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JS-6

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

K. SCHROEDER, O. GUERRA,
ARTURO ALVAREZ, GILBERTO
FRAGOSO, and FIDEL RAMIREZ,
as individuals and on behalf of all
others similarly situated,

Plaintiffs,

v.

ENVOY AIR, INC., and DOES 1–
100, inclusive,

Defendants.

Case No. CV 16-4911-MWF (KSx)

**JUDGMENT APPROVING CLASS
ACTION SETTLEMENT**

The Motion for Final Approval of Class Settlement (the “Settlement Motion”) and the Motion for Award of Attorney’s Fees, Enhancement Awards and Reimbursement of Costs (the “Fee Motion”), filed by Plaintiffs Karla Schroeder, Osvaldo Guerra, Arturo Alvarez, Gilberto Fragoso, and Fidel Ramirez (“Plaintiffs”), came regularly for hearing before this Court on April 22, 2019. After consideration of all the papers filed in connection therewith, the arguments of counsel, and all other matters presented to the Court, and good cause appearing therefore, the two motions are **GRANTED** and,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1 1. The Joint Stipulation for Class Action Settlement and Release
2 (the “Settlement Agreement”) and any exhibits thereto shall be incorporated into
3 this Order as though all terms therein are set forth in full. The capitalized terms in
4 this Order shall have the same force and effect as the terms defined in the
5 Settlement Agreement.

6 2. The terms of the Settlement Agreement reached by Plaintiffs and
7 Defendant Envoy Air Inc. (“Envoy” or “Defendant”) as a result of arms-length
8 negotiations, as set forth in the Settlement Agreement, are hereby finally approved
9 as being fair, reasonable and adequate for Settlement Class Members.

10 3. The Court has jurisdiction over this Action, all Parties involved,
11 Plaintiffs, Defendant, and the Settlement Class Members.

12 4. The Court finds that the Settlement Agreement is in the best interests
13 of Settlement Class Members, is fair, reasonable, and adequate within the meaning
14 of Federal Rule of Civil Procedure 23, and **GRANTS** final approval of the
15 Settlement Agreement and all of the terms and conditions contained therein.

16 5. As required by 28 U.S.C. § 1715, Claims Administrator, on behalf of
17 Defendant, mailed the Class Action Fairness Act Notices to the appropriate persons
18 or entities within ten (10) calendar days of the date of the filing of the Settlement
19 Agreement and more than ninety (90) days before the scheduled April 22, 2019
20 Fairness Hearing date.

21 6. The Court preliminarily found class certification for settlement
22 purposes appropriate under Federal Rule of Civil Procedure 23. (Docket No. 111).
23 The Court now finds final certification of the Settlement Class appropriate, as well.
24 Accordingly, pursuant to Federal Rule of Civil Procedure 23, the Court finally
25 certifies, for settlement purposes only, the Settlement Class defined as follows:
26

27 [A]ll persons who were employed by Envoy within the State of
28 California as non-exempt employees at any time from May 25, 2012
through October 31, 2018, excluding those individuals who timely
submitted a valid Request for Exclusion.

1 For the purpose of the Settlement Agreement, “non-exempt employees” shall
2 include persons bearing the job classification Passenger Service Agent, Agent
3 Cabin Appearance, Agent Compliance Coordinator, Agent Expediter, Agent
4 Operations Planning, Agent Passenger Services, Bus Driver, Station Agent, Agent
5 Customer Service, Customer Assistance Representative, Customer Service
6 Coordinator, Premium Customer Service Representative, Customer Relations
7 Representative, Ramp Agent, Fleet Service Clerk, Technician, Ground Security
8 Coordinator, Ground Support Technician, Repairman, Aircraft Cleaners, Ground
9 Equipment Technician, Mechanic, Aircraft Maintenance Technician, Inspector,
10 Inspector Mechanic, Aircraft Mechanic, Tool and Die Mechanic, Material Logistics
11 Specialist, Inventory Control Specialist, Mechanic Line, Mechanic Plant
12 Maintenance Auto, Maintenance Support Person Auto, System Support Center
13 Specialist, Staff Administrators, Staff Assistants, Administrators, or any other
14 classification of non-exempt employees employed by Envoy in the State of
15 California during the Class Period. This definition shall further include any
16 “Lead,” “Senior,” “Crew Chief,” or other gradations of the same position(s).

17 7. The Court finds that Class Counsel satisfies the requirements of Rule
18 23(g). The Court further confirms for settlement purposes the appointment of
19 Plaintiffs’ counsel as Class Counsel under Rule 23(g).

20 8. The Court finds that Plaintiffs adequately represented the Class in this
21 matter.

22 9. The Notice Packet, which included the Class Notice and Claim Forms,
23 was approved by the Court and was provided by First Class Mail to the Settlement
24 Class Members at their last known address.

25 10. The Court finds that the Notice Packet fairly and adequately advised
26 Settlement Class Members of the following: the pendency of the Class Action; the
27 certification of the Settlement Class for settlement purposes; preliminary Court
28 approval of the Settlement Agreement; the date of the Final Fairness Hearing; the

1 terms of the Settlement Agreement and the benefits available to Settlement Class
2 Members thereunder; Settlement Class Members' rights to opt-out, or to object, and
3 the procedures for exercising those rights; and the Settlement Class Members'
4 rights to submit documentation in opposition to the Settlement Agreement. The
5 Court further finds that said Notice of Class Action Settlement comports with all
6 constitutional requirements, including those of due process.

7 11. On March 25, 2019, the Claims Administrator filed with the Court a
8 declaration attesting to the mailing of the Notice to all members of the Settlement
9 Class and the results of the Notice.

10 12. The following individuals timely submitted a Request for Exclusion
11 Form pursuant to the terms of the Settlement Agreement and are thus excluded
12 from the Settlement:

- 13 a. MARIN, WILLIAM
- 14 b. GRIFFIN, KEISHA
- 15 c. YRACHETA, SOPHIA
- 16 d. YOUNG, JASMINE
- 17 e. TAMAYO, FRANCISCO
- 18 f. MULUNAREY, KEISHA
- 19 g. NARVAEZ, GERARDO
- 20 h. CABRERA, FABIAN
- 21 i. ALVA, EDWARD
- 22 j. WEATHERSBY, SANDRA
- 23 k. MCCLAREN, JAMES
- 24 l. QUINTANA, MARIA
- 25 m. ROLON, DAVID
- 26 n. SPIELBERGER, JON
- 27 o. FRIZ, JAVIER
- 28 p. GOMEZ, LUIS

- 1 q. DIMACULANGAN, MANUEL
- 2 r. PRADO, MARIBEL
- 3 s. SOYLON, ALLAN
- 4 t. NUNEZ, MARCO
- 5 u. NUNEZ, HUGO
- 6 v. FELEKE, ROMAN A.
- 7 w. PADILLA, CARLOS
- 8 x. MUNOZ, LUIS
- 9 y. MANALAC, BIEN JOHN
- 10 z. BROOKS JR, JEROLD
- 11 aa. MORTON, MARLON
- 12 bb. MARTINEZ, MARTIN
- 13 cc. SMITH, DIONNA
- 14 dd. THOMAS, OLIVER
- 15 ee. CASTRO, HUGO
- 16 ff. ARAUZ GONZALEZ, JEFFREY
- 17 gg. RODRIGUEZ LOPEZ, OSCAR
- 18 hh. MALDONADO, BENJAMIN RAMIREZ
- 19 ii. GETANEH, HIWOTIE
- 20 jj. MERINO, GUILLERMO
- 21 kk. DIUSA, ANTHONY
- 22 ll. GONZALEZ, LORENA
- 23 mm. SCOTT, THEODISTHREE
- 24 nn. ROMAN, ANDRE
- 25 oo. ACHI, SOUHIL
- 26 pp. ACHI, SHEHADEH
- 27 qq. FREDERICKS, MATTHEW
- 28 rr. MORALES, JOVHANY

1 13. Pursuant to the terms of the Settlement Agreement, the Effective Date
2 of this Judgment shall be the sixty-fifth day after this judgment is signed and
3 entered (assuming no appeal or review is sought). Upon the Effective Date, and
4 subject to Defendant's deposit of its financial obligations under the Settlement
5 Agreement, the Named Plaintiffs and every Settlement Class Member shall be
6 deemed to have, and by operation of the Judgment shall have, fully, finally, and
7 forever waived, released, relinquished and discharged all Settlement Class Released
8 Claims (as defined below) against all Envoy Releasees, as those terms are defined
9 in the Settlement Agreement and below, regardless of whether such persons
10 received any compensation under the Settlement Agreement. Except as to such
11 rights or claims that may be created by the Settlement Agreement, all Settlement
12 Class Members who did not timely and properly opt out are hereby forever barred
13 and enjoined from prosecuting or seeking to reopen the released claim, and any
14 other claims released by the Settlement Agreement, against the Envoy Releasees.

15 14. "Settlement Class Released Claims" means all actions, causes of
16 action, suits, liabilities, claims, and demands whatsoever, and each of them,
17 whether known or unknown, during the Class Period, which the Settlement Class or
18 individual members thereof, has, had, or hereafter may claim to have, against
19 Envoy Releasees, or any of them, which are based on, arise from, or in any way
20 relate to any and all claims and allegations of the Settlement Class in this Action or
21 the Complaints, as set forth in any and all pleadings in this Action or the
22 Complaints, as well as any and all claims and allegations that could have been
23 raised in this Action or the Complaints, which include, by way of description, but
24 not by way of limitation, claims on behalf of the Settlement Class alleging that
25 Envoy provided Settlement Class Members with meal periods more than five hours
26 after their shifts had started, that Envoy required or permitted Settlement Class
27 Members to take rest breaks in conjunction with and/or combined with their meal
28 periods, that Envoy required, suffered, or permitted Settlement Class Members to

1 work off the clock; that Envoy illegally and inaccurately recorded the time worked
2 by Settlement Class Members, that Envoy owes Settlement Class Members
3 compensation for time spent traveling to and from their workplace at Envoy's
4 remote terminal at LAX, that Envoy failed to include premiums and/or higher rates
5 of pay for holidays and/or shift differentials into Settlement Class Members'
6 regular rate for the purposes of calculating overtime, that Envoy failed to reimburse
7 Settlement Class Members for business-related cell phone usage or any other
8 expenses, that Envoy failed to timely provide wages upon termination; that Envoy
9 failed to record, report, and pay any amounts of money to state authorities under the
10 California Labor Code and other applicable regulations, and any claims asserting
11 alleged violations of California Labor Code, any Wage Order of the California
12 Industrial Welfare Commission ("IWC"), California Business and Professions Code
13 sections 17200 *et seq.*, and any claims arising from the claims described above
14 under federal or applicable state, local, or territorial law ("the Settlement Class
15 Released Claims"). The Settling Parties intend the Settlement Class' release to be
16 general and comprehensive in nature, to the maximum extent permitted by law.
17 The Settlement Class Released Claims further include specifically, by way of
18 further description, but not by way of limitation, any and all claims the Settlement
19 Class may have arising out of or in any way related to:

- 20 i. Any and all allegations set forth in the pleadings in this Action or the
21 Complaints, whether in original or subsequently amended pleadings
22 filed in this Action or the Complaints;
- 23 ii. Any and all alleged claims related to wages, hours, and/or working
24 conditions that arose from or are related to the causes of action that
25 were asserted or could have been asserted in the Action or the
26 Complaints;
- 27 iii. Any and all claims under the PAGA, California Labor Code section
28 2698 *et seq.*, predicated, in whole or in part, on some or all of the

1 allegations that were or could have been set out in this Action or the
2 Complaints and/or referenced in Paragraph 62 of the Settlement
3 Agreement;

4 iv. Any and all fines, penalties, wages, premium wages, interest,
5 restitution, liquidated damages, punitive damages, declaratory relief,
6 and/or injunctive relief allegedly due and owing by virtue of the
7 allegations that were or could have been set out in this Action or the
8 Complaints and/or referenced in Paragraph 62 of the Settlement
9 Agreement, whether based on statutory, regulatory, or common law;
10 and/or

11 v. Any and all claims for attorneys' fees, attorneys' costs/expenses,
12 and/or any and all claims based on calculations, distributions or
13 payments made in accordance with the Settlement Agreement.

14 Notwithstanding any other provision of the Settlement Agreement, including
15 without limitation those claims identified in Paragraph 62 of the Settlement
16 Agreement, "Settlement Class Released Claims" shall not include claims under the
17 federal Fair Labor Standards Act ("FLSA") arising from a Settlement Class
18 Member's employment with Envoy unless the Settlement Class Member has
19 affirmatively opted-in to the case by submitting a timely and valid Claim Form.

20 15. The Settlement Agreement shall be effective as a bar to any and all of
21 the claims released by Paragraph 62 of the Settlement Agreement (for the
22 Settlement Class) and Paragraph 63 (for the Named Plaintiffs). In furtherance of
23 this ruling, as to any and all claims released by Paragraph 62 (for the Settlement
24 Class) and Paragraph 63 (for the Named Plaintiffs), the Settlement Class (including,
25 without limitation, the Named Plaintiffs) expressly waives any and all rights or
26 benefits conferred on Settlement Class Members by the provisions of section 1542
27 of the California Civil Code, or any similar provisions under state, federal, or local
28 law. California Civil Code section 1542 provides as follows:

1 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT**
2 **THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR**
3 **SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF**
4 **EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR**
5 **HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER**
6 **SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

7 The Court understands that the Notice provided to Class Members included
8 the prior language of section 1542, which was amended effective January 1, 2019,
9 to read as indicated above. The Court finds that the minor changes to the language
10 of section 1542 are non-substantive, and thus the Notice was sufficient
11 notwithstanding the minor change in the language of section 1542.

12 As to any and all of the claims released by Paragraph 62 (for the Settlement
13 Class) and Paragraph 63 (for the Named Plaintiffs), all Settlement Class Members
14 (including, without limitation, the Named Plaintiffs) understand fully the statutory
15 language of California Civil Code section 1542, and, with this understanding,
16 assume all risks for claims released hereunder that have already arisen or may in the
17 future arise, whether known or unknown, suspected or unsuspected, and specifically
18 waive all rights they may have under California Civil Code section 1542, or any
19 similar provision under state, federal, or local law. The Settlement Class Members
20 (including, without limitation, the Named Plaintiffs) understand that, if any of the
21 facts relating in any manner to this Action, or to the release and dismissal of claims
22 as provided in the Settlement Agreement, are hereafter found to be other than or
23 different from the facts now believed to be true, they have expressly accepted and
24 assumed that risk and agree that this Agreement and the release of claims as set
25 forth in Paragraph 62 (for the Settlement Class) and Paragraph 63 (for the Named
26 Plaintiffs) contained in the Settlement Agreement shall nevertheless remain
27 effective. As to any and all of the claims released by Paragraph 62 (for the
28 Settlement Class) and Paragraph 62 (for the Named Plaintiffs), the Settlement Class

1 (including, without limitation, the Named Plaintiffs) desires and intends, or is
2 deemed to desire and intend, that the Settlement Agreement shall be given full force
3 and effect according to each and all of its express terms and provisions, including
4 those relating to unknown and unsuspected claims, if any, as well as those relating
5 to the claims referred to above.

6 16. Upon the Effective Date, all Actions are dismissed with prejudice,
7 with each Party to bear its own costs and attorneys' fees except as provided by the
8 terms of the Settlement Agreement.

9 17. Pursuant to the Settlement Agreement, the Gross Settlement Value
10 ("GSV") of the Settlement Agreement shall be three million five hundred fifty-five
11 thousand nine-hundred and forty-one U.S. dollars and two cents (\$3,555,941.02),
12 and deemed included in that amount will be a total of one million two hundred
13 fifty-five thousand nine hundred and forty-one U.S. dollars and two cents
14 (\$1,255,941.02) that Envoy already paid after the filing of the May 25, 2016
15 Complaint to certain Settlement Class Members to compensate employees for
16 allegedly owed wages pursuant the Los Angeles Living Wage Ordinance, L.A.,
17 Cal., Admin. Code, div. 10, ch. 1, art. 11 §§ 10.37 *et seq.* Accordingly, Envoy's
18 total financial commitment pursuant to the Settlement Agreement shall be the non-
19 reversionary Common Fund that will not exceed two million three hundred
20 thousand U.S. dollars and no cents (\$2,300,000.00), out of which Defendant will
21 pay any Court-approved attorneys' fees and costs, Enhancement Awards, payments
22 to the Labor Workforce Development Agency ("LWDA") under PAGA, the cost of
23 claims administration, Envoy's share of applicable taxes and withholdings, and the
24 payments to each of the Settlement Class Members who submit valid and timely
25 claim forms. Envoy further agrees to install, within 24 months from Final
26 Approval of this Settlement, Imprint Commercial Couture Strata or comparable
27 anti-fatigue floor mats at each podium used by Passenger Services Agents working
28 at the ticket counters or gates in connection with Envoy's operation in California.

1 18. Not later than fifteen (15) calendar days after the Effective Date,
2 Envoy shall transfer the Common Fund of \$2,300,000 to the Claims Administrator,
3 and the Claims Administrator shall deposit the same into a non-interest-bearing
4 distribution account, pursuant to the Settlement Agreement.

5 19. The Court has deemed that Class Counsel has adequately represented
6 the Named Plaintiffs and the Settlement Class and hereby **ORDERS** and
7 **AWARDS** Attorneys' Fees in the amount of **\$1,185,195** and Costs, in the amount
8 of **\$43,885.20**. The Claims Administrator is ordered to pay this Award to Harris &
9 Ruble, 655 N Central Ave 17th floor, Glendale, CA 91203, within ten (10) calendar
10 days of the Claims Administrator's receipt of the Common Fund.

11 20. Plaintiffs Schroeder, Guerra, Alvarez, Fragoso, and Ramirez are
12 hereby approved as representatives of the Settlement Class or "Named Plaintiffs."
13 The Enhancement Awards of \$5,000 each for Plaintiffs Schroeder and Guerra and
14 \$1,000 each for Plaintiffs Alvarez, Fragoso, and Ramirez to be paid from the
15 Common Fund are approved. The Claims Administrator is to pay from the
16 Common Fund said amounts to each of the Named Plaintiffs within ten (10) days of
17 Claims Administrator's receipt of the Common Fund. The Claims Administrator
18 shall send the Enhancement Awards to Class Counsel, Harris & Ruble, 655 N
19 Central Ave 17th floor, Glendale, CA 91203.

20 21. The Parties' allocation of \$37,500 from the Gross Settlement Value for
21 a release of Private Attorneys' General Act ("PAGA") claims, which is 75% of the
22 total amount of payout allocated to cover PAGA penalties, to be paid from the
23 Common Fund is approved. The Court hereby approves this Settlement of PAGA
24 claims pursuant to California Labor Code section 2699(1)(2). Accordingly, the
25 LWDA shall be bound by the release(s) of PAGA claims set forth in the Settlement
26 Agreement. In addition, all Settlement Class Members attempting to stand in the
27 shoes of the LWDA and/or the state of California and other purported "aggrieved
28 employees" under the PAGA, or to recover penalties from a PAGA action filed by

1 another purported “aggrieved employee,” shall be bound by the release(s) of PAGA
2 claims set forth in the Settlement Agreement and shall be barred from prosecuting
3 and/or participating in such PAGA action and/or PAGA recovery, unless they
4 timely and properly submitted a Request for Exclusion from the Settlement
5 Agreement. The Claims Administrator is hereby ordered to pay to the LWDA said
6 amount from the Common Fund within ten (10) calendar days of Claims
7 Administrator’s receipt of the Common Fund.

8 22. The Claims Administrator’s costs and expenses of \$24,500, to be paid
9 from the Common Fund, are approved.

10 23. After accounting for each of the amounts to be paid pursuant to
11 Paragraph 42 (a) through (d) of the Settlement Agreement, the Claims
12 Administrator is ordered to pay from the Common Fund the Net Settlement Value
13 to each of the Settlement Class members within ten (10) days of Claims
14 Administrator’s receipt of the Common Fund.

15 24. After the Claims Administrator mails out the Settlement Payments,
16 Settlement Class Members shall have one hundred and twenty (120) calendar days
17 to cash the check that was mailed to them. After one hundred and twenty (120)
18 calendar days from the date of mailing, the checks shall become null and void, and
19 any monies remaining in the distribution account shall be distributed to the
20 Controller of the State of California to be held pursuant to the Unclaimed Property
21 Law, California Civil Code section 1500 *et seq.*, for the benefit of those Settlement
22 Class Members who did not cash their checks until such time that they claim their
23 property.

24 25. In the event that the Effective Date of the Settlement does not occur,
25 this Judgment shall be rendered null and void and any class certified for settlement
26 purposes will be vacated and any other order entered by the Court in furtherance of
27 the Settlement Agreement shall be treated as void *ab initio*. In such an event, the
28 Parties shall return to the status quo as if the Parties had not entered into this

1 settlement, as provided in the Settlement Agreement, except Paragraphs 32, 69, and
2 72-74 of the Settlement Agreement shall survive and be binding on the Parties.

3 26. Judgment is entered pursuant to: (1) the terms of the Settlement
4 Agreement; (2) the November 30, 2018 Order Re: Plaintiffs' Motion for
5 Preliminary Approval of Class Action Settlement and Conditional Certification of
6 Settlement Class; and (3) this Order granting final approval of the Class Action
7 Settlement and Final Judgment.

8 27. Neither this Judgment or Final Approval Order, nor the Settlement
9 Agreement, or Preliminary Approval Order shall be construed as a determination,
10 admission, or concession by any Envoy Releasee of any substantive or procedural
11 issue in this Action, nor is this Judgment a finding of the validity of any of the
12 claims alleged in the Action or a finding of liability or wrongdoing by any Envoy
13 Releasee.

14 28. The Court finds there is no just reason for delay and **ORDERS** the
15 Clerk to enter judgment pursuant to Federal Rule of Civil Procedure 54
16 immediately.

17 29. Without affecting the finality of the Judgment in any way, the Court
18 shall retain exclusive and continuing jurisdiction over the above-captioned parties,
19 including all Settlement Class Members, for purposes of supervising, administering,
20 implementing, enforcing, and interpreting the Settlement Agreement, the Final
21 Approval Order, and this Judgment.

22
23
24 DATED: May 6, 2019



Michael W. Fitzgerald
United States District Judge