

FILED
Superior Court of California
County of Los Angeles

JUN 28 2021

SHERRI R. CARTER, EXECUTIVE OFFICER/CLERK
BY *[Signature]* Deputy
MARIBEL MATA

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

JESENIA DONAN, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

PACIFIC AVIATION CORPORATION, a
California corporation; PACIFIC
AVIATION, LLC, a limited liability
company; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 19STCV19714

[Signature]
**[TENTATIVE] ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT ON CONDITIONS**

Date: June 28, 2021
Dept.: SSC-17
Time: 9:00 a.m.

I. BACKGROUND

Plaintiff Jesenia Donan sues her former employer, Defendants Pacific Aviation Corporation and Pacific Aviation, LLC (collectively, "Pacific Aviation" or "Defendants") for alleged wage and hour violations. Defendants provide airport

1 handling services for international airlines, and operate at the Los Angeles International
2 Airport, San Francisco International Airport, and Seattle-Tacoma International Airport.
3 Plaintiff seeks to represent a class of Defendants' current and former non-exempt
4 employees.

5 On June 6, 2019, Plaintiff filed a putative Class Action alleging the following
6 causes of action: (1) Failure to Pay Minimum Wage and Straight Time Wages [Lab.
7 Code §§ 204, 1194, 1194.2, and 1197]; (2) Failure to Pay Overtime Compensation
8 [Lab. Code §§ 1194 and 1198]; (3) Failure to Provide Meal Periods [Lab. Code §§
9 226.7, 512]; (4) Failure to Authorize and Permit Rest Breaks [Lab. Code §§ 226.7]; (5)
10 Failure to Timely Pay Final Wages at Termination [Lab. Code §§ 201-203]; (6) Failure
11 to Provide Accurate Itemized Wage Statements [Lab. Code § 226]; and (7) Unfair
12 Business Practices [Bus. & Prof. Code §§ 17200, et seq.]. Plaintiff filed a First
13 Amended Complaint adding a cause of action for Civil Penalties Under the Private
14 Attorneys General Act ("PAGA") [Cal. Lab. Code § 2699, et seq.].

15 On September 15, 2020, Plaintiff filed a Second Amended Complaint adding
16 causes of action for failure to reimburse necessary business expenses [Lab. Code §
17 2802] and failure to pay wages owed under Los Angeles Administrative Code, Division
18 10, Chapter 1, Article 11, § 10.37, et seq.

19 On March 25, 2020, the Parties mediated before Steven Rottman, Esq. and
20 agreed to the basic terms of a proposed settlement, signing a Memorandum of
21 Understanding regarding the substantive terms. The Parties subsequently finalized the
22 *Joint Stipulation of Class Action and PAGA Action Settlement* ("Settlement
23 Agreement"), a copy of which was filed with the Court.

24 On May 3, 2021, the Court issued a "checklist" regarding deficiencies in
25 Plaintiff's motion for preliminary approval. In response, the parties filed supplemental

1 briefing, including the First Amended Settlement Agreement attached to the First
2 Supplemental Declaration of H. Scott Leviant (“Leviant Decl.”) as Exhibit 13.

3 Now before the Court is Plaintiff’s motion for preliminary approval of the
4 settlement. For the reasons set forth below, the Court preliminarily grants approval for
5 the settlement on condition that the parties satisfactorily address the following at
6 hearing:

- 7 1. The release of claims should specify that Class Members will only release
8 claims alleged in, or arising out of facts asserted in, the operative Second
9 Amended Complaint. The use of the term “Action” may be confusing. See
10 ¶¶ 37.c.1 and 37.c.2. Counsel should consider using the defined term
11 “Complaint” or “Second Amended Complaint.”
12

13 **II. THE TERMS OF THE SETTLEMENT**

14 **A. SETTLEMENT CLASS AND RELATED DEFINITIONS**

15 “Class” or “Class Members” consist of: All nonexempt employees of PACIFIC
16 AVIATION who worked for PACIFIC AVIATION in California during the Class
17 Period. “Settlement Class Members” are those Class Members who do not submit
18 timely exclusion requests to the Settlement Administrator. Defendants’ best estimate is
19 that the Class included approximately 3,089 individuals who collectively worked
20 approximately 175,000 workweeks between June 5, 2015 and March 25, 2020. (¶4)

21 The “Class Period” is June 6, 2015 through the date upon which the Court grants
22 preliminary approval. (¶3)

23 “PAGA Employee” means all Class Members that worked during the PAGA
24 Period. It is stipulated by the Parties that, for purposes of this Settlement, all PAGA
25 Employees are “aggrieved employees” as defined pursuant to PAGA. (¶11)

1 “PAGA Period” means the period between June 6, 2018 (one year prior to the
2 filing of the action) through the date upon which the Court grants preliminary approval.

3 (¶10)

4
5 **B. THE MONETARY TERMS OF SETTLEMENT**

6 The essential monetary terms are as follows:

7 The Gross Settlement Amount (“GSA”) is **\$875,000** (¶26.c). This includes
8 payment of a PAGA penalty of **\$80,000** to be paid 75% to the LWDA (\$60,000) and 25%
9 to the PAGA Employees (\$20,000) (¶26.g);

10 Escalator Clause: If it is later determined that the number of workweeks through
11 March 25, 2020 is more than 10% greater than the 175,000 estimated by Defendants,
12 Defendants may elect to increase the Gross Settlement Amount by one percent for each
13 percentage point over the 10% threshold that the actual number of workweeks exceeds
14 the estimated number on the date of settlement. If Defendants decline to increase the
15 Gross Settlement Amount, Plaintiff has the option of voiding the agreement by notifying
16 Defendants’ counsel in writing of the election. The Gross Settlement Amount will not be
17 reduced due to Defendants’ estimate. The Parties both expect that the number of
18 workweeks will increase pro rata through preliminary approval, and this Escalator Clause
19 does not apply to that natural increase between the time this Settlement was reached and
20 Preliminary Approval is entered. (¶26.d)

21 The Net Settlement Amount (“Net”) (**\$464,333.34**) is the GSA less:

- 22 ○ Up to **\$291,666.66** (33 1/3%) for attorney fees (¶26.g);
- 23 ○ Up to **\$12,000** for attorney costs (*Ibid.*);
- 24 ○ Up to **\$5,000** for a service award to the proposed class representative
25 (*Ibid.*); and

- 1 ○ Estimated **\$22,000** for settlement administration costs (§26.p).
- 2 • Employer-side payroll taxes will be paid separately by Defendants (§26.h).
- 3 • Assuming the Court approves all maximum requested deductions, approximately
- 4 \$464,333.34 will be available for automatic distribution to participating class
- 5 members. Assuming full participation, the average settlement share will be
- 6 approximately \$150.32. ($\$464,333.34 \text{ Net} \div 3,089 \text{ class members} = \150.32).
- 7 In addition, each PAGA Employee will receive a pro rata portion of the PAGA
- 8 Employees' PAGA Penalty Payment Share, which is \$20,000 (or 25% of
- 9 \$80,000 PAGA penalty).
- 10 • There is no Claim Requirement (§26.f).
- 11 • The settlement is not reversionary (§26.e).
- 12 • Individual Settlement Share Calculation: Each Settlement Class Member will be
- 13 paid a pro-rata share of the Net Settlement Amount (less the \$20,000 amount
- 14 allocated for PAGA penalties to aggrieved employees), as calculated by the
- 15 Settlement Administrator. The pro-rata share will be determined by comparing
- 16 the individual Settlement Class Member's Covered Workweeks employed
- 17 during the Class Period in California to the total Covered Workweeks of all the
- 18 Settlement Class Members during the Class Period as follows: [Workweeks
- 19 worked by a Settlement Class Member] \div [Sum of all Covered Workweeks
- 20 worked by all Settlement Class Members] \times [Net Settlement Amount - \$20,000]
- 21 = individual Settlement Payment for a Settlement Class Member. (§26.i)
- 22 ○ PAGA Payments: PAGA Settlement Payments will be paid out of the Net
- 23 Settlement Amount. Each PAGA Employee will be paid a pro-rata share
- 24 of the \$20,000 amount allocated for PAGA Employees' PAGA Penalty
- 25 Payment Share, as calculated by the Settlement Administrator. Class

1 Members will not be permitted to exclude themselves from this portion of
2 the Settlement. The pro-rata share will be determined by comparing the
3 individual PAGA Employee's PAGA Pay Periods during the PAGA
4 Period to the total PAGA Pay Periods of all the Class Members during the
5 PAGA Period as follows: [PAGA Pay Periods worked by a PAGA
6 Employee] ÷ [Sum of all PAGA Pay Periods worked by all PAGA
7 Employees] × [\$20,000] = individual PAGA Employee's portion of the
8 PAGA Employees' PAGA Penalty Payment Share. (§26.j)

- 9 • Tax Withholdings: 40% to wages, 30% to penalties, and 30% to interest. (§26.k)
- 10 • Uncashed Settlement Payment Checks: Settlement Payment checks shall remain
11 valid and negotiable for 180 calendar days from the date of their issuance.

12 Settlement checks will automatically be cancelled by the Settlement
13 Administrator if they are not cashed by the Class Member within that time, and
14 the Class Member's claims will remain released by the Settlement. Settlement
15 checks which have expired will not be reissued. (§34) Funds from un-cashed or
16 abandoned checks, based on a 180-day void date, shall be transmitted to the
17 California State Controller's Office for Unclaimed Property in the name of each
18 check recipient who failed to cash their check prior to the void date. (§35)

- 19 • Funding of Settlement: Defendants will fund the settlement account within seven
20 calendar days of the Effective Date of the Settlement provided that the
21 Settlement Administrator has provided the Parties with an accounting of the
22 amounts to be paid by Defendants pursuant to the terms of the Settlement
23 Agreement. (§26.q)

24 //

1 **C. TERMS OF RELEASES**

- 2 • As presently written Class members will release, for the entire Class Period:
- 3 “Any and all claims stated in the Action, or that could have been stated based on
- 4 the facts alleged in the Action, implicitly or explicitly, including but not limited
- 5 to state wage and hour claims (including all claims under the California Labor
- 6 Code) for unpaid wages, minimum wage, overtime, off-the-clock work, meal
- 7 periods, rest periods, wage statement violations, unreimbursed business
- 8 expenses, interest, penalties, and attorneys’ fees, waiting time penalties,
- 9 withholding from wages and the related provisions of the Labor Code including
- 10 but limited to Labor Code §§ 201-204, 210, 216, 218.6, 226, 226.3 , 226.7, 510,
- 11 512, 512.5, 558, 1194, 1194.2, 1198, 2802, derivative claims under California
- 12 Business & Professions Code §§ 17200 et seq., Los Angeles Administrative
- 13 Code, Division 10, Chapter 1, Article 11, § 10.37, et seq. and all claims under
- 14 the governing Wage Order. (§37.c.1)” there is a potential ambiguity as the term
- 15 Action is not defined.
- 16 • As to any Class Member who cashes their Settlement Payment, the signing and
- 17 negotiation of that check shall serve as the Class Member’s consent to join the
- 18 action for purposes of releasing claims arising under the Fair Labor Standards
- 19 Act that are related to the claims stated in the Action, implicitly or explicitly.
- 20 (§37.c.2)
- 21 • As to all PAGA Employees, whether requesting exclusion from the Settlement
- 22 or not, claims for penalties arising under the Private Attorneys General Act of
- 23 2004, Labor Code § 2698 et seq., to the extent asserted in Plaintiff’s
- 24 administrative exhaustion letter submitted to the LWDA and attached as Exhibit
- 25 “B” to the Settlement Agreement and the Second Amended Complaint in this

1 matter. The penalty provision at issue in Plaintiff's administrative exhaustion
2 letter include: Labor Code §§ 201 – 203, 204, 226, 226.3, 226.7, 510, 512, 558,
3 1174.5, 1194, 1197, 1197.1, 1198, and 2699(f)(2).

- 4 ○ "Released PAGA Claims Period" means the period between June 6, 2018
5 through the date upon which the Court grants preliminary approval. (§15)
- 6 ○ Class Members Cannot Exclude Themselves from the PAGA Payment:
7 Class Members submitting a Request for Exclusion will nevertheless
8 receive their pro rata share of the 25% of the PAGA penalty payment
9 allocated to the Class. If the Court approves the compromise of the PAGA
10 Claim, all Class Members are bound by the Court's resolution of that
11 Claim. (§26.u)
- 12 ● Identity of Released Parties: The released parties are Defendants, and each of
13 its/their former and present direct and/or indirect owners, dba's, affiliates,
14 parents, subsidiaries, brother and sister corporations, divisions, related
15 companies, successors and predecessors, and current and former employees,
16 attorneys, officers, directors, shareholders, owners, trustees, attorneys,
17 fiduciaries, beneficiaries, subrogees, executors, partners, privies, agents,
18 servants, insurers, representatives, administrators, employee benefit plans, and
19 assigns of said entities (collectively "Releasees"). (§37.a)
- 20 ● The named Plaintiff will also provide a general release and a waiver of the
21 protections of Cal. Civ. Code §1542. (§26.n)
- 22 ● The Released Claims will be released upon the later of (1) the Settlement's
23 Effective Date, or (2) the satisfaction of Defendants' obligation to provide to the
24 Settlement Administrator a sum in the amount required to satisfy all required
25 payments and distributions pursuant to this Settlement and the Order and

1 Judgment of final approval. Class Members will not release claims until both the
2 Effective Date of the Settlement has occurred, and Defendants have paid all
3 amounts owing under the Settlement. (¶37.b)

4
5 **D. SETTLEMENT ADMINISTRATION**

- 6 • The proposed Settlement Administrator is Phoenix Settlement Administrators,
7 which has provided evidence that no counsel are affiliated with it and that it has
8 adequate procedures in place to safeguard the data and funds to be entrusted to it.
9 (See Declaration of Michael E. Moore.)
- 10 • Settlement administration costs are estimated to be \$22,000. (Moore Decl. ¶9.)
- 11 • Notice: The manner of giving notice is described below.
- 12 • Opt Out/Objection Dates: “Response Deadline” means the date sixty (60) days
13 after the Settlement Administrator mails the Notice Packets to Class Members and
14 the last date on which Class Members may submit request for exclusion or written
15 objection to the Settlement. (¶7) The Response Deadline also applies to the
16 submission of workweek disputes. (¶26.v)
 - 17 ○ If 10% or more of the Class Members request exclusion or opt out of this
18 Settlement, then Defendants in their sole discretion may terminate, nullify
19 and void this Settlement. (¶42)
- 20 • The Settlement Administrator will post the final judgment approving the
21 Settlement on a website maintained by the Settlement Administrator for a period
22 of not less than 90 days after the final judgment is entered. (¶30)

23 //

24 //

25 //

1 **III. SETTLEMENT STANDARDS AND PROCEDURE**

2 California Rules of Court, rule 3.769(a) provides: “A settlement or compromise
3 of an entire class action, or of a cause of action in a class action, or as to a party,
4 requires the approval of the court after hearing.” “Any party to a settlement agreement
5 may serve and file a written notice of motion for preliminary approval of the settlement.
6 The settlement agreement and proposed notice to class members must be filed with the
7 motion, and the proposed order must be lodged with the motion.” See Cal. Rules of
8 Court, rule 3.769(c).

9 “In a class action lawsuit, the court undertakes the responsibility to assess
10 fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or
11 dismissal of a class action. The purpose of the requirement [of court review] is the
12 protection of those class members, including the named plaintiffs, whose rights may not
13 have been given due regard by the negotiating parties.” *Consumer Advocacy Group,*
14 *Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal
15 quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
16 245, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018)
17 4 Cal. 5th 260 (“*Wershba*”), [Court needs to “scrutinize the proposed settlement
18 agreement to the extent necessary to reach a reasoned judgment that the agreement is
19 not the product of fraud or overreaching by, or collusion between, the negotiating
20 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
21 concerned.”] [internal quotation marks omitted].

22 “The burden is on the proponent of the settlement to show that it is fair and
23 reasonable. However, “a presumption of fairness exists where: (1) the settlement is
24 reached through arm's-length bargaining; (2) investigation and discovery are sufficient
25 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar

1 litigation; and (4) the percentage of objectors is small.” *Wershba*, 91 Cal. App. 4th at
2 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802].

3 Notwithstanding an initial presumption of fairness, “the court should not give
4 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
5 116, 130 (“*Kullar*”). “[W]hen class certification is deferred to the settlement stage, a
6 more careful scrutiny of the fairness of the settlement is required.” *Carter v. City of*
7 *Los Angeles* (2014) 224 Cal.App.4th 808, 819. “To protect the interests of absent class
8 members, the court must independently and objectively analyze the evidence and
9 circumstances before it in order to determine whether the settlement is in the best
10 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4th at 130.
11 In that determination, the court should consider factors such as “the strength of
12 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation,
13 the risk of maintaining class action status through trial, the amount offered in
14 settlement, the extent of discovery completed and stage of the proceedings, the
15 experience and views of counsel, the presence of a governmental participant, and the
16 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of
17 factors is not exclusive and the court is free to engage in a balancing and weighing of
18 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
19 245.

20 At the same time, “[a] settlement need not obtain 100 percent of the damages
21 sought in order to be fair and reasonable. Compromise is inherent and necessary in the
22 settlement process. Thus, even if ‘the relief afforded by the proposed settlement is
23 substantially narrower than it would be if the suits were to be successfully litigated,’
24 this is no bar to a class settlement because ‘the public interest may indeed be served by
25

1 a voluntary settlement in which each side gives ground in the interest of avoiding
2 litigation.” *Id.* at 250.

3
4 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

5
6 **A. THERE IS A PRESUMPTION OF FAIRNESS**

7 The settlement is entitled to a presumption of fairness for the following reasons:

8
9 **1. The settlement was reached through arm’s-length bargaining**

10 On March 25, 2020, the Parties mediated before Steven Rottman, Esq. and
11 agreed to the basic terms of a proposed settlement, signing a Memorandum of
12 Understanding regarding the substantive terms. The Parties subsequently finalized the
13 long-form Settlement Agreement. (*Leviant Decl.* ¶8.)

14
15 **2. The investigation and discovery were sufficient**

16 Class Counsel represents that the Parties conducted informal discovery and
17 investigation of the facts and law, which included the exchange of informal data and
18 discoverable information in preparation for the mediation session. The Parties analyzed
19 payroll and other data pertaining to Plaintiff and the Settlement Class during the
20 relevant Settlement Period, including but not limited to the numbers of former and
21 current members of each purported subclass within the Settlement Class, average
22 workweeks, and average rate of hourly pay. In addition, Defendants provided
23 documents reflecting its wage and hour policies and practices during the Settlement
24 Period and information regarding the total number of current and former employees in
25 the Settlement Class. (*Id.* at ¶6.)

1 Class Counsel further represents that for purposes of mediation, they requested
2 data from Defendant, including time clock data and wage payment records. To reduce
3 the cost of the production, Defendants proposed providing data from a random sample
4 set of putative class members, which Class Counsel agreed to. Before agreeing to a
5 particular sample size, Class Counsel evaluated the impact of various sample set sizes
6 on the accuracy of extrapolations to the full class (assuming that the sample set was
7 randomly drawn) by calculating the margin of error for the size of a proposed sample
8 from the putative class. Class Counsel settled for a ten percent sample size, and based
9 on a class size of 3,338 individuals and a sample of 340 members, calculated a margin
10 of error of 5.03%. Class Counsel is of the opinion that a five percent margin of error is
11 more than sufficiently precise for use in settlement discussions, while taking into
12 account Defendants' concerns about the cost of producing data for a larger portion of
13 the class. Based on their experience, Class Counsel does not believe that a margin of
14 error more precise than five percent would have had any meaningful impact on the
15 outcome of settlement negotiations in this matter. (First Supp. Leviant Decl. ¶7.)

16 To effectuate the random sampling and prevent bias in the selection, Class
17 Counsel represents that they utilized Excel to randomize a list of employee numbers,
18 then chose the employee numbers for whom data would be provided by selecting the
19 first 340 employee numbers from the randomized list. Defendants ultimately provided
20 time and pay records for approximately ten percent of the putative class, a data set
21 containing time and pay records for the randomly chosen 340 individuals. (*Id.* at ¶8.)

22 This is sufficient to value the case for settlement purposes.

23 //

24 //

25 //

1 **3. Counsel is experienced in similar litigation**

2 Class Counsel represent that they are experienced in class action litigation,
3 including wage and hour class actions. (Leviant Decl. ¶¶ 21-25.)

4
5 **4. Percentage of the class objecting**

6 This cannot be determined until the final fairness hearing. Weil & Brown et al.,
7 Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2019) ¶ 14:139.18 [“Should
8 the court receive objections to the proposed settlement, it will consider and either sustain
9 or overrule them at the fairness hearing.”].

10
11 **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED**
12 **FAIR, ADEQUATE, AND REASONABLE**

13
14 Notwithstanding a presumption of fairness, the settlement must be evaluated in its
15 entirety. The evaluation of any settlement requires factoring unknowns. “As the court
16 does when it approves a settlement as in good faith under Code of Civil Procedure
17 section 877.6, the court must at least satisfy itself that the class settlement is within the
18 ‘ballpark’ of reasonableness. See *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985)
19 38 Cal.3d 488, 499–500. While the court is not to try the case, it is ‘called upon to
20 consider and weigh the nature of the claim, the possible defenses, the situation of the
21 parties, and *the exercise of business judgment* in determining whether the proposed
22 settlement is reasonable.’ (*City of Detroit v. Grinnell Corporation, supra*, 495 F.2d at p.
23 462, italics added.)” *Kullar*, 168 Cal.App.4th at 133 (emphasis in original).

24 //

25 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1. Amount Offered in Settlement

The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.” (*Id.* at 130.)

Class Counsel estimated Defendant’s maximum exposure at \$26,972,781 and realistic exposure at \$7,445,004, based on the following analysis:

Violation	Maximum Exposure	Realistic Exposure
Meal Period Claim	\$1,743,675.00	\$156,930.00
Unpaid Wages - Rounding	\$946,039.00	\$532,146.00
Unpaid Wages - Security Checks	\$1,708,136.00	\$204,976.00
Unpaid Wages - Off-the-Clock	\$2,733,017.00	\$163,981.00
Unpaid Wages - LA Living Wage	\$1,000,000.00	\$562,500.00
Rest Break Claim	\$1,692,172.00	\$50,765.00
Reimbursement Claim	\$196,450.00	\$39,290.00
Waiting Time Penalties	\$4,425,267.00	\$2,489,212.00
Wage Statement Violations	\$2,040,275.00	\$1,147,654.00
PAGA Penalties	\$10,487,750.00	\$2,097,550.00
Total	\$26,972,781.00	\$7,445,004.00

(Leviant Decl. ¶18.)

Class Counsel obtained a gross settlement valued at \$875,000. This is approximately 3.2% of Defendants’ maximum exposure and 11.75% of Defendants’ realistic exposure.

In addition, Class Counsel represents that a factor in arriving at the settlement value was the severe financial risk imposed on a Class recovery of any amount by Defendants’ financial distress following COVID-19 airline industry impacts. (Leviant

1 Decl. ¶¶ 16, 18.) Defendants' main business is providing support services to
2 international air carriers. Defendants' Senior Vice President, Steven A. Gomez, provides
3 a declaration in which he represents that in March 2020, as COVID-19 was gaining
4 global recognition as a pandemic, Pacific Aviation's revenues dropped by 28%, when
5 compared to March 2019. In April and May of 2020, Aviation's revenues dropped by
6 87% in each of those two months, as compared to April and May of 2019. Specifically,
7 Pacific Aviation's revenue in April 2020 was \$2,870,943.00 less than it was for the same
8 month in 2019, while in May 2020, Pacific Aviation's revenue was down by
9 \$3,033,655.00 from the year prior. Although Pacific Aviation received funds under both
10 the CARES Act and the Payment Protection Program, and the amount of governmental
11 assistance Pacific Aviation received helped mitigate the financial collapse of the airline
12 industry in general, Gomez represents that these funds will not make up for Pacific
13 Aviation's loss of business volume and revenues. (Declaration of Steven Gomez ¶¶ 11-
14 13.) Gomez asserts that Pacific Aviation's financial condition, and COVID-19's effect
15 on it, is consistent with and representative of the airline industry as a whole. (*Id.* at ¶14.)
16 Class Counsel has also lodged confidential documents with the Court, from Defendants,
17 that detail Defendants' financial condition, including tax returns, cash flow statements, a
18 balance sheet, and position of current assets and an analysis of same by Plaintiffs'
19 counsel which support the concern that the COVID-19 pandemic has had a significant
20 impact on Defendants' financial situation. (Confidential Declaration of H. Scott Leviant
21 dated April 15, 2021; Memorandum in Support of Defendants Motion to Maintain
22 Documents Under Seal filed April 26, 2021.)

23 //

24 //

25 //

1
2
3
4
5
6
7
8
9
10
11
12
13

2. The Risks of Future Litigation

The case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members. Even if a class is certified, there is always a risk of decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 [“Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.”].) Further, the settlement was negotiated and endorsed by Class Counsel who, as indicated above, are experienced in class action litigation. Based upon their investigation and analysis, the attorneys representing Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and adequate. (Leviant Decl. ¶18.)

14
15
16
17
18

The Court also notes that Plaintiff brings a PAGA claim on behalf of the LWDA, which was sent a copy of the First Amended Settlement Agreement on May 28, 2021 and has not yet objected. (First Supp. Leviant Decl., Exhibit 16.) Any objection by it will be considered at the final fairness hearing.

19

3. The Releases Are Limited

20
21
22
23
24
25

The Court has reviewed the Releases to be given by the absent class members and the named plaintiff. The releases, described above, are tailored to the pleadings and release only those claims in the pleadings. There is no general release by the absent class. The named plaintiff’s general release is appropriate given that she was represented by counsel in its negotiation.

1 **4. Conclusion**

2 Class Counsel estimated Defendant’s maximum exposure at \$26,972,781 and
3 realistic exposure at \$7,445,004. Class Counsel obtained a gross settlement valued at
4 \$875,000. This is approximately 3.2% of Defendants’ maximum exposure and 11.75%
5 of Defendants’ realistic exposure, which, given Defendants’ financial condition and the
6 uncertain outcomes, including the potential that the class might not be certified, that
7 liability is a contested issue, that the full amount of penalties would not necessarily be
8 assessed even if the class is certified and liability found, and that a significant liability by
9 way of judgment might impact Defendant’s ability to continue to operate as a going
10 concern and impact current employees’ employment, the settlement is within the
11 “ballpark of reasonableness.”

12
13 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

14 A detailed analysis of the elements required for class certification is not required,
15 but it is advisable to review each element when a class is being conditionally certified.
16 *Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627. The party
17 advocating class treatment must demonstrate the existence of an ascertainable and
18 sufficiently numerous class, a well-defined community of interest, and substantial
19 benefits from certification that render proceeding as a class superior to the alternatives.”
20 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

21 **1. The Proposed Class is Numerous**

22 There are 3,089 putative Class Members. (Motion for Preliminary Approval at
23 10:3-4.) Numerosity is established. *Franchise Tax Bd. Limited Liability Corp. Tax*
24 *Refund Cases* (2018) 25 Cal.App.5th 369, 393: stating that the “*requirement that there*
25 *be many parties to a class action is liberally construed,*” and citing examples wherein

1 classes of as little as 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28,
2 *Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, were upheld).

3 **2. The Proposed Class Is Ascertainable**

4 “A class is ascertainable, as would support certification under statute
5 governing class actions generally, when it is defined in terms of objective
6 characteristics and common transactional facts that make the ultimate identification
7 of class members possible when that identification becomes necessary.” *Noel v. Thrifty*
8 *Payless, Inc.* (2019) 7 Cal.5th 955, 961 (*Noel*).

9 The class is defined above. Class Members are ascertainable through
10 Defendants’ records. (Motion for Preliminary Approval at 10:3-4.)

11 **3. There Is A Community of Interest**

12 “The community of interest requirement involves three factors: ‘(1) predominant
13 common questions of law or fact; (2) class representatives with claims or defenses typical
14 of the class; and (3) class representatives who can adequately represent the class.’”
15 *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

16 As to predominant questions of law or fact, Plaintiff contends that common
17 questions include, but are not limited to: i. Whether or not Defendants paid proper wages
18 to the Class; ii. Whether or not Defendants provided meal periods to the Class; iii.
19 Whether or not Defendants provided rest periods to the Class; iv. Whether or not
20 Defendants paid compensation timely upon separation of employment to former Class
21 Members; v. Whether or not Defendants paid vested vacation pay at time of termination;
22 vi. Whether or not waiting-time penalties are available to the Class for violation of
23 California Labor Code § 203; vii. Whether or not Defendants engaged in unlawful or
24 unfair business practices affecting the Class in violation of California Business and
25 Professions Code §§ 17200-17208; vii Whether Defendants reimbursed all necessary

1 business expenses; and ix. Whether or not Plaintiff and the Class are entitled to penalties
2 pursuant to PAGA. Plaintiff contends that her claims present sufficient common issues
3 of law and fact that predominate over individual issues and warrant class certification.
4 From their review of the documentation provided, Class Counsel determined that for
5 purposes of these claims, Defendants' policies and practices are either identical, or
6 sufficiently similar, to raise the same questions of liability, and applied to all Settlement
7 Class Members. (Motion for Preliminary Approval at 10:22-11:12.)

8 As to typicality, Plaintiff asserts that, like other Settlement Class Members,
9 Defendants employed her in a non-exempt position during the Class Period, and she was
10 subject to the same policies alleged to have impacted the entire class. (Declaration of
11 Jesenia Donan ("Donan Decl.") ¶¶ 2-4.) Plaintiff contends that she and other Settlement
12 Class Members share the same claims stemming from Defendants' alleged violations of
13 the Labor Code and relevant wage order. In addition, Plaintiff contends that Defendants'
14 main defenses, namely that all policies and practices fully comply with California law,
15 apply equally to the claims of all Settlement Class Members. (Motion for Preliminary
16 Approval at 12:7-12.)

17 As to adequacy, Plaintiff represents that she understands her duties as class
18 representative, does not have conflicts with Class Members, and is aware of the risk she
19 has assumed in prosecuting the case. (Supp. Donan Decl. ¶¶ 3-11.) As previously stated,
20 Class Counsel have experience in class action litigation.

21 **4. Substantial Benefits Exist**

22
23 Given the relatively small size of the individual claims, a class action is superior to
24 separate actions by the class members.
25

1 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS**
2 **OF DUE PROCESS**

3 The purpose of notice is to provide due process to absent class members. A practical
4 approach is required, in which the circumstances of the case determine what forms of
5 notice will adequately address due process concerns. *Noel*, 7 Cal.5th at 982. California
6 Rules of Court, rule 3.766 (e) provides that in determining the manner of the notice, the
7 court must consider: (1) the interests of the class; (2) the type of relief requested; (3) the
8 stake of the individual class members; (4) the cost of notifying class members; (5) the
9 resources of the parties; (6) the possible prejudice to class members who do not receive
10 notice; and (7) the res judicata effect on class members.

11 **1. Method of class notice**

12 Within 7 calendar days from the date of preliminary approval of this Settlement
13 by the Court, Defendants shall provide to the Settlement Administrator a class database
14 containing the following information for each Class Member: (1) name; (2) last known
15 address; (3) social security number; and (5) dates of employment at Defendants'
16 locations in California. The Settlement Administrator will run a check of the Class
17 Members' addresses against those on file with the U.S. Postal Service's National
18 Change of Address List; this check will be performed only once per Class Member by
19 the Settlement Administrator. Absent mutual written agreement of counsel for the
20 Parties or Court order, the Settlement Administrator will keep this database confidential
21 and secure and will return this database to Defendants upon final approval of the
22 settlement or destroy electronic records containing the database after the Settlement is
23 final and all payments are distributed as required under this Agreement. (¶32.a) Within
24 14 calendar days after the Class database is provided to the Settlement Administrator,
25

1 the Settlement Administrator will mail the Notices of Settlement to the Class Members
2 by first class United States mail. (§32.b)

3 Notices returned to the Settlement Administrator as non-deliverable during the
4 60 calendar-day period after the initial mailing shall be resent to the forwarding
5 address, if any, on the returned envelope. A returned Notice will be forwarded by the
6 Settlement Administrator any time that a forwarding address is provided with the
7 returned mail. If there is no forwarding address, the Settlement Administrator will do a
8 computer search for a new address using the Class Member's social security number or
9 other information (skip-tracing). In any instance where a Notice is first returned to the
10 Settlement Administrator within ten days of the original Response Deadline, and a new
11 address for that Class Member can be located via a skip-tracing, the Response Deadline
12 will be extended by 15 days for that Class Member. A letter prepared by the Settlement
13 Administrator will be included in the re-mailed Notice in that instance, stating the
14 extended Response Deadline. Upon completion of these steps by the Settlement
15 Administrator, Defendants and the Settlement Administrator shall be deemed to have
16 satisfied their obligations to provide the Notice of Settlement to the affected Class
17 Member. The affected Class Member shall remain a member of the Settlement Class
18 and shall be bound by all the terms of the Settlement and the Court's Order and Final
19 Judgment. (§32.c)

20 **2. Content of class notice.**

21 A copy of the proposed class notice is attached to the Settlement Agreement as
22 Exhibit A. The notice includes information such as: a summary of the litigation; the
23 nature of the settlement; the terms of the settlement agreement; the maximum
24 deductions to be made from the gross settlement amount (i.e., attorney fees and costs,
25 the enhancement award, and claims administration costs); the procedures and deadlines

1 for participating in, opting out of, or objecting to, the settlement; the consequences of
2 participating in, opting out of, or objecting to, the settlement; and the date, time, and
3 place of the final approval hearing. (See Cal Rules of Court, rule 3.766(d).) The
4 Notice of Settlement will issue in English and Spanish. (¶26.t)

5 **3. Settlement Administration Costs**

6 Settlement administration costs are estimated at **\$22,000**, including the cost of
7 notice (¶26.p). Prior to the time of the final fairness hearing, the settlement
8 administrator must submit a declaration attesting to the total costs incurred and
9 anticipated to be incurred to finalize the settlement for approval by the Court.

11 **E. ATTORNEY FEES AND COSTS**

12 California Rule of Court, rule 3.769(b) states: “Any agreement, express or
13 implied, that has been entered into with respect to the payment of attorney fees or the
14 submission of an application for the approval of attorney fees must be set forth in full in
15 any application for approval of the dismissal or settlement of an action that has been
16 certified as a class action.”

17 Ultimately, the award of attorney fees is made by the court at the fairness
18 hearing, using the lodestar method with a multiplier, if appropriate. *PLCM Group, Inc.*
19 *v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.*
20 (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122,
21 1132-1136. In common fund cases, the court may use the percentage method. If
22 sufficient information is provided a cross-check against the lodestar may be conducted.
23 *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503. Despite any
24 agreement by the parties to the contrary, “the court ha[s] an independent right and
25 responsibility to review the attorney fee provision of the settlement agreement and

1 award only so much as it determined reasonable.” *Garabedian v. Los Angeles Cellular*
2 *Telephone Company* (2004) 118 Cal.App.4th 123, 128.

3 The question of class counsel’s entitlement to **\$291,666.66** (33 1/3%) in attorney
4 fees will be addressed at the final fairness hearing when class counsel brings a noticed
5 motion for attorney fees. If a lodestar analysis is requested class counsel must provide
6 the court with current market tested hourly rate information and billing information so
7 that it can properly apply the lodestar method and must indicate what multiplier (if
8 applicable) is being sought.

9 Class counsel should also be prepared to justify the costs sought (capped at
10 **\$12,000**) by detailing how they were incurred.

11
12 **F. SERVICE AWARDS**

13 The Settlement Agreement provides for a service award of up to **\$5,000** for the
14 class representative. Trial courts should not sanction enhancement awards of thousands
15 of dollars with “nothing more than *pro forma* claims as to ‘countless’ hours expended,
16 ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the form of
17 quantification of time and effort expended on the litigation, and in the form of reasoned
18 explanation of financial or other risks incurred by the named plaintiffs, is required in
19 order for the trial court to conclude that an enhancement was ‘necessary to induce [the
20 named plaintiff] to participate in the suit’” *Clark v. American Residential Services*
21 *LLC* (2009) 175 Cal.App.4th 785, 806-807, italics and ellipsis in original.

22 The Court will decide the issue of the enhancement award at the time of final
23 approval.

24 //

25 //

1 **V. CONCLUSION AND ORDER**

2 Contingent upon the parties satisfactorily addressing whether the releases should
3 be amended to substitute the word "Complaint" or "Second Amended Complaint" for
4 "Action," the Court hereby:

5 (1) Grants preliminary approval of the settlement as fair, adequate, and
6 reasonable;

7 (2) Grants conditional class certification;

8 (3) Appoints Jesenia Donan as Class Representative;

9 (4) Appoints Moon & Yang, APC as Class Counsel;

10 (5) Appoints Phoenix Settlement Administrators as Settlement Administrator;

11 (6) Approves the proposed notice plan; and

12 (7) Approves the proposed schedule of settlement proceedings as follows:

- 13 • Preliminary approval hearing: June 28, 2021
- 14 • Deadline for Defendant to provide class list to settlement administrator: July 5,
15 2021 (within 7 calendar days from preliminary approval)
- 16 • Deadline for settlement administrator to mail notices: July 19, 2021 (within 21
17 calendar days from preliminary approval)
- 18 • Deadline for class members to opt out: September 17, 2021 (60 calendar days
19 from the initial mailing of the Notice Packets)
- 20 • Deadline for class members to object: September 17, 2021 (60 calendar days
21 from the initial mailing of the Notice Packets)
- 22 • Deadline for class counsel to file motion for final approval:
23 _____, 2021 (16 court days prior to final fairness hearing)

24 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

• Final fairness hearing: 11/8, 2021, at 9:00 a.m.

Dated: 04/28 | 2021

Maren E Nelson

MAREN E. NELSON
Judge of the Superior Court