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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 v.

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 JAMES E. MILLER
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.
Crtrm: Courtroom 6; 2nd Floor
Judge: Hon. Jon S. Tigar

1 I, James E. Miller, declare as follows:

2 1. I am a member of the State Bar of California and admitted to practice law in the
3 courts of the State of California, the United States District Court for the Northern District of
4 California, the Ninth Circuit Court of Appeals, and the U.S. Supreme Court, as well as in the state
5 and federal courts of Connecticut, New Jersey and Pennsylvania. I also am admitted to practice
6 before numerous other federal courts in the United States. I am a member in good standing with
7 the California State Bar and with this Court. I am the Managing Partner of the law firm, Miller
8 Shah LLP (“Miller Shah”), and previously was the Managing Partner of Shepherd Finkelman
9 Miller & Shah LLP (“SFMS”), which ceased operations on March 15, 2021 at which time Miller
10 Shah substituted in as counsel in this case.¹ I am one of the attorneys at my firms who has
11 actively litigated this case on behalf of Plaintiffs and the Class, and I remain actively engaged in
12 this litigation as counsel for Plaintiffs and the Class.

13 2. The facts contained in this Declaration are within my personal knowledge, and I
14 could and would testify truthfully to these facts if called to do so under oath. I submit this
15 Declaration in support of Plaintiffs’ Motion to Approve the Plan of Allocation, Attorneys’ Fees
16 and Expenses, and Service Awards to the Class Representatives.

17 3. In August, 2017, Miller Shah entered into a joint prosecution agreement with
18 Duckworth Peters Lebowitz Olivier LLP (“DPLO”), a firm with which our firm had co-counseled
19 (and served as opposing counsel to) in the past, and Kosinski + Thiagaraj, LLP (“KT”), to assist
20 DPLO and KT in completing a significant amount of upcoming discovery in the case, including
21 extensive expert discovery, and to prepare the case for trial.

22 4. I have personally tried over twenty-five (25) cases to verdict or judgment as lead
23 counsel, including class action cases that have resulted in total recoveries of over \$1 billion and
24 individual recoveries of over \$300 million for the class, and my colleagues and I at Miller Shah

25
26 _____
27 ¹For purposes of convenience, Miller Shah will be used hereafter to refer to both my current firm,
28 as well as its predecessor, SFMS. All references to Miller Shah prior to March 15, 2021 refer to SFMS, which ceased operations on March 15, 2021, when Miller Shah purchased its assets and hired all of its previous employees.

1 have substantial experience, as compared to other law firms practicing in the class action/complex
2 litigation field, in preparing and bringing to trial class action and other complex litigation matters.

3 **EXPERIENCE OF CLASS COUNSEL**

4 5. I am the Managing Partner of Miller Shah, a law firm with 25 attorneys and
5 offices in California, Connecticut, Florida, New Jersey, New York and Pennsylvania, as well as
6 an affiliate office in Milan, Italy. Miller Shah specializes in complex class action and commercial
7 litigation matters, and acts for both plaintiffs and defendants (including certain multinational
8 corporations based in San Francisco, CA) in such matters. Miller Shah also performs certain
9 transactional work for international clients and I serve as outside general counsel for the U.S.
10 subsidiaries of over a dozen multinational corporations based in Asia and Europe. I also serve as
11 labor counsel for over two dozen corporate clients with operations throughout the United States.
12 Miller Shah's clients include individuals, including consumers and employees, as well significant
13 international and domestic corporations in the fields of aerospace, food and wine production,
14 financial services, manufacturing and technology, as well as pension funds (both public and
15 private). Since my firm entered its appearance in this matter, I have served as the lead attorney
16 on behalf of Miller Shah in this case and, in addition to supervising the work of the attorneys,
17 project analysts, legal assistants and other team members at our firm, I also have been one of the
18 attorneys primarily responsible for working with co-counsel and interacting with opposing
19 counsel. Additional information regarding our firm is available at www.millershah.com.

20 6. Prior to forming Miller Shah in 2002, I was a partner at Pelino & Lentz, P.C., a
21 law firm based in Philadelphia, Pennsylvania, where I began the practice of law in 1992 and
22 specialized in representing management and highly compensated employees in labor and
23 employment matters, including collective bargaining negotiations on behalf of a multinational
24 corporation with over 50 manufacturing facilities in the United States. While practicing at Pelino
25 & Lentz, P.C., I tried to verdict over one dozen jury trials to successful verdict. I continue to
26 represent a number of my clients from my days practicing at Pelino & Lentz, P.C. in Philadelphia,
27 Pennsylvania. I also began practicing law with my partner, James C. Shah, in 1997 after he
28

1 joined that firm, having been a summer associate at Pelino & Lentz, P.C. during the summer of
2 1996 when I supervised Pelino & Lentz's summer program.

3 7. I have been practicing law since 1992. Since that time, my practice has been
4 devoted in substantial part to complex litigation and class actions, especially since forming Miller
5 Shah in 2002. In particular, I have significant experience as lead counsel in *qui tam*, ERISA,
6 employment, securities and consumer class actions. I am currently lead counsel in some of the
7 most significant false claims cases being prosecuted in the United States. As a result of my
8 previous work in false claims act litigation and, in particular, one case in which \$678 million was
9 recovered for the United States of America and certain participating states, I was named
10 Whistleblower Lawyer of the Year in 2020 by Taxpayers Against Fraud, a leading non-profit in
11 the field. In my *qui tam* work, I have developed relationships working successfully with the
12 Department of Justice and offices of United States Attorneys throughout the United States and, in
13 particular, the Southern District of New York and the Eastern District of Pennsylvania. In my
14 work in ERISA class actions, my colleagues at Miller Shah and I have been responsible for
15 securing some of the most significant settlements in the United States in the last ten (10) years on
16 behalf of defined contribution plans and their participants and, notably, have litigated a number of
17 groundbreaking cases challenging revenue sharing practices by service providers to defined
18 contribution plans.

19 8. I received my J.D. from the University of Pennsylvania School of Law (1991),
20 where I was awarded the Keedy Cup, and my B.S. from Cornell University (1988). After
21 graduating from Penn Law School in 1991, I served as a law clerk for the Honorable Daniel H.
22 Huyett, 3rd of the United States District Court for the Eastern District of Pennsylvania from 1991
23 to 1992.

24 **MILLER SHAH'S SERVICES IN THIS MATTER**

25 9. Since joining our co-counsel in this case, Miller Shah and its predecessor, SFMS,
26 has actively participated in all aspects of this litigation for the past 5-6 years, including (1)
27 communicating with the representative plaintiffs and Class members; (2) engaging in formal
28 discovery with a particular emphasis on expert discovery, including preparation of expert reports

1 and leading expert discovery; (3) performing legal research and evaluating significant legal
2 developments that could impact the litigation; (4) drafting of motions and briefs, including
3 summary judgment and opposition to decertification motions; (5) preparing for and participating
4 in court appearances; (6) participating in litigation strategy decisions; (7) trial preparation; (8)
5 preparing the necessary papers and calculations to seek judgment as to a sum certain; (9)
6 providing substantial assistance in the drafting of appellate papers and arguments; and (10)
7 participating in settlement communication and negotiations. Thus, I am completely familiar with
8 virtually every aspect of the proceedings in this case. If called upon, I am competent to testify
9 that the following facts are true and correct to the best of my knowledge, information, and belief.

10 10. Miller Shah has dedicated significant time and resources to prosecuting the
11 litigation on behalf of the class. The firm's legal services were performed on a wholly contingent
12 fee basis.

13 11. Miller Shah maintained detailed time records regarding the work performed in
14 connection with the prosecution of the Litigation.

15 12. The lodestar charts attached as Exhibits B and C to the Declaration of Monique
16 Olivier dated May 18, 2023 accurately reflect the lodestar of Miller Shah (the "Lodestar Charts").
17 The Lodestar Charts provide (1) the name of each timekeeper; (2) the title for each timekeeper
18 (e.g., partner, associate, paralegal, law clerk.); (3) the hours incurred by that timekeeper by
19 category of work performed; (4) the applicable hourly rate (discussed below); and (5) the lodestar
20 amount. This chart was completed by Miller Shah based upon the records created
21 contemporaneously during the pendency of the Litigation.

22 13. The total number of hours spent by the attorneys, project analysts, paralegals, law
23 clerks and other personnel working on behalf of Miller Shah relating to the Litigation is 1603. As
24 reflected in the Lodestar Charts, through March 15, 2023, Miller Shah has accumulated a lodestar
25 totaling \$1,073,170.

26 14. The hourly rates used to calculate my firm's lodestar range from \$225 for certain
27 paralegal work up to \$925 for experienced senior litigation counsel. I note that the rates used to
28 calculate my firm's lodestar are substantially less than our normal hourly rates because, based

1 upon the Court's previous ruling, we have capped our hourly rates for senior partners and another
2 senior lawyers at \$925 per hour or lower (based upon Monique Olivier's normal hourly rate),
3 even though a number of our attorneys' normal hourly rates are significantly higher. For
4 example, although my normal hourly rate is \$1100 per hour, my firm's lodestar is calculated
5 based upon my hourly rate being \$925 per hour. Based on my knowledge and experience, the
6 hourly rates charged by my firm are within the range of market rates charged by attorneys of
7 equivalent experience, skill, and expertise. These rates also are our normal hourly rates charged
8 to our hourly clients.

9 15. Miller Shah's hourly rates have been routinely approved by courts throughout the
10 United States. *See, e.g., Allison v. L Brands, Inc.* (S.D. Ohio), No. 2:20-cv-06018-EAS-CMV
11 [Dkt. 70]; *Barcenas v. Rush University Medical Center* (N.D. Ill.), No. 1:22-cv-00366 [Dkt. 73];
12 *Boley v. Universal Health Services, Inc.* (E.D. Pa.), No. 2:20-cv-02644 [Dkt. 126]; *Butler National*
13 *Corp. v. The Union Central Life Insurance Co.*, Case No. 1-1:12-cv-00177-SJD-KLL (S.D. Oh.
14 2014) [Dkt. 55]; *Caves v. Walgreen Co.* (E.D. Cal.), No. 2:18-cv-02910-MCE-DB [Dkt. 133];
15 *Corson v. Toyota Motor Sales U.S.A., Inc.*, Case No. 1:12-cv-8499-JGB (C.D. Ca. 2016) [Dkt.
16 107]; *In re: Caterpillar, Inc. C13 and C15 Engine Products Liability Litigation*, MDL No. 2540
17 (D.N.J.) [Dkt. 54]; *Q+Food v. Mitsubishi Fuso Truck of America, Inc.* (D.N.J.), 3:14-cv-06046
18 [Dkt. 70]; *Gay v. Tom's of Maine, Inc.*, Case No. 0:14-cv-60604-KMM (S.D. Fl. 2016) [Dkt. 43];
19 *Golden Star, Inc. v. Mass Mut. Life Ins. Co.*, Case No. 3:11-30235-MGM (D. Mass. 2015) [Dkt.
20 55]; *Hawaii Structural Ironworkers Pension Trust Fund v. AMC Entertainment Holdings, Inc.*
21 (S.D.N.Y.), 1:18-cv-0299, 05210-AJN [Dkt. 230]; *In re: Ford Motor Co. Spark Plug and 3-Valve*
22 *Engine Products Liability Litigation*, Case No. 1:12-md-02316-BYP (N.D. Oh.) [Dkt. 122]; *Jones*
23 *v. Coca-Cola Consolidated, Inc.* (M.D.N.C.), No. 3:20-cv-00654-FDW-DSC [Dkt. 98]; *Terraza*
24 *v. Safeway, Inc.* (N.D. Cal.), No. 4:16-cv-03994-JST [Dkt. 277]; *Trewin v. Church and Dwight,*
25 *Inc.*, Case No. 3:12-cv-01475-MAS-DEA (D.N.J. 2015) [Dkt. 68]; *In re Whirlpool Corp. Front*
26 *Loading Washer Products Liability Litigation*, Case No. 1:08-WP-65000 (N.D. Oh. 2016) [Dkt.
27 656]. Since the rates used to calculate my firm's lodestar are less than our normal hourly rates, I
28

1 respectfully submit that Miller Shah's lodestar is not only fair and reasonable but, in fact, is less
2 than the amount of what would usually be calculated as the firm's reasonable total lodestar.

3 16. As reflected in Exhibit D to the Declaration of Monique Olivier, Miller Shah, to
4 date, has also expended a total of \$214,382.98 in unreimbursed expenses in connection with the
5 prosecution of the litigation (independent of costs recoverable from Defendant). The expenses
6 include computer research expenses, court reporting fees, expert expenses (which account for the
7 vast majority of expenses that Miller Shah has incurred – amounting to over \$211,000 of the total
8 expenses incurred), postage and overnight delivery charges, and copying expenses. I also note
9 that, as a result of the national scope of our practice, Miller Shah does not charge or seek
10 reimbursement for travel expenses of any kind. Therefore, reimbursement is not sought for any
11 of the significant travel expenses incurred by our firm during the course of this litigation.

12 17. These expenses are reflected in the books and records of Miller and are a true and
13 accurate summary of the expenses for this case. The expenses for which reimbursement is sought
14 all were necessarily incurred and are reasonable in amount.

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

18 19. The following attorneys, project analysts, research director and legal assistants
19 have assisted Miller Shah in performing its work in this case in addition to myself. All of these
20 individuals were full-time employees of Miller Shah at the time they performed work on this
21 matter:

- 22 a. **Alec J. Berin** joined Miller Shah as an Associate in 2019, having previously
23 worked for the firm as a credit intern, project analyst and law clerk during law
24 school. Mr. Berin graduated in 2015 from Cornell University with a Bachelor of
25 Science in Industrial and Labor Relations, and graduated from the George
26 Washington School of Law in 2019. Mr. Berin serves as one of the Managing
27 Associates of the firm and performed significant work in connection with the
28 appeal in this matter.
- b. **Jillian M. Boyce** joined Miller Shah as a Paralegal in June, 2012. She holds a
paralegal certificate from the University of Hartford and earned her bachelor's
degree in legal studies from the University of Hartford (B.A. 2017). Ms. Boyce

1 has been active in all aspects of this litigation since the firm entered its appearance
2 in this case.

- 3 c. **Jonathan A. Dilger** joined Miller Shah in June, 2012 as an intern. He holds a
4 Bachelor of Arts from Boston College and currently is completing his Masters of
5 Business Administration at New York University's Stern School of Business. Mr.
6 Dilger serves as the firm's Director of Research and Chief Operating Officer,
7 supervises all of the firm's project analysts and leads all quantitative work
8 performed in-house by the firm, as well as most of the firm's work with experts.
9 Mr. Dilger has been active this litigation in connection with supervising certain
10 project analysts and working with certain experts.
- 11 d. **Elena M. DiBattista** joined Miller Shah in October, 2002. She is a senior
12 paralegal in the firm with over 40 years of paralegal experience. Ms. DiBattista
13 assisted attorneys in the firm in certain aspects of the litigation prior to the appeal
14 in this matter and following the Ninth Circuit Court of Appeals' remand.
- 15 e. **Ronald S. Kravitz** joined Miller Shah in January, 2014 as Senior Counsel. He
16 previously was a partner with Liner, LLP (and its predecessors) from 2001 until
17 2014. Mr. Kravitz is a graduate of Temple University School of Law (J.D. 1986),
18 and has more than 30 years of experience serving as legal counsel in complex
19 business litigation matters. He has served as Co-Chair of the American Bar
20 Association's Employee Benefits Committee for the past 15 years and is a Fellow
21 of the American College of Employee Benefits Counsel and a Life Fellow of the
22 American Bar Foundation. Mr. Kravitz's work in this case centered on defending
23 certain expert depositions in this case.
- 24 f. **Nicolas A. Lussier** joined Miller Shah as a Credit Intern in January, 2015 and
25 became a Project Analyst at the firm in June, 2016 after graduating from Cornell
26 University's School of Industrial & Labor Relations with a Bachelor of Science in
27 2016. Mr. Lussier was the lead Project Analyst working on this case and assisted
28 Ms. Olivier and me in working with experts to develop and refine damages
theories and the presentation of information to them, as well as in preparing
materials to examine Defendants' experts at deposition.
- g. **Sue Moss** joined Miller Shah in 2003. She is a senior and supervising paralegal in
the firm with over 25 years of paralegal experience. Ms. Moss assisted attorneys
in the firm in certain aspects of the litigation prior to the appeal in connection with
the review of documents and in connection with the finalization and filing of the
appellate briefs and filings in this case.
- h. **John C. Roberts** joined Miller Shah as an Associate in 2019, having previously
worked for the firm as a credit intern, project analyst and law clerk during law
school. Mr. Roberts graduated in 2016 from Cornell University with a Bachelor of
Science in Industrial and Labor Relations, and graduated from the George
Washington School of Law in 2019. Mr. Roberts is an Associate of the firm and
performed extremely significant work in connection with the appeal in this matter.

- 1 i. **James C. Shah** joined Miller Shah as a Partner in 2002. Mr. Shah and I began
2 working together at Pelino & Lentz, P.C. in Philadelphia, Pennsylvania during the
3 Summer of 1996. He is admitted to practice law in the States of California, New
4 Jersey, New York, the Commonwealth of Pennsylvania and Wisconsin, as well as
5 numerous federal courts, including the United States District Courts for the
6 Southern, Northern, Central and Eastern Districts of California, District of
7 Connecticut, Eastern District of Pennsylvania, District of New Jersey, Eastern
8 District of Wisconsin, the United States Court of Appeals for the Second Circuit,
9 Third Circuit, Ninth Circuit and Eleventh Circuit and the United States Supreme
10 Court. In addition to these courts and jurisdictions, Mr. Shah has worked on cases
11 with local and co-counsel nationwide and internationally. Mr. Shah concentrates
12 his practice on consumer and qui tam litigation, as well as complex commercial
13 and employment matters. Mr. Shah earned his undergraduate degree in Political
14 Science from the University of Oregon and his law degree from Temple University
15 School of Law. Mr. Shah assisted the firm in connection with the preparation of
16 certain pleadings, litigation strategy and expert discovery.
- 17 j. **Kolin C. Tang** joined Miller Shah in 2009 and is currently a Partner in the firm.
18 Mr. Tang is admitted to practice law in the State of California. At Miller Shah,
19 Mr. Tang concentrates his work on securities, employment and commercial
20 litigation throughout the United States. In addition, Mr. Tang also performs
21 significant work in the firm's whistleblower practice, on both cases arising in the
22 United States and overseas. Mr. Tang received his undergraduate degree in
23 Economics and History with honors from the University of California at Berkeley
24 and earned his law degree from The George Washington University Law School in
25 2011, where he was a member of The George Washington International Law
26 Review. Mr. Tang focused his work in this case on performing legal research, the
27 preparation of certain pleadings and provided substantial assistance with respect to
28 the appellate issues in this case.
- k. **Casey T. Yamasaki** joined Miller Shah as an Associate in 2020, having
previously worked for the firm as a credit intern, project analyst and law clerk
during law school. Ms. Yamasaki graduated in 2016 from Cornell University with
a Bachelor of Science in Industrial and Labor Relations, and graduated from the
University of Washington School of Law in 2020. Ms. Yamasaki performed
significant work in connection with the appeal in this matter.
- l. **Nathan C. Zipperian** joined Miller Shah in 2005 and is currently a Partner in the
firm. Mr. Zipperian is admitted to practice law in the States of Arizona, Florida,
New Jersey and Oregon, as well as in the Commonwealth of Pennsylvania and
numerous federal courts, including the United States District Courts for the
Southern and Middle Districts of Florida, the District of Arizona and the United
States Court of Appeal for the Second Circuit. In addition to these courts and
jurisdictions, Mr. Zipperian has worked on cases with local and co-counsel
throughout the country and worldwide. Mr. Zipperian concentrates his practice on
antitrust, consumer and insurance litigation, as well as complex commercial and
employment matters. Mr. Zipperian earned his undergraduate degree in Political
Science from the University of Oregon in 1995 and his law degree from the

1 Temple University School of Law in 1998. Mr. Zipperian assisted the firm in this
2 case primarily by taking a number of depositions of Defendants' experts and
supervising certain of the appellate work undertaken in this case by our firm.

3 20. I have not included time spent by a number of timekeepers at Miller Shah who
4 only worked on this matter for less than 10 hours, including Betsy Ferling (Paralegal – CT),
5 Ashley Landis (Paid Credit Intern - CA), Christine Mon (Paralegal – PA), Chiharu Sekino
6 (Associate – CA), and Alexa White (Paralegal - CA). The total time spent by these timekeepers
7 collectively accounted for over 50 hours of time and in excess of an additional \$10,000 in lodestar
8 within our system. In addition, I eliminated certain entries that were duplicative in nature. As a
9 result, over one hundred hours of time were eliminated from the time that otherwise would have
10 been included in the Lodestar Charts.

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

13 Executed this 18th day of May, 2023 at Chester, Connecticut.

14
15 /s/ James E. Miller

16 James E. Miller

Attorney for Plaintiffs and the Class

17 *Additional Counsel for Plaintiffs*

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