

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:12-cv-01561-WJM-MEH

JAMES DANIEL TUTEN on behalf of himself and  
all others similarly situated,

Plaintiffs,

v.

UNITED AIR LINES, INC.,

Defendant.

**CLASS COUNSEL'S UNOPPOSED MOTION  
FOR SERVICE AWARD FOR THE CLASS REPRESENTATIVE**

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## **MOTION AND INTRODUCTION**

Pursuant to Section XI.B. of the Settlement Agreement and this Court's October 31, 2013 Order, Class Counsel move for approval of a service award for the Class Representative, Plaintiff James Daniel Tuten ("Plaintiff" or "Tuten" or "Class Representative"). *See* Settlement Agreement § XI.B, Dkt. No. 33 ("Agmt."); Order at 8, Dkt. No. 52. In recognition of the Class Representative's leadership and efforts in this case, it is appropriate to award him a \$15,000 service award. A service award of this amount is appropriate, reasonable, and warranted under the circumstances. Defendant United Air Lines, Inc. ("United") does not oppose this Motion.

## **MEMORANDUM**

### **PROCEDURAL AND FACTUAL BACKGROUND**

#### **A. The Complaint and Pre-Filing Activity**

On June 15, 2012, Plaintiff filed a class action complaint alleging that United's policy for making pension contributions to United pilots who took long term military leave between 2000 and 2010 did not comply with the Uniformed Services Employment and Reemployment Rights Act ("USERRA"). Compl. ¶¶ 1-3, 49-55, Dkt. No. 1. In particular, the Complaint alleged that Plaintiff and a class of United pilots were entitled to receive contributions in their Pilots' Directed Account Retirement Income Plan accounts for periods of military leave based on each pilot's average compensation over the 12 months prior to each period of long term military leave. Compl. ¶¶ 14-15, 44-45, 53-55. Instead, between 2000 and 2010, United implemented a uniform policy for calculating and making pension contributions to pilots who took military leave pursuant to USERRA based on compensation associated with the minimum flight hours established by the pilots' collective bargaining agreement. *Id.* ¶¶ 2, 40, 44-45, 53.

In early 2012, Mr. Tuten contacted members of Class Counsel and later retained Class Counsel to file a class action lawsuit on behalf of him and other similarly situated United pilots who took long term military leave. Declaration of James Daniel Tuten ¶ 5 (Dec. 24, 2013) (“Tuten Decl.”). Before retaining Class Counsel, Mr. Tuten familiarized himself with the duties and responsibilities of a class representative in a class action, including his obligation to represent the interests of all class members and to actively participate in the lawsuit, including participating in any necessary discovery and any settlement negotiations. *Id.* ¶¶ 6-7.

Despite facing potential risk in filing a class action lawsuit against his current employer – for whom he has worked since 1996 – Mr. Tuten agreed to serve as the *sole* class representative and represent other United pilots, because he believed that it is important that all similarly situated persons benefit from this lawsuit and that a class action lawsuit would save time, money, and effort for all Class Members and the Court. *Id.* ¶¶ 5-6. Before the Complaint was filed, Mr. Tuten reviewed a draft of the Complaint, discussed the legal and factual allegations with Class Counsel, and authorized his attorneys to file the class action complaint. *Id.* ¶ 8. At the outset of the action, Mr. Tuten intended to seek to represent a class of United pilots who believe that United violated their rights under USERRA by failing to make full pension contributions for periods in which they took long term military leave. *See id.* ¶ 5; Compl. ¶¶ 9-30.

## **B. The Litigation**

Throughout the litigation, Mr. Tuten regularly spoke with Class Counsel to discuss and participate in a number of strategic decisions, including the decision to explore settlement of the action and seek a stay of the litigation, the development of a methodology to estimate the damages of the Class Members, the negotiation of the terms of the Settlement Agreement, and

seeking class certification and preliminary approval. Tuten Decl. ¶ 9. Moreover, at the outset of the action, Mr. Tuten searched for and provided to Class Counsel numerous documents that could be subject to discovery and would be needed to prosecute the case. *Id.* ¶ 7. In addition, throughout the litigation, Mr. Tuten has served as a liaison to other members of the class who work with him at United, and has continued to do so as Class Members contact him after receiving the court-authorized notice. *Id.* ¶ 9. Thus, Mr. Tuten has regularly spoken with other Class Members about the progress of the case and issues that matter to other United pilots. *Id.*

### **C. The Settlement**

During March 2013, the parties exchanged settlement proposals on potential monetary and non-monetary relief, and on March 13 and 14, 2013, the Parties' counsel met in Chicago and engaged in intensive settlement discussions. Declaration of Peter Romer-Friedman in Support of Pl.'s Motion for Class Certification ¶ 17, Dkt. No. 35 ("Romer-Friedman Decl."). Prior to the exchange of settlement proposals, Mr. Tuten discussed with Class Counsel what proposals to make to United and what final terms he believed would be in the best interests of the Class Members. Tuten Decl. ¶ 10. And during the March 13 and 14 negotiations, Mr. Tuten participated frequently through conference calls with Class Counsel. *Id.* ¶ 11. At the conclusion of those negotiations in March 2013, the parties reached an agreement in principle, and between April and August 2013 Class Counsel and United's counsel finalized a comprehensive Settlement Agreement. *Id.* ¶¶ 11-12; Dkt. No. 33.

The Settlement Agreement provides substantial monetary and non-monetary relief to the members of the Class. With respect to monetary relief, United will pay \$6.15 million to compensate Class Members for past allegedly unmade pension contributions (after deduction of

any court-approved attorneys' fees, costs, and service award). *See* Agmt. §§ II.II, VII. Based on the calculations of Plaintiff's expert actuary using United's personnel data, the damages methodology to which the parties agreed, and the Plan of Allocation approved by the Court, Class Counsel estimate that each Class Member will receive a payment equal to or greater than 100 percent of the under payment between 2000 and 2010. *See* Romer-Friedman Decl. ¶ 18; Dkt. No. 52 at 6. With respect to non-monetary relief, United agreed to modify how it calculates defined pension contributions for pilots who return from long term military leave and to make several important changes to the process by which United informs and communicates with pilots about the pension contributions that they receive for periods of long term military leave. *See* Agmt. § X.A-D. The change to United's formula is expected to increase the amount of pension contributions many United pilots receive when they take long term military leave in the future.

In addition to providing substantial monetary and non-monetary relief to the Class, the Settlement Agreement recognizes that it would be appropriate to provide a service award to the Class Representative and states that Class Counsel may request that the Court approve a service award. *See* Agmt. § XI ("In recognition of the service that the Class Representative has performed on behalf of the Class and/or for reimbursement of his time and expenses, Class Counsel will be entitled to seek a Service Award to be paid out of the Settlement Fund for the Class Representative, Plaintiff James Daniel Tuten, subject to the approval of and in an amount to be approved by the Court.").

Before the Settlement Agreement was executed, Mr. Tuten discussed with Class Counsel the terms of the Settlement Agreement and gave his approval. *See* Tuten Decl. ¶¶ 11-12. Mr. Tuten was very pleased with the result of the litigation, observing that "[t]he results that we

obtained in this case are more than I or any of my peers expected, and especially with regard to the non-monetary policy reforms in the company.” *Id.* ¶ 12.

**D. Certification of the Class and Preliminary Approval**

On August 14, 2013, Mr. Tuten and United filed the Settlement Agreement and Mr. Tuten moved for class certification and preliminary approval of the Settlement Agreement. Dkt. Nos. 33-34. On October 31, 2013, the Court certified a mandatory class, appointed Mr. Tuten as the sole Class Representative, granted preliminary approval, and authorized the Settlement Administrator to send notice to the Class Members. Dkt. No. 52. In the same order, the Court directed Class Counsel to file any motion for a service award by December 31, 2013. On December 13, 2013, Class Counsel moved for an extension of time to file the Motion for a Service Award by January 3, 2013, which the Court granted. Dkt. No. 57 (Dec. 16, 2013).

**ARGUMENT**

Class Counsel request and recommend that the Court approve a \$15,000 service award for the sole Class Representative in recognition of the significant actions that he undertook to advance the rights of Class Members, the outstanding result that he helped to achieve, and the personal risk that he faced in pursuing the action. As described herein, the amount of the proposed service award is modest, reasonable, and appropriate under the circumstances, and all of the relevant considerations support the approval of a modest award to Mr. Tuten.

**A. Courts Routinely Grant Incentive Awards to Class Representatives to Encourage and Reward Their Service to the Class**

“Courts have held that incentive awards are an efficient and productive way to encourage members of a class to become class representatives, and to reward the efforts they make on

behalf of the class.” *Lucken Family Ltd. v. Ultra Res., Inc.*, No. 09-cv-01543-REB-KMT, 2010 U.S. Dist. LEXIS 144366, at \*16 (D. Colo. Dec. 22, 2010) (collecting cases). “This Court has recognized that a special award to a representative plaintiff is reasonable and appropriate.” *Horton v. Leading Edge Mktg., Inc.*, No. 04-cv-00212-EWN-CBS, 2008 U.S. Dist. LEXIS 11761, at \*10 (D. Colo. Feb. 4, 2008) (citing *Lucas v. Kmart Corp.*, No. 99-cv-01923-JLK, 2006 U.S. Dist. LEXIS 51439, at \*28 (D. Colo. July 27, 2006)); accord *Hershey v. ExxonMobil Oil Corp.*, No. 07-1300-JTM, 2012 U.S. Dist. LEXIS 153803, at \*32 (D. Kan. Oct. 26, 2012) (“Incentive awards perform the legitimate function of encouraging individuals to undertake the frequently onerous responsibility of named class representative.”).

Courts in this district use several factors to determine the appropriateness of a service award: “(1) the actions that the class representative took to protect the interests of the class; (2) the degree to which the class has benefited from those actions; and (3) the amount of time and effort the class representative expended in pursuing the litigation.” *Lucken Family Ltd.*, 2010 U.S. Dist. LEXIS 144366, at \*16 (citing *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998)).

In addition to these factors, district courts routinely consider the personal risks that a plaintiff might face in litigating a class action. See *Childs v. Unified Life Ins. Co.*, No. 10-CV-23-PJC, 2011 U.S. Dist. LEXIS 138818, at \*48-49 (Dec. 2, 2011) (N.D. Okla. Dec. 2, 2011) (noting that “[a]n incentive award is meant to compensate the named plaintiff for any personal risk incurred by the individual”) (citation omitted); *McNeely v. Nat’l Mobile Health Care, L.L.C.*, No. CIV-07-933-M, 2008 U.S. Dist. LEXIS 86741, at \*49 (W.D. Okla. Oct. 27, 2008) (same). “Service or incentive payments are especially appropriate in employment litigation, where [like here] ‘the plaintiff is often a former or current employee of the defendant, and thus,

by lending his name to the litigation, he has, for the benefit of the class a whole, undertaken the risk of adverse actions by the employer or co-workers.” *DeWitt v. Darlington Cnty., S.C.*, No. 4:11-cv-00740-RBH, 2013 U.S. Dist. LEXIS 172624, at \*38-39 (D.S.C. Dec. 6, 2013) (quoting *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 187 (W.D.N.Y. 2005)).

**B. The Amount of the Requested Service Award Is Modest and Reasonable**

In an action in which the Class Representative obtained a Settlement Fund that is worth more than \$6 million, as well as significant non-monetary relief, a \$15,000 service award to the Class Representative is both modest and reasonable.

The amount of the service award recommended by Class Counsel is comparable to incentive awards that have been routinely approved in this Circuit. *See, e.g., Newton v. Fortis Ins. Co.*, No. 04-cv-1650-PSF-OES, 2006 U.S. Dist. LEXIS 33965, at \*5 (D. Colo. May 26, 2006) (holding a \$20,000 incentive award “constitutes a reasonable and just amount to be awarded”); *Ponca Tribe of Indians of Okla. v. Cont’l Carbon Co.*, No. 05-445 (C), 2009 U.S. Dist. LEXIS 82522, at \*10 (W.D. Okla. July 31, 2009) (approving a \$15,000 incentive award to each of three named plaintiffs); *McNeely*, 2008 U.S. Dist. LEXIS 86741, at \*49 (same); *Lucken Family Ltd.*, 2010 U.S. Dist. LEXIS 144366, at \*16-17 (approving \$10,000 award); *Horton*, 2008 U.S. Dist. LEXIS 11761, at \*10 (same); *Lucas*, 2006 U.S. Dist. LEXIS 51439, at \*28 (same).

Likewise, a service award of \$15,000 is comparable to incentive awards approved by courts nationwide in employment-related class action cases. *In re Janney Montgomery Scott LLC Fin. Consultant Litig.*, No. 06-3202, 2009 U.S. Dist. LEXIS 60790, at \*36-37 (E.D. Pa. July 16, 2009) (approving \$20,000 incentive awards to each of three class representatives, stating that

the awards are “in line with awards in similar class action litigation, and collecting employment cases from Pennsylvania, California, and Ohio approving incentive awards of \$20,000 or \$15,000); *DeWitt*, 2013 U.S. Dist. LEXIS 172624, at \*39-40 (collecting employment cases from New York, Pennsylvania, California, New Jersey, Iowa, and Maryland awarding incentive awards between \$20,000 and \$10,000).

Moreover, a \$15,000 incentive award would be a mere fraction of the much larger incentive awards approved by courts in this and other Circuits. *Lucken Family Ltd.*, 2010 U.S. Dist. LEXIS 144366, at \*16-17 (citing *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251 (S.D. Ohio 1991) (approving incentive awards of \$50,000 for each of 6 class representatives, for a total of \$300,000 out of a settlement fund of \$56.6 million, which was 0.56% of the common fund)); *see also Been v. O.K. Indus.*, No. Civ-02-285-RAW, 2011 U.S. Dist. LEXIS 115151, at \*33-34 (E.D. Okla. Aug. 16, 2011) (approving incentive awards of \$100,000 for each of five class representatives for a total of \$500,000); *Hershey*, 2012 U.S. Dist. LEXIS 153803, at \*43 (approving an incentive award of \$60,500 plus accrued interest); *Ingram v. Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001) (approving awards of \$300,000 to each of four class representatives); *In re Vitamin C Antitrust Litig.*, No. 06-MD-1738 (BMC) (JO), 2012 U.S. Dist. LEXIS 152275, at \*35-36 (E.D.N.Y. Oct. 22, 2012) (approving incentive awards of \$50,000 to each of two class representatives); *cf. Ryskamp v. Looney*, No. 10-cv-00842-WJM-KLM, 2012 U.S. Dist. LEXIS 114190, at \*18-19 (D. Colo. Aug. 14, 2012) (approving a \$50,000 incentive award to the lead plaintiff in a derivative action, not a class action, and citing *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 373-74 (S.D. Ohio 1990)

(approving incentive awards of either \$55,000 or \$35,000 to each of five representative plaintiffs)).

Indeed, when approving an incentive award in an employment class action settlement, this Court recently observed that a \$7,500 service award to the named plaintiff was “very modest.” *Whittington v. Taco Bell of Am., Inc.*, No. 10-cv-01884-KMT-MEH, 2013 U.S. Dist. LEXIS 161665, at \*23 (D. Colo. Nov. 13, 2013).

Finally, a \$15,000 service award represents only two-tenths of one-percent of the \$6.15 million Settlement Fund that will be used to compensate Class Members, and thus will not materially impact the amount of monetary relief that other Class Members receive under the Settlement Agreement. *See Hershey*, 2012 U.S. Dist. LEXIS 153803, at \*33, \*43 (approving award of \$60,500 plus accrued interest and noting the award was “1/10 of 1% of the total settlement,” which compared to “an incentive ward of a full 1%” approved in a similar action).<sup>1</sup>

**C. All of the Factors That Courts Traditionally Consider for Issuing a Service Award Support the Requested Award**

**1. The Class Representative Obtained Outstanding Results for the Class**

A key factor for considering the propriety and reasonableness of a service award is “the degree to which the class has benefited from those actions.” *Lucken Family Ltd.*, 2010 U.S. Dist. LEXIS 144366, at \*16-17 (citation omitted).

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<sup>1</sup> If Mr. Tuten receives a \$15,000 service award on top of the monetary compensation that he is entitled to receive as an ordinary member of the Class, he would not receive relief that is disproportionate to the relief that other Class Members will receive. Although the average claim is worth about \$2,000 before interest or \$3,000 with 8% annual interest, Romer-Friedman Decl. ¶ 16, there are numerous Class Members who have claims that are worth tens of thousands of dollars under the Plan of Allocation approved by the Court. Accordingly, a modest incentive award will not cause Mr. Tuten to receive greater overall compensation than many Class Members.

This factor weighs strongly in favor of awarding the requested service award, as Plaintiff and his counsel have secured an outstanding Settlement Agreement that provides substantial monetary and non-monetary relief to the Class Members. As described above and in greater detail in Plaintiff's Motion for Preliminary Approval, the terms of the Settlement are very favorable to the Class Members. Based on Class Counsel's estimates, the \$6.15 million of monetary relief will provide Class Members with supplemental pension contributions that are equal to or greater than 100 percent of the amounts that Class Members were denied by virtue of United's policy for making pension contributions from 2000 to 2010. *See* Agmt. §§ II.II, VII; Romer-Friedman Decl. ¶ 18. Moreover, the effective value of the monetary relief is far greater than \$6.15 million in cash, as payments to Class Members will be made, to the greatest extent possible, in a tax favorable manner (*i.e.*, tax free). *See* Agmt. VIII.F.2.

The non-monetary relief obtained by Plaintiff will also provide substantial benefits to Class Members and future military members for years to come. The change that United has agreed to make to its formula for calculating pension contributions for periods of long term military leave is expected to increase the amount of pension contributions that many United pilots receive when they take long term military leave in the future. And the changes that United has agreed to make to the process by which United informs pilots about the same pension contributions will ensure that all United pilots fully understand what contributions they are entitled to receive, how their contributions are calculated, and when they are made. These policy changes benefit all class members as well as future United pilots who are called to military service. Moreover, all of these changes will give the Class Members peace of mind that they can serve their employer and their country without sacrificing their retirement security—a critical

public policy that Congress sought to advance when it enacted USERRA's pension provision. *See* 38 U.S.C. § 4301(a) (2006) (stating that "[t]he purposes of [USERRA] are . . . to encourage noncareer service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment which can result from such service").

**2. The Class Representative Undertook Significant, Critical Actions to Advance the Interests of the Class**

The significant and critical actions that Mr. Tuten "took to protect the interests of the class" further support the requested service award. *Lucken Family Ltd.*, 2010 U.S. Dist. LEXIS 144366, at \*16-17. As described above and in the Tuten Declaration, Mr. Tuten undertook many tasks that were critical to the success of the litigation and Mr. Tuten personally participated in the major strategic decisions that ultimately led to an outstanding settlement. *See* Tuten Decl. ¶¶ 6-12. For instance, Mr. Tuten regularly spoke with and was interviewed by Class Counsel, reviewed the Complaint, discussed a variety of legal and factual issues with Class Counsel, supplied Class Counsel with numerous documents to be used as evidence and discovery, engaged Class Counsel about the appropriate methodology to estimate Class Members' damages, participated in the settlement negotiations, reviewed and approved the Settlement Agreement, helped to identify other Class Members and witnesses, and routinely spoke with other Class Members about the status of the case, key issues in the case, and how they could be helpful to the litigation. *See id.*

The actions that Mr. Tuten took to advance the litigation are similar to the actions of other Class Representatives who received similar awards or even higher awards. *See, e.g., Hershey*, 2012 U.S. Dist. LEXIS 153803, at \*33, \*43 (approving award of \$60,500 plus accrued interest where the plaintiff "remain[ed] in contact with counsel, and stayed informed about the

status of a highly complex . . . class action,” “supplied discovery, traveled [] for deposition, and reviewed and approved the settlement”); *Godshall v. Franklin Mint Co.*, No. 01-CV-6539, 2004 U.S. Dist. LEXIS 23976, at \*19-20 (E.D. Pa. Dec. 1, 2004) (approving \$20,000 awards for each of two class representatives who “helped counsel formulate factual and legal theories for the case, assisted in identifying class members and other witnesses, responded to interrogatories and depositions, attended settlement conferences, monitored negotiations, and assumed responsibility for safeguarding the interests of other class members”); *Cimarron Pipeline Constr., Inc. v. National Council on Compensation Ins.*, No. CIV 89-822-T, 1993 U.S. Dist. LEXIS 19969, at \*5-6 (W.D. Okla. June 8, 1993) (holding that payments of \$10,000 to class representatives were appropriate in light of “their time and effort in asserting the interests of the Class, meeting discovery and other litigation responsibilities, and working with counsel to advance the interests of the Class”) (cited by *Lucas*, 2006 U.S. Dist. LEXIS 51439, at \*28).

**3. The Class Representative Spent a Significant Amount of Time and Energy to Pursue the Litigation**

A third factor, “the amount of time and effort the class representative expended in pursuing the litigation,” similarly supports the requested award. *Lucken Family Ltd.*, 2010 U.S. Dist. LEXIS 144366, at \*16-17. In support of this Motion, Mr. Tuten has submitted a Declaration describing the significant energy and time that he spent pursuing the litigation. *See* Tuten Decl. ¶¶ 5-13. Based on a conservative estimate, Mr. Tuten estimates that overall he spent more than 100 hours of his personal time in connection with the litigation in 2012 and 2013. *Id.* ¶ 14. During the litigation, Mr. Tuten continued to work as a full-time pilot at United, and despite a busy schedule Mr. Tuten always made himself available with very little notice,

carefully reviewed all information that Class Counsel asked him to review, and provided helpful feedback to Class Counsel at all major stages of the litigation. *See id.* ¶¶ 9, 13.

Having worked with many class representatives in past cases, Class Counsel believe that Mr. Tuten was a model class representative, undertaking his role seriously and with the highest degree of professionalism, asking thoughtful and helpful questions, and spending a substantial and reasonable amount of time on the tasks involved in the litigation.

Given the substantial amount of time spent by Mr. Tuten in support of the litigation and the outstanding result he achieved for the Class, a modest incentive award is warranted and proportionate to past incentive awards. For example, in *Ryskamp*, this Court approved an award of \$50,000 where the class representative represented that he had spent about 260 hours on prosecuting the litigation over a two year period. *Ryskamp*, 2012 U.S. Dist. LEXIS 114190, at \*18-19. Although Mr. Tuten spent about 40 percent as much time that the class representative spent in *Ryskamp*, the incentive award that Mr. Tuten seeks is only 30 percent of the incentive award approved by this Court in *Ryskamp*.

**4. The Class Representative Put Himself at Personal Risk in Pursuing a Class Action Against His Current Employer**

Finally, it is beyond dispute that the Class Representative exposed himself to personal risk by filing a class action lawsuit against an employer for whom he has worked for the past 17 years. *See Tuten Decl.* ¶ 5. At the outset of this action, Mr. Tuten was concerned about the potential for retaliation by his employer, but he chose to put the interests of the Class ahead of his own interests and take a stand on behalf of his co-workers. As Mr. Tuten explains, he “agonized over” the decision to serve as the sole Class Representative, but ultimately “decided that if nobody stood up and went for it, nothing would get better.” *Id.* (noting that he was

worried about “unduly jeopardizing his employment,” “was very concerned about losing my job because I would be a current employee suing the airline,” and “believed that filing a lawsuit was like putting a target on my back”).

By “lending his name to the litigation,” Mr. Tuten has “for the benefit of the class as a whole, undertaken the risk of adverse actions by [his] employer or co-workers,” which makes a service award “especially appropriate” in this class action. *DeWitt*, 2013 U.S. Dist. LEXIS 172624, at \*38-39 (quoting *Eastman Kodak*, 228 F.R.D. at 187). Moreover, rewarding the Class Representative for putting himself at risk and for “effecting fundamental change” and the Class’ “interest in receiving fair amends for injuries they suffered,” “creates the proper incentives for individuals to come forward and undertake the arduous efforts needed to challenge alleged discrimination on a class-wide level, thus fulfilling the policies and purposes underlying” USERRA. *Ingram*, 200 F.R.D. at 694.

### **CONCLUSION**

For the reasons stated above, the Court should approve the \$15,000 incentive award for the Class Representative as both reasonable and appropriate. A proposed order is attached.

Respectfully submitted,

January 3, 2014

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was filed with this Court on January 3, 2014 through the CM/ECF system and will be sent electronically to all registered participants as identified on the Notice of Electronic Filing.

/s/ Peter Romer-Friedman

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**Declaration of  
Class Representative  
James Daniel Tuten  
(Dec. 24, 2013)**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:12-cv-01561-WJM-MEH

JAMES DANIEL TUTEN on behalf of himself and  
all others similarly situated,

Plaintiffs,

v.

UNITED AIR LINES, INC.,

Defendant.

I, James Daniel Tuten, declare under penalty of perjury of the laws of the United States:

1. I am the Plaintiff in the above-captioned litigation and I submit this declaration in support of Plaintiffs' Unopposed Motion for a Service Award.
2. I am a United Airlines ("United") pilot and a Lieutenant Colonel in the United States Air Force Reserve. I started work as a pilot for United in 1996 shortly after my active duty military service was completed. Since 1996, I also have served in the United States Air Force Reserve.
3. I took long term military leave from United at various times during my employment.
4. Upon my return from military leaves of absence, I encountered problems figuring out how my pension contributions were calculated; the contributions did not make sense when compared to what I understand is required by the Uniformed Services Employment and Reemployment Rights Act, ("USERRA"). The company personnel I spoke with about this problem did not have straight answers. These circumstances were not acceptable, as it affected my retirement value and my lifestyle when my flying career is over. Many of my peers expressed the same frustration to me.

5. In early 2012, one of my peers told me about the Law Office of Thomas G. Jarrard, PLLC (“Class Counsel”). I contacted Mr. Jarrard and Cohen Milstein Sellers & Toll PLLC and we held several discussions about the prospects of this case and what my representative capacity would involve. We determined the class action case was the best way to proceed to ensure United fixed its policy and paid back lost pension amounts for pilots like me. In the days leading to this decision I agonized over it. I had to talk to Class Counsel, my family and my peers many times just to make sure I would be doing the right thing and not unduly jeopardizing my employment. I was very concerned about losing my job because I would be a current employee suing the airline. I believed that filing a lawsuit was like putting a target on my back. I believed that it would not be difficult to be retaliated against under the pretext of some other reason. Some of my peers shared the same fears. I decided that if nobody stood up and went for it, nothing would get better.

6. Class Counsel and I discussed the duties of being a *sole* class representative and how my being closely involved in all aspects of the case would help ensure that the interests of the class would be protected. This was important to me because I was not seeking anything more than what I am entitled to under USERRA. Instead, I wanted to make sure that the outcome of his case was going to help all my peers who also returned from military leave.

7. At the onset of this case I researched, collected and reviewed numerous documents regarding my retirement, including collective bargaining agreements, copies of the Pension Plans, various United Policies, my own pension statements, and email communications with United personnel about USERRA requirements and pension contributions. Class Counsel and I held several discussions to figure out the method used to make pension contributions, versus what was required under USERRA.

8. As the case moved forward, Class Counsel and I discussed the legal and factual allegations to formulate the complaint. I reviewed a draft of the Complaint and authorized its filing.

9. Throughout this case I have regularly spoke with Class Counsel. Weekly, and sometimes more often, Class Counsel and I would discuss important decisions in the case, including whether or not to explore early settlement, other class members issues that were brought to my attention, whether to seek a stay of the litigation, how to develop a fair method to estimate damages according to the law of USERRA, determine to demand non-monetary relief (company policy changes) in the terms of the Settlement Agreement, and to seek class certification and preliminary approval. In addition, throughout the litigation, I communicated with my peers about the case and what we were trying to accomplish with regard to proper pension contribution calculations for returning service members. To this day, and especially since class notices were sent, I respond to questions from my peers, many of whom had no idea about the case until they received the notice.

10. Prior to the settlement Class Counsel and I discussed what proposals to make to United and what final terms we believed would be in the best interests of the class. With respect to non-monetary relief, we decided that any settlement must include a new method and clear communications about how United calculates its defined pension contributions for pilots who return from long term military leave.

11. Class Counsel attended the settlement while I remained at home and work. I participated by maintaining direct contact with Class Counsel during the March 13 and 14 negotiations. We spoke at length during both days and afterwards. Those negotiations led to the settlement in principle which I approved.

12. From about April to August 2013 Class Counsel and United's counsel finalized a formal Settlement Agreement and notice which I approved. The results that we obtained in this case are more than I or any of my peers expected, and especially with regard to the non-monetary policy reforms in the company.

13. During this matter I continued to work fulltime as a pilot at United. Therefore, I needed to devote my personal time at home or between trips to work with and respond to Class Counsel.

14. I was not asked to keep a log book to record my time in this matter. I did however keep track of the significant events so I could share those, where appropriate, with my peers. Those events are accurately reported here in this declaration. My conservative estimate for the time I spent in moving this case forward over the past year and a half is over 100 hours.

Pursuant to 28 U.S.C. § 1746 I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: December 24, 2013.

  
James Daniel Tuten

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:12-cv-01561-WJM-MEH

JAMES DANIEL TUTEN on behalf of himself and  
all others similarly situated,

Plaintiffs,

v.

UNITED AIR LINES, INC.,

Defendant.

**PROPOSED ORDER**

This matter is before the Court on Class Counsel's Unopposed Motion for a Service Award for the Class Representative, in the above-captioned action. Upon consideration of Class Counsel's Motion, the Court hereby ORDERS that the Motion is GRANTED, and FURTHER ORDERS that the request for a service award of \$15,000 for the Class Representative is approved.

Dated \_\_\_\_\_ 2014

\_\_\_\_\_  
William J. Martinez  
U.S. District Judge