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**SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

**COUNTY OF ORANGE**

**LARISSA MARANTZ** and **MORGHAN GILL**, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

**LAGUNA COLLEGE OF ART AND DESIGN,** a California Non-Profit Corporation,

Defendant.

CASE NO. 30-2021-01194814-CU-OE-CXC

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

Date: August 26, 2022
Time: 9:00 a.m.
Dept. CX104
Reservation No. 73808713

I, Julian Hammond, declare as follows:

## I. INTRODUCTION

1. I am over the age of 18 and have personal knowledge of the facts set forth in this declaration and could and would testify competently to them.

2. I am a member in good standing of the Bar of the State of California. I am licensed to practice before all courts in the State of California.[1]

3. I am the founding shareholder of the law firm HammondLaw, P.C. ("HammondLaw" or "Class Counsel") and counsel for the named Plaintiffs Larissa Marantz and Morghan Gill ("Plaintiffs") and two classes: (1) 295 "Adjunct Class Members" who were employed by Laguna College of Art & Design ("LCAD" or "Defendant") in California as part-time faculty at any time during the period from April 9, 2017 to February 23, 2022 (the "Adjunct Class Period"); and (2) 191 "Reimbursement Class Members" who are all current and former employees of Defendant other than Adjunct Class Members employed by Defendant in California during the period from March 23, 2020 to February 23, 2022 (the "Reimbursement Class Period") and who worked remotely. (Adjunct Class Members and Reimbursement Class Members are collectively referred to as "Class Members" or "CMs").

4. I have no knowledge of the existence of any conflicting interests between my firm and any of its attorneys, on the one hand, and Plaintiffs or any Class Members, on the other.

5. I submit this declaration in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. A copy of the Class Action and PAGA Settlement and Release Agreement ("Settlement Agreement" or "SA") in this matter is attached as Exhibit 1 to the Proposed Order, filed herewith.

## II. ATTORNEY EXPERIENCE

6. HammondLaw has been certified as Class Counsel or Co-Class Counsel over 60 wage and hour class actions, representing tens of thousands of employees, including in the Superior Courts for the Counties of Alameda, Los Angeles, Sacramento, San Diego, San Francisco, Solano, Santa Clara, Monterey, San Joaquin, Placer, Orange, Contra Costa, and San Bernardino, and in federal District Courts in California in diversity jurisdiction cases based on state law, over the last ten years. My firm's resume is attached as **Exhibit 1**.

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

7. I graduated from the University of New South Wales with a Bachelor of Commerce in 1995, from the University of Technology in Sydney with a Bachelor of Law *summa cum laude* in 1999, and from New York University School of Law with a Masters of Law in 2001. I founded HammondLaw in 2010. Since the founding of HammondLaw, I have devoted a substantial percentage of my practice to litigating cases involving wage and hour violations, the bulk of these being class actions. My firm has represented tens of thousands of employees in wage and hour class actions under California law and in California courts.

8. My two associates, Polina Brandler (formerly Polina Pecherskaya) and Ari Cherniak, played an active role in this case. Ms. Brandler is a twelfth-year associate. She received her B.A. in history *cum laude* from the Macaulay Honors College at the City University of New York in 2005, and her J.D. from the Benjamin N. Cardozo School of law in 2009. While in law school, Ms. Brandler was an intern for the Honorable Sandra L. Townes of the Southern District of New York, and was a volunteer for Sanctuary for Families advocating for abused partners and/or spouses seeking orders of protection and/or uncontested divorces. After graduation, she clerked for the Honorable Anita H. Dymant of the Appellate Division of the Los Angeles Superior Court from 2009 to 2012. During her time at HammondLaw, her practice has focused on wage and hour and consumer class actions. Ms. Brandler is admitted to practice law in California and New York.

9. Mr. Cherniak is an eleventh-year associate. He received his B.S. in Philosophy *cum laude* from Towson University in 2007, and his J.D. from Tulane Law School in 2011. While in law school, Mr. Cherniak earned a citation for his extensive pro bono work in the Felony Trial Unit of Baltimore City Office of the Public Defender. Since 2012, Mr. Cherniak's practice has focused on wage and hour and consumer class actions. Mr. Cherniak is admitted to practice law in California, Washington, and Maryland.

10. My experience and my firm's experience in the prosecution and resolution of wage and hour class actions, and particularly wage and hour class actions on behalf of adjunct instructors, was a significant factor in this case proceeding to early mediation and favorable settlement.

**HammondLaw's Experience Representing Adjuncts**

11. This is one of a series of cases brought by HammondLaw, which has been representing adjunct instructors in similar unpaid wage cases since 2016. HammondLaw has represented adjunct instructors and secured court-approved settlements in 23 wage and hour class actions. HammondLaw recently litigated one such case—*Gola v. University of San Francisco,* No. CGC-18-565018 (San Francisco Super. Cty. Ct.)—all the way through trial. These cases challenged a long-standing, industry-

wide practice of classifying adjunct instructors as non-exempt and not paying them for all hours worked. The cases have led to an overhaul of the classification and compensation practices in the industry.

12. Class Counsel's broad collective experience in the prosecution and resolution of wage and hour class action litigation specifically on behalf of California adjunct instructors enabled Counsel to efficiently assess the value of the claims of Class Members and to obtain an efficient settlement.

## III. OVERVIEW OF THE LITIGATION

### A. Procedural History

13. On April 9, 2020, Plaintiff Marantz filed her Complaint alleging that Adjunct CMs were non-exempt employees because they did not earn "a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment" required under the professional exemption, Wage Order No. 4, § 1(A)(3)(a)-(d). Plaintiff Marantz also alleged that Adjuncts were piece-rate workers because LCAD compensated them a set amount of money per Course, which is a form of piece-rate compensation. Therefore, LCAD was required – but failed – (a) to pay wages for all hours worked as required under Labor Code §§ 226.2 and 1194 and IWC Wage Order No. 4-2001 § 4; (b) to authorize and permit paid rest breaks and pay premium pay as required under Labor Code §§ 226.2 and 226.7 and Wage Order No. 4-2001, §§ 4, 12; (c) to provide meal breaks as required under Labor Code § 512 and Wage Order No. 4-2001, § 11; and (d) to issue accurate itemized wage statements in violation of Cal. Labor Code §§ 226(a) and (e) and 226.2(a). Plaintiff Marantz also alleged that LCAD failed (e) to pay compensation due on discharge from employment in violation of Cal. Labor Code §§ 201-203; and (f) to reimburse business expenses in violation of Cal. Labor Code § 2802.

14. Plaintiff Marantz filed a First Amended Complaint on June 28, 2021, adding a PAGA claim for the Labor Code violations alleged her PAGA Notice, attached as **Exhibit 2**.

15. Defendant filed its Answer on August 13, 2021, generally denying the allegations therein and raising forty-seven affirmative defenses, including that Adjunct CMs are subject to binding individual arbitration agreements; that Adjunct CMs were exempt; that Plaintiff's claims are subject to federal preemption at least after August 1, 2018 when the Service Employees International Union's Collective Bargaining Agreement ("CBA") went into effect; that LCAD's failure to pay all wages owed upon discharge was not willful; and that any violation of Labor Code § 226(e) was not knowing and intentional.

16. On July 13, 2022 Plaintiff stipulated to file a Second Amended Complaint adding Morghan Gill as a named plaintiff and class representative and amending the definition of the Adjunct

Class and Reimbursement Class. Defendant filed its Answer to the Second Amended Complaint on July 18, 2022.

**Informal Discovery**

17. Shortly after the filing of the FAC, the parties agreed to engage in informal discovery and attend mediation. LCAD produced extensive documents and data including (a) scheduling data for each semester from Fall 2017 to Spring 2021 including the courses taught by Adjunct CMs; time and date of each class; the start time and end time for each class; and start date and end date of each Adjunct contract; (b) exemplar Teaching Contracts; (c) Plaintiffs' wage statements; (d) Reimbursement policies applicable to Class Members; (e) Collective Bargaining Agreement ("CBA") effective August 1, 2018; (f) class sizes; (g) workweeks worked by the Adjunct Class; and (i) pay period data for the Wage Statement Class Period and for PAGA Period.

18. Plaintiffs also conducted their own investigation and gathered additional documents from LCAD's website and other publicly-available websites including academic calendars, adjunct faculty guidebooks, and LCAD's financial statements. Plaintiffs performed a detailed analysis of the documents and data produced by Defendant and were able to determine the following facts in advance of mediation:

**Defendant's Organization**

19. LCAD is a private, non-profit, college located in Laguna Beach, California. It offers seven undergraduate programs, a post-baccalaureate degree, and three master's degrees. LCAD operates on a semester system with the fall semester running from approximately late-August or early-September to mid-December and the spring semester running from late-January to mid-May.

**Facts Relevant to Adjunct Claims**

20. From the informal discovery and investigation, Plaintiffs ascertained that Defendant employed Adjuncts on a semester-by-semester basis with a new separate contract issued for each semester. (Adjuncts that taught at least eight semesters at LCAD were eligible to receive a two-semester appointments). Prior to each semester, LCAD issued Adjuncts a "Teaching Contract" that included the course name, semester, the number of units in the course, and the flat compensation for teaching that Course. From the start of the Adjunct Class Period until August 31, 2018, the Teaching Contracts incorporated the Faculty Handbook by reference; starting August 31, 2018, the Adjunct Faculty at LCAD unionized and the Teaching Contracts referenced the CBA.

21. Throughout the Adjunct Class Period, Adjunct CMs were paid a flat "per-unit pay" rate for classroom teaching ("Course Rate"). The Course Rate was paid out in equal biweekly installments over the course of a semester. The Teaching Contracts, Faculty Handbook, and CBA all provided that

classes are contingent upon achieving minimum enrollment; if a class was canceled the Adjunct would receive a flat payment plus an additional prorated amount if a class was cancelled after the first session. Plaintiffs believed they would be able to establish that the form of compensation was not a salary because a "salary" is a "predetermined amount that is not subject to reduction based upon the quantity or quality of work" whereas Adjunct compensation was subject to reduction based on enrollment. Further, the more units an Adjunct taught the more he or she was paid. Therefore, Plaintiffs contended that the Course Rate more closely resembled a piece rate.

22. LCAD's policy documents, including its Faculty Handbooks, Teaching Contracts, and CBA, listed duties Adjuncts were required to perform in addition to teaching such as holding office hours; grading papers, exams and assignments; and advising and directing students. Since these duties were completed during the period specified in the Teaching Contract, Plaintiffs concluded that Defendant could reasonably argue they were included in the Course Rate. However, some of the work that Adjuncts were required to perform prior to the start of the semester, and prior to the Teaching Contract start date, including submitting course syllabi, was necessarily not included in the Course Rate, and Plaintiffs alleged this work was therefore unpaid.

23. From the wage statements provided by LCAD, Plaintiffs confirmed that wage statements issued to Adjuncts did not list any hours, hourly rates, or piece rate information.

24. Finally, Plaintiffs alleged that LCAD did not reimburse Adjunct CMs for the books, painting supplies, graphic editor software, and other materials they needed to purchase in order to teach effectively, during the Adjunct Class Period. Plaintiffs also alleged that starting on March 23, 2020, all Class Members were required to work remotely, and incur home-office expenses, but LCAD did not reimburse these expenses. Although LCAD provided a one-time $500 stipend to Adjunct CMs in March 2020, Plaintiffs considered these one-off reimbursements insufficient to fully reimburse the home office expenses incurred by them.

**Mediation**

25. On October 26, 2021, the parties attended a full-day mediation with Lou Marlin, a highly respected mediator. Prior to the mediation, the parties submitted detailed briefs, supported by the documents obtained in informal discovery. After a full day of mediation, and a mediator's proposal, the parties reached agreement on the basic terms of the settlement, and in due course entered into the formal settlement agreement that is now submitted to the Court for approval.

26. At mediation, Plaintiffs were confronted with a number of significant hurdles, including Defendant's arguments that Plaintiffs' class claims are barred by LCAD's arbitration agreement with a class action waiver; and that adjunct class members are exempt employees.

**Arbitration Defense**

27. In its Answer, LCAD contended that the "Court lacks jurisdiction over this Action and the Complaint…as there is a valid, enforceable and mandatory Arbitration Agreement that governs the adjudication of Plaintiff's and/or the putative class members' claims against Defendant. The Arbitration Agreement requires individual arbitration of Plaintiff's claims and thus Plaintiff may not proceed with her claims on behalf of the putative class members." The Arbitration Agreement referenced by LCAD provides:

> To the fullest extent allowed by law, any controversy, claim or dispute between Employee and Employer (and/or any of its affiliates, shareholders, directors, trustees, officers, employees, faculty members, students, volunteers or agents) relating to or arising out of Employee's employment or the cessation of that employment will be submitted to final and binding arbitration in Orange County, California, for determination in accordance with the JAMS Employment Arbitration Rules & Procedures (the "Rules") as the exclusive remedy for such controversy, claim or dispute…The arbitrator may not consolidate more than one party's claims, and may not otherwise preside over any form of a representative or class proceeding.

28. Plaintiffs contended that the CBA explicitly supersedes all prior agreements between CMs and Defendant and does not provide for binding arbitration of any of Plaintiff's claims. The CBA states:

> This Agreement constitutes the sole and entire existing undertaking, understanding and agreement between the parties, after exercise of the full right and opportunity referred to in Section 2 of this Article, and supersedes all prior agreements, commitments and practices, whether oral or written, between the College and the Union and between the College and any of its employees covered by this Agreement

29. Defendant could have contended that, even if the CBA's grievance procedure superseded the arbitration agreement, the Court would find that the arbitration agreement is enforceable to Plaintiffs' pre-CBA class claims (i.e., claims accruing between April 9, 2017 and August 31, 2018 when the CBA became effective) which represents approximately 25% of the Adjunct Class Period.

**Exemption Defense**

30. In its Answer, LCAD contended that "Plaintiff and other members of the putative classes were exempt from minimum wage, overtime requirements, and/or meal and rest break requirements pursuant to the exemptions set forth in the Wage Orders issued by the Industrial Welfare Commission and the Labor Code." This contention could be based either on the argument that Adjuncts were not piece-rate workers but rather salaried professional employees and therefore not entitled to certain

protections of the Labor Code under Wage Order 4-2001 § 1(a)(3); or on Labor Code § 515.7 which provides certain circumstances under which Adjuncts are exempt.

31. As to Defendant's potential contention that Adjuncts were exempt, LCAD could have argued that Adjuncts, as teachers in an accredited university, fell under the "professional employee" exemption of Wage Order 4-2001 § 1(a)(3) and are therefore not subject to California's rest breaks or minimum wage requirements. Further, LCAD could have argued that Adjuncts meet the salary test requirement under Wage Order 4-2001, 1(d) ("a monthly salary equivalent to no less than two (2) times the state minimum wage for full time employment") because compensation can be "pro-rated" for part-time employees – an issue that has not been decided by any appellate court.

32. Plaintiff recognized that the course rate may be found to be a salary because it appeared that Adjuncts did receive a predetermined amount each pay period that was not subject to change within each pay period based on the number of hours Adjuncts taught. However, as stated above, Plaintiffs believed they would be able to establish that the form of compensation was not a salary because a "salary" is a "predetermined amount that is not subject to reduction based upon the quantity or quality of work" whereas Adjunct compensation was subject to reduction based on enrollment. Further, the more units an Adjunct taught the more he or she was paid. Therefore, Plaintiffs contended that the Course Rate more closely resembled a piece rate than a salary. As to Defendant's contention that compensation can be "pro-rated" for part-time employees, Plaintiff's Counsel recently litigated this very issue at a bench trial and won. (Final Statement of Decision in *Gola v. University of San Francisco,* No. CGC-18-565018 (San Francisco Super. Cty. Ct.).

33. Defendant also could have contended that Adjuncts were exempt under Labor Code § 515.7, that provides that Adjuncts employed by private non-profit universities are exempt from Labor Code §§ 226(a)(2), (3), and (9), 510, and 512 if they are paid on a salary basis, and (1) the salary for the course is calculated based on a number of classroom hours (and a minimum classroom hour per rate); or (2) if they are employed under a CBA, and the CBA provides in clear and unambiguous terms that adjunct instructors are professionally exempt.

34. Plaintiffs contended that the Court would not find Labor Code § 515.7 applies to Adjuncts in light of the fact that (a) adjuncts are not paid a salary based on the number of classroom hours but are paid a flat-rate based the number of units taught, as discussed above; and (b) the CBA dated August 1, 2018 does not provide in clear and unambiguous terms that adjunct instructors are professionally exempt. Plaintiffs also contended that even if the Court did apply Labor Code § 515.7 to Adjuncts, it is not

retroactive, and does not apply to claims that accrued prior to Labor Code § 515.7's effective date of September 9, 2020.

**Salary Defense**

35. LCAD could have argued that whether or not Adjuncts are exempt, they were salaried employees, not piece-rate employees, and therefore not entitled to separate and hourly pay for rest breaks or non-teaching tasks under Labor Code § 226.2. LCAD could have argued that Adjuncts were paid a set amount to teach each scheduled course and received the full amount of pay each week regardless of the quantity or quality of the work performed (i.e., even if the Class Member missed a class or ended a class early he or she was still paid). Indeed, the Teaching Contracts provided that Adjuncts were paid on a bi-weekly basis, not per course, and payments were spread evenly across all the pay periods of the semester. LCAD also could have argued that Adjuncts' pay lacked characteristics of a piece-rate system where employees typically produced multiple units or piece per day and can increase their pay by working harder or more efficiently. Therefore, Class Members were salaried, not piece rate, employees, and their salaries covered all work performed, including any time spent performing non-teaching tasks and rest break time and Plaintiffs have no claims under Labor Code § 226.2.

## IV. PLAINTIFFS' DAMAGES ANALYSIS

36. Plaintiffs calculated LCAD's maximum and realistic liability as follows:

**Unpaid Wages – Labor Code §§ 1194 and 226.2**

37. Plaintiffs alleged that the Course Rate only covered work performed during the Teaching Contract, and that any work performed prior to the start date of the Teaching Contract, such as preparing for class prior to the semester, was not covered by the Course Rate, in violation of Labor Code § 226.2 and 1194. Plaintiffs estimated that Adjunct CMs spent an average of 10 hours working before the first day of classes each course. Adjunct CMs taught approximately 1,914 courses between April 8, 2017 and September 15, 2021; and extrapolated out to the end of the Adjunct Class Period for a total of 2,095 courses. The average minimum wage during the Adjunct Class Period was $12.10. Thus, Adjuncts CMs' unpaid wages are (2,095 courses x 10 hours per course x $12.10) which equals $253,442. Interest at 10% per annum adds $77,067 for a total of $330,509.

38. **Class Certification Discount**: Plaintiff applied a minimal 10% discount for the risk for non-certification on the theory that the flat per course/unit rate included all the activities performed prior to the Course, that the amount of time each Adjunct CM spent on pre-Contract work would lead to individualized issues, and because of potentially individualized issues of whether the tasks performed pre-Contract were under LCAD's control. This reduced LCAD's exposure to $297,459.

39. **Merits Discount**: As to the merits, Plaintiff applied a further 50% discount for the risk that CMs' per-course compensation, whether a piece-rate or a salary, included the hours worked before the start of the Contracts because those hours were spent on tasks directly related to the course teaching assignment set out in the Contracts; for a risk that a court would find that Adjuncts are exempt; and for the risk that 10 hours of pre-assignment work was overinflated, given that many courses are taught by Adjuncts who taught the course in previous semesters and therefore have to perform little preparation work prior to the first class. After applying these discounts, for settlement purposes, Plaintiffs calculated LCAD's realistic exposure on the unpaid wage claim as **$148,729.**

**Rest Break Claims – Labor Code §§ 226.2, 226.7**

40. As stated above, Plaintiffs allege that Defendant paid Adjunct CMs a Course Rate which was a form of a piece-rate. Plaintiffs alleged that Defendant did not pay Adjuncts hourly and separately for rest breaks, in violation of Labor Code § 226.2, entitling them to premium pay for each class that was 3.5 hours or longer. Plaintiffs also alleged that Adjuncts were entitled to rest breaks as non-exempt employees but LCAD imposed uniform policies and procedures that impeded them from taking rest breaks during classes that were 3.5 hour or longer, in violation of IWC Wage Order 4-2001 §12.

41. Plaintiffs calculated, based on the course scheduling data, that Adjunct CMs taught approximately 19,308 class sessions that were 3.5 hours or longer between April 8, 2017 and May 15, 2021; Plaintiff extrapolated out to the end of the Adjunct Class Period for a total of 22,854 classes that were 3.5 hours or longer. Plaintiffs calculated Defendant's maximum exposure on this claim, using the hourly rate of $31.43 (which is the hourly rate paid for some non-teaching tasks performed under the CBA), and assuming a 100% violation rate, to be $718,313. Interest at 7% per annum adds $152,897 for a total of $871,210.

42. **Class Certification:** Plaintiffs discounted LCAD's maximum exposure for rest breaks for the risk that their rest break claim would not be certifiable because whether rest breaks were included in the piece rate would depend on each Adjunct's understanding of what the Course Rate covered, and individualized issues would predominate. As to Plaintiffs' claim that Class Members were entitled to rest breaks as non-exempt employees but LCAD imposed uniform policies and procedures that impeded them from taking rest breaks, LCAD could have argued that individualized issues would predominate among in that LCAD did not maintain rest break records, and some Adjuncts took rest breaks, while others did not. LCAD also argued that Adjuncts could have taken a timely off-duty rest break had they chosen to, and any missed rest breaks were voluntary.

43. Plaintiffs applied a 10% discount for the risks of losing on class certification for their piece-rate rest break claim (which Plaintiffs believed was less risky because California law prohibits an employer from building rest-break pay into a piece-rate and what the piece rate includes is a matter of contract and/or interpretation of a contract, not individual understanding); and a 30% discount for the risk of losing on class certification for their non-exempt rest break claim (which was riskier because it relied more heavily on testimony regarding Class Members' experiences). Plaintiffs applied the average discount of 20% which reduced LCAD's liability to $696,968.

44. **Merits:** As to the merits, LCAD could have contended that Adjuncts were exempt employees under IWC Wage Order 4-2001 § 1 and were not entitled to paid rest breaks; that Adjuncts were salaried non-exempt employees and were not entitled to separate and hourly pay for rest breaks; and that even if Adjuncts were entitled to rest breaks, a 100% violation rate was highly unrealistic. As explained above, Plaintiffs recognized some risk on the argument that Adjunct CMs were salaried because it appeared that Adjunct CMs did receive a predetermined amount each pay period that was not subject to change within each pay period based on the number of hours taught. Plaintiffs applied a 50% reduction for these risks, which reduced LCAD's realistic exposure to **$348,484.**

**Meal Break Claims - Labor Code §§ 226.7, 512**

45. Plaintiffs alleged that Adjunct CMs were non-exempt employees and were therefore entitled to an off-duty, unpaid 30-minute meal break before the end of the fifth hour of each shift pursuant to Labor Code § 512. Plaintiffs alleged that Defendant imposed uniform policies and/or practices that impeded Adjunct CMs' ability to take meal breaks, including the requirement and expectation that Adjunct CMs be available to students during any class breaks to answer students' questions. Plaintiffs calculated, based on the course scheduling data, that Adjunct CM's taught approximately 14,100 class sessions that were longer than 5 hours between April 8, 2017 and May 15, 2021; Plaintiffs extrapolated out to the end of the Adjunct Class Period for a total of 16,690 classes. Plaintiffs calculated Defendant's liability on the meal break claim as follows: Assuming a 100% violation rate, LCAD is liable for one hour of premium pay ($31.43) for all five-hour classes which amounts to $524,560. Interest at 7% per annum adds $111,656 for a total of $636,216.

46. **Class Certification:** Defendant could have argued that this claim would not be certified based on the fact that Adjunct CMs taught different courses on different days with different class lengths, and Defendant might successfully argue that individual inquiries would be necessary to determine whether Adjunct CMs were able to take meal breaks. Plaintiffs would have to rely on Adjunct CM testimony rather than an analysis of common factual documents to prove this claim, which added to the

certification risk. Therefore, Plaintiffs applied a 30% discount, which reduced LCAD's likely exposure to $443,351.

47. **Merits**: Defendant could have argued that Adjuncts were exempt under IWC Wage Order 4-2001 § 1 and not entitled to meal breaks; and that even if Adjuncts were entitled to meal breaks, classes that were 5 hours or longer had breaks, and Adjuncts CMs were permitted to take compliant meal periods, and if they failed to do so it was as a matter of choice. Defendant therefore argued that Plaintiffs' assumed violation rate of 100% was highly unrealistic. Plaintiffs believed these arguments warranted a further 50% discount which reduced LCAD's exposure to **$222,676.**

**Wage Statement Claims - Labor Code §§ 226(a), (e), 226.2(a)**

48. Plaintiffs allege that during the Adjunct Class Period, Adjunct CMs, as non-exempt piece rate employees, were entitled to receive accurate itemized wage statements for each pay period during which they worked, and to receive wage statements that listed their hours worked, hourly rate, and piece rate information, pursuant to Labor Code § 226(a) and 226.2(a). Plaintiffs alleged that Defendant's practice with respect to the information included (and omitted) on the wage statements was not a result of an unintentional payroll error, or clerical mistake, but rather a result of Defendant's regular compensation policies and practices. As such, the violation of Labor Code § 226(a) was knowing and intentional. Plaintiffs also alleged that Adjunct CMs suffered injury as a result, because they could not determine from the wage statements alone the number of actual hours worked, or an applicable hourly rate.

49. Plaintiffs calculated Defendant's liability under Labor Code § 226(e) as follows: LCAD issued a total of 2,543 wage statements between April 9, 2020 and September 15, 2021 to 182 Adjunct CMs who worked during that time period. Plaintiff extrapolated out to the end of the Adjunct Class Period for a total of 3,291 wage statements. Plaintiffs multiplied 182 initial pay periods by a $50 penalty ($9,100) and a subsequent 3,109 wage statements by a $100 penalty, for total statutory damages of $320,000.

50. **Class Certification Discounts**: Plaintiffs applied a minimal 10% discount for class certification because wage statement claims are particularly well-suited to class certification. This reduces LCAD's exposure to $287,994.

51. **Merits Discounts**: Defendant asserted in its Answer that it "acted reasonably and in good faith, at all times" and "Plaintiff and the alleged putative class did not suffer injury" as a result of failing to provide compliant wage statements as required under Labor Code § 226(e). Defendant also could have contended that the maximum applicable statutory penalty was the initial penalty of $50 per wage statement because Plaintiffs had not established that Defendant ever received notice from the labor

commissioner or a court, and so there are arguably no "subsequent" violations. LCAD also could have argued that Adjuncts were exempt under Labor Code § 515.7 so there was no liability (at least since September 9, 2020). Plaintiffs applied a 25% reduction for these risks reduced LCAD's realistic exposure on this claim to **$215,996**.

**Waiting Time Penalties - Labor Code § 203**

52. As stated above, Plaintiffs' theory of liability is that Adjunct CMs' Teaching Contracts were for a definitive period of time, which ended on the last day of the semester listed in the Contract, and therefore CMs were discharged for purposes of Labor Code § 201 on that date. However, LCAD paid adjuncts according to its regular payroll schedule, which resulted in the final paychecks being issued on average 5 days after the semester end date, thereby failing to comply with the timely final payment obligation of § 201(a). As a result, LCAD owes Adjunct CMs 5 days of waiting time penalties pursuant to Labor Code § 203.

53. Plaintiff calculated that Adjunct CMs taught 1,234 courses between April 8, 2018 and May 15, 2021; Plaintiff extrapolated out to the end of the Adjunct Class Period for a total of 1,534 courses. As stated above, Adjunct CMs' hourly rate for at least some non-teaching tasks was $31.43. Plaintiffs calculated, based on the course scheduling data, that Adjunct CMs taught on average 5.3 hours per day. Thus, Adjunct's daily rate of pay is (5.3 hours * $31.43 per hour) or $161.24 per day. LCAD is liable for 5 days of waiting time penalties for all 1,534 Teaching Contracts, or $806.18, x 1,534 discharges/ contracts) which equals $1,268,967.

54. **Certification Discount:** Plaintiffs applied a minimal 10% discount for the risk of non-certification because their theory of liability is amenable to class treatment as the relevant legal and factual issues can be determined by facts common to all Adjunct CMs. Additionally, whether the Teaching Contracts are contracts for a definitive period of time, and what the end date of the contract is, are matters of construction of the Contracts, the answer to which will apply equally to all Adjunct CMs. Whether Adjunct CMs were discharged at the end of a contract for a definitive period is a question of law, and whether the late payment was willful is a question that can be determined through PMK testimony. Applying this discount reduced the waiting time penalties to $1,142,070.

55. **Merits Discount:** Plaintiffs applied a 50% discount on the merits based on Defendant's potential defense that (1) there was not an actual discharge at the end of each Contract for those Adjuncts who worked continuously from term to term because they maintained an employment relationship with LCAD, and (2) LCAD's affirmative defense that any alleged failure to pay all wages due upon discharge was not willful and therefore Adjuncts were not entitled to waiting time penalties. LCAD could also have

contended that its failure to pay was not willful because there existed a good faith dispute that wages were not actually owed because Adjuncts were exempt. Applying this discount, for settlement purposes, the realistic value of the penalties is reduced to **$571,035.**

**Adjunct Unreimbursed Expenses Claim - Labor Code § 2802**

56. Plaintiffs alleged that LCAD did not reimburse Adjunct CMs for teaching supplies they purchased in order to effectively carry out their job duties, including art supplies and software. Starting in March 2020, Adjunct CMs started teaching courses remotely and incurred home office expenses as well, including home internet and cell phone expenses. Plaintiffs contend that under Labor Code § 2802, Adjunct CMs were entitled to be compensated for such expenses necessarily incurred as a result of teaching courses. While LCAD paid a one-time $500 stipend to Adjunct CMs in March 2020, Plaintiffs contended that these payments were for one-time purchases of home-office equipment such as microphones or cameras and did not reimburse any of the monthly expenses regularly incurred by Adjuncts.

57. Adjunct CM's taught approximately 9,365 pay periods during the Adjunct Class Period. Plaintiffs estimated that the Adjuncts (who were mostly part-time employees) incurred approximately $25 per period in expenses, or $234,125. Interest at 10% per annum adds $71,193, for a total of **$305,318**.

58. **Class Certification Risk:** Plaintiffs applied a 50% discount for the argument that there was no written policy requiring that Adjuncts purchase art supplies and subscription services (which constitute the bulk of the unreimbursed expenses incurred during the Adjunct Class Period) and that there were varying practices among Class Members for the use of such supplies and services, which posed an obstacle to class certification. This reduced LCAD's exposure to $152,659.

59. **Merits Risk:** As to the merits, Plaintiffs applied a further 50% discount based on anticipated arguments that even if expenses were incurred, they were voluntary and/or minimal; that LCAD had a written reimbursement policy applicable to Adjunct CMs under which Adjuncts could seek $50 per month in reimbursement for their personal cell phones and could request and receive reimbursement for supplies; and that the stipends LCAD paid out in March 2020 would significantly reduce LCAD's liability. This reduced realistic damages to **$76,329.**

**Adjunct CMs Maximum Damages and Realistic Exposure**

60. Plaintiffs calculated maximum damages (excluding PAGA penalties) for the Adjunct Class as $3,732,215 and realistic exposure as $1,583,250. Plaintiffs then applied a further 25% discount to the realistic exposure for the risk that the Court would find LCAD's arbitration agreement applicable to Plaintiffs' pre-CBA claims (i.e., claims accruing between the start of the Adjunct Class Period and

August 31, 2018) which represented approximately 25% of the Adjunct Class Period, which reduced LCAD's realistic liability to $1,187,437. LCAD's maximum and realistic liability on each claim is as follows:

| Labor Code Section | Maximum Damages | Realistic Exposure |
|---|---|---|
| Unpaid Wages (§§ 226.2/ 1194) | $330,509 | $148,729 |
| Rest Breaks (§ 226.7) | $871,210 | $348,484 |
| Meal Breaks (§ 512) | $636,216 | $222,676 |
| Wage Statements (§§ 226(a), (e)) | $320,000 | $215,996 |
| Waiting Time Penalties (§ 203) | $1,268,967 | $571,035 |
| Unreimbursed Expenses (§ 2802) | $305,318 | $76,329 |
| **TOTAL** | $3,732,215 | $1,583,250 |
| After 25% Arbitration discount | | **$1,187,437** |

61. The 88% of the Gross Settlement ($726,000) allocated to Adjuncts represents 19% of Defendant's maximum exposure and 61% of its realistic exposure. Under the Settlement Agreement, if approved as submitted, $482,500[2] will be available for distribution among the two Classes (after deductions of fees, costs, incentive award, Administration fees, and PAGA payments). Of this amount, approximately 88% ($424,600) will be allocated to the Adjunct Class on a *pro rata* basis based on the number of pay periods worked during the Adjunct Class Period. This formula relies upon objective evidence of each Adjunct Class Member's employment history, which Class Members can easily review and confirm for themselves. This information is readily available from Defendant's records, and the Settlement Administrator can apply the formula in a fair and transparent manner.

62. For Adjunct Class Members, the average net recovery is $1,439.32[3] and the average gross recovery is $2,461.01.[4] The value of each pay period is $45.34 net [5] and $77.52 gross.[6] An Adjunct CM who worked the entire 58-month Adjunct Class Period can expect to receive approximately $5,259.33.[7]

[2] The Net Settlement amount allocated to both classes after deduction of fees (up to $275,000) and costs ($25,000); enhancement awards to Plaintiffs ($7,500); settlement administration costs ($15,000); and PAGA penalties ($20,000).
[3] $424,600 / 295 Adjunct Class Members.
[4] $726,000 / 295 Class Members.
[5] $424,600 / 9,365 pay periods.
[6] $726,000/ 9,365
[7] $45.34 per pay period * 2 pay periods per month * 58 months

These are significant recoveries especially when considering Defendant's arbitration defense and many other defenses. In my experience, this settlement is fair, adequate, and reasonable for the Adjunct Class.

**Reimbursement Class Claims (Lab. Code § 2802)**:

63. Plaintiffs allege that, starting on March 23, 2020, as a result of COVID-19, LCAD expected and required all Reimbursement CMs to work remotely from home, and to incur home office expenses, including home internet and cell phone costs. Plaintiffs contend that under Labor Code §2802, Reimbursement CMs were entitled to be compensated for such expenses incurred in order to carry out their job duties from home, in violation of Labor Code § 2802.

64. Plaintiffs calculated Defendant's potential liability for unreimbursed business expenses as follows: Reimbursement CMs worked a total of 4,568 pay periods during the Reimbursement Class Period. Plaintiffs estimate that Reimbursement CMs (many of whom were full-time employees) incurred $75 per month in home office expenses (or $37.50 per pay period) for a total of $171,300 for all Reimbursement CMs**.** Interest at 10% per annum adds $28,550 for a total of $199,850.

65. **Class Certification and Merits Risks:** Plaintiffs contended that this claim was well suited for class certification and trial in light of their allegations that all Reimbursement CMs were required to work from home, incurred similar remote work expenses, and were not reimbursed each month. Accordingly, Plaintiffs applied a 10% discount for the risk that varying practices with regard to incurring expenses by Reimbursement CMs presents an obstacle to class certification, which reduced LCAD's exposure to $179,865; and a further 10% discount on the merits for the risk that not all expenses incurred by each Reimbursement CM were "necessary" or "reasonable." This reduced LCAD's exposure to $161,878.

66. Under the Agreement, 12% of the Gross Settlement ($99,000) is allocated to the Reimbursement Class. This represents 50% of Defendant's maximum exposure, and 61% of its realistic exposure. Reimbursement Class Members will be paid on a *pro rata* basis based on the number of pay periods they worked during the Reimbursement Class Period. 12% of the NSA (approximately $57,900) will be allocated to Reimbursement CMs and paid to them *pro rata* based on the number of pay periods they worked during the Reimbursement Class Period. The average gross payment per Reimbursement Class Member is $518.32 gross[8] and $303.14 net.[9] The Reimbursement Class worked approximately

[8] $99,000 / 191 Reimbursement Class Members
[9] $57,900 / 191 Reimbursement Class Members
(footnote continued)

4,568 pay periods so the value of each pay period is $12.68 net[10] and $21.67 gross.[11] A Reimbursement Class Member who worked for the entire Reimbursement Class Period can expect to receive approximately $583.06.[12] These amounts are significant and fair in light of Defendant's defenses to Plaintiffs' claim for work-from-home expenses.

**PAGA Allocation is Fair and Reasonable**

67. There were approximately 2,688 Adjunct pay periods between April 7, 2020 and September 15, 2021. Plaintiff extrapolated out to the end of the Adjunct PAGA Period for a total of 3,479 pay periods. Using a penalty of $100 per pay period (because Defendant never received notice from the Labor Commissioner or the Court so there are arguably no "subsequent" violations) Defendant's maximum exposure in PAGA Penalties is $347,900 (assuming the Court would not allow "stacking" of PAGA penalties for each separate Labor Code violation).

68. As stated above, there were approximately 4,568 pay periods during the Reimbursement Class Period (which is two weeks longer to the Reimbursement PAGA Period). Using a $100 penalty per pay period, Defendant's maximum exposure in PAGA Penalties is $456,800**.**

69. Defendant's total maximum exposure in PAGA penalties is thus $804,700. The $20,000 allocated to PAGA penalties represents 2% of Defendant's maximum exposure to PAGA penalties. This allocation is fair and reasonable because several factors significantly mitigate assessment of PAGA penalties in this case.

70. First, the overall settlement resulted in robust relief for each Class which is what courts look at when assessing the amount attributed to PAGA penalties. In *Gola v. University of San Francisco*, No. CGC-18-565018 (San Francisco Cnty. Super. Ct. March 3, 2021) a recent case brought by HammondLaw on behalf of adjunct instructors, the court found that substantial monetary relief in form of statutory penalties under § 226(e) (and fees and costs plaintiff would seek) acted as a sufficient punishment and deterrent, and awarded only 15% of the full PAGA penalties—and this was a case where defendant did not have a good faith defense and did not change any of its practices to comply after the lawsuit was filed.

71. Second, the Court could reduce any award of PAGA penalties as "unjust, arbitrary and oppressive, or confiscatory" under Labor Code § 2699(e)(2) on the theory that LCAD operated in good faith and reasonably believed it was in compliance with the Labor Code. Moreover, LCAD argued that

[10] $57,900 / 4,568 pay periods
[11] $99,000 / 4,568 pay periods
[12] $12.68 per pay period * 2 pay periods per month * 23 months

it was highly unlikely that the Court would award $456,800 in PAGA penalties to the Reimbursement Class where damages sustained by that Class were less than half of that amount (i.e., approximately $199,850).

72. Third, Defendant contended that Plaintiffs' claims for PAGA Penalties would fail for the same reasons the underlying Labor Code claims would fail.

73. Fourth, although class certification requirements do not apply to PAGA claims, such claims can be stricken if they are found to be unmanageable, and because only CMs who actually incurred unpaid wages, unpaid premium pay, or unreimbursed expenses during a particular pay period could recover PAGA penalties for those violations, Defendant could have disputed that there is a manageable way to determine who was entitled to such penalties.

74. Finally, Plaintiffs allocation of 2% of the PAGA penalties is comparable to (or more than) PAGA allocations in similar cases that received final approval from California Superior Courts including *Parsons v. La Sierra University*, Case No. CVRI2000104 (Riverside County Superior Court) (May 19, 2022) (finally approving $15,000 allocated to PAGA penalties representing 2% of Defendant's total exposure to PAGA penalties of $737,000); *Sweetland-Gil v University of the Pacific,* Case No. STK-CV-UOE-2019-0014682 (San Joaquin County Superior Court) (March 4, 2022) (finally approving $30,000 allocated to PAGA penalties representing 1.6% of Defendant's total exposure to PAGA penalties of $1,517,700); *Solis et al. v Concordia University Irvine*, Case No. 30-2019- 01114998-CU-OE-CXC (Orange County Superior Court) (February 3, 2022) (finally approving a PAGA allocation of $20,000, representing 2% of the maximum $972,700 in PAGA penalties); *Pillow et al. v. Pepperdine University*, Case No. 19STCV33162 (Los Angeles Superior Court)(July 28, 2021) (finally approving PAGA allocation of $15,000, representing 1% of the maximum $1,619,200 in PAGA penalties); *Moore et al v Notre Dame De Namur University,* Case No. 19-CIV-04765 (San Mateo County Superior Court) (July 1, 2021) (finally approving PAGA allocation in the amount of $12,000, representing 1.9% of the maximum $631,300 in PAGA penalties); *Mooiman et al. v Saint Mary's College of California,* Case No. C19-02092 (Contra Costa County Superior Court) (June 10, 2021) (finally approving $30,000 PAGA allocation representing 1% of the maximum $649,200 in PAGA penalties, and explaining that "the record indicates that defendant changed many of the policies at issue before the action was brought, that there is a substantial monetary award which in part serves the deterrent function of a penalty, and that defendant had some arguments of "good faith," that would mitigate penalties"); *Morse v Fresno Pacific University,* Case No. 19-CV-04350 (Merced County Superior Court) (April 6, 2021)(finally approving $30,000 PAGA allocation, representing 2% of maximum $1,194,800 in PAGA penalties); and *Harris-Foster v.*

*University of Phoenix*, Case No. RG19019028 (Alameda County Superior Court) (March 17, 2021) (finally approving $50,000 PAGA allocation, representing 1.5% of maximum $3,173,200 in PAGA penalties).

## V. FAIRNESS, ADEQUACY, AND REASONABLENESS OF SETTLEMENT

75. Based on my experience with similar class actions and my investigation, research, and knowledge of the specific facts and legal issues in this case, I believe that the Settlement is fair, adequate, reasonable, and appropriate. This conclusion is based on my knowledge of the strength and weaknesses of the claims asserted by Plaintiffs, Defendant's defenses, facts learned during informal discovery as well as the facts learned during my firm's research and investigation, and the typical risks associated with further litigation, as well as the risks associated with LCAD's contention that Adjunct CMs entered into arbitration agreements with class action waivers.

76. If the parties continued to litigate this case, the trial court would rule on the enforceability of the arbitration agreement to Plaintiffs' class claims. Assuming Plaintiffs won, they would proceed to file a contested motion for class certification. Whichever claims cleared that hurdle would potentially face pre-trial dispositive motions, and whichever claims cleared that hurdle would face trial. Regardless of the outcome at trial, the losing party would likely appeal, given that some of the central legal issues in this case have not been conclusively addressed by an appellate court. This process would take years to resolve.

77. The settlement avoids these risks associated with the complexities of this litigation, and especially in view of the arbitration clause at issue in this case. Instead, this settlement provides an early resolution of a dispute, and all Class Members will obtain a recovery in the relatively near future if the settlement is finally approved.

## VI. ATTORNEYS' FEES AND COSTS

78. The Settlement Agreement provides that Defendant will not oppose a request for attorney's fees of up to 1/3 of the Gross Settlement (i.e., $275,000). This is fair, reasonable and adequate to compensate Class Counsel for the substantial work they have already done to prosecute this Action, the risk they assumed to agree to take the case in the first place, the great expense spared to the Class by Class Counsel having achieved a successful resolution, and the continued time and expense that Class Counsel will incur by administering the fair distribution of the settlement fund should this Court grant the settlement's approval.

79. Class Counsel agreed to represent Plaintiffs on behalf of the putative Classes on a contingency basis, and further agreed to advance all litigation costs. Our significant financial outlays

would have been entirely lost if the case were not won, and the amount of Class Counsel's time that would have remained uncompensated in that event would have been substantial. Class Counsel also took on this case despite the known risks associated with Plaintiffs' class allegations as described above and the unpredictable risks that are common to most complex employment class actions that develop only over the course of the litigation. Class Counsel was able to obtain a very favorable settlement for the Classes.

80. Our firm has spent significant time litigating this case, including interviewing Plaintiffs and putative Class Members, reviewing documents provided by Plaintiffs prior to and after case initiation and information obtained by our firm through our own research, filing a detailed complaint, engaging in extensive discovery, analyzing data produced by LCAD, drafting a detailed mediation brief, attending a full-day mediation, negotiating the settlement, drafting the preliminary approval papers; and planning and strategizing throughout the case. Further, we will spend many additional hours obtaining preliminary approval; overseeing the notice process; answering questions from Class Members; preparing the final approval papers; attending the final approval hearing; and overseeing the distribution of the settlement funds.

81. The Settlement Agreement's award of litigation costs of up to $25,000 is intended for commonly reimbursed out-of-pocket cost incurred by my firm, including filing and process-serving fees, expenses related to court appearances, copying, legal and other research charges, and the professional fees paid to Lou Marlin for a full-day mediation session, which was essential in reaching the Settlement.

82. If the Court grants Preliminary Approval and authorizes the dissemination of notice of the settlement to the class, Class Counsel will file a Motion for Attorneys' Fees and Costs and Enhancement Award for Class Representative that will be scheduled to be heard concurrently with the Motion for Final Approval. If the Settlement is given preliminary approval by the Court, our firm will need to expend additional hours and will incur additional costs preparing and filing the motion for final approval and the motion for attorneys' fees and reimbursement of litigation costs, coordinating with the Settlement Administrator, and answering calls and questions from Class Members.

83. Class Counsel will submit their lodestar and costs breakdown with their motion for attorneys' fees and costs, which will be noticed to be heard at the same time as the final approval motion.

## VII. PLAINTIFFS' SERVICE AWARDS

84. The request for Service Awards of $5,000 to Plaintiff Marantz and $2,500 to Plaintiff Gill is reasonable and fair. The Service Awards are intended to compensate Plaintiffs for the critical role they played in this case and the substantial time, effort, and risks they undertook to secure the result obtained

on behalf of the Settlement Classes. Plaintiffs formally agreed to accept the responsibility of representing the interests of all Class Members. Plaintiffs diligently assisted Class Counsel in the investigation for the case and in seeking informal discovery. They assisted in preparing and evaluating the case for mediation, and provided Class Counsel with guidance to evaluate and approve the proposed settlement on behalf of the Settlement Classes. Plaintiffs' participation and assistance was critical to the success of this litigation and the enforcement of Labor Code protections. Without Plaintiffs' willingness and commitment to come forward and serve as Class Representatives in commencing this lawsuit, this litigation, which enforces the protections of the California Labor Code, would not have been brought. Significantly, the named Plaintiffs are granting Defendant a general release of all claims, which is far broader than the release being given by the members of the Classes on whose behalf settlement has been reached.

## VIII. SETTLEMENT ADMINISTRATOR

85. The parties have selected CPT, Inc. to administer this settlement. CPT has extensive experience in the settlement administration of wage and hour class actions like this one, having administered thousands of class action settlements, and my firm has retained them for the settlement administration of many other wage and hour cases.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct. Executed on July 22, 2022.

s/ Julian Hammond
Julian Hammond

**EXHIBIT 1**

**JULIAN A. HAMMOND**
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# Approved California Wage and Hour Cases

- ***Parson v. La Sierra University,*** Case No. CVRI2000104 (Riverside County Superior Court) (May 19, 2022) (certifying HammondLaw as class counsel for $578,220 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, 203, claims on behalf of 381 adjunct instructors and Labor Code § 2802 claims 739 other employees);
- ***Chindamo v Chapman University,*** Case No. 30-2020-01147814-CU-OE-CXC (Orange County Superior Court) (April 15, 2022) (certifying HammondLaw as co-class counsel for $1,150,00 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, 203, claims on behalf of 1,374 adjunct instructors and Labor Code § 2802 claims on behalf of 4,120 other employees);
- ***Sweetland-Gil v University of the Pacific,*** Case No. STK-CV-UOE-2019-0014682 (San Joaquin County Superior Court) (March 4, 2022) (certifying HammondLaw as class counsel for $1,800,000 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, and 203 claims on behalf of 1,100 adjunct instructors);
- ***Senese v. University of San Diego,*** Case No. 37-2019-00047124-CU-OE-CTL (San Diego County Superior Court) (February 8, 2022) (certifying HammondLaw as co-class counsel for $3,892,750 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, and 203 claims on behalf of 2,071 adjunct instructors);
- ***Solis et al. v Concordia University Irvine,*** Case No. 30-2019-01114998-CU-OE-CXC (Orange County Superior Court) (February 3, 2022) (certifying HammondLaw as class counsel for $890,000 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, 203, and 2802 claims on behalf of 778 adjunct instructors);
- ***McCoy et v Legacy Education LLC,*** Case No. 19STCV2792 (Los Angeles County Superior Court) (November 15, 2021) (Labor Code § 2698 et seq. representative action settlement for $76,000 for violation of Labor Code §§ 1194, 226(a), 226.7, 512, 203, and 2802 on behalf of 31 instructors);
- ***Merlan v Alliant International University,*** Case No. 37-2019-00064053-CU- OE-CTL (San Diego County Superior Court) (November 2, 2021) (certifying HammondLaw as co-class counsel for $711,500 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, and 203 claims on behalf of 803 adjunct instructors);
- ***Stupar et al. v University of La Verne***, Case No. 19STCV33363 (Los Angeles County Superior Court) (October 14, 2021) (certifying HammondLaw as class counsel for $2,450,000 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, 512, and 203 claims on behalf of 1,364 adjunct instructors);
- ***Normand et al. v Loyola Marymount University***, Case No. 19STCV17953 (Los Angeles County Superior Court) (September 9, 2021) (certifying HammondLaw as class counsel for $3,400,000 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, and 203 claims on behalf of 1,655 adjunct instructors);
- ***Veal v Point Loma Nazarene University***, Case No. 37-2019-00064165-CU-OE-CTL (San Diego County Superior Court) (August 27, 2021) (certifying

HammondLaw as class counsel for $711,500 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, and 203 claims on behalf of 670 adjunct instructors);

- ***Pillow et al. v. Pepperdine University***, Case No. 19STCV33162 (Los Angeles County Superior Court) (July 28, 2021) (certifying HammondLaw as class counsel for $940,000 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, and 203 claims on behalf of 1,547 adjunct instructors);
- ***Moore et al v Notre Dame De Namur University,*** Case No. 19-CIV-04765 (San Mateo County Superior Court) (July 1, 2021) (certifying HammondLaw as class counsel for $882,880 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, and 203 claims on behalf of 397 adjunct instructors);
- ***Mooiman et al. v Saint Mary's College of California,*** Case No. C19-02092 (Contra Costa County Superior Court) (June 10, 2021) (certifying HammondLaw as class counsel for $1,700,000 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, and 203 claims on behalf of 760 adjunct instructors and Labor Code Code § 226(a) claim on behalf of 2,212 other employees);
- ***Peng v The President and Board of Trustees of Santa Clara College,*** Case No. 19CV348190 (Santa Clara County Superior Court) (April 21, 2021) (certifying HammondLaw as class counsel for $1,900,000 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, and 203 claims on behalf of 1,017 adjunct instructors and Labor Code Code § 226(a) claim on behalf of 5,102 other employees);
- ***Morse v Fresno Pacific University,*** Case No. 19-CV-04350 (Merced County Superior Court) (April 6, 2021) (certifying HammondLaw as class counsel for $1,534,725 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, 512 and 203 claims on behalf of 861 adjunct instructors);
- ***Miner, et al. v. ITT Educational Services, Inc.,*** Case No. 3:16-cv-04827-VC (N.D. Cal.) (March 19, 2021) (certifying HammondLaw as class counsel for $5.2 million settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, 512 and 2802 claims on behalf of 1,154 adjunct instructors);
- ***Harris-Foster v. University of Phoenix***, Case No. RG19019028 (Alameda County Superior Court, March 17, 2021) (certifying HammondLaw as class counsel for $2,863,106 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7 and 2802 putative class action on behalf of 3,447 adjunct instructors);
- ***Granberry v. Azusa Pacific University***, Case No. 19STCV28949 (Los Angeles County Superior Court, March 5, 2021) (certifying HammondLaw as class counsel for $1,112,100 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7 and 2802 claims on behalf of 1,962 adjunct instructors);
- ***Ott v. California Baptist University***, Case No. RIC1904830 (Riverside County Superior Court, January 26, 2021) (certifying HammondLaw as co-class counsel for $700,000 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7 and 512 claims on behalf of 958 adjunct instructors);
- ***Pereltsvaig v. Cartus Corporation***, Case No. 19CV348335 (Santa Clara County Superior Court, January 13, 2021) (certifying HammondLaw as class

counsel in $300,000 settlement of Labor Code §§ 226.8(a), 1194, 226(a), 226.7, 510, 512, and 2802 claims on behalf of 126 instructors);

- ***Morrison v. American National Red Cross***, Case No. 19-cv-02855-HSG (N.D. Cal., January 8, 2021) (certifying HammondLaw as class counsel in a $377,000 Settlement of Labor Code §§ 1194, 226(a), 226.7, 510, 512 and 2802 claims on behalf of 377 instructors who taught training courses);
- ***Brown v. Cernx*****,** Case No. JCCP004971 (Cal. Sup. Ct. Alameda Cty. July 14, 2020) (certifying HammondLaw as co-class counsel in $350,000 settlement of Labor Code §§ 1194, 226, 226.7, 510, 512, and 2802 claims on behalf of 309 amazon couriers);
- ***Stempien v. DeVry University***, Case No. RG19002623 (Cal. Sup. Ct. Alameda Cty. June 30, 2020) (certifying HammondLaw as class counsel for $1,364,880 settlement Labor Code §§ 1194, 226, 226.2, 226.7, and 2802 claims on behalf of 498 adjunct instructors);
- ***McCoy v. Concorde***., Case No. 30-2017-00936359-CU-OE-CXC (Cal. Sup. Ct. Orange Cty. July 2, 2019) (certifying HammondLaw as class counsel for $2,500,000 settlement of Labor Code §§ 1194, 226, 226.7, and 512 putative claims on behalf of 636 adjunct instructors);
- ***Hogue v. YRC*****,** Case No. 5:16-cv-01338 (C.D. Cal. June 24, 2019) (certifying HammondLaw and A&T as co-class counsel for $700,000 settlement of Labor Code §§ 1194, 226.2, 226.7, and 2802 claims on behalf of 225 truck drivers);
- ***Sands v. Gold's Gym*****,** Case No. BC660124 (Cal. Sup. Ct. Los Angeles Cty. March 20, 2019) (Labor Code § 2698 *et seq*. representative action settlement for $125,000 for violation of Labor Code § 1194, 2802 and 246 *et seq*. claims on behalf of 106 fitness instructors);
- ***Garcia v. CSU Fullerton***., Case No. 30-2017-00912195-CU-OE-CXC (Cal. Sup. Ct. Orange Cty. February 15, 2019) (certifying HammondLaw as class counsel for $330,000 settlement of Labor Code §§ 1194, 226, 226.7, and 512 claims on behalf of 127 adjunct instructors);
- ***Pereltsvaig v. Stanford***, Case No. 17-CV-311521 (Cal. Sup. Ct. Santa Clara Cty. January 4, 2019) (certifying HammondLaw as class counsel for $886,890 settlement of Labor Code §§ 1194, 226, 226.7, 512, 2802 and 2699 claims on behalf of 398 adjunct instructors);
- ***Moss et al. v. USF Reddaway, Inc*****.,** Case No. 5:15-cv-01541 (C.D. Cal. July 25, 2018) (certifying HammondLaw and A&T as co-class counsel for $2,950,000 settlement of Labor Code §§ 1194, 226, 226.7, and 201-203 claims on behalf of 538 truck drivers);
- ***Beckman v. YMCA of Greater Long*****,** Case No. BC655840 (Cal. Sup. Ct. Los Angeles Cty. June 26, 2018) (Labor Code § 2698 *et seq*. representative action settlement for $92,500 for violation of Labor Code § 1194 and 226(a) claims on behalf of 101 fitness instructors);
- ***Maldonado v. Heavy Weight Transport, Inc.,*** Case No. 2:16-cv-08838 (C.D. Cal. December 11, 2017) (certifying HammondLaw and A&T as co-class

counsel for $340,000 settlement of Labor Code §§ 1194, 226, 226.2, 226.7, 226, 201-203, and 2699 claims on behalf of 160 truck drivers);

- ***Hillman v. Kaplan***, Case No. 34-2017-00208078 (Cal. Sup. Ct. Sacramento Cty. December 7, 2017) (certifying HammondLaw as class counsel for $1,500,000 settlement of Labor Code §§ 1194, 226, 226.7, 201-203 and 2802 claims on behalf of 506 instructors);
- ***Bender et al. v. Mr. Copy, Inc.***, Case No. 30-2015-00824068-CU-OE-CXC (Cal. Sup. Ct. Orange Cty. October 13, 2017) (certifying HammondLaw and A&T as co-class counsel for $695,000 settlement of Labor Code §2802 claims on behalf of approximately 250 outside sales representatives);
- ***Rios v. SoCal Office Technologies,*** Case No. CIVDS1703071 (Cal. Sup. Ct. San Bernardino Cty. September 6, 2017) (certifying HammondLaw and A&T as co-class counsel for $495,000 settlement of Labor Code §2802 claims on behalf of approximately 180 outside sales representatives);
- ***Russell v. Young's Commercial Transfer, Inc.,*** Case No. PCU265656 (Cal. Sup. Ct. Tulare Cty. June 19, 2017) (certifying HammondLaw and A&T as co-class counsel for $561,304 settlement of Labor Code §§ 1194, 226, 226.2, and 201-203 claims on behalf of 962 truck drivers);
- ***Keyes v. Valley Farm Transport, Inc.,*** Case No. FCS046361 (Cal. Sup. Ct. Solano Cty. May 23, 2017) (certifying HammondLaw and A&T as co-class counsel for $497,000 settlement of Labor Code § 226, 1194, 512 and 2698 *et seq*. claims on behalf of 316 truck drivers);
- ***Numi v. Interstate Distributor Co.***, Case No. RG15778541 (Cal. Sup. Ct. Alameda Cty. March 6, 2017) (certifying HammondLaw and A&T as co-class counsel for $1,300,000 settlement of Labor Code §§ 1194, 226.2 and 2802 claims on behalf of approximately 1,000 truck drivers);
- ***Keyes v. Vitek, Inc.,*** Case No. 2016-00189609 (Cal. Sup. Ct. Sacramento Cty. February 17, 2017) ($102,000 settlement of PAGA representative action for violation of Labor Code § 226.8 on behalf of 90 truck drivers);
- ***Martinez v. Estes West dba G.I. Trucking, Inc.,*** Case. BC587052 (Cal. Sup. Ct. L.A. Cty., April 4, 2017) (certifying HammondLaw and A&T as co-class counsel for $425,000 settlement of Labor Code §§ 1194, 226, and 201-203 claims on behalf of approximately 156 truck drivers);
- ***Sansinena v. Gazelle Transport Inc.***, Case No. S1500-CV- No 283400 (Cal. Sup. Ct. Kern Cty. December 8, 2016) (certifying HammondLaw and A&T as co-class counsel for $264,966 settlement of Labor Code §§ 1194, 226, and 201-203 claims on behalf of approximately 314 truck drivers);
- ***Cruz v. Blackbelt Enterprises, Inc.,*** Case No. 39-2015-00327914-CU-OE-STK (Cal. Sup. Ct. San Joaquin Cty. September 22, 2016) (certifying HammondLaw and A&T as co-class counsel for $250,000 settlement of Labor Code §§ 1194, 226, and 201-203 claims on behalf of approximately 79 truck drivers);
- ***Araiza et al. v. The Scotts Company, L.L.C.,*** Case No. BC570350 (Cal. Sup. Ct. L.A. Cty. September 19, 2016) (certifying HammondLaw and A&T as

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

- ***Dixon v. Hearst Television, Inc.***, Case No. 15CV000127 (Cal. Sup. Ct. Monterey Cty. September 15, 2016) (certifying HammondLaw as class counsel for a $432,000 settlement of Labor Code § 2802 claims on behalf of approximately 55 outside sales representatives);
- ***Garcia et al. v. Zoom Imaging Solutions, Inc.*** SCV0035770 (Cal. Sup. Ct. Placer Cty. September 8, 2016) (certifying HammondLaw and A&T as co-class counsel for $750,000 settlement of Labor Code § 510, 512, 1194 and 2802 claims on behalf of approximately 160 sales representatives and service technicians);
- ***O'Beirne et al. v. Copier Source, Inc. dba Image Source***, Case No. 30-2015-00801066-CU-OE-CXC (Cal. Sup. Ct. Orange Cty. September 8, 2016) (certifying HammondLaw and A&T as co-class counsel for $393,300 settlement of Labor Code §2802 claims on behalf of approximately 132 outside sales representatives);
- ***Mead v. Pan-Pacific Petroleum Company, Inc.*****,** Case No. BC555887 (Cal. Sup. Ct. L.A. Cty. August 30, 2016) (certifying HammondLaw and A&T as co-class counsel for $450,000 settlement of Labor Code §§ 1194, 226, and 201-203 claims on behalf of approximately 172 truck drivers);
- ***Lange v. Ricoh Americas Corporation***, Case No. RG136812710 (Cal. Sup. Ct. Alameda Cty. August 5, 2016) (certifying HammondLaw as co-class counsel for $1,887,060 settlement of Labor Code § 2802 claims on behalf of approximately 550 sales representatives);
- ***Alcazar v. US Foods, Inc. dba US Foodservice***, Case No. BC567664 (Cal. Sup. Ct. L.A. Cty. March 18, 2016) (certifying HammondLaw and A&T as co-class counsel for a $475,000 settlement on behalf of approximately 634 truck drivers);
- ***Harris v. Toyota Logistics***, Case No. C 15-00217 (Cal. Sup. Ct. Contra Costa Cty. February 9, 2016) (certifying HammondLaw and A&T as co-class counsel for $550,000 settlement reached on behalf of approximately truck 125 drivers);
- ***Albanez v. Premium Retail Services Inc***., Case No. RG1577982 (Cal. Sup. Ct. Alameda Cty. January 29, 2016) (Private Attorney General Act Settlement for $275,000 on behalf of approximately 38 employees);
- ***Garcia et al v. Sysco Los Angeles, et al.*****,** Case No. BC560274 (Cal. Sup. Ct. L.A. Cty. November 12, 2015) (certifying HammondLaw and A&T as co-class counsel for a $325,000 settlement on behalf of approximately 500 truck drivers);
- ***Cooper et al. v. Savage Services Corporation, Inc.***, Case No. BC578990 (Cal. Sup. Ct. L.A. Cty. October 19, 2015) (certifying HammondLaw and A&T as co-class counsel for $295,000 settlement on behalf of approximately 115 truck drivers);

- ***Gallardo et al. v. Canon Solutions America, Inc.,*** Case No. CIVDSS1500375 (Cal. Sup. Ct. San Bernardino Cty. August 5, 2015) (certifying HammondLaw and A&T as co-class counsel for $750,000 settlement on behalf for approximately 320 outside sales representatives);
- ***Glover v. 20/20 Companies, Inc.,*** Case No. RG14748879 (Cal. Sup. Ct. Alameda Cty. August 3, 2015) (Private Attorney General Act Settlement for $475,000 on behalf of approximately 273 independent contractors);
- ***Mayton et al v. Konica Minolta Business Solutions USA, Inc***., Case No. RG12657116 (Cal. Sup. Ct. Alameda Cty. June 22, 2015) (certifying HammondLaw as co-class counsel for $1,225,000 settlement on behalf for approximately 620 outside sales representatives);
- ***Garza, et al. v. Regal Wine Company, Inc. & Regal III, LLC***, Case No. RG12657199 (Cal. Sup. Ct. Alameda Cty. February 21, 2014) (certifying HammondLaw as class counsel for $1.7 million settlement on behalf of approximately 317 employees);
- ***Moy, et al. v. Young's Market Co., Inc.,*** Case No. 30-2011-00467109-CU-OE-CXC (Cal. Sup. Ct. Orange Cty. November 8, 2013) (certifying HammondLaw as co-class counsel for $2.3 million settlement on behalf of approximately 575 sales representatives);
- ***Gagner v. Southern Wine & Spirits of America***, ***Inc***., Case No. 3:10-cv-10-04405 JSW (N.D. Cal. December 11, 2012) (certifying HammondLaw as co-class counsel for $3.5 million settlement reached on behalf of approximately 870 sales representatives);
- ***Downs, et al. v. US Foods, Inc. dba US Foodservice***, Case No. 3:10-cv-02163 EMC (N.D. Cal. September 12, 2012) (certifying HammondLaw as co-class counsel for $3 million settlement reached on behalf of approximately 950 truck drivers)

## Approved California Consumer Cases

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

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- ***Davis v. Birchbox, Inc***., Case No. 3:15-cv-00498-BEN-BGS (S.D. Cal. October 14, 2016) (certifying HammondLaw and Berman DeValerio as co-class counsel in $1,572,000 settlement of Cal. Bus. Prof. Code §§ 17603, 17200, and 17535 claims on behalf of 149,000 subscribers to Birchbox's memberships);
- ***Goldman v. LifeLock, Inc***. Case No. 1-15-cv-276235 (Cal. Sup. Ct. Santa Clara Cty. February 5, 2016) (certifying HammondLaw and Berman DeValerio as co-class counsel in $2,500,000 settlement of Cal. Bus. Prof. Code §§ 17603, 17200, and 17535 claims on behalf of 300,000 California subscribers to Lifelock's identity protection programs); and
- ***Kruger v. Kiwi Crate, Inc***. Case No. 1-13-cv-254550 (Cal. Sup. Ct. Santa Clara Cty. July 2, 2015) (certifying HammondLaw as class counsel in $108,000 settlement of Cal. Bus. Prof. Code §§ 17603, 17200, and 17535 claims on behalf of 5,400 California subscribers to Kiwi Crate's subscriptions).

**EXHIBIT 2**

HAMMONDLAW

A PROFESSIONAL CORPORATION

FACSIMILE: 310-295-2385 11780 W. Sample Road, Suite 103 Coral Springs, FL 33065 TELEPHONE: 310-601-6766

April 7, 2021

**VIA LWDA WEBSITE**

Labor & Workforce Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

**VIA CERTIFIED MAIL**

Jonathan Burke
President
Laguna College of Art and Design
2265 Laguna Canyon Rd.
Laguna Beach, CA 92651

**Re: Private Attorneys General Act Notice of Claims Pursuant to California Labor Code § 2699**

Dear Mr. Burke,

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

We represent Larissa Marantz ("Plaintiff") in connection with her representative claims against Laguna College of Art and Design ("LCAD") on behalf of herself and all other part-time faculty,[1] employed by LCAD in California ("Adjunct Aggrieved Employees") from one year prior to the postmark date of this Notice through to trial of this matter ("PAGA Period") for the following Labor Code violations:

(a) failure to pay for non-productive time separately and apart from the piece and/or failure to pay for all hours worked in violation of Labor Code §§ 226.2, 1194, 1194.2, and Wage Order No. 4-2001, § 4;
(b) failure to pay hourly and separately for rest breaks at the average hourly rate and/or failure to permit off-duty rest breaks and failure to pay missed rest break premium pay in violation of Labor Code §§ 226.2 and 226.7 and Wage Order No. 4, § 12;
(c) failure to provide off-duty meal periods and pay missed meal break premium pay in violation of Labor Code § 512 and Wage Order No. 4, § 11;

[1] Part-time faculty, adjuncts, instructors, and adjunct instructors are used in this letter interchangeably.

(d) failure to issue accurate itemized wage statements in violation of Labor Code § 226(a) and 226.2(a);
(e) failure to pay compensation due upon discharge from employment in violation of Labor Code §§ 201-203; and
(f) failure to reimburse for necessarily incurred business expenses in violation of Labor Code § 2802.

Plaintiff Marantz also asserts claims on behalf of herself and all other individuals employed by LCAD in California from the beginning of the PAGA Period through to the trial date, or up to the time employees are permitted to return to work at LCAD campus or no longer required by LCAD to work from home ("Aggrieved Employees") for the following violation:

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

The facts and theories supporting these violations are as follows:

**FACTUAL BACKGROUND**

**Aggrieved Employees Were Non-Exempt Piece Rate Employees:**

Plaintiff was employed by LCAD as a part-time instructor from approximately 2008 until December 2020. Plaintiff and other Adjunct Aggrieved Employees were non-exempt under California law. From the beginning of the PAGA period through to September 7, 2020, the only potentially applicable exemption – the professional exemption, was set out in Wage Order No. 4-2001, § 1(A). Under Wage Order No. 4-2001, § 1(A)(3)(d) the professional exemption only applies if an employee earns "a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment," which is defined in Labor Code § 515(c) as 40 hours per week ("minimum earnings requirement").

Effective September 8, 2020, the Legislature enacted Labor Code § 515.7 which expanded the professional exemption set out in Wage Order No. 4 to include adjunct instructors employed by private non-profit universities and colleges who meet certain minimum payment requirements other than the minimum salary threshold under the Wage Order. Pursuant to § 515.7, adjunct instructors may be classified as exempt even if they do not meet the minimum salary required under Wage Order No. 4, § 1(A)(3)(c) so long as they are paid a *salary* and either (1) the salary is calculated based on specified minimum per classroom hour rate, or (2) if they are employed under a CBA, the CBA provides in clear and unambiguous terms that adjunct instructors are exempt.

LCAD's Adjunct Aggrieved Employees were non-exempt from the beginning of the PAGA period through to September 7, 2020 because they did not earn enough to meet the professional exemption under the Wage Order. The minimum earnings requirement, on a monthly basis, is calculated as follows: 40 (hours per week) multiplied by (the applicable minimum wage) multiplied by 2 (two times the minimum wage) multiplied by 52 (weeks per

year) divided by 12 (months per year). *See*, *e.g.*, *Kao v. Holiday*, 12 Cal. App. 5th 947, 958 (2017). The minimum wage in 2020 in California was $13.00 for employers with more than 25 employees. Accordingly, in 2020 the minimum earnings requirement, under Wage Order No. 4-2001, § 1(A), was approximately $4,506.67 per month, or $2,253.33 per semi-monthly pay period. Plaintiff and Adjunct Aggrieved Employees earned less than the minimum earnings requirement during most, if not all, of the pay periods and were therefore entitled to certain protections under the Labor Code, including to be paid for all hours worked and/or to be paid for non-productive time separate and apart from the piece, to be authorized and permitted to take off-duty rest periods and/or to be paid for time spent on rest periods separate and apart from the piece, to be provided with off-duty meal breaks, and to be provided with accurate itemized wage statements pursuant to Labor Code §§ 1194, 226.2, 226.7, 226(a), 512 and Wage Order No. 4-2001, §§ 4 and 12.

LCAD's Adjunct Aggrieved Employees continued to be non-exempt after September 8, 2020 because they were not paid on a salary basis but a piece rate and therefore did not meet the exemption requirement under Labor Code § 515.7. Plaintiff and Adjunct Aggrieved Employees are not paid a salary but a piece rate because LCAD compensates them a set amount of money for per course unit. During the PAGA period, Adjunct Aggrieved Employees' employment was subject to a Collective Bargaining Agreement, effective dates August 1, 2018 – July 31, 2021 ("CBA"), [2] which provides that adjunct instructors are paid on a per unit basis and lists "Per-Unit Pay for Classroom Teaching." Likewise, the Adjunct Faculty Handbook states (at page 21) that "Adjunct salary is based on an instructor's pay per unit." The more course units Adjunct Aggrieved Employees teach, the more they are paid. This type of compensation is a form of piece-rate compensation.

The DLSE defines "piece-rate" broadly, as "[w]ork paid for according to the number of units turned out. Consequently, a piece rate must be based upon an ascertainable figure paid for completing a particular task or making a particular piece of goods . . ." [3] True to piece-rate definition in the DLSE Manual, a 2014 report from the U.S. House of Representatives Committee on Education and the Workforce Democratic Staff, discussing poor working conditions of adjunct instructors, characterizes adjunct instructors' pay based on the number of courses taught as a piece-rate. The report states: "Generally, adjunct work is a piece work. These contingent faculty usually are paid a piece rate, a fixed amount of compensation for each unit produced, regardless of how much time it takes to produce. In this case, the unit of production is

[2] The CBA includes "all part-time faculty, including adjuncts and instructors . . . and who teach at least one credit-earning class, lesson, or lab at the College's instructional facilities." Article I, Section 2.

[3] DLSE Enforcement and Interpretation Manual, § 2.5.1. Noting the diversity of the nature of piece rate plans, the DLSE provides a non-exclusive list of examples, including automobile mechanics paid on a "book rate," nurses paid on the basis of the number of procedures performed, carpet layer paid based on the number of yards of carpet laid; a technician paid by the number of telephones installed, and a factory worker paid by the widget completed, and carpenter paid by the linear foot of on framing job. DLSE Manual § 2.5.2

a college course." [4] This is *exactly* how LCAD paid Aggrieved Employees – an ascertainable/fixed amount per credit unit.

Furthermore, the per course pay system was a piece rate and not a salary because a "salary" is defined as a "*predetermined amount* that is *not subject to reduction* based upon the quantity or quality of work." *Negri*, 216 Cal. App. 4th at 399 (*citing Kettenring v. Los Angeles Unified School Dist.,* 167 Cal. App. 4th 507, 513-514 (2008); *see also Coates v. Dassault Falcon Jet Corp.,* 961 F.3d 1039, 1042 (8th Cir. 2020) (same). Adjunct Aggrieved Employees' compensation, however, *could be and was* reduced if a course was cancelled, which is inconsistent with the compensation being a salary. *See Lucero v. Regents of Univ. of Cal.,* 1993 U.S. Dist. LEXIS 12208, *17 (N.D. Cal. 1993) (stating that "an exempt employee's must 'not [be] subject to reduction" and finding that "the University's policies permitting, suspension without pay for disciplinary reasons other than safety violations, standing alone, preclude a salaried basis status.").[5]

Accordingly, Aggrieved Adjunct Employees are non-exempt and have been non-exempt throughout the entire PAGA period. *See also* Dec. 23, 1999 Memorandum by the Chief Legal Counsel for the Labor Commissioner at p. 9 ("employees who are paid on the basis of an hourly wage, or commissions, or piece rates, cannot be exempt from payment of overtime under the administrative, executive or professional exemptions."). Additionally, Plaintiff and Adjunct Aggrieved Employees are and were subject to the requirements of Labor Code § 226.2 that governs piece-rate worker pay in California.

**Non-Teaching Time Claim:**

Since at least the beginning of the PAGA Period, and continuing at present, in addition to delivering instruction during scheduled classroom hours, LCAD required and/or expected Adjunct Aggrieved Employees to perform non-teaching tasks outside of the classroom, including, but not limited to: (1) preparing and submitting syllabi prior to the first day of classes and before the beginning of their contracts; (2) being available to meet and confer with students before and after classes, in addition to required office hours; (3) being available to students throughout each week of the semester via email and responding to student emails; (4) creating course materials, building lesson plans, and preparing lectures; (5) grading project assignments; (6) attending faculty orientations, and meetings; (7) attending commencement ceremonies, (8) performing administrative tasks such as taking and reporting attendance for each class; (9) professional development ("Non-Teaching Tasks"). Under Labor Code § 226.2, an employer must compensate piece-rate workers for their time spent performing tasks "not directly related to the activity being compensated on a piece-rate basis." The Non-Teaching Tasks listed above cannot be performed during Adjunct Aggrieved Employees' assigned class hours and must

[4] "The Just-In-Time Professor" is available here: https://edlabor.house.gov/download/the-just-in-time-professor

[5] The CBA also does not contain a clear and unambiguous statement or any statement at all that adjunct instructors are exempt. *See* Lab. Code § 515.7(2)(C).

necessarily be performed outside of teaching time. Because Adjunct Aggrieved Employees are non-exempt employees who are paid by the piece, Defendant is required under Labor Code §§ 226.2, 1194, and 1194.2 to pay them at least minimum wage for all hours worked. Therefore, LCAD was required – but failed – to compensate Adjunct Aggrieved Employees at least at the minimum wage for each hour spent performing these numerous Non-Teaching Tasks, separately and apart from the piece.

Alternatively, even if the per unit pay system is not a piece rate system, because Adjunct Aggrieved Employees are non-exempt Defendant is required under Labor Code § 1194 to pay them at least minimum wage for all hours worked, including hours spent performing these numerous Non-Teaching Tasks. However, LCAD failed to compensate Adjunct Aggrieved Employees at least at the minimum wage for each hour spent performing these numerous Non-Teaching Tasks.

**Rest Break Claim:**

Adjunct Aggrieved Employees routinely worked at least 3.5 hours or more on any given day and LCAD knew or should have known that they did so because it scheduled them to teach classes of 3.5 hours or longer (or shorter classes back to back for a total of 3.5 hours or longer). LCAD was therefore required to permit and authorize paid rest breaks and under Labor Code § 226.2 to pay Adjunct Aggrieved Employees at their average hourly rate for their time spent on rest breaks separately and apart from the piece.[6] LCAD failed pay separately and hourly for rest breaks, however, thereby triggering an obligation to make premium payments to Adjunct Aggrieved Employees under Labor Code § 226.7 and Wage Order No. 4-2001.

LCAD also maintained practices that impeded Adjunct Aggrieved Employees' ability to take off-duty 10-minute rest periods. Defendant did not maintain a rest break policy applicable to Plaintiff Marantz and Adjunct Aggrieved Employees, and Plaintiff Marantz and Adjunct Aggrieved Employees routinely could not take off-duty rest breaks because LCAD required and/or expected them to be available to students for questions during class breaks, the only time otherwise available for instructors to take rest breaks. Students routinely would approach Adjunct Aggrieved Employees to ask questions and Adjunct Aggrieved Employees could not ignored them. Adjunct Aggrieved Employees were further routinely approached by students before and after class with questions about course material.

Defendant accordingly failed to authorize and permit compliant rest breaks in accordance with Wage Order No. 4-2001, § 12(A) thereby further triggering an obligation to make premium payments to Plaintiff and Aggrieved Employees under Labor Code § 226.7 and Wage Order No. 4-2001, § 12(B).
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[6] The CBA does not contain any references, express or otherwise, regarding provisions for rest breaks.

**Meal Break Claim:**

During the relevant period, LCAD regularly scheduled Plaintiff Marantz and Adjunct Aggrieved Employees to work shifts of more than 5 hours, and they did work shifts of more than 5 hours. LCAD knew or should have known that they did so because it scheduled them to teach classes of 5 hours or longer, including back to back classes that resulted in Adjunct Aggrieved Employees being scheduled to teach for more than 5 hours in total.

Under Labor Code § 512 and IWC Wage Order No. 4-2001, § 11, non-exempt employees, such as Adjunct Aggrieved Employees, must be provided with an unpaid, off-duty 30-minute meal period for any shift of 5 or more hours before the beginning of the fifth hour of work. Under Labor Code § 226.7 and IWC Wage Order No. 4-2001, § 11, Adjunct Aggrieved Employees are entitled to receive premium pay for missed meal breaks.[7]

Defendant did not maintain a lawful meal break policy applicable to Plaintiff Marantz and Adjunct Aggrieved Employees. Plaintiff Marantz and Adjunct Aggrieved Employees routinely could not take off-duty meal breaks because LCAD required and/or expected them to be available to students for questions during class breaks. Although students were generally given time during such class periods for breaks and/or to have lunch, Adjunct Aggrieved Employees were required and/or expected by LCAD to remain available to students throughout these periods. Students routinely would approach Adjunct Aggrieved Employees to ask questions about course material and could not be ignored—thus Adjunct Aggrieved Employees worked through their lunch breaks. Adjunct Aggrieved Employees were further routinely approached by students before and after class with questions about course material.

Thus, Defendant failed to provide Plaintiff Marantz and Adjunct Aggrieved Employees with off-duty meal breaks when required, in violation of Labor Code § 512 and Wage Order No. 4, § 11, thereby triggering an obligation to make premium pay pursuant to Labor Code § 226.7, which Defendant also did not pay.

**Labor Code § 226(a) Wage Statement Claims:**

During the PAGA Period, LCAD was required, under Labor Code § 226(a), to furnish Adjunct Aggrieved Employees with wage statements, semimonthly or at the time of each payment of wages, containing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) net wages earned, and (5) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.[8]

[7] The CBA does not contain any references, express or otherwise, regarding provisions for meal breaks.

[8] The CBA makes no reference to wage statements or their content. It is evident that LCAD did not track Adjunct Aggrieved Employees' hours worked and did not list entries for total hours worked or applicable hourly rates on their wage statements.

LCAD, however, furnished Adjunct Aggrieved Employees with wage statements that failed to include any hours spent working; number of piece-rates earned and applicable piece rate; or applicable hourly rates. Indeed, the wage statements explicitly contained columns labelled as "Rate" and "Hours," but the "Rate" column was left blank and the "Hours" column listed "0.00" as the number of hours worked. Thus, LCAD issued wage statements including only a lump sum earned during each pay period without any hours, pieces, or hourly rates included.

**Labor Code § 226.2(a) Wage Statement Claims:**

During the PAGA Period, LCAD was also required, under Labor Code § 226.2(a), to issue wage statements to Adjunct Aggrieved Employees that itemized (1) total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period; and (2) total hours of nonproductive time, the rate of compensation, and the gross wages paid for that time during the pay period.

LCAD, however, furnished Adjunct Aggrieved Employees with wage statements that failed to include any hours spent on rest breaks, or any compensation paid for such rest breaks; and failed to include most hours spent performing Non-Teaching Tasks or amounts paid for such time. Rather, as stated above, LCAD routinely issued wage statements including only the lump sum earned during each pay period with no hours, pieces, or hourly rates included.

**Labor Code §§ 201-203 Failure to Pay Wages Owed at Discharge Claims:**

LCAD employed Adjunct Aggrieved Employees pursuant to contracts of limited duration, as the end of which Adjunct Aggrieved Employees were discharged from employment. As a consequence of LCAD's failure to pay wages owed for Non-Teaching Tasks and premium pay for unpaid or missed rest breaks, Adjunct Aggrieved Employees did not receive all compensation due to them when they were discharged from employment at the end of each semester or contract. As a result, Adjunct Aggrieved Employees did not receive all wages due upon termination; nor did they receive these wages due within 30 days of the separation of their employment from LCAD.

Further, LCAD followed its regular semi-monthly payroll schedule, and as a result routinely did not pay Adjunct Aggrieved Employees all compensation due to them when they were discharged from employment at the end of each semester or contract, but several days after they were discharged and therefore late. This violated Labor Code Sections 201 and 202 with respect to Adjunct Aggrieved Employees.

**Labor Code 2802 Claim on Behalf of Adjunct Aggrieved Employees**

Adjunct Aggrieved Employees incurred expenses in carrying out their work duties for LCAD purchasing their own materials and supplies without any reimbursement from LACD.

Those materials and supplies included, but were not limited to: books, drawing or paint supplies such as paper, paint, brushes, color pencils, graphics editor software such as Adobe Photoshop.

Labor Code § 2802(a) provides:

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

Plaintiff and Adjunct Aggrieved Employees could not effectively carry out their work duties of teaching classes without purchasing the above-described supplies, which LCAD did not provide them with. LCAD knew or should have known that Adjunct Aggrieved Employees incurred expenses associated with purchasing these supplies, however LCAD maintained policies and/or practices that denied reimbursement for the expenses associated with purchasing those supplies.

As a result, LCAD's policies and/or practices require and/or with LCAD's knowledge thereof permit, Adjunct Aggrieved Employees to pay for their materials and supplies in direct discharge of their job duties on behalf of LCAD, without reimbursement by LCAD in full or at all, for such expenses.

LCAD is or should be aware that Plaintiff and Adjunct Aggrieved Employees routinely incur expenses in the discharge of their duties, as employees, for LCAD, without any reimbursement. LCAD's conduct of not reimbursing Adjunct Aggrieved Employees is applicable to all of its campuses/locations and across all of its part-time faculty during the relevant period. As a result, Plaintiff and Adjunct Aggrieved Employees have been harmed by LCAD's failure to reimburse their expenses in clear violation of § 2802 of the California Labor Code.

**Labor Code 2802 Claim on Behalf of Aggrieved Employees:**

As a result of the COVID-10 pandemic, LCAD suspended all on-campus classes, including labs and studios, on or about March 23, 2020. Aggrieved Employees (who were not considered essential) were required to work remotely from home, and those Aggrieved Employees who were employed as instructors were required to develop alternative methods to deliver curriculum and manage operations. In November 2020, LCAD announced that it would continue to operate all of its instruction virtually throughout the 2020-2021 academic year.

From the beginning of the PAGA Period through to the trial date, or up to the time employees are permitted to return to work at LCAD campus or no longer required by LCAD to work from home, Defendant failed to reimburse Plaintiff Marantz and Aggrieved Employees for their business expenses, including but not limited to the cost of internet and

cellular phone service, incurred in carrying out Defendant's business. As discussed above, Labor Code § 2802(a) requires an employer to indemnify his or her employee for business expenses incurred in carrying out their job duties for the employer.

During the relevant period, LCAD required and expected Plaintiff Marantz and Aggrieved Employees to be readily available by laptop computer, mobile phone, email, messaging application, videoconferencing, instant message, and/or text messaging, and LCAD required and expected instructors to deliver curriculum as closely as possible to as if they were at their regular LCAD location.

As a result of working remotely, in direct consequence of carrying out their duties, or their obedience to the directions of the LCAD, Aggrieved Employees incurred office expenses, as described above, including but not limited to internet service, and cellular phone service. LCAD knew or should have known that Aggrieved Employees incurred these office expenses. However, LCAD maintained policies and/or practices that denied reimbursement for these expenses.

As a result, LCAD's policies and/or practices require and/or with LCAD's knowledge thereof permit, Aggrieved Employees to pay for their office expenses including but not limited to internet service and cellular service in direct discharge of their job duties on behalf of LCAD, without reimbursement by LCAD in full or at all, for such expenses.

LCAD is or should be aware that Plaintiff Marantz and Aggrieved Employees routinely incur business expenses in the discharge of their duties, as employees, without any reimbursement. LCAD nevertheless has, throughout the relevant period, failed and refused to reimburse Plaintiff Marantz and Aggrieved Employees for such expenses incurred by them in their work as they carry out their work duties for LCAD. LCAD's conduct is applicable to all of its campuses/locations and across all of its employees during the relevant period. As a result, Plaintiff Marantz and Aggrieved Employees have been harmed by LCAD's failure to reimburse their expenses in clear violation of § 2802 of the California Labor Code.

**PAGA PENALTIES**

***Violation of Labor Code §§ 226.2, 1194 and IWC Wage Order No. 4-2001, § 4***

Under Labor Code §§ 1194 and 226.2, and IWC Wage Order No. 4-2001, employees compensated on a piece-rate basis must be paid separately and hourly for non-productive time. However, as discussed above, LCAD does not compensate Adjunct Aggrieved Employees separately from the per unit compensation for the Non-Teaching Tasks. LCAD is also required to compensate non-exempt employees at least minimum wage for all hours worked, under Labor Code § 1194. However, LCAD did not pay Adjunct Aggrieved Employees at all for their Non-teaching Tasks.

As a result of Defendant's violation of Labor Code §§ 226.2 and 1194, Plaintiff and Adjunct Aggrieved Employees are entitled to one hundred dollars ($100) for each initial

violation and two hundred dollars ($200) for each subsequent violation, pursuant to Labor Code § 2699(f)(2).

***Violation of Labor Code §§ 226.2 and 226.7 and IWC Wage Order 4-2001, § 12***

Under Labor Code § 226.2, employees compensated on a piece-rate basis must be paid separately and hourly for rest periods. However, as discussed above, LCAD does not compensate Adjunct Aggrieved Employees separately from the piece, and hourly, for the rest breaks. Throughout the PAGA Period, LCAD also failed to authorize and permit Adjunct Aggrieved Employees to take statutory rest breaks, and failed to pay premium pay for missed breaks.

As a result of Defendant's violation of Labor Code §§ 226.2 and 226.7, Plaintiff and Adjunct Aggrieved Employees are entitled to hundred dollars ($100) for each initial violation and two hundred dollars ($200) for each subsequent violation, pursuant to Labor Code § 2699(f)(2).

***Violation of Labor Code §§ 512 and 226.7 and IWC Wage Order 4-2001, § 11***

Under Labor Code § 512, employees working more than 5 hours per day must be compensated for meal breaks. However, as discussed above, LCAD does not compensate Adjunct Aggrieved Employees separately from the piece, and hourly, for the meal breaks. Throughout the PAGA Period, LCAD also failed to authorize and permit Adjunct Aggrieved Employees to take statutory meal breaks, and failed to pay premium pay for missed breaks.

As a result of Defendant's violation of Labor Code §§ 512 and 226.7, Plaintiff and Adjunct Aggrieved Employees are entitled to hundred dollars ($100) for each initial violation and two hundred dollars ($200) for each subsequent violation, pursuant to Labor Code § 2699(f)(2).

***Violation of Labor Code §§ 226(a), 226.2(a)***

Throughout the PAGA Period, LCAD issued inaccurate wage statements, or failed to issue wage statements at all, in violation of Labor Code §§ 226(a), 226.2(a). Pursuant to Labor Code § 226.3 Plaintiff and Adjunct Aggrieved Employees are entitled to two hundred fifty dollars ($250) for each initial violation of Labor Code § 226(a) and one thousand dollars ($1,000) for each subsequent violation of § 226(a). Alternatively, pursuant to Labor Code § 2699(f)(2), Plaintiff and Adjunct Aggrieved Employees are entitled to one hundred dollars ($100) for each initial violation, and two hundred dollars ($200) for each subsequent violation.

***Violation of Labor Code §§ 201-202***

Throughout the PAGA Period, LCAD failed to pay Plaintiff and Adjunct Aggrieved Employees all wages owed at discharge, in violation of Labor Code §§ 201-202. Pursuant to Labor Code § 2699(f)(2), Plaintiff and Adjunct Aggrieved Employees are entitled to one hundred

dollars ($100) for each initial violation, and two hundred dollars ($200) for each subsequent violation.

***Violation of Labor Code § 2802***

Labor Code § 2802(a) requires an employer to indemnify employees for all necessary expenditures or losses incurred by the employees in direct consequence of the discharge of their duties, or of their obedience to the directions of the employer. LCAD has, throughout the relevant period, failed and refused to reimburse Plaintiff Marantz, Adjunct Aggrieved Employees and Aggrieved Employees for such expenses incurred by them in their work as they carry out their work duties for LCAD.

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

Plaintiff, Adjunct Aggrieved Employees and Aggrieved Employees are further entitled to recover her attorneys' fees and costs under Labor Code § 2699(g)(1).

**CONCLUSION**

Therefore, pursuant to Labor Code § 2699, we write to inform you and the Labor and Workforce Development Agency of our intent to pursue a lawsuit against LCAD that will include a claim for civil penalties under the PAGA to be brought by the Plaintiff as a representative of the State, individually and on behalf of all other Adjunct Aggrieved Employees and Aggrieved Employees, based on the Labor Code violations alleged above.

Yours truly,

Julian Hammond