

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

KATHERINE M. CLEARY et al.,

Plaintiffs,

v.

AMERICAN AIRLINES, INC.,

Defendant.

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Civil Action No. 4:21-cv-00184-O

**ORDER GRANTING PRELIMINARY APPROVAL OF CLASS SETTLEMENT AND
DIRECTING DISSEMINATION OF CLASS NOTICE**

Before the Court is the Motion for Preliminary Approval of Class Settlement and Direction of Notice Pursuant to Fed. R. Civ. P. 23(e) (“Motion”) (ECF No. 250), filed by Plaintiffs and Certified Class Representatives William Cleary and Filippo Ferrigni (“Plaintiffs”). Plaintiffs and Defendant American Airlines, Inc. (“American”), collectively the “Parties,” have entered into a Class Settlement Agreement and Release (“Settlement Agreement”), dated October 14, 2022, and attached to this Order. Having thoroughly reviewed the Settlement Agreement, including the proposed forms of class notice and other exhibits thereto, the Motion, and the papers and arguments in connection therewith, and good cause appearing, the Court hereby **ORDERS** as follows:

1. Capitalized terms not otherwise defined herein have the meanings set forth in the Settlement Agreement.
2. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332(d), and has personal jurisdiction over the Parties and the Settlement Class Members. Venue is proper in this District.

3. The Motion is **GRANTED**.

4. All other pending motions relating to pre-trial relief in this case (ECF Nos. 175, 178, 181, 192, 200, 203, 206, 209, 212, 229, 238, 241, and 244) are hereby found to be **MOOT**. The Clerk is directed to close all such motions.

5. The Court hereby preliminarily approves the Settlement Agreement and the terms embodied therein pursuant to Fed. R. Civ. P. 23(e)(1). The Court finds that it will likely approve the Settlement Agreement under Fed. R. Civ. P. 23(e)(2) and certify the Settlement Classes for purposes of judgment on the proposed Settlement. The Court preliminarily finds that the Settlement Agreement is fair, reasonable, and adequate as to the Settlement Class Members under the relevant considerations.

- a. The Court finds that Plaintiffs and Class Counsel have adequately represented, and will continue to adequately represent, the Settlement Classes.
- b. The Court further finds that the Settlement Agreement is the product of arms' length negotiations by the Parties with the assistance of an experienced mediator, Clay Cogman of Phillips ADS, and comes after significant litigation, including the certification of two litigation classes, completed discovery, rulings on summary judgment, and pre-trial motions and submissions.
- c. The proposed Settlement provides that American will refund 100% of all At-Issue Baggage Fees to Settlement Class Members who submit timely, valid claims. AA will pay no less than \$7.5 million in refunds to the Settlement Classes. If, six months after disbursement of all Refunds, any funds remain in the Settlement Account—*e.g.*, if some Class Members did not deposit or cash their checks—then: if American paid more than \$7.5 million into the Settlement Account, the remaining

funds in the Settlement Account, up to the amount American paid on top of \$7.5 million, will be returned to American; otherwise, the remaining funds in the Settlement Account will be distributed to Valid Claimants for whom Refund payments were effectuated if there are sufficient remaining funds to warrant such a distribution, or if not will be distributed *cy pres* to recipients agreed on by the Parties.

- d. The Court preliminarily finds that this Settlement relief is fair, reasonable and adequate taking into account, *inter alia*, the costs, risks, and delay of trial and appeal for all Parties, the legal issues presented in this Action, the interests of the proposed Settlement Classes, and the proposed method of distributing payments to the Settlement Classes (*i.e.*, direct payments by checks or electronic means).
- e. The Court preliminarily finds that the Settlement Agreement treats the Settlement Class Members equitably relative to each other, and that the proposed allocation of settlement funds to Settlement Class Members is reasonable and equitable. Under the terms of the Settlement Agreement, all Settlement Class Members are eligible to submit claims for 100% Refunds of their individual At-Issue Baggage Fees via a simple claim form.
- f. The Court will fully assess any request for attorneys' fees and litigation expenses after receiving a motion from Class Counsel supporting such request, which will be paid by American in addition to and separate from Refunds paid to claiming Settlement Class Members. At this stage, the Court finds that the plan to request fees and litigation expenses to be paid separate and apart from the Refunds paid to Settlement Class Members is reasonable and should not delay providing notice to

the Settlement Classes as approved herein.

6. The Court approves the “Settlement Classes,” which comprise the two classes certified by this Court’s September 2, 2021 Order (ECF No. 66), as modified by this Court’s July 22, 2022 Order resolving American’s summary judgment motion (ECF No. 190). The Credit Card Settlement Class shall consist of:

- a. American-branded Citibank or Barclay’s partner credit card holders entitling them to free checked baggage who were required to pay to check one or more such bags on domestic itineraries on or after February 24, 2017 for tickets purchased on or before April 8, 2020 (for the removal of doubt, this includes passengers on layovers on international itineraries who were charged a second time to check bags for domestic portions of those itineraries); and (b) either were sent Mail Notice or Email Notice of the Settlement or otherwise submit a Valid Claim related to At-Issue Baggage Fees covered by subpart (a) of this definition.

The Email Confirmation Settlement Class shall consist of:

- a. American ticket holders who both: (a) received email confirmation that in its body (and not merely in documents incorporated by reference) promised them one or more checked bags at no charge or for “USD \$0.00” and were thereafter required to pay to check one or more such bags on or after February 24, 2017 for tickets purchased on or before April 8, 2020; and (b) either were sent Mail Notice or Email Notice of the Settlement or otherwise submit a Valid Claim related to At-Issue Baggage Fees covered by subpart (a) of this definition.

7. The Court finds that the Settlement Classes satisfy the requirements of Fed. R. Civ. P. 23(a) and 23(b)(3) for the reasons stated in this Court’s order certifying substantially similar

litigation classes. ECF No. 66.

8. The Court previously recognized Plaintiffs as class representatives for the certified classes. ECF No. 66. Plaintiff William Cleary is the class representative representing the Email Confirmation Settlement Class, and Plaintiff Filippo Ferrigni is the class representative representing the Credit Card Settlement Class.

9. The Court previously appointed Class Counsel to represent the Classes as follows: Oren S. Giskan of Giskan Solotaroff & Anderson LLP, Joseph S. Tusa of Tusa P.C., and Roger N. Heller of Lieff Cabraser Heimann & Bernstein, LLP. ECF No. 151.

10. The Court hereby appoints A.B. Data Ltd. as Settlement Administrator and directs A.B. Data Ltd. to carry out all duties and responsibilities of the Settlement Administrator as specified in the Settlement Agreement and herein.

11. Following entry of this Preliminary Approval Order, American shall pay reasonable Notice and Administration Costs as set forth in and arising as a result of the Settlement Agreement by making such payments directly to the Settlement Administrator as those costs are incurred and payment becomes due. American will bear all Notice and Settlement Administration Costs, in addition to (*i.e.*, on top of) American's payment of the Settlement Account amount. To the extent the Settlement Administrator pays any Notice or Settlement Administration Costs reasonably necessary to effectuate the Settlement Notice Plan, American shall reimburse the Settlement Administrator for such costs. The Settlement Administrator shall maintain detailed records of the costs spent on the administration of the Settlement and shall provide those and other administration fees to American's counsel upon request.

Notice Program

12. Pursuant to Fed. R. Civ. P. 23(e)(1) and 23(c)(2)(B), the Court approves the

proposed Notice program set forth at Section VIII of the Settlement Agreement, including the form and content of the proposed forms of notice to the Settlement Classes attached as Exhibits B-F to the Settlement Agreement. The Notice Program includes: (i) Email Notice supplemented by reminder notices; (ii) Mail Notice supplemented by reminder notice; (iii) a case-specific Settlement Website that includes a downloadable Long Form Notice; (iv) Press Release; and (v) CAFA Notice.

13. The Court finds that the proposed Notice program meets the requirements of Due Process under the United States Constitution and Rule 23; and that such Notice program is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto. The Court further finds that the proposed form and content of the forms of the Notice are adequate and will give the Settlement Class Members sufficient information to enable them to make informed decisions as to the Settlement Classes, the right to object or opt out, and the proposed Settlement and its terms. The Court finds that the Notice clearly and concisely states in plain, easily understood language, *inter alia*: (i) the nature of the Action; (ii) the definitions of the Settlement Classes; (iii) the class claims and issues; (iv) that a Settlement Class Member may enter an appearance through an attorney if the member so desires; (v) that the Court will exclude from the Settlement Classes any member who timely and validly requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on Settlement Class Members under Rule 23(c)(3).

14. The Court directs the Settlement Administrator and the Parties to implement the Notice program as set forth in the Settlement Agreement.

15. Settlement Class Notice List: By no later than fourteen (14) days following entry of this Preliminary Approval Order, American shall provide the Settlement Class Notice List and

accompanying information set forth in the Settlement Agreement to the Settlement Administrator.

16. Email Notice: By no later than thirty-five (35) Days after the Preliminary Approval Date, the Settlement Administrator will send the Email Notice (substantially in the form attached to the Settlement as Exhibit B) by email to all persons on the Settlement Class Notice List for whom an email address was provided by American or located by the Settlement Administrator.

17. Mail Notice: By no later than fifty (50) Days after the Preliminary Approval Date, the Settlement Administrator will mail the Mail Notice (substantially in the form attached to the Settlement as Exhibit D), including a removable Claim Form with prepaid postage (substantially in the form attached to the Settlement as Exhibit A), to all persons on the Settlement Class Notice List who have yet to submit a Claim Form and for whom a mailing address was provided by American or located by the Settlement Administrator.

18. For any Mail Notices returned as undeliverable, the Settlement Administrator shall update addresses based on any forwarding information received from the United States Postal Service or otherwise located by the Settlement Administrator. The Settlement Administrator shall promptly re-mail any Mail Notices that are returned as non-deliverable with a forwarding address to such forwarding address. For Mail Notices that are returned undeliverable without a forwarding address, the Settlement Administrator shall perform skip tracing and shall re-mail Mail Notices to any new addresses identified through such skip-tracing.

19. Reminder Email Notices: No later than sixty (60) Days after the Preliminary Approval Date, the Settlement Administrator will email the Reminder Email Notice (substantially in the form attached to the Settlement as Exhibit E) to all individuals who were sent the Email Notice and who have yet to submit a Claim Form as of that time. No later than one hundred (100) Days after the Preliminary Approval Date the Settlement Administrator will email a second

Reminder Email Notice to all individuals who were sent the Email Notice and who have yet to submit a Claim Form as of that time. The Parties, with input from the Settlement Administrator, will negotiate in good faith to determine whether a third Reminder Email Notice (to individuals who were sent the Email Notice and who have yet to submit a Claim Form as of one hundred fifteen (115) Days after the Preliminary Approval Date) is necessary.

20. Reminder Mail Notice: No later than one hundred (100) Days after the Preliminary Approval Date, the Settlement Administrator will mail the Reminder Mail Notice (substantially in the form attached to the Settlement as Exhibit F) to all individuals who were sent the Mail Notice and who have yet to submit a Claim Form as of that time.

21. Press Release: No earlier than the Notice Date and no later than seven (7) days after the Notice Date, Class Counsel shall issue a Press Release, substantially in the form attached to the Settlement as Exhibit G.

22. Settlement Website: The Settlement Administrator shall establish and maintain the Settlement Website, at the URL www.bagfeesettlement.com. The Settlement Website shall provide information and relevant documents related to this Settlement, including but not limited to, the following: applicable deadlines; a downloadable copy of the Long Form Notice in English and Spanish; the Email Notice in English and Spanish, the Mail Notice in English and Spanish; a Claim Form that may be submitted by U.S. Mail, a mechanism for Settlement Class Members to submit online Claim Forms electronically via the Settlement Website; orders of the Court pertaining to the Settlement; the Settlement Agreement; and contact address(es) for questions. Class Counsel and American's Counsel shall agree on all information and documents to be posted on the Settlement Website. The Claim Form shall be removed from the Settlement Website five (5) Days after the Claim Deadline has passed. The Settlement Website shall be operational no

later than the day before the first notices are disseminated or published, and will be deactivated at a time agreed upon by the Parties. The Settlement Website shall be optimized for mobile device use.

23. Toll-Free Number: Within ten (10) Days after entry of this Preliminary Approval Order, the Settlement Administrator shall set up a toll-free telephone number for receiving toll-free calls related to the Settlement. Pre-recorded messages will be available in both English and Spanish languages. That telephone number shall be maintained and operational until thirty (30) Days after the last distribution of the Settlement Class Member Refunds.

24. By no later than fourteen days before the Fairness Hearing, the Settlement Administrator shall file (or provide to Settlement Class Counsel for filing) a declaration confirming that the Notice Program has been implemented in accordance with the Settlement Agreement and this Order (including CAFA notice) and providing the number of Claims received as of that time, the total dollar amount of the Claims received as of that time, and the number and identity of timely exclusion requests and objections received.

Claims Procedure

25. The Court approves the form and content of the proposed Claim Form, in the form attached as Exhibit A to the Settlement Agreement, approves the claims process set forth in Section IX of the Settlement Agreement for Settlement Class Members to submit Claims, and directs the Parties and the Settlement Administrator to implement such claims process.

26. The deadline for Class Members to file Claims shall be 125 days after the entry of this Order.

Opt-Out and Objection Procedures

27. A Person within one or both of the Settlement Class definitions who wishes to opt

out of the Settlement must complete and send to the Settlement Administrator and the Parties' Counsel a request for exclusion that is post-marked no later than ninety (90) days after the entry of this Order (the Opt-Out and Objection Date). The request for exclusion must be personally signed by the Person requesting exclusion and must contain a statement that indicates his or her desire to be excluded from the Settlement. Opt-outs shall be permitted on an individual basis only. So-called "mass" or "class" opt-outs, whether filed by third parties on behalf of a "mass" or "class" of class members or multiple class members where no personal statement has been signed by each and every individual class member, shall not be allowed.

28. Except for those members of the Settlement Classes who timely and properly file a request for exclusion, all members of the Settlement Classes will be deemed to be Settlement Class Members for all purposes under the Settlement Agreement, and upon the Effective Date, will be bound by its terms, and will also be bound by all further proceedings, orders, and judgments in this Litigation, regardless of whether they file a Claim Form or receive any Refund.

29. Any member of the Settlement Classes who properly opts out of the Settlement shall not: (i) be bound by any Final Order and Judgment relating to the Settlement; (ii) be entitled to relief under, or be affected by, the Settlement Agreement; (iii) gain any rights by virtue of the Settlement Agreement; or (iv) be entitled to object to the Settlement.

30. Any Settlement Class Member who does not submit a timely and valid request for exclusion shall have the right to object to the proposed Settlement and/or to Settlement Class Counsel's motion for attorneys' fees, costs, or service awards, by complying with the objection provisions set forth herein. Objections shall be filed or mailed to the Court and sent to Class Counsel and American's Counsel (at addresses included in the Long Form Notice), filed/postmarked no later than ninety (90) days after the entry of this Order (the Opt-Out and

Objection Date), and must include the following: (1) The name, address, telephone number of the Person objecting and, if represented by counsel, of his/her counsel; (2) A statement that he or she is a member of one or both of the Settlement Classes and paid checked baggage fees on or after February 24, 2017 for tickets purchased on or before April 8, 2020; (3) A statement of all objections to the Settlement; (4) the identity of all counsel who represent the objector in this matter, including any former or current counsel who may be entitled to compensation for any reason related to the objection; and (5) A statement of whether he or she intends to appear at the Fairness Hearing, either with or without counsel, and if with counsel, the name of his or her counsel who will attend. Only objections that are submitted in accordance with this paragraph shall be considered by the Court. Any Settlement Class Member who does not timely submit an objection in accordance with this paragraph, shall waive the right to object or to be heard at the Fairness Hearing and shall be forever barred from making any objection to the proposed Settlement or to Class Counsel's motion for attorneys' fees, costs, and service awards. Any Settlement Class Member who objects to the Settlement shall nevertheless be entitled to all benefits of the Settlement if it is approved and becomes final and s/he submits a valid Claim Form.

31. Any attorney, hired by a Settlement Class Member for the purpose of objecting to the proposed Settlement, the Attorneys' Fee Award or the Service Award and who intends to make an appearance at the Fairness Hearing, shall provide to the Settlement Administrator (who shall forward it to Class Counsel and American's Counsel) and file with the Clerk of the Court a notice of intention to appear no later than ninety (90) days after the entry of this Order (the Opt-Out and Objection Date), or as the Court may otherwise direct.

32. The Settlement Administrator shall establish a post office box and email address in the name of the Settlement Administrator to be used for receiving requests for exclusion and any

other communications, and providing that only the Settlement Administrator, Class Counsel, American's Counsel, the Court, the Clerk of the Court and their designated agents shall have access to this post office box, except as otherwise provided in the Settlement Agreement.

33. The Settlement Administrator shall provide Class Counsel and American's Counsel with periodic reports about Opt-Out requests and shall provide them with a final Opt-Out List within fourteen (14) Days after the Opt-Out and Objection Date. The Settlement Administrator shall file with the Court the Opt-Out List with an affidavit attesting to the completeness and accuracy thereof no later than seven (7) days before the Fairness Hearing.

Fairness Hearing

34. The Court will hold a Fairness Hearing **on Friday, May 5, 2023 at 1:30 PM**, in the United States District Court for the Northern District of California, Room 201, 501 West 10th Street, Fort Worth, TX, 76102. The purposes of the Fairness Hearing will be to: (i) determine whether the proposed Settlement Agreement should be finally approved by the Court as fair, reasonable, adequate, and in the best interests of the Settlement Classes; (ii) determine whether judgment should be entered pursuant to the Settlement Agreement, dismissing the Action with prejudice and releasing all Released Claims; (iii) rule on Class Counsel's motion for attorneys' fees, costs, and service awards; (iv) consider any properly filed objections; and (v) consider any other matters necessary in connection with the final approval of the Settlement Agreement.

35. By no later than thirty (30) days before the Opt-Out and Objection Date, Plaintiffs and Class Counsel shall file their: (a) motion for final approval of the Settlement Agreement, requesting entry of the Final Order and Judgment; and (b) Attorneys' Fee Award and Plaintiffs' Service Awards. Promptly after they are filed, these document(s) shall be posted on the Settlement Website.

36. By no later than seven (7) days before the Fairness Hearing, the Parties shall file any responses to any Settlement Class Member objections and any replies in support of final settlement approval and/or in support of Settlement Class Counsel's motion for attorneys' fees, costs, and service awards.

37. The Court may, in its discretion, modify the date and/or time of the Fairness Hearing, and may order that this hearing be held remotely or telephonically. In the event the Court changes the date, time, and/or the format of the Fairness Hearing, the Parties shall ensure that the updated information is posted on the Settlement Website.

38. Only Settlement Class Members who have submitted timely and valid objections, in accordance with the requirements of this Preliminary Approval Order, may be heard at the Fairness Hearing.

39. If, for any reason, this Settlement Agreement fails to become Final or receive approval from this Court, the orders, judgment and dismissal to be entered pursuant to this Settlement Agreement shall be vacated, and the Parties will be returned to the *status quo ante* with respect to the Litigation as if this Settlement Agreement had never been entered into, except that American shall remain liable to pay all Notice and Administration Costs already incurred.

40. Other than such proceedings as may be necessary to carry out the terms and conditions of the Settlement Agreement, all proceedings in the Action are hereby stayed and suspended until further order of this Court.

41. Pending final determination of whether the Settlement Agreement should be finally approved, Plaintiffs and all Settlement Class Members (unless and until they have timely excluded themselves from the Settlement) are barred and enjoined from: (i) filing, commencing, prosecuting, intervening in or participating as plaintiff, claimant, or class member in any other

lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction based on, or arising out of, the Released Claims; and (ii) filing, commencing, participating in, or prosecuting a lawsuit or administrative, regulatory, arbitration, or other proceeding as a class action on behalf of any member of the Settlement Classes who has not timely excluded himself or herself (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action), based on or arising out of the Released Claims. This bar and injunction is necessary to protect and effectuate the Settlement Agreement and this Preliminary Approval Order, and this Court's authority to effectuate the Settlement, and is ordered in aid of this Court's jurisdiction.

42. This Preliminary Approval Order, the Settlement Agreement, and all negotiations, statements, agreements, and proceedings relating to the Settlement, or any matters arising in connection with settlement negotiations, proceedings, or agreements, shall not be construed as or deemed to be evidence of an admission or concession by any person, including American, and shall not be offered or received in evidence, or subject to discovery, in this or any other action or proceeding except in an action brought to enforce its terms or except as may be required by law or Court order.

43. The Court shall retain continuing and exclusive jurisdiction over the Parties to this Settlement and all Settlement Class Members for purposes of the administration and enforcement of this Settlement.

44. The Parties are directed to take all necessary and appropriate steps to establish the means necessary to implement the Settlement Agreement according to its terms should it be finally approved.

45. The Court may, for good cause, extend any of the deadlines set forth in this

Preliminary Approval Order without further notice to Settlement Class Members. Without further order of the Court, the Parties may agree to make non-material modifications in implementing the Settlement that are not inconsistent with this Preliminary Approval Order.

46. The following chart summarizes the dates and deadlines set by this Preliminary Approval Order:

Last day for the Settlement Administrator to set up the Toll-Free Telephone Number and send CAFA Notice	10 days after entry of Preliminary Approval Order
Last day for American to provide the Settlement Class Notice List and related notice information to the Settlement Administrator	14 days after entry of Preliminary Approval Order
Last day for the Settlement Administrator to set up the Settlement Website	1 day before the Notice Date
Notice Date (Last day for the Settlement Administrator to send the Email Notice)	35 days after Preliminary Approval Date
Last day for the Settlement Administrator to send the Mail Notice	50 days after Preliminary Approval Date
Last day for the Settlement Administrator to send the first Reminder Email Notice	60 days after Preliminary Approval Date
Last day for Plaintiffs and Settlement Class Counsel to file motion for final approval of the Settlement, and motion for attorneys' fees, expenses and service awards	60 days after Preliminary Approval Date
Opt-Out and Objection Deadline	90 days after Preliminary Approval Date
Last day for the Settlement Administrator to send the second Reminder Email Notice and second Reminder Mail Notice	100 days after Preliminary Approval Date
Claims Deadline	125 days after Preliminary Approval Date
Last day for the Parties to file any responses to objections, and any replies in support of motion for final settlement approval and/or Settlement Class Counsel's application for attorneys' fees, expenses and service awards	7 days before Fairness Hearing
Fairness Hearing	Friday, May 5, 2023 at 1:30 PM

SO ORDERED on this **20th** day of **October, 2022**.


 Reed O'Connor
 UNITED STATES DISTRICT JUDGE