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11 *Attorneys for Plaintiffs and Proposed Classes*

12 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
13 **COUNTY OF SAN FRANCISCO**

14
15 **DAN BECK and BIENVENIDA SALAZAR,**
individually and on behalf of all others
16 similarly situated,

17 Plaintiffs,

18 vs.

19 **UNIVERSITY OF SAN FRANCISCO,** a
California Corporation,

20 Defendant.
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CASE NO. CGC-21-588930

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

Date: July 9, 2024

Time: 9:00 a.m.

Dept.: 304; Hon. Ethan P. Schulman

I, Julian Hammond, declare as follows:

I. INTRODUCTION

1. I am a member in good standing of the Bar of the State of California¹ and the principal of my own law firm HammondLaw, P.C. (“HammondLaw” or “Class Counsel”) and counsel for the named Plaintiffs Dan Beck and Bienvenida Salazar (collectively, “Plaintiffs”) in the above captioned matter. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to them.

2. I submit this declaration in support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement. A copy of the Class Action and PAGA Settlement Agreement (“Settlement Agreement”), is attached as Exhibit 1 to the Proposed Order, filed herewith. The proposed Class Notice is Exhibit A to the Settlement Agreement.

3. The settlement covers approximately 3,726 individuals. There are approximately 1,879 Unpaid Wage Class Members, 929 Wage Statement Class Members (285 of whom are part-time adjunct instructors whose names were left off the class list in an earlier filed case, *Gola v. University of San Francisco*, Case No. CGC-18-565018 (San Francisco Super. Cnty. Ct.)), and 2,910 Expense Reimbursement Class Members. Plaintiffs are committed to representing the interests of the Class Members. Plaintiffs do not have any conflicts of interest with any of the Class Members, and their interests are virtually coextensive with those of the Class Members.

4. Pursuant to the proposed settlement, Defendant has agreed to pay a non-reversionary gross payment of \$3,888,888 to resolve all the claims that were or could have been alleged in Plaintiffs’ complaints and PAGA notices in this Action.

5. I consider this settlement to be fair, reasonable, and adequate and an excellent result for the Classes, particularly in light of the strength and weaknesses of the case. The settlement will result in prompt and meaningful financial benefit to the Participating Class Members and will avoid all risks of potential litigation.

II. ATTORNEY EXPERIENCE

6. HammondLaw has been certified as Class Counsel or Co-Class Counsel in over 70 wage and hour class actions and PAGA representative actions, representing tens of thousands of employees, including in the Superior Courts for the counties of Alameda, Los Angeles, Sacramento, San Diego, San

¹ I am also an active member of the Bar of the State of New York and of the Washington State Bar Association. I am also admitted to practice as a Barrister-at-Law in both the New South Wales and Victorian Supreme Courts, located in Australia.

1 Francisco, Solano, Santa Clara, Monterey, San Joaquin, Placer, Orange, Contra Costa, San Bernardino,
2 and in federal District Courts in California in diversity jurisdiction cases based on state law, over the last
3 ten years.

4 7. HammondLaw has extensive experience representing part-time adjunct faculty employed
5 in California, and has represented these employees in more class and PAGA representative actions than
6 any other firm since at least 2016. My firm has successfully recovered nearly \$48 million dollars on
7 behalf of over 32,000 instructors in 38 class actions. We have successfully litigated one such class and
8 PAGA action, *Gola v. University of San Francisco*, all the way to trial and appeal.

9 8. Mr. Morris J. Baller, our Co-Counsel, Mr. Polina Brandler, Counsel at HammondLaw, and
10 I were the main attorneys who litigated this case. We also litigated the *Gola* action and having done so,
11 we had deep knowledge of Defendant's misclassification and compensation practices. Mr. Adrian Barnes
12 and Mr. Ari Cherniak who also assisted with litigating this case were actively involved in *Gola*.

13 9. I believe that my firm's experience in the prosecution and resolution of wage and hour
14 class actions and representative actions, including, in particular, our litigation of the *Gola* action, was a
15 significant factor in this case proceeding to mediation and favorable settlement.

16 **III. OVERVIEW OF THE CASE, DISCOVERY, AND SETTLEMENT**

17 **Overview of the Case**

18 10. Plaintiffs' case grew out of and followed an earlier-filed class and PAGA action, *Gola v.*
19 *University of San Francisco*, Case No. CGC-18-565018.

20 11. In *Gola*, plaintiff sought, on behalf of part-time adjunct instructors, unpaid wages for
21 course preparation, waiting time penalties, and statutory penalties for inaccurate wage statements that, as
22 in this case, failed to list hours and hourly rates. Gola's claims for unpaid wages and waiting time penalties
23 were not litigated on the merits because the trial court found those claims were preempted under the Labor
24 Management Relations Act, and dismissed them. The wage statement claim was litigated through trial,
25 and the trial court ruled in favor of plaintiff on her contention that employees, including adjunct
26 instructors, whose wages fall below the minimum salary set out in the Wage Order and Labor Code §
27 515(a) were non-exempt under California law, and against defendant in its contention that its purported
28 good faith provided a defense from liability. In August 2020, the trial court entered a class-judgment for
\$1.6 million in statutory damages pursuant to Labor Code § 226(e), \$545,235 in PAGA penalties, and
\$1.3 million in fees and costs. USF appealed the Gola judgment. Its principal arguments were that Labor
Code § 515.7 applies retroactively and abates claims that accrued prior to its enactment. Labor Code §
515.7 effective September 9, 2020, added two, new wage standards that private non-profit universities in

1 California can now to compensate their adjunct instructors in a manner that allows them to be classified
2 as exempt from certain provisions of the Labor Code, specifically Labor Code §§ 226(a)(2), (3), (9) – the
3 wage statement provisions - and, §§ 510 and 512 – the overtime and meal break provisions. In July 2023,
4 the Court of Appeal rejected Defendant’s contentions, and affirmed the trial court’s judgment.²

5 12. On January 5, 2021, Plaintiffs filed their initial Complaint against Defendant asserting
6 individual and class claims alleging (a) failure to pay wages for all hours worked, including overtime, as
7 required under Cal. Labor Code §§ 510, 1194, and IWC Wage Order No. 4-2001, § 3; (b) failure to provide
8 meal breaks and pay premium pay as required under Cal. Labor Code §§ 226.7, 512 and Wage Order No.
9 4-2001, § 11; (c) failure to permit and authorize rest breaks and pay premium pay as required under Cal.
10 Labor Code §§ 226.7, 512 and Wage Order No. 4-2001, § 12; (d) failure to issue accurate itemized wage
11 statements in violation of Cal. Labor Code §§ 226(a) and (e); (e) failure to reimburse for necessarily
12 incurred business expenses in violation of Cal. Labor Code § 2802; and (f) unfair, unlawful, and/or
13 fraudulent business practices in violation of Business & Professions Code §§ 17200, et seq.

14 13. On March 11, 2021, after exhausting administrative requirements pursuant to PAGA,
15 Plaintiffs filed a First Amended Complaint adding a cause of action for PAGA penalties for the labor code
16 violations alleged in the Complaint. A true and correct copy of Plaintiffs’ PAGA Notice is attached hereto
17 as **Exhibit 1**.

18 14. On April 4, 2022, Plaintiffs filed a Second Amended Complaint expanding the claims for
19 unpaid overtime, and meal and rest break violations to cover part-time adjunct instructors in any field of
20 study, not only nursing part-time instructors as pled in the initial Complaint and the First Amended
21 Complaint.

22 15. On September 14, 2023, Plaintiffs filed a Third Amended Complaint limiting the class
23 period and the period of liability for purposes of the wage statement claim to end on September 8, 2020,
24 one day prior to the effective date of Labor Code § 515.7.

25 16. On April 4, 2021 and April 14, 2022, respectively, Defendant filed its Answer to the First
26 Amended Complaint, and Answer to the Second Amended Complaint. In its Answer to the Second
27 Amended Complaint, Defendant raised fifty-four affirmative defenses, including defenses to class
28 certification, that any violation was made in good faith and/or upon a mistake of law, that Plaintiffs
voluntarily relinquished their rest and meal breaks, that the expense reimbursement claim, and all other
claims, are preempted by the LMRA.

² Gola filed a cross-appeal from the trial court’s dismissal of her claims for unpaid wage and waiting time penalties based on LMRA preemption. The Court of Appeal also rejected these arguments.

17. Defendant also raised an affirmative defense that all claims are barred by Labor Code § 515.7. On March 7, 2022, prior to the decision of the Court of Appeal in *Gola*, this Court granted in part and denied in part Plaintiffs' Motion for Summary Adjudication as to Defendants' affirmative defenses based on § 515.7, holding that § 515.7 preempted wage statement claims, but not the claims for unpaid overtime and premium pay for missed meal and rest breaks. Prior to the parties' agreeing to engage in a judicial settlement conference, Plaintiffs drafted a Motion for Reconsideration, which they would have filed had the case not settled.

Discovery

18. Plaintiffs obtained extensive discovery from Defendant both as part of formal and informal discovery process.

19. Defendant produced approximately 800 pages of documents, including part-time adjunct instructors' assignment letters, wage statements, academic calendars, Part-Time Faculty Handbook, Employee Handbook & Policies, description of USF employees classifications, Collective Bargaining Agreements applicable to part-time adjunct instructors, and those applicable to other members of the ER Class, communications with USF employees regarding campus closures due to COVID-19 pandemic and reopening, communications regarding expense reimbursement, generally applicable expense reimbursement policies, CBA side letters that set out expense reimbursement amounts to be paid to the part-time adjunct faculty, and personnel files of the named Plaintiffs.

20. Defendant produced key data, in excel format, which was analyzed by Plaintiffs' Counsel with the assistance of data analysts. This data included (a) a course spreadsheet containing for each part-time adjunct instructor, identified by his/her employee ID, every course they taught during the Class Period, the title of the course, course ID (e.g. BUS, NURS), the type of course (i.e. lecture, online, fieldwork, clinical, laboratory), the term course was taught in and the first and last date classes met, the beginning and end time of each class sessions and days of the week each class met, and other information; (b) a payroll data spreadsheet containing for every Unpaid Wage Class Member the beginning and end date of every pay period during the Class Period and the amount of wages earned, and the same information for every Wage Statement Class Member for every pay period during the Wage Statement Class Period; (c) an expense reimbursement spreadsheet, for the period of March 1, 2020 through to December 31, 2021, showing the amount of home office expense reimbursement paid to each ER Class Member who submitted a request for monthly home office expense reimbursement, as well as lump sum reimbursement paid to some of the ER Class Members as pandemic relief funds.

1 21. Plaintiffs analyzed these spreadsheets with the assistance of their data experts. From the
2 data and their analysis, Plaintiffs were able to ascertain the following information:

- 3 a. 1,879 – Unpaid Wage Class Members, i.e. part-time adjunct instructors employed during the
4 Class Period whose earnings fell below the minimum salary threshold (i.e. Unpaid Wage
5 Class Members) during approximately 17,532 pay periods (or 8,766 months) during the Class
6 Period;
- 7 b. Of the 1,879 Unpaid Wage Class Members, approximately 387 are Nursing Adjunct
8 Instructors, who worked 3,835 pay periods (or 1,917 months) during which their wages fell
9 below the minimum salary threshold;
- 10 c. 12,324 – class sessions that were scheduled for more than 8 hours, with 14,184 scheduled
11 overtime hours worked by Unpaid Wages Class Members. Approximately 68% of overtime
12 hours were worked by Nursing Adjunct Instructors.
- 13 d. 18,552 – class sessions that met for 5 or more hours. Approximately 63% of these classes
14 were taught by Nursing Adjunct Instructors.
- 15 e. 37,919 – class sessions that met for 3.5 or more hours. Approximately 46% of these classes
16 were taught by Nursing Adjunct Instructors.
- 17 f. 1,135 – IWS Class Members (929 – part-time adjunct instructors whose wages fellow below
18 the minimum salary threshold during approximately 7,587 pay periods; and 285 – part-time
19 adjunct instructors left off the class list in Gola,³ whose wages fellow below the minimum
20 salary threshold during 1,576 pay periods).
- 21 g. Plaintiffs also determined the average hourly rate of part-time adjunct instructors who taught
22 during the Class Period – \$37.60; and
- 23 h. 2,910 - ER Class Members who worked a total of 32,143 months before August 2021 and
24 56,166 months after August 2021. 555 of the 2,910 ER Class Members (19%) submitted
25 expense reimbursement requests and were reimbursed a total of \$188,328 for their home
26 WiFi/cell phone expenses.

27 22. This information allowed Class Counsel to calculate the maximum potential exposure.

28 23. In addition, Plaintiffs' Counsel was familiar with Defendant's policies and practices
applicable to part-time adjunct instructors from the discovery and the PMK deposition conducted in *Gola*.

³ 79 of these adjunct instructors are also part of the 929 instructors.

1 Plaintiffs' Counsel also conducted detailed interviews of several class members in connection with this
2 case.

3 **Settlement Negotiations**

4 24. The parties first participated in a private mediation in February 2022. At that time, the
5 appeal in *Gola* was pending, and the parties were unable to reach settlement. After the private mediation,
6 the parties agreed to stay the case pending the outcome of the appeal in *Gola* given that the Court of
7 Appeal was expected (and did) address issues with respect to application of § 515.7 that directly impact
8 this case.

9 25. Following the decision by the Court of Appeal in *Gola* and the issuance of the remittitur,
10 the parties agreed to engage in settlement discussions, and Plaintiffs requested, and Defendant agreed for
11 the Court to refer the case to a judicial settlement conference.

12 26. On January 17, 2023, the parties participated in an all-day, arms'-length settlement session,
13 with the assistance of a court-appointed mediator, Ms. Pang Ly. Prior to the session, the parties exchanged
14 detailed briefs. In their brief, Plaintiffs set out a detail factual background, the results of their data analysis,
15 supporting case law, and evidence. Based on the data analysis and their investigation, Plaintiffs were
16 well-equipped to evaluate the strengths and weaknesses of their claims and of Defendant's defenses.

17 27. Following the all-day sessions, and several sessions last approximately four to five hours
18 in total, the parties agreed to resolve their dispute and entered into a memorandum of understanding on
19 January 25, 2024. The parties spent the following several weeks drafting and negotiating the long-form
20 Settlement Agreement.

21 **IV. PLAINTIFFS' DAMAGES AND RISK ANALYSIS**

22 **a. Overtime, Meal and Rest Break Claim – Cal. Labor Code §§ 1194, 510, 512 and IWC 23 Wage Order No. 4, §§ 4, 11, 12**

24 28. Plaintiffs alleged that Defendant misclassified its part-time adjunct instructors as exempt
25 throughout the Class Period even though they did not meet the minimum exemption threshold of two times
26 the state minimum wages for full time employment (Lab. Code § 515(a); IWC Wage Order No. 4, §
27 1(A)(3)(d)) and did not maintain any overtime, meal or rest break policies applicable to them. Plaintiffs
28 calculated Defendant's maximum exposure on the overtime, meal and rest break claim (including interest)
for settlement purposes as approximately **\$4,237,376.15**, and realistic exposure, after taking discounts
based on the risks discussed below, as approximately **\$2,806,180.36**, as follows.

29 **Overtime Claim:**

30 29. During the Class Period, Unpaid Wage Class Member were scheduled to work a total of
14,184 overtime hours, and their average hourly rate was \$37.60. Thus, 14,184 x \$37.60 x 1.5 =

1 \$799,977.60. Interest at 10% equals approximately \$433,587.86.⁴ Accordingly, Plaintiffs calculated
2 Defendant's maximum potential exposure on the overtime claim as **\$1,233,565.46**.

3 30. Plaintiffs believed that their overtime claim was strong based on Defendant's uniform
4 classification policy, the practice of scheduling courses to meet for more than 8 hours, and the absence of
5 any policy or practice of paying overtime to its part-time adjunct instructors. However, Defendant could
6 have argued that determining if an Unpaid Wage Class Member actually worked overtime or how much
7 overtime, would require a court to make individualized inquiries to determine whether an Unpaid Wage
8 Class Member. Defendant pointed to the fact that some template syllabi for nursing courses include an
9 hour-long meal break, and also could have argued that instructors often or at least sometimes dismiss
10 students early. Thus, Defendant argued that even if a class was scheduled for more than 8 hours, instructor
11 teaching the class did not necessarily work overtime or worked less overtime than the schedule would
12 suggest. Defendant also argued that Plaintiffs' exposure calculation was inflated because Plaintiffs
13 calculated unpaid overtime based on all scheduled course hours over 8, without taking into account meal
14 breaks and without taking into account that classes sometimes ended early. In addition, while Plaintiffs
15 gave little weight to any of Defendant's arguments based on retroactive application of § 515.7, Defendant
16 argued that § 515.7 allows entitlement to overtime pay to be negotiated under a CBA, and that Defendant's
17 CBA, effective July 1, 2018 waived that right to overtime pay.

18 31. For settlement purposes, based on Defendant's actual and potential arguments, Plaintiffs
19 applied a 15% discount to the exposure on the overtime claim for the certification risk, and a further 15%
20 discount for the risk on the merits. This reduced Defendant's potential realistic exposure to **\$891,251.04**.

21 Meal and Rest Break Claims:

22 32. During the Class Period, Unpaid Wage Class Members were scheduled to teach 18,552
23 class sessions that were five hours or longer. Thus, Plaintiffs calculated Defendant's maximum exposure
24 to missed meal break premium pay, for settlement purposes, as follows $18,552 \times \$37.60 = \$697,555.20$.
25 Interest at 7% adds approximately \$339,569.87.⁵ Thus, Defendant's maximum potential exposure on the
26 meal break claim is **\$1,037,125.07**.

27 ⁴ Plaintiffs calculate interest on this exposure as follows. $\$799,977.60 \times 3.68$ (years in the Class Period)
28 $/2$ (assuming roughly that half of the liability arose before the middle of the Class Period and half after)
 $\times 0.1$ (10%) = \$147,195.88 (interest through to September 8, 2020) *plus* $\$799,977.60 \times 3.58$ (years from
September 8, 2020 to approximately date of preliminary approval) $\times 0.1$ = \$286,391.88

⁵ Interest on this exposure as follows. $\$697,555.20 \times 3.68$ (years in the Class Period) $/2$ (assuming roughly
that half of the liability arose before the middle of the Class Period and half after) $\times 0.07$ (7%) = \$89,845.11

33. During the Class Period, Unpaid Wage Class Members were scheduled to teach 37,919 class sessions that were 3.5 hours or longer. Plaintiffs calculated Defendant's maximum exposure to missed rest break premium pay, for settlement purposes, as follows $37,919 \times \$37.60 = \$1,425,754.40$. Interest at 7% adds approximately \$540,931.22.⁶ Thus, Defendant's maximum potential exposure on the rest break claim is **\$1,966,685.62**.

34. Defendants contended that Plaintiffs would have a very difficult time certifying both the meal and rest break claims because Unpaid Wage Class Members taught different types of courses, in different settings (i.e. online, at a clinical facility, in the laboratory), and at different schools across the University. Defendant argued that in general part-time adjunct instructors also were afforded a lot of discretion as to how to structure their classes and what breaks to give, and did give students breaks. In addition, Defendant contended that students at clinical sites were mainly supervised by the nurses employed by those sites, rather than adjuncts, and adjunct instructors could therefore take breaks if they wanted to. All these variables, Defendant argued, would lead to individualized inquiries that would be necessary to determine if an Unpaid Wage Class Member missed a meal break, and, if so, whether it was a result of a voluntary decision on his/her part or a result of Defendant's practices and/or the nature of their job duties. Plaintiffs believe that they would be able to certify both claims based on Defendant's uniform misclassification of its part-time adjunct instructors, absence of any meal or rest break policy applicable to them, and interviews with members of the Unpaid Wage Class, including Plaintiffs, during which they stated that they were routinely not able to take off-duty breaks. Nevertheless, Plaintiffs recognized that they faced risks on certification based on Defendant's contentions.

35. As to the merits, Defendant contended that Plaintiffs' calculated exposure to unpaid premium pay was overinflated because Plaintiffs based it on every single class session that was over 3.5 and over 5 hours, without taking into account that at least some breaks were taken, that at least some breaks that were missed based on voluntary choice of Unpaid Wage Class Members and not because breaks were impeded. Defendant also could have argued that adjunct instructors who did not take breaks during courses that were between 5 and 6 hours, waived them pursuant to Labor Code § 515(a). Plaintiffs recognized that these arguments posted some risks to recovery.

(interest through to September 8, 2020) *plus* $\$697,555 \times 3.58$ (years from September 8, 2020 to approximately date of preliminary approval) $\times 0.1 = \$249,724$.

⁶ Interest on this exposure as follows. $\$1,425,754.40 \times 3.68$ (years in the Class Period) $/2$ (assuming roughly that half of the liability arose before the middle of the Class Period and half after) $\times 0.07$ (7%) = $\$183,637.17$ (interest through to September 8, 2020) *plus* $\$1,425,754.40 \times 3.58$ (years from September 8, 2020 to approximately date of preliminary approval) $\times 0.1 = \$357,294.05$

36. Based on Defendant's actual and potential defenses, Plaintiffs applied a 25% discount for the risk of certification as to the meal and rest break claims, and a further 15% discount for the risk on the merits, reducing the value of the meal break claim to **\$661,167.23** and the value of the rest break claims to **\$1,253,762.08**.

b. Wage Statement Claim (Labor Code §§ 226(a), (e))

37. Plaintiffs contend that as non-exempt employees, Wage Statement Class Members were entitled to wage statements that listed their total hours worked, applicable hourly rates pursuant to Labor Code § 226 (a)(2) and (a)(9). Plaintiffs calculate Defendant's exposure on this claim as **\$843,350** as follows. Section 226(e) penalties for the 1,576 wage statements issued to the 285 Wage Statement Class Members who were left off the class list in *Gola* and using the 7,000 wage statements issued to Wage Statement Class Members during the Wage Statement Class Period (January 4, 2020 and September 8, 2020) added up to \$843,350.⁷ However, given that § 226(e) sets a maximum penalty (per person) at \$4,000, Defendant's exposure was reduced by \$176,300 because \$176,300 of the \$843,350 in penalties were based on wage statements issued to those Wage Statement Class Members who met the maximum cap based on their recovery in *Gola* (\$843,350 - \$176,300 = \$667,050).

38. In light of the class judgment in the *Gola* case, Plaintiffs see no risk to the merits of their claim. In *Gola*, the parties stipulated to class certification. However, Plaintiffs expect that in this case, Defendant would have opposed class certification. Thus, for settlement purposes, Plaintiffs applied a minimum 5% discount for the risk on class certification. Thus, Plaintiffs calculated total penalties of the wage statement claim as **\$633,697.50**.

c. Unreimbursed Expenses Claim - Labor Code § 2802

39. Plaintiffs contend that Defendant was required, but failed to reimburse ER Class Members, fully and/or at all, for their home office expenses (i.e. home internet, cell phones) they incurred in working from home during the COVID-19 pandemic.

40. At the end of 2020, Defendant implemented a policy of reimbursing its full-time employees \$25/month. In November and December 2020, USF Part-Time Faculty Associated also entered into two side letter agreements that together provided for \$23/month retroactive reimbursement for part-time adjunct instructors who worked remotely from March 15 to August 14, 2020, and for \$25/month reimbursement for the Fall 2020 semester. Pursuant to both the general expense reimbursement policy and the expense reimbursement policy set out in the side letter agreements, employees were required to

⁷ (285 x \$50 + (1,576 - 285)) x \$100 + 7,000 x \$100

1 submit requests for reimbursement in order to be reimbursed. Based on Plaintiffs' analysis of the expense
2 reimbursement data provided by Defendant, Plaintiffs were able to ascertain that Defendant paid out a
3 total of \$188,328 in home internet and cell phone expense reimbursement, and that these reimbursements
4 were only paid to approximately 19% of the ER Class. According to Defendant and documents it produced
5 in discovery, campus fully reopened beginning in August 2021 and employees were expected to return to
work in-person.

6 41. Plaintiffs calculated Defendant's exposure on this claim as follows. ER Class Members
7 worked during approximately 88,309 total months during the ER Class Period, 32,143 of which were
8 months before August 2021, and 56,166 of which were worked after August 2021 (the date campuses
9 reopened). For settlement purposes, Plaintiffs estimated that Defendant should have reimbursed ER Class
10 Members on average \$45 per month, instead of \$25 for the months worked prior to August 2021. Plaintiffs
11 also estimate that for months after August 2021, since campus was reopened and ER Class Members were
12 required to return to working on campus, ER Class Members incurred only \$10/month in business
13 expenses, such as occasional work from home and personal cell phone usage. Thus, Plaintiffs calculated
14 Defendant's exposure for settlement purposes as follows: $(32,143 \times \$45) + (56,166 \times \$10) - \$188,382$
(amount reimbursed) = \$1,819,713. Interest at 10% adds \$368,928,⁸ for a total exposure of **\$2,188,206.88**.

15 42. Plaintiffs faced substantial certification and merits risks based on Defendant's actual and
16 potential defenses. Defendant argued that it had a policy pursuant to which ER Class Members could seek
17 reimbursement for their home office expenses, and, based on Defendant's payroll data, approximately
18 25% of the ER Class Member did submit such requests. Thus, Defendant could have argued that the ER
19 Class could not be certified because the Court would need to make individualized inquiries to determine
20 why some ER Class Members submitted reimbursement requests and some did not. Defendant also could
21 have argued that individualized inquiries would be required to determine whether an ER Class Member
22 used personal home internet and cell phone out of necessity or merely out of convenience so as not to have
to travel to campus even though he/she could gain access to campus facilities during at least some parts
of the ER Class Period.

23 43. On the merits, Defendant argued that Plaintiffs' damages analysis was based on
24 overinflated home office expenses. In support of its argument, Defendant pointed to the fact that several
25 internet providers offered plans for \$20/month in the San Francisco area, and at least some of the home
26 internet was used by for non-business purposes by ER Class Members and/or by other household members

27 ⁸ Interest on this exposure as follows. $\$1,819,713 \times 4.05$ (years in the ER Class Period, through to
28 preliminary approval) $/ 2 \times 0.1$ (10%) = \$368,491.88

who were not USF employees. Defendant also could have argued that its employees were instructed to use CISCO Jabber service to make and receive calls using software installed on their computers, and use of personal cellphones was therefore neither necessary nor encouraged. Finally, Defendant further argued that if the case continued to be litigated, the Court would find that Plaintiffs' claim on behalf of part-time adjunct instructors is preempted under the LMRA because the reimbursement amounts were negotiated and determined to be sufficient under the CBA.

44. Based on these actual and potential defenses, Plaintiffs applied a 30% discount for the certification risk, and a further 45% discount for the merits risks, which reduced Defendant's exposure on this claim to **\$842,459.65**.

The Settlement is an Excellent Result

45. Plaintiffs calculated maximum damages (including interest, and excluding PAGA penalties) as \$7,092,633.03 and realistic exposure as \$4,282,337.51 as follows:

Claim	Maximum Exposure	Realistic Exposure
Unpaid Overtime (Lab. Code §§ 1194, 510)	\$1,233,565.46	\$891,251.04
Missed Meal Breaks (Lab. Code §§ 512, 226.7)	\$1,037,125.07	\$661,167.23
Missed Rest Breaks (Lab. Code § 226.7)	\$1,966,685.62	\$1,253,762.08
Wage Statements (Lab. Code §§ 226(a), (e))	\$667,050.00	\$633,697.50
Unreimbursed Expenses (Lab. Code § 2802)	\$2,188,641.00	\$842,459.65
Total	\$7,092,633.03	\$4,282,337.51

46. The \$3,888,888 settlement compares favorably with the full relief I estimate for the Class Members. The settlement represents **54.8%** of the maximum exposure, and **90.8%** of the realistic exposure, which is fair and reasonable. I consider this settlement to be an excellent result.

47. Under the Settlement Agreement, the Net Settlement Amount ("NSA") will total approximately **\$2,362,592** if the Court grants the fees and costs requested by Plaintiffs in full.

Method of Allocation Between the Classes and the Distribution Formula are Fair and Appropriate

48. The GSA/NSA will be allocated to each Class based on the realistic value of their claims as follows: 65% of the GSA/NSA will be allocated to the Unpaid Wage Class; 15% of the GSA/NSA will be allocated to the Wage Statement Class; and 20% of the GSA/NSA will be allocated to the Expense Reimbursement Class. Each allocation represents approximately 90 to 92% of the realistic value of the

1 claims of each Class: \$2,527,777.20 allocated to the Class Members for the overtime, meal, rest break
2 claims is approximately 90% of \$2,806,180.36 (the realistic exposure on those claims); \$583,333.20
3 allocated to the Class Members for the wage statement claim is approximately 92% of \$633,697.50 (the
4 realistic exposure on this claim); and the \$777,777.60 allocated to the Expense Reimbursement Class
5 claims is approximately 92% of \$842,459.65 (the realistic exposure on this claim).

6 49. Each Participating Class Member will be entitled to payment of a portion of the Net
7 Settlement Amount (i.e., his or her “Individual Settlement Payment”). The amount that each Participating
8 Class Member will be eligible to receive under the Settlement will be determined based on the number of
9 “qualifying” months worked. The “qualifying” months worked by Participating Class Members during
10 the relevant periods will be derived from Defendant’s payroll records.

11 50. For the Unpaid Wages Class and the Wage Statement Class, qualifying months worked are
12 those months during the Class Period and/or Wage Statement or *Gola* Wage Statement Period, as
13 applicable, when Class Members’ earnings were below the minimum salary threshold of two times the
14 state minimum wage for full time employment. In calculating individual settlement shares, the
15 administrator will apply a 2.5 multiplier to the qualifying months worked by the Unpaid Wage Class
16 Members who are Nursing Adjunct Instructors to account for the fact that most of the exposure on the
17 claims of this Class (i.e. overtime, meal, and rest breaks) is based on the classes taught by the Nursing
18 Adjunct Instructors.

19 51. For the ER Class, “qualifying” work months are month worked during the ER Class Period.
20 In calculating individual settlement shares, the administrator will apply a 4.0 multiplier to qualifying
21 works months worked prior to August 2021 to account for the fact that campuses were reopened after
22 August 1, 2021 and all employees could return to work from campuses and did not need to work remotely
23 from their home offices.

24 52. The average gross recovery per Unpaid Class Member who *is* a Nursing Adjunct
25 Instructors will be \$2,689.47,⁹ and the average pre-tax net recovery will be \$1,633.91. For those Unpaid
26

27 ⁹ There are approximately 8,766 “qualifying” months worked by the 1,879 Unpaid Wage Class Members.
28 Of the 1,879 Unpaid Wage Class Members, 387 are Nursing Adjunct Instructors, who taught during
approximately 1,917.5 “qualifying” months of the total 8,766 months, and 1,490 are non-Nursing Adjunct
Instructors who taught during approximately 6,848.5 “qualifying” months. 65% of the GSA allocated to
the Unpaid Wage Class Members equals \$2,527,777 and 65% of the NSA is \$1,535,684. In light of the
fact that Nursing Adjunct Instructors will have a 2.5 multiplier applied to their pay periods/months, the
average gross and net recoveries are calculated as follows: Total months worked by Nursing Adjunct
Instructors with a 2.5 multiplier is 4,793.7 (1,917.5 x 2.5). Total combined months (including those with
a multiplier) equals 11,642 (4,793.7 + 6,848.5). $\$2,527,777 / 11,642 = \$217.13/\text{month}$ (gross) and

Wage Class Members who are *not* Nursing Adjunct Instructors, the average gross recovery will be approximately \$996.62, and the average pre-tax net recovery will be \$605.47.

53. The average gross recovery per Wage Statement Class Member will be \$513.95,¹⁰ and the average pre-tax net recovery will be \$312.24.¹¹

54. The average gross recovery per ER Class Member will be \$267.28,¹² and the average pre-tax net recovery will be \$162.38.¹³

f. PAGA Allocation is Fair and Reasonable

55. According to the data provided by Defendant, Aggrieved Employees worked a total of 525 pay periods between January 4, 2020 and March 10, 2020 (the portion of the Adjunct PAGA Period before the beginning of the Expense Reimbursement PAGA Period) and 88,309 months during the Expense Reimbursement PAGA Period (March 11, 2020 through January 25, 2024). Plaintiffs used months instead of pay periods to calculate exposure to PAGA penalties based on Defendant's alleged violation of § 2802 because Defendant could have argued that penalties, at most, apply only on a monthly basis since there is no requirement for employers to reimburse employees' expenses each pay period. Accordingly, the theoretical maximum exposure to PAGA penalties is \$8,883,400¹⁴ (calculated at \$100 initial penalty and assuming the Court would not allow "stacking" of PAGA penalties for each separate Labor Code violations). However, in light of the discretion afforded to trial courts in awarding PAGA penalties, the fact that most of the exposure is based on the § 2802 claim and that Defendant did maintain an expense reimbursement policy, granted reimbursement requests, campuses reopened at the beginning of August 2021, and unreimbursed expenses were approximately \$2.2 million, the Court would be unlikely to award anything close to \$8.8 million in penalties, an amount that is more than four times the exposure on the § 2802 claim.

\$1,535,684/ 11,642 = \$131.91 (net). The average recovery per non-Nursing Adjunct Instructors is \$996.62 gross (\$217.13 x 6,848.5/1,492) and \$605.47 net (\$131.91 x 6,848.5/1,492), and per Nursing Adjunct Instructor is \$2,689.47 gross (\$217.12 x 4,793.7/387) and \$1,633.91 net (\$131.91 x 4,793.7/387).¹⁰ \$583,333.20 (15% of the GSA)/ 1,135 IWS Class Members (929 IWS Class Members + 285 IWS Class Members who were omitted from the class list in *Gola*, 79 of whom are also part of the 929 IWS Class Members)

¹¹ \$354,388.80 (15% of the NSA)/ 1,135 IWS Class Members

¹² \$777,777.60 (20% of the GSA)/ 2,910 ER Class Members

¹³ \$472,518.40 (20% of the NSA)/ 2,910 ER Class Members

¹⁴ (525 x \$100) + (88,309 x \$100)

1 56. The \$100,000 allocated to the PAGA Payment represents a fair and reasonable portion of
2 the realistic PAGA penalties, which is fair and reasonable. First, the PAGA claim is subject to the same
3 merits risks as the underlying non-PAGA claims. Even if Plaintiffs prevailed on the underlying violations,
4 the award of PAGA penalties is not automatic, but is a matter of court’s discretion. Second, the overall
5 settlement resulted in robust relief per Class Member, which is what courts look at when assessing amount
6 attributed to PAGA penalties. *See O’Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110, 1134 (N.D. Cal.
7 Aug. 18, 2016) (where settlement for the class claims is robust, the purpose of PAGA may be fulfilled
8 because by providing fair compensation to class members, the settlement has a deterrent effect on
9 defendant and other employers, thus fulfilling the purpose of PAGA).

10 57. Third, Plaintiffs’ allocation of 1.13% of the maximum value of PAGA penalties is
11 comparable to PAGA allocations in similar cases that received final approval including *Mooiman et al. v.*
12 *Saint Mary’s College of California*, No. C19-02092 (Contra Costa Cnty. Super. Ct. June 10, 2021) (finally
13 approving \$30,000 carve out for PAGA Penalties, representing 1% of the maximum \$649,200 in PAGA
14 penalties, where “the record indicates that defendant changed many of the policies at issue before the
15 action was brought, that there is a substantial monetary award which in part serves the deterrent function
16 of a penalty, and that defendant had some arguments of “good faith,” that would mitigate penalties”);
17 *Pillow et al. v. Pepperdine University*, Case No. 19STCV33162 (Los Angeles Superior Court)(July 28,
18 2021) (finally approving PAGA allocation of \$15,000, representing 1% of the maximum \$1,619,200 in
19 PAGA penalties); *Mayer, et al v. Visa Inc., et al.*, No. CGC-21-593058 (San Francisco Cnty. Super. Ct.
20 Nov. 17, 2023) (finally approving a \$45,000 carveout for PAGA penalties, representing 1.3% of the
21 maximum PAGA penalties).

22 **The Risk, Expense, Complexity, and Likely Duration of Further Litigation**

23 58. Plaintiffs have determined that each alleged violation has merit as to some or all Class
24 Members and is supported by evidence. Defendant has strongly asserted that there are valid defenses to
25 those claims and denied any liability in the action, but has stated that it desired to settle to avoid the
26 expense and business disruption associated with further legal proceedings.

27 59. Plaintiffs recognize that if they elected not to settle and continued to litigate, they would
28 face uncertainties on the merits and certification. Voluminous evidence would be needed to prove damages
at trial; expert testimony could be required to prove the damage calculations; and trial would be complex
given the number of employees and claims involved. Continued litigation would result in significant
additional costs and delay including further discovery, motion practice, and trial preparation (on whatever
claims made it that far). Appeals could further delay and jeopardize recovery. In *Gola v. University of*

1 *San Francisco*, for example, it took approximately six years from the time the case was filed for the class
2 members to be paid, and the Court of Appeal's affirmance of the trial court's judgment was a 2-1 decision,
3 highlighting the risk posed by appeals, as well as the risks posed by unforeseen developments such as the
4 change of law (as was the case with the enactment of § 515.7 after the judgment was awarded to the class
in *Gola* and while the appeal was pending).

5 60. Thus, while I believe that Plaintiffs would ultimately recover on all or some of their claims,
6 continued litigation could take years and would put Class Members at a risk of recovering less than the
7 settlement amount, or nothing at all provides certainty of recovery to the Class Members and recovery
8 that is in the relatively near future, if the settlement is finally approved.

9 **V. ATTORNEYS' FEES AND COSTS, AND CLASS REPRESENTATIVES' SERVICE**
10 **AWARDS**

11 **Class Representative Service Awards**

12 61. In my view, the requested service awards of \$7,500 for each Plaintiff is fair and reasonable
13 to compensate them for the critical role they played in stepping forward to bring this case, and the time
14 and effort they expended to help secure the result obtained for the Class. In agreeing to serve as class
15 representatives, Plaintiffs formally agreed to accept the responsibilities of representing the interest of all
Class Members. Plaintiffs also took on the danger of negative notoriety result from suing their former
employer.

16 62. Plaintiffs expended effort on behalf of the class to help secure the result obtained. They
17 communicated with Plaintiffs' Counsel frequently and extensively, collected and provided documents and
18 diligently assisted Class Counsel in the investigation for the case, in seeking informal and formal
19 discovery, and preparing for both mediations. Plaintiffs also spent time discussing their availability for
20 depositions and discussing their depositions that Defendant was close to scheduling several times.
21 Plaintiffs' participation and assistance were critical to the success of this litigation and the enforcement of
22 Labor Code protections. Without Plaintiffs' commitment to come forward and serve as lead plaintiffs and
23 Class representatives in prosecuting this lawsuit, this litigation may not have been brought. Finally, none
of the Plaintiffs' claims are antagonistic to the interests of the class.

24 63. Further, unlike other Class Members, Plaintiffs will enter into general releases as part of
25 the settlement. Plaintiffs' proposed service awards will be subject of a separate motion supported by
26 admissible evidence.

27 ///

28 ///

Attorneys' Fees and Costs

64. Plaintiffs will file a separate motion for the requested attorneys' fees and costs. The Settlement Agreement provides that Defendant will not oppose a request for attorneys' fees of up to \$1,296,296 (33.33% of the Gross Settlement) and out of pocket litigation costs of up to \$60,000. This is fair, reasonable and adequate to compensate Class Counsel for the substantial work they have already done to prosecute this Action, the risk they assumed to agree to take the case in the first place, the great expense spared to the Class by Class Counsel having achieved a successful resolution, the substantial financial recovery made available to the Collective, and the continued time and expense that Class Counsel will incur by administering the fair distribution of the settlement fund should this Court grant the settlement's approval.

65. My firm agreed to represent Plaintiffs on behalf of the putative Class on a contingency basis, and further agreed to advance all litigation costs. Our significant financial outlays would have been entirely lost if the case were not won, which in this case in particular was a very real risk. The amount of Class Counsel's time that would have remained uncompensated in that event would have been substantial. Class Counsel also took on this case despite the known risks associated with Plaintiffs' claims as described above and the unpredictable risks that are common to most complex employment class actions that develop only over the course of the litigation. Nevertheless, Class Counsel was able to obtain a very favorable settlement for the Class.

66. Our firm has spent significant time litigating this case, including interviewing the named Plaintiffs and other part-time adjunct instructors, including but not limited to nursing instructors, who worked for Defendant during the relevant periods, reviewing documents provided by Plaintiffs prior to and after case initiation and information obtained by our firm through our own research, filing multiple pleadings, engaging in extensive formal and informal discovery, drafting and arguing Plaintiffs' Motion for Summary Adjudication as to Defendant's affirmative defenses based on Labor Code § 515.7, preparing case management conference statements and appearing at case management conferences, analyzing data produced by Defendant, drafting a detailed mediation briefs and attending an all-day private mediation session at the beginning of 2022, drafting a detailed mediation statement and attending an all-day judicial settlement session, and continuing to engage in settlement negotiations during several days following the judicial settlement session, negotiating the settlement after entering into a memorandum of understanding, drafting the preliminary approval papers; and planning and strategizing throughout the case. Further, we will spend additional attorney time to bring this case, including: obtaining preliminary approval; overseeing the notice process; answering calls and questions from class members; preparing the final

1 approval papers; attending the final approval hearing; and overseeing the distribution of the settlement
2 funds.

3 67. The Settlement Agreement's award of litigation costs of up to \$60,000 is intended for
4 commonly reimbursed out-of-pocket costs incurred by my firm, including filing and process-serving fees,
5 expenses related to court appearances, legal research charges, expert data analysis, professional fees paid
6 to the private mediator, legal research, hearing transcripts.

7 68. If the Court grants preliminary approval and authorizes the dissemination of notice of the
8 settlement to the Class, Class Counsel anticipates filing a Motion for Attorneys' Fees and Costs and Class
9 Representative Service Awards for Class Representatives that will be scheduled to be heard concurrently
10 with the Motion for Final Approval. Class Counsel will submit their lodestar and costs breakdown with
11 their motion for attorneys' fees and costs at that time.

12 **Qualifications for Appoint as Class Counsel for Purposes of the Settlement**

13 69. HammondLaw is a plaintiffs' complex and class action firm founded in 2010. We have
14 been certified as Class Counsel or Co-Class Counsel in over 80 employment and consumer wage and hour
15 class actions and PAGA representative actions, representing tens of thousands of employees, including in
16 the Superior Courts for the counties of Alameda, Los Angeles, Sacramento, San Diego, San Francisco,
17 Solano, Santa Clara, Monterey, San Joaquin, Placer, Orange, Contra Costa, San Bernardino, in federal
18 District Courts in California in diversity jurisdiction cases based on state law, and in Washington state and
19 federal courts over the last fourteen years.

20 70. My firm represents employees across a variety of industries. Since 2016, my firm has also
21 been the leader in prosecuting wage and hour adjunct instructor cases in California, and has successfully
22 recovered over \$50 million dollars in damages and statutory and civil penalties in those cases. We
23 successfully litigated one such wage and hour class action on behalf of adjunct instructors all the way
24 through trial and appeal. *See Gola v. University of San Francisco*, 90 Cal. App. 5th 548 (2023), cert. pet'n
25 denied.

26 71. In addition, my firm was appointed to and served on the Executive Committee in the MDL
27 case titled *In re Ashley Madison Customer Data Security Breach Litigation*, Case No. MDL 2669 (E.D.
28 Mis. Dec. 9, 2015) (\$11.2 million claims-made settlement on behalf of approximately 39 million Ashley
Madison users alleging privacy violation) and as Co-Lead Counsel in a data privacy case filed against
BetterHelp, Inc., pending in the United States District Court for the Northern District of California, Case
No. 3:23-cv-01033-RS. We currently represent putative class members in several large consumer privacy
class actions.

72. My firm was also the first firm in the country to bring cases and secure settlements pursuant to the Automatic Renewal Law § 17600 et seq. (“ARL”) and the UCL. As co-lead counsel we secured a very large settlement against Apple, Inc. (the largest in the country at that time) under the ARL and UCL in *Siciliano, et al. v. Apple, Inc.*, Case No. 1:13-CV-257676 (Cal. Super. Ct. Santa Clara Cnty., November 5, 2018) (\$16,500,000 settlement on behalf of approximately 4,000,000 consumers). We also secured settlements under the ARL and the UCL in *Goldman v. Lifelock*, Case No. 1-15-cv-276235 (Cal. Super. Ct. Santa Clara Cnty., Feb. 5, 2016) (\$2,500,000 settlement on behalf of approximately 320,000 consumers); *Davis v. Birchbox Inc.*, Case No. 3:15-cv-498-BEN-BSG (S.D. Cal. Oct 17, 2016) (settlement in form of Birchbox credits for approximately 150,000 consumers); *Kruger v. Kiwi Crate*, Case No. 1-13-CV-254550 (Cal. Super. Ct. Santa Clara Cnty., July 2, 2015)) (claims made settlements on behalf of consumers); and *Gargir v. SeaWorld Inc.*, Case No. 37-2015-00008175-CU-MC-CTL (Cal. Super. Ct. San Diego Cnty., October 21, 2016) (\$500,000 settlement on behalf of 88,000 subscribers). My firm’s resume is attached hereto as **Exhibit 2**.

VI. SETTLEMENT ADMINISTRATOR

73. The parties solicited bids from four settlement administrators. Simpluris, Inc.’s bid was the lowest bid of the four provided, and Simpluris, Inc. was appointed as the case administrator in *Gola v. University of San Francisco* and is therefore familiar with the case and some of the data (i.e. payroll data) that it will have to analyze in order to calculate settlement shares of the Class Members. Simpluris’ bid the administration of this Settlement for \$24,967. The proposed Settlement seeks administrator costs not to exceed \$35,000. The \$10,033 reserve, if not used, will be added to the NSA. A true and correct copy of the settlement administrator’s bid is attached to the concurrently filed Declaration of Eric Springer on behalf of Simpluris, Inc.

VII. PROPOSED CY PRES BENEFICIARY

74. The Settlement designates Bet Tzedek as cy pres recipient under Cal. Code of Civ. Proc. § 384. Bet Tzedek is a 501(c)(3) non-profit legal services program that provides free legal service in numerous areas, including employment, to low-income residents of Southern California. My firm and attorneys at my firm have no connection to or relationship with Bet Tzedek 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.

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VIII. PLAINTIFFS SUBMITTED SETTLEMENT AGREEMENT TO THE LWDA

75. On May 6, 2024, Plaintiffs submitted a copy of the Settlement Agreement to the LWDA. An email received by Plaintiffs' counsel from the LWDA confirming this submission is attached as **Exhibit 3**.

I declare under penalty of perjury under the laws of the State of California and the United States and the State of California that the foregoing is true and correct. Executed on May 6, 2024.


Julian Hammond

EXHIBIT 1

HAMMONDLAW

A PROFESSIONAL CORPORATION

FACSIMILE: 310-295-2385

11780 W Sample Rd., Suite 103
Coral Springs, FL 33065

TELEPHONE: 310-601-6766

January 4, 2021

VIA LWDA WEBSITE

Department of Industrial Relations
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

VIA CERTIFIED MAIL

Rev. Paul J. Fitzgerald
President, University of San Francisco
2130 Fulton St.
San Francisco, CA 94117

Re: Private Attorneys General Act Notice

Dear Fr. Fitzgerald,

This letter is to provide notice of claims for penalties under the California Labor Code Private Attorneys General Act of 2004, as amended, Cal. Labor Code § 2698 *et seq.* ("PAGA").

We represent Bienvenida Salazar and Dan Beck ("Plaintiffs") in connection with their claims against University of San Francisco ("USF" or "Defendant"). Plaintiff Salazar asserts claims on behalf of herself and other Nursing adjunct professors and/or instructors employed by the USF in California anytime from one year prior to the submission of this notice through to September 8, 2020, and who earned below the monthly salary equivalent of no less than two times the state minimum wage for full-time employment ("Nursing Aggrieved Employees") for the following violations:

- (a) failure to pay overtime compensation for hours worked in excess of 8 in a day in violation of Labor Code §§ 510, 1194 and IWC Wage Order No. 4-2001, § 3;
- (b) failure to provide off-duty meal periods pursuant to Labor Code § 512 and Wage Order No. 4, § 11; and
- (c) failure to permit and authorize off-duty rest breaks pursuant to Labor Code § 226.7 and IWC Wage Order No. 4-2001, § 12.

Plaintiff Salazar also asserts claims on behalf of herself and other adjunct professors and/or instructors employed by USF in California anytime from January 4, 2020 through September 8, 2020, and who earned below the monthly salary equivalent of no less than two times the state minimum wage for full-time employment ("Adjunct Aggrieved Employees") for the following violation:

- (a) failure to issue accurate itemized wage statements in violation of Labor Code §§ 226(a)(2), (a)(9).

Finally, Plaintiff Beck asserts claims on behalf of himself and all other individuals employed by USF in California anytime from March 11, 2020 through to the date of trial in this case (“Aggrieved Employees”) for the following violation:

- (a) failure to reimburse for necessarily incurred business expenses in violation of Labor Code § 2802.

The facts and theories supporting these violations are as follows:

I. Claims on Behalf of Nursing Aggrieved Employees

During the relevant period (one year prior to the postmark date of this notice to September 8, 2020), Plaintiff Salazar and Nursing Aggrieved Employee were non-exempt employees because they earned less than the monthly salary equivalent of no less than two times the state minimum wage for full time employment (Wage Order No. 4, § 1, Lab. Code § 515). As a result, they were entitled to be afforded protections under the Labor Code and applicable Industrial Wage Order, including overtime pay for all hours worked in excess of 8 in a day pursuant to Labor Code §§ 510, 1194 and Wage Order No. 4, § 3; 30-minute off-duty meal breaks for shifts of over 5 hours pursuant to Labor Code § 512 and Wage Order No. 4, § 11; and 10-minute off-duty rest breaks for every 3.5 hours or major fraction thereof worked during shifts of more than 3.5 hours pursuant to Labor Code § 226.7 and Wage Order No. 4, § 12. However, Defendant maintained policies and/or practices that denied Nursing Aggrieved Employees these protections.

A. Defendant’s Policies Denied Overtime Compensation, Meal and Rest Breaks

During the relevant period, Nursing Aggrieved Employees’ employment was subject to a Collective Bargaining Agreement, effective dates July 2018 to June 30, 2023, (“CBA”) entered into between USF and the University of San Francisco Part Time Faculty Association. The CBA provides: “Adjunct professors shall be assigned an appropriate rate of pay by the University” (Art. 18.1.1.) and “The salary schedule for adjunct professors shall be based on a per unit minimum rate of pay.” (Art. 18.1.2). The CBA did not contain any references, express or otherwise, regarding the provision for premium pay for overtime hours worked, off-duty thirty-minute meal breaks, off-duty ten-minute rest breaks (or, as discussed below, wage statements).

i. FLSA Classification Policy

USF maintained a policy of classifying its employees pursuant to the FLSA, and according to the following definitions:

- “Non-exempt: Full-time or par-time employees who are subject to the payment of daily and weekly overtime as required by federal and state law based on job responsibilities and duties

- Exempt: Full-time and part-time employees who are exempt from overtime provisions of federal and state laws due to job responsibilities that meet the exemption criteria established under the U.S. Department of Labor’s Fair Labor Standards Act (FLSA)”

See [HR - Policies - Payroll Services and Pay Practices | myUSF \(usfca.edu\)](#) (last accessed on December 15, 2020)

Pursuant to this policy, USF misclassified Nursing Aggrieved Employees as exempt, without considering whether they were exempt under California law.

ii. Overtime Pay Policy

USF also maintained an overtime pay policy that denied overtime to employees whom it classified as exempt. The overtime pay policy provided that “Overtime will be paid to all non-exempt, non-union employees...” and referred union employees to their CBAs (“Union employees should refer to their collective bargaining agreement for information on overtime pay.”). See [HR - Policies - Payroll Services and Pay Practices | myUSF \(usfca.edu\)](#) (last accessed on December 15, 2020). As discussed above, however, the CBA applicable to Nursing Aggrieved Employees did not contain any provisions, express or otherwise, regarding overtime pay.

iii. Rest Break Policy

USF also maintained a rest break policy that, together with the policy of misclassifying Nursing Aggrieved Employees as exempt under the FLSA, failed to provide for off-duty rest breaks for Nursing Aggrieved Employees. The rest break policy provided as follows:

“Non-exempt employees are permitted at minimum a 10-minute rest break for every 3.5-hour period of work. Non-exempt employees are not required to clock in and clock out for rest periods because this time is considered “time worked” and is compensable. *Exempt employees, as they are paid a weekly salary regardless of the hours they work, may choose to take breaks as needed.* Union employees should refer to their collective bargaining agreement for information on rest breaks.” (emphasis supplied)

See [HR - Policies - Payroll Services and Pay Practices | myUSF \(usfca.edu\)](#) (last accessed on December 15, 2020).

As discussed above, however, the CBA applicable to Nursing Aggrieved Employees did not contain any provisions regarding rest breaks.

iv. Meal Break Policy

Finally, USF maintained a meal break policy that provided for meal breaks only for non-exempt employees and together with the policy of misclassifying Nursing Aggrieved Employees

as exempt under the FLSA, failed to provide for off-duty meal breaks for Nursing Aggrieved Employees. The meal break policy provided, in relevant part, as follows:

“Non-exempt employees who work at least five (5) consecutive hours will be provided a meal break not to exceed 60 minutes. . . .

Non-exempt employees who feel that they are unable to take their required breaks or meal period must contact their supervisor before the scheduled break or meal period...

Employees can opt to waive the meal period if they do not work more than six (6) hours in the workday. Waiver must be written mutual agreement between employee and supervisor. (original emphasis)

See [HR - Policies - Payroll Services and Pay Practices | myUSF \(usfca.edu\)](#) (last accessed on December 15, 2020).

The CBA did not contain any provision regarding meal breaks, and contained no provision, express or otherwise, waiving meal breaks.

Notably, USF maintained Hours Caps Policy which provided that exempt employees “are only required to report leave and not time worked.” As a result, Defendant did not record Nursing Aggrieved Employees’ meal breaks, as required under Wage Order No. 4, § 7(A).

B. USF Denied Overtime Compensation, Meal Breaks, and Rest Breaks

i. USF Failed to Pay Overtime

During the relevant period, USF regularly scheduled Plaintiff Salazar and Nursing Aggrieved Employees to work more than eight hours in a day, and they did in fact work more than eight hours in a workday. For example, Defendant scheduled Plaintiff Salazar to work and teach Clinical Lab I: Adult Medical-Surgical Nursing in the spring semester of 2019, from 6:00 am to 3:30 pm. However, in accordance with its Overtime Policy Defendant did not pay Plaintiff Salazar and Nursing Aggrieved Employees at one and one-half times their regularly hourly rate, for hours worked in excess of eight in a workday, in violation of Labor Code § 510, 1194 and Wage Order No. 4, § 3.

Pursuant to Labor Code § 2699(f)(2), Plaintiff Salazar and Nursing Aggrieved Employees are entitled to one hundred dollars (\$100) for each initial violation and two hundred dollars (\$200) for each subsequent violation of Labor Code §§ 510, 1194.

ii. USF Failed to Provide Off-Duty Meal Periods

During the relevant period, USF regularly scheduled Plaintiff Salazar and Nursing Aggrieved Employees to work shifts of more than 5 hours, and they did work shifts of more than 5 hours.

However, Defendant did not maintain a meal break policy applicable to Plaintiff Salazar and Nursing Aggrieved Employees, and Plaintiff Salazar and Nursing Aggrieved Employees routinely could not take off-duty meal breaks because USF required and/or expected them to supervise their students in clinical courses, at all times. During clinical courses, students are placed in clinical settings to apply and practice their skills, and they are required to be supervised. While Nursing Aggrieved Employees gave their students breaks during their clinical courses, those breaks were staggered and they themselves remained on duty during those times supervising students who were not on breaks. Nursing Class Members were also required and/or expected to always be available for questions and any issues that arose. Additionally, as a result of Defendant's Hours Caps Policy, Defendant did not keep track of the hours worked by Nursing Aggrieved Employees, and did not keep track of the meal breaks taken, in violation of Wage Order No. 4, § 7(A). Thus, Defendant failed to provide Plaintiff Salazar and Nursing Aggrieved Employees with off-duty meal breaks when required, in violation of Labor Code § 512 and Wage Order No. 4, § 11, thereby triggering an obligation to make premium pay pursuant to Labor Code § 226.7, which Defendant also did not pay.

Pursuant to Labor Code § 2699(f)(2), Plaintiff Salazar and Nursing Aggrieved Employees are entitled to one hundred dollars (\$100) for each initial violation and two hundred dollars (\$200) for each subsequent violation of Labor Code § 512 and Wage Order No. 4, § 3.

iii. USF Failed to Permit and Authorize Rest Breaks

During the relevant period, USF regularly scheduled Plaintiff Salazar and Nursing Aggrieved Employees to work shifts of more than 3.5 hours, and up to 12 hours, and they did work shifts of more than 3.5 hours and up to 12 hours. As a result, Plaintiff Salazar and Nursing Aggrieved Employees were entitled to one 10-minute off-duty rest break for shifts between three and a half hours and six hours, two 10-minute rest breaks for shifts between six hours and ten hours, and three 10-minute rest breaks for shifts between 10-12 hours.

However, because Defendant misclassified Plaintiff Salazar and Nursing Aggrieved Employees as exempt under its FLSA Policy and had no policy permitting and authorizing them to take rest breaks (as the Rest Break Policy referred them to the CBA, but the CBA contained no rest break policy), Defendant failed to permit and authorize them to take off-duty rest breaks. Additionally, Plaintiff Salazar and Nursing Aggrieved Employees routinely could not take off-duty rest breaks during their shifts of 3.5 or longer because, as discussed above, USF required and/or expected them to supervise their students at clinical sites. While Plaintiff Salazar and Nursing Aggrieved Employees gave their students breaks, those breaks were typically staggered and Defendant required and/or expected them to supervise students who were not on break, which they did. As discussed above, Nursing Class Members were also required and/or expected to always be available for questions and any issues that arose.

Thus, Defendant failed to provide Plaintiff Salazar and Nursing Aggrieved Employees with off-duty rest breaks when required, in violation of Labor Code § 226.7 and Wage Order No. 4, § 12, thereby triggering an obligation to make premium pay pursuant to Labor Code § 226.7, which Defendant also did not pay.

Pursuant to Labor Code § 2699(f)(2), Plaintiff Salazar and Nursing Aggrieved Employees are entitled to one hundred dollars (\$100) for each initial violation and two hundred dollars (\$200) for each subsequent violation of Labor Code § 226.7 and Wage Order No. 4, § 12.

II. Claims on Behalf of Adjunct Aggrieved Employees

During the relevant period (January 4, 2020 to September 8, 2020), Adjunct Aggrieved Employees were non-exempt employees because they earned less than the monthly salary equivalent of no less than two times the state minimum wage for full time employment (Wage Order No. 4, § 1, Lab. Code § 515). As a result, Defendant was required to list on the wage statements Defendant issued to them entry for total hours worked and applicable hourly rate in effect during each pay period pursuant to Labor Code § 226(a)(2), (a)(9). The CBA made no reference to wage statements or their content. However, Defendant did not track Adjunct Aggrieved Employees' hours worked and did not list entries for total hours worked or applicable hourly rate on their wage statements.

The same violation for the failure to issue accurate itemized wage statements here, was the subject of another case and bench trial, which resulted in a judgment in favor of plaintiff in that case and against Defendant. On March 15, 2018, a former adjunct instructor of Defendant filed a putative class action, which was later amended to add a PAGA claim, alleging, among other violations, that Defendant failed to issue accurate itemized wage statements to its non-exempt part time adjunct instructors in violation of Labor Code § 226(a)(2) and (a)(9). That action was styled *Gola v. University of San Francisco*, Case No. CGC-565018 (San Francisco Superior Cnty. Super. Ct.). Plaintiff's theory in that case was that part-time adjunct instructors who did not earn at least a monthly salary equivalent of two times the state minimum wage for full time employment were non-exempt (Lab. Code § 515, Wage Order No. 4, § 1) and, as such, Defendant was required to list on their wage statements their actual hours worked and applicable hourly rate each pay period under Labor Code § 226(a)(2) and (a)(9). During a bifurcated bench trial, the trial court found that the wage statement claim was not preempted because the CBA in effect at the time contained no provision regarding wage statements.

The trial Court in the Gola action certified a class of adjunct instructors who earned below the minimum wage threshold required to be exempt anytime between March 15, 2017 and January 4, 2020, and the case proceeded to a bench trial on the wage statement claim. In the Statement of Decision following trial, filed on August 10, 2020, the trial Court found that USF was required, but clearly failed, to list on their wage statements the total hours worked each pay period and the applicable hourly rate in effect during each pay period.¹ USF was found liable for statutory and civil penalties for the period that the class was certified for, and judgment was entered on August 20, 2020, awarding Plaintiff and the Class statutory penalties pursuant to Labor Code § 226(e) and \$545,325 in PAGA penalties (15% of the PAGA penalties sought) for the period of January 30, 2017 to January 3, 2020.

¹ A copy of the trial court's Final Statement of Decision and Judgment are attached hereto.

From January 3, 2020 through to about September 8, 2020 Defendant continued to fail to list actual total hours worked and applicable hourly rate in effect during each pay period. Based on information and belief, it appears that as of August 16, 2020, USF began including entries for hours and hourly rates. However, on information and belief, Defendant did not require Adjunct Aggrieved Employees to track their hours worked and as a result the hours listed were not the *actual* precise number of hours worked by the Adjunct Aggrieved Employees. *See McKenzie v. Fed. Express Corp.*, 765 F. Supp. 2d 1222, 1228 (C.D. Cal. April 14, 2011) (citing DLSE May 17, 2002 opinion letter for the proposition that “the obligation to list the total hours worked during the pay period [under § 226(a)(2)] can only be satisfied by listing the precise, actual number of hours worked...” (internal quotations omitted); see also *Cicairos v. Summit Logistics, Inc.*, 133 Cal. App. 4th 949 (2005) (reversing summary judgment on meal, rest, and wage statement claim where wage statements always showed 40 hours no matter how many hours employees worked). Thus, Defendant’s liability for its failure to issue accurate itemized wage statements in violation of Labor Code §§ 226(a)(2) and (a)(9) from January 4 to September 8, 2020 is a matter of res judicata.

Pursuant to Labor Code § 226.3 Plaintiff Salazar and Adjunct Aggrieved Employees are entitled to two hundred fifty dollars (\$250) for each initial violation of Labor Code § 226(a) and one thousand dollars (\$1,000) for each subsequent violation of § 226(a). Alternatively, pursuant to Labor Code § 2699(f)(2), Plaintiff Salazar and Adjunct Aggrieved Employees are entitled to one hundred dollars (\$100) for each initial violation of Labor Code § 2802 and two hundred dollars (\$200) for each subsequent violation of § 2802.

III. Claims for Unreimbursed Expenses on Behalf of Aggrieved Employees

During the relevant period (March 11, 2020 through to the date of trial in this case), Defendant failed to reimburse Plaintiff Beck and Aggrieved Employees for their business expenses, including but not limited to the cost of internet and cellular phone service, incurred pursuant to Defendant’s written policies and in carrying out Defendant’s business.

Labor Code § 2802(a) provides:

“An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

During the relevant period, Defendant maintained and continues to maintain a written policy (“Temporary Telecommuting Remote Work Agreement”) and/or practice of requiring Plaintiff Beck and Aggrieved Employees to work remotely. As part of that policy, Defendant required Plaintiff Beck and Aggrieved Employees to be readily available by laptop computer, mobile phone, email, messaging application, videoconferencing, instant message, and/or text messaging. Defendant also expected and required them to maintain the same response times as if they were at their regular USF location.

As a result of working remotely, in direct consequence of carrying out their duties, or their obedience to the directions of the Defendant, Plaintiff Beck and Aggrieved Employees incurred office expenses, as described above, including but not limited to internet service, and cellular phone service. Defendant knew or should have known that Plaintiff Beck and Aggrieved Employees incurred these office expenses. However, Defendant maintained a personal equipment operating expense reimbursement expense policy and/or policies and/or practices that denied reimbursement for these expenses. That policy provided, in relevant part, as follows:

- “Employees need to have a working telephone or cellphone at their remote location. Those employees who have already migrated to Jabber should ensure that incoming calls to their office phone are forwarded to their remote location phone or cellphone.
- The University of San Francisco is not responsible for operating costs of any personal equipment (including, but not limited to, computers, personal devices, cellular or standard telephones), home maintenance of personal equipment, or any other incidental costs (utility provider costs, telephone costs or for any supply costs used in the home) associated with the use of an employee’s alternative work arrangement.”

See [COVID-19 considerations for remote work 03.06.2020 .pdf \(usfca.edu\)](#) (last accessed December 28, 2020)

As a result, Defendant’s policies and/or practices require and/or with Defendant’s knowledge thereof permit, Aggrieved Employees to pay for their office expenses including but not limited to internet service and cellular service in direct discharge of their job duties on behalf of Defendant, without reimbursement by Defendant in full or at all, for such expenses. Defendant is aware that Plaintiff Beck and Aggrieved Employees routinely incur business expenses in the discharge of their duties, as employees, without any reimbursement. Defendant nevertheless has, throughout the relevant period, failed and refused to reimburse Plaintiff Beck and Aggrieved Employees for such expenses incurred by them in their work as they carry out their work duties for Defendant. Defendant’s conduct is applicable to all of its campuses and across all of its employees during the relevant period. As a result, Plaintiff Beck and Aggrieved Employees have been harmed by Defendant’s failure to reimburse their expenses in clear violation of § 2802 of the California Labor Code.

Pursuant to Labor Code § 2699(f)(2), Plaintiff Beck and Aggrieved Employees are entitled to one hundred dollars (\$100) for each initial violation of Labor Code § 2802 and two hundred dollars (\$200) for each subsequent violation of § 2802.

Attorneys’ Fees

Plaintiffs are entitled to recover his attorneys’ fees and costs under Labor Code § 2699(g)(1).

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///

///

Conclusion

Therefore, pursuant to Labor Code § 2699.3, we write to inform you and the Labor and Workforce Development Agency of our intent to pursue a civil class action lawsuit against Defendant that will also include a claim for civil penalties under the PAGA to be brought by the Plaintiffs, individually and on behalf of all other Nursing Aggrieved Employees, Adjunct Aggrieved Employees, and Aggrieved Employees, as defined herein, based on the labor code violations alleged above.

Yours truly,

Julian Hammond



FILE
San Francisco County Superior Court

AUG 10 2020

CLERK OF THE COURT

BY: [Signature] Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

KELLY GOLA, ET AL.

Plaintiff,

vs.

UNIVERSITY OF SAN FRANCISCO,

Defendant.

Case No. CGC – 18-565018

STATEMENT OF DECISION

Gola represents a Class of adjunct professors suing the University of San Francisco.

Remaining are the Class' claims based on wage statements as not compliant with Labor Code § 226. The matter was the subject of a bench trial conducted on papers, including declarations subject to cross examination via deposition. The procedure allowed the University to assemble its evidence after reviewing Gola's evidence, and for Gola to prepare her rebuttal case after reviewing the University's evidence. After concluding briefs were filed (I refer below to the University's Brief and Gola's Brief), I heard closing argument July 9, and issued a proposed statement of decision on July 22, 2020. I have reviewed the parties' objections dated August 7, 2020.

Request for Judicial Notice

Gola filed a "Supplemental Request for Judicial Notice" dated July 2, 2020. My tentative ruling suggested some of the materials pertained to bills that were never enacted, but this isn't

1 right. All the materials in the Supplemental Request relate to either enacted legislation or opinion
2 letters from the California Division of Labor Standards, and the University has provided no
3 reason why I should not grant the request. It is granted.
4

5 6 **Sealing**

7 By papers dated April 29, 2020 Gola sought to seal documents. I then asked the parties
8 whether sealing was required or whether, alternatively, the assertedly confidential materials
9 could be withdrawn as unnecessary to my determination. At the July 9 argument the parties
10 confirmed that the materials were unnecessary, they had not yet been filed, and Gola will file an
11 amended set omitting assertedly confidential materials. The motion to seal was withdrawn
12 formally on July 20, 2020.
13
14

15 **Factual Background**

16 Gola and the Class teach at the University part time. They are part time adjunct
17 instructors or professors. The Class received wage statements which do not show the hours
18 worked, or the hourly rate. The format is the same for all class members. The University issued
19 two types of wage statements, one type up to 2019, and then a second type thereafter. The
20 differences are immaterial: neither format shows hours or rate. Salaries for the Class are
21 contracted on a per course basis. Trial Testimony/Decl. of D.J. Philpott For Bench Trial No.2
22 dated May 19, 2020 ("Philpott Decl.") ¶¶ 41, 43.
23
24

25 **Business & Professions Code ¶ 17200 (UCL)**

26 The University argues that the UCL claim has in effect been dropped; and at argument
27

1 plaintiffs' counsel did not disagree. Gola's trial brief does not argue on the basis of the UCL.
2 Gola seeks neither restitution nor an injunction. The UCL claim has been abandoned.
3
4

5 **Labor Code Section 226**

6 To make out a claim under § 226 plaintiff must show:

- 7 • The employer did not furnish a wage statement showing (among other things):
 - 8 ○ "total hours worked by the employee, except as provided in subdivision (j)," (§
 - 9 226(a))
 - 10 or
 - 11 ○ "all applicable hourly rates" (§ 226 (a) (9))
 - 12
- 13 • The employee suffered injury (§ 226(e) (1))
 - 14 ○ The employee suffers injury if the wage statement does not include to total hours
 - 15 worked and the hourly rate, and if "the employee cannot promptly and easily
 - 16 determine from the wage statement alone" the total hours worked or the hourly rate.
 - 17 (§ 226 (e)(B))
 - 18 ▪ "promptly and easily determine" means a reasonable person would be able to
 - 19 readily ascertain the information without reference to other documents or
 - 20 information." § 226 (e)(C)
 - 21
- 22 • The employer failure was "knowing and intentional" § 226 (e)(1)
 - 23 ○ A "knowing and intentional failure" does not include an isolated and unintentional
 - 24 payroll error due to a clerical or inadvertent mistake." It is relevant "whether the
 - 25 employer, prior to an alleged violation, has adopted and is in compliance with a set of
 - 26 policies, procedures, and practices that fully comply with this section." § 226 (e)(3)
 - 27

1 Subsection (j), which provides the exception to § 226(a), holds that total hours need not be in the
2 wage statement if:

- 3 • “The employee’s compensation is solely based on salary and the employee is exempt
4 from payment of overtime under subdivision (a) of Section 515 or any applicable order of
5 the Industrial Welfare Commission,”
6

7 or

- 8 • The employee is exempt for various reasons including:
9 “(A) The exemption for persons employed in an executive, administrative, or professional
10 capacity provided in any applicable order of the Industrial Welfare Commission.”
11

12 **Section 226 Liability**

13
14 1. It is obvious that the wage statement does not contain the required information, hours
15 worked or applicable rate.

16 2. It is clear that subsection (j) does not provide an exception. The University has made no
17 argument that suggests the Class was actually exempt under Labor Code § 515(a) or some order
18 of the Industrial Welfare Commission.¹ Its brief argues that I should indeed avoid addressing
19 whether the Class is exempt. University Brief at 3:8-9; 8. Although the University discusses the
20 notion of employees’ exempt status, this is *solely* in the context of a ‘good faith’ defense
21 (University Brief at 11 ff.). The University makes no argument that the instructors actually meet
22 the definitions of § 515, and with good reason: The section requires among other things the IWC
23 to have acted to establish the exemption, and that the monthly salary be at least twice the
24 minimum wage, neither of which is true and neither of which the University argues is actually
25
26

27 ¹ The University did suggest at argument an IWC order applied, but could not tell me which one. The University’s argument on proration is discussed on the next page. But that argument, University Brief at 11-12, was made in the context of the good faith defense. See argument caption at University Brief at 10:18.

1 true.

2 The Industrial Welfare Commission may establish exemptions from the requirement that
3 an overtime rate of compensation be paid pursuant to Sections 510 and 511 for executive,
4 administrative, and professional employees, if the employee is primarily engaged in the
5 duties that meet the test of the exemption, customarily and regularly exercises discretion
6 and independent judgment in performing those duties, and earns a monthly salary
7 equivalent to no less than two times the state minimum wage for full-time employment.

8 Lab. C. § 515(a).

9 The parties have spent some time arguing whether the salary applicable to part time work
10 could be extrapolated or prorated to generate a number which would apply if the instructor
11 worked fulltime. For example if one were paid more than twice the minimum wage for one hour
12 a month, might that be sufficient to meet the “earns a monthly salary equivalent to no less than
13 two times the state minimum wage for full-time employment” test? The University notes there’s
14 nothing in § 515 that says the salary *can’t* be prorated, University Brief at 11 n.3, and Gola cites
15 an opinion from the Chief Legal Counsel of the Labor Commissioner suggesting otherwise. Gola
16 Brief at 22. Gola has the better of this argument, based on the opinion² and e.g., *Kao v. Holiday*,
17 12 Cal. App. 5th 947, 958 (2017), but it doesn’t matter: There is no IWC action³ and the
18 University doesn’t make the argument that the Class is exempt.

19 3. The Class suffered injury. As I have found and as the parties conceded, the wage
20 statements don’t have the required information. And there is no way to figure it out from
21 looking at the statement “alone” (with or without referring to other documents), which is the
22 statutory test. The University’s argument here is that the class is “highly educated and literate,”
23 University Brief at 9, which may well be true but is not in the record. The argument then
24 continues to suggest these sorts of people can’t be injured when they know full well they are paid
25

26 ² “DLSE’s interpretation is entitled to great weight and under established principles of statutory construction, unless
27 it is clearly unreasonable, it will be upheld.” *Skyline Homes, Inc. v. Dep’t of Indus. Relations*, 165 Cal. App. 3d 239,
249 (1985), *disapproved of on separate grounds*, *Tidewater Marine W., Inc. v. Bradshaw*, 14 Cal. 4th 557 (1996).

³ I directly asked the University’s counsel about this at the July 9 argument but he was not able to cite an IWC order.

1 by the course, and not per hour. University Brief at 9. But this isn't the statutory test. The
2 University never addresses the statutory test.

3 *Raines v. Coastal Pac. Food Distributors, Inc.*, 23 Cal. App. 5th 667 (2018) doesn't help
4 the University. It doesn't stand for the vague proposition advanced by the University at
5 argument that one must be practical or reasonable in interpreting § 226, whatever that means.
6 What the case stands for is that if words of the statute apply—if one *can* figure out the missing
7 information from the four corners of the document, then there's no injury:
8

9 Here, one can determine the hourly overtime rate “from the wage statement alone.” (§
10 226(e)(2)(B).) It can be “promptly and easily” determined by simple arithmetic. (*Ibid.*)
11 The mathematical operation required is division, which is taught in grade school.
12 Although many people cannot perform the calculation in their heads, it can be easily
performed by use of a pencil and paper or a calculator; no additional documents or
information are necessary. (§ 226(e)(2)(C).)

13 23 Cal. App. 5th at 677.

14 That's not the situation here.

15 The University cites two nonbinding federal trial court decisions in support of the notion
16 that Gola must have viewed a wage statement before she can be harmed by the missing
17 information. One of these cases does say that, *Holak v. K Mart Corp.*, No. 1:12-CV-00304-
18 AWI-MJ, 2015 WL 2384895, at *7 (E.D. Cal. May 19, 2015) (“the employee must still have
19 viewed the wage statement in question”) but it just relies on the second case, *Nguyen v. Baxter*
20 *Healthcare Corp.*, No. 8:10-CV-01436-CJC, 2011 WL 6018284, at *9 (C.D. Cal. Nov. 28,
21 2011). *Nguyen* does *not* say what *Holak* says it holds; instead, it finds that because the plaintiff
22 wasn't really confused about any of the information required to be on the wage statement she
23 suffered no injury. *Nguyen* at *9. And even *Holak* recognizes that the statute was amended as of
24 2013, probably to impose “a new objective standard by which a plaintiff need not even view a
25 wage statement to be injured by allegedly contained therein,” *Holak* at *7. (But the amendment
26
27

1 came too late to do the plaintiff any good in that case.) It does appear that the amendments,
2 enacted in 2012, were done to make clear that the omission of the data is injury. See legislative
3 history at Ex. K to Plaintiff's Supplemental Request for Judicial Notice.
4

5 *Holak* is worth no more than *Nguyen*, and *Nguyen* doesn't help the University.

6 4. The University has referred to the "knowing and intentional" test as a scienter
7 requirement, and for convenience I will do the same. The central disagreement between the
8 parties here has to do with the test, not the underlying facts. The University says the test is one of
9 "good faith" so that a plausible but ultimately unconvincing position on whether the employees
10 are exempt suffices. E.g., *Stafford v. Brink's, Inc.*, No. CV141352MWFPLAX, 2014 WL
11 12586066, at *6 (C.D. Cal. Aug. 5, 2014); *Harris v. Vector Mktg. Corp.*, 656 F. Supp. 2d 1128,
12 1146 (N.D. Cal. 2009) (suggesting "good faith" dispute is a defense). See also e.g., *Chavez v.*
13 *Converse, Inc.*, No. 15-CV-03746-NC, 2020 WL 1233919, at *1 (N.D. Cal. Mar. 13, 2020)
14 ("California law precludes the recovery of penalties when a good faith dispute exists as to
15 whether wages are owed").
16

17 First, it is odd that while the University claims it honestly thought in good faith the Class
18 was exempt (University Brief at 11-12 n.3), as I have noted the University is not able to actually
19 articulate an argument that instructors were exempt under state law. Further, the evidence is not
20 that the University had a good faith belief of this nature; the evidence is that they never thought
21 about it. University PMK deposition at 98 ff., 101 ff. at pages 116-117, 119);⁴ Philpott trial
22 testimony at page 10. Philpott's testimony is not directly to the contrary: he implies, although
23 he does not actually say, that the University's counsel approved paying the part time instructors
24
25
26
27

⁴ "Pages" refers to the page numbers superimposed by Gola's counsel on the original material.

1 by the course. Philpott Decl. ¶ 44.⁵ But for reasons I detail below under “Other issues,” the fact
2 that pay is contracted one way or the other—by the piece, by commission, or otherwise—is not
3 relevant to whether an employee is exempt and so is not relevant to whether the wage statements
4 must include certain data.⁶

5
6 Secondly, the University implies it relied on the collective bargaining agreement (CBA)
7 with a union which represents the Class. The University suggests the rights at issue are waivable
8 (that is not clear), and understands that for a statutory right to be waived by a CBA, the waiver
9 must be clear and unmistakable. University Brief at 12 n.4. E.g., *Mendez v. Mid-Wilshire Health*
10 *Care Ctr.*, 220 Cal. App. 4th 534, 543 (2013). The University says that sort of waiver is found at
11 Article 23 of the CBA. See e.g. Ex. B to Philpott Decl. That’s obviously not true. Article 23
12 doesn’t even mention wage statements. Subsection A says the parties must follow the law.
13 Subsection B says the agreement, including the pay, is legal. Even if such a self-serving
14 declaration were meaningful, it is patently not a clear and unmistakable statement that the wage
15 statements need not have certain information.
16

17 Thirdly, the federal trial court decisions relied on the University, to the extent one
18 considers them to be interpretations of the scienter requirement under § 226,⁷ are probably not
19 correct. There is no good faith defense. I am bound by state appellate authorities which use a
20

21 ⁵ Philpot does say, in the most general terms, that he considered California law. Philpott Decl. ¶ 58. I do not place
weight on this post-hoc general statement; it is consistent with the consideration whether it was legal to have a
contractual calculation by the piece, discussed next in the text.

22 ⁶ For these reasons, the University’s suggestion, made for the first time in its suggested Principal Controverted
Issues Nos. 19 and 20 (dated July 20, 2020) that CCR tit. 8 § 13520(a) proves a good faith defense doesn’t work
23 either. First, the University can’t make a legal argument for the first time in these suggested Issues (the CCRs aren’t
mentioned in e.g., the University Brief 10-13, its discussions of good faith). And even if § 13520(a) applied, the
24 University would still lose because “Defenses presented which, under all the circumstances, are unsupported by any
evidence, are unreasonable....”. The defense is not supported by evidence.

25 ⁷ Not all of them actually are. *Chavez v. Converse, Inc.*, for example, is about waiting time penalties, not the issue in
this case, and where the rule is different, i.e., where good faith *does* have a role. *Kao v. Holiday*, 12 Cal. App. 5th
26 947, 963 (2017). See also *Caudle v. Sprint/United Mgmt. Co.*, No. C 17-06874 WHA, 2019 WL 2716291, at *3
(N.D. Cal. June 28, 2019); *Deluca v. Farmers Ins. Exch.*, 386 F. Supp. 3d 1235, 1266 (N.D. Cal. 2019). Another
27 case relied on by the University is also about waiting time penalties. *Amaral v. Cintas Corp. No. 2*, 163 Cal. App.
4th 1157, 1201 (2008).

1 different test, which one might dub the ‘predicate facts’ test.

2 A violation exists if the employer “knew that facts existed that brought its actions or
3 omissions within the provisions of [the statute]” (*Willner v. Manpower, Inc.* (N.D. Cal. 2014) 35
4 F.Supp.3d 1116, 1131) or, in other words, “was aware of the factual predicate underlying the
5 violation,” (*Novoa v. Charter Communications, LLC* (E.D. Cal. 2015) 100 F.Supp.3d 1013,
6 1028). Thus, an employer’s knowledge that its wage statements did not contain the pay period’s
7 inclusive dates was held to be a knowing and intentional failure to comply with the statute. *Kao*
8 *v. Holiday*, 12 Cal. App. 5th 947, 961 (2017). See also *Furry v. E. Bay Publ’g, LLC*, 30 Cal.
9 App. 5th 1072, 1085 (2018); *Diaz v. Grill Concepts Servs., Inc.*, 23 Cal. App. 5th 859, 868
10 (2018). Other federal courts have recognized the state predicate facts test. E.g., *Fox v. Eclear*
11 *Int’l CO. Ltd.*, No. CV 17-0865 AS, 2018 WL 6118525, at *9 (C.D. Cal. June 13, 2018); *Suarez*
12 *v. Bank of Am. Corp.*, No. 18-CV-01202-MEJ, 2018 WL 3659302, at *11 (N.D. Cal. Aug. 2,
13 2018); *Mays v. Wal-Mart Stores, Inc.*, 354 F. Supp. 3d 1136, 1144 (C.D. Cal. 2019); *Bernstein v.*
14 *Virgin Am., Inc.*, No. 15-CV-02277-JST, 2018 WL 3344316, at *6 (N.D. Cal. July 9, 2018).

15 The University makes no argument under the predicate facts test.

16 Here, the contents of the wage statements are undisputed: They don’t have the required
17 information. The instructors are not exempt, and the University does not actually argue that they
18 are. The University knew all the facts needed to figure it out. The predicate facts are established
19 and thus so is the scienter requirement.

20 The scienter requirement is not met where the problem is the result of for example, an
21 “unintentional payroll error due to a clerical or inadvertent mistake.” § 226 (e) (3). The
22 University does not press this, and the evidence is to the contrary: There was no mistake. Philpott
23 trial testimony at 31 (Ex A to Amended Decl. of P. Brandler (Rebuttal case) dated June 16,
24
25
26
27

1 2020.

2 The University does ask me to consider that it has “a set of policies, procedures, and
3 practices that fully comply with this section.” § 226 (e) (3). By this, the University means to
4 point to its “Banner payroll system.” University Brief at 10-11. This system we are told
5 properly handles the wage statements of *other* employees which the University has treated as
6 non-exempt. Id. The argument is baffling. It seems to be that the University has the systems to
7 issue compliant wage statements, and does so for some employees, and that I should conclude
8 therefore that it did not act knowingly and intentionally regarding the Class. But to the contrary:
9 This is evidence that the University deliberately treated the instructors differently. The statutory
10 language relied on by the University seems to be an extrapolation of the “clerical or
11 inadvertence” language that precedes it, i.e., that the scienter requirement may not be met if the
12 employer’s *practice* was to issue legally required statements, but where, in fact, some non-
13 compliant statements were, nevertheless, for some reason, issued.
14

15
16 This does not affect my conclusions on scienter.

17 The discussion of these four points completes the analysis of liability under § 226, and
18 shows the University is liable.
19

20 **Other issues**

21 The University raises other issues which don’t seem directly relevant to liability. The
22 argument focuses on § 226 (a)’s requirement of “accurate” statements: because the Class’
23 negotiated pay is on a per course basis, and not hourly, stating hours on the wage statement
24 would be inaccurate. University Brief at 7-9. The argument then invokes legislative intent to
25 support two closely related points: first, in support of the notion of accuracy, and second, that the
26
27

1 point of § 226 is not to make “mischief” or mislead, but to have transparency in reporting pay.
2 Id. at 7-8. Because instructors know exactly how they are paid, and that it is done on a per
3 course basis, the intent of the statute (transparency) is fulfilled.
4

5 I take these in reverse order.

6 First, the fact that the Class knows how it is paid is irrelevant. I assume most workers
7 know how they are paid-- their rate for example, if not also the number of hours they work a
8 week or a month. No authority suggests this moots the requirements of § 226. Courts do not
9 conduct a factual inquiry into whether an employee knows his rate of pay before deciding his
10 wage statement must contain that figure.
11

12 Second, legislative intent (a legal fiction at best) can be interesting but usually only in
13 figuring ambiguous or otherwise problematic statutes. It starts with an identified ambiguous
14 word or phrase. The analysis then often looks at extrinsic materials, such as legislative reports,
15 debates, and so on, which pertain to the wording issue. E.g., *Coburn v. Sievert*, 133 Cal. App.
16 4th 1483, 1500 (2005). Here, the University’s argument proceeds from the unambiguous
17 language of the law, invokes intent, and then applies it to obviate the words of the statute. The
18 statute does not say that transparency is required: It says that certain information such as hours
19 and rate have to be on the wage statement. Using legislative intent to defeat the plain meaning of
20 a statute is dubious work. E.g., *Bonome v. City of Riverside*, 10 Cal. App. 5th 14, 21 (2017);
21 *Whaley v. Sony Computer Entm’t Am., Inc.*, 121 Cal. App. 4th 479, 485 (2004).
22

23 The two cases quoted by the University are not useful, because in those cases there was a
24 question of interpretation which does not exist here. *Ward v. United Airlines, Inc.*, 9 Cal. 5th
25 732, at *9 (2020) (“geographic scope of the labor protection in section 226”); *Soto v. Motel 6*
26 *Operating, L.P.*, 4 Cal. App. 5th 385, 390 (2016) (rejecting interpretation, contrary to statute’s
27

1 wording, that “section 226 requires the monetary amount of earned vacation pay to be listed on
2 each itemized wage statement”). The legislative intent which those two courts thought was
3 pertinent doesn’t necessary apply in this case where we’re looking at a different language and
4 different issues,⁸ and where no ambiguity has been identified.
5

6 As an aside, I also reject Gola’s legislative intent argument in support of the position that
7 California did not pass legislation which if enacted would have made adjunct faculty members
8 exempt employee, all in an effort to suggest they are, therefore, non-exempt. Gola Brief at 10-11.
9 “All we can know for certain is that speculation about why a later Congress declined to adopt
10 new legislation offers a “particularly dangerous” basis on which to rest an interpretation of an
11 existing law a different and earlier Congress did adopt.” *Bostock v. Clayton Cty., Georgia*, __
12 U.S. __, 140 S.Ct. 1731, at *12 (2020).
13

14 Finally, we come to what may be at the heart of the University’s position, which is that
15 because the “basis for compensation” is not hourly, there is nothing to put in the wage statement.
16 University Brief at 4:26 -5 (“There is no hourly rate of pay”); 8:18-20. Any data in that box
17 would be inaccurate. *Id.* at 9. This argument by counsel tracks the same fallacy which guided his
18 client: that one may not enter a number of hours or rate on the wage statement if the employee is
19 not contracted to be paid by the hour. Philpott Decl. at e.g., ¶¶ 107-108. But all employees, no
20 matter the basis of payment, and no matter how their contracts are phrased, are entitled to the §
21 226(a) types of data—unless excepted by e.g. subsection (j). One can imagine employees paid,
22 as matter of contract, by the piece, by the month, by commission, or other measure; no matter.
23

24
25 ⁸ Here, for example, perhaps the legislative intent is that setting out the hourly rate is likely to lead to fewer
26 violations of the state’s minimum wage laws. E.g., *Magadia v. Wal-Mart Assocs., Inc.*, 384 F. Supp. 3d 1058, 1086
27 (N.D. Cal. 2019) (“While amending § 226(a), the California Legislature found that “California employers are
‘chronic violators of wage and hour, safety, and tax laws.’ ” California Assembly Committee on Labor &
Employment, Bill Analysis, A.B. 2509 (Steinberg), April 12, 2000. Given accurate wage information, employees
would be more able to identify any violation of wage and hour laws, so California employers would be less likely to
attempt to cheat employees.”)

1 Insisting on the entry of the required data on the statement doesn't imply that any of those types
2 of contracts are improper.

3 The other way of understanding the University here is that it is not *possible* to obtain the
4 data to insert into the statements. For example, the instructors do their "thinking" at various
5 times, and the University doesn't track that time. University Brief at 5:8 ff. If that were a valid
6 impossibility excusing compliance with the statute, no wage statement could be accurate: it
7 would be a rare employee indeed who never thought constructively about work except at the
8 office or factory. There's no authority cited in support of the impossibility defense, and no good
9 evidence of it. The University does not consider the feasibility of, for example, asking instructors
10 to track their time, or that the University might limit their work time to a specific number of
11 hours subject to an increase (or decrease), which, as it turns out, is exactly what the University
12 does.⁹ (See Letters of Appointment, Philpott Decl. ¶¶ 41, 42, referring to the Handbook, which
13 refers to expected weekly hours of work, and the ability of the instructor to seek approval for
14 more time. Philpot Decl., Ex E at 6 § 2.7 (Handbook); Ex F –H (Letters of Appointment).¹⁰

15 There is a slightly different way to phrase the University's position, which is that because
16 the Class is paid by the course, and the University has thus not set an hourly rate, there simply is
17 no "applicable" rate to put into the wage statements. The argument would rely on § 226(a)'s
18 requirement to show "(9) all *applicable* hourly rates in effect during the pay period and the
19 corresponding number of hours worked at each hourly rate." (Emphasis supplied.) In this
20 reading, "applicable" requires the existence of an actual hourly rate, and because the University
21

22
23
24
25 ⁹ The University's trial counsel provided a declaration, which might include either (or both) percipient or expert
26 testimony, to the effect that the hours were only an artifact of the Affordable Care Act, essentially fake numbers.
27 Decl. of M. Varian for Bench Trial No. 2, dated May 20, 2020 at ¶¶ 17 ff. Compare, CRPC Rule 3.7 (Lawyer as
Witness). Even so, the mechanism seems reasonable, which is to state numbers of hours and allow for modifications.

¹⁰ The University's witness Mr. Philpott thought tracking time would reduce "morale and enthusiasm," Philpott
Decl. ¶ 98. Maybe. Every lawyer who's tracked time for his or her entire professional career in six-minute
increments will understand the testimony. It's not evidence of impossibility, unfortunately.

1 didn't set one, it doesn't exist. There are two sorts of problems with this reading. First, the logic
2 allows an employer easily to devise a compensation system which undermines the statute; if the
3 employer insists on paying by the week or other period, or every time there's a full moon, there
4 would be under this logic no applicable hourly rate. This makes little sense. Compare *Skyline*
5 *Homes, Inc. v. Dep't of Indus. Relations*, 165 Cal. App. 3d 239, 249 (1985) (calculating hourly
6 rate based on work week), *disapproved of on separate grounds, Tidewater Marine W., Inc. v.*
7 *Bradshaw*, 14 Cal. 4th 557 (1996). Secondly, § 226 was amended to *delete* the constraint that
8 hourly rates had to be reported only for hourly workers, and opened it up to a requirement that
9 applied to wage statement for *any* non-exempt employee. Plaintiff's Supplemental Request for
10 Judicial Notice dated July 2, 2020, Ex. M, Legislative Counsel's Digest (AB 2509) at p.18
11 (showing redlines to older version of statute).
12

13
14 These arguments from the University do not affect liability.
15

16 **Statutory Damages**

17 The unchallenged evidence on damages calculation shows statutory damages are
18 \$1,621,600. Kriegler Decl. ¶ 22.
19

20 **PAGA**

21 **1. Liability**

22 The University's arguments against PAGA liability are these: (1) The underlying § 226
23 violation has not been established; (2) The PAGA notice was insufficient, (3) Gola is not
24 "aggrieved" because she did not look at her pay stubs (wage statements). The first issue is
25 disposed of above.
26
27

1 The notice was sufficient. While Gola sent a series of notice letters to the Labor &
2 Workforce Development Agency (LWDA), counsel clarified at the July 9 hearing that he relied
3 solely on the January 30, 2018 notice. Decl. A Cherniak, dated April 20, 2020, Ex. A at page 18.
4
5 The University says that notice does not meet “specificity requirements,” in that it just complains
6 the adjunct instructors are not treated as “piece workers,” which is not the issue litigated here.
7 University Brief at 15. It’s true the notice complains about the piece worker issue, but it also
8 expressly, and repeatedly, cites § 226 and complains that the wage statements don’t show the
9 hours worked or the applicable rate, and provides factual support. In fact, the University does
10 not argue that the notice doesn’t sufficiently describe “facts and theories supporting the
11 violation,” *Brown v. Ralphs Grocery Co.*, 28 Cal. App. 5th 824, 835 (2018). Rather, the
12 University’s position is that the additional claims—the piece work issue—in effect voids the
13 LWDA notice as to other issues. I am unaware of authority for the proposition that a PAGA
14 plaintiff must prosecute every theory set out in a notice; and it would be bad policy, encouraging
15 useless litigation, if there were such authority. A notice with more than one theory still allows the
16 LWDA “to decide whether to allocate scarce resources to an investigation” and “the employer to
17 submit a response to the agency,” *Williams v. Superior Court*, 3 Cal. 5th 531, 546 (2017). And
18 that’s the point of the notice.
19
20

21 As to the third issue—whether Gola is “aggrieved”—I note that the term is defined by
22 law: an “aggrieved employee” means any person who was employed by the alleged violator and
23 against whom one or more of the alleged violations was committed. *Williams v. Superior Court*,
24 237 Cal. App. 4th 642, 649 (2015), quoting Lab. C. § 2699 (c). One can cite cases without end,
25 e.g., *Kim v. Reins Int’l California, Inc.*, 9 Cal. 5th 73, 82 (2020), but it won’t change what is, at
26 least in our context, a definition as straightforward as one could wish for. As noted above, the
27

1 University's notion that the pay stub has to be viewed before an employee could be the subject of
2 a violation conjures an element of the offense which is not in the statute, and whether she did or
3 not is immaterial. Having found above that the University is liable to Gola (and the Class) for
4 violating § 226, it is impossible to me to also find that she was not aggrieved.¹¹
5
6

7 2. *Penalties*

8 *A. Parties' contentions*

9 The parties agree I have substantial discretion in imposing penalties. The University
10 argues the court's discretion on assessing penalties should be "fully exercised" to impose "only
11 the most minute of PAGA penalties," University Brief at 18. The reasons are: the University had
12 a Banner system which produces compliant wage statements; compensation was the result of
13 negotiations with the union; the University's good faith; there was no injury (e.g., Gola proves
14 no loss of wages); and penalties will reduce funds available for education of the students.
15 University Brief 18-19.
16

17 There's no evidence a penalty will affect students' educations, and it's not self-evident.
18 The University also invokes the good works of its students, University Brief at 19-20. I don't
19 dispute this last point, but I put no more weight on students' good efforts than I would increase
20 penalties because students behaved badly.
21

22 Gola seeks 100% of the potential penalties, i.e. \$3,634,900. Gola Brief at 27; B. Kriegler
23 Decl. dated April 17, 2020 at page 14). The University does not dispute this is the maximum
24 penalty. Gola notes the University has never thought about compliance with state law such as §
25

26 ¹¹ Indeed, I would have expected to see this argument set out in opposition to class certification, since it might pose
27 a serious individual issue, blocking certification, to determine whether every member of a proposed class did or
didn't view some or each of the paystubs. But the parties stipulated to certification, entailing an agreement that there
are no such disqualifying individual issues.

1 226, i.e., made no serious attempt to comply with law; the University knows—at least now—that
2 other universities understand their part time adjuncts to be non-exempt; the penalty would
3 represent less than one half percent of total assets; and other cases have awarded penalties in
4 about the same amount as the statutory damages. Gola Brief at 25 ff. To this day, the University
5 has made no move to issue wage statements showing hours and rate.
6

7 B. *Authorities*

8 It is difficult to extract much guidance from the authorities, so I have taken the
9 opportunity to examine the issues at some length.

10 1. *Basic rules*

11 I am to avoid an award that is unjust, arbitrary, oppressive, or confiscatory. Lab. C. §
12 2699(e) (2); CALIFORNIA CIVIL PRACTICE EMPLOYMENT LITIGATION § 5:3.50 (as of March 2020
13 Update), citing *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018); Leonora M.
14 Schloss, Cari A. Cohorn, “Assessing the Amended Labor Code Private Attorneys General Act,”
15 *L.A. Law.*, 13, 16 (February 2006). The point is to “punish and deter employer practices that
16 violate the rights of numerous employees,” *Iskanian v. CLS Transportation Los Angeles, LLC*,
17 59 Cal. 4th 348, 384 (2014); see also *Villacres v. ABM Indus. Inc.*, 189 Cal. App. 4th 562, 581
18 (2010) (penalty “serves a public interest similar to that of other law enforcement statutes”). The
19 Class here has by definition already been compensated by the award of statutory damages; the
20 PAGA penalties are not imposed to benefit the employees, *Lopez v. Friant & Assocs., LLC*, 15
21 Cal. App. 5th 773, 780 (2017), and in that sense at least the Class has no interest in the amount
22 imposed.
23
24

25 2. *Use of class action settlements*

26 Looking at settlements involving PAGA and class actions is useless. E.g., *Magadia v.*
27

1 *Wal-Mart Assocs., Inc.*, 384 F. Supp. 3d 1058, 1101 (N.D. Cal. 2019). The parties in those
2 cases, specifically plaintiffs (defendants don't care), have much incentive to allocate funds to the
3 class claims and not to the PAGA claims, even when the possibility of substantial PAGA
4 penalties is wielded during negotiations to argue for large settlements, because so much of the
5 PAGA penalties go to the state. See generally, *Nordstrom Com. Cases*, 186 Cal. App. 4th 576,
6 589 (2010) (zero dollars to PAGA penalties); *O'Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d
7 1110, 1134 (N.D. Cal. 2016); *Cotter v. Lyft, Inc.*, 176 F. Supp. 3d 930, 932, 941 (N.D. Cal.
8 2016); Matthew J. Goodman, "The Private Attorney General Act: How to Manage the
9 Unmanageable," 56 *Santa Clara L. Rev.* 413, 440 (2016).

11 3. General factors

12
13 Factors may include the defendant's ability to pay (not raised here), whether there have
14 been attempts to correct the violations before or after the suit was filed (not here); whether there
15 were prior complaints (apparently here there were not), and whether employees suffered no
16 injury, at least in the sense of no lost wages (which is the case here considering solely the § 226
17 claim). Kenneth D. Sulzer, Robert A. Escalante, "Uncertain Waivers While California Courts
18 Follow Iskanian, Most Federal Courts Have Sharply Criticized Its Preemption Analysis," *L.A.*
19 *Law.* 20, 24–26 (October 2015), citing on the last issue *Fleming v. Covidien Inc.*, No. (OPX),
20 2011 WL 7563047, at *4 (C.D. Cal. Aug. 12, 2011). *Fleming* thought it relevant that (as is may
21 be true here) the defendant did not know it was violating the law, although unlike here the
22 defendant in *Fleming* "took prompt steps to correct all violations once notified." *Fleming* issued
23 a penalty of just under 18% of the maximum. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th
24 504, 529 (2018) noted a reduction to 10%, apparently, based on "good faith attempts" to comply
25 with meal break obligations and because the court found the violations were minimal.
26
27

1 Another reason to discount is the fact that employees can, from various sources
2 (including their own memory and records, if they cared to keep them), figure out the rate, even if
3 the wage statements are not compliant. E.g., *Aguirre v. Genesis Logistics*, No.
4 SACV1200687JVSANX, 2013 WL 10936035, at *2 (C.D. Cal. Dec. 30, 2013), noting the
5 adverse fact that the defendant there, like the one here, was still not in compliance.
6

7 The penalties may be reduced “for technical violations that cause no injury,” and I should
8 assess if the “violation was inadvertent,” *Raines v. Coastal Pac. Food Distributors, Inc.*, 23 Cal.
9 App. 5th 667, 681 (2018). One court considered the duplicative effect of statutory and PAGA
10 penalties. *Aguirre v. Genesis Logistics*, No. SACV1200687JVSANX, 2013 WL 10936035 (C.D.
11 Cal. Dec. 30, 2013).
12

13 4. Variance in cases

14 Some courts evaluate penalties as a discount from the maximum, some compare the
15 penalties to the other damages (e.g. statutory damages) and consider the ratio, e.g. *Magadia v.*
16 *Wal-Mart Assocs., Inc.*, 384 F. Supp. 3d 1058, 1101 (N.D. Cal. 2019). The cases vary widely.
17 As *Magadia* noted, there are penalties of 30% of the maximum sought (where “defendants
18 attempted to comply with the law”), 28%, and 18% (where defendants were not aware they were
19 violating the law and took prompt steps to correct once notified). *Magadia* awarded 20% of the
20 maximum, 384 F. Supp. 3d at 1104, and 36%, *id.* at 1100. A judge was affirmed in the award of
21 10% of the maximum penalty, because there were “‘good faith attempts’ to comply with meal
22 break obligations and because the court found the violations were minimal.” *Carrington v.*
23 *Starbucks Corp.*, 30 Cal. App. 5th 504, 529 (2018). Where there were very significant damages
24 (over \$45 million), a different judge awarded 75% of the requested penalties. *Bernstein v. Virgin*
25 *Am., Inc.*, 365 F. Supp. 3d 980, 991, 992 (N.D. Cal. 2019) (appeal filed). In *Thurman v.*
26
27

1 *Bayshore Transit Mgmt., Inc.*, 203 Cal. App. 4th 1112, 1136 (2012), *disapproved of on separate*
2 *issue by ZB, N.A. v. Superior Court*, 8 Cal. 5th 175 (2019), the maximum was apparently reduced
3 by 30 percent, i.e., it seemed to impose 70% of the maximum. *Id.* at 1135. There was a twist in
4 *Aguirre v. Genesis Logistics*, No. SACV1200687JVSANX, 2013 WL 10936035 (C.D. Cal. Dec.
5 30, 2013). The underlying statutory award was \$441,000. *Id.* at *2. The maximum PAGA
6 penalties were \$1.8 million. *Id.* The court appears to have imposed penalties of \$500,000—over
7 100% of the statutory penalties—and threatened up to another \$500,000 if the defendant did not
8 come into compliance in the future. *Id.* at *3.

10 In each of these cases the selection of a specific percentage of the maximum penalty may
11 be arbitrary, but despite that, as a whole they provide a range—one might say they create a
12 market—of 10% to 100%.

14 5. *Three approaches*

15 As noted, some cases adjust the percentage of the maximum PAGA penalties (which is
16 the direct statutorily prescribed procedure), others evaluate the propriety of the absolute number
17 of dollars awarded, and others review the ratio of PAGA penalties to damages (statutory or
18 actual). The three approaches are compatible, and some cases at least note more than one, even if
19 they do not rely on all of them.

21 The approaches suggest this framework to evaluate PAGA penalties:

22 1. Absolute dollars. We may compare the absolute dollars of the penalty to the
23 wealth or ability to pay of the defendant to avoid an “oppressive, or confiscatory” award. Lab. C.
24 § 2699(e) (2). That’s what we do in punitive damages cases, and these can provide insight. For
25 example, they tend to look not at gross, but net, assets. “[T]he purpose of punitive damages is
26 not served by financially destroying a defendant. The purpose is to deter, not to destroy.”
27

1 *Bankhead v. ArvinMeritor, Inc.*, 205 Cal. App. 4th 68, 78 (2012) (internal quotes removed). And
2 on the other hand, “obviously, the function of deterrence ... will not be served if the wealth of
3 the defendant allows him to absorb the award with little or no discomfort.” *Id.* (internal quotes
4 removed); *Baxter v. Peterson*, 150 Cal. App. 4th 673, 680 (2007). See e.g., *Little v. Stuyvesant*
5 *Life Ins. Co.*, 67 Cal. App. 3d 451, 469 (1977) (“reasonable relationship to the net assets”). I
6 don’t know what the University’s net assets are (Gola argues from its “total assets,” Gola Brief at
7 4:20; 28:14), see Philpott Trial Testimony / Decl. dated May 19, 2020 at ¶ 24 and Ex. A at p.69
8 (2018 budget of \$457 million, tuition income of \$410 million, plus additional “tuition budget”),
9 and total assets around \$1 billion (Ex A at 65). The endowment provides substantial assistance to
10 the operating budget. *Id.* at p.66. In any event, the University has not claimed that the PAGA
11 penalties would be in this sense confiscatory or oppressive, so there is no further need to discuss
12 this approach.
13
14

15 2. The ratio of damages (actual or statutory) to the PAGA penalties. This may be
16 evaluated as a court determines if a penalty is “unjust” or “arbitrary”. It is a proportionality
17 analysis, and a similar operation (although with a very different set of accepted ratios) is
18 undertaken in punitive damages cases. E.g., *Simon v. San Paolo U.S. Holding Co.*, 35 Cal. 4th
19 1159, 1183 (2005). A number of courts have approved penalties of 100% of the damages. E.g.,
20 *Magadia v. Wal-Mart Assocs., Inc.*, 384 F. Supp. 3d 1058, 1100 (N.D. Cal. 2019), cf., *Aguirre v.*
21 *Genesis Logistics*, No. SACV1200687JVSANX, 2013 WL 10936035 (C.D. Cal. Dec. 30, 2013)
22 (apparently in excess of 100% of damages). In some cases, there do not seem to have been any
23 statutory or actual damages, so this type of calculation was not available. E.g., *Carrington v.*
24 *Starbucks Corp.*, 30 Cal. App. 5th 504, 517 (2018); *Jordan v. NCI Grp., Inc.*, No.
25 EDCV161701JVSSPX, 2018 WL 1409590, at *3 (C.D. Cal. Jan. 5, 2018). Generally, courts do
26
27

1 not seem to rely on the ratio approach, even when it is mentioned.

2 3. The “unjust” statutory test of Lab. C. § 2699(e) (2) seems to be best handled in the
3 context of assessing the percentage of maximum penalty to award. I do so below. I have noted a
4 spectrum of 10%-100%.

5
6 6. *Punishment & Deterrence*

7 I am to focus on punishment and deterrence, according to *Iskanian*.

8 **Punishment** is, I assume, proportional to the two related facets of culpability: severity of
9 the offense and the defendant’s scienter. Here, we have a failure to report numbers the Class
10 itself could determine in some way, and no delay or cheating on wages, and no evidence that the
11 wage statement issue was in aid of such a scheme. PAGA penalties rise rapidly with the number
12 of employees affected, even when the employer has in effect made a single decision to e.g. leave
13 out a number from the wage statement. That is understandable in the sense that many employees
14 are affected, but the high penalties are not necessarily proportionate to the culpability of the
15 employer.¹²

16
17 The scienter is moderate: worse than innocent error, better than deliberate. I conclude
18 that punishment considerations warrant a penalty at the lower end of the spectrum.

19
20 **Deterrence** is a more delicate issue, and our commonsense notions of what it takes to
21 deter either this University (specific deterrence), or others considering the penalties imposed
22 (general deterrence), are not reliable guides. David A. Dana, “Rethinking the Puzzle of
23 Escalating Penalties for Repeat Offenders,” 110 *Yale L.J.* 733, 735 (2001); Eric Rasmusen,
24 “How Optimal Penalties Change with the Amount of Harm,” 15 *Int’l Rev. L. & Econ.* 101 (1995)

25
26
27 ¹² E.g., assuming “the PAGA penalty of \$200 per week is triggered; for one employee, a potential recovery of more than \$40,000 would amount; this sum is then multiplied by 10,000 employees, and, the employer now faces a litigation risk of \$400 million.” Matthew J. Goodman, “The Private Attorney General Act: How to Manage the Unmanageable,” 56 *Santa Clara L. Rev.* 413, 440 (2016) (note omitted).

1 (correlation of penalties and harm, which seems a matter of common sense, is often not correct).

2 For example, it is unwise to presume that the maximum penalty should be exacted to secure
3 maximum deterrence, as obvious as that might seem, because there are costs to over-deterrence.

4 Those costs include:

- 5 • an equivalence of the culpability of trivial¹³ and serious offenses, where the message is
6 that e.g., murder is the same as jaywalking; which wrongly skews the moral weight of
7 court judgments;
- 8 • encouraging the approach of ‘might as well be hung for a sheep as lamb’ where
9 employers may calculate that the great benefits of serious offenses (such as e.g. outright
10 wage theft or denying all breaks) are worth it, if they are to reap as serious consequences
11 of more minor offenses with fewer benefits to the employer;¹⁴
- 12 • resources are misallocated in at least two ways:
 - 13 ○ plaintiffs and their lawyers have the same economic incentive to prosecute trivial
14 offenses as serious offenses, and so will not pursue as often the more serious
15 offenses such as (in the employment context) outright wage theft;¹⁵ nor will they
16 spend as much, if any, resources distinguishing between trivial and serious
17 offenses; and
 - 18 ○ employers wishing to comply with law and faced with serious consequences for
19 more trivial offenses may spend as many resources guarding against those as they
20 do the more serious offenses, and where employers’ resources are limited—and

21 ¹³ I use the word “trivial” and “minor” only as a rhetorical devices to contrast more serious offenses; I do not mean
22 technical or other violations including those at stake in this case are actually trivial.

23 ¹⁴ See e.g., Peter D. Nestor, Comment, “When the Price Is Too High: Rethinking China’s Deterrence Strategy for
24 Robbery,” 16 *Pac. Rim L & Pol’y J.* 525 (2007), available at: <https://digitalcommons.law.uw.edu/wilj/vol16/iss2/9>
25 (failures of China’s death penalty and mass executions for robbery as well as more serious crimes such as murder).

26 ¹⁵ On wage theft, see e.g., Jennifer J. Lee, Annie Smith, “Regulating Wage Theft,” 94 *Wash. L. Rev.* 759 (2019);
27 Jeremy Blasi, “Using Compliance Transparency to Combat Wage Theft,” 20 *Geo. J. on Poverty L. & Pol’y* 95, 96
(2012).

1 they always are—this can result in fewer resources to guard against serious
2 offenses;

- 3 • in the context of PAGA, high PAGA penalties may confusingly skew class actions
4 settlements in cases with both types of claims, as discussed above, and may result in the
5 LWDA getting far less than it should;
- 6 • as stakes rise in a case, i.e., where very high penalties are available, the parties will spend
7 more on litigation, and courts, under doctrines of proportionality, will permit high
8 spending on discovery;¹⁶ this may be a misallocation of resources (of the parties *and* the
9 courts) when the subject matter of the suit is a relatively trivial offense. The impact on
10 plaintiffs is not however the same as it is on defendants, because while defendants lose
11 100% of the penalties they pay, plaintiffs only get 25%. E.g., *Atempa v. Pedrazzani*, 27
12 Cal. App. 5th 809, 828 (2018).

13 For these reasons, we should be as alert to over-deterrence as under deterrence.

14 Typically, effective deterrence is a function of either (a) low-penalty-high-enforcement or (b)
15 high-penalty-low-enforcement schemes. Michael W. Carroll, “When Congress Just Says No:
16 Deterrence Theory and the Inadequate Enforcement of the Federal Election Campaign Act,” 84
17 *Geo. L.J.* 551, 566 (1996). Research from other areas such as criminal penalties suggests that the
18 severity of punishment is not as reliable a deterrence as certainty of punishment; to be more
19 precise, the “certainty of apprehension” is a far more powerful deterrent. Daniel S. Nagin,
20 “Deterrence in the Twenty-First Century,” 42 *Crime & Just.* 199 (2013). This seems to suggest,
21 again, that a low-penalty-high-enforcement scheme works. This is confirmed by other studies of
22 corporate compliance:
23
24
25
26

27 ¹⁶ E.g., Weil & Brown, et al., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶ 8:74.1 (Rutter:
2020); Fed. R. Civ. P. 26(b)(2)(C); Craig B. Shaffer, “The ‘Burdens’ of Applying Proportionality,” 16 *Sedona Conf.*
J. 55, 123 n.36 (2015).

1 We find partial support for the certainty of detection as a predictor of both self-reported and
2 officially recorded compliance but no support for the certainty or severity of sanctioning. The
3 narrow range of sanctions available in the particular regulatory domain studied (regulation of
4 nursing home quality) has enabled a fuller specification than was possible in previous studies
5 of an expected utility model for all available sanctions. Managers' expected corporate
6 disutility from all sanctions fails to explain compliance. Deterrence does not work
7 significantly more effectively for chief executives (a) of for-profit versus nonprofit
organizations, (b) who are owners compared with those who are not owners, (c) who say they
think about sanctions more (sanction salience), (d) who may better fit the rational choice
model in that they are low on emotionality, (e) who have a weaker belief in the law. Nor is
deterrence more effective when compliance costs are low.

8 John Braithwaite et al., "Testing an Expected Utility Model of Corporate Deterrence," 25 *Law &*
9 *Soc'y Rev.* 7 (1991) (emphasis supplied); see also id. at 35-36. See e.g., Alex Raskolnikov,
10 "Crime and Punishment in Taxation: Deceit, Deterrence, and the Self-Adjusting Penalty," 106
11 *Colum. L. Rev.* 569 (2006) ("likelihood of detection" correlating with deterrence).

12
13 Given the qui tam nature of the PAGA action, together with the availability of attorney
14 fees and statutory damages, we have a high enforcement scheme. This suggests a lower penalty
15 scheme is probably sufficient to deter.¹⁷ I also note that in this specific case, based on the patent
16 absence of hours and rates on the wage statements, the likelihood of detection is very high (as
17 opposed to other sorts of cases, such as wage theft, where it can be difficult to discover the
18 offense).

19
20 The University has pointed me to the fact that it is an educational, nonprofit institution.
21 The rights of the employees and need for enforcement, of course, are exactly the same as they
22 are in any other context. The University does not point me to any authority on California's
23

24 ¹⁷ I note one court's view that \$150,000 is a "substantial penalty" and "has a substantial deterrent effect on NCI and
25 other California employers." *Jordan v. NCI Grp., Inc.*, No. EDCV161701JVSSPX, 2018 WL 1409590, at *3 (C.D.
26 Cal. Jan. 5, 2018). Nothing except PAGA penalties was awarded in this PAGA settlement, the sum was some
27 undisclosed % of the maximum but clearly under 33%, and it is not apparent why the court thought this sum had a
deterrent effect. The sum was awarded in a case with allegations far more serious than those here, i.e., "(1) failure to
provide meal periods; (2) failure to provide rest periods; (3) failure to issue itemized wage statements; (4) failure to
pay wages due and payable twice each calendar month; (5) failure to pay wages due upon demand; (6) failure to
issue notice of pay; and (7) failure to pay wages due upon termination." However, all of the employee portion of the
penalties (i.e., 25%) went to one person, the plaintiff, suggesting only one person was aggrieved.

1 policy regarding penalties and nonprofits. I have found some vague support for the notion that
2 penalties which would impact others might for that reason be reduced. Cf., *Notrica v. State*
3 *Comp. Ins. Fund*, 70 Cal. App. 4th 911, 952 (1999) (punitive damages); Daniel A. Barfield,
4 “Notes,” 29 *Val. U. L. Rev.* 1193, 1222 (1995) (noting rationale that penalties could affect
5 innocent donors to non-profits). But I also see arguments that some nonprofits may be more in
6 need of constraints and deterrence than for-profit companies (which may have better oversight).
7 E.g., Denise Ping Lee, “The Business Judgment Rule: Should It Protect Nonprofit Directors?,”
8 103 *Colum. L. Rev.* 925, 935 (2003).

9
10 Finally, two other factors.

11 First, we want a penalty that exceeds the cost of compliance. Here, that is difficult to
12 evaluate: the cost seems to be tracking time, and we don’t know what that cost is; it might not be
13 much, as the University already has the computer systems needed, and might for example just
14 tell instructors to track their time. But there is insufficient evidence for me to consider this.

15 The last factor can be significant; but it too is not the subject of anything in the record.
16 This is the role of competing norms. Corporate decision makers may be motivated by quarterly
17 profits and advancement; not-for-profit officers may be motivated by various factors, and
18 officers all stripes may be motivated by reputational interests such as efficiency, and saving
19 money including low legal compliance costs, and so on. See generally, Jodi L. Short,
20 “Competing Normative Frameworks and the Limits of Deterrence Theory: Comments on Baker
21 and Griffith’s Ensuring Corporate Misconduct,” 38 *Law & Soc. Inquiry* 493, 504 (2013). But, as
22 I say, there’s nothing in the record to assist me in deciding how much of a penalty I must impose
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1 to overcome competing norms.¹⁸

2 *C. Calculations*

3 The mandate to impose a ‘just’ penalty I take as a directive that I evaluate punishment
4 and deterrence; and the mandate not to be ‘arbitrary’ is a directive to tailor the penalty to the
5 facts of this case and have a reasonable basis for the adjustment that I make.
6

7 *General Remarks on the University’s role.* While the University had a good faith
8 argument, it is more akin to reckless ignorance of the law: the University seemed to think that if
9 the Union did not raise a fuss, and the University’s practices were consistent with its view of
10 federal law, there was nothing to worry about. This is reckless. The defendant is not a small
11 business suffering financial or other impediments in obtaining legal advice. But the University
12 did not act with malice, or with an ulterior motive of cheating the Class; the Class did not suffer
13 injury in the sense of lost or delayed wages as a result of the claim decided here; and –perhaps
14 concomitantly—the Union saw no harm in the practice. The statutory penalties are already
15 substantial, and together with the costs of suit—and plaintiffs intend to seek their attorneys’
16 fees—substantial additional PAGA penalties in the range of \$3.5 million won’t impose
17 materially more punishment and deterrence than would lesser penalties. But I note that the
18 anticipated cost of suit, even after it was filed and the University was familiar with Gola’s
19 theory, was insufficient to deter the University: as I say, it has still not issued compliant wage
20 statements.
21

22 *Punishment.* Moral culpability: this is low. There was no ‘harm’ in the sense of lost
23 breaks or wages, or delayed compensation; there were no prior complaints; the Union was
24 satisfied with the status quo, as far as we can tell; the Class could figure out the time and rate
25

26
27 ¹⁸ These last two factors, and perhaps some of the others, are difficult to ascertain and so likely would incur substantial discovery and other litigation costs to determine. It can be more efficient to gloss over some factors in favor of a rougher justice than to seek disproportionately costly precision.

1 from a variety of sources (such as their memories and records if they wished to keep them), even
2 if not from the wage statements. Scier: this is low, or moderate: it is either reckless, which is
3 my view, or at least negligent. The University did not act in aid of scheme to injure the Class.
4
5 Reviewing other cases imposing penalties, the punishment interests here could warrant
6 something in the area of 10-30% of the maximum penalty.

7 *Deterrence.* In this particular case it is difficult to know what would have deterred the
8 University (specific deterrence), as the University didn't think it had violated § 226, and as far as
9 I can tell, still doesn't. One cannot deter with any kind of a fine a driver who thinks she's
10 driving below the speed limit. But a penalty here will help the University think through what I
11 have termed the fallacy at heart of its approach, which is to believe that only people who are
12 contracted to be paid on an hourly basis are entitled to wage statements in full compliance with
13 §226 (a). General deterrence is obviously furthered by a penalty. Given a scheme of high
14 enforcement, already encouraged by attorneys' fees awards and statutory damages, and with the
15 specific type of patent violation we have here, a lower penalty is warranted by these deterrence
16 considerations.
17

18 I conclude that a penalty of 15% of the maximum, which is \$545,235.00, is the
19 appropriate penalty.
20

21 **Conclusion**

22
23 The University is liable for Labor Code § 226 violations, and must pay statutory damages
24 of \$1,621,600.00 for the period March 15, 2017 through and including January 3, 2020. PAGA
25 penalties for the period March 15, 2017 through and including January 3, 2020 are an additional
26 \$545,235.00.
27

1 Plaintiffs' counsel should promptly prepare a proposed judgment, reflecting rulings of the
2 court on each claim (and the proper allocation of penalties,¹⁹) present it to defense counsel
3 allowing five days for comment, make such modifications as seem reasonable, and present the
4 result to me together with any views from the University which Gola's counsel did not adopt.
5

6 I suggest the parties seek agreement on costs and fees before filing motions for those
7 sums.
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10
11 Dated: August 10, 2020



Curtis E.A. Karnow
Judge Of The Superior Court

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27 ¹⁹ See e.g., *Moorer v. Noble L.A. Events, Inc.*, 32 Cal. App. 5th 736, 742 (2019); M. Chin, et al., CALIFORNIA
PRACTICE GUIDE: EMPLOYMENT LITIGATION ¶ 17:760 (Rutter: 2019).

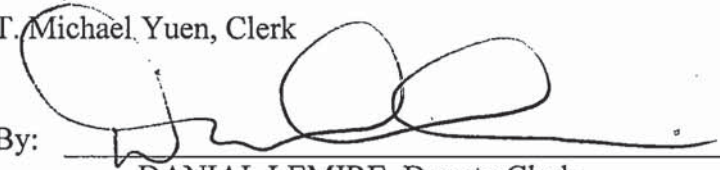
CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.260(g))

I, DANIAL LEMIRE, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On **AUG 11 2020**, I electronically served THE ATTACHED DOCUMENT via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: **AUG 11 2020**

T. Michael Yuen, Clerk

By: 

DANIAL LEMIRE, Deputy Clerk

AUG 20 2020

CLERK OF THE COURT
BY: [Signature]
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

KELLY GOLA, ET AL.

Case No. CGC – 18-565018

Plaintiff,

vs.

Judgment

UNIVERSITY OF SAN FRANCISCO,

Defendant.

The Court conducted a bench trial on Plaintiff Kelly Gola's Second and Fifth Causes of Action in her operative First Amended Complaint, alleging violations of California Labor Code § 226(a) and - (e) and the Private Attorneys General Act (Labor Code § 2698 et seq.) based on the alleged violations of Labor Code § 226(a). Prior to those proceedings, the Court conducted a bifurcated bench trial on Defendant's claim that various of Plaintiff's causes of action were barred by federal pre-emption.

Plaintiff Kelly Gola, the Class and Aggrieved Employees were represented by Julian Hammond, Polina Brandler, and Ari Cherniak of HammondLaw, P.C., and Morris J. Baller, Of Counsel to Goldstein, Borgen, Dardarian & Ho. Defendant University of San Francisco was represented by Michael J. Vartain and Kathryn Burke of Vartain Law Group, P.C.

The Court now enters this judgment:

1. That Plaintiff Kelly Gola and the Class, as defined in the Amended Stipulation and Order for Class Certification, dated January 9, 2020, have judgment on her Second Cause of Action against Defendant University of San Francisco in the sum of \$1,621,600.00 for statutory

1 penalties for the Labor Code § 226(e) violations for the period of March 15, 2017 through
2 January 3, 2020.¹

3 2. That Plaintiff Kelly Gola, members of the Class, and the Aggrieved Employees, as
4 defined in Plaintiff's PAGA Notice dated January 30, 2018, have judgment on her Fifth Cause of
5 Action, to the extent based on the violations alleged in her Second Cause of Action, against
6 Defendant University of San Francisco in the sum of \$545,235.00 for PAGA penalties pursuant
7 to Labor Code § 2699(f)(2) for the period of January 30, 2017 through January 3, 2020. Of this
8 amount, 75% or \$408,926.25 shall be paid to the California Labor Workforce and Development
9 Agency (LWDA), and 25% or \$136,308.75 shall be paid to Plaintiff Kelly Gola as an aggrieved
10 employee and the other Aggrieved Employees, pro rata based on the number of pay periods
11 worked between January 30, 2017 and January 3, 2020.
12

13 3. That Defendant University of San Francisco have judgment against Plaintiff on her First
14 Cause of Action.
15

16 4. That Defendant University of San Francisco have judgment against Plaintiff on her
17 Third Cause of Action.
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19 5. That Defendant University of San Francisco have judgment against Plaintiff on her
20 Fourth Cause of Action to the extent it is based on violations alleged in her First and Third
21 Causes of Action, pursuant to the Ruling entered March 8, 2019.

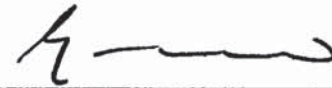
22 6. That Defendant University of San Francisco have judgment against Plaintiff on her
23 Fifth Cause of Action to the extent it is based on violations alleged in her First and Third Causes
24 of Action, pursuant to the Ruling entered March 8, 2019.
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¹ The Statement of Decision contains an error; the correct dates are in this Judgment.

1 7. That Defendant University of San Francisco have judgment against Plaintiff's Fourth
2 Cause of Action to the extent it is based on the violations alleged in her Second Cause of Action,
3 as Plaintiff abandoned the claim.
4

5 8. That Plaintiff Kelly Gola, as the prevailing party shall recover from Defendant
6 University of San Francisco statutory costs in the amount of \$__ by Memorandum of Costs, and
7 reasonable attorneys' fees and costs in the amounts \$__ by further proceedings as specified in
8 the Statement of Decision filed on August 10, 2020. These costs and attorneys' fees, when
9 determined, shall be incorporated into an amended judgment.
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11 Dated: August 20, 2020
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Curtis E.A. Karnow
Judge of the Superior Court

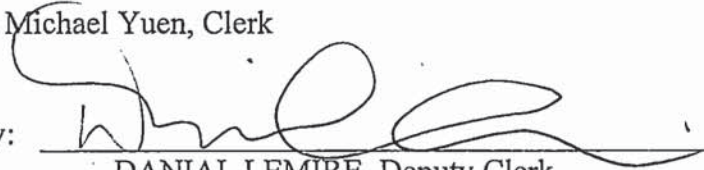
CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.260(g))

I, DANIAL LEMIRE, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On **AUG 20 2020**, I electronically served THE ATTACHED DOCUMENT via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: **AUG 20 2020**

T. Michael Yuen, Clerk

By: 

DANIAL LEMIRE, Deputy Clerk

EXHIBIT 2

Approved California Wage and Hour Cases

- ***Foster v Embry Riddle Aeronautical University***, Case No. CVRI2202995 (Riverside County Superior Court) (February 2, 2024) (certifying HammondLaw as co-class counsel for \$559,482 settlement of Labor Code § 1194, 226.2, 226.7, 226(a), 201-203, 1400, and 2802 claims on behalf of 123 part-time instructors)
- ***Serna v Gurnick Academy of Medical Arts***, Case No. 22-CIV01185 (San Mateo County Superior Court) (January 18, 2024) (Labor Code § 2699 et seq. representative action settlement for \$545,0000 for violation of Labor Code §§ 201-203, 226(a), 226.7, 246, 510, 512, 558, 1194, and 2802 on behalf of 884 employees);
- ***Lundgren v Otis College of Art and Design***, Case No. 22STCV14633 (Los Angeles County Superior Court) (January 2, 2024) (certifying HammondLaw as class counsel for \$990,000 settlement of Labor Code §§ 1194, 226.2, 226.7, 226(a), 201-203, and 2802 claims on behalf of 606 adjunct instructors and 335 remote workers);
- ***Knapp et al. v. Pepperdine University***, Case No. 22STCV16736 (Los Angeles County Superior Court) (December 6, 2023) (certifying HammondLaw as class counsel for \$407,000 settlement of Labor Code § 2802 claims on behalf of 1,497 adjunct instructors);
- ***Meyer et al v Visa Inc. et al.***, Case No. CGC-21-593058 (San Francisco County Superior Court) (November 17, 2023) (certifying HammondLaw as class counsel for \$2,700,000 settlement of Labor Code § 2802 and 432.5 claims on behalf of 4,973 employees);
- ***Davila v Concentrix Solutions Corporation et al***, Case No. RG20079700 (Alameda County Superior Court) (November 17, 2023) (certifying HammondLaw as class counsel for \$385,000 settlement of Labor Code § 2802 claims on behalf of 262 employees);
- ***Dominguez, et al. v. All-Pro Bail Bonds, Inc., et al***, Case No. 21CV381890 (Santa Clara County Superior Court) (September 21, 2023) (certifying HammondLaw as Class Counsel for \$2.3 million settlement of Civil Code § 1799.91 claims on behalf of 33,792 non-spousal co-signers of All Pro bail bond premium financing agreements);
- ***Pasno et al v Hibu, Inc.***, Case No. 22STCV01361 (Los Angeles County Superior Court) (September 27, 2023) (certifying HammondLaw as class counsel for \$140,000 settlement of Labor Code §§ 1194, 510, 226(a), 201-203, and 2802 claims on behalf of 141 sales representatives);
- ***Jackson v University of Redlands***, Case No. CIVSB2133143 (San Bernardino County Superior Court) (September 18, 2023) (certifying HammondLaw as class counsel for \$700,000 settlement of Labor Code §§ 1194 and 226(a) claims on behalf of 310 adjunct instructors and Labor Code § 2802 claims on behalf of 1,100 employees);
- ***Martinez v Knight Transportation***, Case No. 1:16-cv-01730-SKO (E.D. Cal.) (September 11, 2023) (finally approving \$400,000 settlement of Labor Code §§ 1194, 226.2, 226.7, 203, and 2802 claims on behalf of 5,648 truck drivers);^[1]^[SEP]

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- ***Brandmeier v Columbia Southern University***, Case No. 22CV013638 (Alameda County Superior Court) (August 28, 2023) (certifying HammondLaw as class counsel for \$320,000 settlement of Labor Code §§ 201-203, 226(a)-(e), 226.2, 226.7, 1194, 510, 2802, and 2699 claims on behalf of 51 instructors);
- ***Angelina Harrold v California Family Health LLC dba California Family Fitness***, Case No. 34-2022-00323409 (Sacramento County Superior Court) (August 17, 2023) (Labor Code § 2699 et seq. representative action settlement for \$223,000 for violation of Labor Code §§ 1194, 510, 226.7, 512, 226(a), 201-203, and 2802 on behalf of 374 fitness instructors);
- ***Carr et al v Konica Minolta Business Solutions U.S.A., Inc.***, Case No. 21CV001245 (Alameda County Superior Court) (June 27, 2023) (certifying HammondLaw as class counsel for \$1,247,907.53 settlement of Labor Code §§ 1194, 226(a), 226.7, 510, and 201-203 claims on behalf of 269 sales representatives and Labor Code § 2802 claims on behalf of 890 other employees);
- ***Harris v Southern New Hampshire University***, Case No. RG21109745 (Alameda County Superior Court) (May 12, 2023) (certifying HammondLaw as co-class counsel for \$1,475,000 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, 510 512, 201-203, and 2802 claims on behalf of 480 adjunct instructors);
- ***Castillo v Holy Names University***, Case No. HG21097245 (Alameda County Superior Court) (May 2, 2023) (certifying HammondLaw as class counsel for \$970,701.38 settlement of Labor Code §§ 226(a), 226.2, 226.7, 512, 1194, 201-203, and 2802 claims on behalf of 454 part-time instructors; Labor Code § 2802 claims on behalf of 563 other employees who worked remotely; and Labor Code § 226(a) claims on behalf of 682 employees who received inaccurate wage statements);
- ***Marantz v Laguna College of Art and Design***, Case No. 30-2021-01194814-CU-OE-CXC (Orange County Superior Court) (April 21, 2023) (certifying HammondLaw as class counsel for \$825,000 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, 512, 201-203, and 2802 claims on behalf of 295 adjunct instructors; and Labor Code § 2802 claims on behalf of 191 other employees);
- ***Glor v iHeart Media + Entertainment***, Case No. 22CV005286 (Alameda County Superior Court) (February 14, 2023) (certifying HammondLaw as class counsel for \$1,220,000 settlement of Labor Code §§ 226(a), 510, 1194, and 201-203 claims on behalf of 206 account executives and Labor Code § 2802 claims on behalf of 1,154 other employees);
- ***Cassidy v Keyence Corporation of America***, Case No. 21CV382350 (Santa Clara County Superior Court) (February 8, 2023) (Labor Code § 2699 et seq. representative action settlement for \$300,000 for violation of Labor Code §§ 226(a), 512, 203, and 2802 on behalf of 151 sales representatives and Labor Code § 2802 claims on behalf of 18 other employees);
- ***Burleigh v. Brandman University***, Case No. 30-2020-01172801-CU-OE-CXC (Orange County Superior Court) (January 27, 2023) (certifying HammondLaw as class counsel for \$1,550,000 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, 512, 201-203, claims on behalf of 1,757 adjunct instructors and Labor Code § 2802 claims on behalf of 555 other employees);

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- ***Burleigh v. Walden University LLC and Laureate Education, Inc.***, Case No. RG21106062 (Alameda County Superior Court) (December 9, 2022) (certifying HammondLaw as co-class counsel for \$815,000 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, 203, 2802, and 2699, claims on behalf of 244 adjunct instructors);
- ***Burleigh v. National University***, Case No. MSC21-00939 (Contra Costa County Superior Court) (August 26, 2022) (certifying HammondLaw as co-class counsel for \$925,000 settlement of Labor Code § 2802 claim on behalf of 1,802 instructors);
- ***Costa v. University of Antelope Valley***, Case No. 21STCV18531 (Los Angeles County Superior Court) (August 23, 2022) (Labor Code § 2699 et seq. representative action settlement for \$150,000 for violation of Labor Code §§ 1194, 226(a), 226.2, 226.7, 510, 512, 203, and 2802 on behalf of 55 instructors and Labor Code § 2802 claims on behalf of 54 other employees);
- ***Parson v. La Sierra University***, Case No. CVRI2000104 (Riverside County Superior Court) (May 19, 2022) (certifying HammondLaw as class counsel for \$578,220 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, 203, claims on behalf of 381 adjunct instructors and Labor Code § 2802 claims on behalf of 739 other employees);
- ***Chindamo v. Chapman University***, Case No. 30-2020-01147814-CU-OE-CXC (Orange County Superior Court) (April 15, 2022) (certifying HammondLaw as co-class counsel for \$1,150,00 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, 203, claims on behalf of 1,374 adjunct instructors and Labor Code § 2802 claims on behalf of 4,120 other employees);
- ***Sweetland-Gil v. University of the Pacific***, Case No. STK-CV-UOE-2019-0014682 (San Joaquin County Superior Court) (March 4, 2022) (certifying HammondLaw as class counsel for \$1,800,000 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, and 203 claims on behalf of 1,100 adjunct instructors);
- ***Senese v. University of San Diego***, Case No. 37-2019-00047124-CU-OE-CTL (San Diego County Superior Court) (February 8, 2022) (certifying HammondLaw as co-class counsel for \$3,892,750 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, and 203 claims on behalf of 2,071 adjunct instructors);
- ***Solis et al. v Concordia University Irvine***, Case No. 30-2019-01114998-CU-OE-CXC (Orange County Superior Court) (February 3, 2022) (certifying HammondLaw as class counsel for \$890,000 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, 203, and 2802 claims on behalf of 778 adjunct instructors);
- ***McCoy et v Legacy Education LLC***, Case No. 19STCV2792 (Los Angeles County Superior Court) (November 15, 2021) (Labor Code § 2698 et seq. representative action settlement for \$76,000 for violation of Labor Code §§ 1194, 226(a), 226.7, 512, 203, and 2802 on behalf of 31 instructors);
- ***Merlan v Alliant International University***, Case No. 37-2019-00064053-CU- OE-CTL (San Diego County Superior Court) (November 2, 2021) (certifying HammondLaw as co-class counsel for \$711,500 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, and 203 claims on behalf of 803 adjunct instructors);
- ***Stupar et al. v University of La Verne***, Case No. 19STCV33363 (Los Angeles County Superior Court) (October 14, 2021) (certifying HammondLaw as

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class counsel for \$2,450,000 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, 512, and 203 claims on behalf of 1,364 adjunct instructors);

- ***Normand et al. v Loyola Marymount University***, Case No. 19STCV17953 (Los Angeles County Superior Court) (September 9, 2021) (certifying HammondLaw as class counsel for \$3,400,000 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, and 203 claims on behalf of 1,655 adjunct instructors);
- ***Veal v Point Loma Nazarene University***, Case No. 37-2019-00064165-CU-OE-CTL (San Diego County Superior Court) (August 27, 2021) (certifying HammondLaw as class counsel for \$711,500 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, and 203 claims on behalf of 670 adjunct instructors);
- ***Pillow et al. v. Pepperdine University***, Case No. 19STCV33162 (Los Angeles County Superior Court) (July 28, 2021) (certifying HammondLaw as class counsel for \$940,000 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, and 203 claims on behalf of 1,547 adjunct instructors);
- ***Moore et al v Notre Dame De Namur University***, Case No. 19-CIV-04765 (San Mateo County Superior Court) (July 1, 2021) (certifying HammondLaw as class counsel for \$882,880 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, and 203 claims on behalf of 397 adjunct instructors);
- ***Mooiman et al. v Saint Mary's College of California***, Case No. C19-02092 (Contra Costa County Superior Court) (June 10, 2021) (certifying HammondLaw as class counsel for \$1,700,000 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, and 203 claims on behalf of 760 adjunct instructors and Labor Code Code § 226(a) claim on behalf of 2,212 other employees);
- ***Peng v The President and Board of Trustees of Santa Clara College***, Case No. 19CV348190 (Santa Clara County Superior Court) (April 21, 2021) (certifying HammondLaw as class counsel for \$1,900,000 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, and 203 claims on behalf of 1,017 adjunct instructors and Labor Code Code § 226(a) claim on behalf of 5,102 other employees);
- ***Morse v Fresno Pacific University***, Case No. 19-CV-04350 (Merced County Superior Court) (April 6, 2021) (certifying HammondLaw as class counsel for \$1,534,725 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, 512 and 203 claims on behalf of 861 adjunct instructors);
- ***Miner, et al. v. ITT Educational Services, Inc.***, Case No. 3:16-cv-04827-VC (N.D. Cal.) (March 19, 2021) (certifying HammondLaw as class counsel for \$5.2 million settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, 512 and 2802 claims on behalf of 1,154 adjunct instructors);
- ***Harris-Foster v. University of Phoenix***, Case No. RG19019028 (Alameda County Superior Court) (March 17, 2021) (certifying HammondLaw as class counsel for \$2,863,106 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7 and 2802 putative class action on behalf of 3,447 adjunct instructors);
- ***Granberry v. Azusa Pacific University***, Case No. 19STCV28949 (Los Angeles County Superior Court) (March 5, 2021) (certifying HammondLaw as class counsel for \$1,112,100 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7 and 2802 claims on behalf of 1,962 adjunct instructors);
- ***Ott v. California Baptist University***, Case No. RIC1904830 (Riverside County Superior Court) (January 26, 2021) (certifying HammondLaw as co-class

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counsel for \$700,000 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7 and 512 claims on behalf of 958 adjunct instructors);

- ***Pereltsvaig v. Cartus Corporation***, Case No. 19CV348335 (Santa Clara County Superior Court) (January 13, 2021) (certifying HammondLaw as class counsel in \$300,000 settlement of Labor Code §§ 226.8(a), 1194, 226(a), 226.7, 510, 512, and 2802 claims on behalf of 126 instructors);
- ***Morrison v. American National Red Cross***, Case No. 19-cv-02855-HSG (N.D. Cal.) (January 8, 2021) (certifying HammondLaw as class counsel in a \$377,000 Settlement of Labor Code §§ 1194, 226(a), 226.7, 510, 512 and 2802 claims on behalf of 377 instructors who taught training courses);
- ***Brown v. Cernx***, Case No. JCCP004971 (Alameda County Superior Court) (July 14, 2020) (certifying HammondLaw as co-class counsel in \$350,000 settlement of Labor Code §§ 1194, 226, 226.7, 510, 512, and 2802 claims on behalf of 309 amazon couriers);
- ***Stempien v. DeVry University***, Case No. RG19002623 (Alameda County Superior Court) (June 30, 2020) (certifying HammondLaw as class counsel for \$1,364,880 settlement Labor Code §§ 1194, 226, 226.2, 226.7, and 2802 claims on behalf of 498 adjunct instructors);
- ***McCoy v. Concorde.***, Case No. 30-2017-00936359-CU-OE-CXC (Orange County Superior Court.) (July 2, 2019) (certifying HammondLaw as class counsel for \$2,500,000 settlement of Labor Code §§ 1194, 226, 226.7, and 512 putative claims on behalf of 636 adjunct instructors);
- ***Hogue v. YRC***, Case No. 5:16-cv-01338 (C.D. Cal.) (June 24, 2019) (certifying HammondLaw as co-class counsel for \$700,000 settlement of Labor Code §§ 1194, 226.2, 226.7, and 2802 claims on behalf of 225 truck drivers);^{[[L]]SEP}
- ***Sands v. Gold's Gym***, Case No. BC660124 (Los Angeles Alameda County Superior Court)(March 20, 2019) (Labor Code § 2698 *et seq.* representative action settlement for \$125,000 for violation of Labor Code § 1194, 2802 and 246 *et seq.* claims on behalf of 106 fitness instructors);
- ***Garcia v. CSU Fullerton.***, Case No. 30-2017-00912195-CU-OE-CXC (Orange County Superior Court) (February 15, 2019) (certifying HammondLaw as class counsel for \$330,000 settlement of Labor Code §§ 1194, 226, 226.7, and 512 claims on behalf of 127 adjunct instructors);
- ***Pereltsvaig v. Stanford***, Case No. 17-CV-311521 (Santa Clara County Superior Court) (January 4, 2019) (certifying HammondLaw as class counsel for \$886,890 settlement of Labor Code §§ 1194, 226, 226.7, 512, 2802 and 2699 claims on behalf of 398 adjunct instructors);
- ***Moss et al. v. USF Reddaway, Inc.***, Case No. 5:15-cv-01541 (C.D. Cal.) (July 25, 2018) (certifying HammondLaw as co-class counsel for \$2,950,000 settlement of Labor Code §§ 1194, 226, 226.7, and 201-203 claims on behalf of 538 truck drivers);
- ***Beckman v. YMCA of Greater Long***, Case No. BC655840 (Los Angeles County Superior Court) (June 26, 2018) (Labor Code § 2698 *et seq.* representative action settlement for \$92,500 for violation of Labor Code § 1194 and 226(a) claims on behalf of 101 fitness instructors);

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- ***Maldonado v. Heavy Weight Transport, Inc.***, Case No. 2:16-cv-08838 (C.D. Cal.) (December 11, 2017) (certifying HammondLaw as co-class counsel for \$340,000 settlement of Labor Code §§ 1194, 226, 226.2, 226.7, 226, 201-203, and 2699 claims on behalf of 160 truck drivers);
- ***Hillman v. Kaplan***, Case No. 34-2017-00208078 (Sacramento County Superior Court) (December 7, 2017) (certifying HammondLaw as class counsel for \$1,500,000 settlement of Labor Code §§ 1194, 226, 226.7, 201-203 and 2802 claims on behalf of 506 instructors);
- ***Bender et al. v. Mr. Copy, Inc.***, Case No. 30-2015-00824068-CU-OE-CXC (Orange County Superior Court) (October 13, 2017) (certifying HammondLaw as co-class counsel for \$695,000 settlement of Labor Code §2802 claims on behalf of approximately 250 outside sales representatives);
- ***Rios v. SoCal Office Technologies***, Case No. CIVDS1703071 (San Bernardino County Superior Court) (September 6, 2017) (certifying HammondLaw as co-class counsel for \$495,000 settlement of Labor Code §2802 claims on behalf of approximately 180 outside sales representatives);
- ***Russell v. Young's Commercial Transfer, Inc.***, Case No. PCU265656 (Tulare County Superior Court) (June 19, 2017) (certifying HammondLaw as co-class counsel for \$561,304 settlement of Labor Code §§ 1194, 226, 226.2, and 201-203 claims on behalf of 962 truck drivers);
- ***Keyes v. Valley Farm Transport, Inc.***, Case No. FCS046361 (Solano County Superior Court) (May 23, 2017) (certifying HammondLaw as co-class counsel for \$497,000 settlement of Labor Code § 226, 1194, 512 and 2698 *et seq.* claims on behalf of 316 truck drivers);
- ***Numi v. Interstate Distributor Co.***, Case No. RG15778541 (Alameda County Superior Court) (March 6, 2017) (certifying HammondLaw as co-class counsel for \$1,300,000 settlement of Labor Code §§ 1194, 226.2 and 2802 claims on behalf of approximately 1,000 truck drivers);
- ***Keyes v. Vitek, Inc.***, Case No. 2016-00189609 (Sacramento County Superior Court) (February 17, 2017) (\$102,000 settlement of PAGA representative action for violation of Labor Code § 226.8 on behalf of 90 truck drivers);
- ***Martinez v. Estes West dba G.I. Trucking, Inc.***, Case. BC587052 (Los Angeles County Superior Court) (April 4, 2017) (certifying HammondLaw as co-class counsel for \$425,000 settlement of Labor Code §§ 1194, 226, and 201-203 claims on behalf of approximately 156 truck drivers);
- ***Sansinena v. Gazelle Transport Inc.***, Case No. S1500-CV- No 283400 (Kern County Superior Court) (December 8, 2016) (certifying HammondLaw as co-class counsel for \$264,966 settlement of Labor Code §§ 1194, 226, and 201-203 claims on behalf of approximately 314 truck drivers);
- ***Cruz v. Blackbelt Enterprises, Inc.***, Case No. 39-2015-00327914-CU-OE-STK (San Joaquin County Superior Court) (September 22, 2016) (certifying HammondLaw as co-class counsel for \$250,000 settlement of Labor Code §§ 1194, 226, and 201-203 claims on behalf of approximately 79 truck drivers);
- ***Araiza et al. v. The Scotts Company, L.L.C.***, Case No. BC570350 (Los Angeles County Superior Court) (September 19, 2016) (certifying HammondLaw

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as co-class counsel for \$925,000 settlement of Labor Code §226, 510, 512 and 2802 claims on behalf of approximately 570 merchandisers; and Labor Code 226(a) claims on behalf of approximately 120 other employees);

- ***Dixon v. Hearst Television, Inc.***, Case No. 15CV000127 (Monterey County Superior Court) (September 15, 2016) (certifying HammondLaw as class counsel for a \$432,000 settlement of Labor Code § 2802 claims on behalf of approximately 55 outside sales representatives);
- ***Garcia et al. v. Zoom Imaging Solutions, Inc.*** SCV0035770 (Placer County Superior Court) (September 8, 2016) (certifying HammondLaw as co-class counsel for \$750,000 settlement of Labor Code § 510, 512, 1194 and 2802 claims on behalf of approximately 160 sales representatives and service technicians);
- ***O'Beirne et al. v. Copier Source, Inc. dba Image Source***, Case No. 30-2015-00801066-CU-OE-CXC (Orange County Superior Court) (September 8, 2016) (certifying HammondLaw as co-class counsel for \$393,300 settlement of Labor Code § 2802 claims on behalf of approximately 132 outside sales representatives);
- ***Mead v. Pan-Pacific Petroleum Company, Inc.***, Case No. BC555887 (Los Angeles County Superior Court) (August 30, 2016) (certifying HammondLaw as co-class counsel for \$450,000 settlement of Labor Code §§ 1194, 226, and 201-203 claims on behalf of approximately 172 truck drivers);
- ***Lange v. Ricoh Americas Corporation***, Case No. RG136812710 (Alameda County Superior Court) (August 5, 2016) (certifying HammondLaw as co-class counsel for \$1,887,060 settlement of Labor Code § 2802 claims on behalf of approximately 550 sales representatives);
- ***Alcazar v. US Foods, Inc. dba US Foodservice***, Case No. BC567664 (Los Angeles County Superior Court) (March 18, 2016) (certifying HammondLaw as co-class counsel for a \$475,000 settlement of Labor Code §§ 1194, 226, and 201-203 claims on behalf of approximately 634 truck drivers);
- ***Harris v. Toyota Logistics***, Case No. C 15-00217 (Contra Costa County Superior Court) (February 9, 2016) (certifying HammondLaw as co-class counsel for \$550,000 settlement of Labor Code §§ 1194, 226, and 201-203 claims reached on behalf of approximately truck 125 drivers);
- ***Albanez v. Premium Retail Services Inc.***, Case No. RG1577982 (Alameda County Superior Court) (January 29, 2016) (Private Attorney General Act Settlement for \$275,000 on behalf of approximately 38 employees);
- ***Garcia et al v. Sysco Los Angeles, et al.***, Case No. BC560274 (Los Angeles County Superior Court) (November 12, 2015) (certifying HammondLaw as co-class counsel for a \$325,000 settlement on behalf of approximately 500 truck drivers);
- ***Cooper et al. v. Savage Services Corporation, Inc.***, Case No. BC578990 (Los Angeles County Superior Court) (October 19, 2015)(certifying HammondLaw as co-class counsel for \$295,000 settlement on behalf of approximately 115 truck drivers);
- ***Gallardo et al. v. Canon Solutions America, Inc.***, Case No. CIVDSS1500375 (San Bernardino County Superior Court) (August 5, 2015)

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(certifying HammondLaw as co-class counsel for \$750,000 settlement of Labor Code § 2802 claims on behalf for approximately 320 outside sales representatives);

- ***Glover v. 20/20 Companies, Inc.***, Case No. RG14748879 (Alameda County Superior Court) (August 3, 2015) (Private Attorney General Act Settlement for \$475,000 on behalf of approximately 273 independent contractors);
- ***Mayton et al v. Konica Minolta Business Solutions USA, Inc.***, Case No. RG12657116 (Alameda County Superior Court) (June 22, 2015) (certifying HammondLaw as co-class counsel for \$1,225,000 settlement of Labor Code § 2802 claims on behalf for approximately 620 outside sales representatives);
- ***Garza, et al. v. Regal Wine Company, Inc. & Regal III, LLC***, Case No. RG12657199 (Alameda County Superior Court) (February 21, 2014) (certifying HammondLaw as class counsel for \$1.7 million settlement on behalf of approximately 317 employees);
- ***Moy, et al. v. Young's Market Co., Inc.***, Case No. 30-2011-00467109- CU-OE-CXC (Orange County Superior Court) (November 8, 2013) (certifying HammondLaw as co-class counsel for \$2.3 million settlement of Labor Code § 2802 claims on behalf of approximately 575 sales representatives);
- ***Gagner v. Southern Wine & Spirits of America, Inc.***, Case No. 3:10-cv-10-04405 JSW (N.D. Cal.) (December 11, 2012) (certifying HammondLaw as co-class counsel for \$3.5 million settlement of Labor Code § 2802 claims reached on behalf of approximately 870 sales representatives);
- ***Downs, et al. v. US Foods, Inc. dba US Foodservice***, Case No. 3:10-cv-02163 EMC (N.D. Cal.) (September 12, 2012) (certifying HammondLaw as co-class counsel for \$3 million settlement reached on behalf of approximately 950 truck drivers)

Approved California Consumer Cases

- ***Rodriguez v River City Bank***, Case No. 1-13-cv-257676 (Sacramento County Superior Court) (October 26, 2022) (approving \$140,000 settlement of Cal. Bus. Prof. Code §§ 17200, Civil Code § 1798.80 and 1798.100 claims on behalf of 16,417 River City Bank customers);
- ***Siciliano et al. v. Apple***, Case No. 1-13-cv-257676 (Santa Clara County Superior Court) (November 2, 2018) (approving \$16,500,000 settlement of Cal. Bus. Prof. Code §§ 17603, 17200, and 17535 claims on behalf of 3.9 million California subscribers to Apple InApp subscriptions);
- ***In re Ashley Madison Customer Data Security Breach Litigation***, Case No. 4:15-cv- 02669 JAR (E.D. Mis.) (November 20, 2017) (HammondLaw appointed to the executive committee in \$11.2 million settlement on behalf of 39 million subscribers to ashleymadison.com whose information was compromised in the Ashley Madison data breach);
- ***Gargir v. SeaWorld Inc.***, Case No. 37-2015-00008175-CU-MC-CTL (San Diego County Superior Court) (October 21, 2016) (certifying HammondLaw and Berman DeValerio as co-class counsel in \$500,000 settlement of Cal. Bus. Prof. Code §§ 17603, 17200, and 17535 claims class action on behalf of 88,000 subscribers to SeaWorld's annual park passes);

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- ***Davis v. Birchbox, Inc.***, Case No. 3:15-cv-00498-BEN-BGS (S.D. Cal.) (October 14, 2016) (certifying HammondLaw and Berman DeValerio as co-class counsel in \$1,572,000 settlement of Cal. Bus. Prof. Code §§ 17603, 17200, and 17535 claims on behalf of 149,000 subscribers to Birchbox’s memberships); ^[L]_[SEP]
- ***Goldman v. LifeLock, Inc.***, Case No. 1-15-cv-276235 (Santa Clara County Superior Court) (February 5, 2016) (certifying HammondLaw and Berman DeValerio as co-class counsel in \$2,500,000 settlement of Cal. Bus. Prof. Code §§ 17603, 17200, and 17535 claims on behalf of 300,000 California subscribers to Lifelock’s identity protection programs); and

EXHIBIT 3