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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JOSE MEDINA, as an individual and on
behalf of all aggrieved employees,

Plaintiff,

vs.

UNITED AIRLINES, INC, a Delaware
Corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No. BC624742

*Assigned for All Purposes to Honorable Rupert
A. Byrdsong in Department 28*

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; AND MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT**

Date: May 30, 2023
Time: 8:30 a.m.
Dept.: 28

Reservation ID: 811413641161

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on May 30, 2023 at 8:30 a.m., or as soon thereafter as the
3 matter may be heard, before the Honorable Rupert A. Byrdsong, judge presiding, in Department
4 28 of the above referenced Court located at 111 North Hill Street, Los Angeles, CA 90012,
5 Plaintiff JOSE MEDINA (“Plaintiff”) will seek an Order: (1) preliminarily approving the Joint
6 Stipulation of Class and Representative Action Settlement and Release (“Agreement” or
7 “Settlement Agreement”) (2) conditionally certifying the following Class for settlement purposes
8 only: “all current and/or former employees of UNITED AIRLINES, INC. (“United”) who were
9 employed as mechanics in the State of California, at any time from July 5, 2014, through January
10 31, 2023”; (3) appointing Plaintiff as the Class Representative and Larry W. Lee and Max Gavron
11 of Diversity Law Group, P.C., Edward W. Choi and Paul Yi of Law Offices of Choi & Associates,
12 P.C., and William L. Marder of Polaris Law Group, P.C, as Class Counsel; (4) preliminarily
13 approving the Settlement and the Gross Settlement Value of \$14,000,000.00; (5) finding on a
14 preliminary basis that the Settlement Agreement appears to be within the range of reasonableness
15 of a settlement, including the amount of the PAGA penalties, Class Representative Service Award,
16 Class Counsel’s fees and costs, the settlement administration fees, and the allocation of payments
17 to Settlement Class Members, that could ultimately be given final approval by this Court; (6)
18 approving the Preliminary Approval Order (“Class Notice” or “Settlement Class Notice”) to be
19 sent to Class Members, which is attached as Exhibit B to the Settlement Agreement; (7) approving
20 the distribution of the Class Notice to Class Members substantially in the manner and form set
21 forth in the Settlement Agreement; (8) appointing Phoenix Settlement Administrators as the
22 Settlement Administrator; and (9) setting the matter for a Final Fairness and Final Approval
23 hearing.

24 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
25 provides for court approval of the settlement of a purported class action and allows the Court to
26 preliminarily certify a class for settlement purposes.

27 The basis for this Motion, filed without any opposition from Defendant UNITED
28

1 AIRLINES, INC. (“Defendant” or “United”), is that the proposed settlement is fair, adequate, and
2 reasonable and the procedures proposed by the Parties are adequate to ensure the opportunity of
3 class members to participate in, opt-out of, or object to the settlement.

4 This Motion will be based on the attached Memorandum of Points and Authorities, the
5 Settlement Agreement, the proposed Notice to Class Members, and the supporting Declarations of
6 Larry W. Lee, Max Gavron, Edward W. Choi, Paul M. Yi, William L. Marder, Jodey Lawrence,
7 and Plaintiff, and upon the oral arguments of counsel (should there be any) and on the complete
8 records and file herein.

9
10 DATED: May 5, 2023

LAW OFFICES OF CHOI AND ASSOCIATES, APLC

11 By: 
12 Edward W. Choi
13 Attorneys for Plaintiff and the Class
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Jose Medina (“Plaintiff” or “Medina”) and Defendant United Airlines, Inc. (“Defendant”
4 or “United”) (Plaintiff and Defendant are collectively referred to as the “Parties) move for preliminary
5 approval of a global settlement of two lawsuits that have been heavily litigated for almost 7 years. The
6 proposed settlement resolves the case pending before this Court, and a companion action pending in the
7 United States District Court for the Central District of California (referred to as “*Medina II*”).

8 The Parties engaged in extensive litigation, including a motion for summary judgment, an appeal
9 and reversal of the summary judgment motion, moving for and being granted class certification, seeking
10 review by the Ninth Circuit of the class certification order, conducting both pre-certification and post
11 certification discovery and obtaining payroll data that was reviewed by an expert witness. The Parties
12 engaged in mediation with well-respected mediator, Michael Loeb, Esq. on July 21, 2022. The mediation
13 was not successful. However, the Parties continued their negotiations, for several months with Mediator
14 Loeb’s assistance, and ultimately reached a settlement in principle on January 5, 2023. (Declaration of
15 Edward W. Choi (“Choi Decl”) at ¶ 15).

16 The Gross Settlement Value (“GSV”) of Fourteen Million Dollars and Zero Cents
17 (\$14,000,000.00) will be paid by Defendant on a **non-reversionary** basis without the need to submit
18 claim forms. (Joint Stipulation of Class and Representative Action Settlement and Release (“Settlement
19 Agreement”) ¶¶ II.8). Thus, the entire settlement amount will be distributed and no remaining amounts,
20 i.e. unclaimed funds, will revert to Defendant. (*Id.* ¶ II.10). Further, the class members will not need to do
21 anything to participate in the settlement, but have the opportunity to object or opt out of the settlement.
22 (*Id.* at ¶ VI.22-27). The following represents the key terms of the Settlement:

- 23 • Gross Settlement Value of \$14,00,000.00;
- 24 • Estimated Class of 5,940;
- 25 • Attorney’s fees up to \$ 4,666,666.67 (33 1/3% of GSV);
- 26 • Class counsel’s costs up to \$ 75,000.00;
- 27 • Class Representative’s Enhancement Payment of \$20,000.00;
- 28 • Settlement Administrator’s Costs of up to \$30,950.00;

- LWDA Payment of \$690,553.75 (75% of the total PAGA allocation of \$927,383.33);
- Net Settlement Amount of \$8,516,829.58.
- Pure raw average per class member will be at approximately \$1,433.81.

Although Plaintiff prevailed on class certification in *Medina II*, Plaintiff recognizes the inherent risk in further drawn-out litigation and the specific risks that a class certification decision could be reversed on appeal and only after litigating the merits of the case. Even if successful through trial, there is a potential for appeals and further delay as demonstrated by Defendant's Petition to Appeal the class certification decision in the *Medina II*, which was ultimately denied by the Ninth Circuit. Based on their own independent investigation and evaluation, the Parties and their respective counsel are of the opinion that settlement for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best interests of the Settlement Class Members and Defendant in light of all known facts and circumstances and the expenses and risks inherent in litigation.

Therefore, the Parties respectfully request that the Court grant this Motion for Preliminary Approval of Class Action Settlement.

II. FACTUAL AND PROCEDURAL BACKGROUND

On February 1, 2016, and again on May 15, 2018, Plaintiff filed written notices with the California Labor & Workforce Development Agency (collectively, the "PAGA Notices"). (Declaration of Edward W. Choi ("Choi Decl.") ¶2). On June 22, 2016, Plaintiff filed a representative PAGA action against United in the Los Angeles Superior Court, Case No. BC624742 alleging that United failed to provide meal breaks for its mechanic employees that worked shifts over 10 hours. ("*Medina I*"). (Choi Decl. ¶3). The Parties litigated the action for two years prior to Defendant moving for summary judgment. (*Id.* at ¶4). Plaintiff deposed numerous witnesses in Texas identified by Defendant as its persons most qualified, and the Parties exchanged extensive written discovery. (*Id.*).

On September 24, 2018, the Los Angeles Superior Court granted Defendant's Motion for Summary Judgment ("MSJ") on the basis that Railway Labor Act, 45 U.S.C. Sections 151, et. seq. ("RLA") preempts Plaintiff's Labor Code §226.7 claims. (Choi Decl. ¶5). Plaintiff subsequently appealed that decision. On August 24, 2021, the Court of Appeal reversed the Trial Court's MSJ ruling and remanded the case to the Los Angeles Superior Court. 2021 Cal. App. Unpub. LEXIS 5463. (*Id.* at ¶6).

1 On July 25, 2018, the Plaintiff filed a Class Action Complaint against United captioned *Medina v.*
2 *United Airlines, Inc.*, Case No. BC 715062 (LA Superior Court), which United removed to the United
3 District Court for the Central District of California on August 29, 2018, after which it was captioned
4 *Medina v. United Airlines, Inc.*, Case No. 18-cv-07557 (C.D. Ca.) (“*Medina II*”) (collectively, with
5 *Medina I* and the PAGA Notices, the “Lawsuits”) (*Id.* at ¶7). In *Medina II*, the Parties participated in
6 extensive written discovery, administration of a *Belaire West* notice and Plaintiff deposed another of
7 Defendant’s witnesses. (*Id.* at ¶9).

8 On June 13, 2022, the District Court granted Plaintiff’s Motion for Class Certification in *Medina*
9 *II*. The certified class is defined as:

10 “All current and former mechanics employed by United who worked in California at any
11 time from July 25, 2014 through June 13, 2022”
(Choi Decl. ¶10)

12 On June 27, 2022, Defendant filed a Petition for Permission to Appeal Pursuant to Federal Rule of
13 Civil Procedure Rule 23(f) with the United States Court of Appeals for the Ninth Circuit. (*Id.* at ¶11). On
14 July 7, 2022, Plaintiff filed his Answering Brief. (*Id.*). On August 19, 2022, the Ninth Circuit denied
15 Defendant’s petition. (*Id.*).

16 The Lawsuits assert claims as follows. (*Id.* at ¶8). *Medina I* asserts representative claims under
17 the California Labor Code Private Attorneys General Act, Labor Code § 2698 *et seq.* (“PAGA”), alleging
18 that United failed to provide second duty-free meal periods to California-based Mechanics who worked
19 more than ten hours, in violation of California Labor Code § 226.7, and that for “some of the shifts
20 worked for less than 10 hours” a compliant first meal period was not provided. (*Id.*). These claims were
21 brought on behalf of a group of allegedly aggrieved employees consisting of all current and former United
22 mechanics in California who worked a shift longer than ten hours from February 9, 2015, to present. (*Id.*).
23 *Medina II* asserts putative class and PAGA claims, alleging five causes of action: failure to provide meal
24 periods under Labor Code §§ 226.7 and 512; failure to provide rest periods under Labor Code § 226.7;
25 violation of California Labor Code § 226 regarding recordkeeping; violation of Business & Professions
26 Code § 17200 *et seq.*; and PAGA claims predicated on the preceding alleged violations. *Medina II* brings
27 these claims on behalf of a putative class of current and former United mechanics defined all current and
28 former mechanics who worked in California for Defendant from July 25, 2014, to the present. (*Id.*). The

Parties stipulated to the filing of a First Amended Complaint in *Medina I*, which the Court granted on April 24, 2023. (*Id.* at ¶12). The First Amended Complaint, which was filed in *Medina I*, on April 24, 2023 consolidates the claims in *Medina I* and *Medina II* and is the Operative Complaint for settlement purposes. (*Id.* at ¶13). Defendant denies the allegations in the Lawsuits and is prepared to continue to defend the action vigorously. (*Id.* ¶14).

III. DISCUSSION

Any settlement of a class action lawsuit must be reviewed and approved by the Court. This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after notice has been distributed to the class members for their comment or objections. The Manual for Complex Litigation (Third) § 30.41 states:

Approval of class action settlements involves a two-step process. First, counsel submits the proposed terms of settlement and the court makes a preliminary fairness evaluation. If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of class representatives or of segments of the class, or excessive compensation for attorneys, and appears to fall within the range of possible approval, the court should direct that notice ... be given to the class members of a formal fairness hearing, at which arguments and evidence may be presented in support of and in opposition to the settlement. Thus, the preliminary approval by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. As Professor Newberg comments, “[t]he strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court may find that the settlement proposal contains some merit, is within the range of reasonableness required for a settlement offer, or is presumptively valid subject only to any objections that may be raised at a final hearing.” 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002).

The procedures for the parties’ submission of a proposed settlement for preliminary approval by the court also are discussed in 4 *Newberg on Class Actions*:

When the parties to an action reach a monetary settlement, they will usually prepare and execute a joint stipulation of settlement, which is submitted to the court for preliminary approval. The stipulation should set forth the central terms of the agreement, including but not limited to, the amount of settlement, form of payment, manner of determining the effective date of settlement and any recapture clause.

Id. at § 11.24.

1 Here, the Parties have reached such an agreement and have submitted to this Court in connection
2 with this Motion a copy of the Settlement Agreement fully setting forth the agreement reached among the
3 Parties. The Settlement Agreement sets forth all terms of the agreement reached by the Parties, which
4 include, among other things, the method for calculating the Settling Class Members' individual settlement
5 payments.

6 The parties also may, at the preliminary approval stage, request that the court provisionally
7 approve certification of the class – conditional upon final approval of the settlement. “[P]re-certification
8 settlements are routinely approved if found to be fair and reasonable.” *Wershba v. Apple Computer, Inc.*,
9 91 Cal. App. 4th 224, 240 (2001). *Accord Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1803 (1996)
10 (although the settlement was reached before any “adversary certification,” the court was satisfied that it
11 was “fair, adequate and reasonable”); *In re Baldwin-United Corp.*, 105 F.R.D. 475, 478 (S.D.N.Y. 1984)
12 (“many courts have employed this practice in the name of judicial efficiency in order to facilitate
13 apparently beneficial settlement proposals”). As further explained by Professor Newberg:

14 The strength of the findings made by a judge at a preliminary hearing or conference
15 concerning a tentative settlement proposal. . . . may be set out in conditional orders
16 granting tentative approval to the various items submitted to the court. Three basic rulings
17 are often conditionally entered at this preliminary hearing. These conditional rulings may
18 approve a temporary settlement class, the proposed settlement, and the class counsel's
19 application for fees and expenses.

20 4 Newberg on Class Actions, at §11.26

21 In addition to such terms as class identification, settlement amount and payment procedures, the
22 Settlement Agreement reached among the Parties contains a provision pursuant to which the Parties
23 stipulate to the Court's provisional certification of the Class, but do so for the purposes of this settlement
24 only.

25 **A. PROPOSED CLASS DEFINITION**

26 The current settlement is being settled on behalf of “all current and/or former employees of United
27 who were employed as mechanics in the State of California, at any time from July 5, 2014, through
28 January 31, 2023.” (Settlement Agreement ¶ III.11).

B. NUMEROSITY

Courts generally find that numerosity is satisfied if the class includes forty or more members. (*See*

1 *Villalpando v. Excel Direct Inc.* (N.D. Cal. 2014) 303 F.R.D. 588, 605-606.

2 In this case, prior to the mediation, Defendant provided payroll data for approximately 4,900
3 Settlement Class members, therefore, numerosity is satisfied. (Choi Decl. ¶16).

4 **C. ASCERTAINABILITY**

5 Class members are ascertainable where they may be “readily identified without unreasonable
6 expense or time by reference to official records.” (*Lee v. Dynamex, Inc.* (2008) 166 Cal. App. 4th 1325,
7 1334; *see also Faulkinbury v. Boyd & Assocs., Inc.* (2013) 216 Cal. App. 4th 220, 240.) Here, the identity
8 of class members is clearly ascertainable from Defendant’s payroll records and they have already been
9 identified.

10 **D. TYPICALITY AND ADEQUACY OF REPRESENTATION**

11 **1. Class Representative’s Claims are Typical of the Class**

12 The commonality requirement is met when there are questions of law and fact common to the
13 class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) (“The existence of shared legal issues
14 with divergent legal factual predicates is sufficient, as is a common core of salient facts couple with
15 disparate legal remedies within the class”). Commonality requires only that some common legal or
16 factual questions exist; the plaintiffs need not show that all issues in the litigation are identical. *See*
17 *Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473 (1981). Defendant’s conduct is central to the
18 commonality inquiry. *See City of San Jose v. Superior Court*, 12 Ca1. 3d 447, 460 (1974); *Vasquez v.*
19 *Superior Court*, 4 Cal. 3d 800, 812-13 (1971). Where the employer’s conduct is uniformly directed at a
20 class of employees, as it is here, the class wide impact of the Defendant’s policies satisfies the
21 commonality requirement. *See Stephens v. Montgomery Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

22 Plaintiff alleges that Defendant, as a matter of corporate policy, practice or procedure violated the
23 Labor Code by failing to provide meal and rest breaks and provide accurate wage statements. Plaintiff
24 alleges that he did not receive meal and rest breaks and did not receive compliant wage statements.
25 (Declaration of Jose Medina (“Medina Decl.”) ¶3). Moreover, Plaintiff does not have any interests
26 adverse to the class, nor has any such issues been raised or presented. (Medina Decl. ¶ 4). Plaintiff has
27 taken all necessary steps to represent the interests of the Class, by providing information and documents
28 and providing his deposition testimony and signing various declarations. (Medina Decl. ¶¶ 5-6). For such

reasons, Plaintiff has adequately represented the class members and will continue to do so. Indeed, given the District Court’s granting of class certification in *Medina II*, there should be little doubt that Plaintiff has claims typical of the class and has adequately represented the class.

2. Class Counsel Have Adequately Represented the Class and Has Experience with Wage and Hour Class Actions

From the inception of the case, Class Counsel have solely represented the interest of the class. For example, in *Medina I*, Plaintiff conducted written discovery, took depositions of Defendant’s PMK witnesses and successfully appealed the trial court’s granting of Defendant’s motion for summary judgment. In *Medina II*, Plaintiff served written discovery, obtained class contact information after administering a *Belaire West* notice, took depositions of Defendant’s FRCP 30(b)(6) witnesses, obtained an order granting class certification, successfully defended a petition for appeal and conducted post-certification discovery. (Choi Decl. ¶¶4-11). Through formal discovery, Class counsel obtained sufficient class data in order to evaluate that class claims at issue. (*Id.* at ¶15). Class counsel also retained the services of an expert witness to perform a detailed damage analysis. (*Id.* at ¶16). The mediation and settlement were also obtained for the benefit of the class, not for the individual Plaintiff. (*Id.* at ¶15). Finally, Class counsel have been approved as class counsel on a number of prior cases and are competent to represent the class. (Choi Decl. ¶ 26); Declaration of Larry W. Lee (“Lee Decl.”) ¶ 5-6; Declaration of William L. Marder (“Marder Decl.”) ¶¶ 10-11; Declaration of Paul M. Yi. (“Yi Decl.”) ¶ 4 and Declaration of Max Gavron (“Gavron Decl.”) ¶ 8-10).

E. SUPERIORITY

Class treatment is clearly superior to any other method of resolving Plaintiff’s claims. *Sav-on Drug Stores*, 34 Cal. 4th at 326. In employment actions, class actions are in fact encouraged. *Jaimez v. DAIOHS USA, Inc.*, 181 Cal. App. 4th 1286, 1308 (2010) (“In light of the numerous common issues of fact and law that predominate in this lawsuit, we conclude that proceeding by way of class action is the superior method of adjudication. Doing so would further judicial economy by avoiding repetitious suits, would unify what would otherwise be a series of small claims so as to enhance the class members’ access to redress...”).

Here, Plaintiff’s claims are based on system-wide policies, procedures, and practices that apply to all class members and can be most efficiently litigated on a class-wide basis, *i.e.*, Defendant’s alleged

1 failure to provide meal and rest breaks and providing wage statements. The alternative would be the
2 unrealistic filing of numerous individual claims. Since the putative class members are employees with
3 relatively modest individual claims and limited resources, there is a strong likelihood that individual
4 claims would never be brought. *See Local Joint Exec. Bd. of Culinary/Bartender Trust Fund*, 244 F.3d
5 1152, 1163 (9th Cir. 2001) (superiority requirement met where class members would recover, at most,
6 about \$1,330); *see also Gentry v. Sup. Ct.*, 42 Cal. 4th 443, 462 (2007).

7 **F. SUMMARY OF THE CASE, INVESTIGATION AND DISCOVERY AND**
8 **REASONABLE ESTIMATE OF THE NATURE AND AMOUNT OF RECOVERY**

9 The operative First Amended Complaint in *Medina I*, alleges the following causes of action: (1)
10 Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods; (2) Violation of Labor
11 Code § 226.7 for failure to provide rest periods; (3) Violation of Labor Code § 226 regarding
12 recordkeeping; (4) Violation of Business and Professions Code §17200, *et seq.*; and (5) Violation of Labor
13 Code § 2698, *et seq.* (Choi Decl. ¶12). Defendant denies the allegations in the Action and is
14 prepared to continue to defend the action vigorously. (*Id.* at ¶13).

15 During the course of this 7+ year litigation, the Parties conducted formal discovery including
16 written discovery and depositions. In connection therewith, Defendant provided the putative class
17 members' payroll data, which allowed Plaintiff to complete a damage analysis for the class/PAGA claims.
18 (Choi Decl. ¶16). Plaintiff also retained the services of an expert witness to perform a detailed damage
19 analysis. (*Id.*). Thereafter, the parties engaged in mediation with well-respected mediator, Michael Loeb,
20 Esq. on July 21, 2022. The mediation was not successful. However, the Parties continued their
21 negotiations, off and on, for several months with Mediator Loeb's assistance, and ultimately reached a
22 settlement in principle on January 5, 2023. (*Id.* at ¶15).

23 As explained by the Court of Appeal in *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116,
24 130, 133 (2008), a class action settlement should be approved when the plaintiff has conducted sufficient
25 discovery and the settlement is reasonable in light of the strengths of the plaintiff's claims. As discussed
26 herein, Plaintiff's counsel has conducted extensive discovery and investigation and, in light of the strength
27 and weaknesses of Plaintiff's claims, Plaintiff's attorneys submit that this settlement is fair pursuant to
28 *Kullar*.

1 In the present case, the gross settlement of \$14,000,000.00 is for approximately (a) 600,000 pay
2 periods worked by the Settlement Class Members during the Settling Class Period (Settlement Agreement
3 ¶ II.9.b).

4 Plaintiff alleged that Defendant failed to provide compliant meal periods. (Choi Decl. ¶17). Plaintiff
5 alleges that Defendant failed to provide duty-free meal periods because employees were required to be on-
6 call during their meal periods. (*Id.*). Plaintiff's expert calculated a total exposure of \$244,057,736. (*Id.*).
7 Discovery revealed that approximately 40% of the class members were required to carry communication
8 devices while approximately 60% of the class members were not required to carry communication devices.
9 (*Id.*). Further, the 60% of class members that did not carry communication devices had regimented and
10 scheduled meal breaks. (*Id.*). Thus, applying a 60% reduction of the total exposure, the potential exposure
11 is approximately \$97,623,094.41. (*Id.*). The discount is warranted because "the employer is not obligated to
12 police meal breaks and ensure no work thereafter is performed." *Brinker Rest. Corp. v. Superior Ct.*, 53
13 Cal. 4th 1004, 1040, 273 P.3d 513, 537 (2012). (*Id.*). Thus, Defendant could have argued that it met its
14 obligation under the Labor Code by providing the opportunity for an uninterrupted meal break. (*Id.*).

15 Plaintiff also alleged that Defendant failed to provide compliant rest periods because the employees
16 had to remain on-call during their rest breaks. (Choi Decl. ¶18). Like meal periods, only 40% of the class
17 were required to carry communication devices while the other 60% of the class were provided with
18 regimented rest periods. (*Id.*). Further, based on the fact that rest breaks do not need to be recorded,
19 Defendant would have argued that there is no way to prevail on this claim other than through an
20 individualized inquiry. (*Id.*). Applying the same violation rate for meal periods and 50% discount based
21 on the difficulty of proving this claim, the total potential exposure of unpaid rest break premium wages
22 amounted to approximately \$49,241,537.01. (*Id.*).

23 In addition to the above, Plaintiff alleged derivative Labor Code §§ 203 and 226 penalties. (Choi
24 Decl. ¶19). Applying the same violation rate for meal periods, Plaintiff estimates that the realistic exposure
25 of Labor Code §203 penalties amount to \$10,722,577.88. (*Id.*). Similarly, Plaintiff's derivative Labor Code
26 §226 penalties amount to \$7,346,571.62. (*Id.*).

27 Defendant contested the merits and denied it was liable at all. (Choi Decl. ¶20). Defendant argued
28 that Plaintiffs' meal and rest break claims lacked merit, because whenever it was reported to it that a class

1 member missed a meal or rest break a meal or rest break premium was paid out. (*Id.*) Thus,
2 individualized issues would predominate and Plaintiff may not have been able to prevail on his meal and
3 rest break claims. (*Id.*) With respect to waiting time penalties, Defendant contended that it would not be
4 subject to Section 203 penalties, based on a good faith defense since its policy was compliant. (*Id.*) With
5 respect to wage statement liability, Defendant contended that liability under Section 226(e) would be
6 subject to additional defenses requiring proof of injuries resulting from knowing and intentional
7 violations. (*Id.*) Moreover, there is a split in authority as to Section 226(e) penalties and a recent decision
8 held that an employer’s good faith litigation of its affirmative defenses may preclude a finding of knowing
9 and intentional conduct to support 226 penalties. *Naranjo v. Spectrum Security Serv.*, 2023 Cal. App.
10 Lexis 143 (Feb. 27, 2023). While Plaintiffs disagree with *Naranjo* and believe that *Furry v. East Bay*
11 *Publishing, LLC*, 30 Cal. App. 5th 1072, 1085 (2018), and *Kao v. Holiday*, 12 Cal. App. 5th 947, 961-62
12 (2017), which hold that an employer’s good faith belief is not a defense, this Court could have followed
13 *Naranjo*. *Naranjo* also could have called into question the applicability of penalties under Section 203,
14 which would have further reduced the potential exposure, because it held that the employer was not
15 subject to penalties where it demonstrated it acted in good faith in asserting its defense. *Id.*; see also
16 *Chavez v. Converse, Inc.*, 2020 WL 1233919, at *1 (N.D. Cal. 2020) (holding that an employer’s failure to
17 pay is not willful where there is uncertainty in the law or a “good faith mistaken belief that wages are not
18 owed”).

19 PAGA penalties are also subject to any good faith defenses that Defendant may raise. (*Id.* ¶21).
20 Moreover, PAGA penalties are discretionary and subject to reduction by this Court. Pursuant to Labor
21 Code § 2699(f)(2), the Court can decline to award the full amount of PAGA penalties where “...if, based
22 on the facts and circumstances of the particular case, to do otherwise, would result in an award that is
23 unjust, arbitrary and oppressive, or confiscatory.” Indeed, courts have affirmed the reduction of PAGA
24 penalties in the past. As shown in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 517 (2018), the
25 Court of Appeal affirmed the trial court’s reduction of PAGA penalties by 90 percent, citing the
26 employer’s good faith attempt at complying with the law. See also *Bernstein v. Virgin Am., Inc.*, 3 F.4th
27 1127, 1144 (9th Cir. 2021) (holding no subsequent penalty unless prior citation or court ruling).
28 Defendant argued that based on their compliant policies, that the Court would not be inclined to impose

1 maximum PAGA penalties based on their compliant policies and good faith attempt to pay out any
2 premiums that were due to class members. (*Id.*)

3 While the Parties disagree on the application of the law to the facts, each Party recognized in
4 negotiations that, if taken to trial, the other Party would at least have reasonable arguments, such that the
5 Gross Settlement Value to which the Parties ultimately agreed was reasonable. (Choi Decl. ¶¶ 23-24).

6 Based on the above, the potential exposure for the class-wide Labor Code damages amounted
7 \$164,933,780.92. (*Id.* ¶ 22). Assuming 100% liability, the derivative PAGA penalties amounted to
8 \$221,122,736.50. (*Id.* at ¶19). However, if the Court were to reduce the PAGA penalties by 90% similar
9 to *Carrington*, the total potential Labor Code damages and PAGA penalties exposure for the Labor Code
10 and PAGA claims would amount to approximately \$187,046,054.57. (*Id.* at ¶22). Taking into account the
11 defenses that were alleged, and assuming a straightforward 50% risk factor, the realistic total exposure
12 was estimated at \$93,523,027.28. (*Id.*). The Gross Settlement Value of \$14,000,000 when compared to
13 the adjusted exposure amounts to 14.97%. (*Id.*).

14 Numerous courts have held that gross settlement amounts of less than 20%—and as little as 8%—
15 of a defendant’s potential exposure are fair and reasonable. *See, e.g., In re Mego Fin. Corp. Secs. Litig.*,
16 213 F.3d 454, 459 (9th Cir. 2000) (holding that class action settlement recovering 16% of potential
17 exposure was fair and reasonable; “It is well-settled law that a cash settlement amounting to only a
18 fraction of the potential recovery does not per se render the settlement inadequate or unfair. Rather, the
19 fairness and the adequacy of the settlement should be assessed relative to risks of pursuing the litigation to
20 judgment.”); *Bellinghausen v. Tractor Supply Co.*, 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015)
21 (holding that class action settlement recovering between 8.5% and 25% of the defendant’s potential
22 exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, 2014 WL 2472316, at *3 (C.D. Cal. May 30,
23 2014) (acknowledging risks of continued litigation and granting preliminary approval of wage and hour
24 class action settlement obtaining 9.1% of projected damages); *Villegas v. J.P. Morgan Chase & Co.*, 2012
25 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement of approximately
26 15% of the potential recovery was fair and reasonable).

27 Although Plaintiff and his counsel are confident that litigation of the claims would result in a
28 classwide judgment against Defendant, they recognize the inherent risks in litigation, including the

specific risks that class certification could be denied, liability could not be established at trial, or the applicable law could change. (Choi Decl. ¶23). Thus, the settlement for each participating Class Member is fair, reasonable, and adequate, given the inherent risks of litigation, as well as the potential for appeals and the costs of pursuing litigation. (*Id.* at ¶24).

G. SETTLEMENT WAS NEGOTIATED AT ARMS-LENGTH AND IS NOT COLLUSIVE

Courts presume the absence of fraud or collusion in the negotiation of settlement unless evidence to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In re Chicken Antitrust Litig.*, 560 F. Supp. 957, 962 (N.D. Ga. 1980). Courts do not substitute their judgment for that of the proponents, particularly where, as here, settlement has been reached with the participation of experienced counsel familiar with the litigation. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004); *Hammon v. Barry*, 752 F. Supp. 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re Armored Car Antitrust Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass'n*, 79 F.R.D. 571 (E.D. Pa. 1978).

While the recommendations of counsel proposing the settlement are not conclusive, the Court can properly take them into account, particularly where, as here, they have been involved in formal and informal discovery and negotiations for some period of time, appear to be competent, have experience with this type of litigation, and have exchanged substantial evidence from the opposing party. *See Newberg on Class Actions, supra*, at § 11.47; *Nat'l Rural Telecomms. Coop.*, 221 F.R.D. at 528 (quoting *In re Paine Webber Ltd. P'ships Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y. 1997) (“[s]o long as the integrity of the arm’s length negotiation process is preserved, however, a strong initial presumption of fairness attaches to the proposed settlement . . . [citations] and ‘great weight’ is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation”)).

Here, both Plaintiff’s and Defendant’s counsel have a great deal of experience in wage and hour class action litigation. Plaintiff’s counsel has been approved as class counsel in a number of wage and hour class actions and have extensive litigation experience. (Choi Decl. at ¶26; Lee Decl. at ¶¶ 5-6; Marder Decl. at ¶¶ 10-11; Yi Decl. at ¶ 4; Gavron Decl. ¶ 8-10). As discussed above, Plaintiff’s counsel

1 conducted a thorough investigation of the allegations involved in this case since the inception which lead
2 to the class in *Medina II* to be certified. Each side has apprised the other of their respective factual
3 contentions, legal theories and defenses, resulting in extensive arms' length negotiations taking place
4 among the Parties, which was achieved after a full day of mediation before a highly regarded mediator
5 along with months of follow up negotiations.

6 Although Plaintiff believes the class would prevail at trial, Plaintiff also believes in the fairness of
7 the settlement that is based on factoring in the uncertainty and risks to Plaintiff involved in not prevailing
8 on one or more of the causes of action or theories alleged in the operative Complaint, the possibility of
9 potential for appeals. (Choi Decl. at ¶¶23-24).

10 Despite the asserted fairness of the settlement terms, as set forth in the Class Notice, should any
11 Class Member wish to pursue his or her own case for the claims being released herein, each Class Member
12 has the right to submit a request for exclusion (*i.e.*, Opt-Out) from the settlement. Moreover, as set forth
13 in the Class Notice, Class Members are advised of their right to attend the final approval hearing and
14 object to any of the terms contained in the proposed Settlement Agreement, provided that they give proper
15 notice to the Parties and the Court.

16 **H. SETTLEMENT TERMS AND EVALUATION**

17 **1. Proposed Terms of the Settlement**

18 This is a non-reversionary settlement wherein Class Members will be automatically paid out of the
19 settlement if he/she does not opt-out of the settlement. The key terms of the settlement are as follows.

20 The Settlement Agreement provides for a gross settlement amount of Fourteen Million Dollars
21 and Zero Cents (\$14,000,000.00). (Settlement Agreement ¶ II.8). Attorney's fees of up to one-third (1/3)
22 of the Gross Settlement Value (\$4,666,666.66) will be paid to Class Counsel along with costs of up to
23 \$75,000.00. (Settlement Agreement ¶ IX.38). The Service Enhancement Award will be up to \$20,000.00.
24 (Settlement Agreement ¶ IX.39). The Settlement Administrator will be paid up to \$30,950.00 for costs of
25 administering this settlement. (Declaration of Jodey Lawrence ("Lawrence Decl.") ¶ 16). The PAGA
26 Allocation is currently estimated at Six Hundred Ninety Thousand Dollars (\$690,000.00) of which 75%
27 (\$517,500.00) shall be paid to the LWDA and 25% shall be paid to the PAGA Employee Allocation.
28 (Settlement Agreement ¶X.43(d)-(e)).

1 **2. Nature of Any Injunctive Relief**

2 The Settlement Agreement does not provide for any injunctive relief.

3 **3. Amount and Manner of Distribution of the Compensation to be Provided to**
4 **Class Members Including the Amount, or an Estimate, of What Each Class**
5 **Member Will Receive**

6 Each Settlement Class Member who does not request exclusion (“Settling Class Member”) shall
7 have their Class Member Payment by multiplying the Per Workweek Payment by the number of
8 Compensable Workweeks for the individual Settling Class Member. (Settlement Agreement ¶51). The
9 Per Workweek Payment will be determined by the Class Administrator by dividing the Net Settlement
Value divided by the total Compensable Workweeks. (*Id.* at ¶50).

10 Based on the Net Settlement Amount, on a pure raw average, each class member will receive
11 approximately \$1,433.81. (Choi Decl. ¶22). Such amounts for each person could increase or decrease
12 depending on a number of factors, including the number of weeks worked by each Settlement Class
13 Member. The approximate amount each person will be entitled to will not be known until the class data is
14 transferred to the Settlement Administrator for processing.

15 **4. Whether, and Under What Circumstances, Amounts May Revert to Defendant**

16 This is a non-reversionary settlement as the entirety of the settlement amount will be fully paid out.
17 Funds represented by Class Member Payment checks returned as undeliverable and Class Member
18 Payment checks remaining un-cashed for more than 180 days after issuance will be tendered to the
19 Controller of the State of California as unclaimed wages under the name of the Settling Class member
20 pursuant to the escheat procedures set forth in the California Code of Civil Procedure §1300, *et. seq.*
21 (Settlement Agreement ¶X.43(f)).

22 **5. Scope of the Release of Class Members’ Claims**

23 For Settlement Class Members, the released claims are set forth in the Settlement Agreement
24 ¶XII.53 and in the Class Notice as follows:

25 **“Release by Settling Class.** As of the Effective Date and in exchange for the
26 consideration, undertakings, and covenants undertaken by United in this Agreement,
27 including but not limited to the provisions of Paragraph 8 and Section XIII, and to the
28 extent permitted by applicable law, the State of California and the Settling Class hereby
release, discharge, and covenant not to sue United Airlines, Inc., including its predecessors,
successors, affiliates, parents, subsidiaries, related companies, employees, agents,

1 shareholders, officers, directors, attorneys, insurers, and any entity which could be jointly
2 liable with it, or any of them (individually and collectively “the United Releasees,”) from
3 and with respect to any and all actions, causes of action, suits, liabilities, claims, and
4 demands whatsoever, whether known or unknown, during the Settling Class Period, which
5 the State of California, the Settling Class, or individual members thereof, has, or had
6 against the United Releasees, or any of them, which are alleged in the Lawsuits or could
7 have been alleged in the Lawsuits based on the facts alleged in the current or prior
8 pleadings therein, including without limitation claims for violation of: Labor Code §§ 226,
9 226.7, 512, 1174, 1198, and 1199; Wage Order No. 9-2001 §§ 7 and 11; PAGA claims
10 predicated on the foregoing; and claims under Business & Professions Code §§ 17200 *et*
11 *seq.* predicated on the foregoing; and any additional claims for penalties, wages, interest or
12 other monies predicated on the foregoing (the “Released Claims”).

13 Settling Class Members will be subject to a limited Waiver of California Civil Code Section 1542

14 (Limited to Released Claims) as follows:

15 “All Settling Class Members (including, without limitation, the Named Plaintiff), and the
16 State of California, intend and/or are deemed to intend that this Agreement should be
17 effective as a bar to any and all of the claims released by Paragraphs 53 and 54. In
18 furtherance of this intention, and as to the Release Claims only, all Settling Class Members
19 and the State of California expressly waive any and all rights or benefits conferred on them
20 by the provisions of Section 1542 of the California Civil Code, which provides as follows:

21 **“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
22 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN
23 HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
24 RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE
25 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH
26 THE DEBTOR.”**

27 All Settling Class Members and the State of California understand fully the statutory
28 language of Civil Code § 1542, and, with this understanding, assume all risks for claims
released hereunder that have already arisen or may in the future arise, whether known or
unknown, suspected or unsuspected, and specifically waive all rights they may have under
California Civil Code § 1542. The Settling Class Members and the State of California
understand that, if any of the facts relating in any manner to the Lawsuit, or to the release
and dismissal of claims as provided in this Agreement, are hereafter found to be other than
or different from the facts now believed to be true, they have expressly accepted and
assumed that risk and agree that this Agreement and the release of claims contained herein
shall nevertheless remain effective as to the Released Claims only. The Settling Class and
the State of California desire and intend, or are deemed to desire and intend, that this
Agreement shall be given full force and effect according to each and all of its express terms
and provisions, including those relating to unknown and unsuspected claims, if any, as well
as those relating to the claims referred to above.”

29 Settlement Agreement ¶XII. 55. However, the waiver contained in Paragraph 55, above, is not intended to
30 expand the nature of the claims released by the Settling Class beyond the Released Claims set out in

Paragraph 53, but rather is intended to ensure that the release set out in Paragraph 53 is fully enforceable and is not impeded by Section 1542.

6. Tax Treatment of Settlement Amounts

Sixty-six percent (66%) of each Class Member Payment shall be classified as ordinary income and penalties, payable on a Form 1099 and thirty-four percent (34%) of each Class Member Payment shall be classified as wages, payable on a Form W2. (Settlement Agreement ¶X.45.). One hundred percent (100%) of the Named Plaintiff Enhancement Award will be allocated to ordinary income, payable on a Form 1099. (*Id.*). The Named Plaintiff and Settling Class Members shall be individually responsible for any and all tax implications or obligations attributable to receipt of the Enhancement Award and/or Class Member Payments. (*Id.*). United will pay its share of the employer side payroll taxes separately from the Gross Settlement Value. (*Id.*).

7. Affirmative Obligations to be Undertaken by Class Members or Class Counsel and the Reasons for Any Such Obligations

As stated above, Settlement Class Members do not need to do anything should they wish to receive their share of the settlement funds. Thus, this substantially decreases the amount of burden each Settlement Class Member must bear in order to receive their settlement share. If a Settlement Class Member does not wish to take part in this settlement and be bound by the release, he/she must submit an exclusion request. Such obligations are thoroughly identified in the Settlement Class Notice. (Settlement Agreement, Exhibit B).

I. SUBMISSION OF CLAIMS/EXCLUSIONS/OBJECTIONS

Class Members will not be required to submit a claim form to receive compensation. Instead, this is a non-reversionary Settlement Agreement. (Settlement Agreement Exhibit B). Settlement Class Members will be provided 45 calendar days to opt out or object to the settlement. (Settlement Agreement ¶ VI.23). Any Class Member who does not opt-out of the settlement will be automatically issued his/her share of the settlement proceeds. Given that this is a non-reversionary settlement, the parties believe that 45 calendar days is sufficient time for class members to object or opt-out of the settlement. Further, Settlement Class Members will be notified of the Fairness/Final Approval hearing and will have an opportunity to appear at the Fairness hearing.

1 **J. NOTICE TO CLASS MEMBERS**

2 The Notice will be sent in English. (Choi Decl. ¶27). Within fifteen (15) business days of receipt
3 of notice of the Court's entry of an Order of Preliminary Approval, Defendant shall provide the Settlement
4 Administrator with the Class Information for purposes of sending the Class Notice to Settlement Class
5 Members. (Settlement Agreement ¶ V.18). Within ten (10) business days after receipt of the information
6 described above, the Settlement Administrator will send a copy of the Class Notice to each Settlement
7 Class Member. (*Id.* at ¶ V.19). Before the initial mailing of the Class Notice, the Settlement
8 Administrator shall make a good-faith attempt to obtain the most-current names and postal mail addresses
9 for all Settlement Class Members to receive such postal mail, including (1) cross-checking the names
10 and/or postal mail addresses it received from Defendant, and (2) reviewing the addresses with the National
11 Change of Address Database. (*Id.*). If any Class Notice sent via U.S. mail to any Settlement Class
12 Member is returned to the Settlement Administrator with a forwarding address, the Settlement
13 Administrator shall forward the postal mailing to that address. (*Id.* at ¶ V.20). If the Settlement
14 Administrator is not provided a forwarding address, the Settlement Administrator shall attempt to locate a
15 current mailing address for the Class Member by skip tracing using the Class Member's social security
16 number and will mail the Class Notice to the updated address identified. (*Id.*). In the event that any Class
17 Notice is returned as undeliverable a second time, no further efforts shall be required. (*Id.*). The
18 Settlement Administrator shall maintain a log detailing the instances Class Notices are returned as
19 undeliverable. (*Id.* at ¶ V.20).

20 The Class Notice will include a separate Adjustment Form shall be individualized for each Settling
21 Class Member with information reflecting the number of workweeks during the Settling Class Period
22 worked in a capacity qualifying for membership in the Settling Class during the Settling Class Period. (*Id.*
23 at ¶ XI.46). The Adjustment form will also contain the estimated dollar value of the Class Member
24 Payment. (*Id.*). The Class Notice and Adjustment Form shall inform each Settling Class Member that
25 they may submit a corrected Adjustment Form, along with supporting documentation, to the Claims
26 Administrator to the extent a Settling Class Member believes that any of the information pertaining to that
27 individual on the Adjustment Form is incorrect. (*Id.*).

28 Based on the foregoing, the notice procedures fully comply with California Rules of Court Rule

1 3.766 (d) & (e).

2 **K. COSTS AND FEES**

3 **1. Attorneys' Fees and Costs**

4 California state and federal courts have recognized that an appropriate method for determining
5 award of attorneys' fees is based on a percentage of the total value of benefits to Class Members by the
6 settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal.
7 3d 25, 34 (1977) ("*Serrano III*"); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes*
8 *Air West, Inc.*, 557 F. 2d 759, 769 (9th Cir. 1997). The purpose of this equitable doctrine is to avoid
9 unjust enrichment of counsel and to "spread litigation costs proportionally among all the beneficiaries so
10 that the active beneficiary does not bear the entire burden alone." *Vincent*, 557 F. 2d at 769.

11 Under California law, the award of attorneys' fees in common fund wage and hour class action
12 settlements should start with the percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503
13 (Aug. 11, 2016) ("We join the overwhelming majority of federal and state courts in holding that when
14 class action litigation establishes a monetary fund for the benefit of the class members, and the trial court
15 in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of
16 a reasonable fee by choosing an appropriate percentage of the fund created."). Under the percentage of the
17 fund method, the Court's objective remains to "mimic the market" in fixing a reasonable fee. *See Gaskill*
18 *v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (J. Posner) ("When a fee is set by a court rather than by
19 contract, the object is to set it at a level that will approximate what the market will set... The judge, in
20 other words, is trying to mimic the market in legal services.").

21 Here, the fee award representing 33 1/3% of the fund clearly falls within that range, and is
22 consistent with other comprehensive surveys of class action settlements and fee awards. *See Fitzpatrick,*
23 *An Empirical Study of Class Action Settlements and Their Fee Award*, 7 J. Empirical Leg. Stud. 811, 833
24 (2010) (analyzing 444 cases between 2006-2007 and concluding that "[m]ost fee awards were between 25
25 percent and 35 percent, with almost no awards more than 35 percent."); Eisenberg & Miller, *Attorney Fees*
26 *in Class Action Settlements: An Empirical Study: 1993-2008*, 7 J. of Empirical Leg. Stud. 248, 262, fn.16
27 (2010) (independent studies of class action litigation nationwide conclude that fees representing one-third
28 of the total recovery is consistent with market rates).

1 The results delivered by Plaintiff's Counsel also support the requested percentage of the fund.
2 Here, the Parties have agreed to a payment of a maximum of 33 1/3% of the settlement (\$4,666,666.66)
3 for payment to Class Counsel as attorneys' fees. (Settlement Agreement ¶ IX.38). The Parties have
4 agreed to a payment of the foregoing attorney's fees and, thus, this payment should be presumed to be fair.
5 Class Counsel will be splitting the approved fees which has been authorized by the Plaintiff. (Choi Decl.
6 ¶19; Lee Decl. ¶ 7; Marder Decl. ¶ 12; Yi Decl. ¶ 5; Medina Decl. ¶8).

7 Further, the parties have agreed to reimbursement of class counsel's litigation costs of up to
8 \$75,000.00. (Settlement Agreement ¶ IX.38). Class counsel have, at their own risk, expended costs, for
9 example, to file this instant action, service of process, payment of mediation fees, expert witness fees and
10 other litigation related costs and will be submitting detailed cost sheets for the respective costs incurred
11 prior to the Motion for Final Approval. Based on the foregoing, the court should preliminarily approve
12 the attorney's fees and costs being requested by the parties.

13 **2. Proposed Payment to Class Representative**

14 Plaintiff requests a modest enhancement of \$20,000.00. (Settlement Agreement ¶ IX.39). Plaintiff
15 provided documents and information to Class Counsel, prepared for and provided his deposition, reviewed
16 the Settlement Agreement and various declarations throughout the case. (Medina Decl. ¶6). Moreover, as
17 part of his duties as the representative, Plaintiff provided invaluable information, evidence, and documents
18 that resulted in this settlement. (Medina Decl. ¶5).

19 Given that future employers are much less likely to hire individuals who have filed suit against
20 their prior employer, particularly cases of this nature, Plaintiff may face prejudice in the future from other
21 potential employers. Plaintiff also faced the risk of being subjected to Defendant's costs had Plaintiff lost
22 this case. Plaintiff assumed these risks and the whole class benefited from these risks taken by Plaintiff.
23 Class members did not have to file individual lawsuits and bear the risks of payment of fees and costs if
24 they did not prevail, nor did they have to face the potential for retaliation and not getting future
25 employment had they filed a public lawsuit. Plaintiff is also executing a waiver of all known and
26 unknown claims, including any rights under Civil Code § 1542, which was not required of class members.

27 Notably, courts have routinely granted approval of representative enhancements for far greater
28 amounts than the \$20,000.00 sought by Plaintiff in this case. *See, e.g., Van Vranken v. Atlantic Richfield*

Co., 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of \$ 55,000, and three incentive awards of \$ 35,000); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) (\$50,000 awarded to each class representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding \$25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming \$25,000 Incentive award to class representative in ERISA case). Here, Plaintiff requests a modest enhancement of \$20,000.00, which is “presumptively reasonable” and consistent with case law.

3. Class Administration Fees

The parties have agreed to payment of a maximum of \$35,000.00 to the Settlement Administrator, Phoenix Settlement Administrators, for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, distributing the Gross Settlement Value, and providing necessary reports and declarations, as requested by the Parties. (Lawrence Decl. ¶¶5-10, Ex. A). While the Settlement Agreement provides for up to \$35,000.00 in Settlement Administration fees, the estimated cost is lower, totaling \$30,950.00. Phoenix Settlement Administrators is a well-recognized class action settlement administrator. (Lawrence Decl. ¶¶16, Ex. A). Phoenix Settlement Administrators was chosen after a competitive bidding process. (Choi Decl. ¶30). The parties believe that the administration fee is reasonable and should be approved.

IV. LWDA HAS BEEN PROVIDED WITH NOTICE OF THIS MOTION

On May 5, 2023, Plaintiff provided notice of this Motion to the LWDA. (Choi Decl. ¶28, Ex. A).

V. PROPOSED SCHEDULE FOR CLASS NOTICE, OBJECTION, OPT OUT AND MOTION FOR APPROVAL

The following is a proposed schedule:

Event	Date
Preliminary Approval Date	5/30/2023
Class Data to Administrator	6/20/2023
Class Notice Distribution	7/5/2023
Deadline to Opt Out, Objection or Submit Adjustment Form	8/21/2023

Deadline to File Motion for Final Approval	9/8/2023
Final Approval Hearing	10/2/2023 or later

VI. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR PRELIMINARY APPROVAL

For the foregoing reasons, Plaintiff respectfully request that the Court grant preliminary approval of the proposed settlement, sign the proposed Order, approve and authorize mailing of the proposed Settlement Class Notice, and set a date for a final approval hearing on or after October 2, 2023 on a date that is convenient for the court.

DATED: May 5, 2023

LAW OFFICES OF CHOI AND ASSOCIATES

By: 
Edward W. Choi
Attorneys for PLAINTIFF and the CLASS



Court Reservation Receipt

Reservation

Reservation ID: 811413641161	Status: RESERVED
Reservation Type: Motion re: (Preliminary Approval of Class Action Settlement)	Number of Motions: 1
Case Number: BC624742	Case Title: JOSE MEDINA VS UNITED AIRLINES INC
Filing Party: Jose Medina (Plaintiff)	Location: Stanley Mosk Courthouse - Department 28
Date/Time: May 30th 2023, 8:30AM	Confirmation Code: CR-JDW6Z8XZFFHX3OWJS

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	60.00	1	60.00
Credit Card Percentage Fee (2.75%)	1.65	1	1.65
TOTAL			\$61.65

Payment

Amount: \$61.65	Type: Visa
Account Number: XXXX6929	Authorization: 01209G
Payment Date: 2023-03-31	

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