UNITED STATED DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

BARBARA LAWRENCE CONE, individually and on behalf of all others similarly situated, Plaintiff, v. AMERICAN AIRLINES GROUP INC., AMERICAN AIRLINES, INC., DELTA AIRLINES, INC., SOUTHWEST AIRLINES CO., UNITED AIRLINES, INC., AND UNITED CONTINENTAL HOLDINGS, INC. Defendants.	Case No. 1:15-cv-728 **COMPLAINT – CLASS ACTION** JURY TRIAL DEMANDED

I. INTRODUCTION

1. Plaintiff Barbara Lawrence Cone ("Plaintiff" or "Cone"), individually and on behalf of all other similarly situated, brings this class action against American Airlines Group Inc. ("AAG"), American Airlines, Inc. ("American"), Delta Air Lines, Inc. ("Delta"), Southwest Airlines Co. ("Southwest"), United Airlines, Inc. ("United"), and United Continental Holdings, Inc. ("UCH") (collectively "Defendants"), for conspiring to fix, raise, maintain, and stabilize the price of airline tickets in the United States, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. The following allegations are

based on personal knowledge as to Plaintiff's own conduct and are made on information and belief as to all other matters based on an investigation by her counsel.

2. Defendants in this action own or operate the four largest commercial airlines in the United States, and collectively control approximately 80% of the domestic airline market. Beginning at least as early as January 1, 2010, Defendants have acted in concert to artificially inflate and maintain the cost of air travel throughout the United States by conspiring to limit the availability of air travel routes and the number of seats on passenger airplanes. Defendants have done so, at least in part, by signaling to each other that they intend to restrict expansion of travel routes and available seating, a practice that they refer to as "capacity discipline" in statements to the market. As explained by *The New York Times,* "capacity discipline" is "classic oligopoly-speak for limiting flights and seats, higher prices and fatter profit margins." James B. Stewart, *'Discipline' for Airlines, Pain for Fliers,* THE NEW YORK TIMES, June 11, 2015. Defendants have pressured each other to adhere to capacity discipline, and taken punitive measures when co-conspirators have sought to reduce prices or increase capacity beyond agreed levels.

3. As a result of maintaining capacity discipline, airfares in the United States have consistently increased on an inflation-adjusted basis, and in 2014 reached their highest levels in more than a decade. These price increases occurred despite significant declines in the price of jet fuel, Defendants' single largest component cost. Higher ticket

prices and lower fuel costs have allowed Defendants to generate record-breaking supracompetitive profits.

4. Based upon Defendants' unprecedented profits and the resulting harm caused to consumers, two prominent United States Senators have called for an official investigation. In so doing Senator Charles Schumer of New Yorkstated that Defendants' conduct is "[p]articularly concerning," noting that "ticket prices should not shoot up like a rocket and come down like a feather" in response to jet fuel price fluctuations.[1] Similarly, Senator Richard Blumenthal of Connecticut called the coordination of fares and capacity "highly troubling" as "[c]onsumers are paying sky-high fares and are trapped in an uncompetitive market with a history of collusive behavior."[2]

5. The U.S. Department of Justice (the "DOJ") recently began an investigation focused on whether Defendants have colluded to raise airfares above competitive levels. Defendants confirmed the DOJ's investigation on July 1, 2015, admitting that they had received letters from the DOJ demanding information regarding their communications discussing capacity.[3]

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[1] *Schumer Urges the Departments of Justice and Transportation to Investigate, On Behalf of American Fliers, The Cause of Sky-High Prices; Air Travelers Paying 10% More This Year Than 5 Years Ago,* OFFICE OF SENATOR CHARLES E. SCHUMER, December 14, 2014, available at: http://www.schumer.senate.gov/newsroom/press-releases/schumer-as-fuel-costs-plummet-airfares-for-nyers-this-holiday-season-remain-extremely-high_calls-for-federal-investigation-into-why-dramatically-lower-fuel-costs-and-record-airline-profits-are-not-being-passed-on-to-consumers-through-lower-fares, last accessed August 30, 2015.

[2] *Citing Unprecedented Consolidation within Airline Industry, Blumenthal Urges DOJ to Investigate Potential Anti-Competitive, Anti-Consumer Behavior and Misuse of Market Power,* OFFICE OF SENATOR RICHARD BLUMENTHAL, June 17, 2015, available at: http://www.blumenthal.senate.gov/newsroom/press/release/citing-unprecedented-consolidation-within-airline-industry-blumenthal-urges-doj-to-investigate-potential-anti-competitive-anti-consumer-behavior-and-misuse-of-market-power, last accessed August 30, 2015.

[3] David Koenig, *et al.*, *US Probing Possible Airline Collusion that Kept Fares High,* ASSOCIATED PRESS, July 1, 2015; Drew Harwell, *et al.*, *Justice Dept. Investigating Potential Airline Price Collusion,* THE WASHINGTON POST, July 1, 2015.

6. Plaintiff is a purchaser of airline tickets from one or more of the Defendants. She brings this action on behalf of a nationwide class of persons who purchased airline tickets from Defendants between January 1, 2010 and the present (the "Class Period"). Plaintiff seeks damages and injunctive relief pursuant to federal antitrust laws as well as the costs of suit, including reasonable attorneys' fees, for the injuries that she and all other similarly situated purchasers sustained as a result of the unlawful conduct of Defendants.

II. JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1337, and under Section 4(a) and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26, because this is a class action asserting claims for injunctive relief, treble damages, reasonable attorneys' fees, and costs under the federal antitrust laws.

8. Venue in this District is proper under 28 U.S.C. § 1391(b), (c), and (d), and under Sections 4(a) and 12 of the Clayton Act, 15 U.S.C. §§ 15 and 22. During the Class Period one or more of the Defendants resided in, transacted business in, were found in, or had agents in this District, and a substantial part of the events giving rise to the Plaintiff's claims occurred in this District.

9. The Court has personal jurisdiction over Defendants by virtue of their nationwide contacts and other activities. Each Defendant has substantial, daily operations through airports located in North Carolina, including flights through, into, and out of this District.

III. INTERSTATE TRADE AND COMMERCE

10. Defendants, or their subsidiaries, sold tickets for domestic US air travel during the Class Period in a continuous and uninterrupted flow of interstate commerce, including through and into this judicial district.

11. They collectively controlled a dominant percentage or the market for domestic air travel in the United States.

12. Defendants' business activitieswere intended to have and have had a direct, substantial, and reasonably foreseeable anti-competitive effect upon interstate trade and commerce in the United States.

13. Defendants' business conduct caused antitrust injury in the United States.

14. The restraints alleged herein have deprived Plaintiff and the Class of the benefits of free and open competition in the purchase of domestic air passenger transportation services throughout the United States.

IV. PARTIES

15. Plaintiff Barbara Lawrence Cone is a resident of New York, New York. Ms. Cone purchased airline tickets on numerous occasions throughout the Class Period from U.S. Airways, now a subsidiary of DefendantAAG as well as from Defendant Delta, for travel to this District. As a result of Defendants' anticompetitive conduct, Ms. Cone paid more for her airline tickets than she otherwise would have. As a result, Ms. Cone has been damaged in her business or property within the meaning of Section 4 of the Clayton

Act, 15 U.S.C. § 15, and is threatened with continuing and impending future injury to her business or property within the meaning of Section 16 of the Clayton Act, 15 U.S.C. § 26, should Defendants' violations continue unabated. Ms. Cone has therefore suffered antitrust injury and has antitrust standing to seek redress for Defendants' violations.

16. Defendant AAG is a Delaware corporation headquartered at 4333 Amon Carter Blvd., Fort Worth, Texas. AAG is a holding company, with Defendant American and US Airways Group, Inc. ("US Airways") among its subsidiaries. AAG, through its subsidiaries, offers flights to approximately 339 destinations, including flights to and from this District.

17. Defendant American is a Delaware corporation headquartered at 4333 Amon Carter Blvd., Fort Worth, Texas. American offers passenger transportation services throughout the United States, including flights to and from this District.

18. Defendant Delta is a Delaware corporation headquartered at 1030 Delta Boulevard, Atlanta, Georgia. Delta offers air passenger transportation services throughout the United States, including flights to and from this District.

19. Defendant Southwest is a Texas corporation headquartered at 2710 Love Field Drive, Dallas, Texas. Southwest offers air passenger transportation services throughout the United States, including flights to and from North Carolina.

20. Defendant United is a Delaware corporation headquartered at 233 South Wacker Drive, Chicago, Illinois. United offers air passenger transportation services throughout the United States, including flights to and from this District.

21. Defendant UCH is a Delaware corporation headquartered at 233 South Wacker Drive, Chicago, Illinois. UCH is a holding company, with Defendant United as its primary subsidiary. UCH, through its subsidiaries, offers flights to approximately 373 destinations, including flights to and from this District.

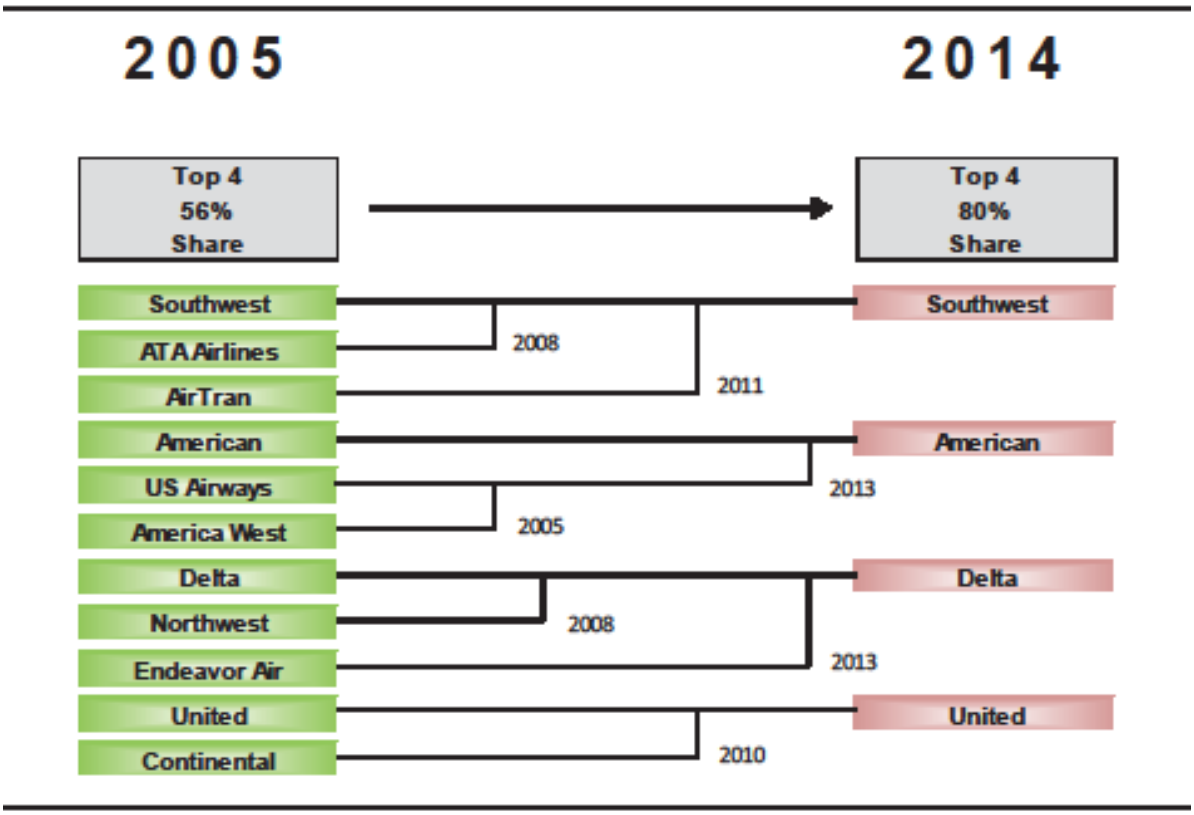
IV. FACTUAL ALLEGATIONS

A. Background

22. The domestic airline industry, composed of flights within the 50 states, the District of Columbia, Puerto Rico and the US Virgin Islands, is highly concentrated and dominated by four major companies: American, Delta, Southwest, and United.

23. Defendants have obtained their large market share partly through a series of recent mergers and acquisitions. Most notable among these referenced mergers and acquisitions are Delta's 2008 acquisition of Northwest Airlines, Inc., United's 2010 merger with Continental Airlines, Inc., Southwest's acquisition of AirTran Holdings, Inc. in 2011, and American's merger with US Airways in 2013.[4] Together Defendants control 80% of the domestic market for air travel.

[4] Fiona Scott Morton, *et al.*, *Benefits of Preserving Consumers' Ability to Compare Airline Fares*, at 35, May 19, 2015, available at http://www.traveltech.org/wp-content/uploads/2015/05/CRA.TravelTech.Study_.pdf.



Source: Department of Transportation, Database 1B Origin & Destination Survey for ticketing carriers Q2 2005 and 2014.

24. New market entrants have not emerged to fill the competitive void left by Defendants' mergers. According to a study prepared for the Travel Technology Association (the "TTA"), the "only new domestic airline to enter [the market] during this decade was Virgin America" and "[o]utside of the largest four U.S. airlines [*i.e.,* Defendants], the share of the remaining smaller carriers, including the remaining low cost carriers, has been stagnant" over the last ten years.[5]

25. The lack of new competitors is largely the product of significant barriers to entry in the airline industry. In particular, new entrants need access to takeoff and landing slots, airport gates, and other airport services. However, these necessary facilities are

[5] *Id.* at 36-37.

typically regulated by exclusive contracts between airports and major airlines (such as Defendants), which force new entrants to pay sublease fees to their competitors in order to gain access to airports.[6] New entrants are also prevented from gaining customers as a result of the incumbent airlines' large and dense network of covered cities.[7]

26. Today, Defendants maintain an overwhelming hold on the domestic airline industry, accounting for approximately 80% of the market.[8]

B. DOJ's Concerns About Anticompetitive Conduct.

27. The DOJ's concerns about the potential for abuse of market power prompted its challenge of the 2013 merger between American and US Airways.[9]The DOJ averred that the "structure of the airline industry is already conducive to coordinated behavior."[10]The DOJ pled that the top airlines "closely watch the pricing moves of their competitors," and "[w]hen one airline 'leads' a price increase, other airlines frequently respond by following with price increases of their own."[11]Airlines seeking to reduce price are punished by so-called "cross-market initiatives" or "CMIs." The DOJ explained, providing examples:

> A CMI occurs where two or more airlines compete against each other on multiple routes. If an airline offers discounted fares in one market, an affected competitor often responds with discounts in another market – a CMI – where the discounting airline prefers a higher fare. CMIs often cause an

[6] *Id.* at 40.
[7] *Id.* at 40-41.
[8] *Id.* at 2.
[9] *United States v. US Airways Group, Inc.*, No. 1:13-cv-1236-CKK (D.D.C.).
[10] *Id.*, ECF No. 73 at ¶ 41.
[11] *Id* at ¶ 42.

> airline to withdraw fare discounts. For example, in the fall of 2009, US Airways lowered fares and relaxed restrictions on flights out of Detroit (a Delta stronghold) to Philadelphia. Delta responded by offering lower fares and relaxed restrictions from Boston to Washington (a US Airways stronghold). US Airways' team lead for pricing observed Delta's move and concluded "[w]e have more to lose in BOSWAS . . . I think we need to bail on the [Detroit-Philadelphia} changes."[12]

28. The DOJ's complaint further pled an example of direct communication between US Airways' Chief Executive Officer and the Chief Executive Officer of another airline in an effort to pressure that airline to abandon a rewards promotion:

> In 2010, one of US Airways' larger rivals extended a "triple miles' promotion that set off a market share battle among legacy carriers. The rival airline was also expanding into new markets and was rumored to be returning planes to its fleet that had been mothballed during the recession. US Airways' CEO complained about these aggressive maneuvers, stating to his senior executives that such actions were "hurting [the rival airline's] profitability – and unfortunately everyone else's." US Airways senior management debated over email about how best to get the rival airline's attention and bring it back in line with the rest of the industry. In that email thread, US Airways' CEO urged the other executives to "portray [ ] these guys as idiots to Wall Street and anyone else who'll listen." Ultimately, to make sure the message was received, US Airways' CEO forwarded the email chain--and its candid discussion about how aggressive competition would be bad for the industry--directly to the CEO of the rival airline.[13]

[12] *Id.* at ¶ 43.
[13] *Id.* at ¶ 45.

29. The litigation brought by the DOJ against American and US Airways was settled, requiring the combined entity to divest slots, gates, and ground facilities at certain airports.[14]

30. The divestiture did nothing to curb Defendants' anticompetitive conduct.Without effective limits on their behavior, Defendants have continued their anticompetitive conduct with impunity, and have ultimately raised airfares to supracompetitive levels.

C. Capacity Discipline –Classic Oligopoly-Speak.

31. Defendants and other airlines euphemistically refer to route and seat restrictions as "capacity discipline," and signal to each other that they intend to maintain such capacity discipline. As explained by *The New York Times*, "'[d]iscipline' is classic oligopoly-speak for limiting flights and seats, higher prices and fatter profit margins."[15]

32. For example, while announcing 2014 profits of $2 billion, United's Chairman, President, and Chief Executive Officer, Jeffrey Smisek stated that United "will absolutely not lose [its] capacity discipline," which , Smisek claimed, is "very healthy for [United] and very healthy for the industry."[16]

33. Additionally, during the June 2015 meeting of the International Air Transport Association (the "IATA"), the top executives of numerous airlines, including Defendants, made public statements reaffirming their commitment to "capacity

[14] *Id.*, ECF Nos. 169, 170.
[15] James B. Stewart, *'Discipline' for Airlines, Pain for Fliers,* THE NEW YORK TIMES, June 11, 2015.
[16] Thomas Frank, *Airline Profits Soar Yet No Relief for Passengers,* USA TODAY, January 27, 2015.

discipline." Delta's President, Ed Bastian, stated that Delta is "continuing with the discipline that the marketplace is expecting."[17]American's Chairman and Chief Executive Officer, Douglas Parker, "said the airlines had learned their lessons from past price wars."[18] Non-defendant Air Canada's Chief Executive Officer, Calin Rovinescu, noted that "[p]eople were undisciplined in the past, but they will be more disciplined this time."[19]

34. Southwest's Chief Executive Officer, Gary Kelly used the June 2015 IATA meeting to "reassure investors [Southwest] isn't going rogue" after "coming under fire" at the meeting for previous comments made regarding Southwest's plans to raise capacity.[20] Kelly calmed investor and competitor fears, stating that Southwest had "taken steps this week to begin pulling down our second half 2015 to manage our 2015 capacity growth, year-over-year[.]"[21]

35. *The New York Times* has since observed that "it wouldn't be much of a stretch to interpret [the above comments] as *thinly veiled invitations to restrict capacity increases to keep ticket prices high*."[22]

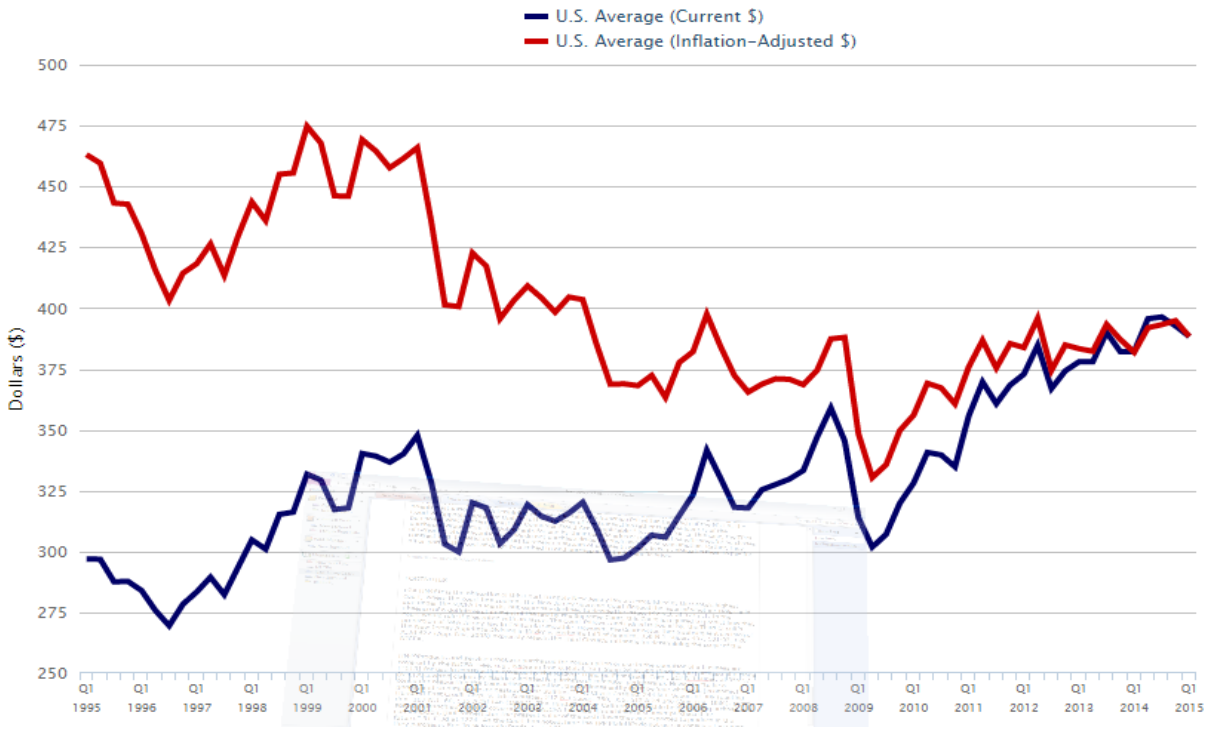
36. Defendants have maintained their collusive restriction on capacity despite overall growth in the U.S. economy. Indeed, between January 2010 and January 2014,

[17] James B. Stewart, *'Discipline' for Airlines, Pain for Fliers,* THE NEW YORK TIMES, June 11, 2015.
[18] *Id*.
[19] *Id*.
[20] *Id.*
[21] *Id.*
[22] *Id.*

capacity on domestic flights remained virtually flat, even though the U.S. economy grew an average of 2.2% per year during that time.

37. Defendants' conduct has further led to supracompetitive increases in airfares between 2009 and 2014, with the average domestic airfare increasing an inflation-adjusted 13%. Over the last year, new fees imposed upon travelers have enabled Defendants to gross nearly $6.6 billion;$3.6 billion in baggage fees and $3 billion in reservation-change fees.[23]

38. As reflected in the following chart prepared by the Department of Transportation, domestic airfares have risen steadily since 2009.[24]



[23] *2014 Airline Financial Data, Table 1,* U.S. DEPARTMENT OF TRANSPORTATION, BUREAU OF TRANSPORTATION STATISTICS, http://www.rita.dot.gov/bts/press_releases/bts022_155, last viewed August 28, 2015.
[24] *National-Level Domestic Average Fare Series,* U.S. DEPARTMENT OF TRANSPORTATION, BUREAU OF TRANSPORTATION STATISTICS, http://www.rita.dot.gov/bts/national/chart, last viewed August 28, 2015.

39. Although there have been some fluctuations in airfares on a quarterly basis (as shown in the above chart), average airfares in 2014 were the highest on an inflation-adjusted basis since 2003.[25]

Year	2014 constant dollars*			Current dollars		
	Average Fare ($)	Percent Change		Average Fare ($)	Percent Change	
		From Previous Year (%)	Cumulative from 1995 (%)		From Previous Year (%)	Cumulative from 1995 (%)
1995	454			292		
1996	418	-7.9	-7.9	277	-5.3	-5.3
1997	424	1.4	-6.7	287	3.8	-1.7
1998	450	6.2	-0.9	309	7.6	5.8
1999	461	2.4	1.5	324	4.7	10.8
2000	467	1.3	2.9	339	4.7	16.0
2001	429	-8.2	-5.6	321	-5.4	9.7
2002	411	-4.1	-9.4	312	-2.6	6.9
2003	406	-1.3	-10.6	315	1.0	7.9
2004	383	-5.7	-15.7	305	-3.2	4.5
2005	373	-2.7	-17.9	307	0.6	5.2
2006	386	3.6	-15.0	329	6.9	12.4
2007	372	-3.6	-18.1	325	-1.0	11.3
2008	381	2.4	-16.1	346	6.5	18.5

[25] *Annual U.S. Domestic Average Itinerary Fare in Current and Constant Dollars*, U.S. DEPARTMENT OF TRANSPORTATION, BUREAU OF TRANSPORTATION STATISTICS, http://www.rita.dot.gov/bts/airfares/programs/economics_and_finance/air_travel_price_index/html/AnnualFares.html (last viewed August 28, 2015).

2009	343	-10.1	-24.5	310	-10.4	6.2
2010	365	6.5	-19.6	336	8.3	15.0
2011	383	4.9	-15.6	364	8.3	24.5
2012	387	0.9	-14.9	375	3.0	28.3
2013	389	0.6	-14.3	382	1.9	30.7
2014	391	0.6	-13.8	392	2.5	34.1

SOURCE: Bureau of Transportation Statistics
* Rate calculated using Bureau of Labor Statistics Consumer Price Index.
Note: Percent change based on unrounded numbers

40. The inflated prices, combined with the newly added fees, have led to record profits for Defendants, with U.S. airlines earning a combined $19.7 billion in the previous two years.

41. The record profits were earned in large part by Defendants' failure to reduce prices in response to recent dramatic decreases in the price of jet fuel, despite that being their single greatest expense. For instance, between the third quarter of 2013 and the third quarter of 2014, jet fuel prices declined by 24.4% and other operating expenses

declined by 2.9%, but airfares increased during that time by an average of 0.5%.[26]

Table 9: Rising Airline Fares But Declining Airline Costs

	2013 Q4	2014 Q4	% Change
Average Fare[1]	$0.157	$0.158	0.5%
Jet Fuel[2]	$2.890	$2.186	-24.4%
Non-Fuel Operating Expenses[1]	$0.162	$0.158	-2.9%

[1] Figures reflect amounts per passenger mile.

[2] Figures reflect U.S. Gulf Coast Jet Fuel Spot Price per Gallon.

Source: Department of Transportation Form 41 Schedules T-1, P-1.2, P-6; Department of Energy, Energy Information Agency.

42. Jet fuel prices have continued to decline, sinking to $1.94 per gallon in April 2015, a 34% decrease from the prior year.[27] Nevertheless, that decrease in costs was not accompanied by a comparable decrease in fares charged to consumers.[28] The lack of a price decline to follow costs strongly suggests a coordinated effort by Defendants to maintain prices at supracompetitive levels at the expense of their customers.

43. To this point, U.S. Senator Charles Schumer recently stated that "[i]t's hard to understand, with jet fuel prices dropping by 40 percent since last year, why ticket prices haven't followed."[29] Similarly, Fiona Scott Morton, a Professor of Economics at the Yale University School of Management, who authored the TTA's study on airline

[26] Fiona Scott Morton, *et al.*, *Benefits of Preserving Consumers' Ability to Compare Airline Fares*, at 53, May 19, 2015, http://www.traveltech.org/wp-content/uploads/2015/05/CRA.TravelTech.Study_.pdf
[27] David Koenig, *et al.*, *US Probing Possible Airline Collusion that Kept Fares* High, ASSOCIATED PRESS, July 1, 2015.
[28] Drew Harwell, *et al.*, *Justice Dept. Investigating Potential Airline Price Collusion*, THE WASHINGTON POST, July 1, 2015.
[29] *Id.*

competition, stated that Defendants' ability to set prices significantly above costs has been "great for the industry but not for consumers."[30]

44. On December 14, 2014, Senator Schumer asked authorities to investigate "why airfares are extremely high, despite record profits for the airlines and rapidly declining fuel costs."[31] Senator Schumer highlighted that is was "[p]articularly concerning . . . that some airlines are still charging fuel surcharges and other add-ons to ticket prices, even in these profitable times, which the airlines have always justified by their thin margins and limited profitability."[32] The Senator further asserted that it was "curious and confounding that ticket prices are sky-high and defying economic gravity," and that the "industry often raises prices in a flash when oil prices spike, yet they appear not to be adjusting for the historic decline in the cost of fuel; ticket prices should not shoot up like a rocket and come down like a feather."[33]

45. Connecticut Senator Richard Blumenthal has similarly requested an investigation of Defendants' unreasonable restraints on trade. In a release issued on June 17, 2015, Senator Blumenthal criticized Defendants' repeated references to "discipline" during the IATA meeting earlier that month, noting that "most airlines have traditionally viewed capacity reductions as highly valuable way to artificially raise fares and boost profit margins."[34] The Senator added that the "public display of strategic coordination is

[30] James B. Stewart, *'Discipline' for Airlines, Pain for Fliers,* THE NEW YORK TIMES, June 11, 2015.
[31] See Note 1 *supra.*
[32] *Id.*
[33] *Id.*
[34] See Note 2 *supra*.

highly troubling" as "[c]onsumers are paying sky-high fares and are trapped in an uncompetitive market with a history of collusive behavior."[35]

46. On July 1, 2015, less than one month after the IATA meeting at which Defendants repeatedly signaled their ongoing collusion on "capacity discipline," the Associated Press reported that the DOJ had initiated an investigation into whether Defendants have conspired to maintain high fares. According to that report, the DOJ issued letters to Defendants on June 30, 2015 "demand[ing] copies of all communications the airlines had with each other, Wall Street analysts and major shareholders about their plans for passenger-carrying capacity, or 'the undesirability of your company or any other airline increasing capacity.'"[36]Moreover, the DOJ "asked each airline for its passenger-carrying capacity both by region, and overall, since January 2010."[37]

47. A spokeswoman for the DOJ confirmed that it is investigating potential "unlawful coordination" among certain airlines, but did not provide additional details.[38]

48. Representatives from each Defendant have confirmed that they are being targeted by the DOJ's investigation.[39]

49. Industry observers praised the DOJ's decision to investigate Defendants. On July 13, 2015, the TTA "applaud[ed] the Department of Justice for its interest in protecting air travel consumers" as "[t]here is less competition in air travel due to carrier

[35] *Id.*
[36] David Koenig, *et al.*, *US Probing Possible Airline Collusion that Kept Fares* High, ASSOCIATED PRESS, July 1, 2015.
[37] *Id.*
[38] *Id.*
[39] *Id.*

consolidation."[40] In addition, Diana Moss, the President of the American Antitrust Institute, stated that the investigation "is a long time coming" due to Defendants' signals "to each other that it was in their joint interest to keep capacity tight and to keep prices high."[41] Similarly, on July 14, 2015, *The Economist* wrote that "something should be done to break [the status quo]" of the dominance that Defendants hold in the air passenger transport market, and highlighted that consolidation has been followed by higher prices in "big hub" airports such as Philadelphia International Airport, where airfares have "gone from 4 percent below average to 10 percent above it" between 2005 and the present.[42]

VI. CLASS ACTION ALLEGATIONS

50. Plaintiff brings this action pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following Class:

> All persons and entities whopurchased aticket for air travel within the United States from one or more of the Defendants and/or their parents, subsidiaries, or affiliates between January 1, 2010 and the present (the "Class Period").

51. Excluded from the Class are Defendants, their corporate parents, subsidiaries, and affiliates, and their officers, directors, legal representatives, successors, and assigns, all governmental entities, and any judges or justices assigned to hear any aspect of this action.

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[40] *Recent Carrier Actions Threaten Independent Distribution of Travel for Millions of Consumers; DOJ Opens Investigation into Airline Practices,* THE TRAVEL TECHNOLOGY ASSOCIATION, July 13, 2015. http://www.traveltech.org/interests-of-air-travel-consumers-continue-to-be-joepardized/.

[41] Drew Harwell, *et al.*, *Justice Dept. Investigating Potential Airline Price Collusion*, THE WASHINGTON POST, July 1, 2015.

[42] *Airlines in America: No Choice,* THE ECONOMIST, July 14, 2015.

52. The Class is so numerous that joinder of all members is impracticable. While Plaintiff does not know the exact number of Class members, which information is in the exclusive possession and control of Defendants, Plaintiff nevertheless believes, based upon publicly available information and the nature of the trade and commerce involved, that there are millions of Class members geographically disbursed throughout the United States..

53. There are question of law or fact common to the Class, including but not limited to the following:

a. whether Defendants engaged in a conspiracy to raise, fix, stabilize, and maintain the price of domestic airfare in the United States;

b. whether Defendants conspired to restrict the supply of seats available on flights within the United States or otherwise shared material, non-public information, and allocated markets and customers, and committed further and additional conduct in support of the conspiracy;

c. the duration and extent of the conspiracy;

d. whether each Defendant was a participant in the conspiracy;

e. whether the conspiracy had the effect of artificially inflating airfares in the United States during the Class Period;

f. whether Defendants' conduct caused injury to the Class;

g. whether Defendants' actions violated Section 1 of the Shearman Act;

h. whether Class members are entitled to injunctive relief;

i. whether Class members are entitled to damages as a result of Defendants' conduct; and

j. The appropriate class-wide measure of damages.

54. These common questions of law and fact predominate over any questions affecting only individual members of the Class.

55. Plaintiff's claims are typical of the claims of the Class. As alleged herein, Plaintiff and the Class members each purchased a ticket for domestic air travel directly from one or more of the Defendants and sustained damages caused by the same course of unlawful conduct by Defendants and their co-conspirators.

56. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff is a member of the Class she seeks to represent. She isready, willing, and ableto serve the Class in a representative capacity and to perform all of the obligations and duties material thereto.

57. Plaintiff's interests are co-extensive with, and not antagonistic to, those of the other Class members, and she has no interests that would conflictwith the interests of the other members of the Class.

58. Plaintiff has engaged the services of counsel who are highly experienced in prosecution of antitrust and other class and complex, multi-party actions. Counsel will assert and protect the rights of the members of the Class.

59. Class action status is warranted under Rule 23(b)(2) because Defendants have acted on grounds generally applicable to the Class, thereby making appropriate an

award of final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

60. Class action status is also warranted under Rule 23(b)(3) because questions of law or fact common to the members of the Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

61. The interest of Class members in individually controlling the prosecution of separate actions is theoretical and not practical. The Class has a high degree of similarity and is cohesive. Prosecution of this action through multiple individuals would be financially impracticable if not impossible, and treatment as a class action will permit a large number of similarly situated individuals to adjudicate common claims in a single forum efficiently and without the duplication of effort and expense, both for the judicial system and for the parties, that would be engendered by individual actions.

62. Plaintiff anticipates no difficulty in the management of this matter as a class action.

63. The Class is easily and clearly definable, and records identifying class members likely exist in Defendants files or those of their co-conspirators.

VII. TOLLING OF THE STATUTE OF LIMITATIONS

64. Plaintiff and the members of the Class did not discover, and could not have discovered through the exercise of reasonable diligence, the existence of the conspiracy alleged herein until on or about June 7, 2015, when the IATA began its annual meeting at

which Defendants publicly spoke about their commitment to "capacity discipline" and pressured Southwest to curtail its planned capacity expansion.

65. Because Defendants' conspiracy was kept secret until June 2015, Plaintiff and the members of the Class before that time were unaware of Defendants' unlawful conduct alleged herein, and they reasonably did not know before that time that they were paying supracompetitive airfares throughout the United States during the Class Period.

66. Defendants' collusive and anticompetitive behavior alleged herein was wrongfully concealed and carried out in a manner that precluded detection. Moreover, Defendants, until recently, have not made clear public signals of their collusive intent when discussing capacity discipline. Plaintiff and the Class therefore reasonably considered the market to be well-regulated and competitive throughout the Class Period.

67. Due to Defendants' successful concealment of their conspiracy, all applicable statutes of limitations affecting the claims of Plaintiff and the Class have been tolled.

VIII. CLAIM FOR VIOLATION OF THE SHERMAN ACT

68. Plaintiff repeats and realleges the allegations in the proceeding paragraphs as if fully set forth herein.

69. Defendants entered into and engaged in a combination or conspiracy in restraint of trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

70. Beginning at least as early as January 1, 2010, and continuing through the present, the exact dates being unknown to Plaintiff, Defendants and their co-conspirators,

by and through their officers, directors, employees, agents or other representatives, entered into and participated in a continuing agreement, understanding, and conspiracy in restraint of trade to artificially fix, raise, maintain, and stabilize airfares in the United States.

71. Defendants' conspiratorial agreement can be inferred from, *inter alia:*

a. Their participation and influence in the airline ticket market;

b. Their significant market power, both on an individual and joint basis;

c. Each Defendant's strong motive and opportunity to collude;

d. Their behavior, which if undertaken unilaterally, would be contrary to each Defendant's economic self-interest, since their behavior did not lead to pro-competitive efficiencies, and because it would have been irrational for one Defendants to unilaterally engage in ticket availability limitations and price increases;

e. The anticompetitive effects of Defendants' agreement; and

f. The lack of evidence to explain Defendants' behavior other than as an agreement to restrain trade and raise airfares.

72. In furtherance of the unlawful conspiracy, Defendants and their co-conspirators have committed overt acts, including, *inter alia:*

a. Agreeing to coordinate and fix airfares at supracompetitive levels throughout the United States;

b. Signaling to each other that they remain dedicated to "capacity discipline" in order to maintain coordinated restrictions on airline ticket availability;

c. Compelling each other to maintain "capacity discipline";

d. Agreeing to eliminate potential competitors in the market for airline tickets; and

e. Agreeing not to compete with each other on price and airline ticket availability.

73. Defendants' anti-competitive acts were intentionally directed at the domestic market for airline tickets and had a substantial and foreseeable effect on interstate commerce throughout the United States.

74. Defendants' conspiratorial acts and combinations have harmed competition and caused unreasonable restraints of trade in the airline ticket market. Defendants' combination and conspiracy in restraint of trade had the following effects, among others:

a. Price competition in the domestic airline ticket market has been restrained, suppressed, and /or eliminated;

b. Prices for domestic airline tickets sold by Defendants have been fixed, raised, maintained, and stabilized at artificially high, supracompetitive levels throughout the United States; and

c. Plaintiff and the members of the Class have been deprived of the benefits of free and open competition.

75. Defendants and their co-conspirators engaged in the activities described above for the purpose of effectuating unlawful arrangements to fix, raise, maintain, and stabilize airfares.

76. The conduct of Defendants and their co-conspirators constitutes a *per se* violation of Section 1 and 3 of the Sherman Act, 15 U.S.C. §§ 1, 3.

77. As a direct, material, and proximate result of Defendants' unlawful agreement, understanding, combination, and conspiracy, Plaintiff and the members of the Class have been injured in their business and property, within the meaning of Section 4 of the Clayton Act, 15 U.S.C. § 15(a). Specifically, Plaintiff and the members of the Class have been harmed by being forced to pay higher prices for airline tickets than they otherwise would have paid in the absence of Defendants' conspiracy.

78. Plaintiff and the members of the Class are entitled to treble damages for Defendants' violations of Sections 1 and 3 of the Sherman Antitrust Act, pursuant to Section 4 of the Clayton Act, 15 U.S.C. § 15(a).

79. Pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26, Plaintiff and the members of the Class are also entitled to injunctive relief against Defendants, preventing and restraining further violations of the antitrust laws.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court enter judgment in favor of Plaintiff and the Class and against Defendants, and award the following relief:

a. That this action be certified as a class action pursuant to Fed. R. Civ. P. 23, appointing Plaintiff as the representative of the Class and her counsel as Class Counsel;

b. That the conduct alleged herein be declared, adjudged, and decreed an unreasonable restraint of trade or commerce in violation of Section 1 of the Sherman Act;

c. That Defendants be enjoined from committing further violations of the federal antitrust laws;

d. That Plaintiff and the members of the Class recover damages, to the maximum extent allowed, and that a joint and several judgment in favor of Plaintiff and the members of the Class be entered against Defendants in an amount to be proven at trial and automatically trebled pursuant to the federal antitrust law;

e. Costs of litigation;

f. Restitution and/or disgorgement of Defendants' ill-gotten gains, andthe imposition of an equitable constructive trust over all such amounts for the benefit of the Class;

g. Pre-and post-judgment interest; reasonable attorneys' fees; and

h. Such other and further relief as this Court may deem just and proper.

DEMAND FOR A JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff respectfully demands a trial by jury of all issues so triable.

Dated: September 3, 2015

Respectfully submitted,

/s/ David F. Meschan

David F. Meschan, NC Bar No. 2978
DAVID F. MESCHAN, PLLC
125 S. Elm Street, Suite 500
Greensboro, NC 27401
Telephone: (336) 500-0655
Facsimile: (336) 378-9968
Email: dmeschan@meschanlaw.com

Robert S. Kitchenoff
David H. Weinstein
WEINSTEIN KITCHENOFF & ASHER LLC
100 South Broad Street, Suite 705
Philadelphia, PA 19110-1061
Telephone: (215) 545-7200
Facsimile: (215) 545-6535
Email: kitchenoff@wka-law.com
Email: weinstein@wka-law.com