IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE DELTA/AIRTRAN BAGGAGE FEE ANTITRUST LITIGATION	)	CIVIL ACTION NO. 1:09-md-2089-TCB ALL CASES

DEFENDANTS' CONSOLIDATED REPLY BRIEF IN SUPPORT OF MOTIONS TO EXCLUDE CLASS CERTIFICATION TESTIMONY OF HAL SINGER

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To establish the predominance of common issues as required by Rule 23, Plaintiffs rely on Dr. Hal Singer's opinion that class members' injury and damages can be proven using common evidence. But the only method Dr. Singer devised to do so is to assume—but not prove—that each class member suffered a uniform impact of an average dollar amount. His method ignores how individualized the facts are, and shows nothing about whether any individual was injured.

Determining whether any individual suffered injury or damages requires analysis of the "but-for" world; that is, establishing whether the price a consumer paid, including the first bag fee, was higher for the flights he took than the but-for prices he would have paid with bundled pricing. There is no dispute that when airlines unbundle bag fees from base fares, they do so in numerous markets in which pricing is continually adjusted by airline inventory management systems, where even passengers on the same flight pay different fares based on variations in demand, time of purchase, and other factors. Dr. Singer does not account for how bag fees impact these individualized prices, and therefore cannot establish "but-for" prices for any individual, identify injured individuals, or calculate individual damages. His opinions on class certification do not address the task at hand.

In arguing to the contrary, Plaintiffs argue only collateral points. First, Plaintiffs incorrectly argue that the Court can forego a rigorous inquiry into the

predominance of common issues on injury and damages. The case law offers Plaintiffs no short cut to establish these class action requirements.

Second, Plaintiffs search for ways to excuse Dr. Singer's inability to prove individual injury using common evidence. Plaintiffs misapply indirect purchaser standing cases, even though Plaintiffs' problem here is the inability to prove injury in the first instance. Then, urging the Court to disregard the flaws in Dr. Singer's approach, Plaintiffs attempt to justify Dr. Singer's faulty analysis of changes in average fares. This too fails: *average* fares cannot demonstrate whether *individual* class members were injured.

Third, Plaintiffs fail to establish that individual damages can be determined on a classwide basis. Dr. Singer admits he estimates only "aggregate" damages for the class, and has no means to determine individual damages. Moreover, Dr. Singer ignores evidence that the available records will not reliably support his proposed method of excluding uninjured individuals from his damage calculations.

The limitations on Dr. Singer's analysis render his opinions unhelpful to the Court. His opinions on class certification must be excluded.

I. Because Plaintiffs rely on Dr. Singer for classwide proof of injury and damages, a *Daubert* examination is necessary.

Plaintiffs, conceding the Eleventh Circuit requires that expert opinions critical to class certification satisfy *Daubert* (Pls.' Mem. at 10), startlingly contend

that Dr. Singer's work is not necessary or critical to certification. However, Dr. Singer's reports are the *only* evidence Plaintiffs cite in their class certification briefing for common proof of injury and damages. (Dkt. 155 at 31, 33; Dkt. 269 at 17, 27-28, 31, 36; Dkt. 607 at 17, 19, 21, 23-24, 26.) Though Plaintiffs contend the Court only referred to Dr. Singer once in the vacated certification order, that one reference was the Court's observation that "Plaintiffs *rely* on their economic expert, Hal J. Singer," to satisfy Rule 23(b)(3)'s predominance requirement. (Dkt. 549 at 16.) Thus, Plaintiffs' class certification motion cannot be granted without resolving Defendants' *Daubert* motions on Dr. Singer's certification opinions.

Next, Plaintiffs suggest Dr. Singer's opinions warrant only "relaxed" scrutiny, because injury can be inferred at certification. That is not the law; there is no "relaxed measure of proof" for injury.[1] Courts will not simply infer that an entire class was injured by alleged price-fixing, particularly when the evidence shows prices did not move in uniform fashion, and some putative class members were unharmed or benefited by the conduct at issue.[2] Indeed, Plaintiffs cite

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[1] *In re Linerboard Antitrust Litig.*, 497 F. Supp. 2d 666, 676 (E.D. Pa. 2007) (contrasting fact of injury with measure of damages); *see also Jot-Em-Down Store (JEDS) Inc. v. Cotter & Co.*, 651 F.2d 245, 247-48 (5th Cir. 1981); *In re Lower Lake Erie Iron Ore Antitrust Litig.*, 998 F.2d 1144, 1176 (3d Cir. 1993).

[2] *See In re Hydrogen Peroxide Antitrust Litig.*, 552 F.3d 305, 322, 326 (3d Cir. 2008) (court may not "relax its certification analysis" in price-fixing cases); *see*

authorities recognizing that the "inference" of individual injury Plaintiffs advocate depends on a plaintiff first having proven the fact of injury as to the whole class.[3] Here, Plaintiffs have not attempted to prove classwide injury other than through Dr. Singer. Therefore, Rule 23 "commands" a "rigorous analysis" of his opinions.[4]

Seeking to downplay the rejection of Dr. Singer's certification opinions by other courts, Plaintiffs contend that in "none of the cited cases" did courts find Dr.

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also Robinson v. Tex. Auto. Dealers Ass'n, 387 F.3d 416, 423-24 (5th Cir. 2004) (no presumption that payment of surcharge constituted injury in price fixing case without proof that "bottom line" individually-set price rose due to alleged conduct); *Blades v. Monsanto Co.*, 400 F.3d 562, 570 (8th Cir. 2005) (refusing to presume class-wide impact given evidence some class members were unharmed); *Ala. v. Blue Bird Body Co.*, 573 F.2d 309, 324-28 (5th Cir. 1978) (price-fixing case involving "diverse" school bus market lacked the "factual simplicity" necessary to prove causation of damage to class); *In re Fla. Cement & Concrete Antitrust Litig.*, 278 F.R.D. 674, 686 (S.D. Fla. 2012) (evidence "overc[ame] any initial presumption of common impact").

[3] *In re Blood Reagents Antitrust Litig.*, No. 09-2081, 2015 WL 6123211, at *28 (E.D. Pa. Oct. 19, 2015) (quoting *Bogosian v. Gulf Oil Corp.*, 561 F.2d 434, 455 (3d Cir. 1977)) ("a court must rigorously analyze the evidence to determine whether *Bogosian* applies," under which an individual can "prove fact of damage" through a purchase if proof shows a conspiracy raised prices to all purchasers); Delta Mem. at 2 & n.5 (11th Circuit requires proof of injury to each individual).

[4] *Comcast Corp. v. Behrend*, 133 S. Ct. 1426, 1432-33 (2013) (to satisfy "demanding" predominance rule, "courts must conduct a 'rigorous analysis' to determine that 'damages are susceptible of measurement across the entire class.'"); *In re Blood Reagents Antitrust Litig.*, 783 F.3d 183, 187 (3d Cir. 2015) (the "rigorous analysis" required by *Comcast* "applies to expert testimony critical to proving class certification requirements"); *In re Rail Freight Fuel Surcharge Antitrust Litig.*, 725 F.3d 244, 255 (D.C. Cir. 2013) (Rule 23 "commands" a "hard look at the soundness of statistical models that purport to show predominance").

Singer failed to meet Rule 702/*Daubert* standards. (Pls.' Mem. at 6 n.6.) Not so. Three courts found Dr. Singer's opinions on predominance as to antitrust injury and damages to be unreliable, with one excluding his opinion under *Daubert* and two others concluding that his opinions were unsupported by any actual data after applying *Daubert*-like relevance and reliability standards.[5]

II. Dr. Singer assumes injury by ignoring benefits of unbundling.

To avoid individual injury issues, Dr. Singer disregards how unbundling benefits consumers. The law requires consideration of those benefits. As such, his predominance opinion is irrelevant and inadmissible.

A. The benefits of unbundling must be considered at the certification stage.

Plaintiffs again assert that if class members paid less for airfare after bag fees were implemented, those base fare reductions should be disregarded as irrelevant to injury and damages. To do so, Plaintiffs misuse the term "offset" to

[5] *Kamakahi v. Am. Soc'y for Reproductive Med.*, 305 F.R.D. 164, 179, 182 (N.D. Cal. 2015) (finding "Dr. Singer's reports are unreliable" and "not relevant" to certification because "his analysis does not reliably support his conclusion that impact or damages are subject to classwide proof"); *In re Photochromic Lens Antitrust Litig.*, MDL No. 2173, 2014 WL 1338605, at *23-24 (M.D. Fla. Apr. 3, 2014) (finding Dr. Singer's injury opinion to be a "theoretical assertion" that speculated on usability of needed data and ignored available data); *In re Fla. Cement*, 278 F.R.D. at 685-87 (finding the "entire basis for Dr. Singer's opinion is grounded on a faulty premise," and his damages model was unsupported by "any empirical analysis to test" whether it was "a plausible methodology").

conflate different antitrust doctrines, and rely on cases holding that a victim of price-fixing does not lose standing simply because he afterward receives some indirect, intangible, or remote benefit in other transactions.[6] But the base fare reductions ignored by Dr. Singer are not part of a separate transaction with a third party; they are part of the allegedly fixed price that he is supposedly analyzing. (*See* Singer Reply ¶¶ 22, 77 (describing the case as about whether class members "paid artificially inflated *prices for air travel*," or more in "*total airfare*") (emphasis added).) An antitrust plaintiff "cannot obtain damages without showing that he actually paid more than he would have paid in the absence of the violation."[7] As recognized by Plaintiffs' own authorities,[8] Plaintiffs must show

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[6] *See Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977) (rejecting defense that direct purchasers "passed-on" overcharges to indirect purchasers); *In re Nexium Antitrust Litig.*, 777 F.3d 9, 28-29 (1st Cir. 2015) (rejecting "passed-on" co-pay price increase argument as to "Group 2" insurers); *In re Elec. Books Antitrust Litig.*, 2014 WL 1282293, at *14-20 (S.D.N.Y. Mar. 28, 2014) ("offsets" involving benefit of wider availability of e-books did not "directly relate to the transactions at issue here" and were "too remote"); *Meijer, Inc. v. Abbott Labs.*, 251 F.R.D. 431, 435 (N.D. Cal. 2008) (indirect benefits arising from overcharges, such as increased cost-plus pricing passed on to end customers, was not relevant to antitrust injury).

[7] *City of Pittsburgh v. West Penn Power Co.*, 147 F.3d 256, 265 (3d Cir. 1998).

[8] *See, e.g., In re Air Cargo Shipping Servs. Antitrust Litig.*, No. 06-MD-1175, 2014 WL 7882100, at *54-55 (E.D.N.Y. Oct. 15, 2014) (approving expert model that "analyzed the 'all-in' prices, rather than the [challenged] surcharge increment in isolation, and therefore account[ed] for the possibility that damages were mitigated or precluded," and noting that "to be common evidence of impact, [a model] must at least attempt to segregate" those who paid all-in overcharges from those who did

that the price they paid for air travel, including bag fees, was higher than the price Plaintiff would have paid "but for" the alleged conspiracy—and that "but for" comparison must include any discount, rebate, surcharge, or other price component that makes up part of the price being analyzed.[9]

Plaintiffs also ignore that base fare effects are part of their own theory of the case. Plaintiffs allege a conspiracy to "increase prices" for "domestic airline passenger service" inclusive of the underlying fares—not fees alone. (Dkt. 53 ¶¶ 1, 28, 83.) Dr. Singer's opinion that class members were injured merely by paying a bag fee rather than based on paying an increased total price for air travel does not fit Plaintiffs' own allegations. Therefore, his opinion is inadmissible.[10]

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not); *Nexium*, 777 F.3d at 28-29 (taking price rebates and coupon pricing into account to determine whether "Group 1" and "Group 4" plaintiffs were injured).

[9] *Blades*, 400 F.3d at 570 (concluding impact was not susceptible to common proof when discounts or rebates sometimes offset alleged overcharges); *Robinson*, 387 F.3d at 423-24 (alleged conspiracy to fix surcharge injured buyers only if "bottom line" price for the vehicle, including "every tax, fee, and surcharge," was higher as a result of the alleged conduct); *Rail Freight*, 725 F.3d at 254 ("[T]he relevant issue is whether Class members paid higher *all-in rates* following Defendants' [allegedly collusive] imposition of new fuel surcharges.") (emphasis added); *Exhaust Unlimited, Inc. v. Cintas Corp.*, 223 F.R.D. 506, 513-14 (S.D. Ill. 2004) (predominance not satisfied in suit alleging conspiracy to fix environmental fee; assessing injury required inquiry into total price paid by customers, encompassing fees and all "compensating discounts or offsets").

[10] *See Comcast*, 133 S. Ct. at 1433; *Rail Freight*, 725 F.3d at 253; Delta Mem. at 4-5 (citing *Allison* and *Boca Raton Cmty. Hosp.*).

B. Dr. Singer's predominance analysis as to injury is incomplete and based on faulty assumptions.

Plaintiffs next try to bolster Dr. Singer's backup position: that even if base fare reductions are relevant, they did not occur. But Dr. Singer swept aside the issue of whether individuals experienced base fare reductions, and analyzed only aggregate effects. He did not analyze whether individuals suffered injury.

First, despite what Plaintiffs claim, Defendants dispute the methodology behind Dr. Singer's conclusion that Delta and AirTran did not reduce base fares after unbundling. Even Dr. Singer concedes that economic theory and literature suggest base fares could decrease after unbundling, and that other airlines reduced base fares when they unbundled bag fees.[11] Analyzing government pricing data, Defendants' experts confirmed that average Delta and AirTran base fares fell on many flights as compared to airlines that had not unbundled first bag fees. Though Defendants need not repeat the arguments here,[12] Dr. Singer's contrary view of average fare effects is based on unreliable techniques and cherry-picked data—flaws that pollute his regressions and justify exclusion on their own.

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[11] Singer Dep. Vol. 3 at 713:21-714:8 (describing theory); *id*. at 707:2-17, 723:16-724:10 (fares could drop whether fee changes were unilateral or coordinated); Singer Dep. Vol. 2 at 387:24-388:14 (conceding industry reduced base fares).

[12] *See, e.g.*, Delta's Opp. to Class Cert. (Dkt. 221) at 14-15; AirTran's Opp. to Class Cert. (Dkt. 222) at 12; AirTran's Supp. Opp. to Cert. (Dkt. 403) at 22; AirTran's Opp. to Motion to Exclude Gaier (Dkt. 636) at 12-25.

But even ignoring the methodological flaws in Dr. Singer's analysis, his analysis is beside the point. His study of *average* fares is inherently incapable of addressing the impact of the first bag fee on *individual* fares.[13] Even Plaintiffs' cases reject claims that proof of *damages in the aggregate* equates to proof that *each class member was injured*; the courts insist on evidence of the latter.[14] Here, there is no such evidence. Plaintiffs acknowledge there is evidence (which they call "anecdotal") that bag fee changes unleashed a variety of different effects on travelers' costs. (Pls.' Mem. at 4, 18, 24.) Moreover, although Plaintiffs assert Dr. Singer found no route-level variations in fare effects, Dr. Singer's regression did not analyze fares by route.[15] He further conceded the class could include persons who were not injured—persons who "paid less in the aggregate for air travel as a result of the challenged conduct." (Singer Reply ¶ 113.) Without proof of impact addressing each class member, Dr. Singer's predominance opinion is irrelevant.

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[13] *See* Singer Reply ¶¶ 27-30 (commenting on "average residuals" from Dr. Lee's regression analysis for Delta fares); ¶ 50 (opining on the fare effect on AirTran's "average roundtrip base fares").

[14] *In re Air Cargo*, 2014 WL 7882100, at *55 (expert's "global model" establishing "aggregate classwide damages … does not go to impact," which requires a showing each class member was overcharged; expert "fixe[d] this problem" with a new model adding "70,000 indicator variables for each customer").

[15] *See* Singer Dep. Vol. 3 at 739:1-740:3, 741:14-16 (conceding his regression model did not analyze fares at the route level); Singer Reply ¶ 65 (observing in a separate analysis a "substantial variation" in fare effects by route; AirTran lowered its fares versus other carriers on "some routes" and raised fares "on others").

C. Dr. Singer ignores how individual price variations arise.

Plaintiffs urge the Court to ignore the data showing what actually happened to fares and focus instead on whether AirTran or Delta made a conscious effort to reduce airfares at the time bag fees were instituted. Plaintiffs' argument simply confirms the blind spot in Dr. Singer's analysis: the airlines' computerized inventory management systems. These systems respond to reduced ticket demand by making cheaper fares available as the departure date approaches for a slow-selling flight; in that way, an airline that left its published fare unchanged for a flight might nevertheless realize a *lower* average fare on that flight as demand softens.[16] Bag-fee-driven reductions in demand on specific routes or flights, such as leisure routes, would spur each airline's inventory management system to boost the number of seats at lower fares without any intentional change in pricing strategy.[17] In specific cases, some passengers will obtain discount tickets that wouldn't have been available in the "but-for" world and will save more than the bag fee.[18] These automatic processes are driven by demand for each individual flight on each route on any given day; therefore, the number of passengers affected

[16] AirTran Mem. (Dkt. 399) at 20-21; Kasper Rpt. ¶¶ 7-15.

[17] Kasper Rpt. ¶ 13. Even Dr. Singer acknowledges airlines may have an incentive to reduce fares after unbundling bag fees. Singer Dep. Vol. 3 at 723:4-724:10.

[18] AirTran Opp. to Cert. (Dkt. 222) at 12 (describing $40 discount on fare—more than enough to cover the $15 bag fee—available to some because of unbundling).

on each flight inevitably varies among routes, flights, and each individual's time of purchase. Even a single plane may have both "winners" and "losers" on it.

But Dr. Singer refused to analyze how inventory management systems affected *individual* fares, based on his position that *average* fares had not declined.[19] This is a critical omission, as Dr. Singer's opinion that impact can be demonstrated using common evidence is based on the baseless assumption that bag fees affected all individual fares in a uniform way—indeed, by a uniform dollar amount. Dr. Singer may disagree with the other experts about how *average* fares changed, but it is undisputed that Dr. Singer never examined fare effects at the *individual* level, and never devised a formula for what an individual would have paid in the but-for world. Because there is no foundation for the key assumption behind Dr. Singer's conclusion that each class member's injury can be shown using common proof, his opinion on predominance is irrelevant and inadmissible.

III. Dr. Singer fails to establish that damages can be proven and uninjured class members identified using common evidence.

A. Dr. Singer admits he can only establish aggregate damages, which is insufficient to support class certification.

To assess predominance, courts must rigorously analyze whether individual damages can be calculated on a classwide basis, or will devolve into a series of

[19] Singer Reply ¶ 72; Singer Dep. Vol. 2 at 522-23.

mini-trials overwhelming common questions. *Comcast*, 133 S. Ct. at 1433. Plaintiffs concede that Dr. Singer estimates damages only for the class as a whole, not for individuals, and Dr. Singer admits he has never been asked to develop any method of allocating damages among the class members.[20] Relying mostly on cases predating *Wal-Mart* and *Comcast*,[21] Plaintiffs contend that aggregates and averages are sufficient, at least at the class certification stage.[22] But as even Plaintiffs' cases make clear, Plaintiffs cannot rely on aggregation unless they

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[20] Pls.' Mem. at 32; Singer Dep. Vol. 3 at 734; *see also* Singer Reply ¶¶ 92-121. Lacking sufficient data to reliably estimate bag fees *paid to Delta* when accounting for base fare reductions (*i.e.*, passenger data telling him how many Delta passengers checked a bag fee on every flight they took), Dr. Singer "extrapolated results from AirTran's database" and assumed those "results" applied to Delta fully as well. *See* Delta Mem. at 12 n.15. Plaintiffs claim Dr. Singer obtained the needed data, but that is false. Dr. Singer obtained updated total baggage fees data, but never obtained the data necessary to correct for his unsubstantiated and unjustified "extrapolation." *See* Singer Merits Rebuttal ¶¶ 148, 156.

[21] Many of Plaintiffs' cases held the court's inquiry was limited at the certification stage to assessing whether there was any damages methodology at all, a standard that did not survive *Wal-Mart* and *Comcast*. *See Klay v. Humana, Inc.*, 382 F.3d 1241, 1259 (11th Cir. 2004); *In re Terazosin Hydrochloride Antitrust Litig.*, 220 F.R.D. 672, 698 (S.D. Fla. 2004); *In re Static Random Access (SRAM) Antitrust Litig.*, No. 07-01819, 2008 WL 4447592, at *5-6 (N.D. Cal. Sept. 29, 2008).

[22] Proof of predominance cannot be deferred until after certification. *See Comcast*, 133 S.Ct. at 1434-35 & n.6; *Blood Reagents*, 783 F.3d at 185-86 (expert evidence does not demonstrate predominance simply because it "'could evolve to become admissible evidence' at trial"); *Hydrogen Peroxide*, 552 F.3d at 318, 321 ("party's assurance" that it "plans to meet the requirements is insufficient"); *Photochromic Lens*, 2014 WL 1338605, at *23 ("Dr. Singer's theoretical assertion [that antitrust impact can be established for all class members at a later time] is insufficient.").

establish that the damages suffered are by their nature formulaic.[23] For example, Plaintiffs rely heavily on *In re Pharmaceutical Industry Average Wholesale Price Litigation*, a case involving manipulation of published prices in an industry where virtually all transactions were priced on a published-index basis. 582 F.3d 156, 198 (1st. Cir. 2009). But aggregation and averaging cannot be used, as Plaintiffs propose here, to sweep aside individual damage issues or provide recovery that does not approximate individuals' actual loss.[24] Simply assuming away individual issues deprives Defendants of their due process right to defend claims brought by individuals who suffered no injury or damages. A predominance opinion premised on ignoring those defenses is invalid as a matter of law.[25]

Moreover, Dr. Singer's admission that he cannot allocate damages is fatal. Even Plaintiffs' cases recognize a proposed averaging technique must be capable of distributing damages to class members in the true amount of their damages.[26]

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[23] *Blue Bird*, 573 F.2d at 326 (averaging only permissible when "the fact of injury and damage breaks down in what may be characterized as 'virtually a mechanical task,' 'capable of mathematical or formula calculation'").

[24] AirTran Mem. at 19-20; Delta Mem. at 13; AirTran Opp. to Cert. (Dkt. 222) at 35-36; Delta Opp. to Cert. (Dkt. 221) at 35-37.

[25] *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2561 (2011) (a class "cannot be certified on the premise that [the defendant] will not be entitled to litigate its statutory defenses to individual claims"); Delta Mem. at 10 n.14; *id.* at 15 n.21.

[26] *In re Scrap Metal Antitrust Litig.*, 527 F.3d 517, 534 (6th Cir. 2008) (aggregate recovery appropriate because evidence showed each plaintiff suffered the same

Those cases recognize that an expert who relies on averaging without addressing the apportionment of damages is subject to *Daubert* exclusion.[27]

B. Dr. Singer does not show that his theoretical damages model can actually identify class members or assess damages.

Plaintiffs argue that the problems with Dr. Singer's aggregate damages model consist of trivial gaps in data, and do not require exclusion under *Daubert*.[28] But the issues here are not trivial. Dr. Singer cannot identify class members, even though he admits that is necessary for computing damages. (Delta Mem. at 13-14.) He further admits that calculating damages requires he be able to identify repeat travelers to balance the fees and fare reductions each individual experienced, but he never examined the airlines' passenger records to test whether he would be able to use them for that purpose. Thus, for example, he was unaware that AirTran's records lacked the unique identifiers his approach requires, leaving more than a

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percentage undercharge); *see In re Air Cargo*, 2014 WL 7882100, at *62 (finding evidence met the requirement that there be a "means to distribute damages to injured class members in the amount of their respective damages").

[27] *Lemon v. Harlem Globetrotters Int'l, Inc.*, 437 F. Supp. 2d 1089, 1104, 1106-07 & nn.10, 13 (D. Ariz. 2006) (collecting cases; holding aggregate damages testimony was irrelevant without methodology for apportioning damages to individuals).

[28] Pls.' Mem. at 39 (citing *In re Air Cargo*, 2014 WL 7882100, at *56, finding data gaps affecting 0.2% of transactions at issue did not affect inference of impact).

quarter of repeat travelers undetected.[29] Plaintiffs neither deny that Dr. Singer fails to identify repeat passengers, nor dispute how often those failures occur. Indeed, Plaintiffs tellingly concede that Dr. Singer cannot opine on the ascertainability of class members. (Pls.' Mem. at 28 n.31.)

The limitations in this data also belie Plaintiffs' contention that Dr. Singer could separate winners from losers using common evidence. While Dr. Singer claims he can separate winners from losers by searching passenger records for repeat travelers (Singer Reply ¶¶ 89-90), he cannot do so reliably as described above. Dr. Singer also identified no mechanism for identifying winners other than repeat travelers, such as individuals who got access to additional discount seats made available by inventory management systems after unbundling, or families traveling together. As a result, Dr. Singer has no common methodology to calculate damages, and the method he does propose would award damages to uninjured class members, requiring its exclusion.

Defendants respectfully request that their Motions to Strike Class Certification Testimony of Dr. Hal J. Singer be GRANTED.

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[29] AirTran Mem. at 23-24 nn.32-33. Even with incomplete data, Dr. Singer acknowledges more than 20% of the class traveled without bags more often than with, and could be net "winners" from bag fees. Singer Reply ¶¶ 88-91.

Respectfully submitted,

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L.R. 7.1D CERTIFICATION AS TO FONT AND POINT SELECTION

The undersigned counsel hereby certifies that this Defendants' Consolidated Reply Brief in Support of Motions to Exclude Class Certification Testimony of Hal Singer has been prepared with Times New Roman, 14 point, which is one of the font and point selections approved by the Court in L.R. 5.1C.

/s/ Alden L. Atkins
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CERTIFICATE OF SERVICE

I hereby certify that on this the 18th day of December, 2015, I filed the foregoing Defendants' Consolidated Reply Brief in Support of Motions to Exclude Class Certification Testimony of Hal Singer with the Clerk of Court and caused the same to be delivered via email to the following attorneys of record:

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