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Counsel for Plaintiff and the Proposed Class

**IN THE UNITED STATES DISTRICT COURT FOR THE  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

FELIKS OBERTMAN, on behalf of himself  
and all others similarly situated

Plaintiff,

v.

FRONTIER AIRLINES INC.,

Defendant.

**CLASS ACTION COMPLAINT**

Case No.

**JURY TRIAL**

**CLASS ACTION COMPLAINT**

1  
2 Plaintiff, Feliks Obertman (“Obertman” or “Plaintiff”), on behalf of himself and all others  
3 similarly situated, by and through undersigned counsel, files this Class Action Complaint against  
4 Frontier Airlines, Inc. (“Frontier” or “Defendant”), and alleges the following:

**INTRODUCTION**

5  
6 1. Frontier is the eighth-largest commercial airline in the United States, operating flights  
7 to over 100 destinations throughout the United States and 30 international destinations. Frontier  
8 typically operates around 300 daily flights. But this year, Frontier has responded to a sudden drop in  
9 demand for passenger air travel by canceling scores of scheduled flights.  
10

11 2. Under the terms of Frontier’s uniform contracts with its customers, when the airline  
12 cancels a flight, the airline must either re-accommodate passengers on another flight or refund the  
13 passengers. Frontier has breached its contracts with thousands of paying customers by offering  
14 credits for future travel on the airline instead of providing refunds for flights canceled by the airline.  
15

**Declining Demand in Light of Novel Coronavirus  
Severely Impacts Frontier’s Operations**

16  
17 3. On December 31, 2019, governmental entities in Wuhan, China confirmed that health  
18 authorities were treating dozens of cases of a mysterious, pneumonia-like illness. Days later,  
19 researchers in China identified a new virus that had infected dozens of people in Asia, subsequently  
20 identified and referred to as the novel coronavirus, or SARS-CoV-2. The illness caused by the virus  
21 has been termed COVID-19. By January 21, 2020, officials in the United States were confirming the  
22 first known domestic cases of COVID-19.  
23

24 4. Due to an influx of thousands of new cases in China, on January 30, 2020, the World  
25 Health Organization officially declared COVID-19 as a “public health emergency of international  
26 concern.”

27 5. On March 11, 2020, the World Health Organization declared COVID-19 a pandemic.

28 6. In efforts to curb the spread of the virus, federal, state and local governments have

1 implemented temporary travel restrictions and guidelines advising against essential travel. In the  
2 United States, the federal government has limited travel from China, Europe, and the United  
3 Kingdom, permitting only the return of U.S. citizens and permanent residents. The Department of  
4 State also advised on March 19, 2020, that U.S. citizens should temporarily avoid all international  
5 travel, with the exception that U.S. residents abroad should arrange for immediate return to the United  
6 States where possible.

7           7. State and local governments have also restricted local travel. On March 16, 2020, seven  
8 counties in the San Francisco, California area announced shelter-in-place orders to reduce local traffic  
9 to activities necessary to perform “essential” activities. Other states, counties, and municipalities have  
10 since implemented similar shelter-in-place orders, and as of the drafting of this Class Action  
11 Complaint, at least 316 million people in at least 42 states, three counties, nine cities, the District of  
12 Columbia, and Puerto Rico are living under such orders.

13           8. In addition to health and safety concerns, people across the country are facing  
14 increasing economic stress due to the novel coronavirus, including unemployment levels not seen  
15 since the Great Depression.

16           9. As the travel limitations, virus fears, and economic uncertainties mounted, consumer  
17 demand for air travel, particularly leisure and non-essential business travel, quickly declined. In  
18 response to this declining demand, Frontier has cancelled many flights in the United States to avoid  
19 flying planes with too many empty seats to be profitable.

20           10. The main way that airlines like Frontier determine operational capacity (*i.e.*, how many  
21 flights it markets and flies) is by looking at passenger “load factors” on each route. Load factors  
22 measure the percentage of seats filled on an aircraft (or set of aircraft) scheduled to depart. Load  
23 factors can be determined for an overall schedule (all flights to all destinations), for particular routes  
24 (all flights between two airports), or for particular flight service (a specific scheduled flight with its  
25 own flight number). If load factors fall too low, airlines will determine that operating flight service as  
26  
27  
28

1 scheduled would not be profitable (or otherwise economically desirable) and will then typically modify  
2 the schedule—including by canceling previously scheduled flights

3 11. Frontier’s overall load factor is typically around 85-89%. But with declining customer  
4 demand in light of COVID-19, the airline has seen significant drops in its load factors.

5 12. Driven by the drop in travel demand, Frontier decreased its total flight capacity by 90%  
6 in April. It plans to fly at only 35% of the usual flight capacity by May 2020.

7 **Frontier Offers Customers Credit Where Refunds Are Due**

8 13. When Frontier cancels a flight, its contracts with its passengers require the airline to  
9 either (1) reaccommodate and transport passengers to their destination on another flight; or (2)  
10 provide a full refund for any unflown flight segments. The contract terms governing cancellations by  
11 the airline do not give Frontier the option of providing customers with a “credit” for future travel on  
12 the airline instead of a refund.  
13

14 14. Nevertheless, after canceling as many as 90% of its scheduled flights, Frontier has  
15 offered many of its canceled passengers only two options: (1) rebook your flight—sometimes weeks  
16 or more from the original travel date—or (2) obtain travel credit.

17 15. However, as will be explained below, Frontier’s Contract of Carriage mandates refunds,  
18 not credits, in this situation.  
19

20 16. Instead of following the terms of its Contract of Carriage, Frontier is unilaterally  
21 pushing vouchers or credits on customers, making it impossible for many customers to request  
22 refunds, and denying refunds when legitimate requests are made.

23 17. Frontier is placing its concern for its own financial stability ahead of the significant  
24 economic impacts its consumers are facing in this unprecedented economic downturn. In just over  
25 one month, over 22 million people in the United States have applied for unemployment benefits, and  
26 the U.S. unemployment rate has climbed to over 20%—the worst it has been since the Great  
27 Depression. As many as one-third of the 40 million renters in the U.S. are unable to make their rent,  
28

1 and millions of people with home mortgages will likely face foreclosure. Meanwhile, Frontier is  
2 currently slated to receive an influx of government rescue funds, in the form of grants and loans that  
3 will likely be forgiven. These government bailout funds are tied to the airline's commitment to provide  
4 a minimum level of service to airline customers, and yet, Frontier is already failing to meet its  
5 commitments to existing customers who are owed refunds. Now more than ever, customers whose  
6 flights or reservations have been canceled by Frontier need the prompt refunds to which they are  
7 entitled.

8  
9 18. As numerous customers complained about this practice by Frontier and other airlines,  
10 the DOT issued an Enforcement Notice Regarding Refunds by Carriers Given the Unprecedented  
11 Impact of the COVID-19 Public Health Emergency on Air Travel ("DOT Notice"). The DOT  
12 Notice provides that the airlines must refund tickets if they cancel flights due to the novel coronavirus:

13 The U.S. Department of Transportation's Office of Aviation Enforcement and  
14 Proceedings (Aviation Enforcement Office), a unit within the Office of the General  
15 Counsel, is issuing this notice to remind the traveling public, and U.S. and foreign  
16 carriers, operating at least one aircraft having a seating capacity of 30 or more seats,  
17 that passengers should be ***refunded promptly*** when their scheduled flights are  
18 cancelled or significantly delayed. Airlines have long provided such refunds, including  
19 during periods when air travel has been disrupted on a large scale, such as the  
20 aftermath of the September 11, 2001 attacks, Hurricane Katrina, and presidentially  
21 declared natural disasters. Although the COVID-19 public health emergency has had  
22 an unprecedented impact on air travel, ***the airlines' obligation to refund passengers  
23 for cancelled or significantly delayed flights remains unchanged.***

24 The Department is receiving an increasing number of complaints and inquiries from  
25 ticketed passengers, including many with non-refundable tickets, who describe having  
26 been denied refunds for flights that were cancelled or significantly delayed. In many  
27 of these cases, the passengers stated that the carrier informed them that they would  
28 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 of the carrier's control  
(e.g., a result of government restrictions). The focus is not on whether the flight***

1 *disruptions are within or outside the carrier's control, but rather on the fact that*  
2 *the cancellation is through no fault of the passenger.* Accordingly, the  
3 Department continues to view any contract of carriage provision or airline policy that  
4 purports to deny refunds to passengers when the carrier cancels a flight, makes a  
5 significant schedule change, or significantly delays a flight to be a violation of the  
6 carriers' obligation that could subject the carrier to an enforcement action.<sup>1</sup>

7 (emphasis added).

8 19. Thus, Frontier's failure to provide prompt refunds for canceled flights violates not only  
9 its own Contract of Carriage, but also federal law.

### 10 **PARTIES, JURISDICTION, AND VENUE**

11 20. Feliks Obertman is a California citizen who resides in Elk Grove, California.

12 21. Defendant is a Colorado for-profit corporation having its principal place of business in  
13 Denver, Colorado.

14 22. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of  
15 2005 ("CAFA"), 28 U.S.C. § 1332(d). The amount in controversy exceeds the sum of \$5,000,000  
16 exclusive of interest and costs, there are more than 100 putative class members, and minimal diversity  
17 exists because many putative class members are citizens of a different state than Defendant.

18 23. Venue is proper in this Court pursuant to 28 U.S.C. §1391, because this is the  
19 judicial district in which a substantial part of the events giving rise to the claims asserted herein  
20 occurred.

### 21 **GENERAL ALLEGATIONS**

22 24. On March 17, 2020, Plaintiff purchased two roundtrip tickets for travel from  
23 Sacramento (SMF) to Denver Intl (DEN), for him and his wife. The flight was scheduled to depart  
24 on May 8, 2020.

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25  
26 <sup>1</sup> U.S. Dep't of Transportation, Enforcement Notice Regarding Refunds by Carriers given the  
27 Unprecedented Impact of the COVID-19 Public Health Emergency on Air Travel (Apr. 3, 2020),  
28 [https://www.transportation.gov/sites/dot.gov/files/2020-04/Enforcement%20Notice%20Final%20April%203%202020\\_0.pdf](https://www.transportation.gov/sites/dot.gov/files/2020-04/Enforcement%20Notice%20Final%20April%203%202020_0.pdf).

1 25. On March 21, 2020, Plaintiff purchased one additional roundtrip ticket for his  
2 daughter for the same flight—Sacramento (SMF) to Denver Intl (DEN).

3 26. On or about March 23, 2020, Plaintiff received an email from Frontier informing him  
4 that the May 8th flight had been cancelled and he would be rebooked.

5 27. On or about March 31, 2020, Plaintiff received an email from Frontier informing him  
6 that the reservation had been further modified and he was now booked on a flight scheduled to  
7 depart Sacramento on May 10, 2020.

8 28. Plaintiff contacted Frontier and was informed that his two options were to accept this  
9 rebooked flight, two days after his originally scheduled trip, or take a credit for future travel on  
10 Frontier. Plaintiff requested a refund, but Frontier told him that option was not available to him.  
11 Having no need for a plane ticket on May 10, 2020, Plaintiff was forced to accept the credit subject  
12 to expiration.  
13

14 29. In sum, despite the fact that Plaintiff could not take the flight he booked because  
15 Frontier canceled it, Frontier failed to provide a refund to Plaintiff and, instead, only offered Plaintiff  
16 a voucher for use on a future Frontier flight.  
17

### 18 **The Contract**

19 30. Every Frontier passenger air travel ticket incorporates by reference (including in some  
20 cases by hyperlink) and is governed by Frontier's Contract of Carriage. **See Contract of Carriage,**  
21 **attached as Exhibit A.** Frontier drafted the Contract of Carriage.

22 31. Section 18 of the Contract of Carriage governs in a situation where Frontier cancels a  
23 flight, as was the case for Plaintiff and other Class members. While there are a number of  
24 circumstances under which Frontier could cancel a flight, in every case, Frontier is required to  
25 provide a reasonable accommodation to the passenger's ticketed destination or refund the fare.  
26

27 32. The Contract of Carriage states in relevant part:

28 B. Force Majeure - In the occurrence of a force majeure event, Frontier may cancel,

1 divert, or delay any flight without liability *except to provide a refund for the unused*  
 2 *portion of the ticket.*

3 C. Delay, Misconnection, or Cancellation - In the event (i) a passenger's flight is  
 4 canceled, (ii) a passenger is denied boarding because an aircraft with lesser capacity is  
 5 substituted, (iii) a passenger misses a connecting Frontier flight due to a delay or  
 6 cancellation of a Frontier flight (but not flights of other carriers), (iv) a passenger is  
 7 delivered to a different destination because of the omission of a scheduled stop to  
 8 which the passenger held a ticket, to the extent possible, Frontier will provide  
 9 transportation on its own flights at no additional charge to the passenger's original  
 10 destination or equivalent destination as provided herein. Frontier will have no  
 11 obligation to provide transportation on another carrier. *If Frontier cannot provide*  
 12 *the foregoing transportation, Frontier shall, if requested, provide a refund for*  
 13 *the unused portion of the passenger's ticket in lieu of the transportation under*  
 14 *the foregoing.* The foregoing shall be the limit of Frontier's liability for the matters  
 15 covered by this provision.

16 \* \* \*

17 E. Schedule Change Prior to Day of Travel -- When a passenger's itinerary is changed  
 18 because of a modification in Frontier's schedule, arrangements will be made to:

- 19 1) Transport the passenger over its own route system to the destination; or  
 20 2) In the event Frontier determines that the schedule modification is  
 21 significant, Frontier shall, if requested, *provide passengers a refund of the*  
 22 *cost of the unused portion of the ticket.*

23 Ex. A at § 18 (emphasis added).

24 33. Section 20(B)(3) specifies that “[a] refund will be provided only to the original  
 25 purchaser’s form of payment.”

26 34. Further, under Frontier’s Customer Service Plan, Frontier reiterates that in the event  
 27 of a flight cancellation—whether caused by a controllable situation or an uncontrollable situation—  
 28 Frontier will “provide you, upon request, a full refund of any unused portion of your ticket.” **Exhibit**  
**B, Frontier Customer Service Commitment, ¶ 12.**

35. Both Section 18 of the Contract of Carriage and paragraph 12 of the Customer Service  
 Plan clearly provide for either rebooking or a refund in the event that Frontier cancels a flight.  
 Neither provision provides for any “credit” for use on a future Frontier flight.

36. Here, Plaintiff’s flight was canceled, and Frontier only offered to rebook him on



1 another flight two days after his and his families' originally scheduled travel date. Plaintiff informed  
2 Frontier that the rebooked flight was not an acceptable alternative transportation and that Plaintiff  
3 would not be taking that flight. Plaintiff had not used any portion of the roundtrip ticket for his trip.  
4 Thus, pursuant to the terms of the Contract of Carriage, Plaintiff is entitled to a refund of the fare  
5 for the roundtrip ticket in U.S. Dollars to his original form of payment. Ex. A at §§ 18; 20(B)(3).

### 6 CLASS ACTION ALLEGATIONS

7 37. Pursuant to Fed. R. Civ. P. 23(a), (b)(1), (b)(2) and (b)(3), as applicable, Plaintiff seeks  
8 certification of the following nationwide class (the "Class"):

9 All persons in the United States who purchased tickets for travel on a  
10 Frontier Airlines flight scheduled to operate from March 1, 2020  
11 through the date of a class certification order, whose flight(s) were  
12 canceled by Frontier, and who were not provided a refund.

13 38. Excluded from the Class are Defendant, any entity in which Defendant has a  
14 controlling interest, and Defendant's officers, directors, legal representatives, successors, subsidiaries,  
15 and assigns. Also excluded from the Class are any judicial officer presiding over this matter, members  
16 of their immediate family, and members of their judicial staff, and any Judge sitting in the presiding  
17 court system who may hear an appeal of any judgment entered. Also excluded from the Class is any  
18 person who was reaccommodated and transported to their ticketed destination by Defendant or its  
19 agents.

20 39. Plaintiff reserves the right to amend or modify the Class definition with greater  
21 specificity or division after having had an opportunity to conduct discovery.

22 40. The Class meets the criteria for certification under Rule 23(a), (b)(1), (b)(2), (b)(3) and  
23 (c)(4).

24 41. **Risk of Inconsistent or Varying Adjudications. Fed. R. Civ. P. 23(b)(1).** As the  
25 proposed class members include thousands of persons across all 50 states, there is significant risk of  
26  
27  
28

1 inconsistent or varying adjudications with respect to individual class members that would establish  
2 incompatible standards of conduct for the Defendant. For example, declaratory relief may be entered  
3 in multiple cases, but the ordered relief may vary, causing the Defendant to have to choose the court  
4 order with which it will comply.

5       42. **Numerosity. Fed. R. Civ. P. 23(a)(1).** Consistent with Rule 23(a)(1), the members  
6 of the Class are so numerous and geographically dispersed that the joinder of all members is  
7 impractical. While the exact number of class members is unknown to Plaintiff at this time, it is  
8 believed that the Class is comprised of tens of thousands if not hundreds of thousands of members  
9 geographically dispersed throughout the United States. Affected consumer's names and addresses  
10 are available from Frontier's records, and class members may be notified of the pendency of this  
11 action by recognized, court-approved notice dissemination methods, which may include electronic  
12 mail, U.S. Mail, internet notice, and/or published notice.

13  
14       43. **Predominance of Common Issues. Fed. R. Civ. P. 23(a)(2) and (b)(3).**  
15 Consistent with Rule 23(a)(2) and with 23(b)(3)'s predominance requirement, this action involves  
16 common questions of law and fact that predominate over any questions affecting individual class  
17 members. The common questions include:

- 18       a. Whether Defendant's conduct breaches its Contract of Carriage;
- 19       b. Whether Defendant is required to give a refund, rather than credit on a future flight  
20 when it cancels a flight and cannot reaccommodate the passengers within a reasonable time of the  
21 original flight schedule;
- 22       c. Whether Plaintiff and members of the Class are entitled to damages, costs, or  
23 attorneys' fees from Defendant; and
- 24       d. Whether Plaintiff and members of the Class are entitled to compensatory damages.

25  
26       44. **Typicality. Fed. R. Civ. P. 23(a)(3).** Plaintiff's claims are typical of other Class  
27 members' claims because Plaintiff and Class members were subjected to the same unlawful conduct  
28

1 and damaged in the same way. Defendant's conduct that gave rise to the claims of Plaintiff and other  
2 Class members (i.e., canceling flights without giving refunds in breach of the Contract of Carriage)  
3 is the same for all Class members.

4 45. **Adequacy. Fed. R. Civ. P. 23(a)(4).** Consistent with Rule 23(a)(4), Plaintiff is an  
5 adequate representative of the Class because Plaintiff is a member of the Class and is committed to  
6 pursuing this matter against Defendant to obtain relief for the Class. Plaintiff has no conflicts of  
7 interest with the Class. Plaintiff's counsel are competent and experienced in litigating class actions,  
8 including extensive experience in litigating consumer claims. Plaintiff intends to vigorously prosecute  
9 this case and will fairly and adequately protect the interests of the Class.  
10

11 46. **Superiority. Fed. R. Civ. P. 23(b)(3).** Consistent with Rule 23(b)(3), a class action is  
12 superior to any other available means for the fair and efficient adjudication of this controversy, and  
13 no unusual difficulties are likely to be encountered in the management of this class action. The  
14 purpose of the class action mechanism is to permit litigation against wrongdoers even when damages  
15 to individual plaintiffs and class members may not be sufficient to justify individual litigation. Here,  
16 the damages suffered by Plaintiff and the Class members are relatively small compared to the burden  
17 and expense required to individually litigate their claims against Defendant, and thus, individual  
18 litigation to redress Defendant's wrongful conduct would be impracticable. Individual litigation by  
19 each Class member would also strain the court system. Moreover, individual litigation creates the  
20 potential for inconsistent or contradictory judgments and increases the delay and expense to all  
21 parties and the court system. By contrast, the class action device presents far fewer management  
22 difficulties and provides the benefits of a single adjudication, economies of scale, and comprehensive  
23 supervision by a single court.  
24

25 47. **Declaratory Relief.** Class certification is also appropriate under Rule 23(b)(2) and (c).  
26 Defendant, through its uniform conduct, acted or refused to act on grounds generally applicable to  
27 the Class as a whole, making injunctive and declaratory relief appropriate to the Class as a whole.  
28

1 Moreover, Defendant continues to offer credits instead of refunds to Plaintiff and Class members  
2 for flights that they cancel, thus making declaratory relief a live issue and appropriate to the Class as  
3 a whole.

#### 4 **COUNT I - BREACH OF CONTRACT**

5 48. Plaintiff realleges and reincorporates its allegations in paragraphs 1 through 46 above  
6 as if fully set forth herein.

7 49. This claim for breach of contract damages or, in the alternative, specific performance  
8 of the contract's refund terms, is based on Defendant's breaches of its Contract of Carriage (the  
9 "Contract").

10 50. Plaintiff, along with all putative class members, entered into a Contract with Defendant  
11 for provision of air travel in exchange for payment. This Contract was drafted by Defendant.

12 51. Plaintiff, and all putative class members performed under the Contract, specifically, by  
13 tendering payment for the airline tickets to Defendant and complied with all conditions precedent  
14 under the Contract.

15 52. Due to Defendant's cancellation of their flights, Plaintiff, and all putative class  
16 members cannot use their airline tickets through no fault of their own and they are not getting the  
17 benefit of their bargain with Defendant.

18 53. Under the terms of the Contract of Carriage drafted by Defendant, Plaintiff and  
19 putative class members are entitled to refunds because Frontier canceled their flights and did not  
20 reaccommodate and transport the customers to their destinations on another flight. Contract of  
21 Carriage § 18(a)(1). By failing to provide refunds, Frontier has breached its Contract of Carriage.  
22

23 54. As a result of Defendant's breaches of contract, Plaintiff and the putative class  
24 members have incurred damages in an amount to be proven at trial.  
25  
26  
27  
28

**REQUEST FOR RELIEF**

**WHEREFORE**, Plaintiff, individually and on behalf of all putative Class members, respectfully requests that the Court enter judgment in their favor and against Defendant as follows:

1. For an Order determining at the earliest possible time that this matter may proceed as a class action under Rule 23 and certifying this case as such;
2. For himself and each Class member their actual compensatory damages, or in the alternative, for specific performance of the refund provisions of the Contract of Carriage;
3. For reasonable attorneys’ fees and costs of suit;
4. For pre-judgment interest; and
5. Such further and other relief the Court deems reasonable and just.

**JURY DEMAND**

Plaintiff, on behalf of himself and the Class of all others similarly situated, hereby demands a trial by jury on all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Dated: April 21, 2020

Respectfully submitted,

/s/Hassan A. Zavareei

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*\*pro hac vice application forthcoming*

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