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13 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
14 **COUNTY OF SAN FRANCISCO**
15

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

18 Plaintiffs,

19 vs.

20 **UNIVERSITY OF SAN FRANCISCO, a**
21 California Corporation,

22 Defendant.
23
24

CASE NO. CGC-21-588930

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: July 9, 2024

Time: 9:00 a.m.

Dept.: 304; Hon. Ethan P. Schulman

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1 **I. INTRODUCTION**

2 Plaintiffs Dan Beck and Bienvenida Salazar seek preliminary approval of a non-reversionary
3 \$3,888,888 of their wage and hour class and representative Private Attorneys' General Act ("PAGA")
4 claims against University of San Francisco ("Defendant" or "USF"). The settlement resolves the
5 following claims on behalf of three overlapping classes: (1) unpaid overtime and premium pay on
6 behalf of approximately 1,879 part-time adjunct instructors; (2) inaccurate wage statements on behalf
7 of approximately 929 adjunct instructors; and (3) unreimbursed expenses on behalf of approximately
8 2,910 employees who worked remotely due to the COVID-19 pandemic. There are a total of
9 approximately 3,726 unique individuals covered by the Settlement. The Class and PAGA Settlement
10 Agreement is attached as **Exhibit 1** to the Proposed Order, filed herewith.

11 The Settlement is a product of well-informed, arms' length settlement negotiations, facilitate
12 by a court-appointed mediator, and preceded by production of extensive formal and informal
13 discovery and class data. The Gross Settlement represents 54.9% of Defendant's maximum exposure
14 and 90.7% of Defendant's realistic, risk-adjusted exposure (excluding PAGA, and including interest),
15 which is an outstanding result in light of the many risks posed by continued litigation, including the
16 risks of non-certification and adverse findings on the merits. If approved, the Settlement will provide
17 average recoveries to Unpaid Wage Class Members, as defined below, who are Nursing Adjunct
18 Instructors of \$2,689.47 gross and \$1,633.91 net; and Unpaid Wage Class Members who are not
19 Nursing Adjunct Instructor of \$996.62 gross and \$604.47 net; average recover per Wage Statement
20 Class Member, as defined below, of \$513.95 gross and \$312.24 net; and the average recovery per
21 Expense Reimbursement Class Member, as defined below, of \$267.28 gross and \$162.38 net.
22 Declaration of Julian Hammond In Supp. of Plaintiffs' Motion for Preliminary Approval of Class
23 Action Settlement ("Hammond Decl."), filed herewith, ¶¶ 52-54.

24 For the reasons set for the below, the terms of the Settlement are fair and reasonable and
25 satisfy the criteria for judicial approval. Accordingly, the Court should grant preliminary approval,
26 approve the proposed Notice, and set a date for final approval.

27 **II. OVERVIEW OF THE LITIGATION**

28 **A. Pleadings and Factual Background**

On January 5, 2021, Plaintiffs filed this class action. In the operative Complaint (the Third Amended Complaint), Plaintiffs allege that Defendant failed to pay overtime wages, provide off-duty meal and rest breaks, and issue accurate itemized wage statements to its part-time adjunct instructors. Plaintiffs also allege that Defendant failed to reimburse its employees for their home office expenses incurred in worked remotely from home due to the COVID-19 pandemic. Hammond Decl. ¶¶ 12-15.

1 Plaintiffs' case grew out of and followed an earlier-filed class action, *Gola v. University of*
2 *San Francisco*, No. CGC-18-565018 (San Francisco Cnty. Sup. Ct., March 15, 2018), in which
3 plaintiff was represented by Class Counsel in this case. In *Gola*, plaintiff sought, on behalf of part-
4 time adjunct instructors, unpaid wages for the time spent on course preparation, waiting time penalties,
5 and penalties for inaccurate wage statements that, as in this case, failed to list hours and hourly rates.
6 *Gola's* claims for unpaid wages and waiting time penalties were not litigated on the merits because
7 the trial court (Hon. Curtis Karnow) ruled they were preempted under the LMRA. Following trial on
8 the certified wage statement claim, the trial court held that part-time adjunct instructors whose wages
9 fell below the minimum salary set out in the Wage Order and Labor Code § 515(a) were non-exempt
10 under California law, rejected UFS's good faith defense as a matter of law and fact, and awarded *Gola*
11 and the class statutory and civil penalties. On April 13, 2023, the trial court's decision was affirmed
12 on appeal in a 2-1 decision, and the Court of Appeal rejected USF's contention that the newly enacted
13 statute, Labor Code § 515.7, which sets out a new classroom hour-based earnings test for the
14 professional exemption for part-time adjunct instructors, applies retroactively and/or abates violations
15 that occurred prior to its enactment on September 9, 2020.¹ Hammond Decl. ¶¶ 10-11.

14 In its Answers, Defendant generally denied the allegations and raised 54 affirmative defenses,
15 including defenses to class certification, that any violation was made in good faith and/or upon a
16 mistake of law, that Plaintiffs voluntarily relinquished their rest and meal breaks, that the expense
17 reimbursement claim, and all other claims, are preempted by the LMRA, and that all claims are barred
18 by Labor Code § 515.7. *See* Answer to Second Amended Complaint, filed on April 14, 2022.

18 **B. Discovery and Investigation**

19 The parties engaged in both formal and informal discovery that informed their settlement
20 discussions. In response to Plaintiffs' discovery requests, Defendant produced pseudonymized course
21 schedules and payroll data for the entire Class Period, data showing the number of individuals
22 employed during the Expense Reimbursement Class Period, and the number of expense
23 reimbursement requests submitted and paid. From this data, Plaintiffs were able to ascertain the
24 number of Unpaid Wages Class Members ("Class Members" are referred to herein for short as "CMs")
25 employed during the Class Period, the number of instructors who taught nursing courses, the number
26 of courses that were scheduled to meet for more than 8 hours, 5 hours or more, and 3.5 hours or more,

27 ¹ Prior to the Court of Appeal decision, this Court held, in its ruling on Plaintiffs' Motion for Summary
28 Adjudication as to Defendant's affirmative defenses under § 515.7, that § 515.7 did abate wage
statements claims. If this case did not settle, Plaintiffs would have moved for reconsideration.

1 the total scheduled overtime hours, as well as the number of inaccurate wage statements issued during
2 the relevant liability period. Based on discovery in *Gola*, Plaintiffs knew the number of wage
3 statements issued to the 285 Wage Statement CMs who were omitted from the class list in *Gola*.
4 Defendant also produced exemplar wage statements and contracts, the Part-Time Faculty Policy
5 Handbook, the CBAs applicable to different groups of employees in the ER Class, including part-time
6 adjunct instructors, Defendant's communications with its employees regarding remote work from
7 home due to the COVID-19 pandemic, including campus closures and campus reopening, ways to
8 access campus during closures, and expense reimbursement policies. Hammond Decl. ¶¶ 18-21.

9 Plaintiffs' Counsel gathered additional information from detailed interviews of class members
10 and were well informed about many of Defendant's policies applicable to the CMs from having
11 litigated the *Gola* action all the way to trial (and appeal). *Id.* ¶ 23.

12 **C. Settlement Negotiations**

13 The parties participated in a private mediation on February 8, 2022, while the appeal in *Gola*
14 was pending, but did not resolve the case. The parties then agreed to a stay pending resolution of the
15 appeal in *Gola*. After the Court of Appeal issued its decision in April 2023, the parties agreed to
16 attend a mandatory settlement conference. On January 17, 2023, the parties participated in an all-day
17 settlement session facilitated by Ms. Pang Ly, a Court assigned judicial mediator. Prior to the session,
18 the parties exchanged detailed briefs supported by evidence produced in discovery. Following the
19 January 17 session, and several additional settlement meetings between counsel, the parties agreed to
20 settle the case on the terms memorialized in the Settlement Agreement. Hammond Decl. ¶¶ 24-27.

21 **III. OVERVIEW OF THE SETTLEMENT TERMS**

22 The key Settlement terms are:

23 1. Gross Settlement Amount ("GSA") – USF will pay a non-reversionary sum of
24 \$3,888,888. SA §§ 1.19, 3.1.

25 2. Class Definition – The Settlement includes three, overlapping, groups (SA § 1.5):

26 a. The "Unpaid Wage Class" consists of "all part-time adjunct instructors employed
27 by the University of San Francisco at any time during the Class Period, who in 2017 earned less than
28 \$3,640.00 in any calendar month in which the instructor was paid wages; who in 2018 earned less
than \$3,813.33 in any calendar month in which the instructor was paid wages; who in 2019 earned
less than \$4,160 in any calendar month in which the instructor was paid wages; or who in 2020 earned
less than \$4,506.67 in any calendar month in which the instructor was paid wages.² The Class Period
is defined as January 4, 2017 through to September 8, 2020.

² Unpaid Wage Class Members employed between September 1 and 8, 2020 will be considered to be
part of this class if their earnings for the entire month of September 2020 were less than \$4,506.67.

1 b. The “Wage Statement Class” consists of “all part-time adjunct instructors
2 employed by the University of San Francisco during the Wage Statement Class Period, who earned
3 less than \$4,506.67 in any calendar month in which the instructor was paid wages; and (b) all part-
4 time adjunct instructors who fell within the definition of the certified class in *Gola v. University of*
5 *San Francisco*, Case No. CGC-18-565028 (San Francisco Super. Cnty. Ct.) and were omitted from
6 the class list in that case.” The Wage Statement Class is defined as January 4, 2020 through to
7 September 8, 2020. The class in *Gola* was certified for the period from March 15, 2017 through to
8 January 4, 2020.

9 c. The “Expense Reimbursement Class” consists of “all current and former
10 employees of the University of San Francisco who worked remotely in California at any time from
11 March 11, 2020 through July 31, 2021.” The Expense Reimbursement Class Period is defined as
12 March 11, 2020 through to January 25, 2024 (the date the parties reached agreement in principle to
13 resolve this case).

14 3. Attorneys’ Fees, Costs, and Named Plaintiffs’ Service Payments – Class Counsel will
15 seek attorneys’ fees of up to \$1,296,296 (1/3 of the GSA) and up to \$60,000 to reimburse their out-of-
16 pocket litigation costs. SA § 3.3.2; Hammond Decl. ¶ 65. Class Counsel will seek Service Payments
17 of \$7,500 for each Plaintiff. SA § 3.3.1.

18 4. PAGA Payment– The Settlement allocates \$100,000 to the PAGA claim. SA § 1.27.
19 The LWDA will be paid 75% of that amount and the remaining \$25,000 will be paid on a *per capita*
20 basis to all CMs who worked during the Adjunct PAGA Period (January 4 to September 8, 2020)
21 and/or the Expense Reimbursement PAGA Period (March 11, 2020 to January 25, 2024). SA §
22 1.27.1, 1.28, 3.3.8. Each CM who worked during either PAGA Period will receive a share of the
23 PAGA Penalties even if he or she opts out of the class settlement. SA §§ 3.3.9.1, 8.4.4.

24 5. Settlement Administration Costs will not exceed \$35,000. SA § 3.3.3. The Parties
25 selected Simpluris, Inc. (“Simpluris”) as the Administrator. SA § 1.2.

26 6. Net Settlement Amount (“NSA”) will total approximately \$2,362,592. Hammond
27 Decl. ¶ 47. This is the amount remaining after subtracting from the GSA attorneys’ fees, costs,
28 service awards, settlement administration costs, employer taxes due on the wage portion of payments
to the CMs, and the PAGA Payment. The NSA will be allocated as follows: 65% to the Unpaid Wage
Class; 15% to the Wage Statement Class; and 20% to the ER Class. Each portion will be distributed
among the members of each Class on a pro-rata basis based on the number of Qualifying Work
Months³ during the relevant settlement period. A 2.5 multiplier will be applied to the Qualifying

³ Qualifying Work Months of the Unpaid Wage CMs and Wage Statement CMs are those months
(footnote continued)

1 Work Months worked by those Unpaid Wages CMs who are Nursing Adjunct Instructors. A 4.0
2 multiplier applied to the with Qualifying Work Months prior to August 1, 2021 (the date when
3 campus reopened). SA § 3.3.5; Hammond Decl. ¶¶ 50-51.

4 7. Class Notice – Within 10 days of preliminary approval, Defendant will provide
5 Simpluris with (a) the names, last known mailing addresses, Social Security numbers of each CM;
6 and (b) for Unpaid Wages CMs and Wage Statement CMs, earnings information per pay period, and
7 for Expense Reimbursement (“ER”) CMs any wifi/cellular phone reimbursements received during
8 the ER Class Period (“Class Data”). SA §§ 1.8, 8.2. Within 10 business days of receiving Class Data,
9 after updating the addresses, Simpluris will mail each CM a Notice substantially in the form attached
10 as **Exhibit A** to the Settlement Agreement. SA § 8.3.2. For all returned Notices, Simpluris will
11 initiate a second mailing after skip tracing. SA §§ 1.9, 8.3.3.

12 8. Automatic Participation – The Settlement is non-reversionary, and each CM will
13 automatically receive his/ her share of the NSA, unless he/ she opts out. SA §§ 1.29, 3.3.5, 8.4.
14 Aggrieved Employees will receive their share of PAGA Penalties even if they opt out. SA § 3.3.9.

15 9. Opting Out or Objecting – CMs who wish to opt out must send a written Request for
16 Exclusion to Simpluris within 60 calendar days of the date the Notices are mailed. SA §§ 1.36-37,
17 8.4. Any CM who properly requests to opt out will not be entitled to receive any payment under and
18 will not be bound by the Settlement, except that they will still receive their share of PAGA Penalties
19 and be bound by the release of PAGA claims. SA §§ 8.4.4, 3.39. Alternatively, a CM may object to
20 the Settlement by sending Simpluris a written statement objecting to the Settlement or by appearing
21 at the final approval hearing and making an oral objection. SA § 8.6 and Ex. A (Class Notice) thereto.

22 10. Tax Consequences of Settlement Payments – For tax purposes, Settlement payments
23 made to the Unpaid Wage CMs will be treated as 1/3 wages and 2/3 as interest and penalties.
24 Settlement payments made to the Wage Statement CMs will be treated as penalties. Settlement
25 payments made to the Expense Reimbursement CMs will be treated as non-wage income and interest.
26 SA § 3.3.6. PAGA payments will be allocated as penalties. SA § 3.3.9.2.

27 11. Uncashed Checks – Settlement checks not cashed within 160 days of the date of
28 mailing will be voided and funds will be tendered to Bet Tzedek as *cy pres* recipient under Code of
Civ. Proc. § 384. SA § 4.2.

29 during which their wages fell below the dollar amounts listed in their Class definitions (i.e. the
30 minimum earnings required for professional employees to be exempt pursuant to Cal. Labor Code §
31 515(a). *See also* IWC Wage Order No. 4, § 1(A)(3)(d).

12. Scope of Release– Participating CMs will release all claims alleged or that could have been alleged against Defendant based on the facts set out in the Complaints and PAGA Notices, as set out in SA §§ 5.1, 5.2.

IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS MERITED

When a negotiated class action settlement is reached prior to certification, the Court may approve certification of a provisional settlement class. Cal. Rules of Court, Rule 3.769(d). A class is certifiable if (1) it is ascertainable and sufficiently numerous; (2) there is a well-defined community of interest; and (3) a class action would be a superior method of adjudication. *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1021 (2012).

A. The Class Is Ascertainable and Sufficiently Numerous

CMs here are “ascertainable” because they may be readily identified from USF’s records. *See Reyes v. Bd. of Supervisors*, 196 Cal. App. 3d 1263, 1271 (1987); *Noel v. Thrifty Payless, Inc.*, 7 Cal. 5th 955, 986 n.15 (2019). The Class is sufficiently numerous with approximately 3,726 CMs and more than 900 individuals in the smallest class (the Wage Statement Class) covered by the settlement. Hammond Decl. ¶ 3.

B. A “Community of Interest” Exists Among CMs

The “community of interest” requirement has three factors: (1) common questions of law or fact that predominate; (2) class representatives with typical claims; and (3) class representatives who can adequately represent the class. *Fireside Bank v. Super. Ct.*, 40 Cal. 4th 1069, 1089 (2007).

1. Common Questions of Law and Fact Predominate

Where the defendant employer’s policies or conduct is uniformly directed at a class or classes of employees, as Plaintiffs contend it is here, the class-wide impact of the defendant’s policies satisfies the commonality requirement. *See Sav-On Drugs Stores, Inc. v. Super. Ct.*, 34 Cal. 4th 319, 331 (2004) (upholding class certification, where the common issue was whether the employer properly classified grocery store managers as exempt from California’s overtime requirements).

Plaintiffs challenge Defendant’s misclassification, compensation, and expense reimbursement policies, which Plaintiffs contend raise common questions of law and fact: whether Unpaid Wage and Wage Statement CMs were misclassified as exempt prior to September 8, 2020; whether Defendant suffered and permitted Unpaid Wage CMs work to work overtime and whether Defendant maintained policies that denied overtime pay, meal and rest breaks to them; whether ER CMs’ remote work expenses were reasonable and necessary; whether Defendant’s expense reimbursement policy that only provided reimbursements upon request was unlawful; and whether the expense reimbursement claim is preempted under the LMRA.

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2. Plaintiffs' Claims Are Typical

Plaintiffs contend that their claims are similar of all CMs they seek to present because they were subject to the same misclassification and compensation policies, received the same standardized wage statements, and were subject to the same work from home and expense reimbursement policies, and, as a result, suffered the same types of injury, and seek the same types of relief as the members of the Classes. *See Seastrom v. Neways, Inc.*, 149 Cal. App. 4th 1496, 1502 (2007); Decl. of Bienvenida Salazar ("Salazar Decl."), filed herewith, ¶¶ 5-9; Decl. of Dan Beck ("Beck Decl."), filed herewith, ¶¶ 2-6.

3. Plaintiffs and Their Attorneys Will Adequately Represent the Class

"Adequacy of representation depends on whether the plaintiff's attorney is qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the class." *Caro v. Procter & Gamble Co.*, 18 Cal. App. 4th 644, 669 n.21 (1993) (citations omitted). Plaintiffs contend that both elements are satisfied here. HammondLaw has extensive class action litigation experience, and in particular class actions alleging wage and hour violations on behalf of part-time adjunct instructors, as well as expense reimbursement claims. Hammond Decl. ¶¶ 7-8. HammondLaw has been appointed class counsel in numerous class actions and has represented thousands of employees in similar cases. *Id.* Plaintiffs are committed to representing the interests of and do not have any conflicts with any CM, and their interests are virtually coextensive with those of the CMs. *Id.* ¶ 3; Salazar Decl. ¶ 4; Beck Decl. ¶ 6.

C. A Class Action Is a Superior Method of Adjudication

Because Plaintiffs' claims depend on common evidence, including Defendant's unlawful policies, uniform course scheduling practices and requirements/expectation with respect to remote work, and given the relatively small size of individual claims, a class action is the fairest and most efficient means of addresses CMs' claims. It would be inefficient to resolve these claims at separate trials. *See Daar v. Yellow Cab. Co.*, 67 Cal. 3d 695 (1967); *Bufile v. Dollar Fin. Grp., Inc.*, 162 Cal. App. 4th 1193, 1208 (2008).

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT BECAUSE IT IS FAIR, REASONABLE, AND ADEQUATE

A. The Two-Step Settlement Approval Process

Court approval of a class action settlement is a two-step process: (1) a preliminary review and contingent approval by the trial court, and (2) after notice has been distributed to the class members, a hearing and a detailed review that includes their responses. Cal. Rules of Court, Rule 3.769(a); *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1800-1801 (1996). Thus, the trial court's preliminary

1 approval of the settlement is simply a conditional finding that the settlement appears to be within the
2 range of acceptable settlements. *See, e.g.,* 4 Newberg on Class Actions § 11.25 (4th ed. 2002).
3 Applying the criteria for preliminary approval in this case reveals a substantial basis for granting the
4 preliminary approval this Motion seeks.

5 **B. The Settlement is Fair and Reasonable**

6 In analyzing whether a settlement is fair and reasonable, courts consider a number of factors:
7 (1) the strength of the plaintiff's case balanced against the settlement amount; (2) the risk, expense,
8 complexity and likely duration of further litigation, the risk of maintaining class action status through
9 trial; (3) the extent of discovery completed and the stage of the proceedings; (4) the experience and
10 view of counsel; and (5) the reaction of the class members to the proposed settlement. *Kullar v. Foot*
11 *Locker Retail, Inc.*, 168 Cal. App. 4th 116 (2008). Indeed, a settlement is initially "presumed to be
12 fair" when (1) it "is reached through arm's-length bargaining; (2) investigation and discovery are
13 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
14 litigation; and (4) the percentage of objectors is small." *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43,
15 52 (2008) (quoting *Dunk*, 48 Cal. App. 4th at 1802).

16 The GSA here represents 90.8% of Defendant's realistic, risk-adjusted exposure on all class
17 claims. Hammond Decl. ¶ 46. Given the substantial relief obtained for the Class and the uncertainties
18 and delays of litigation, the settlement meets the criteria for preliminary approval.

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

20 The settlement is the result of hard-fought extensive settlement negotiations between the
21 parties, conducted at arm's length, and informed by substantial factual and legal investigation.
22 Plaintiffs and the Class have been represented by experienced counsel, who have successfully litigated
23 a very similar case, *Gola v. University of San Francisco*, all the way through trial and appeal, and who
24 have secured numerous wage and hour, and expense reimbursement class action settlements that have
25 been approved by federal and state courts. Hammond Decl. ¶¶ 7-8 & Ex. 1 thereto. Class Counsel
26 have spent a considerable amount of time prosecuting this case, including drafting multiple pleadings,
27 engage in motion practice on the issue of retroactive application and abatement of Labor Code § 515.7
28 (prior to the Court of Appeal opinion being issued in *Gola*), investigating, researching applicable law,
drafting formal discovery, analyzing data and documents produced by Defendant, meeting and
conferring with Defendants' counsel, preparing for and attending a full-day mediation with a private
mediator at the beginning of 2022, and preparing for and attending a full-day settlement negotiation

1 session with a court-appointed mediator, engaging in post-mediation negotiations, and ultimately
2 negotiating the settlement agreement and related documents. *Id.* ¶¶ 12-23.

3 **2. The Settlement Amount is Fair and Reasonable Considering Potential**
4 **Recovery and the Risks of Litigation this Case**

5 Comparison of the extent of the class recovery to the strength of Plaintiffs' case is the most
6 important factor in analyzing the fairness of the settlement. *Kullar*, 168 Cal. App. 4th at 130. The
7 proposed settlement of \$3,888,888 represents 54.8% of the maximum damages, and 90.8% of the
8 realistic damages. The allocation of the settlement funds between the three sets of claims is also
9 reasonable and corresponds to the realistic value of each set of claims. While Plaintiffs believe that
10 they have strong claims, they faced considerable litigation risks. Hammond Decl. ¶¶ 45-48.

11 **a. Overtime, Meal, and Rest Breaks Claims (Lab. Code § 510, 512, 226.7 Wage Order**
12 **No. 4, § 3, 11, 12)**

13 Plaintiffs allege that Defendant's overtime, meal and rest break policies applied only to non-
14 exempt employees, and because Defendant misclassified Unpaid Wage CMs as exempt, it did pay
15 them overtime despite routinely scheduling them to teach courses that met for more than 8 hours in a
16 day, and did not provide them with meal or rest breaks when scheduling them to teach courses that
17 met 3.5 hour or longer and 5 hours or longer. Plaintiffs allege that the nature of part-time adjunct
18 instructors' job duties and Defendant's classification and compensation policies and practices,
19 including the absence of meal and rest break policies applicable to them, were such that they were
20 not paid overtime, and were routinely not able to take off-duty meal and rest breaks. Plaintiffs
21 calculated Defendant's maximum potential exposure on these claims as \$4,237,376.15 (including
22 interest), as follows: \$1,233,565.46 for unpaid overtime and interest at 10%, and \$3,003,810.69 in
23 unpaid premium pay and interest at 7%. Hammond Decl. ¶¶ 28-29, 32-33. Based on Plaintiffs'
24 analysis of the course scheduling data, most of the potential exposure on these claims is based on
25 nursing courses that are scheduled to meet for anywhere between 5 and 12 hours. See *Id.* ¶ 21.

26 Overtime Claim: Defendant argued that Plaintiffs would not be able to certify their overtime
27 claim. Defendant argued that Unpaid Wages CMs who were scheduled to teach courses longer than
28 8 hours did not necessarily work overtime if they took a 30-minute or one-hour long meal breaks (as
template syllabi, according to Defendant, indicated they did) and/or if they dismissed class early.
Hammond Decl. ¶ 30. Defendant argued that determining if an Unpaid Wage CM actually worked
overtime and, if so, the amount of overtime, therefore would require individualized inquiry. *Id.*; See
e.g. Duran v. U.S. Bank National Assoc., 59 Cal. 4th 1, 30-31 (2021). As to the merits, Defendant
could have argued that Plaintiffs' damages analysis led to an inflated exposure figure because in

1 calculating scheduled overtime hours Plaintiffs did not deduct any time for meal breaks, which at
2 least some Unpaid Wage CMs took, and did not take any deduction for the instances when classes
3 were dismissed early.

4 Plaintiffs believed that their overtime claim was strong given the lack of a policy requiring
5 Unpaid Wage CMs to track their hours, the practice of scheduling them to work more than 8 hours a
6 day, and the nature of their employment and Defendant's practices that impeded them from taking
7 breaks during what would otherwise have been break time. However, Plaintiffs also recognized that
8 Defendant's defenses presented both certification and merits risks. For settlement purposes, Plaintiffs
9 applied a 15% discount for the certification risk, and a 15% discount for the merits risk, reducing
10 Defendant's exposure to **\$891,251.04**.

11 Meal and Rest Break Claims: Defendant argued that Plaintiffs would have a very difficult
12 time certifying these claims because they involve different types of courses, taught in different
13 settings (i.e. online, at a clinical facility, in the laboratory), and at different schools across the
14 University. Defendant also argued that instructors had the freedom and discretion to provide
15 classroom breaks, including lunch breaks during longer classes, to their students, and many did so.
16 Defendant also pointed to the fact that some of the template syllabi for nursing classes include a one-
17 hour break for lunch, and argued that testimony of instructors and their administrator would
18 corroborate Defendant's contention that they could take breaks. In addition, Defendant contended
19 that students at clinical sites were mainly supervised by the nurses employed by those sites, rather
20 than instructors, and instructors could therefore take breaks if they wanted to. Even if instructors did
21 not take breaks, Defendant argued that in order to determine why some took breaks while others did
22 not would require individualized inquiries. Thus, Defendant contended that individualized inquiries
23 would be required to determine why each meal and/or rest break was taken late or not taken.

24 On the merits, Defendant could have argued that adjunct instructors often did take breaks, that
25 even if students approached instructors with questions during classroom breaks this was not the case
26 when instructors taught classes remotely from home due to the COVID-19 pandemic, and that
27 Plaintiffs' assumption that breaks were never taken (underlying their calculation of premium pay
28 based on *all* courses that met for more than 3.5 and 5 hours) was therefore unrealistic. Defendant
also could have argued that for all courses shorter than 5 hours, adjunct instructors who did not take
breaks could be said to have agreed to voluntarily waive them. *See* Lab. Code § 512(a).

Therefore, for settlement purposes, Plaintiffs applied a 25% discount to the maximum
exposure on the meal/ rest break claims for the certification risks and a further 15% for the risk on
the merits, reducing Defendant's realistic potential exposure to **\$1,914,929.32**. Hammond Decl. ¶ 36.

1 **c. Wage Statement Claim (Lab. Code § 226(a), (e))**

2 Plaintiffs allege that as a result of misclassifying Unpaid Wages CMs as exempt, Defendant
3 failed to list on their wage statements hours worked and applicable hourly rates, including overtime
4 rates, in violation of Labor Code § 226(a)(2) and (a)(9). Plaintiffs calculated Defendant’s maximum
5 exposure on this claim as **\$843,350**, based on statutory damages set out in § 226(e).

6 Plaintiffs see no risk on the merits of this claim given that the trial court in *Gola* awarded full
7 statutory damages under § 226(e) on the same exact claim, and the Court of Appeal affirmed the trial
8 court’s ruling. Further, uniform wage statements are well suited to certification. However, Plaintiffs
9 expect that if the case did not settle, Defendant would challenge certification of the wage statement
10 claim in this case unlike in *Gola* where University of San Francisco stipulated to class certification.
11 For settlement purposes, Plaintiffs applied a 5% discount for the nominal risk on class certification.
12 Thus, Plaintiffs calculated Defendant’s potential exposure on this claim as **\$633,697.50**.

13 **d. Expense Reimbursement Claim (Lab. Code § 2802)**

14 Plaintiff Beck alleges that Defendant was required but failed to fully reimburse him and other
15 ER CMs for home office expenses, including home internet and personal cellphone costs, incurred in
16 working remotely from home beginning in March 2020, due to the COVID-19 pandemic. Plaintiffs
17 allege that USF’s policy of providing \$25/month in reimbursement upon request was unlawful
18 because it was both insufficient and violated the mandate of § 2802 by requiring requests to be
19 submitted in order to be reimbursed. Plaintiffs assert that once Defendant was aware that expenses
20 were incurred it had an affirmative duty to reimburse them. *See Stuart v. RadioShack*, 641 F. Supp.
21 2d 901, 904 (N.D. Cal. 2009) (holding employer’s duty to reimburse under § 2802 is triggered if it
22 knows or has reason to know that the employees incurred out of pocket expenses, and that “[o]nce
23 the employer has such knowledge, then it has the duty to exercise due diligence and take any and all
24 reasonable steps to ensure that the employee is paid for the expense.”). Plaintiffs calculated
25 Defendant’s maximum exposure (including interest) as **\$2,188,206.88**. Hammond Decl. ¶ 41.

26 Defendant argued that its policy was compliant because nothing in § 2802 bars an employer
27 from requiring employees to submit requests to be reimbursed, and because it reimbursed every
28 request that was submitted. Defendant contended that individual inquires would be required in order
to determine why some ER CMs submitted requests and others did not. *See Williams v. Amazon.com*
Services LLC, No. 22-cv-01892-VC, 2023 WL 2396330, *1 (N.D. Cal. Mar. 7, 2023) (denying
certification because approximately 8.5% of the putative class of remote workers were sufficiently
reimbursed for their home internet expenses during the pandemic, leading the court to conclude that
there was no common policy of non-reimbursement). Defendant also contended that offices and

1 classrooms were available for use by reservation throughout nearly the entire ER Class Period (as
2 early as August 2020) and ER CMs could have, and many did, use them to work. This too, Defendant
3 argued, would lead to individualized inquiries. Hammond Decl. ¶¶ 42-43.

4 Defendant also argued that Plaintiffs' damages calculation was overinflated because several
5 internet providers in the San Francisco area offered internet plans for \$20/month, at least some portion
6 of ER CMs' home internet usage was for personal use, and the use of personal cellphone was not
7 necessary as Defendant instructed its employees to use Jabber (a computer software service) to make
8 and receive calls. Furthermore, Defendant argued that if the case continued to be litigated, the Court
9 would find that part-time adjunct instructors' claim is preempted under the LMRA because the
10 reimbursement policy and amounts applicable to them were set out in a side letter agreement to the
11 CBA. Hammond Decl. ¶ 43.

12 Plaintiffs believe that they would be able to prove that Defendant's policy violated § 2802
13 and that they would certify this claim. However, Plaintiffs also recognized that Defendant's
14 arguments presented substantial risks. Therefore, for settlement purposes, Plaintiffs applied a 30%
15 discount for the certification risk, and a further 45% discount for the risk on the merits and LMRA
16 preemption, reducing Defendant's realistic exposure on this claim as **\$842,459.65**. *Id.* ¶ 44.

17 **e. The Allocations Between the Three Classes and the Distribution Formula are Fair and**
18 **Appropriate**

19 The allocation of the Settlement funds between the three Classes is fair and reasonable and is
20 based on the realistic value of the claims of each Class. The distribution method constitutes a fair,
21 objectively reasonable, and proper attempt to equitably distribute the proposed settlement.

22 The Unpaid Wage Class will be allocated \$2,527,777.20 (65%) of the GSA, which represents
23 90% of USF's realistic exposure to their overtime, meal and rest break claims. Hammond Decl. ¶ 48.
24 This portion of settlement will be distributed based on the number of qualifying work months with a
25 2.5 multiplier applied to the months worked by the Nursing Adjunct Instructors in light of the fact
26 that most of the exposure to the claims of the Unpaid Wage Class is based on courses taught by
27 Nursing Adjunct Instructors. *Id.* ¶¶ 21, 50. The average gross recovery per Unpaid CM who *is* a
28 Nursing Adjunct Instructors will be \$2,689.47, and the average pre-tax net recovery will be
\$1,633.91. The average gross recovery per Unpaid Wage CM who is *not* Nursing Adjunct Instructors,
will be approximately \$996.62, and the average pre-tax net recovery will be \$605.47. *Id.* ¶ 52.

The Wage Statement Class will be allocated \$583,333.20 (15%) of the GSA, which represents
92% of USF's realistic exposure to the wage statement claims. *Id.* ¶ 48. The average recovery per
Wage Statement CM will be \$513.95 gross and \$312.24 net. *Id.* ¶ 53. The ER Class will be allocated

1 \$777,777.60 (20%) of the GSA, which represents 92.3% of USF’s realistic exposure to the expense
2 reimbursement claims. *Id.* ¶ 48. This portion of the settlement will be distributed based on the
3 qualifying months worked during the ER Class Period, with a 4.0 multiplier applied to the months
4 worked prior to August 2021 in light of the fact that campuses were fully reopened after that date,
5 and most of the business expenses were incurred prior to that date. In addition, amounts previously
6 reimbursed to individual ER CMs pursuant to Defendant’s expense reimbursement policy will be
7 used to offset recoveries under the settlement. The average recovery per ER CM will be \$267.28
gross and \$162.38 net, and no ER CM will receive less than \$50. *Id.* ¶ 54.

8 **3. The PAGA Allocation is Fair and Adequate:**

9 Plaintiffs calculate Defendant’s maximum liability for PAGA penalties as \$8,883,400.
10 Hammond Decl. ¶ 55. The \$100,000 allocated to PAGA penalties represents approximately 1.13%
11 of Defendant’s exposure to PAGA penalties, which is comparable to allocations in similar cases that
12 received final approval from California Superior Courts. This allocation is fair and reasonable for
13 several reasons. First, the overall settlement resulted in significant relief, which is what courts look
14 at when assessing amount attributed to PAGA penalties. *O’Connor v. Uber Techs., Inc.*, No. 201 F.
15 Supp. 3d 1110, 1134 (N.D. Cal. Aug. 18, 2016) (where settlement for the class claims is robust, the
16 purpose of PAGA may be fulfilled; by providing fair compensation to class members, the settlement
17 has a deterrent effect on defendant and other employers, thus fulfilling the purpose of PAGA).
18 Second, the Court could reduce any award of PAGA penalties as “unjust, arbitrary and oppressive,
19 or confiscatory” under Labor Code § 2699(e)(2), including based on the relatively weak § 2802 claim
20 for the period after August 1, 2021 (which accounts for over half of the total \$8.5 million PAGA
21 penalties). Third, in order to recover any PAGA penalties, Plaintiff Beck would be required at trial
22 to prove that each employee suffered a violation for each pay period the employee worked, which
23 would be difficult in light of Defendant’s contentions discussed above. Hammond Decl. ¶¶ 55-57.

24 **4. The Risk, Expense, Complexity, and Likely Duration of Further Litigation** 25 **Support the Reasonableness of the Settlement**

26 If litigation were to proceed, Plaintiffs would face a serious risk posed by Defendant’s
27 affirmative defense that Plaintiffs would not be able to certify their claims, particularly the meal, rest,
28 and expense reimbursement claims, and would not lose all or some of the claims (or portions of
claims) on the merits. Hammond Decl. ¶¶ 28-43, 59. Plaintiffs also faced the risk that the Court would
find that their expense reimbursement claim on behalf of part-time adjunct instructors is subject to
LMRA preemption. *Id.* ¶¶ 43. Even if this matter proceeded to trial, voluminous evidence would be
needed to prove damages; expert testimony could be required to prove the damage calculations; and

1 trial would be complex given the number of employees and claims involved. Hammond Decl. ¶ 59.
2 Regardless of which side prevailed on the LMRA issue, class certification, or at trial, an appeal would
3 be likely, creating additional delay and uncertainty of any recovery. *Id.* This Settlement provides an
4 efficient resolution of this dispute, and CM will obtain a substantial recovery now without the major
risks and lengthy delays that further litigation would entail. *Id.* ¶ 60.

5 **5. Extent of Discovery Completed and The Stage of the Proceedings**

6 As discussed in the Hammond Declaration, the Settlement was informed by substantial
7 discovery and investigation. Plaintiffs' data analysts analyzed key data including course schedules,
8 payroll, and expense reimbursement data, interviewed putative CMs, reviewed roughly 800-pages of
9 documents provided by Defendant, and located relevant publicly available information from
10 Defendant's website. Importantly, Plaintiffs' Counsel also had deep knowledge of Defendant's
11 misclassification and compensation practices from having litigated *Gola v. University of San*
12 *Francisco* all the way through trial (and appeal). Hammond Decl. ¶¶ 18-21. Plaintiffs were therefore
13 well-informed about the strengths and weaknesses of their claims, and well-positioned to conclude
that this Settlement was an excellent outcome for the Classes.

14 **6. Views of Experienced Counsel Support the Settlement**

15 As discussed above, Class Counsel has extensive experience in class action litigation, and, in
16 particular wage-and-hour class actions, and have been determined by numerous courts to be adequate
17 class counsel. Hammond Decl. ¶¶ 6-7. Class Counsel has represented thousands of adjunct instructors
18 and employees in similar unpaid wage cases since 2016, and has also represented employees across
19 different industries in remote-work-from-home expense reimbursement cases. *Id.* Class Counsel
20 considers the settlement to be fair, reasonable and adequate and overall an excellent result for the
Classes, particularly when considering Defendant's many defenses discussed above.⁴ *Id.* ¶¶ 46, 60.

21 **C. The Proposed Class Notice Content and Procedure Are Adequate**

22 The proposed Class Notice provides information to allow CMs to make an informed decision
23 to accept or object to the settlement. *See Wershba v. Apple Comput., Inc.*, 91 Cal. App. 4th 224, 251-
24 52 (2001). It provides: (1) the material terms of the Settlement, (2) the CMs' anticipated Settlement
25 shares, (3) instructors as to how to object or opt out, (4) how to obtain more information about the
26 claims, (5) the proposed fees and costs of Class Counsel and settlement administration, (6) the

27
28 ⁴ The final prong of the *Kullar* test – the reaction of the Class – will be evaluated at final approval.

1 proposed Service Payments, and (7) the date and time of the final approval hearing. *See Exhibit A*
2 to the SA (Class Notice); *see also* Cal. Rules of Court, Rule 3.766.

3 The procedure for distribution of Notice has “a reasonable chance of reaching a substantial
4 percentage of the [CMs].” *Cartt v. Super. Ct.*, 50 Cal. App. 3d 960, 974 (1975). The Notice will be
5 sent by first class mail to the most recent address of each CM. SA § 8.3.2. If a Notice is returned as
undeliverable, Simpluris will use skip tracing and resend it if a new address is identified. SA § 8.3.3.

6 **D. The Class Representative Service Payments Are Preliminarily Reasonable**

7 If the Court grants preliminary approval, in conjunction with seeking final approval, Plaintiffs
8 will move for approval of Class Representative Service Payments of \$7,500 each to recognize the
time and effort they expended for the Class and general release they are giving USF. Hammond Decl.
9 ¶ 61. The requested awards fall well within the range of service payments typically awarded to class
10 representatives in similar class actions. *See, e.g., Cellphone Termination Fee Cases*, 186 Cal. App.
11 4th 1380, 1393 (2010) (affirming awards of \$10,000); *Cathers v. Mt. Saint Mary’s University*, No.
12 22STCV02941 (Los Angeles Cnty. Super. Ct. March 8, 2024) (granting award of \$7,500).

13 **E. The Requested Attorneys’ Fees and Costs Are Preliminarily Reasonable**

14 Also in conjunction with final approval, Plaintiffs will move for an award of attorneys’ fees of
15 one-third of the GSA, or \$1,296,296. SA § 5. This fee amount is fair, reasonable and represents the
one-third typically approved in class actions by California courts. *See, e.g., Laffitte v. Robert Half*
16 *Internat. Inc.*, 1 Cal. 5th 480, 487, 596 (2016). Plaintiffs will also request reimbursement for out-of-
17 pocket litigation costs up to \$60,000. *Id.*

18 **F. The Cy Pres Designee is Appropriate**

19 The Settlement designates Bet Tzedek as *cy pres* recipient under Code of Civ. Proc. § 384. SA
20 § 4.2. 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. Hammond
21 Decl. ¶ 74. In compliance with § 382.4, Class Counsel certifies that they have no connection to or
22 relationship with Bet Tzedek that could reasonably create the appearance of impropriety as between
23 the selection of the recipient of the money or thing of value and the interests of the class. *Id.*

24 **VI. CONCLUSION**

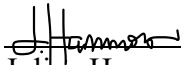
25 The Settlement is well within the range of acceptable settlements and provides substantial
26 monetary relief to the Classes. Plaintiffs request that the Court conditionally certify the Classes for
settlement purposes, preliminarily approve the Settlement, and order that Notice be provided to the
27 Classes as set forth in the proposed Order.
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DATED: May 6, 2024

Respectfully submitted,

HAMMONDLAW, P.C.



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