

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE JUSTICE) THURSDAY, THE 7TH
)
TERRENCE PATTERSON) DAY OF JULY, 2016

BETWEEN:

LORI RIEDIGER and DANIEL BARRETT

Plaintiffs

and

AMERICAN AIRLINES INC.

Defendant

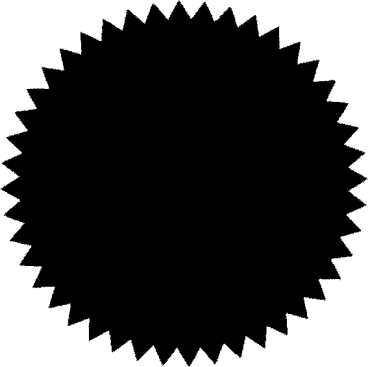
Proceeding under the Class Proceedings Act, 1992

**ORDER
(Settlement Approval)**

THIS MOTION, made by the plaintiffs for the purpose of settlement and for an Order pursuant to subsection 29(2) of the *Class Proceedings Act, 1992*, S.O.

1992, c.6 was heard this day at Windsor, Ontario.

ON READING the materials filed, including the affidavits of Heather Rumble Peterson and Lori Riediger,



AND ON BEING ADVISED that no one has opted out of the action or objected to the proposed settlement and that the parties consent to this Order,

AND ON HEARING the submissions of counsel for the plaintiffs and the defendant,

AND without any admission of liability on the part of the defendant, which has denied liability in the action,

1. **THIS COURT ORDERS** that the definitions set out in the settlement agreement reached with the defendant dated May 17, 2016 (the “Settlement Agreement”) attached as **Schedule “A”** and the following definitions apply to and are incorporated into this Order:

- (a) **“Air Passenger Services”** mean the defendant’s direct and indirect international air passenger flights to trans-atlantic destinations in Europe and/or trans-pacific destinations in Asia and the South Pacific;
- (b) **“Class Period”** means the period from October 1, 2001 to and including August 1, 2007;
- (c) **Excluded Persons** mean the defendant and its respective predecessors, subsidiaries, affiliates, officers, directors and senior employees, its alleged co-conspirators and persons who have commenced litigation in a jurisdiction other than Canada who would otherwise have been Settlement Class Members;
- (d) **“Proceedings”** means *Riediger v. Japan Airlines*, Ontario Court file no. CV-09-384304, *Page v. British Airways*, Ontario Court file no. CV-09-384306, and *Lee v. Korean Air Lines*, Ontario Court file no. 56747CP;
- (e) **“Released Claim”** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual, or otherwise in nature, whether personal or subrogated, damages whenever incurred, and rights and liabilities of any nature whatsoever, including interest, costs,

expenses, administration expenses, Class Counsel Fees and lawyers' fees, known or unknown, suspected or unsuspected, in law, under statute or in equity, that the Releasors, or any of them, whether directly, indirectly, or in any other capacity, ever had, now have, or hereafter can, shall, or may have as against the Releasees or any one or more of the Releasees relating to any conduct alleged, or that could have been alleged, in the Action, or in the Proceedings. Provided, however, nothing herein shall release any claims for negligence, breach of contract, bailment, lost, delayed or damaged baggage, or comparable claim, between the Releasees and Releasors relating to Air Passenger Services to or from Canada;

- (f) **"Releasees"** means the defendant, and its insurers and their respective past and present parents, affiliates, subsidiaries, directors, officers, partners, employees, advisors, lawyers, representatives, successors, assigns and their heirs, executors, administrators, successors and assigns;
- (g) **"Releasors"** means, jointly and severally, the plaintiffs and the Settlement Class Members and their respective past and present representatives, heirs, executors, attorneys, administrators, and guardians, estate trustees, successors and assigns, as the case may be;
- (h) **"Settlement Class Members"** means all persons, other than Excluded Persons, who during the Class Period paid fares for Air Passenger Services to or from Canada which included Surcharges; and
- (i) **"Surcharges"** mean a fuel, insurance and/or security surcharge added to the fare for Air Passenger Services.

2. **THIS COURT ORDERS** that the settlement of the action, as recorded in the Settlement Agreement, is fair, reasonable and in the best interests of the Settlement Class Members and is approved pursuant to s. 29 of the *Class Proceedings Act*, 1992, S.O. 1992, c.6 and shall be implemented in accordance with its terms.

3. **THIS COURT ORDERS** that the Settlement Agreement is incorporated by reference to and forms part of this Order and is binding upon the representative plaintiff and each Settlement Class Member, including those persons who are minors or

mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of this motion.

4. **THIS COURT ORDERS** that each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.

5. **THIS COURT ORDERS** that the Releasors shall not now or hereafter institute, continue, maintain, or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasee or any other person who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto, except for the continuation of the Proceedings against named or unnamed alleged co-conspirators who are not Releasees.

6. **THIS COURT ORDERS** that the use of the terms “Releasors” and “Released Claims” in this Order does not constitute a release of claims by those Settlement Class Members who are resident in any location where the release of one tortfeasor is a release of all tortfeasors. The use of the terms “Releasors”, “Releasees” and “Released Claims” in this Order is a matter of form only for consistency with the Settlement Agreement.

7. **THIS COURT ORDERS** that each Settlement Class Member who is resident in any location where the release of one tortfeasor is a release of all tortfeasors

SCHEDULE A

Court File No.: CV-09-13516

ONTARIO
SUPERIOR COURT OF JUSTICE
(commenced at Windsor)

BETWEEN:

LORI RIEDEGER and DANIEL BARRETT

Plaintiffs

- and -

AMERICAN AIRLINES INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

SETTLEMENT AGREEMENT

Made as of May 17, 2016

All parties consent and agree to the settlement of this proposed class action (the "Action"), subject to Court approval, on the terms set out in the following paragraphs:

1. The Defendant American Airlines Inc. ("AA") denies all of the allegations made against it in this Action and represents to the Plaintiffs that AA has not been named as a defendant in any other action commenced in Canada in respect of Surcharges on Air Passenger Services, as hereinafter defined.
2. The parties acknowledge the existence of litigation commenced in 2015 entitled *Gifford v. Air Canada et al.* and related litigation. The parties agree that *Gifford* and the related litigation are not actions commenced in respect of Surcharges on Air Passenger Services as defined herein.
3. The Plaintiffs acknowledge and agree that the Defendant has fully complied with and completed its obligations under the Tolling Agreement approved in this Action by Court Order dated February 3, 2010.
4. The Plaintiffs will forthwith bring a motion, with all necessary supporting material, for the consent conditional certification of this Action for settlement purposes for the following Class:

All persons, other than **Excluded Persons**¹, who during the **Class Period**² paid fares for **Air Passenger Services**³ to or from Canada which included **Surcharges**⁴.

¹**Excluded Persons** mean the defendant and its respective predecessors, subsidiaries, affiliates, officers, directors and senior employees, its alleged co-conspirators and persons who have commenced litigation in a jurisdiction other than Canada who would otherwise have been Settlement Class members.

²**Class Period** means the period from October 1, 2001 to and including August 1, 2007.

³**Air Passenger Services** mean the defendant's direct and indirect international air passenger flights to trans-atlantic destinations in Europe and/or trans-pacific destinations in Asia and the South Pacific.

⁴**Surcharges** mean a fuel, insurance and/or security surcharge added to the fare for Air Passenger Services.

5. The Certification Order will include a term providing that the Plaintiff will give notice of the certification and proposed resolution of the Action limited to the websites of Plaintiffs' counsel, and limited social media, with the wording and manner of dissemination to be acceptable to the Defendant, and approved by the Court.
6. Following the notice period provided in the Certification Order, the Plaintiffs will forthwith bring a motion, with all necessary supporting material, for the consent dismissal of the Action, including a full release acceptable to the Plaintiffs and Defendant.
7. The Dismissal Order will expressly permit the Plaintiffs and members of the proposed Class in this Action to proceed with the existing Trans-Atlantic, Trans-Pacific and Korean Air Actions being prosecuted by Plaintiffs' counsel against the named parties therein (but not AA).
8. Notwithstanding paragraphs 5 and 6, any members of the proposed Class in this Action resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors do not release the releasees but instead covenant and undertake not to sue or make any claim in any way or to threaten, commence, participate in, or continue any proceeding in any jurisdiction against the releasees in respect of or in relation to the released claims except for the continuation of the Trans-Atlantic, Trans-Pacific and Korean Air Actions against the named parties therein (but not AA).

9. The Certification Order and the Dismissal Order shall be in a form agreeable to the Plaintiffs and the Defendant.
10. The Defendant AA agrees to provide, on a without prejudice basis, information in response to enquiries by Plaintiffs' counsel made to Defendant's counsel regarding airline fuel surcharges during the proposed Class Period. Plaintiffs' counsel will be limited to five enquiries over two years commencing with the issuance of the Dismissal Order in this matter. AA will use its best efforts to respond, but will not be asked or required to search for or to provide any documents, or to contact or provide information from any specific person employed by or outside the employment of the Defendant. AA will not be asked for and will not provide any sworn evidence, other than to substantiate its business records previously produced pursuant to the Tolling Agreement if requested by Plaintiffs' counsel, and will not be issued a subpoena or summons by Plaintiffs' counsel, or by any agent or person under its direction or at its suggestion.
11. The Plaintiffs acknowledge that, upon issuance of the Dismissal Order in this matter, AA will be free to release any litigation hold it may have in place with respect to the causes of action asserted in this Action.
12. Neither the Plaintiffs nor the Defendant will request any order respecting legal fees, costs or disbursements as a term of the dismissal of the Action.
13. The parties acknowledge that this Settlement Agreement is null and void in all respects, if it is not approved by the Court as written.

AUTHORIZED SIGNATURES

The persons signing this Settlement Agreement each represent that he/she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement and has the authority to bind the party with respect to the matters set forth herein. In the case of execution by counsel, the signatory represents that she/he has the full and informed authority of her/his client(s) to proceed.

COUNTERPARTS

This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same Settlement Agreement.

A facsimile or email signature shall be deemed an original signature for the purpose of executing this Settlement Agreement.

DATE OF EXECUTION

The parties have executed this Settlement Agreement as of the date on the cover page.

**LORI RIEDIGER and DANIEL BARRETT, by
their counsel**

By: 

Sutts, Strosberg LLP

By: _____

Harrison Pensa LLP

AMERICAN AIRLINES

By: _____

McCarthy Tetrault LLP

ONTARIO
SUPERIOR COURT OF JUSTICE
(Proceeding commenced at Windsor)

Proceeding under the *Class Proceedings Act, 1992*

SETTLEMENT AGREEMENT
dated this 17th day of May, 2016

McCarthy Tétrault LLP
Suite 5300, Box 48
TD Bank Tower
66 Wellington Street West
Toronto ON M5K 1E6

Dana M. Peebles LSUC#: 30820V
Tel: (416) 601-7839
Fax: (416) 868-0673

Lawyers for the Defendant

14899523

RIEDIGER et al.

Plaintiffs

vs. AMERICAN AIRLINES INC.

Defendant

Court File No. CV-09-13516

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT WINDSOR

Proceeding under the *Class Proceedings Act, 1992*

ORDER

HARRISON PENZA LLP

Lawyers
450 Talbot Street
P.O. Box 3237
London, ON N6A 5J6

JONATHAN FOREMAN

LSUC No.: 45087H
Tel: 519.661.6775
Fax: 519.667.3362

SUTTS, STROSBERG LLP

Lawyers
600 Westcourt Place
251 Goyeau Street
Windsor, ON N9A 6V4

HEATHER RUMBLE PETERSON

LSUC No.: 24671V
Tel: 519.561.6216
Fax: 519.561.6203

LAWYERS FOR THE PLAINTIFFS

FILE: 11.174.000