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1 **1.7** “Class Period” refers to January 15, 2015, through the date of Preliminary
2 Approval of this Settlement Agreement.

3 **1.8** “Class Representative” refers to Plaintiff Lisa Stempien.

4 **1.9** “Complaint” refers to the operative Complaint in this Action.

5 **1.10** “Court” refers to the California Superior Court for the County of Alameda.

6 **1.11** “Final” means the latest of: (a) if there is an appeal of the Court’s
7 Judgment, the date the Judgment is affirmed on appeal, the date of dismissal of such
8 appeal, or the expiration of the time to file a petition for writ of *certiorari*, or, (b) if a
9 petition for a writ of *certiorari* is filed, the date of denial of the petition for writ of
10 *certiorari*, or the date the Judgment is affirmed pursuant to such petition; or (c) if no
11 appeal is filed, the expiration date of the time for filing or noticing any appeal of the
12 Notice of Entry of Judgment.

13 **1.12** “Final Approval Hearing” refers to the hearing at which the Court will
14 make a final determination whether the terms of the Settlement are fair, reasonable, and
15 adequate for the Class and meet all applicable requirements for approval.

16 **1.13** “Final Approval Order” refers to the final order by the Court approving
17 the Settlement following the Final Approval Hearing.

18 **1.14** “Effective Date” refers to the date that the Notice of Entry of Judgment of
19 the executed Final Approval Order is entered if no objections to the Settlement are filed.
20 If objections are filed and overruled, and no appeal is taken of the Judgment, then the
21 Effective Date will be sixty (60) days after the Notice of Entry of Judgment is filed. If an
22 appeal is taken from the Court’s overruling of objections to the settlement, then the
23 Effective Date will be twenty (20) days after the appeal is withdrawn or after an appellate
24 decision affirming the Judgment becomes final.

25 **1.15** “Gross Settlement Amount” (also referred to herein as “GSA”) refers to
26 the maximum settlement payment of One Million One Hundred and Seventy Five
27 Thousand Dollars (\$1,175,000) Defendant will be obligated to make, except that
28 Defendant shall bear, in addition, all employer-side payroll tax payments (e.g., FICA,

1 FUTA, etc.) due and payable to federal and state tax authorities as a result of this
2 Settlement. The GSA includes all payments made to Settlement Class Members, Service
3 Award payment to Class Representative, all Settlement Administration Costs, and
4 attorneys' fees and litigation costs and expenses to Class Counsel as approved by the
5 Court.

6 **1.16** "Judgment" refers to the final judgment by the Court approving the
7 Settlement.

8 **1.17** "Net Settlement Amount" (also referred to herein as "NSA") is the GSA
9 less the Court-approved attorney's fees and litigation costs and expenses to Class Counsel,
10 Settlement Administration Costs, and Service Award. The NSA is the maximum amount
11 that will be available for distribution to Settlement Class Members.

12 **1.18** "Parties" are Plaintiff and Defendant.

13 **1.19** "Released Claims" are those claims defined in Section 13.

14 **1.20** "Request for Exclusion" refers to a request to be excluded from the
15 Settlement, which must be made in writing in conformity with the requirements set forth
16 in the Class Notice, the Court's order granting preliminary approval, and herein, and
17 mailed to the Administrator and postmarked on or before the Response Deadline.

18 **1.21** "Response Deadline" refers to a date that is sixty (60) calendar days after
19 the date that the Class Notice is mailed to Class Members and is the deadline by which
20 Class Members' Requests for Exclusion, disputes regarding Credits, and/or objections
21 must be postmarked in order to be timely.

22 **1.22** "Service Award" refers to a monetary award to the Plaintiff, in an amount
23 not to exceed Seven Thousand Five Hundred Dollars (\$7,500), or other amount as
24 approved by the Court, for her services as Class Representative as described in Section 7,
25 to be paid for from the Gross Settlement Amount, subject to approval by the Court, as
26 described below.

27 **1.23** "Settlement Administrator" refers to the third-party administrator
28 mutually selected by the parties, subject to approval by the Court, to perform the notice,

1 claims administration, and distribution functions further described in this Settlement
2 Agreement. The costs and expenses of the administrator, to perform its tasks and duties
3 as provided by this Settlement Agreement, are the "Settlement Administration Costs."

4 **1.24** "Settlement Administration Costs" refers to the cost of paying the
5 Settlement Administrator. This cost will be paid out of the Gross Fund Value, in an
6 amount not to exceed Twenty Thousand Dollars (\$20,000).

7 **1.25** "Settlement Class" or "Settlement Class Member" refers to all Class
8 Members or individual Class Members as defined in Section 1.2 and 1.4 who do not
9 request exclusion from the Settlement pursuant to Section 16 of this Settlement
10 Agreement.

11 **2. Procedural History and Recitals.**

12 **2.1** On or about January 15, 2019, Plaintiff filed her Complaint asserting
13 putative class action claims against Defendant, on behalf of Class Members. The
14 Complaint alleges the following causes of action: (a) Failure to pay wages for all hours
15 worked (Cal. Lab. Code §§ 226.2, 226.7, IWC Wage Order No. 4-2001, §§ 4, 12); (b)
16 Failure to authorize and permit paid rest breaks and pay premium pay (Cal. Lab Code §§
17 226.2, 226.7, IWC Wage Order No. 4-2001, §§4, 12); (c) Failure to pay compensation
18 due upon discharge (Cal. Lab. Code §§ 201-203); (d) Failure to reimburse for business-
19 related cellphone usage (Cal. Lab. Code § 2802); and (e) Unfair, unlawful, or fraudulent
20 business practices (Cal. Bus. & Prof. Code § 17200 *et seq.*).

21 **2.2** On or about February 13, 2019, Defendant answered the Complaint,
22 denying the allegations contained therein and alleged a number of affirmative defenses to
23 the claims contained in the Complaint. On or about February 15, 2019, Defendant
24 removed the case to the United States District Court for the Northern District of
25 California.

26 **2.3** On May 20, 2019, the Parties participated in a mediation session before
27 mediator Tripper Ortman, Esq., an experienced mediator who has mediated numerous
28 wage-hour class actions. At the mediation session, the Parties reached the basic terms of

1 a settlement and executed a Memorandum of Understanding, and agreed to prepare this
2 formal settlement agreement to be presented to the Court for approval.

3 2.4 On June 3, 2019, Plaintiff and Defendant stipulated to remand the Action
4 to the California Superior Court for the County of Alameda. On June 4, 2019, the Action
5 was remanded pursuant to the Parties' stipulation and by Order of the U.S. District Court.

6 2.5 Defendant denies that it is liable to Plaintiff or the Class and further denies
7 that, for any purpose other than settling the Action, this Action is appropriate for class
8 treatment.

9 2.6 Class Counsel represent that they have thoroughly investigated the claims
10 alleged against Defendant in the Action. Class Counsel represent that they have
11 conducted their own investigation into the underlying facts, events, and issues related to
12 the subject matter of this Action. Class Counsel represent that they have further
13 undertaken an extensive analysis of the legal principles applicable to the claims asserted
14 against Defendant, and the potential defenses thereto. Both Class Representative and
15 Defendant have had an opportunity to evaluate their respective positions on the merits of
16 the claims asserted.

17 2.7 Class Counsel has also engaged in intensive arm's-length negotiations
18 with counsel for Defendant with a view toward achieving substantial benefits for the Class
19 while avoiding the cost, delay and uncertainty of further litigation, trial, and appellate
20 review.

21 2.8 As a consequence of said negotiations, and of Class Counsel's
22 investigation, analysis and discovery, Plaintiff and Class Counsel determined to enter into
23 this Settlement Agreement on the terms and conditions hereinafter set forth, believing
24 such Settlement to be fair, reasonable and adequate and in the best interests of Plaintiff
25 and the other members of the Class. Plaintiff and Class Counsel have determined to
26 execute this Settlement Agreement and urge approval by the Court of the Settlement after
27 considering (a) the substantial factual and legal defenses available to Defendant to the
28 claims asserted in the Action, which render the outcome of the Action substantially

1 uncertain; (b) the potential difficulties Plaintiff and Class Members would encounter in
2 establishing the elements of their claims; (c) the substantial benefits made available to
3 Class Members pursuant to the Settlement; (d) the fact that the Settlement ensures that
4 Class Members will receive relief in the most expeditious and efficient manner
5 practicable, and thus much sooner than would be possible were the claims to be litigated
6 successfully through trial and appeal; and (e) the fact that the Settlement allows persons
7 who would otherwise fall within the definition of the Class, if they so desire, to opt out of
8 the Action and individually pursue any Release Claims that he or she may have.

9 **2.9** As set forth above, without admitting any wrongdoing or liability,
10 Defendant is willing to agree to the terms of the Settlement in order to settle, compromise,
11 and fully resolve the Action and Released Claims (as defined below).

12 **NOW THEREFORE, in consideration of the covenants and agreements set forth**
13 **herein, and of the release of all Released Claims, Plaintiff, on behalf of herself and the**
14 **Class, Class Counsel, and Defendant agree to the terms and provisions of this Settlement**
15 **Agreement, subject to the approval of the Court.**

16 **3. Limitation on Effect of Settlement.**

17 The Settlement will not constitute, in this or any other proceeding, an admission of any
18 kind by Defendant, including without limitation, that certification of a class is appropriate or
19 proper or that Plaintiff could establish any of the requisite elements for class treatment of any
20 of the claims in the Action. In the event that the Settlement is not finally approved, or the
21 Settlement is otherwise terminated, Defendant expressly reserves all rights to challenge
22 certification of a class on all available grounds.

23 **4. Establishment of the GSA.**

24 This Settlement will be made on a non-claims-made basis and will be non-reversionary.
25 Under no circumstances will any of the GSA revert to Defendant. Defendant shall pay a total of
26 no more than the GSA, which will cover payment by Defendant pursuant to this Settlement
27 Agreement, to Settlement Class Members, Settlement Administration Costs, attorneys' fees and
28 litigation costs to Class Counsel, and Service Award to Plaintiff, except that Defendant shall

1 pay, in addition, all employer-side payroll tax payments (e.g., FICA, FUTA, etc.) due and
2 payable to federal and state tax authorities as a result of this Settlement

3 **5. Calculation of the NSA and Distribution of Settlement Proceeds.**

4 **5.1** This settlement is a “non-claims-made” settlement. Each Settlement Class
5 Member will be entitled to a share of the NSA in accordance with the formula set forth
6 below. Payments will be made from the NSA only to Settlement Class Members, as set
7 forth herein.

8 **5.1.1** Each Settlement Class Member will be paid a portion of the NSA
9 in accordance with the following formula: Each Settlement Class
10 Member’s potential share of the NSA will be calculated by
11 dividing the number of credits taught by the Settlement Class
12 Member during the Class Period as a Visiting Professor or adjunct
13 instructor in California (“Credits”) by all the number of credits
14 taught by all Settlement Class Members as Visiting Professors or
15 adjunct instructors in California during the Class Period, and then
16 multiplying the resulting figure by the NSA. Zero-credit courses
17 will be treated as one-credit courses for the purposes of this
18 calculation. Notwithstanding the formula above, the minimum
19 payment to any Settlement Class Member shall be \$200.00.
20 Settlement Class Members’ credits will be weighted as follows: the
21 credits taught as part of a course that was solely online will be
22 reduced by one-quarter (i.e. they will be multiplied by 0.75).

23 **5.1.2** The amount distributed to Settlement Class Members in the form
24 of Class Member Payments, plus all required withholdings, shall
25 not exceed the NSA. If a Class Member timely and validly submits
26 a Request for Exclusion, as set forth herein, his or her portion of
27 the NSA (as calculated pursuant to section 5.1.1 of this Agreement
28 will be re-incorporated into the Net Settlement Amount and be

distributed to the Settlement Class Members as described in this Settlement Agreement.

5.2 Payments to Class Members pursuant to this Settlement Agreement will not be construed as compensation for purposes of determining eligibility for or benefit calculations of any health and welfare benefit plan, retirement benefit plan, vacation benefit plan, unemployment compensation, including, without limitation, all plans, subject to Employee Retirement Income Security Act ("ERISA"). The Parties agree these payments do not represent any modification of any employee's previously-credited hours of service or other eligibility criteria under any employee pension benefit plan, employee welfare benefit plan, or other program or policy.

6. Attorneys' Fees and Costs.

Class Counsel shall file a motion for attorneys' fees and costs at the same time that they file the motion for the final approval, requesting an award of attorneys' fees and litigation costs and expenses that is equal to or less than \$391,627.50 (i.e., 33.33% of the GSA) for attorneys' fees and up to \$20,000.00 for reimbursement of litigation costs and expenses. Defendant agrees to not oppose Class Counsel's request for attorneys' fees and litigation costs and expenses if sought in conformity with this Subsection; Defendant retains the right to oppose a request for attorneys' fees exceeding one-third of the GSA or a request for litigation costs and expenses in excess of \$20,000.00. The terms of this Settlement Agreement will not be abrogated and will continue in full force even if the Court awards a lower amount of attorneys' fees or costs than requested by Class Counsel. However, Class Counsel retains the right to appeal any such reductions, but such an appeal will delay Defendant's obligation to make all payments set forth in this Settlement Agreement. Any unapproved amount of attorneys' fees and litigation costs and expenses, will be added to the Net Settlement Amount and be distributed to the Settlement Class Members as described in this Settlement Agreement.

7. Service Award.

Class Counsel shall file a motion requesting a Service Award for Plaintiff to which Defendant agrees not to object, of no more than Seven Thousand Five Hundred Dollars (\$7,500),

1 from the GSA in consideration for serving as Class Representative. Defendant retains the right
2 to object to a request for a Service Award in excess of this amount. Should the Court approve
3 a Service Award in an amount less than that set forth herein, the unapproved portion or portions
4 will be added to the NSA.

5 **8. Costs of Settlement Administration.**

6 The Parties have mutually agreed to the selection of CPT, Inc. ("Settlement
7 Administrator"), to undertake the administration of the Settlement in this Action. The
8 administration duties include, without limitation, the following: establishing and maintaining a
9 qualified settlement account for the NSA, obtaining tax identification number(s) for Defendant
10 applicable to the Settlement, calculating the Class Member Payments, performing an initial
11 National Change of Address (NCOA) search upon receipt of the Class Member mailing
12 addresses, mailing the Class Notices, performing one skip trace on Class Notices which are
13 returned as undeliverable, reviewing and processing Requests for Exclusion, disputes, and
14 objections, setting up a toll-free number, mailing the Class Members Payments and tax forms to
15 the Settlement Class Members, and setting up a static website regarding the Settlement. The
16 Settlement Administrator will report payment of the individual Class Member Payments to all
17 required taxing and other authorities, take appropriate withholdings, forward payments for
18 withholdings and issue Internal Revenue Service Forms W-2 and 1099. The Settlement
19 Administrator will establish a Qualified Settlement Fund ("QSF"), pursuant to section 468B(g)
20 of the Internal Revenue Service for the purposes of administering the Settlement. The Parties
21 estimate that the costs and expenses of administration of the settlement will not exceed \$20,000,
22 and these costs and expenses will be paid from the GSA, subject to approval of the Court. Any
23 amounts allocated but not paid to the Settlement Administrator will be added to the NSA and
24 distributed to the class *pro rata*.

25 **9. Payment Procedure.**

26 **9.1 Funding the Settlement:** Within fourteen (14) business days after the Final
27 Effective Date of this Settlement Agreement Defendant will deposit money into an
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1 account, through the Settlement Administrator, in an amount equal to the GSA, plus
2 Defendant's portion of payroll taxes in connection with the wages portion of the NSA.

3 **9.2** Payments to Settlement Class Members, Class Counsel, Class
4 Representative, and Taxing Authorities: Within fifteen (15) business days after the Final
5 Effective Date, the Settlement Administrator will pay, subject to approval by the Court:
6 (a) the NSA to the Settlement Class Members per the terms of this Settlement Agreement
7 and the Final Approval Order and Judgment; (b) attorneys' fees and litigation costs and
8 expenses to Class Counsel; (c) Settlement Administration Costs to the Settlement
9 Administrator; and (d) all applicable tax withholdings to the appropriate taxing
10 authorities; (e) the Service Awards to the Class Representative.

11 **9.3** Uncashed Class Payment Checks: Class Member Payments will be
12 calculated in conformity with Section 5 and issued by way of check ("Class Member
13 Payment Check"). Class Member Payment Checks that are not cashed within one
14 hundred and eighty (180) calendar days from the date of issuance by the Settlement
15 Administrator, will be cancelled. Class Members whose Class Member Payment checks
16 are not timely cashed and which are cancelled, will be deemed to have irrevocably waived
17 any right in or claim to any payment under the Settlement, but the settlement and their
18 release of Released Claims will remain binding upon them. The value of the cancelled
19 Class Member Payment checks will be transmitted in conformity with California Civil
20 Procedure Code section 384, as follows: one-hundred percent (100%) to the non-profit
21 organization Legal Aid at Work.

22 **10. Tax Treatment.**

23 **10.1** Tax Treatment of Class Member Payments: 33% percent of each Class
24 Member Payment will be allocated as wages ("wage portion"), 33% percent will be
25 allocated as penalties and 33% percent will be allocated as interest (collectively, "non-
26 wage portion"). The wage portion will be reported on IRS Form W-2 and subject to
27 reduction for the employee's share of taxes and withholding, and the non-wage portion
28 will be reported on IRS Form 1099 (if required).

1 **10.2 Employer's Portion of Payroll Taxes:** Defendant shall pay the employer's
2 portion of payroll taxes with respect to the wage portion of Class Member Payments
3 separately and in addition to the GSA.

4 **10.3 Tax Treatment of Service Award:** Plaintiff will receive an IRS Form 1099
5 for her individual Service Award and will be responsible for payment of any taxes owing
6 on said amount.

7 **10.4 Tax Treatment of Attorneys' Fees and Cost Award:** Class Counsel will
8 receive an IRS Form 1099 for any amount awarded to Class Counsel in the form of
9 attorneys' fees or costs and will be responsible for payment of any taxes owing on said
10 amount.

11 **10.5 No Tax Advice:** Neither Plaintiff nor Defendant, nor the parties' attorneys,
12 shall give or are giving any tax advice in connection with the settlement or any payments
13 to be made pursuant to this settlement. Each Settlement Class Member agrees to
14 indemnify, and hold harmless Defendant from any liability for taxes, fees, costs, or
15 assessments resulting from his or her failure to timely pay his or her share of taxes,
16 interest, fees, or penalties owed.

17 **11. Resolution of Disputes Relating to Credits.**

18 If a Class Member timely disputes the number of Credits listed on his or her Class Notice,
19 the Parties' counsel will make a good faith effort to resolve the dispute informally. If counsel
20 for the Parties cannot agree, the dispute will be submitted to the Settlement Administrator, who
21 will examine the records provided by Defendant and either verify the calculation or provide a
22 corrected calculation. If a Class Member disputes the number of Credits, he or she must do so
23 in writing that is submitted to the Settlement Administrator, postmarked on or before the
24 Response Deadline. The dispute must contain: the Class Member's full name, address,
25 signature, and last four digits of his or her Social Security number; the case name and number
26 of the Action; a clear statement indicating that he or she disputes the number of Credits credited
27 to him or her; and facts supporting the Class Member's dispute, along with any supporting
28 materials confirming that the Credits credited to him or her are incorrect. In any event, the

1 Settlement Administrator will make every effort to resolve any such disputes prior to final
2 approval of this Settlement Agreement. The Settlement Administrator's determination of
3 disputes will be final and not subject to appeal.

4 **12. Non-Materiality of Attorneys' Fees, Costs and Enhancement Awards.**

5 The attorneys' fees and litigation costs and expenses to Class Counsel, Settlement
6 Administration Costs, and Service Award provided by this Settlement, will be awarded at the
7 discretion of the Court, provided that they do not exceed the amounts listed in this Settlement
8 Agreement. The Parties agree that the provisions of Sections 6 and 7 of this Settlement
9 Agreement are severable from the remainder of the Settlement Agreement. Any denial or
10 reduction in amount by the Court of the application for attorneys' fees and litigation costs and
11 expenses, Service Award, and/or Settlement Administration Costs will in no way affect the
12 validity and effect of the remainder of this Settlement Agreement, or give rise to a right to
13 abrogate this Settlement Agreement.

14 **13. Release.**

15 In exchange for the consideration set forth in this Settlement Agreement, Plaintiff and
16 the Settlement Class Members agree to release all claims as set forth herein.

17 **13.1** Upon the Effective Date, Plaintiff on her own individual behalf agrees to
18 generally release Defendant, and any of its parents, affiliates, subsidiaries, divisions,
19 predecessors, successors, and assigns, and each of their officers, directors, board
20 members, trustees, shareholders, employees, agents, attorneys, auditors, accountants,
21 stockholders, representatives, partners, insurers, reinsurers, and other persons acting on
22 their behalf, and each of them (collectively, the "Released Parties"), from any and all
23 causes of action, claims, rights, damages, punitive or statutory damages, penalties,
24 liabilities, expenses, and losses and issues of any kind or nature whatsoever, that Plaintiff
25 has or may have had against any of the Released Parties. Plaintiff acknowledges that she
26 may have claims that are presently unknown and that the release contained in this
27 Settlement Agreement is intended to and will fully, finally, and forever discharge all
28 claims against the Released Parties, whether now asserted or un-asserted, known or

1 unknown, suspected or unsuspected, which now exist, or heretofore existed or may
2 hereafter exist, which if known, might have affected her decision to enter into this release.
3 In making this waiver, Plaintiff agrees that, although she may discover facts in addition
4 to or different from those that are currently known or believed to be true with respect to
5 the Released Claims, it is her intention to fully, finally, and forever settle and release any
6 and all Released Claims, known or unknown, suspected or unsuspected, which now exist,
7 or heretofore existed, or may hereafter exist, and without regard to the subsequent
8 discovery or existence of such additional or different facts. The foregoing waiver
9 includes, without limitation, an express waiver, as to the Released Claims, to the fullest
10 extent permitted by law, by Plaintiff of any and all rights under California Civil Code
11 section 1542, which provides:

12 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
13 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
14 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
15 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
16 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
17 DEBTOR OR RELEASED PARTY."

18 **13.2** Plaintiff warrants and represents that she has not assigned or, transferred,
19 to any person or entity any of the Released Claims or any rights, claims, or causes of
20 action arising out of the Released Claims. In addition, Plaintiff shall defend, hold
21 harmless, and indemnify the Released Parties, or any of them, from and against any
22 claims, damages, litigation, causes of action, and expenses, including reasonable
23 attorneys' fees, resulting from any breach by Plaintiff of this warranty and representation,
24 or any breach by Plaintiff of her release of the Released Claims.

25 **13.3** Upon the Effective Date, all Settlement Class Members hereby release and
26 discharge Released Parties, from any and all claims, rights, demands, liabilities and causes
27 of action of every nature and description, whether known or unknown, that were or could
28 have been brought based on the facts or claims alleged in the Complaint, arising during

1 the period from January 15, 2015, to the date on which the Court grants preliminary
2 approval of the Settlement. The claims released by the Settlement Class Members include
3 all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorney's
4 fees, damages, action or causes of action of any and every kind that were or could have
5 been, asserted in the currently operative Complaint, including, without limitation, to the
6 California Labor Code, the Business & Professions Code (including Section 17200), any
7 IWC Wage Order; claims for restitution and other equitable relief, liquidated damages,
8 punitive damages, interest, wages, overtime, on call time, nonproductive time, business
9 expenses, rest period violations and penalties, waiting time penalties, any other benefit
10 claimed on account of the allegations that were or could have been asserted in the
11 Complaint. This release shall only apply to all claims arising at any point during the Class
12 Period, but this release shall not include claims not at issue in the Complaint, such as
13 unrelated claims like retaliation, discrimination, workers compensation, or ERISA claims
14 or claims arising outside the Class Period, or claims that could not have been asserted in
15 the Complaint. The released claims include without limitation claims meeting the above
16 definition(s), based on the facts or claims alleged in the Complaint in the Action, under
17 any and all applicable statutes, including without limitation any provision of the
18 California Labor Code, California Bus. & Prof. Code sections 17200 *et seq.*, and any
19 provision of the applicable California Industrial Welfare Commission Wage Orders.

20 **13.4 Prohibition on Subsequent Assertion of Released Claims.** As of the
21 Effective Date, Plaintiff will be prohibited from asserting any claims released under
22 Sections 13.1 and 13.3 above, and from commencing, joining in, or voluntarily assisting
23 in a lawsuit or adversary proceeding against the Released Parties for any such claims. As
24 of the Effective Date, to the fullest extent allowed by law, all Settlement Class Members
25 will be prohibited from asserting any claims released under Section 13.3 above, and from
26 commencing, joining in, or voluntarily assisting in a lawsuit or adversary proceeding
27 against the Released Parties for any such claims. Excluded from this prohibition are any
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1 instances where any individual is legally compelled to testify through service of a
2 subpoena or other process.

3 **14. Class Settlement Notice and Settlement Administration.**

4 **14.1 Engagement of Settlement Administrator.** The Parties agree to
5 mutually select a Settlement Administrator, subject to approval by the Court, to perform
6 the notice and other settlement administration functions set forth herein.

7 **14.1.1** The Settlement Administrator shall provide Defendant's counsel
8 and Class Counsel with weekly summary reports, including the
9 total number of Class Notices that were returned as undeliverable,
10 the total number of objections, and disputes regarding Credits,
11 and/or Requests for Exclusion. The Settlement Administrator shall
12 maintain records of its work, which will be available for inspection
13 upon request by Defendant's counsel or Class Counsel.

14 **14.1.2** Should the selected Settlement Administrator be unable or
15 unwilling to serve, the Parties will meet and confer to select an
16 alternate mutually agreeable Settlement Administrator.

17 **14.2 Identification of Class Members.**

18 **14.2.1** Within ten (10) calendar days of the later of entry of the order
19 granting preliminary approval of the Settlement ("Preliminary
20 Approval Order") or Court approval of settlement notice to the
21 class, Defendant shall provide the Settlement Administrator with
22 the following information ("Class Data List"):

- 23 (a) the names, employment identification number, last known
24 addresses, last known telephone numbers, and Social
25 Security numbers of each Class Member;
26 (b) the start and end dates of active employment of each Class
27 Member as a Visiting Professor or adjunct instructor in
28 California during the Class Period; and

1 (c) the number of credit hours taught by each Class Member
2 including the number of credit hours that were taught as
3 part of any solely online course and the number of credit
4 hours taught as part of a classroom course, and the
5 identification of any zero credit hour courses.

6 **14.2.2** Upon its receipt of the Class Data List, the Settlement
7 Administrator shall access the National Change of Address
8 (“NCOA”) Database, and update the addresses contained therein.

9 **14.2.3** Within fourteen (14) days of the later of the Preliminary Approval
10 Order or court approval of settlement notice to the class, the
11 Settlement Administrator shall provide the Class Notice by bulk
12 first class mail, forwarding requested, to the Class Members at the
13 addresses identified through the process described above.

14 **14.2.4** As to any Class Notices that are returned as undeliverable after the
15 date of the initial mailing of the Class Notice, or where the NCOA
16 Database indicates that the last known address of any Class
17 Member is invalid or otherwise undeliverable, the Settlement
18 Administrator will perform a skip trace procedure and re-mail all
19 returned, undelivered mail within five (5) calendar days of the date
20 on which the Settlement Administrator is informed that a Class
21 Notice is undeliverable or otherwise invalid.

22 **14.2.5** If Defendant and the Settlement Administrator determine, based
23 upon further review of available data, that a person previously
24 identified as being a Class Member should not be so included or
25 identify a person who should have been included as a Class
26 Member but was not so included, Defendant and the Settlement
27 Administrator shall immediately notify Class Counsel and Parties
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1 shall meet and confer to mutually determine whether it is
2 appropriate to delete or add such person.

3 **14.2.6** Other than the obligations set forth in this Settlement Agreement,
4 Parties will have no additional obligation to identify or locate any
5 Class Member.

6 **14.2.7** Parties will not be responsible for nor have any liability in
7 connection with the provision of Class Member data to the
8 Settlement Administrator, outside of the obligations set forth in the
9 Settlement Agreement. The Settlement Administrator and all those
10 working through, in concert with, or on behalf of the Settlement
11 Administrator, shall be obligated to take all reasonable steps to
12 maintain the confidentiality of Class Member information and to
13 carry out the other duties enumerated in the Settlement Agreement,
14 including calculating each Class Member's potential share of the
15 Settlement.

16 **14.3** Class Notice and Notification of Credits.

17 **14.3.1** The Class Notice will be a pre-printed notice, in substantially the
18 form attached hereto as **Exhibit A** and to be approved by the Court.
19 In addition to other information contained on the Class Notice, the
20 Class Notice will state the number of Credits that the Class
21 Member worked as a Visiting Professor or adjunct instructor in
22 California during the Class Period for Defendant, according to
23 Defendant's records. The Class Notice also will include an
24 explanation of the *pro rata* distribution formula used to determine
25 the share of the Net Settlement Amount that he or she may be
26 entitled to receive under the Settlement.

27 **14.3.2** The Class Notice will state that, if the Class Member disagrees with
28 the Credits, the Class Member must submit a dispute in conformity

1 with Section 11 herein. Failure to submit written documentation
2 to support such dispute will mean that Defendant's numbers from
3 its records will be controlling.

4 **15. Objections to the Settlement.**

5 Any Class Member who does not request exclusion from the Settlement (i.e. Settlement
6 Class Members) may object to the Settlement Agreement. The Class Notice will provide that
7 Settlement Class Members who wish to object to the Settlement must file with the Court and
8 serve on the Settlement Administrator, not later than the Response Deadline, a written statement
9 objecting to the Settlement. The written objection must contain: the Class Member's full name,
10 address, the case name and number of the Action, and a clear statement of the basis for his or
11 her objection. The Settlement Administrator shall immediately send all objections to counsel
12 for Defendant and Class Counsel.

13 **16. Right to Request Exclusion.**

14 **16.1** Any Class Member may elect to opt out of the Settlement by submitting a
15 written Request for Exclusion from the Settlement to the Settlement Administrator,
16 postmarked no later than the Response Deadline. The Request for Exclusion must contain
17 the following: the Class Member's full name, address, and a clear statement that he or she
18 seeks to be excluded from the Settlement of this Action. The Settlement Administrator
19 shall immediately send all Requests for Exclusion to Defendant's counsel and Class
20 Counsel. A Class Member who fails to comply with the opt out procedure set forth herein
21 on or before the Response Deadline, as set by the Court, will not be excluded and will
22 instead be bound by all provisions of the Settlement Agreement and all orders issued
23 pursuant thereto.

24 **16.2** Any Class Member who elects to opt out of the Class in the manner and
25 within the time limits specified above and in the Class Notice: (1) will not have any rights
26 under the Settlement Agreement; (2) will not be entitled to receive any compensation
27 under the Settlement Agreement; (3) will not have standing to submit any objection to the
28 Settlement Agreement; and (4) will not be bound by the Settlement Agreement.

1 **16.3** Except for persons who elect to opt out of the Settlement in the manner
2 and within the time limits specified above, in the Preliminary Approval Order, and in the
3 Class Notice, all Class Members, will be deemed to be within the Class for all purposes
4 under this Settlement Agreement, will be bound by the terms and conditions of this
5 Settlement Agreement (including the release provisions in Section 13 and its subparts),
6 including all orders issued pursuant thereto, and will be deemed to have waived all
7 unstated objections and opposition to the fairness, reasonableness, and adequacy of this
8 Settlement Agreement, and any of its terms.

9 **16.4** If the Settlement Agreement is given final approval, it will operate as a
10 full, complete, and final release of all the Released Claims of the Class Representative
11 and all Settlement Class Members, and as an effective covenant not to sue.

12 **17. Application for Preliminary Approval Order.**

13 **17.1** After the Parties' execution of this Settlement Agreement, the Plaintiff
14 shall file a motion for preliminary approval of the Settlement, requesting a Preliminary
15 Approval Order that contains the following provisions:

16 **17.1.1** preliminarily approving the Settlement Agreement and its terms;

17 **17.1.2** preliminarily approving and certifying the Class for settlement
18 purposes only;

19 **17.1.3** approving the form of the Class Notice, and finding that the
20 proposed method of disseminating the Class Notice meets the
21 requirements of due process and is the best notice practicable under
22 the circumstances;

23 **17.1.4** establishing the procedures and the deadline by which Settlement
24 Class Members may assert objections to the Settlement, seek
25 exclusion from the Settlement, and/or dispute Credits that have
26 been credited to them under the Settlement;
27
28

1 17.1.5 establishing a deadline for the Parties to submit papers/briefing in
2 response to any objections and in support of final approval of the
3 Settlement Agreement; and

4 17.1.6 setting a date for the Final Approval Hearing.

5 17.2 Counsel for Defendant will be given an opportunity to review and
6 comment on the motion for preliminary approval of the Settlement prior to its being filed
7 with the Court, and such comments will be implemented to the extent reasonable.

8 **18. Final Approval Order and Judgment.**

9 18.1 If the Settlement is preliminarily approved by the Court, the Parties shall
10 thereafter request that the Court enter a Final Approval Order and Judgment which
11 includes the following provisions:

12 18.1.1 confirming certification of the Class for settlement purposes only;

13 18.1.2 finding that the dissemination of the Class Notice in the form and
14 manner ordered by the Court was accomplished as directed, met
15 the requirements of due process; and

16 18.1.3 finally approving the Settlement Agreement and the Settlement as
17 fair, reasonable and adequate and directing consummation of the
18 Settlement in accordance with its terms and provisions.

19 18.2 The Judgment will include the following provisions:

20 18.2.1 directing the Parties to implement the terms of the Settlement
21 Agreement;

22 18.2.2 releasing and discharging the Released Parties from any and all
23 liability with respect to the Released Claims as hereinabove
24 provided;

25 18.2.3 resolving and settling all the Released Claims by the Class
26 Representative and all Settlement Class Members, as herein above
27 provided, with the release precluding them from instituting,
28 commencing, or continuing to prosecute, directly or indirectly, as

1 an individual or collectively, representatively, derivatively, or on
2 behalf of himself or herself, or in any other capacity of any kind
3 whatsoever, any action in this Court, any other state court, or any
4 arbitration or mediation proceeding or any other similar
5 proceeding, against any of the Released Parties, that asserts any
6 Released Claims.

7 **18.2.4** awarding reasonable attorneys' fees and litigation costs and
8 expenses to Class Counsel as determined by the Court;

9 **18.2.5** awarding a Service Award to the Class Representative as
10 determined by the Court;

11 **18.2.6** awarding Settlement Administration Costs to the Settlement
12 Administrator as determined by the Court; and

13 **18.2.7** preserving continuing and exclusive jurisdiction over all matters
14 related to the administration and consummation of the terms of this
15 Settlement and enforcement of the Judgment.

16 **18.3** Counsel for Defendant will be given an opportunity to comment on the
17 motion for final approval of the Settlement prior to its being filed with the Court, and such
18 comments will be implemented to the extent reasonable.

19 **19. Effect of Settlement Not Being Final.**

20 In the event that the Settlement does not become final, then the Settlement Agreement
21 will become null and void, and all negotiations, proceedings, and statements relating thereto will
22 be without prejudice as to the rights of any and all Parties hereto, and all Parties and their
23 respective predecessors and successors will be deemed to have reverted to their respective
24 positions in the Action as of the date and time immediately prior to the execution of this
25 Settlement Agreement. If the Court does not approve either preliminarily or finally any material
26 term or condition of the Settlement Agreement, or if the Court effects a material change to the
27 Parties' settlement (including but not limited to the scope of release to be granted by Class
28 Members or the binding effect of the Settlement on Class Members), the Parties shall work

1 together in good faith to address any concerns raised by the Court and propose a revised
2 Settlement for the Court's approval.

3 **20. Amendment to Complaint.**

4 On October 2, 2019 the Parties entered a stipulation granting Plaintiff leave to amend
5 her Complaint to add a cause of action under Labor Code section 226. Defendant does not object
6 to Plaintiff's standing to assert a claim under Labor Code section 226.

7 **21. Withdrawal From Settlement Based on Requests for Exclusion.**

8 Notwithstanding any other provision of this Settlement Agreement, Defendant will
9 retain the right, in the exercise of its sole discretion, to withdraw from and nullify the Settlement
10 within thirty (30) calendar days after expiration of the Response Deadline, if more than fifteen
11 percent (15%) of Class Members submit valid and timely Requests for Exclusion. If Defendant
12 chooses to exercise this right, it shall give timely written notice of that exercise to Plaintiff, the
13 Settlement Administrator, and the Court. Defendant will bear any costs of administration
14 incurred as of that date.

15 **22. Escalator Clause.**

16 The parties agree that if the number of Settlement Class Members exceeds 411 by more
17 than five percent (5%), the Gross Settlement Value will be increased proportionately for each
18 additional Settlement Class Member above the five percent (5%) threshold (i.e., by way of
19 example, if it is determined that there 22 additional Settlement Class Members, the GSA shall
20 be increased by 1/411).

21 **23. No Admissions.**

22 The Parties understand and agree that this Settlement Agreement is the result of a good
23 faith compromise settlement of disputed claims, and no part of this Settlement Agreement or
24 any conduct or written or oral statements made in connection with this Settlement and this
25 Settlement Agreement, whether or not the Settlement is finally approved and/or consummated,
26 may be offered as or construed to be an admission or concession of any kind by Defendant, or
27 any of the Releasing or Released Parties.
28

1 **24. Avoidance of Undue Publicity.**

2 The Parties and their counsel agree that they will not issue any press releases, initiate
3 any contact with the press, respond to any press inquiry or have any communication with the
4 press about the fact, amount, or terms of the Settlement. If counsel for either party receives an
5 inquiry about the Settlement from the media, counsel may respond only after the motion for
6 preliminary approval has been filed and only by confirming the accurate terms of the Settlement.
7 Nothing in this provision will prevent Defendant from making any required disclosure.

8 **25. Extensions of Time.**

9 Without further order of the Court, the Parties hereto may agree in writing to reasonable
10 extensions of time to carry out any of the provisions of the Settlement, except, where an
11 extension will require the Final Approval Hearing to be re-scheduled, the Parties will seek
12 approval of the Court

13 **26. Construction.**

14 This Settlement Agreement was entered into after substantial good faith, arm's-length
15 negotiations between the Parties. This Settlement Agreement has been entered into without any
16 coercion and under no duress. The Parties acknowledge and agree that all Parties had an equal
17 hand in drafting this Settlement Agreement so that it will not be deemed to have been prepared
18 or drafted by one party or another.

19 **27. Due Authority of Attorneys.**

20 Each of the attorneys executing this Settlement Agreement on behalf of one or more
21 Parties hereto warrants and represents that he or she has been duly authorized and empowered
22 to execute this Settlement Agreement on behalf of each such respective Party and to bind them
23 to the terms hereof.

24 **28. Entire Agreement.**

25 This Settlement Agreement (including all Exhibits hereto) sets forth the entire agreement
26 of the Parties with respect to its subject matter and supersedes any and all other prior agreements
27 and all negotiations leading up to the execution of this Settlement Agreement, whether oral or
28 written, regarding the subjects covered herein. The Parties acknowledge that no representations,

1 inducements, warranties, promises, or statements relating to the subjects covered herein, oral or
2 otherwise, have been made by any of the Parties which are not embodied or incorporated by
3 reference herein.

4 **29. Modification or Amendment.**

5 This Settlement Agreement may not be modified or amended except in a writing signed
6 by all signatories hereto or their attorneys or their successors in interest.

7 **30. Successors.**

8 This Settlement Agreement will be binding upon and inure to the benefit of the Parties
9 hereto and their respective heirs, executors, administrators, successors and assigns, and upon
10 any corporation, partnership or other entity into or with which any Party hereto may merge,
11 combine, or consolidate.

12 **31. Counterparts.**

13 This Settlement Agreement may be executed in counterparts, each of which will be
14 deemed an original, and all of which together will constitute one and the same instrument.

15 **32. Waivers.**

16 The waiver by any Party of any breach of this Settlement Agreement will not be deemed
17 or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous,
18 of this Settlement Agreement.

19 **33. Governing Law.**

20 This Settlement Agreement will be governed by and construed, enforced, and
21 administered in accordance with the internal laws of the State of California.

22 **34. Headings.**

23 The headings contained in this Settlement Agreement are for convenience and reference
24 purposes only, and will not be given weight in its construction.

25 **35. Notices.**

26 Any notices, requests, demands, or other communications required or permitted to be
27 given pursuant to this Settlement Agreement, other than the contemplated Class Notice to the
28 Class Members, must be in writing and mailed as follows:

1 **35.1** To Class Representative, the Class, and Class Counsel to the attention of
2 Julian Hammond, Esq., HammondLaw, P.C., 1829 Reisterstown Road, Suite 410,
3 Baltimore, Maryland 21208; Telephone: (310) 601-6766.

4 **35.2** To Defendant and counsel for Defendant, to the attention of Andrew M.
5 McNaught, Esq., Seyfarth Shaw LLP, 560 Mission St., Ste. 3100, San Francisco,
6 California 94105; Telephone: (415) 544-1022.

7 **IN WITNESS WHEREOF, this Settlement Agreement has been duly executed by and on**
8 **behalf of the Parties, as follows:**

9 **Plaintiff and Proposed Class Representative**

10 Dated: 10/10/2019, 2019 By: Lisa Stempien
11 Lisa Stempien

12 **DeVry University, Inc.**

13
14 Dated: _____, 2019 By: _____
15 Name:
16 Title:
17 On behalf of Defendant

18 **APPROVED AS TO FORM:**

19 **Counsel for Plaintiff and**
20 **Proposed Class Counsel**

21 Dated: _____, 2019 By: _____
22 Julian Hammond
23 HammondLaw, P.C.

24 **Counsel for Defendant**

25 Dated: _____, 2019 By: _____
26 Andrew M. McNaught
27 Coby M. Turner
28 Parnian Vafaeenia
Seyfarth Shaw LLP

35.1 To Class Representative, the Class, and Class Counsel to the attention of
Julian Hammond, Esq., HammondLaw, P.C., 1829 Reisterstown Road, Suite 410,
Baltimore, Maryland 21208; Telephone: (310) 601-6766.

35.2 To Defendant and counsel for Defendant, to the attention of Andrew M.
McNaught, Esq., Seyfarth Shaw LLP, 560 Mission St., Ste. 3100, San Francisco,
California 94105; Telephone: (415) 544-1022.

IN WITNESS WHEREOF, this Settlement Agreement has been duly executed by and on
behalf of the Parties, as follows:

Plaintiff and Proposed Class Representative

Dated: _____, 2019 By: _____
Lisa Stempien

DeVry University, Inc.

Dated: _____, 2019 By: _____
Name: James Bartholomew
Title: President and CEO
On behalf of Defendant

//
APPROVED AS TO FORM:

Counsel for Plaintiff and
Proposed Class Counsel

Dated: 10/24/19, 2019 By: _____
Julian Hammond
HammondLaw, P.C.

Counsel for Defendant

Dated: 10/23, 2019 By: _____
Andrew M. McNaught
Coby M. Turner
Parnian Vafacenia

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Seyfarth Shaw LLP