

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ROBERT CEVASCO, JACK JONES, PATRICK JACKSON, and PAUL RADVANSKY, on behalf of the Allegiant 401(k) Retirement Plan, individually and on behalf of all others similarly situated,

Plaintiff,

vs.

ALLEGIANT TRAVEL COMPANY

Defendant.

Case No.: 2:22-cv-01741-JAD-DJA

ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT

ECF No. 80

The court heard Plaintiff's Motion for Preliminary Approval of Class Action Settlement [ECF No. 80], which seeks certification of a non-opt-out settlement class and preliminary approval of the settlement of this class action (the "Action") over alleged violations of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, *et seq.* ("ERISA"), with respect to the Allegiant 401(k) Retirement Plan (the "Plan") against Defendant Allegiant Travel Company ("Defendant"), on November 12, 2024, and January 6, 2025. The motion is unopposed.

1 The terms of the Settlement are set out in a Class Action Settlement Agreement
2 executed on 8/23/24 (the “Settlement Agreement”). Capitalized terms not otherwise
3 defined in this Order shall have the same meaning as ascribed to them in the Settlement
4 Agreement. The “Settlement Class” is defined in this Order below.
5

6 Having considered Plaintiffs’ Unopposed Motion for Preliminary Approval of
7 Proposed Settlement (ECF No. 80) and the Settlement Agreement attached thereto in order
8 to determine, among other things, whether the Settlement is sufficient to warrant the
9 issuance of notice to members of the proposed Settlement Class, it is hereby **ORDERED**,
10 **ADJUDGED AND DECREED** as follows:
11

12 **Jurisdiction.** The Court has jurisdiction over the subject matter of this Action and
13 over all Parties to this Action, including all Members of the Settlement Class.
14

15 **Class Findings.** The Court preliminarily finds, for purposes of the Settlement, that
16 the requirements of the Federal Rules of Civil Procedure, the United States Constitution,
17 the Local Rules of Civil Procedure for the District of Nevada, and any other applicable
18 law have been met as to the Settlement Class, in that:
19

- 20
- 21 (a) The Settlement Class is ascertainable and the Members of the Settlement Class
are so numerous that their joinder before the Court would be impracticable.
 - 22 (b) The Court preliminarily finds that there are one or more questions of fact
23 and/or law common to the Settlement Class.
 - 24 (c) The Court preliminarily finds that the claims of Plaintiffs are typical of the
25 claims of the Settlement Class.
 - 26 (d) Plaintiffs will fairly and adequately protect the interests of the Settlement
27 Class in that: (i) the interests of Plaintiffs and the nature of their alleged claims
are consistent with those of the Members of the Settlement Class; (ii) there are
28 no significant conflicts between or among Plaintiffs and the Settlement Class;

1 and (iii) Plaintiffs are represented by qualified, reputable counsel who are
2 experienced in preparing and prosecuting ERISA class actions of this type.

- 3 (e) The prosecution of separate actions by individual Members of the Settlement
4 Class would create a risk of: (i) inconsistent or varying adjudications as to
5 individual class members, that would establish incompatible standards of
6 conduct for the parties opposing the claims asserted in the Action; or (ii)
7 adjudications as to individual class members that would, as a practical matter,
8 be dispositive of the interests of the other members not parties to the
9 adjudications, or substantially impair or impede those persons' ability to
10 protect their interests.

11 **Class Certification.** Based on the findings set out above, the Court
12 **PRELIMINARILY CERTIFIES** the following Settlement Class for settlement
13 purposes under Federal Rule of Civil Procedure 23(b)(1) in this litigation (hereinafter the
14 "Settlement Class"):

15 All persons who were participants or beneficiaries of the Plan
16 at any time during the Class Period.

17 The "Class Period" shall be defined as October 17, 2016 through the date of the
18 Preliminary Approval Order. A person was a participant in or beneficiary of the Plans
19 during the Class Period if they had an account balance in any of the Plans during such
20 period.

21 The Court finds that Wenzel Fenton Cabassa, P.A., McKay Law, LLC, Edelson
22 Lechtzin LLP, and Kind Law have and will continue to represent fairly and adequately
23 the interests of the Settlement Class. Accordingly, pursuant to Federal Rule of Civil
24 Procedure 23(g)(2) the Court designates: Wenzel Fenton Cabassa, P.A., McKay Law,
25 LLC, and Edelson Lechtzin LLP as Class Counsel and Kind Law as Local Counsel, with
26 respect to the Settlement Class in this Action.
27

1 The Court finds that Plaintiffs are adequate and typical class representatives for
2 the Settlement Class and, therefore, hereby appoints them as the representatives of the
3 Settlement Class.
4

5 The Court finds this Action may proceed as a non-opt out class action under Fed.
6 R. Civ. P. 23(a) and 23(b)(1). Members of the Settlement Class shall be bound by any
7 judgment concerning the Settlement in this Action, subject to the Court's final
8 determination as to whether this Action may so proceed.
9

10 **Preliminary Approval of Settlement.** The Settlement documented in the
11 Settlement Agreement is hereby **PRELIMINARILY APPROVED**, as the Court
12 preliminarily finds that: (a) the proposed Settlement resulted from arm's-length
13 negotiations; (b) the Settlement Agreement was executed only after Class Counsel had
14 researched and investigated multiple legal and factual issues pertaining to Plaintiffs'
15 claims; (c) there is a genuine controversy between the Parties involving Defendants'
16 compliance with the fiduciary requirements of ERISA; (d) the Settlement appears on its
17 face to be fair, reasonable, and adequate; and (e) the Settlement evidenced by the
18 Settlement Agreement is sufficiently fair, reasonable, and adequate to warrant sending
19 notice of the Action and the Settlement to the Settlement Class.
20
21

22 **Final Fairness Hearing.** A hearing (the "Final Fairness Hearing") pursuant to
23 Fed. R. Civ. P. 23(e) is hereby **SCHEDULED** to be held before the Court on
24 Friday, May 9, 2025, at 10:00 a.m. PST in Courtroom 6D of the U.S. District Court,
25 333 Las Vegas Blvd South, Las Vegas, Nevada 89101 to determine finally, among other
26 things:
27
28

- 1 (a) Whether the Settlement should be approved as fair, reasonable, and adequate;
- 2 (b) Whether the Settlement Class satisfies the requirements of Fed. R. Civ. P. 23,
- 3 and should be finally certified as preliminarily found by the Court;
- 4 (c) Whether the litigation should be dismissed with prejudice pursuant to the
- 5 terms of the Settlement Agreement;
- 6 (d) Whether the Final Approval Order attached to the Stipulation should be
- 7 entered and whether the Releasees should be released of and from the Released
- 8 Claims, as provided in the Settlement Agreement;
- 9 (e) Whether the notice and notice methodology implemented pursuant to the
- 10 Settlement Agreement (i) were reasonably calculated, under the
- 11 circumstances, to apprise Members of the Settlement Class of the pendency of
- 12 the litigation, their right to object to the Settlement, and their right to appear
- 13 at the Final Fairness Hearing; (ii) were reasonable and constituted due,
- 14 adequate, and sufficient notice to all persons entitled to notice; and (iii) met
- 15 all applicable requirements of the Federal Rules of Civil Procedure, and any
- 16 other applicable law;
- 17 (f) Whether Class Counsel adequately represents the Settlement Class for
- 18 purposes of entering into and implementing the Settlement Agreement as
- 19 required by Fed. R. Civ. P. 23(g) and as preliminarily found by the Court;
- 20 (g) Whether the proposed Plan of Allocation of the Net Settlement Amount is fair,
- 21 reasonable, and adequate and should be approved by the Court;
- 22 (h) Whether the Settlement has been negotiated at arm's length by Class Counsel
- 23 on behalf of the Plan and the Settlement Class, whether Plaintiffs have acted
- 24 independently, whether Plaintiffs' interests are identical to the interests of the
- 25 Plan and the Settlement Class, and whether the negotiations and consummation
- 26 of the Settlement by Plaintiffs on behalf of the Plan and the Settlement Class
- 27 does not constitute "prohibited transactions" as defined by ERISA §§ 406(a)
- 28 or (b) and/or qualify for a class exemption from the prohibited transaction
- rules, including Prohibited Transaction Exemption 2003-39;
- (i) Whether the application for attorneys' fees and expenses to be filed by Class Counsel should be approved;
- (j) Whether case contribution awards should be awarded to Plaintiffs; and

1 (k) Any other issues necessary for approval of the Settlement.

2 **Class Notice.** The Parties have presented to the Court a proposed Class Notice
3 at ECF No. 80-1 at pp. 37 - 48. The Court **APPROVES** the form and content of the
4 Class Notice finding that it fairly and adequately: (1) describes the terms and effect
5 of the Settlement Agreement and of the Settlement; (2) gives notice to the Settlement
6 Class of the time and place of the Final Fairness Hearing; and (3) describes how the
7 recipients of the Class Notice may object to approval of the Settlement. The Parties
8 have proposed the following manner of communicating the notice to Members of
9 the Settlement Class, and the Court finds that such proposed manner is adequate,
10 and directs that Plaintiffs shall:
11
12
13

14 (a) By no later than 60 days before the Final Fairness Hearing, cause the Class
15 Notice, with such non-substantive modifications thereto as may be agreed
16 upon by the Parties, to be disseminated to the last known address of each
17 Member of the Settlement Class who can be identified by reasonable effort.

18 (b) By no later than 60 days before the Final Fairness Hearing, cause the Class
19 Notice, with such non-substantive modifications thereto as may be agreed
20 upon by the Parties, to be disseminated to the last known e-mail address of
21 each Member of the Settlement Class who can be identified by reasonable
22 effort.

23 (c) By no later than 60 days before the Final Fairness Hearing, cause the Class
24 Notice, with such non-substantive modifications thereto as may be agreed
25 upon by the Parties, to be electronically published on a website maintained
26 by the Settlement Administrator.

27 No later than 7 days before the Final Fairness Hearing, Class Counsel
28 must file with the Court proof of timely compliance with the foregoing
mailing and publication requirements.

1 **Objections to Settlement.** “Objector” shall mean any Member of the Settlement
 2 Class who wishes to object to the fairness, reasonableness or adequacy of the Settlement,
 3 to the Plan of Allocation, to any term of the Settlement Agreement, to the proposed case
 4 contribution award, or to the proposed award of attorney fees and expenses. Any Objector
 5 must file with the Court a statement of his, her, or its objection(s), specifying the
 6 reason(s), if any, for each such objection made, including any legal support and/or
 7 evidence that such Objector wishes to bring to the Court’s attention or introduce in
 8 support of such objection. Any objection must be signed by the Settlement Class member.
 9 The Objector must also mail the objection and all supporting law and/or evidence to
 10 counsel for the Parties, as stated below. The addresses for filing objections with the Court
 11 and service on counsel are as follows:
 12
 13
 14

| | | |
|--|---|--|
| <p>15 COURT CLERK 16 Lloyd D George 17 Courthouse 18 333 Las Vegas Blvd. 19 Las Vegas, NV 89101</p> | <p>15 PLAINTIFFS’ 16 COUNSEL 17 Brandon J. Hill 18 Wenzel Fenton Cabassa, 19 P.A. 20 1110 N. Florida Avenue, 21 Suite 300 22 Tampa, FL 33602 23 Michael C. McKay 24 McKay Law, LLC 25 5635 N. Scottsdale Road, 26 Suite 117 27 Scottsdale, AZ 85250 28 Eric Lechtzin Edelson Lechtzin LLP 411 S. State Street Suite N-300</p> | <p>15 DEFENDANTS’ 16 COUNSEL 17 René E. Thorne 18 Jackson Lewis P.C. 19 601 Poydras St. 20 Suite 1400 21 New Orleans, LA 70130</p> |
|--|---|--|

| | | |
|--|-------------------|--|
| | Newtown, PA 18940 | |
|--|-------------------|--|

The Objector, or, if represented by counsel, his, her, or its counsel, must both effect service of the objection on counsel listed above and file the objection with the Court at least 30 calendar days prior to the Final Fairness Hearing. Any Member of the Settlement Class or other person who does not timely file and serve a written objection complying with the terms of this paragraph shall be deemed to have waived, and shall be foreclosed from raising, any objection to the Settlement and any untimely objection shall be barred.

Appearance at Final Fairness Hearing. An Objector who files and serves a timely, written objection in accordance with the paragraph above may also appear at the Fairness Hearing either in person or through counsel retained at the Objector’s expense. Objectors or their attorneys intending to appear at the Final Fairness Hearing must effect service of a “Notice of Intention to Appear” setting forth, among other things, the name, address, and telephone number of the Objector (and, if applicable, the name, address, and telephone number of the Objector’s attorney) on counsel identified above and file it with the Court at least 15 calendar days prior to the Final Fairness Hearing. Any Objector who does not timely file and serve a “Notice of Intention to Appear” in accordance with this paragraph shall not be permitted to appear at the Final Fairness Hearing, except for good cause shown. The Parties’ counsel shall promptly furnish each other with copies of any and all objections that come into their possession.

1 **Response to Objectors.** The Parties must respond to any Objector at least
2 7 calendar days prior to the Final Fairness Hearing.

3
4 **Compliance with Class Action Fairness Act.** The Settlement Administrator
5 must, on or before 10 calendar days prior to the Final Fairness Hearing, file with the
6 Court proof of compliance with the Class Action Fairness Act of 2005, as specified in
7 28 U.S.C. § 1715 and paragraph 2.5 of the Settlement Agreement.

8
9 **Notice Expenses.** Reasonable expenses of effectuating Class Notice shall be paid
10 out of the Gross Settlement Amount.

11 **Fees and Expenses Incurred by the Independent Fiduciary and Settlement**
12 **Administrator.** The Court understands that the Plan’s fiduciaries have retained or will
13 retain an Independent Fiduciary for the purpose of evaluating the Settlement to determine
14 whether to authorize the Settlement on behalf of the Plan. All costs of the Independent
15 Fiduciary shall be paid from the Gross Settlement Amount, subject to a cap of \$25,000.
16 The Court understands that the expenses incurred by the Settlement Administrator in
17 administering the Settlement and allocating the Settlement Fund pursuant to the Plan of
18 Allocation approved by the Court shall be paid out of the Gross Settlement Amount.

19
20
21 **Application for Attorneys’ Fees.** Any application by Class Counsel for attorneys’
22 fees and reimbursement of expenses, for case contribution awards to the Plaintiffs, and
23 all papers in support thereof, shall be filed with the Court and served on all counsel of
24 record at least 45 calendar days prior to the Final Fairness Hearing.
25
26
27

1 **Motion for Final Approval of Settlement and Plan of Allocation and**
2 **Independent Fiduciary's Report.** Class Counsel must file with the Court a motion for
3 entry of the Final Approval Order and approval of the Plan of Allocation at least 45
4 calendar days prior to the Final Fairness Hearing, and must file with the court a copy of
5 the Independent Fiduciary's determination letter and report at least 10 days before the
6 Final Fairness Hearing.
7
8

9 **Injunction.** Pending final determination of whether the Settlement should
10 be approved, all Members of the Settlement Class and the Plan are each hereby
11 **BARRED AND ENJOINED** from instituting or prosecuting any action that asserts
12 any Released Claim against any Releasees.
13

14 **Termination of Settlement.** If the Settlement is terminated in accordance with
15 the Stipulation of Settlement or does not become Final under the terms of the Stipulation
16 of Settlement for any other reason, this Order shall become null and void, and shall
17 be without prejudice to the rights of the Parties, all of whom shall be restored to
18 their respective positions existing immediately before this Court entered this Order.
19

20 **Use of Order.** In the event this Order becomes of no force or effect, no part of it
21 shall be construed or used as an admission, concession, or declaration by or against
22 Defendant of any fault, wrongdoing, breach, or liability, nor shall the Order be
23 construed or used as an admission, concession, or declaration by or against
24 Plaintiff or the Settlement Class that their claims lack merit or that the relief requested
25 in the Action is inappropriate, improper, or unavailable, or as a waiver by any party of
26 any defenses or claims he, she, or it may have.
27
28

