

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

IN RE DELTA/AIRTRAN)	CIVIL ACTION FILE
BAGGAGE FEE)	NUMBER 1:09-md-2089-TCB
ANTITRUST LITIGATION)	ALL CASES
)	
)	

**DEFENDANT AIRTRAN'S ANSWER TO
THE CONSOLIDATED AMENDED COMPLAINT**

Defendant AirTran Airways, Inc. (“AirTran”), by and through its undersigned counsel, hereby answers the allegations in the Consolidated Amended Complaint (“CAC”), dated February 1, 2010, as follows:

1. AirTran denies the allegations contained in paragraph 1,¹ except admits that AirTran and Delta Air Lines, Inc. (“Delta”) have a number of overlapping routes on which they compete and that consumers benefit from competition between AirTran and Delta. AirTran further admits that Hartsfield-Jackson Atlanta International Airport (“Hartsfield-Jackson”) is a hub for both AirTran and Delta, but denies that Hartsfield-Jackson is AirTran’s sole hub. AirTran lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 that relate to Delta.

2. AirTran denies the allegations contained in paragraph 2, except admits that Plaintiffs seek damages and injunctive relief on behalf of a class of direct purchasers. AirTran denies the existence of any such class.

3. AirTran lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3.

4. AirTran lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4.

¹ All paragraph numbers refer to paragraphs contained in the CAC.

5. AirTran lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5.

6. AirTran lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6.

7. AirTran lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7.

8. AirTran lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8.

9. AirTran lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9, except admits that Stephen Powell was a passenger on an AirTran flight from Baltimore, Maryland to Boston, Massachusetts in May 2009.

10. AirTran lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10.

11. AirTran lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11.

12. AirTran lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12.

13. AirTran lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13.

14. AirTran denies the allegations contained in paragraph 14, except admits that it is a Delaware corporation with its principal place of business in Orlando, Florida, that it is a subsidiary of AirTran Holdings, Inc., that its operating revenues have exceeded \$2 billion per year since 2007, and that it operates its largest hub at Hartsfield-Jackson.

15. AirTran admits that the Court has subject matter jurisdiction over this action.

16. AirTran denies the allegations contained in paragraph 16, except admits that venue in this district is proper.

17. AirTran denies the allegations contained in paragraph 17.

18. AirTran denies the allegations contained in paragraph 18, except admits that it maintains a low cost structure and that it has described itself as maintaining “industry leading non-fuel costs.”

19. AirTran denies the allegations contained in paragraph 19, except admits AirTran’s 2006 Annual Report, 2006 10-K Report, filed on March 1, 2007, and 2007 Form 10-K/A Report, filed on August 9, 2007 describe AirTran’s Atlanta hub operation as the “core of our business.” AirTran lacks knowledge or

information sufficient to form a belief as to the truth of the allegations that AirTran and Delta account for approximately 92 percent of airline traffic at Atlanta Hartsfield-Jackson and that Delta describes Atlanta as its “core strength market.”

20. AirTran denies that, when AirTran refers to domestic competition from rivals in the “industry,” it is referring to Delta only or specifically. AirTran also denies that AirTran understands Delta to be referring to AirTran only or specifically when Delta refers to domestic competition from rivals in the “industry.” AirTran lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 20. AirTran denies the remaining allegations contained in paragraph 20, except admits that Delta and AirTran compete and that Delta has, at times, matched AirTran’s base fares for flights to and from Hartsfield-Jackson.

21. AirTran denies the allegations of paragraph 21, except admits that AirTran and Delta have competed by various means, including by adding capacity on routes to and from Hartsfield-Jackson. AirTran lacks knowledge or information sufficient to form a belief as to the truth of the allegation that capacity increases have yielded lower prices for consumers.

22. AirTran denies the allegations contained in paragraph 22, except admits that (i) in 2006 it increased overall capacity, as measured in available seat

miles, by 23.7 percent, (ii) it took delivery of twenty-two new planes to grow the total number of planes in its fleet by ten, and (iii) it secured more gates in Hartsfield-Jackson's D concourse. AirTran also admits that, in 2007, it added new routes to its network and it increased capacity by 19.4 percent by taking delivery of additional aircraft. AirTran lacks knowledge or information sufficient to form a belief as to the truth of the allegation that, in 2006, consumers benefited as average fares in and out of Hartsfield-Jackson fell.

23. AirTran admits that, in 2007, its operating revenues increased by about 22.1 percent to approximately \$2.3 billion and its operating income increased 337 percent to \$137.9 million. AirTran lacks knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph 23.

24. AirTran denies the allegations contained in paragraph 24, except admits that, as of December 31, 2007, AirTran planned to take delivery of ten additional aircraft in 2008.

25. AirTran denies the allegations contained in paragraph 25, except admits that consumers have benefited, and continue to benefit, from competition between AirTran and Delta.

26. AirTran denies the allegations contained in paragraph 26 that purport to summarize, characterize, or contextualize statements made by AirTran's Chief Executive Officer ("CEO"), Robert Fornaro, at the Raymond James Growth Airline Conference on January 31, 2008. AirTran denies the remaining allegations contained in paragraph 26, except admits that the block-indented quote of a statement made by Mr. Fornaro during his presentation at the Raymond James Conference is substantially accurate. AirTran respectfully refers the Court to a complete transcript of Mr. Fornaro's remarks from that conference, which the CAC incorporates by reference, and which AirTran admits is attached as Exhibit 9 to the Defendants' Joint Appendix to their Motions to Dismiss. (Dkt. No. 74-10.)

27. AirTran denies the allegations contained in paragraph 27, except admits that crude oil prices exceeded \$100 a barrel for at least six months in 2008. AirTran lacks knowledge or information sufficient to form a belief as to the truth of the allegations that relate to other airlines, including Delta.

28. AirTran denies the allegations contained in paragraph 28.

29. AirTran denies the allegations contained in paragraph 29, except admits the allegations that AirTran holds conference calls with securities analysts on a quarterly basis, that a person may listen to live or archived versions of these calls, that transcripts of these calls are publicly available, and that certain AirTran

employees monitor Delta's earnings calls. AirTran lacks knowledge or information sufficient to form a belief as to the truth of the allegations that relate to Delta.

30. AirTran denies the allegations contained in paragraph 30.

31. AirTran denies the allegations contained in paragraph 31, except admits that AirTran and Delta compete for gate rights at Hartsfield-Jackson and that AirTran and Delta were negotiating gate leases with Hartsfield-Jackson in 2008 and 2009.

32. AirTran denies the allegations contained in paragraph 32, except admits that the first quarter earnings call that AirTran held on April 22, 2008 was originally scheduled for April 24, 2008 and that AirTran rescheduled that earnings call on April 21, 2008.

33. AirTran denies the allegations contained in paragraph 33 that purport to summarize, characterize, or contextualize "announce[ments]" made by AirTran during its April 22, 2008 first quarter earnings call. AirTran denies the remaining allegations contained in paragraph 33, except admits that the block-indented quote of a statement made by AirTran's Senior Vice President ("SVP"), Arne Haak, during that earnings call is substantially accurate. AirTran respectfully refers the Court to a complete transcript of that earnings call, which the CAC incorporates by

reference, and which AirTran admits is attached as Exhibit 18 to the Defendants' Joint Appendix to their Motions to Dismiss. (Dkt. No. 74-19.)

34. AirTran denies the allegations contained in paragraph 34 that purport to summarize, characterize, or contextualize statements made by AirTran during its first quarter earnings call on April 22, 2008. AirTran denies the remaining allegations contained in paragraph 34, except admits that it projected flat growth during the fourth quarter of 2008 and throughout 2009 during its April 22, 2008 first quarter earnings call, and that the block-indented quote of a statement made by Mr. Fornaro during that earnings call is substantially accurate. AirTran and respectfully refers the Court to a complete transcript of that earnings call, which the CAC incorporates by reference, and which AirTran admits is attached as Exhibit 18 to the Defendants' Joint Appendix to their Motions to Dismiss. (Dkt. No. 74-19.)

35. AirTran denies the allegations contained in paragraph 35 that purport to summarize, characterize, or contextualize statements made by AirTran during its April 22, 2008 first quarter earnings call. AirTran denies the remaining allegations contained in paragraph 35, except admits that the block-indented quote of a statement made by Mr. Haak during AirTran's April 22, 2008 first quarter earnings call earnings call is substantially accurate. AirTran respectfully refers the Court to

a complete transcript of that earnings call, which the CAC incorporates by reference, and which AirTran admits is attached as Exhibit 18 to the Defendants' Joint Appendix to their Motions to Dismiss. (Dkt. No. 74-19.)

36. AirTran denies the allegations contained in paragraph 36 that purport to summarize, characterize, or contextualize statements made by AirTran during its April 22, 2008 first quarter earnings call. AirTran denies the remaining allegations contained in paragraph 36, except admits that the block-indented quote of a statement made by Mr. Fornaro during AirTran's April 22, 2008 first quarter earnings call earnings call is substantially accurate. AirTran respectfully refers the Court to a complete transcript of that earnings call, which the CAC incorporates by reference, and which AirTran admits is attached as Exhibit 18 to the Defendants' Joint Appendix to their Motions to Dismiss. (Dkt. No. 74-19.)

37. AirTran admits that Delta held its 2008 first quarter earnings call on April 23, 2008. AirTran lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 37.

38. AirTran lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38.

39. AirTran denies the allegations contained in paragraph 39.

40. AirTran lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 40, except admits that AirTran and Delta participated in the Merrill Lynch Transportation Conference on June 18, 2008 and that speeches were given at this conference.

41. AirTran lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 41.

42. AirTran lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 42.

43. AirTran lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 43.

44. AirTran lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 44.

45. AirTran lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 45.

46. AirTran denies the allegations contained in paragraph 46, except admits that AirTran held its second quarter earnings call on July 29, 2008, and that the block-indented quote of a statement made by Mr. Fornaro during that earnings call is substantially accurate. AirTran respectfully refers the Court to a complete transcript of that earnings call, which the CAC incorporates by reference, and

which AirTran admits is attached as Exhibit 35 to the Defendants' Joint Appendix to their Motions to Dismiss. (Dkt. No. 74-36.)

47. AirTran denies the allegations contained in paragraph 47, except admits that the block-indented quote of a statement made by Mr. Haak during AirTran's July 29, 2008 second quarter earnings call is substantially accurate, apart from any emphasis added by Plaintiffs. AirTran respectfully refers the Court to a complete transcript of that earnings call, which the CAC incorporates by reference, and which AirTran admits is attached as Exhibit 35 to the Defendants' Joint Appendix to their Motions to Dismiss. (Dkt. No. 74-36.)

48. AirTran denies the allegations contained in paragraph 48, except admits that, during its July 29, 2008 second quarter earnings call, AirTran discussed several areas of focus, one of which was revenue improvements.

49. AirTran denies the allegations contained in paragraph 49.

50. AirTran denies the allegations contained in paragraph 50, except admits that, in September 2008, AirTran adjusted its growth rate from eight percent during the summer of 2008 to an eight percent reduction in capacity, and that the block-indented quote of a statement made by Mr. Fornaro during AirTran's April 22, 2009 first quarter earnings call is substantially accurate. AirTran respectfully refers the Court to a complete transcript of that earnings call, which

the CAC incorporates by reference, and which AirTran admits is attached as Exhibit 47 to the Defendants' Joint Appendix to their Motions to Dismiss. (Dkt. No. 74-48.)

51. AirTran denies the allegations contained in paragraph 51, except admits that AirTran participated in the Calyon Securities Airline Conference on September 18, 2008. AirTran further admits that Mr. Haak gave a presentation during the Calyon Conference in which he stated that AirTran's "outlook for capacity next year is to be down 3% to 7% in 2009," that, in April 2008, it had projected flat growth during 2009, and that it sold and deferred delivery of aircraft.

52. AirTran denies the allegation that collusion with AirTran fundamentally changed Delta's business strategies, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 52.

53. AirTran denies the allegations contained in paragraph 53, except admits that it held its 2008 third quarter earnings call on October 23, 2008, and that the block-indented quote of a statement made by Mr. Fornaro during that earnings call is substantially accurate. AirTran respectfully refers the Court to a complete transcript of that earnings call, which the CAC incorporates by reference, and

which AirTran admits is attached as Exhibit 41 to the Defendants' Joint Appendix to their Motions to Dismiss. (Dkt. No. 74-42.)

54. AirTran denies the allegations contained in paragraph 54, except admits that each block-indented paragraph that purports to quote a statement made by Mr. Fornaro during AirTran's October 23, 2008 third quarter earnings call is substantially accurate, apart from any emphasis added by Plaintiffs, though AirTran denies that Mr. Fornaro made the quoted statements consecutively. AirTran respectfully refers the Court to a complete transcript of that earnings call, which the CAC incorporates by reference, and which AirTran admits is attached as Exhibit 41 to the Defendants' Joint Appendix to their Motions to Dismiss. (Dkt. No. 74-42.)

55. AirTran denies the allegations contained in paragraph 55, except admits that the block-indented quote of a statement made by Mr. Fornaro during AirTran's October 23, 2008 third quarter earnings call is substantially accurate, apart from any emphasis added by Plaintiffs, and that Mr. Fornaro answered the question, "But if [Delta] were [to have a first bag fee], you'd consider it? It's not a matter of practice?" by stating, "We would strongly consider it, yes." AirTran respectfully refers the Court to a complete transcript of that earnings call, which the CAC incorporates by reference, and which AirTran admits is attached as

Exhibit 41 to the Defendants' Joint Appendix to their Motions to Dismiss. (Dkt. No. 74-42.)

56. AirTran lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 56, except admits that Delta announced on November 5, 2008 that it would begin charging passengers a \$15 first bag fee applicable to certain customers who booked travel with AirTran according to the following criteria: (1) travel booked on or after November 5; and (2) travel to occur on or after December 5, 2008. AirTran further admits that Delta's November 5, 2008 announcement exempted certain categories of passengers from first bag fee charges.

57. AirTran denies the allegations contained in paragraph 57, except admits that, on November 12, 2008, it announced that it would impose a \$15 first bag fee applicable to certain customers who booked travel with AirTran according to the following criteria: (1) travel booked on or after November 12; and (2) travel to occur on or after December 5, 2008. AirTran further admits that its November 12, 2008 announcement exempted certain categories of passengers from first bag fee charges.

58. AirTran denies the allegations contained in paragraph 58, except that AirTran lacks knowledge or information sufficient to form a belief as to the truth

of the allegation that Delta projected that the 2009 fare structures would not be significantly lower than the levels in 2008.

59. AirTran denies the allegations contained in paragraph 59, except admits that the block-indented quote of Mr. Fornaro's remarks from the Raymond James Growth Airline Conference held on February 5, 2009 are substantially accurate, apart from any emphasis added by Plaintiffs. AirTran respectfully refers the Court to a complete transcript of those remarks, which the CAC incorporates by reference, and which AirTran admits is attached as Exhibit 45 to the Defendants' Joint Appendix to their Motions to Dismiss. (Dkt. No. 74-46.)

60. AirTran denies the allegations contained in paragraph 60, except admits that demand for airline travel was declining in 2008. AirTran lacks knowledge or information sufficient to form a belief as to the truth of the allegation that the price of oil was about \$41 per barrel at the time Delta and AirTran began charging first bag fees.

61. AirTran denies the allegations contained in paragraph 61.

62. AirTran denies the allegations contained in paragraph 62.

63. AirTran lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 63.

64. AirTran lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 64.

65. AirTran denies the allegations contained in paragraph 65, except admits that it has always been reluctant to share competitively sensitive information, and further admits that the block-indented quote of a question and answer in which AirTran's SVP, Kevin Healy, engaged during AirTran's April 22, 2009 is substantially accurate. AirTran further admits that the transcript of that same earnings call quotes Mr. Fornaro as saying, "I think the concern [over AirTran participating in the Air Transport Association's monthly yield report] is this industry has a habit of being very self-destructive by sharing too much information with your competition." (*Id.*) AirTran respectfully refers the Court to complete transcript of that earnings call, which the CAC incorporates by reference, and which AirTran admits is attached as Exhibit 47 to the Defendants' Joint Appendix to their Motions to Dismiss. (Dkt. No. 74-48.)

66. AirTran denies the allegations contained in paragraph 66, except admits that AirTran provides regularly scheduled service between a city of origin and a city of destination, that such origin-destination combinations are known in the airline industry as "city-pairs" and "routes," and that AirTran imposed a first bag fee on all domestic city pairs it serves. AirTran lacks knowledge or

information sufficient to form a belief as to the truth of the allegations in paragraph 66 that relate to Delta.

67. AirTran denies the allegations contained in paragraph 67.

68. AirTran denies the allegations contained in paragraph 68, except admits that AirTran and Delta compete for consumers flying in and out of Hartsfield-Jackson.

69. AirTran denies the allegations contained in paragraph 69, except admits that AirTran's 2006 Annual Report, 2006 10-K Report, filed on March 1, 2007, and 2007 Form 10-K/A Report, filed on August 9, 2007, describe AirTran's Atlanta hub operation as the "core of our business." AirTran lacks knowledge or information sufficient to form a belief as to the truth of the allegation that Delta refers to Atlanta as its "core strength market."

70. AirTran denies the allegations contained in paragraph 70.

71. AirTran denies the allegations contained in paragraph 71.

72. AirTran denies the existence of a class that satisfies the requirements of Federal Rule of Civil Procedure 23. AirTran admits that Plaintiffs purport to bring the current action pursuant to Rule 23 on behalf of themselves and the class defined in paragraph 72.

73. AirTran denies the existence of a class that satisfies the requirements of Federal Rule of Civil Procedure 23. AirTran further denies that the exclusion of the categories of persons listed in paragraph 73 is sufficient to satisfy the requirements of Rule 23. AirTran admits that, in paragraph 73, Plaintiffs purport to exclude certain categories of persons from the putative of class defined in paragraph 72.

74. AirTran denies the allegations contained in paragraph 74.

75. AirTran denies the allegations contained in paragraph 75.

76. AirTran denies the allegations contained in paragraph 76.

77. AirTran denies the allegations contained in paragraph 77.

78. AirTran denies the allegations contained in paragraph 78.

79. AirTran denies the allegations contained in paragraph 79.

80. AirTran denies the allegations contained in paragraph 80.

81. AirTran denies the allegations contained in paragraph 81.

82. AirTran repeats and re-alleges each and every answer to the allegations contained in paragraphs 1–81 of the CAC with the same force and effect as if fully set forth here.

83. AirTran denies the allegations contained in paragraph 83 of the CAC.

84. AirTran denies the allegations contained in paragraph 84 of the CAC.

85. AirTran denies the allegations contained in paragraph 85 of the CAC.

86. AirTran denies the allegations contained in paragraph 86 of the CAC.

87. AirTran denies the allegations contained in paragraph 87 of the CAC.

88. AirTran denies the allegations contained in paragraph 88, except admits that Plaintiffs seek monetary damages for first bag fee payments.

AFFIRMATIVE AND OTHER DEFENSES

Without assuming any burden of proof it would not otherwise bear, AirTran hereby asserts the following affirmative or additional defenses.

First Affirmative Defense

Plaintiffs' claims should be dismissed because the CAC, and every allegation contained therein, fails to state a claim upon which relief can be granted.

Second Affirmative Defense

Plaintiffs' claims are barred, in whole or in part, because Plaintiffs lack standing to bring some or all of the causes of action asserted in the CAC.

Third Affirmative Defense

Plaintiffs' claims are preempted because they would create a conflict between United States securities laws and antitrust laws.

Fourth Affirmative Defense

AirTran specifically reserves all separate or affirmative defenses that it may have against the putative class and its members. It is not necessary at this time for

AirTran to delineate such defenses because no class has been certified and the putative class members are not parties to the litigation.

Fifth Affirmative Defense

AirTran incorporates by reference, as if fully set forth herein, all other defenses asserted by other defendants to this action, and AirTran reserves the right to raise additional defenses.

WHEREFORE, AirTran respectfully requests that the Court dismiss the CAC in its entirety with prejudice, enter judgment in AirTran's favor and against the Plaintiffs, and award AirTran its costs and disbursements, including attorneys' fees, incurred in defending this action, together with other such relief as the Court deems just and proper.

Dated: August 16, 2010

/s/ Michael V. Sachdev

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CERTIFICATE OF SERVICE

I hereby certify that this pleading has been prepared in 14 pt. type consistent with the Rules of this Court. I further certify that on August 16, 2010, I electronically filed the foregoing **DEFENDANT AIRTRAN'S ANSWER TO THE CONSOLIDATED AMENDED COMPLAINT** with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to counsel of record, and also served the foregoing via electronic mail to the following:

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