

1 THE DENTE LAW FIRM  
2 MATTHEW S. DENTE (SB241547)  
3 matt@dentelaw.com  
4 600 B Street, Suite 1900  
5 San Diego, CA 92101  
6 Telephone: (619) 550-3475  
7 Facsimile: (619) 342-9668

8 ROBBINS ARROYO LLP  
9 BRIAN J. ROBBINS (SB190264)  
10 brobbins@robbinsarroyo.com  
11 600 B Street, Suite 1900  
12 San Diego, CA 92101  
13 Telephone: (619) 525-3990  
14 Facsimile: (619) 525-3991

15 MESERVY LAW, P.C.  
16 LONDON D. MESERVY (SB216654)  
17 london@meservylawpc.com  
18 550 West C Street, Suite 1950  
19 San Diego, CA 92101  
20 Telephone: (858) 779-1276  
21 Facsimile: (866) 231-8132

22 Attorneys for Plaintiffs Seiko Takagi and  
23 Paul Bradley, Individually, and as  
24 Representatives of Other Members of the  
25 Public Similarly Situated

26 UNITED STATES DISTRICT COURT  
27 CENTRAL DISTRICT OF CALIFORNIA

28 SEIKO TAKAGI and PAUL  
BRADLEY, Individually, and as  
Representatives of Other Members of  
the Public Similarly Situated,

Plaintiffs,

v.

UNITED AIRLINES, INC. and  
DOES 1-10, Inclusive,

Defendants.

Case No. 2:11-cv-09191 JCG

**CLASS ACTION**

**MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT OF PLAINTIFFS'  
UNOPPOSED MOTION FOR  
FINAL APPROVAL OF CLASS  
ACTION SETTLEMENT AND  
APPLICATION FOR AWARD OF  
ATTORNEYS' FEES AND COSTS,  
CLASS REPRESENTATIVE'S  
ENHANCEMENT PAYMENT,  
AND PAYMENT TO  
SETTLEMENT  
ADMINISTRATOR**

Hearing Date: July 23, 2013  
Hearing Time: 2:00 p.m.  
Courtroom: A-8th Floor  
Judge: Hon. Jay C. Gandhi

**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

	<b>Page(s)</b>
TABLE OF AUTHORITIES .....	iii
I. INTRODUCTION .....	1
II. FACTUAL AND PROCEDURAL BACKGROUND .....	1
A. Summary of Settlement Terms .....	3
B. Preliminary Approval, Class Notice, and the Claims Process.....	4
1. Preliminary Approval.....	4
2. Class Notice.....	5
3. Class Participation in the Settlement.....	6
III. FINAL COURT APPROVAL OF THE SETTLEMENT IS APPROPRIATE .	6
A. The Three-Step Class Action Settlement Approval Process .....	6
B. The Settlement Is Fair, Reasonable, and Adequate .....	7
1. The Terms of the Settlement Disclose No Grounds to Doubt its Fairness.	8
2. The Parties Engaged in Extensive Investigation of Plaintiffs' and the Class's Claims, Which Favors Final Approval .....	9
3. Liability Is Vigorously Contested, and the Settlement Provides Reasonable Compensation for the Class Members' Alleged Injuries. ....	10
4. The Complexity, Expense, and Likely Duration of Continued Litigation in the Absence of Settlement Favors Final Approval .....	10
5. The Experience and Views of Class Counsel Favor Final Approval.....	11
6. Class Members' Positive Reaction to the Settlement Favors Final Approval .....	11
7. This Court Should Approve the PAGA Penalty Portion of the Settlement.....	11
IV. CLASS COUNSEL'S REQUESTED ATTORNEYS' FEES AWARD IS FAIR AND REASONABLE AND SHOULD BE APPROVED .....	11
1. The Results Achieved. ....	14

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

2. The Risks of Litigation..... 14

3. The Skill Required and the Quality of the Work. .... 14

4. The Contingent Nature of the Fee..... 15

5. Awards Made in Similar Cases. .... 16

6. No Class Member Objected to the Attorneys' Fee Award..... 17

V. CLASS COUNSEL'S REQUESTED REPAYMENT OF COSTS IS FAIR AND REASONABLE AND SHOULD BE APPROVED ..... 17

VI. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT AWARDS ARE FAIR AND REASONABLE AND SHOULD BE FINALLY APPROVED ..... 18

VII. THE COURT SHOULD APPROVE THE PAYMENT TO GCG ..... 19

VIII. CONCLUSION..... 20

**TABLE OF AUTHORITIES**

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

**Page(s)**

**CASES**

*Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*,  
421 U.S. 240 (1975) ..... 12

*Birch v. Office Depot, Inc.*,  
Case No. 06cv1690 DMS (WMC) (S.D. Cal. Sept. 28, 2007)..... 17

*Blum v. Stenson*,  
465 U.S. 886 (1984) ..... 13

*Boeing Co. v. Van Gemert*,  
444 U.S. 472 (1980) ..... 12

*Camden I Condo. Ass'n., Inc. v. Dunkle*,  
946 F.2d 768 (11th Cir. 1991)..... 13

*Centr. R.R. & Banking Co. v. Pettus*,  
113 U.S. 116 (1885) ..... 13

*Class Plaintiffs v. Seattle*,  
955 F.2d 1268 (9th Cir. 1992)..... 6

*De Stefan v. Frito-Lay, Inc.*,  
10cv0112-DOC (C.D. Cal. Oct. 29, 2012)..... 16

*Fla. v. Dunne*,  
915 F.2d 542 (9th Cir. 1990)..... 12, 13

*Hanlon v. Chrysler Corp.*,  
150 F.3d 1011 (9th Cir. 1998)..... 8

*In Re Activision Sec. Litig.*,  
723 F.Supp. 1373 (N.D. Cal. 1989)..... 13

*In Re Mercury Interactive Corp. Securities*,  
618 F.3d 988 (9th Cir. 2010)..... 11

*In Re Oracle Sec. Litig.*,  
131 F.R.D. 688 (N.D. Cal. 1990) ..... 13

*In Re Pac. Enter. Sec. Litig.*,  
47 F.3d 373 (9th Cir. 1995)..... 12, 13, 16

*In re Traffic Exec. Ass'n - E. R.R.*,  
627 F.2d 631 (2d Cir. 1980)..... 7

*In re United Energy Corp. Sec. Litig.*,  
MDL No. 726, 1989 WL 73211 (C.D. Cal. Mar. 9, 1989) ..... 17

*Ingalls v. Hallmark Mktg. Corp.*,  
08cv4342 VBF (C.D. Cal. Oct. 16, 2009)..... 16

*Martin v. AmeriPride Servs., Inc.*,  
No. 08cv440-MMA (JMA), 2011 WL 2313604 (S.D. Cal. June 9,  
2011)..... 16

*Mills v. Elec. Auto-Lite Co.*,  
396 U.S. 375 (1970) ..... 12

1 *Morris v. Lifescan, Inc.*,  
54 Fed. Appx. 663 (9th Cir. 2003) ..... 12

2 *Paul, Johnson, Alston & Hunt v. Graulty*,  
3 886 F.2d 268 (9th Cir. 1989) ..... 12

4 *Rippee v. Bos. Mkt. Corp.*,  
Case No. 05cv1359 BTM (JMA) ..... 17

5 *Singer v. Becton Dickinson and Co.*,  
6 No. 08-cv-821-IEG (BLM), 2010 WL 2196104 (S.D. Cal. June 1,  
2010) ..... 16

7 *Sprague v. Ticonic Nat'l. Bank*,  
307 U.S. 161 (1939) ..... 13

8 *Trustees v. Greenough*,  
105 U.S. 527 (1881) ..... 13

9 *Van Bronkhorst v. Safeco Corp.*,  
529 F.2d 943 (9th Cir. 1976) ..... 6

10 *Vizcaino v. Microsoft Corp.*,  
11 290 F.3d 1043 (9th Cir. 2002) ..... 13

12 **OTHER AUTHORITIES**

13 H. Newberg & A. Conte, 4 Newberg on Class Actions  
14 § 11.41, at pp. 87-88 (4th ed. 2002) ..... 6

15 **RULES**

16 Fed. R. Civ. P.  
17 23(e) ..... 6, 7

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **I. INTRODUCTION**

2 Plaintiffs Seiko Takagi and Paul Bradley ("Plaintiffs") seek final approval of  
3 the Joint Stipulation of Class Action Settlement and Release (the "Settlement" or  
4 "Sett. Stip.")<sup>1</sup> reached with Defendant United Airlines, Inc. ("Defendant"). In  
5 addition, Plaintiffs move for approval of the Settlement Administrator's fees, an  
6 award of attorneys' fees and costs, and approval of the enhancement awards to  
7 Plaintiffs for their service as class representatives. Plaintiffs' Motion is unopposed.

8 The Settlement achieves an excellent result for the class, received no  
9 objections, and satisfies all of the criteria for final approval. Accordingly, Plaintiffs  
10 respectfully request that the Court issue an order: (1) granting final approval of this  
11 Settlement; (2) approving distribution of the settlement funds to the Class Members  
12 and the California Labor Workforce Development Agency ("LWDA"); (3)  
13 approving Class Counsel's request for an award of \$308,333.33 attorneys' fees and  
14 \$6,034.80 in costs; (4) approving the request for class representative incentive  
15 award payments of \$7,500.00 for each of the Plaintiffs (\$15,000.00 total); and (5)  
16 approving payment of up to \$20,600.00 to Garden City Group, Inc. for settlement  
17 administration fees and costs.

18 **II. FACTUAL AND PROCEDURAL BACKGROUND**

19 On October 4, 2011, Plaintiffs filed a complaint in the California Superior  
20 Court, County of Los Angeles, alleging that Defendant violated California Labor  
21 Code sections 204 and 226 and seeking civil penalties under the California Labor  
22 Code Private Attorney Generals Act, California Labor Code section 2698, *et seq.*  
23 ("PAGA") for these violations. Specifically, Plaintiffs alleged that Defendant failed  
24 to provide proper itemized wages statements and failed to pay wages in a timely  
25 manner to Plaintiffs and other California Flight Attendants. Defendant disputes and  
26 denies Plaintiffs' claims in their entirety. Defendant's Answer denied all material

27 <sup>1</sup> A copy of the fully-executed Settlement is attached as Exhibit 1 to the Declaration of Brian J.  
28 Robbins in support of this Motion ("Robbins Decl."). Unless otherwise noted, all capitalized  
terms shall have the same definition as set forth in the Settlement.

1 allegations of Plaintiffs' Complaint and raised various affirmative defenses. On  
2 November 4, 2011, Defendant removed this action to the U.S. District Court for the  
3 Central District of California.

4 Counsel for all parties extensively investigated Plaintiffs' claims. The parties  
5 exchanged information sufficient to enable them to fully evaluate the strengths and  
6 weaknesses of the claims and defenses raised by each side. Among other things,  
7 Defendant provided Plaintiffs with detailed information about the number of  
8 putative class members and the number of pay periods in which each putative class  
9 member worked during the relevant class period. Robbins Decl. at ¶5.

10 After deciding to attempt a resolution of this matter, the parties worked with  
11 a well-respected class action mediator, Joel Grossman of JAMS, to successfully  
12 resolve this case at a mediation session held on August 28, 2012, in Orange County.  
13 Prior to the mediation, the parties submitted extensive mediation briefs, evidence,  
14 and legal authorities to the mediator. After serious, intense, and protracted  
15 negotiations, the parties reached a settlement, the terms of which were set forth in a  
16 Memorandum of Understanding signed by all parties that was later memorialized in  
17 the Settlement now before this Court for final approval. *Id.* at ¶¶6-7.

18 On January 17, 2013, the parties filed a Stipulation to Allow Plaintiffs Leave  
19 to File First Amended Complaint. On January 30, 2013, the Court granted the  
20 stipulation, and on January 31, 2013, Plaintiffs filed their First Amended  
21 Complaint.

22 On February 19, 2013, this Court granted preliminary approval of the  
23 Settlement. On April 16, 2013, the Court-appointed Settlement Administrator, The  
24 Garden City Group, Inc. ("GCG"), mailed the Court-approved Class Notice to  
25 4,340 Class Members in accordance with the Court's February 19, 2013 Order.  
26 Declaration of Jennifer M. Keough Regarding Notice and Settlement  
27 Administration ("Keough Decl.") at ¶4. No Class Members objected to the  
28 Settlement. *Id.* at ¶9.

1           **A. Summary of Settlement Terms**

2           The Settlement provides that Defendants will pay \$925,000.00, the Gross  
3 Settlement Amount, to settle the claims of Plaintiffs and the Class, consisting of all  
4 persons who have been employed by Defendant as a Flight Attendant in California  
5 at any point from October 4, 2010 to February 19, 2013, the date of preliminary  
6 approval of the Settlement ("Class Members"). Sett. Stip. at ¶8.

7           The Gross Settlement Amount will also be used to pay Plaintiffs' class  
8 representative incentive award payments (which they now request in the amount of  
9 \$7,500.00 each, \$15,000.00 total); Class Counsel's attorneys' fees (which they now  
10 seek in the amount of \$308,333.33—33.33% of the Gross Settlement Amount); and  
11 reimbursement of Class Counsel's costs (which they now seek in the amount of  
12 \$6,034.80). *Id.* at ¶13. Defendant will also pay \$30,000.00 from the Gross  
13 Settlement Amount to the LWDA as the LWDA's share of the Settlement  
14 attributable to civil penalties under PAGA. *Id.* GCG's claims administration costs,  
15 that are estimated not to exceed \$20,600, will also be paid out of the Gross  
16 Settlement Amount.

17           After deducting: (1) Class Counsel's fees and costs; (2) the incentive award  
18 payments to Plaintiffs; (3) the payment to the LWDA; and (4) the claims  
19 administration expenses from the Gross Settlement Amount, the remaining balance  
20 available for distribution (the "Net Settlement Amount") shall be for distribution to  
21 those Class Members who did not opt out of the Settlement.

22           Each Class Member's share of the Net Settlement Amount will be determined  
23 by the number of months he or she worked in proportion to the total number of  
24 months worked by all Class Members. Any monies in the Net Settlement Amount  
25 that are not claimed, due to opt outs, etc., will be redistributed to Class Members on  
26 a pro rata basis such that 100% of the Net Settlement Amount is distributed to the  
27 Class Members. *Id.* at ¶14.

28

1 As part of the Settlement, Plaintiffs and those Class Members who did not  
2 opt out of the Settlement will fully release and discharge Defendant, its present and  
3 former parent companies, subsidiaries, related or affiliated companies, divisions,  
4 and its respective shareholders, officers, directors, employees, agents, attorneys,  
5 insurers, successors and assigns, and any individual or entity which could be jointly  
6 liable with Defendant or any of them, from any and all claims, debts, liabilities,  
7 demands, obligations, guarantees, costs, expenses, interest, attorneys' fees,  
8 damages, action or causes of action under California state law which were raised or  
9 could have been raised in the Action that arose out of the conduct alleged in  
10 Plaintiffs' Complaint and First Amended Complaint, including failure to make wage  
11 payments in a timely manner during employment, failure to provide accurate wage  
12 statements, all claims under California Labor Code sections 204 and 226, and all  
13 claims of the foregoing nature that arise under federal, state, and local law,  
14 including, but not limited to, the California Labor Code; California Business and  
15 Professions Code section 17200; the California Private Attorneys General Act of  
16 2004 (codified at California Labor Code sections 2698 through 2699); the  
17 California Industrial Welfare Commission Wage Orders; and all applicable civil  
18 and statutory penalties arising from the foregoing, including, but not limited to,  
19 those under California Labor Code sections 204, 210, 226(a), 226(e) and 2698, *et*  
20 *seq.* (collectively, the "Claims").

21 The release is narrowly tailored to encompass only those claims that are  
22 specifically alleged in, or reasonably encompassed by, Plaintiffs' First Amended  
23 Complaint. Robbins Decl. at ¶14.

## 24 **B. Preliminary Approval, Class Notice, and the Claims Process**

### 25 1. Preliminary Approval

26 Plaintiffs moved this Court, unopposed, for an order preliminary approving  
27 the Settlement and provisionally certifying the following Settlement Class:

28 Any and all persons who have been employed by United Airlines, Inc. as a

1 Flight Attendant at any point from October 4, 2010 in California to the date  
2 of preliminary approval of the Settlement.

3 By Order dated February 19, 2013, this Court granted Plaintiffs' Motion for  
4 Preliminary Approval of the Settlement and provisionally certified the Settlement  
5 Class, finding that the Settlement appeared within the range of reasonableness of  
6 settlements that could ultimately be given final approval. *See* this Court's February  
7 19, 2013 Order. This Court also approved the distribution of the Notice of Class  
8 Action Settlement (the "Class Notice"). *Id.* This Court ordered that the Class  
9 Notice be disseminated by GCG by April 16, 2013. *Id.* Class Members were given  
10 45 days after the Class Notice was mailed to object to or opt out of the Settlement.  
11 *Id.*

## 12 2. Class Notice

13 On April 3, 2013, Defendant provided GCG with a mailing list containing the  
14 Class Members' names, last known addresses, Social Security Numbers, and  
15 employment information (the "Class List"). Keough Decl. at ¶4. The Class List  
16 contained data for 4,340 Class Members. *Id.* GCG processed and updated the  
17 mailing addresses contained in the Class List utilizing the National Change of  
18 Address Database ("NCOA") maintained by the U.S. Postal Service. *Id.* If any  
19 Class Member had filed a U.S. Postal Service change of address request, GCG  
20 mailed the Class Notice to the address listed with the NCOA. *Id.*

21 Pursuant to this Court's Order, on April 16, 2013, GCG mailed the Class  
22 Notice—which included the terms relating to attorneys' fees and costs and  
23 Plaintiffs' class representative enhancement—to the 4,340 Class Members. *Id.* at  
24 ¶5.

25 The U.S. Postal Service returned 4 Class Notices to GCG with forwarding  
26 address information. *Id.* at ¶6. GCG promptly remailed these 4 Class Notices with  
27 the updated addresses provided. *Id.* Thirty-five Class Notices were returned to  
28 GCG as undeliverable without forwarding address information. *Id.* GCG

1 performed an advanced address search for all Class Notices that were returned  
2 without forwarding address information. *Id.* GCG was able to obtain 21 updated  
3 addresses and promptly remailed Class Notices to these new addresses. *Id.*

4 3. Class Participation in the Settlement

5 No Class Members objected to the Settlement. *Id.* at ¶9. Only 14 Class  
6 Members, 0.3% of the Class, opted out of the Settlement. *Id.* at ¶8.

7 **III. FINAL COURT APPROVAL OF THE SETTLEMENT IS**

8 **APPROPRIATE**

9 **A. The Three-Step Class Action Settlement Approval Process**

10 A class action may not be dismissed, compromised, or settled without the  
11 approval of the Court. Fed. R. Civ. P. 23(e). Before granting final approval of the  
12 Settlement, the Court must find that it is fair, reasonable, and adequate. *Id.*

13 The law favors settlement, particularly in class actions and other complex  
14 cases where substantial resources can be conserved by avoiding the time, cost, and  
15 rigors of formal litigation. *See Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1276 (9th  
16 Cir. 1992); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976); H.  
17 Newberg & A. Conte, 4 Newberg on Class Actions § 11.41, at pp. 87-88 (4th ed.  
18 2002) (and cases cited therein). Judicial proceedings have led to a defined  
19 procedure and specific criteria for settlement approval in class action settlements, as  
20 described in the Manual for Complex Litigation (Fourth) (the "Manual") § 21.63  
21 (2006). The Manual's settlement approval procedure describes the following steps:

- 22 1. Preliminary approval of the proposed settlement at an informal  
23 hearing;
- 24 2. Dissemination of mailed and/or published notice of the settlement to  
25 all affected Class Members; and
- 26 3. A final settlement approval hearing, at which Class Members may be  
27 heard regarding the settlement, and evidence and argument concerning  
28 the fairness, adequacy, and reasonableness of the Settlement may be

1 presented.

2 This procedure, commonly used by courts and endorsed by the leading class  
3 action commentator, Professor Newberg, safeguards Class Members' procedural  
4 due process rights and enables the Court to fulfill its role as the guardian of class  
5 interests. *See* Newberg & Conte, *supra*, at §11.2.

6 The first two steps of this process are already complete. The first step was  
7 completed on February 19, 2013, when this Court granted preliminary approval of  
8 the Settlement. In doing so, this Court determined that the Settlement was within  
9 the range of possible final approval and that notice to the Class Members of the  
10 Settlement's terms and of the scheduling of the formal fairness hearing should be  
11 distributed. *See, e.g., In re Traffic Exec. Ass'n - E. R.R.*, 627 F.2d 631, 633-34 (2d  
12 Cir. 1980); Newberg & Conte, *supra*, at §11.25.

13 The second step in the class action settlement-approval process, the  
14 dissemination of the Notice, is complete as well. In accordance with the Court's  
15 Preliminary Approval Order, the parties worked with GCG to implement the Court-  
16 approved notice program, which employed the best practicable means to  
17 disseminate to all Class Members notices of the Settlement's terms and of the date  
18 and time of the final approval hearing. Fed. R. Civ. P. 23(e).

19 With this Motion, Plaintiffs request that the Court take the third and last step  
20 in the class action settlement-approval process. Plaintiffs' requested at the final  
21 approval hearing scheduled for July 23, 2013, that this Court determine the  
22 Settlement is fair, reasonable, and adequate. *Id.*

23 **B. The Settlement Is Fair, Reasonable, and Adequate**

24 Pursuant to the Settlement, Defendants will pay \$925,000.00, *on a non-*  
25 *reversionary basis*, to settle this matter. The parties negotiated the Settlement in  
26 good faith and at arms' length, following an intensive investigation of the claims.  
27 The parties shared extensive information with one another before arriving at a  
28 settlement, and fully apprised each other of their respective factual contentions,

1 legal theories, and defenses. Robbins Decl. at ¶5. Class counsel are experienced in  
2 class action wage-and-hour litigation. Robbins Decl. ¶2; Declaration of London D.  
3 Meservy in support of this motion ("Meservy Decl.") ¶¶2-4; Declaration of  
4 Matthew S. Dente in support of this motion ("Dente Decl.") ¶¶2-4. Defendant's  
5 counsel are also experienced in defending class actions of this type.

6 Furthermore, courts must give "proper deference to the private consensual  
7 decision of the parties," since "the court's intrusion upon what is otherwise a private  
8 consensual agreement negotiated between the parties to a lawsuit must be limited to  
9 the extent necessary to reach a reasoned judgment that the agreement is not the  
10 product of fraud or overreaching by, or collusion between, the negotiating parties,  
11 and that the settlement, taken as a whole, is fair, reasonable and adequate to all  
12 concerned." *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998)  
13 (citation omitted). As shown below, the Settlement is fair, reasonable, and  
14 adequate as should be granted final approval.

15 1. The Terms of the Settlement Disclose No Grounds to Doubt its  
16 Fairness.

17 The Settlement provides a significant recovery to the Class and clearly falls  
18 within the range of reasonableness. A thorough review of the terms of the  
19 Settlement, particularly the \$925,000.00 *non-reversionary* settlement amount, gives  
20 rise to no doubts as to its fairness. The Settlement provides for substantial and  
21 immediate benefits payable to Class Members. The Settlement is enhanced by the  
22 fact that there are no non-cash benefits to the Settlement such as paid time off or  
23 coupons. The amounts for which Class Members are eligible exceed settlements of  
24 similar claims and are also commensurate with the value of the Claims adjusted for  
25 risk. The amounts to be paid are not nominal or symbolic. Rather, these are  
26 substantial benefits in relation to the claimed harm suffered by the Class.  
27 Moreover, the LWDA will receive a sizable payment as its share of the Settlement  
28 attributable to civil penalties under PAGA. The monetary recoveries for both the

1 Class and the State of California exemplify the fairness, reasonableness, and  
2 adequacy of the Settlement and justify its final approval.

3 Despite the fairness of the Settlement's terms, any Class Member, upon  
4 reviewing the Class Notice, who was unsatisfied with its terms had the right to  
5 submit a request for exclusion from (i.e., opt out of) the Settlement, in which case  
6 the Class Member would retain any of the Claims he or she may have against  
7 Defendant. Sett. Stip. at ¶29. Moreover, Class Members who did not opt out had  
8 the opportunity, upon providing proper notice to the parties and the Court, to attend  
9 the final fairness hearing for the purpose of objecting to one or more of the  
10 Settlement's terms. *Id.* at ¶33.

11 2. The Parties Engaged in Extensive Investigation of Plaintiffs' and  
12 the Class's Claims, Which Favors Final Approval.

13 Class Counsel and Defendant's Counsel conducted an intensive investigation  
14 into Plaintiffs' and the Class's claims. The parties engaged in significant informal  
15 discovery, exchanging a considerable amount of information and fully apprising  
16 each other of their respective factual contentions, legal theories, and defenses.  
17 Robbins Decl. ¶¶ 4-5, 7, 24. The parties negotiated the Settlement with ample  
18 knowledge of the strengths and weaknesses of Plaintiffs' claims and Defendant's  
19 defenses and the monetary amounts necessary to compensate Class Members taking  
20 into account both parties' strengths, weaknesses, and the risks of going forward with  
21 the litigation. *Id.*

1                   3.     Liability Is Vigorously Contested, and the Settlement Provides  
2                                     Reasonable Compensation for the Class Members' Alleged  
3                                     Injuries.

4                   Of particular relevance to the reasonableness of the Settlement is the fact that  
5 Defendant has legal and factual grounds available to it for defending this action.  
6 From the outset of this litigation, Defendant denied each of Plaintiffs' allegations as  
7 they apply to Plaintiffs and each Class Member. Specifically, Defendant claims  
8 that it paid Plaintiffs and Class Members within the time limits established by  
9 California law, that the wage statements it provided to Plaintiffs and Class  
10 Members complied with California law, and that any alleged defects in its wage  
11 statements were technical and do not give rise to any liability. Robbins Decl. ¶ 17  
12 Notwithstanding Defendant's arguments, the Settlement commits Defendants to pay  
13 \$925,000.00 to compensate Plaintiffs and Class Members for these claims.

14                   4.     The Complexity, Expense, and Likely Duration of Continued  
15                                     Litigation in the Absence of Settlement Favors Final Approval.

16                   Employment class action cases are expensive and time consuming to  
17 prosecute. Due to the size of the Class and the nature of the claims, continued  
18 litigation of this action against Defendant would likely be complex and expensive.  
19 The Settlement avoids the need for a contested class certification motion that would  
20 be time consuming and costly for Plaintiffs to file, Defendant to oppose, and the  
21 Court to decide. The Settlement also avoids a lengthy trial or trials, (and  
22 corresponding appeals) that likely would have involved testimony by numerous  
23 witnesses and experts.

24  
25  
26  
27  
28

1                   5.     The Experience and Views of Class Counsel Favor Final  
2                                    Approval.

3                   Class Counsel support the Settlement as fair, reasonable, adequate, and in the  
4 best interests of the Class. Class Counsel believes this Settlement to be an excellent  
5 result for Class Members. Robbins Decl. at ¶24; Meservy Decl. at ¶25; Dente Decl.  
6 at ¶25.

7                   6.     Class Members' Positive Reaction to the Settlement Favors Final  
8                                    Approval.

9                   Of great importance is the fact that no Class Members objected to the  
10 Settlement. Keough Decl. at ¶9. The Court should construe the overwhelming  
11 non-opposition to the Settlement as a strong indication of Class Members' support  
12 for the Settlement as being fair, reasonable, and adequate and thus deserving of  
13 final approval.

14                   7.     This Court Should Approve the PAGA Penalty Portion of the  
15                                    Settlement.

16                   PAGA requires that this Court review and approve the settlement of penalties  
17 under PAGA. Cal. Lab. Code § 2699(1). As a part of the Settlement, Defendant  
18 agreed to pay \$30,000.00 to the LWDA as its share of the Settlement attributable to  
19 civil penalties under PAGA. Sett. Stip. at ¶13. For all of the reasons stated above,  
20 the Settlement is fair, reasonable, and adequate and should be approved. The  
21 PAGA portion of the Settlement should likewise be approved.

22                   The Settlement is fair, reasonable, and adequate because it provides  
23 substantial benefits to Class Members and the general public. Accordingly, final  
24 approval of the Settlement is appropriate.

25     **IV. CLASS COUNSEL'S REQUESTED ATTORNEYS' FEES AWARD IS**  
26     **FAIR AND REASONABLE AND SHOULD BE APPROVED**

27                   In connection with the Settlement, Class Counsel request an award of  
28

1 attorneys' fees of \$308,333.33 which equals 33.33% of the \$925,000.00 settlement.<sup>2</sup>

2 The U.S. Supreme Court consistently has recognized that "a litigant or  
3 lawyer who recovers a common fund for the benefit of persons other than himself  
4 or his client is entitled to a reasonable attorney's fee from the fund as a whole."  
5 *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Mills v. Elec. Auto-Lite Co.*,  
6 396 U.S. 375 (1970). The common fund doctrine is a well-recognized exception to  
7 the general American rule that a litigant must bear his own attorney's fees. *Alyeska*  
8 *Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 257-58 (1975). The Ninth  
9 Circuit has held that the common fund doctrine applies when: (1) the class of  
10 beneficiaries is sufficiently identifiable; (2) the benefits can be accurately traced;  
11 and (3) the fee can be shifted with some exactitude to those benefiting. *Paul,*  
12 *Johnson, Alston & Hunt v. Grauldy*, 886 F.2d 268, 271 (9th Cir. 1989) ("*Paul*").  
13 These criteria are "easily met" when "each member of a certified class has an  
14 undisputed and mathematically ascertainable claim to part of a lump-sum  
15 [settlement] recovered on his behalf." *Id.* at 271, citing *Van Gemert*, 444 U.S. at  
16 479.

17 Under the three factors set forth in *Paul*, the common fund doctrine applies  
18 here. First, the class of beneficiaries is identifiable. Defendant identified each of  
19 the Class Members (4,340) by examining their employment databases. Second, the  
20 benefits consist of monetary payments to the Class Members and, therefore, can be  
21 easily and accurately traced. Third, the fee can be shifted with exactitude because  
22 Class Counsel are claiming a specific, lump-sum percentage of the total settlement  
23 amount to be paid to Class Members.

24 Under the common fund doctrine, courts typically award attorney's fees

25 \_\_\_\_\_  
26 <sup>2</sup> On May 10, 2013, Plaintiffs filed a Motion for Attorneys Fees and Costs during the Claim  
27 Period in order to ensure that all Class Members had the opportunity, should they so choose, to  
28 review the basis for Class Counsel's claim for attorneys' fees and costs during the time period in  
which they may object to the Settlement as required by the Ninth Circuit Court of Appeals in *In*  
*Re Mercury Interactive Corp. Securities*, 618 F.3d 988 (9th Cir. 2010). For the Court's  
convenience, Plaintiffs include a discussion on this topic in this brief.

1 based on a percentage of the total settlement. *See Fla. v. Dunne*, 915 F.2d 542, 545  
2 (9th Cir. 1990); *see also In Re Pac. Enter. Sec. Litig.*, 47 F.3d 373, 378-79 (9th Cir.  
3 1995) (affirming attorney's fee award of 33% of the recovery); *Morris v. Lifescan,*  
4 *Inc.*, 54 Fed. Appx. 663 (9th Cir. 2003) (affirming attorney's fee award of 33% of  
5 the recovery). Every Supreme Court case that has considered the award of  
6 attorney's fees under the common fund doctrine has determined those fees as a  
7 percentage of the recovery. *See, e.g., Camden I Condo. Ass'n., Inc. v. Dunkle*, 946  
8 F.2d 768, 773 (11th Cir. 1991) citing *Blum v. Stenson*, 465 U.S. 886 (1984) (noting  
9 that the percentage of recovery method is the appropriate method to award  
10 attorney's fees in common fund cases); *Sprague v. Ticonic Nat'l. Bank*, 307 U.S.  
11 161 (1939); *Centr. R.R. & Banking Co. v. Pettus*, 113 U.S. 116, 128 (1885);  
12 *Trustees v. Greenough*, 105 U.S. 527, 532 (1881).

13 In the Ninth Circuit, district courts have the discretion to use either the  
14 percentage of the fund or the lodestar method to calculate attorney's fees. *Williams*  
15 *v. MGM-Pathe Comm'n Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997). Yet the Ninth  
16 Circuit has recognized a "ground swell of support for mandating a percentage-of-  
17 the-fund approach in common fund cases..." *Dunne*, 915 F.2d at 545; *see also In*  
18 *Re Pac. Enter. Sec. Litig.*, 47 F.3d at 378-79, (affirming attorney's fee of 33% of the  
19 recovery); *Morris*, 54 Fed. Appx. at 663 (affirming fee award of 33% of the  
20 recovery). District courts in California have held that the percentage of the fund  
21 method is far preferable to the lodestar method because: (1) it aligns the interests of  
22 Class Counsel and the Class; (2) it encourages efficient resolution of the litigation  
23 by providing an incentive for early, yet reasonable, settlement; and (3) it reduces  
24 the demands on judicial resources. *In Re Oracle Sec. Litig.*, 131 F.R.D. 688, 689  
25 (N.D. Cal. 1990); *In Re Activision Sec. Litig.*, 723 F.Supp. 1373, 1378-79 (N.D.  
26 Cal. 1989).

27 In this case, the proposed attorneys' fees are justified under the factors  
28 identified in *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-50 (9th Cir. 2002).

1 In *Vizcaino*, the court discussed five factors that are relevant in determining  
2 whether proposed attorneys' fees in a common fund case are reasonable: (1) the  
3 results achieved; (2) the risk of litigation; (3) the skill required and the quality of  
4 work; (4) the contingent nature of the fee and the financial burden carried by the  
5 plaintiffs; and (5) awards made in similar cases. *Id.* at 1048-50. Applying the  
6 *Vizcaino* analysis to this case, the requested 33.33% fee is reasonable.

7 1. The Results Achieved.

8 The excellent results achieved in the Settlement support Class Counsel's  
9 request for attorneys' fees. Here, Class Counsel negotiated a non-reversionary cash  
10 settlement of \$925,000.00 for a Class of 4,340 current and former California flight  
11 attendant employees of Defendant. As a part of the Settlement, the State of  
12 California will receive \$30,000.00 for education and enforcement of labor laws.  
13 These are significant benefits for both the Class Members and the State of  
14 California. Robbins Decl. at ¶9; Meservy Decl. at ¶11; Dente Decl. at ¶11.

15 2. The Risks of Litigation.

16 Class action lawsuits carry a tremendous amount of risk both on certification  
17 and liability. From the outset of this litigation, Defendant denied each of Plaintiffs'  
18 allegations and offered legal and factual grounds in defense of this action.  
19 Specifically, Defendant claimed that the wage statements it provided to Class  
20 Members and the timing of its payment of wages to Class Members complied with  
21 California law and they had not violated any provisions of the California Labor  
22 Code, including, but not limited to, §§204, 226. Defendants further argued that any  
23 violation was technical at best. Considering the defenses available to Defendant,  
24 the fact that Class Counsel were able to negotiate a \$925,000.00 Settlement is an  
25 outstanding achievement. Robbins Decl. ¶¶4-5, 7, 24-25.

26 3. The Skill Required and the Quality of the Work.

27 Practice in the narrow area of wage-and-hour class litigation requires  
28 knowledge and skill of the constantly evolving substantive law as well as the

1 procedural requirements of class action litigation. The issues presented in this case,  
2 specifically Plaintiffs' claims regarding the California Labor Code's requirements  
3 for itemized wage statements and for the timing of the payment of wages, required  
4 more than just a general appreciation of wage-and-hour law and class action  
5 procedure. As just one example, the case law regarding the subject matter of this  
6 case is still developing. Further, this case involved matters that required significant  
7 expenditure of Class Counsel's time such as: (1) extensive pre-litigation  
8 investigation; (2) extensive and detailed legal research into the substantive law of  
9 the causes of action at issue; (3) developing and executing litigation strategies; (4)  
10 developing and executing mediation and settlement strategies; and (5) analyzing  
11 detailed and extensive data and information exchanged between the parties in order  
12 to assure that the Settlement's terms are based upon objective evidence that had  
13 been thoroughly considered in the context of the risks, expenses, and benefits of  
14 continuing to litigate the case. Robbins Decl. at ¶16; Meservy Decl. at ¶18; Dente  
15 Decl. at ¶18.

16 The quality of opposing counsel is also important in evaluating the quality of  
17 the work done by Class Counsel. Here, Littler Mendelson P.C., a prominent  
18 national law firm with extensive experience in employment and class action  
19 litigation, represented Defendant. The ability of Class Counsel to obtain a  
20 favorable settlement in the face of this quality opposition reflects the superior  
21 quality of Class Counsel's work.

#### 22 4. The Contingent Nature of the Fee.

23 From the outset of the case to the present, prosecution of this action has  
24 involved significant financial risk for Class Counsel. Robbins Decl. at ¶15;  
25 Meservy Decl. at ¶17; Dente Decl. at ¶17. Class Counsel undertook this matter  
26 solely on a contingent basis with no guarantee of recovery. *Id.* Class Counsel  
27 placed their own resources at risk to prosecute this action with no guarantee of  
28 success. *Id.* The risks of this case are apparent in that class certification would

1 have been a hard-fought issue, especially considering the uncertainty regarding  
2 certification of cases such as this. Moreover, even if class certification were  
3 granted over Defendant's opposition, there was no assurance that Plaintiffs would  
4 succeed at trial. Robbins Decl. at ¶17; Meservy Decl. at ¶19; Dente Decl. at ¶19.  
5 For example, there was a strong possibility that Defendant could prove that it paid  
6 Plaintiffs and Class Members within the time limits established by the California  
7 Labor Code, that the wage statements it provided to Plaintiffs and Class Members  
8 complied with California law, and that any alleged defects in its wage statements  
9 were technical and do not give rise to any liability, as well as the uncertainty in the  
10 law the requisite showing on an injury to recover damages under California Labor  
11 Code section 226. *Id.* Despite such challenges, Class Counsel were able to  
12 persuade Defendants that they faced significant liability exposure such that they  
13 were willing to pay \$925,000.00 to settle this matter. *Id.*

14           5.     Awards Made in Similar Cases.

15           Class Counsel's request for an award of attorneys' fees equal to 33.33% of the  
16 common fund obtained here is in line with attorneys' fees awarded in other common  
17 fund settlements. *See, e.g., In Re Pac. Enter. Sec. Litig.*, 47 F.3d at 378-79  
18 (affirming attorney's fee of 33% of the recovery); *Morris*, 54 Fed. Appx. at 663  
19 (affirming fee award of 33% of the recovery); *Vasquez v. Coast Valley Roofing,*  
20 *Inc.*, 266 F.R.D. 482, 491–92 (E.D. Cal. 2010) (citing to five recent wage and hour  
21 class actions where federal district courts approved attorney fee awards ranging  
22 from 30 to 33%); *Martin v. AmeriPride Servs., Inc.*, No. 08cv440-MMA (JMA),  
23 2011 WL 2313604 (S.D. Cal. June 9, 2011) (noting that "courts may award  
24 attorneys' fees in the 30–40% range in wage and hour class actions that result in  
25 recovery of a common fund under \$10 million"); *Singer v. Becton Dickinson and*  
26 *Co.*, No. 08-cv-821-IEG (BLM), 2010 WL 2196104, \*8 (S.D. Cal. June 1, 2010)  
27 (approving attorney fee award of 33.33% of the common fund and holding that  
28 award was similar to awards in three other wage and hour class action cases where

1 fees ranged from 30.3% to 40%); *De Stefan v. Frito-Lay, Inc.*, 10cv0112-DOC  
2 (C.D. Cal. Oct. 29, 2012) (awarding 33% fee on a \$2 million wage and hour class  
3 action); *Ingalls v. Hallmark Mktg. Corp.*, 08cv4342 VBF (C.D. Cal. Oct. 16, 2009)  
4 (awarding 33.33% fee on a \$5.6 million wage and hour class action); *Birch v. Office*  
5 *Depot, Inc.*, Case No. 06cv1690 DMS (WMC) (S.D. Cal. Sept. 28, 2007) (awarding  
6 a 40% fee on a \$16 million wage and hour class action); *Rippee v. Bos. Mkt. Corp.*,  
7 Case No. 05cv1359 BTM (JMA) (S.D. Cal. Oct. 10, 2006) (awarding a 40% fee on  
8 a \$3.75 million wage and hour class action).

9 6. No Class Member Objected to the Attorneys' Fee Award.

10 Class Counsel's intention to request payment of attorneys' fees equal to  
11 33.33% of the Gross Settlement Award was clearly disclosed to each Class Member  
12 in the Court-approved Class Notice. Not a single one of the 4,340 Class Members  
13 has objected to Class Counsel's request for attorneys' fees. Keough Decl. at ¶9.  
14 The Class Members clearly approved the award of attorneys' fees. Class Counsel  
15 respectfully request \$308,333.33 in attorneys' fees, which equals 33.33% of the  
16 \$925,000.00 Gross Settlement Award.

17 **V. CLASS COUNSEL'S REQUESTED REPAYMENT OF COSTS IS**  
18 **FAIR AND REASONABLE AND SHOULD BE APPROVED**

19 In the course of this litigation, Class Counsel had to incur out-of-pocket costs  
20 totaling \$6,034.80. Robbins Decl. at ¶18. As demonstrated in the Robbins  
21 Declaration, the incurred costs include court fees, copying fees, postage fees,  
22 mediation fees, legal research charges, courier charges, and travel expenses. *Id.*  
23 Such costs are appropriate for cost reimbursement in these types of cases. *See, e.g.,*  
24 *In re United Energy Corp. Sec. Litig.*, MDL No. 726, 1989 WL 73211, at \*6 (C.D.  
25 Cal. Mar. 9, 1989) (quoting Newberg, *Attorney Fee Awards* § 2.19 (1987)). Class  
26 Counsel's intention to request repayment of its costs up to \$10,000.00 was clearly  
27 disclosed to each Class Member in the Court-approved Class Notice and not one of  
28 the 4,340 Class Members objected Keough Decl. at ¶9. Plaintiffs' cost request is

1 reasonable and should be granted.

2 **VI. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT**  
3 **AWARDS ARE FAIR AND REASONABLE AND SHOULD BE**  
4 **FINALLY APPROVED**

5 Plaintiffs seeks class representative enhancements in the amount of  
6 \$7,500.00 each, \$15,000.00 total. These enhancements are intended to recognize  
7 the time and efforts that Plaintiffs spent on behalf of the Class Members as well as  
8 the risks Plaintiffs assumed in acting as the named Plaintiffs in this action. Robbins  
9 Decl. at ¶¶19-23; Meservy Decl. at ¶¶20-24; Dente Decl. at ¶¶20-24.

10 Plaintiffs actively participated in this litigation, spending substantial time  
11 participating in interviews, meetings and telephone consultations with Class  
12 Counsel who required considerable information pertaining to Defendant's policies  
13 and procedures regarding the paystubs they provided to their California flight  
14 attendants and the timing of wage payments. *Id.* Plaintiffs also spent numerous  
15 hours gathering information in support of the claims and responding to written  
16 inquiries from Class Counsel. *Id.* They directly assisted in evaluating the  
17 information obtained from Defendant. *Id.* This work was undertaken in order to  
18 prepare the complaint, the amended complaint, to prepare for mediation, the  
19 anticipated certification motion, and ultimately trial. *Id.*

20 Employees are dependent on, and generally thankful for, their jobs,  
21 especially given the current economic climate and soaring unemployment rate in  
22 California. *Id.* Given these realities, employees are particularly unlikely to  
23 jeopardize their future employment by complaining, much less filing a class action  
24 lawsuit against their employers on behalf of their fellow employees. *Id.* Plaintiffs'  
25 willingness to sacrifice and set aside their own personal interests for the benefit of  
26 the Class should be rewarded, both as just compensation for their efforts and  
27 achievements in this case, and to encourage others to stand up and object to  
28 employment practices they believe to be unlawful. *Id.*

1           The potential financial risks are in and of themselves enough to dissuade  
2 many if not most people from agreeing to act as a class representative. *Id.*  
3 Plaintiffs also took the risk that this lawsuit would have a negative impact on their  
4 future employment opportunities. *Id.* Plaintiffs also run the risk that their  
5 prospective employers may run a background search, including a search for court  
6 records that might reveal this lawsuit and their willingness to file suit against their  
7 employer. *Id.* Suffice to say, this could certainly have a negative impact on their  
8 future employment prospects. *Id.*

9           Plaintiffs sacrificed their personal interests for the benefit of the class. *Id.*  
10 By agreeing to file this case, Plaintiffs assumed the risk of a judgment against them  
11 and personal liability for an award of costs to Defendants in the event of an adverse  
12 outcome. *Id.* In class action losses, the class representative is deemed the losing  
13 party and thus potentially liable for the prevailing party's costs.

14           While the class representatives are potentially personally liable for all of the  
15 costs in an unsuccessful suit, they certainly do not reap all of the benefits in a  
16 successful one. *Id.* Here, for example, Plaintiffs are requesting \$7,500.00 each  
17 (0.8% each of the gross benefits achieved), \$15,000.00 total (1.6% of the gross  
18 benefits achieved). *Id.* Accordingly, a fair service fee is necessary to ensure that  
19 successful class representatives receive just compensation for their willingness to  
20 take on the full risks of a loss. *Id.*

21           Equally significant is the fact that Plaintiffs' intention to request class  
22 representative enhancements of \$7,500.00 each, \$15,000.00 total, were clearly  
23 disclosed to each Class Member in the Court-approved Class Notice and not one of  
24 the 4,430 Class Members objected. Keough Decl. at ¶9. For the foregoing reasons  
25 Plaintiffs' requested class representative enhancements are reasonable and should  
26 be granted.

27 **VII. THE COURT SHOULD APPROVE THE PAYMENT TO GCG**

28           As a part of the preliminary approval process, this Court approved the hiring

1 of GCG as the Settlement Administrator. GCG has performed all of its required  
2 duties to date and is committed to completing the claims administration process.  
3 *See generally* Keough Decl. GCG's total costs for the administration of the  
4 Settlement, including fees incurred and future costs for completion of  
5 administration, is estimated not to exceed \$20,600.00. Keough Decl. at ¶11.  
6 Plaintiffs respectfully request that this Court approve payment of GCG's actual total  
7 fees and costs incurred, up to \$20,600.00, to account for the costs of administration  
8 as part of its final order approving the Settlement.

9 **VIII. CONCLUSION**

10 For all of the foregoing reasons, Plaintiffs requests, and neither Defendant  
11 nor any Class Members oppose, that this Court: (1) grant final approval of this  
12 Settlement; (2) approve distribution of the settlement funds to the Class Members  
13 and the LWDA; (3) approve Class Counsel's request for an award of \$308,333.33 in  
14 attorneys' fees and \$6,034.80 in costs; (4) grant the request for class representative  
15 incentive award payments of \$7,500.00 for each of the Plaintiffs (\$15,000.00 total);  
16 (5) and approve payment of up to \$20,600.00 to GCG for administration fees and  
17 costs.

18 Dated: June 21, 2013

THE DENTE LAW FIRM  
ROBBINS ARROYO, LLP  
MESERVY LAW, P.C.

19  
20  
21 By: s/ Brian J. Robbins  
BRIAN J. ROBBINS (SB# 190264)

22 Attorneys for Plaintiffs Seiko Takagi and  
23 Paul Bradley, Individually, and as  
24 Representatives of Other Members of the  
Public Similarly Situated

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

**CERTIFICATE OF SERVICE**

I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of San Diego, State of California, and not a party of this action. My business address is 600 B Street, Suite 1900, San Diego, California 92101.

I hereby certify that on June 21, 2013, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 21, 2013, at San Diego, California.

s/Brian J. Robbins  
\_\_\_\_\_  
BRIAN J. ROBBINS