UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MICHEAL (SUSIE) HOFFMAN, JUDITH DUPOX, 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. Tharp, Jr.

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

I. INTRODUCTION

On April 28, 2026, the Court held a hearing regarding the parties' proposed class settlement in this ERISA class action. At the conclusion of the hearing, the Court ordered the plaintiffs to file a supplemental memorandum of law in support of the parties' joint motion for preliminary approval of the settlement to address the propriety of certifying this case under Rule 23(b)(2) for the purposes of settlement, instead of Rule 23(b)(3). Below, the plaintiffs explain why certification of

a class for settlement purposes, without any provision for class members to exclude themselves from the settlement, is appropriate in this case. Both Rule 23(b)(2) and its close cousin Rule 23(b)(1) (also invoked by the Settling Parties) provide ample authority for such a no-opt-out certification order.

II. ARGUMENT

A. The Proposed Settlement Class Should Be Certified Under Rule 23(b)(2).

Rule 23(b)(2) permits class certification when "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." Fed. R. Civ. P. 23(b)(2). This case satisfies both elements of that standard: Defendants acted on grounds generally applicable to all class members, and the relief as sought in the litigation and as embodied in the Settlement is fundamentally injunctive and declaratory in character.

1. Defendants Acted on Grounds Generally Applicable to the Class.

The conduct at issue is United's uniform decision to exclude an entire category of retirees (i.e. the Class) who retired between August 17, 2017 and December 31, 2020 from participation in the VSP2, VSP3, and VSL Programs, notwithstanding that the 2017 Early Out policy was an express promise that employees who retired within 36 months of that early out offering would be eligible for the policy's cash benefits. This was not a series of individualized decisions; rather, it was a single corporate policy, applied identically to every class member, that categorically denied payment of the benefits offered under the Programs. See ECF No. 59-1 (policy stating "any employee who has retired in good standing, within the previous 36 months of the closing date of the Early Out election window…will be eligible to participate in the Early Out and receive all monetary incentives being offered."). Every class member was subject to the same promise, the

same programs, and the same denial of benefits. That is precisely the type of conduct Rule 23(b)(2) was designed to address.

2. The Relief Is Properly Characterized as Injunctive and Declaratory.

The Seventh Circuit has repeatedly held that ERISA benefit claims seeking plan-wide relief are paradigmatic Rule 23(b)(2) cases. In *Johnson v. Meriter Health Services Employee Retirement Plan*, 702 F.3d 364, 371 (7th Cir. 2012), the court upheld (b)(2) certification of an ERISA class seeking "a declaration of the rights that the plan confers and an injunction ordering [defendant] to conform the text of the plan to the declaration." The monetary component of the relief, computing each class member's benefits under the reformed plan, was "truly [ ] merely incidental to the declaratory and (if necessary) injunctive relief" because the individual amounts were to be determined mechanically by "laying each class member's pension-related employment records alongside the text of the reformed plan and computing the employee's entitlement …." *Id.* Likewise, in *Ruppert v. Alliance Energy Cash Balance Pension Plan*, 255 F.R.D. 628 (W.D. Wis. 2009), the court held that certification under 23(b)(2) is appropriate in an ERISA case seeking a declaration as to the lawful form of benefit payment. The *Ruppert* court explained that "even when the declaration sought is 'merely a prelude to a request for damages,' it does not bar certification of the class under Rule 23(b)(2) '[a]s long as the concrete follow-on relief that is envisaged if ordered … be the direct, anticipated consequence of the declaration.'" *Ruppert* at 637 (quoting *Berger v. Xerox Corp. Retirement Income Guarantee Plan*, 338 F.3d 755, 764 (7th Cir. 2003). What Plaintiffs sought in this case is indistinguishable from *Johnson*, *Ruppert*, *Berger* and numerous other decisions in this district—namely, a declaration of entitlement to the benefits under the Early Out policy and ensuing severance Programs.

The core relief Plaintiffs seek is a declaration that the VSP2, VSP3, and VSL Programs are qualifying early out severance programs within the meaning of the 2017 Early Out Program. If granted, the monetary consequences follow automatically. Each class member's entitlement is determined by identifying which program or programs he or she was eligible for, then applying the program's benefit formula to that individual's employment records. No individualized inquiry into liability is required. No class member needs to prove reliance on the promise of the 2017 Early Out Program. No class member needs to prove anything beyond what is common to the class: that the 2017 Early Out Program created an enforceable right and that United breached it by refusing to honor it.

The Settlement Agreement confirms this structure. It distributes the Settlement Fund on a pro rata basis using each class member's damages as a proportion of total class damages, with damages calculated by reference to the monetary incentive under the program for which the class member would have been eligible. Settlement Agreement § VI; Exhibit 3, Plan of Allocation. The allocation formula does not require any individualized adjudication; it applies the program terms mechanically to each class member's employment data. Similarly, the 20% reduction applied to Groups B and C reflects the litigation risk associated with the releases those class members signed, which is common to both groups, not individualized. The monetary relief is, in the language of *Johnson*, "a matter of laying each class member's pension-related employment records alongside the text of the [ ] plan and computing the employee's entitlement." *Id.* at 371.

3. The Monetary Component Does Not Defeat (b)(2) Certification.

The fact that the Settlement provides monetary relief does not preclude certification under Rule 23(b)(2). The Supreme Court in *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360 (2011), expressed concern about (b)(2) certification where monetary claims are permitted to "ride along" with injunctive relief in cases where *individualized* monetary claims predominate. But the Court

did not hold that monetary relief is categorically incompatible with (b)(2). To the contrary, the Court acknowledged that some forms of monetary relief, particularly those that are "incidental to" requested injunctive or declaratory relief, remain appropriate under (b)(2). *Id.* at 366.

The Seventh Circuit applied this principle in *Johnson*, decided after *Dukes*, and found (b)(2) certification proper precisely because the monetary relief was mechanically derived from the declaratory relief. *Johnson*, 702 F.3d at 371. The court distinguished *Dukes* on the ground that the ERISA claims at issue did not require individualized determinations of damages or liability; all that was needed was a declaration of plan rights, after which the monetary consequences could be computed from existing records. *Id.*

This case falls squarely within *Johnson*'s framework. Unlike the Title VII backpay claims at issue in *Dukes*, where each class member's damages depended on individualized proof, the damages here are defined by the programs themselves. A class member in Group A1 is entitled to the monetary incentive under VSL. A class member in Group B1 is entitled to the difference between VSL and VSP2(b), reduced by 20% to account for the release risk. These calculations require no individualized factfinding. They require only the application of program terms to employment data that Defendants already possess. *See also Berger v. Xerox Corp. Retirement Income Guarantee Plan*, 338 F.3d at __(affirming a (b)(2) certification order, and stating that "[a]s long as the concrete follow-on relief that is envisaged will if ordered…be the direct, anticipated consequence of the declaration, rather than something unrelated to it, the suit can be maintained under Rule 23(b)(2)."

Either the 2017 Early Out Program creates an enforceable right to benefits under subsequent programs, or it does not. Either the VSP2, VSP3, and VSL are qualifying programs, or

they are not. These are binary, class-wide questions. The individual monetary consequences flow from the answers, not from any individualized inquiry.

B. Certification is Also Permitted Under Rule 23(b)(1).

In addition to moving to certify the Settlement Class under Rule 23(b)(2), the parties also invoked Rule 23(b)(1), which permits no-opt-out certification orders where the prosecution of separate actions by various plaintiffs would create a risk of "inconsistent or varying adjudications" (*see* Rule 23(b)(1)(A)), or the adjudication of some plaintiffs' claims "would be dispositive of the interests of the other members not parties to the individual adjudications" (*see* Rule 23(b)(1)(B)). Courts have recognized that disputes over employee eligibility for benefits under an allegedly ERISA-governed plan, or over the computation of such benefits pursuant to plan terms, meet the test for no-opt-out certification orders under Rule 23(b)(1). As another judge in this District recently found when certifying claims for additional benefits under a defined benefit pension plan, adjudication of the plaintiffs' claims of eligibility for benefit enhancements "would be dispositive of the interests of the other members" of the class, and that Rule 23(b)(1) was a suitable vehicle for certification where calculation of the additional benefit amounts will follow formulaically once eligibility is determined. *See, e.g., Urlaub v. CITGO Petroleum Corp.*, 348 F.R.D. 319, 327–28 (N.D. Ill. 2024) (internal citations omitted) (approving ERISA settlement under Rule 23(b)(1)(B) because "the plaintiffs want the Court to order the defendants to change their plans and recalculate the benefits owed to participants under those terms. The defendants are entitled to consistent rulings regarding operation of the plan, and have a statutory obligation, as well as a fiduciary responsibility, to treat the members of the class alike."); *see also Stone v. Signode Indus. Grp., LLC*, 594 F. Supp. 3d 993, 998 (N.D. Ill. 2022) (certifying class of individuals challenging the discontinuance of a collectively bargained health plan both under Rule 23(b)(1)(A) to avoid the "substantial risk of "inconsistent" or "varying" adjudications and "incompatible standards" for

measuring defendants' healthcare obligations," and under Rule 23(B)(1)(B) as the defendant had allegedly acted on "grounds that generally apply to the class").

C. No Opt-Out Rights Are Required.

Because the proposed Settlement Class meets the standards for certification under Rule 23(b)(2) (as well as under Rule 23(b)(1)), there is no requirement that Settlement Class members be afforded the right to exclude themselves from the settlement. Classes certified under Rule 23(b)(2) (and Rule 23(b)(1)) are mandatory because the relief applies to the class as a whole, and individual opt-outs would undermine the uniformity that certification under those subdivisions of Rule 23 are intended to achieve. *See Johnson*, 702 F.3d at 371 (approving (b)(2) ERISA settlement class without opt-out; noting that notice in (b)(2) classes serves to enable class members "to challenge the class representatives or otherwise intervene in the suit, rather than to allow them to opt out"). The settlement in this case provides robust procedural protections: all known class members will receive individualized notice by email or first-class mail, a dedicated website will host settlement documents, and class members will have the opportunity to file objections and appear at the Final Approval Hearing.

By contrast, Rule 23(b)(3) classes require opt-out rights because they typically involve individualized monetary claims determined by each class member's circumstances. The rationale is that when damages vary significantly based on individual circumstances and each class member could obtain a materially different result by litigating independently, due process requires the opportunity to opt out of the class. But that rationale does not apply here. As discussed above, every class member's entitlement is determined by the same legal question: whether the 2017 Early Out Program creates an enforceable right to benefits under subsequent programs. And each class member's recovery is computed mechanically from program terms and employment records already in Defendants' possession.

No class member stands to gain a materially different or better result by litigating independently, because the individual recovery is a function of the 2017 Early Out formula, not of individualized proof. Permitting opt-outs would risk the very inconsistent adjudications that both Rule 23(b)(1) and (b)(2) are designed to prevent: if some retirees were permitted to litigate separately, courts could reach conflicting determinations about whether the VSP2, VSP3, and VSL Programs are qualifying programs under the 2017 Early Out Program, potentially subjecting United to incompatible obligations. The mandatory nature of such classes thus serves the interests of both the class members and the judicial system. *See Berger*. 338 F.3d at 764 ("The reason for allowing opting out in other types of class action is that even though one class member's claim may overlap another's (common issues), it may be different in respects that makes him want to bring his own suit. There is nothing like that here.").

III. CONCLUSION

For these reasons, the Court may properly order a mandatory class for settlement purposes in this litigation, whether under Rule 23(b)(2)—the focus of the Court's questions in its recent telephonic hearing—or under Rule 23(b)(1), which has also been invoked by the Settling Parties.

Respectfully submitted this 8th day of May, 2026.

/s/ Jamie S. Franklin Jamie S. Franklin ARDC No. 6242916 The Civil Litigation Clinic at Chicago-Kent School of Law 565 West Adams Street, Suite 600 Chicago, IL 60661 (312) 906-5048 (Phone) (312) 906-5299 (Fax) jfranklin5@kentlaw.iit.edu	*/s/ Susan L. Meter* */s/ Samantha L. Brener* Susan L. Meter (*admitted pro hac vice*) Samantha L. Brener (*admitted pro hac vice*) Kantor & Kantor, LLP 9301 Corbin Ave., Suite 1400 Northridge, CA 91324 818-886-2525 (Phone) 818-350-6272 (Fax) smeter@kantorlaw.net sbrener@kantorlaw.net

<u>/s/ Jeffrey Lewis</u> Jeffrey Lewis Keller Rohrback L.L.P. 180 Grand Avenue, Suite 1380 Oakland, CA 94612 (510) 463-3900 (Phone) (510) 463-3901 (Fax) jlewis@kellerrohrback.com	*<u>/s/ Mark D. DeBofsky</u>* Mark D. DeBofsky DeBofsky Law, Ltd. 2 North Riverside Plaza, Suite 1420 Chicago, IL 60606 (206) 681-2581 (Phone) (312) 929-0309 (Fax) mdebofsky@debofsky.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies that on May 8, 2026, pursuant to Fed. R. Civ. P. 5 and LR 5.5, a true and correct copy of the foregoing **PLAINTIFFS' SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF THE PARTIES' JOINT MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT AND CLASS NOTICE** was filed with the Clerk of Court using the CM/ECF System, which will send notification of such filing to the attorneys of record at the email addresses on file with the Court.

/s/ Susan L. Meter
Susan L. Meter

Attorney for Plaintiffs