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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MAYANNA BERRIN and SEAN
BOILEAU, individuals on their own
behalf and on behalf of all others
similarly situated,

Plaintiffs,

v.

DELTA AIR LINES INC., a Delaware
Corporation,

Defendant.

Case No.: 2:23-cv-04150-MEMF-
AS

**THIRD AMENDED CLASS
ACTION COMPLAINT**

1 Plaintiffs Mayanna Berrin and Sean Boileau (“Plaintiffs”), by and
2 through their attorneys, make the following allegations pursuant to the
3 investigation of their counsel and based upon information and belief—except
4 as to allegations specifically pertaining to themselves and their counsel, which
5 are based on personal knowledge—against Defendant Delta Air Lines, Inc.
6 (“Defendant” or “Delta”).

7 **NATURE OF THE ACTION**

8 1. This is a class action lawsuit, brought on behalf of a putative
9 nationwide class, or alternatively a putative class of California residents, who
10 have purchased Defendant’s flights, against Defendant for grossly
11 misrepresenting the total environmental impact of its business operations in its
12 advertisements, corporate announcements, and promotional materials and
13 thereby attaining underserved market share from environmentally concerned
14 consumers.

15 2. Defendant is one of the major commercial airlines in America and
16 operates flights worldwide.

17 3. Since March 2020, Defendant has repeatedly touted itself as “the
18 world’s first carbon-neutral airline” across various channels including
19 advertisements, press releases, LinkedIn posts, podcasts, and in-flight napkins.

20 4. Reasonable consumers reviewing these representations would
21 believe that when taking account of all of Defendant’s carbon emissions and
22 related green investments, Defendant has not been responsible for releasing any
23 net additional carbon into the atmosphere since March 2020.

24 5. Defendant has represented that its airline is “carbon-neutral”
25 because of carbon offsetting via participation in the voluntary carbon offset
26 market. The voluntary carbon offset market is a loose arrangement of companies
27 and NGOs that facilitate investment in green projects such as renewable energy
28 and prevention of deforestation. In exchange for their investment in these

1 projects, companies receive “carbon offsets” in the form of credits that purport to
2 verify the amount of carbon that was not released due to the company’s
3 investments in the offset market. Defendant’s claim of carbon neutrality
4 therefore hinges on an underlying set of representations—that since March 2020
5 Defendant’s investments in the voluntary carbon offset market have entirely
6 offset the CO₂ emissions from Defendant’s global airline operations, such that
7 Defendant has not been responsible for releasing additional carbon into the
8 atmosphere during that time.

9 6. Plaintiffs have since discovered that any such representations are
10 manifestly and provably false. As explained below, foundational issues with the
11 voluntary carbon offset market mean the purchase of said offsets cannot make a
12 company “carbon neutral.” Even the primary offset vendors offer offsets replete
13 with the following:

- 14 a. inaccurate accounting;
- 15 b. non-additional effects on worldwide carbon levels due to the
16 vendors crediting offsets for projects that would have occurred with
17 or without offset market investment;
- 18 c. non-immediate speculative emissions reductions that will at best
19 occur over decades, despite crediting purchasers with the sum of
20 those projected offsets; and
- 21 d. impermanent projects subject to disease, natural disasters, and
22 human intervention

23 7. These issues are specific to offsets purchased by and relied upon by
24 Defendant. both scientists and government regulators have specifically identified
25 Defendant as one of many companies who have grossly misstated the actual
26 carbon reduction produced by their carbon offset portfolio. At the same time,
27 Defendant’s operation of a commercial airline causes significant carbon dioxide
28 (“CO₂”) to be released into the atmosphere.

8. Accordingly, Defendant's claims of "carbon neutrality" are false and misleading; the operation of Defendant's airline is not carbon neutral, and consumers would not have purchased tickets on Defendant's flights, or paid substantially less for them, had they known the claim of carbon neutrality was false.

9. Plaintiffs and the putative class were wronged by these actions. There is a significant demand for green services, and specifically services that do not contribute to climate change. Since March 2020, Plaintiffs purchased Delta flights due to their belief that by flying Delta they engaged in more ecologically conscious air travel and participated in a global transition away from carbon emissions. During this entire period, Defendant still produced massive amounts of CO₂, and its reliance on the voluntary carbon offset market in no way prevented its “carbon-neutral” representations from being false and misleading. Plaintiffs would not have purchased Defendant’s services at the price they paid for them if they understood at the time of purchase that Defendant’s carbon neutral representations were false.

10. Plaintiffs are purchaser of Defendant’s flights who asserts claims on behalf of themselves and similarly situated purchasers of Defendant’s flights for (i) violation of California’s Consumers Legal Remedies Act (“CLRA”), Cal. Civil Code §§ 1750, *et seq.*, (ii) violation of California’s False Advertising, Business and Professions Code § 17500, *et seq.* (“FAL”), and (iii) Unlawful, unfair, and fraudulent trade practices in violation of California’s Business and Professions Code § 17200.

PARTIES

11. Plaintiff Mayanna Berrin is, and at all times alleged in this Class Action Complaint was, an individual and a resident and therefore citizen of Glendale, California. Plaintiff Mayanna Berrin makes her permanent home in Glendale and intends to remain in Glendale.

1 12. Plaintiff Sean Boileau is, and at all times alleged in this Class
2 Action Complaint was, an individual and a resident and therefore citizen of Los
3 Angeles, California. Plaintiff Sean Boileau makes his permanent home in
4 Glendale and intends to remain in Glendale.

5 13. Defendant Delta Air Lines, Inc. is a corporation incorporated under
6 the laws of the state of Delaware, with its principal place of business in Atlanta,
7 Georgia. Defendant markets, sells, and operates flights worldwide and
8 throughout the United States, including the state of California. Defendant
9 operated, marketed, and sold flights during the class period.

10 14. Plaintiff Mayanna Berrin has purchased flights on the Defendant's
11 airline multiple times since March 2020, flying round-trip on Delta on May 6,
12 2021, November 19, 2021, October 10, 2022, and November 29, 2022.

13 15. Prior to her purchase of the flights, Plaintiff Mayanna Berrin had
14 viewed advertisements, LinkedIn posts, and business reporting in which
15 Defendant was touted as a carbon neutral airline. Plaintiff relied on Defendant's
16 representations that Defendant was a carbon neutral business. Plaintiff saw these
17 representations prior to, and at the time of purchase, and understood them as
18 representations and warranties that the flight she had purchased was with a
19 carbon neutral business.

20 16. Plaintiff Mayanna Berrin understood "carbon neutral" to mean that
21 since March 2020 Defendant has removed or offset all the carbon it has emitted
22 on a global basis. Plaintiff Mayanna Berrin relied on these representations and
23 warranties in deciding to purchase her flights with Defendant, rather than some
24 other airline. Accordingly, those representations and warranties were part of the
25 basis of the bargain, in that she would not have purchased said flights on the
26 same terms had she known those representations were not true.

27 17. In making her purchases, Plaintiff Mayanna Berrin relied on the
28 false and misleading carbon neutral claim. Plaintiff Mayanna Berrin did not

1 receive the benefit of the bargain because the flight she purchased was not, in
2 fact, the product of a carbon neutral business.

3 18. Plaintiff Mayanna Berrin is a longstanding and loyal Delta
4 customer. Plaintiff Mayanna Berrin intends to purchase flights from Delta in the
5 future.

6 19. Plaintiff Sean Boileau has purchased flights on the Defendant's
7 airline multiple times since March 2020, flying round-trip on Delta on November
8 29, 2023, December 5, 2023, May 30, 2024, and June 2, 2024.

9 20. Prior to his purchase of the flights, Plaintiff Sean Boileau had
10 viewed advertisements, LinkedIn posts, and business reporting in which
11 Defendant was touted as a carbon neutral airline. Plaintiff relied on Defendant's
12 representations that Defendant was a carbon neutral business. Plaintiff saw these
13 representations prior to the time of purchase and had understood them as
14 representations and warranties that the flight he had purchased was with a carbon
15 neutral business.

16 21. Plaintiff Sean Boileau understood "carbon neutral" to mean that
17 since March 2020 Defendant has removed or offset all the carbon it has emitted
18 on a global basis. Plaintiff Sean Boileau relied on these representations and
19 warranties in deciding to purchase his flights with Defendant, rather than some
20 other airline. Accordingly, those representations and warranties were part of the
21 basis of the bargain, in that he would not have purchased said flights on the same
22 terms had he known those representations were not true.

23 22. In making these purchases, Plaintiff Sean Boileau relied on the false
24 and misleading carbon neutral claim. Plaintiff Sean Boileau did not receive the
25 benefit of the bargain because the flight he purchased was not, in fact, the
26 product of a carbon neutral business.

27 23. In June 2024, Plaintiff Sean Boileau first learned of this lawsuit and
28 the underlying allegations concerning systemic issues with the voluntary carbon

1 offset market. He has since decided he cannot fly on Delta Airlines flights until
2 he is confident in determining whether Delta Airlines is or is not carbon neutral.

3 **JURISDICTION AND VENUE**

4 24. This Court has subject matter jurisdiction over this action pursuant
5 to the Class Action Fairness Act, 28 U.S.C. Section 1332(d)(2)(A) because: (i)
6 there are 100 or more class members; (ii) there is an aggregate amount in
7 controversy exceeding \$5,000,000, exclusive of interest and costs; and (iii)
8 Plaintiff and Defendant are citizens of different states.

9 25. This Court has supplemental jurisdiction over any state law claims
10 pursuant to 28 U.S.C. Section 1367.

11 26. The injuries, damages and/or harm upon which this action is based
12 occurred or arose out of activities engaged in by Defendant within, affecting, and
13 emanating from, the State of California. Defendant regularly conducts and/or
14 solicits business in, engages in other persistent courses of conduct in, and/or
15 derives substantial revenue from services provided to persons in the State of
16 California. Defendant has engaged, and continues to engage, in substantial and
17 continuous business practices in the State of California.

18 27. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2)
19 because a substantial part of the events or omissions giving rise to the claims
20 occurred in the State of California, including within this District.

21 28. In accordance with California Civil Code Section 1780(d), Plaintiffs
22 concurrently file herewith declarations establishing that, at various times
23 throughout the class period, they purchased one or more flights with Delta Air
24 Lines, Inc. while located in California.

25 29. Plaintiffs accordingly allege that jurisdiction and venue are proper
26 in this Court.

SUBSTANTIVE ALLEGATIONS

A. Environmental Impact is a Compelling Consideration for Consumers

30. The changing climate is widely appreciated as the crisis of our times. “Human activities, principally through emissions of greenhouse gasses (GHG), have unequivocally caused global warming, with global surface temperature reaching 1.1°C above 1850-1900 in 2011-2020.”¹ “Observed warming is human-caused, with warming from greenhouse gasses, dominated by CO₂ and methane (CH₄).”²

31. Given the current severity of climate change issues, interest in environmentally friendly (“green”) consumption is at an all-time high. For many consumers, the environmental impact of a company’s supply chain and operations has a significant impact on their purchasing decisions. As the Supreme Court of California has observed, “[t]o some consumers, processes and places of origin matter. Whether a particular food is kosher or halal may be of enormous consequence to an observant Jew or Muslim. Whether a wine is from a particular locale may matter to the oenophile who values subtle regional differences. Whether a diamond is conflict free may matter to the fiancée who wishes not to think of supporting bloodshed and human rights violations each time she looks at the ring on her finger. And whether food was harvested or a product manufactured by union workers may matter to still others.” *Kwikset Corp. v. Superior Ct.*, 51 Cal. 4th 310, 328–29, 246 P.3d 877, 889–90 (2011).

32. The same is true of a company’s environmental footprint. “87% of consumers will have a more positive image of a company that supports social or environmental issues. 88% will be more loyal to a company that supports social or environmental issues. 87% would buy a product with a social and

¹ HOESUNG LEE ET AL., SYNTHESIS REPORT OF THE IPCC SIXTH ASSESSMENT REPORT 6 (STEVEN K ROSE ET AL. EDS., 2022).

² *Id.*

1 environmental benefit if given the opportunity.”³ At the same time, “[i]n spite of
2 consumers’ willingness to contribute to a greener and more circular economy in
3 their everyday lives, their active and effective role in this green transition is
4 hampered by” “a lack of trust in the credibility of environmental claims and the
5 proliferation of misleading commercial practices related to the environmental
6 sustainability of products.”⁴

7 33. In the interest of maintaining consumer loyalty and maintaining
8 market position, companies have rolled out various environmental initiatives to
9 encourage consumers to continue to purchase their goods and services. These
10 initiatives have led to accusations of “greenwashing”—referring to when
11 environmentally harmful goods and services are rebranded as more ecologically
12 conscious than they actually are in fact. Greenwashing is difficult for consumers
13 to identify, as by definition, the inherent information asymmetry between
14 corporations and individual consumers means that “[c]onsumers cannot verify
15 green attributes directly and must rely on such signals as eco-labels to
16 authenticate claims.”⁵

17 34. These efforts are effective at changing consumer perceptions. In
18 one study, “[o]ver half (57%) of consumers (in the control condition) believed
19 that greenwashed claims were a reliable source of information about a company's
20 eco-practices. Consumers were also much more likely to agree that greenwashing
21 energy companies had strong green credentials, compared to energy companies
22
23

24 ³ Adam Butler, *Do Customers Really Care About Your Environmental Impact?*, FORBES (Nov.
25 21, 2018, 8:00 AM), <https://www.forbes.com/sites/forbesnycouncil/2018/11/21/do-customers-really-care-about-your-environmental-impact/>

26 ⁴ EUROPEAN COMM’N, DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON
27 SUBSTANTIATION AND COMMUNICATION OF EXPLICIT ENVIRONMENTAL CLAIMS (GREEN
28 CLAIMS DIRECTIVE) 2 (2023).

⁵ Lucy Atkinson & Sonny Rosenthal, *Signaling the Green Sell: The Influence of Eco-Label Source, Argument Specificity, and Product Involvement on Consumer Trust*, JOURNAL OF ADVERTISING, Feb. 2014, at 33, 33-45.

1 depicted in a non-greenwashed advertisement.”⁶

2 **B. A Brief Primer on the Voluntary Carbon Offset Market**

3 35. “Carbon offsets have become a popular tool in global efforts to
4 mitigate climate change. These programs work by offering regulated polluters
5 the opportunity to increase their own emissions if they subsidize equivalent
6 emission reductions in unregulated markets.”⁷

7 36. “The most common offsets are based on avoiding the release of
8 additional carbon dioxide into the atmosphere, for example by preventing
9 deforestation or supporting renewable energy projects. The other, much more
10 expensive, option is to fund programs that actually remove CO₂ by planting
11 forests or employing machines that capture greenhouse gas from the air and store
12 them away.”⁸

13 37. “Offset logic goes like this: If it is cheaper for a company to buy an
14 offset that cuts emissions somewhere else instead of in their own operations, then
15 offsets are cost effective.”⁹ “With each investment, the corporations rack up
16 “credits” for the forests they save or restore, tokens representing a set amount of
17 carbon dioxide ostensibly kept out of the atmosphere by storing it safely in the
18 trees.”¹⁰

19 38. “On its face, the exchange seems like a win-win: Huge sums of

20 ⁶ *Protecting consumers from Greenwashing*, THE BEHAVIOURAL INSIGHTS TEAM BLOG, (Jun.
21 23, 2022), <https://www.bi.team/blogs/there-is-a-growing-epidemic-of-climate-anxiety/>

22 ⁷ RAPHAEL CALEL ET AL., DO CARBON OFFSETS OFFSET CARBON? 1 (GRANTHAM RSCH. INST.
ON CLIMATE CHANGE AND THE ENV’T ET AL. EDS., 2021).

23 ⁸ Jess Shankleman & Akshat Rathi, *Net Zero Is Hard Work, So Companies Are Going ‘Carbon
24 Neutral’*, BLOOMBERG (Jul. 19, 2021, 3:50 AM),
[https://www.bloomberg.com/news/articles/2021-07-19/offsets-can-play-a-role-to-make-](https://www.bloomberg.com/news/articles/2021-07-19/offsets-can-play-a-role-to-make-companies-carbon-responsible#xj4y7vzkg)
[companies-carbon-responsible#xj4y7vzkg](https://www.bloomberg.com/news/articles/2021-07-19/offsets-can-play-a-role-to-make-companies-carbon-responsible#xj4y7vzkg)

25 ⁹ Betsy Vereckey, *How to Choose Carbon Offsets that Actually Cut Emissions*, MIT SLOAN
26 SCH. (Nov. 2, 2022), [https://mitsloan.mit.edu/ideas-made-to-matter/how-to-choose-carbon-](https://mitsloan.mit.edu/ideas-made-to-matter/how-to-choose-carbon-offsets-actually-cut-emissions)
[offsets-actually-cut-emissions](https://mitsloan.mit.edu/ideas-made-to-matter/how-to-choose-carbon-offsets-actually-cut-emissions)

27 ¹⁰ Josh Lederman, *Corporations are Turning to Forest Credits in the Race to go ‘Carbon
28 Neutral.’ Advocates Worry About ‘Greenwashing.’*, NBC NEWS (Jan. 18, 2023, 12:58 PM),
[https://www.nbcnews.com/news/world/corporations-are-turning-forest-credits-race-go-carbon-](https://www.nbcnews.com/news/world/corporations-are-turning-forest-credits-race-go-carbon-neutral-advocat-rcna7259)
[neutral-advocat-rcna7259](https://www.nbcnews.com/news/world/corporations-are-turning-forest-credits-race-go-carbon-neutral-advocat-rcna7259)

1 money are funneled into environmental projects, mostly in poor countries with
2 less ability to pursue large-scale forest protection on their own,” while companies
3 “can say they’re zeroing out their carbon footprints by offsetting whatever
4 emissions they can’t eliminate from their own operations with CO₂ reductions
5 elsewhere on the planet.”¹¹

6 39. “The last decade has seen billions of carbon offsets issued to project
7 developers around the world, providing opportunities for regulatory compliance
8 at lower cost.”¹² Interest in projects that prevent deforestation has risen “[i]n
9 recent years, [as] a long list of Fortune 500 companies has begun purchasing
10 credits from forest projects.”¹³ “The market for [prevented deforestation carbon
11 offset credits] credits is estimated in the hundreds of millions of dollars, a
12 number growing year upon year as a cottage industry to sell, trade and
13 authenticate forest credits has taken shape.”¹⁴

14 40. Offset programs all promote themselves as nominally certified.
15 Certification and verification is essential—“when offset programs support
16 projects that would have been developed anyway, they not only waste the limited
17 resources available to mitigate climate change but also contribute to climate
18 change by increasing global emissions.”¹⁵ Unfortunately, the voluntary carbon
19 offset market is self-regulated, leading to “multiple, competing ‘certification’
20 standards and a dizzying array of organizations or companies that act as
21 middlemen, authenticating supposed greenhouse gas reductions and connecting
22

23 ¹¹ *Id.*

24 ¹² RAPHAEL CALEL ET AL., DO CARBON OFFSETS OFFSET CARBON? 30 (GRANTHAM RSCH.
INST. ON CLIMATE CHANGE AND THE ENV’T ET AL. EDS., 2021).

25 ¹³ Josh Lederman, *Corporations are Turning to Forest Credits in the Race to go ‘Carbon*
26 *Neutral.’ Advocates Worry About ‘Greenwashing.’*, NBC NEWS (Jan. 18, 2023, 12:58 PM),
<https://www.nbcnews.com/news/world/corporations-are-turning-forest-credits-race-go-carbon-neutral-advocat-rcna7259>

27 ¹⁴ *Id.*

28 ¹⁵ RAPHAEL CALEL ET AL., DO CARBON OFFSETS OFFSET CARBON? 30 (GRANTHAM RSCH.
INST. ON CLIMATE CHANGE AND THE ENV’T ET AL. EDS., 2021).

1 credit buyers and sellers.”¹⁶ Lack of standardization is not the only barrier to
2 verification, as the market is also plagued by structural inability to track
3 genuine progress and poor mathematical modeling. For instance, in the context
4 of prevented deforestation, “[m]easuring activity on the ground in far-flung
5 rainforests can be incredibly difficult.”¹⁷ And in an analysis of the “world’s
6 largest carbon offset program,” which primarily arranges for the purchase of
7 renewable energy offsets, researchers estimated “that at least 52% of approved
8 carbon offsets were allocated to projects that would very likely have been built
9 anyway”—“a substantial misallocation of resources.”¹⁸

10 41. There are also inherent conflicts of interest in the standard offset
11 verification process. According to ecologist Dan Nepstad, the president of the
12 Earth Innovation Institute, “the carbon project developer” “hires the auditors. So
13 the auditors are working for the company that would benefit, really, from a good
14 result.”¹⁹ That means “it’s up to companies to do their own due diligence to
15 know that the credits they’re buying are legitimate.”²⁰

16 **C. Companies Purchase Carbon Offsets to Claim Carbon**
17 **Neutrality, and Said Representations are Effective on**
18 **Consumers**

19 42. Certain companies have also announced they are “carbon neutral” or
20 working towards becoming “net-zero.” Climate-related claims that goods,
21 services, or entities are “carbon neutral” or “100% CO2 compensated” are often

22 ¹⁶ Josh Lederman, *Corporations are Turning to Forest Credits in the Race to go ‘Carbon*
23 *Neutral.’ Advocates Worry About ‘Greenwashing.’*, NBC NEWS (Jan. 18, 2023, 12:58 PM),
24 <https://www.nbcnews.com/news/world/corporations-are-turning-forest-credits-race-go-carbon-neutral-advocat-rcna7259>

25 ¹⁷ *Id.*

26 ¹⁸ RAPHAEL CALEL ET AL., DO CARBON OFFSETS OFFSET CARBON? 30 (GRANTHAM RSCH.
27 INST. ON CLIMATE CHANGE AND THE ENV’T ET AL. EDS., 2021).

28 ¹⁹ Josh Lederman, *Corporations are Turning to Forest Credits in the Race to go ‘Carbon*
Neutral.’ Advocates Worry About ‘Greenwashing.’, NBC NEWS (Jan. 18, 2023, 12:58 PM),
<https://www.nbcnews.com/news/world/corporations-are-turning-forest-credits-race-go-carbon-neutral-advocat-rcna7259>

²⁰ *Id.*

1 predicated on the company having “offset” its carbon emissions by purchasing
2 “carbon credits” “generated outside the company’s value chain, for example
3 from forestry or renewable energy projects.”²¹ The basic premise of carbon
4 offsets is that a company will invest money into a project with ostensibly positive
5 environmental impact and in return they will receive “carbon offset credits” that
6 estimate the project’s carbon-reducing impact. Though the “methodologies
7 underpinning offsets vary widely and are not always transparent, accurate, or
8 consistent,”²² in theory, a company will only claim to be carbon neutral when
9 they have accrued enough carbon credits in a year to fully “offset” the carbon
10 emissions produced by their annual business operations. In the words of Delta’s
11 Managing Director of Sustainability, Amelia DeLuca, being carbon neutral
12 means that “for everything we emit, we take an action, though in our space
13 mostly avoiding deforestation, to neutralize those emissions.”²³

14 43. Carbon neutral representations are effective on consumers,
15 especially for goods and services that consumers identify as otherwise
16 environmentally harmful. A 2015 study found that “the presence of a carbon-
17 neutral label in an advertisement, regardless of the type of product, leads to more
18 favorable perceptions of company environmental concern” while the presence of
19 the carbon neutral label leads to “more pronounced increase[s]’ in consumer
20 perceptions of company environmental concern” when the product in question is
21 “environmentally harmful” than when it is “environmentally neutral.”²⁴

23 ²¹ EUROPEAN COMM’N, DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON
24 SUBSTANTIATION AND COMMUNICATION OF EXPLICIT ENVIRONMENTAL CLAIMS (GREEN
CLAIMS DIRECTIVE) 31 (2023).

25 ²² *Id.*

26 ²³ Brands Unbridled, *Delta Air Lines: Taking Climate Commitments to New Heights*,
STORYHORSE, (Nov. 1, 2021), <https://storyhorsebranding.com/perspective/delta-airlines-taking-climate-commitments-to-new-heights/>

27 ²⁴ Amy Stokes & Anna M. Turri, *Consumer Perceptions of Carbon Labeling in Print*
28 *Advertising: Hype or Effective Communication Strategy?*, JOURNAL OF MARKETING
COMMUNICATIONS, 2015, at 300, 300-315.

44. This is further corroborated by a March 2022 report documenting “a simulated market study” which “revealed that 87% of Americans value carbon-neutral labeled products over similar ‘unlabeled’ products” and “that this value is driven by better brand perceptions and feeling better when buying the product.” This value was not merely reputational; “[p]eople placed a considerable monetary value on carbon-neutral products.” In particular, an experiment found “that consumers consistently reported they were willing to pay more for [carbon-neutral] labeled products compared to equivalent products in a shopping scenario. The [carbon-neutral] label held substantial appeal across demographics, skewing slightly towards women. Carbon neutral products were similarly appealing across income, post-high school education levels, race, and age.”²⁵

45. At the same time, consumers have reason to be concerned about aviation emissions. “Over the past two decades, CO2 emissions from aviation have increased rapidly.” “Although the energy intensity of commercial passenger aviation has declined, due to improvements in the operational and technical efficiency measures adopted by airlines, this has been more than offset by the CO2 emissions resulting from the rapid growth in passenger numbers.”²⁶

D. Delta Claims Carbon Neutrality, Predicated on Carbon Offsets, in Order to Encourage Consumers to Fly Delta

46. In February 2020, Delta CEO Ed Bastian announced that Delta was going “fully carbon neutral” as of March 1, 2020.²⁷ In order to achieve this goal,

²⁵ Graham Gephart, *Understanding How Consumers Value Climate Neutral Certification*, CLIMATE NEUTRAL (Mar. 30, 2022), <https://www.climateneutral.org/blog/understanding-how-consumers-value-climate-neutral-certification>

²⁶ SEAN HEALY, SCOPING VOLUNTARY CORPORATE CLIMATE ACTION IN THE EUROPEAN AVIATION SECTOR 8 (ÖKO-INSTITUT ET AL. EDS., 2022).

²⁷ Jessica Bursztynsky, *Delta Airlines CEO Announces the Carrier will go ‘Fully Carbon Neutral’ Next Month*, CNBC (Feb. 14, 2020, 7:27 AM), <https://www.cnbc.com/2020/02/14/delta-air-lines-ceo-carrier-will-go-fully-carbon-neutral-next-month.html>

1 Bastian stated Delta was committing to using carbon removal and transitioning to
2 sustainable fuels, committing “a billion dollars over this decade, or close to \$100
3 million dollars a year.”²⁸ On the question of carbon offsets, Bastian said “carbon
4 offsets are “not the solution, there are not enough to go around...carbon offsets
5 have a lot of efficacy issues, and quite honestly in some places they do more
6 harm than they do good, or pay people to not do harm, that is not really helping
7 our planet.”²⁹

8 47. Since March 2020, Defendant has marketed itself across various
9 platforms as “the world’s first carbon neutral airline.”

10 48. A September 2021 video advertisement states that Delta is
11 “committed to becoming the world’s first carbon neutral airline on a global
12 basis.”³⁰ As reported by Adweek, Delta’s Managing Director of Sustainability,
13 Amelia DeLuca, stated that Delta’s intention for the advertisement was to
14 communicate that “[w]hen you book with Delta, you can feel confident that we
15 will offset the carbon emitted from your flight with us.”³¹ The airline broadcast
16 the campaign widely, “with placements airing on NBCUniversal properties and
17 digitally in The New York Times, Lonely Planet and HuffPost Black Voices”
18 along with audio and video content “appearing on Pandora, Spotify, Stitcher and
19 YouTube,” complemented with “targeted digital ads” “on social platforms
20 including Facebook, Instagram, Reddit and Twitter.”³² Molly Battin, Delta’s
21 Senior Vice President of Marketing, herself acknowledged that the purpose of the
22 campaign was to raise awareness of Delta’s carbon neutral status after
23 ““proprietary research show[ed] that [Delta] customers [weren’t] aware’ of
24

25 ²⁸ *Id.*

26 ²⁹ *Id.*

27 ³⁰ Kathryn Lundstrom, *Delta’s New Ad Campaign Takes Aim at Travel-Related Climate Guilt*,
ADWEEK (Sep. 13, 2021), <https://www.adweek.com/brand-marketing/delta-travel-related-climate-guilt-carbon-neutral/>

28 ³¹ *Id.*

³² *Id.*

1 Delta's carbon neutral status," and that the media plan aimed to establish Delta
2 "as an industry leader for sustainable change."³³

3 49. A September 28, 2021 LinkedIn Post by DeLuca (simultaneously
4 posted to Delta's corporate website, and remaining there as of the date of filing)
5 went on to state that Defendant "became the first carbon neutral airline on a
6 global basis" in 2020, a commitment "from March 2020 onward, balancing our
7 emissions with investments to remove carbon across our global operations."³⁴
8 DeLuca repeated these representations in a November 1, 2021 episode of the
9 podcast Brands Unbridled, again advertising Delta as "the first carbon neutral
10 airline in the world" such that "since March 1st, 2020 onward, until today and
11 going forward, we are a carbon neutral airline."³⁵ DeLuca went on, stating that
12 "for everything we emit, we take an action, though in our space mostly avoiding
13 deforestation, to neutralize those emissions." And a November 4, 2021,
14 LinkedIn post stated that "[i]n March 2020, Delta became the first carbon neutral
15 airline globally."³⁶

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24 ³³ *Id.*

25 ³⁴ Amelia DeLuca, *An Update on Our Path to Net Zero*, DELTA NEWS HUB (Sep. 28, 2021,
12:00 PM), <https://news.delta.com/update-our-path-net-zero>

26 ³⁵ Brands Unbridled, *Delta Air Lines: Taking Climate Commitments to New Heights*,
STORYHORSE, (Nov. 1, 2021), <https://storyhorsebranding.com/perspective/delta-airlines-taking-climate-commitments-to-new-heights/>

27 ³⁶ Delta Air Lines Inc., *An Update on Our Path to Net Zero*, DELTA NEWS HUB (Nov. 4, 2021,
28 12:45 PM), <https://news.delta.com/delta-joins-first-movers-coalition-drive-breakthrough-technologies-and-sustainable-fuels>

1 50. During this time, Delta also printed and put into circulation an in-
2 flight napkin, a photo of which is below, representing that Delta was “Carbon
3 Neutral Since March 2020.”



14 51. Defendant also made specific representations as to the nature,
15 impact, and structure of its carbon offset portfolio. An April 22, 2021 “Earth
16 Day” post on Delta’s website claimed that as part of Delta’s “commitment to
17 carbon neutrality,” Delta was intending to purchase “more than \$30 million for
18 portfolio [sic] of verified offsets to mitigate 13 million metric tons of Delta’s
19 2020 emissions.”³⁷ Those investments ended up including “protecting half a
20 million acres in an Indonesian peat swamp forest and a Cambodian wildlife
21 sanctuary.”³⁸

22 52. These representations were clearly made with the intent to
23 encourage air travel on Delta. Delta’s September 2021 video advertisement that

24 ³⁷ Delta Air Lines Inc., *Delta Spotlights Ambitious Carbon Neutrality Plan on Path to Zero-*
25 *impact Aviation this Earth Month*, DELTA NEWS HUB (Apr. 22, 2021, 11:30 AM),
26 [https://news.delta.com/delta-spotlights-ambitious-carbon-neutrality-plan-path-zero-impact-](https://news.delta.com/delta-spotlights-ambitious-carbon-neutrality-plan-path-zero-impact-aviation-earth-month)
[aviation-earth-month](https://news.delta.com/delta-spotlights-ambitious-carbon-neutrality-plan-path-zero-impact-aviation-earth-month)

27 ³⁸ Josh Lederman, *Corporations are Turning to Forest Credits in the Race to go ‘Carbon*
28 *Neutral.’ Advocates Worry About ‘Greenwashing.’*, NBC NEWS (Jan. 18, 2023, 12:58 PM),
[https://www.nbcnews.com/news/world/corporations-are-turning-forest-credits-race-go-carbon-](https://www.nbcnews.com/news/world/corporations-are-turning-forest-credits-race-go-carbon-neutral-advocat-rcna7259)
[neutral-advocat-rcna7259](https://www.nbcnews.com/news/world/corporations-are-turning-forest-credits-race-go-carbon-neutral-advocat-rcna7259)

1 mentions its carbon neutrality is premised around encouraging consumers to see
2 the world *and* save the world, and in September 2022, Delta’s newly appointed
3 Sustainability Officer reiterated that the purpose of Delta’s carbon neutral
4 representations was to convince consumers that they do not “have to choose
5 between seeing the world and saving the world.”³⁹

6 **E. Defendant’s Claims of Carbon Neutrality are False and**
7 **Misleading**

8 53. Delta’s representations of carbon neutrality are provably false and
9 misleading. Rather than achieving carbon neutrality through sustainable fuels
10 and carbon removals, as initially promised, Delta has instead premised their
11 carbon neutrality on the purchase of carbon offsets from the voluntary carbon
12 market. Nearly all offsets issued by the voluntary carbon offset market
13 overpromise and underdeliver on their total carbon impact due to endemic
14 methodological errors and fraudulent accounting on behalf of offset vendors,
15 resulting “in offset credits of low environmental integrity and credibility that
16 mislead consumers when they are relied upon in explicit environmental
17 claims.”⁴⁰ “The methodologies underpinning offsets vary widely and are not
18 always transparent, accurate, or consistent” leading to “significant risks of
19 overestimations and double counting of avoided or reduced emissions.”⁴¹ The
20 primary issues with the carbon offset market are the offsets’ lack of verifiability,

21 ³⁹ Philba Wahba, *Delta’s Sustainability Chief Says People Don’t Have to Choose Between*
22 *Flying and Protecting the Environment*, FORTUNE (Sep. 23, 2022, 5:47 AM),
23 https://fortune.com/2022/09/23/delta-sustainability-chief-climate-change-esg-dont-choose-between-flying-protecting-environment/?_ptid=%7Bkpx%7DAAAAvBfj3ejzgQoKY2ZRajJmTTN6ahIQbGhneDlqanZpbzR5cmh1ZxoMRVg1M0IEU01IUVNQIiUxODA4N2RnMGMwLTawMDAzMjAydDhlYtJpNWZwcWMyNGNqaDBvKhhzaG93T2ZmZXJUSVdTtIZWNk9RUEIxNDIwAToMT1RYVjlWNkRMVV15Qg1PVFYySzVEMEpgTTRRUhJ2LYIA8BZ6M2U3bDRpcXNaCzQ3LjE1NS42My40YgNkd2NordrwogZwBHgM
24
25
26

27 ⁴⁰ EUROPEAN COMM’N, DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON
28 SUBSTANTIATION AND COMMUNICATION OF EXPLICIT ENVIRONMENTAL CLAIMS (GREEN
CLAIMS DIRECTIVE) 31 (2023).

⁴¹ *Id.*

1 additionality, immediacy, and durability.⁴²

2 54. Any one of these issues can mean that “a proposed offset won’t
3 actually reduce emissions much, if at all.” And it is only “when companies have
4 achieved all the reductions they possibly can, and balanced the rest with carbon
5 removals, would they achieve ‘carbon-neutrality.’”⁴³ This is because “if it would
6 be preferable to simply avoid (not offset) the emissions in a scenario where the
7 world followed an efficient and equitable approach to eliminating emissions, the
8 act of offsetting cannot make up for this forgone opportunity. Instead, the act of
9 offsetting merely sets the world on a slightly less worse path, but one that still
10 deviates from what is optimal.”⁴⁴ This is particularly true when “carbon credits
11 are sold by companies to ‘compensate’ for an activity where optimal mitigation
12 pathways require consumer behavioral change,” such as “aviation, where
13 identified pathways refer to the need for demand management, or limits on
14 flying.”⁴⁵ And the risks of miscalculation are greater in the aviation sector, as
15 “[a]viation emissions are especially impactful, since their total net effect is
16 enhanced through a variety of non-CO2 radiative forcing processes that occur at
17 high altitudes.”⁴⁶

18 55. The offset industry is replete with well-documented problems,
19 explained further below. Regardless of those granular details, it is simply
20 indisputable that issues with the offset market have been well-documented and
21 publicized. “In the EU, a 2021 study revealed that 85 percent of offsets failed to
22

23 ⁴² Betsy Vereckey, *How to Choose Carbon Offsets that Actually Cut Emissions*, MIT SLOAN
24 SCH. (Nov. 2, 2022), [https://mitsloan.mit.edu/ideas-made-to-matter/how-to-choose-carbon-](https://mitsloan.mit.edu/ideas-made-to-matter/how-to-choose-carbon-offsets-actually-cut-emissions)
25 [offsets-actually-cut-emissions](https://mitsloan.mit.edu/ideas-made-to-matter/how-to-choose-carbon-offsets-actually-cut-emissions)

26 ⁴³ Jess Shankleman & Akshat Rathi, *Net Zero Is Hard Work, So Companies Are Going*
27 *‘Carbon Neutral’*, BLOOMBERG (Jul. 19, 2021, 3:50 AM),
28 [https://www.bloomberg.com/news/articles/2021-07-19/offsets-can-play-a-role-to-make-](https://www.bloomberg.com/news/articles/2021-07-19/offsets-can-play-a-role-to-make-companies-carbon-responsible#xj4y7vzkg)
29 [companies-carbon-responsible#xj4y7vzkg](https://www.bloomberg.com/news/articles/2021-07-19/offsets-can-play-a-role-to-make-companies-carbon-responsible#xj4y7vzkg)

30 ⁴⁴ DERIK BROEKHOFF, EXPERT REPORT 5 (STOCKHOLM ENV’T INST. ET AL. EDS., 2022).

31 ⁴⁵ *Id.* at 6.

32 ⁴⁶ *Id.*

1 reduce emissions. In response, EU member states decided offsets would not
2 count toward European climate goals after 2021.”⁴⁷ “In 2019, a study similarly
3 found that 82 per cent of California’s offset credits do not provide climate
4 benefits.”⁴⁸ Yet despite all of these concerns, Delta has been specifically
5 identified as a company that relies on dubious offsets that fall victim to all of
6 these issues, rendering its claims of carbon neutrality false and misleading and
7 particularly injurious in light of Delta’s massive CO2 footprint as a major
8 worldwide airline.⁴⁹

9 i. Delta’s Purportedly “Verified” Offsets Are Predicated on
10 Misleading and Unverifiable Accounting of Carbon Impact

11 56. The first reason it is false and misleading for Delta to represent it is
12 carbon neutral on the basis of its offsets portfolio is that Delta’s offsets are
13 predicated on misleading and unverifiable accounting of the offset’s carbon
14 impact, due to the voluntary carbon market’s “tendency to inflate” carbon
15 impacts, resulting “in phantom carbon credits.”⁵⁰ Accurate accounting is
16 essential for carbon neutrality claims to be true, as “[if a company’s] calculations
17 are not perfect, you’re doing harm,” due to the fact that the offsets need to
18 meaningfully cancel out “[t]he consequences of adding carbon dioxide to the
19 atmosphere,” which “extend centuries, if not millennia, into the future.”⁵¹

20 57. Verification is important for all kinds of offsets. Whether they are

21 ⁴⁷ Lois Parshley, *California’s Carbon Offsetting May Actually be Increasing Emissions*, NEW
22 SCIENTIST (Dec. 22, 2022), [https://www.newscientist.com/article/2352926-californias-carbon-](https://www.newscientist.com/article/2352926-californias-carbon-offsetting-may-actually-be-increasing-emissions/)
[offsetting-may-actually-be-increasing-emissions/](https://www.newscientist.com/article/2352926-californias-carbon-offsetting-may-actually-be-increasing-emissions/)

23 ⁴⁸ *Id.*

24 ⁴⁹ Akshat Rathi et al., *Junk Carbon Offsets Are What Make These Big Companies ‘Carbon*
Neutral’, BLOOMBERG (Nov. 21, 2022), [https://www.bloomberg.com/graphics/2022-carbon-](https://www.bloomberg.com/graphics/2022-carbon-offsets-renewable-energy/#xj4y7vzkg)
[offsets-renewable-energy/#xj4y7vzkg](https://www.bloomberg.com/graphics/2022-carbon-offsets-renewable-energy/#xj4y7vzkg)

25 ⁵⁰ Patrick Greenfield, *Carbon Offsets Used by Major Airlines Based on Flawed System, Warn*
Experts, THE GUARDIAN (May 4, 2021),
26 [https://www.theguardian.com/environment/2021/may/04/carbon-offsets-used-by-major-](https://www.theguardian.com/environment/2021/may/04/carbon-offsets-used-by-major-airlines-based-on-flawed-system-warn-experts)
[airlines-based-on-flawed-system-warn-experts](https://www.theguardian.com/environment/2021/may/04/carbon-offsets-used-by-major-airlines-based-on-flawed-system-warn-experts)

27 ⁵¹ Lois Parshley, *California’s Carbon Offsetting May Actually be Increasing Emissions*, NEW
28 SCIENTIST (Dec. 22, 2022), [https://www.newscientist.com/article/2352926-californias-carbon-](https://www.newscientist.com/article/2352926-californias-carbon-offsetting-may-actually-be-increasing-emissions/)
[offsetting-may-actually-be-increasing-emissions/](https://www.newscientist.com/article/2352926-californias-carbon-offsetting-may-actually-be-increasing-emissions/)

1 in the form of avoided deforestation, avoided emissions, or green technology
2 investments, a company “must be able to verify that emissions actually fall. If
3 you’re going to plant trees, you have to verify that they were actually planted and
4 that they will survive for decades to come. If you fund efficient, low-emission
5 cook stoves for the rural poor in the developing world, you have to verify that
6 they are actually delivered, kept in working condition, and used.”⁵²

7 58. Yet, the voluntary carbon market is replete with dubious projections
8 misleadingly packaged as guarantees. “Research into Verra, the world’s leading
9 carbon standard for the rapidly growing \$2bn (£1.6bn) voluntary offsets market,
10 has found that, based on analysis of a significant percentage of the projects, more
11 than 90% of their rainforest offset credits – among the most commonly used by
12 companies – are likely to be ‘phantom credits’ and do not represent genuine
13 carbon reductions.”⁵³

14 59. The three major voluntary carbon credit vendors from whom
15 Defendant purchases offsets have repeatedly engaged in fraudulent projections
16 that grossly overstate their guarantee of carbon reduction. One major problem is
17 severe errors in how vendors project future offsetting. Researchers have found
18 that in the context of avoided deforestation offsets, “in all projects that
19 established crediting baselines using historical trends,” “the crediting baselines
20 significantly overstate deforestation in comparison to the counterfactual
21 estimates based on synthetic controls.”⁵⁴ In other words, offset vendors’ routine
22

23 ⁵² Betsy Vereckey, *How to Choose Carbon Offsets that Actually Cut Emissions*, MIT SLOAN
24 SCH. (Nov. 2, 2022), [https://mitsloan.mit.edu/ideas-made-to-matter/how-to-choose-carbon-](https://mitsloan.mit.edu/ideas-made-to-matter/how-to-choose-carbon-offsets-actually-cut-emissions)
offsets-actually-cut-emissions

25 ⁵³ Patrick Greenfield, *Revealed: More Than 90% of Rainforest Carbon Offsets by Biggest*
26 *Provider are Worthless, Analysis Shows*, THE GUARDIAN (Jan. 18, 2023),
[https://www.theguardian.com/environment/2023/jan/18/revealed-forest-carbon-offsets-](https://www.theguardian.com/environment/2023/jan/18/revealed-forest-carbon-offsets-biggest-provider-worthless-verra-aoe)
biggest-provider-worthless-verra-aoe

27 ⁵⁴ THALES A. P. WEST ET AL., OVERSTATED CARBON EMISSION REDUCTIONS FROM VOLUNTARY
28 REDD+ PROJECTS IN THE BRAZILIAN AMAZON 3 (ERIC F. LAMBIN ED., NAT’L ACAD. OF SCI.,
2020).

1 erroneous reliance on historical data leads to the consistent overestimation of the
2 total risks to existing forests, leading to significant overinflation of the estimated
3 carbon reduction from the corresponding offsets. Investigations have further
4 revealed that all three major voluntary carbon markets have engaged in
5 fraudulently double and triple counting of projects, crediting several companies
6 with the entire carbon offset from the same plot of land.⁵⁵⁵⁶

7 60. These issues are specific to Delta's offset portfolio. Delta's offset
8 portfolio is primarily composed of green technology investment offsets,⁵⁷ with an
9 additional substantial investment in prevented deforestation.⁵⁸ For instance, in
10 2021, Delta's offsets portfolio was 50% renewable energy offsets, 44%
11 agricultural forestry and other land use offsets, and 6% renewable offsets.⁵⁹ Yet
12 these are precisely the kinds of offsets that are most likely to be the product of
13 inaccurate baselining and double counting.

14 61. These are precisely the kinds of offsets that are most likely to be the
15 product of inaccurate baselining and double counting. As noted above, a review
16 of the world's largest carbon offset project, the green technology offsets project
17 CDM, (whose green technology investment offsets are present in Delta's offset
18 portfolio) revealed that there were serious issues with the project's baseline
19 assumptions, undermining the likely value of more than half of the offsets sold
20

21 ⁵⁵ EUROPEAN COMM'N, DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON
22 SUBSTANTIATION AND COMMUNICATION OF EXPLICIT ENVIRONMENTAL CLAIMS (GREEN
CLAIMS DIRECTIVE) (2023).

23 ⁵⁶ DERIK BROEKHOFF, EXPERT REPORT (STOCKHOLM ENV'T INST. ET AL. EDS., 2022).

24 ⁵⁷ Akshat Rathi et al., *Junk Carbon Offsets Are What Make These Big Companies 'Carbon
Neutral'*, BLOOMBERG (Nov. 21, 2022), [https://www.bloomberg.com/graphics/2022-carbon-](https://www.bloomberg.com/graphics/2022-carbon-offsets-renewable-energy/#xj4y7vzkg)
offsets-renewable-energy/#xj4y7vzkg

25 ⁵⁸ Josh Lederman, *Corporations are Turning to Forest Credits in the Race to go 'Carbon
Neutral.'* *Advocates Worry About 'Greenwashing.'*, NBC NEWS (Jan. 18, 2023, 12:58 PM),
26 [https://www.nbcnews.com/news/world/corporations-are-turning-forest-credits-race-go-carbon-](https://www.nbcnews.com/news/world/corporations-are-turning-forest-credits-race-go-carbon-neutral-advocat-rcna7259)
neutral-advocat-rcna7259

27 ⁵⁹ *US Airline Buys 12 Million mt of Carbon Offsets for \$137 Million*, QUANTUM COMMODITY
28 INTEL. (May 9, 2022), [https://www.qcintel.com/carbon/article/us-airline-buys-12-million-mt-](https://www.qcintel.com/carbon/article/us-airline-buys-12-million-mt-of-carbon-offsets-for-137-million-5848.html)
of-carbon-offsets-for-137-million-5848.html

1 by the project.⁶⁰ The issue with CDM projects is that the offsets were routinely “
2 awarded to projects that would have been developed without the subsidy”
3 generated by the sales of the offsets, such that the offsets “did not represent
4 emissions savings.”⁶¹ In fact, CDM’s offset allocation “compare[d] unfavorably
5 with a lottery, indicating that there is substantial room for improvement in the
6 design and implementation of the project selection mechanism.”⁶² This is no
7 mere inefficiency; “having a process that accurately screens out projects that do
8 not require subsidies is essential to safeguarding the integrity of offset
9 programs.”⁶³ Inaccurate projections lead to the misallocation of scarce climate
10 change mitigation resources and the rubber stamping of net increase in global
11 emissions. Researchers found that rather than mitigate climate change, CDM’s
12 misallocation of carbon offset funds “may have increased global carbon dioxide
13 emissions by 6.1 billion tonnes, equivalent to running 20 one-gigawatt coal
14 power plants for their entire 50-year lifespan.”⁶⁴

15 62. The same is true for deforestation projects. Delta’s 2021
16 agricultural, forestry and other land use offsets were all verified by the carbon
17 offset vendor Verra. Yet as noted above, recent reporting revealed that 90% of
18 rainforest offsets provided by Verra during this period were predicated on poor
19 baseline assumptions, and in fact had zero climate impact.⁶⁵

20 ii. Delta’s Offsets are Non-Additional and Therefore Have Little
21 to no Climate Impact

22 63. The second reason it is false and misleading for Delta to represent

23 ⁶⁰ RAPHAEL CALEL ET AL., DO CARBON OFFSETS OFFSET CARBON? 21 (GRANTHAM RSCH.
24 INST. ON CLIMATE CHANGE AND THE ENV’T ET AL. EDS., 2021).

25 ⁶¹ *Id.*

26 ⁶² *Id.*

27 ⁶³ *Id.*

28 ⁶⁴ *Id.*

⁶⁵ Patrick Greenfield, *Revealed: More Than 90% of Rainforest Carbon Offsets by Biggest Provider are Worthless, Analysis Shows*, THE GUARDIAN (Jan. 18, 2023), <https://www.theguardian.com/environment/2023/jan/18/revealed-forest-carbon-offsets-biggest-provider-worthless-verra-aoe>

1 itself as carbon neutral on the basis of its offset portfolio is that Defendant has
2 almost exclusively relied on carbon offsets that are “non-additional.” A project
3 is “non-additional” when it credits carbon offsets for reductions that would have
4 occurred regardless of the involvement of the voluntary carbon market. Carbon
5 reductions “are additional if they would not have occurred in the absence of a
6 market for offset credits. If the reductions would have happened anyway – i.e.,
7 without any prospect for project owners to sell carbon offset credits – then they
8 are not additional.

9 64. Additionality is essential for the quality of carbon offset credits – if
10 their associated GHG reductions are not additional, then purchasing offset credits
11 in lieu of reducing your own emissions will make climate change worse.”⁶⁶
12 Accordingly, any project that is non-additional is a carbon offset in name only,
13 such that any claim of carbon neutrality that is even fractionally predicated on
14 non-additional carbon projects is definitively false. Yet, according to one study,
15 “at least 52% of approved carbon offsets were allocated to projects that would
16 very likely have been built anyway.” “In addition to wasting scarce resources,”
17 the sale of non-additional offsets “to regulated polluters” has likely “substantially
18 increased global carbon dioxide emissions.”⁶⁷

19 65. In practice, only “4% of offsets actually remove CO₂ from the
20 atmosphere.”⁶⁸ This is particularly concerning in light of the fact that even
21 though carbon offsetting is not inherently mutually exclusive to initiatives that
22 aim to directly reduce a company’s emissions, e.g. reducing energy consumption
23 or transitioning to low-or-no-carbon fuel sources, carbon offsetting often replaces

24 ⁶⁶ *What Makes a High-Quality Carbon Offset?: Additionality*, CARBON OFFSET GUIDE,
25 <https://www.offsetguide.org/high-quality-offsets/additionality/> (May 19, 2023, 2:17 PM).

26 ⁶⁷ RAPHAEL CALEL ET AL., DO CARBON OFFSETS OFFSET CARBON? 1 (GRANTHAM RSCH. INST.
ON CLIMATE CHANGE AND THE ENV’T ET AL. EDS., 2021).

27 ⁶⁸ Akshat Rathi & Ben Elgin, *What Are Carbon Offsets and How Many Really Work?*,
28 BLOOMBERG (Jun. 14, 2022),
<https://www.bloomberg.com/news/articles/2022-06-14/what-are-carbon-offsets-and-how-many-really-work-quicktake>

1 direct emissions reductions because it is typically more cost effective for
2 companies to engage in carbon offsetting than it would be for them to
3 meaningfully decrease the carbon footprint and overall environmental impact of
4 their products/services. In practice, the low price of carbon offsets often deters
5 companies from pursuing “emissions reductions in their own operations and
6 value chains,” despite adequate contributions to global climate change mitigation
7 targets necessarily requiring the “effective reductions of emissions across”
8 “operations and value chains” instead of reliance on offsets.⁶⁹ This makes non-
9 additional offsets particularly pernicious for global climate goals; not only do
10 they profoundly underperform other green efforts, but they provide companies a
11 discounted means of claiming they are making a difference when they are in fact
12 doing very little.

13 66. Delta has been identified as having almost exclusively relied on
14 non-additional offsets, with an offset portfolio consisting of “half renewables,
15 mostly wind and solar projects in India.”⁷⁰ “Selling offsets for small sums as a
16 way to support the economics of renewables doesn’t provide any real benefit if
17 it’s already cheaper than building new coal or gas power plants.” “The issue is
18 timing: many renewable offsets came into being just as solar and wind power
19 established herself as the cheapest source of energy in most countries.”⁷¹ “An
20 expert review of Delta’s largest single source of renewable offsets, the Los
21 Cocos II wind farm in the Dominican Republic, determined that it almost
22 certainly didn’t need additional support.”⁷² And, as revealed by an analysis of
23 the very wind projects in India from which Delta has heavily purchased offsets,

24 ⁶⁹ EUROPEAN COMM’N, DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON
25 SUBSTANTIATION AND COMMUNICATION OF EXPLICIT ENVIRONMENTAL CLAIMS (GREEN
CLAIMS DIRECTIVE) 31 (2023).

26 ⁷⁰ Akshat Rathi et al., *Junk Carbon Offsets Are What Make These Big Companies ‘Carbon*
27 *Neutral’*, BLOOMBERG (Nov. 21, 2022), [https://www.bloomberg.com/graphics/2022-carbon-](https://www.bloomberg.com/graphics/2022-carbon-offsets-renewable-energy/#xj4y7vzkg)
offsets-renewable-energy/#xj4y7vzkg

28 ⁷¹ *Id.*

⁷² *Id.*

1 “at least 52% of approved carbon offsets were allocated to projects that would
2 very likely have been built anyway.”⁷³

3 67. Similar additionality concerns are present with avoided
4 deforestation projects. A 2021 study “found that California’s offsets programs
5 systematically over-credits the carbon-absorbing potential of its offset properties
6 by nearly a third.” Further satellite analysis confirmed that “no additional carbon
7 is actually being sequestered in these forests than would have been without the
8 program.”⁷⁴

9 iii. Delta’s Offsets do not Provide Immediate Offsetting,
10 Misleadingly Claiming Carbon Offsets From Future Decades
11 of Projected Offsets Against Current Emissions

12 68. Third, Carbon offsets also need to be immediate. In the same way
13 there’s a time value to money, there is a time value to carbon: “Your flight today
14 dumps carbon dioxide into the atmosphere right now, worsening climate change
15 from this day forth. Saplings planted today won’t grow large enough to offset
16 today’s emissions for decades, nor will investments in speculative technologies
17 like nuclear fusion or direct air capture, even if they eventually become viable.”⁷⁵
18 The same is true for green technology investments; projections of decades of
19 fossil fuel replacement from a wind farm are a woefully imprecise means of
20 calculating the actual impact of technologies that may well become obsolete in
21 the intervening years. Consumers also expect that carbon neutral claims are
22 based on immediate carbon reductions. The very premise of claiming carbon
23 neutrality in a calendar year is that the year’s omissions were offset that year.

24 69. Nevertheless, Defendant’s offsets are by definition not-immediate,

25 ⁷³ RAPHAEL CALEL ET AL., DO CARBON OFFSETS OFFSET CARBON? 30 (GRANTHAM RSCH. INST.
ON CLIMATE CHANGE AND THE ENV’T ET AL. EDS., 2021).

26 ⁷⁴ Lois Parshley, *California’s Carbon Offsetting May Actually be Increasing Emissions*, NEW
SCIENTIST (Dec. 22, 2022), [https://www.newscientist.com/article/2352926-californias-carbon-](https://www.newscientist.com/article/2352926-californias-carbon-offsetting-may-actually-be-increasing-emissions/)
27 [offsetting-may-actually-be-increasing-emissions/](https://www.newscientist.com/article/2352926-californias-carbon-offsetting-may-actually-be-increasing-emissions/)

28 ⁷⁵ Betsy Vereckey, *How to Choose Carbon Offsets that Actually Cut Emissions*, MIT SLOAN
SCH. (Nov. 2, 2022), [https://mitsloan.mit.edu/ideas-made-to-matter/how-to-choose-carbon-](https://mitsloan.mit.edu/ideas-made-to-matter/how-to-choose-carbon-offsets-actually-cut-emissions)
[offsets-actually-cut-emissions](https://mitsloan.mit.edu/ideas-made-to-matter/how-to-choose-carbon-offsets-actually-cut-emissions)

1 despite Delta having repeatedly represented that the company is already “carbon
2 neutral.”

3 70. Defendant claims its purchase of offsets meant that its corporate
4 operations were “carbon-neutral” over a calendar year when the offsets in
5 question are in fact only projected future carbon reductions. In reality, the
6 company invested in various green projects, calculated future years of carbon
7 reductions or non-release from those projects, and then credited all of the years
8 of future reductions from the single year’s offset investments against a single
9 contemporary year of emissions. Therefore, Defendant’s representations that it
10 was “carbon-neutral” in a calendar year due to its purchase of offsets from the
11 voluntary carbon market are in fact false—Defendant had simply invested in
12 projects that, assuming nothing goes wrong, will altogether take all of those
13 future years to offset Defendant’s most recent year of carbon emissions.
14 “Regardless of quality, all [carbon offset] projects have long timelines and may
15 take years to scale, which make determining their future effects (and dollar
16 value) an act of educated guesswork.”⁷⁶ That means that “[n]o matter how
17 rigorously vetted a program might be,” offsets programs are “never literally
18 negating the emissions,” “even when companies that support [carbon offsetting]
19 projects claim to make your purchase carbon neutral today.”⁷⁷

20 iv. Delta’s Offsets are Impermanent and Therefore Offer no
21 Guarantee of Future Performance, Despite Delta’s Carbon
22 Neutral Claims Relying on Said Future Performance

23 71. Fourth, offsets also need to permanently sequester carbon in order to
24 meaningfully combat climate change. “Carbon dioxide emissions stay in the
25 atmosphere for a century or more, so you must offset an equivalent amount of
26 emissions for at least that long. Trees planted today are more likely to succumb

27 ⁷⁶ Katie Okamoto, *Don’t Be Fooled by ‘Carbon Neutral’ Shipping*, WIRECUTTER (Nov. 21,
28 2022), <https://www.nytimes.com/wirecutter/blog/what-is-carbon-neutral-shipping/>

⁷⁷ *Id.*

1 to wildfire, disease, pests, or extreme weather as the world warms, and do not
2 provide durable carbon storage.”⁷⁸ “To counterbalance fossil fuel emissions,
3 therefore, carbon credits must be associated with mitigation that is similarly
4 permanent. If mitigation is ‘reversed’ (i.e., carbon stored as a result of a
5 mitigation activity is subsequently emitted, so that no net reduction or removal
6 occurs), then it no longer contributes to staying within a global carbon budget,
7 and no longer serves a counterbalancing function. This is primarily a concern
8 with mitigation activities that result in enhanced carbon storage in biospheric
9 reservoirs (including trees, shrubs, soils, and other biological stores of
10 carbon).”⁷⁹

11 72. There is an inherent problem with crediting companies with the
12 environmental impacts of decades-long projections—“[i]t’s impossible to prove
13 a counterfactual.”⁸⁰ For instance, in the context of prevented deforestation,
14 “[r]ather than just valuing what forests are actually there, which are actively
15 providing a carbon sink or store right now, [carbon offset vendors] have to
16 surmise which forests would still be here versus which ones are the bonus forests
17 that were spared from the theoretical ax.”⁸¹

18 73. “Already, there are examples of forests associated with carbon
19 crediting projects being destroyed by catastrophic fires, including projects funded
20 by BP and Microsoft affected by the increasingly prevalent wildfires in the
21 American West (Hodgson 2021). Such impacts are leading credit buyers to re-
22 evaluate the risks of such projects. While some carbon offset programs, such as

23
24 ⁷⁸ Betsy Vereckey, *How to Choose Carbon Offsets that Actually Cut Emissions*, MIT SLOAN
25 SCH. (Nov. 2, 2022), [https://mitsloan.mit.edu/ideas-made-to-matter/how-to-choose-carbon-](https://mitsloan.mit.edu/ideas-made-to-matter/how-to-choose-carbon-offsets-actually-cut-emissions)
[offsets-actually-cut-emissions](https://mitsloan.mit.edu/ideas-made-to-matter/how-to-choose-carbon-offsets-actually-cut-emissions)

26 ⁷⁹ DERIK BROEKHOFF, EXPERT REPORT 7-8 (STOCKHOLM ENV’T INST. ET AL. EDS., 2022).

27 ⁸⁰ Patrick Greenfield, *Carbon Offsets Used by Major Airlines Based on Flawed System, Warn*
28 *Experts*, THE GUARDIAN (May 4, 2021),
[https://www.theguardian.com/environment/2021/may/04/carbon-offsets-used-by-major-](https://www.theguardian.com/environment/2021/may/04/carbon-offsets-used-by-major-airlines-based-on-flawed-system-warn-experts)
[airlines-based-on-flawed-system-warn-experts](https://www.theguardian.com/environment/2021/may/04/carbon-offsets-used-by-major-airlines-based-on-flawed-system-warn-experts)

⁸¹ *Id.* 2

1 the Gold Standard, maintain insurance mechanisms to address carbon losses
2 (essentially, ‘buffer reserves’ of credits that are issued but not circulated), there
3 are questions about whether they are sufficiently robust and it is doubtful that
4 such mechanisms can be effective over indefinite time periods.” For Gold
5 Standard offsets, “the obligation to compensate for ‘reversals’ (i.e., carbon
6 losses) may extend for as little as 20 years – far short of what is needed to fully
7 counterbalance carbon emissions.”⁸² Ultimately, “[t]he fragility of biospheric
8 carbon reservoirs has led some scientists to object to any use of NCS to offset
9 fossil carbon emissions.”

10 74. According to a report by the European Union, carbon offsets sold by
11 the three major carbon offset vendors have in fact routinely credited companies
12 with decades of projected increase in carbon offsetting from projects that
13 subsequently severely underperformed or were, in some cases, destroyed
14 altogether. Offset vendors claim they insure against catastrophic future events by
15 siloing offsets as insurance, but one study found that “one single disease, on a
16 single tree species called tanoak, would be enough to completely wipe out the
17 credits set aside for all disease-and insect-related mortality.”⁸³

18 75. Accordingly, any claim that Defendant is a carbon neutral company
19 is false and misleading, and Defendant either knew or should have known as
20 such--Defendant’s operations produce significant amounts of carbon into the
21 atmosphere, and its purchase of fraudulently accounted and dubiously designed
22 carbon offsets in no way make their operation produce no additional carbon year
23 over year. Despite the carbon offset market’s claims of verification, its ultimate
24 reliance on “ambitious and dynamic crediting baselines that depart from business
25 as usual” has produced inaccurate and misleading accounting. At the same time,

26
27 ⁸² DERIK BROEKHOFF, EXPERT REPORT 9 (STOCKHOLM ENV’T INST. ET AL. EDS., 2022).

28 ⁸³ Lois Parshley, *California’s Carbon Offsetting May Actually be Increasing Emissions*, NEW
SCIENTIST (Dec. 22, 2022), [https://www.newscientist.com/article/2352926-californias-carbon-
offsetting-may-actually-be-increasing-emissions/](https://www.newscientist.com/article/2352926-californias-carbon-offsetting-may-actually-be-increasing-emissions/)

1 the offsets herself “lack additionality”, are non-immediate, and fundamentally
2 fail to guarantee a permanent impact, all of which render the claim that those
3 offsets make Delta “carbon neutral” provably false and misleading.⁸⁴

4 **F. Delta Knew or Should Have Known These Statements Were**
5 **False**

6 76. It is simply inaccurate to say that offset purchasers are unaware of
7 problems with the voluntary carbon offset market. Much the opposite is true—
8 there are voluminous pages of industry-wide writing acknowledging the legal
9 risks of continuing to engage in these misrepresentations. “41% of corporate
10 sustainability officers don’t use carbon offsets because they don’t trust them,”
11 and another “43% are seeking to have them rated or validated” to prevent
12 misleading the public.⁸⁵ At the same time, market leaders in transportation
13 including Lyft and JetBlue have halted their offset programs and retracted carbon
14 neutral claims out of concerns that the offset market is faulty and therefore
15 carbon neutral claims are actionably false.⁸⁶ And Credit Suisse, “an early
16 purchaser of renewable offsets, now says it’s among the companies shifting
17 towards buying more rigorous removals.”⁸⁷ Even Walmart, the world’s largest
18 company by revenue, has made “a zero emissions commitment that does not rely
19 on carbon offsets.”⁸⁸

20 77. Delta’s own current CEO Ed Bastian himself acknowledged the

21 ⁸⁴ EUROPEAN COMM’N, DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON
22 SUBSTANTIATION AND COMMUNICATION OF EXPLICIT ENVIRONMENTAL CLAIMS (GREEN
CLAIMS DIRECTIVE) 31 (2023).

23 ⁸⁵ AiDASH INC., CARBON OFFSETTING IN 2023: A CHIEF SUSTAINABILITY OFFICER’S GUIDE TO
THE MARKET 4 (2023).

24 ⁸⁶ Justine Calma, *JetBlue No Longer Plans to Offset Emissions from Domestic Flights*, THE
25 VERGE (Dec. 9, 2022), <https://www.theverge.com/2022/12/9/23501665/jetblue-carbon-offsets-sustainable-aviation-fuel>

26 ⁸⁷ Akshat Rathi et al., *Junk Carbon Offsets Are What Make These Big Companies ‘Carbon*
27 *Neutral’*, BLOOMBERG (Nov. 21, 2022), [https://www.bloomberg.com/graphics/2022-carbon-](https://www.bloomberg.com/graphics/2022-carbon-offsets-renewable-energy/#xj4y7vzkg)
offsets-renewable-energy/#xj4y7vzkg

28 ⁸⁸ Betsy Vereckey, *How to Choose Carbon Offsets that Actually Cut Emissions*, MIT SLOAN
SCH. (Nov. 2, 2022), [https://mitsloan.mit.edu/ideas-made-to-matter/how-to-choose-carbon-](https://mitsloan.mit.edu/ideas-made-to-matter/how-to-choose-carbon-offsets-actually-cut-emissions)
offsets-actually-cut-emissions

1 severe problems with offsets when Delta first announced its intention to go “fully
2 carbon neutral” as of March 1, 2020.⁸⁹ On the question of carbon offsets,
3 Bastian said “carbon offsets are “not the solution, there are not enough to go
4 around...carbon offsets have a lot of efficacy issues, and quite honestly in some
5 places they do more harm than they do good, or pay people to not do harm, that
6 is not really helping our planet.”⁹⁰

7 CLASS ALLEGATIONS

8 78. In addition to their individual claims, Plaintiffs bring this action
9 pursuant to Rule 23 of the Federal Rules of Civil Procedure.

10 79. Plaintiffs bring this class action lawsuit on behalf of a proposed
11 class of similarly situated persons, pursuant to Rule 23(b)(2) and (b)(3) of the
12 Federal Rules of Civil Procedure, defined as follows:

13 80. “The Class”: All natural persons who, between March 6, 2020, and
14 the present, purchased a Delta Airlines flight while located in California.

15 81. This action has been brought and may properly be maintained as a
16 class action against Defendant because there is a well-defined community of
17 interest in the litigation and the proposed class is easily ascertainable.

18 82. Numerosity: Plaintiff does not know the exact size of the Class, but
19 estimates that the Class is composed of more than 5,000 persons. The persons in
20 the Class are so numerous that the joinder of all such persons is impracticable
21 and the disposition of their claims in a class action rather than in individual
22 actions will benefit the parties and the courts.

23 83. Common Questions Predominate: This action involves common
24 questions of law and fact to the Class because each class member’s claim derives
25

26 ⁸⁹ Jessica Bursztynsky, *Delta Airlines CEO Announces the Carrier will go ‘Fully Carbon*
27 *Neutral’ Next Month*, CNBC (Feb. 14, 2020, 7:27 AM),
28 [https://www.cnbc.com/2020/02/14/delta-air-lines-ceo-carrier-will-go-fully-carbon-neutral-](https://www.cnbc.com/2020/02/14/delta-air-lines-ceo-carrier-will-go-fully-carbon-neutral-next-month.html)
[next-month.html](https://www.cnbc.com/2020/02/14/delta-air-lines-ceo-carrier-will-go-fully-carbon-neutral-next-month.html)

⁹⁰ *Id.*

1 from the deceptive, unlawful and/or unfair statements and omissions that led
2 consumers to believe that Delta Airlines was a carbon neutral airline.

3 84. The common questions of law and fact predominate over individual
4 questions, as proof of a common or single set of facts will establish the right of
5 each member of the Class to recover. The questions of law and fact common to
6 the Class are:

- 7 • whether Defendant operated a carbon neutral airline;
- 8 • whether Defendant purchased carbon offsets that fully offset its annual
- 9 year of emissions;
- 10 • whether Defendant unfairly, unlawfully and/or deceptively
- 11 misrepresented that it is a carbon neutral airline; that it has fully offset its
- 12 emissions on an annual basis since March 2020;
- 13 • whether the use of the term “carbon neutral” in Defendant’s marketing
- 14 violated Federal and/or California state law;
- 15 • whether the advertising of Delta Airlines as being carbon neutral caused
- 16 them to command a higher market share as compared with similar
- 17 companies that do not make such a claim;
- 18 • whether Defendant’s advertising and marketing regarding carbon
- 19 neutrality was likely to deceive the class members and/or was unfair;
- 20 • whether a carbon neutrality claim is material to a reasonable consumer;
- 21 • whether Defendant engaged in the alleged conduct knowingly,
- 22 recklessly, or negligently;

23 85. Typicality: Plaintiffs’ claims are typical of the claims of other
24 members of the Class because, among other things, all such claims arise out of
25 the same unlawful course of conduct in which Defendant engaged. Plaintiffs and
26 those similarly situated purchased Defendant’s flights based on Defendant’s
27 misrepresentations and omissions that it is a carbon neutral airline that has fully
28 offset all of its emissions since March 2020. Thus, Plaintiffs and the class

1 members sustained the same injuries and damages arising out of Defendant's
2 conduct in violation of the law. The injuries and damages of each class member
3 were caused directly by Defendant's wrongful conduct in violation of law as
4 alleged.

5 86. Adequacy of Representation: Plaintiffs will fairly and adequately
6 protect the interests of all class members because it is in their best interests to
7 prosecute the claims alleged herein to obtain full compensation due to them for
8 the unfair and illegal conduct of which they complain. Plaintiffs also have no
9 interests that are in conflict with, or antagonistic to, the interests of class
10 members. Plaintiffs have retained highly competent and experienced class action
11 attorneys to represent their interests and those of the classes. By prevailing on
12 their own claims, Plaintiffs will establish Defendant's liability to all class
13 members. Plaintiffs and their counsel have the necessary financial resources to
14 adequately and vigorously litigate this class action, and Plaintiffs and counsel are
15 aware of their fiduciary responsibilities to the class members and are determined
16 to diligently discharge those duties by vigorously seeking the maximum possible
17 recovery for class members.

18 87. Superiority: There is no plain, speedy, or adequate remedy other
19 than by maintenance of this class action. The prosecution of individual remedies
20 by members of the classes will tend to establish inconsistent standards of conduct
21 for Defendant and result in the impairment of class members' rights and the
22 disposition of their interests through actions to which they were not parties. Class
23 action treatment will permit a large number of similarly situated persons to
24 prosecute their common claims in a single forum simultaneously, efficiently, and
25 without the unnecessary duplication of effort and expense that numerous
26 individual actions would engender. Furthermore, as the damages suffered by
27 each individual member of the classes may be relatively small, the expenses and
28 burden of individual litigation would make it difficult or impossible for

1 individual members of the class to redress the wrongs done to them, while an
2 important public interest will be served by addressing the matter as a class
3 action.

4 88. Plaintiffs are unaware of any difficulties that are likely to be
5 encountered in the management of this action that would preclude its
6 maintenance as a class action.

7 **CAUSES OF ACTION**

8 **FIRST CAUSE OF ACTION**

9 **(VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT (THE**
10 **“CLRA”), CALIFORNIA CIVIL CODE § 1750, *et seq.*)**
11 **(On Behalf of Plaintiffs and the Class)**

12 89. Plaintiffs reallege and incorporate by reference all paragraphs
13 alleged herein.

14 90. Defendant’s actions, representations and conduct have violated, and
15 continue to violate the CLRA, because they extend to transactions that are
16 intended to result, or which have resulted, in the sale or lease of goods or
17 services to consumers.

18 91. Defendant’s acts and practices, set forth in this Class Action
19 Complaint, led customers to falsely believe that Defendant operated a carbon
20 neutral airline since March 2020; and that Defendant purchased carbon offsets
21 that meant it did not release any net additional carbon into the atmosphere on an
22 annualized basis since March 2020. By engaging in the actions, representations
23 and conduct set forth in this Class Action Complaint, Defendant has violated,
24 and continues to violate, § 1770(a)(2), § 1770(a)(3), § 1770(a)(5), and
25 § 1770(a)(9) of the CLRA. In violation of California Civil Code § 1770(a)(2),
26 Defendant’s acts and practices constitute improper representations regarding the
27 source, sponsorship, approval, or certification of the services they sold. In
28 violation of California Civil Code § 1770(a)(3), Defendant’s acts and practices
constitute improper representations regarding the affiliation, connection, or

1 association with, or certification by, another. In violation of California Civil
2 Code § 1770(a)(5), Defendant's acts and practices constitute improper
3 representations that the services they sell have sponsorship, approval,
4 characteristics, ingredients, uses, benefits, or quantities, which they do not have.
5 In violation of California Civil Code § 1770(a)(9), Defendant has advertised
6 goods or services with intent not to sell them as advertised.

7 92. Plaintiffs request that this Court enjoin Defendant from continuing
8 to employ the unlawful methods, acts and practices alleged herein pursuant to
9 California Civil Code § 1780(a)(2). If Defendant is not restrained from engaging
10 in these types of practices in the future, Plaintiffs and the other members of the
11 Class will continue to suffer harm.

12 93. The violations herein alleged have not been corrected or rectified as
13 required by Civil Code § 1782 within 30 days with respect to all Class Members.
14 Plaintiffs accordingly seek on behalf of each Class Member actual damages of at
15 least \$1,000, punitive damages, an award of \$5,000 for each Class Member who
16 is a disabled person or senior citizen, and restitution of any ill-gotten gains due to
17 Defendant's acts and practices.

18 94. Plaintiffs also request that this Court award them costs and
19 reasonable attorneys' fees pursuant to California Civil Code § 1780(d).

20 **SECOND CAUSE OF ACTION**
21 **FALSE ADVERTISING, BUSINESS AND PROFESSIONS CODE § 17500,**
22 ***et seq.* ("FAL")**
(On Behalf of Plaintiffs and the Class)

23 95. Plaintiffs reallege and incorporate by reference all paragraphs
24 alleged herein.

25 96. Beginning on March 6, 2020, and repeatedly again within three (3)
26 years preceding the filing of the Class Action Complaint, Defendant made
27 untrue, false, deceptive and/or misleading statements in connection with the
28 advertising and marketing of Delta flights.

1 97. Defendant made representations and statements (by omission and
2 commission) that led reasonable customers to believe (i) Delta Airlines operated
3 a carbon neutral airline since March 2020; and (ii) that Defendant purchased
4 carbon offsets such that it did not release any net additional carbon into the
5 atmosphere on an annualized basis since March 2020.

6 98. Plaintiffs and those similarly situated relied to their detriment on
7 Defendant's false, misleading and deceptive advertising and marketing practices,
8 including each of the misrepresentations and omissions set forth in paragraphs
9 46-51 above. Had Plaintiffs and those similarly situated been adequately
10 informed and not intentionally deceived by Defendant, they would have acted
11 differently by, without limitation, refraining from purchasing Delta flights, or
12 paying less for them.

13 99. Defendant's acts and omissions are likely to deceive the general
14 public. Defendant engaged in these false, misleading and deceptive advertising
15 and marketing practices to control a greater market share. Accordingly,
16 Defendant engaged in false advertising, as defined and prohibited by section
17 17500, *et seq.* of the California Business and Professions Code. These practices,
18 which Defendant used, and continues to use, to their significant financial gain,
19 also constitute unlawful competition and provide an unlawful advantage over
20 Defendant's competitors as well as injury to the general public.

21 100. As a direct and proximate result of such actions, Plaintiffs and the
22 other class members have suffered, and continue to suffer, injury in fact and have
23 lost money and/or property as a result of such false, deceptive and misleading
24 advertising in an amount which will be proven at trial, but which is in excess of
25 the jurisdictional minimum of this Court.

26 101. Plaintiffs seek on behalf of themselves and those similarly situated,
27 a declaration that the above-described practices constitute false, misleading and
28 deceptive advertising.

102. Plaintiffs seek on behalf of themselves and those similarly situated, full restitution of monies, as necessary and according to proof, to restore any and all monies acquired by Defendant from Plaintiffs, the general public, or those similarly situated by means of the false, misleading and deceptive advertising and marketing practices complained of herein, plus interest thereon. Pursuant to Federal Rule of Civil Procedure 8(e)(2), Plaintiffs make the following allegations in this paragraph only hypothetically and as an alternative to any contrary allegations in their other causes of action, in the event that such causes of action do not succeed. Plaintiffs and the Class may be unable to obtain monetary, declaratory and/or injunctive relief directly under other causes of action and will lack an adequate remedy at law, if the Court requires them to show classwide reliance and materiality beyond the objective reasonable consumer standard applied under the FAL, because Plaintiffs may not be able to establish each Class member's individualized understanding of Defendant's misleading representations as described in this Complaint, but the FAL does not require individualize proof of deception or injury by absent Class members. *See, e.g., Ries v. Ariz. Bevs. USA LLC*, 287 F.R.D. 523, 537 (N.D. Cal. 2012) ("restitutionary relief under the UCL and FAL 'is available without individualized proof of deception, reliance, and injury.'"). In addition, Plaintiffs and the Class may be unable to obtain such relief under other causes of action and will lack an adequate remedy at law, if Plaintiffs are unable to demonstrate the requisite *mens rea* (intent, reckless, and/or negligence), because the FAL imposes no such *mens rea* requirement and liability exists even if Defendant acted in good faith.

103. Plaintiffs seeks on behalf of herself and those similarly situated, an injunction to prohibit Defendant from continuing to engage in the false, misleading and deceptive advertising and marketing practices complained of herein. Such misconduct by Defendant, unless and until enjoined and restrained

1 by order of this Court, will continue to cause injury in fact to the general public
2 and the loss of money and property in that Defendant will continue to violate the
3 laws of California, unless specifically ordered to comply with the same. This
4 expectation of future violations will require current and future consumers to
5 repeatedly and continuously seek legal redress in order to recover monies paid to
6 Defendant to which it is not entitled. Plaintiffs, those similarly situated, and/or
7 other consumers nationwide have no other adequate remedy at law to ensure
8 future compliance with the California Business and Professions Code alleged to
9 have been violated herein.

10 **THIRD CAUSE OF ACTION**
11 **UNLAWFUL, UNFAIR, AND FRAUDULENT TRADE PRACTICES IN**
12 **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, *et seq.***
(On Behalf of Plaintiffs and the Class)

13 104. Plaintiffs reallege and incorporate by reference all paragraphs
14 alleged herein.

15 105. Since March 2020, and at all times mentioned herein, Defendant
16 engaged, and continues to engage, in unlawful, unfair, and fraudulent trade
17 practices in California by engaging in the unlawful, unfair, and fraudulent
18 business practices outlined in this complaint.

19 106. In particular, Defendant has engaged, and continues to engage, in
20 unlawful practices by, without limitation, violating the following state and
21 federal laws: (i) the CLRA as described herein; and (ii) the FAL as described
22 herein.

23 107. In particular, Defendant has engaged, and continues to engage, in
24 unfair and fraudulent practices by, without limitation, the following: (i)
25 misrepresenting that Delta Airlines operated a carbon neutral airline since March
26 2020; and (ii) misrepresenting that Defendant purchased carbon offsets such that
27 it did not release any net additional carbon into the atmosphere on an annualized
28 basis since March 2020, and (iii) failing to inform Plaintiffs, and those similarly

1 situated, that the representations stated in (i) and (ii) above are false.

2 108. Plaintiffs and those similarly situated relied to their detriment on
3 Defendant's unlawful, unfair, and fraudulent business practices. Had Plaintiffs
4 and those similarly situated been adequately informed and not deceived by
5 Defendant, they would have acted differently by, without limitation: (i) declining
6 to purchase Delta flights, or (ii) purchasing flights from another airline.

7 109. Defendant's acts and omissions are likely to deceive the general
8 public.

9 110. Defendant engaged in these deceptive and unlawful practices to
10 increase its profits. Accordingly, Defendant has engaged in unlawful trade
11 practices, as defined and prohibited by section 17200, et seq. of the California
12 Business and Professions Code.

13 111. These practices, which Defendant used for its significant gain, also
14 constitute unlawful competition and provide an unlawful advantage over
15 Defendant's competitors as well as injury to the general public.

16 112. As a direct and proximate result of such actions, Plaintiffs and the
17 other class members have suffered and continue to suffer injury in fact and have
18 lost money and/or property in an amount which will be proven at trial, but which
19 is in excess of the jurisdictional minimum of this Court.

20 113. As a direct and proximate result of such actions, Defendant enjoyed,
21 and continues to enjoy, significant financial gain in an amount which will be
22 proven at trial, but which is in excess of the jurisdictional minimum of this
23 Court.

24 114. Plaintiffs seek, on behalf of themselves and those similarly situated,
25 equitable relief as a result of Defendant's conduct. Pursuant to Federal Rule of
26 Civil Procedure 8(e)(2), Plaintiffs make the following allegations in this
27 paragraph only hypothetically and as an alternative to any contrary allegations in
28 their other causes of action, in the event that such causes of action do not

1 succeed.

2 115. Plaintiffs and the Class may be unable to obtain monetary,
3 declaratory and/or injunctive relief directly under other causes of action and will
4 lack an adequate remedy of law, if the Court requires them to show classwide
5 reliance and materiality beyond the objective reasonable consumer standard
6 applied under the UCL, because Plaintiffs may not be able to establish each
7 Class member's individualized understanding of Defendant's misleading
8 representations as described in this Complaint, but the UCL does not require
9 individualized proof of deception or injury by absent class members. *See, e.g.,*
10 *Stearns v Ticketmaster*, 655 F.3d 1013, 1020, 1023-25 (distinguishing, for
11 purposes of CLRA claim, among class members for whom website
12 representations may have been materially deficient but requiring certification of
13 UCL claim for entire class). In addition, Plaintiffs and the Class may be unable
14 to obtain such relief under other causes of action and will lack an adequate
15 remedy at law, if Plaintiffs are unable to demonstrate the requisite *mens rea*
16 (intent, reckless, and/or negligence), because the UCL imposes no such *mens rea*
17 requirement and liability exists even if Defendant acted in good faith.

18 116. Plaintiffs seek on behalf of themselves and those similarly situated,
19 a declaration that the above-described trade practices are fraudulent, unfair,
20 and/or unlawful. Plaintiffs seek on behalf of themselves and those similarly
21 situated, an injunction to prohibit Defendant from continuing to engage in the
22 deceptive and/or unlawful trade practices complained of herein. Such
23 misconduct by Defendant, unless and until enjoined and restrained by order of
24 this Court, will continue to cause injury in fact to the general public and the loss
25 of money and property in that Defendant will continue to violate the laws of
26 California, unless specifically ordered to comply with the same. This
27 expectation of future violations will require current and future consumers to
28 repeatedly and continuously seek legal redress in order to recover monies paid to

1 Defendant to which they were not entitled. Plaintiffs and those similarly situated
2 have no other adequate remedy at law to ensure future compliance with the
3 California Business and Professions Code alleged to have been violated herein.

4 **PRAYER FOR RELIEF**


5 WHEREFORE, Plaintiffs, on behalf of themselves and those similarly
6 situated, respectfully request that the Court enter judgment against Defendant as
7 follows:

- 8 A. Certification of the proposed Class, including appointment of
9 Plaintiffs' counsel as class counsel;
10 B. An award of compensatory damages, including statutory damages
11 where available, to Plaintiffs and the Class Members against Defendant for
12 all damages sustained as a result of Defendant's wrongdoing, in an amount
13 to be proven at trial, including both pre-and post-judgment interest
14 thereon;
15 C. An order for full restitution;
16 D. An order requiring Defendant to disgorge revenues and profits
17 wrongfully obtained;
18 E. An order temporarily and permanently enjoining Defendant from
19 continuing the unlawful, deceptive, fraudulent, and unfair business
20 practices alleged in this Complaint;
21 F. For reasonable attorneys' fees and the costs of suit incurred; and
22 G. For such further relief as this Court may deem just and proper.

23
24 **JURY TRIAL DEMANDED**

25 Plaintiffs hereby demand a trial by jury.

26
27 Dated: December 19, 2024 Respectfully submitted,
28



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