

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THOMAS COX, JULIE FEINER, SUSAN HOTT,
SUSY KOSHKAKARYAN, YULIUS MUSTAFA,
GRETA SCHOENEMAN, et al.,

Plaintiffs,

MEMORANDUM & ORDER

17-CV-5172 (EK) (VMS)

-against-

SPIRIT AIRLINES, INC.,

Defendant.

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ERIC KOMITEE, United States District Judge:

**ORDER GRANTING FINAL APPROVAL OF SETTLEMENT BETWEEN PLAINTIFFS
AND DEFENDANT**

WHEREAS, Thomas Cox, Shirin Begum, Jill Brua, Julie Feiner, Susan Hott, Susy Koskhakaryan, Yulius Mustafa, Greta Schoeneman, and Michael Wyant ("Plaintiffs") on behalf of themselves and the Class certified by the Court, and Spirit Airlines, Inc. ("Defendant" or "Spirit") entered into a Settlement Agreement and Release dated August 23, 2023, ECF 178-3 (the "Settlement Agreement"), intended to resolve the claims asserted in this Action;

WHEREAS, this Court preliminarily approved the Settlement Agreement on September 21, 2023 (ECF No. 185) ("Preliminary Approval Order");

WHEREAS, notice of the Settlement was sent to

potential Class members in accordance with the Preliminary Approval Order;

WHEREAS, Defendant provided notice to the appropriate State officials of each State in which a class member resides, and to the appropriate Federal official, in accordance with the Class Action Fairness Act, 28 U.S.C. § 1715(b), within ten days after the filing of the Motion for Preliminary Approval of the Settlement (ECF No. 178);

WHEREAS, Plaintiffs have filed a Motion for Final Approval of the Settlement, and for an Award of Attorneys' Fees, Reimbursement of Class Counsel's Out-of-Pocket Costs and Expenses, for Service Awards for the Plaintiffs; for approval of the costs and expenses of the Settlement Administrator; and for entry of this Order (the "Motion");

WHEREAS, the Court has reviewed the Plaintiffs' Motion, its accompanying memorandum and declarations in support, and is familiar with the prior proceedings in this Action; and

WHEREAS, the Court held a Final Approval Hearing on December 11, 2023.

The Court orders as follows:

1. This Court has jurisdiction over the subject matter of this litigation, the members of the Class, and to approve the Settlement Agreement.
2. Terms used in this Final Order and Judgment ("Order")

that are defined in the Settlement Agreement have the same meaning as in the Settlement Agreement.

3. The Preliminary Approval Order outlined the form and manner by which Plaintiffs were to provide potential Class members with notice of the proposed settlement (the "Class Notice Plan"). The Class Notice Plan included individual notice to those potential Class members whose email or mailing addresses could be obtained through reasonable efforts. Additionally, the Settlement Administrator engaged in a social media campaign designed to reach the remaining potential Class members. The Court finds that the Class Notice Plan complied with Federal Rule of Civil Procedure 23 and the requirements of due process and that the notice provided to potential Class members was reasonably calculated to apprise Class members of the pendency of this Action, the effect of the Settlement Agreement (included the releases set forth in Section K of the Settlement Agreement), their rights to object to the Settlement Agreement or to the request for attorneys' fees, reimbursement of Class Counsel's out-of-pocket costs and expenses, or to the request for Service Awards to the Plaintiffs, as described in the notices, and to appear at the Final Approval Hearing, and their right to exclude themselves from the Class.

4. The Court grants final approval of the Settlement

Agreement and finds that it is fair, adequate, reasonable, in the best interest of the Class members, and in compliance with all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution, the Class Action Fairness Act, the Rules of the Court, and Second Circuit precedent. In the Second Circuit, district courts analyze the nine factors set forth in *City of Detroit v. Grinnell Corp.* when deciding whether to approve a class settlement. 495 F.2d 448, 463 (2d Cir. 1974). These are (1) the complexity, expense, and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through trial; (7) the ability of the defendants to withstand a greater judgement; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and the range of reasonableness of that fund in light of the attendant risks of litigation. See *id.*

5. The Court finds that the analysis required by *Grinnell* is satisfied here. In reaching this conclusion, the Court is satisfied that the Settlement Agreement was the result of arm's-length negotiations undertaken in good faith by counsel

with significant experience litigating consumer class actions and that significant questions of fact and law remain to be determined by the Court and by a jury in this Action had the settlement not been reached, such that the value of an immediate recovery outweighs the mere possibility of future relief after further protracted and expensive litigation. Additionally, as analyzed at length in the Court's Preliminary Approval Order, the Settlement Agreement is within the range of settlements approved by courts in the Second Circuit. See ECF 185. There are no timely objections.

6. Of the over 800,000 potential members of the Class, no individuals have requested to be excluded from the Class.

7. Upon the Effective Date, each Plaintiff and Class member 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, shall be deemed to have released the Class Released Claims as against the Released Defendant Parties (as defined in paragraph 1.24 of the Settlement Agreement), as described in paragraph K(1) of the Settlement Agreement.

8. Upon the Effective Date, each Released Defendant Party shall be deemed to have released the Released Defendant Parties' Released Claims as against each Plaintiff and each

Class member 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, as described in paragraph K(2) of the Settlement Agreement.

9. Upon the Effective Date, in consideration of the Service Awards set forth below, 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.

10. Class Counsel's request for attorneys' fees and litigation costs and expenses in this action is approved as follows: Class Counsel are hereby awarded \$2,750,000 for their attorneys' fees, and \$205,235.93 for reimbursement of litigation costs and expenses, which the Court finds were reasonably incurred in prosecution of this case. The attorneys' fees and expenses so awarded shall be paid from the Common Settlement Fund pursuant to the terms of the Settlement

Agreement.

11. Service Awards of \$7,500 are approved for each of the following individuals, in recognition of their efforts as Named Plaintiffs: Thomas Cox, Shirin Begum, Jill Brua, Julie Feiner, Susan Hott, Susy Koshkakaryan, Yulius Mustafa, Greta Schoeneman, and Michael Wyant. These Service Awards shall be paid from the Common Settlement Fund pursuant to the terms of the Settlement Agreement.

12. The Settlement Administrator is awarded \$181,062.75 for its work issuing Notice to the Class. This award shall be paid from the Common Settlement Fund pursuant to the terms of the Settlement Agreement. Subsequent to the filing of this Order, the Settlement Administrator will incur additional costs in order to effectuate distribution of the Settlement, and Class Counsel may move the Court at that time for an additional award as appropriate as that cost becomes known.

13. Nothing relating to this Order shall be construed as an 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.

14. Without affecting the finality of this Order, the Court retains and shall have exclusive and continuing jurisdiction over this action for the purposes of supervising the implementation, enforcement, construction, administration, and interpretation of the Settlement Agreement and this Order.

15. This action is hereby dismissed with prejudice.

16. The Clerk of the Court is respectfully directed to enter final judgment.

SO ORDERED.

/s/ Eric Komitee
ERIC KOMITEE
United States District Judge

Dated: December 12, 2023
Brooklyn, New York