

**UNITED STATES DISTRICT  
COURT NORTHERN DISTRICT OF  
GEORGIA ATLANTA DIVISION**

ANGELA DUSKO, on behalf of herself  
and all others similarly situated,

Plaintiff,

vs.

DELTA AIR LINES, INC.

Defendant.

CIVIL ACTION: 1:20-CV-01664-ELR

Consolidated Cases:

*Daniels v. Delta Air Lines, Inc.*,

Case No. 1:20-cv-01664-ELR

*Dusko v. Delta Air Lines, Inc.*,

Case No. 1:20-cv-01725

*Polk v. Delta Air Lines, Inc.*,

Case No. 1:20-cv-02461

**PLAINTIFF'S UNOPPOSED MOTION FOR FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT AND APPLICATION FOR  
ATTORNEYS' FEES AND COSTS AND A SERVICE AWARD**

Plaintiff Angela Dusko ("Plaintiff") hereby files this Unopposed Motion for Final Approval of Class Action Settlement and Application for Attorneys' Fees and Costs and a Service Award in Support of Plaintiff's Brief. The Motion is set for a Final Approval Hearing on **October 5, 2023, at 10:00 a.m.**, in Courtroom 1708 of the United States District Court for the Northern

District of Georgia, Richard B. Russell Federal Building, 75 Ted Turner Dr. SW, Atlanta, GA 30303.

In support of the Motion, Plaintiff submits her Memorandum in Support; the Settlement Agreement and Releases (*Exhibit A* to the Memorandum); the Joint Declaration of Class Counsel (*Exhibit B* to the Memorandum); the Declaration of Cameron R. Azari, Esq. on Notice Program Implementation (*Exhibit C* to the Memorandum); copies of unpublished Georgia state court orders cited in the Memorandum (*Composite Exhibit D* to the Memorandum); and a proposed Final Approval Order and Judgement (*Exhibit E* to the Memorandum).

For the reasons set forth in the Memorandum, after the Final Approval Hearing, Plaintiff respectfully request the Court: (a) grant Final Approval of the Settlement; (b) certify the Settlement Class; (c) award Class Counsel the requested \$2,285,000.00 for attorneys' fees and \$51,300.80 for costs, to be paid by Delta; (d) award the Class Representative a \$3,000.00 Service Award, to be paid by Delta; (e) approve Delta's payment of Settlement Administration Costs to the Settlement Administrator; and (f) enter final judgment accordingly.

Dated: July 27, 2023

Respectfully submitted,

/s/ Roy E. Barnes

Roy E. Barnes (Ga. Bar. No. 039000)  
J. Cameron Tribble (Ga. Bar No.  
754759)

**BARNES LAW GROUP, LLC**

31 Atlanta Street

Marietta, Georgia 30060

Telephone: (770) 227-6375

Facsimile: (770) 227-6373

Email: roy@barneslawgroup.com

ctribble@barneslawgroup.com

Melissa S. Weiner\*

**PEARSON WARSHAW, LLP**

328 Barry Avenue S., Suite 200

Wayzata, MN 55391

Telephone: (612) 389-0600

Facsimile: (612) 389-0610

Email: mweiner@pwfir.com

Jeff Ostrow\*

**KOPELOWITZ OSTROW**

**FERGUSON WEISELBERG**

**GILBERT**

1 West Las Olas Blvd. Suite

500 Fort Lauderdale, FL

33301 Telephone: (954) 525-  
4100

Facsimile: (954) 525-4300

Email:

ostrow@kolawyers.com

Annick M. Persinger\*

**TYCKO & ZAVAREEI LLP**

10880 Wilshire Boulevard, Suite 1101

Los Angeles, CA 90024  
Telephone: (510) 250-3316  
Fax: (202) 973-0950  
apersinger@tzlegal.com

Hassan A. Zavareei\*  
**TYCKO & ZAVAREEI LLP**  
2000 Pennsylvania Avenue NW, Suite  
1010  
Washington, DC 20006  
Telephone: (202) 973-0900  
Facsimile: (202) 973-0950  
Email:  
hzavareei@tzlegal.com

\*admitted *pro hac vice*

*Counsel for Plaintiff and the Proposed  
Class*

**FONT CERTIFICATION**

The undersigned hereby certifies that this Motion complies with the font requirements of L.R. 5.1 because the document has been prepared in Times New Roman, 14-point font.

This 27th day of July, 2023.

/s/ Roy E. Barnes

Roy E. Barnes

Ga. Bar No. 039000

J. Cameron Tribble

Ga. Bar No. 754759

BARNES LAW GROUP, LLC

31 Atlanta Street

Marietta, Georgia 30060

Tel: (770) 227-6375

Fax: (770) 227-6373

roy@barneslawgroup.com

ctribble@barneslawgroup.com

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this day a copy of the foregoing was filed and served using the Court's CM/ECF system which will send notification of such filing to ECF registered participants.

DATED this 27th day of July, 2023.

/s/ Roy E. Barnes

Roy E. Barnes

Ga. Bar No. 039000

J. Cameron Tribble

Ga. Bar No. 754759

BARNES LAW GROUP, LLC

31 Atlanta Street

Marietta, Georgia 30060

Tel: (770) 227-6375

Fax: (770) 227-6373

roy@barneslawgroup.com

ctribble@barneslawgroup.com

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
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ANGELA DUSKO, on behalf of herself  
and all others similarly situated,

Plaintiff,

vs.

DELTA AIR LINES, INC.

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CIVIL ACTION: 1:20-CV-01664-ELR

**PLAINTIFF’S MEMORANDUM IN SUPPORT OF PLAINTIFF’S  
UNOPPOSED MOTION FOR FINAL APPROVAL OF  
CLASS ACTION SETTLEMENT AND APPLICATION FOR  
ATTORNEYS’ FEES AND COSTS AND A SERVICE AWARD**

Plaintiff, Angela Dusko, on behalf of herself and the Settlement Class,<sup>1</sup> with the consent of Defendant, Delta Air Lines, Inc., respectfully requests the Court (1) grant Final Approval of the Settlement, (2) grant Class Counsel’s application for attorneys’ fees and costs and a Service Award for the Class Representative, and (3) enter a final judgment.

**I. INTRODUCTION**

The Court preliminarily approved the Settlement, and the Settlement

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<sup>1</sup> All capitalized terms herein have the same meaning as those set forth in the parties’ Settlement Agreement and Releases (the “Agreement”), attached as *Exhibit A*.

Administrator has disseminated Notice to the Settlement Class. Now, Plaintiff, as Class Representative, respectfully asks the Court to conduct a final review of the Settlement and approve it as fair, reasonable, and adequate.

After three years of litigation, the Parties reached a Settlement that provides a refund claims process for almost 68,000 Settlement Class members who were allegedly issued credits after requesting a cash refund after their flights were canceled during the relevant timeframe following the COVID-19 pandemic, in violation of Delta's contract of carriage. Settlement Class Members may claim cash in the amount of any Unused Credit or Partial Unused Credit, plus 7% of the original ticket amount as interest. Alternatively, Settlement Class Members may submit a claim to keep the Unused Credit or Partial Unused Credit and receive a credit in the amount of 7% of the original ticket amount as interest. The Settlement resolves all claims that Plaintiff and Settlement Class Members have against Delta and provides direct monetary relief to Settlement Class Members.

The Settlement is the result of arm's-length negotiations achieved with the assistance of mediator Hunter R. Hughes III, Esq. and provides substantial and meaningful relief to the Settlement Class. While believing strongly in their respective positions, the Parties have concluded that Settlement is preferable to the uncertainty, risk, and costs attendant with further litigation.

The Settlement represents an outstanding result for the Settlement Class. It provides Settlement Class Members with the damages that would likely be sought at trial, avoiding further delay in providing relief and further protracted litigation with uncertain results. Delta will also pay, separate from the Settlement Benefits paid directly to Settlement Class Members, all Settlement Administration Costs, any Court-approved Service Award to the Class Representative, and \$2,285,000.00 for attorneys' fees and up to \$80,000.00 for costs to Class Counsel.

The reaction of the Class will best be judged at the time of the Final Approval Hearing, and this Motion will be supplemented with statistics regarding the Settlement Class Member claim rate, along with opt-out and objection statistics, if any. Notice was sent to the Settlement Class on July 17, 2023. Currently, there are no opt-outs or objections. In light of the benefit conveyed and the significant risks faced through continued litigation, the Settlement is "fair, reasonable, and adequate" and merits Final Approval. Plaintiff requests the Court grant Final Approval and direct implementation of the Settlement, including distribution of the Settlement Benefits, to Settlement Class Members.

## **II. BACKGROUND**

### **A. Facts**

Plaintiff's Second Amended Consolidated Class Action Complaint ("SAC")

(Doc. 59) alleges that, beginning in March 2020, Delta canceled as many as 80% of its scheduled flights in response to the COVID-19 pandemic. *See* SAC at ¶19. Plaintiff alleges Delta breached its contract by failing to issue refunds requested by customers holding non-refundable tickets on those flights. *See, e.g.*, SAC at ¶¶ 34, 47, 66-69, 78, 98. Delta disputes Plaintiff's allegations, contending it adhered to its contract of carriage and offered cash refunds to customers who requested a refund.

### **B. Procedural History**

On April 22, 2020, Plaintiff filed a putative Class Action Complaint based on the above allegations. (Case No: 1:20-cv-01725, Doc. 1.) On July 9, 2020, the Court consolidated this Action with two related putative class actions. (Doc. 20.) The Court also instructed plaintiffs' counsel to seek the appointment of lead counsel and ordered a consolidated amended complaint be filed. *Id.* Following competing applications, the Court entered an Order granting the Motion to Appoint Roy E. Barnes, Melissa S. Weiner, Jeff Ostrow, and Annick M. Persinger as Interim Class Counsel Pursuant to Federal Rule of Civil Procedure 23(g). (*See generally* Doc. 39.)

On December 17, 2020, Plaintiff filed a Consolidated Amended Class Action Complaint ("CAC") as the sole named Plaintiff in this Action. Plaintiff asserted three counts against Delta for breach of contract, breach of the implied covenant of good faith and fair dealing, and declaratory and injunctive relief. (Doc. 44.) On June 23,

2021, Delta filed its Motion to Dismiss the CAC. (Doc. 57.)

On July 23, 2021, Plaintiff filed her SAC, asserting claims for breach of contract and breach of the implied covenant of good faith and fair dealing. (Doc. 59.)

On August 23, 2021, Delta filed its Motion to Dismiss the SAC, which the Parties fully briefed. (Docs. 62, 64, 65, 67, 68.)

On March 2, 2022, the Court entered an Order granting in part and denying in part Delta's Motion to Dismiss. (Doc. 70.) Specifically, the Court denied the motion as to Plaintiff's breach of contract claim alleging that when Plaintiff requested a refund for her flight, a Delta customer service representative told her that Plaintiff was only eligible for a travel credit. *Id.* at 15-17. The Court dismissed the other breach of contract theories and the implied covenant of good faith and fair dealing claim. *See generally id.* On March 30, 2022, Delta filed its Answer. (Doc. 73.)

On April 15, 2022, the Parties filed their Joint Preliminary Planning Report and Discovery Plan and exchanged their Initial Disclosures. (Docs. 74, 75.) On May 9, 2022, Plaintiff served Delta with her First Set of Interrogatories and First Request for Production of Documents (Doc. 78), to which Delta served its written responses on June 15, 2022. Declaration of Class Counsel in Support of Motion for Final Approval and Application for Attorneys' Fees, Costs, and Service Award ("Decl."), attached as *Exhibit B*, at ¶ 13.

On August 10, 2022, the Parties filed their Joint Motion to Stay Proceedings Pending Mediation & Extension of Current Deadlines, which the Court granted. (Docs. 79, 80.) As a condition to mediation, Delta agreed to engage in mediation discovery, which allowed Plaintiff to evaluate all claims. Decl. ¶ 14. The Parties mediated with experienced class action litigation mediator Mr. Hughes on October 17, 2022, November 14, 2022, and January 9, 2022. *Id.* ¶¶ 15-18. Throughout this time, the Parties exchanged informal discovery to prepare and evaluate their positions. *Id.* After the third mediation, the Parties continued to work to draft a confidential term sheet and to confer with the mediator to finalize agreed settlement terms. *Id.* The Parties executed a confidential term sheet memorializing the material settlement terms effective January 13, 2023. *Id.* The Agreement was executed effective May 11, 2023. *Id.* ¶ 19.

Class Counsel filed Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement, together with the Agreement and proposed Notice Program, on May 26, 2023. (Doc. 99.) The Court issued an Amended Order Granting Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement on June 2, 2023, correcting a scrivener's error concerning the Notice Deadline date. (Doc. 101.) The Court established a schedule for dissemination of the Notice, the Opt-Out and Objection Deadline, deadlines for this Motion, to respond to any

objections, and set the October 5, 2023, Final Approval Hearing. *Id.*

### **III. MATERIAL SETTLEMENT TERMS**

The following is a summary of the material terms of the Settlement.

#### **A. The Settlement Class**

The proposed Settlement establishes a Settlement Class as follows:

All ticketholders who are citizens of the United States who received a credit for a non-refundable ticket purchased with dollars on a flight scheduled to depart between March 1, 2020 through April 30, 2021 (a) that Delta cancelled; (b) who requested a refund for the ticket as reflected in Delta's Customer Care or Refund Databases; (c) did not receive a refund; and (d) who had an Unused Credit or Partial Unused Credit as of January 13, 2023.

Agreement ¶ 69.<sup>2</sup>

#### **B. Settlement Benefits**

Delta agrees to the following Settlement Benefits: (a) pay Cash Settlement Payments to certain Settlement Class Members who select the Ticket Cash and Interest Cash option; (b) provide Credit Settlement Payments to certain Settlement Class Members who select the Ticket Credit and Interest Credit option; (c) pay all

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<sup>2</sup> To the extent possible, the Settlement Class has been limited to exclude Delta and its respective subsidiaries and affiliates, members, employees, officers, directors, agents, and representatives and their family members; Class Counsel; the judges who have presided over the Action and their immediate family members; local, municipal, state, and federal governmental agencies; and all persons who have timely opted-out from the Settlement Class in accordance with the Court's orders. Agreement ¶ 69.

Settlement Administration Costs, separate and apart from the Cash Settlement Payments and Credit Settlement Payments made directly to Settlement Class Members; and (d) pay Class Counsel \$2,285,000.00 for attorneys' fees and up to \$80,000.00 for litigation costs, subject to Court approval, separate and apart from the Cash Settlement Payments and Credit Settlement Payments made directly to Settlement Class Members. Agreement ¶ 78. Since Settlement Class Members may obtain a cash refund for the entire outstanding Unused Credit and Partial Unused Credit amount, plus 7% interest based on the original ticket amount, Agreement ¶ 105, the Settlement achieves relief similar to what Plaintiff could have obtained for approximately 67,753 Settlement Class members had she been successful at trial. Decl. ¶ 32. Accordingly, the Settlement includes direct monetary benefits to the Settlement Class. Delta's agreement to separately pay all Settlement Administration Costs and attorneys' fees and costs to Class Counsel also greatly benefits the Settlement Class. *Id.* ¶ 36.

### **C. The Notice Program, Claims Process, Settlement Payments, and Cy Pres Payment**

The Notice Program was designed to and will provide the best notice practicable. Declaration of Cameron Azari, Esq. on Notice Program Implementation, attached as *Exhibit C*, at ¶ 13 ("Admin. Decl."). The Notice Program began on July 17, 2023, will conclude no later than August 28, 2023, and includes: (1) Email

Notice; (2) Postcard Notice; (3) Long Form Notice; (4) a Settlement Website providing detailed information about the Settlement; and (5) a toll-free telephone number and facility to provide Settlement Class members with information and direct them to the Settlement Website. Agreement ¶¶ 88, 98, 99. Each facet of the Notice Program has been timely and properly accomplished to date. Admin. Decl. ¶¶ 8-13. The Settlement Administrator sent a Postcard Notice to 61,041 Settlement Class members for which Delta has both an email and postal address; an Email Notice to 6,085 Settlement Class members for which Delta has only an email address; and a Postcard Notice to 627 Settlement Class members for which Delta has only a postal address. *Id.* ¶ 8. The Settlement Website and toll-free telephone number are active. *Id.* ¶ 10.

Settlement Class Members will receive Settlement Benefits on a claims-made basis. Agreement ¶ 103. Settlement Class Members must submit Claim Forms by the Claims Deadline (*i.e.*, September 15, 2023). *Id.* ¶ 104. Statistics regarding Claim Form submissions will be provided to the Court closer to the Final Approval Hearing date. No later than 90 days after the Effective Date, Delta shall provide Interest Credit to eligible Settlement Class Members. Agreement ¶ 112. No later than 15 days after the Effective Date, Delta shall send the Settlement Administrator the funds necessary to fully pay the Cash Settlement Payment to Settlement Class Members

whose approved Claim Forms require such payments. *Id.* ¶ 113. No later than 60 days after the Effective Date, the Settlement Administrator shall pay the Cash Settlement Payment to all Settlement Class Members entitled thereto. *Id.* ¶ 114.

Settlement Class Members who receive a Cash Settlement Payment by check shall have 180 days from the date on the checks to negotiate their checks. *Id.* Any uncashed or undeliverable checks remaining 210 days after final issuance, and any electronic payments not successfully delivered, shall be paid to *cy pres* recipients subject to the agreement of the Parties and approval of the Court. The Parties shall each propose a *cy pres* recipient to receive 50% of the residual funds. *Id.* ¶ 117. Plaintiff anticipates that any *cy pres* award will be de minimus under the Settlement. Consistent with the Settlement Agreement, Plaintiff proposes Public Justice<sup>3</sup>, a nonprofit legal advocacy organization that advocates for consumer protection, and Delta proposes the United Way of Greater Atlanta, a branch of one of the world's largest charities working to boost education, economic mobility, and health resources.<sup>4</sup>

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<sup>3</sup> See <https://www.publicjustice.net>. Class Counsel Melissa S. Weiner and Hassan Zavareei, another attorney for Plaintiff, volunteer as board members of Public Justice, for which they receive no compensation. Their board service aligns with their practices and dedication to consumer protection.

<sup>4</sup> <https://unitedwayatlanta.org>.

#### **D. Opt-Out and Objection Procedures**

The Notice details the Opt-Out and Objection Deadline (*i.e.*, August 31, 2023) and procedures. (Doc. 101.) To date, zero Settlement Class members have opted-out and zero Settlement Class Members have objected to the Settlement. Admin. Decl. ¶ 11. These statistics will be updated for the Court.

#### **E. Release of Claims**

In exchange for the Settlement Benefits conferred by the Settlement, all Settlement Class Members will be bound by the Releases that discharge the Released Claims against the Settlement Class Members, Class Representative, and Delta. Agreement, Section XI.

#### **F. Class Counsel Fees and Costs and Plaintiff's Service Award**

Subject to Court approval, Delta agrees to separately pay up to \$3,000.00 for a Class Representative Service Award, \$2,285,000.00 in attorneys' fees, and up to \$80,000.00 in costs to Class Counsel (though Class Counsel requests less for costs as explained *infra*). This ensures Settlement Class Members receive 100% of their claimed direct Settlement Benefits. Agreement. ¶¶ 127, 130.

### **IV. THE PROPOSED SETTLEMENT WARRANTS FINAL APPROVAL**

As a prerequisite to directing Notice of the Settlement, the Court determined it would likely be able to approve the Settlement and certify the Settlement Class.

(Doc. 101.) *See* Rule 23(e)(1)(B). This Court should conclude that the Settlement is fair, reasonable, and adequate and grant Final Approval. *See* Rule 23(e)(2).

This Court should “[focus] on the primary procedural considerations and substantive qualities that should always matter to the decision whether to approve the proposal.” *See* Fed. R. Civ. P. 23(e), Committee Notes on Rules–2018 Amendment. The specific considerations include whether (1) the Settlement Class was adequately represented; (2) the Settlement was negotiated at arm’s length; (3) the Settlement Benefits are adequate, accounting for the costs, risks, and delay of trial and appeal; whether the distribution plan is effective, including the Claims Process; the terms governing attorney’s fees; and any side agreements; and (4) whether Class Members are treated equitably relative to each other. Fed. R. Civ. P. 23(e)(2)(A)-(D).

A court has broad discretion over the settlement approval process. *See, e.g., In re Motorsports Merch. Antitrust Litig.*, 112 F. Supp. 2d 1329, 1333 (N.D. Ga. 2000). In conjunction with the Rule 23(e)(2) factors, exercising its discretion, the Court may analyze the Settlement using the so-called *Bennett* factors.<sup>5</sup> *See Bennett*

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<sup>5</sup> The *Bennett* factors include: (1) the likelihood of success at trial; (2) the range of possible recovery; (3) the range of possible recovery at which a settlement is fair, adequate, and reasonable; (4) the anticipated complexity, expense, and duration of litigation; (5) the opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved.

*v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984). Final Approval here is warranted under Rule 23(e)(2) and the *Bennett* factors.

**A. The Adequacy of Representation - Rule 23(e)(2)(A)**

Adequacy of representation is an issue traditionally considered in connection with class certification and involves two questions: “(1) whether the class representatives have interests antagonistic to the interests of other class members; and (2) whether the proposed class counsel has the necessary qualifications and experience to lead the litigation.” *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, 258 F.R.D. 545, 555 (N.D. Ga. 2007). Here, Plaintiff is an adequate representative. She has interests and injuries similar to other Settlement Class members. She has also pursued this Action vigorously by actively seeking out counsel, approving her pleadings, and monitoring the lawsuit in an effort to obtain the maximum recovery for both herself and for the other Settlement Class members. Likewise, Class Counsel are experienced in complex class action litigation, including breach of contract claims, and continue to act with diligence, skill, and

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Similar to Rule 23, a court should make findings that settlement “is not the product of collusion” and “that it is fair, reasonable and adequate.” *See Ault v. Walt Disney World Co.*, 692 F.3d 1212, 1217 (11th Cir. 2012) (citing *Bennett*). Courts have continued to weigh the *Bennett* factors after the 2018 amendments to Rule 23. *See Shiyang Huang v. Equifax Inc. (In re Equifax Customer Data Sec. Breach Litig.)*, 999 F.3d 1247, 1273 (11th Cir. 2021).

professionalism. Decl., Ex. 1-4 (firm resumes).

**B. The Settlement Was Negotiated at Arm's Length - Rule 23(e)(2)(B)**

The Settlement was reached in the absence of collusion and is the result of good-faith, informed, and arm's-length negotiations between experienced attorneys who are familiar with class action litigation and with the legal and factual issues at stake. *Id.* ¶¶ 25, 26. Class Counsel ensured that informal discovery conducted prior to and during mediation would enable them to understand the central issues in the Action such as damages and liability, learn the number of Settlement Class members, and conduct well-informed settlement negotiations. *Id.* ¶ 29.

The Settlement was reached with the assistance of a well-respected and experienced mediator, Hunter R. Hughes, III. *Id.* ¶¶ 15-18. The extensive negotiations were conducted over several months and three formal sessions at arm's-length. *Id.*; see *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 693 (N.D. Ga. 2001) (“The fact that the entire mediation was conducted under the auspices of Mr. Hughes, a highly experienced mediator, lends further support to the absence of collusion.”). Moreover, attorneys’ fees and costs and a Service Award were not discussed until the Parties agreed to all other material Settlement terms. *Id.* ¶ 19. For these reasons and those discussed related to attorneys’ fees below, there was no fraud or collusion in arriving at the Settlement. *Bennett*, 737 F.2d at 986.

### **C. The Adequacy of the Settlement Relief - Rule 23(e)(2)(C)**

Class Counsel, a group with significant experience in class action litigation, strongly believe the Settlement Benefits are fair, reasonable, and adequate, particularly given Settlement Class Members will essentially recover all the damages that they could have recovered at trial. *Id.* at ¶¶ 21, 23, 24; *see Bennett*, 737 F.2d at 986. The Court may rely upon the judgment of experienced counsel. *See, e.g., In re Equifax*, 999, F.3d at 1274 (trial judge “should be hesitant to substitute its own judgment for that of counsel”) (internal quotations omitted). Rule 23(e)(2)(C)’s enumerated factors also show the Settlement is fair, reasonable, and adequate.

#### *1. The Costs, Risks, and Delay of Trial and Appeal*

Any settlement requires the parties to balance the merits of the claims and defenses asserted against the attendant risks of continued litigation and delay. Decl. ¶ 50. Class Counsel believe Plaintiff would prevail if this matter proceeded to trial after the Court’s holding on Delta’s Motion to Dismiss. *Id.* However, they are also pragmatic and aware that there are uncertainties in any litigation. *Id.* ¶ 51. Delta denies liability, wrongdoing, and damage, denies that the Action may be maintained as a class action (except for settlement purposes), and has shown a willingness to continue vigorous litigation. *Id.*

To achieve relief similar to the Settlement Benefits, if Plaintiff were to

continue litigating, she would have to overcome the obstacles of obtaining class certification, surviving summary judgment, and winning at trial. Even a successful trial might not yield more favorable results than the Settlement terms already achieved, and recovery might be delayed for years by an appeal. *See Lipuma v. American Express Co.*, 406 F. Supp. 2d 1298, 1322 (S.D. Fla. 2005) (likelihood appellate proceedings could delay class recovery “strongly favor[s]” approval of a settlement). All that is certain is that with continued litigation, the putative class would face a notably longer wait before receiving any potential recovery, if they received any recovery at all. Decl. ¶ 51. Thus, in Class Counsel’s experience and informed judgment, the Settlement represents an excellent recovery for the Settlement Class, and the Settlement Benefits outweigh the risks and uncertainties of continued litigation. *Id.* ¶ 52; *see also In re Equifax*, 999 F.3d 1247, 1273 (11th Cir. 2021) (“Settlements also save the bench and bar time, money, and headaches”).

## *2. The Effective Method of Distributing Relief and Processing Claims*

The Claim Form Submission Process and distribution of Settlement Benefits is fair, convenient, and effective. Settlement Class Members will promptly receive (a) Cash Settlement Payments for Ticket Cash and Interest Cash by electronic payment or check issued by the Settlement Administrator or (b) Credit Settlement Payments directly from Delta if they elect Ticket Credit and Interest Credit. And the

Settlement Administrator is highly qualified to manage the entire process. (Doc. 103-1). *See Pinon v. Daimler AG*, No. 1:18-CV3984-MHC, 2021 WL 6285941, at \*7 (N.D. Ga. Nov. 30, 2021) (noting importance of an experienced administrator).

### 3. *The Reasonable Terms Relating to Attorneys' Fees*

Whether the attorneys' fees are reasonable on their own terms is a Rule 23(h) analysis. By contrast, under Rule 23(e), the question is not the fee amount in a vacuum, but rather whether attorneys' fees impact the other settlement terms. *See Pinon*, 2021 WL 6285941, at \*7 (finding class relief adequate where attorneys' fees negotiated only after reaching agreement on terms of class relief, and payment of fees did not impact amount of relief available to class members, among other things). Here, Class Counsel requests \$2,285,000.00 in attorneys' fees and \$51,300.80 for costs, to be paid separately by Delta, meaning there will be no reduction or impact whatsoever on Settlement Class Members' Settlement Benefits. Decl. ¶ 36. Also, Settlement Class Members' receipt of Settlement Benefits is not conditioned on the attorneys' fee award to Class Counsel. Agreement ¶ 127. Indeed, the Parties negotiated attorneys' fees and litigation costs only after agreeing to the Settlement Benefits. Decl. ¶ 19. Subject to the Court's consideration of a detailed fee application, *see* § VI, *infra*, the proposed attorneys' fees award is also fair. *See* Fed. R. Civ. P. 23(e)(2)(C)(iii).

4. *The Agreements Identified Pursuant to Rule 23(e)(3)*

Rule 23(e)(3) states that “[t]he parties seeking approval must file a statement identifying any agreement made in connection with the proposal.” Fed. R. Civ. P. 23(e)(3). There are no other agreements between the Parties, which weighs in favor of a finding that the Agreement is fair and adequate.

**D. The Equitable Treatment of Settlement Class Members Relative to Each Other**

Each Settlement Class member is eligible to receive the same benefits. Accordingly, the proposed Settlement treats all Settlement Class members equitably.

**V. CLASS CERTIFICATION IS APPROPRIATE**

This Court has already found that it likely would certify the Settlement Class when it preliminarily approved the Settlement. As demonstrated below, that decision should be made final.

**A. The Settlement Class Satisfies the Rule 23(a) Requirements**

Certification under Fed. R. Civ. P. 23(a) requires numerosity, commonality, typicality, and adequacy of representation. Each of these requirements is met here.

***Numerosity.*** Rule 23(a) numerosity is satisfied because the Settlement Class has approximately 67,753 members, and joinder of all such persons is impracticable. Decl. ¶ 53; Fed. R. Civ. P. 23(a)(1).).

***Commonality.*** “Commonality requires the plaintiff to demonstrate that the

class members ‘have suffered the same injury,’” and the plaintiff’s common contention “must be of such a nature that it is capable of classwide resolution – which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 131 S. Ct. 2541, 2551 (2011) (citation omitted); *see also Williams v. Mohawk Indus., Inc.*, 568 F.3d 1350, 1356 (11th Cir. 2009) (describing plaintiff’s commonality burden as a “low hurdle” that does not require all questions of law and fact raised to be common). Here, commonality is readily satisfied by multiple common questions of law and fact for the Settlement Class members, centering on whether ticketholders holding non-refundable tickets on flights scheduled to depart between March 1, 2020, and April 30, 2021, that Delta cancelled and who requested a ticket refund should have been given refunds as opposed to credits for future travel. *See* SAC, ¶78. Answers to those questions will generate common answers for the Settlement Class members alleged to have been injured in the same or similar way. *See Kleiner v. First Nat. Bank of Atlanta*, 97 F.R.D. 683, 692 (N.D. Ga. 1983) (“When viewed in light of Rule 23, claims arising from interpretations of a form contract appear to present the classic case for treatment as a class action, and breach of contract cases are routinely certified as such.”).

**Typicality.** Typicality is satisfied where claims “arise from the same event or

pattern or practice and are based on the same legal theory.” *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984). It measures whether a “significant nexus” exists between the claims of the Class Representatives and those of the class at large. *Columbus Drywall*, 258 F.R.D. at 555 (quoting *Hines v. Widnall*, 334 F.3d 1253, 1256 (11th Cir. 2003)). Typicality does not mandate that all class members share identical claims, rather they must share only the same “essential characteristics” of the larger class. *Id.* Typicality may be judged at the time of the complaint’s filing. *See Doe v. Wolf*, 424 F. Supp. 3d 1028, 1043 (S.D. Cal. 2020) (invoking relation back doctrine) (citations omitted). Here, Plaintiff’s claims alleged in her original complaint share the essential characteristics of the Settlement Class members’ claims because she asserts that, in response to her request for a cash refund, Delta breached its contract with her by offering credit for future travel instead of refunding her for the non-refundable ticket she purchased for a flight that Delta canceled, just as Delta did to her fellow Settlement Class members.

***Adequacy.*** Plaintiff and Class Counsel also satisfy the adequacy of representation requirement. Rule 23(a)(4) adequacy relates to: (1) whether the proposed class representative has interests antagonistic to the class; and (2) whether the proposed class counsel has the competence to undertake the litigation. *See Dickens v. GC Servs. Ltd. P’ship*, 706 F. App’x 529, 535 (11th Cir. 2017). The

determinative factor, which is satisfied here, “is the forthrightness and vigor with which the representative party can be expected to assert and defend the interests of the members of the class.” *Lyons v. Georgia-Pacific Corp. Salaried Employees Ret. Plan*, 221 F.3d 1235, 1253 (11th Cir. 2000) (internal quotations omitted).

The class representative may be adequate even “upon expiration of the named plaintiff’s substantive claim” after filing a complaint but before certification. *See J.M. by & through Lewis v. Crittenden*, 337 F.R.D. 434, 451 (N.D. Ga. 2019) (citing *U.S. Parole Comm’n v. Geraghty*, 445 U.S. 388, 398 (1980); *Gerstein v. Pugh*, 420 U.S. 103, 95 (1975)); *see also Zeidman v. J. Ray McDermott & Co., Inc.*, 651 F.2d 1030, 1044, 1050 (5th Cir. 1981).

Plaintiff’s interests are coextensive with, not antagonistic to, the Settlement Class’s interests, as Plaintiff asserted claims in her original complaint arising from Delta’s denial of requested refunds, resulting in the same injuries to Plaintiff and the Settlement Class members. The absent Settlement Class members have no diverging interests. Further, Plaintiff and the Settlement Class are represented by qualified and competent Class Counsel, who this Court already appointed as Class Counsel. Each firm is a leader in the class action field, and each attorney has extensive experience prosecuting complex class actions, which has helped them to vigorously litigate on behalf of the Settlement Class thus far. Class Counsel has devoted substantial time

and resources and will continue to do so. Decl. ¶ 57.

**B. The Settlement Class Satisfies the Rule 23(b)(3) Requirements**

Rule 23(b)(3) requires “questions of law or fact common to class members predominate over any questions affecting only individual members,” and class treatment be “superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). It requires a “direct impact” of common issues of law and fact “on every class member’s effort to establish liability that is more substantial than the impact of individualized issues in resolving the claim or claims of each class member.” *Sacred Heart Health Sys., Inc. v. Humana Military Healthcare Servs., Inc.*, 601 F.3d 1159, 1170 (11th Cir. 2010) (internal quotations omitted). Rule 23(b)(3) predominance is readily satisfied because liability questions common to all Settlement Class members substantially outweigh any possible issues that are individual to some Settlement Class member.

Further, the Settlement Class members – and their ticket information – are identified from Delta’s records. Decl. ¶ 58. To administer the Settlement’s relief, all that is required is (1) retrieving the amount of credit outstanding for the Ticket Cash or Ticket Credit, and (2) multiplying the amount of the original ticket by 7% to calculate the Interest Cash or Interest Credit. Thus, there is no risk of individual questions related to damages predominating over common issues *See Klay v.*

*Humana, Inc.*, 382 F.3d 1241, 1259–60 (11th Cir. 2004) (“Particularly where damages can be computed according to some formula, statistical analysis, or other easy or essentially mechanical methods, the fact that damages must be calculated on an individual basis is no impediment to class certification.”) (citations omitted).

Similarly, the simple queries into Delta’s databases make the case administratively feasible and, therefore, weigh in favor of the superiority of a class action here. *See Cherry v. Dometic Corp.*, 986 F.3d 1296, 1303 (11th Cir. 2021). The inquiry into whether the class action is the “superior” method for a particular case focuses on increased efficiency. *Id.* Here, resolution of almost 68,000 claims in one action is far superior to individual lawsuits, because it promotes consistency and efficiency of adjudication. *See Fed. R. Civ. P. 23(b)(3)*.<sup>6</sup>

### **C. The Notice Program Complied with Due Process and Rule 23**

Rule 23(e)(1)(B) requires “direct notice in a reasonable manner to all class members who would be bound by the proposal if giving notice is justified by the parties’ showing that the court will likely be able to (i) approve the proposal under Rule 23(e)(2), and (ii) certify the class for purposes of judgment on the proposal.”

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<sup>6</sup> “Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

“Notice must be reasonably calculated, under all circumstances, to apprise the interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Eisen v. Carlisle and Jacquelin*, 417 U.S. 156, 172 (1974) (internal quotations omitted); *see also Twigg v. Sears, Roebuck & Co.*, 153 F.3d 1222, 1227 (11th Cir. 1998) (substantive claims must be adequately described, and notice must contain sufficient information for deciding whether and how to remain a class member or opt-out); Manual for Compl. Lit., § 21.31 (4th ed. 2022) (listing notice requirements). “Individual notice must be provided to those class members who are identifiable through reasonable effort.” *Eisen*, 417 U.S. at 175.

The Notice Program satisfies the foregoing criteria, informing Settlement Class members of the Settlement’s substantive terms; their options for remaining part of the Settlement Class, for opting out, and for objecting to the Settlement and/or the requested attorneys’ fees, costs, and Service Award; how to make a claim; and how to obtain additional Settlement information. Decl. ¶ 47. The Notice Program was designed to directly reach a very high percentage of Settlement Class members using Settlement Class members’ contact information readily available to Delta. *See* Admin. Decl. ¶ 8. Postcard Notices and Email Notice were sent out on July 17, 2023. *Id.* Before that, the Settlement Administrator established a Settlement Website containing the Long Form Notice and the Agreement (among other important

documents), and a toll-free phone number for the Settlement. *Id.* ¶ 10. Reminder Notices will be sent consistent with the approved Notice Program.

The Parties are optimistic that an outstanding notice reach percentage will be achieved, and the record will be supplemented with that information before the Final Approval Hearing. Admin. Decl. ¶ 14. With that additional information, the Court should conclude the Settlement Class received the best notice practicable under the circumstances in compliance with due process and Federal Rule of Civil Procedure 23(c)(2). *See, e.g., In re Home Depot, Inc. Customer Data Sec. Breach Litig.*, 2016 WL 6902351, at \*51 (N.D. Ga. Aug. 23, 2016) (notice reaching 75% of the class satisfied Rule 23 and due process); *see also* Federal Judicial Center, “Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide” (2010) (recognizing effectiveness of notice that reaches between 70% and 95% of the class).

## **VI. APPLICATION FOR ATTORNEYS’ FEES AND COSTS**

Class Counsel respectfully request an attorneys’ fees award of \$2,285,000.00, equal to approximately 7.6% of the total value (\$29,895,433.02) of the benefits to the Settlement Class—\$27,312,667.22, inclusive of available refunds and 7% interest to be claimed by Settlement Class Members; attorneys’ fees of \$2,285,000.00 to be paid by Delta; \$51,300.80 for litigation costs to be paid by Delta; and \$246,465.00 for estimated Settlement Administration Costs to be paid by Delta.

Decl. ¶ 37. The Parties negotiated and reached agreement regarding attorneys' fees and costs only after reaching agreement on all other material Settlement terms. *Id.* ¶ 19. The Court should afford deference to the Parties' Agreement given the absence of collusion regarding attorney's fees. *See Ingram*, 200 F.R.D. at 695 (giving substantial weight to negotiated fee amount in the absence of any evidence of collusion); *see also Smith v. Floor & Decor Outlets of Am., Inc.*, No. 1:15-cv-04316-ELR, 2017 WL 11495273, at \*4 (N.D. Ga. Jan. 10, 2017) (where "the amount of attorneys' fees to be paid by Floor & Decor was proposed after the other terms of the settlement had been agreed upon . . . the parties' agreement is entitled to substantial weight.").

Further, "[w]hen the parties agree to a fee that is to be paid separately by defendants rather than one that comes from, and therefore reduces, a settlement fund available to the class, . . . the danger of conflicts of interest between attorneys and class members is diminished." *Simerlein v. Toyota Motor Corp.*, No. 2019 WL 2417404, 2019 WL 2417404, at \*24 (D. Conn. June 10, 2019) (citations omitted). The requested fee is also within the range of reason under the factors listed in *Camden I Condo. Ass'n. v. Dunkle*, 946 F.2d 768 (11th Cir. 1991) ("*Camden I*"). Thus, Class Counsel submit the requested fee is appropriate, fair, and reasonable and respectfully request it be approved.

**A. The Requested Fee Is Reasonable Under the Percentage Method**

*1. The Applicability of the Common Benefit Doctrine.*

Class Counsel's \$2,285,000.00 attorneys' fee request, evaluated under a constructive common fund analysis applying Eleventh Circuit precedent, constitutes 7.6% of the total benefits made available to the Settlement Class and is reasonable.

Counsel whose work results in a substantial benefit to a class are entitled to a fee under the common benefit doctrine. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The doctrine serves the "twin goals of removing a potential financial obstacle to a plaintiff's pursuit of a claim on behalf of a class and of equitably distributing the fees and costs of successful litigation among all who gained from the named plaintiff's efforts." *In re Gould Sec. Litig.*, 727 F. Supp. 1201, 1202 (N.D. Ill. 1989). It also ensures those who benefit are not "unjustly enriched." *Van Gemert*, 444 U.S. at 478. Indeed, due to the alignment of interests and the sake of efficiency, "the consensus among class action scholars is that the percentage method should generally be used when the settlement's value can be reliably calculated and the lodestar method is not statutorily required." *In re Home Depot*, No. 1:14-md-02583-TWT, 2020 WL 415923, at \*6 (N.D. Ga. Jan. 23, 2020).

The Eleventh Circuit's controlling authority is *Camden I*, which holds attorneys' fees in common fund cases must be calculated using the percentage rather

than the lodestar approach.<sup>7</sup> 946 F.2d at 774-75. In *Camden I*, although the court noted that awards typically range from 20% to 30%, it stated: “There is no hard and fast rule . . . because the amount of any fee must be determined upon the facts of each case.” *Id.* at 774; *see also, e.g., Waters v. Int’l. Precious Metals Corp.*, 190 F.3d 1291, 1294 (11th Cir. 1999). Awards of up to 25% of the common fund are presumptively reasonable in the Eleventh Circuit. *See Arkin v. Pressman*, 38 F.4th 1001, 1005 n.3 (11th Cir. 2022). Class Counsel request a far lower percentage.

Since this Settlement requires Delta to separately pay Class Counsel’s attorneys’ fees, it does not provide a finite fund from which attorneys’ fees will be deducted. Rather, regardless of the amount claimed or number of claimants, Settlement Class Members will be eligible to make claim refunds for Unused Credits or Partial Unused Credits and 7% interest on the original ticket value. The total value of this relief alone is up to \$27,312,667.22. Decl ¶ 37. Unlike with a limited fund,

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<sup>7</sup> A lodestar cross-check is not required in this Circuit. *See, e.g., Shiyang Huang v. Equifax Inc. (In re Equifax Customer Data Sec. Breach Litig.)*, 999 F.3d 1247, 1280 n.26 (11th Cir. 2021). But “courts . . . sometimes apply a rough lodestar ‘cross-check’ to assess the reasonableness of the percentage-based fee. *In re Ethicon*, 2022 WL 17687425, at \*6. Any cross-check should not “impose” the lodestar approach “through the back door.” *See, e.g., SEC v. Davison*, No. 8:20-cv-325-MSS-MRM, 2023 WL 2931641, at \*3 (M.D. Fla. Mar. 8, 2023) (citations omitted). Here, Class Counsel’s lodestar as of the filing of this Motion is \$1,274,443.90, translating to a reasonable lodestar multiplier of 1.8, Decl. ¶ 42, demonstrating the requested fee is reasonable. *See In re S. Co. S’holder Derivative Litig.*, 2022 WL 4545614, at \*12 n.9 (finding multipliers may range up to 4.5 for purposes of a cross-check).

there will be no prospect of a *pro rata* deduction, nor will there be a deduction from the fund to account for attorneys' fees. "Where class action settlements are concerned, courts will often classify the fee arrangement as a 'constructive common fund' that is governed by common-fund principles even when the agreement states that fees will be paid separately." *In re Home Depot, Inc., Customer Data Sec. Breach Litig.*, 931 F.3d 1065, 1080 (11th Cir. 2019). This methodology may apply when the amount of attorney's fees for class counsel is capped by agreement, as here. *Id.*

Notably, the Eleventh Circuit confirmed that attorneys' fees and litigation costs the defendant agrees to pay to class counsel should be included in the calculation of a constructive common fund. *See id.* at 1092 n.26 ("The formula would read like this: (percentage) x (payment to class + expected payment to counsel) = actual payment to counsel."). *See also, e.g., Amin v. Mercedes-Benz USA, LLC*, No. 1:17-cv-01701-AT, 2020 WL 5510730, at \*4 (N.D. Ga. Sep. 11, 2020) ("To determine the fee percentage from a constructive fund, courts add the requested fee and expenses to the denominator." (citing *In re Arby's Rest. Grp., Inc. Data Sec. Litig.*, No. 1:17-mi-55555-WMR, 2019 WL 2720818, at \*2 (N.D. Ga. June 6, 2019))). Settlement Administration Costs are also properly considered to be part of the Settlement Benefit. *See In re Equifax Customer Data Sec. Breach Litig.*, 2020 WL

256132, at \*37 (N.D. Ga. Mar. 17, 2020) (“It has long been the practice in this Court to use the gross amount of a common fund in calculating a percentage-based fee award without deducting the costs of notice or administration . . . because notice and administration costs inure to the benefit of the class.”) *aff’d in part, rev’d in part* 999 F. 3d 1247, 1284 (11th Cir. 2021) (affirming “rulings in their entirety, except as to the narrow issue of incentive awards”).

Additionally, Eleventh Circuit precedent clearly states the calculation should include *all* the potential relief made available to the class, not just the amount Settlement Class Members choose to claim and what Delta actually pays. *See Waters*, 190 F.3d at 1297 (for purposes of calculating attorneys’ fees, approving valuation based on total value of relief available, as “[t]he fact that there were a reduced number of claimants had no effect at all on the amount each class member received”). Indeed, “[t]he Supreme Court has approved the practice of basing attorneys’ fees off the total possible amount recoverable by members of the class, not the total amount actually recovered, as the ‘right to share the harvest of the lawsuit upon proof of their identity, whether or not they exercise it, is a benefit in the fund created by the efforts of the class representatives and their counsel.’” *Arkin*, 38 F.4th at 1006 n.4 (citing *Van Gemert*, 444 U.S. at 480); *see also Poertner v. Gillette Co.*, 618 F. App’x 624, 628 n.2 (11th Cir. 2015) (“While no published

opinion of ours extends *Camden I*'s percentage-of-recovery rule to claims-made settlements, no principled reason counsels against doing so . . .”).

2. *The Proportion of the Class Benefit Requested by Class Counsel.*

Applying the above-described Eleventh Circuit standards, Class Counsel seek a modest amount of the constructive common fund, which totals \$29,895,433.02, including (a) \$27,312,667.22 made available for claims by the Settlement Class Members, (b) \$2,285,000.00 for attorneys' fees Delta agrees to separately pay, and (c) \$51,300.80 for litigation costs Delta agrees to separately pay, and (d) \$246,465.00 for estimated Settlement Administration Costs Delta also agrees to separately pay. Accounting for these four distinct benefits to the Settlement Class, the requested attorneys' fee award is approximately 7.6% of the constructive common fund, a wholly reasonable amount.

3. *The Johnson Factors Support the Requested Fee.*

In selecting the percentage in a particular case, a district court should apply the factors from *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717 (5th Cir. 1974), as well as any other pertinent factors. See *Camden I*, 946 F.2d at 772. A consideration of the *Johnson* factors, as shown below, supports the reasonableness of the requested fee.

(a) The Time and Labor Required.

This Action has required substantial time and labor. Class Counsel has worked efficiently to investigate the claims; amend the operative complaints and brief many of the dispositive issues; participate in initial discovery; draft initial requests and review Delta's responses; prepare themselves for settlement discussions; and thoroughly assess the options of settlement or litigation. Decl. ¶¶ 8-18; *see also* Agreement ¶¶ 1-21. Class Counsel then prepared and negotiated an exhaustive Agreement and incorporated exhibits. Class Counsel negotiated favorable Notice provisions to ensure fair and direct Notice to Settlement Class members, with a simple Claim Submission Process. Decl. ¶ 20. After preparing the motion for Preliminary Approval, Class Counsel has worked extensively with Delta and the Settlement Administrator to implement the Notice Program and to prepare this Motion. *Id.* ¶ 24. Class Counsel has expended over 1,700 hours for all of these efforts, Decl. ¶ 42, and they will continue to spend significant time and effort in connection with obtaining Final Approval (estimated at 100 hours), overseeing the Settlement Administrator's efforts to complete the Notice Program and manage the Claim Submission Process, and distribute the Settlement Benefits. Decl. ¶ 24.

Class Counsel were able to efficiently identify the pertinent issues in this Action because of their collective experience in litigating airline refund cases specifically and their class action and complex litigation experience more generally.

Decl. ¶¶ 27 and Ex. 1-4 thereto (firm resumes). Class Counsel's grasp of the issues and expertise provide an additional basis supporting the fee, as described below.

(b) The Novelty and Difficulty of the Questions.

“Attorneys should be appropriately compensated for accepting complex and difficult cases.” *Chis v. Peerless Indem. Ins. Co.*, 2016 WL 9185305, at \*7 (M.D. Ga. Nov. 17, 2016) (citing *Columbus Drywall*, 2012 WL 12540344, at \*3). This Action presented legal and factual difficulty for the Plaintiff, including as shown by this Court's order on Delta's motion to dismiss. (Doc. 70.) Plaintiff filed this case asserting claims for breach of contract and breach of the implied covenant of good faith and fair dealing. (Doc. 59.) The Court summarized the breach of contract theories as: (1) failure to issue refunds in a timely manner; (2) systematically frustrating passengers' ability to request a refund; (3) failing to immediately issue refunds after flight cancellations; and (4) initially denying Plaintiff's refund request, instead offering travel credits in lieu of a refund. (Doc. 70 at 8-9.) Delta argued: (a) there was no contractual obligation to provide a refund within a specific time; (b) Plaintiff identified no contractual provision in connection with the alleged systematic frustration of passengers' ability to request refunds; (c) a refund requires a specific passenger request; and (d) there was no breach from the initial denial of Plaintiff's refund request, as Delta ultimately provided it. *Id.* at 10-15.

The Court dismissed parts of the breach of contract claim except for the allegation that when Plaintiff requested her refund, a Delta customer service representative told her she was only eligible for a travel credit. *Id.* at 15-17. The Court also dismissed the implied covenant of good faith and fair dealing claim. *Id.* at 17-20. The Court's order expressly construed the Contract of Carriage as only obligating Delta to refund a ticket after the passenger requested one. *Id.* at 14. Delta's Answer includes thirteen affirmative defenses. (Doc. 73 at 20-22.)

Thus, any continued litigation would face the challenge of (a) the contractual refund request requirement, and (b) Delta's position that it provided refunds to those who so requested. Additional legal challenges would include litigation in a regulated field; contractual interpretation; and class certification.

Notwithstanding these challenges, Class Counsel and Delta worked to identify the population of ticketholders in Delta's databases that are included in the Settlement Class definition that requested a refund, but were issued a travel credit. Decl. ¶ 30. The chief factual challenge related to Plaintiff's remaining theory is proving that Delta mistakenly denied refunds to individuals who made a request, which was an inquiry that risked being fact-intensive for each Settlement Class member. The Settlement was able to overcome this challenge by requiring a simple attestation by Settlement Class members that they are U.S. citizens; their flights

listed on their Claim Forms were cancelled; they requested a refund; and they did not receive a refund. Agreement ¶ 104. That Class Counsel were able to secure a Settlement on such favorable terms, notwithstanding the foregoing challenges, is a factor strongly supporting the requested fee.

(c) The Skill Requisite to Perform the Legal Services Properly, and the Experience, Reputation, and Ability of the Attorneys.

That Class Counsel faced such challenges and obtained near-total relief for the Settlement Class members demonstrates their skill, experience, and reputation. Class Counsel includes firms that are experienced in class actions. Decl., Ex. 1-4 (firm resumes). Further, they have developed expertise in airline refund cases, including having extensively litigated a similar airline COVID-19 refund case where they have taken voluminous discovery and fully briefed and argued a class certification motion. Decl. ¶ 28. *See Pinon*, 2021 WL 6285941, at \*54 (“Class Counsel’s unique experience representing plaintiffs like Class Members in this case supports Plaintiffs’ fee request.”). Such a qualified team is usually “vital” to the success of complex litigation, *In re Ethicon Physiomesh Flexible Composite Hernia Mesh Prods. Liab. Litig.*, 2022 WL 17687425, at \*11 (N.D. Ga. Nov. 14, 2022), warranting a “significant premium,” *Taylor v. Serv. Corp. Int’l*, 2023 WL 2346295, at \*8 (S.D. Fla. Mar. 3, 2023).

Further, “[t]he quality of opposing counsel is also important in evaluating the quality of the work done by Plaintiffs’ Counsel.” *In re Ethicon*, 2022 WL 17687425, at \*11. Delta’s Counsel, King & Spalding LLP, has long been known to be one of the preeminent law firms, regularly practicing before this Court, and is formidable class action defense counsel, a factor weighing in favor of the requested fee award. Decl. ¶ 49.

(d) Preclusion of Other Employment.

But for this case, Class Counsel would have spent significant time on other cases. As stated, Class Counsel has collectively worked 1743.9 hours in this matter. This should be no surprise, as “class action suits have a well deserved reputation as being most complex.” *Thompson v. State Farm Fire & Cas. Co.*, 2019 WL 13076640, at \*8 (M.D. Ga. Jan. 14, 2019) (citing *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977)). Combined with the nature of contingency fees and the economic realities of such litigation, this factor further supports the requested fee.

(e) The Customary Fee.

Complex consumer litigation customarily is handled on a contingent basis because consumers are unwilling and unable to pay substantial hourly rates, and the potential low individual recovery usually does not justify the economic investment. “Contingent fees between 30% and 40% are the prevailing market rates throughout

the United States for contingent representation.” *Chis*, 2016 WL 9185305, at \*7 (citations omitted).

For class actions, although the “benchmark” percentage-of-the-fund award is 25%, contingent fees regularly reach up to one-third of the potential recovery. *See Amin v. Mercedes-Benz USA, LLC*, 2020 WL 5510730, at \*4 (N.D. Ga. Sep. 11, 2020) (noting that the “average percentage fee award in this Circuit [is] now at or above 30%, as courts within this Circuit have routinely awarded attorneys’ fees of 33 percent or more of the gross settlement fund.”) (citations omitted) (cleaned up). The requested fee is well below the acceptable range of awards. Class Counsel’s requested award from the constructive common fund is far below benchmark.

(f) Whether the Fee is Fixed or Contingent

This Action was prosecuted on a contingent basis. If Class Counsel had not achieved a recovery, they would have received nothing, and would have suffered significant out-of-pocket losses due to all the litigation expenses they advanced. This risk justifies their requested fee.

A contingency fee arrangement often justifies an increase in the award of attorneys’ fees. This rule helps assure that the contingency fee arrangement endures. If this “bonus” methodology did not exist, very few lawyers could take on the representation of a class client given the investment of substantial time, effort, and money, especially in light of the risks of recovering nothing.

*Behrens v. Wometco Enterprises, Inc.*, 118 F.R.D. 534, 548 (S.D. Fla. 1988), *aff’d*

899 F.2d 21 (11th Cir. 1990) (citations omitted); *see also In re S. Co. S'holder Derivative Litig.*, 2022 WL 4545614, at \*11 (N.D. Ga. June 9, 2022) (citing *Behrens*, 118 F.R.D. at 548); § 15 Newberg and Rubenstein on Class Actions § 15:87 (6th ed.) (“A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases.”) (citation omitted).

(g) The Amount Involved and the Results Obtained

“The ‘most important factor’ in determining the appropriate fee award in a common fund case is generally considered to be ‘the results obtained’ for the class.” *Thompson*, 2019 WL 13076640, at \*7 (citation omitted). Class Counsel secured excellent results for the Settlement Class despite the challenges the Action presented. The relief available to the Class, excluding attorneys’ fees and costs, is \$27,312,667.22. Eligible Settlement Class Members can choose a 100% refund of the Unused Credit or Partial Unused Credit, plus 7% interest on the original ticket price. Agreement ¶ 105. Even those Settlement Class Members who have used the credits before making a claim are eligible to be compensated for interest. *Id.* And, due to the direct individual Notice and simple attestation on the Claim Forms, Settlement Class Members will easily receive Settlement Benefits.

(h) Awards in Similar Cases.

As the requested fee is below the benchmark, awards in similar cases justify the requested fee. *See Cleary v. American Airlines, Inc.*, No. 4:21-cv-00184-O (N.D. Tex.) (Doc. 253, 276) (awarding 27.5% of the common fund in case involving airline bag fees). As stated, “[a]wards of up to 33% of the common fund are not uncommon in the Eleventh Circuit, and especially in cases where Class Counsel assumed substantial risk by taking complex cases on a contingency basis.” *In re Arby’s Rest. Grp., Inc. Data Security Litig.*, 2019 WL 2720818, at \*4 (N.D. Ga. June 6, 2019).

(i) The Economics Involved in Prosecuting a Class Action

The economics involved in prosecuting a class action further supports the requested fee. *Camden I*, 946 F. 2d at 775. Class Counsel remains completely uncompensated for the time invested in the Action, in addition to the substantial costs they have advanced. Decl. ¶ 35. If not awarded fees, “very few lawyers could take on the representation of a class client given the investment of substantial time, effort, and money, especially in light of the risks of recovering nothing[.]” *In re Checking Account Overdraft Litig.*, 2014 WL 11370115, at \*17 (S.D. Fla. Jan. 3, 2014). Not awarding attorneys’ fees would discourage competent lawyers from acting as private attorneys general, thus weakening the deterrent impact of our laws. *See, e.g., Columbus Drywall*, 2012 WL 12540344, at \*1, 7.

For all of the foregoing reasons, the Court should award the requested \$2,285,000.00, ordering that Delta pay it separately, as the Agreement provides.

**D. The Court Should Reimburse Class Counsel for Their Costs**

The Agreement authorizes reimbursement of up to \$80,000.00 for costs, to be paid by Delta, that Class Counsel reasonably incurred successfully prosecuting this Action on behalf of the Settlement Class. Requests for costs are “appropriate” and granted “as a matter of course” in common fund cases. *Amin*, 2020 WL 5510730, at \*5. Class Counsel reasonably and necessarily incurred \$51,300.80 in costs for court fees, mediation fees, travel costs, research, postage, courier, photocopy, and telephone costs. Decl. ¶ 44. The Court should thus approve Class Counsel’s request for costs. *See, e.g., Columbus Drywall*, 2012 WL 12540344, at \*7-8.

**VII. APPLICATION FOR SERVICE AWARD**

Finally, Plaintiff respectfully requests that the Court order that Delta separately pay her a \$3,000.00 Service Award for her role as Class Representative. Agreement ¶ 130. Since the Eleventh Circuit’s decision in *Johnson v. NPAS Sols., LLC*, 975 F.3d 1244, 1260 (11th Cir. 2020) (“*NPAS*”), an alternative basis for seeking service awards in diversity cases has been investigated by counsel and favorably considered by courts in this Circuit. Consistent with that jurisprudence, Class Counsel seek a Service Award for the Plaintiff pursuant to Georgia substantive

law. *See Roth v. GEICO Gen. Ins. Co.*, 2020 WL 10818393, at \*3 (S.D. Fla. Oct. 8, 2020) (finding *NPAS* should not extend to diversity cases where governing state law permits service awards, particularly where they are to be paid separately and will not impact the recovery of any class member); *South, et al. v. Progressive Sel. Ins. Co., et al.*, Nos. 19-21760-CIV and 19-21761-CIV (S.D. Fla. Apr. 3, 2023), Doc. 258 (same); *see also Wheatly v. Moe's Southwest Grill, LLC*, 580 F. Supp. 2d 1324 (N.D. Ga. 2008) (under *Erie*, “when a federal court adjudicates state law claims in a diversity of citizenship action, the court is obligated to apply the state substantive law and federal procedural law,” and applying Georgia law regarding attorneys’ fees). In the past, the Georgia Court of Appeals has not criticized enhanced payments awarded to representatives. *Am. Home Servs., Inc. v. A Fast Sign Co., Inc.*, 322 Ga. App. 791, 792, 797 (2013). Indeed, Georgia trial courts have long granted service awards,<sup>8</sup> and have continued to do so after *NPAS*.<sup>9</sup>

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<sup>8</sup> *See, e.g., Anderson v. Pub. Sch. Emps. Ret. Sys. of Ga.*, Fulton Co. Superior Court, Business Case Div., 2009 Ga. Super. LEXIS 72, \*13 (July 8, 2009) (granting request for fees and incentive payment pursuant to Georgia law); *Eaves v. Earthlink, Inc.*, No. 2005-cv-97274, Fulton Co. Superior Court, Business Case Div., 2010 Ga. Super. LEXIS 1532, \*26 (granting awards of \$7,500) (June 7, 2010); *Clark v. Bway Holding Co.*, Case No. 2010CV183869, Fulton Co. Superior Court, Business Case Div., 2010 Ga. Super. LEXIS 1518, \*9 (Oct. 10, 2010). Copies of the orders cited in this footnote are attached as **Composite Exhibit D**.

<sup>9</sup> *See Roberson v. ECI Group, Inc.*, No. 2017-A-64506-4 (Ga. Sup. Ct. DeKalb Cty. May 21, 2021). A copy of this order is in **Composite Exhibit D**.

The Class Representative took a risk, and provided a valuable public service, by putting herself forward as the representative of a class. She kept abreast of the case's status, reviewed and approved documents provided by her counsel, and discussed with counsel various aspects of the case, including the Settlement. Decl. ¶¶ 34. Plaintiff should also be commended for taking action to protect the Settlement Class's interests. It cannot be disputed that Plaintiff's efforts, and her willingness to stand up to a powerful adversary in Delta, resulted in the Settlement Class receiving significant financial benefits, making the Service Award requested appropriate.

#### VIII. CONCLUSION

Based on the foregoing, Plaintiff and Class Counsel respectfully request the Court (a) grant Final Approval; (b) certify the Settlement Class; (c) award Class Counsel the requested **\$2,285,000.00** for attorneys' fees and **\$51,300.80** for costs, to be paid by Delta; (d) award the Class Representative a **\$3,000.00** Service Award, to be paid by Delta; (e) approve Delta's payment of Settlement Administration Costs to the Settlement Administrator; and (f) enter final judgment accordingly. A proposed Final Approval Order is attached as *Exhibit E*.

Dated: July 27, 2023

Respectfully submitted,

/s/ Roy E. Barnes

Roy E. Barnes (Ga. Bar. No. 039000)  
J. Cameron Tribble (Ga. Bar No. 754759)  
**BARNES LAW GROUP, LLC**  
31 Atlanta Street  
Marietta, Georgia 30060  
Telephone: (770) 227-6375  
Facsimile: (770) 227-6373  
Email: roy@barneslawgroup.com  
ctribble@barneslawgroup.com

Melissa S. Weiner\*

**PEARSON WARSHAW, LLP**  
328 Barry Avenue S., Suite 200  
Wayzata, MN 55391  
Telephone: (612) 389-0600  
Facsimile: (612) 389-0610  
Email: mweiner@pwwfirm.com

Jeff Ostrow\*

**KOPELOWITZ OSTROW FERGUSON  
WEISELBERG GILBERT**  
1 West Las Olas Blvd. Suite 500  
Fort Lauderdale, FL 33301  
Telephone: (954) 525-4100  
Facsimile: (954) 525-4300  
Email: ostrow@kolawyers.com

Annick M. Persinger\*

**TYCKO & ZAVAREEI LLP**  
10880 Wilshire Boulevard, Suite 1101  
Los Angeles, CA 90024  
Telephone: (510) 250-3316  
Fax: (202) 973-0950  
apersinger@tzlegal.com

Hassan A. Zavareei\*

**TYCKO & ZAVAREEI LLP**

2000 Pennsylvania Avenue NW, Suite 1010

Washington, DC 20006

Telephone: (202) 973-0900

Facsimile: (202) 973-0950

Email: [hzavareei@tzlegal.com](mailto:hzavareei@tzlegal.com)

\*admitted *pro hac vice*

*Counsel for Plaintiff and the Proposed  
Class*

**FONT CERTIFICATION**

The undersigned hereby certifies that this Motion complies with the font requirements of L.R. 5.1 because the document has been prepared in Times New Roman, 14-point font.

This 27th day of July, 2023.

/s/ Roy E. Barnes

Roy E. Barnes

Ga. Bar No. 039000

J. Cameron Tribble

Ga. Bar No. 754759

BARNES LAW GROUP, LLC

31 Atlanta Street

Marietta, Georgia 30060

Tel: (770) 227-6375

Fax: (770) 227-6373

roy@barneslawgroup.com

ctribble@barneslawgroup.com

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this day a copy of the foregoing was filed and served using the Court's CM/ECF system which will send notification of such filing to ECF registered participants.

DATED this 27th day of July, 2023.

/s/ Roy E. Barnes

Roy E. Barnes

Ga. Bar No. 039000

J. Cameron Tribble

Ga. Bar No. 754759

BARNES LAW GROUP, LLC

31 Atlanta Street

Marietta, Georgia 30060

Tel: (770) 227-6375

Fax: (770) 227-6373

roy@barneslawgroup.com

ctribble@barneslawgroup.com

# EXHIBIT A

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

ANGELA DUSKO, on behalf of herself and all  
others similarly situated,

Plaintiff,

vs.

DELTA AIR LINES, INC.

Defendant.

CIVIL ACTION: 1:20-CV-01664-ELR

**SETTLEMENT AGREEMENT AND RELEASES**

This Settlement Agreement and Releases (“Settlement” or “Agreement”),<sup>1</sup> dated as of May 11, 2023, is entered into by Plaintiff Angela Dusko (“Plaintiff”), individually and on behalf of the Settlement Class, and Defendant Delta Air Lines, Inc. (“Delta”) (collectively, the “Parties”). The Parties hereby agree to the following terms in full settlement of the Action, subject to Final Approval, as defined below, by the United States District Court for the Northern District of Georgia.

**I. Recitals**

1. On April 22, 2020, Plaintiff filed this putative class action alleging that Delta breached its contracts with thousands of passengers by offering credits for future travel on the airline instead of providing refunds for flights Delta failed to operate on schedule in the wake of the COVID-19 pandemic.

2. On July 9, 2020, the Court consolidated the Action with two related putative class actions. *See* Dkt. No. 20. The Court then appointed lead counsel and ordered Plaintiffs to file a

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<sup>1</sup> All capitalized terms herein have the meanings ascribed to them in Section II or various places in the Agreement.

consolidated amended complaint.

3. On December 3, 2020, Kevin Polk filed a Notice of Voluntary Dismissal of his action.

4. On December 17, 2020, Plaintiff filed a Consolidated Amended Complaint, asserting three claims against Delta for breach of contract, breach of the implied covenant of good faith and fair dealing, and declaratory and injunctive relief. Elliott Daniels was not a named plaintiff in the Consolidated Amended Complaint, leaving Plaintiff as the sole named plaintiff in this Action.

5. On June 23, 2021, Delta filed its Motion to Dismiss Plaintiff's Consolidated Amended Complaint.

6. On July 23, 2021, Plaintiff filed a Second Amended Consolidated Class Action Complaint ("Second Amended Complaint"), asserting claims for breach of contract and breach of the implied covenant of good faith and fair dealing.

7. On August 23, 2021, Delta filed its Motion to Dismiss Plaintiff's Second Amended Complaint ("Motion to Dismiss"), to which Plaintiff filed her opposition on September 22, 2021, and for which Delta filed its reply on October 12, 2021. After the Motion to Dismiss was fully briefed, Plaintiff filed a Notice of Supplemental Authority to which Delta responded.

8. On March 2, 2022, the Court entered an Order granting in part and denying in part Delta's Motion to Dismiss. Specifically, the Court denied the Motion to Dismiss as to Plaintiff's claim for breach of contract based on the allegation that when Plaintiff requested a refund for her flight, a Delta customer service representative told her that Plaintiff was only eligible for a travel credit. The Court granted the Motion to Dismiss as to Plaintiff's other theories of breach of contract and her claim for breach of the implied covenant of good faith and fair dealing. The Settlement Class is defined to account for the Court's order on the Motion to Dismiss.

9. On March 30, 2022, Delta filed its Answer to Plaintiff's Second Amended Complaint.

10. On April 15, 2022, the Parties filed their Joint Preliminary Planning Report and Discovery Plan.

11. On April 15, 2022, Plaintiff and Delta exchanged their Initial Disclosures.

12. On May 9, 2022, Plaintiff served Delta with her First Set of Interrogatories and First Request for Production of Documents, to which Delta served its written responses on June 15, 2022.

13. On August 10, 2022, the Parties filed their Joint Motion to Stay Proceedings Pending Mediation & Extension of Current Deadlines. The Court granted that motion on August 17, 2022, staying the Action's deadlines until September 26, 2022, and extending deadlines. That order also required the Parties to provide a status report following mediation.

14. On September 21, 2022, the Parties filed their Joint Motion to Request Reset of Status Report Deadline, on account of the Parties' agreement to postpone the mediation to October 17, 2022, to provide additional time for Delta to collect information to facilitate a productive mediation. The Court granted that motion on September 27, 2022, and ordered a status report to be filed following the mediation.

15. On October 17, 2022, the Parties mediated the Action with experienced class action litigation mediator Hunter R. Hughes III, Esq. Prior to mediation, the Parties exchanged informal discovery in order to prepare for mediation, with Delta providing information pertaining to the estimated size of the putative class and related financial information. Although a resolution was not reached, the Parties agreed to conduct another mediation with Mr. Hughes on November 14, 2022, with Delta to provide additional mediation discovery to Plaintiff to aid the negotiations.

16. On October 19, 2022, the Parties filed a Status Report and requested that all

deadlines be stayed until November 21, 2022, to accommodate the second mediation.

17. Following the November 14, 2022 mediation session, during which the Parties made some progress towards agreement on proposed settlement terms, on November 21, 2022, the Parties filed a Joint Status Report and Motion for Entry of Order informing the Court of their agreement to attend a third mediation session with Mr. Hughes on January 9, 2023. On December 1, 2022, the Court entered an Order staying the Action and directing that a status report be filed following the third mediation session.

18. To prepare for the third mediation session, the Parties exchanged additional mediation discovery. On January 9, 2023, the Parties attended a third mediation session with Mr. Hughes. Though the Parties did not agree to all the material settlement terms that day, they continued to work together to draft a confidential term sheet and to confer with the mediator to finalize agreed settlement terms. Those efforts resulted in the Parties executing a confidential term sheet memorializing the material settlement terms effective January 13, 2023.

19. On January 17, 2023, the Parties filed their Joint Status Report and Motion for Entry of Order Staying Case Deadlines, noting that the Parties had executed a confidential term sheet and would negotiate a settlement agreement, following which Plaintiff would move for Preliminary Approval of the Settlement.

20. Class Counsel have made a thorough investigation of the facts and circumstances surrounding the allegations asserted in the Second Amended Complaint, and have engaged in, and continue to engage in, investigation and discovery of the claims asserted therein, including confirmatory discovery.

21. Plaintiff and Class Counsel have examined the benefits to be obtained under the terms of this Agreement, have considered the substantial risks associated with the continued prosecution of the Action and the likelihood of success on the merits and believe that it is in the

best interests of the Settlement Class as a whole that the claims asserted in the Action be resolved on the terms and conditions set forth in this Agreement. Class Counsel reached that conclusion after considering the Court's order on the Motion to Dismiss, the factual and legal issues presented in the Action, the substantial benefits that Settlement Class Members will receive as a result of the Settlement, the substantial risks and uncertainties of continued litigation, the expense that would be necessary to prosecute the Action through trial and any appeals that might be taken, and the likelihood of success at trial.

22. Delta has denied, and continues to deny, each and every allegation of liability, wrongdoing, and damage. Delta further denies that the Action, including any separate action, may properly be maintained as a class action except for settlement purposes. Nonetheless, without admitting or conceding any liability or damages whatsoever, without admitting any wrongdoing, and without conceding the appropriateness of class treatment for claims asserted in any current or future complaint (except for settlement purposes in the Action), Delta has agreed to settle the Action on the terms and conditions set forth in this Agreement to avoid the substantial expense, inconvenience, burden, and disruption of continued litigation.

23. The Parties agree and understand that neither this Agreement nor the Settlement it represents shall be construed as an admission by Delta of any wrongdoing whatsoever, including, without limitation, any admission of any violation of any statute or law or any admission of liability based on any of the claims or allegations asserted in the Action.

24. The Parties agree and understand that neither this Agreement nor the Settlement it represents shall be construed or admissible as an admission by Delta in the Action or any other proceedings that the Plaintiff's claims or any other similar claims are or would be suitable for class treatment if the Action proceeded through both litigation and trial.

25. The Parties desire to compromise and settle all issues and claims that have been

brought or could have been brought arising out of or related to the claims asserted in the Action.

26. The Parties now agree to settle the Action in its entirety, without any admission of liability, with respect to the Released Claims. The Parties intend this Agreement to bind Plaintiff, Delta, and all Settlement Class Members.

**NOW, THEREFORE**, in light of the foregoing, for good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree, subject to approval by the Court, as follows.

## **II. Definitions**

In addition to the terms defined at various points within this Agreement, the following defined terms apply throughout this Agreement:

27. “Action” means *Dusko v. Delta Air Lines, Inc.*, No. 1:20-cv-01664-ELR (N.D. Ga.).

28. “CAFA Notices” means the notice of this Settlement to be served or caused to be served by Delta upon State and Federal regulatory authorities as required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

29. “Cash Settlement Payment” means the cash distribution that will be made to each Settlement Class Member who validly and timely submits a Claim Form that is approved by the Settlement Administrator and elects the Ticket Cash and Interest Cash option for an Unused Credit or Partial Unused Credit.

30. “Claim Form” means the Court-approved claim form, which may be electronic or physical paper, that a Settlement Class member must complete, sign, and submit to the Settlement Administrator by the Claims Deadline to be considered for payment under the Settlement.

31. “Claim Form Submission Process” means the process by which Settlement Class members will submit the Claim Form either by mail or electronically via the Settlement Website,

which will then be reviewed for timeliness and completeness by the Settlement Administrator.

32. “Claims Deadline” means the date by which Claim Forms must be submitted online (if electronic) or postmarked (if by mail) for purposes of being considered timely, which is 60 days after the Notice Deadline.

33. “Claims Period” means the time for Settlement Class members to submit claims. The Claims Period shall run for 60 days after the Notice Deadline.

34. “Class Counsel” means:

KOPELOWITZ OSTROW P.A.  
Jeff Ostrow  
1 West Las Olas Blvd., Suite 500  
Fort Lauderdale, FL 33301

PEARSON WARSHAW, LLP  
Melissa S. Weiner  
328 Barry Avenue S., Suite 200  
Wayzata, MN 55391

TYCKO & ZAVAREEI, LLP  
Annick M. Persinger, Esq.  
1970 Broadway, Suite 1070  
Oakland, CA 94612

BARNES LAW GROUP, LLC  
Roy E. Barnes, Esq.  
31 Atlanta Street  
Marietta, GA 30060

35. “Class List” means a list of Settlement Class members who had an Unused Credit or Partial Unused Credit as of January 13, 2023. Delta shall prepare and provide the Class List to the Settlement Administrator for Notice using information in Delta’s Customer Care or Refund Databases. The Class List shall include the ticketholder’s name, postal address (if available), email address (if available), phone number (if available), ticket number, original ticket value, Unused Credit amount or Partial Unused Credit amount as of January 13, 2023, and 7% interest amount associated with the original ticket value. If Delta has a record of another postal address or email address associated with the ticketholder’s name, Delta shall include that information in the Class List.

36. “Class Period” means the period from March 1, 2020 through April 30, 2021.

37. “Class Representative” means Plaintiff, Angela Dusko. The Parties agree that, at the time she filed her Complaint against Delta, Plaintiff satisfied each of the criteria in the

Settlement Class definition, and that the date of the Complaint determines her membership in the Settlement Class.

38. “Court” means the United States District Court for the Northern District of Georgia.

39. “Credit Settlement Payment” means the credit amount owed to each Settlement Class Member who validly and timely submits a Claim Form that is approved by the Settlement Administrator and elects the Ticket Credit and Interest Credit option for an Unused Credit or Partial Unused Credit.

40. “Customer Care or Refund Databases” means the databases maintained by Delta in the ordinary course of its business containing the data reasonably necessary for Delta to confirm the ticketholders who requested a refund for a non-refundable ticket, did not receive the refund, and have an Unused Credit or Partial Unused Credit, making those ticketholders eligible for inclusion in the Settlement Class.

41. “Days” means calendar days, except that, when computing any period of time prescribed or allowed by this Agreement, the day of the act, event, or default from which the designated period of time begins to run shall not be included. Further, when computing any period of time prescribed or allowed by this Agreement, the last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday in the State of Georgia.

42. “Delta” means Defendant Delta Air Lines, Inc.

43. Delta’s Counsel means:

KING & SPALDING LLP  
David L. Balsler  
Charles Spalding, Jr.  
1180 Peachtree Street, NE  
Suite 1600  
Atlanta, GA 30309

KING & SPALDING LLP  
Julia C. Barrett  
500 W. Second Street  
Suite 1800  
Austin, Texas 78701

44. “Effective Date” means one business day following the latest of: (i) the date upon which the time expires for filing or noticing any appeal of the Final Approval Order and judgment; (ii) entry of the Final Approval Order and judgment if no parties have standing to appeal; or (iii) if any appeal, petition, request for rehearing, or other review has been filed, the Final Approval Order and judgment is affirmed without material change or the appeal is dismissed or otherwise disposed of, no other appeal, petition, rehearing, or other review is pending, and the time for further appeals, petitions, requests for rehearing, or other review has expired.

45. “Email Notice” means a short form of notice that shall be sent by the Settlement Administrator by email pursuant to the terms of the Notice Program in the form attached as *Exhibit 1*. Each Email Notice shall include a click through process to submit a Claim Form electronically, which is pre-populated with information necessary to make the claim.

46. “Final Approval” means the date of the Court’s entry of the Final Approval Order granting final approval to the Settlement and determines the amount of attorneys’ fees and costs awarded to Class Counsel and the amount of any Service Award to the Class Representative.

47. “Final Approval Hearing” is the hearing held before the Court wherein the Court will consider granting Final Approval to the Settlement and further determine the amount of attorneys’ fees and costs awarded to Class Counsel and the amount of any Service Award to the Class Representative.

48. “Final Approval Order” means the final order and judgment that the Court enters granting Final Approval to the Settlement. The proposed Final Approval Order shall be in a form agreed upon by the Parties and substantially in the form attached as an exhibit to the motion for Final Approval. Final Approval Order also includes the orders, which may be entered separately, determining the amount of attorneys’ fees and costs awarded to Class Counsel and the amount of any Service Award to the Class Representative.

49. “Interest Benefits” means the Interest Cash and Interest Credit options available to Settlement Class Members.

50. “Interest Cash” means a cash payment in an amount equal to 7% of the original ticket amount which will be made to certain Settlement Class Members who selected the Ticket Cash and Interest Cash option.

51. “Interest Credit” means a credit in an amount equal to 7% of the original ticket amount, valid for one year from issuance, which will be given to certain Settlement Class Members who selected the Ticket Credit and Interest Credit option.

52. “Long Form Notice” means the form of notice that shall be posted on the Settlement Website and shall be available to members of the Settlement Class by mail on request made to the Settlement Administrator in the form attached as *Exhibit 3*.

53. “Notice” or “Notices” means each of the notices (Email Notice, Postcard Notice, and Long Form Notice) that the Parties will ask the Court to approve in connection with the motion for Preliminary Approval of the Settlement.

54. “Notice Deadline” is the date on which the initial Notice to the members of the Settlement Class is to be accomplished, which shall be 45 days after the entry of the Preliminary Approval Order.

55. “Notice Program” means the methods provided for in this Agreement for giving the Notice and consists of Postcard Notice, Email Notice, Long Form Notice, and the Settlement Website (all defined herein), which shall be substantially in the forms as the exhibits attached to this Agreement.

56. “Opt-Out and Objection Deadline” means the date by which a request to opt-out of the Settlement must be sent to the Settlement Administrator to be excluded from the Settlement Class, and the date by which Settlement Class Members must file objections with the Court, if any,

to the Settlement. The Opt-Out and Objection Date shall be 35 days before the date originally set for the Final Approval Hearing.

57. “Partial Unused Credit” means the remaining portion of credit issued by Delta to Settlement Class members for a non-refundable ticket purchased with dollars on a flight scheduled to depart between March 1, 2020 through April 30, 2021 (a) that Delta cancelled; (b) who requested a refund for the ticket as reflected in Delta’s Customer Care or Refund Databases; and (c) was not refunded as of January 13, 2023.

58. “Party” means Plaintiff and Delta individually, and “Parties” means Plaintiff and Delta collectively.

59. “Plaintiff” means Angela Dusko.

60. “Postcard Notice” shall mean the short form of notice that shall be sent by the Settlement Administrator by U.S. mail pursuant to the terms of the Notice Program, substantially in the form attached as *Exhibit 2*. The Postcard Notice will have a pre-filled, postage prepaid tear off postcard to send back the Claim Form as an option for submitting a claim.

61. “Preliminary Approval” means the date of the Court’s entry of the Preliminary Approval Order that grants preliminary approval to the Settlement, conditionally certifies the Settlement Class, approves the Notice Program, Notices, and Claim Form, approves the procedures to opt-out from or object to the Settlement, and sets the Final Approval Hearing.

62. “Preliminary Approval Order” means the order granting Preliminary Approval of this Settlement, substantially in the form of the exhibit attached to the motion for Preliminary Approval.

63. “Released Claims” means any claims, liabilities, rights, demands, suits, obligations, damages, including but not limited to consequential damages, losses or costs, punitive damages, attorneys’ fees and costs, action or causes of action, penalties, remedies, of every kind or

description—whether known or Unknown Claims (as defined herein), suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, legal, administrative, statutory, or equitable—that relate to or arise from Delta’s cancellation of flights scheduled to depart between March 1, 2020 and April 30, 2021 and subsequent failure to issue refunds requested by the ticketholders holding non-refundable tickets on those flights.

64. “Releases” means all of the releases contained in Section XI of this Agreement.

65. “Service Award” means any Court-ordered payment to Plaintiff for serving as Class Representative, which is in addition to any Settlement Benefit due Plaintiff as a Settlement Class Member. The Parties recognize that Service Awards are currently prohibited by Eleventh Circuit law. Plaintiff intends to seek a Service Award pursuant to Georgia substantive law, absent a change in Eleventh Circuit law. This Settlement Agreement does not obligate Delta to pay any Service Award. Delta reserves its rights with respect to Plaintiff’s proposed application for a Service Award and will pay a Service Award only if ordered to do so by the Court.

66. “Settlement Administration Costs” means all costs and fees of the Settlement Administrator to be paid by Delta for the Notice Program and administration of the Settlement.

67. “Settlement Administrator” means Epiq Class Action & Claims Solutions, Inc. Class Counsel and Delta may, by agreement, substitute a different organization as Settlement Administrator, subject to approval by the Court if the Court has previously approved the Settlement preliminarily or finally. In the absence of agreement, either Class Counsel or Delta may move the Court to substitute a different organization as Settlement Administrator, upon a showing that the responsibilities of Settlement Administrator have not been adequately executed by the incumbent.

68. “Settlement Benefit” means the Ticket Cash, Ticket Credit, Interest Cash, and/or Interest Credit that a Settlement Class Member will receive under the Settlement.

69. “Settlement Class” means all ticketholders who are citizens of the United States

who received a credit for a non-refundable ticket purchased with dollars on a flight scheduled to depart between March 1, 2020 through April 30, 2021 (a) that Delta cancelled; (b) who requested a refund for the ticket as reflected in Delta's Customer Care or Refund Databases; (c) did not receive a refund; and (d) who had an Unused Credit or Partial Unused Credit as of January 13, 2023. Specifically excluded from the Settlement Class are the following: Delta and its respective subsidiaries and affiliates, members, employees, officers, directors, agents, and representatives and their family members; Class Counsel; the judges who have presided over the Action and their immediate family members; local, municipal, state, and federal governmental agencies; and all persons who have timely opted-out from the Settlement Class in accordance with the Court's orders.

70. "Settlement Class Member" means any member of the Settlement Class who has not opted-out of the Settlement and is entitled to receive a Settlement Benefit.

71. "Settlement Website" means the website dedicated to the Settlement to be created and maintained by the Settlement Administrator in accordance with the Notice Program

72. "Ticket Benefits" means the Ticket Cash and Ticket Credit options available to Settlement Class Members.

73. "Ticket Cash" means a cash refund of the Unused Credit or Partial Unused Credit.

74. "Ticket Credit" means a credit in the amount of the Unused Credit or Partial Unused Credit.

75. "Unknown Claims" means any and all Released Claims that any member of the Settlement Class does not know or suspect to exist in his or her favor related to the claims brought in the Action as of the Effective Date and which, if known by him or her, might have affected his or her decision(s) with respect to the Settlement.

76. "Unused Credit" means the full amount of credit issued by Delta to Settlement

Class members for a non-refundable ticket purchased with dollars on a flight scheduled to depart between March 1, 2020 through April 30, 2021 (a) that Delta cancelled; (b) who requested a refund for the ticket as reflected in Delta's Customer Care or Refund databases; and (c) was not refunded as of January 13, 2023.

**III. Certification of the Settlement Class**

77. For Settlement purposes only, Plaintiff and Delta agree to ask the Court to certify the Settlement Class and to appoint the Class Representative and Class Counsel under Federal Rule of Civil Procedure 23.

**IV. Settlement Benefits**

78. Subject to Court approval, Delta has agreed to the following consideration:

a. pay Cash Settlement Payments, as specified below, to certain Settlement Class Members;

b. provide Credit Settlement Payments, as specified below, to certain Settlement Class Members;

c. pay all Settlement Administration Costs, separate and apart from the Cash Settlement Payments and Credit Settlement Payments made directly to Settlement Class Members;

d. pay the Class Representative any Court-approved Service Award of up to \$3,000.00, which will be separate and apart from the Cash Settlement Payments and Credit Settlement Payments made directly to Settlement Class Members. Delta reserves its right to oppose any request for a service award and agrees to pay such award only to the extent ordered by the Court; and

e. pay Class Counsel \$2,285,000.00 for attorneys' fees and up to \$80,000.00 for litigation costs, subject to Court approval, which will be separate and apart from the

Cash Settlement Payments and Credit Settlement Payments made directly to Settlement Class Members.

**V. Settlement Approval**

79. After execution of this Agreement, Class Counsel shall promptly move the Court to enter the Preliminary Approval Order, which:

- a. preliminarily approves this Settlement, conditionally certifying the Settlement Class, finding that the proposed Settlement is likely to be approved as sufficiently fair, reasonable, and adequate to warrant Notice to the Settlement Class;
- b. directs that Notice be provided in a reasonable manner, as set forth herein, to all members of the Settlement Class who would be bound by the Settlement;
- c. schedules a Final Approval Hearing to consider the fairness, reasonableness, and adequacy of the proposed Settlement and Agreement and whether the Court should finally approve it;
- d. appoints the Settlement Administrator;
- e. approves the Notices, the content of which is without material alteration from *Exhibits 1-3* hereto, and directs the Settlement Administrator to publish the Notices in accordance with the Notice Program;
- f. approves the Claim Form, the content of which is without material alteration from *Exhibit 4* hereto, and sets a Claims Deadline;
- g. approves the creation of the Settlement Website;
- h. finds that the Notice Program to be implemented pursuant to this Agreement:
  - (i) is the best practicable notice, (ii) is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action and of their right to opt-out of or object to the proposed Settlement, (iii) is reasonable and constitutes due, adequate, and

sufficient notice to all persons entitled to receive notice, and (iv) meets all requirements of applicable law;

i. requires each member of Settlement Class who wishes to opt-out from the Settlement Class to submit an appropriate, timely request for exclusion, postmarked no later than 35 days before the date originally set for the Final Approval Hearing to the Settlement Administrator at the address on the Notice;

j. requires each Settlement Class Member who wishes to object to the fairness, reasonableness or adequacy of the Settlement or to the attorneys' fees and costs or Service Award to file or mail to the Clerk of the Court and mail to the Settlement Administrator no later than 35 days before the date originally set for the Final Approval Hearing, or as the Court may otherwise direct, a statement of the objection signed by the Settlement Class Member meeting the requirements set forth in the Preliminary Approval Order.

k. provides that any response to an objection shall be filed with the Court no later than 14 days before the Final Approval Hearing.

l. specifies that any Settlement Class Member who does not file a timely written objection to the Settlement or who fails to otherwise comply with the objection requirements set forth in the Preliminary Approval Order shall be foreclosed from seeking any adjudication or review of this Settlement by appeal or otherwise.

m. requires that any attorney hired by a Settlement Class Member will be at the Settlement Class Member's expense for the purpose of objecting to this Agreement, the proposed Settlement, or the Attorneys' Fees and Costs or Service Award;

n. requires that any attorney hired by a Settlement Class Member for the purpose of objecting to the proposed Settlement or to the attorneys' fees and costs and/or Service Award who intends to appear at the Final Approval Hearing to provide to the

Settlement Administrator (who shall forward it to Class Counsel and Delta's Counsel) and to file with the Clerk of the Court a notice of intention to appear (that may be included in the objection) no later than the Opt-Out and Objection Date or as the Court may otherwise direct;

o. requires any Settlement Class Member not represented by an attorney who files and serves a written objection and who intends to appear at the Final Approval Hearing to provide a notice of intention to appear (that may be included in the objection) to the Settlement Administrator (who shall forward it to Class Counsel and Delta's Counsel) and to file with the Clerk of the Court a notice of intention to appear (that may be included in the objection) no later than the Opt-Out and Objection Date or as the Court otherwise may direct;

p. directs the Settlement Administrator to establish a post office box in the name of the Settlement Administrator to be used for receiving opt-out requests, objections, notices of intention to appear, and any other communications, and providing that only the Settlement Administrator, Class Counsel, Delta's Counsel, Delta, the Court, the Clerk of the Court and their designated agents shall have access to this post office box, except as otherwise provided in this Agreement;

q. directs the Settlement Administrator to promptly furnish Class Counsel and Delta's Counsel with copies of any and all written requests for exclusion, notices of intention to appear or other communications that come into its possession, except as expressly provided in this Agreement;

r. directs that Class Counsel shall file their applications for the attorneys' fees and costs and Service Award for the Class Representative no later than 70 days before the date originally set for the Final Approval Hearing and in no event after the Objection

Deadline;

s. orders the Settlement Administrator to provide the list of those who have opted-out to Class Counsel and Delta's Counsel no later than 10 days before the date originally set for the Final Approval Hearing, and then Class Counsel to file with the Court the list of opt-outs with a declaration from the Settlement Administrator attesting to the completeness and accuracy thereof no later than three days before the Final Approval Hearing;

t. preliminarily enjoins all members of the Settlement Class unless and until they have timely opted-out from the Settlement Class from: (1) filing, commencing, prosecuting, intervening in or participating as plaintiff, claimant or class member in any other lawsuit or administrative, regulatory, arbitration or other proceeding in any jurisdiction based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to the Action and/or the Released Claims arising on or before the Preliminary Approval Date; and (2) attempting to effect opt-outs of a class of individuals in any lawsuit or administrative, regulatory, arbitration or other proceeding based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to the Action and/or the Released Claims. This Agreement is not intended to prevent members of the Settlement Class from participating in any action or investigation initiated by a state or federal agency.

u. orders that any Settlement Class Member who does not timely opt-out from the Settlement Class will be bound by all proceedings, orders and judgments in the Action, even if such Settlement Class Member has previously initiated or subsequently initiates individual litigation or other proceedings encompassed by the Releases; and

v. contains any additional provisions agreeable to the Parties that might be

necessary or advisable to implement the terms of this Agreement and the proposed Settlement.

**VI. Confirmatory Discovery**

80. Class Counsel and Delta already have engaged in significant informal discovery related to liability and damages. Delta will also provide a declaration of a corporate representative describing the manner in which members of the Settlement Class and their Unused Credits or Partial Unused Credits were identified using Delta's ticketing data and Customer Care and Refund Databases.

**VII. Settlement Administrator**

81. The Parties have agreed to have Epiq Class Action & Claims Solutions, Inc. serve as the Settlement Administrator, and will request that the Court appoint the Settlement Administrator. The Settlement Administrator was selected following a competitive bidding process that involved solicitation of two notice and claims administration proposals. The Settlement Administrator has provided Class Counsel and Delta's Counsel with a class notice program (the "Notice Program"). A copy of the Notice Program is attached hereto as *Exhibit 5*.

82. The Settlement Administrator shall, under the joint supervision of Class Counsel and Delta, administer various aspects of the Settlement as described in the next paragraph and perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement, including, but not limited to, effectuating the Notice Program and distributing the Cash Settlement Payments as provided herein.

83. The duties of the Settlement Administrator, in addition to other responsibilities that are described in the preceding paragraph and elsewhere in this Agreement, are as follows:

- a. use the name and address information for members of the Settlement Class provided by Delta in the Class List in connection with the Notice Program approved by the

Court, for the purpose of mailing the Postcard Notice and sending the Email Notice, and reminder Notices. The Settlement Administrator may request the assistance of Class Counsel and Delta, which reasonable cooperation will be given, to identify members of the Settlement Class; to facilitate providing direct notice to the Settlement Class; and to accomplish such other purposes as may be approved by Delta and Class Counsel.

b. retain a record of the implementation of the Notice Program procedures and provide periodic updates to the Parties during the Notice period and Claims Period;

c. send the required CAFA notices on Delta's behalf and confirm compliance with CAFA;

d. process Claim Forms and oversee the Claim Form Submission Process as described more fully below;

e. establish and maintain a post office box to receive opt-out requests or objections from the Settlement Class;

f. respond to any mailed or emailed Settlement Class member inquiries;

g. process all opt-out requests from the Settlement Class and determine their timeliness;

h. provide weekly reports to Class Counsel and Delta that summarize the number of opt-out requests received that week, the total number of opt-out requests received to date, the number of objections received that week, the total number of objections received to date, the number of Claim Forms submitted that week, the number of Claim Forms submitted to date, the number of Claim Forms approved and denied, the number of Claim Form deficiency notices sent out, and other pertinent information;

i. in advance of the Final Approval Hearing, prepare a declaration or affidavit to submit to the Court confirming that the Notice Program was completed, describing how

the Notice Program was completed, providing the names of each member in the Settlement Class who timely and properly opted-out from the Settlement Class and each Settlement Class Member who served an objection, detailing the number of Claim Forms that were timely and validly submitted and the number that were denied, and other information as may be necessary to allow the Parties to seek and obtain Final Approval;

j. distribute Cash Settlement Payments by check or electronic payment to certain Settlement Class Members;

k. provide to Delta a detailed list of Settlement Class Members who submitted timely and valid Claim Forms that have been approved, along with the type(s) and amount(s) of the Settlement Benefit due each Settlement Class Member, if any, and instruct Delta to send the Settlement Administrator the funds necessary to pay certain Settlement Class Members their Cash Settlement Payments.

l. invoice Delta for payment of Settlement Administration Costs, as provided in the Agreement; and

m. any other Settlement-administration-related function at the instruction of Class Counsel and Delta, including, but not limited to, verifying that the Cash Settlement Payments have been distributed, cashed, or remain uncashed.

84. All costs for the Notice Program shall be paid by Delta as part of Delta's agreement to pay all Settlement Administration Costs.

#### **VIII. Notice to Settlement Class**

85. Delta will make available to Class Counsel and the Settlement Administrator the Class List no later than 10 days after entry of the Preliminary Approval Order for the Notice Program. To the extent necessary, Delta will cooperate with updating the Class List to accomplish the Notice Program and otherwise administer the Settlement.

86. As soon as practicable after entry of the Preliminary Approval Order, at the direction of Class Counsel and Delta's Counsel, the Settlement Administrator shall implement the Notice Program provided herein, using the forms of Notice approved by the Court. The Notice shall include, among other information: a description of the material terms of the Settlement; the Opt-Out and Objection Deadline; the means by which Settlement Class Members may submit Claim Forms and the Claims Deadline; the date on which the Final Approval Hearing is scheduled to occur; and the Settlement Website address at which Settlement Class members may access this Agreement, the electronic Claim Form, and other related documents and information. The Settlement Administrator shall insert the correct dates and deadlines in the Notice before the Notice Program commences, based upon the dates and deadlines set by the Court in the Preliminary Approval Order. Notices provided under or as part of the Notice Program shall not bear or include the Delta logo or trademarks or the return address of Delta, or otherwise be styled to appear to originate from Delta. The Notices shall include the opt-out and objection procedures as detailed in this Section.

87. The initial Email Notice or Postcard Notice shall be sent to each member of the Settlement Class no later than 45 days after entry of the Preliminary Approval Order. This is the Notice Deadline.

88. Each member of the Settlement Class shall receive direct Notice as follows:

a. For members of the Settlement Class for which Delta has both an email address and postal address, the Settlement Administrator shall send a Postcard Notice via U.S. Mail and up to two reminder Email Notices to those of these members who have *not* submitted a Claim Form as of the date reminder Email Notices are scheduled to be sent, as specified herein. If the same postal address is provided in the Class List for more than one member of the Settlement Class, separate Postcard Notices identifying the ticketholder

name shall be sent so that each such member of the Settlement Class receives separate Notice. If the Postcard Notice is returned undeliverable, and the Settlement Administrator is unable to obtain an alternative postal address to send the initial Postcard Notice, then initial and reminder Email Notices shall be sent in the manner described in subpart b. of this paragraph.

b. For members of the Settlement Class for which Delta has only an email address, the Settlement Administrator shall send an Email Notice and up to two reminder Email Notices to those of these members who have *not* submitted a Claim Form as of the date reminder Email Notices are scheduled to be sent. If the same email address is provided in the Class List for more than one member of the Settlement Class, separate Email Notices identifying the ticketholder name shall be sent so that each such member of the Settlement Class receives separate Notice. Where required, the first reminder Email Notice shall be sent 21 days after the initial notice, and the second reminder notice shall be sent 21 days after the first reminder notice.

c. For members of the Settlement Class for which Delta has only a postal address, the Settlement Administrator shall send a Postcard Notice via U.S. Mail and one reminder Postcard Notice to those of these members who have *not* submitted a Claim Form as of the date reminder Postcard Notices are scheduled to be sent. Where required, the reminder Postcard Notice shall be sent 21 days after the initial Postcard Notice.

89. The Email Notices and Postcard Notices, including any required first and second reminder Notices, shall be completed 87 days after the Preliminary Approval Order.

90. The Long Form Notice shall be available on the Settlement Website or at the request of a Settlement Class member.

91. To account for the possibility that Delta does not have an email address, postal

address, or both, for some members of the Settlement Class, the Parties agree to work with the Settlement Administrator to obtain contact information.

92. The Notice Program requires that the Settlement Administrator ensure that Claim Forms are de-duplicated in advance of sending any reminder Email Notices or Postcard Notices, and to ensure that more than one claim is not approved for a single ticket.

93. Notices shall advise Settlement Class members that they must update their mailing and email addresses with the Settlement Administrator in the event that they change addresses between the date they submit a Claim Form and 60 days following the Effective Date.

94. The Settlement Administrator shall perform reasonable address traces for Postcard Notices that are returned as undeliverable. By way of example, a reasonable tracing procedure would be to run addresses of returned postcards through the Lexis/Nexis database that can be utilized for such purpose.

95. The Email Notice, Postcard Notice, and Long Form Notice shall be in forms approved by the Court, and substantially similar to the notice forms attached hereto as *Exhibits 1-3*. The Parties may by mutual written consent make non-substantive changes to the Notices without Court approval. A Spanish language translation of the Long Form Notice shall be available on the Settlement Website and be provided to members of the Settlement Class who request it from the Settlement Administrator.

96. The Settlement Administrator shall maintain a database showing mail and email addresses to which each Notice was sent and any Notices that were not delivered by mail or email. In addition to weekly updates to the Parties regarding the progress of the Notice Program and the declaration or affidavit by the Settlement Administrator in advance of the Final Approval Hearing and in support of the motion for Final Approval, a summary report of the Notice Program shall be provided to the Parties three days prior to the Final Approval Hearing. Upon request of the Parties,

the Settlement Administrator shall provide a supplemental declaration or affidavit before the Final Approval Hearing to update any Notice Program statistics after the motion for Final Approval is filed. The database maintained by the Settlement Administrator regarding the Notices shall be available to the Parties and the Court upon request. It shall otherwise be confidential and shall not be disclosed to any third party. To the extent the database is provided to Class Counsel, it shall be kept confidential, not be shared with any third party and used only for purposes of implementing the terms of this Agreement, and shall not be used for any other purposes.

97. The Settlement Administrator shall ensure that the information that it receives from Delta, Class Counsel, and/or Settlement Class members is secured and managed in such a way as to protect the security and confidentiality of the information, consistent with applicable law. Except as specifically provided in this Agreement, the Settlement Administrator shall not disclose or disseminate any information that it receives from Delta, Class Counsel, and/or the Settlement Class members without prior written consent of the Parties or by order of the Court.

98. Settlement Website. No later than 44 days after entry of the Preliminary Approval Order, the Settlement Administrator shall establish and make live the Settlement Website, which shall be an Internet website concerning the settlement utilizing an easily recognized domain name. The URL of the Settlement Website shall be [airlineticketsettlement.com](http://airlineticketsettlement.com), or such other URL as Class Counsel and Delta agree upon in writing. The Settlement Website shall be maintained by the Settlement Administrator until 300 days after the Effective Date. The domain name of the Settlement Website shall be included in all Notices. The Settlement Website shall provide, at a minimum: (i) information concerning deadlines for opting out of or objecting to the Settlement or for submitting a Claim Form, and the dates and locations of relevant Court proceedings, including the Final Approval Hearing; (ii) the toll-free phone number applicable to the Settlement; (iii) copies of the Settlement Agreement, the Notices, the Claim Form, Court orders regarding this

Settlement, and other relevant Court documents which the Parties agree or the Court orders be posted, including the motion or Final Approval and Class Counsel's application for attorneys' fees and costs and a Service Award; and (iv) information concerning the procedure to submit Claim Forms, including the ability to submit Claim Forms electronically.

99. **Toll-Free Telephone Number.** No later than 44 days after entry of the Preliminary Approval Order, the Settlement Administrator shall establish a toll-free telephone number and facility that will provide members of the Settlement Class with information and direct them to the Settlement Website. Prior to initial Notice being sent to members of the Settlement Class, Delta shall train its customer service representatives to direct Settlement-related questions to the Settlement Website address and the toll-free phone number that the Settlement Administrator will establish. Delta will maintain this procedure through the distribution of Settlement Benefits following the Effective Date of the Settlement. The toll-free telephone number shall be included on the Settlement Website and in the Notices. The telephone facility shall be capable of providing answers to frequently asked questions including general information concerning the deadline to submit a Claim Form, opting out of or objecting to the Settlement, and the dates and locations of relevant Court proceedings, including the Final Approval Hearing. The toll-free number shall be maintained by the Settlement Administrator during the time period that the Settlement Website is active.

100. **Opt-Outs.** A member of the Settlement Class who wishes to opt-out of the Settlement must do so on or before the Opt-Out and Objection Deadline. To opt-out, a Settlement Class member must inform the Settlement Administrator in writing that he or she wishes to be excluded from the Settlement Class, sending that request by U.S. Mail, post-marked no later than the Opt-Out and Objection Deadline, or by private courier (*e.g.*, Federal Express), shipped no later than the Opt-Out and Objection Deadline. The opt-out request must be personally signed by the

member of the Settlement Class and contain the name, postal address, telephone number, a brief statement identifying membership in the Settlement Class, and a statement that indicates a desire to be excluded from the Settlement Class. A member of the Settlement Class may opt out on an individual and personal basis only; so-called “mass” or “class” opt-outs shall not be allowed.

a. Except for those members of the Settlement Class who timely and properly submit an opt-out request, all other members of the Settlement Class will be deemed to be Settlement Class Members for all purposes under the Agreement, and upon the Effective Date, will be bound by its terms, regardless of whether they file a Claim Form or receive any Settlement Benefit.

b. Any member of the Settlement Class who properly opts-out of the Settlement Class shall not: (i) be bound by any orders or judgments entered in the Action or relating to the Settlement; (ii) be entitled to relief under, or be affected by, the Agreement; (iii) gain any rights by virtue of the Agreement; or (iv) be entitled to object to any aspect of the Settlement. Any statement or submission purporting or appearing to be both an objection and an opt-out shall be treated as a request for exclusion.

101. **Objections.** Objections to the Settlement or to the application for attorneys’ fees, costs, and/or the Service Award must be filed or mailed to the Clerk of the Court and mailed to the Settlement Administrator. For an objection to be considered by the Court, the objection must be submitted no later than the Opt-Out and Objection Deadline, as specified in the Notice. If submitted by mail, an objection shall be deemed to have been submitted when posted if received with a postmark date on or before the Opt-Out and Objection Deadline indicated on the envelope if mailed first class, postage prepaid and addressed in accordance with the instructions. If submitted by private courier (*e.g.*, Federal Express), an objection shall be deemed to have been submitted on the shipping date reflected on the shipping label.

- a. For an objection to be considered by the Court, the objection must also set forth:
    - i. the Settlement Class Member's printed name, address, email address (if any), and telephone number;
    - ii. whether the Settlement Class Member is represented by counsel and, if so, contact information for his or her counsel;
    - iii. evidence showing that the objector is a Settlement Class Member;
    - iv. whether the objection applies to that Settlement Class Member or to a specific subset of the Settlement Class, or to the entire Settlement Class, and state with specificity the grounds for the objection;
    - v. any other supporting papers, materials, or brief that the Settlement Class Member wishes the Court to consider when reviewing the objection;
    - vi. the actual written or electronic signature of the Settlement Class Member making the objection (the counsel's signature is not sufficient); and
    - vii. if that Settlement Class Member and/or his or her counsel intends to appear at the Final Approval Hearing, a statement notifying the Parties and the Court of that intention to appear (this may be filed separately).
  - b. Any Settlement Class Member who fails to file and timely serve a written objection as detailed in the Notice shall not be permitted to object to the approval of the Settlement and shall be foreclosed from seeking any review of the Settlement or the terms of the Agreement by appeal or other means.
  - c. Any Settlement Class Member who fails to file and timely serve a notice of intention to appear (which may be included in the written objection) as detailed in the Notice shall not be permitted to appear at the Final Approval Hearing.
102. The Settlement Administrator shall provide Class Counsel and Delta's Counsel

with copies of all opt-out requests and objections to counsel for the Parties on a weekly basis by email.

**IX. Claim Form Submission Process and Calculation and Payment of Settlement Benefits**

103. Settlement Class Members will receive Settlement Benefits on a claims-made basis. Delta shall determine, based on its records, including in Delta's Customer Care or Refund Databases, the identities of members of the Settlement Class who had an Unused Credit or Partial Unused Credit as of January 13, 2023, to create a Class List for Notice. The Parties agree that a ticketholder who receives Notice of the Settlement based on the records provided by Delta for the Class List shall be irrebuttably deemed a member of the Settlement Class and eligible to submit a Claim Form requesting Settlement Benefits.

104. To receive a Settlement Benefit, Settlement Class Members must submit Claim Forms by the Claims Deadline. In their Claim Forms, Settlement Class Members must attest that they are U.S. residents, and that the covered flight(s) identified in the Claim Form was cancelled by Delta, that a cash refund was requested, and that the refund was not received. The Claim Form shall be in the form attached as *Exhibits 4*.

105. Settlement Class Members who submit a valid Claim Form will have options for each eligible ticket for which Delta issued a credit and for 7% interest as follows:

a. **Ticket Benefits.** For the remaining credit amount as of the Claims Deadline for each eligible ticket, Settlement Class Members who submit Claim Forms shall select either a Ticket Cash option or a Ticket Credit option as follows:

i. **Ticket Cash Option.**

1. Settlement Class Members with an Unused Credit shall receive a cash refund of the Unused Credit amount as of the Claims Deadline to be paid at the Settlement Class Member's election after the Effective Date.

2. Settlement Class Members with a Partial Unused Credit shall receive the remaining Partial Unused Credit amount as of the Claims Deadline to be paid at the Settlement Class Member's election after the Effective Date.

3. Settlement Class Members who elect the Ticket Cash option will have their Unused or Partial Unused Credits frozen by Delta within 14 days after the Claims Deadline. Within 45 days following the Claims Deadline, Delta and the Settlement Administrator shall work together to update the Class List to reflect which Unused Credits and Partial Unused Credits are frozen based on which Settlement Class Members elected Ticket Cash. If the Settlement does not become effective, any Unused Credit or Partial Unused Credit for which Ticket Cash was elected will be maintained by the Settlement Class Member for one year from the date of any final order in which the Settlement was rejected. Within 30 days after the Settlement is rejected, Delta shall unfreeze the Unused Credits and Partial Unused Credits. The Settlement Administrator shall provide notice via email to those Settlement Class Members of the new deadline to use the Unused Credit or Partial Unused Credits.

ii. **Ticket Credit Option.**

1. Settlement Class Members with an Unused Credit shall retain the Unused Credit amount that, pursuant to Delta's current policy, must be used by December 31, 2023 for travel no later than December 31, 2024. Any future extension of Delta's current policy for expiration of credits shall also apply to Settlement Class Members.

2. Settlement Class Members with a Partial Unused Credit shall retain the remaining Partial Unused Credit amount that, pursuant to Delta's current policy,

must be used by December 31, 2023 for travel no later than December 31, 2024. Any future extension of Delta's current policy for expiration of credits shall also apply to Settlement Class Members.

3. Unused Credits and Partial Unused Credits will not be frozen pending Preliminary Approval or Final Approval, allowing those Settlement Class Members to continue to use them. If the Settlement does not become effective, any Unused Credit or Partial Unused Credit for which a Ticket Credit was elected will not be extended past December 31, 2023 for travel no later than December 31, 2024 unless in the future Delta's extends its current policy with respect to the expiration of credits.

iii. **Settlement Class Members with No Unused Credit Amount.** Settlement Class Members who no longer have an Unused Credit or Partial Unused Credit as of the Claims Deadline will be eligible to receive either Interest Cash or Interest Credit based on the election made on the Claim Form, but they will no longer be eligible for Ticket Cash or Ticket Credit.

b. **Interest Benefits:** Settlement Class Members who elect the Ticket Cash option shall receive Interest Cash and who elect the Ticket Credit option shall receive Interest Credit as follows:

i. **Interest Cash Option.** For both Unused Credits and Partial Unused Credits, Settlement Class Members shall receive a cash payment in an amount equal to 7% of the original ticket amount to be paid at the Settlement Class Member's election after the Effective Date.

ii. **Interest Credit Option.** For both Unused Credits and Partial Unused Credits, Settlement Class Members shall receive a credit in an amount equal to 7% of

the original ticket amount valid for one year from the date of issuance.

c. **Settlement Class Members With Multiple Credits.** When making a claim, a Settlement Class Member with more than one eligible Unused Credit and/or Partial Unused Credit shall have the right to elect the Ticket Cash option or Ticket Credit option as to each eligible credit, and that election will mean that Interest Cash or Interest Credit is selected, respectively.

d. **Non-Claimants.** Any member of the Settlement Class that does not make a claim by the Claims Deadline shall be entitled to redeem the Unused Credit or Partial Unused Credit pursuant to Delta's then current policy, including the credit expiration date (currently passengers have until December 31, 2023 to book travel through December 31, 2024), but the failure to timely submit a Claim Form means there is no entitlement to Interest Cash or Interest Credit.

106. A blank Claim Form shall also be available for members of the Settlement Class to fill in and submit themselves electronically or by mail. Use of the blank Claim Form must meet all of this Agreement's requirements for the Claim Submission Process.

107. The Settlement Administrator shall make the final determination as to whether a Claim form is timely and complete and should be approved consistent with the terms of this Agreement. Delta will not audit the validity of claims that are timely filed, except to advise the Settlement Administrator of the amount of the Unused Credit or Partial Unused Credit. The Settlement Administrator shall establish a reasonable procedure to determine whether any duplicate Claim Forms are submitted. In the event any Settlement Class Members submit duplicate Claim Forms, provided that at least one of those Claim Forms is timely submitted and completed within the requirements of this Agreement, then the Settlement Administrator shall approve the claim. Issues regarding the validity of Claim Forms that cannot be resolved by the Settlement

Administrator shall be submitted to Delta's Counsel and Class Counsel for resolution and, if no resolution is reached, to the Court.

108. The Settlement Administrator shall review and evaluate each Claim Form for timeliness and completeness. If the Settlement Administrator determines a timely Claim Form is incomplete, the Settlement Administrator will take reasonable and customary steps to notify the member of the Settlement Class one time of the deficiency by written email notification when possible or otherwise by mail to the postal address provided, requesting the additional information necessary to cure the deficiency. Notification of the deficiency shall occur within 30 days after the Claims Deadline or within 30 days of receipt of a timely postmarked response, whichever is later. To cure the deficiency, the Claim Form deficiency response must be submitted via the online claim portal on the Settlement Website or postmarked within 20 days after the date of the emailed or mailed deficiency notice, failing which the claim will be denied. If the member of the Settlement Class acts to cure the deficiency, and the Settlement Administrator thereafter determines that the Claim Form is complete, the Settlement Administrator shall accept the Claim Form. Claim Forms shall be reviewed and evaluated for deficiencies in the order in which they are received, to the extent practicable. Class Counsel and Delta's Counsel shall have the right to review the Claim Forms received by the Settlement Administrator at any time. The Settlement Administrator shall have the right to confer with Class Counsel and Delta's Counsel with respect to any Claim Form.

109. **Fraudulent or Misleading Claims.** If the Settlement Administrator suspects fraud or misleading conduct with respect to any Claim Form, the Settlement Administrator will immediately bring the claim to the attention of Class Counsel and Delta's Counsel, who shall meet and confer with the Settlement Administrator concerning the claim, including whether the claim should be denied. Class Counsel and Delta's Counsel reserve the right to bring the claim to the

attention of the Court.

110. The calculation and implementation of the Settlement Benefits contemplated by this section shall be done by Class Counsel and Delta, with the assistance of the Settlement Administrator, for the purpose of compensating Settlement Class Members whose Claim Forms are approved. The methodology provided for herein will be applied to the data as consistently, sensibly, and conscientiously, as reasonably possible, recognizing and taking into consideration the nature and completeness of the data and the purpose of the computations.

111. No Settlement Class Member shall have any claim against Delta, Delta's Counsel, Plaintiff, Class Counsel, and/or the Settlement Administrator based on any determinations, distributions, or awards made with respect to any claim. For the avoidance of doubt, in no event shall Plaintiff, Class Counsel, Delta, or Delta's Counsel, have any liability for any claims of wrongful conduct (whether intentional, reckless, or negligent) on the part of the Settlement Administrator or its agents.

112. As soon as practicable but no later than 90 days after the Effective Date, Delta shall provide Interest Credit to eligible Settlement Class Members. Delta shall serve Class Counsel with a declaration certifying its compliance with this obligation no later than 90 days after the Effective Date. Notice of the issuance and expiration date for the Interest Credit shall then be sent by the Settlement Administrator via an email sent to each Settlement Class Member receiving the Interest Credit with instructions on how to use the Interest Credit. The instructions should be consistent with Delta's regular policy for its customers to use airfare credits, which requires credits to be used within one year of issuance.

113. As soon as practicable but no later than 15 days after the Effective Date, Delta shall send the funds necessary for the Settlement Administrator to pay the full amount of the Cash Settlement Payments to Settlement Class Members whose approved Claim Forms require such

payments.

114. As soon as practicable but no later than 60 days after the Effective Date, the Settlement Administrator shall pay the Cash Settlement Payments to all Settlement Class Members entitled to Ticket Cash and/or Interest Cash. Cash Settlement Payments will be made by electronic payment or check, with the request as to the form of payment being made when the Settlement Administrator sends each Settlement Class Member who elected Cash Settlement Payment(s) an email confirming the Effective Date of the Settlement has occurred and the dollar amount to be paid. The parties anticipate that the email will provide Settlement Class Members with more than one option for the receipt of an electronic payment. Settlement Class Members will be sent an email confirming the completion of an electronic payment. When requested, checks will be issued and mailed by the Settlement Administrator with an appropriate legend, in a form approved by Class Counsel and Delta's Counsel, to indicate that it is from the Settlement, and will be sent to the address submitted by the Settlement Class Member when requesting a check form of payment following the Effective Date. Checks shall be valid for 180 days.

115. In the event of any complications arising in connection with the issuance or cashing of a check, other than the Settlement Class Member's failure to timely deposit or cash the check, or if electronic payments cannot be delivered using the information supplied on the Claim Form, the Settlement Administrator shall proceed to resolve the dispute using its best practices and procedures to ensure that the funds are fairly and properly distributed to the Settlement Class Member entitled to the Cash Settlement Payments. In the event the Settlement Administrator is unable to resolve the dispute, it shall provide written notice to Class Counsel and Delta's Counsel. If an electronic payment cannot be completed to the Settlement Class Member, the Settlement Administrator shall issue a check for the Cash Settlement Payment using the address supplied by the Settlement Class Member and notify the Settlement Class Member via email that the check

was mailed.

116. For any returned checks, the Settlement Administrator shall make a reasonable effort to locate a current mailing address for the Settlement Class Members whose checks were returned (such as by running addresses of returned check through the NCOA database to effectuate delivery of such checks). For any such check recipients for whom updated addresses are found, the Settlement Administrator shall make only one additional attempt to re-mail or re-issue a Cash Settlement Payment to the updated address. Notwithstanding the above, should a Settlement Class Member change his or her address or electronic payment information from that provided on the Claim Form after the date the Claim Form was submitted and before 60 days after the Effective Date without also updating his or her address with the Settlement Administrator, such Settlement Class Member may not receive payment.

117. Any uncashed or undeliverable checks remaining 210 days after final issuance, and any electronic payments that are not successfully delivered, shall be paid to a *cy pres* recipient subject to agreement of the Parties and approval of the Court. The Parties shall each propose a *cy pres* recipient to receive 50% of the residual funds.

**X. Final Approval Order and Judgment**

118. Plaintiff's motion for Preliminary Approval of the Settlement will include a request to the Court for a scheduled Final Approval Hearing date. Pursuant to the schedule set by the Court in its Preliminary Approval Order and no later than 70 days before the original date set for the Final Approval Hearing, Class Counsel shall file a motion requesting that the Court grant Final Approval of the Settlement and for entry of the Final Approval Order and a final judgment. That motion will include Class Counsel's application for attorneys' fees and costs and for a Service Award for the Class Representative. At the Final Approval Hearing, the Court will hear argument on Plaintiff's motion for Final Approval of the Settlement, and on Class Counsel's application for

attorneys' fees and costs and for the Service Award for the Class Representative. In the Court's discretion, the Court also will hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement or to Class Counsel's application for attorneys' fees and costs and a Service Award, provided the objector(s) submitted timely objection(s) that meets all of the requirements listed in the Notice and requested to appear at the Final Approval Hearing. An objector's decision not to appear at the Final Approval Hearing does not mean that the Court will not consider the timely objection.

119. At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order granting Final Approval of the Settlement and the final judgment thereon, and whether to approve Class Counsel's request for attorneys' fees, costs, and Service Award. Such proposed Final Approval Order shall, among other things:

- a. determine that the Settlement is fair, adequate, and reasonable;
- b. finally certify the Settlement Class for Settlement purposes only;
- c. determine that the Notice Program satisfies due process requirements;
- d. bar and enjoin the Settlement Class Members from asserting any of the Released Claims; bar and enjoin Settlement Class Members from pursuing any Released Claims against Delta or its affiliates at any time, including during any appeal from the Final Approval Order; bar and enjoin Delta from pursuing any of the claims Delta released against Settlement Class Members; and retain jurisdiction over the enforcement of the Court's injunctions;
- e. release the Parties from the claims specified in Section XI of this Agreement; and
- f. reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including Delta, all Settlement Class Members, and all objectors, to

administer, supervise, construe, and enforce this Agreement in accordance with its terms.

**XI. Releases**

120. As of the Effective Date, all Settlement Class Members and the Class Representative, on behalf of themselves, their heirs, assigns, executors, administrators, predecessors, and successors, and any other person purporting to claim on their behalf, hereby expressly, generally, absolutely, and unconditionally release and discharge any and all Released Claims against Delta and its current, former, and future affiliates, parents, subsidiaries, representatives, officers, agents, directors, partners, principals, employees, insurers, successors, assigns, and attorneys, except for claims relating to the enforcement of the Settlement.

121. As of the Effective Date, Delta and its representatives, officers, agents, directors, partners, affiliates, successors, subsidiaries, parents, employees, insurers, and attorneys hereby expressly, generally, absolutely, and unconditionally release and discharge Settlement Class Members, the Class Representative, and Class Counsel from any claims arising out of or relating in any way to the institution, prosecution, or settlement of the claims against Delta as set forth in the operative complaint, except for claims relating to the enforcement of the Settlement.

122. With respect to any and all Released Claims, the Parties stipulate and agree that upon the Effective Date, all Settlement Class Members shall have waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, the District of Columbia, or principle of common law or otherwise, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542. Class Representative and Class Counsel acknowledge, and each Settlement Class Member by operation of law shall be deemed to have acknowledged, that the inclusion of Unknown Claims in the definition of Released Claims was separately bargained for and was a key element of the Agreement.

123. The Parties understand that if the facts upon which this Agreement is based are

found hereafter to be different from the facts now believed to be true, each Party expressly assumes the risk of such possible difference in facts, and agrees that this Agreement, including the releases contained herein, shall remain effective notwithstanding such difference in facts. The Parties agree that in entering this Agreement, it is understood and agreed that each Party relies wholly upon its own judgment, belief, and knowledge and that each Party does not rely on inducements, promises, or representations made by anyone other than those embodied herein.

124. Each Settlement Class Member is barred and permanently enjoined from bringing on behalf of themselves, or through any person purporting to act on their behalf or purporting to assert a claim under or through them, any of the Released Claims against Delta in any forum, action, or proceeding of any kind.

125. The Parties agree that it is in the best interests of the Settlement Class Members that the above releases will be effective before Settlement Benefits are received because the releases are limited to the Released Claims and payments will be automatic and made within 60 days of the Effective Date.

**XII. Payment of Attorneys' Fees and Costs and Service Award**

126. Class Counsel will file an application for attorneys' fees and costs and a Service Award no later than 70 days before the date originally set for the Final Approval Hearing, which Delta has agreed to pay separately to Class Counsel. That application shall be posted on the Settlement Website.

127. Delta's obligation to pay \$2,285,000.00 for attorneys' fees and reimburse Class Counsel \$80,000.00 for costs, subject to Court approval, shall be payable separate and apart from the direct Settlement Benefits (i.e. Cash Settlement Payments and Credit Settlement Payments) available to Settlement Class Members, thereby ensuring that the Settlement Class Members receive 100% of the direct Settlement Benefits they claim. The Parties agree that the Court's failure

to approve, in whole or in part, any award for attorneys' fees or costs shall not prevent the Agreement from becoming effective, nor shall it be grounds for termination.

128. The procedure for and the allowance or disallowance by the Court of any application for attorneys' fees and costs is not a material term of the Settlement or Agreement and is not a condition of this Agreement that any particular application for attorneys' fees and costs be approved. If an application for attorneys' fees and costs is approved by the Court, Class Counsel shall provide W-9 Forms to the Settlement Administrator prior to such payment.

129. Attorneys' fees and costs approved by the Court shall be paid by Delta within 7 days after the Effective Date. Class Counsel shall thereafter distribute attorneys' fees and costs as they deem appropriate. Under no circumstances will Delta be liable to Class Counsel, or any other attorney or law firm, for, because of, relating to, concerning, or as a result of any payment or allocation of attorneys' fees and costs made in accordance with this Agreement; and Class Counsel, and each of them, release Delta from any and all disputes or claims because of, relating to, concerning, or as a result of any payment or allocation of attorneys' fees and costs made pursuant to this Agreement.

130. Plaintiff may seek a Service Award of up to \$3,000.00 to be paid separately by Delta, subject to Court approval of the amount. Within 7 days of the Effective Date, Delta shall pay the Service Award to the Class Representative. The Service Award shall be paid to the Class Representative in addition to the Class Representative's Settlement Benefit. The Parties agree that the Court's failure to approve a Service Award, in whole or in part, shall not prevent the Agreement from becoming Effective, nor shall it be grounds for termination.

131. Any order or proceedings relating to the applications for attorneys' fees and costs and Service Award, or any appeal from any order relating thereto or reversal or modification thereof, will not operate to terminate or cancel this Agreement, or affect or delay the finality of

Judgment approving the Agreement and the Settlement.

132. The Parties negotiated and reached agreement regarding attorneys' fees and costs and the Service Award only after reaching agreement on all other material terms of this Settlement.

**XIII. Termination of Settlement**

133. This Settlement may be terminated by either Class Counsel or Delta by serving on counsel for the opposing Party and filing with the Court a written notice of termination within 15 days (or such longer time as may be agreed in writing between Class Counsel and Delta) after any of the following occurrences:

- a. Plaintiff and Delta agree to termination;
- b. the Court rejects, materially modifies, materially amends or changes, or declines to grant preliminarily or finally approve the Settlement;
- c. an appellate court vacates or reverses the Final Approval Order, and the Settlement is not reinstated and finally approved without material change by the Court on remand within 360 days after such reversal;
- d. any court incorporates into, or deletes or strikes from, or modifies, amends, or changes, the Preliminary Approval Order, Final Approval Order, or the Settlement in a way that Class Counsel or Delta seeking to terminate the Settlement reasonably considers material. Notwithstanding anything to the contrary, the reasoning or authority relied upon by any court in entering the Preliminary Approval Order or Final Approval Order shall not be considered material for termination of the Settlement;
- e. the Effective Date does not occur; or
- f. any other ground for termination provided for elsewhere in this Agreement.

134. If the Settlement does not receive final and non-appealable Court approval, Delta shall not be obligated to make any payments or provide any other monetary or non-monetary relief

to Plaintiff or the Settlement Class Members, any attorneys' fees or costs to Class Counsel, or a Service Award to the Class Representative.

**XIV. Effect of a Termination**

135. In the event of a termination, this Agreement shall be considered null and void; all of Plaintiff's, Class Counsel's, and Delta's obligations under the Settlement shall cease to be of any force and effect; and the Parties shall return to the status *quo ante* in the Action as if the Parties had not entered into this Agreement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement rights, claims, and defenses will be retained and preserved.

136. In the event of termination, Delta shall have no right to seek reimbursement from Plaintiff, Class Counsel, or the Settlement Administrator, for Settlement Administration Costs paid by Delta. Delta shall however remain responsible for any Settlement Administrator invoices that were outstanding at the time of the termination.

137. The Settlement shall become effective on the Effective Date unless earlier terminated in accordance with the provisions hereof.

138. In the event the Settlement is terminated in accordance with the provisions of this Agreement, any discussions, offers, or negotiations associated with this Settlement shall not be discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose. In such event, all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court.

**XV. No Admission of Liability**

139. Delta denies any fault, wrongdoing, or liability to Plaintiff or the Settlement Class Members for monetary damages or other relief, but Delta believes that the proposed Settlement is desirable in order to avoid the further significant burden, expense, risk, and inconvenience of protracted litigation, and the distraction and diversion of its personnel and resources.

140. Class Counsel believe that the claims asserted in the Action have merit, and they have examined and considered the benefits to be obtained under the proposed Settlement set forth in this Agreement, the risks associated with the continued prosecution of this complex, costly, and time-consuming litigation, and the likelihood of success on the merits of the Action. Class Counsel fully investigated the facts and law relevant to the merits of the claims, conducted significant informal discovery, and conducted independent investigation of the challenged practices. Class Counsel concluded that the proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class members.

141. The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties either previously or in connection with the negotiations or proceedings connected with this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability, or wrongdoing of any kind whatsoever.

142. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by the Plaintiff or Settlement Class Members, or of any wrongdoing or liability of Delta; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of Delta, in the Action or in any proceeding in any court, administrative agency, or other tribunal.

143. In addition to any other defenses Delta may have at law, in equity, or otherwise, to the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and it may be used as the basis for an injunction against, any action, suit or other proceeding that may be instituted, prosecuted, or attempted in breach of this Agreement or the Releases contained

herein.

**XIX. Miscellaneous Provisions**

144. **Gender and Plurals.** As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

145. **Binding Effect.** This Agreement shall be binding upon, and inure to for the benefit of, the successors and assigns of the releasing parties and the released parties as set forth in the Releases herein.

146. **Cooperation of Parties.** The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, uphold Court approval, and do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement.

147. **Obligation to Meet and Confer.** Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have met and conferred in good faith to resolve the dispute.

148. **Integration.** This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

149. **No Conflict Intended.** Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

150. **Governing Law.** Except as otherwise provided herein, the Agreement shall be construed in accordance with, and be governed by, the laws of the State of Georgia, without regard to the principles thereof regarding choice of law.

151. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts. Original signatures are not required. Any ink or electronic signature submitted by facsimile or through email of an Adobe PDF shall be deemed an original.

152. **Jurisdiction.** The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation, and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Program and the Settlement Administrator. As part of its agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose. The Court shall retain jurisdiction over the enforcement of the Court's injunction barring and enjoining all Settlement Class Members from asserting any of the Released Claims and from pursuing any Released Claims against Delta at any time, including during any appeal from the Final Approval Order and judgment.

153. **Notices.** All notices to counsel provided for herein, shall be sent by email with a hard copy sent by overnight mail to:

**Notices to Plaintiff:**

KOPELOWITZ OSTROW P.A.  
Jeff Ostrow  
1 West Las Olas Blvd., Suite 500  
Fort Lauderdale, FL 33301

PEARSON WARSHAW, LLP  
Melissa S. Weiner  
328 Barry Avenue S., Suite 200  
Wayzata, MN 55391

TYCKO & ZAVAREEI, LLP  
Annick M. Persinger, Esq.  
1970 Broadway, Suite 1070  
Oakland, CA 94612

BARNES LAW GROUP, LLC  
Roy E. Barnes, Esq.  
31 Atlanta Street  
Marietta, GA 30060

**Notices to Delta:**

KING & SPALDING LLP  
David L. Balsler  
Charles Spalding, Jr.  
1180 Peachtree Street, NE  
Suite 1600  
Atlanta, GA 30309

KING & SPALDING LLP  
Julia C. Barrett  
500 W. Second Street  
Suite 1800  
Austin, Texas 78701

The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, opt-out requests, or other filings received as a result of the Notice Program.

154. **Modification and Amendment.** This Agreement may not be amended or modified, except by a written instrument signed by Class Counsel and Delta's Counsel and, if the Settlement has been approved preliminarily by the Court, approved by the Court.

155. **No Waiver.** The waiver by any Party of any breach of this Agreement by another Party shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

156. **Authority.** Class Counsel (for the Plaintiff and the Settlement Class Members), and Delta's Counsel (for Delta), represent and warrant that the persons signing this Agreement on their behalf have full power and authority to bind every person, partnership, corporation, or entity included within the definitions of Plaintiff and Delta to all terms of this Agreement. Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

157. **Agreement Mutually Prepared.** Neither Plaintiff nor Delta, nor any of them, shall

be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

158. **Independent Investigation and Decision to Settle.** The Parties understand and acknowledge that they: (a) have performed an independent investigation of the allegations of fact and law made in connection with this Action; and (b) that even if they may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Action as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. Delta has provided and is providing information that Plaintiff reasonably requests to identify the members of the Settlement Class and the Settlement Benefits that they are entitled to claim. It is the Parties' intention to resolve their disputes in connection with this Action pursuant to the terms of this Agreement now and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.

159. **Receipt of Advice of Counsel.** Each Party acknowledges, agrees, and specifically warrants that he, she, or it has fully read this Agreement and the Releases contained herein, received independent legal advice with respect to the advisability of entering into this Agreement and the Releases, and the legal effects of this Agreement and the Releases, and fully understands the effect of this Agreement and the Releases.

*Signature Page Follows*

Dated: May 18, 2023

*Angela Dusko*

ANGELA DUSKO  
*Plaintiff*

Dated: May 18, 2023

*Jeffrey Ostrow*

Jeffrey Ostrow (May 18, 2023 10:19 EDT)

Jeff Ostrow, Esq.  
KOPELOWITZ OSTROW P.A.  
*Class Counsel*

Dated: May 18, 2023

*Melissa Weiner*

Melissa Weiner (May 18, 2023 09:30 CDT)

Melissa S. Weiner, Esq.  
PEARSON WARSHAW, LLP  
*Class Counsel*

Date: May 18, 2023

*Annick Persinger*

Annick Persinger (May 18, 2023 16:04 PDT)

Annick M. Persinger, Esq.  
TYCKO & ZAVAREEI LLP  
*Class Counsel*

Dated: May 19, 2023

*Roy Barnes*

Roy Barnes (May 19, 2023 11:14 EDT)

Roy E. Barnes, Esq.  
BARNES LAW GROUP, LLC  
*Class Counsel*

Dated: \_\_\_\_\_

DELTA AIR LINES, INC.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

David L. Balsler, Esq.  
*Counsel for Defendant*

Dated: \_\_\_\_\_

\_\_\_\_\_  
ANGELA DUSKO  
*Plaintiff*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Jeff Ostrow, Esq.  
KOPELOWITZ OSTROW P.A.  
*Class Counsel*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Melissa S. Weiner, Esq.  
PEARSON WARSHAW, LLP  
*Class Counsel*

Date: \_\_\_\_\_

\_\_\_\_\_  
Annick M. Persinger, Esq.  
TYCKO & ZAVAREEI LLP  
*Class Counsel*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Roy E. Barnes, Esq.  
BARNES LAW GROUP, LLC  
*Class Counsel*

Dated: 5/25/23

\_\_\_\_\_  
*Gary Bunce*  
DELTA AIR LINES, INC.

\_\_\_\_\_  
GARY BUNCE

By: \_\_\_\_\_  
Its: Asst. Gen. Counsel

Dated: 5/25/2023

\_\_\_\_\_  
*David L. Balsler*  
David L. Balsler, Esq.  
*Counsel for Defendant*

# Exhibit 1

**Email Notice**

To: <<Class Member Email>>

From: Settlement Administrator <noreply@xxxxxxxxxxxx.com>

Subject: Dusko v. Delta Air Lines Class Action and Settlement Notice

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**Court-Approved Legal Notice**

**If you are a Delta Air Lines, Inc. ticketholder who requested a refund but instead received a credit for a non-refundable ticket, purchased for a flight scheduled to depart between March 1, 2020, through April 30, 2021, that was cancelled by Delta, you may be eligible to receive benefits from a class action settlement.**

*Si desea recibir esta notificación en español, llámenos 1-XXX-XXX-XXXX o visite nuestra página web [www.xxxxxxxxxxxxxxx.com](http://www.xxxxxxxxxxxxxxx.com).*

A Settlement has been reached in a class action lawsuit filed against Delta Air Lines, Inc. (“Delta”). The lawsuit alleges that Delta breached its contracts of carriage with ticketholders by refusing requests for refunds and instead providing credits for future travel on the airline for flights Delta cancelled in the wake of the COVID-19 pandemic. Delta denies all allegations and has agreed to settle this lawsuit to avoid further litigation. The Court has not decided who is right.

**You are Receiving this Notice Because Delta’s Records Indicate You may be a Settlement Class Member.** You are a Settlement Class member if you are a ticketholder who is a citizen of the United States who received a credit for a non-refundable ticket purchased with dollars on a flight scheduled to depart between March 1, 2020 through April 30, 2021 (a) that Delta cancelled; (b) who requested a refund for the ticket as reflected in Delta’s Customer Care or Refund Databases; (c) did not receive a refund; and (d) who had an Unused Credit and/or Partial Unused Credit as of January 13, 2023.

**What Does the Settlement Provide?** If you are a Settlement Class member, you can submit a Claim Form to receive:

1) **Cash Settlement Payment:** Ticket Cash - a cash refund of the remaining Unused Credit and/or Partial Unused Credit as of Month DD, 20YY, and Interest Cash - a cash payment in an amount equal to 7% of the original ticket amount; **or**

2) **Credit Settlement Payment:** Ticket Credit – the amount of the Unused Credit and/or Partial Unused Credit that will remain as a credit and must be used by December 31, 2023, for travel no later than December 31, 2024; and Interest Credit - a credit in an amount equal to 7% of the original ticket amount, valid for one year from issuance.

**Your Options.** If you are a Settlement Class member, you can submit a Claim Form [here](#) or by mail. Your Claim Form must be filed [online](#) or mailed and postmarked by **Month DD, 20YY**. You will need to enter your Unique ID <<UniqueID>> on your Claim Form. After you enter your Unique ID, details from Delta's records regarding your ticket(s) that are eligible for a Settlement Benefit will be displayed for your ease of filing your electronic Claim Form online or printable Claim Form to be mailed.

If you do *not* want a Settlement Benefit, and you want to keep the right to sue or continue to sue Delta on your own about the legal issues in this case, you must "exclude yourself" by filing an opt-out request postmarked or shipped by **Month DD, 20YY**. If you do not exclude yourself, you will remain in the Settlement Class and will give up the right to sue Delta about the legal issues in this case. It also means the Court's orders will apply to you and legally bind you. If you do not exclude yourself, you may object to the Settlement. The deadline to object is **Month DD, 20YY**.

The Court will hold a Final Approval Hearing on **Month DD, 20YY**, at **x:00 x.m.**, to hear objections and arguments concerning the fairness of the proposed Settlement, including the amount requested by Class Counsel for attorneys' fees and costs. If there are objections, the Court will consider them. You do not need to attend this hearing. If you file an objection that includes a notice of intention to appear, you may attend the Final Approval Hearing, and you may ask to speak, but you do not have to speak. After the hearing, the Court will decide whether to approve the Settlement. This notice summarizes the Settlement and your rights.

More information is available at the [Settlement Website](#) or by calling toll-free 1-xxx-xxx-xxxx.

# Exhibit 2

Dusko v. Delta Air Lines  
Settlement Administrator  
PO Box XXXX  
Portland, OR 972XX-XXXX

**Court-Approved Legal Notice**

If you are a Delta Air Lines, Inc. ticketholder who requested a refund but instead received a credit for a non-refundable ticket, purchased for a flight scheduled to depart between March 1, 2020, through April 30, 2021, that was cancelled by Delta, you may be eligible to receive benefits from a class action settlement.

*Si desea recibir esta notificación en español, llámenos 1-XXX-XXX-XXXX o visite nuestra página web [www.xxxxxxxxxxxxxx.com](http://www.xxxxxxxxxxxxxx.com).*

<<MAIL ID>>  
<<NAME 1>>  
<<NAME 2>>  
<<ADDRESS LINE 1>>  
<<ADDRESS LINE 2>>  
<<ADDRESS LINE 3>>  
<<ADDRESS LINE 4>>  
<<ADDRESS LINE 5>>  
<<CITY, STATE ZIP>>  
<<COUNTRY>>

CLAIM FORM

Please confirm that the address information provided here is correct. If not, please update your name and/or address at www.\*\*\*\*\*.com.

Our records show that you are a ticketholder for <<TicketCount>> ticket(s) totaling <<XXXX>>. To receive a Settlement Benefit for your ticket(s), you must complete and submit a Claim Form postmarked by MONTH DD, 20YY. You can return this Claim Form by mail or submit it online at www.\*\*\*\*\*.com. You must select either a Cash Benefit OR a Credit Benefit for your ticket(s) listed below, not both for each ticket.

Table with columns: Ticket No., Flight Date, Ticket Amount, Remaining Credit, Cash Benefit OR Credit Benefit. Rows include Ticket1t, Ticket2t, Ticket3t, Ticket4t and corresponding FlightD1, FlightD2, FlightD3, FlightD4, Cost1t, Cost2t, Cost3t, Cost4t, Credit1t, Credit2t, Credit3t, Credit4t.

If you select a Cash Benefit (not a Credit Benefit), you will receive an email at <<EMAIL ADDRESS>> after the Court grants final approval prompting you to select whether you want to receive a digital payment, or a paper check.

ATTENTION: I am a U.S. resident, and the covered flight(s) identified above was cancelled by Delta, a cash refund was requested from Delta previously, and a refund was not received.

Signature \_\_\_\_\_ Date \_\_\_\_\_

A Settlement has been reached in a class action lawsuit filed against Delta Air Lines, Inc. ("Delta"). The lawsuit alleges that Delta breached its contracts of carriage with ticketholders by refusing requests for refunds and instead providing credits for future travel on the airline for flights Delta cancelled in the wake of the COVID-19 pandemic. Delta denies all allegations and has agreed to settle this lawsuit to avoid further litigation. The Court has not decided who is right.

**You are Receiving this Notice Because Delta's Records Indicate You may be a Settlement Class Member.** You are a Settlement Class member if you are a ticketholder who is a citizen of the United States who received a credit for a non-refundable ticket purchased with dollars on a flight scheduled to depart between March 1, 2020 through April 30, 2021 (a) that Delta cancelled; (b) who requested a refund for the ticket as reflected in Delta's Customer Care or Refund Databases; (c) did not receive a refund; and (d) who had an Unused Credit and/or Partial Unused Credit as of January 13, 2023.

**What Does the Settlement Provide?** If you are a Settlement Class member, you can submit a Claim Form to receive:

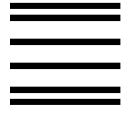
- 1) **Cash Settlement Payment:** Ticket Cash - a cash refund of the remaining Unused Credit and/or Partial Unused Credit as of Month DD, 20YY; and Interest Cash - a cash payment in an amount equal to 7% of the original ticket amount; **or**
- 2) **Credit Settlement Payment:** Ticket Credit - the amount of the Unused Credit and/or Partial Unused Credit that will remain as a credit and must be used by December 31, 2023, for travel no later than December 31, 2024; and Interest Credit - a credit in an amount equal to 7% of the original ticket amount, valid for one year from issuance.

**Your Options.** If you are a Settlement Class member, you can submit a Claim Form at [www.wwxxxxxxxx.com](http://www.wwxxxxxxxx.com) or by mail. Your Claim Form must be filed online or mailed and postmarked by **Month DD, 20YY**. If you do *not* want a Settlement Benefit, and you want to keep the right to sue or continue to sue Delta on your own about the legal issues in this case, you must "exclude yourself" by filing an opt-out request postmarked or shipped by **Month DD, 20YY**. If you do not exclude yourself, you will remain in the Settlement Class and will give up the right to sue Delta about the legal issues in this case. It also means the Court's orders will apply to you and legally bind you. If you do not exclude yourself, you may object to the Settlement. The deadline to object is **Month DD, 20YY**.

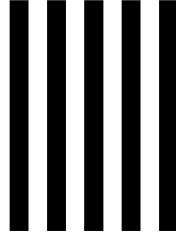
The Court will hold a Final Approval Hearing on **Month DD, 20YY**, at **x:00 x.m.**, to hear objections and arguments concerning the fairness of the proposed Settlement, including the amount requested by Class Counsel for attorneys' fees and costs. If there are objections, the Court will consider them. You do not need to attend this hearing. If you file an objection that includes a notice of intention to appear, you may attend the Final Approval Hearing, and you may ask to speak, but you do not have to speak. After the hearing, the Court will decide whether to approve the Settlement. This notice summarizes the Settlement and your rights.

More information is available at [www.wwxxxxxxxx.com](http://www.wwxxxxxxxx.com) or by calling toll-free **1-xxx-xxx-xxxx**.

[www.wwxxxxxxxx.com](http://www.wwxxxxxxxx.com) • **1-XXX-XXX-XXXX**



NO POSTAGE  
NECESSARY  
IF MAILED  
IN THE  
UNITED STATES



**FIRST-CLASS MAIL PERMIT NO. 581 PORTLAND, OR**  
**BUSINESS REPLY MAIL**

POSTAGE WILL BE PAID BY ADDRESSEE

DUSKO V. DELTA AIR LINES  
SETTLEMENT ADMINISTRATOR  
PO BOX XXXX  
PORTLAND, OR 972XX-XXXX

**DELTA**



# Exhibit 3

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF GEORGIA

**If you are a Delta Air Lines, Inc. ticketholder who requested a refund but instead received a credit for a non-refundable ticket, purchased for a flight scheduled to depart between March 1, 2020, through April 30, 2021, that was cancelled by Delta, you may be eligible to receive benefits from a class action settlement.**

*A federal court has authorized this Notice. This is not a solicitation from a lawyer. Your legal rights are affected whether you act or do not act. Please read this Notice carefully.*

- A Settlement has been reached in a class action lawsuit filed against Delta Air Lines, Inc. (“Delta”). The lawsuit alleges that Delta breached its contracts of carriage with ticketholders by refusing requests for refunds and instead providing credits for future travel on the airline for flights Delta cancelled in the wake of the COVID-19 pandemic. Delta denies all allegations and has agreed to settle this lawsuit to avoid further litigation. The Court has not decided who is right.
- You are a Settlement Class member if you are a ticketholder who is a citizen of the United States who received a credit for a non-refundable ticket purchased with dollars on a flight scheduled to depart between March 1, 2020 through April 30, 2021 (a) that Delta cancelled; (b) who requested a refund for the ticket as reflected in Delta’s Customer Care or Refund Databases; (c) did not receive a refund; and (d) who had an Unused Credit and/or Partial Unused Credit as of January 13, 2023.
- If you are a Settlement Class member, you can submit a Claim Form to receive Settlement Benefits in the form of a Cash Settlement Payment or Credit Settlement Payment. If you have more than one eligible Unused Credit and/or Partial Unused Credit, you can select a Cash Settlement Payment or Credit Settlement Payment for each such credit:

**1. Cash Settlement Payment.**

- **Ticket Cash:** This is a cash refund of the remaining Unused Credit and/or Partial Unused Credit as of **Month DD, 20YY**, [Claims Deadline]; and
- **Interest Cash:** This is a cash payment in an amount equal to 7% of the original ticket amount.

**2. Credit Settlement Payment.**

- **Ticket Credit:** This is the amount of the Unused Credit and/or Partial Unused Credit that will remain as a credit and must be used by December 31, 2023, for travel no later than December 31, 2024; and
- **Interest Credit:** This is a credit in an amount equal to 7% of the original ticket amount, valid for one year from issuance.

YOUR RIGHTS AND CHOICES		DEADLINE
<b>Submit a Claim Form</b>	The only way to get a Settlement Benefit is to submit a timely and valid Claim Form.	Submit a Claim Form by: <b>Month DD, 20YY</b>
<b>Exclude Yourself (Opt-Out)</b>	Get no Settlement Benefit but keep any right to file your own lawsuit against Delta about the legal claims in this case.	Submit an Opt-Out Request by: <b>Month DD, 20YY</b>
<b>Object</b>	Tell the Court why you do not like the Settlement. You may still file a Claim Form for a Settlement Benefit.	File an Objection by: <b>Month DD, 20YY</b>
<b>Attend A Hearing</b>	If you object, you can ask to speak in Court about why you do not support the proposed Settlement. You must file a notice of intention to appear.	File Notice of Intention to Appear by: <b>Month DD, 20YY</b>
<b>Do Nothing</b>	Get no Settlement Benefit. Give up legal rights.	

- These rights and options—and the deadlines to exercise them—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Settlement Benefits will be issued to those Settlement Class Members who submitted timely and valid Claim Forms if the Court approves the Settlement and after appeals are resolved. Please be patient.

**Questions? Call 1-xxx-xxx-xxxx, or Visit [www.xxxxxxxxxx.com](http://www.xxxxxxxxxx.com)**

**WHAT THIS NOTICE CONTAINS**

**BASIC INFORMATION ..... PAGE x**

- 1. Why should I read this Notice?
- 2. What is this lawsuit about?
- 3. What is a class action?
- 4. Why is there a Settlement?

**WHO IS IN THE SETTLEMENT ..... PAGE x**

- 5. Am I part of the Settlement?
- 6. What if I am still not sure whether I am part of the Settlement?

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- 23. How do I get more information?

## BASIC INFORMATION

### 1. Why should I read this Notice?

A Court has preliminarily established, or “certified,” this case as a class action lawsuit for purposes of settlement. This Notice explains the class action lawsuit, the proposed Settlement, your legal rights, what benefits are available, who is eligible for the benefits, and how to get the benefits. If you are a Settlement Class member, you have legal rights and options before the Court decides whether to give final approval to the proposed Settlement. This Notice explains all of these things. For the precise terms and conditions of the Settlement, please review the Settlement Agreement, available at [www.xxxxxxxxxx.com](http://www.xxxxxxxxxx.com).

The Court in charge of this case is the United States District Court for the Northern District of Georgia. The lawsuit is known as *Dusko v. Delta Air Lines, Inc.*, No. 1:20-cv-01664-ELR.

### 2. What is this lawsuit about?

The lawsuit alleges that Delta breached its contracts of carriage with ticketholders by refusing requests for refunds and instead providing credits for future travel on the airline for flights Delta cancelled in the wake of the COVID-19 pandemic. Delta denies all allegations and has agreed to settle this lawsuit to avoid further litigation. The Court has not decided who is right.

### 3. What is a class action?

In a class action lawsuit, one or more person called the named plaintiff sues on behalf of other persons and entities that have similar claims. The people and entities together are a “Settlement Class.” In this lawsuit, the person who sued is called the “named plaintiff” or the “Class Representative,” which means Plaintiff, Angela Dusko. The company being sued, Delta Air Lines, Inc. (“Delta”) is called the “Defendant.” One court resolves the issues for everyone in the Settlement Class, except for those people who choose to exclude themselves (opt-out) from the Settlement Class.

### 4. Why is there a Settlement?

The Court has not decided in favor of the Class Representative or Delta. Instead, both sides agreed to a Settlement. By agreeing to settle, both sides avoid the cost and risk of a trial, and Settlement Class Members who submit a timely and valid Claim Form will get Settlement Benefits. The Class Representative and Class Counsel believe the Settlement is best for the Settlement Class and represents a fair, reasonable, and adequate resolution of the lawsuit.

Delta has denied, and continues to deny, all allegations of liability, wrongdoing, and damage. Without admitting or conceding any liability or damages, and without admitting any wrongdoing, Delta has agreed to settle the lawsuit and agrees to the terms and conditions of the Settlement Agreement to avoid the substantial expense, inconvenience, burden, and disruption of continued litigation.

## WHO IS IN THE SETTLEMENT?

To see if you are eligible for benefits, you first have to determine if you are a Settlement Class member.

### 5. Am I part of the Settlement?

You are a Settlement Class member if you are a ticketholder who is a citizen of the United States who received a credit for a non-refundable ticket purchased with dollars on a flight scheduled to depart between March 1, 2020 through April 30, 2021 (a) that Delta cancelled; (b) who requested a refund

**Questions? Call 1-xxx-xxx-xxxx, or Visit [www.xxxxxxxxxx.com](http://www.xxxxxxxxxx.com)**

for the ticket as reflected in Delta's Customer Care or Refund Databases; (c) did not receive a refund; and (d) who had an Unused Credit or Partial Unused Credit as of January 13, 2023.

Specifically excluded from the Settlement Class are the following: Delta and its respective subsidiaries and affiliates, members, employees, officers, directors, agents, and representatives and their family members; Class Counsel; the judges who have presided over the Action and their immediate family members; local, municipal, state, and federal governmental agencies; and all persons who have timely opted-out from the Settlement Class in accordance with the Court's orders.

## 6. What if I am still not sure whether I am part of the Settlement?

If you are still not sure whether you are a Settlement Class member, you may go to the Settlement Website at [www.xxxxxxxx.com](http://www.xxxxxxxx.com) or call the Settlement Administrator's toll-free telephone number at 1-xxx-xxx-xxxx.

## THE SETTLEMENT BENEFITS – WHAT YOU GET

### 7. What does the Settlement provide?

Delta will provide Settlement Benefits to eligible Settlement Class Members who file a timely and valid Claim Form with a Cash Settlement Payment (Ticket Cash and Interest Cash) or a Credit Settlement Payment (Ticket Credit and Interest Credit). Delta will also pay for all Settlement Administrative Costs, attorneys' fees and costs, and any Service Award, which are all separate and apart from the Cash Settlement Payments and Credit Settlement Payment to Settlement Class Members.

### 8. What can I get from the Settlement?

Settlement Class Members who submit a timely and valid Claim Form will have the following Settlement Benefit options for each eligible ticket. You may request a Cash Settlement Payment or Credit Settlement Payment for each eligible ticket. A Cash Settlement Payment includes Ticket Cash and Interest Cash. A Credit Settlement Payment includes keeping the Ticket Credit and receiving an Interest Credit.

**1. Cash Settlement Payment:** You may receive a cash payment if you select the Ticket Cash and Interest Cash option for an Unused Credit and/or Partial Unused Credit.

- **Ticket Cash:** This is a cash refund of the remaining Unused Credit and/or Partial Unused Credit. The amount of the cash refund will be the remaining Unused Credit amount and/or Partial Unused Credit amount as of **Month DD, 20YY**, [Claims Deadline].

If you select the Ticket Cash option, your Unused and/or Partial Unused Credits will be frozen by Delta within 14 days after the Claim Deadline.

If you no longer have any Unused Credit and/or Partial Unused Credit as of **Month DD, 20YY**, [Claims Deadline], you will only be eligible to receive Interest Cash, not Ticket Cash.

- **Interest Cash:** If you select to receive Ticket Cash, you will also receive Interest Cash in the form of a cash payment in an amount equal to 7% of the original ticket amount for both Unused Credits and Partial Unused Credits.

**2. Credit Settlement Payment:** You may receive a credit if you submit a timely and valid Claim Form, and you select the Ticket Credit and Interest Credit option for both an Unused Credit or Partial Unused Credit.

**Questions? Call 1-xxx-xxx-xxxx, or Visit [www.xxxxxxxx.com](http://www.xxxxxxxx.com)**

- **Ticket Credit:** This is the amount of the Unused Credit and/or Partial Unused Credit which you will keep as a credit, which must be used by December 31, 2023, for travel no later than December 31, 2024.

**NOTE:** If the Effective Date of the Settlement does not occur, that deadline will not be extended unless in the future Delta’s extends its current policy with respect to the expiration of credits.

- **Interest Credit:** If you select to maintain your Ticket Credit, you will receive an Interest Credit in a credit in an amount equal to 7% of the original ticket amount for both Unused Credits and Partial Unused Credits, valid for one year from issuance.

### **Multiple Credits**

If you have more than one eligible Unused Credit and/or Partial Unused Credit, you can select a Cash Settlement Payment or Credit Settlement Payment for each credit.

**Please note:** If you are a member of the Settlement Class and you do not file a Claim Form by the deadline, you can still redeem any Unused Credit or Partial Unused Credit pursuant to Delta’s policy, which allows until December 31, 2023, to book travel through December 31, 2024. However, if you do not file a Claim Form by the deadline, you are not entitled to Interest Cash or Interest Credit.

Per the terms of the Settlement, if any funds remain after all Cash Settlement Payments are made from uncashed or undeliverable checks or electronic payments not successfully delivered to Settlement Class Members, the remaining funds will be donated to a recipient(s) approved by the Court.

## **HOW TO GET BENEFITS FROM THE SETTLEMENT**

### **9. How can I get my Settlement Benefit?**

If you are a Settlement Class Member, you must fill out and submit a Claim Form to qualify for a Settlement Benefit. You can file your electronic Claim Form at [www.xxxxxxxxxx.com](http://www.xxxxxxxxxx.com). If you received a notice of this Settlement via email, there is a link on that email to access the Claim Form. You will need to enter the Unique ID assigned to you on the electronic Claim Form. You can also return the paper Claim Form, postage prepaid if you received a postcard notice for the Settlement. You can also receive a paper Claim Form from the Settlement Website or get one by calling the Settlement Administrator at xxx-xxx-xxxx. The completed Claim Form must be submitted online by **Month DD, 20YY**, or mailed to the following address, **postmarked** by **Month DD, 20YY**.

Dusko v. Delta Air Lines Settlement Administrator  
PO Box xxxx  
Portland, OR 97xxx-xxxx

### **10. When will I receive my Settlement Benefit?**

The Court will hold a hearing on **Month DD, 20YY**, at **x:00 x.m.** (which is subject to change), to decide whether to finally approve the Settlement. Even if the Court finally approves the Settlement, there may be appeals. The appeal process can take time, perhaps more than a year. If you file a timely and valid Claim Form, you will not receive a Settlement Benefit until any appeals are resolved. Please be patient.

### **11. What am I giving up to receive a Settlement Benefit?**

Unless you exclude yourself (“opt-out”) from the Settlement Class by timely submitting an opt-out request, you will remain in the Settlement Class, and that means you cannot sue, continue to sue or

**Questions? Call 1-xxx-xxx-xxxx, or Visit [www.xxxxxxxxxx.com](http://www.xxxxxxxxxx.com)**

be part of any other lawsuit against Delta about the legal issues in this case, including the Releases that are defined and described in legal terms in Section **XI** of the Settlement Agreement, which is available at [www.xxxxxxxxxx.com](http://www.xxxxxxxxxx.com). It also means that all of the Court’s orders will apply to you and legally bind you.

## THE LAWYERS REPRESENTING YOU

### 12. Do I have lawyers in this case?

The Court has appointed attorneys from the law firms of Kopelowitz Ostrow P.A.; Pearson Warshaw, LLP; Tycko & Zavareei, LLP; and Barnes Law Group, LLC to represent you and the other Settlement Class Members. The lawyers are called Class Counsel. They are experienced in handling similar class action cases. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

You may contact Class Counsel if you have any questions about this Notice or the Settlement. ***Please do not contact the Court.***

<p>KOPELOWITZ OSTROW P.A.                  Jeff Ostrow                  1 West Las Olas Blvd., Suite 500                  Fort Lauderdale, FL 33301                  (954) 525-4100                  ostrow@kolawyers.com</p>	<p>PEARSON WARSHAW, LLP                  Melissa S. Weiner                  328 Barry Avenue S., Suite 200                  Wayzata, MN 55391                  (612) 389-0600                  mweiner@pwfirm.com</p>
<p>TYCKO &amp; ZAVAREEI, LLP                  Annick M. Persinger, Esq.                  1970 Broadway, Suite 1070                  Oakland, CA 94612                  (510) 250-3316                  apersinger@tzlegal.com</p>	<p>BARNES LAW GROUP, LLC                  Roy E. Barnes, Esq.                  31 Atlanta Street                  Marietta, GA 30060                  (770) 227-6375                  roy@barneslawgroup.com</p>

### 13. How will the lawyers be paid?

Class Counsel will ask the Court for an award of attorneys’ fees of \$2,285,000 and costs of \$80,000. Attorneys’ fees and costs approved by the Court will be paid by Delta, separate from the Settlement Benefits available to Settlement Class Members. Class Counsel may also ask the Court for a Service Award of up to \$3,000 for the Plaintiff. The purpose of the Service Award is to compensate the Plaintiff for serving as Class Representative. Any Service Award payment to the Plaintiff will be paid by Delta, separate from the Settlement Benefits available to Settlement Class Members. The Court may deny or award less than these amounts. Class Counsel’s Motion for Attorneys’ Fees and Costs and Service Award for the Class Representative will be available at [www.xxxxxxxxxx.com](http://www.xxxxxxxxxx.com) once it has been filed.

## YOUR RIGHTS – EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do *not* want a Settlement Benefit and want to keep the right to sue or continue to sue Delta on your own about the legal issues in this case, then you must take steps to exclude yourself from the Settlement (get out of the Settlement). This is called “excluding yourself” or “opting out” of the Settlement Class.

#### 14. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must send a written “opt-out request” that must include the following:

- Your name;
- Your postal address;
- Your telephone number;
- A brief statement identifying membership in the Settlement Class;
- A statement that indicates a desire to exclude yourself from the Settlement Class; and
- Your personal signature as a member of the Settlement Class

Your opt-out must be mailed via U.S. Mail, **postmarked** or if by private courier (such a Federal Express), **shipped** no later than **Month DD, 20YY**, to:

Dusko v. Delta Air Lines Settlement Administrator  
Opt-Out Requests  
PO Box xxxxx  
Portland, OR 97xxx-xxxx

Only individual requests to opt-out by a member of the Settlement Class on a personal basis are allowed. “Mass” or “class” opt-outs are not allowed according to the terms of the Settlement.

If you do not follow these procedures and the deadline, you will be a Settlement Class Member and lose any opportunity to exclude yourself from the Settlement. This means that your rights will be determined in this lawsuit by the Settlement Agreement if it receives final approval from the Court, even if you do not submit a Claim Form.

#### 15. If I exclude myself, can I get anything from this Settlement?

No. If you opt-out of the Settlement, you cannot receive a Settlement Benefit. However, you may sue, continue to sue, or be part of a different lawsuit against Delta.

### YOUR RIGHTS – OBJECTING TO THE SETTLEMENT

#### 16. How do I tell the Court that I do not like the Settlement?

If you are a Settlement Class Member, you can object to the Settlement or to the application for attorneys’ fees and costs, and/or the Service Award. You can give reasons why you think the Court should not approve it. The Court will consider your views. You cannot ask the Court for a different Settlement; the Court can only approve or reject the Settlement. If the Court denies approval of the Settlement, no Settlement Benefits will be provided, and the lawsuit will continue. If that is what you want to happen, you must object.

To object, you must file a written objection, which includes the following information:

- Your printed name, address, email address (if any), and telephone number;
- A statement of whether you are represented by counsel and if so, contact information for your counsel;
- Evidence showing you as an objector are a Settlement Class Member;

**Questions? Call 1-xxx-xxx-xxxx, or Visit [www.xxxxxxxxxx.com](http://www.xxxxxxxxxx.com)**

- A statement as to whether your objection applies to you as a Settlement Class Member or if it applies to a specific subset of the Settlement Class, or to the entire Settlement Class, and state with specificity the grounds for the objection;
- Any other supporting papers, materials, or brief that you wish the Court to consider when reviewing your objection;
- Your actual written or electronic signature as the objector (counsel’s signature is not sufficient); and
- A statement regarding whether you and/or your counsel intend to appear at the Final Approval Hearing.

Your objection must be filed with or mailed to the Clerk of the Court by **Month DD, 20YY**, and a copy mailed to the Settlement Administrator at the following addresses:

Clerk of the Court	Settlement Administrator
Clerk of Court United States District Court Northern District of Georgia 1788 Richard B. Russell Federal Building and United States Courthouse 75 Ted Turner Drive, SW Atlanta, GA 30303-3309	Dusko v. Delta Air Lines Settlement Administrator Objections PO Box xxxxx Portland, OR 97xxx-xxx

If your objection is mailed via U.S. Mail, your objection will be deemed to have been submitted when posted if received with a **postmark date** on or before **Month DD, 20YY**, indicated on the envelope if mailed first class, postage prepaid, and addressed in accordance with the instructions. If your objection is submitted by private courier (such as Federal Express), your objection will be deemed to have been submitted on the **shipping date** reflected on the shipping label.

If you file a timely objection, it will be considered by the Court at the Final Approval Hearing. You do not need to attend the Final Approval Hearing for the Court to consider your objection.

**17. What is the difference between objecting and asking to be excluded?**

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself (opting out) is telling the Court that you do not want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because you are no longer part of the case.

**YOUR RIGHTS – APPEARING AT THE FINAL APPROVAL HEARING**

The Court will hold a “Final Approval Hearing” to decide whether to approve the Settlement. If you file an objection that includes a notice of intention to appear, you may attend the Final Approval Hearing, and you may ask to speak, but you do not have to speak at the Final Approval Hearing.

**18. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Final Approval Hearing on **Month DD, 20YY**, at **x:00 x.m.**, at the United States District Court for the Northern District of Georgia, 1788 Richard B. Russell Federal Building and United States Courthouse, 75 Ted Turner Drive, SW Atlanta, GA 30303-3309, in Courtroom 1708.

At the hearing, the Court will hear objections and arguments concerning the fairness of the proposed Settlement, including the amount requested by Class Counsel for attorneys' fees and costs. If there are objections, the Court will consider them. You do not need to attend this hearing. You also do not need to attend to have your objection considered by the Court. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

Note: The date and time of the Final Approval Hearing are subject to change by Court Order. Any change will be posted [www.xxxxxxxxxx.com](http://www.xxxxxxxxxx.com). You should check the Settlement Website to confirm that the date and/or time have not changed. The Settlement Website will also identify if the Court determines to hold a virtual, remote hearing, and the link to participate will be on that website.

### 19. Do I have to attend the Final Approval Hearing?

No. Class Counsel will answer all questions the Judge may have. However, you are welcome to attend the hearing at your own expense if you file an objection and your notice of intention to appear. If you submit an objection, you do not have to attend the hearing to talk about your objection. As long as you postmarked, shipped, or filed your written objection by the deadline, the Judge will consider it. You may also pay your own lawyer to attend, but it is not necessary.

### 20. May I speak at the Final Approval Hearing?

If you wish to appear at the Final Approval Hearing to present your objection to the Court, your written objection must include your statement of intent to appear at the Final Approval Hearing.

## YOUR RIGHTS – DO NOTHING

### 21. What happens if I do nothing at all?

If you are a Settlement Class Member as described above and do nothing, you will be part of the Settlement Class, and you will only get a Settlement Benefit if you submit a timely and valid Claim Form for one or more of your eligible tickets. Unless you opt-out of the Settlement, you will not be permitted to continue to assert claims about the issues in this case or subject to the Release in any other lawsuit against Delta ever again.

## GETTING MORE INFORMATION

### 22. Are there more details about the Settlement?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement at [www.xxxxxxxxxx.com](http://www.xxxxxxxxxx.com), or by contacting Class Counsel (see contact information in Question 12).

### 23. How do I get more information?

You can call toll-free xxx-xxx-xxxx, write to Dusko v. Delta Air Lines Settlement Administrator, PO Box xxxx, Portland, OR 97xxx-xxxx; or go to [www.xxxxxxxxxx.com](http://www.xxxxxxxxxx.com), where you will find answers to common questions about the Settlement and important documents, including the Settlement Agreement and Claim Form. You may also contact Class Counsel (see contact information in Question 12).

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT'S CLERK OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS**

**Questions? Call 1-xxx-xxx-xxxx, or Visit [www.xxxxxxxxxx.com](http://www.xxxxxxxxxx.com)**

# Exhibit 4

<<UniqueID>>

<<MailID>>

**TO RECEIVE A SETTLEMENT BENEFIT, YOU MUST COMPLETE A CLAIM FORM AND SUBMIT IT, POSTMARKED BY MONTH DD, 20YY.**

**STEP 1 – DIRECTIONS**

Provide your complete contact information in Step 2. Please print legibly. Then review the information and sign the attestation. A Settlement Benefit, if any, will be issued to the Settlement Class member listed below, for valid claims only.

**STEP 2 – CLAIMANT INFORMATION**

--	--	--

First Name MI Last Name

Current Mailing Address:

--

--	--	--

City State ZIP Code

Email Address (REQUIRED):

--

Telephone number:

--	--	--	--	--	--	--	--

**STEP 3 – SELECT SETTLEMENT BENEFIT**

In the space provided below for each listed ticket, select either Cash Settlement Payment (“Cash Benefit”) OR Credit Settlement Payment (“Credit Benefit”). A Cash Settlement Payment includes Ticket Cash and Interest Cash. A Credit Settlement Payment includes keeping the Ticket Credit and receiving an Interest Credit.

*Ticket Cash:* This is a cash refund of the remaining Unused Credit and/or Partial Unused Credit. The cash refund amount will equal the Unused Credit and/or Partial Unused Credit as of Month DD, 20YY, [Claims Deadline]. If you select this option, your Unused Credit and/or Partial Unused Credit will be frozen by Delta within 14 days after the Claim Deadline. If you no longer have any Unused Credit and/or Partial Unused Credit as of Month DD, 20YY, [Claims Deadline], you will only be eligible to receive Interest Cash, not Ticket Cash.

*Interest Cash:* If you select Ticket Cash, you will also receive Interest Cash, which is a cash payment in an amount equal to 7% of the original ticket amount for both Unused Credits and Partial Unused Credits.

*Ticket Credit:* If you select this option, you will keep your Unused Credit and/or Partial Unused Credit, which must be used by December 31, 2023, for travel no later than December 31, 2024. NOTE: If the Effective Date of the Settlement does not occur, that deadline will not be extended unless in the future Delta’s extends its current policy with respect to the expiration of credits.

*Interest Credit:* If you select to keep your Ticket Credit, you will receive an Interest Credit in an amount equal to 7% of the original ticket amount for both Unused Credits and Partial Unused Credits, valid for one year from its issuance.

*Multiple Credits:* If you have more than one eligible Unused Credit and/or Partial Unused Credit, you can select a Cash Settlement Payment or Credit Settlement Payment for each credit.

You must select either a Cash Benefit OR a Credit Benefit for each your ticket(s) listed below, **not both** for each ticket.

**Total No. of Tickets Purchased:** <<TicketCount>> **Total Cost of Purchased Tickets:** <<\$XXXX>>

<u>Ticket No.</u>	<u>Flight Date</u>	<u>Ticket Amount</u>	<u>Remaining Credit</u>	<u>Cash Benefit</u>	<u>Credit Benefit</u>
<<Ticket1t>>	<<FlightDt1t>>	<<\$Cost1t>>	<<\$Credit1t>>		
<<Ticket2t>>	<<FlightDt2t>>	<<\$Cost2t>>	<<\$Credit2t>>		
<<Ticket3t>>	<<FlightDt3t>>	<<\$Cost3t>>	<<\$Credit3t>>		
<<Ticket4t>>	<<FlightDt4t>>	<<\$Cost4t>>	<<\$Credit4t>>		

<<UniqueID>>

<<MailID>>

If you select a Cash Benefit (not a Credit Benefit), you will receive an email at <<EMAIL ADDRESS>> after the Court grants final approval prompting you to select whether you want to receive digital payment or a paper check.

**STEP 4 – ATTESTATION**

By submitting this Claim Form, I hereby attest that:

I am a U.S. resident, and the covered flight(s) identified above was cancelled by Delta; a cash refund was requested from Delta previously, and a refund was not received.

Signature:

Date:     
MM DD YY

**METHODS OF SUBMISSION**

You must submit your claim via U.S. Mail by sending this completed and signed form to the Settlement Administrator at the below address:

Dusko v. Delta Air Lines, Inc., Settlement Administrator  
P.O. Box XXXX  
Portland, OR 972XX-XXXX

**Your submission must be postmarked no later than Month DD, 20YY.**

**Questions? Visit [www.xxxxxxxx.com](http://www.xxxxxxxx.com) or call  
1-XXX-XXX-XXXX.**

# Exhibit 5

## Notice Program

*Dusko v. Delta Air Lines, Inc.*, No. 1:20-cv-01664-ELR (N.D. Ga.)

### **NOTICE PROGRAM DETAIL**

1. The Notice Program is designed to provide notice to the following “Settlement Class” as defined in the Settlement Agreement and Releases:

[A]ll ticketholders who are citizens of the United States who received a credit for a non-refundable ticket purchased with dollars on a flight scheduled to depart between March 1, 2020 through April 30, 2021 (a) that Delta cancelled; (b) who requested a refund for the ticket as reflected in Delta’s Customer Care or Refund Databases; (c) did not receive a refund; and (d) who had an Unused Credit or Partial Unused Credit as of January 13, 2023.

Specifically excluded from the Settlement Class are the following: Delta and its respective subsidiaries and affiliates, members, employees, officers, directors, agents, and representatives and their family members; Class Counsel; the judges who have presided over the Action and their immediate family members; local, municipal, state, and federal governmental agencies; and all persons who have timely opted-out from the Settlement Class in accordance with the Court’s orders.

### **NOTICE PROGRAM**

#### ***Individual Notice***

2. The Defendant will provide data to Epiq for identified Settlement Class members (to the extent physical and/or email addresses are available to Defendant). For any Settlement Class member records without an available physical mailing address or email address, address reach will be conducting using a third-party lookup service to identify physical mailing and/or email addresses for these Settlement Class members. The Settlement Class member data will be used to provide individual notice. An Email Notice will be sent to all identified Settlement Class members for whom a valid email address is available, and a Postcard Notice will be sent via United States Postal Service (“USPS”) first class mail to all identified Settlement Class members for whom a mailing address is available.

***Individual Notice - Email***

3. Epiq will send an initial Email Notice to all identified Settlement Class members for whom a valid email address is available but no valid postal address is available. The following industry standard best practices will be followed for the Email Notice efforts. The Email Notice will be drafted in such a way that the subject line, the sender, and the body of the message overcome SPAM filters and ensure readership to the fullest extent reasonably practicable. For instance, the Email Notice will use an embedded html text format. This format will provide easy to read text without graphics, tables, images, attachments, and other elements that would increase the likelihood that the message could be blocked by Internet Service Providers (ISPs) and/or SPAM filters. The Email Notices will be sent from an IP address known to major email providers as one not used to send bulk “SPAM” or “junk” email blasts. Each Email Notice will be transmitted with a digital signature to the header and content of the Email Notice, which will allow ISPs to programmatically authenticate that the Email Notices are from our authorized mail servers. Each Email Notice will also be transmitted with a unique message identifier. The Email Notice will include an embedded link to the Settlement Website. By clicking the link, recipients will be able to easily file an online claim, access the Long Form Notice, Settlement Agreement, and other information about the Settlement.

4. If the receiving email server cannot deliver the message, a “bounce code” will be returned along with the unique message identifier. For any Email Notice for which a bounce code is received indicating that the message was undeliverable for reasons such as an inactive or disabled account, the recipient’s mailbox was full, technical autoreplies, etc., at least two additional attempts will be made to deliver the Notice by email.

***Individual Notice - Direct Mail***

5. Epiq will send a double Postcard Notice with Claim Form and prepaid return postage to all identified Settlement Class members for whom a postal mailing address is available. The Postcard Notice will be sent via USPS first class mail. The Postcard Notice will clearly and concisely summarize the case and the legal rights of the Settlement Class members. The Postcard

Notice will also direct the recipients to the Settlement Website where they can access additional information.

6. Prior to sending the Postcard Notices, all mailing addresses will be checked against the National Change of Address (“NCOA”) database maintained by the USPS to ensure Settlement Class member address information is up-to-date and accurately formatted for mailing.<sup>1</sup> In addition, the addresses will be certified via the Coding Accuracy Support System (“CASS”) to ensure the quality of the zip code, and will be verified through Delivery Point Validation (“DPV”) to verify the accuracy of the addresses. This address updating process is standard for the industry and for the majority of promotional mailings that occur today.

7. Postcard Notices returned as undeliverable will be re-mailed to any new address available through USPS information, for example, to the address provided by the USPS on returned pieces for which the automatic forwarding order has expired, but which is still during the period in which the USPS returns the piece with the address indicated, or to better addresses that may be found using a third-party lookup service. Upon successfully locating better addresses, Postcard Notices will be promptly re-mailed. If the initial Postcard Notice is returned undeliverable, and Epiq is unable to obtain an alternative postal address to send the initial Postcard Notice, then an initial Email Notice will be sent.

### ***Settlement Website***

8. Epiq will create and maintain a dedicated website for the Settlement with an easy to remember domain name. The Settlement Website will contain relevant documents and information including: (i) information concerning deadlines for filing a Claim Form, and the dates and locations of relevant Court proceedings, including the Final Approval Hearing; (ii) the toll-

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<sup>1</sup> The NCOA database is maintained by the USPS and consists of approximately 160 million permanent change-of-address (COA) records consisting of names and addresses of individuals, families, and businesses who have filed a change-of-address with the Postal Service™. The address information is maintained on the database for 48 months and reduces undeliverable mail by providing the most current address information, including standardized and delivery point coded addresses, for matches made to the NCOA file for individual, family, and business moves.

free telephone number applicable to the Settlement; (iii) documents, including the Settlement Agreement, the Long Form Notice, the Claim Form, Court Orders regarding this Settlement, and other relevant Court documents, including the Motion for Approval of Attorneys' Fees and Costs; and (iv) information concerning the submission of Claim Forms, including the ability to submit Claim Forms electronically. In addition, the Settlement Website will include answers to frequently asked questions ("FAQs"), instructions for how Settlement Class members may opt-out (request exclusion) from or object to the Settlement, contact information for the Settlement Administrator, and how to obtain other case-related information. The Settlement Website address will be prominently displayed in all notice documents.

***Toll-Free Telephone Number***

9. A toll-free telephone number will be established for the Settlement. Callers will be able to hear an introductory message. Callers will also have the option to learn more about the Settlement in the form of recorded answers to FAQs. The toll-free telephone number will be prominently displayed in all notice documents. The automated phone system will be available 24 hours per day, 7 days per week.

10. A postal mailing address will be provided, allowing Settlement Class members the opportunity to request additional information or ask questions.

***Claim Stimulation Reminder Notice***

11. In an effort to ensure the highest reasonable claim filing participation rate and to maximize participation in the Settlement, Epiq will send claim stimulation reminder notices after the completion of individual notice efforts described above, as detailed in the Settlement Agreement.

12. For Settlement Class members for which Delta has both an email address and postal address, and Epiq successfully sends an initial Postcard Notice via USPS first-class mail, up to two reminder Email Notices will be sent to these Settlement Class members who have *not* submitted a Claim Form as of the date reminder Email Notices are scheduled to be sent.

13. For Settlement Class members for which Delta has only an email address, and Epiq successfully sends an Email Notice, up to two reminder Email Notices will be sent to these Settlement Class members who have *not* submitted a Claim Form as of the date reminder Email Notices are scheduled to be sent.

14. For Settlement Class members for which Delta has only a postal address, and Epiq successfully sends a Postcard Notice via USPS first-class mail, one reminder Postcard Notice will be sent to these Settlement Class members who have *not* submitted a Claim Form as of the date reminder Postcard Notices are scheduled to be sent.

15. The Reminder Notices will use concise text (stressing the impending Claim filing deadline) and include links to the Claim filing page on the Settlement Website.











# DELTA Settlement Agreement - 5-17-23 Final For Execution W-Exhibits

Final Audit Report

2023-05-19

Created:	2023-05-18
By:	Todd Becker (becker@kolawyers.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAATVt0T0YRiHmKX_78vgMOW5etgxX_SArx

## "DELTA Settlement Agreement - 5-17-23 Final For Execution W-Exhibits" History

-  Document created by Todd Becker (becker@kolawyers.com)  
2023-05-18 - 12:37:52 PM GMT- IP address: 146.168.124.226
-  Document emailed to Angela Dusko (angeladusko@gmail.com) for signature  
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-  Document e-signed by Angela Dusko (angeladusko@gmail.com)  
Signature Date: 2023-05-18 - 2:12:24 PM GMT - Time Source: server- IP address: 159.121.202.141
-  Document emailed to Jeffrey Ostrow (ostrow@kolawyers.com) for signature  
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-  Email viewed by Jeffrey Ostrow (ostrow@kolawyers.com)  
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-  Document emailed to Melissa Weiner (mweiner@pswlaw.com) for signature  
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-  Email viewed by Melissa Weiner (mweiner@pswlaw.com)  
2023-05-18 - 2:29:42 PM GMT- IP address: 174.213.225.223
-  Document e-signed by Melissa Weiner (mweiner@pswlaw.com)  
Signature Date: 2023-05-18 - 2:30:17 PM GMT - Time Source: server- IP address: 174.213.225.223

 Document emailed to Annick Persinger (apersinger@tzlegal.com) for signature


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 Document e-signed by Annick Persinger (apersinger@tzlegal.com)

Signature Date: 2023-05-18 - 11:04:35 PM GMT - Time Source: server- IP address: 74.87.211.242

 Document emailed to Roy Barnes (roy@barneslawgroup.com) for signature

2023-05-18 - 11:04:37 PM GMT

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2023-05-19 - 0:36:45 AM GMT- IP address: 104.28.55.229

 Document e-signed by Roy Barnes (roy@barneslawgroup.com)

Signature Date: 2023-05-19 - 3:14:50 PM GMT - Time Source: server- IP address: 12.51.31.106

 Agreement completed.

2023-05-19 - 3:14:50 PM GMT

# EXHIBIT B

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

ANGELA DUSKO, on behalf of herself  
and all others similarly situated,

Plaintiff,

vs.

DELTA AIR LINES, INC.

Defendant.

CIVIL ACTION: 1:20-CV-01664-  
ELR

**JOINT DECLARATION OF CLASS COUNSEL JEFF OSTROW, MELISSA  
S. WEINER, ANNICK M. PERSINGER, AND ROY E. BARNES IN  
SUPPORT OF PLAINTIFF’S UNOPPOSED MOTION FOR FINAL  
APPROVAL OF CLASS ACTION SETTLEMENT AND APPLICATION  
FOR ATTORNEYS’ FEES AND COSTS AND A SERVICE AWARD**

Jeff Ostrow, Melissa S. Weiner, Annick M. Persinger, and Roy E. Barnes  
declare as follows:

1. We are counsel of record for Plaintiff Angela Dusko and Class  
Counsel<sup>1</sup> for the Class in the above-captioned matter. We have been appointed by  
the Court as Class Counsel for Plaintiff and the Settlement Class in this Action. We  
submit this declaration in support of Plaintiff’s Unopposed Motion for Final  
Approval of Class Action Settlement and Application for Attorneys’ Fees and Costs

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<sup>1</sup> The capitalized terms used herein are defined in and have the same meaning as  
those found in the Settlement Agreement unless otherwise stated.

and a Service Award, and in connection with the services rendered and expenses incurred by our firms in connection with this Action. Unless otherwise noted, we have personal knowledge of the facts set forth in this declaration and could and would testify competently to them if called upon to do so.

2. The firm resume of Kopelowitz Ostrow P.A., including the biography of Jeff Ostrow, is attached as *Exhibit 1* to this declaration.

3. The firm resume of Pearson Warshaw, LLP, including the biography of Melissa S. Weiner, is attached as *Exhibit 2* to this declaration.

4. The firm resume of Tycko & Zavareei LLP, including the biography of Annick M. Persinger, is attached as *Exhibit 3* to this declaration.

5. The firm resume of Barnes Law Group, LLC, including the biography of Roy E. Barnes, is attached as *Exhibit 4* to this declaration.

6. Our firms acted as counsel to Plaintiff and the Settlement Class in this Action since its inception. We were retained and took this Action on a purely contingent basis, with no assurance of recovery of litigation costs or attorneys' fees.

7. Plaintiff's Action arises from Delta's cancellation of flights scheduled to depart between March 1, 2020 and April 30, 2021, and subsequent failure to issue cash refunds requested by certain ticketholders holding non-refundable tickets on those flights.

8. Before commencing litigation, we investigated the potential claims

against Delta, interviewed potential plaintiffs, and gathered information regarding Delta's failure to issue refunds to ticketholders whose flights were cancelled.

9. On April 22, 2020, Plaintiff filed a putative Class Action Complaint on behalf of herself and all others similarly situated, alleging that Delta breached its contracts with thousands of passengers by offering credits for future travel instead of providing refunds for flights Delta canceled in the wake of the COVID-19 pandemic. On July 9, 2020, the Court consolidated this Action with two related putative class actions. The Court also instructed counsel for the plaintiffs to seek the appointment of lead counsel and ordered a consolidated amended complaint to be filed. Following competing applications, the Court entered an Order granting the Motion to Appoint Roy E. Barnes, Melissa S. Weiner, Jeff Ostrow, and Annick M. Persinger as Interim Class Counsel Pursuant to Federal Rule of Civil Procedure 23(g).

10. Thereafter, on December 3, 2020, Kevin Polk (a plaintiff in one of the actions consolidated) filed a Notice of Voluntary Dismissal of his action. On December 17, 2020, Plaintiff filed a Consolidated Amended Class Action Complaint ("CAC"), asserting three claims against Delta for breach of contract, breach of the implied covenant of good faith and fair dealing, and declaratory and injunctive relief. Elliott Daniels (another plaintiff who filed suit in one of the actions consolidated) was not a named plaintiff in the CAC, leaving Plaintiff as the sole named plaintiff in

this Action. *Id.* On June 23, 2021, Delta filed its Motion to Dismiss the CAC.

11. On July 23, 2021, Plaintiff filed her Second Amended Class Action Complaint (“SAC”), asserting claims for breach of contract and breach of the implied covenant of good faith and fair dealing. On August 23, 2021, Delta filed its Motion to Dismiss the SAC. After the motion was fully briefed, Plaintiff filed a Notice of Supplemental Authority, to which Delta responded.

12. On March 2, 2022, the Court entered an Order granting in part and denying in part Delta’s Motion to Dismiss the SAC. Specifically, the Court denied the motion as to Plaintiff’s breach of contract claim alleging that Delta breached its contract when it initially denied her request for a refund and instead offered her travel credits. The Court dismissed the other breach of contract theories and the implied covenant of good faith and fair dealing claim. On March 30, 2022, Delta filed its Answer.

13. On April 15, 2022, the Parties filed their Joint Preliminary Planning Report and Discovery Plan and exchanged their Initial Disclosures. On May 9, 2022, Plaintiff served Delta with her First Set of Interrogatories and First Request for Production of Documents, to which Delta served its written responses on June 15, 2022.

14. On August 10, 2022, the Parties filed their Joint Motion to Stay Proceedings Pending Mediation & Extension of Current Deadlines, which the Court

granted. Thereafter, the Parties engaged in extensive negotiations and three formal mediation sessions over several months. As a condition to mediation, Delta agreed to engage in mediation discovery, which allowed Plaintiff to evaluate all claims.

15. On October 17, 2022, the Parties first mediated with well-respected and experienced class action litigation mediator Hunter R. Hughes III, Esq. Before mediation, the Parties exchanged informal discovery to prepare.

16. Although a resolution was not reached at the first mediation session, the Parties agreed to another mediation with Mr. Hughes on November 14, 2022, with Delta to provide additional mediation discovery to Plaintiff to aid the negotiations.

17. During the November 14, 2022 mediation session, the Parties progressed towards agreeing to material settlement terms and agreed to continue negotiations at a third session. Before that session, the Parties exchanged additional mediation discovery.

18. On January 9, 2023, a third mediation session with Mr. Hughes occurred. Though the Parties did not agree to all material settlement terms that day, they continued to work to draft a confidential term sheet and to confer with the mediator to finalize agreed settlement terms. Those efforts resulted in the Parties executing a confidential term sheet memorializing the material settlement terms effective January 13, 2023.

19. Attorneys' fees and costs and a Service Award were not discussed until the Parties agreed to the Settlement Benefits.

20. Class Counsel then prepared and negotiated an exhaustive Agreement and incorporated exhibits. Class Counsel negotiated favorable Notice provisions to ensure fair and direct Notice to Settlement Class members, with a simple Claim Submission Process.

21. The Agreement was executed effective May 11, 2023. A true and correct copy of the Agreement is attached as Exhibit A to Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement and Application for Attorneys' Fees and Costs and a Service Award.

22. Class Counsel filed Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement, together with the Agreement and proposed Notice Program, on May 26, 2023.

23. The Court issued an Amended Order Granting Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement on June 2, 2023, correcting a scrivener's error concerning the Notice Deadline date. The Court established a schedule for dissemination of the Notice, the Opt-Out and Objection Deadline, deadlines for this Motion to respond to any objections, and set the October 5, 2023, Final Approval Hearing.

24. After preparing the motion for Preliminary Approval, Class Counsel

has worked extensively with Delta and the Settlement Administrator to implement the Notice Program and to prepare the motion for Final Approval. Class Counsel has expended over 1,700 hours for all of these efforts, and they will continue to spend significant time and effort in connection with obtaining Final Approval (estimated at 100 hours), overseeing the Settlement Administrator's efforts to complete the Notice Program and manage the Claim Submission Process, and distribute the Settlement Benefits.

25. The Settlement was reached in the absence of collusion and is the result of good-faith, informed, and extensive arm's-length negotiations between competent and experienced attorneys who are familiar with class action litigation and with the legal and factual issues at the center of this Action.

26. Class Counsel are particularly experienced in the litigation, certification, trial, and settlement of class action cases. This experience proved beneficial to Plaintiff and the Settlement Class during Settlement negotiations.

27. Class Counsel were able to efficiently identify the pertinent issues in this Action because of their collective experience in litigating airline refund cases specifically and their class action and complex litigation experience more generally.

28. Class Counsel have developed expertise in airline refund cases, including having extensively litigated a similar airline COVID-19 refund case where they have taken voluminous discovery and fully briefed and argued a class

certification motion. *See Bombin et al. v. Southwest Airlines Co.*, No. 5:20-CV-01883 (E.D. Pa.).

29. Class Counsel ensured that informal discovery, conducted prior to and during mediation, would enable them to understand the evidence related to central issues in the Action, including damages and liability, and to conduct well-informed settlement negotiations. Delta responded to detailed lists of questions prepared by Class Counsel. For example, Class Counsel was able to learn details about Delta's policies regarding refunds to customers, and its volume and ability to process requested refunds over time. This information helped formulate the Class Period set forth in the Agreement. Class Counsel was also able to learn how Delta could identify those individuals who may have requested a refund from the cancellation of flights with nonrefundable tickets, who had an Unused Credit or Partial Unused Credit. Further, Class Counsel was able to learn what sort of information Delta maintained about these individuals in their customer service databases, and how this information might be retrieved.

30. Notwithstanding various litigation challenges, Class Counsel and Delta worked to identify the population of ticketholders in Delta's databases that are included in the Settlement Class definition that requested a refund, but were issued a travel credit. Class Counsel thus learned the approximate number of individuals who fit the Settlement Class definition. Following Preliminary Approval, and

consistent with the Agreement, Delta provided confirmatory discovery regarding the means by which it identified the Settlement Class members using the data that Delta reliable maintained.

31. Plaintiff and Class Counsel firmly believe that this Settlement is fair, reasonable, and adequate, and in the best interests of Class Members.

32. Given that Settlement Class Members may obtain a cash refund for the entire outstanding Unused Credit and Partial Unused Credit amount, plus 7% interest based on the original ticket amount, means the Settlement achieves relief similar to what Plaintiff could have obtained for tens of thousands of Settlement Class Members had she been successful at trial.

33. Plaintiff and Class Counsel will continue to vigorously protect the interests of the Class by ensuring the completion of the Notice Program and distribution of the Settlement Benefits.

34. Pursuant to the Agreement and Notice, Plaintiff respectfully requests the Court have Delta separately pay the Class Representative a Service Award of \$3,000.00. The Class Representative took a risk, and provided a valuable public service, by putting herself forward as the Class Representative. She kept abreast of the Action's status, reviewed and approved documents provided by Class Counsel, and discussed with Class Counsel various aspects of the Action, including the Settlement. The Class Representative's efforts, and her willingness to stand up to a

powerful adversary in Delta, resulted in the Settlement Class receiving significant Settlement Benefits.

35. This Action was prosecuted on a contingent basis. Class Counsel has not been paid for their extensive efforts or reimbursed for costs. If Class Counsel had not achieved a recovery, they would have received nothing and suffered significant out-of-pocket losses due to all the litigation costs they advanced.

36. Pursuant to the Agreement and Notice, Class Counsel respectfully request attorneys' fees in the amount of \$2,285,000.00 and costs in the amount of \$51,300.80, which Delta has agreed to pay separately to Class Counsel, subject to Court approval. Delta's agreement to pay those amounts and all Settlement Administration Costs and a Service Award to the Class Representative (subject to Court approval) also greatly benefits the Settlement Class.

37. Class Counsel's requested attorneys' fee is equal to approximately 7.6% of the total value (\$29,895,433.02) of the benefits to the Settlement Class—\$27,312,667.22, inclusive of available refunds and 7% interest to be claimed by Settlement Class Members; attorneys' fees of \$2,285,000.00 to be paid by Delta; \$51,300.80 for litigation costs to be paid by Delta; and \$246,465.00 for estimated Settlement Administration Costs to be paid by Delta.

38. Regardless of the amount claimed or number of claimants, Settlement Class Members will be eligible to claim refunds for Unused Credits or Partial

Unused Credits and 7% interest on the original ticket value. The total value of this relief alone is up to \$27,312,667.22. There will be no prospect of a *pro rata* deduction, nor will there be a deduction from the fund to account for attorneys' fees.

39. Prosecuting and settling these claims demanded considerable time and labor, making this fee request reasonable. The organization of Class Counsel ensured that the work was coordinated to maximize efficiency and minimize duplication of effort. Class Counsel devoted substantial time and resources investigating and researching the claims against Delta and conducting discovery. Class Counsel reviewed documents produced by Delta and served written discovery. Class Counsel also expended significant resources researching and developing the arguments presented in opposition to Delta's motion to dismiss. As is evident by the docket, the Action was vigorously contested during the time before Settlement.

40. Settlement negotiations consumed additional time and resources. The mediation sessions and subsequent settlement discussions required substantial preparation and damage analysis. Finally, a significant time was devoted to negotiating and drafting of the Agreement and the Preliminary Approval process, and to all actions required thereafter pursuant to the Preliminary Approval Order, including working with the Settlement Administrator and Delta to implement the Notice Program and seek Final Approval of the Settlement. All this work consumed

a substantial amount of time. Class Counsel will also spend time with Settlement administration after Final Approval.

41. All told, Class Counsel's coordinated work paid dividends for the Settlement Class. Each of the above-described efforts was essential to achieving the Settlement before the Court. The time and resources Class Counsel devoted to prosecuting and settling this Action readily justify the requested fee.

42. The total number of hours expended on this Action by Class Counsel from case inception through the filing of the motion for Final Approval is 1,743.9 hours (comprised of 375.3 hours by KO; 388.4 hours by PW; 600.6 hours by TZ; and 379.6 hours by Barnes). The total lodestar for Class Counsel in this time period is \$1,274,443.90 (comprised of \$269,105.00 for KO; \$348,098.00 for PW; \$452,157.40 for TZ; and \$205,083.50 for Barnes).

43. The total number of hours was determined by the examination of daily time records regularly prepared and maintained by Class Counsel. As Class Counsel is seeking funds pursuant to a percentage-of-the-fund analysis, and are providing their lodestar only as part of a lodestar cross-check (which is not required in the Eleventh Circuit), the Court need not exhaustively scrutinize Class Counsel's respective lodestar amounts. Class Counsel's lodestar figures are based on the firms' current hourly billing rates. The hourly rates for the partners, attorneys, and professional support staff in Class Counsel's firms are the same as the usual and

customary hourly rates charged for their services in contingent billing matters.

44. Class Counsel also requests reimbursement for a total of \$51,300.80 in costs, corresponding to certain actual out-of-pocket costs and expenses that Class Counsel necessarily incurred and paid in connection with the prosecution of the Action and the Settlement.

<u>Task</u>	<u>Kopelowitz Ostrow P.A.</u>	<u>Pearson Warshaw, LLP</u>	<u>Tycko &amp; Zavareei LLP</u>	<u>Barnes Law Group</u>
Mediation	\$10,112.50	\$15,225.00	\$7,612.50	\$7,500.00
Court Fees	\$20.00	\$150.00	\$450.00	\$750.00
Travel	\$1,543.33	\$2,614.25	\$0.00	\$29.01
Research	\$675.00	\$884.09	\$749.01	\$2,506.38
Postage / Photocopies / Telephone / Courier	\$51.54	\$91.08	\$9.15	\$327.96
<b>TOTAL</b>	<b>\$12,402.37</b>	<b>\$18,964.42</b>	<b>\$8,820.66</b>	<b>\$11,113.35</b>

45. These out-of-pocket expenses were reasonably and necessarily incurred and paid in furtherance of the prosecution of this Action.

46. Epiq Class Action and Claims Solutions, Inc. (“Epiq”), a well-respected and reputable third-party class action Settlement Administrator, was appointed as Settlement Administrator by the Court and has been overseeing the Notice Program and Settlement administration. Pursuant to the Agreement and Notice, Settlement Administration Costs will be paid by Delta separate and apart from the Settlement Benefits to Settlement Class Members. Having begun implementing the Notice Program, the Settlement Administrator estimates the Settlement Administration

Costs will total \$246,465.00, subject to the number of Claim Forms submitted.

47. The Notice Program was designed to and will provide the best notice practicable. It was tailored to reach the Class Members and protect their due process rights. It will inform Settlement Class members of the Settlement's substantive terms; their options for remaining part of the Settlement Class, opting out, or objecting to the Settlement and/or Class Counsel's application for attorneys' fee and costs and a Service Award for the Class Representative; how to elect Settlement Benefits by submitting Claim Forms; and how to obtain additional information about the Settlement.

48. Class Counsel is familiar with the claims they have litigated. As can be seen from their attached resumes, Class Counsel have substantial experience in the litigation, certification, trial, and settlement of class action cases, including complex class litigation involving breach of contract claims. *See Exhibits 1-4*. This experience proved beneficial to Plaintiff and the Class during negotiations of the Settlement.

49. Based on our experience, Delta's Counsel are also highly experienced in this type of litigation. Delta's Counsel has long been known to be one of the preeminent law firms, regularly practicing before this Court, and is formidable class action defense counsel. It is thus our considered opinion that counsel for each side have fully evaluated the strengths, weaknesses, and equities of the Parties' respective

positions and believe that the proposed Settlement fairly resolves their respective differences.

50. The risks, expense, complexity, and likely duration of further litigation support Final Approval of the Settlement. Any settlement requires the parties to balance the merits of the claims and defenses asserted against the attendant risks of continued litigation and delay. Class Counsel believe the claims asserted are meritorious and that Plaintiff would prevail if this matter proceeded to trial, particularly given Plaintiff's success on Delta's motion to dismiss.

51. However, Class Counsel are also pragmatic and aware that there are uncertainties in any litigation. Delta denies liability, wrongdoing, and damage, denies that the Action may be maintained as a class action (except for settlement purposes), and has shown a willingness to continue vigorous litigation. To achieve relief similar to the Settlement Benefits, if Plaintiff were to continue litigating, she would have to overcome several obstacles—including obtaining class certification, surviving summary judgment, and prevailing at trial. And, even if Plaintiff and the Settlement Class ultimately prevailed at trial, recovery could be delayed for years by an appeal. All that is certain is that with continued litigation, the putative class would face a notably longer wait before receiving any potential recovery, if they received any recovery at all.

52. The Settlement Benefits represent a highly favorable compromise that

balances the merits of Plaintiff's claim and the likelihood of succeeding at trial and on appeal with the attendant risks. The inherent uncertainty in litigation presents a risk to Plaintiff of expending time and money on this case with the possibility of no recovery at all for the Class.

53. The Class consists of 67,753 members, and joinder of all such persons is impracticable.

54. There are multiple questions of law and fact for the Settlement Class, centering on whether ticketholders holding non-refundable tickets on flights scheduled to depart between March 1, 2020 and April 30, 2021 that were canceled by Delta and who requested a refund for their tickets should have been given refunds as opposed to credits for future travel. Answers to those questions will generate common answers for the Settlement Class members who are alleged to have been injured in the same or similar way. Additionally, Plaintiff asserts that all Settlement Class members were subject to the same contract terms that form the basis of the breach of contract claim. Thus, there will be no issue demonstrating Settlement Class members have suffered the same injury.

55. Plaintiff's claims are also typical of Settlement Class members' claims because they arise from the same course of alleged conduct and are premised on the same legal theory. Plaintiff's claims alleged in her original complaint share the essential characteristics of the Settlement Class members' claims because she asserts

that, in her response to her request for a cash refund, Delta breached its contract with her by offering credit for future travel instead of refunding her for the non-refundable ticket she purchased for a flight that Delta canceled, just as Delta did to her fellow Settlement Class members.

56. Plaintiff adequately represents the Settlement Class, as she has no conflicts of interest with other Settlement Class members, is subject to no unique defenses, and she and Class Counsel have and continue to vigorously prosecute this case on behalf of the Settlement Class.

57. Plaintiff's interests are coextensive with, not antagonistic to, the interests of the Settlement Class because Plaintiff and the absent Settlement Class members have the same interest in the relief the Settlement affords, and the absent members of the Settlement Class have no diverging interests. Further, as stated above, Plaintiff and the Settlement Class are represented by qualified and competent Class Counsel. Indeed, each firm representing the Settlement Class is a leader in the class action field. Each attorney has extensive experience and expertise prosecuting complex class actions and has used this experience to vigorously litigate on behalf of the Settlement Class thus far. Class Counsel has devoted substantial time and resources and will continue to do so.

58. Liability questions common to all Settlement Class members substantially outweigh any possible issues that are individual to some Settlement

Class members. Further, the Settlement Class members are identified from Delta's records, making the Settlement Class ascertainable.

59. To administer the Settlement's relief, all that is required is (1) retrieving the amount of credit outstanding for the Ticket Cash or Ticket Credit, and (2) multiplying the amount of the original ticket by 7% to calculate the Interest Cash or Interest Credit.

60. Finally, resolution of almost 68,000 claims in one action is far superior to individual lawsuits, because it promotes consistency and efficiency of adjudication.

I declare under penalty of perjury that the foregoing is true of my own personal knowledge. Executed in Fort Lauderdale, Florida, on July 27, 2023.

/s/ Jeff Ostrow  
JEFF OSTROW

I declare under penalty of perjury that the foregoing is true of my own personal knowledge. Executed in Wayzata, Minnesota, on July 27, 2023.

/s/ Melissa S. Weiner  
MELISSA S. WEINER

I declare under penalty of perjury that the foregoing is true of my own personal knowledge. Executed in Oakland, California, on July 27, 2023.

/s/ Annick M. Persinger  
ANNICK M. PERSINGER

I declare under penalty of perjury that the foregoing is true of my own personal knowledge. Executed in Marietta, Georgia, on July 27, 2023.

/s/ Roy E. Barnes  
ROY E. BARNES

# EXHIBIT 1



## FIRM RESUME

One West Las Olas Boulevard, Suite 500  
Fort Lauderdale, Florida 33301

**Telephone:** 954.525.4100

**Facsimile:** 954.525.4300

**Website:** [www.kolawyers.com](http://www.kolawyers.com)

**Miami – Fort Lauderdale – Boca Raton**

## OUR FIRM

For over two decades, Kopelowitz Ostrow Ferguson Weiselberg Gilbert (KO) has provided comprehensive, results-oriented legal representation to individual, business, and government clients throughout Florida and the rest of the country. KO has the experience and capacity to represent its clients effectively and has the legal resources to address almost any legal need. The firm's 25 attorneys have practiced at several of the nation's largest and most prestigious firms and are skilled in almost all phases of law, including consumer class actions, multidistrict litigation involving mass tort actions, complex commercial litigation, and corporate transactions. In the class action arena, the firm has experience not only representing individual aggrieved consumers, but also defending large institutional clients, including multiple Fortune 100 companies.

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## WHO WE ARE

The firm has a roster of accomplished attorneys. Clients have an opportunity to work with some of the finest lawyers in Florida and the United States, each one committed to upholding KO's principles of professionalism, integrity, and personal service. Among our roster, you'll find attorneys whose accomplishments include Board Certified in their specialty; serving as in-house counsel for major corporations, as city and county attorneys handling government affairs, and as public defenders and prosecutors; achieving multi-millions of dollars through verdicts and settlements in trials, arbitrations, and alternative dispute resolution procedures; successfully winning appeals at every level in Florida state and federal courts; and serving government in various elected and appointed positions.

KO has the experience and resources necessary to represent large putative classes. The firm's attorneys are not simply litigators, but rather, experienced trial attorneys with the support staff and resources needed to coordinate complex cases.

CLASS  
ACTION  
PLAINTIFF

Since its founding, KO has initiated and served as lead class counsel in dozens of high-profile class actions. Although the actions are diverse by subject area, KO has established itself as one of the leading firms that sue national and regional banks and credit unions related to the unlawful assessment of fees. Their efforts spanning a decade plus have resulted in recoveries in excess of \$500 million and monumental practices changes that have changed the industry and saving clients billions of dollars.

Additionally, other past and current cases have been prosecuted for breaches of insurance policies; data breaches; data privacy; wiretapping; biometric privacy; gambling; false advertising; defective consumer products and vehicles; antitrust violations; and suits on behalf of students against colleges and universities arising out of the COVID-19 pandemic.

The firm has in the past litigated certified and proposed class actions against Blue Cross Blue Shield and United Healthcare related to their improper reimbursements of health insurance benefits. Other insurance cases include auto insurers failing to pay benefits owed to insureds with total loss vehicle claims. Other class action cases include cases against Microsoft Corporation related to its Xbox 360 gaming platform, ten of the largest oil companies in the world in connection with the destructive propensities of ethanol and its impact on boats, Nationwide Insurance for improper mortgage fee assessments, and several of the nation's largest retailers for deceptive advertising and marketing at their retail outlets and factory stores.

## CLASS ACTION DEFENSE

The firm also brings experience in successfully defended many class actions on behalf of banking institutions, mortgage providers and servicers, advertising conglomerates, aircraft manufacturer and U.S. Dept. of Defense contractor, a manufacturer of breast implants, and a national fitness chain.

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## MASS TORT LITIGATION

The firm also has extensive experience in mass tort litigation, including serving as Lead Counsel in the Zantac Litigation, one of the largest mass torts in history. The firm also has handled cases against 3M related to defective earplugs, several vaginal mesh manufacturers, Bayer in connection with its pesticide Roundup, Bausch & Lomb for its Renu with MoistureLoc product, Wyeth Pharmaceuticals related to Prempro, Bayer Corporation related to its birth control pill YAZ, and Howmedica Osteonics Corporation related to the Stryker Rejuvenate and AGB II hip implants. In connection with the foregoing, some of which has been litigated within the multidistrict arena, the firm has obtained tens of millions in recoveries for its clients.

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## OTHER AREAS OF PRACTICE

In addition to class action and mass tort litigation, the firm has extensive experience in the following practice areas: commercial and general civil litigation, corporate transactions, health law, insurance law, labor and employment law, marital and family law, real estate litigation and transaction, government affairs, receivership, construction law, appellate practice, estate planning, wealth preservation, healthcare provider reimbursement and contractual disputes, white collar and criminal defense, employment contracts, environmental, and alternative dispute resolution.

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## FIND US ONLINE

To learn more about KO, or any of the firm's other attorneys, please visit [www.kolawyers.com](http://www.kolawyers.com).

**CLASS ACTION AND MASS TORT SETTLEMENTS****FINANCIAL  
INSTITUTIONS**

*Abercrombie v. TD Bank, N.A.*, 0:21-cv-61376 (S.D. Fla. 2022) - \$4.35 million  
*Perks, et al. v. TD Bank, N.A.*, 1:18-cv-11176 (E.D.N.Y. 2022) - \$41.5 million  
*Fallis v. Gate City Bank*, 09-2019-CV-04007 (Dist. Ct., Cty. of Cass, N.D. 2022) - \$1.8 million  
*Mayo v. Affinity Plus Fed. Credit Union*, 27-CV-20-11786 (4th Judicial District Minn. 2022) - \$1 million  
*Glass, et al. v. Delta Comm. Cred. Union*, 2019CV317322 (Sup. Ct. Fulton Cty., Ga. 2022) - \$2.8 million  
*Roy v. ESL Fed. Credit Union*, 19-cv-06122 (W.D.N.Y. 2022) - \$1.9 million  
*Clark v. Hills Bank and Trust Co.*, LACV080753 (Iowa Dist. Johnson Co. 2022) - \$740,000  
*Wallace v. Wells Fargo*, 17CV317775 (Sup. Ct. Santa Clara 2021) - \$10 million  
*Doxey v. Community Bank, N.A.*, 8:19-CV-919 (N.D.N.Y. 2021) - \$3 million  
*Coleman v. Alaska USA Federal Credit Union*, 3:19-cv-0229-HRH (Dist. of Alaska 2021) - \$1 million  
*Perri v. Notre Dame Federal Credit Union*, 71C01-1909-PL-000332 (Cir. Ct. St. Joseph 2021) - \$800,000  
*Smith v. Fifth Third Bank*, 1:18-cv-00464-DRC-SKB (W.D. Ohio 2021) - \$5.2 million  
*Lambert v. Navy Federal Credit Union*, 1:19-cv-00103-LO-MSN (S.D. Va. 2021) - \$16 million  
*Roberts v. Capital One, N.A.*, 16 Civ. 4841 (LGS) (S.D.N.Y. 2021) - \$17 million  
*Baptiste v. GTE Financial*, 20-CA-002728 (Cir. Ct. Hillsborough 2021) - \$975,000  
*Morris v. Provident Credit Union*, CGC-19-581616 (Sup. Ct. San Francisco 2020) - \$1.1 million  
*Lloyd v. Navy Federal Credit Union*, 17-cv-01280-BAS-RBB (S.D. Ca. 2019) - \$24.5 million  
*Lashmbae v. Capital One Bank, N.A.*, No. 17-cv-06406 (E.D.N.Y. 2020) - \$320,000  
*Farrell v. Bank of America, N.A.*, 3:16-cv-00492-L-WVG (S.D. Ca. 2018) - \$66.6 million  
*Bodnar v. Bank of America, N.A.*, 5:14-cv-03224-EGS (E.D. Pa. 2015) - \$27.5 million  
*Morton v. Green Bank*, 11-135-IV (20<sup>th</sup> Judicial District Tenn. 2018) - \$1.5 million  
*Hawkins v. First Tenn. Bank*, CT-004085-11 (13<sup>th</sup> Jud. Dist. Tenn. 2017) - \$16.75 million  
*Payne v. Old National Bank*, 82C01-1012 (Cir. Ct. Vanderburgh 2016) - \$4.75 million  
*Swift. v. Bancorpsouth*, 1:10-CV-00090 (N.D. Fla. 2016) - \$24.0 million  
*Mello v. Susquehanna Bank*, 1:09-MD-02046 (S.D. Fla. 2014) - \$3.68 million  
*Johnson v. Community Bank*, 3:11-CV-01405 (M.D. Pa. 2013) - \$1.5 million  
*McKinley v. Great Western Bank*, 1:09-MD-02036 (S.D. Fla. 2013) - \$2.2 million  
*Blabut v. Harris Bank*, 1:09-MD-02036 (S.D. Fla. 2013) - \$9.4 million  
*Wolfgeber v. Commerce Bank*, 1:09-MD-02036 (S.D. Fla. 2013) - \$18.3 million  
*Case v. Bank of Oklahoma*, 09-MD-02036 (S.D. Fla. 2012) - \$19.0 million Settlement  
*Hawthorne v. Umpqua Bank*, 3:11-CV-06700 (N.D. Cal. 2012) - \$2.9 million Settlement  
*Simpson v. Citizens Bank*, 2:12-CV-10267 (E.D. Mich. 2012) - \$2.0 million  
*Harris v. Associated Bank*, 1:09-MD-02036 (S.D. Fla. 2012) - \$13.0 million  
*LaCour v. Whitney Bank*, 8:11-CV-1896 (M.D. Fla. 2012) - \$6.8 million  
*Orallo v. Bank of the West*, 1:09-MD-202036 (S.D. Fla. 2012) - \$18.0 million  
*Taulava v. Bank of Hawaii*, 11-1-0337-02 (1st Cir. Hawaii 2011) - \$9.0 million

**FALSE  
PRICING**

*Gattinella v. Michael Kors (USA)*, 14-Civ-5731 (WHP) (S.D. NY 2015) - \$4.875 million

*Stathakos v. Columbia Sportswear*, 4:15-cv-04543-YGR (N.D. Ca. 2018) - Injunctive relief prohibiting deceptive pricing practices

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*Lopez, et al. v. Volusion, LLC*, 1:20-cv-00761 (W.D. Tex. 2022) - \$4.3 million

*Gupta v. Aeries Software, Inc.*, 8:20-cv-00995 (C.D. Ca. 2022) - \$1.75 million

*In Re: CaptureRx Data Breach*, 5:21-cv-00523 (W.D. Tex. 2022) - \$4.75 million

*Ostendorf v. Grange Indemnity Ins. Co.*, 2:19-cv-01147-ALM-KAJ (E.D. Ohio 2020) – \$12.6 million

*Walters v. Target Corp.*, 3:16-cv-1678-L-MDD (S.D. Cal. 2020) – \$8.2 million

*Papa v. Grieco Ford Fort Lauderdale, LLC*, 18-cv-21897-JEM (S.D. Fla. 2019) - \$4.9 million

*Bloom v. Jenny Craig, Inc.*, 18-cv-21820-KMM (S.D. Fla. 2019) - \$3 million

*Masson v. Tallahassee Dodge Chrysler Jeep, LLC*, 1:17-cv-22967-FAM (S.D. Fla. 2018) - \$850,000

*DiPuglia v. US Coachways, Inc.*, 1:17-cv-23006-MGC (S.D. Fla. 2018) - \$2.6 million

*In re Disposable Contact Lens Antitrust Litig.*, MDL 2626 (M.D. Fla.) - Liaison Counsel

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*In re Zantac (Ranitidine) Prods. Liab. Litig.*, 9:20-md-02924-RLR (S.D. Fla.) - MDL No. 2924 – Co-Lead Counsel

*In re: Stryker Rejuvenate and ABG II PRODUCTS LIABILITY LITIGATION*, 13-MD-2411 (17th Jud. Cir. Fla. Complex Litigation Division)

*In re: National Prescription Opiate Litigation*, 1:17-md-02804-DAP (N.D. Ohio) - MDL 2804

*In re: Smith and Nephew BHR Hip Implant Products Liability Litigation*, MDL-17-md-2775

*Yasmin and YAZ Marketing, Sales Practices and Products Liability Litigation*, 3:09-md-02100-DRH-PMF (S.D. Ill.) – MDL 2100

*In re: Prempro Products Liab. Litigation*, MDL Docket No. 1507, No. 03-cv-1507 (E.D. Ark.)

**CONSUMER  
PROTECTION**

**MASS  
TORT**

# JEFF OSTROW

Managing Partner

## ***Bar Admissions***

The Florida Bar  
District of Columbia Bar

## ***Court Admissions***

Supreme Court of the United States  
U.S. Court of Appeals for the Eleventh Circuit  
U.S. Court of Appeals for the Ninth Circuit  
U.S. District Court, Southern District of Florida  
U.S. District Court, Middle District of Florida  
U.S. District Court, Northern District of Florida  
U.S. District Court, Northern District of Illinois  
U.S. District Court, Eastern District of Michigan  
U.S. District Court, Western District of Tennessee  
U.S. District Court, Western District of Wisconsin  
U.S. District Court, Western District of Kentucky  
U.S. District Court, Northern District of New York  
U.S. District Court, District of Colorado

## **Education**

Nova Southeastern University, J.D. - 1997  
University of Florida, B.S. - 1994

***Email: [Ostrow@kolawyers.com](mailto:Ostrow@kolawyers.com)***



Jeff Ostrow is the Managing Partner of Kopelowitz Ostrow P.A. He established his own law practice in 1997 immediately upon graduation from law school and has since grown the firm to 25 attorneys in 3 offices throughout south Florida. In addition to overseeing the firm's day-to-day operations and strategic direction, Mr. Ostrow practices full time in the areas of consumer class actions, sports and business law. He is a Martindale-Hubbell AV® Preeminent™ rated attorney in both legal ability and ethics, which is the highest possible rating by the most widely recognized attorney rating organization in the world.

Mr. Ostrow often serves as outside General Counsel to companies, advising them in connection with their legal and regulatory needs. He has represented many Fortune 500® Companies in connection with their Florida litigation. He has handled cases covered by media outlets throughout the country and has been quoted many times on various legal topics in almost every major news publication, including the Wall Street Journal, New York Times, Washington Post, Miami Herald, and Sun-Sentinel. He has also appeared on CNN, ABC, NBC, CBS, Fox, ESPN, and almost every other major national and international television network in connection with his cases, which often involve industry changing litigation or athletes in Olympic swimming, professional boxing, the NFL, NBA and MLB.

Mr. Ostrow is an accomplished trial attorney who represents both Plaintiffs and Defendants, successfully trying many cases to verdict involving multi-million dollar damage claims in state and federal courts. Currently, he serves as lead counsel in nationwide and statewide class action lawsuits against many of the world's largest financial institutions in connection with the unlawful assessment of fees. To date, his efforts have successfully resulted in the recovery of over \$1 billion for tens of millions of bank and credit union customers, as well as monumental changes in the way they assess fees. Those changes have forever revolutionized an industry, resulting in billions of dollars of savings. In addition, Mr. Ostrow has served as lead Class Counsel in consumer class actions against some of the

world's largest airlines, pharmaceutical companies, clothing retailers, health and auto insurance carriers, technology companies, pharmaceutical companies, and oil conglomerates, along with serving as class action defense counsel for some of the largest advertising and marketing agencies in the world, banking institutions, real estate developers, and mortgage companies.

In addition to the law practice, he is the founder and president of ProPlayer Sports LLC, a full-service sports agency and marketing firm. He represents both Olympic Gold Medalist Swimmers, World Champion Boxers, and select NFL athletes, and is licensed by both the NFL Players Association as a certified Contract Advisor. At the agency, Mr. Ostrow handles all player-team negotiations of contracts, represents his clients in legal proceedings, negotiates all marketing and NIL engagements, and oversees public relations and crisis management. He has extensive experience in negotiating, mediating, and arbitrating a wide range of issues on behalf of clients with the NFL Players Association, the International Olympic Committee, the United States Olympic Committee, USA Swimming and the World Anti-Doping Agency. He has been an invited sports law guest speaker at New York University and Nova Southeastern University and has also served as a panelist at many industry-related conferences.

Mr. Ostrow received a Bachelor of Science in Business Administration from the University of Florida in 1994 and Juris Doctorate from Nova Southeastern University in 1997. He is a licensed member of The Florida Bar and the District of Columbia Bar, is fully admitted to practice before the U.S. Supreme Court, the U.S. District Courts for the Southern, Middle, and Northern Districts of Florida, Eastern District of Michigan, Northern District of Illinois, Western District of Tennessee, Western District of Wisconsin, and the U.S. Court of Appeals for the Eleventh Circuit. Mr. Ostrow is also member of several Bar Associations.

He is a lifetime member of the Million Dollar Advocates Forum. The Million Dollar Advocates Forum is the most prestigious group of trial lawyers in the United States. Membership is limited to attorneys who have had multi-million dollar jury verdicts. Additionally, he is consistently named as one of the top lawyers in Florida by Super Lawyers®, a publication that recognizes the best lawyers in each state. Mr. Ostrow is an inaugural recipient of the University of Florida's Warrington College of Business Administration Gator 100 award for the fastest growing University of Florida alumni-owned law firm in the world.

When not practicing law, Mr. Ostrow serves on the Board of Governors of Nova Southeastern University's Wayne Huizenga School of Business and is a Member of the Broward County Courthouse Advisory Task Force. He is also the Managing Member of One West LOA LLC, a commercial real estate development company with holdings in downtown Fort Lauderdale. He has previously sat on the boards of a national banking institution and a national healthcare marketing company. Mr. Ostrow is a founding board member for the Jorge Nation Foundation, a 501(c)(3) non-profit organization that partners with the Joe DiMaggio Children's Hospital to send children diagnosed with cancer on all-inclusive Dream Trips to destinations of their choice. Mr. Ostrow resides in Fort Lauderdale, Florida, and has 3 sons, 2 of which currently attend the University of Florida.



# ROBERT C. GILBERT

Partner

## **Bar Admissions**

The Florida Bar  
District of Columbia Bar

## ***Court Admissions***

Supreme Court of the United States  
U.S. Court of Appeals for the 11th Circuit  
U.S. District Court, Southern District of Florida  
U.S. District Court, Middle District of Florida

## ***Education***

University of Miami School of Law, J.D. - 1985  
Florida International University, B.S. - 1982

***Email: Gilbert@kolawyers.com***

Robert C. “Bobby” Gilbert has over three decades of experience handling class actions, multidistrict litigation and complex business litigation throughout the United States. He has been appointed lead counsel, co-lead counsel, coordinating counsel or liaison counsel in many federal and state court class actions. Bobby has served as trial counsel in class actions and complex business litigation tried before judges, juries and arbitrators. He has also briefed and argued numerous appeals, including two precedent-setting cases before the Florida Supreme Court.

Bobby was appointed as Plaintiffs’ Coordinating Counsel in *In re Checking Account Overdraft Litig.*, MDL 2036, class action litigation brought against many of the nation’s largest banks that challenged the banks’ internal practice of reordering debit card transactions in a manner designed to maximize the frequency of customer overdrafts. In that role, Bobby managed the large team of lawyers who prosecuted the class actions and served as the plaintiffs’ liaison with the Court regarding management and administration of the multidistrict litigation. He also led or participated in settlement negotiations with the banks that resulted in settlements exceeding \$1.1 billion, including Bank of America (\$410 million), Citizens Financial (\$137.5 million), JPMorgan Chase Bank (\$110 million), PNC Bank (\$90 million), TD Bank (\$62 million), U.S. Bank (\$55 million), Union Bank (\$35 million) and Capital One (\$31.7 million).

Bobby has been appointed to leadership positions in numerous other class actions and multidistrict litigation proceedings. He is currently serving as co-lead counsel in *In re Zantac (Ranitidine) Prods. Liab. Litig.*, 9:20-md-02924-RLR (S.D. Fla.), as well as liaison counsel in *In re Disposable Contact Lens Antitrust Litig.*, MDL 2626 (M.D. Fla.); liaison counsel in *In re 21st Century Oncology Customer Data Security Beach Litig.*, MDL 2737 (M.D. Fla.); and *In re Farm-Raised Salmon and Salmon Products Antitrust Litig.*, No. 19-21551 (S.D. Fla.). He previously served as liaison counsel for indirect purchasers in *In re Terazosin Hydrochloride Antitrust Litig.*, MDL 1317 (S.D. Fla.), an antitrust class action that settled for over \$74 million.

For the past 18 years, Bobby has represented thousands of Florida homeowners in class actions to recover full compensation under the Florida Constitution based on the Florida Department of Agriculture's taking and destruction of the homeowners' private property. As lead counsel, Bobby argued before the Florida Supreme Court to establish the homeowners' right to pursue their claims; served as trial counsel in non-jury liability trials followed by jury trials that established the amount of full compensation owed to the homeowners for their private property; and handled all appellate proceedings. Bobby's tireless efforts on behalf of the homeowners resulted in judgments exceeding \$93 million.

Bobby previously served as an Adjunct Professor at Vanderbilt University Law School, where he co-taught a course on complex litigation in federal courts that focused on multidistrict litigation and class actions. He continues to frequently lecture and make presentations on a variety of topics.

Bobby has served for many years as a trustee of the Greater Miami Jewish Federation and previously served as chairman of the board of the Alexander Muss High School in Israel, and as a trustee of The Miami Foundation.



# JONATHAN M. STREISFELD

Partner

## ***Bar Admissions***

The Florida Bar

## ***Court Admissions***

Supreme Court of the United States

U.S. Court of Appeals for the First, Second, Fourth, Fifth Ninth, and Eleventh Circuits

U.S. District Court, Southern District of Florida

U.S. District Court, Middle District of Florida

U.S. District Court, Northern District of Florida

U.S. District Court, Northern District of Illinois

U.S. District Court, Western District of Michigan

U.S. District Court, Western District of New York

U.S. District Court, Western District of Tennessee

## ***Education***

Nova Southeastern University, J.D. - 1997

Syracuse University, B.S. - 1994

***Email: [streisfeld@kolawyers.com](mailto:streisfeld@kolawyers.com)***

Jonathan M. Streisfeld joined KO as a partner in 2008. Mr. Streisfeld concentrates his practice in the areas of consumer class actions, business litigation, and appeals nationwide. He is a Martindale Hubbell AV® Preeminent™ rated attorney in both legal ability and ethics.

Mr. Streisfeld has vast and successful experience in class action litigation, serving as class counsel in nationwide and statewide consumer class action lawsuits against the nation's largest financial institutions in connection with the unlawful assessment of fees. To date, his efforts have successfully resulted in the recovery of over \$500,000,000 for tens of millions of bank and credit union customers, as well as profound changes in the way banks assess fees. Additionally, he has and continues to serve as lead and class counsel for consumers in many class actions involving false advertising and pricing, defective products, data breach and privacy, automobile defects, airlines, mortgages, and payday lending. Mr. Streisfeld has also litigated class actions against some of the largest health and automobile insurance carriers and oil conglomerates, and defended class and collective actions in other contexts.

Mr. Streisfeld has represented a variety of businesses and individuals in a broad range of business litigation matters, including contract, fraud, breach of fiduciary duty, intellectual property, real estate, shareholder disputes, wage and hour, and deceptive trade practices claims. He also assists business owners and individuals with documenting contractual relationships and resolving disputes. Mr. Streisfeld has also provided legal representation in bid protest proceedings.

Mr. Streisfeld oversees the firm's appellate and litigation support practice, representing clients in the appeal of final and non-final orders, as well as writs of certiorari, mandamus, and prohibition. His appellate practice includes civil and marital and family law matters.

Previously, Mr. Streisfeld served as outside assistant city attorney for the City of Plantation and Village of Wellington in a broad range of litigation matters. As a member of The Florida Bar, Mr. Streisfeld served for many years on the Executive Council of the Appellate Practice Section and is a past Chair of the Section's Communications Committee. Mr. Streisfeld currently serves as a member of the Board of Temple Kol Ami Emanu-El.



# DANIEL TROPIN

Partner

## *Bar Admissions*

The Florida Bar

## *Court Admissions*

U.S. District Court, Southern District of Florida

U.S. District Court, Middle District of Florida

## *Education*

University of Virginia, J.D. - 2012

Emory University, B.A. - 2008

***Email: [tropin@kolawyers.com](mailto:tropin@kolawyers.com)***

Daniel Tropin is a litigator who specializes in complex commercial cases and class action litigation. Mr. Tropin joined the law firm as a partner in 2018, and has a wealth of experience across the spectrum of litigation, including class actions, derivative actions, trade secrets, arbitrations, and product liability cases.

Mr. Tropin graduated from the University of Virginia law school in 2012, and prior to joining this firm, was an associate at a major Miami law firm and helped launch a new law firm in Wynwood. He was given the Daily Business Review's Most Effective Lawyers, Corporate Securities award in 2014. His previous representative matters include:

- Represented a major homebuilder in an action against a former business partner, who had engaged in a fraud and defamation scheme to extort money from the client. Following a jury trial, the homebuilder was awarded \$1.02 billion in damages. The award was affirmed on appeal.
- Represented the former president and CEO of a cruise line in a lawsuit against a major international venture capital conglomerate, travel and entertainment company, based on allegations of misappropriation of trade secrets, breach of a non-disclosure agreement, and breach of a partnership agreement.
- Represented the CEO of a rapid finance company in an action seeking injunctive relief to protect his interest in the company.
- Represented a medical supply distribution company in an action that involved allegations of misappropriation and breach of a non-circumvention agreement.
- Represented a mobile phone manufacturer and distributor in a multi-million-dollar dispute regarding membership interests in a Limited Liability Company, with claims alleging misappropriation of trade secrets and breach of fiduciary duty.
- Represented a major liquor manufacturer in a products liability lawsuit arising out of an incident involving flaming alcohol.

# KRISTEN LAKE CARDOSO

Partner

## ***Bar Admissions***

The Florida Bar  
The State Bar of California

## ***Court Admissions***

U.S. District Court, Southern District of Florida  
U.S. District Court, Middle District of Florida  
U.S. District Court, Central District of California  
U.S. District Court, Northern District of Illinois  
U.S. District Court, Eastern District of Michigan

## ***Education***

Nova Southeastern University, J.D., 2007  
University of Florida, B.A., 2004

***Email: cardoso@kolawyers.com***



Kristen Lake Cardoso is a litigation attorney focusing on consumer class actions and complex commercial litigation. She has gained valuable experience representing individuals and businesses in state and federal courts at both the trial and appellate levels in a variety of litigation matters, including contractual claims, violations of consumer protection statutes, fraud, breach of fiduciary duty, negligence, professional liability, real estate claims, enforcement of non-compete agreements, trade secret infringement, shareholder disputes, deceptive trade practices, and other business torts.

Currently, Ms. Cardoso serves as counsel in nationwide and statewide class action lawsuits concerning violations of state consumer protection statutes, false advertising, defective products, data breaches, and breaches of contract. Ms. Cardoso is actively litigating cases against major U.S. airlines for their failure to refund fares following flight cancellations and schedule changes, as well as cases against manufacturers for their sale and misleading marketing of products, including defective cosmetics and nutritional supplements. Ms. Cardoso has also represented students seeking reimbursements of tuition, room and board, and other fees paid to their colleges and universities for in-person education, housing, meals, and other services not provided when campuses closed during the COVID-19 pandemic. Additionally, Ms. Cardoso has represented consumers seeking recovery of gambling losses from tech companies that profit from illegal gambling games offered, sold, and distributed on their platforms.

Ms. Cardoso is admitted to practice law throughout the states of Florida and California, as well as in the United States District Courts for the Southern District of Florida, Middle District of Florida, Central District of California, Northern District of Illinois, and Eastern District of Michigan

Ms. Cardoso attended the University of Florida, where she received her Bachelor's degree in Political Science, cum laude, and was inducted as a member of Phi Beta Kappa honor society. She received her law degree from Nova Southeastern University, magna cum laude. While in law school, Ms. Cardoso served as an Articles Editor for the Nova Law Review, was on the Dean's List, and was the recipient of a scholarship granted by the Broward County Hispanic Bar Association for her academic achievements. When not practicing law, Ms. Cardoso serves as a volunteer at Saint David Catholic School, including as a member of the school Advisory Board and an executive member of the Faculty Student Association. She has also served on various committees with the Junior League of Greater Fort Lauderdale geared towards improving the local community through leadership and volunteering.

# STEVEN SUKERT

Partner

## ***Bar Admissions***

The Florida Bar  
The New York Bar

## ***Court Admissions***

United States District Court, Southern District of Florida  
United States District Court, Middle District of Florida  
United States District Court, Southern District of New York  
United States District Court, Eastern District of New York  
United States District Court, Northern District of Illinois  
United States District Court, Central District of Illinois

## ***Education***

Georgetown University Law Center, J.D., 2018  
Northwestern University, B.S., 2010

***Email: [sukert@kolawyers.com](mailto:sukert@kolawyers.com)***



Steven Sukert has experience in all aspects of complex litigation in federal and state court, including drafting successful dispositive motions and appeals, handling discovery, and arguing court hearings. Steven focuses his practice at KO on complex class actions and multi-district litigations in courts around the country, including in data privacy, bank overdraft fee, and other consumer protection cases.

Before joining KO, Steven gained experience at Gunster, Yoakley & Stewart, P.A. in Miami in high-stakes commercial cases often involving trade secret and intellectual property claims, consumer contract claims, and legal malpractice claims, as well as in international arbitrations. Steven co-authored an amicus brief in the Florida Supreme Court case *Airbnb, Inc. v. Doe* (Case No. SC20-1167), and helped organize the American Bar Association's inaugural International Arbitration Masterclass, in 2021.

Steven was born and raised in Miami. He returned to his home city after law school to clerk for the Honorable James Lawrence King in the U.S. District Court for the Southern District of Florida.

In 2018, Steven earned his J.D. from Georgetown University Law Center. While living in the nation's capital, he worked at the U.S. Department of Labor, Office of the Solicitor, where he won the Gary S. Tell ERISA Litigation Award; the Civil Fraud Section of the U.S. Department of Justice, where he worked on large Medicare fraud cases and pioneered the use of the False Claims Act in the context of pharmaceutical manufacturers who engaged in price fixing; and the Lawyers' Committee for Civil Rights Under Law, where his proposal for writing an amicus brief in the *Janus v. AFSCME* U.S. Supreme Court case was adopted by the organization's board of directors.

Steven has a degree in Molecular Biology from Northwestern University. Prior to his legal career, he worked as a biomedical laboratory researcher at the Diabetes Research Institute in Miami.

# EXHIBIT 2



LOS ANGELES  
15165 VENTURA BOULEVARD  
SUITE 400  
SHERMAN OAKS, CA 91403  
TEL (818) 788-8300  
FAX (818) 788-8104

SAN FRANCISCO  
555 MONTGOMERY STREET  
SUITE 1205  
SAN FRANCISCO, CA 94111  
TEL (415) 433-9000  
FAX (415) 433-9008

MINNEAPOLIS  
328 BARRY AVENUE SOUTH  
SUITE 200  
WAYZATA, MN 55391  
TEL (612) 389-0600  
FAX (612) 389-0610

WWW.PWFIRM.COM

Pearson Warshaw, LLP (“PW”) is an AV-rated civil litigation firm with offices in Los Angeles, San Francisco and Minneapolis. The firm specializes in complex litigation, including state coordination cases and federal multi-district litigation. Its attorneys have extensive experience in antitrust, securities, consumer protection, and unlawful employment practices. The firm handles national and multi-national class actions that present cutting-edge issues in both substantive and procedural areas. PW attorneys understand how to litigate difficult and large cases in an efficient and cost-effective manner, and they have used these skills to obtain outstanding results for their clients, both through trial and negotiated settlement. They are recognized in their field for excellence and integrity, and are committed to seeking justice for their clients.

### **CASE PROFILES**

PW attorneys currently hold, or have held, a leadership role in the following representative cases:

### **NOTABLE CASES**

- *In re National Collegiate Athletic Association Athletic Grant-in-Aid Cap Antitrust Litigation*, Northern District of California, MDL No. 2451. PW attorneys served as co-lead counsel in this multidistrict litigation alleging that the NCAA and its member conferences violated the antitrust laws by restricting the value of grant-in-aid athletic scholarships and other benefits that college football and basketball players could receive. The damages portion of the case settled for \$208 million dollars, while the injunctive relief phase of the case proceeded to a successful bench trial before ultimately concluding with a 9-0 victory in front of the Supreme Court of the United States. *See NCAA v. Alston*, 141 S.Ct. 2141 (2021).
- *In re Credit Default Swaps Antitrust Litigation*, Southern District of New York, MDL No. 2476. PW attorneys served as co-lead counsel and represented the Los Angeles County Employees Retirement Association (“LACERA”) in a class action on behalf of all purchasers and sellers of Credit Default Swaps (“CDS”) against twelve of the world’s largest banks. The lawsuit alleged that the banks, along with other defendants who controlled the market infrastructure for CDS trading, conspired for years to restrain the efficient trading of CDS, thereby inflating the cost to trade CDS. The alleged antitrust



conspiracy resulted in billions of dollars in economic harm to institutional investors such as pension funds, mutual funds, and insurance companies who used CDS to hedge credit risks on their fixed income portfolios. After nearly three years of litigation and many months of intensive settlement negotiations, PW helped reach a settlement with the defendants totaling \$1.86 *billion* plus injunctive relief. On April 15, 2016, the Honorable Denise L. Cote granted final approval to the settlement, which is one of the largest civil antitrust settlements in history.

- *Senne, et al. v. Office of the Commissioner of Baseball, et al.*, Northern District of California, Case No. 14-cv-00608. PW attorneys currently serve as co-lead counsel in this certified class action and FLSA collective action on behalf of minor league baseball players who allege that Major League Baseball and its member franchises violate the FLSA and state wage and hour laws by failing to pay minor league baseball players minimum wage and overtime. On August 26, 2022, the court granted preliminary approval to a historic proposed \$185 million settlement.
- *In re TFT-LCD (Flat Panel) Antitrust Litigation*, Northern District of California, MDL No. 1827. PW served as co-lead counsel for the direct purchaser plaintiffs in this multidistrict litigation arising from the price-fixing of thin film transistor liquid crystal display (“TFT-LCD”) panels. Worldwide, the TFT-LCD industry is a multi-billion dollar industry, and many believe that this was one of the largest price-fixing cases in the United States. PW helped collect over \$405 million in settlements before the case proceeded to trial against the last remaining defendant, Toshiba Corporation and its related entities. PW partner Bruce L. Simon served as co-lead trial counsel, successfully marshaled numerous witnesses, and presented the opening argument. On July 3, 2012, PW obtained a jury verdict of \$87 million (before trebling) against Toshiba. PW later settled with Toshiba and AU Optronics to bring the total to \$473 million in settlements. In 2013, California Lawyer Magazine awarded Mr. Simon a California Lawyer of the Year Award for his work in the *TFT-LCD* case.
- *In re Potash Antitrust Litigation (No. II)*, Northern District of Illinois, MDL No. 1996. PW partner Bruce L. Simon served as co-lead counsel for the direct purchaser plaintiffs in this multidistrict litigation arising from the price-fixing of potash sold in the United States. After the plaintiffs defeated a motion to dismiss, the defendants appealed, and the Seventh Circuit Court of Appeals agreed to hear the case *en banc*. Mr. Simon presented oral argument to the *en banc* panel and achieved a unanimous 8-0 decision in his favor. The case resulted in \$90 million in settlements for the direct purchaser plaintiffs, and the Court’s opinion is one of the most significant regarding the scope of international antitrust conspiracies. *See Minn-Chem, Inc. v. Agrium Inc.*, 683 F. 3d 845 (7th Cir. 2012).
- *In Re Fairlife Milk Products Marketing And Sales Practices Litigation*, Northern District of Illinois, MDL No. 2909. PW partner Melissa S. Weiner served as co-lead counsel for a class of purchasers of fairlife-brand milk products who were allegedly subjected to false



and misleading representations regarding the treatment of the dairy cows. In 2022, the court granted final approval of a landmark \$21 million settlement, which also provided for meaningful stipulated injunctive relief.

### CURRENT CASES

- *In re Broiler Chicken Antitrust Litigation*, Northern District of Illinois, Case No. 1:16-cv-08637. PW attorneys currently serve as interim co-lead counsel on behalf of direct purchaser plaintiffs. The complaint alleges that the nation’s largest broiler chicken producers violated antitrust laws by limiting production and manipulating the price indices. Thus far, PW and co-counsel have secured final approval of over \$180 million in settlements for the direct purchaser plaintiffs with numerous defendants remaining in the litigation.
- *In re Pork Antitrust Litigation*, District of Minnesota, Case No. 0:18-cv-01776. PW attorneys currently serve as interim co-lead counsel on behalf of direct purchaser plaintiffs. The complaint alleges that the nation’s largest pork producers violated antitrust laws by limiting production and manipulating the price indices. Thus far, PW and co-counsel have secured over \$100 million in settlements for the direct purchaser plaintiffs with numerous defendants remaining in the litigation.
- *Vakilzadeh v. The Trustees of The California State University*, Los Angeles County Superior Court, Case No. 20STCV23134. PW partner Daniel L. Warshaw serves as co-lead counsel for a putative class of California State University students who were not provided refunds of tuition and fees from the closing all campuses and ending in-person learning and activities.
- *North American Soccer League, LLC v. United States Soccer Federation, Inc., and Major League Soccer, L.L.C.*, Eastern District of New York, Case No. 1:17-cv-05495-MKB-ST. PW, along with co-counsel, represents the North American Soccer League in a matter against the United States Soccer Federation and Major League Soccer alleging antitrust violations. The complaint alleges that U.S. Soccer and MLS prevented NASL from competing against MLS (the sole Division I league) and the United Soccer League (the sole Division II league). The matter is set for trial in October, 2023.
- *In re Santa Fe Natural Tobacco Company Marketing, Sales Practices, and Products Liability Litigation*, District of New Mexico, Case No. 1:16-md-02695-JB-LF. PW partner Melissa S. Weiner chairs the Executive Committee and PW partner Daniel L. Warshaw serves on the executive committee. This class action alleges that defendants’ “natural” and “additive free” claims on their tobacco products were false and misleading to consumers.
- *In re KIND LLC “Healthy and All Natural” Litigation*, Southern District of New York, MDL No. 2645. PW partner Daniel L. Warshaw currently serves as interim co-lead counsel in this multidistrict litigation on behalf of consumers who allege that they



purchased KIND snack bars that were falsely advertised as “all natural,” “non-GMO,” and/or “healthy.” The case is currently on appeal in the Second Circuit Court of Appeals.

### PAST CASES

- *Grace v. Apple, Inc.*, Northern District of California, Case No. 5:17-CV-00551. PW partners Daniel L. Warshaw and Jill M. Manning served as class counsel in this California certified class action on behalf of consumers who allege Apple intentionally broke its “FaceTime” video conferencing feature for Apple iPhone 4 or iPhone 4S users operating on iOS 6 or earlier. PW and co-counsel obtained final approval of an \$18 million settlement in this matter.
- *In re Lithium Ion Batteries Antitrust Litigation*, Northern District of California, MDL No. 2420. PW served as co-lead counsel for the direct purchaser plaintiffs in this multidistrict antitrust class action alleging price-fixing of lithium ion battery cells. PW and co-counsel secured final approval of over \$139 million in settlements for the direct purchaser plaintiffs.
- *In re Keurig Green Mountain Single-Serving Coffee Antitrust Litigation*, Southern District of New York, MDL No. 2542. In June 2014, Judge Vernon S. Broderick appointed PW to serve as interim co-lead counsel on behalf of indirect purchaser plaintiffs in this multidistrict class action litigation. The case arises from the alleged unlawful monopolization of the United States market for single-serve coffee packs by Keurig Green Mountain, Inc. Keurig’s alleged anticompetitive conduct includes acquiring competitors, entering into exclusionary agreements with suppliers and distributors to prevent competitors from entering the market, engaging in sham patent infringement litigation, and redesigning the single-serve coffee pack products in the next version of its brewing system to lock out competitors’ products. PW and co-counsel obtained final approval of a \$31 million settlement.
- *Trepte v. Bionaire, Inc.*, Los Angeles County Superior Court, Case No. BC540110. PW attorneys served as Class Counsel in this certified class action alleging that the defendant sold defective space heaters. The complaint alleged that defendant breached the warranty and falsely advertised the safety of the heaters due to design defects that cause the heaters to fail – and, as a result of the failure, the heaters could spark, smoke and catch fire. Final approval of the class settlement was granted.
- *In re Carrier IQ Consumer Privacy Litigation*, Northern District of California, MDL No. 2330. PW attorneys served as interim co-lead counsel in this putative nationwide class action on behalf of consumers who alleged privacy violations arising from software installed on their mobile devices that was logging text messages and other sensitive information.



- *Sciortino, et al. v. PepsiCo, Inc.*, Northern District of California, Case No. 14-cv-0478. PW attorneys served as interim co-lead counsel in this putative California class action on behalf of consumers who alleged that PepsiCo failed to warn them that certain of its sodas contain excess levels of a chemical called 4-Methylimidazole in violation of Proposition 65 and California consumer protection statutes.
- *James v. UMG Recordings, Inc.*, Northern District of California, Case No. 11-cv-01613. PW partner Daniel L. Warshaw served as interim co-lead counsel in this putative nationwide class action on behalf of recording artists and music producers who alleged that they had been systematically underpaid royalties by the record company UMG.
- *In re Warner Music Group Corp. Digital Downloads Litigation*, Northern District of California, Case No. 12-cv-00559. PW attorneys served as interim co-lead counsel, with partner Bruce L. Simon serving as chairman of a five-firm executive committee, in this putative nationwide class action on behalf of recording artists and music producers who alleged that they had been systematically underpaid royalties by the record company Warner Music Group.
- *In re Dynamic Random Access Memory (DRAM) Antitrust Litigation*, Northern District of California, MDL No. 1486. PW partner Bruce L. Simon served as co-chair of discovery and as a member of the trial preparation team in this multidistrict litigation arising from the price-fixing of DRAM, a form of computer memory. Mr. Simon was responsible for supervising and coordinating the review of almost a terabyte of electronic documents, setting and taking depositions, establishing and implementing protocols for cooperation between the direct and indirect plaintiffs as well as the Department of Justice, presenting oral arguments on discovery matters, working with defendants on evidentiary issues in preparation for trial, and preparation of a comprehensive pretrial statement. Shortly before the scheduled trial, class counsel reached settlements with the last remaining defendants, bringing the total value of the class settlements to over \$325 million.
- *In re Methionine Antitrust Litigation*, Northern District of California, MDL No. 1311. PW partner Bruce L. Simon served as co-lead counsel in this nationwide antitrust class action involving a conspiracy to fix prices of, and allocate the markets for, methionine. Mr. Simon was personally responsible for many of the discovery aspects of the case including electronic document productions, coordination of document review teams, and depositions. Mr. Simon argued pretrial motions, prepared experts, and assisted in the preparation of most pleadings presented to the Court. This action resulted in over \$100 million in settlement recovery for the Class.
- *In re Sodium Gluconate Antitrust Litigation*, Northern District of California, MDL No. 1226. PW partner Bruce L. Simon served as class counsel in this consolidated antitrust class action arising from the price-fixing of sodium gluconate. Mr. Simon was selected by



Judge Claudia Wilken to serve as lead counsel amongst many other candidates for that position, and successfully led the case to class certification and settlement.

- *In re Citric Acid Antitrust Litigation*, Northern District of California, MDL No. 1092. PW partner Bruce L. Simon served as class counsel in antitrust class actions against Archer-Daniels Midland Co. and others for their conspiracy to fix the prices of citric acid, a food additive product. Mr. Simon was one of the principal attorneys involved in discovery in this matter. This proceeding resulted in over \$80 million settlements for the direct purchasers.
- *Olson v. Volkswagen of America, Inc.*, Central District of California, Case No. CV07-05334. PW attorneys brought this class action lawsuit against Volkswagen alleging that the service manual incorrectly stated the inspection and replacement intervals for timing belts on Audi and Volkswagen branded vehicles equipped with a 1.8 liter turbo-charged engine. This case resulted in a nationwide class settlement.
- *Swain et al. v. Eel River Sawmills, Inc. et al.*, California Superior Court, DR-01-0216. Bruce L. Simon served as lead trial counsel for a class of former employees of a timber company whose retirement plan was lost through management's investment of plan assets in an Employee Stock Ownership Plan. Mr. Simon negotiated a substantial settlement on the eve of trial resulting in a recovery of approximately 40% to 50% of plaintiffs' damages after attorneys' fees and costs.
- *In re Homestore Litigation*, Central District of California, Master File No. 01-11115. PW attorneys served as liaison counsel and class counsel for plaintiff CalSTRS in this securities class action. The case resulted in over \$100 million in settlements to the Class.
- *In re MP3.Com, Inc., Securities Litigation*, Southern District of California, Master File No. 00-CV-1873. PW attorneys served as defense counsel in this class action involving alleged securities violations under Rule 10b-5.
- *In re Automotive Refinishing Paint Cases*, Alameda County Superior Court, Judicial Council Coordination Proceeding No. 4199. PW attorneys served as class counsel with other law firms in this coordinated antitrust class action alleging a conspiracy by defendants to fix the price of automotive refinishing products.
- *In re Beer Antitrust Litigation*, Northern District of California, Case No. 97-20644 SW. PW partner Bruce L. Simon served as primary counsel in this antitrust class action brought on behalf of independent micro-breweries against Anheuser-Busch, Inc., for its attempt to monopolize the beer industry in the United States by denying access to distribution channels.



- *In re Commercial Tissue Products Public Entity Indirect Purchaser Antitrust Litigation*, San Francisco Superior Court, Judicial Counsel Coordination Proceeding No. 4027. PW partner Bruce L. Simon served as co-lead counsel for the public entity purchaser class in this antitrust action arising from the price-fixing of commercial sanitary paper products.
- *Hart v. Central Sprinkler Corporation*, Los Angeles County Superior Court, Case No. BC176727. PW attorneys served as class counsel in this consumer class action arising from the sale of nine million defective fire sprinkler heads. This case resulted in a nationwide class settlement valued at approximately \$37.5 million.
- *Rueda v. Schlumberger Resources Management Services, Inc.*, Los Angeles County Superior Court, Case No. BC235471. PW attorneys served as class counsel with other law firms representing customers of the Los Angeles Department of Water & Power (“LADWP”) who had lead-leaching water meters installed on their properties. The Court granted final approval of the settlement whereby defendant would pay \$1.5 million to a *cy pres* fund to benefit the Class and to make grants to LADWP to assist in implementing a replacement program to the effected water meters.
- *In re Louisiana-Pacific Corp. Inner-Seal OSB Trade Practices Litigation*, Northern District of California, MDL No. 1114. PW partner Bruce L. Simon worked on this nationwide product defect class action brought under the Lanham Act. The proposed class was certified, and a class settlement was finally approved by Chief Judge Vaughn Walker.
- *In re iPod nano Cases*, Los Angeles County Superior Court, Judicial Counsel Coordination Proceeding No. 4469. PW attorneys were appointed co-lead counsel for this class action brought on behalf of California consumers who own defective iPod nanos. The case resulted in a favorable settlement.
- *Unity Entertainment Corp. v. MP3.Com*, Central District of California, Case No. 00-11868. PW attorneys served as defense counsel in this class action alleging copyright infringement.
- *Vallier v. Jet Propulsion Laboratory*, Central District of California, Case No. CV97-1171. PW attorneys served as lead counsel in this toxic tort action involving 50 cancer victims and their families.
- *Nguyen v. First USA N.A.*, Los Angeles County Superior Court, Case No. BC222846. PW attorneys served as class counsel on behalf of approximately four million First USA credit card holders whose information was sold to third party vendors without their consent. This case ultimately settled for an extremely valuable permanent injunction plus disgorgement of profits to worthy charities.



- *Morales v. Associates First Financial Capital Corporation*, San Francisco Superior Court, Judicial Council Coordination Proceeding No. 4197. PW attorneys served as class counsel in this case arising from the wrongful sale of credit insurance in connection with personal and real estate-secured loans. This case resulted in an extraordinary \$240 million recovery for the Class.
- *In re AEFA Overtime Cases*, Los Angeles County Superior Court, Judicial Council Coordination Proceeding No. 4321. PW attorneys served as class counsel in this overtime class action on behalf of American Express Financial Advisors, which resulted in an outstanding class-wide settlement.
- *Khan v. Denny's Holdings, Inc.*, Los Angeles County Superior Court, Case No. BC177254. PW attorneys settled a class action lawsuit against Denny's for non-payment of overtime wages to its managers and general managers.
- *Kosnik v. Carrows Restaurants, Inc.*, Los Angeles County Superior Court, Case No. BC219809. PW attorneys settled a class action lawsuit against Carrows Restaurants for non-payment of overtime wages to its assistant managers and managers.
- *Castillo v. Pizza Hut, Inc.*, Los Angeles County Superior Court, Case No. BC318765. PW attorneys served as lead class counsel in this California class action brought by delivery drivers who claimed they were not adequately compensated for use of their personally owned vehicles. This case resulted in a statewide class settlement.
- *Baker v. Charles Schwab & Co., Inc.*, Los Angeles County Superior Court, Case No. BC286131. PW attorneys served as class counsel for investors who were charged a fee for transferring out assets between June 1, 2002 and May 31, 2003. This case resulted in a nationwide class settlement.
- *Eallonardo v. Metro-Goldwyn-Mayer, Inc.*, Los Angeles County Superior Court, Case No. BC286950. PW attorneys served as class counsel on behalf a nationwide class of consumers who purchased DVDs manufactured by defendants. Plaintiffs alleged that defendants engaged in false and misleading advertising relating to the sale of its DVDs. This case resulted in a nationwide class settlement.
- *Gaeta v. Centinela Feed, Inc.*, Los Angeles County Superior Court, Case No. BC342524. PW attorneys served as defense counsel in this class action involving alleged failures to pay wages, overtime, employee expenses, waiting time penalties, and failure to provide meal and rest periods and to furnish timely and accurate wage statements.
- *Leiber v. Consumer Empowerment Bv A/K/A Fasttrack*, Central District of California, Case No. CV 01-09923. PW attorneys served as defense counsel in this class action involving



copyrighted music that was made available through a computer file sharing service without the publishers' permission.

- *Higgs v. SUSA California, Inc.*, Los Angeles County Superior Court Case No. BC372745. PW attorneys served as co-lead class counsel representing California consumers who entered into rental agreements for the use of self-storage facilities owned by defendants. In this certified class action, plaintiffs allege that defendants wrongfully denied access to the self-storage facility and/or charged excessive pre-foreclosure fees.
- *Fournier v. Lockheed Litigation*, Los Angeles County Superior Court. PW attorneys served as counsel for 1,350 residents living at or near the Skunks-Works Facility in Burbank. The case resolved with a substantial confidential settlement for plaintiffs.
- *Nasseri v. CytoSport, Inc.*, Los Angeles County Superior Court, Case No. 439181. PW attorneys served as class counsel on behalf of a nationwide class of consumers who purchased CytoSport's popular protein powders, ready to drink protein beverages, and other "supplement" products. Plaintiffs alleged that these supplements contain excessive amounts of lead, cadmium and arsenic in amounts that exceed Proposition 65 and negate CytoSport's health claims regarding the products. The case resulted in a nationwide class action settlement which provided monetary relief to the class members and required the reformulation of CytoSport supplement products.
- *In re Samsung Top-Load Washing Machine Marketing, Sales Practice and Products Liability Litigation*, Western District of Oklahoma, Case No. 5:17-ml-02792-D. Plaintiffs allege that the top-load washing machines contain defects that cause them to leak and explode. PW Partner Melissa S. Weiner was appointed to the Plaintiffs' Steering Committee in this multi-district class action.



## ATTORNEY PROFILES

### FOUNDING PARTNERS

#### CLIFFORD H. PEARSON

Clifford H. Pearson is a founding partner of Pearson Warsaw, LLP. Mr. Pearson is a civil litigator, business lawyer and mediator focusing on complex litigation, class actions, and business law. In 2013, 2016, 2021 and 2022 Mr. Pearson was named by the *Daily Journal* as one of the Top 100 Lawyers in California. Additionally, Mr. Pearson was named as one of the Daily Journal's 2019 Top Plaintiff Lawyers and in 2022 he was named one of the Top Antitrust Lawyers. He was instrumental in negotiating a landmark settlement totaling \$1.86 billion in *In re Credit Default Swaps Antitrust Litigation*, a case alleging a conspiracy among the world's largest banks to maintain opacity of the credit default swaps market. Mr. Pearson also negotiated \$473 million in combined settlements in *In re TFT-LCD (Flat Panel) Antitrust Litigation*, an antitrust case in the Northern District of California that alleged a decade-long conspiracy to fix the prices of TFT-LCD panels and over \$90 million in *In re Potash Antitrust Litigation*, an antitrust case in the Northern District of Illinois that alleged price fixing by Russian, Belarusian and North American producers of potash, a main ingredient used in fertilizer. Mr. Pearson currently serves as co-lead counsel in both the *In re Broiler Chicken Antitrust Litigation* and *In re Pork Antitrust Litigation* antitrust class action cases alleging price fixing in the broiler and pork industries.

Before creating the firm in 2006, Mr. Pearson was a partner at one of the largest firms in the San Fernando Valley, where he worked for 22 years. There, he represented aggrieved individuals, investors and employees in a wide variety of contexts, including toxic torts, consumer protection and wage and hour cases. Over his career that spans nearly 40 years, Mr. Pearson has successfully negotiated substantial settlements on behalf of consumers, small businesses and companies. In recognition of his outstanding work on behalf of clients, Mr. Pearson has been regularly selected by his peers as a Super Lawyer (representing the top 5% of practicing lawyers in Southern California). He has also attained Martindale-Hubbell's highest rating (AV) for legal ability and ethical standards.

Mr. Pearson is an active member of the American Bar Association, Los Angeles County Bar Association, Consumer Attorneys of California, Consumer Attorneys Association of Los Angeles, and Association of Business Trial Lawyers.

#### **Current Cases:**

- *In re Broiler Chicken Antitrust Litigation* (N.D. Ill.)
- *In re Pork Antitrust Litigation* (D. Minn.)
- *North American Soccer League, LLC v. United States Soccer Federation, Inc., and Major League Soccer, L.L.C.* (E.D.N.Y.)
- *Senne, et al. v. Office of the Commissioner of Baseball, et al.* (N.D. Cal.)



**Education:**

- Whittier Law School, Los Angeles, California – J.D. – 1981
- University of Miami, Miami, Florida – M.B.A. – 1978
- Carleton University, Ontario, Canada – B.A. – 1976

**Bar Admissions:**

- State of California
- United States Court of Appeals for the Ninth Circuit
- United States District Court for the Central District of California
- United States District Court for the Eastern District of California
- United States District Court for the Northern District of California
- United States District Court for the Southern District of California

**Professional Associations and Memberships:**

- American Bar Association
- Association of Business Trial Lawyers
- Consumer Attorneys Association of Los Angeles
- Consumer Attorneys of California
- Los Angeles County Bar Association



## DANIEL L. WARSHAW

Daniel L. Warshaw, a founding partner of Pearson Warshaw, LLP, is a civil litigator and trial lawyer who focuses on antitrust, complex litigation, class actions, and consumer protection. Mr. Warshaw has held leadership roles in numerous state, federal and multidistrict class actions, and obtained significant recoveries for class members in many cases. These cases have included, among other things, antitrust violations, high-technology products, automotive parts, entertainment royalties, intellectual property and false and misleading advertising. Mr. Warshaw has also represented employees in a variety of class actions, including wage and hour, misclassification and other Labor Code violations.

Mr. Warshaw played an integral role in several of the firm's groundbreaking cases. In the *In re TFT-LCD (Flat Panel) Antitrust Litigation*, he assisted in leading this multidistrict to trial and securing \$473 million in recoveries to the direct purchaser plaintiff class. After the firm was appointed as interim co-lead counsel in *In re Credit Default Swaps Antitrust Litigation*, Mr. Warshaw along with his partners and co-counsel successfully secured a \$1.86 billion settlement on behalf of the class.

Currently he serves in a lead or co-lead position in the following cases: *Vakilzadeh v. The Trustees of The California State University*, Los Angeles County Superior Court, Case No. 20STCV23134, a putative class action alleging the students were not refunded for tuition and fees when the California State University System closed its campuses and provided remote learning in lieu of in person education; *Grace v. Apple, Inc.*, 5:17-CV-00551-YGR (N.D. Cal.), a certified class action on behalf of consumers who allege that Apple intentionally broke its "FaceTime" video conferencing feature for iPhones with older operating systems that recently settled for \$18 million on behalf of a California class; *In re KIND LLC "Healthy and All Natural" Litigation*, MDL No. 2645, (S.D.N.Y.), a multistate certified class action on behalf of consumers who allege that they purchased KIND snack bars that were falsely advertised as "all natural," and/or "non-GMO"; *Senne v. The Office of the Commissioner of Baseball*, 3:14-cv-00608-JCS (N.D. Cal.), a certified multistate class action alleging that Major League Baseball and its teams violate state and federal wage and hour laws relating to minor league players. On August 26, 2022, the court granted preliminary approval to a historic proposed \$185 million settlement.

Mr. Warshaw's cases have received significant attention in the press, and Mr. Warshaw has been profiled by the *Daily Journal* for his work in the digital download music cases. In 2022 Mr. Warshaw was named by the *Daily Journal* as one of the Top 100 Lawyers in California. In 2019 and 2020, Mr. Warshaw was named as one of the *Daily Journal's* Top Plaintiff Lawyers. And in 2020 and 2022 he was also named one of the *Daily Journal's* Top Antitrust Lawyers. Additionally, Mr. Warshaw has been selected by his peers as a Super Lawyer (representing the top 5% of practicing lawyers in Southern California) every year since 2005. He has also attained Martindale-Hubbell's highest rating (AV) for legal ability and ethical standards.

Mr. Warshaw has assisted in the preparation of two Rutter Group practice guides: *Federal Civil Trials & Evidence* and *Civil Claims and Defenses*. Mr. Warshaw is the founder and Chair of the



Class Action Roundtable. The purpose of the Roundtable is to facilitate a high-level exchange of ideas and in-depth dialogue on class action litigation.

**Current Cases:**

- *Vakilzadeh v. The Trustees of The California State University*, (Cal. Super. Ct.)
- *In re KIND LLC “Healthy and All Natural” Litigation* (S.D.N.Y.)
- *In re Pork Antitrust Litigation* (D. Minn.)
- *In re. Santa Fe Natural Tobacco Company Marketing, Sales Practices, and Products Liability Litigation* (D. N.M.)
- *Senne, et al. v. Office of the Commissioner of Baseball, et al.* (N.D. Cal.)

**Education:**

- Whittier Law School, Los Angeles, California – J.D. – 1996
- University of Southern California – B.S. – 1992

**Bar Admissions:**

- State of California
- United States Court of Appeals for the Ninth Circuit
- United States Court of Appeals for the Second Circuit
- United States District Court for the Central District of California
- United States District Court for the Eastern District of California
- United States District Court for the Northern District of California
- United States District Court for the Southern District of California
- United States District Court for the District of Colorado
- United States District Court for the Western District of Texas

**Professional Associations and Memberships:**

- American Bar Association
- Association of Business Trial Lawyers, Board Member
- Consumer Attorneys of California
- Los Angeles County Bar Association, Complex Court Committee, Member
- Plaintiffs’ Class Action Roundtable, Chair



**BRUCE L. SIMON**

Bruce L. Simon is a partner emeritus at Pearson Warshaw, LLP and has lead the firm to national prominence. Mr. Simon specializes in complex cases involving antitrust, consumer fraud and securities. He has served as lead counsel in many business cases with national and global impact.

In 2019, Mr. Simon was named as one of the Daily Journal's Top Plaintiff Lawyers. In 2018, Mr. Simon was awarded "Antitrust Lawyer of the Year" by the California Lawyers Association. In 2013 and 2016, Mr. Simon was chosen by the Daily Journal as one of the Top 100 attorneys in California. In 2013, he received the California Lawyer of the Year award from California Lawyer Magazine and was selected as one of seven finalists for Consumer Attorney of the Year by Consumer Attorneys of California for his work in *In re TFT-LCD (Flat Panel) Antitrust Litigation*, MDL No. 1827 (N.D. Cal.). That year, Mr. Simon was included in the Top 100 of California's "Super Lawyers" and has been named a "Super Lawyer" every year since 2003. He has attained Martindale-Hubbell's highest rating (AV) for legal ability and ethical standards.

Mr. Simon was co-lead class counsel in *In re TFT-LCD (Flat Panel) Antitrust Litigation*, a case that lasted over five years and resulted in \$473 million recovered for the direct purchaser plaintiffs. Mr. Simon served as co-lead trial counsel and was instrumental in obtaining an \$87 million jury verdict (before trebling). He presented the opening argument and marshalled numerous witnesses during the six-week trial.

Also, Mr. Simon was co-lead class counsel in *In re Credit Default Swaps Antitrust Litigation*, a case alleging a conspiracy among the world's largest banks to maintain opacity of the credit default swaps market as a means of maintaining supracompetitive prices of bid/ask spreads. After three years of litigation and many months of intensive settlement negotiations, the parties in *CDS* reached a landmark settlement amounting to \$1.86 billion. It is one of the largest civil antitrust settlements in history.

Mr. Simon was also co-lead class counsel in *In re Potash Antitrust Litigation (II)*, MDL No. 1996 (N.D. Ill.), where he successfully argued an appeal of the district court's order denying the defendants' motions to dismiss to the United States Court of Appeals for the Seventh Circuit. Mr. Simon presented oral argument during an *en banc* hearing before the Court and achieved a unanimous 8-0 decision in his favor. The case resulted in \$90 million in settlements for the direct purchaser plaintiffs, and the Court's opinion is one of the most significant regarding the scope of international antitrust conspiracies.

More recently, Mr. Simon completed the trial seeking injunctive relief in the *In re National Collegiate Athletic Association Athletic Grant-in-Aid Cap Antitrust Litigation*. The plaintiffs allege that the NCAA and its member conferences violate the antitrust laws by restricting the value of grant-in-aid athletic scholarships and other benefits that college football and basketball players can receive.



**Reported Cases:**

- *Minn-Chem, Inc. et al. v. Agrium Inc., et al.*, 683 F.3d 845 (7th Cir. 2012)
- *In re National Collegiate Athletic Association Athletic Grant-in-Aid Cap Antitrust Litigation*, 141 S.Ct. 2141 (2021).

**Education:**

- University of California, Hastings College of the Law, San Francisco, California – J.D. – 1980
- University of California, Berkeley, California – A.B. – 1977

**Bar Admissions:**

- State of California
- Supreme Court of the United States
- United States Court of Appeals for the Ninth Circuit
- United States Court of Appeals for the Seventh Circuit
- United States District Court for the Central District of California
- United States District Court for the Eastern District of California
- United States District Court for the Northern District of California
- United States District Court for the Southern District of California

**Publications:**

- Class Certification Procedure, Ch. V, ABA Antitrust Class Actions Handbook (3d ed.), (forthcoming)
- Reverse Engineering Your Antitrust Case: Plan for Trial Even Before You File Your Case, *Antitrust*, Vol. 28, No. 2, Spring 2014
- *The Ownership/Control Exception to Illinois Brick in Hi-Tech Component Cases: A Rule That Recognizes the Realities of Corporate Price Fixing*, ABA International Cartel Workshop February 2014
- *Matthew Bender Practice Guide: California Unfair Competition and Business Torts*, LexisNexis, with Justice Conrad L. Rushing and Judge Elia Weinbach (Updated 2013)
- *The Questionable Use of Rule 11 Motions to Limit Discovery and Eliminate Allegations in Civil Antitrust Complaints in the United States*, ABA International Cartel Workshop February 2012

**Professional Associations and Memberships:**

- California State Bar Antitrust and Unfair Competition Section, Advisor and Past Chair
- ABA Global Private Litigation Committee, Co-Chair
- ABA International Cartel Workshop, Steering Committee
- American Association for Justice, Business Torts Section, Past Chair
- Business Torts Section of the American Trial Lawyers Association, Past Chair
- Hastings College of the Law, Board of Directors (2003-2015), Past Chair (2009-2011)



## PARTNERS

### MELISSA S. WEINER

Melissa S. Weiner is a partner and civil litigator whose work is squarely focused on combating consumer deception. Her experience is expansive, including class actions related to consumer protection, product defect, intellectual property, automotive, false advertising and data breach. Ms. Weiner has taken a leadership role in numerous large class actions and MDLs in cases across the country.

A contributor to her professional community, Ms. Weiner serves as Chair of the Development Committee for Public Justice and serves on the Minnesota Bar Association Food & Drug Law Council. Additionally, she teaches Food Law as an adjunct professor at Mitchell Hamline School of Law and sits on the Food Law Center Advisory Board for Mitchell Hamline School of Law. In recognition of her outstanding efforts in the legal community, each year since 2012, Ms. Weiner has been named a Super Lawyers *Rising Star* by Minnesota Law & Politics.

Ms. Weiner has been appointed to leadership positions in the following MDLs and consolidated cases:

- *In Re: Luxottica of America, Inc. Data Security Breach Litigation* (S.D. Ohio) (Appointed Interim Executive Committee Member);
- *Culbertson v. Deloitte Consulting LLP* (S.D.N.Y.) (Appointed to Plaintiffs' Executive Committee), a nationwide data breach class action;
- *In Re: Fairlife Milk Products Marketing and Sales Practices Litigation* (N.D. Ill.) (Appointed Interim Co-Lead Counsel);
- *In Re Santa Fe Natural Tobacco Company Marketing & Sales Practices and Products Liability Litigation* (D.N.M.) (chair of the Plaintiffs' Steering Committee and member of the Plaintiffs' Oversight Committee);
- *In Re Samsung Top-Load Washing Machine Marketing, Sales Practices & Product Liability Litigation* (W.D. Okla.), (appointed to Plaintiffs' Executive Committee), a nationwide class action regarding a design defect in 2.8 million top loading washing machines, which resulted in a nationwide settlement;
- *In Re Windsor Wood Clad Window Product Liability Litigation* (E.D. Wis.), a nationwide class action regarding allegedly defective windows, which resulted in a nationwide settlement.
- *In Re: Blackbaud, Inc. Customer Data Security Breach Litigation* (D.S.C.), nationwide data breach class action, (appointed to Plaintiffs' Steering Committee).
- *Dusko v. Delta Airlines, Inc.* (N.D. Ga.), a nationwide breach of contract class action (appointed as Co-Lead Class Counsel);
- *In re Apple Inc. App Store Simulated Casino Style Games Litigation* (N.D. Cal.), a multi-state statutory class action (appointed to Plaintiffs' Steering Committee).



**Current Cases:**

- *Anurag Gupta v. Aeries Software, Inc.* (C.D. Cal.) (data breach)
- *Ashour v. Arizona Beverages USA LLC et al.* (S.D.N.Y.) (false advertising/mislabeling)
- *Benson et al v. Newell Brands Inc., et al.* (N.D. Ill.) (false advertising/mislabeling)
- *Connor Burns v. Mammoth Media, Inc.* (C.D. Cal.) (data breach)
- *Daniels v. Delta Air Lines, Inc.* (N.D. Ga.). (COVID-19 pandemic relief)
- *In Re Pork Antitrust Litigation* (D. Minn.)
- *In Re Samsung Top-Load Washing Machine Marketing, Sales Practices, and Products Liability Litigation* (W.D. Okla.)
- *In Re Santa Fe Natural Tobacco Company Marketing, Sales Practices, and Products Liability Litigation* (D. N.M.) (false advertising/mislabeling)
- *Dusko v. Delta Airlines, Inc.*, (N.D. Ga.) (breach of contract)
- *Bombin v. Southwest Airlines Co.*, (E.D. Pa.) (breach of contract)
- *Freeman v. MAM USA Corp.* (N.D. Ill.) (false advertising/mislabeling)
- *In re: Apple Inc. App Store Simulated Casino-Style Games Litig.; In re: Facebook, Inc. App Center Simulated Casino-Style Games Litig.; and In re: Google Play Store Simulated Casino-Style Games Litig.* (N.D. Cal).

**Education:**

- William Mitchell College of Law – J.D. – 2007
- University of Michigan – Ann Arbor – B.A. – 2004

**Bar Admissions:**

- State of New York
- State of Minnesota
- United States Court of Appeals for the Ninth Circuit
- United States District Court for the District of Minnesota
- United States District Court for the Colorado
- United States District Court for the Northern District of Illinois
- United States District Court for the Southern District of New York
- United States District Court for the Eastern District of New York

**Professional Associations and Memberships:**

- Minnesota State Bar Association
- Federal Bar Association
- Public Justice



## **BOBBY POUYA**

Bobby Pouya is a partner in the firm's Los Angeles office, focusing on complex litigation, class actions, and consumer protection. Mr. Pouya has been an attorney with Pearson Warshaw, LLP since 2007, and has extensive experience in representing clients in a variety of contexts. He has served as a primary member of the litigation team in multiple cases that resulted in class certification or a class-wide settlement, including cases that involved high-technology products, price fixing, consumer safety and false and misleading advertising. The cases that Mr. Pouya has worked on have resulted in hundreds of millions of dollars in judgments and settlements on behalf of effected plaintiffs and class members.

Mr. Pouya has served as one of the attorneys representing direct purchaser plaintiffs in several complex antitrust cases, including *In re Polyurethane Foam Antitrust Litigation* (N.D. Ohio) and *In re Fresh and Processed Potatoes Antitrust Litigation* (D. Idaho). Mr. Pouya is currently actively involved in the prosecution of *In re Broiler Chicken Antitrust Litigation* (N.D. Ill), *In re Pork Antitrust Litigation* (D. Minn.), *Senne, et al. v. Office of the Commissioner of Baseball, et al.* (N.D. Cal.), as well as several prominent consumer class action lawsuits.

Mr. Pouya's success has earned him recognition by his peers as a Super Lawyers Rising Star (representing the top 2.5% of lawyers in Southern California age 40 or younger or in practice for 10 years or less) every year since 2008. Mr. Pouya earned his Juris Doctorate from Pepperdine University School of Law in 2006, where he received a certificate in dispute resolution from the prestigious Straus Institute for Dispute Resolution and participated on the interschool trial and mediation advocacy teams, the Dispute Resolution Law Journal and the Moot Court Board.

### **Current Cases:**

- *In re Broiler Chicken Antitrust Litigation* (N.D. Ill)
- *In re Pork Antitrust Litigation* (D. Minn.)
- *In re Cattle Antitrust Litigation* (D. Minn.)
- *Senne, et al. v. Office of the Commissioner of Baseball, et al.* (N.D. Cal.)

### **Education:**

- Pepperdine University School of Law, Malibu, California – J.D. – 2006
- University of California, Santa Barbara, California – B.A., with honors – 2003

### **Publications:**

- *Should Offers Moot Claims?*, Daily Journal, Oct. 10, 2014
- *Central District Local Rules Hinder Class Certification*, Daily Journal, April 9, 2013

### **Bar Admissions:**

- State of California
- United States Court of Appeals for the Ninth Circuit
- United States District Court for the Central District of California



- United States District Court for the Eastern District of California
- United States District Court for the Northern District of California
- United States District Court for the Southern District of California

**Professional Associations and Memberships:**

- American Bar Association
- Consumer Attorneys Association of Los Angeles
- Consumer Attorneys of California
- Los Angeles County Bar Association

**Professional Associations and Memberships:**

- California State Bar Antitrust and Unfair Competition Section, Advisor and Past Chair
- ABA Global Private Litigation Committee, Co-Chair
- ABA International Cartel Workshop, Steering Committee
- American Association for Justice, Business Torts Section, Past Chair
- Business Torts Section of the American Trial Lawyers Association, Past Chair
- Hastings College of the Law, Board of Directors (2003-2015), Past Chair (2009-2011)



**JILL M. MANNING**

Jill M. Manning is a partner in the firm's San Francisco office. She is a trial attorney and skilled litigator who focuses her practices on recovering damages for individuals, employers and businesses who are victims of price-fixing schemes, tying, restraints of trade, and other types of anticompetitive conduct and unfair business practices. She has successfully represented plaintiffs in some of the leading cases brought under federal and state antitrust and consumer protection laws. She has sued price-fixing cartels, high tech companies, electronics manufacturers, agribusinesses, healthcare companies and the NCAA, and has achieved recoveries exceeding \$1.5 billion. Ms. Manning is one of the top-rated antitrust litigation attorneys in Northern California and has met the stringent Super Lawyers selection criteria since 2020.

Ms. Manning has played a prominent role in achieving substantial recoveries for individuals and businesses in numerous complex and class action cases, including:

- *In re TFT-LCD (Flat Panel) Antitrust Litigation* (N.D. Cal) – Resulted in \$1.082 billion for the indirect purchaser plaintiff class.
- *In re DRAM Antitrust Litigation* (N.D. Cal.) – Resulted in \$310 million for the indirect purchaser plaintiff class.
- *In re Lithium Ion Batteries Antitrust Litigation* (N.D. Cal.) – Resulted in over \$139 million for the proposed direct purchaser plaintiff class.
- *In re SRAM Antitrust Litigation* (N.D. Cal.) – Resulted in \$25 million for the indirect purchaser plaintiff class.
- *In re Fresh and Process Potatoes Antitrust Litigation* (D. Idaho) – Resulted in \$19.5 million and injunctive relief valued at over \$1 billion for the direct purchaser plaintiff class.
- *Facebook v. Saverin* (Santa Clara Sup. Ct.) – Resulted in a confidential settlement for Eduardo Saverin, the co-founder of Facebook, and was one of the cases featured in the Academy Award-winning movie, *The Social Network*.

Ms. Manning presently serves in a leadership role or as part of the leadership team in the following cases:

- *Grace v. Apple Inc.* (N.D. Cal.) – co-lead counsel for the certified California class.
- *In re Apple Inc. App Store Simulated Casino-Style Games Litig.; In re Meta, Inc. App Center Simulated Casino-Style Games Litig.; In re Google Play Store Simulated Casino-Style Games Litig.* (N.D. Cal) – plaintiffs' steering committee.



- *In re Broiler Chicken Antitrust Litig.* (N.D. Ill.) – firm appointed as co-lead counsel for the direct purchaser plaintiff class.
- *In re NCAA Student/Athlete Concussion Injury Litigation* (N.D. Ill.) – plaintiffs’ steering committee.
- *In re Pork Antitrust Litigation* (D. Minn.) – firm appointed as interim co-lead counsel for the proposed direct purchaser plaintiff class.
- *Sidibe, et al. v. Sutter Health* (N.D. Cal.) – member of the trial team for the certified California class in an antitrust tying case. After a four-week trial, the jury returned a verdict for the defense which is on appeal in the Ninth Circuit.

In addition to her litigation practice, Ms. Manning is a trained mediator and court appointed neutral. Her mediation practice focuses on facilitating cost-effective, impartial, and efficient resolution of disputes at any stage of the proceeding, including pre-litigation counseling services. Through her broad range of experience and depth of knowledge, Ms. Manning is able to quickly harness and dissect complex legal concepts and pinpoint the critical issues underlying the dispute. An active listener with strong interpersonal skills, Ms. Manning strives to improve the quality and tone of communication between parties in order to facilitate a productive discussion and increase the chances of reaching a settlement.

In addition to her legal practice, Ms. Manning has demonstrated leadership in her professional life and community. In 2022, she was appointed to a four-year term on the Board of Representatives of the California Lawyers Association. She served as Chair of the Executive Committee of the Antitrust and Unfair Competition Law Section of the California Bar Association during the 2017-2018 term and presently serves as an advisor. She has served as editor of the CALIFORNIA ANTITRUST TREATISE, Chapter 22 Indirect-Purchaser Class Actions, since 2014. She is the co-creator and co-chair of the annual “Celebrating Women in Competition Law” event, now in its sixth year. She is an elected official, serving on the Board of Trustees of Shoreline Unified School District since 2010, and as President of the Board since 2016.

Ms. Manning lives in West Marin with her husband and daughter. She enjoys cooking with vegetables grown in her garden, hiking coastal Marin and Sonoma with her Australian Shepherd, playing tennis, and exploring ancient ruins.

**Education:**

- Cambridge University, Pembroke College (summer 1990)
- B.A., University of California at Davis (1991)
- J.D., University of San Francisco School of Law (1995)

**Bar Admissions:**

- United States Supreme Court



- United States Court of Appeals for the Second Circuit
- United States Court of Appeals for the Ninth Circuit
- United States District Court for the Northern District of California
- United States District Court for the Central District of California
- United States District Court for the Southern District of California
- State of California

**Professional Associations and Memberships:**

- American Bar Association, Antitrust Section
- Bar Association of San Francisco, Antitrust Section
- California Lawyers Association, Antitrust Section
- Marin County Bar Association

**Recent Events / Speaking Engagements:**

- Co-creator and Co-chair, Sixth Annual “Celebrating Women in Competition Law” panel presentation, moderated by the Honorable Judge Jacqueline Scott Corley, March 9, 2023
- Master of Ceremonies, 32nd Annual Golden State Antitrust Institute & Antitrust Lawyer of the Year Ceremony, November 10, 2022
- Panelist, Teatime with Angeion: Work-Life Balance in the COVID Era, March 4, 2021
- Moderator, “Big Stakes Antitrust Trial: *In re Korean Ramen Antitrust Litigation*” panel presentation, 29th Annual Golden State Antitrust Law Institute, November 14, 2019
- Moderator, “Managing Antitrust and Complex Business Trials” panel presentation, featuring the Honorable William Alsup, Laurel Beeler, and Edward Chen, 28th Annual Golden State Antitrust Institute, November 8, 2018
- Co-Creator and Moderator, “Practicing Law and Wellness: Modern Strategies for the Lawyer Dealing with Stress, Substance Abuse, and Depressing,” Webinar, January 27, 2016



### MICHAEL H. PEARSON

Michael H. Pearson is a partner and civil litigator in the firm's Los Angeles office, focusing on complex litigation, class actions, and consumer protection. Mr. Pearson has extensive experience in representing clients in a variety of contexts. He has served as a member of the litigation team in multiple cases that resulted in class certification or a class-wide settlement, including cases that involved antitrust, business litigation, complex financial products, high-technology products, consumer safety, and false and misleading advertising. *In re Broiler Chicken Antitrust Litig.*, No. 16 C 8637, 2022 WL 1720468, (N.D. Ill. May 27, 2022); *Benson v. Newell Brands, Inc.*, No. 19 C 6836, 2021 WL 5321510 (N.D. Ill. Nov. 16, 2021). Specifically, he was instrumental in managing the review of tens of millions of documents and drafting pleadings in *In Re Credit Default Swaps Antitrust Litigation*, which was settled for \$1.86 billion, plus injunctive relief.

Mr. Pearson received his Bachelor of Science degree from Tulane University in 2008, majoring in Finance with an Energy Specialization. He received his Juris Doctorate from Loyola Law School Los Angeles in 2011. Mr. Pearson is an active member in a number of legal organizations, including the American Bar Association, Los Angeles County Bar Association, and the Association of Business Trial Lawyers.

Mr. Pearson's success has earned him recognition by his peers as a Super Lawyers Rising Star (representing the top 2.5% of lawyers in Southern California age 40 or younger or in practice for 10 years or less) in 2017, 2018, 2019, 2020, 2021, and 2022.

#### **Current Cases:**

- *In re Broiler Chicken Antitrust Litigation* (N.D. Ill.)
- *In re Pork Antitrust Litigation* (D. Minn.)
- *Senne, et al. v. Office of the Commissioner of Baseball, et al.* (N.D. Cal.)
- *Benson et al v. Newell Brands Inc., et al.* (N.D. Ill)
- *Freeman v. MAM USA Corp.* (N.D. Ill.)
- *In Re: Blackbaud, Inc. Customer Data Security Breach Litigation* (D.S.C.)
- *Martinez v. Nissan North America, Inc.* (M.D. Tenn.)
- *Busler v. Nissan North America, Inc.* (M.D. Tenn.)
- *Beaver v. Nissan North America, Inc.* (M.D. Tenn.)

#### **Past Cases:**

- *In re National Collegiate Athletic Association Athletic Grant-in-Aid Cap Antitrust Litigation* (N.D Cal.) – **\$208 million settlement**
- *In re Credit Default Swaps Antitrust Litigation* (S.D.N.Y.) – **\$1.86 billion settlement**
- *In Re Fairlife Milk Products Marketing And Sales Practices Litigation* (N.D. Ill.)– **\$21 million settlement**
- *Trepte v. Bionaire, Inc.* (Los Angeles County Superior Court)



**Education:**

- Loyola Law School Los Angeles, Los Angeles, California – J.D. – 2011
- Tulane University, New Orleans, Louisiana – B.S., *magna cum laude* – 2008

**Bar Admissions:**

- State of California
- United States Court of Appeals for the Ninth Circuit
- United States District Court for the Central District of California
- United States District Court for the Eastern District of California
- United States District Court for the Northern District of California
- United States District Court for the Southern District of California
- United States District Court for the Northern District of Illinois

**Professional Associations and Memberships:**

- American Bar Association
- Association of Business Trial Lawyers
- Los Angeles County Bar Association



### MATTHEW A. PEARSON

Matthew A. Pearson is a partner in the firm's Los Angeles office focusing on antitrust, consumer protection, business litigation and childhood sexual abuse matters. Matt received his Bachelor of Science degree from the University of Arizona in 2010, majoring in Business Management, and received his Juris Doctorate from Whittier Law School in 2013.

Over the course of his career, Matt has represented clients in variety of different matters including toxic tort litigation, general business litigation, intellectual property, products liability, family law and high-stakes personal injury matters. Matt's clients have included public and private companies, closely held corporations and thousands of individuals.

Matt was part of the litigation team in the *National Collegiate Athletic Association Athletic Grant-in-Aid Cap Antitrust Litigation* which resulted in a plaintiff verdict for the injunctive relief portion of the case in 2018. The damages portion of the case had previously been settled for \$208 million. The plaintiffs' litigation team was honored with the "Outstanding Antitrust Litigation Achievement in Private Law Practice" award by the American Antitrust Institute (AAI) in 2019 for their success in the matter. The verdict was later appealed to the United States Supreme Court where plaintiffs successfully upheld district court's verdict in a landmark 9-0 victory.

Matt is an active member in a number of legal organizations including the American Bar Association, American Association for Justice, Association of Business Trial Lawyers and the Los Angeles County Bar Association. Matt has also been selected as a Southern California Rising Star by Super Lawyers from 2019 to the present.

#### **Current Cases:**

- *In re Broiler Chicken Antitrust* (N.D. Ill.)
- *In re Pork Antitrust Litigation* (D. Minn.)
- *In re Cattle Antitrust Litigation* (D. Minn.)
- *Jennifer Andrews, et al v. Google LLC, et al* (N.D. Cal)
- *In re KIND LLC "Healthy and All Natural" Litigation* (S.D.N.Y.)
- *North American Soccer League, LLC v. United States Soccer Federation, Inc., and Major League Soccer, L.L.C.* (E.D.N.Y.)
- *In re Northern California Clergy Cases*
- *In re Southern California Clergy Cases*
- *In re The San Diego Diocese Cases*

#### **Past Cases:**

- *In re: Keurig Green Mountain Single-Serve Coffee Antitrust Litigation* (S.D.N.Y.) – **\$31 million settlement**
- *Grace v. Apple, Inc.* (N.D. Cal.) – **\$18 million settlement**
- *In re National Collegiate Athletic Association Athletic Grant-in-Aid Cap Antitrust Litigation* (N.D. Cal.) – **\$208 million settlement**



- *In re Credit Default Swaps Antitrust Litigation* (S.D.N.Y.) – **\$1.86 billion settlement**
- *Eashoo v. Iovate Health Sciences USA Inc.* (C.D. Cal.) – **\$2.5 million settlement**

**Education:**

- Whittier Law School, California – J.D. – 2013
- University of Arizona: Eller College of Management – B.S.– 2010

**Bar Admissions:**

- State of California
- United States Court of Appeals for the Ninth Circuit
- United States District Court for the Central District of California
- United States District Court for the Eastern District of California
- United States District Court for the Northern District of California
- United States District Court for the Southern District of California

**Professional Associations and Memberships:**

- American Bar Association
- American Association for Justice
- Association of Business Trial Lawyers
- Los Angeles County Bar Association



## OF COUNSEL

### NEIL SWARTZBERG

Neil Swartzberg, of counsel to Pearson Warshaw, LLP, has significant litigation and counseling experience, with a track record of providing advice and representation to individuals and companies. He has expertise in complex and commercial litigation, focusing on consumer protection, antitrust and securities laws, primarily in the class action context. Practicing in both federal and state courts, he has litigated price-fixing class actions, securities fraud suits and other consumer protection cases, as well as patent infringement, trade secret misappropriation and related intellectual property matters.

Mr. Swartzberg was a leading attorney in the direct purchaser plaintiff class action *In re Static Random Access Memory (SRAM) Antitrust Litigation* (N.D. Cal.). He was also actively involved in several other antitrust class actions, such as *In re International Air Transportation Surcharge Antitrust Litigation* (N.D. Cal.), *Air Cargo Shipping Services Antitrust Litigation* (E.D.N.Y.), *In re Cathode Ray Tube (CRT) Antitrust Litigation* (N.D. Cal.), and *In re Optical Disk Drive (ODD) Antitrust Litigation* (N.D. Cal.). In addition, he has represented patent owners and companies in infringement cases for patents covering video game controllers, Internet search functionality, secure mobile banking transactions and telecommunications switches.

His current cases include: direct purchaser antitrust class actions against the leading domestic producers of poultry (broiler chickens) and pork; several class actions on behalf students against colleges and universities seeking partial refunds of tuition and fees because of the schools closing their campuses and transitioning to online-only classes in the wake of COVID-19; an antitrust suit challenging the conduct of Major League Soccer and the United States Soccer Federation to exclude competition in men's professional soccer; and, two consumer class actions against airlines who failed to provide proper refunds when they canceled passengers' flights following COVID-19.

### **Current Cases:**

- *In re Broiler Chicken Antitrust Litigation* (N.D. Ill.)
- *In re Pork Antitrust Litigation* (D. Minn.)
- *Vakilzadeh v. The Trustees of California State University* (Cal. Sup. Ct., Los Angeles)
- *North American Soccer League, LLC v. United States Soccer Federation, Inc.* (E.D.N.Y)
- *Bombin v. Southwest Airlines Co.* (E.D. Pa.)
- *Dusko v. Delta Air Lines, Inc.* (N.D. Ga.)

### **Education:**

- University of California, Davis, School of Law– J.D. – 2001
- State University of New York, Buffalo – M.A. – 1994
- Duke University – A.B. – 1991



**Bar Admissions:**

- State of California
- United States Court of Appeals for the Ninth Circuit
- Federal Circuit Court of Appeals
- United States District Court for the Central District of California
- United States District Court for the Eastern District of California
- United States District Court for the Northern District of California
- United States District Court for the Eastern District of Missouri
- United States District Court for the Western District of Pennsylvania

**Publications and Presentations:**

- *The Hard Cell, Mobile banking and the Federal Circuit's "divided infringement" decisions*, Feb. 2013, Intellectual Property magazine, with Robert D. Becker.

**Professional Associations and Memberships:**

- American Bar Association

**Languages:**

- German (proficient)



## ASSOCIATES

### NAVEED ABAIE

Naveed Abaie is an associate in the firm's Los Angeles office focusing on consumer protection, antitrust, and business litigation.

He graduated from the University of San Diego, School of Law in 2017. While at the University of San Diego, Mr. Abaie earned his J.D. with a concentration in Business and Corporate Law. Mr. Abaie received his Bachelor's degree from the University of California, Berkeley Haas School of Business in 2012.

#### **Current Cases:**

- *In re Broiler Chicken Antitrust Litigation* (N.D. Ill)
- *In re Pork Antitrust Litigation* (D. Minn.)

#### **Education:**

- University of San Diego, California – J.D. – 2017
- University of California, Berkeley, California – B.A.– 2012

#### **Bar Admissions:**

- State of California

#### **Professional Associations and Memberships:**

- Iranian American Bar Association



**BRIAN S. PAFUNDI**

Brian S. Pafundi is an associate in the firm's Minneapolis office focusing on antitrust and consumer class actions.

Mr. Pafundi graduated from University of Florida Levin College of Law in 2010. After law school he worked as an Assistant Public Defender for the State of Minnesota where he handled a full and diverse caseload including felony trials.

Mr. Pafundi received his B.A. in Political Science in 2005 and a Master of Arts degree in Mass Communications in 2009, both from the University of Florida.

**Current Case:**

- *In re Pork Antitrust Litigation* (D. Minn.)
- *Freeman v. MAM USA Corp.* (N.D. Ill.)

**Education:**

- University of Florida Levin College of Law – J.D. – 2010
- University of Florida College of Journalism and Communications – M.A. – 2009
- University of Florida College of Liberal Arts and Science – B.A. – 2005

**Bar Admission:**

- State of Minnesota



**ADRIAN J. BUONANOCE**

Adrian J. Buonanoce is an associate in the firm's Los Angeles office, focusing on antitrust and consumer protection litigation.

Mr. Buonanoce received a Bachelor's degree in Political Economy from the University of California, Berkeley in 2012. He earned his Juris Doctorate from the University of San Diego School of Law with a concentration in International Law in 2018.

**Current Cases:**

- *Vakilzadeh v. The Trustees of California State University* (Cal. Sup. Ct., Los Angeles)
- *In re Pork Antitrust Litigation* (D. Minn.)
- *In re Cattle Antitrust Litigation* (D. Minn.)
- *In re Broiler Chicken Antitrust Litigation* (N.D. Ill.)

**Education:**

- University of San Diego, California – J.D. – 2018
- University of California, Berkeley, California – B.A.– 2012

**Bar Admissions:**

- State of California

**Professional Associations and Memberships:**

- Association of Business Trial Lawyers



**ERIC J. MONT**

Eric J. Mont is an associate in the firm's Los Angeles office focusing on antitrust, consumer protection, and business litigation. Mr. Mont has represented clients in a variety of different matters and works closely with clients, co-counsel, and opposing counsel on all aspects of litigation.

Mr. Mont received his Bachelor of Science degree from Loyola Marymount University in 2012, majoring in Natural Science. He received his Juris Doctorate from UCLA in 2017.

**Current Cases:**

- *In re Broiler Chicken Antitrust Litigation* (N.D. Ill)
- *In re Pork Antitrust Litigation* (D. Minn.)

**Education:**

- University of California, Los Angeles, Los Angeles, CA– J.D. – 2017
- Loyola Marymount University, Los Angeles, CA– B.S.– 2012

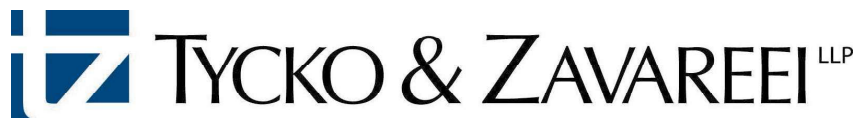
**Bar Admissions:**

- State of California

**Professional Associations and Memberships:**

- American Bar Association

# EXHIBIT 3



## Firm Resume

Jonathan Tycko and Hassan Zavareei founded Tycko & Zavareei LLP in 2002 when they left a large national firm to form a private public interest law firm. Since then, a wide range of clients have trusted the firm with their most difficult problems. Those clients include individuals fighting for their rights, tenants' associations battling to preserve decent and affordable housing, consumers seeking redress for unfair business practices, whistleblowers exposing fraud and corruption, and non-profit entities and businesses facing difficult litigation.

The firm's practice focuses on complex litigation, with a particular emphasis on consumer and other types of class actions, and *qui tam* and False Claims Act litigation. In its class action practice, the firm represent consumers who have been victims of corporate wrongdoing. The firm's attorneys bring a unique perspective to such litigation because many of them trained at major national defense firms where they obtained experience representing corporate defendants in such cases. This unique perspective enables the firm to anticipate and successfully counter the strategies commonly employed by corporate counsel defending class action litigation. Tycko & Zavareei LLP's attorneys have successfully obtained class certification, been appointed class counsel, and obtained approval of class action settlements with common funds totaling over \$500 million.

Tycko & Zavareei LLP's twenty-four attorneys graduated from some of the nation's finest law schools, including Harvard Law School, Columbia Law School, Duke University School of Law, UC Berkeley School of Law, UC Hastings College of the Law, Georgetown Law, the University of Michigan Law School, and the University of Miami School of Law. They have served in prestigious clerkships for federal and state trial and appellate judges and have worked for low-income clients through competitive public interest fellowships. The firm's diversity makes it a leader amongst its peers, and the firm actively and successfully recruits attorneys who are women, people of color, and LGBTQ. To support its mission of litigating in the public interest, Tycko & Zavareei LLP offers a unique public interest fellowship for recent law graduates. Tycko & Zavareei LLP's attorneys practice in state and federal courts across the nation.

## Representative Cases

***Vergara v. Uber Technologies, Inc.*, No. 1:15-cv-06972 (N.D. Ill.).** Tycko & Zavareei LLP served as Co-Lead Counsel in this case under the Telephone Consumer Protection Act, in which he obtained a class settlement of \$20 million.

***In re Fifth Third Early Access Cash Advance Litigation*, No. 1:12-cv-00851 (S.D. Ohio).** Tycko & Zavareei LLP was appointed Co-Lead Counsel in these consolidated payday lending cases, which are in discovery after a successful appeal before the Sixth Circuit.

***Farrell v. Bank of America, N.A.*, No. 16-cv-000492 (S.D. Cal.).** As Co-Lead Counsel, Tycko & Zavareei LLP obtained a settlement valued at \$66.6 million plus injunctive relief valued at \$1.2 billion.

***In re TD Bank, N.A. Debit Card Overdraft Fee Litigation*, No. 15-mn-02613 (D.S.C.).** Tycko & Zavareei LLP serves on the Plaintiffs Executive Committee in this case challenging TD Bank's overdraft fee practices. Tycko & Zavareei LLP assisted in obtaining a \$70 million class settlement.

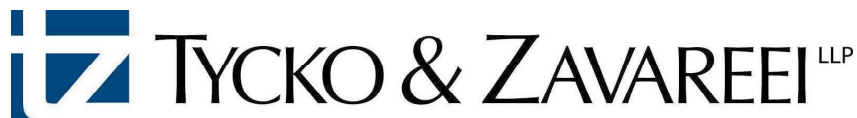
***In re Higher One Account Marketing & Sales Practices Litigation*, No. 12-md-02407 (D. Conn.).** As Lead Counsel, Tycko & Zavareei LLP helped secure a \$15 million common fund settlement with significant changes to business practices for illegal debit card fees.

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Tycko & Zavareei LLP  
2000 Pennsylvania Avenue NW, Suite 1010  
Washington, DC 20006  
202.973.0900

Tycko & Zavareei LLP  
1970 Broadway, Suite 1070  
Oakland, CA 94612  
510.254.6808

Tycko & Zavareei LLP  
10880 Wilshire Blvd., Suite 1101  
Los Angeles, CA 90024  
510.254.6808



***Duval v. Citizens Financial Group, Inc.***, No. 10-cv-21080 (S.D. Fla.). Tycko & Zavareei LLP was appointed Class Counsel and obtained a common fund settlement of \$137.5 million.

***In re American Psychological Association Assessment Fee Litigation***, No. 10-cv-01780 (D.D.C.). Tycko & Zavareei LLP served as Co-Lead Counsel in this case challenging the APA's deceptive fee practices, and achieved a \$9.02 million common fund settlement for the class.

***Lloyd v. Navy Federal Credit Union***, No. 17-cv-1280 (S.D. Cal.). As Co-Lead Counsel, Tycko & Zavareei LLP helped secure a \$24.5 million common fund settlement on behalf of a class of NFCU customers harmed by the credit union's overdraft fee practices.

***Morgan v. Apple, Inc.***, No. 17-cv-5277 (N.D. Cal.), ***Simmons v. Apple Inc.***, No. 17CV312251 (Sup. Ct. Ca., Santa Clara Cty.). Tycko & Zavareei LLP is currently serving as Lead Counsel in this class action challenging Apple's deceptive marketing of Powerbeats headphones and secured a \$9.75 million settlement for the class, which is pending preliminary approval.

***Wallace v. Wells Fargo Bank, N.A.***, No. 17CV31775 (Sup. Ct. Ca., Santa Clara Cty.). Tycko & Zavareei LLP serve as Co-Lead Counsel in this case against Wells Fargo's overdraft fee practices. Tycko & Zavareei LLP recently moved for preliminary approval of a \$10.5 million common fund class settlement.

***Roberts v. Capital One Financial Corporation***, No. 16-cv-04841 (S.D.N.Y.). As Co-Lead Counsel, Tycko & Zavareei LLP helped secure a \$17 million settlement on behalf of Capital One customers forced to pay excessive overdraft fees.

***Hawkins v. First Tennessee Bank, N.A.***, No. CT-0040851-11 (Cir. Ct. Shelby Cty. Tenn.). As Co-Lead Counsel, Tycko & Zavareei LLP helped obtain a class settlement of \$16.75 million on behalf of bank customers harmed by First Tennessee's predatory overdraft fees.

***Mascaro v. TD Bank, N.A.***, No. 10-cv-21117 (S.D. Fla.). Tycko & Zavareei LLP was appointed Class Counsel and was instrumental in obtaining a \$62 million common fund on behalf of the class.

***Trombley v. National City Bank***, No. 10-cv-00232 (D.D.C.). Tycko & Zavareei LLP served as Lead Counsel and obtained a \$12 million common fund settlement on behalf of a class of consumers.

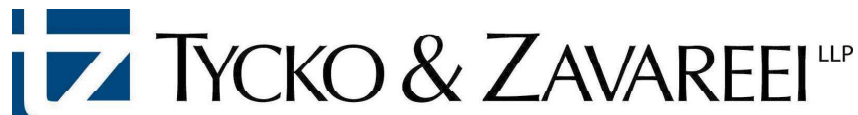
***Taulava v. Bank of Hawaii***, No. 11-1-0337-02 (Cir. Ct. of 1<sup>st</sup> Cir., Haw.). As Co-Lead Counsel, Tycko & Zavareei LLP obtained a \$9 million common fund for a class of customers who were harmed by Bank of Hawaii's overdraft fee practices.

***Bodnar v. Bank of America, N.A.***, No. 14-cv-3224 (E.D. Pa.). Tycko & Zavareei LLP served as lead Counsel and obtained a \$27.5 million class settlement and significant injunctive relief.

***Lambert v. Navy Federal Credit Union***, No. 19-cv-00103 (E.D. Va.). Tycko & Zavareei LLP was appointed Class Counsel and helped secure a \$16 million settlement on behalf of members of Navy Federal Credit Union who were harmed by the credit union's practice of assessing a second or third NSF Fee upon re-resentation of debit items or checks.

***Hamm v. Sharp Electronics Corp.***, No. 19-cv-488 (M.D. Fla.). Tycko & Zavareei LLP was appointed Co-Lead Counsel and was instrumental in providing relief valued at \$109 million for class members exposed to a product defect in certain Sharp Microwave Drawer Ovens.

***Gibbs v. TCV V, LP & Gibbs v. Rees***, Nos. 19-cv-789 & 20-cv-717 (E.D. Va.). Tycko & Zavareei LLP was named class counsel in one of, if not, the largest unlawful tribal payday lending schemes. Thus far, class counsel has been able to obtain a settlement fund over \$60 million as well as the cancellation of \$380 million in loans.



## Jonathan Tycko

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### Partner

202.973.0900  
jtycko@tzlegal.com



In his 25 years of practice, Jonathan Tycko has represented a wide range of clients, including individuals, Fortune 500 companies, privately-held business, and non-profit associations, in both trial and appellate courts around the country. Although he continues to handle a variety of cases, his current practice is focused primarily on helping whistleblowers expose fraud and corruption through qui tam litigation under the False Claims Act and other similar whistleblower statutes. Mr. Tycko's whistleblower clients have brought to light hundreds of millions of dollars in fraud in cases involving healthcare, government contracts, customs and import duties, banking and tax.

Prior to founding Tycko & Zavareei LLP in 2002, Mr. Tycko was with Gibson, Dunn & Crutcher LLP, one of the nation's top law firms. He received his law degree in 1992 from Columbia University Law School, and earned a B.A. degree, with honors, in 1989 from The Johns Hopkins University. After graduating from law school, Mr. Tycko served for two years as law clerk to Judge Alexander Harvey, II, of the United States District Court for the District of Maryland.

In addition to his private practice, Mr. Tycko is an active participant in other law-related and community activities. He currently serves on the Conference Committee of the Taxpayers Against Fraud Education Fund, charged with planning the premier annual conference of whistleblower attorneys and their counterparts at the United States Department of Justice and other government agencies. He has taught as an Adjunct Professor at the George Washington University Law School. He is a former member and Chairperson of the Rules of Professional Conduct Review Committee of the District of Columbia Bar, where he helped draft the ethics rules governing members of the bar. And Mr. Tycko is a member of the Board of Trustees of Studio Theatre, one of the D.C. area's top non-profit theaters.

Mr. Tycko is admitted to practice before the courts of the District of Columbia, Maryland and New York, as well as before numerous federal courts, including the Supreme Court, the Circuit Courts for the D.C. Circuit, Third Circuit, Fourth Circuit, Fifth Circuit, Seventh Circuit, Ninth Circuit, Eleventh Circuit and Federal Circuit, the District Courts for the District of Columbia and District of Maryland, the Southern District of New York, the Northern District of New York, the Western District of New York, and the Court of Federal Claims.

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### Education

Columbia University Law School,  
1992

The Johns Hopkins University, 1989,  
with Honors

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### Bar Admissions

District of Columbia  
Maryland  
New York  
Supreme Court of the United States

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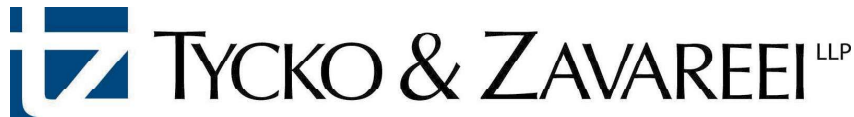
### Memberships

American Association for Justice  
(AAJ)  
Public Justice  
Taxpayers Against Fraud Education  
Fund (TAFEF)

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### Awards

Stone Scholar (all three years),  
Columbia Law School  
Thomas E. Dewey Prize for Best  
Brief, Harlan Fiske Stone Moot Court  
Competition, Columbia Law School  
Award of Litigation Excellence,  
CARECEN-The Central American  
Resource Center  
Super Lawyers, 2012-current  
Member of the D.C. Bar Leadership  
Academy



## Hassan A. Zavareei

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### Partner

202.973.0900  
hzavareei@tzlegal.com

Mr. Zavareei has devoted the last eighteen years to recovering hundreds of millions of dollars on behalf of consumers and workers. He has served in leadership roles in dozens of class action cases and has been appointed Class Counsel on behalf of numerous litigation and settlement classes. An accomplished and experienced attorney, Mr. Zavareei has litigated in state and federal courts across the nation in a wide range of practice areas; tried several cases to verdict; and successfully argued numerous appeals, including in the D.C. Circuit, the Fourth Circuit, and the Fifth Circuit.

After graduating from UC Berkeley School of Law, Mr. Zavareei joined the Washington, D.C. office of Gibson, Dunn & Crutcher LLP. There, he managed the defense of a nationwide class action brought against a major insurance carrier, along with other complex civil matters. In 2002, Mr. Zavareei founded Tycko & Zavareei LLP with his partner Jonathan Tycko.

Mr. Zavareei has served as lead counsel or co-counsel in dozens of class actions involving deceptive business practices, defective products, and/or privacy. He has been appointed to leadership roles in multiple cases. As Lead Counsel in an MDL against a financial services company that provided predatory debit cards to college students, Mr. Zavareei spearheaded a fifteen-million-dollar recovery for class members. He is currently serving as Co-Lead Counsel in consolidated proceedings against Fifth Third Bank, and on the Plaintiffs' Executive Committee in MDL litigation against TD Bank. As Co-Lead Counsel in *Farrell v. Bank of America*, a case challenging Bank of America's punitive overdraft fees, Mr. Zavareei secured a class settlement valued at \$66.6 million in cash and debt relief, together with injunctive relief forcing the bank to change a practice that will save millions of low-income consumers approximately \$1.2 billion in overdraft fees. In his Order granting final approval, Judge Lorenz of the U.S. District Court for the Southern District of California described the outcome as a "remarkable" accomplishment achieved through "tenacity and great skill."



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### Education

UC Berkeley School of Law, 1995,  
Order of the Coif  
Duke University, 1990, *cum laude*

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### Bar Admissions

California  
District of Columbia  
Maryland  
Supreme Court of the United States

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### Memberships

Public Justice, Board Member  
American Association for Justice

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### Awards

Washington Lawyers Committee,  
Outstanding Achievement Award  
Super Lawyer  
Lawdragon 500

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### Presentations & Publications

Witness Before the Subcommittee on  
the Constitution and Civil Justice,  
115<sup>th</sup> Congress

Witness Before the Civil Rules  
Advisory Committee, 2018, 2019

Editor, Duke Law School Center for  
Judicial Studies, Guidance on New  
Rule 23 Class Action Settlement  
Provisions

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Tycko & Zavareei LLP  
2000 Pennsylvania Avenue NW, Suite 1010  
Washington, DC 20006  
202.973.0900

Tycko & Zavareei LLP  
1970 Broadway, Suite 1070  
Oakland, CA 94612  
510.254.6808

Tycko & Zavareei LLP  
10880 Wilshire Blvd., Suite 1101  
Los Angeles, CA 90024  
510.254.6808



## Andrea R. Gold

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### Partner

202.973.0900  
agold@tzlegal.com

Andrea Gold has spent her legal career advocating for consumers, employees, and whistleblowers. Ms. Gold has litigated numerous complex cases, including through trial. Her extensive litigation experience benefits the firm's clients in both national class action cases as well as in qui tam whistleblower litigation.

She has served as trial counsel in two lengthy jury trials.

In her class action practice, Ms. Gold has successfully defended dispositive motions, navigated complex discovery, worked closely with leading experts, and obtained contested class certification. Her class action cases have involved, amongst other things, unlawful bank fees, product defects, violations of the Telephone Consumer Protection Act, and deceptive advertising and sales practices.

Ms. Gold also has significant civil rights experience. She has represented individuals and groups of employees in employment litigation, obtaining substantial recoveries for employees who have faced discrimination, harassment, and other wrongful conduct. In addition, Ms. Gold has appellate experience in both state and federal court.

Prior to joining Tycko & Zavareei LLP, Ms. Gold was a Skadden fellow. The Skadden Fellowship Foundation was created by Skadden, Arps, Slate, Meagher & Flom LLP, one of the nation's top law firms, to support the work of new attorneys at public interest organizations around the country.

Ms. Gold earned her law degree from the University of Michigan Law School, where she was an associate editor of the Journal of Law Reform, co-President of the Law Students for Reproductive Choice, and a student attorney at the Family Law Project clinical program. Ms. Gold graduated with high distinction from the University of Michigan Ross School of Business in 2001, concentrating her studies in Finance and Marketing.



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### Education

University of Michigan Law School,  
2004

University of Michigan, Ross School  
of Business, 2001

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### Bar Admissions

District of Columbia  
Illinois  
Maryland

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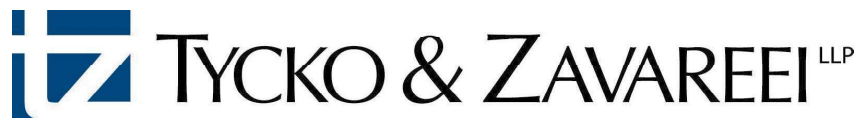
### Memberships

American Association for Justice  
National Associate of Consumer  
Advocates  
National Employment Lawyers  
Association  
Public Justice  
Taxpayers Against Fraud Education  
Fund

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### Awards

National Trial Lawyers, Top 100 Civil  
Plaintiff Lawyers, 2020  
Super Lawyers, Rising Star  
Skadden Fellow, Skadden Arps Slate  
Meagher & Flom LLP, 2004-2006



## Anna Haac

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### Partner

202.973.0900  
ahaac@tzlegal.com



Anna C. Haac is a Partner in Tycko & Zavareei LLP's Washington, D.C. office. She focuses her practice on consumer protection class actions and whistleblower litigation. Her prior experience at Covington & Burling LLP, one of the nation's most prestigious defense-side law firms, gives her a unique advantage when representing plaintiffs against large companies in complex cases. Since arriving at Tycko & Zavareei LLP, Ms. Haac has represented consumers in a wide range of practice areas, including product liability, false labeling, deceptive and unfair trade practices, and predatory financial practices. Her whistleblower practice involves claims for fraud on federal and state governments across an equally broad spectrum of industries, including health care fraud, customs fraud, and government contracting fraud.

Ms. Haac has helped secure multimillion-dollar relief on behalf of the classes and whistleblowers she represents. Ms. Haac also serves as the D.C. Co-Chair of the National Association of Consumer Advocates and as Co-Chair of the Antitrust and Consumer Law Section Steering Committee of the D.C. Bar.

Ms. Haac earned her law degree *cum laude* from the University of Michigan Law School in 2006 and went on to clerk for the Honorable Catherine C. Blake of the United States District Court for the District of Maryland. Prior to law school, Ms. Haac graduated with a B.A. in political science with Highest Distinction from the Honors Program at the University of North Carolina at Chapel Hill.

Ms. Haac is a member of the District of Columbia and Maryland state bars. She is also admitted to the United States Court of Appeals for the Second, Third, and Fourth Circuits and the United States District Courts for the District of Columbia, District of Maryland, and the Eastern District of Michigan, among others.

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### Education

University of Michigan Law School,  
2006, *cum laude*

University of North Carolina at  
Chapel Hill, 2002, Highest Honors

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### Bar Admissions

District of Columbia  
Maryland

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### Memberships

Antitrust & Consumer Protection  
Section of District of Columbia Bar,  
Co-Chair

National Association of Consumer  
Advocates, District of Columbia  
Co-Chair

Public Justice

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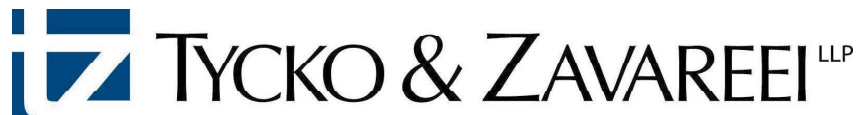
### Awards

Super Lawyers, Rising Star, 2015

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### Presentations & Publications

Discussion Leader, "Practical Ideas  
about Properly Framing the Issues  
and Educating the Court and Public  
in Filings Responding to Increasing  
Attacks on Class Action Settlements  
and Fees," Cambridge Forum on  
Plaintiffs' Class Action Litigation  
(October 2020)



## Annick M. Persinger

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### Partner

510.254.6808  
apersinger@tzlegal.com

Annick M. Persinger leads Tycko & Zavareei LLP's California office as California's Managing Partner. While at Tycko & Zavareei LLP, Ms. Persinger has dedicated her practice to utilizing California's prohibitions against unfair competition and false advertising to advocate for consumers. Ms. Persinger has taken on financial institutions, companies that take advantage of consumers with deceptive advertising, tech companies that disregard user privacy, companies that sell defective products, and mortgage loan servicers. Ms. Persinger also represents whistleblowers who expose their employer's fraudulent practices.

Ms. Persinger graduated magna cum laude as a member of the Order of the Coif from the University of California, Hastings College of the Law in 2010. While in law school, Ms. Persinger served as a member of Hastings Women's Law Journal, and authored two published articles. In 2008, Ms. Persinger received an award for Best Oral Argument in the first year moot court competition. In 2007, Ms. Persinger graduated *cum laude* from the University of California, San Diego with a B.A. in Sociology, and minors in Law & Society and Psychology.

Following law school, Ms. Persinger worked as a legal research attorney for Judge John E. Munter in Complex Litigation at the San Francisco Superior Court.

Ms. Persinger served as an elected board member of the Bay Area Lawyers for Individual Freedom (BALIF) from 2017 to 2019, and as Co-Chair of BALIF from 2018 to 2019. During her term on the BALIF Board of Directors, Ms. Persinger advocated for LGBTQI community members with intersectional identities, and promoted anti-racism and anti-genderism. Ms. Persinger now serves as a Steering Committee member for the Cambridge Forum on Plaintiffs' Food Fraud Litigation.



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### Education

University of California Hastings  
College of Law, 2010, *magna cum laude*,  
Order of the Coif

University of California San Diego,  
2007, *cum laude*

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### Bar Admissions

California

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### Memberships

American Association for Justice

Plaintiffs' Food Fraud Litigation, 2020  
Steering Committee Member

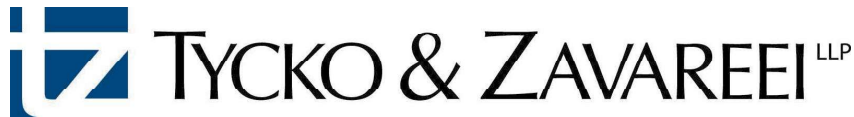
Public Justice

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### Awards

Super Lawyer, Rising Star 2020

UC Hastings, Best Oral Argument  
2008



## Sabita J. Soneji

### Partner

510.254.6808  
ssoneji@tzlegal.com



In 20 years of practice, Sabita J. Soneji has developed extensive experience in litigation and legal policy at both the federal and state level and a passion for fighting consumer fraud. Now a Partner in Tycko & Zavareei LLP's Oakland office, she focuses on consumer protection class actions and whistleblower litigation. In addition to her success with novel Telephone Consumer Protection cases, False Claims Act cases involving insurance fraud, and deceptive and false advertising cases, Ms. Soneji serves in leadership on multi-district litigation against Juul, for its manufacture and marketing to youth of an addictive nicotine product. Ms. Soneji also successfully represents consumers harmed by massive data breaches and by corporate practices that collect and monetize user data without consent. She serves as head of the firm's Privacy and Data Breach Group.

Ms. Soneji began that work during her time with the United States Department of Justice, as Senior Counsel to the Assistant Attorney General. In that role, she oversaw civil and criminal prosecution of various forms of financial fraud that arose in the wake of the 2008 recession. For that work, Ms. Soneji partnered with other federal agencies, state attorneys' general, and consumer advocacy groups. Beyond that affirmative work, Ms. Soneji worked to defend various federal programs, including the Affordable Care Act in nationwide litigation.

Ms. Soneji has extensive civil litigation experience from her four years with international law firm, her work as an Assistant United States Attorney in the Northern District of California, and from serving as Deputy County Counsel for Santa Clara County, handling civil litigation on behalf of the County including regulatory, civil rights, and employment matters. She has successfully argued motions and conducted trials in both state and federal court and negotiated settlements in complex multi-party disputes.

Early in her career, Ms. Soneji clerked for the Honorable Gladys Kessler on the United States District Court for the District of Columbia, during which she assisted the judge in overseeing the largest civil case in American history, *United States v. Phillip Morris, et al.*, a civil RICO case brought against major tobacco manufacturers for fraud in the marketing, sale, and design of cigarettes. The opinion in that case paved the way for Congress to authorize FDA regulation of cigarettes.

Ms. Soneji is a graduate of the University of Houston, *summa cum laude*, with degrees in Math and Political Science, and Georgetown University Law Center, *magna cum laude*.

### Education

Georgetown University Law Center,  
*magna cum laude*

University of Houston, *summa cum laude*

### Bar Admissions

District of Columbia  
California  
Supreme Court of the United States

### Memberships

Ninth Circuit Judicial Council Lawyer  
Representative for the Northern  
District of California, 2023-2025

Law360 Diversity & Inclusion  
Editorial Advisory Board Member,  
2022-2023

American Association for Justice  
(AAJ)

Public Justice, 2022-2023 Member of  
the Board of Directors

### Impact Fund

Taxpayers Against Fraud Education  
Fund (TAFEF)

### Awards

Attorney General's Award 2014

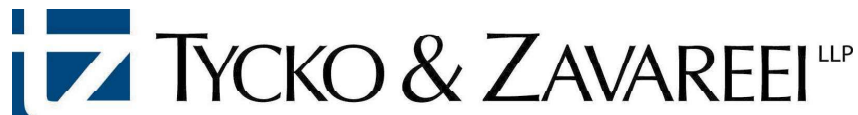
### Presentations & Publications

NITA Trial Skills Faculty 2010-  
present

Tycko & Zavareei LLP  
2000 Pennsylvania Avenue NW, Suite 1010  
Washington, DC 20006  
202.973.0900

Tycko & Zavareei LLP  
1970 Broadway, Suite 1070  
Oakland, CA 94612  
510.254.6808

Tycko & Zavareei LLP  
10880 Wilshire Blvd., Suite 1101  
Los Angeles, CA 90024  
510.254.6808



## Kristen G. Simplicio

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### Partner

202.973.0900  
ksimplicio@tzlegal.com

Kristen G. Simplicio has devoted her career to representing victims of false advertising and corporate fraud. Prior to joining Tycko & Zavareei LLP's D.C. office in 2020, she spent ten years at a boutique class action firm in California. While there, she successfully litigated over a dozen false advertising cases against manufacturers of a variety of consumer products, including olive oil, flushable wipes, beverages, and chocolate. In connection with this work, she helped to obtain millions of dollars in refunds to consumers, as well as changed practices.

In addition to her product labeling work, Ms. Simplicio has represented plaintiffs in a wide variety of areas. For example, she was the lead associate on RICO case on behalf of small business owners against 18 defendants in the credit card processing industry. In connection with that case, she obtained a preliminary injunction halting an illegal \$10 million debt collection scheme, and later, helped to secure refunds and changed practices for the victims. She has also represented victims of other debt collectors, as well as those harmed by unlawful background and credit reporting, including a pro bono matter performed in conjunction with the Lawyers' Committee for Civil Rights of the San Francisco Bay Area. Ms. Simplicio also worked on a lawsuit against government agencies, which were charging unconstitutional fines and fees in connection with toll collection.

Ms. Simplicio graduated *cum laude* from American University, Washington College of Law in 2007. She holds a bachelor's degree from McGill University. She began her legal career at the United States Department of Labor, where she advised on regulations pertaining to group health insurance plans. Before and during law school, Ms. Simplicio worked for other plaintiffs' law firms.

Ms. Simplicio serves as the D.C. Co-Chair of the National Association of Consumer Advocates. She is admitted to practice in California and the District of Columbia.



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### Education

American University, Washington  
College of Law, 2007, *cum laude*  
McGill University, 1999

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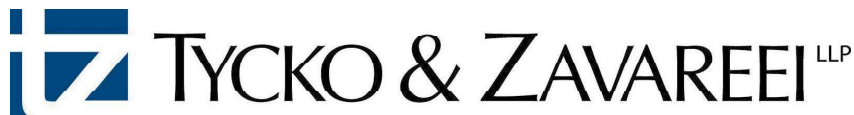
### Bar Admissions

California  
District of Columbia

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### Memberships

National Association of Consumer  
Advocates  
American Association for Justice  
Public Justice



## Renée Brooker

### Partner

202.417.3664  
reneebrooker@tzlegal.com

Bringing 30 years of practice, knowledge, and expertise as a former prosecutor in a senior leadership position at the United States Department of Justice, Renée Brooker is now representing whistleblowers. While at the Department of Justice for over two decades, Ms. Brooker was responsible for billions of dollars in recoveries under whistleblower laws. As an accomplished and experienced attorney, Ms. Brooker has advised and represented whistleblowers under the False Claims Act (FCA), the Anti-Kickback Statute and Stark Law, FIRREA (bank fraud, mail, and wire fraud), the Financial Institutions Anti-Fraud Enforcement Act (FIAFE), and the Whistleblower Programs of the SEC, the CFTC, and the IRS.

As Assistant Director within the Civil Division of the United States Department of Justice, Ms. Brooker was responsible for sizeable recoveries and successful judgments under the False Claims Act, FIRREA, and civil RICO in almost every industry: pharmaceutical, health care, defense, financial services, government procurement, small business, insurance, tobacco products, and higher education.

Ms. Brooker received her law degree in 1990 from Georgetown University Law Center, and a B.S. degree in 1987 from Temple University. After graduating from Georgetown, Ms. Brooker served as a Law Clerk to Judge Noël Kramer in the District of Columbia for one year before joining the United States Department of Education as an attorney. Ms. Brooker was hired as part of the enforcement response to Congressional investigations of fraud in federal student aid programs affecting consumers and taxpayers. Prior to joining Tycko & Zavareei LLP in 2020, Ms. Brooker worked at another prominent whistleblower firm where she advised and represented whistleblowers while expanding the firm's whistleblower practice. Ms. Brooker also served as a member of the United States Department of Justice-appointed Independent Corporate Compliance Monitor and Auditor for Volkswagen under its Plea Agreement and Consent Decree with the United States Department of Justice.



### Education

Georgetown University Law Center, J.D.  
Temple University, B.S.

### Bar Admissions

District of Columbia  
Pennsylvania

### Memberships

Taxpayers Against Fraud Education Fund (TAFEF)  
Board Member, Federal Bar Association Qui Tam Section  
National Employment Lawyers Association (NELA)

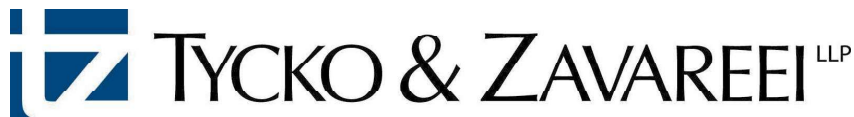
### Awards

Department of Justice Commendation Award for recovering billions of dollars under the Big Lender Initiative, 2016  
Council of the Inspectors General on Integrity and Efficiency Award for Excellence for \$1.2 billion False Claims Act settlement with Wells Fargo, 2016  
Department of Justice Award for “a record of outstanding actions and accomplishments,” 2015  
Attorney General’s Award for Fraud Prevention, 2011  
Department of Justice Award for prosecuting Big Tobacco under RICO, 2005

Tycko & Zavareei LLP  
2000 Pennsylvania Avenue NW, Suite 1010  
Washington, DC 20006  
202.973.0900

Tycko & Zavareei LLP  
1970 Broadway, Suite 1070  
Oakland, CA 94612  
510.254.6808

Tycko & Zavareei LLP  
10880 Wilshire Blvd., Suite 1101  
Los Angeles, CA 90024  
510.254.6808



## Eva Gunasekera

### Partner

202.417.3655  
eva@tzlegal.com

Bringing 16 years of complex litigation experience practice, Eva Gunasekera, the former Senior Counsel for Health Care Fraud at the United States Department of Justice, is now representing whistleblowers. Ms. Gunasekera has spent the better part of her career enforcing the False Claims Act and the Stark and Anti-Kickback laws.

Highly strategic, Ms. Gunasekera has many notable successes under her belt, sizeable recoveries under the False Claims Act, and has held companies accountable for fraudulent conduct that harmed important government programs such as Medicare and Medicaid. With deep health care fraud expertise, she has investigated, litigated, and settled cases involving all federal health care programs (Medicare, Medicaid, TRICARE, FEHB). Ms. Gunasekera is an expert on analyzing complex health care data sets, including Medicare and Medicaid payment data and trends, to identify potentially fraudulent practices. She has enforced anti-fraud laws and represented whistleblowers across industries: pharmaceutical manufacturers, health care providers, hospitals, physicians, physician groups, laboratories, managed care, pharmacies, hospice and nursing home providers, financial institutions, government suppliers, automotive, small businesses, and defense contractors. Many of her investigations involved parallel criminal proceedings and compliance and whistleblower programs of health care organizations, including those subjected to Corporate Integrity Agreements and oversight by Independent Review Organizations, as required by the U.S. Department of Health and Human Services, Office of Inspector General (HHS-OIG).

After graduating with her Master's in Public Administration from Ohio University, and from Georgetown University Law Center, Ms. Gunasekera practiced law at two international law firms. She acted as second chair during administrative trials and handled complex commercial litigation. Ms. Gunasekera also played a significant role on the team that represented the Enron Creditors Recovery Corp in the bankruptcy proceeding, successfully returning billions of dollars to creditors in the wake of the Enron scandal. Further, Ms. Gunasekera represented clients in pro bono matters, including the successful defense of an individual seeking asylum and as guardian ad litem for three children.



### Education

Georgetown University Law Center,  
J.D., 2004  
Ohio University, M.A., 2001  
Ohio University, B.A., 2000

### Bar Admissions

District of Columbia  
Ohio

### Memberships

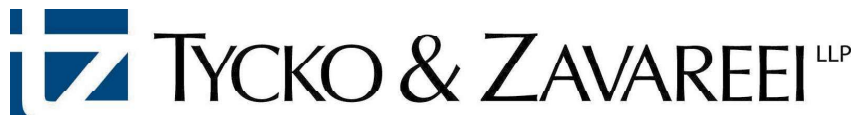
Taxpayers Against Fraud Education  
Fund (TAFEF)  
Federal Bar Association Qui Tam  
Section

### Presentations & Publications

"Whistleblower Rewards 101" –  
Scottsdale (Arizona) Bar Association  
(March 9, 2021)

"Should the False Claims Act be  
Amended to Define Falsity?" - Federal  
Bar Association, Qui Tam Section  
(February 17, 2021)

Law review article: False Claims Act,  
the opioid crisis, whistleblowing,  
Emory University Law School,  
February 26, 2019



## Allison W. Parr

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### Associate

202.973.0900  
aparr@tzlegal.com

Prior to joining Tycko & Zavareei LLP in 2021, Allison W. Parr was an associate in the Washington, D.C. office of Mayer Brown LLP, where she represented corporations in complex commercial litigation, including cases involving unfair competition and false advertising claims. Previously, Ms. Parr was a litigation associate in the New York office of Kramer Levin Naftalis & Frankel LLP, where she maintained an active pro bono practice in LGBTQ civil rights.

Ms. Parr graduated from the Georgetown University Law Center in 2018, where she served as the Articles and Notes Editor for the Food and Drug Law Journal. During law school, Ms. Parr externed for the Commercial Litigation Branch, Fraud Section of the Department of Justice, where she assisted with cases involving allegations of fraud against the government. Ms. Parr received her Bachelor of Music from the Peabody Institute of the Johns Hopkins University in 2013.

Ms. Parr is admitted to practice in New York and the District of Columbia.



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### Education

Georgetown University Law Center,  
2018

John Hopkins University, 2013, with  
High Honors

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### Bar Admissions

New York  
District of Columbia

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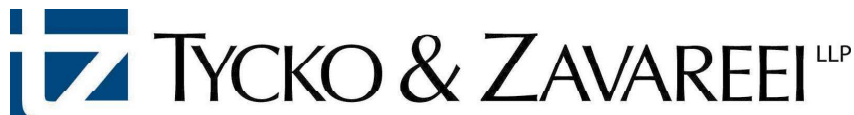
### Memberships

Public Justice

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### Presentations & Publications

Agribusiness and Antibiotics: A  
Market-Based Solution, 73 Food &  
Drug L.J. 338 (2018)



## Glenn Chappell

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### Associate

202.973.0900  
gchappell@tzlegal.com

Glenn Chappell is an associate in the Washington, D.C. office. Prior to joining Tycko & Zavareei LLP, he was an associate in the Washington, D.C. office of Gibson, Dunn & Crutcher LLP, one of the nation's most prestigious defense-side firms. During his time at Gibson Dunn, Mr. Chappell represented corporations in complex litigation at the trial and appellate levels, including the United States Supreme Court. He also maintained an active pro bono practice that focused on police and sentencing reform.

Mr. Chappell graduated *summa cum laude* from Duke University School of Law in 2017, where he served as Managing Editor of the *Duke Law Journal* and Senior Research Editor of the *Duke Law & Technology Review*. While in law school, he dedicated more than 450 hours to pro bono work.

After graduating law school, Mr. Chappell clerked for the Honorable Gerald Bard Tjoflat of the United States Court of Appeals for the Eleventh Circuit and the Honorable Anthony J. Trenga of the United States District Court for the Eastern District of Virginia. Before law school, he worked as a manager in the manufacturing industry. He graduated with honors from Saint Leo University, earning a Bachelor of Arts in Business Administration. His legal scholarship has appeared in multiple publications, including the *Duke Law Journal* and the *University of Richmond Law Review*.



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### Education

Duke University School of Law, 2017,  
*summa cum laude*, Order of the Coif  
Saint Leo University, 2011, *cum laude*

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### Bar Admissions

District of Columbia  
Virginia  
Supreme Court of the United States

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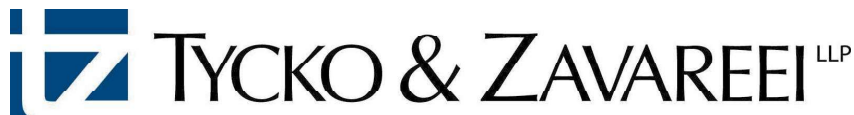
### Memberships

Order of the Coif  
Virginia Equality Bar Association  
American Constitution Society  
Virginia Bar Association  
Public Justice

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### Publications

*The Historical Case for Constitutional "Concepts"*, 53 UNIVERSITY OF RICHMOND LAW REVIEW 373 (2019)  
*Health Care's Other "Big Deal": Direct Primary Care Regulation in Contemporary American Health Law*, 66 DUKE LAW JOURNAL 1331 (2017)  
*Seeking Rights, Not Rent: How Litigation Finance Can Help Break Copyright's Precedent Gridlock*, 15 DUKE LAW & TECHNOLOGY REVIEW 269 (2017)



## Lauren Kuhlik

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### Associate

202.973.0900  
lkuhlik@tzlegal.com



Prior to joining Tycko & Zavareei LLP in 2021, Lauren Kuhlik was a fellow at the National Prison Project of the American Civil Liberties Union, where she engaged in litigation and other advocacy to stop unconstitutional and illegal practices by prison and jail administrators and ICE. She focused on improving conditions of confinement for pregnant and postpartum people, as well as fighting to eliminate the inhumane practice of solitary confinement. During the COVID-19 crisis, Ms. Kuhlik maintained an extensive habeas practice seeking to secure the release of detained individuals with medical vulnerabilities.

Ms. Kuhlik graduated *cum laude* from Harvard Law School in 2017. She also received a Masters in Public Health from the Harvard T.H. Chan School of Public Health in 2017. Following law school, Ms. Kuhlik clerked for the Honorable Stephen Glickman of the District of Columbia Court of Appeals. She has published articles regarding the treatment of pregnant incarcerated people in the Harvard Law and Policy Review and the Harvard Civil Rights-Civil Liberties Law Review. Ms. Kuhlik has also published about gender and incarceration in USA Today and Ms. Magazine, among others.

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### Education

Harvard Law School, 2017, *cum laude*  
Harvard T.H. Chan School of Public Health, M.P.H., 2017  
Wesleyan University, BA in Philosophy with Honors, 2011

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### Bar Admissions

District of Columbia  
Virginia

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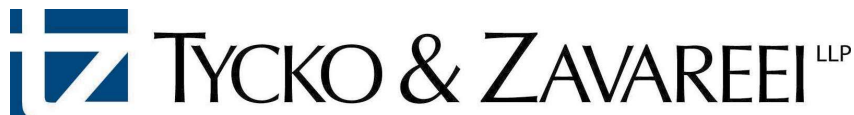
### Memberships

Public Justice

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### Publications & Presentations

National Abortion Federation Annual Meeting (2021)  
Pregnancy, Systematic Disregard and Degradation, and Carceral Institutions, Harvard Law & Policy Review (2020)  
Harvard Law & Policy Review Fall Symposium (2019)  
Society of Family Planning Annual Meeting (2019)  
George Mason University Law School Civil Rights Law Journal Symposium (2019)  
Pregnancy Behind Bars: The Constitutional Argument for Reproductive Healthcare Access in Prison, Harvard Civil Rights & Civil Liberties Law Review (2017)



## Leora N. Friedman

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### Associate

202.417.3669  
lfriedman@tzlegal.com



Leora Friedman received her J.D. from Georgetown University Law Center in 2020.

At Georgetown Law, Leora obtained diverse legal experience through experiential courses led by the O'Neill Institute for National and Global Health Law and by the Institute for Constitutional Advocacy and Protection. In addition, she authored papers proposing new legal frameworks for addressing the negative health impacts of electronic cigarettes and improving pandemic preparedness through writing-intensive coursework.

During law school, Leora also served as an intern for the Department of Justice's Office of Vaccine Litigation and its Consumer Protection Branch. She was an Executive Editor for the Georgetown Environmental Law Review, which published her note "Recommending Judicial Reconstruction of Title VI to Curb Environmental Racism: A Recklessness-Based Theory of Discriminatory Intent."

Previously, Leora was the Rockefeller Foundation's Princeton Project 55 Fellow from 2014-2015 and, thereafter, aided international health advocacy campaigns at Global Health Strategies.

She graduated from Princeton University with an A.B. in Politics in 2014.

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### Education

Georgetown University Law Center,  
2020  
Princeton University, 2014

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### Bar Admissions

District of Columbia

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### Memberships

Public Justice

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### Publications

*Recommending Judicial Reconstruction of Title VI to Curb Environmental Racism: A Recklessness-Based Theory of Discriminatory Intent*, 32 GEO. ENV'T L. REV. 421 (2020)



## Spencer Hughes

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### Associate

510.254.6808  
shughes@tzlegal.com

Spencer Hughes is an associate in the Oakland, California office, where he focuses on representing consumers in class actions against corporations.

Before joining Tycko & Zavareei LLP, Mr. Hughes was an associate at Kirkland & Ellis LLP, a top defense-side law firm. He gained invaluable experience in complex consumer protection cases and learned the strategies of defense teams in these matters. While at Kirkland & Ellis, Mr. Hughes maintained an active pro bono practice in trial-level and appellate courts, and he received the firm's Pro Bono Service Award for four consecutive years.

Mr. Hughes earned his Juris Doctor from Duke University School of Law in 2017, where he was an editor of the *Duke Law Journal*. After graduation, he clerked for the Honorable Gerald Bard Tjoflat of the United States Court of Appeals for the Eleventh Circuit.

Mr. Hughes graduated *cum laude* from Iowa State University in 2014, earning a Bachelor of Arts in political science and speech communication. He served as the university's Student Body President for the 2013-14 academic year.



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### Education

Duke University School of Law, 2017  
Iowa State University, 2014, *cum laude*

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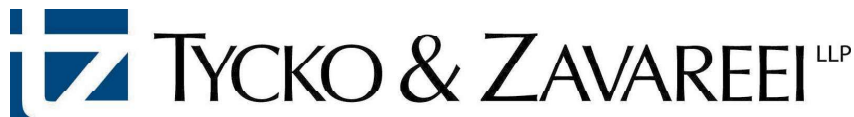
### Bar Admissions

California  
District of Columbia  
Supreme Court of the United States

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### Memberships

American Constitution Society  
Public Justice



## Cameron Partovi

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### Associate

510.254.6808  
cpartovi@tzlegal.com



Cameron Partovi is an associate in the Oakland, California office.

Prior to joining Tycko & Zavareei LLP in 2022, Mr. Partovi was an associate at Bird Marella, P.C., a litigation boutique in Los Angeles. There, Mr. Partovi represented individuals and corporations in complex commercial actions, including profit participation, false advertising, and breach of contract class actions. Mr. Partovi was previously a litigation associate at Gibson, Dunn & Crutcher LLP, one of the country's top defense firms. Mr. Partovi maintained an active pro bono practice in both law firms.

Mr. Partovi graduated from Harvard Law School *cum laude* in 2017, where he served as a Managing Editor of the Harvard Environmental Law Review. After graduating, Mr. Partovi clerked for the Honorable Lawrence E. Kahn of the United States District Court for the Northern District of New York.

Mr. Partovi graduated with honors from the University of Utah, earning a Bachelor of Science in Political Science.

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### Education

Harvard Law School, 2017, *cum laude*  
University of Utah, 2013, with Honors

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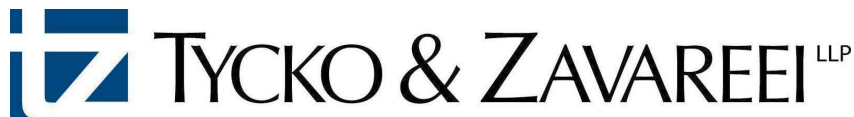
### Bar Admissions

California

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### Memberships

Public Justice



## Gemma Seidita

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### Associate

202.973.0900  
gseidita@tzlegal.com

Gemma Seidita is an associate in the Washington, D.C. office where she focuses on civil rights cases and advocating for whistleblowers and consumers.

Prior to joining Tycko & Zavareei LLP in 2022, Ms. Seidita was an associate in the Washington, D.C. office of Cooley LLP, where she represented clients in complex commercial litigation and investigations, including cases involving securities, trade secret, and unfair competition claims. At Cooley, Ms. Seidita maintained an active pro bono practice in civil rights and immigration areas. Ms. Seidita was a member of the trial team in the historic federal *Sines v. Kessler* litigation where white supremacists were put on trial for their conspiratorial actions in planning and committing violence at the Unite the Right rally in Charlottesville, Virginia.

Ms. Seidita graduated from Duke University School of Law in 2018 where she earned a J.D. and an LLM in international and comparative law. While in law school, she served as a Research Editor for the Duke Environmental Law and Policy Forum. Ms. Seidita received her Bachelor of Arts in Foreign Affairs from the University of Virginia in 2015.



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### Education

Duke University School of Law, 2018,  
*cum laude*

University of Virginia, 2015, with  
Distinction

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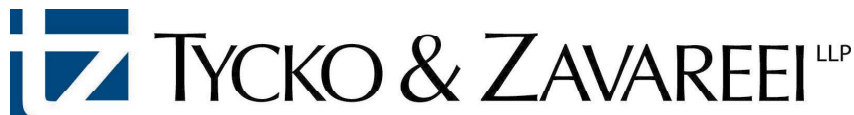
### Bar Admissions

California  
District of Columbia  
Massachusetts

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### Memberships

Public Justice



## Marika K. O'Connor Grant

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### Associate

202.973.0900

moconnorgrant@tzlegal.com



Ms. O'Connor Grant graduated from Stanford Law School in 2020 with high pro bono distinction. During her time at Stanford Law, Ms. O'Connor Grant served as the Technical Managing Editor of the Stanford Journal of Civil Rights and Civil Liberties, worked in Stanford's Immigrants' Rights Clinic, and volunteered with the Economic Advancement Pro Bono Project. While in law school, Ms. O'Connor Grant also worked as a research assistant analyzing local communities' efforts to mitigate poverty and served as a teaching assistant at the Stanford Graduate School of Business. Ms. O'Connor Grant graduated from Carleton College in 2014 with a Bachelor of Arts in Political Science.

Following her first year of law school, Ms. O'Connor Grant served as the Janet D. Steiger Fellow in the Consumer Protection Division at the Massachusetts Attorney General's Office, where she worked on data privacy, cybersecurity, for-profit school, and other consumer protection enforcement actions. During the following summer, Ms. O'Connor Grant worked as a summer associate at Debevoise & Plimpton LLP, where she focused on data privacy, cybersecurity, Committee on Foreign Investments in the United States, and pro bono matters.

Before joining Tycko & Zavareei LLP, Ms. O'Connor Grant served as a law clerk to the Honorable Wilhelmina M. Wright of the United States District Court for the District of Minnesota. Before her clerkship, Ms. O'Connor Grant worked as a litigation associate at Cooley LLP, where she represented clients in complex commercial litigation and securities matters and maintained an active pro bono practice focused on civil rights and immigration. Ms. O'Connor Grant also served as a vetting attorney on the Biden-Harris Transition Team, where she evaluated the personal and policy risks associated with presidential nominees and appointees, interviewed candidates, and advised senior Transition staff.

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### Education

Stanford Law School, *High Pro Bono Distinction*

Carleton College, 2014

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### Bar Admissions

California

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### Memberships

Public Justice

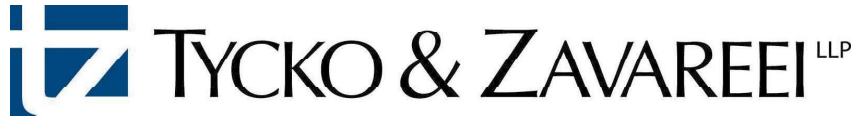
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Tycko & Zavareei LLP  
2000 Pennsylvania Ave. NW, Suite 1010  
Washington, DC 20006  
202.973.0900

Tycko & Zavareei LLP  
1970 Broadway, Suite 1070  
Oakland, CA 94612  
510.254.6808

Tycko & Zavareei LLP  
10880 Wilshire Blvd., Suite 1101  
Los Angeles, CA 90024  
510.254.6808



## David W. Lawler

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### Of Counsel

202.973.0900  
dlawler@tzlegal.com

Mr. Lawler joined Tycko & Zavareei LLP in January 2012. He has over twenty years of commercial litigation experience, including an expertise in eDiscovery and complex case management. At the firm Mr. Lawler has represented consumers in a numerous practice areas, including product liability, false labeling, deceptive and unfair trade practices, and antitrust class actions litigation.

Before joining Tycko & Zavareei LLP, Mr. Lawler was an associate in the litigation departments at McKenna & Cuneo LLP and Swidler Berlin Shereff Friedman LLP.

Among Mr. Lawler's career achievements include the co-drafting of appellate briefs which resulted in rare reversal and entry of judgment in favor of client, US Court of Appeals for the Fourth Circuit.

Mr. Lawler is a member of the District of Columbia Bar, as well as numerous federal courts.



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### Education

Creighton University School of Law,  
1997

University of California, Berkeley  
School of Law, 1989

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### Bar Admissions

District of Columbia

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### Memberships

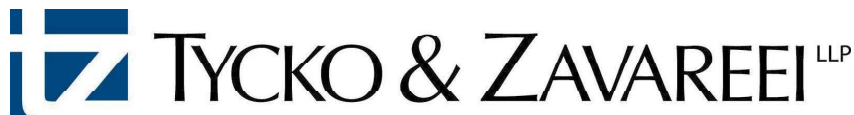
American Association for Justice  
Public Justice

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Tycko & Zavareei LLP  
2000 Pennsylvania Avenue NW, Suite 1010  
Washington, DC 20006  
202.973.0900

Tycko & Zavareei LLP  
1970 Broadway, Suite 1070  
Oakland, CA 94612  
510.254.6808

Tycko & Zavareei LLP  
10880 Wilshire Blvd., Suite 1101  
Los Angeles, CA 90024  
510.254.6808



## F. Peter Silva II

### Of Counsel

202.973.0900  
psilva@tzlegal.com

Peter Silva is a zealous advocate for consumers, workers, and individuals whose rights have been violated by the government, employers, and financial institutions. Over the last decade, Peter has successfully represented clients in civil rights, consumer protection, and foreclosure defense cases in negotiations, mediations, arbitrations, and at trial in state and federal courts and before various administrative agencies.

Prior to joining Tycko & Zavareei LLP, Peter represented individuals and small businesses as a Partner with Gowen Silva & Winograd, PLLC. Peter's work on behalf of Maryland, D.C., and Virginia homeowners has prevented dozens of foreclosures through loan modifications, settlements, and litigation. Peter not only defends foreclosures, but countersues for violations of state and federal lending and servicing laws. Peter has successfully brought and defended lawsuits against America's biggest banks and mortgage servicers including Wells Fargo, Bank of America, U.S. Bank, Fannie Mae, Freddie Mac, Mr. Cooper/Nationstar Mortgage, Bayview Loan Servicing, and Ocwen Loan Servicing. Through aggressive litigation and creative settlement solutions, Peter has obtained millions of dollars in damages and savings for his clients including principal and interest reductions, write-downs, and deficiency waivers. Peter's extensive knowledge of the foreclosure and loan modification processes, mortgage servicing industry and applicable state and federal laws including the Real Estate Settlement Procedures Act (RESPA) and Truth-in-Lending (TILA) allows him to provide clients with upfront and straightforward assessments of their options so that they can make an informed decision.

Peter has worked with local, state, and federal governments and non-profit entities to strengthen legal protections of consumers. Peter is a member of the National Association of Consumer Advocates.

At the beginning of his legal career, Peter worked extensively in the civil rights field as an attorney fellow for the Washington Lawyers' Committee for Civil Rights and Urban Affairs, and a law clerk with the Equal Employment Opportunity Commission and the civil rights interest group, People for the American Way.



### Education

University of Miami, School of Law, 2010  
San Diego State University, 2007

### Bar Admissions

Virginia  
District of Columbia  
Maryland

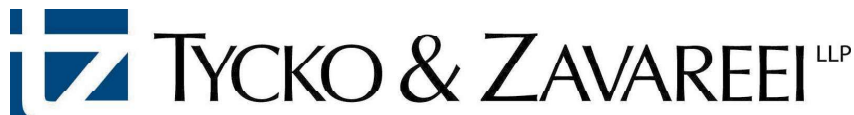
### Memberships

National Association of Consumer Advocates  
Public Justice

### Presentations & Publications

"The Tactical Deployment of Regulation X: Loss Mitigation in Judicial, Quasi-Judicial, and Non-judicial States," National Association of Consumer Advocates (February 11, 2021)

"Foreclosures: What You Don't Know Will Hurt You!" National Association for the Advancement of Colored People



## Wesley M. Griffith

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### Of Counsel

510.254.6808  
wgriffith@tzlegal.com



Mr. Griffith is a graduate of the University of California, Berkeley and the University of Chicago Law School. After law school, Mr. Griffith spent a decade working at two of the nation's top defense firms, where he represented some of the world's largest companies in class actions, complex litigation, and regulatory matters.

Mr. Griffith now uses those same skills to advocate on behalf of his consumer clients. He is dedicated to tenaciously advancing his clients' interests through all phases of litigation, including trial and on appeal.

While Mr. Griffith's preference is always to litigate, he also knows that being an effective advocate sometimes means settling. Mr. Griffith has been involved with dozens of significant settlements over the course of his career, including settlements valued at over \$100 million, and he has defended those settlements in parallel actions and on appeal.

Mr. Griffith maintains an active pro bono practice representing clients in civil rights cases. He serves on the pro bono panels for the Ninth Circuit Court of Appeal and the Eastern District of California, and was recognized in 2021 for his pro bono service to the Eastern District.

Mr. Griffith is a member of the California Bar and is admitted to practice in the U.S. District Courts for the Central, Eastern, Northern and Southern Districts of California, as well as the U.S. Judicial Panel on Multidistrict Litigation and the U.S. Courts of Appeal for the Second, Ninth, and Eleventh Circuits.

Mr. Griffith is a member of the Advisory Board of the Legal Aid Foundation of Los Angeles, and he has been repeatedly recognized for his mentorship to junior attorneys.

When not practicing law, Mr. Griffith enjoys spending time with his toddler and wife and hiking in the Sierras with his dog.

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### Education

University of Chicago Law School,  
2012

University of California, Berkeley,  
2007, with Honors and Distinction

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### Bar Admissions

California  
Supreme Court of the United States

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### Memberships

Pro Bono Panel, Ninth Circuit Court  
of Appeal

Pro Bono Panel, U.S. District Court  
for the Eastern District of California

Legal Aid Foundation of Los Angeles,  
Advisory Board Member

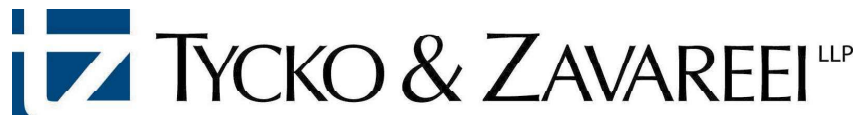
Public Justice

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### Awards

2021 Honoree, U.S. District Court for  
the Eastern District of California  
Night to Honor Service

2020 and 2021 Mentorship Award,  
Jenner & Block LLP



## Shana Khader

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### Of Counsel

202.973.0900  
skhader@tzlegal.com

Shana Khader is passionate about using the legal system creatively to challenge abuses of power and to seek justice on behalf of traditionally marginalized communities and poor people—even in hard cases. In the past several years, she has specialized in representing low-income immigrant workers in Texas. As Senior Managing Attorney at the Equal Justice Center and as Director of Legal Services at Workers Defense Project, Ms. Khader represented workers in challenging abusive employment practices through class and individual litigation, policy advocacy, and community organizing. She also has extensive experience working with survivors of sexual harassment and assault at work. She has obtained favorable decisions and verdicts on behalf of her clients in state and federal court.

Prior to moving to Texas, Ms. Khader served as a Kirkland & Ellis Public Service Fellow at the New York Legal Assistance Group, where she represented low-income New Yorkers who were victimized by unscrupulous debt collectors in courts throughout the city.

Ms. Khader graduated with academic honors from Columbia Law School. She served as a judicial law clerk to the Honorable Debra C. Freeman, Magistrate Judge in the Southern District of New York.

Ms. Khader served as a member of the Dallas Civil Service Board, has served as a board member of the DFW chapter of the National Employment Lawyers Association, and is an alumna of the Latino Center for Leadership Development Leadership Academy. She is fluent in Spanish.



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### Education

Columbia University School of Law,  
2011, *James Kent Scholar*  
Occidental College, 2005, *magna cum laude*

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### Bar Admissions

New York  
Texas

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### Memberships

American Association for Justice  
Public Justice

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### Awards

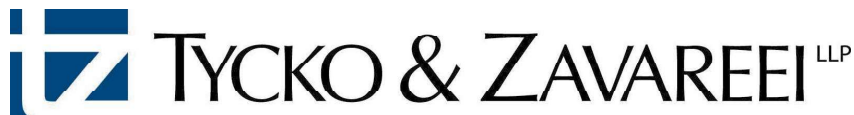
Kirkland & Ellis New York City  
Public Service Fellow  
Hamilton Fellow  
Pro Bono Honors

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### Presentations & Publications

“Timekeeping and Teleworking in the Era of COVID,” Texas Employment Lawyers Association Spring Seminar, (Apr. 2021)

“Taking the Sex out of Sexual Harassment: Why the ‘Equal Opportunity Harasser’ Defense Under Title VII Should be Eliminated.” *Columbia Gender and Sexuality Law Journal Online*, (Spring 2011)



## Jaclyn S. Tayabji

### Fellow

202.973.0900  
jtayabji@tzlegal.com

Jaclyn Tayabji is the 2021-2023 Public Interest Fellow at Tycko & Zavareei LLP. Jaclyn received her J.D. *magna cum laude* from Boston University School of Law in 2021. While in law school, Jaclyn embraced experiential learning opportunities and consistently utilized her legal skills to promote the public interest. Jaclyn completed a legal internship in the Consumer Protection Division of the Massachusetts Attorney General's Office and a judicial externship with the Honorable Vickie L. Henry on the Massachusetts Appeals Court. As a Student Attorney in the Access to Justice Civil Litigation Clinic, Jaclyn represented low-income clients in various civil disputes, including defending tenants in summary process evictions and facilitating discovery production in a federal employment discrimination case.

In law school, Jaclyn served as an Editor for the *Boston University Law Review* and was elected to leadership positions in the Middle Eastern & South Asian Law Students Association, the International Law Society, and the Public Interest Project. Jaclyn was also selected to serve on the Public Interest Committee alongside fellow students, faculty, and staff to review the policies and programs related to public service offerings at Boston University School of Law and to advocate for institutional resources.

Jaclyn received her B.A. in International Studies and African Studies from Emory University in 2016. Prior to law school, Jaclyn served with the Peace Corps in Malawi and subsequently worked as a Recovery Coach through the inaugural AmeriCorps-Police Assisted Addiction & Recovery Initiative program.



### Education

Boston University School of Law,  
2021, *magna cum laude*  
Emory University, 2016

### Bar Admissions

District of Columbia

### Memberships

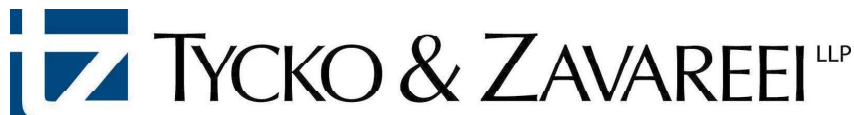
Public Justice

### Awards

Public Interest Scholar, Boston University School of Law  
Sylvia Beinecke Robinson Award, Boston University School of Law  
Paul J. Liacos Scholar, Boston University School of Law  
G. Joseph Tauro Distinguished Scholar, Boston University School of Law  
Deans Award (Torts), Boston University School of Law

### Presentations & Publications

*Rehabilitation Under the Rehabilitation Act: The Case for Medication-Assisted Treatment in Federal Correctional Facilities*, 101 B.U. L. REV. ONLINE 79 (2021)  
*Boston University Law Review*, Editor



## Cort Carlson

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### Fellow

510.254.6808  
ccarlson@tzlegal.com

Cort Carlson is a Public Interest Fellow in the Oakland, California office. Mr. Carlson received his J.D. from University of California, Berkeley, School of Law in 2022, with a Public Interest & Social Justice Certificate. During law school, Mr. Carlson immersed himself in public interest scholarship and advocacy. Mr. Carlson completed a judicial externship with the Honorable Kimberly J. Mueller, Chief United States District Judge for the Eastern District of California, worked on whistleblower cases as a law clerk for a public interest plaintiff-side law firm in the Bay Area, and worked on cases involving unsafe and unfair housing conditions as an extern at the San Francisco City Attorney's Office. Mr. Carlson was twice elected to editor positions on the *Ecology Law Quarterly*, one of the nation's leading environmental law reviews, and served on the *Berkeley Technology and Law Journal*. Outside of school, Mr. Carlson served as a student advocate for incarcerated youth in collaboration with the Contra Costa County Public Defender and was a student researcher for the Brady Center to Prevent Gun Violence. Mr. Carlson also participated in a state and local impact litigation practicum in which he worked alongside current and former government attorneys on justice-oriented affirmative litigation projects.

Mr. Carlson received his B.A. *Summa Cum Laude* in Anthropology and English with a minor in Political Science from The George Washington University in 2019. Mr. Carlson traces his passion for public interest advocacy to early experiences working on issues that uniquely affect vulnerable communities, including poverty, incarceration, environmental harm, and personal data protection. Prior to law school, Mr. Carlson served as an academic tutor to persons pursuing higher education while incarcerated at Prince George's County Correctional Center in Maryland. Mr. Carlson also conducted research on people's perceptions and management of privacy on their cellular devices in collaboration with the GW Anthropology Department and the Smithsonian Institution.



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### Education

UC Berkeley School of the Law, 2022  
The George Washington University, 2019, *summa cum laude*

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### Bar Admissions

Sat for California Bar Examination, July 2022 (*results pending*)

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### Memberships

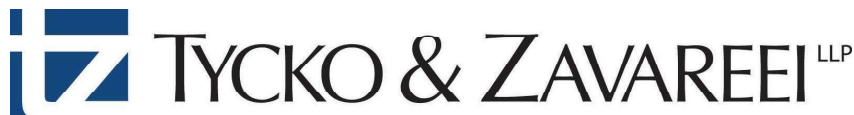
Public Justice

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### Awards

Public Interest & Social Justice Certificate, University of California, Berkeley, School of Law

Hart Award for Outstanding Academic Achievement, The George Washington University



## Schuyler Standley

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### Fellow

202.973.0900  
sstandley@tzlegal.com

Schuyler Standley is the 2022-2024 Public Interest Fellow at Tycko & Zavareei LLP. Schuyler received her J.D. from the University of California, Berkeley School of Law in 2021. While in law school, Schuyler embraced experiential learning opportunities and consistently utilized her legal skills to promote the public interest. Before her fellowship, Schuyler clerked for the Honorable Katherine M. Menendez of the United States District Court for the District of Minnesota. She also served as a judicial fellow for the Honorable Joseph C. Spero, Chief Magistrate Judge of the United States District Court for the Northern District of California.

While in law school, Ms. Standley focused on experiential learning and pro bono work. She spent three semesters in the Samuelson Law, Technology, and Public Policy Clinic, where she assisted with litigation at the intersection of technology and civil rights.



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### Education

UC Berkeley School of the Law, 2021  
American University, 2016

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### Bar Admissions

Illinois

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### Memberships

Public Justice

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# EXHIBIT 4



## **The Barnes Law Group, LLC**

Anchored by Georgia’s former Governor Roy E. Barnes, the Barnes Law Group (“BLG”) is an AV Preeminent rated law firm based in Marietta, Georgia with a national distinction for its skill and advocacy in all matters consumer. BLG’s legal team is comprised of experienced and dedicated lawyers and staff who have devoted decades in the public and private sectors to “Making It Right” for those who have been wronged. As a result, BLG has consistently achieved the *Best Lawyer/Best Law Firm* rankings from *U.S. News & World Report* in mass torts and class actions since 2010. Individually, BLG lawyers are regularly recognized and included in peer-rated litigation honors such as Martindale Hubble’s AV preeminent ratings and Georgia Super Lawyers.

Mr. Barnes, the firm’s lodestar, has been active in public service throughout his adult life. He served in the Georgia State Senate from 1974 to 1990, the Georgia House of Representatives from 1992 – 1999, and as Georgia’s 80<sup>th</sup> Governor from 1999 until 2003. In 2003, he was awarded the John F. Kennedy Profile in Courage Award for leading the effort to make the Confederate battle emblem less prominent on the state flag. For over 50 years, Mr. Barnes has tried civil and criminal cases throughout Georgia and beyond, and has appeared as counsel in well over 340

reported cases. He has appeared as counsel in nearly 50 reported decisions related to class actions. One of his first nationally prominent successful class action lawsuits was against Fleet Finance in the early 1990s.

Collectively, lawyers in the firm have obtained judgments and settlements in excess of \$1 billion on behalf of consumers and injured plaintiffs. A few examples of notable, complex and class action cases led by BLG lawyers include the following:

- *State of Georgia v. Teva Pharmaceuticals, et al*, Superior Court of Gwinnett County, Ga., CAFN 19-A-00060-2. BLG has been representing the State of Georgia as special outside counsel in the opioid litigation against various pharmaceutical manufacturers and distributors. Thus far those cases have yielded hundreds of millions of dollars in settlement funds for the state's benefit, with active pre-trial preparation still occurring;
- *In Re: Equifax, Inc., Customer Data Security Breach Litigation*, No. 1:17-MD-02800-TWT (N.D. Ga.) (appointed co-class counsel of data breach class action resulted in settlement fund worth at least \$380.5 million);
- *In Re: Home Depot Data Breach Litigation*, No. 14-MD-2584-TWT (N.D. Ga.) (appointed as co-class counsel in data breach class action resulting in settlement fund of at least \$13 million);

- *In Re: Arby's Restaurant Group, Inc. Data Security Litigation*, No. 1:17-CV-1035-WMR (N.D. Ga.) (approved as class counsel in obtaining settlement regarding payment card data breach);
- *Elaine Ann Gold, et al, v. DeKalb County School District and DeKalb County Board of Education*, Superior Court of DeKalb County, Ga., CAFN: 11CV3657 (class action against the Board of Education over pension contributions settled for \$117.5 million);
- *Richard A. Newton, Sr. v. Brighthouse Life Insurance Co.*, CAFN: 1:20-cv-02001-AT (motion for class certification pending; BLG is seeking to represent a Georgia class of insurance policy-holders alleging cost-of-insurance overcharges);
- *A Fast Sign Company, Inc. v. American Home Services, Inc.*, Superior Court of Fulton County, Ga., CAFN: 2003-CV-77276 (\$459 million judgment for TCPA violations);
- *Cox v. Community Loans of America*, CAFN: 4:11-cv-177-CDL (M.D. Ga.) (multistate settlement repaying Servicemembers damages for interest rates charged in violation of the Military Lending Act);
- *Mitchell v. Regions Bank*, USDC, No. 2:17-cv-0100-RWS (N.D. Ga.) (approved as counsel for multistate settlement collective in FLSA action).

- *Gates v. Syrian Arab Republic*, Case No. 1:06CV01500 (USDC DC) (\$412 million judgment for terrorist sponsored activities);
- *First Center, Inc. v. Delta Comm. Credit Union*, Superior Court of Cobb County, Ga., CAFN: 10-1-7119-40 (\$75 million judgment for commercial lending dispute);
- *Greene v. Cash America, Inc.*, State Court of Cobb County, Ga., CAFN: 2004A7104-6 (\$34 million class action settlement for payday lending violations);
- *Kahn v. Fortis Insurance Co.*, State Court of Fulton County, Ga., CAFN: 2004 VS 074998 (\$14 million class action settlement for unlawful and allegedly fraudulent insurance rating practices).
- *Jason A. Sain, et al v. Preferred Women's Healthcare, et al*, State Court of Gwinnett County, Ga., CAFN: 14 C-03749-2 (medical malpractice action resulting in \$8.5 million verdict);

BLG regularly assumes all the risks and financial burdens associated with a lawsuit, on a contingency fee basis. We strive to work productively for the benefit of our clients and the classes we represent. In every case, in the absence of settlement, the firm is willing and able to devote the time and resources required to see this case to completion, including to trial, if necessary. Barnes Law Group's success stems from a simple, yet powerful philosophy *Making It Right* for those who

have been wronged. That means BLG has always been, and will always be, in the corner of the individuals that need an effective advocate to help level the playing field.

# EXHIBIT C

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

ANGELA DUSKO, on behalf of herself  
and all others similarly situated,

Plaintiff,

vs.

DELTA AIR LINES, INC.

Defendant.

CIVIL ACTION: 1:20-CV-01664-  
ELR

**DECLARATION OF CAMERON R. AZARI, ESQ.  
ON NOTICE PROGRAM IMPLEMENTATION**

I, Cameron R. Azari, Esq., hereby declare and state as follows:

1. My name is Cameron R. Azari, Esq. I have personal knowledge of the matters set forth herein, and I believe them to be true and correct.

2. I am a nationally recognized expert in the field of legal notice, and I have served as an expert in hundreds of federal and state cases involving class action notice plans.

3. I am a Senior Vice-President of Epiq Class Action and Claims Solutions, Inc. (“Epiq”) and the Director of Legal Notice for Hilsoft Notifications (“Hilsoft”), a firm that specializes in designing, developing, analyzing, and implementing large-scale, un-biased, legal notification plans. Hilsoft is a business unit of Epiq. All references to Epiq within this declaration include Hilsoft.

4. This declaration confirms the implementation of the Notice Program (“Notice Program”) for *Dusko v. Delta Air Lines, Inc.*, No. 1:20-cv-01664-ELR, in the United States District Court for the Northern District of Georgia, Atlanta Division (the “Action”), approved by the Court in the Amended Preliminary Approval Order. *See* ECF No. 99-2 at 73-77; 101 at 21-25.

5. I previously executed my *Declaration of Cameron R. Azari, Esq. on Notice Program and Notice* (“Notice Program Declaration”) on May 17, 2023, which described the proposed Notice Program, detailed Hilsoft’s class action notice experience, and attached Hilsoft’s *curriculum vitae*. I understand the Notice Program Declaration was filed on July 24, 2023. *See* ECF No. 103-1. I also provided my educational and professional experience relating to class actions and my ability to render opinions on overall adequacy of notice programs.

### OVERVIEW

6. On June 8, 2023, the Court approved the Notice Program designed by Hilsoft and appointed Epiq as the Settlement Administrator in the *Amended Order Granting Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement* (“Amended Preliminary Approval Order”), Dkt. 101.

7. After the Court’s Amended Preliminary Approval Order was entered, Epiq began to implement the Notice Program. This declaration confirms the implementation of the Notice Program in compliance with the Amended Preliminary

Approval Order. The facts in this declaration are based on my personal knowledge, as well as information provided to me by my colleagues in the ordinary course of my business at Epiq.

**NOTICE PROGRAM IMPLEMENTATION SUMMARY**

*Individual Notice*

8. Epiq received data from the Defendant in the form of email addresses and/or physical mailing addresses for identified Settlement Class members. This Settlement Class member data was used to provide Individual Notice as follows:

a. On July 17, 2023, Epiq sent 6,085 Email Notices to all identified Settlement Class members for whom a valid email address was available, and no valid postal address was available.

b. On July 17, 2023, Epiq sent 61,668 double Postcard Notices with Claim Form and prepaid return postage on the Claim Form (“Postcard Notice”), of which 61,041 were sent to identified Settlement Class members with both an available valid email address and an associated physical address and 627 were sent to identified Settlement Class members with an available physical address only. The Notices were sent via United States Postal Service (“USPS”) first-class mail.

c. Epiq is preparing for completion of the Notice Program by August 28, 2023, in accordance with the Amended Preliminary Approval Order. Reminder Notices will be sent as specified in the Notice Program.

9. It was later determined that 7,353 Settlement Class member records had incorrect mailing addresses. Of this population, 5,729 records have a valid email address, and Epiq will send an Email Notice to those Settlement Class members on July 28, 2023. Additionally, Epiq will perform a third-party address look-up search for each of the 7,353 records to attempt to locate a new mailing address. I understand Delta is also attempting to locate a new mailing address for the Settlement Class members. Where an updated mailing address is available, Epiq will send a Postcard Notice via USPS first-class mail on or before August 4, 2023.

***Settlement Website, Toll-free Telephone Number and Postal Mailing Address***

10. On July 14, 2023, a Settlement Website ([www.AirlineTicketSettlement.com](http://www.AirlineTicketSettlement.com)) and a toll-free telephone number (1-888-814-6501) were established for the Settlement to allow Settlement Class members to obtain additional information about the Settlement, including the Long Form Notice (in English and Spanish) and important legal documents, including the Amended Preliminary Approval Order, the Settlement Agreement, and the Second Amended Complaint. A postal mailing address and email address were also established, allowing Settlement Class members to request additional information or ask questions via these channels.

***Requests for Exclusion and Objections***

11. The deadline to request exclusions from the Settlement or to object to the Settlement is August 31, 2023. As of July 25, 2023, Epiq has received no

requests for exclusion. As of July 25, 2023, I am aware of no objections to the Settlement.

### **CLAIMS PROCESS**

12. Epiq will also administer the Claims Process upon receipt of Claim Forms from Settlement Class Members. The deadline for Claim Form submission is September 15, 2023. As of July 25, 2023, Epiq has received 1,880 Claim Forms.

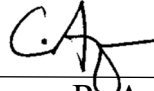
### **CONCLUSION**

13. The Notice Program provided the best notice practicable under the circumstances of this case, conformed to all aspects of Federal Rule of Civil Procedure 23, comported with the guidance for effective notice articulated in the Manual for Complex Litigation 4<sup>th</sup> Ed, and was consistent with the Federal Judicial Center's Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide (2010).

14. Prior to the Final Approval Hearing and consistent with the schedule established by the Court, I will provide a comprehensive Supplemental Declaration on Notice Program Implementation to be filed with the Court, which will include all notice implementation details, notice and settlement administration statistics, confirm the delivered reach and adequacy of the Notice Program as implemented, report on any opt-outs received, address any objections received that may relate to the Notice Program, and information regarding administration of the Claims Process.

I declare under penalty of perjury that the foregoing is true and correct.

Executed July 27, 2023.

A handwritten signature in black ink, consisting of the letters 'C', 'A', and 'Z' in a stylized, cursive font.

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Cameron R. Azari, Esq.

# EXHIBIT D

*Anderson v. Public School Employees  
Retirement System of Georgia, et al.*  
(Superior Court of Fulton County, Georgia)  
CAFN: 2008CV154757



Neutral

As of: July 24, 2023 1:35 PM Z

## [Anderson v. Pub. Sch. Emps. Ret. Sys. of Ga.](#)

Superior Court of Fulton County, Business Case Division, State of Georgia

July 8, 2009, Decided; July 8, 2009, Filed

FILE NO. 2008CV154757

### Reporter

2009 Ga. Super. LEXIS 72 \*

SMITH A ANDERSON, on behalf of herself and all other members of her class similarly situated, Plaintiffs, v. PUBLIC SCHOOL EMPLOYEES RETIREMENT SYSTEM OF GEORGIA, et al., Defendants.

**Prior History:** [Anderson v. Public Sch. Emples. Ret. Sys. of Ga., 2008 Ga. Super. LEXIS 142 \(Ga. Super. Ct., Nov. 13, 2008\)](#)

### Core Terms

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Settlement, class member, calculation, benefits, matters, Notice, expenses, Parties, proposed settlement, retirement benefits, cause of action, mortality table, option-plan, Retirement, waived, attorney's fees, incentive award, preclusion, estimate, injunction, funds, terms

**Judges:** [\*1] ALICE D. BONNER, Senior Judge, Superior Court of Fulton County, Business Case Division

**Opinion by:** ALICE D. BONNER

### Opinion

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#### FINAL ORDER AND JUDGMENT

WHEREAS the Plaintiff, individually and as Class Representative, and the Defendants entered into a Settlement Agreement, with exhibits (collectively, the "Settlement

Agreement"), date May 1, 2009 to settle this Action; and

WHEREAS the Court entered a Preliminary Approval Order dated May 4, 2009, ordering First-Class Mail Notice and Publication Notice to Class Members and follow-up First-Class Mail Notice, scheduling a Fairness Hearing for July 8, 2009, and providing Class Members with an opportunity to exclude themselves from the Class and to object to the proposed settlement; and

WHEREAS the Court held a Fairness Hearing on July 8, 2009, to determine whether to give final approval to the proposed settlement; and

WHEREAS the Court has decided to grant final approval to the proposed settlement, dismissing the Class Members' claims (among other things).

Based on the submissions of the Parties and Class Members and the Fairness Hearing, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. **Incorporation of Other Documents.** This Final Order and Judgment incorporates [\*2] and makes a part hereof:

- (a) the Settlement Agreement submitted to this Court on May 1, 2009;
- (b) the exhibits to the Settlement Agreement; and
- (c) the Court's Preliminary Approval Order.

2. **Capitalized Terms.** Capitalized terms used

in this Order but not defined shall have the meaning ascribed to them in the Settlement Agreement.

3. **Jurisdiction.** The Court has personal jurisdiction over all Class Members and has subject-matter jurisdiction over this Action including, without limitation, jurisdiction to approve the proposed settlement and dismiss this Action.

4. **Class Certification.** The Court has previously, in its Order of December 5, 2008, certified the Class as follows:

All member beneficiaries and beneficiaries designated by members pursuant to [O.C.G.A. §§ 47-4-102](#) and 47-2-104 and, and the estates of both groups to the extent they can be identified and located by Plaintiffs' counsel, who are owed either back-pay of benefits or prospective future correction of benefits, or both, in accordance with the ruling of the Georgia Supreme Court in its Order of October 30, 2006, [Plymel v. Teachers Retirement System of Georgia, 281 Ga. 409, 637 S.E.2d 379 \(2006\)](#), which the parties acknowledge constitutes [\*3] binding precedent in this action, establishing that the Public School Employees' Retirement System of Georgia has calculated optional retirement benefits that were not actuarially equivalent to the benefits otherwise payable to those beneficiaries had they selected the maximum plan of retirement upon their retirements.<sup>1</sup>

A list of those persons who have excluded themselves from the Class and who therefore are not Class Members and are not bound by this Final Order and Judgment is on file with the Court and is incorporated herein and made

a part hereof

5. **Adequacy of Representation.** After conducting a rigorous analysis of the requirements of [O.C.G.A. § 9-11-23\(a\)\(4\)](#), the Court finds that Class Counsel and the Class Representative have fully and adequately represented the Class for purposes of entering into and implementing the settlement and have satisfied the requirements of [O.C.G.A. § 9-11-23\(a\)\(4\)](#).

6. **Class Notice.** After completing the necessary rigorous analysis, the Court finds that the First-Class Mail Notice, Publication Notice and distribution of Class Notice Package in accordance with the terms of the Settlement Agreement and this Court's Preliminary Approval Order:

- (a) constituted [\*4] the best practicable notice to Class Members under the circumstances of this Action;
- (b) was reasonably calculated, under the circumstances, to apprise Class Members of: (i) the pendency of this Action; (ii) the certification of the Class; (iii) their right to exclude themselves from the Class; (iv) the proposed settlement; (v) their right to object to any aspect of the proposed settlement (including the fairness, reasonableness or adequacy of the proposed settlement, the adequacy of representation by Plaintiff or Class Counsel, or the award of attorneys' fees, expenses of litigation, expenses of notice and of administration of the settlement, and an incentive award to the Class Representative); (vi) their right to appear at the Fairness Hearing, either on their own or through counsel hired at their own expense; and (vii) the binding effect of Orders and the Final Order and Judgment in this Action, whether favorable or unfavorable, on all persons who do not request exclusion from the Class;

<sup>1</sup>The reference to O.C.G.A. § 47-2-104 in the definition of the Class in the December 5, 2008 Order is a typographical error. The correct reference is [O.C.G.A. § 47-4-104](#).

(c) was reasonable and constituted due, adequate and sufficient notice to all persons entitled to be provided with notice; and

(d) fully satisfied all applicable requirements of the Georgia Code, the [\*5] Uniform Superior Court Rules, the Georgia Constitution, the United States Constitution (including the Due Process Clause), and any other applicable law.

**7. Final Settlement Approval.** The terms and provisions of the Settlement Agreement, including all exhibits, have been entered into in good faith and are hereby fully and finally approved as fair, reasonable and adequate, and consistent with and in full compliance with all applicable requirements of the Georgia Code, the Georgia Constitution, the United States Constitution (including the Due Process Clause), the Uniform Superior Court Rules, and any other applicable law, and in the best interests of each of the Parties and the Class Members. The Parties and their counsel are hereby directed to implement and consummate the Settlement Agreement according to its terms and provisions.

**8. Binding Effect.** The terms of the Settlement Agreement and of this Final Order and Judgment shall be forever binding on the Plaintiff and all other Class Members, as well as their heirs, executors and administrators, successors and assigns, and anyone acting on behalf of Class Members or for their benefit, and those terms shall have *res judicata* and other [\*6] preclusive effect in all pending and future claims, lawsuits or other proceedings maintained by or on behalf of any such persons, to the extent (and only to the extent) those claims, lawsuits or other proceedings involve claims that are released, waived and precluded by the Release.

**9. Release, Covenant and Preclusion.** The Release, which is set forth in the Settlement

Agreement, is expressly incorporated herein in all respects and is effective as of the date of this Final Order and Judgment. In return for the consideration provided in the Settlement Agreement, the Plaintiff, Class Members and all other Releasors release and discharge the Releasees and agree as follows:

a. Plaintiff and all other Class Members, on their behalf and on behalf of all other Releasors, release, acquit and forever discharge the Releasees from any and all past and present actions, suits, causes of action, claims, damages, awards, equitable, legal and administrative relief, interest, demands or rights, whether class, individual or otherwise, including any claims for costs, expenses, penalties, or fees (including attorneys' fees, expert fees, and consulting fees), for any kind of relief whatsoever (including injunctive [\*7] relief, monetary relief, damages, punitive damages, restitution, reimbursements, disgorgement, and economic injury) that are based upon the failure of the Defendants to use the correct mortality tables to calculate option-plan retirement benefits for Class Members in accordance with the decision of the Supreme Court of Georgia in Plymel v. Teachers Retirement System of Georgia. This release shall not extend to any other claim of any Class Member relating to the calculation or determination of benefits owed or claimed to be owed by PSERS to such Class Member, including, without limitation, any claim relating to PSERS' formulas for calculation of benefits or to any error or claimed error in calculating option-plan retirement benefits other than the error of using incorrect mortality tables. By excluding matters from the scope of this release, the Parties do not agree or intend to suggest that meritorious claims relating to such matters may exist but rather agree that such matters (including not only the

specific example provided above but also the other more generally described matters above) are outside the scope of this Action and are preserved, if any such claims exist;

b. Plaintiff [\*8] and all other Class Members, on their own behalf and on behalf of all other Releasers agree, covenant and acknowledge that neither they nor anyone acting on their behalf shall now or hereafter initiate, participate in, maintain, or otherwise bring any action, suit, cause of action, claim, or demand, either directly or indirectly, derivatively, on their own behalf, or on behalf of the Class or the general public, or any other person or entity, against the Releasees based upon the failure of the Defendants to use the correct mortality tables to calculate option-plan retirement benefits for Class Members in accordance with the decision of the Supreme Court of Georgia in Plymel v. Teachers Retirement System of Georgia. This agreement, covenant and acknowledgment shall not extend to any other claim of any Class Member relating to the calculation or determination of benefits owed or claimed to be owed by PSERS to such Class Member, including, without limitation, any claim relating to PSERS' formulas for calculation of benefits or to any error or claimed error in calculating option-plan retirement benefits other than the error of using incorrect mortality tables. By excluding matters from [\*9] the scope of this covenant and acknowledgment, the Parties do not agree or intend to suggest that meritorious claims relating to such matters may exist but rather agree that such matters (including not only the specific example provided above but also the other more generally described matters above) are outside the scope of this Action and are preserved, if any such claims exist; and

c. Plaintiff and all other Class Members and all the other Releasers, and anyone acting on their behalf or for their benefit, without limitation, are precluded and estopped from bringing any action, suit, cause of action, claim, or demand in the future based upon the failure of the Defendants to use the correct mortality tables to calculate option-plan retirement benefits for Class Members in accordance with the decision of the Supreme Court of Georgia in Plymel v. Teachers Retirement System of Georgia. This preclusion and estoppel shall not extend to any other claim of any Class Member relating to the calculation or determination of benefits owed or claimed to be owed by PSERS to such Class Member, including, without limitation, any claim relating to PSERS' formulas for calculation of benefits or to any [\*10] error or claimed error in calculating option-plan retirement benefits other than the error of using incorrect mortality tables. By excluding matters from the scope of this preclusion and estoppel, the Parties do not agree or intend to suggest that meritorious claims relating to such matters may exist but rather agree that such matters (including not only the specific example provided above but also the other more generally described matters above) are outside the scope of this Action and are preserved, if any such claims exist.

The Court further finds and determines that:

a. Nothing in the Release shall be deemed (1) to release a Class Member's right to assert any claims or causes of action that arise from acts, facts, or circumstances arising exclusively after February 28, 2007; or (2) to preclude any action to enforce the terms of the Agreement;

b. Nothing in the Release shall be deemed to release a Class Member's right to assert

any claims or causes of action that relate to the calculation or determination of benefits owed or claimed to be owed by PSERS to such Class Member other than the claim that the calculation or determination is not correct because of the failure of the Defendants [\*11] to use the correct mortality tables to calculate option-plan retirement benefits for Class Members in accordance with the decision of the Supreme Court of Georgia in Plymel v. Teachers Retirement System of Georgia; and

c. The Release may be raised as a complete defense to and will preclude any action or proceeding that is released, waived and precluded by the Release.

**10. Permanent Injunction.** All Class Members who have not been timely excluded from the Class, and anyone acting on their behalf or for their benefit, are hereby permanently barred and enjoined from: (a) filing, commencing, prosecuting, maintaining, intervening in, participating in (as class members or otherwise), or receiving any benefits or other relief from, any other lawsuit, arbitration, or administrative, regulatory or other proceeding or order in any jurisdiction based on claims released, waived and precluded by the Release; or (b) organizing or soliciting the participation of any such Class Members into a separate class for purposes of pursuing as a purported class action (including by seeking to amend a pending complaint to include class allegations, or by seeking class certification in a pending action) any lawsuit [\*12] or other proceeding based on claims released, waived and precluded by the Release. The Court finds that issuance of this permanent injunction is necessary and appropriate in aid of the Court's jurisdiction over the action and to protect and effectuate the Court's Final Order and Judgment. Any person found in contempt of this injunction will be subject to sanctions. Any Releasee who must seek from the Court the

compliance of a Releasor who is in violation of this injunction is entitled to reimbursement of his or her or its attorneys' fees incurred as a result of seeking such compliance.

**11. Objections to Settlement.** The Court provided all Class Members and their representatives who complied with the requirements for objections and appearance at the Fairness Hearing set forth in the Preliminary Approval Order a fair and adequate opportunity to object to the proposed settlement.

**12. Enforcement of Settlement.** Nothing in this Final Order and Judgment shall preclude any action to enforce the terms of the Settlement Agreement, nor shall anything in this Final Order and Judgment preclude the Plaintiff or Class Members from participating in the settlement if they are entitled to do so under [\*13] the terms of the Settlement Agreement.

**13. Attorneys' Fees and Expenses.** Class Counsel's application for an award for attorneys' fees, expenses of litigation, and an incentive award for the Class Representative is granted for the reasons stated in the Court's separate Order prepared in accordance with Friedrich v. Fidelity Nat'l Bank, 247 Ga. App. 704, 707-08, 545 S.E.2d 107, 110 (2001). As set out in the separate Order, the Court awards 25% of the common fund as the Fee and Expense Award. The Court further orders that the expenses of notice and administration of the settlement and the incentive award to the Class Representative shall have first priority of payment from the Fee and Expense Award, and the remainder shall be paid to Class Counsel for their expenses of litigation and fee award. Within thirty (30) days of entry of this Order, the Settlement Administrator shall account to Class Counsel for fees and expenses already deducted from or allocated to the Fee and Expense Fund or the Fee and

Expense Award and shall estimate the reasonable expenses that it expects will be incurred over the remaining period of administering Settlement Sum # 1 and any other funds that the Settlement [\*14] Administrator has by that time received under the Settlement Agreement. The Settlement Administrator shall also within this same time period (1) set aside from the Fee and Expense Award an amount equal to twice the amount of its estimate and hold that sum from which to make payment of expenses, if any; (3) set aside from the Fee and Expense Award the amount of the incentive award to the Class Representative; and (4) disburse to Class Counsel, pursuant to the directions of Class Counsel, the remainder of the funds that it then holds that are part of the Fee and Expense Award. Within thirty (30) days of receipt by the Settlement Administrator from PSERS of other or additional funds under the Settlement Agreement and this Order, the Settlement Administrator shall estimate the reasonable expenses that it expects will be incurred over the period of administering such funds under the Settlement Agreement. The Settlement Administrator shall provide its estimate to Class Counsel, and, within thirty (30) days of providing such estimate, the Settlement Administrator shall (1) set aside from the Fee and Expense Award an amount equal to twice the amount of its estimate and hold that sum from which [\*15] to make payment of expenses, if any; and (2) disburse to Class Counsel, pursuant to the directions of Class Counsel, the remainder of such other or additional funds that it then holds that are part of the Fee and Expense Award.

14. **No Other Payments.** The preceding paragraph of this Order covers, without limitation, any and all claims for attorneys' fees and expenses of litigation, costs or disbursements incurred by Class Counsel or any other counsel representing Plaintiff or Class Members, or incurred by Plaintiff or the

Class Members, or any of them, in connection with or related in any manner to this Action, the settlement of this Action, the administration of such settlement, or the claims released, waived and precluded by the Release except to the extent otherwise specified in this Order and the Settlement Agreement.

15. **Incentive Award to the Class Representative.** Plaintiff Anderson is hereby awarded an incentive award as Class Representative in the amount of twenty-five thousand dollars (\$25,000.00), in addition to any amount that she is owed as a Class Member. The incentive award is to be paid by the Settlement Administrator within ten (10) business days after the Final Settlement [\*16] Date, subject to any conditions set forth in the Settlement Agreement. Any other amount due to the Class Representative (for example, any back benefits or future adjustment of benefits) is to be paid as provided in the Settlement Agreement.

16. **Modification of Settlement Agreement.** The Parties are hereby authorized, without further approval from the Court and without further notice to the Class, to agree to and adopt such amendments to, and modifications and expansions of the Settlement Agreement as are consistent with this Final Order and Judgment and that do not limit the rights of Class Members under the Settlement Agreement.

17. **Retention of Jurisdiction.** The Court has jurisdiction to enter this Final Order and Judgment. Without affecting in any way the finality of this Final Order and Judgment, this Court expressly retains jurisdiction as to all matters relating to the administration, consummation, enforcement and interpretation of the Settlement Agreement and of this Final Order and Judgment, and for any other necessary purpose, including, without limitation:

(a) enforcing the terms and conditions of the Settlement Agreement and resolving any disputes, claims or causes of action [\*17] that, in whole or in part, are related to or arise out of the Settlement Agreement and this Final Order and Judgment (including, without limitation, whether a person or entity is or is not a Class Member and whether claims or causes of action allegedly related to this case are or are not barred by this Final Order and Judgment);

(b) entering such additional Orders as may be necessary or appropriate to protect or effectuate the Court's Final Order and Judgment approving the Settlement Agreement, dismissing all claims, and permanently enjoining Class Members from initiating or pursuing related proceedings, or to ensure the fair and orderly administration of this settlement; and

(c) entering any other necessary or appropriate Orders to protect and effectuate this Court's retention of continuing jurisdiction; provided, however, that nothing in this paragraph is intended to restrict the ability of the parties to exercise their rights under the Settlement Agreement.

18. **No Admissions.** Entering into or carrying out the Settlement Agreement, and any negotiations or proceedings related to it, shall not in any event be construed as, or deemed to be evidence of, an admission or concession as to [\*18] the Defendants' defenses and shall not be offered or received in evidence in any action or proceeding against any Party hereto in any court, administrative agency or other tribunal for any purpose whatsoever, except as evidence of the settlement or to enforce the provisions of this Final Order and Judgment and the Settlement Agreement; provided, however, that this Final Order and Judgment and the Settlement Agreement may be filed in any action against or by the Defendants or the Releasees to support a defense of *res*

*judicata*, collateral estoppel, release, waiver, good-faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim.

19. **Dismissal of Action.** All claims in this Action that are released, waived and precluded by the Release, including individual and Class claims, are hereby DISMISSED ON THE MERITS AND WITH PREJUDICE against Plaintiff and all other Class Members who have not excluded themselves from the Class. To the extent that the Complaint could be read to plead any claim that is not released, waived and precluded by the Release, this Action, including individual and Class [\*19] Claims, is DISMISSED WITHOUT PREJUDICE against Plaintiff and all other Class Members who have not excluded themselves from the Class. This dismissal is without fees or costs to any party except as otherwise provided in this Final Judgment and Order.

Accordingly, finding no just reason for delay and upon express direction for the entry of Judgment, it is hereby **ORDERED, ADJUDGED** and **DECREED** that **FINAL JUDGMENT** is hereby entered this 8 day of July 2009.

/s/ Alice D. Bonner

ALICE D. BONNER

Senior Judge, Superior Court of Fulton County,

Business Case Division

*Clark v. Bway Holding Company, et al.*  
(Superior Court of Fulton County, Georgia)  
CAFN: 2010CV183869



Neutral

As of: July 24, 2023 1:38 PM Z

## Clark v. Bway Holding Co.

Superior Court of Fulton County, Business Case Division, State of Georgia

October 10, 2010, Decided; October 10, 2010, Filed

Case No. 2010CV183869

### Reporter

2010 Ga. Super. LEXIS 1518 \*

REBECCA CLARK, on Behalf of Herself and All Others Similarly Situated, Plaintiff, v. BWAY HOLDING COMPANY, KENNETH M. ROESSLER, MICHAEL B. CLAUER, JEAN-PIERRE M. ERGAS, WARREN J. HAYFORD, DAVID I. WAHRHAFTIG, THOMAS R. WALL, IV, DAVID M. RODERICK, LAWRENCE A. MCVICKER, EARL L. MASON, WELLFORD L. SANDERS, JR., MADISON DEARBORN PARTNERS, LLC, PICASSO PARENT COMPANY, INC, and PICASSO MERGER SUB, INC, Defendants.

**Prior History:** [Clark v. Bway Holding Co., 2010 Ga. Super. LEXIS 1541 \(Ga. Super. Ct., Aug. 30, 2010\)](#)

### Core Terms

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Settlement, Notice, class action, consummation, holders

**Judges:** Hon. Alice D. Bonner [\*1], Senior Judge, Superior Court of Fulton County, Atlanta Judicial Circuit.

**Opinion by:** Alice D. Bonner

### Opinion

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## FINAL ORDER AND JUDGMENT APPROVING CLASS SETTLEMENT AND CERTIFICATION OF THE SETTLEMENT CLASS

This matter comes before the Court for final approval of settlement of the above-styled class action, and certification of the Class.<sup>1</sup> In entering this Order, the Court has reviewed and considered, *inter alia*, (i) the Stipulation of Settlement ("Stipulation") between and among Plaintiff Rebecca Clark ("Plaintiff"), on behalf of herself and the Class, and Defendants BWAY Holding Company ("BWAY" or the "Company"), Madison Dearborn Partners, LLC ("MDP"), Picasso Parent Company, Inc., Picasso Merger Sub, Inc., Kenneth M. Roessler, Jean-Pierre M. Ergas, Warren J. Hayford, David I. Wahrhaftig, Thomas R. Wall, IV, David M. Roderick, Lawrence A. McVicker, Earl L. Mason, and Wellford L. Sanders, Jr. (together, "Defendants") (Plaintiff and Defendants collectively are referred to as the "Settling Parties"); (ii) the Notice of Proposed Class Action Settlement (the "Class Notice"); (iii) the parties' pleadings and filings in this case; (iv) the arguments of counsel; and (v) the statements made before [\*2] the Court at the Fairness Hearing conducted on November 10, 2010.

Having reviewed and considered the foregoing, and being otherwise duly and sufficiently advised, the Court hereby ORDERS, ADJUDGES and DECREES as follows:

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<sup>1</sup>Capitalized terms not otherwise defined herein have the meanings set forth in the Stipulation of Settlement.

A. Incorporation of Other Documents. This Final Order and Judgment specifically incorporates and makes a part hereof:

1. the Stipulation;
2. all of the exhibits to the Stipulation; and
3. the Court's Notice Order, dated August 30, 2010.

B. Adequacy of Lead Counsel and Class Representative.

1. Based on a review of the record, the Court finds that Plaintiff fairly and adequately represents the Class. The Court further finds that there is no conflict of interest between Plaintiff and the rest of the Class. Regarding Plaintiff's counsel—Holzer Holzer & Fistel, LLC, Law Office Of Jonathan M. Stein, PL, and Robbins Geller Rudman & Dowd, LLP — the Court finds that, (a) since the inception of this litigation, Plaintiff's counsel has fairly, reasonably, and adequately represented the interests of the Class, and (b) Plaintiff's counsel in this case is experienced in class litigation, experienced in trials, and adequate to represent the Class. In this regard, the Court has considered, [\*3] *inter alia*, (i) the work that Plaintiff's counsel has done to date in identifying and investigating the potential claims and claims directly asserted in this litigation; (ii) Plaintiff's counsel's experience in handling complex litigation, including class actions; (iii) Plaintiff's counsel's knowledge of the applicable law; and (iv) the resources that Plaintiff's counsel committed to representing the Class. Based on the foregoing findings, the Court concludes that Plaintiff and Plaintiff's counsel have fairly and adequately protected the interests of the Class.

C. Settlement Class.

1. The Court finds that the requirements for certification of the Class have been met. In making this finding, the Court has considered the interest of Class Members in individually controlling the prosecution or defense of

separate actions, the impracticality or inefficiency of prosecuting or defending separate actions, the extent and nature of any litigation concerning these claims already commenced, the desirability of concentrating the litigation of claims in a particular forum, and the difficulties likely to be encountered in the management of a class action.

2. The Class consists of all record holders [\*4] and beneficial owners of the common stock of the Company who held such shares at any time between and including March 29, 2010 (the date that the proposed Merger was publicly announced) through and including June 16, 2010 (the effective date of consummation of the Merger), including the legal representatives, heirs, successors in interest, transferees and assigns of all such foregoing holders and/or owners, immediate and remote, excluding the Defendants and any person, trust, corporation or other entity related to or affiliated with any of them and their successors in interest. The Class is ascertainable on the basis of these objective criteria, and the Court finds, that Class Members are so numerous that it is impracticable to bring all Class Members before the Court. Accordingly, the Court also concludes that the requirements of [O.C.G.A. § 9-11-23\(a\)\(1\)](#) are satisfied.

3. The Court finds that there is a well-defined community of interest among Class Members regarding substantially similar questions of law or fact. These questions of law or fact appear to be common to the Class, and concern, among other things, whether the Defendants breached their fiduciary duties in connection with [\*5] MDP's acquisition of BWAY. The Court finds that the requirement of commonality under [O.C.G.A. § 9-11-23\(a\)\(2\)](#) is met.

4. The claims of Plaintiff appear to be typical of the Class, and it appears that Plaintiff will

fairly, reasonably, and adequately protect the interests of the Class, in that, (i) the interests of Plaintiff are consistent with those of the Class; (ii) there are no conflicts between or among Plaintiff and the Class Members; (iii) Plaintiff has been and continues to be capable of actively pursuing this litigation and the negotiations to settle the Action; and (iv) Plaintiff and the Class Members are represented by qualified, reputable counsel who is experienced in preparing and litigating complex matters, including class actions. Accordingly, the Court finds that the requirements of typicality and adequacy of representation under [O.C.G.A. §§ 9-11-23\(a\)\(3\)](#) and [9-11-23\(a\)\(4\)](#) are met.

#### D. Certification of Class, for Settlement Purposes.

Based on, *inter alia*, the foregoing findings, the Court hereby certifies the following Class:

The Class includes all record holders and beneficial owners of the common stock of the Company who held such shares at any time between and including [\*6] March 29, 2010 (the date that the proposed Merger was publicly announced) through and including June 16, 2010 (the effective date of consummation of the Merger), including the legal representatives, heirs, successors in interest, transferees and assigns of all such foregoing holders and/or owners, immediate and remote, excluding the Defendants and any person, trust, corporation or other entity related to or affiliated with any of them and their successors in interest.

#### E. Findings Regarding the Stipulation of Settlement.

The Court finds that the Stipulation resulted from extensive arms' length negotiations, and was concluded only after Plaintiff's counsel had conducted broad discovery (including the review of documents and depositions). The

Court finds that the proposed Stipulation is fair, reasonable, and adequate to the Class. The Court finds and concludes that the Settlement is fair, reasonable, and adequate, and in the best interests of the Class, and hereby approves the Settlement and all transactions preliminary or incident thereto.

F. Relief Afforded. The settlement is based on BWAY's agreement to make certain additional disclosures in a supplemental Schedule 14A, which was filed [\*7] with the SEC on June 1, 2010 in advance of the special meeting where BWAY shareholders voted on the Merger.

G. Adequacy of Class Notice. The Court finds that members of the Class have received adequate notice, which consisted of the Notice being sent via regular mail to all holders of BWAY stock who were mailed the definitive proxy statement. The Court finds that Notice has been provided to the Class consistent with the procedures authorized in the Court's prior orders regarding notice to the class. The Court finds that the Notice provided pursuant to these Court-approved procedures constituted the best notice practicable under the circumstances, and that said Notice fully satisfied the requirements of Georgia Rule of Civil Procedure 23, the requirements of due process, and any other applicable law.

H. Release. As against the Released Persons, the Settled Claims are hereby fully, finally, and forever compromised, settled, extinguished, dismissed, discharged and released with prejudice by the Releasing Parties and their further prosecution of the Settled Claims in this or any other action or proceeding permanently barred and enjoined pursuant to the terms and conditions herein; provided, [\*8] however, that the claims to be released shall not include the right of any members of the Class or any of the Defendants to enforce the terms of the Settlement.

I. Injunction. As of the date of this Order, the

Releasing Parties are forever enjoined and barred from commencing, asserting, or pursuing in any way, any of the claims that are released under the terms of the Stipulation. Thus, Releasing Parties subject to the settlement may not commence, participate in, or benefit from the pursuit of any causes of action, claims, damages, equitable, legal, or administrative relief, interest, demands, and rights, including, without limitation, claims for mental anguish, whether based on federal, state, or local law, statute, ordinance, regulation, contract, common law, or any other source, that have been, could have been, may be or could be alleged or asserted now or in the future by Plaintiff or any Releasing Party against the Released Parties or any of them in the Action or in any other court action or before any administrative body, tribunal, arbitration panel, or other adjudicatory body, on the basis of, connected with, arising out of, or related to, in whole or in part, the Settled Claims. [\*9]

J. Consummation of Settlement. The Parties are directed hereby to consummate the Settlement in accordance with the terms and conditions set forth in the Stipulation; and the Clerk of Court is directed to enter and docket this Final Order and Judgment in the Action.

K. Attorneys' Fees. Plaintiff's Counsel is awarded Attorneys' Fees in the amount of \$450,000.00, which sum the Court finds to be fair and reasonable. Defendants shall cause such amount to be paid in accordance with, and subject to, the terms of the Stipulation. Plaintiff is awarded \$1,000.00 as a service award to be paid by Plaintiff's Counsel out of the Attorney's Fees.

L. Retention of Jurisdiction. The Court has jurisdiction to enter this Final Order and Judgment. Without in any way affecting the finality of this Final Order and Judgment, this Court expressly retains jurisdiction as to all

matters relating to the administration, consummation, enforcement and interpretation of the Stipulation and of this Final Order and Judgment, and for any other necessary purpose, including, without limitation: (a) enforcing the terms and conditions of the Stipulation and resolving any disputes, claims or causes of action that, in whole [\*10] or in part, are related to or arise out of the Stipulation and this Final Order and Judgment (including, without limitation, whether a person or entity is or is not a Class Member; whether claims or causes of action are or are not barred by this Final Order and Judgment, etc.); (b) entering such additional orders as may be necessary or appropriate to protect or effectuate this Final Order and Judgment or to ensure the fair and orderly administration of this settlement; and (c) entering any other necessary or appropriate orders to protect and effectuate this Court's retention of continuing jurisdiction; provided, however, that nothing in this paragraph is intended to restrict the ability of the Parties to exercise their rights under the Stipulation.

M. No Admissions. Neither this Final Order and Judgment nor the Stipulation (nor any other document referred to herein) nor any action taken to carry out this Final Order and Judgment) is, may be construed as, or may be used as an admission, concession or declaration by or against the Defendants of any fault, wrongdoing, breach or liability. Nor shall the Order be construed or used as an admission, concession or declaration by or against [\*11] Plaintiff or the Class Members that their claims lack merit or that the relief requested in the Amended Complaint is or was inappropriate, improper or unavailable, or as a waiver by any party of any defenses or claims, he, she or it may have. Entering into or carrying out the Stipulation, and any negotiations or proceedings related to it, shall not in any event be construed as, or deemed evidence of, an admission or concession as to

the Defendants' denials or defenses and shall not be offered or received in evidence in any action or proceeding against any Released Party (as defined in the Stipulation) in any court, administrative agency or other tribunal for any purpose whatsoever, except as evidence of the settlement or to enforce the provisions of this Final Order and Judgment and the Stipulation; provided, however, that this Final Order and Judgment and the Stipulation may be filed in any action against or by the Defendants or other Released Parties to support a defense of *res judicata*, collateral estoppel, release, waiver, good-faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim. [\*12]

N. Conduct of Litigation. The Court finds that during the course of the Litigation, the Settling Parties and their respective counsel at all times complied with the requirements of Georgia Rules of Civil Procedure, Uniform Superior Court Rules, and all other applicable rules and statutes.

O. Dismissal on Merits. All of the claims asserted in the Action on behalf of the Class against all Defendants are dismissed on the merits with prejudice against Plaintiff and all Class Members, without costs (except as provided above with respect to Attorneys' Fees).

The above is Hereby Ordered and Entered this 10 day of Nov, 2010.

/s/ Alice D. Bonner

Hon. Alice D. Bonner, Senior Judge

Superior Court of Fulton County

Atlanta Judicial Circuit

*Eaves, et al. v. EarthLink, Inc.*  
(Superior Court of Fulton County, Georgia)  
CAFN: 2005-CV-97274



Neutral

As of: July 24, 2023 1:37 PM Z

## *Eaves v. Earthlink, Inc.*

Superior Court of Fulton County, Business Case Division, State of Georgia

June 7, 2010, Decided; June 7, 2010, Filed

Civil Action No. 2005-CV-97274

### Reporter

2010 Ga. Super. LEXIS 1532 \*

DEBORAH EAVES, WILLIAM O'HARA, and DAVID TEGART, on behalf of themselves and all others similarly situated, Plaintiffs, v. EARTHLINK, INC., Defendant.

### Core Terms

settlement, attorney's fees, class member, incentive award, expenses, class representative, negotiated, benefits, common fund, class action, subscribers, injunctive relief, requested fee, parties, cases, awards, multiplier, estimate, lodestar, fee award, damages, factors, courts, skill, common benefit, litigated, certification, five year, constitutes, contingent

**Judges:** [\*1] ALICE D. BONNER, Judge.

**Opinion by:** ALICE D. BONNER

### Opinion

#### ORDER ON ATTORNEYS' FEES AND COSTS AND INCENTIVE AWARDS TO CLASS REPRESENTATIVES

Counsel for the parties appeared at a hearing held on June 7, 2010 to present oral argument and evidence regarding the application of Class Counsel for an award of attorneys' fees and expenses, as well as for incentive awards to the three class representatives. The Court, having considered the record of the case and

the arguments and evidence presented, and the briefing submitted on the issues, finds as follows:

Class Counsel seek an award of attorneys' fees and expenses of \$3,700,000, which the parties agreed to in their Settlement Agreement subject to this Court's approval. Class Counsel have zealously litigated this case on behalf of the Class for five years and achieved excellent results for the Class, including significant damages and injunctive relief. Class Counsel have presented evidence that the requested award would constitute approximately 7% to 11% of the common benefit to the Class of the settlement, that it would be paid separately by Defendant, and that it would not reduce the benefits provided to the Class by the Settlement. Accordingly, the requested [\*2] award is clearly a reasonable percentage of the common benefit under Georgia law. Moreover, each of the applicable factors set forth in [Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 \(5th Cir. 1974\)](#) supports the requested award, which constitutes less than 1.61 times Class Counsel's total lodestar. The Court also finds that Class Representatives are entitled to the requested incentive awards, having borne the burden and risk of advancing the interests of the entire Class as representatives in this matter for five years and having thereby achieved significant benefits for the Class.

The Court therefore grants Class Counsel's Motion for Award of Attorneys' Fees and Costs

and Incentive Awards to Class will charge its subscribers [\*4] in the future. Representatives.

## BACKGROUND

Plaintiffs are past or present customers of EarthLink, Inc. ("EarthLink"), a company that provides Internet access through a variety of technologies. Plaintiffs alleged that EarthLink violated Georgia law and damaged Plaintiffs by uniformly charging or threatening to charge its customers an arbitrary early termination fee ("ETF") for canceling service prior to the completion of a twelve-month contract term. The parties submitted a Settlement Agreement on February 8, 2010, which the Court preliminarily approved on February 19, [\*3] 2010, and finally approved on June 7, 2010.

The Court observes that Class Counsel achieved an excellent result for the class by negotiating damages relief for the Class, despite that this Court had granted Defendant's motion for partial judgment on the pleadings based on the voluntary payment doctrine, which eliminated the class's claims for damages. The Court's ruling meant that no class members who had paid an ETF could recover it barring reversal of that ruling by the Georgia Court of Appeals. While the Court and the Court of Appeals certified that issue for interlocutory appeal, the Georgia Court of Appeals had not ruled on the issue at the time the parties entered the settlement.

The total Class includes more than a million and a half current and former subscribers of EarthLink. The Settlement Agreement provides significant relief to class members, including: cash refunds of half of ETFs actually paid; clearance of unpaid ETFs from former subscribers' EarthLink accounts and credit reports; EarthLink's agreement to cease any collection efforts for such unpaid amounts; and injunctive relief substantially reducing and prorating the amount of the ETFs EarthLink

Class Counsel have estimated, based on EarthLink's records, that the aggregate value of the damages and injunctive relief ranges from \$33 to \$50 million. Declaration of Bruce V. Spiva in Support of Plaintiffs' Motion for (1) Final Approval of Class Action Settlement; (2) Award of Attorneys' Fees and Costs; and (3) Incentive Awards to Class Representatives ("Spiva Decl.") ¶ 13. Class Counsel calculated this range of value using data EarthLink produced during discovery pursuant to a protective order. The range is based on estimations of: (1) the total amount of money available to class members who paid the fee and are entitled to claim half of their money back; (2) an estimate of the value of the reduction of EarthLink ETFs going forward, using 2009 data to project the number of likely ETFs over the three years covered by the injunction; and (3) the value of EarthLink agreeing to refrain from attempting to collect its purported "bad debt" related to ETFs that subscribers were charged but never paid. Spiva Decl. ¶¶ 13-14.

Class Counsel aver that their estimated range of value is conservative, because it does not include many significant elements of the settlement that, while [\*5] clearly valuable, are difficult to quantify. For instance, Class Counsel observe that the settlement provides for the proration of ETFs after six months of a subscriber's contract has run. This means that in the future many subscribers who terminate early will be charged an ETF that is less than *one-third* as much as it would have been under EarthLink's pre-settlement terms. However, Class Counsel state that due to a lack of data that would allow a projection of the likely number of subscribers who will terminate their contracts after the first six months, Class Counsel do not include the cost savings from proration in their estimate of the total value of the Class benefits. In addition, Class Counsel

point out that under the Settlement Agreement EarthLink has agreed that it will not require a subscriber who has completed a twelve-month term contract to enter into a new term contract that contains an ETF unless the new contract involves the supply of new equipment or a different service. Class Counsel have not attempted to place a value on this benefit due to data limitations, but this injunctive relief will certainly result in many customers being able to terminate service without [\*6] paying an ETF, when they would have under EarthLink's pre-settlement terms.

The Court finds that Class Counsel's estimate of the range of value of the benefits to the Class is credible and conservative, and finds that the likely range of benefits to the Class of the Settlement Agreement is between \$33 and \$50 million. Under the terms of the settlement, EarthLink has agreed to pay attorneys' fees and expenses of \$3,700,000 plus incentive awards to the three named Plaintiffs in the amount of \$7,500 each, for the time and effort undertaken in and risks of pursuing this five-year long litigation. Settlement Agreement ¶ 6.1. No award of attorneys' fees, costs, expenses or incentive awards made by the Court will decrease or have any other effect on the relief to be provided to class members. The requested attorneys' fee and expense award "constitutes from 7% to 11% of the common benefit created for the Class.

### **I. THE COURT GIVES SIGNIFICANT WEIGHT TO THE FAIR AND REASONABLE AMOUNT OF ATTORNEYS' FEES AND EXPENSES NEGOTIATED BY THE PARTIES**

Courts generally encourage fee agreements between plaintiffs and defendants in class actions that, like this one, are negotiated at arm's-length: "[i]n cases [\*7] of this kind [class actions], we encourage counsel on both sides to utilize their best efforts to understanding,

sympathetically, and professionally arrive at a settlement as to attorney's fees." [Johnson, 488 F.2d at 720](#). This maxim applies with even greater force in this case. Unlike many common fund cases, here, a decision to reduce the negotiated fee would not result in any additional benefit to the class, as EarthLink has agreed to pay the fee separately from the class recovery. The Court finds that the parties negotiated the attorneys' fees and expenses at arm's-length. Because the fee will be paid separately from the settlement benefit, EarthLink had a particular incentive to keep the fee as low as possible. See [Elkins v. Equitable Life Ins. Co. of Iowa, No. 96-296, 1998 U.S. Dist. LEXIS 1557, \\*99 \(M.D. Fla. 1998\)](#) (observing that where fee will not be deducted from a fixed fund, the defendant "had a particular incentive to bargain strenuously to keep the fee as low as possible."). Under these circumstances, the Court gives "great weight" to the negotiated fee in considering the fee request. *Id.* The Court sees no reason, and none has been presented, to reduce the amount of fees and incentives negotiated by the parties.

### **II. THE FEE IS REASONABLE UNDER A COMMON FUND ANALYSIS**

Under Georgia law, Class Counsel [\*8] who create a common fund or benefit for a class are entitled to have their fees and costs based on the common benefit achieved. See, e.g., [Barnes v. City of Atlanta, 281 Ga. 256, 260, 637 S.E.2d 4 \(2006\)](#) ("[A] person who at his own expense and for the benefit of persons in addition to himself, maintains a successful action for the preservation, protection or creation of a common fund in which others may share with him is entitled to reasonable attorney fees from the fund as a whole."); see also [Boeing Co. v. Van Gemert, 444 U.S. 472, 478, 100 S. Ct. 745, 62 L. Ed. 2d 676 \(1980\)](#) ("a lawyer who recovers a common fund for

the benefit of persons other than... his client is entitled to a reasonable attorney's fee from the fund as a whole"); [Camden I Condo. Ass'n, Inc. v. Dunkle, 946 F.2d 768, 771 \(11th Cir. 1991\)](#) ("*Camden I*") ("Under [common fund] doctrine, fee reimbursement is permitted . . . when litigation indirectly confers substantial monetary or nonmonetary benefits on members of an ascertainable class" (quoting H. Newberg, *Attorney Fee Awards* § 2.01 at 28-29 (1986))). This method of awarding attorneys' fees is appropriate whether the benefits conferred on class members are in cash - as are a substantial portion of the benefits available to the class in this case - or in non-monetary benefits such as discounts or injunctive relief.. See, e.g., [Camden I, 946 F.2d at 771](#) (quoted above); [Hillis v. Equifax Consumer Svcs., Inc., No. 04-CV-3400, 2007 U.S. Dist. LEXIS 48278, \\*12, 15-16](#) (awarding \$4 million in attorneys' fees [\*9] based on substantial "in-kind benefits" and "injunctive relief").<sup>1</sup>

Georgia primarily looks to the "common fund" or "percentage of recovery" method for determining the reasonableness of attorneys' fees in class action cases. [Camden I, 946 F.2d at 774](#); [Friedrich v. Fidelity Nat'l Bank, 247 Ga. App. 704, 545 S.E.2d 107 \(Ga. App. 2001\)](#) (adopting *Camden I*'s rationale and holding that the "percentage of the fund" method is the

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<sup>1</sup>As Class Counsel point out in their application, even the supposedly "non-monetary" benefits in this case actually have a monetary value. For example, EarthLink customers who terminate early going forward will be charged an ETF that is 40% lower than the fee they would have paid under pre-settlement terms. That savings constitutes a real monetary value: namely, \$60 in the consumer's pocket that otherwise would have gone to EarthLink under pre-settlement terms. Likewise, proration of the ETF will result in a savings of \$105 for many DSL subscribers who terminate after six months of service. Not only will these reduced fees save class members money in the future, but the future ETF reductions benefit all current subscribers subject to an ETF, because all will have more freedom - in the form of lower termination costs - to choose whether to stay with EarthLink or choose another Internet Service Provider.

most appropriate."). While allowing that "[t]here is no hard and fast rule mandating a certain percentage of a common fund which may reasonably be awarded as a fee because the amount of any fee must be determined upon the facts of each case," the court in *Camden I* nevertheless found that "the majority of common fund fee awards fall between 20% to 30% of the fund," and some courts have approved fees above that range. [Camden I, 946 F.2d at 774](#); see also [id. at 775](#) (observing that an "upper limit of 50% of the fund may be stated as a general rule, although even larger percentages have been awarded") (citations omitted); [Waters v. International Precious Metals Corp., 191 F.3d 1291, 1295, 1300 \(11th Cir. 1999\)](#) (upholding award of 33%).

In cases such as this one, involving a claims made process where class members must make a claim to receive a cash payment, courts generally determine a reasonable percentage for attorneys' fees and expenses based on the total amount of potential value created for the class, not [\*10] just the amount of monetary claims actually made. *Boeing Co., AAA U.S. at 480* ("[The class members'] right to share the harvest of the lawsuit upon proof of their identity, whether or not they exercise it, is a benefit in the fund created by the efforts of the class representatives and their counsel."); [Waters, 191 F.3d at 1295-1298](#) (finding that district court did not abuse discretion in basing fee on amount of total fund, rather than claims actually made); [Hillis, 2007 U.S. Dist. LEXIS 48278, \\* 15-16](#) ("The Court is aware that not all consumers will avail themselves of an opportunity to redeem this benefit. Nevertheless, the offer of the benefit to each class member has a substantial value, as of course does the injunctive relief agreed to."). The Court is aware that not all class members who are eligible to make a claim for a cash refund of ETFs will actually make a claim, resulting in less than the total possible value being achieved. However, the Court finds that

it is appropriate to award fees on the basis of the total benefit created. Class Counsel have negotiated a fair and robust notice program, funded by EarthLink separately from any benefits reserved to the class, and an uncapped commitment from EarthLink to pay any and all legitimate claims made during the claims period. [\*11] Moreover, the Court finds that the injunctive relief provides real value to the class. Under these circumstances, it is appropriate to look to the total value of the package of benefits negotiated by the parties in determining the reasonableness of the requested fee award.

Class Counsel estimate, based on records provided by EarthLink during discovery, that the settlement obtained by Class Counsel has resulted in \$33 to \$50 million in tangible benefits being conferred upon the class.<sup>2</sup> Spiva Decl. ¶ 13. As previously noted, Class Counsel request, and EarthLink does not oppose, an award of \$3,700,000 for both attorneys' fees *and* expenses. The requested fee and expense award is approximately 7% to 11% of the minimum value of the benefits obtained for the class - a percentage well below the 20% to 30% that Georgia courts

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<sup>2</sup>Class Counsel have submitted the following facts to the Court in the form of a Declaration by' Bruce V. Spiva. In discovery, EarthLink produced a summary spreadsheet, along with voluminous backup spreadsheets, which purport to summarize data concerning the amount of ETFs charged and paid by early terminating subscribers from 2002 through a portion of 2009. Because EarthLink has stated that it does not have complete data for the entire class period — 2001 to present-Class Counsel's total estimate of value includes estimated values for the year 2001 and for portions of 2009 and 2010, based on extrapolation from existing EarthLink data. The range of total estimated value derives from a combination of: (1) the monetary payments available to class members who actually paid an ETF if they make a claim; (2) the likely future monetary benefits, based on historical data, of the reduction and proration of EarthLink's ETFs; and (3) the value to class members of EarthLink agreeing to refrain from attempting to collect its purported "bad debt" related to ETFs from customers who were charged but never paid an ETF. Spiva Dec. ¶ 13-15.

recognize as a reasonable norm. Moreover, as discussed above, the value to the class of many of the settlement benefits cannot be easily estimated and therefore Class Counsel's estimated range does not include those benefits. Accordingly, the fee and expense award sought by Counsel is likely even lower than 7% to 11% of the common benefit created for the class. Because these [\*12] percentages are well below the fees of 20 % to 30% of the common fund routinely found to be reasonable in Georgia, the Court grants Class Counsel's request for an award of \$3,700,000 in fees and expenses. See [Camden I, 946 F.2d at 774-75](#); [Waters, 191 F.3d at 1295, 1300](#).

Finally, although the requested fee constitutes a reasonable percentage of the common benefit provided to the Class in its own right, the amount sought is even more reasonable because, unlike many common fund cases, in which the fees are deducted from the common fund and thus reduce the amount of benefits to class members, in this case, EarthLink has agreed to pay the requested award separate and apart from the cash and other benefits provided to class members. [Elkins, 1998 U.S. Dist. LEXIS 1557 at \\*97](#) (characterizing as "far superior" an approach, as in this case, of not capping class recovery and not deducting attorneys' fees from common fund).

### III. THE FEE IS REASONABLE UNDER THE "JOHNSON" FACTORS

Georgia and Eleventh Circuit courts also evaluate the reasonableness of attorneys' fee awards in common fund cases under the so-called "*Johnson* factors," first articulated in [Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 \(5th Cir. 1974\)](#). See [Camden I, 946 F.2d at 772-773](#). The twelve *Johnson* factors are: (1) the time and labor required to prosecute the case; (2) the novelty and

difficulty of the questions involved; (3) the [\*13] skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. [Camden I, 946 F.2d at 772](#) (citing [Johnson, 488 F.2d at 717-19](#)). In this case, each of the applicable *Johnson* factors supports the requested attorneys' fees. The Court discusses each of these factors below.

#### **A. The Time and Labor Required to Prosecute the Case**

Class Counsel obtained the extraordinary results in this settlement through five years of hard-fought litigation. The firms working on behalf of the class have spent over 5,200 hours in attorney and professional time prosecuting this case, which translates into a lodestar of \$2,284,754.42, as well as over \$75,000 in expenses. Spiva Decl. ¶ 9; Worley Deck ¶¶ 6-8; Wallace Deck ¶ 5-7; Berk Decl. ¶¶ 6-8.

Class Counsel's fee and expense declarations confirm, under a lodestar/multiplier [\*14] cross-check, the reasonableness of the attorneys' fee and expense payment agreed to by the parties. The requested fee award would result in a multiplier of approximately 1.62, and likely less. This multiplier is clearly at the low end of attorneys' fee multipliers in complex class actions such as this one. For example, in *Elkins*, the court approved a fee that resulted in a lodestar multiplier of 2.34, noting that it was "much lower than the midrange of the

multipliers in contingent fee awards in [complicated class actions]." *Elkins*, 1998 U.S. Dist. LEXIS at \* 104.

#### **B. The Novelty and Difficulty of the Questions Involved**

This case involved difficult and novel issues, as evidenced by the fact that it has been up to the Court of Appeals twice. Most recently, this case went before the Court of Appeals on an interlocutory appeal of the Court's ruling on the voluntary payment doctrine, which this Court certified for interlocutory review, as did the Court of Appeals. One of the factors weighing in favor of interlocutory certification was the novelty of the issue and the potential for difference of opinion among judges.

In addition, the primary claim in this case - that Earthlink's ETFs are unlawful penalties and not lawful liquidated damages [\*15] - has rarely been litigated in a class action. EarthLink also raised several difficult and/or novel constitutional issues in opposing Plaintiffs' ultimately successful motion for class certification.

The fact that Class Counsel have skillfully addressed these novel and difficult issues, achieving a valuable settlement even in the face of the Class's damages claims having been dismissed, supports the requested fee award.

#### **C. The Skill Requisite to Perform the Legal Service Properly**

All class actions are complex and require a high level of skill and experience to litigate properly. Nationwide class actions such as this one are even more difficult and complex. Class Counsel achieved class certification of this nationwide class action against a determined, sophisticated and skillful defense by EarthLink.

EarthLink raised a number of challenges to class certification, including several constitutional defenses, which Class Counsel successfully overcame. EarthLink also tenaciously attempted to reverse this Court's certification decision, and Plaintiffs successfully defended certification in the Georgia Court of Appeals and resisted certiorari review by the Georgia Supreme Court. As noted above, [\*16] the voluntary payment doctrine also presented another difficult and novel legal issue. Class Counsel's perseverance in the face of an adverse ruling on that issue required skill and determination, and no doubt played significant role in EarthLink agreeing under the settlement to repay 50% of the ETFs to class members who make a claim. This factor also supports the requested fee award.

#### **D. The Preclusion of Other Employment by the Attorney Due to Acceptance of the Case**

The Court does not doubt Lead Class Counsel's representation that vigorous litigation of this lawsuit precluded Class Counsel from accepting some other opportunities during the five years that they litigated this case. Spiva Decl. ¶ 9. The attorneys working on the matter are highly skilled and experienced, but each of their firms is relatively small in size. Class Counsel collectively worked over 5,200 hours on this matter, a substantial commitment to this case which was necessary to litigate it properly and achieve the excellent results for the class included in the settlement. Spiva Decl. ¶ 9.

#### **E. The Customary Fee**

As noted above, the requested fee falls well below the typical range of common fund and lodestar awards to counsel [\*17] in other class actions in Georgia and the Eleventh Circuit.

See *supra*. Sections I(A) & (B)(1).

#### **F. Whether the Fee is Fixed or Contingent**

Class Counsel undertook this litigation on a purely contingency fee basis and thus faced a real risk of recovering nothing and losing a substantial sum in cost and expense advances. See Spiva Decl. ¶ 2; Worley Decl. ¶ 3; Berk Decl. ¶ 2; Wallace Decl. ¶ 2. "Courts have long recognized, particularly in [the Eleventh Circuit], that the attorneys' contingent risk is an important factor in determining the fee award." *Elkins*, 1998 U.S. Dist. LEXIS at \*102.

#### **G. Time Limitations Imposed by the Client or the Circumstances**

"Priority work that delays the lawyer's other legal work is entitled to some premium." [\*Johnson\*, 488 F.2d at 718](#). The Court credits Lead Class Counsel's statement that this litigation took an enormous amount of Class Counsel's time, and frequently required prioritizing this case over other work and/or turning down new work that would have interfered with the vigorous prosecution of this matter. Spiva Decl. ¶ 9.

#### **H. The Amount Involved and the Results Obtained**

As set forth above, the result obtained by Class Counsel is excellent. Those class members who paid EarthLink an ETF will be able to receive half of the [\*18] ETF back *in cash* by filling out a simple claim form that may be submitted online or by mail. This result is particularly remarkable in that, as of the time the parties entered this settlement, this Court's February 18, 2009 Order granting EarthLink's motion for partial judgment on the pleadings based on the voluntary payment doctrine had

completely eliminated the potential for class members to recover any damages, barring a reversal of that ruling by the Georgia Court of Appeals. Yet Class Counsel still were able to negotiate damages relief for the class, *i.e.*, half of their money back. All class members who make a valid claim for a refund will receive half of the ETF they actually paid back, regardless of how many class members make a claim. The agreed upon attorneys' fees will not diminish the class relief in any respect.

Furthermore, Class Counsel have negotiated significant injunctive relief on behalf of those class members who are subject to being charged an ETF in the future, and on behalf of those class members who were charged an ETF but never paid it. For those class members who were charged a fee but never paid it, EarthLink has agreed to cease any further collection efforts [\*19] to collect unpaid ETFs, and to clear any negative credit reports relating to unpaid ETFs. For those subscribers subject to being charged an ETF in the future, the injunctive relief includes a substantial reduction of the ETF EarthLink will charge on existing services that are subject to ETFs, which will result in a certain monetary savings to current subscribers who are charged an ETF in the future. EarthLink will lower the ETF for its DSL service and DSL & Home Phone Service from \$149.95 to \$90, and the ETF for its Home Networking service from \$79.95 to \$48. Moreover, EarthLink will prorate ETFs if the subscriber cancels after six months of service by cutting the reduced ETF in half. For example, a subscriber who cancels DSL service after six months would be subject to a \$45 ETF, as opposed to the \$149.95 ETF under pre-settlement EarthLink terms. These results are extraordinary and strongly support the requested fee.

#### **I. The Experience, Reputation, and Ability of the Attorneys**

The Court has previously found that the attorneys who have litigated this case are highly experienced and skilled class action lawyers with good reputations in their legal communities. The Court has observed and [\*20] finds that Class Counsel have applied their experience and skill in a determined fashion in this matter. This factor also supports the requested fee award.

#### **J. The "Undesirability" of the Case**

This factor appears to have particular application to civil rights cases such as *Johnson*, in which the Court noted "attorneys face hardships in their communities because of their desire to help the civil rights litigant." [\*Johnson\*, 488 F.2d at 719](#). Class Counsel do not purport to have faced such hardships in bringing this case. However, to the extent that this factor is read more broadly to encompass as "undesirable" a case with uncertain economic remuneration, this case certainly fits that description. There was no ready way for Class Counsel to know at the beginning of the case, or even during most of the time they were litigating the case, the economic value of the case, as most of the data concerning the number of people who had been charged the ETF remained solely in EarthLink's hands and unavailable to Plaintiffs. Moreover, Class Counsel made an early strategic decision to embrace EarthLink's Georgia choice of law and venue provision, which they successfully argued allowed a nationwide class to be certified in the Georgia [\*21] courts. However, this decision meant taking on a major Atlanta-based corporation on its "home turf." In that respect, the case could be considered undesirable by many attorneys.

#### **K. The Nature and Length of the Professional Relationship with the Client**

As noted above, Class Counsel have been

working on behalf of the named plaintiffs and the class for over five years with no assurance that they would be compensated for the time dedicated to the litigation or reimbursed for substantial litigation expenses. This factor also weighs in favor of approving the requested and agreed-to fee.

#### L. Awards in Similar Cases

As noted above, the requested fee falls well below the typical range of common fund and lodestar awards in other class actions in Georgia and the Eleventh Circuit.

In sum, all of the *Johnson* factors favor approval of the requested fee award. Accordingly, the Court approves the fee application and awards \$3.7 million in attorneys' fees and expenses. The negotiated fee avoids the prospect of litigation over a fee award, provides for a fair and reasonable fee for the results obtained, and comports with the Supreme Court's observation that "[a] request for attorneys' fees should not result in a [\*22] second major litigation. Ideally, of course, litigants will settle the amount of a fee." [\*Hensley v. Eckerhart\*, 461 U.S. 424, 437, 103 S. Ct. 1933, 76 L. Ed. 2d 40 \(1983\)](#); see also [\*Johnson\*, 488 F.2d at 720](#) (encouraging settlement of attorney's fees).

#### IV. THE REACTION OF THE CLASS SUPPORTS APPROVAL OF THE FEE AWARD

The reaction of the class also supports approval of the fee award. The claims administrator sent out hundreds of thousands of individual email and postcard notices of the settlement and published notices in the *New York Times*, *Atlanta Journal-Constitution*, *Los Angeles Times*, and *Washington Post*. See Settlement Agreement ¶¶ 52., 5.3, 5.4; Fenwick Decl. ¶¶ 4-10 & Ex. B. The parties

also established a toll-free number with an Interactive Voice Response ("IVR") system, and a settlement website, [www.earthlinkearlyterminationfee.com](http://www.earthlinkearlyterminationfee.com), which provide class members with information in both Spanish and English regarding the settlement and how to make a claim. See Settlement Agreement ¶¶ 5.1; Fenwick Decl. ¶ 11. The notice advised the class members that Class Counsel would apply for an award of fees and expenses of \$3.7 million and that class members could object to the fee application. Yet, out of over a million and a half class members, only a single objection regarding attorneys' fees [\*23] had been lodged as of the May 21, 2010 deadline for filing objections to the Settlement. This is an exceedingly small number of objectors and the Court takes it as "some indication that the class members as a group did not think the settlement was unfair." [\*Ingram v. The Coca-Cola Co.\*, 200 F.R.D. 685, 691 n.7 \(N.D. Ga. 2001\)](#) (quoting [\*Kincade v. General Tire & Rubber Co.\*, 635 F.2d 501, 506 n.4 \(5th Cir. 1981\)](#)).

On April 20, 2010, Class Counsel received an objection from purported Class Members Dean Mostofi and his wife Young Sun Kim ("Mostofi/Kim" objection). Mostofi/Kim do not object to any of the substantive provisions of the settlement. Rather, Mostofi/Kim complain that the attorney's fees are too high and that Class Counsel would not provide them a detailed accounting or billing records purportedly to determine the reasonableness of the requested award. In addition, objectors assert, without support, that "every dollar saved in legal fees will lead to an extra dollar for class members."

The Court finds that this objection is not well-founded and thus overrules the objection. Class Counsel have submitted with this fee petition and their final approval brief declarations of Class Counsel setting forth

Class Counsel's lodestar and hours worked. These declarations demonstrate that Mostofi's unsupported assumptions are wrong. [\*24] Contrary to Mostofi's assertions, more than three attorneys worked on this case, and they collectively worked in excess of 5,200 hours. Spiva Decl. ¶¶ 9, 10. The number of hours expended by Plaintiffs' counsel is not surprising to the Court. This is complex litigation, and Class Counsel pursued it in a diligent and persistent manner.

Moreover, to the extent Mostofi/Kim claim that Class Counsel may not receive an attorneys' fee that constitutes a multiplier of their lodestar, their argument is contrary to settled Georgia and Eleventh Circuit caselaw. Georgia follows the common fund method to determine the reasonableness of the attorneys' fee, and the requested award constitutes in the range of 7% to 11% of the benefit conferred on the class by the settlement. This is an exceedingly modest percentage of the common benefit. Moreover, as discussed above, the approximate 1.61 lodestar multiplier resulting from the Court's fee award is below the low end of accepted multipliers in cases of this type.

Finally, Mostofi/Kim are simply wrong that "every dollar saved in legal fees will lead to an extra dollar for class members." The Settlement Agreement was negotiated at arm's-length, and the attorneys' [\*25] fees were negotiated separately from the substantive terms of the settlement. Spiva Decl. ¶ 9, 12. EarthLink has agreed to refund half of the money of any class member who files a legitimate claim, regardless of how many make such claims and regardless of the amount of attorneys' fees paid. Thus, the attorneys' fees will not reduce the amount paid to class members; nor will they reduce or impact in any way the value of the injunctive relief to which EarthLink has agreed. Any reduction in the fee to which EarthLink has

already agreed would not inure to the benefit of the class, but would inure only to the benefit of EarthLink.<sup>3</sup> The Court overrules the Mostofi/Kim objection.

## V. THE COURT APPROVES INCENTIVE AWARDS FOR THE CLASS REPRESENTATIVES

Class Counsel seek approval of an incentive award of \$7,500 to each of the named Plaintiffs. Courts routinely approve similar payments to class representatives for their willingness to take the risks entailed in being a class representative and to shoulder the burden and inconvenience of litigation on behalf of the class. See, e.g., *Hillis*, 2007 U.S. Dist. LEXIS \*51 (approving incentive awards of \$7,500 each and noting that "[i]ncentive awards to class representatives are an accepted [\*26] element of class action cases"); [\*Huguley v. General Motors Corp.\*, 128 F.R.D. 81, 85 \(E.D. Mich. 1989\)](#) (named plaintiffs "are entitled to more consideration than class members generally because of the onerous burden of litigation that they have borne"). The Court finds such incentive awards appropriate in this case. Each Class Representative undertook the burdens and risks of representing the Class throughout this five-year long litigation. Each was deposed and produced documents and interrogatory responses in discovery. Each followed the progress of the litigation and provided input to Class Counsel regarding the litigation and settlement prior to Class Counsel seeking preliminary approval from the Court. Spiva Decl. ¶ 21.

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<sup>3</sup> Apart from the Mostofi/Kim objection, only one other objection has been filed. That objection, involving the effect of the breadth of the release on another matter involving EarthLink, had nothing to do with either the attorneys' fees or the substance of the settlement. That objection has been resolved and has been withdrawn by the objector without the need for a change to the Settlement Agreement.

Moreover, EarthLink has agreed to pay these incentive awards separate and apart from the relief being provided to the class. Thus, these *de minimis* awards do not in any way take away from the recovery on behalf of the rest of the class. The Court therefore grants approval of the incentive awards set forth in the Settlement Agreement.

## VI. CONCLUSION

Class Counsel's application for an award of attorneys' fees, litigation expenses, and incentive awards for the Class Representatives is granted for the reasons set forth above. Class Counsel [\*27] are awarded attorneys' fees and expenses of \$3,700,000 to be paid by EarthLink to Lead Class Counsel no later than 10 days after the date of this Court's Final Order and Judgment, and to be allocated and distributed among Class Counsel by Lead Class Counsel, in its sole discretion, as set forth in the Settlement Agreement.

The Court further Orders that the three Class Representatives are hereby awarded an incentive award of \$7,500 each, in addition to any amount owed to the Class Representatives as Class Members. The incentive award is to be paid not later than 10 days after the date of this Court's Final Order and Judgment, in accordance with the provisions of the Settlement Agreement.

**SO ORDERED**, this 7 day of June, 2010

/s/ Alice D. Bonner

ALICE D. BONNER

Senior Judge, Superior Court of Fulton County

Business Case Division

*Roberson v. ECI Group, Inc., ECI Management,  
LLC and DeKalb-Lake Ridge, LLC*  
(State Court of DeKalb County, Georgia)  
CAFN: 17-A-64506-4

STATE COURT OF DEKALB COUNTY  
STATE OF GEORGIA

NICHON ROBERSON, on behalf of herself  
and all others similarly situated,

Plaintiff,

v.

ECI GROUP, INC., ECI MANAGEMENT,  
LLC, and DEKALB-LAKE RIDGE, LLC,

Defendants.

Civil Action File No.  
17-A-64506-4

CLASS ACTION  
JURY TRIAL

**Final Judgment And Order Granting Final Approval Of Class Settlement**

On September 29, 2020, this Court granted preliminary approval of the class settlement of this action. *See* Sept. 29, 2020 Order Granting Preliminary Approval. The terms of the settlement are set forth in the Comprehensive Settlement Agreement of August 3, 2020. *See* Comprehensive Settlement Agreement, attached as Ex. 2 to Aug. 3, 2020 Pl.'s Unopposed Mot. for Preliminary Approval of Class Settlement & Notice, at 1-8. Fair notice was provided by the Class Action Administrator, Kurtzman Carson Consultants, LLC (“KCC”) pursuant to this Court’s preliminary approval order, including notice to submit a claim for monetary relief, to opt out of this class action, or to object to this settlement. The deadline for any such actions was March 1, 2021.

This matter is now before this Court on an unopposed motion for final approval filed by Plaintiff and Class Representative Nichon Roberson on May 12, 2021.

Having considered all papers in this case and having held a final approval hearing on May 20, 2021, in which there was opportunity for any objections to be heard orally, this Court **GRANTS** final approval of the class settlement and enters **FINAL JUDGMENT** pursuant to the Comprehensive Settlement Agreement.

This Court also makes the following specific findings:

1. This Court has subject matter jurisdiction over this action and over all parties to this action, including but not limited to all class members.

2. The provision of notice by KCC to class members as specified in this Court's preliminary approval order satisfies Rule 23 of the Georgia Civil Practice Act and any due process requirements; this notice constitutes the best notice practicable under the circumstances; and sufficient notice of the Final Approval Hearing was provided as well.

3. No class members have filed any objections or opt outs, and thus the reaction of the Class to the settlement is one of no opposition at all.

4. Class members had the opportunity to be heard on all issues regarding the settlement, including the mutual release provision.

5. The parties and KCC are authorized to take the remaining steps authorized by the Comprehensive Settlement Agreement to execute and finalize the settlement.

6. The Court approves the Class certified in the preliminary approval order:

(a) Any person; (b) who had an agreement for the rental of real property with any of the Defendants, or any of their subsidiaries or affiliated entities or persons, including but not limited to DeKalb-Lake Ridge, LLC; (c) who had all or some of their security deposit not returned within one month of the termination of the lease due, at least in part, to alleged damage to the premises; (d) had all or some of their security deposit retained during the time period beginning on May 19, 1997 and continuing through June 30, 2018; and (e) did not receive a list of alleged damage to the premises within three business days of termination of the occupancy.

Sept. 29, 2020 Order Granting Preliminary Approval at 2.

7. Under the Effective Date set forth in the Comprehensive Settlement Agreement, Roberson and the Class members, including their heirs, trustees, executors, administrators, principals, beneficiaries, assigns, and successors will be bound by this Final Judgment and conclusively deemed to have fully released, acquitted, and forever discharged any and all known

or unknown claims, causes of action, or suits of whatever kind or nature arising from the acts alleged in the Action, whether at law, in equity, or under any statute or regulation, against the ECI Defendants and all of their past and present officers, directors, agents, attorneys, employees, stockholders, divisions, parent companies, holding companies, affiliated companies, and subsidiaries, and all of their successors, assigns, and legal representatives of any of the entities and/or persons listed in these paragraphs. The claims released in this paragraph do not include any claim for enforcement of the Comprehensive Settlement Agreement or the Final Judgment. Similarly, the claims released in this paragraph do not include claims against ECI unrelated to alleged damage to the apartment premises. *See* Comprehensive Settlement Agreement at 7-8.

8. Under the Effective Date set forth in the Comprehensive Settlement Agreement, the ECI Defendants, including their heirs, trustees, executors, administrators, principals, beneficiaries, assigns, and successors will be bound by this Final Judgment and conclusively deemed to have fully released, acquitted, and forever discharged any and all known or unknown claims, causes of action, or suits of whatever kind or nature arising from the acts alleged in the Action, whether at law, in equity, or under any statute or regulation, against Roberson and the Class members and all of their past and present officers, directors, agents, attorneys, employees, stockholders, divisions, parent companies, holding companies, affiliated companies, and subsidiaries, and all of their successors, assigns, and legal representatives of any of the entities and/or persons listed in these paragraphs. For additional clarity, this means that the counterclaims against Roberson in this action are released. The claims released in this paragraph do not include any claim for enforcement of the Comprehensive Settlement Agreement or the Final Judgment. Similarly, the claims released in this paragraph do not include claims against Class Members unrelated to alleged damage to apartment premises, such as outstanding rent, and therefore will

not impact ECI's ability to collect amounts for those claims. *Id.*

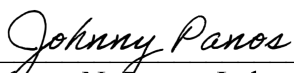
9. The motion for Class Counsel to be paid reasonable attorney fees and reimbursed expenses is granted in the amount requested—25% of the total amount made available to the Class, *i.e.*, \$600,000 out of the \$2,400,000 made available to the Class—and with payment to be made pursuant to the terms of the Comprehensive Settlement Agreement.

10. The motion for Nichon Roberson to be paid a class representative service award is granted in the amount requested—\$12,500—and with payment to be made pursuant to the terms of the Comprehensive Settlement Agreement.

11. With this Final Judgment, this action is dismissed with prejudice pursuant to the terms of the Comprehensive Settlement Agreement and with costs, fees, and expenses borne as set forth in the Comprehensive Settlement Agreement.

12. The Court reserves jurisdiction, without affecting the finality of this Final Judgment, over any implementation of the settlement, disposition of the settlement funds to Class members, attorneys, and class representative award.

The Court issues this order on May 21, 2021.

  
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Johnny N. Panos, Judge  
State Court of DeKalb County

# EXHIBIT E

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

ANGELA DUSKO, on behalf of herself  
and all others similarly situated,

Plaintiff,

vs.

DELTA AIR LINES, INC.

Defendant.

CIVIL ACTION: 1:20-CV-01664-ELR

Consolidated Cases:

*Daniels v. Delta Air Lines, Inc.*,

Case No. 1:20-cv-01664-ELR

*Dusko v. Delta Air Lines, Inc.*,

Case No. 1:20-cv-01725

*Polk v. Delta Air Lines, Inc.*,

Case No. 1:20-cv-02461

**[PROPOSED] ORDER GRANTING UNOPPOSED MOTION FOR FINAL  
APPROVAL OF CLASS ACTION SETTLEMENT AND APPLICATION  
FOR ATTORNEYS' FEES AND COSTS AND A SERVICE AWARD**

Plaintiff Angela Dusko and Defendant Delta Airlines, Inc. have entered into a proposed Settlement Agreement and Releases (the “Agreement”) as of May 11, 2023, for the purpose of settling this action.<sup>1</sup> On June 2, 2023, this Court preliminarily approved the Settlement and ordered that Notice be sent to Settlement

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<sup>1</sup> Terms and phrases used in this Final Approval Order and Judgment not otherwise defined herein shall have the same meanings ascribed to them in the Agreement.

Class members. [Docs. 100, 101]. On July 27, 2023, in accordance with the schedule set by the Court, Class Counsel filed Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement and Application for Attorneys' Fees and Costs and a Service Award (the "Motion"). [Doc. \_\_.] A Final Approval Hearing was held on October 5, 2023. [Doc. \_\_.]

Plaintiff's Motion is now before the Court. The Parties have requested that the Court grant Final Approval of the Settlement, grant Class Counsel's application for attorneys' fees and costs and a Service Award for the Class Representative, and enter a final judgment.

The Court, having reviewed and considered the Motion, declarations, and other submissions by the Parties, **IT IS ORDERED AND ADJUDGED:**

1. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) and personal jurisdiction over the Class Representative, Settlement Class Members, and Delta. Additionally, venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

**I. MATERIAL TERMS OF THE SETTLEMENT**

**A. The Settlement Class**

2. The proposed Settlement Class is defined as follows:

All ticketholders who are citizens of the United States who received a credit for a non-refundable ticket purchased with dollars on a flight

scheduled to depart between March 1, 2020 through April 30, 2021 (a) that Delta cancelled; (b) who requested a refund for the ticket as reflected in Delta's Customer Care or Refund Databases; (c) did not receive a refund; and (d) who had an Unused Credit or Partial Unused Credit as of January 13, 2023.

See Agreement ¶ 69.

**B. Settlement Benefits**

3. In accordance with the Agreement, Delta shall: (a) pay Cash Settlement Payments to certain Settlement Class Members who select the Ticket Cash and Interest Cash option; (b) provide Credit Settlement Payments to certain Settlement Class Members who select the Ticket Credit and Interest Credit option; (c) pay all Settlement Administration Costs, separate and apart from the Cash Settlement Payments and Credit Settlement Payments made directly to Settlement Class Members; and (d) pay the Class Representative a \$\_\_\_\_\_ Service Award and Class Counsel \$\_\_\_\_\_ for attorneys' fees and \$\_\_\_\_\_ for litigation costs, subject to Court approval, separate and apart from the Cash Settlement Payments and Credit Settlement Payments made directly to Settlement Class Members. *Id.* ¶ 78.

4. Since Settlement Class Members may obtain a cash refund for the entire outstanding Unused Credit and Partial Unused Credit amount, plus 7% interest based on the original ticket amount, *id.* ¶ 105, the Settlement achieves relief similar to what

Plaintiff could have obtained for approximately 67,753 Settlement Class members had she been successful at trial. Thus, the Court finds the Settlement includes outstanding direct monetary benefits to the Settlement Class. The Court finds Delta's agreement to separately pay all Settlement Administration Costs and attorneys' fees and costs to Class Counsel also greatly benefits the Settlement Class.

5. In exchange for the Settlement Benefits conferred by the Settlement, Plaintiff and Settlement Class Members will, upon entry and by operation of this Final Approval Order and Judgment, provide Delta with a full and final release for each and every Released Claim. *See id.*, § XI. Additionally, upon the Effective Date of the Agreement, all claims by Plaintiff and Settlement Class Members will be dismissed with prejudice.

**C. The Notice Program, Claims Process, Settlement Payments, and Cy Pres Payment**

6. The Notice Program began on July 17, 2023, and concluded on August 28, 2023. It included: (1) Email Notice; (2) Postcard Notice; (3) Long Form Notice; (4) a Settlement Website providing detailed information about the Settlement; and (5) a toll-free telephone number and facility to provide Settlement Class members with information and direct them to the Settlement Website. *Id.* ¶¶ 88, 98, 99. Each facet of the Notice Program was timely and properly accomplished.

7. Settlement Class Members will receive Settlement Benefits on a

claims-made basis. *Id.* ¶ 103. Settlement Class Members were required to submit Claim Forms by the Claims Deadline (*i.e.*, September 15, 2023). *Id.* ¶ 104. No later than 90 days after the Effective Date, Delta shall provide Interest Credit to eligible Settlement Class Members. *Id.* ¶ 112. No later than 15 days after the Effective Date, Delta shall send the Settlement Administrator the funds necessary to fully pay the Cash Settlement Payment to Settlement Class Members whose approved Claim Forms require such payments. *Id.* ¶ 113. No later than 60 days after the Effective Date, the Settlement Administrator shall pay the Cash Settlement Payment to all Settlement Class Members entitled thereto. *Id.* ¶ 114.

8. Settlement Class Members who receive a Cash Settlement Payment by check shall have 180 days from the date on the checks to negotiate their checks. *Id.* Any uncashed or undeliverable checks remaining 210 days after final issuance, and any electronic payments not successfully delivered, shall be paid to *cy pres* recipients, which the Parties proposed in the Motion to be Public Justice and United Way of Greater Atlanta, each to receive 50% of the residual funds. *Id.* ¶ 117.

## **II. THE SETTLEMENT WARRANTS FINAL APPROVAL**

9. For the reasons set forth below, the Court finds the Settlement is fair, adequate, and reasonable, and should be finally approved.

10. A court has broad discretion over the settlement approval process. *See,*

*e.g.*, *In re Motorsports Merch. Antitrust Litig.*, 112 F. Supp. 2d 1329, 1333 (N.D. Ga. 2000). In exercising this discretion, courts in this Circuit historically analyzed a class settlement using the so-called *Bennett* factors. *See, e.g.*, *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, 258 F.R.D. 545, 558-59 (N.D. Ga. 2007); *Ault v. Walt Disney World Co.*, 692 F.3d 1212, 1217 (11th Cir. 2012) (court must make findings that settlement “is not the product of collusion” and “that it is fair, reasonable and adequate”). The *Bennet* factors include: (1) the likelihood of success at trial; (2) the range of possible recovery; (3) the range of possible recovery at which a settlement is fair, adequate, and reasonable; (4) the anticipated complexity, expense, and duration of litigation; (5) the opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved.

11. The 2018 amendments to Rule 23 similarly make clear that the Court should “[focus] on the primary procedural considerations and substantive qualities that should always matter to the decision whether to approve the proposal.” *See* Fed. R. Civ. P. 23(e), Committee Notes on Rules–2018 Amendment. The specific considerations include whether (1) the class was adequately represented; (2) the settlement was negotiated at arm’s length; (3) the relief is adequate, taking into account the costs, risks, and delay of trial and appeal, how the relief will be distributed, the terms governing attorney’s fees, and any side agreements; and (4)

whether Class Members are treated equitably relative to each other. *See* Fed. R. Civ. P. 23(e).<sup>2</sup> In the findings that follow, the Court addresses the more recently-enacted Rule 23(e) factors and the *Bennett* factors in concert.

**A. The Class was Adequately Represented**

12. Adequacy of representation is an issue traditionally considered in connection with class certification and involves two questions: “(1) whether the class representatives have interests antagonistic to the interests of other class members; and (2) whether the proposed class’ counsel has the necessary qualifications and experience to lead the litigation.” *Columbus Drywall & Insulation, Inc.*, 258 F.R.D. at 555.

13. As it found at the Preliminary Approval stage, the Court finds Plaintiff is an adequate class representative. She has interests and injuries similar to other Settlement Class members. She has also pursued this Action vigorously by actively seeking out counsel, approving her pleadings, and monitoring the lawsuit in an effort to obtain the maximum recovery for both herself and for the other Settlement Class members. Pursuant to Rule 23, the Court confirms the appointment of Plaintiff

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<sup>2</sup> This framework tracks the traditional approach, and since the 2018 amendments, courts in this Circuit have continued to weigh the *Bennett* factors. *See, e.g., Berman v. General Motors, LLC*, 2019 WL 6163798, at \*3 (S.D. Fla. Nov. 18, 2019); *Gumm v. Ford*, 2019 WL 2017497, at \*2 (M.D. Ga. May 7, 2019).

Angela Dusko as Class Representative of the Settlement Class.

14. As to the adequacy of Class Counsel, “the adequacy of class counsel is presumed” absent specific proof to the contrary. *Diakos v. HSS Sys., LLC*, 137 F. Supp. 3d 1300, 1309 (S.D. Fla. 2015). Throughout this complex Action, Class Counsel has acted with diligence, skill, and professionalism. Class Counsel are experienced in complex class litigation and have successfully prosecuted similar cases throughout the country. Further, this Court has already appointed them as Class Counsel in connection with this Settlement. In addition, Delta does not challenge Class Counsel’s adequacy to serve as Class Counsel.

15. Pursuant to Rule 23(g), the Court confirms the appointment of Jeff Ostrow, Esq. of Kopelowitz Ostrow P.A., Melissa S. Weiner, Esq. of Pearson Warshaw, LLP, Annick M. Persinger, Esq. of Tycko & Zavareei, LLP, and Roy E. Barnes, Esq. of Barnes Law Group, LLC as Class Counsel.

**B. The Settlement was Negotiated as Arm’s Length**

16. The Court concludes that this Settlement was negotiated at arm’s length and without collusion based on the terms of the Settlement itself, the length and difficulty of the negotiations, and the oversight of a well-respected and experienced mediator, Hunter R. Hughes III, over several months and three formal sessions. *See Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 693 (N.D. Ga. 2001) (“The fact that

the entire mediation was conducted under the auspices of Mr. Hughes, a highly experienced mediator, lends further support to the absence of collusion.”). Moreover, attorneys’ fees and costs and a Service Award were not discussed until the Parties agreed to all other material Settlement terms.

**C. The Adequacy of Relief Provided by the Settlement**

17. Class Counsel, a group with significant experience in class action litigation, strongly believe the Settlement Benefits are fair, reasonable, and adequate, particularly given Settlement Class Members will essentially recover all the damages that they could have recovered at trial. The Court may rely upon the judgment of experienced counsel. *See, e.g., In re Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d 1247, 1274 (11th Cir. 2021) (trial judge “should be hesitant to substitute its own judgment for that of counsel”) (internal quotations omitted). Rule 23(e)(2)(C)’s enumerated factors also show the Settlement is fair, reasonable, and adequate.

**i. The Risks, Costs, and Delay of Continued Litigation**

18. The risks, costs, and delay of continued litigation are substantial given that Delta denies liability, wrongdoing, and damage, denies that the Action may be maintained as a class action (except for settlement purposes), and has shown a willingness to continue vigorous litigation. To achieve relief similar to the

Settlement Benefits, if Plaintiff were to continue litigating, she would have to overcome the obstacles of obtaining class certification, surviving summary judgment, and winning at trial. Even a successful trial might not yield more favorable results than the Settlement terms already achieved, and recovery might be delayed for years by an appeal. *See Lipuma v. American Express Co.*, 406 F. Supp. 2d 1298, 1322 (S.D. Fla. 2005) (likelihood appellate proceedings could delay class recovery “strongly favor[s]” approval of a settlement). All that is certain is that with continued litigation, the Settlement Class would face a notably longer wait before receiving any potential recovery, if they received any recovery at all.

ii. **An Effective Method of Distributing Relief**

19. The Claim Form Submission Process and distribution of Settlement Benefits is fair, convenient, and effective. Settlement Class Members will promptly receive (a) Cash Settlement Payments for Ticket Cash and Interest Cash by electronic payment or check issued by the Settlement Administrator or (b) Credit Settlement Payments directly from Delta if they elect Ticket Credit and Interest Credit. And the Court-approved Settlement Administrator is highly qualified to manage the entire process. *See Pinon v. Daimler AG*, No. 1:18-cv-3984-MHC, 2021 WL 6285941, at \*7 (N.D. Ga. Nov. 30, 2021) (noting importance of an experienced administrator).

**iii. The Reasonable Terms Relating to Attorneys' Fees**

20. Whether the attorneys' fees are reasonable on their own terms is a Rule 23(h) analysis. By contrast, under Rule 23(e), the question is not of the fee amount in a vacuum, but rather whether attorneys' fees impact the other settlement terms. *See Pinon*, 2021 WL 6285941, at \*7 (finding class relief adequate where attorneys' fees negotiated only after reaching agreement on terms of class relief, and payment of fees did not impact amount of relief available to class members, among other things). Here, Class Counsel requests \$2,285,000.00 in attorneys' fees and \$51,300.80 for costs, which by agreement will be paid separately by Delta, meaning there will be no reduction or impact whatsoever on Settlement Class Members' Settlement Benefits. Also, Settlement Class Members' receipt of Settlement Benefits is not conditioned on the attorneys' fee award to Class Counsel. Indeed, the Parties negotiated attorneys' fees and litigation costs only after agreeing to the Settlement Benefits. Thus, and as discussed in detail below, *see* § IV, *infra*, Class Counsel's requested attorneys' fee award is reasonable in the context of granting Final Approval of the Settlement.

**iv. The Agreements Identified Pursuant to Rule 23(e)(3)**

21. Rule 23(e)(3) states that “[t]he parties seeking approval must file a statement identifying any agreement made in connection with the proposal.” Here,

there are no other agreements between the Parties.

**D. The Equitable Treatment of Settlement Class Members Relative to Others**

22. Each Settlement Class member is eligible to receive the same benefits, choosing only between cash or credit. Accordingly, the proposed Settlement treats all Settlement Class members equitably.

23. Thus, applying Rule 23(e), in conjunction with the *Bennett* factors, the Court finds the Class Representative and Class Counsel have adequately represented the Settlement Class, finds the Settlement is a product of extensive arms-length negotiations by seasoned counsel, and that it is fair, reasonable, and adequate.

**III. THE COURT CERTIFIES THE SETTLEMENT CLASS**

24. The Court hereby finally certifies the following Settlement Class for settlement purposes only pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3):

All ticketholders who are citizens of the United States who received a credit for a non-refundable ticket purchased with dollars on a flight scheduled to depart between March 1, 2020 through April 30, 2021 (a) that Delta cancelled; (b) who requested a refund for the ticket as reflected in Delta's Customer Care or Refund Databases; (c) did not receive a refund; and (d) who had an Unused Credit or Partial Unused Credit as of January 13, 2023.<sup>3</sup>

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<sup>3</sup> The Settlement Class excludes Delta and its respective subsidiaries and affiliates, members, employees, officers, directors, agents, and representatives and their family members; Class Counsel; the judges who have presided over the Action and their

**A. The Settlement Class is Sufficiently Numerous**

25. Rule 23(a)(1) requires that the class be so numerous that individual joinder of all plaintiffs is impracticable. There is no rigid standard for determining numerosity, but the Eleventh Circuit has held that, generally, “less than twenty-one is inadequate, more than forty adequate.” *See Sanchez-Knutson v. Ford Motor Co.*, 310 F.R.D. 529, 536 (S.D. Fla. 2015) (quoting *Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir. 1986)).

26. Here, numerosity is satisfied because the Settlement Class has approximately 67,753 members, and joinder of all such persons is impracticable.

**B. Questions of Law and Fact are Common to the Settlement Class**

The second prerequisite to class status requires questions of law or fact common to the class. *See* Fed. R. Civ. P. 23(a)(2). Commonality requires the plaintiff to demonstrate that the class members have suffered the same injury. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349-50 (2011); *see also Williams v. Mohawk Indus., Inc.*, 568 F.3d 1350, 1356 (11th Cir. 2009) (describing plaintiff’s commonality burden as a “low hurdle” that does not require all questions of law and

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immediate family members; local, municipal, state, and federal governmental agencies; and all persons who have timely opted-out from the Settlement Class in accordance with the Court’s orders.

fact raised to be common). Here, commonality is readily satisfied by multiple common questions of law and fact for the Settlement Class members, centering on whether ticketholders holding non-refundable tickets on flights scheduled to depart between March 1, 2020, and April 30, 2021, that Delta cancelled and who requested a ticket refund should have been given refunds as opposed to credits for future travel. Answers to those questions will generate common answers for the Settlement Class members alleged to have been injured in the same or similar way. *See Kleiner v. First Nat. Bank of Atlanta*, 97 F.R.D. 683, 692 (N.D. Ga. 1983) (“When viewed in light of Rule 23, claims arising from interpretations of a form contract appear to present the classic case for treatment as a class action, and breach of contract cases are routinely certified as such.”). The Court finds the commonality requirement is met.

**C. Plaintiff’s Claims are Typical of Settlement Class Members’ Claims**

The third prerequisite to class status mandates that the claims of the putative Class Representatives be typical of the claims held by the broader class, which is not a demanding test. *See Fed. R. Civ. P. 23(a)(3); County of Monroe, Fla. v. Priceline.com, Inc.*, 265 F.R.D. 659, 667 (S.D. Fla. 2010). Typicality is satisfied where claims “arise from the same event or pattern or practice and are based on the same legal theory.” *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337

(11th Cir. 1984). It measures whether a “significant nexus” exists between the claims of the class representative and those of the class at large. *Columbus Drywall & Insulation, Inc.*, 258 F.R.D. at 555 (quoting *Hines v. Widnall*, 334 F.3d 1253, 1256 (11th Cir. 2003)). Furthermore, the typicality requirement does not mandate that all class members share identical claims, rather they must share only the same “essential characteristics” of the larger class. *Id.* Typicality may be judged at the time of the complaint’s filing. *See Doe v. Wolf*, 424 F. Supp. 3d 1028, 1043 (S.D. Cal. 2020) (invoking relation back doctrine) (citations omitted). Here, Plaintiff’s claims alleged in the Second Amended Complaint share the essential characteristics of the Settlement Class members’ claims because she asserts that, in response to her request for a cash refund, Delta breached its contract with her by offering credit for future travel instead of refunding her for the non-refundable ticket she purchased for a flight that Delta canceled, just as Delta did to her fellow Settlement Class members. The Court finds the typicality requirement is met.

**D. Plaintiff and Class Counsel are Adequate Representatives**

27. As explained in more detail above in assessing the Settlement’s fairness, adequacy, and reasonableness, the Court finds Plaintiff and Class Counsel satisfy the adequacy of representation requirement. Plaintiff does not have antagonistic interests to the Settlement Class, and Class Counsel possess the

necessary experience and qualifications to lead this litigation. Accordingly, the final prerequisite of class status is also met. *See* Fed. R. Civ. P. 23(a)(4); *Columbus Drywall & Insulation, Inc.*, 258 F.R.D. at 555.

**E. The Settlement Class Meets the Requirements of Rule 23(b)(3)**

28. Rule 23(b)(3) requires that “questions of law or fact common to class members predominate over any questions affecting only individual members,” and that class treatment is “superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). “Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial.” *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

29. The predominance requirement “tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Id.* at 623. “Common issues of fact and law predominate if they have a direct impact on every class member’s effort to establish liability and on every class member’s entitlement to . . . relief.” *Carriuolo v. GM Co.*, 823 F.3d 977, 985 (11th Cir. 2016). Here, Rule 23(b)(3) predominance is readily satisfied because the Contract of Carriage breach of contract liability questions common to all Settlement Class members substantially

outweigh any possible issues that are individual to some Settlement Class member.

30. Further, the Settlement Class members – and their ticket information – are identified from Delta’s records. To administer the Settlement’s relief, all that is required is (1) retrieving the amount of credit outstanding for the Ticket Cash or Ticket Credit, and (2) multiplying the amount of the original ticket by 7% to calculate the Interest Cash or Interest Credit. Thus, there is no risk of individual questions related to damages predominating over common issues *See Klay v. Humana, Inc.*, 382 F.3d 1241, 1259-60 (11th Cir. 2004) (“Particularly where damages can be computed according to some formula, statistical analysis, or other easy or essentially mechanical methods, the fact that damages must be calculated on an individual basis is no impediment to class certification.”) (citations omitted).

31. Similarly, the simple queries into Delta’s databases make the case administratively feasible and, therefore, weigh in favor of the superiority of a class action here. *See Cherry v. Dometic Corp.*, 986 F.3d 1296, 1303 (11th Cir. 2021). The inquiry into whether the class action is the “superior” method for a particular case focuses on increased efficiency. *Id.* Here, resolution of almost 68,000 claims in one action is far superior to individual lawsuits, because it promotes consistency and efficiency of adjudication. *See Fed. R. Civ. P. 23(b)(3)*.

**F. The Notice Program Complied with Due Process and Rule 23**

32. In two declarations filed with the Court [Doc. \_\_\_\_], the Settlement Administrator advised that the Notice Program was executed in accordance with the Agreement and the Preliminary Approval Order. [Docs. \_\_\_\_, \_\_\_\_]. As declared by the Settlement Administrator, the Notice Program reached more than \_\_\_\_% of the Settlement Class and \_\_\_\_% of Settlement Class members (\_\_\_\_) responded by submitting Claims to the Settlement Administrator, which is a substantial response rate. [Doc. \_\_\_\_.] The Settlement Administrator also advised that \_\_\_\_ Settlement Class members opted out and \_\_\_\_ Settlement Class Members objected to the Settlement. *Id.* The names of the opt-outs, who will not be bound by the Agreement, are listed in the attached *Exhibit A*.

33. The Notice furnished to Settlement Class members was reasonably calculated, under the circumstances, to apprise Settlement Class members of the Settlement's substantive terms; their options for remaining part of the Settlement Class, for opting out, and for objecting to the Settlement and/or the requested attorneys' fees, costs, and Service Award; how to make a claim; and how to obtain additional Settlement information.

34. The Court finds the Settlement Class received the best notice practicable under the circumstances in compliance with due process and Federal Rules of Civil Procedure 23(c)(2) and (e)(1). *See, e.g., In re Home Depot, Inc.*

*Customer Data Sec. Breach Litig.*, 2016 WL 6902351, at \*51 (N.D. Ga. Aug. 23, 2016) (notice reaching 75% of the class satisfied Rule 23 and due process); *see also* Federal Judicial Center, “Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide” (2010) (recognizing effectiveness of notice that reaches between 70% and 95% of the class).

35. In addition, the notice given by Delta to state and federal officials pursuant to 28 U.S.C. § 1715 fully and timely satisfied the requirements of that statute.

#### **IV. APPLICATION FOR ATTORNEYS’ FEES AND COSTS**

36. Class Counsel request an attorneys’ fees award of \$2,285,000.00 and \$51,300.80 for litigation costs incurred in the prosecution of the Action and in connection with the Settlement, to be paid separately by Delta. The Parties negotiated and reached agreement regarding attorneys’ fees and costs only after reaching agreement on all other material Settlement terms. The Court finds the requested fee is within the range of reason under the factors listed in *Camden I Condo. Ass’n v. Dunkle*, 946 F.2d 768 (11th Cir. 1991) (“*Camden I*”).

37. It is well established that counsel whose work results in a substantial benefit to a class are entitled to a fee under the common benefit doctrine. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The doctrine serves the “twin goals of

removing a potential financial obstacle to a plaintiff's pursuit of a claim on behalf of a class and of equitably distributing the fees and costs of successful litigation among all who gained from the named plaintiff's efforts." *In re Gould Sec. Litig.*, 727 F. Supp. 1201, 1202 (N.D. Ill. 1989). The doctrine also ensures those who benefit are not "unjustly enriched." *Van Gemert*, 444 U.S. at 478. The controlling authority in the Eleventh Circuit is *Camden I*, which holds that fees in common fund cases must be calculated using the percentage rather than the lodestar approach. *Camden I* does not require any particular percentage. The court stated: "There is no hard and fast rule . . . because the amount of any fee must be determined upon the facts of each case." 946 F.2d at 774; *see also, e.g., Waters v. Int'l. Precious Metals Corp.*, 190 F.3d 1291, 1294 (1999).

38. Since the Agreement requires Delta to separately pay Class Counsel's attorneys' fees, as approved by the Court, it does not provide a finite fund from which attorneys' fees will be deducted. Rather, regardless of the amount claimed or number of claimants, Settlement Class Members will be eligible to make claims from the total sum of \$27,312,667.22, inclusive of available refunds for Unused Credits or Partial Unused Credits and 7% interest on the original ticket value. Unlike with a limited fund, there will be no prospect of a *pro rata* deduction, nor will there be a deduction from the fund to account for attorneys' fees. "Where class action

settlements are concerned, courts will often classify the fee arrangement as a ‘constructive common fund’ that is governed by common-fund principles even when the agreement states that fees will be paid separately.” *In re Home Depot, Inc., Customer Data Sec. Breach Litig.*, 931 F.3d 1065, 1080 (11th Cir. 2019). This methodology may apply when the amount of attorney’s fees for class counsel is capped by agreement, as here. *Id.*

39. Notably, the Eleventh Circuit confirmed that attorneys’ fee awards to class counsel should be included in the calculation of a constructive common fund. *See id.* at 1092 n.26 (“The formula would read like this: (percentage) x (payment to class + expected payment to counsel) = actual payment to counsel.”). Settlement Administration Costs are also properly considered to be part of the Settlement Benefit. *See In re Equifax Customer Data Sec. Breach Litig.*, 2020 WL 256132, at \*37 (N.D. Ga. Mar. 17, 2020) (“It has long been the practice in this Court to use the gross amount of a common fund in calculating a percentage-based fee award without deducting the costs of notice or administration . . . . because notice and administration costs inure to the benefit of the class.”) *aff’d in part, rev’d in part* 999 F. 3d 1247, 1284 (11th Cir. 2021) (affirming “rulings in their entirety, except as to the narrow issue of incentive awards”).

40. Additionally, Eleventh Circuit precedent clearly states the calculation

should include *all* the potential relief made available to the class, not just the amount Settlement Class Members choose to claim and what Delta actually pays. *See Waters*, 190 F.3d at 1297 (for purposes of calculating attorneys’ fees, approving valuation based on total value of relief available, as “[t]he fact that there were a reduced number of claimants had no effect at all on the amount each class member received”). Indeed, “[t]he Supreme Court has approved the practice of basing attorneys’ fees off the total possible amount recoverable by members of the class, not the total amount actually recovered, as the ‘right to share the harvest of the lawsuit upon proof of their identity, whether or not they exercise it, is a benefit in the fund created by the efforts of the class representatives and their counsel.’” *Arkin v. Pressman, Inc.*, 38 F.4th 1001, 1006 n.4 (11th Cir. 2022) (citing *Van Gemert*, 444 U.S. at 480); *see also Poertner v. Gillette Co.*, 618 F. App’x 624, 628 n.2 (11th Cir. 2015) (“While no published opinion of ours extends *Camden I*’s percentage-of-recovery rule to claims-made settlements, no principled reason counsels against doing so . . .”).

41. In selecting the percentage in a particular case, a district court should apply the 12 factors from *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717 (5th Cir. 1974), as well any other pertinent factors. *Camden I*, 946 F.2d at 776.<sup>4</sup>

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<sup>4</sup> The *Johnson* factors are: (1) the time and labor required; (2) the novelty and

In *Camden I*, although the court noted that awards typically range from 20% to 30%, it stated: “There is no hard and fast rule . . . because the amount of any fee must be determined upon the facts of each case.” *Id.* at 774; *see also, e.g., Waters*, 190 F.3d at 1294. Awards of up to 25% of the common fund are presumptively reasonable in the Eleventh Circuit. *See Arkin*, 38 F.4th at 1005 n.3.

42. Finally, when analyzing the various factors, a lodestar cross-check is unnecessary. *See, e.g., Shiyang Huang v. Equifax Inc. (In re Equifax Customer Data Sec. Breach Litig.)*, 999 F.3d 1247, 1280 n.26 (11th Cir. 2021). In fact, in the Eleventh Circuit, the lodestar approach should not “impose” the lodestar approach “through the back door.” *See, e.g., SEC v. Davison*, No. 8:20-cv-325-MSS-MRM, 2023 WL 2931641, at \*3 (M.D. Fla. Mar. 8, 2023) (citations omitted).” The Eleventh Circuit “made clear in *Camden I* that percentage of the fund is the exclusive method for awarding fees in common fund class actions.” *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d at 1362 (emphasis added) (citing Alba Conte, ATTORNEY

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difficulty of the questions involved; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the “undesirability” of the case; (11) the nature and the length of the professional relationship with the client; and (12) awards in similar cases. *See Camden I*, 946 F.2d at 772 n.3 (citing *Johnson*, 488 F.2d at 717–19).

FEE AWARDS § 2.7, at 91 n.41 (“The Eleventh . . . Circuit[ ] repudiated the use of the lodestar method in common-fund cases.”)). Lodestar “encourages inefficiency” and “creates an incentive to keep litigation going in order to maximize the number of hours included in the court’s lodestar calculation.” *Id.* at 1362-63. Thus, “courts in this Circuit regularly award fees based on a percentage of the recovery, without discussing lodestar at all.” *Id.* at 1363; *see also Reyes v. AT&T Mobility Servs., LLC*, No. 10-20837, at \*6 (S.D. Fla. Jun. 21, 2013) (Cooke, J.); *In re Takata Airbag Prods. Liability Litig.*, No. 15-02599, at \*9-10 (S.D. Fla. Nov. 1, 2017).

43. In light of these factors, the arguments made by Class Counsel, and Class Counsel’s Declaration, all submitted with the Motion, the Court finds that Class Counsel’s request for an award of attorney’s fees in the amount of \$2,285,000.00, *i.e.*, approximately 7.6% of the total value (\$29,895,433.02) of the benefits to the Settlement Class—\$27,312,667.22, inclusive of available refunds and 7% interest to be claimed by Settlement Class Members; attorneys’ fees of \$2,285,000.00 to be paid by Delta; \$51,300.80 for litigation costs to be paid by Delta; and \$246,465.00 for estimated Settlement Administration Costs to be paid by Delta—is reasonable and warranted.

#### V. APPLICATION FOR SERVICE AWARD

44. The Court finds that Class Counsel’s request for a Service Award in the

amount of \$3,000.00 to be paid to the Class Representative is distinguishable from the type of service award prohibited by *Johnson v. NPAS Solutions, LLC*, 975 F.3d 1244 (11th Cir. 2020), and thus finds that it is appropriate, and the amount requested is reasonable. As courts in this Eleventh Circuit have explained, state law governs the issue of Service Awards in this diversity action. *See, e.g., Roth v. Geico Gen. Ins. Co.*, No. 16-cv62942WPD, 2021 U.S. Dist. LEXIS 23105, at \*37 (S.D. Fla. Feb. 8, 2021) (citations omitted); *see also Wheatly v. Moe's Southwest Grill, LLC*, 580 F. Supp. 2d 1324 (N.D. Ga. 2008) (under *Erie*, “when a federal court adjudicates state law claims in a diversity of citizenship action, the court is obligated to apply the state substantive law and federal procedural law,” and applying Georgia law regarding attorneys’ fees). Here, Georgia law permits providing Service Awards to class representatives. *See, e.g., Anderson v. Pub. Sch. Emps. Ret. Sys. of Ga.*, Fulton Co. Superior Court, Business Case Div., 2009 Ga. Super. LEXIS 72, \*13 (July 8, 2009) (granting request for fees and incentive payment pursuant to Georgia law); *Eaves v. Earthlink, Inc.*, No. 2005-cv-97274, Fulton Co. Superior Court, Business Case Div., 2010 Ga. Super. LEXIS 1532, \*26 (granting awards of \$7,500) (June 7, 2010); *Clark v. Bway Holding Co.*, Case No. 2010CV183869, Fulton Co. Superior Court, Business Case Div., 2010 Ga. Super. LEXIS 1518, \*9 (Oct. 10, 2010); *see also Roberson v. ECI Group, Inc.*, No. 2017-A-64506-4 (Ga. Sup. Ct. DeKalb Cty. May

21, 2021) (authorizing service award post *NPAS*).

## **VI. MISCELLANEOUS**

45. Pursuant to Rule 23(c)(3)(B), the Court finds that all Settlement Class Members who did not opt out of the Settlement are bound by the Agreement and this Final Approval Order and Judgment.

46. The Court confirms its earlier appointment of Epiq Class Action & Claims Solutions, Inc. as the Settlement Administrator.

47. The Court finally approves the distribution plan set forth in the Agreement as a fair and reasonable method to allocate the Settlement Benefits among Settlement Class Members. The Court directs that the Settlement Administrator effectuate the distribution plan according to the terms of the Agreement. The Court reaffirms that any Settlement Class Members who failed to submit a Claim in accordance with the requirements and procedures specified in the Notice shall be forever barred from making a claim, but will in all other respects be subject to and bound by the provisions in the Agreement, the Releases included in that Agreement, and this Final Approval Order and Judgment.

48. By operation of this Final Approval Order and Judgment, as of the Effective Date, the Releases set forth in Section XI of the Agreement shall be given full force and effect.

49. Settlement Class Members are hereby barred and enjoined from asserting any of the Released Claims and pursuing any Released Claims against Delta or its affiliates at any time, including during any appeal from the Final Approval Order.

50. Delta is hereby barred and enjoined from pursuing any of the claims Delta released against Settlement Class Members.

51. The Parties are ordered to implement each and every obligation set forth in the Agreement in accordance with the terms and provisions of the Agreement. The Court retains jurisdiction over this Action and the Parties, Settlement Class Members, attorneys, and all objectors, and other appointed entities, for all matters relating to this Action, including (without limitation) the administration, supervision, construction, interpretation, effectuation, or enforcement of the Agreement, this Court's injunctions, and this Final Approval Order and Judgment.

52. There is no just reason to delay entry of this Final Approval Order and Judgment and immediate entry by the Clerk of the Court is directed pursuant to Federal Rule of Civil Procedure 54(b).

## **VII. CONCLUSION**

53. In sum, the Court **GRANTS** Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement and Application for Attorneys' Fees and Costs

and a Service Award. [Doc. \_\_.] Accordingly, the Court **APPROVES** the Agreement. Additionally, the Court **GRANTS** Class Counsel's requested \$\_\_\_\_\_ Service Award to the Class Representative, and \$\_\_\_\_\_ for attorneys' fees and \$\_\_\_\_\_ for costs to Class Counsel, all to be paid separately by Delta in accordance with the Agreement. The Court also approves the proposed *cy pres* recipients: Public Justice and United Way of Greater Atlanta, who shall each receive 50% of the residual funds in accordance with the Agreement.

Further, in accordance with the Agreement, the Court **DISMISSES WITH PREJUDICE** this Action and **ENTERS JUDGMENT**.

**SO ORDERED**, this \_\_ day of \_\_\_\_, 2023.

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ELEANOR L. ROSS  
UNITED STATES DISTRICT JUDGE  
NORTHERN DISTRICT OF GEORGIA