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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ABRAHAM HAKIMI, on behalf of himself
and all others similarly situated,

Plaintiffs,

v.

SOCIÉTÉ AIR FRANCE, S.A.; AIR
FRANCE KLM and DOES 1 through 10,
inclusive,

Defendants.

CASE NO.:

CLASS ACTION

CLASS ACTION COMPLAINT

- 1. Breach of Self-Imposed Undertaking**
- 2. Breach of Contract (Express)**
- 3. Breach of Contract (Implied)**
- 4. Breach of Contract (Federal Law)**
- 5. Breach of the Implied Covenant of Good Faith and Fair Dealing**
- 6. Unjust Enrichment**

DEMAND FOR JURY TRIAL

Plaintiff Abraham Hakimi (hereinafter “Plaintiff”), on behalf of himself and all others similarly situated, hereby files this Complaint against Société Air France, S.A.; and Air France KLM and DOES 1 through 10, inclusive (hereinafter collectively referred to as “Defendants”). All allegations in this class action complaint are based upon information and belief, except for those allegations that pertain to the Plaintiff named herein and his counsel. Plaintiff’s information and belief, *inter alia*, are based upon the investigation conducted to date by Plaintiff and his counsel. Each allegation either has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further

1 investigation and discovery. Plaintiff is informed and believes, and on the basis of that information
2 and belief alleges, as follows:

3 1. This is a consumer class action for, *inter alia*, breach of self-imposed undertaking,
4 breach of contract (express and implied), unjust enrichment, and misrepresentation, all arising out of
5 Defendants' failure to provide premium economy seats as contracted. Plaintiff brings this action in his
6 own right and on behalf of a nationwide class and subclass of all others similarly situated.

7 **JURISDICTION AND VENUE**

8 2. Jurisdiction is proper in this Court under 28 U.S.C. § 1332(d), as amended by the Class
9 Action Fairness Act of 2005. In addition, under 28 U.S.C. § 1367, this Court may exercise
10 supplemental jurisdiction over any state law claims because all of the claims are derived from a
11 common nucleus of operative facts and are such that Plaintiff ordinarily would expect to try them in
12 one judicial proceeding.

13 3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(c) because the
14 Defendants transact substantial business within, and are subject to personal jurisdiction in, this judicial
15 district.

16 **PARTIES**

17 4. Plaintiff is a resident of Los Angeles County, California.

18 5. Defendant Société Air France, S.A., is a corporate entity duly organized and existing
19 under the laws of France, with its principal place of business in Tremblay in France. Defendant Société
20 Air France, S.A., has agreed to accept service at 125 West 55th Street, New York, New York 10019.
21 Air France is a common carrier that regularly operates international passenger flights to and from the
22 United States, including the State of California.

23 6. Defendant Air France-KLM Group ADS is a foreign corporation organized under the
24 laws of France and headquartered at 45, rue de Paris, 95747 Roissy-CDG Cedex, France, with a
25 primary United States office at 125 West 55th Street, 2nd Floor, New York, New York 10019. Air
26 France-KLM conducts airfreight shipping throughout the world, including into the United States and
27 this District.

28 7. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under

1 the fictitious names DOES 1 through 10 but will seek leave of this Court to amend the complaint and
2 serve such fictitiously named Defendants once their names and capacities become known.

3 8. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and
4 omissions alleged herein were performed by, or are attributable to Defendants, each acting as the
5 agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-
6 Defendants and was acting within the course and scope of such agency, employment, joint venture, or
7 concerted activity with legal authority to act on the others' behalf. The acts of any and all Defendants
8 represent and were in accordance with Defendants' official policy.

9 9. At all relevant times, Defendants, and each of them, ratified each and every act or
10 omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted
11 the acts and omissions of each and all the other Defendants in proximately causing the damages herein
12 alleged.

13 10. Plaintiff is informed and believes, and thereon alleges, that each of the said Defendants
14 are in some manner intentionally, negligently, or otherwise responsible for the acts, omissions,
15 occurrences, and transactions alleged herein.

16 **GENERAL ALLEGATIONS**

17 **A. Facts Regarding Air France**

18 11. Air France is a French Airline Operating from hubs at Paris-Charles de Gaulle Airport
19 (CDG) and Paris Orly Airport (ORY), the airline flies to more than 200 destinations. This includes
20 about 35 domestic airports and more than 90 countries in Europe, Africa, Asia, the Middle East, North
21 America and South America. A member of the SkyTeam alliance, Air France also has codeshare
22 agreements with about 30 other airlines. Its fleet of 234 passenger aircraft consists of both Airbus and
23 Boeing planes with a variety of cabin configurations. Although cabin classes vary by route and plane,
24 the airline offers First Class, Business Class, Premium Economy Class and Economy Class cabins.

25 12. The "Premium Economy Class" cabin is available on intercontinental flights.

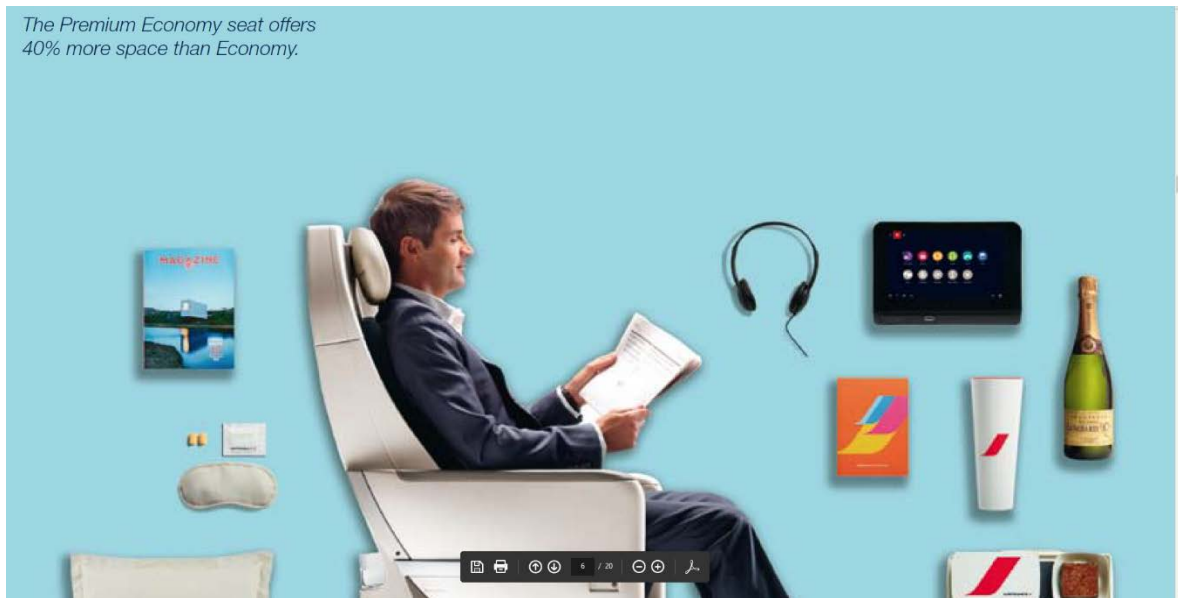
26 **B. Air France Represents that The "Premium Economy Seat Provides 40% More Space"**
27 **Than the Economy Cabin Seat**

28 13. At all times relevant to the matters alleged in this Complaint, Defendants have made,

1 and continue to make misrepresentations and/or omissions regarding the sizing of their seats in the
2 “Premium Economy” cabin which have become part of the contract between Plaintiff and the members
3 of the classes on one hand, and Defendants on the other. Specifically, Defendants represent, guarantee,
4 and contract that the seating the “Premium Economy” cabin provide 40% more space than the
5 economy cabin.

6 14. Defendants promise “[e]quipped with a large and relaxing seat, the Premium Economy
7 seat gives you 40% more space compared to the Economy cabin as well as multiple storage areas.¹”

8 15. Defendants boast, “Since 2009, the Premium Economy cabin has been offering
9 customers a new more comfortable way of travelling for business or pleasure at affordable prices, in
10 a separate cabin. The seat offers 40% more space than Economy Class and has won over, close to, 2.5

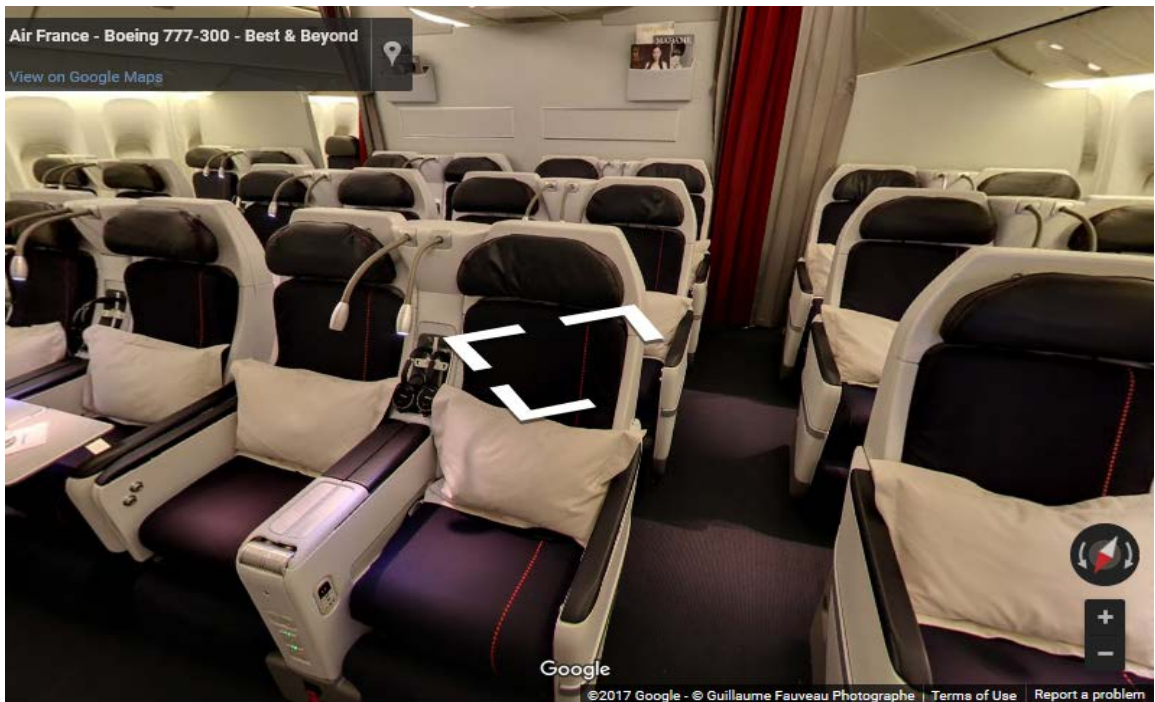


22 million customers since its launch².”

23 The Air France website provides photos of the Premium Economy Cabin

24
25
26
27 ¹ https://www.airfrance.us/US/en/common/guideeconomy/classeetconfort/premium_economy_a_bord.htm (last viewed January 2, 2018).

28 ² https://www.airfrance.fr/common/image/pdf/en/montee_en_gamme_eco_premium_eco_en.pdf (last viewed January 2, 2018)



22 16. In fact, the “Premium Economy” seating does not provide 40% more space than the
23 economy cabin.

24 17. The seat pitch for Defendants’ “Economy” class is 32 inches while the seat pitch
25 Premium Economy seat is merely 38 inches. The width of the economy seat is 17 inches while the
26 Premium Economy seat is only two (2) inches more.

27 18. Indeed, a number of customers have complained about the size of the seats.
28



Review

Mar 21, 2014, 8:42 AM



Julie P
Ho Chi Minh City...

Level 3 Contributor

4 posts

10 reviews

I completely agree on the comments concerning the seats in PE. What were they thinking???? We currently live in Asia and it's a long 12 hour night flight to Paris. Fortunately, I've only once not managed to upgrade to BC with miles. That was the most uncomfortable flight I've ever had. I was tired but so uncomfortable it was impossible to sleep. As others have noted, the footrest hits you on the back of your calves and the seat doesn't recline. My children have had the misfortune to have done the France-Asia-France flights several times in PE and have actually asked to travel in Eco, that's how bad it is. I too have written in and I seriously hope they change these seats. The only reason worth booking them as far as I'm concerned is to have the possibility to upgrade into Business. Otherwise I wouldn't bother as I already have access to the Sky Priority checkin and the lounge via my Flying Blue card level.

Reply

Report inappropriate content



103. Re: Air France Premium Economy Review

Apr 17, 2017, 4:43 PM



Carolin L
Victoria, BC

Level 5 Contributor

15 posts

52 reviews

Reply

Report inappropriate content

Premium economy seats are Torture, they do not recline and have far less padding than economy seats. Pay the extra \$\$ for extra leg room in economy, first row or emergency.



105. Re: Air France Premium Economy Review

Apr 28, 2017, 4:48 PM



sparkacigar
Illinois City...

Level 3 Contributor

1 post

11 reviews

Reply

Report inappropriate content

I spent 9 hours in this seat on both trips across the Atlantic from Chicago to Paris and back.

I can only hope that someday the people who designed and chose to install this seat are forced to endure the torture of sitting in it for as long as I did.

If prisoners of war were transported in these seats the Geneva convention would need to be notified of the inhumane treatment.

I will NEVER purchase a ticket in AF premium economy again



Wager5
Paris, France

1 post

111. **Re: Air France Premium Economy Review**

Sep 17, 2017, 12:56 PM

Save Reply

Just flew SFO to CDG AF Premium Economy and I will never do that again. The seats as mentioned by many are a fixed recline, foot support recliner doesn't extent to far and hardly any padding in seats. The food was horrible, inedible I recommend eating prior to flight. I can usually sleep on long flights but there was no position of comfort, I'm not looking forward to my return flight . I have never flown AF before and doubt I will again, in AF advertisements for Premium Econ they mentioned access to AF Lounge and was tuned away ,informed for business and first class only

Edited: 12:58 pm, September 17, 2017

Reply

Report inappropriate content



Christopher Z
Boston...

6 posts

119. **Re: Air France Premium Economy Review**

Nov 23, 2017, 8:58 AM

Save Reply

KennyRoss,

I'm actually dead serious when I maintain the AF coach seat I had from [Budapest to Paris](#) was more comfortable. I don't see myself as the complainer type, have flown over 200 times, and only occasionally do I upgrade, so my expectations were not particularly high. My claim may seem like an obvious exaggeration, but it isn't. I literally found it 100% impossible to get the seat comfortable. My leg rest kept popping up, and the design of my seat meant that I could not sit upright, and in the recline mode, the seat back did not recline, the entire seat moves as a single unit. I was so appalled by the inability to get comfortable for 7 hours, I without hesitation called it like its was: a torture board [edit]: (yes, a hyperbolic metaphor not to be taken literally.)

Now, it's been 4 years since I took the flight, and maybe not all AF PEs are the same. But I cannot emphasize enough how I wanted to like this product. I'm glad you had a nice trip. I did not. Maybe the seats are different today. But it's very unlikely all the negativity in this thread is due to the princess-and-the-pea factor. If this were a bunch of New Yorkers going to [Florida](#) for the winter, then maybe that would make some sense!

I sincerely hope the reason you had a comfortable seat is because AF has changed the design.

cheers

Edited: 9:02 am, November 23, 2017

Reply

Report inappropriate content

19. At all relevant times, Defendants knew, or reasonably should have known, that the seats in the “Premium Economy Cabin” did not provide 40% more space to the customer than those in the “Economy” cabin.

20. Defendants' decision to contract to provide 40% more space to customers purchasing

1 “Premium Economy” seating as compared to seats in the economy cabin was entire a voluntary
2 undertaking.

3 21. The experiences and complaints of Plaintiff, and Defendants’ acknowledgement of
4 these complaints, show that Defendants were well aware of their breach. But despite this knowledge,
5 Defendants have failed to implement any changes to cure and/or mitigate the breach.

6 **C. Facts Relating to Plaintiff**

7 22. On or about June of 2014, Plaintiff purchased an airline ticket on Air France in the
8 Premium Economy Cabin for travel from Paris to Los Angeles. Plaintiff paid additional monies to
9 receive a seat that provided 40% more space than the economy seating and which reclined.

10 23. In purchasing the ticket, Plaintiff relied upon Defendants offer to provide 40% more
11 space than the economy cabin and to provide a reclining seat. Such terms became the basis of the
12 parties’ bargain.

13 24. Plaintiff performed all conditions, covenants, and promises required to be performed
14 on their part in accordance with the terms and conditions of the contract, except to the extent such
15 performance was excused, released or waived by the actions, conduct or agreement of Defendant.

16 25. Plaintiff paid the upgraded purchase price and presented himself for carriage on the
17 date of departure.

18 **CLASS ACTION ALLEGATIONS**

19 26. Plaintiff brings this action individually and on behalf of all other persons similarly
20 situated. The classes that Plaintiff seeks to represent comprise of:

21 **California Class**

22 All persons in California who purchased a ticket for travel from Defendants
23 with a seat in the “Premium Economy” cabin from March 2, 2014 until the date
24 of judgment in this action. Specifically excluded from this Class are
25 Defendants; the officers, directors, or employees of Defendants; any entity in
26 which Defendants have a controlling interest; and any affiliate, legal
27 representative, heir, or assign of Defendants (California Class). Also excluded
28 are those who assert claims for personal injury as well as any federal, state, or

1 local governmental entities, any judicial officer presiding over this action and
2 the members of his/her immediate family and judicial staff, and any juror
3 assigned to this action (the “California Class”)

4 **National Class**

5 All persons in the United States who purchased who purchased a ticket for
6 travel from Defendants with a seat in the “Premium Economy” cabin from
7 March 2, 2014, until the date of judgment in this action. Specifically excluded
8 from this Class are Defendants; the officers, directors, or employees of
9 Defendants; any entity in which Defendants have a controlling interest; and any
10 affiliate, legal representative, heir, or assign of Defendants (“National Class”).
11 Also excluded are those who assert claims for personal injury as well as any
12 federal, state, or local governmental entities, any judicial officer presiding over
13 this action and the members of his/her immediate family and judicial staff, and
14 any juror assigned to this action.

15 27. The California Class and the National Class shall be collectively referred to as the
16 “Classes.”

17 28. Plaintiff reserves the right to redefine the Classes and to add additional subclasses as
18 appropriate based on further investigation, discovery, and specific theories of liability.

19 29. While the exact number of members of the Classes are unknown to Plaintiff at this time
20 and can only be determined by appropriate discovery, membership in the Classes are ascertainable
21 based upon the billing records maintained by Defendants and by the data submitted to and compiled
22 by the U.S. Department of Transportation. The Classes are sufficiently numerous, as each includes
23 thousands of persons who have purchased tickets in Defendants’ Premium Economy Cabin. Thus,
24 joinder of such persons in a single action or bringing all members of the Classes before the Court is
25 impracticable for purposes of Federal Rules of Civil Procedure, Rule 23(a)(1). The question is one of
26 a general or common interest of many persons and it is impractical to bring them all before the Court.
27 The disposition of the claims of the members of the Classes in this class action will substantially
28 benefit both the parties and the Court.

1 30. There are questions of law and fact common to each Class for purposes of Federal
2 Rules of Civil Procedure, Rule 23(a)(2), including whether the seats in the “Premium Economy” cabin
3 provide 40% more space than those in the “Economy” cabin and whether the seats in the “Premium
4 Economy” cabin recline as advertised. The members of each Class were and are similarly affected by
5 having purchased tickets for seats in “Premium Economy” and the relief sought herein is for the benefit
6 of Plaintiff and other members of the Classes. Thus, there is a well-defined community of interest in
7 the questions of law and fact involved in this action and affecting the parties.

8 31. Plaintiff asserts claims that are typical of the claims of each respective Class for
9 purposes of Federal Rules of Civil Procedure, Rule 23(a)(3). Plaintiff and all members of each
10 respective Class have been subjected to the same wrongful conduct because they have purchased
11 tickets in “Premium Economy” and Defendants breached their contracts with Plaintiff and the
12 members of the Classes by failing to provide the seats as offered. Plaintiff and the members of each
13 Class are entitled to refunds in the amount of the upgraded ticket price.

14 32. Plaintiff will fairly and adequately represent and protect the interests of the other
15 members of each respective Class for purposes of Federal Rules of Civil Procedure, Rule 23(a)(4).
16 Plaintiff has no interests antagonistic to those of other members of each respective Class. Plaintiff is
17 committed to the vigorous prosecution of this action and has retained counsel experienced in litigation
18 of this nature to represent him. Plaintiff anticipates no difficulty in the management of this litigation
19 as a class action.

20 33. Class certification is appropriate under Federal Rules of Civil Procedure, Rule 23(b)(2)
21 because Defendants have acted on grounds that apply generally to each Class, so that final injunctive
22 relief or corresponding declaratory relief is appropriate respecting each Class as a whole.

23 34. Class certification is appropriate under Federal Rules of Civil Procedure, Rule 23(b)(3)
24 because common questions of law and fact substantially predominate over any questions that may
25 affect only individual members of each Class. Among these common questions of law and fact are:

- 26 a. whether Defendants breached a self-imposed duty to provide reclining seats to
27 consumers purchasing tickets in their “Premium Economy” cabin;
28 b. whether Defendants breached a self-imposed duty to provide seats which provided

1 consumers in the “Premium Economy” cabin with 40% more space than those in the
2 “Economy” cabin;

3 c. whether Defendants breached their agreement(s) with passengers who paid increased
4 fees for “Premium Economy seats in order to receive reclining seats with 40% more
5 space than those in the “Economy Cabin”; and

6 d. whether Defendants were unjustly enriched by their conduct.

7 35. Defendants engaged in a common course of conduct giving rise to the legal rights
8 sought to be enforced by the members of each respective Class. Similar or identical statutory and
9 common law violations and deceptive business practices are involved. Individual questions, if any,
10 pale by comparison to the numerous common questions that predominate.

11 36. The injuries sustained by Plaintiff and the members of each Class flow, in each
12 instance, from a common nucleus of operative facts – Defendants’ misconduct.

13 37. Plaintiff and the members of each Class have been damaged by Defendants’
14 misconduct. The members of each Class performed their duties under the contract, however,
15 Defendants breached their voluntary duties under the contracts by failing to provide seats with
16 qualities and characteristics which Plaintiff and the Classes contracted to receive.

17 38. Plaintiff will fairly and adequately represent and protect the interests of the Class and
18 Subclass as required by Federal Rules of Civil Procedure, Rule 23(a)(4). Plaintiff is an adequate
19 representative of the Class and Subclass because he has no interests that are averse to the interests of
20 the other Class Members. Plaintiff is committed to the vigorous prosecution of this action and, to that
21 end, Plaintiff has retained counsel who are competent and experienced in handling class action
22 litigation on behalf of consumers.

23 39. Proceeding as a class action provides substantial benefits to both the parties and the
24 Court because this is the most efficient method for the fair and efficient adjudication of the
25 controversy. Members of each Class have suffered and will suffer irreparable harm and damages as a
26 result of Defendants’ wrongful conduct. Because of the nature of the individual claims of the members
27 of each Class, few, if any, could or would otherwise afford to seek legal redress against Defendants
28 for the wrongs complained of herein, and a representative class action is therefore the appropriate,

1 superior method of proceeding and essential to the interests of justice insofar as the resolution of
2 claims of the members of each Class is concerned. Absent a representative class action, members of
3 each Class would continue to suffer losses for which they would have no remedy, and Defendants
4 would unjustly retain the proceeds of its ill-gotten gains. Even if separate actions could be brought
5 by individual members of each Class, the resulting multiplicity of lawsuits would cause undue
6 hardship, burden, and expense for the Court and the litigants, as well as create a risk of inconsistent
7 rulings, which might be dispositive of the interests of the other members of each Class who are not
8 parties to the adjudications and/or may substantially impede their ability to protect their interests.

9 40. In the alternative, this action is certifiable under the provisions of Federal Rules of
10 Civil Procedure, Rules 23(b)(1) and/or 23(b)(2) because:

- 11 a. The prosecution of separate actions by individual Class Members would create a risk
12 of inconsistent or varying adjudications with respect to individual Class Members that
13 would establish incompatible standards of conduct for Defendant;
- 14 b. The prosecution of separate actions by individual Class Members would create a risk
15 of adjudications as to them that would, as a practical matter, be dispositive of the
16 interests of the other class members not parties to the adjudications, or substantially
17 impair or impede their ability to protect their interests; and,
- 18 c. Defendants have acted or refused to act on grounds generally applicable to the Class
19 and Subclass, thereby making appropriate final injunctive relief or corresponding
20 declaratory relief with respect to the Classes as a whole thereby necessitating that any
21 such relief be extended to the Class Members on a mandatory, class wide basis.

22 41. Plaintiff is aware of no difficulty that will be encountered in the management of this
23 litigation that should preclude its maintenance as a class action.

24 42. The names and addresses of the members of the California Class and the National Class
25 are available from Defendant's records. Notice can be provided to the members of the California Class
26 and the National Class via first class mail or otherwise using techniques and a form of notice similar
27 to those customarily used in consumer class actions arising under California state law and federal law.
28

FIRST CAUSE OF ACTION

Breach of Self-Imposed Undertaking

43. Plaintiff repeats and realleges the allegations set forth above and incorporates the same as if set forth herein at length.

44. Defendants created a self-imposed duty to, in exchange for the enhanced fees paid by their customers, deliver seats in their “Premium Economy” cabin that: (1) provided 40% more space than in the “Economy” cabin; and (2) reclined. Defendants’ self-imposed undertaking is independently evidenced by both their words and their conduct.

45. When Defendants undertook the duty to provide seats that: (1) provided 40% more space than seats in the “Economy” cabin; and (2) that reclined, in exchange for a fee and failed to do so, but retained the fee, Defendants breached their self-imposed undertaking. As a consequence of such breach, Defendants were obligated to timely refund the upgraded costs paid by Plaintiff and the members of the Classes for the premium seat.

SECOND CAUSE OF ACTION

Breach of Express Contract

46. Plaintiff repeats and realleges the allegations set forth in the paragraphs 1-45 and incorporates the same as if set forth herein at length.

47. Plaintiff and Class Members and Defendants entered into an express contract under which Defendants agreed to furnish Plaintiff and the members of the class with a seat that provided 40% more space than a seat in the economy cabin; this was a material term of the express contract. Plaintiff and the Class Members agreed to pay and did pay a premium fee to Defendants for such a seat in the “Premium Economy” cabin.

48. Plaintiff and each member of the Class are parties to contracts with Defendants that are uniform with respect to the provisions applicable to the claims asserted against Defendants.

49. Plaintiff and the members of the Classes have performed all conditions, covenants, and promises required to be performed on their part in accordance with the terms and conditions of the contract, except to the extent such performance was excused, released or waived by the actions, conduct or agreement of Defendants.

1 55. Plaintiffs and Class Members demonstrated their clear intent and understanding that
2 they would be provided “Premium Economy” seating that provided 40% more space than “Economy”
3 cabin seating by their conduct when they either:

4 (1) arrived at the airport, identified themselves and their flight itinerary including the
5 “Premium Economy” class ticket to Defendants at the time of check-in (either via a human
6 representative or by way of first an airline check-in Kiosk and then a human representative);
7 or

8 (2) paid the additional “Premium Economy” seating fee at the time that they purchased their
9 ticket online or through a ticket/travel agency.

10 62. Defendants demonstrated its clear intent and understanding that the seats it provided to
11 Plaintiff and the Members of the Classes were to have 40% more space than the seats in “Economy”
12 cabin when they:

13 (1) made the offer to furnish such seating to consumers at the time that they purchased their
14 tickets or when the passenger arrived at the airport to travel with luggage in hand;

15 (2) accepted their enhanced fees;

16 (3) accepted the passenger’s seat and cabin request;

17 (4) flew that customers’ flight; or

18 (5) failed to inform their passengers that it was not agreeing to provide seats with 40% more
19 space than in “Economy” class.

20 56. Plaintiff and each member of the Class are parties to these contracts with Defendants
21 that are uniform with respect to the provisions applicable to the claims asserted against Defendants.
22 Plaintiff and each member of the Classes are parties to these contracts.

23 57. Plaintiff and the members of the Classes have performed all conditions, covenants, and
24 promises required to be performed on their part in accordance with the terms and conditions of the
25 baggage fee contract, except to the extent such performance was excused, released or waived by the
26 actions, conduct or agreement of Defendants.
27
28

1 58. Defendant breached its contractual obligations under these contracts and with Plaintiff
2 and each member of the Classes by failing provide seating that had 40% more space than the seating
3 in “Economy” class. In addition, such failure constitutes a failure of consideration.

4 59. As a direct and proximate result of Defendants’ failure to provide seating that had 40%
5 more space than the seating in “Economy” class, Plaintiff and each member of the Classes are entitled
6 to a return of the consideration that they paid Defendants in the form of the enhanced ticket fees.

7 **FOURTH CAUSE OF ACTION**

8 **Breach of Contract- Federal Common Law**

9 60. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 to 59, and
10 incorporates the same as if set forth herein at length.

11 61. Federal common law recognizes a breach of contract between contracting parties
12 Plaintiff and Class Members and Defendants entered into a uniform express contract as alleged in
13 paragraphs 46-51 or in the alternative a uniform express and implied contract as alleged in paragraphs
14 52-59, under either of which Defendants agreed to provide seating that had 40% more space than the
15 seating in “Economy” class; this was a material term of the contract. Plaintiff and the Class Members
16 agreed to pay an enhanced ticket fee to Defendants in exchange for the extra space.

17 62. Plaintiff and the members of the Classes have performed all conditions, covenants, and
18 promises required to be performed on their part in accordance with the terms and conditions of the
19 contract, except to the extent such performance was excused, released or waived by the actions,
20 conduct or agreement of Defendants.

21 63. Defendants breached their contractual obligations under these contracts with Plaintiff
22 and each member of the Classes by failing to provide seating that had 40% more space than the seating
23 in “Economy” class. In addition, such failure constitutes a failure of consideration.

24 64. As a direct and proximate result of Defendants’ failure to timely deliver their baggage,
25 Plaintiff and each member of the Classes are entitled to a return of the consideration that they paid
26 Defendants, in the form of the enhanced ticket price paid for the premium seat.

FIFTH CAUSE OF ACTION

Breach of the Covenant of Good Faith and Fair Dealing

1
2 65. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs 1 to
3 64, and incorporates the same as if set forth herein at length.

4 66. Implied in every contract is the covenant of good faith and fair dealing, which will be
5 enforced if they do not contradict the express rights of the parties. Plaintiff and Class Members entered
6 into a uniform express contract as alleged in paragraphs 46-51 or in the alternative a uniform express
7 and implied contract as alleged in paragraphs 52-59, under either of which Defendants agreed provide
8 seating to Plaintiff and the members of the Classes that had 40% more space than the seating in
9 “Economy” class; this was a material term of the contract. Plaintiff and the Class Members agreed to
10 pay and did an enhanced fee to Defendants for such seating.

11 67. Here, under the implied covenant, Defendants were obligated to refund the enhanced
12 fee if they did not provide seating to Plaintiff and the members of the Classes that had 40% more space
13 than the seating in “Economy” class.

14 68. Plaintiff and the members of the Classes have performed all conditions, covenants, and
15 promises required to be performed on their part in accordance with the terms and conditions of the
16 baggage fee contract, except to the extent such performance was excused, released or waived by the
17 actions, conduct or agreement of Defendants.

18 69. By failing to refund the enhanced ticketing fee, Defendants breached the covenant of
19 good faith and fair dealing under both state and federal common law.

20 70. Defendants failed to refund the enhanced fee to Plaintiff and each member of the
21 Classes, despite having failed to provide seating to Plaintiff and the members of the Classes that had
22 40% more space than the seating in “Economy” class. By failing to refund the enhanced fees,
23 Defendants breached the covenant of good faith and fair dealing.

24 71. As a direct and proximate result of Defendants’ failure to provide seating to Plaintiff
25 and the members of the Classes that had 40% more space than the seating in “Economy” class, Plaintiff
26 and each member of the Classes are entitled to a return of the consideration that they paid Defendants,
27 in the form of their enhanced fees.
28

SIXTH CAUSE OF ACTION

Unjust Enrichment

1
2
3 72. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 to 42, above, and
4 incorporates the same as if set forth herein at length, pleading this Claim in the alternative to Plaintiff
5 and the Class Members’ breach of contract Claims, and will not seek to recover upon this Claim in
6 the event they recovery on any contract Claim

7 73. Plaintiff brings this claim individually, as well as on behalf of members of the
8 Nationwide Class and California Class pursuant California law. Although there are numerous
9 permutations of the elements of the unjust enrichment cause of action in the various states, there are
10 few real differences. In all states, the focus of an unjust enrichment claim is whether the defendant
11 was unjustly enriched. At the core of each state’s law are two fundamental elements – the defendant
12 received a benefit from the plaintiff and it would be inequitable for the defendant to retain that benefit
13 without compensating the plaintiff. The focus of the inquiry is the same in each state. Since there is
14 no material conflict relating to the elements of unjust enrichment between the different jurisdictions
15 from which class members will be drawn, California law applies to the claims of the Class.

16 74. In the alternative, Plaintiff brings this claim individually as well as on behalf of the
17 California Class.

18 75. Plaintiff and each member of the Class conferred a benefit upon Defendant when they
19 paid the enhanced fees. Defendants acknowledged receipt of the benefit when it accepted the enhanced
20 fees.

21 76. By accepting the enhanced fees, Defendants were enriched and their revenue increased,
22 as was Defendants’ intention. By accepting the enhanced fees from customers, Defendants were
23 obligated to provide seating to Plaintiff and the members of the Classes that had 40% more space than
24 the seating in “Economy” class. This obligation was self-imposed by Defendants.

25 77. Defendants accepted or retained the non-gratuitous benefits conferred by Plaintiff and
26 members of the Classes, with full knowledge and awareness that, Plaintiff and members of the Classes
27 were not receiving a product of the quality, nature, fitness, or value that had been offered, promised
28 and contracted for by Defendants.

1 78. Retaining the non-gratuitous benefits conferred upon Defendants by Plaintiff and
2 members of the Classes under these circumstances made Defendants' retention of the non-gratuitous
3 benefits unjust and inequitable. Thus, Defendants must pay restitution to Plaintiff and members of
4 the Classes for their unjust enrichment, as ordered by the Court in an amount to be determined
5 according to proof at trial.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays for judgment and relief against Defendants as follows (cause
8 of action number three is excluded from the below to the extent the remedy includes monetary
9 damages):

10 a. That the Court certify the nationwide Class and the California Class under Federal
11 Rules of Civil Procedure, Rule 23 and appoint Plaintiff as Class Representative and his attorneys as
12 Class Counsel to represent the members of the Classes;

13 b. That the Court declare that Defendants' conduct violates the statutes referenced herein;

14 c. That the Court preliminarily and permanently enjoin Defendants from conducting their
15 business through the unlawful, unfair, or fraudulent business acts or practices, untrue, and misleading
16 labeling and marketing and other violations of law described in this Complaint;

17 d. That the Court order Defendants to pay restitution to restore to all affected persons all
18 funds acquired by means of any breach of contract;

19 e. Order Defendant to make an accounting of profits and/or expenses saved by their
20 unlawful practices and to provide full restitution to Plaintiff and each member of the Class;

21 f. For a declaration that Defendant is financially responsible for notifying all Class
22 members about this litigation;

23 g. For attorney's fees as provided by law;

24 h. that the Court grant such other and further relief as may be just and proper; and
25
26
27
28

1 i. For leave to amend these pleadings to conform to the evidence adduced during
2 discovery and/or presented at trial.

3 DATED: March 2, 2018

BRADLEY/GROMBACHER, LLP

4
5 By: /S/ Kiley Lynn Grombacher
6 Marcus J. Bradley, Esq.
7 Kiley Lynn Grombacher, Esq.
8 Attorneys for Plaintiff

JURY DEMAND

9 Plaintiff demands a trial by jury on all causes of action so triable.

10 DATED: March 2, 2018

BRADLEY/GROMBACHER, LLP

11 By: /S/ Kiley Lynn Grombacher
12 Marcus J. Bradley, Esq.
13 Kiley Lynn Grombacher, Esq.
14 Attorneys for Plaintiff
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JS-CAND 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
ABRAHAM HAKIMI

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Bradley/Grombacher, LLP, 2815 Townsgate Road, Suite 130,
 Westlake Village, CA 91361

DEFENDANTS
SOCIETE AIR FRANCE, S.A.; AIR FRANCE KLM

County of Residence of First Listed Defendant France
(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 3 Federal Question
(U.S. Government Not a Party)

2 U.S. Government Defendant X4 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)*

	PTF	DEF		PTF	DEF
Citizen of This State	X 1	1	Incorporated or Principal Place of Business In This State	4	4
Citizen of Another State	2	2	Incorporated and Principal Place of Business In Another State	5	5
Citizen or Subject of a Foreign Country	3	3	Foreign Nation	6	X 6

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance	PERSONAL INJURY	625 Drug Related Seizure of Property 21 USC § 881	422 Appeal 28 USC § 158	375 False Claims Act
120 Marine	310 Airplane	690 Other	423 Withdrawal 28 USC § 157	376 Qui Tam (31 USC § 3729(a))
130 Miller Act	315 Airplane Product Liability	LABOR	PROPERTY RIGHTS	400 State Reapportionment
140 Negotiable Instrument	320 Assault, Libel & Slander	710 Fair Labor Standards Act	820 Copyrights	410 Antitrust
150 Recovery of Overpayment of Veteran's Benefits	330 Federal Employers' Liability	720 Labor/Management Relations	830 Patent	430 Banks and Banking
151 Medicare Act	340 Marine	740 Railway Labor Act	835 Patent—Abbreviated New Drug Application	450 Commerce
152 Recovery of Defaulted Student Loans (Excludes Veterans)	345 Marine Product Liability	751 Family and Medical Leave Act	840 Trademark	460 Deportation
153 Recovery of Overpayment of Veteran's Benefits	350 Motor Vehicle	790 Other Labor Litigation	SOCIAL SECURITY	470 Racketeer Influenced & Corrupt Organizations
160 Stockholders' Suits	355 Motor Vehicle Product Liability	791 Employee Retirement Income Security Act	861 HIA (1395ff)	480 Consumer Credit
X 190 Other Contract	360 Other Personal Injury	IMMIGRATION	862 Black Lung (923)	490 Cable/Sat TV
195 Contract Product Liability	362 Personal Injury -Medical Malpractice	462 Naturalization Application	863 DIWC/DIWW (405(g))	850 Securities/Commodities/Exchange
196 Franchise	CIVIL RIGHTS	465 Other Immigration Actions	864 SSID Title XVI	890 Other Statutory Actions
REAL PROPERTY	440 Other Civil Rights	PRISONER PETITIONS	865 RSI (405(g))	891 Agricultural Acts
210 Land Condemnation	441 Voting	HABEAS CORPUS	FEDERAL TAX SUITS	893 Environmental Matters
220 Foreclosure	442 Employment	463 Alien Detainee	870 Taxes (U.S. Plaintiff or Defendant)	895 Freedom of Information Act
230 Rent Lease & Ejectment	443 Housing/Accommodations	510 Motions to Vacate Sentence	871 IRS—Third Party 26 USC § 7609	896 Arbitration
240 Torts to Land	445 Amer w/Disabilities--Employment	530 General		899 Administrative Procedure Act/Review or Appeal of Agency Decision
245 Tort Product Liability	446 Amer w/Disabilities--Other	535 Death Penalty		950 Constitutionality of State Statutes
290 All Other Real Property	448 Education	OTHER		
		540 Mandamus & Other		
		550 Civil Rights		
		555 Prison Condition		
		560 Civil Detainee--Conditions of Confinement		

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

X 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—Transfer 8 Multidistrict Litigation—Direct File

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. Section 1332(d)
 Brief description of cause:
 Breach of Contract

VII. REQUESTED IN COMPLAINT: X CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ 500,000 plus CHECK YES only if demanded in complaint: JURY DEMAND: X Yes No

VIII. RELATED CASE(S), IF ANY *(See instructions):* JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)
(Place an "X" in One Box Only) X SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE March 2, 2018 /s/ Kiley L. Grombacher, Esq. SIGNATURE OF ATTORNEY OF RECORD

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)."
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Federal Rule of Civil Procedure 23.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: "the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated."
- Date and Attorney Signature.** Date and sign the civil cover sheet.