

# APPENDIX 1

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

SAMANTHA LEVEY and ETHAN	)	Case No.: 1:20-cv-02215
FEIRSTEIN, individually and on	)	
behalf of all others similarly situated,	)	Judge John Robert Blakey
	)	
Plaintiffs,	)	Magistrate Judge Jeffrey I. Cummings
	)	
v.	)	
	)	
CONCESIONARIA VUELA COMPAÑÍA	)	
DE AVIACIÓN, S.A.P.I. DE C.V., a	)	
foreign corporation d/b/a “VOLARIS,”	)	
	)	
Defendant.	)	

**CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

Subject to the approval of the Court and pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Class Action Settlement Agreement and Release (“Settlement Agreement” or “Settlement”), is entered into between Plaintiffs Samantha Levey and Ethan Feirstein, individually and on behalf of the Settlement Class as defined below, and Defendant Concesionaria Vuela Compañía de Aviación, S.A.P.I. de C.V., in the above-captioned action, *Samantha Levey, et al., individually and on behalf of all others similarly situated, v. Concesionaria Vuela Compañía de Aviación, S.A.P.I. de C.V.* in the United States District Court for the Northern District of Illinois, Case No. 1:20-cv-02215.

**I. DEFINITIONS**

1. “**Action**” means the pending action styled *Samantha Levey, et al., individually and on behalf of all others similarly situated, v. Concesionaria Vuela Compañía de Aviación, S.A.P.I. de C.V.* in the United States District Court for the Northern District of Illinois, Case No. 1:20-cv-02215.
2. “**Agreement**” means this Settlement Agreement and Release.
3. “**Attorneys’ Fees and Litigation Expenses**” means the attorneys’ fees and litigation expenses, including costs, to be requested by Class Counsel subject to Court approval in accordance with this Agreement to be paid out of the “Settlement Funds.”
4. “**CAFA Notice**” refers to the notice requirements imposed by 28 U.S.C. § 1715(b), pursuant to which, Defendant, through the Settlement Administrator, shall mail all required notices in accordance with its obligations thereunder.

5. “**Claimant**” means any Settlement Class Member who does not timely opt out of the Settlement.
6. “**Class Counsel**” means Keith J. Keogh and William M. Sweetnam of Keogh Law, Ltd.
7. “**Class List**” means the list of approximately 23,779 Settlement Class Members identified by Plaintiffs from the passenger records. Defendant shall update the list identified by Plaintiffs to provide, if known, each Settlement Class Member’s full name, last known U.S. mailing address and email address.
8. “**Class Period**” means the period commencing on March 20, 2020 and ending on November 30, 2020.
9. “**Court**” means the United States District Court for the Northern District of Illinois.
10. “**Defendant**” means Concesionaria Vuela Compañía de Aviación, S.A.P.I. de C.V.
11. “**Execution**” means the signing of this Agreement by all signatories hereto.
12. “**Final Approval Hearing**” means the hearing during which the Court considers the Parties’ request to enter the Final Approval Order granting final approval of the Settlement and to determine the amount of Attorneys’ Fees and Litigation Expenses awarded to Class Counsel and the amount of any Settlement Class Representative Incentive Payments.
13. “**Final Approval Order**” means the final judgment and order of dismissal approving the Settlement and dismissing the Action with prejudice, which the Parties agree to propose in the form attached hereto as Exhibit 1. “Final Approval” occurs on the date that the Court enters the Final Approval Order.
14. “**Notice**” means the mail notice of proposed class action settlement that the Parties will ask the Court to approve in connection with the motion for Preliminary Approval of the Settlement, substantially in the form attached hereto as Exhibit 2.
15. “**Notice and Administration Costs**” means any and all costs associated with administering the Settlement by the Settlement Administrator, including, but not limited to, mailing costs, printing costs, taxes and tax-related expenses incurred by or in connection with handling the Settlement Funds, all costs of providing notice to the Settlement Class, costs for creating the Notice, Website Notice, and any different or additional notice that might be ordered by the Court and any other costs associated with administering the Settlement.
16. “**Notice Deadline**” means the date the Court sets for Notice to be provided to the Settlement Class in accordance with the Agreement. The Parties agree to propose that the Notice Deadline will be twenty-eight (28) days following the entry of the Preliminary Approval Order, unless extended by the Court.
17. “**Opt-Out Request**” means a request by a Settlement Class Member to exclude themselves from the Settlement Class using the procedures set forth in this Agreement.

18. “**Opt-Out/Objection Period**” means the period that begins the day after the earliest date on which the Notice is first sent and ends 60 days after mailing of the Notices to putative class members, or such other date as the Court determines. The deadline for the Opt-Out Period and Objection Period will be specified in the Notice.
19. “**Parties**” means Plaintiffs, Samantha Levey and Ethan Feirstein, and Defendant, Concesionaria Vuela Compañía de Aviación, S.A.P.I. de C.V.
20. “**Plaintiffs**” means Plaintiffs, Samantha Levey and Ethan Feirstein.
21. “**Preliminary Approval Order**” means the order certifying the Settlement Class and preliminarily approving the Settlement, which the Parties agreed to propose in the form attached as Exhibit 3. “Preliminary Approval” occurs on the date the Court enters the Preliminary Approval Order.
22. “**Release**” means the release contained in this Agreement.
23. “**Released Claims**” means any and all claims whether known or unknown, asserted or that could have been asserted in the Action, relating to Plaintiffs’ and Settlement Class Members’ purchase of a ticket for a Volaris flight that was scheduled to operate during the Class Period but was cancelled or significantly delayed by Volaris against the Released Parties.
24. “**Released Parties**” means and refers to Concesionaria Vuela Compañía de Aviación, S.A.P.I. de C.V. and each of its present or former parents, subsidiaries, affiliates, successors and assigns, and each and all of their present or former respective managers, employees, officers, directors, owners, heirs, executors, insurers, agents, and attorneys.
25. “**Releasing Settlement Class Members**” means Plaintiffs and all Settlement Class Members, other than those who submit timely and proper Out-Out Requests, and each of their respective executors, representatives, heirs, spouse, partners, predecessors, assigns, beneficiaries, successors, bankruptcy trustees, agents, attorneys, and all those who claim through them or on their behalf.
26. “**Settlement**” means the compromise and settlement of the Action as contemplated by this Agreement.
27. “**Settlement Administrator**” means the entity selected by the Parties, subject to approval by the Court, or if the parties cannot agree, each will submit a proposal to the Court and the Court will select the entity to administer the Settlement. The Settlement Administrator shall be responsible for providing the class Notice as well as the services related to the administration of the Settlement that are addressed and defined herein.
28. “**Settlement Award**” means a cash or electronic payment that may be available to eligible Settlement Class Members who do not timely opt-out of the Settlement.
29. “**Settlement Class**” means the individuals defined and identified as follows:

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.

30. “***Settlement Class Members***” means the Settlement Class Representatives and all members of the Settlement Class.

31. “***Settlement Class Representatives***” means Samantha Levey and Ethan Feirstein, who are the Plaintiffs in the Action, and who are also the persons Class Counsel shall request to be appointed by the Court as Class Representatives for purposes of the Settlement Class. Plaintiffs are also a member of the Settlement Class.

32. “***Settlement Class Representative Incentive Payment***” means the additional amount Plaintiffs may request he be paid to them as Class Representatives under this Agreement.

33. “***Settlement Effective Date***” means the business day after the last of the following occurrences:

A. Expiration of the date to appeal entry of the Final Approval Order with no appeal or other judicial review having been taken or sought; or

B. If an appeal or other judicial review has been taken or sought on this Action, the latest of: (i) the date the Final Approval Order is finally affirmed by an appellate court with no possibility of subsequent appeal or other judicial review; or (ii) the date the appeal(s) or other judicial review therefrom are finally dismissed with no possibility of subsequent appeal or other judicial review; or (iii) if remanded to the District Court or to a lower appellate court following an appeal or other review, the date the Final Approval Order is entered by the District Court after remand and the time to appeal or seek other judicial review of the entry of that Final Approval Order has expired with no further appeal or other judicial review having been taken or sought. If further appeal is sought after a remand, the time periods in this Sub-Section shall apply.

34. “***Settlement Costs***” means all costs incurred by Plaintiffs, Class Counsel, and the Settlement Administrator in connection with the Action, including: (i) the Attorneys’ Fees and Litigation Expenses approved by the Court; (ii) any Settlement Class Representative Incentive Payments approved by the Court; (iii) Notice and Administration Costs; and (iv) the fees, expenses, and all other costs of the Settlement Administrator.

35. “**Settlement Funds**” means the THREE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$3,500,000) to be provided by Defendant pursuant to this Agreement, for purposes of paying Settlement Awards and Settlement Costs, as the foregoing are defined herein. In no event shall Defendant’s liability with respect to the Settlement, including but not limited to any and all Settlement Costs, Settlement Class Representative Incentive Payments, Settlement Administrator’s fees, notice expenses, Class Counsel’s fees and expenses, and any and all distributions to Settlement Class Members, exceed an aggregate total of \$3,500,000.

36. “**Settlement Website**” means the website created and managed by the Settlement Administrator which will provide Settlement Class Members with access to the Notice and other information regarding the Settlement. The Parties agree that the following URL will be used: volarisrefund.com or, if unavailable, a substantially similar name agreed upon by the Parties or determined by the Court shall be used.

37. “**Website Notice**” means the long form notice e-mail notice attached hereto as Exhibit 4. The Website Notice will be posted on the “Settlement Website.”

Capitalized terms used in this Agreement but not defined above shall have the meaning ascribed to them in this Agreement, including the attached exhibits.

## II. RECITALS

38. WHEREAS, on April 8, 2020, Plaintiffs filed this Action on behalf of a class alleging that Defendant breached its contract of carriage and Department of Transportation (“DOT”) rules by failing to provide them prompt refunds for Volaris flights that were cancelled or significantly changed for reasons related to the Covid-19 pandemic beginning in March 2020. Defendant disputes these allegations and believes it has meritorious defenses to Plaintiffs’ claims;

39. WHEREAS, on June 22, 2020, Defendant moved to dismiss the original Class Action Complaint. Plaintiff Levey responded to the motion to dismiss on July 30, 2020, and Defendant filed its reply in support of the motion on August 24, 2020;

40. WHEREAS, on October 14, 2020, following the filing of a parallel class action in New York, Plaintiff moved for appointment of Keogh Law, Ltd., as interim class counsel, which Defendant opposed on November 13, 2020. Plaintiff filed a reply in support of the motion on November 16, 2020. That motion was denied without prejudice on March 29, 2021;

41. WHEREAS, on November 13, 2020, the plaintiff in the parallel New York action moved to intervene in this Action;

42. WHEREAS, on January 12, 2021, Plaintiffs served Defendant with their first set of interrogatories and requests for production;

43. WHEREAS, on March 29, 2021, the Court granted and denied in part Defendant’s motion to dismiss for failure to state a claim, sustaining Plaintiff’s claim for breach of contract and her class action allegations;

44. WHEREAS, on July 21, 2021, Volaris filed its Answer to Plaintiffs' Class Action Complaint, denying the allegations and asserting additional affirmative defenses;
45. WHEREAS, on August 27, 2021, Defendant took the deposition of Plaintiff Levey;
46. WHEREAS, on January 12, 2022, Plaintiffs took the deposition of Defendant's Executive Vice President Commercial Operations, Holger Blankenstein. On August 12, 2021, Plaintiff took the deposition of Defendant's legal manager of fleet and regulatory matters, Susana de la Torre Abardía. On August 12, 2021, Plaintiffs again deposed Ms. Abardía as Defendant's corporate designee pursuant to Fed. R. Civ. P. 30(b)(6). Plaintiffs deposed Ms. Abardía a third time, on April 5, 2023. On January 13, 2022, Plaintiffs took the deposition of Defendant's Senior Chief of Delivery of Service, Jessica Caramon Sanchez. On January 14, 2022, Plaintiffs took the deposition of Defendant's Chief of Resolution and Customer Service, Patricia Miramontes;
47. WHEREAS, on July 19, 2021, Plaintiffs moved to compel the production of certain documents, which Defendant filed an opposition to on August 2, 2021. A hearing was held on the motion to compel and denied without prejudice on August 26, 2021. On May 4, 2022, Plaintiff made another motion to compel, orally at a previously scheduled hearing, which the Court granted;
48. WHEREAS, over the course of discovery, Defendant produced tens of thousands of pages of documents, including hundreds of thousands of passenger records, which Plaintiffs' counsel reviewed and analyzed with the assistance of an accounting and data professional;
49. WHEREAS, following the above written and oral discovery, on July 6, 2022, the parties participated in private mediation with Hon. Morton Denlow (Ret.), which did not result in a settlement;
50. WHEREAS, on August 3, 2022, Plaintiff moved for leave to file an amended complaint. Defendant filed on opposition to that motion on August 26, 2022, and Plaintiff filed a reply in support of the motion on September 1, 2022. The Court granted Plaintiff leave to file an amended complaint on September 13, 2022;
51. WHEREAS, Plaintiff filed her First Amended Class Action Complaint on September 14, 2022, which, among other things, added additional named plaintiff Ethan Feirstein;
52. WHEREAS, on October 6, 2022, Volaris filed its Answer to Plaintiffs' First Amended Class Action Complaint, denying the allegations and asserting additional affirmative defenses;
53. WHEREAS, on November 14, 2022, Plaintiffs moved for class certification, which the Court administratively denied without prejudice on December 30, 2022;
54. WHEREAS, following further discovery, Plaintiffs renewed their motion for class certification, which Defendant opposed. The motion was fully briefed and submitted by September 20, 2023;
55. WHEREAS, awaiting decision on Plaintiffs' motion for class certification, the parties again agreed to mediation, which occurred on December 19, 2023, before Hon. William E. Gomolinski (Ret.), resulting in the settlement described herein;

56. WHEREAS, Plaintiffs and Class Counsel believe this Action is meritorious. Class Counsel thoroughly investigated the case and diligently pursued Plaintiffs' and the Settlement Class Members' claims against Defendant, including, but not limited to: (i) participating in extensive written and oral discovery; (ii) briefing Defendant's motion to dismiss; (iii) briefing Plaintiffs' motion for class certification and renewed motion for class certification, (iv) reviewing tens of thousands of pages of documents and analyzing relevant passenger records; (v) and researching the applicable law and the potential defenses. Based on their full, independent investigation and evaluation, Class Counsel are of the opinion that the Settlement is fair, reasonable, adequate, and in the best interest of Plaintiffs and the Settlement Class Members in light of all known facts and circumstances, including the risk of significant delay, the defenses raised by Defendant, class certification risk, summary judgment risk, the risk associated with potential changes in the applicable law, trial risk and risks on appeal;

57. WHEREAS, this Settlement is not an admission by Volaris of wrongdoing, fault, liability, or damage of any kind. Volaris disputes the claims alleged in this Action and is entering into this Settlement to avoid burdensome and costly litigation. Volaris denies any liability or wrongdoing of any kind associated with the claims alleged in the Action. Defendant also continues to assert the Action fails to meet the prerequisites for class action treatment under Federal Rule of Civil Procedure 23 but, despite this belief, it will not oppose certification of the Settlement Class contemplated by this Agreement solely for purposes of effectuating this Settlement. Other than for purposes of this Settlement, Defendant does not waive its objections to certification of the Settlement Class; and

58. WHEREAS, the Parties contemplate that entry of the Final Approval Order shall dismiss with prejudice Plaintiffs' and the Settlement Class Members' claims against Defendant and the Released Parties, with the exception of claims of Settlement Class Members who properly exclude themselves from the Settlement, if any, in accordance with the Opt-Out Process described in Section VIII of this Agreement. Defendant shall retain any existing defenses to such excluded claims. The Parties agree to cooperate in good faith and take all steps reasonable and appropriate to obtain preliminary and final approval of this Settlement, and to effectuate its terms.

59. NOW, THEREFORE, without (a) any admission or concession on the part of Plaintiffs about the likelihood of success at trial, on appeal, or in other motion practice, or (b) any admission or concession by Volaris as to the merit of the Action or of liability or wrongdoing or the lack of merit of any defense of Volaris, it is hereby stipulated and agreed by the undersigned, on behalf of Plaintiffs, the Settlement Class, and Volaris, that the Action and all Released Claims of the Settlement Class be settled, compromised, and dismissed on the merits and with prejudice as to Volaris, subject to Court approval as required by Federal Rule of Civil Procedure 23, on the terms and conditions set forth herein.

60. Each of these Recitals is incorporated into this Agreement as if fully set forth herein.

### **III. CERTIFICATION OF THE SETTLEMENT CLASS**

61. The Settlement contemplates Plaintiffs moving for an order preliminarily approving the Settlement Agreement and granting certification of the Settlement Class. The Parties agree certification of the Settlement Class is conditional and for settlement purposes only. This



Settlement further contemplates, and all counsel, Parties, and Released Parties agree that none of the Released Parties are admitting that class certification is appropriate, or that any violation of any state, federal or local statute or common law occurred, or that any damages were suffered by Plaintiffs or any Settlement Class member. The Released Parties retain their rights to object to certification of this Action, or any other class action, should the Settlement ultimately not receive final approval.

If the Court does not grant final approval of the Settlement, or if final approval is granted but ultimately reversed on appeal, or if the Settlement Effective Date does not occur, the certification of the Settlement Class for settlement purposes shall be deemed null and void, and each Party, and Released Party, shall retain all of their respective rights as they existed prior to Execution of this Agreement, and this Settlement Agreement will be inadmissible in this or any other action against any of the Released Parties, and may not be used for any purpose other than the settlement of this Action. Certification of the Settlement Class for settlement purposes is in no way an admission by the Released Parties that class certification is proper.

#### IV. TERMS OF SETTLEMENT

62. **Settlement Funds.** Subject to the other terms and conditions of this Agreement, and subject to Court approval, within twenty-one days (21) days after the entry of a Final Approval Order and receipt of Settlement Administrator instructions and a Form W-9 for the Settlement Administrator, Defendant agrees to pay total Settlement Funds of THREE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$3,500,000) to the Settlement Administrator, minus any funds previously advanced for Notice and Administration Costs. These Settlement Funds will be used by the Settlement Administrator to pay Settlement Class Members, Settlement Costs, and Attorney Fees and Litigation Expenses as described in this Agreement. Settlement Class Members who do not opt out will be eligible for a *pro rata* share of the balance of the Settlement Fund after Court approved Settlement Costs, and Attorney Fees and Litigation Expenses are paid. Such *pro rata* share shall not exceed the total amount paid by each Settlement Class Member for their canceled or significantly delayed flight, including airfare taxes and ancillary charges, less any refund received from Volaris or any applicable third party and/or the redeemed amount of any voucher provided by Defendant. The Settlement contemplates the Settlement Funds shall be used to pay Settlement Awards and Settlement Costs, except as provided below. The Settlement Funds will be used to satisfy all claims of Plaintiffs and the Settlement Class Members in exchange for the comprehensive release and the covenants set forth in this Agreement, including, without limitation, a full, fair, and complete release of all Released Parties from Released Claims, and dismissal of the Action with prejudice.

63. **Notice and Administration Costs.** Notice and Administration Costs shall be paid from the Settlement Funds, and from no other source. The Parties shall be jointly responsible for supervising the Settlement Administrator.

64. **Attorneys' Fees and Litigation Expenses.** Attorneys' Fees and Litigation Expenses approved by the Court shall be paid from the Settlement Funds, and from no other source. Class Counsel shall apply to the Court for an award of reasonable Attorneys' Fees and Litigation Expenses. The Settlement Administrator shall pay to Class Counsel the amount of the Attorneys' Fees and Litigation Expenses awarded by the Court, as directed by Class Counsel. In the event the

Court does not approve the award of Attorneys' Fees and Litigation Expenses requested by Class Counsel, or the Court awards Attorneys' Fees and Litigation Expenses in an amount less than that requested by Class Counsel, such decision shall not affect the validity and enforceability of the Settlement. Plaintiffs and Class Counsel retain their right to appeal any decision by the Court regarding the award of Attorneys' Fees and Litigation Expenses.

65. **Settlement Class Representative Incentive Payment.** Any Settlement Class Representative Incentive Payment shall be paid from the Settlement Funds, and from no other source. Plaintiffs may apply to the Court for a Settlement Class Representative Incentive Payment for the Settlement Class Representative (in addition to any *pro rata* distribution they may receive under this Agreement). The Settlement Administrator shall pay Plaintiffs as directed by Class Counsel, the amount of incentive payment awarded by the Court. The denial by the Court of any such application shall not affect the validity and enforceability of the Settlement. Plaintiffs retain their right to appeal any decision by the Court regarding the application.

66. **Settlement Awards to Settlement Class Members.** The Settlement Administrator will manage the notice process in cooperation with Class Counsel and Defendant, and in accordance with this Agreement. All Settlement Class Members who do not opt out shall be paid a *pro rata* share of the Settlement Funds, after Settlement Costs are deducted, by check mailed to their last known address unless electronic payment is elected by the Class Members. If there is no known valid mailing address but the Class List contains a valid e-mail address, then electronic payment will be sent.

## V. NOTICE TO THE CLASS

67. Within ten (10) business days of the complete execution of this Settlement Agreement, Class Counsel shall provide the Class List to the Settlement Administrator.

68. The Settlement Administrator shall implement the notice program, as set forth in this Section and directed by the Court. The Settlement Administrator shall, by the Notice Deadline, provide:

A. **Notice.** The Class Administrator shall provide direct notice via U.S. First Class Mail to each Settlement Class Member. Notice shall be by way of a postcard and shall contain a class member ID and shall direct recipients to the Settlement Website to allow them to update their address and view a Spanish language translation of the notice. Prior to mailing the Notice, the Settlement Administrator shall search for updated addresses via the United States Postal Service's national change of address database. The Settlement Administrator shall re-mail once any Notice returned as undeliverable and for which an alternative address can be located and undertake reasonable means to locate alternative addresses for returned notices. If there is no known valid mailing address, notice will be sent via e-mail if available.

B. **Website Notice.** The Settlement Administrator will establish and maintain a Settlement Website dedicated to the Settlement, on which will be posted the Notice, the complaint, motion for preliminary approval and order, motion for attorney fees and incentive award and the motion for final approval. A Spanish language translation of the Notice shall also

be posted on the Settlement Website. These documents shall be available on the Settlement Website promptly following entry of the Preliminary Approval Order or when filed and remain until after the stale date of the Settlement Awards. The Settlement Administrator shall secure the URL volarisrefund.com for the Settlement Website, or, if unavailable, shall secure another substantially similar URL mutually agreed upon by the Parties or determined by the Court.

## **VI. CAFA NOTICE**

69. Pursuant to 28 U.S.C. §1715(b), Defendant shall provide CAFA Notice to the appropriate governmental authorities no later than the end of the ten (10) day period provided by CAFA.

## **VII. OPT-OUT PROCESS**

70. A Settlement Class Member who wishes to exclude themselves from this Settlement Class shall submit a written Opt-Out Request to the Settlement Administrator at the address designated in the Notice no later than the Opt-Out/Objection Deadline. Opt-Out Requests must: (i) be timely submitted by the Objection Deadline; (ii) be signed by the person in the Settlement Class who is requesting to be excluded from the Settlement Class; (iii) include the full name and current mailing address, telephone number and email address of the person in the Settlement Class requesting exclusion; and (iv) include a statement or words to the effect of the following: "I request to be excluded from the Volaris Settlement Class, and understand that by doing so I will not be entitled to receive any of the benefits from the settlement." No person in the Settlement Class, or any person acting on behalf of or in concert or participation with that person in the Settlement Class, may exclude any other person in the Settlement Class from the Settlement Class.

71. The Settlement Administrator shall maintain a list of persons who have submitted Opt-Out Requests and shall provide such list to the Parties upon written request.

## **VIII. OBJECTION PROCESS**

72. A Settlement Class Member who wishes to object to any matter concerning the Settlement must notify the Court and the Parties' counsel of his or her objection, in writing, on or before the Opt-Out/Objection Deadline, or other deadline set by the Court.

73. To state a valid objection to the Settlement, an objecting Settlement Class Member must personally sign the objection and provide the following information with it: (i) full name and current mailing address, telephone number and email address; (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.

74. Subject to approval of the Court, an objecting Settlement Class Member may, but does not need to, appear in person or by counsel at the Final Approval Hearing. To do so, the objecting Settlement Class Member must file with the Court, and serve on all counsel designated in the Notice, a notice of intention to appear by the Opt-Out/Objection Deadline, or other deadline set by the Court. The notice of intention to appear must include copies of any papers, exhibits, or other

evidence that the objecting Settlement Class Member (or his/her/its counsel) will present to the Court in connection with the Final Approval Hearing. Unless otherwise ordered by the Court, any Settlement Class Member who does not timely provide a notice of intention to appear in conformance with the requirements set out in the Notice and Website Notice, and who has not timely filed an objection in accordance with the requirements set out in the Notice and Website Notice, will be deemed to have waived any objection to the Settlement and can be barred from presenting any views at the Final Approval Hearing.

## **IX. DISTRIBUTION PROCESS**

75. The timing of Defendant's payment of the Settlement Funds is:

A. Within fourteen (14) business days after the Court enters the Preliminary Approval Order, Defendant shall transfer the estimate for the Notice and Administration Costs to the Settlement Administrator, which amount will be credited against the Settlement Fund. In the event that the Settlement Effective Date does not occur, any amounts actually used by the Settlement Administrator for notice and administration shall not be refundable to Defendant. If, however, Defendant has paid monies for Notice and Administration Costs which have not been used by the Settlement Administrator, those amounts not used by the Settlement Administrator shall be refunded to Defendant.

A. Within twenty-one (21) days after the entry of a Final Approval Order and receipt of Settlement Administrator instructions and a Form W-9 for the Settlement Administrator, Defendant shall pay the remainder of the Settlement Funds to the Settlement Administrator. Class Counsel shall instruct the Settlement Administrator as to whom the Attorneys' Fees and Litigation Expenses and any Settlement Class Representative Incentive Payment should be distributed. Defendant shall not, under any circumstances or for any reason, be obligated to pay any amounts in addition to the Settlement Funds in connection with the Settlement.

76. ***Settlement Award Payments.*** Settlement Class Members who do not opt out will be eligible for a *pro rata* share of the balance of the Settlement Fund after Court approved Settlement Costs, and Attorney Fees and Litigation Expenses are paid. Such *pro rata* share shall not exceed the total amount paid by each Settlement Class Member for their canceled or significantly delayed flight, including airfare taxes and ancillary charges, less any refund received from Volaris or any applicable third party and/or the redeemed amount of any voucher provided by Defendant.

Settlement Awards shall be paid by check or electronic payment. Within thirty (30) days after the Settlement Effective Date, the Settlement Administrator shall send the Settlement Award to each eligible Settlement Class Member. The Settlement Administrator shall undertake reasonable means to locate current addresses for all returned checks. Checks will be valid for ninety (90) days from the date on the check. The amounts of any checks that remain uncashed more than ninety (90) days after the date on the check will be included as part of a Subsequent Distribution (as defined below).

77. ***Subsequent Distribution.*** If, after the expiration date of the checks distributed pursuant to Paragraph 62 above, there remains money in the Settlement Fund sufficient to pay at least \$5.00

to each Settlement Class Member who cashed their initial Settlement Award, that remaining money will be distributed on a *pro rata* basis to those Settlement Class Members who cashed their initial Settlement Award checks or accepted their initial Settlement Award deposits (the “Subsequent Distribution”). Such *pro rata* share shall not exceed the total amount paid by each Settlement Class Member for their canceled or significantly delayed flight, including airfare taxes and ancillary charges, less any refund received from Volaris or any applicable third party and/or the redeemed amount of any voucher provided by Defendant and less the amount of the initial Settlement Award payment. The Subsequent Distribution shall be made within thirty (30) days after the expiration date of the checks distributed pursuant to Paragraph 62 above and shall be paid in the same manner as the original Settlement Award. Checks issued pursuant to the Subsequent Distribution will be valid for ninety (90) days from the date on the check. If there is not enough money to pay at least \$5.00 to each Settlement Class Member who cashed their initial Settlement Award check or accepted their initial Settlement Award deposit, or if any checks or deposits from the subsequent distribution remain uncashed after the stale date, those funds shall be distributed *cy pres* to an appropriate third party non-profit organization agreed upon by the parties, subject to court approval or if the parties cannot agree, each party shall submit their choice to the Court at preliminary approval and the notices shall set forth Plaintiffs’ and Defendant’s respective choices.

## **X. RELEASE**

78. Subject to the Court’s final approval of the Settlement, and for good and valuable consideration set forth herein, the receipt and sufficiency of which is hereby acknowledged, Plaintiffs and all Settlement Class Members who do not timely exclude themselves from the Settlement Class, and all their respective heirs, assigns, executors, administrators, and agents, past or present, fully and without limitation release and discharge each and every Released Party from any and all claims, actions, suits, losses, rights, damages, costs, fees, expenses, accounts, demands, obligations, liabilities, and causes of action of every character, nature, kind, or description whatsoever, known or unknown, foreseen or unforeseen, and suspected or unsuspected, that Plaintiffs and such Settlement Class Members have or may have arising out of or relating to failing to provide refunds for flights scheduled to operate during the Class Period but which were cancelled or significantly changed by Volaris for reasons related to the COVID-19 health emergency for the period up to and including the date of Final Approval (the “Released Claims”).

79. Releasing Settlement Class Members acknowledge the facts could be different than they now know or suspect to be the case, but they are nonetheless releasing all Released Claims.

80. The Parties acknowledge that this Settlement, including the releases provided in this Section, reflects a compromise of disputed claims.

81. The Final Approval Order shall dismiss the Action with prejudice and shall incorporate the terms of this release.

## **XI. DUTIES OF THE PARTIES WITH RESPECT TO OBTAINING PRELIMINARY APPROVAL**

82. Class Counsel shall apply to the Court for the entry of an order requesting the following relief:

- A. Preliminarily approving the Settlement;
- B. Conditionally certifying the Settlement Class for settlement purposes in accordance with applicable legal standards and this Agreement;
- C. Approving the form and content the proposed Notice, and plan for its distribution;
- D. Scheduling a fairness hearing on the question of whether the proposed Settlement should be finally approved as fair, reasonable, and adequate;
- E. Formally appointing Class Counsel as class counsel;
- F. Approving Plaintiffs as Settlement Class Representatives;
- G. Approving the Settlement Administrator; and
- H. Setting the Notice Deadline, Objection Deadline, and Opt Out Period.

## **XII. DUTIES OF PARTIES FOLLOWING PRELIMINARY COURT APPROVAL**

83. Following Preliminary Approval of the Settlement, and no later than the filing of the motion for final approval, Class Counsel will submit a proposed Final Approval Order in substantially the form attached hereto as Exhibit 1, except as otherwise required by the Court.

## **XIII. MUTUAL FULL COOPERATION**

84. The Parties agree to cooperate fully with each other to accomplish the terms of this Settlement, including but not limited to execution of all necessary documents, providing any additional records and information pertaining to the Settlement Class Members necessary for notice and payment of Settlement Awards, and to take such other action as may be needed to implement the terms of this Settlement. The Parties shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by order of the Court or otherwise, to effectuate the terms of this Settlement. As soon as practicable after execution of this Settlement, Class Counsel shall, with the reasonable assistance and cooperation of Defendant and its counsel, take all reasonable and necessary steps to secure the Court's Final Approval Order.

## **XIV. CONDITIONS FOR TERMINATING THE AGREEMENT**

85. In the event that this Settlement is not approved, or if for any reason the Settlement Effective Date does not occur, the Settlement Agreement shall be deemed null, void, and unenforceable and shall not be used nor shall it be admissible in any subsequent proceedings either in this Court or in any other judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or other proceeding, and the Parties shall return to their respective positions prior to the Court's consideration of this Settlement. However, the Parties may agree to seek approval of an amended version of the Settlement.

## **XV. SIGNATORIES' AUTHORITY**

86. The respective signatories to this Agreement each represent that they are fully authorized to enter into this Settlement on behalf of the respective Parties for submission to the Court for preliminary and final approval.

## **XVI. NO PRIOR ASSIGNMENTS**

87. The Parties represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.

## **XVII. NOTICES**

88. Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given: (i) on the date given, if given by hand delivery; (ii) within one (1) business day, if sent by overnight delivery services such as Federal Express or similar courier; (iii) on the third business day after mailing by United States registered or certified mail, return receipt requested, or (iv) on the day received for delivery by e-mail. All notices given under this Agreement shall be addressed as follows:

### **A. To Plaintiffs and the Class:**

Keith J. Keogh  
William M. Sweetnam  
KEOGH LAW, LTD.  
55 West Monroe Street, Suite 3390  
Chicago, Illinois 60603  
keith@keoghlaw.com  
wsweetnam@keoghlaw.com

### **B. To Defendant:**

Robert Tonn  
HOLLAND & KNIGHT LLP  
150 North Riverside Plaza, Suite 2700  
Chicago, Illinois 60606  
robert.tonn@hkllaw.com

## **XVIII. MISCELLANEOUS PROVISIONS**

89. **Construction.** The Parties agree that the terms and conditions of this Settlement are the result of lengthy, intensive arms-length negotiations between the Parties and that this agreement shall not be construed in favor of or against any party by reason of the extent to which any party or their counsel participated in the drafting it.

90. **Captions and Interpretations.** Paragraph titles or captions contained in this Agreement are a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision of this Agreement. Each term of this Agreement is contractual and not merely a recital.

91. **Modification.** This Agreement may not be changed, altered, or modified, except in a writing signed by the Parties. Any such modification is subject to Court approval.

92. **Integration Clause.** This Agreement, the exhibits hereto, and any other documents delivered pursuant hereto contain the entire agreement between the Parties relating to the resolution of the Action. No rights under this Settlement may be waived except in writing and signed by the Party against whom such waiver is to be enforced.

93. **Binding on Assigns.** This Settlement shall be binding upon, and inure to the benefit of, the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns.

94. **Counterparts.** This Agreement may be executed by facsimile signature and in any number of counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one and the same Agreement, which shall be binding upon and effective as to all Parties.


95. **Disagreements.** The Parties agree the Court shall resolve any disagreements over the meaning or implementation of this Agreement or the Settlement.

96. **Applicable Law.** This Agreement shall be governed by Illinois law without regard to its choice of law or conflicts of law principles or provisions.


**REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**



ACCEPTED AND AGREED:

  
\_\_\_\_\_  
Samantha Levey (Mar 1, 2024 16:48 EST)  
Samantha Levey

03/01/2024  
Date

  
\_\_\_\_\_  
Ethan Feirstein (Mar 1, 2024 18:23 EST)  
Ethan Feirstein

03/01/2024  
Date

APPROVED AS TO FORM:

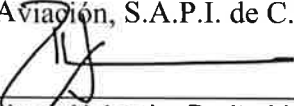
  
\_\_\_\_\_  
Keith J. Keogh  
William M. Sweetnam  
KEOGH LAW, LTD.  
55 West Monroe Street, Suite 3390  
Chicago, Illinois 60603  
keith@keoghlaw.com  
wsweetnam@keoghlaw.com

03/01/2024  
Date

*Counsel for Plaintiffs and the Class*

ACCEPTED AND AGREED:

Concesionaria Vuela Compañía  
de Aviación, S.A.P.I. de C.V.

  
\_\_\_\_\_  
By: Jose Alejandro De Iturbide Gutierrez  
Its: Sr. Vice President and Chief Legal Officer

3/1/2024

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Robert E. Tonn  
HOLLAND & KNIGHT, LLP  
150 N. Riverside Plaza, Suite 2700  
Chicago, Illinois 60606  
robert.tonn@hklaw.com

3/1/2024

\_\_\_\_\_  
Date

Counsel for Concesionaria Vuela Compañía  
de Aviación, S.A.P.I. de C.V.

# EXHIBIT 1

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

SAMANTHA LEVEY and ETHAN	)	Case No.: 1:20-cv-02215
FEIRSTEIN, individually and on	)	
behalf of all others similarly situated,	)	Judge John Robert Blakey
	)	
Plaintiffs,	)	Magistrate Judge Jeffrey I. Cummings
	)	
v.	)	
	)	
CONCESIONARIA VUELA COMPAÑÍA	)	
DE AVIACIÓN, S.A.P.I. DE C.V., a	)	
foreign corporation d/b/a "VOLARIS,"	)	
	)	
Defendant.	)	

**[PROPOSED] ORDER GRANTING  
FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

The Court having held a final approval hearing on \_\_\_\_\_, 2024, notice of the hearing and the Settlement having been duly given in accordance with this Court’s order (1) preliminarily approving Settlement, (2) certifying the Settlement Class, (3) approving notice plan and (4) setting the final approval hearing, and having considered all matters submitted at the final approval hearing and otherwise, and finding no just reason for delay in entry of this final order

It is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. The Settlement Agreement dated \_\_\_\_, 2024, including its Exhibits (the “Agreement”), and the definition of words and terms contained therein, are incorporated by reference and are used hereafter. The terms and definitions of this Court’s Preliminary Approval Order (ECF No.\_\_\_\_) are also incorporated by reference into this Final Approval Order.

2. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2), and personal jurisdiction over Concesionaria Vuela Compañía de

Aviación, S.A.P.I. de C.V. (“Defendant”), and the Settlement Class Members, certified in the Court’s preliminary approval order, who did not timely request exclusion.

3. The Court hereby finds that the Agreement is the product of arm’s length settlement negotiations between Plaintiffs and Defendant, supervised by well-qualified mediators, Hon. Morton Denlow (Ret.) and Hon. William E. Gomolinski (Ret.). The Court hereby finds Notice of the Settlement was disseminated to persons in the Settlement Class in accordance with the Court’s preliminary approval order, was the best notice practicable under the circumstances, and that the Notice satisfied Federal Rule 23 and due process.

4. [There were no objections to the Agreement] [*or*] [For the reasons stated on the record, as well as the reasons set forth in Plaintiffs’ and Defendant’s submissions, the Court overrules all objections to the Agreement.]

5. On \_\_\_\_\_, 2024, the Court preliminarily found:

(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 delayed 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. The Court hereby confirms these findings and finally certifies the Settlement Class for settlement purposes. The Court finds for settlement purposes that the Settlement Class satisfies all the requirements of Federal Rule 23.

7. The Court hereby finally approves the Agreement, finding it fair, reasonable and adequate as to all members of the Settlement Class in accordance with Federal Rule 23.

8. The Court hereby approves the plan of distribution for the Settlement Fund as set forth in the Agreement. The Settlement Administrator is hereby ordered to comply with the terms of the Agreement with respect to distribution of the Settlement Fund, including the distribution of any remaining funds.

9. As of the Effective Date, the Plaintiffs and every Settlement Class Member hereby releases all Released Parties from the Released Claims, as stated in the Agreement.

10. This Final Approval Order will settle and resolve with finality on behalf of Plaintiffs and the Settlement Class, the Action and the Released Claims against the Released Parties by Plaintiffs and the other Settlement Class Members 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, affiliates, 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.

11. Class Counsel have moved, pursuant to Fed. R. Civ. P. 23(h) and 52(a), for an award of attorneys' fees and reimbursement of costs and expenses. Pursuant to Fed. R. Civ. P. 23(h)(3) and 52(a) this Court makes the following findings of fact and conclusions of law:

(a) The Settlement confers substantial benefits on the members of the Settlement Class;

(b) The value conferred on the Settlement Class is immediate and readily quantifiable, in that members of the Settlement Class will receive cash payments that represent a significant portion of the damages available to them were they to prevail in individual actions asserted the same or similar claims;

(c) Class Counsel vigorously and effectively pursued the Settlement Class Members' claims before this Court in this complex case;

(d) The Settlement was obtained as a direct result of Class Counsel's advocacy;

(e) The Settlement was reached following extensive negotiations between Class Counsel and Counsel for Defendant, supervised by well-qualified mediators, and was negotiated in good-faith and without collusion;

(f) Members of the Settlement Class were advised in the Notice approved by the Court that Class Counsel intended to apply for an award of attorneys' fees equal to \_\_\_\_\_% of the Settlement Funds less notice and administration costs, in the amount of \$ \_\_\_\_\_, plus expenses, to be paid from the Settlement Funds;

(g) A copy of Plaintiffs' motion for an award of attorneys' fees and expenses and any incentive award was made available for inspection in the Court's file and on the settlement website during the period class members had to submit any objections;

(h) [No member] [\_\_\_\_\_ member(s)] of the Settlement Class submitted written objection(s) to the award of attorneys' fees, costs and expenses; and

(i) Counsel who recover a common fund for the benefit for persons other than themselves for their client are entitled to reasonable attorneys' fees from the fund as a whole. *See, e.g., Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Sutton v. Bernard*, 504 F.3d 688, 691 (7th Cir. 2007) ("the attorneys for the class petition the court for compensation from the settlement or common fund created for the class's benefit"), *Birchmeier v. Caribbean Cruise Line, Inc.*, 896 F.3d 792, 796-97 (7th Cir. 2018) (affirming attorney fees in consumer class action of 36% of the first \$10 million, 30% of the next \$10 million, and 24% of the next \$34 million), *Martin v. JTH Tax, Inc.*, No. 13-6923 (N.D. Ill. Sept. 16, 2015) (Shah, J.) (38% of total fund); *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 501 (N.D. Ill. 2015) (Kennelly, J.) (36% of the fund net admin costs) and accordingly, Class Counsel are hereby awarded \$ \_\_\_\_\_ for attorneys' fees, and \$ \_\_\_\_\_ for unreimbursed costs and expenses which the Court finds to be fair and



reasonable, which amount shall be paid to Class Counsel from the Settlement Fund in accordance with the terms of the Agreement.

12. The Class Representatives, Samantha Levey and Ethan Feirstein, are hereby compensated in the amount of \$ \_\_\_\_\_ each for their efforts in this case. *See, e.g., See Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (recognizing that “because a named plaintiff is an essential ingredient of any class action, an incentive award is appropriate if it is necessary to induce an individual to participate in the suit”); *In re Synthroid Mkt. Litig.* (“*Synthroid I*”), 264 F.3d 722, (7th Cir. 2001) (“Incentive awards are justified when necessary to induce individuals to become named representatives.”); *see also Leung v. XPO Logistics, Inc.*, 326 F.R.D. 185, 205 (N.D. Ill. 2018) (awarding \$10,000 incentive award to named plaintiff); *Briggs v. PNC Financial Services Group*, No. 1:15-cv-10447, 2016 U.S. Dist. LEXIS 165560, at \*5 (N.D. Ill. Nov. 29, 2016) (\$12,500 incentive award for each named plaintiff); *Castillo v. Noodles & Co.*, No. 16-cv-03036, 2016 U.S. Dist. LEXIS 178977, at \*8 (N.D. Ill. Dec. 23, 2016) (authorizing \$10,000 incentive award for each named plaintiff).

13. If, after the expiration date of the second distribution, if any, as provided for in the Settlement Agreement, there remains money in the Settlement Fund, all money remaining will be distributed to *cy pres* to an appropriate third party non-profit organization agreed upon by the parties, subject to court approval, or if the parties cannot agree, each party shall submit their choice to the Court for approval. *See Ira Holtzman, C.P.A., & Assocs. v. Turza*, 728 F.3d 682, 689 (7th Cir. 2013).

14. This Court hereby dismisses this case with prejudice, except the Court retains jurisdiction to supervise the administration of the Settlement, enforce the Agreement, and resolve any disputes relating to the same.

**IT IS SO ORDERED,  
ADJUDGED AND DECREED.**

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

\_\_\_\_\_  
Honorable John Robert Blakey  
United States District Judge

# EXHIBIT 2

**NOTICE OF CLASS ACTION LAWSUIT AND PROPOSED SETTLEMENT**  
THE COURT AUTHORIZED THIS NOTICE. THIS IS NOT A SOLICITATION FROM A LAWYER.

***Levey, et al. v. Concesionaria Vuela Compañía de Aviación, S.A.P.I. de C.V.***  
**USDC, Northern District of Illinois, Eastern Division, Case No. 1:20-cv-02215**

YOU MAY BE ENTITLED TO RECEIVE AN AVERAGE OF \$90

Para obtener información en español, visite [www.volarisrefund.com/](http://www.volarisrefund.com/)[insert website page]

<b>What is this?</b>	This is notice of a Proposed Settlement in a class action lawsuit.
<b>What is this lawsuit about?</b>	The Settlement would resolve a lawsuit brought on behalf of a putative class of individuals, alleging Concesionaria Vuela Compañía de Aviación, S.A.P.I. de C.V., which operates the airline known as “Volaris,” breached its contract of carriage and violated Department of Transportation rules by failing to provide passengers prompt refunds for Volaris flights that were cancelled or significantly changed by the airline for reasons related to the Covid-19 pandemic beginning in March 2020. Volaris denies these allegations and any wrongdoing whatsoever. The Court has not ruled on the merits of Plaintiffs’ claims or Volaris’ defenses.
<b>Why am I getting this notice?</b>	You were identified as a ticketed U.S. citizen passenger on a Volaris flight to, from or within the United States, whose flight was scheduled to operate between March 20, 2020 and November 30, 2020, but was canceled or significantly delayed by Volaris for

	<p>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.</p>
<p><b>What does the Settlement provide?</b></p>	<p>Volaris has agreed to pay \$3,500,000 into a Settlement Fund, which will be distributed pro rata to Settlement Class members after payment of the cost of this notice, costs of administering the settlement, and attorneys' fees, costs and expenses incurred by counsel for Plaintiff and the Settlement Class ("Class Counsel"), and any service award for Plaintiff permitted by law.</p> <p>Class Counsel estimates that Settlement Class members will receive on average \$90, but it may be more or less depending on whether you were issued a refund or a voucher and used any portion of that voucher as all payouts are capped at the amount of the fare paid, less the amount of any refund received or voucher received and used. Plaintiff will petition for a service award not to exceed \$_____ for each Plaintiff for their work in representing the Class and Class Counsel's fees up to _____% of the settlement fund less notice and administrative costs, not to exceed \$_____, plus reasonable costs and expenses.</p>
<p><b>How can I receive a payment from the Settlement?</b></p>	<p>There is nothing you need to do to obtain a payment from the Settlement. Your portion of the settlement funds will be sent by check to your last known address or, if there is no known valid</p>

	<p>mailing address but the Class List contains a valid e-mail address, then electronic payment will be sent to that e-mail address. If you wish to elect to receive electronic payment, you must go to at <a href="http://www.[insert website name with page]">www.[insert website name with page]</a> and enter your Claim ID found in this notice and follow the directions to elect electronic payment.</p>
<p><b>Do I have to be included in the Settlement?</b></p>	<p>If you do not want monetary compensation from this Settlement and you want to keep the right to sue, or continue to sue Volaris on your own, then you must exclude yourself from the Settlement Class by sending a letter to the address below requesting exclusion to the Settlement Administrator by _____, 2024. The letter must contain the specific information set forth on the Settlement Website “Opt-Out Process.”</p>
<p><b>If I don’t like something about the Settlement, how do I tell the Court?</b></p>	<p>If you do not exclude yourself from the Settlement, you can object to any part of the Settlement. You must file your written objection with the Court by _____, 2024, and mail a copy to both Class Counsel and defense counsel. Your written objection must contain the specific information set forth on the Settlement Website at <a href="http://www.[insert website name with page]">www.[insert website name with page]</a>.</p>
<p><b>What if I do nothing?</b></p>	<p>If you do nothing, your settlement payment will be issued to your last known address. You will be bound by the Settlement, and you will release Volaris from liability.</p>

<b>How do I get more information about the Settlement?</b>	This notice contains limited information about the Settlement. For more information, to view additional Settlement documents, and to review information regarding your opt-out and objection rights and the final approval hearing, visit <a href="http://www.[insert website name]">www.[insert website name]</a> . You can also obtain additional information or a long form notice by calling [insert 800 number].
--	---

VOLARIS AIRFARE REFUND SETTLEMENT

[INSERT CLAIMS ADMIN]

[INSERT CLAIMS ADMIN ADDRESS]

[CLAIM ID IN DIGITS]

[CLAIM ID IN 2D BARCODE]

Postal Service: Please Do Not Mark or Cover Barcode

[FIRST1] [LAST1]

[BUSINESSNAME]

[ADDR1] [ADDR2]

[CITY] [ST] [ZIP]

# EXHIBIT 3



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

SAMANTHA LEVEY and ETHAN	)	Case No.: 1:20-cv-02215
FEIRSTEIN, individually and on	)	
behalf of all others similarly situated,	)	Judge John Robert Blakey
	)	
Plaintiffs,	)	Magistrate Judge Jeffrey I. Cummings
	)	
v.	)	
	)	
CONCESIONARIA VUELA COMPAÑÍA	)	
DE AVIACIÓN, S.A.P.I. DE C.V., a	)	
foreign corporation d/b/a “VOLARIS,”	)	
	)	
Defendant.	)	

**[PROPOSED] ORDER CERTIFYING SETTLEMENT CLASS, PRELIMINARILY  
APPROVING CLASS ACTION SETTLEMENT, AND APPROVING NOTICE PLAN**

This matter came before the Court on Plaintiffs’ Motion for Preliminary Approval of the proposed class action settlement (the “Settlement”). Based on 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. \_\_\_\_\_ 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 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. 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.

18. 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.

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

_____, 2024 [14 days after the date of this Order]	Deadline for the Settlement Administrator to send notice to the Settlement Class in accordance with the Agreement and this Order (Notice Deadline)
_____, 2024 [Same as Notice Deadline]	Deadline for Plaintiffs to file their Motion for Attorneys’ Fees, Costs and Expenses, and any Incentive Awards

<p>_____, 2024</p> <p>[60 days after Notice] Deadline]</p>	<p>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)</p>
<p>_____, 2024</p> <p>[21 days after the Opt-Out and Objection Deadline]</p>	<p>Deadline for Plaintiffs to file:</p> <p>(1) Motion and memorandum in support of final approval, including proof of class notice; and</p> <p>(2) Response to any objections.</p>
<p>_____, 2024 at _____.m.</p> <p>[Court's Convenience]</p>	<p>Final Approval Hearing</p>

IT IS SO ORDERED.

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

\_\_\_\_\_  
Hon. Robert John Blakey  
United States District Judge

# EXHIBIT 4



***Levey, et al. v. Concesionaria Vuela Compañía de Aviación, S.A.P.I. de C.V.***  
***(“Volaris”)***

**USDC, Northern District of Illinois, Eastern Division**  
**Case No. 1:20-cv-02215**

**EL AVISO EN ESPAÑOL ESTÁ A CONTINUACIÓN.**

**If you were a passenger on a Volaris flight that was cancelled or significantly delayed by the airline for reasons related to the Covid-19 pandemic beginning in March 2020, you may be entitled to receive on average \$90 but it may be more or less as explained below.**

*A federal court authorized this Notice. This is not a solicitation from a lawyer.*

- **A proposed settlement will provide \$3,500,000 (the “Settlement Fund”) to fully settle and release claims of the following individuals:**

**All ticketed U.S. citizen passengers on Volaris flights to, from or within the United States, whose flights were scheduled to operate between March 20, 2020 and November 30, 2020, 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.**

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.

- **Volaris denies Plaintiff’s allegations and denies any wrongdoing whatsoever. The Court has not ruled on the merits of Plaintiffs’ claims or Volaris’ defenses. By entering into the settlement, Volaris has not conceded to the truth or validity of any of the claims brought against it.**
- **The Settlement Funds shall be used to pay amounts related to the settlement, including awards to Settlement Class, attorneys’ fees and costs to attorneys representing Plaintiffs and the Settlement Class (“Class Counsel”), any service award for Plaintiffs and the costs of notice and administration of the settlement. Class Counsel estimate that Settlement Class members will receive approximately \$90 (“Initial Settlement Award”). In no event shall a Settlement Class Member’s Initial Settlement Award exceed the total amount they paid for their flight less any refund already received from Volaris or any applicable third party. If a Settlement Class member received a voucher from Volaris and redeemed it, the amount of their cash award will be reduced by the same amount. Any monies remaining in the Settlement Fund after the Initial Settlement Awards are distributed, and the expiration date of any checks has passed, will be distributed on a *pro rata* basis to those Settlement Class Members who cashed their Initial Settlement Award check or accepted their electronic payment (the “Subsequent Distribution”), so long as the amount to be distributed is at least \$5.00 per class member. Such *pro rata* share shall not exceed the total amount paid by each Settlement Class Member for their canceled or significantly delayed flight, including airfare taxes and ancillary charges, less any**

**refund and/or the redeemed amount of any voucher provided by Defendant and less the amount of the initial Settlement Award payment. The Subsequent Distribution shall be made within ninety (30) days after the expiration date of the Initial Settlement Award checks or the date of transmission of electronic payments.** If there is not enough money to pay at least \$5.00 to each Settlement Class Member who cashed their initial Settlement Award check or accepted their initial Settlement Award electronic payment, or if any checks or electronic payments from the subsequent distribution remain uncashed after the stale date or electronic payments unaccepted, those funds shall be distributed *cy pres* to an appropriate third-party non-profit organization agreed upon by the parties, subject to court approval or if the parties cannot agree, each party shall submit their choice to the Court at preliminary approval and the notices shall set forth Plaintiffs’ and Defendant’s respective choices.

- **Your rights and options, and the deadlines to exercise them, are explained in this Notice. Your legal rights are affected whether you act or do not act. Read this Notice carefully.**

SUMMARY OF LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING	All Settlement Class Members will receive an estimated payment of \$90 by check mailed to their last known address unless electronic payment is elected by the Class Members. The \$90 is an estimate, but it may be more or less depending on whether you were issued a voucher and used any portion of that voucher as all payouts are capped at the amount of the fare accounting for any voucher used. . If there is no known valid mailing address but the Class List contains a valid email address, then electronic payment will be sent automatically to that email address. You may also elect electronic payment by visiting _____, entering your Class Member ID and following the directions on the website.
EXCLUDE YOURSELF OR “OPT-OUT” OF THE SETTLEMENT	If you ask to be excluded, you will not receive a payment. This is the only option that allows you to pursue your own claims against Volaris or other released parties related to a released claim. The deadline for excluding yourself is _____, 2024.
OBJECT TO THE SETTLEMENT	If you wish to object to the settlement, you must write to the Court about why you believe the settlement is unfair in any respect as explained below. The deadline for objecting is _____, 2024.
GO TO THE FINAL APPROVAL HEARING	You may attend the Final Approval Hearing. At the Final Approval Hearing you may ask to speak in Court about the fairness of the settlement. To speak at the Final Approval Hearing, you must file a document that includes your name, address, telephone number and your signature with the Court, which must also state your intention to appear at the Final Approval Hearing. This must be filed no later than _____, 2024.

- 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. Payments (*i.e.*, Settlement Awards) will be disbursed if the Court approves the settlement and after any appeals are resolved. Please be patient.

## BASIC INFORMATION

### 1. What is the purpose of this Notice?

The purpose of this Notice is to inform you that a proposed Settlement has been reached in the putative class action lawsuit entitled *Levey, et al. v. Concesionaria Vuela Compañía de Aviación, S.A.P.I. de C.V. (“Volaris”)* filed in the United States District Court for the Northern District of Illinois, Case No. 1:20-cv-02215. Because your rights will be affected by this Settlement, it is extremely important that you read this Notice carefully. This Notice summarizes the settlement and your rights under it.

### 2. What does it mean if I received a postcard about this settlement?

If you received a postcard describing this settlement, it is because Volaris’ records indicate that you may be a member of the Settlement Class. The members of the Settlement Class include:

All ticketed U.S. citizen passengers on Volaris flights to, from or within the United States, whose flights were scheduled to operate between March 20, 2020 and November 30, 2020, 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.

### 3. What is this class action lawsuit about?

In a class action, one or more people called Class Representatives (here, Plaintiffs, Samantha Levey and Ethan Feirstein) sue on behalf of people who allegedly have similar claims. This group is called a class and the persons included are called class members. One court resolves the issues for all of the class members, except for those who exclude themselves from the class.

Here, Plaintiffs filed the lawsuit in 2020 claiming Volaris breached its contract of carriage and Department of Transportation rules by failing to provide passengers prompt refunds for Volaris flights that were cancelled or significantly delayed by the airline for reasons related to the Covid-19 pandemic beginning in March 2020. Volaris denies these allegations and any wrongdoing. The Court has not ruled on the merits of Plaintiffs’ claims or Volaris’ defenses. The Court has conditionally certified a class action for settlement purposes only. The Honorable Robert John Blakey is in charge of this action.

### 4. Why is there a settlement?

The Court did not decide in favor of Plaintiffs or Volaris. Instead, the parties agreed to this settlement after years of litigation and two separate mediations with two different retired judges.

This way, the parties avoid the risk and cost of a trial, and the Settlement Class members will receive compensation. Plaintiff and Class Counsel think the settlement is best for all persons in the Settlement Class.

## WHO IS IN THE SETTLEMENT CLASS?

### 5. How do I know if I am a part of the settlement class?

The Court has certified a class action for settlement purposes only. The Settlement Class is defined as:

All ticketed U.S. citizen passengers on Volaris flights to, from or within the United States, whose flights were scheduled to operate between March 20, 2020 and November 30, 2020, 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.

A “Settlement Class Member” is any person in the Settlement Class who is not validly excluded from the Settlement Class. If you are still not sure whether you are included, you can visit other sections of the Settlement Website, [www.volarisrefund.com](http://www.volarisrefund.com), you may write to the Settlement Administrator at Settlement, c/o \_\_\_\_\_, or you may call the Toll-Free Settlement Hotline, 1-\_\_\_\_\_, for more information.

## THE LAWYERS REPRESENTING YOU

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

The Court has appointed Keith J. Keogh and William M. Sweetnam of the law firm of Keogh Law, Ltd., as Class Counsel to represent you and the other persons in the Settlement Class. You will not be personally charged by these lawyers.

### 7. How will Class Counsel be paid?

Class Counsel will ask the Court to approve payment of \_\_\_\_\_ percent of the Settlement Fund after administrative expenses have been deducted, which is \$\_\_\_\_\_ for attorneys’ fees, plus reasonable expenses. Class Counsel also will ask the Court to approve payment of \$\_\_\_\_\_ to Plaintiffs for their services as Class Representatives if permitted by law. The Court may award less than these amounts.

## THE SETTLEMENT BENEFITS – WHAT YOU GET

### 8. What does the settlement provide?

**Settlement Fund.** Volaris will pay \$3,500,000 into a fund (the “Settlement Funds”), which will cover: (1) cash payments to Settlement Class Members; (2) an award of attorneys’ fees and expenses to Class Counsel; (3) service award to the Plaintiffs, Samantha Levey and Ethan Feirstein; and (4) the costs of notice and administration of the Settlement.

- **Payments.** All Settlement Class Members will receive an estimated payment of \$90 by check mailed to their last known address unless electronic payment is elected by the Class Members or if there is no known valid mailing address but the Class List contains a valid

e-mail then electronic payment will be sent. In no event shall a Settlement Class Member's Initial Settlement Award exceed the total amount they paid for their flight less any refund already received from Volaris or any applicable third party. If a Settlement Class member received a voucher from Volaris and redeemed it, the amount of their cash award will be reduced by the same amount such that the pro rata estimate may be more or less than the \$90, but will not be reduced if you never used any portion of the voucher. Class Members do not need to submit a claim to receive payment. Any money remaining in the Settlement Fund after paying all Settlement Awards to Settlement Class Members, attorneys' fees and costs to Class Counsel, any service award to Plaintiff, and the costs of notice and administration of the settlement will be distributed on a *pro rata* basis to those Settlement Class Members who cashed their Initial Settlement Award check or accepted their electronic payment, so long as the amount to be distributed per Settlement Class Member is at least \$5.00. Such pro rata share shall not exceed the total amount paid by each Settlement Class Member for their canceled or significantly delayed flight, including airfare taxes and ancillary charges, less any refund received from Volaris or any applicable third party and/or the redeemed amount of any voucher provided by Defendant and less the amount of the initial Settlement Award payment. Any subsequent distribution will be made within ninety (30) days after the expiration date of the Initial Settlement Award check or transmission in the case of electronic payments. If there is not enough money to pay at least \$5.00 to each Settlement Class Member who cashed their initial Settlement Award check or accepted their initial Settlement Award electronic payment, or if any checks or electronic payments from the subsequent distribution remain uncashed after the stale date or electronic payments unaccepted, those funds shall be distributed *cy pres* to an appropriate third-party non-profit organization agreed upon by the parties, subject to court approval.

#### 9. How much will my payment be?

Class Counsel estimates the average payout will be \$90. The \$90 is an estimate, but it may be more or less depending on whether you were issued a voucher and used any portion of that voucher as all payouts are capped at the amount of the fare accounting for any voucher use. **The final cash payment amount will depend on the costs of notice and administration, as well as the reasonable costs, attorney's fees, and incentive award approved by the Court.**

#### 10. What am I giving up to stay in the Settlement Class?

Unless you exclude yourself from the settlement, you will be part of the Settlement Class and will be bound by the release of claims in the settlement. This means that if the settlement is approved, you cannot rely on any Released Claim to sue, or continue to sue Volaris or other Released Parties, on your own or as part of any other lawsuit, as explained in the Settlement Agreement. It also means that all of the Court's orders will apply to you and legally bind you. Unless you exclude yourself from the Settlement, you will agree to release Volaris and all other Released Parties, as defined in the Settlement Agreement, from any and all claims for damages as a result of flights that were canceled or significantly changed by Volaris for reasons related to the COVID-19 health emergency.

In summary, the Release includes any and all claims, whether known or unknown, for damages as a result of Volaris flights that were scheduled to operate between March 20, 2020 and November 30, 2020, but were canceled or significantly delayed by Volaris for reasons related to the COVID-19 health emergency.

If you have any questions about the Release or what it means, you can speak to Class Counsel, listed under Question 6, for free; or, at your own expense, you may talk to your own lawyer. The Release does not apply to persons in the Settlement Class who timely exclude themselves.

## HOW TO OBTAIN A PAYMENT

### 11. How can I get a payment?

All Settlement Class Members will receive an estimated payment of \$90 by check mailed to their last known address unless electronic payment is elected by the Class Members or if there is no known valid mailing address but the Class List contains a valid e-mail then electronic payment will be sent. If a Settlement Class member received a refund or received a voucher from Volaris and redeemed it, the amount of their cash award will be reduced by the same amount. You may elect electronic payment by visiting \_\_\_\_\_, entering your Claim ID and following the directions on the website. Class Members do not need to submit a claim to receive payment via check.

## WHEN WILL I RECEIVE MY SETTLEMENT PAYMENT?

### 12. When would I receive a settlement payment?

The Court will hold a hearing on \_\_\_\_\_, 2024 to decide whether to approve the Settlement. If the Court approves the Settlement, after that, there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. Please visit Settlement Website at [www.\[INSERT WEBSITE NAME\]](http://www.[INSERT WEBSITE NAME]) for updates. Please be patient.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

### 13. How do I get out of the settlement?

If you want to keep the right to sue, or continue to sue Volaris or a Released Party, as defined in the Settlement Agreement, then you must take steps to get out of the Settlement Class. This is called excluding yourself from, or opting-out of, the Settlement Class.

A Settlement Class Member who wishes to exclude themselves from this Settlement Class, and from the Release pursuant to this Settlement, shall submit a written Opt-Out Request to the Settlement Administrator at the address designated in the Notice no later than the Opt-Out/Objection Deadline. Opt-Out Requests must: (i) be timely submitted by the Opt-Out/Objection Deadline; (ii) be signed by the person in the Settlement Class who is requesting to be excluded from the Settlement Class; (iii) include the full name, current mailing address, telephone number and email address of the person in the Settlement Class requesting exclusion; and (iv) include a statement or words to the effect of the following: "I request to be excluded from the Volaris Settlement Class, and understand that by doing so I will not be entitled to receive any of the benefits from the settlement." No person in the Settlement Class, or any person acting on behalf of or in concert or participation with that person in the Settlement Class, may exclude any other person in the Settlement Class from the Settlement Class.

**To be valid, you must mail your exclusion request postmarked no later than \_\_\_\_\_, 2024 to the Settlement Administrator at Volaris Settlement, c/o \_\_\_\_\_.**

**14. If I do not exclude myself, can I sue Volaris for the same thing later?**

No. If you do not exclude yourself, you give up any right to sue (or continue to sue) Volaris or any Released Parties for the claims that this settlement resolves.

**15. If I exclude myself, can I get a benefit from this settlement?**

No. If you exclude yourself, you will not receive a settlement payment and you cannot object to the settlement.

**OBJECTING TO THE SETTLEMENT**

**16. How do I tell the Court that I do not think the settlement is fair?**

If you are in the Settlement Class, you can object to the settlement, and the Court will consider your views. If you do not provide a written objection in the manner described below, you shall be deemed to have waived any objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the settlement, or the award of any attorneys' fees and expenses, and/or any proposed service award.

To object, you must make your objection in writing, stating that you object to the Settlement. To be considered by the Court, the written objection must personally sign the objection and provide the following information with it: (i) full name and current mailing address, telephone number and email address; (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.

**To be considered, you must file your objections with the Court and mail a copy of your objections to the addresses below, postmarked no later than \_\_\_\_\_, 2024.**

For Plaintiff:

Keith J. Keogh  
William M. Sweetnam  
KEOGH LAW, LTD.  
55 West Monroe Street, Suite 3390  
Chicago, Illinois 60603

For Defendant:

Robert Tonn  
HOLLAND & KNIGHT LLP  
150 North Riverside Plaza, Suite 2700  
Chicago, Illinois 60606

**17. What is the difference between objecting and excluding yourself?**

Objecting is 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 means that you do not want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you.



## IF YOU DO NOTHING

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

If you do nothing, you will still receive a payment from settlement and give up your rights to sue Volaris or any other released parties related to a released claim. For information relating to what rights you are giving up, see Question 10.

## THE FINAL APPROVAL HEARING

### 19. When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Approval Hearing at \_\_\_\_:00 a.m. on \_\_\_\_\_, 2024 in Courtroom \_\_\_\_ at the United States Courthouse, 219 South Dearborn Street, Chicago, Illinois. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. If there are valid objections that comply with the requirements in Question 16 above, the Court also will consider them and will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Class Counsel and Plaintiff.

The Final Approval Hearing may be moved to a different date or time, so it is a good idea to check the Settlement Website for updates.

### 20. Do I have to come to the hearing?

No. Class Counsel will appear on behalf of the Settlement Class. But, you are welcome to come, or have your own lawyer appear, at your own expense.

### 21. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing, but only in connection with an objection that you have timely submitted to the Court according to the procedure set forth in the answer Question 16 above. To speak at the Final Approval Hearing, you must also file a document with the Court stating your intention to appear. For this document to be considered, it must include all of the information in the answer to Question 16 above. The document must be filed with the Court no later than \_\_\_\_\_, 2024. You cannot speak at the hearing if you exclude yourself from the settlement.

## GETTING MORE INFORMATION

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

This notice is only a summary of the proposed settlement. You can get a copy of the settlement agreement by visiting the Settlement Website, [www.\[INSERT WEBSITE\]](http://www.[INSERT WEBSITE]), or you can write to the address below or call the Toll-Free Settlement Hotline, \_\_\_\_\_. Telephone representatives who answer calls made to the toll-free number are not authorized to change the terms of the settlement or this notice. You can also call Class Counsel with any questions at 866-726-1092.

**PLEASE DO NOT CALL THE COURT, THE CLERK OF THE COURT, VOLARIS OR VOLARIS' COUNSEL ABOUT THE SETTLEMENT.**