

**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

ANSWER OF DELTA AIR LINES, INC.

Defendant Delta Air Lines, Inc. (“Delta”) hereby answers the Consolidated Amended Class Action Complaint (Dkt. 53, dated February 1, 2010) (hereinafter the “Complaint”) as follows.

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Plaintiffs’ claims are barred, in whole or in part, because Plaintiffs lack standing.

THIRD DEFENSE

Plaintiffs’ claims are barred because Delta’s conduct was unilateral, reasonable, and based on independent, legitimate business and economic reasons.

FOURTH DEFENSE

Plaintiffs' claims are barred because they do not involve injury to competition.

FIFTH DEFENSE

Plaintiffs' claims are barred because Plaintiffs have not suffered any cognizable injury or antitrust injury by reason of any actions of Delta.

SIXTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the First Amendment of the U.S. Constitution.

SEVENTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the doctrine of implied preclusion because Plaintiffs' claims conflict with federal securities laws.

EIGHTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, to the extent that Plaintiffs were reimbursed for any baggage fee(s) that are the basis for their claims.

NINTH DEFENSE

To the extent Plaintiffs seek equitable relief, Plaintiffs' claims are barred because Plaintiffs have complete and adequate remedies at law.

TENTH DEFENSE

This case cannot proceed as a class action consistent with the requirements of Fed. R. Civ. P. 23 and/or the Due Process requirements of the U.S. Constitution.

ELEVENTH DEFENSE

Delta adopts by reference any additional, applicable defense pleaded by any other Defendant not otherwise pleaded here.

Delta answers the individually-numbered paragraphs of the Complaint as follows:¹

1. Delta admits that Delta and AirTran are competitors on a number of nonstop routes from Atlanta, where Delta operates its largest hub. Delta admits that vigorous competition between Delta and AirTran has benefited consumers. Delta denies that Atlanta is Delta's only hub, as Delta also operates hubs in Detroit, Minneapolis, Salt Lake City, New York – JFK, Cincinnati, Memphis, and Tokyo. Delta admits that it competes intensely on many routes with all major U.S. airlines, including Southwest Airlines, American Airlines, US Airways, Continental Airlines, and United Airlines, as well as several smaller new entrant

¹ The Complaint contains numerous headings, which are not allegations and do not require a response from Delta. To the extent any headings are construed as allegations, they are denied.

airlines, including AirTran Airways and JetBlue Airways. Delta admits that at the time of the filing of Plaintiffs' Consolidated Class Action Complaint all major U.S. carriers except Southwest, and many smaller carriers, charged a fee of \$15 or higher for the first piece of checked luggage. Delta admits that it announced on November 5, 2008, shortly after completing its merger with Northwest on October 29, 2008, it would begin charging a first bag fee for tickets purchased on or after November 5, 2008 for travel on or after December 5, 2008. Delta denies the remaining allegations of this paragraph.

2. Delta admits the Complaint seeks damages for payments of first bag fees to Delta and AirTran. Delta also admits the Complaint seeks an injunction precluding Delta and AirTran from charging a first bag fee. Except as admitted, Delta denies the allegations of this paragraph.

3. Delta lacks sufficient knowledge or information to admit or deny the allegations of this paragraph.

4. Delta lacks sufficient knowledge or information to admit or deny the allegations of this paragraph.

5. Delta lacks sufficient knowledge or information to admit or deny the allegations of this paragraph.

6. Delta lacks sufficient knowledge or information to admit or deny the allegations of this paragraph.

7. Delta denies that Ryan Goldstein is a Plaintiff. Delta otherwise lacks sufficient knowledge or information to admit or deny the allegations of this paragraph.

8. Delta lacks sufficient knowledge or information to admit or deny the allegations of this paragraph.

9. Delta lacks sufficient knowledge or information to admit or deny the allegations of this paragraph.

10. Delta lacks sufficient knowledge or information to admit or deny the allegations of this paragraph.

11. Delta lacks sufficient knowledge or information to admit or deny the allegations of this paragraph.

12. Delta denies Victoria Mertes is a Plaintiff. Delta otherwise lacks sufficient knowledge or information to admit or deny the allegations of this paragraph.

13. Delta admits the first sentence of this paragraph. Delta also admits the second sentence of this paragraph, except that Delta denies that Atlanta is its “principal” hub. Atlanta is Delta’s largest hub, but Delta also operates major hubs

at Detroit, Minneapolis, New York-JFK, Cincinnati, Salt Lake City, and Tokyo. Delta denies the remaining allegations of this paragraph.

14. Delta admits that AirTran is a domestic airline with its principal place of business in Orlando and a hub in Atlanta. Delta lacks sufficient knowledge or information to admit or deny the remaining allegations of this paragraph.

15. Admitted.

16. Admitted.

17. Denied.

18. Admitted, except that Delta lacks sufficient knowledge or information to admit or deny the accuracy of the quote in this paragraph.

19. Delta admits that AirTran and Delta are vigorous competitors, particularly on many nonstop routes to and from Atlanta, where both carriers operate a hub. Delta denies that Atlanta is its “principal” hub. Atlanta is Delta’s largest hub, but Delta also operates major hubs at Detroit, Minneapolis, New York-JFK, Cincinnati, Salt Lake City, and Tokyo. Delta lacks sufficient knowledge or information to admit or deny the accuracy of the quotes in this paragraph. Delta denies the remaining allegations of this paragraph.

20. Delta admits that AirTran and Delta are vigorous competitors, particularly on many nonstop routes to and from Atlanta, where both carriers

operate a hub. Delta admits that it often offers fares that are competitive with those offered by AirTran, but denies that its baggage fee policies have consistently matched those offered by AirTran. Except as admitted, Delta denies the allegations of this paragraph.

21. Delta denies that Delta and AirTran no longer compete vigorously. Delta admits that vigorous competition between Delta and AirTran has benefited consumers.

22. Delta lacks sufficient knowledge or information to admit or deny the allegations of this paragraph.

23. Delta lacks sufficient knowledge or information to admit or deny the allegations of this paragraph.

24. Delta lacks sufficient knowledge or information to admit or deny the remaining allegations of this paragraph.

25. Delta admits that vigorous competition between Delta and AirTran has benefited consumers. Delta denies that competition with AirTran constrained Delta from imposing “ancillary” fees, including a first bag fee. Delta admits that at the time of the filing of Plaintiffs’ Complaint all major U.S. carriers except Southwest, and many smaller carriers, charged a fee of \$15 or higher for the first

piece of checked luggage. Except as admitted, Delta denies the allegations of this paragraph.

26. Delta admits that this paragraph accurately quotes certain statements made by AirTran's CEO during the Raymond James Growth Airline Conference on January 31, 2008. Delta denies the remaining allegations of this paragraph.

27. Delta admits that 2008 was a difficult period for airlines due to record-high and highly volatile fuel prices and a severe economic recession, and that these events negatively impacted Delta's financial condition. Delta lacks sufficient knowledge or information to admit or deny the second, fourth and fifth sentences of this paragraph. Delta denies the remaining allegations of this paragraph.

28. Denied.

29. Delta admits that corporations routinely hold public conference calls with securities analysts to discuss their financial condition, and that Delta routinely monitors the analyst calls of its competitors. Delta denies the remaining allegations of this paragraph.

30. Denied.

31. Delta admits that it has and continues to compete intensely with AirTran for gate rights at Atlanta's Hartsfield-Jackson International Airport. Delta

also admits that in 2008 and 2009 Delta negotiated with the City of Atlanta regarding airport use rights at Hartsfield-Jackson, including gate leases. Delta denies the remaining allegations of this paragraph.

32. Delta admits that one or more of its employees monitored AirTran's public April 22, 2008 first quarter earnings conference call. Delta lacks sufficient knowledge or information to admit or deny the remaining allegations of this paragraph.

33. Delta admits this paragraph accurately quotes certain statements from AirTran's April 22, 2008 first quarter 2008 public earnings call. Delta lacks sufficient knowledge or information to admit or deny the remaining allegations of this paragraph.

34. Delta admits this paragraph accurately quotes certain statements from AirTran's April 22, 2008 first quarter 2008 public earnings call. Delta lacks sufficient knowledge or information to admit or deny the remaining allegations of this paragraph.

35. Delta admits this paragraph accurately quotes certain statements from AirTran's April 22, 2008 first quarter 2008 public earnings call. Delta lacks sufficient knowledge or information to admit or deny the remaining allegations of this paragraph.

36. Delta admits this paragraph accurately quotes certain statements from AirTran's April 22, 2008 first quarter 2008 public earnings call. Delta lacks sufficient knowledge or information to admit or deny the remaining allegations of this paragraph.

37. Delta admits this paragraph accurately quotes certain statements from Delta's April 23, 2008 first quarter 2008 public earnings call. Delta denies the remaining allegations of this paragraph.

38. Delta admits this paragraph accurately quotes certain statements from Delta's April 23, 2008 first quarter 2008 public earnings call. Delta denies the remaining allegations of this paragraph.

39. Denied.

40. Delta admits that one or more of its employees attended the Merrill Lynch Transportation Conference on June 18, 2008 and that speeches were made at that conference. Delta denies the remaining allegations of this paragraph.

41. Delta admits that Ed Bastian, Delta's Chief Financial Officer at that time, spoke at the Merrill Lynch Transportation Conference on June 18, 2008. Delta also admits that this paragraph accurately quotes certain statements Mr. Bastian made at that conference. Delta denies the remaining allegations of this paragraph.

42. Delta admits that its second quarter 2008 public earnings call occurred on July 16, 2008. Delta also admits that this paragraph accurately quotes certain statements from that call. Delta denies the remaining allegations of this paragraph.

43. Delta admits that this paragraph accurately quotes certain statements made during Delta's July 16, 2008 second quarter 2008 public earnings call. Delta denies the remaining allegations of this paragraph.

44. Delta admits that this paragraph accurately quotes certain statements made during Delta's July 16, 2008 second quarter 2008 public earnings call. Delta denies the remaining allegations of this paragraph.

45. Delta admits that at the time of its July 16, 2008 second quarter 2008 public earnings call, Northwest Airlines had announced its adoption of a \$15 first bag fee for tickets purchased on or after July 10, 2008 for travel on or after August 28, 2008. Delta also admits that this paragraph accurately quotes certain statements made during Delta's July 16, 2008 second quarter 2008 public earnings call. Except as admitted, Delta denies the allegations of this paragraph.

46. Delta admits that AirTran held its second quarter 2008 public earnings call on July 29, 2008. Delta also admits that this paragraph accurately quotes certain statements made by AirTran's CEO during that call. Delta denies the remaining allegations of this paragraph.

47. Delta admits that this paragraph accurately quotes certain statements made by Arne Haak, AirTran's Vice President, during AirTran's July 29, 2008 second quarter 2008 public earnings call. Delta denies the remaining allegations of this paragraph.

48. Delta admits that this paragraph accurately quotes certain statements made during AirTran's July 29, 2008 second quarter 2008 public earnings call. Delta lacks sufficient knowledge or information to admit or deny the remaining allegations in this paragraph.

49. Denied.

50. Delta admits that this paragraph accurately quotes certain statements made during AirTran's April 22, 2009 first quarter 2009 public earnings call. Delta denies that AirTran at any time "commit[ed] to reduce capacity." Delta lacks sufficient knowledge or information to admit or deny the remaining allegations in this paragraph.

51. Delta admits that one or more of its employees attended the Calyon Securities Airline Conference on September 18, 2008. Delta denies that it has colluded with AirTran. Delta lacks sufficient knowledge or information to admit or deny the remaining allegations in this paragraph.

52. Delta admits that its third quarter 2008 public earnings call occurred on October 15, 2008. Delta also admits that this paragraph accurately quotes certain statements from that call. Delta denies the remaining allegations of this paragraph.

53. Delta admits that AirTran's third quarter 2008 public earnings call occurred on October 23, 2008. Delta also admits that this paragraph accurately quotes certain statements from that call. Delta lacks sufficient knowledge or information to admit or deny the remaining allegations of this paragraph.

54. Delta admits that it had not announced its specific capacity levels for the calendar year 2009 as of October 23, 2008, the date of AirTran's third quarter 2008 public earnings call. Delta also admits that this paragraph accurately quotes certain statements from AirTran's October 23, 2008 third quarter 2008 public earnings call. Delta denies that it ever threatened AirTran in order to encourage any capacity cuts. Delta lacks sufficient knowledge or information to admit or deny the remaining allegations of this paragraph.

55. Delta admits that this paragraph accurately quotes certain statements from AirTran's October 23, 2008 third quarter 2008 public earnings call. Delta lacks sufficient knowledge or information to admit or deny the remaining allegations of this paragraph.

56. Delta admits that it announced on November 5, 2008, shortly after completing its merger with Northwest on October 29, 2008, it would begin charging a first bag fee for tickets purchased on or after November 5, 2008 for travel on or after December 5, 2008. Delta denies the remaining allegations of this paragraph.

57. Delta admits that AirTran announced on November 12, 2008 that it would begin charging a first bag fee for tickets purchased on or after November 12, 2008 for travel on or after December 5, 2008. Delta denies that at any time AirTran “assured” or “reassured” Delta that AirTran “would follow Delta’s lead in implementing a first bag fee.” Delta lacks sufficient knowledge or information to admit or deny the remaining allegations of this paragraph.

58. Delta admits that during the fourth quarter of 2008 and first quarter of 2009 the United States was experiencing a severe economic recession. Delta lacks sufficient knowledge or information to admit or deny the allegation that AirTran earned record profits during the fourth quarter of 2008 and the first quarter of 2009. Delta denies the remaining allegations of this paragraph.

59. Delta admits this paragraph accurately quotes certain statements made by AirTran’s CEO during the Raymond James Growth Airline Conference on February 5, 2009. Delta denies the remaining allegations of this paragraph.

60. Delta admits that in 2008 and 2009 the United States was experiencing a severe economic recession that affected demand for passenger airline service during that period. Delta lacks sufficient knowledge or information to admit or deny the second and third sentences of this paragraph. Delta denies the remaining allegations of this paragraph.

61. Delta denies the allegations in this paragraph because there is no such collusion.

62. Delta admits that on November 5, 2008, shortly after completing its merger with Northwest on October 29, 2008, Delta issued a press release announcing the alignment of numerous policies and fees for customers traveling on Delta- and Northwest-operated flights to ensure a seamless and consistent customer experience during the integration of the two carriers. Except as admitted, Delta denies the allegations of this paragraph.

63. Delta admits that its merger with Northwest was pro-competitive and did not substantially reduce competition. Delta denies the remaining allegations of this paragraph.

64. Delta admits that the quoted statement by Richard Anderson is an accurate quote from the transcript of an analyst conference held on April 21, 2009. To the extent Paragraph 64 alleges Delta adhered to its antitrust compliance

policies, Delta admits this allegation because Delta always adhered to its antitrust compliance policies. Delta denies the remaining allegations of this paragraph.

65. Delta admits that the quoted statements are accurate quotes from the transcript of an AirTran analyst conference held on April 22, 2009. Delta denies the remaining allegations of this paragraph.

66. Delta admits this paragraph alleges the relevant product and geographic market for purposes of this action is domestic airline passenger service city pairs by either Delta or AirTran. Except as admitted, Delta denies the allegations of this paragraph.

67. Delta admits this paragraph alleges, in the alternative, the relevant product and geographic submarkets for purposes of this action are Delta and AirTran's domestic airline passenger city pairs served from Atlanta Hartsfield-Jackson Airport. Except as admitted, Delta denies the allegations of this paragraph.

68. Delta admits that its largest hub is in Atlanta, that AirTran also operates a hub in Atlanta, and that Delta and AirTran are vigorous competitors on many nonstop routes to/from Atlanta. Delta denies the remaining allegations of this paragraph.

69. Delta admits that it has the largest market share on most city pair routes to/from Atlanta, and that its market share varies from route to route. Delta admits that AirTran is the second largest carrier at the airport, and that its market share also varies from route to route. Delta denies the remaining allegations of this paragraph.

70. Delta admits that its and AirTran's air transportation services are provided in interstate commerce. Delta denies the remaining allegations of this paragraph.

71. Denied.

72. Delta admits that Plaintiffs purport to bring this matter as a class action, and denies that Plaintiffs' allegations have any merit.

73. Delta admits that Plaintiffs purport to bring this matter as a class action, and denies that Plaintiffs' allegations have any merit.

74. Delta admits that the members of the putative class are so numerous as to make joinder impracticable. Except as admitted, Delta denies the allegations of this paragraph.

75. Denied.

76. Delta lacks sufficient knowledge or information to admit or deny whether Plaintiffs are members of the putative class, and denies the remaining allegations of the paragraph.

77. Delta lacks sufficient knowledge or information to admit or deny this paragraph.

78. Delta lacks sufficient knowledge or information to admit or deny this paragraph.

79. Denied.

80. Denied.

81. Denied.

82. No response required.

83. Denied.

84. Denied.

85. Denied.

86. Denied.

87. Denied.

88. Denied.

89-93. On August 2, 2010, the Court dismissed Count II of the Complaint; accordingly, no response is required to Paragraphs 89-93.

94-98. On August 2, 2010, the Court dismissed Count III of the Complaint; accordingly, no response is required to Paragraphs 94-98.

Except to the extent admitted above, the remaining allegations of the Complaint are denied.

WHEREFORE, Delta prays that:

- (1) Plaintiffs' Complaint be dismissed with prejudice, with all costs taxed to Plaintiffs;
- (2) The Court enter judgment in Delta's favor as to all claims asserted by Plaintiffs;
- (3) Delta recover from Plaintiffs its litigation expenses, including reasonable attorneys' fees; and
- (4) Delta recover such other and further relief as the Court deems just and proper.

Respectfully submitted, this 16th day of August, 2010.

s/ Randall L. Allen
s/ Gregory B. Mauldin
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Counsel for Defendant Delta Air Lines, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on August 16, 2010, I electronically filed the foregoing Answer with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to all counsel of record who have appeared in this matter, and also served the foregoing via electronic mail to the following:

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