II	OLIVIER & SCHREIBER LLP			
11	Monique Olivier (SBN 190385) monique@os-legal.com)			
	Cassidy Clark (SBN 335523)			
	<u>cassidy@os-legal.com</u> ) 475 14 <sup>th</sup> Street, Suite 250			
	Dakland, CA 94612			
]	Γelephone: (415) 484-0980			
	KOSINSKI + THIAGARAJ, LLP Alison Kosinski (SBN 261676)			
(	alison@ktlawsf.com)			
	Emily Thiagaraj (SBN 284634) <a href="mailto:emily@ktlawsf.com">emily@ktlawsf.com</a> )			
	1300 Clay Street, Suite 600 Dakland, CA 94612			
Ш	Γelephone: (415) 230-2860			
£	Attorneys for Plaintiffs and the Class			
UNITED STATES DISTRICT COURT				
NORTHERN DISTRICT OF CALIFORNIA				
	JULIA BERNSTEIN, LISA MARIE SMITH,	Case No. 15-cv-02277-JST		
	and ESTHER GARCIA, on behalf of themselves and all others similarly situated,	CLASS ACTION		
	Plaintiffs,	DECLARATION OF ALISON KOSINSKI IN SUPPORT OF		
	v.	PLAINTIFFS' MOTION TO APPROVE		
	VIRGIN AMERICA, INC.; ALASKA AIRLINES, INC. and Does 1-10, inclusive;	THE PLAN OF ALLOCATION, ATTORNEYS' FEES AND EXPENSES, AND SERVICE AWARDS TO CLASS		
	Defendants.	REPRESENTATIVES		
		Date: July 6, 2023 Time: 2:00 p.m.		
		Crtrm: Courtroom 6; 2 <sup>nd</sup> Floor Judge: Hon. Jon S. Tigar		
_		Judge. Holl. Joh S. Hgai		

## I, Alison Kosinski, declare as follows:

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1. I am a member of the State Bar of California and admitted to practice law in all the courts of the State of California and in the United States District Court for the Northern District of California. I am in good standing with the Bar and with this Court. I am a partner in the law firm Kosinski and Thiagaraj, LLP ("KTLaw") and am counsel for Plaintiffs and the Class in this action.

- 2. The facts contained in this declaration are within my personal knowledge, and I could and would testify truthfully to these facts if called to do so under oath. I submit this declaration in support of Plaintiffs' Motion to Approve the Plan of Allocation, Attorneys' Fees and Expenses, and Service Awards to Class Representatives.
- 3. At the inception of this action more than eight years ago, KTLaw associated with Monique Olivier, an exceptionally experienced class action litigator, of Olivier & Schreiber LLP ("O&S"). From then on, KTLaw and Ms. Olivier have worked as co-counsel on behalf of the Plaintiffs and the Class in this action. I have worked as the primary attorney at KTLaw on this action and have been actively involved in each part of this action, from the initial client intake to the appeal to this fee motion.
- 4. In 2017, when it became clear that there would be post-certification discovery, motion, expert and pre-trial work, we associated with Miller Shah LLP ("MS"), as additional cocounsel. The firms are collectively referred to below as Class counsel. In 2019, Class counsel associated Cooper & Kirk, PLLC ("CK"), a highly regarded firm specializing in Circuit and Supreme Court proceedings in light of Defendants' appeal to the Ninth Circuit attempting to overturn this Court's judgment for the Class.
- 5. Below I provide a summary of the fees and costs sought by my firm and an explanation of the documentation submitted in support thereof, a summary of my firm's experience, the hourly rates for the attorneys at my firm, a description of how my firm allocated and billed work in this case, and the particular risks my firm undertook in this contingency litigation.

6. Additional information about Ms. Olivier's experience and work is contained in the declaration of Monique Olivier in support of Plaintiffs' motion for attorneys' fees and costs, filed concurrently herewith. Additional information about MS's experience and work is contained in the declaration of James E. Miller in support of Plaintiffs' motion for attorneys' fees and costs, filed concurrently herewith. Additional information about CK's experience and work is contained in the declaration of Charles J. Cooper, filed concurrently herewith.

### SUMMARY OF FEES AND EXPENSES REQUESTED

- 7. Class counsel has dedicated significant time and resources to prosecuting the litigation on behalf of the Class. Class counsel's legal services were performed on a wholly contingent basis. Each firm has maintained detailed time records regarding the work performed in connection with the prosecution of the litigation.
- 8. At the time of filing, the total combined lodestar for Class counsel and appellate counsel for prosecuting the claims to date in this action is \$5,844,318.50, representing over 7,300 hours of counsel's time, after deductions made for billing judgment. All of Class counsel's time is documented in counsel's contemporaneous time records. The bases for the lodestar are more fully described in the Olivier Declaration.
- 9. This lodestar also reflects counsel's careful exercise of billing judgment. The portion of this total lodestar attributable to KTLaw is \$1,226, 310 and is documented more fully in Exhibits B and C to the Olivier Declaration.
- 10. Plaintiffs also request payment of expenses, as documented in Exhibits D and E to the Olivier Declaration.

#### **EXPERIENCE OF CLASS COUNSEL**

11. I am a partner of KTLaw, an Oakland-based firm that exclusively represents individuals and classes in employment matters. KTLaw is a two-attorney firm, consisting of two partners, Emily Thiagaraj and myself. Both Ms. Thiagaraj and I have worked exclusively in employment law since being admitted to the Bar. More information about our law firm and our experience is available at our firm's website: <a href="www.ktlawsf.com">www.ktlawsf.com</a>.

- 12. I have been practicing law since 2008. In addition to class action work, which I describe in more detail below, I have represented individuals in wage and hour lawsuits, discrimination lawsuits, and wrongful termination suits, before California administrative agencies, California state courts, and federal district courts.
- 13. Every year from 2016 to 2018, I was recognized by Northern California Super Lawyers as a Rising Star. Starting in 2019, every year Northern California Super Lawyers has recognized me as a Super Lawyer.
- 14. I have presented to audiences of lawyers regarding California employment law, including at the California Employment Lawyers Association's ("CELA") annual employment law conference. I have also served on CELA's Wage and Hour Committee and have organized employment law-related continuing education presentations for plaintiff-side employment attorneys in Northern California.
- 15. Immediately following law school, I served as the judicial law clerk to the Honorable R. Marc Kantrowitz of the Massachusetts Appeals Court from September 2008 through August 2009. Following my clerkship, I worked for the U.S. Department of Labor in San Francisco and then for a mid-size employment defense firm, Liebert Cassidy Whitmore, where I focused my practice on public sector wage and hour matters. I worked at Liebert Cassidy Whitmore until 2014, when Ms. Thiagaraj and I launched our firm.
- 16. I received my J.D. (*summa cum laude*) from Suffolk University Law School in Boston, Massachusetts. In law school I served as the Chief Managing Editor for the Suffolk Transnational Law Review. I received my B.A. with distinction in all subjects from Cornell University in Ithaca, New York.
- 17. Ms. Thiagaraj received her J.D. from University of San Francisco Law School, and her B.A. from the University of California San Diego. During law school, Ms. Thiagaraj served as the Business Editor for the USF Maritime Law Journal, externed at Duane Morris LLP, and worked as a summer associate at Liebert Cassidy Whitmore.
- 18. Starting in law school and continuing through until the launch of KTLaw in 2014, Ms. Thiagaraj practiced exclusively employment law at Liebert Cassidy Whitmore in San

Francisco. Ms. Thiagaraj has represented individuals in wage and hour lawsuits, discrimination lawsuits, and wrongful termination lawsuits, before California state courts and in arbitrations. Ms. Thiagaraj has organized and presented employment law-related continuing education presentations for the AIDS Legal Referral Panel in San Francisco and the Alameda County Bar Association Labor & Employment Symposium.

- 19. Ms. Thiagaraj has been named a Rising Star by the Northern California Super Lawyers every year from 2017 onward.
- 20. KTLaw has recently resolved a class and collective action on behalf of security guards who were misclassified as independent contractors (*Houston et al. v. Braavos, Inc. et al.*, San Francisco Superior Court Case No. CGC-17-562019). KTLaw litigated this case for over four years before reaching a favorable result for its clients. In both this matter before the Court and in the *Houston* case, KTLaw has partnered with exceptionally experienced co-counsel to litigate on behalf of the classes.

### **CLASS COUNSEL'S HOURLY RATES**

- 21. Our lodestar for this case is based on the rates currently charged in all cases by the timekeepers. For KTLaw, Ms. Thiagaraj and I have determined our hourly rates based on a variety of factors, including years of practice, relevant experience, relative expertise, past and current services contracts with clients, and rates of similarly experienced peers at other firms. We set the billing rates for our firm to be consistent with the prevailing market rates in the private sector for attorneys of comparable skill, qualifications and experience.
- 22. My 2022 rate is \$700 per hour and Ms. Thiagaraj's 2022 rate is \$650 per hour. These are the usual and customary rates we charge our hourly clients. Based on my knowledge and experience, the hourly rates charged by KTLaw are within the range of market rates charged by attorneys of equivalent experience, skill, and expertise.
- 23. Our billing rates are commensurate with, and in fact often below, prevailing rates in the San Francisco Bay Area for partners and associates with comparable skill and experience litigating class actions. *See Hefler v. Wells Fargo & Co.*, No. 16-CV-05479-JST, 2018 WL

6619983, at \*14 (N.D. Cal. Dec. 18, 2018) (approving hourly rates from \$650 to \$1,250 for partners or senior counsel and from \$400 to \$650 for associates); *Smith v. Am. Greetings Corp.*, No. 14-CV-02577-JST, 2016 WL 2909429, at \*9 (N.D. Cal. May 19, 2016) (approving rates in the Northern District of California for partners from \$560 to \$800 and associates from \$285 to \$510); *Steinfeld v. Discover Fin. Servs.*, No. C 12-01118 JSW, 2014 U.S. Dist. LEXIS 48540, at \*4 (N.D. Cal. Mar. 31, 2014) (approving rates of class action firms including \$550/hour for partner in practice for 12 years).

24. Further, although the rates in the Bay Area market are typically higher than those in the Washington D.C area, the hourly rates sought by Class counsel are also below the Adjusted Laffey Matrix, the tool that sets forth reasonable rates in the Washington D.C. area that courts in that area and elsewhere have considered (<a href="http://www.laffeymatrix.com/see.html">http://www.laffeymatrix.com/see.html</a>). For example, under the Matrix, the reasonable hourly rate (not adjusted for the Bay Area) for me and Ms. Thiagaraj would be \$829, while we are seeking \$700 per hour for me and \$650 for Ms. Thiagaraj. The accepted Laffey Matrix rates are considerably higher than the rates sought here.

# BILLING RECORDS AND ALLOCATION OF WORK

- 25. At the beginning of this case, both Ms. Thiagaraj and I worked equally on this case, and in collaboration with Ms. Olivier. Approximately one year into the litigation, I transitioned to be the primary partner on this case, with Ms. Thiagaraj stepping in to handle specific discovery matters, communications with class members and plaintiffs, and preparation of lengthy motions. I have continued to be the primary attorney from our firm working on this case, other than during my maternity leaves in 2017 and 2019 when Ms. Thiagaraj handled all matters related to the case for our firm.
- 26. Accordingly, I have been intimately involved in all aspects of this litigation from inception of this case. My work on this case has consisted of: performing extensive due diligence prior to filing the complaint; coordinating assignments with our co-counsel and with Ms. Thiagaraj; drafting the original and amended complaints; preparing for and participating in early mediation; conducting extensive document review and discussing with co-counsel key

documents; preparing written discovery; responding to written discovery; preparing for and taking depositions; interviewing and communicating with class members; reviewing expert materials; drafting and editing sections of motions including class certification, motion for summary judgment, and oppositions to Defendants' motions for summary judgment and decertification; preparing submissions to the Ninth Circuit Court of Appeal; supporting cocounsel during Defendant's petition for certiorari to the U.S. Supreme Court. I have also served as the primary point of contact for the over 2,000 Class Members, responding promptly to each of their inquiries by email and phone, keeping the Class appraised on the status of the case, and updating our website with updates accordingly.

- 27. Ms. Thiagaraj has primarily worked on the following aspects of this case: communicating with and interviewing the named plaintiffs and class members; drafting declarations in connection with the motion for class certification; reviewing document productions; responding to written discovery requests; preparing for and defending class member depositions; and corresponding with Class Members in my absence.
- 28. My firm does not employ associates or paralegal staff. Therefore, we outsourced any necessary administrative work, such as printing, assembling, and delivering documents, to local copying and courier services, so as to minimize attorney billing time.
- 29. KTLaw maintains contemporaneous time records reflecting the time spent on cases, including the date and amount of time spent on a task to one-tenth of an hour and a description of the work performed.
- 30. I have reviewed the records of all the time that Ms. Thiagaraj and I billed to this matter. We work closely together on many litigation matters and are careful to minimize duplication of efforts. We have worked hard to litigate this action in an efficient and cost-effective manner. KTLaw is a two-person firm and we began litigating this matter when the firm was less than one year old. At that time and throughout this litigation, we have, simply because of the nature of contingency work and the financial realities for a nascent, small firm, been particularly careful to work efficiently and not pour any unnecessary hours of work into a protracted, class action matter.

- 31. I exercised billing judgment in KTLaw's hours by deleting time that was inefficient or duplicative.
- 32. I anticipate that my firm will continue to conduct work, and thus the lodestar will grow slightly, in order to finalize the fee motion work. Plaintiffs will update the total hours in conjunction with the reply brief.

#### **CONTINGENT RISK**

- 33. Class counsel has undertaken this litigation on a purely contingent basis. Class counsel have not been paid for any of their time spent on this action, nor have they been reimbursed for the substantial out-of-pocket expenses they incurred in the prosecution of this action. The vast majority of the work that Class counsel does is done on a contingency fee basis. Because we do not have regularly paying clients, we rely on awards for attorneys' fees and costs in order to continue our work for the enforcement of labor standards. We have not charged Plaintiffs nor any class member any fees or costs to litigate their claims in this action.
- 34. KTLaw has only two attorneys. Taking on a class action case, as a newly-formed, two-person law firm brought with it significant financial risk. We expended a tremendous amount of attorney time and out-of-pocket expenses from the outset of this case, with no guarantee that we would ever be compensated for our time or reimbursed for our costs. Further, there was no way for us to have anticipated eight years of litigation at the district court and appellate levels before reaching a final judgment. Despite the risks of this case, we have nonetheless made every effort to litigate this case zealously on behalf of the Plaintiffs and the Class while being as efficient as possible with all of our billed time.
- 35. I have been the primary attorney at KTLaw working on this case and for many parts of 2016, 2017, and 2018 I devoted the majority of my work time to this case. I currently spend significant time as the primary attorney responsible for all Class communications as well. As a result, I have turned down numerous individual employment law cases because I did not have enough time in my caseload to take on additional work. I also turned down at least one potential class action because our firm was not able to take on more financial risk inherent in contingency class action work. While I worked primarily on this case, Ms. Thiagaraj carried the

1	burden of working on the majority of KTLaw's individual cases, which for several of these years		
2	was the firm's sole source of income. Throughout this work arrangement allocating the work		
3	between Ms. Thiagaraj and me, we were constantly aware that this case carried a risk of no		
4	recovery at all and that all of my time spent on the case could result in no financial recovery.		
5	Therefore, we are relying upon the recovery of our lodestar plus an appropriate multiplier in orde		
6	for our firm to again represent employees who have been denied wages in lengthy, time-		
7	consuming, and complex cases such as this one.		
8	<u>EXPENSES</u>		
9	36. KTLaw maintained all of its records regarding costs and expenses in this action. I		
10	have reviewed the records of costs expended in this matter. The expenses for which we seek		
11	payment include copying costs, postage charges, delivery fees, deposition-related transportation		
12	and travel expenses. These expenses were reasonably necessary for the continued prosecution of		
13	this litigation. The expenses sought are included in Exhibits D and E to the Olivier Declaration.		
14	37. Class counsel will continue to incur fees and expenses in this matter and reserve		
15	the right to seek such additional fees and expenses at the appropriate time.		
16	I declare under penalty of perjury under the laws of the United States that the foregoing is		
17	true and correct.		
18	Executed this 18th of May, 2023 in Oakland, California.		
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20	<u>/s/ Alison Kosinski</u> Alison Kosinski		
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1	Additional Counsel for Plaintiffs	
2 3	JAMES E. MILLER (SBN 262553) (jemiller@millershah.com) MILLER SHAH LLR	
4	MILLER SHAH, LLP 65 Main Street	
5	Chester, CT 06412 Telephone: (860) 526-1100	
6	KOLIN C. TANG (SBN 279834)	
7	(kctang@millershah.com)	
8	CHIHARU G. SEKINO (SBN 306589) (cgsekino@millershah.com)	
9	MILLER SHAH, LLP 1230 Columbia Street, Suite 1140	
10	San Diego, CA 92101	
11	Telephone: (619) 235-2416	
12	JAMES C. SHAH (SBN 260435) (jcshah@millershah.com)	
13	MILLER SHAH, LLP 1845 Walnut Street, Suite 806	
14	Philadelphia, PA 19063	
15	Telephone: (610) 891-9880	
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ı	KOSINSKI DECL. ISO MTN. TO APPROVE PLAN OF ALLOCATION	CASE NO. 15-cv-02277-JST