**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF NEW YORK**

| | |
|---|---|
| SVETLANA SHOLOPA and MILICA MILOSEVIC, individually and on behalf of all others similarly situated,<br><br>Plaintiffs,<br><br>v.<br><br>TURK HAVA YOLLARI A.O. (d/b/a Turkish Airlines, a foreign corporation), and TURKISH AIRLINES, INC., a New York Corporation,<br><br>Defendants. | Case No. 1:20-cv-03294-ALC<br><br>Hon. Andrew L. Carter |

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

Dated: June 29, 2023

**BURSOR & FISHER, P.A.**
Max S. Roberts
1330 Avenue of the Americas, 32nd Floor
New York, NY 10019
Telephone: (646) 837-7150
Facsimile: (212) 989-9163
E-mail: mroberts@bursor.com

**BURSOR & FISHER, P.A.**
Yeremey O. Krivoshey (*Pro Hac Vice*)
1990 North California Blvd., Suite 940
Walnut Creek, CA 94596
Telephone: (925) 300-4455
Facsimile: (925) 407-2700
E-mail: ykrivoshey@bursor.com

**LIDDLE SHEETS COULSON P.C.**
Nicholas A. Coulson (*Pro Hac Vice*)
975 E. Jefferson Avenue
Detroit, Michigan 48207
Telephone: (313) 392-0015
Facsimile: (313) 392-0025
E-mail: ncoulson@lsccounsel.com

*Class Counsel*

# TABLE OF CONTENTS

**PAGE(S)**

INTRODUCTION ..... 1

THE LITIGATION HISTORY AND SETTLEMENT NEGOTIATIONS ..... 2

TERMS OF THE SETTLEMENT ..... 4

I. CLASS DEFINITION ..... 4

II. MONETARY RELIEF ..... 5

III. RELEASE ..... 5

IV. NOTICE AND ADMINISTRATION EXPENSES ..... 6

V. INCENTIVE AWARDS ..... 6

VI. ATTORNEYS' FEES AND EXPENSES ..... 6

ARGUMENT ..... 7

I. FINAL APPROVAL OF THE SETTLEMENT IS APPROPRIATE ..... 7

A. The *Grinnell* Factors ..... 9

1. Litigation Through Trial Would Be Complex, Costly, And Long (*Grinnell* Factor 1) ..... 9

2. The Reaction Of The Class (*Grinnell* Factor 2) ..... 10

3. Discovery Has Advanced Far Enough To Allow The Parties To Responsibly Resolve The Case (*Grinnell* Factor 3) ..... 11

4. Plaintiffs Would Face Real Risks If The Case Proceeded, And Establishing A Class And Maintaining It Through Trial Would Not Be Simple (*Grinnell* Factors 4, 5, And 6) ..... 12

5. Defendant's Ability To Withstand A Greater Judgment (*Grinnell* Factor 7) ..... 13

6. The Settlement Amount Is Reasonable In Light Of The Possible Recovery And The Attendant Risks Of Litigation (*Grinnell* Factors 8 And 9) ..... 13

B. The Rule 23(e)(2) Factors ..... 15

1. The Class Representatives And Class Counsel Have Adequately Represented The Class (Rule 23(e)(2)(A) ..... 15

2. The Settlement Was Negotiated At Arm's Length ..... 15

3. The Settlement Provides Adequate Relief To The Class ..... 16

4. The Settlement Treats All Class Members Equally ..... 17

II. CERTIFICATION OF THE RULE 23 CLASS IS APPROPRIATE ..... 18

A. The Proposed Settlement Class Meets The Requirements Of Rule 23(a) ..... 19

1. Numerosity ..... 19

2. Commonality ..... 19

3. Typicality ..... 20

4. Adequacy ..... 20

B. The Proposed Settlement Class Meets The Requirements Of Rule 23(b)(3) ..... 21

1. Predominance ..... 22

2. Superiority ..... 22

III. THE NOTICE PLAN COMPORTS WITH DUE PROCESS ..... 23

IV. THE OBJECTION SHOULD BE OVERRULED ..... 25

CONCLUSION ..... 25

# TABLE OF AUTHORITIES

**PAGE(S)**

**CASES**

*Amchem Prods., Inc. v. Windsor*,
521 U.S. 591 (1997) ..... 23

*Beckman v. KeyBank*,
293 F.R.D. 467 (S.D.N.Y. 2013) ..... 12

*Brown v. Kelly*,
609 F.3d 467 (2d Cir. 2010) ..... 23

*Buffington v. Progressive Advanced Ins. Co.*,
342 F.R.D. 66 (S.D.N.Y. 2022) ..... 20, 22

*City of Detroit v. Grinnell Corp.*,
495 F.2d 448 (2d Cir. 1974) ..... 8, 10

*Damassia v. Duane Reade, Inc.*,
250 F.R.D. 152 (S.D.N.Y. 2008) ..... 21

*Ebin v. Kangadis Food Inc.*,
297 F.R.D. 561 (S.D.N.Y. 2014) ..... 20, 21

*Eisen v. Carlisle & Jacquelin*,
417 U.S. 156 (1974) ..... 23

*Ferrick v. Spotify USA Inc.*,
2018 WL 2324076 (S.D.N.Y. May 22, 2018) ..... 16

*Flores v. CGI Inc.*,
2022 WL 13804077 (S.D.N.Y. Oct. 21, 2022) ..... 12, 13

*Gilliam v. Addicts Rehab. Ctr. Fund*,
2008 WL 782596 (S.D.N.Y. Mar. 24, 2008) ..... 14

*Godson v. Eltman, Eltman, & Cooper, P.C.*,
328 F.R.D. 35 (W.D.N.Y. 2018) ..... 10

*Hernandez v. Uzzal Pizzeria, Inc.*,
2022 WL 1032522 (S.D.N.Y. Apr. 6, 2022) ..... 17

*Hill v. County of Montgomery*,
2020 WL 5531542 (N.D.N.Y. Sept. 14, 2020) ..... 23

*In re Adelphia Commc'ns Corp. Sec. & Derivative Litigs.*,
271 F. App'x 41 (2d Cir. 2008) ..... 24

*In re AXA Equitable Life Ins. Co. COI Litig.*,
2020 WL 4694172 (S.D.N.Y. Aug. 13, 2020) ..... 20

*In re Baldwin-United Corp. (Single Premium Deferred Annuities Ins. Litig.*,
607 F. Supp. 1312 (S.D.N.Y. 1985) ..... 11

*In re GSE Bonds Antitrust Litig.*,
414 F. Supp. 3d 686 (S.D.N.Y. 2019) ..... 15, 17

*In re Marsh & McLennan Cos., Inc. Sec. Litig.*,
2009 WL 5178546 (S.D.N.Y. Dec. 23, 2009) ..... 24

*In re MetLife Demutualization Litig.*,
689 F. Supp. 2d 297 (E.D.N.Y. 2010) ..... 10

*In re Nigeria Charter FlightsContract Litig.*,
233 F.R.D. 297 (E.D.N.Y. 2006) ..... 19, 22, 23

*In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*,
330 F.R.D. 11 (E.D.N.Y. 2019) ..... 15, 16, 17, 18

*In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*,
2019 WL 6875472 (E.D.N.Y. Dec. 16, 2019) ..... 8

*In re Vitamin C Antitrust Litig.*,
2012 WL 5289514 (E.D.N.Y. Oct. 23, 2012) ..... 10

*Jara v. Felidia Restaurant, Inc.*,
2018 WL 11225741 (S.D.N.Y. Aug. 20, 2018) ..... 7, 15

*Johnson v. Nextel Commc'ns Inc.*,
780 F.3d 128 (2d Cir. 2015) ..... 19

*Johnson v. Rausch, Sturm, Israel, Enerson & Hornik, LLP*,
333 F.R.D. 314 (S.D.N.Y. 2019) ..... 8

*Lowe v. NBT Bank, N.A.*,
2022 WL 4621433 (N.D.N.Y. Sept. 30, 2022) ..... passim

*Lyter v. Cambridge Sierra Holdings, LLC*,
2019 WL 13153197 (C.D. Cal. June 18, 2019) ..... 11

*Maree v. Deutsche Lufthansa AG*,
2023 WL 2563914 (C.D. Cal. Feb. 13, 2023) ..... 10, 13, 15

*Massiah v. MetroPlus Health Plan, Inc.*,
2012 WL 5874655 (E.D.N.Y. 2012) ..... 11

*Masters v. Wilhelmina Model Agency, Inc.*,
473 F.3d 423 (2d Cir. 2007) ..... 14, 17

*McKnight v. Uber Techs., Inc.*,
2017 WL 3427985 (N.D. Cal. Aug. 7, 2017) ..... 21

*McLaughlin v. IDT Energy*,
2018 WL 3642627 (E.D.N.Y. July 30, 2018) ..... 9

*Mogull v. Pete and Gerry's Organics, LLC*,
2022 WL 4661454 (S.D.N.Y. Sept. 30, 2022) ..... 21

*Nichols v. Noom, Inc.*,
2022 WL 2705354 (S.D.N.Y. July 12, 2022) ..... 11

*Pearlstein v. BlackBerry Ltd.*,
2022 WL 4554858 (S.D.N.Y. Sept. 29, 2022) ..... 9, 11, 12

*Peoples v. Annucci*,
180 F. Supp. 3d 294 (S.D.N.Y. 2016) ..... 7

*Philemon v. Aries Capital Partners, Inc.*,
2019 WL 13224983 (E.D.N.Y. July 1, 2019) ..... 13, 22, 23

*Roach v. T.L. Cannon Corp.*,
778 F.3d 401 (2d Cir. 2015) ..... 22

*Shames v. Hertz Corp.*,
2012 WL 5392159 (S.D. Cal. Nov. 5, 2012) ..... 16

*TBK Partners, Ltd. v. Western Union Corp.*,
517 F. Supp. 380 (S.D.N.Y. 1981) ..... 9

*Times v. Target Corp.*,
2019 WL 5616867 (S.D.N.Y. 2019) ..... 9

*Trinidad v. Pret a Manger (UDS) Ltd.*,
2014 WL 4670870 (S.D.N.Y. Sept. 19, 2014) ..... 17

*Wal-Mart Stores, Inc. v. Dukes*,
564 U.S. 338 (2011) ..... 19

*Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*,
396 F.3d 96 (2d Cir. 2005) ..... 7, 24

*Weigner v. City of N.Y.*,
852 F.2d 646 (2d Cir. 1988) ..... 24

**RULES**

Fed. R. Civ. P. 23 ..... passim

Fed. R. Civ. P. 26(f) ..... 3

**OTHER AUTHORITIES**

NEWBERG ON CLASS ACTIONS (4th ed. 2002) ..... 7

Plaintiffs Svetlana Sholopa and Milica Milosevic ("Plaintiffs"), by and through their undersigned counsel, Bursor & Fisher, P.A. and Liddle Sheets Coulson P.C. ("Class Counsel"),[1] respectfully submit this memorandum in support of Plaintiffs' Motion for Final Approval of the Class Action Settlement. The Settlement Agreement (the "Settlement") and its exhibits are attached as **Exhibit 1** to the Declaration of Yeremey O. Krivoshey ("Krivoshey Decl."). 

## INTRODUCTION

After over three years of litigation and extensive settlement discussions with the assistance of a neutral mediator, the Honorable Wayne R. Andersen (Ret.) of JAMS, Plaintiffs have reached a Class Action Settlement with Turk Hava Yollari A.O. (d/b/a Turkish Airlines) and Turkish Airlines, Inc. (collectively, "Turkish" or "Defendants") and request final approval of the Settlement. The Settlement Class Members in this case are set to receive virtually all, if not more, of what they could hope to achieve *at trial*. The Settlement—preliminarily approved by this Court on April 4, 2023— provides that Settlement Class Members who have already received a refund for their flights (the "Refunded Claimants") may elect to receive $10 in cash or a $45 voucher that can be used on any Turkish flight. *See* Settlement ¶ III.A. The $10 cash payments and $45 vouchers are capped at $1 million. *Id.* ¶ III.B.

Settlement Class Members who have not to date received a refund from Turkish (the "Nonrefunded Claimants") may submit a claim for a *full* refund, *plus* one percent (1%) of their unused ticket price, or in the case of partially used tickets, one percent (1%) of the price of the unused flight segment. *Id.* ¶ III.D.2. $13,011,083.92 remains due and owing to these Settlement Class Members, in addition to $130,119.84 in interest under the Settlement, for a total of $13,141,194.76. *See* Krivoshey Decl. ¶ 18. The availability of the full refunds plus interest is not

[1] All capitalized terms not otherwise defined herein have the same definitions as set out in the settlement agreement. *See* Krivoshey Decl., Ex. 1.

capped in the Settlement, and any attorneys' fees and costs, incentive awards, and notice and administration costs are to be paid separately and in addition to the relief to the Refunded and Nonrefunded Claimants. Settlement ¶ III.C.1-4. Thus, the Settlement makes roughly $14.1 million in benefits available to Class Members, with any awards of attorneys' fees and costs, incentive awards, and notice and administration costs as additional benefits to be paid on top. Krivoshey Decl. ¶ 20. This is extraordinary relief for the Class, especially because most of the dozens of class action lawsuits filed against other airlines over an alleged failure to refund passengers whose flights were also cancelled due to the COVID-19 pandemic were either dismissed or the potential relief offered to aggrieved passengers was substantially trimmed. *Id*. ¶ 24.

For these reasons, and as explained further below, the Settlement is fair, reasonable, and adequate, and warrants this Court's final approval.

## THE LITIGATION HISTORY AND SETTLEMENT NEGOTIATIONS

On April 27, 2020, Plaintiff Sholopa, through her counsel, Bursor & Fisher, P.A., filed a putative class action in the United States District Court for the Southern District of New York against Turkish for, *inter alia*, breach of contract, alleging that Turkish failed to refund Plaintiff Sholopa and similarly situated passengers for her cancelled flight in violation of Turkish's General Conditions of Carriage ("GCC") (ECF No. 1). A day later, Plaintiff Milosevic, through her counsel, Liddle Sheets Coulson P.C., filed a putative class action against Turkish alleging the same claims. *Milosevic v. Turk Hava Yollari A.O., Inc., et al.*, Case No. 1:20-cv-03328, ECF No. 1 (S.D.N.Y. Apr. 28, 2020). On May 20, 2020, Plaintiff Sholopa filed a Notice of Related Case stating that the instant action was related to Plaintiff Milosevic's action (ECF No. 6). On June 29, 2020, this Court deemed the two cases to be related, and on October 23, 2020, Plaintiffs filed a Consolidated Class Action Complaint ("CAC") against Turkish (ECF No. 37).

On November 13, 2020, Turkish filed a Motion to Dismiss the CAC (ECF No. 38). Briefing on this motion was completed on January 8, 2021 (ECF Nos. 43, 44). On March 31, 2022, the Court denied Turkish's Motion to Dismiss in its entirety (ECF No. 57). The Court thereafter set a status conference for April 12, 2022 (ECF No. 58).

On April 8, 2022, in preparation for the status conference, counsel for the Parties conferred pursuant to Fed. R. Civ. P. 26(f). Krivoshey Decl. ¶ 9. The Parties discussed interest in a class-wide resolution of this action. *Id*. At the status conference, the Parties informed the Court that they intended to pursue settlement negotiations with the assistance of a private mediator. *Id.*; *see also* ECF No. 60. In advance of the mediation, the Parties prepared mediation statements that were provided to Judge Andersen. *Id*. ¶ 10. The Parties also exchanged information relevant to their claims and defenses, including (i) the number of passengers whose flights had been cancelled by Turkish as a result of the COVID-19 pandemic, (ii) the amount of money that Turkish had refunded in either cash or vouchers for flights that were cancelled as a result of the COVID-19 pandemic, (iii) the amount of money Turkish had not refunded for flights that were cancelled as a result of the COVID-19 pandemic, (iv) the amount of money in vouchers that had been claimed by passengers whose flights were refunded, and (v) Plaintiffs' attempts to contact Turkish to request a refund. *Id*. ¶ 11. This is largely the same information that would have been produced had the case proceeded to formal discovery. *Id*. Accordingly, the Parties were sufficiently informed at the time of the mediation of the strengths and weaknesses of their respective positions, the size of the putative class, and the damages at issue to negotiate a reasonable settlement. *Id*.

On August 9, 2022, the Parties attended a full-day mediation with the Honorable Wayne R. Andersen of JAMS. Krivoshey Decl. ¶ 12. While the Parties did not completely resolve the matter at the mediation, the Parties continued to negotiate a settlement in good faith and with the assistance of Judge Andersen. *Id*. By the end of September 2022, the Parties had come to an

agreement on all material terms, and executed a term sheet for a nationwide class settlement on November 3, 2022. *Id*.

On December 20, 2022, the Parties entered into a Settlement Agreement and Release, which sets forth the terms and conditions of the proposed Settlement and the dismissal of the Litigation against Turkish with prejudice. *Id.* ¶ 13. That same day, Plaintiffs moved the Court for an Order preliminarily approving the proposed Settlement pursuant to Federal Rule of Civil Procedure 23, certifying a Settlement Class for purposes of settlement, and approving notice to the Settlement Class.

On April 4, 2023, the Court granted preliminary approval of the Settlement (ECF No. 86). On April 19, 2023, the Court extended the Settlement deadlines to allow Turkish to compile Class Member data so that notice could be provided to the Settlement Class (ECF No. 88). During and since that time, Class Counsel has worked with the Settlement Administrator, JND Legal Administration ("JND"), to carry out the Court-ordered Notice Plan. Specifically, Class Counsel helped compile and review the contents of the required notice, reviewed the final claim and notice forms, and reviewed and tested the settlement website before it launched live. Krivoshey Decl. ¶¶ 15-16.

## TERMS OF THE SETTLEMENT

### I. CLASS DEFINITION

The "Settlement Class" or "Settlement Class Members" means all United States residents who purchased tickets for travel on a Turkish flight scheduled to operate to, from, or within the United States between the Class Period (a) whose flights were cancelled by Turkish, (b) the customer did not cancel the flight or fail to show for the first leg of the flight prior to the cancellation of a later leg, (c) the customer did not request and receive a voucher or rebooking

from Turkish, and (d) the customer did not request and receive a charge back from their credit card provider for the full amount of the flight cancelled by Turkish. Settlement ¶ I.DD.

## II. MONETARY RELIEF

For those Settlement Class Members who have received refunds from Turkish for Qualified Flights (the "Refunded Claimants"), they have the option to submit a Claim Form electing: 1. The Cash Option: $10.00 USD per person; or 2. The Voucher Option: a Voucher for future travel in the amount of $45.00 USD. *Id.* ¶¶ III.A.1.-A.2. Turkish shall pay the value of all Valid Claims for Cash Options and Voucher Options pursuant to Section III.A up to $1,000,000.00 USD (the "Refunded Claimants Settlement Cap"). *Id.* ¶ III.B.

For those Settlement Class Members who have not received refunds from Turkish for Qualified Flights (the "Nonrefunded Claimants"), they are eligible to receive a full refund of the purchase price, plus one percent (1%) of the unused ticket price, or in the case of partially used tickets, one percent (1%) of the price of the unused flight segment. *Id.* ¶ III.D.1. Upon submission of a Valid Claim Form Turkish will (i) process their refund, and (ii) make an additional Interest Payment of one percent (1%) of the unused ticket price, or in the case of partially used tickets, one percent (1%) of the price of the unused flight segment. *Id.* ¶ III.D.2.

## III. RELEASE

In exchange for the relief described above, Defendants, each of their related affiliated entities, as well as all "Released Parties" as defined in Settlement ¶ I.AA, will receive a full release of all claims that in any way relate to the "Released Claims" as defined in Settlement ¶ I.Z. *See* Settlement ¶¶ I.AA, I.Z, VII (full releasing language). The Release does not include claims for personal injuries. *Id.* ¶ VII.

## IV. NOTICE AND ADMINISTRATION EXPENSES

Defendants shall pay all "Claims Administration Expenses" as defined in Settlement ¶ I.E. Settlement Administration Expenses shall be paid in addition to, and separate from, any awards paid to Refunded and Nonrefunded Claimants, and shall not derogate in any way from any relief due to the Settlement Class. *Id.* ¶ III.C.4.

## V. INCENTIVE AWARDS

In recognition for their efforts on behalf of the Settlement Class, Defendants have agreed that Plaintiffs may receive, subject to Court approval, incentive awards of $3,500 each as appropriate compensation for their time and effort serving as Class Representatives and as parties to the Litigation. Settlement ¶ IX.H. Any incentive awards shall be paid by Defendants in addition to, and separate from, any awards paid to Settlement Class Members Claimants, and shall not reduce any relief due to the Settlement Class. *Id.* ¶ III.H. Plaintiffs' request for incentive awards should be granted for the reasons set forth in the Motion for Attorneys' Fees, Costs, and Expenses, and Incentive Awards.

## VI. ATTORNEYS' FEES AND EXPENSES

Subject to approval by the Court, Class Counsel has petitioned, and Defendants will pay, attorneys' fees, costs, and expenses of nine-hundred thousand dollars and zero cents ($900,000). Settlement ¶ IX. Any attorneys' fees, costs, and expenses shall be paid by Defendants in addition to, and separate from, any awards paid to Settlement Class Members, and shall not reduce any relief due to the Class. Settlement ¶ III.C.2. Class Counsel's request for attorneys' fees, costs, and expenses should be granted for the reasons set forth in the Motion for Attorneys' Fees, Costs, and Expenses, and Incentive Awards.

## ARGUMENT

### I. FINAL APPROVAL OF THE SETTLEMENT IS APPROPRIATE

The Court's Preliminary Approval Order provisionally certified a class for settlement purposes of: "all United States residents who purchased tickets for travel on a Turkish Airlines flight scheduled to operate to, from, or within the United States between March 1, 2020 and December 31, 2021 (the "Class Period") (a) whose flights were cancelled by Turkish Airlines, (b) the customer did not cancel the flight or fail to show for the first leg of the flight prior to the cancellation of a later leg, (c) the customer did not request and receive a voucher or rebooking from Turkish Airlines, and (d) the customer did not request and receive a charge back from their credit card provider for the full amount of the flight cancelled by Turkish Airlines (the "Settlement Class"). ECF No. 86 ¶ 2. No substantive changes have occurred since that ruling, and more importantly, no objections have challenged that conclusion. The Court may therefore rely on the same rationale as explained in the preliminary approval order to find that class certification is appropriate in connection with final approval.

There is a "strong judicial policy in favor of settlements, particularly in the class action context." *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc*., 396 F.3d 96, 116 (2d Cir. 2005) ("*Visa U.S.A.*") (internal quotations omitted); *see also* NEWBERG ON CLASS ACTIONS § 11.41 (4th ed. 2002) ("The compromise of complex litigation is encouraged by the courts and favored by public policy."). "Courts have discretion regarding the approval of a proposed class action settlement." *Jara v. Felidia Restaurant, Inc.*, 2018 WL 11225741, at *1 (S.D.N.Y. Aug. 20, 2018). "In exercising this discretion, courts should give weight to the parties' consensual decision to settle class action cases because they and their counsel are in unique positions to assess potential risks." *Id*. "Due to the presumption in favor of settlement, absent fraud or collusion, courts should be hesitant to substitute their judgment for that of the parties who negotiated the settlement." *Peoples*

*v. Annucci*, 180 F. Supp. 3d 294, 307 (S.D.N.Y. 2016) (cleaned up).

In evaluating a class action settlement, courts in the Second Circuit consider the nine factors set forth in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974) ("*Grinnell*"). The *Grinnell* factors are: (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. *Grinnell*, 495 F.2d at 463.

Courts must also consider the "four enumerated factors in the new [Federal Rule of Civil Procedure] Rule 23(e)(2), in addition to the nine *Grinnell* factors." *Johnson v. Rausch, Sturm, Israel, Enerson & Hornik, LLP*, 333 F.R.D. 314, 420 (S.D.N.Y. 2019). The Rule 23(e) factors are whether: (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other. Fed. R. Civ. P. 23(e)(2). "There is significant overlap between the Rule 23(e)(2) and *Grinnell* factors, which complement, rather than displace each other." *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, 2019 WL 6875472, at *14 (E.D.N.Y. Dec. 16, 2019) ("*In re Payment Card II*").

The Court should now grant final certification because the Settlement Class meets all the requirements of Rule 23(a) and Rule 23(b)(3). *See Times v. Target Corp.*, 2019 WL 5616867, *1-2 (S.D.N.Y. 2019) (granting plaintiffs' motion for class certification because these requirements are met). Indeed, in granting preliminary approval this Court already determined that class certification for settlement purposes is warranted. *See* ECF No. 86 ¶ 3.

### A. The *Grinnell* Factors

#### 1. Litigation Through Trial Would Be Complex, Costly, And Long (*Grinnell* Factor 1)

"[C]lass action suits readily lend themselves to compromise because of the difficulties of proof, the uncertainties of the outcome, and the typical length of the litigation." *Pearlstein v. BlackBerry Ltd.*, 2022 WL 4554858, at *3 (S.D.N.Y. Sept. 29, 2022). As such, courts have consistently held that unless the proposed settlement is clearly inadequate, its acceptance and approval are preferable to the continuation of lengthy and expensive litigation with uncertain results. *TBK Partners, Ltd. v. Western Union Corp.*, 517 F. Supp. 380, 389 (S.D.N.Y. 1981), *aff'd,* 675 F.2d 456 (2d Cir. 1982).

As mentioned above, Plaintiffs prevailed on Turkish's Motion to Dismiss, and the Parties engaged in informal discovery that involved largely the same information that would have been produced in formal discovery related to issues of class certification and summary judgment. Krivoshey Decl. ¶ 11. The next steps in the litigation would presumably have been depositions of the Parties, substantial electronically stored information discovery, and contested motions for summary judgment and class certification, which would be costly and time-consuming for the Parties and the Court and create a risk that a litigation class would not be certified and/or that the Class would recover nothing at all. *McLaughlin v. IDT Energy*, 2018 WL 3642627, at *10 (E.D.N.Y. July 30, 2018) (finding the first *Grinnell* factor weighed in favor of settlement approval where "the parties would likely need to brief motions for class certification, summary judgment,

and potentially proceed to trial"). Indeed, in presiding over another COVID-19 airline cancellation case, a judge opined that "the existence of condition precedents may raise individual determinations as to whether each class member provided sufficient proof to be entitled to a refund." *Maree v. Deutsche Lufthansa AG*, 2023 WL 2563914, at *10 (C.D. Cal. Feb. 13, 2023). Thus, while Plaintiffs are confident in the merits of this case, there is no guarantee that they would be successful. Krivoshey Decl. ¶¶ 24-29. Moreover, "[e]ven assuming that plaintiffs were successful in defeating any pretrial motions filed by defendants, and were able to establish defendants' liability at trial, there is always the potential for an appeal, which would inevitably produce delay." *Godson v. Eltman, Eltman, & Cooper, P.C.*, 328 F.R.D. 35, 55 (W.D.N.Y. 2018) (internal quotations omitted).

The Settlement, on the other hand, permits a prompt resolution of this action on terms that are fair, reasonable, and adequate to the Class. Krivoshey Decl. ¶ 30. It secures up to $14.1 million in extraordinary relief for Settlement Class Members. Krivoshey Decl. ¶ 20. This *Grinnell* factor weighs in favor of preliminary approval.

**2. The Reaction Of The Class (*Grinnell* Factor 2)**

Under the second *Grinnell* factor, the Court judges "the reaction of the class to the settlement." *In re Vitamin C Antitrust Litig.*, 2012 WL 5289514, at *4 (quoting *Grinnell*, 495 F.2d at 463). "It is well settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy." *In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 333 (E.D.N.Y. 2010) (internal quotation marks omitted). This "significant" factor weighs heavily in favor of final approval.

Here, the reaction of the Class Members to the Settlement has been overwhelmingly positive. Class Notice has been provided to the Settlement Class Members in accordance with the requirements of Rule 23(c)(2)(B) and the Preliminary Approval Order (ECF No. 86 ¶¶ 8-11), and

the Settlement Administrator directly reached at least 83% of the Settlement Class. *See* Declaration of Bronyn Heubach ("Heubach Decl.") ¶ 13. To date, 8,886 Settlement Class Members have submitted claims under the Settlement. *Id.* ¶ 27. By contrast, only one Settlement Class Member objected to the Settlement (as addressed in Argument § IV, *infra*), and only twenty-four (0.0070% of the approximately 344,000 Settlement Class) opted out. *See id.* ¶¶ 29, 31; Krivoshey Decl. ¶¶ 33-34. This exceptional participation rate and lack of objections from the Settlement Class leave no question that the class members view the Settlement favorably, which weighs heavily in favor of final approval and further supports the "presumption of fairness." *See*, *e.g.*, *Massiah v. MetroPlus Health Plan, Inc.*, 2012 WL 5874655, at *4 (E.D.N.Y. 2012) ("The fact that the vast majority of class members neither objected nor opted out is a strong indication of fairness."); *Nichols v. Noom, Inc.*, 2022 WL 2705354, at *9 (S.D.N.Y. July 12, 2022) ("There have also been no objections to the settlement and only a total of eight opt-outs-a tiny amount in relation to the 2 million members of the settlement class."); *In re Baldwin-United Corp. (Single Premium Deferred Annuities Ins. Litig.)*, 607 F. Supp. 1312, 1321 (S.D.N.Y. 1985) (factor met where 0.3% of class members opted out of the settlement). Consequently, this *Grinnell* factor weighs in favor of final approval of the Settlement.

**3. Discovery Has Advanced Far Enough To Allow The Parties To Responsibly Resolve The Case (*Grinnell* Factor 3)**

"This factor asks[] whether … counsel possessed a record sufficient to permit evaluation of the merits of Plaintiffs' claims, the strengths of the defenses asserted by Defendants, and the value of Plaintiffs' causes of action for purposes of settlement." *Pearlstein*, 2022 WL 4554858, at *4 (cleaned up). As discussed above, Plaintiffs defeated Defendants' Motion to Dismiss, and the Parties conducted informal discovery that involved the same information that would have been produced in formal discovery related to issues of class certification and summary judgment. Krivoshey Decl. ¶¶ 8, 10-11; *see also Lyter v. Cambridge Sierra Holdings, LLC*, 2019 WL

13153197, at *5 (C.D. Cal. June 18, 2019) (finding that the parties were sufficiently informed where they engaged in significant informal discovery and engaged in adversarial motion practice.). Both sides have also prepared mediation statements setting forth their relevant positions and participated "in a day-long mediation allowed them to further explore the claims and defenses." *Beckman v. KeyBank*, 293 F.R.D. 467, 475 (S.D.N.Y. 2013); *see also* Krivoshey Decl. ¶¶ 10-12. Class Counsel's experience in similar matters, as well as the efforts made by counsel on both sides, confirms that "Plaintiffs obtained sufficient discovery to weigh the strengths and weaknesses of their claims and to accurately estimate the damages at issue." *Beckman*, 293 F.R.D. at 475.

**4. Plaintiffs Would Face Real Risks If The Case Proceeded, And Establishing A Class And Maintaining It Through Trial Would Not Be Simple (*Grinnell* Factors 4, 5, And 6)**

"Courts generally consider the fourth, fifth, and sixth Grinnell factors together." *Pearlstein*, 2022 WL 4554858, at *5 (internal quotations omitted). In weighing the risks of certifying a class and establishing liability and damages, "the Court is not required to decide the merits of the case, resolve unsettled legal questions, or to foresee with absolute certainty the outcome of the case." *Lowe v. NBT Bank, N.A.*, 2022 WL 4621433, at *8 (N.D.N.Y. Sept. 30, 2022) (cleaned up). "[R]ather, the Court need only assess the risks of litigation against the certainty of recovery under the proposed settlement." *Flores v. CGI Inc.*, 2022 WL 13804077, at *7 (S.D.N.Y. Oct. 21, 2022) (internal quotations omitted).

"Here, while Plaintiffs and Class Counsel believe that they would prevail on their claims asserted against [Defendants], they also recognize the risks and uncertainties inherent in pursuing the action through class certification, summary judgment, trial, and appeal." *Lowe*, 2022 WL 4621433, at *8. In particular, Plaintiffs would face "[t]he risk of obtaining … class certification and maintaining [it] through trial," which "would likely require extensive discovery and briefing." *Beckman*, 293 F.R.D. at 475. As one judge noted in preliminary approving a COVID-19 flight

refund settlement, "the existence of condition precedents may raise individual determinations as to whether each class member provided sufficient proof to be entitled to a refund." *Maree*, 2023 WL 2563914, at *10. And yet another judge presiding over another COVID-19 flight refund case opined that the case presented real issues at class certification and "has failure written all over it." *See* ECF No. 78 ¶ 17 (Declaration of Yeremey O. Krivoshey In Support of Preliminary Approval). To say the least, COVID-19 flight refund cases have fared poorly and will face numerous risks at class certification.

Further, "[e]ven assuming that the Court granted certification, there is always the risk of decertification after the close of discovery." *Lowe*, 2022 WL 4621433, at *8; *see also Flores*, 2022 WL 13804077, at *8 ("The risks attendant to certifying a class and defending any decertification motion supports approval of the settlement."). Approval of the Settlement obviates the "[r]isk, expense, and delay" of further litigation, and these *Grinnell* factors thus support preliminary approval. *Lowe*, 2022 WL 4621433, at *8.

**5. Defendant's Ability To Withstand A Greater Judgment (*Grinnell* Factor 7)**

While Defendants could likely withstand a greater judgment, "this factor standing alone does not mean that the settlement is unfair." *Philemon v. Aries Capital Partners, Inc.*, 2019 WL 13224983, at *12 (E.D.N.Y. July 1, 2019).

**6. The Settlement Amount Is Reasonable In Light Of The Possible Recovery And The Attendant Risks Of Litigation (*Grinnell* Factors 8 And 9)**

"It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not *per se* render the settlement inadequate or unfair." *Philemon*, 2019 WL 13224983, at *12. Instead, "[w]hen the proposed settlement provides a meaningful benefit to the class when considered against the obstacles to proving plaintiff's claims with respect to damages in particular, the agreement is reasonable." *Id*. Moreover, when a settlement assures immediate

payment of substantial amounts to Class Members and does not "sacrific[e] speculative payment of a hypothetically larger amount years down the road," the settlement is reasonable. *See Gilliam v. Addicts Rehab. Ctr. Fund*, 2008 WL 782596, *5 (S.D.N.Y. Mar. 24, 2008) (cleaned up).

In the Second Circuit, courts are required to calculate the value of a Settlement in terms of the amount of relief *made available* to Class Members, as opposed to the amount that may actually be claimed. *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423, 437 (2d Cir. 2007) (basing award of attorneys' fees on "the total funds made available, whether claimed or not" because "[t]he entire Fund, and not some portion thereof, is created through the efforts of counsel at the instigation of the entire class."). To that end, Class Counsel has made at least $14.1 million in benefits available to Class Members. Krivoshey Decl. ¶ 20. The Settlement provides for a full refund plus 1% of the unused ticket price to Nonrefunded Claimants (Settlement ¶ III.D), which meets if not exceeds what these Settlement Class Members would have procured at trial (full refunds).[2] Thus, this portion of the settlement—$13.1 million—represents at least 100% of Turkish's potential exposure at trial. Krivoshey Decl. ¶ 18.

The Settlement also provides up to $1 million in Cash ($10) or Voucher ($45) Options for Refunded Claimants. Settlement ¶ III.A. Assuming that Refunded Claimants would receive 1% of their ticket price—which, again, is a reasonable interest rate—based on Turkish's failure to issue refunds within a "reasonable time," this portion of the Settlement represents an 80% recovery even with the Settlement Cap. Krivoshey Decl. ¶ 19. Further, although the interest rate for Refunded Claimants could conceivably be higher, these Settlement Class Members would also face significant risk at class certification because "the determination of what a reasonable time to

[2] A 1% interest rate is more than reasonable amount. For instance, from the time period of March 2020 through February 2022, the federal funds rate was less than 1% the entire time. FEDERAL FUNDS EFFECTIVE RATE, https://fred.stlouisfed.org/series/FEDFUNDS.

issue [a refund] is a highly individualized factual determination." *Maree*, 2023 WL 2563914, at *10. Weighing the benefits of the Settlement against the risks associated with proceeding in litigation and in collecting on any judgment, the $14.1 million Settlement is more than reasonable.

### B. The Rule 23(e)(2) Factors

#### 1. The Class Representatives And Class Counsel Have Adequately Represented The Class (Rule 23(e)(2)(A)

"Determination of adequacy typically entails inquiry as to whether: (1) plaintiff's interests are antagonistic to the interest of other members of the class and (2) plaintiff's attorneys are qualified, experienced and able to conduct the litigation." *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, 330 F.R.D. 11, 30 (E.D.N.Y. 2019) ("*In re Payment Card I*") (internal quotations omitted). Here, "plaintiffs' interests are aligned with other class members' interests because they suffered the same injuries": they purchased Turkish airline tickets and Turkish Airlines did not issue or timely issue refunds for their canceled flights due to COVID-19. *In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 692 (S.D.N.Y. 2019). "Because of these injuries, plaintiffs have an interest in vigorously pursuing the claims of the class." *Id.* (internal quotations omitted). Further, courts have previously found that Plaintiffs' attorneys adequately meet the obligations and responsibilities of Class Counsel. Krivoshey Decl. at Exs. 2-3 (Firm Resumes of Bursor & Fisher and Liddle Sheets Coulson).

#### 2. The Settlement Was Negotiated At Arm's Length

"If a class settlement is reached through arm's-length negotiations between experienced, capable counsel knowledgeable in complex class litigation, the Settlement will enjoy a presumption of fairness." *In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d at 693 (internal quotations omitted). Further, "[a] settlement like this one, reached with the help of a third-party neutral, enjoys a presumption that the settlement achieved meets the requirements of due process." *Jara*, 2018 WL 11225741, at *2 (cleaned up). Here, both counsel for Plaintiffs and for Defendants

are experienced in class action litigation. Krivoshey Decl. ¶¶ 25, 51-57. Moreover, the Parties participated in a mediation before Judge Andersen and engaged in protracted settlement discussions. Krivoshey Decl. ¶¶ 9-12, 23.

**3. The Settlement Provides Adequate Relief To The Class**

Whether relief is adequate considers "(i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims, if required; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3)." Rule 23(e)(2)(C)(i-iv).

***"The costs, risks, and delay of trial and appeal."*** This factor "subsumes several *Grinnell* factors … including: (i) the complexity, expense, and likely duration of the litigation; (ii) the risks of establishing liability; (iii) the risks of establishing damages; and (iv) the risks of maintaining the class through the trial. *In re Payment Card I*, 330 F.R.D. at 36. As noted *supra*, the Settlement has met each of these *Grinnell* factors. Argument §§ I.A.1, I.A.4, *supra*.

***"The effectiveness of any proposed method of distributing relief to the class."*** Class Members need only submit a simple claim form—to receive significant monetary relief. This is a reasonable method of distributing relief to Settlement Class Members, especially given that Settlement Class Members normally must submit a refund request to Turkish outside of litigation. *See Ferrick v. Spotify USA Inc.*, 2018 WL 2324076, at *8 (S.D.N.Y. May 22, 2018) ("[R]equiring class members to submit copyright registration numbers is reasonable because plaintiffs would have to provide that information to pursue their own copyright infringement action."). Further, as to Refunded Claimants, a claims process is necessary to give these Class Members the option to choose between the Cash Option and the Voucher Option. *Shames v. Hertz Corp.*, 2012 WL 5392159, at *12 (S.D. Cal. Nov. 5, 2012) ("[T]he actual intent of the claims process is to allow

class members the opportunity to choose between several payment options. The parties would otherwise have no way of knowing whether a particular class member wants to receive the cash option or the rental voucher.") (cleaned up).

***"The terms of any proposed award of attorneys' fees."*** In the Second Circuit, an award of attorneys' fees is based on "the total funds made available, whether claimed or not" because "[t]he entire Fund, and not some portion thereof, is created through the efforts of counsel at the instigation of the entire class." *Masters*, 473 F.3d at 437. Here, Class Counsel has petitioned the Court for nine-hundred thousand dollars ($900,000) in fees and expenses. This is a mere 6.38% of the $14.1 million in monetary relief that Class Counsel has made available, which is more than reasonable. *Trinidad v. Pret a Manger (UDS) Ltd.*, 2014 WL 4670870, at *11 (S.D.N.Y. Sept. 19, 2014) ("[A]warding fees of 33% is common in this district."); *Hernandez v. Uzzal Pizzeria, Inc.*, 2022 WL 1032522, at *1 (S.D.N.Y. Apr. 6, 2022) (same).

Class Counsel's fees are also being paid separately from and in addition to any relief due to Class Members and will therefore not derogate in any way from the relief provided for. Settlement ¶¶ III.C.2, IX.A.

***"Any agreement required to be identified by Rule 23(e)(3)."*** This factor requires identification of "any agreement made in connection with the proposal." *In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d at 696. No such agreement exists other than the Settlement. Krivoshey Decl. ¶ 37.

**4. The Settlement Treats All Class Members Equally**

This Rule 23(e)(2) factor discusses "whether the apportionment of relief among class members takes appropriate account of differences among their claims, and whether the scope of the release may affect class members in different ways that bear on the apportionment of relief." *In re Payment Card I*, 330 F.R.D. at 47. Here, the Settlement both accounts for the differences

between Class Members and treats them equally. On the one hand, Refunded Claimants are naturally not entitled to a full refund because Turkish has already provided them one. This fairly and adequately accounts for the differences among the claims of the Settlement Class Members. On the other hand, the relief provided effectively puts all Settlement Class Members in the same place. Nonrefunded Claimants will be able to procure an effectively 101% refund of their unused ticket price. Meanwhile, Refunded Claimants will be able to procure up to $1 million in Cash or Voucher Options—which is equal to roughly 1% of the total amount owed to Refunded Claimants in interest (Argument § I.A.6, *supra*; *see also* Krivoshey Decl. ¶ 19)—on top of the refund Turkish has already provided them. As a result, each Settlement Class Member that submits a claim will effectively have received a full refund of their unused ticket price plus 1% interest, and therefore be at an equal place relative to one another.

## II. CERTIFICATION OF THE RULE 23 CLASS IS APPROPRIATE

"Before approving a class settlement agreement, a district court must first determine whether the requirements for class certification in Rule 23(a) and (b) have been satisfied." *In re Payment Card I*, 330 F.R.D. at 50. Under Fed. R. Civ. P. 23(a), a class action may be maintained if all the prongs of Fed. R. Civ. P. 23(a) are met, as well as one of the prongs of Fed. R. Civ. P. 23(b). Fed. R. Civ. P. 23(a) requires that:

> (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). As relevant here, Fed. R. Civ. P. 23(b)(3) requires the court to find that "questions of law or fact common to the members of the class predominate over any questions

affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy."

### A. The Proposed Settlement Class Meets The Requirements Of Rule 23(a)

#### 1. Numerosity

Numerosity is satisfied when the class is "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Here, based on Defendant's records, the Settlement Class includes approximately 344,000 persons: about 44,000 Nonrefunded Claimants and about 300,000 Refunded Claimants. Krivoshey Decl. ¶¶ 18-19. Numerosity is therefore met. *Lowe*, 2022 WL 4621433, at *4 ("Numerosity is presumed at a level of 40 members.") (cleaned up).

#### 2. Commonality

Commonality is satisfied when the claims depend on a common contention, the resolution of which will bring a class-wide resolution of the claims. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349-50 (2011). "Although the claims need not be identical, they must share common questions of fact or law." *Lowe*, 2022 WL 4621433, at *4. Instead, "Rule 23(a)(2) simply requires that there be issues whose resolution will affect all or a significant number of the putative class members." *Johnson v. Nextel Commc'ns Inc.*, 780 F.3d 128, 137 (2d Cir. 2015) (cleaned up). "Where the same conduct or practice by the same defendant gives rise to the same kind of claims from all class members, there is a common question." *Id.* (cleaned up)

Here, Plaintiffs allege that Turkish breached its GCC by failing to refund passengers at all or within a reasonable time for flights that Turkish cancelled. CAC ¶¶ 17-21, 23-24, 44-47. Resolution of this common question requires evaluation of the interpretation of a single contract. If Defendant violated its GCC, then all Settlement Class Members' rights have been violated in the exact same manner, and damages can be precisely calculated for each Settlement Class Member. Thus, the commonality requirement is satisfied. *See In re Nigeria Charter Flights*

*Contract Litig.*, 233 F.R.D. 297, 300 (E.D.N.Y. 2006) ("Plaintiffs allege that the relevant terms and conditions of the tickets of prospective class members and plaintiffs are identical, as are the issues relating to World's alleged failure to abide by its obligations. These allegations satisfy Rule 23(a)(2)'s commonality requirement."); *In re AXA Equitable Life Ins. Co. COI Litig.*, 2020 WL 4694172, at *7 (S.D.N.Y. Aug. 13, 2020) (certifying breach of contract class where class members' "contracts with AXA are identical in all material respects").

**3. Typicality**

Fed. R. Civ. P. 23(a)(3) requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." "Minor variations in the fact patterns underlying individual claims do not preclude a finding of typicality when it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented." *Buffington v. Progressive Advanced Ins. Co.*, 342 F.R.D. 66, 72 (S.D.N.Y. 2022) (cleaned up). Here, "[P]laintiffs' and other class members' claims ar[o]se out of the same course of conduct by the defendant and [were] based on the same legal theories": Turkish's failure to issue a refund for cancelled flights in violation of its GCC. *Ebin v. Kangadis Food Inc.*, 297 F.R.D. 561, 565-66 (S.D.N.Y. 2014); *see also* CAC ¶¶ 23-24.

**4. Adequacy**

"Determination of adequacy typically entails inquiry as to whether: (1) plaintiff's interests are antagonistic to the interest of other members of the class and (2) plaintiff's attorneys are qualified, experienced, and able to conduct the litigation." *Lowe*, 2022 WL 4621433, at *5 (internal quotations omitted). Here, Plaintiffs—like each one of the Settlement Class Members—were passengers on a flight that Turkish cancelled as a result of the COVID-19 pandemic, and who were not issued a refund prior to the commencement of this lawsuit or within a reasonable time after the cancellation. CAC ¶¶ 23-24. "The fact that [P]laintiffs' claims are

typical of the class is strong evidence that their interests are not antagonistic to those of the class; the same strategies that will vindicate plaintiffs' claims will vindicate those of the class." *Damassia v. Duane Reade, Inc.*, 250 F.R.D. 152, 158 (S.D.N.Y. 2008).

Likewise, Class Counsel is more than qualified to represent the Settlement Class. *See* Krivoshey Decl. Exs. 2-3 (Firm Resumes of Bursor & Fisher and Liddle Sheets Coulson); *see also Mogull v. Pete and Gerry's Organics, LLC*, 2022 WL 4661454, at *2 (S.D.N.Y. Sept. 30, 2022) (Briccetti, J.) ("Bursor & Fisher … has represented other plaintiffs in more than one hundred class action lawsuits, including several consumer class actions that proceeded to jury trials in which Bursor & Fisher achieved favorable results for the plaintiffs."); *Ebin v. Kangadis Food Inc.*, 297 F.R.D. 561, 566 (S.D.N.Y. Feb. 25, 2014) (Rakoff, J.) ("Bursor & Fisher, P.A., are class action lawyers who have experience litigating consumer claims … The firm has been appointed class counsel in dozens of cases in both federal and state courts, and has won multi-million dollar verdicts or recoveries in five [now six] class action jury trials since 2008."); *McKnight v. Uber Techs., Inc.*, 2017 WL 3427985, at *8 (N.D. Cal. Aug. 7, 2017) (appointing Nicholas Coulson as class counsel).

Class Counsel has devoted substantial resources to the prosecution of this action by investigating Plaintiffs' claims and that of the Class, aggressively pursuing those claims, defeating a motion to dismiss, conducting informal discovery, participating in a private mediation with Judge Andersen, and ultimately, negotiating a favorable class action settlement. Krivoshey Decl. ¶¶ 4-17, 23. In sum, Class Counsel has vigorously prosecuted this action. *Id.*

### B. The Proposed Settlement Class Meets The Requirements Of Rule 23(b)(3)

Rule 23(b)(3) requires that common questions of law "predominate over any questions affecting only individual members and that a class action is superior to other available methods

for the fair and efficient adjudication of the controversy." Fed. R. Civ. P. 23(b)(3). Both predominance and superiority are met here.

**1. Predominance**

"Under Rule 23(b)(3), a proposed class must be sufficiently cohesive and common issues must predominate in order to warrant adjudication as a class." *Philemon*, 2019 WL 13224983, at *9. "Predominance is satisfied if resolution of some of the legal or factual questions that qualify each class member's case as a genuine controversy can be achieved through generalized proof, and if these particular issues are more substantial than the issues subject only to individualized proof." *Roach v. T.L. Cannon Corp.*, 778 F.3d 401, 405 (2d Cir. 2015) (internal quotations omitted). "Satisfaction of Rule 23(a) [as Plaintiffs have done here] goes a long way toward satisfying the Rule 23(b)(3) requirement of commonality." *Lowe*, 2022 WL 4621433, at *6 (cleaned up).

"[T]here is widespread agreement that certification under Rule 23(b)(3) is warranted for claims that involve contracts that, like here, contain the same or essentially the same terms." *Buffington*, 342 F.R.D. at 74 (internal citations omitted); *see also In re Nigeria*, 233 F.R.D. at 304 (predominance met where "plaintiffs' claims do not rely on individualized representations, but rather on a uniform deceptive course of conduct by World Airways ... that was directed at all ticket purchasers"). These common questions include but are not limited to: (i) whether Turkish breached its GCC; (ii) whether Defendant failed to refund passengers at all or within a "reasonable time"; and (iii) the amount of damages stemming from the breach." *See also* CAC ¶ 37.

**2. Superiority**

Under Rule 23(b)(3)'s superiority requirement, Plaintiffs must demonstrate that a "class action would achieve economies of time, effort, and expense, and promote uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other

undesirable results." *Philemon*, 2019 WL 13224983, at *9 (citing *Brown v. Kelly*, 609 F.3d 467, 483 (2d Cir. 2010)). Fed. R. Civ. P. 23(b)(3) sets forth a non-exclusive list of relevant factors, including whether individual class members wish to bring, or have already brought, individual actions; and the desirability of concentrating the litigation of the claims in the particular forum.[3]

Here, "a class action is far superior to requiring the claims to be tried individually given the relatively small awards that each Settlement Class [M]ember is otherwise entitled." *Lowe*, 2022 WL 4621433, at *6. Further, "litigating this matter as a class action will conserve judicial resources and is more efficient for the Settlement Class [M]embers, particularly those who lack the resources to bring their claims individually." *Id*. Thus, a class action is the most suitable mechanism to fairly, adequately, and efficiently resolve the putative settlement class members' claims, while "the prohibitive cost of proceeding individually against [Turkish] and the likely unavailability of contingency-fee counsel far outweigh any interest the plaintiffs have in proceeding individually." *In re Nigeria*, 233 F.R.D. at 306.

## III. THE NOTICE PLAN COMPORTS WITH DUE PROCESS

Before final approval can be granted, due process and Rule 23 require that the notice provided to the Settlement Class is "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). "Such notice to class members need only be reasonably calculated under the circumstances to apprise interested

[3] Another factor, whether the case would be manageable as a class action at trial, is not of consequence in the context of a proposed settlement. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, for the proposal is that there be no trial"); *Hill v. County of Montgomery*, 2020 WL 5531542, at *4 (N.D.N.Y. Sept. 14, 2020) ("Whether the case would be manageable as a class action at trial is not of consequence here in the context of a proposed settlement.").

parties of the pendency of the settlement proposed and to afford them an opportunity to present their objections." *In re Marsh & McLennan Cos., Inc. Sec. Litig.*, 2009 WL 5178546, at *12 (S.D.N.Y. Dec. 23, 2009). Notice must clearly state essential information regarding the settlement, including the nature of the action, terms of the settlement, and class members' options. See Fed. R. Civ. P. 23(c)(2)(B). At its core, all that notice must do is "fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *Wal-Mart Stores*, 396 F.3d at 114 (cleaned up).

"It is clear that for due process to be satisfied, not every class member need receive actual notice, as long as counsel 'acted reasonably in selecting means likely to inform persons affected.'" *In re Adelphia Commc'ns Corp. Sec. & Derivative Litigs.*, 271 F. App'x 41, 44 (2d Cir. 2008) (quoting *Weigner v. City of N.Y.*, 852 F.2d 646, 649 (2d Cir. 1988)). The Federal Judicial Center notes that a notice plan is reasonable if it reaches at least 70% of the class. *See* FED. JUDICIAL CTR., JUDGES' CLASS ACTION NOTICE AND CLAIMS PROCESS CHECKLIST AND PLAIN LANGUAGE GUIDE 3 (2010). The notice plan here easily meets these standards, as it provided direct notice and digital notice to at least 83% of the Settlement Class. *See* Heubach Decl. ¶ 13.

At preliminary approval, the Court approved the Parties' proposed Notice Plan, finding it met the requirements of Rule 23 and due process. *See* ECF No. 86 ¶ 8. The Plan has now been fully carried out by professional settlement administrator JND Legal Administration ("JND"). Pursuant to the Settlement, Defendant provided JND with a list of 247,682 available names, addresses and emails of potential Settlement Class Members. *See* Heubach Decl. ¶¶ 5-6. Through a combination of direct e-mail and postcard notice, the Court-approved Notice Plan successfully reached at least 83% of the Settlement Class. *See id.* ¶ 13. These notices also directed Settlement Class Members to the Settlement Website, where they were able to submit claims online; access important court filings, including the Motion for Attorneys' Fees and all related documents; and

see deadlines and answers to frequently asked questions. *See id.* ¶¶ 20-22. Accordingly, the requirements of due process and Rule 23 are easily met.

## IV. THE OBJECTION SHOULD BE OVERRULED

Only one Settlement Class Member, Mickie Hazlewood, filed an objection to the Settlement. Heubach Decl. Ex. G. As is clear from the text of the objection, Mr. Hazlewood's objection has nothing to do with the terms of the Settlement itself. *Id*. Rather, Mr. Hazlewood's objection is based on the fact he believes he is a Nonrefunded Claimant but was improperly classified as a Refunded Claimant. But as Turkish will address at the Final Approval hearing or in a supplemental declaration, Turkish refunded Mr. Hazlewood's ticket before the Settlement was reached, and he was properly classified as a Refunded Claimant as such. Krivoshey Decl. ¶ 34. Accordingly, the objection should be overruled.

## CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that the Court grant their Motion for Final Approval of the Settlement and enter the Final Approval Order in the form submitted herewith.

Dated: June 29, 2023

Respectfully submitted,

By: */s/ Max S. Roberts*
Max S. Roberts

**BURSOR & FISHER, P.A.**
Max S. Roberts
1330 Avenue of the Americas, 32nd Floor
New York, NY 10019
Telephone: (646) 837-7150
Facsimile: (212) 989-9163
E-mail: mroberts@bursor.com

**BURSOR & FISHER, P.A.**
Yeremey O. Krivoshey (*Pro Hac Vice*)
1990 North California Blvd., Suite 940
Walnut Creek, CA 94596
Telephone: (925) 300-4455

Facsimile: (925) 407-2700
E-mail: ykrivoshey@bursor.com

**LIDDLE SHEETS COULSON P.C.**
Nicholas A. Coulson (*Pro Hac Vice*)
975 E. Jefferson Avenue
Detroit, Michigan 48207
Telephone: (313) 392-0015
Facsimile: (313) 392-0025
E-mail: ncoulson@lsccounsel.com

*Class Counsel*