

**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 AN AWARD OF
ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES**

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MOTION AND INTRODUCTION

Pursuant to Rule 23(h) of the Federal Rules of Civil Procedure and the Court's October 31, 2013 Order, Class Counsel respectfully submit this Motion for an Award of Attorneys' Fees and Reimbursement of Expenses. Dkt. No. 52. Based on well-established principles for awarding attorneys' fees when Class Counsel obtain a common fund, Class Counsel request that the Court award 24.7% of the Settlement Fund in this action as attorneys' fees, which would result in \$1,522,500 in attorneys' fees, plus \$246,157.59 as reimbursement of expenses. This amount is reasonable and consistent with prior decisions awarding fees based on common fund principles, especially because Class Counsel estimate that Class Members will receive at least 100 percent of the pension contributions they were denied by Defendant United Air Lines, Inc. ("United") from 2000 to 2010, even after the deduction of the requested fees, costs, and service award from the \$6.15 million Settlement Fund. United does not oppose this Motion.

MEMORANDUM

PROCEDURAL AND FACTUAL BACKGROUND

A. The Litigation and the Role of Class Counsel

After undertaking a pre-suit investigation that began in 2010, Class Counsel, on behalf of Plaintiff James Daniel Tuten ("Plaintiff"), filed the Complaint alleging that United's policy for making pension contributions to its pilots who took long term military leave between 2000 and 2010 violated the Uniformed Services Employment and Reemployment Rights Act ("USERRA") and caused monetary harm. Compl. ¶¶ 1-3, 49-55, Dkt. No. 1 (June 15, 2012); Decl. of Peter Romer-Friedman ¶ 10 (Jan. 3, 2014) ("PRF Decl."); Decl. of Thomas Jarrard ¶ 3 (Jan. 2, 2014),

Ex. 3 to PRF Decl. (“Jarrard Decl.”).¹ Before United’s deadline to respond to the Complaint, United expressed interest in discussing settlement. PRF Decl. ¶ 11. Before agreeing to stay the action, Class Counsel advised that prior to discussing settlement, they would need information about United’s pension policies and practices, and the same data on Class Members they would have received in discovery to understand United’s policy and assess damages. *Id.* ¶ 13. After receiving such assurance, Class Counsel agreed to move to stay the action in August 2012. *Id.*

From July 2012 to March 2013, Class Counsel engaged in informal discovery on liability and damages, and continued their own investigation to obtain information directly from Class Members, the U.S. Department of Labor, and the pilots’ union. *Id.* ¶¶ 12-16. During that process:

- United produced, and Class Counsel reviewed, voluminous documents about United’s pension plan and military leave policies, and how they were applied to Class Members, including electronic databases that contained detailed personnel information for each United pilot who took long term military leave since 2000. *Id.* ¶¶ 13-14.
- Class Counsel spoke many times with United’s counsel about its military leave policies and how they were applied, and spoke with the Air Line Pilots Association (“ALPA”) about the same issues and its views on how the policy can be improved. *Id.* ¶¶ 16-17.
- Class Counsel interviewed more than 100 putative Class Members (about 10% of the Class) to verify the accuracy of United’s personnel data, understand how United’s policy impacted putative Class Members, and obtain a range of information that is relevant to Plaintiff’s claims and United’s potential affirmative defenses. *Id.* ¶ 10.
- Through a Freedom of Information Act request, Class Counsel obtained from the U.S. Department of Labor (“DOL”), and reviewed, voluminous documents on prior complaints filed by United’s employees with DOL regarding United’s pension obligations under USERRA. *Id.* ¶ 15.

¹ Instead of making pension contributions 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, United’s policy for making pension contributions was based on compensation associated with the minimum flight hours established by the pilots’ union contract. Compl. ¶¶ 2, 14-15, 44-45, 53-55. As a result, Plaintiff alleged that the Class received smaller pension contributions for periods of long term military leave than they were entitled to receive under USERRA. *Id.* ¶¶ 3-4, 45.

By undertaking this discovery and factual investigation, as well as conducting legal research on a range of issues, Class Counsel understood United's policy, how it was applied, and the strengths and weaknesses of Plaintiff's claims and United's potential defenses.

At the outset of this process, Class Counsel hired an expert actuary with more than 25 years of experience with pensions to assist Class Counsel in developing a methodology for calculating the estimated potential damages of each putative Class Member based on United's personnel data, and to calculate those potential damages. *Id.* ¶¶ 20, 53. After obtaining the information and data from United, Class Counsel, in conjunction with its actuary, developed a methodology for calculating Class Members' damages. *Id.* ¶ 21. After Class Counsel proposed this methodology to United, the parties reached an agreement on a methodology ("Agreed Damage Methodology") to calculate damages that was consistent with how Plaintiff would have calculated damages at trial. *Id.* ¶¶ 21-22; Settlement Agmt. ("Agmt."), Exs. A-C, Dkt. No. 33.

Between January and March 2013, Plaintiff's expert applied this methodology to calculate damages for 2,013 claims of nearly 1,200 potential Class Members. *Id.* ¶¶ 23-24.² Class Counsel reviewed a random subset of the calculations to ensure the expert followed the Agreed Damage Methodology and address unforeseen issues. *Id.* In early March 2013, Plaintiff's expert reported the total potential damages of 2,013 Claims was about \$4 million before interest and \$6 million after applying an annual compound interest rate of 8% from the dates of contributions through April 1, 2013. *Id.* ¶ 24. After receiving the expert's damages analysis, Class Counsel met with United's counsel in Chicago and for two full days engaged in

² Plaintiff's Motion for Class Certification incorrectly stated the number of Class Members as nearly 1,300. Dkt. No. 34 at 6. Plaintiff intended to state there are nearly 1,200 Class Members.

intensive settlement discussions over monetary and programmatic relief. *Id.* ¶ 25. At the end of the second day, the parties reached a verbal agreement in principle that, in the view of Class Counsel, constituted an outstanding settlement. *Id.* Then, Class Counsel drafted and negotiated a 6-page written Agreement in Principle that the parties executed on March 27, 2013. *Id.*

Between April and early August 2013, the parties' counsel negotiated the settlement's detailed terms, exchanged numerous drafts of the agreement and related exhibits (including Notice to the Class and a Plan of Allocation), and executed it on August 12, 2013. *Id.* ¶ 26; Dkt. No. 33. The parties' counsel also negotiated and executed an escrow agreement under which United deposited \$6.15 million in August 2013. PRF Decl. ¶ 27. In July and August 2013, Class Counsel issued a request for proposals to hire a Settlement Administrator and Adjudicator, reviewed numerous proposals, and made a joint recommendation to the Court. *Id.* ¶ 28. On August 14, 2013, Class Counsel filed a Motion for Class Certification, Preliminary Approval of the Settlement Agreement, and Approval of Notice. Dkt. No. 34. On October 31, 2013, the Court granted the motion, certifying a mandatory Rule 23(b)(1) class, granting preliminary approval, and directing KCC, the Settlement Administrator, to issue notice to the Class. Dkt. No. 52. Thereafter, Class Counsel worked with KCC to finalize the Class Notice, and provided KCC with individualized personnel data that were used to calculate the claim(s) of each Class Member so that KCC could include the information in each Class Member's notice. PRF Decl. ¶¶ 29-30.

B. The Settlement Agreement

1. Monetary Relief

Under the Settlement, United will pay at least \$6.15 million to compensate Class Members for past allegedly unmade pension contributions (after deducting any court-approved

attorneys' fees, costs, and service award). Agmt. §§ II.II, VI.A.1, VII.A. As supplemental pension payments will be made, to the extent possible, in a tax favorable manner, the monetary value far exceeds \$6.15 million in cash. *Id.* VIII.F.2. The Settlement Fund also may increase above \$6.15 million to compensate Class Members who are currently on military leave and later successfully challenge United's personal data. *Id.* § VI.A.3, VII.D. Based on the calculations of Plaintiff's expert using United's personnel data and the Plan of Allocation preliminarily approved, Class Counsel estimate each Class Member will receive a supplemental payment *equal to or greater than* 100 percent of the under payment between 2000 and 2010 (even after subtracting requested fees, costs, and service award from the Settlement Fund). PRF Decl. ¶ 31.

2. Programmatic Relief

Under the Settlement, United has agreed to modify how it calculates defined pension contributions for pilots who return from long term military leave. In particular, United will change its formula for calculating pension contributions so that United considers the average monthly compensation from *all* 12 months for which United has data before a period of long term military leave, and will credit all military leave by counting compensation that was paid *or would have been paid* during the 12 month period. Agmt. § X.A. This change is expected to increase pension contributions for pilots who take substantial short term military leave. United also will make several key changes to the process by which it informs pilots about pension contributions they receive for periods of long term military leave, including maintaining a written policy on pension contributions and making it available, providing pilots the data and methods used to calculate their pension contributions, and giving pilots who are starting periods of leave estimates of the average hours they worked in the prior 12 month period. *Id.* § X.B-D.

C. The Efforts of Class Counsel

1. Class Counsel Have Performed Significant Work to Date

Class Counsel performed significant work on behalf of the Class, expending over 1,900 hours to date. PRF Decl. ¶ 44 & Ex. 1; Jarrard Decl. ¶ 19; Decl. of Matthew Crotty ¶ 21 (Dec. 29, 2013), Ex. 4 to PRF Decl. (“Crotty Decl.”); Decl. of Robert Mitchell ¶ 12(t) (Jan. 1, 2014), Ex. 5 to PRF Decl. (“Mitchell Decl.”). At current hourly rates, the time Class Counsel expended on behalf of the Class amounts to \$752,735.40. PRF Decl. ¶ 44. Class Counsel also advanced \$246,157.59 in expenses for expert witness fees, travel, legal research, and other costs. *Id.* ¶ 51.³

2. Class Counsel Will Be Required to Perform Additional Work

Class Counsel’s work is far from over. Although the parties have reached a settlement, Class Counsel will continue to provide service to the Class and will undertake a significant amount of additional work. Between today and the May 16, 2014 fairness hearing, Class Counsel will perform a range of important duties, including (1) training and providing information to the Settlement Adjudicator so it can adjudicate challenges to United’s personnel data, (2) moving for final approval, (3) communicating with Class Members who have questions about their claims and Settlement rights, and (4) attending the fairness hearing. Furthermore, the work of Class Counsel will likely continue through 2020—the last year Class Members currently on military leave can exercise their Settlement rights. Class Counsel estimate they will spend at

³ The records of the time expended by Class Counsel, maintained contemporaneously with the work performed, are voluminous and contain confidential and privileged information. Consistent with established practice in common fund cases, Class Counsel have summarized the records in their declarations, and, should the Court request, will make the records available for *in camera* review. *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 284 (3d Cir. 2009) (summary of labor sufficient in common fund case as court used information to cross-check reasonableness of fee award); *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 200 (3d Cir. 2000) (appropriate for counsel to wait to submit detailed time records until Court requests them).

least \$50,000 to \$75,000 of additional time to complete all of this work. *Id.* ¶ 33. Class Counsel estimate they will incur additional out-of-pocket expenses of \$2,500 to \$3,000 between now and the fairness hearing, and will submit a supplemental declaration before the hearing on such costs. As there will likely be further expenses between final approval and the final distribution of the Settlement Funds, Class Counsel may submit a supplemental request for reimbursement of costs.

ARGUMENT

A. The Tenth Circuit Favors Awarding Fees Based on a Percentage of a Fund

The Tenth Circuit has “approved the use of common fund methodology to award attorneys whose efforts created a fund benefitting persons other than themselves or their clients.” *Connolly v. Harris Trust Co. of Cal.*, 309 F.3d 1234, 1241 (10th Cir. 2002) (citing *Gottlieb v. Barry*, 43 F.3d 474, 487-88 (10th Cir. 1994)). When attorneys have “created a ‘common fund’ from which the plaintiff class obtained a benefit,” “[a]ttorneys’ fees are appropriately awarded from that fund, on the theory ‘that persons who obtain the benefit of a lawsuit without contributing to its costs are unjustly enriched at the successful litigant’s expense.’” *Gottlieb*, 43 F.3d at 482 (quoting *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)). The Tenth Circuit has instructed that attorneys’ fees in common fund cases ordinarily should be based on a percentage of the fund available to the class, instead of calculating fees based on a lodestar plus multiplier method. *Id.* at 482-83, 487 (holding a district court erred by rejecting percentage of the fund approach to a common fund fee award and “replacing it with the lodestar plus multiplier method”).⁴ At the same time, however, the Tenth Circuit has held a court also should consider

⁴ See *Lucken Family Ltd. P’ship v. Ultra Res., Inc.*, No. 09-cv-01543, 2010 U.S. Dist. LEXIS 144366, at *5-6 (D. Colo. Dec. 22, 2010) (“In *Gottlieb*, the Tenth Circuit recognized that the prevailing trend in awarding attorney fees in common fund cases is to award fees based on a

“the specific factors traditionally used to calculate the lodestar” to assess the reasonableness of a common fund fee award. *Cox v. Sprint Commc’n Co., L.P.*, No. 6:10-cv-01262-KGG, 2012 U.S. Dist. LEXIS 162576, at *6 (D. Kan. Nov. 14, 2012) (quoting *Gottlieb*, 43 F.3d at 482-83).

By instructing courts to apply the percentage of the fund approach but also consider the 12 *Johnson* factors that are applied under the lodestar plus multiplier method, the Tenth Circuit has adopted a “‘hybrid’ approach” to approving fees from a common fund. *Id.* (quoting *Gottlieb*, 43 F.3d at 482-83); *accord Lucken*, 2010 U.S. Dist. LEXIS 144366, at *7-8. In weighing the *Johnson* factors, courts in this Circuit have concluded that “[i]n a common fund case, the greatest weight should be given to the monetary results achieved for the benefit of the class [and] this factor is often ‘decisive.’” *Lucken*, 2010 U.S. Dist. LEXIS 144366, at *8 (quoting *Brown*, 838 F.2d at 456); *Lowery v. City of Albuquerque*, No. Civ. 09-0457 JB/WDS, 2013 U.S. Dist. LEXIS 35626, at *136 (D.N.M. Feb. 27, 2013) (“Courts have consistently held that the most important factor within this analysis is what results were obtained for the class.”) (citation omitted).

B. Class Counsel Seek Reasonable Fees As a Percentage of the Common Fund

In this Circuit, “[t]he customary fee awarded to class counsel in a common fund settlement is approximately one third of the total economic benefit bestowed on the class.”

Lucken, 2010 U.S. Dist. LEXIS 144366, at *13 (quoting *Anderson*, 2009 U.S. Dist. LEXIS 100681, at *10). Similarly, a District Judge in this District observed that even “[a] 30%

percentage of the common fund obtained for the benefit of the class.”) (citing *Anderson v. Merit*, No. 07-cv-00916, 2009 U.S. Dist. LEXIS 100681, at *5 (D. Colo. Oct. 20, 2009) (“Under Tenth Circuit law, attorneys’ fees in common fund cases are generally awarded based on a reasonable percentage of the fund created”). The Tenth Circuit prefers “the common fund approach, as opposed to the lodestar method, because a percentage of the common fund ‘is less subjective than the lodestar plus multiplier approach,’ matches the marketplace most closely, and is the better suited approach when class counsel were retained on a contingent fee basis[.]” *Id.* at *6-7 (quoting *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 484 (10th Cir. 1998)).

common fund fee award is in the middle of the ordinary 20%-50% range and is presumptively reasonable.” *Vaszlavik v. Storage Tech. Corp.*, No. 95-B-2525, 2000 U.S. Dist. LEXIS 21140, at *11 (D. Colo. March 9, 2000).⁵ A recent study analyzing all class action settlements nationwide in 2006 and 2007 found “[m]ost fee awards were between 25 percent and 35 percent,” with a 25.4% average award. Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical L. Stud. 811, 833 (2010). The national average and median fee awards in *employment* class action settlements were 28% and 29% in 2006 and 2007. *Id.* at 835.

Here, Class Counsel seek a fee award of 24.7% of the \$6.15 million Settlement Fund, which would result in a \$1,522,500 fee.⁶ Thus, the requested fee is a reasonable percentage that is far less than many courts in this and other Circuits routinely award in common fund cases, and especially in employment class actions.

⁵ See, e.g., *Whittington v. Taco Bell of Am., Inc.*, No. 10-cv-01884-KMT-MEH, 2013 U.S. Dist. LEXIS 161665, at *20 (D. Colo. Nov. 13, 2013) (approving attorneys’ fees of 33% in a wage and hour case as “within the normal range for a contingent fee award.”); *Lowery*, 2013 U.S. Dist. LEXIS 35626, at *140 (approving a fee of 30% of the common fund as being “within the range of awards that other courts within the Tenth Circuit have approved,” and citing cases, including *Sanders v. MPRI, Inc.*, No. 5:08-cv-00345-R (W. D. Okla. July 9, 2009) (approving fees in a Fair Labor Standards Act collective action of 38.5% of the total settlement plus litigation costs)).

⁶ The common fund and monetary benefits to the Class are actually more than just the \$6.15 million because that number does not include (1) United’s agreement to pay for the administrative costs of the settlement, (2) any increase that United has agreed to pay to pilots who are currently on military leave and successfully challenge United’s data, and (3) the change United is making to its pension contribution formula that will likely increase contributions Class Members receive in the future. See *Cox*, 2012 U.S. Dist. LEXIS 162576, at *8-9 (including administrative costs paid by defendant as part of common fund’s value); *Anderson*, 2009 U.S. Dist. LEXIS 100681, at *3 (calculating value of fund by including “present value of anticipated increase in the future royalties” resulting from changes to defendant’s royalties formula).

C. The *Johnson* Factors Support the Reasonableness of the Requested Fees

All of the *Johnson* factors⁷ that are relevant in this case further support the reasonableness of the 24.7 percent common fund fee Class Counsel have requested.

1. The Amount Involved and Results Obtained

The most important *Johnson* factor in assessing the reasonableness of a common fund fee award – the relief obtained – weighs heavily in favor of the award requested by Class Counsel, as Class Counsel obtained outstanding monetary and injunctive relief for the Class. *Supra* at 8. In a prior case where counsel obtained just 50 percent of the class members’ losses, a District Judge in this Circuit found the recovery “demonstrates that the class will receive a substantial recovery for their losses” and “thus weighs in favor of approving the [] requested fees.” *Lowery*, 2013 U.S. Dist. LEXIS 35626, at *137. And in a case where counsel secured relief of “more than 80% of [the class’] damages,” a District Judge in this District hailed it as “an excellent recovery by any standard.” *Lucken*, 2010 U.S. Dist. LEXIS 144366, at *9. Here, the monetary recovery exceeds the results in those cases and also includes substantial, valuable prospective relief.

Based on United’s payment of *at least* \$6.15 million in supplemental pension payments and the Plan of Allocation, Class Counsel estimate all Class Members will receive supplemental pension contributions that are equal to or greater than 100 percent of the contributions Class

⁷ The 12 factors of *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), are “[1] the time and labor required, [2] the novelty and difficulty of the question presented by the case, [3] the skill requisite to perform the legal service properly, [4] the preclusion of other employment by the attorneys due to acceptance of the case, [5] the customary fee, [6] whether the fee is fixed or contingent, [7] any time limitations imposed by the client or the circumstances, [8] the amount involved and the results obtained, [9] the experience, reputation and ability of the attorneys, [10] the ‘undesirability’ of the case, [11] the nature and length of the professional relationship with the client, and [12] awards in similar cases.” *Gottlieb*, 43 F.3d at 482 n.4 (citing *Johnson*, 488 F.2d at 717-19). Two factors – time limitations imposed by client and the nature and length of the professional relationship with the client – are not relevant to this action.

Members were denied from 2000 to 2010, even after deducting the requested fees, costs and service award. PRF Decl. ¶ 31. Such a high degree of monetary relief – over 100% of the lost contributions plus interest – weighs strongly in favor of finding the requested fee is reasonable, especially since United possesses a timeliness argument that, if accepted, could result in the dismissal of about 40 percent of the Claims in this action. *See* Dkt. No. 34 at 29-30.

In addition, Class Counsel obtained programmatic changes that will provide major benefits to Class Members (and even other United pilots who are not Class Members) in the future. The changes United will make to its formula for calculating pension contributions are expected to increase the amount of contributions many United pilots receive when they take long term military leave in the future, and the wide-ranging procedural changes will ensure all pilots fully understand the contributions to which they are entitled, how their contributions are calculated, and when the contributions are made. These future benefits further enhance the value of the Settlement to Class Members and support the requested fee.

2. The Time and Labor Required

The amount of time and labor that Class Counsel spent to advance the litigation and reach an outstanding Settlement Agreement also weighs in favor of the requested fee. Class Counsel have already spent 1,938.81 hours on this class action to date, and will continue to spend additional time and labor to complete their work on behalf of the Class. PRF Decl. ¶¶ 33, 44-45.

a. Class Counsel Performed a Significant Amount of Labor

Class Counsel have performed a significant amount of labor to advance the interests of the Class, including: engaging in a thorough pre-suit investigation; filing the action; obtaining, reviewing and analyzing thousands of pages of discovery from more than 100 individual Class

Members whom Class Counsel interviewed, United, ALPA, and the Department of Labor; working closely with an expert to develop a comprehensive methodology to estimate Class Members' damages and apply that methodology (for the purpose of settlement or trial); researching myriad legal and factual issues for the purpose of litigation or settlement; negotiating a complex, comprehensive Settlement Agreement that provides Class Members with at least 100 percent of their estimated damages; drafting, negotiating and executing a Settlement and many related exhibits and procedures (including the Notice and Plan of Allocation); recruiting and proposing a Settlement Administrator; negotiating an escrow agreement to deposit, preserve, and invest the Settlement Funds; moving for class certification, for preliminary approval, and for approval of Notice; filing additional procedural motions; filing a service award motion; and filing this fee motion. *Id.* ¶¶ 10-35. To reduce the number of hours and lodestar spent on this case, Class Counsel assigned work to attorneys who are most familiar with the relevant issues or motions, assigned a higher portion of work to attorneys at each firm who have lower billing rates, and avoided having many meetings where multiple attorneys were present. *Id.* ¶ 34.

The work performed by Class Counsel is substantial, and the 1,938 hours Class Counsel spent performing that work are reasonable. *See* Order, Dkt. No. 52 at 4 (observing that Class Counsel “have expended significant resources investigating the claims, hiring experts, and negotiating with United to reach the proposed settlement.”). Class Counsel also will perform a substantial amount of additional work through the May 16, 2014 fairness hearing, and thereafter through 2020. PRF Decl. ¶ 33. Though the litigation was stayed for most of the time between the filing of the case and the execution of the Settlement, Class Counsel worked diligently to obtain the same information that they would have received if there was active litigation. *See*

supra at 2-3. If they had not reached a settlement, Class Counsel would have been prepared to move for class certification and proceed to trial quickly with little further discovery, possibly requiring only some interrogatories and a single 30(b)(6) deposition. PRF Decl. ¶ 32.

Based on the hourly rates that Class Counsel customarily charge their clients, the lodestar of Class Counsel is \$752,735.40. PRF Decl. ¶¶ 36-44 & Ex. 1. In Exhibit 1 to the Romer-Friedman Declaration, Class Counsel provide a Chart that identifies the hours of work performed by the attorneys and their paralegals at each law firm, as well as their respective hourly rates, and the declarations for each law firm summarize the work that their legal professionals did in this action. PRF Decl. ¶¶ 10-35, 37-38 & Ex. 1; Jarrard Decl. ¶¶ 3-7, 18-20; Crotty Decl. ¶¶ 15-17, 19-22; Mitchell Decl. ¶¶ 6, 12(t).

The hourly rates of the members of Class Counsel who performed the work in this matter are reasonable for lawyers working on a complex, national pension class action lawsuit, especially in their respective geographical areas,⁸ are all lower than the rates customarily charged by national law firms that represent defendants in class action litigation, and are comparable to or lower than rates charged by United's counsel in this case.⁹ Furthermore, the hourly rates of Class Counsel are comparable to the hourly rates that this Court accepted in granting a fee request in a complex, derivative action. *Make A Difference Found. v. Hopkins*, No. 10-cv-

⁸ The hourly rate of R. Joseph Barton is \$570, and the hourly rate of Peter Romer-Friedman is \$440 per hour. PRF Decl., Ex. 1. The hourly rate of Thomas Jarrard is \$350. Jarrard Decl. ¶ 16. The hourly rate of Matthew Crotty is \$350. Crotty Decl. ¶ 21. The hourly rate of Robert Mitchell is \$300. Mitchell Decl. ¶¶ 7, 11, 12(t).

⁹ See National Law Journal, 2012 Law Firm Billing Survey (Dec. 17, 2012), available at <https://ebooksag.settlements.com/LinkClick.aspx?fileticket=-HI1rkj60k%3D&tabid=79&mid=451>; National Law Journal, 2010 Billing Survey http://www.americanlegalsearch.com/ResourceFile/Firm_rates.xls (stating over 3 years ago, Seyfarth Shaw's hourly rates for partners ranged from \$770 to \$335 and \$535 to \$185 for associates, with \$503 median firm rate).

00408-WJM-MJW, 2012 U.S. Dist. LEXIS 36251, at *10-11 (D. Colo. Mar. 19, 2012) (approving attorney rates between \$350 and \$700 “given the complexity of the case” and the “expertise of Plaintiff’s counsel”). Moreover, the hourly rates of Class Counsel in 2013 are substantially less than or comparable to the average hourly rate of pension litigators in Colorado in 2008 – \$500 per hour – according to a 2008 Colorado Bar Association study. *See DeGrado v. Jefferson Pilot Financial Ins. Co.*, No. 02-cv-01533-WYD-BNB, 2009 U.S. Dist. LEXIS 60515, at *29 (D. Colo. July 6, 2009) (describing 2008 study).¹⁰

Finally, the hourly rates of Cohen Milstein Sellers & Toll PLLC, Lead Class Counsel, have been approved by many courts when awarding attorneys’ fees in class action settlements. PRF Decl. ¶ 38 (collecting recent cases). The rates of the Law Office of Thomas Jarrard PLLC, Crotty & Son PLLC, and Robert Mitchell, Attorney at Law, members of Class Counsel, are well within the range of hourly rates charged in Spokane, Washington, and are routinely charged to their clients and approved by courts. Jarrard Decl. ¶ 16; Crotty Decl. ¶ 26; Mitchell Decl. ¶¶ 7-10

b. A Lodestar Crosscheck Shows the Requested Fee is Reasonable

To consider the reasonableness of the fee requested by class counsel in relation to the work performed, courts often perform a lodestar crosscheck by dividing the requested fees by class counsel’s lodestar. *Lucken*, 2010 U.S. Dist. LEXIS 144366, at *9-10. In this case, the request of Class Counsel amounts to a multiplier of approximately 2.02, which is lower than lodestar multipliers that the Tenth Circuit and other Circuits have approved.¹¹ In addition, by the

¹⁰ The \$570 current hourly rate of R. Joseph Barton, a national leader in pension class action litigation, is \$526 in 2008 dollars, based on the Consumer Price Index. Thus, Mr. Barton’s hourly rate is only slightly higher than the average hourly rate of pension litigators in Colorado.

¹¹ *See Lucken*, 2010 U.S. Dist. LEXIS 144366, at *9 (approving a multiplier of 1.82, after reviewing other cases because the multiplier “is lower than lodestar multipliers that federal

end of the action Class Counsel’s multiplier will likely decline below 2.0, as Class Counsel will undertake a substantial amount of additional work on behalf of the Class. PRF Decl. ¶ 33.

Moreover, as this is a common fund case and Class Counsel prosecuted it on a contingency fee basis, the Court should “shift[] the analytical focus away from hours spent on the case to the ultimate result class counsel has obtained.” *Childs v. United Life Ins. Co.*, No. 10-CV-23-PJC, 2011 U.S. Dist. LEXIS 138818, at *44-45 n.10 (N.D. Okla. Dec. 2, 2011) (citation omitted). In fact, to do otherwise would create an incentive for class counsel to avoid the early resolution of class actions. *Id.* at *45 (citing *In re Harrah’s Entm’t*, 1988 WL 832574, at *5 (E.D. La. Nov. 25, 1998) (“To overly emphasize the amount of hours spent on a contingency fee case would penalize counsel for obtaining an early settlement and would distort the value of the attorneys’ services.”)); *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 198 (3d Cir. 2000) (“[O]ne purpose of the percentage method’ of awarding fees – rather than the lodestar method, which arguably encourages lawyers to run up their billable hours – ‘is to encourage early settlements by not penalizing efficient counsel.’”) (quoting Manual for Complex Litigation

courts consistently have approved in other class action cases,” including *Miniscribe Corp. v. Harris Trust Co. of Cal.*, 309 F.3d 1234, 1245 (10th Cir. 2002) (affirming fee award based on a lodestar multiplier of 2.57 in class action); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir. 2002) (approving lodestar multiplier of 3.65 in the cross-check as reasonable); *Lucas v. Kmart Corp.*, No. 99-cv-01923, 2006 U.S. Dist. LEXIS 51420, 2006 WL 2729260 at *9 (D. Colo. July 27, 2006) (lodestar multiplier of 1.87 in the cross-check was reasonable)); *see also Ryskamp v. Looney*, No. 10-cv-00842-WJM-KLM, 2012 U.S. Dist. LEXIS 114190, at *17-18 (D. Colo. Aug. 14, 2012) (citing *Miniscribe*, *Lucas*, and other cases where courts approved much larger multipliers in class actions and derivative actions than one requested there); *see also id.* (citing *In re UnitedHealth Group Inc. S’holder Derivative Litig.*, 631 F. Supp. 2d 1151, 1160 (D. Minn. 2009) (applying 2.75 multiplier to lodestar figure in shareholder derivative suit where plaintiffs’ counsel worked on contingency in the face of considerable risk and uncertainty)).

(Third) § 24.121, at 207 (1997)). As Class Counsel’s total current lodestar is \$752,735, it is reasonable for the Court to award Class Counsel 24.7% of the \$6.15 million Settlement Fund.

3. The Novelty and Difficulty of the Question Presented by the Case

“[T]he novelty and difficulty of the questions” supports the requested fee, as this action presented a range of novel and difficult issues, including interpreting a rarely applied federal law. *Horton v. Leading Edge Mktg., Inc.*, No. 04-cv-00212-EWN-CBS, 2008 U.S. Dist. LEXIS 11761, at *5-7 (D. Colo. Feb. 4, 2008); *see Childs*, 2011 U.S. Dist. LEXIS 138818, at *43-44. Not only have a very small number of USERRA cases been prosecuted as class actions, but Class Counsel is aware of only two class actions challenging the failure to calculate pension benefits consistent with Section 4318(b)(3) – the specific claim here – and the only successful one was filed by the United States. *Compare Goodman v. City of N.Y.*, No. 1:10-cv-05236-RJS, Dkt. No. 97 (S.D.N.Y. July 2, 2013) (preliminarily approving settlement with U.S. Attorney), *with Carder v. Cont’l Airlines, Inc.*, No. 4:09-CV-3173, 2013 U.S. Dist. LEXIS 121131, at *14-18 (S.D. Tex. Mar. 28, 2013) (dismissing pension claim). This case also presented novel questions about whether United’s policy violated USERRA, how to calculate Class Members’ damages, and the timeliness of some Class Members’ claims. *See* Dkt. No. 34 at 28-31.

4. Experience, Reputation and Ability of the Attorneys

The extensive experience, reputation, ability and skill of Class Counsel “significantly contributed to the excellent terms the settlement class members received,” and thus supports the requested fee. *Lucken*, 2010 U.S. Dist. LEXIS 144366, at *13. As previously described in support of class certification, Class Counsel is composed of attorneys who are highly experienced and recognized leaders in the areas of class action litigation, employee benefits, civil

rights and employment, and veterans' rights. *See* Dkt. No. 34 at 25-26 & Exs. A-D; Order, Dkt. No. 52 at 4 (“Counsel has significant experience in class actions, employee benefits cases, and USERRA cases.”). The high ““quality of opposing counsel”” also supports the requested fee, as United is represented by experienced counsel at a leading national employment law firm. *Horton*, 2008 U.S. Dist. LEXIS 11761, at *7 (citing *Brown*, 838 F.2d at 455). In fact, this week Seyfarth Shaw received an award as one of the top law firms nationally in employment law. Jake Simpson, Law360 Names Practice Groups of the Year, Law360 (Jan. 1, 2014).

5. The Skill Requisite to Perform the Legal Service Properly

Here, the skill required to properly represent the Class in this case was high and supports the requested fee, particularly given the complexity, difficulty, and novelty of the legal and factual issues, the amount of damages at stake, and the need to obtain class certification to obtain class-wide relief. *See Horton*, 2008 U.S. Dist. LEXIS 11761, at *7. Given the outstanding relief obtained, it is clear that Class Counsel prosecuted the action with a high degree of skill.

6. The Preclusion of Other Employment by the Attorneys

Here, the “preclusion of other employment” by Class Counsel “due to acceptance of the case” “weighs in favor of the [fee] application,” given that this action “took up a substantial portion of” the time of several members of Class Counsel during the action. *Horton*, 2008 U.S. Dist. LEXIS 11761, at *7; *see also Childs*, 2011 U.S. Dist. LEXIS 138818, at *44; PRF Decl. ¶ 40 & Ex. 1; Jarrard Decl. ¶ 19; Crotty Decl. ¶¶ 18, 21; Mitchell Decl. ¶ 12(s)-(t).

7. Contingent Fee

The contingent nature of Class Counsel’s representation further supports the requested fee. *See Childs*, 2011 U.S. Dist. LEXIS 138818, at *43-45 & n.10. In this action, Class

Counsel's fees were contingent upon achieving a favorable settlement or judgment, and Class Counsel expended a substantial amount of time and \$246,157 in out-of-pocket costs to advance the litigation with a substantial risk of not receiving any fees or reimbursement of costs. *See* PRF Decl. ¶¶ 38, 51 & Ex. 2; Jarrard Decl. ¶ 14; Crotty Decl. ¶ 18; Mitchell Decl. ¶ 12(o)-(p).

8. The Customary Fee

Here, the requested fee of 24.7 percent is substantially lower than the “customary fee awarded to class counsel in a common fund settlement” of “approximately one third of the total economic benefit bestowed on the class,” and thus supports the requested fee. *Lucken*, 2010 U.S. Dist. LEXIS 144366, at *13-14 (collecting cases). Also, the requested fee is substantially below the customary fee of 33.3 percent that Class Counsel charge their contingency-based clients, which further supports the reasonableness of the requested fee. *Childs*, 2011 U.S. Dist. LEXIS 138818, at *45 (request for 33.3% fee award when retainer agreement allowed counsel to ask for up to 40% of common fund in fees shows “counsel has the best interests of the Settlement Class in mind” by “foregoing their contractual rights to ensure more money is available to provide a remedy to the Settlement Class”); PRF Decl. ¶ 38 (stating Cohen Milstein typically agrees to not seek fees that exceed 33% of a common fund in class cases, Class Counsel did the same here, and a fee of 25% is on the lower end of fees Cohen Milstein charges clients in non-class cases); Jarrard Decl. ¶ 15 (typically charges 33%); Crotty Decl. ¶ 9 (typically charges 33% to 40%).

9. Undesirability of the Case

There were a number of issues related to the “subject matter” and “risk” that made this case “undesirable,” and thus support the requested fee. *Horton*, 2008 U.S. Dist. LEXIS 11761, at *9. For instance, this type of USERRA pension claim has been litigated infrequently, there was

a risk that a large portion of the claims (up to 40 percent) could be dismissed as untimely, the cost of having an expert determine the damages of Class Members would be significant, and estimating the size of the Class and the approximate damages pre-suit was nearly impossible. Despite the result achieved by Class Counsel, other lawyers considered this case to be undesirable due to the complexity of the case and the novelty of USERRA, and for these reasons other class action law firms declined to join Mr. Jarrard in pursuing this action before Cohen Milstein agreed to do so in 2012. Jarrard Decl. ¶ 4; *see also* Crotty Decl. ¶¶ 15, 17.¹²

10. Awards in Similar Cases

Awards in class actions under USERRA and other employment laws further support the requested fee. *See Lucken*, 2010 U.S. Dist. LEXIS 144366, at *14-15; *Horton*, 2008 U.S. Dist. LEXIS 11761, at *10. Class Counsel is aware of only a single class action under USERRA where attorneys' fees were awarded, and there the Court granted a request for "one-third of the recovery . . . under the common fund theory." *Becher v. Long Island Lighting Co.*, 64 F. Supp. 2d 174, 182 (E.D.N.Y. 1999). Moreover, the requested fee is lower than the mean and median award in employment class actions nationwide and is far lower than awards that courts in this Circuit have approved in employment cases. *Supra* at 9.¹³ And in pension settlements

¹² Indeed, for at least 10 years, United implemented a policy that Plaintiff asserts was unlawful and caused substantial harm to nearly 1,200 pilots. A number of pilots filed complaints with the DOL, and it is likely some contacted private counsel. PRF Decl. ¶ 15. That no private attorney filed such a class action further shows this class action was viewed as undesirable.

¹³ *See also Lucas*, 2006 WL 2729260, at *6 (describing the "customary fee award" as "30% of the fund under the percentage of the fund approach"); *Cimarron Pipeline Constr., Inc. v. National Council on Compensation Ins.*, 1993 WL 355466, at *2 (W.D. Okla. June 8, 1993) ("Fees in the range of 30-40% of any amount recovered are common in complex and other cases taken on a contingent fee basis," and "attorneys' fees of 33 1/3% of the common fund . . . [are] consistent with prevailing case law in this circuit."); *Childs*, 2011 U.S. Dist. LEXIS 138818, at *46 ("The Tenth Circuit has identified the typical fee range as 23.7% to 33.7%").

nationwide, courts commonly approve fees that exceed 24.7 percent. *E.g., In re Marsh ERISA Litig.*, 265 F.R.D. 128, 146-147 (S.D.N.Y. 2010) (awarding 33.33% fee in ERISA case); *In re Aquila ERISA Litig.*, 2007 U.S. Dist. LEXIS 87830, at *6-7 (W.D. Mo. Nov. 29, 2007) (same).

D. Class Counsel Seek Reimbursement of Reasonable Expenses Incurred

“As with attorneys’ fees, an attorney who creates or preserves a common fund for the benefit of a class is entitled to receive reimbursement of all reasonable costs incurred,” and “[c]osts are awarded in addition to the attorney fee percentage.” *Vaszlavik*, 2000 U.S. Dist. LEXIS 21140, at *11 (citations omitted). The costs advanced by Class Counsel are summarized in Class Counsel’s declarations, and were all necessary to achieve the outstanding result in this case. PRF Decl. ¶¶ 47-56 & Exhibit 2 (stating the specific expenses of Cohen Milstein and total expenses of each law firm); Jarrard Decl. ¶ 20; Crotty Decl. ¶ 27; Mitchell Decl. ¶ 13. The vast majority of the costs are associated with paying the expert actuary who calculated each Class Member’s damages and whose work was not only important to obtain this settlement, but also would have been necessary at trial. *See id.* In a case such as this, where a “statistical expert analysis” is “essential” to advancing the claims, expert costs should be routinely approved. *Vaszlavik*, 2000 U.S. Dist. LEXIS 21140, at *12. As such, the Court should approve reimbursement of \$246,157.59 of the out-of-pocket expenses that Class Counsel advanced.

CONCLUSION

For the foregoing reasons, Class Counsel’s Motion for Attorneys’ Fees and Reimbursement of Expenses should be granted. A proposed order is attached.

January 3, 2014

Respectfully submitted,

/s/ Peter Romer-Friedman

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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.

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**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.

**DECLARATION OF PETER ROMER-FRIEDMAN IN SUPPORT OF
CLASS COUNSEL’S MOTION FOR AND AWARD OF
ATTORNEYS’ FEES AND REIMBURSEMENT OF EXPENSES**

I, Peter Romer-Friedman, declare under penalty of perjury as follows:

1. I am an Associate for the law firm of Cohen Milstein Sellers & Toll, PLLC (“Cohen Milstein”), which has been appointed lead counsel in *Tuten v. United Air Lines, Inc.*, Civil Action No. 1:12-cv-01561-WJM-MEH (D. Colo.). *See* Dkt. No. 52. I submit this declaration in support of Class Counsel’s request for an Order granting an award: (i) of Attorney Fees in favor of Class Counsel of 24.7% of the \$6.15 million Settlement Fund created through the efforts of Class Counsel, which amounts to \$1,522,500; and (ii) for reimbursement of \$246,157.59 in reasonable expenses necessarily incurred by Class Counsel in the litigation of this matter.

2. On June 15, 2012, Cohen Milstein filed the present action on behalf of Plaintiff James Daniel Tuten (“Plaintiff”) in the United States District Court for the District of Colorado asserting claims on behalf of himself and a putative class of all United Air Lines, Inc. (“United”)

pilots who took long term military leave between 2000 and received smaller pension contributions for those periods of long term military leave due to the application of United's uniform policy for making pension contributions that violated USERRA.

3. On August 12, 2013, the parties to this litigation reached a Settlement of the litigation ("the Settlement") and on August 14, 2013 Plaintiff moved for certification of a class and preliminary approval of the Settlement by the Court. Dkt. No. 34.

4. R. Joseph Barton, a partner at Cohen Milstein, and I, a seventh year associate at Cohen Milstein, have been the attorneys at Cohen Milstein primarily responsible for the management of this litigation since its inception.

5. I have been personally involved in all stages of this litigation since Cohen Milstein filed the original Complaint in this action, including the factual discovery, expert witness discovery, class certification, and the settlement process.

6. The case has been litigated by counsel for the Plaintiff and the Defendant who are competent and experienced in pension litigation, civil rights, employment, and veterans' rights.

7. Cohen Milstein is a Washington, DC based law firm that specializes in complex class action litigation and maintains an Employee Benefits Practice Group that specializes in pension benefits class actions, as well as a Civil and Employment Rights Practice Group that specializes in a range of areas including employment discrimination, credit discrimination, veterans' rights, wage and hour law, and fair housing. The firm's resume was previously submitted to the Court in connection with Plaintiff's Motion for Class Certification, which resulted in the appointment of Cohen Milstein as Lead Counsel for the Class. Dkt. No. 34, Ex. A; Dkt. No. 52. Since submitting the firm's resume, Cohen Milstein was named a "Most

Feared Plaintiffs Firm” by Law360, Peter Romer-Friedman was selected as a Washington, DC “Rising Star” by *Super Lawyers* for 2014, and R. Joseph Barton was named a “Super Lawyer” again for 2014.

8. Cohen Milstein has served as lead counsel or co-lead counsel in class action pension litigation in numerous cases filed in District Courts throughout the United States, including: *Mehling v. New York Life Ins. Co.*, Civ. No. 99-CV-5417 (E.D. Pa.); *Dynegy, Inc. ERISA Litigation*, Civil Action No. H-02-3076 (S.D. Tex); *In re Marsh McClennan ERISA Litigation*, 04 Civ. 8157(CM) (S.D.N.Y.); *In Re Merck ERISA Litigation*, MDL No. 1658(SRC) (D.N.J.); *In Re Merrill Lynch & Co. Inc. ERISA Litigation*, 1:08-md-01933-JSR (S.D.N.Y.); and *Banyai v. Mazur*, No. 00cv9806 (S.D.N.Y.); *Dooley, et al. v. Saxton*, Case No. 3:13-cv-00395 (D. Or.). Cohen Milstein was lead counsel in *Chesemore, et al. v. Alliance Holdings, Inc.*, 09-CV-413-wmc (W.D. Wis.), which was successfully tried in 2011 and 2012, resulting in favorable decisions for plaintiffs on liability and damages. See *Chesemore v. Alliance Holdings, Inc.*, No. 09-cv-413-wmc, 2012 WL 3041950 (W.D. Wis. July 24, 2012); *Chesemore v. Alliance Holdings, Inc., et al.*, No. 09-cv-413-wmc, 2013 WL 2445036 (W.D. Wis. June 4, 2013).

9. Cohen Milstein has served as lead or co-lead counsel in numerous class and non-class civil rights and employment actions, including: *Hill v. U.S. Postal Service*, EEOC Hearing No. 110-2004-00311X, where disabled veterans who were asked by the U.S. Postal Service to provide medical documentation prior to conditional offers of employment in violation of federal law, won an \$11 million settlement that reforms the Postal Service’s practices and protects disabled veteran applicants’ rights; *Keepseagle v. Vilsack*, No. 1:99CV03119 (D.D.C.), where thousands of Native American farmers and ranchers nationwide obtained a settlement with the U.S. Department of Agriculture (USDA) that provides \$760 million in damages to

compensate the farmers for racial discrimination under the USDA's farm loan program since 1981 and reforms the USDA's programs; and *Greater New Orleans Fair Housing Action Center v. U.S. Department of Housing & Urban Development (HUD)*, 1:08-cv-01938-HHK (D.D.C.), where two fair housing groups and 20,000 African-American homeowners in New Orleans challenged Louisiana and HUD's \$11 billion post-Katrina housing rebuilding program that discriminated against African Americans, and obtained over \$470 million in voluntary reforms and \$62 million in a settlement that primarily benefited African-American homeowners.

**THE PROFESSIONAL SERVICES PROVIDED BY CLASS
COUNSEL IN THIS LITIGATION**

10. Prior to the filing of this action in June 2012, Plaintiff's counsel undertook an investigation of the underlying claims. Plaintiff's counsel continued its investigation of United's policies and practices after the Complaint was filed. As part of this investigation, Plaintiff's counsel have interviewed more than 100 putative Class Members to verify the accuracy of United's personnel data, understand how United's policy impacted putative Class Members, and obtain a range of information that is relevant to the claims in this litigation and United's potential affirmative defenses. Many of these 100-plus Class Members provided a substantial amount of documents about their personnel records and their military leave from United.

11. Before the deadline by which United needed to respond to the Complaint, United's counsel contacted me and indicated that United was interested in potentially resolving the action.

12. Over a nine month period, from July 2012 to March 2013, counsel for the parties engaged in informal discovery regarding both liability and damages.

13. In July and August 2012, Plaintiffs' counsel requested that United's counsel provide a variety of information about potential Class Members, documents about United's pension plan and military leave policies, and information about prior cases that involved the same factual allegations as this action. In making this request, I explained to United's counsel that prior to discussing the terms of any settlement it would be necessary for me and my colleagues to obtain from United the same type of discovery about its policy and the Class Members as they ordinarily would receive in the course of litigation so that we could fully understand United's policy and how it affected Class Members, and so that our own expert could complete a thorough analysis of each Class Member's damages. Before the parties' moved for a stay of the litigation, United's counsel represented that United would work cooperatively to produce on a timely basis the type of information that we had asked United to produce.

14. In September, October, and November, 2012, United's counsel responded to Plaintiff's informal discovery requests, and in particular produced several databases in excel spreadsheets that contained detailed personnel information for each United pilot who took long term military leave since 2000.

15. In addition to seeking information from United, Plaintiff's counsel also submitted a Freedom of Information Act ("FOIA") request to the U.S. Department of Labor's Veterans' Employment & Training Service. Through that FOIA request, Plaintiff's counsel obtained a range of information about prior complaints about United's pension practices regarding servicemembers and veterans.

16. From the time that United first began producing documents and information through December 2012, I and other counsel to Plaintiff engaged in a number of conversations with United's counsel about United's policies on pension contributions and military leave and

about the data United had produced about each potential Class Member.

17. In addition, throughout 2012 and 2013 I spoke with a representative of the Air Line Pilots Association (“ALPA”) about ALPA’s views on United’s policy for making pension contributions under USERRA and on how that policy can be improved.

18. Based on the personnel information provided by United about pilots who had taken long term military leave in the past, I was able to identify around 1,200 potential Class Members who collectively have around 2,000 potential Claims for specific periods of long term military leave that began and ended between January 1, 2000 and October 31, 2010.

19. Based on United’s representations and analysis by Plaintiff’s counsel and its expert of the data provided by United, Plaintiff’s counsel have concluded that all Class Members were subject to the same policy for calculating pension contributions when the pilots took and returned from long term military leave from January 1, 2000 to October 31, 2010.

20. In the Fall of 2012, as United began to produce personnel information on its pilots, Cohen Milstein engaged an expert actuary to help develop a methodology for measuring the potential damages and estimate the amount of potential damages of each Claim of each potential Class Member.

21. In November and December 2012, with the assistance of our expert actuary, Plaintiff’s counsel developed and proposed a comprehensive methodology to calculate the estimated potential damages of each putative Class Member based on United’s personnel data. The primary goal of developing a damages methodology was to formulate a method to estimate the difference between the pension contributions that putative Class Members received for each month in which he or she took long term military leave and what Plaintiff contended the Class Members should have received. Another goal of developing a damages methodology was to

address the fact that certain necessary information was missing from United's personnel data for some Class Members. As a result, Plaintiff's counsel proposed and the parties agreed to make certain assumptions about the missing personnel data when calculating damages. I believe that the assumptions to which the parties have agreed are fair and reasonable to the Class Members.

22. In late December 2012, Plaintiff's counsel proposed a damages methodology. After negotiating over the details of this methodology with United's counsel, on January 16, 2013 the parties executed an agreement over the Agreed Damage Methodology. *See* Settlement Agreement ("Agmt.") Ex. A. During the course of performing the calculations, Plaintiff's counsel and its expert actuary discovered additional assumptions that needed to be made as a result of data that was not available for certain members of the class – primarily concerning the number of hours that they had worked prior to long term military leave. On March 26, 2013, the parties executed an agreement that supplements the January 16, 2013 agreement. Agmt. Ex B. In addition, in approximately mid-March 2013 the parties reached an oral understanding to further supplement the January 16, 2013 agreement that is memorialized in an August 7, 2013 agreement. Agmt. Ex. C. In total, these agreements reflect the methodology and assumptions that Plaintiff's pension actuary made when calculating the damages of each Claim. The additional assumptions in the March and August supplemental agreements primarily address instances in which data was not available regarding the number of hours worked prior to a period of long term military leave. The Agreed Damages Methodology are consistent with how Plaintiff would have calculated the damages of Class Members for the purpose of trial.

23. From January to early March 2013, Class Counsel reviewed a random subset of the work of a team of actuaries who were calculating the potential damages for 2,013 Claims of nearly 1,200 potential Class Members based on the Agreed Damage Methodology, to ensure that the correct methodology was applied consistently.

24. Between January and early March 2013, Plaintiff's expert completed the calculations and reported to Plaintiff's counsel in early March 2013 that, when applying the Agreed Damage Methodology to United's data, the total damages of the approximately 2,000 Claims was about \$4 million before applying any interest—and about \$6 million when applying annual compound annual interest of 8% ("8% interest") from the date that the contributions were made through April 1, 2013. Accordingly, the average Claim without interest is around \$2,000 and the average Claim with 8% interest is about \$3,000.

25. In March 2013 after Plaintiff's counsel had received its expert actuary's damages analysis, the parties exchanged settlement proposals on monetary relief and non-monetary relief. On March 13 and 14, 2013, I and other members of Plaintiff's counsel (R. Joseph Barton, Thomas G. Jarrard, Matthew Z. Crotty, and Robert W. Mitchell) met with United's counsel in Chicago (including both in-house and outside counsel), engaged in intensive settlement discussions, and exchanged a variety of proposals. On the afternoon of March 14, 2013, the parties reached an oral agreement in principle that Class Counsel believe to provide outstanding relief to the Class. After exchanging several drafts of a proposed agreement in principle, the parties executed a 6-page Agreement in Principle on March 27, 2013.

26. In April 2013, Plaintiff's counsel drafted and proposed a final Settlement Agreement to United, and thereafter the parties exchanged numerous drafts of the Settlement Agreement and related exhibits to the Settlement Agreement. On August 12, 2013, the parties

executed a final Settlement Agreement.

27. In July and August 2013, the parties' counsel negotiated and executed an escrow agreement that will govern the use of the \$6.15 million that United deposited into an escrow account in August 2013.

28. In July and August 2013, Class Counsel issued a request for proposals to hire a Settlement Administrator and Adjudicator, reviewed numerous proposals, and made a joint recommendation to the Court that Kurtzman Carson Consultants LLC should be appointed by the Court as the Settlement Administrator and the Settlement Adjudicator.

29. On August 14, 2013, Class Counsel filed a Motion for Class Certification, Preliminary Approval of the Settlement Agreement, and Approval of Notice to the Class, Dkt. No. 34, which the Court granted on October 31, 2013. Dkt. No. 52.

30. After the Court granted preliminary approval, Class Counsel worked closely with KCC to finalize the notice that was sent to all known Class Members on December 13, 2013, and provided KCC with individualized personnel data that had been used to calculate each Class Member's claim(s) so KCC could include that information in each Class Member's notice. Because of the complexity and manual nature of providing this personnel data to the Settlement Administrator, Class Counsel hired three temporary workers for several days to manually extract and provide to the Settlement Administrator the personnel data that was used to calculate the damages for each of 2,000 Claims (which was, in turn, provided to Class Members in their notice packets). The cost of hiring those temporary workers has been identified as an expense of Class Counsel, and the hours of those workers have not been used to calculate the hours or lodestar of Class Counsel.

31. Based on the calculations of Plaintiff's expert actuary using United's personnel data and the Plan of Allocation that the Court has preliminarily approved, Class Counsel estimate that under the terms of the Settlement Agreement each Class Member will receive a payment equal to or greater than the amount of the under payment between 2000 to 2010, including after deducting the attorneys' fees, costs, and the service award requested by Class Counsel from the \$6.15 million Settlement Fund.

32. If this action had not settled in August 2013, Class Counsel would have been prepared to move for class certification and/or proceed to trial in a very short amount of time, due to the substantial factual discovery that occurred over the prior year, including by United producing information and Class Counsel undertaking its own independent investigation. Because United had already described how its policy worked, United had produced personnel data on each Class Member, and Plaintiff's expert had conducted an expert analysis of all of the Claims, the outstanding discovery that Class Counsel would have needed before proceeding with class certification or a trial was likely limited to confirming information disclosed about the policy and the assumptions and data about the members of the Class. As such, such discovery could likely be completed through interrogatories, perhaps some document requests and a Rule 30(b)(6) deposition of a United official regarding United's policy for making pension contributions for periods of long term military leave.

33. To complete the work of Class Counsel in this action, Class Counsel expects that it will undertake a range of activities on behalf of the Class, including (1) training and providing information to the Settlement Adjudicator so it can adjudicate challenges to United's personnel data, (2) moving for final approval, (3) communicating with Class Members who have questions about their claims and Settlement rights, and (4) attending the fairness hearing. In

addition, Class Counsel expect that they will continue to work on behalf of the Class through 2020 on a range of smaller tasks, because the Settlement Agreement allows Class Members who are currently on long term military leave to exercise their rights when they return from long term military leave and the administration of the Settlement Agreement will likely continue through for six years after final approval. Class Counsel estimate they will spend at least \$50,000 to \$75,000 of additional time to complete all of this work. In particular, Class Counsel estimate that they will spend approximately 60 hours reviewing any objections to the Settlement Agreement and drafting the Motion for Final Approval, approximately 25 hours to train the Settlement Administrator on how to evaluate the Class Members' challenges to United's personnel data, and respond to inquiries from the Settlement Administrator about challenges to personnel data and other issues related to settlement administration and adjudication (including after Final Approval), 25 hours for a sub-set of Class Counsel to travel to Denver, Colorado to attend the fairness hearing, between 25 and 50 hours answering questions of Class Members and interacting with Class Members before and after Final Approval, and approximately 5 to 10 hours to work with the Settlement Administrator on determining the final distributions that Class Members will receive (including after Final Approval).

34. During this litigation, Class Counsel have sought to prosecute the case in an efficient and effective manner. With those goals in mind, Class Counsel avoided holding numerous meetings in which multiple attorneys were present, assigned work to attorneys who are most familiar with the relevant issues or motions, and assigned a higher portion of the work to attorneys at each law firm who have lower billing rates. For instance, at Cohen Milstein, two attorneys were assigned to the case and the attorney with the lower billing rate (Peter Romer-Friedman) completed more than 70% of the attorney hours for Cohen Milstein. In addition,

attorneys at Cohen Milstein, a leading plaintiff-side class action law firm with substantial experience in pension and employment class action litigation, did most of the work in developing a damages methodology, supervising the expert actuary, drafting and negotiating the Settlement Agreement, moving for class certification and preliminary approval, working with the Settlement Administrator on providing notice to the Class, moving for an award of attorneys' fees and costs, and moving for a service award for the Class Representative.

35. Over the course of this action, attorneys and paralegals at Cohen Milstein have performed, *inter alia*, the following types of labor on behalf of the Class:

- Drafting the Original Complaint.
- Interviewing dozens of Class Members, developing a questionnaire for Class Members to provide information about themselves, reviewing and analyzing the questionnaires and documents provided by Class Members, and comparing the data in Class Members' own records to the personnel information that United produced about Class Members.
- Communicating regularly with Class Members and the Air Line Pilots Association about the action.
- Submitting a Freedom of Information Act Request to the U.S. Department of Labor, negotiating with the Department of Labor over what information it would produce, reviewing the documents and information provided by the Department of Labor.
- Conducting legal research on key issues relevant to liability, United's affirmative defenses, and damages, for the purpose of responding to a potential motion to dismiss and/or negotiating with United over the strengths and weaknesses of the

claims.

- Conducting legal research for a number of substantive motions filed with the Court, including motions for class certification, preliminary approval, attorneys' fees and costs, and service awards.
- Developed, drafted, and negotiated with United's counsel a comprehensive methodology for estimating the potential damages of each Class Member.
- Hired an expert actuary to conduct an expert damages analysis, and supervised and reviewed the work of the expert.
- Spoke regularly with United's counsel about United's pension and military leave policies and how they were specifically applied, and about the personnel data that United possessed and produced regarding Class Members.
- Drafted settlement proposals on monetary and programmatic relief.
- Attended settlement negotiations with United and United's counsel in Chicago, Illinois to resolve action.
- Drafted and negotiated an agreement in principle.
- Drafted and negotiated a final Settlement Agreement and related exhibits, including the Plan of Allocation and Notice to the Class.
- Researched potential banks in which to deposit Settlements Funds in escrow, and edited and negotiated an escrow agreement proposed by United.
- Drafted a request for proposal to hire a Settlement Administrator and Adjudicator, reviewed numerous proposals, negotiated with United over which entity to recommend to the Court.
- Drafted and filed a Motion for Class Certification, a Motion for Preliminary

Approval, and Motion for Approval of Notice to the Class.

- Drafted and filed the instant Motion for Attorneys' Fees and Costs.
- Drafted and filed the Motion for Service Award.
- Drafted and filed a number of other motions and pleadings, including motions to stay the litigation, a motion to administratively close the litigation, status reports, motions to restrict access to documents associated with the Settlement Agreement, and motions for extensions of time and/or page limits.

36. The value of the professional services provided by Cohen Milstein attorneys, paralegals and staff on behalf of the Class through January 3, 2013 total \$448,797.40 (other than a very small amount of time that has not yet been entered into our timekeeping system for December 2013). This value was arrived at by using what is commonly referred to as the "lodestar" methodology under which the "number of hours reasonably expended on the litigation [is] multiplied by a reasonable hourly rate." *Brown v. Phillips Petroleum, Co.*, 838 F.2d 451, 453-54 (10th Cir. 1998) (internal citations and quotations omitted).

37. The above total represents the recorded hours charged in this case by Cohen Milstein attorneys, paralegals and staff multiplied by the customary hourly rates charged by such attorneys and professionals in pension litigation such as this. Attached hereto as Exhibit 1 and incorporated herein is a compilation that identifies each attorney, paralegal or other staff member who provided services in the case, the number of hours he or she recorded on this litigation through January 3, 2013, the hourly rate for each such person, and the lodestar value of such individual's services.

38. The present action was litigated by Cohen Milstein and the other members of Class Counsel on a contingent fee basis. The rates that Cohen Milstein used in the preparation of Exhibit 1 are the same rates that Cohen Milstein charges for other non-class work for fiduciaries and other third-parties for non-contingent work. The rates of Cohen Milstein have been approved by numerous courts when awarding attorneys' fees in class action settlements, including in recent years. *See, e.g., In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 260 (E.D. Va. 2009) (approving as reasonable rates ranging from \$440 to \$775 for partners and \$295 to \$525 for associates at Cohen Milstein); *Parker v. Dish Network, L.L.C.*, No. 4:11-cv-1457, Doc. No. 63 (N.D. Cal. Feb. 13, 2012), *granted*, Doc. No. 87 (Apr. 17, 2012) (\$530 to \$710 for partners and \$350 for associates). In class action cases, Cohen Milstein routinely agrees that it will not seek attorneys' fees that exceed one-third of a common fund, and Cohen Milstein entered into the same type of agreement with Plaintiff James Daniel Tuten in this action. In addition, in non-class action cases, Cohen Milstein enters into agreements that vary with respect to the attorneys' fees that Cohen Milstein will receive. However, a fee of 25 percent falls on the lower end of the spectrum of Cohen Milstein's fee agreements with clients in non-class cases.

39. Exhibit 1 has been carefully prepared and accurately reflects the hours Cohen Milstein billed in the prosecution of this litigation.

40. In total the attorneys, paralegals and staff of Cohen Milstein who worked on this matter expended 1,036.96 hours with a lodestar value of \$448,797.40. Because of the significant amount of work performed by me and R. Joseph Barton in this matter, Mr. Barton and I were prevented from working on or pursuing other matters.

41. In addition, the Law Office of Thomas Jarrard PLLC, whom the Court appointed as Class Counsel, has submitted the Declaration of Thomas Jarrard (“Jarrard Declaration”) in support of this application for fees and expenses attached hereto as Exhibit 3, which indicates that the Law Office of Thomas Jarrard provided a total of 374.80 hours of services to the Class calculated in a similar manner, which has a total value of \$131,180. *See* Exhibit 3, Jarrard Decl. ¶ 19.

42. In addition, Crotty & Son PLLC, whom the Court appointed as Class Counsel, has submitted the Declaration of Matthew Crotty (“Crotty Declaration”) in support of this application for fees and expenses attached hereto as Exhibit 4, which indicates that Crotty & Son provided a total of 292.8 hours of services to the Class calculated in a similar manner, which has a total value of \$102,483. *See* Exhibit 4, Crotty Decl. ¶ 21.

43. In addition, Robert Mitchell, Attorney at Law, PLLC, whom the Court appointed as Class Counsel, has submitted the Declaration of Robert Mitchell (“Mitchell Declaration”) in support of this application for fees and expenses attached hereto as Exhibit 5, which indicates that Robert Mitchell provided a total of 234.25 hours of services to the Class calculated in a similar manner, which has a total value of \$70,275. *See* Exhibit 5, Mitchell Decl. ¶ 12(t).

44. Cohen Milstein, the Law Office of Thomas Jarrard PLLC, Crotty & Son PLLC, and Robert Mitchell, Attorney at Law, PLLC, have collectively indicated in the attached Declarations that they have provided a total of 1,938.81 hours of professional services to the Class in the litigation of this matter with a cumulative lodestar value \$752,735.40.

45. Class Counsel will continue to expend additional time and out-of-pocket expenses in connection with the settlement administration process, seeking final approval of the

Settlement and, if it is approved, responding to Class Members' inquiries, and assisting with implementation of the Settlement through 2020. *See supra* ¶ 33.

46. Any fee award entered by the Court will be shared among Class Counsel as they deem appropriate.

**THE EXPENSES REASONABLY AND NECESSARILY
INCURRED BY CLASS COUNSEL IN THE THIS MATTER**

47. Cohen Milstein expended a total of \$239,818.82 in necessary expenses in the litigation of this matter through January 3, 2014. Attached hereto as Exhibit 2 and incorporated herein is a summary of the disbursements by description and amount. Exhibit 2 has been carefully prepared and accurately reflects the expenses Cohen Milstein incurred in prosecuting this litigation. Exhibit 2 also reports the overall amount of expenses of each of the four law firms that were appointed by the Court as Class Counsel.

48. In addition, the Jarrard Declaration indicates that the Law Office of Thomas Jarrard PLLC expended on behalf of the Class through January 3, 2014 a total \$2,516.65. *See* Exhibit 3, Jarrard Decl. ¶ 20.

49. In addition, the Crotty Declaration indicates that Crotty & Son PLLC had expenses of \$3,053.56 in connection with this litigation through January 3, 2014. *See* Exhibit 4, Crotty Decl. ¶ 27.

50. In addition, the Mitchell Declaration indicates that Robert Mitchell, Attorney at Law, PLLC, had expenses of \$768.56 in connection with this litigation through January 3, 2014. Exhibit 5, Mitchell Decl. ¶ 13.

51. Cohen Milstein, the Law Office of Thomas Jarrard PLLC, Crotty & Son PLLC, and Robert Mitchell, Attorney at Law, PLLC, have collectively indicated in the attached Declarations that they have incurred total expenses reasonable and necessary for the litigation of

this matter of \$246,157.59 for which they seek reimbursement. *See* Exhibit 2; Exhibit 3, Jarrard Decl. ¶ 20; Exhibit 4, Crotty Decl. ¶ 27; Exhibit 5, Mitchell Decl. ¶ 13.

52. Because the litigation involved complex issues with respect to the measurement of Class Members' damages, the proof of which was dependent on testimony of pension experts, more than 90 percent of the expenses for which Class Counsel seek reimbursement relate to expert witness fees and expenses. *See* Exhibit 2.

53. The expert witness and expert consulting expenses totaled \$232,112.50 of which amount Cohen Milstein expended \$232,112.50. *See* Exhibit 2. The actuarial firm that Class Counsel hired has substantial experience in pension litigation and more than 25 years of experience with pensions, and employed a team of several expert actuaries to calculate the estimated potential damages of 2,013 Claims in this action of nearly 1,200 potential Class Members. All of these expert witness and expert consulting expenses were incurred prior to the time in which the parties' counsel began to negotiate over the major terms of a settlement. The expert work that Class Counsel commissioned was indispensable to Class Counsel's ability to negotiate a Settlement Agreement that provided highly favorable terms to the Class Members, including monetary relief that will likely exceed more than 100 percent of the pension contributions that Class Members were denied as a result of United's policy that allegedly violated USERRA. In addition, if the action had not settled in August 2013, this expert work would have been used to support a motion for class certification and Plaintiff's claims for damages at trial.

54. Over the course of this action, Class Counsel incurred modest expenses researching a range of legal and factual issues, and attending a two-day settlement meeting with United's counsel in Chicago, Illinois. Collectively Class Counsel incurred \$4,701.80 in travel, lodging and meal expenses. Cohen Milstein incurred \$837.10 in transportation expenses, \$791.51 in hotel expenses, \$549.62 in meal expenses. *See* Exhibit 2. The Law Office of Thomas Jarrard PLLC, Crotty & Son PLLC, and Robert Mitchell, Attorney at Law, PLLC, collectively have a total of \$2,523.57 in airfare, ground travel, meals and lodging expenses. *See* Exhibit 3, Jarrard Decl. ¶ 20; Exhibit 4, Crotty Decl. ¶ 27; Exhibit 5, Mitchell Decl. ¶ 13.

55. Class Counsel collectively incurred \$5,779.25 in computer research expenses, other legal and pension research expenses, and database management fees, of which \$3,729.25 was incurred by Cohen Milstein, \$550 by the Law Office of Thomas Jarrard PLLC, and \$1,500 by Crotty & Son PLLC. *See* Exhibit 2; Exhibit 3, Jarrard Decl. ¶ 20; Exhibit 4, Crotty Decl. ¶ 27.

56. Class Counsel also incurred \$1,283.21 in miscellaneous expenses for professional services, namely the \$1,283.21 cost of hiring three temporary workers for several days to manually extract and provide to the Settlement Administrator the personnel data that was used to calculate the damages for each of the approximately 2,000 Claims (which was, in turn, provided to Class Members in their notice packets).

57. Class Counsel estimate they will incur additional out-of-pocket expenses of \$2,500 to \$3,000 between now and the fairness hearing, as well as further out-of-pocket expenses between final approval and the final distribution of the Settlement Funds.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. This Declaration was executed this 3rd day of January, 2014, in Washington, D.C.

/s/ Peter Romer-Friedman
Peter Romer-Friedman
COHEN, MILSTEIN, SELLERS &
TOLL, PLLC
1100 New York Avenue, NW, Suite 500
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Tel: (202) 408-4600
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EXHIBIT 1

Tables on Fees of Class Counsel

**Lodestar of All Firms Appointed
Class Counsel Through January 3, 2014**

	Lodestar	Hours
Cohen Milstein Sellers & Toll PLCC	\$448,797.40	1,036.96
Law Office of Thomas G. Jarrard PLLC	\$131,180.00	374.8
Crotty & Son PLLC	\$102,483.00	292.8
Robert Mitchell, Attorney at Law, PLLC	\$70,275.00	234.25
Total	\$752,735.40	1,938.81

**Lodestar of Cohen Milstein Sellers & Toll PLLC
By Legal Professional Through January 3, 2014**

Name	Title	Hours	Hourly Rate	Lodestar
Barton , Robert, J.	Partner	228.25	\$570.00	\$130,102.50
Fust, John	Paralegal	108.00	\$245.00	\$26,460.00
Kolcun, Jason	Paralegal	19.75	\$240.00	\$4,740.00
Lindblom, Alina	Paralegal	9.00	\$245.00	\$2,205.00
Regina, Gail, D.	Paralegal	58.50	\$255.00	\$14,917.50
Romer-Friedman, Peter	Associate	609.46	\$440.00	\$268,162.40
Schildhause, Eva	Paralegal	1.50	\$245.00	\$367.50
Sellers, Joseph	Partner	2.25	\$775.00	\$1,743.75
Shafroth, Abigail, E.	Associate	0.25	\$395.00	\$98.75
Total		1,036.96		\$448,797.40

**Lodestar of Law Office of Thomas G. Jarrard
By Legal Professional Through January 3, 2014**

Name	Title	Hours	Hourly Rate	Lodestar
Thomas G. Jarrard	Partner	374.8	\$350.00	\$131,180.00

**Lodestar of Law Office of Crotty & Son PLLC
By Legal Professional Through January 3, 2014**

Name	Title	Hours	Hourly Rate	Lodestar
Matt Crotty	Partner	285.7	\$350.00	\$99,995.00
Robert Crotty	Partner	4.7	\$350.00	\$1,645.00
Ryan Best	Attorney	2.4	\$350.00	\$840.00
Total		292.8		\$102,480.00

**Lodestar of Robert Mitchell, Attorney at Law, PLLC
By Legal Professional Through January 3, 2014**

Name	Title	Hours	Hourly Rate	Lodestar
Robert Mitchell	Partner	234.25	\$300.00	\$70,275.00

EXHIBIT 2

Tables on Expenses of Class Counsel

**Expenses of All Firms Appointed
Class Counsel Through January 3, 2014**

	Expenses
Cohen Milstein Sellers & Toll PLLC	\$239,818.82
Law Office of Thomas G. Jarrard PLLC	\$2,516.65
Crotty & Son PLLC	\$3,053.56
Robert Mitchell, Attorney at Law, PLLC	\$768.56
Total	\$246,157.59

**Expenses of Cohen Milstein Sellers & Toll PLLC
Through January 3, 2014**

Type of Expense	Amount
Transportation - Airfare	\$716.60
Transportation - Taxis and Other	\$120.50
Hotel	\$791.52
Meals	\$549.62
Telephone and Conference Calls	\$329.42
Expert Witness Fees	\$232,112.50
Other Professional Services	\$1,283.21
Legal Research and Database Management	\$3729.25
Court Fees	\$186.00
Total	\$239,818.62

EXHIBIT 3

Declaration of Thomas G. Jarrard

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

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

Plaintiffs,

v.

UNITED AIRLINES, INC.,

Defendants.

Civil Action No. **12-cv-1561-WJM-MEH**

**DECLARATION OF THOMAS G. JARRARD IN SUPPORT OF PLAINTIFFS’
MOTION FOR AN AWARD OF ATTORNEYS’ FEES AND EXPENSES**

I, Thomas G. Jarrard, declare:

1. I am competent to testify and have personal knowledge about what is written in this declaration.
2. I am co-counsel of record in the above captioned matter.
3. In the winter of 2010, I became aware of pension contribution complaints of pilots at United Airlines who had returned from military service. Several pilots called me and complained that they received a notice or statement showing a pension contribution was made when they returned from service, but they could not determine how it was calculated. These pilots were referred to me by members of veteran affinity groups that I belong to, or found me because I advertise my USERRA litigation and Veterans related law practice. These pilots complained that USERRA provided that pension contributions should be calculated based upon their hours of work as though they did not have a break in employment. They complained that

they could not determine what was used to calculate their pension contributions because the contribution amounts they had received did not square with the hours they had worked. These pilots asked about legal representation and legal advice about the best course of action to protect their rights. Over the course of the next year I received numerous similar complaints and calls, often times followed by emails and attachments containing voluminous supporting records from the pilots.

4. In September 2011, I estimated the number of unique calls I had received was more than three dozen. I consulted with Matt Crotty about the prospects of filing a USERRA case in this matter. Mr. Crotty's experience is detailed in his own declaration, but his USERRA litigation and military experiences are key strengths and core competencies that I rely upon in USERRA litigation. We determined the matter was ripe for the filing of a complaint and consulted with other attorneys and law firms with experience in class action litigation and supporting Veterans. Some firms were not interested because the complexity of the case and the novelty of USERRA in their practices. Mr. Crotty and I have associated on over a dozen USERRA litigation matters, and other collective action matters.

5. In November 2011, Mr. Crotty and I began consulting with Robert Mitchell with regard to this matter. Mr. Mitchell's experience is detailed in his own declaration, but his litigation and military experiences are key strengths and core competencies that I rely upon in USERRA litigation. We are associated in several USERRA litigation and class action matters.

6. In April 2012, we began work with the law firm of Cohen Milstein, who became co-lead counsel on the case.

7. My practice is focused on Veterans and USERRA litigation. In the past four years I have successfully litigated and resolved dozens of USERRA and Veterans matters across the United States. I am admitted to practice in Washington State, the Eastern and Western Federal District Courts of Washington, District of Colorado, District of Wisconsin, the 5th, 7th, 8th, 9th, 10th, 11th, and the Federal Circuit Courts of Appeal; the Merit System Protection Board; and the United States Supreme Court.

8. The Law Office of Thomas G. Jarrard, PLLC is listed as one of Spokane's "Top Lawyers" in Spokane Coeur D' Alene Living Magazine for two years running. The Law firm received a 10/10 "Superb" rating from the AVVO legal rating forum, and holds a "Preeminent" 5.0 out of 5.0 Client Review Rating at Martindale-Hubble.

9. Prior to opening my practice, I served as a felony prosecutor for Spokane County Prosecutor's Office. Prior to service as a prosecutor, I served in a two-year clerkship on the Washington State Court of Appeals, Division III. I received my JD from Gonzaga University School of Law in 2007 and a MBA from the Columbia College School of Business in 2000. During law school, I served as an associate editor for the Gonzaga Journal of International Law and as a Thomas More Scholar.

10. I am an accredited Attorney for claims against the U.S. Department of Veterans Affairs and my law firm is certified by the Washington State Department of Veterans Affairs as a Service Disabled Veteran Owned Business. My law firm is a first referral among Veteran affinity groups, including the Reserve Officers Association of America, the Disabled American Veterans and the Military Order of the Purple Heart and I am a life member in each of these organizations.

11. I have experience litigating USERRA cases, including appeals. I co-authored the Reserve Officers Association of America, Law Center *amicus curiae* brief to the United States Supreme Court in the case of *Staub v. Proctor Hospital*, 131 S.Ct. 1186 (2011). I have written on behalf *amicus curie* and service members in USERRA appeals before the New Mexico Court of Appeals; the Merit System Protection Board; the 5th, 7th, 8th, 9th, 10th, 11th Circuits and the Federal Circuit Court of Appeals.

12. I instruct at local and national continuing legal educations seminars for USERRA and I authored the following articles related to USERRA: Tax Records in USERRA: *How Both Parties May Obtain Each Other's Private Financial Records*, ROA L. Rev. 1129, (2011); USERRA and Federal Rule of Civil Procedure 68, Offer of Judgment: *Awards of Plaintiff's Attorney Fees and Prohibition of Charging Costs Under USERRA Are Not Affected by Rule 68*, ROA L. Rev. 1082, (2010). I am a contributor in, Kathryn Piscitelli & Edward Still, *The USERRA Manual: Uniformed Services Employment & Reemployment Rights* (2012 ed.).

13. In addition to the practice of law I serve in the United States Marine Corps Reserve. I have 23 years of continuous service in the United States Marine Corps and Reserve. These experiences, combined, provide me with a rapport with service members, including military pilots, like the pilots who called my office before and throughout this matter.

14. My compensation for services rendered in this case and reimbursements of my expenses is wholly contingent the outcome.

15. My practice consists entirely of contingency cases (typically 1/3 recovery terms) hourly work on appellate matters and pro bono or deeply discounted hourly rates in disabled veteran matters.

16. The average hourly fee charged in my locality ranges \$300 to \$500 per hour in federal court litigation. My current billing rate is \$350.00 per hour; I charge this rate for services in my other non-disabled veteran cases including USERRA contingency matters.

17. The records I maintain pertaining to the hours and expenses I have spent in this case are voluminous and reflect confidential information and privileged work product. Therefore the following provides a summary of those records.

18. My work on this case includes the interviewing of pilots, investigating their factual allegations, and reviewing the documents in support of the pilots who eventually became members of the class. I conducted strategy sessions with co-counsel and prospective co-counsel in pre-litigation to develop a case plan. I identified the class representative and conducted frequent and weekly discussions with the class representative, coordinated and assisted the class representative in the preparation of his declarations. I conducted interviews with military affairs representatives involved in the case, prepared legal memoranda, reviewed pleadings, assisted in the preparation of the complaint and conducted pre-litigation research of the defendant. I prepared argument, legal support and research for settlement negotiations and attended the same for two days in Chicago in March 2013. I assisted in the preparation of the settlement documents, final class notices, and the class member waiver for those currently serving on active duty.

19. Throughout this matter I maintained the time I worked on this matter, entered the time into a computer database and client records in such a manner to reflect each discrete, non-administrative, and completed task from 2010 to present. As illustrated in the following table, I recorded **374.80** hours of time on this matter through December 31, 2013. This is actual time

spent by me on this case. In addition, I expended many hours of time related to this case in consultation with pilots, but I have excluded those hours as a matter of billing judgment. I am prepared to submit supporting records to the Court for inspection *in camera* at its request.

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Loadstar</u>
Thomas G. Jarrard	374.80	\$350.00	\$131,180.00

20. Throughout this matter I maintained the records for the expenses I incurred in such a manner to reflect each discrete cost attributed to this case from 2010 to present. Throughout this case I spent \$2,516.65 on expenses inclusive of court costs, travel and necessary printing costs. I am prepared to submit supporting records to the Court for inspection *in camera* at its request. The following table provides a summary of the expenses incurred by The Law Office of Thomas G. Jarrard, PLLC through December 31, 2013.

<u>Type of Cost</u>	<u>Amount</u>
Transportation Airfare	319.00
Transportation Taxis and Other	310.45
Hotel	297.00
Legal Research - Lexis	550.00
Copying	220.00
Court Fees / Other Costs	<u>820.20</u>
TOTAL	\$2,516.65

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: January 2, 2013

/s/ Thomas G. Jarrard
Thomas G. Jarrard

EXHIBIT 4

Declaration of Matthew Z. Crotty

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

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

Plaintiffs,

v.

UNITED AIRLINES, INC.,

Defendants.

Civil Action No. **12-cv-1561-WJM-MEH**

**DECLARATION OF MATTHEW Z. CROTTY IN SUPPORT OF CLASS COUNSEL'S
MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES**

I, Matthew Z. Crotty, declare:

1. I am competent to testify and have personal knowledge about what is written in this declaration.

2. I am co-counsel of record in the above captioned matter.

3. I am admitted to practice law in the State of Washington and State of Idaho, the 9th and 10th Circuit Courts of Appeal, the District of Idaho, the Eastern District of Washington, and the Western District of Washington. I have also been admitted *pro hac vice* in numerous federal courts throughout the country.

4. I have first chaired bench, jury, and arbitration trials. I maintain a "Preeminent 5/5" AV rating from Martindale-Hubble and a "Superb" 10/10 rating from Avvo, nation-wide attorney rating services. In 2013 I received Avvo's "Clients' Choice Award" for litigation. In 2013 I was recognized as one of the top attorneys in Spokane, Washington by "Spokane & Coeur

d'Alene Living Magazine" and, in late-2013, my law practice was featured on the front page of the Spokesman Review's Sunday December 4, 2013, edition. The article is available at: <http://m.spokesman.com/stories/2013/dec/08/in-their-corner-attorneys-help-veterans-resolve/>

5. I have litigated Fair Labor Standards Act (FLSA) and consumer protection collective and class actions, employment discrimination cases, civil rights matters, Freedom of Information Act (FOIA) and tort actions, among others. I am an accredited Attorney for claims against the U.S. Department of Veterans Affairs.

6. I graduated *magna cum laude* in the top 5% of my law school class and served as Editor-in-Chief of the Gonzaga Law Review. Following law school I worked as a litigation associate at Paine-Hamblen, LLP (for approximately two years) and Witherspoon Kelley (for approximately four years). At Witherspoon I conducted a substantial amount of class-action defense work. I was recruited from Paine-Hamblen to Witherspoon. Paine-Hamblen and Witherspoon are fifty-plus attorney defense-oriented law-firms for which entry-level employment is highly competitive.

7. In November 2012 I left Witherspoon to start my own law firm. My law firm, Crotty & Son Law Firm, PLLC is a state and federally recognized veteran owned business. I left Witherspoon to focus more on plaintiff's work.

8. I practice law with my father, Robert J. Crotty, a thirty-year plaintiff's attorney with extensive class action and jury trial experience, who serves in an "of counsel" capacity. Before joining the Crotty & Son Law Firm Robert Crotty worked at the Lukins & Annis law firm in Spokane, served as the firm's litigation chair, and successfully litigated Fen-Phen diet drug, Baycol cholesterol medication, Hurd windows, Vioxx anti-inflammatory drug, and Sulzer hip

replacement medical device class action law suits. In those cases Robert Crotty charged between \$500.00 and \$800.00 hour. His fee in this case is \$350.00/hour. Robert Crotty assisted in the above-captioned matter in evaluating the classes' claims, meeting with the class representative, and assisting with the litigation strategy.

9. Customarily, Crotty & Son's contingency fee agreements provide for a 33% to 40% common fund fee recovery depending on the complexity and risk associated with the case. In this action, the fee agreement was for 33% of the common fund fee recovery.

10. In my litigation experience I have obtained attorneys' fees in Freedom of Information Act, commercial lending, and commercial lease actions. The fees that I obtained in those hourly, non-contingent matters, ranged from \$230.00 to \$170.00/hour. Due to the contingent nature of the United Air Lines class action I charge \$350.00/hour. The \$350.00/hour rate is based on rates charged by plaintiff class action attorneys with similar experience in the Spokane, Washington area. I am aware of their rates because I have (in my large law firm class action defense practice) successfully litigated class action consumer protection actions against attorneys who charged those rates. Additional bases for my hourly rate is set out below.

11. I have written about the Uniformed Services Employment and Reemployment Rights Act (USERRA) and have had my work published in the Gonzaga Law Review. The title of my work is: "*The Uniformed Services Employment and Reemployment Rights Act and Washington State's Veteran's Affairs Statue: Still Short on Protecting Reservists from Hiring Discrimination*," 43 Gonz. Law Rev. 2007. I have also been published in the Reserve Officers Association's online Law Review directory.

12. In addition to being an attorney I am a Lieutenant Colonel in the Washington Army National Guard. I am currently the commander of the 341st Military Intelligence Battalion - - - a 350-Soldier unit that currently has individuals deployed to Afghanistan, Africa, Yemen, and throughout the United States conducting intelligence collection and analysis operations.

13. I have served over 20 years in the U.S. Army. My service includes a tour with the Army's elite 75th Ranger Regiment (1999-2001) and a combat-tour with Special Operations Command - Central (SOCCENT) (2003-2004). I have been promoted ahead of my peers, or at first opportunity, to the ranks of Major and Lieutenant Colonel respectively.

14. Throughout my career in the U.S. Army and Army National Guard I have led Soldiers who have had their employment rights violated on account of their military service. Thus, the USERRA statute has unique meaning to me. Further, my military experience has enabled me to achieve a positive level of rapport with my veteran clients, including the members of the class in this case.

15. In September 2011, I began working with attorney Thomas Jarrard regarding the possibility of filing a USERRA case against United Air Lines regarding United's alleged failure to comply with USERRA's pension provisions. As of September 2011 Mr. Jarrard and I had successfully litigated USERRA cases in the Montana Federal District Court and the Southern District of Florida. Our Southern District of Florida matter successfully resolved after the first day of a jury trial. Suffice to say, our collective USERRA and military experiences played a role in evaluating the possibility of bringing a case against United. Mr. Jarrard and I subsequently

determined the matter was ripe for the filing and consulted with other attorneys and law firms accordingly.

16. Since our early September 2011 dialogue Mr. Jarrard and I continued to evaluate the merits of the United case. We also continued (and continue to this day) to litigate USERRA cases nationwide. The forums in which Mr. Jarrard and I successfully litigated USERRA cases include the Eastern District of Virginia, the Western District of Virginia, the Central District of California, Northern District of California, Eastern District of Washington, Western District of Washington, Eastern District of Wisconsin, Western District of Wisconsin, and the District of Colorado.

17. In April 2012, we began work with the law firm of Cohen Milstein, who became lead counsel on the case.

18. My firm's compensation for services rendered in this case and reimbursements of my firm's expenses is wholly contingent the outcome. During the course of the United Air Lines litigation I have refrained from taking on other matters due to the work-load associated with the case and the small size of my law firm.

19. The records I maintain pertaining to the hours and expenses I have spent in this case are voluminous and reflect confidential information and privileged work product. Broadly speaking, the work I did on this case involved analyzing the documents relating to United's pension practices, conducting extensive interviews with approximately fifty class members, analyzing data from those class members, and marshalling that data into the classes' broader litigation strategy. That analysis further led to researching varied statute of limitations and willful damages legal authorities, incorporating that analysis into the litigation strategy, and

developing a follow up Freedom of Information Act request to the US Department of Labor for complaints United received, relative to its pension practices, from 2000 onward. Additionally, I assisted in preparing the pleadings and motion papers in this case, reviewing the same, and keeping class members informed of the litigation's progress. Informing the class members of the litigation's progress required synthesizing the court filings, analyzing documents obtained through the informal discovery scheme and FOIA request, and conveying the "so what" of the legal research into information that the class members could appreciate and evaluate. I attended the settlement negotiations in this case.

20. In the run up to the (above-referenced) settlement conference I commissioned some research and evaluation assistance from attorney Ryan M. Best. Mr. Best is a 10 year litigator with whom I worked at Paine Hamblen, a graduate of Baylor University Law School, and a veteran of numerous bench, jury, and arbitration trials. Mr. Best left Paine Hamblen in 2012. Although Mr. Best is from a different firm than mine, we share office space and regularly associate on cases, including False Claims Act, Fair Labor Standards Act, and Insurance Fair Claims Act litigation. I have utilized Mr. Best in resolving complex litigation and his ability to drive issues to a successful resolution is second-to-none. Mr. Best's hourly rate on this case is \$350.00.

21. Throughout this matter I kept contemporaneous accounting of the work my firm, and associated counsel like Mr. Best, conducted on this case in a manner that reflected completion of discrete non-administrative tasks. The hours that my firm has spent on this case is as follows:

Name	Title	Hours	Hourly Rate	Lodestar
Matt Crotty	Attorney	285.7	\$350.00	\$99,995.00
Robert Crotty	Attorney	4.7	\$350.00	\$1,645.00
Ryan Best	Attorney	2.4	\$350.00	\$840.00
Total				\$102,480.00

22. This is actual time spent by my firm (and associated counsel) on this case. The time spent was necessary to investigate the case, pursue the matter through the filing of the complaint, and perform needed research, discovery, and analysis to drive the case to a successful resolution all while ensuring that the class's many members were informed of the case's progression. Additionally, I expended many hours (such as time from September 2011 to early 2012) of time related to this case in consultation with United pilots or other attorneys, but I have excluded those hours.

23. The Crotty & Son Law Firm maintains separate contemporaneously maintained detailed time records on each of the matters in which it is engaged. Attorneys' time was recorded contemporaneously with work performed. We would have used the same methodology had we billed an hourly client directly for these services. I am prepared to submit supporting records to the Court for inspection *in camera* at its request. The total attorneys' fees set forth herein are based on current hourly rates and calculated by the firm's electronic billing systems.

24. Our firm will expand additional time from the submission of this fee petition, through the reasonableness hearing of May 2014, and beyond in working on this case.

25. This case, throughout its course, has been contingent in nature, with counsel devoting time and effort without any guarantee of being compensated for work performed. As a

result, there was a substantial risk of non-payment. Counsel have also been denied use of the fees they have earned over the course of the litigation.

26. The rates charged for attorneys and associated counsel working on this matter are all \$350.00 per hour, as shown above. Matt Crotty's current billing rate ranges from \$250.00 to \$350.00 per hour on contingency based cases. The Crotty & Son Law Firm's lodestar is 2: a number that is based on the lodestar that has been awarded by Washington State courts to attorneys and firms with Crotty & Son Law Firm's skill and experience in analogous litigation. *See e.g. Carlsen v. Global Client Solutions*, E.D. Wash., No. CV-09-246-LRS (2012) (multiplier of 1.65); *Carlsen v. Freedom Debt Relief*, E.D. Wash., No. CV-09-055-LRS (2011) (multiplier of 1.5); *Johnson v. Wojcik, et al.*, Spokane County Cause No. 09-2-03638-6 (2011) (multiplier of 1.9); *McGinnity v. AutoNation Inc.* (2008) (1.5 multiplier); *Reese v. Employment Services litigation* (2010) (effective multiplier of 2.5); *Rob'n I Inc. v. Uniform Code Counsel*, (2003) (effective multiplier of 4); *In re: Diet Drugs (Fen Phen)* (2003) (multiplier of 2.5); *In re: Matter of Firestorm* (1998) (effective multiplier of 1.7); *Johnson v. Wojcik, et al.*, Spokane County Cause No. 09-2-03638-6 (2011) (multiplier of 1.9). Notably, Robert Crotty served as a lead counsel on the above-referenced *In re: Diet Drugs (Fen Phen)* (2003) (multiplier of 2.5) and *In re: Matter of Firestorm* (1998) (effective multiplier of 1.7) actions.

27. Throughout this matter Crotty & Son has maintained the records for the expenses it incurred in such a manner to reflect each discrete cost attributed to this case from 2012 to present. Throughout this case the firm incurred the following as costs:

Costs	Amount
Westlaw Fee	\$1,500.00
Copying Fees	\$220.00

Printer Fees	\$80.00
Airfare	\$314.60
Lodging	\$513.96
Pro Hac Vice Fee	\$75.00
Administrative Fees	\$300.00
Supp. Court Admission Fee	\$50.00
Firm Total Costs	\$3,053.56

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 29, 2013

/s/ Matthew Z. Crotty
Matthew Z. Crotty
CROTTY & SON, PLLC
WSBA #39284, ISB #8653
Crotty & Son, PLLC
421 W. Riverside Ave. Ste 1005
Spokane, WA 99201
Tel: (509) 850-7011
matt@crottyandson.com

EXHIBIT 5

Declaration of Robert Mitchell

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

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

Plaintiffs,

v.

UNITED AIRLINES, INC.,

Defendants.

Civil Action No. 12-cv-1561-WJM-MEH

DECLARATION IN SUPPORT OF
PLAINTIFFS' MOTION FOR COSTS
AND ATTORNEY'S FEES

DECLARATION OF ROBERT MITCHELL IN SUPPORT OF COSTS & FEES

This declaration is made by ATTORNEY ROBERT MITCHELL, Plaintiffs' counsel in
the above entitled action:

I. DECLARATION

I, ROBERT MITCHELL, Attorney at Law, PLLC, 1020 N. Washington, Spokane,
Washington, 99201, (509) 327-2224, hereby declare under penalty of perjury pursuant to the laws
of the State of Colorado and the laws of the United States of America as follows:

1) I am over the age of eighteen (18) years old and fully competent to testify to the
matters set forth herein;

DECLARATION OF ATTORNEY ROBERT
MITCHELL

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Robert Mitchell
Attorney at Law
1020 N. Washington
Spokane, WA 99201
(509) 327-2224 327-3374 (Fax)

1 2) I make this declaration based upon my own personal knowledge and belief;

2 3) I am co-counsel in the above-entitled action;

3 4) I maintain a practice devoted to Servicemembers rights, Veterans rights, and
4 Consumer Protection (*Servicemembers Civil Relief Act and Military Lending Act*);

5 5) I maintain a nationwide practice through offices located in Spokane and
6 Vancouver, Washington;

7 6) In general, the type of services I performed in this litigation included, but was not
8 limited to:

- 9 a. Investigating factual allegations;
- 10 b. Investigating and analyzing statutes and case law;
- 11 c. Interviewing class members;
- 12 d. Multiple meetings with the class representative;
- 13 e. Legal research of both the underlying cause of action and developments in
14 class action litigation;
- 15 f. Attending settlement negotiations;
- 16 g. Drafting and reviewing settlement documents following resolution.

17 7) My reasonable hourly fee for services is \$300.00;

18 8) My standard fee agreement provides for me to receive either a percentage of the
19 net recovery, or my hourly rate, whichever is greater;

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24 DECLARATION OF ATTORNEY ROBERT
25 MITCHELL

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Robert Mitchell
Attorney at Law
1020 N. Washington
Spokane, WA 99201
(509) 327-2224 327-3374 (Fax)

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1 9) Because I have litigated hundreds of cases in both state and federal courts, I
2 have never had a client, an opposing party, or opposing counsel object to my hourly rate, or
3 even suggest that my hourly rate is unreasonable;

4 10) More importantly, while I have had Courts award less hours than requested in a
5 fee petition, I have never had any Court reduce my hourly rate (*State or Federal Court*);

6 11) The fee agreement I entered with Plaintiffs provides for an hourly rate of
7 \$300.00;

8 12) My hourly fee is reasonable for the following reasons:

- 9
- 10 a. There are very few attorneys who are also United States Marines;
- 11 b. Of the active attorneys who were fortunate enough to have served this great
- 12 nation, very few are engaged in representing servicemembers and veterans;
- 13 c. I am a United States Marine¹ with a practice focused on serving veterans and
- 14 servicemembers;
- 15 d. I have represented clients in at least 100 federal cases²;
- 16 e. I am licensed to practice law in the states of Oregon and Washington, the
- 17 U.S. District Courts for the Eastern and Western Districts of Washington,
- 18 and the U.S. District Court for the District of Oregon;
- 19 f. I am also licensed and have handled litigation in one federal court in
- 20 Virginia, and this federal court in Colorado;
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22 _____
¹ Though I am not currently on active duty, "Once a Marine, Always a Marine."

23 ² Some cases settled before filing in the federal district court, but a Pacer check illustrates substantial
24 activity.

25 DECLARATION OF ATTORNEY ROBERT
26 MITCHELL

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Robert Mitchell
Attorney at Law
1020 N. Washington
Spokane, WA 99201
(509) 327-2224 327-3374 (Fax)

- 1 g. I have been practicing law in federal courts for over six years;
- 2 h. I have presented at several CLE's, most recently on the topic of the
- 3 Servicemembers Civil Relief Act at the Washington State Bar Association
- 4 in September of 2013;
- 5 i. I am currently counsel in three separate class action lawsuits, two of which
- 6 are nationwide class action cases;
- 7 j. I clerked for the Washington State Attorney General's Office for two years
- 8 while in law school;
- 9 k. I clerked for a United States Senator while in college;
- 10 l. I am a United States Marine capable of maintaining a rapport with
- 11 servicemembers and veterans that most attorneys would be unable to
- 12 develop;
- 13 m. I have attended class action litigation legal seminars, most recently the
- 14 National Consumer Law Center's class action symposium in Washington,
- 15 D.C., in November of 2013;
- 16 n. These types of cases are somewhat complex in that USERRA is a
- 17 complicated statute, the relationship between the state and federal military
- 18 employment statutes is complicated, and large corporate employers retain
- 19 large law firms and employ various defensive tactics strategies;
- 20 o. The nature of my work is almost exclusively contingent upon success and I
- 21 rarely receive fees if I am unsuccessful;
- 22 p. My fees in this case are entirely contingent upon success on the merits;
- 23

24 DECLARATION OF ATTORNEY ROBERT
25 MITCHELL

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Robert Mitchell
Attorney at Law
1020 N. Washington
Spokane, WA 99201
(509) 327-2224 327-3374 (Fax)

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- q. There is substantial risk inherent in class action litigation against a corporation the size of United Airlines;
- r. Other class action attorneys in my community charge roughly twice as much as my \$300.00 hourly rate for similar cases;
- s. Representation in this case was provided to the exclusion of other cases and my practice has experienced a significant revenue decrease as a result of the hours dedicated to this litigation;
- t. Throughout this litigation, I incurred:

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Lodestar</u>
Robert Mitchell	234.25	\$300.00	\$70,275.00

- u. My hours were recorded contemporaneously with the work performed;
- v. I have significantly reduced the hours billed by striking: non-legal work, significant travel to and from Chicago, some research hours expended, document drafting, duplicative work, and other work completed that resembled administrative or ministerial duties;

13) Throughout this litigation, I also incurred \$768.56 in costs as follows:

<u>Type of Cost</u>	<u>Amount</u>
Airfare to Chicago for Settlement Conf.	\$314.16
Hotel in Chicago for Settlement Conf.	\$453.96
TOTAL	\$768.56

DECLARATION OF ATTORNEY ROBERT MITCHELL

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Robert Mitchell
 Attorney at Law
 1020 N. Washington
 Spokane, WA 99201
 (509) 327-2224 327-3374 (Fax)

1 14) I have substantially reduced this cost request to the bare minimum for billing
2 purposes.

3 15) Detailed attorney fee and cost billing records are available for *in camera* review
4 upon this Court's request.

5 **I declare under penalty of perjury under the laws of the State of Colorado and the United**
6 **States of America, that the foregoing is true and correct.**

7 Signed at: 1020 N. Washington, Spokane, WA 99201

8
9 DATED 1-1-2014

S//Robert Mitchell
Robert Mitchell (WSBN 37444)
Attorney at Law, PLLC
1020 N. Washington
Spokane, WA 99201

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24 DECLARATION OF ATTORNEY ROBERT
25 MITCHELL

Robert Mitchell
Attorney at Law
1020 N. Washington
Spokane, WA 99201
(509) 327-2224 327-3374 (Fax)

**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 an Award of Attorneys' Fees and Reimbursement of Expenses, 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 attorneys' fees of \$1,522,500 is approved, and the request for reimbursement of expenses of \$246,157.59 is approved.

Dated _____ 2014

William J. Martinez
U.S. District Judge