UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MICHEAL (SUSIE) HOFFMAN, JUDITH DUPOUX, ON BEHALF OF THE ESTATE OF MARGARETT ROUMAIN, GREGORY FRANK, VICTOR YUSTMAN, VICTORIA FELLOWS, MARIA DEGLAUVE, RON OZAKI, ERNEST HEWSON, DONNA LOUCKS, ROXANN MERLINI, JO GAWLER and ROBERT KEARNEY,

Plaintiffs,

v.

UNITED AIRLINES, INC., UNITED AIRLINES 36-MONTH SUPPLEMENTAL BENEFIT PLAN, UNITED AIRLINES FRONTLINE VOLUNTARY SEPARATION PROGRAM 2 (VSP2), UNITED AIRLINES FRONTLINE VOLUNTARY SEPARATION LEAVE (VSL) PROGRAM, UNITED AIRLINES CONSOLIDATED WELFARE BENEFIT PLAN, and UNITED AIRLINES RETIREE MEDICAL PROGRAM,

Defendants.

Consolidated
Civil Action No. 21-cv-06395

The Honorable John J. Tharpe, Jr.

MEMORANDUM OF LAW IN SUPPORT OF THE PARTIES' JOINT MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT AND CLASS NOTICE

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The parties have jointly moved this Court for an order preliminarily approving the proposed Settlement Agreement[1] and approving the Class Notice in connection with the proposed settlement of all individual and class claims asserted in this action ("Motion"). Plaintiffs submit this memorandum of law in support of the joint Motion. The following documents are appended in support of this Motion:

Exhibit 1	Proposed Settlement Agreement
Exhibit 2	Proposed Class Notice
Exhibit 3	Proposed Plan for Allocation of Funds to Class Members
Exhibit 4	Declaration of Susan L. Meter in Support of Motion for Preliminary Approval Agreement and Class Notice
Exhibit 5	Declaration of Samantha Brener in Support of Motion for Preliminary Approval Agreement and Class Notice
Exhibit 6	Declaration of Mark D. DeBofsky in Support of Motion for Preliminary Approval Agreement and Class Notice
Exhibit 7	Declaration of Jamie S. Franklin in Support of Motion for Preliminary Approval Agreement and Class Notice
Exhibit 8	Declaration of Jeffrey Lewis in Support of Motion for Preliminary Approval Agreement and Class Notice
Exhibit 9	Draft notice by Defendants under the Class Action Fairness Act of 2005 ("CAFA")

[1]Capitalized terms used in this Motion have the meanings assigned to them in the Settlement Agreement.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiffs' Allegations

At various times, United has offered its employees "early out" retirement benefits, typically during periods of financial downturn, to reduce its overhead by offering incentives to induce long-term employees to retire earlier than they otherwise would, such as additional monetary compensation and benefits. ECF. No. 54, Second Amended Class Action Complaint ("SAC") ¶¶ 32-34. Employees contemplating and eligible for retirement were often reluctant to retire due to fear of missing out on an early out program that might be just around the corner. *Id*. at ¶ 35. Recognizing that this was the case in 2017, Oscar Munoz, then United's CEO, announced a company-wide policy to remove such concerns. United added a "new clause" to United's "retirement policy" to guarantee that "[i]f something drastic happens in the industry and we decide to offer an early out within 36 months of when you retire, you would be eligible for the cash benefits of the program even after retiring." *Id*. at ¶¶ 35-37. United memorialized this promise of additional benefits in writing in August 2017 (the "2017 Early Out Program"). *Id*. at ¶ 38.

In 2020, in response to COVID-19's impact on United's financial outlook, United announced that it would be offering a voluntary separation package for workers that would include extended pay, travel, and medical benefits. SAC ¶ 42. In April 2020, United offered a severance program, the Voluntary Separation Program 1 ("VSP1"), which had no cash value. In the summer of 2020, United offered an additional severance program called the Voluntary Separation Program 2 ("VSP2"), under which qualifying employees could choose either additional medical, travel, and job support services and an additional year of service under a pension plan, or they could opt to receive 25% of their normal pay for three months and enhanced medical benefits. SAC ¶¶ 45-47. Plaintiff Kearney retired within 36 months of VSP2's effective date, but he never received any

communication from United regarding that program and was never given the opportunity to obtain the cash benefits under VSP2. *Id*. at ¶¶ 76, 102. Plaintiffs Hoffman, Roumain, Frank, Loucks, and Gawler all opted to retire under VSP2 after United informed employees that no better program would be offered and indicated that employees who did not accept this offer would be furloughed. *Id*. at ¶¶ 51-55.

However, United soon offered an even better separation program. On January 21, 2021, United announced a new program with significantly richer benefits called the Voluntary Separation Leave ("VSL") Program. SAC ¶¶ 58-60. The VSL Program, like the VSP2, contained two options, both of which provided better benefits than the VSP2. *Id*. at ¶ 63. Employees could choose paid leave at 33% of their base wages until the end of 2021 (and a $125,000 contribution to a retiree health account for the employee, among other non-cash benefits) or paid leave at 100% of their base wages up to $112,500 until August 31, 2022. *Id*. at ¶ 64. All Plaintiffs other than Mr. Kearney retired within the 36 months before this offering, but none were informed by United of the VSL Program or offered the opportunity to receive benefits under it, including Plaintiff Fellows, who retired without any enhanced benefits just weeks before the VSL was announced. SAC ¶¶ 82, 85-86. Plaintiffs Yustman, Deglauve, Ozaki, and Hewson also retired without any enhanced benefits. *Id*. at ¶¶ 78, 83, 84, 87. Plaintiff Merlini retired in April 2020 under VSP1. *Id*. at ¶ 74.

Thus, despite the policy stated in the 2017 Early Out Program, United did not inform the Plaintiffs about the VSL Program and did not offer them the opportunity to apply for VSL benefits (or, in Mr. Kearney's and Ms. Merlini's cases, VSP2 benefits). When two of them nevertheless requested such benefits, United told them they were not eligible to participate, despite the 2017 Early Out Program, because United's position was that these were not "early out programs." SAC ¶¶ 90-99.

Plaintiffs assert that both the VSP2 and the VSL Programs, as well as the 2017 Early Out Program itself, are employee benefit plans governed by ERISA, and that they are participants in these plans. SAC ¶¶ 113-17. On their own behalf and on behalf of a similarly situated class of approximately 8,500 retirees, the Plaintiffs brought ERISA claims seeking the promised benefits or other appropriate equitable relief to remedy United's fiduciary and other statutory breaches. *Id*. at ¶ 125-59. Alternatively, the Plaintiffs asserted a claim for breach of contract under state law. *Id*. at ¶¶ 160-65.

B. Procedural History

Plaintiff Micheal (Susie) Hoffman filed the original Complaint in this matter on November 30, 2021, asserting claims on behalf of herself and a class of former employees of United under ERISA. Two additional cases were filed asserting similar claims: *Yustman, et al., v. United Airlines, Inc., et al.*, No. 2:21-cv-09432 (C.D. Cal.), which was filed in the Central District of California on December 6, 2021, and *Loucks, et al., v. United Airlines, Inc., et al*., No. 2:22-cv-1604 (C.D. Cal.), which was filed in the Central District of California on March 10, 2022. On March 11, 2022, the *Yustman* case was transferred to the Northern District of Illinois as Case No. 22-cv-01311, and on March 22, 2022, it was transferred to this Court as a related case. ECF No. 37. On March 16, 2022, the *Loucks* case was transferred to the Northern District of Illinois as Case No. 22-cv-01604, and on March 22, 2022, it was transferred to this Court as a related case. ECF No. 37.

Plaintiffs in all three actions filed a Consolidated Amended Class Action Complaint on May 10, 2022. ECF. No. 42. Defendants filed a Motion to Dismiss the Consolidated Amended Class Action Complaint on June 1, 2022. ECF No. 46. Plaintiffs filed their Second Amended Consolidated Class Action Complaint on July 5, 2022. ECF No. 54 (the operative Complaint). Defendants filed a Motion to Dismiss the Second Amended Class Action Complaint on July 26,

2022. ECF No. 56. On May 1, 2025, the Court granted the Defendants' Motion to Dismiss the Second Amended Class Action Complaint in its entirety. ECF No. 102. The Court entered a final order on May 15, 2025. ECF No. 105. Plaintiffs filed a Notice of Appeal on May 29, 2025, ECF No. 108, and the case was set for appeal before the United States Court of Appeals for the Seventh Circuit.

C. Settlement Negotiations

While the Motion to Dismiss was pending, the Parties engaged in limited discovery, including the exchange of a large volume of documents and data, but did not take any oral discovery. Through this process, the Parties developed a thorough understanding of the facts and applicable law, enabling them to assess the relative merits of each side's claims and defenses. As a result, the Parties agreed to attend a day-long mediation with a private mediator on July 27, 2023. They met and conferred multiple times regarding class and program data prior to the mediation and developed competing damage models. The Parties made progress at the mediation but did not resolve the case at that time, turning their attention to the motion to dismiss and discovery. Then, after this Court granted the Defendants' motion to dismiss and the Plaintiffs filed their notice of appeal, the Parties participated in three mediation sessions with Jillisa Brittan from the Seventh Circuit's Circuit Mediation Office on August 7, September 12, and September 16, 2025. During that process, the Parties reached an agreement to resolve this matter, subject to the Court's approval following approval of Plaintiffs' motion pursuant to Fed. R. Civ. P. 62.1 and an order from the Seventh Circuit Court of Appeals remanding the matter to re-vest this Court with jurisdiction.

On March 11, 2026, Class Counsel jointly requested an indicative ruling from this Court pursuant to Fed. R. Civ. P. 62.1 as to whether, upon a remand of the action from the Court of Appeals solely for purposes of effectuating the Settlement, the Court would favorably entertain

the Preliminary Approval Motion and enter the Preliminary Approval Order. ECF No. 111. The Court provided the requested indicative ruling on March 16, 2026, ECF No. 114, and the Parties jointly notified the Clerk of the Court of Appeals of the indicative ruling and requested that the Court of Appeals order a limited remand of the matter to provide the District Court with jurisdiction to review, approve and effectuate the Settlement, which it provided on March 18, 2026. The Seventh Circuit Court of Appeals then filed a certified copy of its order remanding the case to this Court. ECF No. 115. After carefully considering the facts and applicable law, the uncertainty of continued litigation, the risk of the Seventh Circuit upholding this Court's adverse decision on the merits, and as a result of having engaged in extensive arms-length negotiations, the Parties agree that it would be in the best interests of the Parties and the Class to resolve all matters by entry of this Settlement Agreement. By entering into this Settlement Agreement, no party makes any admission regarding any claims or defenses.

II. THE PROPOSED SETTLEMENT

A. The Settlement Fund

The Settlement Agreement provides that the Defendants will pay a total of $27,500,000 ("Cash Settlement Amount") to resolve the claims of the Class and the Named Plaintiffs, to pay Class Counsel's fees and costs in an amount awarded by the Court not to exceed 1/3 of the Cash Settlement Amount, to pay Named Plaintiff Service Awards, to defray 50% of the cost of the Settlement Administrator, and to pay any actual or estimated taxes that are the obligation of the Settlement Fund. Exhibit 1, Settlement Agreement, § I.E; § VI.1. The Settlement Agreement defines "Settlement Fund" as the Cash Settlement Amount plus any earnings and interest, minus any Court-approved deductions and expenses. *Id*. at § I.LL.

Defendants will pay the entire Cash Settlement Amount into an Escrow Account within 30 days after entry of the Preliminary Approval Order. Until Final Approval of the Settlement becomes Non-Appealable or until the Settlement is terminated in accordance with the Settlement Agreement, the Settlement Fund will be held in the Escrow Account, for which an Escrow Agent will act pursuant to the terms of the Escrow Agreement or as ordered by the Court. After the Final Approval Order becomes Non-Appealable, Class Counsel will manage the Settlement Fund in compliance with the terms of the Final Approval Order. Any earnings or interest earned by the Settlement Fund will become part of the Settlement Fund. Distribution of the Settlement Fund will take place in the manner described in the Settlement Agreement. Exhibit 1, Settlement Agreement § VII.

B. Proposed Plan of Allocation

As detailed in Exhibit 3, Plaintiffs have created a proposed Plan of Allocation that distributes the remainder of the Settlement Fund (after deduction of attorneys' fees, expenses and Plaintiff Awards) to Settlement Class Members on a pro rata basis using the ratio of the Class Member's Damages as a proportion of the total of all Class Members' Damages. Class Members' Damages are divided into three groups, as follows:

The following groups have been established for allocation of the Settlement Fund to Class Members:

1. **Group A:** Frontline and Management and Administrative Employees who did not retire under any Voluntary Separation Program.
    a. A1 - VSL Eligible: Group A1 Class Members who were VSL eligible have damages equal to the monetary incentive under VSL. There are approximately 2,608 Class Members in this group.
    b. A2 - VSP2 eligible but not VSL eligible: Group A2 Class Members who were VSP2 eligible but were not VSL eligible have damages equal to the monetary incentive under VSP2(b). There are approximately 1,607 Class Members in this group.

c. A3 – VSP3 eligible but not VSP2 or VSL eligible: Group A3 Class Members who were VSP3 eligible but were not VSP2 or VSL eligible have damages equal to the monetary incentive under VSP3. There are approximately 74 Class Members in this group.

2. **Group B:** Frontline and Management and Administrative Employees who retired under VSP2.
   a. B1 - VSL Eligible: Group B1 Class Members who retired under VSP2 and were VSL eligible have damages equal to the difference between the monetary incentive under VSL and VSP2(b). The difference will then be reduced by 20%. There are approximately 3,976 Class Members in this group.

3. **Group C:** Frontline and Management and Administrative Employees who retired under VSP1.
   a. C1 – VSL eligible: Group C1 Class Members who were VSL eligible have damages equal to the monetary incentive under VSL reduced by 20%. There are approximately 259 Class Members in this group.
   b. C2 – VSP2 eligible but not VSL eligible: Group C2 Class Members who were not eligible for VSL but were eligible for VSP2 have damages equal to the monetary incentive under VSP2(b) reduced by 20%. There are approximately 111 Class Members in this group.
   c. C3 – VSP3 eligible but not VSP2 or VSL eligible: Group C3 Class Members who were VSP3 eligible but not VSP2 or VSL eligible have damages equal to the monetary incentive under VSP3 reduced by 20%. There are approximately 6 people in this group.

The 20% reduction for Groups B and C reflects the fact that members of these groups signed releases when they elected to receive the benefits of VSP1 or VSP 2. Defendants assert that the terms of those releases bar the claims made in the lawsuit. If the Defendants' argument were to be accepted by the court or jury, this would preclude Groups B and C from recovering anything in the lawsuit.

C. Non-Monetary Settlement Terms

Defendants will provide 8 vacation passes, as defined in § I.OO of the Settlement Agreement, for use on flights operated by United to each Class Member. Exhibit 1, Settlement Agreement, § IV.1.

D. Proposed Class Notice and Settlement Administrator

1. Class Notice

Class Counsel, in consultation with Defendants and their counsel, will appoint a Settlement Administrator to provide notice of the proposed Settlement to the Class Members by the date identified in the Court's Preliminary Approval Order. Exhibit 1, Settlement Agreement, § VIII.1. The Proposed Class Notice is appended as Exhibit 2 to this Motion and contains a brief description of the claims advanced by the Class, a summary of the terms of the Settlement Agreement, the maximum amount of attorneys' fees and costs that Class Counsel will seek, a description of the proposed Plan of Allocation of the Settlement Fund, information about making objections, and information about the Final Approval Hearing. (Blanks on the notice consist of (1) dates to be filled in depending on the Court's schedule and (2) contact information for the Settlement Administrator which will be filled in before submission of the Notice for final approval.)

The Class Notice will be provided to each individual Class Member: (a) by email, if a current, valid email address is available or, if a current valid email address is unavailable, by first class U.S. Mail at the last known address of the Class Member; and (b) by posting the Class Notice (and other documents filed in the litigation) on a dedicated website. For undeliverable notices, the Settlement Administrator will make reasonable efforts to obtain a valid mailing address and promptly resend the Class Notice to the Class Member by U.S. Mail. Exhibit 1, Settlement Agreement, § III.

Reasonable fees and expenses charged by the Settlement Administrator for preparation and distribution of the Class Notice and for completing all other elements required for administering the Settlement will be paid in equal portions from the Settlement Fund and by Defendants. The

Settlement Administrator will provide invoices to Class Counsel and Defense Counsel itemizing such fees and expenses. Exhibit 1, Settlement Agreement, § VIII.3.

2. The Settlement Administrator's Additional Duties

The Settlement Administrator's additional duties will include:

- distributing a Class Action Fairness Act ("CAFA") Notice in accordance with CAFA and the terms of this Settlement Agreement;
- distribution of the Class Notice to the Class Members in accordance with this Settlement Agreement and any order of the Court;
- providing notice to Class Counsel of updated email or U.S. mail addresses;
- responding to questions from Class Members or referring Class Members to Class Counsel for responses;
- maintaining and staffing a toll-free phone number and a web site until six months after distributions of the Settlement Fund have been made to Class Members;
- filing with the Court a declaration confirming distribution of the CAFA Notice and compliance with the Class Notice procedures ordered by the Court;
- determining for purposes of allocation of the Net Settlement Amount, subject to the approval by the Court, whether persons claiming that they are Class Members have sufficiently established their status as such, and sending notice of determinations or adjudications to those persons;
- calculating the amount of the Net Settlement Amount to be allocated to each Class Member entitled to payment from the Net Settlement Amount by name and amount;

- distributing payments of the settlement proceeds to Plaintiffs, to Class Counsel, and to Class Members, consistent with instructions from Class Counsel and the Court-approved Plan of Allocation;
- monitoring the Fund and filing all informational and other tax returns necessary or advisable with respect to the Settlement Fund; and
- ensuring that Class Data is used solely for the administration of this Settlement and is shared only with any persons or entities employed by the Settlement Administrator or for purposes of the administration of this Settlement, and upon completion of responsibilities as Settlement Administrator, destroying all physical and electronic copies of Class Member lists containing personal information.

Exhibit 1, Settlement Agreement, § VIII.2.

E. Releases

Upon the Final Approval Order becoming Non-Appealable, the Named Plaintiffs and all Class Members (and their respective heirs, beneficiaries, executors, successors and assigns) will be deemed to have fully, finally, and forever settled, released, relinquished, waived and discharged all Released Parties from the Released Claims, whether or not such Class Members have filed an objection to the Settlement or to any application by Class Counsel for a Fee Award or Expense Award, and regardless of the monetary benefit that such Class Members receive pursuant to the Plan of Allocation approved by the Court. Exhibit 1, Settlement Agreement, Exhibit 1, § XV.

F. Named Plaintiff Awards

With the approval of the Court, each of the 12 Named Plaintiffs will be paid an additional $10,000 as an incentive payment for serving as Class Representative out of the Settlement Fund. Each Named Plaintiff expended a great deal of time and effort on this case over a period of several

years, including participating in pre-filing discussions, filing the actions ultimately consolidated in this lawsuit, providing documents and information to Class Counsel, communicating and meeting with Class Counsel on a regular basis, and participating in settlement negotiations. Exhibit 1, Settlement Agreement, § IX.1; IX.2.

G. Attorneys' Fees and Costs

Prior to the deadline for Class Members to object to the Settlement Agreement, Class Counsel will file a motion with the Court for an award from the Settlement Fund of their Attorneys' Fees and Expenses. Defendants will take no position regarding the application for or an award of the Attorneys' Fees and Expenses, provided that the fee request does not exceed one-third of the gross Settlement Fund. Exhibit 1, Settlement Agreement, § IX.1-6.

H. Implementing the Settlement

1. Remand from the Court of Appeals

The Court of Appeals ordered a limited remand of the matter to provide this Court with jurisdiction to entertain and effectuate the Settlement on March 20, 2026.

2. Preliminary Approval Order

With the remand of the matter from the Court of Appeals completed, the Parties now file this Preliminary Approval Motion to request that the Court enter the Proposed Order re Preliminary Approval of Settlement.

I. Class Certification

1. The Parties request that the Court certify the following class: "All former employees of United who retired between August 17, 2017 and December 31, 2020 who were not eligible to participate in VSP2, VSP3, and/or VSL for the sole reason that they retired before

United offered VSP2, VSP3, or VSL benefits to others, regardless of whether they signed a release in connection with their separation from United."

2. They request that the Class be certified by the Court pursuant to Fed. R. Civ. P. 23(b)(2), or in the alternative, 23(b)(1), in either case without provisions for members of the Class to exclude themselves from the Settlement.

3. They request that Plaintiffs' Counsel be appointed as Class Counsel and that the Named Plaintiffs be appointed as Class Representatives.

J. Final Approval of the Settlement

If the Court grants the Preliminary Approval Order as described in the Settlement Agreement, Class Counsel and Defendants will jointly file a Final Approval Motion, which will seek entry of a proposed Final Approval Order in a form to be agreed upon by the Parties. The proposed Final Approval Order will, among other things, seek final approval of the Settlement, the Plan of Allocation, the Named Plaintiff Awards, Attorneys' Fees and Costs, and dismissal of the Action, with the Court to retain exclusive jurisdiction, without affecting the finality of the Order entered, with regard to: (i) implementation of this Settlement Agreement; (ii) disposition of the Settlement Fund and distributions from the Settlement Fund; (iii) any disputes about the allocation of Attorneys' Fees and Expenses among Plaintiffs' Counsel; and (iv) enforcement and administration of this Settlement Agreement, including the non-monetary terms. Exhibit 1, Settlement Agreement § XI.3.

K. Residual Funds and Cy Pres Award

Any portion of the Settlement Fund that remains after (a) payments to each Class Member, (b) payment of all Court-approved Attorneys' Fees and Expenses, Named Plaintiff Service Awards,

Settlement Administration Costs, and any other Court-approved deductions, and (c) the expiration or voiding of all settlement checks issued to Class Members, will constitute the Residual Funds.

If the total amount of Residual Funds is greater than $100,000.00 (the "De Minimis Threshold"), then, subject to Court approval, the Residual Funds shall be redistributed on a pro rata basis to Settlement Class Members who cashed their checks in the initial distribution.

The Parties and the Settlement Administrator will not be required to make a further distribution if, in their judgment and subject to Court approval, doing so would be administratively impracticable or economically infeasible.

If the total amount of Residual Funds is less than or equal to the De Minimis Threshold, or if a further distribution would be administratively impracticable or economically infeasible, then remaining Residual Funds shall be used to reimburse United for its share of fees and expenses charged by the Settlement Administrator for the preparation and distribution of the Class Notice and for completing all other elements required for administering the Settlement, as described in § VIII.3 of the Settlement Agreement.

If any Residual Funds remain after distribution to United for defraying administrative costs, then the remaining Residual Funds shall be paid as a Cy Pres Award, subject to court approval, to a non-profit organization to be agreed upon by the parties.

III. ARGUMENT

When parties have entered into a classwide settlement agreement and present a preliminary approval motion pursuant to Fed. R. Civ. P. 23, the Court performs a preliminary review of the terms of the proposed settlement to determine whether it is sufficient to warrant notice to the class and a hearing. Fed. R. Civ. P. 23(e)(1)(A). The Court must determine whether it will "likely be able to" both (1) approve the proposed settlement under Fed. R. Civ. P. 23(e)(2) as fair, reasonable,

and adequate, and (2) certify the class for purposes of judgment on the proposal. As shown below, each element necessary for preliminary approval has been met.

Further, the preliminary approval stage serves a limited gatekeeping function. As established in *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982), the purpose of the inquiry is only to "ascertain whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing," not to conduct a full-fledged inquiry into whether the settlement meets the standards for approval. The court performs only "a summary version of the exhaustive final fairness inquiry." *In re Nat'l Collegiate Athletic Ass'n Student-Athlete Concussion Inj. Litig.,* 314 F.R.D. 580, 588 (N.D. Ill. 2016).

A. The Settlement Meets the Standard of Fairness, Reasonableness, and Adequacy

The Seventh Circuit has consistently recognized that prompt settlement of class actions benefits both judicial efficiency and class members' interests. See *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996) ("Federal courts naturally favor the settlement of class action litigation."); *E.E.O.C. v. Hiram Walker & Sons, Inc*., 768 F.2d 884, 888-89 (7th Cir. 1985); *Metropolitan Housing Development Corp. v. Village of Arlington Heights*, 616 F.2d 1006, 1013 (7th Cir. 1980). The Court may approve the settlement if it is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(1)(C).

To evaluate the fairness, reasonableness, and adequacy of a settlement, the Court must consider five factors: "the strength of plaintiffs' case compared to the amount of defendants' settlement offer, an assessment of the likely complexity, length and expense of the litigation, an evaluation of the amount of opposition to settlement among affected parties, the opinion of competent counsel, and the stage of the proceedings and the amount of discovery completed at the time of settlement." *Synfuel Techs., Inc. v. DHL Express (USA), Inc*., 463 F.3d 646, 653 (7th Cir.

2006). Here, the proposed Settlement reflects a fair, reasonable, and adequate compromise of the Parties' claims and defenses and fully meets the above standard for approval.

1. Strength of Case Versus Amount of Settlement

The first factor has been deemed by the Seventh Circuit as the most critical: "[t]he most important factor relevant to the fairness of a class action settlement is the strength of plaintiff's case on the merits balanced against the amount offered in the settlement." *Wong v. Accretive Health, Inc*., 773 F.3d 859, 863-64 (7th Cir. 2014), quoting *In re Gen. Motors Corp. Engine Interchange Litig*., 594 F.2d 1106, 1132 n. 44 (7th Cir. 1979). The Plaintiffs' case was dismissed by this Court and was pending on appeal before the parties reached a settlement agreement. Settlement of the case at this stage would constitute a major benefit for the class members, whose claims are extremely uncertain given the case's procedural posture, creating a reasonable probability that the Plaintiffs would not achieve any recovery if a negotiated settlement was not achieved. The amount of the proposed settlement, $27,500,000, is substantial, particularly in view of the fact that the Plaintiffs' Amended Complaint was dismissed with prejudice by the Court, and it will provide significant benefits to the Class Members who otherwise might well be left without recourse – all Class members if the District Court's dismissal were to be upheld on appeal, or if the appeal were to be successful those who might be barred from recovery if the District Court were to rule in Plaintiffs' favor, but accept Defendants' release defenses which would bar recovery for Class members who signed such releases as a condition of receiving benefits under one of the early out programs.

2. Complexity, Length, and Expense of Litigation

If this case continues, litigation is likely to be risky, complex, lengthy, and expensive. The Plaintiffs must prosecute their appeal in the Seventh Circuit, including briefing and oral argument.

If they succeed, they will then return to the District Court for full discovery and motion practice. If they do not succeed, as is common with most appeals, their claims are extinguished.

3. Opposition to the Settlement

No opposition to the settlement has been communicated to Class Counsel, nor are class counsel aware of any opposition. All of the Named Plaintiffs agree that the case should be settled, and the Class Members will have the chance to file objections prior to the Final Approval Hearing and to appear at the Hearing.

4. Opinion of Competent Counsel

Counsel for both Plaintiffs and Defendants, all highly experienced attorneys with many years of class action experience litigating ERISA cases (see Declarations of Class Counsel, Ex. 4), agree that settlement is appropriate at this stage and that there is little to be gained in continuing to litigate the case on appeal, given the fact that a satisfactory settlement has been reached by the Parties. Further, the settlement was fairly and honestly negotiated and reflects no fraud or collusion. The Parties' negotiations were contentious and at arm's length at all times. The use of both a private mediator and the Circuit Mediator weighs against a finding of collusion. *Wong*, 773 F.3d at 864 (approving settlement where "the settlement was proposed by an experienced third-party mediator after an arm's-length negotiation where the parties' positions on liability and damages were extensively briefed and debated.").

5. Stage of Proceedings and Discovery Completed

The Parties conducted significant written discovery during the pendency of the motion to dismiss and settlement negotiations. They were able to ascertain the scope of the class, the identities of the class members, and each class member's potential damages under various theories of the case.

In sum, the Parties have satisfied every consideration regarding the fairness, reasonableness, and adequacy of the proposed settlement, and it should be preliminarily approved.

B. The Class Should be Certified for Settlement Purposes

The settlement class is subject to the four requirements of Fed. R. Civ. P. 23(a) (numerosity, commonality, typicality, and adequacy of representation) and the requirements of Fed. R. Civ. P. 23(b)(1) or (2), depending on which provision the Court uses to certify the class. Plaintiffs have satisfied each of the Rule 23 requirements, as follows.

Fed. R. Civ. P. 23(a)

a. Numerosity

The first requirement – numerosity – is easily fulfilled here. Defendants have produced data showing that there are approximately 8,600 class members, which satisfies the numerosity requirement under Rule 23(a)(1) because joinder of all Class Members is impracticable. *Orr v. Shicker,* 953 F.3d 490, 497-98 (7th Cir. 2020).

b. Commonality

The second requirement is that there must be a question of law or fact common to the class that can be resolved on a class-wide basis. Fed. R. Civ. P. 23(a)(2). Common questions in this case include:

- whether the VSP2, VSP3, and VSL Programs were early out programs to which the 2017 Early Out Program applies;
- whether the 2017 Early Out Program is an ERISA plan;
- whether Defendants unlawfully excluded Plaintiffs and the Class of retirees from eligibility to participate in the VSP2, VSP3, and VSL Programs;

- whether Defendants owed a fiduciary duty to Plaintiffs and the Class with regard to their right to participate in the VSP2, VSP3, and VSL Programs;
- whether Defendants unlawfully prevented employees who retired between August 17, 2017 and December 31, 2020 from being eligible to participate in and applying for benefits under the subsequent programs; and
- whether Defendants breached their fiduciary duties by preventing Plaintiffs and the Class from participating in the VSP2, VSP3, and VSL Programs.

These common questions generate common answers, which the Seventh Circuit has identified as the "key to commonality." *Lacy v. Cook Cnty., Illinois*, 897 F.3d 847, 865 (7th Cir. 2018) ("the capacity of a class-wide proceeding to generate common answers apt to drive the resolution of the litigation" satisfies commonality).

c. Typicality

The third requirement is that the named plaintiffs' claims must be typical of the class. "A plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members and [is] based on the same legal theory." *Rosario v. Livaditis*, 963 F.2d 1013, 1018 (7th Cir. 1992). Here, the proposed class satisfies Rule 23(a)(4) because Plaintiffs' claims are "typical of the claims … of the class," as they arise from the same course of conduct by Defendants and are based on the identical legal theories as the absent Class Members. *McFields v. Dart*, 982 F.3d 511, 517-18 (7th Cir. 2020).

d. Adequacy of Representation

The fourth requirement, which receives heightened attention in settlement classes, requires that class representatives and counsel will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a)(4). The twelve Named Plaintiffs meet these requirements. They understand

the claims they are pursuing, appreciate their responsibilities in serving as Class Representatives, have remained in close contact with Class Counsel, have monitored the progress of the litigation and settlement negotiations, and have actively participated in the prosecution of and settlement negotiations in this action.

The attorneys for the Class, Susan Meter and Samantha Brener of Kantor & Kantor, LLP, Jamie Franklin of Chicago-Kent College of Law, Mark DeBofsky of DeBofsky Law, Ltd., and Jeffrey Lewis of Keller Rohrback LLP have substantial expertise in the litigation of ERISA class actions, are fully capable of prosecuting this action, and are competent and able to fairly and adequately represent the interests of the proposed Settlement Class. Fed. R. Civ. P. 23(g). See Declarations of Class Counsel, Exhibits 4 through 8.

Fed. R. Civ. P. 23(b)(2) Requirements

Under Fed. R. Civ. P. 23(b)(2), a class may be certified if "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole[.]" The proposed Settlement Class meets the requirements under Rule 23(b)(2), because Defendants' actions apply to the entire class, and if relief is granted, the plans in question specify the relief that is owed. See *In re Allstate Ins. Co*., 400 F.3d 505, 507 (7th Cir. 2005) (finding Rule 23(b)(2) certification proper because "if the plaintiffs get the declaration they are seeking, the benefits to which the ERISA plan entitles them will simply be read off from the plan" and noting that class members would "all sink or swim together."). The primary relief in the Settlement Agreement is injunctive and declaratory, as the Settlement Agreement will distribute the settlement fund proportionally as if the VSP2, VSP3, and VSL programs were qualifying programs under 2017 Early Out Program. *Johnson v. Meriter Health Servs. Emp. Retirement Plan*, 702 F.3d 364, 371 (7th Cir. 2012) is instructive.

There, the Seventh Circuit upheld certification of a class under Rule 23(b)(2) because the classes sought "a declaration of the rights that the plan conforms and an injunction ordering [defendant] to conform the text of the plan to the declaration." The monetary relief, which was "a matter of laying each class member's pension related employment records alongside the text of the reformed plan and computing the employee's entitlement," was "truly… incidental to the declaratory and… injunctive relief." *Id.*; *see also Diehl v. Twin Disc, Inc.*, 1995 WL 330637 (N.D. Ill. May 30, 1995) (stressing that relief under a 23(b)(2) class "does not automatically preclude the recovery of monetary awards on a class-wide basis provided that monetary relief is either a part of the equitable relief granted or is secondary or ancillary to the predominant injunctive or declaratory relief.").

Fed. R Civ. P. 23(b)(1) Requirements

> Under Fed. R. Civ. P. 23(b)(1), a class may be certified if:
>
> (1) prosecuting separate actions by or against individual class members would create a risk of:
>
> (A) inconsistent or varying adjudications with respect to individual class members [which] would establish incompatible standards of conduct for the party opposing the class, or
>
> (B) adjudications with respect to individual class members [which], as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

The proposed Settlement Class satisfies the requirements of Rule 23(b)(1)(A) and (B). First, under Rule 23(b)(1)(A), if the court did not certify a class, the prosecution of separate actions by various Plaintiffs would create a risk the very "inconsistent or varying adjudications with respect to individual members of the class" that Rule 23(b)(1)(A) disallows. Second, under Rule 23(b)(1)(B), because Plaintiffs bring claims for benefits and for breach of Defendants' fiduciary duties, adjudications with respect to their claims "would, as a practical matter, be dispositive of

the interests of other members not parties," as Rule 23(b)(1)(B) contemplates. Numerous courts have found ERISA claims particularly well-suited to 23(b)(1) certification. See *Neil v. Zell*, 275 F.R.D. 256, 267 (N.D. Ill. 2011) (collecting cases).

C. The Court Should Approve the Proposed Class Notice

Finally, the Court should approve the Proposed Class Notice, appended as Exhibit 2. The Notice describes the claims advanced by the Class, summarizes the terms of the Settlement Agreement, identifies the maximum amount of attorneys' fees and costs that Class Counsel will seek, specifies the Incentive Awards that will be sought for the named Plaintiffs, describes the proposed Plan of Allocation of the Settlement Fund, and provides information about Objections and the Final Approval Hearing. The Notice will fully apprise Class Members of the existence of the lawsuit, the proposed Settlement, and the information necessary for them to make informed decisions regarding their rights.

The notice plan consists of multiple components designed to reach Class Members. The Class Notice will be provided to each individual Class Member: (a) by email, if a current, valid email address is available or, if a current valid email address is unavailable, by first class U.S. Mail; and (b) by posting the Class Notice (and other documents filed in the litigation) on a dedicated website that includes a toll-free number they can call for information. For undeliverable notices, the Settlement Administrator will make reasonable efforts to obtain a valid mailing address and promptly resend the Class Notice to the Class Member by U.S. Mail. Because all class members are known, the Parties expect to reach nearly all of the members. *See Johnson*, 702 F.3d at 371 (holding that notice under a Rule 23(b)(2) class is "to enable class members to challenge the class representatives or otherwise intervene in the suit, rather than to allow them to opt out.").

The proposed form and method of notice satisfy all due process considerations and meet the requirements of Rule 23(e)(1).

IV. CONCLUSION

For the reasons set forth above, the Plaintiffs respectfully request that the Court grant Plaintiffs' Unopposed Motion for Preliminary Approval of the Settlement Agreement and Approval of the Class Notice and enter a Preliminary Approval Order in the form of or similar to the Proposed Order re Preliminary Approval of Settlement Agreement:

1. Granting preliminary approval of the Settlement as set forth in the Settlement Agreement, subject to further hearing and determination under Fed. R. Civ. P. 23(e);

2. Certifying the Class pursuant to Fed. R. Civ. P. 23(b)(2), and, in the alternative, Fed. R. Civ. P. 23(b)(1), consisting of all former employees of United who retired between August 17, 2017 and December 31, 2020 who were not eligible to participate in VSP2, VSP3, and/or VSL for the sole reason that they retired before United offered VSP2, VSP3, or VSL benefits to others, regardless of whether they signed a release in connection with their separation from United;

3. Approving the form of Proposed Class Notice, substantially in the form agreed upon by the Parties, and the manner of distribution and publication, which is consistent with this Agreement, Fed. R. Civ. P. Rule 23, and the requirements of due process;

4. Appointing Susan L. Meter and Samantha L. Brener of Kantor & Kantor, LLP, Mark D. DeBofsky of DeBofsky Law, Ltd., Jamie S. Franklin of Chicago-Kent College of Law, and Jeffrey Lewis of Keller Rohrback L.L.P., as Class Counsel;

5. Authorizing:

   a. Payment, in part, of Settlement Administration expenses out of the Settlement Fund, consistent with the terms of the Settlement Agreement;

b. Preliminary approval of the Plan of Allocation;

c. Appointment Verita as the Settlement Administrator;

d. Setting a date for the Final Approval Hearing, at which the Court will determine whether the Settlement Agreement should be finally approved as fair, reasonable, and adequate, and whether the Final Approval Order approving the Settlement Agreement should be entered, including setting deadlines for transmitting the Class Notice to Class members; setting the date and time of the Final Approval Hearing; and setting a deadline for objections;

e. Setting deadlines for filing a Final Approval Motion, Class Counsel's application for a Fee and Expense Award, and Plaintiffs' Application for Named Plaintiff Awards.

f. Requiring Defendants to produce the Class Data required pursuant to this Agreement to the extent that such data is reasonably available and within their possession, custody or control, by a date certain; and

g. Approving the form of notice by Defendants under CAFA, attached as Exhibit 9 to this Motion.

Respectfully submitted this 20th day of April, 2026

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