

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

JUL 15 2015

S=155798

No. _____
Vancouver Registry

In the  Supreme Court of British Columbia

Between

JACOB G. SORENSEN

Plaintiff

and

**AIR CANADA, AIR CANADA ROUGE GENERAL PARTNER INC.,
CHORUS AVIATION INC., JAZZ AIR INC., DELTA AIR LINES, INC.,
AMERICAN AIRLINES, INC. UNITED AIRLINES, INC. and
SOUTHWEST AIRLINES CO.**

Defendants

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (c) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and

- (d) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

PART 1: STATEMENT OF FACTS

Parties

The Plaintiff

1. The plaintiff, Jacob G. Sorensen is a director of sales who resides in Burnaby, British Columbia. Between January 1, 2010 and the present (the "Class Period"), Mr. Sorensen purchased tickets from one or more of the defendants for air travel between the United States of America ("USA") and Canada.

The Defendants

2. The defendant Air Canada is a company incorporated pursuant to the Laws of Canada with a head office located at 510 Boulevard de Maisonneuve W., 7th

Floor, Montreal, QC, and a designated attorney in the Province of British Columbia, namely, AHBL Corporate Services Ltd., with a delivery and mailing address at 2700-700 West Georgia Street, Vancouver, BC. During the Class Period, Air Canada carried on business as a provider of air travel services and sold tickets for air travel between Canada and the USA to Canadian residents.

3. The defendant Air Canada rouge General Partner Inc. ("Air Canada rouge") is wholly-owned subsidiary of Air Canada and is a company incorporated pursuant to the Laws of Canada with a registered office located at 7373 de la Cote Vertu Boulevard, Montreal, QC. During the Class Period, Air Canada rouge carried on business as a provider of air travel services and sold tickets for air travel between Canada and the USA to Canadian residents.
4. The defendant Chorus Aviation Inc. ("Chorus") is a company incorporated pursuant to the Laws of Canada with a registered office at 100 King Street West, Suite 6100, 1 First Canada Place, Toronto, ON. During the Class Period, Chorus carried on business as a provider of air travel services and sold tickets for air travel between Canada and the USA to Canadian residents through its subsidiary, the defendant Jazz Air Inc. ("Jazz"; collectively with Air Canada, Air Canada rouge, and Chorus, the "Air Canada Group").
5. The defendant Jazz is a company incorporated pursuant to the Laws of Canada with a registered office at 310 Goudey Drive, Enfield, NS. During the Class Period, Jazz carried on business as a provider of air travel services and sold tickets for air travel between Canada and the USA to Canadian residents.
6. Air Canada controlled the business of Chorus and Jazz for air travel between Canada and the USA through contractual arrangements. The business of Air Canada, Air Canada rouge, Chorus and Jazz is inextricably interwoven with that of the other and each is the agent of the other for the purposes of providing of air travel services and selling tickets for air travel between Canada and the USA to Canadian residents and for the purposes of the conspiracy described below.

7. The defendant, Delta Air Lines, Inc. ("Delta") is a Delaware corporation with a head office in Atlanta, Georgia, USA and extra-provincially registered in British Columbia with a designated attorney in the Province of British Columbia, namely, Patricia Moreland, with a delivery and mailing address c/o Delta Air Lines Inc., C4854 Vancouver International Airport, 3211 Grant McConachie Way, Richmond, BC. During the Class Period, Delta carried on business as a provider of air travel services and sold tickets for air travel within the USA, and between Canada and the USA, to Canadian residents.

8. The defendant American Airlines, Inc. ("American Airlines") is a Delaware corporation with a head office in Fort Worth, Texas, USA, and extra-provincially registered in British Columbia with a designated attorney in the Province of British Columbia, namely, Douglas A. Side, with a delivery and mailing address at 19th Floor, 885 West Georgia Street, Vancouver, BC. During the Class Period, American Airlines carried on business as a provider of air travel services and sold tickets for air travel within the USA, and between Canada and the USA, to Canadian residents.

9. The defendant United Airlines is a Delaware corporation with a head office in Chicago, Illinois, and extra-provincially registered in British Columbia with a designated attorney in the Province of British Columbia, namely Terrance D. Swan, with a delivery and mailing address at 1212-1175 Douglas Street, Victoria, BC. During the Class Period, United Airlines carried on business as a provider of air travel services and sold tickets for air travel within the USA, and between Canada and the USA, to Canadian residents.

10. The defendant Southwest Airlines Co. ("Southwest") is a Texas corporation with its head office in Dallas, Texas. During the Class Period, Southwest carried on business as a provider of air travel services and sold tickets for air travel within the USA to Canadian residents.

The Class

11. This action is brought on behalf of all Canadian resident persons who, during the Class Period, purchased a ticket from any of the defendants for air travel within the USA, or between Canada and the United States (excluding the defendants, their employees and their respective parents, subsidiaries and affiliates) (the "Class").

Barriers to Entry in the Airline Industry

12. There are significant barriers to entry in the airline industry. High capital investment and overhead costs, restrictions on the number of available takeoff and landing slots at airports and the existence of established frequent flyer programs and airline associations with a captive clientele make it difficult for new airlines to enter the market.

The Alleged Conspiracy

13. During the Class Period, the defendants conspired and agreed with each other, and with other unknown airlines not yet named as defendants, to:
 - (a) fix, maintain, increase or control the price for the supply of tickets for air travel within the USA and between the USA and Canada;
 - (b) allocate sales, territories, customers or markets for the supply of air travel within the USA and between the USA and Canada; and
 - (c) fix, maintain, control, or lessen the supply of and capacity for air travel services within the USA or between the USA and Canada.

(collectively, the "Conspiracy")

14. The defendants' predominant purpose was to injure the plaintiff and other members of the Class. The defendants directed the Conspiracy towards the plaintiff and other members of the Class. Further, and in any event, the

defendants knew or ought to have known in the circumstances that injury to the plaintiff and to the other Class members was likely to, and in fact, did result.

15. In furtherance of the Conspiracy, during the Class Period, the following acts were done by the defendants and their respective executives, officers, employees, servants and agents:
- (a) they shared information about passenger-carrying capacity and profitability of routes;
 - (b) they had communications about their plans or other airlines' plans for passenger-carrying capacity;
 - (c) they had communications about the undesirability of increases to passenger-carrying capacity;
 - (d) they had communications about their plans for adding new flights, routes and extra seats;
 - (e) they reached agreements to limit flying routes;
 - (f) they reached agreements to limit increases to passenger-carrying capacity;
 - (g) they took advantage of business meetings, such as the June 2015 annual International Air Transport Association ("IATA") conference, to have discussions regarding the matters outlined at subparagraphs (a) through (f) above and to further the Conspiracy;
 - (h) they took steps to disguise meetings and communications in which they discussed the Conspiracy, such as using the word "discipline" as a euphemism for limiting flights and seats, with the effect of higher prices and fatter profit margins for the defendants;
 - (i) they instructed members of the Conspiracy not to divulge its existence;

- (j) they engaged in monitoring activities to determine whether their co-conspirators were abiding by their agreements; and
 - (k) they threatened to take retaliatory measures such as engaging in a “price war” with any airline which failed to abide by their agreements.
16. As further particulars of the implementation of the Conspiracy, at the 2015 IATA annual meeting:
- (a) Delta’s president, Ed Bastian, stated that Delta was “continuing with the discipline that the market place is expecting”;
 - (b) Air Canada’s chief executive, Calin Rovinescu, stated, “People were undisciplined in the past, but they will be more disciplined this time”; and
 - (c) American Airlines’ chief, Doug Parker, stated that the airlines had learned their lessons from past price wars: “I think everybody in the industry understands that”.
17. The defendants were motivated to conspire and their predominant purpose was to harm the plaintiff and other Class members by requiring them to pay illegal and artificially high prices for air travel within the USA, and between Canada and the USA.
18. The acts alleged in this claim to have been done by each corporate defendant were authorized, ordered, and done by each defendant’s officers, directors, agents, employees, or representatives while engaged in the management, direction, control, or transaction of their respective business affairs.

Damages

19. As a result of the defendant’s actions, the plaintiff and the other Class members suffered the following damages:

- (a) the prices paid by the plaintiff and by other Class members for air travel with one of the defendants within the USA or between the USA and Canada were maintained at or increased to a supracompetitive level; and
- (b) competition in the supply of air travel services within the USA or between the USA and Canada has been lessened.

PART 2: RELIEF SOUGHT

20. The plaintiff claims, on his own behalf, and on behalf of the members of the Class:

- (a) an order certifying this action as a class proceeding against the defendants;
- (b) an order appointing the plaintiff as representative plaintiff in respect of the Class members;
- (c) a declaration that the defendants, and each of them, participated in a conspiracy with each other and with other airlines to:
 - (i) fix, maintain, increase or control the price for the supply of tickets for air travel within the USA or between the USA and Canada;
 - (ii) allocate sales, territories, customers or markets for the supply of air travel within the USA or between the USA and Canada; and
 - (iii) fix, maintain, control, or lessen the supply of air travel services within the USA or between the USA and Canada,in violation of statutory, common law, and equitable laws as alleged in this claim;
- (d) alternatively, a declaration that some or all of the defendants have been unjustly enriched by the receipt of the Ticket Overcharge (as defined below at paragraph 29) or a portion thereof;

- (e) general damages for conduct that is contrary to Part VI of the *Competition Act*, RSC 1985, c 19 (2nd Suppl.);
- (f) general damages for conspiracy;
- (g) alternatively, damages for unjust enrichment, payable to the plaintiff and to the other Class members in an amount equal to the Ticket Overcharge;
- (h) an accounting and disgorgement of any benefits acquired by the defendants through any conspiracy;
- (i) an injunction restraining the defendants from conspiring or agreeing with each other, or others, to:
 - (i) fix, maintain, increase or control the price for the supply of tickets for air travel within the USA or between the USA and Canada;
 - (ii) allocate sales, territories, customers or markets for the supply of air travel within the USA or between the USA and Canada;
 - (iii) fix, maintain, control or lessen the supply of and capacity for air travel services within the USA or between the USA and Canada;
- (j) an order for the aggregate assessment of monetary relief and its distribution to the plaintiff and the Class members.
- (k) judgment in the amount of the Ticket Overcharge;
- (l) punitive damages;
- (m) costs of investigation and prosecution of this proceeding pursuant to section 36 of the *Competition Act*;
- (n) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, RSBC 1996, c 78, s 128; and
- (o) such further and other relief as to this Honourable Court may seem just.

PART 3: LEGAL BASIS

21. The plaintiff pleads and relies upon the *Class Proceedings Act*, the *Competition Act*, and the *Court Jurisdiction and Proceedings Transfer Act*, RSBC 2003, c 28 (the "CJPTA").

Causes of Action

Breach of the *Competition Act*

22. The acts particularized in paragraphs 13 through 18 are in breach of section 45 of Part VI of the *Competition Act*, and render the defendants jointly and severally liable to pay damages and costs of investigation pursuant to section 36 of the *Competition Act*.
23. Specifically in committing the acts particularized in paragraphs 13 through 18, the defendants conspired to:
- (a) fix, maintain, increase or control the price for the supply of tickets for air travel within the USA or between the USA and Canada;
 - (b) allocate sales, territories, customers or markets for the supply of air travel within the USA or between the USA and Canada; and
 - (c) fix, maintain, control or lessen the supply of air travel within the USA or between the USA and Canada.

Civil Conspiracy

24. The acts particularized in paragraphs 13 through 18 were unlawful acts directed towards the plaintiff and other Class members, which unlawful acts the defendants knew in the circumstances would likely cause injury to the plaintiff and other Class members, and as such the defendants are each liable for the tort of civil conspiracy.
25. Further, or alternatively, the acts particularized in paragraphs 13 through 18 were directed towards the plaintiff and other Class members. The predominant

purpose of those acts was to injure the plaintiff and other Class members, and the defendants are jointly and severally liable for the tort of conspiracy to injure.

Punitive Damages

26. The plaintiff pleads that the defendants' conduct as particularized at paragraphs 13 through 18 was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, willful, in disregard of the plaintiff's rights and the rights of each Class member, indifferent to the consequences and, as such, renders the defendants jointly and severally liable to pay punitive damages.

Unjust Enrichment and Waiver of Tort

27. In the alternative, the plaintiff waives any tort pleaded above, and pleads that it and the other Class members are entitled to recover for the defendants' gains resulting from the Conspiracy under restitutionary principles.

28. Equity and good conscience requires that the defendants make restitution to the plaintiff and the other Class members of the artificially-induced Ticket Overcharge, or alternatively to disgorge that ill-gotten gain to the Plaintiff and the other Class members because, among other reasons:

- (a) the Ticket Overcharge was acquired in such circumstances that the defendants may not in good conscience retain it;
- (b) justice and good conscience require restitution;
- (c) the integrity of the marketplace would be undermined if the court did not order restitution; and
- (d) there are no factors that would, in respect of the artificially induced Ticket Overcharge, render restitution unjust.

29. Further, or alternatively, the defendants have each been unjustly enriched by the receipt of the artificially high prices for their tickets for air travel within the USA, or between Canada and the USA. The plaintiff and other Class members have

suffered a deprivation in the amount of the difference between what they paid for those tickets and what they would have paid absent the Conspiracy (the "Ticket Overcharge").

30. There can be no juristic reason justifying the defendants' receipt of the Ticket Overcharge as it resulted from the defendants' wrongful or unlawful acts. In particular, the ticket contracts by which the defendants purport to have received the artificially induced Ticket Overcharge are illegal and void because:

- (a) they violate and are prohibited by Part VI of the *Competition Act*, in that the defendants combined or agreed with each other to prevent or lessen, unduly, competition and to restrain or injure competition unduly, as particularized above. The defendants were aware or ought to have been aware that the effect of the agreements would be to prevent or lessen competition unduly; and
- (b) they violate public policy and are an unlawful restraint of trade at common law and equity.

Jurisdiction

31. There is a real and substantial connection between British Columbia and the facts alleged in this proceeding. The plaintiff and other Class members plead and rely upon the *CJPTA* in respect of the defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this proceeding exists pursuant to sections 10 (f) – (i) of the *CJPTA* because this proceeding:

- (a) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;
- (b) concerns a tort committed in British Columbia;
- (c) concerns a business carried on in British Columbia; and
- (d) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.

Plaintiff's address for service:

CAMP FIORANTE MATTHEWS MOGERMAN

#400 – 856 Homer Street
Vancouver, BC V6B 2W5

Tel: (604) 689-7555

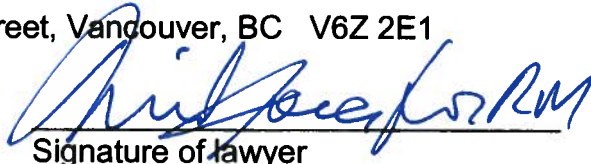
Fax: (604) 689-7554

Email: service@cfmlawyers.ca

Place of trial: Vancouver Law Courts

Address of the registry: 800 Smithe Street, Vancouver, BC V6Z 2E1

Date: 15/July/2015



Signature of lawyer
for the plaintiff
Reidar Mogerman

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE
OUTSIDE BRITISH COLUMBIA**

The plaintiff claims the right to serve this pleading on the defendants outside British Columbia on the ground that there is a real and substantial connection between British Columbia and the facts alleged in this proceeding and the plaintiff and other Class members plead and rely upon the *CJPTA* in respect of these defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this proceeding exists pursuant to ss.10 (f) –(i) of the *CJPTA* because this proceeding:

- (f) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;
- (g) concerns a tort committed in British Columbia;
- (h) concerns a business carried on in British Columbia; and
- (i) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

APPENDIX

CONCISE SUMMARY OF NATURE OF CLAIM:

This action arises from a conspiracy to fix, raise, maintain, or stabilize prices of Parking Heaters sold in Canada, including in British Columbia. During the Class Period, the defendants and their senior executives participated in illegal and secretive meetings and made agreements relating to the prices for Parking Heaters. The plaintiff and the Class Members suffered damages as a result.

THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites

- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

1. *Class Proceedings Act*, RSBC, 1996 c 50;
2. *Competition Act*, RSC 1985, c 19 (2nd Suppl.); and
3. *Court Jurisdiction and Proceedings Transfer Act*, RSBC 2003, c 28.