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Attorneys for Plaintiffs Angelyna Celio, Matthew Lytle, Robert Martin, and Donell Fort on behalf of themselves and all others similarly situated

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

ANGELYNA CELIO, MATTHEW LYTLE,
ROBERT MARTIN, and DONELL FORT,
on behalf of themselves and others similarly
situated

Plaintiffs,

v.

AIR INTERNATIONAL US, INC., a
Delaware Corporation; and DOES 1
Through 10, inclusive,

Defendants.

Case No. RG21098764

ASSIGNED FOR ALL PURPOSES TO:

The Honorable James Reilly
Department 25

CLASS AND REPRESENTATIVE ACTION

**DECLARATION OF ISAM C. KHOURY IN
SUPPORT OF MOTION FOR ORDER
GRANTING PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT,
CONDITIONAL CERTIFICATION,
APPROVAL OF CLASS NOTICE, AND
SETTING A FINAL APPROVAL HEARING
DATE**

Hearing Information

Date: August 16, 2023

Time: 3:00 p.m.

Dept: 25

Judge: Hon. James Reilly

Reservation No: 405363008773

Complaint filed: May 10, 2021

Trial Date: Not Set

1 I, Isam C. Khoury, declare as follows:

2 1. I am a Founding Partner in the law firm Cohelan Khoury & Singer, co-counsel
3 of record for Plaintiffs Angelyna Celio, Matthew Lytle, Robert Martin, and Donell Fort. The
4 following facts are within my personal knowledge and I could and would competently testify
5 to them.

6 2. I am a 1973 Hastings School of Law graduate and was admitted to the California
7 State Bar in 1974 and am admitted to practice in all state courts in California and in the all
8 federal courts in California, as well as the First Circuit Court of the State of Hawaii and the
9 United States Court of Appeals for Sixth Circuit.

10 3. In 1981, Timothy D. Cohelan and I formed Cohelan & Khoury, a Partnership of
11 Professional Law Corporations, and within a few years began to focus on class actions. Cohelan
12 & Khoury became Cohelan Khoury & Singer in 2009. Our firm represents plaintiffs in class and
13 representative action litigation, including wage and hour, labor and employment, antitrust,
14 consumer protection, construction defect and other public interest class and representative
15 actions.

16 4. I, along with Partner Diana M. Khoury, have been selected by our peers based on
17 ethics, experience and reputation as Super Lawyers in Civil Litigation by the Southern
18 California Super Lawyers Magazine for the years 2012 through the present. Michael D. Singer,
19 Managing Partner, was named to the Daily Journal 2012, 2013, and 2018 list of Top California
20 Labor and Employment Attorneys and selected to the Southern California Super Lawyers in
21 2010, 2012-2019. Mr. Singer was admitted as a fellow to the College of Labor and Employment
22 Attorneys in 2020. I am AV – Preeminent rated by Martindale-Hubbell, as are many attorneys
23 in our firm.

24 5. Cohelan Khoury & Singer has been certified by the State Bar of California to
25 provide the Mandatory Continuing Legal Education activity entitled “Litigating California
26 Class Actions” and has conducted MCLE certified seminars on this topic. Senior Partner,
27 Timothy D. Cohelan, is the author of Cohelan on California Class Actions (1997-2022,
28 updated annually), part of Thomson Reuters Expert Series updated annually. Michael D. Singer

1 is a contributing author on the CEB publication California Wage and Hour Law: Compliance
2 and Litigation (2010-2022 updated annually), in which he wrote the opening chapter overview
3 on California Wage and Hour laws, including the public policy underpinnings for those laws,
4 and the Private Attorneys General Act ("PAGA") Claim chapter. He is also a contributing
5 author to the CEB Practitioner (2020), including guidelines for oral argument and forms for
6 PAGA litigation. Mr. Singer has served as a columnist for the California State Bar, Litigation
7 Section on wage and hour litigation and has contributed articles on wage and hour and class
8 action issues through the years to numerous California publications.

9 6. Prior to COVID-19, Mr. Singer typically lectured several times per year for
10 continuing education courses on wage and hour and class action issues at events in San Diego,
11 Orange County, Los Angeles, and San Francisco. For over twelve years, he has served as wage
12 and hour amicus co-chair and liaison for the California Employment Lawyers Association,
13 drafting, reviewing, and coordinating amicus filings on wage and hour issues in the California
14 Supreme Court and Courts of Appeal. He has been engaged in the practice of labor and
15 employment law since 2000, handling well over 300 wage and hour class and PAGA actions
16 and several individual labor cases. He has litigated several types of employment actions,
17 including complex ERISA employee welfare benefit plan cases, as well as wage and hour class
18 actions before Federal and State Courts in California. In 2014, Mr. Singer tried a wage and
19 hour class action involving claims for illegally deducted wages and unreimbursed expenses.
20 *Dilts v Penske Logistics LLC, Inc.* Mr. Singer successfully appealed the trial court ruling in
21 *Dilts* finding state laws preempted by the FAAAA for truck drivers. Mr. Singer has
22 participated in over 50 appellate cases and argued writs and appeals before several California
23 District Courts of Appeal, arguing for plaintiffs on rehearing in *Brinker International Inc. v.*
24 *Superior Court* before the Fourth District Court of Appeal, as well as federal appeals in the
25 Second, Third, and Ninth Circuit Courts of Appeals. In addition, Mr. Singer has drafted
26 numerous appellate briefs as the appellant, respondent, or amicus curiae in employment class
27 and individual actions. As co-Class Counsel in *Brinker Restaurant Corp. v. Superior Court*
28 [formerly reported at (2008)165 Cal.App.4th 25], Mr. Singer argued before the Fourth District

1 Court of Appeal in May 2008 on transfer from the California Supreme Court, and co-authored
2 the successful Petition for Review. My firm has successfully tried class cases, obtained
3 appellate reversals of class certification denials (*Hicks v. Kaufman and Broad*, (2001) 89
4 Cal.App.4th 908), certified multiple wage and hour class.

5 7. As a part of our overall firm philosophy lawyers perform community service
6 and pro bono work. Firm volunteer work includes service through Legal Aid at Work, San
7 Diego Volunteer Lawyer Program, the San Diego County Bar Foundation and Consumer
8 Attorneys of San Diego. I am a past recipient of the Wiley W. Manuel Award for Pro Bono
9 Service. Mr. Singer has served on the Legal Aid at Work Board of Directors since 2011. Mr.
10 Cohelan served as the Chair of the San Diego Volunteer Lawyers Program from 2015-2018,
11 and currently sits on the Board as past Chair. He completed 24 years of volunteer judicial
12 service as a Judge Pro Tem of the San Diego Superior Court. Since admission to the California
13 Bar, Partner Diana M. Khoury has been a member of the San Diego County Bar Association,
14 Consumer Attorneys of San Diego, Consumer Attorneys of California, and American
15 Association for Justice serving and chairing various committees through the years for these
16 organizations. For six years from 2010 through 2015, Ms. Khoury served on the Board of
17 Directors for Consumer Attorneys of San Diego. Since 2013, Ms. Khoury actively serves on
18 the Board of Directors for the San Diego County Bar Foundation, the 501(c)(3) charitable arm
19 of the San Diego County Bar Association providing access to justice to the underserved and
20 impoverished in the San Diego County region. Our firm's recent pro bono victories include a
21 settlement which prohibits the City of San Diego from targeting homeless people for illegal
22 lodging tickets under Penal Code Section 467(j). (*Spencer v. City of San Diego*, USDC Case
23 No 04CV-2314 BEN (WMC).) The *Spencer* settlement had the effect of increasing the number
24 of available shelter beds in San Diego.

25 8. Cohelan Khoury & Singer has been certified Class Counsel in the following
26 contested proceedings: *Aguilar v. Atlantic Richfield, et al.*, San Diego County Superior Court
27 Case No. 00700810; *Andino v. Kaiser Foundation Hospitals*, Alameda County Superior Court
28 Case No. RG11580548; *Arellano, et al. v. Container Connection of Southern California, Inc.*,

1 Los Angeles County Superior Court Case No. BC500675; *BANK OF AMERICA WAGE AND*
2 *HOOR EMPLOYMENT PRACTICES LITIGATION*, United States District Court, District of
3 Kansas MDL Case No. 2138 (FLSA Condition Certification); *Czuchaj v. Conair Corporation*,
4 United States District Court, Southern District of California Case No. 13CV1901; *Dilts, et al.*
5 *v. Penske Logistics, L.L.C., et al.*, United States District Court, Southern District of California
6 Case No. 08CV0318; *Englert, et al. v. AT&T Wireless Services, Inc., et al.*, Circuit Court of the
7 Second Circuit, State of Hawaii Case No. 02-1-0074; *Evans v. Washington Mutual Bank*,
8 Orange County Superior Court Case No. 02CC15415; *Filion v. Ethan Allen Retail Inc.*, United
9 States District Court, Southern District of California Case No. 05CV2340; *Gerard v. Les*
10 *Schwab Tire Centers of California, Inc.*, Sacramento County Superior Court Case No. 2007-
11 30000003; *Grana, et al. v. PICO Enterprises, Inc. dba Phyle Inventory Control Specialist and*
12 *PICS L.A.S.C.* Case No. BC472891; *Gutierrez v. Save Mart Supermarkets* San Mateo Superior
13 Case No. CIV530955; *Wilcox v Albertsons*, San Diego County Superior Court Case No.
14 GIC833922; *Gonzalez, et al. v. Freedom Communications, Inc. d/b/a The Orange County*
15 *Register*, Orange County Superior Court Case No. 03CC08756; *Graham, et al. v. Overland*
16 *Solutions, Inc.*, United States District Court, Southern District of California Case No.
17 10CV0672 (FLSA Conditional Certification); *Hicks v. Kaufman and Broad Home Corp.*, Los
18 Angeles County Superior Court Case No. B198414; *Hohnbaum, et al. v. Brinker Restaurant*
19 *Corporation, et al.*, San Diego County Superior Court Case No. GIC834348; *KEMP, et al. v.*
20 *CSEA, et al.*, Circuit Court of the First Circuit, State of Hawaii Case No. 98-3815-08;
21 *LIBERTY MUTUAL OVERTIME CASES*, Los Angeles County Superior Court Case No. JCCP
22 4234; *Mitchell, et al. v. Acosta, Inc., dba Acosta Sales and Marketing Company*, United States
23 District Court, Central District of California Case No.11CV07196 (FLSA Conditional
24 Certification); *Santana v. Rady Children's Hospital-San Diego*, San Diego County Superior
25 Court Case No. 37-2014-00022411; *Schaffer v. Rady Children's Hospital-San Diego*, San
26 Diego County Superior Court Case No. 337-2015-00022978; *Schneider, et al. v. Catholic*
27 *Healthcare West*, San Francisco County Superior Court Case No. CGC-10-506243; *Salucci v.*
28 *Amada Senior Care, Inc.*, Orange County Superior Court Case No. 37-2015-00778081; *Smith*

1 v. *California Pizza Kitchen*, San Diego County Superior Court Case No. 37-2008-00083992;
2 STEROID HORMONE PRODUCT CASES, Los Angeles County Superior Court Case No.
3 JCCP 4363; *Stevenson Aibangbee v. Victoria Apartments, et al.*, Los Angeles County Superior
4 Court Case No. BC299498; *Swift v. Liebert Corp.*, Orange County Superior Court Case No.
5 00CC04588; *Sylvia, et al. v. Wells Fargo Home Mortgage, Inc.*, Orange County Superior Court
6 Case No. 03CC05747; *Vaquero v. Ashley Furniture Industries, Inc., et al.*, United States
7 District Court, Central District of California Case No. 12CV8590; *Vaquero v. Stoneledge*
8 *Furniture LLC*, Los Angeles County Superior Court Case No. BC522676; *Vazquez v. Kraft*
9 *Heinz Foods Company*, United States District Court, Southern District of California Case No.
10 16-CV-02749; *Watson v. Raytheon Company*, United States District Court, Southern District of
11 California Case No. 10CV0634; and *Weigle v. FedEx Ground Package System, Inc.*, United
12 States District Court, Southern District of California Case No. 06CV1330, among others, as
13 well as being appointed Class Counsel in connection with well over 200 class action
14 settlements.

15 9. As Class and PAGA Representative Counsel, Cohelan Khoury & Singer has
16 actively commenced, prosecuted and concluded numerous state and federal class and
17 representative actions. Since 2016, Cohelan Khoury & Singer has played a central role in the
18 resolution of over 200 such cases, including the following, which have received court approval:
19 (a) *Arellano, et al. v. Container Connection of Southern California, Inc.*, Los Angeles County
20 Superior Court, Case No. BC500675, Hon. Anne I. Jones; (b) *Castro v. Home Depot U.S.A.,*
21 *Inc.*, Los Angeles County Superior Court, Case No. BC577885, Hon. Elihu M. Berle; (c)
22 *Czuchaj v. Conair Corporation*, United States District Court, Southern District of California,
23 Case No. 13-CV-1901 BEN, Hon. Roger T. Benitez; (d) *Gardiner v. TSYS*, United States
24 District Court, Central District of California, Case No. 18-cv-00415, Hon. David O. Carter; (e)
25 *Grana v. PICO Enterprises, Inc.*, Los Angeles County Superior Court, Case No. BC472891,
26 Hon. Stephanie M. Bowick; (f) *Gutierrez v. Save Mart Supermarkets*, San Mateo County
27 Superior Court, Case No. CIV530955, Hon. Marie S. Weiner; (g) *Hernandez v. Workforce*
28 *Enterprises WFE, Inc.*, Los Angeles County Superior Court Case No. BC590913, Hon. Elihu

1 M. Berle; (h) *Hicks v. Poway Academy of Hair Design, Inc.*, San Diego County Superior Court,
2 Case No. 2014-00026517, Hon. Ronald L. Styn; (i) *Hubbard v. Caliber Home Loans, Inc.*,
3 Orange County Superior Court, Case No. 2018-01017838; (j) *Klein v. Loomis Armored US,*
4 *LLC*, San Bernardino County Superior Court, Case No. CIVDS1704547, Hon. David Cohn; (k)
5 *Laureano v. The Art of Shaving*, Los Angeles County Superior Court, Case No. BC550093,
6 Hon. Amy D. Hogue; (l) *Lopez, et al. v. Management & Training Corporation, et al.*, United
7 States District Court, Southern District of California, Case No. 17-CV-010624 JM, Hon.
8 Jeffrey T. Miller; (m) *Magdaleno v. Shelly Automotive, LLC*, Orange County Superior Court
9 Case No. 2013-0043958, Hon. Kim. G. Dunning; (n) *McGrath, et al. v. Wyndham Resort*
10 *Development Corporation, et al.*, United States District Court, Southern District of California,
11 Case. No. 15-CV-1631 JM, Hon. Jeffrey T. Miller; (o) *Mena v. Wolfgang Puck Catering*, Los
12 Angeles County Superior Court Case No. BC582743, Hon. John Shepard Wiley, Jr.; (p)
13 *Morales v. The Los Angeles Country Club*, Los Angeles County Superior Court, Case No.
14 BC566493, Hon. William F. Highberger; (q) *Nijmeh v. Bon Appetit Management Company,*
15 *Inc.*, Santa Clara County Superior Court, Case No. 16CV294127, Hon. Thomas E. Kuhnle; (r)
16 *Plascencia v. Aramark Services, Inc.*, Santa Clara County Superior Court, Case No. 2015-1-
17 CV-288310, Hon. Brian C. Walsh; (s) *Plimpton v. Gordon Trucking, Inc.*, San Bernardino
18 County Superior Court, Case No. CIV-DS-1511918, Hon. Donald Alvarez; (t) *Raya v.*
19 *Amazon*, USDC, Northern District of California, Case No. 15-CV-02005 MMC, Hon. Maxine
20 M. Chesney; (u) *Rivas v. ESA Management*, USDC, Central District of California, Case No.
21 14-CV-5767, Hon. Dale S. Fischer; (v) *Rodriguez v Healthcare Partner Medical Group, Inc.*,
22 Los Angeles County Superior Court, Case No. BC541313, Hon. Kenneth Freeman; (w) *Ryan v.*
23 *Dignity Health*, Sacramento County Superior Court Case No. 2013-00147371, Honorable Alan
24 G. Perkins; (x) *Santana v. Rady Children's Hospital-San Diego*, San Diego County Superior
25 Court Case No. 37-2014-00022411, Hon. Joel R. Wohlfeil; (y) *Schaffer v. Rady Children's*
26 *Hospital-San Diego*, San Diego County Superior Court Case No. 37-2015-00022978; Hon.
27 Joel R. Wohlfeil; (z) *Schneider v. Catholic Healthcare West*, San Francisco County Superior
28 Court, Case No. CGC-10-506243, Hon. Angela Bradstreet; (aa) *Schwartz v Bank of the West*,

1 San Francisco County Superior Court, Case No. CGC-14-538955, Hon. Harold E. Kahn; (bb)
2 *Syed v. M.I. Swaco*, USDC, Eastern District of California, Case No. 12-CV-01718 DAD, Hon.
3 Dale A. Drozd; (cc) *Vaquero, et al. v. Stoneledge Furniture, LLC*, Los Angeles County
4 Superior Court Case No. BC522676, Hon. Elihu M. Berle; (dd) *Vazquez v. Kraft Heinz Foods*
5 *Company*, USDC, Southern District of California Case No. 16-CV-02749, Hon. William Q.
6 Hayes; (ee) *Walsh v. Cedars-Sinai Medical Center*, Los Angeles County Superior Court Case
7 No. BC487290, Hon. William F. Highberger; *Popal v. Wells Fargo Bank National Association*,
8 San Diego County Superior Court Case No. 37-2020-00038101; Hon. Gregory W. Pollock;
9 among many others.

10 10. Plaintiff seeks preliminary approval of a \$600,000 non-reversionary wage and
11 hour class and Private Attorney Generals' Act ("PAGA") settlement for an estimated 859 non-
12 exempt employees who worked for Air International (US), Inc. ("Defendant" or "AIUS") in
13 the State of California, at any time from May 10, 2017 through the earlier of Ninety (90)
14 calendar days after the Parties' December 8, 2022 mediation date or the date a signed order
15 preliminarily approving the Settlement is signed ("Class Period"). The proposed Settlement is
16 memorialized in the Class Action and PAGA Representative Action Settlement Agreement and
17 Release of Claims ("Settlement Agreement" or "SA"), attached as **Exhibit 1**, and the
18 Addendum to Class Action and PAGA Representative Action Settlement and Release of
19 Claims ("Addendum"), attached as **Exhibit 2**.

20 11. AIUS is a division of Air International Thermal Systems, founded in Australia
21 in 1967. AIUS designs, develops, and supplies thermal systems, and offers HVAC, engine
22 cooling, and thermal control systems to the automotive market. AIUS has its primary office in
23 Auburn Hills, Michigan. AIUS didn't have any employees in California until January 2020.

24 12. Plaintiff Angelyna Celio was employed from June 2020 through January 2021
25 and worked near the start of the production line wrapping HVAC condensers and evaporators
26 with seals. Plaintiff Matthew Lytle was employed from June 2020 through December 2020 in
27 the position of assembly line crew employee building HVAC units. Plaintiff Robert Martin was
28 employed from October 2020 through March 2021 as warehouse lead, driving a forklift,

1 loading and unloading trucks, and generally keeping the production line moving. Plaintiff
2 Donell Fort was employed from March 2020 through December 2020 as a line tech,
3 responsible for assembling HVAC units and boxes for a lineup.

4 13. The Class Members are all hourly, non-exempt employees of Defendant in
5 California from May 10, 2017 through the earlier of Ninety (90) days after the Parties
6 December 8, 2022 mediation or the date a signed order preliminarily approving the Settlement
7 is filed.

8 14. The approximately 859 Class Members worked an estimated 22,400
9 workweeks.

10 15. The Aggrieved Employees are all hourly, non-exempt employees of Defendant
11 in California from May 10, 2020 through the earlier of Ninety (90) days after the Parties
12 December 8, 2022 mediation or the date a signed order preliminarily approving the Settlement
13 is filed ("PAGA Period").

14 16. During the PAGA Period, 850 allegedly aggrieved employees worked 11,039
15 pay periods.

16 17. Class Members and Aggrieved Employees worked for AIUS on various parts of
17 a production line, assembling heating, ventilation, and HVAC units.

18 18. My office formally requested Plaintiffs' personnel files, which AIUS produced.

19 19. On March 16, 2021, my office filed a PAGA Notice with the Labor and
20 Workforce Development Agency ("LWDA") on behalf of Plaintiffs Celio and Lytle, advising
21 of their intent to pursue claims on behalf of all allegedly Aggrieved Employees. On April 2,
22 2021, my office filed a PAGA Notice with the LWDA on behalf of Plaintiffs Martin and Fort,
23 advising of their intent to pursue claims on behalf of the allegedly Aggrieved Employees.

24 20. On May 10, 2021, my office filed the initial Class Action Complaint on behalf
25 of Plaintiffs, asserting claims for: (1) failure to pay minimum, regular, or overtime wages for
26 all hours worked (Cal. Labor Code §§ 510, 1194, 1194.2, 1197.2); (2) failure to provide
27 compliant meal periods (Cal. Labor Code §§ 226.7, 512, and IWC Wage Orders); (3) failure to
28 authorize and permit paid rest periods (Cal. Lab. Code § 226.7 and IWC Wage Orders; (4)

1 failure to provide accurate itemized wage statements (Cal. Labor Code § 226); (5) failure to
2 timely pay all wages due at separation (Cal. Labor Code § 203); (6) failure to reimburse
3 business expenses (Cal. Lab. Code § 2802); violation of the unfair competition law (Cal.
4 Business & Professions Code §§17200, *et seq.*).

5 21. On June 7, 2021, my office filed a First Amended Class Action Complaint and
6 Representative Action ("FAC") on behalf of Plaintiffs, adding claims for PAGA civil penalties
7 for all underlying Labor Code claims alleged in their initial complaint (specifically, causes of
8 action 8-13 of the FAC). Additionally, the FAC sought PAGA civil penalties for failure to
9 maintain a reasonably comfortable temperature and failure to provide one day's rest in seven
10 (causes of action 14-15 of the FAC).

11 22. My office served AIUS with formal discovery on behalf of Plaintiff Celio
12 including special interrogatories. The Parties subsequently engaged in meet and confer efforts
13 and decided to attempt to resolve Plaintiffs' claims through mediation.

14 23. The Parties agreed to mediate and participated in mediation on December 8,
15 2022 with Steve Rottman. In preparation for mediation, I requested and AIUS produced
16 documents and data for the Class Period and PAGA Period, including: (1) employee
17 handbooks and policies relevant to Plaintiffs' claims; (2) number of current and former
18 putative class members and Aggrieved Employees; (3) aggregate number of workweeks; (4)
19 aggregate number of pay periods; (5) timekeeping and payroll records for twenty-five percent
20 of the Class; (6) amount of meal and rest period premium wages paid; (7) itemized wage
21 statements; (8) records showing total wages paid, including overtime, double-time, and bonus
22 wages; and (9) average hourly rate of pay for Class Members.

23 24. Plaintiffs contended that AIUS's rounding practice resulted in systemic
24 underpayment of wages. Although AIUS's timekeeping system captures the actual minutes
25 worked by employees, AIUS rounds the actual hours worked, resulting in a failure to pay all
26 wages for all hours worked. This rounding policy was not neutral in application and resulted in
27 a cumulative loss of time and pay to the Plaintiffs, Class Members, and Aggrieved Employees.

28 25. AIUS contended its rounding practice was for the convenience of the employees

1 and that employees were specifically instructed not to work during the pre-shift window.
2 Accordingly, AIUS contended its rounding system operated neutrally and did not result in any
3 systematic underpayment of its employees.

4 26. Plaintiffs also contended that AIUS failed to include all compensation when
5 calculating the regular rate, resulting in the underpayment of wages, including overtime wages,
6 meal premiums and sick pay. Additionally, Plaintiffs contended that AIUS did not pay for all
7 hours worked off-the-clock including time spent by Plaintiffs and putative class members
8 undergoing the following mandatory unpaid tasks: (1) daily pre-shift mandatory COVID-19
9 screenings; (2) cleaning up around the dumpster each day, and; (3) filling propane tanks at
10 least twice a week. For mediation, Plaintiffs estimated an average of one hour of unpaid off-
11 the-clock time per week per employee.

12 27. AIUS contended that it did not require employees to perform any work off-the-
13 clock and had a policy informing employees that all hours worked must be accurately recorded.
14 AIUS also argued that certification would be very problematic given its policy against working
15 off-the-clock and individualized issues regarding whether any such work was performed.

16 28. Plaintiffs also contended that employees were typically scheduled for 10.5 hour
17 shifts and frequently worked in excess of 12 hours per workday. Due to the demands of the job,
18 employees were often not permitted to take their meal breaks until after the fifth hour of work
19 per their manager's instruction to keep working to make their production goals and to take their
20 meal breaks later. Although AIUS has a compliant written policy, employee records showed
21 that 98.8% of shifts between 10-12 hours did not have a recorded second meal period.
22 Additionally, on shifts in excess of 10 hours or more, Plaintiffs alleged that AIUS failed to
23 provide a third duty-free rest break.

24 29. AIUS contended that employees were properly informed of their right to meal
25 and rest periods under California law and were not prevented from taking timely and off-duty
26 breaks. AIUS argued that if employees reported late, short, or missed meal or rest breaks, they
27 were paid premium wages, as required under California law.

28 30. The overall percentage of unique meal break violations was 42.5%. Unique

1 meal break violations are defined as shifts with at least one of the following: 1) recorded 1st
2 meal break after the end of the 5th hour for shifts more than five (5) hours; (2) 1st meal break
3 less than 30 minutes for shifts greater than five hours; 3) no 1st meal break for shifts greater
4 than five (5) hours; or 4) no 2nd meal break for shifts greater than ten (10) hours.

5 31. In conjunction with a review of the sampled data, Plaintiffs' consultant also
6 analyzed whether the Labor Code section 226.7 meal period premium payments and sick pay
7 wages were made using the appropriate hourly rate pursuant to *Ferra v. Loews Hollywood*
8 *Hotel, LLC* (2021) 11 Cal.5th 858. This required determining how many shifts involved pay
9 periods in which shift premiums were recorded and/or sick pay was paid. The records revealed
10 that very few of the premium payments would qualify and that the aggregate "underpayment"
11 for meal period premiums extrapolated to the class totaled \$404. The aggregate underpayment
12 for sick pay wages extrapolated to the class totaled \$5,449.

13 32. With respect to Plaintiff's claims relating to missed second meal periods on
14 shifts of more than 10 hours, which amounted to an estimated 12.2% of all shifts analyzed, the
15 violation rate was found to be 98.8%. However, AIUS produced a compliant second meal
16 period policy and argued that employees could voluntarily waive their second meal period so
17 long as a compliant first meal period was provided.

18 33. Plaintiff also contended AIUS had a class wide policy which failed to authorize
19 or permit non-exempt employees to receive a third rest period of at least ten minutes for shifts
20 greater than ten (10) hours. Because rest breaks were not recorded, for mediation Plaintiffs
21 assumed a 100% violation rate for shifts more than 10 hours in length, which amounted to an
22 estimated 12.2% of all shifts analyzed by Plaintiff's consultant.

23 34. AIUS argued it followed California law at all times by authorizing and
24 permitting rest breaks, not discouraging employees from taking them, and that to the extent any
25 employees missed a break, it was voluntarily. AIUS produced a compliant rest break policy
26 which included the right to a third rest break on shifts of more than 10 hours in length. AIUS
27 also argued that certification would be very problematic given its compliant policies and the
28 fact that rest periods were not required to be recorded and that it would be entitled to individual

1 inquiries which would defeat class certification.

2 35. Plaintiffs also contended that AIUS failed to reimburse the putative class
3 members for all necessary business expenses incurred, in violation of Labor Code section
4 2802. Specifically, Plaintiffs had to use their personal cell phones to communicate with one
5 another for work-related purposes throughout the workday. Despite relying on employees to
6 use their personal cell phones to discharge their duties, AIUS do not reimburse the putative
7 class members for a reasonable portion of their monthly cell phone bills, thus unlawfully
8 shifting a portion of their overhead costs onto their workforce. AIUS argued that its employees
9 were not required to use personal cell phones for work and that AIUS provided employees with
10 two-way radios to communicate while at work.

11 36. Plaintiffs also contended, based on the underlying claims, AIUS's wage
12 statements did not display all required information, including actual hours worked, and rates
13 earned for all hours worked. Plaintiffs also alleged derivative penalties pursuant to Labor Code
14 section 203 for separated employees who were not paid all wages owed at termination. Finally,
15 Plaintiffs sought PAGA civil penalties related to the labor code violations alleged and civil
16 penalties for failure to maintain a reasonably comfortable temperature.

17 37. With significant investigation, research, and consultant's analysis of the
18 voluminous data, and a class-wide damages model, the Parties attended mediation with Steve
19 Rottman on December 8, 2022, and engaged in serious and informed arm's-length
20 negotiations.

21 38. By the end of the day, the Parties reached an agreement in principal on a
22 proposed settlement. Thereafter the Parties signed a Memorandum of Understanding. The
23 Parties subsequently negotiated additional settlement terms and entered into a formal
24 Agreement.

25 39. AIUS will pay the Gross Settlement Amount ("GSA") of \$600,000, which
26 includes: (a) attorneys' fees of \$200,000 (one-third of GSA) to compensate Class Counsel for
27 all work performed and remaining to be performed securing final Court approval; (b)
28 reasonable litigation costs; (c) Class Representative Service Award payments of \$7,500.00 to

1 each of the Plaintiffs for work as a Class representative; (d) \$25,000.00 in PAGA Payment
2 (with \$18,750/75% payable to the LWDA, and \$6,250/25% payable to the Aggrieved
3 Employees); and (e) Settlement Administration Costs not to exceed \$15,000. AIUS will pay
4 the employer's share of payroll taxes in addition to the GSA.

5 40. Plaintiffs consented to apportionment of attorneys' fees: 60% to Cohelan
6 Khoury & Singer, and 40% to Stonebrook Law.

7 41. After Court-approved deductions, the estimated Net Settlement Amount
8 ("NSA") of \$330,000 will be distributed pro-rata to Class Members based on the number of
9 Workweeks worked during the Class Period. There are approximately 22,400 Workweeks
10 during the Class Period. Class Members who do not opt out will receive an estimated \$14.73
11 for each Workweek worked during the Class Period.

12 42. Class Members employed during the PAGA Period will receive a share of the
13 \$6,250 in PAGA Payments based on number of Workweeks worked during the PAGA Period
14 whether they opt out or not.

15 43. No portion of the GSA will revert to AIUS under any circumstances. After 180
16 days of issuance, all uncashed checks will be sent to the State of California Controller,
17 Unclaimed Property Division, for further handling on behalf of the Class Member whose check
18 was voided.

19 44. Class Members who do not timely file a Request for Exclusion, will release all:

20 Claims alleged in Plaintiffs' Complaint and First Amended Complaint, as
21 well as all any and all claims, debts, liabilities, demands, obligations,
22 guarantees, costs, expenses, attorney's fees, damages, action or causes of
23 action of whatever kind or nature, whether known or unknown, contingent
24 or accrued, under any legal theory under federal and state law that were or
25 reasonably could have been brought based on the facts alleged in any
26 version of the complaints filed in the Action and in the LWDA Letters
27 submitted to the LWDA by Plaintiffs, regardless of theory of recovery,
28 including: claims under California Labor Code sections 201, 202, 203,
204, 206, 210, 218, 218.5, 226, 226.7, 227, 245 et seq., 510, 511, 512,
515, 517, 551-556, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800,
2802; the California IWC Wage Orders; the Fair Labor Standards Act (29
U.S.C. Section 201, et seq.); and California Business and Professions
Code section 17200, et seq.

1 45. CPT Group (the Settlement Administrator) will search the National Change of
2 Address database, update Class Member addresses, perform skip-tracing, and mail the Notice
3 of Class Action Settlement (Settlement Notice) to each Class Member in AIUS' employment
4 records.

5 46. The Settlement Notice explains (1) how to participate in the Settlement without
6 submitting a claim; (2) dispute the basis of an Individual Settlement Payment; (3) object or opt
7 out; (4) the release to be given, (5) date of Final Approval hearing, and how to obtain further
8 information.

9 47. The method of distributing the Settlement is fair and reasonable and does not
10 give preferential treatment to any Class Member. The information used is readily available
11 from AIUS's records, and the Settlement Administrator can apply the formula fairly and
12 transparently.

13 48. Plaintiffs and their Counsel gave serious consideration to all facts and
14 arguments and concluded the Settlement is fair and reasonable. The proposed Settlement
15 reflects an excellent recovery for the Class and is well within the "ballpark" of reasonableness
16 and should be granted preliminary approval.

17 49. While Plaintiffs believe in the merits of their case, they recognize the inherent
18 risks of litigation and the benefit to the Class of receiving settlement funds immediately, and
19 not risking unfavorable decisions on class certification, the merits of the case, damages, or a
20 lengthy appeal.

21 50. Class Counsel investigated the claims and AIUS's defenses before filing PAGA
22 charges with the Labor and Workforce Development Agency. With discovery responses
23 outstanding, the Parties agreed to mediation. Thereafter, I requested, and Defendant produced,
24 policy documents, information, and data for a representative sample of the Class, aggregate
25 workweeks and pay periods, and average hourly rates, to allow liability for the claims to be
26 assessed and class-wide damages to be estimated. Proof of Class claims involving alleged
27 rounding, underpaid overtime wages, sick pay, and meal premiums, and meal period violations
28 is based largely on written policies and an analysis of time and pay records.

1 51. Extensive investigation and information exchanged gave the Parties a clear
2 understanding of the strengths and weaknesses of their positions before negotiations.

3 52. Defense counsel, Christian J. Rowley and Eric M. Lloyd of Seyfarth Shaw LLP,
4 a well-known and respected defense firm, are highly skilled defense attorneys who defended
5 their client vigorously throughout this case, including through mediation and subsequent
6 negotiations.

7 53. I believe the Settlement is fair, reasonable, and in the Class's best interest in
8 light of the monetary recovery, risks of certification/decertification, summary adjudication, the
9 lengthy process of establishing damages, delay and uncertainty of appeals, the substantial prior
10 settlement payments, and the risk releases obtained would be found enforceable.

11 54. I relied on similar documents and data as in *Munoz*, including time and pay
12 records for Class Members. I reviewed, organized, and analyzed all information, and worked
13 with experienced damages consultants to calculate class-wide damages through the date of
14 mediation.

15 55. Plaintiffs' "rounding" claim was based on AIUS's pay practices which Plaintiffs
16 alleged did not compensate the Class for all hours worked due to its non-neutral time
17 application. Additionally, AIUS's pay practices failed to include non-discretionary bonus
18 wages in the calculation of the regular rate for payment of overtime and sick pay wages, thus
19 underpaying both.

20 56. Furthermore, Plaintiffs contended that meal periods were not legally compliant,
21 being either late, short, or missed based on AIUS's time record. The total meal period
22 premiums paid by AIUS as demonstrated by the payroll data produced were credited in
23 Plaintiffs' damage analysis.

24 57. There are approximately 859 putative Class Members with approximately
25 22,400 workweeks during the Class Period. The number of Aggrieved Employees in the
26 PAGA Period is approximately 850, with an aggregate number of 11,039 pay periods. The
27 number of terminated or separated employees in the 3-year statute of limitations period for
28 Labor Code section 203 is approximately 527. The combined average rate of pay was reported

1 to be \$16.15 per hour.

2 58. Plaintiffs' derivative claims include failure to provide accurate itemized wage
3 statements, timely final wages, and PAGA violations.

4 **PENALTIES FOR POTENTIAL VIOLATIONS**

5 **Unpaid Wages: Time Rounding**

6 59. In preparation for mediation, Plaintiffs' damages consultant analyzed the 25%
7 sample of time and pay records, and determined that approximately 41.1% individuals were
8 underpaid, 23% were overpaid and 35.8% were neither underpaid nor overpaid. Plaintiffs'
9 consultant calculated the alleged "loss" sustained by Class Members totaled \$6,652.00 (357.90
10 "unpaid" hours x \$16.15 (average hourly rate = \$5,780.00 plus interest of \$872.00).

11 60. Defendant also argued that certification would be problematic, and that
12 Plaintiffs would be required to prove that employees were actually working during the
13 rounding windows and that this would create significant manageability issues and defeat
14 certification. Class counsel has had considerable experience litigating "rounding" claims
15 through appellate argument and was very familiar with potential defenses to certification. This
16 claim was discounted in light the potential certification hurdles and claimed defenses by 50%
17 to an exposure value of \$3,326.00.

18 **Unpaid Wages: Off-the-Clock**

19 61. For mediation, Plaintiffs assumed on hour of unpaid off-the-clock hours worked
20 per workweek per employee using the average hourly rate of pay of \$16.15 and the overtime
21 rate of \$24.23 for 74.8% of the pay periods (based on the time records produced by Defendant
22 for mediation). Plaintiffs' consultant calculated the estimated amount owed for unpaid wages
23 to be \$542,348.00.

24 62. Defendant argued that working off-the-clock was strictly prohibited by AIUS
25 and that Plaintiffs were not required to perform any duties unless clocked in. Again, Defendant
26 argued that certification would be problematic, and that Plaintiffs would be required to prove
27 on a class-wide basis that employees were working off-the-clock and under the control of the
28 employer, contrary to explicit instruction by AIUS to not perform any work off-the-clock and

1 accurately record all hours worked. This claim was discounted in light the potential
2 certification hurdles and claimed defenses by 75% to an exposure value of \$135,584.00.

3 **Unpaid Wages: Regular Rate**

4 63. The records revealed that very few of the premium payments would qualify and
5 that the aggregate “underpayment” for meal period premiums extrapolated to the class totaled
6 \$404. The aggregate underpayment for sick pay wages extrapolated to the class totaled \$5,449.
7 Plaintiffs’ consultant calculated that overtime wages were unpaid by approximately
8 \$163,669.00. Given the nature of this claim, a discount was not necessary.

9 **Labor Code § 226.7 Meal Period Premiums**

10 64. The overall percentage of unique meal break violations was 42.5%. Plaintiffs
11 also analyzed shifts between 10 and 12 hours to assess whether the records showed second
12 meal period violations, which amounted to an estimated 12.2% of all shifts analyzed, the
13 violation rate was found to be 98.8%. Meal premiums in the amount of \$160,145.00 paid by
14 AIUS were deducted from the total amount owed. This was discounted for certification hurdles
15 by 50% for a total of \$360,799.50.

16 **Labor Code § 226.7 Rest Period Claims**

17 65. Since rest periods are not required to be recorded, for purposes of negotiation at
18 mediation, Plaintiffs’ counsel assumed a violation rate of 100% for shifts over 10 hours. This
19 resulted in alleged exposure of \$235,192.45 (14,563 shifts x \$16.15)). Based on Plaintiffs’
20 experience and input from Defendant that it maintained compliant policies providing rest
21 periods, this amount was discounted by 90% to \$23,519.00. Proof of this claim was discounted
22 substantially because of the total lack of supportive time records and increased challenges to
23 establishing the merits of each employee's possible rest break claims, as well as the significant
24 hurdles in certifying a rest break claim.

25 **Labor Code § 2802 Claims**

26 66. Plaintiffs assumed a \$30 reimbursement was owed per employee per month in
27 the class period, which amount to approximately \$506,580.00. Given the difficulty in
28 quantifying the possible aggregate exposure and class certification hurdles, this claim was

discounted by 90% for a total of \$50,658.00.

Labor Code § 226 Wage Statement Penalties

67. The penalty claim was calculated as follows: 11,940 pay periods x \$50 = \$597,000.00. This claim, being derivative and, given the defenses available and the requirement that the underlying claims be certified and prevail at trial, was reduced by 90% to \$59,700.00.

Labor Code § 203 Penalties

68. There are 527 separated employees for a total exposure of \$2,093,718.00 (527 x 8.2 hours x \$16.15 x 30 days). Plaintiffs' counsel believed there was only a 25% probability of prevailing based on difficulties in certifying and proving the underlying violation and particularly showing willfulness and used a 75% discount to reach an estimated realistic exposure for the waiting time claim of \$418,743.66.

Labor Code § 2699 PAGA Penalties

69. There are 850 allegedly aggrieved employees and approximately 11,940 pay periods during the PAGA period. Using initial violation rates of \$100 for these pay periods, maximum penalties were estimated for all potential violations for a total of \$6,110,050 in PAGA penalties.

70. The Gross Settlement Amount of \$600,000.00 represents approximately 32.92% of the reasonable combined value of the claims, \$1,822,498.00 (Non-PAGA \$1,221,448.16 + PAGA \$611,050.00 = \$1,822,498.00).

71. The Individual Settlement Payment for each Class Member shall be calculated by dividing the number of Eligible Workweeks attributed to the Settlement Class Member during the Class Period by all Eligible Workweeks during the Class Period attributed to members of the Settlement Class, multiplied by the portion of the Net Settlement Amount that is not attributable to the PAGA Payment. If the Settlement Class Member is an Aggrieved Employee, then the Settlement Class Member shall also receive a share of the PAGA Payment. The Settlement Class Member's share of the PAGA Payment shall be proportionate to the number of Eligible Workweeks attributed to the Settlement Class Member during the PAGA

1 Period divided by all Eligible Workweeks attributed to Aggrieved Employees during the
2 PAGA Period. Settlement Payments are characterized as one-third (1/3) wages and two-thirds
3 (2/3) penalties and interest.

4 72. On the same date this motion and its exhibits are filed with the Court, they will
5 be served upon Defendant and provided to the Labor and Workforce Development Agency
6 ("LWDA") via the LWDA's website, using the appropriate intake form. Attached as **Exhibit 3**
7 is a true and correct copy of the LWDA confirmation of Receipt.

8 I declare under the penalty of perjury under the laws of the State of California the
9 foregoing is true and correct and this declaration is executed March 7, 2023, in San Diego,
10 California.

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13
14 Isam C. Khoury
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28

EXHIBIT 1

1 SEYFARTH SHAW LLP
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2 crowley@seyfarth.com
Eric M. Lloyd (SBN 254390)
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4 San Francisco, California 94105
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6 Attorneys for Defendant
Defendant AIR INTERNATIONAL (US) INC.

7 *(Additional Counsel Listed on Next Page)*
8

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF ALAMEDA

12 ANGELYN A CELIO, MATTHEW LYTLE,
13 ROBERT MARTIN, and DONELL FORT, on
behalf of themselves and others similarly situated
14 and aggrieved,

15 Plaintiffs,

16 v.

17 AIR INTERNATIONAL (US) INC., a Delaware
Corporation; and DOES 1 through 10, inclusive,

18 Defendants.
19

Case No. RG21098764

**CLASS ACTION AND PAGA
REPRESENTATIVE ACTION
SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

Class Action Complaint Filed: 5-10-21
First Amended Complaint Filed: 6-07-21

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12 Attorneys for Plaintiffs

ANGELYNA CELIO, DONELL FORT, MATTHEW LYTTLE and ROBERT MARTIN

1 This Class Action Settlement Agreement and Release of Claims (“Agreement”) is between (1)
2 Plaintiffs ANGELYNA CELIO, DONELL FORT, MATTHEW LYTLE and ROBERT MARTIN—
3 individually and on behalf of the Class Members and Aggrieved Employees defined below—and
4 (2) AIR INTERNATIONAL US, INC., subject to judicial approval, as provided below.

5 By this Agreement the Parties intend to settle the Action (defined below) and to fully, finally,
6 and forever resolve, discharge, and settle the Released Claims (defined below), subject to judicial
7 approval of the terms set forth herein. If this Agreement is not finally approved, or is otherwise nullified,
8 then the Parties shall return to their positions preceding this Agreement and Defendant shall retain all
9 rights to challenge the Plaintiffs’ claims and the certification of any class.

10 **1. DEFINITIONS**

11 For the purposes of this Agreement, the Parties define the following terms. Each defined term
12 appears throughout in initial capital letters.

13 **1.1. “Action”** refers, to the lawsuit entitled *Angelyna Celio, Matthew Lytle, Robert*
14 *Martin and Donnell Fort, on behalf of themselves and others similarly situated and aggrieved v. Air*
15 *International US, Inc., a Delaware Corporation; and DOES 1 Through 10, inclusive*, Case No.
16 RG21098764, pending in the Superior Court for the State of California, County of Alameda.

17 **1.2. “Administrative Costs”** refers to all costs associated with administration of the
18 Settlement contemplated by this Agreement. Administrative Costs include all fees and costs for, among
19 other things, printing, copying, formatting, postage, envelopes, computer searches to locate addresses,
20 calculation of payments to individual class members, calculation of applicable payroll withholdings and
21 payroll taxes, preparation and filing of appropriate IRS Forms, any cost associated with the process for
22 any uncashed settlement checks, and any other expenses the Settlement Administrator incurs to
23 complete the settlement process according to the terms of this Agreement. Administrative Costs are
24 borne in the first instance by the Settlement Administrator.

25 **1.3. “Aggrieved Employees”** refers to all hourly, non-exempt employees of
26 Defendant in California from May 10, 2020 through the earlier of Ninety (90) calendar days after the
27
28

Parties' December 8, 2022 mediation or the date a signed order preliminarily approving the Settlement is filed.

1.4. "Agreement" refers to this Class Action and PAGA Representative Action Settlement Agreement and Release of Claims, which includes all its Recitals herein and all the attached Exhibit.

1.5. "Class Counsel" refers to Cohelan Khoury & Singer and Stonebrook Law. For purposes of providing any notices required under this Agreement, Class Counsel shall refer to Isam Khoury, Michael D. Singer, Marta Manus and Rosemary C. Khoury of Cohelan Khoury & Singer, 605 C Street Suite 200, San Diego, CA 92101, and Joseph Tojarieh of Stonebrook Law, 10250 Constellation Boulevard, Suite 100, Los Angeles, CA 90067.

1.6. "Class Counsel Payment" refers to the amount of attorney's fees and costs that the Court awards to Class Counsel in connection with the resolution of the Action in accordance with this Agreement.

1.7. "Class Members" refers to those individuals who for purposes of this Agreement will be certified as members of the class, defined as follows: all hourly, non-exempt employees of Defendant in California from May 10, 2017 through the earlier of Ninety (90) calendar days after the Parties' December 8, 2022 mediation or the date a signed order preliminarily approving the Settlement is filed.

1.8. "Class Period" is deemed to be any time during the period of May 10, 2017 through the earlier of Ninety (90) calendar days after the Parties' December 8, 2022 mediation or the date a signed order preliminarily approving the Settlement is filed.

1.9. "Class Representatives" refers to Plaintiffs Angelyna Celio, Donell Fort, Matthew Lytle and Robert Martin.

1.10. "Class Representative Service Award" refers to any payment(s) that the Court awards to the Class Representatives for efforts in prosecuting the Action on behalf of the Class Members.

1.11. "Celio" refers to Plaintiff Angelyna Celio.

1 **1.12. “Complaint”** refers to all versions of the complaint filed in the Action.

2 **1.13. “Consideration Period”** refers to the sixty (60) calendar day period following
3 the date when the Settlement Administrator mails the Notice of Class Action Settlement. The
4 Consideration Period is the period in which a Class Member can submit an Objection or a Request for
5 Exclusion.

6 **1.14. “Court”** refers to the Superior Court of the State of California for the County of
7 Alameda, or other court assuming jurisdiction over the Action.

8 **1.15. “Defendant”** refers to Air International US, Inc.

9 **1.16. “Defense Counsel”** refers to Seyfarth Shaw LLP. For purposes of providing any
10 notices required under this Agreement, Defense Counsel shall refer to Christian J. Rowley and Eric M.
11 Lloyd, Seyfarth Shaw LLP, 560 Mission Street, Suite 3100, San Francisco, California 94105.

12 **1.17. “Effective Date”** means the date upon which both of the following have
13 occurred: (i) approval of the Settlement is granted by the Court, and (ii) the Court’s Judgment approving
14 the Settlement becomes Final. “Final” shall mean the latest of: (i) if there is an appeal of the Court’s
15 Judgment, the date the Judgment is affirmed on appeal, the date of dismissal of such appeal, or the
16 expiration of the time to file a petition for review to the California Supreme Court, or, (ii) if a petition
17 for review is filed, the date of the California Supreme Court denies the petition for review or decides not
18 to respond and take no action, or the date the Judgment is affirmed pursuant to such petition; or (iii) if
19 no appeal is filed, the expiration date of the time for filing or noticing any appeal of the Judgment.

20 **1.18. “Eligible Workweeks”** refers to the workweeks each Settlement Class Member
21 worked during the Class Period.

22 **1.19. “Fairness Hearing”** refers to the hearing at which the Court decides whether the
23 terms of the Agreement are fair, reasonable, and adequate for the Class Members and meet all
24 requirements for final approval.

25 **1.20. “Final Approval Order”** refers to the final order by the Court approving the
26 Settlement following the Fairness Hearing.

27 **1.21. “Fort”** refers to Plaintiff Donell Fort.

1 **1.22. “Gross Settlement Amount”** refers to the payment Defendant is obligated to
2 make in connection with this Agreement: Six Hundred Thousand Dollars (\$600,000.00), plus any
3 employer-side payroll withholding taxes. In no event shall Defendant be obligated to pay more than this
4 amount other than the employer’s share of payroll taxes. The Gross Settlement Amount shall include all
5 Individual Settlement Payments to Settlement Class Members and Aggrieved Employees,
6 Administrative Costs, the Class Counsel Payment, any Class Representative Service Awards, and the
7 PAGA Payment.

8 **1.23. “Individual Settlement Payment”** refers to the amount calculated by the
9 Settlement Administrator to distribute to each Settlement Class Member and/or Aggrieved Employee.
10 The Individual Settlement Payment shall be paid from the Net Settlement Amount.

11 **1.24. “Judgment”** refers to the final judgment entered by the Court in this Action
12 following the Fairness Hearing.

13 **1.25. “LWDA”** refers to the California Labor & Workforce Development Agency,
14 which helps to enforce the Private Attorneys General Act (“PAGA”), and which will receive the LWDA
15 portion of the PAGA Payment.

16 **1.26. “LWDA Letters”** refers to the March 16, 2021 letter from Cohelan Khoury &
17 Singer, on behalf of Celio and Lytle, to the LWDA, and, the April 2, 2021 letter from Cohelan Khoury
18 & Singer, to the LWDA on behalf of Fort and Martin, providing notice of Plaintiffs’ intent to pursue a
19 PAGA claim.

20 **1.27. “Lytle”** refers to Plaintiff Matthew Lytle.

21 **1.28. “Martin”** refers to Plaintiff Robert Martin.

22 **1.29. “Net Settlement Amount”** refers to the portion of the Gross Settlement Amount
23 that remains after accounting for the Class Representative Service Awards, the portion of the PAGA
24 Payment payable to the LWDA, Administrative Costs, and the Class Counsel Payment. The Net
25 Settlement Amount shall include all Individual Settlement Payments.

26 **1.30. “Notice of Class Action Settlement”** refers to the Notice of Class Action
27 Settlement, substantially in the form attached as Exhibit A.

1 **1.31. “Objection”** refers to a written statement submitted timely by a Settlement Class
2 Member to the Settlement Administrator that contains (1) the name and case number of this Action (or
3 reasonable portion thereof), (2) the full name, last four digits of their social security number, and current
4 address of the Settlement Class Member making the Objection, (3) the specific reason(s) for the
5 Objection, and (4) all evidence and supporting papers (including, without limitation, all briefs, written
6 evidence, and declarations) for the Court to consider.

7 **1.32. “Objector”** refers to a Settlement Class Member who has submitted an
8 Objection.

9 **1.33. “PAGA Payment”** refers to a Twenty-Five Thousand Dollar (\$25,000) payment
10 in settlement of a claim for civil penalties under the Private Attorney General Act of 2004. Seventy-five
11 percent (75%) of the PAGA Payment shall be payable to the LWDA and twenty-five percent (25%)
12 shall be payable to the Net Settlement Amount for distribution to Aggrieved Employees. The PAGA
13 Payment shall be paid from the Gross Settlement Amount.

14 **1.34. “PAGA Period”** is deemed to be any time during the period of May 10, 2020
15 through the earlier of Ninety (90) calendar days after the Parties’ December 8, 2022 mediation or the
16 date a signed order preliminarily approving the Settlement is filed.

17 **1.35. “Parties”** refers collectively to (1) Plaintiff Angelyna Celio, individually and on
18 behalf of the Class and the Aggrieved Employees, (2) Plaintiff Donell Fort, individually and on behalf of
19 the Class and the Aggrieved Employees, (3) Plaintiff Matthew Lytle, individually and on behalf of the
20 Class and the Aggrieved Employees, (4) Plaintiff Robert Martin, individually and on behalf of the Class
21 and the Aggrieved Employees, and (5) Defendant Air International US, Inc.

22 **1.36. “Plaintiffs”** refers collectively to Class Representatives Angelyna Celio, Donell
23 Fort, Matthew Lytle and Robert Martin, individually and on behalf of the Class and the Aggrieved
24 Employees.

25 **1.37. “Preliminary Approval Order”** refers to the order entered by the Court granting
26 a Motion for Preliminary Approval of the Agreement.

1 **1.38. “Qualified Settlement Fund (QSF)”** refers to a Qualified Settlement Fund
2 pursuant to U.S. Treasury Regulation Section 468B-1.

3 **1.39. “Released Claims”** refers to the Released Class Claims and the Released PAGA
4 Claims, as defined below.

5 **1.40. “Released Class Claims”** refers to those claims alleged in Plaintiffs’ Complaint
6 and First Amended Complaint, as well as all any and all claims, debts, liabilities, demands, obligations,
7 guarantees, costs, expenses, attorney’s fees, damages, action or causes of action of whatever kind or
8 nature, whether known or unknown, contingent or accrued, under any legal theory under federal and
9 state law that were or reasonably could have been brought based on the facts alleged in any version of
10 the complaints filed in the Action and in the LWDA Letters submitted to the LWDA by Plaintiffs,
11 regardless of theory of recovery, including: claims under California Labor Code sections 201, 202, 203,
12 204, 206, 210, 218, 218.5, 226, 226.7, 227, 245 *et seq.*, 510, 511, 512, 515, 517, 551-556, 1182.12,
13 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802; the California IWC Wage Orders; the Fair Labor
14 Standards Act (29 U.S.C. Section 201, *et seq.*); and California Business and Professions Code section
15 17200, *et seq.* The Released Class Claims shall apply to all Class Members who do not timely file a
16 Request for Exclusion.

17 **1.41. “Released PAGA Claims”** refers to any and all civil penalty claims or causes of
18 action under the Private Attorneys General Act, Labor Code section 2699 *et seq.* of whatever kind or
19 nature which occurred during the PAGA Period that were or reasonably could have been brought based
20 on the facts alleged in any version of the complaints filed in the Action and in the LWDA Letters
21 submitted to the LWDA by Plaintiffs, regardless of theory of recovery, including but not limited to, any
22 alleged violations of or relief under California Labor Code sections 201, 202, 203, 218.5, 218.6, 226,
23 226.3, 226.7, 245 *et seq.*, 510, 512, 551, 552, 558, 1182.12, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198,
24 2800, 2802, and the applicable provisions of the applicable IWC Wage Orders.

25 **1.42. “Released Parties”** refers to Air International US, Inc., all of its present and
26 former parent companies, subsidiaries, affiliates, shareholders, officers, directors, employees, agents,
27 servants, registered representatives, attorneys, insurers, successors and assigns.

1 **1.43. “Request for Exclusion”** refers to a timely, written, opt-out request signed by a
2 Class Member who thereby elects to be excluded from this Agreement.

3 **1.44. “Settlement Administrator”** refers to CPT Group, the third-party administrator
4 the Parties have selected, subject to Court approval.

5 **1.45. “Settlement Class”** refers to all Class Members who do not file a timely and
6 valid Request for Exclusion.

7 **1.46. “Settlement Class Member”** refers to a member of the Settlement Class.

8 **2. RECITALS AND PROCEDURAL HISTORY**

9 **2.1. Allegations in Complaint.** On May 10, 2021, Plaintiffs filed a complaint in the
10 Superior Court for the State of California, for the County of Alameda, individually and on behalf of a
11 class of similarly situated individuals. Plaintiffs asserted claims for 1) Failure to Pay Minimum, Regular
12 and Overtime Wages; 2) Failure to Provide Meal Periods; 3) Failure to Authorize and Permit Rest
13 Periods; 4) Failure to Provide Accurate Itemized Wage Statements; 5) Failure to Timely Pay Wages Due
14 at Separation; 6) Failure to Reimburse Business Expenses; and 7) Violation of the Unfair Competition
15 Law. On June 7, 2021, Plaintiffs filed a First Amended Class Action and Representative Action
16 Complaint Under the Private Attorneys General Act individually and on behalf of all others similarly
17 situated in the Superior Court for the State of California, for the County of Alameda, alleging claims for:
18 1) Failure to Pay Minimum, Regular and Overtime Wages; 2) Failure to Provide Meal Periods; 3)
19 Failure to Authorize and Permit Rest Periods; 4) Failure to Provide Accurate Itemized Wage Statements;
20 5) Failure to Timely Pay Wages Due at Separation; 6) Failure to Reimburse Business Expenses; 7)
21 Violation of the Unfair Competition Law; and 8) Violation of the California Private Attorneys General
22 Act, Cal. Labor Code § 2698 *et seq.*

23 **2.2. Defendant’s Denials.** Defendant denies (1) all the material allegations in this
24 Action, (2) that it violated any applicable laws, (3) that it is liable for damages, penalties, interest,
25 restitution, attorneys’ fees, or costs, or for any other compensation or remedy with respect to anyone on
26 account of the claims asserted in the Action, and (4) that class certification or representative treatment is
27 appropriate as to any claim in the Action. Defendant contends that its policies, procedures, and practices
28

1 comply with all applicable laws asserted in the Action. Nonetheless, without admitting any liability or
2 wrongdoing whatsoever and without admitting that class certification or representative treatment is
3 appropriate for any purpose other than for settlement purposes alone, Defendant has agreed to settle the
4 Action on the terms set forth in this Agreement, to avoid the burden, expense, and uncertainty of
5 litigation. Any statements by Defendant in this Agreement are made for settlement purposes only.

6 **2.3. Class Counsel's Investigation.** Class Counsel have investigated the facts relating
7 to the claims alleged in the Action and also have analyzed all defenses. Class Counsel obtained the
8 production of relevant documentation and data from Defendant prior to mediation. Class Counsel have
9 examined Defendant's policies, procedures, and practices.

10 **2.4. Negotiation of Settlement.** Class Counsel engaged in intensive, arms-length
11 negotiations with Defendant at mediation with experienced mediator Steven Rottman with a view
12 toward achieving substantial benefits for the Class Members, while avoiding the cost, delay, and
13 uncertainty of further litigation. Plaintiffs and Class Counsel urge approval by the Court of this
14 Agreement after considering (1) the factual and legal defenses to the claims asserted, which render
15 uncertain the ultimate outcome of the Action and class certification, (2) the potential difficulties
16 Plaintiffs and Class Members would encounter in establishing their claims and maintaining class
17 treatment, (3) the substantial benefits that Class Members would receive under this Agreement, (4) that
18 this Agreement provides Class Members relief in an expeditious and efficient manner, compared to any
19 manner of recovery possible after litigation and potential appeal, and (5) that this Agreement allows
20 Class Members to opt out of the Action and individually pursue the claims alleged in the Action.

21 **2.5. Certification of Settlement Class.** For settlement purposes only, the Parties
22 stipulate that the Settlement Class Members described herein who do not submit a timely Request for
23 Exclusion from the Settlement Class may be conditionally certified as a settlement class and that the
24 Aggrieved Employees are appropriate for representative treatment for purposes of settlement. This
25 stipulation to certification and representative treatment is in no way an admission that class action
26 certification and/or representative treatment is proper and shall not be admissible in this or in any other
27 action except for the sole purpose of enforcing this Agreement. Nor should Defendant's stipulation to
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1 conditional class certification and representative treatment be deemed as a waiver to any additional
2 defenses against class or representative action treatment. Should, for whatever reason, the Court fail to
3 issue a Final Approval Order, the Parties' stipulation to class certification and representative treatment
4 as part of the Settlement shall become null and void *ab initio* and shall have no bearing on, and shall not
5 be admissible in connection with, the issue of whether or not certification and/or representative
6 treatment would be appropriate in a non-settlement context.

7 **3. NOTICE TO CLASS MEMBERS**

8 **3.1. Content of Notice of Class Action Settlement.** The Notice of Class Action
9 Settlement shall be substantially in the form attached as Exhibit A and include: (a) the amount of the
10 Settlement; (b) a calculation of the Class Member's anticipated share of the Net Settlement Amount; (c)
11 the full amounts of the Class Counsel Payment, Class Representative Service Awards, and
12 Administrative Costs to be awarded; (d) the terms of the releases and Class Members' waiver of their
13 right to pursue litigation of the Released Class Claims; (e) the procedure to opt out of the Settlement
14 through a Request for Exclusion; (f) the procedure to Object to the Settlement; and (g) the date of the
15 Fairness Hearing. No claim form will be required to participate in the Settlement.

16 **3.2. Settlement Administrator.** The Parties select CPT Group as the Settlement
17 Administrator. The duties of the Settlement Administrator shall include, without limitation, mailing
18 notices to Class Members, establishing a QSF, obtaining appropriate tax identification number(s),
19 calculating Individual Settlement Payments, mailing Individual Settlement Payments and tax forms to
20 Settlement Class Members, remitting any tax payments and requisite reporting documentation to taxing
21 authorities, and the other duties associated with settlement administration, including specified in this
22 Agreement. Any dispute relating to the settlement administration will, after good-faith efforts by the
23 Parties to resolve the dispute, be referred to the Court.

24 **3.3. Class Data for the Settlement Administrator.** Within Twenty-One (21)
25 calendar days of the latter of: entry of the Preliminary Approval Order, or Court approval of the Notice
26 of Class Action Settlement to the Class, Defendant shall provide to the Settlement Administrator a
27 confidential class list containing the names, last known address, email address and telephone number(s),
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1 numbers of Eligible Workweeks worked during the Class Period and the PAGA Period, and Social
2 Security numbers to facilitate the administration of this Agreement. The Settlement Administrator shall
3 keep the class data provided by Defendant strictly confidential and shall use the class data only for the
4 purposes described in this Agreement and shall return the class data to Defendant or confirm the
5 destruction of same upon completing the settlement administration called for by this Agreement.

6 **3.4. Mailing Materials to Class Members.** Upon its receipt of the list of names and
7 last known addresses of each Class Member, the Settlement Claims Administrator shall access the
8 National Change of Address ("NCOA") Database, and update the addresses maintained by Defendant.
9 Within Ten (10) calendar days of the receipt of the class data discussed immediately above, the
10 Settlement Administrator shall send the Notice of Class Action Settlement to Class Members at their last
11 known address via First Class U.S. Mail and Email. Any mailing returned to the Settlement
12 Administrator as undeliverable shall be sent within Ten (10) calendar days via First Class U.S. Mail to
13 any available forwarding address. If no forwarding address is available, then the Settlement
14 Administrator shall attempt to determine the correct address by using a computer-based skip-trace
15 search, and shall then perform, if feasible, a re-mailing via First Class U.S. Mail within Five (5) calendar
16 days. If the last known address is not available for a Class Member, then the Notice of Class Action
17 Settlement for that Class Member will be deemed undeliverable. Only one re-mailing is required. If a
18 Class Member cannot be located within Two (2) attempts at mailing, then the Notice of Class Action
19 Settlement for that Class Member will be deemed undeliverable. It is the intent of the Parties that
20 reasonable means be used to locate Class Members.

21 **3.5. Proof of Mailing.** At least Thirty (30) calendar days prior to the Fairness
22 Hearing, the Settlement Administrator shall provide a declaration of due diligence and proof of mailing
23 with regard to mailing of the Notice of Class Action Settlement to Class Counsel and Defense Counsel,
24 which they shall in turn provide to the Court.

1 **4. CLASS MEMBERS' OPTIONS TO RESPOND**

2 **4.1. Consideration Period.**

3 **4.1.1. Submission of Objections and Requests for Exclusion.** Class Members
4 will have sixty (60) calendar days from the date of the mailing of the Notices to postmark their
5 objections and written Requests For Exclusion to the Settlement Administrator ("Consideration
6 Period"). A Class Member who excludes himself or herself from the Settlement shall lose standing to
7 object. Except as specifically provided herein, no Class Member response of any kind that is postmarked
8 after the Consideration Period shall be considered unless agreed to by the Parties or ordered by the
9 Court.

10 **4.1.2. Deficiency Notices.** Within Ten (10) calendar days after receipt by the
11 Settlement Administrator of each timely-submitted Request For Exclusion, the Settlement Administrator
12 will send a deficiency notice to Class Members addressing any irregularities in the Request For
13 Exclusion (such as failure to sign or include last four digits of Social Security Number). The deficiency
14 notice will provide the Class Members Fourteen (14) calendar days from the mailing of the deficiency
15 notice to postmark a written response to cure all deficiencies. The failure of a Class Member to cure all
16 deficiencies in a timely manner shall invalidate a Request For Exclusion and will not be subject to cure.

17 **4.2. Requests for Exclusion and Opt Out Rights.** Class Members shall be given the
18 opportunity to opt out of the Settlement as to the Released Class Claims only.

19 **4.2.1. Opt Out Procedure.** Class Members may opt out of the Settlement as to
20 the Released Class Claims by mailing the Settlement Administrator a Request for Exclusion. A Request
21 for Exclusion, to be valid, must include the Class Member's name, current address, current telephone
22 number, and the last four digits of the Class Member's Social Security number. Any Request for
23 Exclusion that does not include all of the required information or that is not submitted in a timely
24 manner will be deemed ineffective. If there is a dispute regarding the timeliness or validity of a Request
25 for Exclusion, then the Settlement Administrator shall make the determination, after consultation with
26 Class Counsel and Defense Counsel.

1 **4.2.2. Effect of Exclusion Through Opting Out.** The right to object to or opt
2 out of the Settlement shall only apply to the Released Class Claims and not the Released PAGA Claims.
3 Any Class Member who opts out of the Settlement may not submit an Objection and shall not receive a
4 share of the Net Settlement Value relating to the Released Class Claims and shall not be bound by the
5 release of the Released Class Claims set forth in this Agreement. The Individual Settlement Payment of
6 any Class Member who opts out of this Agreement shall consist solely of that Class Member's
7 proportionate share of the PAGA Payment, if they are an Aggrieved Employee, and such Class Member
8 shall remain bound by the release of the PAGA Released Claims. If a Class Member submits both a
9 Request for Exclusion and an Objection, then the Request for Exclusion will be valid and will invalidate
10 the Objection. Each Class Member who does not submit a timely, valid Request for Exclusion shall be
11 bound by the Released Claims for which this Agreement provides.

12 **4.2.3. Tolerance of Opt-Outs—Defendant's Right to Withdraw.** Defendant
13 shall have the right, in the exercise of its sole discretion, and within Fifteen (15) business days of the end
14 of any notice and opt out period, to terminate this Settlement and render the Settlement null and void, if
15 at least Five Percent (5%) of all Class Members opt out of the Settlement. In such event the Parties shall
16 revert to *status quo ante* prior to this Agreement and Defendant shall bear the cost of any Settlement
17 Administrator fees incurred as of the date Defendant provides notice of its intent to terminate the
18 Settlement.

19 **4.3. Objections.** Class Members who do not submit a Request for Exclusion shall be
20 entitled to object to the terms of the Agreement. The right to object shall not apply to the Released
21 PAGA Claims.

22 **4.3.1. Objection Procedures.** Any Objection to this Agreement must state
23 (1) the name and case numbers of the Action (or reasonable portion thereof), (2) the full name, last four
24 digits of their social security number, and current address of the Settlement Class Member making the
25 Objection, (3) whether it applies only to the objector, to a specific subset of the class, or to the entire
26 class; and (4) with specificity the grounds for the objection. Settlement Class Members who submit an
27 Objection remain bound by this Agreement if it is approved by the Court.

1 **4.4. Proof of Class Members' Responses.** At least Thirty (30) calendar days prior to
2 the Fairness Hearing, the Settlement Administrator will prepare a declaration to submit to the Court
3 regarding the mailing of the Notice of Class Action Settlement, the inability to deliver any mailing due
4 to invalid addresses, the number of any Requests for Exclusion and the number of any Objections and
5 the contents of the Objections.

6 **4.5. Binding Effect of Settlement.** Although a Class Member might not receive the
7 Notice of Class Action Settlement and might not timely submit an Objection or Request for Exclusion
8 because of inability to locate the Class Member's current address, that Class Member shall nonetheless
9 be bound by this Agreement.

10 **4.6. No Interference with Class Member Responses.** Each Party and their counsel
11 agree not to encourage any Class Member to submit an Objection or a Request for Exclusion and agree
12 not to retaliate against any Class Member for participating or not participating in the Settlement.

13 **5. DISTRIBUTION OF SETTLEMENT PROCEEDS**

14 **5.1. Administrative Costs.** The Parties agree to obtain a reasonable estimate of
15 Administrative Costs of up to Fifteen Dollars Exactly (\$15,000.00), and seek approval of Administrative
16 Costs to be drawn from the Gross Settlement Amount. If the Court approves only a lesser amount, then
17 the other terms of this Agreement shall still remain in effect. The amount of Administrative Costs is not
18 a material term of this Agreement. If this Agreement is not finally effectuated, then any Administrative
19 Costs incurred to date will be paid in equal parts by Defendant and Plaintiff, except if Defendant
20 exercises its right to abrogate the Agreement under Section 4.2.3, Defendant shall be responsible for
21 payment of all Administrative Costs incurred.

22 **5.2. Class Counsel Payment.** Class Counsel shall request that the Court award a
23 percentage of the Gross Settlement Amount as the Class Counsel Payment for (a) attorneys' fees, and
24 (b) litigation costs actually incurred in representing the interests of the Class. Defendant agrees not to
25 oppose a request for attorneys' fees of up to One-Third (33.33%) of the Gross Settlement Amount plus
26 reasonable litigation costs. Defendant shall have no liability for any other attorneys' fees or costs, and
27 Plaintiffs, Class Counsel, the Class and the Aggrieved Employees waive any additional claim for
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1 attorneys' fees and litigation costs incurred in connection with the Action. To the extent that the Court
2 approves less than the amount of Class Counsel Payment that Class Counsel request, the difference
3 between the requested and awarded amounts will be distributed to Settlement Class Members on a
4 proportional basis relative to the size of their claims as set forth in Section 5.6, below. For purposes of
5 settling this matter only, Defendant agrees that Cohelan Khoury & Singer and Stonebrook Law are
6 adequate Class Counsel.

7 **5.2.1. Approval of Class Counsel Payment Not Material.** The Court's
8 approval of the Class Counsel Payment in the amount requested is not a material term of this
9 Agreement. If the Court approves only a lesser amount, then the other terms of this Agreement shall still
10 remain in effect and the difference will remain part of the Net Settlement Amount.

11 **5.2.2. Timing of Class Counsel Payment.** The Settlement Administrator shall
12 issue the Class Counsel Payment within Thirty (30) calendar days after Defendant advances sufficient
13 funds, not to exceed the Gross Settlement Amount, to the Settlement Administrator. Within Ten (10)
14 calendar days after the Effective Date, Class Counsel shall transmit instructions to the Settlement
15 Administrator as to how any approved attorneys' fees and costs shall be paid. Cohelan Khoury & Singer
16 and Stonebrook Law, or their assignees, will each provide a completed Form W-9 to the Settlement
17 Administrator before the payment is made. Class Counsel shall be solely responsible for paying all
18 applicable taxes on any Class Counsel payment and shall indemnify and hold harmless Defendant from
19 any claim or liability for taxes, penalties, or interest arising as a result of the Class Counsel Payment.

20 **5.3. Class Representative Service Awards.** Class Counsel intends to request that the
21 Court award a Class Representative Service Award to each of the Class Representatives, in the amount
22 of Seven Thousand Five Hundred Dollars Exactly (\$7,500.00) each, to be drawn from the Gross
23 Settlement Amount. Defendant agrees not to oppose these requests. The Class Representative Service
24 Awards would be in addition to Plaintiffs' respective Individual Settlement Payments. Any amount of
25 the Class Representative Service Awards to any Plaintiff which is not approved by the Court shall be
26 allocated to the Net Settlement Amount and distributed to Settlement Class Members on a proportional
27 basis relative to the size of their claims as set forth in Section 5.6, below. In exchange for their
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1 respective Class Representative Service Awards, Plaintiffs shall execute a general release of all claims,
2 as set forth in Section 6.2 below. Further, an award of less than the requested amount to Plaintiffs, or
3 any of them, will not give rise to a basis to abrogate the general release executed by any Plaintiff so long
4 as the amount of their respective Class Representative Enhancement Payments is greater than Zero
5 Dollars (\$0).

6 **5.3.1. Class Representative Service Awards Not Material.** The Court's
7 approval of Class Representative Service Awards to Plaintiffs is a not material term of this Agreement.
8 If the Court does not approve or approves only a lesser amount than that requested for Plaintiffs' Class
9 Representative Service Awards, then the other terms of this Agreement shall still remain in effect.

10 **5.3.2. Timing of Class Representative Service Awards.** The Settlement
11 Administrator shall pay any Class Representative Service Award within Thirty (30) calendar days after
12 Defendant advances sufficient funds, not to exceed the amount of the Gross Settlement Amount, to the
13 Settlement Administrator, and shall issue an IRS Form 1099 to Plaintiffs. Plaintiffs shall be solely
14 responsible for paying all applicable taxes on their respective Class Representative Service Awards, as
15 applicable, and shall indemnify and hold harmless Defendant from any claim or liability for taxes,
16 penalties, or interest arising as a result of the Class Representative Service Award.

17 **5.4. PAGA Payment.** The Parties will seek approval for a Twenty-Five Thousand
18 Dollar Exactly (\$25,000.00) PAGA Payment. Seventy-Five percent (75%) of the PAGA Payment will
19 be drawn from the Gross Settlement Amount and paid to the LWDA, and Twenty-Five percent (25%)
20 will be allocated to the Net Settlement Amount. The portion of the PAGA Payment allocated to the Net
21 Settlement Amount that shall be distributed to Aggrieved Employees will be determined by dividing
22 their total Eligible Workweeks within the PAGA Claim Period by the total Eligible Workweeks worked
23 by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the
24 Twenty Five Percent (25%) portion of the PAGA Payment to arrive at the Aggrieved Employee's
25 individual share. These payments to Aggrieved Employees shall be allocated as One Hundred Percent
26 (100%) penalties; Aggrieved Employees will be responsible for paying any personal income taxes owed
27 on the amounts they receive. Any uncashed checks will escheat to the State of California's Unclaimed
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1 Property Fund to be held in the name of each expired check payee, pursuant to applicable unclaimed
2 property laws.

3 **5.4.1. Amount of PAGA Payment Not Material.** Any change in the requested
4 PAGA Payment is not a material term of this Agreement. If the Court approves a lesser or greater
5 amount than that requested, the other terms of this Agreement shall still remain in effect. However,
6 some approval of a PAGA Payment is a material term of the Settlement and this Agreement. If the Court
7 does not approve a PAGA Payment, then the entire Agreement will be, at Defendant's sole discretion,
8 void and unenforceable. In the event Defendant exercises this option, then the Administrative Costs shall
9 be borne by Defendant.

10 **5.4.2. Timing of LWDA Portion of PAGA Payment.** The Settlement
11 Administrator shall pay Seventy-Five percent (75%) of any approved PAGA Payment to the LWDA
12 within Thirty (30) calendar days after Defendant advances sufficient funds, not to exceed the Gross
13 Settlement Amount, to the Settlement Administrator.

14 **5.5. Individual Settlement Payments.** Each Class Member shall be entitled to an
15 Individual Settlement Payment consisting of a share of the Net Settlement Amount, in accordance with
16 the formula set forth below.

17 **5.5.1. Calculation of Amount.** Each Settlement Class Member will be eligible
18 to receive a portion of the Net Settlement Amount as follows:

19 a. For Settlement Class Members, the Individual Settlement Payment shall be calculated by
20 dividing the number of Eligible Workweeks attributed to the Settlement Class Member during the Class
21 Period by all Eligible Workweeks during the Class Period attributed to members of the Settlement Class,
22 multiplied by the portion of the Net Settlement Amount that is not attributable to the PAGA Payment. If
23 the Settlement Class Member is an Aggrieved Employee, then the Settlement Class Member shall also
24 receive a share of the PAGA Payment. The Settlement Class Member's share of the PAGA Payment
25 shall be proportionate to the number of Eligible Workweeks attributed to the Settlement Class Member
26 during the PAGA Period divided by all Eligible Workweeks attributed to Aggrieved Employees during
27 the PAGA Period.

1 **b.** For a Class Member who opts out of the Settlement, and who is an Aggrieved Employee,
2 the Individual Settlement Payment shall consist solely of a share of the PAGA Payment. The Class
3 Member's share of the PAGA Payment shall be proportionate to the number of Eligible Workweeks
4 attributed to the Class Member during the PAGA Period, divided by all Eligible Workweeks attributed
5 to Aggrieved Employees during the PAGA Period.

6 Defendant's records regarding the number of Eligible Workweeks for each Class Member shall
7 be used for purposes of calculating Individual Settlement Payments. The Notice of Class Action
8 Settlement will include an Information Sheet for each Class Member showing how much the individual
9 Class Member is expected to receive based on this formula and their number of Eligible Workweeks.
10 The Notice of Class Action Settlement will also provide the Class Members an opportunity to dispute
11 the number of Eligible Workweeks indicated on the Notice of Class Action Settlement. Such dispute
12 must be made no later than Sixty (60) calendar days from the date of the mailing of the Notice of Class
13 Action Settlement. Defendant and/or the Settlement Administrator shall review any documentation
14 provided by the Class Member to determine whether there was an error in the number of Eligible
15 Workweeks and adjust any payment to be allocated if necessary.

16 **5.5.2. Timing of Individual Settlement Payments to Class Members.** The
17 Settlement Administrator shall issue Individual Settlement Payments no later than Thirty (30) calendar
18 days after Defendant advances sufficient funds, not to exceed the amount of the Gross Settlement
19 Amount, to the Settlement Administrator. Any checks from the first distribution that are not cashed
20 within One Hundred Eighty (180) calendar days from the date of the mailing of the checks shall be
21 cancelled and said cancellation shall not affect the validity of the releases provided for herein and the
22 Class Member shall be deemed to, nevertheless, be bound by the releases provided herein. Any
23 uncashed checks will escheat to the State of California's Unclaimed Property Fund to be held in the
24 name of each expired check payee, pursuant to applicable unclaimed property laws.

25 **5.5.3. Tax Treatment of Individual Settlement Payments to Class Members.**
26 Of the Net Settlement Amount, One-Third (1/3) shall be allocated to wages, and Two-Thirds (2/3) shall
27 be allocated to interest, penalties, liquidated damages and/or unreimbursed business expenses. These
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1 allocations represent the Parties' good faith allocation based on the claims asserted and potential
2 damages related to wages, liquidated damages, interest and penalties. In accordance with law, the
3 Settlement Administrator will make required tax withholdings from each Individual Settlement Payment
4 on the portion designated as wages and will remit the withholding to the appropriate taxing authorities.
5 The Settlement Administrator shall issue any necessary Form W-2 and 1099 statements to Class
6 Members for their respective Individual Settlement Payments. No opinion regarding the tax
7 consequences of this Settlement to any individual Class Member is being given, or will be given, by
8 Defendant, counsel for Defendant, any other Released Party, or Class Counsel. Class Members must
9 consult their own tax advisors regarding the tax consequences of this Settlement, including but not
10 limited to any payments provided or tax reporting obligations. Class Members shall be solely
11 responsible for paying all other applicable taxes on their respective Individual Settlement Payments and
12 shall indemnify and hold harmless Defendant and the Released Parties from any claim or liability for
13 taxes, penalties, or interest arising as a result of Individual Settlement Payments. The Court's approval
14 of the tax allocation of Individual Settlement Payments is not a material term of this Agreement. If the
15 Court does not approve or approves a different allocation, then the other terms of this Agreement shall
16 still remain in effect.

17 **5.6. Effect of Opt Outs On Net Settlement Amount.** This is a non-reversionary,
18 non-claims-made Settlement. No portion of the Gross Settlement Amount shall remain with Defendant.
19 If any Class Member chooses to opt out of the Settlement and submits a timely and valid Request for
20 Exclusion, then that Class Member's Individual Settlement Payment shall be distributed to Settlement
21 Class Members on a proportional basis relative to the size of their claims.

22 **5.7. Final Funding of Gross Settlement Amount.** Within Thirty (30) days of the
23 Effective Date, Defendant shall advance the Gross Settlement Amount to the Settlement Administrator.

24 **6. RELEASES**

25 **6.1. Releases by Settlement Class Members.** By operation of the entry of the Final
26 Approval Order and Judgment, and except as to rights this Agreement creates, each Settlement Class
27 Member releases Defendant and all of its present and former parent companies, subsidiaries, affiliates,
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1 shareholders, officers, directors, employees, agents, servants, registered representatives, attorneys,
2 insurers, successors and assigns (collectively the "Released Parties") from those claims alleged in
3 Plaintiffs' Complaint and Plaintiffs' First Amended Complaint, as well as all any and all claims, debts,
4 liabilities, demands, obligations, guarantees, costs, expenses, attorney's fees, damages, action or causes
5 of action of whatever kind or nature, whether known or unknown, contingent or accrued, under any legal
6 theory under federal and state law that were or reasonably could have been brought based on the facts
7 alleged in any version of the complaints filed in the Action and in the LWDA Letters submitted to the
8 LWDA by Plaintiffs, regardless of theory of recovery, including: claims under California Labor Code
9 sections 201, 202, 203, 204, 206, 210, 218, 218.5, 226, 226.7, 227, 245 *et seq.*, 510, 511, 512, 515, 517,
10 551-556, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802; the California IWC Wage Orders; the
11 Fair Labor Standards Act (29 U.S.C. Section 201, *et seq.*); and California Business and Professions
12 Code section 17200, *et seq.* (the "Released Class Claims"). Settlement Class Members shall further
13 agree to waive their right to pursue individual lawsuits as to any of the Released Class Claims against
14 the Released Parties to the extent such Released Class Claims accrued during the Class Period.
15 Additionally, Plaintiffs, on behalf of the State of California, will release Defendant and the Released
16 Parties from any and all PAGA claims or causes of action of whatever kind or nature which occurred
17 during the PAGA Period that were or reasonably could have been brought based on the facts alleged in
18 any version of the complaints filed in the Action and in the LWDA Letters submitted to the LWDA by
19 Plaintiffs, regardless of theory of recovery, including but not limited to, any alleged violations of or
20 relief under California Labor Code 201, 202, 203, 218.5, 218.6, 226, 226.3, 226.7, 245 *et seq.*, 510, 512,
21 551, 552, 558, 1182.12, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 2800, 2802, and the applicable
22 provisions of the applicable IWC Wage Orders. (the "Released PAGA Claims"). Neither the Settlement
23 Agreement nor any amounts paid to Plaintiffs, Settlement Class Members or any Aggrieved Employee
24 under the Settlement Agreement will modify any previously credited hours or service under any
25 employee benefit plan, policy, or bonus program sponsored by Defendant. The release as to the State of
26 California and Aggrieved Employees only covers claims that arise under the Private Attorneys General
27 Act and does not cover an Aggrieved Employee's individual Labor Code claims. The release expressly
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1 excludes claims for vested benefits, wrongful termination, unemployment insurance, disability, social
2 security, workers' compensation, class claims, and PAGA claims outside of the PAGA Period.

3 **6.2. Additional Release by Class Representatives.** In addition to the releases given
4 by each Settlement Class Member, each Plaintiff also generally releases all claims against each Released
5 Party. This general release includes claims arising from Plaintiffs' relationships with Defendant,
6 including, without limitation, claims for discrimination, harassment, or retaliation pursuant to Title VII
7 of the Civil Rights Act of 1964, 42 U.S.C. section 2000 *et seq.*, the California Fair Employment and
8 Housing Act, California Gov't Code Section 12900 *et seq.*, or any claims for violation of public policy,
9 or claims arising from the California Labor Code and the FLSA. This general release by Plaintiffs also
10 includes a waiver of rights under California Civil Code Section 1542, which states:

11 A general release does not extend to claims that the creditor or releasing party does not
12 know or suspect to exist in his or her favor at the time of executing the release and that, if
13 known by him or her, would have materially affected his or her settlement with the debtor
or released party.

14 These releases from Plaintiffs, respectively, are only effective upon the Court granting final approval of
15 the Settlement and only apply to claims that may be released as a matter of law. These releases also do
16 not include future claims that arise after final approval.

17 **6.3. Settlement is Contingent Upon Release of Claims.** This Agreement is
18 conditioned upon the releases by the Settlement Class, the Aggrieved Employees and Plaintiffs as
19 described herein, and upon covenants by the Settlement Class, the Aggrieved Employees and Plaintiffs
20 that they will not participate in any actions, lawsuits, proceedings, complaints, or charges in any court or
21 before any administrative body related any claims they have released under this Settlement.

22 **6.4. Inadmissibility of Settlement Documents.** The Parties agree that this Agreement
23 and all exhibits hereto shall be inadmissible in any proceeding, except an action or proceeding to
24 approve, interpret, or enforce this Agreement. The Parties agree that, to the extent permitted by law, this
25 Agreement will operate as a complete defense to—and may be used as the basis for an injunction
26 against—any action, suit, or other proceeding attempted in breach of this Agreement.

1 **7. SETTLEMENT APPROVAL PROCEDURE**

2 **7.1. Preliminary Approval.** Plaintiffs shall submit to the Court a Motion for
3 Preliminary Approval of Class Action and PAGA Settlement. This motion shall seek an order to
4 preliminarily approve this Agreement according to the terms in this Agreement and provide for the
5 Notice of Class Action Settlement to be sent to Class Members as specified in this Agreement,
6 substantially in the form attached hereto as Exhibit A. This motion shall include the bases for
7 demonstrating that settlement amounts are reasonable in light of the facts and controlling authorities
8 pertaining to the claims alleged. The motion shall also be accompanied by a declaration of Class
9 Counsel discussing the risks of continued litigation and the decision that the best interests of the Class
10 Members are served by the terms of this Agreement. Class Counsel shall endeavor to file the Motion for
11 Preliminary approval within forty-five (45) calendar days of execution by the Parties of this Agreement.
12 Plaintiffs shall provide Defendant with a draft of their Motion for Preliminary Approval at least Five (5)
13 calendar days prior to filing so that Defendant can review and make comments on the motion. Plaintiffs
14 shall incorporate Defendant's comments to the extent they are consistent with this Settlement
15 Agreement. Defendant agrees not to oppose Plaintiffs' Motion for Preliminary Approval to the extent it
16 comports with this Settlement Agreement.

17 **7.2. Final Approval.** Plaintiffs shall submit to the Court a Motion for Final Approval,
18 which shall include findings and orders: (a) approving the Agreement, (b) adjudging the terms to be fair,
19 reasonable, and adequate, (c) reciting the Released Claims in full, (d) directing that the terms of the
20 Agreement be carried out, and (e) retaining jurisdiction to oversee enforcement of this Agreement and
21 the Court's orders. Plaintiffs shall provide Defendant with a draft of their Motion for Final Approval at
22 least Seven (7) days prior to filing so that Defendant can review and make comments on the motion.
23 Plaintiffs shall incorporate Defendant's comments to the extent they are consistent with this Settlement
24 Agreement.

25 **7.3. Motion for Class Counsel Payment.** Along with the Motion for Final Approval,
26 Class Counsel may file a motion for Court approval of attorneys' fees and litigation costs. The Parties
27 agree that the Court's approval of any request for attorneys' fees or litigation costs is not a condition of
28

1 this Settlement Agreement and that an award of less than the amounts requested would not give rise to a
2 basis to abrogate the Settlement Agreement. Any amount of requested attorneys' fees or litigation costs
3 not approved by the Court shall be allocated to the Net Settlement Amount. Plaintiffs, Class Counsel,
4 the Class and the Aggrieved Employees waive any additional claim for attorneys' fees and litigation
5 costs incurred in connection with the Action.

6 **7.4. Motion for Class Representative Service Award.** Along with the Motion for
7 Final Approval, Class Counsel may file a motion for Court approval of Class Representative Service
8 Awards to Plaintiffs.

9 **7.5. Timing of Judgment.** After the Final Approval Order, the Parties shall request
10 that the Court: (a) enter Judgment in accordance with this Agreement, without further fees or costs, and
11 (b) enter an order permanently enjoining all members of the Settlement Class and the Aggrieved
12 Employees from pursuing or seeking to reopen claims that have been released by this Agreement.

13 **7.6. Appeal Rights.** Only an Objector has the right to appeal the Judgment, if the
14 Judgment is in accord with this Agreement. The Class Representatives and Class Counsel hereby waive
15 any right to appeal any judgment, ruling, or order in this Action, including, without limitation, any Final
16 Approval Order and any Judgment in the Action. This waiver includes all rights to any post-judgment
17 proceeding and appellate proceeding, such as, but not limited to, a motion to vacate judgment, a motion
18 for new trial, and any extraordinary writ, and the Judgment therefore will become non-appealable at the
19 time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal,
20 appellate proceedings, or post-judgment proceedings.

21 **8. MISCELLANEOUS**

22 **8.1. Materiality of Terms.** Except as otherwise stated herein, each substantive term
23 of this Agreement is material and has been relied upon by the Parties in entering into this Agreement. If
24 the Court does not approve any substantive term, or if the Court effects a material change to the
25 Agreement—such as increasing any amount that Defendant must pay—then the entire Agreement will
26 be, at Defendant's sole discretion, void and unenforceable. Where this Agreement states that a term is
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1 not material, then the Court's refusal to approve that term leaves all the other terms of the Agreement in
2 effect, and does not give Class Counsel or any Class Member any basis to abrogate this Agreement.

3 **8.2. No Tax Advice.** Neither Class Counsel nor Defense Counsel intend anything
4 contained in this Agreement to constitute advice regarding taxes or taxability, nor shall anything in this
5 Agreement be relied upon as such within the meaning of United States Treasury Department Circular
6 230 (31 C.F.R. Part 10, as amended) or otherwise.

7 **8.3. No Impact on Employee Benefits.** No payment made under this Agreement shall
8 be considered as compensation or hours worked or hours paid for purposes of determining eligibility,
9 vesting, participation, or contributions with respect to any employee benefit plan. For purposes of this
10 Agreement, the term "benefit plan" means every ERISA "employee benefit plan," as defined in the
11 Employee Retirement and Income Security Act of 1974 ("ERISA"), 29 U.S.C. section 1002(3). The
12 term also includes any 401(k) plan, bonus, pension, stock option, stock purchase, stock appreciation,
13 welfare, profit sharing, retirement, disability, vacation, severance, hospitalization, insurance, incentive,
14 deferred compensation, or any other similar benefit plan, practice, program, or policy, regardless of
15 whether any such plan is considered an ERISA employee benefit plan.

16 **8.4. Language of Settlement Documents.** All settlement-related documents to be
17 filed with the Court or sent to Class Members must be approved by all Parties before being filed or sent.

18 **8.5. Parties' Authority.** The signatories hereto represent that they are fully authorized
19 to bind the Parties to all the term of this Agreement. The Parties agree that Class Members are so
20 numerous that it is impossible or impractical to have each Class Member execute this Agreement. This
21 Agreement may be executed on behalf of Class Members by the Class Representatives and by Class
22 Counsel.

23 **8.6. Entire Agreement.** This Agreement, which includes its Definitions, Recitals, and
24 all Exhibits attached hereto, constitutes the entire agreement on its subject matter, and supersedes all
25 prior and contemporaneous negotiations and understandings between the Parties.

26 **8.7. Counterparts.** This Agreement may be executed in counterparts, and each
27 counterpart signed and delivered shall be deemed an original, and when taken together with other signed
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1 counterparts, signed and delivered shall constitute one signed Agreement, which shall be binding upon
2 and effective as to all Parties.

3 **8.8. Facsimile or Scanned Signatures.** A Party may sign and deliver this Agreement
4 by signing on the designated signature block and transmitting that signature page via facsimile or as an
5 attachment to an email to counsel for the other Party. Any such signature shall be deemed an original for
6 purposes of this Agreement and shall be binding upon the Party who transmits the signature page.

7 **8.9. Waivers and Modifications to Be in Writing.** No waiver, modification, or
8 amendment of this Agreement—whether purportedly made before or after the Court’s approval of this
9 Agreement—shall be valid unless it appears in a writing signed by or on behalf of all Parties, and then
10 shall be valid subject to any required Court approval. Any failure by any Party to insist upon the strict
11 performance by the other Party of any provision of this Agreement shall not be deemed a waiver of
12 future performance of the same provisions or of any other provision of this Agreement, and such Party,
13 notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of
14 any provision of this Agreement. The time periods and dates provided in this Agreement with respect to
15 giving of notices and hearings are subject to Court approval and modification by the Court or by written
16 stipulation of Class Counsel and Defense Counsel.

17 **8.10. Construction.** Each Party participated jointly in the drafting of this Agreement,
18 and its terms are not intended to be, and shall not be, construed against any party by virtue of
19 draftsmanship.

20 **8.10.1. Exhibits Incorporated by Reference.** This Agreement include the terms
21 set forth in any attached exhibit. Any exhibit to this Agreement is an integral part of it.

22 **8.10.2. Headings.** The headings within this Agreement appear for convenience of
23 reference only and shall have no effect upon the construction or interpretation of any part of this
24 Agreement.

25 **8.10.3. Invalidity of Any Provision.** Before declaring any provision of this
26 Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent
27 possible consistent so as to render all provisions of this Agreement enforceable.

1 **8.11. Duty to Cooperate.** Each Party, upon the request of another, agrees to perform
2 such acts and to execute and to deliver such documents as are reasonably necessary to carry out this
3 Agreement. In the same spirit, the Parties agree to make all reasonable efforts to avoid unnecessary
4 Administrative Costs.

5 **8.12. No Prior Assignments or Undisclosed Liens.** The Class Representatives and
6 Class Counsel represent that they have not assigned, transferred, conveyed, or otherwise disposed of any
7 Released Claim or claim to attorneys' fees and costs award to be paid under this Agreement. The Class
8 Representatives and Class Counsel further represent and warrant that there are not any liens or claims
9 against any amount that Defendant is to pay under this Agreement. The Class Representatives and Class
10 Counsel agree to defend, to indemnify, and to hold Defendant harmless from any liability, losses,
11 claims, damages, costs, or expenses, including reasonable attorneys' fees, resulting from a breach of
12 these representations or from any lien or assignment.

13 **8.13. Waiver of Right to Request Exclusion by Class Representatives.** The Class
14 Representatives, by signing this Agreement, each agree not to request exclusion from the Settlement.
15 The Class Representatives, by signing this Agreement, each further represent that they have no objection
16 to the terms of the Agreement and that each believes the terms to be fair, reasonable and adequate.

17 **8.14. Confidential Information.** Class Counsel will destroy all confidential documents
18 and information provided by Defendant within Sixty (60) calendar days after the completion of the
19 administration of this Agreement. Class Counsel further agree that none of the information provided by
20 Defendant shall be used for any purpose other than prosecution of this Action.

21 **8.15. Publicity.** Neither Plaintiffs nor Class Counsel shall cause to be publicized,
22 directly or indirectly, any discussion resulting in or the existence of this Settlement Agreement or its
23 terms in any type of mass media, including, but not limited to, speeches, press conferences, press
24 releases, interviews, television or radio broadcasts, newspapers, website postings, messages on the
25 Internet, Facebook, Twitter or any other social media, prior to preliminary approval. Breach of this
26 provision shall entitle Defendant, in the exercise of its sole discretion, to nullify this Settlement
27 Agreement at any time before the Effective Date. Nothing in this Agreement shall preclude Class
28

Counsel from communicating with members of the Settlement Class after preliminary approval, nor from including publicly-available information in their declarations describing their qualifications as counsel in other cases.

8.16. Continuing Jurisdiction. The Court shall retain jurisdiction over the implementation of this Agreement as well as any matter arising out of, or related to, the implementation of this Agreement. The Court shall not have jurisdiction to modify the terms of this Agreement without the consent of all Parties.

8.17. Disputes. If the Parties dispute the interpretation of this Agreement, they shall first attempt to resolve the dispute informally through good faith negotiations, and, if those efforts are unsuccessful, they agree to mediate any such dispute. The Parties will split the costs of the mediator, and all parties will bear their own fees and costs.

8.18. Interim Stay of the Action. Pending completion of all of the prerequisites necessary to effectuate this Settlement, the Parties agree, subject to Court's approval, to a stay of all proceedings in the Action except such as are necessary to effectuate the Settlement.

8.19. Governing Law. All terms of this Agreement shall be governed by and interpreted according to California law.

SO AGREED:

Dated: January 11, 2023



Plaintiff ANGELYNA CELIO

Dated: January __, 2023

Plaintiff DONELL FORT

Dated: January __, 2023

Plaintiff MATTHEW LYTLE

Dated: January __, 2023

Plaintiff ROBERT MARTIN

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SO AGREED:

Dated: January ____, 2023

Plaintiff ANGELYNA CELIO

Dated: January 12, 2023

Donell Fort

Plaintiff DONELL FORT

Dated: January ____, 2023

Plaintiff MATTHEW LYTLE

Dated: January ____, 2023

Plaintiff ROBERT MARTIN

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SO AGREED:

Dated: January ____, 2023

Plaintiff ANGELYN CELIO

Dated: January ____, 2023

Plaintiff DONELL FORT

Dated: January 11__, 2023

Matthew Lytle

Plaintiff MATTHEW LYTLE

Dated: January ____, 2023

Plaintiff ROBERT MARTIN

Counsel from communicating with members of the Settlement Class after preliminary approval, nor from including publicly-available information in their declarations describing their qualifications as counsel in other cases.

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SO AGREED:

Dated: January ____, 2023

Plaintiff ANGELYNA CELIO

Dated: January ____, 2023

Plaintiff DONELL FORT

Dated: January ____, 2023

Plaintiff MATTHEW LYTLE

Dated: January 11th, 2023



Plaintiff ROBERT MARTIN

1 Dated: January ____, 2023

2
3 By _____
4 AIR INTERNATIONAL (US) INC.

5 Its: _____

6 **Approval As To Form And Content By Counsel:**

7 Dated: January ____, 2023

8 SEYFARTH SHAW LLP

9 By _____
10 Christian J. Rowley
11 Eric M. Lloyd
12 Attorneys for Defendants AIR INTERNATIONAL US,
13 INC.

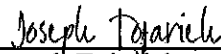
14 Dated: January 11, 2023

15 COHELAN KHOURY & SINGER

16 By  _____
17 Isam C. Khoury
18 Attorney for Plaintiffs ANGEL YNA CELIO, DONELL
19 FORT, MATTHEW LYTLE and ROBERT MARTIN

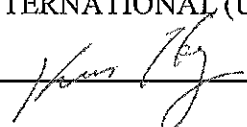
20 Dated: January 11, 2023

21 STONEBROOK LAW

22 By  _____
23 Joseph Tojarieh
24 Attorney for Plaintiffs ANGEL YNA CELIO, DONELL
25 FORT, MATTHEW LYTLE and ROBERT MARTIN

1 Dated: January _11_, 2023

2
3 By Kwangtaek Hong
4 AIR INTERNATIONAL (US) INC.

5 Its: 

6 **Approval As To Form And Content By Counsel:**

7 Dated: January ^{1/12/2023}____, 2023

8 SEYFARTH SHAW LLP

9 By Eric Lloyd
10 Christian J. Rowley
11 Eric M. Lloyd
12 Attorneys for Defendants AIR INTERNATIONAL US,
13 INC.

14 Dated: January ____, 2023

15 COHELANKHOURY & SINGER

16 By Isam C. Khoury
17 Attorney for Plaintiffs ANGELYNA CELIO, DONELL
18 FORT, MATTHEW LYTLE and ROBERT MARTIN

19 Dated: January ____, 2023

20 STONEBROOK LAW

21 By Joseph Tojarieh
22 Attorney for Plaintiffs ANGELYNA CELIO, DONELL
23 FORT, MATTHEW LYTLE and ROBERT MARTIN

EXHIBIT A

NOTICE OF SETTLEMENT OF CLASS ACTION

**YOU MAY QUALIFY FOR AN INDIVIDUAL SETTLEMENT PAYMENT
PLEASE READ CAREFULLY**

**Angelyna Celio, Matthew Lytle, Robert Martin and Donnell Fort, on behalf of themselves and others
similarly situated and aggrieved v. Air International US, Inc., a Delaware Corporation; and DOES 1
Through 10, inclusive**

**Superior Court of the State of California, County of Alameda
Case No. RG21098764**

To: All hourly, non-exempt employees of Air International US, Inc. (“Air International”) in California from May 10, 2017 through and including [Date] (the “Class”):

THIS NOTICE is of a proposed settlement of a class action lawsuit, and an announcement of a court hearing that you may choose to attend. Your rights may be affected by the legal proceedings in this action. The Court will conduct a hearing on [DATE] to address whether the proposed settlement should be approved (“Final Approval Hearing”). You may be entitled to receive a payment under the terms of this class action settlement contained in the Settlement Agreement.

[IDENTIFYING INFORMATION]

You have been identified as a Class Member in the above lawsuit. Under the terms of the proposed settlement, you are estimated to receive approximately \$INSERT AMOUNT as your share of the Net Settlement Amount should the Court grant the settlement in full. Please note that this is only an estimate. Your actual share of the Net Settlement Amount may be more or less than this estimate. Your estimate is based on the number of weeks you worked at Air International in California between May 10, 2017 through [Date] (the “Class Period”). Your options and eligibility requirements for receiving payments are described below.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT (SEE SECTION VIII FOR MORE DETAILS)	
DO NOTHING	Receive a settlement payment and give up your right to sue on the Released Claims described in Section III. This settlement does <u>not</u> require a claims process to receive a payment. Therefore, there is <u>no</u> claim form for you to complete should you wish to receive payment. You are automatically included and eligible to receive a payment once the Court approves the settlement. Please alert the Settlement Administrator if your mailing address changes.
EXCLUDE YOURSELF	You may “opt-out” of any connection with this case including any right to a settlement payment if you would like to retain the right to pursue your own individual claims against the Company. If you choose to opt-out, you must submit a Request for Exclusion by [DATE] (see Section VI). All persons who validly and timely opt-out of the Settlement will <u>not</u> receive any settlement payment and will preserve Released Claims described in Section IV subject to applicable statutes of limitations, except that Settlement Class Members who worked during the PAGA limitations period are nevertheless bound by the release of the PAGA claims.
OBJECT	Write to the Court and Settlement Administrator about why you do not like the Settlement by completing and submitting an Objection by [DATE] (see Section VI).
GO TO A HEARING	Ask to speak in Court about the fairness of the Settlement.

I. Why should I read this Notice?

The Court has granted preliminary approval of a proposed settlement (the “Settlement”) in a case entitled *Angelyna Celio, Matthew Lytle, Robert Martin and Donnell Fort, on behalf of themselves and others similarly situated and aggrieved v. Air International US, Inc., a Delaware Corporation; and DOES 1 Through 10, inclusive*, Alameda County Superior Court Case

No. RG21098764 (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

Air International’s records show that you were employed in California as a non-exempt employee (meaning you were paid hourly or otherwise eligible for overtime pay) at some point during the Class Period. The Court ordered this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT: If you were employed by Air International as a non-exempt employee in California during the Class Period, you are automatically included in the Settlement and do not need to take any further action to receive a payment. You should alert the Settlement Administrator, using the contact information provided herein, if you change your mailing address in the future.

The purpose of this Notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the proposed Settlement, and to discuss your rights and options in connection with the Lawsuit and the Settlement.

II. What is this lawsuit about?

On May 10, 2021, Plaintiffs and Class Representatives Angelyna Celio, Matthew Lytle, Robert Martin and Donnell Fort (“Plaintiffs”), through their attorneys (“Class Counsel”), filed a class action complaint against Air International for wage and hour violations on behalf of all current and former non-exempt employees who were employed by Air International in California at any time since May 10, 2017. Plaintiffs then filed, an amended complaint adding a claim for civil penalties under the California Private Attorneys General Act, California Labor Code section 2698 *et seq.*, on June 7, 2021. The complaints in the Lawsuit allege that Air International violated various Labor Code sections by failing to pay wages for all hours worked including overtime wages, as well as failing to provide all required meal and rest breaks, failing to timely pay final wages, failing to provide accurate and complete wage statements, and failing to reimburse necessary business expenses.

Air International denies these allegations and contends that it has done nothing wrong. Air International denies that it owes any wages, expenses, restitution, penalties, or other damages. Accordingly, this class Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Air International, which expressly denies all liability.

The Court has not ruled on the merits of the claims alleged in the Lawsuit. And, by approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose the Lawsuit if it went to trial. However, to avoid additional expense, inconvenience, and risks of continued litigation, Air International and Plaintiffs have concluded that it is in their respective best interests and the interests of the Settlement Class to settle the Lawsuit on the terms summarized in this Notice. After an extensive provision of information to Class Counsel by Air International, the Settlement was reached following an arm’s length mediation. In these negotiations, both sides recognized the substantial risk of the Court deciding against them at trial and determined that the Proposed Settlement was a good option to resolve the disputed claims.

The Class Representatives and Class Counsel support this Settlement. Among the reasons for their support are the defenses to liability potentially available to Air International, the risk of denial of class certification, the inherent risk of trial on the merits, and the delays and uncertainties associated with litigation.

If you are still employed by Air International, this Settlement will not affect your employment. Air International will not take any adverse action against any Class Member because of the Class Member’s participation or decision not to participate in this Settlement.

III. Who are the attorneys?

Class Counsel:

Isam C. Khoury
Michael D. Singer
Marta Manus
Rosemary Khoury
Cohelan Khoury & Singer
605 C Street, Suite 200
San Diego, CA 92101
Tel: (619) 595-3001

Stonebrook Law
Joseph Tojarieh
10250 Constellation Boulevard, Suite 100
Los Angeles, CA 90067
Tel: (310) 553-5533

IV. What are the terms of the Settlement?

On **[Preliminary Approval Date]**, the Court certified a class, for settlement purposes only, of all hourly, non-exempt employees employed by Air International in California between May 10, 2017, through **[Date]** (the "Settlement Class"). Individuals who do not opt out of the Settlement Class, pursuant to the procedures set forth in this Notice, ("Class Members") will be mailed Settlement checks and in exchange be bound by the Settlement and release of certain wage and penalty claims against Air International.

Without admitting any wrongdoing, Air International has agreed to pay Six Hundred Thousand Dollars (\$600,000) (the "Settlement Amount") in U.S. dollars to fully resolve all claims in the Lawsuit, which includes payments for Individual Settlement Payments to eligible Class Members, attorneys' fees and costs, Settlement Administration Costs, and Class Representative Service Awards.

The Parties agreed to the following payments from the Settlement Amount:

Settlement Administration Costs. The Court has approved CPT Group to act as the "Settlement Administrator," who is sending this Notice to you and will perform many other duties relating to the Settlement. Under the Settlement, a maximum of \$15,000 will be paid from the Settlement Amount to pay the Settlement Administration Costs.

Penalties to the California Labor Workforce and Development Agency ("LWDA"). Twenty-Five Thousand Dollars (\$20,000) of the Settlement Amount will be allocated to Plaintiffs' claim under PAGA (the "PAGA Payment"). Of this amount, Seventy-Five Percent (75%) will be paid to the LWDA in satisfaction of the claims for penalties under PAGA, and the remaining Twenty-Five Percent (25%) will be included in the Net Settlement Amount to be divided between all Class Members.

Service Awards to Settlement Class Representatives. Class Counsel will ask the Court to award Class Representatives Angelyna Celio, Matthew Lytle, Robert Martin and Donnell Fort a Service Award in the amount of Seven Thousand Five Hundred Dollars (\$7,500) each to compensate them for service and extra work provided on behalf of the Class Members. The Class Representatives also may receive shares of the Settlement as Class Members.

Attorneys' Fees and Expenses. Class Counsel have been prosecuting the Lawsuit on behalf of the Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Settlement Amount. Class Members are not personally responsible for any of Class Counsel's attorneys' fees or expenses. Class Counsel will ask for fees of one-third of the common fund Settlement Amount as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through finalization of the Settlement. Class Counsel also will ask for reimbursement of up to _____ Dollars (\$ _____) for the costs Class Counsel incurred in connection with the Lawsuit.

Calculation of Individual Settlement Payments to Class Members. After deducting the amounts above, the balance will form the Net Settlement Amount for distribution to the participating Class Members (who are Class Members who do not opt-out). The Net Settlement Amount will total approximately _____ Dollars (\$ _____). A Class Member's Individual Settlement Payment shall be calculated by dividing the number of eligible workweeks attributed to the Class Member during the Class Period by all Eligible Workweeks during the Class Period attributed to all members of the Settlement Class, multiplied by the portion of the Net Settlement Amount that is not attributable to the PAGA Payment. A Class Member who worked as a non-exempt, hourly employee for the Company in California between May 10, 2020 and [Date] (the "PAGA Period") shall also receive a share of the PAGA Payment. The Class Member's share of the PAGA Payment shall be proportionate to the number of eligible workweeks attributed to the Class Member during the PAGA Period divided by all eligible workweeks attributed to all Class Members during the PAGA Period, multiplied by Twenty-Five percent (25%) of the PAGA Payment. The individual settlement payment for a Class Member who opts out of the Settlement, and who was employed by Air International during the PAGA Period, shall consist solely of a share of the PAGA Payment. The share of such a Class Member shall be proportionate to the number of eligible workweeks attributed to the Class Member during the PAGA Period, divided by all eligible workweeks attributed to all Class Members during the PAGA Period, multiplied by Twenty-Five percent (25%) of the PAGA Payment.

For each Settlement Class Member, the weeks worked at Air International during the Class Period will be calculated from Air International's records. Air International's records indicate that you worked for [TOTAL WORKWEEKS] Workweeks in California during the Class Period, and [PAGA WORKWEEKS] Workweeks during the PAGA Period. If you disagree with either of these numbers, you may submit evidence to the Settlement Administrator on or before _____, with documentation to establish the number of weeks you claim to have actually worked for Air International in California during the Class Period and/or the PAGA Period (excluding any excluded workweeks). **DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED; DO NOT SEND ORIGINALS.**

Based on the above criteria, your estimated gross share of the Settlement is _____ [Amount].

Payments to Class Members. After the Court grants Final Approval of the Settlement and Judgment is entered, settlement checks will be mailed to all participating Class Members who did not timely request to be excluded. In addition, Class Members who were (a) employed during the PAGA Period, and (b) timely submitted a request for exclusion will nonetheless remain bound by the release of PAGA claims and receive a proportionate share of the PAGA Payment following Final Approval of the Settlement and the entry of Judgment. Participating Class Members will have 180 days from the issuance of the last check to cash all of the checks. Any uncashed checks will escheat to the State of California's Unclaimed Property fund to be held in the name of each expired check payee, pursuant to applicable unclaimed property laws.

Allocation and Taxes. One-Third (1/3) of the Settlement Amount distributed to each participating Class Member will be considered and reported as "wages" (W-2 reporting). The remaining Two-Thirds (2/3) of the Settlement Amount will be distributed to each participating Class Member as "interest" and non-wage "penalties," liquidated damages and/or unreimbursed business expenses (Form 1099 reporting). The Settlement Administrator shall take all usual and customary deductions from the Settlement payments that are distributed as wages, including, but not limited to, state and federal tax withholding, disability premiums, and unemployment insurance premiums. There will be no deduction taken from the interest or non-wage penalty distribution; however, it will be reported on IRS Form 1099 as income. Class Members are responsible for the proper income tax treatment of the Settlement Amounts. The Settlement Administrator, Air International and its counsel, and Class Counsel cannot provide tax advice and make no representations as to the tax treatment or legal effect of the Individual Settlement Payments. Participating Class Members will be solely responsible for the payment of any taxes and penalties assessed on their Individual Settlement Payments. Accordingly, Class Members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. Once the Court approves the proposed Settlement, enters Judgment and Air International funds the Settlement Amount, then the Settlement Agreement will bind all members of the participating Class Members who have not opted out of the Settlement, and will bar them from bringing certain claims against Air International as described below. Specifically, after Final Approval by the Court, the Settlement Class Members will fully release and discharge Air International and all of its present and former parent companies, subsidiaries, affiliates, shareholders, officers, directors, employees, agents, servants, registered representatives, attorneys, insurers, successors and assigns (collectively the "Released Parties") from those claims alleged in Plaintiffs' complaints, as well as all any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorney's fees, damages, action 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 that were or reasonably could have been brought based on the facts alleged in any version of the complaints filed in the Action and in the LWDA Letters submitted to the LWDA by Plaintiffs, regardless of theory of recovery, including: claims under California Labor Code sections 201, 202, 203,

204, 206, 210, 218, 218.5, 226, 226.7, 227, 245 *et seq.*, 510, 511, 512, 515, 517, 551-556, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802; the California IWC Wage Orders; the Fair Labor Standards Act (29 U.S.C. Section 201, *et seq.*); and California Business and Professions Code section 17200, *et seq.* (the "Released Class Claims"). Settlement Class Members shall further agree to waive their right to pursue individual lawsuits as to any of the Released Class Claims against the Released Parties to the extent such Released Class Claims accrued during the Class Period. Additionally, Plaintiffs, on behalf of the State of California, will release Air International and the Released Parties from any and all PAGA claims or causes of action of whatever kind or nature which occurred during the PAGA Period that were or reasonably could have been brought based on the facts alleged in any version of the complaints filed in the Action and in the notices submitted to the California Labor & Workforce Development Agency by Plaintiffs, regardless of theory of recovery, including but not limited to, any alleged violations of or relief under California Labor Code sections 201, 202, 203, 218.5, 218.6, 226, 226.3, 226.7, 245 *et seq.*, 510, 512, 551, 552, 558, 1182.12, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 2800, 2802, and the applicable provisions of the applicable IWC Wage Orders (the "Released PAGA Claims"). Any participating Class Member who timely requests exclusion in compliance with these requirements will not be bound by this Release, except that participating Class Members who worked during the PAGA limitations period are nevertheless bound by the release of the PAGA claims.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class, and the entry of Judgment.

V. How can I claim money from the settlement?

You are automatically included as a Settlement Class Member to receive a settlement payment, provided that you do not exercise your right to opt-out as explained below, and do not have to take any further action. It is the responsibility of all Class Members to ensure that the Settlement Administrator has your current address on file, or you may not receive important information or a settlement amount.

VI. What other options do I have?

- A. **Do Nothing and Participate in the Settlement.** Under the Settlement, you will automatically receive a settlement payment unless you exclude yourself from the settlement by following the exclusion procedure set forth below. If you disagree with the number of weeks worked, as described in this Notice, you may dispute the allocation of the Settlement without excluding yourself or objecting, as described below.

If you are a current employee, your decision as to whether or not to participate in this Settlement will not be considered by Air International and Air International will not take any adverse employment action against you based on your participation in the Settlement.

- B. **Exclude Yourself from the Settlement.** If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator a "Request for Exclusion from the Class Action Settlement" letter/card postmarked no later than _____, with your full name, address, telephone number, last four digits of your social security number, and signature. The Request for Exclusion should state:

"I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN CELIO V. AIR INTERNATIONAL US, INC. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I MAY NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT."

Your Request for Exclusion must be mailed to the Settlement Administrator postmarked no later than _____, 2023 (60 days of the initial mailing) in the envelope provided or in a separate envelope addressed to:

Angelyna Celio, et al. v. Air International US, Inc.
c/o [Settlement Admin Name]
P.O. Box [XXXXX]
XXXX, CA [ZIP]

Any person who files a timely Request for Exclusion from the Class Action Settlement, upon receipt: (1) will not have any rights under this Settlement, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive any payments in connection with the release of the class action claims under this Settlement;

and (3) will not be bound by this Settlement, or the Judgment, except that Settlement Class Members who worked during the PAGA period are nevertheless bound by the release of the PAGA claims.

- C. **Object to Settlement.** You may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing at your expense, either in person, telephonically, or through an attorney, provided you notify the Court of your intention to do so. All written objections, supporting papers and/or notices of intent to appear at the Final Approval Hearing must (a) clearly identify the case name and number (*Angelyna Celio, Matthew Lytle, Robert Martin and Donnell Fort, on behalf of themselves and others similarly situated and aggrieved v. Air International US, Inc., a Delaware Corporation; and DOES 1 Through 10, inclusive*, Alameda County Superior Court Case No. RG21098764), (b) be submitted to the Court either by mailing the objection to: Clerk of the Court, Superior Court of California, County of Alameda, 1225 Fallon Street, Oakland, California 94612, or by filing in person at the same location; (c) also be mailed to Cohelan Khoury & Singer, 605 C Street, Suite 200, San Diego, CA 92101 and Stonebrook Law, 10250 Constellation Boulevard, Suite 100, Los Angeles, CA 90067 and (d) be filed or postmarked on or before _____, 2023. If the Court rejects your objection, you will still be bound by the terms of the Settlement.

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as participating Class Members who do not object. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

VII. What is the effect of the settlement?

Released Rights and Claims. The Settlement is intended to settle all claims against the Released Parties that were asserted or could have been asserted in the Lawsuit regarding the alleged violations of wage and hour laws. If you were employed by Air International in California at any time during the Class Period and do not elect to exclude yourself from the Settlement Class, you will be deemed to have entered into this Release and to have released the above-described Released Claims. If the Settlement is not approved by the Court or does not become final for some other reason, the Lawsuit may continue, and the releases will not take effect.

VIII. What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement, and Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses and the Service Awards to the Class Representatives on _____, at 3:00 p.m. in Department 25 of the Alameda County Superior Court, located at 1221 Oak Street, Oakland, CA 94612.

You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

IX. How can I get additional information?

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you are referred to the detailed Settlement Agreement, which is on file with the Clerk of the Court. The pleadings and other records in this litigation, including the Settlement Agreement, may be examined (a) online on the Superior Court of California, County of Alameda's Website at www.alameda.courts.ca.gov, or (b) in person at the Superior Court of California, County of Alameda, Rene C. Davidson Courthouse, 1221 Oak Street, Oakland, CA 94612, Monday through Friday, excluding Court holidays and closures, or you may contact Class Counsel or the Settlement Administrator. You may also visit the website maintained by the Settlement Administrator at [URL].

PLEASE DO NOT TELEPHONE THE COURT OR AIR INTERNATIONAL'S COUNSEL FOR INFORMATION REGARDING THIS SETTLEMENT.

X. Reminder as to time limits.

Class Members do not have to take any further action to participate in the Settlement. The deadline for submitting a Request for Exclusion is _____. The deadline for mailing an objection to the Settlement Administrator is _____. These deadlines will be strictly enforced.

**PLEASE DO NOT CALL OR WRITE THE COURT
FOR INFORMATION ABOUT THIS SETTLEMENT**

EXHIBIT 2

1 SEYFARTH SHAW LLP
Christian J. Rowley (SBN 187293)
2 crowley@seyfarth.com
Eric M. Lloyd (SBN 254390)
3 elloyd@seyfarth.com
560 Mission Street, 31st Floor
4 San Francisco, California 94105
Telephone: (415) 397-2823
5 Facsimile: (415) 397-8549

6 Attorneys for Defendant
Defendant AIR INTERNATIONAL (US) INC.

7 *(Additional Counsel Listed on Next Page)*

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF ALAMEDA

12 ANGELYNA CELIO, MATTHEW LYTLER,
13 ROBERT MARTIN, and DONELL FORT, on
behalf of themselves and others similarly situated
14 and aggrieved,

15 Plaintiffs,

16 v.

17 AIR INTERNATIONAL (US) INC., a Delaware
Corporation; and DOES 1 through 10, inclusive,

18 Defendants.
19
20
21
22
23
24
25
26
27
28

Case No. RG21098764

**ADDENDUM TO CLASS ACTION AND
PAGA REPRESENTATIVE ACTION
SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

Class Action Complaint Filed: 5-10-21
First Amended Complaint Filed: 6-07-21

1 COHELAN KHOURY & SINGER

Isam C. Khoury (SBN 58759)

2 ikhoury@ckslaw.com

Michael D. Singer (SBN 115301)

3 msinger@ckslaw.com

Marta Manus (SBN 260132)

4 mmanus@ckslaw.com

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5 rkhoury@ckslaw.com

605 C Street, Suite 200

6 San Diego, CA 92101

Telephone: (619) 585-3001

7 Facsimile: (619) 595-3000

8 STONEBROOK LAW

Joseph Tojarieh (SBN 265492)

9 jft@stonebrooklaw.com

10250 Constellation Blvd, Suite 100

10 Los Angeles, CA 90067

Telephone: (310) 553-5533

11 Facsimile: (310) 553-5536

12 Attorneys for Plaintiffs

ANGELYNA CELIO, DONELL FORT, MATTHEW LYTLE and ROBERT MARTIN

1 This Addendum to the Class Action Settlement Agreement and Release of Claims
2 (“Addendum”) is made and entered into by and between (1) Plaintiffs ANGELYN CELIO, DONELL
3 FORT, MATTHEW LYTLE and ROBERT MARTIN—individually and on behalf of the Class
4 Members and Aggrieved Employees defined below—and (2) AIR INTERNATIONAL US, INC.,
5 pursuant to Paragraph 8.9. of the Class Action Settlement Agreement and Release of Claims
6 (“Agreement,” “Settlement,” or “Stipulation of Settlement”) previously entered into by the Parties.

7 Excepting only the provisions of the Agreement that are expressly modified by this Addendum,
8 the Agreement remains in full force and effect. By executing this Addendum, the Parties agree to be
9 bound by its terms, as follows:

10 The following Section 3.4 is applicable to this Addendum and replaces the Section 3.4 in the
11 Agreement.

12 **3.4. Mailing Materials to Class Members.** Upon its receipt of the list of names and last
13 known addresses of each Class Member, the Settlement Claims Administrator shall access the National
14 Change of Address (“NCOA”) Database, and update the addresses maintained by Defendant. Within
15 Ten (10) calendar days of the receipt of the class data discussed immediately above, the Settlement
16 Administrator shall send the Notice of Class Action Settlement to Class Members at their last known
17 address via First Class U.S. Mail and Email. Any mailing returned to the Settlement Administrator as
18 undeliverable shall be sent within Ten (10) calendar days via First Class U.S. Mail to any available
19 forwarding address. If no forwarding address is available, then the Settlement Administrator shall
20 attempt to determine the correct address by using a computer-based skip-trace search, and shall then
21 perform, if feasible, a re-mailing via First Class U.S. Mail within Five (5) calendar days. Class Members
22 who are sent a re-mailed the Notice of Class Action Settlement shall have their Consideration Period
23 extended by ten (10) calendar days from the date the Settlement Administrator re-mails the Notice of
24 Class Action Settlement. If the last known address is not available for a Class Member, then the Notice
25 of Class Action Settlement for that Class Member will be deemed undeliverable. Only one re-mailing is
26 required. If a Class Member cannot be located within Two (2) attempts at mailing, then the Notice of
27
28

1 Class Action Settlement for that Class Member will be deemed undeliverable. It is the intent of the
2 Parties that reasonable means be used to locate Class Members.

3 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this
4 Addendum to the Class Action Settlement Agreement and Release of Claims between Plaintiffs, on the
5 one hand, and Defendant, on the other hand, as of the date(s) set forth below:

6 **SO AGREED:**

7 Dated: February 17, 2023



Plaintiff ANGELYNA CELIO

9 Dated: February ____, 2023

Plaintiff DONELL FORT

11 Dated: February ____, 2023

Plaintiff MATTHEW LYTLE

13 Dated: February ____, 2023

Plaintiff ROBERT MARTIN

15 Dated: February ____, 2023

16 By AIR INTERNATIONAL (US) INC.

18 Its: _____

19 **Approval As To Form And Content By Counsel:**

20 Dated: February ____, 2023

SEYFARTH SHAW LLP

22 By

23 Christian J. Rowley
24 Eric M. Lloyd
Attorneys for Defendants AIR INTERNATIONAL US,
INC.

25 Dated: February ____, 2023

1 Class Action Settlement for that Class Member will be deemed undeliverable. It is the intent of the
2 Parties that reasonable means be used to locate Class Members.

3 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this
4 Addendum to the Class Action Settlement Agreement and Release of Claims between Plaintiffs, on the
5 one hand, and Defendant, on the other hand, as of the date(s) set forth below:

6 **SO AGREED:**

7
8 Dated: February ____, 2023

Plaintiff ANGELYN CELIO

9 Dated: February 22__, 2023

Donell Fort

Plaintiff DONELL FORT

10
11 Dated: February ____, 2023

Plaintiff MATTHEW LYTLE

12
13 Dated: February ____, 2023

Plaintiff ROBERT MARTIN

14
15 Dated: February ____, 2023

16 By _____
17 AIR INTERNATIONAL (US) INC.

18 Its: _____

19 **Approval As To Form And Content By Counsel:**

20 Dated: February ____, 2023

21 SEYFARTH SHAW LLP

22 By

23 Christian J. Rowley
24 Eric M. Lloyd
Attorneys for Defendants AIR INTERNATIONAL US,
INC.

25 Dated: February ____, 2023
26
27
28

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2 Parties that reasonable means be used to locate Class Members.

3 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this
4 Addendum to the Class Action Settlement Agreement and Release of Claims between Plaintiffs, on the
5 one hand, and Defendant, on the other hand, as of the date(s) set forth below:

6 **SO AGREED:**

7
8 Dated: February ____, 2023

Plaintiff ANGELYN A CELIO

9 Dated: February ____, 2023

Plaintiff DONELL FORT

10
11 Dated: February 17, 2023

Matthew Lytle
Plaintiff MATTHEW LYTLE

12
13 Dated: February ____, 2023

Plaintiff ROBERT MARTIN

14
15 Dated: February ____, 2023

16 By _____
17 AIR INTERNATIONAL (US) INC.

18 Its: _____

19 **Approval As To Form And Content By Counsel:**

20 Dated: February ____, 2023

21 SEYFARTH SHAW LLP

22 By

23 Christian J. Rowley
24 Eric M. Lloyd
Attorneys for Defendants AIR INTERNATIONAL US,
INC.

25 Dated: February ____, 2023
26
27
28

1 Class Action Settlement for that Class Member will be deemed undeliverable. It is the intent of the
2 Parties that reasonable means be used to locate Class Members.

3 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this
4 Addendum to the Class Action Settlement Agreement and Release of Claims between Plaintiffs, on the
5 one hand, and Defendant, on the other hand, as of the date(s) set forth below:

6 **SO AGREED:**

7
8 Dated: February ____, 2023

Plaintiff ANGELYN CELIO

9
10 Dated: February ____, 2023

Plaintiff DONELL FORT

11
12 Dated: February ____, 2023

Plaintiff MATTHEW LYTLE

13
14 Dated: February 16, 2023



Plaintiff ROBERT MARTIN

15
16 Dated: February ____, 2023

17
18 By _____
AIR INTERNATIONAL (US) INC.

19
20 Its: _____

21 **Approval As To Form And Content By Counsel:**

22
23 Dated: February ____, 2023

SEYFARTH SHAW LLP

24
25 By

Christian J. Rowley
Eric M. Lloyd
Attorneys for Defendants AIR INTERNATIONAL US,
INC.

26
27
28 Dated: February ____, 2023

1 Class Action Settlement for that Class Member will be deemed undeliverable. It is the intent of the
2 Parties that reasonable means be used to locate Class Members.

3 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this
4 Addendum to the Class Action Settlement Agreement and Release of Claims between Plaintiffs, on the
5 one hand, and Defendant, on the other hand, as of the date(s) set forth below:

6 **SO AGREED:**

7
8 Dated: February ____, 2023

Plaintiff ANGELYNA CELIO

9
10 Dated: February ____, 2023

Plaintiff DONELL FORT

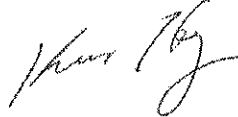
11
12 Dated: February ____, 2023

Plaintiff MATTHEW LYTLE

13
14 Dated: February ____, 2023

Plaintiff ROBERT MARTIN

15
16 Dated: February 16, 2023

17
18 By  _____

AIR INTERNATIONAL (US) INC.

19 Its: Kwangtaek Hong

20 **Approval As To Form And Content By Counsel:**

21
22 Dated: February 16, 2023

SEYFARTH SHAW LLP

23
24 By  _____

Christian J. Rowley

Eric M. Lloyd

Attorneys for Defendants AIR INTERNATIONAL US,
INC.

25
26 Dated: February 22, 2023

COHELAN KHOURY & SINGER

By


Isam C. Khoury
Attorney for Plaintiffs ANGELYNA CELIO, DONELL
FORT, MATTHEW LYTLE and ROBERT MARTIN

Dated: February 17, 2023

STONEBROOK LAW

By

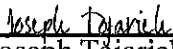

Joseph Tojarieh
Attorney for Plaintiffs ANGELYNA CELIO, DONELL
FORT, MATTHEW LYTLE and ROBERT MARTIN

EXHIBIT 3