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.

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THE PARTIES' JOINT MOTION FOR FINAL APPROVAL OF SETTLEMENT AGREEMENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

FEDERAL RULES

Plaintiffs, by and through Class Counsel, submit this Memorandum of Law in Support of the Parties' Joint Motion for Final Approval of Settlement Agreement.[1]

I. INTRODUCTION

This Settlement represents a substantial benefit for the Class. The Settlement provides for a payment by Defendants of twenty-seven million five hundred thousand dollars ($27,500,000) in cash, plus eight United Vacation Passes for each Class Member[2], in order to resolve all claims asserted by Plaintiffs in this Action. The Settlement was mediated by Jillisa Brittan, a mediator employed by the Seventh Circuit Court of Appeals. Based on an evaluation of the facts, governing law, and settlements in cases similar to this, and in recognition of the substantial risks of continued litigation, Plaintiffs and Class Counsel submit that the proposed Settlement is fair, reasonable, adequate, and in the best interest of the proposed Class. The Settlement provides a meaningful recovery now and allows the Parties to avoid the risks of continued litigation and trial, which could result in no recovery for the Class or a judgment less than the $27.5 million recovery provided by the Settlement.

On May 14, 2026, the Court entered an order: (1) preliminarily approving the Class Action Settlement Agreement; (2) preliminarily certifying a proposed Settlement Class pursuant to Federal Rule of Civil Procedure ("Rule") 23(b)(2), appointing Plaintiffs as Class Representatives, and appointing their counsel as Class Counsel; (3) approving the form and method of Class Notice; and (4) setting the date and time for a hearing (the "Fairness Hearing") for consideration of final approval of the Settlement, payment of attorneys' fees, litigation expenses, administration expenses, and Named Plaintiff Awards. ECF No. 123 ("Preliminary Approval Order").

---

[1] Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Settlement Agreement.

[2] Plaintiffs estimate the value of the United vacation passes to be more than $14 million.

Since then, the Parties have complied with the terms of the Preliminary Approval Order, including: providing notice to the Settlement Class by email, if a current, valid email address was available or, by first class U.S. Mail where no email was available; posting the Class Notice on a dedicated website (hoffmansettlement.com); mailing the Class Action Fairness Act ("CAFA") notices to the requisite State officials pursuant to the CAFA statute, 28 U.S.C. § 1715 (2005); and depositing the cash Settlement Amount into a qualified settlement fund. Declaration of Susan Meter ("Meter Decl.") ¶¶ 14-16. Under the standards for evaluating class action settlements in this Circuit and pursuant to Rule 23(e)(2), this Settlement is fair, reasonable, and adequate, and the Parties respectfully request that the Court grant final approval of the Settlement.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiffs' Allegations

At various times, United 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. The benefits offered included additional monetary compensation and benefits. ECF. No. 54, Second Amended Class Action Complaint ("SAC") ¶¶ 32-34. However, 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*. ¶ 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 dramatic happens in the industry and we decide to offer an early out within 36 months after you retire, you would be eligible for the financial benefits of the program even after retiring." *Id*. ¶¶ 35-39. United memorialized this promise of additional benefits in writing in August 2017 (the "2017 Early Out Program"). *Id*. ¶ 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. *Id.* ¶ 42. Thus, 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. *Id.* ¶¶ 45-47. The Voluntary Separation Program 3 ("VSP3"), effective beginning June 2020, was offered to management and administrative employees.

On January 21, 2021, United announced a new program with significantly richer benefits called the Voluntary Separation Leave ("VSL") Program. *Id.* ¶¶ 58-60. The VSL Program, like the VSP2, contained two options, both of which provided better benefits than the VSP2. *Id.* ¶ 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.* ¶ 64. All Plaintiffs but one 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. *Id.* ¶¶ 82, 85-86.

Despite the policy stated in the 2017 Early Out Program, United did not inform Plaintiffs about the programs described above and did not offer them the opportunity to apply for enhanced benefits offered within 36 months of their retirement. If they applied for these, Plaintiffs were told they were not eligible. *Id.* ¶¶ 90-99.

Plaintiffs have asserted that the VSP2, VSP3, 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. *Id.* ¶¶ 113-17. On their own behalf and on behalf of a similarly situated class of approximately 8,600 retirees, Plaintiffs brought ERISA claims seeking the promised benefits or other appropriate equitable relief to remedy United's fiduciary and other statutory breaches. *Id.* ¶ 125-59. Alternatively, Plaintiffs asserted a claim for breach of contract under Illinois state law. *Id.* ¶¶ 160-65.

B. Procedural History

Plaintiff Micheal (Susie) Hoffman filed the original complaint in this matter on November 30, 2021, asserting ERISA claims on behalf of herself and a class of former employees of United. Two additional cases were filed asserting similar claims: *Yustman v. United Airlines, Inc.*, No. 2:21-cv-09432 (C.D. Cal.), which was filed on December 6, 2021, and *Loucks v. United Airlines, Inc.*, No. 2:22-cv-1604 (C.D. Cal.), which was filed on March 10, 2022.

The three cases were later consolidated, and 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 Defendants' Motion to Dismiss the Second Amended Class Action Complaint in its entirety. ECF No. 102. The Court entered a final judgment 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 written discovery, including the exchange of a large volume of documents and data. Thereafter, the Parties agreed to attend a day-long mediation with a private mediator on July 27, 2023. The Parties made progress at the mediation but did not resolve the Action at that time. Then, after this Court granted Defendants' motion to dismiss and 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.

On March 11, 2026, Class Counsel jointly requested an indicative ruling from this Court pursuant to Rule 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. This Court provided the requested indicative ruling on March 16, 2026, ECF No. 114. The Court of Appeals then granted a limited remand of the matter to effectuate settlement on March 20, 2026. Appellate ECF No. 19. 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 arm's-length negotiations, the Parties agreed that it would be in the best interests of the Parties and the Class to resolve all matters by entry into this Settlement Agreement. By entering into this Settlement Agreement, no party makes any admission regarding any claims or defenses.

III. OVERVIEW OF THE SETTLEMENT AGREEMENT

A. The Settlement Fund

The Settlement Agreement provides that Defendants will pay a total of $27,500,000 ("Cash Settlement Amount") to resolve the claims of the Class and Plaintiffs. The Settlement Agreement further provides that Plaintiffs may seek payment from the Settlement Fund to pay Class Counsel's fees in an amount to be awarded by the Court not to exceed one-third of the Cash Settlement Amount, expenses for costs of litigation, payment of Named Plaintiff Awards, 50% of the cost of the Settlement Administrator, and actual or estimated taxes that are the obligation of the Settlement Fund. Meter Decl. Ex. E (Settlement Agreement) §§ I(E), IX(2), 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*. § I(LL).

Defendants paid 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. Meter Decl. Ex. E § VII.

B. Proposed Plan of Allocation

As detailed in Meter Decl. Ex. F, Plaintiffs created a proposed Plan of Allocation that distributes the remainder of the Settlement Fund (after deduction of attorneys' fees, litigation expenses, administration expenses, and Named 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. The following sub-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 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 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 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 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 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 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 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 VSP 1 or VSP 2. Defendants assert that the terms of those releases bar the claims made in the Action. If Defendants' argument were to be accepted by the Court or by a jury, this would preclude Groups B and C from recovering anything.

C. Non-Monetary Settlement Terms

Defendants will provide eight Vacation Passes, as defined in § I(OO) of the Settlement Agreement, for use on flights operated by United to each Class Member. Meter Decl. Ex. E § IV(1).

D. Class Notice and Settlement Administrator

1. Class Notice

Class Counsel, in consultation with Defendants and their counsel, appointed a Settlement Administrator to provide the Court-approved notice of the proposed Settlement to the Class Members. The Class Notice was issued on September 26, 2026. It contained 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 expenses 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 Fairness Hearing.

The Class Notice was provided to each individual Class Member: (a) by email, if a current, valid email address was available or, if a current valid email address was 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 Action) on the dedicated website: hoffmansettlement.com. For undeliverable emailed notices, the Settlement Administrator promptly resent the Class Notice to the Class Member by U.S. Mail. Meter Decl. Ex. G ¶ 3(a), (b) (Letter of Confirmation from the Settlement Administrator)

2. The Settlement Administrator's Additional Duties

The Settlement Administrator's additional duties not yet completed, as they involve future actions, include:

- 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 website 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;
- 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: Named Plaintiffs' Awards, Class Counsel attorneys' fees and costs, and pro rata Net Settlement Amount to Class Members, consistent with this Court's order on Final Approval of Settlement Agreement;
- monitoring the Qualified Settlement Fund and filing all informational and other tax returns necessary or advisable with respect to the Qualified Settlement Fund; Meter Decl. Ex. E § VIII(2).

One half of the 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 by Defendants and, if approved, one half will be paid from the Settlement Fund. The Settlement Administrator will provide invoices to Class Counsel and Defense Counsel itemizing such fees and expenses. Meter Decl. Ex. E § VIII(3).

E. Releases

Upon the Final Approval Order becoming Non-Appealable, 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. Meter Decl. Ex. E § XV.

F. Attorneys' Fees, Litigation Expenses and Named Plaintiff Awards

Concurrently with this motion, Class Counsel has filed a motion for an award of attorneys' fees of one-third of the Settlement Fund, expenses, and Named Plaintiff Awards of $10,000 for each Named Plaintiff. Any awards of attorneys' fees, litigation expenses, and Named Plaintiff awards should be paid out of the Settlement Fund. Meter Decl. Ex. E, § VI. Defendants 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 Cash Settlement Amount. Meter Decl. Ex. E § IX(1)-(6). The Settlement is not contingent upon the Court granting Plaintiffs' request for attorneys' fees, litigation expenses or Named Plaintiff awards.

G. Class Certification

The Parties request that the Court issue final certification for 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."

The Parties request that the Class be certified by the Court pursuant to Rule 23(b)(2), or in the alternative, Rule 23(b)(1), in either case without provisions for Class Members to exclude themselves from the Settlement. Plaintiffs filed a supplemental brief (ECF No. 121) explaining why certification is appropriate under these sections.

The Parties request that Plaintiffs' Counsel be appointed as Class Counsel and that Named Plaintiffs be appointed as Class Representatives.

H. Final Approval of the Settlement

At this time, the Parties jointly seek entry of a Final Approval Order that will, among other things, issue final approval of the Settlement, the Plan of Allocation, Attorneys' Fees, Litigation Expenses, Administration Expenses, Named Plaintiff Awards 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 Litigation Expenses among Class Counsel; and (iv) enforcement and administration of this Settlement Agreement, including the non-monetary terms. Meter Decl. Ex. E, § XI(3).

I. 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, Litigation Expenses, Administration Expenses, Named Plaintiff Awards, 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.

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 agreed upon by the Parties.

IV. ARGUMENT

This Court has already granted preliminary approval of the Settlement. ECF No. 123. Now, the Parties seek final approval to effectuate its terms. When parties have entered into a class-wide settlement agreement and present a final approval motion pursuant to Rule 23, the Court should approve the settlement if it finds it "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2); *see also Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 634 (7th Cir. 2011) (quoting Fed R. Civ. P. 23(e)(2)); *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996). In general, federal courts "favor the settlement of class action litigation." *Id.*

> In the class action context in particular, there is an overriding public interest in favor of settlement.... Settlement of the complex disputes often involved in class actions minimizes the litigation expenses of both parties and also reduces the strain such litigation imposes upon already scarce judicial resources.

Armstrong v. Bd. of Sch. Dirs. of City of Milwaukee, 616 F.2d 305, 313 (7th Cir. 1980) (citation modified), *overruled on an unrelated issue by Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998).

As a result, "[c]ourts do not easily disturb settlement agreements[.]" *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Adcock*, 176 F.R.D. 539, 544 (N.D. Ill. 1997); *see also Miksis v. Evanston Twp. High Sch. Dist. # 202*, 235 F. Supp. 3d 960, 987 (N.D. Ill. 2017), *as amended* (Feb. 2, 2017) (approving settlement agreement, noting that "the Court also cannot ignore the strong federal policy favoring the voluntary resolution of disputes"); *Cannon v. Burge*, 752 F.3d 1079, 1104 (7th Cir. 2014) ("Public policy in Illinois favors settlements[.]") (citation omitted).

The Seventh Circuit has consistently recognized that prompt settlement of class actions benefits both judicial efficiency and class members' interests. *See Isby*, 75 F.3d at 1196 ("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); *Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights*, 616 F.2d 1006, 1013 (7th Cir. 1980).

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

To evaluate the fairness, reasonableness, and adequacy of a settlement under Rule 23(e)(1)(C), the Court must consider five factors:

> [T]he 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) (citation omitted). 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)). This Action was dismissed by this Court and was pending on appeal before the Parties reached a settlement agreement. Settlement of the Action at this stage would constitute a major benefit for the Class Members, whose claims are extremely uncertain given the Action's procedural posture, creating a reasonable probability that Plaintiffs would not achieve any recovery if a negotiated settlement were not reached. The amount of the cash portion of the proposed settlement, $27,500,000 alone, is substantial, and additional value is provided by the United Vacation Passes, particularly in view of the fact that Plaintiffs' SAC was dismissed with prejudice by this Court, and it will provide significant benefits to the Class Members who otherwise might well be left without recourse. If the District Court's dismissal were to be upheld on appeal Class Members would not recover anything. If the appeal were to be successful, but the Court were to accept Defendants' release defenses, there would be no 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 Action continues, litigation is likely to be risky, complex, lengthy, and expensive. 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, including extensive fact and expert depositions, as well as substantial contested merits briefing, including (nonsettlement) class certification and summary judgment motions. If Plaintiffs do not succeed, their claims would be extinguished.

3. Opposition to the Settlement

The reaction of Class Members to the Settlement strongly favors approval. Pursuant to the Preliminary Approval Order, the primary method for distribution of the Class Notice was via email, with physical mailings a secondary method. In total, 9,386 emails and physical mailings of the Class Notice were transmitted. Meter Decl. Ex. G ¶ 3(c).

The deadline to object to the Settlement is August 12, 2026. As of the date of this motion, and despite targeted notice of the Settlement, no objections have been filed by Class Members or received by Class Counsel. Meter Decl. ¶ 19. Those Class Members who file objections will have the chance to appear at the Fairness Hearing.

This reaction of the Class to date strongly supports approval of the Settlement. In this Circuit, where a relatively small number of class members object, this fact suggests that class members deem the settlement fair. *In re Mex. Money Transfer Litig.*, 164 F. Supp. 2d 1002, 1020-21 (N.D. Ill. 2000). Notably, no Class Members have objected to the Settlement Agreement to-date. Should any objections be filed by the deadline, Class Counsel will file a response to them.

4. CAFA Notice

Pursuant to the Settlement Agreement, the Settlement Administrator served CAFA Notices on the Attorney General for each state in which a Class Member resides, and the Acting Attorney General of the United States on April 30, 2026. Meter Decl. Ex. G ¶ 3(e) (Letter of Confirmation from the Settlement Administrator)

No objections from any of these officials have been received in response to the CAFA Notice, which further indicates the reasonableness and adequacy of the Settlement. *Noll v. eBay,* *Inc.*, 309 F.R.D. 593, 608 (N.D. Cal. 2015) (no response to CAFA notice "indicat[es] that such officials . . . do not object to the Settlement. . . . Thus, this factor favors the settlement").

5. Opinion of Competent Counsel

Counsel for both Plaintiffs and Defendants, highly experienced attorneys with many years of class action experience litigating ERISA and class action cases (*see* Declarations of Class Counsel, Meter Decl. and Exs. A-C thereto), 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").

6. Stage of Proceedings and Discovery Completed

The Parties conducted significant written discovery during the pendency of the motion to dismiss and settlement negotiations. The Parties 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 Action.

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. Notice to the Class Satisfied the Requirements of Rule 23 and Due Process

The Class Notice directed by the Court and provided to the Class satisfies Rule 23(e)(1), which requires that notice of a settlement be provided to the Class in a "reasonable manner." The contents of the Class Notice were also substantively reasonable. A notice of a settlement is reasonable if it:

> [F]airly and adequately advises the class of the terms of the proposed settlement and the process available to class members to obtain monetary relief provided by the settlement, the rights of class members to object to the settlement … and the rights of class members to appear before the Court at the Final Fairness Hearing.

Tucker v. Walgreen Co., No. 2007 WL 2915578, at *4 (S.D. Ill. Oct. 5, 2007). Both the substance of the Class Notice and the method of its dissemination to Class Members satisfied these standards. The Class Notice was disseminated by email to 6,592 Class Members. Meter Decl. Ex. G ¶ 3(c). An additional 2,794 copies of the Class Notice were mailed to Class Members for whom no email address was available, or where a notification of non-delivery to an email address was received by the Settlement Administrator. Meter Decl. Ex. G ¶ 3(c). The Class Notice was also posted on a dedicated website for public viewing. Meter Decl. Ex. G ¶ 3(d). The website has been visited over 1,371 times since its establishment. *Id.*

C. The Court Should Finally Certify the Settlement Class

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

1. Federal Rule of Civil Procedure 23(a)

a. Numerosity

The first requirement—numerosity—is easily fulfilled here. Defendants have produced data showing that there are 8,641 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 Action 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 those 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) (citation omitted). Here, the proposed class satisfies Rule 23(a)(4) because Plaintiffs' claims are "typical of the claims . . . of the [C]lass," as they arise from the same course of conduct by Defendants and are based on the identical legal theories as those of the absent Class Members. *McFields v. Dart*, 982 F.3d 511, 517-18 (7th Cir. 2020) (citation omitted).

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 Action and settlement negotiations, and have actively participated in the prosecution of, and settlement negotiations in, this Action.

Class Counsel, 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 L.L.P. 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 Settlement Class. Fed. R. Civ. P. 23(g). *See* Declarations of Class Counsel, Meter Decl. and Exs. A-C.

2. Federal Rule of Civil Procedure 23(b)(2) Requirements

Under Rule 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 the 2017 Early Out Program. *Johnson v. Meriter Health Services Employee Retirement Plan*, 702 F.3d 364 (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 confers and an injunction ordering [defendant] to conform the text of the plan to the declaration." *Id.* at 371. 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.*, No. 94 C 50031, 1995 WL 330637, at *6 (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").

3. Federal Rule of Civil Procedure 23(b)(1) Requirements

In the alternative, a class maybe be certified under Rule 23(b)(1) 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 of 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, 267-68 (N.D. Ill. 2011) (collecting cases).

V. CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that the Court grant the Parties' Joint Motion for Final Approval of Settlement Agreement and enter a Final Approval Order in the form of or similar to the Proposed Order Granting Final Approval of Settlement, including:

1. Granting final approval of the Settlement as set forth in the Settlement Agreement;

2. Certifying the Class pursuant to Rule 23(b)(2), and, in the alternative, Rule 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. Granting final approval of the Plan of Allocation;

4. Dismissing the Action against Defendants with prejudice;

5. Finding that Plaintiffs and the Class have released the Released Partes from the Released Claims as defined in the Settlement Agreement;

6. Finding that Plaintiffs, Class Counsel and the Class are released from claims related to the prosecution of this Action, as provided in the Settlement Agreement;

7. Retaining exclusive jurisdiction with regard to: (i) implementation of the Settlement Agreement; (ii) disposition of the Settlement Fund and distributions from the Settlement Fund; (iii) any disputes about the allocation of Attorneys' Fees and Litigation Expenses among Class Counsel; and (iv) enforcement and administration of the Settlement Agreement, including the non-monetary terms; and

8. Finding that notice to the appropriate State and Federal officials has been provided as required by CAFA.

Respectfully submitted this 22nd day of July, 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

/s/ Jeffrey Lewis

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

/s/ Mark D. DeBofsky

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 July 22, 2026, pursuant to Fed. R. Civ. P. 5 and LR 5.5, a true and correct copy of the foregoing **PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THE PARTIES' JOINT MOTION FOR FINAL APPROVAL OF SETTLEMENT AGREEMENT AWARDS** 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

Counsel for Plaintiffs