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Attorneys for Plaintiff and the Proposed Class

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JAYSON HUNTSMAN, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

SOUTHWEST AIRLINES CO.,

Defendant.

Case No. 3:17-cv-03972-JD
SETTLEMENT AGREEMENT

1 **I. INTRODUCTION¹**

2 This case, *Huntsman v. Southwest Airlines, Co.*, No. 4:17-cv-03972-JD (N.D. Cal.), was
3 brought by Jayson Huntsman (“Plaintiff”) on behalf of himself and others similarly situated
4 against Southwest Airlines Co. (“Southwest”) under the Uniformed Services Employment and
5 Reemployment Rights Act (“USERRA”), 38 U.S.C. § 4301 *et seq.* alleging that Southwest (i)
6 failed to make the proper matching contributions to pilots’ retirement plans based on Deemed
7 Earnings during periods of Short-Term Military Leave from their employment at Southwest; (ii)
8 failed to facilitate pilots’ opportunity to make retirement contributions that could be matched
9 during periods of Short-Term Military Leave, and (iii) failed to provide for the accrual of Sick
10 Leave during pilots’ periods of Short-Term Military Leave.

11 In the interest of resolving this dispute between the Parties without the significant expense,
12 delay, and inconvenience of further litigation of the collective and individual issues raised in the
13 Case, and in reliance upon the representations, mutual promises, covenants, and obligations set out
14 in this Settlement Agreement, and for good and valuable consideration also set out in this
15 Settlement Agreement, the Parties, through their undersigned counsel of record, hereby stipulate
16 and agree as follows.

17 **II. DEFINITIONS**

18 The following terms, as they are used in this Settlement Agreement, shall have the
19 meanings defined below:

20 **A.** “401(k) Plan” is the Southwest Airlines Pilots 401(k) Plan, as described in Section
21 19 of the CBA.

22 **B.** “Agreement” is this Settlement Agreement.

23 **C.** “Case” or “Litigation” is the action titled *Huntsman v. Southwest Airlines, Co.*, No.
24 4:17-cv-03972-JD (N.D. Cal.).

25 **D.** “Cash Settlement Amount” is the amount of Five Million Eight Hundred Thousand
26 United States Dollars (\$5,800,000).

27
28 ¹ Capitalized terms have the meanings set forth in the Definitions section below.

1 **E.** “Class Counsel” are Outten & Golden LLP, 601 Massachusetts Ave. NW, Suite
2 200W, Washington DC, 20001; the Law Office of Thomas G. Jarrard PLLC, 1020 N. Washington
3 Street, Spokane, WA 99201; and Crotty & Son Law Firm, PLLC, 421 W. Riverside Ave., Ste.
4 1005, Spokane, WA 99201.

5 **F.** “Class Member” is any Southwest pilot who satisfies the definition of the Proposed
6 Settlement Class set forth below or satisfies the definition of a class approved by the Court that is
7 substantially similar to the Proposed Settlement Class.

8 **G.** “Class Period” is the time period between January 1, 2001 and the Preliminary
9 Approval Date.

10 **H.** “Class Representative” is Plaintiff Jayson Huntsman.

11 **I.** “Collective Bargaining Agreement” or “CBA” is the collective bargaining
12 agreement between Southwest and the Southwest Airline Pilots’ Association.

13 **J.** “Court,” unless otherwise specified or clear from the context, is the United States
14 District Court for the Northern District of California.

15 **K.** “Deemed Earnings” is the amount of earnings Southwest pilots would have earned
16 per pay period if they had not taken Short-Term Military Leave.

17 **L.** “Effective Date of the Settlement Agreement” or “Effective Date” is the date upon
18 which an order providing Final Approval of this Agreement under Federal Rule of Civil Procedure
19 23(e) becomes non-appealable, or, in the event of any appeals, the date of final resolution of all
20 appeals. When this Agreement refers to the date on which the Agreement became “Effective,”
21 such date is the Effective Date.

22 **M.** “Escrow Account” is an account to be established pursuant to an escrow deposit
23 agreement by the Settlement Administrator, into which Southwest will deposit the Settlement
24 Fund.

25 **N.** “Final Approval Date” is the date upon which the Court enters an order granting
26 Final Approval of the Settlement Agreement.

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1 **O.** “Final Approval of the Settlement Agreement” or “Final Approval” is the Court’s
2 decision that the resolution of this Case, as reflected in the Settlement Agreement, is fair,
3 adequate, and reasonable pursuant to the provisions of Federal Rule of Civil Procedure 23(e).

4 **P.** “Lead Class Counsel” is Outten & Golden LLP, 601 Massachusetts Ave. NW,
5 Suite 200W, Washington DC, 20006.

6 **Q.** “Net Settlement Fund” is the Settlement Fund minus any amounts deducted for
7 attorneys’ fees, expenses and costs, the Settlement Administrator’s fees and costs, any Service
8 Award approved by the Court, and any taxes owed by the Settlement Fund.

9 **R.** “Notice Mailing Date” is the date the Notice Packets are mailed to the Class
10 Members.

11 **S.** “Notice Packet” is the packet of materials that consists of the Notice of Proposed
12 Class Action Settlement and Fairness Hearing.

13 **T.** “Parties” are Southwest and the Plaintiff in the Case.

14 **U.** “Plan Amount” is the amount of the Net Settlement Fund that has been allocated to
15 each Class Member, corresponding to each year covered by the Settlement Agreement, that can be
16 contributed to the Class Member’s 401(k) account in compliance with applicable IRS limits for
17 each such year without jeopardizing the tax-qualified status of the 401(k) Plan.

18 **V.** “Preliminary Approval Date” is the date on which the Court enters an order
19 granting Preliminary Approval of the Settlement Agreement.

20 **W.** “Proposed Settlement Class” or “Class” is defined as all former or current pilots
21 employed by Southwest who took Short-Term Military Leave from Southwest between January 1,
22 2001 and the Preliminary Approval Date.

23 **X.** “Service Award” is a monetary award to the Class Representative for his services
24 rendered and/or reimbursement for any lost compensation and out-of-pocket expenses incurred in
25 pursuing the Case and negotiating the Settlement on behalf of the Proposed Settlement Class.

26 **Y.** “Settlement Administrator” is the firm, to be proposed to and appointed by the
27 Court, as set forth below, that will perform the administrative functions required by this
28 Settlement Agreement, including but not limited to printing and mailing the Notice Packets,

1 establishing a Qualified Settlement Fund and Bank Account, and distribution of the Settlement
2 Funds to the Class Members.

3 **Z.** “Settlement Agreement” or “Settlement” is this Settlement Agreement.

4 **AA.** “Settlement Fund” means the amount of Five Million Eight Hundred Thousand
5 Dollars (\$5,800,000), plus any interest accrued on that amount while in escrow, that will be used
6 (i) to make supplemental contributions to Class Members’ 401(k) accounts or, if it is not possible
7 to make any such supplemental contributions to Class Members’ 401(k) accounts, to make cash
8 payments to Class Members for their claims related to USERRA make-up contributions during
9 periods of Short-Term Military Leave, (ii) to make payments of \$1,000 each to former employees
10 as consideration for the release of their Sick Leave Claims; (iii) to award attorneys’ fees and costs,
11 (iv) to fund a Service Award to the Class Representative, (v) to fund the costs of providing notice
12 to the Class and administrating the Settlement, and (vi) to pay any taxes owed by the Settlement
13 Fund.

14 **BB.** “Short-Term Military Leave” is a period of military leave of 14 calendar days or
15 less.

16 **CC.** “Sick Leave” is paid leave for illness or injury, which accrues at a rate of 1 TFP for
17 each 10 TFP a pilot flies, as described in Section 12 of the SWAPA CBA.

18 **DD.** “Sick Leave Claim” is a claim by a Class Member that he or she was subject to
19 Southwest’s policy that did not provide for the accrual of Sick Leave for pilots during periods of
20 Short-Term Military Leave from January 1, 2001 through the Preliminary Approval Date.

21 **EE.** “Southwest” is Southwest Airlines Co.

22 **FF.** “Southwest Airline Pilots’ Association” or “SWAPA” is the employee union that
23 represents Southwest pilots.

24 **GG.** “Southwest’s Counsel” is Ogletree, Deakins, Nash, Smoak & Stewart, P.C., Stuart
25 Tower, One Market Plaza, Suite 1300, San Francisco, CA 94105.

26 **HH.** “Trips For Pay” or “TFP” is a unit of pilot compensation that roughly corresponds
27 with miles flown, as described in Section 4 of the SWAPA CBA.

28

1 **II.** “USERRA” means the federal Uniformed Services Employment and
2 Reemployment Rights Act of 1994, as amended.

3 **III. RECITALS**

4 **A.** On July 14, 2017, Plaintiff filed this Case against Southwest alleging that
5 Southwest violated USERRA by failing to provide its pilots (i) appropriate retirement
6 contributions mandated by USERRA for periods of Short-Term Military Leave, (ii) information to
7 facilitate pilots’ opportunity to make retirement contributions that could be matched during
8 periods of Short-Term Military Leave, and (iii) accrued paid Sick Leave for Short-Term Military
9 Leave, even though Southwest provides accrued paid Sick Leave to pilots who take other types of
10 leave. Plaintiff alleged that USERRA requires Southwest to (i) provide matching contributions to
11 pilots’ 401(k) accounts for the Deemed Earnings earned during periods of Short-Term Military
12 Leave for elective deferrals already made to the 401(k) Plan, (ii) provide timely information to
13 pilots on their Deemed Earnings so that they can make make-up retirement contributions into their
14 401(k) accounts pursuant to USERRA, 38 U.S.C. § 4318, and (iii) have their make-up
15 contributions matched by Southwest. Plaintiff also alleged that USERRA, 38 U.S.C. § 4316,
16 requires Southwest to provide for the accrual of Sick Leave when pilots take Short-Term Military
17 Leave, because Southwest provides for the accrual of Sick Leave when pilots engage in jury duty,
18 union leave, and bereavement leave. Southwest denies these allegations and maintains that the
19 claims in the Case have no merit.

20 **B.** Plaintiff sought, among other things, a declaration that Southwest’s policy with
21 respect to how Southwest matched the retirement contributions of Plaintiff and the Class Members
22 during periods of Short-Term Military Leave violated their rights under USERRA and a
23 declaration that Southwest’s failure to provide accrued paid Sick Leave to pilots who took Short-
24 Term Military Leave violated the rights of Plaintiff and the Class under USERRA. Plaintiff also
25 sought a declaration that Plaintiff and the Class were and are entitled under USERRA to receive
26 contributions to their defined contribution retirement accounts in an amount that is consistent with
27 USERRA § 4318 and that they are entitled to receive accrued paid Sick Leave in an amount that is
28 consistent with USERRA § 4316, and an order that Southwest fully compensate Plaintiff and the

1 Class for their losses related to the alleged violations. Southwest denies that Plaintiff or any
2 members of the class is entitled to these or any other forms of relief.

3 **C.** Plaintiff filed the Case as a putative class action pursuant to Rule 23 of the Federal
4 Rules of Civil Procedure and alleged that the Case is maintainable as a class action under Rule
5 23(a) and Rule 23(b)(1), Rule 23(b)(2), or Rule 23(b)(3).

6 **D.** On August 31, 2017, Southwest moved to transfer venue to the United States
7 District Court for the Northern District of Texas. On September 15, 2017, the parties stipulated to
8 a stay of the litigation to allow them to explore settlement following Plaintiff's Opposition to the
9 Motion to Transfer Venue. Plaintiff's opposition was filed on September 21, 2017, and the Court
10 granted the stipulation the same day.

11 **E.** From September 2017 through June 2018, the Parties engaged in informal
12 discovery on both liability and potential damages for the purpose of exploring a settlement. Using
13 personnel data provided by Southwest, Class Counsel developed a methodology for calculating the
14 potential alleged damages of Class Members.

15 **F.** On June 26 and 27, 2018, the Parties attended a mediation in Dallas, Texas with the
16 Honorable Deborah Hankinson, an experienced mediator and a former Texas Supreme Court
17 Justice. At the end of two days of arm's-length negotiation, the Parties agreed to the basic terms
18 set forth in a term sheet. In the weeks that followed, the Parties continued to negotiate the details
19 of a settlement, including how to allocate the Net Settlement Fund among the Settlement Class
20 Members.

21 **G.** The Parties intend this Settlement Agreement to be a final and complete resolution
22 of all Claims asserted in this Action. The Settlement is a compromise of contested claims and shall
23 not be deemed an admission by any Party as to the merits of any claim or defense. The Parties
24 agree that the terms of the Settlement were negotiated in good faith at arm's length by the Parties,
25 and were reached voluntarily after consultation with competent legal counsel. The Parties believe
26 that the terms of this Settlement Agreement are fair, reasonable, and adequate to the Proposed
27 Settlement Class as a whole; that this Settlement Agreement provides substantial benefits to the
28 Proposed Settlement Class and the Class Members; and that settlement of the Case on the terms

1 set forth in this Settlement Agreement is in the best interests of the Proposed Settlement Class and
2 the Class Members.

3 **H.** The purpose of this Settlement Agreement is to make a full, complete, and final
4 resolution of all the Claims of Class Members that will be released pursuant to Section XIV of this
5 Settlement Agreement

6 **I.** The Parties agree that Southwest's agreement not to oppose Plaintiff's motion for
7 preliminary approval in the Northern District of California is without prejudice to Southwest's
8 contention that the proper forum for this action is the Northern District of Texas, and further agree
9 that Southwest's agreement not to oppose Plaintiff's motion for preliminary approval in the
10 Northern District of California will not be held against Southwest in the event that the Settlement
11 is not approved, the parties return to active litigation, and Southwest re-notices its motion to
12 transfer venue. The Parties agree that upon the filing of the motion for preliminary approval,
13 Southwest or the parties shall request the Court to administratively terminate its motion to transfer
14 venue.

15 NOW, THEREFORE, in reliance on the mutual promises, covenants, releases, and
16 obligations as set out in this Settlement Agreement, and for good and valuable consideration, the
17 Parties hereby stipulate and agree to resolve the Claims of Class Members that will be released
18 pursuant to Section XIV of this Settlement Agreement.

19 **IV. THE SETTLEMENT CLASS**

20 **A.** The Parties agree, for purposes of this Settlement Agreement, that the following
21 class should be certified pursuant to Rule 23 of the Federal Rules of Civil Procedure: All former or
22 current pilots employed by Southwest who took Short-Term Military Leave from Southwest
23 between January 1, 2001 and the Preliminary Approval Date.

24 **B.** The Parties will cooperate and each use their best reasonable efforts to obtain
25 certification of an opt-out class under Rule 23(a) and 23(b)(3) of the Federal Rules of Civil
26 Procedure.

27 **C.** At the time that Plaintiff moves for preliminary approval of the Settlement, Plaintiff
28 will also seek, and Southwest will not oppose, certification of the Settlement Class solely for the

1 purpose of Settlement.

2 **D.** On the Effective Date of the Settlement Agreement, all members of the Settlement
3 Class will be bound by the Settlement Agreement’s terms, except that those Class Members who
4 effectively and timely exercise a right to opt out of the Class and the Settlement will not be bound
5 by the Settlement Agreement.

6 **E.** In the event that the Court does not certify a class having a definition that is
7 substantially similar to the Class definition set forth in this Settlement Agreement or otherwise
8 requires the modification of material terms of this Settlement Agreement, each Party shall have the
9 right to void this Settlement Agreement so long as notice of the exercise of such right is provided
10 to the Court and the opposing Party within 14 days after the date on which the Court enters the
11 order establishing the non-conforming Class definition or otherwise requiring the modification of
12 material terms of this Settlement Agreement.

13 **F.** The Parties will cooperate and use their best reasonable efforts to obtain the fullest
14 possible participation of all Class Members in the Settlement.

15 **V. NOTICE**

16 **A.** Southwest has identified 1,478 Class Members who dropped a trip to take Short-
17 Term Military Leave from January 1, 2008 to the present (“previously identified Class
18 Members”). In addition, Southwest has identified approximately 500 additional former or current
19 Southwest pilots who had a military status since January 1, 2001—whether or not they took
20 military leave since that date—but have not been identified as part of the 1,478 Class Members
21 (“potential Class Members”).

22 **B.** If the Court certifies the Class and preliminarily approves the Settlement, the
23 Settlement Administrator will provide the previously identified Class Members and potential Class
24 Members with a copy of the Notice of Proposed Class Action Settlement and Fairness Hearing in
25 the form agreed upon by the Parties, subject to modification and approval by the Court. The
26 Notice will contain a brief description of the Claims advanced by the Class Representative, a
27 summary of the terms of the proposed Settlement, and a notice of a fairness hearing to be held
28

1 pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

2 **C.** Subject to modification and approval by the Court, Notice shall be provided to
3 each previously identified Class Member and potential Class Member as follows: (1) electronic
4 notice by e-mail to all previously identified Class Members and potential Class Members for
5 whom electronic information is available; and (2) direct notice by First Class Mail to all
6 previously identified Class Members and potential Class Members.

7 **D.** Southwest will cooperate with the Settlement Administrator and Class Counsel to
8 facilitate providing Notice and other court-approved settlement-related communication by
9 electronic means.

10 **E.** Publication Notice will be provided by a website that will contain information and
11 documents about the Settlement. This website shall be established by the Settlement
12 Administrator and maintained from at least the date on which notice is mailed until the Court no
13 longer maintains jurisdiction over this action.

14 **F.** A Settlement Administrator will be retained to provide notice to the previously
15 identified Class Members and potential Class Members and perform other services as set forth in
16 this Settlement Agreement. Within ten (10) business days of the Court's Order Granting
17 Preliminary Approval, Southwest shall provide the Settlement Administrator with the following
18 contact information for each known Class Member and each pilot with military status who was
19 employed by Southwest from January 1, 2001 to December 31, 2007, to the extent they are
20 reasonably available in Southwest's databases: (1) a street mailing address; (2) telephone
21 number(s); (3) Southwest and personal e-mail address(es), including email accounts provided by
22 Southwest; (4) Social Security number; (5) dates of known days with dropped trips for Short-Term
23 Military Leave; and (6) the average annual rate of pay for pilots.

24 **VI. SETTLEMENT CONSIDERATION FROM SOUTHWEST**

25 **A.** In full settlement of all Claims that the Class Members will release pursuant to
26 Section XIV, and in exchange for the consideration Southwest will receive as set forth in this
27 Agreement, Southwest agrees to the following:

28 **1. Settlement Fund.** Southwest will pay Five Million Eight Hundred

1 Thousand Dollars (\$5,800,000) into an Escrow Account jointly selected by the
2 parties that earns simple interest. The Escrow Account, including any accrued
3 interest, will be used to (i) make supplemental retirement contributions to Class
4 Members' 401(k) accounts to the greatest extent permitted under the law or, if it is
5 not possible to make such supplemental retirement contributions to Class
6 Members' 401(k) accounts, as cash payments to Class Members for their claims
7 related to USERRA make-up contributions during periods of Short-Term Military
8 Leave, which shall be consistent with the Plan of Allocation, (ii) make payments of
9 \$1,000 each to former employees as consideration for the release of their Sick
10 Leave Claims; (iii) award attorneys' fees and costs, (iv) fund a Service Award to
11 the Class Representative, (v) fund the costs of providing notice to the Class and
12 administering the Settlement, and (vi) pay any applicable taxes.

13 **2. Sick Leave Accrual for Periods of Short-Term Military Leave.**

14 a. For each day in which a Class Member dropped a trip to take Short-
15 Term Military Leave from January 1, 2008 to the Preliminary Approval Date,
16 Southwest will add to the pilot's Sick Leave balance 100% of the pilot's unaccrued
17 Sick Leave TFPs based on a rate of 7.1 TFPs per day with dropped trips for Short-
18 Term Military Leave and a rate of 1 TFP of unaccrued Sick Leave for every 10
19 TFPs of dropped trips.² For each Class Member who submits a sworn writing to
20 the Settlement Administrator stating each month that he or she took Short-Term
21 Military Leave from January 1, 2001 through December 31, 2007, Southwest will
22 add to the pilot's Sick Leave balance 8.5 TFPs of Sick Leave per year in which the
23

24 ² For example, if a pilot dropped a single day of scheduled work to perform Short-Term Military
25 Leave between January 1, 2008 and the date of Preliminary Approval, the pilot would receive an
26 additional 0.71 TFP of Sick Leave in the pilot's Sick Leave balance, based upon an estimated 7.1
27 dropped TFP and a Sick Leave accrual rate of 1 TFP for every 10 TFP. If a pilot dropped 10 days
28 of work to perform Short-Term Military Leave between January 1, 2008 and the date of
29 Preliminary Approval, the pilot would receive 7.1 TFP of Sick Leave in the pilot's Sick Leave
30 balance, based upon an estimated 71 dropped TFP and a Sick Leave accrual rate of 1 TFP for
31 every 10 TFP.

1 pilot took Short-Term Military Leave. If a Class Member is no longer employed by
2 Southwest 30 days after the Effective Date of the Settlement, the Class Member
3 shall receive a \$1,000 share of the Net Settlement Fund, in addition to any
4 supplemental retirement contributions or payments he or she is entitled to receive
5 under the Plan of Allocation, except that if a Class Member has elected to exchange
6 accrued Sick Leave for continued health coverage upon retirement and the Class
7 Member is still receiving those continued benefits on the date of the distribution of
8 Sick Leave, that Class Member will receive additional accrued Sick Leave in the
9 same manner as current Southwest employees. The \$1,000 shares of the Settlement
10 Fund shall be allocated to Class Members before the Class Members' shares are
11 determined for claims related to USERRA make-up contributions.

12 **b.** The funding of each Class Member's Sick Leave balance pursuant
13 to this settlement will be capped at 1600 TFPs per pilot, which is the maximum
14 balance that a pilot can accrue pursuant to the CBA.

15 **c.** The process for Class Members to provide a sworn writing to the
16 Settlement Administrator stating each month that the pilot took Short-Term
17 Military Leave from January 1, 2001 through December 31, 2007, is set forth in
18 Section VII(C). The Settlement Administrator will determine for each Class
19 Member how many accrued Sick Leave TFP will be added to the Class Member's
20 Sick Leave balance, based upon Southwest's personnel data from 2008 to the
21 Preliminary Approval Date and Class Members' claim forms that identify the years
22 in which they took Short-Term Military Leave between January 1, 2001 and
23 December 31, 2007.

24 **d.** Within 30 days of the Effective Date, Southwest will add to each
25 Class Member's Sick Leave balance the amount of accrued Sick Leave TFP that
26 the Settlement Administrator determines will be added pursuant to this Section.

27 **B.** In addition to the consideration described in the preceding paragraphs, and in
28 exchange for the consideration it will receive as set forth in this Agreement, Southwest agrees to

1 implement the non-monetary relief set forth herein in Section X.

2 **VII. IDENTIFYING THE CLASS MEMBERS AND SHORT-TERM MILITARY**
3 **LEAVE TAKEN FROM 2001 TO 2007**

4 **A.** Although the Class Period in this Case extends as far back as January 1, 2001,
5 Southwest does not possess comprehensive records to identify which Southwest pilots took Short-
6 Term Military Leave from January 1, 2001 through December 31, 2007. Because of this gap in
7 data, it is possible that the parties cannot through Southwest's own records identify all members of
8 the Settlement Class. And to provide appropriate credit under the Plan of Allocation to Class
9 Members who took Short-Term Military Leave between January 1, 2001 and December 31, 2007,
10 it is necessary for Class Members to identify when they took Short-Term Military Leave between
11 January 1, 2001 and December 31, 2007. The parties agree that persons will have an opportunity
12 to demonstrate their membership in the Class if Southwest has not already identified them as Class
13 Members, and will have the opportunity to identify the amount of time that they took Short-Term
14 Military Leave between January 1, 2001 and December 31, 2007.

15 **B.** Class membership will be based on the data provided by Southwest to the
16 Settlement Administrator about which pilots took Short-Term Military Leave from January 1,
17 2001 through the Preliminary Approval Date, unless, pursuant to the following procedure (or
18 another procedure ordered by the Court) a person provides the Settlement Administrator with
19 information that demonstrates that the person meets the definition of a Class Member.

20 a. Before the Final Approval date, and by a deadline to be established by the
21 Court, any person who claims to meet the definition of a Class Member but who has not
22 been identified by Southwest as a Class Member will be entitled to demonstrate
23 membership in the Settlement Class to the satisfaction of the Settlement Administrator. A
24 person may make this showing by: (1) submitting a sworn statement to the Settlement
25 Administrator that the person was a Southwest pilot who took Short-Term Military Leave
26 between January 1, 2001 and the date of Preliminary Approval, and (2) demonstrating
27 through documentary evidence or having Southwest verify, upon a request from the
28 Settlement Administrator, that the person was a Southwest pilot during the Class Period.

1 Within five business days (or another period ordered by the Court) of when a person
2 submits a sworn statement to demonstrate that he or she is a Class Member, the Settlement
3 Administrator shall submit a request to Southwest for Southwest to identify whether the
4 person was a pilot for Southwest during the Class Period. If Southwest agrees that the
5 person was a pilot for Southwest during the Class Period, the person shall be deemed to
6 have been a Southwest pilot during the Class Period. If Southwest does not agree that the
7 person was a pilot for Southwest during the Class Period, the Settlement Administrator
8 shall send a deficiency letter to the person requiring the person to provide documentary
9 evidence to demonstrate that he or she was a pilot for Southwest during the Class Period
10 and return that evidence within twenty-one (21) days of the date of the deficiency letter (or
11 another period ordered by the Court). If the person submits such documentary evidence,
12 the Settlement Administrator will determine whether the person was employed by
13 Southwest as a pilot during the Class Period.

14 b. To the extent that a person demonstrates membership in the Settlement
15 Class to the satisfaction of the Settlement Administrator, that person will be included in the
16 Settlement Class and Southwest will provide the Settlement Administrator with any
17 available relevant data from the period of January 1, 2008 to December 31, 2013 that is
18 necessary to perform calculations regarding that person's Sick Leave and share of the Net
19 Settlement Fund pursuant to the Plan of Allocation for the period covering January 1, 2008
20 to December 31, 2013. A person who demonstrates his or her membership in the Class
21 shall have the same opportunity as other Class Members to identify the amount of Short-
22 Term Military Leave that the person took between January 1, 2001 and December 31,
23 2007, as described in Section VII(C).

24 C. For the months between January 1, 2001 and December 31, 2007, Class Members
25 will have an opportunity to identify the number of days each month in which they took Short-
26 Term Military Leave and those days of Short-Term Military Leave shall be taken into account to
27 determine the Class Member's share of the Net Settlement Fund pursuant to the Plan of Allocation
28 and to determine whether the Class Member will receive 8.5 TFP of accrued Sick Leave for a year

1 in which the Class Member took Short-Term Military Leave from January 1, 2001 and December
2 31, 2007. Pursuant to the following procedure, Class Members shall provide the Settlement
3 Administrator with information on the number of days each month in which they took Short-Term
4 Military Leave from January 1, 2001 to December 31, 2007.

5 a. Before the Final Approval date, and by 120 days after the date that Notice is
6 mailed to the Class (or a deadline to be established by the Court), any Class Member who
7 took Short-Term Military Leave from January 1, 2001 to December 31, 2007 shall submit
8 to the Settlement Administrator an online claim form signed under oath that identifies for
9 each month between January 1, 2001 to December 31, 2007 the number of days in which
10 the Class Member engaged in military service for a period of 14 consecutive days or less.
11 The claim form will advise pilots that, before signing the claims form under oath, they
12 should make reasonable efforts to confirm their claims with their own personal records of
13 military service or the records of military service reasonably available to them through the
14 military.

15 b. Upon receipt of timely online claim forms, the Settlement Administrator
16 shall determine for each month between January 1, 2001 to December 31, 2007 the number
17 of days of military service for periods of 14 consecutive days or less that each Class
18 Member identified in his or her online claim form. These days of military leave shall be
19 considered for the purpose of the Plan of Allocation that will be approved by the Court.

20 c. Upon receipt of timely online claim forms, the Settlement Administrator
21 shall determine for each year between January 1, 2001 to December 31, 2007 whether each
22 Class Member had any days of military service for periods of 14 consecutive days or less,
23 and for each such year Southwest will add to the pilot's Sick Leave balance 8.5 TFPs of
24 Sick Leave.

25 **VIII. DISTRIBUTION FROM THE SETTLEMENT FUND**

26 **A. Payment of Cash Settlement Amount into Escrow Account:** Within seven (7)
27 calendar days of the Effective Date of this Settlement Agreement, Southwest will deposit the Cash
28 Settlement Amount into an Escrow Account that will accrue simple interest. The Escrow Account

1 will be established by the Settlement Administrator, with the Settlement Administrator acting at
2 the joint direction of Lead Class Counsel and Southwest in administering the Escrow Account.
3 The Cash Settlement Amount plus any interest on the Cash Settlement Amount while in escrow
4 will constitute the Settlement Fund. The Cash Settlement Amount excludes individual investment
5 earnings and no Class Member is entitled to investment earnings on his or her allocation of the
6 Settlement Fund in accordance with his or her investment directions under the 401(k) Plan.

7 **B. Qualified Settlement Fund:** To the extent possible and at the earliest date
8 possible, the Settlement Fund is intended by the Parties to be a “qualified settlement fund” for
9 federal income tax purposes pursuant to Treas. Reg. § 1.468B-1.

10 **C. Attorneys’ Fees & Expenses:** Pursuant to the deadline set by the Court and no
11 later than fourteen (14) days prior to the deadline(s) by which Class Members must object and/or
12 opt out of the Settlement (if opt-outs are permitted), Class Counsel will file any motion requesting
13 the payment of attorneys’ fees, expenses/costs, and/or a Service Award from the Settlement Fund.

14 **D. Distribution and Allocation of the Settlement Fund to Class Members:**

15 **A.** Subject to Section VIII(G) below, the Net Settlement Fund will be
16 distributed to Class Members after the payment of any award of attorneys’ fees, reimbursement of
17 any expenses, any Service Award to the Class Representative from the Settlement Fund, and any
18 applicable taxes or withholdings.

19 **B.** Class Counsel and Southwest will submit a joint Proposed Plan of
20 Allocation to the Court for the distribution of the Net Settlement Fund in the form attached hereto
21 as Exhibit A. The Proposed Plan of Allocation is subject to approval or modification by the Court.
22 If the Court rejects the Proposed Plan of Allocation, the Parties will meet and confer and propose a
23 Revised Proposed Plan of Allocation. If the Court rejects the Revised Proposed Plan of
24 Allocation, the Parties will ask the Court to implement a Plan of Allocation that satisfies the
25 Court. If the Proposed Plan of Allocation is rejected or modified by the Court or on appeal, such
26 modification will not constitute a material modification of the Settlement, will not void the
27 Settlement Agreement, and will not provide a basis for either party to withdraw from the
28 Settlement Agreement.

1 C. Before the distribution of the Net Settlement Fund, the Settlement
2 Administrator will determine which persons are Class Members and the share of the Net
3 Settlement Fund that each of the Class Members will receive pursuant to the Plan of Allocation
4 approved by the Court, including all Class Members who identify themselves to the satisfaction of
5 the Settlement Administrator and all periods of Short-Term Military Leave that are identified by
6 Class Members between January 1, 2001 and December 31, 2007, to the satisfaction of the
7 Settlement Administrator, through the process set forth in Section VII of this Settlement
8 Agreement.

9 D. As described in section VIII(I), once the Settlement Administrator has
10 determined the share of the Net Settlement Fund each Class Member will receive, the Settlement
11 Administrator will work with Southwest to determine the amount of each Class Member's
12 payment that can be put directly into the Class Member's 401(k) account on a tax-deferred basis.
13 Any payments that can be made directly into the Class Member's 401(k) account on a tax-deferred
14 basis will be placed directly into each Class Member's 401(k) account, and whatever amounts
15 cannot be placed into the 401(k) account on a tax-deferred basis will be paid to Class Members
16 through checks less any necessary tax deductions. No payments to Class Members shall be made
17 until Southwest receives a final response from the Internal Revenue Service ("IRS") on whether
18 the payments can be made into the Class Members' 401(k) accounts on a tax-deferred basis.

19 E. No portion of the Cash Settlement Amount or the Settlement Fund, including any
20 undistributed monies, will revert to Southwest.

21 **F. Maximizing Distributions To the 401(k) Plan:** All distributions to the 401(k)
22 Plan, including Plan Amounts, distributed pursuant to this Settlement Agreement are intended to
23 be corrective contributions for specific years covered by this Settlement Agreement. To the
24 maximum extent that such contributions on behalf of the members of the Class can be made in
25 compliance with the applicable IRS limits for each such year without jeopardizing the tax-
26 qualified status of the 401(k) Plan, Southwest will use its best reasonable efforts to obtain and
27 maximize the tax-favored treatment of the distributions made pursuant to this Settlement
28 Agreement, and will submit an application for correction under the Employee Plan Compliance

1 Resolution System, as set forth in Revenue Procedure 2016-51, or later guidance, so that the Plan
2 Amounts contributed on behalf of each Class Member reflect corrective contributions for the
3 corresponding year(s) in which they allegedly should have been allocated to the Class Member's
4 Plan account. Southwest will provide copies to Class Counsel of any correspondence to and from
5 the IRS regarding the implementation of such corrective procedures related to the Settlement. The
6 Net Settlement Fund will not be contributed or distributed to Class Members until such time as
7 Southwest receives a favorable compliance statement from the IRS in response to its application
8 under the Employee Plan Compliance Resolution System, which may take one or more years. If
9 Southwest does not receive a compliance statement from the IRS, then contributions will be
10 distributed to Class Members as set forth above and will not be contributed to the Class Members'
11 401(k) Plan accounts.

12 **G. Taxes**

13 **1. Payment of Taxes on the Settlement Fund:** Following the Effective Date
14 and the deposit of the Cash Settlement Amount into the Escrow Account, the Settlement
15 Administrator shall to the extent necessary establish a reserve (the "Tax Reserve") within
16 the Settlement Fund to pay any taxes that are or will be owed (but not yet due) and for
17 expenses related to payment of taxes and filing returns.

18 **2. Taxation of Payments to Class Members:** As described in Section
19 VIII(G) above, the Parties will work collaboratively to maximize the amount of Class
20 Members' payments that will be made directly into their 401(k) accounts to defer taxes on
21 those payments. However, to the extent that any amount of a Class Member's payments
22 must be made to them in cash and not directly into their 401(k) accounts, the Settlement
23 Administrator shall withhold and remit to tax authorities any federal or state taxes, file the
24 required tax forms, and issue the required IRS forms to the Class Members. To the extent
25 that the Settlement Administrator determines that payroll taxes should be withheld from
26 the payments that Class Members receive from the Net Settlement Fund, both the
27 employee and employer share of the payroll taxes shall be paid from the Net Settlement
28 Fund.

1 **3. IRS Guidance:** Southwest will submit an application for correction under
2 the Employee Plan Compliance Resolution System, as set forth in Revenue Procedure
3 2016-51, on what amounts of the Class Members' payments from the Net Settlement Fund
4 may be deposited directly into the 401(k) Plan, and will use reasonable best efforts to
5 expedite the final guidance from the IRS.

6 **4. Responsibility for Tax Liabilities:** Southwest will not be held responsible
7 for any tax liabilities associated with payments made to Class Members.

8 **H. Distribution By Southwest as the 401(k) Plan Sponsor:**

9 **1.** By no later than 30 days after the Effective Date (or within another period
10 set forth by the Court), the Settlement Administrator will provide counsel for the Parties
11 and Southwest, the 401(k) Plan sponsor, with a spreadsheet that details the monetary
12 allocation from the Net Settlement Fund to which each Class Member is entitled for each
13 year covered by the Settlement Agreement, as determined by the Settlement Administrator
14 under the Plan of Allocation approved by the Court.

15 **2.** By no later than 30 days after receiving the information in Paragraph 1 (or
16 within another period set by the Court), or 30 days after receiving final confirmation from
17 the IRS about making the Class Members' payments directly into the 401(k) account on a
18 tax-deferred basis, whichever is later, Southwest will inform the Settlement Administrator
19 in writing for each Class Member (a) the Plan Amount, and (b) what amount of each Class
20 Member's Settlement Fund allocation, corresponding to each year covered by the
21 Settlement Agreement, cannot be contributed to the Class Member's 401(k) Account for
22 each such year without jeopardizing the tax-qualified status of the 401(k) Plan under
23 applicable IRS limits (the "Cash Amount"). In the event that Southwest determines that
24 more time than 270 days from the Effective Date is needed to ensure that the allocation of
25 the Net Settlement Fund to Class Member 401(k) accounts will not jeopardize the tax-
26 exempt status of the 401(k) Plan, Southwest shall promptly notify Class Counsel of the
27 reasons for that determination. Should the Parties have a dispute about when the allocation
28 of the Net Settlement Fund or payments should be made, any party may move the Court

1 for an order regarding when the allocation or payments should occur.

2 3. Except for those Settlement Fund monies that cannot be paid to a Class
3 Member's 401(k) account because of applicable IRS limits, the Settlement Administrator
4 will transmit to Southwest in the form of a cash payment the Plan Amounts within the
5 period set by the Court, which shall not in any event be earlier than the Effective Date.

6 4. Once the Plan Amounts have been transmitted from the Settlement
7 Administrator to Southwest in its capacity as Plan sponsor, Southwest will distribute or
8 cause to be distributed the Plan Amounts to each Class Member's 401(k) account in the
9 amounts previously identified.

10 5. The Settlement Administrator will distribute the respective Cash Amounts,
11 if any, to the Class Members at or about the same time that the Plan Amounts are
12 transmitted from the Settlement Administrator to Southwest, and will withhold and remit
13 to tax authorities any relevant taxes from those Cash Amounts.

14 6. Class Members shall have 180 days to cash their checks for any Cash
15 Amounts received. Any amount remaining unclaimed after that point shall be provided to
16 a cy pres entity agreed upon by the parties. 30 days before the 180 days have expired, the
17 Settlement Administrator will mail a postcard to any Class Members who have not yet
18 cashed their checks reminding them to cash their checks within the 180-day period.

19 **IX. SETTLEMENT ADMINISTRATION**

20 **A. Settlement Administrator:** The Settlement Administrator will be agreed to by the
21 Parties and approved by the Court. Any proposed Settlement Administrator will have experience
22 providing notice to Class Members in employment or employee benefit class action settlements,
23 and in supervising and administering large and complex settlement funds. The Parties will issue a
24 request for proposal to at least several potential settlement administrators for bids, and the request
25 for proposal will include a request that the settlement administrators indemnify Southwest for any
26 data breach related to the Class Members. The Settlement Administrator will undertake the
27 following to administer this Settlement consistent with the terms of this Settlement, the Proposed
28 Plan of Allocation as approved by the Court, and such other procedures or provisions as

1 established or approved by the Court:

2 **1.** Print and mail and e-mail the Class Notice Packet to the previously
3 identified Class Members and potential Class Members in a manner consistent with that
4 directed by the Court and undertake a single trace and re-mailing for all undeliverable
5 Notice Packets;

6 **2.** Establish a web site that includes information on the Settlement and that
7 includes a claim form that permits individuals to identify themselves as Class Members
8 and that permits Class Members to identify the number of days that they took Short-Term
9 Military Leave from January 1, 2001 to December 31, 2007;

10 **3.** Provide Counsel for the Parties with copies of all written objections to the
11 Settlement Agreement, any request for exclusions from the Class, and all claim forms that
12 identify persons as Class Members and/or identify the number of days that they took Short-
13 Term Military Leave from January 1, 2001 to December 31, 2007;

14 **4.** Maintain and staff a toll-free phone number and a website until the Court
15 no longer exercises jurisdiction over this Case;

16 **5.** Establish and manage a Qualified Settlement Fund, establish and manage
17 an Escrow Account, and submit any tax return and/or tax payments to tax authorities
18 regarding the Qualified Settlement Fund and the Escrow Account;

19 **6.** Provide the Plan Amounts and Sick Leave amounts to Southwest, disburse
20 the Cash Amounts to the Class Members, and withhold and remit relevant taxes on the
21 Cash Amounts disbursed to Class Members;

22 **7.** Track the status of mailing and re-mailing of Notice Packets, the status of
23 Plan Amounts disbursed to Southwest, the status of Cash Amounts disbursed to Class
24 Members, the status of accrued Sick Leave added to the Sick Leave balances of Class
25 Members, and the date of receipt of written objections or challenges filed by any Class
26 Members;

27 **8.** Provide monthly reporting to the Parties regarding the items above until the
28 Effective Date, and thereafter provide quarterly reporting to the Parties until the Court no

1 longer exercises jurisdiction over this Case.

2 **X. NON-MONETARY SETTLEMENT CONSIDERATION**

3 **A.** Within 30 days of the Effective Date of the Settlement Agreement, Southwest will
4 modify its policy to allow pilots to accrue Sick Leave during periods of Short-Term Military
5 Leave. Pilots who take Short-Term Military Leave will accrue Sick Leave for Short-Term
6 Military Leave at the same rate that pilots accrue Sick Leave during other forms of leaves of
7 absence for which pilots accrue Sick Leave.

8 **B.** Within 30 days of the Effective Date of the Settlement Agreement, Southwest will
9 (i) identify in all Southwest pilots' monthly paystubs the dollar amount of Deemed Earnings TFP
10 associated with their military leave for the relevant month; (ii) provide Southwest pilots individual
11 monthly emails that state the number of TFP for retirement plan purposes that the pilot earned in
12 the prior month (*e.g.*, June's statement will show the TFPs for May); and (iii) implement a
13 procedure such that a Southwest pilot may ask a designated Southwest human resources employee
14 to provide him or her with detailed information on how the pilot's Deemed Earnings TFP for the
15 prior month was calculated after the conclusion of each monthly pay period, and Southwest will
16 provide that information as soon as administratively feasible, which ordinarily should not exceed
17 30 days after the request is made and will not exceed 60 days after the request is made. In
18 addition, Southwest will consider the feasibility of automatically providing pilots detailed
19 information on each pilot's Deemed Earnings TFP for the prior month on a monthly basis, via
20 email or otherwise.

21 **XI. ATTORNEYS' FEES, EXPENSES, COSTS, AND SERVICE AWARD**

22 **A.** Class Counsel will be entitled to seek an award of attorneys' fees and
23 reimbursement of expenses and costs from the Settlement Fund subject to the approval of and in
24 an amount determined by the Court. Any award of attorneys' fees or reimbursement of expenses to
25 Class Counsel will be paid out of the Settlement Fund in an amount determined by the Court.

26 **B.** In recognition of the service that the Class Representative has performed on behalf
27 of the Class and/or for reimbursement of his time and expenses, Class Counsel will be entitled to
28 seek a Service Award to be paid out of the Settlement Fund for the Class Representative, Plaintiff

1 Jayson Huntsman, subject to the approval of and in an amount to be approved by the Court.

2 **C.** Southwest will not take any position with respect to Class Counsel's request for an
3 award of attorneys' fees, reimbursement of expenses or costs, and the Service Award, so long as
4 the request for such attorneys' fees does not exceed \$1,740,000 plus any expenses. Southwest will
5 not take any position with respect to Plaintiff's request for an award of a Service Award for the
6 Class Representative, so long as the request for such a Service Award does not exceed \$2,000 plus
7 reimbursement for any lost compensation and out-of-pocket expenses that the Class
8 Representative experienced due to his service to the Class and participation in the Litigation.

9 **D.** On the Effective Date of the Settlement Agreement, Class Counsel will be entitled
10 to a disbursement from the Settlement Fund equal to the amount of attorneys' fees, expenses/costs
11 and the Service Award as awarded by the Court, and will be entitled to distribute any Service
12 Award to the Class Representative consistent with the Court's order granting Final Approval. In
13 the event that there is an appeal of the Final Approval of the Settlement Agreement solely on the
14 issue of the amount of attorneys' fees and costs, within 30 days of the notice of appeal Class
15 Counsel will be entitled to a disbursement from the Settlement Fund of such amount of the
16 attorneys' fees and/or such amount of expenses/costs as to which there is no objection.

17 **XII. PROCEDURES GOVERNING APPROVAL OF THIS SETTLEMENT**
18 **AGREEMENT**

19 **A.** Within 15 days of the date on which this Settlement Agreement is fully executed by
20 or on behalf of all Parties, Plaintiff shall submit this Settlement Agreement and its Exhibits to the
21 Court along with a motion for its preliminary approval, a motion seeking certification of the class
22 and appointment of Class Counsel, a plan for providing Notice to the Class Members, and a
23 recommendation of a Settlement Administrator to perform their respective duties set forth in this
24 Settlement Agreement. The Motion shall be accompanied by a proposed Preliminary Approval
25 Order. The Motion shall specifically request that the Court:

- 26 1. Certify the Class for settlement purposes under Rule 23(a) and 23(b)(3);
27 2. Appoint Class Counsel and Class Representative, as defined in this
28 Settlement Agreement, to represent the Class;

1 The Parties agree to take all actions necessary to obtain approval of this Settlement Agreement
2 consistent with their ethical duties and obligations to their clients and, as to Class Counsel, the
3 Settlement Class.

4 **E.** The Parties reserve the right, subject to the Court’s approval, to request any
5 reasonable extensions of time that might be necessary to carry out any of the provisions of this
6 Settlement Agreement. In addition, upon a showing of good cause the Settlement Administrator
7 may extend any deadline for a person to submit information about membership in the Class or
8 submit information on the number of days of Short-Term Military Leave a Class Member took
9 from January 1, 2001 to December 31, 2007.

10

11

12 **XIII. COURT SUPERVISION OF THE SETTLEMENT AGREEMENT & DISMISSAL**
13 **OF THE ACTION**

14 **A.** If the Court preliminarily approves the Settlement, the Parties will jointly agree to
15 seek an order and final judgment dismissing the case with prejudice consistent with Rules 41(a)(2)
16 and 23(e) of the Federal Rules of Civil Procedure, subject to the terms of the Settlement
17 Agreement and subject to the Court’s continuing jurisdiction as set forth in this section.

18 **B.** The Court shall retain continuing jurisdiction over this action beyond the Final
19 Approval Date for a period of three years from the Final Approval Date. If all payments
20 contemplated by the Settlement Agreement have not been made after three years from the Final
21 Approval Date, the Parties shall inform the Court that certain payments have not yet been made
22 and the Court shall extend its continuing jurisdiction until all such payments have been made.

23 **C.** The Parties agree to submit to the jurisdiction of the Court and shall be bound by
24 the terms of this Settlement Agreement, including, without limitation, disputes related to
25 interpreting, implementing, and enforcing the Settlement embodied in this Settlement Agreement,
26 and will request that the Court retain jurisdiction to hear any such disputes. If Plaintiff or a
27 member of the Class prevails in securing relief in the event of a violation or breach of the
28 Settlement Agreement by Southwest, the Court shall have discretion to award Class Counsel

1 attorneys' fees and costs against Southwest.

2 **D.** The waiver by one Party of any breach of this Settlement Agreement by any other
3 Party shall not be deemed a waiver of any other breach of this Settlement Agreement. The
4 provisions of this Settlement Agreement may not be waived except by a writing signed by the
5 affected Party, or counsel for that Party, or orally on the record in court proceedings.

6 **XIV. RELEASE OF CLAIMS**

7 **A.** Upon the Effective Date of this Settlement Agreement, Plaintiff and all other Class
8 Members (including their respective heirs, beneficiaries, executors, administrators, estates, agents,
9 attorneys, predecessors, successors, and assigns) release and fully and finally settle, relinquish,
10 waive and discharge, any and all claims, actions, demands, damages, rights, obligations, expenses,
11 costs, causes of action, or liabilities, known or unknown, against Southwest, the 401(k) Plan
12 administrator, the 401(k) Plan sponsor, the 401(k) Plan, 401(k) Plan fiduciaries, and their parents,
13 subsidiaries, agents, employees, and other affiliated persons or entities that (1) arise from or relate
14 to the accrual of Sick Leave during periods of Short-Term Military Leave from January 1, 2001
15 through the date of Preliminary Approval, or (2) arise from or relate to employee or employer
16 contributions to Class Members' 401(k) accounts arising from or related to periods of Short-Term
17 Military Leave from January 1, 2001 through December 31, 2013, including those related to the
18 failure to provide Class Members with information regarding their 401(k) accounts, Short-Term
19 Military Leave, or Deemed Earnings to facilitate additional contributions to Class Members'
20 401(k) accounts based on Short-Term Military Leave.

21 **B.** In the event that the Court certifies the Class under Rule 23(b)(3) or otherwise
22 permits Class Members to opt out of the Class, this release shall not apply to any Class Member
23 who successfully opts out of the Settlement Agreement pursuant to the deadlines and procedures
24 established by the Court.

25 **XV. TERMINATION OF THE SETTLEMENT**

26 **A.** In the event that Final Approval is not entered by the Court or the Settlement is
27 materially modified by the Court, either Class Counsel or Southwest may void this Settlement
28 Agreement.

1 **B.** In the event that the Court certifies the Class under Rule 23(b)(3) or otherwise
2 permits Class Members to opt out of the Class, Southwest will have the unilateral right by no later
3 than seven (7) calendar days before the Final Approval hearing to withdraw from the Settlement
4 and resume the Litigation if more than 50 Class Members opt out of the Class and the Settlement.

5 **C.** In the event that Final Approval is reversed on appeal, or in the event that either
6 Class Counsel or Southwest exercises a right to withdraw from the Settlement Agreement within
7 the times specified in this Agreement prior to the Final Approval Date, (1) the Settlement Fund
8 (including any interest or other earnings, but excluding any amount paid or owing for taxes or that
9 is necessary to prepare any tax returns, or that is owed to the Settlement Administrator) shall be
10 returned to Southwest, (2) Southwest will not be released from the claims asserted in the
11 Litigation, and (3) the Parties will return to their respective positions in the Litigation as of the day
12 before this Settlement Agreement was executed.

13 **XVI. CLASS ACTION FAIRNESS ACT NOTICE**

14 **A.** Pursuant to the Class Action Fairness Act of 2005 (“CAFA”), within ten (10) days
15 of the filing of the Preliminary Approval Motion, Southwest, at its own expense, shall prepare and
16 provide notices and materials required by CAFA set forth in 28 U.S.C. § 1715(b)(1)-(8) to the
17 Attorney General of the United States and the Attorneys General of all states in which any
18 members of the Class reside or any other Appropriate Federal official or Appropriate State Official
19 identified by the Court (“Appropriate State and Federal Officials”).

20 **B.** At the time that the Preliminary Approval Motion is filed, Southwest will identify
21 to the best of its knowledge and ability, the states in which any Class Members reside. In the
22 Proposed Preliminary Approval Order, Plaintiff and Southwest will request that the Court
23 determine (i) that the Attorney General of the United States and the Attorneys General of the states
24 that the Defendants have identified as being the residence of the members of the Class are the
25 Appropriate State and Federal Officials pursuant to CAFA, 28 U.S.C. § 1715(a) & (b), and (ii) that
26 in light of the terms of the Settlement, it is not feasible to include in the Notices to the Appropriate
27 State and Federal Officials the information described in CAFA, 28 U.S.C. § 1715(b)(7) (A) & (B).

28 **C.** Southwest will provide Class Counsel with a copy of the proposed notice and

1 materials that Southwest intends to send to the Appropriate State and Federal Officials as soon as
2 practicable, but no later than 1 business day, before such materials are sent.

3 **D.** To ensure compliance with CAFA, 28 U.S.C. § 1715(d), the Preliminary Approval
4 Motion will request that the Court set the Final Approval Hearing for a date no earlier than ninety
5 (90) days after the date that Southwest is required to provide notice under 28 U.S.C. § 1715(b).

6 **XVII. MISCELLANEOUS PROVISIONS**

7 **A.** This Settlement Agreement is deemed to have been drafted by all Parties, as a
8 result of arm's-length negotiations among the Parties. Whereas all Parties have contributed
9 substantially and materially to this Settlement Agreement, it shall not be construed more strictly
10 against one Party than another.

11 **B.** The headings in this Settlement Agreement are used for purposes of convenience
12 and ease of reference only and are not meant to have any legal effect, nor are they intended to
13 influence the construction of this Settlement Agreement in any way.

14 **C.** All terms of this Settlement Agreement shall be governed by and interpreted
15 according to the laws of the State of Texas without regard to its rules of conflicts of law and in
16 accordance with the laws of the United States.

17 **D.** This Settlement Agreement shall be binding upon, and inure to the benefit of, the
18 successors, assigns, executors, administrators, heirs and legal representatives of the Parties,
19 provided, however, that no assignment by any Party shall operate to relieve such party of its
20 obligations hereunder.

21 **E.** This Settlement Agreement may be executed in one or more original, photocopied,
22 or facsimile counterparts. All executed counterparts and each of them shall be deemed to be one
23 and the same instrument.

24 **F.** No opinion or advice concerning the tax consequences of the Settlement
25 Agreement has been given or will be given by counsel involved in the Case to Southwest, the
26 Settlement Class, or the Class Representative, nor is any representation or warranty in this regard
27 made by or to anyone by virtue of this Settlement Agreement. The tax obligations of Southwest,
28 the Settlement Class, the Class Representative, and Class Counsel and the determination thereof

1 are the sole responsibility of each of them, and it is understood that the tax consequences may vary
2 depending on the particular circumstances of each member of the Settlement Class.

3 **G.** All of the Exhibits attached hereto and identified herein are hereby incorporated by
4 reference as though fully set forth herein.

5 **H.** This Settlement Agreement may be amended or modified only by written
6 instrument signed by, or on behalf of, all Parties or their successors in interest, and approved by
7 the Court.

8 **I.** This Settlement Agreement constitutes the entire agreement among the Parties, and
9 no representations, warranties or inducements have been made by or to any Party concerning this
10 Settlement Agreement or the Agreement in Principle, other than the representations, warranties,
11 and covenants contained and memorialized in such documents. In the event of any conflicts
12 between this Settlement Agreement, the Agreement in Principle, or any other document, the
13 Parties agree that this Settlement Agreement shall control.

14 **J.** Southwest shall bear its own attorneys' fees, costs, and expenses in this Case.
15 Except as provided in this Settlement Agreement, the Class and the Class Representative shall
16 bear their own attorneys' fees, costs, and expenses in this Case.

17 **K.** Each signatory to this Settlement Agreement represents that he, she or it is
18 authorized to enter into this Settlement Agreement on behalf of the respective Parties he, she or it
19 represents.

20 **L.** References in this Settlement Agreement to time and mailing shall be construed in
21 the following manner. All time periods in this Settlement Agreement that are stated in terms of
22 days are calendar days. Unless otherwise specified in this Settlement Agreement, a document shall
23 be deemed timely if it is received, postmarked, or bears a similar reliable verification of delivery
24 before the expiration of the applicable period, or in the absence of a legible postmark, if it is
25 received by mail within three days of the expiration of the applicable period. The first day counted
26 shall be the day after the event from which the time period begins to run and the last day of the
27 period shall be included, unless it falls on a Saturday, Sunday, or Federal holiday, in which case
28 the period shall be extended to include the next business day.

1 **M.** Whenever this Settlement Agreement provides for notice to be given to the Parties,
2 such notice shall be served on the Parties as follows:

3 Notice to Plaintiff, Plaintiff’s Counsel, or Class Counsel Shall Be Sent To:

4 Peter Romer-Friedman
5 Outten & Golden LLP
6 601 Massachusetts Ave NW, Suite 200W
7 Washington DC, 20001
8 Fax: (202) 847-4410
9 prf@outtengolden.com

10 Notice to Southwest Shall Be Sent To:

11 Brian Berry
12 Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
13 Steuart Tower, One Market Plaza, Suite 1300
14 San Francisco, CA 94105
15 brian.berry@ogletreedeakins.com

16 **N.** Nothing in this Settlement Agreement, the Exhibits attached hereto, or the term sheet
17 shall be deemed to or construed to constitute an admission or evidence as to any of the claims or
18 allegations in the Complaint or any other matter, including whether this Case is suitable for class
19 treatment except for the purpose of settlement, nor shall this Agreement, the Exhibits attached
20 hereto, or the Agreement in Principle be used by any Party in this proceeding or any other
21 proceeding or context as reflecting upon the validity or invalidity of any claim or as any evidence
22 concerning the amount of or limit on potential alleged damages that may be recovered by the
23 Settlement Class, or as reflecting on whether this Case is suitable for class treatment except for the
24 purpose of settlement.
25
26
27
28

1 IT IS HEREBY AGREED by the undersigned.

2 DocuSigned by:
3 Jayson Huntsman
711202BA1B9F4E0...

4 JAYSON HUNTSMAN
5 Dated: 9/12/2018

6 Approved as to Form:
7 [Signature]
8 Peter Romer-Friedman
9 Dated: September 11, 2018

10 Peter Romer-Friedman
11 OUTTEN & GOLDEN LLP
12 601 Massachusetts Avenue NW,
13 Second Floor West Suite
14 Washington, D.C. 20001
15 Telephone: (202) 847-4400
16 Facsimile: (202) 847-4410
17 Email: prf@outtengolden.com
18 Jahan C. Sagafi
19 Rachel Dempsey
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21 One Embarcadero Center, 38th Floor
22 San Francisco, California 94111
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25 Email: jsagafi@outtengolden.com
26 Email: rdempsey@outtengolden.com

27 Thomas G. Jarrard (*pro hac vice*)
28 LAW OFFICE OF THOMAS JARRARD PLLC
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Matthew Z. Crotty (*pro hac vice*)
CROTTY & SON LAW FIRM, PLLC
905 W. Riverside Ave, Suite 409
Spokane, WA 99201
Telephone: (509) 850-7011

SOUTHWEST AIRLINES CO.

By: _____
Name (print): _____
Title: _____
Dated: _____

Approved as to Form:

Dated: _____

Douglas J. Farmer (CA Bar No. 139646)
douglas.farmer@ogletree.com
Brian D. Berry (CA Bar No. 229893)
brian.berry@ogletree.com
Jason P. Brown (CA Bar No. 266472)
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OGLETREE, DEAKINS, NASH, SMOAK
& STEWART, P.C.
Stueart Tower, Suite 1300
One Market Plaza
San Francisco, CA 94105
Telephone: 415.442.4810
Facsimile: 415.442.4870

*Attorneys for Defendant Southwest Airlines
Co.*

1 IT IS HEREBY AGREED by the undersigned.

2

3

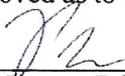
4 JAYSON HUNTSMAN

5 Dated: _____

6

7

8 Approved as to Form:

9 
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