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**UNITED STATES DISTRICT COURT
EASTERN OF WASHINGTON**

J. MITCH HALL and NATHAN
KAY, on behalf of himself and all
others similarly situated,

Plaintiffs,

v.

L-3 COMMUNICATIONS
CORPORATION, L-3
COMMUNICATIONS VERTEX
AEROSPACE, LLC and L-3
COMMUNICATIONS
INTEGRATED SYSTEMS L.P.,

Defendants.

NO. 2:15-cv-231-SAB

**PLAINTIFF NATHAN KAY'S
UNOPPOSED MOTION FOR
CONDITIONAL
CERTIFICATION OF
SETTLEMENT CLASS AND
PRELIMINARY APPROVAL OF
SETTLEMENT**

WITHOUT ORAL ARGUMENT

Date: November 30, 2018

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INTRODUCTION

1
2 Plaintiff Nathan Kay (“Plaintiff”), on behalf of himself and a proposed Class,
3 requests that the Court preliminarily approve the Class Settlement Agreement
4 between Plaintiff and L-3 Communications Corporation, L-3 Communications
5 Vertex Aerospace, LLC, and L-3 Communications Integrated Systems L.P. (“L-3”)
6 (collectively, the “Parties”). The Class Settlement Agreement (“Settlement”) is
7 fair, reasonable, and adequate, and satisfies the criteria for approval. Plaintiff
8 requests that the Court: (1) grant preliminary approval of the Settlement, which is
9 attached as Exhibit 1 to the Declaration of Peter Romer-Friedman (“Romer-
10 Friedman Decl.”)¹; (2) conditionally certify the proposed Settlement Class; (3)
11 appoint Plaintiff’s counsel as Class Counsel; (4) approve the proposed Court-
12 Authorized Notice and Claim Form (“Notice and Claim Form”), attached as Exhibit
13 C to the Settlement Agreement, and authorize its distribution; and (5) establish a
14 date for the final approval hearing.

15 L-3 does not oppose this motion, but it does not agree with or adopt Plaintiff’s
16 recitation of the alleged facts or applicable law. L-3 denies liability and specifically
17 denies it ever discriminated against anyone in its hiring practices.

18
19
20 ¹ Unless otherwise indicated, all Exhibits are attached to the Romer-Friedman
21 Declaration and all capitalized terms have definitions set forth in the Settlement.

1 **PROCEDURAL AND FACTUAL BACKGROUND**

2 **I. Procedural Background**

3 On September 13, 2015, Plaintiffs Joseph “Mitch” Hall and Nathan Kay filed
4 individual claims under the Uniformed Services Employment & Reemployment
5 Rights Act (“USERRA”), 38 U.S.C. §§ 4301 *et seq.* ECF No. 1.² L-3 filed a motion
6 to dismiss, ECF No. 8, which was denied. *Hall v. L-3 Commc’ns Corp.*, 170 F.
7 Supp. 3d 1316, 1321 (E.D. Wash. 2016). Written discovery and discovery-related
8 motion practice ensued. On February 23, 2017, the Court granted leave to amend
9 the complaint to add class claims on behalf of Plaintiff Kay and other Reservist
10 pilots who were denied employment by L-3. ECF No. 123. On March 15, 2017,
11 Plaintiff filed a Third Amended Complaint, ECF No. 128 (hereinafter “Complaint”
12 or “Compl.”), which added class-based allegations and claims. *Id.*

13 From March 2017 to April 2018, the Parties engaged in robust written and
14 oral discovery, including nine depositions of key witnesses, production of over
15 65,000 pages of documents, and interviews of dozens of witnesses, resulting in
16

17 ² Hall, a former L-3 employee, brought individual claims against L-3 for various
18 employment practices, and did not seek to represent the class. Hall’s claims are not
19 addressed in the Class Settlement between Kay, other applicants, and L-3. As Hall
20 is not a party to this Class Settlement, any references to “Plaintiff” in this motion
21 refer to Plaintiff Nathan Kay.

1 declarations from 20 L-3 applicants and employees. Romer-Friedman Decl. ¶ 56.
2 The Parties analyzed tens of thousands of pages of personnel records so that they
3 and their experts could analyze whether the data demonstrated disparities and/or
4 bias in how Reservists were treated. *Id.* ¶ 57.

5 After completing nearly all the discovery needed to move for class
6 certification and preparing a class certification motion, Plaintiff joined L-3 in asking
7 the Court to stay the action to explore settlement. ECF No. 161; Romer-Friedman
8 Decl. ¶ 58. On April 12, 2018, the Parties engaged in a 13-hour mediation with
9 Carol A. Wittenberg of JAMS in New York City. Romer-Friedman Decl. ¶ 59. Ms.
10 Wittenberg has a wealth of experience mediating complex employment class
11 actions. *Id.* The Parties reached an agreement in principle at the mediation, which
12 they committed to writing and executed on May 21, 2018. *Id.* ¶ 60. Over the next
13 four months, the Parties extensively negotiated a detailed Settlement Agreement
14 and executed the Settlement on October 15, 2018. *Id.* ¶ 61.

15 **II. Factual Background**

16 The facts stated below are based on Plaintiff's view of the discovery to date.
17 Although L-3 does not oppose this motion, L-3 does not adopt the facts alleged
18 below.

19 In this action, Plaintiff Kay brings discrimination claims under USERRA, 38
20 U.S.C. § 4311(a), on behalf of all noncareer members of the National Guard and
21 Reserves ("Reservists") who applied for and were denied the Senior Pilot I position

1 in L-3’s Intelligence, Surveillance, and Reconnaissance (“ISR”) programs. Compl.

2 ¶ 1.1. Kay alleges that Reservists were subjected to a general pattern or practice of
3 discrimination due to their ongoing military service or obligations. *Id.* ¶¶ 1.3-4

4 **A. Background on L-3 and its ISR Programs**

5 L-3 Communications Corp. (now called “L3 Technologies”) is the thirteenth
6 largest American defense contractor and a prime contractor in ISR systems, aircraft
7 sustainment, simulation and training, and detection systems. Romer-Friedman
8 Decl. ¶ 19. L-3’s customers include federal defense, intelligence, and homeland
9 security agencies. *Id.* ¶ 20. L-3 operates many of its businesses through wholly
10 owned subsidiaries, including L-3 Vertex Aerospace (“L-3 Vertex”) and L-3
11 Communications Integrated Systems (“L-3 CIS”), which collectively employed
12 hundreds of ISR pilots since 2011. *Id.* ¶ 21.

13 L-3’s ISR programs and employees, including pilots, provide support for
14 military intelligence activities, especially in the Middle East and South Asia. *Id.* ¶
15 22. L-3’s Program Management Office (“PMO”) staff based in northeast Texas
16 supervise L-3’s ISR pilots, and the PMO staff of every ISR program consist of a
17 Program Manager, an Operations Manager, a Chief Pilot, Chief Operator, and Chief
18 Maintainer.³ *Id.* Each ISR program’s staff is supported by a deployment

19
20 ³ Originally, L-3 Vertex operated L-3’s ISR Programs out of offices in northeast
21 Texas and Mississippi. In October 2014, all but one ISR Program, MARSS, were

1 coordinator/scheduler who creates and manages pilots' schedules. *Id.*

2 **B. L-3's Hiring Process for the Senior Pilot I Position**

3 To staff military contracts, L-3's ISR programs have routinely employed
4 hundreds of Senior Pilot I pilots. *Id.* ¶ 24. The Senior Pilot I position is a "line
5 pilot" or basic pilot position, the entry point for most pilots who want to work for
6 L-3's ISR programs, and the most common pilot position. *Id.* In every ISR
7 program, Senior Pilot I pilots do the same basic type of work. *Id.* ¶ 25. Senior
8 Pilot I pilots across all ISR programs fly the same aircraft, the Beech King Air 350.
9 *Id.* ¶ 26.

10 For most of 2011 to 2018, L-3's ISR programs have maintained the same
11 basic criteria for hiring Senior Pilot I pilots. *Id.* ¶ 27. For the Senior Pilot I position,
12 applicants have been required to have at least 2,000 total flight hours and 500 hours
13 of fixed wing multi-engine ("ME") time (though from March 2016 to March 2017,
14 the total hour requirement was 1,500 hours). *Id.* ¶ 28. There also have been
15 "preferred" qualifications for instrument time, turbine time, cross country time, and
16 pilot in command time. *Id.* ¶ 29. Candidates still could be hired with fewer than
17 2,000 total flight hours if they had other relevant experience. *Id.*

18
19 _____
20 transferred to L-3 CIS and have been operated out of offices in North Texas. L-3
21 Vertex continued to operate MARSS out of Mississippi until February 2016, when
L-3 Vertex ceased operating ISR Programs. *Id.* ¶ 23.

1 Plaintiff alleges that L-3's ISR programs have had a centralized process for
2 recruiting and hiring pilots. *Id.* ¶ 30. During most time periods since 2011, two to
3 three recruiters or hiring coordinators and four to six chief pilots have been
4 primarily responsible for hiring decisions. *Id.* ¶ 31. L-3's hiring of Senior Pilot I
5 pilots has generally included an initial review step, a hiring team review step, an
6 interview, and then a hire recommendation. *Id.* ¶ 32. Candidates have been
7 required to submit online applications for the Senior Pilot I position. *Id.* ¶ 33. In
8 doing so, they answer standard questions about prior jobs and education, and they
9 submit their cover letters and resumes. *Id.*

10 Two to three recruiters conduct an initial review of applications. *Id.* ¶ 34.
11 Recruiters work closely with chief pilots across all ISR programs to assess the
12 programs' needs and eliminate unqualified candidates. *Id.* The purpose of the
13 initial review is often to identify applicants who meet the minimum criteria, limiting
14 the number of applications chief pilots review and interview. *Id.* ¶ 35.

15 An applicant who survives the initial review moves onto the hiring team
16 review. *Id.* ¶ 36. Prior to 2015, recruiters conducted the initial review and moved
17 those selections to the hiring team review step, where the chief pilot decided
18 whether to conduct an interview. *Id.* ¶ 37. After the creation of the hiring team
19 coordinator role in early 2015, recruiters have reviewed resumes to determine
20 whether candidates meet the position's basic qualifications and then the hiring team
21 coordinator has reached out to applicants. *Id.* ¶ 38.

1 The hiring coordinator's outreach has involved a pre-screen e-mail that asks
 2 about the applicant's military separation date and for written documentation on the
 3 person's separation from the military. *Id.* ¶ 39. When applicants provided such
 4 information to the hiring coordinator, the hiring coordinator recorded the
 5 applicant's military status—for example, as “Civilian,” “Reserves,” “Retired [from
 6 military],” or “currently on terminal [leave from military].” *Id.* ¶ 40.

| | | | |
|--|--|---|---|
| Military Applicant: Terminal <i>currently on</i> Leave: Separation <i>terminal</i> Date: Final Retire: <i>1 June 2017</i> | Military Applicant: Terminal <i>NOVA</i> Leave: Separation <i>Civilian</i> Date: Final Retire: | Military Applicant: Terminal _____ Leave: Separation _____ Date: Final Retire: <i>Reserves</i> | Military Applicant: Terminal _____ Leave: Separation <i>retired</i> Date: Final Retire: <i>2014</i> |
|--|--|---|---|

9 Chief pilots have made decisions about whom to interview based on the
 10 applications filtered by the recruiters or hiring coordinator. *Id.* ¶ 41. Before 2015,
 11 the chief pilot conducted interviews and determined whether to recommend the
 12 hiring of an applicant to the program manager. *Id.* During interviews, some chief
 13 pilots recorded their notes in documents called “pilot interview worksheets.” *Id.* In
 14 the pilot interview worksheets, some decision-makers obtained and recorded
 15 information about applicants' military status or service, including when applicants
 16 would retire from the military and whether they were reservists or civilians, similar
 17 to the images directly prior to this paragraph. *Id.* After creating the hiring
 18 coordinator role, interviews have been conducted by the chief pilot, hiring
 19 coordinator, and operations manager. *Id.* ¶ 42.

20 Large percentages of all Senior Pilot I applicants have been removed from
 21 the application pool at the initial review and hiring team review stages. *Id.* ¶ 43.

1 But over 97% of persons interviewed were recommended for hire. *Id.* The decision
2 to recommend a Senior Pilot I for hire has always rested on the chief pilot of the
3 relevant ISR program. *Id.* ¶ 44. The chief pilot has completed a standard form used
4 across all ISR programs called a “hire recommendation form” and submitted it to
5 the program manager for approval of a new hire. *Id.* Often the chief pilot would
6 make remarks on the applicants’ military status or service in the hire
7 recommendation form. *Id.* Program managers usually approve chief pilots’ hiring
8 recommendations, such that the vast majority of those who make it to the interview
9 stage are offered a position. *Id.*

10 **C. Plaintiff’s Evidence of L-3’s Alleged Pattern or Practice of**
11 **Discrimination Against Reservists**

12 Through extensive discovery, Plaintiff alleges that there is evidence to show
13 that L-3 had a pattern or practice of discrimination against Reservists, including
14 evidence that (1) L-3 expressly documented and considered the military status and
15 obligations of Reservists in the hiring process, (2) Reservists were treated less
16 favorably than veterans in the first two steps of the hiring process, (3) L-3 managers
17 found it inconvenient to schedule Reservists for work when they took military leave
18 and found applicants less attractive if their military duty interfered with L-3’s work
19 schedules, and (4) L-3 employees complained about hostility towards Reservists
20 who took leave that interfered with their L-3 work. *Id.* ¶ 45. L-3 denies such
21 allegations as detailed below. While L-3 does not oppose this motion, it denies the
facts as alleged in this section.

1 In general, Plaintiff alleges that Reservist and veteran pilot applicants to L-
2 3's ISR programs had similar professional experiences and were ideal candidates
3 for the Senior Pilot I position, due to high flight hours, combat flying experience,
4 comfort working with the military, and active security clearances. *Id.* ¶ 46. Due to
5 this experience, most of L-3's ISR pilots had military backgrounds, and both
6 Reservists and veterans were hired at a higher rate than civilian applicants for the
7 Senior Pilot I position. *Id.* ¶ 47. But when L-3 considered applicants with military
8 experience (Reservists or veterans), Plaintiff alleges that statistical evidence
9 supports its assertion that L-3 had a practice of preferring veterans who lacked
10 ongoing military obligations over Reservists who would be routinely called to
11 military duty and be more likely than veterans to have military duty interfere with
12 their 60-day work rotations at L-3. *Id.*

13 Plaintiff has identified evidence on the following practices, based on over
14 65,000 pages of documents produced by the Parties, declarations of Class Members
15 and L-3 employees, nine depositions, and Plaintiff's expert's statistical analysis of
16 disparities between Reservists and veterans in L-3's hiring process. *Id.* ¶ 48.

17 First, Plaintiff alleges that L-3 officials inquired into the military status or
18 service of applicants and documented such information in interview worksheets and
19 pre-interview emails used by the very same people making hiring decisions. *Id.* ¶
20 49. In recent years, applicants had to provide information on their military status
21 to move beyond the pre-screening process and obtain an interview. *Id.*

1 Inquiring into an applicant’s military service, including whether he or she has
2 ongoing military obligations, may show an employer’s bias in hiring. *Atteberry v.*
3 *Avantair, Inc.*, No. 08 Civ. 1034, 2009 WL 1615519, at *4 (M.D. Fla. June 9, 2009)
4 (prima facie case of hiring discrimination met where employer asked “how much
5 longer he had” in reserves); *Murphy v. Radnor Twp.*, 542 F. App’x 173, 178 (3rd
6 Cir. 2013) (decision not to hire reservist found to be motivated by military service
7 as employer inquired into “military obligations”). Under similar anti-discrimination
8 laws, “pre-employment inquiries concerning a job applicant’s” protected status
9 “may constitute evidence of discrimination.” *Collins Foods Int’l, Inc. v. U.S. I.N.S.*,
10 948 F.2d 549, 552 (9th Cir. 1991) (internal citation and quotations omitted).

11 Second, Plaintiff alleges that Reservists were disfavored vis-à-vis veterans
12 because their military duty might conflict with their 60-day L-3 work rotations.
13 Romer-Friedman Decl. ¶ 50. For example, Plaintiff asserts evidence shows
14 (1) a L-3 hiring official told a Reservist applicant in an interview that L-3 expected
15 this pilot to perform his military duty when he was not scheduled for work at L-3;
16 (2) a high-ranking L-3 official testified he would tell an applicant who cannot
17 always work his 60-day work rotation at L-3—which includes many Reservists—
18 he should not apply for the Senior Pilot I position; (3) Reservists hired by L-3
19 perceived that they were expected to schedule military leave to avoid conflicts with
20 their L-3 work schedules and consequently lost work opportunities at L-3; (4) and
21 Reservists believed L-3 managers were frustrated when they frequently took

1 voluntary military leave or leave that conflicted with their L-3 work schedules. *Id.*

2 Bias may be shown by asking or requiring an employee to schedule military
3 duty on days when he or she is not working, *Mills v. Earthgrains Baking Cos., Inc.*,
4 No. 03 Civ. 182, 2004 WL 1749500, at *4-5 (E.D. Tenn. July 19, 2004) (bias where
5 employer directed employee to “use his day off . . . to complete his weekend drills”),
6 by imposing restrictions on a reservist taking leave does, *Leisek v. Brightwood*
7 *Corp.*, 278 F.3d 895, 900 (9th Cir. 2002), or by expressing frustration about taking
8 various types of military leave. *See, e.g., Savage v. Fed. Express Corp.*, 856 F.3d
9 440, 449 (6th Cir. 2017); *Arroyo v. Volvo Grp. N. Am., LLC*, 805 F.3d 278, 285 (7th
10 Cir. 2015); *Eichaker v. Village of Vicksburg*, 627 F. App’x 527, 532 (6th Cir. 2015);
11 *Bobo v. United Parcel Serv., Inc.*, 665 F.3d 741, 756 (6th Cir. 2012); *Pfunk v.*
12 *Cohere Commc’ns, LLC*, 73 F. Supp. 3d 175, 190 (S.D.N.Y. 2014); *Brown v. Union*
13 *Pac. R.R. Co.*, No. 08 Civ. 335, 2009 WL 1110824, at *2-5 (E.D. Ark. Apr. 24,
14 2009).

15 Third, Plaintiff alleges that certain Reservists were not hired by L-3 because
16 they were on reserve duty when they applied for the Senior Pilot I position. Romer-
17 Friedman Decl. ¶ 51. Refusing to hire or consider a reservist because he or she may
18 be unavailable to start a job at a certain time may show bias. *McLain v. City of*
19 *Somerville*, 424 F. Supp. 2d 329, 333 (D. Mass. 2006) (employer engaged in
20 discrimination by declining to hire person whose military service would end weeks
21 after start of police academy, and discussing *Beattie v. Trump Shuttle, Inc.*, 758 F.

1 Supp. 30, 31-34 (D.D.C. 1991) (employer discriminated by refusing to hire reservist
2 as his reserve duty prevented him from starting job on the employer's desired date)).

3 Fourth, Plaintiff's counsel and their expert conducted a detailed analysis of
4 personnel files and hiring data L-3 produced, applying two different
5 methodologies—one that compared the success rate of each application and another
6 that compared the success rate of each person's collective applications to be hired
7 once—to find that Reservists were treated less favorably than veterans at the first
8 two steps of the hiring process, and if Reservists had advanced at the same rate as
9 veterans dozens of additional Reservists would have been hired for the Senior Pilot
10 I position from 2011 to 2018. Romer-Friedman Decl. ¶ 52.

11 After analyzing tens of thousands of pages of application files to determine
12 which applicants were reservists, veterans, and civilians when they applied for the
13 Senior Pilot I position, Plaintiff's counsel and expert determined that veterans were
14 hired at a substantially greater rate than Reservists and veterans' applications were
15 significantly more likely to be successful than Reservists' applications. They
16 determined that if Reservists and veterans had been hired at the same rate, between
17 20 and 35 additional Reservists would have been hired from 2011 to 2018 for the
18 Senior Pilot I position. *Id.* ¶ 53.

19 **D. L-3 Denies That it Has Discriminated Against Reservists**

20 Throughout this litigation, L-3 has vigorously denied that it discriminated
21 against Reservists and maintains that it has consistently hired the most qualified

1 applicants regardless of their military status. Among other things, L-3's expert
2 opined based on the same statistical evidence that L-3 hired Reservists at a greater
3 rate than either veterans or civilians. Both Plaintiff's and L-3 experts agreed that
4 Reservists were hired at a greater rate than non-Reservists (even though Plaintiff's
5 expert concluded that veterans were hired at a greater rate than Reservists). Thus,
6 L-3 asserts that it did want to hire Reservists due to their relevant experience.

7 L-3 disagreed with Plaintiff's statistical analyses. First, L-3 took issue with
8 the first methodology that compared applications (as opposed to applicants) because
9 some applicants applied many times, as opposed to one time. Second, L-3 and
10 Plaintiff had significant differences in which applicants they identified as being
11 Reservists, veterans and/or civilians at the time that they applied for the Senior Pilot
12 I position. These differences were responsible for the lion's share of differences
13 between the Parties' conclusions on disparities between Reservists and other
14 applicants. Third, L-3 disagreed with any analysis that generally compares all
15 veterans to all active Reservists, given that many veterans have been out of the
16 military for many years and have more experience than Reservists. Thus, L-3
17 believes it is possible that even if a discrepancy existed between the hiring rates of
18 veterans and Reservists, it could be explained by reasons other than discrimination,
19 such as differences in experience levels between the two groups. The Parties agree
20 that L-3 has hired a significant number of Reservists for Senior Pilot I positions
21 during the class period, but Plaintiffs believe that more Reservists would have been

1 hired in the absence of bias.

2 Accordingly, L-3 strongly denies having any general pattern or practice of
3 discriminating against Reservists in hiring. Rather, L-3 contends that all pilot
4 applicants were offered positions or denied positions based on the merits of their
5 credentials. Further, L-3 denies that its hiring team inquired into applicants'
6 military status for the purposes of discriminating against them. Rather, L-3 claims
7 that it only asked about applicants' military status because L-3 was forbidden from
8 hiring active duty military members. L-3 also denies that it had a policy or practice
9 of hostility toward Reservists.

10 L-3 further denies that it had a policy or practice of requiring pilots to conduct
11 their military duty during their rest and recuperation period, disagrees with
12 Plaintiff's analysis of the evidence that Plaintiff identified on this subject, and does
13 not believe that such evidence would support a finding of bias in hiring.

14 **TERMS OF THE SETTLEMENT AGREEMENT**

15 **I. The Settlement Class**

16 The Parties agreed to certify a Settlement Class under Rule 23(a) and (b)(3)
17 of the Federal Rules of Civil Procedure, defined as "all persons who applied for a
18 Senior Pilot I position with one or more of Defendants' ISR Programs during the
19 Settlement Class Period of January 1, 2011 through the date of the Motion for
20 Preliminary Approval ("the Settlement Class Period"), who at the time of their
21 applications were active or current Reservists during the Settlement Class Period,

1 and were not hired by any Defendant in a Senior Pilot I position during the
2 Settlement Class Period.” Settlement § IV.1. Plaintiff estimates there are 200 to
3 250 Class Members. Romer-Friedman Decl. ¶ 65.

4 **II. Settlement Overview**

5 The Settlement Agreement provides both monetary and programmatic relief.
6 L-3 will pay \$2 million to compensate the Class Members for lost wages and to pay
7 for attorneys’ fees and costs, service awards, and any relevant taxes. Settlement §
8 VI.1. In addition to the \$2 million payment, L-3 will pay for the full cost of
9 providing notice to the Class, adjudicating the Claim Forms submitted by Class
10 Members, and other settlement administration tasks. *Id.* § VI.3. Furthermore, L-3
11 will adopt a number of modifications intended to enhance its practices for the benefit
12 of Reservists who apply to work for L-3 and who secure employment at L-3. *Id.* §
13 VI.2; Exhibit D to the Settlement (“Programmatic Changes”).

14 **III. Monetary Relief and Determining Entitlement to Settlement Payments**

15 The Settlement requires L-3 to pay \$2 million (the “Cash Settlement
16 Amount”) into a Settlement Fund, which will pay for: (a) lost wage payments to
17 Class Members who file successful Claim Forms; (b) Service Awards to Class
18 Representatives, subject to Court approval; (c) attorneys’ fees and costs, subject to
19 Court approval; and (d) applicable taxes. Settlement § VI.1. After fees, costs,
20 service awards, and certain taxes are paid, persons who file successful Claim Forms
21 showing that they are Class Members and were qualified for the Senior Pilot I

1 position will receive equal shares of the Settlement Fund. *Id.* §§ VIII.4, X.1-2.

2 To obtain a Settlement payment, persons must submit Claim Forms with the
3 Settlement Administrator to provide evidence that they are Class Members—they
4 were Reservists when they applied for a Senior Pilot I position and were not hired—
5 and that they were qualified to be a Senior Pilot I during the Class Period. *Id.* § X.3.
6 To file a completed Claim Form, Class Members must state the relevant information
7 in their Claim Forms and supply documentary evidence to support their statements.
8 *Id.* § X.2. It is necessary for Class Members to show their Class membership and
9 qualifications, as there are not comprehensive records on which applicants were
10 Reservists or were qualified. Romer-Friedman Decl. ¶ 67.

11 **IV. Programmatic Relief**

12 L-3's division that currently employs pilots in ISR programs, L-3 CIS, has
13 agreed to implement a range of policies to enhance the opportunity of Reservists.
14 Settlement § VI.2; Programmatic Changes. These programmatic changes will
15 reform and/or clarify L-3's practices for the benefit of Reservists who apply to work
16 at L-3 or are employed by L-3 and seek to balance their L-3 and military duties. *See*
17 Programmatic Changes. Plaintiff believes the programmatic relief represents an
18 important commitment by L-3 to ensure that Reservists are treated equally, and that
19 the reforms will expand opportunity for hundreds of Class Members and other
20 Reservists. Romer-Friedman Decl. ¶ 68.

21 The programmatic relief will bar L-3 from making inquiries into military

1 status before an offer is made, establish greater training on USERRA and military
2 leave, no longer require or expect Reservists to take military leave during time off
3 from L-3, and reform L-3's scheduling policies to make it easier for employees to
4 take military leave and maximize their L-3 work and pay. Programmatic Changes.
5 As described in Exhibit D to the Settlement, L-3 CIS will take the following steps
6 as part of the programmatic relief:

- 7 1. L-3 CIS will create a policy on USERRA rights as either a
8 standalone policy or within an appropriate Human Resources policy.
9 The USERRA policy will address the military status and service of
10 applicants and employees.
- 11 2. L-3 CIS will not inquire into an applicant's military status or ask an
12 applicant to disclose his military status before making a conditional
13 offer of employment to the applicant.
- 14 3. L-3 CIS will not require employees who go on rotations outside of
15 the Continental United States ("rotators") to schedule their reserve
16 military duty during their periods of rest and recuperation.
- 17 4. L-3 CIS employees will not be required to give the company written
18 notice of military leave before they take military leave. Oral notice
19 will be sufficient.
- 20 5. L-3 CIS will reform its scheduling policies to increase the amount
21 of work that rotators can perform for L-3 CIS in conjunction with
any military leave that they take, including accelerating the time
period to return to work after military leave, allowing rotators to
work shifts that are 45 days long (and in some cases shorter than 45
days) rather than missing a shift altogether if military leave will
interfere with a portion of a rotation, and allowing rotators who
work with the company's human resources department to adjust
future rotations in light of the rotator's expected return from military
leave.
6. L-3 CIS will train its Human Resources employees and designated
L-3 personnel regarding the CIS USERRA policy and its

1 implementation.

- 2 7. L-3 CIS will conduct annual training on USERRA and other
3 reservist issues for human resources and program staff who work
4 with reservists on their military leave or who work on recruitment
and hiring, and will modify equal employment opportunity training
materials to refer to military service or status as protected classes.

5 Exhibit D, Programmatic Changes.

6 **V. Attorneys' Fees and Costs and Service Awards**

7 Under the Settlement, Class Counsel may request attorneys' fees and costs of
8 up to \$650,000, subject to Court approval. Ex. 1, § XI.1. The amount of attorneys'
9 fees that Class Counsel will request is substantially smaller than Class Counsel's
10 lodestar in pursuing the class claims. Romer-Friedman Decl. ¶ 69. In this action,
11 Class Counsel interviewed dozens of witnesses, reviewed and analyzed tens of
12 thousands of pages of documents, undertook an exhaustive analysis of personnel
13 data, conducted extensive legal and factual research, took or defended nine
14 depositions, zealously represented the Class during mediation and post-mediation
15 settlement talks, and otherwise aggressively litigated the case. *Id.* ¶¶ 55-61.

16 The Settlement allows for Service Awards for Class Representatives in the
17 following amounts: \$20,000 for Nathan Kay, \$10,000 for Adam Richter, and
18 \$10,000 for Stephen Leary. Settlement § XI.2. These payments are separate from
19 any other recovery they are entitled to as Class Members and will compensate them
20 for the significant time they spent prosecuting the case for the Class. Romer-
21 Friedman Decl. ¶ 70.

1 **VI. Settlement Administration, Claim Forms, and Proposed Distribution**

2 Under the Settlement, a professional and experienced Settlement
3 Administrator will manage the Settlement Fund, distribute the Notice and Claim
4 Form, adjudicate the Claim Forms to decide which persons are eligible to receive
5 payments, distribute the settlement payments, withhold and remit any tax payments,
6 and otherwise administer the Settlement. Settlement §§ II.1, V.1, VIII.4.

7 L-3 will pay the Settlement Administrator's fees and costs, in addition to the
8 \$2 million Cash Settlement Amount, and will pay L-3's share of any payroll taxes
9 that are owed on payments to Class Members. *Id.* §§ VI.1, VI.3. Notice will be
10 provided to all applicants for the Senior Pilot I position during the Class Period, and
11 Class Members will have an opportunity to object to the Settlement or to opt out of
12 the Class and the Settlement. *Id.* §§ XII.1; Ex. B, Notice and Claim Form.

13 **ARGUMENT**

14 **I. Preliminary Approval of the Class Action Settlement is Appropriate**

15 "Rule 23(e) directs the Court to examine the proposed settlement and make a
16 preliminary finding of fairness," with courts applying a strong judicial policy in
17 favor of class settlements. *Pacheo v. JP Morgan Chase Bank, N.A.*, No. 15 Civ.
18 05689, 2017 WL 3335844, at *2 (N.D. Cal. Aug. 4, 2017). When a class has not yet
19 been certified, courts will conditionally certify a class based on Rule 23's standards,
20 grant preliminary approval, and authorize class notice to the class if "the proposed
21 settlement (1) appears to be the product of serious, informed, noncollusive

1 negotiations, (2) has no obvious deficiencies, (3) does not improperly grant
2 preferential treatment to class representatives or segments of the class, and (4) falls
3 with the range of possible approval.” *Id.*

4 **A. Certification is Proper Under Rule 23(b)(3)**

5 Class certification is appropriate where the party seeking certification shows
6 the four requirements of Rule 23(a) and one of Rule 23(b)’s prongs is met. Fed. R.
7 Civ. P. 23(a)-(b); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613-14 (1997).

8 **1. Numerosity is Satisfied**

9 Rule 23(a) requires members of the class to be so numerous that joinder is
10 impracticable. Fed. R. Civ. P. 23(a)(1). “Generally, 40 or more members will satisfy
11 the numerosity requirement.” *Dunakin v. Quigley*, 99 F. Supp. 3d 1297, 1326-27
12 (W.D. Wash. 2015). Here, Plaintiff estimates there are 200 to 250 Class Members.
13 Romer-Friedman Decl. ¶ 65. Thus, numerosity is readily satisfied.

14 **2. Commonality Is Satisfied**

15 Commonality poses a “limited burden” as it “only requires a single significant
16 question of law or fact.” *Mazza v. Am. Honda Motor Co., Inc.*, 666 F.3d 581, 589
17 (9th Cir. 2012); *accord Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, 1133 (9th
18 Cir. 2016) (“To satisfy Rule 23(a)(2) commonality, ‘[e]ven a single
19 [common] question’ will do.”) (internal citation and quotations omitted).
20 Commonality “means that the class members’ claims must depend upon
21 a common contention and that the common contention, moreover, must be of such a

1 nature that it is capable of classwide resolution—which means that determination of
2 its truth or falsity will resolve an issue that is central to the validity of each one of
3 the claims in one stroke.” *Vaquero v. Ashley Furniture Indus., Inc.*, 824 F.3d 1150,
4 1153 (9th Cir. 2016) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350
5 (2011) (internal quotation marks omitted)).

6 This action raises many legal and factual central questions common to all
7 members of the Proposed Class. Plaintiff’s pattern or practice discrimination claim
8 alleging disparate treatment of Reservists raises the common question of whether
9 bias against Reservists was L-3’s “standard operating procedure,” to be shown via
10 “significant proof” that L-3 “operated under a general policy of discrimination.”
11 *Dukes*, 564 U.S. at 352-53 & n.7. The question of whether L-3 had a general policy
12 of discrimination against Reservists is capable of class wide resolution, and will
13 determine whether Plaintiff can meet his prima facie case of discrimination and
14 whether liability may be imposed on L-3 for a pattern or practice of discrimination.

15 In a pattern or practice case like this, plaintiffs may rely upon a “bifurcated,
16 burden-shifting structure” adopted by the Supreme Court in *International*
17 *Brotherhood of Teamsters v. U.S.*, 431 U.S. 324, 360-62 (1977). *See Ellis v. Costco*
18 *Wholesale Corp.*, 285 F.R.D. 492, 505 (2012). Under that approach, plaintiffs first
19 establish a prima facie case of discrimination by showing the company’s standard
20 operating procedure was discrimination, which creates a rebuttable inference that all
21 class members were adversely affected by the discriminatory practice. Then, a

1 “district court must usually conduct additional proceedings . . . to determine the
2 scope of individual relief,” with the burden shifting to the employer to prove that it
3 did not discriminate against each plaintiff. *Dukes*, 564 U.S. at 366-67.

4 To make out a prima facie case and establish liability in a pattern or practice
5 case, a plaintiff must show “significant proof” that an employer “operated under a
6 general policy of discrimination.” *Id.* at 353. “Significant proof of such a policy
7 can be shown entirely through statistics and anecdotal evidence that demonstrate a
8 pattern of discrimination . . . even where the pattern is the result of discretionary
9 decision-making.” *Rollins v. Traylor Bros.*, No. 14 Civ. 1414, 2016 WL 258523, at
10 *7 (W.D. Wash. Jan. 21, 2016) (quoting *Brown v. Nucor Corp.*, 785 F.3d 895, 915
11 (4th Cir. 2015) (internal quotation marks omitted)); see *Beck v. Boeing Co.*, 60 F.
12 App’x 38, 39 (9th Cir. 2003) (“*Beck II*”) (prima facie case may be shown via
13 “statistics alone”).

14 Plaintiff alleges that the evidence here would be sufficient to make out a prima
15 facie case and offers common factual evidence to support a general policy of
16 discrimination. The evidence includes: (1) statistical evidence on the rate of hiring
17 Reservists; (2) documentary and testimonial evidence that L-3’s national pilot hiring
18 process was uniform and carried out by a small group of decisionmakers who were
19 located in one (or at most two) offices; (3) documentary and testimonial evidence
20 that L-3 requested and considered the military status and service of applicants in
21 hiring, L-3 officials disfavored Reservist applicants whose military duty would

1 conflict with L-3 work schedules, and L-3 officials expected Reservists to fit military
2 leave into their time off from their L-3 work. Romer-Friedman Decl. ¶ 63.

3 Other courts have relied on the same types of evidence to support
4 commonality for class disparate treatment claims. *Rollins*, 2016 WL 258523, at *7-
5 10 (commonality satisfied by substantial anecdotal evidence of bias and statistical
6 evidence of disparities); *Nucor*, 785 F.3d at 914 (“[T]he workers’ statistical and
7 anecdotal evidence, especially when combined, thus provide precisely the ‘glue’ of
8 commonality that *Wal-Mart* demands.”); *Beck v. Boeing Co.*, 203 F.R.D. 459, 464
9 (W.D. Wash. 2001) (“*Beck I*”), *aff’d in part, vacated in part on other grounds*, 60 F.
10 App’x 38 (9th Cir. 2003) (“[S]tatistically significant results of adverse impacts on
11 female employees in every facility and at every level within the Puget Sound area .
12 . . . establishes sufficient indicia of classwide disparate treatment to satisfy the
13 certification criteria of commonality and typicality.”). Moreover, L-3’s centralized,
14 uniform national hiring process for ISR pilots, carried out by a small group of L-3
15 officials in one or two locations, stands in stark contrast to *Dukes*, where plaintiffs
16 challenged decisions made by “thousands of managers” nationwide. *Dukes*, 564
17 U.S. at 345.

18 **3. Typicality Is Satisfied**

19 Typicality requires that “the claims or defenses of the representative parties
20 are typical of the claims . . . the class,” Fed. R. Civ. P. 23(a)(3), and considers
21 “whether other members have the same or similar injury, whether the action is based

1 on conduct which is not unique to the named plaintiffs, and whether other class
2 members have been injured by the same course of conduct.” *Hanon v. Dataproducts*
3 *Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). Here, typicality is satisfied, as each Class
4 Member challenges the same conduct and has the same injury: being denied a Senior
5 Pilot I position based on reserve status or service, which caused them to lose income.

6 **4. Adequacy is Satisfied**

7 Rule 23 requires a plaintiff to fairly and adequately protect the class’ interests.
8 Fed. R. Civ. P. 23(a)(4). “The test for adequacy is (1) do the named plaintiffs and
9 their counsel have any conflicts of interest with other class members and (2) will the
10 named plaintiffs and their counsel prosecute the action vigorously on behalf of the
11 entire class.” *Torres v. Mercer Canyons, Inc.*, 305 F.R.D. 646, 653 (E.D. Wash.
12 2015), *aff’d*, 835 F.3d 1125 (9th Cir. 2016) (citation and internal quotations omitted).

13 Neither Plaintiff nor his counsel has any such conflict. Plaintiff is a Reservist
14 who applied for and was denied a Senior Pilot I position at L-3, and thus has the
15 same interests – in justice, compensation for lost income, and reform of the company
16 – as other Reservists who were denied the same position by L-3.

17 Plaintiff’s counsel include experienced litigators who focus on protecting
18 reservists’ USERRA rights, including Matthew Crotty and Thomas Jarrard who
19 were reservists, and lawyers from Outten & Golden LLP, a leading plaintiff-side
20 employment law firm. Romer-Friedman Decl. ¶ 8; Declaration of Matthew Crotty
21 ¶ 4; Declaration of Thomas Jarrard ¶¶ 3-4; Declaration of Michael Love ¶¶ 5, 10.

1 Mr. Crotty, Mr. Jarrard, and Mr. Romer-Friedman of Outten & Golden have litigated
2 and settled four of the largest settlements in USERRA’s history, including: (1) a
3 USERRA settlement worth up to \$19 million for over 1,500 Southwest Airlines
4 pilots in *Huntsman v. Southwest Airlines Co.*, No. 17 Civ. 3872 (N.D. Cal.); and (2)
5 a settlement worth nearly \$15 million for nearly 900 Washington State Patrol
6 officers in *Martin v. State of Washington*, No. 14 Civ. 00016 (Wash. Sup. Ct.); see
7 Romer-Friedman Decl. ¶ 8.

8 **B. The Requirements of Rule 23(b)(3) are Satisfied**

9 **1. Predominance is Satisfied**

10 Rule 23(b)(3) requires that “common questions predominate over any
11 questions affecting only individual members.” Fed. R. Civ. P. 23(b)(3).
12 Predominance “asks whether the common, aggregation-enabling, issues in the case
13 are more prevalent or important than the non-common, aggregation-defeating,
14 individual issues.” *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016)
15 (citation and internal quotations omitted). Predominance is met when common
16 questions “present a significant aspect of the case and . . . can be resolved for all
17 members of the class in a single adjudication.” *Hanlon v. Chrysler Corp.*, 150 F.3d
18 1011, 1022 (9th Cir. 1998) (citation and internal quotations omitted).

19 Here, numerous common questions regarding both liability and damages
20 predominate over individual issues. As described above, in Plaintiff’s view the
21 evidence and allegations demonstrate a pattern or practice of discrimination against

1 reservist applicants, including statistical, direct, and anecdotal evidence, and, if
2 accepted by the Court, that evidence could establish a prima facie case of
3 discrimination. Thus, Plaintiff raises common factual and legal issues that
4 overwhelm any individualized issues. And any individual issues on whether specific
5 Class Members were subjected to discrimination may be adjudicated in a *Teamsters*
6 hearing after a class-wide liability hearing. *See Dukes*, 564 U.S. at 352 n.7, 366.

7 Furthermore, when a plaintiff relies on the *Teamsters* burden-shifting
8 approach, “to meet its rebuttal burden, the employer must demonstrate that the
9 plaintiff[’]s [] statistical evidence ‘is either inaccurate or insignificant,’” yet another
10 common issue; and the employer “cannot defeat class certification at the liability
11 phase by arguing that it is entitled to introduce individualized evidence that each of
12 its employment decisions was motivated by a legitimate nondiscriminatory reason.”
13 *Beck II*, 60 F. App’x at 39 (quoting *Teamsters*, 431 U.S. at 360).

14 Finally, calculating Class Members’ damages does not defeat predominance,
15 especially since here Plaintiff may rely on a common methodology to determine
16 damages. *Leyva v. Medline Indus. Inc.*, 716 F.3d 510, 513 (9th Cir. 2013) (“damage
17 calculations alone cannot defeat certification”) (citation and internal quotation marks
18 omitted).

19 **2. Superiority Is Satisfied**

20 Rule 23(b)(3) requires that a class action be “superior to other available
21 methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P.

1 23(b)(3). Superiority “requires the court to determine whether maintenance of this
2 litigation as a class action is efficient and whether it is fair.” *Wolin v. Jaguar Land*
3 *Rover N.A., LLC*, 617 F.3d 1168, 1175-76 (9th Cir. 2010).

4 Here, superiority is met. First, there is currently no other similar litigation
5 against L-3. Fed. R. Civ. P. 23(b)(3)(B). Second, Class Members have a modest
6 interest in pursuing individual actions, and they would likely fare far better in a class
7 action. Fed. R. Civ. P. 23(b)(3)(A). While some Class Members might be able to
8 recover tens of thousands of dollars or more in an individual action, the claims may
9 still be “the kind of ‘negative value’ individual lawsuits which these plaintiffs . . .
10 would be unable to pursue on their own; *i.e.*, the cost of prosecuting them would
11 likely exceed the potential income to any prospective attorney.” *Beck I*, 203 F.R.D.
12 at 466. Third, it is ideal to litigate a pattern or practice claim in one forum where all
13 Class Members can benefit from a class-wide decision that they were subjected to a
14 general policy of discrimination. Fourth, the manageability of a class action need not
15 be considered where, as here, a class is certified for settlement purposes. *Amchem*,
16 521 U.S. at 620.

17 **C. The Settlement Meets the Preliminary Approval Criteria**

18 The Settlement Agreement easily satisfies the test that courts apply to
19 determine whether to grant preliminary approval. *See Collins v. Cargill Meat Sols.*
20 *Corp.*, 274 F.R.D. 294, 301-02 (E.D. Cal. 2011).

1 First, the Settlement is “the product of serious, informed, non-collusive
2 negotiations.” *Id.* at 301. The Parties engaged in extensive discovery to inform
3 themselves on the strengths and weaknesses of the claims, defenses, and potential
4 damages. Romer-Friedman Decl. ¶ 55. They completed enough discovery for
5 Plaintiff to move for class certification in a case with over 65,000 pages of
6 documents and dozens of witnesses. *Id.* ¶¶ 56, 58. Before the settlement talks, the
7 Parties and their experts analyzed years of personnel records and estimated potential
8 damages based on methodologies they developed. *Id.* ¶ 57. All told, the Parties
9 engaged in over two years of extensive discovery. *Id.* ¶ 55. The 13-hour mediation
10 was intensive and lengthy, and was supervised by an experienced mediator. *Id.* ¶
11 59. And the Settlement was negotiated by experienced counsel. *Id.* ¶¶ 6-8.

12 Second, the Settlement has no obvious deficiencies. *Collins*, 274 F.R.D. at
13 301. The Settlement is a 54-page, comprehensive agreement that resolves complex
14 claims of over 200 Reservists for L-3’s alleged failure to hire them due to military
15 status or service. It identifies how the \$2 million Cash Settlement Amount will be
16 distributed to Class Members—after payment of fees, cost, service awards, and any
17 taxes—who were allegedly harmed by L-3’s alleged bias. Settlement § VI.1. The
18 Settlement also requires L-3 to undertake programmatic changes to benefit hundreds
19 of reservist applicants and employees.

20 Third, the Settlement does not provide any improper preferential treatment to
21 the Class Representatives or any segments of the Class. *Collins*, 274 F.R.D. at 301-

1 02. All Class Members who submit completed Claim Forms, including the three
2 proposed Class Representatives, will receive equal shares of the Settlement Fund.

3 Finally, the Settlement “falls well within the range of possible approval,” *id.*
4 at 302, as it provides excellent relief to the Class when considering the major risks
5 in this action. *Hanlon*, 150 F.3d at 1026 (affirming approval of settlement that
6 allowed plaintiffs to avoid the risks of losing their claims in litigation).

7 In assessing this factor, courts weigh the issues that are considered in greater
8 detail at the final approval stage, such as: (1) “the strength of the plaintiffs’ case,”
9 “the risk, expense, complexity, and likely duration of further litigation,” and “the
10 risk of maintaining class action status throughout the trial,” (2) “the amount offered
11 in settlement,” (3) “the extent of discovery completed and the stage of the
12 proceedings,” and (4) “the experience and views of counsel.” *Id.* at 1026.

13 **1. Plaintiff’s Case Faced Significant Risk**

14 While Plaintiff believes the Class Members’ claims are strong and based on
15 compelling evidence, Plaintiff and the Class would face significant risks due to the
16 inherent complexity of litigating a nationwide pattern or practice case and unique
17 features of this case. Romer-Friedman Decl. ¶ 64. There are risks that a class will
18 not be certified; that class-wide liability cannot be established, especially given that
19 L-3’s expert found no disparities that disadvantaged Reservists; that damages
20 awarded could be far less than the \$2 million Settlement figure; and that the Court
21 might not order the programmatic changes Plaintiff secured here. *Id.* Moreover,

1 absent a settlement, L-3 was prepared to litigate many factual and legal questions
2 that could impact liability, class certification, and damages, such as differences
3 between L-3's ISR programs across multiple companies, a statistical advantage
4 maintained by Reservists as compared to civilians (and veterans according to L-3's
5 expert analysis), and the individual qualifications of Reservist applicants.

6 **2. The Settlement Amount Is Appropriate**

7 The monetary amount L-3 will pay—\$2 million plus the cost of administering
8 the settlement—is a favorable recovery, particularly due to significant risks the Class
9 would face, and in light of the programmatic reforms the Settlement secures.
10 Indeed, as described above, L-3 claims that Reservists face no bias, denies liability,
11 and would argue based on statistical evidence that no damages are owed. *Supra* §
12 I.C.1.

13 When applying the methodology described above—with L-3 and Plaintiff's
14 designations of applicants' military status—Plaintiff estimated an additional 20 to
15 35 Reservists would have been hired for Senior Pilot I positions if Reservists and
16 veterans had been treated equally. Romer-Friedman Decl. ¶ 54. When using the
17 current mid-level pay for the Senior Pilot I position (about \$125,000 including
18 hazard pay), an average longevity of Senior Pilot I pilots of 2.833 years, and
19 assuming that pilots on average would mitigate 80% of lost wages via alternative
20
21

1 employment,⁴ the loss of income for 20 to 35 pilots ranges from \$1.4 million to \$2.5
2 million. *Id.* ¶ 66. In light of these estimates, a \$2 million Settlement figure is on the
3 higher end of the range.

4 Given the major risks the Class faces on liability, damages, and class
5 certification, the Settlement offers strong relief and potentially greater relief than the
6 Class could obtain in protracted litigation. *See In Re Heritage Bond Litig.*, No. 02
7 ML 1475, 2005 WL 1594403, at *19 (C.D. Cal. June 10, 2005) (calling a recovery
8 of 23% of the claimed loss after deduction of fees an “exceptional result”); *Arnett v.*
9 *Bank of Am., N.A.*, No. 11 Civ. 1372, 2014 WL 4672458, at *7 (D. Or. Sept. 18,
10 2014) (collecting cases approving settlements from 6% to 12% of potential
11 recoveries). The “[t]he track record for large class action employment
12 discrimination cases demonstrates that many years may be consumed by trial(s) and
13 appeal(s) before the dust finally settles.” *Officers for Justice v. Civil Serv. Comm’n*
14 *of City & Cnty. of S.F.*, 688 F.2d 615, 629 (9th Cir. 1982).

15
16
17
18 ⁴ In 2017, the median annual wage for airline and commercial pilots was \$111,930,
19 about 90% of the current mid-level band of pay for L-3 ISR pilots. Bureau of Labor
20 Statistics, *Airline and Commercial Pilots Summary*, [https://www.bls.gov/
21 ooh/transportation-and-material-moving/airline-and-commercial-pilots.htm](https://www.bls.gov/ooh/transportation-and-material-moving/airline-and-commercial-pilots.htm).

3. The Extent of Discovery Supports the Settlement

The touchstone of the analysis of the extent of discovery is whether “the parties have sufficient information to make an informed decision about settlement.” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (citation and internal quotations omitted). Here, the extent of the discovery is robust. As described above, before the Parties agreed to discuss settlement, the case was hotly litigated, with numerous motions, nine depositions, over 65,000 pages of documents produced, expert discovery, and many discovery disputes. Romer-Friedman Decl. ¶ 56. The Parties and their counsel had the critical information they needed to value the case and make an informed decision on settlement. The remaining litigation—including written and oral discovery on liability and damages, a class certification motion, expert depositions, and trial—would be protracted, and an appeal would be likely.

For these reasons, the Settlement should be preliminarily approved.

III. The Settlement Notice and Notice Plan Should be Approved

The proposed Notice is “reasonable” and the “best notice that is practicable under the circumstances.” Fed. R. Civ. P. 23(c)(2)(B) & (e)(1). The Notice and Claim Form are consistent with modern best practices. Romer-Friedman Decl. ¶ 71. They will be disseminated by electronic mail to every Senior Pilot I applicant who was not hired during the Class Period, and if an e-mail address is not available or is returned as undeliverable for such applicants, the notice will be sent via U.S. Mail to them. Ex. 1, Settlement § V.1. In addition, a web site hosted by the Settlement

1 Administrator will provide information to the potential Class Members. *Id.* § V.3(a).

2 In recent years, courts have approved dissemination of notice via electronic
3 mail where reliable e-mail addresses are available, and here L-3 has e-mail addresses
4 for nearly all of the applicants, since all of them applied online. *See Margulies v.*
5 *Tri-Cnty. Metro. Transp. Dist. of Or.*, No. 13 Civ. 00475, 2013 WL 5593040, at *21
6 (D. Or. Oct. 10, 2013) (approving notice via by e-mail, finding that “email is an
7 efficient and nonintrusive method of communication,” and collecting cases).

8 Finally, consistent with Rule 23(c)(2)(B), the Notice describes the scope of
9 the Class, the terms of the Settlement, how Class Members can exclude themselves
10 from the Class by a specific date, that the judgment will include all Class Members
11 who do not opt out, that any Class Member who does not opt out can appear through
12 their counsel, and how Class Members can object to or comment on the Settlement,
13 among other critical information. *See Ex. B, Notice and Claim Form.*

14 **CONCLUSION**

15 For the foregoing reasons, Plaintiff’s motion should be granted. A proposed
16 order is attached as Exhibit B to the Settlement Agreement.

17 DATED this 30th day of October, 2018.

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CERTIFICATE OF SERVICE

I certify that on October 30, 2018 I caused the forgoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to the all counsel of record.

/s/ Peter Romer-Friedman
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