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Class Counsel

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

KARLA MAREE and MOURAD GUERDAD, on behalf of themselves and all others similarly situated,

Plaintiff,

v.

DEUTSCHE LUFTHANSA AG,

Defendant.

Case No. 8:20-cv-00885-SVW-MRW

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Date July 10, 2023
Time: 1:30 p.m.
Courtroom: 10A
Judge: Hon. Stephen V. Wilson

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on July 10, 2023 at 1:30 p.m. or as soon thereafter as counsel may be heard by the above-captioned Court, located at the First Street Courthouse, 350 West First Street, Courtroom 10A, Los Angeles, California 90012 in the courtroom of the Honorable Stephen V. Wilson, Plaintiffs Karla Maree and Mourad Guerdad ("Plaintiffs"), by and through their undersigned counsel of record, will move, pursuant to Fed. R. Civ. P. 23(e), for the Court to: (i) grant final approval of the proposed Stipulation of Class Action Settlement ("Settlement Agreement"), and (ii) finally certify the Class, designate Plaintiffs as the Class Representatives, and appoint Bursor & Fisher, P.A. as Class Counsel.

This motion is made on the grounds that final approval of the proposed class action settlement is proper, given that each requirement of Rule 23(e) has been met.

This motion is based on Plaintiffs' Memorandum of Points and Authorities in Support of Motion for Final Approval of Class Action Settlement, the accompanying Declaration of Yeremey O. Krivoshey, the Declaration of William Boub, the Settlement Agreement, the pleadings and papers on file herein, and any other written and oral arguments that may be presented to the Court.

Dated: June 5, 2023

Respectfully submitted,

BURSOR & FISHER, P.A.

By: */s/ Yeremey O. Krivoshey*
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Class Counsel

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I. INTRODUCTION

On February 10, 2023, this Court preliminarily approved the Settlement and directed notice to be sent to the Settlement Class.[1] *See generally Maree v. Deutsche Lufthansa AG*, 2023 WL 2563914 (C.D. Cal. Feb. 13, 2023) (Order Granting Reconsideration of Preliminary Approval, ECF No. 198); *see also* Amended Order Granting Preliminary Approval, ECF No. 203. The Claims Administrator has implemented the Court-approved notice plan, which reached over 64 percent of the Settlement Class through direct notice, and reached at least 75 percent of the Settlement Class in combination with a robust digital media notice campaign. *See* Declaration of Dana Boub ("Boub Decl.") ¶¶ 8-23. The reaction from the Class has been overwhelmingly positive. To date, more than 20,000 class members have filed claims.[2] There have been only eleven (11) requests for exclusion (approximately 0.007% of the Settlement Class), and no objections.[3] As courts in this District routinely note, "[a] low proportion of opts outs and objections indicates that the class generally approves of the settlement." *Arreola v. Shamrock Foods Co.*, 2021 WL 4220630, at *5 (C.D. Cal. Sept. 16, 2021) (internal quotation omitted). "[T]he absence of objections and small number of requests for exclusion weighs in favor of final approval." *Brulee v. DAL Global Servs., LLC*, 2018 WL 6616659 at *6 (C.D. Cal. Dec. 13, 2018). Accordingly, Plaintiffs Maree and Guerdad ("Plaintiffs") respectfully submit this memorandum in support of Plaintiffs' Motion for Final Approval of Class Action Settlement.

In granting preliminary approval, the Court expressed some reservations about the claims-made nature of the Settlement, despite noting that "courts routinely provide preliminary approval for claims-made settlements that contain a reversion."

[1] All capitalized terms not otherwise defined herein shall have the same definitions as set out in the Settlement Agreement. *See* Krivoshey Decl. Ex. 1.

[2] The deadline to file claims is June 8, 2023. ECF No. 203.

[3] The deadline to object or opt-out of the Settlement is June 8, 2023. ECF No. 203.

Maree, 2023 WL 2563914, at *8. The Court's concerns in this regard, however, should be alleviated at final approval. *See id*., at *11 ("Time, in other words, will tell whether the Maree Plaintiffs' claims that 'there will likely be a higher claims rate than usual' comes to pass."). First, the current claims rate is 12.42% (with 20,505 persons submitting claims out of 165,098 potential Settlement Class Members), which is already far better than is typical in claims made settlements. *See* FED. TRADE COMM'N, CONSUMERS AND CLASS ACTIONS: A RETROSPECTIVE AND ANALYSIS OF SETTLEMENT CAMPAIGNS 11 (2019) ("Across all cases in our sample requiring a claims process, the median calculated claims rate was 9%, and the weighted mean (*i.e.*, cases weighted by the number of notice recipients) was 4%."); *see also*, *e.g.*, *In re Facebook Biometric Information Privacy Lit*., 522 F. Supp. 3d 617, 622 (N.D. Cal. 2021) (noting that claims rate of 22 percent "vastly exceeds the rate of 4-9% that is typical for consumer class actions"); *Rodriguez v. West Publishing Corp*., 563 F.3d 948, 967 (9th Cir. 2009) (finding claims rate of 13.8 supported a finding of a "favorable reaction to the settlement among class members"); *In re Online DVD-Rental Antitrust Litig.,* 779 F.3d 934, 944-45 (9th Cir. 2015) (affirming approval of settlement where less than 3.4% of class members filed claims); *Zepeda v. PayPal, Inc.*, 2017 WL 1113293, at *16 (N.D. Cal. Mar. 24, 2017) (finding that the "reaction of the Settlement Class is favorable" with a 2.8% claims rate.); *In re Linkedin User Priv. Litig.,* 309 F.R.D. 573, 589 (N.D. Cal. 2015) (approving a roughly 6% claims rate with few objections or opt-outs). A rate of 12.42% is also 2.5-4 times higher than the "3% to 5%" claims rate anticipated by the *Castanares* Plaintiffs' expert in opposition to Plaintiffs' motion for preliminary approval. *See* Declaration of Christopher Longley, ECF No. 118-19, at ¶ 27.

It is also substantially higher than the 4.32% claims rate that obtained final approval in a nearly identical airline Covid settlement: *Ide v. British Airways, PLC (UK)*, Case No. 1:20-cv-03542-JMF (S.D.N.Y). Krivoshey Decl. ¶ 57. There, the

court stated it would have "preferred" the claims rate to be higher (*id.* ¶ 58; *id.* Ex. 20 at 6:5-6), but recognized that it is "comparable to rates in other cases that have been approved" and reflective of class action settlements generally (*id.* Ex. 20 at 6:6-7).

Further, the combination of (1) the additional $500,000 minimum floor negotiated by the Parties for the interest payment portion of the Settlement, and (2) the high amounts claimed by Settlement Class Members ensures that Lufthansa does not receive a "windfall." *See Maree*, 2023 WL 2563914, at *8. The Settlement provides that class members that have already received a refund from Lufthansa could receive $10 in cash or a $45 voucher, and those class members that have not received a refund could receive a full refund of their flight ticket plus 1 percent of the affected ticket price. The average cost of an affected ticket is $1,816.41. *See* Declaration of Eric Mangusi, ECF No. 95-5, at ¶ 6; Krivoshey Decl. ¶ 15. To date, 899 class members have filed a claim for a full refund, entitling them to a $1,816.41 refund, plus $18.16 in interest. *See* Boub Decl. ¶ 20; Krivoshey Decl. ¶ 15 . Because the claims for a full refund are uncapped under the Settlement, Lufthansa will have to pay out the full amount of these claims. In addition, 17,712 class members have filed claims for $10 in cash, and 1,894 class members have filed claims for $45 vouchers. Boub Decl. ¶ 20. Because the sum of these claims does not appear to exceed the $500,000 minimum floor, Lufthansa will have to increase payouts to these class members on a pro rata basis such that the full $500,000 floor is paid out.

Given that the parties had estimated that potential recovery *at trial* could be as low as $159,730-$341,753, the Settlement here provides a tremendous result while avoiding "litigation hazards" and "a long, contentious, and uncertain road to recovery." *See Maree,* 2023 WL 2563914, at *10 (discussing strengths of the

Plaintiffs' case); *id.*, at *12 (providing chart of each party's valuation of damages at trial).

This case has had a long and arduous path to final approval. After scorched earth litigation, contested discovery, and multiple oral arguments, the Court granted preliminary approval. Since then, the Settlement has only improved, with the addition of the $500,000 minimum floor for the Cash Option, Voucher Option, and Interest Payment portion of the Settlement, the addition of reminder notices, and lengthening of the notice and claims periods. The Settlement has resulted in a robust claims rate and is overwhelmingly supported by the Settlement Class. In a case stemming from alleged delay of providing refunds, the Court should now grant final approval so that class members can finally receive what they had been seeking for more than three years since the COVID-19 related flight cancellations of early 2020.

II. LEGAL STANDARD

Federal Rule of Civil Procedure Rule 23(e) requires court approval for class-action settlements. Fed. R. Civ. P. 23(e). "When the parties reach a settlement agreement before class certification, a court uses a two-step process to approve a class-action settlement." *Alvarez v. Sirius XM Radio Inc.*, 2021 WL 1234878 at *5 (C.D. Cal. Feb. 8, 2021) (citing *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003)). "First, the court must certify the proposed settlement class. Second, the court must determine whether the proposed settlement is fundamentally fair, adequate, and reasonable." *Id*. (internal citations omitted).

III. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES IS APPROPRIATE

A. The Settlement Class

The Court has preliminarily certified the following Settlement Class: "All residents of the United States who purchased a Qualifying Flight on Lufthansa scheduled to operate to or from the United States from January 1, 2020 to August 16, 2021 whose flights were cancelled by Lufthansa." ECF No. 203 ¶ 2.

The Ninth Circuit has recognized that certifying a settlement class to resolve consumer lawsuits is a common occurrence. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998), overruled on other grounds by *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011). When presented with a proposed settlement, a court must first determine whether the proposed settlement class satisfies the requirements for class certification under Rule 23. In assessing those class certification requirements, a court may properly consider that there will be no trial. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems … for the proposal is that there be no trial.").

B. The Court Has Already Preliminary Certified The Proposed Class

The Court's Preliminary Approval Order provisionally certified a Settlement Class after concluding that each of the requirements under Rule 23(a) and (b)(3) were satisfied. ECF No. 203 ¶¶ 2-5. No substantive changes have occurred since that ruling, and, more importantly, no objections have challenged that conclusion. The Court may therefore rely on the same rationale as explained in the preliminary approval order to find that class certification is appropriate under Rule 23(a) and (b) in connection with final approval. *See Alvarez*, 2021 WL 1234878, at *5 ("[F]or the reasons specified in its preliminary approval order, the Court certifies the Settlement Class for final approval of the Settlement."); *Ochinero v. Ladera Lending, Inc.*, 2021 WL 4460334, at *4 (C.D. Cal. July 19, 2021) (noting on final approval that "[t]he Court has already certified the Settlement Class for purposes of this Settlement Agreement.").[4]

[4] Plaintiffs incorporate by reference their prior arguments regarding certification of the Settlement Class, as set forth in the Motion for Preliminary Approval, rather than repeating them here. *See* ECF No. 95 at 14-16.

IV. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE

Under Rule 23(e)(2), if the proposed settlement would bind class members, the Court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate. To make this determination, the Court must consider the following factors:

> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
>
> (C) the relief provided for the class is adequate, taking into account:
>
> > (i) the costs, risks, and delay of trial and appeal;
> >
> > (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> >
> > (iii) the terms of any proposed award of attorneys' fees, including timing of payment; and
> >
> > (iv) any agreement required to be identified under Rule 23(e)(3); and
>
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2); *see also* Order Granting Reconsideration, ECF No. 198, at 10-11 (discussing standard).

Before the revisions to the Federal Rule of Civil Procedure 23(e), the Ninth Circuit had developed its own list of factors to be considered. *See*, *e.g.*, *In re Bluetooth Headset Products Liability Litigation*, 654 F.3d 935, 964 (9th Cir. 2011) (citing *Churchill Village, L.L.C. v. General Electric*, 361 F.3d 566, 575 (9th Cir. 2004)). "The revised Rule 23 'directs the parties to present [their] settlement to the court in terms of [this new] shorter list of core concerns.'" *Alvarez*, 2021 WL 1234878, at *5 (quoting Fed. R. Civ. P. 23(e)(2), 2018 Advisory Committee Notes). "The goal of amended Rule 23(e) is … to focus the district court and the lawyers on

the core concerns of procedure and substance that should guide the decision whether to approve the proposal." *Id*. (brackets and internal quotations omitted).

A. Adequacy Of Representation

"Under Rule 23(e)(2)(A), the first factor to be considered is whether the class representatives and class counsel have adequately represented the class. This analysis includes 'the nature and amount of discovery' undertaken in the litigation." *Alvarez*, 2021 WL 1234878, at *5 (quoting Fed. R. Civ. P. 23(e)(2)(A), 2018 Advisory Committee Notes).

The Class Representatives and Class Counsel have adequately represented the Settlement Class. The Settlement was negotiated by counsel with extensive experience in consumer class action litigation. *See* Krivoshey Decl. Ex. 1 (firm resume of Bursor & Fisher, P.A.). Based on their collective experience, and after conducting extensive research, discovery, and investigation, Class Counsel concluded that the Settlement Agreement provides exceptional results for the Settlement Class while sparing Settlement Class Members from the uncertainties of continued and protracted litigation. *See* ECF No. 203 ¶ 6 ("The Court finds that the Settlement is the product of non-collusive, arm's-length negotiations between experienced counsel who were thoroughly informed of the strengths and weaknesses of the case through discovery and motion practice."). And, the Court has already found that "[p]rior to settlement, Maree's counsel engaged in a variety of informal discovery; served, responded, and conferred regarding interrogatories and production of documents; and litigated two motions to dismiss and motion to compel arbitration." ECF No. 198, at 15. "This procedural history sufficiently demonstrates that Maree's counsel was adequately informed of the merits of the case before engaging in negotiations." The Court also found that the Plaintiffs and Class Counsel are adequate representatives for all Class Members. *See Maree*, 2023 WL 2563914, at *5 ("Plaintiff Guerdad's declaration persuades the Court that he is an

adequate representative of direct purchasers."); ECF No. 203, at ¶¶ 4, 5 ("The Court finds that … Plaintiffs Karla Maree and Mourad Guerdad are adequate representatives and appoints them to serve as representatives for the Settlement Class. The Court also finds that the law firm of Bursor & Fisher, P.A. has significant expertise and knowledge in prosecuting class actions involving consumer claims, and has committed the necessary resources to represent the Settlement Class. The Court, for purposes of settlement, appoints Bursor & Fisher, P.A. as Class Counsel for the Settlement Class."). Nothing has occurred to disturb those rulings.

B. Negotiated At Arm's Length

The second Rule 23(e)(2) factor asks the Court to confirm that the proposed settlement was negotiated at arm's length. Fed. R. Civ. P. 23(e)(2)(B). "As with the preceding factor, this can be 'described as [a] 'procedural' concern[], looking to the conduct of the litigation and of the negotiations leading up to the proposed settlement.'" *Alvarez*, 2021 WL 1234878, at *6 (quoting Fed. R. Civ. P. 23(e)(2), 2018 Advisory Committee Notes). Courts will evaluate the settlement process as well as the terms and conditions of the agreement to assure "that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties." *Rodriguez*, 563 F.3d at 965 (quoting *Hanlon*, 150 F.3d at 1027). "The involvement of a neutral or court-affiliated mediator or facilitator in settlement negotiations may bear on whether those negotiations were conducted in a manner that would protect and further the class interests." *Alvarez*, 2021 WL 1234878, at *6 (internal brackets and quotations omitted).

Although this factor was highly contested by the *Castanares* Plaintiffs, the Court ultimately found that "the Settlement is the product of non-collusive, arm's-length negotiations between experienced counsel who were thoroughly informed of the strengths and weaknesses of the case through discovery and motion practice, and whose negotiations were supervised by an experienced mediator." ECF No. 203 ¶ 6.

The Court evaluated this factor at length in its Order Granting Reconsideration of Preliminary Settlement Approval, where it found that "the record before the Court does not permit the Court to conclude that Maree and Lufthansa engaged in collusion that prejudiced the interests of class members." *Maree*, 2023 WL 2563914, at *8. "[T]he settlement was reached through a neutral mediator, which supports the propriety of the negotiations." *Id.* "[M]ore importantly, the Court … did not find the traditional subtle signs of implicit collusion." *Id.* "The fees provided to Maree's counsel align with the Ninth Circuit's 25% benchmark." *Id.* "The agreement also does not contain a 'clear sailing' arrangement." *Id.* Ultimately, the Court found that despite the claims-made nature of the Settlement, the Court was confident "that the amount offered to the class is well within the range of possible approval." *Id.*, at *9. This factor strongly supports final approval.

C. Adequacy Of Relief Provided For The Class

"The third factor the Court considers is whether 'the relief provided for the class is adequate, taking in to account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorneys' fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3).'" *Alvarez*, 2021 WL 1234878, at *6 (quoting Fed. R. Civ. P. 23(e)(2)(C)). Under this factor, the relief "to class members is a central concern." *Id.* (internal quotation omitted).

The Settlement provides that Class Members that have already received a refund for a Qualified Flight could receive $10 cash or $45 voucher. Settlement ¶ III.A. Payout for this class will be capped at $3.5 million, which includes the attorney's fees, costs and expenses, Interest Payments, incentive awards, and Claims Administration Expenses. *Id.* ¶ III.C. In addition, Class Members who have not received a full refund for their ticket price could submit a claim for a full refund

(which is not capped by the Settlement), plus 1% interest of the affected ticket price. *Id.* ¶ III.B2. For reference, the average cost of an affected ticket is $1,816.41, plus 1 percent interest of $18.16, with $56.6 million in qualifying open tickets that could have been claimed through the Settlement at the time the Settlement was reached. *See* ECF No. 95-5, at ¶ 6; Krivoshey Decl. ¶ 13.

At preliminary approval, the Court evaluated the adequacy of relief factors and held that they support approval. *See Maree,* 2023 WL 2563914, at *11-12. As the Court noted, "[e]valuating potential *recovery* in this case presents several challenges as [there are] two variables that significantly impact the amount of recovery: the interest rate and when interest begins to accrue." *Id.*, at *12 (emphasis added). "Each interested party presented their own figures and calculations as to what the maximum recovery and range of recovery would look like." *Id*. On the low-end, Lufthansa's estimate of potential damages *at trial* was $159,730, Maree's was $341,753, and Castanares was $1.96 million. *Id*. On the high end, Lufthansa's estimate was $6.12 million, Maree's was $13.77 million, and Castanares' estimate was $19.6 million – which the Court noted had "many errors," was "excessively optimistic," and was "too high". *Id*.

Comparing these figures to the valuation of the Settlement was also difficult. For instance, the *Castanares* Plaintiffs argued that the Settlement should be valued at under $1 million, Lufthansa argued that it should be valued at $3.5 million, and Plaintiffs argued that it should be valued at roughly $60 million when taking into account the $56.6 million in refunds that could have been claimed when the motion was initially filed. The Court took a middle approach, valuing the Settlement at $9.1 million, and noting that "the full refunds present a significant benefit to Class Members who have not received their refund." *Id*., at *11. While Plaintiffs ultimately believe that the Settlement provides *more than* $9.1 million in valuation, they believe that the Settlement should be approved even if only valued at $3.5

million Settlement Cap. To be conservative, Plaintiffs cite the $3.5 million figure herein, though of course standing by their belief that the Settlement provides vastly more benefits than that figure.

After preliminary approval was granted, the Settlement has only improved. The Parties negotiated (and the Court approved) the addition of (1) a $500,000 minimum floor to the interest portion of the Settlement, (2) a reminder notice, and (3) 30 extra days for class members to submit claims, opt out, and object. *See* ECF Nos. 199, 201. Amazingly, Castanares opposed these *improvements*. ECF No. 200. The Court approved these improvements to the Settlement, and adopted them as part of its Amended Order Granting Preliminary Approval. ECF No. 203. Seeing that the Settlement has improved since preliminary approval, the Court should have no hesitation in again finding that the Settlement is adequate.

Further, the Court now also has the benefit of seeing the results of the claims and notice process. As discussed above, the claims rate of 12.42 percent is outstanding and far higher than is typical in consumer class actions. In total, it appears that Class Members will receive the $500,000 minimum floor for the $10 Cash Option, $45 Voucher Option, and Interest Payment claims, and are set to receive an additional $1,632,952.59 for the full refund claims. *See* Boub Decl. ¶ 20 (899 full refund claims multiplied by $1,816.41, the average cost of the affected tickets). Claims Administration Costs are projected to be $182,308. *Id.* ¶ 24. And, Class Counsel have requested $875,000 in attorneys' fees and costs, which are to be counted as part of the valuation of the Settlement. *See Maree*, 2023 WL 2563914, at *11 ("In considering the amount offered to the class, the Court must also consider attorney's fees, incentive awards, and administrative costs."); *see also*, *e.g.*, *Lopez v. Youngblood*, 2011 WL 10483569, at *12 (E.D. Cal. Sept. 2, 2011) ("Fees and class administration costs are included in determining the size of the fund."). Thus, even if looking only at the *realized* value of the Settlement, as opposed to the amount of

value created by the Settlement, the Settlement is still an extraordinary result. As this Court noted, "Courts have routinely approved settlements that amount to fractions of maximum recovery." *Maree,* 2023 WL 2563914, at *12. Here, the *realized* value of the Settlement alone is higher than many of the parties' projections of damages at trial.

1. Strength of Plaintiffs' Claims, and the Cost, Risks, and Delay of Trial and Appeal

This factor was the subject of considerable opposition by *Castanares* Plaintiffs at preliminary approval. Plaintiffs pointed out that Class Members would be limited to interest damages, and would have to "show that the timing of Lufthansa's performance (the refund) was unreasonable." *Maree,* 2023 WL 2563914, at *10. "The Maree Plaintiffs and Lufthansa contend[ed], and the Court agree[d], that given the backdrop of COVID-19 and the prospect of Lufthansa going bankrupt, there is a serious question as to whether an average refund period of 40, 45, or even 140 days was reasonable time [to] provide refunds." *Id*. Plaintiffs also contended that class members would face significant hurdles at class certification and on the merits, including (1) that the determination of what constitutes a reasonable time to issue refunds is a highly individualized factual determination, (2) the determination of whether and which class members were injured would be an individualized determination, and (3) the existence of condition precedents may raise individual determinations as to whether each class member provided sufficient proof to be entitled to a refund. *See id*. The Court "recognize[d] that the issues raised by the Maree Plaintiffs and Lufthansa present hurdles for class certification on the merits that could jeopardize the ability of the class to recover." *Id*., at *11. "At a minimum, the briefs demonstrate that class certification would be hotly contested, weighing in favor of settlement." *Id*. "In light of these litigation hazards, the Court agree[d] that Class Members would face a long, contentions, and uncertain road to recovery, which weighs in favor of settlement." *Id*.

Again, nothing has occurred to disturb the Court's prior ruling. Indeed, even though COVID-19 related flight refund cases have now been pending more than three years, Plaintiffs are unaware of plaintiffs successfully obtaining class certification in even one such case. Absent settlement, Class Members risk failing to obtain class certification, losing at summary judgment, losing at trial and/or losing on appeal. ECF No. 95-1, at ¶ 19 (Krivoshey Declaration in Support of Preliminary Approval). In settling, Plaintiffs also avoid the delays associated with further litigation and appeals. *Id*. This factor strongly supports final approval.

2. Effectiveness of the Proposed Method of Distributing Relief to the Class

The second adequacy factor is "effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims." Fed. R. Civ. P. 23(e)(2)(C)(ii).

Much has been said about claims-made settlements here already. In the end, at preliminary approval, the Court approved preliminarily approved the claims made structure here and noted that "courts routinely provide preliminary approval for claims-made settlements." *Maree*, 2023 WL 2563914, at *8. The Court also held that the proposed notice plan "will provide the best notice practicable under the circumstances." ECF No. 203 ¶ 8. As described in the Boub Declaration, the notice campaign and administration have been a resounding success. *See* Boub Decl. ¶¶ 8-23. Far more class members filed claims here than is typical in consumer class actions, showing that the proposed method of distribution was effective and well received by the Settlement Class. The claims-made structure was necessary because the Settlement was designed to provide Class Members with the option of receiving cash or vouchers, and full refunds, and significant percentages of Class Members utilized each option. *See id*. ¶ 20. Different claims options were provided to reflect the different nature of the claims of those class members that had already received a refund and those that had not, and provide multiple options for those that wished to

fly with Lufthansa in the future (and therefore chose the voucher) and those that did not (those that chose the cash refund). The flexibility required the use of a claims-made structure.

The approved notice and claims process worked as intended and was highly effective. This factor supports final approval as well.

3. Proposed Attorneys' Fees Award

Third, the Court must consider "the terms of any proposed award of attorneys' fees, including timing of payment." Fed. R. Civ. P. 23(e)(2)(c)(iii). The Settlement permits Class Counsel to seek up to 25% ($875,000) of the $3.5 million fund. Settlement ¶ IX.A. As the Court recognized at preliminary approval, "[t]he agreement also does not contain a 'clear sailing' arrangement, since Lufthansa may still challenge the amount of attorney's fees that Maree's counsel may receive." *Maree*, 2023 WL 2563914, at *8. And, "[t]he fees provided to Maree's counsel align with the Ninth Circuit's 25% benchmark." *Id*. Even with an elongated notice period and a continuance of Class Members' deadline to object, no Class Member has objected to the Settlement's provision of fees up to 25% of the $3.5 million fund. As addressed in Plaintiffs' concurrent motion for attorneys' fees, Plaintiffs in fact seek fees of 24.47% of the $3.5 million minimum valuation of the Settlement. This factor favors approval.

4. Agreement Identification Requirement

The Court must also evaluate any agreement made in connection with the proposed Settlement. *See* Fed. R. Civ. P. 23(e)(2)(C)(iv), (e)(3). Here, the Settlement Agreement before this Court is the only agreement. Krivoshey Decl. ¶ 16; *id.* Ex. 1. *See Suaverdez v. Circle K Stores, Inc*., 2021 WL 4947238, at *8 n.7 (D. Colo. June 28, 2021) (factor satisfied where "the Parties have submitted their proposed Settlement Agreement as Exhibit 1"). Thus, the Court need not evaluate

any additional agreements outside of the evaluation it makes of the Settlement Agreement.

D. Equitable Treatment of Class Members

The final Rule 23(e)(2) factor turns on whether the proposed settlement "treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D). At preliminary approval, the Court did not "find that the settlement provides preferential treatment to class representatives or segments of the class." *Maree*, 2023 WL 2563914, at *12 n.3. The Settlement treats Class Members equitably, and provides them with options depending on their particular circumstances, such as whether they want cash or vouchers. And it provides relief tailored to whether they had already received a refund or not. The Court previously found that this structure was reasonable, and should do so again.

V. THE PROPOSED SETTLEMENT CLASS MEETS THE NOTICE REQUIREMENTS UNDER RULES 23(e)(1)(B) AND 23(c)(2)(B)

Rule 23(e)(1)(B) requires the court to "direct notice in a reasonable manner to all class members who would be bound by" a proposed class settlement. Fed. R. Civ. P. 23(e)(1)(B). Rule 23(c)(2)(B) further directs that the notice be "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). Rule 23(c)(2)(B) further states that the "notice may be made by one of the following: United States mail, electronic means, or other appropriate means." *Id.* "The notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3)." *Id.* Notice is satisfactory if it "generally describes the terms of the

settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard." *Churchill Vill., LLC v. Gen. Elec.,* 361 F.3d 566, 575 (9th Cir. 2004) (quoting *Mendoza v. Tucson Sch. Dist. No. 1*, 623 F.2d 1338, 1352 (9th Cir. 1980).

In its Preliminary Approval Order, this Court concluded that the Class Notice "will provide the best notice practicable under the circumstances," adequately summarized the terms of the Settlement, advised the Class regarding their rights to object, file claims, and opt out, and otherwise "satisfies the requirements of Rule 23 … due process, and all other applicable law and rules." ECF No. 203 ¶ 8. The Claims Administrator has implemented the Notice. *See* Boub Decl ¶¶ 8-23. Further, the Class Notice has been improved since it was approved at preliminary approval, as the parties added (with the Court's approval) an additional reminder notice and expanded the notice and claims periods by 30 days. Krivoshey Decl. ¶ 12. To date, there have been 20,505 claims, accounting for 12.42 percent of the Class, no objections, and only eleven (11) opt outs. Boub Decl. ¶¶ 18-20; Krivoshey Decl. ¶ 22.

The remarkable participation in the settlement by the Class demonstrates that the notice previously approved by the Court and implemented by the Claims Administrator satisfies the notice standard. Accordingly, the Court should find that the Notice to the Settlement Class was fair, adequate, and reasonable.

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant their Motion for Final Approval of the Settlement. A Proposed Order granting final approval and certifying the Settlement Class is submitted herewith.

Dated: June 5, 2023

Respectfully submitted,

BURSOR & FISHER, P.A.

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