

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

JON TOWER, On Behalf of Himself
and All Others Similarly Situated,

Plaintiff,

v.

TRANSPORTES AEREOS
PORTUGUESES, S.A. D/B/A TAP
AIR PORTUGAL,

Defendant.

Case No. 2:22-cv-6746-JKS-SDA

**ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT¹**

WHEREAS, Plaintiff Jon Tower (“Plaintiff”) filed an Unopposed Motion pursuant to Federal Rules of Civil Procedure 23(e) and (g) to grant preliminary approval of the proposed Settlement between Plaintiff and Defendant Transportes Aereos Portugueses, S.A. d/b/a Tap Air Portugal (“Defendant”), and to appoint the law firms of Carella, Byrne, Cecchi, Brody & Agnello, P.C. (“Carella Byrne”), and Glancy Prongay & Murray, LLP (“GPM”), as Settlement Class Counsel;

WHEREAS, the Court has read and considered the Settlement Agreement and its exhibits, and Plaintiff’s Unopposed Motion for Preliminary Approval;

NOW, IT IS HEREBY ORDERED THAT:

¹ The date for the Final Fairness hearing herein is different than the date stated on the Record on April 7, 2025, as more time was necessary for the Court to finalize the Opinion for this Motion. *See* page 13, *infra*.

1. This Order incorporates by reference the definitions in the Settlement Agreement, and all terms used in this Order shall have the same meanings as set forth in the Settlement Agreement. The motion for preliminary approval (ECF No. 63) is **GRANTED**.

2. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(d).

3. The Court preliminarily approves the Settlement Agreement, and all of its Settlement terms, as fair, reasonable and adequate under Rule 23, subject to further consideration at the Final Fairness Hearing.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court preliminarily certifies, for settlement purposes only, the following Settlement Class:

All ticketholders who are citizens of the United States who purchased with dollars a flight scheduled to depart between March 1, 2020 through December 31, 2021 (a) that TAP canceled; (b) who requested a refund for the ticket as reflected in TAP's customer care, refund databases, call logs or other information within its possession, custody, or control; (c) did not receive a refund before a claim has been submitted and paid; and (d) who have not used any portion of any flight credit issued in connection with the canceled flight document. For purposes of (a) above, flights that TAP canceled in response to a government order, if any, shall not be excluded.

Excluded from the Settlement Class are: (a) all Judges who have presided over the Action and their spouses; (b) all current employees, officers, directors, agents and representatives of Defendant, and their family members; (c) any affiliate, parent or subsidiary of Defendant and any entity in which Defendant has a controlling interest; (d) any Settlement Class Member who, prior to the date of the Settlement

Agreement, settled with and released Defendant or any Released Parties from any Released Claims; and (j) any Settlement Class Member who files a timely and proper Opt-Out from the Settlement Class.

5. The Court preliminarily appoints the law firms of Carella Byrne and GPM as Class Counsel for the Settlement Class.

6. The Court preliminarily appoints Plaintiff Jon Tower and Bianca Vazquez as Settlement Class Representatives.

7. The Court preliminarily appoints Epiq Class Action & Claims Solutions, Inc. as the Settlement Claims Administrator (“Claim Administrator”).

8. The Court preliminarily finds, solely for purposes of the Settlement, that the Rule 23 criteria for certification of the Settlement Class exists in that: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members in the Action is impracticable; (b) there are questions of law and fact common to the Settlement Class that predominate over individual questions; (c) the claims of the Settlement Class Representatives are typical of the claims of the Settlement Class; (d) the Settlement Class Representatives and Settlement Class Counsel have and will continue to fairly and adequately represent and protect the interests of the Settlement Class; and (e) a class action is superior to all other available methods for the fair and efficient adjudication of the controversy.

9. In addition, the Court preliminarily finds that certification of the Settlement Class is appropriate when balanced against the risks and delays of further litigation. The proceedings that occurred before the Parties entered into the Settlement Agreement afforded counsel the opportunity to adequately assess the claims and defenses in the Action, the relative positions, strengths, weaknesses, risks, and benefits to each Party, and as such, to negotiate a Settlement Agreement that is fair, reasonable and adequate and reflects those considerations.

10. The Court also preliminarily finds that the Settlement Agreement has been reached as a result of intensive, arm's-length negotiations of disputed claims, including through the use and assistance of an experienced third-party neutral mediator, and that the proposed Settlement is not the result of any collusion.

11. The Court approves the form and content of the Settlement Class Notice (Exhibits A through C to the Settlement Agreement)² and the Claim Form (Exhibit D to the Settlement Agreement). The Court further finds that the mailing of the Settlement Class Notice, in the manner set forth in the Settlement Agreement, as well as the establishment of a settlement website, satisfies Rule 23, due process, and constitutes the best notice practicable under the circumstances. The Notice Plan set forth in the Settlement Agreement is reasonably calculated to apprise the Settlement

² The Court requests Plaintiff correct two minor typographical errors in the long form notice. First, in listing Magistrate Judge Adams' full name, Stacey should be spelled with an "e". Second, the docket number should be reflected to end in "JKS-SDA" rather than "JKS-ESK."

Class of the pendency of the Action, the certification of the Settlement Class for settlement purposes only, the terms of the Settlement, its benefits, and the Release of Claims, the Settlement Class Members' rights including the right to, and the deadlines and procedures for, requesting exclusion from the Settlement or objecting to the Settlement, Class Counsel's application for Fees and Expenses and/or the application for Settlement Class representative Service Awards, the deadline, procedures and requirements for submitting a Claim for Reimbursement pursuant to the Settlement terms, the time, place, and right to appear at the Final Fairness hearing, and other pertinent information about the Settlement and the Settlement Class Members' rights. The Court authorizes the Parties to make non-material modifications to the Settlement Class Notice and Claim Form prior to mailing if they jointly agree that any such changes are appropriate.

12. Accordingly, the Court approves, and directs the implementation of, the Notice Plan pursuant to the terms of the Settlement Agreement.

13. The Claim Administrator is directed to perform all settlement administration duties set forth in, and pursuant to the terms and time periods of, the Settlement Agreement, including mailing of the CAFA Notice, implementing and maintaining the Settlement website, implementing the Notice Plan, the processing, review and determination of timely submitted and proper Claims for Reimbursement under the Settlement terms, and the submission of any declarations and other

materials to counsel and the Court, as well as any other duties required under the Settlement Agreement.

14. Any Settlement Class Member who wishes to be excluded from the Settlement Class must mail, by first-class mail postmarked no later than thirty-five (35) days before the date originally set for the Final Approval Hearing, a written request for exclusion (“Request for Exclusion”) to each of the following: (a) the Claim Administrator at the address specified in the Class Notice; (b) Donald A. Ecklund, Esq., Carella, Byrne, Cecchi, Brody & Agnello, P.C., 5 Becker Farm Road, 3rd Floor, Roseland, New Jersey 07068 on behalf of Class Counsel; and (c) Nathaniel J. Kritzer, Esq., Steptoe LLP, 1114 Avenue of the Americas, New York, New York 10036 on behalf of Defendant. To be effective, the Request for Exclusion must be timely and must:

- a. Include the Settlement Class Member’s full name, address and telephone number,
- b. and identify the date and flight number of the flight(s) that TAP cancelled along with the claimed refund owed;
- c. Specifically and unambiguously state his/her/their/its desire to be excluded from the Settlement Class.

15. Any Settlement Class Member who fails to submit a timely and complete Request for Exclusion sent to the proper addresses shall remain in the

Settlement Class and shall be subject to and bound by all determinations, orders and judgments in the Action concerning the Settlement, including but not limited to the Released Claims set forth in the Settlement Agreement.

16. Any Settlement Class Member who has not submitted a Request for Exclusion may object to the fairness of the Settlement Agreement and/or the requested amount of Class Counsel Fees and Expenses and/or Settlement Class Representative service awards.

- a. To object, a Settlement Class Member must either: (i) file the objection, together with any supporting briefs and/or documents, with the Court in person or via the Court's electronic filing system within thirty-five (45) days before the date originally set for the Final Approval Hearing; or (ii) mail, via first-class mail postmarked within thirty-five (35) days before the date originally set for the Final Approval Hearing, the objection, together with any supporting briefs and/or documents, to each of the following:
 - (a) the Clerk's Office of the United States District Court, District of New Jersey, Martin Luther King Jr. Federal Building and United States Courthouse, 50 Walnut Street, Newark, New Jersey 07102;
 - (b) Donald A. Ecklund, Esq., Carella, Byrne, Cecchi, Brody & Agnello, P.C., 5 Becker Farm Road, 3rd Floor,

Roseland, New Jersey 07068 on behalf of Class Counsel; and (c) Nathaniel J. Kritzer, Esq., Steptoe LLP, 1114 Avenue of the Americas, New York, New York 10036 on behalf of Defendant.

- b. Any objecting Settlement Class Member must include the following with his/her/their/its objection: (i) the objector's full name, address, and telephone number; (ii) must identify the date and flight number of the flight(s) that TAP cancelled along with the claimed refund owed; (iii) a written statement of all grounds for the objection accompanied by any legal support for such objection; (iv) copies of any papers, briefs, or other documents upon which the objection is based and are pertinent to the objection; (v) the name, address and telephone number of any counsel representing said objector; (vi) a statement of whether the objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel, and the identity(ies) of any counsel who will appear on behalf of the Settlement Class Member objection at the Final Approval Hearing; and (vii) a list of all other objections submitted by the objector, or the objector's counsel, to any class action settlements submitted in any court in the United States in the previous five

(5) years, including the full case name, the jurisdiction in which it was filed and the docket number. If the Settlement Class Member or his/her/its counsel has not objected to any other class action settlement in the United States in the previous five (5) years, he/she/they/it shall affirmatively so state in the objection.

- c. Subject to the approval of the Court, any Settlement Class Member who has properly filed a timely objection may appear, in person or by counsel, at the Final Fairness Hearing to explain why the proposed Settlement should not be approved as fair, reasonable and adequate, or to object to any motion for Class Counsel Fees and Expenses or Settlement Class Representative service awards. In order to appear, any Settlement Class Member must, no later than the objection deadline, file with the Clerk of the Court and serve upon all counsel designated in the Class Notice, a Notice of Intention to Appear at the Final Fairness Hearing. The Notice of Intention to Appear must include copies of any papers, exhibits or other evidence and the identity of all witnesses that the objecting Settlement Class Member (or the objecting Settlement Class Member's counsel) intends to present to the Court in connection with the Final Fairness Hearing. Any

Settlement Class Member who does not provide a Notice of Intention to Appear in accordance with the deadline and other requirements set forth in this Order and the Class Notice shall be deemed to have waived any right to appear, in person or by counsel, at the Final Fairness Hearing.

- d. Any Settlement Class Member who has not properly filed a timely objection in accordance with the deadline and requirements set forth in this Order and the Class Notice shall be deemed to have waived any objections to the Settlement and any adjudication or review of the Settlement Agreement and/or its approval by appeal or otherwise.

17. In the event the Settlement is not granted final approval by the Court, or for any reason the parties fail to obtain a Final Order and Judgment as contemplated in the Settlement Agreement, or the Settlement is terminated pursuant to its terms for any reason, then the following shall apply:

- a. All orders and findings entered in connection with the Settlement shall become null and void and have no further force and effect, shall not be used or referred to for any purposes whatsoever, and shall not be admissible or discoverable in this or any other proceeding, judicial or otherwise;

- b. All of the Parties' respective pre-Settlement claims, defenses and procedural rights will be preserved, and the parties will be restored to their positions status quo ante;
- c. Nothing contained in this Order is, or may be construed as, any admission or concession by or against Defendant, Released Parties or Plaintiff on any allegation, claim, defense, or point of fact or law in connection with this Action;
- d. Neither the Settlement terms nor any publicly disseminated information regarding the Settlement, including, without limitation, the Class Notice, court filings, orders and public statements, may be used as evidence in this or any other proceeding, judicial or otherwise; and
- e. The preliminary certification of the Settlement Class pursuant to this Order shall be vacated automatically, and the Action shall proceed as though the Settlement Class had never been preliminarily certified.

18. Pending the Final Fairness Hearing and the Court's decision whether to grant final approval of the Settlement, no Settlement Class Member, either directly, representatively, or in any other capacity (including those Settlement Class Members who filed Requests for Exclusion from the Settlement which have not yet been

reviewed and approved by the Court at the Final Fairness Hearing), shall commence, prosecute, continue to prosecute, or participate in, against any of the Released Parties, any action or proceeding in any court or tribunal (judicial, administrative or otherwise) asserting any of the matters, claims or causes of action that are to be released in the Settlement Agreement. Pursuant to 28 U.S.C. §§ 1651(a) and 2283, the Court finds that issuance of this preliminary injunction is necessary and appropriate in aid of the Court’s continuing jurisdiction and authority over the Action.

19. Pending the Final Fairness Hearing and any further determination thereof, this Court shall maintain continuing jurisdiction over these Settlement proceedings.

20. Based on the foregoing, the Court sets forth the following schedule for the Final Fairness Hearing and the actions which must precede it. If any deadline set forth in this Order falls on a weekend or federal holiday, then such deadline shall extend to the next business day. These deadlines may be extended by order of the Court, for good cause shown, without further notice to the Class. Settlement Class Members must check the Settlement website regularly for updates and further details regarding this Settlement:

Event	Deadline Pursuant to Settlement Agreement
Notice shall be mailed in accordance with the Notice Plan and this Order	45 days from the date of this Order

Deadline to submit claims	105 days from the date of this Order
Class Counsel’s Fee and Expense Application and request for service awards for the Settlement Class Representatives	124 days after the issuance of this Order
Deadline for Objections to the Settlement, Class Counsel’s Fee and Expense Application, and/or the request for Settlement Class Representative service awards	145 days from the date of this Order
Deadline for Requests for Exclusion from the Settlement	145 days from the date of this Order
Settlement Class Representatives to file Motion for Final Approval of the Settlement	150 days from the date of this Order
Responses of Any Party to any Objections and/or Requests for Exclusion	165 days from the date of this Order
Any submissions by Defendant concerning Final Approval of Settlement	165 days from the date of this Order
Final Fairness Hearing will be held at the Frank Lautenberg Post Office & U.S. Courthouse 2 Federal Square, Newark, New Jersey 07102	October 23, 2025 at 10:00 a.m. (at least 30 days after Plaintiff’s filing of his Final Approval Motion)

Dated: April 22, 2025

s/ Stacey D. Adams
THE HONORABLE STACEY D. ADAMS
UNITED STATES MAGISTRATE JUDGE