

GOODSILL ANDERSON QUINN & STIFEL
A LIMITED LIABILITY LAW PARTNERSHIP LLP

BRUCE L. LAMON 2738-0
blamon@goodsill.com

BRETT R. TOBIN 9490-0
btobin@goodsill.com

Alii Place, Suite 1800
1099 Alakea Street
Honolulu, Hawai'i 96813
Telephone: (808) 547-5600
Facsimile: (808) 547-5880

SHEPPARD MULLIN RICHTER & HAMPTON
LLP

M. ROY GOLDBERG
rgoldberg@sheppardmullin.com

CHRISTOPHER M. LOVELAND
cloveland@sheppardmullin.com

1300 I Street, N.W., Suite 1100 East
Washington, D.C. 20005-3314
Tel. (202) 218-0007
Fax (202) 312-9425

Attorneys for Plaintiff
AIR TRANSPORT ASSOCIATION OF
AMERICA, INC., dba Airlines for America

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

AIR TRANSPORT ASSOCIATION
OF AMERICA, INC., dba Airlines for
America

Plaintiff,

vs.

STIPULATION FOR JUDGMENT
AND PERMANENT INJUNCTION

EXHIBIT A

NEIL ABERCROMBIE, in his Official Capacity as Governor of the State of Hawai‘i, and RUSSELL S. KOKUBUN, in his Official Capacity as Chairperson of the Hawai‘i Department of Agriculture,

Defendants.

STIPULATION FOR JUDGMENT AND PERMANENT INJUNCTION

Pursuant to Rules 54, 57, 58 and 65(d) of the Federal Rules of Civil Procedure, plaintiff Air Transportation Association of America, Inc., d/b/a Airlines for America (“Plaintiff”) and defendants Neil Abercrombie, in his Official Capacity as Governor of the State of Hawaii, and Russell K. Kokubun, in his Official Capacity as Chairperson of the Hawaii Department of Agriculture (“Defendants”), hereby respectfully stipulate to the entry of judgment and a permanent injunction for the resolution and termination of this litigation as follows:

RECITALS

WHEREAS, Hawaii Revised Statutes Chapter 150A, as amended by Act 173, S.B. No. 2523 (2010) (the “Hawaii Plant Quarantine Law”), which became effective July 1, 2010, requires transportation companies, including airlines, which sell transportation of freight into Hawaii to bill their customers a freight inspection fee based on the net weight of the freight (the “Freight Inspection Fee”), and imposes a fine of \$50 or more per transaction if the airline

fails to timely invoice its customers for the Freight Inspection Fee, and remit collected Fees to the Hawaii Department of Agriculture (“HDOA”); and

WHEREAS, on July 28, 2010, Plaintiff filed a “Petition for Declaratory Order” with the United States Department of Transportation (“USDOT” or “Department”), docketed on September 29, 2010 as the Hawaii Inspection Fee Proceeding, No., DOT-OST-2010-0243, which sought a ruling by the USDOT that the application of the Hawaii Plant Quarantine Law to airlines violates and is preempted by federal law (the “Administrative Proceeding”); and

WHEREAS, on July 29, 2010, Plaintiff filed the Complaint instituting the above-captioned action against Defendants (the “Judicial Proceeding”); and

WHEREAS, Count Two of the Complaint asserts that, by requiring airlines to invoice and remit a Freight Inspection Fee, the Hawaii Plant Quarantine Law, as applied to airlines, violates and is preempted by the Anti-Head Tax Act (“AHTA”), codified at 49 U.S.C. § 40116, because it imposes a “charge” on the sale of the transportation of “property by aircraft”; and

WHEREAS, Count Three of the Complaint asserts that the Hawaii Plant Quarantine Law, as applied to airlines, violates and is preempted by the Airline Deregulation Act (“ADA”), codified at 49 U.S.C. § 41713(b)(1), because it is a “law . . . related to a price, route, or service of an air carrier” for which no statutory exemption applies; and

WHEREAS, Count Four of the Complaint alleges that the Hawaii Plant Quarantine Law, as applied to airlines, is invalid and unenforceable because it violates the Supremacy Clause of the Constitution of the United States, Article VI, in that it conflicts with Congressional directives in the AHTA and the ADA; and

WHEREAS, on October 12, 2010, the Court entered a stipulation and order for a temporary stay of the Judicial Proceeding, pending resolution of the Administrative Proceeding; and

WHEREAS, on January 23, 2012, the USDOT issued a Final Declaratory Order in the Administrative Proceeding, No. DOT-OST-2010-0243 (which USDOT served on January 24, 2012), ruling as follows:

- a. “The Department holds that the Hawaii Plant Quarantine Law as amended, [H.R.S.] § 150A (Act 173) and accompanying program requirements are preempted by the ADA, 49 U.S.C. § 41713”;
- b. “The Department holds that the Hawaii Plant Quarantine Law as amended, [H.R.S.] § 150A (Act 173) and accompanying program requirements are preempted by the AHTA, 49 U.S.C. § 40116”; and
- c. “The Department holds that Hawaii may not enforce the Hawaii Plant Quarantine Law as amended, [H.R.S.] § 150A (Act 173) and accompanying program requirements against air carriers”; and

WHEREAS, Defendants have decided not to seek judicial review of the USDOT decision.

AGREEMENT

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. The Court shall enter judgment in favor of Plaintiff and against Defendants on Counts Two, Three, and Four of the Complaint.

2. The Court shall adopt the findings and conclusions of the USDOT and declare that:

a. The Hawaii Plant Quarantine Law as amended, [H.R.S.] §150A (Act 173) and accompanying program requirements are preempted by the ADA, 49 U.S.C. § 41713;

b. The Hawaii Plant Quarantine Law as amended, [H.R.S.] §150A (Act 173) and accompanying program requirements are preempted by the AHTA, 49 U.S.C. § 40116; and

c. The State of Hawaii may not enforce the Hawaii Plant Quarantine Law as amended, [H.R.S.] § 150A (Act 173) and accompanying program requirements against air carriers.

3. The Court shall also declare that the Hawaii Plant Quarantine Law, as applied to airlines, is invalid and unenforceable because it violates the Supremacy Clause of the Constitution of the United States, Article VI, in that it conflicts with Congressional directives in the AHTA and the ADA.

4. The Court shall enjoin Defendants and their agents, employees and attorneys, and all other persons who are in active concert or participation with them, are permanently enjoined from applying the Hawaii Plant Quarantine Law as amended, [H.R.S.] § 150A (Act 173) and accompanying program requirements, to airlines.

5. Counts One, Five, Six, Seven, Eight, Nine, Ten and Eleven of the Complaint will be dismissed as moot.

6. Defendants shall reimburse the airlines that submitted Freight Inspection Fees pursuant to the Hawaii Plant Quarantine Law to the extent that such fees were not collected by that airline from a shipper. The identities of, and amounts to be reimbursed to, affected airlines shall be established by separate agreement between the parties.

7. The terms of the parties' Escrow Agreement are incorporated herein and shall be followed by Defendants and those airlines that deposited funds in an escrow account pursuant to the Escrow Agreement.

8. The Court shall retain jurisdiction to enforce this Stipulated Judgment.

9. Each of the parties shall bear its own costs and attorneys' fees.

/

/

/

/

/

/

/

/

DATED: Honolulu, Hawai‘i, March 6, 2012

/s/ Bruce L. Lamon

M. ROY GOLDBERG
BRUCE L. LAMON
BRETT R. TOBIN

Attorneys for Plaintiff
AIR TRANSPORT
ASSOCIATION OF AMERICA,
INC., dba Airlines of America

DATED: Honolulu, Hawai‘i, March 8, 2012

/s/ Myra M. Kaichi

DEBORAH DAY EMERSON
MYRA M. KAICHI

Attorneys for Defendants
NEIL ABERCROMBIE, RUSSELL
S. KOKUBUN

Air Transport Association of America, Inc. dba Airlines for America v. Neil Abercrombie, et al., Civil No. 10-00444 DAE BMK; STIPULATION FOR JUDGMENT AND PERMANENT INJUNCTION