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17 **UNITED STATES DISTRICT COURT**
18 **SOUTHERN DISTRICT OF CALIFORNIA**

19 **SCHUYLER HOFFMAN,**
20 **INDIVIDUALLY AND ON**
21 **BEHALF OF ALL OTHERS**
22 **SIMILARLY SITUATED,**

23 Plaintiff,

24 v.

25 **US AIRWAYS, INC.,**

26 Defendant.

Case No.: '15CV1214 L JMA

**CLASS ACTION COMPLAINT
FOR DAMAGES, RESTITUTION
AND INJUNCTIVE RELIEF FOR
VIOLATIONS OF:**

- 1.) **CALIFORNIA BUS. & PROF.
§§ 17500 ET SEQ.**
- 2.) **CALIFORNIA BUS. & PROF.
§§ 17200 ET SEQ.**
- 3.) **NELIGENCT
MISREPRESENTATION**
- 4.) **INTENTIONAL
MISREPRESENTATION**

JURY TRIAL DEMANDED

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INTRODUCTION

1. Plaintiff SCHUYLER HOFFMAN (“Plaintiff”) brings this class action to challenge the actions of U.S. AIRWAYS, INC. (“Defendant”) with regard to the unfair and fraudulent business practice of inducing consumers to attempt to purchase its airline tickets online at a price it does not intend to sell, causing an incompletable transaction, indicating that the consumer has not been charged for the attempted purchase, while charging and placing Plaintiff’s funds on hold, making the funds unavailable to Plaintiff and other similarly situated consumers.
2. This nationwide fraudulent advertising and unlawful business practice constitutes: (1) a violation California’s False Advertising Law (“FAL”), Bus. & Prof. Code §§ 17500 et seq.; (2) a violation of California’s Unfair Competition Law (“UCL”), Bus. & Prof. Code §§ 17200 et seq.; (3) negligent misrepresentation; and (4) intentional misrepresentation. This conduct caused Plaintiff and other similarly situated damages, and requires restitution and injunctive relief to remedy and prevent further harm.
3. Plaintiff makes these allegations on information and belief, with the exception of those allegations that pertain to a plaintiff, or to a plaintiff’s counsel, which Plaintiff alleges on personal knowledge.
4. Unless otherwise indicated, the use of any Defendant’s name in this Complaint includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives and insurers of the named Defendant

JURISDICTION AND VENUE

5. This Court has jurisdiction over this matter pursuant to the Class Action Fairness Act (CAFA) because the amount in controversy in this matter exceeds the sum or value of \$5,000,000 as to all putative Class members, exclusive of attorneys’ fees and costs. 28 U.S.C. Sections 1332(d), 1453, and

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- 1711-1715.
6. This Court also has diversity jurisdiction over this matter pursuant to 28 U.S.C. § 1332 in that Plaintiff is a resident and citizen of the State of California while Defendant is a corporation incorporated under the laws of the State of Delaware.
 7. Based upon the high advertised price of Defendant’s product and its nationwide availability, Plaintiff are informed, believe, and thereon allege the class damages exceed the \$5,000,000 threshold as set by 28 U.S.C. § 1332(d) for a diversity jurisdiction class action.
 8. The court has personal jurisdiction over Defendant because Defendant conducts business in the County of San Diego, State of California. Therefore, Defendant has sufficient minimum contacts with this state, and otherwise purposely avails itself of the markets in this state through the promotion, sale, and marketing of its products in this state, to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.
 9. Venue is proper in the United States District Court, Southern District of California pursuant to 28 U.S.C. § 1391 for the following reasons:
 - (i) Plaintiff resides in the County of San Diego, State of California which is within this judicial district;
 - (ii) The conduct complained of herein occurred within this judicial district as Plaintiff purchased Defendant’s airline tickets in this district;
 - (iii) Defendant conducted and does substantial business in the County of San Diego, State of California; and
 - (iv) Defendant is subject to personal jurisdiction in this district.

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PARTIES

10. Plaintiff is, and at all times mentioned herein is, an individual citizen and resident of the State of California.

11. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and at all times mentioned herein was, a corporation that is incorporated under the laws of the State of Arizona, and does business within the State of California and within this district.

FACTUAL ALLEGATIONS

12. Plaintiff re-alleges and incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

13. On May 10, 2015, Plaintiff Schuyler Hoffman attempted to purchase two airline tickets, for which Plaintiff was quoted a total price of \$1,372.02, through Defendant’s website located at URL: <http://www.usairways.com>.

14. Upon submitting the order, Defendant’s website displayed an error message which stated:

“We are unable to complete your purchase at this time and did not charge your credit card or book your trip. Please try again. If you continue to receive this message, please call 800-327-7810 for assistance.”

15. Immediately after receiving the above error message, Plaintiff attempted to purchase the same tickets at least two additional times, each time checking to ensure that he had entered his payment information correctly and marked the appropriate disclosures. Defendant’s website continued to display the same error message after each attempt.

16. Within the hour, Plaintiff contacted Defendant’s customer service line via telephone and was informed by Defendant’s representative that the debit card Plaintiff used to make the transaction had not been charged. However, Defendant’s representative could not determine why the purchase had not

1 been completed.

2 17. During this telephone conversation, Defendant's representative attempted to
3 book the reservation again and provided Plaintiff with a confirmation number
4 "DL547G". Defendant's representative also instructed Plaintiff to contact
5 Plaintiff's banking institution to inquire into the previously uncompleted
6 transactions.

7 18. Plaintiff immediately contacted his banking institution and confirmed that
8 Defendant had charged Plaintiff's account for the price of the tickets in the
9 amount of \$1,372.02. Plaintiff's bank further indicated that although
10 Plaintiff's account contained sufficient funds, subsequent attempts to make
11 the reservation and/or bill the account had failed due to a \$2,000 daily debit
12 limit established to prevent fraudulent charges.

13 19. Later that evening, Plaintiff again contacted Defendant via telephone and
14 spoke with Defendant's representative, "Kristy," Employee ID: H7.
15 Defendant's representative was unable to locate the prior reservation with
16 confirmation number DL547G. Defendant's representative further explained
17 that the reason Plaintiff's debit card was declined during his previous
18 attempts was because the price of the tickets had increased in the short time
19 between when Plaintiff selected the tickets and Plaintiff entered his payment
20 information and submitted his orders, a period of a few minutes.

21 20. The charge of \$1,372.02 was "pending" in Plaintiff's bank account for at
22 least six days thereafter, making the funds unavailable to Plaintiff for that
23 period of time.

24 21. As a result of Defendant's misrepresentations regarding its airline tickets,
25 Plaintiff and other putative class members were induced into attempting to
26 purchase the product under the belief that the prices displayed at the time the
27 tickets were selected accurately reflected the price at which they could
28 actually be purchased. Had Plaintiff and putative class members been made

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1 aware that Defendant would not allow Plaintiff to purchase tickets at the
2 advertised price and would charge for the tickets despite Plaintiff’s inability
3 to complete the transaction, Plaintiff and putative class members would not
4 have attempted to purchase the product or would have purchased airline
5 tickets from a different carrier. Therefore, Plaintiff and putative class
6 members suffered injury in fact and lost money and/or property as a result of
7 Defendant’s conduct complained of herein.

8 22. During the “Class Period,” as defined below, Plaintiff and other similarly
9 situated consumers were exposed to and saw Defendant’s advertised prices
10 disseminated by Defendant for the purpose of selling goods. Plaintiff and
11 putative class members attempted to purchase Defendant’s product in
12 reliance on these claims, and thereby suffered injury in fact and lost money
13 and/or property as a result of Defendant’s unfair, misleading and unlawful
14 conduct described herein.

15 23. In making the decision to purchase Defendant’s airline tickets, Plaintiff relied
16 upon Defendant’s advertisements and/or the price that Defendant displayed
17 on its website, prepared and approved by Defendant and/or its agents and
18 disseminated through its website displaying the false and/or misleading
19 misrepresentations herein alleged.

20 24. Defendant’s misleading advertising is publicly disseminated on a widespread
21 and continuous basis during the Class Period as the offending advertised
22 prices are displayed on its website which is accessible throughout the State of
23 California and throughout the United States.

24 25. Defendant’s advertised airline ticket prices were untrue, false, and misleading
25 to Plaintiff and all similarly situated putative class members as a reasonable
26 consumer would have interpreted Defendant’s offer to be the actual price for
27 which the tickets could be purchased.

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1 26. Defendant knew, or in the exercise of reasonable care should have known,
2 that the advertised prices of its tickets were misleading. Defendant could
3 have easily displayed the actual price at which it would sell its airline tickets.
4 However, Defendant deliberately chose to advertise at a lower price than it
5 would sell for the purpose of inducing the purchase of its product, only to
6 invalidate the transaction and illegally charge the consumer and earn interest
7 on Plaintiffs’ monies without having provided the ticket/s that the Plaintiffs
8 had bargained for.

9 27. Defendant made an intentional strategic and tactical decision to deceive
10 consumers with the intent of reaping the financial benefit of the false,
11 misleading, and deceptive advertising regarding the prices of its airline
12 tickets.

13 **CLASS ACTION ALLEGATIONS**

14 28. Plaintiff and the members of the Class have all suffered injury in fact as a
15 result of the Defendant’s unlawful and misleading conduct.

16 29. The “Class Period” means four years prior to filing of the Complaint in this
17 action.

18 30. Plaintiff brings this lawsuit on behalf of himself and other California
19 consumers similarly situated under Rule 23(b)(2) and (b)(3) of the Federal
20 Rules of Civil Procedure. Subject to additional information obtained through
21 further investigation and/or discovery, the proposed “Class” consists of:

22 “All persons who attempted to purchase a US
23 Airways airline ticket online whose transaction/s
24 was/were declined due to an increase in price
25 between the time the ticket/s was/were selected until
26 the order/s was/were submitted and had monies held
27 due to US Airways’ pending charge in the State of
28 California within four years prior to the filing of the
Complaint in this action.”

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1 Excluded from the Class are Defendant and any of its officers, directors, and
 2 employees, or anyone who purchased a US Airways airline ticket for resale.
 3 Plaintiff reserves the right to modify or amend the Class definition before the
 4 Court determines whether certification is appropriate.

5 31. ***Ascertainability.*** The members of the Class are readily ascertainable from
 6 Defendant's records and/or Defendant's agent's records regarding
 7 uncompleted online transactions resulting in charges made to the consumer, as
 8 well as through public notice.

9 32. ***Numerosity.*** The members of the Class are so numerous that their individual
 10 joinder is impracticable. Plaintiff is informed and believes, and on that basis
 11 alleges, that the proposed class consists of hundreds of thousands of members,
 12 if not millions.

13 33. ***Existence and Predominance of Common Questions of Law and Fact.***
 14 Common questions of law and fact exist as to all members of the Class
 15 predominate over any questions affecting only individual Class members. All
 16 members of the Class have been subject to the same conduct and their claims
 17 are based on the standardized marketing, advertisements and promotions. The
 18 common legal and factual questions include, but are not limited to, the
 19 following:

20 (a) Whether Defendant's claims and representations above are
 21 untrue, or are misleading, or reasonably likely to deceive;

22 (b) Whether Defendant's conduct is an unlawful act or practice
 23 within the meaning of California Business & Professions Code
 24 §§ 17200 *et seq*;

25 (c) Whether Defendant's conduct is a fraudulent act or practice
 26 within the meaning of California Business & Professions Code
 27 §§ 17200 *et seq*;

28 (d) Whether Defendant's conduct is an unfair act or practice

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within the meaning of California Business & Professions Code §§ 17200 *et seq*;

(e) Whether Defendant’s advertising is unfair, deceptive, untrue or misleading within the meaning of California Business & Professions Code §§ 17200 *et seq*;

(f) Whether Defendant’s advertising is false, untrue, or misleading within the meaning of California Business & Professions Code §§ 17500 *et seq*;

(g) Whether Defendant acted intentionally in making the misrepresentations contained in its website.

(h) Whether Defendant, through its conduct, received money that, in equity and good conscience, belongs to Plaintiff and members of the Class;

(i) Whether Plaintiff and proposed members of the Class are entitled to equitable relief, including but not limited to restitution and/or disgorgement; and

(j) Whether Plaintiff and proposed members of the Class are entitled to injunctive relief sought herein.

34. **Typicality.** Plaintiff’s claims are typical of the claims of the members of the Class in that Plaintiff is a member of the Class that Plaintiff seeks to represent. Plaintiff, like members of the proposed Class, attempted to purchase Defendant’s airline ticket online for the advertised price where the transaction was incompletable due to an arbitrary increase in price caused by Defendant but Defendant still charged Plaintiff for the tickets. Plaintiff is advancing the same claims and legal theories on behalf of himself and all absent members of the Class. Defendant has no defenses unique to the Plaintiff.

35. **Adequacy of Representation.** Plaintiff will fairly and adequately protect the interests of the members of the Class. Plaintiff has retained counsel

1 experienced in consumer protection law, including class actions. Plaintiff has
2 no adverse or antagonistic interests to those of the Class, and will fairly and
3 adequately protect the interests of the Class. Plaintiff's attorneys are aware of
4 no interests adverse or antagonistic to those of Plaintiff and proposed Class.

5 36. **Superiority.** A class action is superior to all other available means for the fair
6 and efficient adjudication of this controversy. Individualized litigation would
7 create the danger of inconsistent and/or contradictory judgments arising from
8 the same set of facts. Individualized litigation would also increase the delay
9 and expense to all parties and court system and the issues raised by this action.
10 The damages or other financial detriment suffered by individual Class
11 members may be relatively small compared to the burden and expense that
12 would be entailed by individual litigation of the claims against the Defendant.
13 The injury suffered by each individual member of the proposed class is
14 relatively small in comparison to the burden and expense of individual
15 prosecution of the complex and extensive litigation necessitated by
16 Defendant's conduct. It would be virtually impossible for members of the
17 proposed Class to individually redress effectively the wrongs to them. Even if
18 the members of the proposed Class could afford such litigation, the court
19 system could not. Individualized litigation increases the delay and expense to
20 all parties, and to the court system, presented by the complex legal and factual
21 issues of the case. By contrast, the class action device presents far fewer
22 management difficulties, and provides the benefits of single adjudication,
23 economy of scale, and comprehensive supervision by a single court.
24 Therefore, a class action is maintainable pursuant to Fed. R. Civ. P. 23(b)(3).

25 37. Unless the Class is certified, Defendant will retain monies received as a result
26 of Defendant's unfair and fraudulent conduct alleged herein. Unless a class-
27 wide injunction is issued, Defendant will also likely continue to charge
28 consumers for its airline tickets in an unlawful and misleading manner, and

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1 members of the Class will continue to be misled, harmed, and denied their
2 rights under California law.

3 38. Further, Defendant has acted or refused to act on grounds that are generally
4 applicable to the Class so that declaratory and injunctive relief is appropriate
5 to the Class as a whole, making class certification appropriate pursuant to Fed.
6 R. Civ. P. 23(b)(2).

7 **FIRST CAUSE OF ACTION**

8 **FOR VIOLATIONS OF CAL. BUS. & PROF. CODE §§ 17500 ET SEQ.**

9 **[CALIFORNIA’S FALSE ADVERTISING LAW]**

10 39. Plaintiff repeats, re-alleges and incorporates by reference the above
11 allegations as if fully stated herein.

12 40. Plaintiff brings this cause of action on behalf of himself and on behalf of the
13 putative Class.

14 41. Plaintiff and Defendant are both “person[s]” as defined by California
15 Business & Professions Code § 17506. California Business & Professions
16 Code § 17535 authorizes a private right of action on both an individual and
17 representative basis.

18 42. The misrepresentations, acts, and non-disclosures by Defendant of the
19 material facts detailed above constitute false and misleading advertising and
20 therefore violate Business & Professions Code §§ 17500 *et seq.*

21 43. At all times relevant, Defendant’s advertising and promotion regarding its
22 airline ticket prices was false, misleading, and likely to deceive the
23 reasonable consumer and the public; and, in fact, has deceived the Plaintiff
24 and other consumers similarly situated by representing that Defendant’s
25 airline tickets could be purchased at a specific price when in fact Defendant
26 did not intend to sell at those prices.

27 44. Defendant engaged in the false and/or misleading advertising and marketing
28 as alleged herein with the intent to directly or indirectly induce the attempted

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1 purchase of airline tickets Defendant knew, or had reason to know, could not
2 be purchased at the advertised prices.

3 45. In making and publicly disseminating the statements and/or omissions
4 alleged herein, Defendant knew or should have known that the statements
5 and/or omissions were untrue or misleading, and acted in violation of
6 California Business & Professions Code §§ 17500 *et seq.*

7 46. Plaintiff and members of the putative Class have suffered injury in fact and
8 have lost money and/or property and/or lost interest on monies Defendant
9 illegally obtained as a result of Defendant's false advertising, as more fully
10 set forth herein. Plaintiff and members of the Class have been injured because
11 they were induced to attempt to purchase Defendant's tickets on the belief
12 that Defendant's product could be purchased at the price advertised when in
13 fact Defendant intended to sell at a higher price and consequently denied the
14 transaction involving the lower advertised price. Plaintiff and members of the
15 putative Class have been injured because had they been made aware that
16 Defendant's airline tickets could not be purchased for the advertised price,
17 they would have not purchased the tickets or would have purchased tickets
18 from a different airline carrier.

19 47. At a date presently unknown to Plaintiff, but at least four years prior to the
20 filing of this action, and as set forth above, Defendant has committed acts of
21 false and misleading advertising and promotion of its airline tickets, as
22 defined by Business & Professions Code §§ 17500 *et seq.*, by engaging in the
23 false advertising and promotion of the prices of its airline tickets on its
24 website.

25 48. The false and misleading advertising of Defendant, as described above,
26 presents a continuing threat to consumers, as Defendant continues to engage
27 in the deceptive pricing of its tickets, which will continue to mislead
28 consumers who attempt to purchase Defendant's airline tickets under false

1 premises.

2 49. As a direct and proximate result of the aforementioned acts and
 3 representations of Defendant, Defendant received monies rightfully
 4 belonging to Plaintiff and other similarly situated consumers who were led to
 5 purchase Defendant's airline tickets, due to the unlawful acts of Defendant,
 6 during the Class Period.

7 **SECOND CAUSE OF ACTION**

8 **FOR VIOLATIONS OF CAL. BUS. & PROF. CODE §§ 17200 ET SEQ.**

9 **[CALIFORNIA'S UNFAIR COMPETITION LAW]**

10 50. Plaintiff repeats, re-alleges and incorporates by reference the above
 11 allegations as if fully stated herein.

12 51. Plaintiff and Defendant are each "person[s]" as defined by California Business
 13 & Professions Code § 17201. California Business & Professions Code §
 14 17204 authorizes a private right of action on both an individual and
 15 representative basis.

16 52. "Unfair competition" is defined by Business and Professions Code Section §
 17 17200 as encompassing several types of business "wrongs," all four of which
 18 are at issue here: (1) an "unlawful" business act or practice, (2) an "unfair"
 19 business act or practice, (3) a "fraudulent" business act or practice, and (4)
 20 "unfair, deceptive, untrue or misleading advertising." The definitions in §
 21 17200 are drafted in the disjunctive, meaning that each of these "wrongs"
 22 operates independently from the others.

23 **A. "Unlawful" Prong**

24 53. Because Defendant has violated California's False Advertising Law, Business
 25 & Professions Code §§ 17500 *et seq.*, Defendant has violated California's
 26 Unfair Competition Law, Business & Professions Code §§ 17200 *et seq.*,
 27 which provides a cause of action for an "unlawful" business act or practice
 28 perpetrated on members of the California public.

1 54. Defendant had other reasonably available alternatives to further its legitimate
 2 business interest, other than the conduct described herein, such as advertising
 3 its airline tickets at a price it actually intends to sell to consumers.

4 55. Plaintiff and the putative class members reserve the right to allege other
 5 violations of law, which constitute other unlawful business practices or acts,
 6 as such conduct is ongoing and continues to this date.

7 **B. “Unfair” Prong**

8 56. Defendant’s actions and representations constitute an “unfair” business act or
 9 practice under § 17200 in that Defendant’s conduct is substantially injurious
 10 to consumers, offends public policy, and is immoral, unethical, oppressive,
 11 and unscrupulous as the gravity of the conduct outweighs any alleged benefits
 12 attributable to such conduct. Without limitation, it is an unfair business act or
 13 practice for Defendant to charge the consuming public for airline tickets when
 14 said tickets were not actually sold or reserved. Such conduct by Defendant is
 15 "unfair" because it offends established public policy and/or is immoral,
 16 unethical, oppressive, unscrupulous and/or substantially injurious to
 17 consumers in that Defendant’s pending charge caused those funds to be
 18 unavailable to consumers.

19 57. At a date presently unknown to Plaintiff, but at least four years prior to the
 20 filing of this action, and as set forth above, Defendant has committed acts of
 21 unfair competition as defined by Business & Professions Code §§ 17200 *et*
 22 *seq.*, by charging for its airline tickets that were neither sold to nor reserved
 23 for consumers.

24 58. Defendant could and should have furthered its legitimate business interests by
 25 not charging consumers for its airline tickets in accordance with the error
 26 message displayed when the orders were submitted.

27 59. Plaintiff and other members of the Class could not have reasonably avoided
 28 the injury suffered by each of them. Plaintiff reserves the right to allege

1 further conduct that constitutes other unfair business acts or practices. Such
 2 conduct is ongoing and continues to this date.

3 **C. “Fraudulent” Prong**

4 60. Defendant’s claims and statements were false, misleading and/or likely to
 5 deceive the consuming public within the meaning of Business & Professions
 6 Code §§ 17200 *et seq.* Defendant engaged in fraudulent acts and business
 7 practices by knowingly or negligently representing to Plaintiff, and other
 8 similarly situated consumers, through its website, that its airline tickets could
 9 be purchased for a specific price and then declining the submission of the
 10 order by attributing it to an arbitrary increase in price from the time
 11 consumers selected their desired tickets until the order was submitted.
 12 Furthermore, while Defendant represents that the transaction has not been
 13 completed and that the consumer has not be charged, the consumer is actually
 14 charged and the funds are held from the consumer’s account, preventing
 15 consumers access to and use of those funds.

16 61. Plaintiff reserves the right to allege further conduct that constitutes other
 17 fraudulent business acts or practices. Such conduct is ongoing and continues
 18 to this date.

19 62. The unfair and fraudulent business practices of Defendant, as described above,
 20 present an ongoing threat to consumers in that they will continue to be unable
 21 to purchase airline tickets online at the price initially represented to them or
 22 access the funds that are held due to Defendant’s charge after an uncompleted
 23 transaction.

24 **D. “Unfair, Deceptive, Untrue or Misleading Advertising” Prong**

25 63. Defendant’s advertising is unfair, deceptive, untrue or misleading in that
 26 consumers are led to believe that Defendant’s airline tickets could be
 27 purchased at the prices advertised, when in fact Defendant intends to only sell
 28 its tickets at a higher price.

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1 64. Plaintiff, who is a reasonable consumer, and the public would be likely to be
2 and actually were, deceived and misled by Defendant's advertising as they
3 would, and did, attempt to purchase Defendant's tickets at the price displayed
4 when the tickets were initially selected.

5 65. As a direct and proximate result of the aforementioned acts and
6 representations of Defendant, Defendant caused certain funds to be
7 unavailable to Plaintiff and other similarly situated consumers who were led
8 to attempt to purchase Defendant's airline tickets, due to the unlawful acts of
9 Defendant.

10 66. Thus, Defendant caused Plaintiff and other members of the Class to attempt to
11 purchase its airline tickets under false premises during the Class Period.

12 67. Defendant has engaged in unlawful, unfair and fraudulent business acts or
13 practices, entitling Plaintiff, and putative class members, to a judgment and
14 equitable relief against Defendant, as set forth in the Prayer for Relief.
15 Pursuant to Business & Professions Code § 17203, as result of each and every
16 violation of the UCL, which are continuing, Plaintiff is entitled to restitution
17 and injunctive relief against Defendant, as set forth in the Prayer for Relief.

18 68. Plaintiff and members of the putative class have suffered injury in fact and
19 have lost money and/or property and/or lost interest on monies Defendant
20 illegally obtained as a result of Defendant's unfair competition, as more fully
21 set forth herein. Plaintiff and members of the putative class have been injured
22 as they relied on Defendant's intentional misrepresentation and were induced
23 to attempt to purchase Defendant's tickets on the belief that Defendant's
24 product could be purchased at the price advertised when in fact Defendant
25 intended to sell at a higher price and consequently denied the transaction
26 involving the lower advertised price. Plaintiff and members of the Class have
27 been injured as had they been made aware that Defendant's airline tickets
28 could not be purchased at the advertised prices, they would have not

1 purchased the tickets or purchased tickets from a different airline carrier.

2 69. Defendant, through its acts of unfair competition, has unfairly acquired
3 monies from Plaintiff and members of the putative Class. It is impossible for
4 Plaintiff to determine the exact amount of money that Defendant has obtained
5 without a detailed review of the Defendant's books and records. Plaintiff
6 requests that this Court restore these monies and enjoin Defendant from
7 continuing to violate California Business & Professions Code §§ 17200 *et*
8 *seq.*, as discussed herein.

9 70. Plaintiff and other similarly situated consumers residing within California,
10 will continue to be exposed to and harmed by Defendant's unfair business
11 practices unless Defendant is enjoined from continuing to engage in the
12 unlawful, unfair, fraudulent, untrue, and deceptive business acts and practices
13 as described herein

14 71. Plaintiff further seek an order requiring Defendant to make full restitution of
15 all monies wrongfully obtained and disgorge all ill-gotten revenues and/or
16 profits, together with interest thereupon.

17 72. Plaintiff also seek attorneys' fees and costs pursuant to, *inter alia*, California
18 Civil Code Section 1021.5.

19 **THIRD CAUSE OF ACTION**

20 **FOR NEGLIGENT MISREPRESENTATION**

21 73. Plaintiff repeats, re-alleges and incorporates by reference the above
22 allegations as if fully stated herein.

23 74. At a date presently unknown to Plaintiff, but at least four years prior to the
24 filing of this action, and as set forth above, Defendant represented to the
25 public, including Plaintiff, through its website, that its airline tickets could be
26 purchased for the advertised price, as described herein. Defendant's
27 representations were untrue.

28 75. Defendant made the representations herein alleged with the intention of

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1 inducing the public, including Plaintiff and putative Class members, to
2 attempt to purchase its airline tickets.

3 76. Plaintiff and other similarly situated consumers in California saw, believed,
4 and relied upon Defendant's advertising representations and, in reliance on
5 them, attempted to purchase the product, as described herein.

6 77. At all times relevant, Defendant made the misrepresentations herein alleged
7 when Defendant should have known these representations to be untrue, and
8 Defendant lacked a reasonable basis for believing the representations to be
9 true at the time such representations were made to Plaintiff and other
10 similarly situated consumers.

11 78. As a proximate result of Defendant's negligent misrepresentations, Plaintiff
12 and other consumers similarly situated were induced to attempt to purchase
13 Defendant's airline tickets, due to the unlawful acts of Defendant, in an
14 amount to be determined at trial, during the Class Period.

15 **FOURTH CAUSE OF ACTION**

16 **FOR INTENTIONAL MISREPRESENTATION**

17 79. Plaintiff repeats, re-alleges and incorporates herein by reference the above
18 allegations as if fully stated herein.

19 80. At a date presently unknown to Plaintiff, but at least four years prior to the
20 filing of this action, and as set forth above, Defendant intentionally
21 represented to the public, including Plaintiff, through its website, that its
22 airline tickets could be purchased for the advertised price, as described herein.
23 Defendant's representations were untrue.

24 81. Defendant made the representations herein alleged with the intention of
25 inducing the public, including Plaintiff, to attempt to purchase its airline
26 tickets, for Defendant's own financial gain.

27 82. Defendant intentionally made such misrepresentations by offering its airline
28 tickets at the advertised prices on its website.

1 83. The representations regarding the price of Defendant's airline tickets were
2 misleading because Defendant did not intend to sell its tickets at the price
3 advertised but for a higher price.

4 84. Plaintiff and other similarly situated consumers in California saw, believed,
5 and relied upon Defendant's advertising representations and, in reliance on
6 such representations, attempted to purchase the products, as described above.

7 85. At all times relevant, Defendant intentionally made the misrepresentations
8 herein alleged, allowed the misrepresentations to continue to be made on its
9 website, and Defendant knew the representations to be false.

10 86. As a proximate result of Defendant's intentional misrepresentations, Plaintiff
11 and other consumers similarly situated were induced to spend an amount of
12 money to be determined at trial on Defendant's misrepresented product.

13 87. Defendant knew that it would not sell its airline tickets at the prices displayed
14 on its website but nevertheless made such representations disseminated
15 through Defendant's marketing and advertising with the intention and belief
16 that consumers would rely on Defendant's representations.

17 88. Plaintiff and other consumers similarly situated, in attempting to purchase the
18 products as herein alleged, relied on Defendant's representations, including
19 the representations on Defendant's website, all to their damage and/or
20 detriment as herein alleged.

21 89. Plaintiff allege the "who, what, when, where, and how" of the alleged
22 deception by Defendant as follows:

23 a. The "who" is Defendant US Airways, Inc.;

24 b. The "what" is representation that Defendant's airline tickets could be
25 purchased for the price advertised;

26 c. The "when" is the date Plaintiff attempted to purchase the product
27 and the Class Period of four years prior to the filing of the Complaint;

28 d. The "where" is in Defendant's website, located at URL

1 http://www.usairways.com; and

2 e. The “how” is the allegation that Defendant caused an uncompleted
3 transaction to prevent the purchase of its airline tickets at the
4 advertised price because the price had increased between the time the
5 consumer selected the desired tickets until the order was submitted.

6 90. By engaging in the acts described above, Defendant is guilty of malice,
7 oppression, and fraud, and each Plaintiff is therefore entitled to recover
8 exemplary or punitive damages.

9 **PRAYER FOR RELIEF**

10 **WHEREFORE**, Plaintiff prays that judgment be entered against Defendant,
11 and that Plaintiff and the Class be awarded damages from Defendant as follows:

- 12 • That this action be certified as a Class Action, Plaintiff be appointed as
13 the representative of the Class, and Plaintiff’s attorneys be appointed
14 Class counsel;
- 15 • A temporary, preliminary and/or permanent order for injunctive relief
16 requiring Defendant to: (i) discontinue advertising, marketing and
17 otherwise representing its airline tickets at a price it does not intend to
18 sell; (ii) discontinue charging consumers for uncompleted online
19 transactions;
- 20 • An order requiring imposition of a constructive trust and and/or
21 disgorgement of Defendant’s ill-gotten gains and to pay restitution to
22 Plaintiff and all members of the Class and to restore to Plaintiff and
23 members of the Class all funds acquired by means of any act or practice
24 declared by this court to be an unlawful, fraudulent, or unfair business
25 act or practice, in violation of laws, statutes or regulations, or
26 constituting unfair competition;
- 27 • Distribution of any monies recovered on behalf of members of the Class
28 via fluid recovery or *cy pres* recovery where necessary and as applicable,

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to prevent Defendant from retaining the benefits of their wrongful conduct;

- Prejudgment and post judgment interest;
- Special, general, and compensatory damages to Plaintiff and the Class for negligent and/or intentional misrepresentations;
- Exemplary and/or punitive damages for intentional misrepresentations pursuant to, *inter alia*, Cal. Civ. Code § 3294;
- Costs of this suit;
- Reasonable attorneys’ fees pursuant to, *inter alia*, California Code of Civil Procedure § 1021.5; and
- Any and all other relief that this Court deems necessary or appropriate.

Dated: June 1, 2015

Respectfully submitted,

KAZEROUNI LAW GROUP, APC

By: s/ ABBAS KAZEROUNIAN
ABBAS KAZEROUNIAN, ESQ.
ATTORNEYS FOR PLAINTIFF

TRIAL BY JURY

91. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: June 1, 2015

Respectfully submitted,

KAZEROUNI LAW GROUP, APC

By: s/ ABBAS KAZEROUNIAN
ABBAS KAZEROUNIAN, ESQ.
ATTORNEYS FOR PLAINTIFF

CIVIL COVER SHEET

15CV1214 L JMA

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

SCHUYLER HOFFMAN

(b) County of Residence of First Listed Plaintiff SAN DIEGO (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Abbas Kazerounian, Esq. (SBN 249203) Mona Amini, Esq. (SBN 296829) KAZEROUNI LAW GROUP, APC; 245 Fischer Avenue, Unit D1 Costa Mesa, CA 92626; Tel: (800) 400-6808; Fax: (800) 520-5523

DEFENDANTS

US AIRWAYS, INC.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff, and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Property, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332(d), Cal. Bus. & Prof. Code §§ 17500, et seq. and §§ 17200, et seq.

Brief description of cause: False Advertisement; Unlawful, Unfair, Fraudulent Business Practices, Negligent & Intentional Misrepresentation

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: X Yes O No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 06/01/2015 SIGNATURE OF ATTORNEY OF RECORD /s/ Abbas Kazerounian, Esq.

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE