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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF ALAMEDA**

12 **CHRISTOPHER BRANDMEIR**, individually
13 and on behalf of all others similarly situated,

14 Plaintiff,

15 vs.

16 **COLUMBIA SOUTHERN UNIVERSITY,**
17 **INC.**, an Alabama Corporation,

18 Defendant.
19

Case No. 22CV013638

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

Date: August 25, 2023

Time: 9:30 a.m.

Dept 23; Hon. Brad Seligman

Reservation No.: A-13638-002

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I. INTRODUCTION

Plaintiff Christopher Brandmeir (“Plaintiff”) seeks final approval of a non-reversionary \$320,000 wage and hour class action settlement¹ on behalf of 51 full and part-time faculty members (“Class Members” or “CMs”) employed in California by Columbia Southern University (“CSU” or “Defendant”) from June 30, 2018 through April 25, 2023 (“Class Period”).

On May 22, 2023, the Court entered an order preliminarily approving the settlement, concluding that the settlement was within the range of reasonableness and was the product of good faith, arm’s-length negotiations. The Court ordered dissemination of a Court-approved notice of the settlement to the Class Members, which was mailed on June 22, 2023. The Class’s response has been uniformly positive to date, with no objections or opt outs. *See* Declaration of Taylor Mitzner with Respect to Notification and Settlement Administration (“Mitzner Decl.”), ¶¶ 8-9.² Plaintiff will file a Supplemental Declaration with the complete results of the Notice Administration following the August 7, 2023 Response Deadline and prior to the Final Approval Hearing.

The uniformly positive reaction of the Class Members supports the Court’s earlier finding that that the settlement is fair, adequate, and reasonable. Accordingly, Plaintiff respectfully requests that the Court grant final approval of the proposed settlement.

II. OVERVIEW OF THE SETTLEMENT

The Settlement Agreement (“SA”) resolves all claims of the Plaintiff and the proposed Class. A summary of the settlement terms is as follows:

1. Gross Settlement Amount (“GSA”) – CSU will pay a non-reversionary sum of \$320,000 to settle this case. SA §§ 1.21, 3.1; Mitzner Decl. ¶ 14. CSU will also pay the employer’s share of payroll taxes separately from the GSA. *Id.* § 3.1; Mitzner Decl. ¶ 18.

2. Class Definition and Class Period – The Class consists of all full and part-time faculty and instructors who worked for Defendant in California during the Class Period, which is defined as June 30, 2018, to April 25, 2023. SA §§ 1.6, 1.12.

¹ The Settlement Agreement is attached as **Exhibit 1** to the Proposed Order filed herewith.

² The deadline to object/opt out of the settlement is August 7, 2023. Plaintiff will file an updated declaration of the Settlement Administrator after that date and prior to the hearing on this Motion.

1 *Id.* ¶ 5. The Notice fairly and clearly described the proposed settlement terms for monetary relief, the
2 amount of the service award requested for the Class Representative, attorneys' fees and costs, settlement
3 administration costs, and the manner in which Class Members could object to or request exclusion from
4 the settlement, or challenge the number of pay periods reflected in the Class Notice. *See* Mitzner Decl.
5 Ex. A and B (Notices). The Class Notice also provided each Class Member with an estimate of their award
6 from the settlement, an explanation of how their pay periods were calculated, and an explanation of how
7 each share would be calculated. *Id.* After the initial mailing, no Class Notices were returned as
8 undeliverable, which means that 100% of the Notices were successfully mailed to the Class Members.
9 Mitzner Decl. ¶ 7. The Settlement Administrator has provided the Court with a full report of its activities
10 as set forth in the contemporaneously filed Mitzner Declaration.

11 **B. No Class Members Objected, and No Class Member Opted Out**

12 The Class Notice provided Class Members with the option of opting out or objecting to the
13 settlement. *See* Mitzner Decl. Ex. A and B. The deadline to file an objection or opt out is August 7, 2023.
14 Mitzner Decl. ¶¶ 8-9. As of the filing of this Motion, which is four days prior the response deadline, no
15 objections to the settlement were filed and no requests for exclusion were submitted. *Id.* As stated above,
16 Phoenix will provide an updated declaration after the objection/opt deadline and prior to the hearing.

17 **C. There Were No Challenges to Pay Period Calculations**

18 The Notice provided Class Members with directions for how to dispute the pay periods included
19 in their Notice and that formed the basis for their settlement shares. *See* Mitzner Decl., Ex. A and B. The
20 Settlement Administrator received no disputes. *Id.* ¶ 10.

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

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

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

1 Plaintiff now requests this Court to make a final determination that the proposed settlement is
2 fair, reasonable, and adequate. *See Officers for Justice v. Civil Serv. Comm'n. of the City & Cnty. of S.F.*,
3 688 F.2d 615, 625 (9th Cir. 1982). The law favors settlement, particularly in class actions where
4 substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. *See*,
5 *e.g.*, *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) (“7-
6 11”); *Neary v. Regents of Univ. of Cal.*, 3 Cal. 4th 273, 277-281 (1992); *Lealao v. Beneficial Cal., Inc.*,
7 82 Cal. App. 4th 19, 52 (2000).

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

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

22 **B. The Settlement Terms Are Presumptively Fair**

23 A settlement agreement is presumptively fair when it is (1) the product of arm’s-length
24 bargaining; (2) supported by sufficient investigation or discovery to allow assessment of plaintiff’s
25 claims; (3) supported by experienced counsel; and (4) subject to only a small percentage of objections.
26 *See Dunk*, 48 Cal. App. 4th at 1802; *7-11*, 85 Cal. App. 4th at 1146. As described in detail in the
27 preliminary approval papers filed on May 1, 2023, this settlement satisfies these factors. The settlement,
28 therefore, is presumptively fair and reasonable.

1 First, the settlement was reached after an arm’s length negotiation between the parties. *See*
2 Declaration of Julian Hammond ISO Pls.’ Mot. for Prelim. App. of Class Action Settlement (“Hammond
3 Prelim Decl.”), filed on May 1, 2023, ¶ 28. Second, Class Counsel conducted thorough and extensive
4 investigation of Plaintiff’s claims, and analyzed substantial documents and data obtained from Defendant
5 for purposes of settlement negotiations prior to engaging in settlement negotiations. *Id.* ¶¶ 18-27. Third,
6 Class Counsel is highly skilled and experienced in similar cases and has extensive class action litigation
7 experience. *Id.* ¶ 29. Hammond Law has been appointed class counsel in numerous class actions and has
8 represented thousands of adjunct instructors in similar unpaid wage cases since 2016 including 29 cases
9 that have received final approval, and having recently litigated one such case successfully all the way
10 through a trial and appeal. *See* Declaration of Julian Hammond ISO Pls.’ Mot. for Final Approval of
11 Class Action Settlement and Mot. for Approval of Attorneys’ Fees etc. (“Hammond Final Decl.”) ¶
12 13(a)(d) (*Gola v. University of San Francisco*, 90 Cal. App. 5th 548 (2023), pet’n denied July 14, 2023).
13 Fourth, as stated above, to date, not one of the 51 Class Members objected to the settlement and not one
14 has opted out. Mitzner Decl. ¶¶ 8-9. Further, the fact that the Class here consists of sophisticated
15 university-level faculty members and instructors makes the “the magnitude of the favorable
16 response...particularly impressive.” 7-11, 85 Cal. App. 4th at 1152-53.

17 The settlement is thus presumptively fair, reasonable, and adequate, and should be finally
18 approved.

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

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

28 ///

1 **1. The Value of the Settlement Favors Final Approval When Considered Against the**
2 **Risk, Expense, and Complexity of Continued Litigation**

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

6 The \$320,000 Gross Settlement Amount, of which approximately \$185,054.72 will be distributed
7 to the Class (Mitzner Decl. ¶ 14), provides Class Members with very meaningful financial relief. 100%
8 of the Class Members will participate in this settlement, with an average net payment of \$3,628.52 and
9 the highest net payment of \$6,162.97. Mitzner Decl. ¶ 15. This is an excellent result considering that the
10 Gross Settlement Amount provides 60% recovery for the Class of the realistic exposure on all claims.
11 Hammond Prelim. Decl. ¶ 70. In addition, Class Members who worked during the PAGA Period will
12 also receive their share of the \$2,500 allocated to PAGA Penalties. Mitzner Decl. ¶ 16.

13 The financial relief provided by the settlement is commensurate with the risks posed by continued
14 litigation and is based on substantial damages calculations and evidence. Plaintiff calculated the
15 maximum total amount that Class Members could recover as \$986,799. Hammond Prelim. Decl. ¶¶ 62,
16 70. As discussed in detail in the preliminary approval submission, Plaintiff's Counsel believes that the
17 realistic recovery in this case was \$529,223 based on the fact that Plaintiff faced risks that included (a)
18 CSU's defense that only the initial § 226(e) \$50 penalty applied to each violation because CSU did not
19 receive notice that its wage statements were non-compliant, (b) CSU's defense that it acted in good faith
20 and thus did not knowingly and intentionally violate § 226(a) and was therefore not liable for any § 226(e)
21 penalties, (c) CSU's defense that any overtime worked was minimal, (d) CSU's defense that the rest
22 break claim on the piece rate theory would not be certified, and that Class Members were not paid a piece
23 rate, (e) CSU's argument that there was no discharge for those Class Members who were not formally
24 terminated and that it had a good faith belief that no wages were owed, and finally (f) CSU's argument
25 that Plaintiff would not certify the expense reimbursement claims and, if Plaintiff did certify the claim,
26 its assumption of \$150/month in unreimbursed expenses was inflated. Hammond Prelim. Decl. ¶¶ 33-
27 62.
28

1 Therefore, the Gross Settlement Amount, which is 32% of the maximum recovery on all claims
2 and 60% of the Class’s realistic recovery, falls well within the range of reasonableness. This percentage
3 of recovery is consistent with other settlements that other courts have approved as reasonable. *See, e.g.,*
4 *In re Omnivision Technologies, Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement
5 that constituted 9% of the maximum potential damages); *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948,
6 965 (9th Cir. 2009) (approving settlement amounting to 30% of the damages estimated by the class
7 expert; court noted that even if the plaintiffs were entitled to treble damages that settlement would be
8 approximately 10% of the estimated damages).

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

10 Plaintiff conducted thorough investigation, and reviewed and analyzed highly relevant class data
11 and documents provided by Defendant as part of informal discovery, and gathered additional documents
12 and information available online including academic calendars, and faculty job descriptions. *See*
13 *Hammond Prelim. Decl.* ¶¶ 18-19. Based on the information obtained, Plaintiff was able to calculate the
14 class size, the number of weeks and pay periods worked by the Class, the number of courses taught by
15 the Class Members during the Class Period, and the amount Class Members were paid during each pay
16 period including their average hourly rate for purposes of calculating unpaid rest breaks and unpaid
17 overtime. *Id.* ¶¶ 22-27. Plaintiff prepared a detailed damages analysis to identify the range of settlement
18 figures for the claims alleged. *Hammond Final Decl.* ¶ 21(b). Thus, Plaintiff was adequately informed
19 to make the decision to settle this case on the proposed terms. Further, the settlement was reached through
20 arm’s-length settlement negotiations by highly skilled counsel with extensive experience in the particular
21 claims alleged by the Plaintiff. *Hammond Prelim Decl.* ¶¶ 29, 69; *Hammond Final Decl.* ¶ 13(a)(d).

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

23 As discussed above, Class Counsel is highly experienced and has a successful track record in
24 handling wage and hour class actions and those on behalf of university professors and instructors in
25 particular. *Hammond Prelim Decl.* ¶¶ 29, 69; *Hammond Final Decl.* ¶¶ 13. Class Counsel believes the
26 settlement is fair, reasonable, and adequate, and in the best interests of the Class. *Hammond Prelim.*
27 *Decl.* ¶ 28; *Hammond Final Decl.* ¶¶ 7-12. The endorsement of qualified and well-informed counsel
28 regarding the settlement as fair is entitled to significant weight in the final approval process. *See Dunk,*

1 48 Cal. App. 4th at 1802. Accordingly, Class Counsel’s opinion that the settlement is fair, reasonable,
2 and adequate; that it is in the best interests of the Class; and that, as set forth in additional detail in the
3 preliminary approval papers, the result is an excellent one for the Class, weighs in favor of final approval.

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

5 The final element of a fair, reasonable, and adequate settlement is a positive reaction by the Class
6 to the settlement’s terms. The Class’s uniformly positive response to the settlement here strongly favors
7 final approval. As discussed above, to date, none of the 51 class members has objected and none has
8 opted out. Mitzner Decl. ¶¶ 8-9. *See, e.g.,* 7-11, 85 Cal. App. 4th at 1152-53 (1.5% opt-out rate and
9 0.1% objection rate supported final approval); *Nat’l Rural Telecomm. Coop. v. DIRECTV, Inc.*, 221
10 F.R.D. 523, 529 (C.D. Cal. 2004) (“[T]he absence of a large number of objections to a proposed class
11 action settlement raises a strong presumption that the terms of a proposed class action settlement are
12 favorable to the class members.”). The positive response in this case indicates universal acceptance of
13 the settlement’s terms by the Class and supports approval of the settlement.

14 **D. The Proposed Cy Pres Distribution of Uncashed Check is Fair and Reasonable**

15 Pursuant to California Civil Procedure Code § 384(b), an appropriate cy pres designee includes a
16 “nonprofit organization[]” that “support[s] projects that will benefit the class or similarly situated
17 persons.” Here, any amount remaining from uncashed settlement checks will be distributed, subject to
18 Court approval, to Bet Tzedek. *See* SA § 4.2. Bet Tzedek is a non-profit organization that provides free
19 legal services to low-income residents of Southern California, including representation in unpaid wage
20 cases. *See* Hammond Prelim Decl. ¶ 81 and <https://bettzedek.org/>. This mission satisfies the statutory
21 requirement of benefiting “the class or similarly situated workers.” Class Counsel certify that they do
22 not have any connection that could reasonably create the appearance of impropriety as between the
23 selection of the recipient of the money or thing of value and the interests of the class. *Id.* ¶ 82. Plaintiff
24 requests that the proposed cy pres distribution be approved.

25 **V. CONCLUSION**

26 Because the settlement provides benefits that are demonstrably fair in relation to the potential risk
27 and benefits of continued litigation, is supported by a robust evidentiary record, is endorsed by counsel
28 with extensive experience in wage and hour litigation, and is overwhelmingly supported by the Class,

1 Plaintiff respectfully requests that the Court grant final approval of the settlement as fair, reasonable, and
2 adequate.

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Dated: August 3, 2023

Respectfully submitted,

P. Brandler
Julian Hammond
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Attorneys for Plaintiff and the Settlement Class