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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

CHRISTOPHER BRANDMEIR, individually
and on behalf of all others similarly situated,

Plaintiff,

vs.

**COLUMBIA SOUTHERN UNIVERSITY,
INC.**, an Alabama Corporation,

Defendant.

Case No. 22CV013638

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR APPROVAL
OF ATTORNEYS' FEES AND COSTS, AND
SERVICE AWARD FOR CLASS
REPRESENTATIVE**

Date: August 25, 2023

Time: 9:30 a.m.

Dept. 23; Hon. Brad Seligman

Reservation No: A-13638-002

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I. INTRODUCTION

In conjunction with his motion for final approval, Plaintiff Christopher Brandmeir (“Plaintiff”) moves this Court for an award of attorneys’ fees in the amount of \$106,666.67, representing one-third of the \$320,000 Gross Settlement Amount (“GSA”); reimbursement of out-of-pocket expenses in the amount of \$5,828.61; and a service award for the Class Representative in the amount of \$7,500. The Notice provided the Class with notice of the requested fees, costs, and service award and *not one* of the 51 Class Members objected.

As set forth in this motion, Class Counsel believe this request is appropriate because of the excellent result achieved for the Class, and the risk and financial burden Class Counsel undertook to litigate this complex case for the Class on a contingent basis. The Settlement provides robust monetary payments to Class Members with an average net payment of \$3,628.52 and the highest payment of \$6,162.97.

The requested attorneys’ fees are reasonable and fair because they represent one-third of the GSA routinely awarded fees under the common fund approach. Under a lodestar cross-check, the requested fees represent a negative multiplier of 0.98 to Class Counsel’s lodestar as of July 17, 2023—a lodestar that already increased at the time of the filing of this Motion and that will continue to increase as Class Counsel performs the remaining work to present the final approval and this motion to the Court and ensure that the Settlement is correctly distributed to the Class. The actual out-of-pocket costs incurred in connection with this litigation are \$5,828.61 (\$14,171.39 less than the \$20,000.00 allowed by the Settlement). The difference will be added to the Net Settlement and increase each Class Members share.

The Class Representative’s requested service award warrants approval because, at \$7,500, the amount is similar to awards approved by courts as reasonable and is commensurate with the risks taken and effort expended by Plaintiff, without whose efforts the Class would not have recovered their alleged unpaid wages, unreimbursed expenses, or statutory and civil penalties, and in consideration of the fact that the Plaintiff is entering into broad general releases which the other Class Members are not.

Accordingly, the Court should approve the requested amounts in full.

1 **II. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE**

2 **A. The Uniformly Positive Reaction of the Class and Excellent Result Obtained Support**
3 **Approval of the Requested Attorneys' Fees and Costs**

4 The positive reaction of the Class supports the requested fee award. The Court-approved Notice
5 informed Class Members of the requested attorneys' fees, costs, and class representative service award.
6 To date, no CM has objected to the Settlement and no CM has opted out. *See* Declaration of Taylor
7 Mitzner With Respect to Notification and Settlement Administration ("Mitzner Decl."), filed herewith,
8 ¶¶ 8-9.

9 This uniformly positive reaction is consistent with the substantial benefit achieved for the Class.
10 CMs' average and high payments are \$6,162.97 and \$3,628.52 net, respectively. Mitzner Decl. ¶ 15. In
11 addition, CMs who were employed during the PAGA Period will receive their share of the PAGA
12 penalties. *Id.* ¶ 16.

13 The Settlement represents a substantial recovery because Plaintiff faced a very real risk of
14 recovering nothing or significantly less than the GSA for the Class in light of Defendant's actual and
15 potential defenses, including that Plaintiff would not be able to certify any of this claim and would lose
16 on the merits, that his damages model was inflated, that Defendant would succeed on its good faith
17 defense, which would bar any recovery on the wage statement and the waiting time penalties claims.
18 Declaration of Julian Hammond ISO Pl.'s Mot. for Final App. of Class Action Settlement and Mot. for
19 App. of Attys' Fees and Costs, and Service Award for Class Rep., filed herewith, ("Hammond Final
20 Decl.") ¶¶ 7-12.

21 **B. The Fees Are Reasonable Under the Percentage of the Fund and Lodestar Crosscheck**

22 The award of attorneys' fees in common fund wage and hour class action settlements should
23 start with the percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join
24 the overwhelming majority of federal and state courts in holding that when class action litigation
25 establishes a monetary fund for the benefit of the class members, and the trial court in its equitable
26 powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable
27 fee by choosing an appropriate percentage of the fund created."). The Supreme Court has also affirmed
28 the lodestar crosscheck in determining the propriety of a fees award. *See id.* at 490 (citing *Hensley v.*

1 *Eckerhart*, 461 U.S. 424 (1983)). Here, the attorneys’ fees requested are reasonable under both
2 approaches.

3 **1. The Requested Fees Are Reasonable Under the Common Fund Approach**

4 **a. Plaintiff has Created a Substantial Common Fund**

5 Courts in California have long recognized the equitable “common fund” doctrine under which
6 attorneys who create a common fund or benefit for a group of persons may be awarded their fees and
7 costs out of that fund. “[W]hen a number of persons are entitled in common to a specific fund, and an
8 action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of
9 that fund, such plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.” *Serrano v. Priest*,
10 20 Cal. 3d 25, 34 (1977); *see also Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (“[A] lawyer
11 who recovers a common fund . . . is entitled to reasonable attorneys’ fee from the fund as a whole”).

12 Here, there is an easily calculable \$320,000 common fund that will provide substantial benefits
13 to the class. *See Serrano* 20 Cal. 3d at 35 (common fund approach is available when Class Counsel’s
14 efforts “have resulted in the preservation or recovery of a certain or easily calculable sum of money -
15 out of which sum or ‘fund’ the fees are to be paid.”).

16 **b. Fee Award of One-Third of the Common Fund Is Reasonable**

17 The requested fees represent one-third of the Gross Settlement Amount—a percentage routinely
18 awarded in common fund settlements. *See e.g., Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11
19 (2008) (“[e]mpirical studies show that, regardless of whether the percentage method or the lodestar
20 method is used, fee awards in class actions average around one-third of recovery.”); *Singer v. Becton*
21 *Dickinson*, 2010 U.S. Dist. LEXIS 53416, at *23 (S.D. Cal. June 1, 2010) (citing cases awarding 40%
22 of common fund in wage and hour class actions); *Cicero v. DirectTV, Inc.*, 2010 U.S. Dist. LEXIS
23 86920, at *17 (C.D. Cal. July 27, 2010) (“Other case law surveys suggest that 50% is the upper limit,
24 with 30-50% commonly being awarded in case in which the common fund is relatively small.”). This
25 percentage is in line with (or lower than) the contingency fee that Class Counsel would have agreed to
26 with the class members in individual cases. *Hammond Final Decl.* ¶ 18; *see, e.g., Matter of Cont’l Ill.*
27 *Sec. Litig.*, 962 F.2d 566, 572 (7th Cir. 1992) (in a common fund case, the object “is to give the lawyer
28 what he would have gotten in the way of a fee in an arm’s length negotiation, had one been feasible”).

1 **c. The Requested Fees Are Fair and Reasonable**

2 The requested fees constitute a reasonable charge to the Class in light of (1) the excellent results
3 achieved for the Class; (2) the risk of litigation including the complexity and novelty of the case; (3) the
4 financial burden carried by Class Counsel litigating this case on a contingent basis; (4) preclusion of
5 other income-generating work; (5) similar contingent fee arrangements in private litigation; and (6)
6 awards made in similar cases.

7 **i. Plaintiff Obtained Excellent Monetary Results**

8 Class Counsel obtained an excellent result for the Class with an average and high net payment
9 of \$6,162.97 and \$3,628.52 for the CMs. Mitzner Decl. ¶ 15.

10 **ii. Risk of Litigation and Novelty and Complexity of the Case**

11 As described in Hammond Final Declaration, one of Plaintiff’s central theories – that adjuncts
12 are piece-rate works – is a novel theory that has not been decided by any appellate court. Hammond
13 Final Decl. ¶ 8. In addition, Defendant contended that Plaintiff’s damages model was inflated and
14 asserted several defenses to Plaintiffs’ claims, which, if successful, could result in no recovery or could
15 significantly reduce monetary recovery. *Id.* ¶¶ 8-9. These defenses included Defendant’s good faith
16 defense to Labor Code § 226(e) penalties, which the Court of Appeal in *Naranjo v. Spectrum Security*
17 *Services, Inc.*, 88 Cal. App. 5th 937, 950-51 (2023) held applies to Labor Code § 226(a) violations and,
18 if proven, eliminated penalties. *Id.* ¶ 8. Defendant also argued that at most it would be subject to only
19 the initial \$50 penalty per pay period because it was not put on notice of its violation by any court or
20 government agency. *Id.*; See *Robinson v. Open Top Sightseeing San Francisco, LLC*, 2018 U.S. Dist.
21 LEXIS 24556, at *52-58 (N.D Cal. Feb. 14, 2018) (finding that only the initial \$50 Labor Code § 226(e)
22 penalty applied because nothing in the recorded showed defendant as previously notified that its wage
23 statements were noncompliant). Plaintiff also faced the risk of losing on class certification because CMs
24 taught different types and number of courses, leading to different schedules, and in addition to teaching
25 courses handled different assignments (such as being on the dissertation committee), such that it would
26 be unworkable to determine liability on the overtime claims and on the missed-rest break claim on a
27 class-wide basis. Hammond Final Decl. ¶ 9. In addition, because CMs taught from their homes, figuring
28 out who worked 3.5 hours in a day and/or straight and who missed a rest break, and/or who worked

overtime would also lead to individualized issues. *Id.*

If the Parties continued to litigate this case, the trial court would ultimately rule on the question of whether CMs’ compensation is a piece rate and whether Defendant sufficiently proved its good faith defense to § 226(a) claims, and the losing party would almost certainly appeal. The uncertainties of continued litigation presented a very real risk that Plaintiff would be unable to litigate her class claims at all and put Class Members at a risk of recovering nothing. Hammond Final Decl. ¶ 10.

iii. Preclusion of Other Income-Generating Work

Taking this case required Class Counsel to divert attorney time away from other fee-generating work. *See Serrano*, 20 Cal. 3d at 49 (one of the factors that weighs in favor of granting request for attorneys’ fees is “the extent to which the nature of the litigation precluded other employment by the attorneys”). Hammond Final Decl. ¶ 19.

iv. Percentage Requested Is Consistent with the Private Marketplace

The requested one-third of the GSA is in line with the fee that Class Counsel would have expected if they had negotiated individual retainer agreements with each Class Member. Hammond Final Decl. ¶ 18. Such an award ensures that Class Counsel receive an appropriate fee for the benefit conferred on the Class, particularly when it would be impossible *ex ante* to enter a fair fee arrangement with all the members of the Class.

v. Awards in Similar Cases

Class Counsel has been awarded one-third or more of the common fund in other wage and hour cases including this Court in *Castillo v. Holy Names University*, Case No. HG21097245 (Cal. Sup. Ct. Alameda Cnty., May 2, 2023) (approving fees of 1/3 of \$907,701 wage and hour class settlement) and *Glor, et al v. iHeartMedia + Entm’t, Inc.*, Case No. 22CV005286 (Cal. Sup. Ct. Alameda Cnty. February 14, 2023) (approving fees of 1/3 of \$1,220,000 in a wage and hour class settlement); and other Courts in *Burleigh v. National University*, Case No. MSC21-00939 (Cal. Sup. Ct. Contra Costa Cnty.) (Aug. 26, 2022) (approving fees of 40% of \$925,000 class settlement) and *Parsons v. La Sierra University*, Case No. CVRI2000104 (Riverside County Superior Court, May 19, 2022) (approving fees of a 1/3 of \$578,220 wage and hour class settlement); and other cases listed in Hammond Final Decl. ¶ 15.

1 **2. The Fees Request Is Reasonable Under the Lodestar Crosscheck**

2 To perform a lodestar cross-check of a common fund fee award, the Court compares the
3 requested fee to Class Counsel’s “lodestar” – *i.e.*, the hours reasonably spent on the case multiplied by
4 counsel’s reasonable hourly rates. *In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-57
5 (2009). If the percentage-of-the-fund fee reflects a multiplier of Class Counsel’s lodestar that is
6 “extraordinarily high or low, the trial court should consider whether the percentage used should be
7 adjusted ..., but the court is not necessarily required to make such an adjustment.” *Laffitte*, 1 Cal. 5th at
8 505. The lodestar calculation “does not override the trial court’s primary determination of the fee as a
9 percentage of the common fund and thus does not impose an absolute maximum or minimum on the
10 potential fee award.” *Id.* “Multipliers can range from 2 to 4 or even higher.” *Wershba*, 91 Cal. App.
11 4th at 255. In general, a positive multiplier can be desirable to reflect the contingent nature and risk
12 associated with the action, as well as other factors such as the degree of skill required and the ultimate
13 success achieved. *See Ketchum v. Moses*, 24 Cal. 4th 1122, 1132 (2001) (also explaining that the
14 “purpose of a fee enhancement, or so-called multiplier, for contingent risk is to bring the financial
15 incentives for attorneys enforcing important ... rights”). *Laffitte*, 1 Cal. 5th at 504 (in wage and hour
16 class action, trial court properly considered novelty, difficulty, and skill displayed in determining 2.03-
17 2.13 multiplier reasonable as cross-check to 33% fee).

18 Here, Plaintiff’s Counsel’s seek compensation for 146.3 hours expended by attorneys whose
19 rates range from \$650 to \$925 per hour. Hammond Final Decl. ¶¶ 20, 22. The combined lodestar is
20 \$109,150 and the requested fee award thus amounts to a negative multiplier of 0.98 times the lodestar.
21 *Id.* ¶ 20. This does not include the additional hours Class Counsel will spend finalizing the instant motion
22 and the final approval motion, obtaining final approval, and seeing this case through to conclusion. *Id.*

23 **a. Hours Spent by Plaintiff’s Counsel Were Reasonable**

24 Applying the first step of the lodestar analysis, Class Counsel have expended more than 146
25 hours in this litigation to date. Hammond Final Decl. ¶ 20. Summary reports of these hours based on the
26 actual billing records, are included in Class Counsel’s declarations for the Court’s review. *Id.* ¶¶ 21-22.
27 The hours spent by Plaintiff’s Counsel were “reasonably necessary to the conduct of the litigation.”
28 *Robertson v. Fleetwood Travel Trailers of Cal., Inc.*, 144 Cal. App 4th 785, 818 (2006). Plaintiff’s

Counsel's time litigating this case includes interviewing the named Plaintiff, collecting and reviewing his employment documents, gathering documents about Defendant available online, drafting and filing the PAGA Notice, the initial Complaint, First Amended Complaint, the Second Amended Complaint, meeting and conferring with opposing counsel, drafting informal discovery requests and analyzing data and documents provided by Defendant in informal discovery; drafting a detailed brief prior to the parties' settlement negotiations session, engaging in settlement negotiations with opposing counsel, negotiating and drafting the final settlement agreement, obtaining preliminary approval of class action settlement papers, overseeing the class notice process, and planning and strategizing throughout the case, as well as other necessary tasks like drafting CMC statements, arranging for appearance at hearing, and communicating with Plaintiff about the case. *See* Hammond Final Decl. ¶ 21.

Plaintiff's Counsel made every effort to staff and litigate this case efficiently by coordinating the work of attorneys, minimizing duplication, and assigning tasks in a cost-efficient manner based on the timekeepers' experience levels and talents. Hammond Final Decl. ¶ 23. Finally, Plaintiff avoided the need for extensive litigation by successfully settling very soon after filing the lawsuit.

b. Plaintiff's Counsel's Hourly Rates Are Reasonable

Plaintiff's Counsel requested hourly rates for each of the firms representing Plaintiff in this litigation are shown in the tables immediately below:

Attorney	Position	Admission	Rate	Hours	Fees (Lodestar)
Julian Hammond	Principal	2000	\$925	13.1	\$12,117.50
Adrian Barnes	Sr. Counsel	2007	\$775	27.3	\$21,157.50
Polina Brandler	Counsel	2010	\$750	70.4	\$52,800.00
Ari Cherniak	Associate	2011	\$650	19.4	\$12,610.00
Steven Greenfield	Attorney	2000	\$650	16.1	\$10,465.00
Total				146.3	\$109,150.00

The rates claimed are reasonable if they are "within the range of reasonable rates charged by and judicially awarded comparable attorneys for comparable work." *Children's Hosp. & Med. Ctr. v. Bonta*, 97 Cal. App 4th 740, 783 (2007). Courts consider the "prevailing market rates in the relevant community," as well as the "experience, skill, and reputation of the attorney requesting fees." *Heritage Pac. Fin., LLC v. Monroy*, 215 Cal. App 4th 972, 1009 (2013). In complex litigation like class action

1 employment cases, the appropriate market is that governing rates for attorneys engaged in “equally
2 complex” matters. *Hensley*, 461 U.S. at 430, n.4.

3 Class Counsel’s current rates have been approved by this Court in *Castillo, et al. v. Holy Names*
4 *University, Inc.*, Case No. 22CV005286 (Cal. Sup. Ct. Alameda Cnty., May 2, 2023), and by Judge
5 Evelio Grillo in *Harris v. Southern New Hampshire University*, Case No. RG21109745 (Cal. Sup. Ct.
6 Alameda Cnty., May 17, 2023). Hammond Final Decl. ¶ 24.

7 HL’s slightly lower 2022 hourly rates have been approved by this Court in *Glor v. iHeartMedia*
8 *+ Entm’t, Inc.* Case No. 22CV005286 (Cal. Sup. Ct. Alameda Cnty., February 14, 2023) and other
9 California Superior Courts in *Cassidy v. Keyence Corporation of America*, Case No. 21CV382350 (Cal.
10 Sup. Ct. Santa Clara Cnty., February 8, 2023); *Rodriguez v. River City Bank*, Case No. 1-13-cv-257676
11 (Cal. Sup. Ct. Sacramento Cnty., October 26, 2022); and other cases listed in Hammond Final Decl. ¶
12 25.

13 **c. Class Counsel’s Requested Fees Amount to a Negative Multiplier, Even Though**
14 **a Positive Multiplier Would be Easily Justified Under the Law**

15 “After making the lodestar calculation, the court may augment or diminish that amount based on
16 a number of factors specific to the case, including the novelty and difficulty of the issues, the attorneys’
17 skill in presenting the issues, the extent to which the case precluded the attorneys from accepting other
18 work, and the contingent nature of the work.” *Ctr. for Biological Diversity v. County of San Bernardino*,
19 188 Cal. App 4th 603, 616 (2010). Class Counsel’s current lodestar is \$109,150 and the fees request
20 represents a negative multiplier of 0.98, and that multiplier will be reduced by the conclusion of the
21 case. Hammond Final Decl. ¶ 20. However, factors considered in determining whether a lodestar
22 multiplier is appropriate, which are set out in section II.B.1.c above and discussed at pp. 4-5, underscore
23 the reasonableness of the attorney fee award sought here.

24 **III. THE REQUESTED COSTS ARE REASONABLE.**

25 Class Counsel has incurred \$5,828.61 in litigation costs to date, which is \$14,171.39 less than
26 the \$20,000.00 for costs stated in the Court-approved Class Notice. Hammond Final Decl. ¶¶ 27-28.
27 The difference will be added to the Net Settlement and increase each CMs settlement share. These costs
28 include filing and service costs, research costs, witness location costs, research costs, technology costs,

1 and anticipated costs in connection with filing the final approval motion papers. *See* Mitzner Decl. ¶
2 14. Thus, Class Counsel’s requested litigation costs are reasonable and should be approved.

3 **IV. THE CLASS REPRESENTATIVE’S SERVICE AWARD IS PROPER**

4 The requested service award of \$7,500 to Plaintiff Brandmeir is reasonable and should be
5 approved because class representatives are eligible for reasonable participation payments to compensate
6 them for the risks assumed and efforts made on behalf of the Class. *See Staton v. Boeing Co.*, 327 F.3d
7 938, 976 (9th Cir. 2003). Courts routinely approve enhancement awards, including in amounts equal to
8 or greater than that requested here. *See, e.g., In re Cellphone Fee Termination Cases*, 186 Cal. App. 4th
9 1380, 1393-94 (2010) (approving \$10,000 payment to each class representative in a consumer class
10 action); *Glor, et al. v. iHeartMedia + Entm’t, Inc.*, Case No. 22CV005286 (Cal. Sup. Ct. Alameda Cnty.
11 February 14, 2023) (awarding \$7,500 to each of the two named plaintiffs).

12 Relevant factors courts use in determining the amount of enhancement awards include (1) the
13 actions the plaintiff has taken to protect the interests of the class; (2) the degree to which the class has
14 benefitted from those actions; (3) the amount of time and effort the plaintiff expended in pursuing the
15 litigation; and (4) the risk the plaintiff assumed. *Clark v. American Residential Services, LLC*, 175 Cal.
16 App. 4th 785, 804 (2009). All of the above factors support the service award here.

17 First, Plaintiff has served the Class well and has significantly benefited the class. Plaintiff
18 diligently searched for and collected his relevant employment documents and assisted Counsel with
19 preparation of the PAGA Notice and complaints, promptly responded to Counsel’s questions or requests
20 for additional information and/or documentation, and regularly sought reports on the status of the case.
21 Plaintiff’s Counsel believes that but for Plaintiff’s willingness to represent the Class, Class Members
22 would not have pursued their claims and no monetary relief would have been recovered. In addition,
23 this settlement, in which Plaintiff played a critical role, directly furthers the public policy underlying the
24 California Labor Code by requiring out of state Defendant who conducts business in California to
25 comply with the California labor laws, namely to fully compensate its employees for all hours worked,
26 provide mandated breaks, reimburse necessary business expenses. Plaintiff has thus advanced
27 California’s public policy goal of enforcing wage and hour laws. *See Sav-On Drug Stores, Inc. v. Super.*
28 *Ct.*, 34 Cal. 4th 319, 340 (2004). Second, as discussed above, this litigation resulted in substantial

1 monetary relief to the Class, which compares very favorably to other similar cases.

2 Third, the service award is appropriate to compensate Plaintiff for the time and effort he
3 expended in this litigation. In agreeing to serve as a Class Representative, Plaintiff formally accepted
4 the responsibilities of representing the interests of all Class Members. Plaintiff spent at least 10 to 11
5 hours assisting in the litigation of this case. *See* Declaration of Christopher Brandmeir (“Brandmeir
6 Decl.”), filed herewith.

7 Fourth, assisting in the litigation of this case assumed the risk of being branded a “troublemaker”
8 and blacklisted by other employers in the industry. *Staton*, 327 F.3d at 976 (“reasonabl[e] fear [of]
9 workplace retaliation” is a factor in assessing the proper amount of the enhancement); *Mitchell v. Robert*
10 *DeMario Jewelry, Inc.*, 361 U.S. 288, 292 (1960) (“[I]t needs no argument to show that fear of economic
11 retaliation might often operate to induce aggrieved employees quietly to accept substandard
12 conditions.”); *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1073 (9th Cir. 2000) (“[F]ear
13 of employer reprisals will frequently chill employees’ willingness to challenge employers’ violations of
14 their rights.”). *See* Brandmeir Decl. ¶ 16.

15 Furthermore, Plaintiff is entering into a general release of claims against the Released Parties,
16 which is much broader than the targeted release of claims being given by the Class Members. SA § 5.3.

17 **V. CONCLUSION**

18 Plaintiff respectfully requests that the Court award attorneys’ fees in the amount of \$106,666.67,
19 litigation costs in the amount of \$5,828.61, and service award of \$7,500 to Plaintiff Brandmeir, pursuant
20 to the terms of the Settlement.

21
22 Dated: August 3, 2023

Respectfully submitted,

23 *P. Brandler*

24 Julian Hammond
25 Polina Brandler

26 *Attorneys for Plaintiff and the Settlement Class*
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