

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
JUSTICE GLUSTEIN

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MONDAY ,THE 22nd DAY

OF FEBRUARY, 2021

(Signed June 3, 2021) BG



BETWEEN:

OMID ARSALANI

Plaintiff

- and -

**ISLAMIC REPUBLIC OF IRAN, ISLAMIC REVOLUTIONARY GUARD CORPS,
UKRAINE INTERNATIONAL AIRLINES PJSC, and
JOHN DOE MISSILE OPERATOR**

Defendants

Proceedings under the *Class Proceedings Act, 1992*, S.O. 1992, c.6

ORDER

THIS MOTION, made by the Plaintiff, for an Order certifying this action as a class action proceeding as against the defendants Islamic Republic of Iran and Islamic Revolutionary Guard Corp (the “Iran Defendants”), Ukraine International Airlines PJSC (“UIA”) and John Doe Missile Operator was heard this day by videoconference.

ON READING the certification motion record of the Plaintiff, the factum and books of authorities of the Plaintiff, and on hearing the submissions of Class Counsel, counsel for UIA and counsel for proposed intervenors, no one appearing for the Iran Defendants and John Doe Missile Operator;

AND BEING ADVISED THAT the Defendant UIA does not oppose the certification of this action on the terms set out in this Order, the Iran Defendants having been noted in

default:

1. **THIS COURT ORDERS** that leave be and hereby is granted to the Plaintiff to amend the claim in the form of the Fresh as Amended Statement of Claim attached hereto as Schedule “A”, and to substitute Omid Arsalani as a plaintiff in this action with Omid Arsalani in his capacity as estate trustee without a will of Hiva Molani, and to add as plaintiffs in this action Fatholla (Vahid) Hezarkhani in his capacity as administrator of the estates of Naser Pourshabosibi and Firouzeh Madani, and Habib Hoghood.

2. **THIS COURT ORDERS** that this action be and is hereby certified as a class proceeding pursuant to section 5 of the *Class Proceedings Act, 1992*, c 6, as amended (the “CPA”).

3. **THIS COURT ORDERS** that the Class is defined as:
 - (a) **Passenger Class** - the passengers who were on board Ukraine International Airlines Flight PS752 who are entitled to claim damages in the Ontario Superior Court of Justice pursuant to the *Carriage by Air Act*, R.S.C. 1985, c., C-26, as amended and/or such other legislation or agreement as may be applicable in their province or territory. For the sake of clarity, the following persons are excluded from this class as against the Defendant, UIA: (i) on duty employees of UIA including members of the flight crew and cabin crew; and (ii) passengers whose claims against UIA are not subject to the jurisdiction before the Courts of Canada under the *Carriage by Air Act*, R.S.C. 1985, c. C-26, as amended;

 - (b) **Family Claimant Class** – those members of the family of passengers of Ukraine International Airlines Flight PS752 (including each passenger’s spouse, parent, step-parent, grandparent, brother, sister, child, adopted child, step-child, grandchild, and any other person for whom the passenger stood in the place of a parent) who are entitled to claim damages pursuant to Section 61 of the *Family Law Act*, R.S.O. 1990, c. F3, as amended or, as against UIA, s. 2(5) and Schedule II of the *Carriage by Air Act*, R.S.C. 1985, c., C-26, as amended, and/or such other legislation or agreement as may be applicable in their province or territory. For the sake of clarity, the following persons are excluded from this class as against the Defendant, Ukraine International Airlines: family members of passengers whose claims against Ukraine International Airlines are not subject to the jurisdiction before the courts of

Canada under the *Carriage by Air Act*, R.S.C. 1985, c. C-26, as amended;

(collectively, “Class Members”)

4. **THIS COURT ORDERS** that the nature of the claims asserted, and the relief sought on behalf of the Class Members are as set out in the Fresh as Amended Statement of Claim attached as Schedule “A”.

5. **THIS COURT ORDERS** that Omid Arsalani in his capacity as estate trustee for the Estate of Hiva Molani, and Fatholla (Vahid) Hezarkhani, in his capacity as administrator of the Estates of Naser Pourshaboshi and Firouzeh Madani, are hereby appointed as the Representative Plaintiffs for the Passenger Class, and Habib Haghjoo is hereby appointed as the Representative Plaintiff for the Family Claimant Class.

6. **THIS COURT ORDERS** that TWA Law is hereby appointed as counsel for the Class (“Class Counsel”).

7. **THIS COURT ORDERS** that the common issues are as set out in “Schedule B” attached hereto.

8. **THIS COURT ORDERS** that the litigation plan attached as Schedule “C” is a workable method of advancing the proceedings and may be amended or clarified if required by agreement of the parties, directions of the Court at a case management conference or, on application to the Court.

9. **THIS COURT ORDERS** that the Notice of Certification, attached as Schedule “D”, be and is hereby approved.

10. **THIS COURT ORDERS** that the Notice of Certification be given to the Class in the

following manner:

- (a) Sent by electronic communication and/or registered mail to each of the Class Members at the physical address and/or email address provided by UIA. Where UIA provides a Class Member's phone number to Class Counsel pursuant to paragraphs 17 and 18 below but no physical address and/or email address is provided, Notice is to be sent by text message or similar means;
 - (b) Posted on the following website: www.flightps752.ca;
 - (c) Provided by Class Counsel to any person who requests it; and
 - (d) Published on one occasion in each of the Globe and Mail, the National Post, and the Farsi language newspaper Iran Javan.
11. **THIS COURT ORDERS** that the costs of effecting the Notice of Certification as set out in paragraphs 10(a) and 10(d) above shall initially be paid by the Plaintiff, without prejudice to subsequent request for recovery from one or more of the Defendants.
 12. **THIS COURT DECLARES** that the Notice of Certification and its distribution satisfy the requirements of s. 17 of the *CPA*.
 13. **THIS COURT ORDERS** that RicePoint Administration Inc. is hereby appointed as Notice Administrator.
 14. **THIS COURT ORDERS** that a Class Member may opt out of this class proceeding by delivering a completed Opt Out Form, attached as Schedule "E", to the Notice Administrator, which may be sent by mail, email or courier but must be received on or before January 8, 2022 (the "**Opt Out Deadline**").
 15. **THIS COURT ORDERS** that Class Members may not opt out after the Opt Out Deadline.
 16. **THIS COURT ORDERS** that within 14 days of the Opt Out Deadline, Class Counsel

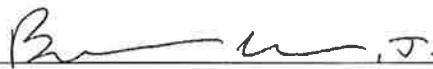
and the Notice Administrator shall report to the Court and provide to UIA the names of persons who have delivered a valid completed Opt Out Form, a copy of the completed Opt Out Form(s) together with confirmation that the Notice of Certification as set out in paragraphs 10 above has been completed. This report will be delivered under seal shall remain confidential and not form part of the court file.

17. **THIS COURT ORDERS** that within 15 days of this Order, UIA will provide to Class Counsel a complete copy of the Passenger Manifest for Flight PS752, together with, to the extent known to UIA, a list of the Class Members, including their names, and last known contact information, including physical address and email addresses, for the purposes of identifying Class Members entitled to receive Notice of Certification.: Phone numbers of Class Members, if known to UIA, shall be provided to Class Counsel for the purposes set out in paragraph 10(a) above, where the Class Members are not represented by independent legal counsel.
18. Where UIA believes a Class Member is represented by independent legal counsel, UIA shall ask that independent legal counsel for the Class Member's physical address and/or email address. Independent legal counsel shall either confirm that he/she does not represent the Class Member or shall provide the requested contact information, which Class Counsel shall then use for the purpose of providing notice. If the independent legal counsel for the Class Member fails to provide the Class Member's physical address and/or email address, then UIA shall provide the Class Member's phone number to Class Counsel, and Class Counsel shall use the phone number for the purposes of notice under paragraph 10(a) above.

19. **THIS COURT ORDERS** that Class Counsel shall use the information provided pursuant to paragraph 17 of this Order for the sole purpose of facilitating the Notice of Certification and for no other purpose.
20. **THIS COURT ORDERS** that Class Counsel and the Notice Administrator shall maintain confidentiality over and shall not share the information provided pursuant to paragraph 17 with any other person unless doing so is necessary for effecting notice of certification or any other steps in relation to the litigation of this action.
21. **THIS COURT DECLARES AND ORDERS** that this Order constitutes an Order compelling the production of information by UIA within the meaning of applicable privacy laws, including that it satisfies the requirements of section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5.
22. **THIS COURT ORDERS** that this Order does, and is deemed to, comply with any requirement under applicable privacy laws for UIA to provide notice to any person of disclosure of the information required by this Order without consent.
23. **THIS COURT ORDERS** that UIA be and is hereby released from any and all obligations pursuant to any and all applicable privacy laws, including common law, statutes and regulations in relation to the disclosure of personal information or personal health information required by this Order.
24. **THIS COURT ORDERS** that the Defendants shall deliver their statements of defence on a date to be agreed upon by the parties or otherwise set by the court.

25. **THIS COURT ORDERS** that the time for service and filing of the Amended Notice of Motion dated January 19, 2021 be abridged and any irregularities waived.

26. **THIS COURT ORDERS** that the parties and the proposed intervenors shall bear their own costs of this motion.



The Honourable Justice Glustein