UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

Katherine M. Cleary, *et al*., individually and on behalf of all others similarly situated, Plaintiffs, v. American Airlines, Inc., Defendant.	Civil Action No. 4:21-cv-00184-O Hon. Reed O'Connor, USDJ Hon. Hal R. Ray, Jr., USMJ

PLAINTIFFS' AND CLASS COUNSEL'S MOTION FOR
AWARD OF ATTORNEYS' FEES AND EXPENSES AND FOR SERVICE AWARDS

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COME NOW, Plaintiffs William Cleary and Filippo Ferrigni ("Plaintiffs") and Class Counsel,[1] who pursuant to Fed. R. Civ. P. 23(e) and (h) file this Motion for an Award of Attorneys' Fees and Expenses and for Service Awards.[2]

I. INTRODUCTION

Having vigorously investigated and prosecuted this case for over two years, resulting in a strong class settlement that provides relief in the form of full refunds eligible to hundreds of thousands of Settlement Class Members, Class Counsel respectfully move the Court for an award of attorneys' fees and reimbursement of reasonable litigation expenses in the amount of $2,850,000.00. All fees and expenses awarded to Class Counsel will be paid by defendant American Airlines ("American" or "AA") ***on top of*** the $7.5 million (at minimum) that will be paid to Settlement Class Members under the Settlement, and thus will not reduce in any way the settlement refunds payable to Settlement Class Members[3] that submit valid claims.

The requested fee amount was agreed to by American following a separate fee negotiation, and is fair, reasonable and appropriate under applicable law. The requested fee, if granted, would represent approximately 27.5% of the total $10.35 million monetary payout by American, even assuming the Settlement refunds are the *minimum* amount of $7.5 million (plus proposed attorneys' fees and estimated Settlement expenses) that will be paid by American. That percentage would decrease if the Settlement refunds exceed $7.5 million, and could decrease significantly once the total amount of Settlement Class Member claims are

[1] "Class Counsel" are those counsel so appointed pursuant to the Court's Preliminary Approval Order, ECF No. 252: Oren Giskan of Giskan Solotaroff & Anderson, LLP; Joseph S. Tusa of Tusa P.C.; and Roger N. Heller of Lieff Cabraser Heimann & Bernstein LLP.

[2] The Fairness Hearing, when this motion will be heard, is May 5, 2023. *See* ECF No. 252, ¶ 34.

[3] Capitalized terms are defined in the Parties' class action *Settlement Agreement and Release* (ECF No. 251-1; the "Settlement" or "Settlement Agreement").

resolved.[4] Even a 27.5% fee is lower than the percentage fees regularly awarded in the Fifth Circuit in complex class actions like this one. The requested fee is well justified under the circumstances of this litigation and the "*Johnson* factors" that are applied in this Circuit. Those *Johnson* factors include: the complexity of this case; the commitment of time, resources, and effort that were required of Class Counsel to successfully prosecute this this hotly disputed case over two years; the strong result achieved for the Settlement Class that will pay all Settlement Class Member who filed claims *at least* 100% of their injuries; and the significant challenges and risks that Class Counsel assumed in pursuing this case on a purely contingency basis.

The Settlement achieved here represents a very strong result for Settlement Class Members. Pursuant to the terms of the Settlement, American has agreed to pay more than $10.35 million, including:

(a) at least $7.5 million into a Settlement Account, which will be used to pay Refunds of at least 100% of their injuries to Settlement Class Members who submit valid claims. If the total amount approved for all valid claims exceeds $7.5 million, American will pay that higher amount into the Settlement Account instead. There is no maximum on the amount that American will pay Valid Claimants.

(b) $2.85 million in attorneys' fees and litigation costs, subject to Court approval, to be paid by American to Class Counsel and other Plaintiffs' counsel separate and apart from the Refunds paid to Settlement Class Members.

(c) All Notice and Settlement Administration Costs (estimated at $1,142,945.63),

[4] Class Counsel will supplement this Memorandum after the February 22, 2023 Claims Deadline and before the Final Approval Hearing to provide the Court with the total amount of valid Settlement Member Claims.

including fees and costs incurred by the Settlement Administrator to implement the robust notice program, administer the claims process, distribute Settlement payments, and perform the other administrative tasks described in the Settlement. American's payment of settlement administration costs will not reduce the amount of Refunds paid to Settlement Class Members.

(d) Service awards of $10,000 to each of the two Class Representatives, subject to Court approval, on top of the other settlement payments.

This strong result for the Settlement Class would not have been possible but for the hard work and dedication of Class Counsel. As the Court is aware, the Settlement here follows years of intense litigation—including class certification, extensive discovery, motion practice, and trial preparation. Class Counsel have already devoted more than 3,614 hours to the investigation, discovery, prosecution, and settlement of this litigation, for a total combined lodestar to date of more than $2,166,407.5 with significant work still being done in connection with obtaining final settlement approval and if approved, implementing the Settlement. The requested fee currently represents a multiplier of approximately 1.284, which is also within the range approved in similar cases. The requested fee should be approved.

The $67,395.99 in litigation expenses for which Class Counsel seek reimbursement were reasonably expended in prosecuting this case, are reasonable, and should be approved.

The fee award that Class Counsel is seeking was provided in the Court-approved notices sent to the Settlement Class Members. While the deadline for Settlement Class Members to submit objections will not expire until January 18, 2023, as of December 16, 2022, there were no objections to the Settlement or Class Counsel's proposed fee request.[5]

[5] *See Declaration of Jack Sobczak, A.B. Data* ("A.B. Data Decl."), at ¶ 21, filed herewith. The final numbers of opt-outs and objections will be reported to the Court in advance of the May 5, 2023 Fairness

For these reasons and the others detailed below, Class Counsel respectfully request that the Court grant their motion for attorneys' fees and expenses, and grant service awards in the amount of $10,000 each for the Plaintiffs to compensate them for their commitment and efforts on behalf of the Settlement Class.

II. BACKGROUND

A. The Settlement Represents a Strong Result for the Settlement Class.

1. At Least $7.5 Million in Refunds to Settlement Class Members

Under the Settlement, American will pay no less than seven million five hundred thousand dollars ($7.5 million) into a Settlement Account, which will be used to pay all Settlement refunds to Settlement Class Members who submit Valid Claims. Settlement Class Members who submit a Valid Claim will receive *at least* a full, 100% refund of their At-Issue Baggage Fees.[6] Settlement §§ IV.A-C.

If the total amount approved for all claims submitted (the "Total Claim Amount") exceeds $7.5 million, American will pay that higher Total Claim Amount into the Settlement Account instead, fully refunding the At-Issue Baggage Fees for all Valid Claimants. Settlement § IV.E.

Hearing.

[6] "'At-Issue Baggage Fees' means and includes the following baggage fees paid during the Relevant Timeframe by Settlement Class Members, to the extent such baggage fees have not yet been refunded by American and were not released in *Max Bazerman, et al. v. American Airlines, Inc.*, Case No. 1:17-cv-11297-WGY (D. Mass 2017):

(i) Where Email Confirmation Settlement Class Members received an email confirmation that in its body (and not merely in documents incorporated by reference) promised them one or more checked bags for no charge or "USD 0.00" and baggage fees were charged by American inconsistent with such email confirmation promise; or

(ii) Baggage fees improperly charged by American to Credit Card Settlement Class Members, while they held Citi or Barclay's American partner credit cards that entitled them to free checked baggage, on domestic itineraries. For the removal of doubt, this includes passengers on international itineraries who were charged to check a first bag, of standard weight and size, for the entirely domestic portion of such itineraries in addition to the international portions of those itineraries." Settlement § II.C.

The Settlement sets no maximum on the amount that American will pay Valid Claimants. *Id.*

Depending on the amount of the Valid Claims that are received, Settlement refunds to valid claimants can exceed 100%. If the Total Claim Amount is less than $7.5 million, American will pay $7.5 million into the Settlement Account. *Id.* § IV.F. In that case, each Valid Claimant's total Refund will equal their respective At-Issue Baggage Fees plus a *pro rata* allocation of the difference between $7.5 million and the Total Claim Amount. *Id.*

Further, as described in Section III.A *infra*, the amount of attorneys' fees and Settlement and Administration Costs paid by American is a further benefit to the Settlement Classes.

2. Class Notice Plan

The Settlement provided for a robust Class Notice Plan comprising direct and publication notices to the Settlement Classes, which has been approved by the Court and is being implemented by the Settlement Administrator and the Parties. All Notice and Settlement Administration Costs, including fees and costs of the Settlement Administrator implementing the Class Notice Program, administering the claims process, mailing checks, and performing the other administrative tasks described in the Settlement, will be paid by American, in addition to Refunds paid to claiming Settlement Class Members. Settlement § VII.C. American's payment of Settlement Administration Costs will not reduce the amount of Refunds paid to Settlement Class members. *Id.* § VII.D. A.B. Data Ltd. is serving as the Court-approved Settlement Administrator. *Id.* § VII.A; *see also* ECF No. 252.

3. Separate Payment of Attorneys' Fees and Expenses.

American will pay Class Counsel attorneys' fees and expenses in a total amount of $2.85 million, subject to Court approval. Class Counsel are filing herewith their application for attorneys' fees and reimbursement of expenses. Class Counsel's fee application also requests service awards of $10,000 for each of the two Plaintiffs to compensate them for their efforts and

commitment on behalf of the Settlement Classes. Any attorneys' fees, expenses, and service awards awarded by the Court will be paid by American in addition to (*i.e.*, on top of) the Refunds that will be distributed to Settlement Class Members, and thus will not reduce the amount of Refunds to Settlement Class Members. Settlement § VI.A.

B. Class Counsel Expended Considerable Time and Resources and Overcame Substantial Obstacles in Achieving the Strong Result for the Settlement Classes.

Class Counsel achieved the strong result for the Settlement Classes with substantial effort in the face of numerous obstacles. To be in a position to adequately address the numerous key issues raised in this action—including, but not limited to, factual issues relating to the glitches in American's computer system (several of which Class Counsel uncovered through investigative efforts), the electronic storage of customer data by American and its third party email vendor (Appriss Insights), American's ticketing practices, and American's credit card marketing practices on international and domestic flights—Class Counsel had to invest significant time and resources to develop expertise in these areas, all the while litigating against a well-funded defendant with abundant institutional knowledge regarding these subjects that was represented by highly-skilled and experienced outside counsel.

The complaint in this case, filed on February 24, 2021, was the product of extensive pre-filing research and factual investigation conducted by lead Class Counsel and its co-counsel. These investigative efforts, which continued throughout the course of the litigation, included, *inter alia*, thoroughly investigating and analyzing American's customer disclosures and checked baggage policies; speaking with American customers about their experiences; and investigating customer complaints and other pertinent public information. Class Counsel also researched and analyzed the legal issues regarding the claims pled and American's defenses and potential defenses, including statute of limitations and class action waiver issues.

See Declaration of Oren Giskan ("Giskan Decl."), at ¶ 7, filed herewith.

American vigorously disputed Plaintiffs' and classes' case at every stage. The significant motion practice in this case included: Plaintiffs' motion for class certification, granted by the Court as modified; three motions to compel by Plaintiffs, all of which were granted in part or in full; American's objection to Magistrate Judge Ray's Report and Recommendation compelling discovery, which Plaintiffs successfully opposed; a motion to intervene an additional plaintiff; American's motion for summary judgment, which Plaintiffs opposed and which was partially denied; Plaintiffs' motion for spoliation sanctions, which the Court granted; American's motion to reconsider the Court's decision on summary judgment, which Plaintiffs opposed; and the Parties' extensive motions *in limine*. Giskan Decl., at ¶ 11. Addressing and overcoming American's numerous defenses and objections, particularly on class certification and summary judgment, required significant commitments of time, effort, and resources from Class Counsel. Giskan Decl., ¶ 16. Because this case settled only 12 days before trial was set to begin, Class Counsel had already prepared for trial by preparing and filing numerous motions *in limine*, witness and exhibit lists, and other pre-trial motions and documents. *See, e.g.*, ECF Nos. 200, 206, 212.

Moreover, Class Counsel expended significant amounts of time conducting extensive discovery in this case. Class Counsel reviewed more than 50,000 pages of internal documents and a hugh amount of electronic discovery produced by American and third-party Appriss Insights, American's email vendor; conducted eight depositions of multiple Rule 30(b)(6) corporate designees and of other American employee witnesses; defended the depositions of Plaintiffs Cleary and Ferrigni; propounded written discovery and analyzed American's responses; and prepared responses to written discovery served by American on Plaintiffs.

Giskan Decl., ¶¶ 8-9.

Throughout the discovery process, the Parties held frequent, often lengthy, meet and confer sessions, including regarding the specifics and scope of American's E-Ticket Email system. Through those efforts, the Parties were able to resolve many of their potential disputes without Court assistance. However, the Parties did litigate three motions to compel discovery brought by Plaintiffs, each of which was granted, at least in part, by Magistrate Judge Ray and this Court. Giskan Decl., ¶¶ 10-11. *See* Dkt. Nos. 65, 89, 106.

Shortly after the Court granted Plaintiffs' motion for class certification and certified two classes, the Parties participated in settlement mediation with Clay Cogman of Phillips ADS. That September 2021 mediation did not result in an agreement and substantial litigation followed. The Parties and their counsel again participated in a full-day, primarily in-person mediation with Clay Cogman on August 8, 2022. The Parties were not able to reach a settlement during that mediation but agreed to continue negotiations. The Parties reached an agreement in principle on August 17, 2022. Giskan Decl., ¶¶ 18-20.

After reaching an agreement in principle, Class Counsel worked diligently with counsel for American drafting the Settlement Agreement and exhibits, worked closely with the Settlement Administrator and counsel for American on implementing the Settlement Notice Plan, continued to communicate with Settlement Class Members (following dissemination of the class notice, which included Class Counsel's contact information), and have prepared (and will continue to prepare) final approval of the Settlement. Giskan Decl., ¶ 22.

III. ARGUMENT

Rule 23(e)(2)(C)(iii) requires the Court to consider "the terms of any proposed award of attorneys' fees, including timing of payment." Rule 23(h) further provides that any fee awarded to Class Counsel here must be approved by the Court.

A. The Requested Fee Is Reasonable Under Applicable Law and Is Well-Justified Under the Circumstances of this Case.

When class counsel's efforts have conferred a substantial benefit upon a class, counsel is entitled to attorneys' fees for achieving that benefit. *Mills v. Elec. Auto-Lite Co*., 396 U.S. 375, 393-94 (1970); *cf. Boeing Co. v. Van Gernert*, 444 U.S. 472, 478 (1980) (where the efforts of class counsel result in the creation of a common fund to be shared among a class, class counsel should be paid for assisting the creation of that common fund). Parties to a class settlement are encouraged to agree on the amount of the fees, as Plaintiffs and American have done in this case. *See Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) (holding that an agreed-to fee is an ideal situation because "[a] request for attorney's fees should not result in a second major litigation. Ideally, of course, litigants will settle the amount of a fee." *Ayers v. Thompson*, 358 F.3d 356, 375 (5th Cir. 2004) (citing *Hensley*, 461 U.S. at 437); *In re Heelys Derivative Litig*., No. 07-cv-1682-K, 2009 U.S. Dist. LEXIS 148801, at *29 (N.D. Tex. Nov. 17, 2009); *DeHoyos v. Allstate Corp*., 240 F.R.D. 269, 322-23 (W.D. Tex. 2007).

Even where there is an agreement on fees, the Court must still evaluate the requested fee amount under applicable standards to ensure that the fee awarded is reasonable. *In re Heartland Payment Systems, Inc.*, 851 F. Supp. 2d 1040, 1069 (S.D. Tex. 2012); *Lopez v. STS Consulting Servs. LLC*, No. 16-cv-00246-RWS, 2018 U.S. Dist. LEXIS 40977 (E.D. Tex. Feb. 6, 2018), *report and recommendation adopted*, 2018 U.S. Dist. LEXIS 39736 (E.D. Tex. Mar. 12, 2018) ("district courts generally begin by looking to the parties' proposed percentage as the starting point to determine the benchmark fee," before applying *Johnson* factors to ensure the requested fee is reasonable).

Where, as here, a class settlement provides a monetary recovery for the class, the court has discretion to use either the "percentage-of-the-fund" or the "lodestar-multiplier" approach

(or a combination of the two) to determine a reasonable fee. *See Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 644 (5th Cir. 2012). Fifth Circuit courts have repeatedly recognized that in common fund and constructive common fund cases (such as this case), the most appropriate method to use is the percentage-of-the-fund approach, often with the lodestar-multiplier approach used as a "cross-check." *Dell*, 669 F.3d at 643 (recognizing that the percentage method "brings certain advantages . . . because it allows for easy computation" and "aligns the interests of class counsel with those of the class members."); *Schwartz v. TXU Corp.*, No. 02-cv-2243-K, 2005 U.S. Dist. LEXIS 27077, at *84 (N.D. Tex. Nov. 8, 2005) ("There is a strong consensus in favor of awarding attorneys' fees in common fund cases as a percentage of the recovery."); *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico*, MDL No. 2179, 2016 U.S. Dist. LEXIS 147378, at *61 (E.D. La. Oct. 25, 2016) ("Virtually all of the recent common fund fee awards by district courts in the Fifth Circuit have utilized the percentage method" with "[m]any of these courts includ[ing] an additional step, cross-checking the award against a 'rough lodestar analysis."); *In re Heartland*, 851 F. Supp. 2d at 1072-73, 1078 (applying percentage approach, with lodestar cross-check, to determine reasonable fee for settlement with constructive common fund; citing cases).

In the Fifth Circuit, whether the court uses the percentage-of-the-fund and/or the lodestar- multiplier approach, the court must evaluate the reasonableness of the fee in light of the "*Johnson* factors," which are: (1) The time and labor required; (2) The novelty and difficulty of the questions; (3) The skill requisite to perform the legal service properly; (4) The preclusion of other employment by the attorney due to acceptance of the case; (5) The customary fee; (6) Whether the fee is fixed or contingent; (7) 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. *See Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974).

The requested fee here, which was agreed to by the Parties, is reasonable under both the percentage-of-the-fund and lodestar-multiplier approaches and is justified under the circumstances of this case and application of the *Johnson* factors.

1. The Requested Fee is Reasonable Under the Percentage-of-the-Fund Approach.

Where the defendant in a class settlement agrees to separately pay attorneys' fees and expenses on top of the monetary relief provided to the class (as opposed to paying both the class and class counsel from a traditional "common settlement fund"), it is proper to consider the attorneys' fees and expenses as part of the total settlement consideration used to apply the percentage-of-the-fund method. *See* Federal Judicial Center, *Manual for Complex Litigation*, § 21.7, p. 335 (4th ed. 2004) ("If an agreement is reached on the amount of a settlement fund and a separate amount for attorney fees and expenses….the sum of the two amounts ordinarily should be treated as a settlement fund for the benefit of the class, with the agreed-on fee amount constituting the upper limit on the fees that can be awarded to counsel."); *In re Heartland*, 851 F. Supp. 2d at 1072 (where settlement provides for separate payment by defendant of attorneys' fees on top of the class payments, proper to treat the combination of the class payments and attorneys' fees as a "constructive common fund" used in applying percentage method); *Deepwater Horizon*, 2016 U.S. Dist. LEXIS 147378, at *63 ("[W]hen, as here, the settlement calls for the defendant to fund the payment of attorneys' fees to class counsel, it relieves the class of the burden of paying those fees from the recovery otherwise

available to class members. As such…that amount is properly included in the value of the settlement for fee award purposes.").

Pursuant to the Settlement, American has agreed to pay *no less than* $7.5 million in refunds to the Settlement Class Members, Settlement Administration Costs (estimated by the Settlement Administrator to be $1,142,945.63), Court-awarded attorneys' fees and expenses (up to $2.85 million) and requested service awards to Plaintiffs ($10,000 each). When added together, the total Settlement payout by American (*i.e.*, the total "constructive fund") well exceeds $10.35 million, and depending on the amount of Valid Claims received by the claims deadline, may ultimately be higher.

The attorneys' fees and reimbursement of expenses requested by Class Counsel, $2,850,000, represent less than 27.5% of the total (minimum) $10.35 million payout. That percentage is well within the percentage fees regularly awarded in this Circuit in comparable cases, which most typically range between around 30% and 33%. *See, e.g.*, *Schwartz*, 2005 U.S. Dist. LEXIS 28453, at *14-15, ("[C]ourts throughout this Circuit regularly award fees of 25% and more often 30% or more of the total recovery under the percentage-of-the recovery method.") (compiling 21 cases where courts awarded a 30% fee or greater); *Erica P. John Fund, Inc. v. Halliburton Co.*, No. 02-cv-1152-M, 2018 U.S. Dist. LEXIS 69143, at *34 (N.D. Tex. Apr. 25, 2018) (approving 33⅓% fee as "within the range of percentage fees awarded in the Fifth Circuit in other complex cases" and noting that "numerous courts in this Circuit have awarded fees in the 30% to 36% range"); *Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942, 972 (E.D. Tex. 2000) ("[B]ased on the opinions of other courts and the available studies of class action attorneys' fees awards . . . attorneys' fees in the range from [25%] to [33%] have been routinely awarded in class actions. Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around

one-third of the recovery."); *Kemp v. Unum Life Ins. Co. of Am.*, No. 14-cv-0944, 2015 U.S. Dist. LEXIS 166164, at *23 (E.D. La. Dec. 11, 2015) ("In the Fifth Circuit, the average percent awarded as attorneys' fees is 29.5%."); *Klein v. O'Neal, Inc.*, 705 F. Supp. 2d 632, 675 (N.D. Tex. 2010) (approving 30% fee as within range of reasonableness and noting that "[i]f the request is relatively close to the average awards in cases with similar characteristics, the court may feel a degree of confidence in approving the award").

As discussed below, consideration of the *Johnson* factors further supports a conclusion that the requested fee is reasonable. *Johnson*, 488 F.2d at 717-19.

a. The Time and Effort Required (*Johnson* Factor 1)

The professional time and effort required to investigate and prosecute this case over two years, and successfully resolve this action on behalf of the Settlement Classes, was substantial. This case was very heavily litigated from start to finish, requiring substantial commitments of both time and resources from Class Counsel and their colleagues. Class Counsel's and their co-counsel's efforts have included:

- Conducting a thorough pre-filing factual investigation and ongoing investigation throughout the course of the litigation, including reviewing and analyzing American customer disclosures and checked baggage policies; speaking with American customers about their experiences; and investigating customer complaints and other pertinent public information.

- Conducting extensive legal research, prior to filing and throughout the litigation, regarding the claims pled and American's defenses and potential defenses.

- Drafting the Complaint.

- Successfully briefing and litigating Plaintiffs' motion for class certification.

- Conducting extensive formal discovery, including: reviewing more than 50,000 pages of internal documents and extensive electronic data produced by American and third-party Appriss Insights; reviewing additional documents and data produced by American and third parties, including American's credit card partners (Citibank and Barclays); conducting eight depositions of American employees and Rule

30(b)(6) corporate designees; defending the depositions of Plaintiffs Cleary and Ferrigni; propounding substantial written discovery and analyzing American's responses; and preparing responses to written discovery served on Plaintiffs. Plaintiffs served on American five sets of document requests and three sets of interrogatories.

- Preparing and litigating three successful motions to compel the production of documents and/or information, as well as opposing American's objection to Magistrate Judge Ray's Order regarding one of those motions to compel.

- Successfully opposing American's motion for summary judgment, which was denied in part.

- Successfully litigating Plaintiffs' motion for spoliation sanctions;

- Briefing a motion to intervene an additional plaintiff;

- Litigating numerous case management motions.

- Communicating on a regular basis with Plaintiffs and class representatives William Cleary and Dr. Filippo Ferrigni, who were personally and actively engaged in this litigation. They each provided information to Class Counsel about their experiences, searched for and provided documents and information in response to American's written discovery requests, prepared and appeared for depositions, and regularly communicated with Class Counsel. Dr. Ferrigni also personally attended (by video conference) the August 2022 mediation session.

- Preparing extensively for trial in this case, which settled in principle only 12 days before the scheduled beginning of the trial. These preparations included preparing and filing motions *in limine* and other pre-trial motions, exhibit and witness lists, other disclosures, a joint proposed pretrial order, and other documents, as well as opposing American's motions *in limine*.

- Preparing for and participating in extensive mediation, including one half-day mediation session in September 2021, plus a full-day in-person session in August 2022, as well as extensive follow-up negotiations.

- Along with American, drafting the Settlement Agreement and exhibits.

- Working closely with the Settlement Administrator and American on implementing the Class Notice Program and other administration tasks, including communicating with Class Members to answer questions about the Settlement.

- Drafting motions for final approval of the Settlement and Class Counsel's motion for an award of attorneys' fees and reimbursement of costs and expenses.[7]

In total, Class Counsel have already devoted more than 3,614 hours investigating, litigating, and resolving this action. That figure does not include significant additional time Class Counsel will spend, going forward, seeking final approval, continuing to speak with Settlement Class Members, and on settlement implementation matters. *See* Giskan Decl., ¶ 25. The substantial time and effort that Class Counsel have devoted to this case strongly supports the requested fee.

b. The Novelty and Difficulty of the Questions Involved (*Johnson* Factor 2)

Courts further evaluate the reasonableness of a requested fee is the difficulty of the questions presented by the litigation. *Johnson*, 488 F.2d at 718; *Kemp*, 2015 U.S. Dist. LEXIS 166164 at *31. When analyzing this factor, courts consider the type of case, whether a case has a significant risk of no recovery, whether class counsel has litigated similar cases in the past, the volume of discovery and pretrial practice in the case, and the duration of the litigation. *See In re Heartland*, 851 F. Supp. 2d at 1083; *Klein*, 705 F. Supp. 2d at 677.

This factor weighs heavily in favor of awarding the requested fee. Plaintiffs' claims address conduct that required knowledge of the technical aspects of American's E-Ticket Confirmation system, which had numerous glitches/defects, some of which were detected by Class Counsel through its thorough investigation.

Class certification and summary judgment presented additional difficult issues. First, Class Counsel was able to overcome American's defenses to class certification, including its

[7] Class Counsel is permitted to include their professional time to prepare the motions for final approval of the Settlement and an award of attorneys' fees. *See, e.g., Bardales v. Fontana & Fontana*, No. 19-cv-340-WBV-DMD, 2021 U.S. Dist. LEXIS 159495, at *14 (E.D. La. Aug. 24, 2021).

arguments that Plaintiffs' breach of contract claim required individualized inquiry, and that Mr. Cleary and Dr. Ferrigni were inadequate class representatives. Second, on summary judgment, American argued, *inter alia*, that the email confirmations were not part of the Classes' contractual agreement, but Class Counsel was able to overcome this argument, which, if successful, would have effectively ended the case for a substantial number of Class Members. *See* ECF No. 190. American succeed in its arguing that Texas's four-year statute of limitations applied to this case, without any tolling, which narrowed the time period for the claims. *Id.* Other defenses put forth by American on summary judgment, including its arguments regarding the applicability of a class action waiver for AAdvantage members who purchased tickets on or after May 5, 2015, and its request to dismiss foreign class members' claims, were denied without prejudice, and thus would have been presented again at trial.

The procedural posture of this case also weighs in favor of granting Class Counsel's request. When the Parties reached the Settlement, there was a disputed motion filed by American to reconsider the Court's summary judgment and sanctions decisions (ECF Nos. 192, 198), and multiple trial-related motions, which, if decided in American's favor, would have significantly narrowed—or even eliminated—the damages available to the certified Classes. Among the trial-related motions filed by American were motions *in limine* to exclude Plaintiffs' classwide damages evidence, exclude evidence proving American's classwide liability, and exclude trial witnesses proposed by Plaintiffs. *See* ECF Nos. 200-210. There was also no guarantee that the Court would grant the motions *in limine* filed by Plaintiffs that were opposed by American, including: (i) to exclude as waived defenses not raised in American's Answer; (ii) to exclude non-expert opinion testimony; (iii) to prevent American from disputing the validity of the damages discovery it produced pursuant to Court orders;

(iv) to prevent American from disputing that E-Ticket Confirmation Emails sent by American to Class Members were a part of American's contracts with Class Members; and (v) to extend this Court's pre-trial spoliation rulings to the trial. *See* ECF No. 212.

But for the Settlement, a jury trial was scheduled to begin at the end of August 2022. This meant that Plaintiffs would have needed to convince a jury of American's liability and to award damages equivalent to full refunds for each Class Member in order to achieve the result that was reached through the Settlement, and then prevail on a certain appeal. Plaintiffs and Class Counsel thus faced very substantial risks and challenges in this case, several of which remained at the time the Settlement was reached.

Notwithstanding the complexity of this case, and notwithstanding the risks and challenges they faced, Class Counsel took on representation in this case and prosecuted it on entirely contingency basis, devoted substantial time and money to that prosecution, and ultimately achieved a Settlement which represents a strong result for the certified Classes.

c. The Skill Required to Perform the Legal Service Properly; and the Experience, Reputation, and Ability of the Attorneys (*Johnson* Factors 3 and 9)

The *Johnson* factors also include consideration of the skill required to litigate the case and "the experience, reputation, and ability of the attorneys' involved. *Johnson*, 488 F.2d at 718-19. Successfully prosecuting this case, overcoming the numerous challenges and risks, and achieving a strong result for the Settlement Classes, required significant skill. Class Counsel here have extensive experience litigating and resolving large class actions and other complex matters. *See generally* Giskan Decl., Declaration of Joseph Tusa ("Tusa Decl."), The Declaration of Roger Heller ("Heller Decl."), filed herewith. Class Counsel's skill and hard work in this case was critical to the result achieved.

Moreover, the quality of the opposition faced by Class Counsel should also be

considered. *Schwartz*, 2005 U.S. Dist. LEXIS 28453, at *18 ("The ability of plaintiffs' counsel to obtain such a favorable settlement for the Class in the face of such formidable legal opposition confirms the superior quality of their representation"); *Shaw*, 91 F. Supp. 2d at 970 (finding the presence of "very skilled [opposing] counsel" as relevant to the *Johnson* analysis). American was represented by knowledgeable and experienced outside counsel, which deployed a formidable team of highly skilled lawyers with significant experience defending American in another baggage fee class action and large class actions generally involving consumer protection and other issues. This Factor further supports the reasonableness of the requested fee.

d. The Contingent Nature of the Fee and the Preclusion of Other Employment (*Johnson* Factors 4 and 6)

Class Counsel prosecuted this case on a purely contingent basis, agreeing to advance all necessary expenses and that they would only receive a fee if there was a recovery.[8] Class Counsel's outlay of resources has been very significant. They have spent thousands of hours prosecuting this case on behalf of the Settlement Classes, and have incurred more than $67,395.99 in litigation expenses to date. Not only has Class Counsel's substantial commitment to this case necessarily limited their ability to take on other work, but they expended these resources despite the very real risk that they may never be compensated at all for it. Class Counsel's substantial outlay of expenses, when there was a real risk that that none of it would be recovered, would support an even higher fee and fee percentage than Class Counsel are requesting, and strongly supports the reasonableness of the fee that is requested. *King v. United SA Fed. Credit Union*, 744 F. Supp. 2d 607, 615 (W.D. Tex. 2010) ("Courts have consistently recognized that the risk of receiving little or no recovery is a major Factor in

[8] Giskan Decl., ¶ 26; Tusa Decl., ¶ 14; Heller Decl., ¶ 20.

considering an award of attorneys' fees.").[9]

e. The Customary Fee and Awards in Similar Cases (*Johnson* Factors 5 and 12)

As discussed above, the fee requested represents, at most, 27.5% of the total monetary outlay by American under the Settlement (*i.e.*, of the total "constructive fund"), which is on par with or slightly lower than the normal range typically awarded in similar cases in this Circuit. *See* Section III.A.1., *supra*; *Schwartz*, 2005 U.S. Dist. LEXIS 28453, at *14 ("courts throughout this Circuit regularly award fees of 25% and more often 30% or more of the total recovery under the percentage-of-the recovery method") (compiling cases); *Erica P. John*, 2018 U.S. Dist. LEXIS 69143, at *34 (approving 33⅓% fee as "within the range of percentage fees awarded in the Fifth Circuit in other complex cases" and noting that "numerous courts in this Circuit have awarded fees in the 30% to 36% range."); *Shaw*, 91 F. Supp. 2d at 972 ("attorneys' fees in the range from [25%] to [33%] have been routinely awarded in class actions"); *Kemp*, 2015 U.S. Dist. LEXIS 166164 at *23 ("In the Fifth Circuit, the average percent awarded as attorneys' fees is 29.5%.").[10]

Moreover, as discussed *infra*, under the lodestar-multiplier approach, the requested fee results in an effective multiplier of 1.284 (and dropping as Class Counsel continues to work on the matter), which is well within the range regularly awarded in comparable class cases in

[9] *See also Klein*, 705 F. Supp. 2d at 678 (where "class counsel represented the class on a contingent-fee basis, with no guarantee of any recovery . . . [t]he contingent nature of the fee favors an increase" in the fee); *Billitteri v. Sec. Am., Inc.*, No. 3:09-cv-01568-F, 2011 U.S. Dist. LEXIS 93907M, * at 38 (N.D. Tex. Aug. 4, 2011) (finding the contingency fee arrangement of a class action "particularly relevant" to the *Johnson* analysis "considering the difficulty presented by the facts and legal questions in [such] case[s] and the very real risk of obtaining no recovery at all").

[10] *See also, e.g., Rodriguez v. Stage 3 Separation, LLC*, No. 14-cv-00603-RP, 2015 U.S. Dist. LEXIS 186251 at *15 (W.D. Tex. Dec. 23, 2015) (finding that a 30% benchmark fee is common in the Fifth Circuit); *Klein*, 705 F. Supp. 2d at 675 (approving 30% fee); *Al's Pals Pet Care v. Woodforest Nat'l Bank*, No. 17-cv-3852, 2019 U.S. Dist. LEXIS 17652 (S.D. Tex. Jan. 30, 2019) (awarding 33% fee).

this Circuit and elsewhere. *See* Section III.A.2.c., *infra.* This further supports the reasonableness of the requested fee. *Johnson*, 488 F.2d at 718-19.

f. Time Limitations Imposed by the Client (*Johnson* Factor 7)

This factor is "inapplicable to this case, and [is] therefore neutral." *In re Dell Inc.*, No. A-06-CA-726-SS, 2010 U.S. Dist. LEXIS 58281 (W.D. Tex. June 10, 2010) at *57-58 ; *see also Klein*, 705 F. Supp. 2d at 676 ("not every [*Johnson*] Factor need necessarily be considered"); *Schwartz*, 2005 U.S. Dist. LEXIS 28453, at *15 ("The relevance of each of the *Johnson* factors will vary in any particular case, and, rather than requiring a rigid application of each factor, the Fifth Circuit has left it to the lower court's discretion to apply those factors in view of the circumstances of a particular case.").

g. The Amount Involved and the Results Achieved (*Johnson* Factor 8)

"The United States Supreme Court and the Fifth Circuit have held 'the most critical Factor in determining the reasonableness of a fee award is the degree of success obtained.'" *In re Dell*, 2010 U.S. Dist. LEXIS 58281 (W.D. Tex. June 10, 2010), at *58 (quoting *In re Enron*, 586 F. Supp. 2d at 796). The Settlement achieved by Class Counsel here represents a strong result for the Settlement Class, further supporting the reasonableness of the requested fee. Each Settlement Class Member who submits a Valid Claim will receive *at least* a full refund for his/her checked baggage charges. That successful result would not have been possible but for Plaintiffs' and Class Counsel's efforts. Class Counsel was successful in achieving certification of two nationwide classes of airline passengers who were overcharged baggage fees, overcoming numerous challenges by American in the process, including American's motion for summary judgment. Solely through the diligent work of Class Counsel will Settlement Class Members receive full refunds to compensate them for their

baggage charges. This Factor supports approval of the requested fee.

h. The Undesirability of the Case (*Johnson* Factor 10)

"[T]he 'risk of non-recovery' and 'undertaking expensive litigation against . . . well-financed corporate defendants on a contingent fee' has been held to make a case undesirable, warranting a higher fee." *Erica P. John*, 2018 U.S. Dist. LEXIS 69143, at *41 (quotation omitted). Here, the risk of non-payment was high. It would not have been economically feasible for Plaintiffs to retain lawyers on an hourly basis or to pay the costs of litigation, which would quickly surpass the amount in controversy for an individual plaintiff. As a result, Class Counsel undertook the representation of Plaintiff and the class on a fully contingent basis and would recover nothing unless the case succeeded. *See* Giskan Decl., ¶ 26. Thus, in taking the case, Class Counsel accepted a high risk of not being compensated for their efforts, supporting approval of the fee award here. *See In re Combustion, Inc.*, 968 F. Supp. 1116, 1132 (W.D. La. 1997) ("The rationale behind awarding a percentage of the fund to counsel in common fund cases is the same as that which justifies permitting contingency fee arrangements in general . . . The underlying premise is the existence of risk—the contingent risk of nonpayment.").

Moreover, Class Counsel financed this litigation against a well-financed corporate defendant, on behalf of classes with relatively small individual claims, further justifying the percentage requested by Class Counsel. *Braud v. Transp. Serv. Co.*, No. 05-cv-1898, 2010 U.S. Dist. LEXIS 93433, at *37 (E.D. La. Aug. 17, 2010) (noting that "the relatively small size of the individual claims made undertaking expensive litigation against a few well-financed corporate defendants on a contingent fee a not-very-attractive proposition.").

i. The Nature and Duration of the Professional Relationship with the Client (*Johnson* Factor 11)

Lead Class Counsel has represented Mr. Cleary and Dr. Ferrigni for the entirety of this action. From the very beginning, Class Counsel has maintained strong, positive, and professional working relationships with both Plaintiffs. Giskan Decl., ¶ 13.

2. A Lodestar-Multiplier Cross-Check Confirms the Reasonableness of the Requested Fee.

Under Fifth Circuit law, where a court applies the percentage-of-the-fund approach to determine a reasonable fee, the court may, but is not required to, conduct a lodestar-multiplier "cross-check." *Compare Deepwater Horizon*, 2016 U.S. Dist. LEXIS 147378, at *76 (performing cross-check) *with Al's Pals*, 2019 U.S. Dist. LEXIS 17652, at *10 (approving 33% fee without performing a lodestar cross-check).

Application of the lodestar-multiplier method here—whether used directly or as a "cross-check" on the percentage-of-the-fund method—further strongly supports the reasonableness of the requested fee. The first step in the lodestar-multiplier approach is "multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate." *Dell*, 669 F.3d at 642-43. Once this raw lodestar amount is calculated, the Court may then adjust that figure up or down via a "multiplier" based on application of the *Johnson* factors. *Id*. In complex class actions like this case, courts regularly award positive multipliers to reflect, as applicable, the risks assumed by counsel in litigating on a contingency basis, the novelty and complexity of the issues involved, the undesirability of the case, and consideration of the other relevant *Johnson* factors. *See, e.g.*, *DeHoyos*, 240 F.R.D. at 333; *Klein*, 705 F. Supp. 2d at 680.

a. Class Counsel's Hourly Rates are Reasonable.

The accompanying Class Counsel declarations set forth the billing rates used to calculate their lodestar, and summarize the experience of the primarily timekeepers who

worked on this litigation. In assessing the reasonableness of an attorney's hourly rate, courts consider whether the claimed rate is in line with "prevailing market rates for lawyers with comparable experience and expertise in complex class litigation." *In re Heartland*, 851 F. Supp. 2d at 1088 (citation and internal quotation marks omitted). It is appropriate to apply each biller's current rates for all hours of work performed, regardless of when the work was performed, as a means of compensating for the delay in payment. *See Missouri v. Jenkins,* 491 U.S. 274, 283–84 (1989); *Leroy v. City of Houston*, 831 F.2d 576, 584 (5th Cir. 1987); *In re Enron Corp. Sec., Derivative & ERISA Litig.*, 586 F.Supp.2d 732, 763 (S.D. Tex. 2008) ("accepted method of compensating for a long delay in paying for attorneys' services is to use their current billing rates in calculating the lodestar").

Class Counsel and this co-counsel brought extensive experience in consumer class actions and complex litigation, including specific experience litigating cases regarding excessive fee charging.[11] Class Counsel's rates, used in calculating the lodestar here, are in line with prevailing market rates for lawyers with comparable experience and expertise, and have been approved by federal courts throughout the country.[12]

b. <u>The Number of Hours That Class Counsel Worked is Reasonable.</u>

The accompanying Class Counsel declarations also set forth the number of hours that Class Counsel have worked in this litigation and describe the work performed. Class Counsel, their co-counsel and their staffs have already devoted more than 3,614.96 hours to this litigation, and have a total unadjusted lodestar to date of approximately $2,166,407.50[13] These

[11] Giskan Decl., ¶¶ 3-6; Tusa Decl., ¶¶ 4-8; Heller Decl., ¶¶ 2-5.

[12] Giskan Decl., ¶ 29; Heller Decl., ¶ 23.

[13] Giskan Decl., ¶¶ 25-27, 42; Tusa Decl., ¶¶ 15-16; Heller Decl., ¶¶ 21-22.

amounts do not include the additional time that Class Counsel will spend going forward in obtaining final approval of, and implementing, the Settlement.

The number of hours spent by Class Counsel is reasonable. The numerous important tasks that Class Counsel have had to spend significant time on in this case are summarized above and in the accompanying counsel declarations. *See* Sections II.B, III.A.1., *supra*. The following chart summarizes the hours spent by Class Counsel for which reimbursement is sought, broken down by task category:

Task Category	**Hours** (all Class Counsel Firms)
Investigation and Drafting Complaints	153.32
Discovery	1370.44
Motion Practice	1098.7
Mediation/Settlement	380
Trial Preparation	612.5
Total Hours	3614.96

The time spent on these efforts was not only reasonable, but critical to the effective prosecution of the case and to achieving the Settlement for the Settlement Class.[14] Further, Class Counsel made every reasonable effort to prevent the duplication of work or inefficiencies.

c. <u>The Fee Requested Represents a Reasonable 1.284 Multiplier on Class Counsel's Lodestar</u>

Class Counsel and their co-counsel request a combined fee and reimbursement of expenses in the amount of $2.85 million. After deducting expenses, Class Counsel seek a fee of $2,782,604.01, which represents a multiplier of approximately 1.284 on Class Counsel's total lodestar of $2,166,407.50 incurred to date in this litigation.[15] Such a multiplier is well

[14] In moving for fees, counsel is "not required to record in great detail how each minute of his time was expended." *Hensley v. Eckerhart*, 461 U.S. 424, 437 n.12 (1983). Instead, counsel need only "identify the general subject matter of his time expenditures." *Id.* If the Court prefers to review Class Counsel's detailed time records, Class Counsel will make them available for *in camera* review.

[15] The multiplier will continue to decrease with the additional work Class Counsel will perform going forward in gaining final approval and implementing the Settlement should it be approved.

within the range of multipliers that courts in the Fifth Circuit and elsewhere regularly approve, particularly in large complex cases like this one. *See, e.g.*, *DeHoyos*, 240 F.R.D. at 333 (W.D. Tex. 2007) ("The average range of multipliers applied to other class actions has been from 1.0 to 4.5. The range of multipliers on large and complicated class actions have ranged from at least 2.26 to 4.5."); *Klein*, 705 F. Supp. 2d at 680 (approving a 2.5 multiplier, noting that "[m]ultipliers in this range are not uncommon in class action settlements," and citing cases); *see also* 3 *Newberg on Class Actions* § 14.03 (multipliers "ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied").

As discussed above, application of the *Johnson* factors to the circumstances of this case support the requested fee—including the difficulty of this case, the strong result achieved for the Settlement Classes under challenging circumstances, and the significant risks that Class Counsel assumed in prosecuting this case for two years, and incurring substantial litigation expenses, on a purely contingent basis. *See* Section III.A.1., *supra* (discussing application of *Johnson* factors); *Klein*, 705 F. Supp. 2d at 680 (finding 2.5 multiplier was warranted "due to the risks entailed in this lawsuit and the zealous efforts of the attorneys that resulted in a significant recovery for the class").

B. Class Counsel's Litigation Expenses are Reasonable and Should Be Reimbursed.

Class Counsel are entitled to reimbursement of the expenses they "reasonably and necessarily incurred in prosecuting [the] action and achieving the proposed Settlement." *Schwartz*, 2005 U.S. Dist. LEXIS 27077, at *34; *see also Klein*, 705 F. Supp. 2d at 682; *In re Heartland*, 851 F. Supp. 2d at 1089. Pursuant to the Settlement, all expenses awarded to Class Counsel will be paid by American ***on top of*** the $7.5 million (at minimum) in refunds to the Settlement Class Members, and thus will not reduce what the Settlement Class Members

receive.

To date, Class Counsel have incurred a total of $67,395.99 in litigation expenses for which they seek reimbursement. This amount includes mediation fees, costs to provide the Court-ordered notices to the certified classes following class certification, and costs for deposition transcripts/videos, legal research, filing fees, process service, document database maintenance costs, travel, and postage.[16] The expenses for which Class Counsel seek reimbursement were reasonably necessary for the prosecution and resolution of this litigation, and were incurred by Class Counsel for the benefit of the Class with no guarantee that they would be reimbursed. They are reasonable in amount and the Court should approve their reimbursement.

C. The Requested Service Awards for Plaintiffs are Reasonable and Justified.

"Federal courts consistently approve incentive awards [also known as service awards] in class action lawsuits to compensate named plaintiffs for the services they provide and burdens they shoulder during litigation." *DeHoyos*, 240 F.R.D. at 339 (citing Fifth Circuit cases); *Welsh v. Navy Fed. Credit Union*, No. 5:16-CV-1062-DAE, 2018 U.S. Dist. LEXIS 227456, at *44 (W.D. Tex. Aug. 20, 2018) (service awards compensate class representatives "for the services they provide and the risks they incur initiating and prosecuting class action cases in their own name but on behalf of an unnamed class."). The requested service awards here are reasonable and justified. In addition to lending their names and experiences to this class action, and thus subjecting themselves to public attention, the Plaintiffs here were actively engaged. Among other things, they each had their depositions taken by American's counsel, prepared for their depositions, provided information to Class Counsel, gathered

[16] Giskan Decl., ¶ 30; Tusa Decl., ¶¶ 18-19; Heller Decl., ¶¶ 24-25.

documents, responded to written discovery requests, stayed updated about the litigation, and reviewed and approved the Settlement.[17] Dr. Ferrigni also participated personally in the August 2022 mediation. Giskan Decl., ¶ 12.

The amount of the service awards requested here are well within the range of service awards that courts have granted in similar circumstances. *See, e.g*, *Blackmon v. Zachary Holdings, Inc.*, No. 20-CV-00988-JKP, 2022 U.S. Dist. LEXIS 139417, at *16-17 (W.D. Tex. Aug. 5, 2022) (approving $12,500 award to each class representative); *Sleezer v. Chase Bank USA*, No. 5:07-cv-00961-HLH (W.D. Tex. Aug. 6, 2009) ($25,000 to class representative); *Welsh*, 2018 U.S. Dist. LEXIS 227456, at *45 ($10,000 award). Moreover, any service awards granted will be paid by American ***on top of*** the $7.5 million (at minimum) in refunds that will be issued to the Class Members.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs and Class Counsel respectfully request that the Court enter an Order: (a) awarding Class Counsel attorneys' fees and reimbursement of litigation expenses in the total amount of $2,850,000.00, and (b) awarding the two Plaintiffs service awards in the amount of $10,000 each for their efforts and commitment on behalf of the Settlement Class, with all such attorneys' fees, expenses, and service awards to be paid separately by American in addition to (*i.e.*, on top of) the $7.5 million (at minimum) in refunds that will be issued to Settlement Class Members pursuant to the Settlement.

[17] Mr. Cleary and Dr. Ferrigni's commitment to the case is notable given the modest size of their personal financial stakes in this matter. *Van Vranken v. Atlantic Richfield Co.,* 901 F. Supp. 294, 299 (N.D. Cal. 1995) ("In exchange for his participation, Van Vranken will not receive great personal benefit. He owns a moderately sized truck stop and his claim makes up only a tiny fraction of the common fund.").

Dated: December 19, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2022, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ *Oren Giskan*

CERTIFICATE OF CONFERENCE

The undersigned counsel certifies that he conferred in with opposing counsel and that American does not oppose the relief sought in this Motion.

/s/ *Oren Giskan*