JULIAN HAMMOND (SBN 268489)
jhammond@hammondlawpc.com
POLINA BRANDLER (SBN 269086)
pbrandler@hammondlawpc.com
ARI CHERNIAK (SBN 290071)
acherniak@hammondlaw.com
HAMMONDLAW, P.C.
1829 Reisterstown Rd., Suite 410
Baltimore, MD 21208
(310) 601-6766
(310) 295-2385 (Fax)

Attorneys for Plaintiffs and the Putative Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

MATTHEW NORMAND and ANGELA WILSON, individually and on behalf of all others similarly situated, Plaintiffs, vs. **LOYOLA MARYMOUNT UNIVERSITY,** a California Corporation, Defendant.	Case No. 19STCV17953 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR APPROVAL OF ATTORNEYS' FEES AND COSTS, AND ENHANCEMENT AWARDS FOR CLASS REPRESENTATIVES** Date: September 9, 2021 Time: 10:30 a.m. Judge: Hon. Carolyn B. Kuhl Dept: 12 – Spring Street Courthouse

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I. INTRODUCTION

In conjunction with their motion for final approval, Plaintiffs Matthew Normand and Angela Wilson ("Plaintiffs" or "Class Representatives") move this Court for an award of attorneys' fees in the amount of $1,133,333, representing 1/3 of the Gross Settlement Amount ("GSA");[1] reimbursement of out-of-pocket expenses in the amount of $20,097.75; and enhancement awards for the Class Representatives in the amounts of $7,500 and $2,500, respectively.

As set forth in this motion, Class Counsel believe this request is appropriate because of the excellent result achieved for the Class, and the risk and financial burden Class Counsel undertook to litigate this novel and complex case for the Class. The Settlement provides robust monetary payments with average recovery for Pre-Fall 2019 Semester Class Members of $1,316.66 and the highest recovery of $4,609.98. Post-Fall 2019 Semester Class Members will all receive a flat payment of $200. In addition, this Settlement resulted in significant non-monetary relief because following the filing of the present lawsuit, Defendant Loyola Marymount University ("Defendant" or "LMU") reclassified adjunct instructors as non-exempt hourly employees, began requiring adjunct instructors to record all hours worked and paying them for all recorded hours, and communicated rest and meal break policies to adjunct instructors, all in order to bring its labor policies into compliance with California labor law.

The requested attorneys' fees are reasonable and fair because they represent the routinely approved, approximately one-third of the Gross Settlement Amount under the common fund approach. Under a lodestar-multiplier cross-check, the requested fees represent a multiplier of 3.53 to Class Counsel's lodestar to date—a lodestar that will increase as Class Counsel performs the remaining work to present this final approval motion to the Court and ensure that the Settlement is correctly distributed to the Class.

The requested out-of-pocket costs incurred in connection with this litigation are $4,902.25 *less than* the $25,000 allowed by the Settlement. The difference will be added to the Net Settlement, increasing each Pre-Fall 2019 Semester Class Member's share.

The Class Representatives' requested enhancement awards warrant approval because, at $7,500 and $2,500 respectively, the amounts are similar to awards approved by courts as reasonable and are

[1] The Amended Settlement Agreement ("SA") is attached as **Exhibit 1** to the Proposed Order filed herewith.

commensurate with the risks taken and effort expended by each Plaintiff, without whose efforts the Class would not have recovered their alleged unpaid wages or statutory and civil penalties.

The Class Notice provided the Class with notice of the requested fees, costs and enhancement awards. Not one of the 1,659 Class Members has voiced any concerns with the requested fees, costs, or enhancement awards. Accordingly, the Court should approve the requested amounts in full.

II. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE

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

The positive reaction of the Class supports the requested fee award. The Court-approved Notice informed Class Members of the GSA, the requested attorneys' fees (up to 35% of the GSA), costs (up to $25,000), and Class Representative enhancement awards. To date, over a month after the Response Deadline, no CM has objected and only four CMs have opted out. Declaration of Zach Cooley Regarding Notice and Settlement Administration ("Cooley Decl.") ¶¶ 9, 11 filed herewith.

This overwhelmingly positive reaction is consistent with the substantial benefit achieved for the Class. Each Class Member who taught classes between May 23, 2015 and the Fall 2019 semester, when Defendant reclassified its adjunct instructors as non-exempt, will receive an average net payment of $1,316.66 and the highest payment will be $4,609.98. Cooley Decl. ¶ 12. Class Members who taught during or after the Fall 2019 semester, the time when Defendant reclassified its adjunct instructors as non-exempt, will receive a flat $200 payment. *Id*. The Settlement is non-reversionary and each of the 1,655 Class Members who did not opt out will automatically receive a payment.

The Settlement represents a substantial recovery because Plaintiffs faced a very real risk of recovering nothing for the Class in light of Defendant's contentions. Specifically, Defendant contended that (a) Class Members were exempt employees, or that Class Members were part-time, salaried non-exempt employees and their salaries covered all work performed; (c) its alleged failure to pay Class Members all wages due at the end of their employment contract was not willful, and therefore the Class was not entitled to waiting time penalties; (d) its alleged failure to issue accurate itemized wage statements was not knowing and intentional and Class Members did not suffer injury as required by Labor Code § 226(e), and the Class could therefore not recover statutory penalties;(e) Plaintiffs' damages models were inflated and the Class suffered far less unpaid wages than Plaintiffs claimed; and (f) class certification would not be granted because Class Members taught different courses that varied in schedule, length, and working hours outside of the classroom. Declaration of Julian Hammond In

Support of Plaintiffs' Motion for Order Granting Final Approval of Class Action Settlement and Motion for Attorneys' Fees and Costs and Enhancement Award for Class Representatives ("Hammond Final Decl.") at ¶ 84.

In addition, this case faced major risks associated with the COVID-19 pandemic, which arose while the parties were negotiating the long form Settlement, and the effect the pandemic had on LMU's financial well-being and potential ability to pay a judgment, as well as on court operations. Hammond Final Decl. ¶¶ 81-82.

B. <u>The Requested Attorneys' Fees Are Reasonable Under the Percentage of the Fund and Lodestar-Multiplier Analyses</u>

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

1. <u>The Requested Fees Are Reasonable Under the Common Fund Approach</u>

a. Plaintiffs have Created a Substantial Common Fund

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

Here, there is an easily calculable $3,400,000 common fund that will provide substantial benefits to the class. *See Serrano,* 20 Cal. 3d at 35 (common fund approach is available when Class Counsel's efforts "have resulted in the preservation or recovery of a certain or easily calculable sum of money - out of which sum or 'fund' the fees are to be paid."). The reasonableness of the award is further supported by the fact that the "fund" is even larger because Defendant will separately pay employer-side payroll taxes estimated at $86,187.22 from which no attorneys' fee will be deducted. Cooley Decl. ¶ 14.

b. Fee Awards of Approximately One-Third of the Common Fund Are Routinely Awarded

The requested fees represent 1/3 of the Gross Settlement Amount—a percentage routinely awarded in common fund settlements. *See e.g.*, *Laffitte*, 1 Cal. 5th at 489 (affirming a fee award of 33% of the settlement); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11 (2008) ("[e]mpirical studies show that, regardless of whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of recovery."); Newberg on Class Actions § 15.73 (5th ed.) ("[F]ee awards in class actions average around one-third of the recovery."). This percentage is in line with (or lower than) the contingency fee that Class Counsel and the class members would likely have agreed to if such agreement had been possible. Hammond Final Decl. ¶ 11; *see*, *e.g.*, *Matter of Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 572 (7th Cir. 1992) (in a common fund case, the object "is to give the lawyer what he would have gotten in the way of a fee in an arm's length negotiation, had one been feasible").

c. The Requested Fees Are Fair and Reasonable

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

i. <u>Plaintiffs Obtained Excellent Results</u>

Class Counsel obtained an excellent result for the Class with an average gross payment for Pre-Fall 2019 Semester Class Members of $1,316.66 and the highest recovery of $4,609.98. In addition, Post-Fall 2019 Semester Class Members will each receive a flat payment of $200. Cooley Decl. ¶ 12. In addition to the substantial monetary recovery, after Plaintiffs filed their lawsuit, LMU revised its compensation practices applicable to adjunct instructors, including reclassifying them as hourly non-exempt employees, requiring them to record and submit actual hours worked, paying them for work performed beyond instructional time as well as numerous other activities outside the classroom, changing the contract start date for adjunct instructors to begin approximately one week prior to the first day of classes for each semester, and advising adjunct instructors that they were entitled to rest breaks and uninterrupted meal breaks under California law. Hammond Final Decl. ¶ 85.

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

Plaintiffs' Counsel have been litigating this case for over two years, expending over 438 attorney hours and over $20,000 in out-of-pocket expenses to date, all as-yet uncompensated, and without any certainty of receiving payment. Hammond Final Decl. ¶ 74. Also, Plaintiffs' central theory—that adjuncts are piece-rate workers—is a novel theory that has not been decided by any appellate court. *Id.* ¶ 80. If the Parties continued to litigate this case, the trial court would ultimately rule on the question of whether the per-course rate is a piece rate, and the losing party would almost certainly appeal. *Id.* The uncertainties of continued litigation presented a very real risk that Plaintiffs would be unable to litigate their class claims at all and put Class Members at a risk of recovering nothing. In addition to these risks, this case also faced a major risk from the COVID-19 pandemic and its impact on the courts and upon Defendant's financial condition. *Id.* ¶¶ 81-82.

iii. Preclusion of Other Income-Generating Work

Taking this case required Class Counsel to avoid pursuing other fee-generating work. *See Serrano*, 20 Cal. 3d at 49 (one of the factors that weighs in favor of granting request for attorneys' fees is "the extent to which the nature of the litigation precluded other employment by the attorneys"). Hammond Final Decl. ¶ 86.

iv. Percentage Requested Is Consistent with the Private Marketplace

The requested 1/3 of the GSA is in line with (or lower than) the fee that Class Counsel would have expected if they had negotiated individual retainer agreements with each Class Member. Hammond Final Decl. ¶ 11. Such an award ensures that Class Counsel receive an appropriate fee for the benefit conferred on the Class, particularly when it would be impossible *ex ante* to enter a fair fee arrangement with all the members of the Class. *Id.*

v. Awards in Similar Cases

Class Counsel has been awarded 33% or more of the common fund in other wage and hour cases, including Judge Amy Hogue in *Pillow et al. v. Pepperdine University*, Case No. 19STCV33162 (Los Angeles Superior Court) (July 28, 2021) (approving fees of 33% in $940,000 wage and hour class action); Judge Ann Jones in *Granberry v. Azusa Pacific University*, Case No. 19STCV28949 (Los Angeles County Superior Court, March 5, 2021) (approving fees of 33% in a $1,112,100 wage and hour class action); and other California courts in *Moore et al v Notre Dame De Namur University***,** Case No. 19-CIV-04765 (San Mateo County Superior Court) (July 1, 2021) (approving fees of 33% in $882,880 wage and hour class action); *Peng v The President and Board of Trustees of Santa Clara College*, Case No. 19CV348190 (Santa Clara County Superior Court) (April 21, 2021) (approving fees of 33% in $1,900,000 wage and hour class action); *Morse v Fresno Pacific University*, Case No. 19-CV-04350 (Merced County Superior Court) (April 6, 2021) (approving fees of 33% in $1,534,725 wage and hour class action); *Miner, et al. v. ITT Educational Services, Inc.*, Case No. 3:16-cv-04827-VC (N.D. Cal. March 19, 2021) (1/3 award); *Ott v. California Baptist University*, Case No. RIC1904830 (Riverside County Superior Court) (January 26, 2021) (33% award); *Pereltsvaig v. Stanford*, Case No. 17-CV-311521 (Santa Clara County Superior Court) (Jan. 4, 2019) (33% award); and other cases cited at Hammond Final Decl. ¶ 8.

2. <u>The Fees Request Is Reasonable Under the Lodestar-Multiplier Method</u>

California's lodestar-multiplier method is a two-step process of fee calculation under which the Court first determines a lodestar value of the fees by multiplying the time reasonably spent on the case by a reasonable hourly rate. *In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-57 (2009) The Court may then enhance the lodestar by applying a multiplier to take into account the contingent nature and risk associated with the action, the degree of skill required, and the ultimate success achieved, as well as other factors. *See Ketchum v. Moses*, 24 Cal. 4th 1122, 1132 (2001) (also explaining that the "purpose of a fee enhancement, or so-called multiplier, for contingent risk is to bring the financial incentives for attorneys enforcing important . . . rights"); *Laffitte*, 1 Cal. 5th at 504 (in wage and hour class action, trial court properly considered novelty, difficulty, and skill displayed in determining multiplier as cross-check to 33% fee).

The goal is "to encourage suits effectuating a strong [public] policy by awarding substantial attorney's fees . . . to those who successfully bring such suits." *Woodland Hills Residents Assn. v. City Council*, 23 Cal. 3d 917, 933 (1979). "Adequate fee awards are perhaps the most effective means of achieving [the] salutary goal [of encouraging 'private attorney general' actions, and] [c]ourts should not be indifferent to the realities of the legal marketplace or unduly parsimonious in the calculation of such fees." *Thayer v. Wells Fargo Bank*, 92 Cal. App. 4th 819, 839 (2001).

Here, Plaintiffs' Counsel's lodestar-based fees are reasonable. Plaintiffs seek compensation for 438 hours expended by attorneys whose rates range from $575 to $945 per hour (for Morris J. Baller, a nationally acclaimed employment law attorney with 50 years of experience in wage and hour law). Hammond Final Decl. ¶ 62. A detailed breakdown of counsel's lodestar is submitted herewith. *See id.* ¶¶ 12-26.

The combined lodestar is $320,410 and Plaintiffs' requested fee award thus amounts to a 3.53 multiplier. *Id.* ¶ 70. The lodestar will increase, and the multiplier will be reduced, as Plaintiffs' Counsel spend additional time finalizing the instant motion, preparing for and appearing at the final approval hearing, and supervising the distribution of the settlement funds if final approval is granted. *Id*. This multiplier is appropriate given Class Counsel's success in achieving an excellent result for the Class, for taking on a contingent risk to do so, for the novelty and complexity of this case, and other factors discussed above. *See supra* at pp. 4-5.

a. <u>Hours Spent by Plaintiffs' Counsel Were Reasonable</u>

The hours spent by Plaintiffs' Counsel were "reasonably necessary to the conduct of the litigation." *Robertson v. Fleetwood Travel Trailers of Cal., Inc.*, 144 Cal. App. 4th 785, 818 (2006). Plaintiffs' Counsel's time litigating this case includes interviewing the named Plaintiffs and putative class members, drafting declarations, reviewing Plaintiffs' contracts and wage statements, drafting and filing the initial Complaint, First Amended Complaint, and Second Amended Complaint, drafting the PAGA Notice, analyzing voluminous data provided by Defendant, surveying and interviewing Class Members, drafting declarations, drafting a detailed mediation brief, traveling to Los Angeles in order to attend a full-day mediation, attending the mediation, negotiating the settlement, drafting the Settlement Agreement, drafting the preliminary approval of class action settlement papers, amending the Settlement Agreement and Class Notice as directed by the Court, overseeing the class notice process, and planning and strategizing throughout the case. Hammond Final Decl. ¶¶ 12-26.

Plaintiffs' Counsel made every effort to staff and litigate this case efficiently by coordinating the work of HammondLaw attorneys, Mr. Baller, and other counsel, minimizing duplication, and assigning tasks in a cost-efficient manner based on the timekeepers' experience levels and talents. Hammond Final Decl. ¶ 57. Plaintiffs' Counsel exercised billing judgment to delete and/or reduce certain time entries based on Counsel's experience in similar lodestar calculation and billing judgment determinations in other complex cases, and knowledge of the tasks assigned to attorneys in this case and how each attorney approached them. *Id*. ¶ 60. Finally, Plaintiffs avoided the need for extensive litigation by successfully settling this case within a year after filing the lawsuit.

b. <u>Plaintiffs' counsel's hourly rates are reasonable</u>

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

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2021 Rates		
Attorney/Timekeeper	**Year Admitted**	**Rate**
Julian Hammond, Principal	2000	$825
Polina Brandler, Associate	2010	$695
Ari Cherniak, Associate	2011	$575
Morris J. Baller, Consultant	1970	$945
William Jhaveri-Weeks, Attorney	2007	$695
Adrian Barnes, Attorney	2007	$695
Dr. Arie Michelson, Attorney	1999	$750

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

Plaintiff's requested hourly rates are reasonable under these standards. Plaintiff's Counsel request compensation at rates that are comparable to the prevailing Los Angeles market rates for attorneys of similar experience, qualification, and skill. Declaration of Richard Pearl in Support of Plaintiff's Motion for Reasonable Attorneys' Fees, filed herewith, at ¶ 10-16. Mr. Pearl is a renowned expert on California attorneys' fees law and practice, providing authoritative evidence that Plaintiff's Counsel's requested hourly rates are well within the range of reasonable in the Los Angeles market. Pearl Decl. ¶ 4-9.

HammondLaw has outstanding reputation for wage and hour class action litigation Since its founding in 2010, HammondLaw has represented employees, as a lead or co-lead counsel, in over 50 employment and consumer class actions in state and federal courts in California, as well as in Washington state. Hammond Final Decl. ¶ 29 & Ex. 1. Since 2016, HammondLaw has focused its practice on representing adjunct instructors in wage and hour cases, and is the leading firm in the state prosecuting such cases. *Id*. ¶ 32. Mr. Baller has 50 years of experience representing workers in employment law class action cases. *Id*. ¶ 41-42. Mr. Jhaveri-Weeks, Mr. Barnes, and Dr. Michelson are also well-respected attorneys with significant experience in complex litigation. *Id.* at ¶¶ 46-54.

HammondLaw's 2021 hourly rates have been approved by the Los Angeles County Superior Court in *Pillow et al. v. Pepperdine University*, Case No. 19STCV33162 (Los Angeles Superior Court)(July 28, 2021) (approving HL's 2021 hourly rates as reasonable, and within the range of market rates that attorneys with similar levels of skill, experience and reputation in the Los Angeles Area charge for handling matters of similar complexity); and slightly lower earlier rates were approved by the Los Angeles County Superior Court in *Granberry v Azusa Pacific University*, Case No. 19STCV28949 (Los Angeles County Superior Court, March 5, 2021) (approving lodestar analysis calculated using HL's 2020 hourly rates and awarding 1.77 multiplier); and other California curts including *Mooiman et al. v Saint Mary's College of California*, Case No. C19-02092 (Contra Costa County Superior Court) (June 10, 2021) (awarding 2.0 multiplier without raising any concerns as to HL's 2020 hourly rates); *Peng v The President and Board of Trustees of Santa Clara College,* Case No. 19CV348190 (Santa Clara County Superior Court) (April 21, 2021) (approving requested fees based on percentage of common fund, without raising any concerns as to HL's 2020 hourly rates, and approving a 2.75 multiplier); *Morse v Fresno Pacific University*, Case No. 19-CV-04350 (Merced County Superior Court) (April 6, 2021) (approving HL's 2020 "hourly rates as reasonable, and within the range of market rates that attorneys with similar levels of skill, experience and reputation, and a reasonable charge for handling matters of similar complexity" and approving a 3.13 multiplier); *Ott v. California Baptist University*, Case No. RIC1904830 (Riverside County Superior Court) (January 26, 2021) (approving HL's 2020 rates as reasonable and approving a 1.56 multiplier); and *Pereltsvaig v. Cartus Corp.*, Case No. 19CV348335 (Santa Clara County Superior Court) (Jan. 13, 2021) (approving requested fees based on percentage of common fund, without raising any concerns as to HL's 2020 hourly rates, and approving a 1.43 multiplier). Hammond Final Decl. ¶ 63.

Mr. Baller's hourly rates has been approved in the *Santa Clara, Fresno Pacific,* and *Azusa* cases cited above. *Id.* ¶ 65.

Mr. Jhaveri-Weeks' hourly rate was recently approved in the *Pepperdine* case cited above; and slightly lower versions of his rates was approved in the *Notre Dame* and *California Baptist University* cases cited above. *Id.* ¶ 66.

Mr. Barnes slightly lower hourly rate of $625 was approved *Vallimont v. Westat, Inc.,* Case No. 34-2019-00264440-CU-OE-GDS (Sacramento County Superior Court) (Apr. 2, 2021) (approving $625 hourly rate for Mr. Barnes); and *Curtis v. Aegis Treatment Centers, LLC*, Case No. 193712 (Cal. Super.

Ct. Shasta Cnty., Mar. 2, 2021) (same). Hammond Final Decl. ¶ 67.

Finally, Dr. Michelson's current hourly rate was approved in the *Pepperdine* and *Saint Mary's College* cases discussed above. *Id.* ¶ 68.

c. A Multiplier Is Appropriate

"After making the lodestar calculation, the court may augment or diminish that amount based on a number of factors specific to the case, including the novelty and difficulty of the issues, the attorneys' skill in presenting the issues, the extent to which the case precluded the attorneys from accepting other work, and the contingent nature of the work." *Ctr. for Biological Diversity v. County of San Bernardino*, 188 Cal. App. 4th 603, 616 (2010). Class Counsel's current lodestar is $320,410 and the fees request represents a multiplier of 3.53, although that multiplier will be reduced by the conclusion of the case. Hammond Final Decl. ¶ 70.

Class Counsel has been awarded multipliers in other adjunct cases including a 3.13 multiplier in *Morse v Fresno Pacific University*, Case No. 19-CV-04350 (Merced County Superior Court) (April 6, 2021); and a 3.05 multiplier in *Harris-Foster v. University of Phoenix*, Case No. RG19019028 (County Superior Court) (March 17, 2021). Hammond Final Decl. ¶ 71. Class Counsel's multiplier is well supported for cases like this one, in which Counsel accepted the contingent risk of the litigation and obtained an excellent result. *See e.g.*, *Zadan v Costco Wholesale Corporations*, Case No. 19CV340438 (Santa Clara County Superior Court) (February 2, 2021)) (applying multiplier of 4); (*Wershba v. Apple Computer, Inc.,* 91 Cal App. 4th 224, 255 (2001) (lodestar "multipliers can range from 2 to 4 or even higher"); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 & n.6 (9th Cir. 2002) (affirming lodestar multiplier of 3.65 and surveying 34 class common fund settlements to find that 83% of multipliers were in the 1 to 4 range). *Id*.

The applicable factors strongly support the requested multiplier, including (1) the significant contingency risk Class Counsel assumed in accepting the representation; (2) the novel and complex nature of the case; and (3) the exceptional result achieved.

i. Contingency Risk

An application of a multiplier is appropriate to compensate Plaintiffs' Counsel for the significant contingency risk assumed by taking on this litigation. *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 580 (2004) ("[A] lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions."); *Ketchum*, 24 Cal. 4th at 1132 ("[A] contingent fee contract, since it involves a gamble on the result, may properly provide for a larger compensation than would otherwise be reasonable.”).

As stated above, Plaintiffs’ Counsel have expended over 438 hours, all as-yet uncompensated, and have expended over $20,000 in out-of-pocket expenses, without any certainty of receiving payment. Hammond Final Decl. ¶ 74. There was a significant risk that Plaintiffs’ Counsel would be paid nothing and would be responsible for Defendant’s statutory costs if Plaintiffs lost on one of Defendant’s many defenses. Id. Thus, an enhancement which “includes a premium for the risk of nonpayment or delay in payment of attorney fees” is appropriate. *Ketchum*, 24 Cal. 4th at 1138; Id. at 1136 (“The experience of the marketplace indicates that lawyers generally will not provide legal representation on a contingent basis unless they receive a premium for taking that risk”); Id. at 1133 (“A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions”).

ii. Novelty and Complexity of the Case

This case presented novel and complex issues. Plaintiffs’ theory that Class Members were paid a piece-rate has never been adjudicated by a Court of Appeal in California. Hammond Final Decl. at ¶ 80. Plaintiffs faced other hurdles common to litigation of this type, including Defendant’s actual or potential arguments to the merits of Plaintiffs’ claims and the risk of losing on class certification. *Id.* ¶ 84. Despite these risks, Class Counsel resolved the matter on very favorable terms to the Class in an early mediation, with an average payment to Pre-Fall 2019 Class Members of $1,316.66, the highest payment of $4,609.98, and a flat $200 payment to Post-Fall 2019 Class Members. Cooley Decl. ¶ 12. These are significant awards obtained in the face of significant risk of non-recovery.

iii. Excellent Result Achieved

The results achieved for the Class are excellent, representing a recovery of 59% of Defendant’s realistic exposure (excluding PAGA penalties). Hammond Final Decl. ¶ 84. The average net payment for Pre-Fall 2019 Semester Class Members is $1,316.66 and the highest payment is $4,609.98. Cooley Decl. ¶ 12. The Settlement also provides a flat $200 payment to each Post-Fall 2019 Semester Class Member. In addition, this case resulted in significant nonmonetary relief to the entire Class in view of the fact that beginning with the Fall 2019 Semester, following the filing of this lawsuit, LMU overhauled its compensation practices for adjunct faculty to bring them into compliance with California law including re-classifying adjuncts as hourly non-exempt employees. As part of this reclassification, LMU began paying adjunct faculty by the hour. LMU also changed the start date for adjunct faculty contracts to begin approximately one week prior to the first day of classes, and enumerated additional duties adjunct faculty were required to perform under such contracts. LMU's new-practices roll-out further provided that adjunct faculty were entitled to rest and meal breaks. Hammond Final Decl. ¶ 85.

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

III. THE REQUESTED COSTS ARE REASONABLE.

Class Counsel has incurred $20,097.75 in litigation costs to date, which is $4,902.25 less than the $25,000 for costs stated in the Class Notice. Hammond Final Decl. ¶ 99. The difference will be added to the Net Settlement and distributed to the Pre-Fall 2019 Semester CMs, such that their actual awards are greater than the estimated awards stated on their settlement notice. *Id*. The requested costs include filing, serving and delivery costs, research costs, survey costs, witness location costs, technology costs, travel costs, and mediation costs. *Id*. ¶¶ 87-98 Thus, Class Counsel's requested litigation costs are reasonable and should be approved.

IV. THE CLASS REPRESENTATIVE ENHANCEMENT AWARDS ARE REASONABLE

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

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

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[2] Counsel requests a larger Enhancement Award for Plaintiff Normand because his involvement in the case began prior to the filing of the original Complaint, whereas Plaintiff Wilson became involved shortly prior to the filing of the Second Amended Complaint. The relative size of the awards is commensurate with the relative time spent by each Plaintiff on the case

All of the above factors support the service award here. First, Plaintiffs have served the Class well. Their involvement as class representatives was critical to the success of this litigation and enforcement of California's wage and hour rights. Hammond Final Decl. ¶ 101. In agreeing to serve as class representatives, Plaintiffs formally agreed to accept the responsibility of representing the interests of all Class Members. They diligently assisted Class Counsel in the investigation of the case and in seeking informal discovery, as well as in reviewing and approving the Complaints, PAGA Notice, and Settlement Agreement, and (in the case of Mr. Normand) attending the full-day mediation. *See* Declaration of Matthew Normand ISO Plaintiffs' Motion for Attorneys' Fees and Costs, and Declaration of Angela Wilson ISO Plaintiffs' Motion for Attorneys' Fees and Costs, filed herewith. Plaintiffs' participation and assistance was critical to the success of this litigation and the enforcement of Labor Code protections. Without their commitment to come forward and serve as the Class Representatives, this litigation, which enforces the protections of the Labor Code, would not have been brought. This Settlement, in which Plaintiffs played a critical role, directly furthers the public policy underlying the California Labor Code by requiring Defendant to fully compensate its employees for all hour worked and provide mandated breaks, and by putting other employers on notice that they must comply with these statutory requirements. Plaintiffs have thus advanced California's public policy goal of enforcing wage and hour laws. *See Sav-On Drug Stores, Inc. v. Super. Ct.*, 34 Cal. 4th 319, 340 (2004).

Second, as discussed above, this litigation resulted in substantial monetary and non-monetary relief to the Class.

Third, the enhancement award is appropriate to compensate Plaintiffs for the substantial time and effort they expended in this litigation. In agreeing to serve Class Representatives, Plaintiffs formally accepted the responsibilities of representing the interests of all Class Members. Plaintiff Normand spent 15 to 20 hours assisting in the litigation and settlement of this case, including attending the full-day mediation in Los Angeles, reviewing and approving pleadings, settlement agreement, and amended settlement agreement, searching his records and sending relevant documents to counsel, and communicating with his attorneys. Plaintiff Wilson spent 3 to 4 hours assisting in the litigation and settlement of this case, including communicating with her attorneys, reviewing and approving pleadings and the class settlement agreement, searching her records and sending relevant documents to counsel.

Fourth, Plaintiffs assumed the risk of being branded "troublemakers," and blacklisted by other employers in their industry. Hammond Final Decl. ¶ 100; *see also Staton*, 327 F.3d at 976 ("reasonabl[e] fear [of] workplace retaliation" is a factor in assessing the proper amount of the enhancement); *Mitchell* *v. Robert DeMario Jewelry, Inc.*, 361 U.S. 288, 292 (1960) ("[I]t needs no argument to show that fear of economic retaliation might often operate to induce aggrieved employees quietly to accept substandard conditions."); *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1073 (9th Cir. 2000) ("[F]ear of employer reprisals will frequently chill employees' willingness to challenge employers' violations of their rights.").

Furthermore, Plaintiffs are entering into general releases of all potential claims against the Released Parties, which is much broader than the targeted release of claims being given by the Class Members. Amended SA § 17.2.

In view of the foregoing, the $7,500 enhancement award to Plaintiff Normand and $2,500 award to Plaintiff Wilson are reasonable and should be approved.

V. THE *CY PRES* BENEFICIARY IS APPROPRIATE

Pursuant to California Civil Procedure Code § 384(b), an appropriate *cy pres* includes a "nonprofit organizations or foundations" that "promote the law consistent with the objectives and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent." The Settlement provides for uncashed settlement checks to be distributed to the Legal Aid Foundation of Los Angeles ("LAFLA"), a non-profit law firm that protects and advances the rights of the underserved residents in the Los Angeles area. Among its many programs are its employment law program that helps income-eligible people with recovering unpaid wages including overtime pay; getting unemployment benefits; legal advice regarding discrimination, workplace harassment, medical leave and other workplace rights. Hammond Final Decl. ¶ 102. Plaintiffs' Counsel has no connection to or relationship with LAFLA. Hammond Final Decl. ¶ 103.

VI. CONCLUSION

Plaintiffs respectfully request that the Court award attorneys' fees in the amount of $1,133,333.33, litigation costs in the amount of $20,097.75 and service awards of $7,500 and $2,500 to Plaintiff Normand and Wilson, respectively, pursuant to the terms of the Settlement.

Dated: August 17, 2021

Respectfully submitted,

Julian Hammond
Attorneys for Plaintiffs and Settlement Class