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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF OHIO
 EASTERN DIVISION**

TAM TRAVEL, INC. d/b/a TAMALPAIS TRAVEL;)	M.D.L Docket No. 1561
TRAVEL GODDESS, INC. d/b/a)	
UNIGLOBE HAPPY TRAVEL; MZZO, INC. d/b/a)	N.D. Ohio Case No. 03-30000
BEYOND TRAVEL; BONANZA WORLD)	
TRAVEL, INC.; TJ KAP, INC. d/b/a MASTER)	HON. PETER C. ECONOMUS
KILBYS TRAVEL d/b/a SPORTSMANS)	
TRAVEL d/b/a MASTER TRAVEL; A TEAM)	
TRAVEL, INC. d/b/a A TEAM TRAVEL; A&W)	
TRAVEL, INC.; KATHERINE ARCELL, an)	
individual; CHRISTINE WHALEN, an individual;)	FIRST AMENDED COMPLAINT
BRENDA K. DAVIS AND ASSOCIATES, INC.)	FOR VIOLATIONS OF SECTION 1
d/b/a ALL DESTINATIONS TRAVEL;)	OF THE SHERMAN ANTITRUST
ALLWAYS TRAVEL, INC.; BRETON VILLAGE)	ACT
TRAVEL SERVICES, INC. d/b/a EASTLAKE)	
TRAVEL SERVICES; EASTLAKE TRAVEL)	JURY TRIAL DEMANDED
SERVICES, INC.; VILLAGE TRAVEL)	
SERVICES, INC.; ADVENTURE TRAVEL, INC.)	
d/b/a CARLSON WAGONLIT TRAVEL;)	
GARAVANIAN TRAVEL, INC.; TALSON, INC.)	
d/b/a CARLSON WAGONLIT TRAVEL d/b/a)	
TRAVEL AGENTS INTERNATIONAL;)	
COMPASS LTD. d/b/a AMBASSADOR)	
TRAVEL; DELUXE TRAVEL, LLC d/b/a)	
DELUXE TRAVEL LTD.; DESTINATIONS, INC.)	
d/b/a DESTINATIONS INC., A TRAVEL)	
COMPANY; EXCEL TRAVEL, INC.; ETC)	

First Amended Complaint for Violations of the Sherman Antitrust Act.

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HOLDINGS, LTD. d/b/a EXECUTIVE TRAVEL)
CONSULTANTS, LTD.; ROZANNE KUNSTLE,)
an individual, d/b/a EXPRESS TRAVEL; STEVEN)
P. KUNSTLE, an individual d/b/a EXPRESS)
TRAVEL; GIDDEN, INC. d/b/a EXPRESS)
TRAVEL; FIVE STAR TRAVEL, INC.; CBD,)
INC. d/b/a A BETTER WAY TRAVEL SERVICE,)
d/b/a/ A BETTER WAY TRAVEL, d/b/a A)
BETTER WAY TRAVEL AGENCY, d/b/a)
GARDEN OF THE GODS TRAVEL SERVICE,)
d/b/a GARDEN OF THE GODS TRAVEL, d/b/a)
GARDEN OF THE GODS TRAVEL AGENCY;)
JOHN R. DENNY, an individual d/b/a GARDEN)
OF THE GODS TRAVEL d/b/a GARDEN OF)
THE GODS TRAVEL SERVICE d/b/a A BETTER)
WAY TRAVEL d/b/a A BETTER WAY TRAVEL)
SERVICE; Y. JOCELYN GARDNER, a sole)
proprietor d/b/a GATEWAY TRAVEL AND)
CRUISES, INC., d/b/a GATEWAY TRAVEL)
SERVICES; GATEWAY TRAVEL AND)
CRUISES, INC.; GATEWAY TRAVEL, INC.)
d/b/a GATEWAY TRAVEL AND CRUISES;)
LAGO TRAVEL, INC.; MAD TRAVEL, INC.;)
MARINA BENZ, an individual; CAMELOT)
TOURS, INC. d/b/a MARINA'S TRAVEL;)
ROSEMARY D'AUGUSTA, an individual d/b/a)
PERNA TRAVEL SERVICE d/b/a PERNA GOLF)
ADVENTURES d/b/a TRAVELBROKER.COM;)
PROFESSIONAL-WORLD TRAVEL, INC.; RED)
BIRD TRAVEL SERVICE, INC. d/b/a RED BIRD)
TRAVEL PLUS; GO EVERYWHERE, INC. d/b/a)
RIVERSIDE TRAVEL GROUP d/b/a RIVERSIDE)
TRAVEL; RUBINSOHN TRAVEL, INC., d/b/a)
RUBINSOHN TRAVEL SERVICE; SONDRAS)
RUSSELL, an individual d/b/a SANDY'S GET)
AWAY TRAVEL; SILHOUETTE TRAVEL, INC.;)
JUNE STANSBURY, an individual d/b/a)
STANSBURY TRAVEL d/b/a STANSBURY)
STERLING TRAVEL; STANSBURY TRAVEL)
LTD.; STANSBURY TRAVEL LLC; NANCY)
WALKER and J. MICHAEL WALKER, a)
partnership d/b/a SUNSET TRAVEL; UAT, INC.)
d/b/a THE TRAVEL STORE; THOMAS TRAVEL)
OF AMERICAN FORK, INC.; TOUR WEST)
TRAVEL OF AMERICAN FORK, INC.; LWK)
CORPORATION d/b/a TENNESSEE VALLEY)
TRAVEL AGENCY; IMPERIAL TRAVEL BY)
DANA, LLC d/b/a UNIVERSAL TRAVEL;)
TRAVEL BY DANA, INC.; DESTINATIONS)
RESORT RESERVATIONS, INC. d/b/a)
GREENWOOD TRAVEL; THE TRAVEL)
CENTER, INC.; CAROLYN FJORD, an individual)
d/b/a TRAVEL EXPRESS; TRAVEL KING, INC.;)
LEE GENTRY, an individual d/b/a TRAVEL)

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KING.; NANCY RIESCH, an individual d/b/a)
TRAVEL PLUS; TRAVEL PLUS, NAR INC. d/b/a)
TRAVEL PLUS; TRAVEL PROFESSIONALS,)
INC.; TRAVEL TRAVEL, INC. d/b/a TRAVEL)
TRAVEL ERINDALE SQ.; WNMP TRAVEL,)
INC. d/b/a UNIGLOBE PROFESSIONAL)
TRAVEL; VIDAL TRAVEL, INC.; TALGOOD)
ENTERPRISES, INC. d/b/a TALGOOD TRAVEL;)
WORLD TRAVELER, INC. d/b/a SUMMERLIN)
TRAVEL, d/b/a CARLSON WAGONLIT)
SUMMERLIN TRAVEL, d/b/a GREEN VALLEY)
TRAVEL, d/b/a CARSON WAGONLIT GREEN)
VALLEY TRAVEL; WORLD TRAVELERS, INC.)
d/b/a TRAVEL, INC., d/b/a CARLSON)
WAGONLIT TRAVEL/TRAVEL, INC., d/b/a)
SUMMERLIN TRAVEL, d/b/a CARSON)
WAGONLIT SUMMERLIN TRAVEL, d/b/a)
GREEN VALLEY TRAVEL, d/b/a CARSON)
WAGONLIT GREEN VALLEY TRAVEL; and)
SATELLITE TRAVEL SYSTEMS, INC.,)

Plaintiffs,

v.

DELTA AIR LINES, INC.; AMERICAN)
AIRLINES, INC.; UNITED AIR LINES, INC.;)
NORTHWEST AIRLINES, INC.;)
CONTINENTAL AIRLINES, INC.; US)
AIRWAYS, INC.; US AIRWAYS GROUP, Inc.;)
ALASKA AIR GROUP, INC; ALASKA)
AIRLINES, INC.; HORIZON AIR INDUSTRIES,)
INC.; AMERICA WEST AIRLINES, INC.;)
FRONTIER AIRLINES, INC.; ATA AIRLINES,)
INC.; HAWAIIAN AIRLINES, INC.; KLM)
ROYAL DUTCH AIRLINES; AIR CANADA,)

Defendants.

Plaintiffs bring this private antitrust action under Sections 4 and 16 of the Clayton Antitrust Act, 15 U.S.C. §§15, 26, for damages and injunctive relief against Defendants for violations of Section 1 of the Sherman Antitrust Act, 15 U.S.C. §1, and demanding a trial by jury, allege and complain as follows:

JURISDICTION

1. This Court has jurisdiction pursuant to Sections 4 and 16 of the Clayton Antitrust Act, 15 U.S.C. §§15, 26 and 28 U.S.C. §§ 1331 and 1337(a).

VENUE

2. On November 10, 2003, the Judicial Panel on Multidistrict Litigation, pursuant to 28 U.S.C. § 1407 transferred this action to the Northern District of Ohio for coordinated and consolidated pretrial proceedings.

THE PARTIES

3. Each of the following Plaintiffs is a travel agency and/or travel agent that has sold air travel tickets, has received commissions for the sale of air travel tickets from one of more of the Defendants, and has been injured in its business or property by reason of Defendants' unlawful actions:

Plaintiffs	Representative(s)	City	State
Tam Travel, Inc. d/b/a Tamalpais Travel	Cynthia Prosterman	Corte Madera	California
Travel Goddess, Inc. d/b/a Uniglobe Happy Travel	Jan-Marie Brown	Carson City	Nevada
MZZO, Inc. d/b/a Beyond Travel	Lenny Marazzo	Reno	Nevada
Bonanza World Travel, Inc.	Sylvia Sparks	Carson City	Nevada
TJ Kap, Inc. d/b/a Master Kilby's Travel d/b/a Sportsman's Travel d/b/a Master Travel	David Wendell	Reno	Nevada
A Team Travel, Inc. d/b/a A Team Travel	Dean Bradt	Reno	Nevada
A&W Travel, Inc.; Katherine Arcell, an individual; Christine Whalen, an individual	Katherine Arcell, Christine Whalen	New Orleans	Louisiana
Brenda K. Davis and Associates, Inc. d/b/a All Destinations Travel	Brenda Davis	Mesquite	Texas
Allways Travel, Inc.	Donna Fry	Colorado Springs	Colorado
Breton Village Travel Services, Inc.	John Lovell	Grand	Michigan

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2	d/b/a Eastlake Travel Services; Eastlake		Rapids	
3	Travel Services, Inc.; Village Travel			
4	Services, Inc.			
5	Adventure Travel, Inc. d/b/a Carlson	Michael Malaney	Grand	Michigan
6	Wagonlit Travel		Rapids	
7	Garavanian Travel, Inc.	Gabriel Garavanian	North	Massachusetts
8			Chelmsford	
9	Talson, Inc. d/b/a Carlson Wagonlit	Gary Talewsky	Canton	Massachusetts
10	Travel			
11	Compass Ltd. d/b/a/ Ambassador	Robert Conway	Las Vegas	Nevada
12	Travel			
13	Deluxe Travel, LLC d/b/a/ Deluxe	Jose Brito	Reno	Nevada
14	Travel Ltd.			
15	Destinations, Inc. d/b/a/ Destinations	Judy Crandall,	Reno	Nevada
16	Inc., A Travel Company	Gail Kosach		
17	Excel Travel, Inc.	Ted Friedli	Long	New Jersey
18			Branch	
19	ETC Holdings, Ltd. d/b/a Executive	Clyde Stensrud,	Bellevue	Washington
20	Travel Consultants, Ltd.			
21	Rozanne Kunstle, An Individual, d/b/a	Rozanne Kunstle,	Colorado	Colorado
22	Express Travel; Steven P. Kunstle, An	Steve Kunstle	Springs	
23	Individual d/b/a Express Travel;			
24	Gidden, Inc. d/b/a Express Travel			
25	Five Star Travel, Inc.	Sherry Lynne	Colorado	Colorado
26		Stewart, Judith	Springs	
27		Anne Bray		
28	CBD, Inc. d/b/a A Better Way Travel	John R. Denny	Colorado	Colorado
29	Service, d/b/a a Better Way Travel,		Springs	
30	d/b/a A Better Way Travel Agency,			
31	d/b/a Garden of the Gods Travel			
32	Service, d/b/a Garden of the Gods			
33	Travel, d/b/a Garden of the Gods Travel			
34	Y. Jocelyn Gardner, a sole proprietor	Y. Jocelyn Gardner	Colorado	Colorado
35	d/b/a Gateway Travel and Cruises d/b/a		Springs	
36	Gateway Travel; Gateway Travel and			
37	Cruises, Inc.; Gateway Travel, Inc.			
38	d/b/a Gateway Travel and Cruises			
39	Lago Travel, Inc.	Maria Munecas	Guaynabo	Puerto Rico
40	Mad Travel, Inc.	Lee McCarthy, Lisa	Naples	Florida
41		McCarthy		
42	Camelot Tours, Inc. d/b/a Marina's	Marina Benz	Reno	Nevada
43	Travel			
44	Rosemary D'Augusta, an individual,	Rosemary	Burlingame	California
45	d/b/a Perna Travel Service, d/b/a Perna	D'Augusta		
46	Golf Adventures, d/b/a			

1	Travelbroker.com			
2	Professional World Travel, Inc.	Pam Ward	Richardson	Texas
3	Red Bird Travel Service, Inc. d/b/a Red Bird Travel Plus	Donna Johnson	Desoto	Texas
4	Go Everywhere, Inc., d/b/a Riverside Travel Group, d/b/a Riverside Travel	Valerie Jolly	Arlington	Texas
5	Rubinsohn Travel, Inc., d/b/a Rubinsohn Travel Service	Bill Rubinsohn	Elkins Park	Pennsylvania
6	Sandy Russell, an individual d/b/a Sandy's Get Away Travel	Sondra Russell	Waco	Texas
7	Silhouette Travel, Inc.	June Grepps, Pamela Faust, Vicki Rhoads, Donald Grepps	Cincinnati	Ohio
8	June Stansbury, an individual d/b/a Stansbury Travel d/b/a Stansbury Sterling Travel; Stansbury Travel Ltd.; Stansbury Travel LLC	June Stansbury	Reno	Nevada
9	J. Michael Walker and Nancy Walker, a partnership d/b/a Sunset Travel	J. Michael Walker, Nancy Walker	Grass Valley	California
10	UAT, Inc. d/b/a The Travel Store	Don Freeland, Loraine Freeland	Cincinnati	Ohio
11	Thomas Travel of American Fork, Inc.; Tour West Travel of American Fork, Inc.	Annette Tippetts	American Fork	Utah
12	LWK Corporation d/b/a Tennessee Valley Travel Agency	L. West Oehmig, Jr.	Chattanooga	Tennessee
13	Imperial Travel by Dana, LLC d/b/a Universal Travel; Travel by Dana, Inc.; Destinations Resort Reservations, Inc. d/b/a Greenwood Travel	Dana Robinson	Greenwood Village	Colorado
14	The Travel Center, Inc.	Suraj Zutshi, Donna Zutshi	Reno	Nevada
15	Carolyn Fjord, an individual d/b/a Travel Express	Carolyn Fjord	Davis	California
16	Lee Gentry, an individual d/b/a Travel King; Travel King, Inc.	Lee Gentry	Cincinnati	Ohio
17	Nancy Riesch, an individual, d/b/a Travel Plus; Travel Plus NAR, Inc. d/b/a Travel Plus	Nancy Riesch	Monument	Colorado
18	Travel Professionals, Inc.	Pat Meeuwsen, Pat Kamm, Russ Meeuwsen	Kalamazoo	Michigan
19	Travel Travel, Inc. d/b/a Travel Travel Erindale Square	Robert Rosenthal, Gillian Rosenthal	Colorado Springs	Colorado
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1	WNMP Travel, Inc. d/b/a Uniglobe Professional Travel	Deborah Pulfer, Steven Pulfer	Sidney	Ohio
2	Vidal Travel, Inc.	Ilana Glikman, Jay Glikman	Encino	California
3	Talgood Enterprises, Inc. d/b/a Talgood Travel	Wayne Taleff, Brett Goodson	Cincinnati	Ohio
4	World Traveler, Inc. d/b/a Summerlin Travel, d/b/a Carson Wagonlit Summerlin Travel, d/b/a Green Valley Travel, d/b/a Carson Wagonlit Green Valley Travel; World Travelers, Inc. d/b/a Travel, Inc., d/b/a Carlson Wagonlit Travel/Travel, Inc., d/b/a Summerlin Travel, d/b/a Carson Wagonlit Summerlin Travel, d/b/a Green Valley Travel, d/b/a Carson Wagonlit Green Valley Travel	Sharon Holmes-Reed	Las Vegas	Nevada
5	Satellite Travel Systems, Inc.	Diana Ultican	Bellevue	Washington
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15 4. Defendant Delta Air Lines, Inc. ("Delta") is an airline incorporated under the
16 laws of the State of Delaware, is found and transacts business in the Northern District of
17 California, and has its principal place of business at Hartsfield Atlanta International Airport,
18 1030 Delta Boulevard; Atlanta, Georgia 30320.

19 5. Defendant American Airlines, Inc. ("American") is an airline incorporated
20 under the laws of the State of Delaware, is found and transacts business in the Northern District
21 of California, and has its principal place of business at 4333 Amon Carter Boulevard; Fort
22 Worth, Texas 76155.

23 6. Defendant United Air Lines, Inc. ("United") is an airline incorporated under the
24 laws of the State of Delaware, is found and transacts business in the Northern District of
25 California, and has its principal place of business at 1200 East Algonquin Road; Elk Grove
26 Township, Illinois 60007.

27 7. Defendant Northwest Airlines, Inc. ("Northwest") is an airline incorporated
28 under the laws of the State of Minnesota, is found and transacts business in the Northern

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2 District of California, and has its principal place of business at 2700 Lone Oak Parkway,
3 Eagan, Minnesota 55121.

4 8. Defendant Continental Airlines, Inc. ("Continental") is an airline incorporated
5 under the laws of the State of Delaware, is found and transacts business in the Northern District
6 of California, and has its principal place of business at 1600 Smith Street; Houston, Texas
7 77002.

8 9. Defendant US Airways Group, Inc. is a company incorporated under the laws
9 of the State of Delaware, and serves as a holding company for Defendants US Airways, Inc.
10 ("US Airways") and America West Airlines, Inc. ("America West"), with whom it merged in
11 2005. US Airways Group, Inc. is found and transacts business in the Northern District of
12 California, and has its principal place of business at 111 W. Rio Salado Parkway Tempe, AZ
13 85281.

14 10. Defendant Alaska Air Group, Inc. is a company incorporated under the laws of
15 the State of Delaware, and serves as a holding company for Defendants Alaska Airlines, Inc.
16 ("Alaska") and Horizon Air Industries, Inc. ("Horizon"), and maintains its principal place of
17 business at 19300 Pacific Highway South; Seattle, Washington 98188. Alaska is incorporated
18 under the laws of the State of Alaska, Horizon is incorporated under the laws of the State of
19 Washington, and both are found and transact business in the Northern District of California.

20 11. Defendant Frontier Airlines, Inc. ("Frontier") is an airline incorporated under
21 the laws of the State of Colorado, is found and transacts business in the Northern District of
22 California, and has its principal place of business at Frontier Centre One, 7001 Tower Road;
23 Denver, Colorado 80249.

24 12. Defendant ATA Airlines, Inc. ("ATA"), is an airline incorporated under the
25 laws of the State of Indiana, is found and transacts business in the Northern District of
26 California, and has its principal place of business at 7337 West Washington Street;
27 Indianapolis, Indiana 46231.
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2 13. Defendant Hawaiian Airlines, Inc. ("Hawaiian") is an airline incorporated
3 under the laws of the State of Delaware, is found and transacts business in the Northern District
4 of California, and has its principal place of business at 3375 Koapaka Street, Suite G350;
5 Honolulu, Hawaii 96819.

6 14. Defendant KLM Royal Dutch Airlines ("KLM") is an airline that is found
7 and transacts business in the Northern District of California with its principal place of
8 business at Amsterdamseweg 55, 1182GP Amstelveen, The Netherlands.

9 15. Defendant Air Canada ("Air Canada") is an airline that is found and transacts
10 business in the Northern District of California with its principal place of business at 7373
11 Cote-Vertu Boulevard West; Saint-Laurent (Montreal), Quebec, Canada H4Y 1H4.

12 16. Various co-conspirators, including other persons, firms, partnerships, and/or
13 corporations not named as Defendants in this complaint, including among others, Orbitz, Inc.,
14 the Airline Reporting Corporation, and various trade associations have aided, abetted, and/or
15 participated with Defendants in the combination and conspiracy alleged herein and have
16 performed acts and made statements in furtherance thereof.

17
18 **EFFECT OF CONDUCT ON COMPETITION**

19 17. Plaintiffs are and/or have been during the relevant time travel agencies and/or
20 travel agents whose business includes the sale of Defendants' airline tickets.

21 18. Defendants' business is the commercial transportation of passengers by air
22 within, between and among the states and foreign nations.

23 19. Defendants' air transportation of passengers within, between and among the
24 states and foreign nations constitutes a substantial amount of interstate and foreign commerce,
25 and Defendants' unlawful actions have affected and continue to affect a substantial amount of
26 interstate and foreign commerce.

27 20. The booking of Defendants' tickets by travel agencies and/or travel agents for
28 the air transportation of passengers within, between and among the states and foreign nations

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2 constitutes a substantial amount of interstate and foreign commerce, and Defendants' unlawful
3 actions have affected and continue to affect a substantial amount of interstate and foreign
4 commerce.

5 21. The payment to travel agencies and/or travel agents of commissions by
6 Defendants in return for the booking of Defendants' tickets for air transportation of passengers
7 within, between and among the states and foreign nations constitutes a substantial amount of
8 interstate and foreign commerce, and Defendants' unlawful actions have affected and continue
9 to affect a substantial amount of interstate and foreign commerce.

10
11 **CONDUCT GIVING RISE TO VIOLATIONS OF LAW**

12 **A. Industry History and Practice**

13 22. Size carries with it an opportunity for abuse that is not to be ignored when the
14 opportunity is proved to have been utilized in the past.

15 23. In 1983, an executive of Defendant American was involved in a price-fixing
16 conspiracy taped by an executive of another airline, in which the American executive
17 suggested that both airlines increase their fares by twenty percent to "make more money."
18 The same executive served as American's Chief Executive Officer from 1995 to 1998 and
19 approved commission cuts that are the subject of this action.

20 24. In the late 1980s and early 1990s, the major airlines in the United States,
21 including Defendants in this case, engaged in a conspiracy to allocate markets and fix ticket
22 prices by signaling to each other through computer reservation systems and by developing
23 hub and spoke networks throughout the United States. Through this conspiracy, Defendants
24 developed, implemented, and adopted a system and pattern and practice of communicating
25 with each other by signaling and trade announcements and thereby forming tacit and implied
26 agreements and common understandings to restrain and suppress competition among
27 themselves, to the prejudice and injury of consumers and the traveling public.

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2 25. The United States Department of Justice is currently conducting an
3 investigation into three separate price-fixing conspiracies involving Defendant airlines and
4 dating back to 2000, including:

- 5 a) a conspiracy to fix air-cargo rates,
6 b) a cartel affecting fuel surcharges on passenger flights between Europe
7 and the U.S., and
8 c) a cartel involving passenger flight fuel surcharges on flights in Asia.

9 In February, 2006, the United States Justice Department and the European Union conducted
10 raids at the offices of several airlines, including several that are Defendants in this case. In
11 August, 2007 British Airways PLC and Korean Air Lines Co. both pled guilty to
12 participation in these conspiracies and have agreed to fully cooperate with the continuing
13 U.S. government investigation.

14 **B. Simultaneity and Uniformity of Commission Cuts and Caps**

15 26. Beginning in 1995, Defendants initiated a collusive pattern of joint reductions
16 in travel agent commissions, culminating in the elimination of all base commissions for
17 travel agents in March 2002 as described hereafter.

18 27. Each Defendant knew that concerted action to reduce and cap commissions
19 was contemplated and invited. Each Defendant adhered to the common scheme to reduce
20 and cap commissions and participated in it. Each Defendant was advised that every other
21 Defendant was invited to participate. Each Defendant knew that cooperation was essential
22 to successful operation of the plan.
23

24 28. At a time unknown to Plaintiffs, Defendants, through their top executives and
25 Chief Executive Officers, agreed that they would collectively act to cap, reduce and
26 ultimately eliminate commissions paid to travel agents for the sale of airline tickets.
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2 29. Defendants agreed that when one Defendant announced a commission cut or
3 cap, the other Defendants would immediately follow suit with an identical action.

4 30. Defendants knew that it was necessary that their actions be concerted and
5 identical for any commission reduction or cap to hold.

6 31. In 1995, Defendants Delta, American, Northwest, United and Continental
7 combined and conspired to fix airline travel agent commissions by collectively imposing a
8 commission cap of \$25 for sales of one-way domestic tickets and \$50 for sales of round-trip
9 domestic tickets.
10

11 32. Beginning in approximately September 1997 and continuing up to and
12 including the date of this complaint, in order to eliminate competition between and among
13 themselves for the sale of airline tickets through travel agencies and travel agents, Defendants
14 combined and conspired to reduce, cap and eliminate commissions paid to travel agencies and
15 travel agents, including Plaintiffs, in the United States, Puerto Rico and the United States
16 Virgin Islands for the sale of Defendants' airline tickets for travel within the United States and
17 to and from the United States and foreign nations.

18 **1. 1997 Commission Cuts from 10% to 8%.**

19 33. In furtherance of the Defendants' combination and conspiracy to eliminate
20 competition between and among themselves, in or around September 1997 Defendants
21 combined and conspired to reduce commissions paid to travel agents for the sale of
22 Defendants' airline tickets from 10% to 8% of the ticket price.

23 34. On September 18, 1997, United announced its intention to reduce base
24 commissions payable to travel agents on international and domestic airfares from 10% to 8%,
25 effective on September 19, 1997. On September 19, 1997, United reduced commissions from
26 10% to 8%.
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2 35. On September 23, 1997, American announced its intention to reduce base
3 commissions payable to travel agents on international and domestic airfares from 10% to 8%,
4 effective on September 23, 1997. On September 23, 1997, American reduced commissions
5 from 10% to 8%. This reduction by American was the same reduction undertaken earlier by
6 the leader, United.

7 36. On September 23, 1997, Delta announced its intention to reduce base
8 commissions payable to travel agents on international and domestic airfares from 10% to 8%,
9 effective on September 23, 1997. On September 23, 1997, Delta reduced commissions from
10 10% to 8%. This reduction by Delta was the same reduction undertaken earlier by the leader,
11 United.

12 37. On September 24, 1997, Northwest announced its intention to reduce base
13 commissions payable to travel agents on international and domestic airfares from 10% to 8%,
14 effective on September 24, 1997. On September 24, 1997, Northwest reduced commissions
15 from 10% to 8%. This reduction by Northwest was the same reduction undertaken earlier by
16 the leader, United.

17 38. On September 25, 1997, Continental announced its intention to reduce base
18 commissions payable to travel agents on international and domestic airfares from 10% to 8%,
19 effective on September 25, 1997. On September 25, 1997, Continental reduced commissions
20 from 10% to 8%. This reduction by Continental was the same reduction undertaken earlier by
21 the leader, United.

22 39. On September 24, 1997, US Airways announced its intention to reduce base
23 commissions payable to travel agents on international and domestic airfares from 10% to 8%,
24 effective on September 24, 1997. On September 24, 1997, US Airways reduced commissions
25 from 10% to 8%. This reduction by US Airways was the same reduction undertaken earlier by
26 the leader, United.

27 40. On September 29, 1997, America West announced its intention to reduce base
28 commissions payable to travel agents on international and domestic airfares from 10% to 8%,

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2 effective on September 29, 1997. On September 29, 1997, America West reduced
3 commissions from 10% to 8%. This reduction by America West was the same reduction
4 undertaken earlier by the leader, United.

5 41. On March 31, 1998, Frontier announced its intention to reduce base
6 commissions payable to travel agents on international and domestic airfares from 10% to 8%,
7 effective on April 1, 1998. On April 1, 1998, Frontier reduced commissions from 10% to 8%.
8 This reduction by Frontier was the same reduction undertaken earlier by the leader, United.

9 42. On September 30, 1997, Alaska announced its intention to reduce base
10 commissions payable to travel agents on international and domestic airfares from 10% to 8%,
11 effective on October 6, 1997. On October 6, 1997, Alaska reduced commissions from 10% to
12 8%. This reduction by Alaska was the same reduction undertaken earlier by the leader, United.

13 **2. 1998 International Caps of \$50 and \$100**

14 43. In furtherance of the Defendants' combination and conspiracy to eliminate
15 competition between and among themselves, beginning in November, 1998 Defendants
16 combined and conspired to impose a cap of \$50 for a one-way ticket and \$100 for a round-trip
17 tickets on commissions payable on international air travel tickets sold by travel agents.

18 44. On November 12, 1998, United announced its intention to cap commissions
19 payable to travel agents on international airfares at \$50 and \$100 for one-way and round-trip
20 flights, respectively, effective on November 12, 1998. On November 12, 1998, United capped
21 commissions payable to travel agents on international airfares at \$50 and \$100 for one-way and
22 round-trip flights, respectively.

23 45. On November 17, 1998, American announced its intention to cap commissions
24 payable to travel agents on international airfares at \$50 and \$100 for one-way and round-trip
25 flights, respectively, effective on November 17, 1998. On November 17, 1998, American
26 capped commissions payable to travel agents on international airfares at \$50 and \$100 for one-
27 way and round-trip flights, respectively. The level of caps set by American was the same level
28 set earlier by the leader, United.

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2 46. On November 17, 1998, Delta announced its intention to cap commissions
3 payable to travel agents on international airfares at \$50 and \$100 for one-way and round-trip
4 flights, respectively, effective on November 17, 1998. On November 17, 1998, Delta capped
5 commissions payable to travel agents on international airfares at \$50 and \$100 for one-way and
6 round-trip flights, respectively. The level of caps set by Delta was the same level set earlier by
7 the leader, United.

8 47. On November 23, 1998, Northwest announced its intention to cap commissions
9 payable to travel agents on international airfares at \$50 and \$100 for one-way and round-trip
10 flights, respectively, effective on November 23, 1998. On November 23, 1998, Northwest
11 capped commissions payable to travel agents on international airfares at \$50 and \$100 for one-
12 way and round-trip flights, respectively. The level of caps set by Northwest was the same level
13 set earlier by the leader, United.

14 48. On November 20, 1998, Continental announced its intention to cap
15 commissions payable to travel agents on international airfares at \$50 and \$100 for one-way and
16 round-trip flights, respectively, effective on November 20, 1998. On November 20, 1998,
17 Continental capped commissions payable to travel agents on international airfares at \$50 and
18 \$100 for one-way and round-trip flights, respectively. The level of caps set by Continental was
19 the same level set earlier by the leader, United.

20 49. On December 2, 1998, US Airways announced its intention to cap
21 commissions payable to travel agents on international airfares at \$50 and \$100 for one-way
22 and round-trip flights, respectively, effective on December 3, 1998. On December 3, 1998,
23 US Airways capped commissions payable to travel agents on international airfares at \$50
24 and \$100 for one-way and round-trip flights, respectively. The level of caps set by US
25 Airways was the same level set earlier by the leader, United.

26 **3. 1999 Commission Cuts from 8% to 5%**

27 50. In furtherance of the Defendants' combination and conspiracy to eliminate
28 competition between and among themselves, beginning in October 1999 Defendants combined

1
2 and conspired to further reduce base commission payable on the sale of domestic tickets, from
3 8% to 5%.

4 51. On October 7, 1999, United announced its intention to reduce base
5 commissions payable to travel agents on domestic and international tickets from 8% to 5%,
6 effective on October 8, 1999. On October 8, 1999, United reduced base commissions payable
7 to travel agents on domestic and international tickets from 8% to 5%.

8 52. On October 8, 1999, American announced its intention to reduce base
9 commissions payable to travel agents on domestic and international tickets from 8% to 5%,
10 effective on October 9, 1999. On October 9, 1999, American reduced base commissions
11 payable to travel agents on domestic and international tickets from 8% to 5%. This reduction
12 by American was the same reduction undertaken earlier by the leader, United.

13 53. On October 11, 1999, Delta announced its intention to reduce base commissions
14 payable to travel agents on domestic and international tickets from 8% to 5%, effective on
15 October 11, 1999. On October 11, 1999, Delta reduced base commissions payable to travel
16 agents on domestic and international tickets from 8% to 5%. This reduction by Delta was the
17 same reduction undertaken earlier by the leader, United.

18 54. On October 11, 1999, Northwest announced its intention to reduce base
19 commissions payable to travel agents on domestic and international tickets from 8% to 5%,
20 effective on October 11, 1999. On October 11, 1999, Northwest reduced base commissions
21 payable to travel agents on domestic and international tickets from 8% to 5%. This reduction
22 by Northwest was the same reduction undertaken earlier by the leader, United.

23 55. On October 12, 1999, Continental announced its intention to reduce base
24 commissions payable to travel agents on domestic and international tickets from 8% to 5%,
25 effective on October 12, 1999. On October 12, 1999, Continental reduced base commissions
26 payable to travel agents on domestic and international tickets from 8% to 5%. This reduction
27 by Continental was the same reduction undertaken earlier by the leader, United.
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2 56. On October 12, 1999, US Airways announced its intention to reduce base
3 commissions payable to travel agents on domestic and international tickets from 8% to 5%,
4 effective on October 13, 1999. On October 13, 1999, US Airways reduced base commissions
5 payable to travel agents on domestic and international tickets from 8% to 5%. This reduction
6 by US Airways was the same reduction undertaken earlier by the leader, United.

7 57. On October 18, 1999, America West announced its intention to reduce base
8 commissions payable to travel agents on domestic and international tickets from 8% to 5%,
9 effective on October 18, 1999. On October 18, 1999, America West reduced base commissions
10 payable to travel agents on domestic and international tickets from 8% to 5%. This reduction
11 by America West was the same reduction undertaken earlier by the leader, United.

12 58. On November 2, 1999, Frontier announced its intention to reduce base
13 commissions payable to travel agents on domestic and international tickets from 8% to 5%,
14 effective on November 5, 1999. On November 5, 1999, Frontier reduced base commissions
15 payable to travel agents on domestic and international tickets from 8% to 5%. This reduction
16 by Frontier was the same reduction undertaken earlier by the leader, United.

17 59. On October 18, 1999, Alaska announced its intention to reduce base
18 commissions payable to travel agents on domestic and international tickets from 8% to 5%,
19 effective on October 19, 1999. On October 19, 1999, Alaska reduced base commissions
20 payable to travel agents on domestic and international tickets from 8% to 5%. This reduction
21 by Alaska was the same reduction undertaken earlier by the leader, United.

22 **4. 2001 Domestic Caps of \$10 and \$20**

23 60. In furtherance of the Defendants' combination and conspiracy to eliminate
24 competition between and among themselves, beginning in August of 2001, Defendants
25 combined and conspired to impose caps of \$10 for a one-way ticket and \$20 for a round-trip
26 ticket on commissions payable on domestic air travel tickets sold by travel agents.

27 61. On August 17, 2001, American announced its intention to cap commissions
28 payable to travel agents on domestic flights at \$10 and \$20 for one-way and round-trip flights,

1
2 respectively, effective on August 18, 2001. On August 18, 2001, American capped
3 commissions payable to travel agents on domestic flights at \$10 and \$20 for one-way and
4 round-trip flights, respectively.

5 62. On August 22, 2001, United announced its intention to cap commissions
6 payable to travel agents on domestic flights at \$10 and \$20 for one-way and round-trip flights,
7 respectively, effective on August 23, 2001. On August 23, 2001, United capped commissions
8 payable to travel agents on domestic flights at \$10 and \$20 for one-way and round-trip flights,
9 respectively. The level of caps set by United was the same level set earlier by the leader,
10 American.

11 63. On August 22, 2001, Delta announced its intention to cap commissions payable
12 to travel agents on domestic flights at \$10 and \$20 for one-way and round-trip flights,
13 respectively, effective on August 22, 2001. On August 22, 2001, Delta capped commissions
14 payable to travel agents on domestic flights at \$10 and \$20 for one-way and round-trip flights,
15 respectively. The level of caps set by Delta was the same level set earlier by the leader,
16 American.

17 64. On August 23, 2001, Northwest announced its intention to cap commissions
18 payable to travel agents on domestic flights at \$10 and \$20 for one-way and round-trip flights,
19 respectively, effective on August 24, 2001. On August 24, 2001, Northwest capped
20 commissions payable to travel agents on domestic flights at \$10 and \$20 for one-way and
21 round-trip flights, respectively. The level of caps set by Northwest was the same level set
22 earlier by the leader, American.

23 65. On August 27, 2001, Continental announced its intention to cap commissions
24 payable to travel agents on domestic flights at \$10 and \$20 for one-way and round-trip flights,
25 respectively, effective on August 27, 2001. On August 27, 2001, Continental capped
26 commissions payable to travel agents on domestic flights at \$10 and \$20 for one-way and
27 round-trip flights, respectively. The level of caps set by Continental was the same level set
28 earlier by the leader, American.

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2 66. On August 23, 2001, US Airways announced its intention to cap commissions
3 payable to travel agents on domestic flights at \$10 and \$20 for one-way and round-trip flights,
4 respectively, effective on August 24, 2001. On August 24, 2001, US Airways capped
5 commissions payable to travel agents on domestic flights at \$10 and \$20 for one-way and
6 round-trip flights, respectively. The level of caps set by US Airways was the same level set
7 earlier by the leader, American.

8 67. On August 27, 2001, America West announced its intention to cap commissions
9 payable to travel agents on domestic flights at \$10 and \$20 for one-way and round-trip flights,
10 respectively, effective on August 28, 2001. On August 28, 2001, America West capped
11 commissions payable to travel agents on domestic flights at \$10 and \$20 for one-way and
12 round-trip flights, respectively. The level of caps set by America West was the same level set
13 earlier by the leader, American.

14 68. On September 4, 2001, Frontier announced its intention to cap commissions
15 payable to travel agents on domestic flights at \$10 and \$20 for one-way and round-trip flights,
16 respectively, effective on September 5, 2001. On September 5, 2001, Frontier capped
17 commissions payable to travel agents on domestic flights at \$10 and \$20 for one-way and
18 round-trip flights, respectively. The level of caps set by Frontier was the same level set earlier
19 by the leader, American.

20 69. On November 1, 2001, Alaska announced its intention to cap commissions
21 payable to travel agents on domestic flights at \$10 and \$20 for one-way and round-trip flights,
22 respectively, effective on November 5, 2001. On November 5, 2001, Alaska capped
23 commissions payable to travel agents on domestic flights at \$10 and \$20 for one-way and
24 round-trip flights, respectively. The level of caps set by Alaska was the same level set earlier
25 by the leader, American.

26 **5. 2002 Commission Reductions From 5% to 0%**

27 70. In furtherance of the Defendants' combination and conspiracy to eliminate
28 competition between and among themselves, beginning in March, 2002 Defendants combined

1
2 and conspired to further reduce base commission payable on the sale of domestic tickets from
3 5% to 0%, eliminating base commissions.

4 71. On March 14, 2002, Delta announced its intention to reduce base commissions
5 payable to travel agents on domestic and international tickets from 5% to 0%, effective on
6 March 14, 2002. On March 14, 2002, Delta reduced base commissions payable to travel agents
7 on domestic and international tickets from 5% to 0%.

8 72. On March 18, 2002, American announced its intention to reduce base
9 commissions payable to travel agents on domestic and international tickets from 5% to 0%,
10 effective on March 18, 2002. On March 18, 2002, American reduced base commissions
11 payable to travel agents on domestic and international tickets from 5% to 0%. This reduction
12 by American was the same reduction undertaken earlier by the leader, Delta.

13 73. On March 20, 2002, United announced its intention to reduce base commissions
14 payable to travel agents on domestic and international tickets from 5% to 0%, effective on
15 March 20, 2002. On March 20, 2002, United reduced base commissions payable to travel
16 agents on domestic and international tickets from 5% to 0%. This reduction by United was the
17 same reduction undertaken earlier by the leader, Delta.

18 74. On March 19, 2002, Northwest announced its intention to reduce base
19 commissions payable to travel agents on domestic and international tickets from 5% to 0%,
20 effective on March 19, 2002. On March 19, 2002, Northwest reduced base commissions
21 payable to travel agents on domestic and international tickets from 5% to 0%. This reduction
22 by Northwest was the same reduction undertaken earlier by the leader, Delta.

23 75. On March 18, 2002, Continental announced its intention to reduce base
24 commissions payable to travel agents on domestic and international tickets from 5% to 0%,
25 effective on March 18, 2002. On March 18, 2002, Continental reduced base commissions
26 payable to travel agents on domestic and international tickets from 5% to 0%. This reduction
27 by Continental was the same reduction undertaken earlier by the leader, Delta.
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2 76. On March 21, 2002, US Airways announced its intention to reduce base
3 commissions payable to travel agents on domestic and international tickets from 5% to 0%,
4 effective on March 21, 2002. On March 21, 2002, US Airways reduced base commissions
5 payable to travel agents on domestic and international tickets from 5% to 0%. This reduction
6 by US Airways was the same reduction undertaken earlier by the leader, Delta.

7 77. On March 21, 2002, America West announced its intention to reduce base
8 commissions payable to travel agents on domestic and international tickets from 5% to 0%,
9 effective on March 21, 2002. On March 21, 2002, America West reduced base commissions
10 payable to travel agents on domestic and international tickets from 5% to 0%. This reduction
11 by America West was the same reduction undertaken earlier by the leader, Delta.

12 78. On May 31, 2002, Frontier announced its intention to reduce base commissions
13 payable to travel agents on domestic and international tickets from 5% to 0%, effective on May
14 31, 2002. On May 31, 2002, Frontier reduced base commissions payable to travel agents on
15 domestic and international tickets from 5% to 0%. This reduction by Frontier was the same
16 reduction undertaken earlier by the leader, Delta.

17 79. On May 31, 2002, Alaska announced its intention to reduce base commissions
18 payable to travel agents on domestic and international tickets from 5% to 0%, effective on June
19 3, 2002. On June 3, 2002, Alaska reduced base commissions payable to travel agents on
20 domestic and international tickets from 5% to 0%. This reduction by Alaska was the same
21 reduction undertaken earlier by the leader, Delta.

22 80. The respective executives and/or Chief Executive Officers of the Defendant
23 airlines approved each of the commission cuts and caps as alleged herein after being assured
24 that their major competitors would follow suit.

25
26 **C. Commission Cuts Against Defendants' Individual Self-interest**

27 81. The conduct of each Defendant in reducing travel agent commissions and
28 capping commissions was contrary to the economic self-interest of each Defendant if
First Amended Complaint for Violations of the Sherman Antitrust Act.

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2 undertaken unilaterally and in the absence of a conspiracy, inasmuch as any airline
3 unilaterally taking such action would suffer a substantial loss of business when travel agents
4 directed their customers to other airlines that had not reduced and/or capped commissions.

5 82. Prior to the course of concerted conduct begun in 1995 to reduce travel agent
6 commissions, Defendants unilaterally and unsuccessfully attempted to reduce commissions
7 paid to travel agents.

8 83. Approximately in 1981, Defendant United lowered its commission rates by
9 imposing a system of flat fee commissions, based on miles traveled per ticket. The system
10 was in place for four to five days. When other carriers failed to follow suit, United withdrew
11 its reduced commission program and reverted back to the pre-existing system of commission
12 rates, so as not to lose business to other airlines by reason of travel agents' shifting business
13 to those airlines paying higher commission rates.

14 84. Approximately in 1983, American Airlines announced that it would reduce
15 its base commission payable to travel agents from 10% to 7%. The response of the travel
16 agency community was vitriolic, including mail and phone calls to an American executive
17 that denounced the cuts and threatened to book away travel to other airlines. Shortly
18 thereafter, several of American's competitors indicated that they would stay at the then-
19 industry standard 10 percent rate. When other carriers indicated that they would not follow
20 American's lead, American withdrew its reduced commission program within 14 days and
21 reverted back to the pre-existing system of commission rates, so as not to lose business to
22 other airlines by reason of travel agents' shifting business to those airlines paying higher
23 commission rates.

24 85. Because travel agents book a substantial percentage of air travel, no airline
25 would rationally introduce and maintain a commission reduction independently, as the
26 United and American experiments show; rather an airline would introduce and maintain a
27 reduction in travel agent commissions only if a common understanding existed that other
28 airlines would do so.

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2 86. Defendants' commission reductions and caps made economic sense only if
3 Defendants had a common understanding and commitment to a common scheme that all of
4 them would, in concert, reduce and cap travel agent commissions.

5 87. On July 31, 2007, Michael Gunn, former Executive Vice President of
6 Marketing and Planning of American testified that "industry consensus" on new commission
7 levels was necessary for the commission cuts and caps to hold. Mr. Gunn further testified
8 that if any other Defendant set commission rates either above or below the new level, other
9 Defendants would be forced to rescind their cuts. Mr. Gunn further testified that he had to
10 match commission cuts exactly or he would undercut the movement by Defendants to
11 reduce and cap commissions.

12 88. Commissions paid to travel agents were and are important incentives to travel
13 agents to book passengers on a particular airline.

14 89. Defendants have and continue to pay commissions to travel agents through
15 confidential "incentive agreements." Such payments are made to travel agents as an
16 incentive to book on competitive routes and/or as back-end payments in the form of
17 overrides. Some Defendants pay commission as high as 15% or more as an incentive to
18 travel agents to book on their airline on certain routes or to book certain passenger volumes.

19
20 **D. Opportunities for Defendants to Combine and Conspire**

21 90. Defendants' executives and/or other persons responsible for the setting of
22 commission levels and caps met frequently during the period of cuts and caps. These meetings
23 afforded these persons the opportunity to combine and conspire and with one another to cut and
24 cap commissions on the sales of airline tickets.

25 91. At these meetings, Defendants communicated with one another for the purpose
26 of developing, furthering, implementing, and/or maintaining their common plan to reduce, cap
27 and eliminate commissions paid to travel agents and agencies for the sale of airline tickets.
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2 92. During the period of commission cuts, Defendants' executives, including
3 those responsible for setting travel agency commissions, were members and guests of an
4 organization named "Conquistadores Del Cielo." Various Defendants' executives attended
5 retreats held by this organization at least once a year.

6 93. Defendants jointly own the Airline Reporting Corporation ("ARC"). The
7 ARC is an information clearinghouse that provides ticket distribution, reporting and
8 settlement services for air carriers and travel agents. Through ARC, a Defendant airline was
9 and is able to monitor base commission rates paid by each and every other Defendant. ARC
10 maintains a Board of Directors that selects membership of an "Advisory Council" whose
11 role is to provide advice and guidance to ARC on matters affecting travel agents.

12 94. Defendants have entered into so-called alliances with one or more other
13 Defendants for the purpose, among others, of jointly marketing their services. Executives
14 and personnel of different Defendants who were responsible for the cutting and capping of
15 commissions frequently communicated with one another in the creation and maintenance of
16 these alliances during the period that commissions were being cut and capped.

17 95. Defendants' executives regularly meet and attend gatherings of the Air
18 Transport Association.

19 96. Defendants' executives regularly attend and meet at conferences, including
20 but not limited to the Japan Air Summit, the British Air Summit, the Paris Air Show, the
21 Alex Brown Transportation Conference, the International Aviation Symposium, and the
22 Merrill Lynch Conference.

23 97. On May 27th and 28th, 1997, representatives of Defendants United, KLM,
24 Delta, and Air Canada, among others, attended a committee meeting of the International Air
25 Transport Association ("IATA") held in Montreal, Canada at which participants discussed
26 whether IATA members should rescind that organization's commission resolution setting base
27 commissions. Four months later, on September 18, 1997, United announced a reduction in
28

1
2 base commissions from 10 percent to eight percent, applicable to both domestic and
3 international flights. The other Defendants followed United's lead shortly thereafter.

4 98. In July, 1998 an IATA committee met in Singapore. In attendance were
5 representatives of Defendants United, Air Canada, Delta, KLM, Northwest, and American,
6 among others. An action taken at the meeting was to modify an IATA resolution that set base
7 commissions at 9% so that the resolution no longer applied to Canada. Four months after this
8 meeting, United announced that it would impose caps on commissions payable for international
9 tickets issued in the United States and Canada. The other Defendants followed United's lead
10 shortly thereafter.

11 99. In mid-1999, Defendants Delta, United, Northwest and Continental began
12 discussions, later joined by American, that led ultimately to the formation of Orbitz, a jointly
13 owned web site offering tickets to the public. The formation and operation of Orbitz
14 brought together on a regular basis airline executives sharing the common objective of
15 diverting customers away from travel agents to the internet. These same executives were
16 involved in cutting travel agent commissions.

17 100. Also in mid-1999 an Executive Vice President of Marketing & Distribution
18 for Northwest Airlines, a Senior Vice President of Planning for US Air, and a Senior Vice
19 President of Marketing for American met for three hours in a Dallas Hotel conference room.

20 101. Also in mid-1999 a committee of IATA met in Montreal, Canada. Attending
21 were representatives of United, Air Canada, American, Delta, KLM, and Northwest, among
22 others. An action taken at the meeting was to rescind the IATA resolution setting base
23 commissions at 9%, effective August, 2000. Three months after this meeting, United
24 announced that it was reducing U.S. base commissions from 8% to 5% for both domestic
25 and international tickets. The other Defendants followed United's lead shortly thereafter.

26 102. In 2001, a Delta senior executive met for a weekend of golf and socializing at
27 the home of an American executive responsible for setting American's commission levels.
28 Four months later, American led an industry-wide reduction on commission caps from \$20

1
2 to \$10, the first time American had led any commission action since 1983. The other
3 Defendants followed American's lead shortly thereafter.
4

5 **E. Further Conduct Giving Rise to Violation of Law**

6 103. Each time the airlines took a commission action, they acted substantially
7 simultaneously. Their actions were separated by only a matter of days. The speed at which the
8 airlines acted allowed insufficient time for independent study and analysis of the most
9 advantageous commission rate structure for each of the airlines.

10 104. The actions of the airlines marked a significant departure from established
11 business practice. For more than a dozen years prior to the initial commission cut, airlines
12 uniformly paid a base commission of 10 percent. Delta's imposition of caps on commissions in
13 1995 was an entirely novel structure among U.S. carrier, and yet American matched it in only
14 one day. The other Defendants followed Delta's lead shortly thereafter.

15 105. By common design, Defendants structured their announcements to occur at
16 different times to create the appearance of unilateral rather than concerted behavior.

17 106. Announcements of commission cuts and caps that were faxed by different
18 Defendants to travel agents and agencies used identical or nearly identical language to describe
19 the Defendant's intentions and actions.

20 107. Prior to Delta's initial public announcement of the March, 2002 elimination of
21 base commissions, a sales representative of United told several travel agents that such changes
22 were imminent.

23 108. At a travel agent conference in San Francisco on March 4, 2002, a
24 representative of Orbitz told a travel agent that nothing "will matter very, very soon because
25 something big is about to happen that will make Orbitz #1." Ten days later, on March 14,
26 2002, Delta Airlines dropped base commissions from 5% to 0%. Other Defendants followed
27 Delta's lead shortly thereafter.
28

1
2 **F. Bankruptcy Defendants**

3 109. A conspiracy in restraint of trade may be a continuing offense renewed each
4 day of its continuance, and one who knowingly enters an illegal conspiracy intends to cause
5 the injury that the conspiracy was designed to impose and is liable for injuries caused by the
6 restraint of trade.

7 110. Delta entered Chapter 11 bankruptcy on September 14, 2005 and emerged on
8 April 30, 2007.

9 111. United entered Chapter 11 bankruptcy on December 9, 2002 and emerged on
10 February 1, 2006.

11 112. Northwest entered Chapter 11 bankruptcy on September 21, 2005 and
12 emerged on May 31, 2007 (confirm)

13 113. ATA entered Chapter 11 bankruptcy on October 26, 2004 and emerged on
14 Feb 28, 2006.

15 114. Hawaiian entered Chapter 11 bankruptcy on March 21, 2003 and emerged on
16 June 2, 2005.

17 115. Air Canada entered Chapter 11 bankruptcy on April 1, 2003 and emerged on
18 September 30, 2004.

19 116. US Airways entered Chapter 11 bankruptcy on August 11, 2002 and emerged
20 on March 31, 2003. US Airways reentered bankruptcy on September 14, 2004 and
21 reemerged on September 16, 2005.

22 117. Defendants Delta, United, Northwest, ATA, Hawaiian, Air Canada and US
23 Airways, upon emerging from bankruptcy had knowledge of the conspiracy among
24 Defendants to reduce, cap and eliminate commissions paid to travel agencies and travel
25 agents.

26 118. Through their conduct of conforming to the commission levels and caps to
27 which their co-conspirators had agreed, Defendants Delta, United, Northwest, ATA,
28 Hawaiian, Air Canada and US Airways ratified the conspiracy among Defendants.

1
2 119. At no time have Defendants Delta, United, Northwest, ATA, Hawaiian, Air
3 Canada or US Airways undertaken any action to affirmatively disavow the conspiracy
4 among Defendants to reduce, cap and eliminate commission paid to travel agencies and
5 travel agents.

6
7 **ANTITRUST INJURY**

8 120. Plaintiffs have been injured in their business and/or property by reason of the
9 Defendants' violations alleged in this complaint in the following particulars, among others:

- 10 a) Plaintiffs received less commission revenue than they otherwise would
11 have in a free, open and competitive market in the absence of the
12 Defendants' conspiracy and combination;
- 13 b) Plaintiffs have suffered losses in the values of their businesses as going
14 concerns by reason of the reduction of commission revenue they
15 otherwise would have received in a free, open and competitive market in
16 the absence of Defendants' conspiracy and combination.

17 121. The conduct of Defendants described hereinabove, and specifically the
18 agreement between and among Defendants to reduce, cap and eliminate commissions paid to
19 Plaintiffs for the sale of airline tickets constitutes a contract, combination or conspiracy to
20 unreasonably restrain trade in that such is an agreement to fix prices, a *per se* violation of
21 Section 1 of the Sherman Antitrust Act, 15 U.S.C. §1, pursuant to which Plaintiffs have
22 proximately sustained injury and damage to their businesses and property, such that Plaintiffs
23 are entitled to recover threefold such actual damages as the jury finds them to have sustained,
24 the cost of suit, including a reasonable attorney's fee, and injunctive relief, pursuant to §§4 and
25 16 of the Clayton Antitrust Act, 15 U.S.C. §§15, 26.

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TOLLING OF THE STATUTE OF LIMITATIONS

122. On June 21, 2000 a class action entitled Sarah Futch Hall, et al v. American Airlines, et al (Case Number 7-00-CV-123-BR) ("Hall") was filed in the United States District Court for the Eastern District of North Carolina on behalf of "all travel agents in the United States, Puerto Rico, and the United States Virgin Islands, who, at any time from September 1, 1997 to the present issued tickets, miscellaneous charge orders (MCO) or prepaid tickets advices (PTA) for travel on any of the Defendant airlines." As a result of the filing of the Hall complaint, the statute of limitations with respect to Plaintiffs' claims against Defendants and their co-conspirators was tolled for all purposes on June 21, 2000.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against the Defendants as follows:

- 1) That the Court find, adjudge, and decree that the Defendants have engaged in violations of the antitrust laws of the United States as set forth hereinabove;
- 2) That the Court award to Plaintiffs treble the amount of the actual damages found by the jury as provided by Section 4 of the Clayton Antitrust Act, 15 U.S.C. §15;
- 3) That the Court grant injunctive relief as provided by Section 16 of the Clayton Antitrust Act, 15 U.S.C. §26;
- 4) That the Court award to Plaintiffs the cost of suit, including a reasonable attorney's fee, as provided by Section 4 of the Clayton Antitrust Act, 15 U.S.C. §15;
- 5) That the Court grant to Plaintiffs such other and further relief to which the Plaintiffs are entitled, and the Court finds to be just in these proceedings.

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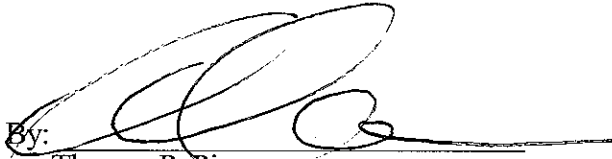
CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

JURY DEMAND

Plaintiffs demand a trial by jury of all issues triable thereby, pursuant to the Seventh Amendment of the Constitution of the United States and Rule 38(b) of the Federal Rules of Civil Procedure.

Dated: September 14, 2007

By: 
Thomas P. Pier

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