

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

IN RE DOMESTIC AIRLINE TRAVEL
ANTITRUST LITIGATION

MDL Docket No. 2656
Misc. No. 15-1404 (CKK)

This Document Relates To:

ALL CASES.

DISCOVERY STIPULATION AND ORDER

Pursuant to the Court's Order Regarding Initial Scheduling and Case Management Conference (ECF No. 125) and Scheduling Order Regarding Discovery and Briefing on Motion for Class Certification (ECF No. 152), the parties stipulate that the discovery items below shall be governed by the Local Rules of this Court and the Federal Rules of Civil Procedure as supplemented and modified below. For clarity, references to "Court" herein refer to the Special Master and any orders of the District Court. This Order establishes limitations on all fact discovery conducted in the litigation up to the time of trial unless modified by Court order or agreement of the parties. The Parties agree that all fact discovery will be complete by April 27, 2018, provided, however, the Parties reserve their rights to seek discovery after resolution of the motion for class certification for good cause shown, either by agreement of the Parties or by Order of the Court.

I. INITIAL DISCLOSURES

The parties shall serve their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1)(A) within 30 days of entry of this Order.

II. DOCUMENT REQUESTS

Defendants collectively may serve up to sixty (60) requests for production of documents on all plaintiffs collectively. Plaintiffs (which, for the avoidance of doubt, includes all plaintiffs currently named in this action and any named plaintiff added at a later date) collectively may serve up to sixty (60) requests for production of documents on defendants collectively, and up to 10 requests for production of documents to each defendant individually.

III. INTERROGATORIES

Defendants collectively may serve up to forty (40) interrogatories concerning issues common to all Plaintiffs, of which no more than twenty-five (25) may be contention interrogatories, and may serve five interrogatories on each Plaintiff concerning issues unique to that Plaintiff. Plaintiffs collectively may serve up to forty (40) interrogatories concerning issues common to all Defendants, of which no more than twenty-five (25) may be contention interrogatories, and may serve five interrogatories on each Defendant concerning issues unique to that Defendant. These limitations may be modified by agreement of the parties or order of the Court.

IV. REQUESTS FOR ADMISSION

Defendants collectively may serve up to forty (40) requests for admission on Plaintiffs. Plaintiffs collectively may serve up to forty (40) requests for admission on Defendants. Requests seeking solely admissions regarding the authenticity or admissibility of documents or things shall not be counted for purposes of the total number of requests for admission.

V. DEPOSITIONS

1. Plaintiffs collectively may depose up to ten (10) employees of each defendant (including current employees and former employees who are represented by counsel for the

defendant by whom they were previously employed) to testify in their individual capacities. Defendants collectively may depose all plaintiffs named in the complaint who are natural persons and up to two (2) employees or agents of each named plaintiff that is an organization as defined in Rule 30(b)(6) to testify in their individual capacities. These deposition limits do not include 30(b)(6) witnesses or expert witnesses. Any party may seek additional depositions either by agreement of the parties or leave of the Court.

2. Except by agreement of the parties or order of the Court, or as otherwise provided herein, the deposition of any witness (whether fact or expert) shall be limited to one day of seven (7) hours of direct examination, excluding time taken for breaks, meals, and other legitimate reasons. Counsel for parties that did not notice the deposition may examine the witness for up to a total of one (1) an additional hour at the conclusion of direct examination. To the extent that Plaintiffs or Defendants, singularly or jointly, cross notice a deposition, they shall confer in good faith about whether 8 hours is sufficient for both depositions and if not, the number of hours beyond eight by which the deposition will be increased . If the parties cannot reach agreement, they shall submit the dispute to the Court for resolution. The Parties may cross-notice deposition in good-faith and without intent to deprive the first-noticing party of its right to conduct a complete deposition.

3. Subject to paragraph VII.3, the receiving party of a notice of deposition pursuant to Rule 30(b)(6) shall identify the corporate representative(s) being offered to testify as a witness pursuant to Rule 30(b)(6) and the topics on which any such witness is being offered to testify at least seven (7) days in advance of the deposition date. Plaintiffs shall be permitted to take up to 17 hours of Rule 30(b)(6) depositions for each defendant, regardless of the number of witnesses produced for testimony in response to a 30(b)(6) deposition notice. Plaintiffs' 30(b)(6)

depositions of defendants need not be conducted on consecutive days, except that the deposition of any particular individual designated as a corporate representative in response to a 30(b)(6) notice shall be conducted on consecutive days until concluded.

4. For any deposition, the parties and any affected non-party may stipulate to additional time beyond the limits set forth above. Absent agreement of the parties, the length of depositions provided herein may only be modified by an order of the Court.

5. To the extent the Parties cannot sufficiently address admissibility or authentication issues through requests for admissions or by stipulation, the Parties agree to meet and confer regarding any additional time for depositions focused on these issues.

VI. THIRD PARTY DISCOVERY

1. The parties are entitled to serve a reasonable number of subpoenas on third parties. While there is no limit on the number of subpoenas under this Order, any party is free to raise the issue of such a limitation if it believes the number of third party subpoenas or the breadth of discovery sought in those subpoenas do not comply with Rules 26(b)(1) or 45(d)(3) of the Federal Rules of Civil Procedure.

2. Any subpoenas for deposition testimony from a third party shall be served on the third party as required by law, with copies served on all parties. The parties shall coordinate with each other and the third party to schedule the deposition at a mutually convenient time. If the parties are unable to resolve any scheduling differences, they may submit their dispute to the Special Master for prompt resolution.

3. If both plaintiffs and defendants, whether individually or jointly, issue deposition subpoenas to the same third-party, the parties shall meet and confer to determine the amount of time each side reasonably requires for the deposition and attempt to allocate time accordingly. In

the event that the amount of time required by the parties exceeds seven hours, the parties shall attempt to reach agreement with the third party on additional deposition time. If the parties and the third party cannot reach agreement, they shall promptly bring the matter to the Court for resolution. Third-party subpoenas shall be issued in good-faith and without intent to deprive the first-issuing party of its right to conduct a complete deposition.

4. The parties shall provide or make available to the other parties all materials obtained from subpoenaed third parties within five (5) business days of receiving them. Any documents produced by a third party subject to subpoena duces tecum must be provided or made available at least fourteen (14) days before a deposition of that third party where practicable.

VII. PROTOCOL FOR PARTY AND THIRD PARTY DEPOSITIONS

1. Before issuing deposition notices, Principle Designees (as described in ECF No. 152) or their proxies shall consult in advance in an effort to schedule depositions at mutually convenient times and locations. Absent agreement between the noticing party and the witness or counsel for the witness or leave of the Court, depositions shall not be allowed on less than fourteen (14) days' notice. Unless otherwise agreed by the parties, counsel for the witness or the party employing the witness shall respond to a written request (which may be via electronic mail) for a deposition within five (5) business days with alternative dates on which that witness is available for deposition if the date proposed by the noticing party is not practicable. The parties shall make good faith efforts to schedule depositions within three (3) weeks of the original proposed deposition date, subject to the existing commitments of the deponents.

2. Absent agreement of the parties or leave of the Court, no more than one (1) deposition of a witness for a particular party may be scheduled each day, and no more than two

depositions taken by Plaintiffs and two depositions taken by Defendants may be scheduled on each day.

3. If a deponent is scheduled to testify in both their corporate and individual capacities, where practicable, the depositions shall be scheduled for two sequential days, absent consent or request of defending counsel. This provision does not apply where the Rule 30(b)(6) deposition is solely on topics concerning a party's organizational structure, the completeness of a party's document search or preservation, a party's ESI sources, and/or production or a party's transactional data. Principle Designees shall attempt to avoid the need to subject any person to repeated depositions.

4. Absent consent of all parties and the witness, no depositions may be scheduled on holidays or weekends. The parties shall work cooperatively to ensure a fair and orderly process for the scheduling of depositions.

5. A Party who seeks to depose a witness who is a current or former employee of another party located within the United States will serve a written notification to counsel of record for that party of a request to depose that employee. Counsel for the party for which the witness is a current or former employee must confirm whether counsel will represent that current or former employee, and for former employees, confirm whether counsel is authorized to accept service of a subpoena (or to waive service) on behalf of the former employee. To the extent the witness is a former employee of any party and is not currently represented by counsel for that party, counsel for that party shall provide in response to a written request from the noticing party the date of departure and last known address of the former employee.

6. Except as otherwise provided herein, a witness may be deposed only once in these proceedings unless (i) a witness properly revokes an earlier assertion of the Fifth Amendment,

(ii) the witness refuses to answer a question on privilege or other grounds and later withdraws the basis for refusing to answer, or the basis for refusing to answer is rejected by the Court; (iii) the witness is both a fact witness and an expert witness, in which case that witness may be deposed separately as a fact and expert witness (but only if the witness's dual status was not apparent at the time the witness was first deposed in one capacity), provided that if the witness's dual status is apparent at the time the witness is deposed every effort shall be made to conduct the "fact" and "expert" deposition in one single day; (iv) the witness is identified as both a party's expert and a party's rebuttal expert, in which case that witness may be deposed separately as an expert witness and rebuttal expert witness, provided, however, that a party deposing a witness as a rebuttal expert shall endeavor in good faith to avoid unnecessary duplication of testimony already provided in an earlier expert deposition and, if a prior deposition has already been taken in respect of an expert report, any second deposition of such expert witness shall be limited to the matters set forth in the rebuttal expert report; (v) the parties otherwise agree; or (vi) upon order of the Court. For purposes of clarity, an individual designated by a Party to testify on behalf of an organization under Rule 30(b)(6) is not a "witness" for purposes of the 30(b)(6) deposition and this subparagraph.

7. In any deposition, each side should endeavor to limit the number of attorneys questioning each witness by conferring in advance of the deposition with the goal of limiting the primary questioner to one attorney per side. Other attorneys who may wish to question a deponent should confer in advance to allocate among themselves the time permitted for the deposition.

8. When a privilege is claimed, the deponent shall nevertheless answer foundational questions relevant to the existence, extent, or waiver of the privilege, such as the date of a

communication, who made it, to whom and in whose presence it was made, other persons to whom the communication has been disclosed, and the general subject matter of the communication. It is agreed that answers to those foundational questions shall not be deemed a waiver of any applicable privilege.

9. Private consultations between a deponent and his or her attorneys while a question is pending are prohibited except for the purpose of determining whether a privilege should be asserted. Other consultations between a deponent and his or her attorney only may take place during normal recesses and adjournments, provided however, (1) the parties do not waive any rights to object to witness coaching or to seek any applicable remedies; and (2) examining counsel may question the deponent regarding whether he or she conferred with his or her attorney during such recesses and adjournment, subject to the attorney-client privilege, the work product doctrine, and other applicable privileges.

10. The Parties agree that objections shall be made in conformance with Fed. R. Civ. P. 30(c)(2). Any objection to the form of a question shall be deemed to have been made on behalf of all other parties, and need not be repeated by other counsel to preserve that objection on behalf of other parties. Counsel shall avoid repeating objections already preserved.

11. During depositions, disputes that arise that cannot be resolved by agreement and that, if not immediately resolved, will significantly disrupt the discovery schedule or require a rescheduling of the deposition, may be presented to the Special Master (or the Court if the Special Master is unavailable) by telephone. The presentation of the issue and any ruling will be transcribed as part of the deposition. In the event that the Special Master (or Court) is not available, the deposition shall continue with full reservation of rights on the issue; provided that, the matter is promptly brought to the attention of the Special Master (or Court).

12. To minimize travel and related costs, counsel may participate in any deposition by telephone. Counsel intending to do so must notify counsel for the party that noticed the deposition and counsel for the witness at least three (3) business days before the date of the deposition. Counsel noticing the deposition shall make arrangements so that a conference call line, and, if requested, a real-time video and text feed are reasonably available during the deposition. Any party requesting real-time video, text feed, or conference call shall be responsible for the cost of the additional services requested.

Dated: March 10, 2017

Respectfully submitted:

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IT IS SO ORDERED.

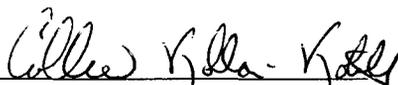
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COLLEEN KOLLAR-KOTELLY
UNITED STATES DISTRICT JUDGE

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