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Attorneys for Defendants
VIRGIN AMERICA INC.
and ALASKA AIRLINES, INC.

Attorneys for Plaintiffs and the Class

11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

14 JULIA BERNSTEIN, LISA MARIE SMITH,
15 and ESTHER GARCIA, on behalf of
themselves and all others similarly situated,

16 Plaintiffs,

17 vs.

18 VIRGIN AMERICA INC.; ALASKA
19 AIRLINES, INC. and Does 1-10, inclusive;

20 Defendants.

Case No. 15-cv-02277-JST

CLASS ACTION

**STIPULATION RE: PLAN OF
ALLOCATION, ATTORNEYS' FEES
AND EXPENSES, AND NOTICE TO
THE CLASS [PROPOSED] ORDER**

1 Pursuant to Civil Local Rule 7-12, Plaintiffs Julia Bernstein, *et al.* (“Plaintiffs”) and
2 Defendants Virgin America Inc. and Alaska Airlines, Inc. (“Defendants”) (collectively, the
3 “Parties”), through their counsel, hereby submit the following stipulation.

4 **I. INTRODUCTION**

5 1. On January 16, 2019, the Court granted Plaintiffs’ motion for summary judgment
6 on damages in part. Dkt. 365. On February 4, 2019, the Court entered judgment. Dkt 367.

7 2. On January 21, 2020, the Court granted Plaintiffs’ motion for attorneys’ fees,
8 concluding that a \$2,899,775 lodestar represented Plaintiffs’ counsel’s reasonable hours at
9 reasonable hourly rates at that time, awarding certain statutory fees with a multiplier, and noting
10 that Plaintiffs had reserved the right to also seek fees from the common fund at a later date. Dkt.
11 402.

12 3. Defendants appealed the judgment and the order regarding attorneys’ fees and
13 expenses to the Ninth Circuit, Case Nos. 19-15382, 20-15186. The Ninth Circuit affirmed this
14 Court’s summary judgment to Plaintiffs on their claims for overtime, meal and rest break
15 violations, wage statement deficiencies, waiting time penalties, and class certification. The Ninth
16 Circuit reversed this Court’s summary judgment to Plaintiffs on their claims for minimum wage,
17 payment for each hour worked, and for heightened penalties under PAGA. The Ninth Circuit also
18 vacated this Court’s order granting attorneys’ fees and costs to Plaintiffs and remanded the issue
19 back to this Court. The Ninth Circuit also granted Plaintiffs’ request to transfer any motion for
20 attorneys’ fees and expenses related to the appeal back to this Court.

21 4. After post-remand proceedings, the Court entered judgment on January 24, 2023.
22 Dkt. 458.

23 5. On February 7, 2023, the Court approved a briefing and hearing schedule for
24 Plaintiffs’ motion for attorneys’ fees and expenses and to file a bill of costs (“Plaintiffs’
25 Motion”). Dkt. 461.

26 6. The deadline to file any appeals from the judgment was on February 24, 2023. No
27 party filed a notice of appeal.
28

1 7. The Court extended the briefing and hearing schedule for Plaintiffs’ Motion upon
 2 stipulation by the Parties so that the Parties could meet and confer with respect to Plaintiffs’
 3 Motion (N.D. Cal., L.R. 54-5). The current deadline for Plaintiffs’ Motion is May 18, 2023, and
 4 the hearing date is July 6, 2023. Dkt. 467. Nothing herein seeks to modify that schedule.

5 8. The Parties have now reached certain agreements with respect to Plaintiffs’
 6 Motion. As a result, on May 18, 2023, Plaintiffs’ Motion will be filed as a motion to approve the
 7 plan of allocation, attorneys’ fees and expenses, and service awards to the Class representatives.
 8 Plaintiffs will seek approval of attorneys’ fees and costs both as a percentage of the common fund
 9 judgment and as payable under the applicable California fee-shifting statutes.

10 9. In connection with Plaintiffs’ Motion, Plaintiffs intend to provide notice to the
 11 class of, and an opportunity to object to, Plaintiffs’ Motion. Accordingly, Plaintiffs hereby attach
 12 a copy of such notice as **Exhibit A** to this Stipulation for this Court’s approval. Defendants have
 13 no opposition to the proposed notice. The Class Administrator, Strategic Claims Solutions
 14 (“SCS”), is prepared to send notice on May 22, 2023.

15 **II. THE PARTIES’ AGREEMENTS**

16 10. This stipulation also is intended to record certain agreements reached by the
 17 Parties with respect to the judgment and the statutory fees and expenses.

18 **A. The Final Common Fund Judgment**

19 11. The total judgment amount is \$30,976,831.87, broken down as follows:

Overtime	\$6,324,592.18
Interest on Overtime Claim	\$5,125,302.51
Meal Periods	\$190,525.29
Rest Breaks	\$410,841.31
Waiting Time Penalties	\$2,249,470.58
Wage Statement	\$4,398,600.00
PAGA Penalties	\$12,277,500.00
Total	\$30,976,831.87

26 Dkt. 458.

1 12. The judgment also provides that additional prejudgment interest of \$1,732.76 per
2 day for a period of nine days from January 15, 2023 to January 24, 2023 shall be included. That
3 additional prejudgment interest amount is **\$15,594.84**.

4 13. In addition, the Parties agree that post-judgment interest applies to the total
5 judgment pursuant to 28 U.S.C. § 1961, which “shall be calculated from the date of the entry of
6 the judgment, at a rate equal to the weekly average 1-year constant maturity Treasury yield, as
7 published by the Board of Governors of the Federal Reserve System, for the calendar week
8 preceding the date of the judgment.” That rate, for the week ending on January 20, 2023, is
9 4.66%.

10 14. The Parties agree that the total post-judgment interest for a period of 163 days
11 from January 24, 2023 to July 6, 2023, the date that the Court will hold the hearing on Plaintiffs’
12 Motion, would be **\$644,965.14**.

13 15. Accordingly, the Parties agree that the total amount of the judgment as of July 6,
14 2023, would be **\$31,637,391.85** (the “Final Common Fund Judgment”), which amount shall be
15 deposited by Defendants in a Qualified Settlement Fund maintained by Huntington National Bank
16 on or before July 6, 2023. If the Final Common Fund Judgment is paid before or after July 6,
17 2023, the Parties also agree that the amount of post-judgment interest will need to be adjusted
18 according to the formula set forth in 28 U.S.C. § 1961 to account for any lesser or additional post-
19 judgment interest earned as of the date of the deposit of the Final Common Fund Judgment.

20
21 **B. Plan of Allocation**

22 16. The Parties agree that the Final Common Fund Judgment will be distributed by the
23 Class Administrator, SCS, pursuant to the proposed plan of allocation to be submitted with
24 Plaintiffs’ Motion on May 18, 2023, and as approved by the Court. Defendants agree to provide
25 any such information to SCS and Class Counsel as is necessary to effectuate the plan of
26 allocation.

1 **C. Statutory Attorneys' Fees and Expenses**

2 17. As previously indicated to the Court, Plaintiffs intend to seek fees and expenses
3 (1) as a percentage of the common fund judgment; and (2) as payable under the applicable
4 California fee-shifting statutes, subject to approval of the Court. After the judgment was final and
5 no appeals were filed, the Parties engaged in negotiations on the statutory attorneys' fees and
6 expenses payable by Defendants.

7 18. During the Parties' meet and confer sessions to discuss the statutory fees
8 purportedly payable by Defendants that Plaintiffs intended to seek from the Court, Plaintiffs'
9 Counsel represented their total lodestar for all work through March 15, 2023 was approximately
10 \$5,844,320. Plaintiffs' Counsel further represented that they again intended to petition the Court
11 to grant them statutory fees and a multiplier on that lodestar amount. Defendants raised several
12 challenges to Plaintiffs' lodestar amount and request for a multiplier that Defendants intended to
13 raise in opposition to Plaintiffs' Motion.

14 19. After extensive negotiations, Defendants have agreed to pay \$6,395,874.95 in
15 attorneys' fees and \$40,000 in reimbursement of taxable expenses (*i.e.*, the expenses that would
16 otherwise be recovered through a Bill of Costs), payable to Class Counsel. The Parties agree that
17 because Defendants will reimburse Plaintiffs \$40,000 in taxable expenses, Plaintiffs will not file a
18 Bill of Costs.

19 20. Defendants' agreement represents a compromise of the total amount of fees and
20 taxable expenses under the applicable California fee-shifting statutes that would have been
21 claimed in a contested motion and a Bill of Costs had a compromise not been reached. This
22 negotiated resolution is also intended to avoid a contested fee motion for attorneys' fees and
23 expenses and potential appeals therefrom, which could significantly impede and delay
24 distribution of the judgment to the Class.

25 21. The Parties arrived at the amount of Defendants' payment after Class Counsel
26 shared information regarding the work performed by Class Counsel and the hours, rates,
27 timekeepers, and categories of such work they would be presenting to the Court through
28 Plaintiffs' Motion, as well as certain itemized expenses that are considered taxable expenses.

1 Although Defendants contested the hours, rates and amounts Class Counsel presented and
 2 Defendants would contest Class Counsel's calculations in their opposition to Plaintiffs' Motion,
 3 the Parties relied upon this information for purposes of their negotiations. In the event the Court
 4 does not approve Plaintiffs' motion to approve the plan of allocation, attorneys' fees and
 5 expenses, and service awards to the Class representatives, the Parties agree that their agreement
 6 shall be null and void. In that event, Plaintiffs may seek any statutory and/or common fund fee
 7 and expense reimbursement they believe is reasonable and appropriate through a motion and Bill
 8 of Costs and Defendants may assert any and all defenses and objections to any subsequent motion
 9 for attorneys' fees and expenses and/or Bill of Costs Plaintiffs file.

10 22. Defendants understand that Plaintiffs will also seek fees, reimbursement of non-
 11 taxable expenses, and service awards to the Class Representatives as a percentage of the Final
 12 Common Fund Judgment, and that any awarded fees will be offset (that is, reduced) by the
 13 amount Defendants have agreed to pay in statutory attorneys' fees and expenses.

14 **IT IS SO STIPULATED.**

15 Date: May 18, 2023

Respectfully submitted,

16 OLIVIER & SCHREIBER LLP

17 */s/ Monique Olivier*

18 Monique Olivier

19 *Attorneys for Plaintiffs and the Certified Class*

20
 21
 22 Date: May 18, 2023

MORGAN LEWIS & BOCKIUS

23 */s/ Brendan T. Killeen*

24 Brendan T. Killeen

25 *Attorneys for Defendants*

26
 27 *I, Monique Olivier, have obtained the consent of Brendan T. Killeen to this filing,
 28 pursuant to the local rules.

[PROPOSED] ORDER

PURSUANT TO STIPULATION, IT IS HEREBY ORDERED that the Class Notice attached hereto is approved, and the schedule for Plaintiffs’ Motion to Approve the Plan of Allocation, Attorneys’ Fees and Expenses, and Service Awards, and for Notice to the Class shall be as follows.

Date	Action
May 18, 2023	Plaintiffs’ Motion to Approve Plan of Allocation, Attorneys’ Fees and Expenses, and Service Awards to be filed
May 22, 2023	Notice to be sent to the Class
June 21, 2023	Deadline for Class Members to Object to Plaintiffs’ Motion
June 23, 2023	Plaintiffs’ Report re Class Notice
July 6, 2023	Hearing on Plaintiffs’ Motion

IT IS SO ORDERED.

Dated: _____

 JON S. TIGAR
 UNITED STATES DISTRICT JUDGE

EXHIBIT A

Bernstein, et al. v. Virgin America Inc., et al., Case No. 15-cv-02277

**Notice of Motion to Approve the Plan of Allocation, Attorneys' Fees and Expenses,
and Service Awards to Class Representatives**

May 22, 2023

Dear Class Member:

You are receiving this notice because Judge Jon S. Tigar of the United States District Court for the Northern District of California entered a judgment on your behalf as a Class member in the case *Bernstein v. Virgin America, Inc., et al.* Class members are all individuals who have worked as California-based flight attendants of Virgin America Inc. ("Virgin") at any time during the period from March 18, 2011 to April 6, 2017. The defendants in the case are Virgin and Alaska Airlines, Inc., as the successor-in-interest to Virgin ("Defendants").

As you may be aware, the Court ruled that Virgin violated certain California wage and hour laws and issued a judgment in favor of the Class and the State of California in the amount of \$30,976,831.97 through January 15, 2023, plus prejudgment interest through January 24, 2023, and continuing post-judgment interest (the "Final Common Fund Judgment"). Now that the Final Common Fund Judgment has been entered, the attorneys who represent the Class ("Class counsel") have filed a Motion to Approve the Plan of Allocation, Attorneys' Fees and Expenses, and Service Awards to the Class Representatives (the "Motion"). The Motion will be heard by the Court on July 6, 2023. The Court's order relating to the Motion will be posted on www.VirginWageLawsuit.com after it is issued.

The Motion seeks approval of the Plan of Allocation to distribute the Net Distribution Amount of the Final Common Fund Judgment to the Class. The "Net Distribution Amount" is the amount of the Final Common Fund Judgment after deductions for the Judgment amount payable to the Labor & Workforce Development Agency, and for attorneys' fees, expenses, costs of administration, and service awards to the Class Representatives, as approved by the Court. The Plan of Allocation entitles you as a Class member to your pro-rata share of the Net Distribution Amount, based upon the damages calculations of the expert witness retained on behalf of the Class and accepted by the Court. Those damage calculations are derived from your hours worked, dates of service, and other similar factors. After the Court approves the Plan of Allocation, your pro-rata share of the Net Distribution Amount will be mailed directly to you in the form of a check by the Class Administrator. You do not need to do anything additional, although we ask that if your contact information has changed and you have not previously provided it to us, please send an email to info@strategicclaims.net. You may also submit a completed W-4 form to that same address if you wish to update your tax withholding status from what Defendants may have on file. If you wish to know your portion of the Net Distribution Amount in advance of receiving your check, you may contact the Class Administrator by email or telephone by [REDACTED], 2023 (within 45 days of the Court's order approving the Plan of Allocation) and request your Preliminary Class Member Net Distribution Amount. If you wish to contest that amount, you must contact the Class

Administrator with any additional information or documentation by _____, 2023 (within 75 days of the Court's order approving the Plan of Allocation).

The Motion also requests that Class counsel be paid 33% of the Common Fund Judgment plus certain expenses incurred in prosecuting the case. That amount will be offset (that is, reduced) by \$6,395,874.95, which is the amount Virgin has agreed to pay in statutory attorneys' fees, which means that Class counsel will be requesting approximately 13% of the Common Fund plus certain unreimbursed expenses.

As a Class member, you have the right to object to the Motion. A copy of Class counsel's Motion and supporting papers can be reviewed online at www.VirginWageLawsuit.com. By filing an objection, you will not waive your right to receive your share of the judgment. If you wish to file an objection, you must do so by June 23, 2023 by emailing or mailing a written objection with your name, contact information and the reason for your objection to:

Virgin Wage Lawsuit
c/o Strategic Claims Services
600 North Jackson Street – Suite 205
Media, PA 19063
info@strategicclaims.net
1-866-274-4004

Class counsel will file your objection letter with the Court and send a copy to Defendants' counsel prior to the hearing on the Motion scheduled for July 6, 2023. Any objection you have to the Motion will be waived unless you raise it by the time and in the manner stated in this notice.