

Court File No.:

CV-09-384306

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

JOHN D. PAGE and LORI RIEDIGER

Plaintiffs

and

**AIR CANADA, BRITISH AIRWAYS PLC, DELTA AIR LINES, INC., DEUTSCHE
LUFTHANSA A.G., KONINKLIJKE LUCHTVAART MAATSCHAPPIJ N.V.,
SOCIETE AIR FRANCE and UAL CORPORATION**

Defendants

Proceeding under the Class Proceedings Act, 1992

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff(s). The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff(s) lawyer(s) or, where the plaintiff(s) do(es) not have a lawyer, serve it on the plaintiff(s), and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: July 31, 2009

Issued by: 

Registrar

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TO:

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DEFINED TERMS

1. The following definitions apply for the purpose of this statement of claim:

- (a) “**ACCC**” means the Australian Competition & Consumer Commission;
- (b) “**AEA**” means the Association European Airlines;
- (c) “**Air France**” means Societe Air France also known as Air France-KLM;
- (d) “**American**” means American Airlines, Inc., the wholly owned subsidiary of AMR Corporation;
- (e) “**Base Fare**” means the price of **Passenger Services** excluding all **Surcharges** and applicable taxes;
- (f) “**British Airways**” means British Airways PLC;
- (g) “**CCB**” means the Canadian Competition Bureau;
- (h) “**CJA**” means the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (i) “**Class Members**” mean all persons, other than **Excluded Persons**, who during the **Class Period** paid air passenger **Surcharges** for **Passenger Services** to or from Canada, including flights that connect at U.S. airports, and **Trans-Atlantic Destinations** operated by the **Defendants**, or such other definition as is approved by the court;
- (j) “**Class Period**” means the period from October 1, 2001 to and including August 1, 2007;
- (k) “**Code Sharing Partner**” means an air carrier which sells seats, under its own name, on the flight of another air carrier with which it has agreed to partner;
- (l) “**Competition Act**” means the *Competition Act*, R.S.C. 1985, C.34, as amended;
- (m) “**Co-conspirators**” mean Virgin Atlantic, and various air carriers not named as **Defendants** herein and their respective officers, directors, senior employees, subsidiaries and affiliates;
- (n) “**CPA**” means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended;

- (o) “**CTA**” means the Canadian Transportation Agency;
- (p) “**Defendants**” mean the defendants including their respective predecessors and **Code Sharing Partners for Passenger Services** to or from Canada and **Trans-Atlantic Destinations** during the **Class Period**;
- (q) “**Delta**,” means Delta Air Lines, Inc., the company that acquired Northwest Airlines during 2008, which provides scheduled air passenger services from its hub markets in Atlanta, Cincinnati, Detroit, Memphis, Minneapolis-St. Paul, New York-JFK, Salt Lake City, Paris-Charles de Gaulle, Amsterdam, and Tokyo.
- (r) “**DOT**” means the U.S. Department of Transportation;
- (s) “**DOJ**” means the U.S. Department of Justice;
- (t) “**Excluded Persons**” mean the Defendants and their respective predecessors, subsidiaries, affiliates, officers, directors and senior employees, the **Co-conspirators** and persons who commence litigation in a jurisdiction other than Canada prior to the conclusion of the trial of the common issues who would otherwise have been **Class Members**;
- (u) “**Fuel Surcharge**” means a surcharge that was added to the **Base Fare** purportedly to defray costs for aviation fuel;
- (v) “**IATA**” means the International Air Transport Association;
- (w) “**Insurance Surcharge**” means a surcharge that was added to the **Base Fare** purportedly to defray costs for insurance;
- (x) “**KLM**” means Koninklijke Luchtvaart Maatschappij N.V., which is now part of **Air France-KLM**;
- (y) “**Lufthansa**” means Deutsche Lufthansa A.G.;
- (z) “**Passenger Services**” means international scheduled public long-haul air passenger services between Canada and **Trans-Atlantic Destinations**, including flights connecting in the United States;
- (aa) “**Security Surcharge**” means a surcharge that was added to the **Base Fare** purportedly to defray costs for airport security;
- (bb) “**Air France**” means Societe Air France;
- (cc) “**Surcharges**” mean the **Fuel Surcharge, Insurance Surcharge and Security Surcharge**;

- (dd) **“Swiss Air”** means the entity formerly known as Swissair that was acquired by Lufthansa during 2005;
- (ee) **“Trans-Atlantic Destinations”** mean countries located in Europe serviced by direct and indirect long-haul air passenger flights of the Defendants that include, but are not limited to, England, Ireland, France, Germany, Netherlands and Switzerland;
- (ff) **“United”** means UAL Corporation; and
- (gg) **“Virgin”** means Virgin Atlantic Airways Limited.

THE RELIEF CLAIMED

2. The plaintiffs claim on their own behalf and on behalf of the other Class

Members:

- (a) an order pursuant to the *CPA* certifying this action as a class proceeding and appointing them as the representative plaintiffs;
- (b) damages for conduct that is contrary to Part VI of the *Competition Act* in the amount of \$100 million or such other sum as this court finds appropriate at the trial of the common issues or at a reference or references;
- (c) damages for civil conspiracy in the amount of \$100 million or such other sum as this court finds appropriate at the trial of the common issues or at a reference or references
- (d) punitive and/or exemplary damages in the amount of \$10 million or such other sum as this court finds appropriate at the trial of the common issues;
- (e) prejudgment interest and post-judgment interest, compounded, or pursuant to ss. 128 and 129 of the *CJA*;
- (f) costs of investigation and prosecution of this action pursuant to s. 36(1) of the *Competition Act*;
- (g) costs of this action in an amount that provides full indemnity or on a substantial indemnity basis plus the costs of distribution of an award under s. 24 or 25 of the *CPA*, including the costs of notice associated with the distribution and the fees payable to a person administering the distribution pursuant to s. 26(9) of the *CPA*;

- (h) an order directing a reference or giving such other directions as may be necessary to determine issues not determined in the trial of the common issues; and
- (i) such further and other relief as to this Honourable Court seems just.

THE NATURE OF THE ACTION

3. This action arises from a conspiracy to enhance unreasonably the price of Passenger Services by the adoption and adjustment of Surcharges on top of the cost of Base Fares for flights to and from Canada and Trans-Atlantic Destinations operated by the Defendants and/or the Co-conspirators during the Class Period.

4. As alleged herein, the Defendants and the Co-conspirators agreed at international air carrier association meetings and elsewhere to adopt and adjust Surcharges in tandem, despite having different cost structures, including different fuel hedging strategies.

5. Beginning in 2007, with the assistance of the ACCC and the CCB, the DOJ has objected to Surcharges and has lodged criminal complaints against certain air carriers. During August 2007, British Airways plead guilty to criminal price-fixing charges in violation of U.S. antitrust laws for its participation in a cartel relating to Surcharges, in part, associated with the Surcharges associated with the cost of Passenger Services to or from U.S. and Trans-Atlantic Destinations.

6. Because of the unlawful conduct and conspiracy alleged herein, which plaintiffs believe relates to the same conduct involved in British Airways' guilty plea secured by the DOJ, the plaintiffs and other members of the Class paid Surcharges for Passenger Services to and from Canada and Trans-Atlantic Destinations serviced by the Defendants and the Co-conspirators during the Class Period.

THE PARTIES

7. Lori Riediger resides in St. Catherines, Ontario. During the Class Period, Riediger paid for Passenger Fares and Surcharges on the internet for a flight operated by British Airways departing from Toronto, Ontario to London, England and return. Riediger thereafter had a contractual relationship with British Airways in Ontario.

8. John Page resides in Cottam, Ontario. During the Class Period, Page paid for a Passenger Fare and Surcharges in London, Ontario for a flight operated by British Airways departing from Toronto, Ontario to London, England and return. Page thereafter had a contractual relationship with British Airways in Ontario.

9. Air Canada is a Canadian corporation headquartered in Saint Laurent, Quebec that provides, on behalf of itself and its Code Sharing Partners, international air transportation and operates flights between Canada and Trans-Atlantic Destinations. Air Canada is a member of IATA. During the Class Period, Air Canada, on behalf of itself and its Code Sharing Partners, charged its customers Surcharges in addition to Base Fares to or from Canada and Trans-Atlantic Destinations.

10. Air France is a French corporation headquartered in Cedex, France, that provides international air transportation and operates flights between Canada and Trans-Atlantic Destinations. Air France and KLM merged their operations in May 2004. Air France is a member of IATA. During the Class Period, Air France, on behalf of itself and its Code Sharing Partners, charged customers Surcharges in addition to its Base Fares to or from Canada and Trans-Atlantic Destinations.

11. British Airways is a British corporation headquartered in Harmondsworth, England, that provides international air transportation and operates flights between Canada and the United Kingdom. British Airways is a member of IATA. During the Class Period, British Airways, on behalf of itself and its Code Sharing Partners, charged its customers Surcharges in addition to Base Fares to or from Canada and Trans-Atlantic Destinations.

12. Delta is a U.S. based company with its principal place of business in Atlanta, Georgia. Delta provides international air transportation and operates flights between Canada and Trans-Atlantic Destinations. Delta is a member of IATA. During 2008, Delta acquired Northwest Airlines, Inc. ("Northwest"). Delta and Northwest are members of IATA. During the Class Period, Delta and Northwest, on behalf of itself and its Code Sharing Partners, charged its customers Surcharges in addition to Base Fares to and from Canada and Trans-Atlantic Destinations.

13. KLM is a Dutch corporation with headquarters in Cedex, France, and Amsterdam, Netherlands, that provides international air transportation and operates flights between Canada and Trans-Atlantic Destinations. Air France and KLM merged their operations in May 2004. KLM is a member of IATA. During the Class Period, KLM, on behalf of itself and its Code Sharing Partners, charged its customers Surcharges in addition to Base Fares to or from Canada and Trans-Atlantic Destinations.

14. Lufthansa is a German corporation with its principal places of business in Bonn and Cologne, Germany, that provides international air transportation and operates flights between Canada and Trans-Atlantic Destinations. Lufthansa is a member of IATA. During the Class Period, Lufthansa, on behalf of itself and its Code Sharing Partners, charged its customers Surcharges in addition to Base Fares to or from Canada and Trans-Atlantic Destinations.

15. United is an American corporation headquartered in Chicago, Illinois that provides international air transportation and operates flights between Canada and Trans-Atlantic country destinations. United is a member of IATA. During the Class Period, United, on behalf of itself and its Code Sharing Partners, charged its customers Surcharges in addition to Base Fares to or from Canada and Trans-Atlantic Destinations. On December 9, 2002, United filed for Chapter 11 bankruptcy protection and on February 1, 2006, it emerged from bankruptcy. At no time during the bankruptcy proceeding did United inform the Class of the potential of the claim lodged herein.

16. The plaintiffs plead that the Defendants are jointly and severally liable each for the acts and liability of the others and their respective Code Sharing Partners.

THE CO-CONSPIRATORS

17. Various air carriers not named as Defendants herein, including but not limited to Virgin, participated as Co-conspirators in the unlawful conduct alleged herein and performed acts and made statements in furtherance thereof.

18. Virgin provides international air transportation and operates flights between the U.S. and the United Kingdom. During the Class Period, Virgin charged its customers Surcharges in addition to Base Fares to and from U.S. and Trans-Atlantic Destinations.

19. The acts alleged in this claim to have been done by the Defendants and the Co-conspirators were authorized, ordered and done by their officers, directors and senior employees, wherever situate.

20. The plaintiffs plead that the Defendants are jointly and severally liable for the acts and liability of all Co-conspirators.

THE CANADIAN TRADE AND COMMERCE

21. The international air passenger service market in Canada is regulated, in part, by the CTA and CCB.

22. The Passenger Services market is highly concentrated. There exist substantial barriers to entry into the Passenger Services market. Both factors facilitate the implementation and maintenance of a horizontal price-fixing cartel such as the one alleged herein.

23. The Montreal Economic Institute has reported that the Canadian air transportation industry had a production value of over \$4 billion annually. During 2005, the number of passengers using Canadian airports climbed to 63.7 million.

RELEVANT PRODUCT AND SERVICE MARKET

24. Passenger Services are a fungible, commodity product such that one air carrier is readily substitutable for another. Price is the primary factor driving customer choice between different air carriers.

25. Air Canada is Canada's largest domestic full service airline. Foreign air carriers provide scheduled public air passenger service for the Trans-Atlantic Destination market in alleged connection with Air Canada and major foreign airlines.

Major U.S. airlines also provide air passenger services to Canadians out of U.S. airports to and from Trans-Atlantic Destinations.

26. The Defendants and the Co-conspirators are competitors of each other in numerous Trans-Atlantic routes. In its annual reports, British Airways identifies Air Canada, Air France, Lufthansa, United, and other air carriers as competitors.

27. The purported reason for the Surcharges is to compensate for alleged unforeseen incremental costs of fuel, security and insurance.

28. The plaintiffs allege that the uniform adoption and adjustment of Surcharges by the Defendants, as facilitated in part by the IATA meetings, was anticompetitive and unduly prevented or lessened competition in the market for scheduled public flights to and from Canada and Trans-Atlantic Destinations operated by the Defendants and/or the Co-conspirators during the Class Period.

29. Collectively the Defendants and their known and unknown Co-Conspirators enjoy market power in the market for scheduled public flights to and from Canada and Trans-Atlantic Destinations, including, but not limited to, flights between Canada, including flights that connect at U.S. airports, and Ireland, United Kingdom, Brussels, France, and Germany.

THE INTERNATIONAL AIR CARRIERS' ASSOCIATION MEETINGS

30. IATA is a non-governmental international trade organization, organized under Canadian laws, that includes most of the world's international air carriers, including Air Canada, Air France, American, British Airways, Lufthansa and United.

31. Among various reasons, IATA was established to enable its air carrier members to discuss and agree upon international rates and fares for scheduled cargo and passenger transportation services.

32. The IATA Tariff Services Handbook, Issue 1 of 1 July 1999, specifically lists the gaining of access to market knowledge and the exchange of market information required to price tariffs as benefit to airlines from attending IATA conferences.

33. At the IATA meetings, competing air carrier members discuss the air passenger fares and tariff rates that they wish to charge in many international markets. Generally, once an understanding between competing air carriers is formed, the understanding is drafted into a resolution. The resolution is then submitted to various aviation regulators around the globe, including the CTA and DOT.

34. Prior to acting on a resolution, IATA air carrier members are supposed to file the proposed tariff with aviation regulators, in this case, CTA. At all times IATA air carrier members are forbidden to engage in activities that violate competition and antitrust laws.

THE FACTS

35. Beginning on or about January 1, 2000, the Defendants and their Co-conspirators conspired to adopt Surcharges in addition to the cost of their Base Fares. As described in more detail below, the Defendants and the Co-conspirators participated in meetings, conversations and communications during which they agreed to adopt and enhance unreasonably the amounts for Fuel Surcharges, Insurance Surcharges and Security Surcharges.

36. On February 2, 2000, IATA hosted one of multiple joint working groups among the IATA member air cargo and air passenger carriers in Geneva, Switzerland. Patrick Murphy, IATA's Director of Tariff Services, chaired the joint air cargo and air passenger meetings. At this joint air cargo and air passenger conference, IATA air carrier members analyzed and determined possible resolution changes.

EVOLUTION OF THE INTERNATIONAL AIR PASSENGER CARTEL

37. During the February 24 - 25, 2000 IATA Passenger Tariff Coordinating Conference in Geneva, Switzerland, J van Crombrughe, IATA's Chairman, opened a special meeting relating to, among other topics, the cost of jet fuel. IATA provided its members with a fuel index from 1990 to February 2000.

38. During this special meeting, Patrick Murphy and the IATA air carrier members discussed the adoption of passenger Fuel Surcharges either in the form of a percentage of the air passenger fare or a specific monetary amount:

- (a) other air carrier members, such as Lufthansa, however, proposed air passenger fare increases on a worldwide basis specifically including North American markets;
- (b) Air Canada proposed that IATA air carrier members charge an additional 4% to/from Canadian markets to compensate for fuel costs; and
- (c) IATA strongly encouraged members to increase worldwide air passenger fares by 3% in order not to jeopardize the general agreement to increase air passenger fares to compensate themselves for increased fuel costs.

39. When the February 24–25, 2000, Passenger Tariff Coordinating Conference concluded, it was uncertain whether the Fuel Surcharge would be approved by the DOT, so it was recommended that the Secretariat of IATA continue to monitor fuel prices and to inform IATA Passenger Tariff Conference members.

40. On March 14, 2000 the DOT issued an order denying the proposed IATA Fuel Surcharges for air cargo services antitrust immunity. Once IATA air carrier members learned of this denial, they dropped the development of a resolution in respect of Fuel Surcharges for Passenger Services.

41. At a May 12–17, 2000 IATA conference, IATA air carrier members discussed how they could circumvent the DOT's order opposing Fuel Surcharges for air

cargo services. Swiss Air proposed that the industry re-address the fuel surcharge index and create procedures to compensate for the present increase in fuel costs in a manner acceptable to various authorities, which would be effective August 1, 2000.

42. Once an agreement was reached, Swiss Air proposed a method by which the industry could be kept informed in the most efficient manner and announced that it would circulate its own fuel index to IATA members.

43. After the events of September 11, 2001, AEA air carrier members discussed how to establish a joint insurance fund paid for, in part, by Insurance Surcharges and uniformly adopted Insurance Surcharges.

44. On or about May 19 to 23, 2003, representatives of IATA's Resolution Advisory Panel met in Montreux, Switzerland to discuss the adoption of a Fuel Surcharge to be added to Passenger Services.

45. On or about July 14 to 18, 2003, Air France, British Airways, KLM, and Lufthansa, Co-conspirators and other IATA air carrier members met at the IATA Passenger Tariff Coordinating Conference in Geneva, Switzerland at which time they agreed to adopt a Surcharge for Fuel Surcharges, Insurance Surcharges and Security Surcharges for Passenger Services to and from Canada and Trans-Atlantic Destinations beginning around April 2004.

46. In May 2004, in accordance with the July 2003 agreement made among various IATA members, Air Canada, Air France, British Airways and other IATA members providing Passenger Services added a Fuel Surcharge to flights to and from Canada and Trans-Atlantic Destinations.

47. On or about May 28, 2004, the Defendants met with other IATA air carrier members at an IATA Passenger Tariff Coordinating Conference at which time they agreed to increase the Fuel Surcharge during the summer months.

48. Following this meeting, certain Defendants and other air carriers providing Passenger Services to Trans-Atlantic Destinations originating in Canada, including Air Canada, British Airways, and other IATA air carrier members, submitted documents to the CTA concerning their increase of Surcharges.

49. By way of example of how the CTA responded to all air carriers, the CTA advised British Airways to provide justification as to how the Fuel Surcharge responds to an unforeseen and unavoidable increase in costs, and why it is necessary to propose a Surcharge rather than an increase in Base Fares. The CTA did not analyze the prospective anticompetitive nature of the Surcharges.

50. On or about April 29, 2005, the Defendants and other IATA air carrier members met at an IATA Passenger Tariff Coordinating Conference in Geneva, Switzerland to discuss increasing Fuel Surcharges.

51. Although this meeting was supposed to exclude any discussion of the North American markets, the IATA air carrier members specifically addressed Canadian markets:

- (a) Catherine Prunier-Billard, of Air France, suggested that IATA air carrier members should adjust their air passenger Fuel Surcharges to \$40 per segment on a world-wide basis;
- (b) Barbara Ahlers, of Lufthansa, supported general air passenger fare price increases but expressly disclosed its inability to increase air passenger fares from Germany; and
- (c) Alan Clarkson, of United, supported the proposition of adjusting air passenger Fuel Surcharges to CAD\$75 per segment on the U.S. to Japan route and CAD\$25 for special fares.

52. Following this meeting, Air Canada, British Airways, United and other air carriers increased their Fuel Surcharges on Trans-Atlantic flights originating in Canada.

53. On or about July 18 to 21, 2005, the Defendants and other IATA air carrier members met at an IATA Passenger Tariff Coordinating Conference in Montreal, Quebec to discuss a plan for IATA to monitor fuel costs and to circulate a fuel surcharge index with a base level to index Fuel Surcharges between air carrier members while avoiding the scrutiny of certain aviation regulators.

54. At this meeting, the Defendants and other IATA air carrier members accepted and adopted a proposal for IATA to develop and administer a fuel index that would not require approval from the CTA, DOT and other aviation regulators.

THE GOVERNMENT INVESTIGATIONS AND SUBSEQUENT GUILTY PLEAS

55. On August 1, 2007, the DOJ issued a Criminal Information charging British Airways with conspiring to fix the price of Passenger Services.

56. On August 23, 2007, British Airways appeared in the U.S. District Court for the District of Columbia and pled guilty to criminal antitrust violations for its role in a price-fixing conspiracy concerning both the air cargo and air passenger industries. It paid a fine of USD\$300 million dollars. In its plea, it admitted that it engaged in discussions and attended meetings with representatives of another Trans-Atlantic airline in furtherance of the alleged conspiracy.

57. On April 20, 2009, the EU issued an official information statement confirming that the European Commission formally opened two antitrust proceedings in relation to the improper cooperation between certain airlines on Passenger Services for Trans-Atlantic Destinations. Both investigations relate to the airlines' alleged anticompetitive conduct in agreeing to schedules, capacity, pricing, and revenue management on Trans-Atlantic Destinations.

58. In addition, the Defendants and other international air carriers have been identified as targets and or subjects of international anti competition and/or price-fixing investigations by the ACCC, CCB, DOJ, Attorney General of Florida, Office of Fair Trade of the United Kingdom, and Brazilian antitrust authorities.

THE CONSPIRACY

59. During the Class Period, the Defendants and their Co-conspirators engaged in conversations, communications and attended meetings in Canada, the United States, Switzerland and other places unknown to the plaintiffs and unlawfully agreed to:

- (a) adopt and adjust Surcharges in agreed upon amounts set from time to time for flights to and from Canada and Trans-Atlantic Destinations; and
- (b) prevent or lessen, unduly, competition in the Passenger Services market in Canada for flights to or from Canada and Trans-Atlantic Destinations by sharing sales and pricing data relating to their Surcharges thereby permitting Defendants not having to compete on Surcharges.

60. In furtherance of the conspiracy, the following acts were done by Defendants and the Co-conspirators during the Class Period:

- (a) they participated in meetings, conversations and communications in Canada, Switzerland, the United States and elsewhere to discuss the adoption and adjustment of Surcharges;
- (b) they agreed to adopt and adjust Surcharges in a manner to prevent, limit or lessen, unduly the competition between air carriers;

- (c) they engaged in meetings, conversations and communications to monitor and enforce the agreed upon Surcharges;
 - (d) they agreed not to discuss publicly or otherwise reveal the nature and substance of the conspiracy;
 - (e) they used their membership in AEA and IATA to exchange information about market conditions and the amount of Surcharges; and
 - (f) they gave false reasons for the amounts of the Surcharges, and for the increases in those amounts during the Class Period and falsely described such increases as being the result of external costs rather than collusion;
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61. The result of the unlawful conduct was that the plaintiffs and the other Class Members were forced to pay Surcharges for Passenger Services to and from Canada and Trans-Atlantic Destinations during the Class Period.

62. The acts particularized above were unlawful because they breached Part VI of the *Competition Act* and render the Defendants jointly and severally liable to pay the damages which resulted pursuant to s. 36 of the *Competition Act*.

63. Further, or alternatively, the acts particularized above were unlawful acts directed towards the plaintiffs and the other Class Members, which the Defendants knew were in violation of antitrust laws and would likely cause injury to the plaintiffs and the other Class Members. Therefore, the Defendants are liable for the tort of civil conspiracy.

THE PLAINTIFFS AND THE CLASS MEMBERS SUFFERED DAMAGES

64. The alleged violations of the *Competition Act* and wrongful conduct at common law, had the effect of artificially inflating Surcharges for Passenger Services to and from Canada and Trans-Atlantic Destinations during the Class Period because of the Surcharges which were charged and paid by plaintiffs and the other Class Members.

65. The Defendants and their Co-conspirators agreed to and did charge Surcharges for Passenger Services in uniform manners during the Class Period for Trans-Atlantic Destinations.

66. During the Class Period, the plaintiffs and the other Class Members paid and the Defendants unjustly collected millions of dollars for the Surcharges for Passenger Services between Canada and Trans-Atlantic Destinations.

67. By reason of the alleged violations of the *Competition Act* and the wrongful conduct at common law, the plaintiffs and the other Class Members paid more for Passenger Services to or from Canada and Trans-Atlantic Destinations during the Class Period than they would have paid in the absence of the wrongful conduct. As a result, they have been injured and have suffered damages in the amount of the Surcharges and the applicable taxes.

68. The plaintiffs assert that their combined damages along with those of the other Class Members are capable of being quantified on an aggregate basis, in whole or

in part, as the aggregate of the Surcharges and the applicable taxes thereon paid for Passenger Services to or from Canada and Trans-Atlantic Destinations during the Class Period.

PUNITIVE/EXEMPLARY DAMAGES

69. The plaintiffs plead that the conduct of the Defendants was high-handed, outrageous, wanton, deliberate, callous, disgraceful, wilful and motivated solely by economic considerations. Such conduct renders the Defendants liable to pay punitive and/or exemplary damages.

70. The discussions at the IATA meetings to adopt and adjust Surcharges for Passenger Services began, at the latest, in January 2000.

71. The DOJ put the Defendants on notice that indexing for Fuel Surcharge purposes was improper and would breach antitrust laws.

72. The CTA put the Defendants on notice that their adoption and use of Surcharges appeared, at times, to be unreasonable and unjustified.

73. Between 2000 and 2005, the Defendants engaged in numerous meetings to determine how to structure a fuel index for Fuel Surcharges and the methods to circumvent disclosure.

74. The conduct alleged herein renders the Defendants liable to pay punitive and/or exemplary damages.

RELEVANT LEGISLATION

75. The plaintiffs plead and rely upon the *CJA*, *CPA* and Sections 36, 45 and 46 of the *Competition Act*.

REAL AND SUBSTANTIAL CONNECTION WITH ONTARIO

76. The plaintiffs plead that this action has a real and substantial connection with Ontario because, among other things:

- (a) the Defendants engage in business in Ontario;
- (b) the Defendants engaged in meetings in Canada relating to the alleged conspiracy;
- (c) the Defendants directly, or indirectly with code-sharing arrangements, market tickets for Trans-Atlantic Destinations to and from Canada and derive substantial revenue from such sales;
- (d) the plaintiffs' damages, and those of the other Class Members resident in Ontario, were sustained in Ontario;
- (e) the Defendants made application to Transport Canada in Ottawa to receive an Air Operator Certificate Status for permission to carry on business in Canada;
- (f) the Defendants advertised their air transportation services in Ontario; and

- (g) Defendants have all engaged in numerous forms of official contacts and business with the CTA.

SERVICE

77. This originating process may be served without court order outside Ontario in that the claim is:

- (a) in respect of contracts made in Ontario with the plaintiffs and those Class Members resident in Ontario (Rule 17.02(f));
- (b) in respect of a tort committed in Ontario (Rule 17.02(g));
- (c) in respect of damages sustained in Ontario arising from a tort wherever committed (Rule 17.02(h));
- (d) against a person outside Ontario who is a necessary or proper party to a proceeding properly brought against another person served in Ontario (Rule 17.02(o)); and
- (e) against a person carrying on business in Ontario (Rule 17.02(p)).

PLACE OF TRIAL

78. The plaintiffs propose that this action be tried in the City of Toronto in the Province of Ontario.

July 31, 2009

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PAGE et al.

Plaintiffs

vs. Air Canada et al.

Defendants

Court File No.

CV-09-3843db

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT LONDON

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

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