

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JEFFREY M. DUBAN, individually and on	:	
behalf of all others similarly situated,	:	
	:	Civil Action No.
Plaintiff,	:	21-cv-04524
	:	
v.	:	
	:	NOTICE OF REMOVAL
SCANDINAVIAN AIRLINES SYSTEM, INC. and	:	
SCANDINAVIAN AIRLINES OF NORTH	:	
AMERICA, INC.,	:	
	:	
Defendants.	:	
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Defendants SCANDINAVIAN AIRLINES SYSTEM (sued incorrectly herein as “SCANDINAVIAN AIRLINES SYSTEM, INC.”) (hereinafter “SAS”) and SCANDINAVIAN AIRLINES OF NORTH AMERICA, INC. (hereinafter “SANA”), by and through their attorneys, Condon & Forsyth LLP, hereby remove this action to the United States District Court for the Southern District of New York pursuant to 28 U.S.C. §§ 1332, 1441, 1446 and 1453 and the Class Action Fairness Act of 2005 (“CAFA”), Pub. L. 109-2, § 1(a), 119 Stat. 4 (Feb. 18, 2005) (codified as amended in 28 U.S.C. § 1332(d) and 1453). In support of this Notice of Removal, SAS and SANA state as follows:

1. On or about April 14, 2021, Plaintiff Jeffrey M. Duban filed a putative class action against Defendants by the filing of a Complaint in the Supreme Court of the State of New York (County of New York), with Index No. 153608/2021. A copy of the Summons and Complaint is attached hereto as Exhibit “A.”
2. According to the Affidavits of Service filed by Plaintiff on April 26, 2021, service was made on SAS and SANA on April 19, 2021. While Defendants do not concede the adequacy of the service, this Notice of Removal is timely pursuant to 28 U.S.C. § 1446.

3. No further proceedings have taken place in this action.

4. Under 28 U.S.C. § 1441(a), a defendant may remove “any civil action brought in a State court of which the district courts of the United States have original jurisdiction.” This applies to class actions. *See* 28 U.S.C. § 1453. Generally, as set forth in 28 U.S.C. 1332(d)(2), CAFA confers original federal jurisdiction over a class action “if the class has more than 100 members, the parties are minimally diverse, and the amount in controversy exceeds \$5 million.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 84–85 (2014) (citing 28 U.S.C. § 1332(d)(2), (5)(B); *Standard Fire Ins. Co. v. Knowles*, 568 U.S. —, —, 133 S. Ct. 1345, 1348 (2013)). Because each of these three elements is satisfied according to Plaintiff’s allegations here, this Court has original and removal jurisdiction over this action.

5. First, a “class action” is defined as “any civil action filed under Rule 23 of the Federal Rules of Civil Procedure or similar state statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action.” 28 U.S.C. § 1332(d)(1)(B); *see also* 28 U.S.C. § 1453(a). Plaintiff expressly alleges that the action is brought as a class action under Article 9 of the New York Civil Practice Law and Rules. (*See* Compl. ¶ 46.) Plaintiff also alleges that “[w]hile the exact number of Class members can be determined only by appropriate discovery, Plaintiff believes that members of the Class number in the hundreds or more.” (*Id.* ¶ 48.) Thus, although Defendants maintain that this case may not proceed on a class basis, Plaintiff’s allegations satisfy the class action numerosity requirement for purposes of CAFA jurisdiction and removal.

6. Second, Plaintiff alleges that he is a resident and citizen of New York. (*See* Compl. ¶ 5.) Defendant SAS is a citizen of its place of incorporation and its principal place of business. *See* 28 U.S.C. § 1332(c)(1). SAS is a consortium of corporations organized under the laws of

Denmark, Norway, and Sweden, and is headquartered in Stockholm, Sweden. Under CAFA, diversity is satisfied when “any member of a class of plaintiffs is a citizen of a State different from any defendant” 28 U.S.C. § 1332(d)(2)(A). Accordingly, minimal diversity is satisfied.

7. Third, CAFA jurisdiction requires the amount in controversy to exceed “the sum or value of \$5,000,000, exclusive of interest and costs,” and expressly requires that “the claims of the individual members shall be aggregated” 28 U.S.C. § 1332(d)(2). Plaintiff expressly alleges compensatory damages on behalf of himself individually in excess of \$2,000. (*See* Compl. ¶ 30.) Additionally, Plaintiff expressly seeks punitive damages on behalf of the Class. (*Id.* ¶ 73(c).)

8. Plaintiff defines the purported Class as, “[a]ll United States customers of the Defendants who purchased tickets for air travel scheduled to take place between March 1, 2020 and the present whose flights were canceled by Defendants, and who have not received a ticket purchase refund from Defendants.” (*Id.* ¶ 46.) Based on the number of SAS customers who purchased tickets in the United States for air travel scheduled to take place between March 1, 2020 and May 1, 2021, the number of flights that were cancelled by SAS, and the number of passengers who subsequently received refunds, there is a reasonable probability that 1) the size of the putative Class (as alleged and defined by Plaintiff) exceeds 41,000 members, and, 2) in view of Plaintiff’s claimed individual damages and claim for punitive damages on behalf the Class, the amount in controversy exceeds the value of \$5,000,000, as required by 28 U.S.C. § 1332(d). *See Moltner v. Starbucks Coffee Co.*, 624 F.3d 34, 37 (2d Cir. 2010); *Cutrone v. Mortg. Elec. Registration Sys., Inc.*, 749 F.3d 137, 143 (2d Cir. 2014); *Andersen v. Walmart Stores, Inc.*, No. 16 Civ. 6488 (CJS), 2017 WL 661188, at *5 (W.D.N.Y. Feb. 17, 2017); *see also* the accompanying Declaration of Anna Mossberg, annexed hereto as Exhibit “B,” at ¶¶ 6–7 (explaining that the number of SAS customers who are designated in SAS’s records as “U.S. Point of Sale” – *i.e.*, individuals who purchased

tickets through SAS's U.S. website, www.flysas.com/us, or through third party entities located in the United States – who were scheduled to travel between March 1, 2020 and May 1, 2021, and whose flights were cancelled by SAS largely due to the ongoing COVID-19 pandemic and consequent travel restrictions, is approximately 122,000, and that among these SAS customers, approximately 80,100 received cash refunds as of May 1, 2021.).

9. Therefore, Defendants are entitled to remove this action to this Court pursuant to 28 U.S.C. §§ 1441 and 1453(b), which permit removal of any class action as defined by 28 U.S.C. § 1332(d)(1).

10. Pursuant to 28 U.S.C. § 1446(a), this Notice of Removal is filed in the United States District Court for the Southern District of New York, which is the district in which the action is pending.

11. Defendants will file this date a copy of the Notice of Removal with the Clerk of the Supreme Court of the State of New York, New York County, as required by 28 U.S.C. § 1446(d).

12. Defendants will this date give written notice of the filing of this Notice of Removal to Plaintiff as required by 28 U.S.C. § 1446(d).

WHEREFORE, Defendants SAS and SANA pray that this action now pending in the Supreme Court of the State of New York (New York), be removed therefrom to this Court pursuant to 28 U.S.C. §§ 1441 and 1453(b).

Dated: New York, New York
May 19, 2021

CONDON & FORSYTH LLP

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SCANDINAVIAN AIRLINES SYSTEM and
SCANDINAVIAN AIRLINES OF NORTH AMERICA, INC.

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New York, NY 10016
(212) 867-3838

Counsel for Plaintiff and the Putative Class

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

JEFFREY M. DUBAN, Individually and on behalf of
all others similarly situated,

Plaintiff,

-against-

SCANDINAVIAN AIRLINES SYSTEM INC. and
SCANDINAVIAN AIRLINES OF NORTH AMERICA
INC.,

Defendants.

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SUMMONS

Index No.

Date Purchased:

Plaintiff designates New
York County as the place
of trial.

The basis of venue is the
Residence of Plaintiff.

To the above-named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the plaintiff's attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if the summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
April 14, 2021



G. Oliver Koppell
Daniel F. Schreck
Law Offices of G. Oliver Koppell
and Associates
99 Park Avenue, Suite 1100
New York, NY 10016
(212) 867-3838

TO: Scandinavian Airlines System Inc.
301 Route 17 North
Rutherford, New Jersey, 07070.

Scandinavian Airlines of North America Inc.
301 Route 17 North
Rutherford, New Jersey, 07070

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
JEFFREY M. DUBAN, Individually and on behalf of
all others similarly situated,

Plaintiff,

Complaint
Index No.

-against-

SCANDINAVIAN AIRLINES SYSTEM INC. and
SCANDINAVIAN AIRLINES OF NORTH AMERICA
INC.,

Defendants.

-----X

Jeffrey M. Duban (“Plaintiff”), individually and on behalf of all others similarly situated (the “Class Members”), by and through his attorneys, the Law Offices of G. Oliver Koppell & Associates, as and for his Complaint against Scandinavian Airlines System Inc. and Scandinavian Airlines of North America Inc. (“Defendants”), alleges as follows:

Introduction

1. This action stems from the failure of Defendants to refund to Plaintiff and all others similarly situated monies paid to Defendants for airline tickets.
2. Plaintiff and all others similarly situated purchased tickets from Defendants for airline travel on or after March 1, 2020. However, because of the global Covid-19 pandemic, Defendants canceled Plaintiff’s and all other Class Members’ flights.
3. Despite Defendants’ cancellation of the flights, Defendants have failed to return to Plaintiff and the Class the monies paid by them for the purchase of tickets. Many months have passed, and despite demands for the return of the monies, Defendants have made no such return.

4. Defendants have no justification for failing to return such funds to Plaintiff and the Class Members. Defendants should not be allowed to profit from the global pandemic, and their own cancellation of flights pursuant thereto, at the expense of Plaintiff and the Class Members.

Parties

5. Plaintiff is a resident of the State of New York, County of New York, who resides at 258 Riverside Drive, Apt. 5A, New York, New York 10025.

6. Defendant Scandinavian Airlines System Inc. is a foreign business corporation with a principal office for the transaction of business in the United States at 301 Route 17 North, Rutherford, New Jersey, 07070.

7. Defendant Scandinavian Airlines of North America Inc. is a domestic business corporation authorized to do business in New York with a principal executive office located at 301 Route 17 North, Rutherford, New Jersey 07070.

8. Defendants own, operate and control an airline that provides flights to consumers from the United States and other locations around the globe.

Allegations Common to All Claims

9. The Covid-19 pandemic caused a substantial shutdown of international travel to avoid the spread of the virus. Many airlines canceled all, or a substantial portion of, their international flights.

10. On December 31, 2019, governmental entities in Wuhan, China confirmed that health authorities were treating dozens of cases of a mysterious, pneumonia-like illness. Days later, researchers in China identified a new virus that had infected dozens of people in Asia, subsequently referred to as the novel coronavirus, or COVID-19. By January 21, 2020,

officials in the United States were confirming the first known domestic infections of COVID-19. Due to an influx of thousands of new cases in China, on January 30, 2020, the World Health Organization officially declared COVID-19 as a “public health emergency of international concern.”

11. The U.S. State Department warned travelers to avoid traveling to China, and, on January 31, 2020, the U.S. federal government restricted travel from China, thus beginning travel restrictions affecting passengers ticketed on domestic and international air travel to and from the United States. That same day, January 31, 2020, the U.S. Health and Human Services Secretary “determine[d] that a public health emergency exists and has existed since January 27, 2020, nationwide.”¹
12. By February 29, 2020, COVID-19 restrictions continued to spread across the globe. As the number of global cases rose to nearly 87,000, the U.S. federal government issued its highest-level warning, known as a “do not travel” warning, for areas in Italy and South Korea that were most affected by the virus. The government also banned all travel to Iran and barred entry to any foreign citizen who had visited Iran in the previous 14 days.
13. On March 11, 2020, the World Health Organization declared COVID-19 a pandemic. That same day, American officials announced yet another travel ban expansion, this time blocking most visitors from continental Europe to the United States.
14. On March 13, 2020, the President of the United States issued the Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19)

¹ *Determination that a Public Health Emergency Exists*, U.S. Department of Health & Human Services (Jan. 31, 2020), <https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx>.

The U.S. Department of Health & Human Services’ declaration that a public health emergency exists was renewed on April 21, 2020. *Renewal of Determination that a Public Health Emergency Exists*, U.S. Department of Health & Human Services (Apr. 21, 2020), <https://www.phe.gov/emergency/news/healthactions/phe/Pages/covid19-21apr2020.aspx>.

Outbreak (“Proclamation”), proclaiming that the COVID-19 outbreak constituted a national emergency in the United States, beginning March 1, 2020.²

15. Domestic travel restrictions began on March 16, 2020, with seven counties in the San Francisco, California area announcing shelter-in-place orders. Other states, counties, and municipalities have followed the shelter-in-place orders and/or other travel restrictions.
16. On March 31, 2020, the United States Department of State issued a Global Level 4 Health Advisory not to travel.³
17. Consistent with the shutdown of such travel, Defendants canceled many of its flights beginning on or about March 1, 2020.
18. Prior to the shutdown, many customers of Defendants had booked and prepaid for their travel on Defendants’ airline.
19. Defendants sell their airline seat inventory and fares through Defendants’ direct channels (such as Defendants’ direct-to-consumer sales website and the company’s mobile applications) and through traditional travel agencies and online travel agencies. With each ticket sale, Defendants collect passenger identification information, including name, address, and telephone information.
20. Despite Defendants’ cancellation of the flights, Defendants have failed to return to Plaintiff and Class Members the monies prepaid for the cost of their flights.
21. Defendants have been unresponsive to requests for refunds, unlawfully retaining and profiting from money that belongs to Plaintiff and Class Members.

² Proclamation No. 9994, 85 Fed. Reg. 15,337 (Mar. 13, 2020), available at: <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergencyconcerning-novel-coronavirus-disease-covid-19-outbreak/>.

³ Global Level 4 Health Advisory – Do Not Travel, U.S. Department of State (Mar. 31, 2020), available at <https://travel.state.gov/content/travel/en/traveladvisories/ea/travel-advisory-alert-global-level-4-health-advisory-issue.html>.

22. Prior to the pandemic, the United States Department of Transportation (“DOT”) advised consumers of their right to a refund for a cancelled flight: “If your flight is cancelled and you choose to cancel your trip as a result, you are entitled to a refund for the unused transportation—even for non-refundable tickets. You are also entitled to a refund for any bag fee that you paid, and any extras you may have purchased, such as a seat assignment.”⁴
23. Such rights did not change with the pandemic. Rather, on April 3, 2020, the DOT issued the Enforcement Notice Regarding Refunds By Carriers Given The Unprecedented Impact Of The COVID-19 Public Health Emergency On Air Travel (“Notice”) reiterating that airlines, are obligated to issue prompt refunds to customers whose flights are/were cancelled or changed significantly during the COVID-19 crisis.⁵
24. The Notice states, in part, as follows:

The Department is receiving an increasing number of complaints and inquiries from ticketed passengers, including many with non refundable tickets, who describe having been denied refunds for flights that were cancelled or significantly delayed. In many of these cases, the passengers stated that the carrier informed them that they would receive vouchers or credits for future travel. But many airlines are dramatically reducing their travel schedules in the wake of the COVID-19 public health emergency. As a result, passengers are left with cancelled or significantly delayed flights and vouchers and credits for future travel that are not readily usable.

Carriers have a longstanding obligation to provide a prompt refund to a ticketed passenger when the carrier cancels the passenger’s flight or makes a significant change in the flight schedule and the passenger chooses not to accept the alternative offered by the carrier. The longstanding obligation of carriers to provide refunds for flights that carriers cancel or significantly delay does not cease when the flight disruptions are outside the carrier’s control (e.g. a result of government restrictions). The focus is not whether the flight disruptions are within or outside the carrier’s control, but rather on the fact that the cancellation is through no fault of the passenger.

⁴ Flight Delays & Cancellations, U.S. Department of Transportation (Mar. 4, 2020), available at <https://www.transportation.gov/individuals/aviation-consumer-protection/flight-delays-cancellations>.

⁵ Notice, DOT (Apr. 3, 2020), available at <https://www.transportation.gov/sites/dot.gov/files/2020-04/Enforcement%20Notice%20Final%20April%203%202020.pdf>.

25. Put another way, “[a] passenger is entitled to a refund if the airline cancelled a flight, regardless of the reason, and the passenger chooses not to be rebooked on a new flight on that airline.⁶

26. Continued failures to provide refunds by airlines resulted in the release of a second DOT enforcement notice. Under that notice, the DOT restated that “airlines have an obligation to provide a refund to a ticketed passenger when the carrier cancels or significantly changes the passenger’s flight, and the passenger chooses not to accept an alternative offered by the carrier.”⁷

Plaintiff’s Experience with Defendants

27. On or about November 10, 2019, prior to the outbreak of the Covid-19 pandemic, Plaintiff purchased from Defendants two tickets for roundtrip travel from Newark, New Jersey, to Oslo, Norway, for himself and his wife, Jayne Connell.

28. The dates of travel on the tickets were July 20, 2020 through July 28, 2020.

29. Plaintiff purchased the tickets from the Defendants through a third-party agent, Gotogate, Inc. (“Gotogate”).

30. Plaintiff paid \$1,142.05 for one ticket and \$1,035.98 for the second, for a total payment to Defendants of \$2,178.03.

31. On or about late June, 2020 Defendants informed Plaintiff that due to the Covid-19 pandemic Plaintiff’s flights were being canceled by Defendants.

32. Plaintiff immediately began inquiring about obtaining a refund for the canceled flights.

⁶ Refunds, U.S. Department of Transportation (Apr. 21, 2020), available at <https://www.transportation.gov/individuals/aviation-consumer-protection/refunds>.

⁷ Frequently Asked Questions Regarding Airline Ticket Refunds Given the Unprecedented Impact of the COVID-19 Public Health Emergency on Air Travel, DOT (May 12, 2020), available at <https://www.transportation.gov/sites/dot.gov/files/2020-05/Refunds%20Second%20Enforcement%20Notice%20FINAL%20%28May%2012%202020%29.pdf>.

- 33. Plaintiff first inquired of Defendants about obtaining a refund. Plaintiff was directed by Defendants to contact the third-party agent, Gotogate.
- 34. Upon inquiring of Gotogate, Gotogate referred Plaintiff to Defendants to obtain a refund.
- 35. This round-robin, in which Plaintiff was directed back and forth between Defendants and Gotogate to obtain a refund, continued for a month or more.
- 36. Defendants finally instructed Plaintiff that if he was dealing with an “uncooperative agent,” they would send him an e-form that Plaintiff could submit for direct refund from Defendants.
- 37. Plaintiff submitted the electronic form in or around mid-August, 2020, receiving no acknowledgment thereof, only a brief “pop-up” indicating “We got it.” Defendants indicated in a follow-up phone discussion that a refund would be issued within four months of the form’s submission.
- 38. On or about January 27, 2021, Defendants sent Plaintiff a link for processing the refund. The link would not function.
- 39. Plaintiff contacted Defendants by email on January 30, 2021 and reported the non-functioning link. Plaintiff received no response to his email.
- 40. On or about February 1, 2021, Plaintiff reported the link malfunction to “George,” an employee of Defendants. George indicated he would directly call the Defendants’ Refund Department on Plaintiff’s behalf. To date, no response has been received to this inquiry.
- 41. Within days thereafter, Plaintiff peculiarly received notice from Defendants that he would need obtain refund from Gotogate.

42. At or around this time, Defendant and Gotogate both started sending mid-month advisories to Plaintiff concerning the status of Plaintiff's refund, stating: "You're almost there!" Nonetheless, Plaintiff never received his refund.
43. Several weeks later, the non-functioning link sent by Defendants to Plaintiff opened and was found to work. But there was no getting past the Homepage which required the Plaintiff's name and IBAN number for the supposed transfer of refund to such bank account as Plaintiff would designate.
44. The purported request seeking information was a ploy by Defendants because, as Plaintiff subsequently learned:
- (a) IBAN is used only by banks for transfer of foreign currencies to the U.S., whereas Plaintiff's tickets had been purchased with dollars.
 - (b) Refunds on credit card purchases are universally credited back to the originating card, not to a bank account the full information of which the customer would have to provide.
45. To date, eight months later, Plaintiff has not received a refund from Defendants.

CLASS ACTION ALLEGATIONS

46. Plaintiff seeks to bring this class action pursuant to Article 9 of the CPLR on behalf of himself and the following Class:
- All United States customers of the Defendants who purchased tickets for air travel scheduled to take place between March 1, 2020 and the present whose flights were canceled by Defendants, and who have not received a ticket purchase refund from Defendants.
47. The Class satisfies the numerosity, commonality, typicality, adequacy, predominance and superiority requirements of the CPLR.

48. The members of the Class are so numerous that joinder of all Class members is impracticable. While the exact number of Class members can be determined only by appropriate discovery, Plaintiff believes that members of the Class number in the hundreds or more.
49. Defendants' misconduct has affected all members of the Class in a similar manner.
50. Plaintiff's claims are typical of the claims of the members of the Class because Plaintiff and all of the Class Members were injured and continue to be injured in the same manner by Defendants' unlawful and inequitable acts and practices, as well as by Defendants' wrongful conduct.
51. Plaintiff has no interests that are adverse or antagonistic to those of the Class. Plaintiff's interest is to obtain relief for himself and the Class for the harm arising from the violations of law as set forth herein.
52. Plaintiff will fairly and adequately protect the interests of the members of the Class, and has retained counsel competent and experienced in complex class action litigation.
53. The class action is superior to all other available methods for fair and efficient adjudication of this controversy. Since the damages suffered by the members of the Class may be relatively small, the expense and burden of individual litigation make it virtually impossible for Plaintiff and members of the Class individually to seek redress for the wrongful conduct alleged.
54. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:
- a) Did Defendants cancel flights between March 1, 2020 and the present?

- b) What policies did Defendants' maintain regarding the issuance of refunds to customers for cancelled flights?
- c) Did Defendants adhere to those policies and timely issue refunds to Class Members for cancelled flights?
- d) Did Defendants wrongfully retain the monies paid by Class Members for cancelled flights?
- e) Was it lawful for Defendants to retain the monies paid by customers for cancelled flights?
- f) Did Class Members have contracts with Defendants?
- g) Did Defendants breach their contracts with Class Members? and
- h). Have Class Members sustained damages as a result of Defendants' conduct and, if so, the proper measure of such damages.

55. The Class is readily definable, and prosecution of this action as a class action will reduce the possibility of repetitious litigation. Plaintiff knows of no difficulty to be encountered in the management of this litigation which would preclude its maintenance as a class action.

56. Defendants have acted and refused to act, as alleged herein, on grounds generally applicable to the Class, thereby making appropriate final injunctive relief and/or corresponding declaratory relief with respect to the Class as a whole.

AS AND FOR A FIRST CAUSE OF ACTION FOR CONVERSION

57. Plaintiff repeats and re-alleges each of the allegations contained in paragraphs 1 through 56 of this complaint as if fully set forth herein.

58. Defendants knowingly, intentionally and unlawfully exercised control over the monies belonging to Class Members, failing to return monies paid for tickets to Class Members.

59. Because of Defendants failure to return Class Members' funds, Class Members' rights in their funds are interfered with and their funds cannot be used as Class Members desire.

60. As a result of the foregoing, Plaintiff and the other members of the Class were caused to incur damages.

AS AND FOR A SECOND CAUSE OF ACTION FOR UNJUST ENRICHMENT

61. Plaintiff repeats and re-alleges each of the allegations contained in paragraphs 1 through 60 of this complaint as if fully set forth herein.

62. Defendants have been unjustly enriched and benefited from the inequitable acts alleged herein, resulting in Class Members having their funds held by Defendants, and allowing Defendants to continue to use and benefit from those funds.

63. Defendants have reaped profits and revenues resulting from their unlawful conduct.

64. The sources of Defendants' unlawful profits and revenues are derived from Class Members' payment of monies for tickets to Defendants and Defendants' retention of such monies following the cancellation of Class Members' flights.

65. It would be inequitable for Defendants to be permitted to retain any of the proceeds derived from this unlawful conduct.

66. Defendants should be compelled to disgorge into a common fund or constructive trust for the benefit of Class Members all proceeds received by them from any unlawful acts described in this Complaint which have inured and continue to inure to the unjust enrichment of Defendants.

AS AND FOR A THIRD CAUSE OF ACTION FOR BREACH OF CONTRACT

67. Plaintiff repeats and re-alleges each of the allegations contained in paragraphs 1 through 66 of this complaint as if fully set forth herein.

68. Upon information and belief, Defendants entered into a uniform contract of carriage with each Class Member.

69. Upon information and belief, in and by that agreement, Defendants covenanted to provide Class Members with air travel between various locations in exchange for remuneration by Class Members. In the event such travel was unable to take place, Defendants were obliged to provide a refund to Class Members.

70. Class Members prepaid Defendants pursuant to the terms of the contract.

71. Defendants failed to perform under the Contract and canceled its flights.

72. Defendants failed to return to the Class the monies paid by them.

73. As a result of the foregoing, Plaintiff and the other members of the Class were caused to incur damages.

WHEREFORE, Plaintiff demands judgment:

- a) Certifying the Class pursuant to Article 9 of the CPLR and appointing Plaintiff as Class Representatives and his counsel as Class Counsel;
- b) Awarding Plaintiff and all Class Members compensatory damages on all causes of action;
- c) Awarding Plaintiff and all Class Members statutory, exemplary and punitive damages where permitted;
- d) Ordering Defendants to make restitution and/or disgorge into a common fund or a constructive trust all monies paid by Plaintiff and Class Members to the full extent that Defendants were unjustly enriched by their unlawful and inequitable conduct alleged herein;

- e) Ordering other appropriate injunctive or declaratory relief as permitted by law or equity, including an order directing Defendants to comply with their contractual obligations and/or enjoining Defendants from retaining refunds for cancelled flights;
- f) On each of the above causes of action interest, costs, disbursements and legal fees; and
- g) Such other and further relief as this court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues to be determined by a jury.

Dated: New York, New York
April 14, 2021

Law Offices of G. Oliver Koppell &
Associates

By: 
G. Oliver Koppell

Daniel F. Schreck
99 Park Ave., Suite 1100
New York, NY 10016
212-867-3838

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims Scandinavian Airlines Owes Refunds for Flights Canceled Amid Pandemic](#)
