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**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

**RICHARD CUSICK, DORRIS MCDOWELL
SAMSIL, JR., JAMES KAMBURIS, JR., and
MITCHELL HUNGERPILLER, individually and
on behalf of a class of similarly situated persons;**

Plaintiffs,

v.

SOUTHWEST AIRLINES CO., a Texas Corporation,

Defendant.

CV: _____

CV-08-TMP-0650-S

Jury Trial Demanded

CLASS ACTION COMPLAINT

The Plaintiffs, by and through their attorneys, bring this class action pursuant to Rules 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure. They bring this class action on their own behalf and on behalf of all persons and entities who purchased tickets with Southwest Airlines and/or traveled with Southwest Airlines ("the Class"), between January 2002 and March 2008 (the "Relevant Period"), on airplanes which were not in compliance with the laws and governmental regulations of the U.S. Department of Transportation, the Federal Aviation Administration ("FAA") and/or the Transportation Security Administration.

PARTIES

1. Defendant Southwest Airlines Co. ("Southwest Airlines"), is a citizen of the State of Texas, has its principal place of business in the State of Texas, and is doing business within the State of Alabama and throughout the entire United States. Southwest Airlines operates more than 515 Boeing 737 aircraft between 64 cities. Year end results for 2007 marked Southwest

Airlines' 35th consecutive year of profitability. Southwest Airlines operates more than 3,300 flights a day, making it the largest carrier in the United States based on domestic departures.

2. Plaintiff, Richard Cusick ("Mr. Cusick"), is a citizen of Alabama and has been an adult resident of Jefferson County, Alabama during the Relevant Period. Mr. Cusick purchased airline tickets with Southwest Airlines and traveled on Southwest Airlines' airplanes during the Relevant Period. Mr. Cusick, within the relevant time period, purchased tickets within this judicial district and traveled on Southwest airplanes within this judicial district.

3. Plaintiff, Dorris McDowell Samsil, Jr. ("Mr. Samsil"), is a citizen of Alabama and has been an adult resident of Jefferson County, Alabama during the Relevant Period. Mr. Samsil purchased airline tickets with Southwest Airlines and traveled on Southwest Airlines' airplanes during the Relevant Period, both within this judicial district.

4. Plaintiff, James Kamburis, Jr. ("Mr. Kamburis"), is a citizen of Alabama and has been an adult resident of Montgomery County, Alabama during the Relevant Period. During the Relevant period, Mr. Kamburis purchased airline tickets with Southwest Airlines and flew on Southwest Airlines' airplanes departing from Birmingham, AL - located in this judicial district.

5. Plaintiff, Mitchell Hungerpiller ("Mr. Hungerpiller"), is a citizen of Alabama and has been an adult resident of Jefferson County, Alabama during the Relevant Period. Mr. Hungerpiller purchased airlines tickets with Southwest Airlines and traveled on Southwest Airlines' airplanes during the Relevant Period, both within this judicial district.

JURISDICTION AND VENUE

6. This Court has subject-matter jurisdiction in this nationwide class action pursuant to 28 U.S.C. § 1332, as amended by the Class Action Fairness Act of 2005, because the matter in

controversy exceeds \$5,000,000.00, exclusive of interest and costs, the Class is estimated to exceed ten (10) thousand individuals, and most members of the Class, including the above named Class Representatives, are citizens of States different than Southwest Airlines' State of citizenship, Texas.

7. This Court has personal jurisdiction over Southwest Airlines because it does business in the State of Alabama, has sufficient minimums contacts with the State of Alabama and otherwise avails itself of the markets in Alabama through the promotion, marketing and sale of its services in Alabama, thereby rendering exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

8. Venue is proper in this Northern District of Alabama, Southern Division because Southwest Airlines operates in this judicial district, many of the airline tickets were purchased in this judicial district, the named Plaintiffs purchased tickets and flew on airplanes within this judicial district, and many of the acts and/or occurrences giving rise to this action occurred in this judicial district and division.

CLASS ALLEGATIONS

9. Plaintiffs bring this action under Rule 23 of the Federal Rules of Civil Procedure, on behalf of the following Class: all persons and entities who purchased tickets with Southwest Airlines and/or traveled with Southwest Airlines, during the Relevant Period, on airplanes which were not in compliance with the laws and governmental regulations of the U.S. Department of Transportation, the FAA and/or the Transportation Security Administration.

10. Membership in the Class is so numerous as to make it impractical to bring all Class members before the Court. The identity and exact number of Class members is unknown at this time, but, is estimated to exceed ten (10) thousand individuals.

11. Plaintiffs' claims are typical of those of other Class members, all of whom have suffered harm due to Southwest Airlines' uniform course of conduct.

12. Plaintiffs are representatives of the Class, have no conflicts with this Class, will vigorously pursue these claims on behalf of the class, and have retained counsel experienced in class and complex litigation.

13. There are substantial questions of law and fact common to all members of the Class which control this litigation and predominate over any individual issues. These common issues include, but are not limited to:

- a. Whether airplanes operated by Southwest Airlines were in compliance with governmental safety regulations and guidelines, including airworthiness directives issued by the FAA;
- b. Whether Southwest Airlines received monies through ticket sales in exchange for transporting individuals on airplanes which were not in compliance with governmental safety regulations and guidelines;
- c. Whether Plaintiffs and members of the Class purchased tickets with Southwest Airlines and flew on airplanes which were not in compliance with governmental safety regulations and guidelines;
- d. Whether Southwest Airlines is refusing to reimburse Plaintiffs and the members of the Class for the cost of the airline tickets;

e. Whether Southwest Airlines' failure to comply with all governmental safety regulations and guidelines constitutes a breach of contract with persons purchasing tickets;

f. Whether Southwest Airlines' was negligent in its duty to inspect, maintain, and operate its airplanes in accordance with all laws and governmental regulations;

g. Whether Southwest Airlines' misrepresented to Plaintiffs and members of the Class that its airplanes were in compliance with all laws and governmental regulations;

h. Whether Southwest Airlines' suppressed information with regard to whether its airplanes were in compliance with all laws and governmental regulations;

i. Whether Southwest Airlines has been unjustly enriched; and

j. Whether Plaintiffs and members of the Class are entitled to relief.

14. The Defendant acted on grounds generally applicable to the Class as a whole, thereby making declaratory relief appropriate.

15. A class action is the superior method for the fair and efficient adjudication of this controversy, for the following reasons:

a. Without a class action, the Class will not be compensated and the Defendant will continue to enjoy the fruits and proceeds of its unlawful misconduct;

b. Given (1) the substantive complexity of this litigation; (2) the size of individual Class member's claims; and (3) the limited resources of the Class members, few, if any, Class members could afford to seek legal redress individually for the wrongs the Defendant has committed against them;

c. This action will foster an orderly and expeditious administration of Class members' claims, economies of time, effort and expense, and uniformity of decision;

d. Inferences and presumptions of materiality and reliance are available to obtain class-wide determinations of those elements within the Class members' claims, as are accepted methodologies for class-wide proof of damages; alternatively, upon adjudication of the Defendant's liability, the Court can efficiently determine the identity and claims of the individual Class members; and this action presents no difficulty that would impede the Court's management of it as a class action, and a class action is the best available means by which members of the Class can seek legal redress for the harm caused them by the Defendant.

STATEMENT OF FACTS

16. This action is brought by the Plaintiffs, individually and in their representative capacities, as a class action on their own behalf and on behalf of all others similarly situated, under the provisions of the Federal Rules of Civil Procedure, specifically subdivisions (a), (b)(2), (b)(3) and (c) of Rule 23.

17. Southwest Airlines proclaims its “number one priority” to be “the personal [s]afety of each Southwest Airlines Customer and Employee.” Southwest Airlines held out to its customers and the flying public that its airplanes were safe, airworthy and had been maintained and inspected and had passed said inspections for safety and airworthiness in accordance with all laws and regulations set forth by the FAA, the U.S. Department of Transportation and the Transportation Security Administration.

18. Southwest Airlines’ Contract of Carriage, the terms of which are incorporated into each ticket sale to each Plaintiff and the Class, states:

All transportation is sold and all carriage is performed subject to compliance with all applicable laws and governmental regulations, including those of the U.S. Department of Transportation, the Federal Aviation Administration, and the Transportation Security Administration, many of which are not specified herein but are nonetheless binding on Carrier and all passengers.

(Contract of Carriage, ¶ 125).

19. The FAA issues airworthiness directives (AD’s) to correct pressing safety risks which might not be detected through regular maintenance. The FAA requires that airplanes which are not in compliance with airworthiness directives should be grounded until compliance is reached.

20. Upon information and belief, Southwest Airlines’ maintenance system and its system for tracking compliance with federal airworthiness directives was inadequate. Discrepancies in Southwest Airlines’ tracking system were noted as early as 2003. During the Relevant Time period, Southwest Airlines tried to keep serious problems with its safety program hidden.

21. In early April 2008, Congressional hearings were held in an attempt to investigate inspection and maintenance issues of the airline. Two Federal Aviation Administration officials,

acting as whistleblowers, offered extensive testimony before Congress which revealed serious questions concerning a failure by Southwest Airlines to comply with FAA rules and regulations. Part of the testimony by the FAA whistleblowers pertained to failures by Southwest Airlines to conduct required inspections, and the transportation of passengers on airplanes for which the required inspections had not been done.

22. Indeed, FAA requires mandatory inspections on all passenger airplane rudder units which are part of the steering mechanism. The FAA officials testified before Congress that at least 70 airplanes owned and operated by Southwest Airlines transported passengers when these required inspections had not been done. Some of the airplanes, according to the FAA whistleblowers, carried passengers for up to 30 months beyond the period of the mandatory rudder inspection.

23. Congressional testimony further revealed that Southwest Airlines had failed to conduct mandatory inspections on the fuselage for 46 Boeing 737s. Even following the receipt of an AD submitted by the FAA, Southwest Airlines continued to operate those aircrafts. Officials from the FAA have stated that a total of 1,451 commercial operations were conducted by Southwest Airlines in violation of the law which placed the safety of thousands of passengers at risk. After flying the 46 airplanes beyond the mandatory inspection of the fuselage when inspections were finally carried out, six of the airplanes were found to have possibly dangerous cracks.

24. In its testimony before Congress, officials from Southwest Airlines admitted responsibility for failing to conduct the required fuselage inspections, and inexplicably transporting passengers on these airplanes in violation of the AD entered by the FAA. Southwest Airlines admitted that a “. . . failure to comply with Federal Aviation Regulations is

unacceptable”, and that “. . . better judgment should have been exercised than to allow those aircraft to fly after the potential non-compliance was discovered.” (April 3, 2008 testimony to U.S. House of Representatives Committee on Transportation and Infrastructure, by Southwest Airlines Executive Chairman Herb Kelleher and CEO Gary Kelly)

25. The FAA’s Associate Administrator for Aviation Safety, Nicholas Sabatine, has blamed Southwest Airlines and the agency’s then-principal maintenance inspector overseeing the airline for allowing the operation of more than 59,000 flights between June 2006 and March 2007 on airplanes that did not undergo inspections for fuselage cracks. The FAA claims that Southwest Airlines continued to operate airplanes on an additional 1,451 flights in March 2007, after the airline discovered that it had failed to do the fuselage inspections.

26. Further, according to the investigation completed by the US Department of Transportation Inspector General, in March of 2007, Southwest Airlines had 21 key inspections which were overdue for at least five (5) years.

27. The FAA has proposed a \$10.2 million fine against Southwest Airlines as a result of its failure to comply with airworthiness directives (AD’s). This would be the largest fine in aviation history.

28. Southwest Airlines has not offered to reimburse Plaintiffs, or other members of the Class, for costs of the airline tickets for travel on airplanes which were not in compliance with federal regulations, and which were flying illegally.

CLAIMS FOR RELIEF

COUNT ONE (Breach of Contract)

29. Plaintiffs hereby adopt and incorporate by reference all of the above allegations.

30. Southwest Airlines' Contract of Carriage is incorporated into each ticket sale.

The terms of the Contract of Carriage state:

All transportation is sold and all carriage is performed subject to compliance with all applicable laws and governmental regulations, including those of the U.S. Department of Transportation, the Federal Aviation Administration, and the Transportation Security Administration, many of which are not specified herein but are nonetheless binding on Carrier and all passengers.

(Contract of Carriage, ¶ 125).

31. Southwest Airlines' Contract of Carriage creates a promise between private parties, that Southwest Airlines will comply with all applicable laws and governmental regulations involving the safety of its airplanes. No state is a party to any such contract, nor can any state enforce the agreements referenced herein. The assurance of compliance with safety directives became part of the basis of the bargain for the ticket sales between Southwest Airlines and its passengers.

32. Southwest Airlines breached the terms of that contract by selling tickets for, and accepting monies for, travel on airplanes which had not been inspected and/or maintained in compliance with governmental regulations.

33. Southwest Airlines knew, or should have known, that its airplanes had not been inspected and were not in compliance with airworthiness directives.

34. As a proximate result of Southwest Airlines' breach of the terms of its contract, Plaintiffs and members of the Class have suffered damages.

35. By reason of the foregoing, Plaintiffs and members of the Class have been damaged by Southwest Airlines and all relief set forth in the Ad Damnum clause below is due.

COUNT TWO (Unjust Enrichment)

36. Plaintiffs hereby adopt and incorporate by reference all of the above allegations.

37. Southwest Airlines received from Plaintiffs and members of the Class, monies from the purchase of airline tickets for travel on airplanes which were not in compliance with governmental regulations.

38. Plaintiffs and members of the Class have conferred a benefit on Southwest Airlines.

39. Southwest Airlines has knowledge of this benefit and has accepted and retained the benefit.

40. Southwest Airlines will be unjustly enriched if it is allowed to retain monies for the sale of travel on airplanes which were flying illegally and were not in compliance with governmental regulations, and each Plaintiff and member of the Class is entitled to an amount equal to the amount each member enriched Southwest Airlines.

41. By reason of the foregoing, Plaintiffs and members of the Class have been damaged by Southwest Airlines and are entitled to all relief set forth in the Ad Damnum clause.

COUNT THREE (Breach of Express Warranty)

42. Plaintiffs hereby adopt and incorporate by reference all of the above allegations.

43. Southwest Airlines proclaimed their “number one priority” to be “the personal [s]afety of each Southwest Airlines Customer and Employee.” Southwest Airlines held out to its customers and the flying public that its airplanes were safe, airworthy, had been inspected and had passed said inspections for safety and airworthiness in accordance with all regulations set forth by the FAA, the U.S. Department of Transportation and the Transportation Security Administration.

44. The assurance of safety became part of the basis of the bargain and created an express warranty that the airplanes operated by Southwest Airlines were safe and airworthy, had been inspected and had passed said inspections for safety and airworthiness.

45. Additionally, Southwest Airlines' Contract of Carriage created an express warranty that the airplanes operated by Southwest Airlines were in compliance with the FAA, the U.S. Department of Transportation and the Transportation Security Administration. (See, Contract of Carriage, ¶ 125).

46. Southwest Airlines breached its express warranty by selling tickets for travel on airplanes which had not been inspected and were not in compliance with governmental regulations.

47. Southwest Airlines knew, or should have known, that its airplanes had not been inspected and were not in compliance with airworthiness directives.

48. As a proximate result of Southwest Airlines' breach of implied warranties, Plaintiffs and members of the Class have suffered damages.

49. By reason of the foregoing, Plaintiffs and members of the Class have been damaged by Southwest Airlines and all relief set forth in the Ad Damnum clause below is due.

COUNT FOUR (Negligent and Reckless Operation of an Aircraft)

50. Plaintiffs hereby adopt and incorporate by reference all of the above allegations.

51. Southwest Airlines owed a duty to the Plaintiffs and members of the Class to maintain and inspect their airplanes in accordance with all laws and governmental regulations.

52. Southwest Airlines owed a duty to the Plaintiffs and members of the Class to comply with all FAA airworthiness directives.

53. Southwest Airlines owed a duty to the Plaintiffs and members of the Class to ground all airplanes which were not in compliance with airworthiness directives until those airplanes reached compliance.

54. Southwest Airlines owed a duty to the Plaintiffs and members of the Class not to transport passengers on airplanes that were flying illegally.

55. Southwest Airlines was negligent, careless, reckless, grossly negligent, willful and wanton in all the following respects:

- a. By failing to implement an adequate tracking system to insure that airplanes were timely inspected and kept in compliance with all laws and applicable regulations;
- b. By failing to implement proper and timely maintenance on airplanes;
- c. By failing to hire, train, supervise and monitor such workers at its airline to ensure that the inspections and maintenance would be conducted in a timely manner consistent with all laws and applicable regulations;
- d. By failing to warn passengers and potential passengers that the airplanes were out of compliance with critical inspections;
- e. By flying passengers in airplanes that were out of compliance with critical inspections;
- f. By continuing to fly passengers in airplanes that were out of compliance with critical inspections, even after Southwest Airlines acknowledged the airplanes were not in compliance;

g. By continuing to fly passengers in airplanes that were out of compliance with critical inspections, even after cracks were reported to be found in the fuselage of similar airplanes;

h. By placing and permitting the airplanes to fly when Southwest Airlines knew or should have known of that such airplanes were not in compliance with FAA airworthiness directives and consequently posed a hazard to the flying community; and

i. By failing to use due care under the circumstances.

56. As a proximate result of the negligence of Southwest Airlines, Plaintiffs and members of the Class have been damaged in their property.

57. By reason of the foregoing, Plaintiffs and members of the Class are entitled to all relief set forth in the Ad Damnum clause, including punitive damages.

COUNT FIVE (Rescission)

58. Plaintiffs hereby adopt and incorporate by reference all of the above allegations.

59. Southwest Airlines represented to Plaintiffs, and members of the Class, that its airplanes were safe, airworthy, had been maintained and inspected and had passed said inspections for safety and airworthiness in accordance with all regulations set forth by the FAA, the U.S. Department of Transportation and the Transportation Security Administration.

60. The representations made by Southwest Airlines' to Plaintiffs, and members of the Class, were false as many airplanes had not been inspected and/or maintained in compliance with applicable laws and governmental regulations.

61. Southwest Airlines had knowledge of its noncompliance with laws and governmental regulations and yet failed to communicate its incompliance to passengers and

potential passengers and continued to operate with airplanes that were not in compliance with FAA airworthiness directives.

62. Southwest Airlines suppressed information relating to its failure to timely inspect and maintain its airplanes.

63. Southwest Airlines acted with intent to misrepresent its compliances with laws and governmental regulations and to suppress information relating to its failure to comply with those regulations in order to profit from continued sales of tickets.

64. As a proximate result of the misrepresentations made by Southwest Airlines and the information suppressed by Southwest Airlines, Plaintiffs and members of the Class, have parted with their property (payments for tickets) and suffered damages.

65. Plaintiffs and the Class are entitled to rescind their contracts with Southwest Airlines, and are entitled to a full refund, plus any other appropriate relief under the circumstances.

AD DAMNUM CLAUSE

WHEREFORE, the Plaintiffs and members of the Class pray that they be awarded compensatory, nominal and punitive damages and recover judgment against Southwest Airlines for the following:

1. Damages in the amount of monies paid for travel on airplanes which were not in compliance with government regulations and/or rescission of the sales contract;
2. Actual damages, statutory damages, nominal damages, punitive or treble damages, and such other relief as provided by law;
4. Pre-judgment and post-judgment interest on such monetary relief;

5. Appropriate attorney fees and costs and expenses incurred in connection with the litigation of this matter;

6. Certification of the action as a Class Action pursuant to Federal Rules of Civil Procedure, Rules (b)(2) and (b)(3), and appointment of Plaintiffs as Class Representatives and Plaintiffs' counsel of record as Class Counsel;

7. An order declaring Southwest Airlines' conduct unlawful, with respect to its operating airplanes which were not in compliance with the applicable laws and governmental regulations; and

8. For such other and further relief as this Court may deem just proper, and equitable.

PLAINTIFFS DEMAND A TRIAL BY JURY.

Filed this the 11th day of April 2008.

/s/ W. Lewis Garrison, Jr.
W. Lewis Garrison, Jr. (ASB-3591-N74W)
Gayle L. Douglas (ASB-6971-E63D)

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