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11  
12

13 SUPERIOR COURT OF CALIFORNIA  
14 COUNTY OF ALAMEDA, NORTHERN DIVISION

15 (Unlimited Jurisdiction)

16 WILLIAM LOYD HELMICK, SHANE  
WILLIAMS, MATTHEW A. POORE,  
17 and TIMOTHY J. ALLISON, individually  
and on behalf of all those similarly  
18 situated,

19 Plaintiffs,  
20 vs.

21 AIR METHODS CORPORATION, and  
DOES 1 – 100, inclusive,

22  
23 Defendants.  
24

Case No. RG 13665373

**CLASS ACTION**

*Assigned for all purposes to the  
Hon. Winifred Y. Smith, Dept. 21*

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

**DATE: July 1, 2020**

**TIME: 9:00 a.m.**

**DEPT: 21**

**RESERVATION NO.: R-2186338**

Complaint Filed: January 30, 2013

Trial Date: July 8, 2019

25  
26 ERRATA CORRECTED: math progression at p. 22:25-26, pagination  
27  
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1     **I.       INTRODUCTION**

2             Plaintiffs seek preliminary approval of a proposed \$78 million, non-reversionary class action  
3 settlement for approximately 450 class members that resolves the overtime, meal and rest break  
4 (M&RB), and related PAGA claims tried last July, including the wage claims of non-class members  
5 who, based on the post-trial decision of *ZB, N.A. v. Superior Court* (2019) 8 Cal. 5th 175, could not  
6 recover overtime and premium wages in this Action and therefore filed a follow on action called *Lyons,*  
7 *et al. v. Air Methods Corporation* (Lyons Action).<sup>1</sup> This payment is in addition to the \$4,273,845.63  
8 that Class Members already obtained under a partial settlement in 2018 of claims for off-the-clock work  
9 (OTCW), waiting time penalties, itemized pay statement (paystub) penalties, and related PAGA  
10 penalties before February 14, 2018. After the LWDA is paid, fee and service awards, and  
11 reimbursement to Class Counsel of the over \$800,000 of out-of-pocket costs incurred over the seven  
12 years of this hard fought litigation against a grossly mismatched opponent, **the average Settlement**  
13 **Class member will receive over \$100,000**, an unheard of result in wage and hour class actions.<sup>2</sup>

14             In addition, and of greater monetary value, the defendant employer (AMC) has agreed to entry  
15 of a permanent injunction that provides that, absent unionization, it will pay daily and weekly overtime  
16 on all shifts (including at the Fort Hunter Liggett [FHL] base that the Court tentatively identified as a  
17 federal enclave), expressly and permanently surrenders any claim that Flight Crew are exempt under  
18 Wage Order 9-2001, § 3(K), and agrees to provide California compliant M&RB or, in their absence,  
19 pay premium wages, while reserving the option to pursue on-duty meal agreements or apply to the  
20 DLSE for relief from M&RB obligations. But this injunctive relief goes beyond a de facto vindication  
21 of all claims to be settled. AMC has agreed to restrict its ability to reduce Flight Crew hourly rates  
22 such that its payment of overtime on a go-forward basis represents a major increase in compensation,  
23 not a hollow victory subverted by an employer's legally reducing hourly rates to minimum wage. AMC

24     <sup>1</sup> "Plaintiffs" refer to the plaintiffs in this Action in contrast to the "Lyons Plaintiffs."

25     <sup>2</sup> The accompanying declaration of class counsel (Sitkin Dec.) supports this motion. The executed  
26 Settlement Agreement, including its exhibits, form Exhibit 1 to the Sitkin Dec. The exhibits consist of  
27 the following: Ex. A (Settlement Class Members hired during January 14, 2016 to February 14, 2020  
28 and therefore not members of the class certified in this Action), Ex. B (proposed class notice), Ex. C  
(proposed release), Ex. D (proposed Preliminary Approval Order), Ex. E (proposed Final Approval  
Order), Ex. F (operative Complaint in Lyons Action), and Ex. G (proposed Judgment).

1 also has agreed to extend the anti-retaliation injunction in the 2018 partial settlement to a wider class.  
2 Also, this lawsuit has been a catalyst for other positive work rule changes, such as AMC's paying for  
3 travel time in excess of regular commutes and for some of the time commonly worked before and after  
4 scheduled flight duty shifts in performing shift transition duties.

5 The Settlement proposes this allocation of the \$78 million new money: a) \$1 million to the  
6 California Labor Workforce Development Agency (LWDA) for its share of the PAGA recovery on the  
7 settled claims, b) up to \$850,000 to reimburse Class Counsel for Court-approved costs/expenses, c) a  
8 \$27,424,615.217 fee award to compensate Class Counsel for the over 15,000 hours to achieve this  
9 result, calculated as 1/3 of the \$78 million plus the \$4,273,845.63 already paid in the partial settlement  
10 in which AMC committed to pay later service and fee awards, d) \$110,000 to the Plaintiffs and the  
11 Lyons Plaintiffs as service awards and for mutual general releases with AMC, and e) \$48,615,384.79  
12 to Eligible Class Members consisting of Flight Crew whom AMC employed in California during  
13 January 30, 2009 – June 29 2020. The allocation amongst the Eligible Class Members is as follows.  
14 Each Class Members' individual share will vary in proportion to his or her W-2 Income earned in a  
15 Flight Crew position. Adjustments will be made for the year the W-2 Income was earned to account  
16 for interest, whether the Class Member executed an individual settlement and release of the claims in  
17 this Action, whether the Class Member was home based at FHL and subject to AMC's federal enclave  
18 doctrine defense, and whether the Class Member already was a part of a certified class, namely the one  
19 certified in this Action. Thus, the distribution formula is tied to the relative value of each Class  
20 Member's claims, and the awards will be substantial.

21 Settlement administration costs have no real impact because AMC has committed to pay the  
22 first \$25,000, which is virtually the entire expense, except if the number of distributions increases due  
23 to early payment, in which case AMC picks up the added costs. AMC also pays its own taxes.

24 The Settlement provides for AMC's payment in three installments, starting with no less than  
25 \$40 million seven days after Final Approval, another \$19 million by October 1, 2021, and no less than  
26 \$19 million by March 11, 2022,<sup>3</sup> barring early payment, and unpaid sums accrue 7% interest absent

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27 <sup>3</sup>The deadline of the last installment may be extended by nine months if AMC's obtains an extension  
28 of at least a year of a credit line now due in April 2021.

1 default, whereupon the rate increases to 10%, including retroactively. Except for reimbursement up  
2 front to Class Counsel of costs/expenses, each distribution is proportionately allocated. Class Counsel  
3 have had a forensic CPA evaluate solvency risk in carefully weighing the risks of further litigation.

4 The Settlement was reached after hard-fought adversarial litigation by competent Class  
5 Counsel, including extensive investigation, discovery, motion practice, and a trial. The negotiations  
6 were at arms-length and were facilitated by a highly respected mediator, Mark Rudy, who specializes  
7 in employment class actions, over the course of marathon mediation sessions and days of subsequent  
8 negotiations. The Settlement amount is excellent for the Class in light of the litigation risks and the  
9 prospect of ongoing appeals and other delays.

10 The Settlement has all the key procedural terms for a fair class action settlement. Class  
11 Members will receive a written notice by mail explaining the details of the Settlement and their rights.  
12 The notice will be individually tailored to provide each Class Member a summary of his or her pertinent  
13 employment data and the estimated amount of his or her settlement award. The same third-party  
14 administrator who administered the 2018 partial settlement, CPT Group, will send the notice to all  
15 potential Class Members identified by AMC's employment records. The third-party administrator will  
16 use well established address verification and skip-tracing techniques to ensure that Class Members  
17 receive actual notice of the settlement in the best practical manner.

18 All Class Members will have forty-five days from the sending of Class Notice to opt-out of, or  
19 submit objections to, the Settlement or to dispute the data central to his or her individual settlement  
20 payment to the extent not already determined as part of the 2018 partial settlement. To simplify the  
21 process, Class Members who do not opt out will receive their settlement checks automatically, without  
22 any need to submit a claim form. Unclaimed or undeliverable funds will be delivered to the California  
23 Comptroller and any residue goes to a proper *cy pres* beneficiary. *In no event will any part of the  
settlement funds revert back to AMC.*

24 In sum, the proposed Settlement satisfies all the criteria for settlement approval. It was  
25 negotiated at arms-length by competent and informed counsel, after significant discovery, motion  
26 practice, and a trial, and is well above the "range of reasonableness" standard for preliminary approval.  
27 *See Kullar v. Foot Locker Retail, Inc.*, (2008) 168 Cal.App.4th 116, 133; *Dunk v. Ford Motor Co.*  
28 (1996) 48 Cal.App.4th 1794, 1802; Alba Conte & Herbert Newberg, Newberg on Class Actions, §

1 11:25-11:26, (4th ed. 2002) (“Newberg”). Accordingly, Plaintiffs request that the Court preliminarily  
2 approve the proposed Settlement, approve distribution of notice of the proposed settlement, and set a  
3 final approval hearing.

## 4 **II. SUMMARY OF THE LITIGATION AND SETTLEMENT**

### 5 **A. Factual background related to off-the-clock claims**

6 Extensive motion practice, including Plaintiffs’ 2015 class certification motion, the parties’  
7 summary adjudication motions, and the hearing on the § 3(K) exemption, and the July 2019 trial,  
8 including the parties’ Trial Stipulations (P-TRX-239), establish these facts. AMC is the country’s  
9 largest private provider of air medical transport. Its relevant operations involve community based,  
10 helicopter emergency and medical transport within California. The transports typically are manned by  
11 a pilot and a Flight Crew team consisting of one Flight Paramedic and one Flight Nurse.

12 AMC maintains helicopter bases throughout California. Flight Crew typically are assigned a  
13 home base to which they commute, though it also is common for them to be temporarily assigned to  
14 another, more distant base. AMC typically classifies Flight Crew as scheduled to work twenty-four-  
15 hour flight duty shifts that start/end at the same time each day and span two calendar days (*e.g.* 7:00  
16 a.m. to 7:00 a.m.), during which they are subject to being dispatched to undertake helicopter medical  
17 transports. They must remain on base, except when dispatched to perform a job duty, typically a  
18 medical transport. Historically, barring a late dispatch, Flight Crew reported no more than twenty-four  
19 hours for flight duty shifts. Following the lawsuit, AMC eventually moved to its current policy of  
20 permitting Flight Crew to report and be paid for up to ten minutes before and ten minutes after the  
21 scheduled twenty-four hours to account for shift transition duties jointly performed by incoming and  
22 outgoing flight crew teams. The ten minutes after is now paid at overtime rates.

23 Flight Crew also work non-flight duty shifts, a.k.a. administrative shifts, during which they are  
24 unavailable for dispatch. Duties include in person trainings, Program Meetings at which Flight Crew  
25 from several bases assemble to receive management direction, and community outreach/PR events. All  
26 these may take place away at locations far away from their home bases and involve travel in excess of  
27 regular commutes to home bases. In mid-2013, after this lawsuit was filed, AMC changed its stated  
28 policy to pay for travel in excess of Flight Crew regular commute to trainings. In mid-2014, based on



1 calculations of back travel pay by defense expert Robert Crandall and his team at Resolution Economics  
2 (RESCON) and a separately stated component for other claims based on years of service, AMC made  
3 settlement offers to Flight Crew. About fifty-five executed individual settlement agreements that  
4 purported to release all claims herein asserted.

5 AMC's policy and practice has been not to pay daily overtime on flight duty shifts it classifies  
6 as twenty-four hour shifts and to exclude from hours counted toward weekly overtime up to eight hours  
7 for sleep periods during which Flight Crew remain on base. Under AMC's sleep period policy, if AMC  
8 considers that the Flight Crew Member is unable to get five consecutive hours without a recognized  
9 job-related interruption, all eight hours are counted toward weekly overtime. Plaintiffs contend sleep  
10 period interruptions are under-recognized.

11 AMC has not paid premium wages for missed meal or rest breaks.

#### 12 **B. Pertinent Pre-Trial Procedural History**

13 Judicial notice of the filings herein, the factual recitals in the Settlement Agreement (§ I), and  
14 Sitkin Decl. ¶¶ 12-27, which has added details, confirm the following procedural history. On January  
15 7, 2013, Plaintiffs William Loyd Helmick and Shane Williams notified the LWDA of an intent to seek  
16 civil penalties, including those herein settled. The LWDA did not assume the prosecution. These  
17 Plaintiffs then filed this case on January 30, 2013. The operative Revised Second Amended Complaint  
18 (SAC), filed on September 11, 2014 by Plaintiffs William Loyd Helmick, Shane Williams, Matthew  
19 Poore, and Timothy Allison, alleges claims based on AMC's: 1) failure to provide M&RB (¶¶26-30),  
20 2) failure to pay for off-the-clock work (¶¶31-35), 3) failure to provide overtime compensation for  
21 overtime hours worked, 4) failure to provide itemized pay statements and maintain records (¶¶41-44),  
22 5) for violation of the Unfair Competition Law (Business and Professions Code §§ 17200, *et seq.*),  
23 based on the foregoing unlawful conduct (¶¶45-49), 6) for PAGA (Labor Code §§ 2698, *et seq.*)  
24 penalties (¶¶ 50-55), and 7) retaliation (¶¶ 56-58). By October 14, 2014 Order the Court overruled  
25 AMC's demurrer based on preemption to Plaintiffs' individual M&RB claims and designated the  
26 seventh claim for retaliation as individual claims of Plaintiffs Helmick and Williams. On October 14,  
27 2014, AMC filed its operative Amended Answer to the operative Revised Second Amended Complaint,  
28 which included a general denial and asserted 25 affirmative defenses, to which a 26<sup>th</sup> was added in the  
Amended Answer filed December 18, 2019.

1 On November 24, 2015 Order, the Court granted Plaintiffs' contested class certification motion  
2 and certified a class defined as

3 former or current Flight Crew, also known as Medical Crew, Medical Flight Crew, and  
4 including Flight Nurses, Flight Paramedics, Base Supervisors, Clinical Base  
5 Supervisors, and Medical Base Supervisors (collectively "Flight Crew"), whom AMC  
6 employed in California at any time on or after January 30, 2009 until the date of notice  
7 to the class that a class has been certified.

8 The Court further certified the PAGA claims but acknowledged that PAGA claims need not  
9 satisfy class action requirements. The initial issuance of class notice was January 14, 2016. So, those  
10 hired thereafter were not members of the certified class.

11 Over serial summary adjudication motions and cross-motions, Plaintiffs obtained the dismissal  
12 of many of AMC's myriad defenses. These include fourteen affirmative defenses on which the Court  
13 granted summary adjudication in Plaintiffs' favor on March 2, 2017;<sup>4</sup> two additional defenses which  
14 the Court summarily adjudicated in Plaintiffs' favor on November 29, 2017;<sup>5</sup> and an additional  
15 affirmative defense which was summarily adjudicated in Plaintiffs' favor on January 12, 2018.<sup>6</sup>  
16 Among these determinations were the questions of first impression: whether the Airline Deregulation  
17 Act pre-empted California M&RB protections for Medical Flight Crew and whether the federal enclave  
18 doctrine applied to AMC's base at the 29 Palms military installation. Following a stipulated special

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19 <sup>4</sup> (1) Third Affirmative Defense of Failure to Exhaust Internal Remedies (Answer at 2:1-60); (2) Fourth  
20 Affirmative Defense of Failure to Exhaust Contractual Dispute Resolution Procedures (*id.* at 2:7-11);  
21 (3) Fifth Affirmative Defense for Reasonable Care (*id.* at 2:12-18); (4) Sixth Affirmative Defense based  
22 on Res Judicata and Collateral Estoppel (*id.* at 2:19-25); (5) Seventh Affirmative Defense based on  
23 Waiver and Estoppel (*id.* at 2:26-3:4); (6) Eighth Affirmative Defense of Laches (*id.* at 3:5-8); (7) Ninth  
24 Affirmative Defense of Failure to Mitigate (*id.* at 3:9-13); (8) Eleventh Affirmative Defense of Exempt  
25 Status [under Wage Order 5, § 3(J), 29 C.F.R. §785.22 and/or the Railway Labor Act (29 U.S.C. §  
26 213(b)(3))] (*id.* at 3:20-4:7); (9) Twelfth Affirmative Defense of Unclean Hands, Negligence,  
27 Misconduct (*id.* at 4:8-22); (10) Fourteenth Affirmative Defense based on the Primary Jurisdiction  
28 Doctrine (*id.* at 5:9-14); (11) Seventeenth Affirmative Defense of No Equitable Relief (*id.* at 6:1-7);  
(12) Eighteenth Affirmative Defense that Representative Claims Violate Defendant's Rights (*id.* at  
6:8-21); (13) Nineteenth Affirmative Defense of Consent (*id.* at 6:22-7:4); and (14) Twenty-Fourth  
Affirmative Defense of Defendant's Immediate Corrective Action (*id.* at 7:26-8:3).

<sup>5</sup> AMC's Twenty-First Affirmative Defense, Preemption under the Federal Aviation Act (49 U.S.C. §  
40101 *et seq.*), the Airline Deregulation Act (49 U.S.C. § 41713) and/or the Federal Aviation  
Administration Authorization Act (49 U.S.C. 14501) and AMC's Twenty-Fifth Affirmative Defense  
based on Federal Enclave with respect to AMC's 29 Palms location *See* Answer at 7:10-15, 7:26-8:3.

<sup>6</sup> AMC's Twenty-Second Affirmative Defense based on Release. *See* Answer at 7:16-20.

1 hearing procedure and extensive submissions, Plaintiffs also prevailed on a question of first impression  
2 that the daily overtime exemption under Wage Order 9-2001, § 3(K) did not apply to Flight Crew. *See*  
3 Decision, entered August 23, 2017. On a motion for judgment on the pleadings, Plaintiffs also  
4 prevailed on a question of first impression that Proposition 11, Labor Code § 880, *et seq.* did not  
5 proscribe Flight Crew’s M&RB rights and was unconstitutional to the extent it purported to apply  
6 retroactively. *See* Order, entered January 29, 2019.

7 Discovery has been extensive, clear from the extensive discovery motion practice. AMC  
8 served 908 written discovery requests; Plaintiffs by contrast served 293. Sitkin Decl. ¶¶ 29-30. AMC  
9 has produced over a quarter million documents, which sum to 124 gigabytes, estimated to be between  
10 1,919,148-20,558,084 pages based on averages for the type of files produced. *Id.* Over sixty persons  
11 have been deposed, mostly noticed by AMC, consisting of Class Members, AMC management, and  
12 AMC’s PMK representatives, 524 deposition exhibits marked. *Id.*

### 13 **C. 2018 Partial Settlement**

14 On February 14, 2018, the Court granted preliminary approval and, on June 1, 2018, final  
15 approval, without class member objection, of a partial settlement of the claims in this Action, leaving  
16 unresolved the following “Reserved Claims” as defined as follows in paragraph 54 of the approval  
17 partial settlement agreement: “Reserved Claims. ‘Reserved Claims’ are claims asserted in the  
18 Complaint but that are expressly excluded from the Partial Settlement and from the Release set forth in  
19 Exhibit “C” hereto. Such claims are for: 1) failure to pay overtime pay and interest related thereto); 2)  
20 premium pay for failure to provide meal periods and interest related thereto; 3) premium pay for failure to  
21 provide rest periods and interest related thereto; 4) PAGA penalties in connection with failure to pay  
22 overtime, failure to provide meal periods or failure to provide rest periods; 5) the retaliation claims asserted  
23 by Plaintiffs Helmick and Williams; and any relief related thereto.” Paragraph 73 of the partial settlement  
24 agreement that the Court approved states, “Defendant agrees that Plaintiffs’ counsel are entitled to  
25 reasonable fees, costs (statutory and non-statutory), and expenses relating to all claims settled herein in  
26 an amount to be determined by the Court and to be paid by Defendant. Defendant further agrees that  
27 the Class Representatives are entitled to reasonable Service Awards in amounts to be determined by  
28 the Court and to be paid by Defendant.” The partial settlement further provided that the application for  
such awards could be (and has been) deferred to when application is made for such awards in

1 conjunction with the resolution of the Reserved Claims. AMC paid \$4,273,845.63 to partial settlement  
2 class members Crew, in addition to costs of settlement administration and Defendant's portion of  
3 withholdings, contributions, deductions, taxes, fees and any other amounts due to government agencies  
4 and/or tax authorities in relation to any payments.

5 The average class member payout was over \$12,000. Sitkin Dec. at ¶ 20. The partial settlement  
6 also included a permanent injunction against retaliation against settlement class members, a protection  
7 carried forward into the instant Settlement and extended to cover more people.

8 Pursuant to the Stipulation and Order Concerning Non-Certification of Settled Claims entered  
9 December 13, 2018, the class was decertified insofar as claims of the nature of those settled under the  
10 partial settlement that arose after the partial class settlement release date of February 14, 2018, leaving  
11 only the Reserved Claims under the partial settlement and the individual retaliation claims of Plaintiffs  
12 Helmick and Williams as the claims pled in the Complaint to be tried.

13 **D. Trial of the Class Claims for Overtime and Meal/Rest Break Violations and of**  
14 **the Related PAGA Claims.**

15 During July 8-23, 2019, the parties proceeded to trial on the claims reserved under the partial  
16 settlement for overtime, meal/rest break violations, and related PAGA penalties. Plaintiffs' expert  
17 David Breshears and defense expert Robert Crandall testified to class damages and PAGA penalty  
18 exposure based on AMC's voluminous, though incomplete, time and pay records.

19 Plaintiffs tried the case on the basis that Flight Crew hired after January 14, 2016, who did not  
20 fall within the class definition, like class members, could recover overtime and premium wages under  
21 Labor Code § 558 by virtue of Plaintiffs' non-class, representative claim under PAGA. After the trial,  
22 the California Supreme Court decided *ZB, N.A. v. Superior Court* (2019) 8 Cal. 5th 175, in which it held  
23 that Labor Code § 558 no longer could be employed by private PAGA plaintiffs as a vehicle to recover  
24 back wages. In post-trial briefing, Plaintiffs consequently modified their damage model to exclude  
25 recovery of back wages and interest by non-class members, i.e. those Flight Crew, like Christopher R.  
26 Lyons and Amelia G. Vielguth, plaintiffs in the Lyons Action (*see infra*), whom AMC hired since  
27 January 14, 2016 and employed in California, while maintaining the claims for PAGA penalties for  
28 those non-class members. The parties have now completed post-trial submissions, and are awaiting  
entries of a finalized statement of decision and judgment. The Court filed a tentative statement of

1 decision, to which both sides objected, and which awaits the Court's finalization, delayed by COVID-  
2 19, with entry of judgment to follow.

3 Although reserved for trial after the class claims, in September 2019, Plaintiffs Helmick and  
4 Williams and AMC entered into individual settlement agreements of their retaliation claims under the  
5 seventh cause of action of the Complaint. Sitkin Dec. ¶ 25. AMC has paid those Plaintiffs pursuant to  
6 said individual settlement agreements. These agreements provided that "... Defendant shall: allow  
7 [Helmick's/Williams'] attorneys in this Action to make an application for reasonable attorneys' fees  
8 and costs/expenses associated with the prosecution of [Helmick's/Williams'] retaliation cause of action  
9 in the Second Amended Complaint. This application shall be made as part of any application for fees  
10 and costs/expenses on the remaining claims in the lawsuit ..."

11 **E. The Lyons Action Seeks Recovery of Overtime and Premium Wages for Flight  
12 Crew Hired After January 14, 2016 Who Are Not Members of the Class  
13 Certified in the Helmick Action.**

14 On February 5, 2020, Christopher R. Lyons and Amelia G. Vielguth, former California AMC  
15 Flight Crew members hired since January 14, 2016, filed in the Alameda County Superior Court the  
16 Lyons Action against AMC. The operative Complaint, a copy of which is attached hereto as Exhibit F  
17 to the Settlement Agreement, alleges the putative class as follows: "[a]ll persons who, having been  
18 hired by AMC since January 14, 2016, performed services or perform services in California as a Flight  
19 Paramedic or Flight Nurse and all persons, regardless of when hired by AMC, who performed such  
20 services at any time after entry of judgment in the Helmick Action until such time as there is a final  
21 disposition of this lawsuit." The Complaint in the Lyons Action alleges putative class claims for  
22 overtime, M&RB violations, and derivative claims under the Unfair Competition Law, claims for  
23 waiting time penalties under Labor Code § 203 and claims for improperly itemized pay statements  
24 under Labor Code § 226. The putative class claims alleged in the Lyons Action therefore include the  
25 overtime and premium wage claims for the non-class members in the Helmick Action, which were  
26 excluded by virtue of the *Z B, N.A.* decision. The Complaint in the Lyons Action, however, alleges in  
27 paragraph 13 that "...Plaintiffs do not seek recovery barred by the Federal Enclave doctrine associated  
28 with the Fort Hunter Liggett base" and in paragraph 14 that the claims for waiting time penalties  
postdate the February 14, 2018 release date of the partial settlement and the claims for penalties for  
itemized pay statement violations are subject to the statement of limitations. As in this Action, AMC

1 has answered by denying liability and asserting affirmative defenses.

2 On March 9, 2020, AMC filed a Notice of Removal of the Lyons Action to the U.S. District  
3 Court, Northern District of California, where it has been assigned to the Honorable Phyllis J. Hamilton  
4 and has been assigned case no. 4:20-cv-01700-PJH. The Lyons Plaintiffs' motion to remand, filed  
5 April 8, 2020, has been fully briefed and awaits decision.

6 **F. Achieving the Settlement.**

7 After lengthy mediation sessions on March 11, 2015 and January 8, 2018 (ending around  
8 midnight) and years of intervening communications with the Mediator Mark Rudy, on May 12, 2020,  
9 the parties engaged in a third mediation session before Mr. Rudy. The mediation was preceded by two  
10 days of constructive, direct communications between AMC's CEO and General Counsel and Class  
11 Counsel from which, at AMC's instigation, defense counsel was excluded, setting the stage for a more  
12 constructive resumption of mediation sessions. Before the 2015, 2018, and 2020 mediation sessions,  
13 Plaintiffs submitted comprehensive mediation briefs, which included increasingly refined analyses of  
14 damages, despite the sometimes chaotic and incomplete condition of AMC's records, in which  
15 exposure analyses Plaintiffs were assisted by their damage/trial expert David Breshears. After the May  
16 12<sup>th</sup> mediation also failed to reach a settlement, the parties with the assistance of Mr. Rudy continued  
17 negotiations for several weeks, and on June 23<sup>rd</sup> and 25<sup>th</sup> participated in further remote mediation  
18 sessions. These extensive, arms-length negotiations resulted in the proposed Settlement covering all  
19 claims ever asserted in this Action, i.e. including waiting time penalties, paystub penalties, and OTCW  
20 after the February 14, 2018 release date in the partial settlement, and claims asserted in the Lyons  
21 Action Sitkin Dec. ¶¶ 30-34. Negotiations and the exchange of multiple drafts followed the May 12<sup>th</sup>  
22 mediation session. AMC also provided financial documents for confidential review by Class Counsel  
23 and a forensic CPA with audit expertise to evaluate any collection risk as the Settlement provides for  
installment payments. *Id.* at ¶ 33.

24 **III. SUMMARY OF KEY SETTLEMENT TERMS**

25 Under the terms of the Settlement Agreement, summarized at Sitkin Decl. ¶¶ 69-70, AMC will  
26 pay \$78,000,000, in addition to the \$4,273,845.63 AMC paid to Class Members and the LWDA under  
27 the partial settlement in 2018, along with accrued interest, to the Settlement Class Members, the  
28 LWDA, Class Counsel, the Plaintiffs/Class Representatives in this Action, and the Lyons Plaintiffs

1 (“Gross Settlement Amount”).<sup>7</sup> Settlement Agreement at ¶ 44. In addition, AMC will pay the  
2 employer’s share of payroll taxes on any wage payment and, Class Administration Costs up to \$25,000.

3 Settlement Agreement ¶ 25.<sup>8</sup> The entire amount of the Settlement Fund will be disbursed pursuant to  
4 the terms of the Settlement Agreement, and none of it will revert to AMC. Settlement Agreement at ¶

5 81. Key additional terms of the Settlement Agreement are:

- 6 • Settlement Class (¶ 22): The parties agree to certification of a proposed settlement class defined  
7 as “all former or current Flight Crew, also known as Medical Crew, Medical Flight Crew, and  
8 including Flight Nurses (of all levels including but not limited to, Float Nurses), Flight  
9 Paramedics (of all levels including, but not limited to, Float Paramedics), Base Supervisors,  
10 Clinical Base Supervisors, Medical Base Supervisors, Clinical Base Leads, Clinical Base  
11 Educators, and Clinical Leads (collectively "Flight Crew"), whom AMC employed in California  
12 at any time on or after January 30, 2009 until June 29, 2020. This Settlement Class consists of  
those persons within the class certified in the Helmick Action by Order, entered November 24,  
2015, the partial settlement class for which the Court granted final approval on June 1, 2018,  
those persons whom Named Plaintiffs have claimed in the Action that they should be permitted  
to represent pursuant to PAGA during the Class Period, and those persons within the putative  
class alleged in the Lyons Action.”
- 13 • Direct Payments to Class Members / No Claim Forms (¶ 81): Class Members who do not opt  
14 out of the Settlement will not need to submit claims to obtain their settlement check. Rather,  
15 settlement checks will be automatically sent to all class members for whom a valid address can  
be located either through Defendant’s personnel records, and/or the Class Administrator address  
verification efforts, including through the USPS National Change of Address (NCOA) database.
- 16 • Released Claims (Ex. C): The class release applies to “all class and PAGA claims during the  
17 Class Period now pleaded or that could be pleaded based on the facts alleged in the Complaint  
18 in the Helmick Action or in the Lyons Action for: 1) failure to pay overtime pay and interest  
19 related thereto; 2) premium pay for failure to provide meal periods and interest related thereto;  
20 3) premium pay for failure to provide rest periods and interest related thereto; 4) failure to  
21 provide itemized wage statements; 5) failure to pay all wages at the time of termination; 6) off  
22 the clock work; 7) failure to maintain adequate payroll records; 8) PAGA penalties in connection  
23 with any of the foregoing; and 9) any relief related thereto or any claims now pleaded or that  
24 could be pleaded based on the facts alleged in the Lyons Complaint in the Lyons Action. This  
release extends to claims for violations, including, but not limited to, of the following statutes  
and regulations: California Labor Code Sections: 201, 203, 204, 225.5, 226, 226.3, 226.7, 432.5,  
510, 512, 558, 1174; California Business & Professions Code Section 17200 *et seq.*; Wage Order  
9-2001 of the California Industrial Welfare Commission, 8 Cal. Regs. 11090, ¶¶ 3, 7(B), 11,  
and 12, and comparable paragraphs of other applicable Wage Orders, to the extent such claims

25 <sup>7</sup> The Settlement Agreement provides for an adjustment in the event AMC has omitted to disclose in  
26 Settlement Agreement, Ex. A/A-1 Class Members hired during January 14, 2016-February 14, 2020  
who were not disclosed in the 2018 partial settlement. Settlement Agreement ¶ 74(d).

27 <sup>8</sup> Beyond \$25,000, class administration is paid from the Gross Settlement Amount, except if resulting  
28 from AMC’s early payments’ resulting in more than three distributions, the cost of which AMC  
assumes. Settlement Agreement ¶ 90.

1 were pleaded or could have been pleaded based on the facts alleged in the Complaint in the  
2 Helmick Action or the complaint in the Lyons Action. Included in this Release are any claims  
3 for fees and costs by Class Counsel arising out of the Helmick Action, the Lyons Action, the  
4 2018 Partial Settlement Agreement. or the resolution of Plaintiffs Helmick and Williams’  
5 retaliation claims previously released.”

- 6 • LWDA Payment (¶ 47): \$100,000,000 plus accruing interest shall be allocated for payment to  
7 the LWDA as part of the \$1,333,333 settlement of Plaintiff’s claims under the Private Attorney  
8 General Act of 2004 (“PAGA”), California Labor Code section 2699 *et seq.*, which has been  
9 served this Motion.
- 10 • Reimbursement to Class Counsel for Costs/Expenses (¶ ¶ 84, 91): Up to \$850,000, on Court  
11 approval will be reimbursed to Class Counsel for their out-of-pocket costs and expenses. The  
12 2018 partial settlement agreement (¶ 72) already provided for Class Counsel to be reimbursed in  
13 the future for costs/expenses relating to those settlement claims.
- 14 • Class Counsel Fees (¶ 81): Up to 1/3 of the value of the relief obtained, including both monetary  
15 and injunctive. However, less half the permitted maximum, Plaintiffs propose an award of  
16 \$27,424,615.21 for Class Counsel fees plus accruing interest, calculated as 1/3 of the \$78 million  
17 plus the \$4,273,845.63 already paid under the 2018 partial settlement agreement (¶ 72) where  
18 AMC committed to pay later fee awards.
- 19 • Payments to Named Plaintiffs and Lyons Plaintiffs as Service Awards and for Mutual General  
20 Releases (¶ 81): \$110,000 to the Named Plaintiffs and the *Lyons* Plaintiffs as service awards  
21 and for mutual general releases with AMC. The 2018 partial settlement (¶ 72) already provided  
22 for service awards for those settled clams. Please refer to the accompanying declarations of each  
23 of the four Plaintiffs for further support for these service awards.
- 24 • Allocation of Net Settlement Amount to Be Paid to Eligible Class Members (¶ 81): The  
25 estimated \$48,615,384.79 remaining after the preceding payments shall be apportioned as  
26 follows, with accrued interest apportioned to Eligible Class Members per their settlement  
27 shares. AMC will contribute an added amount for any newly identified Class Member that  
28 AMC should have included in Exhibit A/A-1 who was not already identified in the 2018 partial  
settlement. Each Eligible Class Member (i.e. one who does not opt out) will be assigned a  
“Settlement Proportion” consisting of their total W-2 income from AMC while holding a  
Settlement Class position since 2009 as a proportion of such W-2 Income for all Settlement  
Class Members. Each such Class Member’s Settlement Proportion will subject to further  
adjustments where applicable, including (1) a downward adjustment for those who also held  
(in a given year) another position, such as on promotion to a manager position; (2) weighting  
W-2 Income by calendar years by applying the following multipliers: 1.0 (2020), 1.1 (2019),  
1.2 (2018), 1.3 (2017), 1.4 (2016), 1.3 (2015), 1.5 (2014), 1.6 (2013), 1.7 (2012), 1.6 (2011),  
1.8 (2010), 1.9 (2009). (3) W-2 Income for Class Members who were first hired for a Class  
position after January 14, 2016 and therefore are not part of the class certified under the  
November 24, 2015 Order will be multiplied by 0.9. (4) Flight Crew home based at Fort Hunter  
Liggett will have their W-2 Income multiplied by 0.2. (5) a 10% downward adjustment for  
those who executed in 2014 an individual settlement agreement of the claims in this action and  
negotiated a corresponding settlement check. Notwithstanding the foregoing, each Eligible  
Class Member who has worked at least one flight duty shift in California during the Class  
Period shall receive no less than one hundred (\$100) for each calendar year in which they  
worked in a Settlement Class Member position since 2009 up to a maximum total of three



hundred dollars (\$300). The exact formula is set forth in the Settlement Agreement as well as the proposed class notice; *see proposed* Notice to Class, Exhibit B to Settlement Agreement.

- Right to Challenge AMC's Records (§ 74(e)). Class Members will have the opportunity, should they disagree with AMC's records bearing on their individual settlement calculations to challenge those records except insofar as W-2 Income and status as having entered into an individual settlement were finally determined in the 2018 partial settlement. If a dispute arises, the Class Administrator will consult with the Parties to determine whether an adjustment is warranted. The Class Administrator shall determine the eligibility for, and the amounts of, any individual settlement payments under the terms of this Agreement. The Class Administrator's determination of the eligibility for and amount of any individual settlement payment shall be binding upon the Settlement Class Member and the Parties.
- Timing of Installment Payments/Distributions and Interest (§ 84): The Settlement provides for AMC's payment in three installments. The first installment is due seven days after entry of a Final Approval Order and includes no less than \$40 million of the \$78 million AMC must pay. The second installment shall be the earlier of October 1, 2021 or one year after the first installment is due. The third installment shall be the earlier of either the one-year anniversary of the first installment March 1, 2022. The second and third installments, absent early payment, each includes no less than \$19 million of the \$78 million AMC must pay. Interest accrues at seven (7.0%) percent on the unpaid balance after the first installment unless AMC defaults, in which case interest for the entire period over which it accrues is assessed at ten (10%) percent. The deadline for the third installment payment will be extended to the earlier of December 2, 2022 or nine months after the third installment is otherwise due if, prior to March 1, 2022, Defendant's credit facility be extended, replaced or refinanced for a minimum period of one year. AMC may make early payments. Thus, AMC may elect to avoid interest accrual by early payment in amounts no less than \$5 million or the amount owed for the next installment. After each payment, the Class Administrator will distribute the Gross Settlement Amount according to the relative proportions of the \$78 million, described above, except that costs/expenses approved for reimbursement to Class Counsel will be paid in their entirety from the next distribution. The first payment will be five days after the Effective Date of the Final Approval Order, i.e. when non-appealable and subsequent payments five days after AMC's deposit. Distributions to Eligible Class Members will follow each of the three installment payments.
- Tax Allocation (§ 82): The Settlement provides that settlement payments will be allocated as follows: Eighty Percent (80%) shall be treated as wages, and Twenty Percent (20%) shall be treated as penalties and interest. Employer payroll taxes, contributions, and fees shall be exclusive of the settlement payment and paid by AMC. The Class Notice directs Class Members to their own tax advisors.
- Notice of Proposed Settlement (Ex. B, §§ 71, 73): The Class Notice sets forth in plain terms, a statement of case, the terms of Settlement, an explanation of how the settlement allocations are calculated, each class member's estimated payment and key information on which the calculation was based, which AMC is ordered to provide and verify by declaration, along with last known contact information. See proposed Class Notice, Exhibit B to Settlement Agreement. Class members will be notified by first class mail of the settlement. CPT Group, the nominated and experienced Class Administrator who, as above noted, administered the 2018 partial settlement, will undertake its best efforts to ensure that the notice is provided to the current addresses of class members, including checking the last known contact list that

1 AMC will provide against the USPS National Change of Address database before the mailing  
2 and skip tracing of any notice returned as undeliverable, and re-mailing the notice to updated  
addresses.

- 3 • Right to Object (Ex. B, ¶ 74 (a), (b)). The Class Notice advises Class Members that they have  
4 a right to submit objections within 45 days of the mailing of the class notice. Class Members  
5 also have a right to appear at the Final Approval/Fairness Hearing in order to have their  
objections heard by the Court.
- 6 • Right to Opt Out (¶ 74 (c)). The Class Notice advises Class Members that they have 45 days to  
7 exclude themselves from the Settlement. Any Class Member who requests to be excluded from  
the Settlement Class will not be entitled to any recovery under the Settlement and will not be  
8 bound by the terms of the Settlement or have any right to object, appeal or comment thereon.
- 9 • Permanent Injunction Against Retaliation, Continuing Jurisdiction in this Court to Enforce  
10 Settlement (¶ 100). The Court shall enter a permanent injunction barring Defendant from  
retaliating against Class Members for participating in this Action, settlement, opting out of the  
11 settlement or objecting to the settlement. The Agreement anticipates the Court's ongoing  
exercise of jurisdiction to enforce the Settlement.
- 12 • Permanent Injunction Effecting Work Rule Changes (¶ 101): The Court shall enter a permanent  
injunction and retain jurisdiction for its enforcement to effect the following:
  - 13 a) AMC will provide meal and rest periods and pay premium wages for missed meal and  
14 rest periods as defined by California law. This is without prejudice to AMC's entry into  
on-duty meal period agreements or obtaining relief from the DLSE insofar as meal or rest  
15 period obligations, and without prejudice to whatever legal challenge, if any, that might be  
brought against such agreements or application for relief. The payment of meal period or  
16 rest period premium for a meal period that is not provided or a rest period that is not  
permitted or authorized, shall not be deemed a violation of the injunction.
  - 17 b) AMC will calculate the regular rate of pay for overtime purposes to include bonuses  
18 and stipends as required by California law. This permanent injunctive relief as to this  
subpart 'b' will become null and void during such period that Flight Crew are unionized and  
19 Defendant qualifies for the exemption under Wage Order 9-2001, § 1(E) (2001).
  - 20 c) AMC will treat all Flight Crew work as eligible for daily overtime under California  
law. All Flight Crew work hours of which AMC has notice will be counted to determine  
21 whether daily overtime will be paid and AMC will not rely on Wage Order 9-2001, § 3(K)  
to classify Flight Crew as exempt from daily overtime. The permanent injunctive relief as  
22 to this subparagraph 'c' will become null and void during such period that Flight Crew are  
unionized and Defendant qualifies for the exemption under Wage Order 9-2001, § 1(E)  
23 (2001).
  - 24 d) AMC will not reduce the base hourly pay of a Class Member below that currently paid  
25 insofar as he or she continues to occupy the position of a Flight Crew member employed by  
Defendant in California. Newly hired California Flight Paramedics and California Flight  
26 Nurses will have a base hourly pay no less than the lowest base hourly pay of, respectively,  
California Flight Paramedics and California Flight Nurses as of May 12, 2020. Separately,  
27 the minimum base hourly rate for California Flight Paramedics or California Flight Nurses,  
in the permanent injunction as to this subparagraph (d), may be correspondingly reduced to  
28

1 the extent the lowest base hourly rate of pay paid to Flight Paramedics or Flight Nurses  
2 become more than 5% greater than the average hourly rate of pay paid to, respectively,  
3 Flight Paramedics or Flight Nurses California market as set forth in a report published by  
4 Mercer. Flight Nurse and Flight Paramedic pay shall be separately assessed for purposes  
5 of this adjustment to the minimum base hourly pay.

6 e) AMC will maintain time and pay records in accordance with California law that  
7 accurately state daily and weekly overtime hours worked; applicable overtime rates; when  
8 meal periods were taken by Flight Crew; any premium wages paid to Flight Crew for missed  
9 meal or rest periods; and the rate of premium wage payments. AMC promptly shall produce  
10 such records, in accordance with California law, to Flight Crew or their representative on  
11 request without charge. Such records shall be retained for no less than four years.

12 f) AMC will provide Flight Crew with itemized pay statements in accordance with  
13 California law that accurately state overtime hours worked, applicable overtime rates, the  
14 number of hours of meal and rest period premium pay paid, the hourly rate of premium  
15 wage payments and meal and rest period premium wages paid for Flight Crew. AMC shall  
16 retain for no less than four years copies of its itemized pay statements for Flight Crew and  
17 shall promptly produce such records to Flight Crew or their representative on request  
18 without charge.

#### 19 **IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL**

20 The Court has broad powers to determine whether a proposed settlement is fair under the  
21 particular circumstances of the case. *See, e.g., Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App.  
22 4th 224, 234-35; *Rebney v. Wells Fargo Bank* (1990) 220 Cal. App. 3d 1117, 1138 (“The trial court has  
23 broad discretion to determine whether the settlement is fair.”). The decisions in *Dunk v. Ford Motor*  
24 *Co.* (1996) 48 Cal. App. 4th 1794, 1800 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App.  
25 4th 116, 128, set forth the factors the Court should consider in assessing the fairness of a proposed class  
26 action settlement:

27 The well-recognized factors that the trial court should consider in evaluating the  
28 reasonableness of a class action settlement agreement include “the strength of plaintiffs’  
case, the risk, expense, complexity and likely duration of further litigation, the risk of  
maintaining class action status through trial, the amount offered in settlement, the  
extent of discovery completed and stage of the proceedings, the experience and views  
of counsel, the presence of a governmental participant, and the reaction of the class  
members to the proposed settlement.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th  
1794, 1801; *see* 4 Newberg on Class Actions (4th ed.2002) §§ 11.41, 11.43, 13.68.).

*Kullar*, 168 Cal. App. 4th at 128, citing *Dunk*, 48 Cal. App. 4th at 1800. The Court in *Kullar* went to  
on to cite *Dunk* for the proposition that:

a presumption of fairness exists where: (1) the settlement is reached through arm's-  
length bargaining; (2) investigation and discovery are sufficient to allow counsel and  
the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the

percentage of objectors is small.

*Kullar*, 168 Cal. App. 4th at 128.

**V. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE**

**A. Conditional Certification of the Settlement Class to Expand the Temporal Scope of the Previously Certified Class is Appropriate**

As noted above, on November 24, 2015, the Court granted Plaintiffs' contested class certification motion and certified a class defined as

All former or current Flight Crew, also known as Medical Crew, Medical Flight Crew, and including Flight Nurses, Flight Paramedics, Base Supervisors, Clinical Base Supervisors, and Medical Base Supervisors (collectively "Flight Crew"), whom AMC employed in California at any time on or after January 30, 2009 until the date of notice to the class that a class has been certified.<sup>9</sup>

The definition of the previously certified class and the Settlement Class thus are the same, except the Settlement Class extends forward the time during which Flight Crew may qualify as Class Members. This change is appropriate because the parties negotiated the Settlement to compensate the Settlement Class Members through the expanded Class Period and the Plaintiffs have been representing the Class Members to be added to the expanded Class by virtue of the non-class, representative PAGA claims. In light of Plaintiffs' showing, the Court's previous Order granting class certification and the showing made in support of that Order, the substantial similarity between the class definition proposed in the Settlement and the class definition previously certified in this case, and the reasonableness of the proposed change to the temporal scope of the class definition, the proposed Settlement Class meets the criteria for certification under C.C.P. § 382. Accordingly, Plaintiffs request that the Court conditionally certify the Settlement Class.<sup>10</sup>

---

<sup>9</sup> The 2018 partial settlement class similarly defined in that Settlement Agreement (¶ 13) as:

All former or current Flight Crew, also known as Medical Crew, Medical Flight Crew, and including Flight Nurses, Flight Paramedics, Base Supervisors, Clinical Base Supervisors, and Medical Base Supervisors (collectively "Flight Crew"), whom AMC employed in California at any time on or after January 30, 2009 until [February 14, 2018, the date of Preliminary Approval] .

<sup>10</sup> The Settlement Class excludes Thomas Easter, Robert Nieblas, and Jonathan Carroll who earlier agreed to be removed from the class in exchange for not being deposed in this litigation. *See* Order, entered February 2, 2018. It also excludes William Hinton. *See* Order, entered July 17, 2019.

1           **B.       The Settlement is Entitled to a Presumption of Fairness because it is the Product**  
2           **of Serious, Informed and Non-collusive Negotiations**

3           A settlement that is the product of an arms-length negotiation is entitled to a presumption of  
4           fairness. *See, e.g., Dunk*, 48 Cal. App. 4th at 1802. At this stage, so long as the settlement falls into  
5           the range of possible approval, the presumption applies and the Settlement should be preliminarily  
6           approved. Here, the proposed Settlement was reached after hard-fought adversarial litigation, extensive  
7           investigation, discovery, motion practice, beating off two writ petitions by AMC, a two plus week trial  
8           that awaits judgment, assistance of a highly regarded expert to quantify exposure, and settlement  
9           negotiations supervised by a highly respected and experienced mediator, Mark Rudy. These extensive  
10          arms-length negotiations, summarized above, demonstrate that the Settlement is not a product of  
11          collusion between the parties.

12          Additionally, Class Counsel has extensive experience litigating and settling complex wage and  
13          hour class actions. Sitkin Decl. at ¶¶ 4-6; Konecky Decl., filed February 1, 2018 in support of  
14          preliminary approval of partial settlement, at ¶¶ 2-4 and Ex. 1. They have conducted extensive  
15          discovery, litigated the factual and legal issues raised in this action. Initially Mr. Sitkin alone, then  
16          joined in 2017 by Schneider Wallace, as Class Counsel, have diligently litigated the Plaintiffs' claims  
17          for over seven years. The extensive motion practice has allowed the parties to assess the strengths and  
18          weaknesses of the claims herein and the benefits of the proposed Settlement. Accordingly, the  
19          settlement here is the product of extensive and hard-fought, adversarial litigation and arms-length  
20          negotiations between the parties and is therefore fair. *See Wershba v. Apple Computer, Inc.* (2001) 91  
21          Cal.App.4th 224, 245.

22           **C.       The Settlement Has No Obvious Deficiencies But Rather Provides An Excellent**  
23           **Result for the Class Members**

24          A proposed settlement is not to be measured against a hypothetical ideal result that might have  
25          been achieved. *See Wershba*, 91 Cal.App.4th at 246 (citing *Linney v. Cellular Alaska Partnership* (9th  
26          Cir.1998) 151 F.3d 1234, 1242.). "The test is not the maximum amount plaintiffs might have obtained  
27          at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances."  
28          *Id.* at 250; *In re Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 510.  
            Nevertheless, this Settlement presents the highly unusual circumstance that its value, when injunctive  
            relief is factored in, exceeds the employer's exposure based on Plaintiffs' exposure analysis of the

likely result before this Court based on the tentative ruling. *See* Sitkin Dec. at ¶¶67-68.

Plaintiffs, aided by their damage expert David Breshears, presented at trial a class damage model that the Court's tentative decision largely approved as adjusted for the post-trial *ZB. N.A.* decision, the Court's upholding AMC's federal enclave doctrine defense as limited by Plaintiffs' pre-trial motion practice to the FHL base, and the denial of the subsequent rate for PAGA penalties until after the Court's August 23, 2017 decision dismissing AMC's § 3(K) defense. Plaintiffs expanded that damage model for wages owed to Flight Crew hired after January 14, 2016 who were therefore not Helmick class members who could recover wages in this Action, based on AMC's own exposure analysis offered to support its removal of the Lyons Action to federal court and opposition Plaintiffs' remand motion concerning whether AMC showed the amount-in-controversy to support CAFA jurisdiction. Plaintiffs thus quantified AMC's exposure to the Class, separate from payments to Class Counsel and Plaintiffs, as follows:

<b>Scenario #1: Overtime Premiums, Meal and Rest Period Premium Wages, Interest (@10% for OT and 7% for Meal and Rest), and PAGA Penalties (Initial Rate in First Pay Period, then Subsequent Rate after August 23, 2017 decision/November 29, 2017 Order; FHL Excluded</b>	
	Total for Helmick and Lyons Matters "FHL Excluded" (8.78% discount)
Summary by Category:	
Wages: Overtime	\$36,215,674
Wages: Meal Premiums	\$3,538,785
Wages: Rest Premiums	\$3,713,645
	\$43,468,105
Interest: Overtime	\$18,275,849
Interest: Meal Premiums	\$1,301,124
Interest: Rest Premiums	\$1,354,865
	\$20,931,838
Inaccurate Wage Statements	\$259,764
Waiting Time Penalties [1]	\$3,803,301
<b>PAGA Penalties</b>	<b>\$16,925,564</b>
Total Penalties	\$20,988,629
Total Through 4/24/20	\$85,388,572
Per Day After 4/24/20	\$29,513

Number of Days after 4/24/20 to 6/29/20	66
Additional Amount Due	\$2,132,283
Grand Total	\$87,520,855
[1]Note: Helmick Class Members Waiting Time Penalties Post 2/14/18.	

There is an important caveat to this exposure analysis. The Court's tentative decision does not indicate the extent to which the Court intends to exercise its discretion under Labor Code § 2699(e) to reduce further \$16,925,564 potential PAGA penalties, which AMC has sought to have eliminated based on the novelty of the legal issues on which Plaintiffs have prevailed. Without PAGA penalties, AMC's exposure is \$70,595,291. The monetary component of the Settlement, standing alone, represents a very strong recovery for the Class. The Settlement would be distributed to the approximately 450 members of the Settlement Class.<sup>11</sup> This works out to an average share of well over \$100,000 per person, net of proposed payments to the LWDA, Class Counsel, and the plaintiffs in both cases. This is an unheard of result for class claims of this genre and will bring substantial relief to the Class.

But the Settlement not only provides for AMC's non-reversionary payment of \$78 million but injunctive relief of even greater value by requiring AMC henceforth to pay overtime and provide M&RB or, in their absence, pay premium wages under California law.<sup>12</sup> See Sitkin Dec. at ¶¶ 71-75. This includes the FHL base, despite the Court's tentative decision's upholding the federal enclave doctrine defense, such that work there will be treated the same as work at the other bases. Indeed, the injunctive relief imposes obligations on AMC that exceed what the law requires and are a major financial boon for Flight Crew. The Settlement prohibits AMC from reducing Flight Crew hourly rates, except in the unlikely event the lowest hourly rate exceeds by five or more percent the average Flight Crew pay in the Mercer labor market report or if Flight Crew (after several failed efforts) ever unionize. Consequently, AMC is denied the expedient of adjusting downward the hourly rate of pay to negate

<sup>11</sup> The 450 estimate of the Class size is probably on the high side. Sitkin Dec., p. 1, fn. 1. To be safe in obtaining CPT's quotes of class administration costs, Plaintiffs have been using a 450-60 range.

<sup>12</sup> Also consistent with California law, AMC, if Flight Crew unionized, would be relieved of the obligation to pay daily overtime, despite its permanent waiver of reliance on the § 3(K) exemption. Wage Order 9-2001, § 1(e). Similarly, the Settlement preserves AMC's right under California law to apply to the DLSE for relief from its M&RB obligations, without taking a position on its entitlement to such relief. See Settlement Agreement ¶ 101. See *Augustus v. ABM Sec. Servs., Inc.* (2016) 2 Cal. 5th 257, 269, fn. 12.

1 the financial benefit of this injunctive relief. This protects straight time compensation and overtime  
2 and premium wages. So, for the typical flight duty shift without a recognized interrupted sleep period  
3 where AMC now pays twenty-four straight hours but no overtime or premium wages, under the  
4 Settlement, for the same shift spanning two days (e.g. 7 a.m. to 7 a.m.), AMC will pay the equivalent  
5 of forty hours, i.e. two hours for overtime above eight through twelve hours, twelve hours for overtime  
6 above twelve to twenty-four hours, and two premium wage hours for a two thirds increase in  
7 compensation ( $[40-24]/24$ )!

8 Based on AMC's overtime and premium wage liability over the 11.45 year recovery period  
9 and adjusting for the increased number of AMC bases, Plaintiffs estimate that the injunctive relief's  
10 value will exceed the \$48,615,384.79 proposed to be paid to the class from the \$78 million non-  
11 reversionary fund within 8.53 years and the \$78 million within less than 11.45 years. *See* Sitkin Dec.  
12 ¶¶ 73-74. But, as the injunction is permanent and this Court retains exclusive jurisdiction over its  
13 enforcement, the value of the injunctive relief predictably far exceeds the \$78 million. *Id.* at ¶ 75.

14 Add to this the value of the other work rule changes that this lawsuit has triggered: a) effective  
15 July 2013, payment for travel time in excess of regular commute, which AMC's expert calculated had  
16 a value averaging about \$89,000/year (*see id.*, ¶76); b) permission that Flight Crew may report up to  
17 ten minutes before and ten minutes after their 24 hour shift for shift transition times (*see id.* at ¶ 77).  
18 Also, those entering into individual settlements in 2014, for which Plaintiffs obtained an Order, entered  
19 January 12, 2018, invalidating the release of class claims, also received about \$357,614.89, for which  
20 AMC was unable to claim a credit at trial (*see id.*, ¶78). In sum, when the value of a proposed settlement  
21 exceeds an employer's estimated exposure, no question can arise over the excellence of the result  
22 obtained and that it is fair and reasonable.

23 **D. The Settlement Amount Is Reasonable Given The Risks Associated With**  
24 **Continued Litigation**

25 The potential risks attending further litigation also support preliminary approval. Courts have  
26 long recognized the inherent risks of litigation and emphasized the comparative benefits of immediate  
27 recovery by way of the compromise to the mere possibility of relief in the future, after protracted and  
28 expensive litigation. *See In re Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495,  
510-511. A settlement does not have to provide 100% of the damages sought to be considered a fair



1 and reasonable settlement. *Rebney v. Wells Fargo Bank*, (1991) 220 Cal.App.3d 1117, 1139. Rather,  
2 compromise is expected:

3       Compromise is inherent and necessary in the settlement process...even if “the relief  
4       afforded by the proposed settlement is substantially narrower than it would be if the  
5       suits were to be successfully litigated,” this is no bar to a class settlement because “the  
6       public interest may indeed be served by a voluntary settlement in which each side gives  
7       ground in the interest of avoiding litigation.”

8       *Wershba v. Apple Computer. Inc.*, (2001) 91 Cal. App. 4th 224, 250.

9       In entering into the Settlement, Plaintiffs carefully considered the substantial risks, including  
10      reversal on appeal on the issues, including of first impression, on which they prevailed before this  
11      Court. *See* Sitkin Dec. at ¶¶ 35-66.<sup>13</sup> This is not to say that Plaintiffs believe AMC ultimately would be  
12      successful. The Settlement also avoids further delay in the Class’ being paid and significant costs. *Id.*  
13      at ¶¶ 79-80. As proposed, the settlement exchanges these and other risks for the certainty of Class  
14      Member payments averaging over \$100,000 and value injunctive relief.

15               **E.       The Formula for Each Class Member’s Share Is Fair And Reasonable**

16       The proposed formula for allocation of the \$78 million plus post-Final Approval interest,

17       <sup>13</sup> Such risks were posed by 1) gross difference in litigation resources (Sitkin Dec. at ¶¶ 38-41), 2) class  
18      certification for the putative class in Lyons and decertification in this case (*id.* at 42), 3) the issue of  
19      whether the January 14, 2016 end date to belong to the Helmick class ended further accrual of damages  
20      and interest for Helmick class members (*ibid.*), 4) upholding on appeal that Wage Order 9-2001, § 3(K)  
21      does not apply to Flight Crew (*id.* at ¶ 43), 5) upholding on appeal that the shift schedule, not the  
22      calendar day, defines the workday for daily overtime accrual (*id.* at ¶ 44) upholding on appeal that the  
23      ADA does not preempt Flight Crew M&RB protections (*id.* at ¶ 45), 6) upholding on appeal that having  
24      to stay on base means a failure to provide M&RB (*id.* at ¶ 46), 7) upholding on appeal that Proposition  
25      11 did not limit Flight Crew M&RB protections (*id.* at ¶ 47), 8) upholding on appeal awards of pre-  
26      judgment interest (*id.* at ¶ 48), 9) upholding on appeal that the class releases in the individual settlement  
27      agreements were invalid (*id.* at ¶49), 10) the Court’s tentative decision that the federal enclave doctrine  
28      applied to FHL (*id.* at ¶ 50), 11) uncertainties under California Supreme Court jurisprudence of PAGA  
methodology and defenses (*id.* at ¶¶ 51-53), 12) difficulties in quantifying OTCW and AMC’s defense  
it had no notice of it (*id.* at ¶¶ 54-55), 13) argument that failure to pay premium wages or paystub  
penalties cannot support waiting time penalty awards (*id.* at ¶ 56), 13) argument that no waiting time  
penalties are recoverable once the Helmick Action was filed (*id.* at ¶ 57), 14) no injury predicate to  
paystub penalty recovery (*id.* at ¶ 58), 15) arguments over how to quantify daily wages for purposes  
of waiting time penalties (*id.* at ¶ 59), 16) good faith defense, particularly based on uncertainty of law  
as asserted against all penalty claims (*id.* at ¶ 60), 17) gaps, errors, and impairment of electronic access  
relating to AMC’s pay and time records (*id.* at ¶ 61), 18) ability to justify permanent injunctive relief  
and reduction of financial benefit to Flight Crew through reduction of hourly rates (*id.* at ¶¶62-63), 19)  
collection risk (*id.* at ¶ 64), 20) delayed payment per years on appeal (*id.* at ¶ 66), and 21) upholding  
on appeal dismissals of several other AMC affirmative defenses (*id.* at ¶ 65), among other risks.

1 including among Class Members, is subject to the same standard of review as class action settlements—  
2 it must be “fair, adequate and reasonable.” *See, e.g., 7-Eleven Owners for Fair Franchising v.*  
3 *Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1166-1167; *Chavez v. Netflix, Inc.* (2008) 162 Cal.  
4 App. 4th 43, 55-56.

5 Allocating \$1,000,000 to the LWDA for its share of PAGA penalties is appropriate. The PAGA  
6 recovery shares the risks of proving the underlying Labor Code violations, but also risks peculiar to  
7 recovery of civil penalties, particularly in a case rife with issues of first impression (*see* fn. 13 above).  
8 The \$110,000 allocated among the Plaintiffs and Lyons Plaintiffs are well earned service awards or  
9 consideration for entry into mutual general releases. *See* accompanying declarations from each Plaintiff  
10 and Sitkin Dec. ¶¶ 85-87. Class Counsel has incurred about \$800,000 of reasonable costs/expense, with  
11 more bills arriving. Both under the partial settlement and this Agreement, they are entitled to be  
12 reimbursed for costs as the Court approves. *Id.* at ¶ 84. Under both the partial settlement and this one,  
13 Class Counsel are entitled to reasonable compensation for the over 15,000 hours their firms have put  
14 into this case to achieve this result. *See* Sitkin Dec. ¶¶ 81-83. Although the Settlement Agreement  
15 provides for a fee award of up to one-third of the value of the monetary and injunctive relief obtained,  
16 Class Counsel is requesting a fee award of \$27,424,615.21, calculated by taking one third of the  
17 \$4,273,845,63 already paid to Eligible Class Members in the 2018 partial settlement plus the  
18 \$78,000,000 required to be paid under this Settlement, plus interest AMC may pay thereon.

19 The distribution formula for the proposed \$48,615,384.79 and accruing interest to be shared  
20 by the Class Members takes into account objective data. Settlement Agreement at ¶ 81. Each class  
21 member’s share will increase or decrease proportionally based on the total W-2 Income earned in a  
22 Settlement Class position during the Class Period, in comparison to the amount earned by all Class  
23 Members combined. This equilibrates differences in work history and hourly rates of pay. Additionally,  
24 the distribution formula allows for adjustments based on additional objective factors. *First*, to account  
25 for pre-judgment interest, W-2 Income is weighted by calendar year earned by applying the following  
26 multipliers: 1.0 (2020), 1.1 (2019), 1.2 (2018), 1.3 (2017), 1.4 (2016), 1.5 (2015), 1.6 (2014), 1.7  
27 (2013), 1.8 (2012), 1.9 (2011), 2.0 (2010), 2.1 (2009). *Second*, W-2 Income for Class Members who  
28 were first hired for a Class position after January 14, 2016 and therefore are not part of the class certified  
under the November 24, 2015 Order will be multiplied by 0.9 to account for certification risk. *Third*,

1 Flight Crew home based at Fort Hunter Liggett will have their W-2 Income multiplied by 0.2 to account  
2 for the federal enclave doctrine defense. *Fourth*, a 10% downward adjustment is assessed for those who  
3 executed in 2014 an individual settlement agreement of the claims in this Action and negotiated a  
4 corresponding settlement check in recognition of the risk of reversal on appeal of the dismissal of the  
5 release defense. Notwithstanding the foregoing, each Eligible Class Member who has worked at least  
6 one flight duty shift in California during the Class Period shall receive no less than one hundred (\$100)  
7 for each calendar year in which they worked in a Settlement Class Member position since 2009 up to  
8 a maximum total of three hundred dollars (\$300).

9 Accordingly, the distribution formula is fair and reasonable because the Class Members' share  
10 will increase or decrease proportionally based on the Class Members rate of pay and the amount of  
11 time worked as reflected in W-2 Income and the Class Member's vulnerability to various defenses.<sup>14</sup>

## 12 **VI. THE COURT SHOULD ORDER DISSEMINATION OF THE PROPOSED CLASS NOTICE**

### 13 **A. The Proposed Class Notice Procedure Is Adequate Under CRC, Rule 3.769(f)**

14 The primary purpose of procedural due process is to provide affected parties with the right to  
15 be heard at a meaningful time and in a meaningful manner that appries interested parties of the  
16 pendency of the action affecting their interests and an opportunity to present their objections. *Ryan v.*  
17 *Cal. Interscholastic Fed* (2001) 94 Cal.App.4th 1048, 1072. Indeed, courts have approved class notices,  
18 even when they provide only general information about a settlement. *See, e.g., Mendoza v. United*  
19 *States* (9th Cir. 1980) 623 F.2d 1338, 1351, disapproved on other grounds by *Evans v. Jeff D.* (1986)  
20 475 U.S. 717, 725, n. 10; *In re Michael Milken & Assoc. Sec. Lit.* (S.D.N.Y. 1993) 150 F.R.D. 57, 60.  
21 As set forth in the Settlement Agreement, within fourteen (21) days after its Preliminary Approval of

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22 <sup>14</sup> Additionally, the Settlement Agreement (§ 74) provides the Class Members the opportunity, should  
23 they disagree with Defendant's records pertinent to the calculation of their shares, to contest that  
24 information, except to the extent already resolved during the 2018 partial settlement administration. If  
25 there is a dispute, the Class Administrator before deciding will consult with the parties to determine  
26 whether an adjustment is warranted. Class Members will also be given the opportunity to submit timely  
27 objections to the settlement under procedures clearly set forth in the Class Notice or to appear at the  
28 Final Approval/Fairness Hearing to have their objections heard by the Court. Class Members will have  
the opportunity to opt-out of the settlement should they so desire. The Class is given forty-five days to  
respond to the Class Notice. All of these procedural safeguards are explained in the Class. *See* Exhibit  
B to the Settlement Agreement (Exhibit 1 to Sitkin Decl.).

1 the Settlement Agreement, AMC will provide the Class Administrator with the class information for  
2 purposes of mailing the Class Notice to Class Members. *See* Settlement Agreement at ¶ 71. The parties  
3 have agreed on a notice plan that would provide class members with individual notice by first class  
4 mail. *Id.* at ¶ 73. Upon receipt of the class information, the Class Administrator will perform a search  
5 based on the National Change of Address Database to update and correct any known or identifiable  
6 address changes. *Id.* No more than twenty-one days after AMC provides the Class Administrator with  
7 the class information, the Class Administrator shall mail copies of the Class Notice to all Class  
8 Members via regular First-Class U.S. Mail, and email to the extent available. *Id.*

9 Any Class Notices returned to the Class Administrator as non-delivered on or before the  
10 Response Deadline shall be re-mailed to the forwarding address affixed thereto. *Id.* If no forwarding  
11 address is provided, the Class Administrator shall promptly attempt to determine a correct address by  
12 use of skip-tracing, or other search such as using the name, address or social security number of the  
13 Class Member involved, and shall then perform a re-mailing, if another mailing address is identified  
14 by the Class Administrator. *Id.* This notice procedure is reasonable and adequate under applicable law.  
15 *See, e.g., Cartt v. Superior Court* (1975) 50 Cal. App. 3d 960, 974 (holding that class notice is adequate  
16 if it has “a reasonable chance of reaching a substantial percentage of the class members”).

17 If despite these efforts the Eligible Class Member cannot be located or a settlement check is  
18 not negotiated after 180 days, the Class Administrator will deposit the funds in the Class Member’s  
19 name with the State Comptroller. *Id.* at ¶ 82(f). Any further and likely negligible residue of  
20 undistributed funds, such as interest earned after the distribution to the Eligible Class Members and the  
21 LWDA will go to a proper *cy pres* beneficiary, The Code Green Campaign, a non-profit, first responder  
22 mental health advocacy organization, a proper *cy pres* beneficiary under CCP § 384(b)(3)(C). *See* Sitkin  
23 Dec. ¶ 87. The distribution of any *cy pres* funds would follow the default allocation required in § 384.

24 **B. The Notice Fairly Apprises Settlement Class Members of the Settlement Terms  
25 And Their Rights Under The Settlement**

26 The “notice given to the class must fairly apprise the class members of the terms of the  
27 proposed compromise and of the options open to dissenting class members.” *Trotsky v. Los Angeles*  
28 *Fed. Sav. & Loan Assn.* (1975) 48 Cal. App. 3d 134, 152-153. The purpose of a class notice in the  
context of a settlement is to give class members sufficient information to decide whether they should

1 accept the benefits offered, opt out, or object to the settlement. *Id.* Here, the Class Notice clearly and  
2 accurately informs the Class of the material terms of the Settlement and their rights pertaining to it,  
3 including the right to opt out from or object to the Settlement and how to do so according to required  
4 procedures. *See* proposed Class Notice, Exhibit B to Settlement Agreement (Exh. 1 to Sitkin Decl.).  
5 The Class Notice also will be tailored for each individual and provides key individualized information  
6 pertinent to the calculation of the Class Member's settlement payment. Thus, the proposed notice to  
7 Class Members in this case satisfies all of the requirements of Rule 3.769(f) of the California Rules of  
8 Court.

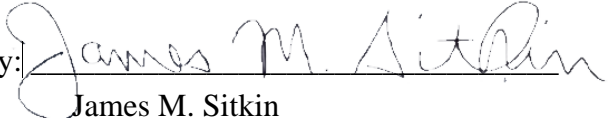
9 **VII. CONCLUSION**

10 For each of the foregoing reasons, Plaintiffs respectfully request that the Court enter an order:  
11 (1) preliminarily approving the proposed Settlement; (2) approving the form and method for providing  
12 notice of the Settlement to the Class; and (3) scheduling a fairness hearing to consider final approval  
13 of the Settlement. Exhibit D to the Settlement Agreement is a proposed Preliminary Approval Order,  
14 with dates that the Court sets to be added.

15 Respectfully submitted,

16 Dated: June 26, 2020

17 **LAW OFFICES OF JAMES M. SITKIN**

18 By:   
James M. Sitkin

19 Attorney for Plaintiffs and Certified Class