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UNITED STATES DISTRICT COURT

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FOR THE CENTRAL DISTRICT OF CALIFORNIA

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16 ASSEM BAYAA, and)

Case No.

17 THE AMERICAN-ARAB ANTI-)
DISCRIMINATION COMMITTEE, on behalf)
18 its members and constituents,)

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

19 Plaintiffs,)

vs.)

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21 UNITED AIRLINES, INC.;)
UAL CORPORATION,)

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Defendants.)

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Plaintiffs allege as follows:

I. JURISDICTION AND VENUE

1. This lawsuit for declaratory and injunctive relief challenges the discriminatory and wholly unjustified removal of a United States citizen from a United Airlines flight, in violation of the laws of the United States and of the State of California. This case is brought pursuant to 42 U.S.C. § 1981 and California Civil Code § 51 *et seq.* This court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343, and 1367. Plaintiffs’ action for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201, 2202, and 1343(a)(4).

2. Venue is proper pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims herein occurred in this district.

II. INTRODUCTORY STATEMENT

3. This civil rights lawsuit is brought to ensure that the promise of equal treatment embodied in federal and state anti-discrimination laws does not become a meaningless guarantee for persons of Arab or Muslim appearance. Since the horrific events of September 11, our nation has witnessed an alarming rise in incidents of discrimination against Arab and Muslim Americans and against persons perceived to be Arab or Muslim. In response to this disturbing trend, President Bush, in his first address to Congress following the attacks, felt compelled to declare that “no one should be singled out for unfair treatment or unkind words because of their background or religious faith.” Attorney General Ashcroft was equally adamant in proclaiming, just days after the attacks, that “we must not descend to the level of those who perpetrated Tuesday’s violence by targeting individuals based on their race, their religion, [or] their national origin.”

4. Federal law expressly provides that an “air carrier or foreign air carrier may not subject a person in air transportation to discrimination on the basis of race, color, national origin, religion, sex, or ancestry.” 49 U.S.C. § 40127(a). Nevertheless, since September 11, reports of air carriers discriminating against passengers of Arab and Middle Eastern appearance have risen dramatically.

1 As early as September 21, 2001, the United States Department of Transportation (DOT) responded
2 to these incidents by sending an email to several major airlines, including United Airlines, in which
3 it warned that it had “seen several reports of airlines apparently removing passengers from flights
4 because the passengers appeared to be Middle Eastern and/or Muslim.” The DOT cautioned airlines
5 “not to target or otherwise discriminate against passengers based on their race, color, national or
6 ethnic origin, religion, or based on passengers' names or modes of dress that could be indicative of
7 such classification.” On October 17, 2001, the DOT sent a second email to the airlines, stating that
8 “it is important to reemphasize that in performing our critical duties, we may not rely on generalized
9 stereotypes or attitudes or beliefs about the propensity of members of any racial, ethnic, religious, or
10 national origin group to engage in unlawful activity.”

11 5. Notwithstanding the forceful statements of the DOT and the clear mandates of federal
12 law, airlines have continued to subject passengers of Arab or Middle Eastern appearance to
13 discriminatory treatment. Indeed, the DOT, which tracks consumer complaints in a monthly “Air
14 Travel Consumer Report,” has for the first time added a category of complaints specifically
15 addressing alleged incidents of discrimination. Between January and March, 2002 – the first period
16 for which these statistics are available – the DOT has documented 84 complaints of discrimination
17 by air carriers, including 17 complaints against United Airlines alone.

18 6. This suit is brought in response to one such egregious incident. In an act of blatant racial
19 discrimination, Plaintiff Assem Bayaa, an American citizen of Arab descent, was kicked off a flight
20 for which he had purchased a valid ticket simply because, he was told, members of the crew “felt
21 uncomfortable” having him on board. United Airlines, by its conduct during and after Mr. Bayaa's
22 removal from his scheduled flight, has effectively conceded that its actions were not based on
23 legitimate security considerations: following Mr. Bayaa's removal from the plane, he was never once
24 questioned or searched by security personnel, his checked luggage was not removed from the plane
25 before it took off, and he was promptly offered a boarding pass for the next flight. Mr. Bayaa brings
26 this suit to ensure that he is never again subjected to unlawful and humiliating treatment by United
27 Airlines, and he is joined in this action by the American-Arab Anti-Discrimination Committee,
28 which seeks similar relief on behalf of its members and constituents.

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2 **III. PARTIES**

3 **A. PLAINTIFFS**

4 7. Plaintiff Assem Bayaa is a United States citizen of Lebanese and Palestinian descent.
5 His wife and three children are also United States citizens. Mr. Bayaa attended high school and
6 college in Long Beach, California, and he earned a masters degree in taxation from California State
7 University, Fullerton. Since 1998, Mr. Bayaa has resided with his family in Riyadh, Saudi Arabia,
8 where he is employed as an audit manager for Arthur Anderson LLP. Mr. Bayaa regularly returns to
9 the United States, both for business and for visits with family members in California.

10 8. Mr. Bayaa was a regular customer of United Airlines prior to the incident described
11 herein. As a result of his treatment, Mr. Bayaa has been deterred from flying United Airlines,
12 because he is afraid that he will be subjected to similar discriminatory treatment by Defendants and
13 their employees in the future. Mr. Bayaa's fear is reasonable, because he travels by air frequently,
14 and because Defendants have engaged in a pattern of removing passengers whom they perceive to be
15 Arab or Muslim Americans from their planes on the sole basis of race or national origin.

16 9. United Airlines frequently provides one the most convenient flights on the routes that
17 Mr. Bayaa regularly travels. As a result, if Mr. Bayaa were assured that United Airlines would not
18 discriminate against him in the future, either as a result of a court order or other appropriate action by
19 Defendants, Mr. Bayaa would continue to fly United Airlines in the future.

20 10. Plaintiff American-Arab Anti-Discrimination Committee (ADC) is a non-sectarian,
21 non-partisan organization dedicated to defending the rights of people of Arab descent and to
22 combating defamation and negative stereotyping of Arab Americans wherever it is practiced. Its
23 thousands of members and millions of constituents fly on all major airlines, including United
24 Airlines, on a regular basis, and at various times have been subjected to racially discriminatory
25 practices similar to those described herein. The ADC brings this action on behalf of itself and its
26 members and constituents and as organizational representative for its members and constituents who
27 have been and may continue to be subjected to race-based discrimination by United Airlines.

28 11. ADC's members and constituents face a likelihood of being subjected to discriminatory

1 treatment in the future as a result of their continuing travel on United Airlines, and Defendants'
2 pattern of discrimination against passengers whom they perceive to be Arab or Muslim Americans.

3 **B. DEFENDANTS**

4 12. Defendant UAL Corporation is the holding company for Defendant United Airlines,
5 Inc. UAL Corporation is incorporated in Delaware and does business throughout the United States.

6 13. Defendant United Airlines, Inc. is incorporated in Delaware, does business throughout
7 the United States, and operates the aircraft from which Mr. Bayaa was removed.

8 14. As of May 7, 2002, Defendant United Airlines, Inc. had received at least
9 \$644,086,267.00 in federal financial assistance from the United States Department of Transportation
10 pursuant to sections 101 and 103 of the Air Transportation Safety and System Stabilization Act, P.L.
11 107-42.

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IV. FACTUAL ALLEGATIONS

14 **A. ASSEM BAYAA**

15 15. On December 23, 2001, Plaintiff Assem Bayaa was returning to his home in Riyadh,
16 Saudi Arabia after a three-week visit with his mother, sisters, nephews, and nieces in Aliso Viejo,
17 California. Mr. Bayaa had purchased a valid round-trip ticket from Riyadh to Los Angeles, and he
18 was scheduled to depart at 8:45 A.M. on United Airlines Flight #10 from Los Angeles International
19 Airport (LAX) to John F. Kennedy International Airport (JFK) in New York. From there, he was to
20 connect with a Saudi Airlines flight to Riyadh.

21 16. Mr. Bayaa arrived at LAX early on the morning of December 23 and presented his
22 ticket and his United States passport to United Airlines personnel. He checked two suitcases, one of
23 which was opened and searched on the spot, and both of which were scanned through a detection
24 device. Mr. Bayaa retained one piece of carry-on luggage and proceeded to the security screening
25 section, where he passed through the metal detector without incident. Mr. Bayaa sent his carry-on
26 bag through the x-ray machine and then retrieved it. Airport personnel did not select the bag for
27 additional screening.

28 17. When the time came to board the aircraft, Mr. Bayaa was informed by United Airlines

1 personnel that he had been chosen for additional pre-board screening. He was thereafter searched
2 with a hand-wand, and his carry-on luggage was opened and examined. By the time the procedure
3 was completed, Mr. Bayaa was the last passenger to board the plane.

4 18. Mr. Bayaa proceeded to his designated seat in the coach section of the plane,
5 approximately two rows behind the last row of business class seats. He opened one, and then
6 another overhead compartment, looking for a place for his carry-on bag. Finding both compartments
7 full, he requested assistance from a female flight attendant. The flight attendant opened an overhead
8 compartment and saw that it was full. She then asked Mr. Bayaa for his final destination. When he
9 replied that his final destination was Riyadh, Saudi Arabia, the flight attendant asked him to wait,
10 and she walked toward the front of the plane.

11 19. Mr. Bayaa waited for five minutes. At that point, he was asked by United Airlines
12 personnel to walk to the front of the plane. Mr. Bayaa complied, and at the front of the plane he was
13 greeted by a woman who identified herself as the head of ground security for United Airlines. The
14 woman asked Mr. Bayaa to step off the plane. Mr. Bayaa asked the woman why he was being
15 removed from the plane, and he was told: "The crew does not feel comfortable having you on
16 board." Not satisfied with that response, Mr. Bayaa asked again what he had done to warrant the
17 airline's extraordinary request. He was told that there was no time to discuss the issue on board the
18 plane and was once again urged to step off. Mr. Bayaa asked about his checked luggage, and he was
19 assured that it would be removed before the plane took off. Mr. Bayaa then walked off the plane.

20 20. In the passage from the plane to the terminal, Mr. Bayaa observed three other men, two
21 of whom appeared Middle Eastern, who had evidently been removed from the plane as well. He also
22 observed that a police officer had been summoned and was conferring with United Airlines
23 personnel. Mr. Bayaa heard the head of ground security informing the police officer that the men
24 had "done nothing wrong," and that United Airlines would attempt to book them onto a later flight.
25 Meanwhile, contrary to the assurances that Mr. Bayaa had received, United Airlines flight #10
26 departed for JFK with Mr. Bayaa's luggage, and his possessions were not returned to him until two
27 nights later.

28 21. Mr. Bayaa was promptly offered a boarding pass for the next United Airlines flight

1 from LAX to JFK. He asked United Airlines personnel whether he could be assured that he would
2 not be removed from the later flight, just as he had been removed from his scheduled flight. He was
3 told only that the later flight crew would be briefed on what had occurred, but that the airline could
4 not guarantee that he would be permitted to fly. Mr. Bayaa declined the airline's offer of a seat on a
5 later flight. Instead, he changed his reservation, and subsequently returned to Saudi Arabia on a
6 different airline.

7 22. At no time following his removal from the aircraft was Mr. Bayaa searched or
8 questioned, either by airline personnel or by law enforcement. At no time was he told that he had
9 behaved in a manner deemed suspicious. To the contrary, had United Airlines suspected that Mr.
10 Bayaa in any way represented a security threat, it would not have allowed his luggage to remain on
11 the plane from which he had been removed, and it would not have offered him passage on the next
12 flight without subjecting him to any additional screening measures. The unfortunate but ineluctable
13 conclusion that must be drawn is that Mr. Bayaa was removed from his flight simply and solely
14 because he is an Arab American.

15 23. Mr. Bayaa was embarrassed and humiliated by his treatment at the hands of United
16 Airlines. Every time he has boarded a plane since December 23, 2001, he has worried about being
17 subjected to the same treatment, and he has even rehearsed what he would say if he were once again
18 asked to step off a plane. When Mr. Bayaa's three young children asked him what he had done to
19 deserve the punishment of being kicked off his flight, he did not know how to answer them. Mr.
20 Bayaa has always believed that the United States affords him greater rights and freedoms than any
21 other nation, and he accordingly seeks a declaration from this Court affirming that United Airlines
22 acted unlawfully, and an injunction barring United Airlines from subjecting him to discriminatory
23 treatment in the future.

24 **B. AMERICAN-ARAB ANTI-DISCRIMINATION COMMITTEE**

25 24. The members and constituents of the ADC have also been and may continue to be
26 subjected to defendant United Airlines' race-based discrimination. Since September 11, the ADC
27 has documented more than 60 incidents of alleged racial discrimination against Arab Americans by
28 domestic and foreign airlines. Eleven of those incidents have involved passengers of Middle Eastern

1 or South Asian descent who, like Mr. Bayaa, were removed from flights by United Airlines.

2 25. The ADC's members and constituents fly regularly on all major airlines, including
3 United Airlines. By way of example, the ADC conducts an annual conference in Washington, D.C.,
4 which is regularly attended by thousands of ADC members and constituents. On information and
5 belief, more than 2000 members and constituents of ADC will be attending this year's conference in
6 June, 2002, and they will be traveling to Washington on all major airlines, including United Airlines.

7 26. The thousands of members and millions of constituents of the ADC will continue to fly
8 on United Airlines, and they accordingly seek this Court's assurance that United Airlines will be
9 enjoined to take all necessary steps to ensure that its employees comply with federal and state anti-
10 discrimination laws.

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V. REQUISITES FOR RELIEF

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27. By reason of the factual allegations set forth above, an actual controversy has arisen and
now exists between Plaintiff and Defendant. A declaration from this court that Defendant's actions
violated Plaintiff's rights is therefore necessary and appropriate.

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28. Defendant's continued discriminatory conduct will result in irreparable harm to
Plaintiffs, including but not limited to violations of their legal rights. Plaintiffs have no plain,
adequate, or complete remedy at law to address the wrongs described herein. Plaintiffs therefore
seek injunctive relief restraining Defendant from engaging in the unlawful acts and policies
described herein.

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V. CLAIMS FOR RELIEF

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Count I: 42 U.S.C. § 1981 **Discrimination in the Making and Enforcement of Contracts**

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29. Plaintiffs incorporate ¶¶ 1-24 of this complaint as if fully set forth here.

30. The pilot, flight crew, gate agents, and ground security personnel for United Flight #10
on December 23, 2001, were at all relevant times agents and/or employees of Defendant United
Airlines.

1 31. Defendant is liable for the unlawful acts of its agents and employees directly
2 and/or under the doctrine of *respondeat superior*.

3 32. Defendant engaged in intentional discrimination on the basis of Plaintiff’s perceived
4 race, color, alienage, or ethnicity in removing Plaintiff from United Flight #10 on December 23,
5 2001. In doing so, Defendant discriminated against Plaintiff in the making and enforcement of his
6 contract with Defendant, namely the ticket he purchased to travel on United Flight #10 on December
7 23, 2001. Defendant's actions deprived Plaintiff of the right to make and enforce contracts
8 regardless of his race, in violation of 42 U.S.C. § 1981. Defendant’s similar actions against
9 members and constituents of the ADC were intentional and done in violation of their civil rights.

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Count II: California Civil Code § 51 et.seq.
Unruh Civil Rights Act
**Unlawful Deprivation of Right to Full and Equal Accommodations, Advantages, Facilities,
Privileges, or Services in All Business Establishments of Every Kind Whatsoever**

33. Plaintiffs incorporate ¶¶ 1-28 of this complaint as if fully set forth here.

34. Defendant is a “business establishment” within the terms of the Unruh Civil Rights Act, and thus may not “discriminate against, boycott or blacklist, or refuse to buy from, contract with, sell to, or trade with any person in this state because of the race, creed, religion, color, national origin, sex, disability, or medical condition.” Cal. Civ. Code §§ 51, 51.5.

35. The pilot, flight crew, gate agents, and ground security personnel for United Flight #10 on December 23, 2001, were at all relevant times agents and/or employees of Defendant.

36. Defendant is liable for the unlawful acts of its agents and employees directly and/or under the doctrine of *respondeat superior*.

37. Defendant engaged in intentional discrimination on the basis of Plaintiff’s perceived race, creed, religion, color, or national origin in removing Plaintiff from United Flight #10 on December 23, 2001. Defendant's acts violated the Unruh Civil Rights Act by depriving Plaintiff of the “full and equal accommodations, advantages, facilities, privileges, or services in all business establishments” to which Plaintiff is entitled under California law. Defendant’s similar actions against members and constituents of the ADC were intentional and done in violation of their civil

1 rights.

2 **Count III: Title VI of the Civil Rights Act of 1964**

3 38. Plaintiffs incorporate ¶¶ 1-33 of this complaint as if fully set forth here.

4 39. The pilot, flight crew, gate agents, and ground security personnel for United Flight #10
5 on December 23, 2001, were at all relevant times agents and/or employees of Defendant United
6 Airlines.

7 40. Defendant is liable for the unlawful acts of its agents and employees directly
8 and/or under the doctrine of *respondeat superior*.

9 41. Defendant is the recipient of federal funds, and is thus covered by Title VI of the
10 Civil Rights Act of 1964 (42 U.S.C. § 2000d). Title VI and its implementing regulations prohibit
11 recipients of federal monies from discriminating on the basis of, *inter alia*, race, color, or national
12 origin. Defendant's failure to permit Plaintiff to fly on Defendant's airline on the basis of Plaintiff's
13 race, color, and/or national origin discriminated against Plaintiff in violation of Title VI and its
14 implementing regulations. Defendant's similar actions against members and constituents of the
15 ADC were intentional and done in violation of their civil rights.

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17 **VI. PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor:

19 (a) Declaring that the actions of Defendant described above constituted discrimination on
20 the basis of race and national origin in violation of 42 U.S.C. § 1981 and the Unruh Civil Rights Act,
21 California Civil Code § 51 *et. seq*;

22 (b) Permanently enjoining Defendant and its directors, officers, agents, and employees to
23 take all affirmative steps necessary to remedy the effects of the illegal, discriminatory conduct
24 described herein and to prevent similar occurrences in the future;

25 (c) Awarding Plaintiffs their expenses, costs, fees, and other disbursements associated with
26 the filing and maintenance of this action, including reasonable attorneys' fees pursuant to 28 U.S.C. §
27 1988, California Code of Civil Procedure § 102.5 and any other applicable provision of law;

28 (d) Awarding such other equitable and further relief as the Court deems just and proper.

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Dated: June 4, 2002

Respectfully Submitted,

Ben Wizner
Peter J. Eliasberg
ACLU FOUNDATION OF SOUTHERN
CALIFORNIA

By: _____
Ben Wizner

By: _____
Peter J. Eliasberg