

HONORABLE MARSHA J. PECHMAN

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UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LAURA HUTCHINSON, C. DONALD SMITH
and JOAN SMITH, husband and wife, AYDAN
KAYSERILI, ERICA McQUEEN, KRISTINA
SMITH, KEVIN VIRGIL, PHILIP SANFORD,
TRUDY McAVOY and RANDY McAVOY,
husband and wife, GISELA SANCHEZ-
MARTINEZ, and CINDY KERR individually
and on behalf of others similarly situated,

Plaintiffs,

v.

BRITISH AIRWAYS Plc,

Defendant.

No. 07-CV-1370 (MJP)

SECOND AMENDED CLASS ACTION
COMPLAINT

JURY TRIAL DEMANDED

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1 Plaintiffs Laura Hutchinson, C. Donald and Joan Smith, husband and wife, Aydan
2 Kayserili, Erica McQueen, Kristina Smith, Kevin Virgil, Philip Sanford, Trudy and Randy
3 McAvoy, husband and wife, Gisela Sanchez-Martinez, and Cindy Kerr by and through their
4 attorneys, on behalf of themselves and all others similarly situated, bring this Class Action
5 Complaint against British Airways Plc, pursuant to the Montreal Convention (Convention for the
6 Unification of Certain Rules for International Carriage by Air, done at Montreal on May 28,
7 1999) (or “the Convention”), and allege, based upon personal knowledge as to themselves and
8 their own acts, and as to all other matters upon information and belief, as follows:

9 **I. BACKGROUND**

10 1. British Airways Plc (or “British Air”) is a private airline company, registered in
11 England, with world headquarters located outside London. On its website, British Air notes that
12 it is “the UK’s largest international scheduled airline, flying to over 550 destinations....”

13 2. British Air reported \$16.66 billion in revenue for the fiscal year ending March 31,
14 2007, carrying over 33 million passengers during the course of the year.

15 3. Though according to its website “British Airways takes pride in providing a full
16 service experience” for its passengers, for at least the past two years British Air has instead
17 provided an inexcusably reckless service that fails to protect and deliver its passengers’ baggage.
18 While in its most recent financial report British Air boasts of adding “accolades” graciously “to
19 the trophy cabinet,” it was recently given the distinction of being *the worst* major European
20 airline for losing passenger baggage.

21 4. According to their recent report, the Air Transport Users Council (AUC)
22 determined that British Air loses (temporarily or permanently) 23 bags per 1,000 passengers
23 carried – over 60 percent more lost baggage than the already alarming industry average. Having
24 carried over 65 million passengers over the past two years, that translates to over one million lost
25 items of baggage, including delayed and damaged baggage.

26

1 5. British Air’s Director of Operations, Chris Want, in discussing this abysmal
2 record, acknowledged this year that “we accept that overall levels of service we offered to our
3 customers has not been up to an acceptable standard.” In apologetic letters to aggrieved
4 passengers, British Air representatives claim they are “trying to make improvements to our
5 baggage performance,” realizing “our service to our customers may not always reflect the usual
6 levels of customer service we pride ourselves on.” This has been true for at least the past two
7 years, most conspicuously in 2007.

8 6. Despite knowledge of its inability to honestly provide reasonable assurance that
9 its company is able to effectively handle the transport of a given passenger’s baggage to its
10 assigned destination, the Defendant has not given its passengers notice of its inadequate baggage
11 handling system. According to reports, by March of this year the Defendant admitted a 20,000
12 bag backlog (which workers claimed was closer to 40,000) of mishandled passenger baggage.
13 Despite this, and British Air’s April 2007 admission that its baggage handling system was
14 running at nearly 25 percent above capacity, the Defendant failed to warn travelers or provide
15 any notice whatsoever of its inability to make good on its promise to transport personal property
16 to its assigned destination.

17 7. In the complete absence of such notice, many thousands of American passengers
18 have relied, to their detriment, upon the assurance that both they and their property would arrive
19 at their expected destinations. British Air’s recklessness in handling its passengers’ baggage has
20 resulted in significant amounts of damaged and/or lost property, not to mention the scores of
21 ruined vacations and damaged or lost treasured personal items, often sold off to the highest
22 bidder at auction. In fact, multiple reports indicate premature sale at auction of scores of
23 personal items, such as iPods, digital cameras, computer laptops, and mobile phones, each
24 removed from luggage which is auctioned separately. According to auction employees, these
25 auction sales increased throughout 2007, and often included items which had only been
26 “missing” for a few weeks.

1 8. Adding insult to injury, the Defendant's response to legitimate complaints and
2 requests for assistance from numerous passengers, including proposed Class Members, has
3 utterly failed to demonstrate a bona fide concern for their welfare, and the integrity of their
4 personal property. While providing repeated, false assurances to their travelers, British Air
5 simultaneously routes tens of thousands of passengers' baggage to auction houses. British Air
6 fails to provide any notice to its passengers concerning this practice.

7 9. The Defendant has provided little helpful information to passengers asking for
8 assistance in locating their baggage, or in securing due compensation for their lost and/or
9 damaged property. Instead, such consumers, including proposed Class Members, have been
10 placed on hold *ad infinitum*, misled repeatedly concerning the whereabouts of their baggage, and
11 otherwise treated with disrespect or indifference, left to navigate alone in a seemingly endless
12 maze of corporate bureaucracy.

13 10. "RECOGNIZING," in part, "the importance of ensuring protection of the interests
14 of consumers in international carriage by air and the need for equitable compensation based on
15 the principle of restitution..." over 125 countries, including the United States and the United
16 Kingdom, have become signatory "States Parties" to the Montreal Convention. *Reprinted in S.*
17 *Treaty Doc. No. 106-45, 1999 U.S.T. Lexis 175.*

18 11. Among its many provisions, the Convention provides that the "carrier is liable for
19 damage sustained in case of destruction or loss of, or of damage to, checked baggage..." Article
20 17, and "liable for damage occasioned by delay in the carriage by air of passengers, baggage or
21 cargo." Article 19.

22 12. With respect to both aforementioned Articles, the Convention provides that in
23 "the carriage of baggage, the liability of the carrier in the case of destruction, loss, damage, or
24 delay is limited to 1,000 Special Drawing Rights for each passenger," where the passenger has
25 not otherwise paid in advance for greater insurance. Article 22. This limitation on liability is
26 rendered inapplicable by the terms of the Convention where "it is proved that the damage

1 resulted from an act or omission of the carrier, its servants or agents, or done with intent to cause
2 damage *or recklessly and with knowledge that damage would probably result*” Article 22(6)
3 (emphasis added). As British Air recognizes in its letter to passengers, if the 1,000 Special
4 Drawing Rights “does not cover the total cost of your expenses or your belongings then you may
5 have further rights against us under the Montreal Convention....” Plaintiffs here seek to secure
6 those rights on behalf of themselves and those similarly situated.

7 13. Plaintiffs, and those similarly situated, have lost precious time, money, and
8 personal, often significant, property as a result of the Defendant’s reckless handling and care of
9 their baggage, and have thereby suffered injury entitling them to damages from the Defendant
10 under the terms of the Convention. Defendant’s acknowledgment of and reckless disregard for
11 such foreseeable, repeated injury to its passengers subjects it to liability equal to the damages
12 sustained by such passengers.

13 II. JURISDICTION AND VENUE

14 14. This Court has subject matter jurisdiction over Plaintiffs’ claims pursuant to the
15 Montreal Convention, Article 33 (Convention for the Unification of Certain Rules for
16 International Carriage by Air, done at Montreal May 28, 1999), S. Treaty Doc. No. 106-45,
17 1999 U.S.T. Lexis 175, 1999 W.L. 33292734 (2000). Class members include persons across the
18 United States, many of whom reside outside the State of Washington, some of whom reside
19 temporarily outside the United States. Defendant British Airways is a private British airline
20 company headquartered in Waterside, Harmondsworth, subject to the terms of the Montreal
21 Convention as applied to the Plaintiffs and proposed Class Members.

22 15. Venue is proper in this Court pursuant to the Montreal Convention, Article 33, as
23 the Western District of Washington is the “territory of one of the States Parties” (to wit, the
24 United States) where the “carrier...has a place of business through which the contract has been
25 made....,” and is selected, pursuant to the Montreal Convention, “at the option of the Plaintiff.”
26 Plaintiffs Laura Hutchinson, C. Donald and Joan Smith, Kristin Smith, Philip Sanford, Trudy and

1 Randy McAvoy, and Gisela Sanchez-Martinez entered into their respective contracts with the
2 Defendant carrier in this District, and the remaining Plaintiffs concur in the decision to file their
3 respective claims in this District.

4 III. PARTIES

5 16. At all times relevant herein, Plaintiff Laura Hutchinson has been a resident of
6 Seattle, Washington. Ms. Hutchinson secured air transportation from British Airways and did
7 travel on said airline during the proposed Class Period. As a result of the Defendant's acts
8 and/or omissions, her baggage, including valuable personal property and foreign study materials,
9 was permanently lost.

10 17. At all times relevant herein, Plaintiffs C. Donald and Joan Smith have been
11 residents of Tacoma, Washington. They secured air transportation from British Airways and did
12 travel on said airline during the proposed Class Period. As a result of the Defendant's acts
13 and/or omissions, both C. Donald and Joan Smith temporarily lost, had delayed and subsequently
14 damaged beyond repair, their personal baggage and valuable property.

15 18. At all times relevant herein, Plaintiff Aydan Kayserili has been a resident of
16 Milwaukee, Wisconsin. Ms. Kayserili secured air transportation from British Airways and did
17 travel on said airline during the proposed Class Period. As a result of the Defendant's acts
18 and/or omissions, her baggage, including valuable personal property, was permanently lost.

19 19. At all times relevant herein, Plaintiff Erica McQueen has been a resident of Park
20 Ridge, Illinois. Ms. McQueen secured air transportation from British Airways and did travel on
21 said airline during the proposed Class Period. As a result of the Defendant's acts and/or
22 omissions, her baggage, including valuable personal property, was permanently lost.

23 20. At all times relevant herein, Plaintiff Kristina Smith has been a resident of Seattle,
24 Washington. Ms. Smith secured air transportation from British Airways and did travel on said
25 airline during the proposed Class Period. As a result of Defendant's acts and/or omissions, her
26 baggage, including valuable personal property, was delayed for months, and returned damaged.

1 21. At all times relevant herein, Plaintiff Kevin Virgil has been a resident of the State
2 of Virginia. Mr. Virgil secured air transportation from British Airways and did travel on said
3 airline during the proposed Class Period. As a result of the Defendant's acts and/or omissions,
4 his baggage, including valuable personal property, was permanently lost.

5 22. At all times relevant herein, Plaintiff Philip Sanford has been a resident of Seattle,
6 Washington. Mr. Sanford secured air transportation from British Airways and did travel on said
7 airline during the proposed Class Period. As a result of the Defendant's acts and/or omissions,
8 his baggage, including valuable personal property, was delayed for many weeks, at great
9 personal expense.

10 23. At all times relevant herein, Plaintiffs Trudy and Randy McAvoy have been
11 residents of Forks, Washington. The McAvoy's secured air transportation from British Airways
12 and did travel on said airline during the proposed Class Period. As a result of the Defendant's
13 acts and/or omissions, their baggage, including valuable personal property, was delayed,
14 misrouted, and returned damaged.

15 24. At all times relevant herein, Plaintiff Gisela Sanchez-Martinez has resided in
16 Western Washington. Ms. Sanchez-Martinez secured air transportation from British Airways
17 and did travel on said airline during the proposed Class Period. As a result of the Defendant's
18 acts and/or omissions, her baggage, including valuable personal property, was permanently lost.

19 25. At all times relevant herein, Plaintiff Cindy Kerr has resided in the Denver,
20 Colorado area. Ms. Kerr secured air transportation from British Airways and did travel on said
21 airline during the proposed Class Period. As a result of Defendant's acts and/or omissions, her
22 baggage, including valuable personal property, was delayed for months, at great personal and
23 professional expense.

24 26. The Defendant's recklessness in the operation of its baggage transport has
25 resulted in significant economic harm to each of the aforementioned Plaintiffs.
26

1 27. At all times relevant here, British Air has operated as a private airline company,
2 registered as British Airways Plc in the United Kingdom, with headquarters in Waterside,
3 Harmondsworth. British Air is registered in Washington as British Airways Plc d/b/a British
4 Airways Plc Ltd. During the proposed Class Period, the Defendant was engaged in the business
5 of providing air transportation services for passengers located throughout the United States and
6 the world.

7 IV. ALLEGATIONS

8 A. British Air's Admissions Regarding its Unacceptable Baggage Handling System

9 28. Following half a century of state ownership, in 1987 British Airways was
10 privatized under direction from the British government, and began listing on the London Stock
11 Exchange. Shortly thereafter, British Air became a highly profitable company, immodestly
12 claiming title as "The World's Favourite Airline."

13 29. Based at London's Heathrow Airport (or "Heathrow"), where it controls nearly
14 40% of the take off and landing slots, British Air, for the past ten years, has carried an annual
15 average of 35 million passengers on its fleet of over 200 aircraft. It is also one of the twelve
16 largest cargo airlines in the world.

17 30. British Air employs approximately 50,000 employees in its global operations,
18 roughly half the workforce of competitors (the two other largest airlines in Europe) Air France-
19 KLM Group and Lufthansa Group.

20 31. With its own "US Website," British Air markets its services heavily within the
21 United States, and many thousands of American travelers have trusted British Air to transport
22 them and their property to their international destinations.

23 32. Many travelers on British Air flights, including many proposed Class Members,
24 are connected to their destinations through Heathrow, a highly congested hub through which
25 British Air commonly routes its passengers.

26

1 33. Unfortunately for hundreds of thousands of British Air passengers (more than
2 550,000 already this year), upon transferring care of their baggage to British Air, at Heathrow
3 and other airports, such baggage is misrouted, misplaced, abandoned, damaged, left in pouring
4 rain, placed into the wrong plane or no plane at all, lost permanently or for extended periods of
5 time, and generally handled with reckless disregard for its well-being.

6 34. Baggage not damaged beyond repair or lost altogether is then sent off for auction,
7 with individual personal items sold off to the highest bidder.

8 35. This fall, after initial denials, the Defendant acknowledged a massive backlog of
9 thousands of pieces of lost luggage (the balance of which were likely auctioned off) being flown
10 in jumbo jets to the United States for further processing. Up to ten such flights from London to
11 New York City have occurred in the past few months. Additionally, a fleet of trucks were
12 recently rented by British Air to drive massive collections of baggage out of London to Italy for
13 sorting, after the Defendant's Heathrow "processing centre" was overrun with lost baggage.
14 Having acknowledged its poor judgment, British Air is now belatedly attempting to hire 340
15 more baggage handlers, and scores of customer service operators.

16 36. The Association of European Airlines (AEA) noted recently that in April, May,
17 and June of this year, the Defendant lost one piece of baggage for every 36 passengers it carried
18 – significantly worse than any other airline, and twice the rate of the worst U.S. airline. Not
19 surprisingly, it is reported that the Defendant asked the AEA not to disseminate this information.
20 Additionally, British Air continues to operate its baggage handling system in this reckless
21 manner, without providing passengers any notice of their already out-of-control backlog of
22 mishandled property.

23 37. In reaction to this massive display of recklessness by the Defendant, multiple
24 websites have attracted scores of mistreated passengers, documenting the indifference shown by
25 the Defendant to the welfare of their personal property and the Defendant's obstinacy in the face
26 of thousands of legitimate passenger complaints.

1 38. A recent undercover investigation published in the Sept. 16, 2007, edition of the
2 *Sunday Telegraph* reported, “The baggage debacle at Heathrow,” revealing “[t]he careless way
3 that passengers’ luggage is treated,” and noting that “British Airways has been identified as the
4 worst airline for lost luggage” The investigation revealed the habitual indifference of British
5 Air to the fate of its passengers’ baggage, commonly allowing such baggage to fall off the backs
6 of “tugs” (carts), adding to the mountains of lost baggage overflowing Heathrow.

7 **B. Typical Passenger Experiences Resulting From British Air’s Baggage Mishandling**

8 **1. Laura Hutchinson**

9 39. Among the hundreds of thousands of aggrieved British Air passengers who have
10 suffered as a result of the Defendant’s recklessness, Plaintiff Laura Hutchinson, a college student
11 paying for her own education at the University of Washington, left Seattle on June 29, 2007, for
12 a two-month study abroad program in Paris, France. This was her first trip to Europe and she
13 planned to travel the continent following completion of the program. Upon arrival in Paris, she
14 was informed by a British Air representative that her bags were “delayed” in London, but would
15 be “delivered” to her dormitory the following day. Ms. Hutchinson was also provided an
16 inaccurate, non-functional “confirmation number” for her lost baggage claim. Lacking, *inter*
17 *alia*, all her study materials, travel accessories, rail passes, prescription medications, two months
18 worth of clothing, and with only the clothes on her back, her laptop, and her purse, she headed to
19 her dormitory.

20 40. Despite the Defendant’s false assurances, Ms. Hutchinson did not receive her
21 baggage the next day, nor the day after that, nor on any day subsequent. Instead, with those
22 assurances, she washed the same clothing each night to wear the next day. Ms. Hutchinson made
23 multiple, sequential calls to the Defendant’s “customer service” line, at great personal expense,
24 only to be placed on hold for extended periods of time, and to be told each time that she needed
25 to call back in another 30 minutes. Finally, after stressful days spent enduring British Air’s non-
26 responsive behavior, Ms. Hutchinson began to purchase necessary replacement items.

1 41. Adding insult to injury, during the following days, and eventually weeks, Ms.
2 Hutchinson constantly checked the British Air website, all the while attempting to contact
3 “customer service,” and was eventually misinformed by the Defendant that her bags were found,
4 and the delivery process initiated. Ms. Hutchinson even received a phone call at her dormitory
5 promising delivery of her baggage *the following day*. When the baggage did not arrive, British
6 Air, rather than apologizing, simply responded, on July 26 (one month after her travel experience
7 began) that they were unaware of the location of her baggage. The Defendant directed her to
8 come back to the Charles de Gaulle airport to talk with someone in person the next day – the day
9 before her finals.

10 42. At the airport, Ms. Hutchinson was greeted with further incompetence and
11 indifference. Despite having no money, and little available credit, British Air informed her that
12 they could not help her any further, and that she might receive her baggage, eventually, back in
13 Seattle. Ms. Hutchinson has never received any of her baggage, and has yet to be compensated
14 commensurate with the damages she suffered.

15 **2. C. Donald and Joan Smith**

16 43. Plaintiffs C. Donald and Joan Smith endured a British Air vacation experience
17 that included lost, damaged, and delayed baggage. On June 24, 2007, the couple boarded British
18 Air flight 298 from Chicago to London, in anticipation of a romantic vacation to Italy. Upon
19 arrival at Heathrow, the couple learned that some of their baggage had not arrived. They were
20 told unapologetically by British Air that the airline was experiencing extreme baggage handling
21 problems.

22 44. After arriving in Naples, Italy, their destination, the Smiths attempted to get help
23 from the Defendant in determining the status of their baggage. After much effort by the Smiths,
24 British Air determined that their baggage could not be located. Nearly all of Ms. Smith’s travel
25 items were contained in the baggage lost by Defendant, as well as a number of Mr. Smith’s
26 personal items.

1 45. In possession of only the clothing worn by her while aboard her international
2 flight, and a pair of high heels, Ms. Smith was forced to spend valuable vacation time searching,
3 in vain, for comparable replacement items. While Ms. Smith spent her vacation time searching
4 for replacement items, Mr. Smith spent countless hours, and hundreds of dollars in phone calls,
5 attempting to get assistance from the Defendant in locating their property.

6 46. Instead of assisting the Smiths, the Defendant's "customer service"
7 representatives informed them that there was nothing they could do, and that they were simply
8 "overworked and underpaid." One British Air representative was verbally abusive to both Ms.
9 Smith and the owner of the Bed & Breakfast the Smith's were staying at.

10 47. After two weeks spent without the slightest assistance from the Defendant, and
11 having spent significant amounts of money as a result of the Defendant's recklessness and lack
12 of professionalism, the Smiths headed back to the Naples Airport in anticipation of their flight to
13 London. Over the angry objection of a British Air employee, Ms. Smith insisted on accessing
14 the "lost baggage" area of the Defendant's operation at Naples, and managed to locate the
15 Smith's missing baggage on her own.

16 48. Upon inspection, the Smiths learned that the baggage, and all of its contents, had
17 somehow been damaged by water beyond repair. Neither the luggage nor any of the items inside
18 were salvageable.

19 49. The Smiths then took the damaged baggage with them to Heathrow, where 87
20 aggrieved passengers stood in British Airways' "customer service" line lodging complaints about
21 their missing and/or damaged baggage. Each of the Defendant's agents that the Smiths
22 attempted to contact for advice on how to receive compensation for their damaged baggage
23 treated them with utter and complete disrespect, refusing to provide employee identification, and
24 informing them that "no manager or supervisor" was "interested" in meeting with them about
25 their concerns.

26

1 50. In addition to the thousands of dollars in damaged property, including valuable
2 clothing and a camera, the costs of replacing items temporarily lost, delayed, and then damaged,
3 and costly phone calls to the non-responsive British Airways “customer service center,” Ms.
4 Smith was forced to spend her entire vacation without, *inter alia*, her dental plate (causing her to
5 suffer dental complications), or Albuterol asthma inhaler, and was unable to dress appropriately
6 for various special occasions during her vacation. Despite all of this, British Airways has not
7 provided full compensation to the Smiths.

8 **3. Aydan Kayserili**

9 51. Plaintiff Aydan Kayserili, an international business traveler, traveled Euro Class
10 aboard a British Air flight on April 14, 2007, from Glasgow to London-Gatwick Airport, and
11 from London to Madrid.

12 52. Though Ms. Kayserili arrived at the Madrid Airport, like hundreds of thousands
13 of other British Air travelers, her baggage did not. When she sought help from British Air, she
14 was misinformed, firstly, that her baggage would be aboard the next flight; secondly, that her
15 baggage would be on the first flight the next day; and lastly, that her baggage would arrive the
16 third day. Despite being on business travel for the following two weeks, because of false
17 assurances from the Defendant, Ms. Kayserili waited to purchase replacement clothing and was
18 forced to wear the same clothing for three and a half days. Finally, after much effort, the
19 Defendant confirmed to her that it did not know when, or if, she would get her baggage, and told
20 her she should begin purchasing replacement items for which she would be “immediately
21 reimbursed.” This assurance also proved to be false.

22 53. In addition to the thousands of dollars worth of Ms. Kayserili’s clothing that was
23 lost by the Defendant, she was forced to spend thousands more in an effort to replace her
24 clothing with items similarly professional and appropriate for her work. To make matters worse,
25 the Defendant informed her that were it to locate her baggage, it would not be sent to her in
26 Europe, but rather, returned to an airport in the United States.

1 54. What little information of value that Ms. Kayserili was able to extract from the
2 obstreperous British Air “customer service” representatives came at the significant cost of money
3 and time, with calls to British Air’s baggage claim in Madrid (both in Spanish and English)
4 nearly every hour, and came only after hours of being placed on hold and otherwise re-routed.

5 55. After her return to the United States, Ms. Kayserili spent many hours attempting
6 to get cooperation from the Defendant in locating her baggage. After 21 days, she was informed
7 by the Defendant that her baggage was never located and should be considered permanently lost.
8 A frequent business traveler, Ms. Kayserili now suffers from constant anxiety about losing her
9 checked baggage, and is no longer comfortable checking baggage at all. She has yet to be fully
10 compensated for her losses caused by British Air’s recklessness.

11 **4. Erica McQueen**

12 56. Plaintiff Erica McQueen traveled June 22, 2007, on British Air, from Chicago to
13 London’s Heathrow Airport. Ms. McQueen began an 18-day, 10-country, post-college
14 graduation tour of Europe. She had worked multiple jobs to earn enough money for clothing and
15 other items to bring on this long-awaited vacation. Upon arrival in London, however, she
16 learned that none of her items, including nearly her entire wardrobe and carefully selected items
17 for dinner, outdoor travel, museums and theatre, had traveled to their promised destination.

18 57. Ms. McQueen spent the next two hours at Heathrow seeking guidance from
19 agents of the Defendant, and receiving none. Instead, she was told her baggage was probably
20 misrouted by Chicago employees, but should arrive within 24-48 hours, and be sent to her hotel.
21 Unfortunately for Ms. McQueen, her baggage was not recovered and returned to her. Instead,
22 she spent hours over the course of the following days trying to get information from British Air
23 regarding the whereabouts of her property, only to be given further misinformation. At one
24 point, while she was en route to Amsterdam, she was wrongly told that her baggage would arrive
25 for her there. It did not.

1 58. Often forced to wear out-of-place and ill-fitting clothing, including men’s shoes,
2 as she made her way across Europe, Ms. McQueen was finally advised by her travel agent that
3 she could purchase necessities and be compensated by the airline. As Ms. McQueen headed for
4 Rome, she tried her best to rely on the Defendant’s assurances that her baggage was coming, as
5 she was forced to find imperfect substitutes for dinners in Germany, mountain climbing in
6 Switzerland, and white water rafting in Austria. British Air’s assurances notwithstanding, her
7 time in Rome came and went, and, as she headed off for her final days in France, she finally
8 asked the Defendant to simply send her baggage home, for fear it would be lost in Europe. At
9 that point, with only a day left in her travels, British Air stated that they probably would not find
10 the baggage at all, and could not explain the series of promises given her to the contrary.

11 59. Adding insult to injury, after losing thousands of dollars worth of Ms. McQueen’s
12 property on her travel to Europe, British Air then managed to lose (albeit temporarily) the
13 replacement baggage that she purchased for her return home. This bag arrived at her home days
14 later, looking much less “new” than the day she purchased it that week in Europe. Despite all
15 this, Ms. McQueen has not received an apology nor explanation from British Air, nor has she
16 been fully compensated for her damages.

17 **5. Kevin Virgil**

18 60. Plaintiff Kevin Virgil similarly traveled to London via British Airways for
19 business on July 23, 2007. Mr. Virgil’s baggage, which contained appropriate business attire for
20 pending job interviews in London, was lost by the Defendant and never recovered. The
21 Defendant was non-responsive to multiple inquiries for assistance from Mr. Virgil, who was
22 forced to spend significant amounts of time waiting for “customer service” to provide
23 information on the whereabouts of his baggage.

24 61. As a result of the Defendant’s recklessness, Mr. Virgil was forced to immediately
25 purchase business attire in London on short notice. Despite multiple requests from Mr. Virgil,
26

1 the Defendant was, until recently, utterly non-responsive, and now has failed to provide Mr.
2 Virgil full compensation for his damages.

3 **6. Kristina Smith**

4 62. Plaintiff Kristina Smith traveled June 30, 2007, on British Air, to Charles de
5 Gaulle Airport in France, via Heathrow. Her travel itinerary included work for her employer's
6 foreign office in Paris, as well as attending a friend's wedding, and other leisure travel. While at
7 Heathrow, she was told to try and recover her baggage to put on the flight to France, since a
8 delayed plane caused her to take a subsequent flight out of London. Unfortunately, the terminal
9 she was directed to, the infamous Terminal Four, was so buried in baggage Ms. K. Smith had no
10 chance of recovering her own. Instead, she was given assurance that it would be forwarded
11 along to her hotel in Paris. This assurance proved to be false.

12 63. Instead, upon arrival in Paris, with only her laptop, purse and the clothing on her
13 back, British Air provided no relief, nor assistance of any kind. With little time to shop for
14 necessary work clothing, much less proper attire for a wedding, Ms. K. Smith immediately was
15 forced to purchase a number of necessities to get through the coming weeks. During those
16 weeks, British Air "customer service" did not provide helpful, accurate information to Ms. K.
17 Smith, who was unable to enjoy the wedding, and her travel, because of the constant worry over
18 her personal items lost by the Defendant, and her inability to find appropriate replacement
19 clothing for special occasions. Only upon returning to Seattle did British Air return her baggage,
20 heavily damaged from having been recklessly left in water. Ms. K. Smith has not been fully
21 compensated for her loss.

22 **7. Philip Sanford**

23 64. Plaintiff Philip Sanford traveled June 23, 2007, on British Air, for travel that was,
24 like Ms. K. Smith's, both leisure and business-related. Much of the planned leisure activity for
25 Mr. Sanford involved cycling in three different countries, including an Erickson Cycle Tour trip.
26 To that end, Mr. Sanford checked his bicycle through British Airways, according to airline

1 protocol, inside his bicycle case. After a layover at Heathrow, Mr. Sanford arrived at his
2 destination in Oslo – his bicycle did not. He completed a report for lost luggage and was
3 informed by airport personnel that British Air had become well known for losing baggage.

4 65. Despite frequent calls by Mr. Sanford to British Air “customer service,” he was
5 given no information nor assurances about his bicycle. He was told, however, that volumes of
6 lost baggage were being sorted, though in no particular order. During his stay in Oslo, Mr.
7 Sanford was unable to take advantage of the planned opportunity to cycle through and around the
8 area.

9 66. On June 27, 2007, Mr. Sanford returned for a week in London. While at
10 Heathrow Airport, Mr. Sanford approached agents of British Air in hopes that someone would
11 give him particular information about his lost baggage. Instead, he was coldly informed that
12 10,000 to 12,000 lost bags were being processed at any given time, and there was little they
13 could do. While in London, Mr. Sanford’s pre-planned, pre-purchased cycling trip (from London
14 to Canterbury) was ruined, as Mr. Sanford was unable to join the cycling group.

15 67. Mr. Sanford left London to Geneva for his two-week cycling tour, with no
16 assurance nor information provided by the Defendant concerning the whereabouts of his bicycle.
17 A reasonably priced replacement bike, suitable for French Alps climbing as his then-lost bicycle
18 was, could not be found. Instead, Mr. Sanford spent his pre-paid cycling tour riding on
19 uncomfortable, ill-equipped bicycles lent out of generosity by others, with what equipment he
20 was able to purchase, and at times simply sitting in a van. All the while, Mr. Sanford was given
21 contradictory, inaccurate information from British Air concerning the whereabouts of his
22 checked baggage, told first it was in South Africa, then that it was waiting in London, finally that
23 it was still at the Sea-Tac Airport in Seattle – all of this false. Long after his return to Seattle,
24 Mr. Sanford received his bicycle.

1 **8. Trudy and Randy McAvoy**

2 68. Plaintiffs Trudy and Randy McAvoy traveled October 18, 2005, from Seattle to
3 Heathrow, via British Air, then on to Rome, Italy. This vacation was a birthday gift to Ms.
4 McAvoy, and had been planned for many months. Upon their arrival in Italy, however, checked
5 baggage containing clothing and other personal items of the McAvoy's were not available to
6 them. The baggage had been lost by the Defendant. For three days in a row, instead of enjoying
7 their vacation, the McAvoy's returned to the airport, searching for their critical baggage in vain.
8 Much of their subsequent vacation time was spent finding ill-fitting, off-season clothing.

9 69. With her walking shoes among the lost baggage items, Ms. McAvoy was forced
10 to navigate the cobbled walkways of Italy looking for replacement items in the clogs she wore
11 during flight. Eventually she twisted her ankle attempting to navigate those walkways, unable
12 during the entire trip to find appropriate shoes that fit her. Despite numerous efforts to contact
13 British Air "customer service" for details on their lost baggage, they were provided no helpful
14 information. On the eleventh day of their trip, as they prepared for travel to Scotland before
15 returning home, their pet-sitter informed them that their baggage had arrived at their home,
16 instead of being routed to their disclosed location in Italy. Upon returning home November 6,
17 after weeks without their baggage, the McAvoy's discovered that their personal property had been
18 allowed to stand in the rain for an extended period, covering their property with mold and
19 mildew, including the bags themselves. The Defendant has refused to compensate them for their
20 damaged baggage.

21 **9. Gisela Sanchez-Martinez**

22 70. Plaintiff Gisela Sanchez-Martinez traveled July 17, 2007 from Seattle to
23 Heathrow, via British Air, then on to Madrid. She was accompanied by her two children on her
24 annual trip to visit her family, who reside in Spain. Upon arrival in Madrid, Ms. Sanchez-
25 Martinez learned that none of the five bags she checked had arrived. With two children, aged 5
26 and 9, and none of her baggage, her \$4000 vacation to see family began with 48 hours of anxiety

1 and emergency shopping. Though four out of five bags arrived days later, the final bag was lost
2 permanently by the Defendant – the bag containing her childrens’ new clothing and personal
3 items.

4 71. Absent their baggage for over a month in a foreign country, her children were
5 unable to begin their respective summer programs in Spain, for tennis and karate, lacking the
6 proper attire and equipment all of which was lost by British Air. Ms. Sanchez-Martinez spent
7 precious time, and money, calling the Defendant’s “customer service” line almost daily, waiting
8 an average of 40 minutes on hold, only to be told there was no additional information. Only after
9 their return to the United States, August 21, did British Air concede they had lost the family’s
10 baggage, but would not be providing full compensation for her damages.

11 **10. Cindy Kerr**

12 72. Plaintiff Cindy Kerr is a consultant and Chief Marketing Officer for an NGO
13 based in San Francisco and Africa, helping to provide irrigation equipment for underdeveloped
14 parts of Africa. Operating out of Denver, Colorado, Ms. Kerr traveled June 14, 2007, on British
15 Air, to Nairobi, Kenya, via London Heathrow Airport. Upon arrival in Kenya, she was informed
16 that her baggage was missing. With important business materials, not to mention virtually all of
17 her personal items for an expected six-week business trip, inaccessible to her, Ms. Kerr made
18 every effort to locate her baggage, with daily phone calls to London and Nairobi, detailed e-
19 mailing, and monitoring of British Air’s website. On no less than *four separate occasions*, Ms.
20 Kerr was told, falsely, by agents of the Defendant, that her baggage would be arriving, or was
21 already at, the Nairobi Airport. On each of four separate trips, trips that are not easily made in
22 that area of the world, she spent hours searching through piles of bags herself and was
23 subsequently informed that her baggage had in fact *not* arrived as promised. She was also told
24 by British Air representatives, variously, that her baggage was in Rome, that it never was in
25 Rome, that it was at Heathrow, and then that it “disappeared” from tracking.

1 73. Initially left with only the yoga clothing she wore for travel, Ms. Kerr continued
2 to spend significant amounts of time, and money, attempting to contact someone able to help her
3 locate her baggage. The time Ms. Kerr spent dealing with her baggage issues was time taken
4 away from her being able to accomplish the work she needed to accomplish with limited time in
5 Kenya and Tanzania. It was also time she was unable to bill her clients for, causing additional
6 economic loss to her personally.

7 74. Additionally, Ms. Kerr was forced to spend time hunting for replacement clothing
8 on short notice, and in locations such as rural Tanzania where appropriate clothing to purchase
9 was rarely available and overpriced, while also trying to locate a doctor for prescription
10 medicine. The British Air website was not updated with helpful information, nor was she given
11 any helpful information after scores of expensive, international calls to the British Air “customer
12 service” line. Months later, her delayed baggage was returned to her, but complete
13 compensation for her damages has not been paid by the Defendant.

14 **C. British Air’s Treaty Obligations Under the Montreal Convention**

15 75. The Defendant carrier’s obligations, with respect to the carriage of baggage and
16 passengers, are governed by the Montreal Convention. The Montreal Convention entered into
17 force in the United States on November 4, 2003, thereby superseding the Warsaw Convention as
18 the treaty governing air carrier liability among the signatory States Parties. The Convention
19 covers “all international carriage of persons, baggage or cargo performed by aircraft for reward,”
20 where the “place of departure and the place of destination, whether or not there be a break in the
21 carriage or a transshipment, are situated,” *inter alia*, “within the territories of two States Parties.”
22 Article 1.

23 76. The Convention provides that the “carrier is liable for damage sustained in case of
24 destruction or loss of, or of damage to, checked baggage...,” and that if “the carrier admits the
25 loss of the checked baggage, or if the checked baggage has not arrived at the expiration of
26

1 twenty-one days after the date on which it ought to have arrived, the passenger is entitled to
2 enforce against the carrier the rights which flow from the contract of carriage.” Article 17.

3 77. Similarly, the carrier is “liable for damage occasioned by delay in the carriage by
4 air of passengers, baggage or cargo,” unless it proves that it “took all measures that could
5 reasonably be required to avoid the damage or that it was impossible for it or them to take such
6 measures.” Article 19.

7 78. Plaintiffs and proposed Class Members variously had their baggage damaged,
8 lost, and/or delayed as a result of the Defendant’s reckless acts and/or omissions. British Air, on
9 its website, acknowledges the applicability of the Convention with respect to its liability
10 obligations to passengers for loss, delay, and damage to baggage.

11 79. The Convention specifies that “[i]n the carriage of baggage, the liability of the
12 carrier in the case of destruction, loss, damage or delay is limited to 1,000 Special Drawing
13 Rights for each passenger,” where the passenger did not declare a higher interest in the baggage
14 at the time it was given to the carrier. Article 22(2). Special Drawing Rights are defined by the
15 International Monetary Fund (IMF), which converts such Rights into national currencies
16 calculated under IMF protocol “at the date of the judgment.” Article 23.

17 80. As cited above, such limitation, however, “shall not apply if it is proved that the
18 damage resulted from an act or omission of the carrier, its servants or agents, done with intent to
19 cause damage *or recklessly and with knowledge that damage would probably result,*” provided
20 the servant or agent acted “within the scope of its employment.” Article 22(5) (emphasis added).
21 British Air, in letters to aggrieved passengers, acknowledges this exception to the Convention’s
22 liability limitation – where British Air’s partial compensation “does not cover the total cost of
23 your expenses or your belongings then you may have further rights against us under the Montreal
24 Convention....”

25 81. Because the Defendant acted recklessly and with foreseeable knowledge that
26 damage, delay, and loss of passenger baggage would continue unabated as a result of its

1 inadequate, careless system of baggage transport, Plaintiffs and proposed Class Members who
2 suffered injury as a result are entitled under the controlling Convention to the relief requested
3 below.

4 **V. CLASS ACTION ALLEGATIONS**

5 82. Pursuant to Fed. R. Civ. P. 23(b)(2) & (3), Plaintiffs bring this class action on
6 behalf of themselves and all members of the following class (the “Class”):

7 All United States citizens and permanent residents who, between
8 September 5, 2005 and September 5, 2007, traveled internationally
9 on a British Airways flight from one State Party to another State
Party (as defined by the Montreal Convention), and whose checked
baggage was lost, damaged, or delayed.

10 83. Excluded from the Class are all executives and employees of British Airways Plc.

11 84. Plaintiffs believe the proposed Class includes thousands of American travelers,
12 but the precise number and identities of the Class members are currently unknown.

13 85. Common questions of law and fact exist as to all members of the Class and
14 predominate over any questions affecting solely individual members of the Class. Nearly all, if
15 not all, factual and legal issues raised in the Complaint are common to each of the members of
16 the Class and will apply uniformly to every member of the Class. Among the questions of law
17 and fact common to Class members are:

- 18
- 19 • Whether the Defendant is bound by the terms of the Montreal
20 Convention, including the liability obligations related to lost,
21 damaged, and delayed baggage;
 - 22 • Whether Plaintiffs are entitled to damages as a result of any act
23 or omission of the Defendant, and/or its agents, done with
24 intent to cause damage or recklessly and with knowledge that
25 damage would probably result;
 - 26 • Whether Defendant, and/or its agents, acted within the scope of
their employment when causing damage to Plaintiffs;

- 1 • Whether Defendant, and/or its agents, warned Plaintiffs of its
- 2 inability to prevent damage, loss, or delay in its transport of
- 3 passenger baggage;
- 4 • Whether the limits on liability imposed by the Montreal
- 5 Convention are applicable, or whether, because of the
- 6 Defendant's pattern of recklessness, such limitations are
- 7 inapplicable under the terms of the Convention; and
- 8 • Whether, and in what amount, Plaintiffs and the other Class
- 9 Members are entitled to recover court costs and attorneys' fees
- 10 under the Montreal Convention.

86. Plaintiffs' claims are typical of the claims of other members of the Class because Plaintiffs and every member of the Class have suffered injury and are entitled to damages as a result of the same reckless disregard for the personal property of passengers evidenced by the Defendant. Plaintiffs have no interests adverse to the interests of the other members of the Class.

87. Plaintiffs will fairly and adequately represent and protect the interests of the Class. Plaintiffs have retained able counsel with extensive experience in class action litigation. The interests of the Plaintiffs coincide with, and are not antagonistic to, the interests of the other Class members.

88. The questions of law and fact common to the members of the Class predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

89. Plaintiffs and other members of the Class have been injured in their property and are entitled to damages as a result of the Defendant's reckless conduct. Absent a class action, thousands of international travelers with the misfortune of having selected the Defendant as their carrier, and whose personal baggage was lost, damaged, or delayed as a result of Defendant's conduct, will not be able to effectively litigate these claims and secure the relief to which they are entitled. Defendant will likely, then, continue with impunity its practice of recklessly failing to care for the personal property of its passengers.

1 90. A class action is superior to other available methods for the fair and efficient
2 adjudication of this controversy because joinder of all Class members is impracticable. The
3 expense and burden of individual litigation make it impossible for members of the Class to
4 individually redress the wrongs done to them. The Class is readily definable, and prosecution of
5 this action as a class action will eliminate the possibility of repetitious litigation. There will be
6 no difficulty in the management of this action as a class action.

7 **VI. JURY DEMAND**

8 91. Plaintiffs demand a trial by jury of all issues triable of right by jury.

9 **VII. COUNT I**

10 **MONTREAL CONVENTION – ARTICLES 17 & 19**
11 **S. TREATY DOC. 106-45**

12 92. The preceding allegations are re-alleged and incorporated by reference as if fully
13 set forth herein.

14 93. Plaintiff and Class Members, international travelers whose place of departure and
15 place of destination consisted of two State Parties under the Montreal Convention, sustained
16 injury (through loss, damage, and/or delay) to their respective property, to wit, baggage, as that
17 term is understood and provided for under the Convention. Articles 1, 17, 19.

18 94. The Montreal Convention, Article 17, provides as follows:

19 (2) The carrier is liable for damage sustained in case of destruction
20 or loss of, or of damage to, checked baggage upon condition only
21 that the event which caused the destruction, loss or damage took
22 place on board the aircraft or during any period within which the
23 checked baggage was in the charge of the carrier. ...

24 (3) If the carrier admits the loss of the checked baggage, or if the
25 checked baggage has not arrived at the expiration of twenty-one days
26 after the date on which it ought to have arrived, the passenger is
entitled to enforce against the carrier the rights which flow from the
contract of carriage.

95. Article 19 provides:

1 The carrier is liable for damage occasioned by delay in the carriage
2 by air of passengers, baggage, or cargo.

3 96. The Convention, at Article 22, provides for limitations on said liability,
4 though such limitation is not absolute.

5 (1) In the case of damage caused by delay as specified in Article 19
6 in the carriage of persons, the liability of the carrier for each passenger
7 is limited to 4 150 Special Drawing Rights.

8 (2) In the carriage of baggage, the liability of the carrier in the case
9 of destruction, loss, damage or delay is limited to 1000 Special
10 Drawing Rights for each passenger unless the passenger has made,
11 at the time when the checked baggage was handed over to the
12 carrier, a special declaration of interest in delivery at destination
13 and has paid a supplemental sum if the case so requires.

14 97. Such a limitation to liability, “*shall not apply* if it is proved that the damage
15 resulted from an act or omission of the carrier, its servants or agents, done with intent to cause
16 damage *or recklessly and with knowledge that damage would probably result*; provided that, in
17 the case of such act or omission of a servant or agent, it is also proved that such servant or agent
18 was acting within the scope of its employment.” Article 22(5) (emphasis added).

19 98. By recklessly acting and/or failing to act despite knowledge of the likelihood that
20 significant numbers of passengers would have their baggage delayed, lost and/or damaged by its
21 flawed, inadequate system of baggage handling, the Defendant invited additional liability equal
22 to the damages sustained by the Plaintiffs. Plaintiffs are also entitled, under the Convention,
23 Article 22(6), to “the whole or part of the court costs and of the other expenses of the litigation
24 incurred by the plaintiff, including interest.”

25 **WHEREFORE**, Plaintiffs, on their behalf and on behalf of the proposed Class, pray for
26 judgment as follows:

A. For an Order finding that this action may be maintained as a class action pursuant
to Fed. R. Civ. P. 23(b)(2) & (3), and that reasonable notice be given to members of the proposed
Class;

1 B. That Plaintiffs and proposed Class Members be awarded damages in the amount
2 equal to their actual damages, including all costs associated with the loss, damage, or delay of
3 their baggage, with interest;

4 C. That Plaintiffs and proposed Class Members be awarded reasonable attorneys'
5 fees and costs of this suit;

6 D. And for such other and further relief as this Court may deem just and proper.

7 DATED: April 28, 2008.

8 HAGENS BERMAN SOBOL SHAPIRO LLP

9
10 By: /s/ Steve W. Berman

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