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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CASEY CLARKSON,

Plaintiff,

v.

ALASKA AIRLINES, INC., and
HORIZON AIR INDUSTRIES, INC.,

Defendants.

CASE NO. 2:19-CV-0005-TOR

ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

BEFORE THE COURT are Plaintiff’s Unopposed Motion to Modify Order Granting Motion for Class Certification, ECF No. 241, and Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement, ECF No. 242. The Court has reviewed the file and the pleadings and is fully informed.

The Court grants the Motion to Modify Class Certification and grants the Motion for Preliminary Approval of the Class Action Settlement as follows:

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Amendment of the Class Definition and Appointment of Additional Class Representatives

1 1. The Court previously certified a Paid Leave Class consisting of “All
2
3 current or former Alaska or Horizon pilots who have taken short-term military
4 leave from October 10, 2004 through the date of the judgment.” ECF No. 89 at 18.
5

6 2. An order granting class certification “may be altered or amended
7 before final judgment.” Fed. R. Civ. P. 23(c)(1)(C). Holding a plaintiff to the
8 original class definition “would ignore the ongoing refinement and give-and-take
9 inherent in class action litigation, particularly in the formation of a workable class
10 definition.” *In re Monumental Life Ins. Co.*, 365 F.3d 408, 414 (5th Cir. 2004).
11 Among other things, courts generally agree that at some point, a class definition
12 should have an end date although there is no set rule as to what the end date should
13 be. *See Guidry v. Wilmington Tr.*, 333 F.R.D. 324, 329 (D. Del. 2019) (surveying
14 law and setting an end date as of the court’s decision).

15 3. Plaintiff requests one change to the class previously certified by the
16 Court—that it have an end date of May 31, 2023. Because this change “does not
17 alter the reasoning underlying the Court’s prior Order granting class certification”
18 the Court finds this modification to the class definition is appropriate.

19 4. The definition of the Paid Leave Class is thus modified to: “All
20 current or former Alaska or Horizon pilots who have taken short-term military

1 leave from October 10, 2004 through May 31, 2023.”

2 5. Additionally, Plaintiff requests the appointment of Ryan Schwend,
3 Scott Silvester and Matt Fisk as additional class representatives. Class Counsel
4 represents that these individuals were invited to participate in the mediation that
5 was held for the purpose of negotiating prospective relief as part of this settlement,
6 because they were, unlike Plaintiff, current pilots and servicemembers. They thus
7 had standing to pursue prospective relief and thus enhanced the representation of
8 the interests of Class members who, unlike Plaintiff, would personally benefit from
9 such relief. Defendants do not oppose the appointment of the additional class
10 representatives. The Court finds them adequate class representatives and so
11 appoints them.

12 **Preliminary Approval of the Settlement**

13 6. Preliminary approval is the first step in the class settlement process.
14 The request for preliminary approval only requires an “initial evaluation” of the
15 fairness of the proposed settlement. *Manual for Complex Litigation* § 21.632 (4th
16 ed. 2004). The purpose of preliminary approval is to determine “whether to direct
17 notice of the proposed settlement to the class, invite the class’s reaction, and
18 schedule a fairness hearing.” William B. Rubenstein *et al.*, *Newberg on Class*
19 *Actions* § 13:10 (5th ed. 2013).

20 7. In granting preliminary approval, the Court considers “whether the

1 Settlement Agreement appears to be the product of serious, informed, non-
2 collusive negotiations; has no obvious deficiencies; does not grant preferential
3 treatment to class representatives, and falls within the range of possible approval.”

4 8. The Court finds that the Settlement Agreement is the result of serious,
5 informed, and non-collusive negotiations. The Settlement Agreement is the result
6 of arm’s length negotiations by counsel well-versed in the prosecution of class
7 actions. The assistance of a professional mediator reinforces that the Settlement
8 Agreement is non-collusive.

9 9. The proposed Settlement provides substantial relief to the Class. The
10 monetary component of the Settlement Agreement provides for payment of \$4.75
11 million to a settlement fund for the benefit of the Class—43% of Class Counsel’s
12 estimate of the Class’s gross damages (i.e., not including prejudgment interest,
13 liquidated damages, or any offset for military pay). This result is better than that
14 achieved in class settlements approved by other courts in USERRA cases, both in
15 absolute terms and as a proportion of Class Counsel’s estimate of Defendants’
16 potential liability.

17 10. The Settlement Agreement also provides for significant forward-
18 looking relief for the Class: Defendants will provide members of the Class who are
19 employed as pilots at Alaska Airlines or Horizon Air with four calendar days of
20 paid military leave per year, subject to certain terms and conditions. Class Counsel

1 estimates this benefit will have an annual value of \$2,000.00-\$6,619.40 for each
2 Class member at Alaska Airlines and \$1,512.00-\$3,612.00 for each Class member
3 at Horizon Air. This substantial prospective relief for the Class further supports
4 preliminary approval.

5 11. The Settlement Agreement does not suffer from any obvious
6 deficiencies, such as preferential treatment of the Class representatives. The Ninth
7 Circuit has advised courts to be concerned (a) “when counsel receive a
8 disproportionate distribution of the settlement, or when the class receives no
9 monetary distribution but class counsel are amply rewarded”; (b) “when the parties
10 negotiate a ‘clear sailing’ arrangement providing for the payment of attorneys’ fees
11 separate and apart from class funds, which carries ‘the potential of enabling a
12 defendant to pay class counsel excessive fees and costs in exchange for counsel
13 accepting an unfair settlement on behalf of the class’”; and (c) “when the parties
14 arrange for fees not awarded to revert to defendants rather than be added to the
15 class fund.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 947 (9th
16 Cir. 2011). Such signs do not necessarily mean that a settlement is improper, but
17 only that it is supported by an explanation of why the fee is justified and does not
18 betray the class’s interests. *Id.* at 949.

19 12. Here, the Class will receive a monetary distribution and counsel’s
20 distribution will not be disproportionate. While the Settlement Agreement includes

1 a “clear sailing” provision, under which Defendants will not oppose a request for
2 attorney’s fees, the Settlement Agreement provides that any amounts not awarded
3 will revert to the Class.

4 13. No class member or group of Class members will receive unduly
5 favorable treatment under the terms of the Settlement Agreement. The Plan of
6 Allocation proposes that the Settlement Fund will be divided among all Class
7 Members on a pro rata basis. Claims for Class Members arising from their
8 employment with Horizon between 2004 and 2008 will be discounted to reflect the
9 lack of employer military leave data as to those claims, which would have created
10 a substantial bases for a laches defense. The Court preliminarily finds this fair and
11 reasonable under the circumstances.

12 14. The Court finds that there are no grounds to doubt the fairness of the
13 Settlement Agreement and concludes that the proposed Settlement Agreement is
14 within the range of possible settlement approval, such that notice to the class is
15 appropriate.

16 **Class Notice**

17 15. The Court approves the Proposed Notice of Class Action Settlement
18 (“Class Notice”) which is attached as Exhibit 3 to the Downes Declaration and
19 directs its distribution to the Class. ECF No. 240-4.

20 16. The content of the Class Notice fully complies with due process and

1 Federal Rule of Civil Procedure 23.

2 17. Pursuant to Federal Rule of Civil Procedure 23(c)(2)(B), a notice must
3 provide:

4 the best notice practicable under the circumstances, including
5 individual notice to all members who can be identified through
6 reasonable effort. The notice must concisely and clearly state in plain,
7 easily understood language: the nature of the action; the definition of
8 the class certified; the class claims, issues, or defenses; that a class
9 member may enter an appearance through counsel if the member so
10 desires; that the court will exclude from the class any member who
11 requests exclusion, stating when and how members may elect to be
12 excluded; and the binding effect of a class judgment on class members
13 under Rule 23(c)(3).

14 Fed. R. Civ. P. 23(c)(2)(B). Notice sent by first class mail is sufficient when the
15 names and addresses of the class members are known. *Eisen v. Carlisle &*
16 *Jacquelin*, 417 U.S. 156, 173-77 (1974); *Peters v. Nat'l R.R. Passenger Corp.*, 966
17 F.2d 1483, 1486 (D.C. Cir. 1992). Here, the names and addresses of the Class
18 members are known except as to Horizon pilots who took military leave between
19 2004 and 2008, and thus notice to the Class by first class mail is appropriate as to
20 them. As to Horizon pilots who took military leave between 2004 and 2008, notice
will be provided to all Horizon pilots from that timeframe by first class mail, and
they will have the opportunity to submit claims. The Court finds this represents
the best notice practicable under the circumstances.

18. Rule 23(c)(3) requires that the notice inform class members of the

1 following: “(i) the nature of the action; (ii) the definition of the class certified; (iii)
2 the class claims, issues, or defenses; (iv) that a class member may enter an
3 appearance through an attorney if the member so desires; (v) that the court will
4 exclude from the class any member who requests exclusion; (vi) the time and
5 manner for requesting exclusion; and (vii) the binding effect of a class judgment on
6 members under Rule 23(c)(3).” Fed. R. Civ. P. 23(c)(2)(B). The proposed notice
7 to the Class meets these requirements.

8 19. A proper notice should (1) describe the facts underlying the action and
9 the class, (2) describe the terms of the settlement, (3) disclose any benefits
10 provided to class representatives, (4) provide information regarding attorney’s fees,
11 (5) state the time and place of the final hearing, (6) provide counsel’s contact
12 information and instructions on how to object and/or make inquiries, and (7)
13 explain the procedure for allocation. *Manual for Complex Litigation, supra*, §
14 21.312. Here, the proposed notice to the Class provides information on these
15 subjects and informs class members about their rights under the Settlement as well
16 as their right to be heard at the final fairness hearing.

17 20. The Court appoints Simpluris as the Settlement Administrator for
18 providing Class Notice and otherwise assisting in administration of the Settlement.
19 The Settlement Administrator shall provide notice to the Class **no later than**
20 **November 22, 2024**. The Settlement Administrator will file a declaration with the

1 Court confirming that the Class Notice was sent in accordance with this Order by
2 **December 2, 2024.**

3 **Class Action Settlement Procedures**

4 21. Any Class Member who wishes to object to this Settlement or
5 otherwise to be heard concerning this Settlement shall timely inform the District
6 Court in writing of his or her intent to object to this Settlement and/or to appear at
7 the Fairness Hearing by following the procedures set forth in the Class Notice
8 (“Objection”). To be considered timely, the Objection **must bear a postmark**
9 **that is no later than December 20, 2024.** The Objection must set forth at least
10 the following: (a) the full name, address and contact information for the Objector
11 and the name and address of counsel (if represented by counsel); (b) a written
12 statement of any and all objections to this Settlement and include any supporting
13 papers and arguments; (c) the signature of the Objector (or his attorney).

14 22. As the Court previously allowed Class Members the opportunity to
15 exclude themselves from the Class, only Class Members who were not previously
16 sent a prior Class Notice will be allowed to exclude themselves from the Class and
17 the Settlement. Any such Class Member who wishes to be excluded from the
18 Class and this Settlement must timely inform the District Court in writing of his or
19 her intent to be excluded from this Settlement following the procedures set forth in
20 the Class Notice (“Exclusion”). To be considered timely, the Exclusion **must bear**

1 **a postmark that is no later than no later than December 20, 2024.** The
2 Exclusion must set forth at least the following: (a) the full name, address and
3 contact information for the person seeking exclusion; and (b) the signature of the
4 person seeking exclusion (or their attorney).

5 23. Any Class Member or other person who fails to make his, her or its
6 Objection or Exclusion in the manner provided shall be deemed to have waived
7 such objection or Exclusion and shall forever be foreclosed from making any
8 objection to the fairness or adequacy of the proposed settlement as incorporated in
9 the Settlement Agreement, to the Judgment, to the Plan of Allocation, to the award
10 of attorneys' fees and reimbursement of expenses to Plaintiffs' Counsel, unless
11 otherwise ordered by the Court. To the extent that any objections or comments are
12 transmitted to Settlement Administrator, or the Parties' counsel, but are not filed
13 with the Court, those persons are hereby directed to file such objections with the
14 Court.

15 24. The Settlement Fund will be deemed and considered to be *in custodia*
16 *legis* of the Court and will remain subject to the jurisdiction of the Court until such
17 time as such funds will be distributed pursuant to the Settlement Agreement and/or
18 the order of the Court.

19 25. Class Counsel will file any Motion for Attorneys' Fees, Costs, and
20 any motion for Class Representative Service Awards **by January 3, 2025.**

1 26. Neither Defendants nor Defendants' counsel will have any
2 responsibility for the Plan of Allocation or will make any application for or take
3 any position on attorneys' fees or reimbursement of expenses submitted by Co-
4 Lead Class Counsel.

5 27. Class Counsel shall file a Motion for Final Approval of the Settlement
6 **by January 3, 2025.**

7 28. The Court will hold a **final fairness hearing on January 15, 2025, at**
8 **11:00 a.m., at the United States District Court for the Eastern District of**
9 **Washington, 920 West Riverside Ave., Courtroom 902, Spokane, Washington.**

10 The Court may continue the date of the final fairness hearing if necessary without
11 further notice to the Class, but any such continuance will be publicized on the
12 settlement website.

13 The District Court Executive shall enter this order and furnish copies to
14 counsel.

15 DATED September 25, 2024



17 *Thomas O. Rice*
18 THOMAS O. RICE
19 United States District Judge