

Declaration of Peter Romer-Friedman

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

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

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

Plaintiffs,

v.

UNITED AIR LINES, INC.,

Defendant.

DECLARATION OF PETER ROMER-FRIEDMAN

I, Peter Romer-Friedman, hereby declare under penalty of perjury of the laws of the United States as follows:

1. I am an attorney at the law firm of Cohen Milstein Sellers & Toll PLLC in Washington, DC, one of Plaintiff's counsel in *Tuten v. United Air Lines, Inc.*, Civil Action No. 1:12-cv-01561-WJM-MEH (D. Colo.). I submit this Declaration in support of Plaintiff's Consent Motion for Class Certification, Preliminary Approval of Settlement Agreement, and Approval of Notice to the Class.

2. Prior to the filing of this action in June 2012, Plaintiff's counsel undertook an investigation of the underlying claims. Plaintiff's counsel continued its investigation of United's policies and practices after the Complaint was filed. As part of this investigation, Plaintiff's counsel have interviewed more than 100 putative Class Members to verify the accuracy of

United Air Lines' ("United") personnel data and understand how United's policy impacted putative Class Members.

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

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

5. In July and August 2012, Plaintiffs' counsel requested that United's counsel provide a variety of information about potential Class Members, documents about United's pension plan and military leave policies, and information about prior cases that involved the same factual allegations as this action.

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

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

8. From the time that United first began producing documents and information through December 2012, I and other counsel to Plaintiff engaged in a number of conversations

with United's counsel about United's policies on pension contributions and military leave and about the data United had produced about each potential Class Member.

9. Based on the personnel information provided by United about pilots who had taken long term military leave in the past, I was able to identify around 1,300 potential Class Members who collectively have around 2,000 potential Claims for specific periods of long term military leave that began and ended between January 1, 2000 and October 31, 2010.

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

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

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

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

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

14. From the time that Plaintiff's Counsel developed and agreed to the Agreed Damage Methodology, Plaintiff's counsel recognized that, due to the fact that certain personnel data was not available, it would be important to provide Class Members an opportunity to challenge United's data that was used to estimate their damages and thus provide data that is more reliable or accurate. Accordingly, under the Settlement Agreement, Class Members will

have an opportunity to challenge United's data and present data that is more reliable or accurate that will be used to calculate the damages that they will receive. *See* Agmt. § VIII.3.C.

15. Starting in January 2013, Plaintiff's expert supervised a team of actuaries in calculating the potential damages for about 2,000 Claims of around 1,300 putative Class Members based on the Agreed Damage Methodology.

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

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

18. In April 2013, Plaintiff's counsel drafted and proposed a final Settlement Agreement to United, and thereafter the Parties exchanged numerous drafts of the Settlement

Agreement and related exhibits to the Settlement Agreement. On August 12, 2013, the Parties executed a final Settlement Agreement. Based on the calculations of Plaintiff's expert actuary using United's personnel data, Class Counsel estimates that under the terms of the Settlement Agreement each Class Member will receive a payment *equal or greater to* the amount of the under payment between 2000 to 2010.

19. United has advised Plaintiff's counsel that it estimates that approximately 169 of the nearly 1,300 Potential Class Members are currently engaged in military leave from United.

20. Plaintiff's counsel has worked with James Daniel Tuten throughout the litigation. Prior to the time that he retained Plaintiff's counsel, he was informed of his duties and responsibilities as a Class Representative. He provided Plaintiffs' counsel with information helpful to our case. He attended the settlement conference via telephone and was consistently kept informed and updated of the settlement discussions and proposals. At all times, Mr. Tuten has taken an active role in prosecuting this litigation and protecting all members of the Class.

21. I am unaware of any actual or potential conflicts between Plaintiff Tuten or Plaintiff's counsel and other Class Members and no other member of Plaintiff's counsel has raised any such issues with me.

22. United has identified a single lawsuit involving the same issues as this action that was filed in court, *LaTourrette v. United Air Lines, Inc.*, 1:12-cv-00635-WJM-CBS (D. Colo.). This action, which was filed in this United States District Court, did not raise class claims and was settled in June 2012. According to information provided by United, there are 13 other pilots who filed administrative complaints with the U.S. Department of Labor against United regarding the same practice. The U.S. Department of Labor has the responsibility under federal law to

investigate USERRA complaints filed by private sector workers, attempt to resolve them, and refer such complaints to the U.S. Department of Justice for litigation. *See* 38 U.S.C. §§ 4322(a)-(f), 4323(a). According to United, of these 13 administrative complaints, 10 were settled, 2 are still active administrative complaints no litigation has been commenced, and one complaint is no longer active.

23. Attached as Exhibit A is a true and correct copy of the Firm Resume for Cohen Milstein Sellers & Toll PLLC. As described in the Firm's resume, Cohen Milstein is one of the leading law firms representing plaintiffs in class actions that involve employment and employee benefits issues and has served as lead or co-lead counsel in numerous employment and employee benefits class actions, including those involving claims for pension benefits. The partner in charge of this case at Cohen Milstein, R. Joseph Barton, as described in the Firm Resume, has litigated numerous employee benefit class actions, with an emphasis on actions involving pension and retirement benefits. *See* Ex. A, Resume of R. Joseph Barton.

24. I am a seventh year associate at Cohen Milstein, where my practice focuses on complex civil rights and employment class action and impact cases. Over the past several years, I have worked on several large, successful civil rights, employment, and veterans' actions, including (1) *Keepseagle v. Vilsack*, a credit discrimination action brought by Native American farmers against the U.S. Department of Agriculture that settled for \$760 million, (2) *Greater New Orleans Fair Housing Action Center v. U.S. Department of Housing & Urban Development*, a fair housing race discrimination action that resulted in more than \$500 million in relief for African-American homeowners in Louisiana through voluntary programmatic changes and settlement benefits, and (3) *Hill v. U.S. Postal Service*, a disability discrimination action on

behalf of disabled veterans that settled for more than \$11 million and programmatic changes.

From 2007 to 2009, prior to joining Cohen Milstein, I served as labor counsel to Senator Edward M. Kennedy, Chairman of the U.S. Senate Committee on Health Education Labor & Pensions (“HELP Committee”). In that capacity, I advised Senator Kennedy and other HELP Committee members on issues relating to the Uniformed Services Employment & Reemployment Rights Act (“USERRA”) and drafted legislation to amend USERRA on behalf of Senator Kennedy. In addition, on behalf of Chairman Kennedy, I worked closely with the U.S. Senate Committee on Veterans’ Affairs to draft and successfully enact amendments to USERRA.

25. Attached as Exhibit B is a true and correct copy of the Firm Resume of The Law Office of Thomas G. Jarrard PLLC, 1020 N. Washington Street, Spokane, WA 99201, as provided to me by Thomas Jarrard.

26. Attached as Exhibit C is a true and correct copy of the Firm Resume of Crotty & Son, PLLC, 421 W. Riverside Ave., Ste. 1005, Spokane, WA 99201, as provided to me by Matthew Z. Crotty.

27. Attached as Exhibit D is a true and correct copy of the Firm Resume of Robert W. Mitchell, Attorney at Law, PLLC, 901 N. Monroe, Suite 356, Spokane, WA 99201, as provided to me by Robert W. Mitchell.

28. Attached as Exhibit E is a true and correct copy of a memorandum in *Woodall v. American Airlines, Inc.*, No. 3:06-cv-00072-M (N.D. Tex. Aug. 1, 2008).

29. Attached as Exhibit F is a true and copy of the Proposed Notice to Class for a mandatory class under Rule 23(b)(1) or (2) of the Federal Rules of Civil Procedure.

30. Attached as Exhibit G is a true and correct copy of the Proposed Notice to Class for an opt-out class under Rule 23(b)(3) of the Federal Rules of Civil Procedure.

31. Attached as Exhibit H is a true and correct copy of the first three pages of the proposal that KCC made to the Parties to serve as the Settlement Administrator and Settlement Adjudicator. A full copy of KCC's proposal will be filed separately under seal, because the remaining pages of KCC's proposal contain proprietary, confidential information.

The foregoing is true and correct to the best of my knowledge

Executed this 14th day of August, 2013 in Washington, D.C.



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