

HAMMONDLAW, P.C.  
Julian Hammond (SBN 268489)  
jhammond@hammondlawpc.com  
Polina Brandler (SBN 269086)  
pbrandler@hammondlawpc.com  
Ari Cherniak (SBN 290071)  
acherniak@hammondlawpc.com  
1201 Pacific Ave Suite 600  
Tacoma WA 98402  
(310) 601-6766  
(310) 295-2385 (Fax)

Attorneys for Plaintiff and the Putative Classes

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF RIVERSIDE**

**DEAN PARSONS**, individually and on behalf  
of all others similarly situated,

Plaintiff,

vs.

**LA SIERRA UNIVERSITY**, a California  
Non-Profit Corporation,

Defendant.

Case No. CVRI2000104

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PLAINTIFF'S MOTION FOR FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

Date: May 19, 2022  
Time: 8:30 a.m.  
Dept. S302

## I. INTRODUCTION

Plaintiff Dean Parsons (“Plaintiff”) seeks final approval of the proposed \$578,220<sup>1</sup> non-reversionary class action settlement of state wage and hour claims with Defendant La Sierra University (“Defendant” or “LSU”). The proposed settlement consists of two classes: (1) 381 adjunct lecturers employed by LSU in California (“Adjunct Class Members” or “Adjunct CMs”) from November 12, 2016 through October 15, 2021 (“Adjunct Class Period”); and 739 other LSU employees in California who worked remotely (“Reimbursement Class Members” or “Reimbursement CMs”) from March 4, 2020 through October 15, 2021 (“Reimbursement Class Period”)(collectively, Adjunct CMs and Reimbursement CMs are referred to as “Class Members” or “CMs”).

Despite facing very real risks of losing on some or all claims based on Defendant’s vigorous argument that the First Amendment’s ministerial exception was a complete bar to Plaintiff’s recovery given LSU’s religious mission – a defense that, if litigated, would take years to resolve; other actual and potential defenses to the merits of the case and to class certification; and the risk of litigating during the COVID-19 pandemic, Plaintiff obtained an excellent settlement, with an average payment per Adjunct CM of \$332.93 and the highest payment of \$5,701.41, and a flat \$50.09 payment to each Reimbursement Class Member. *See* Declaration of Erin La Russa Regarding Notice Administration (“La Russa Decl.”), filed herewith, ¶ 19.

The response of the Classes to the Settlement has been overwhelmingly positive. Only 7 Adjunct CMS (out of 388), and only 19 Reimbursement CMs (out of 758) opted out. La Russa Decl. ¶ 13. Only 1 Class Member submitted a valid Objection Form which does not actually challenge the Settlement as unfair and provides no basis for finding the settlement unfair and should be overruled. La Russa Decl. ¶ 14 and **Exhibit E**. Accordingly, Plaintiff respectfully requests that the Court grant final approval of the proposed Settlement.

---

<sup>1</sup> The Settlement Agreement is attached as **Exhibit 1** to the Declaration of Julian Hammond In Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, filed August 11, 2021; and the Amendment to the Class Action Settlement Agreement is attached as **Exhibit 1** to the Supplemental Declaration of Julian Hammond In Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement filed on September 23, 2021 (collectively referred to as the “Settlement Agreement”). The settlement amount was initially \$550,000 with \$8,800 allocated to the 176 Reimbursement Class Members. Following preliminary approval, Defendant identified an additional 582 Reimbursement Class Members which increased the reimbursement class size to 758 members. This triggered the escalator clause in the Settlement Agreement and increased the overall Gross Settlement by \$28,220 to \$578,220.

## II. OVERVIEW OF THE SETTLEMENT

The Settlement resolves all claims of Plaintiff and the proposed Classes alleged in the operative Complaint. The Gross Settlement is \$578,220, and this sum is non-reversionary, meaning the Defendant will be paying the full Settlement amount. SA at § 5.1. LSU will also pay the employer's share of payroll taxes separately from the gross settlement. *Id.* § 9.3. The Net Settlement Amount ("NSA") – the amount remaining of the GSA after deductions of attorneys' fees, costs, enhancement award, settlement administration costs, and PAGA penalties – will total approximately \$330,074.06. La Russa Decl. ¶ 18. From this amount, each Reimbursement CM will receive a flat \$50.09; and the remainder of the NSA will be distributed to the Adjunct Class Members pro rata based on the number of credits they taught during the Adjunct Class Period. SA § 8.1.3-5. The average payment per Adjunct CM is \$332.83, the highest payment is \$5,701.41. La Russa Decl. ¶ 19. These are substantial amounts considering the many risks associated with litigating this case including the ministerial exception, which LSU contended applied and therefore precluded any recovery in this case; and the fact that LSU retroactively reimbursed its employees for remote work expenses and was arguably only liable to the Reimbursement Class for unpaid interest. Declaration of Julian Hammond In Support of Plaintiff's Motion for Final Approval ("Hammond Final Decl."), filed herewith, ¶¶ 58; 62.

## III. OVERVIEW OF NOTICE ADMINISTRATION

### A. The Class Received Adequate Notice of the Settlement

Pursuant to the Preliminary Approval Order, Defendant provided the Settlement Administrator with CMs names, addresses, and (for Adjunct CMs) the number of credits they taught. La Russa Decl. ¶ 5. After updating mailing addresses for Class Members, on November 18, 2021, the Settlement Administrator mailed the Court-approved Notice Packet via first-class mail to the 549 unique Class Members. *Id.* ¶¶ 5-7. After the initial mailing, CPT received a revised data file from Defendant's Counsel which contained information for 582 Reimbursement Class Members who were inadvertently left off of the Class Data List. *Id.* ¶ 8. On February 9, 2022, CPT mailed out 582 additional Notices. *Id.* Altogether, CPT mailed out a total of 1,131 Notices. *Id.* ¶ 10. A total of 31 Notices were returned after mailing. *Id.* ¶¶ 11. CPT performed an advanced address search to obtain updated addresses for the returned packets. Ultimately, only 3 out of 1,131 Notices were undeliverable. *Id.* ¶ 12.

### B. Only 1.8 % of the Adjunct Class and 2.5% of the Reimbursement Class Opted Out

The Notices provided CMs with directions on how to opt out of the Settlement and the deadline to do so. **Exhibits A–C** to La Russa Decl. Only 7 out of 388 Adjuncts (representing 1.8% of the Adjunct

Class) and 19 out of 758 Reimbursement CMs (representing 2.5% of the Reimbursement Class) opted out. *Id.* ¶ 12.

**C. Only One CM Submitted an Objection Form**

The Notices provided CMs with directions on how to object to the Settlement and the deadline to do so. **Exhibits A–C** to La Russa Decl. Only 1 Class Member submitted a valid objection form. *Id.* ¶ 14 & **Exhibit E**. As discussed below, the lone Objection raises no issues as to the fairness of the Settlement or any of its provisions, nor points to any purported deficiencies in the Settlement, and provides no basis upon which this Court can sustain it. The Court should therefore overrule it. Hammond Final Decl. ¶ 76.

**D. Disputes to Employment History**

The Notice provided Adjunct CMs with directions on how to dispute the credits taught information included in their Notice and the deadline to do so. **Exhibits A–C** to La Russa Decl. The Settlement Administrator received three disputes. *Id.* Of these disputes, one was approved, one was partially approved, and one was not approved. *Id.*

**IV. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT**

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

Court approval is required for the settlement of a class action. *See* Cal. Rule of Court 3.769. The 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).

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

In analyzing whether a settlement is fair and reasonable, courts consider a number of factors, including: (1) the amount offered in settlement; (2) the risk, expense, complexity, and likely duration of

1 further class action litigation; (3) the extent of discovery completed and the stage of the proceedings; (4)  
2 the experience and view of counsel, and (5) the reaction of the Class to the proposed settlement. *Dunk*  
3 *v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996); *Kullar*, 168 Cal. App. 4th at 133 (court must be  
4 provided with information about nature and magnitude of claims and the basis for concluding that  
5 consideration being paid represents reasonable compromise); *Clark v. Am. Residential Services, LLC*,  
6 175 Cal. App. 4th 785, 790, 802-03 (2009).

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

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

15 A settlement agreement is presumptively fair when it is (1) the product of arm's-length  
16 bargaining; (2) supported by sufficient investigation or discovery to allow assessment of plaintiff's  
17 claims; (3) supported by experienced counsel; and (4) subject to only a small percentage of objections.  
18 *See Dunk*, 48 Cal. App. 4th at 1802; 7-11, 85 Cal. App. 4th at 1146. As described in detail in the  
19 preliminary approval papers filed on December 16, 2020, this Settlement satisfies the first three factors,  
20 and following completing of the notice process the fourth factor is now also satisfied. The settlement,  
21 therefore, is presumptively fair and reasonable.

22 *First*, the settlement was reached after a full-day mediation led by an experienced and highly  
23 respected mediator Lou Marlin. Hammond Final Decl. ¶ 19. *Second*, Class Counsel engaged in  
24 substantial investigation and informal discovery prior to participating in mediation. Defendant produced  
25 highly relevant class documents and data including: (a) exemplar Contract Teaching Agreements; (b)  
26 Plaintiff's personnel file; (c) exemplar wage statements; (d) LSU's Faculty Handbook; (e) payroll  
27 calendars; (f) a letter to adjuncts announcing their reclassification as hourly non-exempt and new time  
28 reporting and meal and rest break policies; (g) class scheduling data for the Adjunct Class Period,  
including the number of terms taught by Adjunct CMs, the number of courses taught by Adjunct CMs,  
and class length; and (h) LSU's COVID expense reimbursement policy. Plaintiff's Counsel also  
conducted their own investigation, including online surveys of Adjunct CMs regarding their unpaid wage  
claims, and performed a detailed analysis of Defendant's production. *Id.* ¶¶ 17-18.

1 *Third*, Class Counsel is experienced in class action litigation having been approved as adequate  
2 counsel or co-class counsel in over 70 putative wage and hour class actions. Hammond Final Decl. ¶ 28  
3 and **Exhibit 1** thereto. Class Counsel is particularly experienced in cases brought on behalf of adjunct  
4 and other part-time instructors in California, having negotiated class action settlements in 23 such cases  
5 that have been preliminarily or finally approved, and having recently successfully litigated one such case  
6 all the way through trial. *Id.* ¶ 31.

7 Fourth, only 7 of 388 Adjunct CMs, and 19 of 782 Reimbursement CMs, have opted out; and  
8 only 1 Class Member submitted a valid objection. These are far smaller percentages than in *7-11*, where  
9 1.4% of the Class objected, and where the Court found that “the response of the absent class members to  
10 the proposed settlement...was overwhelmingly positive.” Further, the fact that the Adjunct Class consists  
11 of sophisticated college instructors makes the “the magnitude of the favorable response...particularly  
12 impressive.” *7-11*, 85 Cal. App. 4th at 1152-53. The Settlement is thus presumptively fair, reasonable,  
13 and adequate, and should be finally approved.

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

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

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

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

27 The Gross Settlement Amount is \$578,220, of which approximately \$330,074.06 will be  
28 distributed to the Classes. La Russa Decl. ¶ 18. Over 98% of the Adjunct CMs will participate in this  
Settlement, with an average net payment per Adjunct of \$332.83 and the highest payment of \$5,701.41.  
Over 97% of the Reimbursement Class will participate in this Settlement and will receive a flat \$50.09  
each. *Id.* ¶ 19.

1 This is an excellent result for Adjuncts when considering the GSA allocated to their claims  
2 provides 55% of Defendant's estimated realistic exposure (excluding PAGA penalties). Hammond Final  
3 Decl. ¶ 59. The risks Plaintiff faced on his unpaid wage claims include LSU's defenses that (a) Adjuncts  
4 were salaried non-exempt employees; (b) the hours worked before the start of the Contracts were included  
5 in the course pay and there were no unpaid wages; (c) Adjuncts were never discharged; (d) LSU's actions  
6 were not willful; (e) LSU acted in good faith and thus did not "knowingly and intentionally" fail to  
7 provide compliant wage statements; (f) Adjuncts were authorized and permitted paid off-duty rest breaks  
8 as non-exempt salaried employees; (g) Adjuncts were permitted to and regularly did take compliant meal  
9 breaks; (h) Adjuncts were free and able to seek reimbursement for expenses incurred for remote work;  
10 and (g) Plaintiff's claims are altogether barred by the ministerial exception. *Id.* ¶ 60.

11 This is also an excellent result for Reimbursement CMs when considering the GSA allocated to  
12 those claims represents more than 100% of Defendant's estimated exposure on their claims (excluding  
13 PAGA penalties). Hammond Final Decl. ¶ 61.

14 Had the parties continued to litigate, Plaintiff faced the risk of losing completely on the ministerial  
15 exception defense; or, at the very least, losing at the class certification stage based on the argument that  
16 the various factors the Supreme Court looks to when deciding whether the ministerial exception applies  
17 raise a host of individual issues that would need to be resolved on an employee by employee basis.  
18 Assuming Plaintiff's claims proceeded to trial, the losing party would likely appeal, given that some of  
19 the central legal issues in this case have not been conclusively addressed by an appellate court. Hammond  
20 Final Decl. ¶ 57-58. This process would take years to resolve under normal circumstances, and even  
21 longer as a result of the Covid-19 shutdown. *Id.* Instead, this settlement provides an early resolution of  
22 a dispute, and CMs will obtain a recovery in the relatively near future if the settlement is finally approved.

23 In addition, CMs have benefited from changes LSU has made to its compensation practices. In  
24 Fall 2020, LSU reclassified Adjunct CMs as hourly non-exempt employees. LSU also began tracking  
25 adjunct instructors' hours and including entries for total hours worked and hourly rates on their wage  
26 statements. LSU also asked Adjunct CMs to track hours worked the week before classes and the week  
27 after finals and paid for these hours. *Id.* ¶ 62. In January 2021, LSU introduced a COVID Temporary  
28 Emergency Reimbursement under which it retroactively reimbursed CMs for their expenses incurred in  
working from home during the COVID pandemic, and has continued reimbursing CMs since then. *Id.*

The significant and immediate relief provided by this Settlement justifies final approval, and the  
appropriate discounts Plaintiff has taken from the maximum value in negotiating the settlement are  
commensurate with the risks presented by Defendant's defenses and the inherent uncertainties of

continued litigation.

**2. Plaintiff Conducted Thorough Investigation and Discovery**

Plaintiff conducted a thorough investigation, including reviewing and analyzing highly relevant class data provided by Defendant and conducting an online survey. Hammond Final Decl. ¶¶ 16-19. Based on the information obtained, Plaintiff was able to ascertain class sizes, number of courses and classes taught by Adjunct CMs, the number of wage statements issued to them, their average hourly rate and average daily rate, number of classes that were 3.5 hours or 5 hours long, and other relevant data. *Id.* ¶ 17. Plaintiff then prepared a detailed damages analysis. *Id.* Thus, Plaintiff was adequately informed to make the decision to settle this case on the proposed terms. Further, the Settlement was reached through arm's-length settlement negotiations after a full-day mediation with experienced mediator Lou Marlin. *Id.* ¶ 19.

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

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 and other employees for unpaid wages. Hammond Final Decl. ¶¶ 28-31. Class Counsel believes the Settlement is fair, reasonable, and adequate, and in the best interests of each Class. The endorsement of qualified and well-informed counsel regarding the settlement as fair is entitled to significant weight in the final approval process. *See Dunk*, 48 Cal. App. 4th at 1802. Accordingly, Class Counsel's opinion that the Settlement is fair, reasonable, and adequate; that it is in the best interests of each class, weighs in favor of final approval.

**4. Class Members' Positive Reaction to the Settlement Favors Approval**

The final element of a fair, reasonable, and adequate settlement is a positive reaction by the Class to the settlement's terms. The overwhelming positive response of the Classes to the Settlement here strongly favors final approval. As discussed above, only 7 Adjuncts (out of 388), and only 19 Reimbursement CMs (out of 782), have opted out. La Russa Decl. ¶ 16-17. Only one Class Member has submitted a valid objection form. *Id.* ¶ 14; *see 7-11*, 85 Cal. App. 4th at 1152-53 (1.5% opt-out rate and 0.1% objection rate supported final approval); *Nat'l Rural Telecomm. Cooperative v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) ("[T]he absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class action settlement are favorable to the class members."). This positive response indicates nearly universal acceptance of the Settlement's terms by the Classes and supports approval of the Settlement.



1                   **5.        The Court Should Overrule the Lone Objection**

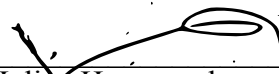
2           The lone “Objection” does not challenge the fairness or adequacy of the Settlement, and does not  
3 address the Settlement at all. *See* La Russa Decl., **Exhibit E** (stating in part, “I don’t agree with California  
4 law in the method of clocking hours ...”). It merely disagrees with California wage and hour laws, and  
5 provides no basis for the Court to rule on. Therefore, it should be overruled.

6                                   **V.       CONCLUSION**

7           Because the Settlement provides benefits that are demonstrably fair in relation to the risks of  
8 continued litigation, is supported by a robust evidentiary record, is endorsed by counsel with extensive  
9 experience in wage and hour litigation, and is overwhelmingly supported by the Classes, Plaintiff  
10 respectfully requests that the Court grant final approval of the Settlement as fair, reasonable, and  
11 adequate.

12 Dated: April 26, 2022

Respectfully Submitted,

13   
14 \_\_\_\_\_  
15 Julian Hammond  
16 Attorney for Plaintiff and the Putative Classes  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28