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**SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

**COUNTY OF SACRAMENTO**

**CHRISTOPHER PAHL** and **KELLY LESLIE**,  
individually and on behalf of all others similarly  
situated,

Plaintiffs,

v.

**CEC EMPLOYEE GROUP, LLC**, a Delaware  
Limited Liability Company, **COLORADO**  
**TECHNICAL UNIVERSITY, INC.**, a  
Colorado Corporation, **AMERICAN**  
**INTERCONTINENTAL UNIVERSITY**  
**SYSTEM, INC.**, a Georgia Corporation,  
**TRIDENT UNIVERSITY**  
**INTERNATIONAL, LLC**, a Delaware  
Corporation, **AMERICAN**  
**INTERCONTINENTAL UNIVERSITY, INC.**,  
a Georgia Corporation, and **CALIFORNIA**  
**SOUTHERN UNIVERSITY**,

Defendants.

CASE NO. 34-2022-00322588

**DECLARATION OF JULIAN HAMMOND IN  
SUPPORT OF PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

Date: December 15, 2023

Time: 9:00 a.m.

Dept. 28; Hon. Lauri A. Damrell

Reservation No. A-322588-001

1 I, Julian Hammond, declare as follows:

2 1. I am over the age of 18 and have personal knowledge of the facts set forth in this  
3 declaration and could and would testify competently to them.

4 2. I am a member in good standing of the Bar of the State of California. I am licensed to  
5 practice before all courts in the State of California.

6 3. I am the principal of my own law firm HammondLaw, P.C. (“HammondLaw” or “Class  
7 Counsel”) and counsel for the named plaintiffs Christopher Pahl and Kelly Leslie (“Plaintiffs”) and two  
8 putative classes: (a) approximately 246 Class Members who were employed as instructors by CEC  
9 Employee Group, LLC, Colorado Technical University, Inc., American Intercontinental University  
10 System, Inc., Trident University International, LLC, American Intercontinental University, Inc., and  
11 California Southern University (“Defendants”) in California at any time during the period from June 28,  
12 2018 to June 7, 2023 (the “Class Period”); and (b) approximately 182 Staff Class Members who were  
13 employed by Defendants in California as remote workers, excluding Class Members, during the Class  
14 Period.

15 4. I submit this declaration in support of Plaintiffs’ Motion for Preliminary Approval of  
16 Class Action Settlement. A copy of the Class Action Settlement Agreement in this matter is attached as  
17 **Exhibit 1** to the proposed order, filed herewith.

18 5. HammondLaw has been certified as Class Counsel or Co-Class Counsel in over 70 wage  
19 and hour class actions, representing tens of thousands of employees, including in the Superior Courts for  
20 the counties of Alameda, Los Angeles, Sacramento, San Diego, San Francisco, Solano, Santa Clara,  
21 Monterey, San Joaquin, Placer, Orange, Contra Costa, San Bernardino, and in federal District Courts in  
22 California in diversity jurisdiction cases based on state law, over the past ten years. In addition,  
23 HammondLaw is putative Class Counsel in at least 40 pending actions in California Superior Courts, and  
24 federal courts, some of which have been tentatively settled and/or preliminarily approved by the courts,  
25 and many of which, like the present case, are brought, in part, on behalf of professors. These cases –  
26 challenging the long-standing industry-wide practice of classifying adjuncts as non-exempt and not  
27 paying them for all hours worked – have led to an overhaul of these practices in the industry

28 6. My firm’s experience in the prosecution and resolution of wage and hour class actions,  
and particularly wage and hour class actions on behalf of instructors, was a significant factor in this case  
proceeding to early mediation and favorable settlement.

## I. OVERVIEW OF THE LITIGATION

### Procedural History

7. On June 22, 2022, Plaintiff Pahl submitted a PAGA Notice to the LWDA and to Defendants CEC Employee Group, LLC and Colorado Technical University, Inc. seeking PAGA penalties for Defendants' alleged (i) failure to pay wages for all hours worked in violation of Labor Code §§ 226.2, 1194; (ii) failure to pay hourly and separately for rest breaks and to authorize and permit paid off-duty rest breaks in violation of Labor Code §§ 226.2, 226.7; (iii) failure to issue accurate itemized wage statements in violation of Labor Code §§ 226(a)(2)-(a)(3), (a)(6), 226.2; (iv) failure to pay timely in violation of Labor Code § 204; (v) failure to pay all wages due upon discharge from employment in violation of Labor Code §§ 201-202; (vi) failure to provide paid sick time off in violation of Labor Code §§ 246; and (vii) failure to reimburse business-related expenses in violation of Labor Code § 2802.

8. On June 28, 2022, Plaintiff Pahl filed his Complaint alleging violations of Labor Code §§ 226(a), 226.2, 1194, 226.7, and 2802. On September 8, 2022, Plaintiff Pahl filed a First Amended Complaint adding a PAGA cause of action for the labor code violations alleged in his PAGA Notice.

9. In his Complaint, and First Amended Complaint, Plaintiff Pahl alleged that Class Members did not fall within the professional exemption under Wage Order No. 4 § 1(A)(3)(d), which requires that employees who meet the duties test (meaning that employees be primarily engaged in a profession requiring discretion and independent judgment) must earn "[a] monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment" which is defined as "40 hours per week." Plaintiff alleged that CMs' course pay was not a salary but a "piece-rate", i.e., a flat/ascertainable amount per course taught. Plaintiff further alleged that even if the course pay was a salary, CMs did not earn the minimum monthly or hourly payments required to be exempt. As a result, Plaintiff Pahl alleged that Defendants were required to pay CMs separately and hourly for non-teaching time (i.e., work that took place before the first day of classes and after the last day of classes, as well as the hours spent on mandatory trainings, completing required forms, and attending meetings during each term) pursuant to Labor Code §§ 1194, 226.2 and Wage Order No. 4, § 4.

10. Plaintiff Pahl also alleged that, as non-exempt piece rate workers, Defendants were required to pay CMs separately and hourly for time spent on rest breaks and/or authorize and permit paid rest breaks pursuant to Labor Code §§ 226.2, 226.7 and Wage Order No. 4, §§ 4, 12; were required to issue timely accurate wage statements pursuant to Labor Code §§ 204, 226(a) and 226.2; and were required to provide paid sick leave, pursuant to Labor Code § 246.

1 11. Finally, Plaintiff Pahl alleged that Defendant required and/or expected Class Members  
2 and Staff Class Members to work remotely, and incur home office expenses as a result, for which  
3 Defendants did not reimburse them, in violation of Labor Code § 2802.

4 12. On October 7, 2022, Plaintiff Pahl provided an amended PAGA Notice adding Kelly  
5 Leslie as a PAGA representative, and alleging that Defendants wrongfully terminated Plaintiff Pahl in  
6 violation of Labor Code §§ 98.6 and 1102.5.

7 13. On October 11, 2022, Defendants filed an answer to Plaintiff Pahl's First Amended  
8 Complaint generally denying the allegations, and raising 34 affirmative defenses including (a) that  
9 Plaintiff Pahl's claims are subject to a binding arbitration agreement; (b) that off-the-clock work was  
10 prohibited by Defendants and any such work was not reported by any Class Members to Defendants; (c)  
11 that Defendants authorized and permitted Class Members to take rest breaks and to the extent Class  
12 Members did not take an authorized and permitted rest break, they freely chose to do so without any  
13 employer coercion or encouragement; (d) that any violation of Labor Code § 226(a) was not knowing  
14 and intentional; (e) that Class Members were properly reimbursed for their remote work expenses; (f)  
15 that Class Members were properly classified as exempt employees; (g) that Plaintiff would be unable to  
16 certify either class; and (h) that an award of PAGA penalties would be unjust, arbitrary and oppressive  
17 based on Defendants' good faith efforts to comply with the California Labor Code and such penalties  
18 would be excessive in relation to Defendants' ability to pay.

#### 19 **Discovery and Investigation**

20 14. After the parties agreed to mediate, Defendants produced key data and documents in  
21 informal discovery for each of the entities named as a Defendant including: (a) faculty handbooks; (b)  
22 job descriptions; (c) payroll calendars; (d) compensation policies; (e) Letters of Assignment; (f)  
23 timekeeping policies; and (g) sick leave policies. Defendant also produced spreadsheets showing (h)  
24 CMs' dates of employment, job titles, the entity who employed them, and how they were classified (i.e.,  
25 exempt or non-exempt); (i) CMs' course assignments including course title, start date and end date, and  
26 number of credit hours in the course; and (j) CMs' pay data including the start date, end date, and pay  
27 date of each pay check, the amount of each pay check, the type of payment included in each pay check  
28 (i.e., teaching pay, tech stipend, sick pay, vacation pay, etc.); and the number of hours recorded on each  
check.

15. Defendants also produced a Mutual Arbitration Agreement it required CMs to sign at the  
beginning of their employment that provided "for the final and binding arbitration of any and all disputes,

claims or controversies arising out of the employment” between Plaintiffs and other CMs and Defendants and included the following class action waiver:

**Claims will be resolved on an individual basis only. The Parties may not bring Claims in any purported class, representative, or collective action. The Arbitrator will have no authority to hear disputes on a class, representative or collective basis or to interpret this Agreement as allowing for class, representative, or collective arbitration.**

16. Defendant produced its expense reimbursement policies, and spreadsheets listing each reimbursement request submitted by CMs and Staff CMs, whether Defendants approved the request, the dollar amount Defendants approved, and the amount paid to CMs in “Tech Stipends” during each pay period in the Class Period.

17. Plaintiffs’ counsel also conducted their own investigation and gathered additional documents and information from Colorado Technical University’s website.

18. From informal discovery, Plaintiff Pahl ascertained that Perdoceo Education Corporation (“PEC”), formerly known as Career Education Corporation, is an Illinois-based corporation that owns multiple for-profit universities that offered online programs in California: American InterContinental University System, Inc., which operated under the DBAs American InterContinental University and California Southern University; Colorado Technical University (“CTU”); and Trident University.

19. From the start of the Class Period until the end of 2022, most CMs were classified as exempt and were paid a flat per-course rate that was memorialized in a Letters of Assignment issued to CMs prior to each Course. The Letters of Assignment issued by Defendants included the Course name, number, credits, pay rate, and pay dates, and provided that if, “in the judgment of [Defendants] a class does not have enough students to warrant starting the class, the class may be cancelled in advance and no payment will be made. If the class is discontinued after the start of the session, a pro-rated payment will be made for the period you worked after the start of the session.” At the end of 2022, most CMs were laid off; and the remaining CMs were reclassified as non-exempt and began tracking their hours worked.

20. Plaintiff Pahl believed that he would be able to establish that the Course Rate was not a salary because a “salary” is a “predetermined amount that is not subject to reduction based upon the quantity or quality of work” whereas CMs’ compensation was subject to reduction based on enrollment. Further, the more units a CM taught the more he or she was paid. Therefore, Plaintiff Pahl contended that the Course Rate more closely resembled a piece rate.

21. Plaintiff’s Counsel also analyzed the pay data provided by Defendant and determined that CMs earned below the monthly exemption threshold under Wage Order No. 4, § 1(A)(3)(d) during nearly

every single pay period. Based on this, Plaintiff Pahl alleged that even if the Course Rate was a “salary,” CMs were still misclassified as exempt.

22. The Faculty Handbooks issued by Defendants included job duties that CMs were required to perform before and after each course including preparing for each Course, posting documents on Defendants’ websites, posting grades, and submitting incomplete grades. CMs were also required to perform non-teaching tasks during each Course such as attending faculty meetings and trainings. However, the Course rate included in the Letters of Assignment only “covers all activities required for the class, including classroom/lab and non-teaching academic duties related to the class including but not limited to office hours, course set up, grading, etc.” but not duties performed before and after the Course, or non-teaching related activities performed during the Course.

23. Plaintiff Pahl reviewed CMs’ wage statements, and Defendants’ compensation policies, and determined that Defendants estimated the average weekly time commitment per course and included those hours under the “Hours” column on CMs’ paychecks rather than the actual hours CMs worked. Defendants also issued no paychecks for work performed prior to the Course; and issued paychecks on a monthly (rather than bi-weekly) basis approximately 29% of the time.

24. Plaintiff Pahl reviewed Defendants’ sick leave policy, and pay data, and determined that there was no sick leave policy applicable to CMs until November 2022.

25. Finally, Plaintiff Pahl alleged that Defendants required and/or expected CMs and Staff CMs to work remotely throughout the Class Period. Defendants’ Tech Stipend was issued “each pay period to reimburse for technology-related costs including internet service and mobile phones” and totaled \$187,685 during the Class Period. Defendants also maintained an expense reimbursement policy that allowed CMs and Staff CMs to submit expenses and receive reimbursement but Plaintiff Pahl alleged that Defendants reimbursed few or no remote work expenses pursuant to this policy.

### **Mediation**

26. On March 9, 2023, the Parties participated in a mediation session with Lou Marlin, an experienced mediator who has mediated numerous wage-hour class actions. Prior to the mediation, Plaintiffs submitted a detailed mediation brief supported by documents and data obtained in informal discovery. The parties reached an agreement in principle at mediation, and subsequently reached a final agreement that is presented to the Court for approval. I consider the proposed settlement to be fair, reasonable, and adequate and overall an excellent result for the Classes.

27. Following settlement, Plaintiff Pahl filed his Second Amended Complaint, adding Kellie Leslie as a named Plaintiff and PAGA representative; adding Trident University International, American

1 Intercontinental University, Inc., American Intercontinental University System, Inc., and California  
2 Southern University as Defendants; adding class causes of action for waiting time penalties under Labor  
3 Code §§ 201-203, and the WARN Act and the California WARN Act; and adding an individual cause of  
4 action against Defendants CEC Employee Group, LLC and Colorado Technical University, Inc. for  
wrongful termination of Plaintiff Pahl in violation of Labor Code §§ 98.6 and 1102.5.

## 5 **II. KULLAR ANALYSIS**

6 28. Plaintiffs calculated Defendants' maximum liability (before applying any discounts) and  
7 potential realistic liability (after applying discounts) on the class claims as follows:

### 8 **Unpaid Wages Claim – Labor Code §§ 1194 and 226.2**

9 29. As stated above, Plaintiffs alleged that CMs were non-exempt piece-rate workers entitled  
10 to be paid separately and hourly for all non-teaching tasks performed during each Course, as well as for  
11 work performed before and after each Course. However, the Course pay included in the Letters of  
12 Assignment only covered teaching tasks performed during the Course. Plaintiffs estimate that CMs spent  
13 on average 15 hours of unpaid work per course. Based on the data provided by Defendants, CMs taught  
14 approximately 5,770 non-overlapping courses from the start of the Class Period until the end of 2022.  
15 Accordingly, Plaintiffs calculated Defendants' exposure as: \$13.50 (average minimum wage) x (15 hours  
per course) x (5,770 courses) = \$1,168,425. Interest at 10% per annum adds \$292,106 for a total of  
16 \$1,460,531.

17 30. **Class Certification:** Plaintiffs applied a 50% discount for the risk of non-certification on  
18 the theory that whether certain activities were covered by the Letter of Assignment would depend on  
19 each CM's understanding of what the course rate covered, and on the theory that the amount of time each  
20 CM spent on pre-course work, or non-teaching work performed during the Letter of Assignment period,  
would lead to individualized issues of whether the tasks performed were under Defendants' control. This  
21 reduced Defendants' liability to \$730,265.

22 31. **Merits:** As to the merits, Plaintiffs applied a further 50% discount for the risk that the  
23 Court would find that prep work is included in the Course Rate because those hours were spent on tasks  
24 directly related to the course assignment; for the risk that Plaintiffs' calculation of exposure is overstated  
25 because many CMs spent less than 10 hours per course performing unpaid work (bringing the average  
substantially below 15 hours of unpaid work), especially those CMs who were teaching repeat courses  
26 and had to perform little preparation work prior to the first class.

27 32. Applying the certification and merits discount, for settlement purposes, Defendants'  
28 realistic exposure on the unpaid wage claim is \$365,132.

1                    **Rest Break Claims – Labor Code §§ 226.2, 226.7**

2            33.        As stated above, Plaintiffs allege that Defendants paid CMs a Course Rate which was a  
3 form of a piece-rate. Plaintiffs alleged that Defendants did not pay CMs hourly and separately for rest  
4 breaks, in violation of Labor Code § 226.2, entitling them to premium pay for each class that was 3.5  
5 hours or longer. Plaintiffs also alleged that CMs were entitled to rest breaks as non-exempt employees  
6 but Defendants imposed uniform policies and procedures that impeded them from taking rest breaks  
7 during classes that were 3.5 hour or longer, in violation of IWC Wage Order 4-2001 §12.

8            34.        According to policy documents provided by Defendants, courses with 4.5 or more credits  
9 required at least “three clock hours of synchronous interaction in the form of class chat(s) and office  
10 hour(s)” per week. Plaintiffs calculated, based on the course scheduling data, that CMs taught  
11 approximately 3,208 courses that were 4.5 credits or more between the start of the Class Period and the  
12 end of 2022. Based on data provided by Defendants, the average length of each course was 8 weeks,  
13 meaning that there were 25,744 potential rest break violations (assuming that 100% of the time, CMs  
14 started their weekly synchronous sessions early and stayed late answering students’ questions). Plaintiffs  
15 calculated CMs’ hourly rate of \$27.38 by dividing total compensation paid to the Class by total estimated  
16 hours that CMs worked. Accordingly, Defendants’ maximum exposure on this claim, assuming a 100%  
violation rate, is \$704,870 (which is 25,744 classes multiplied by \$27.38). Interest at 10% per annum  
adds \$176,217 for a total of \$881,088.

17           35.        **Class Certification:** Plaintiffs applied a 50% discount to Defendants’ maximum  
18 exposure for the risk that even if CMs were paid by the piece, the piece-rate included time spent on rest  
19 breaks, and what was included in the piece-rate would depend on each CM’s understanding of what the  
20 course rate covered, and individualized issues would predominate. Defendants also contended that  
21 individualized issues would predominate in that CMs were never scheduled to work 3.5 hours in a row,  
22 and if any CM did so, and did not take rest break, it was completely voluntary. This reduced Defendants’  
liability to \$440,544.

23           36.        **Merits:** As to the merits, Defendants contended that CMs were never required to work  
24 more than 3.5 hours in a row. In fact, Defendants specifically directed CMs to work synchronous hours  
25 “at varied times in a seven-day calendar week to accommodate diverse schedules” of students. Plaintiffs  
26 applied a further 50% reduction for this risk, which reduced Defendants’ realistic exposure to \$220,272.

**Wage Statements - Labor Code §§ 226(a), (e), 226.2(a)**

37. Plaintiffs alleged that CMs, as non-exempt piece rate employees, were entitled to receive accurate itemized wage statements for each pay period during which they worked, and to receive wage statements that listed their hours worked, hourly rate, and piece rate information, pursuant to Labor Code §§ 226(a) and 226.2(a). Plaintiffs also alleged that Defendants failed to issue *any* wage statement for work performed prior to the Letter of Assignment start date, and issued wage statements monthly (instead of bi-weekly) to some CMs. Plaintiffs alleged that Defendants' practices and failures were not a result of an unintentional payroll error, or clerical mistake, but rather a result of Defendants' regular compensation policies including its policy of requiring CMs to perform unpaid work prior to each course. As such, the violation of Labor Code § 226(a) was knowing and intentional. Plaintiffs also alleged that CMs suffered injury pursuant to § 226(e)(2)(A) and Defendants were liable for statutory penalties.

38. Plaintiffs calculated Defendants' liability as follows: according to the data provided by Defendants, CMs were issued approximately 3,078 bi-weekly wage statements during the relevant statutory period (June 28, 2021 to the end of 2022). There were approximately 182 CMs employed in that time-period, meaning that 182 of the violations were "initial" (\$50) violations, and the remaining violations were "subsequent" (\$100) violations. Thus, Plaintiffs calculated statutory penalties on their missing wage statement claims as follows:  $(182 \times \$50) + ((2,896 \times \$200)) = \$298,700$ .

39. Plaintiffs calculated Defendants' liability for its failure to issue wage statements twice a month as follows: according to the data provided by Defendants, between June 28, 2021 to the end of 2022 when Defendants reclassified CMs as non-exempt, Defendants issued 893 monthly wage statements during the relevant statutory period. Thus, Plaintiff calculated statutory penalties on as follows:  $(182 \times \$50) + (711 \times \$200) = \$80,200$ .

40. Finally, Plaintiffs calculated Defendants' liability for failure to issue *any* wage statement for work performed prior to each Course as follows: CMs taught 2,502 courses during the relevant statutory period meaning that Defendants failed to issue 2,502 wage statements. Thus, Plaintiff calculated statutory penalties on as follows:  $(182 \times \$50) + (2,320 \times \$200) = \$241,100$ .

41. Thus, Defendants' maximum exposure on the wage statement claim was \$620,000.

42. **Class Certification:** Plaintiffs applied a 50% discount for class certification for Defendants' contention that individualized issues would predominate about how many hours CMs worked each pay period, whether CM were piece rate employees, whether CMs were required to perform work prior to the Course Start date, and whether Defendants were required to issue wage statements for pre-Course work that CMs performed voluntarily. This reduced Defendants' exposure to \$310,000.

1           43.     **Merits:** Plaintiffs applied a further 50% reduction on the merits for Defendants'  
2 contention that it did not “knowingly and intentionally” fail to provide inaccurate wage statements  
3 because it reasonably believed that CMs were exempt; or reasonably believed that the Course Rate  
4 covered all work related to teaching the Course including preparation time. Defendants also could have  
5 contended that the maximum applicable statutory penalty was the initial penalty of \$50 per wage  
6 statement because Plaintiffs had not established that Defendants ever received notice from the Labor  
7 Commissioner or a court, and so there are arguably no “subsequent” violations. This reduced Defendants’  
8 exposure to \$155,000.

9           **Waiting Time Penalties – Labor Code §§ 201-203**

10           44.     Plaintiffs alleged that, as a result of Defendants’ failure to pay wages for all hours worked,  
11 CMs who were discharged were not paid all wages due and owing to them.

12           45.     Based on data provided by Defendants, 186 CMs were terminated between June 28, 2021  
13 and the end of 2022. Plaintiffs calculated CMs’ average daily rate as \$105 by multiplying the average  
14 number of hours CMs worked per day while teaching a course (3.85) by CMs’ average hourly rate  
15 (\$27.38). Accordingly, Plaintiffs calculated total waiting time penalties as ( $\$105 * 30 \text{ days} * 186 \text{ CMs}$ )  
16 = \$575,555.

17           46.     **Class Certification Discount:** Plaintiffs applied a 50% discount for Defendants’  
18 contention that the claim would not be certified for the same reason the underlying claims would not be  
19 certified. This reduced Defendants’ exposure on the waiting time penalties claim to \$287,777.

20           47.     **Merits Discount:** Plaintiffs applied a 50% discount on the merits because this claim is  
21 derivative of Plaintiffs’ unpaid wage claims; and for Defendants’ defense that it had a good faith dispute  
22 that CMs were not owed any unpaid wages which could negate the willfulness requirement of Labor  
23 Code § 203. This reduced Defendants’ exposure on the waiting time penalties claim to \$143,888.

24           **WARN Act Claims - Labor Code § 1400 et seq. and 29 U.S.C. § 2102(b)**

25           48.     Plaintiffs alleged that Defendants violated the federal WARN Act and California WARN  
26 Act at the end of 2022 by laying off at least 50 CMs within a 30-day period, yet failing to provide at least  
27 60 days’ notice. As a result, Defendants are liable for up to 60 days of back pay, including unpaid wages,  
28 bonuses, accrued holiday pay, accrued vacation pay, pension and 401(k) contributions and other ERISA  
benefits, for each employee. Based on the pay data provide by Defendants, Plaintiffs calculated CMs’  
hourly rate (including bonuses, accrued holiday pay, accrued vacation pay, etc.) was \$27.38. According  
to data provided by Defendant, 67 CMs were laid off at the end of 2022. Defendants are therefore liable

1 \$6,325 per CM (which is 3.85 hours per day \* \$27.38 per hour\* 60 days) or \$423,760 for all terminated  
2 CMs.

3 49. Plaintiffs applied a 50% discount for class certification in light of Defendants' contention  
4 that individualized inquiries would predominate as to when each CM was given notice of the termination,  
5 what their effective date of the termination was, because CMs were notified at different times and their  
6 employment terminated on different dates. This reduced Defendants' exposure to \$211,880.

7 50. Plaintiffs applied a 50% discount on the merits. Defendants contended and/or could have  
8 contended that they were not covered the either the California WARN Act or the federal WARN Act  
9 because none of them employed at least 75 (or at least 100) individual at any one time. *See* Labor Code  
10 §§ 1400.5(a), 1401; 29 USC § 2102(a)(1), 2102. In addition, Defendants argued and/or could have  
11 argued that no "layoff" or "mass layoff" occurred because none of the individual Defendants laid off 50  
12 or more employees in a 30-day period. *See* Labor Code §§ 1400.5, 1401; 29 USC §§ 2102(2), 2102. This  
13 reduced Defendants' exposure on the WARN Act claims to \$105,940.

14 **Unreimbursed Expenses Claim - Labor Code § 2802**

15 51. Plaintiffs alleged that CMs worked remotely throughout the Class Period, and were  
16 required to use their home internet and personal cell phones in order to perform their job duties for  
17 Defendants. Defendants maintained a policy providing that "[a]ll remote employees receive a tech  
18 stipend in their paycheck each pay period to reimburse for technology-related costs including internet  
19 service and mobile phones" and, according to data provided by Defendants, it paid CMs at least \$73,247  
20 for their remote work expenses pursuant to this policy. Defendants also maintained an expense  
21 reimbursement policy providing that CMs could request reimbursement for out-of-pocket costs, but  
22 Plaintiffs contended that, in practice, no CMs submitted or received reimbursement for remote work  
23 expenses pursuant to this policy.

24 52. Based on published surveys of average cell phone, internet, and electricity costs in  
25 California and nationally during the Class Period, Plaintiffs estimated that CMs incurred approximately  
26 \$70 per month in remote work expenses, including \$45 per month in cell phone and internet work-related  
27 costs, and \$25 per month in electricity work-related costs. Thus, the entire class incurred \$466,252 for  
28 all 6,196 work months worked by the Class (extrapolated out to the end of the Class Period). After  
deducting the \$73,247 paid out in tech stipends, CMs are owed \$393,005. Interest at 10% adds \$98,251  
for a total of \$491,257.

53. **Class Certification:** Plaintiffs applied a 50% discount for class certification based on the  
fact that there were varying practices with regard to expenses incurred by CMs, whether those expenses

were reasonable, whether CMs requested reimbursement pursuant to Defendants' policies, and whether Defendants approved the request, which would all lead to individualized issues. This reduced Defendants' liability to \$245,628.

54. **Merits:** As to the merits, Plaintiffs applied a further 50% discount based on the risks that: the assumption of \$70 per month as a "reasonable" estimate of unreimbursed expenses was inflated given the part-time nature of CMs' employment; a much smaller percentage of their home office expenses should be reimbursed; some of the expenses claimed were not necessary; and, CMs could request reimbursement if they wanted to. This reduced realistic damages to \$122,814.

**Maximum and Realistic Exposure on CMs' Claims**

55. Plaintiffs calculated Defendants' maximum exposure on CMs' claims (including interest but excluding PAGA) as \$4,452,099, and their realistic exposure as \$1,113,046. A summary of the maximum and realistic exposure is as follows:

| Labor Code Section               | Maximum Damages    | Realistic Exposure |
|----------------------------------|--------------------|--------------------|
| Unpaid Wages (§§ 226.2 / 1194)   | \$1,460,531        | \$365,132          |
| Rest Breaks (§ 226.7)            | \$881,088          | \$220,272          |
| Wage Statements (§§ 226(a), (e)) | \$620,000          | \$155,000          |
| Waiting Time Penalties (§ 203)   | \$575,554          | \$143,888          |
| WARN Act                         | \$423,670          | \$105,940          |
| Unreimbursed Expenses (§ 2802)   | \$491,256          | \$122,814          |
| <b>Total</b>                     | <b>\$4,452,099</b> | <b>\$1,113,046</b> |

56. The 83% of the Gross Settlement (\$750,000) allocated to CMs represents 17% of Defendants' maximum exposure and 67% of its realistic exposure. Under the Settlement Agreement, if approved as submitted, 83% of the NSA (\$408,333)<sup>1</sup> will be allocated to CMs on *pro rata* basis based on the number of weeks worked by them during the Class Period. The average net recovery is \$1,659.89<sup>2</sup> and the average gross recovery is \$3,048.78.<sup>3</sup> According to data provided by Defendants, CMs worked approximately 26,643 work weeks (extrapolated to the end of the Class Period). The value of each work

<sup>1</sup> The Net Settlement Amount allocated to both classes is \$490,000 after deduction of fees (up to \$315,000) and costs (up to \$25,000); enhancement awards to Plaintiffs (\$30,000); settlement administration costs (\$10,000); and PAGA penalties (\$30,000).

<sup>2</sup> \$408,333 / 246 Class Members

<sup>3</sup> \$750,000 / 246 Class Members

1 week is approximately \$15.33 net<sup>4</sup> and \$28.15 gross.<sup>5</sup> These are significant recoveries when considering  
2 Defendants' many defenses discussed above.

3 **Staff Class Claims (Lab. Code § 2802):**

4 57. Plaintiffs allege that Defendants expected and required Staff CMs to work remotely from  
5 home, and to incur home office expenses, including home internet and cell phone costs. Plaintiffs contend  
6 that under Labor Code § 2802, Staff CMs were entitled to be compensated for such expenses incurred in  
7 order to carry out their job duties from home, but were not, in fact, compensated, in violation of Labor  
8 Code § 2802.

9 58. Plaintiffs calculated Defendants' potential liability for unreimbursed business expenses  
10 as follows: According to data provided by Defendants, Staff CMs worked approximately 23,651 work  
11 weeks (extrapolated to the end of the Class Period), or approximately 5,500 work months. Plaintiffs  
12 estimate that Staff CMs (who would have worked more hours than part-time CMs) incurred \$150 per  
13 month in home office expenses, for a total of \$851,433 for all Staff CMs. After deducting \$114,438 in  
14 tech stipends paid by Defendants, Staff CMs are owed \$737,005. Interest at 10% adds \$184,251 for a  
15 total of \$921,256.

16 59. **Class Certification / Merits:** Plaintiffs applied a 50% discount for the risk that varying  
17 practices with regard to incurring expenses by Staff CMs presents an obstacle to class certification, which  
18 reduced Defendants' exposure to \$460,628; and a further 50% discount on the merits for the risks that  
19 not all expenses incurred by each Staff CM were "necessary" or "reasonable" and that the estimated \$150  
20 per month was inflated, especially given the fact that CMs could request reimbursement if they wanted  
21 to. This reduced Defendants' exposure to \$230,314.

22 60. Under the Agreement, 17% of the Gross Settlement (\$150,000) is allocated to the Staff  
23 Class. This represents 16% of Defendants' maximum exposure of that Class claims, and 65% of its  
24 realistic exposure. 17% of the NSA (approximately \$81,666) will be allocated to Staff CMs and paid to  
25 them *pro rata* based on the number of weeks they worked during the Class Period. The average gross  
26 payment per Staff Class Member is \$824.18 gross<sup>6</sup> and \$448.72 net.<sup>7</sup> According to data provided by  
27 Defendants, CMs worked approximately 23,651 work weeks (extrapolated to the end of the Class  
28

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<sup>4</sup> \$408,333 / 26,643 work weeks

<sup>5</sup> \$750,000 / 26,643 work weeks

<sup>6</sup> \$150,000 / 182 Reimbursement Class Members

<sup>7</sup> \$81,666 / 182 Reimbursement Class Members

Period). The value of each work week is \$6.34 gross<sup>8</sup> and \$3.45 net.<sup>9</sup> These amounts are significant and fair in light of Defendants' defenses to Plaintiffs' claim for work-from-home expenses.

**PAGA Allocation is Fair and Reasonable**

61. Plaintiffs calculated that CMs worked approximately 5,328 pay periods from the start of the PAGA Period (June 22, 2021) until the end of the PAGA Period (June 7, 2023)<sup>10</sup> by multiplying the extrapolated Class work weeks (26,643) by 40% (because the PAGA Period is 40% the length of the Class Period) and dividing the result by 2 (for two weeks per period). Using a penalty of \$100 per pay period (because Defendants never received notice from the Labor Commissioner or a court so there are arguably no "subsequent" violations) Defendants' maximum exposure in PAGA Penalties is \$532,800 (assuming the Court would not allow "stacking" of PAGA penalties for each separate Labor Code violation).

62. Plaintiffs calculated that Staff CMs worked 4,730 pay periods from the start of the PAGA Period (June 22, 2021) until the end of the PAGA Period (June 7, 2023) by multiplying the extrapolated Staff Class work weeks (23,651) by 40% (because the PAGA Period is 40% of the Class Period) and dividing the result by 2 (for two weeks per pay period). Using a penalty of \$100 per pay period, Defendants' maximum exposure in PAGA Penalties is \$473,300.

63. The \$30,000 allocated to PAGA penalties represents approximately 3% of Defendants' total PAGA penalties exposure of \$1,005,800, which is fair and reasonable for several reasons.

64. First, Defendants could have contended that Plaintiffs' claims for PAGA Penalties would fail for the same reasons as the underlying Labor Code claims.

65. Second, the Court could reduce any award of PAGA penalties as "unjust, arbitrary and oppressive, or confiscatory" under Labor Code § 2699(i) because Defendants operated in good faith and reasonably believed they were in compliance with the Labor Code.

66. Third, the overall settlement resulted in robust relief for the Classes, with CMs receiving average payments of \$1,659 and Staff CMs receiving average payments of \$448, which is what courts look at when assessing the amount attributed to PAGA penalties.

67. Fourth, although class certification requirements do not apply to PAGA claims, such claims can be stricken if they are found to be unmanageable, and because only CMs who actually incurred

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<sup>8</sup> \$150,000 / 23,651 work weeks

<sup>9</sup> \$81,666 / 23,651 work weeks

<sup>10</sup> The Settlement Agreement, ¶ 1.18, defines the PAGA Period as "June 22, 2021 through the present" but the parties have agreed that the PAGA Period end date is actually June 7, 2023.

1 unpaid wages, were missing wage statements, or incurred unreimbursed expenses during a particular pay  
2 period could recover PAGA penalties for those violations, Defendants could have disputed that there is  
3 a manageable way to determine who was entitled to such penalties.

4 68. Finally, the parties' allocation of 3% of the maximum value of PAGA Penalties is  
5 comparable to (or higher than) PAGA allocations in similar cases that received approval from California  
6 Superior Courts including *Jackson v University of Redlands*, Case No. CIVSB2133143 (San Bernardino  
7 County Superior Court) (September 18, 2023) (finally approving \$25,000 allocated to PAGA penalties  
8 representing 1% of defendant's total exposure to PAGA penalties of \$2,336,700); *Carr et al v Konica*  
9 *Minolta Business Solutions U.S.A., Inc.*, Case No. 21CV001245 (Alameda County Superior Court) (June  
10 27, 2023) (finally approving \$30,000 allocated to PAGA penalties representing 2% of defendant's total  
11 exposure to PAGA penalties of \$1,318,800); *Harris v. Southern New Hampshire University*, Case No.  
12 RG21109745 (Alameda County Superior Court, May 17, 2023) (finally approving \$30,000 allocated to  
13 PAGA penalties representing 2% of defendant's total exposure to PAGA penalties of \$ \$1,568,300);  
14 *Castillo v Holy Names University*, Case No. HG21097245 (Alameda County Superior Court) (May 2,  
15 2023) (finally approving \$30,000 allocated to PAGA penalties representing 2% of defendant's total  
16 exposure to PAGA penalties of \$ \$1,525,600); *Marantz v Laguna College of Arts & Design*, Case No.  
17 30-2021-01194814-CU-OE-CXC (Orange County Superior Court) (April 21, 2023) (finally approving  
18 \$20,000 allocated to PAGA penalties representing 2% of defendant's total exposure to PAGA penalties  
19 of \$804,700); *Glor v iHeart Media + Entertainment*, Case No. 22CV005286 (Alameda County Superior  
20 Court) (February 14, 2023) (finally approving \$30,000 allocated to PAGA penalties representing 1.8%  
21 of defendant's total exposure to PAGA penalties of \$1,659,300); *Burleigh v. Brandman University*, Case  
22 No. 30-2020-01172801-CU-OE-CXC (Orange County Superior Court) (January 27, 2023) (finally  
23 approving \$35,000 allocated to PAGA penalties representing 1.7% of defendant's total exposure to  
24 PAGA penalties of \$2,024,233); *Sweetland-Gil v University of the Pacific*, Case No. STK-CV-UOE-  
25 2019-0014682 (San Joaquin County Superior Court) (March 4, 2022) (finally approving \$30,000  
26 allocated to PAGA penalties representing 1.6% of defendant's total exposure to PAGA penalties of  
27 \$1,517,700); *Pillow et al. v. Pepperdine University*, Case No. 19STCV33162 (Los Angeles Superior  
28 Court)(July 28, 2021) (finally approving PAGA allocation of \$15,000, representing 1% of the maximum  
\$1,619,200 in PAGA penalties); *Moore et al v Notre Dame De Namur University*, Case No. 19-CIV-  
04765 (San Mateo County Superior Court) (July 1, 2021) (finally approving PAGA allocation in the  
amount of \$12,000, representing 1.9% of the maximum \$631,300 in PAGA penalties); *Mooiman et al. v*  
*Saint Mary's College of California*, Case No. C19-02092 (Contra Costa County Superior Court) (June

1 10, 2021) (finally approving \$30,000 PAGA allocation representing 1% of the maximum \$649,200 in  
2 PAGA penalties, and explaining that “the record indicates that defendant changed many of the policies  
3 at issue before the action was brought, that there is a substantial monetary award which in part serves the  
4 deterrent function of a penalty, and that defendant had some arguments of “good faith,” that would  
5 mitigate penalties”); and *Harris-Foster v. University of Phoenix*, Case No. RG19019028 (Alameda  
6 County Superior Court) (March 17, 2021) (finally approving \$50,000 PAGA allocation, representing  
1.5% of maximum \$3,173,200 in PAGA penalties).

### 7 **III. ATTORNEYS’ FEES AND COSTS**

8 69. The Settlement Agreement provides that Defendants will not oppose a request for  
9 attorneys’ fees of up to 35% of the Gross Settlement (i.e., \$315,000). This is fair, reasonable and adequate  
10 to compensate Class Counsel for the substantial work they have already done to prosecute this Action,  
11 the risk they assumed to agree to take the case in the first place, the great expense spared by Class Counsel  
12 having achieved a successful resolution early on in the case, and the continued time and expense that  
13 Class Counsel will incur by administering the fair distribution of the settlement fund should this Court  
grant the settlement’s approval.

14 70. Class Counsel agreed to represent Plaintiffs and the putative Classes on a contingency  
15 basis, and further agreed to advance all litigation costs. Our significant financial outlays would have been  
16 entirely lost if the case were not won, and the amount of Class Counsel’s time that would have remained  
17 uncompensated in that event would have been substantial. Class Counsel also took on this case despite  
18 the known risks associated with Plaintiffs’ class allegations as described above, and the unpredictable  
19 risks that are common to most complex employment class actions that develop only over the course of  
the litigation. Class Counsel was able to obtain a very favorable settlement for the Class.

20 71. Our firm has spent significant time litigating this case, including, interviewing the named  
21 Plaintiffs; reviewing documents provided by Plaintiffs prior to and after case initiation; reviewing  
22 information obtained by our firm through our own research; filing a detailed complaint; engaging in  
23 extensive informal discovery; analyzing voluminous data produced by Defendants; drafting a detailed  
24 mediation brief; attending a full-day mediation; negotiating the settlement; drafting the preliminary  
25 approval papers; and, planning and strategizing throughout the case. Further, we will spend many  
26 additional hours obtaining preliminary approval; overseeing the notice process; answering calls and  
27 questions from Class Members; preparing the final approval papers; attending the final approval hearing;  
28 and overseeing the distribution of the settlement funds.

1           72.     The Settlement Agreement's award of litigation costs of up to \$25,000 is intended for  
2 commonly reimbursed out-of-pocket cost incurred by my firm, including filing and process-serving fees,  
3 expenses related to court appearances, copying, legal and other research charges, and the professional  
4 fees paid to the mediator for a full-day mediation session, which was instrumental to reaching the  
Settlement.

5           73.     If the Court grants Preliminary Approval and sets a final approval hearing date, Class  
6 Counsel will submit their lodestar and costs breakdown with their motion for attorneys' fees and costs,  
7 which will be noticed to be heard at the same time as the final approval motion.

8           **The Class Representative Service Awards Are Reasonable**

9           74.     In conjunction with seeking final approval, Plaintiffs will move for approval of a Class  
10 Representative Service Award of \$20,000 to Plaintiff Pahl and \$10,000 to Plaintiff Leslie.

11           75.     Plaintiffs are committed to representing the interests of the Classes, do not have any  
12 conflicts with any class members, and their interests are virtually coextensive with those of the class  
13 members. The Service Awards are intended to compensate Plaintiffs for the critical role they played in  
14 this case and the substantial time, effort, and risks they undertook in helping secure the result obtained  
15 on behalf of the Settlement Classes. In agreeing to serve as class representatives, Plaintiffs formally  
16 agreed to accept the responsibility of representing the interests of all Class Members. They collected  
17 and provided documents and diligently assisted Class Counsel in the investigation for the case and in  
18 seeking informal discovery. Plaintiffs' participation and assistance were critical to the success of this  
19 litigation and the enforcement of Labor Code protections. Without Plaintiffs' commitment to come  
forward and serve as Class Representatives in commencing this lawsuit, this litigation, which enforces  
the protections of the Labor Code, would not have been brought.

20           76.     The Service Awards are also intended to compensate Plaintiffs for taking on serious  
21 reputational risks by suing their employer.

22           77.     Significantly, the named Plaintiffs are granting Defendants a general release of all claims,  
23 which is far broader than the release being given by the members of the Class. The general release  
24 Plaintiff Pahl has agreed to with Defendants includes his alleged wrongful termination claim he brings  
under Labor Code §§ 98.6 and 1102.5, and claims for PAGA penalties based on those alleged violations.

25           78.     Accordingly, the requested service awards are reasonable and should be preliminarily  
26 approved.

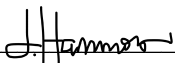
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**Cy Pres Beneficiary**

79. The Settlement designates Koinonia Family Services as *cy pres* recipient under Cal. Code of Civ. Proc. § 384 which approves child advocacy programs as beneficiaries. Koinonia Family Services is a non-profit public service organization offering a wide variety of services throughout California, including intensive services foster care, emergency foster care, special health care needs, nonminor dependents, therapeutic foster care, and specialized treatment foster care, adoption, and short-term residential therapeutic programs.

80. In compliance with Code of Civil Procedure § 382.4, I, my firm, and Plaintiffs have no connection to, relationship with, or any interest, financial or otherwise, in Koinonia Family Services that could reasonably create the appearance of impropriety as between the selection of the recipient of the money or thing of value and the interests of the class.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct. Executed on November 21, 2023.

  
\_\_\_\_\_  
Julian Hammond