

1 STEVEN C. SUNSHINE, *admitted pro hac vice*
 steven.sunshine@skadden.com
 2 GARY A. MACDONALD, *admitted pro hac vice*
 gary.macdonald@skadden.com
 3 SARA L. BENSLEY, *admitted pro hac vice*
 sara.bensley@skadden.com
 4 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
 1440 New York Avenue, N.W.
 5 Washington, D.C. 20005
 Telephone: (202) 371.7000
 6 Facsimile: (202) 393.5760

7 ALLEN J. RUBY (SBN: 47109)
 allen.ruby@skadden.com
 8 THOMAS V. CHRISTOPHER (SBN: 185928)
 thomas.christopher@skadden.com
 9 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
 525 University Avenue
 10 Palo Alto, California 94301
 Telephone: (650) 470-4500
 11 Facsimile: (650) 470-4570

12 Attorneys for Defendants
 SOUTHWEST AIRLINES CO.,
 13 GUADALUPE HOLDINGS CORP., and
 AIRTRAN HOLDINGS, INC.

14 **UNITED STATES DISTRICT COURT**
 15 **NORTHERN DISTRICT OF CALIFORNIA**
 16 **SAN FRANCISCO DIVISION**

17 WAYNE TALEFF, et al.
 18
 19 Plaintiffs,
 20 v.
 21 SOUTHWEST AIRLINES CO., et al.
 22 Defendants.

CASE NO.: CV-11-02179-JW
 (1) **REQUEST FOR JUDICIAL NOTICE
 IN SUPPORT OF MOTION TO DISMISS
 PLAINTIFFS' COMPLAINT; and**
 (2) **DECLARATION OF THOMAS V.
 CHRISTOPHER IN SUPPORT
 THEREOF**

Date: October 31, 2011
 Time: 9:00 a.m.
 Courtroom: Courtroom 15, 18th Floor
 Before: Hon. James Ware

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 Pursuant to Federal Rule of Evidence 201, Defendants Southwest Airlines Co., Guadalupe
3 Holdings Corp., and AirTran Holdings, Inc. (collectively “Southwest”) hereby respectfully request
4 that the Court take judicial notice of the following exhibits attached to the Declaration of Thomas
5 V. Christopher:

6 Exhibit 1: A true and correct copy of the press release entitled Statement of the Department
7 of Justice Antitrust Division on Its Decision To Close Its Investigation of Southwest’s Acquisition
8 of AirTran, issued on April 26, 2011.

9 Exhibit 2: A true and correct copy of the Form 8-K dated May 2, 2011 (without exhibits),
10 filed with the Securities and Exchange Commission (“SEC”) by AirTran Holdings, Inc.

11 Exhibit 3: A true and correct copy of Plaintiffs’ Complaint for Injunctive Relief Against
12 Violations of Section 7 of the Clayton Act, *Malaney v. UAL Corp.*, No. 10-cv-2858-RS (N.D. Cal.
13 June 29, 2010).

14 Exhibit 4: A true and correct copy of an excerpt from the transcript from the Preliminary
15 Injunction Hearing in the matter of *Malaney v. UAL Corp.*, No. 10-cv-2858-RS (hearings held Aug.
16 31, Sept. 1 & Sept. 17, 2010).

17 Exhibit 5: A true and correct copy of Plaintiffs’ Post-Hearing Memorandum in the matter
18 of *Malaney v. UAL Corp.*, No. 10-cv-2858-RS (N.D. Cal. Sept. 13, 2010).

19 Exhibit 6: A true and correct copy of Plaintiffs’ Notice of Motion, Motion & Application
20 for TRO and Order To Show Cause; Memorandum of Points & Authorities in Support Thereof,
21 *Golden Gate Pharmacy Servs., Inc. v. Pfizer, Inc.*, No. 09-cv-3854-MMC (N.D. Cal. Oct. 13, 2009).

22 Exhibit 7: A true and correct copy of Plaintiffs’ Notice of Motion, Motion & Application
23 for TRO and Order To Show Cause; Memorandum of Points & Authorities in Support Thereof,
24 *Golden Gate Pharmacy Servs., Inc. v. Pfizer, Inc.*, No. 09-cv-3854-MMC (N.D. Cal. Oct. 16, 2009).

25 Exhibit 8: A true and correct copy of Plaintiffs’ Emergency Motion for Injunction Seeking
26 a Temporary “Hold Separate” Order Pending Disposition of *Malaney, et al., v. UAL Corp., et al.,*
27 *Taleff v. Sw. Airlines Co.*, No. 11-16173 (9th Cir. May 9, 2011).

28 Exhibit 9: A true and correct copy of Defendants’ Motion To Dismiss Appeal, *Taleff v. Sw.*

1 *Airlines Co.*, No. 11-16173 (9th Cir. May 12, 2011).

2

3 DATED: August 8, 2011

4

SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP

5

6

By: /s/ Steven C. Sunshine

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STEVEN C. SUNSHINE

8

Attorneys for Defendants

SOUTHWEST AIRLINES CO.

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GUADALUPE HOLDINGS CORP., and

AIRTRAN HOLDINGS, INC.

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MEMORANDUM OF POINTS AND AUTHORITIES

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2 Defendants Southwest Airlines Co., Guadalupe Holdings Corp., and AirTran Holdings, Inc.
3 (collectively “Southwest”) hereby request that this Court take judicial notice of Exhibits 1 through
4 9 attached to the Declaration of Thomas V. Christopher.

5 Rule 201(d) provides that “[a] court shall take judicial notice if requested by a party and
6 supplied with the necessary information.” Fed. R. Evid. 201(d). A judicially noticed fact “must be
7 one not subject to reasonable dispute in that it is either (1) generally known within the territorial
8 jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources
9 whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b).

10 Here, Exhibit 1, which is attached to the Declaration of Thomas V. Christopher, is the
11 proper subject of judicial notice because it falls squarely within Rule 201(b). The press release
12 attached hereto as Exhibit 1 is publicly available at
13 http://www.justice.gov/atr/public/press_releases/2011/270293.pdf.

14 The Court therefore should take judicial notice of Exhibit 1, regarding the Department of
15 Justice’s investigation, because courts may take judicial notice of such press releases. *See In re*
16 *Network Assocs., Inc. II Sec. Litig.*, No. C 00-4849 MJJ, 2003 U.S. Dist. LEXIS 14442, at *2 n.3
17 (N.D. Cal. Mar. 25, 2003) (“Judicial notice is appropriate for . . . press releases . . . as they are
18 ‘capable of accurate and ready determination by resort to sources whose accuracy cannot be
19 reasonably questioned.’” (quoting *Plevy v. Haggerty*, 38 F. Supp. 2d 816, 821 (C.D. Cal. 1998)).)
20 Official statements by the Department of Justice are no exception to this general rule. *See Nero AG*
21 *v. MPEG LA, L.L.C.*, No. 10-cv-3672-MRP-RZ, 2010 U.S. Dist. LEXIS 119030, at *25-26 (C.D.
22 Cal. Sept. 14, 2010) (taking judicial notice of various documents taken from the Department of
23 Justice’s website, including, among other things, two Business Review Letters).

24 Defendants also request that this Court take judicial notice of Exhibit 2 attached to the
25 Declaration of Thomas V. Christopher. Exhibit 2 is a copy of the Form 8-K dated May 2, 2011
26 (without exhibits), filed with the SEC by AirTran Holdings, Inc.

27 Exhibit 2 is also the proper subject of judicial notice because it also falls within the scope of
28 Rule 201(b). It is a public record filed with the SEC, and is publicly available at

1 <http://www.sec.gov/Archives/edgar/data/948846/000119312511122077/d8k.htm>.

2 Courts regularly take judicial notice of a company's SEC filings. *See, e.g., Metzler Inv.*
3 *GMBH v. Corinthian Colls., Inc.*, 540 F.3d 1049, 1064 n.7 (9th Cir. 2008) (upholding district
4 court's grant of request for judicial notice of SEC filings, "which in any event was proper");
5 *Dreiling v. Am. Express Co.*, 458 F.3d 942, 946 n.2 (9th Cir. 2006) (noting that SEC filings are
6 subject to judicial notice); *In re Computer Scis. Corp. Derivative Litig.*, No. CV 06-05288 MRP,
7 2007 WL 1321715, at *7 n.5 (C.D. Cal. Mar. 26, 2007) (taking judicial notice of SEC filings in
8 considering allegations of stock options backdating).

9 Exhibits 3 through 9 are also proper subjects of judicial notice since they are all official
10 filed or served materials from federal court proceedings.

11 Exhibit 3 is a copy of Plaintiffs' Complaint for Injunctive Relief Against Violations of
12 Section 7 of the Clayton Act, *Malaney v. UAL Corp.*, No. 10-cv-2858-RS (N.D. Cal. June 29,
13 2010).

14 Exhibit 4 is a copy of an excerpt from the transcript from the Preliminary Injunction
15 Hearing in the matter of *Malaney v. UAL Corp.*, No. 10-cv-2858-RS (hearings held Aug. 31, Sept.
16 1 & Sept. 17, 2010).

17 Exhibit 5 is a copy of Plaintiffs' Post-Hearing Memorandum in the matter of *Malaney v.*
18 *UAL Corp.*, No. 10-cv-2858-RS (N.D. Cal. Sept. 13, 2010)

19 Exhibit 6 is a copy of Plaintiffs' Notice of Motion, Motion & Application for TRO and
20 Order To Show Cause; Memorandum of Points & Authorities in Support Thereof, *Golden Gate*
21 *Pharmacy Servs., Inc. v. Pfizer, Inc.*, No. 09-cv-3854-MMC (N.D. Cal. Oct. 13, 2009).

22 Exhibit 7 is a copy of Plaintiffs' Notice of Motion, Motion & Application for TRO and
23 Order To Show Cause; Memorandum of Points & Authorities in Support Thereof, *Golden Gate*
24 *Pharmacy Servs., Inc. v. Pfizer, Inc.*, No. 09-cv-3854-MMC (N.D. Cal. Oct. 16, 2009).

25 Exhibit 8 is a copy of Plaintiffs' Emergency Motion for Injunction Seeking a Temporary
26 "Hold Separate" Order Pending Disposition of *Malaney, et al., v. UAL Corp., et al., Taleff v. Sw.*
27 *Airlines Co.*, No. 11-16173 (9th Cir. May 9, 2011).

28 Exhibit 9 is a copy of Defendants' Motion To Dismiss Appeal, *Taleff v. Sw. Airlines Co.*,

1 No. 11-16173 (9th Cir. May 20, 2011).

2 The Court may take judicial notice of Exhibits 3 through 9, regarding proceedings in this
3 Circuit, because courts may take judicial notice of proceedings in other courts. *See Biggs v.*
4 *Terhune*, 334 F.3d 910, 916 n.3 (9th Cir. 2003) (“Materials from a proceeding in another tribunal
5 are appropriate for judicial notice.”); *Papai v. Harbor Tug & Barge Co.*, 67 F.3d 203, 207 n.5 (9th
6 Cir. 1995) (upholding judicial notice of orders and decisions by other courts), *rev’d on other*
7 *grounds*, 520 U.S. 548 (1997); *United States ex rel. Robinson Rancheria Citizens Council v.*
8 *Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) (holding that courts may take judicial notice of
9 “proceedings in other courts, both within and without the federal judicial system, if those
10 proceedings have a direct relation to matters at issue” (quoting *St. Louis Baptist Temple, Inc. v.*
11 *FDIC*, 605 F.2d 1169, 1172 (10th Cir. 1979)); *Mullis v. United States Bankr. Ct. for the Dist. Of*
12 *Nev.*, 828 F.2d 1385, 1388 n.9 (9th Cir. 1987) (holding that it is proper for a court to take judicial
13 notice of the contents of court files in other lawsuits). *See also Schweitzer v. Scott*, 469 F. Supp.
14 1017, 1020 (C.D. Cal. 1979) (holding that “the Court is empowered to and does take judicial notice
15 of court files and records” under Fed. R. Evid. 201).

16 Upon proper notice, the court is required to take judicial notice of the documents listed
17 above. *See* Fed. R. Evid. 201(d) (“A court shall take judicial notice if requested by a party and
18 supplied with the necessary information.”). Here, Southwest has requested judicial notice and
19 furnished the Court with the necessary information.

20 Accordingly, for the foregoing reasons, Southwest respectfully requests that the Court take
21 judicial notice of Exhibits 1 through 9, which are attached to the Declaration of Thomas V.
22 Christopher, filed with this Request for Judicial Notice, and submitted in support of Southwest’s
23 Motion to Dismiss.

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DATED: August 8, 2011

SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP

By: /s/ Steven C. Sunshine

STEVEN C. SUNSHINE
Attorneys for Defendants
SOUTHWEST AIRLINES CO.
GUADALUPE HOLDINGS CORP., and
AIRTRAN HOLDINGS, INC.

DECLARATION OF THOMAS V. CHRISTOPHER

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2 1. I am counsel with Skadden, Arps, Slate, Meagher & Flom, LLP and am one of the
3 attorneys for Defendants Southwest Airlines Co., Guadalupe Holdings Corp., and AirTran
4 Holdings, Inc. (collectively “Southwest”). I make this declaration in support of Defendants’
5 Request for Judicial Notice in support of their Motion to Dismiss. I make this declaration based on
6 my own personal knowledge and if called upon to do so, could and would testify competently.

7 2. Exhibit 1: A true and correct copy of the press release entitled Statement of the
8 Department of Justice Antitrust Division on Its Decision To Close Its Investigation of Southwest’s
9 Acquisition Of AirTran, issued on April 26, 2011.

10 3. Exhibit 2: A true and correct copy of the Form 8-K dated May 2, 2011 (without
11 exhibits), filed with the Securities and Exchange Commission (“SEC”) by AirTran Holdings, Inc.

12 4. Exhibit 3: A true and correct copy of Plaintiffs’ Complaint for Injunctive Relief
13 Against Violations of Section 7 of the Clayton Act, *Malaney v. UAL Corp.*, No. 10-cv-2858-RS
14 (N.D. Cal. June 29, 2010).

15 5. Exhibit 4: A true and correct copy of an excerpt from the transcript from the
16 Preliminary Injunction Hearing in the matter of *Malaney v. UAL Corp.*, No. 10-cv-2858-RS
17 (hearings held Aug. 31, Sept. 1 & Sept. 17, 2010).

18 6. Exhibit 5: A true and correct copy of Plaintiffs’ Post-Hearing Memorandum in the
19 matter of *Malaney v. UAL Corp.*, No. 10-cv-2858-RS (N.D. Cal. Sept. 13, 2010).

20 7. Exhibit 6: A true and correct copy of Plaintiffs’ Notice of Motion, Motion &
21 Application for TRO and Order To Show Cause; Memorandum of Points & Authorities in Support
22 Thereof, *Golden Gate Pharmacy Servs., Inc. v. Pfizer, Inc.*, No. 09-cv-3854-MMC (N.D. Cal. Oct.
23 13, 2009).

24 8. Exhibit 7: A true and correct copy of Plaintiffs’ Notice of Motion, Motion &
25 Application for TRO and Order To Show Cause; Memorandum of Points & Authorities in Support
26 Thereof, *Golden Gate Pharmacy Servs., Inc. v. Pfizer, Inc.*, No. 09-cv-3854-MMC (N.D. Cal. Oct.
27 16, 2009).

28 9. Exhibit 8: A true and correct copy of Plaintiffs’ Emergency Motion for Injunction

1 Seeking a Temporary “Hold Separate” Order Pending Disposition of Malaney, et al., v. UAL Corp.,
2 et al., *Taleff v. Sw. Airlines Co.*, No. 11-16173 (9th Cir. May 9, 2011).

3 10. Exhibit 9: A true and correct copy of Defendants’ Motion To Dismiss Appeal,
4 *Taleff v. Sw. Airlines Co.*, No. 11-16173 (9th Cir. May 20, 2011).

5 I declare under penalty of perjury under the laws of the United States of America that the
6 foregoing is true and correct. Executed this day, August 8, 2011, in Palo Alto, California.

7 /s/ Thomas V. Christopher

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9 **ATTESTATION PURSUANT TO GENERAL ORDER 45**

10 I, Steven C. Sunshine, am the ECF User whose ID and password are being used to file this
11 Request for Judicial Notice. I hereby attest that concurrence in the filing of this document has been
12 obtained from each of the other signatories. I declare under penalty of perjury under the laws of
the United States of America that the foregoing is true and correct.

13 Executed this day, August 8, 2011, in Washington, DC.

14 /s/ Steven C. Sunshine