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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

Case No. 17-cv-01012-JD

CODY MEEK, *et al.*

Plaintiffs,

v.

SKYWEST, INC. and SKYWEST
AIRLINES, INC.,

Defendants.

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR ATTORNEYS' FEES,
EXPENSES, AND INCENTIVE AWARDS;
AND MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Judge: Hon. James Donato
Date: February 23, 2023
Time: 10:00 a.m.
Courtroom: 11

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on February 23, 2023 at 10:00 a.m., in Courtroom 11 of the United States District Court for the Northern District of California, Phillip Burton Federal Building & United States Courthouse, 450 Golden Gate Avenue, San Francisco, California 94102, the Honorable James Donato, presiding, Plaintiffs Cody Meek, Coryell Ross, and Jeremy Barnes (the “Class Representatives”)¹ will and hereby move for an Order pursuant to Fed. R. Civ. P. 23(h)(1) and 54(d)(2) awarding: (i) Attorneys’ Fees to Class Counsel of \$1,216,550, which is 29% of the \$4.195 million non-reversionary Settlement Fund; (ii) unreimbursed expenses totaling \$145,029.59 that Class Counsel reasonably and necessarily incurred in the prosecution of this class action; and (iii) Incentive Awards for the Class Representatives in the amount of \$5,000 each.

This motion is based upon this Motion, the Memorandum of Points and Authorities; the Joint Declaration of Mitchell Breit, Thien An Truong, and Matthew George dated November 28, 2022 (“Joint Decl.”); the Declarations of Cody Meek (“Meek Decl.”), Jeremy Barnes (“Barnes Decl.”), and Coryell Ross (“Ross Decl.”); the pleadings on file in this action; and, other such matters and argument as the Court may consider at the hearing on this motion.

STATEMENT OF ISSUES TO BE DECIDED

1. Whether the Court should award \$1,216,550, which is 29% of the \$4,195,000 Settlement Fund, to Class Counsel as Attorneys’ Fees;
2. Whether the Court should award \$145,029.59 in unreimbursed expenses that Class Counsel expended in furtherance of the case; and
3. Whether the Court should award Incentive Awards to the three Class Representatives of \$5,000 each, for their work, time and risks in this litigation over the past 5 years in pursuing this case.

¹ On September 29, 2021, the Court appointed these three named plaintiffs as Class Representatives, and appointed Kaplan Fox & Kilsheimer LLP, Simmons Hanly Conroy LLC, and Milberg Coleman Bryson Phillips Grossman, PLLC as Class Counsel. *See* Dkt. 167, Order re Class Certification.

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION 1

II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND..... 2

 A. Summary of the Litigation 2

 B. Class Certification and Ongoing Litigation Efforts 2

 C. Summary of the Settlement Negotiations 3

 D. Summary of the Work Performed by Class Counsel 3

 E. The Class Representatives’ Commitment to the Litigation 7

III. REQUESTED AWARDS 8

IV. ARGUMENT 9

 A. Percentage of the Fund Method Is the Most Appropriate Method for Calculating Reasonable Attorneys’ Fees in this Common Fund Case 9

 B. The Requested Fee Award Is Reasonable..... 11

 1. Class Counsel Achieved Favorable Results for the Class..... 11

 2. Class Counsel Undertook the Litigation at Substantial Risk 12

 3. The Litigation Required Skill and High-Quality Work 14

 4. Class Counsel Worked for Five Years on a Fully Contingent Basis 16

 5. The Requested Award is Consistent with Similar Cases 17

 C. The Lodestar Cross-Check Confirms Reasonableness 17

 1. The Number of Hours Devoted to the Case Was Reasonable 18

 2. The Reported Hourly Rates are Reasonable 19

 3. Requested Fees Results in a Negative Multiplier 19

 D. The Litigation Expenses Are Reasonable and Should Be Approved..... 19

 E. The Position of the Settlement Class 21

 F. Request For Named Plaintiff Incentive Awards 21

V. CONCLUSION 23

TABLE OF AUTHORITIES

	Page(s)
1 <i>Harris v. Marhoefer</i> , 24 F.3d 16 (9th Cir. 1994).....	20
2	
3 <i>Hausfeld v. Cohen Milstein Sellers & Toll, PLLC</i> , No. 06-CV-826, 2009 WL 4798155 (E.D. Penn. Nov. 30, 2009)	18
4 <i>Hefler v. Wells Fargo & Co.</i> , No. 16-cv-05479-JST, 2018 WL 6619983 (N.D. Cal. Dec. 18, 2018)	18, 19
5	
6 <i>Hensley v. Eckerhart</i> , 461 U.S. 424 (1983).....	12
7 <i>In re Am. Apparel, Inc. Shareholder Litig.</i> , No. 10-cv-06352 MMM (JCGx), 2014 WL 10212865 (C.D. Cal. July 28, 2014)	16
8	
9 <i>In re Apple Inc. Device Performance Litig.</i> , No. 5:18-md-02827-EJD, 2021 WL 1022866 (N.D. Cal. Mar. 17, 2021).....	16
10 <i>In re Black Farmers Discrimination Litig.</i> , 953 F. Supp. 2d 82 (D.D.C. 2013)	18
11	
12 <i>In re Capacitors Antitrust Litig.</i> , No. 3:17-md-02801-JD, 2018 WL 4790575 (N.D. Cal. Sept. 21, 2018).....	18
13 <i>In re Facebook Biometric Info. Privacy Litig.</i> , 522 F. Supp. 3d 617 (N.D. Cal. Feb. 26, 2021)	12, 13
14	
15 <i>In re Heritage Bond Litig.</i> , No. 02-ML-1475 DT, 2005 WL 1594403 (C.D. Cal. June 10, 2005)	15, 16
16 <i>In re Korean Air Lines Co., Ltd. Antitrust Litig.</i> , No. CV 07-05107 SJO AGRX, 2013 WL 7985367 (C.D. Cal. Dec. 23, 2013)	9, 10
17	
18 <i>In re LendingClub Sec. Litig.</i> , No. C 16-02627 WHA, 2018 WL 4586669 (N.D. Cal. Sept. 24, 2018).....	20
19 <i>In re Lenovo Adware Litig.</i> , No. 15-md-02624-HSG, 2019 WL 1791420 (N.D. Cal. Apr. 24, 2019)	11, 15, 21
20	
21 <i>In re Media Vision Tech. Sec. Litig.</i> , 913 F. Supp. 1362, 1366 (N.D. Cal. 1995)	20
22 <i>In re Nexus 6P Prods. Liab. Litig.</i> , No. 17-cv-02185-BLF, 2019 WL 6622842 (N.D. Cal. Nov. 12, 2019).....	11, 14, 16, 17
23	
24 <i>In re Omnivision Techs., Inc.</i> , 559 F. Supp. 2d 1036 (N.D. Cal. Jan. 9, 2008).....	11, 12, 15
25 <i>In re Online DVD-Rental Antitrust Litig.</i> , 779 F.3d 934 (9th Cir. 2015).....	21
26	
27 <i>In re Toys R Us-Del., Inc – Fair and Accurate Credit Transactions Act (FACTA) Litig.</i> , 295 F.R.D. 438 (C.D. Cal. 2014)	18
28 <i>In re Washington Pub. Power Supply Sys. Sec. Litig.</i> , 19 F.3d 1291 (9th Cir. 1994).....	17

TABLE OF AUTHORITIES

	Page(s)
1 <i>Johnson v. Fujitsu Tech. & Bus. of Am., Inc.</i> , No. 16-cv-03698-NC, 2018 WL 2183253 (N.D. Cal. May 11, 2018).....	21
2	
3 <i>Kendall v. Odonate Therapeutics, Inc.</i> , No.: 3:20-cv-01828-H-LL, 2022 WL 1997530 (S.D. Cal. June 6, 2022).....	17
4 <i>Kumar v. Salov N. Am. Corp.</i> , No.:14-CV-2411-YGR, 2017 WL 2902898 (N.D. Cal. July 7, 2017).....	11
5	
6 <i>Lesevic v. Spectraforce Techs. Inc.</i> , No. 19-CV-03126-LHK, 2021 WL 1599310 (N.D. Cal. Apr. 23, 2021).....	18
7 <i>Luna v. Universal City Studios, LLC</i> , No. CV 12-9286 PSG (SSx), 2016 WL 10646310 (C.D. Cal. Sept. 13, 2016)	16
8	
9 <i>Moreno v. Capital Bldg. Maint. & Cleaning Servs.</i> , No. 19-cv-07087-DMR, 2021 WL 4133860 (N.D. Cal. Sep. 10, 2021).....	19
10 <i>Moreyra v. Fresenius Med. Care Holdings, Inc.</i> , No. SACV 10-517 JVS (RZx), 2013 WL 12248139 (C.D. Cal. Aug. 7, 2013)	15
11	
12 <i>Newell v. Ensign U.S. Drilling (Cal.) Inc.</i> , No. 1:19-cv-01314-JLT-BAK, 2022 WL 2704551 (E.D. Cal. July 12, 2022)	16
13 <i>Noll v. eBay, Inc.</i> , 309 F.R.D. 593 (N.D. Cal. Sept. 15, 2015).....	21
14	
15 <i>Powers v. Eichen</i> , 229 F.3d 1249 (9th Cir. 2000).....	11
16 <i>Roberti v. OSI Sys., Inc.</i> , No. CV-13-09174 MWF (MRW), 2015 WL 8329916 (C.D. Cal. Dec. 8, 2015).....	14
17	
18 <i>Schaffer v. Litton Loan Serv., LP.</i> , No. CV 05-07673 MMM (JCx), 2012 WL 10274679 (C.D. Cal. Nov. 13, 2012)	12
19 <i>Staton v. Boeing Co.</i> , 327 F.3d 938 (9th Cir. 2003).....	9
20	
21 <i>Tait v. BSH Home Appliances Corp.</i> , No. SACV 10-0711-DOC (ANx), 2015 WL 4537463 (C.D. Cal. July 27, 2015).....	10
22 <i>Thomas v. MagnaChip Semiconductor Corp.</i> , No. 14-CV-01160-JST, 2018 WL 2234598 (N.D. Cal. May 15, 2018)	10, 20
23	
24 <i>Unutoa v. Interstate Hotels & Resorts, LLC</i> , No. 2:14-cv-09809-SVW-PJW, 2016 WL 7496127 (C.D. Cal. Aug. 23, 2016)	10
25 <i>Van Lith v. iHeartMedia + Entertainment, Inc.</i> , No. 1:16-cv-00066-SKO, 2017 WL 4340337 (E.D. Cal. Sept. 29, 2017).....	17
26	
27 <i>Virgin America, Inc., et al., v. Bernstein, et al.</i> , U.S. Supreme Court No. 21-260	2, 14
28 <i>Vizcaino v. Microsoft Corp.</i> , 290 F.3d 1043 (9th Cir. 2002).....	passim

TABLE OF AUTHORITIES

	Page(s)
1 <i>Wallace v. Countrywide Home Loans, Inc.</i> ,	
2 No. SACV 08-1463-JLS (MLGx), 2015 WL 13284517 (C.D. Cal. Apr. 17, 2015)	15
3 <i>Williams v. MGM-Pathe Commc’ns Co.</i> ,	
4 129 F.3d 1026 (9th Cir. 1997).....	11
5 <i>Williamson v. McAfee, Inc.</i> ,	
6 No. 5:14-cv-00158-EJD, 2017 WL 6033070 (N.D. Cal. Feb. 3, 2017).....	9
7 <i>Willner v. Manpower Inc.</i> ,	
8 No. 11-cv-02846-JST, 2015 WL 3863625 (N.D. Cal. June 22, 2015)	17
9 <i>Wilson v. SkyWest</i> ,	
10 No. 19-cv-01491-VC, 2022 WL 1601410 (N.D. Cal. Jan. 31, 2022).....	13
11 Statutes	
12 49 U.S.C.	
13 §§ 41713 et seq.	14
14 Other Authorities	
15 5 William B. Rubenstein, <i>Newberg and Rubenstein on Class Actions</i>	
16 §§ 15:62, 15:65 (6th ed.).....	10
17	
18	
19	
20	
21	
22	
23	
24	
25	
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MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

Plaintiffs Cody Meek, Coryell Ross, and Jeremy Barnes (the “Class Representatives”), through undersigned Class Counsel, respectfully move the Court for an attorneys’ fee award of \$1,216,550, which is 29% of the \$4.195 million, non-reversionary Settlement Fund that Defendants SkyWest Inc. and SkyWest Airlines, Inc. (together, “SkyWest” or “Defendants”) have agreed to pay to settle this class action. *See* ECF No. 193-1, Ex. 1, Stipulation of Class Settlement Release Between Plaintiffs and Defendants (“Settlement Agreement” or “SA”). Plaintiffs’ further seek reimbursement of reasonable litigation expenses in the amount of \$145,029.59 that was incurred by Class Counsel, and Incentive Awards of \$5,000 to each of the three Class Representatives.

As discussed in more detail below, under Ninth Circuit and other relevant authority the requested fees, payment of litigation expenses and incentive awards are fair and reasonable. This litigation spanned five years, involved substantial investigation, discovery, motion practice, expert work, trial preparations and protracted settlement negotiations. Moreover, the legal issues were complex, heavily litigated and precarious in light of pending U.S. Supreme Court cases involving the preemption of California’s Labor Code under federal law. Despite these challenges, Class Counsel and the Class Representatives pursued litigation for five years and ultimately prevailed at the class certification stage, obtaining class certification for many of the core claims. By the time of settlement (reached just weeks before trial), fact and expert discovery was complete, multiple dispositive motions had been briefed and argued, and Class Counsel well knew the strengths of the case and the risks of trial. With that basis of knowledge, Class Counsel secured a favorable settlement of \$4.195 million for the 2,361 Settlement Class Members—a notable result considering that many other plaintiffs asserting wage and hour claims against SkyWest have repeatedly failed.

Through it all, the Class Representatives remained diligently involved, from the pre-complaint investigation, through discovery, briefings, class certification, and mediations. They did so while incurring significant risk to their professional reputations and employment prospects. The history of this litigation and the collective time, effort and expense by the Class Representatives and Class Counsel warrant the granting of the fees, expenses, and incentive awards requests herein.

1 **II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND**

2 **A. SUMMARY OF THE LITIGATION**

3 This consolidated class action was originally initiated in February 2017 by Cody Meek.² It
4 was eventually consolidated with an action filed by Jeremy Barnes and Coryell Ross (formerly
5 Case No. 3:17-cv-04182). Both cases alleged causes of action on behalf of a putative class of
6 SkyWest Frontline Employees for unpaid minimum wages, overtime, meal and rest break
7 violations, and associated penalties. *See* ECF No. 112. In the Consolidated Class Action
8 Complaint, Plaintiffs alleged comprehensive facts to support a total of eight causes of action.³ *Id.*

9 **B. CLASS CERTIFICATION AND ONGOING LITIGATION EFFORTS**

10 On September 29, 2021, the Court issued its order on Plaintiffs' Motion for Class
11 Certification (ECF No. 134), certifying Plaintiffs' proposed class of: "All individuals currently or
12 formerly employed by SkyWest Airlines, Inc. and SkyWest, Inc. as Frontline Employees who
13 worked on the ground and were paid on an hourly basis for at least one shift in the State of California
14 at any time from February 27, 2013, through October 18, 2020... ." on Plaintiffs' Meal Period and
15 Rest Period Claims as well as the derivative Waiting Time Penalty and UCL Violation claims. ECF
16 No. 167 at 14-15. The Court did not certify Plaintiffs' Grace Period Claim for underpayment of
17 wages for time recorded in the payroll system at the beginning of the work shift, but that was not
18 compensated. *Id.* While Class Certification was a procedural victory for the Class, success at the
19 impending trial remained uncertain. The posture of a number of other airline wage and hour cases,
20 some of which seemed destined for the U.S. Supreme Court, presented substantial risks to the class
21 claims. *See, e.g., Virgin America, Inc., et al., v. Bernstein, et al.*, U.S. Supreme Court No. 21-260;
22 Joint Decl., ¶ 29.

23 Notwithstanding these risks, Class Counsel continued to aggressively litigate the case on
24 behalf of the class. Following the Order on Class Certification, the parties conducted additional
25

26 ² Plaintiffs set forth the Factual and Procedural History in more detail in the Renewed Motion for
27 Preliminary Approval, and the accompanying Joint Declaration of Counsel at ¶¶ 1-10. ECF Nos.
193; 193-1.

28 ³ The Consolidated Class Action Complaint was the fourth complaint filed. The first being filed by
Plaintiff Meek, followed by an amended complaint, then followed by the complaint of Plaintiff
Barnes and Ross.

1 fact and expert discovery, and, with a trial date in January 2022, began trial preparations by drafting
2 pre-trial submissions and motions *in limine* that were imminently due before the pre-trial
3 conference set for January 6, 2022.

4 **C. SUMMARY OF THE SETTLEMENT NEGOTIATIONS**

5 The parties engaged in substantial settlement negotiations that included an in-person
6 settlement conference with Magistrate LaPorte in 2018, multiple settlement conference calls with
7 Magistrate Hixson, and two full day virtual mediations with Judge Andrew Guilford (Ret.), as well
8 as follow up negotiations between counsel before reaching a final settlement in December 2021.
9 Joint Decl., ¶ 10. By this time, both fact and expert discovery was completed, multiple motions
10 briefed, certain claims lost, and the parties were on the cusp of trial. Thus, in negotiating the
11 settlement, Class Counsel had the benefit of a thorough understanding of the relative strengths and
12 weaknesses of the remaining claims. Joint Decl., ¶¶ 28-31. Of note, the \$4.195 million is a strong
13 recovery of the remaining class claims given the considerable risks posed by trial, the potential for
14 claim-defeating case law from the U.S. Supreme Court, and the prospect of decertification and
15 appeals. *Id.*, ¶¶ 11-18, 28-31. Moreover, based on SkyWest's records the universe of Class
16 Members is known to be 2,361, of which approximately 400 did not work an eligible shift. *Id.*,
17 ¶12. Accordingly, for the 1950 Settlement Class Members who will automatically receive a
18 payment *without* filing a claim, the \$4.195 million provides a recovery of approximately \$2,150
19 per person before deductions for fees and costs, or approximately \$1,320 after deductions of those
20 estimated amounts. *Id.* Those estimated recoveries will actually *increase* because those estimates
21 account for a 33% attorneys' fees award and \$180,000 in expenses and Plaintiffs are seeking less
22 than those amounts. With Class Members who made roughly \$14 per hour during the Class Period,
23 \$2,150 is roughly 150 hours of work—or nearly 4 weeks (or one month) of full-time work. This is
24 a significant amount of money for Settlement Class Members that was achieved through the work
25 performed by Class Counsel and the Class Representatives described below.

26 **D. SUMMARY OF THE WORK PERFORMED BY CLASS COUNSEL**

27 Litigation of these claims spanned five years and all stages of the case were vigorously
28 contested. During this time, Class Counsel expended over 4,500 hours, which included time spent

1 on the following:

- 2 • **Investigation** and research into the potential claims in this case which included
3 interviewing potential plaintiffs and class members, reviewing their payroll records
4 and employment related documents, researching the applicable legal theories that
5 included issues pertaining to collective bargaining agreements, issuing FOIA
6 requests to airport agencies and reviewing their productions, drafting and issuing
7 pre-suit demand letters, and drafting and filing the initial complaints in the *Meek*
8 and the *Barnes* Actions.
- 9 • **Dispositive motion** practice at the outset of the litigation that included multiple
10 rounds of motion to dismiss briefing on issues pertaining to SkyWest's collective
11 bargaining and preemption defenses.
- 12 • **Summary judgment** cross-motion practice that was specifically requested by the
13 Court on whether there was a valid collective bargaining agreement, that included
14 special rounds of written discovery (including substantial discovery disputes),
15 document productions, and initial depositions in Los Angeles, California of
16 SkyWest/SAFA personnel and Plaintiff Cody Meek in October 2018.
- 17 • **Consolidation** of the related cases after resolution of initial dispositive motions, as
18 well as general case management activities such as preparing and submitting case
19 management statements and schedules, stipulations to address administrative and
20 scheduling issues, and conferences between counsel to discuss strategy and assign
21 projects/manage workflows.
- 22 • **Discovery** that included written discovery, substantial document and data
23 productions, and depositions summarized as follows:
 - 24 ○ SkyWest propounded two sets of document requests on Plaintiffs totaling 25
25 requests per Plaintiff and two sets of interrogatories on Plaintiffs that
26 constituted 24 interrogatories per Plaintiff.
 - 27 ○ Plaintiffs propounded four set of document requests totaling 47 requests,
28 three sets of interrogatories totaling 20 interrogatories, and two sets of

1 requests for admission totaling 15 requests for admission.

- 2 ○ Plaintiffs produced over 1,000 pages of documents including materials
3 received in response to FOIA requests, as well as employment records and
4 social media posts.
- 5 ○ SkyWest produced over 27,000 pages of documents that included payroll
6 and personnel information, collective bargaining agreements and related
7 documents, and SkyWest's policies and procedures. SkyWest also produced
8 gigabytes of data that included employee and flight scheduling information
9 and payroll data.
- 10 ○ Depositions of each named Plaintiff, including a second deposition of
11 Plaintiff Meek in October 2020. Plaintiffs took another round of six
12 depositions of current and former SkyWest personnel between October 2020
13 and January 2021 pursuant to 30(b)(6) and in their individual capacity,
14 including Janice Cooper, Tufi Naea, Lori Hunt, Christina Sherman, Greg
15 Atkin, and Harmar Denny (who had to be subpoenaed).
- 16 ○ Much of the discovery was contentious and required continual meeting and
17 conferring that often resulted in supplemental productions or discovery
18 responses, and sometimes the Parties had to take issues to the Court for
19 resolution.
- 20 ● **Expert reports and discovery** that included Plaintiffs issuing two reports from
21 payroll damages expert David Breshears, CPA, and SkyWest issuing three reports
22 from two experts, Darrin Lee and Dr. Ali Saad. All of the Parties experts were
23 deposed in November 2021.
- 24 ● **Class certification** proceedings that included substantial briefing, expert reports,
25 and the interviews and drafting of declarations for dozens of SkyWest workers, as
26 well as a hearing in August 2022.
- 27 ● **Summary judgment** proceedings in tandem with class certification briefing that
28 also went to hearing in August 2022.

- 1 • **Settlement conferences** and negotiations that included an in-person settlement
2 conference with Magistrate LaPorte in 2018, multiple settlement conference calls
3 with Magistrate Hixson, and two full day virtual mediations with Judge Guilford
4 (Ret.), as well as follow up negotiations between counsel.
- 5 • **Settlement** documentation including drafting the settlement agreement, class
6 notices, determining the plan of allocation, and drafting and filing two motions for
7 preliminary approval. Additional time is currently being expended implementing
8 the settlement, conferring with Settlement Class Members, and managing the
9 settlement administrator.
- 10 • **Trial preparations** -- This case only settled about six weeks before the January
11 2022 trial date and the Parties were already filing and defending *Daubert* motions
12 to exclude their opposing experts, preparing trial plans, engaging in meet and
13 confers and drafting briefs and pre-trial submissions in accordance with the Court's
14 standing orders that included motions *in limine*, witness and exhibit lists, and other
15 strategy issues.
- 16 • **Court appearances** for motion hearings and case management conferences, which
17 required preparing and travel time.
- 18 • **Communications** with Plaintiffs and Settlement Class Members during the course
19 of the litigation, who were very active and inquisitive about the status of the case
20 and how they could assist the litigation.

21 See Joint Decl., ¶ 23.

22 As set forth above, this case was fully litigated from start to finish and required a substantial
23 amount of attorneys' time and resources. A summary of the hours and total lodestar of the work
24 performed by Class Counsel in this case totals \$3.505 million:

FIRM	HOURS	LODESTAR
Milberg Coleman Bryson Phillips Grossman, PLLC	2,514	\$1,907,413.40
Simmons Hanly Conroy LLC	516.55	\$469,692.50
Kaplan Fox & Kilsheimer LLP	1,545.6	\$1,128,729.50
TOTAL	4,576.15	\$3,505,835.40

28 Joint Decl., ¶ 23. A further breakdown of Class Counsel's time by each billing attorney and

1 paralegal and their hourly rates is contained in the Joint Declaration. *Id.*, ¶ 24.

2 In litigating this case, Class Counsel also incurred over \$145,029.59 in litigation expenses,
3 which includes travel expenses for court appearances and depositions, experts' and consultants'
4 fees, deposition transcript costs, legal research and mediation expenses. A summary of the
5 expenses incurred to date includes:

6 CATEGORY	MILBERG 7 COLEMAN	SIMMONS 8 HANLY	KAPLAN FOX	TOTAL
9 Telephone, Conference Calls 10 and Facsimiles	\$42.65	\$0.00	\$0.00	\$42.65
11 Court Costs, Filing Fees and 12 Transcripts	\$8,346.32	\$400.00	\$7,385.83	\$16,132.15
Experts/Consultants	\$24,803.38	\$23,916.75	\$28,523.00	\$77,243.13
Mediation Fees	\$15,500.00	\$0.00	\$0.00	\$15,500.00
Delivery/Courier	\$122.72	\$310.00	\$1,251.64	\$1,684.36
Travel and Meals	\$3,399.10	\$11,327.82	\$5,669.53	\$20,396.45
Legal Research	\$2,209.66	\$0.00	\$9,355.23	\$11,564.89
Service of Process	\$768.26	\$429.70	\$1,268.00	\$2,465.96
TOTAL	\$55,192.09	\$36,384.27	\$53,453.23	\$145,029.59

13 Joint Decl., ¶ 26.

14 E. THE CLASS REPRESENTATIVES' COMMITMENT TO THE LITIGATION

15 Each Class Representative expended considerable time, expense and risk in pursuing this
16 class action and putting themselves forth as the named plaintiffs. The Class Representatives
17 assisted with the pre-complaint investigation, providing critical factual information to assist Class
18 Counsel. Meek Decl., ¶ 4; Ross Decl., ¶ 4 Barnes Decl., ¶ 4; Joint Decl., ¶ 27. Throughout the
19 litigation, the Class Representatives maintained contact with Class Counsel, responded to numerous
20 discovery requests, prepared for and sat through day-long depositions, remained on call for
21 mediations and settlement, and conferred with Class Counsel on the settlement proposals to ensure
22 the best results for the class. Meek Decl., ¶¶ 5, 9; Ross Decl., ¶ 5, 10; Barnes Decl., ¶¶ 5, 10; Joint
23 Decl., ¶ 27. Plaintiff Meek was actually deposed twice, including once in Los Angeles, California
24 that required travel. Meek Decl., ¶ 5. Similarly, Plaintiff Ross used vacation time at his current
25 job to travel from Detroit, Michigan to the San Francisco Bay Area during the COVID-19 pandemic
26 for his deposition and preparations. Ross Decl., ¶ 5. Plaintiff Barnes worked with many of the
27 Settlement Class Members at another airline and was frequently asked about the status of the
28 litigation and referred them to Class Counsel as needed. Barnes Decl., ¶ 6. The Class

1 Representatives were integral in getting other Settlement Class Members to come forward and
2 submit declarations in support of Plaintiffs' successful class certification motions. Ross Decl., ¶ 6;
3 Barnes Decl., ¶ 6; Joint Decl., ¶ 27. They each estimate spending over 100 hours diligently assisting
4 with this litigation. Meek Decl., ¶ 10; Ross Decl., ¶ 11; Barnes Decl., ¶ 11.

5 Additionally, the Class Representatives were exposed to certain risks by being a Plaintiff in
6 this case. Meek Decl., ¶¶ 7-9; Ross Decl., ¶¶ 7-9; Barnes Decl., ¶¶ 7-9. They each knew that suing
7 a former employer would be a matter of public record after filing the lawsuit. *Id.* They were
8 concerned that they would suffer adverse consequences from SkyWest as a result of asserting the
9 wage and hour claims on behalf of their co-workers and that by filing the lawsuit they risked my
10 future employment prospects because if a potential employer discovered (for example, through a
11 simple Google search) that they had initiated a class action lawsuit against their employer, they
12 may choose not to interview or hire them. *Id.* They continue to be worried that a current, potential,
13 or future employer will discriminate, retaliate, or perceive them negatively because of their
14 involvement in this lawsuit. *Id.* If they were to lose their ability to get work and income because
15 of their participation in this suit, it would have a very negative impact on their lives and careers.
16 *Id.* Nonetheless, they were willing to take the risks associated with acting as a class representative
17 because they believed SkyWest needed to fairly pay its workers and provide them breaks. *Id.* And,
18 each Plaintiff is executing a Personal Release against SkyWest that is broader than that for the
19 Settlement Class Members that will preclude Plaintiffs from participating in or recovering from
20 other potential actions. Joint Decl., ¶ 27; Settlement Agreement, ¶ 21. Class Counsel also submit
21 that each Plaintiff has devoted substantial time to the case and have been exemplary Class
22 Representatives. Joint Decl., ¶ 27.

23 **III. REQUESTED AWARDS**

24 Plaintiffs respectfully request 29% of the gross settlement amount, or \$1,216,550, in
25 attorneys' fees. The Settlement Agreement permits an award of attorneys' fees up to 33%. SA ¶
26 15(b). Accordingly, the 29% requested is less than that permitted under the Settlement Agreement
27 but is modestly above the Ninth Circuit benchmark of 25% in common fund cases such as this. As
28 set forth below, the requested fee is fair and reasonable in light of the recovery, the tremendous

1 time, expense, and efforts expended by Class Counsel, the risks to Class Counsel in representing
2 plaintiffs on a contingent basis, and prevailing attorneys' fee jurisprudence in this District and
3 Circuit. A lodestar cross-check further supports the reasonableness of the requested fee, which
4 shows a *negative* multiplier of 0.34 for Class Counsel because their lodestar is approximately
5 \$3.505 million. Additionally, Class Counsel seek reimbursement of only routine litigation
6 expenses that amount to \$145,029.59 for a five-year litigation. And, Plaintiffs seek an Incentive
7 Award of \$5,000 for each Class Representative.

8 **IV. ARGUMENT**

9 **A. PERCENTAGE OF THE FUND METHOD IS THE MOST APPROPRIATE** 10 **METHOD FOR CALCULATING REASONABLE ATTORNEYS' FEES IN** 11 **THIS COMMON FUND CASE**

12 Under the "common fund" doctrine, "a litigant or a lawyer who recovers a common fund
13 for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee
14 from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *accord Fleming*
15 *v. Impax Labs. Inc.*, No. 16-cv-06557-HSG, 2022 WL 2789496, at *7 (N.D. Cal., July 15, 2022).
16 Where, as here, Class Counsel's work has created a common fund, the doctrine of unjust enrichment
17 entitles them to reasonable attorneys' fees from the fund. *Staton v. Boeing Co.*, 327 F.3d 938, 967
18 (9th Cir. 2003) ("common fund doctrine permits the court to award attorneys' fees from monetary
19 payments that the prevailing party recovered in the lawsuit"); *Van Gemert*, 444 U.S. at 478; *Impax*
20 *Labs.*, 2022 WL 2789496, at *7 (purpose of "common fund" doctrine is to avoid unjust enrichment
21 at expense of "lawyers whose skill and effort helped create it") (internal citations omitted).

22 Under Ninth Circuit law, "the district court has discretion in common fund cases to choose
23 either the percentage-of-the-fund or the lodestar method." *Vizcaino v. Microsoft Corp.*, 290 F.3d
24 1043, 1047 (9th Cir. 2002); *accord Williamson v. McAfee, Inc.*, No. 5:14-cv-00158-EJD, 2017 WL
25 6033070, at *1 (N.D. Cal. Feb. 3, 2017). However, the percentage-of-the-fund method is preferred
26 in common fund cases. *In re Korean Air Lines Co., Ltd. Antitrust Litig.*, No. CV 07-05107 SJO
27 AGRX, 2013 WL 7985367, at *1 (C.D. Cal. Dec. 23, 2013) ("use of the percentage-of-the-fund
28 method in common-fund cases is the prevailing practice in the Ninth Circuit for awarding attorneys'
fees and permits the Court to focus on a showing that a fund conferring benefits on a class was

1 created through the efforts of plaintiffs' counsel[)]; *Bellinghausen v. Tractor Supply Co.*, 306
2 F.R.D. 245, 260 (N.D. Cal. Mar. 20, 2015) (“[b]ecause this case involves a common settlement
3 fund with an easily quantifiable benefit to the class, the Court will primarily determine attorneys’
4 fees using the benchmark method but will incorporate a lodestar cross-check to ensure the
5 reasonableness of the award.”); *Unutoa v. Interstate Hotels & Resorts, LLC*, No. 2:14-cv-09809-
6 SVW-PJW, 2016 WL 7496127, at * 3 (C.D. Cal. Aug. 23, 2016) (“California Supreme Court has
7 recently affirmed that the percentage method is a valid approach to calculating attorneys’ fees in
8 California, especially in common fund cases . . . as it provides the simplest method of determining
9 a reasonable fee award when the value of the settlement fund is definite and therefore is most likely
10 to achieve a reasonable result”) (citations omitted).

11 Courts often prefer the percentage method because it confers “significant benefits . . .
12 including consistency with contingency fee calculations in the private market, aligning the lawyers’
13 interests with achieving the highest award for the class members, and reducing the burden on the
14 courts that a complex lodestar calculation requires.” *Tait v. BSH Home Appliances Corp.*, No.
15 SACV 10-0711-DOC (ANx), 2015 WL 4537463, at *11 (C.D. Cal. July 27, 2015); *see* 5 William
16 B. Rubenstein, *Newberg and Rubenstein on Class Actions* §§ 15:62, 15:65 (6th ed.) (courts
17 generally employ the percentage method with a lodestar cross-check).

18 The nature of this class action warrants application of percentage-of-the-fund approach, the
19 principal and “prevailing practice in the Ninth Circuit” to determine the reasonableness of
20 Settlement Class Counsel’s fee request. *Korean Air Lines*, 2013 WL 7985367, at *1. Where the
21 “benefit to the class is easily quantified in common-fund settlements,” district courts may “award
22 attorneys a percentage of the common fund in lieu of the often more time-consuming task of
23 calculating the lodestar.” *Thomas v. MagnaChip Semiconductor Corp.*, No. 14-CV-01160-JST,
24 2018 WL 2234598, at *3 (N.D. Cal. May 15, 2018) (citing *In re Bluetooth Headset Prods. Liab.*
25 *Litig.*, 654 F.3d 935, 942 (9th Cir. 2011)).

26 Here, the \$4,195,000 Settlement Fund is non-reversionary and will be fully distributed to
27 Settlement Class Members without the need to file any claims, and therefore the amount is fixed
28 and easily quantifiable. This weighs in favor of employing the percentage of the fund method. *Id.*

B. THE REQUESTED FEE AWARD IS REASONABLE

In applying the percentage of the fund method, the Ninth Circuit has established 25% as a benchmark, which may be adjusted up or down depending on the circumstances of a case. *Vizcaino*, 290 F.3d at 1047; *Powers v. Eichen*, 229 F.3d 1249, 1257 (9th Cir. 2000); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998); *Williams v. MGM-Pathe Commc'ns Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997). The 25% benchmark is “of the total settlement value, including both monetary and non-monetary recovery.” *Kumar v. Salov N. Am. Corp.*, No.:14-CV-2411-YGR, 2017 WL 2902898, at * 7 (N.D. Cal. July 7, 2017) (citing *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F. 2d 1301, 1311 (9th Cir. 1990)). That benchmark represents “a starting point for analysis” and “[s]election of the benchmark or any other rate must be supported by findings that take into account all of the circumstances of the case.” *Vizcaino*, 290 F.3d at 1048. Here, the requested fee amount of 29% is within “the usual range” in common fund cases. *Vizcaino*, 290 F.3d at 1047; see *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1047 (N.D. Cal. Jan. 9, 2008) (“in most common fund cases, the award exceeds that [25 percent] benchmark”).

In determining whether to depart from the 25% benchmark, courts consider: “(1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made in similar cases.” *In re Lenovo Adware Litig.*, No. 15-md-02624-HSG, 2019 WL 1791420, at *8 (N.D. Cal. Apr. 24, 2019) (citing *Vizcaino*, 290 F.3d at 1050–51); *In re Nexus 6P Prods. Liab. Litig.*, No. 17-cv-02185-BLF, 2019 WL 6622842, at *11 (N.D. Cal. Nov. 12, 2019) (same).

Each of these factors compels the conclusion that a modest upward adjustment from 25% to 29% is warranted because of the risky, novel legal issues pertaining to the airline industry presented in this case, the length of the proceedings and the vigorous defense that was mounted, and the success in this matter where prior plaintiffs against SkyWest have failed.

1. Class Counsel Achieved Favorable Results for the Class

“The overall result and benefit to the class from the litigation is the most critical factor in

1 granting a fee award.” *Omnivision Techs.*, 559 F. Supp. 2d at 1046.⁴ Here, the \$4.195 Settlement
 2 Fund million is a substantial recovery. Moreover, based on SkyWest’s records the universe of
 3 Class Members is known to be 2,361, of which approximately 400 did not work an eligible shift.
 4 Joint Decl., ¶12. Accordingly, for the 1950 Settlement Class Members who will automatically
 5 receive a payment *without* filing a claim, the \$4.195 million provides a recovery of approximately
 6 \$2,150 per person before deductions for fees and costs, or approximately \$1,320 after deductions
 7 of those estimated amounts. *Id.* With Class Members who made roughly \$14 per hour during the
 8 Class Period, \$2,150 is roughly 150 hours of work—or nearly 4 weeks (or one month) of full-time
 9 work. And, those estimated recoveries would actually increase by roughly \$85 (or 4%) because
 10 those estimates account for a 33% attorneys’ fees award and Plaintiffs are only seeking 29%.

11 Further, the Settlement also guarantees an immediate recovery of an amount much greater
 12 than the theoretical recovery a Class Member could have recovered had Plaintiffs prevailed at trial.
 13 Accordingly, the Court’s reliance on these figures must be tempered by the additional costs and
 14 delay of trial coupled with the risk that Plaintiffs could prove liability yet still recover nothing. *See,*
 15 *e.g., Schaffer v. Litton Loan Serv., LP.*, No. CV 05-07673 MMM (JCx), 2012 WL 10274679, at
 16 *11 (C.D. Cal. Nov. 13, 2012) (“Estimates of what constitutes a fair settlement figure are tempered
 17 by factors such as the risk of losing at trial, the expense of litigating the case, and the expected
 18 delay in recovery (often measured in years)”).

19 2. Class Counsel Undertook the Litigation at Substantial Risk

20 The risk associated with the litigation is also a key consideration in determining whether a
 21 requested fee award is reasonable. *Vizcaino*, 290 F.3d at 1048; *Eashoo v. Iovate Health Scis.*
 22 *U.S.A., Inc.*, No. CV 15-01726 BRO (PJWx), 2016 WL 6205785, at *9 (C.D. Cal. Apr. 5, 2016)
 23 (“[t]he risk that further litigation might result in no recovery is a significant factor in assessing the
 24 fairness and reasonableness of an award of attorneys’ fees”) (quotation marks and citation omitted).

25 No assurances existed that Plaintiffs would have prevailed at trial. *In re Facebook*
 26 *Biometric Info. Privacy Litig.*, 522 F. Supp. 3d 617, 626 (N.D. Cal. Feb. 26, 2021) (“[a]ll good trial

27 _____
 28 ⁴ The Supreme Court has said the same thing in the civil rights fee-shifting context. *See Hensley v. Eckerhart*, 461 U.S. 424, 440 (1983) (“extent of a plaintiff’s success is a crucial factor in determining” attorneys’ fees award).

1 lawyers and judges know that it is a fool’s errand to predict a jury verdict. Consequently, it makes
2 little sense to say that a payout to class members is adequate or not because there is a 5% or 65%
3 chance of success at trial”).

4 While an initial take may indicate that this was a garden variety wage and hour class
5 action—it was not. The airline industry has long claimed various defenses to claims under the
6 California Labor Code under the federal laws such as Railway Labor Act and the Airline
7 Deregulation Act, both of which were at issue in this case. Invoking those federal laws, SkyWest
8 (and its longstanding counsel at Jones Day) had defeated many plaintiffs in prior litigations
9 asserting the same claims brought by Plaintiffs here. *See, e.g., Blackwell v. SkyWest Airlines, Inc.*,
10 2008 WL 5103195 (S.D. Cal. Dec. 3, 2008); *Fitz-Gerald v. SkyWest Airlines, Inc.*, 155 Cal. App.
11 4th 411 (2007); Joint Decl., ¶ 29. Thus, it was far from certain Plaintiffs would even get past a
12 motion to dismiss, and the record here is clear it took nearly *three years* for the case to advance
13 past initial dispositive motions.

14 From there, the litigation was heavily contested and at the time of settlement, SkyWest had
15 already prevailed on summary judgment on two of Plaintiffs’ claims, was vigorously challenging
16 the waiting time penalties claim as well as the damages valuation for the meal and rest period
17 claims. Indeed, SkyWest filed a motion to strike Plaintiffs’ damages report that could have
18 unwound Plaintiffs’ case—and in that motion SkyWest indicated a motion for decertification was
19 imminent. ECF No. 178. In fact, during the pendency of this case, a similar case against SkyWest
20 was pending in the Northern District before Judge Vincent Chhabria in which the plaintiffs were
21 represented by a very experienced wage and hour attorney and SkyWest was represented by the
22 same counsel in this case. *Wilson v. SkyWest*, No. 19-cv-01491-VC (N.D. Cal.). In that case,
23 SkyWest defeated class certification and the plaintiffs settled individually—making Plaintiffs
24 achievement in this case unique. *Wilson v. SkyWest*, No. 19-cv-01491-VC, 2022 WL 1601410
25 (N.D. Cal. Jan. 31, 2022).

26 It is also not an understatement to say that the legal landscape regarding airlines’ potential
27 liability under the California Labor Code presented a precarious situation for Plaintiffs in the
28 litigation. For example, SkyWest had maintained throughout the litigation that California’s wage

1 and hour laws were preempted by the Airline Deregulation Act, 49 U.S.C. §§ 41713 *et seq.* Indeed,
2 on November 15, 2021, while the Parties were in the midst of settlement negotiations, the Supreme
3 Court issued a call for the view of the United States Solicitor General in a case involving California
4 airline workers that was pending a cert petition. *See Virgin America, Inc., et al., v. Bernstein, et*
5 *al.*, U.S. Supreme Court No. 21-260. Joint Decl., ¶ 29. Had the Supreme Court taken up the matter
6 after getting the Solicitor General’s view, it could have had many potential outcomes, along with
7 uncertainty and delay. *Id.* Further, the airline industry as a whole had banded forces in filing
8 amicus curiae briefs to get adverse Ninth Circuit and District Court opinions reversed via the *Virgin*
9 *America* case—making the Settlement here a notable achievement in light of the pending appellate
10 issues and industry stance to defend these cases to the teeth. *Id.* While the petition for writ of
11 certiorari was not denied until June 30, 2022, it was a serious risk that Plaintiffs here were facing
12 at the time of litigation and pre-trial proceedings. 142 S. Ct. 2903 (Mem) (Jun. 30, 2022).

13 These real and unique litigation risks weigh in favor of granting the requested fee award.
14 *Bower v. Cycle Gear, Inc.*, No. 14-cv-02712-HSG, 2016 WL 4439875, at *7 (N.D. Cal. Aug. 23,
15 2016) (considerable risks related to obtaining class certification, surviving summary judgment,
16 prevailing at trial, and “withstanding a potential appeal”); *Destefano v. Zynga, Inc.*, No. 12-cv-
17 04007-JSC, 2016 WL 537946, at *17 (N.D. Cal. Feb. 11, 2016) (noting “substantial” risk associated
18 with “obtaining [and maintaining] class certification”); *Roberti v. OSI Sys., Inc.*, No. CV-13-09174
19 MWF (MRW), 2015 WL 8329916, at *6 (C.D. Cal. Dec. 8, 2015) (defendant’s “vigorous
20 opposition” represented “substantial” risk weighing in favor of the requested attorney’s fees).

21 3. The Litigation Required Skill and High-Quality Work

22 This case’s history shows that Class Counsel’s experience, and the skill they brought to bear
23 in this case, resulted in key successes for the class and favor the 29% fee award. *See, e.g., Nexus*
24 *6P*, 2019 WL 6622842, at *12 (finding class counsel’s experience and expertise in proved
25 particularly beneficial in this action and factored an upward adjustment”) (citing *Zepeda v. PayPal,*
26 *Inc.*, No. C 10-1668 SBA, 2017 WL 1113293, at *20 (N.D. Cal. Mar. 24, 2017)).

27 The quality of Class Counsel’s representation is reflected in the work they performed
28 throughout the case, in obtaining class certification, and, ultimately, in the favorable settlement.

1 See *Moreyra v. Fresenius Med. Care Holdings, Inc.*, No. SACV 10-517 JVS (RZx), 2013 WL
2 12248139, at *3 (C.D. Cal. Aug. 7, 2013) (noting that the result is “[t]he single clearest factor
3 reflecting the quality of class counsels’ services”) quoting *In re Heritage Bond Litig.*, No. 02-ML-
4 1475-DT(RCX), 2005 WL 1594389, at *12 (C.D. Cal. June 10, 2005); *Wallace v. Countrywide*
5 *Home Loans, Inc.*, No. SACV 08-1463-JLS (MLGx), 2015 WL 13284517, at *9 (C.D. Cal. Apr.
6 17, 2015) (noting customary factors reflecting counsel’s skill such as developing the facts and legal
7 claims, conducting discovery, reviewing documents, retaining experts, motion practice, and
8 negotiating and drafting the settlement).

9 As discussed above, the Settlement was hard-won. The litigation was difficult, the legal
10 issues complex, and the settlement negotiations protracted. But notwithstanding these challenges,
11 Class Counsel worked tirelessly to litigate the case and to obtain a favorable resolution. *Moreyra*,
12 2013 WL 12248139, at *3 (observing that counsel’s skill was reflected in “diligently investigating
13 and developing the claims”; “efficient discovery”; and “well-researched legal arguments”). Over
14 the course of five years, Class Counsel advanced the litigation in the face of multiple motions to
15 dismiss, motions for summary judgment, and class certification opposition. As mentioned above,
16 Plaintiffs here succeeded where many other plaintiffs suing SkyWest did not—demonstrating a
17 skill and tenacity that supports a fee award.

18 All the efforts made put Class Counsel in the best possible position to negotiate a favorable
19 resolution for the class. *Barbosa v. Cargill Meat Sols. Corp.*, 297 F.R.D. 431, 449 (E.D. Cal. 2013)
20 (class counsel used their “specialized skill” in the particular area of law which represented an asset
21 to class members and weighed in favor of the fee request); *Omnivision Techs.*, 559 F. Supp. 2d at
22 1047 (“[t]hat Plaintiffs’ case withstood two such motions, despite other weaknesses, is some
23 testament to Lead Counsel’s skill. This factor also supports the requested fee.”); *In re Heritage*
24 *Bond Litig.*, No. 02-ML-1475 DT, 2005 WL 1594403, at *19 (C.D. Cal. June 10, 2005) (fact
25 investigation, detailed complaints, extensive motion practice, review of numerous documents, and
26 the taking of multiple depositions demonstrated class counsel’s legal skills); *Lenovo*, 2019 WL
27 1791420, at *8 (noting favorable result given that the case had “been actively litigated for the past
28 four years, and required complex legal and factual research and analysis by Class Counsel”).

1 The quality of opposing counsel should also be considered when evaluating the performance
 2 of Class Counsel.) *In re Am. Apparel, Inc. Shareholder Litig.*, No. 10-cv-06352 MMM (JCGx),
 3 2014 WL 10212865, at *22 (C.D. Cal. July 28, 2014 (“[i]n addition to the difficulty of the legal
 4 and factual issues raised, the court should also consider the quality of opposing counsel as a measure
 5 of the skill required to litigate the case successfully”) (citing *Wing v. Asarco Inc.*, 114 F.3d 986,
 6 989 (9th Cir. 1997)). SkyWest’s lawyers from Jones Day (one of the largest law firms in the world)
 7 have substantial experience defending airline wage and hour cases, have defeated many other cases
 8 brought by SkyWest’s workers, and possess abundant resources. This factor, therefore, weighs in
 9 favor of the requested fee award. *See Heritage Bond*, 2005 WL 1594403, at *20 (“no dispute that
 10 the plaintiffs in this litigation were opposed by highly skilled and respected counsel with well-
 11 deserved local and nationwide reputations for vigorous advocacy in the defense of their clients”).

12 4. Class Counsel Worked for Five Years on a Fully Contingent Basis

13 The contingency fee market paradigm also supports the 29% fee request. “[W]hen counsel
 14 takes cases on a contingency fee basis, and litigation is protracted, the risk of non-payment after
 15 years of litigation justifies a significant fee award.” *Bellinghausen*, 306 F.R.D. at 261; *see also*
 16 *Newell v. Ensign U.S. Drilling (Cal.) Inc.*, No. 1:19-cv-01314-JLT-BAK, 2022 WL 2704551, at
 17 *10 (E.D. Cal. July 12, 2022) (“[t]he Court recognizes that contingency-based law firms need to
 18 recover more than their actual expended hours in cases they win to offset cases with no recovery.”).

19 Courts have noted that “[t]he contingent nature of representation in this case supports an
 20 award of attorneys’ fees.” *In re Apple Inc. Device Performance Litig.*, No. 5:18-md-02827-EJD,
 21 2021 WL 1022866, at *6 (N.D. Cal. Mar. 17, 2021). So does its exceptionally long duration. *Luna*
 22 *v. Universal City Studios, LLC*, No. CV 12-9286 PSG (SSx), 2016 WL 10646310, at *7 (C.D. Cal.
 23 Sept. 13, 2016) (“the duration of the case—lasting now for over three years—counsels in favor of
 24 a larger attorneys’ fees award”). Class Counsel took this matter on a full contingency basis and
 25 advanced all necessary professional time and expenses for over five years. Joint Decl., ¶¶ 23-26.
 26 “This substantial outlay, when there is a risk that none of it will be recovered, further supports the
 27 award of the requested fees.” *Nexus 6P*, 2019 WL 6622842, at *13 quoting *Omnivision Techs.*,
 28 559 F. Supp. 2d at 1047. “Courts have long recognized that the public interest is served by

1 rewarding attorneys who assume representation on a contingent basis with an enhanced fee to
 2 compensate them for the risk that they might be paid nothing at all for their work.”) *Ching v.*
 3 *Siemens Indus. Inc.*, No. 11-cv-04838-MEJ, 2014 WL 2926210, at * 8 (N.D. Cal. June 27, 2014);
 4 *see also In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994)
 5 (“[i]t is an established practice in the private legal market to reward attorneys for taking the risk of
 6 non-payment by paying them a premium over their normal hourly rates for winning contingency
 7 cases.”).

8 5. The Requested Award is Consistent *with Similar Cases*

9 Plaintiffs’ request for a modest upward departure from the 25% benchmark is supported by
 10 awards in this Circuit, and within the range for wage and hour class actions. *Kendall v. Odonate*
 11 *Therapeutics, Inc.*, No.: 3:20-cv-01828-H-LL, 2022 WL 1997530, at * 6–7 (S.D. Cal. June 6, 2022)
 12 (awarding 33.3% and noting “[d]istrict courts in the Ninth Circuit have also frequently awarded
 13 fees of one-third of the common fund”); *Barbosa*, 297 F.R.D. at 450 (awarding 33% in wage and
 14 hour class action); *Van Lith v. iHeartMedia + Entertainment, Inc.*, No. 1:16-cv-00066-SKO, 2017
 15 WL 4340337, at *16 (E.D. Cal. Sept. 29, 2017) (awarding 30% in wage and hour class action);
 16 *Deaver v. Compass Bank*, No. 13-cv-00222-JSC, 2015 WL 8526982, at *11-12 (N.D. Cal. Dec. 11,
 17 2015) (awarding 33% in wage and hour class action); *Willner v. Manpower Inc.*, No. 11–cv–02846–
 18 JST, 2015 WL 3863625, at *7 (N.D. Cal. June 22, 2015) (awarding 30% in wage and hour class
 19 action); *Ching*, 2014 WL 2926210, at *8 (awarding 30% in wage and hour class action); *Adoma v.*
 20 *Univ. of Phoenix, Inc.*, 913 F. Supp. 2d 964, 983 (E.D. Cal. 2012) (awarding 29% in wage and hour
 21 class action); *Collins v. Cargill Meat Sols. Corp.*, No. 1:10–cv–00500 OWW MJS, 2011 WL
 22 2580321, at *11 (E.D. Cal. June 28, 2011) (awarding 31.7% in wage and hour class action).

23 C. THE LODESTAR CROSS-CHECK CONFIRMS REASONABLENESS

24 “As a final check on the reasonableness of requested attorneys’ fees, courts often compare
 25 the amount counsel would receive under the percentage-of-recovery method with the amount
 26 counsel would have received under the lodestar method.” *Nexus 6P*, 2019 WL 6622842, at *13;
 27 *see also Vizcaino*, 290 F.3d at 1050 (“[c]alculation of the lodestar, which measures the lawyers’
 28 investment of time in the litigation, provides a check on the reasonableness of the percentage

1 award.”). Under a lodestar cross-check, “a court takes the number of hours reasonably expended
 2 on the litigation multiplied by a reasonable hourly rate.” *Hefler v. Wells Fargo & Co.*,
 3 No. 16-cv-05479-JST, 2018 WL 6619983, at *14 (N.D. Cal. Dec. 18, 2018) (citations omitted).

4 In performing the cross-check, however, courts “should not, become green-eyeshade
 5 accountants” but rather “do rough justice, not to achieve auditing perfection.” *Id.* (citations
 6 omitted); *see In re Capacitors Antitrust Litig.*, No. 3:17-md-02801-JD, 2018 WL 4790575, at *6
 7 (N.D. Cal. Sept. 21, 2018) (the cross-check does not require “mathematical precision nor bean-
 8 counting”) (citation omitted); *In re Toys R Us-Del., Inc – Fair and Accurate Credit Transactions*
 9 *Act (FACTA) Litig.*, 295 F.R.D. 438, 460 (C.D. Cal. 2014) (“[i]n cases where courts apply the
 10 percentage method to calculate fees, they should use a rough calculation of the lodestar as a cross-
 11 check to assess the reasonableness of the percentage award.”).

12 **1. The Number of Hours Devoted to the Case Was Reasonable**

13 As reflected in the Joint Declaration, Class Counsel did a great deal of work, including
 14 research and preparing the multiple complaints; researching, briefing, and arguing multiple motions
 15 to dismiss and motions for summary judgment, engaging in extensive discovery work, preparing
 16 for and participating in multiple settlement conferences/mediations; and, working with SkyWest
 17 and the Claim Administrator (CPT) to ensure all relevant class member information was provided
 18 and to ensure that the Notice Program was properly developed and implemented. *See* Joint Decl.,
 19 ¶¶ 23-24. In total, Class Counsel collectively spent over 4,500 hours on this matter through October
 20 31, 2022.⁵ Joint Decl., ¶¶ 23-24. Not an unreasonable amount considering the scope and duration
 21 of work involved. *Id.*

25 ⁵ Time incurred post-settlement is compensable and thus is included in the figures reported in the
 26 Joint Declaration. *See, e.g., In re Black Farmers Discrimination Litig.*, 953 F. Supp. 2d 82, 97
 27 (D.D.C. 2013) (time spent assisting class members, including with claims, is compensable);)
 28 *Hausfeld v. Cohen Milstein Sellers & Toll, PLLC*, No. 06-CV-826, 2009 WL 4798155, at *17 (E.D.
 Penn. Nov. 30, 2009 (“[w]here attorneys provide additional services post-settlement . . . courts
 should award fees for those services”). However, consistent with Northern District practice, time
 spent on this fee application is *excluded*. *Lesevic v. Spectraforce Techs. Inc.*, No. 19-CV-03126-
 LHK, 2021 WL 1599310, at *6 (N.D. Cal. Apr. 23, 2021).

1 **2. The Reported Hourly Rates are Reasonable**

2 The supporting Joint Declaration identifies the hourly rates charged by each timekeeper
3 included in the lodestar cross-check calculation. Joint Decl., ¶ 24. The range for partners,
4 associates, staff attorneys, and paralegals are conservative and well within ranges previously
5 approved by judges in the Northern District of California. *See, e.g., Impax Labs.*, 2022 WL
6 2789496, at *9 (*e.g.*, finding \$760 to \$1,325 for partners to be reasonable); *Hefler*, 2018 WL
7 6619983, at *14 (rates “from \$650 to \$1,250 for partners or senior counsel, from \$400 to \$650 for
8 associates, and from \$245 to \$350 for paralegals” deemed reasonable).

9 Class Counsel’s rates are even more facially reasonable when compared to the hourly rates
10 charged by large, top defense firms, which now consistently approach \$2,000. *See Roy Strom, Big*
11 *Law Rates Topping \$2000 Leave Value “In Eye of Beholder”* (Bloomberg, June 9, 2022) (reporting
12 that after “a two-year burst in demand,” many partners at large law firms charge hourly rates of
13 \$2,000 or more).⁶

14 **3. Requested Fees Results in a Negative Multiplier**

15 “A negative multiplier ‘strongly suggests the reasonableness of [a] negotiated
16 fee.’” *Moreno v. Capital Bldg. Maint. & Cleaning Servs.*, No. 19-cv-07087-DMR, 2021 WL
17 4133860, at *6 (N.D. Cal. Sep. 10, 2021) (quoting *Rosado v. eBay Inc.*, No. 5:12-cv-04005-EJD,
18 2016 WL 3401987, at *8 (N.D. Cal. June 21, 2016)). Here, based on the collective hours spent by
19 Class Counsel, and their reasonable and customary hourly rates, they have a combined lodestar of
20 \$3.505 million. Thus, the requested award of fees of \$1,216,550 represents a reduction of 0.34 the
21 lodestar, which further weighs in favor of granting the request. *See Foster v. Adams and Associates,*
22 *Inc.*, No. 18-cv-02723-JSC, 2022 WL 425559, at *10-11 (N.D. Cal. Feb. 11, 2022) (awarding 33%
23 of settlement fund where, *inter alia*, the among resulted in a negative multiplier and 64% reduction
24 of Class Counsel’s lodestar).

25 **D. THE LITIGATION EXPENSES ARE REASONABLE AND SHOULD BE**
26 **APPROVED**

27 “Reasonable costs and expenses incurred by an attorney who creates or preserves a common

28 ⁶ Available at <https://news.bloomberglaw.com/business-and-practice/big-law-rates-topping-2-000-leave-value-in-eye-of-beholder> (last accessed November 28, 2022).

1 fund are reimbursed proportionately by those class members who benefit[.]” *In re Media Vision*
 2 *Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1995) (citation omitted). An attorney is
 3 entitled to recover as part of the award of attorney’s fees “those out-of-pocket expenses that would
 4 normally be charged to a fee-paying client.” *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994)
 5 (quotations omitted).

6 Class Counsel have incurred \$145,029.59 in unreimbursed litigation expenses, including
 7 costs advanced in connection with experts and consultants, legal research charges, filing fees and
 8 court/deposition transcripts, travel costs for hearings and depositions, mediation fees, copying and
 9 mailing, and other customary litigation expenses:

CATEGORY	MILBERG COLEMAN	SIMMONS HANLY	KAPLAN FOX	TOTAL
Telephone, Conference Calls and Facsimiles	\$42.65	\$0.00	\$0.00	\$42.65
Court Costs, Filing Fees and Transcripts	\$8,346.32	\$400.00	\$7,385.83	\$16,132.15
Experts/Consultants	\$24,803.38	\$23,916.75	\$28,523.00	\$77,243.13
Mediation Fees	\$15,500.00	\$0.00	\$0.00	\$15,500.00
Delivery/Courier	\$122.72	\$310.00	\$1,251.64	\$1,684.36
Travel and Meals	\$3,399.10	\$11,327.82	\$5,669.53	\$20,396.45
Legal Research	\$2,209.66	\$0.00	\$9,355.23	\$11,564.89
Service of Process	\$768.26	\$429.70	\$1,268.00	\$2,465.96
TOTAL	\$55,192.09	\$36,384.27	\$53,453.23	\$145,029.59

17 Joint Decl., ¶ 26. All of these categories are routinely approved by judges in this District. *See, e.g.*,
 18 *Impax Labs.*, 2022 WL 2789496, at *9–10; *In re LendingClub Sec. Litig.*, No. C 16-02627 WHA,
 19 2018 WL 4586669, at *3 (N.D. Cal. Sept. 24, 2018) (expenses such as expert and consultant fees,
 20 court fees, travel and lodging costs, legal research fees, and copying expenses were reasonable and
 21 recoverable); *Thomas*, 2018 WL 2234598, at *4 (granting requests for costs consisting of “court
 22 fees, online research fees, postage and copying, travel costs, electronic discovery expenses,
 23 deposition costs, mediation charges, and travel costs”). As set for the above the largest expenses
 24 in the case are for experts/consultants, mediation fees, and transcripts which comprises over
 25 \$108,000 of the total expenses. Class Counsel have verified the accuracy of their carried expenses
 26 under oath based on contemporaneous billing records and Plaintiffs are requesting reimbursement
 27 at cost, without any markup or interest. Joint Decl., ¶ 26.
 28

1 **E. THE POSITION OF THE SETTLEMENT CLASS**

2 Given that class notice was just distributed, Plaintiffs can more fully address this factor in
3 connection with their forthcoming final approval motion.

4 **F. REQUEST FOR NAMED PLAINTIFF INCENTIVE AWARDS**

5 Incentive awards are “intended to compensate class representatives for work undertaken on
6 behalf of a class” and “are fairly typical in class action cases.” *In re Online DVD-Rental Antitrust*
7 *Litig.*, 779 F.3d 934, 943 (9th Cir. 2015) (internal quotation marks and citation omitted). Incentive
8 awards (also called “service awards”) of \$5,000 are “presumptively reasonable” in this District.
9 *Bellinghausen*, 306 F.R.D. at 266. Here, Plaintiffs’ request for Incentive Awards aligns with the
10 “presumptively reasonable” amount of \$5,000 for each of the three Class Representatives for a total
11 of \$15,000. *Id.*); *Noll v. eBay, Inc.*, 309 F.R.D. 593, 611 (N.D. Cal. Sept. 15, 2015 (Davila, J.)).

12 In considering whether to make a service award, courts consider “the actions the plaintiff
13 has taken to protect the interests of the class, the degree to which the class has benefitted from those
14 actions, ...and the amount of time and effort the plaintiff expended in pursuing the litigation.”
15 *Johnson v. Fujitsu Tech. & Bus. of Am., Inc.*, No. 16-cv-03698-NC, 2018 WL 2183253, at *8 (N.D.
16 Cal. May 11, 2018) (alterations and citation omitted); *Lenovo*, 2019 WL 1791420, at *9–10 (same).

17 The Class Representatives in this case were willing to step forward to represent and protect
18 the interests of the Class. In doing so, they risked retaliation not just by SkyWest but by the airline
19 industry and future employers. *Baird v. BlackRock Institutional Trust Company, N.A.*, 2021 WL
20 5113030, at *9 (N.D. Cal. Nov. 3, 2021) (awarding a service award of \$10,000 and taking into
21 account the reputational risks to named plaintiff in participating in the lawsuit against prior
22 employer). This risk is particularly acute in an industry such as the airline industry in which there
23 are a limited handful of employers and in which there is often mergers or consolidation of airlines.
24 Moreover, their participation in this litigation was not *de minimis* by any means. Throughout the
25 litigation, the Class Representatives maintained contact with Class Counsel, responded to numerous
26 discovery requests, prepared for and sat through day-long depositions that required travel and
27 missing work, remained on call for mediations and settlement, and conferred with Class Counsel
28 on the settlement proposals to ensure the best results for the class. *See* Meek Decl.; Ross Decl.;

1 Barnes Decl. The Class Representatives were integral in getting other Settlement Class Members
2 to come forward and submit declarations in support of Plaintiffs' successful class certification
3 motions. *Id.* They each estimate spending over 100 hours diligently assisting with this litigation.
4 *See* Meek Decl., ¶ 10; Ross Decl., ¶ 11; Barnes Decl., ¶ 11.

5 Additionally, the Class Representatives knew that suing a former employer would be a
6 matter of public record after filing the lawsuit. Meek Decl., ¶¶ 7-9; Ross Decl., ¶¶ 7-9; Barnes
7 Decl., ¶¶ 7-9. They were concerned that they would suffer adverse consequences from SkyWest
8 as a result of asserting the wage and hour claims on behalf of their co-workers and that by filing
9 the lawsuit they risked my future employment prospects because if a potential employer discovered
10 (for example, through a simple Google search) that they had initiated a class action lawsuit against
11 their employer, they may choose not to interview or hire them. *Id.* They continue to be worried
12 that a current, potential, or future employer will discriminate, retaliate, or perceive them negatively
13 because of their involvement in this lawsuit. *Id.* And, each Plaintiff is executing a Personal Release
14 against SkyWest that is broader than that for the Settlement Class Members that will preclude
15 Plaintiffs from participating in or recovering from other potential actions. Joint Decl., ¶ 27;
16 Settlement Agreement, ¶ 21. Class Counsel also submit that each has devoted substantial time to
17 the case and have been exemplary Class Representatives. Joint Decl., ¶ 27.

18 In relation to the settlement amount as a whole, the requested Incentive Awards total
19 \$15,000, which accounts for a fraction of one percent (0.3%) of the \$4.195 million Settlement Fund.
20 With each Class Member averaging a \$2,150 payout, the proposed Incentive Award is only about
21 2 times the average settlement payment—clearly not a windfall. And, on a per capita basis, each
22 Settlement Class Member is contributing approximately \$7.50 each to the Incentive Awards in
23 total—a fair amount considering that absent class members did not have to do anything during the
24 course of the litigation and will not have to do anything to obtain a substantial settlement payment.
25 Because of the tremendous time, effort and risk undertaken by the Class Representatives, and
26 because the requested Incentive Awards are “in line with precedent,” *Allagas v. BP Solar Int’l, Inc.*,
27 No. 3:14-cv-00560-SI (EDL), 2016 WL 9114162, at *4 (N.D. Cal. Dec. 22, 2016) (citations
28 omitted), the Court should grant the request.

1 **V. CONCLUSION**

2 Class Counsel devoted thousands of hours to this five-year litigation, the bulk of which was
3 incurred even before they were appointed as Class Counsel. As a result of their hard work, they
4 were able to successfully negotiate a favorable settlement the Class where many other litigants had
5 failed against SkyWest. Based on this result, and consistent with the factors applied by federal
6 courts, including in the Northern District of California, Plaintiffs respectfully request that the Court
7 issue an Order awarding \$1,216,550 in attorneys' fees, approving reimbursement of \$145,029.59
8 in litigation expenses, and approving Incentive Awards of \$5,000 to each of the Class
9 Representatives.

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1 Dated: November 28, 2022

Respectfully submitted,

2 **KAPLAN FOX & KILSHEIMER LLP**

SIMMONS HANLY CONROY LLC

3
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17 *Class Counsel*

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ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(h)(3)

I, Matthew B. George, attest that concurrence in the filing of this document has been obtained from the other signatories. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 28th day of November, 2022, at San Diego, California.

/s/ Matthew B. George
Matthew B. George