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12 a Delaware corporation

12 **UNITED STATES DISTRICT COURT**
13 **EASTERN DISTRICT OF CALIFORNIA**
14 **SACRAMENTO DIVISION**

15 ERICKA BOHNEL; ROSA
16 MARTINEZ,

17 Plaintiffs,

18 vs.

19 JETBLUE AIRWAYS
20 CORPORATION,

21 Defendant.

) CASE NO. 18-CV-00081-WBS-DMC

) **STIPULATED PROTECTIVE**
) **ORDER**

1 **STIPULATED PROTECTIVE ORDER**

2 IT IS HEREBY STIPULATED AND AGREED by and between the parties
3 hereto, Plaintiffs ERICKA BOHNEL and ROSA MARTINEZ, and Defendant
4 JETBLUE AIRWAYS CORPORATION, by their undersigned counsel, that the
5 following procedures shall govern the production and exchange of all Confidential
6 documents, testimony, interrogatories and other information produced, given or
7 exchanged in the course of the above-entitled action (the "Action"). Nothing in this
8 Protective Order shall be deemed to waive any right a person otherwise might have
9 to obtain information, to oppose production of documents or information on any
10 ground, or to object to the introduction of evidence on any ground. In addition,
11 nothing in this Protective Order shall be deemed to authorize or preclude the
12 disclosure of Sensitive Security Information ("SSI") in any form, including, but not
13 limited to, documents and oral testimony.

14 1. For the purposes of the Protective Order,

15 (a) The term "document" includes, without limitation, (i)
16 interrogatory answers, (ii) requests to admit and responses thereto, (iii)
17 documents produced by any party or non-party in the Action, (iv) deposition
18 transcripts and exhibits, (v) any portion of any papers, including Court papers,
19 that quote from or summarize any of the foregoing, and (vi) audio recordings.
20 Without limitation, the term "document(s)" includes all originals (or copies if
21 the original is unavailable), non-identical copies, drafts and revisions.

22 (b) The term "person" means any party, individual, or entity.

23 2. Any person subject to discovery in the Action ("Producing Party") may,
24 in good faith, designate non-public business, financial, trade secret, or proprietary
25 information, or confidential research, development, personal or commercial and
26 personal information as "Confidential" (by stamping the relevant pages or otherwise)
27 thus rendering that document subject to protection. Documents designated as

1 "Confidential," the information contained therein, and any notes or other documents
2 quoting from or summarizing such materials are hereinafter referred to as
3 "Confidential Information."

4 3. A Producing Party shall designate for confidential treatment only
5 documents, items or information which the Producing Party believes in good faith
6 contain material constituting any non-public business, financial, trade secret,
7 proprietary information, confidential research, or medical, financial, personal, or
8 commercial information.

9 4. If a Producing Party inadvertently produces any confidential materials
10 without the appropriate designation, the Producing Party may furnish a substitute
11 copy properly designated along with written notice to all parties that such
12 information is deemed Confidential Information. Any receiving party must replace
13 the undesignated original and any and all copies (either in its possession or
14 previously sent to any third parties) with the substitute copy and return the original
15 and any such copies to the Producing Party within fourteen (14) days of receipt of
16 the substitute copy.

17 5. If any non-party produces discovery materials and does not designate
18 them "Confidential," any party may seek to have such materials so designated if it
19 in good faith believes such designation is necessary, either by requesting that the
20 non-party producing the materials designate such materials "Confidential" or by
21 requesting that the opposing party or parties agree to such designation, or by seeking
22 an order of the Court. No penalty or duty shall be imposed upon a receiving party
23 who has disclosed a document that is subsequently designated by the Producing
24 Party as "Confidential" if the disclosure predates the "Confidential" designation.
25 However, the Producing Party will make reasonable efforts to ensure the return of
26 documents it disclosed prior to such designation being made.

27

1 6. Nothing in Paragraph 5, above, or elsewhere in this Protective Order,
2 shall be construed as precluding the right of any party to seek relief from the Court
3 precluding the disclosure of materials received from third parties or requiring that
4 such materials be designated "Confidential" prior to their production. Subject to the
5 express provisions of this Paragraph and Paragraph 5, *supra*, nothing herein shall
6 impose any restrictions on the use or disclosure by a party or witness of documents
7 or information obtained through discovery proceedings between the parties in this
8 action which have also been obtained lawfully by a party or witness from an
9 independent source.

10 7. If any party objects to the designation of any document as
11 "Confidential" the party shall state the objection in writing to counsel for the party
12 or non-party making the designation within fifteen (15) business days of receipt of
13 the document(s) in question. The party or non-party designating the material as
14 Confidential shall then provide a written explanation as to why the material is
15 believed to be Confidential within five (5) business days of receipt of any such
16 objection. If the parties are unable to resolve the objection, any party may move the
17 Court to do so. The materials so designated shall remain Confidential pending
18 resolution of the objection. The party or non-party who designated the discovery
19 material as Confidential shall have the burden of establishing confidentiality.

20 8. This Protective Order may only be modified in writing, signed by
21 counsel for all parties.

22 9. The attorneys of record are responsible for employing reasonable
23 measures to control, consistent with this Protective Order, duplication of, access to,
24 and distribution of copies of Confidential Information.

25 10. Confidential Information shall be used by the receiving party solely for
26 the purposes of investigating, preparing for and/or conducting litigation in the Action
27

1 and any resulting appellate proceedings and in a manner consistent with this
2 Protective Order.

3 11. The inadvertent production of privileged information, whether
4 designated "Confidential" or bearing no designation shall not constitute a waiver of
5 any applicable privilege. Any party or non-party receiving produced privileged
6 material must return such material to the Producing Party immediately upon request.
7 Nothing in this paragraph, however, shall be construed as preventing the party to
8 which assertedly privileged information was produced from seeking to reobtain such
9 information by arguing that it is not privileged.

10 12. The inadvertent production of materials containing SSI shall be
11 returned immediately upon request by Defendant or by the Transportation Security
12 Administration ("TSA"). Nothing in this paragraph, however, shall prevent any party
13 from moving the Court for or petitioning the TSA for the disclosure of these
14 materials.

15 13. All materials designated as "Confidential" shall not be disclosed
16 directly or indirectly by the person receiving such materials to persons or entities
17 other than:

18 (a) subject to the provisions of paragraph 20, the Court, persons
19 employed by the Court, the jury, or stenographers transcribing the testimony
20 or argument at a hearing, trial, or deposition in the Action or any appeal
21 therefrom;

22 (b) the parties to the Action or their authorized agent/representative,
23 or any officer, director or employee of the parties to this Action or of the
24 parties' authorized agent/representative, to the extent necessary for the
25 prosecution or defense of this Action;

1 (c) counsel to the parties in the Action (including in-house counsel
2 of the parties or their agents/representatives), or such counsel's clerical,
3 paralegal, and secretarial staff;

4 (d) any subsequently joined party or officer, director or employee of
5 any subsequently joined party, provided that such subsequently joined party
6 signs an undertaking in the form attached hereto as **Exhibit A** agreeing to be
7 bound by the Protective Order;

8 (e) any person reflected as an author, addressee, or recipient of the
9 materials being disclosed or any person who received the materials in the
10 ordinary course of business;

11 (f) any non-party trial witness or non-party deposition witness,
12 provided that such witness signs an undertaking in the form attached hereto
13 as **Exhibit A** agreeing to be bound by the Protective Order; and

14 (g) experts consulted by counsel in connection with these
15 proceedings to allow such experts to prepare a written opinion, to prepare to
16 testify, or to assist counsel in the prosecution or defense of the Action. Any
17 expert(s) who receives material designated as "Confidential" must sign an
18 undertaking in the form of **Exhibit A** attached agreeing to be bound by the
19 Protective Order.

20 14. If any party desires to provide Confidential Information or materials to
21 any person(s) not set forth in Paragraphs 13 above, and if the parties cannot resolve
22 the matter consensually, the party requesting disclosure shall make an appropriate
23 application to the Court. Any third party not included in Paragraph 13 above must
24 review and sign **Exhibit A** attached hereto before any material designated as
25 "Confidential" is made available to that person.

26 15. Nothing herein shall prevent any party from seeking relief from the
27 Court for an order modifying the terms and/or provisions of this Protective Order.

1 16. If, at any time, any Confidential Information in the possession, custody
2 or control of any person or party other than the person or party who originally
3 produced such Confidential Information is subpoenaed or requested by any court,
4 administrative agency, legislative body, the recipient of the subpoena or request
5 immediately shall promptly notify the designating party in writing and include a
6 copy of the subpoena or court order; promptly notify in writing the party who caused
7 the subpoena or order to issue in the other litigation that some or all of the material
8 covered by the subpoena or order is subject to this agreement; and cooperate with
9 respect to all reasonable procedures sought to be pursued by the designating party
10 whose Confidential Information may be affected. Such notification shall include a
11 copy of this agreement. The receiving party or recipient of the subpoena or request
12 shall not produce the Confidential Information unless and until the parties resolve
13 the issue or the Court in this Action orders the production of Confidential
14 Information.

15 17. Before filing confidential material or discussing or referencing such
16 material in court filings, the filing party shall confer with the designating party to
17 determine whether the designating party will remove the confidential designation,
18 whether the document can be redacted, or whether a motion to seal or stipulation and
19 proposed order is warranted. If a party desires to protect confidential information at
20 trial, the issue should be addressed during the pre-trial conference or in a motion

21 18. Any party who intends to file papers containing documents or
22 information designated by an opposing party as "Confidential" or derived from
23 documents or information designated by an opposing party as "Confidential" must
24 comply with any rules governing the filing of papers under seal, absent agreement
25 of the parties regarding such use. Nothing in this Protective Order shall be construed
26 to prohibit a party from objecting to the sealing of such documents, information, or
27 material at the time of the filing or anytime thereafter.

1 19. Nothing herein shall be construed to affect in any way the admissibility
2 of any document, testimony or other evidence at the trial in the Action. Nothing
3 herein shall be construed to limit in any way any party's use of its own Confidential
4 Information, or a party's subsequent waiver of its own prior designation with respect
5 to its own Confidential Information.

6 20. The parties may either identify on the record, during the deposition or
7 other pretrial proceeding, all protected testimony, or may so designate such
8 testimony after reviewing the transcript. Any party may, within thirty days after
9 receiving a deposition transcript, designate portions of the transcript, or exhibits
10 thereto, as Confidential.

11 21. Neither the termination of the Action nor the termination of
12 employment of any person who has had access to any Confidential Information shall
13 relieve such person from the obligation of maintaining the confidentiality of such
14 information.

15 22. Within sixty (60) days after termination of the Action, all actions
16 stemming from the underlying incident in which Plaintiffs' counsel is a participant,
17 or any appeal therefrom, counsel shall return all Confidential Information and copies
18 to counsel for the producing party or non-party, or in lieu thereof, certify in writing
19 that such Confidential Information has been destroyed. The Court shall retain
20 jurisdiction for all purposes in connection with this paragraph. Notwithstanding this
21 provision, counsel are entitled to retain one archival copy of all documents filed with
22 the court, trial, deposition, and hearing transcripts, correspondence, deposition and
23 trial exhibits, expert reports, attorney work product, and consultant and expert work
24 product provided that documents designated as Confidential may not be kept by any
25 party under any circumstances, nor may any Confidential Information be disclosed
26 or otherwise used in any other action.

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Dated: November 8, 2018

HOLLAND & KNIGHT LLP

/s/ Shelley Hurwitz
Shelley G. Hurwitz
Steven Raffaele
Sarah G. Passeri
*Attorneys for Defendant
JetBlue Airways Corporation*

Dated: November 8, 2018

FRIEDMAN RUBIN PLLP

/s/ Rachel Luke
Rachel Luke
Alisa Brodkowitz
Rachel Luke
*Attorneys for Plaintiffs in the Hill Matter
and the Bohnel Matter*

IT IS SO ORDERED.

Dated: December 6, 2018


DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE

1 **EXHIBIT A**

2 **CONFIDENTIALITY ACKNOWLEDGMENT**

3 I, _____, hereby acknowledge that: (i) I have read the foregoing
4 Protective Order, dated November __, 2018 (the "Protective Order"), which I am
5 informed has been executed by the attorneys for the parties in the action presently
6 pending in the United States District Court for the Eastern District of California,
7 entitled *Bohnel, et al. v. JetBlue Airways Corporation*, Case No. 18-cv-00081 (the
8 "Action"); (ii) I understand the terms of the Protective Order; (iii) I agree, upon the
9 potential penalty of contempt and other civil remedies under the laws of the United
10 States, to be bound by the terms of the Protective Order and will not reveal
11 Confidential Information to anyone, except as allowed by the Protective Order; (iv)
12 I understand that all Confidential Information and copies thereof shall be maintained
13 in a secure manner and shall be returned no later than sixty (60) days after the
14 termination of this action or any appeal therefrom to the counsel for the party or
15 other person who provided such Confidential Information to me; and (v) I submit
16 my person to the jurisdiction of the United States District Court for the Eastern
17 District of California, for the limited purpose of securing compliance with the terms
18 and conditions of the Protective Order.

19
20 DATED: _____

21 (Signature)

22
23 NAME: _____

24
25 BUSINESS ADDRESS:

26 _____