

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SAMANTHA LEVEY and ETHAN)
FEIRSTEIN, individually and on)
behalf of all others similarly situated,)

Plaintiffs,)

v.)

CONCESIONARIA VUELA COM)
COMPAÑÍA DE AVIACIÓN, S.A.P.I.)
DE C.V., a foreign corporation d/b/a)
“VOLARIS,”)

Defendant.)

Case No. 1:20-cv-02215

Judge John Robert Blakey

PRELIMINARY APPROVAL ORDER

This matter came before the Court on Plaintiffs’ Motion for Preliminary Approval of the proposed class action settlement (the “Settlement”). Based upon this Court’s review of the Settlement Agreement (“Agreement”), Plaintiffs’ Motion for Preliminary Approval of Settlement, and the arguments of counsel, THE COURT HEREBY FINDS AND ORDERS AS FOLLOWS:

1. Settlement Terms. Unless otherwise defined herein, all terms in this Order shall have the meanings ascribed to them in the Agreement.

2. Jurisdiction. The Court has subject matter jurisdiction over this case pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2).

3. Preliminary Approval of Proposed Agreement. The Court has conducted a preliminary evaluation of the Settlement as set forth in the Agreement. Based on this preliminary evaluation, the Court finds that: (a) the Agreement is fair,

reasonable and adequate, and within the range of possible approval; (b) the Agreement has been negotiated in good faith at arm's length between experienced attorneys familiar with the legal and factual issues of this case, and supervised by two well-qualified mediators, Hon. Morton Denlow (Ret.) and Hon. William E. Gomolinski (Ret.); and (c) the proposed forms and method of distributing notice of the Settlement to the Settlement Class are appropriate and warranted. Therefore, the Court grants preliminary approval of the Settlement.

4. Class Certification for Settlement Purposes Only. The Court, pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for purposes of this Settlement only, certifies the following Settlement Class:

All ticketed U.S. citizen passengers on Volaris flights to, from or within the United States, whose flights were scheduled to operate during the Class Period but were canceled or significantly delayed by Volaris for reasons related to the COVID-19 health emergency and who did not (1) accept alternative transportation offered by Volaris, (2) receive a refund from Volaris or any applicable third party, or (3) receive a flight voucher from Volaris for future transportation and use that voucher in full.

There are approximately 23,779 Settlement Class members included in the above Settlement Class. Excluded from the Settlement Class are Defendant and any of its respective officers, directors or employees, the presiding judge, Class Counsel and members of their immediate families, and persons or entities who timely and properly exclude themselves from the Settlement Class.

5. In connection with granting class certification, the Court makes the following preliminary findings:

(a) The Settlement Class includes approximately 23,779 members, and thus the class is so numerous joinder of all members is impracticable;

(b) There appear to be questions of law or fact common to the Settlement Class for purposes of determining whether the Settlement should be approved, including, but not limited to, whether airline passengers whose flights were similarly canceled or significantly changed by Defendant during the COVID-19 pandemic are entitled to prompt refunds, and whether Defendant's contract of carriage allowed it to issue vouchers in lieu of refunds, and these questions appear to predominate over any alleged individual questions;

(c) The claims of both Plaintiffs appear to be typical of the claims of the Settlement Class because they allege their flights were canceled or significantly delayed by Defendant for pandemic-related reasons, but Defendant did not issue either of them refunds. In addition, plaintiff Feirstein is a typical representative of the subclass of passengers who hold expired vouchers;

(d) Plaintiffs and their counsel are adequate to represent the class. Plaintiffs appear to have the same interests as the Settlement Class, they do not have any apparent conflict of interest with the Settlement Class, and their attorneys have extensive experience litigating class action cases, including consumer protection class actions like the instant action;

(e) Certification of the Settlement Class is the superior method for fairly and efficiently resolving the claims of the Settlement Class.

6. Class Representatives. The Court appoints Plaintiffs, Samantha Levey and Ethan Feirstein as representatives of the Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure.

7. Class Counsel. The Court appoints Keith J. Keogh and William M. Sweetnam as Class Counsel pursuant to Rule 23 of the Federal Rules of Civil Procedure.

8. Settlement Administrator. KCC Class Action Services, LLC, is hereby appointed as the Settlement Administrator. The Settlement Administrator shall be responsible for providing notice of the Settlement (“Notice”) to the Settlement Class as provided in the Agreement and this Order, as well as services related to administration of the Settlement.

9. Class Notice. The Class Administrator shall provide Notice via First Class Mail in accordance with the Agreement.

10. Opt-Outs and Objections. Persons in the Settlement Class who wish to object to the Settlement or request exclusion from the Settlement Class, must do so in accordance with the Notice. A Settlement Class Member who opts out may not also submit an objection, unless the class member confirms their intent to withdraw their opt-out in writing by no later than the opt-out deadline.

11. Settlement Administrator to Maintain Records. The Settlement Administrator shall maintain copies of all objections, and opt-outs received. The Settlement Administrator shall provide copies of all objections and opt-outs received by it to Class Counsel and counsel for Defendant.

12. Objections to the Settlement. Any Settlement Class Member who wishes to be heard orally at the Final Approval Hearing, or who wishes for any objection to be considered, must file a written notice of objection in accordance with the Notice, Agreement, and this Order. To be considered, the objection: (A) must be personally signed by the objecting Settlement Class Member, (B) it must include (i) the Settlement Class Member's full name, current address, and current telephone number; (ii) documentation sufficient to establish membership in the Settlement Class; (iii) a statement of reasons for the objection, including the factual and legal grounds for the objector's position; and (iv) copies of any other documents the objecting Settlement Class Member wishes to submit in support of his/her/its position, and (C) it must be filed with the Court and sent to Plaintiffs' and Defendant's counsel as stated in the Notice, by no later than the Opt-Out and Objection deadline stated below. Objections that are untimely or do not include the required information above shall be deemed waived.

13. Appearing at Final Approval Hearing. An objecting Settlement Class Member does not need to appear in at the Final Approval Hearing but may do so by filing a notice of intention to appear in accordance with the Notice, Agreement, and this Order no later than the Opt-Out and Objection deadline below.

14. Reasonable Procedures to Effectuate the Settlement. Unless otherwise ordered by the Court, the parties are authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Order or the Agreement, including making minor

changes to the form or content of the Notice or exhibits to the Agreement they agree are reasonable and necessary.

15. Final Approval Hearing. At the date and time provided below, or at such other date and time later the Court sets, this Court will hold a Final Approval Hearing on the fairness, adequacy and reasonableness of the Agreement and to determine whether (a) final approval of the Settlement embodied by the Agreement should be granted, and (b) Class Counsel's application for an award of attorneys' fees and expenses, and any service award to Plaintiffs, should be granted, and in what amounts. The hearing shall be held in Courtroom 1203 at the Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, Illinois, or at such other location or means as the Court may order.

16. Release of Claims. Final approval of the Agreement will settle and resolve with finality on behalf of the Plaintiffs and the Settlement Class, the Action and the Released Claims against the Released Parties by the Releasers in the Action. As of the Effective Date, the Agreement and the above-described release of the Released Claims will be binding on, and have res judicata preclusive effect in, all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiffs and all other Settlement Class Members who do not validly and timely exclude themselves from the Settlement, and their respective predecessors, successors, spouses, heirs, executors, administrators, agents and assigns of each of the foregoing, as set forth in the Agreement, and the Released Parties may file the Agreement and/or the Final Approval Order in any action or proceeding that may be

brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

17. By agreement, *see* [164], the Court preliminarily appoints Travelers United as the *cy pres* recipient subject to final approval.

18. Plaintiffs shall file their motion in support of Class Counsel’s application for attorneys’ fees, costs and expenses, and any service awards, no later than the Notice Deadline below.

19. Plaintiffs shall file their: (a) motion in support of final approval of the Settlement; (b) response to any objections to the Settlement, no later than the date stated for the same in the Schedule of Events below.

20. Schedule of Events. Based on the foregoing, the Court hereby orders the resolution of this matter shall proceed on the following schedule:

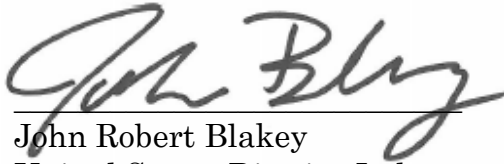
June 10, 2024	Deadline for the Settlement Administrator to send notice to the Settlement Class in accordance with the Agreement and this Order (“Notice Deadline”)
June 10, 2024	Deadline for Plaintiffs to file their Motion for Attorneys’ Fees, Costs and Expenses, and any Incentive Awards
August 9, 2024	Deadline for any member of the Settlement Class to request exclusion from the Settlement or object to the Settlement in accordance with the Notice and this Order (“Opt-Out and Objection Deadline”)

August 30, 2024	Deadline for Plaintiffs to file: (1) Motion and memorandum in support of final approval, including proof of class notice; and (2) Response to any objections.
October 9, 2024, at 11:00 a.m. in Courtroom 1203	Final Approval Hearing

IT IS SO ORDERED.

Dated: April 25, 2024

Entered:



John Robert Blakey
United States District Judge