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Peter Romer-Friedman (*pro hac vice*)
OUTTEN & GOLDEN LLP
601 Massachusetts Avenue NW,
Second Floor West Suite
Washington, D.C. 20001
Telephone: (202) 847-4400
Facsimile: (202) 847-4410
Email: prf@outtengolden.com

Thomas G. Jarrard (*pro hac vice*)
LAW OFFICE OF THOMAS JARRARD
PLLC
1020 N. Washington Street
Spokane, WA 99201
Telephone: (425) 239-7290
Facsimile: (509) 326-2932
Email: Tjarrard@att.net

Jahan C. Sagafi (Cal. Bar No. 224887)
Rachel W. Dempsey (Cal. Bar No. 310424)
OUTTEN & GOLDEN LLP
One California Street, 12th Floor
San Francisco, CA 94111
Telephone: (415) 638-8800
Facsimile: (415) 638-8810
Email: jsagafi@outtengolden.com
Email: rdempsey@outtengolden.com

Matthew Z. Crotty (*pro hac vice*)
CROTTY & SON LAW FIRM, PLLC
905 W. Riverside Avenue, Suite 404
Spokane, WA 99201
Telephone: (509) 850-7011
Email: matt@crottyandson.com

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

JAYSON HUNTSMAN, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

SOUTHWEST AIRLINES, CO.

Defendants.

Case No. 3:17-cv-03972

**~~PROPOSED~~ ORDER
GRANTING CONDITIONAL
CERTIFICATION OF SETTLEMENT
CLASS AND PRELIMINARY
APPROVAL OF SETTLEMENT**

1 On November 8, 2018, a hearing was held on the motion of Plaintiff Jayson Huntsman
2 (“Plaintiff”) for an order to: (1) conditionally certify the settlement class; (2) preliminarily
3 approve the parties’ proposed class action settlement (“Settlement”); (3) appoint Plaintiff as the
4 Class Representative, his counsel as Class Counsel, and Settlement Services, Inc. as Settlement
5 Administrator; (4) set the deadlines for filing Claim Forms, written exclusions, or objections to
6 the Settlement; (5) approve the Claim Form and notice to the class of the Settlement; and
7 (6) schedule a hearing on the final approval of the Settlement. Romer-Friedman, Jahan Sagafi,
8 and Rachel Williams Dempsey appeared for Plaintiff. Brian Berry appeared for Defendant
9 Southwest Airlines Co. (“Southwest”).

10 Having considered the papers on the motion, the arguments of counsel, and the law, the
11 Court now enters this Preliminary Approval Order and orders as follows:

12 **I. NATURE OF ACTION**

13 Plaintiff alleges that Southwest violated the Uniformed Services Employment and
14 Reemployment Rights Act (“USERRA”), 38 U.S.C. §§ 4316, 4318, by failing to: (i) make the
15 proper matching contributions to pilots’ retirement accounts based on Deemed Earnings during
16 periods of Short-Term Military Leave from their employment at Southwest; (ii) facilitate pilots’
17 opportunity to make retirement contributions that could be matched during periods of Short-Term
18 Military Leave; and (iii) provide for the accrual of Sick Leave during pilots’ periods of Short-
19 Term Military Leave. Short-Term Military Leave is defined as leave lasting 14 or fewer
20 consecutive days. Deemed Earnings are the amount of earnings that Southwest pilots would have
21 earned if they had not taken Short-Term Military Leave.

22 Southwest disputes and denies all of Plaintiff’s claims. Southwest contends that it has
23 fully complied with all applicable laws at issue in this matter.

24 **II. CONDITIONAL CERTIFICATION OF RULE 23 SETTLEMENT CLASS**

25 **A. Rule 23 Settlement Class**

26 For settlement purposes only, the Parties have proposed conditional certification of a
27 Settlement Class of all former or current pilots employed by Southwest who took Short-Term
28 Military Leave from Southwest between January 1, 2001 and the Preliminary Approval Date.

1 **B. Conditional Rule 23 Certification**

2 The Court hereby finds and concludes that for purposes of the Settlement only, the
3 Settlement Class satisfies all of the requirements for certification under Rule 23(a) and (b)(3) of
4 the Federal Rules of Civil Procedure.

5 1. The Settlement Class is sufficiently numerous that joinder is impracticable,
6 as the Settlement Class has at least 1,500 members.

7 2. The members of the Settlement Class share common issues of fact and law
8 regarding whether Southwest had uniform practices of denying pilots accrued sick leave for
9 Short-Term Military Leave, failing to match retirement contributions based on their deemed
10 earnings, and denying pilots information on deemed earnings, and whether these practices violate
11 USERRA.

12 3. The Class Representative's claims are typical of those of the Class he
13 proposes to represent, because they arise out of the same policies and practices and course of
14 conduct that all Class Members challenge in this action.

15 4. The Class Representative is an adequate representative of the Class he
16 proposes to represent, because his interests are co-extensive with those of the Class Members, and
17 he has retained experienced counsel to represent himself and the Class Members.

18 5. Questions of law or fact common to the Class predominate over
19 individualized issues, and a class action is superior to other available methods for the fair and
20 efficient adjudication of this controversy.

21 6. Because certification of the Class is proposed in the context of a settlement,
22 the Court need not inquire whether the case, if tried as a class action, would present intractable
23 management problems.

24 Accordingly, the Court hereby certifies the Settlement Class under Rule 23(a) and (b)(3).

25 **III. APPOINTMENT OF CLASS REPRESENTATIVE AND CLASS COUNSEL**

26 **A. Class Representatives**

27 The Court finds and concludes that the Plaintiff Jayson Huntsman has claims that are
28 typical of the members of the Class he proposes to represent, and he is an adequate representative

1 of the Class he seeks to represent. The Court hereby appoints Plaintiff Jayson Huntsman to serve
2 as Class Representative.

3 **B. Class Counsel**

4 The Court finds and concludes that Outten & Golden LLP, the Law Office of Thomas
5 Jarrard, PLLC, and the Crotty & Son Law Firm, PLLC, have extensive experience and expertise
6 in prosecuting USERRA class actions and other types of class actions. The Court appoints
7 Outten & Golden LLP, the Law Office of Thomas Jarrard, PLLC, and the Crotty & Son Law
8 Firm, PLLC, as Class Counsel, and the Court appoints Outten & Golden LLP as Lead Class
9 Counsel.

10 **IV. PRELIMINARY APPROVAL OF SETTLEMENT**

11 The Court has reviewed the terms of the Settlement, including the Plan of Allocation and
12 the release of claims. The Court has also read and considered the declarations of Peter Romer-
13 Friedman, Thomas Jarrard, and Matthew Crotty in support of the Preliminary Approval Motion.
14 Based on review of those papers and the Court's familiarity with this case, the Court finds and
15 concludes that the Settlement is the result of arm's-length negotiations between the Parties
16 conducted after Class Counsel had adequately investigated Plaintiff's claims and become familiar
17 with their strengths and weaknesses. The assistance of an experienced mediator in the settlement
18 process supports the finding that the Settlement is non-collusive. Based on all of these factors,
19 the Court concludes that the proposed Settlement meets the criteria for preliminary settlement
20 approval. The Settlement has no obvious defects and falls within the range of possible approval
21 as fair, adequate, and reasonable, such that notice to the Class Members is appropriate.
22 Accordingly, the Settlement is hereby preliminarily approved.

23 **V. APPROVAL OF THE NOTICE PLAN**

24 The Parties have also submitted for this Court's approval a proposed class notice. After
25 carefully reviewing this document, the Court finds and concludes as follows:

26 **A. Best Notice Practicable**

27 The Class Notice is the best notice practicable under the circumstances and allows Class
28 Members a full and fair opportunity to consider the Settlement.

1 The Class Notice, based on the model forms supplied by the Federal Judicial Center,
2 fairly, plainly, accurately, and reasonably informs Class Members of appropriate information
3 about: (1) the nature of this action, the definition of the Class, the identity of Class Counsel, and
4 the essential terms of the Settlement, including the Plan of Allocation; (2) Plaintiff's forthcoming
5 application for the Class Representative's Service Award and Class Counsel's Attorneys' Fees
6 and Costs Award; (3) how Class Members' settlement shares will be calculated; (4) this Court's
7 procedures for final approval of the Settlement, and about Class Members' right to appear
8 through counsel if they desire; (5) how to submit a claim form, comment on or opt out of the
9 Settlement, if a Class Member wishes to do so; and (6) how to obtain additional information
10 regarding this action and the Settlement.

11 The proposed plan for distributing the Class Notice likewise is a reasonable method
12 calculated to reach all individuals who would be bound by the Settlement. Under this plan, the
13 Settlement Administrator will distribute the Class Notice to all Class Members who took Short-
14 Term Military Leave between January 1, 2008 and the date of preliminary approval, by first-class
15 mail and e-mail to their last known mailing and, if available, e-mail addresses. In addition, the
16 Settlement Administrator will distribute the Class Notice to hundreds of additional potential Class
17 Members by first-class mail and e-mail to their last known mailing and, if available, e-mail
18 addresses: all pilots who were employed at Southwest between January 1, 2001 and December
19 31, 2007 and had a military status during at least part of their employment with Southwest. In
20 addition, information about the Settlement will be published on a web site that the Settlement
21 Administrator will establish. There is no additional method of distribution that is cost-effective
22 and would be reasonably likely to notify Class Members who may not receive notice pursuant to
23 the proposed distribution plan.

24 **B. CAFA Notice of Proposed Settlement**

25 Within ten (10) days after Plaintiff's Preliminary Approval Motion was filed, notice of the
26 Settlement was mailed to the Attorney General of the United States of America and the
27 appropriate state official in California and all the other states in which a Class Member is known
28 by Southwest to reside. The notice contains the documents required by 28 U.S.C. § 1715(b)(1)-

1 (8). On this basis, the notice of the Settlement is approved and the Court finds that Southwest has
2 discharged its obligations under CAFA to provide notice to the appropriate federal and state
3 officials.

4 **C. Approval**

5 Accordingly, the Court finds and concludes that the proposed plan for distributing the
6 Class Notice will provide the best notice practicable, satisfies the notice requirements of Rule
7 23(e), and satisfies all other legal and due process requirements. Accordingly, the Court hereby
8 orders as follows:

- 9 1. The Class Notice, Claim Form, and Notice Envelope are approved.
- 10 2. The manner of distributing the Class Notice to the Class Members is approved.
- 11 3. Promptly following the entry of this order, the Settlement Administrator will
12 prepare final versions of the Class Notice, incorporating into them the relevant dates and
13 deadlines set forth in this order.
- 14 4. Within ten (10) business days following entry of this order, Southwest will provide
15 the Settlement Administrator with a database in a format reasonably acceptable to the Settlement
16 Administrator (“Settlement Class List”), that lists, for each known Class Member who took Short-
17 Term Military Leave from January 1, 2008 to the date of preliminary approval and each
18 Southwest pilot who had a military status and was employed by Southwest from January 1, 2001
19 to December 31, 2007, to the extent they are reasonably available in Southwest’s databases: (1) a
20 street mailing address; (2) telephone number(s); (3) Southwest and personal e-mail address(es),
21 including email accounts provided by Southwest; and (4) Social Security number. Within ten
22 (10) business days following the deadline for Class Members to submit Claim Forms, Southwest
23 will provide the Settlement Administrator with a database in a format reasonably acceptable to
24 the Settlement Administrator that lists, for each known Class Member, (1) the dates of known
25 days with dropped trips for Short-Term Military Leave; and (2) the average annual rate of pay for
26 each Class Member from 2001 to 2013.

1 5. The Settlement Administrator will perform one skip-trace and re-mailing on
2 returned mail and re-mail the Notice to an updated address (if any) as soon as possible upon
3 return of the undeliverable Notice.

4 6. Plaintiff will file with the motion for final approval a declaration from the
5 Settlement Administrator of due diligence and proof of mailing with regard to the mailing of the
6 Notice, and Plaintiff will file prior to the hearing on the motion a supplemental declaration from
7 the Settlement Administrator as applicable.

8 7. The Settlement Administrator will take all other actions in furtherance of
9 settlement administration as are specified in the Settlement.

10 **VI. PROCEDURES FOR FINAL APPROVAL OF THE SETTLEMENT**

11 **A. Final Approval Hearing**

12 The Court hereby schedules a hearing to determine whether to grant final approval of the
13 Settlement (the “Final Approval Hearing”) for **June 20, 2019**, at **10:00 a.m.** The date of the
14 hearing may be changed without further notice to the Class. However, Plaintiff is responsible for
15 promptly updating the case web site with information about any such change.

16 **B. Deadline to Submit Claim Form**

17 All Class Members who wish to submit Claim Forms must do so within one hundred
18 twenty (120) calendar days from the date of the mailing of the Notice. Submissions may be filed
19 by online web site submission.

20 **C. Deadline to Opt Out of the Settlement**

21 **1. Form of Opt-Out Request**

22 Any Class Member may opt out of participating in the Settlement by submitting a signed
23 letter to the Settlement Administrator stating that he or she wishes to be excluded from the
24 Settlement. The letter must include the Class Member’s name, address, telephone number, and
25 signature.

26 **2. Deadline for Submitting Opt-Out Request**

27 A completed opt-out request will be deemed timely submitted to the Settlement
28 Administrator if it is mailed to the Settlement Administrator by first-class mail and postmarked

1 by not later than the opt-out date set by the Court. Pursuant to Rule 23(b)(3) and (c)(2) of the
2 Federal Rules of Civil Procedure, the Settlement will have no binding effect on any Class
3 Member who properly opts out of the Settlement in the manner required by this Order.

4 **D. Southwest's Right to Withdraw from the Settlement**

5 If fifty (50) or more of the eligible Class Members validly opt out pursuant to the process
6 set forth herein, Southwest will have the right to withdraw from the Settlement and resume the
7 litigation.

8 **E. Deadline for Filing Comments on or Objections to Settlement**

9 Any Class Member who wishes to comment on or object to the fairness, reasonableness,
10 or adequacy of the Settlement must do so in writing. Class Members who have timely
11 commented on or objected to the Settlement in writing may also appear at the Final Approval
12 Hearing, in person or through counsel, but only if they (a) have given written notice of their intent
13 to appear at the hearing as provided in the Notice, or (b) can show good cause why they could not
14 provide such notice. To be considered, any comment on or objection to the final approval of the
15 Settlement must (a) clearly identify the person's name, address, telephone number, signature, and
16 the case name and number (*Huntsman v. Southwest Airlines Co.*, Case No. 17 Civ. 3972), (b) be
17 submitted to the Court either by mailing the comment or objection to the Class Action Clerk,
18 United States District Court for the Northern District of California, 450 Golden Gate Avenue, San
19 Francisco, CA 94102, or by filing them in person at any location of the United States District
20 Court for the Northern District of California, and (c) be filed or postmarked within the deadline
21 set by the Court. Any Class Member who does not timely submit such a written comment or
22 objection will not be permitted to raise such comment or objection or appear at the Final
23 Approval Hearing, except for good cause shown, and any Class Member who fails to object in the
24 manner prescribed by this order will be deemed to have waived, and will be foreclosed from
25 raising, any such comment or objection, except for good cause shown. The Court will only
26 require substantial compliance with the requirements for submitting an objection.

1 **F. Deadline for Mailing and Cashing Settlement Share Checks**

2 No later than seven (7) calendar days after the Effective Date of the Settlement, Southwest
3 will deposit the Cash Settlement Amount in to an Escrow Account established and managed by
4 the Settlement Administrator. The Cash Settlement Amount plus any interest on the Cash
5 Settlement Amount while in escrow will constitute the Settlement Fund. Class Members shall
6 have one hundred and eighty (180) days to cash their checks for any Cash Amounts received.
7 Any amount remaining unclaimed after that point shall be provided to a cy pres entity agreed
8 upon by the parties. Thirty (30) days before the one hundred and eighty (180) days have expired,
9 the Settlement Administrator will mail a postcard to any Class Member who has not yet cashed
10 his or her check reminding the person to cash his or her check within the 180-day period.

11 **VII. PLAINTIFF’S AND CLASS MEMBERS’ RELEASE**

12 If, at the Final Approval Hearing, this Court grants final approval to the Settlement,
13 Plaintiff and every Class Member who does not opt out will, pursuant to the Settlement, be
14 adjudicated to have granted the “Release of Claims” as set forth in Section XIV of the Settlement
15 and the Class Notice.

16 **VIII. APPOINTMENT OF SETTLEMENT ADMINISTRATOR**

17 Settlement Services, Inc. is hereby appointed Settlement Administrator to carry out the
18 duties set forth in this Preliminary Approval Order and the Settlement.

19 **IX. SCHEDULING ORDER**

20 The following schedule sets the sequence for the relevant dates and deadlines:

Event	Date
Preliminary Approval (“PA”) Hearing	November 8, 2018
Entry of PA Order	December 5, 2018
Notice disseminated by Settlement Administrator	30 Days After PA
Reminder notices	60 Days After PA
Fee and Service Award motions due	115 Days After PA
Deadline for Class Members to submit requests for exclusion and/or objections	150 Days After PA
Deadline for Class Members to submit Claim Forms	150 Days After PA

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Event	Date
Deadline for Southwest to provide required employment information to Settlement Administrator	164 Days After PA
Final Approval motion due	35 Days Before FA Hearing
Final approval, Service Award fee reply briefs	14 Days Before FA Hearing
Final Approval (“FA”) Hearing	June 20, 2019, at 10:00 a.m.
Effective Date (assuming no appeals)	31 Days After Final Approval Order

IT IS SO ORDERED.

Dated: December 5, 2018



The Hon. James Donato
United States District Judge