UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:12-cv-01561-WJM-MEH

JAMES DANIEL TUTEN on behalf of himself and all others similarly situated,

Plaintiffs,

v.

UNITED AIR LINES, INC.,

Defendant.

PLAINTIFF'S UNOPPOSED MOTION FOR FINAL APPROVAL OF SETTLEMENT AGREEMENT

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

OTHER AUTHORITIES

MOTION AND INTRODUCTION

Pursuant to Rule 23(e) and this Court's October 31, 2013 Order, Plaintiff James Daniel Tuten hereby moves for final approval of the Settlement between Plaintiff and Defendant United Air Lines, Inc. ("United").

The Settlement Agreement should be granted final approval, as it is fair, reasonable, and adequate. As described herein, all of the factors that courts in this Circuit consider to assess the reasonableness of a settlement strongly weigh in favor of approving the Settlement Agreement. In addition, the Settlement Agreement enjoys support from the Class, as not a single Class Member submitted an objection to the Settlement Agreement or expressed any criticism of the Settlement Agreement.

I. FACTUAL AND PROCEDURAL BACKGROUND

On June 15, 2012, Plaintiff filed a class action complaint alleging that United's policy for making pension contributions to its pilots who took long term military leave between 2000 and 2010 violated the Uniformed Services Employment and Reemployment Rights Act ("USERRA") and caused monetary harm to numerous United pilots. Dkt. No. 1. On August 12, 2013, the parties executed a Settlement Agreement to resolve this class action lawsuit brought under the Uniformed Services Employment and Reemployment Rights Act ("USERRA").

On August 14, 2013, Plaintiff moved for class certification, preliminary approval of the Settlement Agreement, and approval of notice to the class. Dkt. No. 34. On October 31, 2013 the Court granted Plaintiff's motion, certifying a mandatory, non-opt out class under Rule

23(b)(1), granting preliminary approval, and setting forth a number of actions for the parties and the Settlement Administrator, KCC, to undertake by certain dates. Dkt. No. 52 at 7-11.[1]

Since the Court granted preliminary approval, KCC has issued notice to the Class, Dkt. No. 58 (Dec. 18, 2013) (confirming compliance with the class notice procedures), Plaintiff moved for an award of attorneys' fees, costs, and a service award, Dkt. Nos. 60-61 (Jan. 3, 2014), KCC issued supplemental notice informing Class Members that the date of the fairness hearing had been changed to May 15, 2014, Dkt. No. 62 (Jan. 21, 2014), Class Members submitted challenges to United's personnel data by February 14, 2014, and the Settlement Adjudicator, KCC, adjudicated substantially all of the challenges to United's personnel data by March 31, 2014. Dkt. No. 65 (Apr. 7, 2014) (confirming compliance with adjudication procedures); Supplemental Declaration of Andy Morrison ¶¶ 2-3.

II. THE TERMS OF THE SETTLEMENT AGREEMENT

Plaintiff has previously described in detail the terms of the Settlement Agreement. Mot. for Preliminary Approval, Dkt. No. 34 at 6-12; Dkt. No. 35-6 at 3-7. Overall, the Settlement provides outstanding monetary and programmatic relief to the Class Members.

A. Monetary Relief

United will pay at least $6.15 million in monetary relief to compensate Class Members for past allegedly unmade pension contributions (after deducting any court-approved attorneys' fees, costs, and service award). Agmt. §§ II.II, VI.A.1, VII.A.[2] The Settlement provides that

---

[1] The prior factual and procedural history are fully described in Plaintiff's Motion for Preliminary Approval, Dkt. No. 34 at 1-12 (Aug. 14, 2013), and Motion for an Award of Attorneys' Fees and Reimbursement of Expenses, Dkt. No. 61 at 1-6 (Jan. 3, 2014).

[2] Under the Settlement Agreement, attorneys' fees, costs, and any service award will be paid out of the $6.15 million Settlement Fund. Agmt. § XI.A-B. The Settlement Administrator and Adjudicator will be paid by United separately from the $6.15 million Settlement Fund. *Id*. § VI.A.

payments will be made into the pilots' pension plan in order to allow class members, to the extent possible, to receive these payments in a tax favorable manner. *Id.* VIII.F.2. Class Counsel estimated the potential damages of Class Members based on a methodology that was negotiated and agreed to by the parties. Dkt. No. 34 at 4-6, 9; Dkt. No. 33 Exs. A-C (describing the Agreed Damages Methodology and negotiation of the methodology). The Plan of Allocation proposed to the Court and which was preliminarily approved, was based on the Agreed Damages Methodology. *Id.* at 9; Plan of Allocation (Dkt. No. 33) Ex. D at 1 & n.3; Dkt. No. 52 at 6.

Under the Plan of Allocation for distributing the $6.15 million, all Claims will be eligible to receive supplemental pension contributions based on the amount of their estimated potential damages (as calculated by Plaintiff's expert or modified by the Settlement Adjudicator pursuant to a challenge to personnel data). Dkt. No. 33, Ex. D ¶¶ 2-3. In addition, 1,759 Later Claims will be eligible to receive additional allocations – so long as the payment does not exceed the damages plus 8% annual interest from the date of the original pension contribution through March 31, 2013. *Id.* ¶ 4(a). After the Later Claims have been allocated the full amount of the claim plus up to 8% annual interest, and if there is money remaining, the 230 Earlier Claims – that would be subject to a more significant potential statute of limitations defense – will be eligible to receive an allocation of any remaining funds. *Id.* ¶ 4(b).

Based on the calculations of Plaintiff's expert using United's personnel data, the modifications made by the Settlement Adjudicator based on successful challenges to United's personnel data, and the Plan of Allocation preliminarily approved by the Court, Class Counsel estimate each Class Member will receive a supplemental payment equal to or greater than 100 percent of the under payment between 2000 and 2010 (even after subtracting requested fees,

costs, and service award from the Settlement Fund). Suppl. Decl. of Peter Romer-Friedman ("Romer-Friedman Suppl. Decl.") ¶ 2.

B. Programmatic Relief

The Settlement Agreement also provides important programmatic relief that will benefit Class Members, as well as other United pilots who are not Class Members. Most critical, United will change its formula for calculating pension contributions so that the average monthly compensation figure reflects data from all 12 months before a period of long term military leave, and counts all military leave military leave that occurred during at 12-month period. Agmt § X.A. This change is expected to increase pension contributions for pilots who take substantial short term military leave prior to a period of long term military leave. United also will make a range of important changes in how it informs pilots about pension contributions they receive for periods of long term military leave, including maintaining a written policy on pension contributions and making it available, providing pilots the data and methods used to calculate their pension contributions, and giving pilots who are starting periods of leave estimates of the average hours they worked in the prior 12 month period. *Id.* § X.B-D.

C. Procedural Protections for Class Members

The Settlement Agreement provides important procedural protections that enhance the fairness of the Settlement for all Class Members. First, the Settlement Agreement allowed Class Members to challenge United's data that was used to calculate the damages for each Claim and have the Settlement Adjudicator recalculate their damages based on more accurate data that is supplied. Agmt. § VIII.C.3.a. Second, individuals who believe that they were not identified by United as a Class Member had ample opportunity to demonstrate membership in the Class and be included in the Settlement. *Id.* § VIII.C.3.b. Third, Class Members who are currently on military leave will benefit from a range of procedures that preserve their rights while they remain

on long term military leave, including the ability to participate in the Settlement now or when they return from leave, to submit any challenges to United's data now or when they return from leave, and to receive a higher amount of damages based on a successful challenge that occurs after final approval (with additional funds beyond the $6.15 million Settlement Fund paid by United, if necessary).

III. THE PROPOSED SETTLEMENT AGREEMENT IS FAIR, REASONABLE AND ADEQUATE, AND SHOULD BE APPROVED

Under Rule 23(e), the Court may approve a settlement that "would bind class members . . . only after a hearing and on finding that it is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). The approval of a settlement agreement is within the sound discretion of the district court. *See New England Health Care Emps. Pension Fund v. Woodruff*, 512 F.3d 1283, 1290 (10th Cir. 2008). When deciding "whether to approve a class action settlement, the court should 'not decide the merits of the case or resolve unsettled legal questions,'" since "'the essence of settlement is compromise, and settlements are generally favored.'" *Ashley v. Reg'l Transp. Dist. & Amalgamated Transit Union Div. 1001*, No. 05-cv-01567-WYD-BNB, 2008 U.S. Dist. LEXIS 13069, at *11-12 (D. Colo. Feb. 11, 2008) (quoting *Carson v. Am. Brands, Inc*., 450 U.S. 79, 88 n.14 (1981), and *Wilkerson v. Martin Marietta Corp*., 171 F.R.D. 273, 283 (D. Colo. 1997) (citing *Williams v. First Nat. Bank*, 216 U.S. 582, 595, 30 S. Ct. 441, 54 L. Ed. 625 (1910)); *E.E.O.C. v. Hiram Walker & Sons, Inc.,* 768 F.2d 884, 889 (7th Cir. 1985). Thus, a court reviews "a settlement [] to determine whether the proposed settlement is fundamentally fair, adequate and reasonable, not to rewrite the settlement agreement." *Id.* at *12 (citing *Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1026 (9th Cir. 1998)).

The Tenth Circuit has identified four non-exclusive factors that ought to be considered to determine whether a settlement agreement is fair, reasonable, and adequate:

> (1) whether the proposed settlement was fairly and honestly negotiated;
>
> (2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt;
>
> (3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and
>
> (4) the judgment of the parties that the settlement is fair and reasonable.

Rutter & Wilbanks Corp. v. Shell Oil Co., 314 F.3d 1180, 1188 (10th Cir. 2002) (quoting *Gottlieb v. Wiles*, 11 F.3d 1004, 1014 (10th Cir. 1993)). These are also the same factors that this Court applied in granting preliminary approval of the instant Settlement. *See* Dkt. No. 52 at 5 (citing *Lucas v. Kmart Corp*., 234 F.R.D. 688, 693 (D. Colo. 2006)).

In the instant action, the Settlement Agreement is fundamentally fair. The Settlement Agreement represents an outstanding resolution for the Class. The Class will receive payments equal to or greater than 100 percent of the payments they were denied by United between 2000 and 2010. The Class will benefit from United's substantive and procedural changes to its military leave policies. In light of the benefits to the Class, each of the four relevant factors weighs strongly in favor of granting final approval.

A. The Settlement Was Fairly and Honestly Negotiated

As described in Plaintiff's preliminary approval motion, the Settlement was fairly and honestly negotiated by experienced counsel over many months, and only after Class Counsel had (1) undertaken sufficient informal discovery and legal research to fully understand the merits of the claims and defenses, (2) negotiated a comprehensive methodology for estimating Class Members' potential damages, and (3) had an expert actuary calculate Class Members' potential damages. Dkt. No. 34 at 27-28 (citing *Lucken Family Ltd. P'ship, LLLP v. Ultra Res., Inc.*, No. 09-cv-01543, 2010 U.S. Dist. LEXIS 80846, at *8 (D. Colo. June 30, 2010) (finding a settlement agreement was "fairly and honestly negotiated," as "parties entered into the agreement only after

engaging in a meaningful exchange of information, and with full knowledge of the critical factual and legal issues"). As this Court found on preliminary approval, this Settlement was fairly and honestly negotiated. Dkt. No. 52 (finding "[t]he settlement was negotiated by competent counsel during arms-length negotiations").

B. Serious Questions of Law and Fact Exist, Placing the Outcome in Doubt

This second factor addresses whether "the parties could reasonably conclude that there are serious questions of law and fact that exist such that they could significantly impact this case if it were litigated," including disputes over liability, a potential statute of limitations defense, and the amount of damages. *Lucas v. Kmart Corp.*, No. 99-cv-01923-JLK, 2006 U.S. Dist. LEXIS 51439, at *23-24 (D. Colo. July 27, 2006) (finding disputed issues placed outcome in doubt where defendant asserted claims were discharged in bankruptcy, which could "potentially wipe out any successful result," and the parties disagreed over the legal standard). As explained in the motion for preliminary approval and as recognized by this Court, there are serious questions of both law and fact that could significantly impact the case and the recovery. Mot. for Preliminary Approval, Dkt. No. 34 at 28-31 (describing disputes in detail); Dkt. No. 52 at 5-6 (recognizing "[s]erious questions of law exist with regard to the issue of statute of limitations and whether any claims prior to 2008 could be brought under USERRA," and "the parties dispute whether United's policy complied with USERRA and, if it did not, the damages to which the Class members may be entitled.").

First, United would likely assert that pilots compensation is "not reasonably certain" under 38 U.S.C. § 4318(b)(3)(B), and its policy for calculating pension contributions based on monthly minimum compensation complied with USERRA. *See* Dkt. No. 34 at 28. If United prevailed on this issue, Plaintiff and the Class would not be entitled to *any* relief. *Id.*

Second, the parties have a major dispute about the timeliness of a substantial portion of the approximately 2,000 Claims, including whether USERRA had any statute of limitations period before a October 10, 2008 statutory amendment and, if so, what impact the amendment had on claims that accrued before the amendment. *Id.* at 29. This issue has generated major disagreements among federal courts and, if decided in United's favor here, could wipe out over 40% of the Claims. *Id.* at 29-30.

Third, if the case were further litigated, the Parties would have a number of disputes about the damages owed to Class Members, including the proper way to estimate the pension contributions that should have been made under USERRA, the appropriateness of liquidated damages, and whether pre-judgment interest should be based on the 8% provided under Colorado state law or the far lower rate of U.S. Treasury bonds under 28 U.S.C. § 1961(a). *Id.* at 30-31. Any of these issues could have a major impact on Class Members' damages. Indeed, the issue of the pre-judgment interest rate alone is estimated to have an impact of nearly $2 million.

C. The Value of an Immediate Recovery Strongly Outweighs the Possibility of Further Relief After Protracted Litigation

This factor weighs the value of an immediate recovery against the "the mere possibility of future relief after protracted and expensive litigation." *Rutter*, 314 F.3d at 1188; *see* Dkt. No. 34 at 31. In a recent case in which a settlement provided class members 50% of their losses, a Court in this Circuit found the immediate recovery factor satisfied, because "a jury trial could leave the class with a smaller award, or no award at all" and the settlement "guarantees a favorable outcome for the class, and will facilitate a faster and easier payment than the class would receive after a jury trial." *Lowery v. City of Albuquerque*, No. CIV 09-0457 JB/WDS, 2013 U.S. Dist. LEXIS 35626, at *117 (D.N.M. Feb. 27, 2013). The same is true here.

Here, the value to Class Members of immediately receiving what Class Counsel estimates to be *at least* 100% of the pension contributions that they were allegedly denied by United and immediately benefiting from a range of prospective changes strongly outweighs the mere possibility of future relief after protracted and expensive litigation. Indeed, the Class would not likely achieve a better result if this case were litigated to trial and further litigation would expose most, if not all, of the Class Members to the risk of losing all or some of the damages that United has agreed to pay them under the Settlement. Dkt. No. 34 at 31. In light of a recovery in excess of the estimated actual damages, the high level of risk going forward, and the fact that "litigation in this case would likely be expensive and time consuming," the immediate recovery far outweighs the possibility of any further recovery. Dkt. No. 52 at 6.

D. Class Counsel Believes the Settlement Is Fair and Reasonable

Where the parties are represented by counsel who have "substantial experience in complex class action litigation, . . . Counsels' judgment as to the fairness of the agreement is entitled to considerable weight.'" *Lucas*, 2006 U.S. Dist. LEXIS 51439, at *27 (quoting *Marcus v. Kansas Dept. of Revenue*, 209 F. Supp. 2d 1179, 1182-83 (D. Kan. 2002) ("When a settlement is reached by experienced counsel after negotiations in an adversarial setting, there is an initial presumption that the settlement is fair and reasonable.")). As this Court previously recognized, "the parties have represented that they believe the settlement is fair and adequate." Dkt. No. 52 at 6 (citing Agmt. § III.E.). Moreover, as Plaintiff explained in greater detail in his preliminary approval motion, Class Counsel view the Settlement as an outstanding recovery, given that it provides what Class Counsel estimates to be monetary relief in equal to or in excess of 100% of the lost contributions and valuable programmatic relief, and given the significant litigation risks. Dkt. No. 34 at 32. And the overall fairness of the Settlement is substantially enhanced by the procedural protections given to all Class Members to challenge the personnel data that is used to

calculate their damages and specifically provided to Class Members who are currently engaged in military leave. *Cf. Lowery*, 2013 U.S. Dist. LEXIS 35626, at *128 (observing the opportunity for class members to "present evidence of damages to the Special Master" bolsters fairness of settlement and rebutted objection).

E. Reaction of the Class Supports Approval

In addition to the four non-exclusive factors identified above for evaluating a settlement, courts often consider the reaction of the class to decide whether a settlement should be approved under Ruler 23(e). *See Ponca Tribe of Indians of Okla. v. Cont'l Carbon Co.*, No. 05-445 (C), 2009 U.S. Dist. LEXIS 82522, at *8 (W.D. Okla. July 30, 2009); *West v. First Franklin Fin. Corp.*, No. 06-2064-KHV/JPO, 2007 U.S. Dist. LEXIS 79286, at *4 (D. Kan. Oct. 24, 2007) (noting that the Court "gives weight to the parties' judgment that the settlement is fair and reasonable, and as well as to the class's reaction to the settlement."). As settlement notices do not ask class members to affirmatively express their support for a settlement, courts generally consider the failure to object to a settlement as a sign of approval of the settlement. *E.g.*, *Ramah Navajo Chapter v. Babbitt*, 50 F. Supp. 2d 1091, 1101 (D.N.M. 1999) (observing that "[t]he reaction of the Class has been favorable as judged by the fact that 98% or more of the putative Class members . . . , all of whom received notice, failed to object or express any criticism of the Settlement."). Here, the reaction of the Class has been very positive. There have been no objections. In fact, of the 266 class members who are currently on military leave, 88 filed requests to affirmatively be included. Romer-Friedman Suppl. Decl. ¶ 3; Supplemental Declaration of Andy Morrison ¶ 5. And the vast majority of the challenges to United's personnel data or other submission to the Settlement Adjudicator concerned persons seeking additional pension contributions for periods of leave that are outside of the class period in this case.

IV. THE PLAN OF ALLOCATION IS FAIR, REASONABLE AND SHOULD BE APPROVED AS PART OF THE SETTLEMENT.

"'An allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel.'" *Lucas*, 2006 U.S. Dist. LEXIS 51439, at *29 (quoting *In re Am. Bank Note Holographics*, 127 F. Supp. 2d 418, 429-30 (S.D.N.Y. 2001)). A Plan of Allocation "exceeds the legal requirements" of merely having a "reasonable and rational basis" when the Plan of Allocation is "based upon objective facts learned during the litigation" and "applied by Plaintiff['s] damages expert." *Ponca Tribe*, 2009 U.S. Dist. LEXIS 82522, at *7-8.

Here, the Plan of Allocation is based on the Agreed Damages Methodology, which is essentially the damages methodology that Class Counsel would have advocated in litigation and which incorporates the objective facts (*i.e.*, United's personnel data) that Class Counsel obtained through this litigation.

While the Plan of Allocation provides up to 8% of interest to the Later Claims before providing interest to the Earlier Claims, this distinction reflects the greater likelihood that the Earlier Claims could be dismissed based on United's potential statute of limitations defense and is "'an appropriate means to reflect the comparative strengths and values of different categories of the claim.'" *Lucas*, 2006 U.S. Dist. LEXIS 51439, at *28-29 (quoting *In re Am. Bank Note Holographics*, 172 F. Supp. 2d at 429-30) (approving varying compensation for claims from different states based on factors that "affect the relative strength and value of the claims among these states"). Finally, as with the Settlement, there are no objections to the Plan of Allocation.

V. CONCLUSION

For the foregoing reasons as well as those set forth in the motion for preliminary approval, final approval of the Settlement should be granted.

April 15, 2014

Respectfully submitted,

/s/ R. Joseph Barton

R. Joseph Barton
Peter Romer-Friedman
COHEN MILSTEIN SELLERS & TOLL PLLC
1100 New York Avenue, NW,
Suite 500
Washington, D.C.20005
Tel: (202) 408-4600
Fax: (202) 408-4699
jbarton@cohenmilstein.com
promerfriedman@cohenmilstein.com

Thomas G. Jarrard
Law Office of Thomas G. Jarrard PLLC
1020 N. Washington Street
Spokane, WA99201
Tel: (425) 239-7290
Fax: (509) 326-2932
tjarrard@att.net

Matthew Z. Crotty
CROTTY & SON, PLLC
WSBA #39284, ISB #8653
Crotty & Son, PLLC
421 W. Riverside Ave. Ste 1005
Spokane, WA 99201
Tel: (509) 850-7011
matt@crottyandson.com

Robert W. Mitchell
Attorney at Law, PLLC
901 N. Monroe, Suite 356
Spokane, WA99201
Tel: (509) 327-2224
Fax: (509) 327-3374
bobmitchellaw@yahoo.com

Attorneys for Plaintiff & the Class

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed with this Court on April 15, 2014 through the CM/ECF system and will be sent electronically to all registered participants as identified on the Notice of Electronic Filing.

/s/ R. Joseph Barton
R. Joseph Barton
COHEN, MILSTEIN, SELLERS &
TOLL, PLLC

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:12-cv-01561-WJM-MEH

JAMES DANIEL TUTEN on behalf of himself and all others similarly situated,

Plaintiffs,

v.

UNITED AIR LINES, INC.,

Defendant.

[PROPOSED] ORDER GRANTING PLAINTIFF'S UNOPPOSED MOTION FOR FINAL APPROVAL OF SETTLEMENT AGREEMENT, CLASS COUNSEL'S UNOPPOSED MOTION FOR A SERVICE AWARD, AND CLASS COUNSEL'S UNOPPOSED MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

WHEREAS, the Court entered an order preliminarily approving the Settlement Agreement and certifying a Class on October 31, 2013, and held a Final Approval Hearing on May 15, 2014; and the Court has heard and considered all submissions in connection with the proposed Settlement and the files and records herein, including Plaintiff's Unopposed Motion for Final Approval of Settlement, Class Counsel's Unopposed Motion for Approval of Class Representative Service Awards, and Class Counsel's Unopposed Motion for an Award of Attorneys' Fees and Expenses, as well as the arguments of counsel;

It is hereby ORDERED, ADJUDGED AND DECREED that

1. The Court has jurisdiction over the subject matter of the Action, Plaintiff, all Class Members, and the Defendant.

2. The Court finds that the prerequisites for a class action under Fed. R. Civ. P. 23(a) and (b)(1) have been satisfied in that: (a) the number of Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Class; (c) the claim of the Class Representative is typical of the claims of the Class he seeks to represent; (d) the Class Representative has and will fairly and adequately represent the interests of the Class; and (e) prosecuting separate actions by or against individual class members would create a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby finally certifies Plaintiff James Daniel Tuten as Class Representative and finally certifies this Action as a class action on behalf of:

> (1) all former or current pilots employed by United who were participants in the Pilots Directed Account Plan ("PDAP") between January 1, 2000 and October 31, 2010; and
>
> (2) who were on a Long Term Military Leave that began and ended between January 1, 2000 and October 31, 2010; and
>
> (3) on whose behalf United made defined contribution retirement plan contributions based on the monthly minimum flight hours guaranteed under the pilots' CBA; and
>
> (4) whose average flight hours during the 12-month period that immediately preceded a period of Long Term Military Leave (or, if shorter than 12 months, the period of employment immediately preceding such period of military leave) exceeded the monthly minimum flight hours guaranteed under the pilots' CBA.
>
> Excluded from the Settlement Class are all former or current pilots who previously reached settlements with or judgments against United in their individual USERRA claims or actions concerning inadequate retirement plan contributions for periods of military leave.

4. The Settlement was attained following an extensive investigation of the facts and the law. The Settlement resulted from vigorous arm's-length negotiations, which were undertaken in good faith by counsel with significant experience litigating civil rights and employee benefits class actions. Serious questions of law and fact exist, placing the ultimate

outcome of the litigation in doubt. The value of the recovery outweighs the mere possibility of future relief after protracted and expensive litigation. The parties have judged the settlement to be fair and reasonable. Not a single Class Member has objected to the Settlement Agreement or expressed any concern about the Settlement Agreement.

5. Notice of was given to all Class Members who could be identified with reasonable effort. The form and method of notifying the Class of the pendency of the action as a class action and of the terms and conditions of the proposed Settlement met the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, and any other applicable law, constituted the best notice practicable under the circumstances

6. The Settlement Agreement, including the proposed Plan of Allocation, is fair, reasonable, and adequate within the meaning of Rule 23(e) of the Federal Rules of Civil Procedure.

7. The Motion for Final Approval of Settlement is granted, and the Settlement Agreement is hereby approved.

8. Class Counsel's Unopposed Motion for an Award of Attorneys' Fees and Reimbursement of Expenses Attorneys' Fees and Reimbursement of Expenses is granted, and the Court awards $ _____ in attorneys' fees, and reimbursement of expenses of $ _____.

9. Class Counsel's Unopposed Motion for a Service Award for the Class Representative is granted, and the Court orders that the request for a service award of $15,000 for the Class Representative is approved.

10. Without affecting the finality of this Judgment and Final Order in any way, this Court hereby retains continuing jurisdiction for a period of six years from the Final Approval Date, or until one year after all Non-Responding ML Class Members have completed their last

period of "military service" (as defined by the SCRA) any portion of which occurred between the Notice Mailing Date and the Final Approval Date, whichever is earlier, for the limited purposes set forth in Section XIII of the Settlement Agreement.

11. Continuing jurisdiction is hereby retained over the parties and the Class Members for all matters relating to the terms of the Settlement Agreement, including the administration, interpretation, effectuation or enforcement of the Settlement embodied in the Settlement Agreement and this Order and Final Judgment.

12. Under Rule 54(a) and (b) of the Federal Rules of Civil Procedure, this Order and Final Judgment constitute this Action's final adjudication on the merits and it should be entered without delay. Accordingly, the Clerk of the Court is directed to enter this Judgment forthwith.

Dated _____ ___ 2014

_____
William J. Martinez
U.S. District Judge