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

ORDER

This matter is before the Court on Plaintiffs' motion for class certification and appointment of class counsel [123].[1] Plaintiffs seek to certify a class of individuals and entities who paid a first-bag fee as a result of an alleged conspiracy between Defendants AirTran Airways, Inc. and Delta Air Lines, Inc.

I. Background

AirTran and Delta are competitors for airline service. AirTran positions itself as a discount airline that provides fares lower than its competitors, and Delta has consistently matched AirTran's lower prices. According to Plaintiffs, prior to the unlawful collusion alleged in this action,

[1] Plaintiffs filed their motion on June 30, 2010. The reason it has taken the Court five years to rule on the motion is that it was necessary to allow the parties to conduct discovery before ruling on the motion. And as anyone familiar with this case knows, the discovery phase has been tortuous and protracted.

consumers benefited from Defendants' competition in the form of additional capacity on routes, lower prices, and fewer ancillary fees. Plaintiffs aver that the intense competition between Defendants is what prevented either airline from unilaterally charging a first-bag fee.

However, Plaintiffs allege, Defendants colluded in 2008 to impose a first-bag fee, ultimately causing consumers to suffer harm in the form of higher prices. Specifically, Plaintiffs contend that "Delta and AirTran used their earnings calls (and other channels) to communicate and coordinate pricing behavior" so that both airlines could impose the fee without losing any market share.

Plaintiffs contend that Defendants' conspiratorial communications culminated during AirTran's third-quarter earnings call on October 23, 2008. When asked during the call if it would impose a first-bag fee, AirTran indicated that it wanted to implement a first-bag fee, had not done so because Delta did not yet have one, and would strongly consider imposing the fee once Delta did so. Plaintiffs argue that AirTran's statements during the call sent Delta a clear (and illegal) message that if it imposed a first-bag fee, AirTran would follow suit.

On November 5, 2008—less than two weeks after AirTran's call—Delta announced that it would begin charging passengers a $15 first-bag fee, effective December 5, 2008. On November 12, AirTran announced that it would also impose a $15 first-bag fee, effective the same day as Delta's fee. Plaintiffs aver that if either Defendant had unilaterally imposed the first-bag fee, it risked losing millions of dollars; thus by acting in concert, Plaintiffs aver, Defendants benefited from increased revenues without suffering any loss in market share.

Soon after Defendants imposed their first-bag fees, several individual antitrust cases were filed by Plaintiffs in various federal district courts across the country. On October 6, 2009, the U.S. Judicial Panel on Multidistrict Litigation entered an order transferring all of the cases to this Court. On January 21, 2010, the Court issued an initial case management order [51], and pursuant to that order, on February 1, 2010, Plaintiffs filed a consolidated amended class action complaint against Defendants.

The complaint consists of three counts. Count one alleges that Defendants engaged in a conspiracy to restrain trade in violation of § 1 of the Sherman Act. In this count, Plaintiffs aver that Defendants entered into a conspiracy in restraint of trade that led to the imposition of the first-bag

fee and capacity reductions, all in a joint and concerted effort to increase prices to consumers. Plaintiffs seek injunctive relief and damages in the amount of the first-bag fee payments paid by class members.

Counts two and three are brought pursuant to § 2 of the Sherman Act and are identical except that they pertain to each Defendant separately. Count two alleges that AirTran engaged in attempted monopolization in violation of § 2 of the Sherman Act. Plaintiffs aver that by inviting Delta to collude, AirTran attempted to monopolize the domestic airline passenger service market served by Delta and AirTran. Count three asserts a similar attempted monopolization claim against Delta.

On March 8, 2010, Defendants filed separate motions to dismiss, contending that all three counts in Plaintiffs' complaint failed to state a claim upon which relief can be granted. On June 30, Plaintiffs filed their motion for class certification and for appointment of class counsel. On August 2, the Court issued an order that granted in part and denied in part Defendants' motions to dismiss. The Court dismissed Plaintiffs' § 2 Sherman Act claims, which left only count one (their first-bag-fee and capacity claims premised on § 1 of the Sherman Act).

On June 18, 2012, the Court issued a consent order and stipulation in which Plaintiffs stipulated "without prejudice, that they have abandoned any claim for relief based on an alleged contract, combination and/or conspiracy to reduce capacity, as alleged in the complaint generally and in Count 1, in particular." Thus, the only claim that remains is Plaintiffs' § 1 Sherman Act claim related to the first-bag fee, and the Court's evaluation of Plaintiffs' class-certification motion is limited to analysis of this claim.

Plaintiffs propose certifying the following class: "All persons or entities in the United States and its territories that directly paid Delta and/or AirTran one or more first bag fees on domestic flights from December 5, 2008 through the present (and continuing until the effects of Delta's and AirTran's anticompetitive conspiracy ceases)."

II. Legal Standard

Federal Rule of Civil Procedure 23 governs the certification and management of class actions. The rule provides that a class action may be maintained only if the plaintiffs are qualified to represent the class in accordance with the four prerequisites found in subsection (a), and only if

the action is one of the three types identified in subsection (b). *See also Griffin v. Dugger*, 823 F.2d 1476, 1482 (11th Cir. 1987).[2]

In evaluating the class-certification motion, the trial court must first perform a "rigorous analysis" to ensure that Rule 23(a)'s prerequisites are satisfied. *Gen. Tel. Co. v. Falcon*, 457 U.S. 147, 161 (1982); *Gilchrist v. Bolger*, 733 F.2d 1551, 1555 (11th Cir. 1984). Specifically, Rule 23(a) requires plaintiffs to show that

> (1) the class is so numerous that joinder of all members is impracticable;
>
> (2) there are questions of law or fact common to the class;
>
> (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
>
> (4) the representative parties will fairly and adequately protect the interests of the class.

"These four requirements commonly are referred to as the prerequisites of numerosity, commonality, typicality, and adequacy of representation, and

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[2] Delta also argues that some courts impose an "ascertainability requirement," which determines whether the class definition is impermissibly "amorphous" or "imprecise," before evaluating the Rule 23 requirements. *Grimes v. Rave Motion Pictures Birmingham, L.L.C.*, 264 F.R.D. 659, 663-64 (N.D. Ala. 2010). Delta contends that application of the requirement in this case demands denial of Plaintiffs' motion. It argues that Plaintiffs' proposed class definition is amorphous because the members of the proposed class are not readily identifiable, as neither its system nor AirTran's system "contain information sufficient to identify the person that actually paid the bag fee." The Court disagrees and finds that the proposed definition is not amorphous or imprecise such that class members cannot be sufficiently identified.

they are designed to limit class claims to those fairly encompassed by the named plaintiffs' individual claims." *Piazza v. Ebsco Indus., Inc.*, 273 F.3d 1341, 1346 (11th Cir. 2001) (citations and internal quotations omitted). Even where these requirements are undisputed, the Court must conduct an independent inquiry to ensure that they have been met. *Valley Drug Co. v. Geneva Pharms., Inc.*, 350 F.3d 1181, 1188 (11th Cir. 2003).

If plaintiffs can establish that Rule 23(a)'s four requirements are met, they must then show that at least one of the requirements set forth in Rule 23(b) is met. *Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1265 (11th Cir. 2009). Plaintiffs contend that either Rule 23(b)(2) or (b)(3) is satisfied, but they primarily focus on subsection (b)(3). Rule 23(b)(2) applies if "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief is appropriate respecting the class as a whole." Rule 23(b)(3) provides, in pertinent part, that a class action may be maintained if "the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy."

Within the parameters of Rule 23(a) & (b), "[i]t is well settled that questions concerning class certification are left to the sound discretion of the district court." *Freeman v. Motor Convoy, Inc.*, 700 F.2d 1339, 1347 (11th Cir. 1983). In addition, the burden of establishing the propriety of class certification lies with the moving party. *Hudson v. Delta Air Lines, Inc.*, 90 F.3d 451, 456 (11th Cir. 1996). However, "[i]n determining the propriety of a class action, the question is not whether the plaintiff or plaintiffs have stated a cause of action or will prevail on the merits, but rather whether the requirements of Rule 23 are met." *Miller v. Mackey Int'l, Inc.*, 452 F.2d 424, 427 (5th Cir. 1971); *but see Valley Drug*, 350 at 1188 n.15 ("[T]he trial court can and should consider the merits of the case to the degree necessary to determine whether the requirements of Rule 23 will be satisfied.").

III. Analysis

Defendants' primary objection to Plaintiffs' motion for class certification is that the class members did not all suffer the same effects as a result of the first-bag fee. For example, Defendants contend that some members benefited from imposition of the fee because the fee caused Defendants to lower base fares, and the base-fare reductions exceeded class

members' first-bag-fee payments. Thus, as a result of these varying effects, Defendants argue that each person who paid the fee must be looked at individually to determine the impact of the fee, and consequently Plaintiffs cannot adequately represent the class members, nor can Plaintiffs satisfy the predominance requirement of Rule 23(b)(3).

A. Rule 23(a) Requirements

As stated above, the four Rule 23(a) requirements are numerosity, commonality, typicality, and adequacy of representation. Defendants challenge the last requirement—adequacy of representation.[3] Relying primarily on *Valley Drug*, 350 F.3d at 1189, Defendants contend that Plaintiffs cannot adequately represent the class because class members have both benefitted and been harmed by the alleged conspiracy to implement the first-bag fee. Defendants argue that the disparate effects of their behavior create a fundamental conflict between class members that prevents class certification.

[3] Delta also contends that the typicality and commonality requirements cannot be satisfied when some class members benefited and some did not. It does not expand on this argument or provide any case or statutory law to support its position. Consequently, its argument against these two requirements does not rebut Plaintiffs' contention that they have met them. Moreover, as discussed *infra*, the Court finds Plaintiffs' arguments that they have met the typicality and commonality requirements well taken.

To satisfy Rule 23(a)(4), Plaintiffs must show that (1) a fundamental conflict of interest does not exist between them and the proposed class, and (2) they will adequately prosecute the action. *Id.*; *accord Busby v. JRHBW Realty, Inc.*, 513 F.3d 1314, 1323 (11th Cir. 2008). The Court has no doubt that Plaintiffs' counsel will adequately prosecute the action, and Defendants do not challenge otherwise. Indeed, the Court appointed the proposed class counsel as interim counsel on January 5, 2010, and in the five years since they were appointed, Plaintiffs' counsel have competently represented the putative class. The issue is whether the named Plaintiffs have a fundamental conflict of interest with the proposed class members.

In *Valley Drug*, 350 F.3d at 1189, the court explained that a "fundamental conflict exists where some party members claim to have been harmed by the same conduct that benefitted other members of the class." *See also Pickett v. Iowa Beef Processors*, 209 F.3d 1276, 1280 (11th Cir. 2000) ("class cannot be certified when its members have opposing interests or when it consists of members who benefit from the same acts alleged to be harmful to other members of the class").

Plaintiffs respond that Defendants' arguments that Plaintiffs have such a conflict with the class members fail for five reasons. First, Plaintiffs

contend that *Valley Drug* is inapposite because in that case, at least three members of the class earned greater profits reselling the drug at issue, whereas none of them resold the first-bag-fee services at a profit. The Court finds this argument unpersuasive.

Second, Plaintiffs argue that Defendants' base-fare-reduction argument is not supported by the evidence and thus their contention that some class members benefited from the first-bag fee is without merit. Third, they assert that even if some class members received a net benefit, such benefit is not sufficient to rise to the level of being a fundamental conflict. Fourth, Plaintiffs argue that Defendants' conflict argument relies on an alleged offsetting defense, and since neither Defendant pled the defense of set-off in their answers, they cannot use set-off to defeat class certification. Finally, Plaintiffs argue that even if the Court accepts Defendants' benefits argument, they have proposed an alternative methodology that uses common proof to address the issue and if necessary determine a separate class of net beneficiaries.

With respect to Plaintiffs' second through fifth arguments, the Court finds based on the record that Plaintiffs have presented sufficient evidence that any potential conflict between them and the class members does not

rise to the level of being a fundamental conflict of interest that would prevent Plaintiffs from vigorously prosecuting the interests of the class through qualified counsel. *Cf. Valley Drug*, 350 F.3d at 1196 (noting that plaintiffs failed to carry burden with respect to subsection (a)(4), as they did not put forth any evidence that a fundamental conflict did not exist among the class members, and remanding for discovery on whether class members experienced net benefit or loss as a result of alleged conspiracy); *see also Hillis v. Equifax Consumer Servs., Inc.*, 237 F.R.D. 491, 500 (N.D. Ga. 2006) (holding that even if some class members benefited from challenged conduct, not enough to create fundamental conflict and that defendants' benefits argument depended on viable set-off defense which defendants had failed to plead in their answers).

AirTran also argues that Plaintiffs cannot adequately represent the class because conflicts between them and the class members exist with respect to proof of the alleged conspiracy. Specifically, AirTran argues that class members cannot align around a conspiracy in which Defendants raised their first-bag fees at different times and in different amounts. AirTran contends that the varying increases make it improbable that the class members share a common theory of antitrust liability. AirTran does

not provide any case or statutory law to support its contention, and the Court does not find it persuasive. Accordingly, this argument does not defeat Plaintiffs' motion.

Thus, the Court holds that Plaintiffs have satisfied the adequacy-of-representation requirement. In addition, the Court has reviewed Plaintiffs' arguments with respect to the other Rule 23(a) requirements and finds them well taken. Consequently, the Court holds that Plaintiffs have satisfied all of the Rule 23(a) requirements, and now turns to Plaintiffs' arguments with respect to subsection (b).

B. Rule 23(b) Requirements

As mentioned above, Plaintiffs must satisfy one of the three requirements of Rule 23(b) in order to maintain a class action. Plaintiffs contend that subsection (b)(2) or (3) applies, but their main focus is on subsection (3).

1. Subsection (b)(2)

Rule 23(b)(2) provides that a class action may be maintained thereunder so long as the "party opposing the class has acted or refused to act on grounds that apply generally to the class" and the "final injunctive

relief or corresponding declaratory relief is appropriate respecting the class as a whole." Plaintiffs contend that subsection (b)(2) applies in the event the Court determines that subsection (b)(3) does not apply; however, Plaintiffs fail to address either subsection (b)(2) requirement.

In addition, Plaintiffs do not address whether their requested injunctive relief is the primary relief sought or merely incidental to the treble damages they seek under section 4 of the Clayton Act, 15 U.S.C. § 15. "Monetary relief may be obtained in a Rule 23(b)(2) class action so long as the predominant relief sought is injunctive or declaratory." *Murray v. Auslander*, 244 F.3d 807, 812 (11th Cir. 2001); *accord Vega*, 564 F.3d at 1265 n.8; 7AA CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE § 1775 (3d ed. 2005) (subsection (b)(2) applies only where injunctive relief is primary relief sought with money damages being incidental). "Monetary relief predominates in (b)(2) class actions unless it is *incidental* to requested injunctive or declaratory relief." *Murray*, 244 F.3d at 812; *see also Christ v. Beneficial Corp.*, 547 F.3d 1292, 1298 n.11 (11th Cir. 2008) ("The mere recitation of a request for declaratory relief cannot transform damages claims into a Rule 23(b)(2) class action.").

It is clear from Plaintiffs' complaint that they seek predominantly monetary relief. Consequently, Rule 23(b)(2) does not apply. *See In re Domestic Air Transp. Antitrust Litig.*, 137 F.R.D. 677, 684 n.6 (N.D. Ga. 1991) ("While there are injunctive and declaratory aspects of the relief that plaintiffs seek, the true nature of this action is defined by the treble damages available for civil violations of the antitrust laws under the Clayton Act.").

2. Subsection (b)(3)

In order for subsection (b)(3) to apply, Plaintiffs must show that (1) common questions of law and fact predominate over individual issues, and (2) a class action is superior to other available methods of adjudication. *See also Vega*, 564 F.3d at 1265; *Domestic Air*, 137 F.R.D. at 684. Of the two requirements, Defendants vehemently challenge the predominance requirement. As stated earlier, it is generally inappropriate for the Court to consider whether Plaintiffs will prevail on the merits of their claim when determining whether the class can be certified under subsection (b)(3).

a. Predominance

Plaintiffs contend that they will use common proof to show that (1) Defendants conspired to introduce the first-bag fee; (2) the illegal fee impacted the entire class; and (3) payment of the fee caused the class members to suffer damages. In support of their position, Plaintiffs rely on their economic expert, Hal J. Singer, Ph.D.

To satisfy the predominance requirement, Plaintiffs must show that "the issues in the class action . . . are subject to generalized proof, and thus applicable to the class as a whole, [and] predominate over those issues that are subject only to individualized proof." *Kerr v. City of W. Palm Beach*, 875 F.2d 1546, 1558 (11th Cir. 1989); *see also Vega*, 564 F.3d at 1278 (stating that predominance is "perhaps the central and overriding prerequisite for a Rule 23(b)(3) class"). Stated another way, Plaintiffs must show not only that there are predominating questions, but also that the questions are susceptible to common proof. *Alabama v. Blue Bird Body Co.*, 573 F.2d 309, 325-26 (5th Cir. 1978).

"Whether an issue predominates can only be determined after considering what value the resolution of the class-wide issue will have in each member's underlying cause of action." *Vega*, 564 F.3d at 1270. "If

common issues truly predominate over individualized issues in a lawsuit, then the addition or subtraction of any of the plaintiffs to or from the class should not have a substantial effect on the substance or quantity of evidence offered." *Id.*

In *Domestic Air*, 137 F.R.D. at 684-85, this Court set forth the standard for determining predominance in an airline-antitrust case:

> In making its predominance determination the Court must first identify the substantive law that will control the outcome of the litigation. *Alabama v. Blue Bird Body Co.*, 573 F.2d 309, 316 (5th Cir. 1978). The Court must then examine the manner in which plaintiffs propose to prove their antitrust claim to determine whether common issues of law or fact will predominate. In other words, the Court must determine if the evidence plaintiffs propose to employ will pertain only to individual plaintiffs and their claims or be common to the class as [a] whole. *Id.*

Accord Columbus Drywall & Insulation, Inc. v. Masco Corp., 258 F.R.D. 545, 556 (N.D. Ga. 2007) [hereinafter *Columbus Drywall 1*].

Like the plaintiffs in *Domestic Air*, Plaintiffs in this case allege that Defendants violated § 1 of the Sherman Act, and they seek relief under § 4 of the Clayton Act. Thus,

> [t]he substantive law underlying [P]laintiffs' civil action for alleged antitrust violations is § 4 of the Clayton Act. To recover treble damages under this section, [P]laintiffs must prove (1) that defendants violated the antitrust laws; (2) that the alleged violations caused [P]laintiffs to suffer some injury . . . ; and (3)

> that the extent of this injury can be quantified with requisite precision. Plaintiffs' burden is to establish that common or "generalized proof" will predominate at trial with respect to these three essential elements of their antitrust claim.

Domestic Air, 137 F.R.D. at 685 (internal citations and quotations omitted).

Delta does not challenge the first element of Plaintiffs' antitrust claim, as it states in its brief in opposition to Plaintiffs' motion that it "does not dispute that the facts and legal issues concerning the *existence* (or non-existence) and *scope* (if any) of the alleged conspiracy concerning first bag fees are identical with respect to all members of the proposed class." Although not as explicit as Delta, AirTran also does not challenge the first element of Plaintiffs' antitrust claim. Rather, both Defendants contend that individual issues dominate the injury and damages elements of Plaintiffs' claim, and as a result these elements cannot be established with common proof.

In order to recover damages in an antitrust action, the class "must be able to prove that it suffered a 'cognizable injury attributable to the violation' committed by defendants. This element is often referred to as the 'fact of injury' or 'impact.'" *Columbus Drywall 1*, 258 F.R.D. at 557. "Proof of 'impact' is not only essential to demonstrating defendants' liability under the antitrust laws, it is also the key element in determining whether

common issues will predominate." *Domestic Air*, 137 F.R.D. at 689; *accord Vega*, 564 F.3d at 1278 (stating that predominance is "the central and overriding prerequisite for a Rule 23(b)(3) class").

Delta contends that the first-bag fee did not have the same effect on all proposed class members in that some members were not harmed by the fee because (1) imposition of the fee led to lower base fares for both Defendants and that for some class members this lower fare exceeded the cost of the first-bag fee; (2) Delta reduced the second-bag fee when it introduced the first-bag fee, and class members who paid both fees paid less than the cost of the original second-bag fee; and (3) class members who were reimbursed for the fee were not harmed. Because the first-bag fee impacted the class members differently, Delta argues that proving injury will depend on each class member, and as a result individualized issues clearly predominate over common ones.

Similarly, AirTran argues that common proof of impact cannot be shown because (1) the alleged conspiracy affected only the first-bag fee, which is but one element of the total ticket price; (2) class members purchased tickets in various markets and paid a range of total prices; and (3) ticket prices vary by route, flight, carrier and date of purchase. Thus,

AirTran asserts that these factors preclude "common proof of any alleged increase in the total price of air travel."

Several courts have rejected predominance arguments similar to those made by Delta and AirTran, and have certified classes under subsection (b)(3) when presented with facts similar to those in this case. *See Columbus Drywall & Insulation, Inc. v. Masco Corp.*, No. 1:04-cv-3066-JEC, 2009 WL 856306, at *9-10 (N.D. Ga. Feb. 9, 2009) [hereinafter *Columbus Drywall 2*]; *In re Nw. Airlines Corp.*, 208 F.R.D. 174, 222-23 (E.D. Mich. 2002); *Midwestern Mach. v. Nw. Airlines, Inc.*, 211 F.R.D. 562, 571-72 (D. Minn. 2001); *Domestic Air*, 137 F.R.D. at 689-92. While Defendants' arguments are "superficially successful at deconstructing Plaintiffs' proposed method of proof so as to make it appear uniquely complex and incapable of common proof, it is ultimately an exaggeration and insufficient to defeat Plaintiffs' claim of predominance." *Midwestern Mach.*, 211 F.R.D. at 571. "Simply because an industry involves an elaborate pricing system that results in a range of prices . . . is an insufficient reason for denying class certification." *Id.* at 572.

Here, analysis and evaluation of Plaintiffs' proposed proof that Defendants conspired to impose the first-bag fee and that the resulting

antitrust violation impacted the class "will be done once for the benefit of the class and not repeatedly for each individual member." *Id.*; *see also Nw. Airlines*, 208 F.R.D. at 223 ("All that matters, at this stage, is that Plaintiffs' theory of liability rests upon a colorable analytical method that is susceptible to generalized proof."); *Columbus Drywall 2*, 2009 WL 856306, at *9 ("[P]laintiffs can easily prove class-wide impact in spite of the fact that prices are subject to individualized negotiations. In order to do so, plaintiffs must simply show that the starting price for the negotiations was artificially increased as a result of the conspiracy."). Thus, the Court finds that Plaintiffs have carried their burden of showing that common questions predominate the individual issues with respect to the injury element of their antitrust claim.

This is not to say that individual issues will not arise. Indeed, evaluation of Defendants' arguments about the damages element of Plaintiffs' antitrust claim shows that it is likely "inevitable that individualized proof will be presented" in this case. However, such proof "will only be relevant with respect to the calculation of damages." *Midwestern Mach.*, 211 F.R.D. at 572. And, "the fact that there will necessarily be individualized damages evidence does not preclude Rule

23(b)(3) certification in this case." *Columbus Drywall 2*, 2009 WL 856306, at *10. Particularly in the antitrust context, "[o]nce [a] violation and its causal relation to plaintiff's injury have been established, the burden of proving the amount of damages is much less severe." *Id.* (alteration in original) (quoting *Graphic Prods. Distribs., Inc. v. ITEK Corp.*, 717 F.2d 1560, 1579 (11th Cir. 1983)).

"Moreover, the fact that some members of the class may not have suffered actual injury is not fatal to class certification; and thus, a determination of actual individual injury is not necessary at this time." *Midwestern Mach.*, 211 F.R.D. at 572. Thus, the Court also finds that the individual issues about damages do not predominate the common questions. Defendants' issues with Plaintiffs' proposed method of calculating damages can be dealt with in the future; for now, it is enough to conclude that the individual issues do not predominate. *Nw. Airlines*, 208 F.R.D. at 224. It is also unnecessary to address at this time Delta's argument that class certification is inappropriate because some class members were reimbursed for their first-bag fee. *See Nw. Airlines*, 208 F.R.D. at 224-25 (rejecting a similar argument because it was an "inappropriate basis for denying class certification"); *Domestic Air*, 137

F.R.D. at 696 (reimbursement defense not properly raised at class-certification stage, as argument goes directly to merits of each plaintiff's claim).

Accordingly, the Court finds that Plaintiffs have carried their burden on the predominance inquiry with respect to all three elements of their antitrust claim.

b. Superiority

"In addition to finding that common questions predominate over individual inquiries, in certifying a class under Rule 23(b)(3), the Court must find that the class action vehicle is superior to other available methods for adjudication." *Domestic Air*, 137 F.R.D. at 693. Delta has not challenged that class certification is a superior method for adjudicating this case. AirTran cursorily argues that inquiries with respect to individual class members will "devolve into numerous mini-trials, rendering this case unmanageable." The Court disagrees.

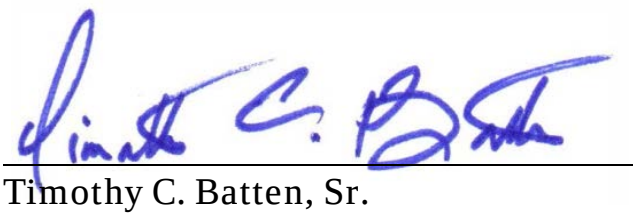
Even if "the number of plaintiffs makes the proceeding complex or difficult," this alone is not a reason to deny certification. *Domestic Air*, 137 F.R.D. at 693. Where, as here, the class members' claims are "so small that the cost of individual litigation would be far greater than the value of those

claims," class certification is appropriate. *Id.* Thus, the Court finds that a class action is the only fair method of adjudication for Plaintiffs and the other class members.

IV. Conclusion

Plaintiff's motion for class certification [123] is granted, and it is hereby ordered pursuant to Rule 23(g) that interim class counsel be and hereby are appointed as class counsel.

IT IS SO ORDERED this 5th day of August, 2015.



Timothy C. Batten, Sr.
United States District Judge