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14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16

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

19 Plaintiffs,

20 v.

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

22 Defendants.
23

Case No. 15-cv-02277-JST

CLASS ACTION

**DECLARATION OF MONIQUE
OLIVIER IN SUPPORT OF
PLAINTIFFS' MOTION TO APPROVE
THE PLAN OF ALLOCATION,
ATTORNEYS' FEES AND EXPENSES,
AND SERVICE AWARDS TO CLASS
REPRESENTATIVES**

Date: July 6, 2023
Time: 2:00 p.m.
Crtrm: Courtroom 6; 2nd Floor
Judge: Hon. Jon S. Tigar

1 I, Monique Olivier, declare as follows:

2 1. I am a member of the State Bar of California and admitted to practice law in all the
3 courts of the State of California and in the United States District Court for the Northern District of
4 California. I am in good standing with the Bar and with this Court. I am a partner in the law firm
5 Olivier & Schreiber LLP (“O&S”) and am counsel for Plaintiffs and the Class in this action.

6 2. The facts contained in this declaration are within my personal knowledge, and I
7 could and would testify truthfully to these facts if called to do so under oath. I submit this
8 declaration in support of Plaintiffs’ Motion to Approve the Plan of Allocation, Attorneys’ Fees
9 and Expenses, and Service Awards to Class Representatives (“Plaintiffs’ Motion”). Below I
10 describe the facts and circumstances that support Plaintiffs’ Motion.

11 3. This Court entered judgment in this case on January 24, 2023. Dkt. 458. With the
12 additional amount of prejudgment and post-judgment interest owed on that amount, as of July 6,
13 2023, the amount of the judgment will be \$31,637,391.85.

14 4. In addition, after extensive negotiations, Defendants have agreed to pay Plaintiffs
15 statutory attorneys’ fees of \$6,395,874.95 and reimbursement of taxable costs in the amount of
16 \$40,000. Accordingly, the full benefit to the Class is \$38,073,266.80.

17 **PLAN OF ALLOCATION**

18 5. Attached hereto as **Exhibit A** is the proposed Plan of Allocation. Early in the
19 litigation, Plaintiffs engaged an expert, David Breshears of Hemming Morse, to provide an
20 analysis of the damages and penalties for each Class member for each of the claims asserted in
21 this action. After we obtained fulsome payroll data from Virgin for all Class members, Mr.
22 Breshears and his team spent hundreds of hours reviewing and analyzing this data and building a
23 complex damages model which allocates damages and penalties to each class member based on
24 their unique payroll data including dates worked, hours worked each day and each week,
25 workdays in which a meal period was required but not provided, workdays in which a rest period
26 was required but not provided, wage statements received, and work weeks in which a wage

1 violation occurred for purposes of penalties under the Private Attorneys General Act, Labor Code
2 § 2698 *et seq.* (“PAGA”).

3 6. Mr. Breshears’s work provides the basis for the Plan of Allocation. That Plan
4 reasonably and equitably distributes the Net Distribution Amount among the Class based upon
5 their unique payroll data and provides a pro rata share of the Net Distribution Amount based upon
6 each Class member’s time worked and violations experienced.

7 7. Out of an abundance of caution, we have also included within the proposed Plan of
8 Allocation a process through which a Class member, should they so choose, can obtain a
9 preliminary distribution amount and raise any concerns about that amount with the Class
10 Administrator.

11 8. This Plan of Allocation is consistent with the allocation plans I have done in
12 similar class action wage and hour cases, and is also consistent with the allocation plans in other
13 class action wage and hour cases I have reviewed. In my opinion, it provides the most equitable
14 distribution of the Net Distribution Amount because it is tied to the actual time worked and
15 violations experienced by Class members.

16 **ATTORNEYS’ FEES AND EXPENSES**

17 9. In this kind of case, where fee shifting is available and a common fund judgment is
18 created, attorneys’ fees are permitted on both a fee-shifting and common fund basis. After
19 extensive negotiations, Defendants have agreed to pay the statutory fee. Accordingly, Plaintiffs
20 are requesting that this Court approve a percentage-of-the-fund recovery for attorneys’ fees at
21 33.00%, with the statutory fees that Defendants have agreed to pay to be credited back to the
22 Common Fund Judgment.

23 10. Plaintiffs seek attorneys’ fees of \$10,441,409 which will come from two sources:
24 \$6,395,874 will be paid directly by Defendants; the remaining \$4,045,534 to be paid from the
25 over \$31 million Common Fund Judgment. The amount of fees sought is 33% of the Common
26 Fund Judgment, but the roughly \$6.4 million Defendants have agreed to pay will be credited
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1 against that amount. Accordingly, while Plaintiffs request is for a 33% fee, with the credit,
2 Plaintiffs in fact seek a payment of 12.8% of the Common Fund Judgment, plus expenses.

3 11. In my opinion, this fee request is very reasonable given the risks taken, the
4 excellent work performed by Class Counsel, and the extraordinary results achieved on behalf of
5 the Class. The judgment represents 100% of the losses by Class members on all successful
6 claims.

7 12. Plaintiffs also seek expenses of \$615,293.38, which will similarly come from two
8 sources. \$40,000 will be paid by Defendants as reimbursement for Plaintiffs taxable costs, i.e.,
9 costs that are recoverable by statute; the remaining \$575,293.38.

10 13. to be paid from the Common Fund Judgment.

11 14. Below I provide a summary of my firm's and my prior firm's involvement in
12 reaching the significant judgment achieved here, our extensive experience and expertise in class
13 action litigation, the hourly rates for the attorneys and staff at my firm and prior firm, a
14 description of the allocation of work and billing practices utilized in this case, and a discussion of
15 the exceptional results achieved through this settlement in light of the complexity and novelty of
16 the legal issues and the risks to Class Counsel in undertaking this large-scale, class action
17 contingency litigation.

18 15. My firm specializes in employment, consumer, and civil rights matters. All of
19 O&S's partners are leaders in their fields and are widely recognized as experienced and capable
20 litigators on behalf of plaintiffs. More information on our firm is available at www.os-legal.com.
21 Prior to joining my current firm, I was a partner at Duckworth Peters Lebowitz Olivier LLP
22 ("DPLO"). DPLO has actively participated in all aspects of this action for four years along with
23 co-counsel Kosinski + Thiagaraj LLP ("KT"). Since founding O&S, I have remained actively
24 involved in this matter as lead Class counsel.

25 16. In 2017, when it became clear that there would be significant post-certification
26 discovery, summary judgment and pretrial work, we associated Miller Shah LLP ("MS") as co-
27 counsel. In 2019, because of Defendants' appeal to the Ninth Circuit attempting to overturn this
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1 Court's judgment for the Class, which attracted significant attention by amici curiae, Class
2 counsel associated Cooper & Kirk, PLLC ("CK") a highly regarded firm specializing in Circuit
3 and Supreme Court proceedings. The firms are collectively referred to below as Class counsel.

4 17. Additional information about KT's experience and work is contained in the
5 declaration of Alison Kosinski in support of Plaintiffs' motion to approve the plan of allocation,
6 filed concurrently herewith ("Kosinski Declaration"). Additional information about MS's
7 experience and work is contained in the declaration of James E. Miller in support of Plaintiffs'
8 motion to approve the plan of allocation, filed concurrently herewith ("Miller Declaration").
9 Additional information about CK's experience and work is contained in the declaration of Charles
10 J. Cooper in support of Plaintiffs' motion to approve the plan of allocation, filed concurrently
11 herewith ("Cooper Declaration").

12 **History of the Litigation and Class Counsel's Work**

13 18. There are over 465 docket entries in this action. The major litigation events are
14 well-documented in prior briefings and by this Court. *See, e.g.*, Dkt. Nos. 121, 317, 365, 414, and
15 456. The recovery of over \$31 million is the culmination of over eight years of hard-fought
16 litigation – encompassing over 7,300 hours of Class Counsel's time – with a substantial risk of no
17 compensation. For the purposes of Plaintiffs' fee request, Plaintiffs focus on the most significant
18 events for which specific work was undertaken by Class Counsel to reach the outstanding
19 recoveries for Plaintiffs and the Class, summarized as follows.

20 19. **Pleadings:** After investigation and due diligence, Plaintiffs filed their initial
21 complaint on March 18, 2015 in the Superior Court of California, San Francisco County.
22 Defendants removed the action to this Court and answered the Complaint on May 20, 2015. Dkt.
23 1, 5. After an initial Case Management Conference on August 26, 2015, Plaintiffs filed their First
24 Amended Complaint with leave of Court on October 30, 2015, which Defendants also answered
25 on November 20, 2015. Dkt. 23, 32 and 33. After Virgin America, Inc. was acquired and merged
26 with Alaska Airlines, Inc., on March 20, 2018, Plaintiffs added Alaska Airlines, Inc. as a
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1 defendant and successor-in-interest. Dkt. 297, 298. Alaska filed an answer on April 18, 2018.
2 Dkt. 310.

3 20. Plaintiffs filed their operative Third Amended Complaint (“TAC”) on March 20,
4 2018, alleging that Defendants failed to pay the class of flight attendants minimum wage (Cal.
5 Lab. Code §§ 1182.12, 1194, 1194.2), overtime (Cal. Lab. Code §§ 510), and for all hours worked
6 (Cal. Lab. Code § 204); failed to provide required meal periods (Cal. Lab. Code §§ 226.7, 512),
7 rest breaks (Cal. Lab. Code § 226.7), and accurate wage statements (Cal. Lab. Code § 226); failed
8 to pay waiting time penalties (Cal. Lab. Code §§ 201, 202, 203); and violated California’s Unfair
9 Competition Law (“UCL”) (Cal. Bus. & Prof. Code § 17200). Dkt. 298 ¶¶ 42–97. Plaintiffs
10 additionally sought civil penalties under the California Private Attorneys General Act of 2004
11 (“PAGA”) (Cal. Lab. Code § 2699)). *Id.* ¶¶ 98–104.

12 21. **Discovery Conducted in Support of Class Certification:** Discovery in this case
13 was lengthy and hotly contested. To support their motion for class certification, Class Counsel
14 served three sets of requests for production of documents, totaling 90 document requests, and two
15 sets of interrogatories, totaling 27 interrogatories. Class Counsel also deposed four of Virgin’s
16 corporate representatives pursuant to Fed. Rules Civ. Pro. 30(b)(6) in preparation for Plaintiffs’
17 class certification motion.

18 22. During this pre-certification period, Virgin served five sets of interrogatories on the
19 named plaintiffs, totaling 73 interrogatories, and seven sets of requests for production of
20 documents, totaling 222 document requests, all to which Plaintiffs were obligated to respond.
21 Virgin also deposed Plaintiffs Bernstein, Garcia, and Smith, as well as class member declarants
22 Holidais Evans-Bunch, Adam Croteau, Ramon Ryan, and Victor Tomlinson, prior to class
23 certification.

24 23. **Class Certification and Defendants’ Surprise Motion for Summary Judgment:**
25 Plaintiffs prepared and filed their motion for class certification on July 6, 2016. Dkt. 50. Virgin
26 obtained an extension to respond to the class certification motion until September 15, 2016 [Dkt.
27 56], and filed a surprise motion for summary judgment on September 6, 2016 [Dkt. 60], as part of
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1 a transparent attempt to disrupt the orderly class certification proceedings. Virgin also opposed
2 Plaintiffs' request for an extension of time to respond to this surprise motion. Dkt. 68, 69, 76.
3 The Court granted Plaintiffs' request and continued the hearing on Defendants' summary
4 judgment motion until after the scheduled hearing on class certification. Dkt. 78. Undeterred,
5 Defendants then filed another motion to set the hearing on Plaintiffs' motion for class certification
6 concurrently with Defendants' summary judgment motion, which the Court denied. Dkt. 86, 88,
7 93. Due to the volume of material that Defendants had marked confidential pursuant to a
8 stipulated protective order, the parties also filed multiple administrative motions to seal and
9 responses thereto. *See, e.g.*, Dkt. 43, 83, 84, 92, 95, 100.

10 24. Virgin opposed Plaintiffs' class certification motion on September 15, 2016, and
11 also filed a motion to strike Plaintiffs' expert report. Dkt. 71, 74. On October 17, 2016,
12 Defendants filed an amended notice of motion and motion for summary judgment. Dkt. 97. On
13 October 18, 2016, the Court held oral argument on Plaintiffs' motion for class certification. Dkt.
14 98. The Court granted class certification on November 7, 2016. Dkt. 104.

15 25. Plaintiffs opposed Defendants' summary judgment motion on November 1, 2016.
16 Dkt. 101. Plaintiffs also filed a declaration under Fed. R. Civ. P. 56(d) due to Defendants'
17 premature and surprise summary judgment motion. Dkt. 101-49. Defendants opposed Plaintiffs'
18 Rule 56(d) Affidavit, and Plaintiffs filed a response. Dkt. 109, 112. The Court held oral
19 argument on Defendants' summary judgment motion on December 13, 2016 [Dkt. 117] and
20 thereafter permitted supplemental briefing [Dkt. 119, 120]. On January 5, 2017, the Court issued
21 its order denying in large part Defendants' motion for summary judgment. Dkt. 121. On
22 February 13, 2017, Defendants filed a motion for leave to file a motion for reconsideration or, in
23 the alternative, for an order certifying the summary judgment order for interlocutory appeal. Dkt.
24 127. The Court denied Defendants' motion. Dkt. 151.

25 26. On February 15, 2017, the Court issued its Third Scheduling Order setting a
26 schedule for expert discovery, dispositive motions, pretrial, and trial. Dkt. 131. Even class notice
27 was contentious. Defendants objected to Plaintiffs' proposal that class notice be sent via work
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1 email addresses for current Virgin employees, even though Defendants had used those email
2 addresses to communicate about this litigation. Dkt. 134, 137, 147-149. The Court granted
3 Plaintiffs' request that notice via work email addresses be sent, and issued an order resolving the
4 parties' disputes and ordering class notice. Dkt. 140, 150. On April 6, 2017, class notice was sent
5 via mail and email to 1,869 class members. Much later in the litigation, in August 2018,
6 Defendants informed Plaintiffs that there were 163 Class members who did not receive notice.
7 Defendants then informed Plaintiffs that there were an additional 51 Class members who did not
8 receive notice. On August 24, 2018, class notice was sent to these individuals. *Id.* Class counsel
9 worked closely with the class administrator to facilitate and disseminate notice and maintain and
10 update the Class notice website. *Id.*

11 27. **Discovery Conducted after Class Certification:** Following class certification, the
12 parties had significant disagreement as to the scope of further discovery. Ultimately, the
13 discovery burden on Class counsel was heavy. Class Counsel served an additional two sets of
14 requests for production of documents, totaling 28 more requests, and an additional two sets of
15 interrogatories, totaling six more interrogatories. Virgin produced in total over 249,000 pages of
16 discovery documents for Class counsel's review. Virgin served three more sets of documents
17 requests on Plaintiffs, totaling 38 requests; three sets of requests for admission, totaling 75
18 requests; two sets of document requests to all absent class members, totaling seven requests; and
19 one set of interrogatories to all absent class members, totaling nine interrogatories. Class Counsel
20 responded to each of these discovery requests.

21 28. On February 15, 2017, the Court referred all discovery matters to then Magistrate
22 Judge Corley for resolution. Dkt. 130. Class Counsel submitted and/or responded to ten
23 discovery letter briefs to the Court, after lengthy meet and confer efforts with Virgin's counsel.
24 *See* Dkt. 54, 128, 154, 165, 172, 188, 193, 200, 203, 240. The Court denied either in full or in
25 part each of Virgin's discovery requests. Dkt. 159, 175, 189, 195, 202, 205. Virgin challenged
26 these rulings by filing four motions for relief from a non-dispositive pre-trial order [Dkt. 164, 179,
27 192, 210], and the Court denied each of these motions. Dkt. 167, 185, 196, 215.

1 29. **Expert Discovery:** Class Counsel submitted the expert reports of Plaintiffs' expert
2 David Breshears. Dkt. 50-1, 79-6, 84-1, 258-24, 258-25, 259-28, 282-7, 343-2. Virgin deposed
3 Mr. Breshears twice. During the second deposition, Mr. Breshears became aware of minor errors
4 in his calculation. Class Counsel immediately notified Virgin that Mr. Breshears would be
5 correcting his expert report and offered to extend Virgin's expert rebuttal deadline and the
6 opportunity to further depose Mr. Breshears. Virgin repeatedly refused Class Counsel's offer.
7 Instead, it filed a motion to exclude Mr. Breshears' supplemental report, which both then
8 Magistrate Judge Corley and this Court denied. Dkt. 247, 283. Ultimately, Defendants did not
9 depose Mr. Breshears regarding his corrected report, and failed to produce any rebuttal testimony
10 to address Mr. Breshears' corrected report.

11 30. Virgin relied upon the analysis of expert Valentin Estevez in support of its motion
12 for summary judgment [Dkt. 98] as well as on six additional experts for its motion for
13 decertification and to oppose Plaintiffs' motion for summary judgment. Dkt. 227, 227-1, 228,
14 228-1, 229, 229-1, 230, 231, 235, 281. Class Counsel deposed Estevez twice, first in preparation
15 for Plaintiffs' class certification motion and again in preparation for their summary judgment
16 motion, and four of Virgin's additional experts prior to filing Plaintiffs' motion for summary
17 judgment. After flying across the country for many of these depositions, Class Counsel moved to
18 exclude Virgin's experts. Dkt. 261. The Court ultimately sustained Plaintiffs' objections to five
19 of Virgin's seven experts and excluded their testimony in support of Virgin's motion for
20 decertification. Dkt. 316.

21 31. **Plaintiffs' Motions for Summary Judgment and Defendants' Motion to**
22 **Decertify the Class:** In December 2017, Defendants sought leave to file a second summary
23 judgment motion, which Plaintiffs opposed. Dkt. 214, 218, 219. The Court denied Defendants'
24 motion. Dkt. 220. On January 12, 2018, Plaintiffs filed a motion for summary judgment, and
25 Defendants filed a motion to decertify the class. Dkt. 225, 226.

26 32. In support of their motion, Defendants submitted voluminous reports of eight
27 purported experts. Dkt. 227-231. The report of Darin Lee alone was over 84 pages. Dkt No.
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1 227-1 at 6-7. When it became apparent that discovery would continue to be contentious and
2 absorb substantial time and resources, and that the action was on track for a class action trial,
3 Class counsel associated the firm Miller Shah, LLP (“MS,” formerly Shepherd, Finkelman, Miller
4 & Shah LLP) as co-counsel. Dkt. 181-84.

5 33. Before the Court ruled on the parties’ motions, Defendants also moved to stay the
6 litigation pending resolution of a trio of cases involving transportation workers pending before the
7 Ninth Circuit. Dkt. 295. Plaintiffs opposed the stay, and the Court denied the stay. Dkt. 315.
8 Again, because the material submitted in support of the motions contained substantial material
9 that Defendants had identified as confidential, several administrative motions to file material
10 under seal were also filed. See, e.g., Dkt. 224, 255, 269, 271, 272.

11 34. The Court denied Defendants’ motion for decertification in large part, decertifying
12 the class only “with respect to any claims based on the completion of incident reports.” Dkt. 316.
13 On July 9, 2018, the Court granted Plaintiffs’ motion for summary judgment in large part. Dkt.
14 317. The Court granted Plaintiffs’ motion as to Plaintiffs’ claims for failure to pay minimum
15 wages, failure to pay for all hours worked, failure to pay overtime, failure to provide meal and rest
16 breaks, failure to provide accurate wage statements, and failure to provide waiting time penalties.
17 Dkt. 317. The Court also granted the motion as to Plaintiffs’ UCL and PAGA claims. *Id.* The
18 Court denied summary judgment as to Plaintiffs’ claims related to time spent completing incident
19 reports, finding the existence of a triable issue of fact as to the length of time required to complete
20 such a report. *Id.* The Court also denied Plaintiffs’ motion as to the declaratory and injunctive
21 relief sought by Plaintiffs, and did not determine the amount of damages and penalties owed. *Id.*

22 35. **Settlement:** The parties made an early attempt at settlement. They participated in
23 private mediation early in the case with Hunter Hughes, but the case did not settle. Plaintiffs
24 approached Defendants to engage in settlement discussions again in September 2017, and in 2018,
25 but Defendants did not respond. Plaintiffs approached Defendants again in 2020, and preliminary
26 conversations were had, but the case did not settle.

1 36. **Motion for Judgment:** Because Defendants had not complied with their
2 discovery obligations and provided all data necessary to calculate complete damages for the Class
3 and Subclasses, Plaintiffs were unable to provide a full damages report at the time of their motion
4 for summary judgment. In addition, Defendants continued to insist that a subgroup of the Class –
5 class members who had participated in Virgin’s buyout program (“Career Choice”) – could not
6 participate in the Class recovery. Accordingly, after the Court granted Plaintiffs’ summary
7 judgment motion, the parties attended a series of case management conferences with the Court to
8 determine how best to proceed. Dkt. 321, 327. Plaintiffs maintained that Defendants had waived
9 any argument as to the Career Choice Class members because they had refused to produce Career
10 Choice documents during discovery. Dkt. 320-1. Plaintiffs offered a compromise to Defendants
11 that would have permitted them to maintain their argument as to the Career Choice Class
12 members for whom full documentation had been produced. Defendants declined this
13 compromise. Plaintiffs thereafter filed a motion for sanctions under Fed. R. Civ. P. 37 to exclude
14 any Career Choice documents and for a determination that Defendants had waived their
15 affirmative defense that Career Choice class members were barred from asserting claims. Dkt.
16 333. The Court granted Plaintiffs’ motion. Dkt. 345.¹

17 37. Defendants produced updated Class-wide data, and Plaintiffs worked with their
18 expert to produce an updated expert report. The parties thereafter met and conferred extensively
19 in an attempt to agree upon the amount and form of the judgment. After a negotiated resolution
20 failed, Plaintiffs filed a motion for judgment as to a sum certain, which Defendants opposed. Dkt.
21 343, 352. The Court granted Plaintiffs’ motion. Dkt. 365. On February 4, 2019, the Court
22 entered judgment awarding \$59,063,082.75 plus post-judgment interest to the Class and
23 Subclasses, and another \$18,735,862.50 to the State of California’s Labor & Workforce
24 Development Agency, for a total judgment of \$77,798,945.25. Dkt. 367. Since this Court’s first
25 Judgment, Class counsel have responded to inquiries from hundreds of Class members regarding
26 the status of the case.

27 _____
28 ¹ The parties subsequently resolved the monetary sanctions associated with the Rule 37 Motion.
The lodestar associated with that motion has been deducted from the fees sought herein.

1 **38. Order Granting Attorneys’ Fees and Expenses:** On January 21, 2020, this Court
2 granted in part Plaintiffs’ first motion for attorneys’ fees and expenses. Dkt. 402. Plaintiffs had
3 requested \$12,969,630 in attorneys’ fees and \$250,775.81 in expenses. *Id.* In response to
4 Defendants’ objections, the Court reduced Plaintiffs’ lodestar by five percent and rejected fees for
5 work performed for which Plaintiffs did not provide sufficient description. *Id.* at 8-9. The Court
6 declined to reduce Plaintiffs’ lodestar based on overstaffing or duplicative work. *Id.* at 10.
7 Defendants argued that Plaintiffs could not recover fees for time spent litigating unsuccessful
8 claims, including based on Plaintiffs’ expense reimbursement and San Francisco Minimum Wage
9 Ordinance (“SFMWO”) claims. *Id.* at 10. The Court determined that Plaintiffs’ SFMWO claim
10 was related to their successful claims, so Plaintiffs could recover fees for time spent litigating this
11 claim. *Id.* at 11. The Court determined that Plaintiffs’ reimbursement claim was not related to
12 Plaintiffs’ other claims for the purposes of apportioning fees, and therefore excluded hours spent
13 exclusively on this claim from the lodestar. *Id.* at 12. In calculating the lodestar, the Court reduced
14 the billing rates of James Miller and James Shah to match the prevailing upper-tier rates of this
15 district. *Id.* at 14. Otherwise, the Court approved Class counsel’s rates. *Id.* at 15. In response to
16 Plaintiffs’ request for a multiplier of four, the Court determined that the issues presented in this
17 case were “novel and difficult” (*Id.* at 16), that “counsel displayed extraordinary skill, above and
18 beyond that reflected in the prevailing market rate for attorneys with commensurate experience”
19 (*Id.* at 18), that Class counsel had to turn down other fee-generating matters due to their work on
20 this case (*Id.* at 19), and that Class counsel bore risk of non-payment (*Id.* at 20), all weighing in
21 favor of a positive multiplier. The Court concluded that a 2.0 multiplier was appropriate. *Id.* at 23.
22 The Court awarded all claimed expenses. *Id.* at 24. In total, this Court approved an award of
23 \$5,753,115.00 in attorney’s fees and \$250,775.81 in expenses. *Id.* at 24.

24 **39. Ninth Circuit Proceedings:** On March 4, 2019, Defendants filed a Notice of
25 Appeal to the Ninth Circuit Court of Appeals, seeking to overturn the judgment. Dkt. 370;
26 *Bernstein v. Virgin Am., Inc.*, 19-cv-15382 (9th Cir. 2021), ECF 24. Defendants’ appeal was full-
27 throated. They focused on attempting to invalidate the judgment in its entirety on the basis of
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1 preemption, purported lack of applicability of state wage laws to airline personnel, and the
2 Dormant Commerce Clause. They also sought to overturn the order certifying the Class.

3 40. The appeal attracted significant attention by amici curiae. The United States, the
4 U.S. Chamber of Commerce, and several airline and transportation trade associations submitted
5 briefs in support of Defendants. Twenty states, the District of Columbia, and the Association of
6 Flight Attendants submitted briefs in support of Plaintiffs. To aid in the appellate proceedings,
7 Class counsel associated Cooper & Kirk, PLLC, a highly regarded firm specializing in Circuit and
8 Supreme Court proceedings.

9 41. Defendants' efforts at a wholesale reversal were unsuccessful. The Ninth Circuit
10 affirmed this Court's certification of the Class and its holding that California wage laws apply to
11 the Class, and affirmed liability as to all claims save one. Dkt. 414. The Ninth Circuit reversed
12 the Court's holding as to Plaintiffs' claims based on payment of minimum wage and payment for
13 all hours worked on the basis of its interpretation of an intervening California Supreme Court
14 decision, *Oman v. Delta Air Lines, Inc.*, Cal. 5th 762 (2020). The appellate court also remanded
15 for recalculation of the PAGA penalties, concluding as a matter of first impression that the
16 "subsequent" violation rate applies only after a court or agency has found a violation. *Id.* at 34.

17 42. The Ninth Circuit issued its original opinion on February 23, 2021, and an
18 amended opinion, sua sponte, on March 8, 2021. Dkt. 408, 409. The parties then filed cross-
19 petitions for rehearing. On July 20, 2021, the Ninth Circuit denied both petitions for rehearing
20 and issued a further amended opinion. Dkt. 414; *Bernstein v. Virgin America, Inc. et al.*, 3 F.4th
21 1127 (9th Cir. 2021).

22 43. Defendants also pursued a separate appeal of this Court's order granting attorneys'
23 fees and expenses. Dkt. 404. That appeal was not limited to requesting a reversal in the event the
24 judgment was reversed, but raised a number of arguments, including some never raised in this
25 Court. After full briefing, the Ninth Circuit concluded it was required to vacate and remand this
26 Court's fees order on the basis of the partial reversal of the judgment, because it "cannot say with
27 certainty that the district court would exercise its discretion in the same way[.]" Dkt. 414 at 35.

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1 44. **Supreme Court Proceedings:** On August 19, 2021, Defendants filed a petition for
2 certiorari to the United States Supreme Court, asking the Court to address whether the Airline
3 Deregulation Act (“ADA”) preempts California’s meal and rest break laws. Again, the petition
4 generated significant amici interest; the U.S. Chamber of Commerce, several trade associations
5 and a few states submitted amicus briefs in support of Defendants. Plaintiffs filed their response
6 to Defendants’ petition on September 22, 2021.

7 45. At the time the Supreme Court was considering the petition, it was also considering
8 several petitions involving issues relating to the application of state employment laws to interstate
9 workers. On November 15, 2021, the Court invited the Solicitor General to file a brief expressing
10 the views of the United States. The Office of the Solicitor General then held meetings counsel for
11 Plaintiffs and counsel for Defendants, and submitted a brief in May 2022. The certiorari
12 proceedings attracted significant interest and several amicus curiae briefs were filed. The
13 Supreme Court denied the petition on June 30, 2022.

14 46. **Post-Remand Work:** On February 11, 2022, Defendants sought a motion to stay
15 proceedings in this Court pending proceedings at the U.S. Supreme Court, which Plaintiffs
16 opposed. This Court denied that motion on May 4, 2022. Dkt. 446. On May 26, 2022, Plaintiffs
17 filed a Motion to Amend the Judgment. Dkt. 447. Following vigorous opposition, on January 24,
18 2022, the Court entered judgment awarding \$21,768,706.87 to the Class and subclass and
19 \$9,208,125 to the State of California’s Labor & Workforce Development Agency, plus continuing
20 prejudgment interest for a total judgment of \$30,990,693.95. Dkt. 458.

21 47. Defendants did not appeal the judgment. Knowing that the judgment amount was
22 fixed, and the only remaining issues were to seek approval of a plan of allocation and attorneys’
23 fees and expenses, Plaintiffs and Defendants engaged in negotiations regarding the payment of a
24 statutory fee award. Resolution of the statutory fee award with Defendants would bring finality to
25 the judgment and limit any appeals, which would lead to certainty with respect to the judgment
26 and reduce any delay in distributing the common fund judgment to the Class.

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1 52. I am also an Appellate Specialist certified by the California State Bar Board of
2 Legal Specialization. In 2016, I was the recipient of the California Lawyer of the Year (“CLAY”)
3 Award for my appellate work.

4 53. I serve as a Mediator and an Early Neutral Evaluator for the U.S. District Court,
5 Northern District of California’s ADR Program and am a member of the Northern District’s Pro
6 Bono Panel. I also serve on the Northern District’s ADR Local Rules Committee, and I have
7 served on the Northern District’s Magistrate Judge Merit Selection Panel.

8 54. I am the Immediate Past President of the Federal Bar Association’s Northern
9 California Chapter, a member of the Board of Directors of the National Association of Consumer
10 Advocates, and a former member of the Lawyer Representative Committee for the Northern
11 District. I am regularly invited to speak on class action and appellate issues, and I have co-chaired
12 the Federal Bar Association Northern District Chapter’s Class Action Symposium since 2015.

13 55. I received my J.D. (Order of the Coif) from the U.C. Davis King Hall School of
14 Law in 1997 and my B.A. from Boston College in 1991. I served as a judicial extern to the Hon.
15 Lawrence K. Karlton, Eastern District of California. Prior to founding DPLO and then O&S, I
16 was the managing attorney at The Sturdevant Law Firm where I litigated employment, civil
17 rights, and consumer class actions nationally.

18 56. O&S and its partners have had significant success in litigating complex
19 employment and civil rights cases. A few examples of our work include:

- 20 • *Chavez v. Jani-King of California, Inc., et al*, Alameda Cty. Case No.
21 RG19043517 (obtaining \$15.35 million settlement for more than 1,200 janitors
22 misclassified as franchisees);
- 23 • *Hidalgo v. Global K9 Protection Group LLC*, Case No. 3:20-cv-02780-VC (N.D.
24 Cal.) (obtaining a settlement for a national class of dog handlers against a
25 defendant facing serious financial precarity);
- 26 • *Toolajian v. Air Methods Corp.*, Case No. 3:18-cv-06722-AGT (N.D. Cal.)
27 (settlement of \$1.75 million for a class of pilots in wage and hour class action);

- 1 • *Casteel v. Alaska Airlines, Inc.*, Case No. RCG20052826 (Alameda County
2 Superior Court) (obtaining a \$3 million settlement in representative wage and hour
3 action under the Private Attorneys General Act (PAGA) on behalf of aggrieved
4 flight attendants);
- 5 • *Saechao v. Landry's, Inc. et al.*, Case No. 3:15-cv-00815-WHA (N.D. Cal.)
6 (certified wage & hour class action that settled for \$500,000 on behalf of 217 low-
7 wage restaurant workers);
- 8 • *Ambrosio et al. v. Cogent Communications, Inc.*, Case No. 14-02182 RS (N.D.
9 Cal.) (certified class action on behalf of California sales personnel for overtime
10 violations, resulting in classwide settlement of \$3M);
- 11 • *Bell v. Delta Air Lines*, No. 13-cv-01199 YGR (N.D. Cal.) (class action on behalf
12 of California airline cargo workers for overtime violations, resulting in classwide
13 settlement of \$1.4M);
- 14 • *Balderas v. Massage Envy*, No. 12-cv-06327 NC (N.D. Cal.) (class action on
15 behalf of approximately California massage therapists for reimbursement of
16 licensing and insurance costs, resulting in classwide settlement of \$519,000 plus
17 significant injunctive relief);
- 18 • *Kirola v. City and County of San Francisco*, No. 14-17521 (9th Cir.) (securing
19 reversal of judgment in favor of defendant following bench trial of this action
20 seeking disability access to city services and programs);
- 21 • *Li v. A Perfect Day Franchise, Inc. et al.*, No. CV 10-01189 LHK (PSG) (N.D.
22 Cal.) (class action on behalf of low wage workers subjected to massive wage
23 violations, resulting in judgment over \$13M);
- 24 • *Mansourian v. Regents of the Univ. of Calif.*, 602 F.3d 957 (9th Cir. 2010)
25 (securing reversal of judgment in favor of defendant and removing procedural
26 hurdles for women seeking to enforce their rights under Title IX); and
27
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- 1 • *Brust v. Regents of the University of California*, No. 2:07-cv-01488-FCD-EFB
2 (E.D. Cal.) (class action on behalf of women students alleging sex discrimination
3 in athletics under Title IX and the Equal Protection Clause of the U.S.
4 Constitution, resulting in injunctive relief and monetary restitution for class).

5 57. I am lead counsel in this action and have been intimately involved in all aspects of
6 this litigation. My work prior to judgment consisted of: performing due diligence prior to filing
7 the complaint; directing the work of the attorneys and staff; coordinating assignments with our
8 co-counsel; drafting the original complaint and amended complaints; developing our litigation
9 strategy; preparing for and participating in early mediation; supervising document review and
10 analyzing key documents; preparing and directing written discovery; responding to written
11 discovery; coordinating deposition strategy and related document productions; interviewing class
12 members; defending Plaintiffs' depositions and taking the depositions of Defendants' witnesses
13 and experts; drafting and editing key motions including class certification, motion for summary
14 judgment, and oppositions to Defendants' motion for summary judgment and decertification;
15 working closely with Plaintiffs' expert on analysis of data and preparation of original and
16 supplemental expert reports; and preparing Plaintiffs' motion for judgment and supporting
17 documents.

18 58. I have also prepared, reviewed and revised the fee motion and accompanying
19 materials. I have been primarily responsible for all post-judgment proceedings.

20 59. My partner, Christian Schreiber, also performed work in this case. He has been
21 practicing law for sixteen years. He obtained his J.D. from the UCLA School of Law in 2006 with
22 a concentration in Critical Race Studies and having completed the Program in Public Interest Law
23 & Policy. Prior to founding O&S, he was a partner at Chavez & Gertler LLP, where he
24 prosecuted class action and other complex litigation matters across the country. Mr. Schreiber has
25 served as class counsel in class actions filed in courts across the United States, including
26 numerous wage and hour cases in California. He is actively involved in organizations seeking to
27 promote the interests of workers, consumers, underserved and indigent populations, and legal
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1 service providers. He is the chair of the California State Bar’s Legal Services Trust Fund
2 Commission, one which he has served for nearly 10 years. He is also the past Chair of the Board
3 of the Impact Fund, a Berkeley-based non-profit organization that trains class action litigators and
4 litigates and funds public interest impact litigation across the country. Mr. Schreiber provided
5 support on strategy matters at critical points throughout the litigation, and also contributed to
6 research and briefing.

7 60. Katharine Chao was my partner at O&S when the firm was named Olivier,
8 Schreiber & Chao (“OSC”), and performed work on this case. She has been practicing law for
9 over fifteen years. She obtained her J.D. from Berkeley Law (formerly known as Boalt Hall) in
10 2006, where she served as a Senior Articles Editor for the Berkeley Journal of Employment and
11 Labor Law. She has worked as an associate in the complex commercial litigation division at Paul
12 Hastings LLP, and as an associate at Nossaman LLP, where she was involved in multidistrict
13 antitrust litigation. She began her own firm in 2012, where she focused on plaintiff-side work in
14 employment law, until she co-founded OSC with me and Christian Schreiber. Ms. Chao provided
15 limited research and strategy support during the litigation.

16 61. Hannah Shirey was an Associate Attorney at O&S and performed work in this
17 case. Before working at O&S, Ms. Shirey served as a law clerk for the Honorable Michael J.
18 Melloy of the United States Court of Appeals for the Eighth Circuit and for the Honorable James
19 E. Gritzner of the United States District Court for the Southern District of Iowa. Ms. Shirey
20 earned her law degree from the University of Iowa College of Law in 2018, where she served as
21 Editor in Chief of the Iowa Law Review and received the Hancher-Finkbine Medallion for her
22 leadership and contributions. Ms. Shirey assisted in research for the appeals and drafted minor
23 motions and status reports after remand.

24 62. Cassidy Clark is an Associate Attorney at O&S and performed work on this case.
25 Before working at O&S, Ms. Clark was an associate attorney at Bryan Schwartz Law, where she
26 was involved in class, representative, and individual employment litigation. Ms. Clark obtained
27 her J.D. from Berkeley Law in 2020. During law school, Ms. Clark served as a law clerk at Equal
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1 Rights Advocates, a plaintiffs' employment law firm, and was a clinical student at the East Bay
2 Community Law Center. Ms. Clark is a volunteer supervising attorney and lecturer for at Legal
3 Aid at Work and active member of the CELA. She has published articles in Plaintiff Magazine
4 regarding employment litigation. Ms. Clark assisted in the drafting of the instant motion and
5 supporting documents and in various research projects relating to the motion.

6 63. Multiple members of O&S support staff have performed work on this case,
7 including paralegals, senior paralegals, and a law clerk. In this case, staff supported the attorneys
8 by reviewing and analyzing documents, editing and preparing briefs and other documents for
9 filing, filing and serving documents with the court and other parties.

10 64. Thomas E. Duckworth was a partner at DPLO, and is currently a partner of
11 Duckworth Peters LLP. He is a civil litigator with over 25 years of experience, specializing in
12 employment law. He assisted in pre-litigation due diligence, review and editing of class
13 certification and summary judgment briefing, and review of the expert data and reports.

14 65. Erika Heath was of counsel to DPLO, and is currently of counsel to Duckworth
15 Peters LLP. She is a civil litigator with over 9 years of experience, specializing in consumer and
16 employment matters. Erika researched and wrote meet and confer correspondence and briefing
17 on discovery matters, handled depositions of defense witnesses, and researched and drafted
18 sections of the opposition to Defendants' motion for summary judgment.

19 66. Aseil Mohmoud was an associate attorney at DPLO. She graduated from law
20 school in 2014 and was admitted to practice in California that same year. She performed work
21 under my direction on this case including document review and drafting of discovery responses.

22 67. The background and experience of co-counsel are set forth in the Kosinski, Miller,
23 and Cooper Declarations.

24 **Allocation of Counsel's Work in This Action**

25 68. The work Class Counsel did over the course of this litigation was necessitated by
26 the difficulty and complexity of the case, Defendants' staunch defense of the case, the skill and
27 sophistication of defense counsel in opposing the claims, and the lengthy proceedings culminating
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1 in multiple motions for judgment. During the course of this case, Defendants litigated vigorously.
2 Plaintiffs had to face multiple skilled and tenacious partners and associates throughout the case.

3 69. The substantial work in this case primarily includes: (1) case investigation; (2)
4 pleadings; (3) written discovery, disclosures and discovery disputes; (4) document review; (5)
5 legal research; (6) communicating with class members and class representatives throughout the
6 course of the litigation; (7) class certification; (8) experts; (9) summary judgment; (10)
7 decertification; (11) motion for judgment; (12) participating in settlement negotiations; (13) post-
8 judgment briefing; (14) appeals; and (15) post-remand proceedings. Having served as counsel
9 since the inception of the case, I am fully familiar with the proceedings.

10 70. Initially, the case was primarily staffed by Alison Kosinski, Emily Thiagaraj and
11 me. Due to my extensive class experience, I took the lead on developing the class aspects of the
12 complaint, discovery and overall case strategy. Ms. Kosinski and Ms. Thiagaraj, who have lower
13 billing rates, focused on drafting discovery and reviewing the voluminous documents produced
14 by Virgin. We also delegated specific research assignments, class member outreach and
15 discovery matters initially to Erika Heath and Aseil Mohmoud, and then, when MS came on
16 board, to MS's attorneys and staff, who concentrated their work on expert discovery, summary
17 judgment, decertification and the motion for judgment. Ms. Kosinski and Ms. Thiagaraj took the
18 lead on defending class member depositions, and we split the responsibility of defending the class
19 representative depositions, each of which were a full day.

20 71. My firm, KT and MS all worked cooperatively on written discovery, document
21 review and expert matters. I led the strategy on all dispositive motions, with key input and
22 assistance from both KT and MS. The team at MS was critical in handling the crush of expert
23 depositions and reports produced by Defendants to support their dispositive motions. Both MS
24 and I devoted substantial efforts throughout the case to working closely with our expert on review
25 and analysis of voluminous payroll data for all class members for all pay periods during the over
26 six year class period, and development and refinement of damages models.

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1 75. For the lodestar, Plaintiffs are using the hours and hourly rates that Class Counsel
2 used when negotiating the statutory fee with Defendants. As of March 15, 2023, the total
3 combined lodestar for Class counsel for prosecuting and resolving the claims to date in this action
4 is \$5,844,319.50, representing over 7,300 hours of Class counsel's time. All of Class counsel's
5 time is documented in counsel's contemporaneous time records. To provide the Court with
6 review of the work done by Class counsel in this case, without requiring the review of our
7 detailed time records themselves, please refer to **Exhibit B** and **Exhibit C**, which provide
8 detailed charts of each timekeeper's role, hourly rates, hours, and categories of work performed
9 during the course of this litigation. Exhibit C specifically identifies the work of Class counsel
10 into specific categories that track the process of the litigation from our initial investigation
11 through post-remand proceedings. All of the work was reasonably split among all firms. For
12 each major task, we would determine who would take the lead, and then the other firm would
13 provide support.

14 76. The portion of this total lodestar attributable to DPLO is \$1,802,767.50. The
15 portion of this total lodestar attributable to O&S is \$1,150,505. The portion of the total lodestar
16 attributable to KT is \$1,226,310, and is further described in the Kosinski Declaration. The
17 portion of the total lodestar attributable to MS is \$1,073,170, and is further described in the Miller
18 Declaration. The portion of the total lodestar attributable to CK is \$607,567, and is further
19 described in the Cooper Declaration.

20 77. All firms that performed work in this action maintain contemporaneous time
21 records reflecting the time spent on cases, including the date and amount of time spent on a task
22 to one-tenth of an hour and a description of the work performed. I have reviewed the records of
23 all time that was billed to this matter. All firms have made every effort to litigate this action in an
24 efficient and cost-effective manner by reducing duplication of effort and assigning work to
25 maximize efficiency and quality. Further, tasks were delegated appropriately among partners and
26 associate attorneys according to their complexity. By nature, contingency arrangements cause
27 counsel to be cognizant of the amount of time required by tasks on the case. Efficiency and
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1 economy are a necessary practice in such cases, as results, and not hours billed, are the focus.
2 This is particularly the case with small firms such as ours. We also exercised billing judgment by
3 deleting time that was inefficient or duplicative.

4 78. For purposes of the lodestar, Class Counsel have used our 2022 hourly rates rather
5 than our current rates, which are 4-8% higher. Our 2022 rates range from \$200 for paralegal
6 work up to \$925 for experienced litigation partners. All counsel have charged their 2022 rates to
7 private clients; in addition most counsel have been awarded their 2022 rates by a court. In
8 addition, the partners at Miller Shah LLP have capped their rates at my 2022 rate, even though
9 they normally bill at rates substantially higher than my 2022 rate. The lodestar does not include
10 the majority of work done on negotiating Defendants' fee contribution, the majority of the work
11 on this Motion, and all future work that will be necessary to finalize the Plan of Allocation, work
12 with the Class Administrator on finalizing and executing the distribution, and communicate with
13 Class members. I conservatively estimate that this work will represent another \$300,000 in
14 lodestar.

15 79. We charge different rates for different attorneys within each category (e.g.,
16 partners, associates, etc.), based on a variety of factors, including years of practice, years as at the
17 relevant level (e.g., years as a partner, etc.), relevant experience, relative expertise, court
18 decisions approving our rates and rates of other attorneys, and rates of similarly experienced peers
19 at our firm and other firms. We perform a similar analysis for our non-attorney timekeepers. We
20 continually monitor prevailing market rates charged by both defense and plaintiffs' law firms for
21 individuals with similar levels of skill and experience who are doing comparable work as our
22 attorneys and staff. We gather this information from surveys, the review of other fee applications,
23 and conversations with attorneys in the relevant billing market. We set the billing rates for our
24 firm to be consistent with the prevailing market rates in the private sector for attorneys and staff
25 of comparable skill, qualifications and experience.

26 80. My 2022 rate is \$925 per hour; I have 26 years of experience as a litigator, all of
27 which has been in complex, representative and class action litigation. Mr. Schreiber's 2022 rate is
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1 \$825 per hour. He has 17 years of experience as a civil litigator, which has involved substantial
2 complex litigation and class action experience. Ms. Chao's 2022 rate is \$800 per hour. She has
3 over 15 years of legal experience, including extensive individual and class employment litigation.
4 The rate for Hannah Shirey, a fifth-year associate (including one year of a federal district court
5 clerkship and two years of a federal appellate court clerkship), is \$500 per hour. The rate for
6 Cassidy Clark, a third-year associate, is \$475. Our senior paralegals are billed at \$250 per hour,
7 and our paralegals are billed at \$200 per hour. These are the usual and customary billing rates we
8 charge our clients.

9 81. In addition, multiple courts have approved our rates. *See, e.g., Chavez v. Jani-*
10 *King, Inc.*, Case No. RG19043517 (Alameda Cty.) (approving Ms. Olivier, Mr. Schreiber, and
11 Ms. Shirey's 2022 rates of \$925, \$825 and \$500 respectively); *Hidalgo v. Global K9 Protection*
12 *Group LLC*, Case No. 3:20-cv-02780-VC (N.D. Cal.) (approving 2021 rates); *Casteel v. Alaska*
13 *Airlines, Inc.*, Case No. RCG20052826 (Alameda County Superior Court) (approving Ms.
14 Olivier's 2020 rate of \$850/hour); *Bernstein v. Virgin America, Inc.*, 13-cv-02277-JST (N.D.
15 Cal.); *Bowerman v. Field Asset Services*, 13-cv-00057-WHO (N.D. Cal.); *Ambrosio v. Cogent*
16 *Communications, Inc.*, 3:14-cv-02182-RS, (N.D. Cal.); *Balderas v. Massage Envy*, No. 12-cv-
17 06327 NC, (N.D. Cal.); *Bell v. Delta Air Lines*, No. 13-cv-01199 YGR, (N.D. Cal.); *Guifu Li v. A*
18 *Perfect Day Franchise, Inc.*, 5:10-CV-01189-LHK, 2012 WL 2236752 (N.D. Cal. June 15, 2012).

19 82. As detailed in the Declaration of Richard M. Pearl, an expert in attorneys' fees, our
20 billing rates are commensurate with, and in fact often below, prevailing rates in the San Francisco
21 Bay Area for attorneys with comparable skill and experience litigating class actions.

22 83. Further, although the rates in the Bay Area market are typically higher than those
23 in the Washington D.C area, the hourly rates sought by Class counsel are also below the Adjusted
24 Laffey Matrix, the tool that sets forth reasonable rates in the Washington D.C. area that courts in
25 that area and elsewhere have considered (<http://www.laffeymatrix.com/see.html>). For example,
26 under the Matrix, the reasonable hourly rate (not adjusted for the Bay Area or for any class action
27 expertise) for me would be \$997, while I am seeking \$925/hour. The accepted Laffey Matrix
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1 rates are considerably higher than the rates sought here, with the exception of Charles Cooper,
2 who is a U.S. Supreme Court specialist with over 45 years of experience.

3 84. Based on my knowledge and experience, the hourly rates charged by O&S are
4 within the range of market rates charged by attorneys of equivalent experience, skill, and
5 expertise.

6 **Contingent Risk**

7 85. Class counsel has undertaken this litigation on a purely contingent basis. Class
8 counsel have not been paid for any of their time spent on this action, nor have they been
9 reimbursed for the substantial out-of-pocket expenses they incurred in the prosecution of this
10 action. The vast majority of the work that Class counsel does is done on a contingency fee basis.
11 Because we do not have regularly paying clients, we rely on awards for attorneys' fees and costs
12 in order to continue our work for the enforcement of labor, consumer and civil rights standards.
13 We have not charged Plaintiffs nor any class member any fees or costs to litigate their claims in
14 this action.

15 86. DPLO was a very small firm of five attorneys; O&S has only four. KT has only
16 two attorneys. MS has approximately 25 attorneys and, similarly, does most of its work on a
17 contingency fee basis. Appellate counsel CK has approximately 20 attorneys. Going head-to-
18 head with a firm of over 1,500 attorneys and against a large corporation on behalf of workers
19 presented a tremendous amount of financial risk to our firms. We took this case without any
20 assurance that we would be paid any fees or reimbursed any costs for our efforts or expenditures.
21 At the outset, we had no way of anticipating the course taken by this case. In spite of this, we took
22 the case on with every intent of expending all necessary hours and out-of-pocket expenses to
23 ensure vindication of the Class. We have done our best to resolve this case as efficiently and
24 favorably for the Class as possible and in doing so availed ourselves of the extensive experience
25 and expertise that we have developed over the years in handling other class actions and wage and
26 hour matters.

1 87. Like other important and complex employment class actions, this case carried a
2 risk of no recovery at all for either the class or the attorneys representing them. When we do
3 succeed in vindicating statutory and employment rights on behalf a class of employees, such as in
4 this case, our firm depends upon the recovery of our lodestar plus an appropriate multiplier.
5 Otherwise, we could not continue to represent employees who are denied wages, but whose cases
6 may be time-consuming and difficult to prove.

7 88. For the first few years of this action, it took up the majority of my billable time
8 during long stretches of the litigation. I was repeatedly forced to turn down new employment due
9 to the demands that this case had on my time. In particular, I turned away a number of hourly and
10 contingency fee matters on behalf of individuals and at least two potential class actions to focus
11 my efforts on this case. Even after we associated MS, the discovery, motion practice and pretrial
12 burden on Class counsel was significant.

13 89. Our risks in this case were compounded by the vigorous and skillful manner in
14 which defense counsel represented their client. Although I have always believed strongly in the
15 strength of the claims in this case, the outcome has been uncertain. Defendants have mounted a
16 formidable defense of this action. Throughout the case, they aggressively pushed back against
17 Plaintiffs' claims. Defense counsel forced Plaintiffs to meet and confer on nearly all discovery
18 matters, opposed class certification, filed a motion for summary judgment, filed a motion for
19 decertification, and sought to stay the action. Defendants also denied the allegations against them
20 and have, at various times, presented legal defenses it believes it has to Plaintiffs' claims.

21 90. All this contributed to our risk of recovering nothing or close to nothing for our
22 commitment and investment in the case. Given these uncertainties, we undertook significant risk
23 to finally take the case to judgment, through appeals and Supreme Court review, and to an
24 amended judgment, and secure the exceptional results for the Class.

25 **Novelty, Difficulty and Complexity of Case and Results Achieved**

26 91. This case presented a range of difficulties requiring the efforts of highly skilled
27 and experienced attorneys. I believe the team of Class counsel brought significant class action,
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1 complex litigation and California wage and hour experience to this matter. Class counsel's depth
2 of experience and considerable resources, in both money and staff time, were critical in obtaining
3 the exceptional results achieved in this action.

4 92. As this Court has recognized, the case has raised issues that had not previously
5 been resolved in the courts with respect to the application of California wage laws. While
6 Plaintiffs are convinced that, under California law, the members of the Class and Subclasses are
7 entitled to their unpaid wages, overtime premiums, meal and rest break premiums, and waiting
8 time penalties, as well as PAGA penalties, this action has presented some challenges. For
9 example, Defendants have maintained and continue to maintain that Plaintiffs' claims are barred
10 by various preemption doctrines and by the Dormant Commerce Clause. Defendants repeatedly
11 raised these arguments and also sought to introduce expert testimony in support of those
12 arguments. Defendants also repeatedly raised arguments as whether Plaintiffs could maintain a
13 Subclass one criteria of which is the residency of the Subclass members.

14 93. During discovery, there were substantial difficulties in obtaining the necessary
15 information from Defendants. Practically all discovery requests were met with resistance and
16 involved considerable resources in meeting and conferring and ultimately seeking court
17 intervention on several matters. When Defendants did produce documents, they were voluminous
18 and unorganized, while often also being incomplete. In particular, the voluminous Class member
19 flight schedule and pay data was produced in a variety of formats which necessitated Plaintiffs
20 spending significant time and resources to work with their expert and their expert's consultant to
21 write and implement a coding script to import the data into a usable format. These productions
22 significantly increased the difficulty, time and cost. Review and analysis of these documents took
23 hundreds of hours of attorney, staff and expert time. In addition, Class counsel had to follow up
24 with Defendants a number of times due to Defendants unwillingness to provide updated Class
25 member data.

26 94. Defendants also attempted to engage in far-reaching discovery, seeking to
27 propound written discovery on, and depose, each Class member. Defendants also sought
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1 extensive discovery from the Class representatives, deposed each Class representative as well as
2 several Class member declarants, and deposed Plaintiffs' expert for multiple days.

3 95. The dispositive motions also presented difficult and complex issues. Immediately
4 after Plaintiffs filed their class certification motion, Defendants filed a surprise motion for
5 summary judgment on their legal defenses, requiring Plaintiffs to seek relief from the Court as to
6 the briefing and hearing schedule, and then to engage substantial resources to oppose Defendants'
7 motion while pursuing class certification.

8 96. Plaintiffs' motion for class certification required a detailed presentation of the
9 evidence marshalled in support, as well as a preliminary expert report. As a result of Class
10 counsel's thorough review of the evidence and research of the legal issues, Plaintiffs were able to
11 move successfully for summary judgment on all claims, and also oppose Defendants' attempt to
12 decertify the Class. After those motions were resolved, Plaintiffs were also able to obtain an
13 order preventing one of Defendants' affirmative defenses, and an order granting all of Plaintiffs'
14 requests for damages, and the vast majority of the penalties Plaintiffs sought on behalf of the state
15 of California.

16 97. Throughout the action, Plaintiffs prevailed on virtually all legal issues, after
17 comprehensive briefing, motion practice and oral argument, at nearly every stage of the case.
18 The Court certified the Class, approved the Class Notice Plan that Plaintiffs developed with minor
19 changes, granted summary judgment to Plaintiffs on all claims and on their entitlement to
20 damages (no easy feat for Plaintiffs), granted Plaintiffs' motion for sanctions pursuant to Rule 37,
21 and granted Plaintiffs' motion for judgment as to the amounts of damages and penalties. The
22 Court also largely denied Defendants' motion for summary judgment and motion for
23 decertification.

24 98. In the face of Plaintiffs' victory, Defendants appealed this Court's order, seeking
25 to overturn the judgment. The basis for Defendants' appeal was preemption, purported lack of
26 applicability of state wage laws to airline personnel, and the Dormant Commerce Clause.
27 Defendants additionally sought to decertify the class. Despite Defendants' vigorous appellate
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1 effort, Defendants were unable to secure a wholesale reversal. The Ninth Circuit affirmed this
2 Court's certification of the Class and its holding that California wage laws apply to the Class. The
3 Ninth Circuit affirmed liability as to all claims except one. Defendants pursued a petition for
4 certiorari to the United States Supreme Court, which attracted amicus interest. In addition, after
5 the petition was filed, the Supreme Court called for the opinion of the Solicitor General,
6 necessitating meetings with the Solicitor General's office and additional briefing.

7 99. Defendants additionally filed a separate appeal of this Court's earlier order
8 granting attorneys' fees. Based on its partial reversal in Defendants' parallel appeal, the Ninth
9 Circuit vacated and remanded the fee order to this Court.

10 100. Following the appeals, Plaintiffs again were awarded judgment in this case,
11 resulting in a judgment that is now in excess of \$31 million. This litigation has also resulted in
12 several published decisions that will be of positive value for interstate transportation workers, and
13 others, seeing to enforce California wage laws.

14 101. Class counsel was able to secure these exceptional results for the Class.
15 Accordingly, Class counsel's skill and the exceptional results achieved to date warrant the
16 application of the multiplier sought here, as discussed more fully in the Pearl Declaration.

17 EXPENSES

18 102. As reflected in Exhibits D and E, Class counsel's expenses in connection with the
19 prosecution of the litigation total \$615,293.38. Defendants have separately agreed to reimburse
20 Class Counsel \$40,000 for their taxable costs. Plaintiffs therefore request that the non-taxable
21 costs of \$575,293.38 be paid out of the Common Fund Judgment.

22 103. Class counsel maintained all records regarding costs and expenses in this action. I
23 have reviewed the records of costs expended in this matter. The expenses for which we seek
24 payment include copying costs, postage charges, delivery fees, expert fees, and case-related travel
25 expenses. In addition, of the \$575,293.38 sought, up to \$250,000 is earmarked for the Class
26 administration costs which, in this case, will be considerable. See Exhibit A (describing the Plan
27 of Allocation). All expenses sought were or are reasonably necessary for the continued
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1 prosecution of this litigation. Any overage in this amount associated with class administration
2 will be credited back to Defendants.

3 **SERVICE AWARDS**

4 104. Under the terms of the proposed Plan of Allocation, Plaintiffs Julia Bernstein, Lisa
5 Marie Smith, and Esther Garcia are to receive a service award payment of up to \$25,000 each for
6 their role as Class Representatives. This payment is intended to compensate them for the
7 additional efforts, risks, and hardships they have undertaken as class representatives on behalf of
8 the group in filing and prosecuting the action.

9 105. Plaintiffs have devoted significant time to this case. Plaintiff Bernstein has been
10 involved in this case since before it was filed, and met with Class counsel several times to prepare
11 the original Complaint. Shortly after the class action was filed, Plaintiffs Smith and Garcia
12 approached Class counsel to share information and help the class. Plaintiffs have had lengthy
13 conversations with Class counsel and provided information and documents crucial to Class
14 counsel's understanding of the airline industry, Defendants' unique policies and practices, and
15 Plaintiffs' wage claims. Plaintiffs met with Class counsel several times and spent considerable
16 time on their own to help with the completion of an immense amount of written discovery,
17 including initial and amended responses to three sets of interrogatories, an initial and amended
18 response to one set of admission requests, and responses to four separate sets of document
19 requests. In March 2016, all three Plaintiffs traveled to San Francisco to participate in mediation.
20 Additionally, Plaintiffs met with Class counsel multiple times to prepare for mediation. Plaintiffs
21 each had their depositions taken in May 2016, for which they also had to travel to San Francisco
22 and spend significant time preparing. Plaintiffs have consistently remained in contact with Class
23 counsel from the beginning of their involvement with the case. Plaintiffs have additionally
24 frequently communicated to class members regarding the status of the case.

25 106. Plaintiffs opted to pursue claims for the entire class, not just for themselves, and
26 sacrificed the opportunity to potentially seek more lucrative damages awards or settlements had
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1 they opted to pursue their claims on an individual basis. The work of Plaintiffs is set forth in
2 detail in the declarations of Bernstein, Smith, and Garcia, filed concurrently herewith.

3 107. As explained in their declarations, Plaintiffs have undertaken personal and
4 professional risks in serving as the driving force behind this lawsuit. Nevertheless, they were
5 willing to run this risk for the benefit of not only themselves, but on behalf of other class
6 members. Plaintiffs risked their professional reputations by attaching their names to a lawsuit in a
7 small, interconnected industry. This risk was amplified by the length of this case, which lasted
8 over eight years. Because of their extensive involvement in this case, Plaintiffs additionally
9 endured years of personal hardship, taking away from their work and home lives.

10 108. Plaintiffs made significant contributions to this litigation and demonstrated an
11 exceptional commitment to this case, spending 780 combined hours supporting the litigation
12 efforts. Plaintiffs' contributions were integral to achieving meaningful results for Plaintiffs'
13 fellow flight attendants.

14 109. Under such circumstances, the excellent result on behalf of the Class, the extent of
15 their involvement, and based on the cases cited in the accompanying Memorandum of Points and
16 Authorities, in my opinion the \$25,000 service awards for each of them, as provided in the
17 proposed Settlement Agreement, is very reasonable and should be approved. It is also within the
18 range of service awards that have been approved in other Northern District cases.

19
20 I declare under penalty of perjury under the laws of the United States that the foregoing is
21 true and correct.

22 Executed this 18th day of May 2023 in Saint Helena, California.

23 /s/ Monique Olivier
24 Monique Olivier

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