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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

16 MARVIN TOLEDO, an individual, on
17 behalf of himself and all other similarly
18 situated non-exempt current and former
19 employees,

20 Plaintiff(s),

21 v.

22 DELTA AIR LINES, INC., a Delaware
23 corporation; and DOES 1 through 50,
24 inclusive,

25 Defendants.

Case No. 3:22-cv-00081-AMO

**[PROPOSED] ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT**

Date: January 23, 2025

Time: 2:00 p.m.

Courtroom: 10

Action Filed: December 3, 2021

1 Plaintiff's Motion for Preliminary Approval of Class and Representative Action
2 Settlement came before this Court for hearing on January 23, 2025. The Court, having fully
3 reviewed Plaintiff's Motion for Preliminary Approval of Class and Representative Action
4 Settlement, the supporting Memorandum of Points and Authorities and Declarations filed in
5 support thereof, including the Stipulation of Class Action and Representative Action Settlement
6 and Release ("Settlement Agreement") and Notice of Settlement ("Notice"), and for good cause
7 appearing, HEREBY MAKES THE FOLLOWING ORDERS:

8 1. The Court grants preliminary approval of the settlement based upon the terms set
9 forth in the Settlement Agreement, which is attached as Exhibit 1 to the Declaration of Shaun
10 Setareh, and is incorporated in full by this reference and made a part of this Order. The
11 Settlement appears to be fair, adequate, and reasonable to the Class.

12 2. All capitalized terms defined in the Settlement Agreement shall have the same
13 meaning when used in this Order.

14 3. The Settlement falls within the range of reasonableness of a settlement which
15 could ultimately be given final approval by this Court, and appears to be presumptively valid,
16 subject only to any objections that may be raised at the Final Approval Hearing. The Court notes
17 that Defendant Delta Air Lines, Inc. ("Delta" or "Defendant") has agreed to create a common
18 fund of \$12,000,000.00 to cover (a) the Individual Settlement Shares; (b) the \$450,000.00
19 payment to the State of California, Labor & Workforce Development Agency for its share of the
20 settlement of the Released Private Attorneys General Act ("PAGA") Claims; (c) the \$150,000.00
21 payment to the PAGA Members; (d) a Class Representative Service Payment of up to \$10,000.00
22 for Class Representative Marvin Toledo; (e) Class Counsel's attorneys' fees, not to exceed 33-
23 1/3% of the Maximum Settlement Amount, and actual litigation expenses incurred by Class
24 Counsel up to \$70,000.00; (f) Settlement Administration Costs estimated to be \$29,000.00; and
25 (g) all taxes except for Defendant's share of payroll taxes on Individual Settlement Shares.
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1 4. The Court finds and concludes that the Settlement is the result of arms-length
2 negotiations between the parties and a mediation conducted after Class Counsel had adequately
3 investigated Plaintiff's claims and become familiar with their strengths and weaknesses. The
4 assistance of an experienced mediator in the settlement process further confirms that the
5 Settlement is non-collusive. The Court further finds that the settlement of Plaintiff's
6 representative claims under the PAGA is fair and reasonable and is approved.

7 5. In accordance with the Settlement Agreement, the Court hereby certifies the
8 following class for purposes of settlement: All persons employed by Delta in non-exempt
9 positions in California at any time during the Class Period, but excluding flight attendants, pilots,
10 and those persons who participated in Delta's Enhanced Retirement or Voluntary Opt-Out
11 Programs in 2020 and who did not thereafter work for Delta in a non-exempt position in
12 California during the Class Period. The Court hereby finds and concludes that the Class satisfies
13 all of the requirements for certification under Fed. R. Civ. P. 23(a) and 23(b)(3), except
14 manageability. Because certification of the Class is proposed in the context of a settlement, the
15 Court need not inquire whether the case, if tried as a class action, would present intractable
16 management problems.

17 6. With respect to the requirements of Fed. R. Civ. P. 23(a) and 23(b)(3), the Court
18 makes the following findings:

19 a. The Class, which has approximately 5,000 members, satisfies the standard for
20 numerosity in Fed. R. Civ. P. 23(a)(1).

21 b. There are many questions of fact and law that are common to the Class regarding
22 the policies and practices that applied to Class Members' employment with Defendant, thereby
23 satisfying the standard for commonality in Fed. R. Civ. P. 23(a)(2).

24 c. Plaintiff Marvin Toledo's claims meet the typicality requirement because he was a
25 non-exempt employee of Defendant and his claims arise from the same alleged events and course
26 of conduct as those alleged on behalf of the Class, thereby satisfying Fed. R. Civ. P. 23(a)(3).

1 d. The Court finds that Setareh Law Group will fairly and adequately represent the
2 Class and appoints this firm as Class Counsel.

3 e. The Court finds that Plaintiff Marvin Toledo will fairly and adequately represent
4 the Class, and appointments him as Class Representative.

5 f. The Court finds that for purposes of settlement only, common questions of law and
6 fact predominate over individualized issues, because the claims arise from Defendant's policies
7 and widespread practices, and further finds that the superiority requirement is satisfied because it
8 is likely that recovery on an individual basis would be dwarfed by the cost of litigating on an
9 individual basis.

10 7. The Court approves Phoenix Settlement Administrators ("Settlement
11 Administrator") to perform the duties of the Settlement Administrator as set forth in this Order
12 and the Settlement Agreement.

13 8. The Court finds that the Notice, which is attached as Exhibit 1 to the Settlement
14 Agreement, comports with Fed. R. Civ. P. 23 and all Constitutional requirements including those
15 of due process. The Court further finds that the Notice adequately advises the Class about the
16 class action; the terms of the proposed settlement, the benefits available to each Class Member,
17 and the proposed fees and costs to Class Counsel; each Class Member's right to object or opt out
18 of the settlement, and the timing and procedures for doing so; preliminary Court approval of the
19 proposed settlement; and the date of the Final Approval hearing as well as the rights of Class
20 Members to file documentation in support of or in opposition to and appear in connection with
21 said hearing. The Court further finds that the mailing of the Notice to each Class Member's last
22 known address, with appropriate skip tracing and mail forwarding for Notices returned as
23 undeliverable, as specifically described in the Settlement Agreement, constitutes reasonable
24 notice to Class Members of their rights with respect to the class action and proposed settlement.
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1 9. Within thirty (30) days of the issuance of this Order, Defendant shall provide the
2 Settlement Administrator with the Class Member Database, as specified in the Settlement
3 Agreement.

4 10. Within 14 days after receipt of the Database, the Settlement Administrator shall
5 mail the Notice in the manner specified in the Settlement Agreement.

6 11. The Court orders that any Request for Exclusion from the non-PAGA portion of
7 the Settlement must be postmarked no later than 45 days after the Notice is initially mailed to
8 Class Members and must be received by the Settlement Administrator. To be valid, the Request
9 for Exclusion must be timely and include: (a) the Class Member's name; (b) a statement that the
10 Class Member desires to exclude himself or herself from the case; and (c) the last four digits of
11 the Class Member's social security number. Class Members are still bound by the release of
12 PAGA claims even if they submit a valid Request for Exclusion and will receive a check with his
13 or her individual payment from the PAGA Allocation if they are a PAGA Member.

14 12. If more than five percent (5%) of the total number of Class Members submit
15 timely and valid Requests for Exclusion, then Defendant shall have the option to void the
16 Settlement in its sole discretion. To exercise this option, Defendant must send written
17 notification to Class Counsel within fourteen (14) days of receiving a report from the Settlement
18 Administrator informing Defendant that the total number of timely and valid Requests for
19 Exclusion is more than five percent (5%).

20 13. Only Settlement Class Members who do not opt out may object to the non-PAGA
21 portion of the Settlement. Class Members who opt out of the Settlement are not eligible to object.
22 All objections must be sent no later than forty-five (45) days after the mailing of the Class Notice,
23 and such deadline applies notwithstanding any argument regarding non-receipt of the notice.
24 Failure to send timely written objections in this manner will not foreclose a Class Member's right
25 to have their objection heard at the Final Approval Hearing. A Class Member who fails to send a
26 timely written objection, or appear at the Final Approval Hearing to have their objection heard,
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1 shall be deemed to have waived any objections and shall be foreclosed from filing any appeal
2 from any Final Approval Order issued by the Court. The Parties may file a response to any
3 objections submitted by objecting Class Members at or prior to the Final Approval Hearing.
4 Class Members shall be permitted to withdraw their objections in writing by submitting a
5 withdrawal statement to the Settlement Administrator not later than one (1) business day prior to
6 the Final Approval Hearing.

7 14. The Final Approval Hearing shall be held before this Court on _____, 2025
8 at 2:00 p.m. in Courtroom 10, to consider the fairness, adequacy, and reasonableness of the
9 proposed settlement preliminarily approved by this Order, and to consider the motion of Class
10 Counsel for an award of reasonable attorneys' fees and costs and a Class Representative service
11 payment.

12 15. Any party to this case, including any Class Member, may be heard in person or by
13 counsel, to the extent allowed by the Court, in support of, or in opposition to, the Court's
14 determination of the good faith, fairness, reasonableness, and adequacy of the proposed
15 settlement, the requested attorneys' fees and costs, the requested Class Representative service
16 payment, and any order of final approval and Judgment regarding such settlement, fees, costs, and
17 payments; provided however, that no person shall be heard in opposition to such matters unless
18 such person has complied with the conditions set forth in the Notice.

19 17. The Court orders that if for any reason the Court does not execute and file an order
20 of final approval and judgment, or if such a final approval order is reversed, the Settlement
21 Agreement and the proposed settlement which is the subject of this Order and all evidence and
22 proceedings had in connection therewith, shall be without prejudice to the status quo ante rights
23 of the Parties to the litigation as more specifically set forth in the Settlement Agreement.

24 18. The Court orders that the Settlement Agreement shall not be construed as an
25 admission or evidence of liability.
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1 19. Pending further order of this Court, all proceedings in this matter except those
2 contemplated herein and in the Settlement Agreement are stayed.

3 20. The Court expressly reserves the right to adjourn or continue the Final Approval
4 Hearing without further notice to Class Members.

5 **IT IS SO ORDERED.**

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7 Dated:

8 By:

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10 The Hon. Araceli Martínez-Olgún
11 District Court Judge
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