

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

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THOMAS COX et al, on behalf of themselves	:	
and all others similarly situated,	:	
	:	Case No. 1:17-cv-5172-EK-VMS
v.	:	
	:	
SPIRIT AIRLINES, INC.	:	
	:	
-----X		

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement (“Settlement Agreement”) is made this 23rd day of August 2023, by and between Shirin Begum, Jill Brua, Thomas Cox, Julie Feiner, Susan Hott, Susy Koshkakaran, Yulius Mustafa, Greta Schoeneman, and Michael Wyant (“Plaintiffs”) and Spirit Airlines, Inc. (“Defendant” or “Spirit”). Plaintiffs and Defendants are collectively referred to herein as the “Parties” and individually referred to as “Party.”

1. RECITALS

WHEREAS, on August 31, 2017, Plaintiff Thomas Cox commenced the above-captioned class action (ECF No. 1) (the “Action”). On September 15, 2017, Plaintiff Thomas Cox filed an Amended Class Action Complaint to which John Cox, Christie Neptune, and Cynthia Coe were added as plaintiffs (ECF No. 5), and on May 10, 2018, they filed a Second Amended Class Action Complaint (“SAC”), to which Michael Wyant, Greta Schoeneman, Albert Eyzagirre, Victoria Eyzagirre, Susan Hott, Jill Brua, Heather McGlashan, Dodzi Amemado, Silva Iahdjian, Shirin Begum, David Langton, Susy Koshkakaran, Terry Murray, Yulius Mustafa, Maryam Afkarian, Hayfaa Baround, Julie Feiner, and Diana Carrillo were added as plaintiffs (ECF No. 31). That complaint was refiled as ECF No. 60, pursuant to the Court’s August 1, 2018 Order (ECF No. 59). The SAC charged Defendant with breach of contract, unjust enrichment, and fraud due to

Defendant's practice of allegedly selling airfare tickets through on-line travel agents and, after the sale, charging to bring a carry-on bag on the plane.

WHEREAS, by Decision and Order dated November 20, 2018, Judge William F. Kuntz II, dismissed this action on the grounds that the Airline Deregulation Act ("ADA"), 49 U.S.C. § 41713(b)(1), preempted all of the claims asserted in the SAC (ECF No. 74).

WHEREAS, on appeal, the plaintiffs limited their claims to a breach of contract claim only, and on September 10, 2019, the Second Circuit Court of Appeals vacated the District Court's decision insofar as it held that plaintiffs' breach of contract claims were preempted by the ADA and remanded the case for further proceedings in accordance with the Second Circuit's decision. *Cox v. Spirit Airlines, Inc.*, 786 Fed. Appx. 283, 285 (2d Cir. 2019).

WHEREAS, on November 15, 2019, Spirit Answered the SAC (ECF No. 86).

WHEREAS, substantial discovery has been conducted in this litigation including the production by Defendant of approximately 7,500 pages of documents, and by Plaintiffs of approximately 21,000 pages of documents, depositions of five Spirit employees and former employees, eleven Plaintiffs, and three representatives of on-line travel agents ("OTAs").

WHEREAS, various discovery disputes among the Parties were resolved by Magistrate Judge Scanlon. *See* ECF Nos. 28, 29, 54, 80, 81, and 92.

WHEREAS, on October 12, 2020, the Parties stipulated to the dismissal as parties to this action of Plaintiffs Christine Neptune, Terry Murray, Hayfaa Baroud, Diana Carrillo, Albert and Victoria Eyzagirre, Silva Iahdijian, David Langton, Cynthia Coe, and Maryam Afkarian, without prejudice to their membership in any class that may be certified in this action so long as they are included in the definition of any class certified by this Court, with each party to bear its, his, or her own costs and expenses (ECF No. 106). In addition, by Memorandum and Order dated July 8,

2021, the Court dismissed Heather McGlashen as a party to this action without prejudice to her later participation as a member of the class, in the event one is certified and she qualifies (ECF No. 143).

WHEREAS, on April 26, 2021, pursuant to the Court's order of December 8, 2020, Plaintiffs filed their motion for class certification and Spirit simultaneously filed its motion for summary judgment (ECF Nos. 128-132.) Following further briefing on these respective motions (ECF Nos. 133-138) and oral argument on December 10, 2021 (ECF No. 147, 149) as well as supplemental letter submissions by the Parties (ECF Nos. 150-151), by Memorandum and Order dated March 29, 2022, the Court denied Spirit's motion for summary judgment and granted, with certain modifications, Plaintiffs' motion for class certification, certifying the following class (the "Class"):

first-time fliers of Spirit who purchased their Spirit flight through the six OTAs already at issue – Expedia, Travelocity, Kiwi, CheapOair, CheapTickets, and BookIt – during the period of August 31, 2011 through May 3, 2017, and whose claims are governed by U.S. law.

The Court also dismissed the claim of Plaintiff Amemado as time-barred. *See* ECF No. 152.

WHEREAS, on April 12, 2022, Defendant moved for reconsideration of the Court's class certification decision (ECF No. 153), filed a petition with the Second Circuit Court of Appeals to appeal the Court's class certification decision pursuant to Fed. R. Civ. Pro. 23(f), and filed a request before the Court for a Pre-Motion Conference to further challenge the Court's class certification decision on the grounds that, according to Spirit, certain Class Members had agreed to arbitrate their claims and that the Court lacked personal jurisdiction over Class Members who lacked a nexus to New York (ECF No. 154).

WHEREAS, following briefing (ECF Nos. 156-157), the Court held oral argument on Spirit's motion for reconsideration on May 19, 2022 (ECF No. 159), and directed the submission of supplemental letters (ECF Nos. 160-162).

WHEREAS, on August 11, 2022, the Second Circuit denied Spirit's 23(f) Petition.

WHEREAS, on January 20, 2023, the Court held the requested Pre-Motion Conference at which it set a briefing schedule for Spirit's requested arbitration/personal jurisdiction motion and also set a schedule for the submission of letters regarding the content of the Class notice, required the Parties to file a joint proposed pretrial order by August 21, 2023; and set jury selection and the trial of this Action to begin on January 16, 2024 at 9:30 a.m. (ECF Nos. 164-165).

WHEREAS, on February 14, 2023, the Court made certain modifications to its March 29, 2022, Memorandum and Order, including the exclusion of Spirit employees from the class, but otherwise denied Spirit's motion for reconsideration (ECF No. 166).

WHEREAS, on March 6, 2023, the Parties submitted their respective letters concerning the content of the Class notice (ECF Nos. 167-168) and on April 5, 2023, the Court issued a Memorandum and Order directing the Parties to submit a proposed stipulation and order regarding class notice and a class notice consistent with its Order, by April 24, 2023 (ECF No. 172).

WHEREAS, on April 3, 2023, the Parties' respective briefs concerning Spirit's arbitration/personal jurisdiction motion were filed with the Court (ECF Nos. 169-171).

WHEREAS, on April 10, 2023, the Parties advised the Court that they had agreed to non-binding mediation before an experienced class action mediator in an effort to resolve the claims of Plaintiffs and the Class in this Action and that the mediation was scheduled for May 11, 2023. The Parties therefore requested until May 25, 2023 to submit the proposed stipulation and class notice

requested by the Court, (ECF No. 173), which extension was granted by the Court on April 20, 2023.

WHEREAS, the Parties met and conferred regarding the content of class notice and filed their proposed stipulation concerning such class notices on May 25, 2023 (ECF No. 174). By Order dated June 5, 2023, the Court entered an Order approving the Class notices that were submitted and the schedule proposed by the Parties regarding Class notice (ECF No. 175).

WHEREAS, on July 5, 2023, the Parties participated in a mediation before David Geronemus of JAMS, and after approximately ten hours of arms-length negotiations, an agreement in principle was reached to settle this class action (subject to approval by Spirit's Board of Directors) on the terms set forth in this Settlement Agreement.

WHEREAS, Spirit's Board of Directors approved the agreement-in-principle reached as a result of the mediation. Accordingly, on July 24, 2023, the Parties advised the Court of the agreement in principle, and the Court subsequently set August 25, 2023 as the date by which a motion for preliminary approval of the proposed settlement should be filed.

WHEREAS, the Plaintiffs and Defendant recognize that the outcome of the trial of this matter is uncertain, and that a final resolution through the litigation process could require several more years of protracted adversarial litigation and appeals; substantial risk and expense; the distraction and diversion of the Defendant's personnel and resources of the Plaintiffs and Defendant, and their respective counsel, and have therefore agreed to resolve this class action according to the terms set forth in this Settlement Agreement.

NOW, THEREFORE, without: (1) any admission or concession on the part of the Plaintiffs of the lack of merit of the Action whatsoever, or (2) any admission or concession of liability or wrongdoing or the lack of merit of any defense whatsoever by Defendant, it is stipulated and

agreed by the undersigned on behalf of the Plaintiffs and the Class and the Defendant that this Action and all claims of the Class concerning the payment of carry-on bag fees to Spirit during the Class Period be settled, compromised, and dismissed on the merits and with prejudice as to Defendant, subject to Court approval as required by Federal Rule of Civil Procedure 23, on the terms and conditions set forth herein.

The foregoing recitals stated above are true and accurate and are made a part of this Settlement Agreement.

DEFINITIONS

For the purposes of this Settlement Agreement, including the recitals stated above, the following terms will have the following meanings:

- 1.1** “Action” means the above-captioned class action.
- 1.2** “Administrative Costs” means the amount of fees and costs incurred or to be incurred by the Settlement Administrator for processing requests for exclusion and Claim Forms, and calculating and disseminating the payments due to Authorized Claimants.
- 1.3** “Authorized Claimant” means a person identified in SPRIT-COX-0007509-10 who submits a timely and valid proof of claim to share in the Settlement described in accordance with the criteria set forth in Section C(6).
- 1.4** “CAFA Notice” means notice (in a form substantially similar to that attached as Exhibit A) of this settlement to the appropriate federal and state officials, as provided by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and as further described in Section D.
- 1.5** “Claim Form” means the Proof of Claim form (in the form substantially similar to the form attached as Exhibit B and approved by the Court) that will be disseminated to potential Class Members by mail or email, as further described in Section C.

- 1.6** “Class” means first-time fliers of Spirit who purchased their Spirit flight through one of the following six OTAs – Expedia, Travelocity, Kiwi, CheapOair, CheapTickets, and BookIt – during the period of August 31, 2011, through May 3, 2017, and whose claims are governed by U.S. law. A potential Class Member’s claim is governed by U.S. law if, at the time of booking, the individual resided in the United States or a U.S. Territory. The class excludes current or former employees of Spirit.
- 1.7** “Class Counsel” means Klafter Lesser LLP and the Hermina Law Group.
- 1.8** “Class List” means the respective list of potential Class Members produced by Spirit as SPIRIT-COX-0007509-10, as further described in Section C.
- 1.9** “Class Members” means the individuals who are within the definition of the Class.
- 1.10** “Class Notices” means the summary post-card mailing notice, summary email notice, and full notice (in the forms substantially similar to those attached as Exhibit C-1, C-2 and C-3, respectively, and approved by the Court) that will be disseminated to potential Class Members by mail or email, as further described in Section C.
- 1.11** “Class Notice Plan” means the plan for providing notice of this settlement to potential Class Members under Federal Rules of Civil Procedure 23(c)(2)(A) and (e)(1), as set forth in Section C.
- 1.12** “Class Period” means the period August 31, 2011, through and including May 3, 2017.
- 1.13** “Class Released Claims” means those claims that the Class Members will be releasing, as set forth in Section K(1).
- 1.14** “Class Representatives” means the Plaintiffs defined in paragraph 1.20.
- 1.15** “Class Website” means a webpage established by the Settlement Administrator that contains (i) information about the settlement, (ii) key litigation documents, and (iii) a portal

where Class Members can submit claims forms and make payment elections, as described in Section C(6) below.

- 1.16** “Court” means the United States District Court for the Eastern District of New York.
- 1.17** “Defendant” means Spirit Airlines, Inc.
- 1.18** “Effective Date” means the date on which all appellate rights with respect to the Final Order and Judgment have expired or have been exhausted in such a manner as to affirm the Final Order and Judgment, and when no further appeals are possible, including review by the United States Supreme Court.
- 1.19** “Final Judgment” or “Final Order and Judgment” means a final judgment and order of dismissal entered by the Court in this Action, in the form of Exhibit D, granting final approval of this Settlement Agreement (including Class Counsel’s request for attorneys’ fees, costs, and other expenses and the Class Representatives’ requests for Service Awards), and entering a judgment according to the terms set forth in this Settlement Agreement.
- 1.20** “Net Settlement Fund” means the Settlement Common Fund less the amounts the Court awards to Class Counsel for their attorneys’ fees and expenses, the amount of Service Awards to the Class Representatives, and the amount of Court approved Notice Costs and Settlement Administration Costs.
- 1.21** “Notice Costs” means the amount of fees and costs incurred or to be incurred by the Settlement Administrator in verifying addresses and email addresses, printing notices, the costs of any social media efforts, and disseminating notice to the Class.
- 1.22** “Plaintiffs” means Shirin Begum, Jill Brua, Thomas Cox, Julie Feiner, Susan Hott, Susy Koshkakaryan, Yulius Mustafa, Greta Schoeneman, and Michael Wyant.

- 1.23** “Parties” means the Plaintiffs and the Defendant.
- 1.24** “Plaintiff Released Claims” means the claims each Plaintiff will be releasing as set forth in Section K(3).
- 1.25** “Preliminary Approval” and “Preliminary Approval Order” mean the Court’s order in the form attached as Exhibit E, preliminarily approving the proposed settlement, approving the Class Notice Plan, and appointing a Settlement Administrator.
- 1.26** “Released Defendant Parties” means the Defendant and/or any of its parents, subsidiaries, corporate affiliates, representatives, employees, agents, officers, directors, insurers, or successors and assigns, including JetBlue Airways Corporation (“JetBlue”) and any company affiliated with JetBlue, if JetBlue acquires Defendant.
- 1.27** “Released Defendant Parties’ Released Claims” means the claims each Released Defendant Party will be releasing as set forth in Section K(2).
- 1.28** “Service Award” means the one-time payment to each Class Representative, for the time and resources he or she has put into prosecuting this Action and representing the Class as further set forth in Section I.
- 1.29** “Settlement Administrator” means the Angeion Group.
- 1.30** “Settlement Agreement” means this Settlement Agreement and Release, including its Exhibits.
- 1.31** “Settlement Common Fund” means the amount that Defendant will pay in full and final settlement of the claims of Plaintiffs and the Class, which amount shall not exceed \$8,250,000, inclusive of all potential costs and fees, including but not limited to Class Counsel’s attorneys’ fees, costs, and other expenses, the Class Representatives’ Service Awards, and Notice and Administration Costs.

A. The Settlement Consideration

1. Defendant shall pay, from the Settlement Common Fund, the Settlement Administrator's Notice Costs after entry of the Preliminary Approval Order and upon fourteen (14) days after receiving an invoice from the Settlement Administrator detailing such Notice.

2. Defendant shall pay, from the Settlement Common Fund, the amounts awarded by the Court for attorneys' fees, expenses, and Service Awards within ten (10) days after the Effective Date.

3. Defendant shall pay the remainder of the Settlement Common Fund due Authorized Claimants as provided in Section J(1).

B. Preliminary Approval of the Settlement

1. As soon as reasonably practicable following the execution of this Settlement Agreement by the Parties, the Plaintiffs shall send to Defendant a proposed Motion for Preliminary Approval of the Proposed Class Action Settlement, the Class Notice Plan, and Appointment of Settlement Administrator. After the Parties reach agreement on the contents of these documents, Plaintiffs shall file with the Court the Motion for Preliminary Approval of the Proposed Class Action Settlement, the Class Notice Plan, and Appointment of Settlement Administrator, which motion Defendant shall not oppose. The Motion shall seek entry of an Order that would:

a. preliminarily approve the settlement described in this Settlement Agreement;

b. approve the proposed the Class Notice Plan, including the forms of mailed, emailed Class Notices and full Class Notice to be posted on a Class Website to be maintained by

the Settlement Administrator, and Claim Form, substantially similarly to those attached in Exhibits C-1, C-2, C-3 and B, respectively.

c. appoint the Settlement Administrator who will facilitate the notice and claims process and provide professional guidance to Class Counsel in the implementation of the Class Notice Plan.

C. The Class Notice Plan

1. Immediately following entry of the Preliminary Approval Order, the Settlement Administrator will run the Class List through appropriate physical mail and email address updating services (including the National Change Of Address (“NCOA”) database).

2. To the extent a personal email address is indicated on SPIRIT-COX-0007509 or 7510 for a potential Class Member, the Class Notice, substantially in the form of Exhibit C-2, which contains a link to an electronic Claim Form, shall be provided by email to such potential Class Member, provided, however, if the email notice proves to be invalid (such as due to a bounce back notification stating the email address is invalid) and a mailing address is indicated on SPIRIT-COX-0007509 or 7510, the following mailing procedures shall be followed to provide notice to such person.

3. To the extent a personal email address is not indicated on SPIRIT-COX-0007509 or 7510 for a potential Class Member, but a mailing address is indicated on SPIRIT-COX-0007509 or 7510, the Class Notice, substantially in the form of Exhibit C-1, shall be provided by first-class mail in the postcard format with a tear off Claim Form, as set forth in Exhibits B.

4. To the extent neither a valid email address nor mailing address is indicated on SPIRIT-COX-0007509 or 7510 for a potential Class Member, the Settlement Administrator will employ, subject to the Parties’ agreement, an appropriate social media campaign designed based

on guidance of the Settlement Administrator and agreement by the Parties designed to reach potential Class Members.

5. Class notice according to the foregoing will be facilitated by the Settlement Administrator thirty (30) days after a Preliminary Approval Order is entered.

6. The Settlement Administrator will also establish a Class Website that will permit the submission of claims as well as, if the claimant elects to do so, permit the claimant to provide securely the information necessary for electronic payment of their share of the Settlement by Zelle, Venmo or EFT, if determined by the Settlement Administrator to be an Authorized Claimant. The Settlement Administrator will only determine a claimant to be an Authorized Claimant if the claimant attests that he or she first flew Spirit during the Class Period and their Spirit flight is within the applicable Statute of Limitation for the State or U.S. Territory they resided in when they purchased their Spirit flight, as indicated on Exhibit F.

7. Half-way through the period for submitting Claim Forms, the Settlement Administrator will send reminder notices to potential Class Members using the same method as initial notice was provided to them.

8. The costs associated with the Class Notice Plan shall be paid by Spirit following entry of the Preliminary Approval Order within fourteen (14) days of when billed by the Settlement Administrator as part of the Settlement Common Fund.

D. CAFA Notice

Defendant shall serve notice of the settlement that meets the requirements of the Class Action Fairness Act, on the appropriate federal and state officials (including in the State of New York) not later than ten (10) days after the filing of this Settlement Agreement with the Court.

E. Claims

1. The Notices to potential Class Members will attach a Claim Form and include or provide a link to a Claim Form that potential Class Members will have to complete and sign under penalty of perjury and provide to the Settlement Administrator within thirty (30) days after the Final Judgment is entered by the Court (the “Claim Date”).

2. The Claim Form will require potential Class Members to attest under penalty of perjury: (a) that they first flew Spirit during the Class Period and (b) the State or U.S. Territory in which they were at the time they purchased their first Spirit flight through the applicable OTA.

3. There shall be a thirty (30) day period following the Claim Date during which Claimants will have to the opportunity to cure any Claim Forms determined to be deficient by the Settlement Administrator.

4. The review and processing of Claim Forms shall be handled exclusively by the Settlement Administrator according to the criteria and guidelines agreed to by the Parties.

F. Requests for Exclusion

1. All Class Members shall be given the opportunity to opt out of the Class by submitting an “Opt-Out Notice” or a letter containing the information specified in the Class Notice, stating that the Class Member wants to be excluded from the Class. All Opt-Out Notices must be in writing, sent to the Settlement Administrator and postmarked no later than thirty (30) days before the Final Approval Hearing. To be valid, a request for exclusion must be personally signed and must include: (1) name, address, and telephone number, and, if the person lived elsewhere when they booked their first flight with Spirit, the State or U.S. Territory in which they then resided; (2) a statement that they first flew Spirit during the Class Period; and (3) a statement substantially to the effect “I request to be excluded from the Class in *Cox et al. v. Spirit Airlines*,

Inc., Case No. 1:17-cv-5172-EK-VMS, pending in the United States District Court for the Eastern District of New York.” In the event of ambiguity as to whether a Class Member has requested to be excluded, Class Counsel shall contact the Class Member who submitted it to resolve the ambiguity, and, if necessary, present the ambiguity to the Court for resolution.

2. Notwithstanding the foregoing, no Class Member, or any person acting on behalf of or in concert or participation with that person, may submit a request for exclusion for any other Class Member. Requests for Exclusion submitted for more than one Class Member will be invalid as to any other person other than the person who signed the request for exclusion.

3. The Settlement Administrator shall provide copies of the Requests for Exclusion to Class Counsel and counsel for Defendant by email no later than forty-eight (48) hours after their receipt by the Settlement Administrator. No later than ten (10) business days before the Final Approval Hearing, the Settlement Administrator shall provide Class Counsel with a declaration to be filed with the Court verifying that notice has been provided to the Class as provided by the Preliminary Approval Order and that all valid Requests for Exclusion have been provided to Class Counsel. No later than ten (10) business days before the Final Approval Hearing and in connection with a motion for final approval, Class Counsel shall file all the Requests for Exclusion for all Class Members who wish to be excluded from the Settlement with the Court.

4. All such excluded Class Members will not be subject to any orders entered by the Court and preserve their ability to independently pursue, at their own expense, any individual, non-class, non-representative claims he or she claims to have against Defendant.

5. No person who has provided a proper request for exclusion may object to any part of this Settlement Agreement.

G. Objections from Class Members

1. Any Class Member who has not opted-out in accordance with the terms above and who intends to object to this Settlement Agreement must file their objection in writing with the Court no later than thirty (30) days before the Final Approval Hearing, and must concurrently serve their objection on all counsel in this action. The objection must include the following: (1) the Class Member's full name, address and current telephone number and, if the person lived elsewhere when they booked their first flight with Spirit, the State or U.S. Territory in which they then resided; (2) a statement that: they first flew Spirit during the Class Period; (3) if the individual is represented by counsel, the name and telephone number of their counsel; (4) all objections and the basis for any such objections stated with specificity; (5) the identity of any witnesses the objector may call to testify; (6) a listing of all exhibits the objector intends to introduce into evidence at the Final Approval Hearing as well as true and correct copies of such exhibits; and (7) a statement of whether the objector intends to appear at the Final Approval Hearing, either with or without counsel.

2. Any Class Member who fails to timely file and serve a written objection pursuant to the foregoing paragraph shall not be permitted to object to the approval of the Settlement or this Settlement Agreement and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by appeal or other means, unless otherwise ordered by the Court.

H. Final Approval of the Settlement

1. The Final Approval Hearing shall be scheduled not less than 90 days following entry of the Preliminary Approval Order.

2. No later than ten (10) days before the Final Approval Hearing, the Settlement Administrator will provide proof of the dissemination of the Class Notices and Claim Forms to

Class Counsel for filing with the Court as part of a motion for final approval. Neither the Parties nor the Settlement Administrator will have any further obligation after the Settlement Administrator provides such proof to send notice of the Settlement to potential Class Members.

3. No later than ten (10) days before the Final Approval Hearing, Defendant shall file with the Court proof that it timely complied with the requirements of 28 U.S.C. § 1715.

4. No later than ten (10) days prior to the Final Approval Hearing, Plaintiff shall file a motion, to which Defendant will consent, for entry by the Court of the Final Order and Judgment which, if entered by the Court, will:

a. grant final approval of the Settlement described in this Settlement Agreement, and direct its implementation pursuant to its terms and conditions;

b. rule on Class Counsel's application for attorneys' fees, costs, and other expenses;

c. rule on the Plaintiffs' application for Service Awards;

d. rule on approving payment to the Settlement Administrator of the amounts necessary to effectuate the settlement administration and payment processes;

e. discharge and release the Defendant Released Parties, and each of them, from the Class Released Claims, as provided in Section K(1);

f. discharge and release the Plaintiff Released Parties, and each of them, from the Defendant Released Claims, as provided in Section K(3);

g. permanently bar and enjoin all Class Members, other than Class Members who submit a timely and valid request from exclusion, from instituting, maintaining, or prosecuting, either directly or indirectly, any lawsuit that asserts any Class Released Claims;

h. direct that the Action be dismissed with prejudice and without costs, except as provided herein;

i. state pursuant to Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing that the Final Order and Judgment is a final, appealable order; and

j. reserve to the Court continuing and exclusive jurisdiction over the Parties with respect to the Settlement Agreement and the Final Judgment and Order.

I. The Application for Attorneys' Fees and Expenses and Service Awards

1. No later than ten (10) business days before the Final Approval Hearing, and as part of a motion for final approval, Class Counsel shall make an application to the Court for: (a) an award of attorneys' fees not to exceed \$2.75 million in total; (b) for an award of costs and expenses (including Administrative Costs) incurred and expected to be incurred in litigating the case and effectuating the settlement; and (c) Service Awards to each Class Representative not to exceed \$7,500 each.

2. Defendant agrees not to object to the application by Class Counsel for attorneys' fees in an amount not to exceed \$2.75 million and reasonable costs and expenses, and Service Awards to each Class Representative not to exceed \$7,500 each.

3. To the extent the Court approves an award of attorneys' fees or costs and expenses or Service Awards in amounts less than the requested amounts, then the amount not approved shall become part of the amount of the Net Settlement Fund from which Authorized Claimants shall be paid.

4. The application for attorneys' fees, costs, and expenses, and Service Awards, and any and all matters related thereto, shall not be considered part of the Settlement Agreement, and shall be considered by the Court separately from the Court's consideration of the fairness,

reasonableness, and adequacy of the Settlement Agreement. This Settlement Agreement is not conditioned on the Court's approval of attorneys' fees, costs, and expenses or the Service Awards in the requested amounts or in any amount whatsoever. If a lesser amount is awarded than requested, the Court's ruling shall not operate to terminate or cancel the Settlement Agreement.

J. Payments Following the Effective Date

1. Payments to Authorized Claimants

a. Within ten (10) days after the Effective Date, the Settlement Administrator will provide the Parties with a list of Claimants it determines to be Authorized Claimants.

b. Within seven (7) days thereafter, Defendant will provide to Class Counsel and the Settlement Administrator the amount of carry-on fee paid by each Authorized Claimant.

c. Within seven (7) days thereafter, the Settlement Administrator will provide the Parties with the aggregate amount due all Authorized Claimants pursuant to subparagraph (d) below. Within five (5) days thereafter, Spirit shall wire the aggregate amount due Authorized Claimants to the Settlement Administrator pursuant to wire instructions it will provide.

d. Amounts to be received by Authorized Claimants will be determined on a pro-rata basis based on the amount of carry-on fee they each paid, provided that the gross benefit for any Authorized Claimant (prior to the pro rata deductions for attorneys' fees, expenses, Service Awards, and Notice Costs and Administrative Costs, as approved by the Court) shall not exceed 75% of the actual amount of the carry-on bag fee they paid. Claims will be paid only to Class Members identified on the class lists provided by Spirit to Plaintiffs' counsel who satisfy the criteria set forth in Section C(6).

e. Within thirty (30) days after Defendant wires the aggregate funds to the Settlement Administrator for payment to Authorized Claimants, the Settlement Administrator shall

(a) send by an electronic payment service payments out of the Settlement Fund to those Authorized Claimants who, pursuant to the Settlement website or otherwise by contacting the Settlement Administrator provide details of their electronic payment preference or, (b) in the event any Authorized Claimant did not provide an electronic payment preference, send via U.S. mail to the address reflected in the Claim Form. As to checks, the payment notice accompanying the check shall notify the recipients that the checks must be cashed within sixty (60) days from the date on the payment notice and that the enclosed check shall not be valid after that date. As to the value of (a) any checks not cashed within 60 days of delivery (or any checks that were undeliverable), and if no further update of addresses can be addressed by a Level 1 trace by the Claims Administrator, and (b) any rejected electronic payment service payments that cannot be rectified by the Settlement Administrator by resubmitting the payment, shall revert to Defendant

f. The Settlement Administrator shall provide an accounting of the Settlement Fund one hundred and fifty (150) days after the Effective Date, which will include an accounting of all administrative expenses and costs (including notice costs).

2. Payments of Court Awarded Attorneys' Fees, Expenses, and Service Awards

Within ten (10) days after the Effective Date, Defendant shall wire the amounts awarded by the Court for attorneys' fees, expenses, and Service Awards to Class Counsel Klawter Lesser LLP pursuant to wiring instructions to be provided.

K. Releases Following the Effective Date

1. The Class Released Claims

Upon the Effective Date, each Plaintiff and each Class Member who has not submitted a valid and timely request for exclusion and his or her respective spouses, heirs, executors, administrators, representatives, agents, attorneys, partners, assigns, and all those acting or

purporting to act on their behalf acknowledge full satisfaction of, and shall be conclusively deemed to have fully, finally, and forever settled, released, and discharged all claims asserted in the Action or that could have been asserted in the Action against any of the Released Defendant Parties that are related to payment of carry-on bag fees to Spirit during the Class Period.

2. The Released Defendant Parties' Released Claims

Upon the Effective Date, each Released Defendant Party shall be conclusively deemed to have fully, finally, and forever settled, released, and discharged each Plaintiff and each Class Member who has not submitted a valid and timely request for exclusion and his or her respective spouses, heirs, executors, administrators, representatives, agents, attorneys, partners, assigns, and all those acting or purporting to act on their behalf, from all claims that are related to payment of carry-on fees to Spirit through the entry of Final Judgment or which relate to the prosecution or settlement on this Action.

3. Plaintiff Released Claims

Upon the Effective Date, in consideration of receiving a Service Award, each Plaintiff and his or her respective spouses, heirs, executors, administrators, representatives, agents, attorneys, partners, assigns, and all those acting or purporting to act on their behalf acknowledge full satisfaction of, and shall be conclusively deemed to have fully, finally, and forever settled, released, and discharged all claims, whether known or unknown against any of the Released Defendant Parties through the entry of the Final Judgment.

L. Termination

1. Defendant's willingness to settle this Action on a class-action basis is dependent upon achieving finality in this Action and the desire to avoid the expense of this and other related litigation. Consequently, Defendant has the right, but not the obligation, to terminate this

Settlement Agreement, declare it null and void, and have no further obligations under this Settlement Agreement to the Plaintiffs or to members of the Class, but only if any of the following conditions subsequent occurs:

- a. the Parties fail to obtain preliminary approval of the proposed settlement of the Action;
- b. the Court fails to enter a Final Order and Judgment consistent with Exhibit D;
- c. the settlement of the Class Claims set forth in the Settlement Agreement is not upheld on appeal, including review by the United States Court of Appeals for the Second Circuit or the United States Supreme Court; or
- d. the Effective Date does not occur for any other reason, including but not limited to the entry of an order by any court that would require either material modification or termination of the Settlement Agreement.

2. Plaintiffs' willingness to settle this Action is dependent upon Defendant's payment of the Settlement Common Fund in accordance with the timetable set forth in Section A. Consequently, Plaintiffs have the right, but not the obligation, to terminate this Settlement Agreement, declare it null and void, and have no further obligations under this Settlement Agreement if Defendant does not make the payments as set forth in Section A.

3. The failure of the Court or any appellate court to approve in full the request by Class Counsel for attorneys' fees, expenses and Service Awards shall not be grounds for the Plaintiffs, the Class, or Class Counsel to cancel or terminate this Settlement Agreement.

4. If the Settlement Agreement is not finally approved, is not upheld on appeal, or is otherwise terminated for any reason before the Effective Date, then the Settlement Agreement and all negotiations, proceedings, and documents prepared, and statements made in connection

therewith, shall be without prejudice to any Party and shall not be deemed or construed to be an admission or confession by any Party of any fact, matter, or proposition of law; and all Parties shall stand in the same procedural position in the Action as if the Settlement Agreement had not been negotiated, made, or filed with the Court, except for Spirit's payment of the Notice Costs.

M. Miscellaneous Provisions

1. Best Efforts to Obtain Court Approval

Plaintiffs and Defendant, and the Parties' respective counsel, agree to use their best efforts to obtain Court approval of this Settlement Agreement.

2. No Admission

This Settlement Agreement, whether or not it shall become final, and any and all negotiations, communications, and discussions associated with it, shall not be:

a. offered or received by or against any Party as evidence of, or be construed as or deemed to be evidence of, any presumption, concession, or admission by a Party of the truth of any fact alleged by Plaintiffs or defense asserted by Defendant, of the validity of any claim that has been or could have been asserted in the Action, or the deficiency of any defense that has been or could have been asserted in the Action, or of any liability, negligence, fault, or wrongdoing on the part of any Plaintiff or Defendant; or

b. construed as an admission or concession by the Plaintiffs, the Class, or Defendant that the consideration to be given hereunder represents the relief that could or would have been obtained through trial in the Action.

3. Governing Law

This Settlement Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to the principles of conflicts of law.

4. Dispute Resolution

The Parties agree to meet and confer in good faith to resolve any disagreements over the implementation of the terms of this Settlement Agreement or any other documents necessary to effectuate the Settlement. If the meet and confer is not successful, the Parties agree to then bring their dispute before David Geronemus to determine if they can reach a mediated resolution before taking any other actions.

5. Notices

Any notices issued pursuant to the terms of this Settlement Agreement, other than notice to the Class, shall be sent to the Parties at the addresses of their respective counsel as follows:

For Plaintiffs and the Class to:

Jeffrey A. Klafter
KLAFTER LESSER LLP
2 International Drive, Suite 350
Rye Brook, NY 10573
(914) 934-9200
jak@klafterlesser.com

For Defendant to:

Mark W. Robertson
O'MELVENY & MYERS LLP
Times Square Tower
7 Times Square
New York, NY 10036
(212) 326-2000
mrobertson@omm.com

John Hermina
HERMINA LAW GROUP
Laurel Lakes Executive Park
8327 Cherry Lane
Laurel, Maryland 20707
(301) 776-2003
j@herminalaw.com

6. Parties' Costs

Except as otherwise provided for herein, the Named Plaintiffs and the Defendant shall be solely responsible for her or its own costs and expenses.

7. Taxes

Plaintiffs and Class Counsel shall be responsible for paying any and all federal, state, and local taxes due on any payments made to them pursuant to the Settlement Agreement.

8. Complete Agreement

Other than as stated herein, the Parties warrant that no representation, promise, or inducement has been offered or made to induce any Party to enter into this Settlement Agreement. This Agreement contains and constitutes the entire understanding and agreement between the Parties and supersedes all previous oral and written negotiations, agreements, commitments, and writings in connection therewith. This Settlement Agreement may not be amended or modified except by a writing signed by authorized representatives of all Parties.

9. Headings for Convenience Only

The headings in this Settlement Agreement are for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement.

10. Severability

In the event that any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, this Settlement Agreement shall continue in full force and effect without said provision to the extent Defendant does not exercise its right to terminate under Section L.

11. No Party Is the Drafter

None of the Parties to this Settlement Agreement shall be considered to be the primary drafter of this Settlement Agreement or any provision hereof for the purpose of any rule of interpretation or construction that might cause any provision to be construed against the drafter.

12. Binding Effect

This Settlement Agreement shall be binding according to its terms upon, and inure to the benefit of, the Plaintiffs, the Class, the Defendant, the Released Parties, and their respective successors and assigns.

13. Authorization to Enter Settlement Agreement

The individual signing this Settlement Agreement on behalf of the Defendant represents that he is fully authorized by the Defendant to enter into, and to execute, this Settlement Agreement on its behalf. Class Counsel represent that they are fully authorized to conduct settlement negotiations with counsel for Defendant on behalf of the Class, and to enter into, and to execute, this Settlement Agreement on behalf of the Plaintiffs and the Class. The Plaintiffs enter into and execute this Settlement Agreement on behalf of his or herself, and as a representative of and on behalf of the Class.

14. Execution in Counterparts

Plaintiffs, Class Counsel, Defendant, and Defendant's counsel may execute this Settlement Agreement in counterparts, and the execution of counterparts shall have the same effect as if all Parties had signed the same instrument. Facsimile and scanned signatures shall be considered as valid signatures as of the date signed, although the original signature pages shall thereafter be appended to the Settlement Agreement. This Settlement Agreement shall not be deemed executed until signed by all Plaintiffs, all Class Counsel, and by counsel for and representative of Defendant.

[SIGNATURES ON FOLLOWING PAGES]

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THE UPS STORE:5255

PAGE 02/02

Plaintiffs:

Shirin Begum

Jill Brua



Thomas Cox

Julie Feiner

Susan Hott

Susy Koshkakyaryan

Yulius Mustafa

Greta Schoeneman

Michael Wyant

Plaintiffs:

Shirin Begum

Jill Brua

Thomas Cox

Julie Feiner



Susan Hott

Susy Koshkakaryan

Yulius Mustafa

Greta Schoeneman

Michael Wyant

Plaintiffs:

Shirin Begum

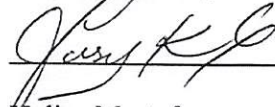
Jill Brua

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Susan Hott

Susy Koshakaryan



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Plaintiffs:

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Plaintiffs:

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Jill Brua

Thomas Cox

Julie Feiner

Susan Hott

Susy Koshkakaryan

Yulius Mustafa

Greta Schoeneman

Michael Wyant

Mike Wyant

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Defendant:


Name: Thomas Canfield

General Counsel
Title/Position

Counsel for Defendant



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