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26 Representatives of Other Members of the
27 Public Similarly Situated

28 UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SEIKO TAKAGI and PAUL
BRADLEY, Individually, and as
Representatives of Other Members of
the Public Similarly Situated,

Plaintiffs,

v.

UNITED AIRLINES, INC. and
DOES 1-10, Inclusive,

Defendants.

Case No. 2:11-cv-09191 JCG

CLASS ACTION

**MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF PLAINTIFFS'
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: March 12, 2013
Time: 2:00 P.M.
Courtroom: A-8th Floor
Judge: Hon. Jay C. Gandhi

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I. INTRODUCTION

The parties to this Action hereby seek preliminary approval of their proposed Joint Stipulation of Class Action Settlement and Release (the “Settlement” or “Sett. Stip.”).¹ Subject to Court approval, Plaintiffs Seiko Takagi and Paul Bradley (collectively, “Named Plaintiffs”), on behalf of themselves and a putative class of all persons who have been employed by Defendant United Airlines, Inc. (“Defendant”) as a Flight Attendant at any point from October 4, 2010 in California to the date of preliminary approval of the Settlement, have agreed to settle the Class’ claims against Defendant for Defendant’s alleged violations of California Labor Code sections 204 and 226 in exchange for a non-reversionary Gross Settlement Amount of Nine Hundred Twenty-Five Thousand Dollars (\$925,000.00) (the “Gross Settlement Amount”), which is inclusive of Named Plaintiffs’ incentive award payments, attorneys’ fees, costs, settlement administration expenses, and Labor Code civil penalties. The Settlement fully resolves Named Plaintiffs’ and Class Members’ Claims as that term is defined below, against Defendant.

The proposed Settlement satisfies all of the criteria for preliminary approval and deserves approval. Accordingly, the parties request that the Court grant preliminary approval of the proposed Settlement, conditionally certify the class for settlement purposes only, approve the parties’ proposed Class Notice to be disseminated to the Class Members, and schedule a final approval hearing in this matter.

II. FACTUAL AND PROCEDURAL BACKGROUND

On October 4, 2011, Named Plaintiffs filed a complaint in the California Superior Court, County of Los Angeles, alleging that Defendant violated California Labor Code sections 204 and 226 and seeking civil penalties under the California

¹ A copy of the fully executed Settlement is attached as Exhibit 1 to the Declaration of London D. Meservy in Support of Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement (“Meservy Decl.”). Unless otherwise noted, all capitalized terms shall have the same definition as set forth in the Settlement.

1 Labor Code Private Attorney Generals Act, California Labor Code section 2698, *et*
2 *seq.* (“PAGA”) for these violations. Specifically, Named Plaintiffs alleged that
3 Defendant failed to provide proper itemized wages statements and failed to pay
4 wages in a timely manner to Named Plaintiffs and other California Flight
5 Attendants. Defendant disputes and denies Named Plaintiffs' claims in their
6 entirety. Defendant's Answer denied all material allegations of Named Plaintiffs'
7 Complaint and raised various affirmative defenses. On November 4, 2011,
8 Defendant removed this action to the U.S. District Court for the Central District of
9 California.

10 Counsel for all parties extensively investigated Named Plaintiffs' claims.
11 The parties exchanged information sufficient to enable them to fully evaluate the
12 strengths and weaknesses of the claims and defenses raised by each side. Among
13 other things, Defendant provided Named Plaintiffs with detailed information about
14 the number of putative class members and the number of pay periods in which each
15 putative class member worked during the relevant class period. Meservy Decl., ¶ 7.

16 After deciding to attempt a resolution of this matter, the parties worked with
17 a well-respected class action mediator, Joel Grossman of JAMS, to successfully
18 resolve this case at a mediation session held on August 28, 2012, in Orange County.
19 Prior to the mediation, the parties submitted extensive mediation briefs, evidence,
20 and legal authorities to the mediator. After serious, intense, and protracted
21 negotiations, the parties reached a settlement, the terms of which were set forth in a
22 Memorandum of Understanding signed by all parties that was later memorialized in
23 the Settlement now before this Court for preliminary approval. *Id.*, ¶¶ 8-9.

24 On January 17, 2013, the parties filed a Stipulation to Allow Plaintiffs Leave
25 to File First Amended Complaint. On January 30, 2013, the Court granted the
26 stipulation, and on January 31, 2013, Named Plaintiffs filed their First Amended
27 Complaint.
28

1 **III. SUMMARY OF SETTLEMENT TERMS**

2 The Settlement provides that Defendants will pay Nine Hundred Twenty-
 3 Five Thousand Dollars (\$925,000.00), the Gross Settlement Amount, to settle the
 4 claims of Named Plaintiffs and the Class, consisting of all persons of all persons
 5 who have been employed by Defendant as a Flight Attendant in California at any
 6 point from October 4, 2010 to the date of preliminary approval of the Settlement
 7 (“Class Members”). Sett. Stip., ¶ 8. The parties estimate that there are
 8 approximately 4,236 eligible Class Members. Meservy Decl., ¶ 11.

9 The Gross Settlement Amount will also be used to pay Named Plaintiffs’
 10 class representative incentive award payments (which Named Plaintiffs will request
 11 to be not more than Seven Thousand Five Hundred Dollars (\$7,500.00) each,
 12 Fifteen Thousand Dollars (\$15,000.00) total); Class Counsel’s attorneys’ fees
 13 (which they will seek in a separate application in an amount up to thirty-three
 14 percent (33%) of the Maximum Payment—Three Hundred Eight Thousand Three
 15 Hundred Thirty-Three Dollars and Thirty-Three Cents (\$308,333.33); and
 16 reimbursement of Class Counsel’s costs, up to Ten Thousand Dollars (\$10,000).
 17 Sett. Stip., ¶ 13. Defendant will also pay Thirty Thousand Dollars (\$30,000.00)
 18 from the Settlement Fund to the California Labor Workplace Development Agency
 19 (“LWDA”) as the LWDA’s share of the Settlement attributable to civil penalties
 20 under PAGA. Sett. Stip., ¶ 13.

21 The parties propose to have Garden City Group serve as the Claims
 22 Administrator. Defendant will pay claims administration costs out of the Gross
 23 Settlement Amount. The administration costs are estimated to be Twenty Thousand
 24 Six Hundred Dollars (\$20,600.00).

25 After deducting (1) Class Counsel’s fees and costs, (2) the incentive award
 26 payments to Named Plaintiffs, (3) the payment to the LWDA, and (4) the claims
 27 administration expenses from the Gross Settlement Amount, the remaining balance
 28

1 available for distribution (the “Net Settlement Amount”) shall be for distribution to
 2 those Class Members who do not opt out of the Settlement.

3 Each Class Member’s share of the Net Settlement Amount will be
 4 determined by the number of months he or she worked in proportion to the total
 5 number of months worked by all Class Members. Any monies in the Net
 6 Settlement Amount that are not claimed, due to opt outs, etc., will be redistributed
 7 to Class Members on a pro rata basis such that 100% of the Net Settlement Amount
 8 is distributed to the Class Members. Sett. Stip., ¶ 14.

9 As part of the Settlement, Named Plaintiffs and those Class Members who do
 10 not opt out of the Settlement will fully release and discharge Defendant, its present
 11 and former parent companies, subsidiaries, related or affiliated companies,
 12 divisions, and its respective shareholders, officers, directors, employees, agents,
 13 attorneys, insurers, successors and assigns, and any individual or entity which could
 14 be jointly liable with Defendant or any of them, from any and all claims, debts,
 15 liabilities, demands, obligations, guarantees, costs, expenses, interest, attorneys’
 16 fees, damages, action or causes of action under California state law which were
 17 raised or could have been raised in the Action that arose out of the conduct alleged
 18 in Named Plaintiffs’ Complaint and First Amended Complaint, including failure to
 19 make wage payments in a timely manner during employment, failure to provide
 20 accurate wage statements, all claims under California Labor Code sections 204 and
 21 226, and all claims of the foregoing nature that arise under federal, state, and local
 22 law, including, but not limited to, the California Labor Code; California Business
 23 and Professions Code section 17200; the California Private Attorneys General Act
 24 of 2004 (codified at California Labor Code sections 2698 through 2699); the
 25 California Industrial Welfare Commission Wage Orders; and all applicable civil
 26 and statutory penalties arising from the foregoing, including, but not limited to,
 27 those under California Labor Code sections 204, 210, 226(a), 226(e) and 2698, *et*
 28 *seq.* (collectively, the “Claims”).

1 The release is narrowly tailored to encompass only those claims that are
 2 specifically alleged in, or reasonably encompassed by, Named Plaintiffs' First
 3 Amended Complaint. Meservy Decl., ¶ 17.

4 **IV. CLASS ACTION SETTLEMENT APPROVAL PROCEDURE**

5 A class action may not be dismissed, compromised, or settled without the
 6 approval of the Court. Fed. R. Civ. P. 23(e). Judicial proceedings have led to a
 7 defined procedure and specific criteria for settlement approval in class action
 8 settlements, as described in the Manual for Complex Litigation (Fourth) (the
 9 "Manual") § 21.63 (2006). The Manual's settlement approval procedure describes
 10 the following steps:

- 11 1. Preliminary approval of the proposed settlement at an informal
 12 hearing;
- 13 2. Dissemination of mailed and/or published notice of the settlement to
 14 all affected class members; and
- 15 3. A final settlement approval hearing, at which class members may be
 16 heard regarding the settlement, and evidence and argument concerning the fairness,
 17 adequacy, and reasonableness of the settlement may be presented.

18 This procedure, commonly used by courts and endorsed by the leading class
 19 action commentator, Professor Newberg, safeguards Class Members' procedural
 20 due process rights and enables the Court to fulfill its role as the guardian of class
 21 interests. *See* H. Newberg & A. Conte, 4 Newberg on Class Actions § 11.2 (4th ed.
 22 2002).

23 With this motion, the parties request that the Court take the first step in the
 24 settlement approval process and grant preliminary approval of the proposed
 25 Settlement. The purpose of the Court's preliminary evaluation of the proposed
 26 Settlement is to determine whether it is within the "range of reasonableness" and
 27 whether the Class Notice setting forth the terms and conditions of the Settlement
 28

1 and the scheduling of a formal fairness hearing are worthwhile. *See* 4 Newberg
2 § 11.25.

3 The following schedule sets forth a proposed sequence for the relevant dates
4 and deadlines, assuming this Court grants preliminary approval of the proposed
5 Settlement at or around the time of the hearing on this motion and sets a final
6 approval hearing on or around July 19, 2013:

7 April 1, 2013	Deadline for Defendant to provide Claims Administrator with class data.
8 April 16, 2013	Deadline for Claims Administrator to mail the Class Notice to all Class Members.
9 May 31, 2013 10 (45 days after mailing of Class 11 Notice)	Last day for Class Members to submit written objections to the Settlement and any notices of intent to appear at the final approval hearing.
12 May 31, 2013 13 (45 days after mailing of Class 14 Notice)	Last day for Class Members to submit requests to be excluded from the Settlement.
15 June 14, 2013	Last day for Claims Administrator to provide the parties with a declaration of compliance with its obligations under the Settlement.
16 June 21, 2013	Last day for Named Plaintiffs to file and serve a motion for final approval of Settlement, and for Named Plaintiffs to file request for attorneys' fees, costs, and Class Representative payments.
17 July 8, 2013	Last day for filing of any written opposition to motion for final approval of Settlement and/or Named Plaintiffs' request for attorneys' fees, costs, and Class Representative payments.
18 July 23, 2013	Final approval hearing.

1 **V. PRELIMINARY APPROVAL OF THE SETTLEMENT IS**
 2 **APPROPRIATE**

3 **A. The Governing Principles.**

4 The law favors settlement, particularly in class actions and other complex
 5 cases where substantial resources can be conserved by avoiding the time, cost, and
 6 rigors of formal litigation. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268,
 7 1276 (9th Cir. 1992); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir.
 8 1976); 4 Newberg § 11.41 (and cases cited therein).

9 To grant preliminary approval of this Settlement, the Court need find only
 10 that the Settlement falls within the range of possible final approval, also described
 11 as “the range of reasonableness.” *See, e.g., In re Traffic Executive Ass’n - Eastern*
 12 *Railroads*, 627 F.2d 631, 633-34 (2d Cir. 1980); 4 Newberg § 11.25.

13 Furthermore, courts must give “proper deference to the private consensual
 14 decision of the parties,” since

15 the court’s intrusion upon what is otherwise a private consensual
 16 agreement negotiated between the parties to a lawsuit must be limited
 17 to the extent necessary to reach a reasoned judgment that the
 18 agreement is not the product of fraud or overreaching by, or collusion
 19 between, the negotiating parties, and that the settlement, taken as a
 whole, is fair, reasonable and adequate to all concerned.

20 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) (citation omitted).
 21 Indeed, as a “[s]ettlement is the offspring of compromise,” the question upon
 22 preliminary approval “is not whether the final product could be prettier, smarter or
 23 snazzier, but whether it is fair, adequate and free from collusion.” *Id.* Accordingly,
 24 a court should not second-guess the parties, or substitute its judgment for that of the
 25 proponents of the settlement, particularly when experienced counsel familiar with
 26 the litigation have reached settlement. *See Hammon v. Barry*, 752 F. Supp. 1087
 27 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979).
 28

1 The Manual characterizes the preliminary approval stage as an “initial
2 assessment” of the fairness of the proposed settlement made by the court on the
3 basis of written submissions and an informal presentation from the settling parties.
4 The Manual summarizes the preliminary approval criteria as follows:

5 If the preliminary evaluation of the proposed settlement does not
6 disclose grounds to doubt its fairness or other obvious deficiencies,
7 such as unduly preferential treatment of class representatives or of
8 segments of the class, or excessive compensation for attorneys, and
9 appears to fall within the range of possible approval, the court should
10 direct that notice under Rule 23(e) 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.

11 See 4 Newberg § 11.25 (quoting *Manual for Complex Litigation* (Third) § 30.41
12 (1995)).

13 Here, as shown below, the proposed Settlement falls well within the range of
14 reasonableness.

15 **B. The Terms of the Settlement Disclose No Grounds to Doubt its**
16 **Fairness.**

17 A preliminary review of the terms of the Settlement gives rise to no doubts as
18 to its fairness. Here, the parties negotiated the Settlement in good faith and at arms’
19 length, following an intensive investigation of the factual and legal claims over a
20 period of almost one year and a full-day mediation session, and ultimately agreed
21 on the terms of the Settlement. The parties shared extensive information with one
22 another before arriving at the Settlement, and fully apprised each other of their
23 respective factual contentions, legal theories, and defenses. Meservy Decl., ¶¶ 6-9.

24 Class Counsel are experienced in class action wage-and-hour litigation.
25 Meservy Decl., ¶¶ 2-4; Declaration of Matthew S. Dente in Support of Plaintiffs’
26 Unopposed Motion for Preliminary Approval of Class Action Settlement (“Dente
27 Decl.”), ¶¶ 2-4; Declaration of Brian Robbins in Support of Plaintiffs’ Unopposed
28

1 Motion for Preliminary Approval of Class Action Settlement (“Robbins Decl.”), ¶
 2 2. Defendant’s counsel also are experienced in defending class actions of this type.

3 **C. Liability is Vigorously Contested, and the Settlement Provides**
 4 **Reasonable Compensation for the Class Members’ Alleged**
 5 **Injuries.**

6 Of particular relevance to the reasonableness of the proposed Settlement is
 7 the fact that Defendant has legal and factual grounds available to it for defending
 8 this action. Defendant denies each of Named Plaintiffs’ allegations as they apply to
 9 Named Plaintiffs and each Class Member. Specifically, Defendant claims that it
 10 paid Named Plaintiffs and Class Members within the time limits established by
 11 California law, that the wage statements it provided to Named Plaintiffs and Class
 12 Members complied with California law, and that any alleged defects in its wage
 13 statements were technical and do not give rise to any liability. Notwithstanding
 14 Defendant’s arguments, the Settlement commits Defendants to pay \$925,000.00 to
 15 compensate Class Members for these claims. Approximately 4,236 current and
 16 former employees will be eligible to participate.

17 The Settlement provides a significant monetary recovery to the Class and
 18 easily falls within the range of reasonableness. It provides substantial and
 19 immediate benefits to the Class Members. The Settlement is jointly presented as
 20 the product of extensive arms’ length negotiations by experienced counsel on both
 21 sides after thorough investigation of the claims and recognition of the strengths and
 22 weaknesses of each other’s positions. In calculating the appropriate settlement
 23 amount, the parties had sufficient information, and conducted an adequate
 24 investigation, to allow them to make an educated and informed analysis.

25 The Settlement is fair, reasonable, and adequate, given the inherent risks of
 26 litigation, the risk that class certification may be denied, and the costs of pursuing
 27 the litigation through trial and subsequent appeals. The Settlement will finally
 28

1 resolve all timing of wage payment and paystub-related claims, costs, and
2 attorneys' fees.

3 Despite the asserted fairness of the settlement terms, should any Class
4 Member, upon reviewing the Class Notice, be unsatisfied with the terms, each has
5 the right to submit a request for exclusion from (i.e., opt out of) the Settlement, in
6 which case the Class Member would retain any claim he or she may have against
7 Defendant.

8 Moreover, Class Members who do not opt out may, upon providing proper
9 notice to the parties and the Court, attend the final fairness hearing for the purpose
10 of objecting to one or more of the settlement terms.

11 Accordingly, preliminary approval of the Settlement is appropriate.

12 **VI. CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS**
13 **IS APPROPRIATE**

14 It is well established that trial courts should use a lower standard for
15 determining the propriety of certifying a settlement class, as opposed to a litigation
16 class. The reason for this is that no trial is anticipated in a settlement class, so the
17 case management issues inherent in determining if the class should be certified
18 need not be confronted. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620
19 (1997).

20 **A. Rule 23(a)'s Requirements for Certification Are Met Here.**

21 For settlement purposes, each of Rule 23(a)'s requirements necessary for
22 certification of the Settlement Class — numerosity, commonality, typicality, and
23 adequacy of representation — are met here. *See* Fed. R. Civ. P. 23(a); *see also*
24 *Hanlon*, 150 F.3d at 1019.

25 **1. Numerosity**

26 Rule 23(a)(1) requires that the proposed class be so numerous that joinder of
27 all Class Members is impracticable. Named Plaintiffs need not, however, show that
28

1 the number is so large that it would be impossible to join every Class Member.
 2 *Gay v. Waiters' & Dairy Lunchmen's Union*, 489 F. Supp. 282 (N.D. Cal. 1980),
 3 *aff'd*, 694 F.2d 531 (9th Cir. 1982); *Harris v. Palm Springs Alpine Estates, Inc.*,
 4 329 F.2d 909, 913-14 (9th Cir. 1964); *Murray v. Local 2620, Dist. Council 57,*
 5 *AFSCME, AFL-CIO*, 192 F.R.D. 629, 631 (N.D. Cal. 2000). The Settlement Class
 6 is comprised of approximately 4,236 current and former Flight Attendants of
 7 Defendant, which is clearly large enough to make joinder impracticable. Meservy
 8 Decl., ¶ 11. The proposed Class therefore satisfies Rule 23(a)(1)'s numerosity
 9 requirement.

10 **2. Commonality**

11 Rule 23(a)(2) requires that there be "questions of law or fact common to the
 12 class." The showing needed to satisfy the commonality requirement is "minimal."
 13 *Hanlon*, 150 F.3d at 1020. "Indeed, Rule 23(a)(2) has been construed permissively
 14 ... The existence of shared legal issues with divergent factual predicates is
 15 sufficient, as is a common core of salient facts coupled with disparate legal
 16 remedies within the class." *Id.* at 1019; *see also Rosario v. Livaditis*, 963 F.2d
 17 1013, 1017-18 (7th Cir. 1992) ("A common nucleus of operative facts is usually
 18 enough to satisfy the commonality requirement of Rule 23(a)(2).").

19 For settlement purposes, the members of the proposed Class share common
 20 issues of fact and law including: whether Defendant failed to provide its California
 21 Flight Attendants with proper itemized wage statements as required by California
 22 Labor Code section 226; and whether Defendant failed to pay its California Flight
 23 Attendants their wages in accordance with the time limits set by California Labor
 24 Code section 204 and other applicable wage orders and labor laws.

25 Rule 23(a)(2)'s commonality requirement is clearly met here.

26 **3. Typicality**

27 Rule 23(a)(3) requires that Named Plaintiffs' claims are typical of the claims
 28 of the Class. The typicality inquiry focuses on whether Plaintiffs possess the same

1 interest and suffered the same injury as Class Members and is satisfied if Named
 2 Plaintiffs' claims are "reasonably co-extensive with those of absent class members;
 3 they need not be substantially identical." *Hanlon*, 150 F.3d at 1020.

4 The purpose of the typicality requirement is to ensure that class
 5 representatives are motivated to protect the interests of the class. *See Eisenburg v.*
 6 *Gagnon*, 766 F.2d 770, 786 (3d Cir. 1985). "[T]he Ninth Circuit interprets Rule
 7 23(a)(3) typicality permissively." *Bates v. United Parcel Service*, 204 F.R.D. 440,
 8 446 (N.D. Cal. 2001); *see also Armstrong v. Davis*, 275 F.3d 849, 869 (9th Cir.
 9 2001) ("We do not insist that the named plaintiffs' injuries be identical with those
 10 of the other class members, only that the unnamed class members have injuries
 11 similar to those of the named plaintiffs and that the injuries result from the same,
 12 injurious course of conduct.").

13 Named Plaintiffs are members of the Class. *See Bailey v. Patterson*, 369
 14 U.S. 31, 32-33 (1962). They worked as Flight Attendants in California for
 15 Defendant and were subject to Defendant's employment policies and practices that
 16 are the subject matter of this litigation. Named Plaintiffs' claims are typical of the
 17 other Class Members' claims. Nothing about the claims alleged in the Complaint
 18 are unique to Named Plaintiffs, nor preclude class certification. The typicality
 19 requirement is easily satisfied here.

20 **4. Adequacy**

21 Rule 23(a)(4)'s adequacy requirement is met if Named Plaintiffs will fairly
 22 and adequately represent the Class. The adequacy inquiry turns on whether Named
 23 Plaintiffs have interests similar to those of the Class Members, have the motivation
 24 to further the interests of the Class, and have retained qualified, motivated, and
 25 competent counsel. The purpose of the adequacy requirement is to protect the due
 26 process interests of absent Class Members who must be afforded adequate
 27 representation before entry of a judgment that binds them. The Ninth Circuit has
 28 identified two criteria for determining the adequacy of representation: "First, the

1 representatives must appear able to prosecute the action vigorously through
 2 qualified counsel, and second, the representatives must not have antagonistic or
 3 conflicting interests with the unnamed members of the class.” *Lerwill v. Inflight*
 4 *Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978) (certifying a class for
 5 unpaid overtime wages). Both criteria are met here.

6 Here, Named Plaintiffs have chosen competent, qualified, and experienced
 7 class counsel. *See* Meservy Decl., ¶¶ 2-4; Dente Decl., ¶¶ 2-4; Robbins Decl., ¶ 2.
 8 They have participated in Class Counsel’s investigation of the class-wide claims,
 9 have engaged in extensive discussions with Class Counsel, and have been educated
 10 on the nature of class action litigation and the duties and responsibilities of being
 11 Class Representatives. *See* Meservy Decl., ¶ 21. After considering the duties and
 12 responsibilities of being a Class Representative as well as the risks and burdens of
 13 class litigation, Named Plaintiffs nevertheless desired to pursue this case as a class
 14 action. *See id.*, ¶¶ 22-23. All of these factors indicate that Named Plaintiffs have
 15 fairly and adequately represented the Class and will continue to do so.

16 Moreover, Named Plaintiffs do not have any conflicts with the Class. To the
 17 contrary, Named Plaintiffs have a strong interest in establishing liability and
 18 obtaining a recovery from Defendant. Named Plaintiffs are able and willing to
 19 prosecute this case and to protect the interests of Class Members. *See id.*, ¶¶ 21-22.
 20 The adequacy requirement is met here.

21 **B. Rule 23(b)’s Requirements for Certification Are Met Here.**

22 Common issues of law or fact “predominate over any questions affecting
 23 only individual members.” Fed. R. Civ. P. 23(b)(3). Commonality under Rule
 24 23(a) has been established above. The focus under Rule 23(b)(3) shifts to whether
 25 common issues predominate. Normally, courts pragmatically assess the entire
 26 action and the issues involved to determine if the common questions present a
 27 significant aspect of the case and they can be resolved for all members of the class
 28 in a single adjudication. *Romero v. Producers Dairy Foods, Inc.*, 235 F.R.D. 474,

1 489 (E.D. Cal. 2006). “When common questions present a significant aspect of the
 2 case and they can be resolved for all members of the class in a single adjudication,
 3 there is clear justification for handling the dispute on a representative rather than on
 4 an individual basis.” *Hanlon*, 150 F.3d at 1022.

5 The proposed Class in this action is sufficiently cohesive to warrant
 6 adjudication by representation. Named Plaintiffs and each Class Member seek
 7 statutory penalties and damages for work performed as Flight Attendants in
 8 California; common questions regarding Class Members’ entitlement to the
 9 statutory damages and penalties at issue predominate over individual questions; and
 10 each Class Members’ potential legal remedies are identical within the Class. The
 11 proposed Class should be certified for settlement purposes.

12 The class action device proposed here “is superior to other available methods
 13 for fairly and efficiently adjudicating of the controversy.” Fed. R. Civ. P. 23(b)(3).
 14 This action allows all of the Settlement Class Members’ claims to be fairly,
 15 adequately, and efficiently resolved to a degree that no other mechanism or forum
 16 would provide. As in *Hanlon*, the alternative methods of resolution are individual
 17 claims for a relatively small amount of damages. 150 F.3d at 1023. These claims
 18 “would provide uneconomic for potential plaintiffs” because “litigation costs would
 19 dwarf potential recovery.” *Id.* For this reason, a class action is the superior method
 20 of resolution here.

21 For these reasons, this class should be certified for settlement purposes.

22 **VII. THE PROPOSED CLASS NOTICE IS APPROPRIATE**

23 **A. The Class Notice Satisfies Due Process Requirements.**

24 Due process and judicial interpretation of the notice provisions under
 25 California and federal law require notice be provided to Class Members by the best
 26 reasonable method available. *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 176
 27 (1974). The notice plan here entails mailing the Class Notice to the last known
 28 addresses of all Class Members based on Defendant’s payroll records and diligent

1 administrative efforts. The Class Notice is consistent with class certification
 2 notices approved by numerous federal courts, and is, under the circumstances of
 3 this case, the best notice practicable. Defendant will provide the Claims
 4 Administrator with a database of all Class Members, including their number of
 5 months worked during the relevant period. The Claims Administrator will
 6 thereafter finalize the Class Notice and mail it to the Class Members. The Claims
 7 Administrator will endeavor to determine current addresses for Class Members
 8 whose Notices are returned undelivered and will re-send Notices to them as
 9 appropriate. Sett. Stip., ¶ 26, 28. Thus, the proposed Class Notice process satisfies
 10 all due process requirements. *See Eisen*, 417 U.S. 156.

11 **B. The Proposed Class Notice Is Accurate and Informative.**

12 The proposed Class Notice provides: (1) information on the meaning and
 13 nature of the proposed Settlement; (2) the terms and provisions of the Settlement;
 14 (3) the relief the Settlement will provide Class Members, including an estimate of
 15 the amount to be paid to each Class Member; (4) the amount requested by Class
 16 Counsel for reimbursement of costs and attorneys' fees, and for the Class
 17 Representative payments; (5) the procedure and deadlines for submitting Claim
 18 Forms, requests to be excluded from the Settlement, and/or objections to the
 19 Settlement; and (6) the date, time, and place of the final approval hearing.

20 The Class Notice also fulfills the requirement of neutrality in class notices.
 21 *See H. Newberg & A. Conte*, 3 *Newberg on Class Actions* § 8.39 (3rd ed. 1992). It
 22 summarizes the proceedings to date, and the terms and conditions of the Settlement,
 23 in an informative and coherent manner, in compliance with the Manual's statement
 24 that the notice should state essential terms "concisely and clearly ... in plain, easily
 25 understood language." *See Manual* § 21.31. The Class Notice clearly states that
 26 the Settlement does not constitute an admission of liability by Defendant and
 27 recognizes that the Court has not ruled on the merits of the Action. It also states
 28 that the Court's final settlement approval decision has yet to be made. Accordingly,

the Class Notice complies with the standards of clarity, fairness, completeness, and objectivity required of a settlement class notice disseminated under authority of the Court. *See* Fed. R. Civ. P. 23(c)(2); 23(e); 3 Newberg §§ 8.21, 8.39; Manual §§ 21.311, 21.312.

VIII. A FINAL APPROVAL HEARING SHOULD BE SCHEDULED

The last step in the settlement approval process is the final approval hearing, at which the Court may hear all evidence and argument necessary to evaluate the proposed Settlement. At that hearing, proponents of the Settlement may explain and describe its terms and conditions and offer argument in support of Settlement approval, and members of the Settlement Class, or their counsel, may be heard in support of or in opposition to the Settlement. The parties propose that the final approval hearing be held on or about July 19, 2013.

IX. CONCLUSION

For all of the foregoing reasons, the parties respectfully request that this Court grant preliminary approval of the proposed Settlement, grant conditional certification of the settlement class, approve the proposed form of Class Notice, and schedule the final approval hearing.

Dated: February 7, 2013

THE DENTE LAW FIRM
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By: s/ London D. Meservy
LONDON D. MESERVY (SB# 216654)

Attorneys for Plaintiffs Seiko Takagi and
Paul Bradley, Individually, and as
Representatives of Other Members of the
Public Similarly Situated

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CERTIFICATE OF SERVICE

I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of San Diego, State of California, and not a party of this action. My business address is 550 West C Street, Suite 1950, San Diego, California 92101.

I hereby certify that on February 7, 2013, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on February 7, 2013, at San Diego, California.

s/London D. Meservy
London D. Meservy