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19 **UNITED STATES DISTRICT COURT**
20 **NORTHERN DISTRICT OF CALIFORNIA**

21 JULIA BERNSTEIN, LISA MARIE SMITH,
22 and ESTHER GARCIA, on behalf of
23 themselves and all others similarly situated,

24 Plaintiffs,

25 vs.

26 VIRGIN AMERICA INC.; ALASKA
27 AIRLINES, INC. and Does 1-10, inclusive;

28 Defendants.

Case No. 15-cv-02277-JST

CLASS ACTION

**DECLARATION OF CHARLES J.
COOPER IN SUPPORT OF PLAINTIFFS’
MOTION TO APPROVE THE PLAN OF
ALLOCATION, ATTORNEYS’ FEES
AND EXPENSES, AND SERVICE
AWARDS TO CLASS
REPRESENTATIVES**

Date: July 6, 2023
Time: 2:00 p.m.
Courtroom 6; 2nd Floor
Judge: Hon. Jon S. Tigar

1 I, Charles J. Cooper, declare as follows:

2 1. The facts contained in this declaration are within my personal knowledge, and I
3 could and would testify truthfully to these facts if called to do so under oath. I submit this
4 declaration in support of Plaintiffs’ Motion for Attorneys’ Fees and Expenses.

5 2. I am a founding member and the chairman of Cooper & Kirk, PLLC (“Cooper &
6 Kirk” or the “Firm”). I am a member of the Alabama, Georgia, and District of Columbia bars, as
7 well as the bars of the U.S. Supreme Court, all 13 federal circuit courts of appeals, and many
8 federal district courts.

9 3. I am familiar with the Firm’s policies, practices, and procedures governing the
10 recording and maintenance of time and expense reports. I am also familiar with Cooper & Kirk’s
11 standard hourly rates customarily charged for professional services delivered to clients who
12 (a) hire the Firm for a particular case or matter purely on an hourly basis and generally pay their
13 bills within 30 to 60 days, (b) assume responsibility for paying for all expenses, and (c) agree to
14 pay the Firm’s hourly rates without regard to the outcome of the case.

15 4. In staffing this case, I endeavored to keep the number of personnel assigned to the
16 case to the minimum necessary to represent Plaintiffs in an efficient manner. Given the
17 complexity and importance of the legal issues presented in this case, the quantity of time devoted
18 by Cooper & Kirk professionals to this case and detailed here is reasonable, necessary, and fully
19 deserving of compensation.

20 5. From the inception of the Firm’s involvement in this case, I have had personal
21 familiarity with the work performed by the attorneys assigned to this case. The following Cooper
22 & Kirk attorneys have worked on this case:

23 **a. Charles J. Cooper**

24 6. I am a founding member and the chairman of Cooper & Kirk. I have over 40 years
25 of legal experience in government service and private practice. I have argued nine cases before
26 the United States Supreme Court and scores of appeals before each of the 13 federal courts of
27 appeals and several state supreme courts. I have been lead trial counsel in numerous complex,
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1 weeks-long trials in federal courts throughout the country. My practice is national in scope and is
2 concentrated in the areas of constitutional and civil rights litigation.

3 7. I received my B.S. from the University of Alabama School of Business
4 Administration in 1974 (with Honors). After graduating from the University of Alabama School
5 of Law in 1977, where I ranked first in my class and served as Editor-in-Chief of the Alabama
6 Law Review, I began my career as a law clerk to Judge Paul Roney on the Fifth Circuit Court of
7 Appeals and to Justice William H. Rehnquist on the United States Supreme Court. I then
8 practiced law in Atlanta for two years before joining the Civil Rights Division of the U.S.
9 Department of Justice, where I served as the Deputy Assistant Attorney General in charge of,
10 among other things, appellate matters. In 1985 President Reagan appointed me to the position of
11 Assistant Attorney General for the Office of Legal Counsel, which is the office responsible for
12 providing legal opinions and advice to the White House, the Attorney General, and Executive
13 Branch departments and agencies on issues covering the full spectrum of federal constitutional,
14 statutory, and regulatory law.

15 8. The Firm's standard rate for my time is \$1550 per hour.

16 **b. Peter A. Patterson**

17 9. Pete Patterson is a partner at Cooper & Kirk. His practice includes appellate
18 litigation, constitutional litigation, commercial litigation, and administrative law. In addition, Mr.
19 Patterson for a number of years taught an appellate litigation clinic at the University of Cincinnati
20 College of Law. Mr. Patterson has extensive experience in complex matters involving important
21 questions of constitutional, statutory, and administrative law. He frequently has represented
22 plaintiffs in cases alleging constitutional or statutory violations by federal, state, and local
23 government officials. He also has represented plaintiffs in class action litigation against
24 corporations and the federal government.

25 10. Mr. Patterson joined Cooper & Kirk in 2009. Prior to arriving at Cooper & Kirk,
26 he served as Associate Counsel to the President in the White House Counsel's Office. Before that,
27 he served as a law clerk to Judge Jeffrey S. Sutton of the United States Court of Appeals for the
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1 Sixth Circuit. Mr. Patterson received his J.D. from Stanford Law School in 2006, earning Order
2 of the Coif honors for finishing in the top 10% of his class. There, he was a member of the
3 Stanford Law Review, serving as an Articles Editor. He also participated in litigation before the
4 United States Supreme Court through the Stanford Supreme Court Litigation Clinic.

5 11. Mr. Patterson is a member of the Bars of the State of Ohio, the District of
6 Columbia, the Supreme Court of the United States, all 13 federal circuit courts of appeals, and
7 many federal district courts.

8 12. Mr. Patterson graduated with University Honors from Carnegie Mellon University
9 in 2000 with a B.S. in Information and Decision Systems.

10 13. The Firm's standard rate for Mr. Patterson's time is \$925 per hour.

11 **c. John D. Ohlendorf**

12 14. John Ohlendorf is a partner at Cooper & Kirk. Mr. Ohlendorf has extensive
13 experience with every aspect of litigation, from arguing discovery disputes and cross-examining
14 trial witnesses to working on appeals at all levels of the state and federal judicial systems. Mr.
15 Ohlendorf has written dozens of briefs in the United States Supreme Court and has argued
16 numerous cases, including appeals in both state and federal court. While much of his career has
17 focused on appellate advocacy, he has also developed deep experience litigating at the trial-court
18 level from the filing of the complaint to proceedings in the Supreme Court.

19 15. Mr. Ohlendorf's litigation experience is wide-ranging, but it includes a particular
20 focus on constitutional law and suits against the government. He has litigated multiple claims
21 involving the separation of powers, the Appointments Clause, freedom of speech, the Second
22 Amendment, the Due Process Clause, the Equal Protection Clause, and the Takings Clause. Mr.
23 Ohlendorf has also litigated many cases involving administrative law and government contracts.

24 16. Before coming to Cooper & Kirk, Mr. Ohlendorf clerked for Judge Raymond
25 Gruender of the United States Court of Appeals for the Eighth Circuit, taught at Northwestern
26 University School of Law as an Olin-Searle-Smith Fellow, and then at Georgetown University
27 Law Center as a Visiting Lecturer and Fellow at the Georgetown Center for the Constitution. His
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1 articles have been published in the Notre Dame Law Review, the Harvard Journal of Law and
2 Public Policy, National Affairs (with Joel Alicea), the Georgia Law Review, and the Maine Law
3 Review. He received a J.D. from Harvard Law School, magna cum laude, in 2010, where he was
4 an Editor for the Harvard Journal of Law and Public Policy, and graduated with a B.A. from
5 Bethany Lutheran College, summa cum laude, in 2007.

6 17. Mr. Ohlendorf is a member of the Bars of the State of Missouri, the District of
7 Columbia, the Supreme Court of the United States, the United States Courts of Appeals for the
8 First, Second, Third, Fourth, Fifth, Sixth, Ninth, Eleventh, District of Columbia, and Federal
9 Circuits, and many federal district courts.

10 18. The Firm's standard rate for Mr. Ohlendorf's time is \$750 per hour.

11 19. The following Cooper & Kirk legal assistants have also performed work on this
12 case:

13 **a. Katlyn Troilo**

14 20. Kaitlyn Troilo received her B.A. in Politics from Catholic University of America
15 in 2019. She has been a legal assistant with Cooper & Kirk since 2019.

16 21. The Firm's standard rate for Ms. Troilo's time is \$205 per hour.

17 **b. Erica Lizza**

18 22. Erica Lizza received her B.S. in Foreign Service from Georgetown University in
19 2019. She was a legal assistant with Cooper & Kirk from 2019-2022.

20 23. The Firm's standard rate for Ms. Lizza time was \$195 per hour in 2022 when she
21 left the Firm.

22 24. Since joining our co-counsel in this case in 2019, Cooper & Kirk has actively
23 participated in this litigation, including (1) drafting significant briefs, including the Appellees'
24 Brief before the Ninth Circuit and a Brief in Opposition to a Writ of Certiorari in the U.S.
25 Supreme Court; (2) preparing for and participating in oral argument before the Ninth Circuit; (3)
26 performing legal research and evaluating significant legal developments that could impact the
27 litigation; and (4) participating in litigation strategy decisions.
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1 25. Cooper & Kirk has dedicated significant time and resources to prosecuting the
2 litigation on behalf of the class. The firm's legal services were performed on a wholly contingent
3 fee basis.

4 26. Cooper & Kirk maintained detailed time records regarding the work performed in
5 connection with the prosecution of the Litigation.

6 27. Cooper & Kirk's hours incurred and billing rates are documented more fully
7 alongside those of Class counsel in Exhibits B and C to the Declaration of Monique Olivier in
8 support of Plaintiffs' Motion to Approve the Plan of Allocation, Attorneys' Fees and Expenses,
9 and Service Awards to Class Representatives ("Olivier Declaration").

10 28. The Firm's entries included in Exhibits B and C to the Olivier Declaration are
11 derived from the actual number of hours incurred by the firm for its work on this case. The entries
12 were derived from the Firm's Timeslips database which is maintained in the ordinary course of
13 the Firm's business. The database entries are recorded at or about the time of the events
14 recorded. The expenses for which reimbursement is sought all were necessarily incurred and are
15 reasonable in amount.

16 29. The total number of hours spent by the attorneys, project analysts, paralegals and
17 law clerks working on behalf of Cooper & Kirk relating to the Litigation is 645.80. As reflected
18 in Exhibit "A," through June 30, 2022, the Firm has accumulated a lodestar totaling \$607,567.

19 30. The Firm's hourly rates range from \$195 for certain paralegal work up to \$1,550
20 for experienced senior litigation counsel. Based on my knowledge and experience, the hourly
21 rates charged by Cooper & Kirk are well within the range of market rates charged by attorneys of
22 equivalent experience, skill, and expertise. These rates are our normal hourly rates charged to our
23 hourly clients. Cooper & Kirk's hourly rates have been routinely approved by courts. *See, e.g.,*
24 *Shepard v. Madigan*, 2014 WL 4825592 (S.D. Ill. Sept. 29, 2014); *NRA v. Village of Oak Park*,
25 871 F. Supp. 2d 781 (N.D. Ill. 2012); *Benson v. City of Chicago*, No. 10-cv-4184 (N.D. Ill. 2014),
26 Dkt. 260.

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31. For individuals still employed by our firm, the hourly rates sought by Cooper & Kirk reflect the standard hourly rates charged in 2022 by the firm to fee-paying clients. For individuals no longer employed by the firm, the hourly rates sought reflect the standard hourly rates we charged for their time during the most-recent year they were employed at the firm. Thus, the hourly rates sought here reflect the rates paid to the Firm in typical arm's-length, market-rate transactions.

32. As reflected above, I am familiar with all aspects of this litigation since my firm entered its appearance and have supervised my colleagues in connection with the excellent work that they have performed in this case.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 18th day of May, 2023 at Washington, D.C.

/s/ Charles J. Cooper
Charles J. Cooper

1 *Additional Counsel for Plaintiffs*

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