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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF ALAMEDA**

11  
12 **CHARLES CASTILLO** and **DEIDRE BEAN**,  
13 individually and on behalf of all others similarly  
situated,

14 Plaintiffs,

15 vs.

16  
17 **HOLY NAMES UNIVERSITY**, a California  
18 Non-Profit Corporation,

19 Defendant.

CASE NO. HG21097245

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PLAINTIFFS' MOTION FOR APPROVAL  
OF ATTORNEYS' FEES AND COSTS, AND  
SERVICE AWARDS FOR CLASS  
REPRESENTATIVES**

Date: May 2, 2023

Time: 3:00 p.m.

Dept. 23

Reservation ID: 21097245-002

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## I. INTRODUCTION

In conjunction with their motion for final approval, Plaintiffs Charles Castillo and Deidre Bean (“Plaintiffs”) move this Court for an award of attorneys’ fees in the amount of \$339,745.48, representing 35% of the \$970,701.38 Gross Settlement Amount (“GSA”); reimbursement of out-of-pocket expenses in the amount of \$19,181.19; and service awards for each Class Representative in the amount of \$5,000. The Notice provided the Class with notice of the requested fees, costs, and service awards and *not one* of the 1,201 Class Members objected.

As set forth in this motion, Class Counsel believe this request is appropriate because of the result achieved for the Class, and the risk and financial burden Class Counsel undertook to litigate this novel and complex case. The Settlement provides robust monetary payments with Part-Time Faculty Class Member average and high payments of \$387.22 and \$2,181.24; Expense Reimbursement Class Member average and high payments of \$63.45 and \$203.69; and General Class Member average and high payments of \$12.51 and \$40.06. These are excellent results considering Defendant’s contention that Plaintiffs’ class claims were subject to individual arbitration under the arbitration provision in Defendant’s CBA; and Defendant’s contention that the Part-time Faculty Class claims were preempted by § 301 of the Labor Management Relations Act (“LMRA”); and Defendant’s contention that the Part-time Faculty class claims would fail because they are exempt employees under Labor Code § 515.7.

In addition to the monetary relief, following the filing of this case, HNU revised its compensation system with respect to Part-time Faculty CMs. HNU reclassified CMs as hourly non-exempt employees and changed their compensation from per course/per unit to hourly. HNU also began tracking part-time faculty instructors’ hours and including entries for total hours worked and hourly rates on their wage statements. HNU also rolled out a new rest policy applicable to CMs. In October 2021, HNU implemented an expense reimbursement policy pursuant to which it began reimbursing Expense Reimbursement CMs \$10/month for internet and \$10/month for cellphone. Finally, HNU corrected the wage statements after May 10, 2020 and ensured that they included beginning, as well as end, dates of each pay period.

The requested attorneys’ fees are reasonable and fair because they represent only slightly more than the 33% of the GSA routinely awarded fees under the common fund approach. Under a lodestar cross-check, the requested fees represent a modest multiplier of only 1.17 to Class Counsel’s lodestar to date—a lodestar that will increase as Class Counsel performs the remaining work to present this final approval motion to the Court and ensure that the Settlement is correctly distributed to the Class.

1 The out-of-pocket costs incurred in connection with this litigation are \$19,181.19 (\$818.81 less  
2 than the \$20,000 allowed by the Settlement). The difference will be added to the Net Settlement and  
3 increase each Class Members share.

4 The Class Representatives' requested service awards warrant approval because the requested  
5 \$5,000 for each Plaintiff is an amount routinely approved by courts as reasonable and is commensurate  
6 with the risks taken and effort expended by Plaintiffs, without whose efforts the Class would not have  
7 recovered their alleged unpaid wages, unreimbursed expenses, or statutory and civil penalties.

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

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

10 **A. *The Overwhelmingly Positive Reaction of the Class and Excellent Result Obtained***  
11 ***Support Approval of the Requested Attorneys' Fees and Costs***

12 The positive reaction of the Class supports the requested fee award. The Court-approved Notice  
13 informed Class Members of the requested attorneys' fees, costs, and class representative service awards.  
14 To date, no CM has objected to the Settlement and only 4 CMs have opted out. *See* Declaration of Laura  
15 Singh Regarding Notice and Settlement Administration ("Singh Decl."), filed herewith, at ¶¶ 6-7.

16 This overwhelmingly positive reaction is consistent with the substantial benefit achieved for the  
17 Class. CMs average and high payments of \$387.22 and \$2,181.24 for Part-time Faculty CMs; \$63.45 and  
18 \$203.69 for Expense Reimbursement CMs; and \$12.51 and \$40.06 for General CMs. Singh Decl. ¶ 10-  
19 12. In addition, CMs who were employed during the PAGA Period will receive their share of the PAGA  
20 penalties. *Id.* ¶ 14.

21 The Settlement represents a substantial recovery because Plaintiffs faced a very real risk of  
22 recovering nothing for the Class in light of the arbitration provision in Defendant's CBA, Defendant's  
23 contentions that Part-time Faculty CMs' claims were necessarily dependent on the interpretation of  
24 Defendant's CBA and therefore are preempted under § 301 of the LMRA; Defendant's contentions that  
25 Part-time Faculty Class Members are exempt under Labor Code § 515.7; and Defendant's defenses on  
26 class certification and on the merits. Declaration of Julian Hammond in Support of Plaintiffs' Motion for  
27 Order Granting Final Approval of Class Action Settlement and for Attorneys' Fees and Costs and Service  
28 Awards for Class Representatives ("Hammond Final Decl."), filed herewith, ¶¶ 59-63, 67.

The Settlement also provides significant non-monetary relief insofar as after the filing of this  
lawsuit, Defendant revised its policies to bring them into compliance with the Labor Code including  
revising its compensation system with respect to Part-time Faculty CMs; implementing an expense  
reimbursement policy; and issuing accurate wage statements. *Id.* at ¶¶ 72-74.

1           **B.     *The Requested Attorneys’ Fees Are Reasonable Under the Percentage of the Fund and***  
2           ***Lodestar Crosscheck***

3           The award of attorneys’ fees in common fund wage and hour class action settlements should start  
4 with the percentage method. *See Laffitte v. Robert Half Int’l*, 1 Cal. 5th 480, 503 (2016) (“We join the  
5 overwhelming majority of federal and state courts in holding that when class action litigation establishes  
6 a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards  
7 class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing  
8 an appropriate percentage of the fund created.”). The Supreme Court has also affirmed the lodestar  
9 crosscheck in determining the propriety of a fees award. *See id.* at 490 (citing *Hensley v. Eckerhart*, 461  
10 U.S. 424 (1983)). Here, the attorneys’ fees requested are reasonable under both approaches.

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

12           **a)     Plaintiffs have Created a Substantial Common Fund**

13           Courts in California have long recognized the equitable “common fund” doctrine under which  
14 attorneys who create a common fund or benefit for a group of persons may be awarded their fees and costs  
15 out of that fund. “[W]hen a number of persons are entitled in common to a specific fund, and an action  
16 brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund,  
17 such plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.” *Serrano v. Priest*, 20 Cal. 3d  
18 25, 34 (1977); *see also Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (“[A] lawyer who recovers  
19 a common fund . . . is entitled to reasonable attorneys’ fee from the fund as a whole”).

20           Here, there is an easily calculable \$970,701.38 common fund that will provide substantial benefits  
21 to the class. *See Serrano* 20 Cal. 3d at 35 (common fund approach is available when Class Counsel’s  
22 efforts “have resulted in the preservation or recovery of a certain or easily calculable sum of money - out  
23 of which sum or ‘fund’ the fees are to be paid.”).

24           **b)     Fee Award of 35% of the Common Fund Is Reasonable**

25           The requested fees represent 35% of the Gross Settlement Amount—a percentage slightly higher  
26 than 1/3 routinely awarded in common fund settlements. *See e.g., Chavez v. Netflix, Inc.*, 162 Cal. App.  
27 4th 43, 66, n.11 (2008) (“[e]mpirical studies show that, regardless of whether the percentage method or  
28 the lodestar method is used, fee awards in class actions average around one-third of recovery.”); *Singer v.*  
*Becton Dickinson*, 2010 U.S. Dist. LEXIS 53416, at \*23 (S.D. Cal. June 1, 2010) (citing cases awarding  
40% of common fund in wage and hour class actions); *Cicero v. DirectTV, Inc.*, 2010 U.S. Dist. LEXIS  
86920, at \*17 (C.D. Cal. July 27, 2010) (“Other case law surveys suggest that 50% is the upper limit, with  
30-50% commonly being awarded in case in which the common fund is relatively small.”). This



1 percentage is in line with (or lower than) the contingency fee that Class Counsel and the class members  
2 would likely have agreed to if such agreement had been possible. Hammond Final Decl. ¶ 10; *see, e.g.,*  
3 *Matter of Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 572 (7th Cir. 1992) (in a common fund case, the object “is  
4 to give the lawyer what he would have gotten in the way of a fee in an arm’s length negotiation, had one  
5 been feasible”).

6 **c) The Requested Fees Are Fair and Reasonable**

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

12 **i. Plaintiffs Obtained Excellent Monetary and Nonmonetary Results**

13 Class Counsel obtained an excellent result for the Class with an average and high share of \$387.22  
14 and \$2,181.24 for Part-time Faculty CMs; \$63.45 and \$203.69 for Expense Reimbursement CMs; and  
15 \$12.51 and \$40.06 for General CMs. Singh Decl. ¶¶ 10-12. As discussed above, in addition to the  
16 substantial monetary recovery, after Plaintiffs filed this lawsuit, Defendant overhauled its compensation  
17 policies applicable to Part-time Faculty CMs, reclassified them as hourly employees, began tracking their  
18 hours and including total hours worked and hourly rates on their wage statements, and rolled out a new  
19 rest policy applicable to Part-time Faculty CMs. In October 2021, HNU also implemented an expense  
20 reimbursement policy pursuant to which it began reimbursing Expense Reimbursement CMs \$10/month  
21 for internet and \$10/month for cellphone. Finally, HNU corrected the wage statements issued after May  
22 10, 2020 and ensured that they included beginning, as well as end, dates of each pay period. Hammond  
23 Final Decl. ¶¶ 72-74.

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

25 Plaintiffs’ Counsel have been litigating this case for almost two years, expending over 387 hours  
26 and over \$19,000 in out-of-pocket expenses to date, all as-yet uncompensated, and without any certainty  
27 of receiving payment. Hammond Final Decl. ¶ 58. The litigation was particularly risky in this case  
28 because of the potentially enforceable arbitration agreement between Plaintiffs and Defendant. *Id.* ¶ 59.  
Plaintiffs also faced the risk of losing on LMRA preemption. *Id.* ¶¶ 60-61. Plaintiffs also faced risks from  
Defendant’s contention that Part-time Faculty are exempt under Labor Code § 515.7 because Defendant  
paid them a salary and the CBA provided that “all bargaining unit faculty employed and compensated

1 pursuant to the terms of this Agreement or its predecessor were and are classified as professional exempt  
2 employees and were and are exempt under California Labor Code § 515.7.” Id. ¶ 62.

3 Assuming Plaintiffs won on some or all of these contested issues, the case would proceed to class  
4 certification, and whichever claims were certified would proceed to trial. The losing party would likely  
5 appeal, given that whether a compensation scheme like HNU’s (i.e., per course pay where a university  
6 reserves the right to reduce compensation based on low enrollment) constitutes a piece-rate or a salary  
7 has never been decided by any California courts. Id. ¶¶ 63, 67. The uncertainties of continued litigation  
8 presented a very real risk that Plaintiffs would be unable to litigate their class claims at all.

9 **iii. Preclusion of Other Income-Generating Work**

10 Taking this case required Class Counsel to avoid pursuing other fee-generating work. See  
11 *Serrano*, 20 Cal. 3d at 49 (one of the factors that weighs in favor of granting request for attorneys’ fees is  
12 “the extent to which the nature of the litigation precluded other employment by the attorneys”). Hammond  
13 Final Decl. ¶ 75.

14 **iv. Percentage Requested Is Consistent with the Private Marketplace**

15 The requested 35% of the distribution is in line with the fee that Class Counsel would have  
16 expected if they had negotiated individual retainer agreements with each Class Member. Hammond Final  
17 Decl. ¶ 10. Such an award ensures that Class Counsel receive an appropriate fee for the benefit conferred  
18 on the Class, particularly when it would be impossible *ex ante* to enter a fair fee arrangement with all the  
19 members of the Class.

20 **v. Awards in Similar Cases**

21 Class Counsel has been awarded approximately 35% or more of the common fund in other wage  
22 and hour cases including *Burleigh v. National University*, Case No. MSC21-00939 (Contra Costa Cty.  
23 Sup. Ct.) (Aug. 26, 2022) (approving fees of 40% of \$925,000 class settlement); *Mayton et al v. Konica*  
24 *Minolta Business Solutions USA, Inc.*, Case No. RG12657116 (Cal. Sup. Ct. Alameda Cty. June 22, 2015)  
25 (approving fees of 40% of \$1,225,000 class wage and hour settlement); and other cases listed in Hammond  
26 Final Decl. ¶ 7.

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

28 To perform a lodestar cross-check of a common fund fee award, the Court compares the requested  
fee to Class Counsel’s “lodestar” – i.e., the hours reasonably spent on the case multiplied by counsel’s  
reasonable hourly rates. *In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-57 (2009). If the  
percentage-of-the-fund fee reflects a multiplier of Class Counsel’s lodestar that is “extraordinarily high or

1 low, the trial court should consider whether the percentage used should be adjusted ..., but the court is not  
2 necessarily required to make such an adjustment.” *Laffitte*, 1 Cal. 5th at 505. The lodestar calculation  
3 “does not override the trial court’s primary determination of the fee as a percentage of the common fund  
4 and thus does not impose an absolute maximum or minimum on the potential fee award.” *Id.* “Multipliers  
5 can range from 2 to 4 or even higher.” *Wershba v. Apple Computer, Inc.*, 91 Cal App. 4th 224, 255  
6 (2001). In general, a positive multiplier can be desirable to reflect the contingent nature and risk  
7 associated with the action, as well as other factors such as the degree of skill required and the ultimate  
8 success achieved. *See Ketchum v. Moses*, 24 Cal. 4th 1122, 1132 (2001) (also explaining that the “purpose  
9 of a fee enhancement, or so-called multiplier, for contingent risk is to bring the financial incentives for  
10 attorneys enforcing important ... rights”). *Laffitte*, 1 Cal. 5th at 504 (in wage and hour class action, trial  
11 court properly considered novelty, difficulty, and skill displayed in determining 2.03-2.13 multiplier  
12 reasonable as cross-check to 33% fee).

13 Here, Plaintiffs’ Counsel’s seek compensation for 387 hours expended by attorneys whose rates  
14 range from \$650 to \$925 per hour. Hammond Final Decl. ¶ 48. The combined lodestar is \$290,537 and  
15 the requested fee award thus amounts to a 1.17 multiplier. Hammond Final Decl. ¶ 54. This does not  
16 include the additional hours Class Counsel will spend seeing this case through to conclusion. *Id.* A modest  
17 multiplier is appropriate given Class Counsel’s success in achieving an excellent result for the Class, for  
18 taking on a contingent risk to do so, for the novelty and complexity of this case, and other factors discussed  
19 above.

20 **a) Hours Spent by Plaintiffs’ Counsel Were Reasonable**

21 Applying the first step of the lodestar analysis, Class Counsel have expended at least 387 hours in  
22 this litigation to date for a combined lodestar of at least \$290,537. Hammond Final Decl. ¶ 54. Summary  
23 reports of these hours, and actual billing records, are included in Class Counsel’s declarations for the  
24 Court’s review. Hammond Final Decl. ¶¶ 12-23. The hours spent by Plaintiffs’ Counsel were “reasonably  
25 necessary to the conduct of the litigation.” *Robertson v. Fleetwood Travel Trailers of Cal., Inc.*, 144 Cal.  
26 App. 4th 785, 818 (2006). Plaintiffs’ Counsel’s time litigating this case includes interviewing Plaintiffs  
27 and putative class members, drafting and filing the initial Complaint, First Amended Complaint, Motion  
28 for Leave to File First Amended Complaint, PAGA Notice, amended PAGA Notice and PAGA Cure  
dispute, drafting and responding to formal discovery including Defendant’s deposition notices, and  
drafting a Motion for Protective Order; analyzing data provided by Defendant in informal discovery;  
drafting a detailed mediation brief, attending a full-day mediation, negotiating the settlement, drafting the

1 settlement agreement, obtaining preliminary approval of class action settlement papers, overseeing the  
2 class notice process, and planning and strategizing throughout the case. Hammond Final Decl. ¶¶ 12-23.

3 Plaintiffs' Counsel made every effort to staff and litigate this case efficiently by coordinating the  
4 work of attorneys, minimizing duplication, and assigning tasks in a cost-efficient manner based on the  
5 timekeepers' experience levels and talents. Hammond Final Decl. ¶¶ 44-45. Finally, Plaintiffs avoided  
6 the need for extensive litigation by successfully settling soon after filing the lawsuit.

7 **b) Plaintiffs' Counsel's Hourly Rates Are Reasonable**

8 Plaintiffs' Counsel requested hourly rates are shown in the tables immediately below:

| Attorney        | Position  | Admission | Rate  | Hours        | Fees (Lodestar)     |
|-----------------|-----------|-----------|-------|--------------|---------------------|
| Julian Hammond  | Principal | 2000      | \$925 | 61.8         | \$57,165.00         |
| Polina Brandler | Associate | 2010      | \$725 | 178.9        | \$134,175.00        |
| Ari Cherniak    | Associate | 2011      | \$650 | 108.7        | \$70,655.00         |
| Arie Michelson  | Attorney  | 2001      | \$750 | 4.7          | \$3,642.50          |
| Adrian Barnes   | Counsel   | 2007      | \$775 | 33.2         | \$24,900.00         |
| <b>Total</b>    |           |           |       | <b>387.3</b> | <b>\$290,537.50</b> |

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13 The rates claimed are reasonable if they are “within the range of reasonable rates charged by and  
14 judicially awarded comparable attorneys for comparable work.” *Children’s Hosp. & Med. Ctr. v. Bonta*,  
15 97 Cal. App 4th 740, 783 (2007). Courts consider the “prevailing market rates in the relevant  
16 community,” as well as the “experience, skill, and reputation of the attorney requesting fees.” *Heritage*  
17 *Pac. Fin., LLC v. Monroy*, 215 Cal. App 4th 972, 1009 (2013). In complex litigation like class action  
18 employment cases, the appropriate market is that governing rates for attorneys engaged in “equally  
19 complex” matters. *Hensley*, 461 U.S. at 430, n.4.

20 A detailed declaration by an expert on attorneys' fee awards, Richard Pearl, supporting the  
21 reasonableness of HammondLaw's hourly rates, is submitted herewith. The declaration, which Plaintiffs'  
22 Counsel recently filed in another wage and hour class action pending in Alameda County Superior Court,  
23 is supported by detailed exhibits showing the rates currently charged by attorneys in complex litigation in  
24 the Bay Area, as well as rates that have recently been approved as reasonable by Bay Area courts, and  
25 states that Class Counsel's hourly rates are “well within the range of hourly rates charged in 2023 for  
26 comparable services by comparably experienced and qualified attorneys in the San Francisco Bay Area  
27 legal marketplace.” **Exhibit 2** to the Hammond Decl., ¶ 13-14.

28 HammondLaw's slightly lower 2022 hourly rates have been approved by this Court in *Glor v.*  
*iHeart Media + Entertainment*, Case No. 22CV005286 (Alameda County Superior Court) (February 14,

1 2023) ( approving Class Counsel’s hourly rates as reasonable, and within the range of market rates that  
2 attorneys with similar levels of skill, experience and reputation for handling matters of similar  
3 complexity); and other California Courts in *Cassidy v. Keyence Corporation of America*, Case No.  
4 21CV382350 (Santa Clara County Superior Court) (February 8, 2023); *Rodriguez v. River City Bank*,  
5 Case No. 1-13-cv-257676 (Sacramento County Superior Court, October 26, 2022); *Burleigh v. National*  
6 *University*, Case No. MSC21-00939 (Contra Costa County Superior Court, Aug. 26, 2022); *Costa v*  
7 *University of Antelope Valley*, Case No. 21STCV18531 (Los Angeles County Superior Court, August 23,  
8 2022); *Parsons v. La Sierra University*, Case No. CVRI2000104 (Riverside County Superior Court, May  
9 19, 2022); *Chindamo v. Chapman University*, Case No. 30-2020-01147814-CU-OE-CXC (Orange County  
10 Superior Court, April 15, 2022); *Sweetland-Gil v. University of the Pacific*, Case No. STK-CV-UOE-  
11 2019-0014682 (San Joaquin County Superior Court, March 4, 2022); and *Senese v. University of San*  
12 *Diego*, Case No. 37-2019-00047124-CU-OE-CTL (San Diego County Superior Court, February 8, 2022).  
Hammond Final Decl. ¶ 50. HammondLaw’s 2021 and 2021 rates have also been approved by the Courts  
listed at Hammond Final Decl. ¶ 51.

13 **c) A Multiplier is Appropriate**

14 “After making the lodestar calculation, the court may augment or diminish that amount based on  
15 a number of factors specific to the case, including the novelty and difficulty of the issues, the attorneys’  
16 skill in presenting the issues, the extent to which the case precluded the attorneys from accepting other  
17 work, and the contingent nature of the work.” *Ctr. for Biological Diversity v. County of San Bernardino*,  
18 188 Cal. App 4th 603, 616 (2010). Class Counsel’s current lodestar is \$290,537 and the fees request  
19 represents a multiplier of 1.17, although that multiplier will be reduced by the conclusion of the case.  
Hammond Final Decl. ¶ 55.

20 This is well within the range of multipliers approved by California Courts of Appeal. See, e.g.,  
21 *Wershba*, 91 Cal App. 4th at 255 (2001) (lodestar “multipliers can range from 2 to 4 or even higher”);  
22 *Laffitte*, 1 Cal. 5th at 480, 488 (upholding a multiplier, on crosscheck, of between 2.03 and 2.13 which the  
23 trial court awarded based on “the novelty and difficulty of the questions involved, the skill displayed in  
24 presenting them, the extent to which the litigation precluded other employment by the attorneys and the  
25 inherent risk whenever there is a fee award that is contingent.”). Superior Courts regularly approve  
26 lodestar cross-checks in this range in cases handled by Class Counsel, including this Court in *Glor v iHeart*  
27 *Media + Entertainment*, Case No. 22CV005286 (Alameda County Superior Court) (February 14, 2023)  
28 (finding the fees request justified under the lodestar/multiplier analysis and awarding a 2.12 multiplier);

1 and other Courts in *Normand v. Loyola Marymount University* (Los Angeles County Superior Court)  
2 (September 9, 2021) (awarding a 3.53 multiplier because “counsel should not be disadvantaged for  
3 efficient litigation tactics and that lowering the percentage-of-gross fee award could encourage inefficient  
4 litigation practices”); *Harris-Foster v. University of Phoenix*, Case No. RG19019028 (Cal. Super. Ct.  
5 Alameda Cnty., March 17, 2021) (awarding a 3.05 multiplier in an adjunct case where plaintiffs faced risk  
6 from an arbitration agreement with a class action waiver); *Burleigh v. Brandman University*, Case No. 30-  
7 2020-01172801-CU-OE-CXC (Orange County Superior Court, January 27, 2023) (awarding a 2.1  
8 multiplier in an adjunct case where plaintiffs faced risk from an arbitration agreement with a class action  
9 waiver); *Chindamo v. Chapman University*, Case No. 30-2020-01147814-CU-OE-CXC (Orange County  
10 Superior Court) (April 15, 2022) (awarding a 1.92 multiplier in an adjunct case where plaintiffs faced risk  
11 from an arbitration agreement with a class action waiver). Hammond Final Decl. ¶ 56.

12 ***i. Novelty and Complexity of the Case***

13 This case presented novel and complex issues, involving legal issues that have not been  
14 conclusively addressed by an appellate court. Plaintiffs’ theory that a compensation scheme like HNU’s  
15 (i.e., per course pay where a university reserves the right to reduce compensation based on low enrollment)  
16 constitutes a piece-rate rather than a salary and that Part-Time Faculty are non-exempt has never been  
17 decided by any California courts. Hammond Final Decl. ¶¶ 62-63. Moreover, there was an underlying risk  
18 of the potential enforcement of arbitration agreements between Defendant and Plaintiffs, or the potential  
19 for Plaintiffs’ claims to be preempted under the LMRA. *Id.* ¶¶ 59-61. The uncertainties of continued  
20 litigation presented a very real risk that Plaintiffs would be unable to litigate their class claims at all and  
21 put CMs at a risk of recovering nothing. Despite these risks, Class Counsel resolved the matter on very  
22 favorable terms to the Class, in the face of significant risk of non-recovery.

23 ***ii. Excellent Result Achieved***

24 The results achieved for the Class are excellent with average and high payments of \$387.22 and  
25 \$2,181.24 for Part-time Faculty CMs; \$63.45 and \$203.69 for Expense Reimbursement CMs; and \$12.51  
26 and \$40.06. The Settlement also brings non-monetary relief insofar as following the filing of the  
27 Complaint, Defendant changed its labor policies and practices to bring them into conformance with  
28 California labor law. Hammond Final Decl. ¶¶ 72-74.

The rights vindicated in this case are core statutory rights to be paid for all hours worked, to receive  
mandated paid rest breaks, to be provided with accurate, itemized wage statements, and to be reimbursed  
for home office expenses.

1                    ***iii.      Preclusion of Other Employment***

2                    Third, the litigation resulted in Class Counsel foregoing other employment. *Serrano*, 20 Cal. 3d at  
3 49 (finding that one of the factors that weighs in favor of granting a request for attorneys’ fees is the “the  
4 extent to which the nature of the litigation precluded other employment by the attorneys”). Because Class  
5 Counsel must maintain appropriate attorney and staff-to-case ratios, taking this case required that Class  
6 Counsel turn away other potential fee-generating work. Hammond Final Decl. ¶ 75.

7                    ***iv.      Contingency Risk***

8                    An application of a multiplier is appropriate to compensate Plaintiffs’ Counsel for the significant  
9 contingency risk assumed by taking on this litigation. *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th  
10 553, 580 (2004) (“[A] lawyer who both bears the risk of not being paid and provides legal services is not  
11 receiving the fair market value of his work if he is paid only for the second of these functions.”); *Ketchum*,  
12 24 Cal. 4th at 1122 (“[A] contingent fee contract, since it involves a gamble on the result, may properly  
13 provide for a larger compensation than would otherwise be reasonable.”).

14                    As stated above, Plaintiffs’ Counsel have expended over 387 hours, all as-yet uncompensated, and  
15 have expended over \$19,000 in out-of-pocket expenses, without any certainty of receiving payment.  
16 Hammond Final Decl. ¶ 58. There was a significant risk that Plaintiffs’ Counsel would be paid nothing  
17 especially in light of Defendant’s arbitration agreements with Plaintiffs that, if enforced by the Court,  
18 could have rendered their class claims worthless. *Id.* ¶ 59. In addition, there was a risk that the Adjunct  
19 claims would be dismissed based on Defendant’s LMRA preemption argument. *Id.* ¶¶ 60-61. Courts  
20 routinely approve similar multipliers based on contingency risk. *Id.* ¶ 63; *See, e.g., Taylor v. Nabors*  
*Drilling USA, LP*, 222 Cal. App. 4th 1228, 1252 (2014) (contingency risk and deferral in payment alone  
21 supported multiplier of 1.4 to 1.5); *Ridgeway v Walmart Stores Inc.*, 269 F. Supp. 3d 975, 996-97 (N.D.  
22 Cal. 2017) (contingency risk was among factors supporting 2.0 multiplier).

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

24                    Class Counsel has incurred \$19,181.19 in litigation costs, which is \$818.81 less than the \$20,000  
25 for costs stated in the Court-approved Class Notice. Hammond Final Decl. ¶ 87. The difference will be  
26 added to the Net Settlement and increase each CMs settlement share. *Id.* These costs include filing and  
27 service costs, research costs, survey costs, witness location costs, technology costs, and mediation costs.  
28 Hammond Final Decl. ¶¶ 76-86. Thus, Class Counsel’s requested litigation costs are reasonable and should  
be approved.

1 **IV. THE CLASS REPRESENTATIVES' SERVICE AWARDS ARE PROPER**

2 The requested service award of \$5,000 to be paid to each Plaintiff is reasonable and should be  
3 approved because class representatives are eligible for reasonable participation payments to compensate  
4 them for the risks assumed and efforts made on behalf of the Class. *See Staton v. Boeing Co.*, 327 F.3d  
5 938, 976 (9th Cir. 2003). Courts routinely approve enhancement awards, including in amounts equal to or  
6 greater than that requested here. *See, e.g., In re Cellphone Fee Termination Cases*, 186 Cal. App. 4th 1380,  
7 1393-94 (2010) (approving \$10,000 payment to each class representative in a consumer class action);  
8 *Hillman v. Kaplan Higher Educ.*, No. 34-2017-00208078 (Sacramento County Superior Court, Dec. 7,  
9 2017) (issuing final approval of enhancement award of \$7,500 for class representative in adjunct wage and  
10 hour case).

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

16 First, Plaintiffs have served the Classes well. Their involvement as class representatives was  
17 critical to the success of this litigation and enforcement of California's wage and hour rights. In agreeing  
18 to serve as Class Representatives, Plaintiffs formally agreed to accept the responsibility of representing  
19 the interests of all Class Members. Plaintiffs' participation and assistance was critical to the success of  
20 this litigation and the enforcement of Labor Code protections. Without their commitment to come forward  
21 and serve as the Class Representative, this litigation, which enforces the protections of the California  
22 Labor Code, would not have been brought. This Settlement, in which Plaintiffs played a critical role,  
23 directly furthers the public policy underlying the California Labor Code by requiring Defendant to fully  
24 compensate its employees for all hours worked, provide mandated breaks, reimburse necessary business  
25 expenses, and by putting other employers on notice that they must comply with these statutory  
26 requirements. Plaintiff has thus advanced California's public policy goal of enforcing wage and hour laws.  
27 *See Sav-On Drug Stores, Inc. v. Super. Ct.*, 34 Cal. 4th 319, 340 (2004).

28 Second, as discussed above, this litigation resulted in substantial monetary and non-monetary relief  
to the Class. Hammond Final Decl. ¶¶ 68, 72-74.

Third, the service awards are appropriate to compensate Plaintiffs for the substantial time and effort  
they each expended in this litigation. In agreeing to serve as Class Representatives, Plaintiffs formally



1 accepted the responsibilities of representing the interests of all Class Members. Plaintiffs Castillo spent  
2 13 to 14 hours assisting in the litigation of this case and Plaintiff Bean spent approximately 9 hours  
3 assisting in the litigation of this case. *See* Declaration of Charles Castillo and Declaration of Deidre Bean,  
4 filed herewith.

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

12 Furthermore, Plaintiffs are entering into a general release of claims against the Released Parties,  
13 which is much broader than the targeted release of claims being given by the Class Members. SA § 16.5.  
14 In view of the foregoing, the \$5,000 enhancement award to each Plaintiff is reasonable and should be  
15 approved.

16 **V. CONCLUSION**

17 Plaintiffs respectfully request that the Court award attorneys’ fees in the amount of \$339,745.48  
18 litigation costs in the amount of \$19,181.19, and Enhancement Awards of \$5,000 to each Plaintiff,  
19 pursuant to the terms of the Settlement.

20 Dated: April 10, 2023

21 Respectfully submitted,

22 s/ Julian Hammond  
23 Julian Hammond  
24 *Attorneys for Plaintiffs and the Putative Classes*