

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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.,  
Defendant.

Case No. 3:17-cv-03972-JD

**~~{PROPOSED}~~ ORDER GRANTING  
FINAL APPROVAL OF SETTLEMENT  
AND FINAL JUDGMENT**

1 On June 20, 2019, a hearing was held on the motion of Plaintiff Jayson Huntsman,  
2 individually and on behalf of all others similarly situated (“Plaintiff”), for final approval of the  
3 class settlement, and on the separate motions of Plaintiff and his counsel for awards of the Class  
4 Representative Service Payment and the Class Counsel Attorneys’ Fees and Costs Payment.  
5 Peter Romer-Friedman, Rachel Williams Dempsey, and Thomas Jarrard appeared for Plaintiff.  
6 Brian D. Berry appeared for Defendant Southwest Airlines Co. (“Southwest”).

7 At the hearing, the Court directed Plaintiff’s counsel to file supplemental briefing to  
8 address two issues: (1) the proposed reimbursement amount for the settlement administrator’s  
9 costs; and (2) the legal basis and accounting of the reimbursement requested for the named  
10 Plaintiff’s hours spent in service to the class. ECF No. 55. In addition, the Court ordered  
11 Plaintiff’s counsel to file a revised proposed Final Approval Order. *Id.*

12 On July 2, 2019, Plaintiff submitted supplemental briefing and a revised Final Approval  
13 Order. Dkt. No. 56.

14 The Parties have also submitted their Settlement Agreement (the “Settlement”), which  
15 this Court preliminarily approved in its December 5, 2018 order (the “Preliminary Approval  
16 Order”). In accordance with the Preliminary Approval Order, Class Members have been given  
17 notice of the terms of the Settlement and the opportunity to submit a claim form, comment on the  
18 settlement, and/or opt out of its provisions.

19 In addition, pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715  
20 (“CAFA”), Southwest has given the Attorney General of the United States and the appropriate  
21 state officials in the states in which the Class Members reside timely notice of the Settlement.

22 Having received and considered the Settlement, the supporting papers filed by the Parties,  
23 including the post-hearing supplemental briefing, and the evidence and argument received by the  
24 Court at the final approval hearing on June 20, 2019, by means of this order (the “Final Approval  
25 Order”), the Court grants final approval to the Settlement and orders as follows.  
26  
27  
28

1           **Definitions**

2           1.       Except as otherwise specified herein, the Court for purposes of this Final  
3 Approval Order adopts all defined terms set forth in the Settlement.

4           **Jurisdiction**

5           2.       This Court has jurisdiction over the subject matter of this litigation and all claims  
6 raised in this action and released in the Settlement, and personal jurisdiction over Southwest and  
7 all Class Members (except for Robert J. Waltz, who timely filed an opt-out request).  
8 Specifically, this Court has federal question jurisdiction over this action pursuant to 28 U.S.C.  
9 § 1331.

10           **Dissemination of Notice to Class Members**

11           3.       Pursuant to the Preliminary Approval Order, the notice documents were sent to  
12 each Class Member by email and by first-class mail. The notice materials informed Class  
13 Members of the terms of the Settlement, how their settlement share would be calculated, how to  
14 submit a Claim Form, their right to comment on (including object to) the Settlement or opt out of  
15 the Settlement to pursue their claims individually, and their right to appear in person or by  
16 counsel at the final approval hearing and be heard regarding approval of the Settlement.  
17 Adequate periods of time were provided by each of these procedures.

18           4.       The Court finds and determines that this notice procedure afforded adequate  
19 protections to Class Members and provides the basis for the Court to make an informed decision  
20 regarding approval of the Settlement based on the responses of Class Members. Notice was  
21 accomplished in the manner prescribed by the Settlement. The Court finds and determines that  
22 the notice provided in this case was the best notice practicable, which satisfied the requirements  
23 of law and due process.

24           **Notice to Attorneys General Pursuant to CAFA**

25           5.       Pursuant to CAFA, within 10 days after the filing of the motion seeking  
26 preliminary approval of the Settlement, Southwest served upon the Attorney General of the  
27 United States and the state attorneys general officials of the states in which the Class Members  
28

1 reside a notice of the Settlement consisting of the appropriate settlement notice documents. This  
2 Final Approval Order is being entered at least 90 days after the later of the dates on which the  
3 appropriate federal and state officials were served with the notice of proposed settlement.

4 6. The Court finds and determines that Southwest's notice of Settlement was timely,  
5 adequate, and compliant with the statutory requirements of CAFA. Accordingly, 28 U.S.C.  
6 § 1715(e) has no application to the Settlement.

7 **Certification Under Fed. R. Civ. P. 23 and the FLSA**

8 7. For the reasons stated in the Preliminary Approval Order, this Court finds and  
9 determines that the proposed Settlement Class, as defined in Section IV.A of the Settlement and  
10 in Section II.A of its Preliminary Approval Order, meets all of the legal requirements for class  
11 certification under Federal Rule of Civil Procedure 23 ("Rule 23") (a) and (b)(3), and it is hereby  
12 ordered that the Settlement Class is finally approved and certified as a Class for purposes of  
13 settlement of this action.

14 **Fairness**

15 8. Pursuant to Rule 23(e), the Court further finds and determines that the terms of  
16 the Settlement are fair, reasonable, and adequate to the Class and to each Class Member and that  
17 the Class Members who have not opted out will be bound by the Settlement, that the Settlement  
18 is ordered finally approved, and that all terms and provisions of the Settlement should be and  
19 hereby are ordered to be consummated. The Court specifically finds that the Settlement is  
20 rationally related to the strength of Plaintiffs' claims given the risk, expense, complexity, and  
21 duration of further litigation. This Court also finds that the Settlement is the result of arms'-  
22 length negotiations between experienced counsel representing the interests of the Class Members  
23 and Southwest, under the supervision of an experienced and independent third-party mediator,  
24 after thorough factual and legal investigation. *Staton v. Boeing Co.*, 327 F.3d 938, 960 (9th Cir.  
25 2003); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992).

26 9. The Court has received and considered the objection of Brent Dennis, which was  
27 timely filed on May 6, 2019. ECF No. 51. Mr. Dennis's objection expressed his concern over  
28

1 the discount for claims earlier in the class period, as well as his personal concern about  
2 harassment and retaliation against servicemembers at Southwest. The Court finds that the Plan  
3 of Allocation reasonably and fairly discounted Class Members' claims for 2001 to 2007 on the  
4 basis that Southwest's defenses as to those claims were stronger than its defenses for claims from  
5 2008 and afterwards. In addition, the level of recovery for these claims is still substantial,  
6 particularly given that the claims are 11 to 18 years old and face a serious statute of limitations  
7 defense. To the extent that Mr. Dennis's objection concerned alleged retaliation or other  
8 hostility against servicemembers, such claims are not at issue in this action and are not released  
9 by the Class Settlement. Accordingly, Mr. Dennis's objection does not alter the Court's  
10 conclusion that the Settlement is fair, reasonable, and adequate.

11 10. The Court finds and determines that the payments to be made to the Class  
12 Members as provided for in the Settlement, Section VIII.D, are fair and reasonable. The  
13 proposed plan of allocation bases each Class Member's recovery on (a) all periods of Short-Term  
14 Military Leave that are identified by the Class Member between January 1, 2001 and December  
15 31, 2007, and (b) all periods of Short-Term Military Leave with one or more dropped trips that  
16 the Class Member took between January 1, 2008 and December 31, 2013. The plan of allocation  
17 is rational. The Court hereby gives final approval to the payments and orders those amounts be  
18 paid to the claimants out of the Net Fund Value in accordance with the terms of the Settlement.  
19 The Court also hereby gives final approval to the additional paid sick leave and orders those  
20 amounts to be added to their sick leave balances.

#### 21 **Class Member Response**

22 11. The Court further finds that the response of the Class Members to the Settlement  
23 supports settlement approval. Of the 1,999 Class Members and Potential Class Members, only  
24 one opted out of the Settlement, and only one objected to the Settlement.

25 12. The Court hereby excludes Robert J. Waltz from the Settlement and Release on  
26 the basis of his opt-out request, which was timely provided to the Settlement Administrator on  
27 March 12, 2019, in accordance with the procedure set forth in the Class Notice.  
28

**Late Claim Form**

13. For good cause shown, the Court permits consideration of the late Claim Form postmarked May 23, 2019.

**Appointment of Class Representatives and Class Representative Service Awards**

14. The Court confirms as final the appointment of Jayson Huntsman as Class Representative of the Rule 23 Class.

15. The Court approves a \$9,969.60 service award to plaintiff Huntsman based on his time spent in service to the Class. In this case, plaintiff has submitted sufficient “evidence of the proposed awardees’ involvement in the case and other justifications for the award,” N.D. Cal. Procedural Guidance for Class Action Settlements, such that the Court is able to make an informed decision on this issue. Of the 100 hours claimed by Huntsman, Dkt. No. 49-9 ¶ 10, the Court deducts 16 hours of travel time and his 24 hours of informal communications with class members. Dkt. No. 49-9 ¶¶ 10(c), (e), (g). The Court accepts Huntsman’s proposed hourly rate of \$166.16, Dkt. No. 56 at 3, and consequently grants him an award of \$9,969.60.

**Appointment of Class Counsel; Attorneys’ Fees and Costs**

17. Class Counsel attest to performing substantial work on behalf of the Class Members, totaling \$703,471 in lodestar as of June 6, 2019. The Court finds the hours worked by Class Counsel to be reasonably incurred for the benefit of the Class Members. Class Counsel’s hourly rates, ranging from \$250 to \$290 for staff and \$280 to \$900 for attorneys, are reasonable in light of the market for legal services of this type and quality. The Court confirms as final the appointment of Jahan C. Sagafi, Peter Romer-Friedman, and Rachel Williams Dempsey of Outten & Golden LLP, Matthew Z. Crotty from Crotty & Son Law Firm, PLLC, and Thomas Jarrard from Law Office of Thomas G. Jarrard, PLLC as Class Counsel for the Rule 23 Class. Class Counsel has capably and effectively represented the Class Members’ interests. The Court finds and determines that the payment of \$1,500,000 in attorneys’ fees and \$33,761.32 in litigation costs and expenses is reasonable. *See, e.g., Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 (9th Cir. 2002); *Chemical Bank v. City of Seattle (In re Washington Public Power Supply Sec.*

1 *Litig.*), 19 F.3d 1291, 1297 (9th Cir. 1994). This fee is approximately 26% of the total fund and  
2 8% of Plaintiffs' estimated Settlement value, which is consistent with Ninth Circuit guidance for  
3 class action settlements. Under a lodestar cross-check, the lodestar multiplier of 2.13x supports  
4 the fee award. The Court hereby gives final approval to that amount and orders that payment be  
5 made to Class Counsel out of the Gross Fund Value in accordance with the terms of the  
6 Settlement.

7 **Settlement Administrator Report and Fees**

8 18. Upon completion of administration of the Settlement, the Settlement  
9 Administrator will provide written certification of such completion to the Court and counsel for  
10 the Parties.

11 19. The Court finds and determines that reimbursement of Settlement Administrator  
12 costs in the amount of \$54,000 is reasonable and hereby gives final approval to that amount.

13 **Release**

14 20. By operation of the entry of this Final Approval Order and pursuant to the  
15 Settlement, all Qualified Claimants are permanently barred from prosecuting against Southwest  
16 any Claim as set forth in Section XIV of the Settlement. The Court has reviewed the release in  
17 Section XIV of the Settlement and finds it to be fair, reasonable, and enforceable under Rule 23,  
18 and all other applicable law.

19 **Contingency on Finality**

20 21. If, for any reason, the Settlement ultimately does not become Final (as defined in  
21 the Settlement, Section XV), this Final Approval Order will be vacated; the Parties will return to  
22 their respective positions in this action as those positions existed immediately before the parties  
23 executed the Settlement; and nothing stated in the Settlement or any other papers filed with this  
24 Court in connection with the Settlement will be deemed an admission of any kind by any of the  
25 Parties or used as evidence against, or over the objection of, any of the Parties for any purpose in  
26 this action or in any other action.

1 **Final Judgment and Dismissal**

2 22. By means of this Final Approval Order, this Court hereby enters final judgment in  
3 this action, as defined in Federal Rule of Civil Procedure 58(a)(1).

4 23. Without affecting the finality of the Court's judgment in any way, the Court  
5 retains jurisdiction over this matter for purposes of resolving issues relating to interpretation,  
6 administration, implementation, effectuation and enforcement of the Settlement. Nothing in this  
7 Final Approval Order will preclude any action to enforce the Parties' obligations under the  
8 Settlement or under this order, including the requirement that Southwest make the settlement  
9 payments in accordance with the terms of the Settlement.

10 24. The Parties are hereby ordered to comply with the terms of the Settlement.

11 25. This action is dismissed with prejudice, each side to bear its own costs and  
12 attorneys' fees except as provided by the Settlement and the Court's orders.

13  
14  
15 Dated: October 4, 2019

16   
17 \_\_\_\_\_  
18 JAMES DONATO  
19 United States District Judge  
20  
21  
22  
23  
24  
25  
26  
27  
28