

2. Ms. Men has been the sole owner and leader of GTT for the last fourteen years, after losing her husband to cancer. With the goal of making GTT the largest consolidator in the United States, Ms. Men and her family have expended countless hours of sweat and toil on the business, resulting in tremendous growth, goodwill and success. Ms. Men, her company, and her family stand as an embodiment of the American Dream, realized through unwavering dedication and unrelenting pursuit of excellence.

3. GTT has worked with American Airlines for over thirty-five years, and it had, until this lawsuit, a collaborative and mutually rewarding relationship as American Airlines's top producing travel agency partner. Over the last few years alone, GTT has sold hundreds of millions of dollars in tickets for American Airlines. Yet, without warning, American Airlines rushed to court to attack Ms. Men and her company, calling Ms. Men, her work, and her company "frauds." To support its accusations, American Airlines cites a mere *six* instances of bad conduct—not by GTT, but by *third parties*—among the *hundreds of thousands* of ticket sales that GTT has successfully completed on behalf of American Airlines in the last five years alone.

4. In American Airlines' initial state court pleading (which was subsequently withdrawn and replaced with a federal court pleading),¹ it identified eight alleged non-exclusive subagents of GTT, out of thousands, as examples of GTT's bad conduct. GTT has sold tickets only to four of them—Shahi World Tour and Travels, Sam Travels, ARB Travels and MakeUsFly. These subagents also work with other consolidators. And since January 2021, GTT issued only *one* American Airlines ticket to any of these four subagents, out of hundreds of thousands of ticket sales.²

¹ In a sign of American Airlines' rush to the courthouse, American Airlines actually filed a different lawsuit against GTT with different claims in Texas state court first. It then quickly withdrew that lawsuit, removed some claims and allegations, added a flimsy trademark claim "on information and belief," and re-filed in federal court. It is unclear what good-faith basis American Airlines had to file either the state (breach of fiduciary duty) or federal (trademark) claims, given rapid change in pleadings and venue.

² In January of 2020, also without any notice to GTT, American Airlines sued Shahi and MakeUsFly, chiefly complaining

5. On the basis of only six examples of allegedly improper transactions (out of millions of ticket sales for thirty-five years) and its “information and belief”—and while continuing to receive revenue from GTT thanks to millions of dollars in ticket sales—American Airlines has targeted a woman and minority-owned business in a malicious and defamatory campaign.

6. GTT countersues to set the record straight, and to recover for the economic and reputational damage American Airlines is causing GTT through its baseless suit. GTT will prove:

- GTT has not engaged in a single “prohibited practice.”
- GTT submits its thousands of subagents through a review process prior to selling them tickets. GTT also requires that every subagent agree they will be responsible for booking violations or misconduct. And GTT takes swift action to hold subagents responsible—including in many instances terminating subagents—when GTT becomes aware of any booking violation or misconduct.
- GTT has assumed responsibility to investigate any reported abuse or violations by its subagents and, if American Airlines demands, pay any penalties or fees for ticket cancellations. The parties have a lengthy and collaborative history of rooting out any subagent misconduct. Under the parties’ contracts, American Airlines has at its disposal several methods to alert consolidators about any concerns with subagents, including warnings about subagent activity, customer complaints about subagent’s marketing practices or selling conduct, and issuing debit memos, which are penalties issued by airlines for errors in booking or ticketing (“Debit Memos”) for ticket

of these agencies’ use of search engine marketing strategies and American Airlines’ trademarks to re-direct customers to foreign call centers for ticket servicing transactions. GTT’s preliminary investigation of the alleged subagents reveals that they primarily targeted their misconduct at major legacy carriers in the US domestic and Caribbean markets, and have conducted business with other major consolidators besides GTT. But GTT provides only ticket fulfilment services to subagents; it is not involved in, and is not privy to, subagents’ online marketing. American Airlines has already settled its dispute with Shahi and MakeUsFly, and it never demanded that GTT stop doing business with either of these subagents.

cancellations or fees.³ Over the history of the parties' business dealings, GTT has always honored American Airlines' instructions and warnings, including by ceasing to do business with misbehaving subagents, circulating alerts to employees, and assuming responsibility for Debit Memos even when subagents fail to do so.

- American Airlines is best suited to discover, and alert GTT of, subagent abuse and violations. American Airlines owns the reservations and ticketing host system which stores all booking and ticketing data that is needed to identify subagent misconduct. GTT and its subagents are users of Global Distribution Systems ("GDS") such as Sabre, Amadeus and Travelport, which are used to create airline bookings and tickets. These GDS providers also support airlines and travel agencies to flag and investigate any abuse or violations by subagents. Indeed, GTT cannot initiate any booking violation investigation until it receives the relevant data, for example a passenger name record (PNR) or ticket number, from the airline and/or the GDS.
- American Airlines is also best suited to receive complaints from customers about misleading or fraudulent marketing or fees charged by subagents, because GTT has no direct engagement with the customers. American Airlines must first provide the customer complaint(s), including details of the service performed, PNR and/or ticket number, to GTT before GTT can investigate subagents' marketing practices. To date, GTT has not received a single customer complaint from American Airlines related to the claims made in American Airline's lawsuit.
- American Airlines is aware of its potent data and systems to root out abuse and violations. It has an entire "revenue integrity system" dedicated to policing

³ Debit Memo as defined in the ARA means "a written or electronic transmission from a Carrier to Agent for payment of an Agent obligation." (ARA §39.12)

prohibited behavior. This “revenue integrity system” can detect a booking violation at the time a PNR is created based on American Airlines’ internal revenue management data. When a booking violation is detected, American Airlines immediately cancels the booking (for example, by changing the booking status from “HK/confirmed” to “UC/Unable to accept request” or “HX/cancelled”), which indicates to GTT that this is not an approved booking. Immediately upon receiving such notices, GTT will not (and indeed, is not permitted to) issue the ticket. This is the only way GTT becomes aware that a booking violation has occurred.

- Each of the four alleged “bad actor” subagents American Airlines identified in its state court pleading constitute very little GTT’s overall ticket sales *since 2017* – 0.01% from Shahi World Tour and Travels, 0.25% from Sam Travels, 0.05% from ARB Travels and 0.15% from MakeUsFly. And those subagents *never* pay GTT any portion or percentage of any extra fees they charge. From January 2021 to July 2023, GTT issued only *one* American Airlines ticket to the subagents American Airlines identified in its state court lawsuit, out of a total of *289,399 tickets GTT issued for AA*.
- The alleged “bad actor” subagents do business with all major consolidators, not only GTT. The sorts of booking violations that American Airlines complains about, and fraud committed by rogue subagents, are an industry-wide problem acknowledged by other major legacy carriers. They require collective and collaborative action, not lawsuits. And yet American Airlines has chosen to target through its lawsuit the only minority, woman-owned and operated consolidator.
- There is zero evidence in American Airlines pleadings or anywhere else that GTT misused any American Airlines data or trademarks.

7. American Airlines' lawsuit is a malicious smear campaign. American Airlines is not interested in solving any problems—if it was, it would have reached out to GTT before suing. GTT would have worked day and night to explore solutions for American Airlines, as it has for decades.

8. Through its counterclaims, GTT requests a declaration from the Court to clarify the parties' rights and obligations under the relevant contracts. Further, because American has targeted GTT due to its ownership by an Asian woman, GTT sues for racial discrimination under 42 U.S.C. § 1981.

II. PARTIES

9. Plaintiff/Counter-Defendant American Airlines, Inc. is a Delaware corporation with its worldwide headquarters in this District at 1 Skyview Drive, Fort Worth, Texas 76155.

10. Defendant/Counter-Plaintiff U.S.A. Gateway d/b/a GTT Travel is a Texas corporation with its headquarters at 600 Data Drive, Suite 101, Plano, Texas 75075.

III. JURISDICTION & VENUE

11. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S. C. § 1367. GTT asserts a discrimination claim under 42 U.S.C. § 1981 and files its counterclaims as part of the same case or controversy with respect to which American Airlines has invoked this Court's jurisdiction.

12. This Court has personal jurisdiction over American Airlines, which has its headquarters in this State and which has appeared in this cause and invoked the Court's jurisdiction.

13. Venue is proper in this District under 28 U.S.C. § 1391(b)(1) because American Airlines resides in this District. Further, venue is proper in this District also because a substantial part of the events giving rise to the counterclaims occurred in this District.

IV. FACTS

A. Gloria Men and Tom Chou Found and Expand GTT, Leading to a Profitable Partnership for American Airlines.

14. Mr. Chou and Ms. Men immigrated to the United States in 1984. That same year, they founded GTT as a single-office, two-employee travel agency in Dallas, Texas. Within four years, they opened a second office, in Houston. At that time, a friend asked them what their dream was. They answered that they wanted to make GTT the largest consolidator in the United States.

15. Despite the language and cultural barriers they faced, Mr. Chou and Ms. Men enlisted the help of their entire family and steadily grew the business for the next forty years. Today, GTT has thirty-five offices nationwide, from New York to California, and employs approximately 200 people. GTT has also expanded internationally, with offices and call centers around the world. It has reached over a billion dollars in ticket sales, and GTT has been recognized as an industry leader for decades.

16. Mr. Chou passed away fourteen years ago, after a difficult battle with cancer. Ms. Men became, and has remained, the sole owner and leader of the business. From inception, she has enlisted the help of her family in running the business, and so it always has been a family affair.

17. Over the past three decades, GTT has had an unblemished reputation and a fantastic working relationship with over fifty major airlines. To this day, GTT remains one of the top consolidators for American Airlines. In the last three years alone, GTT sold over \$200 million worth of American Airlines tickets, and prior to the pandemic, GTT consistently produced over \$100 million in annual ticket sales for American Airlines.

B. Consolidators Like GTT Help Airlines Sell Tickets Through Subagents.

18. GTT's business model as an airline consolidator focuses mainly on airline ticket fulfillment. GTT contracts with airlines for access to their airfares, and in turn provides subagents

access to these contracts and performs the role of ticket fulfilment on behalf of the subagents. GTT also provides related services, such as itinerary changes, ticket exchanges, refunds, cancellations, etc.

19. When GTT sells airline tickets through subagents using the airline contracts, GTT merely acts as a middleperson between airlines and subagents by charging a ticketing fee in exchange for the ticket fulfilment and related services. Subagents, not GTT, sell the tickets to end customers—including by charging for any additional services they may offer or fees they may collect. Every time a subagent purchases a ticket from GTT, GTT issues the ticket to that subagent and guarantees payment to the airlines.

20. Subagents often sell a combination of travel services along with the ticket, such as accommodation, car rentals, and vacation packages. The Airline Reporting Corporation (“ARC”)—and also American Airlines’ own contract with GTT—expressly permits travel agencies to sell their services at a markup, which is how subagents make money and survive. Miscellaneous charges and fees, which the ARC allows subagents to charge as “ARC MCO 890 Merchant Record,” are not uncommon. Subagents are solely responsible for how they sell their packages or price their services to their customers. Their final retail price for airline tickets is entirely up to their own discretion, and so long as they do not mislead or defraud customers, subagents are permitted to sell these tickets at whatever price their customer is willing to pay.

21. When GTT performs the ticketing on behalf of a subagent, GTT will only know the total amount the subagent charges its customer, the ticket price based on the airline contract, and the mark-up the subagent charges, i.e. the difference between the total charge and the ticket price. The mark-up could be a few dollars as a fee for the subagent’s service to the customer, or it could be up to thousands of dollars for a hotel reservation and car rental package, but GTT will not know what the subagent is charging for. GTT has zero visibility into the breakdown or components of subagents’ mark-up, and, prior to filing their lawsuit, American Airlines never asked for that information.

22. Inherent in the consolidator business model is the credit risk GTT bears when subagents default on any payment and/or violate ticketing rules. Whenever that occurs, airlines may cancel the booking, alert GTT, issue a Debit Memo to GTT, and/or collect fees from GTT based on the airline's internal rules. Debit Memos are the standard industry practice to resolve airline ticketing disputes between airlines and consolidators, memorized in the Agent Reporting Agreement ("ARA") that binds American Airlines and GTT. Through Debit Memos, American Airlines effectively transfers the risk to GTT and walks away whole and fully compensated.

C. American Airlines Surprises GTT With a Lawsuit Involving Subagents GTT Has Done Almost No Business With.

23. Despite American Airlines' long-standing relationship with GTT; American Airlines earning over a billion dollars in revenue from GTT's sales; and the numerous non-litigation options for dispute resolution that American Airlines has at its disposal, American Airlines surprised GTT with a lawsuit, without even the basic courtesy of a phone call before filing. As evidence of its rush to court and prioritization of speed over accuracy, American Airlines first sued GTT in Texas state court, asserting the same breach of contract claim but also a breach of fiduciary duty claim. It immediately non-suited that case, and re-filed in federal court, without the breach of fiduciary duty claim but adding "on information and belief" the trademark claims. It is unclear what good-faith basis American Airlines had to file either the state (breach of fiduciary duty) or federal (trademark) claims, given rapid change in pleadings and venue.

24. In its first state court pleading, American Airlines referenced eight alleged subagents of GTT: Shahi World Tour and Travels, Sam Travels, Hola Fares, MakeUsFly), Gorilla Fares, ARB Travels, Dream Fly Travels, and Kiwi.com Inc. Of these, only Shahi World Tour and Travels, Sam Travels, ARB Travels, and MakeUsFly have sold tickets as subagents of GTT. American Airlines sued, and has already settled with, Shahi and MakeUsFly, but it never notified GTT about any of the

lawsuits or settlements. American Airlines also never asked GTT to stop doing business with any of these subagents, even the ones it sued.

25. Each of these subagents constitute very little of GTT's overall ticket sales since 2017 – 0.01% from Shahi World Tour and Travels, 0.25% from Sam Travels, 0.05% from ARB Travels and 0.15% from MakeUsFly. From January 2021 to July 2023, only *one* American Airlines ticket was issued by GTT to these four subagents (to ARB Travels), out of a total of 289,399 tickets GTT issued for AA. Following American Airlines' filing of their claim, GTT's preliminary investigations into the alleged subagents revealed they also did business with other major consolidators, not only GTT.

26. As explained above, American Airlines is in the best position to identify booking abuse or rule violations, because it has both the data and the customer contact to do so. GTT does assume responsibility to investigate any reported abuse or violations and to coordinate with American Airlines to take any necessary action to prevent future abuse or violation. But American Airlines has the reservations and ticketing host system which stores all booking and ticketing data to identify subagent misconduct. The GDS providers also support airlines and travel agencies to flag and investigate any abuse or violations by subagents. As for concerns regarding misleading marketing practices by subagents, customers would normally complain to American Airlines, since GTT has no direct engagement with the customers.

27. The purported abuse by subagents that American Airlines complains about is an industry-wide problem, not specific to GTT or American Airlines. Using Google search engine optimization strategies, rogue actors target a variety of airlines, not just American Airlines. A simple online search will also instruct the public on how to find, for example, "Hidden City" opportunities.⁴

⁴ "Hidden city" opportunities are pricing arbitrage opportunities presented due to the way airlines set one-way pricing for non-stop flights vs flights with 1 or more stops. Typically, non-stop flights would be priced higher due to the

Thus, GTT is not the perpetrator of some massive fraud alongside subagents; booking violations or fraudulent practices are problems that airlines, consolidators, and the GDS must jointly and collaboratively address.

28. American Airlines knows this, and it has known about the sort of abuse it complains about for years. The best evidence is that American Airlines has issued Debit Memos to GTT in the past over a handful of transactions involving some of these very subagents. When issuing these Debit Memos, at no time did American Airlines demand that GTT cease doing business with these subagents, or otherwise blame GTT for the situation. And GTT, as it always has done, assumed financial responsibility for the Debit Memo, even when the subagent refused to pay. American Airlines has always been made whole.

D. The Parties' Contract Does Not Obligate GTT to Step Into American Airlines' Shoes and Pursue Booking Violations GTT Is Not Even Aware of.

29. The documents governing American Airlines and GTT's domestic principal-agent relationship include (1) the Agent Reporting Agreement ("ARA"),⁵ (2) the Industry Agent's Handbook referenced in the ARA ("IAH"),⁶ (3) American Airlines' Addendum to Governing Travel Agency Agreements ("Addendum"), and (4) other incentives agreements between American Airlines and GTT (all documents collectively "GTAA").

30. The Recitals of the ARA provide that the ARA aims to "address the way in which Agents report and settle ARC Traffic Documents⁷ through the ARC-administered Settlement Plan⁸

demand for shorter flight duration and better passenger convenience. Flights with 1-stop, by contrast, are priced lower to account for the additional stop incurred from the passenger's perspective.

⁵ The ARA is entered between agents and the Airlines Reporting Corporation ("ARC") on behalf of airlines/carriers. This document is publicly available at <https://www2.arccorp.com/globalassets/ara-ctdra/ara.pdf>.

⁶ This document is publicly available at <https://www2.arccorp.com/globalassets/iah/iah.pdf>.

⁷ ARC Traffic Document means "all industry standard forms and documents that ARC may provide to Agent, in trust, and for which Agent is responsible. This term includes Carriers' own traffic documents provided to ARC for processing reporting, settlement and administration under this Agreement." (ARA, §39.8)

⁸ ARC Settlement Plan is defined as "the system through which Agent reports and settles ARC Traffic Documents issued on behalf of Carriers." (ARA, §39.6)

in a competitive and efficient manner, as well as to outline the rights and obligations of the parties to this Agreement.” American Airlines is one of the participating airlines to ARC’s ticket settlement services with travel agencies.⁹ In other words, the ARA primarily governs ticketing practice and rights and obligations arising from ticketing practice.

31. The ARA defines a Debit Memo as a written or electronic transmission from a Carrier to Agent for payment of an Agent obligation. (ARA, §39.12). Accordingly, when GTT pays American Airlines fees arising from Debit Memos issued by American Airlines, GTT fulfills and discharges any obligation associated with the dispute or issue that underlies the Debit Memo.

32. Consistent with the issuance of Debit Memos as a standard industry practice memorialized in the ARA, American Airlines’ Addendum, which contains the allegedly breached provisions that give rise to American Airlines’ breach of contract claim, describes this process. It provides:

If Agent issues a ticket in violation of the Agreement or is otherwise in violation of the Rules American has issued for travel agents, including these instructions, American may issue a debit memo to Agent for any deficiency or any loss incurred by American by reason of the violations

(Addendum, §5(a))

American Airlines also “may immediately suspend, limit or terminate any Agency Location or Agent’s Appointment upon notice to Agent.” That is, American Airlines could demand GTT terminate its relationship with any violating subagent.

33. American Airlines chose to proceed under the contractual remedies provision of the Addendum with respect to the instances of alleged violations, and GTT honored American Airlines’ Debit Memos. If American Airlines had some other issue or problem with those subagents, it never even attempted to alert GTT to those issues.

⁹ This information is publicly available at <https://www2.arccorp.com/support-training/travel-agencies/participating-airline-information>.

34. Given this contractual scheme, the Addendum does not create an affirmative obligation on GTT to police its subagents. The Addendum provides only that “[t]o the extent that Agent or Agent’s sub-agents ... are involved in Agent’s activities within the scope of the Appointment, *Agent will remain primarily responsible and liable to American* for their full compliance with all of Agent’s obligations under the Agreement.” (Addendum, Recitals).¹⁰ GTT’s resulting obligation is to assume financial responsibility, for example, for ticket cancellations and refunds, regardless of whether the subagent does or not. But when GTT pays Debit Memos under the GTAA, GTT’s has fulfilled its obligations and owes nothing more to American Airlines.¹¹ Nowhere in the governing agreements is there some specific, affirmative obligation for GTT to police all subagents for conduct GTT is not aware of and may not even be able to catch.

E. The Parties’ Course of Performance and Dealing, as well as Industry Practice, Show How Booking Abuse is Routinely Addressed.

35. GTT has worked collaboratively with American Airlines for decades. For several years, GTT and American Airlines established a course of performance with respect to the GTAA’s rights and obligations vis-à-vis alleged booking violations. It typically consists of an alert from the GDS and/or American Airlines, a Debit Memo issued by American Airlines to GTT, and/or totally restricting a subagent from ticket sales.

36. For example, on January 26, 2021, American Airlines sent an email to GTT noting that it “will *begin* monitoring common booking practices,” including Churning, Hidden City, Inactive Segments, Marriage Segment, Origin and Destination Manipulation. American Airlines noted that

¹⁰ There is a legal question regarding this language in a Recital, and whether it can be enforced as an obligation at all given its placement in the Recital. GTT preserves and does not waive that issue.

¹¹ Curiously, American Airlines unilaterally amended the Addendum in April 2023. Despite its decades-long relationship with GTT, American Airlines did not alert GTT of any specific changes in the Addendum. Whether the recital at issue was included in the previous Addendum is not clear. According to public commentators, American Airlines’ “new addendum contains a bunch of surprises—all bad—for all agencies that issue airline tickets.”

its own systems would be generating automated processes to seek out these practices and alert the agent. GTT then forwarded American Airlines' message to *all* of its managers—who maintain communication with GTT's subagents—noting “PLEASE MAKE SURE AGENTS *AND SUB-AGENTS* ARE AWARE AND ANY DEBIT MEMOS RESULTING TO AN AA ABUSE MUST BE HONORED.”

37. On another instance, American Airlines emailed GTT to note that a particular agent or agency was engaging in booking violations. GTT responded immediately by identifying the subagent and requested that the subagent be blocked to avoid ongoing issues.

38. The typical resolution process for booking anomalies involves discovery by American Airlines or the GDS, an alert to GTT, and immediate investigation by GTT. GTT requests supporting data from GDS providers for the investigation, which can take between 3-10 business days. In some instances, American Airlines will send a Debit Memo for a certain amount to be reimbursed or paid to American Airlines as compensation. GTT will then pay the invoiced amount, even when its subagents fail or refuse to do so. American Airlines and GTT have followed this practice for the entire course of their decades-long relationship.

39. Industry practice memorialized in the ARA and IAH that apply to all airlines and agents also shows that Debit Memos are the appropriate and primary channel to resolve ticketing disputes between airlines and consolidators. (*See, e.g.*, ARA §39.12; IAH at 41)

40. In addition to immediately responding to any alert of abuse by a subagent, GTT also imposes upon all of its subagents responsibility for any violations. GTT's application for subagents requires agreement to the following: “Agency fully agrees to pay [GTT] any fees/penalties or debit memos issued by the airlines for any booking/pricing violations or alteration of ticketed PNR's committed by the ‘Agency’.”

41. As for violations regarding marketing practices by subagents, they fall outside the scope of the services provided by GTT. Subagents are independently owned and GTT has no authority to intervene in their internal business or marketing decisions. GTT can only investigate a subagent's marketing practice or selling conduct if GTT is made aware of a customer complaint to GTT. To date, GTT has not received any formal customer complaints from American Airlines related to the claims made in American Airline's lawsuit.

F. American Airlines Targets GTT Because It is a Minority, Woman-Owned Business.

42. In its lawsuit, American Airlines alleged that GTT breached the GTAA due to GTT's subagents' misconduct. (*See* Compl. ¶¶ 83-102, ECF No. 2) The subagents identified by American Airlines procured ticketing services not only from GTT, but also other major consolidators.¹² These consolidators are similarly situated to GTT vis-à-vis American Airlines:

- a) Like GTT, these consolidators' principal-agent relationships with American Airlines are governed by the same standardized agreement that governs the GTT-American Airlines relationship (the GTAA);
- b) Like GTT, these consolidators' responsibility to American Airlines for their subagents are specifically governed by the standardized clauses in the ARA and the Addendum;
- c) Like GTT, these consolidators can only investigate subagent misconduct after being informed by the airlines or GDS (including customer complaints made directly to the airline);

¹² Further, these subagents can also potentially procure the same ticketing services from hundreds of other appointed travel agencies by American Airlines.

- d) Like GTT, these consolidators pay outstanding Debit Memo fees to American Airlines to resolve any ticket errors or violations and/or block subagent access to book tickets;

43. Despite GTT and these other consolidators being similarly situated in all material respects, American Airlines chose to sue the only Asian and woman owned consolidator. The other consolidators have more traditional investor backing and support, including institutional investors or private equity. GTT, on the other hand, is a family business owned by an immigrant, Asian woman. American Airlines' lawsuit is discriminatory.

44. The result of American Airlines' targeting against GTT has been deep, and painful. These are but a few of the headlines after AA's suit:

- e) "American Airlines Goes After Scam Travel Agencies That Mislead Passengers."¹³
- f) "American Airlines Lawsuit Targets Scam Travel Agencies."¹⁴
- g) "American Airlines Lawsuit Unveils Hidden Practices of Ticket Consolidator: American Airlines Lawsuit Exposes GTT's Alleged Deceptive Practices in Air Travel Booking."¹⁵
- h) "American Airlines' Lawsuit Against Ticket Consolidator Reveals Details About Hidden Practices."¹⁶
- i) "American Airlines Says Travel Website Allows Scam in TM Suit."¹⁷

¹³ <https://viewfromthewing.com/american-airlines-goes-after-scam-travel-agencies-that-mislead-passengers/>.

¹⁴ <https://liveandletsfly.com/american-airlines-scam-lawsuit/>.

¹⁵ <https://aviationa2z.com/index.php/2023/08/26/american-airlines-lawsuit-unveils-hidden-practices-of-ticket-consolidator/>.

¹⁶ <https://skift.com/2023/08/25/american-airlines-lawsuit-against-ticket-consolidator-reveals-details-about-hidden-practices/>.

¹⁷ <https://www.law360.com/articles/1704625/american-airlines-says-travel-website-allows-scam-in-tm-suit>.

45. American Airlines' intentional targeting against GTT is causing damage. GTT's reputation has suffered, and it is sure to lose business opportunities and revenues as a result. Ms. Men and her business was wrongfully accused as frauds, solely due to her race.

V. CAUSES OF ACTION

Count I Declaratory Judgment

(Under 28 U.S.C. §§ 2201 and 2202)

46. GTT adopts and reincorporates the allegations in paragraphs 1 through 45 as if set forth herein.

47. 28 U.S.C. §§ 2201 and 2202 govern actions for declaratory judgment at federal courts.

48. An actual and justiciable controversy exists between GTT and American Airline as to whether GTT has an affirmative obligation to police its subagents for full compliance of the GTAA. American Airlines alleged that GTT breached the GTAA due to misconduct of its subagents under the recital of the Addendum. (*See* Compl. ¶ 28, ECF No. 2)

49. Recital of the Addendum provides:

To the extent that Agent or Agent's affiliates, or their respective employees, sub-agents, services vendors or other third-party contractors or representatives including sub-agents using a technology platform provided by Agent ("Agent Representatives") are involved in Agent's activities within the scope of the Appointment, Agent will remain primarily responsible and liable to American for their full compliance with all of Agent's obligations under the Agreement.

50. The language of this clause does not impose an affirmative obligation on GTT to police its subagents for full compliance with the GTAA. Nowhere in this provision, or anywhere else in the applicable agreements, is there a provision affirmatively requiring GTT to police subagents or discover the types of conduct American Airlines complains about (but which American Airlines can detect). Such silence should not be interpreted as an affirmative obligation on GTT because judicial interpretations of contracts are "governed by what [the parties] said in [their] contract, not by what

one side or the other alleges they intended to say but did not.” *Perthuis v. Baylor Miraca Genetics Labs., LLC*, 645 S.W.3d 228, 236 (Tex. 2022) (quoting *Gilbert Tex. Constr., L.P. v. Underwriters at Lloyd’s London*, 327 S.W.3d 118, 127 (Tex. 2010)).

51. An actual and justiciable controversy exists between GTT and American Airlines regarding the interpretation of the contractual provisions governing responsibility for subagent conduct. The interpretation of these provisions going forward is necessary, because the parties have an ongoing relationship governed by these provisions and dispute the obligations the contracts create with respect to policing and discovering subagent abuse. GTT, therefore, requests a declaration that the parties’ governing agreements do not impose an affirmative obligation on GTT to either police its subagents to fully comply with the GTAA, or to discover all potential misconduct or practices that may violate the parties’ agreements.

52. An additional actual and justiciable controversy exists between GTT and American Airlines as to whether American Airlines has the obligation to notify GTT of conduct it considers a violation of the applicable agreements when American Airlines intends to have GTT assume financial responsibility for such conduct. Course of performance and dealing between American Airlines and GTT establishes that the GDS and/or American Airlines will first notify GTT of alleged subagent misconduct, because only they can discover it. Then, if appropriate, American Airlines will issue a Debit Memo. GTT requests a declaration that if American Airlines fails to notify GTT of such misconduct, and GTT has not discovered or otherwise been alerted to such misconduct either, then GTT has no liability to American Airlines under the relevant agreements. On the other hand, if American Airlines does discover and notify GTT of such alleged misconduct, and GTT assumes financial responsibility by way of a Debit Memo, then GTT requests a declaration that such assumption of liability and payment of any related charges or fees fully discharges GTT’s obligations under the relevant agreements.

Count II Racial Discrimination under Civil Rights Act

(Under 42 U.S.C. § 1981)

53. GTT adopts and reincorporates the allegations in paragraphs 1 through 45 as if set forth herein.

54. Section 1981 provides that “[a]ll persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts.” 42 U.S.C. § 1981(a). “Make and enforce contracts” is defined as “the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.” § 1981(b). To establish a § 1981 claim for contractual discrimination, plaintiffs must allege that (1) they are members of a racial minority; (2) defendants intended to discriminate on the basis of race; and (3) the discrimination concerned one or more of the activities enumerated in the statute. *Body by Cook, Inc. v. State Farm Mut. Auto. Ins.*, 869 F.3d 381, 386 (5th Cir. 2017); *Bellows v. Amoco Oil Co.*, 118 F.3d 268, 274 (5th Cir. 1997); *Green v. State Bar of Tex.*, 27 F.3d 1083, 1086 (5th Cir. 1994). The analysis of discrimination claims under § 1981 is identical to the analysis of Title VII claims. *Body by Cook*, 869 F.3d at 386; *Jones v. Robinson Prop. Grp. L.P.*, 427 F.3d 987, 992 (5th Cir. 2005). Plaintiffs can show discrimination in two ways: disparate treatment and disparate impact. *Pacheco v. Mineta*, 448 F.3d 783, 787 (5th Cir. 2006) (Title VII claims analysis). Disparate treatment describes “actions that treat [a plaintiff] worse than others based on [his] race...” *Id.* The “simple test” for determining whether disparate treatment has occurred is whether “treatment of a person in a manner which but-for that person’s [protected characteristic] would be different.” *City of L.A., Dep’t of Water & Power v. Manhart*, 435 U.S. 702, 711 (1978) (internal quotation marks and citation omitted) (Title VII claims analysis).

55. GTT is a 100% Asian American-owned business and therefore member of a racial minority. *See Body by Cook*, 869 F.3d at 386 (“Plaintiffs adequately plead the first element of a § 1981 claim by alleging that Body by Cook is a ‘100% African American-owned body shop.’”).

56. American Airlines and GTT have a valid contractual relationship governed by the GTAA.

57. American Airlines sued GTT for breach of contract under the GTAA, intending to deprive GTT of the enjoyment of benefits, privileges, terms, and conditions of their contractual relationship, including but not limited to, commissions and incentives that GTT is entitled to under the GTAA.

58. American Airlines intended to discriminate GTT on the basis of race. American Airlines alleged that GTT breached the GTAA due to the misconduct of GTT subagents. (*See* Compl. ¶¶ 83-102, ECF No. 2) Subagents identified by American Airlines procured ticketing services not only from GTT, but also other consolidators. These consolidators are similarly situated to GTT.

59. To date, GTT is the only consolidator sued by American Airlines under the standardized GTAA for alleged subagent misconduct. The other, similarly-situated consolidators are not being sued or even named in the lawsuit.

60. American Airlines is targeting GTT because it is an Asian-American owned business.

61. American Airlines' racial discrimination against GTT results in reputation damages, loss of potential business opportunities, and direct loss of revenues to GTT.

VI. CONDITIONS PRECEDENT

62. All conditions precedent to these claims have been performed by GTT, been waived, or occurred.

VII. ATTORNEYS' FEES

63. GTT adopts and reincorporates the allegations in paragraphs 1 through 45 as if set forth herein.

64. GTT retains legal services in prosecution of these claims. GTT is entitled to recover its reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

VIII. PRAYER

WHEREFORE, GTT respectfully requests that the Court:

- a) Award GTT judgment against American Airlines for actual and punitive damages caused by American Airlines' racial discrimination;
- b) Award GTT attorneys' fees and costs, pre-judgment interest, post-judgment interest, and costs of court;
- c) Issue declarations as described above; and
- d) Award GTT such other and further relief as may be proper.

DATE: September 18, 2023

Respectfully Submitted,

/s/ Michael Hurst

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**ATTORNEYS FOR DEFENDANT /
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GATEWAY**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on all counsel of record on September 18, 2023, via CM/ECF.

/s/ Michael Hurst

Michael K. Hurst