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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

KATHY E. EMERY, Intervening Party, **EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)** Plaintiff, **AMERICAN AIRLINES, INC.** And **ENVOY AIR INC.** Defendants.	**NOTICE OF KATHY E. EMERY'S OBJECTION and RESPONSE TO JOINT MOTION FOR ENTRY OF AMENDED CONSENT DECREE BY PLAINTIFF EEOC AND DEFENDANTS AMERICAN AIRLINES, INC. and ENVOY AIR INC., AND REQUEST TO INTERVENE.** **Case No.: 2:17-cv-04059-SPL** **Judge Steven P. Logan** **HEARING REQUESTED**

OBJECTION TO JOINT MOTION FOR ENTRY OF AMENDED CONSENT DECREE BY PLAINTIFF EEOC AND DEFENDANT'S AMERICAN AIRLINES, INC and ENVOY AIR, INC. and REQUEST TO INTERVENE

COMES NOW, Kathy E. Emery, (hereinafter "Emery") who is a former American Airlines aggrieved pilot hereby files her Objection and Response to Joint Motion for Entry of Amended Consent Decree by Plaintiff, Defendants American Airlines, Inc. and Envoy Air, Inc.

and as ground states:

1. The Joint Motion for Entry of Amended Consent Decree by Plaintiff EEOC and Defendant's American Airlines, Inc. and Envoy Air, Inc. resolving certain pending EEOC Litigation should be denied for the following reasons: 1.) The Amended Consent Decree agreed to by the parties, the Equal Employment Opportunity Commission ("EEOC"), American Airlines, Inc. ("American"), and Envoy Air Inc., is prejudicial to all aggrieved American Airlines and Envoy Air pilot employees. The parties never notified Emery or any potentially aggrieved disabled pilot employees of the ongoing negotiations, the Consent Decree filed December 15, 2017 [ECF No. 4-1], or the pending Joint Motion for Entry of Amended Consent Decree, currently before this Court [ECF No. 10]. 2.) Aggrieved disabled pilots and former disabled pilots, including Emery weere not properly represented or protected by Plaintiff EEOC and their interests will not be protected if potentially aggrieved pilots are not given notice and a fair opportunity to voice an objection to the Consent Decree. 3.) The Consent Decree is not fair, adequate or reasonable. It fails to eradicate the effects of Defendant's past and present unlawful employment practices, and 4.) The Amended Consent Decree violates the principle of equal treatment of claims within a class of creditors under the Bankruptcy Code.

BACKGROUND

2. On July 14. 2012. The U.S. Equal Employment Opportunity Commission, filed Proof of Claim No. 9676 (GCG No. 07451963). The Basis for the Claim, was a charge of Discrimination No. 540-2009-01250 and other aggrieved individuals. *See* (Doc. 12861) Exhibit D., Case No. 11-15463 U.S. Bankruptcy Court (SDNY).

3 On November 3, 2017, a lawsuit styled as *Equal Employment Opportunity Commission v. American Airlines, Inc. and Envoy Air Inc.,* No. 2:17-cv-04059-SPL in the United States District

Court for the District of Arizona ("Arizona District Court") was filed by the Equal Employment Opportunity Commission ("EEOC" or "Plaintiff") asserting claims against American Airlines, Inc. ("American") and Envoy Air Inc. ("Envoy") (collectively "Defendants") for alleged violations of the Americans with Disabilities Act of 1009 ("ADA") and Title I of the Civil Rights Act of 1991.

4. In the Litigation, the EEOC asserted that American and Envoy during the period of **January 1, 2009 through August 3, 2015 (hereinafter the "Discriminatory Period")** (*Id.* Doc 4-1 ¶ 14), had engaged in various nationwide unlawful patterns and practices that violated the ADA, including refusing to accommodate employees with disabilities, terminating employees with disabilities, and failing to rehire employees.

5. The litigation was filed on behalf of 13 current and former employees of American and Envoy who filed charges of discrimination with the EEOC, as well as a nationwide group of potential claimants who suffered disability discrimination and/or retaliation.

6 .On November 3, 2017, the parties entered into a Consent Decree (Doc 12861, Exhibit F) which among other things, provides the EEOC with settlement consideration in the form of an Allowed Claim of $9.8 million (the "Allowed Claim") to be distributed to the 13 Charging Parties and other aggrieved parties determined to be eligible based on objective criteria provided by the EEOC to a Settlement Administrator yet to be named. American and Envoy have estimated that the nationwide group of potential claimants to be 1500 which is set forth in the Consent Decree.

7. On November 16, 2017, the Arizona District Court entered an order granting the Joint Motion for Entry of Consent Decree and adopted and entered as the Consent Decree as judgment in the litigation pursuant to Rule 54 of the Federal Rules of Civil Procedure

8. Pursuant to the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Debtors requested entry of an order, pursuant to Rule 9019(a), approving the Consent Decree, dated November 3, 2017 and satisfying with prejudice the EEOC Proofs of Claim, including the EEOC Proof of Claim (Doc 12861, Exhibit D at 21) *Also see* (Doc 12861, Exhibits A and F).

9. On February 1, 2018, the parties appeared before the Bankruptcy Court, seeking approval of the monetary relief provided for in the Consent Decree. At the hearing Emery and other pilot/s who had been unaware of the proceedings in the United States District Court for the District of Arizona, objected to the Consent Decree. Objectors asserted among other things, that the Consent Decree was not fair and equitable and was prejudicial and discriminatory to all aggrieved individuals who are current or former pilot employees of American Airlines and Envoy Air. It was further argued that the Consent Decree violates the principal of equal treatment of claims within the same class of creditors. The Bankruptcy Court Judge did not sign the Defendant's Order Approving Consent Decree, which specifically excluded pilots from the Employee Lists of potentially aggrieved individuals entitled to Mailing Notice and Claim Forms.

10. Following the February 1, 2018 hearing, the parties agreed to revise the Consent Decree. The revision (Amended Consent Decree) is purported to be in response to objections raised by pilots including Emery, present at the Bankruptcy Court hearing.

11. Additionally, in response to the parties belief that the Consent Decree may be appealed by certain pilots, the parties now seek to change the effective date of the Consent Decree from a date that makes the decree effective once approved by this Court and the Bankruptcy Court, as opposed to when an order of the Bankruptcy Court becomes "final and non-appealable."

12. Between the February 1, 2018 New York Bankruptcy Court hearing and this date, pilots including Emery have attempted to confer with counsel of record for the EEOC in order to address their concerns, but had been unsuccessful until April 4, 2018.

ARGUMENT/MEMORANDUM

13. The EEOC settlement consideration and Consent Decrees involves claims of debtors systemic, retaliation and discrimination of employees on the basis of medical disability that violated the ADA and Title I of the Civil Rights Act of 1991 and that these acts occurred during the period from **January 1, 2009 through August 3, 2015 (the "Discriminatory Period")**

14. A court reviews a consent decree to determine whether it is "fundamentally fair, adequate, and reasonable," *United States v. State of Oregon,* 913 F.2d 576, 581 (9th Cir. 1990). While there is no requirement for the court to conduct a "mini-trial" of the claims being settled or a full independent investigation. *See In re W.T. Grant Co.,* 699 F.2d at 608 (internal citations omitted) *accord Drexel Burnham,* 134 B.R. at 505.). In determining whether to approve a settlement, an independent determination that the settlement is fair and reasonable is required. *Nellis v. Shugrue,* 165 B.R. 115, 122-23 (S.D.N.Y. 1994).

15. While in reviewing a consent decree, the district court pays deference to the expertise of the agency and the policy encouraging settlement." *Equal Employmnet Opportunity Comm.n v. Mach Mining LLC,* No. 11 cv-00879-JPG-RJD, No. 16-cv-o1306-JPG-RJD, 2017 WL 365636, at* 1 (S.D. Ill. Jan 25, 2017) (citing *United States v. George A. Whiting Paper Co.,* 644 F.3d at 372.) "As such, a presumption in favor of approving the consent decree arises." *Donovan v. Robbins,* 752 F.d 1170, 1177 (7th Cir. 1985). "Accordingly, the Court 'must approve a consent decree if it is reasonable, consistent with the agency's goals, and substantively and procedurally

fair.'" *Mach Mining,* 2017 2017 WL 365636, at 1 (citing *George A. Whiting Paper Co.,* 644 F.3d at 372.) However, the court must still evaluate "all factors relevant to a full and fair assessment of the wisdom of the proposed compromise." *TMT Trailer Ferry,* 390 U.S. at 424.

16. On November 16, 2017, this Court issued an order granting the Parties' Joint Motion for Entry of Consent Decree [ECF No. 8] which was filed and ruled upon without any objection. This, due to the fact that the parties failed to notify potentially aggrieved disabled pilots of American Airlines and Envoy Air of the Consent Decree and the motions filed in this Court [ECF No. 4-1 and ECF No. 10], denying them the opportunity to be heard.

17. Now the parties are again coming before this Court, proposing only minor changes to address objections raised at the hearing seeking approval by the Bankruptcy Court. Yet to this date, neither the EEOC nor Defendant's American Airlines or Envoy Air have notified potentially aggrieved disabled pilots of the Consent Decree or the motion/s filed with this Court seeking approval. For this reason alone, the Motion for Entry of Amended Consent Decree should be denied.

The Amended Consent Decree is Prejudicial All Potentially Aggrieved Pilots and Former Pilot Employees of American Airlines and Envoy Air.

18. On July 14, 2012, the U.S. Equal Employment Opportunity Commission, filed Proof of Claim No. 9676 (the **"EEOC Proof of Claim"**) in the unsecured amount unliquidated against American; which listed the basis of the claim as, **"Charge of discrimination No. 540-2009-10250 and other aggrieved individuals."** Case No. 11-15463, US Bankruptcy Court (SDNY)

19. "Other Aggrieved Individuals," includes all of American Airlines and Envoy Air's disabled pilots and former disabled pilots who were victims of American's nationwide pattern of practice of discrimination against disabled employees or employees with a history of disability. (i.e. Failure to Accommodate Employees in violation of (42 U.S.C. §§12112(a) and

(b)(5)(A)); (Disparate Treatment (42 U.S.C. §§12112(a) and (b)(5)(B))

20. This is particularly true of any pilot or former pilot with disabilities under the ADA, 42 U.S.C. 12111(8) in that they could perform the duties of their jobs with or without reasonable accommodation, including where necessary "reassignment" and where Defendant's did not provide reasonable accommodations to the aggrieved pilots; treated pilots disparately, and/or retaliated against pilots who filed EEOC charges against Defendant's and/or filed internal charges of discrimination.

For example,

a. where Defendant's did not allow and still do not allow certain pilots with a disability or history of disability to return to work, even though they have no restrictions related to their injuries and/or disabilities that would preclude them from performing their duties, including pilots who have been issued FAA First Class Medicals by qualified FAA medical examiners;

b. requiring aggrieved individual pilots to apply for and compete for vacant positions instead of considering reassignment as a reasonable accommodation;

c. where defendant's failed or refused to provide a pilot any accommodation, including a non-flying job;

d. terminating aggrieved pilots or placing them on unpaid sick leave;

e. where Defendant retaliated against pilots who filed EEOC charges of discrimination by terminating them or placing them on-paid sick leave of absence and /or refused or failed to provide reasonable accommodation;

f. where Defendant's intentionally refused to rehire or reinstate pilots because of their disabilities, and/or because the Defendant regarded them as disabled and/or because of the need to provide reasonable accommodation for their disability.

21. Potentially, there are approximately 1000 potentially aggrieved disabled American Airlines pilots and former disabled pilots, who were discriminated against during the EEOC's sytemic investigation during the period of **January 1, 2009 through August 3, 2015, (hereinafter the "Discriminatory Period")**

22. At least 241 of those disabled pilots have been discriminated against because they have been removed from the seniority list and purportedly administratively terminated on the basis of disability, in violation of the ADA as well as the pilots Collective Bargaining Agreement.

23. Some of those pilots requested reasonable accommodations or reassignment during the "discriminatory period" but were refused and informed they would have to apply for and compete for vacant positions, as they were no longer employed by the company.

24. Others the company considered disabled were denied disability benefits and placed on unpaid sick leave of absence and/or terminated without notice and without due process.

25. Despite the fact there are a large number of potentially aggrieved pilots, the Amended Consent Decree as written is prejudicial to all potentially aggrieved pilots and former pilots of American Airlines and Envoy Air.

26. There are a number of American Airlines pilots based across the country, who filed EEOC charges against American for the very same systemic pattern or practices of discrimination and retaliation alleged by the EEOC in this case (Case No. 17-04059-SPL), yet no pilots were informed of the systemic investigation, the lawsuit filed by the EEOC or the Consent Decree which specifically excluded pilots of American and Envoy from the Employee List of Potentially Aggrieved Individuals (PAI's).

27. Nor were they to receive Mailing Notice and Claim Form containing describing the process, the claim filing deadlines, or the information concerning the Website and Toll-Free Telephone Number accessible to PAI's on the Employee List.

28. The exclusionary language in the Consent Decree specific to all pilots of American and Envoy, was and is prejudicial to all potentially aggrieved pilots and former

pilots of American and Envoy and by virtue of the fact that the Consent Decree specifically excludes pilots without notice or reasonable explanation should make those potentially aggrieved pilots indispensable parties to this action and they should be allowed to object or intervene.

29. It is Emery's belief that the Consent Decree was and is discriminatory on its face. Excluding disabled pilots explicitly or implicitly, as the new Amended Consent Decree does (without notice and a full and fair opportunity to be heard), is both prejudicial and a violation of the disabled pilots right of due process, in particular where the excluded individual is at risk of losing valuable benefits or right he/she may be entitled to.

30. In exposing the fact that the EEOC's nationwide disability discrimination lawsuit settlement (the Consent Decree), was discriminatory on its face as to disabled pilots, during the Bankruptcy proceedings, the parties have now made an effort to foist yet another exclusionary and discriminatory agreement on this Court styled as the "Amended Consent Decree" [ECF No. 10] ¶¶ 22.b.ii at 9.

31. While the "Amended Consent Decree" appears to now include pilots on its face, striking the exclusionary language as to pilots, the reality is, that all potentially aggrieved disabled pilot employees and former pilot employees are still excluded and at risk of losing valuable legal rights and benefits, including compensation for the Defendant's systemic pattern or practice of discriminating against disabled pilots during the discriminatory period.

32. The "Amended Consent Decree is misleading, giving the false impression that pilots are now included, when they are not. In the fine print pilots are implicitly excluded for the purpose of forcing the matter forward as originally intended, to exclude disabled pilots from the Employee List of PAI's (likely because they are the highest compensated non-management employees and hence the costliest to make whole)

33. parties now want to make seemingly minor changes to the Consent Decree, but in reality are significant changes.

34. In the Amended Consent Decree, the parties while striking the pilot exclusionary language in paragraph 22.c. ("exclude pilots of American and Envoy"), in a slight of hand, add language in the paragraph just above that ¶ 22.b.ii. ("except for those individuals reviewed exclusively for purposes of obtaining disability benefits"), which will have essentially the same effect, to "exclude pilots of American and Envoy"

35. Originally ¶ 22.b.ii. stated, "Were reviewed by the Medical Review Board". Now the new added language ("except for those individuals reviewed exclusively for purposes of obtaining disability benefits") seemingly excludes every disabled American pilot.

36. In the Amended decree, the parties do not describe the function of the "Medical Review Board," or the reason for the added language. Nor do they explain why a pilot who was "reviewed exclusively for purposes of obtaining disability benefits" would be excluded. In particular, where the pilot had been discriminated against in violation of Title I of the ADA and subjected to same unlawful employment practices that other employees who were reviewed by the "Medical Review Board," for any other purpose.

37. The other two clauses in ¶22.b.i and ii, requiring submission of "*a completed request forAccommodation Form,"* and to have been, reviewed by the *Accommodation Review Board,"*do not apply to pilots as no such forms or boards exist at least for American pilots, and thus is exclusionary as to pilots.

38. Since no such forms are provided to pilots and there has been no Accommodation Review Board established by the company for pilots, then based on the added language in paragraph 22.b.ii, paragraph 22 makes it almost impossible for an aggrieved American pilot to

even get on the Employee List of PAI's who are entitled to notice.

39. These requirements are more form than function and only serve to discriminate against a protected class of disabled aggrieved pilots who were subjected to the same discriminatory and unlawful practices as other employees.

40. Pilots who have requested accommodations have done so by other means, (i.e. written correspondence such as letters or e-mails or verbal communications) Simply because the company has failed or refused to establish reasonable accommodation procedures for all disabled employees cannot be a legitimate reason to deny pilots same protections under Title I of the Americans with Disabilities Act 1990 and Title I of the Civil Rights Act of 1991

41. Further evidence of the parties intent to exclude pilots is the fact that the original Consent Decree provided that it could not become effective until the US Bankruptcy Courts Order Approving, became final and non-appealable. "As it should be"

42. The parties now seek to have the Court approve an Amended Consent Decree that will become effective once approved by the Bankruptcy Court and this Court, as opposed to when an order becomes "final and non-appealable."

43. The reasoning is the parties concern that the Amended Consent Decree, as written is still likely to be appealed, falsely claiming one of the pilots who attended February 1 Bankruptcy hearing intended to appeal any order. Now the parties again are trying to push a bad agreement through hoping there will be little or no judicial scrutiny, and minimize the effect of any appeal even if successful.

44. This is highly prejudicial to the potentially aggrieved disabled pilots who under the terms of the Amended Consent Decree are still excluded simply by the parties saying the same thing in a different, less obvious way . *See* [ECF No. 10] ¶¶'s 8 and 12 However, the effect will

be the same, just as if the exclusionary language had not been stricken

Aggrieved Disabled Pilots and Former Disabled Pilots, Have Not Been Represented or Protected by Plaintiff EEOC

45. Aggrieved disabled pilots and former disabled pilots have not been represented or protected by the EEOC and disabled pilots interests will not be protected if potentially aggrieved pilots are not given notice and a fair opportunity to voice an objection to the Amended Consent Decree.

46. Disabled pilots have filed discrimination charges against Defendant, in various cities across the country during the "discriminatory period," including Emery, whose charges sat for years at the EEOC before it was even assigned to an investigator. Case in point , the Miami office was subject to two Congressional investigations when one pilot who had a charge of Disparate Treatment against American was unreasonably delayed. Only after the second Congressional inquiry did the pilot get a resolution.

47. The Consent Decree and the Amended Consent Decree to which the EEOC is a party, violates EEOC's public policy goals and congressional mandate.

48, Here the EEOC who initially prosecuted its charges of discrimination on behalf of ALL disabled employees of American and Envoy, by filing a general EEOC POC in the unliquidated amount on behalf of all "*other aggrieved individuals*;" a lawsuit on behalf of a "*nationwide group of potential aggrieved individuals*"; and boasting in a press release that "*the settlement applies to all American and Envoy employees throughout the country*" did an about face and acted in an arbitrary and discriminatory manner when it entered into a Consent Decree, with American Airlines and Envoy Air, which explicitly added language excluding unionized pilots of American Airlines and Envoy Air and Corporate Officers, without any reasonable explanation, but included all other employees including unionized flight attendants and

mechanics and even management employees; wherein the decree specifically stated, *"**The Employee List shall exclude pilots of American and Envoy", corporate officers of American and Envoy…"**. See* Consent Decree ¶22.c. at 9.

49. Now in the Amended Consent Decree, the EEOC and Defendants' are attempting to lead this Court to believe that its proposed changes address the inclusion of pilots, which was but one of the issues raised at the February 1 Bankruptcy Court Hearing. Parties to the Consent Decree claim they have eliminated the exclusionary language in Paragraph 22.(c). and agreed to revise the Consent Decree to include pilots on the list of employees if they satisfy the criteria in Paragraph 22(b), with the exception in Paragraph 22(b)(ii), for pilots who the Medical Review Board reviewed solely because the pilot was seeking disability benefits pursuant to a disability plan. Hence, the parties *"give with one hand, and take with another"*, knowing full well Paragraph 22 as written essentially excludes all potentially aggrieved disabled pilots of American. Emery a former American pilot, is unsure of the role of the Medical Review Board as it relates to Envoy Air pilots.

50. To the extent it is the Medical Review Board that reviews applications of disabled American pilots applying for disability benefits under the Plan, which Emery believes it is, then but for the exception in Paragraph 22(b)(ii), all potentially aggrieved disabled pilots would be included on the list of Employees receiving mailing notice and claim forms and other information necessary to perfect their claims.

51. The obvious goal of removing the exclusion and adding the exception, again is exclusion of potentially aggrieved disabled pilots from the claim process.

52. Based on the posture the EEOC has taken, where EEOC has knowingly entered into an agreement to exclude potentially aggrieved disabled pilots, without even informing

them, then it should be clear that the EEOC has not and cannot not represent or protect the interests of aggrieved pilot employees of American or Envoy and independent representation should be provided to the group of potentially aggrieved disabled pilots of American and Envoy.

The Amended Consent Decree is Fundamentally Unfair, Inadequate and Unreasonable. Nor Does the Amended Consent Decree Eradicate the Affects of Defendant's Past and Present Unlawful Employment Pattern or Practices

53. A court reviews a consent decree to determine whether it is "fundamentally fair, adequate, and reasonable," *United States v. State of Oregon,* 913 F.2d 576, 581 (9th Cir. 1990). In determining whether to approve a settlement, an independent determination that the settlement is fair and reasonable is required. *Nellis v. Shugrue,* 165 B.R. 115, 122-23 (S.D.N.Y. 1994).

54. Based on the foregoing facts and arguments alone, the Parties Amended Consent Decree submitted to this Court fundamentally unfair, inadequate, and unreasonable. Nor does the Amended Consent Decree eradicate the effects of Defendant's past and present unlawful employment pattern or practices.

55. Since at least 2007, Defendants' have engaged in unlawful employment practices. Emery's employer, American Airlines engaged in a discriminatory pattern and practice of violating the ADA by refusing to accommodate pilot employees with disabilities, terminating pilot employees with disabilities, failing to rehire or reinstate aggrieved pilot employees with a disability or history of disability and egregious acts of retaliation. Emery is just such a pilot who was subjected to those exact unlawful employment practices, and more

56. Plaintiff EEOC claims that since at least January 1, 2009, Defendants have engaged in these unlawful practices which are ongoing. Yet the Consent Decree, while a step in the right direction, fails to eradicate the effects of Defendants' past and present unlawful employment practices, in particular as it pertains to "*aggrieved disabled pilot employees*" of

American Airlines and Envoy Air.

The Amended Consent Decree is Fundamentally Unfair, Unreasonable and Woefully Inadequate as to the Monetary Relief

57. Firstly, the monetary relief called for in the Amended Consent Decree is wholly inadequate.

58 The Amended Consent Decree states in part that the EEOC shall be deemed to hold an Allowed American General Unsecured Claim as defined in the Debtors Amended Joint Chapter 11 Plan (the "Plan") in the amount of $9.8 million (the EEOC Allowed Claim) which the parties acknowledge that the ultimate dollar value of the settlement will depend upon the trading price of AAL stock (at the time of distribution).

59. While the value of the stock to be distributed in accordance with the terms of the Plan currently exceeds the settlement amount of $9.8 million, the stock price has and continues to fluctuate wildly, down 16% in the last few weeks. Nonetheless, the Decree is fully enforceable no matter the trading price of the stock.

60. At the time the parties agreed to the total monetary amount $9.8M the Defendants, American Airlines and Envoy Air estimated the number of potentially aggrieved individuals to be 1500 in addition to the 13 charging parties. This was *exclusive of pilots of American Airlines and Envoy Air pilots*

61. The new Amended Consent Decree now "purports" to include pilots that were originally excluded from the employee list of potentially aggrieved individuals. Currently there 15,000 American Airlines pilots, approximately 960 of those pilots are disabled employees, not including the disabled pilots of Envoy and former disabled pilots of both American and Envoy. All disabled American pilots are potentially aggrieved individuals.

62. At least 241of those disabled American pilots like Emery, were removed from the seniority list and administratively terminated solely on the basis of their medical disability or because American considered them to be disabled. Many who requested accommodations were refused. Some of those pilots were held out of service without pay or benefits for the entire discriminatory period of 2009-2015 and still have not been reinstated.

63. Regardless, even if the settlement were doubled, it would still be far too little. Especially considering that, an average pilot earns pay and benefits of approximately $250,000 per year. If only 1 pilot was denied six years of back pay (for the discriminatory period of 2009-2015), the back-pay component would be $1.5M for that one pilot alone. Hence, the monetary relief given in the Consent Decree, is wholly inadequate, fundamentally unfair and unreasonable.

64. Considering the years of education, training, and financial resources it takes to become a Commercial Airline Pilot with a major Air Carrier like American, pilots pay is considerably higher than some other unionized employees whose average pay and benefits may be between $50,000 and $100,000 per year. Pilots who are highly skilled and have enormous responsibilities for the safety of the traveling public, earn the equivalent of other highly skilled professionals like accountants, doctors or lawyers.

65. Considering that American denied accommodation's, and/or terminated and/or removed 241 disabled pilots from the seniority list ,that would make the aggrieved disabled pilot back-pay component alone significantly higher than the $9.8M agreed upon by the parties. In fact, during the February 1, 2018 Bankruptcy Court Hearing, attended by Emery, Americans attorneys admitted, that the EEOC was seeking ten times the settlement amount (around $80 to $100M).

66. It appears that with the pilots "excluded", American got a much better deal for the bankruptcy estate settling for only $9.8M, which is wholly inadequate even for the original

charging parties and the 1500 potentially aggrieved individuals as estimated by Defendants. That would amount to only $5,000-10,000 (less taxes and expenses), per aggrieved disabled employee, depending on the value of AAL stock on the distribution date.

Hence, the Monetary Relief agreed to by the parties is fundamentally unfair, unreasonable, and wholly inadequate.

The Consent Decree as to the Equitable Relief Granted is Fundamentally Unfair, Inadequate and Completely Unreasonable Because it Fails to Require Reinstatement of Aggrieved Individuals Who Were Terminated

67. Plaintiff EEOC in its complaint [ECF No. 1] claimed Defendants engaged in a pattern or practice of disparate treatment by intentionally terminating and intentionally refusing to re-hire charging parties and aggrieved individuals because of their disabilities, and/or because they regarded them as disabled, and/or because of the need to provide reasonable accommodation for their disability, in violation of Sections 102(a) and 102(b)(5)(B) of the ADA, 42 U.S.C. §§ 12112(a)and(b)(5)(B).

68. After extensive investigation, the EEOC concluded the effect of the practices has been to deprive the Charging Parties and other aggrieved individuals of equal employment opportunities and otherwise adversely affect her or his status as an employee, because of her or his disability. The EEOC charged that the practices complained of were unlawful and were done with malice and reckless indifference to the federally protected right of the charging parties and other aggrieved individuals for whom EEOC sought relief.

69. Outrageously, EEOC has now entered into an Amended Consent Decree that fails to contain language requiring the reinstatement of aggrieved individuals (including aggrieved pilots) whom the Defendants terminated in violation of Federal law and now refuses to rehire.

70. American has some 960 disabled pilot employees, and at least 241 of which

including Emery, were terminated and removed from the pilot seniority list solely on the basis of their medical disability or because the company considers them to be disabled, or the need to provide reasonable accommodation for their disability or who were retaliated against because the pilot complained about discrimination, filed a charge of discrimination, and/or filed a lawsuit against the company related to their disability status.

71. EEOC failure to require reinstatement rights for aggrieved individuals (in particular pilots) who were terminated on the basis of disability violates the EEOC's Public Policy Goals and Congressional Mandate which is guided by 'the overriding public interest in equal employment opportunity…asserted through direct Federal enforcement."… Further, the U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against an employee because of a person's race, color, religion, sex, national origin, and disability, as is the case here.

72. In accordance with the EEOC's Public Policy Goal…"[T]he EEOC is not merely a proxy for the victims of discrimination…The EEOC acts to vindicate the public interest in the eradication of employment discrimination.

73. In so far as the EEOC enters into an agreement as it has done here, which fails to eradicate the effects of Defendant's *"past and present"* unlawful employment pattern or practices, an atmosphere is created that tends to foster future violations of the law. *See Brooklyn Savings Bank v. O'Neil,* 324 U.S. 697, 710 (1945); *EEOC v. Astra USA, Inc.,*94 F.3d, 738, 742 (1st Cir. 1996).

74. Here the EEOC, entered into a Consent Decree with Defendant's that fails to eradicate the effects of Defendant's *"past and present"* unlawful discriminatory pattern and practices when they failed to ensure that all aggrieved individuals, including pilots (and in particular pilots

due to their having invested their valuable pilot careers in American Airlines).

75. Career pilots hired by a major air carrier, who have years invested in that carrier (i.e. American), cannot reasonably start anew with another major air carrier (i.e. Delta or United). Pilots when hired by a major air carrier almost always remain with that company their entire careers.

76. Were a pilot to be terminated from a major air carrier on the basis of disability, like has occurred with frequency at American, the pilot would be required to start at the bottom of the seniority list with any new carrier at drastically reduced pay and benefits, and diminished working conditions due to the loss of seniority, which virtually governs almost all issues related to the pilots employment.

77. Seniority determines the pay a pilot receives and all quality of life issues (the aircraft they fly, the pay and benefits they receive, vacation time, flight schedules, days off, etc). Long term American Airlines Captains would be demoted to an entry level First Officers position and would lose more than 50% of their pay, even if they could get hired at another major air carrier

78. Almost all disabled pilots who have been terminated by American on the basis of disability are older than **40 years of age**. Most are in their 50's and 60's. This in and of itself amounts not only to discrimination on the basis of disability but could amount to discrimination on the basis of age as well. Clearly it is financially beneficial to American to terminate older disabled pilots, who are amongst the highest paid pilot employees based on their longevity with the company and their place on the pilots seniority list.

79. In the past as well as the present, American has terminated pilots on the basis of disability and/or those that they regard as disabled who currently hold FAA First Class Medicals, that they

have steadfastly refused to reinstate or rehire. One or more of these pilots have been forced to take jobs outside of the United States and fly for foreign carriers (i.e., China) and others have had no alternative but to fly with smaller, third tier carriers at less than one- third of the pay they would be receiving from American Airlines.

80. Chances of aggrieved older pilot employees getting hired at another major carrier in the United States is virtually non-existent, because of the high cost required to train all new hire pilots, regardless of experience.

81. American knows that pilots terminated on the basis of disability or because American considers them to be disabled and where their pay and benefits have been terminated generally do not have the wherewithal or financial resources to remedy the wrong.

82. Where EEOC has turned a blind eye to American's discriminatory pattern of practices aimed at its disabled pilots, (almost all of whom are 40 or older) , is a grave injustice and is in violation of the EEOC's public policy goals and congressional mandate, as qualified older pilots are being removed from the workforce, in particular, when there is a nationwide shortage of qualified pilots

Hence, The Consent Decrees Equitable Relief is fundamentally unfair, inadequate and completely unreasonable and it fails to eradicate the effects of Defendant's "*past and present*" unlawful employment practices.

The Consent Decree Fails to Include the Objective Criteria to be Provided by the EEOC Upon Which the Settlement Administrator Will Evaluate Potentially Aggrieved Individuals (PAI's) Claims.

83. The objective criteria to be provided by the EEOC upon which the Settlement Administrator will evaluate potentially aggrieved individuals claim is not contained in the Consent Decree. Thus, the Amended Consent Decree should not be approved absent such

objective criteria.

84. Without including the objective criteria upon which claims will be evaluated the Court cannot possibly determine the fairness or reasonableness of the Amended Consent Decree, nor can it guarantee that all potentially aggrieved individuals, including pilots of American and Envoy will be protected.

85. Potentially aggrieved pilots claims share with this action common questions of law and fact, and the action filed by the EEOC involves the interpretation of the ADA, a statute the EEOC is entrusted to enforce. Nonetheless, the EEOC has proven that the agency has not and cannot represent or protect the statutory rights or interests of the aggrieved disabled pilots of American Airlines and Envoy Air. In fact, Plaintiff EEOC and Defendants' American Airlines and Envoy Air have joined forces to exclude potentially aggrieved pilots of American and Envoy from both the Consent Decree and the new Amended Consent Decree using exclusory criteria. *See* Consent Decree ¶22.c. excluding pilots of American and Envoy [ECF No.XX and Amended Consent Decree ¶22.b.(i)(ii)(iii) [ECF No. 10]

Hence no Consent Decree should be approved unless and until EEOC provides the "*objective criteria*", in plain and unambiguous language upon which the Settlement Administrator will evaluate claims of the potentially aggrieved individuals, including pilots, and the Consent Decree entered into November 3, 2017 should be deemed a nullity.

The EEOC Who Knowingly Excluded Pilots From the Consent Decree, Has Not and Cannot Represent or Protect the Rights of the Aggrieved Disabled Pilots. The Potentially Aggrieved Disabled Pilots of American and Envoy Who Have Not Been Fairly Represented by EEOC Should Be Provided With Court Appointed Counsel or Counsel Appointed by the Attorney General's Office Prior to the Approval of Any Amended Consent Decree.

86. Disabled pilots of American and Envoy, like any other employee are protected by the same statutory provisions of the ADA, a statute that Congress has entrusted to the Attorney General

to Administer.

87 Though American pilots had EEOC charges pending against the company during the discriminatory period, January 1, 2009 through August 3, 2015 for the same pattern or practice of disability discrimination in violation of the ADA, that other rank and file employees were subjected to. A number of pilots EEOC charges including Emery's languished during the discriminatory period. American pilots who were some of the most vocal employees protesting American's discriminatory practices were never even contacted during the course of the EEOC nationwide investigation.

88. On July 14, 2012 the EEOC filed Proof of Claim No. 9676 (the "EEOC Proof of Claim (POC)") in the American Airlines Chapter 11 Bankruptcy Case in the unsecured amount of unliquidated against American, which listed the basis of the claim as, **"Charge of Discrimination No. 540-2009-01250** ***and other aggrieved individuals".***

89. On November 3, 2017, EEOC filed its complaint styled as *Equal Employment Opportunity Commission v. American Airlines, Inc. and Envoy Air Inc.* (D. Ariz., No. 2:17-cv-04059-SPL [ECF No. 1}, asserting Claims against American Airlines Inc. on behalf of 13 current and former employees of American and Envoy who filed charges with the EEOC, as well as a ***"nationwide group of potential aggrieved individuals."*** without limitation, and nowhere does it exclude disabled pilots of American or Envoy, who were discriminated against during EEOC's systemic investigation during the period of January 1, 2009-August 3, 2015. [ECF No. 1] at ¶14.

90. Yet on November 3, 2017, the very same day, the EEOC entered into a Consent Decree with Defendant's American Airlines, Inc. and Envoy Air, Inc. resolving the lawsuit which specifically stated that the Employee Lists "**shall" excluded pilots of American and Envoy** [ECF No. 4-1] Consent Decree ¶22.(c).

91. No potentially aggrieved disabled pilots ever received notice of the EEOC's filing of lawsuit along with the Joint Motion for Entry of Consent Decree, excluding pilots; the Order adopted and entered as final judgment in the Litigation; the Joint Motion for Entry of Consent Decree filed in the Bankruptcy Court, excluding pilots, or the Motion before this Court seeking approval of an Amended Consent Decree.

92. The EEOC's lack of adequate representation of aggrieved pilot employees of American and Envoy Air, who were subjected to same unlawful employment practices in violation of the ADA is FUNDAMENTALLY UNFAIR.

Hence, since the EEOC has not and now cannot represent pilots because of their efforts to exclude pilots from the Consent Decree. The group of potentially aggrieved pilots of American and Envoy should be provided with Court appointed legal counsel or counsel appointed by the Attorney General in order to ensure all potentially aggrieved pilots statutory rights under the ADA are protected.

The Amended Consent Decree Which Explicitly Excludeds Pilots of American or Envoy from the Employee List of Potentially Aggrieved Individual's, Violates the Principle of Equal Treatment of Claims Within a Class of Creditors Under the Bankruptcy Code

93. On November 29, 2011, Defendants American and Envoy, through their parent Company AMR, Inc., filed for Chapter 11 bankruptcy protection, in the U.S. Bankruptcy Court, Southern District of New York, Case No. 11-15463.

94. From 2009 to 2015 the EEOC's Phoenix District office conducted a nationwide systemic investigation of American and Envoy, for its pattern and practice of disability discrimination.

95. On November 3, 2017 the EEOC filed this lawsuit on behalf of 13 current and former Employees of American and Envoy who filed charges with the EEOC, **as well as a *"nationwide"group of potential aggrieved individuals,"*** which includes all ***"other aggrieved***

Individuals," including pilot employees of American Airlines and Envoy Air.

96. On November 3, 2017 the very same day the lawsuit was filed the Parties entered into a Consent Decree (ECF 4-1), which had been negotiated over a period of two years. The Decree specifically excluded pilots of American Airlines and Envoy Air from the Employee List of "***potentially aggrieved individuals"*** which necessarily includes ***"other aggrieved individuals,"*** (including pilots)

97. Attempts by the Debtors, American Airlines and Envoy Air to exclude its pilots from the Employee List of potentially aggrieved individuals violates equal treatment of claims within a class of creditors under the Federal Bankruptcy Code, for whom the U.S. Equal Employment Opportunity Commission, filed proofs of claim.

98 The parties now seek this Court's approval of an Amended Consent Decree purportedly to address pilots objections to excluding pilots of American Airlines and Envoy Air. from the Consent Decree. [ECF No. 10]

99. However, the Amended Decree as written, again violates the principle of Equal Treatment of Claims within a class of creditors under the U.S. Bankruptcy Code, for whom U..S. Equal Employment Opportunity Commission, filed Proof of Claim No. 9676 in the unsecured amount of unliquidated against American, which listed the basis of the claim as "*Charge of discrimination No. 540-2009-01250 and" **other aggrieved individuals**,"* which includes pilots of American Airlines and Envoy Air.

100. The Amended Consent Decree, while removing the explicit language from the original Consent Decree at ¶ 22.(c)., excluding pilots of American and Envoy from the Employee List, again seeks to exclude most, if not all, potentially aggrieved American Airlines pilots and possibly Envoy pilots by adding the underlined language in ¶22.b.ii.which excludes "those

individuals reviewed by the Medical Review Board (MRB), exclusively for purposes of obtaining disability benefits" [ECF No. 10]

101. Most if not all potentially aggrieved American Airlines disabled pilots were reviewed by the MRB, exclusively for purposes of obtaining disability benefits, yet many of American's disabled pilots were subjected to the same discriminatory pattern of practices in violation of the ADA, during the period from January 1, 2009 to August 3, 2015 that other aggrieved employees were subjected to, which practice continues today.

102. The underlined language in ¶22.(ii) of the Consent Decree is added solely for purposes of "*excluding*" aggrieved pilot claimants from the Employee List of "PAI's") who are to receive Mailing Notice and Claim Forms (including claim procedures; claim filing deadline; appeal filing deadline and other relevant information) necessary for an aggrieved individual to perfect his/her claim, which essentially acts as a denial.

103. The parties, by inserting criteria in the new Amended Consent Decree, which explicitly or implicitly excludes aggrieved pilot claimants from the Employee List of potentially aggrieved individuals violates the principle of equal treatment of claims within a class of creditors under the Federal Bankruptcy Code.

The Amended Consent Decree Relating to Tax Reporting and Tax Payments May Be Susceptible to More Than One Reasonable Interpretation

104. The terms of the Fourth Amended Joint Chapter Eleven Plan reflect that expenses and taxes related to the increase in the value of AAL stock from the time it was placed in the Disputed Claim Reserve ("DCR") are an obligation of the Disputed Claim Reserve not of individuals or entities recovering the distribution. The disbursing agent, Garden City Group (GCG) is responsible for payments of expenses and taxes of the DCR from the assets, including capital gains taxes, which was confirmed pursuant to Bankruptcy Court Order dated January 17,

2017 [ECF No. 12830], pursuant to Memorandum of Decision [ECF No. 12825] Case No. 11-15463-SHL

105. The Amended Consent Decree may be susceptible to more than one reasonable interpretation. The Plan states that the "Settlement Fund shall be available for the payment of "any" taxes on earnings from or otherwise imposed in respect of the Settlement Fund and its assets, including without limitation, "any" taxes in respect to "any" gain from the sale of stock received.

106. Consistent with the Bankruptcy Code's requirement of equal treatment for claims in the same class, the Bankruptcy Code and the "Plan" requires equal treatment for all unsecured creditors regardless of when they were paid.

107. The parties Settlement Fund should not be available for payment of taxes with respect to any gain from the time the stock was placed in the disputed Claim Reserve until the time of distribution to the Settlement Administrator.

108. The Settlement Fund should only be responsible for gains taxes on earnings from the time The Settlement Administrator receives the AAL stock until the date the stock is sold, which is required to be no later than ten (10) business days after receiving the distribution of stock from the Disputed Claim Reserve, and for taxes on interest earned from the interest bearing account after the stock-to-cash conversion.

109. Emery conferred with counsel for EEOC on **April 3, 2018**, who admitted the issue concerning the Settlement Funds obligations to pay gains taxes needed to be clarified.

110. The Bankruptcy Code explicitly requires that a plan "provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to less favorable treatment, of such particular claim or interest." 11U.S.C.§

1123(a)(4).

111. While disparate treatment within a class is permitted if the holder of a claim or interest agrees to less favorable treatment, the agreement must explicitly provide that particular creditors, (the EEOC on behalf of the 13 Charging Parties and other aggrieved individuals) are being treated in this manner, so as to put such creditors on notice. There is no evidence in the Consent Decree that creditors have been put on notice, if in fact they are being treated differently.

112. It would be unfair to deny creditors full value for their Allowed Claim under the Bankruptcy Code, where the Plan does not explicitly take those rights away.

113. Under the terms of the Amended Consent Decree, it appears there may be dissimilar treatment of claims within the same class, under the Fourth Amended Joint Chapter Eleven Plan, with respect to taxes on earnings and the issue needs clarification.

CONCLUSION

Based on the foregoing, Kathy Emery respectfully requests this Court consider her Objection to Joint Motion for Entry of Amended Consent Decree by Plaintiff EEOC and Defendant's American Airlines, Inc. and Envoy Air, Inc., and deny the motion.as the Amended Consent Decree is prejudicial to all aggrieved American Airlines and Envoy Air pilot employees and former pilot employees, who were subjected to the same unlawful pattern and practices in violation of the ADA, that other employees were subjected to.

. The Parties never notified potentially aggrieved disabled pilot employees of the ongoing negotiations, the Consent Decree filed December 15, 2017 [ECF No. 4-1], or the pending Joint Motion for Entry of Amended Consent Decree, currently before this Court [ECF No. 10], yet seek to exclude, pilots from the Employee List of potentially aggrieved individuals.

Additionally, aggrieved disabled pilots and former disabled pilots have not been properly represented or protected by Plaintiff EEOC and their interests will not be protected if potentially aggrieved pilots are not given notice and a fair opportunity to voice an objection to the Consent Decree.

Moreover, the Consent Decree is not fair, adequate or reasonable: It fails to eradicate the effects of Defendant's past and present unlawful employment practices. The monetary relief is woefully inadequate; the Consent Decree fails to contain language requiring the reinstatement of employees terminated in violation of the ADA, nor does the Consent Decree disclose the objective criteria upon which the Settlement Administrator will evaluate claims, which is essential for this Court to determine whether or not the Decree is fair and reasonable.

Finally, the Amended Consent Decree violates the principle of equal treatment of claims within a class of creditors under the Bankruptcy Code by the exclusion of pilots and issues related to the Consent Decree need to be clarified as it relates to the parties tax obligations, . Based on the posture the EEOC has taken, where EEOC has knowingly entered into an agreement with Defendant's to exclude potentially aggrieved disabled pilots, without even informing them, then it should be clear that the EEOC has not and cannot not represent or protect the interests of aggrieved pilot employees of American or Envoy and independent representation should be provided to the group of potentially aggrieved disabled pilots of American and Envoy.

Wherefore, Kathy Emery prays that this Court will not approve any Decree that fails to eradicate the effects of Defendant's past and present unlawful employment practices. In particular, Emery asks that no Consent Decree be approved, that does not include a provision providing for the reinstatement and/or re-hiring of all pilots and other employees

without loss of seniority, that Defendant's terminated because of their disabilities, and/or because they regarded them as disabled or because of the need to provide reasonable accommodation for their disability.

Signed and dated this April 5, 2018

Kathy E. Emery

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Certificate of Service

I, Kathy E. Emery, hereby certify, that a true and correct copy of the foregoing was served by U.S. Mail on April 6, 2018 on all counsel or parties of record on the Service List below.

Kathy E Emery
Signature of Filer

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