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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.:

MARGARET SCHULTZ,

Plaintiff, on Behalf of a Putative Class,

vs.

CLASS REPRESENTATION

AMERICAN AIRLINES, INC.
a foreign for-profit corporation,

Defendant.
_____/

COMPLAINT

Plaintiff, Margaret Schultz, individually and on behalf of a putative class of similarly situated individuals, sues Defendant, American Airlines, Inc., for damages stemming from American's purposeful, systematic, and profit-driven breach of contracts with its airline customers, and states:

I. PARTIES, JURISDICTION, AND VENUE

1. Plaintiff is a citizen of Florida who resides in Palm Beach County.

2. America Airlines, Inc. ("American") is a corporation organized and existing under the laws of Delaware.

3. American's headquarters and principal place of business are in Fort Worth, Texas.

4. The putative class (referred to herein collectively as the "putative Class" or the

"Class," and individually as a "Class Member" or the "Class Members") consists of citizens of the various United States, including residents of Florida and Palm Beach County. As to all utterances herein, the Class includes Plaintiff.

5. A Class aggregate of greater than $15,000, exclusive of costs, fees, and interest, is at issue, as:

a. The Class is likely to exceed 250 persons, as:

i. Tens of thousands of airline flights are booked on American's website, aa.com, each day;

ii. The offending conduct is fueled by profit motive and is systematic and not incidental;

iii. Plaintiff herself was victimized by the offending conduct no less than three times in five months;

iv. Internet message boards and other consumer forums are rife with complaints of the offending conduct; and

b. The known instances of the offending conduct projects that each Class Member incurred approximately $30 in damages.

6. At all material times, American subjected itself to the jurisdiction of the Courts of Florida via the state's long-arm jurisdiction provision, Fla. Stat. § 48.193, by:

a. Maintaining regularly functioning business offices in Florida;

b. Operating, conducting, engaging in, and carrying on its business—including the marketing and selling of commercial airline tickets and operation of commercial flights—in Florida, both in various airports and other establishments throughout the state, and by reaching into Florida via the

Internet;

c. While reaching into Florida from other states via the Internet as part of its regular business practices, committing the wrongful acts and omissions alleged herein against various Class Members, who at the time of such acts and omissions were, as American knew, in Florida;

d. Causing injury by breaching contracts while the breaching American agents were physically outside of Florida but:

i. While American was engaged in solicitation and service activities in Florida; and

ii. While American's services were sold, used, and consumed within Florida in the ordinary course of trade and commerce;

e. Consummating and breaching contracts with Plaintiff and other Class Members at times when American knew that such Class Members were in Florida and would suffer harm from American's actions herein;

f. Through its continuous and systematic business practices, establishing Florida's general jurisdiction over American such that it could at any time reasonably be haled into court herein for acts and omissions occurring in Florida and elsewhere; and

g. Operating so regularly and establishing contacts so pervasive in Florida that the state courts' jurisdiction over American is consistent with due process and traditional notions of fair play and substantial justice.

7. As Plaintiff accessed her computer in Palm Beach County, American intentionally reached into the county via the Internet and induced Plaintiff to enter into the

contract at issue through direct marketing to a consumer it knew, on account of America's sophisticated information technology system, was located in the county.

8. Knowing Plaintiff was at the time located in Palm Beach County, American entered into (and breached) the contract at issue in the county[1], knowingly causing harm to Plaintiff in Palm Beach County and effecting accrual of Plaintiff's action, as defined by Fla. Stat. § 47.011, in the county.

9. Palm Beach County is home to more than 1.3 million people, has the fifth-highest per-capita income of all Florida counties, is a center for tourism and seasonal living, and contains an international airport and numerous corporate headquarters. These factors correlate with disproportionately frequent air travel to and from the county, and thus the citizens of Palm Beach County are, relative to the average county in the United States, disproportionately likely to fall victim to the contractual breaches by American that are described herein. As such, Palm Beach County is an ideal forum.

10. Based on the foregoing, jurisdiction lies, and venue is proper and convenient, in this Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida.

[1] "[A] contract is made at the place where the last act necessary to complete the contract is done." *Jemco, Inc. v. UPS*, 400 So. 2d 499, 500 (Fla. 3d DCA 1981); *See also Prime Ins. Syndicate, Inc. v. B.J. Handley Trucking, Inc.*, 363 F.3d 1089, 1092-93 (11th Cir. 2004) ("The determination of where a contract was executed is fact-intensive, and requires a determination of where the last act necessary to complete the contract was done.") (internal citation omitted).

II. FACTUAL ALLEGATIONS

11. Plaintiff incorporates by reference Paragraphs 1 through 10 as though fully set forth herein.

12. By every meaningful measure—fleet size, flights offered, passengers flown—American is the largest airline in the world.

13. The majority of American flights are purchased through its website, aa.com.

14. To maximize profitability, American hires computer engineers to continually manipulate flight prices by, *inter alia,* tracking behavior through Internet "cookies" and other machinations and changing prices on consumers whom American learns will pay a higher price based on their browsing histories.

15. Among its most nefarious practices is the "bait-and-switch" that forms the basis of this lawsuit and that has substantially harmed thousands of United States airline consumers.

16. On May 25, 2017, American listed for purchase on its website a flight from Ronald Reagan Washington National Airport ("DCA") to Miami International Airport ("MIA").

17. In plain and unequivocal language, American offered a completely delineated and specific service—airfare and all accompanying taxes and fees, including baggage and seat fees, from DCA to MIA, on an identified aircraft, with an identified flight number, that was to leave DCA and land at MIA at a definite time on a definite date—for a clear and unmistakable price: $197.

18. In posting this offer, American announced to all potential customers searching for flights on aa.com from DCA to MIA, including Plaintiff, that they could accept

American's offer and purchase this specific service—to be performed at on an allotted date, at an allotted time, from an allotted place, on an allotted aircraft, with an allotted flight number, in an allotted seat—and that they must manifest their acceptance, if at all, in this exclusive manner: Entering passenger biographical and valid payment information, then clicking the "Pay now" button on the aa.com purchase screen.

19. Because it was actively manipulating prices for this flight and because it purposefully utilizes the web cache system described in more detail herein, American at all material times knew that the payment screen would continue to display the offer and exact terms until the "Pay now" button was clicked by a customer who had entered his or her information and the customer paid $197 to American.

20. For the same reasons, American also knew that it was offering to Plaintiff a contract it intended to breach.

21. Plaintiff saw the aforementioned offer, entered all of the biographical information required by American for acceptance of the offer, and entered all of the payment information required by American—which information was valid and of a type explicitly accepted by American—for acceptance of the offer.

22. After completing all steps necessary to accept American's offer, under the terms of acceptance set out by American itself, **except** for clicking "Pay now," Plaintiff could see on the buying screen that the exact flight, on the exact date, exact flight time, exact flight number, exact departure location, exact arrival location, and exact seat number were indeed being offered for purchase for an exact price: $197.

23. As Plaintiff centered her computer cursor on the "Pay now" button—the clicking of which was, per American's own indication, the only task remaining to fully accept

American's clearly delineated offer, American had created a reasonable expectation in Plaintiff, as an objectively reasonable consumer, that American had a willingness to enter into a contract with Plaintiff pursuant to the terms annunciated above.

24. Moreover, as it followed entry of information for a valid form of payment, explicitly authorized by American and backed by more than sufficient funds, Plaintiff's click of the "Pay now" button paid American and constituted completion of the only substantial performance obligation Plaintiff had under the established contract.

25. Instead of performing as agreed, American immediately breached the contract, refusing to perform as promised and putatively revoking its offer (which revocation was wholly ineffective because it came after acceptance[2]).

26. The May 25, 2017 incident giving rise to this action was the **third** time, since October of 2016, that American had refused to provide promised airfare to Plaintiff after Plaintiff had purchased tickets in a manner substantially identical to the May 25th purchase.

27. On May 25th, after American refused to honor its contract with Plaintiff regarding the $197 DCA-MIA flight, it raised the price to $297.[3]

28. Though upset at American's contractual breach, Plaintiff, left with no choice and in a manner substantially identical to her purchase of the $197 ticket, decided to purchase

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[2] *See* Note 11, *infra.*

[3] American's tactic is a classic bait and switch, albeit refurbished for the Internet age. *See Izadi v. Gus Machado Ford*, 550 So. 2d 1135, 1139 n.8 (Fla. 3d DCA 1989) ("'Bait and switch' describes an offer which is made not in order to sell the advertised product at the advertised price, but rather to draw the customer to the store to sell him another similar product which is more profitable to the advertiser.") (internal citations omitted). The Class would undoubtedly have a sound false-advertising claim, Fla. Stat. § 817.44, and Florida Deceptive and Unfair Trade Practices Act claim, Fla. Stat. § 501.201 *et seq.*, but for preemption of these provisions by the Airline Deregulation Act of 1978, codified at 49 U.S.C. § 40101 *et seq.*

the $297 ticket.

29. After she did so, American **again** failed to perform, breaching the contract regarding the $297 ticket in substantially the identical manner in which it breached the contract regarding the $197 ticket. When Plaintiff clicked "Pay now" and paid American $297 via the same process and payment method as the $197 ticket, American refused to provide the promised services, returned the $297 payment, and claimed the ticket price was **now $379.**

30. Not wanting to pay $379 for a ticket she had previously purchased for $197, Plaintiff decided to use points from her account with American's frequent flyer program, AAdvantage, to purchase her ticket.

31. Plaintiff ultimately used AAdvantage points worth the equivalent of $320 to purchase a ticket on the same DCA-MIA flight, in the same or substantially the same seating class, as the ticket she had previously purchased for $197.

32. American's breach of its contract with Plaintiff for the $197 ticket[4] is part of a systematic and purposeful effort by American to dishonestly lure customers with contracts it knows it cannot honor, then fatten its coffers after the consumer—having already accepted the contract at a lower price—is forced to pay more for the same service.

33. American has ascertained, through millions of observations of millions of flight bookings on its website and other forms of data mining, that once consumers decide on an airline, departure airport, arrival airport, flight time, and price level for a specific seat, they will likely pay a higher price for the same seat to avoid the stress associated with changing their flight.

[4] Plaintiff is not suing for the second breach, wherein American refused to honor the parties' contract for the $297 ticket **after** it refused to honor the contract for the $197 ticket, or any other of many contracts American made and breached with Plaintiff.

34. Because of this, at the time of Plaintiff's and each Class Member's purchase, American used a web cache system that it knew does not update inventory in real time.

35. American knew at all material times that using this system would guarantee it would have to renege on multiple contract offers to customers on a daily basis.

36. During the five years preceding the filing of this action, the Class Members each viewed and purchased a flight offer on aa.com.

37. To purchase their airfare from aa.com, each Class Member—after entering a departure and arrival place, and date, in a screen substantially identical to Screen 1: "Destination," attached as Exhibit 1—clicked, in order, through a series of screens substantially identical to:

a. Screen 2: "Choose Departure Flight," attached as Exhibit 2;

b. Screen 3: "Choose Return Flight," attached as Exhibit 3;

c. Screen 4; "Trip Summary," attached as Exhibit 4;

d. Screen 5: "Passengers," attached as Exhibit 5;

e. Screen 6: "Choose Your Seat," attached as Exhibit 6; and

f. Screen 7: "Review and Pay," attached as Exhibit 7.

38. When each Class Member was on Screen 7, in plain and unequivocal language, American promised a completely delineated and specific service—airfare and all accompanying taxes and fees, including baggage and seat fees, on an identified aircraft, with an identified flight number, that was to leave one specific airport and land at another at a definite time on a definite date—for a clear and unmistakable price.

39. Because Plaintiff understandably did not screen-shot the payment screen before she clicked "Pay now" and American breached the contract, it is not possible to attach a copy

of her pursuant to Fla. R. Civ. P. 1.130(a).

40. However, Plaintiff warrants that the below screen-shot of the pertinent portions of Screen 7, which screen-shot is also the pertinent portions of Exhibit 7 and is incorporated into Paragraph 43, is substantially identical—except for departure city, destination city, and price—to the contract offer made by American to Plaintiff, on May 25th, that forms the basis of Plaintiff's breach-of-contract claim. Neither departure city, nor destination city, nor price bear on the identical contract-formation issues encountered by Plaintiff and the putative Class.

41. The below screen-shot of the pertinent portions of Screen 7, which screen-shot is also the pertinent portions of Exhibit 7 and is incorporated into Paragraph 43, is substantially identical—except for departure city, destination city, and price, which vary with each Class Member—to the contract offers made by American to all Class Members, including Plaintiff, that form the bases for the Class' breach-of-contract claim.

42. The allegations in the preceding two paragraphs allow American to plead with specificity.[5]

43. As evidenced below, American's offer directly communicated to Plaintiff a promise and commitment to certain and definite terms by which the parties were to be bound:

[5] *See* Sachse v. Tampa Music Co., 262 So. 2d 17, 19 (Fla. 2nd DCA 1972).

American Airlines Plan Travel Travel Information AAdvantage

Review and pay

« New search

Depart Miami, FL to Denver, CO
Friday, October 6, 2017

Flight	Depart	Arrive	Travel time	Aircraft	Class	Seats
2424 American Airlines	7:02 AM MIA	9:23 AM DEN	4h 21m	738	Economy	Choose seats

Return Denver, CO to Miami, FL
Sunday, October 8, 2017

Flight	Depart	Arrive	Travel time	Aircraft	Class	Seats
1912 American Airlines	2:15 PM DEN	8:11 PM MIA	3h 56m	319	Economy	Choose seats

Cost summary

https://www.aa.com/seats/cancel?bookingPathStateId=1502460603745-407&_button_cancel=continueWithoutSeats 1/5

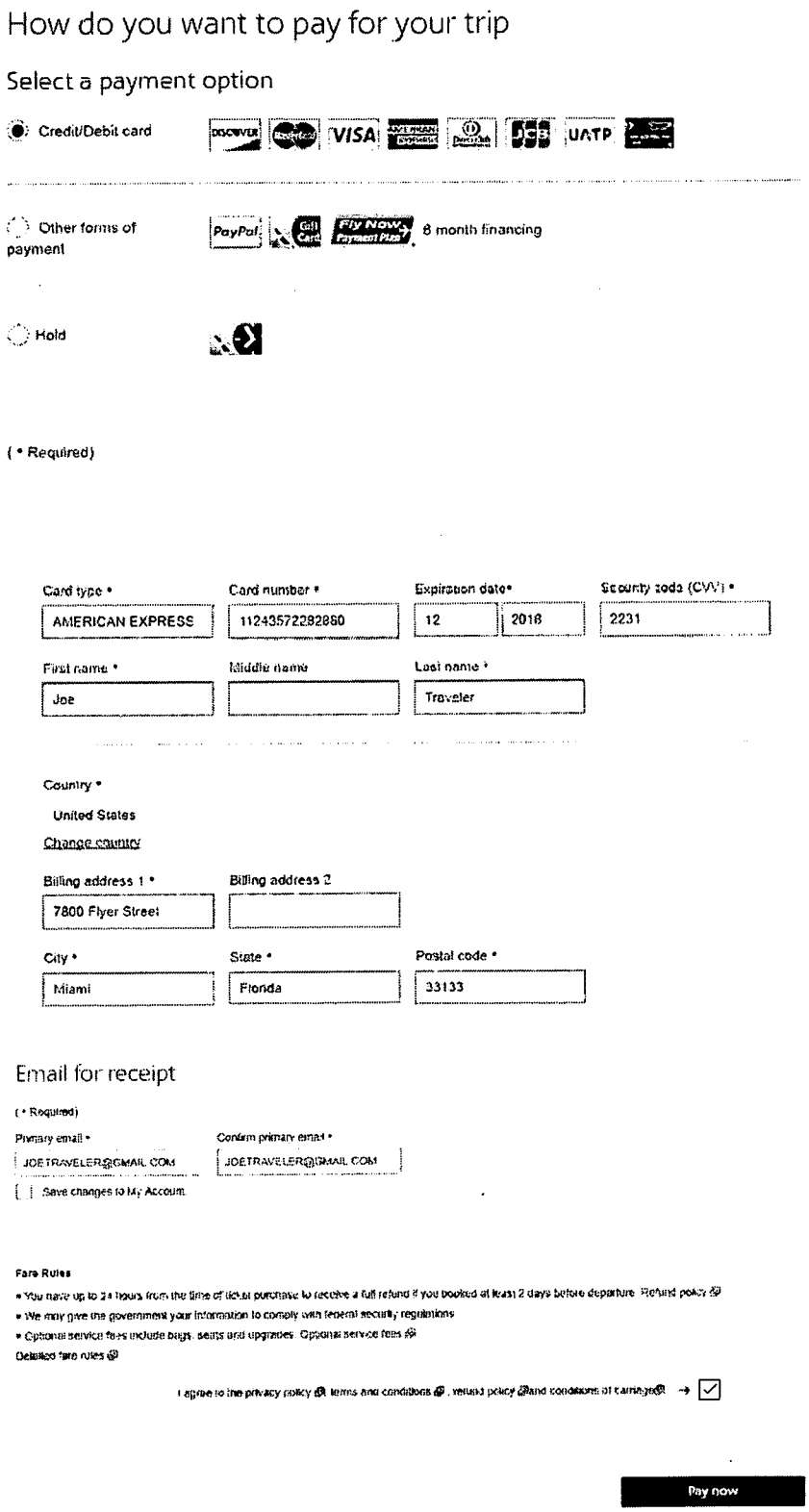
8/11/2017 Review and pay - Check flights and pay for your trip - American Airlines

Your total

$388.40

Includes all taxes and carrier-imposed fees

Passenger x 1	$334.88	Bag and optional fees
Taxes	$53.52	Reservation and tickets FAQs
Carrier-imposed fees	$0.00	Price and Tax Information
Total (all passengers)	$388.40	Conditions of Carriage



How do you want to pay for your trip

Select a payment option

Credit/Debit card

Other forms of payment

PayPal

8 month financing

Hold

(* Required)

Card type *: AMERICAN EXPRESS

Card number *: 112435722382860

Expiration date*: 12 / 2018

Security code (CVV) *: 2231

First name *: Joe

Middle name:

Last name *: Traveler

Country *: United States

Change country

Billing address 1 *: 7800 Flyer Street

Billing address 2:

City *: Miami

State *: Florida

Postal code *: 33133

Email for receipt

(* Required)

Primary email *: JOETRAVELER@GMAIL.COM

Confirm primary email *: JOETRAVELER@GMAIL.COM

Save changes to My Account

Fare Rules

- You have up to 24 hours from the time of ticket purchase to receive a full refund if you booked at least 2 days before departure. Refund policy
- We may give the government your information to comply with federal security regulations
- Optional service fees include bags, seats and upgrades. Optional service fees

Detailed fare rules

I agree to the privacy policy, terms and conditions, refund policy and conditions of carriage.

Pay now

44. Accordingly, when each Class Member checked the box corresponding to "I agree to the privacy policy, terms and conditions and refund policy," then clicked "Pay now," as all Class Members did, they officially accepted American's valid offer under the terms specified by American and agreed to by American and each Class Member.

45. Through its website, American had announced to the individual Class Members that they could accept American's offer and purchase a specific service—to be performed at on an allotted date, at an allotted time, from an allotted place, on an allotted aircraft, with an allotted flight number, in an allotted seat—and that they must manifest their acceptance, if at all, in this exclusive manner: Entering passenger biographical and payment information, then clicking the "Pay now" button on Screen 7.

46. Because it was actively manipulating prices for these flights, American knew that the screens being viewed by the Class Members continued to display the offers and exact terms until the "Pay now" button was clicked by each Class Member who had entered his or her valid payment information, i.e., until each Class Member had already completely accepted the contract and had already paid American.

47. Each Class Member saw the specific offer, entered all of the biographical information required by American for acceptance of the offer, and entered all of the payment information required by American—which information was valid and of a type explicitly accepted by American—for acceptance of the offer.

48. After completing all steps necessary to accept American's offer, under the terms of acceptance set out by American itself, **except** for clicking "Pay now," the Class Members could see on the buying screen that the exact flight, on the exact date and bearing the exact flight time, exact flight number, exact departure location, exact arrival location, and exact

seat number, were indeed being offered for purchase for a specified price.

49. As the individual Class Members were poised to hit their respective "Pay now" buttons—clicking on which was explicitly the last and only task remaining to fully accept American's clearly delineated offer—American had created a reasonable expectation in an objectively reasonable consumer that American had a willingness to enter into a contract with each Class Member pursuant to the terms that American itself had spelled out.

50. Moreover, as it followed entry of information for a valid form of payment explicitly authorized by American, each Class Member's click of the "Pay now" button effectively paid American and constituted completion of the only substantial performance obligation the Class Members had under the then-established contract.

51. As visible in Exhibit 7 and the excerpt incorporated into Paragraph 43, Screen 7 contains multiple hyperlinks that, when clicked from the screen, open a page containing additional information, which information was substantially the same for each Class Member, varying only as to some hyperlinks and when varying doing so only in departure city, destination city, and price, which individual terms control only the damages of each Plaintiff and in no material way alter a reasonable person's expectations as to whether he or she was entering into a contract. In order from top to bottom in Screen 7, attached as Exhibit 7, and submitted here as exemplars substantially identical, subject to the above clarification, to those viewed by the Class Members, these pages are titled:

a. "Optional service fees" (Screen 7 hyperlink text: "Bag and optional fees), attached as Exhibit 8;

b. "Reservation & tickets FAQs" (Screen 7 hyperlink text: same as linked page title), attached as Exhibit 9;

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c. "Fare, taxes and fees" (Screen 7 hyperlink text: "Price and Tax Information"), attached as Exhibit 10;

d. "Conditions of Carriage" (Screen 7 hyperlink text: same as linked page title), attached as Exhibit 11;

e. "Customer service plan"[6] (Screen 7 hyperlink text: "Refund policy"), attached as Exhibit 12;

f. "Optional service fees" (Screen 7 hyperlink text: same as linked page title) attached as Exhibit 13;

g. "Detailed Fare Rules" (Screen 7 hyperlink text: "terms and conditions") attached as Exhibit 14; and

h. "Privacy policy" (Screen 7 hyperlink text: same as linked page title), attached as Exhibit 15;[7]

52. None of these pages contained any language that purported to revoke or in any way dilute the firm contract offer that the Class Members accepted pursuant to American's explicit offers.

53. As to each Class Member, instead of performing as agreed, American immediately breached the contract.

54. At all material times and as to its contract with each Class Member, American

[6] To access the "Refunds" portion of the linked "Customer service plan" page that is attached as Exhibit 12, one needs to expand the "Refund" tab, which has been done in the exhibit.

[7] The "Refund policy" link appears twice on Screen 7. The page it links to, "Customer service plan," is attached once as Exhibit 12. It is not attached twice. Similarly, the link to "Detailed Fare Rules," appears twice on Screen 7. The second time it appears, the link is named "terms and conditions" rather than "Detailed fare rules." The page linked to by these links is attached as Exhibit 14. It is not attached twice.

possessed the expertise to avoid falsely offering ticket prices (the bait), then changing the terms after it knowingly strings along the unsuspecting consumer (the switch), but willfully chose not to change the system, for two reasons: (1) It would cost money to purchase the technology, hardware, and software to change the system; and (2) It would cost American hundreds of thousands of dollars in revenue to change the system because it would no longer receive the occasional $20, and even $40, increases in fares from people who, having had their first contract already breached and not wishing to start the process over on another web site, will relent and pay extra money for substantially identical airfare.

55. Due solely to American's breach, each Class Member ultimately paid more money—ranging, for most Class Members, between $20 and $40—for a ticket on the same or substantially the same flight, in the same or substantially the same seating class, as their original purchased ticket.

III. CLAIMS

COUNT 1: BREACH OF CONTRACT

56. Plaintiffs and the putative Class incorporate by reference Paragraphs 11 through 55 as though fully set forth herein.

57. The Airline Deregulation Act of 1978 does not preempt state breach-of-contract actions between consumers and an airline.[8]

58. American created a reasonable expectation in the Class that American was willing to enter into a contract, by directly expressing to the Class a promise, undertaking, and/or commitment to enter into an agreement under certain and definite terms that

[8] *American Airlines v. Wolens,* 513 U.S. 219, 232-33 (1995).

constituted all terms essential for travel with a common carrier: Date, time, distance, departure site, arrival site, seat number and location, baggage policies, and price.[9]

59. The Class Members believed, as would any reasonable person in their position, that they could exercise the power given to them by American's offer to consummate the contract by providing all information required by American, including payment information, and clicking the "Pay now" button.

60. Each Class Member manifested his or her assent to be bound by the terms of American's contract offer by checking a box indicating agreement to terms proposed by American, entering biographical information in the manner specified by American, and paying American in a manner American had deemed acceptable: Entering credit-card information and clicking the "Pay now" button, thereby transferring money to American.

61. At the point at which the individual Class Members clicked "Pay now," they had accepted American's offer for a specific service at a specific price, and had performed under the contract by paying American.

62. The money each Class Member paid American constituted valuable consideration.

63. Likewise, American's promised provision of air carriage to each Class Member constituted valuable consideration.

64. The moment each Class Member clicked "Pay now," thereby accepting

[9] It is beyond argument that American's offers to the Class were sufficiently specific to be binding. *See Izadi v. Gus Machado Ford*, 550 So. 2d 1135, 1139 (Fla. 3d DCA 1989) (citing Annot., Advertisement Addressed to Public Relating to Sale or Purchase of Goods at the Specified Price As an Offer the Acceptance of Which Will Consummate a Contract, 43 A.L.R.3d 1102 (1972)).

American's offer[10] and performing via payment, American became obligated to uphold its end of the bargain by rendering the services (chiefly, an airline flight) it had promised to provide in exchange for the Class Members' consideration.

65. After extending an unambiguous offer for a specified service at a specified price and delineating the exact manner by which the Class was to enter into the agreement, and after each Class Member entered into the agreement in that precise manner and performed under the contract by paying American via the Internet, American reneged.

66. American refused to accept the payment each Class Member had made and refused to provide the services it had promised, and in so doing breached its contract with each Class Member.

67. American did not attempt to revoke its contract offer, if at all, until **after** each Class Member accepted the offer by clicking the "Pay now" button[11] and simultaneously paid

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[10] That this action by the Class constituted acceptance is black-letter law that has been applied recently and uniformly by the courts in the e-commerce context. *See, e.g., Ewers v. Genuine Motor Cars, Inc.*, No. 1:07 CV 2799, 2008 U.S. Dist. LEXIS 21466, at *14 (N.D. Ohio Mar. 18, 2008) ("**An enforceable contract existed** for the purchase of the van at the time plaintiffs hit the **'buy it now' button on EBay**.") (emphasis added); *Devries v. Experian Info. Sols., Inc.*, No. 16-cv-02953-WHO, 2017 U.S. Dist. LEXIS 26471, at *14-15 (N.D. Cal. Feb. 24, 2017) ("The text containing the Terms and Conditions hyperlink was located directly above that button and indicated that clicking 'Submit Secure [*15] Purchase' constituted acceptance of those terms.").

[11] "**If an offer is accepted** without conditions, and without varying its terms, **and the acceptance is communicated to the other party without unreasonable delay, a contract arises, from which neither party can withdraw at its pleasure**." *Am. Appraisal Assocs. v. Am. Appraisals, Inc.*, 531 F. Supp. 2d 1353, 1358 (S.D. Fla. 2008) (emphasis added) (citing RESTATEMENT OF CONTRACTS, § 64 and *Kendel v. Pontious*, 261 So. 2d 167, 169 (Fla. 1972) ("The trial judge and the District Court of Appeal in the case sub judice correctly held that the acceptance must be communicated to the offeror and that the offeror could revoke the offer provided the communication of such revocation is received [**8] **prior** to the acceptance.")); *see also id.* at 170 ("the **pivotal issue is whether the contract was revoked before acceptance**.") (emphasis added). Here, American attempted to revoke its offer and return the Class Members' payments **after** acceptance—i.e., too late.

American. Once each Class Member clicked the button, American was in receipt of their payments and unilaterally chose to give them back, thereby breaching the contract **after** each Class Member had already manifested his or her assent to American's definitive offer, and after performance under the contract by each Class Member. To the extent American wished to revoke its offer, it was too late. [12]

68. No valid justification, at law or in equity, existed for American's breaches of its contract with any Class Member.

69. As a direct and proximate result of American's breach, each Class Member was forced to find another airline ticket to replace the ticket he or she had bought and which American refused to honor.

70. Each Class Member, in good faith and without unreasonable delay, found cover in the form of a higher-priced ticket on the same or a substantially similar flight.

71. Each Class Member is entitled to recover from American the benefit of the bargain of the original contract offer, and/or the difference between the cost of their cover and their original contract price with American, plus incidental and consequential damages.

COUNT 2: UNJUST ENRICHMENT

72. Plaintiffs and the putative Class incorporate by reference Paragraphs 11

[12] The flagship case on the issue, taught in most every law school in America, is ***Lefkowitz v. Great Minneapolis Store, Inc.***, 86 NW 2d 689 (Minn. 1957). In *Lefkowitz,* a Minneapolis store published an advertisement stating, "Saturday 9 A.M. Sharp 3 Brand New Fur Coats Worth to $100.00. First Come First Served $1 Each." *Id.* at 690. Lefkowitz arrived with $1.00, wishing to buy a fur coat. *Id.* The store refused. *Id.* Lefkowitz sued. *Id.* The court held that the advertisement was sufficiently definitive as to constitute a contract offer, and the Lefkowitz, having successfully managed to comply with the terms of the advertisement, and having offered the state purchase price of the article, was entitled to performance on the part of the defendant. *Id.* at 691. *See also Izadi v. Gus Machado Ford*, 550 So. 2d 1135, 1139 (Fla. 3d DCA 1989) (citing *Lefkowitz* holding).

through 55 as though fully set forth herein.

73. As it took from each Class Member the benefit of their bargain with American, and/or the difference in money between their original contract price and their cost of cover, American was conferred a benefit by each Class Member that enriched American to the detriment of each Class Member.

74. American accepted and retained this benefit from Plaintiff and each Class Member, accumulating substantial ill-gotten profit that, on information and belief, it has utilized in its business pursuits and/or to enrich its employees.

75. Under the circumstances described herein, it would be unjust and inequitable to allow American to retain these benefits, as they were obtained through practices that intentionally and effectively misled the Class even though each Class Member acted as reasonable consumers at all material times.

IV. CLASS REPRESENTATION ALLEGATIONS

76. Plaintiff incorporates the foregoing paragraphs by reference as though fully set forth herein.

77. The Class is defined as follows:

> **All United States residents who: (1) accepted an American Airlines, Inc. offer to buy airfare on the airline's website by (a) navigating substantially the same airline website screens and content as Margaret Schultz and (b) clicking "Pay now" after entering valid payment information; then (2) were informed by the airline that it was refusing to honor the offer, after which the airline returned the payment; then (3) booked more costly, alternative airfare.**

PREREQUISITES FOR CLASS REPRESENTATION (FLA. R. CIV. P. 1.220(a))

78. Certifying and maintaining this cause as a class action is both appropriate and

necessary given the nature of the claims and in light of the following factors:

79. **The members of the class are so numerous that separate joinder of each member is impracticable (Fla. R. Civ. P. 1.220(a)(1): Numerosity).** Plaintiff conservatively alleges in Paragraph 5, *supra,* that there are more than 1,000 Class Members. Maintenance of 1,000 separate and nearly identical claims is untenable, would unnecessarily overwhelm the court system, and is best remedied by use of class litigation, which the Supreme Court of the Florida and the Florida Legislature, by adoption of Fla. R. Civ. P. 1.220, have expressed preference for in like circumstances.

80. **The claim or defense of the representative party raises questions of law or fact common to the questions of law or fact raised by the claim or defense of each member of the class (Fla. R. Civ. P. 1.220(a)(2): Commonality); and the claim or defense of the representative party is typical of the claim or defense of each member of the class (Fla. R. Civ. P. 1.220(a)(3)): Typicality).** A chronology of events common to Plaintiff and to each Class Member demonstrates that American breached contracts with each Class Member in nearly identical fashion. Each Class Member, including Plaintiff, encountered Screen 7, which for each Class Member, including Plaintiff, was identical but for the (1) flight locations and (2) prices—the former of which is irrelevant to any analysis, and the latter of which affects only damages and not liability.[13] Having been falsely led to believe they were entering into a

[13] *See, e.g., Butler v. Sears, Roebuck & Co.*, 727 F.3d 796, 801 (7th Cir. 2013) ("It would drive a stake through the heart of the class action device...to require that every member of the class have **identical** damages. **If the issues of liability are genuinely common issues, and the damages of individual class members can be readily determined in individual hearings, in settlement negotiations, or by creation of subclasses, the fact that damages are not identical across all class members should not preclude class certification**. Otherwise defendants would be able to escape liability for tortious harms of enormous aggregate magnitude but so widely distributed as not to be remediable in individual suits. As we noted in *Carnegie v. Household Int'l, Inc.*, 376 F.3d 656, 661 (7th Cir. 2004), 'the more claimants there

contract with American by the exact same presentation and language by American, each Class Member had their contract with American immediately breached by American in a uniform and summary manner and without justification. Each Class Member, including Plaintiff, then incurred damages—losing the benefit of their bargain and being forced to book substantially identical airfare at a higher price—that can be calculated using the exact same formula. Thus, the only material difference among the Class Members, including Plaintiff, is as to the amount of total damages of each Class Member. An individual determination as to damages among a Class harmed by a defendant's uniform and systematic wrongs is insufficient to defeat class certification, and indeed such a scenario demands class action as the only option conducive to judicial economy.

Among the numerous questions of law and fact common to Plaintiff and to each Class Member are:

a. Whether American's display on Screen 7—which as indicated above was viewed identically by Plaintiff and every Class Member—constitutes an offer or, rather, is an invitation to bargain;

b. Whether, under the circumstances encountered on a uniform basis on the payment screen by Plaintiff and all Class Members, a reasonable person in a Class Member's position would believe that American was willing to enter into an agreement under the terms proposed on the screen;

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are, the more likely a class action is to yield substantial economies in litigation. It would hardly be an improvement to have in lieu of this single class 17 million suits each seeking damages of $15 to $30...The realistic alternative to a class action is not 17 million individual suits, but zero individual suits, as **only a lunatic or a fanatic sues for $30**.'") (emphasis added); *see also In re Checking Account Overdraft Litig.*, 307 F.R.D. 656, 666 n.5 (S.D. Fla. 2015) and *Philip Morris USA, Inc. v. Douglas*, 110 So. 3d 419, 429 (Fla. 2013).

c. Whether American's uniform offers as appear on the screen manifest an assent to be bound by the terms therein;

d. Whether the Class Members manifested assent to the terms through the uniform actions they took as they moved through the various aa.com screens;

e. Whether a valid contract was formed at the moment each Class Member clicked "Pay now";

f. Whether entering valid payment information and clicking "Pay now" constituted performance under the contract by each Class Member;

g. Whether the Class' breach-of-contract actions are preempted by the Airline Deregulation Act of 1978, 49 U.S.C. § 40101 *et seq.*;

h. Application of contract-formation principles regarding when advertisements constitute offers—which principles have been deeply embedded in the common law and do not vary in any significant manner among the laws of each state—to the contract-formation issue that is uniform among all Class Members;

i. Whether the putative choice-of-law clause contained on the bottom of American's website—a pure "browse-wrap" agreement—was sufficiently conspicuous as to put the Class on notice that Texas law applies;

j. Whether the choice-of-law clause is unenforceable as violative of the public policy embodied in the Airline Deregulation Act of 1978, 49 U.S.C. § 40101 *et seq.*; and

k. Whether the aforementioned choice-of-law clause is unenforceable as unconscionable.

81. **The representative party can fairly and adequately protect and represent the**

interests of each member of the class (Fla. R. Civ. P. 1.220(a)(4): Adequacy). Plaintiff is *sui juris,* intelligent, honest, and fair. She is a responsible, law-abiding citizen who believes that if a person (or entity) promises to do something, she or he (or it) should follow through with that guarantee, including honoring bargained-for agreements. Plaintiff raises this claim to pursue justice on behalf of all consumers who have been wronged by American, which, buoyed by sheer size and in the interest of profit, has taken advantage of customers via deceptive practices. Plaintiff is an ideal class representative.

TYPE OF CLASS ACTION (FLA. R. CIV. P. 1.220(b))

82. Satisfaction of **either** subsection (b)(1), (b)(2), or (b)(3) of Fla. R. Civ. P. 1.220 would allow this action to proceed in class form; this action is especially conducive to class action and disposition in that it meets all three criteria:

83. **The prosecution of separate claims or defenses by or against individual members of the class would create a risk of either inconsistent or varying adjudications concerning individual members of the class which would establish incompatible standards of conduct for the party opposing the class, and adjudications concerning individual members of the class which would, as a practical matter, be dispositive of the interests of other members of the class who are not parties to the adjudications, or substantially impair or impede the ability of other members of the class who are not parties to the adjudications to protect their interests (Fla. R. Civ. P. 1.220(b)(1).** If actions are pursued individually, and one court or jury rules that American's uniform actions toward its customers constituted a breach of contract and another adjudicates that it did not, the result would be untenable. The upshot would be American being told by one court that its actions constitute a breach of contract, and told by another court that its actions are legitimate and as such American can

continue to operate in such a manner. Moreover, given the nearly identical nature of the claims, under collateral estoppel and *res judicata,* if thousands of claims are brought individually, the adjudications of individual members would likely be dispositive as to future claimants' rights, and thus these very important rights would essentially be decided in the subsequent plaintiffs' absence. Additionally, in lieu of class representation, early settlements of some cases could lessen the pool of money available to subsequent claimants, leading to an unjust result whereby an identically aggrieved plaintiff recovers nothing merely because he or she filed suit after many other plaintiffs.

84. **The party opposing the class has acted or refused to act on grounds generally applicable to all the members of the class, thereby making final injunctive relief or declaratory relief concerning the class as a whole appropriate (Fla. R. Civ. P. 1.220(b)(2)).** As shown *supra,* American has harmed every Class Member in substantially identical fashion. Declaratory and/or injunctive relief would signal to all Class Members whether they have a valid claim, furthering the interests of efficiency and finality.

85. **The questions of law or fact common to class members predominate over any questions affecting only individual members and class action is superior to other available methods for fairly adjudicating the controversy (Fla. R. Civ. P. 1.220(b)(3)).** As Paragraph 80, *supra*, demonstrates, dozens of questions of law or fact, which will control whether the Class is entitled to relief, are common to all Class Members. There is only one issue that varies with each individual Class Member: Dollar amount of damages, which will be determined pursuant to the same rubric as to all Class Members. Because meting out damages will be formulaic and because every other issue is the same for every Class Member, class action without question is the manner in which to resolve this dispute that most furthers

the interest of judicial economy. Among all methods of adjudication, class action will be fairest for all parties and will reduce the burden on the courts, and will reduce attorney's fees and costs for all parties.

VII. REQUEST FOR RELIEF

WHEREFORE, based on the foregoing, Plaintiff individually, and Plaintiff on behalf of the putative Class, respectfully prays that the Court: Enter an order deeming Plaintiff the representative of the Class and the law firms below counsel for the Class; enter judgment for Plaintiff and the Class; and award money damages, costs, and pre- and post-judgment interest as allowed by law to the Class, and a reasonable attorney's fee to Class counsel.

VIII. JURY TRIAL DEMAND

Plaintiff and the Class hereby demand a trial by jury as to all issues so triable.

Respectfully Submitted By:

/s/ MaKe

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