**IN THE UNITED STATES DISTRICT COURT**
**FOR THE WESTERN DISTRICT OF NORTH CAROLINA**
**CHARLOTTE DIVISION**
**CIVIL ACTION NO. 3:14-CV-577-RJC-DCK**

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| **US AIRLINE PILOTS ASSOCIATION,** | ) |
| | ) |
| **Plaintiff,** | ) |
| | ) |
| **v.** | ) |
| | ) |
| **ROGER VELEZ, and LEONIDAS, LLC,** | ) |
| | ) |
| **Defendants.** | ) |
| | ) |
| | ) |

**JOINT MEMORANDUM OF LAW IN SUPPORT OF FINAL APPROVAL OF CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

## INTRODUCTION

The parties jointly submit this memorandum in support of their motion for final approval of the class action settlement and release, which the Court preliminarily approved on April 22, 2016 (the "Preliminary Approval Order") (Doc. 117).

The proposed Settlement Agreement and Release ("Settlement Agreement") puts to final rest eight years of litigation between East Pilots and West Pilots. The main terms of the Settlement Agreement include (1) settlement of the West Pilots' claim for attorneys' fees in the *Addington* litigation and all claims, counterclaims, and third-party claims in the USAPA DJ Action, LMRDA action I, and LMRDA action II;[1] (2) agreement to a proposed class of East Pilots and a proposed class of West Pilots, all of whom have received written notice of the

[1] The West Pilots' claim for attorneys' fees in *Addington* is approximately $3.6 million. The counterclaims against USAPA in the USAPA DJ Action include reimbursement of money that USAPA spent to support the USAPA Merger Committee after USAPA's September 16, 2014 decertification in the approximate sum of $1.8 million, West Pilots' allocation of the merger dues increase (in the approximate sum of $1.4 million), and West Pilots' share of the $1.3 million reimbursement from American Airlines (in the approximate amount of $500,000).

settlement and the opportunity to file written objections or comments and attend the Fairness Hearing; (3) payment by USAPA in the amount of $5.5 million for the benefit of the West Pilots, representing full and final consideration in settlement of the consolidated cases and the West Pilots' motion for attorneys' fees in *Addington* III; (4) dismissal of all claims, counterclaims, and third-party claims by all parties to the consolidated cases with prejudice; (5) conversion of certain terms of the August 27, 2015 preliminary injunction relating to certain activities of USAPA into a permanent injunction, and extending its duration for three years after entry of the Final Order; and (6) mutual releases of all claims.[2]

The settlement will also allow USAPA to complete the steps necessary to be able to dissolve and to distribute its remaining assets, after payment of the settlement and satisfaction of its debts, to the members of the East Pilot Settlement Class according to the USAPA Constitution and Bylaws.

There is no good reason to continue the disputes that are being settled. USAPA has not been certified to represent any employees, and has had no dues income, for nearly two years, and the airline for which it was certified as the pilots' bargaining representative – US Airways – no longer exists. Under these circumstances, no pilot on either side will benefit from continued litigation; all pilots – East and West – will benefit from the settlement. The parties submit that

[2] The released claims in the Settlement Agreement do not include *Karas v. Allied Pilots Association, et al*., 3:16-cv-00168-TJM-DEP, currently pending in the U.S. District Court for the Northern District of New York, and in which USAPA is a named defendant. On May 23, 2016, USAPA moved to dismiss the *Karas* action. Case No. 16-cv-01688-TJM-DEP, Doc. 22. On May 27, 2016, the remaining defendants moved to have the action transferred to the United States District Court for the District of Columbia pursuant to 28 U.S.C. § 1404(a). Case No. 16-cv-01688-TJM-DEP, Docs. 29, 31. The motions are pending before the Court which did not order oral argument.

the proposed settlement is fair, reasonable and adequate, and in the best interests of the settlement classes.[3]

Since the Court preliminarily approved the settlement, notice of the settlement has been issued to all settlement class members pursuant to the terms of the Preliminary Approval Order. For the reasons discussed below and in the Parties' Joint Memorandum of Law in Support of Motion for Preliminary Approval ("Preliminary Approval Memorandum") (Doc. 116), the Parties respectfully request that the Court enter the Final Approval Order granting final approval of the settlement and confirming certification of the settlement classes.

## FACTUAL AND PROCEDURAL BACKGROUND

The factual background is stated in the Parties' Preliminary Approval Memorandum. (Doc. 116 at 2-7).

Settlement of the consolidated cases and the motion for attorneys' fees in *Addington III* was reached after three days of mediation attended by all parties in late January 2016, and hours of continued negotiations by telephone after the in-person mediation. On February 8, 2016, Mediator Gary Hemric reported that a settlement in principle of this "complex labor dispute" had been achieved. (Doc. 111). On February 17, 2016, the parties filed a Notice of Settlement. (Doc. 112). Pursuant to the Court's order dated March 11, 2016 (Doc. 114), on April 11, 2016, the parties filed a Joint Motion for Conditional Class Certification, Preliminary Approval of the Settlement Agreement, and Approval of the Content and Method of Distribution of the Notice to Class Members. (Doc. 115). The Court granted the Preliminary Approval Motion on April 22, 2016, conditionally certifying the consolidated cases, for settlement purposes only, as a class action, preliminarily approving the settlement as fair, reasonable, and adequate, and ordering the

[3] A fraction of a percentage of the settlement class members (38 out of 5,222, or 0.73%) have objected to the settlement. Twenty-four of the 38 objections were filed late. As explained in the Parties' accompanying response, the objections are not well-taken, and should be overruled.

parties to provide notice to the settlement classes and notice pursuant to the Class Action Fairness Act ("CAFA"). (Doc. 117).

On April 29, 2016, Class Counsel caused notice pursuant to CAFA to be mailed to the Attorney General of the United States, and the Attorneys General of all 50 states, the District of Columbia, and the territories of Puerto Rico and the U.S. Virgin Islands. (Doc. 118). Based on the response to the CAFA Notice by the New York State Office of the Attorney General, a supplemental CAFA Notice was mailed on May 27, 2016 to the same list of Attorneys General as the initial CAFA Notice mailing. (Doc. 119).

Notice of the settlement was provided to 5,222 class members (3,576 members of the East Pilot Settlement Class and 1,646 members of the West Pilot Settlement Class)[4] by regular first-class mail, e-mail, and by posting the notice on the public portion of the USAPA and Leonidas, LLC websites,[5] all of which was accomplished within twenty days of the entry of the April 22, 2016 order. (Owens Decl. ¶ 4).

As set forth in the supporting Declaration of Cory Rogers, timely objections were received from (1) Andrew Riolo; (2) the Boyd Law Group, PLLC, on behalf of the 11 named plaintiffs in the pending action entitled *Karas v. Allied Pilots Association, et al*., 3:16-cv-00168-TJM-DEP (N.D.N.Y.); (3) Frederick M. Brown, Jr.; and (4) Jose J. Gonzalez. Twenty-four additional objections were received after the July 11 deadline, all of which state that they object for the reasons stated in the objection of Frederick M. Brown, Jr. Including the late objections, a total of 38 pilots objected, out of 5,222 total class members, for an objection percentage of 0.73%.

[4] *See* Declaration of John Owens, Doc. 116-1, ¶ 3.
[5] www.usairlinepilots.org and www.cactuspilot.com.

## ARGUMENT

### A. The Settlement Should Be Granted Final Approval Because it is Fair, Reasonable and Adequate.

Federal courts considering class action settlements follow a two-step procedure. *Horton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 855 F. Supp. 825, 827 (E.D.N.C. 1994); *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 159 (4th Cir. 1991). First, the Court conducts a preliminary approval or pre-notification hearing to determine whether the proposed settlement is "within the range of possible approval" or, in other words whether there is "probable cause" to notify the class of the proposed settlement. *Horton*, 855 F. Supp. at 827 (citing *Armstrong v. Bd. of Sch. Dirs. of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980), *overruled on other grounds by Felzen v. Andreas*, 134 F.3d 873, 875 (7th Cir. 1998)).

On April 22, 2016, the Court completed this first step by granting preliminary approval of the Settlement Agreement, granting preliminary class certification for settlement purposes, approving the form and method for disseminating class notice, and setting a date for the Fairness Hearing on final approval of the Settlement. (Doc. 117).

Second, the Court conducts a final "fairness" hearing which provides all interested parties with an opportunity to be heard on the proposed settlement. The ultimate purpose of this procedure is to ensure that the settlement is "fair, reasonable and adequate," and that all class members and/or objectors have the ability to be heard.

"[A]pproval of a class action settlement is committed to 'the sound discretion of the district courts to appraise the reasonableness of particular class-action settlements on a case-by-case basis, in light of the relevant circumstances.'" *In re MicroStrategy, Inc. Sec. Litig.*, 148 F. Supp. 2d 654, 663 (E.D. Va. 2001), quoting *Evans v. Jeff D.*, 475 U.S. 717, 742 (1986). The Supreme Court has cautioned, however, that in reviewing a proposed class settlement, a court

should "not decide the merits of the case or resolve unsettled legal questions." *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981). Because the object of settlement is to avoid, not confront, the determination of contested issues, the approval process should not be converted into an abbreviated trial on the merits. *See Flinn v. FMC Corp.*, 528 F.2d 1169, 1172-73 (4th Cir. 1975) (noting that the settlement hearing is not "a trial or a rehearsal of the trial" (quotation marks and citation omitted)). Instead, courts have consistently held that the function of a judge reviewing a settlement is to determine whether the proposed settlement is fundamentally fair, adequate and reasonable, *see United States v. North Carolina*, 180 F.3d 574, 581 (4th Cir. 1999), "without modifying [the settlement's] terms, and without substituting its business judgment for that of counsel, absent evidence of fraud or overreaching." *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 455 (S.D.N.Y. 2004) (internal quotation marks and citations omitted).

There is a "strong presumption in favor of finding a settlement fair." *Lomascolo v. Parsons Brinckerhoff, Inc.*, 2009 U.S. Dist. LEXIS 89136, 2009 WL 3094955, at *10 (E.D. Va. Sept. 28, 2009) (internal quotation omitted). Because a settlement hearing is not a trial, the court's role is more "balancing of likelihoods rather than an actual determination of the facts and law in passing upon … the proposed settlement." *Id.*, *quoting Flinn v. FMC Corp.*, 528 F.2d 1169, 1173 (4th Cir. 1975) (internal quotations omitted).

**B. The Proposed Settlement Meets the Fairness Standard.**

In assessing the fairness of a proposed settlement, the district court should consider: "(1) the posture of the case at the time settlement was proposed, (2) the extent of discovery that had been conducted, (3) the circumstances surrounding the negotiations, and (4) the experience of counsel in the area of . . . class action litigation." *Jiffy Lube*, 927 F.2d at 159.

1. Posture of the Consolidated Cases at the Time the Settlement was Proposed

In the present case, the Parties litigated before this Court for two and a half years before entering into the Settlement.[6] The consolidated cases had been actively litigated with extensive motion practice when the settlement was reached. Motions in the USAPA DJ Action included defendants' Motions to Dismiss (Docs. 7 and 8), USAPA's Motion to Remand (Doc. 19), and USAPA's Motion for Jurisdictional Discovery (Doc. 24). Motion practice in the *Bollmeier* LMRDA actions included plaintiffs' Motion for a Temporary Restraining Order or Preliminary Injunction (Doc. 48), defendants' Motion to Vacate the Order Dated March 5, 2015, or, in the Alternative, to Dismiss the Verified Complaint (Docs. 49 and 50), defendants' Motions to Dismiss (Docs. 87 and 96), defendants' Motion for Reconsideration of the Court's Order on the motion to vacate and/or dismiss and on the motion for a preliminary injunction (Doc. 88), plaintiffs' Motion to Dismiss the Third-Party Complaints (Doc. 104), and plaintiffs' Motion to Hold Defendants in Contempt and/or for an Order to Show Cause (Doc. 105).

2. The Extent of Discovery That Had Been Conducted

The Court next considers the extent of discovery conducted as a means of evaluating a settlement for final approval. *See Horton*, 855 F. Supp. at 829. There is, however, no minimum or definitive amount of discovery that must be undertaken to satisfy this fairness consideration. *See id.* at 830. Indeed, discovery may not be necessary for the parties to fully evaluate the merits of the plaintiffs' claims. In *Jiffy Lube*, the Fourth Circuit approved the proposed partial class action settlement — with the exception of a settlement provision about a nonsettling defendant's right of setoff — prior to any formal discovery. *See* 927 F.2d at 159. *See also*, *In re Microstrategy, Inc. Sec. Lit.*, 148 F. Supp. 2d 654, 664-65 (E.D. Va. 2001) ("although this

[6] The original *Addington* case was filed in September, 2008, and was concluded in September, 2015, except for the *Addington* III Plaintiffs' claim for attorneys' fees and costs.

settlement came early on — prior to the completion of formal discovery — it is clear that plaintiffs 'have conducted sufficient informal discovery and investigation to . . . evaluate [fairly] the merits of Defendants' positions during settlement negotiations'" (citation omitted).

These consolidated cases were sufficiently advanced at the point that settlement was reached. Prior to reaching a settlement, the Parties engaged in a combination of formal and informal discovery and class counsel conducted an extensive investigation relating to the class claims and the underlying events and transactions, and researched the applicable law with respect to the potential claims and defenses. The investigation and discovery conducted by the Parties in this case was comprehensive and time-consuming. Indeed, there is no dispute that the Parties thoroughly investigated the relevant facts and legal issues through every means available. Such an undertaking yielded substantial information, which allowed the Parties to discuss intelligently and freely the pros and cons of settlement.

3. Circumstances Surrounding Settlement Negotiations

The Parties and their counsel engaged in court-approved mediation over three days in Charlotte, North Carolina in January, 2016. These negotiations were contentious, adversarial, and without collusion, with the *Bollmeier* LMRDA action II defendants initially not even consenting to participate in the mediation. *See Beaulieu*, 2009 WL 2208131, at *25 (finding the proposed settlement fair where, *inter alia*, the settlement negotiations appear clearly to have been adversarial, at arm's length, without collusion, contentious, and at times heated.). All parties eventually participated, but the initial three days of mediation did not result in an agreement. However, continued efforts with the assistance of mediator Gary Hemric in the weeks following the mediation sessions, eventually resulted in the Parties reaching a global settlement.

4. Counsel's Experience

Courts also examine the experience of class counsel to determine whether there was any collusion between the defendants and class counsel in reaching the proposed settlement. *Jiffy Lube*, 927 F.2d at 159. Counsel for the West Pilot Settlement Class has been representing the West Pilots since 2008, including all of the *Addington* litigation. Counsel for USAPA has represented USAPA since April, 2011, including representation of USAPA in the *Addington* litigation since that date. Counsel for the East Pilot Settlement Class and *Bollmeier* LMRDA action I defendants (Gary Hummel, Stephen Bradford, Rob Streble, Steve Smyser, John Taylor, Joe Stein, Pete Dugstad, Jay Milkey, Stephen Nathan, and Courtney Borman), was counsel for USAPA from the time of its creation until December, 2011 and represented USAPA in *Addington I*.

Based on Class Counsel's experience and the specific facts and circumstances of this particular case, Class Counsel have concluded that the Settlement is fair, reasonable, and adequate. This factor supports final approval of the proposed Settlement. In *MicroStrategy*, the court concluded that in similar circumstances, it was "'appropriate for the court to give significant weight to the judgment of class counsel that the proposed settlement is in the interest of their clients and the class as a whole.'" 148 F. Supp. 2d at 665 (quoting *S.C. Nat'l Bank v. Stone*, 139 F.R.D. 335, 339 (D.S.C. 1991)); *see also Flinn*, 528 F.2d at 1173 ("While the opinion and recommendation of experienced counsel is not to be blindly followed by the trial court, such opinion should be given weight in evaluating the proposed settlement.").

Based on consideration of all four of the "fairness" factors identified by the Fourth Circuit, Class Counsel recommend final approval of the Settlement.

**C. The Proposed Settlement Meets the Adequacy Standard.**

Relevant factors to consider in determining whether a proposed settlement is adequate include:

> (1) the relative strength of the plaintiffs' case on the merits, (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial, (3) the anticipated duration and expense of additional litigation, (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment, and (5) the degree of opposition to the settlement.

*Beaulieu*, 2009 WL 2208131, at *26 (citing *Jiffy Lube*, 927 F.2d at 158; *Horton*, 855 F.Supp. at 829-30).

1. The Relative Strength of the Claims on the Merits

"Perhaps the most important factor in evaluating the adequacy of a class action settlement is the relative strengths of plaintiffs' case and the existence of any defenses or difficulties of proof." *Horton*, 855 F. Supp. at 831; *In re Serzone Prods. Liab. Litig.*, 231 F.R.D. 221, 244-45 (S.D.W. Va. 2005).

Counsel for all parties asserting claims, counterclaims, and third-party claims have carefully assessed the probability of ultimate success on the merits and the risks of establishing liability and the requested relief. While all counsel certainly believe that the various claims, counterclaims, and third-party claims are strong and could be proven at trial, a finding of liability is never assured, especially in complex litigation.

2. The Existence of any Difficulties of Proof or Strong Defenses

All of the parties face significant risks in establishing liability and defending the claims. For example, the *Bollmeier* LMRDA action I defendants may have difficulty in successfully defending the LMRDA claims after this Court's finding that the *Bollmeier* "Plaintiffs are likely to succeed on the merits of their claims." (Doc. 75, at 6). On the other hand, at the time of

settlement, a motion to dismiss the LMRDA claims by the *Bollmeier* LMRDA action II defendants was pending that, if successful, would result in the dismissal of all of the LMRDA claims against all *Bollmeier* LMRDA action II defendants.

The West Pilots may likewise have difficulty in successfully defending their motion for $3,593,065.35 in attorneys' fees in the *Addington* litigation. On the other hand, USAPA faces the risk of further litigation on the attorneys' fees motion, including a hearing and the possibility that a successful motion may in fact increase the attorneys' fees awarded to the West Pilots.

3. The Anticipated Duration and Expense of Additional Litigation

Settling these cases now saves the Parties from years of litigation and saves the Court's resources. Discovery had not yet been complete at the time of settlement. Should the Parties continue to litigate, the Parties would have to engage in further formal discovery and class certification proceedings. Dispositive motions, trial, and appeals would follow, extending the lengthy litigation history between the Parties by at least another two years. The settlement obviates that delay. Thus, this factor also speaks strongly in favor of final approval of the proposed Settlement. *Cf. MicroStrategy*, 148 F. Supp. 2d at 667 ("[T]here is little doubt that a jury verdict for either side would only have ushered in a new round of litigation in the Fourth Circuit and beyond, thus extending the duration of the case and significantly delaying any relief for plaintiffs.").

4. The Solvency of Defendant and Likelihood of Recovery on a Litigated Judgment

The solvency of USAPA is an issue to be considered because it is no longer a certified union receiving dues income, and faces the risk of liability on the *Bollmeier* LMRDA action defendants' indemnification claims. The likelihood of recovery of the *Bollmeier* LMRDA action plaintiffs' restitution claims against individual defendants is also a factor that favors settlement.

5. The Degree of Opposition to the Settlement

The reaction of the class to the settlement is a significant factor in assessing its fairness and adequacy. *Flinn v. FMC Corp.*, 528 F.2d 1169, 1173 (4th Cir. 1975) ("the attitude of the members of the Class, as expressed directly or by failure to object, after notice to the settlement is a proper consideration for the trial court."). "It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members." *In re Omnivision Techs.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2007) (citation omitted) (approving settlement with 3 objections out of 57,630 class members). *See also, Churchill Village LLC v. Gen. Elec,* 361 F.3d 566, 577 (9th Cir. 2004) (affirming settlement with 45 objections out of 90,000 notices sent).

Notice of the settlement was provided to 5,222 class members (3,576 members of the East Pilot Settlement Class and 1,646 members of the West Pilot Settlement Class)[7] by regular first-class mail, e-mail, and by posting the notice on the public portion of the USAPA and Leonidas, LLC websites.[8] (Owens Decl. ¶ 4). Only 14 timely objections were received, which includes one objection from an individual (Andrew Riolo) who is not believed to be an eligible class member. (Owens Decl. ¶ 5). An additional 24 objections were submitted after the July 11 deadline. (Rogers Decl. ¶¶ 6-8).

Including the Riolo objection and the late objections, a total of 38 pilots (0.73%) objected, out of 5,222 total class members.[9] The small percentage of objections reflects Class members' support for the settlement and is compelling evidence that the settlement is adequate.

[7] *See* Declaration of John Owens, Doc. 116-1, ¶ 3.
[8] www.usairlinepilots.org and www.cactuspilot.com.
[9] Of significance is that no member of the West Pilot Settlement Class filed an objection.

Finally, the Settlement Agreement is consistent with the public interest. There is a strong public interest in encouraging settlement of complex litigation and class action suits because they are "notoriously difficult and unpredictable" and settlement conserves judicial resources. *Granada Inv., Inc. v. DWG Corp.*, 962 F.2d 1203, 1205 (6th Cir. 1992). The Settlement Agreement is consistent with the public interest because it settles a multitude of claims by multiple parties in two different federal courts and conserves scarce judicial resources.

Based on the foregoing, the Settlement Agreement is clearly fair, adequate, and reasonable. As described above, the Settlement Agreement provides a significant remedy for all Parties and the settlement classes. Accordingly, the Parties submit that the standards for final approval under Fed. R. Civ. P. 23(e) are met, and the Settlement Agreement should be granted final approval.

**D. The Court Should Grant Final Class Certification for Settlement Purposes.**

This Court has preliminarily certified the settlement classes for settlement purposes, and the Parties now request final certification of the East Pilot Settlement Class and the West Pilot Settlement Class, which are defined as follows:

The East Pilot Settlement Class is defined as:

> All pilots who were employed by US Airlines/American Airlines as of September 16, 2014 and who were listed on the US Airways East Pilot Seniority List.

The West Pilot Settlement Class is defined as:

> All pilots who were employed by US Airlines/American Airlines as of September 16, 2014 and who were listed on the US Airways West Pilot Seniority List.

Before determining whether a class should be certified, the district court must first make

two initial determinations: (1) whether a precisely defined class exists; *Haywood v. Barnes*, 109 F.R.D. 568, 576 (E.D.N.C. 1986); and (2) whether the class representative is a member of the proposed class. *East Texas Motor Freight System, Inc. v. Rodriguez*, 431 U.S. 395, 403 (1977). As stated in the Parties' Preliminary Approval Motion (Doc. 116 at 7-8), and as found by the Court, the East Pilot Settlement Class and the West Pilot Settlement Class are sufficiently precise, and the named representatives are each members of their respective class. (Doc. 117 at 2).

A party seeking to certify a class must satisfy the four threshold requirements of Rule 23(a), as well as the requirements for certification under one of the three subsections of Rule 23(b). Fed. R. Civ. P. 23; *Gunnells v. Healthplan Servs., Inc.*, 348 F.3d 417, 423 (4th Cir. 2003). The parties seek certification under Rule 23(b)(2).

Rule 23(a) provides that a case is appropriate for certification as a class action if:

> (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a). These four requirements are commonly referred to as numerosity, commonality, typicality, and adequacy of representation.

As stated in the Parties' Preliminary Approval Motion (Doc. 116 at 8-13), and as found by the Court, the four requirements of Rule 23(a) are met. (Doc. 117 at 3). First, the proposed classes satisfy the numerosity requirement because they consist of 1,646 West Pilots and 3,576 East Pilots. Second, there are questions of law and fact common to the classes; therefore, the commonality requirement is met. Third, the typicality requirement is met because the claims of the representative parties are identical to the claims of the proposed classes. Fourth, the

representative parties will fairly and adequately protect the interests of the classes because their interests are identical and not antagonistic.

A putative class satisfies Rule 23(b)(2) if (1) the party opposing the class has acted on grounds generally applicable to the class, (2) thereby making final injunctive relief or corresponding declaratory relief appropriate with respect to the class as a whole. Fed. R. Civ. P. 23(b)(2). Rule 23(b)(2) does not "cover cases where the primary claim is for damages, but is only applicable where the relief sought is . . . predominantly injunctive or declaratory." *Lukenas v. Bryce's Mountain Resort, Inc.*, 538 F.2d 594, 595 (4th Cir. 1976) (internal quotation marks and ellipsis omitted); *see also Zimmerman v. Bell*, 800 F.2d 386, 389-90 (4th Cir. 1986) (holding that Rule 23(b)(2) does not apply where the proposed class seeks "essentially monetary relief," but is "limited to claims where the relief sought was primarily injunctive or declaratory"). As stated in the Parties' Preliminary Approval Motion (Doc. 116 at 13-16), and as found by the Court, the East and West Settlement Classes satisfy Rule 23(b)(2) because the relief sought in the USAPA DJ Action and the *Bollmeier* LMRDA actions are predominantly injunctive or declaratory, and not for money damages. (Doc. 117 at 4).

Accordingly, with respect to the proposed Settlement Agreement among the parties, the Parties seek final certification of the East Pilot Settlement Class and the West Pilot Settlement Class.

**CONCLUSION**

For the foregoing reasons, the Parties respectfully request that the Court grant their motion and issue an Order granting final approval of the settlement and confirming certification of the settlement classes.

Dated: August 8, 2016

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## CERTIFICATE OF SERVICE

This is to certify that on this date, a true and accurate copy of the foregoing Joint Memorandum of Law in Support of Final Approval of Class Action Settlement Agreement and Release was electronically filed with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record in this matter via e-mail through CM/ECF.

This the 8th day of August, 2016.

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