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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, a Delaware Corporation,
AMERICAN INTERCONTINENTAL
UNIVERSITY, INC., a Georgia Corporation,
and **CALIFORNIA SOUTHERN**
UNIVERSITY, a Georgia Corporation,

Defendants.

CASE NO. 34-2022-00322588

**MEMORANDUM OF POINTS AND
AUTHORITIES 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

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1 **I. INTRODUCTION**

2 Plaintiffs Christopher Pahl and Kelly Leslie seek preliminary approval of a non-reversionary
3 \$900,000 settlement with CEC Employee Group, LLC, Colorado Technical University, Inc., American
4 Intercontinental University System, Inc., Trident University International, American Intercontinental
5 University, Inc., and California Southern University (“Defendants”) on behalf of two classes: (1) 246
6 “Class Members” who were employed by Defendants in California as instructors at any time between
7 June 28, 2018 and June 7, 2023 (the “Class Period”); and (2) 182 “Staff Class Members” who are
8 employees of Defendants in California, other than Class Members, employed as remote workers during
9 the Class Period.

10 Plaintiffs allege that Defendants misclassified Class Members (“CMs”) as exempt, and as a result
11 failed to (a) pay them separately and hourly for nonproductive time and/or all hours worked, in violation
12 of Labor Code §§ 226.2, 1194, and Wage Order No. 4, § 4; (b) authorize and permit rest breaks and failed
13 to pay missed rest break premiums, in violation of Labor Code §§ 226.2, 226.7 and Wage Order No. 4,
14 § 12; (c) pay all wages due upon discharge in violation of Labor Code §§ 201-203; and (d) issue accurate
15 itemized wage statements in violation of Labor Code §§ 226(a) and 226.2(a). Plaintiffs also allege that
16 Defendants failed to give CMs sufficient WARN Act notices prior to laying off CMs, in violation of
17 Labor Code § 1400 et seq. and 29 U.S.C §§ 2101 et seq. Plaintiffs further allege that during the Class
18 Period, Defendants required CMs and Staff Class Members (“Staff CMs”) to incur home office expenses
19 but did not reimburse them for these expenses, in violation of Labor Code § 2802.

20 After a full-day mediation session, the parties entered into a Settlement Agreement (“SA”) now
21 presented to the Court for preliminary approval. If approved, the Settlement will afford significant relief
22 to members of the Classes: an average recovery of \$3,048.78 gross and \$1,659.89 net per CM; and an
23 average recovery of \$824.18 gross and \$448.72 net per Staff CM. These are excellent results when
24 considering Defendants’ actual and potential defenses on arbitration, certification, and the merits.
25 Accordingly, Plaintiffs respectfully request that the Court preliminarily approve the proposed Settlement,
26 approve the proposed Class Notice, and schedule a final approval hearing.

27 **II. OVERVIEW OF THE SETTLEMENT**

28 The Settlement Agreement resolves all claims of the Plaintiffs and the proposed Classes. A
summary of the Settlement terms is as follows:

1. Gross Settlement Amount (“GSA”) – Defendants will pay a non-reversionary sum of
\$900,000 to settle all claims alleged in the operative Second Amended Complaint, and will separately
pay employer-side payroll taxes. SA §§ 1.15, 15.1.

1 2. Attorneys' Fees, Costs, and Service Awards – Class Counsel will seek attorneys' fees of
2 up to 35% of the GSA, up to \$25,000 to reimburse out-of-pocket litigation costs, and Service Awards of
3 up to \$20,000 for Plaintiff Pahl and \$10,000 for Plaintiff Kelly. SA §§ 6-7.

4 3. PAGA Award – The Settlement allocates \$30,000 for the PAGA claims, to be divided
5 75/25 between the LWDA and the Aggrieved Employees. SA § 8.

6 4. Settlement Administrator and Administration Costs – The Parties have mutually agreed
7 to use ILYM as the Administrator. SA § 11. Administration Costs are capped at \$20,000. SA § 9.

8 5. Net Settlement Amount ("NSA") – The NSA (approximately \$490,000) will be allocated
9 as follows: (1) 17% of the NSA (approximately \$81,666) will be allocated to Staff CMs and paid to them
10 *pro rata* based on the number of weeks they worked during the Class Period; and (2) 83% of the NSA
11 (approximately \$408,333) will be allocated to CMs and paid to them *pro rata* based on number of weeks
12 they worked during the Class Period. SA § 5.1.1 – 5.1.2. If any CM disagrees with the work weeks
13 information provided on their Notice, they may dispute such information. SA § 13. ILYM will resolve
14 challenges based on Defendants' records and any documents or information presented by the CMs. *Id.*

15 6. Class Notice – Within 10 business days after the Court grants preliminary approval,
16 Defendants will provide ILYM with a list of all CMs and Staff CMs and the number of work weeks each
17 worked during the relevant Class Period. SA § 10.1. Within 25 days after the Court grants preliminary
18 approval, ILYM will mail the Notice Packet substantially in the form attached to the Settlement
19 Agreement as **Exhibit A**, and will use skip trace procedures for returned mail. S.A. § 10.4.

20 7. Opting Out or Objecting – CMs who wish to opt-out must send a written notice to ILYM
21 within 45 days of the mailing of the Notices. SA § 1.24. Any CM who properly requests to opt-out will
22 not be entitled to receive any payment under the settlement and will not be bound by the settlement. SA
23 § 11.1. Any CM may object to the Settlement by mailing an objection to ILYM within 45 days of the
24 mailing of the Notices or appearing at the final approval hearing and objecting orally. SA § 12.

25 8. Tax Consequences of Settlement Payments – For tax purposes, CMs' payments will be
26 allocated 33% to wages and 66% to penalties and interest. SA § 15.2. Payments to the Staff CMs will be
27 allocated 100% to non-wage payments. SA § 15.3.

28 9. Scope of Release and Final Judgment – CMs will release all claims alleged, or that could
have been alleged, in the operative Complaint, and arising during the Class Period. SA §§ 17.1, 17.2.
Named Plaintiffs will also give a general release. *Id.* § 17.3.

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III. OVERVIEW OF THE LITIGATION

A. Pleadings

Plaintiff Pahl filed his complaint on June 28, 2022, alleging that Defendants misclassified CMs because they did not earn the minimum monthly salary required to be exempt under the professional exemption. Wage Order No. 4, § 1(a)(3)(a)-(d), and that CMs were piece-rate workers because Defendants compensated them a set amount per Course, which is a form of piece-rate compensation. Plaintiff alleges that Defendants were therefore required – but failed – (i) to pay wages for all hours worked (Lab. Code §§ 226.2, 1194 and Wage Order No. 4, § 4); (ii) to pay hourly and separately for rest breaks and to authorize and permit paid off-duty rest breaks (Lab. Code §§ 226.2, 226.7, and Wage Order No. 4, § 12); and, (iii) to issue accurate itemized wage statements (Lab. Code §§ 226(a), 226.2(a)(2)). Plaintiff also alleged that Defendants failed to reimburse CMs and Staff CMs for the business expenses they incurred in working remotely for Defendants (Lab. Code § 2802). On September 8, 2022, Plaintiff amended his Complaint to add a PAGA cause of action. Decl. of Julian Hammond ISO Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (“Hammond Decl.”), filed herewith, ¶¶ 7-11.

On October 11, 2022, Defendants filed an answer generally denying Plaintiff’s allegations, and raising 34 affirmative defenses including that (a) Plaintiff’s claims are subject to a binding arbitration agreement; (b) off-the-clock work was prohibited by Defendants and also was not reported by any CM to Defendants, and had CMs reported such work, Defendants would have paid them for it; (c) any missed rest breaks were the CMs’ own choice and not the result of coercion from Defendants; (d) any violation of Labor Code § 226(a) was not knowing and intentional; (e) CMs were properly reimbursed for their remote work expenses; (f) CMs were properly classified as exempt employees; (g) Plaintiff would be unable to certify either class; and (h) an award of PAGA penalties would be unjust, arbitrary and oppressive based on Defendants’ good faith efforts to comply with the California Labor Code and such penalties would be excessive in relation to Defendants’ ability to pay. Hammond Decl. ¶ 13.

After reaching Settlement, Plaintiff filed the operative Second Amended Complaint adding Kellie Leslie as a named Plaintiff and PAGA representative; adding Trident University International, American Intercontinental University, Inc., American Intercontinental University System, Inc., and California Southern University as named Defendants; adding causes of action for waiting time penalties (Lab. Code §§ 201-203), for violation of the federal and California WARN Acts, and an individual cause of action for wrongful termination of Plaintiff Pahl (Lab. Code §§ 98.6 and 1102.5). Hammond Decl. ¶ 27.

B. Pre-mediation Investigation and Discovery

Following the filing of FAC, the parties agreed to attend mediation and engage in informal document and data exchange. Defendants produced extensive informal discovery for each entity who

1 employed CMs including (a) faculty handbooks; (b) job descriptions; (c) payroll calendars; (d)
2 compensation policies; (e) Letters of Assignment; (f) timekeeping policies; and (g) sick leave policies.
3 Defendants also produced spreadsheets showing (h) CMs' dates of employment, job title, and the entity
4 who employed them; (i) CMs' course assignments including course title, start date and end date, and
5 number of credit hours in the course; and (j) CMs' pay data including the start date, end date, and pay
6 date of each pay check, the amount of each pay check, the type of payment included in each pay check
7 (i.e., teaching pay, tech stipend, sick pay, vacation pay, etc.), and the number of hours recorded on each
8 check. Defendants also produced a Mutual Arbitration Agreement they required CMs to sign at the
9 beginning of their employment that included a class action waiver. Hammond Decl. ¶¶ 14-15.

10 Defendants also produced their expense reimbursement policies, including their Tech Stipend
11 policy that reimbursed CMs' and Staff CMs' home internet service and cell phone, as well as spreadsheets
12 listing each expense reimbursement request submitted by CMs and Staff CMs, whether Defendants
13 approved the request, and the dollar amount Defendants approved. Hammond Decl. ¶ 16.

14 Plaintiffs performed a detailed analysis of these documents and data and ascertained that
15 Defendants employed CMs pursuant to standardized Letters of Assignment that included the Course
16 name, number, credits, pay rate, and pay dates, and provided that CMs' compensation was subject to
17 reduction based on enrollment. Based on this compensation scheme, Plaintiffs believed they would be
18 able to establish that the form of compensation was not a salary because it was subject to reduction (*see*
19 *Negri v. Koning & Associates*, 216 Cal. App. 4th 392, 399 (2013)) and more closely resembled a piece
20 rate. Hammond Decl. ¶¶ 18-20. Plaintiffs also analyzed the pay data and determined that CMs earned
21 less than the minimum salary require for the professional exemption during nearly every pay period.
22 Hammond Decl. ¶ 21.

23 The Faculty Handbooks issued by Defendants included job duties that CMs were required to
24 perform before and after each course including preparing for each Course, posting documents on
25 Defendants' websites, posting grades, and submitting incomplete grades. CMs were also required to
26 perform non-teaching tasks during each Course such as attending faculty meetings and trainings.
27 However, the Course rate included in the Letters of Assignment only covered teaching-related activities
28 performed during the Course but not duties performed before and after the Course, or non-teaching
activities performed during the Course. Hammond Decl. ¶ 22. From the wage statements provided by
Defendants, Plaintiffs confirmed that CMs' wage statements did not list the actual hours worked or any
piece rate information, and that Defendants issued paychecks on a monthly (rather than bi-weekly) basis
approximately 29% of the time. *Id.* ¶ 23.

1 Finally, while Defendants paid a “Tech Stipend” to CMs and Staff CMs, and allowed CMs and
2 Staff CMs to submit expenses and receive reimbursement, Plaintiffs alleged that these were insufficient
3 to reimburse the actual remote work expenses. Hammond Decl. ¶ 25.

4 **C. Mediation**

5 On March 9, 2023, the Parties participated in a mediation session with Lou Marlin, an experienced
6 mediator who has mediated numerous wage-hour class actions. Prior to the mediation, Plaintiffs
7 submitted a detailed mediation brief supported by documents and data obtained in informal discovery.
8 The parties reached an agreement in principle at mediation, and subsequently reached a final agreement
9 that is presented to the Court for approval. Hammond Decl. ¶ 26.

10 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS APPROPRIATE**

11 When a negotiated class action settlement has been reached prior to certification – as here – the
12 court may make an order approving or denying certification of a provisional settlement class. Cal. Rules
13 of Court, Rule 3.769(d). In California, a Class is certifiable if: (1) the class is ascertainable and
14 sufficiently numerous; (2) there exists a well-defined community of interest; and (3) class action is a
15 superior method of adjudication. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004, 1021
(2012); *Linder v. Thrifty Oil*, 23 Cal. 4th 429, 435 (2000). All class certification requirements are met in
16 this case for the reasons set forth below.

17 **A. The Classes Are Ascertainable and Sufficiently Numerous**

18 Members of the Classes here are “ascertainable” because they can be readily identified from
19 Defendants’ records. *See Noel v. Thrifty Payless, Inc.*, 7 Cal. 5th 955, 980 (2019); *Reyes v. Board of*
20 *Supervisors*, 196 Cal. App. 3d 1263, 1271 (1987); SA § 10.1.1.

21 The Classes are sufficiently numerous since they have approximately 246 members and 179
22 members, respectively. *See Rose v. City of Hayward*, 126 Cal. App. 3d 926, 934 (1981) (42 people “is
23 quantitatively sufficient for class action”).

24 **B. “Community of Interest” Exists Among Class Members**

25 A “community of interest” requirement embodies three factors: (1) predominant common
26 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
27 class representatives who can adequately represent the class. *Fireside Bank v. Superior Court*, 40 Cal.
28 4th 1069, 1089 (2007) (citations and internal quotations omitted). Each factor to establish a community
of interest exists among the Class Members.

1. Common Questions of Law and Fact Predominate

Where an employer’s policies or conduct are uniformly directed at a class of employees, like here,
the class-wide impact of the defendant’s policies satisfies the commonality requirement. *See Sav-On*

1 *Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 331 (2004) (upholding class certification, where the
2 common issue was whether the employer properly classified grocery store managers as exempt from
3 California’s overtime requirements). Here, Plaintiffs challenge common pay policies raising predominant
4 common questions of law and fact. Some of these common questions include: (1) whether Defendants
5 misclassified Adjuncts as exempt; (2) whether the course rate constitutes a piece rate; (3) whether the
6 CMs’ compensation covered work performed prior to the beginning of the course and non-teaching tasks
7 performed during the course; and (4) whether Defendants timely reimbursed out-of-pocket business
8 expenses necessarily incurred by CMs and Staff CMs.

9 **2. Plaintiffs’ Claims Are Typical of the Class Claims**

10 The “test of typicality ‘is whether other members have the same or similar injury, whether the
11 action is based on conduct which is not unique to the named plaintiffs, and whether other Class Members
12 have been injured by the same course of conduct.’” *See Seastrom v. Neways, Inc.*, 149 Cal. App. 4th
13 1496, 1502 (2007); 1-3 California Class Actions Practice and Procedure (2007) § 3.02. Here, Plaintiffs’
14 claims are typical of the Class that they seek to represent because they were subject to the same
15 compensation policies/practices, suffered the same type of injury, and seek the same types of relief.

16 **3. Plaintiffs and Their Attorneys Will Adequately Represent the Class**

17 “Adequacy of representation depends on whether the plaintiff’s attorney is qualified to conduct
18 the proposed litigation and the plaintiff’s interests are not antagonistic to the interests of the class.” *Caro*
19 *v. Procter & Gamble Co.*, 18 Cal. App. 4th 644, 669, n.21 (1993) (citations omitted). Both elements are
20 satisfied here. Plaintiffs’ Counsel are highly skilled and have extensive class action litigation experience.
21 Plaintiffs’ Counsel have been appointed class counsel in numerous class action suits and have represented
22 thousands of adjunct instructors in similar unpaid wage cases since 2016. Hammond Decl. ¶¶ 5-6.
23 Plaintiffs are committed to representing the interests of the Classes, do not have any conflicts with any
24 CMs, and their interests are virtually coextensive with those of the CMs. *Id.* ¶ 75.

25 **C. This Class Action Is a Superior Method of Adjudication**

26 Plaintiffs’ and each of the classes’ claims are based on the contention that Defendants had uniform
27 compensation policies, remote work policies and expense reimbursement policies, and their claims
28 involve common evidence. *See Bufil v. Dollar Fin. Grp., Inc.*, 162 Cal. App. 4th 1193, 1208 (2008). The
class action mechanism in this case will also allow Plaintiffs and CMs to obtain redress for their relatively
small claims, which would otherwise be impractical to litigate on an individual basis.

29 **V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**

30 **A. The Two Step Settlement Approval Process**

Court approval of a class action settlement is a two-step process: (1) a preliminary review and

contingent approval by the trial court, and (2) after notice has been distributed to the Class Members, a hearing and a detailed review that includes their responses. Manual for Complex Litigation (Fourth) § 21.6 (“Manual”); Cal. Rules of Court, Rule 3.769(a); *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1800-1801 (1996). Thus, preliminary approval of the settlement is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. *See, e.g.*, 4 Newberg on Class Actions § 11.25 (4th ed. 2002); Manual § 21.6. *C.f. North Cnty. Contractor’s Ass’n v. Touchstone Ins. Services*, 27 Cal. App. 4th 1085, 1094-1095 (1994). Applying the criteria for preliminary approval in this case reveals a substantial basis for granting the preliminary approval this Motion seeks.

B. The Settlement is Fair and Reasonable

In analyzing whether a settlement is fair and reasonable, courts consider a number of factors including “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, and . . . the reaction of the class members to the proposed settlement.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008) (quoting *Dunk*, 48 Cal. App. 4th at 1801). A settlement is initially “presumed to be fair” when (1) it “is reached through arm’s length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 52 (2008) (quoting *Dunk*, 48 Cal. App. 4th at 1802).

As discussed below, and as set out in the Hammond Declaration, the proposed Settlement is presumptively fair because (1) it was the product of serious, informed, and non-collusive negotiations, (2) the putative Classes are represented by experienced counsel; and (3) the Parties investigated the claims, exchanged key information, and thus Plaintiffs’ Counsel was able to make an informed recommendation about the proposed Settlement. In addition, the reasonableness of the Settlement is further supported by the strengths and risk of the claims asserted, the risk of maintaining class action status, the amount offered to settle, and the endorsement of experienced counsel. Together, all of these factors demonstrate that the proposed Settlement is preliminarily fair, reasonable, and adequate.

1. The Settlement Was a Product of Informed, Non-Collusive Negotiations

California courts recognize that “a presumption of fairness exists where . . . [a] settlement is reached through arms-length bargaining.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 245 (2001) (citation omitted); *see also Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742-45 (2009) (upholding trial court’s determination that settlement was “fair, reasonable and adequate”

1 where the settlement “provided valuable benefits to the class ... that were ‘particularly valuable in light
2 of the risks plaintiff would have faced if she proceeded to litigate her case.’”).

3 Here, the settlement is a result of extensive settlement negotiations between the parties conducted
4 at arm’s length and informed by substantial factual and legal investigation. Throughout this case, the
5 Classes have been represented by counsel with extensive experience in wage and hour litigation, and, in
6 particular, class actions alleging similar types of claims. Hammond Decl. ¶¶ 5-12. Class Counsel have
7 spent a considerable amount of time prosecuting this case, including, but not limited to, drafting
8 pleadings, meeting and conferring with Defendants’ counsel, researching California law, analyzing
9 documents and data produced by Defendants, preparing for and attending a full-day mediation, and
10 negotiating and finalizing the settlement agreement and related documents. *See Id.* ¶¶ 7-27. As discussed
11 above, the mediation session was with a skilled, experienced mediator Lou Marlin. *Id.* ¶ 26.

12 **2. The Settlement Amount is Fair and Reasonable Considering the Risks**

13 The amount of the settlement in light of the strength of the plaintiff’s case is the most important
14 “reasonableness” factor. *See Kullar*, 168 Cal. App. 4th at 130. In determining whether a settlement is
15 fair, the court must “independently satisfy[] itself that the consideration being received for the release of
16 the class members’ claims is reasonable in light of the strengths and weaknesses of the claims and the
17 risks of the particular litigation.” *Id.* at 129. This requires a record that “allows ‘an understanding of the
18 amount that is in controversy and the realistic range of outcomes of the litigation.’” *Munoz v. BCI Coca-*
19 *Cola Bottling Co. of L.A.*, 186 Cal. App. 4th 399, 409 (2010) (quoting *Kullar*, 168 Cal. App. 4th at 120).

20 The \$900,000 Settlement will provide CMs with significant payments. The average recovery for
21 a CM is \$1,659.89 net, the average gross recovery is \$3,048.78. Hammond Decl. ¶ 56. The average
22 recovery for a Staff CM is \$824.18 gross and \$448.72 net. *Id.* ¶ 60.

23 The settlement amount compares favorably with Defendants’ estimated exposure and realistic
24 value of CMs’ claims, as discussed below and in greater detail in the Hammond Declaration. Although
25 Plaintiffs believe that the Classes have strong claims, they also acknowledge there are obstacles as to
26 both the certification and the merits of each claim, which warrant a settlement at less than “complete
27 victory” value. The major risks applicable to the claims are addressed in the discussion below, which
28 includes a claim-by-claim comparison of the estimated potential recovery and discounted settlement
amount attributable to each claim for each class.

29 **Unpaid Wages Claim (Labor Code §§ 1194, 226.2):** Plaintiffs allege that CMs were paid on a
30 piece-rate basis, with the piece being the course, and that as a result, the course pay only covered work
31 performed during the Course, but did not cover non-teaching tasks performed during the Course, or work
32 performed prior to and after the course, in violation of Labor Code §§ 1194 and 226.2. Plaintiffs

1 calculated Defendants' maximum exposure as \$1,460,531 (including interest). Hammond Decl. ¶ 29.

2 **Class Certification Risks:** Plaintiffs applied a 50% discount for the risk for non-certification on
3 the theory that what was included in the course rate depends, at least in part, on each Adjunct CMs'
4 individual understanding, that the amount of time each Adjunct CM spent working would lead to
5 individualized issues, and because of potentially individualized issues of whether the tasks performed
pre-course were under Defendants' control. Hammond Decl. ¶ 30.

6 **Merits Risk:** As to the merits, Plaintiffs applied a further 50% discount for the risk that CMs'
7 per-course compensation, whether a piece-rate or a salary, included the hours worked before the start of
8 the course because those hours were spent on tasks directly related to the course assignment set out in
9 the Letter of Assignment; and for the risk that Plaintiffs' damages are overinflated, given that many
10 courses are taught by CMs who taught the course in previous semesters and therefore have to perform
11 little preparation work prior to the first class. *Id.* ¶ 31. Applying the certification and merits discount, for
12 settlement purposes, Defendants' realistic exposure on the unpaid wage claim is reduced to \$365,132.
Id. ¶ 32.

13 **Rest Break Claim (Labor Code § 226.7):** Plaintiffs allege that Defendants compensated CMs
14 on a piece-rate basis, and as such was required, but failed, to pay CMs hourly and separately from the
15 piece for the time spent on rest breaks pursuant to Labor Code § 226.2 (a)(1). Thus, CMs who worked
16 3.5 hours or more were entitled to hourly and separate pay for rest breaks. Plaintiffs also allege that CMs
17 were entitled to rest breaks as non-exempt employees but Defendants imposed uniform policies and
18 procedures that impeded them from taking rest breaks. Plaintiffs calculated Defendants' liability on the
rest break claim as \$881,088 (including interest). Hammond Decl. ¶¶ 33-34.

19 **Class Certification:** Defendant contended that even if CMs were paid on a piece-rate basis, what
20 was included in the piece-rate would depend on each CM's understanding of what the course rate covered,
21 and individualized issues would predominate. Defendants also could have argued that CMs could have
22 taken a timely off-duty rest break had they chosen to, and any missed rest breaks were voluntary.
Plaintiffs applied a 50% discount for these risks. Hammond Decl. ¶ 35.

23 **Merits:** Defendants could have contended that Plaintiffs would lose on the merits because CMs
24 were never required to work more than 3.5 hours in a row, and in fact, Defendants specifically directed
25 CMs to work synchronous hours "at varied times in a seven-day calendar week to accommodate diverse
26 schedules" of students. Plaintiffs applied a 50% discount based on these arguments, which reduced
27 Defendants' exposure on the rest break claim is \$220,272. Hammond Decl. ¶ 36.

28 **Wage Statement Claim (Labor Code §§ 226(a), 226.2(a)):** Plaintiffs contended that CMs were
entitled to wage statements that listed their total hours worked, applicable hourly rates, piece rate, the

1 number of pieces earned, and rest break and nonproductive time information, pursuant to Labor Code §§
2 226(a)(2), (3) and (9), and 226.2(a). However, Defendants did not track CMs' hours worked and did not
3 include on their wage statements any entries for hours actually worked, applicable hourly rates, or piece
4 rate information. Plaintiffs also alleged that Defendants failed to issue *any* wage statement for work
5 performed prior to the Letter of Assignment start date, and issued wage statements monthly (instead of
6 bi-weekly) basis approximately 29% of the time. Plaintiffs calculated Defendants' liability on this wage
statement claim as \$620,000. Hammond Decl. ¶¶ 37-41.

7 **Class Certification Risks:** Plaintiffs applied a 50% discount for Defendants' contention that
8 individualized issues would predominate about whether CM were piece rate employees, whether CMs
9 were required to perform work prior to the Course Start date, and whether Defendants are required to
issue wage statements for pre-Course work that CMs performed voluntarily. Hammond Decl. ¶ 42.

10 **Merits Risks:** As to the merits, Plaintiffs faced a risk that a court would find that only the initial
11 \$50 penalty applied to each violation because Defendants did not receive notice from the labor
12 commissioner or a court that its wage statements were noncompliant. *Robinson v. Open Top Sightseeing*
13 *San Francisco, LLC*, No. 14-cv-00852, 2018 U.S. Dist. LEXIS 24556, at *52-58 (N.D Cal. Feb. 14, 2018)
14 (finding that only the initial \$50 Labor Code § 226(e) penalty applied because nothing in the recorded
15 showed defendant as previously notified that its wage statements were noncompliant). In addition,
16 Defendants asserted in their Answer "that any violation of Labor Code § 226(a) was not knowing and
17 intentional" which could have been based on a reasonable belief that CMs were exempt employees or a
18 reasonable belief that the Course Rate covered all work related to teaching the Course including prep
19 time. Plaintiffs applied a 50% discount for these risks which reduced Defendants' liability to \$155,000.
Hammond Decl. ¶ 43.

20 **Waiting Time Penalties (Labor Code § 203):** Plaintiffs allege as a result of Defendants' failure
21 to pay wages for all hours worked, CMs who were discharged were not paid all wages due and owing to
22 them, which entitles them to waiting time penalties under Labor Code § 203. Plaintiffs calculated total
maximum waiting time penalties as \$575,555. Hammond Decl. ¶¶ 44-45.

23 **Class Certification:** Plaintiffs applied a 50% discount for Defendants' contention that the claim
24 would not be certified for the same reason the underlying claims would not be certified. Hammond Decl.
25 ¶ 46.

26 **Merits:** Plaintiffs applied a further 50% discount on the merits because this claim is derivative of
27 Plaintiffs' unpaid wage claims; and for Defendants' defense that they had a good faith dispute that CMs
28 were not owed any unpaid wages which could negate the willfulness requirement of Labor Code § 203.
See Barnhill v. Roberts Saunders & Co., 125 Cal. App. 3d 1, 8-9 (1981) (an employer's failure to pay

1 wages is not “willful,” if the legal duty to pay them was unclear at the time of the violation.); *see also*
2 Cal. Code Regs., tit. 8, § 13520. After applying discounts, for settlement purposes, Defendants’ realistic
3 exposure on the waiting time penalties claim is \$143,888. Hammond Decl. ¶ 47.

4 **WARN Acts:** Plaintiffs alleged that Defendants violated the WARN Act and California WARN
5 Act by laying off at least 50 employees within a 30-day period, yet failing to provide at least 60 days’
6 notice, as required under 29 U.S.C. § 2102(b)) and Labor Code §§ 1400 *et seq.* As a result, Defendants
7 are liable to each employee for up to 60 days of back pay, or a total of \$423,760. Hammond Decl. ¶ 48.

8 **Class Certification:** Plaintiffs applied a 50% discount for class certification in light of
9 Defendants’ contention that individualized inquiries would predominate as to which entity employed
10 each CM, when each CM was given notice of the termination and what their effective date of the
11 termination was, because CMs were notified at different times and their employment terminated on
12 different dates. Hammond Decl. ¶ 49.

13 **Merits:** Plaintiffs applied a 50% discount on the merits for Defendants’ actual and/or potential
14 contentions that the California WARN Act and the federal WARN Act did not apply because none of the
15 Defendants employed at least 75 (or even 100) individuals at any one time (see Lab. Code § 1400.5(a),
16 1401; 29 U.S.C. § 2101(a)(1), 2102). Further, Defendants could have argued that no one of the
17 Defendants laid off 50 employees in a 30-day period (*see* Lab. Code §§ 1400.5(d), 1401; 29 U.S.C. §§
18 2101(2), 2102). After applying discounts, Plaintiffs calculated Defendants’ realistic exposure on this
19 claim as \$105,940. Hammond Decl. ¶ 50.

20 **Unreimbursed Expenses Claim (Labor Code § 2802):** Plaintiffs alleged that Defendants did
21 not reimburse CMs for their necessarily incurred remote work expenses in violation of Labor Code §
22 2802. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal.App.4th 1137 (2014). Plaintiffs alleged that
23 Defendants’ Tech Stipend policy was insufficient to reimburse CMs actual out-of-pocket costs, and that
24 Defendants’ expense reimbursement policies were not actually used by CMs to obtain reimbursement.
25 Plaintiffs calculated the unreimbursed expenses of CMs as \$491,257 (including interest). Hammond
26 Decl. ¶¶ 51-52.

27 **Class Certification:** Plaintiffs applied a 50% discount for class certification based on the fact that
28 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. Hammond Decl. ¶ 53.

Merits: Plaintiffs applied a further 50% discount based on anticipated arguments that even if
expenses were incurred, they were voluntary and/or minimal; that Defendants had a written expense
reimbursement policy applicable to CMs under which they could seek reimbursement for their out-of-

pocket expenses; that Plaintiffs' estimate of unreimbursed expenses is inflated given the part-time nature of CMs' employment and a much smaller percentage of their home office expenses should be reimbursed. After applying these discounts, Plaintiffs calculated Defendants' realistic damages as \$122,814. Hammond Decl. ¶ 54.

Allocation to the Class is Fair and Reasonable: Plaintiffs calculated Defendants' maximum exposure on the Class claims (including interest but excluding PAGA) 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
Total	\$4,452,099	\$1,113,046

The \$750,000 allocated to CMs represents 17% of Defendants' maximum exposure, and 67% of their realistic exposure. The average net recovery per CM is \$1,659.89 and the average gross recovery is \$3,048.78. Hammond Decl. ¶ 56. These are significant recoveries when considering Defendants' arbitration defense and many other defenses discussed above.

Staff Class Claims (Lab. Code § 2802): Plaintiffs alleged that Defendants also required and expected Staff CMs to work remotely, yet did not adequately reimburse them for business expenses in violation of Labor Code § 2802. Plaintiffs calculated Defendants' maximum liability for unreimbursed business expenses as **\$921,256** (including interest). Hammond Decl. ¶¶ 57-58.

Class Certification / Merits Risk: Plaintiffs applied a 50% discount for the contention that Staff CMs had varying practices with regard to incurring expenses and that individualized issues would predominate; and a further 50% discount on the merits for the risk that not all expenses incurred by each Staff CM were "necessary" or "reasonable," or that the estimated monthly incurred expenses were inflated, especially given the fact that CMs could request reimbursement if they wanted to. These discounts reduced Defendants' liability to \$230,314. Hammond Decl. ¶ 59.

Allocation to the Staff Class is Fair and Reasonable: The \$150,000 allocated to Staff Class Members represents 17% of Defendant's estimated maximum exposure and 65% of its realistic exposure. The average payment per Staff Class Member is \$824.18 gross and \$448.72 net. Hammond Decl. ¶ 60.

1 These are significant recoveries when considering Defendants' contentions on class certification and the
2 merits. *Id.*

3 **PAGA Penalties:** Plaintiffs calculated Defendants' maximum liability for PAGA penalties using
4 a penalty amount of \$100 per pay period (because Defendants never received notice from the Labor
5 Commissioner or the Court so there are arguably no "subsequent" violation). Defendants' maximum
6 exposure in PAGA Penalties is \$1,005,800 (assuming the Court would not allow "stacking" of PAGA
7 penalties for each separate Labor Code violation). *Castillo v. ADT, LLC*, 2017 U.S. Dist. LEXIS 10579,
8 at *11 (E.D. Cal. Jan 24, 2017). The \$30,000 allocated to PAGA penalties in this case represents 3% of
9 Defendants' total exposure which is comparable to (or even more than) PAGA allocations in many
10 similar cases that received final approval from California Superior Courts. Hammond Decl. ¶ 68.

11 Several factors significantly mitigate assessment of PAGA penalties in this case. First,
12 Defendants could have contended that Plaintiffs' claims for PAGA Penalties would fail for the same
13 reasons the underlying Labor Code claims would fail. Hammond Decl. ¶ 64. Second, Defendants could
14 have contended that they operated in good faith and reasonably believed they were in compliance with
15 the Labor Code and the Court would likely reduce any award of PAGA penalties as "unjust, arbitrary and
16 oppressive, or confiscatory" under Labor Code § 2699(i). Hammond Decl. ¶ 65.

17 Third, the overall settlement resulted in robust relief for each Class which is what courts look at
18 when assessing amount attributed to PAGA penalties. Hammond Decl. ¶ 66; *see O'Connor v. Uber*
19 *Techs., Inc.*, No. 201 F. Supp. 3d 1110, 1134 (N.D. Cal. Aug. 18, 2016) (where settlement for the class
20 claims is robust, the purpose of PAGA may be fulfilled because by providing fair compensation to class
21 members, the settlement has a deterrent effect on defendant and other employers, thus fulfilling the
22 purpose of PAGA). Thus, the lawsuit fulfills the purpose of PAGA which is to 'remediate present
23 violations and deter future ones,' not to redress employees' injuries." *Cotter v. Lyft, Inc.*, 193 F. Supp.
24 3d 1030, 1037 (2016) (significant reduction to PAGA penalties appropriate because the law was not clear
25 and there was thus no deliberate violation); *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 529
26 (2018) (affirming award of 10% of the maximum penalty because there were "good faith attempts to
27 comply with meal break obligations and because the court found the violations were minimal").

28 Fourth, Defendants could have contended that PAGA claims would be found unmanageable
because only CMs and Staff CMs who actually incurred unpaid wages, unpaid premium pay, or
unreimbursed expenses during a particular pay period could recover PAGA penalties, and there is no
manageable way to determine who was entitled to penalties. Hammond Decl. ¶ 67. *Raphael v. Tesoro*
Ref & Mktg. Co., 2015 U.S. Dist. LEXIS 130532, at *5 (C.D. Cal. Sept. 25, 2015). Further, in order to
recover any PAGA penalties, Plaintiffs would be required at trial to prove that each Aggrieved Employee

suffered a violation for each pay period the employee worked, which would be difficult in light of Defendants' contentions on the merits discussed above. *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant.").

3. The Risk, Expense, Complexity and Likely Duration of Further Litigation

The fact that CMs entered into arbitration agreements that precluded class action claims presented a considerable risk that Plaintiffs would be unable to sustain class claims on behalf of Class Members, which would have significantly reduced the value of this case as a whole. Further, Defendants strongly disagreed as to the merits of Plaintiffs' claims. Assuming some of the claims proceeded to trial, the losing party would likely appeal, given that some of the central legal issues in this case have not been conclusively addressed by an appellate court, which could take years to resolve. Instead, this settlement provides an early resolution of this dispute, and CMs will obtain a recovery in the relatively near future if the settlement is finally approved.

4. Extent of Discovery Completed and Stage of the Proceedings

As described in the Hammond Decl. and above, the parties have engaged in extensive discovery, and were adequately informed to make the decision to settle this case on the proposed terms. Hammond Decl. ¶¶ 14-25.

5. Views of Experienced Counsel Support the Reasonableness of the Settlement

As discussed above, Class Counsel have extensive experience in class action litigation, and, in particular wage-and-hour class actions on behalf of adjunct instructors, and have been determined by numerous courts to be adequate class counsel. Hammond Decl. ¶ 5. Class Counsel have represented thousands of adjunct instructors in over 40 similar unpaid wage cases since 2016. *Id.* These cases – challenging the long-standing industry-wide practice of classifying adjuncts as non-exempt and not paying them for all hours worked – have led to an overhaul of these practices in the industry. *Id.* Class Counsel considers the settlement to be fair, reasonable and adequate. *Id.* ¶ 26.

6. Reaction of the Class Members to The Proposed Settlement

It is premature to address this factor since notice has not yet been sent out. The settlement confers substantial benefits on the CMs and Staff CMs and reasonably tailors CMs' and Staff CMs' payment amounts to the number of weeks worked they worked for Defendants. S.A. §§ 5.1.1 – 5.1.2.

C. The Proposed Class Notice Content and Procedure Are Adequate

Constitutional due process requires that class members be provided with notice sufficient to give them an opportunity to be heard in the proceedings. *Mullane v. Central Hanover Bank & Trust*, 339 U.S.

306, 314 (1950). Proper notice must provide class members with sufficient information to make an informed decision to accept, opt out or object to the settlement. *See Wershba*, 91 Cal. App. 4th at 251-252. Here, the proposed Notice meets these standards since it provides all the information a reasonable person would need to make a fully informed decision about the settlement: (1) the material terms of the settlement; (2) the proposed fees and costs of Class Counsel and costs of settlement administration; (3) the proposed Service Awards; (4) how CMs may opt out of, or object to the Settlement; (5) the fact that the Judgment will bind CMs who do not opt out; (6) each CM's proposed allocation; (7) details about the court hearing on settlement approval; and, (8) how CMs can obtain additional information. *See* Cal. Rules of Court, Rule 3.766 and **Exhibit A** to the SA. Therefore, the Court should approve the Notice.

D. The Service Award for Each Class Representative Is Reasonable

Plaintiffs will request a Service Award of \$20,000 for Plaintiff Pahl (who alleges that he was wrongfully terminated as a result of filing his lawsuit and is releasing those claims as part of a general release) and \$10,000 for Plaintiff Leslie, to recognize the time and effort expended by each Plaintiff on behalf of the Class, and the serious reputational risks they assumed by suing their employer. Hammond Decl. ¶¶ 74-77. If the Court grants preliminary approval, Class Counsel anticipates filing a declaration from each Plaintiff detailing the risks they assumed, and the time and effort they devoted to this case.

E. The Requested Attorneys' Fees and Costs Are Reasonable

In addition, Plaintiffs' counsel will request attorneys' fees of 35% of the GSA. SA § 6. This fee percentage amount is fair, reasonable and is within the range typically approved in similar class actions by California courts. *Harrold v. California Family Health LLC*, Case No. 34-2022-00323409 (Sacramento Cty. Super. Ct.) (August 17, 2023) (approving fees of 35% of \$320,000 PAGA settlement); *Burleigh v. National University*, Case No. MSC21-00939 (Contra Costa Cty. Sup. Ct.) (Aug. 26, 2022) (approving fees of 40% of \$925,000 class settlement); *Mayton et al v. Konica Minolta Business Solutions USA, Inc.*, Case No. RG12657116 (Alameda Cty. Sup. Ct.) (June 22, 2015) (approving fees of 40% of \$1,225,000 class wage and hour settlement). Plaintiffs will also request reimbursement of up to \$25,000 for actual out-of-pocket litigation costs incurred by Class Counsel. SA § 6. If the Court grants preliminary approval, Class Counsel anticipates filing a Motion for Attorneys' Fees and Costs that will be scheduled to be heard following the notice process.

VI. CONCLUSION

The settlement provides substantial relief for the Classes and easily passes the *Kullar* analysis. Accordingly, Plaintiffs respectfully request that the Court preliminarily approve the settlement, approve the proposed Class Notice, and schedule a final approval hearing.

1 Dated: November 21, 2023

2 Respectfully submitted,
3 HAMMONDLAW, P.C.

4 s/ Julian Hammond
5 Julian Hammond