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SUPERIOR COURT OF 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 1-50, Inclusive,

Defendant.

Case No. RG21113701

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL**

Date: November 17, 2023
Time: 9:00 a.m.

Judge: Hon. Evelio Grillo
Dept.: 21

1 Plaintiffs’ motion for an order finally approving the Amended Class Action and Private
2 Attorneys General Act (“PAGA”) Settlement Agreement (“Agreement”) and Motion for Class
3 Counsel Fees and Litigation Expenses Payment and Class Representative Service Payments duly
4 came on for hearing on November 17, 2023, before the above-entitled Court. Zakay Law Group,
5 APLC, and the JCL Law Firm, APC, appeared on behalf of Plaintiffs DEVIN TERRELL, NESHA
6 SHEDD, and SUSAN BUSTOS (“Plaintiffs”). Seyfarth Shaw, LLP appeared on behalf of
7 Defendant KAISERAIR, INC., a California corporation (hereinafter “Defendant”).

8 **I.**

9 **FINDINGS**

10 Based on the oral and written argument and evidence presented in connection with the
11 motion, the Court makes the following findings:

12 1. All capitalized terms used herein shall have the same meaning as defined in
13 the Agreement.

14 2. This Court has jurisdiction over the subject matter of this litigation pending
15 in the California Superior Court for the County of Alameda (“Court”), Case No. RG21113701,
16 entitled *Terrell v. KaiserAir, Inc.* and over all Parties to this litigation, including the Class.

17 **Preliminary Approval of the Settlement**

18 3. On June 30, 2023, the Court granted preliminary approval of a class-wide
19 settlement. At this same time the court approved certification of a provisional settlement class for
20 settlement purposes only. The Court confirms this Order and finally approves the settlement and
21 the certification of the Class.

22 **Notice to the Class**

23 4. In compliance with the Preliminary Approval Order, the Class Notice was
24 mailed by first class mail to the Class Members at their last known addresses on August 7, 2023.

25 5. Mailing of the Class Notice to their last known addresses was the best notice
26 practicable under the circumstances and was reasonably calculated to communicate actual notice of
27 the litigation and the proposed settlement to the members of the Class Members. The Court finds
28

1 that the Class Notice provided fully satisfies the requirements of California Rules of Court, rule
2 3.769.

3 6. The Response Deadline for opting out or objecting was September 21, 2023.
4 There was an adequate interval between notice and deadline to permit Class Members to choose
5 what to do and act on their decision. No Class Members objected. Two Class Members requested
6 exclusion.

7 **Fairness Of The Settlement**

8 7. The Agreement provides for a Gross Settlement Amount of \$1,200,000.00.
9 The Agreement is entitled to a presumption of fairness. (*Dunk v. Ford Motor Co.* (1996) 48
10 Cal.App.4th 1794, 1801.)

11 a. The settlement was reached through arms-length bargaining between
12 the Parties. There is no evidence of any collusion between the Parties in reaching the proposed
13 settlement.

14 b. The Parties' investigation and discovery have been sufficient to allow
15 the Court and counsel to act intelligently.

16 c. Counsel for all parties are experienced in similar employment class
17 action litigation and have previously settled similar class claims on behalf of employees claiming
18 compensation. All counsel recommended approval of the Settlement.

19 d. No objections were received. Two requests for exclusion were
20 received. The names of the Class Members who requested exclusion are Carole Nordquist and Susan
21 Nagid.

22 e. The participation rate is high. 99.41% of Class Members will be
23 participating in the Settlement and will be sent settlement payments.

24 8. The consideration to be given to the Class Members under the terms of the
25 Agreement is fair, reasonable, and adequate considering the strengths and weaknesses of the claims
26 asserted in this Action and is fair, reasonable, and adequate compensation for the release of the
27 Released Class Claims and Released PAGA Claims, given the uncertainties and risks of the
28 litigation and the delays which would ensue from continued prosecution of the Action.

1 9. The Agreement is finally approved as fair, adequate, and reasonable and in
2 the best interests of the Participating Class Members.

3 **PAGA Penalties Payment**

4 10. The Agreement provides for a payment of PAGA Penalties in the amount of
5 \$60,000.00. The Court has reviewed the PAGA Penalties payment and finds and determines that the
6 PAGA Penalties payment and the allocation of \$45,000.00 to LWDA and \$15,000.00 of the PAGA
7 Penalties payment to Aggrieved Employees is fair and reasonable and complies with the
8 requirements set forth in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56.

9 **Class Counsel Fees and Litigation Expenses**

10 11. The Agreement provides for a Class Counsel Attorneys' Fees and Litigation
11 Expenses Payment in the amount of up to Four Hundred Twenty-Five Thousand Dollars and Zero
12 Cents (\$425,000.00). Subject to Court approval, the Class Counsel Attorneys' Fees and Litigation
13 Expenses consists of attorneys' fees equal to one-third (1/3) of the Gross Settlement Amount, or
14 Four Hundred Thousand Dollars and Zero Cents (\$400,000.00) and reimbursement of costs and
15 expenses in the amount of Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00).

16 12. A Class Counsel Fees and Litigation Expenses Four Hundred Twenty-Five
17 Thousand Dollars and Zero Cents (\$425,000.00) comprised of attorneys' fees in the amount of Four
18 Hundred Thousand Dollars and Zero Cents (\$400,000.00) and reimbursement of costs and expenses
19 in the amount of Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) is reasonable in light
20 of the contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the results
21 achieved by Class Counsel. The requested attorneys' fee award represents 1/3 of the common fund,
22 which is reasonable, and is supported by Class Counsel's lodestar.

23 **Class Representative Service Awards**

24 13. The Agreement provides for Class Representative Service Awards of up to
25 Five Thousand Dollars and Zero Cents (\$5,000.00) each for Plaintiffs Devin Terrell and Nesha
26 Shedd and up to Ten Thousand Dollars and Zero Cents (\$10,000.00) for Plaintiff Susan Bustos,
27 subject to the Court's approval. The Court finds that the amounts of Five Thousand Dollars and
28 Zero Cents (\$5,000.00) each for Plaintiffs Devin Terrell and Nesha Shedd and Ten Thousand

1 Dollars and Zero Cents (\$10,000.00) for Plaintiff Susan Bustos are reasonable in light of the risks
2 and burdens undertaken by the Plaintiffs in this class action litigation.

3 **Settlement Administration Expenses**

4 14. The Agreement provides for Settlement Administration Costs to be paid in
5 an amount not to exceed \$12,000.00. The Declaration of the Settlement Administrator provides that
6 the actual claims administration expenses were \$9,200.00. The amount of this payment is reasonable
7 in light of the work performed by the Settlement Administrator.

8 **II.**

9 **ORDERS**

10 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

11 1. The Class is certified for the purposes of settlement only. The Settlement
12 Class is hereby defined to include:

13 All non-exempt employees who are or previously were employed by Defendant and
14 performed work in California during the period of September 23, 2017 to January
15 18, 2023.

16 2. There are 337 members of the Class. Every person in the Class who did not
17 opt out is a Settlement Class Member. After providing Notice to the Class, there are two opt-outs
18 to the Settlement.

19 3. The Agreement is hereby approved as fair, reasonable, adequate, and in the
20 best interest of the Class. The Parties are ordered to effectuate the Settlement in accordance with
21 this Order and the terms of the Agreement.

22 4. Defendant shall fund the Gross Settlement Amount on the Funding Date. In
23 exchange the Class Members shall release the “Released Parties” from the “Released Class Claims”
24 and the “Aggrieved Employees” shall release the “Released Parties” from the “Released PAGA
25 Claims.”

26 a. The “Released Parties” means Defendant and any parent, subsidiary,
27 affiliate, predecessor or successor, and all agents, employees, officers, directors and attorneys
28 thereof.

1 b. The “Released Class Claims” are defined as any and all claims, debts,
2 liabilities, demands, obligations, penalties, premium pay, guarantees, costs, expenses, attorney’s
3 fees, damages, actions or causes of action of whatever kind or nature, whether known or unknown,
4 contingent or accrued, under any legal theory under federal and state law for any alleged failure to
5 pay all wages due (including minimum wage and overtime wages), failure to pay for all hours
6 worked (including off-the clock and on-call work), failure to provide meal and authorize and permit
7 rest periods, short/late meal and rest periods, failure to relieve of all duties during meal and rest
8 periods, failure to reimburse business expenses, failure to provide or accurately calculate sick pay,
9 failure to timely pay wages and final wages, failure to furnish accurate wage statements including
10 claims derivative and/or related to these claims, liquidated damages, and conversion of wages
11 through the Class Period. This Release shall include, claims that were raised, or that reasonably
12 could have been raised based on the facts and allegations in the Complaint (after amended pursuant
13 to Paragraph 1.5, above). This Release shall include all claims and theories arising under the
14 applicable regulations, Wage Orders and Labor Code, as well as claims under Business and
15 Professions Code section 17200 *et seq.*, based on violations of the above Labor Code provisions.
16 This release shall apply to all claims arising at any point during the Class Period. This release
17 expressly excludes any claims for penalties arising under PAGA which are to be separately released
18 by Plaintiffs, as agents and proxies of the LWDA, and the LWDA.

19 c. The “Aggrieved Employees” are defined as all non-exempt
20 employees who are or previously were employed by Defendant and performed work in California
21 during the period of July 19, 2020 to January 18, 2023.

22 d. The “Released PAGA Claims” are defined as all PAGA claims
23 alleged in the operative complaint and Plaintiff’s PAGA notice to the LWDA which occurred during
24 the PAGA Period, and expressly excluding all other claims, including claims for vested benefits,
25 wrongful termination, unemployment insurance, disability, social security, workers’ compensation,
26 and PAGA claims outside of the PAGA Period.

27 5. Class Counsel are awarded attorneys’ fees in the amount of \$425,000.00
28 comprised of attorneys’ fees equal to one-third (1/3) of the Gross Settlement Amount, or Four

1 Hundred Thousand Dollars and Zero Cents (\$400,000.00) and reimbursement of costs and expenses
2 in the amount of Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00). Class Counsel shall
3 not seek or obtain any other compensation or reimbursement from Defendant, Plaintiff, or members
4 of the Class.

5 6. The payment of the Class Representative Service Awards to the Plaintiffs in
6 the amounts of \$5,000.00 to Plaintiff Devin Terrell, \$5,000.00 to Plaintiff Nesha Shedd and
7 \$10,000.00 to Plaintiff Susan Bustos are approved.

8 7. The payment of \$9,200.00 to the Settlement Administrator for Settlement
9 Administration Costs is approved.

10 8. The PAGA Civil Penalty Payment of \$60,000.00 is hereby approved as fair,
11 reasonable, adequate, and adequately protects the interests of the public and the LWDA. Further,
12 the Court finds that Plaintiff and Class Counsel negotiated the PAGA Civil Penalty Payment at
13 arms-length, absent of any fraud or collusion.

14 9. Class Members must cash their checks within 180 days after the date of
15 mailing. For Class Members who do not cash their Individual Class and/or Individual PAGA
16 Payment checks within the check-cashing deadline, the Administrator will transmit the funds from
17 said checks to the Children Advocacy Institute (CAI), a cy pres.

18 10. Final Judgment is hereby entered in this action. The Final Judgment shall
19 bind each Participating Class Member.

20 11. Final Judgment shall also bind Plaintiffs, acting on behalf of the State of
21 California and all PAGA Members, pursuant to PAGA.

22 12. The Court further finds and determines that Class Counsel satisfied California
23 Labor Code § 2699(1)(2) by giving the LWDA notice of the proposed Settlement of claims arising
24 under PAGA on March 6, 2023, and again on October 25, 2023.

25 13. The Court orders Class Counsel to comply with California Labor Code §
26 2699(1)(3) by providing the LWDA a copy of this order within ten (10) calendar days of the Court's
27 entry of this Order.

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1 14. The Agreement is not an admission by Defendant, nor is this Final Approval
2 Order and Judgment, a finding of the validity of any claims in the Action or of any wrongdoing by
3 Defendant. Neither this Final Approval Order, the Settlement, nor any document referred to herein,
4 nor any action taken to carry out the Settlement is, may be construed as, or may be used as an
5 admission by or against Defendant of any fault, wrongdoing, or liability whatsoever. The entering
6 into or carrying out of the Agreement, and any negotiations or proceedings related thereto, shall not
7 in any event be construed as, or deemed to be evidence of, an admission or concession with regard
8 to the denials or defenses by Defendant and shall not be offered in evidence in any action or
9 proceeding against Defendant in any court, administrative agency or other tribunal for any purpose
10 as an admission whatsoever other than to enforce the provisions of this Final Approval Order and
11 Judgment, the Settlement, or any related agreement or release. Notwithstanding these restrictions,
12 any of the Parties may file in the Action or in any other proceeding this Final Approval Order and
13 Judgment, the Agreement, or any other papers and records on file in the Action as evidence of the
14 Settlement to support a defense of res judicata, collateral estoppel, release, or other theory of claim
15 or issue preclusion or similar defense as to the claims being released by the Settlement.

16 15. Notice of entry of this Final Approval Order and Judgment shall be given to
17 Class Counsel on behalf of Plaintiffs and all Class Members. It shall not be necessary to send notice
18 of entry of this Final Approval Order and Judgment to individual Class Members and the Final
19 Approval Order and Judgment shall be posted on Settlement Administrator's website as indicated
20 in the Class Notice.

21 16. After entry of Final Judgment, the Court shall retain jurisdiction to construe,
22 interpret, implement, and enforce the Settlement, to hear and resolve any contested challenge to a
23 claim for settlement benefits, and to supervise and adjudicate any dispute arising from or in
24 connection with the distribution of settlement benefits.

25 17. The Court sets a Case Management Conference RE: Settlement Compliance
26 for _____, at _____. A Declaration RE: Settlement Compliance and Amended
27 Judgment shall be filed five (5) days prior to the hearing.

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1 18. If the Settlement does not become final and effective in accordance with the
2 terms of the Settlement, resulting in the return and/or retention of the Gross Settlement Amount to
3 Defendant consistent with the terms of the Settlement, then this Final Approval Order and Judgment,
4 and all orders entered in connection herewith shall be rendered null and void and shall be vacated.

5 **IT IS SO ORDERED.**

6 DATED: _____, 2023
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9 _____
10 Hon. Evelio Grillo
11 JUDGE OF THE SUPERIOR COURT
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