

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)

Monnett De La Torre (State Bar #272884)

5440 Morehouse Drive, Suite 3600

San Diego, CA 92121

Telephone: (619) 599-8292

Facsimile: (619) 599-8291

jlapuyade@jcl-lawfirm.com

mdelatorre@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)

Jackland K. Hom (State Bar #327243)

5440 Morehouse Drive, Suite 5400

San Diego, CA 92121

Telephone: (619) 255-9047

Facsimile: (858) 404-9203

shani@zakaylaw.com

jackland@zakaylaw.com

Attorneys for Plaintiffs

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

DEVIN TERRELL, NESHA SHEDD AND
SUSAN BUSTOS, individuals, on behalf of
themselves, and on behalf of all persons similarly
situated,

Plaintiffs,

vs.

KAISERAIR, INC., a California corporation; and
DOES 1 through 50, Inclusive.

Defendants.

Case No. RG21113701

**DECLARATION OF JEAN-CLAUDE
LAPUYADE, ESQ., IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT**

Hearing Date: March 29, 2023

Hearing Time: 10:00 a.m.

Department: 21

Trial Date:

Action Filed: September 23, 2021

Reservation ID: 621236664904

1 I, JEAN CLAUDE LAPUYADE, declare as follows:

2 1. I am the managing attorney and founder of the law firm of The JCL Law Firm, APC, and
3 counsel of record for Plaintiff AARON GORMAN, an individual, on behalf of himself, and on behalf
4 of all persons similarly situated ("Plaintiff") in this matter. As such, I am fully familiar with the facts,
5 pleadings and history of the matter.

6 2. I am submitting this declaration in support of Plaintiff's Motion for Preliminary Approval
7 of Class and PAGA Action Settlement.

8 I. EXHIBITS

9 3. Attached hereto as **Exhibit "1"** is a true and correct copy of the fully executed Joint Class
10 Action and PAGA Settlement Agreement and Class Notice ("Agreement" or "Settlement Agreement").
11 Attached as **Exhibit "A"** to the Agreement is a true and correct copy of the proposed Class Notice.

12 4. Attached hereto as **Exhibit "2"** is a true and correct copy of the proof of filing with the
13 Labor and Workforce Development Agency notice of this settlement with the Settlement Agreement
14 and Motion for Preliminary Approval of Class Action and PAGA Settlement evidencing Class
15 Counsel's compliance with California Labor Code Section 2699(1)(2).

16 5. Attached hereto as **"Exhibit 3"** is a true and correct copy of the JCL Law Firm "Firm
17 Resume" detailing some of the major cases the JCL Law Firm has undertaken.

18 II. INTRODUCTION

19 6. An objective evaluation of the Settlement confirms that the relief negotiated on behalf of
20 the Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm's length.
21 The Settlement confers substantial benefits to the Class. The relief offered by the Settlement is
22 particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage
23 and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, the Class will not
24 have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being
25 denied or of Defendant prevailing at trial. Assuming there are zero opt-outs, the entire Net Settlement
26 Amount will be paid to all Participating Class Members resulting in an average Individual Class
27 Payment of approximately **\$2,095.09**.

7. As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement approval and falls within the range of reasonableness. The average Individual Class Payments to the Settlement Class meets or exceeds awards in similar wage and hour class actions. Moreover, the proposed Settlement Class is appropriate for provisional certification. Accordingly, Plaintiff respectfully requests the Court grant preliminary approval of the Settlement.

III. FACTS AND PROCEDURE

8. Defendant is an Oakland, California based full-service aviation company operating charter flights from Oakland and Santa Rosa airports. Plaintiff Terrell worked for Defendant as a non-exempt Senior Lead LS Technician and Ramp Coordinator from December 2016 to March 2021. Plaintiff Bustos worked for Defendant as a non-exempt Flight Attendant from August 2009 to March 2022. Plaintiff Shedd has been employed by Defendant since October 2017, and has held the position of Lead Flight Attendant since October 2019. Plaintiffs allege that Defendant, among other things, failed to provide compliant meal and rest periods, furnished inaccurate itemized wage statements, miscalculated the regular rate of pay for purposes of paying overtime compensation, and failed to reimburse employees for mandatory business expenses. Throughout their employment, Plaintiffs were subject to Defendant's written policies and procedures contained in, among other documents, the KaiserAir Employee Handbook.

9. Defendant forcefully denies liability for each of Plaintiffs' claims. Further, Defendant asserts that it fully complied with all applicable employment laws and raised several other significant defenses to Plaintiffs' claims, including but not limited to, compliant compensation policies and plans, complaint meal and rest practices, compliant wage statements, and timely payment of all wages due upon separation of employment.

10. On July 19, 2021, Plaintiff Terrell served Defendant and the Labor and Workforce Development Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiffs’ PAGA Notice set forth the facts and theories supporting Defendant’s alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of his intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 *et seq.* (“PAGA”).

1 11. On September 23, 2021, Plaintiff Terrell filed this class action complaint in the Alameda
2 Superior Court. The Action alleged ten causes of action against Defendant for: (1) Unfair Competition
3 in Violation of Bus. and Prof. Code sections 17200 *et seq*; (2) Failure to pay overtime wages in violation
4 of California Labor Code sections 510 *et seq*; (3) Failure to pay minimum wages in violation of
5 California Labor Code sections 1194, 1197 & 1197.1; (4) Failure to provide required meal periods in
6 violation of California Labor Code sections 226.7 and 512 and the applicable IWC wage order; (5)
7 Failure to provide required rest periods in violation of California Labor Code sections 226.7 and 512
8 and the applicable IWC wage order; (6) Failure to reimburse employees for required business expenses
9 in violation of California Labor Code section 2802; (7) Failure to provide accurate itemized wage
10 statements in violation of California Labor Code section 226; (8) Failure to pay sick pay at the correct
11 rate of pay in violation of California Labor Code section 246; (9) Failure to provide wages when due
12 in violation of Cal. Lab. Code sections 201, 202 and 203 and (10) Violations of the California Labor
13 Code Private Attorneys General Act [Labor Code section 2698, *et seq.*].

14 12. After commencing written discovery, the Parties agreed to mediation. Following the
15 successful mediation, Plaintiff served an amended PAGA Notice and filed the operative First Amended
16 Complaint adding Plaintiffs Shedd and Bustos to the action.

17 IV. INVESTIGATION

18 13. To prepare for mediation, Class Counsel requested pertinent documents and data points
19 to evaluate Plaintiffs' claims and measure Defendant's liability exposure to the Class. In response,
20 Defendant produced, among other things, time, and payroll records for 26% of the Class, aggregate
21 workweek and pay period data, and copies of applicable handbooks, policies, and procedures. In total,
22 Defendant produced nearly 1,000 pages of documents and approximately 1 million unique cells of time
23 and payroll data.

24 14. Class Counsel then retained the statisticians and economists at Berger Consulting Group
25 ("BCG") to evaluate the Class Members' payroll and time data and to calculate Defendant's liability
26 exposure to the Class. BCG provides data analysis and damage modeling consulting services,
27 specializing in wage and hour class actions. BCG analyzed Defendant's time and payroll data and
28 developed various damage models that assisted Class Counsel at the time of mediation.

15. Overall, Class Counsel thoroughly investigated the claims at issue. Class Counsel (1) reviewed Plaintiffs' suitability as a putative class representatives through interviews, background investigations, and analysis of her employment files; (2) evaluated Plaintiffs' potential claims; (3) researched similar wage and hour class actions; (4) analyzed time and payroll records for the Class; (5) analyzed Defendant's labor policies and practices; (6); developed comprehensive damage models which estimated Defendant's liability for purposes of settlement with the assistance of a third party damages consultant, BCG; (7) drafted the mediation brief; and (8) participated in the mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, and to make an independent assessment of the reasonableness of the terms to which the Parties have agreed. Based on its investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay and uncertainty associated with litigation, and the various defenses asserted by Defendants, Class Counsel firmly believe this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate.

V. MEDIATION

16. On November 18, 2022, the Parties participated in a full day mediation with Steven Rottman, Esq., an experienced wage and hour mediator. The mediation concluded with a settlement after the Parties accepted a Mediator’s proposal, which was subsequently memorialized in the form of a Memorandum of Understanding (“MOU”) and then the Agreement. At all times, the Parties’ negotiations were at an arm’s length, adversarial, and non-collusive. After reaching an agreement in the principle, the Parties drafted and negotiated a long-form settlement which is the subject of the instant motion.

17. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue.

VI. THE SETTLEMENT IS FAIR AND REASONABLE

18. The Gross Settlement Amount of \$1,200,000.00 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to mediation, Class Counsel retained BCG to develop economic damage models measuring Defendant's liability exposure while accounting for the uncertainties of continued litigation. The

various models were informed by Class Counsel's investigation, including the analysis of a significant sample of time and payroll data. Class Counsel projected Defendant's liability exposure for *class claims* (excluding PAGA Penalties) at \$7,866,763.00 dollars. Thus, the Gross Settlement Amount of \$1,200,000.00 represents approximately 15.2% of Defendant's *class-wide* liability exposure. The following summarizes Defendant's estimated exposure.

19. Plaintiffs' primary claim in this Action is that Defendant failed to calculate certain non-discretionary compensation into the regular rate of pay for purposes of paying overtime and redeemed sick pay. Based on the review of the Class Members' time and payroll data, BCG estimated Defendant underpaid the Class Members approximately \$266,040. Defendant vigorously denied liability and asserted that all incentive compensation was either properly calculated into the regular rate of pay or properly excluded as discretionary compensation.

20. Plaintiffs also alleged that because of their rigorous work schedule, Plaintiff, Class Members, and Aggrieved Employees were not able to take timely and duty-free meal and rest periods. However, Plaintiffs' analysis showed that Defendant's time and payroll data evidenced a 57% violation rate for meal periods. Defendant's dispute this analysis and suggested the violation rate was significantly lower. Plaintiffs utilized the same violation rate for purposes of quantifying damages for rest period violations. In total, Class Counsel estimated Defendant's exposure for the meal and rest claims at \$5,514,072.

21. Defendant argued, *inter alia*, that it provided the Class Members and Aggrieved Employees with compliant meal and rest periods as evidenced by the modest violation rate. Defendant also argued that they maintained facially complaint meal and rest period policies and paid more than \$50,000 in meal period premiums during the Class Period. Thus, Defendant argued, any missed meal and rest periods were done so voluntarily and not eligible for premium payments. In sum, Defendant argued that there was no potential liability for Plaintiffs' alleged meal and rest period violations and any claimed violations required a highly individualized inquiry not suitable to class treatment.

22. Plaintiffs also alleged that they were required to perform work while off-the-clock. Specifically, Plaintiffs alleged that during portions of the Class Period, Defendant required the Class to complete pre-shift COVID-19 screening while off-the-clock. Plaintiffs' expert estimated Defendant's

1 exposure for this claim to be \$105,140.80 based on an assumed 5 minutes of uncompensated time spent
2 performing mandatory pre-shift COVID-109 screening. Defendant argued that any time spent
3 performing this task was voluntary and de minimis, and, thus, not compensable.

4 23. Plaintiffs further alleged that Defendant required the Class to use personal cell phones to
5 receive and respond to work-related communications with supervisors and co-workers regarding task
6 completions, scheduling, and flight information. California employers who require employees to use
7 a personal cellular device for work purposes must reimburse the employee for the cost incurred in
8 furnishing the device, including voice and data service. Plaintiffs estimated Defendant's exposure for
9 this claim at \$192,060 or \$20 per month for each member of the Class during the Class Period

10 24. Plaintiffs allege that Defendant's alleged violations resulted in derivative violations of
11 Labor Code sections 203 and 226(a). Class Counsel considered the arguable presence of various
12 penalties and weighed the potential recoveries against probable defenses. Specifically, Defendant could
13 argue that Plaintiffs could not prove the "willful" prong needed to obtain waiting time penalties under
14 Labor Code section 203. Additionally, Defendant could argue that Plaintiffs could not show that Class
15 Members suffered an "injury" because of wage statement violations, as required by Labor Code section
16 226. Plaintiffs estimated Defendant's exposure for these claims to be approximately \$1,789,451
17 (\$1,050,201 for Labor Code section 203 waiting time penalties and \$739,250 for Labor Code section
18 226 penalties).

19 25. Class Counsel's damage models also estimated Defendant's exposure for PAGA
20 penalties. At the time of mediation, Plaintiffs estimated Defendant's PAGA exposure to be
21 approximately \$3,575,700 dollars.

22 26. To recover any PAGA penalties, Plaintiffs would be required at trial to prove each of the
23 underlying Labor Code violations. Here, Plaintiffs would need to prove that each Aggrieved Employee
24 suffered a violation for each pay period the employee worked. Again, Defendant raised several
25 defenses that presented serious threats to the claims of the Plaintiffs and the Aggrieved Employees. In
26 addition to those arguments discussed *supra*, Defendant also argued that the Court of Appeals' decision
27 in *Cacho v. Eurostar, Inc.* (2019) 43 Cal.App.5th 885, weakened Plaintiffs' claims, on liability, value,
28 and manageability as to the rest period claims.

1 27. The proposed Settlement allocates \$60,000 to satisfy the PAGA claims. This amount
2 represents approximately 5% of the Gross Settlement Amount. This achieves a fair, reasonable, and
3 adequate resolution of Plaintiffs' PAGA claim. See *Moniz v. Adecco* (2021) 72 Cal.App.5th 56.
4 Further, the amount allocated to the satisfaction of Plaintiffs' PAGA claim, is well within the range of
5 reasonableness. See, e.g., *Nordstrom Comm'n Cases* (2010) 186 Cal.App.4th 576, 589 (approving 0%
6 PAGA allocation); *Berry v. Urban Outfitters* (N.D. Cal. Lead Case No. 13-cv-02628-JSW) (approving
7 1% PAGA allocation in \$5M settlement); *Jack v. Hartford Fire Ins. Co.* (S.D. Cal. 2011) 2011 WL
8 4899942 * 6 (approving \$3,000 PAGA allocation in \$1.2M settlement); *Singer v. Becton Dickinson &*
9 *Co.* (S.D. Cal. 2010) 2010 WL 2196104 *2 (approving \$3,000 PAGA allocation in \$1M settlement);
10 and *Hopson v. Hanesbrands, Inc* (N.D. Cal. 2009) 2009 WL 928133 * 9 (approving \$1,500 PAGA
11 allocation in \$1.026M settlement.)

12 28. With respect to the most immediate challenge, i.e., class certification, the risks attendant
13 to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart*
14 *Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded
15 a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and
16 directed the trial court to enter judgement in favor of the employer. See also *O'Conner v. Uber*
17 *Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification
18 action); see also *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial
19 verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209
20 Cal.App.4th 1077, 1088 ("[T]he reason, if any, that employees might not take their breaks were
21 predominantly individualized questions of fact not susceptible to class treatment."); *Ali v. U.S.A. Cab*
22 *Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees'
23 declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries
24 were required to show harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217
25 at *11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal
26 break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D.
27 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of
28 individual issues). Collectively, the examples cited above illustrate the uncertain nature of class

1 litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a
2 significant risk factor favoring settlement.

3 29. Finally, continuing to litigate this action would require continued and extensive resources
4 coupled with significant Court time to proceed through trial and post-trial motions, which can often
5 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
6 extensive expert testimony, particularly with regards to damages. But even if Plaintiffs are successful
7 at trial, Plaintiffs are acutely aware that a judgment does not end the litigation. Plaintiffs fully expect
8 that Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d
9 668, the risk of an appeal and subsequent reversal is real.

10 30. Given the amount of the settlement here, as compared to potential value of the claims,
11 offset by the various inherent risks to continued litigation, the settlement is fair and reasonable.

12 VII. CLASS NOTICE

13 31. The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class
14 of their rights and remedies. The Settlement Administrator will first verify addresses, then mail the
15 proposed Class Notice to the entire Class. The Class Notice includes information regarding the nature
16 of the lawsuit, a summary of the substance of the Settlement's terms, the procedure, and time within
17 which to requests for exclusions or objections to the Settlement, the date for the final approval hearing,
18 the formula used to calculate settlement payments, and the terms and scope of the Released Class
19 Claims. The Parties negotiated this method to ensure delivering the most reasonable method of notice
20 to the Class while ensuring cost effective administration of the Settlement.

21 32. As detailed in the Agreement, the method of disseminating the proposed Class Notice and
22 contents of the Proposed Class Notice satisfy due process and the California Rule of Court 3.766.

23 VIII. THE SERVICE AWARD

24 33. The Settlement provides for an Enhancement Award of \$5,000 to each Plaintiff Terrell
25 and Plaintiff Shedd, and \$10,000 to Plaintiff Bustos. Unlike Terrell and Shedd, Bustos is granting
26 Defendant a broad waiver of California Civil Code Section 1542. The Service Payments are fair and
27 reasonable compensation for the Plaintiffs' efforts bringing the action, assisting Class Counsel with the
28 litigation and settlement, regularly conferring with Class Counsel on the status of his case and the

1 strategies for prosecuting the claims, reviewing the proposed Settlement to ensure that its terms are fair
2 and provide adequate relief for the Settlement Class.

3 34. Class Counsel on behalf of Plaintiffs will file a formal motion for the negotiated Class
4 Representative Service Award once preliminary approval of the Settlement is granted. Plaintiffs
5 respectfully submits that the above showing is sufficient for preliminary approval of the negotiated
6 Class Representative Service Award.

7 **IX. ATTORNEYS' FEES AND ATTORNEYS' EXPENSES**

8 35. Class Counsel took this matter on a contingency fee basis and invested significant time
9 and expense successfully prosecuting Plaintiffs' claims. As discussed *supra*, the estimated average
10 Individual Class Payments illustrates the demonstrably positive outcome for the Class. Considering
11 the positive outcome, and considering the supporting authority, the proposed Class Counsel Fees
12 Payment and Class Counsel Litigation Expenses Payment are fair and reasonable.

13 36. Plaintiffs will file a formal motion for the Class Counsel Fees Payment and Class Counsel
14 Litigation Expenses Payment once preliminary approval of the Settlement is granted. Plaintiffs
15 respectfully submits that the above showing is sufficient for preliminary approval of the negotiated
16 attorneys' fees.

17 **X. PROVISIONAL CERTIFICATION**

18 37. For Settlement, Plaintiffs contend, and Defendant does not dispute, that provisional
19 certification of the Class is appropriate.

20 38. Because all members of the Class are Defendant's current and former non-exempt
21 employees, the class is readily ascertainable from Defendant's regular business records, i.e., payroll
22 records.

23 39. The statutes relating to each of Plaintiffs' claims apply with equal force and effect to the
24 entire Settlement Class. Factually, Defendant's policies and practices apply class-wide and Defendant's
25 liability can be determined by facts common to all members of the class. The wage and hour issues are
26 both numerous and substantial, and a class action is the most advantageous method of dealing with the
27 claims of the Settlement Class.
28

40. Plaintiffs' wage and hour claims are typical of the proposed Settlement Class because they arise from the same factual basis and are based on the same legal theories applicable to the other Class Members. Likewise, Plaintiffs' interests are entirely coextensive with the interests of the Settlement Class. Plaintiffs allege that she was injured by the same company-wide practices to which the proposed Class Members were subject to and seeks the same relief. Plaintiffs have already demonstrated his ability to advocate for the interests of the Class Member by initiating this litigation, undertaking extensive class discovery, and evaluating the proposed settlement to assure that it is fair.

41. Additionally, Plaintiffs are represented by competent Class Counsel who have extensive experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and gained state court settlement approval of the same class-wide causes of action that are at issue in this case. Class Counsel's wage and hour class action experience establishes that they are well qualified to represent the interests of this Class.

42. A class action is superior to a multitude of individual lawsuits. Given the size and amount of each individual claim, the Class Members likely have little incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 6th day of March, 2022, at San Diego, California.

JCL LAW FIRM, APC

By: Jean-Claude Lapuyade
Jean-Claude Lapuyade
Attorneys for Plaintiff

EXHIBIT 1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

Subject to final approval by the Court, which counsel and the Parties agree to diligently pursue and recommend in good faith, this Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiffs Devin Terrell, Nesha Shedd and Susan Bustos (“Plaintiffs”) individually and on behalf of all other similarly situated persons and aggrieved employees, on the one hand, and Defendant KaiserAir, Inc. (“Defendant”) on the other hand. The Agreement refers to Plaintiffs and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiffs’ lawsuit alleging wage and hour violations against Defendant captioned *DEVIN TERRELL v. KAISERAIR, INC. et al.* initiated on September 23, 2021, Case No. RG21113701, and pending in Superior Court of the State of California, County of Alameda.
- 1.2. “Administrator” or “Settlement Administrator” means ILYM Group Inc., 14771 Plaza Drive, Ste. L, Tustin, CA 92780; Tel: 1-888-250-6810, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” means all non-exempt employees who are or previously were employed by Defendant and performed work in California during the period of July 19, 2020 to January 18, 2023 (the “PAGA Period”).
- 1.5. “Amended Complaint” Plaintiff Devin Terrell agrees to file an amended complaint, which shall add Nesha Shedd and Susan Bustos as named plaintiffs and class representatives. In amending his Complaint, Terrell will also add any claims and theories encompassed by the settlement to ensure that all included claims and theories are clearly articulated and covered. Plaintiff Terrell also agrees to amend his PAGA Notice to include any claims and theories encompassed by the settlement to ensure that all included claims and theories are clearly articulated and covered.
- 1.6. “Class” means all non-exempt employees who are or previously were employed by Defendant and performed work in California during the period of September 23, 2017 to January 18, 2023 (the “Class Period”).
- 1.7. “Class Counsel” means the JCL Law Firm, APC, and Zakay Law Group, APLC.
- 1.8. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action, including their pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement

work, all post-Settlement compliance procedures in an amount of up to one-third (1/3) of the Gross Settlement Amount. The Class Counsel Fees Payment shall be divided between Class Counsel as follows: 50% to JCL Law Firm, APC, and 50% to Zakay Law Group, APLC.

- 1.9. “Class Data” means Class Member identifying information in Defendant’s possession that Defendant will provide to the Administrator. To the extent available, the Class Data shall include each Class Member’s full name, last-known mailing address, Social Security number, telephone number, and number of Class Period Workweeks and PAGA Pay Periods.
- 1.10. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non- Participating Class Member who qualifies as an Aggrieved Employee).
- 1.11. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.12. “Class Notice” means the means the Court-approved Notice of Class Action Settlement in a form substantively similar to **Exhibit A**, to be mailed to Class Members informing them of the settlement, including their rights to request exclusion or to object to the Settlement, the right to dispute their estimated workweeks/payment, of their estimated payment to be received without the need to return a claim form, and the date set for the Final Approval Hearing.
- 1.13. “Class Period” means the period from September 23, 2017 to January 18, 2023.
- 1.14. “Class Representatives” means Devin Terrell, Susan Bustos, and Nesha Shedd.
- 1.15. “Class Representative Service Payment” means the payment to the Class Representatives for initiating the Action and providing services in support of the Action.
- 1.16. “Court” means the Superior Court of California, County of Alameda.
- 1.17. “Defendant” means named Defendant KaiserAir, Inc.
- 1.18. “Defense Counsel” means Ari Hersher, Andrew M. McNaught and Parnian Vafaenia of Seyfarth Shaw LLP.
- 1.19. “Effective date” will be the date of final approval if no objections are filed to the settlement. If objections are filed and overruled, and no appeal is taken of the final approval order, then the effective date of final approval will be thirty (30) days after the trial court enters final approval. If an appeal is taken from the Court’s overruling of objections to the settlement, then the effective

date of final approval will be twenty (20) days after the appeal is withdrawn or after an appellate decision affirming the final approval decision becomes final. No money will be distributed unless and until the effective date of final approval occurs.

- 1.20. “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.21. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.22. “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- 1.23. “Funding Date” means the date on which Defendant shall fund the Gross Settlement Amount to the Administrator.
- 1.24. “Gross Settlement Amount” means One Million Two Hundred Thousand Dollars and Zero Cents (\$1,200,00.00) which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses, Class Representative Service Payments and the Administration Expenses Payment.
- 1.25. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period. Any Class Member who submits a timely and valid request for exclusion pursuant to the procedures set forth herein, is not eligible to receive an Individual Class Payment.
- 1.26. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of pay periods worked during the PAGA Period.
- 1.27. “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.28. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.29. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.30. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments on a pro-rata basis as described in section 1.24.

- 1.31. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.32. “PAGA Pay Period” means any pay period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.33. “PAGA Period” means the period from July 19, 2020 to January 18, 2023.
- 1.34. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.35. “PAGA Notice” means Plaintiff Terrell’s July 19, 2021, letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a) and Plaintiffs’ amended letter to Defendant and the LWDA dated December 27, 2022, providing further notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.36. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount which is Sixty Thousand Dollars (\$60,000.00), which will be allocated as follows: 25% to the Aggrieved Employees (\$15,000.00) and the 75% to LWDA (\$45,000.00) in settlement of PAGA claims.
- 1.37. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.38. “Plaintiffs” mean DEVIN TERRELL, NESHA SHEDD and SUSAN BUSTOS, the individuals that are currently named and will be named in the Action by way of an Amended Complaint.
- 1.39. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.
- 1.40. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.41. “Released Class Claims” Upon entry of an order granting final approval of this settlement and upon funding of the Gross Settlement Amount, each member of the Settlement Class releases the Released Parties from any and all claims, debts, liabilities, demands, obligations, penalties, premium pay, guarantees, costs, expenses, attorney’s fees, damages, actions or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, under any legal theory under federal and state law for any alleged failure to pay all wages due (including minimum wage and overtime wages), failure to pay for all hours worked (including off-the clock and on-call work), failure to provide meal and authorize and permit rest periods, short/late meal and rest periods, failure to relieve of all duties during meal and rest periods, failure to reimburse business expenses, failure to provide or accurately calculate sick pay, failure to timely pay wages and final wages, failure to furnish accurate wage statements including claims derivative and/or related to these claims, liquidated damages, and conversion of wages through the Class Period. This Release shall include, claims that were raised, or that reasonably could

have been raised based on the facts and allegations in the Complaint (after amended pursuant to Paragraph 1.5, above). This Release shall include all claims and theories arising under the applicable regulations, Wage Orders and Labor Code, as well as claims under Business and Professions Code section 17200 *et seq.*, based on violations of the above Labor Code provisions. This release shall apply to all claims arising at any point during the Class Period. This release expressly excludes any claims for penalties arising under PAGA which are to be separately released by the PAGA Class.

- 1.42. “Released PAGA Claims” Upon entry of final judgment and funding of the Gross Settlement Amount, the Defendant shall be entitled to a release from the PAGA Class Members of all PAGA claims alleged in the operative complaint and Plaintiff’s PAGA notice to the LWDA which occurred during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers’ compensation, and PAGA claims outside of the PAGA Period.
- 1.43. “Released Parties” means: Defendant and any parent, subsidiary, affiliate, predecessor or successor, and all agents, employees, officers, directors and attorneys thereof.
- 1.44. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.45. “Response Deadline” will be forty-five (45) calendar days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional fourteen (14) calendar days beyond the Response Deadline has expired.
- 1.46. “Settlement” means the disposition of the Action effectuated by this Agreement and the Judgment.
- 1.47. “Workweek” means any week during which a Class Member worked for Defendant for at least one day, during the Class Period.

2. RECITALS.

- 2.1. On July 19, 2021, Plaintiff Terrell filed a Notice of Violations with the Labor and Workforce Development Agency (“LWDA”) and served the same on Defendant.
- 2.2. On September 23, 2021, Plaintiff Terrell commenced this Action by filing a Complaint in the Alameda Superior Court alleging causes of action against Defendant for: (1) Unfair Competition in violation of Cal. Bus. & Prof. Code §§ 1700, *et. Seq.*; (2) Failure to Pay Overtime Wages in violation of Cal. Lab. Code §§ 510, *et seq.*, (3) Failure to Pay Minimum Wages in violation of Cal. Lab. Code §§ 1194, 1197, 1197.1; (4) Failure to Provide Required Meal Periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the

Applicable IWC Wage Order; (5) Failure to Provide Required Rest Periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (6) Failure to Reimburse for Required Expenses in violation of Cal. Lab. Code § 2802; (7) Failure to Provide Accurate Itemized Wage Statements in violation of Cal. Lab. Code § 226; (8) Failure to Pay Sick Pay at the Correct Rate of Pay in Violation of Cal. Labor Code § 246 et seq.; and (9) Failure to Pay Wages When Due in violation of Cal. Lab. Code §§ 201, 202, and 203; (10) Violation of the Private Attorneys General Act [Labor Code §§ 2698, et. Seq. (“PAGA”)]. Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged.

- 2.3. On December 27, 2022, Plaintiffs Terrell, Shedd and Bustos filed a Notice of Violations attaching a First Amended Complaint with the Labor Workforce Development Agency (“LWDA”) and served the same on Defendant).
- 2.4. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff Terrell gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.
- 2.5. On November 18, 2022, the Parties participated in an all-day mediation with Mediator Steven Rottman, Esq., a mediator of wage and hour class and representative actions.
- 2.6. Prior to mediation, Plaintiffs obtained, through informal discovery, timekeeping and payroll records for the Class Members. Plaintiffs’ investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).
- 2.7. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendant promises to pay One Million Two Hundred Thousand Dollars and Zero Cents (\$1,200,000.00) and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount or any payroll taxes prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.
- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts

specified by the Court in the Final Approval:

- 3.2.1. To Plaintiffs: Class Representative Service Payment to the Class Representatives Terrell and Shedd of not more than Five Thousand Dollars and Zero Cents (\$5,000.00) and Class Representative Bustos of not more than Ten Thousand Dollars and Zero Cents (\$10,000.00), in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representatives are entitled to receive as a Participating Class Member. Defendant will not oppose Plaintiffs' request for Class Representative Service Payments that do not exceed these amounts. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiffs will seek Court approval for any Class Representative Service Payments no later than sixteen (16) court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiffs assume full responsibility and liability for employee taxes owed on the Class Representative Service Payments they receive.
- 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than one-third (1/3) of the GFV, which is currently estimated to be Four Hundred Thousand Dollars and Zero Cents (\$400,000.00), and a Class Counsel Litigation Expenses Payment of not more than Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00). Defendant will not oppose requests for these payments provided that do not exceed these amounts. Plaintiffs and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than sixteen (16) court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.
- 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$12,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$12,000.00, the Administrator will retain the remainder in the Net Settlement Amount.
- 3.2.4. To Each Participating Class Member: Each Individual Class Payment will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and

(b) multiplying the result by each Participating Class Member's respective Workweeks.

3.2.4.1. Tax Allocation of Individual Class Payments. 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of Sixty Thousand Dollars and Zero Cents (\$60,000.00) to be paid from the Gross Settlement Amount, with 75% (\$45,000.00) allocated to the LWDA PAGA Payment and 25% (\$15,000.00) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$15,000.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employees' respective PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendant estimates there are 326 Class Members who collectively worked a total of 35,288 Workweeks, and 221 of Aggrieved Employees who worked a total 7,503 PAGA Pay Periods.

4.2. Class Data. Not later than fifteen (15) business days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class

Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data to the Settlement Administrator as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

- 4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than fifteen (15) days after the Effective Date.
- 4.4. Payments from the Gross Settlement Amount. Within twenty-five (25) days after the "effective date" of final approval of the settlement, the Administrator will pay all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payments. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payments shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
 - 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.
 - 4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within seven (7) days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an

address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.4.3. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the Community Law Project, A Cy Pres, leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 386.

4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

6. RELEASES OF CLAIMS. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

6.1 Plaintiff Bustos Release. Plaintiff and her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred through the date this Agreement is fully executed, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all claims related to her alleged employment with Defendants; (c) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice ("**Plaintiff Bustos Release**"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, or workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff Bustos's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

6.1.1 Plaintiff Bustos Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff Bustos's Release, Plaintiff Bustos expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release,

and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.

6.2 Plaintiff Terrell and Shedd's Release. Plaintiffs Terrell and Shedd and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all wage and hour claims that occurred through the date this Agreement is fully executed, including, but not limited to: (a) all wage and hour claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiffs' PAGA Notice(s) ("**Plaintiff Terrell and Shedd Release**"). This Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, or workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. The Release does not extend to claims currently alleged in their respective filed cases entitled: *Terrell v. KaiserAir, Inc.* (Case No. 22CV010887) and *Shedd v. KaiserAir, Inc.* (Case No. 21CIV001954). Plaintiffs Terrell and Shedd do not expressly or otherwise waive and/or relinquish the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code.

6.3 Release by Participating Class Members Who Are Not Aggrieved Employees: Upon entry of an order granting final approval of this settlement and upon funding of the Gross Settlement Amount, each member of the Settlement Class releases KaiserAir, Inc. and any parent, subsidiary, affiliate, predecessor or successor, and all agents, exempt employees, officers, directors and attorneys thereof ("Releasees"), from any and all of the Released Class Claims. The release shall include all claims, debts, liabilities, demands, obligations, penalties, premium pay, guarantees, costs, expenses, attorney's fees, damages, actions or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, under any legal theory under federal and state law for any alleged failure to pay all wages due (including minimum wage and overtime wages), failure to pay for all hours worked (including off-the clock and on-call work), failure to provide meal and authorize and permit rest periods, short/late meal and rest periods, failure to relieve of all duties during meal and rest periods, failure to reimburse business expenses, failure to provide or accurately calculate sick pay, failure to timely pay wages and final wages, failure to furnish accurate wage statements including claims derivative and/or related to these claims, liquidated damages, and conversion of wages through the Class Period. This Release shall include, claims that were raised, or that reasonably could have been raised based on the facts and allegations in the Complaint (after amended pursuant to Paragraph 1.5, above). This Release shall include all claims and theories arising under the applicable regulations, Wage Orders and Labor Code, as well as claims under Business and Professions Code section 17200 *et seq.*, based on violations of the above Labor Code provisions. This release shall apply to all claims arising at any point during the Class Period. This release shall not apply to the Released PAGA Claims, which are released separately hereinbelow. Except as set forth in Sections 6.3 and 6.4 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and

Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

- 6.4 Release by Non-Participating Class Members Who Are Aggrieved Employees: All Participating and Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from the Released PAGA Claims, including all PAGA claims alleged in the operative complaint and Plaintiff's PAGA notice to the LWDA, as amended, which occurred during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside of the PAGA Period. This release includes, but is not limited to a release for PAGA penalties arising from violations alleged under California Labor Code sections 201-204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 226.8, 246, 510, 512, 1174, 1174.5, 1194, 1197, 1198, 2802.

7. **MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Court's current checklist for Preliminary Approvals.

- 7.1 Plaintiffs' Responsibilities. Plaintiffs will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competently; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members [and/or the proposed Cy Pres]; and the nature and extent of any financial relationship with Plaintiffs, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiffs confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, [and/or] the Administrator [and/or the proposed Cy Pres]; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (vi) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator and/or the Cy Pres Recipient. In their Declarations, Plaintiffs and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or

adversely affected by the Settlement.

7.2 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than sixty (60) days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

7.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

8. SETTLEMENT ADMINISTRATION.

8.1 Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for the Administration Expenses Payment. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

8.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

8.4 Notice to Class Members.

8.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.

8.4.2 Using best efforts to perform as soon as possible, and in no event later than fourteen (14) days after receiving the Class Data, the Administrator will send to

all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice substantially in the form attached to this Agreement as **Exhibit A**. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

8.4.3 Not later than three (3) business days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

8.4.4 The deadlines for Class Members’ written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional fourteen (14) days beyond the forty-five (45) days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

8.4.5 If the Administrator, Defendant or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than fourteen (14) days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

8.5 Requests for Exclusion (Opt-Outs).

8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than forty-five (45) days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member’s election to be excluded from the Settlement and includes the Class Member’s name, address and email address or telephone number. To be valid, a

Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

8.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

8.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 6.1, 6.2 and 6.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

8.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.4 of this Agreement and are eligible for an Individual PAGA Payment.

8.6 Challenges to Calculation of Workweeks. Each Class Member shall have forty-five (45) days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

8.7 Objections to Settlement.

- 8.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.
- 8.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present oral objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than forty-five (45) days after the Administrator's mailing of the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice was re-mailed).
- 8.7.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.
- 8.8 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.
- 8.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.
- 8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than five (5) days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).
- 8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned

undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

8.8.4 Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.

8.8.5 Administrator’s Declaration. Not later than fourteen (14) days before the date by which Plaintiffs are required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.

8.8.6 Final Report by Settlement Administrator. Within ten (10) days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least fifteen (15) days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

9. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE. Based on its records, Defendant estimates that, as of the date of this Settlement Agreement, (1) there are 326 Class Members and 35,288 Total Workweeks during the Class period and (2) there were 221 Aggrieved Employees who worked 7503 Pay Periods during the PAGA Period. If the number of workweeks increases by more than 10% of the estimate stated herein, the Gross Settlement Amount will increase proportionally for the number of workweeks over 110% of 35,288 (or 38,817 workweeks).

10. DEFENDANT’S RIGHT TO WITHDRAW. If the number of valid Requests for Exclusion identified in the Exclusion List equals or exceeds 10% of the total of all Class Members, Defendant may, but is not obligated, elect to withdraw from the Settlement. The

Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not later than 30 (30) days after the Response Deadline; late elections will have no effect.

11. MOTION FOR FINAL APPROVAL. Not later than sixteen (16) court days before the calendared Final Approval Hearing, Plaintiffs will file in Court, a motion for final approval of the Settlement that includes a request for approval of the Class and PAGA settlement under Labor Code section 2699, subd. (1), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiffs shall provide drafts of these documents to Defense Counsel not later than seven (7) days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

11.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

11.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval. The Court’s decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

11.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court shall retain continuing jurisdiction over this case under CCP section 664.6 to ensure the continuing implementation of the provisions of this Settlement.

11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties’ obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the

amount of the Net Settlement Amount.

11.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

12. **AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

13. **ADDITIONAL PROVISIONS.**

13.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiffs reserves the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

13.2 Confidentiality Prior to Preliminary Approval. Plaintiffs, Class Counsel, Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency.

Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiffs, Class Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that “the matter was resolved,” or words to that effect. This paragraph does not restrict Class Counsel’s communications with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.

13.3No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel’s ability to communicate with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.

13.4Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

13.5Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiffs and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

13.6Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

13.7No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

13.8No Tax Advice. Neither Plaintiffs, Class Counsel, Defendant nor Defense Counsel are providing, nor shall provide, any advice regarding taxes or taxability. Nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise. Plaintiffs agree that Defendant is not liable for any Class Member’s failure to timely pay their share of taxes, interest, fees, or penalties owed.

- 13.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 13.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 13.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 13.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 13.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 13.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiffs shall destroy, all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.
- 13.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 13.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 13.17 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiffs:

JCL LAW FIRM, APC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
T: 619-599-8292
F: 619-599-8291

ZAKAY LAW GROUP
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
T: 619-892-7095
F: 858-404-9203

To Defendant:

SEYFARTH SHAW, LLP
Andrew M. McNaught
Parnian Vafaenia
560 Mission Street, 31st Floor
San Francisco, CA 94105
T: 415-397-2823
F: 415-397-8549

13.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

13.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

IT IS SO AGREED TO AS TO FORM AND CONTENT BY PLAINTIFFS:

DATED: Jan 24, 2023, 2023

Devin Terrell
[Devin Terrell \(Jan 24, 2023 12:41 PST\)](#)
DEVIN TERRELL

DATED: Jan 23, 2023, 2023

Nesha Shedd
[nesha shedd \(Jan 23, 2023 17:51 PST\)](#)
NESHA SHEDD

DATED: Jan 23, 2023, 2023


Susan Bustos (Jan 23, 2023 18:31 PST)
SUSAN BUSTOS

DATED: January 24, 2023

JCL LAW FIRM, APC



By: Jean-Claude Lapuyade, Esq.
Attorney for Plaintiffs DEVIN TERRELL, NESHA
SHEDD and SUSAN BUSTOS

DATED: January 24, 2023

ZAKAY LAW GROUP, APLC



By: Shani O. Zakay, Esq.
Attorney for Plaintiffs DEVIN TERRELL, NESHA
SHEDD and SUSAN BUSTOS

IT IS SO AGREED TO AS TO FORM AND CONTENT BY DEFENDANT:

DATED: _____, 2023

KAISERAIR, INC.

By: _____

DATED: _____, 2023

SEYFARTH SHAW LLP

By: Ari Hersher, Esq.
Andrew M. McNaught, Esq.
Parnian Vafaenia, Esq.
Attorneys for Defendant
KAISERAIR, INC.

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DATED: _____, 2023

SUSAN BUSTOS

DATED: _____, 2023

JCL LAW FIRM, APC

By: Jean-Claude Lapuyade, Esq.
Attorney for Plaintiffs DEVIN TERRELL, NESHA
SHEDD and SUSAN BUSTOS

DATED: _____, 2023

ZAKAY LAW GROUP, APLC

By: Shani O. Zakay, Esq.
Attorney for Plaintiffs DEVIN TERRELL, NESHA
SHEDD and SUSAN BUSTOS

IT IS SO AGREED TO AS TO FORM AND CONTENT BY DEFENDANT:

DATED: 1/27/2023, 2023

KAISERAIR, INC.

By: 

DATED: 01/30/2023, 2023

SEYFARTH SHAW LLP


By: Ari Hersher, Esq.
Andrew M. McNaught, Esq.
Parnian Vafaenia, Esq.
Attorneys for Defendant
KAISERAIR, INC.

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EXHIBIT A

**COURT APPROVED NOTICE OF CLASS ACTION AND PAGA SETTLEMENT AND
HEARING DATE FOR FINAL COURT APPROVAL**

DEVIN TERRELL v. KAISERAIR, INC. et al Case No. RG21113701

***The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from a class and PAGA action lawsuit (“Action”) against KaiserAir, Inc. (“Defendant” or “KaiserAir”) for alleged wage and hour violations. The Action was filed by current and former KaiserAir employees Devin Terrell, Nesha Shedd and Susan Bustos (“Plaintiffs”) and seeks payment of (1) back wages for a class of nonexempt employees who worked for KaiserAir in California (“Class Members”) during the Class Period (September 23, 2017 to January 18, 2023); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all nonexempt employees who worked for KaiserAir in California during the PAGA Period (July 19, 2020 to January 18, 2023) (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendant to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendant to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on Defendant’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$XX (less withholding) and your Individual PAGA Payment is estimated to be \$XX.** The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendant’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on Defendant’s records showing that **you worked XX workweeks** during the Class Period and **you worked XX pay periods** during the PAGA Period. If you believe that you worked more workweeks or pay periods during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiffs and Plaintiffs’ attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Defendant that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is MONTH XX, 2022	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiffs who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiffs, but every dollar paid to Class Counsel and Plaintiffs reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiffs if you think they are unreasonable. See Section 7 of this Notice.

You Can Participate in the Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on MONTH XX, 2022 . You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Workweeks and number of PAGA Period Pay Periods you worked according to Defendant's records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by MONTH XX, 2022 . See Section 4 of this Notice.

Defendant will not retaliate against you for any actions you take with respect to the proposed Settlement.

1. WHAT IS THE ACTION ABOUT?

Plaintiffs are current and former employees of Defendant. The Action accuses Defendant of violating California labor laws by failing to pay minimum wages, including overtime wages, failing to provide legally compliant meal and rest periods, failing to reimburse for mandatory business expenses, failing to provide accurate itemized wage statements, failing to pay overtime, premiums and sick pay at the correct rate of pay, and failing to pay wages when due. Based on the same claims, Plaintiffs have also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) ("PAGA"). Plaintiffs are represented by attorneys in the Action: The JCL Law Firm, APC, and Zakay Law Group, APC ("Class Counsel.")

Defendant strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendant or Plaintiffs are correct on the merits. In the meantime, Plaintiffs and Defendant hired a neutral mediator in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement ("Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiffs and Defendant have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendant does not admit any violations or concede the merit of any claims.

Plaintiffs and Class Counsel strongly believe the Settlement is a good deal for you because they

believe that: (1) Defendant has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE TERMS OF THE PROPOSED SETTLEMENT?

1. Defendant Will Pay \$1,200,000.00 as the Gross Settlement Amount (Gross Settlement). Defendant has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payments, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, Defendant will fund the Gross Settlement not more than fifteen (15) days after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiffs and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$400,000.00 (one-third of the Gross Settlement) to Class Counsel for attorneys' fees and up to \$20,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. Plaintiffs Terrell and Shedd will receive a Class Representative Award in the amount of \$5,000 each whereas Plaintiff Bustos will receive a Class Representative Award in the amount of \$10,000 for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiffs will receive other than Plaintiffs' Individual Class Payment and any Individual PAGA Payment.
 - C. Up to \$12,000.00 to the Administrator for services administering the Settlement.
 - D. Up to \$60,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross

Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.

4. Taxes Owed on Payments to Class Members. Plaintiffs and Defendant are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable wages (“Wage Portion”) and 80% to interest and penalties (“Non-Wage Portion.”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendant will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiffs and Defendant have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don’t cash it by the void date, your check will be automatically cancelled, and the monies will be paid to the Community Law Project in your name.
6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than **MONTH XX, 2022**, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the **MONTH XX, 2022** Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth your name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendant.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Defendant based on the PAGA Period facts alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims against Defendant.
8. Administrator. The Court has appointed a neutral company, ILYM Group, Inc. (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re- mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.
9. Participating Class Members’ Release. After the Judgment is final and Defendant has fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release KaiserAir, Inc. and any parent, subsidiary, affiliate, predecessor or successor, and all agents, exempt employees, officers, directors and attorneys thereof (“Releasees”), from any and all of the Released Class Claims. The release shall include all claims, debts, liabilities, demands, obligations, penalties, premium pay, guarantees, costs, expenses, attorney’s fees, damages, actions or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, under any legal theory under federal and state law for any alleged failure to pay all wages due (including minimum wage and overtime wages), failure to pay for all hours worked (including off-the clock and on-call work), failure to provide meal and authorize and permit rest periods, short/late meal and rest periods, failure to relieve of all duties during meal and rest periods, failure to reimburse business expenses, failure to provide or accurately calculate sick pay, failure to timely pay wages and final wages, failure to furnish accurate wage statements including claims derivative and/or related to these claims, liquidated damages, and conversion of wages through the Class Period. This Release shall include, claims that were raised, or that reasonably could have been raised based on the facts and allegations in the Complaint (after amended pursuant to Paragraph 1.5, above). This Release shall include all claims and theories arising under the applicable regulations, Wage Orders and Labor Code, as well as claims under Business and Professions Code section 17200 *et*

seq., based on violations of the above Labor Code provisions. This release shall apply to all claims arising at any point during the Class Period. This release shall not apply to the Released PAGA Claims, which are released separately hereinbelow. Except as set forth in Sections 6.3 and 6.4 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

10. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and Defendant has paid the Gross Settlement and separately paid the employer-side payroll taxes, all Aggrieved Employees will be barred from asserting PAGA claims against Defendant, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Defendant or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement. The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

All Participating and Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from the Released PAGA Claims, including all PAGA claims alleged in the operative complaint and Plaintiff's PAGA notice to the LWDA, as amended, which occurred during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside of the PAGA Period. This release includes, but is not limited to a release for PAGA penalties arising from violations alleged under California Labor Code sections 201-204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 226.8, 246, 510, 512, 1174, 1174.5, 1194, 1197, 1198, 2802.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of respective Workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$15,000.00 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of respective PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Defendant's records, are stated in the first page of this Notice. You

have until **MONTH XX, 2022** to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendant's calculation of Workweeks and/or Pay Periods based on Defendant's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defendant's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Devin Terrell v. KaiserAir, Inc.* Case No. RG21113701, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by **MONTH XX, 2022**, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiffs and Defendant are asking the Court to approve. At least sixteen (16) days before the **MONTH XX, 2022** Final Approval Hearing, Class Counsel and/or Plaintiffs will file in Court (1) a Motion for Final Approval that includes,

among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiffs are requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website

<https://ilymgroup.com/> or the Court's website <https://www.alameda.courts.ca.gov>

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiffs are too high or too low. **The deadline for sending written objections to the Administrator is MONTH XX, 2022.** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action *Devin Terrell v. KaiserAir, Inc.* Case No. RG21113701 and include your name, current address, telephone number, and approximate dates of employment for Defendant and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on MONTH XX, 2022 at XX:XX am/pm in Department 21 of the Rene C. Davidson Courthouse (Alameda Superior Court), located at 1225 Fallon Street Oakland, CA 94612. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiffs, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via Zoom. Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website <https://ilymgroup.com/> beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendant and Plaintiffs have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to ILYM Group, Inc.'s website at <https://ilymgroup.com/>. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to

(<https://www.alameda.courts.ca.gov/online-services/search-name>) and entering the Case Name and or/ the Case Number for the Action, Case No. RG21113701.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel:

JCL LAW FIRM, APC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
T: 619-599-8292
F: 619-599-8291

ZAKAY LAW GROUP
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
T: 619-892-7095
F: 858-404-9203

Settlement Administrator:

ILYM Group, Inc.
P.O. Box 2031 Tustin, CA 92781
T: 1-888-250-6810

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

EXHIBIT 2

EXHIBIT 3

JCL LAW FIRM, APC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Tel: (619) 599-8292
Fax: (619) 599-8291

FIRM RESUME

Areas of Practice: Employee Class Actions, Wage and Hour Class Actions, Civil Litigation, and Unlawful Housing Practices.

ATTORNEY BIOGRAPHIES

Jean-Claude Lapuyade, Esq.
California Bar Number 248676
Founding Partner

Biography:

Mr. Lapuyade is a San Diego based labor and employment attorney representing aggrieved California employees and the victims of unlawful housing practices throughout the State of California. Mr. Lapuyade's litigation practice focuses on representing California employees in wage and hour class actions for unpaid wages, missed meal and rest breaks, and misclassification, wrongful termination cases and tenants in unlawful housing class actions. Mr. Lapuyade prides himself on providing his clients with aggressive, attentive and result driven representation through the litigation process, trial and arbitration. Since 2007, Mr. Lapuyade successfully recovered in excess of \$100 million in monetary awards for his clients.

Mr. Lapuyade served as co-editor of the Insurance Column for Consumer Attorneys of San Diego from 2011 to 2014. As editor, Mr. Lapuyade was responsible for publishing monthly articles in the Trial Bar News periodical analyzing complex insurance coverage issues. Mr. Lapuyade is a four-time recipient of the Super Lawyers Rising Star by Thomson Reuters. To be eligible for inclusion in Rising Stars, a candidate must be either 40 years old or younger or in practice for 10 years or less. While up to 5 percent of the lawyers in a state are named to Super Lawyers, no more than 2.5 percent are named to Rising Stars.

Bar Admissions:

- California
- U.S. District Court Southern District of California
- U.S. District Court Central District of California
- U.S. District Court Eastern District of California
- U.S. District Court Northern District of California

Professional Associations:

- California Employment Lawyers Association, 2007 to Present
- Consumer Attorneys of San Diego, 2007 to 2020
- American Bar Association, Section of Litigation, Member, 2007 to 2020
- American Bar Association, Labor & Employment Section, Member, 2007 to 2020
- American Bar Association, Tort, Trial & Insurance Section, Member, 2007 to 2020
- California Bar Association, Labor & Employment Section, Member, 2007 to Present
- California Bar Association, Litigation Section, Member, 2007 to Present

Education:

- **California Western School of Law**
 - J.D. - 2006
 - Honors: Deans Merit Scholarship, California Western School of Law 2005 - 2006
- **University of Arizona**
 - B.A. - 2001
 - Major: History

Honors:

- Super Lawyers Rising Star, Thomson Reuters, 2015 - 2018
- Distinguished Advocate Award for Outstanding Oral Advocacy, 2005 - 2006

Sydney Castillo-Johnson, Esq.
California Bar Number 343881
Associate Attorney

Biography:

Ms. Castillo-Johnson is a San Diego based labor and employment attorney representing California employees throughout the state of California. Ms. Castillo-Johnson's litigation practice focuses on representing current and former employees in wage and hour class actions for unpaid wages, missed meal and rest breaks, misclassification, and wrongful termination.

Ms. Castillo-Johnson volunteered her time at California Western School of Law first as a student intern and later as a student manager with the Community Law Project which offers legal services to the low-income community of San Diego. She now sits on the Advisory Council with the Community Law Project.

Education:

- **California Western School of Law**
 - J.D.- 2022
 - Honors:
 - Dean's Honor List: Spring 2021, Fall 2021
 - Public Service Honor Society Fall 2021
 - 3L Academic Merit Scholarship
 - Dean's Diversity, Service, and Leadership Scholarship
 - Activities: Community Law Project Student Manager
- **Azusa Pacific University**
 - B.A. – 2018
 - Major: Criminal Justice

Monnett De La Torre, Esq.
California Bar Number 272884
Senior Associate

Biography:

Ms. De La Torre is a San Diego and Ventura County based labor and employment attorney representing aggrieved California employees throughout the State of California. Ms. De La Torre's litigation practice focuses on representing California employees in wage and hour class and representative actions for unpaid wages, missed meal and rest breaks, misclassification, penalties, and wrongful termination cases. Ms. De La Torre has extensive experience handling internal workplace investigations. Ms. De La Torre has handled matters before the Department of Fair Employment and Housing, Equal Employment Opportunity Commission and Department of Labor.

Ms. De La Torre is a two-time recipient of the Super Lawyers Rising Star by Thomas Reuters. To be eligible for inclusion in Rising Stars, a candidate must be either 40 years old or younger or in practice for 10 years or less. While up to five percent of the lawyers in a state are named to Super Lawyers, no more than 2.5 percent are named to Rising Stars.

Bar Admissions:

- California
- U.S. District Court Southern District of California

Professional Associations:

- California Employment Lawyers Association, 2022 to Present
- Consumer Attorneys of San Diego, 2010-2015
- American Bar Association, Labor & Employment Section, Member, 2015 to Present
- California Bar Association, Labor & Employment Section, Member, 2015 to Present
- San Diego La Raza Lawyers Association, 2010-2015
- Ventura County Bar Association, 2015-Present
- Women Lawyers of Ventura County, 2015-Present

Education:

- **New England School of Law**
 - J.D.- 2010

- Honors:
 - Dean's List Consecutive years
- **University of California, San Diego**
 - B.A.- 2006
 - Major: Economics
 - Minor: Latin American Studies

Honors:

- Super Lawyers Rising Star, Thomson Reuters, 2021 and 2022
- Pacific Cost Business Times, "Top 40 under 40" Award
- Daily Transcripts "Top Young Attorney: nominee, consecutive years"

REPORTED CASES

- *Blanchette et al., v. Superior Court (GHA Homes)*, 8 Cal.App.5th 521, 2017
- *Chmurny v. State*, 392 Md. 159, 2006

CLASS ACTION & REPRESENTATIVE CASES

- *Martinello v. Century Wilshire, Inc.*, Los Angeles Superior Court Case No. 20STCV32613 (March 1, 2022) Hon. Carolyn Kuhl approved a \$550 billing rate and appointed Jean Claude Lapuyade, Esq. of the JCL Law Firm, APC, as Class Counsel.
- *Wilson v. Spreen Inc. (dba Spreen Honda)*, San Bernardino Superior Court Case No. CIVSB2119857 (April 6, 2022) Hon. David Cohn approved a \$300,000 PAGA action settlement for meal and rest period violations. The JCL Law Firm, APC, represented the plaintiff, the State of California, and the Aggrieved Employees.
- *Ledesma v. TVJ Sons I, Inc.; Porter and Howard, Inc.* Santa Barbara Superior Court Case No. 20CV03573 (November 10, 2021) Hon. Jed Beebe approved a \$350,000 PAGA action settlement for meal and rest period violations. The JCL Law Firm, APC represented the State of California and the Aggrieved Employees.
- *Jacobs v. Rush Media Company, LLC; XLT Management Services, Inc.*, Los Angeles Superior Court Case No. 20STCV32350 (May 2, 2022) Hon. Daniel J. Buckley appointed the JCL Law Firm, APC as Class Counsel and approved a \$330,000 class action settlement for, *inter alia*, independent contractor misclassification.
- *Chavez v. HTL Conrad Domestic, LLC; HTL Conrad Domestic Employer, LLC*, San Diego Superior Court Case No. 37-2020-00016193-CU-OE-CTL (June 9, 2022) Hon. John S. Meyer approved a \$850,000 PAGA action settlement for, *inter alia*, failure to compensate overtime at the regular rate of pay. The JCL Law Firm, APC acted as representative PAGA counsel for the State of California and the Aggrieved Employees.
- *Renteria v. Love's Country Stores of California*, San Bernardino Superior Court Case No. CIVDS20164481 (June 14, 2022) Hon. David Cohn approved a \$2.2 million dollar class action and PAGA action settlement for, *inter alia*, unpaid overtime and sick pay. The JCL Law Firm, APC acted as Class Counsel and as representative PAGA counsel for the State of California.
- *Lopez v. Adidas America, Inc.*, Ventura Superior Court Case No. 56-2021-005498444-CU-OE-VTA (April 4, 2022) Hon. Mark Borrell approved a \$1.5 million dollar class action and PAGA action settlement for, *inter alia*, inaccurate overtime calculations, and appointed the JCL Law Firm, APC as Class Counsel.
- *Felix v. TVI, Inc., d.b.a. Savers*, Santa Clara Superior Court Case No. 21CV376407 (February 18, 2022) Hon. Sunil R. Kulkarni approved a \$1.8 million dollar class action and PAGA action settlement for, *inter alia*, unpaid off-the-clock work. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Munoz v. AMTCR*, San Bernardino Superior Court Case No. CIV-DS2001914 (August 24, 2021) Hon. David Cohn approved a \$1.8 million dollar class and PAGA settlement for, *inter alia*, inaccurate itemized wage statements. The JCL Law Firm, APC acted as class counsel for the settlement class and as representative PAGA counsel the State of California and the Aggrieved Employees.)
- *Nunes v. Home Depot U.S.A., Inc.*, San Joaquin Superior Court Case No. STK-CV-UOE-2020-0011011 (October 20, 2021 – Hon. Roger Ross approved a \$1.5 million dollar class and PAGA settlement for, *inter alia*, miscalculated meal period premiums and appointed Jean-Claude Lapuyade, Esq. as Class Counsel.)
- *Pillsbury v. T&T Restaurants CA, Inc.*, Del Norte Superior Court Case No. CVUJ-20-1214 (December 14, 2021 – Hon. Darren McElfresh approved \$550 billing rate and appointed Jean-Claude Lapuyade, Esq. as Class Counsel in a wage and hour class action settlement.)
- *Latin v. OneMain General Service Corporation*, Stanislaus County Superior Court Case No. CV-20-002498 (October 22, 2021) Hon. Stacy Speiller approved a PAGA action settlement for \$700,000 wage statement violations. The JCL Law Firm, APC acted as counsel for the plaintiff, the State of California and the Aggrieved Employees.

- *Elias Kaser v. Aviation Consultants, Inc.*, Orange County Superior Court Case No. 30-2021-01191204-CU-OE-CXC (September 22, 2021 – Hon. Peter J. Wilson approved \$550 billing rate in a representative California Labor Code Private Attorney General Act settlement).
- *Rodriguez v. RSI Home Products, Inc.*, San Bernardino Superior Court Case No. CIVDS2023354 (July 30, 2021 – Hon. David Cohn approved a \$1.45 million class and PAGA settlement for, *inter alia*, failure to comply with piece-rate laws, and appointed the JCL Law Firm, APC as Class Counsel)
- *Jer Vang v. Bridge Property Management*, Alameda County Superior Court, Case No RG19047434 (January 8, 2021 – Hon. Winifred Smith approved a class and PAGA settlement for, *inter alia*, unpaid off the clock work. The JCL Law Firm, APC acted as class counsel for the settlement class and as representative PAGA counsel the State of California and the Aggrieved Employees.)
- *Johnson v. Volt Management Corp., Inc. et al.*, Los Angeles County Superior Court, Case No. 19STCV16466 (December 11, 2020 – Hon. Amy Hogue approved a PAGA Settlement negotiated on behalf of the State of California and the aggrieved employees by the JCL Law Firm, APC.)
- *Salazar v. Frontier Auto Sales Inc., dba Frontier Toyota*, Los Angeles Superior Court, Case No. 19STCV20382 (November 24, 2020 – Hon. John P. Doyle appointed the JCL Law Firm, APC as class counsel and approved a class and PAGA settlement for, *inter alia*, missed meal and rest periods.)
- *Villalobos v. Alterra Group, LLC et al.*, Los Angeles County Superior Court, Case No. 19STCV19448 (November 11, 2020 – Hon. Richard Fruin approved a PAGA Settlement for, *inter alia*, unreimbursed business expenses. The JCL Law Firm, APC acted as counsel for the plaintiff, the State of California and the Aggrieved Employees.)
- *Stevens et al., v. Bank of England*, San Diego County Superior Court Case No. 37-2019-00018662-CU-OE-CTL (October 16, 2020 – Hon. John Meyer appointed JCL Law Firm as Class Counsel and granted final approval of wage and hour class action for, *inter alia*, off-the-clock work.)
- *Frazier v. ASA Carlton, Inc.*, San Diego Superior Court Case No. 37-2019-00036147 (October 9, 2020 Hon. Kenneth Medel appointed the JCL Law Firm as Class Counsel and granted final approval of wage and hour class action for off-the-clock work.)
- *Krake et al., v. Central Valley Diner, Inc.*, Placer County Superior Court Case No. SCV0041645 (September 4, 2020 – Hon. Michael Jones appointed JCL Law Firm as class counsel and granted final approval of wage and hour class action for meal period violations.)
- *Conner v. Ascendant Marketing, LLC et al.*, San Diego Superior Court Case No. 37-2019-00026864-CU-OE-CTL (July 24, 2020 Hon. Joel Wohlfeil granted approval of PAGA Settlement for, among other things, off-the-clock work. JCL Law Firm, APC acted as lead counsel.)
- *Guerrero v. Estancia Operations, LLC.*, San Diego Superior Court Case No. 37-2019-00028963 (August 25, 2020 – Hon. Katherine Bacal approved PAGA Settlement for, *inter alia*, missed meal and rest periods. JCL Law Firm, APC, acted as lead counsel.)
- *Moreno v. Dash Lube, et al.*, United States District Court, Southern District of California, Case No. 18cv1922 DMS (AHG) (December 13, 2019 – Granted class certification of Labor Code Section 226 claim and appointed JCL Law Firm, APC, as Class Counsel.)
- *Perkins et al., v. Tahiti Enterprises, Inc., et al.*, Orange County Superior Court Case No. 30-2016-00863095 (October 22, 2019 – Hon. Peter Wilson appointed JCL Law Firm, APC, as Class Counsel and granted final approval for an unlawful housing class action settlement arising out of Civil Code Section 1940.1.)
- *Hill v. Stetak Holdings, Ltd.*, San Diego Superior Court Case No., 37-2018-00000747 (January 28, 2020 – Hon. Kenneth Medel appointed JCL Law Firm, APC as class counsel and granted final approval of wage and hour class action for unpaid overtime.)
- *Shachno et al., v. KT Hotels, LLC, et al.* San Diego Superior Court Case No Case No. 37-2018-00043601 (May 31, 2019 – Hon. Gregory Pollack appointed JCL Law Firm, APC, as Class Counsel and granted preliminary approval for the wage and hour class action settlement involving nearly 900 current and former employees. Final approval scheduled for October 4, 2019)
- *Almanza v. The Express Group, Inc.*, San Bernardino Superior Court Case No. CIVDS1722542 (April 19, 2019 – Hon. David Cohn appointed the JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement for *inter alia*, missed meal and rest periods and independent contractor misclassification.)
- *Moschetto v. Pillow Global, Inc.* San Diego Superior Court, Case No. 37-2017-00024031-CU-OE-CTL (April 5, 2019 – Hon. John S. Meyer appointed JCL LAW Firm, APC, as Class Counsel and granted final approval for a wage and hour wage class action settlement involving misclassified house cleaners.)
- *Burke v. Friendship Hotel, LLC*, San Diego County Superior Court Case No. 37-2017-00022517-CU-OE-CTL (March 10, 2019 – final approval granted on for an unlawful housing class action arising under Civil Code Section 1940.2)
- *Terrado et al., v. Accredited Debt Relief, LLC*, San Diego County Superior Court Case No. 37-2018-00014181-CU-OE-CTL (February 8, 2019 – Hon. Gregory W. Pollock appointed JCL Law Firm, APC as Class Counsel and granted final approval for a wage and hour class action settlement for meal and rest period violations);

- *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court Case No. CIVDS1512625, (July 27, 2018 – Hon. Thomas S. Garza appointed JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement involving claims for on duty meal and rest periods.);
- *Summerlin et al. v. Maplebear, Inc. dba Instacart*, Los Angeles Superior Court Case No. BC603030 (2018 - certified and settled wage and hour class action.)
- *Ortega v. Prime Healthcare*, San Diego Superior Court Case No. 37-2014-00011240-CU-OE-CTL (2018 – Approved PAGA only settlement for on duty meal and rest periods)
- *Engstrom v. Bender-Rosenthal, Inc.* San Diego Superior Court Case No. 37-2016-00012373-CU-OE-CTL (2017 - Certified and settled class action for employee misclassification);
- *Crawford v. Outlook Amusements, Inc.*, Los Angeles Superior Court Case No. BC617160 (2017 - Certified and settled wage and hour class action.);
- *Hernandez v. Sunglass Hut Trading, LLC*, San Bernardino Superior Court Case No. CIVDS1505181 (2016 - Certified and settled wage and hour class action);
- *Burns v. Shalom, LLC*, San Diego Superior Court, Case No., 37-2013-00058356-CU-BT-CTL (2015 - certified and settled class action for unlawful housing practices arising out of Civil Code Section 1940.1);