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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
N.D. CA. SAN JOSE

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Attorneys for Plaintiffs

alt **IN THE UNITED STATES DISTRICT COURT**
FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 HAYLEY HICKCOX-HUFFMAN,
13 on behalf of herself and all others
14 similarly situated

Plaintiff,

vs.

17 US AIRWAYS, INC., and DOES 1
18 through 10, inclusive.

Defendants.

Case No. **V 10-05193**

HRL

CLASS ACTION COMPLAINT

- 1. Breach of Contract
- 2. Unjust Enrichment
- 3. Breach of the Covenant of Good Faith and Fair Dealing
- 4. Negligent Misrepresentation
- 5. Interference with Use of Property/Bailment

JURY DEMAND

BY FAX

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I. NATURE OF THE ACTION

1. This is a consumer class action for, *inter alia*, breach of contract, unjust enrichment, breach of the covenant of good faith and fair dealing, negligent misrepresentation, and negligent interference with use of property/bailment arising out of Defendant's handling and transportation of its passengers' baggage. Plaintiff Huffman brings this action in her own right and on behalf of a nationwide class of all others similarly situated.

2. All allegations made in this Complaint are based upon information and belief except those allegations that pertain to the plaintiff, which are based on personal knowledge. Each allegation in this Complaint either has evidentiary support or, alternatively, pursuant to Rules 8(e)(2) and 11(b)(3) of the Federal Rules of Civil Procedure, is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

II. JURISDICTION AND VENUE

3. Jurisdiction is proper in this Court under 28 U.S.C. § 1332(d), as amended by the Class Action Fairness Act of 2005. In addition, under 28 U.S.C. § 1367, this Court may exercise supplemental jurisdiction over the state law claims because all of the claims are derived from a common nucleus of operative facts and are such that Plaintiff ordinarily would expect to try them in one judicial proceeding.

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(c) because the Defendant resides and transacts substantial business within, and is subject to personal jurisdiction in, this judicial district.

III. PARTIES

5. Plaintiff Hayley Hickcox-Huffman (hereinafter "Plaintiff Huffman") is a resident of Atascadero, California, in San Luis Obispo County.

6. Defendant US Airways, Inc. (hereinafter "US Airways" or "Defendant") is, and at all times relevant hereto was, a Delaware corporation with

1 its principal place of business located in Tempe, Arizona. Defendant conducts
2 business under the name "US Airways."

3 7. Plaintiff Huffman is unaware of the true names, identities and
4 capacities of the defendants sued herein as DOES 1 through 10. Plaintiff Huffman
5 will amend this Complaint to allege the true names and capacities of DOES 1
6 through 10 when ascertained. Plaintiff Huffman is informed and believes, and
7 thereupon alleges, that each of the defendants sued herein as a DOE is legally
8 responsible in some manner for the events and happenings set forth herein, and has
9 proximately caused injuries and damages to Plaintiff Huffman as set forth below.

10 8. Whenever, in this Complaint, reference is made to any act, deed or
11 conduct of Defendant, the allegation means that Defendant engaged in the act,
12 deed or conduct by or through one or more of its officers, directors, agents,
13 employees or representatives who was actively engaged in the management,
14 direction, control or transaction of the ordinary business and affairs of Defendant.

15 **IV. FACTUAL BACKGROUND**

16 9. Defendant is a major commercial airline based in Tempe, Arizona.
17 Defendant is an operating unit of US Airways Group, Inc. and is the sixth (6th)
18 largest airline (measured by traffic volume) and the eighth (8th) largest airline
19 (measured by market value) in the United States. As of December 2008, Defendant
20 employed approximately 33,765 people worldwide and operated 3,130 daily
21 flights.

22 10. Commencing on or about July 9, 2008, Defendant began charging
23 passengers fifteen dollars (\$15) for their first checked bag for flights in the United
24 States, as well as flights to and from Canada, Latin America and the Caribbean.
25 When Defendant began charging fees for baggage, it incurred the obligation to
26 handle such baggage with care and ensure the timely delivery of the baggage to its
27 passengers on arrival at their destination. Each time Defendant delays, damages or
28 loses baggage, but fails to refund the baggage fee to the affected passenger, it
breaches this obligation. Defendant is not entitled to retain baggage fees collected

1 from passengers whose bags have been delayed, damaged or lost while in the care
2 of Defendant.

3 11. Defendant charged a baggage service fee to its passengers in addition
4 to the amount already charged to the passengers for purchase of airline tickets.
5 Defendant undertook to create a baggage service fee, set the amount of the
6 baggage service fee, and required its passengers to pay the baggage service fee.
7 The undertaking was self-imposed by Defendant. In a transaction separate and
8 apart from the purchase of airline tickets by passengers, Defendant began charging
9 passengers a baggage service fee. The price paid by passengers, including Plaintiff
10 Huffman, for their airline tickets from Defendant did not include the baggage
11 service fee. Upon acceptance of the baggage service fee and baggage, Defendant
12 incurred the obligation to deliver the bags timely and undamaged to those
13 passengers who paid the baggage service fee upon arrival at their destinations.
14 Defendant expressly agreed to undertake, impose on itself, and assent to the
15 obligations arising from payment of the baggage service fee. Defendant has
16 breached and continues to breach this obligation by delaying, losing, and/or
17 damaging bags; but in each such instance, Defendant has kept and continues to
18 keep the baggage service fees paid by passengers whose bags they have delayed,
19 lost or damaged.

20 12. On or about May 2, 2009, Plaintiff Huffman purchased a one-way
21 airline ticket on US Airways to travel from Colorado Springs, Colorado to San
22 Luis Obispo, California. While at the airport in Colorado Springs, Plaintiff
23 Huffman checked one (1) bag with the US Airways agent and paid the required
24 fifteen dollar (\$15) baggage service fee charged by Defendant. Attached hereto as
25 Exhibit "A" is a copy of Plaintiff Huffman's baggage receipt, confirming payment
26 of the fifteen dollar (\$15) baggage fee to Defendant in cash.

27 13. Plaintiff Huffman boarded her flight. However, when she arrived at
28 her destination, her bag was not there. When she asked why her bag was not there,
Plaintiff Huffman was told by representatives of US Airways that they could not

1 locate the bag. Plaintiff Huffman's bag remained "lost" until the following day.

2 14. Despite Plaintiff Huffman having paid Defendant fifteen dollars (\$15)
3 for the safe and timely delivery of her bag to her destination, Defendant lost her
4 bag and did not refund her baggage fee.

5 **V. CLASS ACTION ALLEGATIONS**

6 15. Plaintiff Huffman brings this action, on behalf of herself and all others
7 similarly situated, as a class action pursuant to Rule 23 of the Federal Rules of
8 Civil Procedure. The class that Plaintiff Huffman seeks to represent is defined as:
9 All US Airways passengers traveling in United States who were charged and paid
10 a baggage service fee, and whose bags were delayed, damaged, lost or not
11 delivered to them upon arrival at their destination, and who did not receive a
12 refund of the baggage service fee from US Airways ("the Class").

13 16. This action is brought and properly may be maintained as a class
14 action pursuant to the provisions of F.R.Civ.P. 23(a)(1)-(4) and 23(b)(1), (b)(2) or
15 (b)(3) and satisfies the requirements thereof.

16 17. While the exact number of members of the Class is unknown to
17 Plaintiff Huffman at this time and can only be determined by appropriate
18 discovery, membership in the Class is ascertainable based upon the billing records
19 maintained by Defendant and by the data compiled by the U.S. Department of
20 Transportation.

21 18. At this time, Plaintiff Huffman is informed and believes that the Class
22 likely includes thousands of members. According to the U.S. Department of
23 Transportation, US Airways mishandled approximately 37,046 bags between
24 March and May, 2009, corresponding to the time period when Plaintiff Huffman
25 traveled. Therefore, the Class is sufficiently numerous that joinder of all members
26 of the Class and in a single action is impracticable under F.R.Civ.P. 23(a)(1), and
27 the resolution of their claims through the procedure of a class action will be of
28 benefit to the parties and the Court. Further, a refund of all fees charged to Class
Members during the relevant statute of limitations period would far exceed the

1 jurisdictional requirements of the Class Action Fairness Act of 2005.

2 19. Common questions of law and fact exist as to the members of the
3 Class, as required by F.R.Civ.P. 23(a)(2), and predominate over any questions that
4 affect only individual members of the Class within the meaning of F.R.Civ.P.
5 23(b)(3).

6 20. The common questions of fact and law include, but are not limited to,
7 the following:

8 (a) Whether Defendant breached its agreements with passengers
9 who paid baggage service fees but did not receive their bags timely upon arrival at
10 their destination, and did not receive a refund;

11 (b) Whether Defendant breached its agreements with passengers
12 who paid baggage fees but had their bags damaged or destroyed while in the care
13 of Defendants, and did not receive a refund;

14 (c) Whether Defendant was unjustly enriched by retaining the
15 baggage service fees paid by passengers whose bags were delayed, damaged lost
16 or not delivered to them upon arrival at their destinations;

17 (d) Whether Defendant breached the covenant of good faith and
18 fair dealing by failing to refund baggage service fees to passengers who contracted
19 with Defendant for the timely and safe delivery of their bags, but whose bags were
20 delayed, damaged, or lost by Defendants;

21 (e) Whether Defendant negligently misrepresented to passengers
22 that their bags would be delivered to them timely and undamaged upon arrival at
23 the passengers' destinations;

24 (f) Whether Defendant interfered with the use of passengers' bags
25 and the contents thereof in a manner that was not authorized by the agreement by
26 delaying, losing or damaging the baggage;

27 (g) Whether Defendant is obligated to refund baggage fees charged
28 to Class members each time they fail to timely deliver the baggage to passengers
upon arrival at their destination.

1 (h) Whether Defendant is obligated to refund baggage fees charged
2 to Class members each time they damage or destroy the baggage.

3 21. Plaintiff Huffman's claims are typical of the claims of the other
4 members of the Class whom she seeks to represent under F.R.Civ.P. 23(a)(3)
5 because Plaintiff Huffman and each member of the Class was charged a baggage
6 fee by Defendant, had their bags lost, delayed or damaged, and did not receive a
7 refund of the baggage fee.

8 22. Plaintiff Huffman will fairly and adequately represent and protect the
9 interests of the Class as required by F.R.Civ.P. 23(a)(4). Plaintiff Huffman is an
10 adequate representative of the Class because she has no interests that are adverse to
11 the interests of the other members of the Class. Plaintiff Huffman is committed to
12 the vigorous prosecution of this action and, to that end, Plaintiff Huffman has
13 retained counsel who are competent and experienced in handling class action
14 litigation on behalf of consumers.

15 23. A class action is superior to any other available methods for the fair
16 and efficient adjudication of the claims asserted in this action under F.R.Civ.P.
17 23(b)(3) since:

18 (a) The expense and burden of individual litigation make it
19 economically unfeasible for class members to seek redress other than through the
20 procedure of a class action;

21 (b) If separate actions were brought by individual class members,
22 the resulting duplicity of lawsuits would cause undue hardship and expense to the
23 Court and the litigants by necessitating multiple trials of similar factual issues; and

24 (c) Absent a class action, Defendant likely would retain the
25 benefits of its wrongdoing, and there would be a failure of justice.

26 24. In the alternative, this action is certifiable under the provisions of
27 F.R.Civ.P. 23(b)(1) and/or 23(b)(2) because:
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2 (a) The prosecution of separate actions by individual class
3 members would create a risk of inconsistent or varying adjudications with respect
4 to individual class members that would establish incompatible standards of
5 conduct for Defendant;

6 (b) The prosecution of separate actions by individual class
7 members would create a risk of adjudications as to them that would, as a practical
8 matter, be dispositive of the interests of the other class members not parties to the
9 adjudications, or substantially impair or impede their ability to protect their
10 interests; and

11 (c) Defendant has acted or refused to act on grounds generally
12 applicable to the Class, thereby making appropriate final injunctive relief or
13 corresponding declaratory relief with respect to the Class as a whole and
14 necessitating that any such relief be extended to the class members on a
15 mandatory, class wide basis.

16 25. Plaintiff Huffman is aware of no difficulty that will be encountered in
17 the management of this litigation which should preclude its maintenance as a class
18 action.

19 26. The names and addresses of the members of the Class are available
20 from Defendant's records. Notice can be provided to the members of the Class via
21 first class mail or otherwise using techniques and a form of notice similar to those
22 customarily used in consumer class actions arising under California state law and
23 federal law.

24 **FIRST CLAIM FOR RELIEF**

25 **(Breach of Contract)**

26 27. Plaintiff Huffman repeats and incorporates herein by reference each
27 and every allegation in paragraphs 1 through 26, inclusive, as though fully set forth
28 herein.

28 28. Plaintiff Huffman brings this claim for relief on behalf of herself and
the members of the Class.

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2 29. Each time Defendant charges a passenger a baggage service fee, it
3 enters into a separate contract with the passenger to timely deliver the baggage to
4 the passenger upon arrival at their destination and to deliver the baggage to the
5 passenger undamaged.

6 30. Plaintiff Huffman and Defendant entered into a contract under which
7 Defendant agreed to timely deliver Plaintiff's Huffman's bag to her upon arrival at
8 her destination and otherwise handle her bag with care so as not to lose, delay or
9 damage her bag, and Plaintiff Huffman agreed to pay a baggage service fee to
10 Defendant.

11 31. Plaintiff Huffman and each member of the Class are parties to
12 contracts, namely baggage service fee contracts, with Defendant that are uniform
13 with respect to the provisions applicable to the claims asserted against Defendant.

14 32. Plaintiff Huffman and the members of the Class have performed all
15 conditions, covenants, and promises required to be performed on their part in
16 accordance with the terms and conditions of the baggage fee contract, except to the
17 extent such performance was excused, released or waived by the actions, conduct
18 or agreement of Defendant.

19 33. Defendant breached its contractual obligations under the baggage
20 service fee contracts with Plaintiff Huffman and each member of the Class by
21 failing to timely deliver their baggage to Plaintiff Huffman and each member of
22 the Class upon arrival at their destinations, without damage to the baggage, and by
23 not refunding the baggage service fee.

24 34. As a direct and proximate result of Defendant's breach of baggage
25 service fee contract, Plaintiff Huffman and each member of the Class have been
26 damaged in an amount according to proof at trial.
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SECOND CLAIM FOR RELIEF

(Unjust Enrichment)

35. Plaintiff Huffman repeats and incorporates herein by reference each and every allegation in paragraphs 1 through 26, inclusive, as though fully set forth herein.

36. Plaintiff Huffman brings this claim for relief on behalf of herself and the members of the Class.

37. Plaintiff Huffman and each member of the Class conferred a benefit upon Defendant when they paid the baggage service fees. Defendant acknowledged receipt of the benefit when it accepted the baggage service fees.

38. By accepting the baggage service fees, Defendant was enriched and its revenue increased, as was Defendant's intention. By accepting the baggage service fees, Defendant was obligated to deliver the baggage to the paying passenger, including Plaintiff Huffman and each member of the Class, timely and undamaged to them upon arrival at their final destination. This obligation was self-imposed by Defendant.

39. Defendant was unjustly enriched, however, when it retained the baggage service fees paid by those passengers, including Plaintiff Huffman and each member of the Class, whose bags were delayed, lost or damaged while in the care of Defendant. By not refunding the baggage service fees to such passengers, Defendant was unjustly enriched under both state and federal common law.

40. As a direct and proximate result of the foregoing, Plaintiff Huffman and each member of the Class were damaged in an amount to be determined at trial.

THIRD CLAIM FOR RELIEF

(Breach of the Covenant of Good Faith and Fair Dealing)

41. Plaintiff Huffman repeats and incorporates herein by reference each and every allegation in paragraphs 1 through 40, inclusive, as though fully set forth herein.

1 42. Plaintiff Huffman brings this claim for relief on behalf of herself and
2 the members of the Class.

3 43. Implied in the baggage service fee contracts between Defendant, on
4 the one hand, and Plaintiff Huffman and each member of the Class, on the other
5 hand, is a covenant of good faith and fair dealing. When Defendant accepts the
6 baggage service fee, it becomes obligated to deliver the paying passenger's
7 baggage, including Plaintiff Huffman and each member of the Class, timely and
8 undamaged to the passenger upon arrival at the destination.

9 44. Defendant failed to refund the baggage service fee to Plaintiff
10 Huffman and each member of the Class, despite having failed to deliver their
11 baggage timely and undamaged upon arrival at their destination. By failing to
12 refund the baggage service fee, Defendant breached the covenant of good faith and
13 fair dealing under both state and federal common law.

14 45. As a direct and proximate result of the foregoing, Plaintiff Huffman
15 and each member of the Class were damaged in an amount to be proven at trial.

16 **FOURTH CLAIM FOR RELIEF**

17 **(Negligent Misrepresentation)**

18 46. Plaintiff Huffman repeats and incorporates herein by reference each
19 and every allegation in paragraphs 1 through 26, inclusive, as though fully set forth
20 herein.

21 47. Plaintiff Huffman brings this claim for relief on behalf of herself and
22 the members of the Class.

23 48. At all times herein mentioned, Defendant represented to Plaintiff
24 Huffman and each member of the Class that an important fact was true, namely,
25 that upon payment of the baggage service fee, Defendant would deliver their
26 baggage timely and undamaged to them upon arrival at their destination.

27 49. Based on the reported frequency with which Defendant delays, loses,
28 or damages baggage, as reported by the U.S. Department of Transportation,
Defendant knew or in the exercise of reasonable care should have known that its

1 representations to Plaintiff Huffman and each member of the Class were not true.

2 50. Although Defendant may have believed that the representations were
3 true, Defendant had no reasonable grounds for believing the representations were
4 true when Defendant made them.

5 51. Defendant intended that Plaintiff Huffman and each member of the
6 Class rely on these representations.

7 52. Plaintiff Huffman and each member of the Class reasonably relied on
8 Defendant's representations, as evidenced by, among other things, their payment
9 of the baggage service fees and their checking of baggage with Defendant.

10 53. Plaintiff Huffman and each member of the Class were harmed.

11 54. Plaintiff Huffman's and each member of the Class' reliance on
12 Defendant's representations was a substantial factor in causing the harm.

13 **FIFTH CLAIM FOR RELIEF**

14 **(Interference with Use of Property/Bailment)**

15 55. Plaintiff Huffman repeats and incorporates herein by reference each
16 and every allegation in paragraphs 1 through 26, inclusive, as though fully set forth
17 herein.

18 56. Plaintiff Huffman brings this claim for relief on behalf of herself and
19 the members of the Class.

20 57. Baggage was delivered by Plaintiff Huffman and each member of the
21 Class to Defendant.

22 58. This delivery was part of an agreement between Plaintiff Huffman
23 and each member of the Class, on the one hand, and Defendant, on the other hand,
24 for Defendant to deliver said baggage to Plaintiff Huffman and each member of the
25 Class timely and undamaged upon arrival at their destination, in exchange for a
26 baggage service fee paid by Plaintiff Huffman and each member of the Class and
27 Defendant.

28 59. Under this agreement, Defendant was authorized to deliver the
baggage timely and undamaged to Plaintiff Huffman and each member of the

1 Class upon arrival and their destination.

2 60. Defendant used the property in a manner that was not authorized by
3 the agreement, namely, by delaying, losing or damaging the baggage such that it
4 was not available for use by Plaintiff Huffman and each member of the Class
5 immediately upon arrival at their destination.

6 61. As a direct and proximate result of the foregoing, Plaintiff Huffman
7 and each member of the Class were damaged in an amount to be proven at trial.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff Huffman, and all other similarly situated, demand
10 judgment against Defendant and pray for:

11 1. A permanent injunction enjoining Defendant, its officers, successors,
12 agents, assigns, and all persons in active concert or participation with it, from
13 retaining any baggage service fee paid by a domestic airline passenger traveling on
14 Defendant's airline when that passenger's baggage has been delayed, lost or
15 damaged.

16 2. Order Defendant to make Plaintiff Huffman and each member of the
17 Class whole by immediately refunding all baggage service fees charged for
18 baggage that has been delayed, lost or damaged by Defendant.

19 3. Order Defendant to make an accounting of profits and/or expenses
20 saved by their unlawful practices and provide full restitution to Plaintiff Huffman
21 and each member of the Class.

22 4. Order Defendant to make Plaintiff Huffman and each member of the
23 Class whole by providing compensation for past and future pecuniary losses
24 resulting from the unlawful practices set forth herein, including out-of-pocket
expenses, in amounts to be determined at trial.

25 5. Order Defendant to make Plaintiff Huffman and each member of the
26 Class whole by providing appropriate prejudgment and post-judgment interest.

27 6. For costs and attorney's fees, as provided by law.

28 7. For any and all other relief the Court deems necessary, just or

1 appropriate.

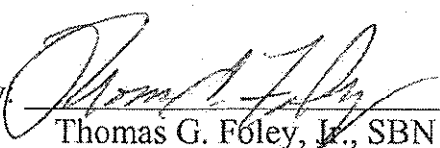
2 8. For certification of the proposed Class pursuant to Fed. R. Civ. P. 23.

3 9. For a declaration that Defendant is financially responsible for
4 notifying all Class members about this litigation.

5 10. For leave to amend these pleadings to conform to the evidence
6 adduced during discovery and/or presented at trial.

7 Dated this 16th day of November, 2010.

8 **FOLEY BEZEK BEHLE & CURTIS** ^{LLP}

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JURY DEMAND

1. Plaintiff demands a trial by jury of all issues and claims so triable in this action.

FOLEY BEZEK BEHLE & CURTIS^{LLP}


By: 
Thomas G. Foley, Jr., SBN 065812
tfoley@foleybezek.com

EXHIBIT A

EXHIBIT A

Ticket Detail: Ticket Number 0372347700424
PNR CNYK5R
Passenger Name HUFFMAN/HAYLEYE
Sales Reference # ETKTRES

Agency Name COS SE
Booking Date 05/02/2009

Payment / Reference Cash Payment \$15.00
Ticket Amount \$15.00

Coupon Usage X V V V
Additional Usage

Fare Calc BAGGAGE FEE Ä1B) 01 0015 Ä2B) 00 0000 Ä3B) 00 0000 ÄOW) 00
0000 ÄOZ) 00 0000 ÄSE) 00 0000 USD15.00END
Tour Code/E-Cert #

Ticket Detail: Ticket Number 0372348652622
PNR F9SRGH
Passenger Name HUFFMAN/HAYLEYE
Sales Reference # ETKTRES

Agency Name SBA KM
Booking Date 05/10/2009

Payment / Reference Visa *****2618
Ticket Amount \$15.00

Coupon Usage X V V V
Additional Usage

Fare Calc BAGGAGE FEE Ä1B) 01 0015 Ä2B) 00 0000 Ä3B) 00 0000 ÄOW) 00
0000 ÄOZ) 00 0000 ÄSE) 00 0000 USD15.00END
Tour Code/E-Cert #

Exhibit A

EXHIBIT A

EXHIBIT A

Ticket Detail: Ticket Number 0372347700424
PNR CNYK5R
Passenger Name HUFFMAN/HAYLEYE
Sales Reference # ETKTRES

Agency Name COS SE
Booking Date 05/02/2009

Payment / Reference Cash Payment \$15.00
Ticket Amount \$15.00

Coupon Usage X V V V
Additional Usage

Fare Calc BAGGAGE FEE A1B) 01 0015 A2B) 00 0000 A3B) 00 0000 AOW) 00
0000 AOZ) 00 0000 ASE) 00 0000 USD15.00END
Tour Code/E-Cert #

Ticket Detail: Ticket Number 0372348652622
PNR F9SRGH
Passenger Name HUFFMAN/HAYLEYE
Sales Reference # ETKTRES

Agency Name SBA KM
Booking Date 05/10/2009

Payment / Reference Visa *****2618
Ticket Amount \$15.00

Coupon Usage X V V V
Additional Usage

Fare Calc BAGGAGE FEE A1B) 01 0015 A2B) 00 0000 A3B) 00 0000 AOW) 00
0000 AOZ) 00 0000 ASE) 00 0000 USD15.00END
Tour Code/E-Cert #

Exhibit A