

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

IN RE: DELTA/AIRTRAN BAGGAGE FEE ANTITRUST LITIGATION	CIVIL ACTION FILE NUMBER 1:09-md-2089-TCB ALL CASES
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**PLAINTIFFS' DAUBERT MOTION TO EXCLUDE THE OPINIONS
AND TESTIMONY OF DR. ERIC GAIER**

Pursuant to Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), Plaintiffs hereby file this *Daubert* Motion to Exclude the Opinions and Testimony of Dr. Eric Gaier. Because the Court does not need to rely on AirTran economist Dr. Gaier's testimony to resolve any class certification issues, it is unnecessary for the Court to consider this Motion prior to ruling on class certification. *Local 703 v. Regions Fin. Corp.*, 762 F.3d 1248, 1258 n.7 (11th Cir. 2014). However, at trial (and if deemed relevant, at class certification), the Court should exclude discrete areas of testimony offered by Dr. Gaier as irrelevant, unreliable and misleading.

First, Dr. Gaier offers opinions on purported base fare offsets that were purportedly caused by Defendants' imposition of first bag fees. But because base fare offsets are irrelevant as a matter of law and the amounts of the purported offsets are therefore not an issue, Dr. Gaier's testimony about offsets should be excluded

because it will not “help the trier of fact . . . to determine a fact in issue.” Fed. R. Evid. 702.

Second, Dr. Gaier performed a rough “difference-in-differences” calculation of the alleged decline in AirTran’s base fares after AirTran implemented its first bag fee. But Dr. Gaier’s difference-in-differences calculation lacks control variables, and contains a basic arithmetic error, and therefore yields unreliable and inaccurate results.

Finally, Dr. Gaier performed regression analyses of alleged base fare declines. But Dr. Gaier’s multiple regression analyses are also unreliable, as they lack critical control variables.

For the reasons set forth in Plaintiffs’ supporting memorandum, which Plaintiffs expressly incorporate herein, Plaintiffs respectfully request that the Court exclude Dr. Gaier’s opinions on base fare offsets, including: (1) his rough difference-in-differences calculation; and (2) his regression analysis.

Respectfully submitted,

Dated: October 23, 2015

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CERTIFICATION UNDER L.R. 7.1D

Pursuant to Northern District of Georgia Civil Local Rule 7.1D, the undersigned counsel hereby certifies that the above and foregoing is a computer document prepared in Times New Roman (14 point) font in accordance with Civil Local Rule 5.1B.

So certified, this 23rd day of October, 2015.

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CERTIFICATE OF SERVICE

The undersigned counsel certifies that on this day he caused the foregoing to be filed, under seal, with the Clerk of Court and caused the same to be delivered via e-mail to the following attorneys of record:

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