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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

CHARLES CASTILLO and DEIDRE BEAN,
individually and on behalf of all others similarly
situated,

Plaintiffs,

vs.

HOLY NAMES UNIVERSITY, a California
Non-Profit Corporation,

Defendant.

CASE NO. HG21097245

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR ORDER
GRANTING FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: May 2, 2023

Time: 3:00 p.m.

Dept. 23

Reservation ID: 21097245-001

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I. INTRODUCTION

Plaintiffs Charles Castillo and Deidre Bean (“Plaintiffs”) seeks final approval of a non-reversionary \$970,701.38¹ settlement of their wage and hour class claims against Holy Names University (“Defendant” or “HNU”) on behalf of 1,197 Settlement Class Members including (1) 453 “Part-time Faculty Class Members” who worked for Defendant as part-time instructors in California between April 16, 2017 and October 4, 2022 (“Class Period”); (2) 561 “Expense Reimbursement Class Members” other than Part-time Faculty Class Members who were required to work from home during the COVID-19 pandemic and allegedly did not receive proper expense reimbursement for Defendant between March 16, 2020 and October 4, 2022 (“Expense Reimbursement Class Period”); and (3) 679 “General Class Members” other than Part-time Faculty Class Members employed between April 16, 2022 to October 4, 2022 who received wage statement(s) that did not include the beginning date of each pay period (“General Class Period”). Part-time Faculty CMs, Expense Reimbursement Class Members, and General Class Members are collectively referred to as “Class Members” or “CMs.”

On October 4, 2022, the Court entered an order preliminarily approving the Settlement, concluding that the Settlement was within the range of reasonableness and was the product of good faith, arm’s-length negotiations, and ordered dissemination of Notice to the Class Members. The Class response has been overwhelmingly positive with not a single objection and only four opt outs. Declaration of Laura Singh Regarding Notice and Settlement Administration (“Singh Decl.”), filed herewith, ¶¶ 6-7.

Prior to sending out the Class Notice, Defendant provided class data to the Settlement Administrator which included more months/ pay periods worked by the Expense and General classes than the months/pay periods that were presented to the Court at preliminary approval. Based on the data provided to the Settlement Administrator, the value of each month worked by Expenses Class decreased by \$6.89 (from \$26.92 to \$20.03); and the value of each inaccurate wage statement issued to the General Class decreased by \$12.93 (from \$32.17 to \$19.24). Declaration of Julian Hammond in Support of Plaintiffs’ Motion for Order Granting Final Approval of Class Action Settlement and for Attorneys’ Fees and Costs and Service Award for Class Representatives (“Hammond Final Decl.”), filed herewith, at ¶ 69-70. The Settlement still remains fair, reasonable and adequate for all of the reasons set forth in Plaintiffs’ Motion for Preliminary Approval, and the percentages of the NSA allocated to each class still represent

¹ The Gross Settlement Amount was originally \$875,000. Following preliminary approval, the Part-time Faculty class escalator clause in the Settlement Agreement was triggered, which increased the GSA allocated to the Part-time Class from \$713,125 to \$808,826, and increased the overall Gross Settlement from \$875,000 to \$970,701.38.

1 an excellent result, with average and high payments of \$387.22 and \$2,181.24 for Part-time Faculty CMs;
2 \$63.45 and \$203.69 for Expense Reimbursement CMs; and \$12.51 and \$40.06 for General CMs. Singh
3 Decl. ¶¶ 10-12.

4 In addition to the robust monetary relief, following the filing of Plaintiffs' complaint, HNU
5 overhauled and discontinued the policies challenged in the lawsuit to ensure compliance with the Labor
6 Code. Hammond Final Decl. at ¶¶ 72-74.

7 The overwhelmingly positive reaction of the Class supports the Court's earlier finding that the
8 Settlement is fair, adequate, and reasonable. Accordingly, Plaintiffs respectfully request that the Court
9 grant final approval of the proposed Settlement.

10 II. OVERVIEW OF THE SETTLEMENT

11 The Settlement resolves all claims of Plaintiffs and the proposed Classes alleged in the operative
12 First Amended Complaint. A summary of the Settlement terms is as follows:

13 1. Gross Settlement Amount ("GSA") – HNU will pay a non-reversionary sum of
14 \$970,701.38 to settle all claims alleged in the operative Complaint. SA § 1.14.

15 2. Attorneys' Fees, Costs, and Service Awards – Class Counsel seeks attorneys' fees of up to
16 \$339,745.48 (35% of the GSA); \$19,181.19 to reimburse out-of-pocket litigation costs, and a Service
17 Award of \$5,000 for each Plaintiff. SA §§ 6, 7.

18 3. PAGA Award – The Settlement allocates \$30,000 for the PAGA claim, to be divided 75/25
19 between the LWDA and the Class Members who worked during the PAGA Period. SA § 8.

20 4. Settlement Administration Costs – Settlement Administration Costs are \$15,500. Singh
21 Decl. ¶ 15.

22 5. Net Settlement – Approximately 83.6% of the NSA will be paid to the Part-Time Faculty
23 Class *pro rata* based on the number of pay periods worked by them during the Part-Time Faculty Class
24 Period; approximately 13.7% of the NSA will be paid to the Expense Class *pro rata* based on the number
25 of pay periods worked by them during the Expense Reimbursement Class Period; and approximately 2.7%
26 of the NSA will be paid to the General Class *pro rata* based on the number of pay periods worked by them
27 during the General Class Period. SA §§ 5.1.²

28

29 ² The percentage of the NSA allocated to the Part-Time Faculty Class is slightly higher, and the
30 percentages allocated to the Expense Class and General Class are slightly lower, than the percentages
31 included in the Settlement, due to the increased GSA allocated to the Part-Time Faculty Class.

1 6. Scope of Release and Final Judgment – Settlement CMs will release all claims alleged in
2 the operative First Amended Complaint and arising during the relevant Class Period. SA § 16.2. Named
3 Plaintiffs will give a general release as consideration for their Service Awards. Id. § 16.5.

4 **III. OVERVIEW OF NOTICE ADMINISTRATION**

5 ***A. The Class Received Adequate Notice of the Settlement***

6 Following the Preliminary Approval Order, Defendant provided the Settlement Administrator with
7 the names, last known addresses, and relevant data for the 1,201 Class Members. Singh Decl. ¶ 3. After
8 skip tracing and updating mailing addresses for Class Members, the Settlement Administrator mailed the
9 Court-approved Notice via first-class mail to the Class. Id. ¶ 4. After the initial mailing, 147 Notice
10 Packets were returned. Id. at ¶ 5. The Settlement Administrator performed an advanced address search
11 on those Notice Packets that were returned without a forwarding address and re-mailed them. Ultimately,
12 only 9 out of 1,201 Notices were undeliverable, meaning Notice was successfully mailed to over 99.99%
13 of the Class. Id.; Federal Judicial Center, *Judge’s Class Action Notice and Claims Process Checklist and*
14 *Plain Language Guide 3* (2010) (“The lynchpin in an objective determination of the adequacy of a
15 proposed notice effort is whether all the notice efforts together will reach a high percentage of the class.
16 It is reasonable to reach between 70-95%.”).

17 ***B. Four Class Members Opted Out and None Objected***

18 The Notice provided Class Members with the procedural requirements for objecting to or opting
19 out of the Settlement. Singh Decl., Ex. A (Notice). The Response Deadline was March 24, 2023. To date,
20 no CMs have objected and only four have opted out. Id. at ¶¶ 5-7.

21 ***C. No Disputes to Employment History***

22 The Notice provided Class Members with directions on how to dispute the number of the pay
23 periods they worked, as reflected in the Class Notice, and the deadline to do so. The Settlement
24 Administrator received no disputes. Singh Decl. ¶ 6.

25 **IV. THE COURT SHOULD GRANT FINAL APPROVAL**

26 ***A. Legal Standard for Granting Final Approval***

27 Court approval is required for the settlement of a class action. See Cal. Rule of Court 3.769. The
28 Court has broad discretion in reviewing a proposed class settlement for approval, which may be reversed
only upon a strong showing of clear abuse of discretion. *Wershba v. Apple Computer, Inc.*, 91 Cal. App.
4th 224, 234-35 (2001); *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 127-28 (2008).

1 This Court now must make a final determination of whether the proposed Settlement Agreement
2 is fair, reasonable, and adequate. *See Officers for Justice v. Civil Serv. Comm'n. of the City & Cnty. of*
3 *S.F.*, 688 F.2d 615, 625 (9th Cir. 1982); Manual for Complex Litigation (4th ed. 2004) (hereinafter
4 “Manual”) § 21.61 at 308. Final approval is warranted when “the interests of the class are better served
5 by the settlement than by further litigation.” Manual § 21.61 at 309. The law favors settlement,
6 particularly in class actions where substantial resources can be conserved by avoiding the time, cost, and
7 rigors of formal litigation. *See, e.g., 7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal.
8 App. 4th 1135, 1151 (2000) (“7-11”); *Neary v. Regents of Univ. of Cal.*, 3 Cal. 4th 273, 277-281 (1992);
9 *Lealao v. Beneficial Cal., Inc.*, 82 Cal. App. 4th 19, 52 (2000) (California Supreme Court “has placed an
10 extraordinarily high value on settlement”); 4 Newberg on Class Actions (4th ed. 2002) § 11.41.

11 In analyzing whether a settlement is fair and reasonable, courts consider a number of factors,
12 including: (1) the amount offered in settlement; (2) the risk, expense, complexity, and likely duration of
13 further class action litigation; (3) the extent of discovery completed and the stage of the proceedings; (4)
14 the experience and view of counsel, and (5) the reaction of the Class to the proposed settlement. *Dunk v.*
15 *Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996); *Kullar*, 168 Cal. App. 4th at 133 (court must be
16 provided with information about nature and magnitude of claims and the basis for concluding that
17 consideration being paid represents reasonable compromise); *Clark v. Am. Residential Services, LLC*, 175
18 Cal. App. 4th 785, 790, 802-03 (2009).

19 The Court’s role is limited to making a reasoned judgment that the proposed class settlement
20 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties,
21 and that the settlement as a whole is fair, reasonable, and adequate to the Class. *See* Manual § 21.61 at
22 309. “[T]he settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits.”
23 *7-11*, 85 Cal. App. 4th at 1145 (citation omitted). Rather, “[d]ue regard should be given to what is
24 otherwise a private consensual agreement between the parties.” *Dunk*, 48 Cal. App. 4th at 1801.

25 ***B. The Settlement Terms Are Presumptively Fair Based on the Settlement Process and***
26 ***Overwhelming Support by Class Members***

27 A settlement agreement is presumptively fair when it is (1) the product of arm’s-length bargaining;
28 (2) supported by sufficient investigation or discovery to allow assessment of plaintiff’s claims; (3)
supported by experienced counsel; and (4) subject to only a small percentage of objections. *See Dunk*, 48
Cal. App. 4th at 1802; *7-11*, 85 Cal. App. 4th at 1146. As described in detail in the preliminary approval
papers filed on August 9, 2021, this Settlement satisfies these factors. The settlement, therefore, is
presumptively fair and reasonable.

1 *First*, the settlement was reached after a full-day mediation led by experienced and highly
2 respected mediator Lou Marlin. Hammond Final Decl. at ¶ 20.

3 *Second*, Class Counsel engaged in substantial investigation and informal discovery prior to
4 participating in mediation. Defendant produced highly relevant class data and documents including: (a)
5 class sizes; (b) Plaintiffs’ personnel files; (c) course data for Fall 2016 through Fall 2021; (d) Employee
6 Handbook, Faculty Handbook, and Faculty Guidebook; (e) academic calendars; (f) HNU’s expense
7 reimbursement policy; and (g) an exemplar 2022 adjunct employment contract. Hammond Final Decl. at
8 ¶ 17. Plaintiffs’ counsel conducted their own investigation and gathered additional documents and
9 information, including the CBA applicable to part-time adjunct instructors (effective January 2018 to
10 June 30, 2020), pre-Fall 2021 Part-Time Faculty Contracts, sample of wage statements, and other
11 documents including academic calendars, course schedules, and communications regarding HNU’s
12 directive to its employees to work from home during the COVID-19 pandemic. *Id.* Plaintiffs then
13 performed a detailed analysis of the documents and data produced by Defendant and gathered by Plaintiffs,
14 reviewed survey responses received from Part-Time CMs and compiled summaries of the survey results
15 for inclusion in the mediation brief, and drafted a detailed mediation brief. *Id.* at ¶¶ 17-18.

16 *Third*, Class Counsel is experienced in class action litigation having been approved as adequate
17 counsel or co-class counsel in numerous employment and consumer class actions. Hammond Final Decl.
18 at ¶¶ 26-29 and **Exhibit 1**. HammondLaw is particularly experienced in cases brought on behalf of part-
19 time adjunct faculty in California, having negotiated class action settlements on behalf of adjunct
20 instructors in over two dozen cases that have been finally approved, and having recently litigated one such
21 case all the way through a trial. *Id.* ¶ 29.

22 *Fourth*, as stated above, to date, none of the 1,201 CMs objected to the Settlement and only four
23 have opted out. Singh Decl. ¶¶ 6-7. This is a far better result than in *7-11*, where 1.4% of the Class objected,
24 and where the Court found that “the response of the absent class members to the proposed settlement...was
25 overwhelmingly positive.” 85 Cal. App. 4th at 1152. Further, the fact that 454 of the 1,201 Class Members
26 here consists of sophisticated college instructors makes the “the magnitude of the favorable
27 response...particularly impressive.” *Id.* at 1152-53.

28 The Settlement is thus presumptively fair, reasonable, and adequate, and should be finally
approved.

1 ***C. The Settlement Terms Provide Benefits to the Class That Are Demonstrably Fair,***
2 ***Reasonable and Adequate in Relation to the Potential Benefits and Risks of Further***
3 ***Litigation.***

4 The Court should also grant final approval of the Settlement based on the following factors which
5 evince the fairness, reasonableness, and adequacy of the Settlement: (1) the value of the settlement; (2)
6 the risks inherent in continued litigation; (3) the extent of discovery completed and the stage of the
7 proceedings when settlement was reached; (4) the complexity, expense, and likely duration of the
8 litigation in the absence of settlement; (5) the experience and views of class counsel; and (6) the reaction
9 of the class members. *See Wershba*, 91 Cal. App. 4th 224, 244-45 (2001); *Dunk*, 48 Cal. App. 4th at 1801.

10 **1. The Value of the Settlement Considered Against the Risks in Continued Litigation**

11 The first two elements for determining whether a settlement is fair, reasonable, and adequate are
12 the amount offered in the settlement and the risk, expense, complexity, and likely duration of further class
13 action litigation. Both of these factors support approving the Settlement.

14 The \$970,701 Gross Settlement Amount, of which approximately \$556,274.70 will be distributed
15 to the Classes, provides CMs with very meaningful financial relief. Singh Decl. ¶ 9. 453 of the 454 Part-
16 Time Faculty Class Members will participate in this Settlement, with an average payment of \$387.22 and
17 \$2,181.24; 561 of the 563 Expense Class Members will participate in this Settlement, with an average
18 share of \$63.45 and \$203.69; and 679 of the 682 General Class Members will participate in this Settlement,
19 with an average share per General Class Member of \$12.51 and \$40.06. *Id.* ¶ 10-12. In addition, CMs who
20 worked during the PAGA Period will also receive their share of the \$7,500 allocated to PAGA Penalties.
21 *Id.* ¶ 14.

22 These are excellent results in light of the significant risk Plaintiffs faced on the issue of the
23 arbitration agreements between Defendant and CMs, which, if enforced, would arguably have led to
24 potentially no recovery for the class on the class claims; the risk posed by Defendant contention that Part-
25 time Faculty Class claims were preempted by § 301 of the LMRA because their resolution would
26 necessarily dependent on the interpretation of the CBA; the risks Plaintiffs faced from Defendant's
27 contention that Part-time Faculty are exempt under Labor Code § 515.7; and Defendant's contentions that
28 class certification would not be granted. Hammond Final Decl. ¶¶ 59-63; 67.

 In addition to the financial relief, the Settlement also brought significant non-monetary benefits.
 In Fall 2021, 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

1 hours worked and hourly rates on their wage statements. HNU also rolled out a new rest policy applicable
2 to CMs. In October 2021, HNU implemented an expense reimbursement policy pursuant to which it
3 began reimbursing Expense Reimbursement CMs \$10/month for internet and \$10/month for cellphone.
4 Finally, HNU corrected the wage statements and ensured that they included beginning, as well as end,
5 dates of each pay period. Hammond Final Decl. ¶ 72-74.

6 If the parties continued to litigate this case, Plaintiffs would have to clear hurdles including a
7 motion to compel arbitration and a motion on the issue of LMRA preemption, other pre-trial dispositive
8 motions, and class certification. Whichever claims cleared these hurdles would potentially face pre-trial
9 dispositive motions, and whichever claims survived such motions would face trial. Regardless of the
10 outcome at trial, the losing party would likely appeal given that some of the central legal issues in this
11 case have not been conclusively addressed by an appellate court. This process would take years to resolve.
12 Instead, this settlement provides an early resolution of a dispute, and CMs will recover in the relatively
13 near future if the settlement is finally approved. Id. ¶ 67.

14 **2. Plaintiffs Conducted Thorough Investigation and Discovery**

15 Plaintiffs conducted thorough investigation, and reviewed and analyzed highly relevant class data
16 provided by Defendant described § IV.B above. Based on the information obtained, Plaintiffs were able
17 to calculate class sizes, number of courses taught by Part-Time Faculty CMs, number of classes that were
18 at least 3.5 hours long, the average hourly rate paid to Part-Time Faculty CMs, number of wage statements
19 issued to them; to ascertain the remote work expenses incurred by Part-time Faculty CMs and Expense
20 Reimbursement CMs; and the inaccurate wage statements issued to General CMs. Hammond Final Decl.
21 ¶ 18.

22 Plaintiffs prepared a detailed damages analysis to identify the range of settlement figures for the
23 claims alleged. Id. Thus, Plaintiffs were adequately informed to make the decision to settle this case on
24 the proposed terms. Further, the Settlement was reached through arm's-length settlement negotiations
25 after a full-day mediation with experienced mediator, and only after a mediator's proposal. Hammond
26 Final Decl. ¶ 21.

27 **3. Class Counsel's Experience and Views Favor Final Approval**

28 As discussed above, Class Counsel is highly experienced and has a successful track record in
handling wage and hour class actions, including those brought on behalf of adjunct instructors for unpaid
wages. Hammond Final Decl. ¶ 26-29. Class Counsel believes the Settlement is fair, reasonable, and
adequate, and in the best interests of the Class. Id. ¶ 71. The endorsement of qualified and well-informed

1 counsel regarding the settlement as fair is entitled to significant weight in the final approval
2 process. *See Dunk*, 48 Cal. App. 4th at 1802.

3 **4. Class Members’ Positive Reaction to the Settlement Favors Settlement**

4 The final element of a fair, reasonable, and adequate settlement is a positive reaction by the Class
5 to the settlement’s terms. The Class’ overwhelmingly positive response to the Settlement here strongly
6 favors final approval. As discussed above, to date, none of the 1,201 CMs objected and only four have
7 opted out. Singh Decl. ¶¶ 6-7. *See, e.g., 7-11*, 85 Cal. App. 4th at 1152-53 (1.5% opt-out rate and 0.1%
8 objection rate supported final approval); *Nat’l Rural Telecomm. Cooperative v. DIRECTV, Inc.*, 221
9 F.R.D. 523, 529 (C.D. Cal. 2004) (“[T]he absence of a large number of objections to a proposed class
10 action settlement raises a strong presumption that the terms of a proposed class action settlement are
11 favorable to the class members.”). This positive response indicates nearly universal acceptance of the
12 Settlement’s terms by the Class and supports approval of the Settlement.

11 **V. CONCLUSION**

12 Because the Settlement provides benefits that are demonstrably fair in relation to the potential risk
13 and benefits of continued litigation, is supported by a robust evidentiary record, is endorsed by counsel
14 with extensive experience in wage and hour litigation, and is overwhelmingly supported by the Class,
15 Plaintiffs respectfully request that the Court grant final approval of the Settlement as fair, reasonable, and
16 adequate.

17 Dated: April 10, 2023

Respectfully submitted,

18 _____
19 s/ Julian Hammond
20 Julian Hammond
21 *Attorneys for Plaintiffs and the Putative Classes*