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RICHARD JOHN

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

RICHARD JOHN, an individual,

Plaintiff,

v.

UNITED AIRLINES, INC.; CONTINENTAL  
AIRLINES, and DOES 1-10

Defendants.

Case No. 3:15-cv-00475-VC

[CORRECTED] SIXTH AMENDED  
COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF

(1) DISCRIMINATION IN VIOLATION  
OF 42 U.S.C. §1981

(2) DISCRIMINATION BASED ON  
RACE IN VIOLATION OF TITLE VII

(3) DISCRIMINATION BASED ON  
RACE IN VIOLATION OF FEHA

**JURY TRIAL DEMANDED**

Plaintiff RICHARD JOHN files this Sixth Amended Complaint, and complains of the named Defendants UNITED AIRLINES, INC. and CONTINENTAL AIRLINES, (collectively “United,” “UAL,” or “Defendants”) and each of them, jointly and severally, and for claims, alleges as follows:

1. This Court has jurisdiction over this action under 28 U.S.C. §1331 and 42 U.S.C. §2000e-5(f)(3) and 42 U.S.C. §1981. The action presents federal questions under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, *et seq.*, as amended, and 42 U.S.C. §1981.

1 2. Venue is proper in this district pursuant to 42 U.S.C. §2000e5(f)(3), because (a) the  
2 challenged unlawful employment practices occurred in the Northern District of California;  
3 and/or (b) all of the records related to companywide promotions are located in the Northern  
4 District of California; and/or (c) the Plaintiff would have worked in the State of California but  
5 for the unlawful employment practices and/or the effects of discrimination were felt in the State  
6 of California.

7  
8 3. United's Flight Operations Management structure is broken down into five regions.

9 4. California is home to two of the five regions. California is home to more United Flight  
10 Operations Management employees than any other state.

11 5. Plaintiff RICHARD JOHN is an African-American male currently employed by  
12 Defendants as a Captain.

13 6. Plaintiff has been employed by Defendants from approximately January 1993 to the  
14 present.

15  
16 **A. UNITED IS FORCED TO HIRE AFRICAN-AMERICAN PILOTS AS PART OF  
17 A CONSENT DECREE.**

18 7. Plaintiff was hired as part of a 1976 Consent Decree between the EEOC and United  
19 Airlines, which required United to hire African-Americans and females in its workforce due to  
20 invidious discrimination.

21 8. To comply with quotas set forth in the Consent Decree, United took measures designed to  
22 ensure that African-Americans would not be precluded from participating in management  
23 positions at United. For example, each and every domicile was assigned a Flight Operations  
24 Management team, and United worked closely with African-American organizations such as the  
25 Organization of Black Aerospace Professionals (“OBAP”) and its internal Black Professional  
26 Organization (“BPO”) to recruit African-Americans pilots and groom African-American pilots  
27 for management positions.  
28

1 9. During his initial interview, and in initial training, it was apparent that Plaintiff was a  
2 “consent decree” hire.

3 10. Plaintiff is currently an Airbus A320 Captain who flies domestically and internationally  
4 for Defendants.

5 11. Plaintiff's seniority number is 4030, and he has approximately 15,000 total flight hours.

6 12. Plaintiff first bid into a Captain position in the year 2000.

7  
8 13. Throughout his career, Plaintiff has been denied the opportunity to participate in several  
9 management opportunities because the vacant management positions were not posted prior to  
10 being filled. All times pertinent herein, United has continued this practice after being put on  
11 notice by its African-American Captains that this practice has a negative impact upon African-  
12 American Captains, resulting in continued gross statistical disparities between African-  
13 Americans in the classes of positions set forth below and the qualified African-Americans in  
14 United's workforce.

15  
16 **B. UNITED'S WORD-OF-MOUTH PROMOTIONAL PRACTICES**

17 14. Throughout Plaintiff's employment at United, Plaintiff has been represented by a union  
18 (Airline Pilots Association “ALPA”). The terms and conditions of his employment have always  
19 been governed by one or more Collective Bargaining Agreements.

20 15. Prior to 1995, while the EEOC Consent Decree was in place, United used Captains in  
21 temporary management positions, sometimes known as “Special Assignments” or “special  
22 projects,” purportedly based on “operational need” without the Captain losing seniority, pay, or  
23 benefits, and being compensated as though a full schedule of flying had occurred. While the  
24 EEOC Consent Decree was in place, these positions were filled by the word-of-mouth  
25 recommendations to the Chief Pilot who was locally assigned to a particular domicile.  
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1 16. Approximately six years after the EEOC Consent Decree was terminated, United  
2 restructured Flight Operations Management, from a domicile-based structure to a regional-based  
3 structure.

4 17. At this time, United no longer actively worked with OBAP and BPO, the African-  
5 American organizations United previously utilized to recruit African-Americans into  
6 management positions.  
7

8 18. After the termination of the EEOC Consent Decree, Special Assignments were filled by  
9 word-of-mouth recommendations to the five regional Chief Pilots who at that time were  
10 responsible for several local domiciles in their regions.

11 19. The first level management position in Flight Operations is a Line Check Airman. A  
12 Line Check Airman (“LCA”) position, also technically covered by the Collective Bargaining  
13 Agreement, is utilized to perform “check rides,” to determine Captains' and First Officers'  
14 adherence to protocol. At United, the LCA position is a quasi-management position, and  
15 typically a stepping stone into upper management.  
16

17 20. While operating under the EEOC Consent Decree, all LCA positions were filled by paper  
18 applications in response to domicile invitation.

19 21. After the Consent Decree ended, all LCA positions were filled by word-of-mouth  
20 recommendations to the five regional Chief Pilots. After receiving complaints about the fairness  
21 of this promotional practice, United began to sparingly post these positions.  
22

23 22. Prospective African-American applicants for LCA positions were routinely informed  
24 that Special Assignments are prerequisites or qualifiers for LCA positions.

25 23. Until April 1, 2014, United did not post Special Assignments, and hand-picked  
26 candidates without requiring an expression of interest by the Captain.  
27  
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1 24. Prior to April 1, 2014, United had not posted Special Assignments, but on that date,  
2 United announced it would begin posting Special Assignments as follows: “Every six months a  
3 notice will be sent to all line pilots via CCS advising them of the opportunity to express their  
4 interest in upcoming long-term Special Assignments.” Prior to that time, United had never  
5 presented Plaintiff with a formal opportunity to express his interest in Special Assignments.

6 25. The second level of management positions in Flight Operations, including the Training  
7 Center, are Standard Captains, Flight Operations Duty Managers (“FODM”), Flight Managers,  
8 Assistant Chief Pilots, and Chief Pilots.

9 26. Each of these positions require the qualified candidate to be FAA-qualified to fly  
10 particular types of aircraft, and to maintain their FAA-approved pilot's license. Many of these  
11 positions are salaried positions, and not covered by the ALPA Collective Bargaining Agreement.  
12

13 27. In practice, United has used “Special Assignments” or “special projects” or LCA  
14 positions as prerequisites or qualifiers for Flight Operations Management positions. Flight  
15 Operations Management positions in the past have been filled by a combination of posted  
16 vacancy announcements and by word-of-mouth hiring.  
17

18 28. At World Headquarters and throughout the company, Manager, Director, Senior  
19 Directors, Vice President, and Executive Vice President positions are salaried positions, not  
20 governed by a collective bargaining agreement.  
21

22 29. In practice, United has used “Special Assignments” or “special projects” or LCA  
23 positions, and Flight Operations Management positions as qualifiers or requirements for this  
24 class of positions.

25 30. These positions in the past have been filled by a combination of vacancy announcements  
26 and by word-of-mouth hiring.  
27  
28

1 31. In 2005, United moved its job application system to an Internet connected system using  
2 the TALEO system; however, United does not post all management vacancies in TALEO.

3 32. Prior to 2014, United did not post vacancies for LCA positions or Special Assignments.  
4 Prior to 2014, applications for the LCA position were paper-based, and paper applications were  
5 only handed out to those pilots whom a domicile-based Chief Pilot determined should receive an  
6 application.

7  
8 **C. PLAINTIFF EXPRESSES HIS INTEREST IN MANAGEMENT POSITIONS.**

9 33. In 2006, Plaintiff applied for a Standards Captain position at United Airlines, but was  
10 denied the position.

11 34. Plaintiff first expressed a desire to be considered for Special Assignments in August 2006  
12 to JFK Chief Pilot, Bob Spielman, and again in September 2006 to A320 Assistant Fleet Captain,  
13 Vince Kramer.

14 35. During their meeting in August 2006, Mr. Spielman informed Plaintiff that if Plaintiff  
15 volunteered for Special Assignments and worked in the Flight Office, that it can look good on  
16 Plaintiff's resume. Mr. Spielman also promised to give Plaintiff an opportunity to work in the  
17 flight office. At that time, Plaintiff expressed a desire to be considered for a Special Assignment  
18 position but that did not materialize.

19 36. Mr. Kramer sent Plaintiff an e-mail after Plaintiff applied for a Standards Captain  
20 position. Mr. Kramer advised Plaintiff that if he wanted to become a Standards Captain and be  
21 competitive, he should volunteer for Special Assignments. Plaintiff at that time informed Mr.  
22 Kramer that he would like to be considered for a Special Assignment position.

23 37. From 2006 to the present, Plaintiff has talked to numerous people regarding his interest in  
24 being considered for Special Assignments including the following people: Chief Pilot Bo Ellis in  
25 September 2007 by email and in person discussions; Director of Domicile Operations, Keith  
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1 Rimer in November 2007 by email and in person discussion; Chief Pilot Walt Clark in 2010 by  
2 email and in person discussion; Director of Flight Training Marc Champion in May 2011 by  
3 email and in person discussion; Chief Pilot James Simons in March 2012 by email and in person  
4 discussion; A320 Fleet Manager Carol Cameron in June 2012 by email; Captain Mike DeSantis  
5 in July 2012 by email and in person discussion; and Human Factors Manager Donna Ziedins in  
6 September 2012 by email.

7  
8 38. Plaintiff has seen multiple coworkers receive Special Assignments which led to  
9 promotions. For example, Captain Jeffrey Barath, a Caucasian male, was promoted to Line  
10 Check Airman after performing a Special Assignment; Captain Johnnie Quinn, a Caucasian  
11 male, was promoted to a Flight Operations Duty Manager after performing a Special  
12 Assignment; Captain Mo Morsey, a Middle Eastern male, was promoted to an Assistant Chief  
13 Pilot position after performing a Special Assignment; Captain Jenifer Duce, a Caucasian female,  
14 who was promoted to Flight Operations Duty Manager after performing Special Assignment;  
15 Captain Bryan Quigley, a Caucasian male, who was promoted to a Director after performing a  
16 Special Assignment; and Captain Andy Allen, who is a Caucasian male, was promoted to a Chief  
17 Pilot after performing a Special Assignment.  
18

19 39. After observing all of these Special Assignment turned into promotions, Plaintiff  
20 requested and volunteered to be considered for every Special Assignment in every region at  
21 United.  
22

23 40. In 2007, Plaintiff spoke to the Director of Domicile Operations and System Chief Pilot,  
24 Keith Rimer, regarding his recent applications for management positions. Plaintiff informed Mr.  
25 Rimer that he had applied for 30 positions and that he would like to volunteer for a Special  
26 Assignment. Mr. Rimer told Plaintiff that he would find Plaintiff an assignment in New York.  
27  
28

1 41. Plaintiff's first Special Assignment took place soon after his meeting with Mr. Rimer.

2 Plaintiff's Special Assignment was as a fill-in Flight Manager for JFK, Washington Dulles, and  
3 Chicago. This Special Assignment lasted for three days.

4 42. After Plaintiff's first Special Assignment, Plaintiff wrote Mr. Rimer a letter stating that a  
5 three-day assignment was not sufficient and that United was not offering Plaintiff enough  
6 opportunities.

7  
8 43. Soon after Plaintiff's letter to Mr. Rimer, Mr. Rimer contacted Plaintiff regarding another  
9 Special Assignment similar to the first. Plaintiff was a fill-in Flight Manager at Washington-  
10 Dulles for one month.

11 44. In 2008, after requesting Special Assignments and applying for promotions with no  
12 success, Plaintiff made his first internal complaint, orally and in writing to Assistant Chief Pilot  
13 777/400 Ray Nesheim regarding his application for a Standards Captain position.

14  
15 45. In his complaint, Plaintiff stated that United should follow the guidelines of Equal  
16 Opportunity for all employees and that United was not giving everyone a fair opportunity for  
17 promotion into management. Plaintiff also attached United's EEO policy to his complaint.

18 46. In response to his complaint to Captain Nesheim, Captain Bob Spielman wrote Plaintiff a  
19 letter on or around August 31, 2008. Captain Spielman encouraged Plaintiff to continue pursuing  
20 positions but that Plaintiff was not selected for the Standards Captain position.

21  
22 47. In 2009, Plaintiff received his third Special Assignment which was as a Flight Operations  
23 Duty Manager in Chicago for one week.

24 48. Throughout 2010, Plaintiff had conversations with other African-American pilots,  
25 including those who formed the United Coalition for Diversity, concerning the decreasing  
26 representation of African-Americans in the United management structure, their EEOC  
27 complaints, and the repeated futile attempts by Coalition members, including himself, to get into  
28



1 management, despite scores of applications. In these conversations Captains shared their  
2 individual experiences of United handpicking of much junior non-African-American Pilots into  
3 special assignments and management positions, and United's failure to even interview well-  
4 qualified African-Americans for management positions.

5 49. From 2010 through the present, Plaintiff informed management in all five regions of his  
6 interest in Special Assignments and management positions. Plaintiff expressed interest in the  
7 following classes of vacant management positions which were filled by a general posting or job  
8 announcement: all permanent executive management positions, Chief Pilot, Assistant Chief  
9 Pilot, FODM, Director of Safety and Security, Director of Pilot Recruitment and Development,  
10 and Standards Captain in every domicile.

11  
12 50. United's Regional Flight Operations management regularly reports to World  
13 Headquarters and with each other concerning operational needs, staffing levels, assignments, and  
14 promotions. Plaintiff is informed and believes that at these regular meetings, World  
15 Headquarters Flight Management personnel specifically discuss potential promotional vacancies,  
16 potential applicants, and individual pilots for special assignments.

17  
18 51. Because of the constant communication between Regional Flight Operations  
19 Management concerning operational needs, staffing levels, assignments, and promotions, an  
20 employee expressing interest to one Regional Chief Pilot or Assistant Chief Pilot has the effect  
21 of communicating interest throughout the system.

22  
23 52. In June 2010, Plaintiff filed an EEOC discrimination complaint against United Airlines  
24 because less qualified non-African-American candidates had been selected for Special  
25 Assignments and promotions for positions Plaintiff applied.

26 53. Later that year, Plaintiff informed Defendants of his desire to be considered for Special  
27 Assignments and management positions by communicating discrimination complaints to  
28

1 executive management in person during a meeting with executive management at United in San  
2 Francisco and Chicago.

3 54. By the beginning of 2011, Plaintiff escalated his complaints of race discrimination and  
4 his desire to be considered for Special Assignments and management positions in multiple  
5 meetings with senior managers, including former San Francisco Chief Pilot Walt Clark and  
6 General Counsel for Defendants, Brett Hart.

7  
8 55. Throughout 2011, Plaintiff and other African-American Captains continued to meet with  
9 senior-level executives to work out the details of a “protocol” for remedying the  
10 underrepresentation of African-Americans in Airport Operations and Flight Operations at the  
11 merged companies, which contained particularized details of a “Diversity Office” in the Flight  
12 Operations department, with performance metrics, communications standards, and the like.

13  
14 56. Plaintiff, along with other African-American Captains, discussed with Brett Hart at these  
15 meetings promises made with regard to African-Americans competing for jobs and the  
16 implementation of a “protocol” for bringing transparency and fairness to the promotional  
17 practices at the merged United Airlines, and that the hiring practices which were the subject of  
18 the United Coalition's 2010 EEOC complaints were still being utilized in the new merged  
19 company.

20  
21 57. In these meetings, Executive Vice President and General Counsel Brett Hart stated that  
22 he “did not have a mind bending machine” to change people into doing what was right,  
23 acknowledging at a minimum, latent racial bias at United.

24  
25 58. In these meetings, United Executive Vice President of Human Resources and Labor  
26 Relations, Mike Bonds, stated that his view of diversity is not an “Afro-Centric” view. At the  
27 time, all of Mike Bonds' direct reports were non-African-Americans.  
28

1 59. During these meetings that took place throughout 2011, Plaintiff, along with other  
2 African American Captains, provided United Executive Vice President of Human Resources and  
3 Labor Relations, Mike Bonds, a number of points, including statements made by Ray Sean  
4 Silvera, Assistant Chief Pilot of UAL that Director of Flight Operations that Fred Abbott “does  
5 not have the balls to change things”; Mr. Bonds stated that he knew Ray Sean and the position  
6 that he held.

7  
8 60. During these meetings that took place throughout 2011, Plaintiff, along with other  
9 African American Captains of the United Coalition, advised United Executive Vice President of  
10 Human Resources and Labor Relations, Mike Bonds, that United had no African-American  
11 Captains in a full-time leadership job after being in business for over 80 years, and that every  
12 single Officer from Fred Abbott and Howard Attarian and the Managing Director to all the flight  
13 operations personnel were non-African-American.

14  
15 61. During these meetings that took place throughout 2011, Defendants' Executive Vice  
16 President of Human Resources and Labor Relations, Mike Bonds, stated that he could not be  
17 blamed for the lack of African-American Captains in full-time leadership positions and that  
18 diversity programs will cost money.

19  
20 62. In 2011, Plaintiff and another African-American Captain Glen Roane were present at a  
21 conference where Managing Director of the Change Management Team, Marc Champion, was  
22 present. Roane requested Captain Champion consider Plaintiff for a Special Assignment.  
23 Captain Champion instructed Plaintiff to send Captain John's resume and he would try to move  
24 his resume application forward. Captain Champion confirmed his receipt of the resume and  
25 stated that he would pass the resume to management for Special Assignments and the Change  
26 Management Team, but nothing ever materialized.  
27  
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1 63. In March 2011, Plaintiff and Glen Roane had an opportunity to have a face-to-face  
2 meeting with former San Francisco Chief Pilot Walt Clark. Plaintiff and Captain Glen Roane  
3 expressed their desire to be considered for Special Assignments and management positions, but  
4 nothing came of the meeting.

5 64. On May 18, 2011, Plaintiff, along with other African American Captains who had filed  
6 EEOC complaints in 2010, met with Defendants' Executive Vice President Mike Bonds, Senior  
7 Vice President and General Counsel Brett Hart, and Managing Director of Human Resources  
8 Theodore Forbes to further discussions of diversity and promotional opportunities and the  
9 discussion of a particularized "protocol" for managing diversity, which had been the subject of  
10 the 2010 EEOC charges.

11 65. After reviewing company documents available to all employees on the internal corporate  
12 system, Skynet, Plaintiff became aware that there are 1,013 management positions in the State of  
13 California including SFO and LAX domiciles. Based on his review of company documents on  
14 Skynet, Plaintiff became aware that there are more management employees in California than  
15 any other state in which United does business. Plaintiff was informed and believed that in order  
16 to get a management position, he would have to go to California.

17 66. The State of California is unique amongst all states in which the Defendants operate, as it  
18 has the greatest number of opportunities for both Special Assignments and promotions due to the  
19 large domiciles: SFO and LAX, and being the only state to house two separate regions of the  
20 company. Some of these California promotions are posted and some are hand-picked without a  
21 competitive process.

22 67. Defendants allow for nationwide travel for employees involved with collective  
23 bargaining agreement negotiations between Defendants and ALPA and union business.  
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1 68. Defendants' employees utilize the "Prudent Judgment" Policy, which is found in  
2 Defendants' Flight Operations manual. The "Prudent Judgment" Policy allows Defendants'  
3 pilots to commute long distances for work-related purposes and would allow Plaintiff to keep his  
4 residence in New York while working in San Francisco had he been selected.

5 69. The Defendants in this case have limited Plaintiff's ability to move into higher  
6 management by hand-selecting less qualified, non-African-Americans for Special Assignments  
7 in San Francisco and Los Angeles and across the company. Consequently, without Special  
8 Assignments, Plaintiff has not had a fair opportunity to compete for higher management  
9 positions located in California and Plaintiff has not been promoted despite his years of  
10 experience and superior qualifications.

11 70. Throughout 2011 and 2012, Plaintiff had numerous conversations with other African-  
12 American pilots in the United Coalition for Diversity concerning the continuing racial disparity  
13 in management, including the efforts of Coalition members to negotiate a "protocol" for  
14 increasing promotional opportunities for African-Americans, including the meetings with senior-  
15 level management where Coalition members requested promotions and special assignments for  
16 African-American captains, including Plaintiff. When Plaintiff learned of senior management's  
17 refusal to take concrete action to remedy the racial disparity, and United's continuing to hand-  
18 pick less qualified non-African-Americans for management, despite the efforts of the Coalition  
19 and his own personal efforts, Plaintiff filed EEOC charges to remedy the discrimination.  
20  
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22

23 71. As a result of the continuing discriminatory promotion practices, Plaintiff filed his  
24 second EEOC charge on February 7, 2012 and obtained a Right-to-Sue letter from the EEOC on  
25 March 1, 2012.

26 72. Plaintiff obtained an immediate Right-to-Sue letter from the California Department of  
27 Fair Employment and Housing on April 17, 2012.  
28

1 73. Neither Defendant Continental nor United Airlines have remedied the acknowledged  
2 invidious discrimination against African-Americans in aviation that has existed since the creation  
3 of the industry in their workforces.

4 74. While some progress was made towards creating a racially diverse class of pilots and a  
5 level playing field for promotions into management, those efforts have stalled, backtracked, and  
6 failed to create a workplace of equal opportunity regardless of race.

7 75. After being apprised that the promotional practices described below have resulted in  
8 discrimination against African-Americans, United nevertheless consciously perpetuated  
9 promotional practices with full knowledge that these practices perpetuate race discrimination in  
10 promotions. These practices have survived the merger of the two companies, and continue into  
11 the present.

12 76. Commencing in 2005 with the posting of positions in the Taleo system, United has  
13 intentionally taken action to give only the appearance of a competitive promotional process,  
14 purportedly based upon non-racial considerations, when in fact, the actions are nothing more  
15 than a risk mitigation scheme, with no real intent on changing the discriminatory practices at  
16 United.

17 77. These actions are intended to give the illusion of a documented deliberative process  
18 which considers all applicants' experience and qualifications; however, in nearly every instance,  
19 a non-African-American is pre-selected, and the qualifications for an upcoming vacancy are  
20 created around the specific experience of the pre-selected non-African-American, or based upon  
21 factors that are not validated.

22 78. When stated qualifications are not manipulated to match the pre-selected non-African-  
23 American, a highly subjective decision-making process is used, that allows for the expression of  
24 overt and latent racial biases against African-Americans.

1 79. For example, the decision to post “special assignments” in April 2014, while ostensibly  
2 reversing a practice that kept African-Americans out of the promotional track, is nevertheless  
3 still based upon a highly subjective decision-making process that allows for the expression of  
4 overt and latent racial biases against African-Americans.

5 80. The following promotional practices have existed prior to the charging period herein, and  
6 continue to the present, despite United's posting of some permanent and temporary management  
7 positions:  
8

9 (a) Failure to consistently post all job and promotional openings to ensure that all  
10 African-American Captains have notice of and opportunity to seek advancement, higher  
11 compensation, overtime, or more desirable assignments and training;

12 (b) Reliance upon unweighted, arbitrary, and subjective criteria in making promotional  
13 decisions. Even where Defendants' policies state objective requirements, these requirements are  
14 often applied in an inconsistent manner and ignored at the discretion of management;

15 (c) Reliance on racial stereotypes in making employment decisions involving  
16 management promotions;

17 (d) Pre-selection, “grooming”, and fast-tracking of Non-African-American employees for  
18 promotion, favorable assignments, higher pay, and more desirable positions;

19 (e) Maintenance of largely racially segregated job categories and departments;

20 (f) Deterrence and discouragement of African American Captains from seeking  
21 advancement, training, favorable assignments and higher paying, more desirable positions.  
22

23  
24 **FIRST CLAIM**  
25 **VIOLATION OF 42 U.S.C. §1981**  
26 **(Alleged Against All Defendants)**

27 81. Plaintiff re-alleges as though fully set forth herein, paragraphs 1 through 80 set forth  
28 above.

1 82. This claim is specifically directed towards and limited to conduct occurring February  
2 2011 and thereafter.

3 83. Several promotional practices and procedures implemented by Defendants for filling  
4 vacant management positions in California are discriminatory against African-Americans by  
5 treating African-Americans less favorably than their non-African-American counterparts in the  
6 terms and conditions of their employment.

7  
8 **1. Posted Positions**

9 84. On or about 2/4/2011, Plaintiff applied for the MD Pilot Contract Administration - Flight  
10 Operations position in Chicago, IL; however, despite Plaintiff being well-qualified, Caucasian  
11 Mark Seeby received the promotion, despite having fewer educational qualifications, and on  
12 information and belief, less seniority and fewer flight hours. All employment records concerning  
13 this promotion are maintained in Northern District of California.

14 85. On or about 4/18/2011, Plaintiff applied for the Senior Manager - Fleet Standards 737  
15 IAH promotion; however, despite Plaintiff being well-qualified, Caucasian Michael Zadrowski  
16 received the promotion, despite on information and belief, having less seniority and fewer flight  
17 hours.

18 86. On or about 4/18/2011, Plaintiff applied for the Senior Manager - Fleet Standards  
19 757/767 DEN promotion; however, despite Plaintiff being well-qualified, Caucasian Stephen  
20 Williams received the promotion, despite on information and belief, having less seniority and  
21 fewer flight hours.

22 87. On or about 4/18/2011, Plaintiff applied for the Senior Manager - Fleet Standards - 747  
23 DEN promotion; however, despite Plaintiff being well-qualified, Caucasian Dean McDavid  
24 received the promotion, despite on information and belief, having less seniority and fewer flight  
25 hours.  
26  
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1 88. On or about 4/18/2011, Plaintiff applied for the Senior Manager - Fleet Standards –  
2 777/787 DEN promotion; however, despite Plaintiff being well-qualified, Caucasian Gary  
3 Peterson received the promotion, despite on information and belief, having less seniority and  
4 fewer flight hours.

5 89. On or about 4/18/2011, Plaintiff applied for the Senior Manager - Fleet Training –  
6 747/777/787DEN promotion; however, despite Plaintiff being well-qualified, Caucasian Charlie  
7 Oliver received the promotion, despite on information and belief, having less seniority and fewer  
8 flight hours.

10 90. On or about 4/18/2011, Plaintiff applied for the Senior Manager - Fleet Training 757/767  
11 DEN promotion; however, despite Plaintiff being well-qualified, Caucasian David Tornabene  
12 received the promotion, despite on information and belief, having less seniority and fewer flight  
13 hours.

14 91. On or about 4/18/2011, Plaintiff applied for the Senior Manager - Fleet Training A320  
15 DEN promotion; however, despite Plaintiff being well-qualified, Caucasian Carol Cameron  
16 White received the promotion, despite on information and belief, having less seniority and fewer  
17 flight hours.

19 92. On or about 4/18/2011, Plaintiff applied for the Senior Manager - Fleet Standards A320  
20 DEN promotion; however, despite Plaintiff being well-qualified, Caucasian Emil Lassen  
21 received the promotion, despite on information and belief, having less seniority and fewer flight  
22 hours.

24 93. In or about 2011, Rich Parella, a Caucasian pilot, was appointed without any job posting  
25 to the position of Assistant Chief Pilot – Washington, for which Plaintiff was well-qualified and  
26 had previously expressed interest.  
27  
28

1 94. On or about 6/14/2011, Plaintiff applied for the Senior Manager Intl Flight Operations  
2 promotion in Chicago, IL; however, despite Plaintiff being well-qualified, Caucasian Andy Jost  
3 received the promotion, despite on information and belief, having less seniority and fewer flight  
4 hours.

5 95. On or about 6/14/2011, Plaintiff applied for the Senior Manager Domestic Flight  
6 Operations promotion in Chicago, IL; however, despite Plaintiff being well-qualified, Caucasian  
7 James C. White received the promotion, despite on information and belief, having less seniority  
8 and fewer flight hours.

10 96. On or about 6/15/2011, Plaintiff applied for the Assistant Chief Pilot - Washington  
11 promotion; however, despite Plaintiff being well-qualified, Caucasian Chris Bird received the  
12 promotion, despite on information and belief, having less seniority and fewer flight hours.

13 97. On or about 6/15/2011, Plaintiff applied for the Assistant Chief Pilot - Chicago  
14 promotion; however, despite Plaintiff being well-qualified, Caucasian Cal Bagby received the  
15 promotion, despite having less educational qualifications, and on information and belief, having  
16 less seniority and fewer flight hours.

18 98. On or about 6/15/2011, Plaintiff applied for the Assistant Chief Pilot - Chicago  
19 promotion; however, despite Plaintiff being well-qualified, Caucasian Chris Bales received the  
20 promotion, despite on information and belief, having less seniority and fewer flight hours.

21 99. On or about 6/15/2011, Plaintiff applied for the Assistant Chief Pilot - Chicago  
22 promotion; however, despite Plaintiff being well-qualified, Caucasian Jim Barnes, received the  
23 promotion, despite having lesser educational qualifications and on information and belief,  
24 having less seniority and fewer flight hours.

26 100. On or about 6/15/2011, Plaintiff applied for the Assistant Chief Pilot - Chicago  
27 promotion; however, despite Plaintiff being well-qualified, Caucasian Jeff Bayless received the  
28

1 promotion, despite having lesser educational qualifications and on information and belief,  
2 having less seniority and fewer flight hours.

3 101. On or about 6/20/2011, Plaintiff applied for the Line Training manager - 737 IAH/DEN  
4 promotion; however, despite Plaintiff being well-qualified, Caucasian John Bauer received the  
5 promotion, despite on information and belief, having less seniority and fewer flight hours.

6 102. On or about 6/20/2011, Plaintiff applied for the Line Training manager - 747 DEN  
7 promotion; however, despite Plaintiff being well-qualified, Caucasian Tom Spratt received the  
8 promotion, despite on information and belief, having less seniority and fewer flight hours.

9 103. On or about 6/20/2011, Plaintiff applied for the Line Training Manager - 777/787  
10 DEN/IAH promotion; however, despite Plaintiff being well-qualified, Caucasian Troy Maddox  
11 received the promotion, despite on information and belief, having less seniority and fewer flight  
12 hours.  
13

14 104. On or about 6/20/2011, Plaintiff applied for the Line Training Manager - A320 DEN  
15 promotion; however, despite Plaintiff being well-qualified, Caucasian Ron Davis received the  
16 promotion, despite on information and belief, having less seniority and fewer flight hours.  
17

18 105. On or about 7/22/2011, Plaintiff applied for the Flight Operations Duty Manager  
19 (FODM) EWR promotion; however, despite Plaintiff being well-qualified, Caucasian Scott  
20 Klein received the promotion, despite on information and belief, having less seniority and fewer  
21 flight hours.  
22

23 106. On or about 7/22/2011, Plaintiff applied for the FODM WHQ promotion; however,  
24 despite Plaintiff being well-qualified, non-African-American Mo Morsey received the  
25 promotion, despite on information and belief, having less seniority and fewer flight hours.

26 107. On or about 7/22/2011, Plaintiff applied for the FODM IAD promotion; however,  
27 despite Plaintiff being well-qualified, Caucasian John Quinn received the promotion, despite  
28

1 having lesser educational qualifications and on information and belief, having less seniority and  
2 fewer flight hours.

3 108. On or about 7/22/2011, Plaintiff applied for the FODM IAD promotion; however, despite  
4 Plaintiff being well-qualified, Caucasian Michael Weber received the promotion, despite having  
5 lesser educational qualifications and on information and belief, having less seniority and fewer  
6 flight hours.

7  
8 109. On or about 7/22/2011, Plaintiff applied for the FODM DEN promotion; however,  
9 despite Plaintiff being well-qualified, Caucasian Clark Clodfelder received the promotion,  
10 despite having lesser educational qualifications and on information and belief, having less  
11 seniority and fewer flight hours.

12 110. On or about 7/22/2011, Plaintiff applied for the FODM IAH promotion; however, despite  
13 Plaintiff being well-qualified, Caucasian Dave Sambrano received the promotion, despite having  
14 lesser educational qualifications and on information and belief, having less seniority and fewer  
15 flight hours.

16  
17 111. On or about 8/25/2011, Plaintiff applied for the Line Check Airman A320 - JFK  
18 promotion; however, despite Plaintiff being well-qualified, Caucasian Jeffery Barath received  
19 the promotion, despite on information and belief, having less seniority and fewer flight hours.

20  
21 112. On or about 9/6/2011, Plaintiff applied for the Director - Flight Training Support  
22 promotion in Denver, CO; however, despite being well-qualified, Caucasian Mike McCasky  
23 received the promotion, despite on information and belief, having less seniority and fewer flight  
24 hours.

25 113. On or about 9/19/2011, Plaintiff applied for the Standards Captain - B767 promotion in  
26 Denver, CO; however, despite Plaintiff being well-qualified, Caucasian Jeffery De Paolis  
27 received the promotion, despite on information and belief, having fewer flight hours.  
28

1 114. On or about 10/3/2011, Plaintiff applied for the Chief Pilot - Newark promotion;  
2 however, despite Plaintiff being well-qualified, Caucasian Mike Bowers received the promotion,  
3 despite on information and belief, having less seniority and fewer flight hours.

4 115. On or about 12/8/2011, Plaintiff applied for the Senior Manager - Fleet Standards 787  
5 IAH promotion; however, despite Plaintiff being well-qualified, Caucasian Dave Lundy received  
6 the promotion, despite on information and belief, having less seniority and fewer flight hours.

7 116. In or about 2011, Caucasian pilot Marc Champion was appointed to the Director of Pilot  
8 Recruitment & Development promotion in Denver, CO; the position was not posted or otherwise  
9 advertised, and Plaintiff was well qualified for the position and had expressed interest.

10 117. On or about 1/16/2012, Plaintiff applied for the Assistant Chief Pilot - Washington  
11 promotion; however, despite being well-qualified, non-African-American Omar Garcia received  
12 the promotion, despite having lesser educational qualifications and on information and belief,  
13 having less seniority and fewer flight hours.

14 118. On or about 1/16/2012, Plaintiff applied for the Assistant Chief Pilot - Denver  
15 promotion; however, despite Plaintiff being well-qualified, Bob Early, a Caucasian, received the  
16 promotion, despite on information and belief, having less seniority and fewer flight hours.

17 119. On or about 3/30/2012, Plaintiff applied for the Job Share Standards Capt A320  
18 promotion in Denver, CO; however, despite being well-qualified, non-African-American Darius  
19 Pirzadeh received the promotion, despite on information and belief, having less seniority and  
20 fewer flight hours.

21 120. On or about 4/2/2012, Plaintiff applied for the Flight Ops Leadership Development  
22 Associate promotion, which if he was hired, would have required him to serve on the local  
23 management team in Newark, NJ; the training center in Denver, CO; and in Management in  
24 Chicago, IL; however, despite Plaintiff being well-qualified, Caucasian Carol Difeo received the  
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27  
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1 promotion, despite having lesser educational qualifications and on information and belief,  
2 having fewer flight hours.

3 121. On or about 4/2/2012, Plaintiff applied for the Flight Ops Leadership Development  
4 Associate promotion, which if he was hired, would have required him to serve on the local  
5 management team, Newark, NJ; the training center in Denver, CO; and in Management in  
6 Chicago, IL; however, despite Plaintiff being well-qualified, Caucasian Robert Fuschino  
7 received the promotion, despite having lesser educational qualifications and on information and  
8 belief, having less seniority and fewer flight hours.

10 122. On or about 7/30/2012, Plaintiff applied for the FODM promotion at EWR, which  
11 Richard Howard received, despite on information and belief, having less seniority and fewer  
12 flight hours.

13 123. On or about 7/30/2012, Plaintiff applied for the FODM IAD promotion; however,  
14 despite Plaintiff being well-qualified, Caucasian Martin Neary received the promotion, despite  
15 having lesser educational qualifications and on information and belief, having less seniority and  
16 fewer flight hours.

18 124. On or about 7/30/2012, Plaintiff applied for the FODM ORD promotion; however,  
19 despite being well-qualified, Caucasian Jim Sasser received the promotion, despite having lesser  
20 educational qualifications and on information and belief, having less seniority and fewer flight  
21 hours.

23 125. On or about 7/30/2012, Plaintiff applied for the FODM ORD promotion; however,  
24 despite Plaintiff being well-qualified, Caucasian Kevin Harrigan received the promotion, despite  
25 having lesser educational qualifications and on information and belief, having less seniority and  
26 fewer flight hours.

1 126. On or about 7/30/2012, Plaintiff applied for the FODM SFO promotion; however,  
2 despite Plaintiff being well-qualified, Caucasian Jenifer Duce received the promotion, despite  
3 having lesser educational qualifications and on information and belief, having less seniority and  
4 fewer flight hours.

5 127. On or about 7/30/2012, Plaintiff applied for the FODM SFO promotion; however,  
6 despite Plaintiff being well-qualified, Caucasian James Abell received the promotion, despite  
7 having lesser educational qualifications and on information and belief, having less seniority and  
8 fewer flight hours.

10 128. On or about 7/30/2012, Plaintiff applied for the FODM SFO promotion; however,  
11 despite Plaintiff being well-qualified, Caucasian Steve Adams received the promotion, despite  
12 having lesser educational qualifications and on information and belief, having less seniority and  
13 fewer flight hours.

14 129. On or about 7/30/2012, Plaintiff applied for the FODM DEN promotion; however,  
15 despite Plaintiff being well-qualified, Caucasian Rob Pikowski received the promotion, despite  
16 having lesser educational qualifications and on information and belief, having less seniority and  
17 fewer flight hours.

18 130. On or about 7/30/2012, Plaintiff applied for the FODM IAH promotion; however, despite  
19 Plaintiff being well-qualified, Caucasian Laszlo Horanyi received the promotion, despite having  
20 lesser educational qualifications and on information and belief, having less seniority and fewer  
21 flight hours.

22 131. On or about 10/19/2012, Plaintiff applied for the Program Manager - Flt Ops Fleet Trg  
23 B787 promotion in Houston, TX; however, despite being well-qualified Plaintiff did not receive  
24 the promotion. Instead, Caucasian Lynn Nelson received the promotion despite, on information  
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1 and belief, having less seniority and fewer flight hours. All employment records concerning this  
2 promotion are maintained in the Northern District of California.

3 132. On or about 10/12/2012, Plaintiff applied for a Program Manager Flight Operations  
4 Fleet training B787 position; however, despite Plaintiff being well-qualified, a white male,  
5 Captain Niels Olufsen, was promoted.

6 133. On or about 6/23/2013, Plaintiff applied for a Managing Director Flight Operations  
7 position; however, despite Plaintiff being well-qualified, a white male, Captain Bryan Quigley,  
8 was promoted.

9 134. On or about 8/19/2013, Plaintiff applied for a Managing Director Flight Standards  
10 position in Denver, CO; however, despite Plaintiff being well-qualified, a white male, Captain  
11 John Weigand, was promoted.

12 135. On or about 1/29/2014, Plaintiff applied for a Senior Manager – A320 Fleet Training  
13 position; however, despite Plaintiff being well-qualified, a white male, Captain Ken Redmond,  
14 was hired.

15 136. On or about 1/29/2014, Plaintiff applied for a Director – Flight Training Support position  
16 in Houston, TX; however, despite Plaintiff being well-qualified, a white male, Captain Tom  
17 Stivala, was promoted.

18 137. On or about 1/29/2014, Plaintiff applied for a Senior Manager – Flight Operations Pilot  
19 Hiring Programs position; however, despite Plaintiff being well-qualified, a white male, Bill  
20 Kennedy, was promoted.

21 138. On or about 2/25/2014, Plaintiff was interviewed for a Domestic Flight Operations -  
22 Senior Manager position in Chicago, IL; however, despite Plaintiff being well-qualified, First  
23 Officer Gary Robert Galbraith, a lesser qualified white male, was hired, even though he did not  
24 meet the minimum qualifications of the position, including Captain status.  
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1 139. On or about 3/12/2014, Plaintiff applied for a Director of Flight Standards position;  
2 however, despite Plaintiff being well-qualified, a lesser qualified white male was hired: Captain  
3 Dean McDavid.

4 140. On or about 3/20/2014, Plaintiff applied for an Assistant Chief Pilot position in Houston,  
5 TX and was interviewed on 7/19/2014; however, despite Plaintiff being well-qualified, Captain  
6 Kyle Gardner, a white male, and Evey Cormican, a white female, were hired.

7 141. On or about 5/22/2014, Plaintiff applied for a Flight Operations Management  
8 Development Associate; however, despite being well-qualified, Inam Amanullah, a non-  
9 African-American, was hired.

10 142. On or about 6/11/2014, Plaintiff applied for a Director - Flight Operations Business  
11 Engagement (“FOBE”) position; however, despite Plaintiff being well-qualified, a white male  
12 was hired: David B. Kensick. The FOBE position was removed from organization chart, and  
13 Mr. Kensick is now Managing Director of AO Planning and Strategy.

14 143. On or about 6/12/2014, Plaintiff applied for a Senior Manager – Flight Safety Action  
15 Program and Event Review Committee position; however, despite Plaintiff being well-qualified,  
16 a white male was hired: Captain Bob Mackay.

17 144. On or about 8/04/2014, Plaintiff applied for a Director Flight Training Operations  
18 position; however, despite Plaintiff being well-qualified, a white male was hired: Captain  
19 Charlie Oliver.

20 145. On or about 3/13/2015, Plaintiff applied for a Senior Manager A350 Fleet Standards  
21 position, based in Denver, and was interviewed on 4/17/2015, and was rejected. Capt. Brad  
22 Peterson, a white male with less seniority, who had been pre-selected, groomed, and been  
23 allowed to obtain international experience by qualifying on international 777 aircraft, out of line  
24 with his seniority, was hired instead of Plaintiff.  
25  
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1 146. The Civil Rights Act of 1866, codified as 42 U.S.C. §1981, prohibits race discrimination  
2 in the making and enforcing of contracts. “Making and enforcing” contracts includes the  
3 “making, performance, modification and termination of contracts, and the enjoyment of all  
4 benefits, privileges, terms, and conditions of the contractual relationship.” 42 U.S.C. §1981(b).

5 147. Defendants have engaged in a pattern and practice of intentional discrimination against  
6 Plaintiff with respect to Special Assignments and promotion.

7 148. The foregoing conduct constitutes illegal intentional discrimination with respect to the  
8 making, performance, modification, and termination of contracts prohibited by 42 U.S.C. §1981.

9 149. Plaintiff requests relief as provided in the Prayer for Relief below.

10 150. The conduct of Defendants set forth above in maintaining unlawful employment practices  
11 that intentionally discriminate against African-American captains was willful, malicious, and  
12 done in conscious disregard for Plaintiff's rights. As set forth above, Defendants have a pattern  
13 and practice of discriminating against African-Americans in their workforce, and have long been  
14 on notice of the wrongfulness of the employment practices set forth above.

15 151. The conduct of Defendants set forth above was engaged in, condoned, and ratified by  
16 Defendants and the officers and managing agents. Accordingly Plaintiff is entitled to punitive  
17 damages in an amount sufficient to punish Defendants and exemplary damages to deter future  
18 unlawful conduct.

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20  
21 **2. Unposted Special Assignment Positions**

22 152. Beginning in 2010, through the present, Plaintiff informed management in all five regions  
23 of his interest in Special Assignments and management positions. Plaintiff expressed interest in  
24 the following classes of vacant management positions which were filled by a general posting or  
25 job announcement: all permanent executive management positions, Chief Pilot, Assistant Chief  
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1 Pilot, FODM, Director of Safety and Security, Director of Pilot Recruitment and Development,  
2 and Standards Captain in every domicile.

3 153. Soon after informing management of his interest in Special Assignments and  
4 management positions, Plaintiff became aware of the fact that there were management positions  
5 filled in the Northwest Region for which Plaintiff was qualified; however, because of United's  
6 practices, Plaintiff was not given the opportunity to apply for these positions, nor was Plaintiff  
7 invited to interview for these positions.  
8

9 154. Plaintiff was discriminated against on the basis of his race in the filling of the vacancies  
10 of Special Assignment positions, a.k.a. temporary management positions. Defendants' policy and  
11 practice of not posting Special Assignments, includes the following non-flying management  
12 functions: (1) temporary and/or acting Flight Manager ("FO" and Captain); (2) Integration  
13 Subject Matter Experts ("SMEs"); (3) Human Factors Facilitators; (4) I-Pad Training/Trainer;  
14 (5) Sabre Training/Instructor; (6) Preferential Bidding System Training/Trainer; (7) Flight  
15 Operations Supervisor; (8) Acting Assistant Chief Pilot; (9) System Integration; (10) Change  
16 Management; (11) I-Pad Development; (12) Human Factors and Change Review; (13) Training  
17 Instructor and/or Program Planning; and, (14) Training Committee, with a corresponding  
18 increase in pay and pension contributions, from 2008 to the present in all domiciles.  
19

20 155. With respect to these unposted Special Assignments, Plaintiff took reasonable efforts to  
21 make Defendants aware of his interest in Special Assignment positions.  
22

23 156. Plaintiff was not aware of Special Assignment positions as they came open and vacant  
24 Special Assignment positions were not well known throughout the company.

25 157. An employee is not allowed to apply for a particular position that is currently filled.

26 158. An employee is not allowed to apply for a position at United in the absence of posting.  
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1 159. There is no way for an employee at United to have advance knowledge that a particular  
2 position is soon to become available without word-of-mouth communication from management.

3 160. Dozens to hundreds of Special Assignment positions were filled for which Plaintiff was  
4 qualified. Below are examples of non-African-Americans who were selected pursuant to  
5 Defendants' policies and practices for non-flying management functions a.k.a. Special  
6 Assignments and temporary management positions, for which Plaintiff was denied the ability to  
7 apply despite being equally and/or more qualified, in terms of one or more of experience,  
8 particular line experience, education, seniority, or total flight hours:  
9

- 10 • From January to May 2012, Airbus Captain RV Raskey (Seniority # 4341), a non-  
11 African-American, performed a non-flying special management assignment in System  
12 Integration at the Chicago Flight office.
- 13 • From January to March 2012, Co-pilot 400 MR Harris (Seniority #3842), a non-African-  
14 American , performed a non-flying Special Assignment in Change Management in the  
15 Chicago Flight office.
- 16 • From January to May 2012, Airbus Captain JW Redman (Seniority #3571), a non-  
17 African-American, performed a non-flying special management assignment in I-Pad  
18 Development in the Chicago Flight Office.
- 19 • From January to April 2012, Airbus Captain RC Keller (Seniority #5264), a non-African-  
20 American, performed a non-flying special management assignment in System Integration  
21 and Management in the Chicago Flight office.
- 22 • From January to March 2012, 767 co-pilot SC Hodges (Seniority #4823), a non-African-  
23 American, performed a non-flying special management assignment conducting Human  
24 Factors and Change Review (“HF CR”) Training in the Denver Flight Office.  
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- 1 • From January to April 2012, Airbus Captain SW Wright (Seniority #5854), a non-  
2 African-American, performed a non-flying special management assignment in Change  
3 Management in the San Francisco Flight Office.
- 4 • From February to May 2012, RA Milke (Seniority #2315), a non-African-American,  
5 performed a non-flying special management assignment as a Sabre Training Instructor in  
6 the Los Angeles Flight Office.
- 7 • In March 2012, Line Check Airman, DL Dobias (Seniority #3314), a non-African-  
8 American, performed a non-flying special management assignment for Sabre Training at  
9 LAX.
- 10 • In March 2012, Airbus Captain MB Covington (Seniority #4482), a non-African-  
11 American, performed a non-flying special management assignment in Change  
12 Management in the Washington, D.C. Flight office.
- 13 • From March 2012 to May 2012, Airbus Captain AF Trueba (Seniority #4662), a non-  
14 African-American, performed a non-flying special management assignment in Change  
15 Management in the Washington, D.C. Flight office.
- 16 • In March 2012 and May 2012, Airbus Captain KM Woods (Seniority #3584), a non-  
17 African-American , performed a non-flying special management assignment in Change  
18 Management in the Washington, D.C. Flight office.
- 19 • In March 2012, Airbus Captain PD Purkey (Seniority #2533), a non-African-American,  
20 performed a non-flying special management assignment in HFCR and Change  
21 Management in the Denver Flight office.
- 22 • From March 2012 to April 2012, 767 HA Loomis (Seniority #2477), a non-African-  
23 American, performed a non-flying special management assignment in HFCR and Change  
24 Management in the Denver Flight office.
- 25 • From March 2012 to April 2012, 767 HA Loomis (Seniority #2477), a non-African-  
26 American, performed a non-flying special management assignment in HFCR and Change  
27 Management in the Denver Flight office.
- 28 • From March 2012 to April 2012, 767 HA Loomis (Seniority #2477), a non-African-  
American, performed a non-flying special management assignment in HFCR and Change  
Management in the Denver Flight office.

- 1 • In March 2012, Airbus Captain CS Difeo (Seniority #4181), a non-African-American,  
2 performed a non-flying special management assignment in Change Management in the  
3 San Francisco Flight office.
- 4 • In April 2012, Airbus Captain JS Barath (Seniority #3992), a non-African-American,  
5 performed a non-flying special management assignment in Change Management in the  
6 Washington D.C. flight office.
- 7 • In April 2012, Airbus Captain RD Brunette (Seniority #5312), a non-African-American  
8 less qualified individual, performed a non-flying special management assignment in  
9 System Integration in the Chicago flight office.
- 10 • From April 2012 to May 2012, Airbus Captain HE McVay (Seniority #4745), a non-  
11 African-American, performed a non-flying special management assignment in HFCR  
12 and Change Management in the Denver flight office.
- 13 • In April 2012, Airbus Captain CS Difeo (Seniority #4181), a non-African-American,  
14 performed a non-flying special management assignment in Change Management in the  
15 San Francisco flight office.
- 16 • In April 2012, Airbus Captain Plaskon (Seniority #5717), a non-African-American,  
17 performed a non-flying special management assignment in HFCR in the San Francisco  
18 flight office.
- 19 • In April 2012, MS Swint (Seniority #1266), a non-African-American, performed a non-  
20 flying special management assignment as a Human Factors facilitator at LAX.
- 21 • From April through October 2012, WH Sleeper (Seniority #74), a non-African-American,  
22 performed a non-flying special management assignment as a Human Factors Facilitator at  
23 SFO.  
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- 1 • From April through November 2012, SJ Corsello (Seniority #1631), a non-African-  
2 American, performed a non-flying special management assignment in Change  
3 Management at SFO.
- 4 • From April through October 2012, JE Rajacic (Seniority #253), a non-African-American,  
5 performed a non-flying special management assignment as a Human Factors Facilitator at  
6 SFO.
- 7 • In May 2012, A Sierra (Seniority #2842), a non-African-American, performed a non-  
8 flying special management assignment as Human Factors Facilitator at JFK.
- 9 • In May 2012, RP Maty (Seniority #2527), a non-African-American, performed a non-  
10 flying special management assignment as a Sabre Training Instructor in the Denver Flight  
11 Office.
- 12 • In May 2012, RH Zimmerman (Seniority #2688), a non-African-American, performed a  
13 non-flying special management assignment as a Sabre Training Instructor in the Denver  
14 Flight Office.
- 15 • In May 2012, DW Moore (Seniority #3673), a non-African-American, performed a non-  
16 flying special management assignment as a Sabre Training Instructor in the Denver Flight  
17 Office.
- 18 • In May 2012, Al Calder (Seniority #5532), a non-African-American, performed a non-  
19 flying special management assignment as a Sabre Training Instructor in the Los Angeles  
20 Flight Office.
- 21 • In May 2012, Harland (Seniority #363), a non-African-American, performed a non-flying  
22 special management assignment as a Human Factors Training at LAX.
- 23 • In June 2012, Vince Krammer (Seniority #5055), a non-African-American, performed a  
24 non-flying special management assignment on the I-Pad development team at LAX.  
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- 1 • In July 2012, HA Loomis (Seniority #2477), a non-African-American, performed a non-  
2 flying special management assignment on the Training Committee at the Denver Flight  
3 Office.
- 4 • In July 2012, SC Hodges (Seniority #4823), a non-African-American, performed a non-  
5 flying special management assignment on the Training Committee at the Denver Flight  
6 Office.
- 7 • In July 2012, SW Wright (Seniority #5854), a non-African-American, performed a non-  
8 flying special management assignment on the Training Committee at the Denver Flight  
9 Office.
- 10 • In September 2012, RL Aiken (Seniority #4217), a non-African-American, performed a  
11 non-flying special management assignment in HFCR at SFO.
- 12 • In September 2012, AW Cole (Seniority #1485), a non-African-American performed a  
13 non-flying special management assignment as a Training Instructor at SFO.
- 14 • In September 2012, Flett (Seniority #3807), a non-African-American, performed a non-  
15 flying special management assignment as a Human Factors at SFO.
- 16 • In September 2012, Martinez (Seniority #227), a non-African-American, performed a  
17 non-flying special management assignment as a Human Factors at SFO.
- 18 • In September 2012, AW Cole (Seniority #1485), a non-African-American, performed a  
19 non-flying special management assignment as a Human Factors at SFO.
- 20 • In September 2012, AW Cole (Seniority #1485), a non-African-American, performed a  
21 non-flying special management assignment as a Human Factors at LAX.
- 22 • In October 2012, BT Mead (Seniority # 4140), a non-African-American, performed a  
23 non-flying special management assignment in Change Management at SFO.
- 24 • In October 2012, GJ Daley (Seniority #2286), a non-African-American, performed a non-  
25 flying special management assignment in Change Management at SFO.
- 26 • In October 2012, GJ Daley (Seniority #2286), a non-African-American, performed a non-  
27 flying special management assignment in Change Management at SFO.
- 28



- 1 • In November 2012, DL Dobias (Seniority #3314), a non-African-American, performed a  
2 non-flying special management assignment as a Training Instructor at the Denver Flight  
3 Office.
- 4 • Throughout 2012, Ron Romine, a non-African-American, performed a non-flying special  
5 management assignment in iPad implementation at the Chicago Flight Office.
- 6 • In or around May 2009, Andrew Allen (Seniority #2075), a non-African-American,  
7 performed a non-flying special management assignment as Flight Manager in the  
8 Chicago office.
- 9 • In 2009-2010, Dave Honda (Seniority #6368), a non-African-American, performed a  
10 non-flying special management assignment as a Flight Operations Supervisor at LAX.
- 11 • In 2009-2010, Steve Hoehner (Seniority #4347), a non-African-American performed a  
12 non-flying special management assignment as Acting Assistant Chief Pilot at LAX.
- 13 • In 2009-2010, Steve Bogert (Seniority #3334), a non-African-American, performed a  
14 non-flying special management assignment as Acting Assistant Chief Pilot at LAX.
- 15 • In 2009-2010, Steve Bogert (Seniority #3334), a non-African-American, performed a  
16 non-flying special management assignment as Acting Assistant Chief Pilot at LAX.
- 17 • In 2010-2011, Burt Race (Seniority #6278), a non-African-American, performed a non-  
18 flying special management assignment as a Flight Operations Specialist at LAX.
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## 20 **2. Unposted Permanent Management Positions**

21 161. Beginning in 2010, and through the present, Plaintiff informed management in all five  
22 regions of his interest in Special Assignments and management positions. Plaintiff expressed  
23 interest in the following classes of vacant management positions which were filled by a general  
24 posting or job announcement: all permanent executive management positions, Chief Pilot,  
25 Assistant Chief Pilot, FODM, Director of Safety and Security, Director of Pilot Recruitment and  
26 Development, and Standards Captain in every domicile.  
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1 162. Soon after informing management of his interest in Special Assignments and  
2 management positions, Plaintiff became aware of the fact that there were management positions  
3 filled in the Northwest Region for which Plaintiff was qualified; however, because of United's  
4 practices, Plaintiff was not given the opportunity to apply for these positions, nor was Plaintiff  
5 invited to interview for these positions.

6 163. Plaintiff was discriminated against on the basis of his race in the filling of the vacancies  
7 of permanent managerial positions which were not posted: all permanent executive management  
8 positions, Chief Pilot, Assistant Chief Pilot, FODM, Director of Safety and Security, Director of  
9 Pilot Recruitment and Development, Standards Captain, and Line Check Airman, from 2008 to  
10 the present in every domicile.

11 164. With respect to these unposted Management Positions, Plaintiff took reasonable efforts to  
12 make Defendants aware of his interest in Management positions.

13 165. Plaintiff was not aware of unposted management positions as they came open and these  
14 unposted Management positions were not well known throughout the company.

15 166. An employee is not allowed to apply for a particular management position that is  
16 currently filled.

17 167. An employee is not allowed to apply for a management position at United in the absence  
18 of posting.

19 168. There is no way for an employee at United to have advance knowledge that a particular  
20 management position is soon to become available without word-of-mouth communication from  
21 management.

22 169. Dozens to hundreds of management positions were filled for which Plaintiff was  
23 qualified. Below are examples of non-African-Americans who were selected pursuant to  
24 Defendants' policies and practices for non-flying management functions a.k.a. Special  
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1 Assignments and temporary management positions, for which Plaintiff was denied the ability to  
2 apply despite being equally and/or more qualified, in terms of one or more of experience,  
3 particular line experience, education, seniority, or total flight hours:

- 4 • In 2008, Allan Twigg (Seniority # 8185), a non-African-American counterpart, was  
5 promoted into management in a Chief Pilot position, traveling from Dulles to SFO  
6 without this position being posted.
- 7 • In 2008, Jim Barnes (Seniority # 1073), a non-African-American counterpart, was  
8 promoted into management as the Acting Chief Pilot position at SFO without this  
9 position being posted.
- 10 • In 2008, Tad Gordon (Seniority # 706), a non-African-American counterpart, was  
11 promoted into management as the Acting Chief Pilot position at LAX without this  
12 position being posted.
- 13 • In 2008, Alberto Diaz (Seniority # 4817), a non-African-American counterpart, was  
14 promoted into management as a FODM at LAX without this position being posted.
- 15 • In or around 2009, Curt Hughes, a non-African-American counterpart, was promoted into  
16 management as a Assistant Chief Pilot at SFO without this position being posted.
- 17 • In or around November 2009, Claudia Gerstle (Seniority # 3241), a non-African-  
18 American counterpart, was promoted into management as a Director of Safety and  
19 Security position based out of Chicago, IL, with no posting of the position.
- 20 • In or around 2010, Andy Allen (Seniority # 2075), a non-African-American counterpart,  
21 was promoted into management as a Chief Pilot position at SFO without this position  
22 being posted.
- 23 • In or around 2010, James Barnes (Seniority # 1073), a non-African-American  
24 counterpart, was promoted into management as an Assistant Chief Pilot position in  
25 Chicago, IL without this position being posted.
- 26
- 27
- 28

- 1 • In or about 2011, Marty Neary (Seniority # 2268), a non-African-American counterpart,  
2 was promoted into management as Flight Operations Duty Manager of the Northeast  
3 region, with no posting of the position.
- 4 • In or about August 2011, Johnie Quinn (Seniority # 3504), a non-African-American  
5 counterpart, was promoted into management as Flight Operations Duty Manager of the  
6 Northeast region, with no posting of the position.
- 7 • In or about 2011, Rich Parella (Seniority # 3063), a non-African-American counterpart,  
8 was promoted into management as Assistant Chief Pilot at Dulles International Airport,  
9 with no posting of the position.
- 10 • In or about 2011, Marc Champion (Seniority # 1071), a non-African-American  
11 counterpart, was promoted into management as the Director of Pilot Recruitment &  
12 Development promotion in Denver, CO, with no posting of the position.
- 13 • In or about 2011, Jeffrey De Paolis (Seniority #3958), a non-African-American  
14 counterpart, was promoted into management as a 767 Fleet Standards Captain position  
15 based out of Denver, CO, with no posting of the position.
- 16 • In or around 2012, Lawrence Panetta (Seniority #6527), a non-African-American  
17 counterpart, was promoted into management as a FODM at Dulles International Airport  
18 without this position being posted.

19 170. The Civil Rights Act of 1866, codified as 42 U.S.C. §1981, prohibits race discrimination  
20 in the making and enforcing of contracts. “Making and enforcing” contracts includes the  
21 “making, performance, modification and termination of contracts, and the enjoyment of all  
22 benefits, privileges, terms, and conditions of the contractual relationship.” 42 U.S.C. §1981(b).

24 171. Defendants have engaged in a pattern and practice of intentional discrimination against  
25 Plaintiff with respect to Special Assignments and promotion. Because many African-American  
26 Captains, including Plaintiff, are often more qualified than those hand picked for UAL  
27 management, it can be logically inferred that Plaintiff has been individually and African-  
28

1 American Captains collectively excluded from management due to their race. The  
2 aforementioned long documented pattern and practice of willfully and maliciously excluding  
3 blacks from management which can only be remedied by judicial intervention.

4 172. The foregoing conduct constitutes illegal intentional discrimination with respect to the  
5 making, performance, modification, and termination of contracts prohibited by 42 U.S.C. §1981.

6 173. Plaintiff requests relief as provided in the Prayer for Relief below.

7  
8 174. The conduct of Defendants set forth above in maintaining unlawful employment practices  
9 that intentionally discriminate against African-American Captains was willful, malicious, and  
10 done in conscious disregard for Plaintiff's rights. As set forth above, Defendants have a pattern  
11 and practice of discriminating against African-Americans in their workforce, and have long been  
12 on notice of the wrongfulness of the employment practices set forth above.

13 175. The conduct of Defendants set forth above was engaged in, condoned, and ratified by  
14 Defendants and the officers and managing agents. Accordingly Plaintiff is entitled to punitive  
15 damages in an amount sufficient to punish Defendants and exemplary damages to deter future  
16 unlawful conduct.

17  
18 WHEREFORE, Plaintiff has been damaged and prays relief as set forth below.

19  
20 **SECOND CLAIM**  
21 **RACE DISCRIMINATION IN VIOLATION OF TITLE VII**  
22 **(Alleged Against All Defendants)**

23 176. Plaintiff re-alleges as though fully set forth herein, the factual allegations of paragraphs 1  
24 through 175 above, and this claim is alleged as to promotions occurring during the Title VII  
25 charging period and thereafter.

26 177. This claim is specifically directed towards and limited to conduct occurring February,  
27 2011 and thereafter.

1 178. Defendants are employers engaged in industry affecting commerce and employing over 15  
2 employees within the meaning of 42 U.S.C. §2000e(b).

3 179. Several promotional practices and procedures implemented by Defendants for filling  
4 vacant management positions in California are discriminatory against African-Americans by  
5 treating African-Americans less favorably than their non-African-American counterparts in the  
6 terms and conditions of their employment.

7  
8 **1. Posted Positions**

9 180. As set forth in paragraphs 84 through 145 above, Plaintiff applied for numerous  
10 positions, and continues to apply for such positions, yet despite being more qualified in terms of  
11 one or more advanced degrees, seniority and/or experience at United or on a particular aircraft  
12 type, or total flight hours, United continues to deny Plaintiff promotions based upon his race.

13 181. Despite Plaintiff being more qualified in terms of one or more advanced degrees,  
14 seniority and/or experience at United or on a particular aircraft type, or total flight hours, United  
15 continues to deny Plaintiff promotions based upon his race.

16 182. The foregoing conduct violates Title VII of the Civil Rights Act of 1964, 42 U.S.C.  
17 §§2000(e), *et seq.*, by treating African-Americans, including Plaintiff, less favorably than their  
18 non-African-American counterparts in the terms and conditions of their employment.

19 183. As a result of Defendant's conduct, Plaintiff has suffered damages as set forth below.

20 184. The conduct of Defendants set forth above in maintaining unlawful employment practices  
21 that intentionally discriminate against African-American Captains was willful, malicious, and  
22 done in conscious disregard for Plaintiff's rights. As set forth above, Defendants have a pattern  
23 and practice of discriminating against African-Americans in their workforce, and have long been  
24 on notice of the wrongfulness of the employment practices set forth above.  
25  
26  
27  
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1 185. The conduct of Defendants set forth above was engaged in, condoned, and ratified by  
2 Defendants and the officers and managing agents. Accordingly, Plaintiff is entitled to punitive  
3 damages in an amount sufficient to punish Defendants and exemplary damages to deter future  
4 unlawful conduct.

5 **THIRD CLAIM**  
6 **RACE DISCRIMINATION IN**  
7 **VIOLATION OF THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT**  
8 **(Alleged Against All Defendants)**

9 186. Plaintiff re-alleges as though fully set forth herein, the factual allegations of paragraphs 1  
10 through 184 set forth above.

11 187. Plaintiff alleges this claim only as to those actions occurring February 2011 and  
12 thereafter.

13 188. Defendants are employers covered by the provisions of the California Fair Employment  
14 and Housing Act (Cal. Gov. Code §12940, *et. seq.*).

15 189. Several promotional practices and procedures implemented by Defendants for filling  
16 vacant management positions in California are discriminatory against African-Americans by  
17 treating African-Americans less favorably than their non-African-American counterparts in the  
18 terms and conditions of their employment.

19 190. The practice of the passing over of Plaintiff for promotions into vacancies which were  
20 posted by Defendants, and for which Plaintiff made applications, but was denied the promotion  
21 in favor of lesser-qualified persons outside his protected class, are set forth below.

22 191. On or about 7/30/2012, Plaintiff applied for the FODM SFO promotion; however,  
23 despite Plaintiff being well-qualified, Caucasian Jenifer Duce received the promotion, despite  
24 having lesser educational qualifications and on information and belief, having less seniority and  
25 fewer flight hours.  
26  
27  
28

1 192. On or about 7/30/2012, Plaintiff applied for the FODM SFO promotion; however, despite  
2 Plaintiff being well-qualified, Caucasian James Abell received the promotion, despite having  
3 lesser educational qualifications and, on information and belief, having less seniority and fewer  
4 flight hours.

5 193. On or about 7/30/2012, Plaintiff applied for the FODM SFO promotion; however, despite  
6 Plaintiff being well-qualified, Caucasian Steve Adams received the promotion, despite having  
7 lesser educational qualifications and, on information and belief, having less seniority and fewer  
8 flight hours.

10 194. Defendants have not offered a legitimate, non-discriminatory reason for treating Plaintiff  
11 less favorably than his non-African-American counterparts in terms of these promotions.

12 195. The foregoing conduct violates the California Fair Employment and Housing Act by  
13 treating African Americans, including Plaintiff, less favorably than their non-African-American  
14 counterparts in the terms and conditions of their employment.

16 196. As a result of Defendant's conduct, Plaintiff has suffered damages as set forth below.

17 197. The conduct of Defendants set forth above in maintaining unlawful employment practices  
18 that intentionally discriminate against African-American captains was willful, malicious, and  
19 done in conscious disregard for Plaintiff's rights. As set forth above, Defendants have a pattern  
20 and practice of discriminating against African-Americans in their workforce, and have long been  
21 on notice of the wrongfulness of the employment practices set forth above.

23 198. The conduct of Defendants set forth above was engaged in, condoned, and ratified by  
24 Defendants and the officers and managing agents. Accordingly, Plaintiff is entitled to punitive  
25 damages in an amount sufficient to punish Defendants and exemplary damages to deter future  
26 unlawful conduct.

27  
28 WHEREFORE, Plaintiff has been damaged and prays relief as set forth below.



1  
2 **PRAYER FOR RELIEF**

3  
4 WHEREFORE, Plaintiff prays for relief as follows:

5 1. A mandatory injunction directing Defendants to cease and desist in discriminating  
6 against Plaintiff on the basis of race; and providing for proactive procedures and the monitoring  
7 of the same to remedy the pattern and practice of racial discrimination;

8 2. General damages in amounts according to proof and in no event in an amount less than  
9 the jurisdictional limit of this court;

10 3. For special damages in amounts according to proof;

11 4. For back pay and front pay;

12 5. For punitive damages sufficient to punish defendant for the conduct alleged herein, and  
13 to deter such conduct in the future;

14 6. For attorneys' fees as provided by law;

15 7. For interest as provided by law;

16 8. For costs of suit herein;

17 9. For such other and further relief as the Court deems fair and just.  
18  
19

20 **JURY DEMAND**

21 Plaintiff hereby demands trial by jury of all matters so triable.

22  
23 Respectfully submitted this 30th day of June, 2015.

24 SMITH PATTEN

25 /s/ Spencer F. Smith  
26 SPENCER F. SMITH  
27 DOW W. PATTEN  
28 Attorneys for Plaintiff  
RICHARD JOHN

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Attorneys for Plaintiff  
LEO SHERMAN

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

LEO SHERMAN, an individual,

Plaintiff,

v.

UNITED AIRLINES, INC.; CONTINENTAL  
AIRLINES; and DOES 1-10

Defendants.

**Case No. 3:15-cv-00473-VC**

**SIXTH AMENDED COMPLAINT FOR  
DAMAGES AND INJUNCTIVE RELIEF**

**(1) DISCRIMINATION IN VIOLATION  
OF 42 U.S.C. §1981**

**(2) DISCRIMINATION BASED ON  
RACE (TITLE VII)**

**(3) DISCRIMINATION BASED ON  
RACE (FEHA)**

**JURY TRIAL DEMANDED**

Plaintiff LEO SHERMAN, files this Sixth Amended Complaint, and complains of the named Defendants UNITED AIRLINES, INC. and CONTINENTAL AIRLINES (collectively “United,” “UAL,” or “Defendants”), and each of them, jointly and severally, and for claims, alleges as follows:

1. This Court has jurisdiction over this action under 28 U.S.C. §1331 and 42 U.S.C. §2000e-5(f)(3) and 42 U.S.C. §1981. The action presents federal questions under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, *et seq.*, as amended, and 42 U.S.C. §1981.

1 2. Venue is proper in this district pursuant to 42 U.S.C. §2000e5(f)(3), because (a) the  
2 challenged unlawful employment practices occurred in the Northern District of California;  
3 and/or (b) all of the records related to companywide promotions are located in the Northern  
4 District of California; and/or (c) the Plaintiff would have worked in the State of California but  
5 for the unlawful employment practices and/or the effects of discrimination were felt in the State  
6 of California.

7 3. California is home to more United management employees than any other state.

8 4. United's Flight Operations Management structure is broken down into five regions.  
9 California is home to two of the five regions. California is home to more United management  
10 employees than any other state.  
11

12 5. Plaintiff Leo Sherman is an African-American male individual who has been employed  
13 by Defendants from approximately January 1998 to the present.

14 6. Plaintiff is currently a 737 Captain who flies domestically and internationally for  
15 Defendants.  
16

17 7. Plaintiff's current seniority rank is 5462 and Plaintiff has in excess of 20,000 hours total  
18 flight time.

19 **A. SHERMAN WORKS TO IMPROVE AFRICAN-AMERICAN**  
20 **REPRESENTATION IN COMMERCIAL AVIATION.**

21 8. Plaintiff became a member of the Organization of Black Aerospace Professionals  
22 ("OBAP") in 1988, and began working on creating opportunities for African-Americans in the  
23 aviation industry. Through OBAP, Plaintiff met many African-American pilots who were  
24 employed at United Airlines, and who shared their experiences with Plaintiff concerning the  
25 difficulties African-American Captains were facing in obtaining promotions at United.  
26

27 9. In 1999, approximately one year after Plaintiff began employment with Continental,  
28 Plaintiff noted the complete absence of any African-Americans in Continental management.

1 Based upon his affiliations with OBAP and others in the minority pilots' circle, Plaintiff resolved  
2 to change the complete absence of diversity at Continental by fostering, recruiting, and  
3 mentoring a qualified pool of African-American pilots, captains, and future management  
4 material.

5 **B. SHERMAN WORKS TO IMPROVE REPRESENTATION OF AFRICAN-**  
6 **AMERICANS IN CONTINENTAL'S FLIGHT OPERATIONS MANAGEMENT**

7 10. From the time Plaintiff was hired at Continental through 2010, Continental did not have a  
8 formal recruitment mechanism for increasing African-American representation in its First  
9 Officers, Captains, Check Airman Flight Operations, and Executive Management.

10 11. At Continental, the majority of Check Airman positions were not formally posted. When  
11 the positions were posted, the application process was for the Captain to submit a resume to the  
12 flight office.

13 12. At Continental, there was no open, competitive process for obtaining positions in  
14 Management. At times, vacancy announcements were placed on a bulletin Board in the Flight  
15 Office, however, there were no stated objective lists of qualifications, skills, and experience.

16 13. As a result of Continental's hiring practices, non-qualified applicants received  
17 promotions, based upon factors other than skill, experience, and qualifications in a highly  
18 subjective decision-making process.

19 14. In this process, the Vice President of Flight Operations, Frederick Abbott, had complete  
20 and unfettered control as to whom to hire and when.

21 15. Plaintiff engaged in numerous efforts to have formal diversity initiatives at Continental.

22 **C. SHERMAN EXPRESSES A DESIRE TO BE CONSIDERED FOR**  
23 **MANAGEMENT POSITIONS AT CONTINENTAL.**

24 16. Plaintiff became aware of Special Assignments through the Vice President of Flight  
25 Operations, Frederick Abbott, and Michael Bonds.  
26  
27  
28

1 17. In or about 2000, Plaintiff met and spoke with the Senior Secretary for Fred Abbott,  
2 Neciey Osborn (deceased), who saw firsthand the lack of diversity and made it known to Mr.  
3 Abbott and Mr. Bonds. Ms. Osborn stated to Plaintiff, "There are no pilots of color coming in to  
4 work in the flight office and getting all the good jobs, why are you guys not working in the flight  
5 office," to which Plaintiff responded, "we don't know how to get into the office."

6 18. From 2003 to 2005, Plaintiff spoke to the former Houston-based Secretary, Pat  
7 Hutchinson, on several occasions about promotions and special assignments never being  
8 advertised.

9 19. Prior to Plaintiff's employment with Defendants, Plaintiff worked at Trans World  
10 Airlines (TWA) as a member of the recruitment process. Because of Plaintiff's previous work  
11 experience, Plaintiff was frequently approached by the manager of recruitment with qualified  
12 candidates at Continental Airlines. Plaintiff was introduced to the then Senior Vice President of  
13 Flight Operations, Deborah McCoy, through Plaintiff's participation in community affairs.

14 20. When Plaintiff was hired by Continental, there were approximately 25-40 African-  
15 American pilots with even fewer Hispanic, Asian, or Indian pilots.

16 21. To remedy this racial disparity, Plaintiff frequently visited the new Vice President of  
17 Flight Operations, Fredrick Abbott, who was a former Peoples Express Captain, and spoke with  
18 him concerning the recruitment and outreach of the company to African-Americans.

19 22. Between 2000-2005, Plaintiff witnessed the decision-making process where Fredrick  
20 Abbott did not make any decision concerning any issue dealing with racial minorities without  
21 consulting Legal and the Senior Vice President of Human Resources, Mike Bonds. Plaintiff  
22 spoke multiple times, commencing in the year 2000 and thereafter with Mr. Bonds and Mr.  
23 Abbott, repeatedly expressing to them his interest in moving up the Flight Operations ladder.  
24  
25  
26  
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1 23. Between 2003 and 2005, Plaintiff frequently asked why he was not receiving Special  
2 Assignments despite being upgraded to fly the 777 wide body in Newark, a position many of  
3 Plaintiff's counterparts had not accomplished. Plaintiff was also upgraded to fly the 737 earlier  
4 than normal, which should have given him a visible advantage over other non-African-American  
5 pilots in the placement of special assignments and positions.

6 24. From approximately 1998 until around 2012, Roscoe Edwards, a senior MD80 First  
7 Officer and 737 Captain, hand-picked numerous African-American pilots to present them to Fred  
8 Abbott.

9 25. During this time period, Mr. Abbott's secretary, Neciey Osborn, an African-American,  
10 repeatedly asked Plaintiff and his African-American co-workers why they were not selected for a  
11 flight operations position, given that Plaintiff had better qualifications and no history that should  
12 disqualify him. She directly approached Mr. Abbott about these occurrences and would report  
13 back what was happening "on the inside."  
14

15 26. Plaintiff was asked on more than one occasion by Patricia Hutchinson, a Houston-based  
16 secretary, why Plaintiff never came to the Houston Office as an acting Chief Pilot. She told  
17 Plaintiff that numerous pilots would rotate through that office. Plaintiff responded that he never  
18 knew there were openings.  
19

20 27. In or around June 2009, Plaintiff received a phone call from the base Chief Pilot, Gary  
21 Small (retired), who brought Plaintiff into the flight office for a short stint. The position was  
22 eventually filled, permanently, by Captain Ray Sean Silvera, who had been given a short stint in  
23 the training center while his wife had been expecting in 2005. Fred Abbott arranged this  
24 promotion.  
25

26 28. Between 2000 and the present, Plaintiff became aware of numerous management  
27 positions that were filled via word-of-mouth. Most of the positions were Special Assignments.  
28

Below is a chart of those promoted, based upon Plaintiff's first-hand knowledge at Continental along with the method by which they became aware of the promotion:

Person who received position	Knowledge of position	Other relevant personal knowledge
Tom Stivala	Union	Contract negotiation, administration, Sim /Grnd school, Instructor, Check Airmen/ Assistant Chief Pilot 737/757/767/777/787, Manager Flight Training Support
Rick Muir	Union	Check Airmen / Merger preparation person / Assistant Chief Pilot, Base Chief Pilot IAH
Steve Pacilli	Union	Check Airmen 737
Chris Dowell	Union	Check Airmen 737
Jeff Pierce	Union	Inst 777/Temporary Assistant Chief Pilot, Los Angeles
Marty Shupp	Union	Check Airmen 737 did not meet minimum requirement for Check Airmen
Pat Maloney		
Todd Beckman	Union	Check Airmen 737
Wade Beckman	Union	Check Airmen 737
Jessica Bader		Instructor 777
Mikey Philpott		Instructor 757/767
Dave Zullo	Union	Contract Administration / Houston Assistant Chief Pilot
Sarah Bull		Instructor 737 (very junior)
Nancy Bartzeco		Flight Manager Chicago (very junior)
Bryan Green	Union	Check Airman 737 did not meet minimum requirement for Check Airmen job
Pam Krueger	Union	Assistant Chief Pilot
Chris Lynch	Union	Instructor 756
Chris Norton	Check Airmen	PBS DEVELOPER
Steve Adams	Union	Flight Operations Duty Manager manages systemwide operations
Kevin Harrigan		Flight Operations Duty Manager manages systemwide operations

1	Kris Grigis	Union	737 Instructor
2	Ray Sean Silvera		737 Instructor/Assistant Chief Pilot IAH did not meet minimum requirement for Check Airmen job (job never advertised)
3	Corey Shepard		Instructor 737 and Flight manager (Product of Flight Officer Leadership Development Program); low timer no Pilot in Command experience when initially hired.
4			
5			
6	Pascal Alexander		Instructor 737 low timer did not meet pic requirements when hired initially
7			

8 29. Throughout Plaintiff's employment at Continental, Plaintiff spent the majority of his time  
9 promoting the Continental brand by recruiting and working with new hires to make sure they got  
10 through the training and new hire process. Plaintiff became partnered with Roscoe Edwards who  
11 took charge of communicating and screening resumes of African-Americans to the then Vice  
12 President of Flight Operations, Debbie McCoy (later Frederick Abbott).  
13

14 30. Around this time, several African-American pilots, Plaintiff included, began to ask Mr.  
15 Abbott for funding to support an Organization of Black Airline Pilots in an effort to promote  
16 diversity.  
17

18 31. Plaintiff was selected to attend OBAP conventions. Plaintiff, along with Gordon  
19 Bethune, CEO, CD McLean, Sr. Manager, and Debbie McCoy, attended the San Antonio  
20 convention in August 1999.

21 32. In an effort to attain promotions, Plaintiff began improving his qualifications by starting a  
22 Masters degree.

23 33. Between 2000 and 2003, Plaintiff had multiple conversations with Mr. Edwards and Mr.  
24 Silvera concerning his interest in a Check Airman position and the need for a black Pilot to  
25 become a Check Airman. Plaintiff was informed that this decision was in Mr. Abbott's hands;  
26 however, it was apparent from these conversations that Mr. Abbott would not promote an  
27 African-American until Plaintiff far exceeded the requirements for the position.  
28



1 34. During a convention in 2004 in Detroit, Plaintiff spoke to the then CEO Larry Kellner  
2 and explained to him the value proposition of creating a diversity outreach to African-Americans  
3 to increase the representation of and opportunities for African-Americans in the Continental  
4 workforce.

5 35. In or around 2006, Plaintiff expressed his desire to work in the 777 fleet to Mr. Abbott.  
6 At the time, Continental was hiring instructors. Union-affiliated individuals were instead given  
7 the jobs over Plaintiff.

8 36. In 2008, Plaintiff met the minimum requirements to serve as a Captain for the Check  
9 Airman position and thereafter began applying for Check Airmen jobs, Chief Pilot jobs, and  
10 Instructor jobs. Plaintiff never received a call for an interview for any of these positions to  
11 which he applied.  
12

13 37. In 2009, without an application, Plaintiff received a call from the then Houston Chief  
14 Pilot, Gary Small (Retired). Mr. Small instructed Plaintiff to report to the Houston Office to act  
15 as a 737 Chief Pilot for a Captain who was out on vacation. During this same period, Plaintiff's  
16 non-African-American comparator, Marty Shupp, was rotating in and out of this same position  
17 and later became a Check Airman over Plaintiff.  
18

19 38. Based off of conversations Plaintiff helped to initiate, Defendants promoted its first  
20 African-American General Counsel, Brett Hart.

21 39. Plaintiff communicated his interest in management positions from 2002 through 2011 to  
22 Fred C. Abbott directly via being a volunteer recruiting African-American Pilots with Captain  
23 Roscoe Edwards and further as a representative of Continental Airlines at the OBAP as a  
24 Member of the Board of Directors of OBAP from 2004-2006.  
25  
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27  
28

1 40. In 2009, Plaintiff directly spoke with and asked Mr. Abbott to assist Plaintiff in getting a  
2 Line Check Airman Job, to which Mr. Abbot he replied he would put a word in for Plaintiff;  
3 however, no promotion materialized.

4 41. Plaintiff directly spoke to Mike Bonds the Senior Vice President of Human Resources,  
5 and was assigned to escort him around the 2004 OBAP convention and thus encourage him to  
6 have Continental host a convention in 2006. Mr. Bonds informed Plaintiff that he wished  
7 Plaintiff to be the Convention Chair because Plaintiff knew how OBAP worked, and to ensure  
8 that Continental would not be embarrassed by spending funds on “those Black Organizations.”  
9

10 42. In or around 2003-2005, Plaintiff told retired Newark 777 Chief Pilot Ralph Oman that  
11 he was interested in managerial positions on the 777 fleet; however, no such positions  
12 materialized.

13 43. In or about 2009, Plaintiff informed specific individuals in management that he had a  
14 desire to promote into management, including then Houston Chief Pilot Base Chief Pilot Gary  
15 Small along with Houston 777 Assistant Chief Pilots Kip Komidor 777, Tom Pinardo 757/767  
16 Lloyd Roberson, Steve Williams 737.  
17

18 44. In or around 2010-2011, Plaintiff had a conversation with Captain Dave Lynn, the former  
19 Manager of Houston Training Center, regarding Plaintiff's interest in instructing and in a  
20 recruiting management position. Plaintiff complained that unqualified persons were being hired  
21 into management, but Plaintiff was not being noticed.  
22

23 45. Plaintiff also had conversations with Captain Dave Lundy and Captain Cliff Pitman of  
24 the 777 and 737 fleets, informing them of his desire to promote; however, Plaintiff never  
25 received a call for an interview.

26 46. Both Captain Tom Stivala and Captain Rick Muir were aware that Plaintiff had expressed  
27 interest in promoting; however, they were busy doing special assignment work in Chicago.  
28

1 47. Plaintiff was privy to the statements made by Fred Abbott concerning the United  
2 Coalition, (all of whom were, like Plaintiff, interested in applying for jobs at the merged  
3 corporation as of 2009), that “they would never be considered for promotion”.

4 **D. SHERMAN LEARNS OF CONTINENTAL'S MERGER WITH UNITED AND**  
5 **THE CONTINUED RACE ISSUES AT UNITED.**

6 48. In or about August 2010 Plaintiff had an email exchange with Mike Bonds concerning  
7 Plaintiff's communications the group of African-American pilots identified as the United  
8 Coalition for Diversity and their attempts to achieve greater opportunities for African-Americans  
9 in management at the merged company. Mike Bonds responded that he had spoken with Jennifer  
10 Vogel, who had said it was not appropriate for Continental management to address the issue at  
11 the time, and that once the merger of United Airlines and Continental Airlines was complete,  
12 management would do a thorough review of the allegations of African-Americans being  
13 excluded from management positions.  
14

15 49. Throughout 2011 and 2012, Plaintiff had numerous conversations with other African-  
16 American pilots in the United Coalition for Diversity concerning the continuing racial disparity  
17 in management, including the efforts of Coalition members to negotiate a “protocol” for  
18 increasing promotional opportunities for African-Americans, including the meetings with senior  
19 level management where Coalition members requested promotions and special assignments for  
20 African-American captains, including Plaintiff. When Plaintiff learned of senior management's  
21 refusal to take concrete action to remedy the racial disparity, and United's continuing to hand-  
22 pick less qualified non-African-Americans for management, despite the efforts of the Coalition  
23 and his own personal efforts, Plaintiff filed EEOC charges to remedy the discrimination.  
24

25 50. Because of the efforts of the United Coalition, with whom Plaintiff had had numerous  
26 conversations, Plaintiff was recruited in response to the United Coalition's 2010 EEOC  
27  
28

1 complaints to be a part of a competing group of African-American pilots from the Continental  
2 side of the merger, the purpose of which was to diminish the power of the United Coalition.

3 51. When United learned that the United Coalition was preparing to continue with its efforts  
4 to obtain management positions in 2011 and 2012, United quickly hired numerous African-  
5 Americans into positions, to respond to the United Coalition's call for a formal diversity process  
6 at United.

7 52. Due to Plaintiff's association with the United Coalition, Plaintiff was not invited further  
8 to participate in the group being formed from the Continental side to counter the United  
9 Coalition.  
10

11 **E. PLAINTIFF EXPRESSES HIS INTEREST IN MANAGEMENT POSITIONS AT**  
12 **THE NEW UNITED.**

13 53. Around the time of the United/Continental merger, Plaintiff began using the online Taleo  
14 system to apply for positions at the new merged company, as set forth below; however, despite  
15 having made numerous applications, Plaintiff was consistently refused an interview, and not  
16 selected for the position.

17 54. In 2015, in order to increase his visibility to management, and to have an opportunity to  
18 demonstrate to management in various regions of the company, Plaintiff began bidding on  
19 temporary assignments (TDY) assignments in domiciles at SFO and LAX to show Flight  
20 Operations Management in various regions his leadership abilities.  
21

22 55. Despite these efforts and the expression of interest Plaintiff had directly made to Fred  
23 Abbot and Mike Bonds, who became the Vice President of Human Resources for the new  
24 merged United Airlines, Plaintiff did not receive a special assignment, unposted position, or a  
25 posted position for which he applied either at the merged company.  
26

27 56. As a result of the continuing discriminatory promotion practices at UAL, Plaintiff filed  
28 his EEOC Charge on April 25, 2012 and received his EEOC Right-to-Sue letter on June 7, 2012.

1 57. Plaintiff obtained an immediate Right-to-Sue letter from the California Department of  
2 Fair Employment and Housing on April 24, 2012.

3 58. Neither Defendant Continental nor United Airlines have remedied the acknowledged  
4 invidious discrimination against African-Americans in aviation that has existed since the creation  
5 of the industry in their workforces.

6 59. While some progress was made towards creating a racially diverse class of pilots and a  
7 level playing field for promotions into management, those efforts have stalled, backtracked, and  
8 failed to create a workplace of equal opportunity regardless of race.

9 60. After being apprised that the promotional practices described below have resulted in  
10 discrimination against African-Americans, United nevertheless consciously perpetuated  
11 promotional practices with full knowledge that these practices perpetuate race discrimination in  
12 promotions. These practices have survived the merger of the two companies, and continue into  
13 the present.  
14

15 61. Commencing in 2005 with the posting of positions in the Taleo system, United has  
16 intentionally taken action to give only the appearance of a competitive promotional process,  
17 purportedly based upon non-racial considerations, when in fact, the actions are nothing more  
18 than a risk mitigation scheme, with no real intent on changing the discriminatory practices at  
19 United.  
20

21 62. These actions are intended to give the illusion of a documented deliberative process  
22 which considers all applicants' experience and qualifications; however, in nearly every instance,  
23 a non-African-American is pre-selected, and the qualifications for an upcoming vacancy are  
24 created around the specific experience of the pre-selected non-African-American, or based upon  
25 factors that are not validated.  
26  
27  
28

1 63. When stated qualifications are not manipulated to match the pre-selected non-African-  
2 American, a highly subjective decision-making process is used, that allows for the expression of  
3 overt and latent racial biases against African-Americans.

4 64. For example, the decision to post “special assignments” in April 2014, while ostensibly  
5 reversing a practice that kept African-Americans out of the promotional track, is nevertheless  
6 still based upon a highly subjective decision-making process that allows for the expression of  
7 overt and latent racial biases against African-Americans.

8 65. The following promotional practices have existed prior to the charging period herein, and  
9 continue to the present, despite United's posting of some permanent and temporary management  
10 positions:  
11

12 (a) Failure to consistently post all job and promotional openings to ensure that all African  
13 -American Captains have notice of and opportunity to seek advancement, higher compensation,  
14 overtime, or more desirable assignments and training;

15 (b) Reliance upon unweighted, arbitrary, and subjective criteria in making promotional  
16 decisions. Even where Defendants' policies state objective requirements, these requirements are  
17 often applied in an inconsistent manner and ignored at the discretion of management;

18 (c) Reliance on racial stereotypes in making employment decisions involving  
19 management promotions;

20 (d) Pre-selection, “grooming,” and fast-tracking of non-African American employees for  
21 promotion, favorable assignments, higher pay, and more desirable positions;

22 (e) Maintenance of largely racially segregated job categories and departments;

23 (f) Deterrence and discouragement of African-American Captains from seeking  
24 advancement, training, favorable assignments and higher paying, more desirable positions.  
25  
26  
27

28 **FIRST CLAIM**  
**VIOLATION OF 42 U.S.C. §1981**

**(Alleged Against All Defendants)**

1  
2 66. Plaintiff re-alleges as though fully set forth herein, paragraphs 1 through 65 set forth  
3 above.

4 67. Several promotional practices and procedures implemented by Defendants for filling  
5 vacant management positions in California are discriminatory against African-Americans by  
6 treating African-Americans less favorably than their non-African-American counterparts in the  
7 terms and conditions of their employment.

8  
9 **1. Unposted Positions**

10 68. Plaintiff has been discriminated against on the basis of his race in the filling of the  
11 vacancies of permanent managerial positions: all permanent executive management positions,  
12 Chief Pilot, Assistant Chief Pilot, Flight Operations Duty Manager (“FODM”), Director of  
13 Safety and Security, Director of Pilot Recruitment and Development, and Standards Captain,  
14 from 2008 to the present in every domicile.

15  
16 69. With respect to these unposted Management positions, Plaintiff took reasonable efforts to  
17 make Defendants aware of his interest in Management positions.

18 70. Plaintiff was not aware of Management positions as they came open, and vacant Special  
19 Assignment positions were not well known throughout the company.

20 71. An employee is not allowed to apply for a particular Management position that is  
21 currently filled.

22  
23 72. An employee is not allowed to apply for a Management position at United in the absence  
24 of posting.

25 73. There is no way for an employee at United to have advance knowledge that a particular  
26 Management position is soon to become available without word-of-mouth communication from  
27 management.  
28

1 74. Despite Plaintiff being more qualified in terms of one or more of education, seniority  
2 and/or experience at United or on a particular aircraft type, or total flight hours, United continues  
3 to deny Plaintiff promotions based upon his race.

4 75. Plaintiff was denied the ability to apply despite being equally and/or more qualified, in  
5 terms of one or more of experience, particular line experience, education, seniority, or total flight  
6 hours. Plaintiff is further aware of several, but not all instances of this promotional practice as  
7 follows:  
8

- 9 • In or about 2011, Marty Neary (Seniority # 2268), a non-African-American, was  
10 promoted into management as Flight Operations Duty Manager of the Northeast region,  
11 with no posting of the position.
- 12 • In or about August 2011, Johnie Quinn (Seniority # 3504), was promoted into  
13 management as FODM of the Northeast region, with no posting of the position.
- 14 • In or about 2011, Rich Parella (Seniority # 3063), was promoted into management as  
15 Assistant Chief Pilot – Dulles International Airport, with no posting of the position.
- 16 • In or about 2011, Marc Champion (Seniority # 1071), a non-African-American, was  
17 promoted into management as the Director of Pilot Recruitment & Development  
18 promotion in Denver, CO, with no posting of the position.
- 19 • In or about 2011, Jeffrey De Paolis (Seniority #3958), a non-African-American, was  
20 promoted into management as a 767 Fleet Standards Captain position based out of  
21 Denver, CO, with no posting of the position.
- 22 • In or around 2012, Lawrence Panetta (Seniority #6527), a non-African-American, was  
23 promoted into management as a Flight Operations Duty Manager at Dulles International  
24 Airport without this position being posted.

## 25 **2. Special Assignments**

26  
27 76. Defendants' policy and practice of not posting Special Assignments Positions, while  
28 using those assignments to groom non-African-Americans, and using them as qualifiers for



1 permanent positions, discriminates against African-American Captains, including Plaintiff  
2 Defendants' policy and practice of not posting special assignments, includes the following non-  
3 flying management functions: (1) temporary and/or acting Flight Manager (“FO” and Captain);  
4 (2) Integration Subject Matter Experts (“SMEs”); (3) Human Factors Facilitators; (4) i-Pad  
5 Training/Trainer; (5) Sabre Training/Instructor; (6) Preferential Bidding System  
6 Training/Trainer; (7) Flight Operations Supervisor; (8) Acting Assistant Chief Pilot; (9) System  
7 Integration; (10) Change Management; (11) i-Pad Development; (12) Human Factors and  
8 Change Review; (13) Training Instructor and/or Program Planning; and (14) Training  
9 Committee, with a corresponding increase in pay and pension contributions, from 2008 to the  
10 present in all domiciles.  
11

12 77. With respect to these unposted Special Assignments, Plaintiff took reasonable efforts to  
13 make Defendants aware of his interest in Special Assignment positions.  
14

15 78. Plaintiff was not aware of Special Assignment positions as they came open and vacant  
16 Special Assignment positions were not well known throughout the company.  
17

18 79. An employee is not allowed to apply for a particular position that is currently filled.  
19

20 80. An employee is not allowed to apply for a position at United in the absence of posting.  
21

22 81. There is no way for an employee at United to have advance knowledge that a particular  
23 position is soon to become available without word of mouth communication from management.  
24

25 82. Below are examples of non-African-Americans who were selected pursuant to  
26 Defendants' policies and practices for non-flying management functions a.k.a. special  
27 assignments and temporary management positions, for which Plaintiff was denied the ability to  
28 apply despite being equally and/or more qualified, in terms of one or more of experience,  
particular line experience, education, seniority, or total flight hours:

- 1 • From January to May 2012, Airbus Captain RV Raskey (Seniority # 4341), a non-  
2 African-American, performed a non-flying special management assignment in System  
3 Integration at the Chicago Flight office.
- 4 • From January to April 2012, Airbus Captain RC Keller (Seniority #5264), a non-African-  
5 American, performed a non-flying special management assignment in System Integration  
6 and Management in the Chicago Flight office.
- 7 • From January to March 2012, 767 co-pilot SC Hodges, (Seniority #4823), a non-African-  
8 American, performed a non-flying special management assignment conducting Human  
9 Factors and Change Review (“HFCR”) Training in the Denver Flight Office.
- 10 • From January to April 2012, Airbus Captain SW Wright (Seniority #5854), a non-  
11 African-American, performed a non-flying special management assignment in Change  
12 Management in the San Francisco Flight Office.
- 13 • In March 2012, Airbus Captain MB Covington (Seniority #4482), a non-African-  
14 American, performed a non-flying special management assignment in Change  
15 Management in the Washington, D.C. Flight office.
- 16 • From March 2012 to May 2012, Airbus Captain AF Trueba (Seniority #4662), a non-  
17 African-American, performed a non-flying special management assignment in Change  
18 Management in the Washington, D.C. Flight office.
- 19 • In March 2012 and May 2012, Airbus Captain KM Woods (Seniority #3584), a non-  
20 African-American, performed a non-flying special management assignment in Change  
21 Management in the Washington, D.C. Flight office.
- 22 • In March 2012, Airbus Captain CS Difeo (Seniority #4181), a non-African-American,  
23 performed a non-flying special management assignment in Change Management in the  
24 San Francisco Flight office.
- 25 • In April 2012, Airbus Captain JS Barath (Seniority #3992), a non-African-American,  
26 performed a non-flying special management assignment in Change Management in the  
27 Washington D.C. flight office.
- 28

- 1 • In April 2012, Airbus Captain RD Brunette (Seniority #5312), a non-African-American,  
2 performed a non-flying special management assignment in System Integration in the  
3 Chicago flight office.
- 4 • From April 2012 to May 2012, Airbus Captain HE McVay (Seniority #4745), a non-  
5 African-American, performed a non-flying special management assignment in HFCR and  
6 Change Management in the Denver flight office.
- 7 • In April 2012, Airbus Captain CS Difeo (Seniority #4181), a non-African-American,  
8 performed a non-flying special management assignment in Change Management in the  
9 San Francisco flight office.
- 10 • In April 2012, Airbus Captain Plaskon (Seniority #5717), a non-African-American,  
11 performed a non-flying special management assignment in HFCR in the San Francisco  
12 flight office.
- 13 • In May 2012, Al Calder (Seniority #5532), a non-African-American, performed a non-  
14 flying special management assignment as a Sabre Training Instructor in the Los Angeles  
15 Flight Office.
- 16 • In June 2012, Vince Krammer (Seniority #5055), a non-African-American, performed a  
17 non-flying special management assignment on the I-Pad development team at LAX.
- 18 • In July 2012, SC Hodges (Seniority #4823), a non-African-American, performed a non-  
19 flying special management assignment on the Training Committee at the Denver Flight  
20 Office.
- 21 • In July 2012, SW Wright (Seniority #5854), a non-African-American, performed a non-  
22 flying special management assignment on the Training Committee at the Denver Flight  
23 Office.
- 24 • In September 2012, RL Aiken (Seniority #4217), a non-African-American, performed a  
25 non-flying special management assignment in HFCR at SFO.
- 26 • In September 2012, Flett (Seniority #3807), a non-African-American, performed a non-  
27 flying special management assignment as a Human Factors at SFO.
- 28

- 1 • In October 2012, BT Mead (Seniority # 4140), a non-African-American, performed a  
2 non-flying special management assignment in Change Management at SFO.
- 3 • In November 2012, DL Dobias (Seniority #3314), a non-African-American, performed a  
4 non-flying special management assignment as a Training Instructor at the Denver Flight  
5 Office.
- 6 • Throughout 2012 Ron Romine, a non-African-American, performed a non-flying special  
7 management assignment in iPad implementation at the Chicago Flight Office.
- 8 • In 2011, Sarah Bull a Caucasian Junior First Officer, was also hand-picked by Christy  
9 Nixon, Manager of Pilot Recruitment, for the special assignment of recruiting pilots  
10 Reno, NV. Soon thereafter, in 2012, she was promoted to a 737 Flight Instructor  
11 position, in Houston, TX, a position for which Plaintiff was more qualified and had  
12 previously applied for in 2011 and was denied an interview.

### 13 **3. Posted Positions**

14 83. Plaintiff applied for numerous posted positions, and continues to apply for such positions,  
15 yet despite being equally or more qualified in terms of one or more of education, seniority and/or  
16 experience at United or on a particular aircraft type, or total flight hours, United continues to  
17 deny Plaintiff promotions based upon his race.

18 84. Marty Shupp, one of Plaintiff's non-African-American counterparts, was asked to be a  
19 temporary Assistant Chief Pilot at the Houston base and was promoted to a full-time 737 Line  
20 Check Airman in 2010. Plaintiff applied for this 737 Line Check Airman position in 2010 and  
21 was denied an interview. Captain Shupp had approximately only 700 hours of flight time as a  
22 Captain, approximately 300 hours below the minimum requirement of 1,000 hours for a Line  
23 Check Airman. At this time, Plaintiff had approximately 1,000 hours as a Captain.  
24  
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1 85. On November 16, 2009, Plaintiff applied for the 737 Chief Pilot promotion in Houston,  
2 TX; however, despite Plaintiff being well-qualified, the promotion was awarded to Caucasian  
3 Tom Stivala with fewer flight hours.

4 86. On or about September 29, 2009, Plaintiff applied for the 777 Flight Instructor promotion  
5 in Houston, TX; however, despite Plaintiff being well-qualified, the promotion was awarded to  
6 Caucasian Jeff Pierce with fewer flight hours.

7 87. On or about May 17, 2010, Plaintiff applied for the 737 Line Check Airman promotion in  
8 Houston, TX; however, despite Plaintiff being well-qualified, the promotion was awarded to  
9 Marty Shupp.  
10

11 88. On or about June 13, 2011, Plaintiff applied for the 737 Flight Instructor promotion, in  
12 Houston, TX; however, despite Plaintiff being well-qualified, the promotion was awarded to  
13 Caucasian David Gruss, with fewer flight hours and less seniority.

14 89. On or about June 13, 2011, Plaintiff applied for the 737 Flight Instructor promotion in  
15 Houston, TX; however, despite Plaintiff being well-qualified, the promotion was awarded to  
16 Caucasian Sara Bull with fewer flight hours and less seniority.  
17

18 90. On or about June 30, 2011, Plaintiff applied for the 777 Flight Instructor promotion in  
19 Houston, TX; however, despite Plaintiff being well-qualified, with international experience, the  
20 promotion was, upon information and belief, awarded to a Caucasian, Jessica Bader, with with  
21 fewer flight hours, less seniority, and less international experience.  
22

23 91. On or about August 12, 2011, Plaintiff applied for the 737 Line Check Airman promotion  
24 in Houston, TX; however, despite Plaintiff being well-qualified, the promotion was awarded to  
25 Caucasian Todd Beckman, with fewer flight hours and less seniority.  
26  
27  
28

1 92. On or about August 12, 2011, Plaintiff applied for the 737 Line Check Airman promotion  
2 in Newark, NJ; however, despite being well-qualified, the promotion was awarded to Caucasian  
3 Bryan Green, with fewer flight hours.

4 93. On or about November 14, 2011, Plaintiff applied for the Assistant Chief Pilot promotion  
5 based in Houston, Texas; however, despite Plaintiff being well-qualified, the promotion was  
6 awarded to Ray Sean Silvera, an African-American with fewer flight hours and less seniority.

7 94. On or about June 16, 2012, Plaintiff applied for the 737 Flight Instructor promotion in  
8 Houston, TX; however, despite Plaintiff being well-qualified, the promotion was awarded to  
9 Caucasian Chris Dowell, with fewer flight hours.

10 95. On or about June 16, 2012, Plaintiff applied for the 737 Line Check Airman promotion in  
11 Houston, TX; however, despite Plaintiff being well-qualified, the promotion was awarded to  
12 Caucasian Bill Sabesalk.

13 96. On or about July 25, 2012, Plaintiff applied for the Flight Operations Duty Manager  
14 promotion in SFO; however, despite Plaintiff being well-qualified, the promotion was awarded  
15 to Caucasian Steve Adams.

16 97. The Civil Rights Act of 1866, codified as 42 U.S.C. §1981, prohibits race discrimination  
17 in the making and enforcing of contracts. “Making and enforcing” contracts includes the  
18 “making, performance, modification and termination of contracts, and the enjoyment of all  
19 benefits, privileges, terms, and conditions of the contractual relationship.” 42 U.S.C. §1981(b).

20 98. Defendants have engaged in a pattern and practice of intentional discrimination against  
21 Plaintiff with respect to special assignments and promotion.

22 99. The foregoing conduct constitutes illegal intentional discrimination with respect to the  
23 making, performance, modification, and termination of contracts prohibited by 42 U.S.C. §1981.

24 100. Plaintiff requests relief as provided in the Prayer for Relief below.  
25  
26  
27  
28

1 101. The conduct of Defendants set forth above in maintaining unlawful employment practices  
2 that intentionally discriminate against African-American captains was willful, malicious, and  
3 done in conscious disregard for Plaintiff's rights. As set forth above, Defendants have a pattern  
4 and practice of discriminating against African-Americans in their workforce, and have long been  
5 on notice of the wrongfulness of the employment practices set forth above.

6 102. The conduct of Defendants set forth above was engaged in, condoned, and ratified by  
7 Defendants and the officers and managing agents. Accordingly, Plaintiff is entitled to punitive  
8 damages in an amount sufficient to punish Defendants and exemplary damages to deter future  
9 unlawful conduct.

10  
11 WHEREFORE, Plaintiff has been damaged and prays relief as set forth below.

12  
13 **SECOND CLAIM**  
14 **RACE DISCRIMINATION IN VIOLATION OF TITLE VII**  
**(Alleged Against All Defendants)**

15 103. Plaintiff re-alleges as though fully set forth herein, the factual allegations of paragraphs 1  
16 through 102 above, and alleges this claims as to those promotions occurring during the Title VII  
17 charging period.

18 104. Defendants are employers engaged in industry affecting commerce and employing over  
19 15 employees within the meaning of 42 U.S.C. §2000e(b).

20 105. Several promotional practices and procedures implemented by Defendants for filling  
21 vacant management positions in California are discriminatory against African-Americans by  
22 treating African-Americans less favorably than their non-African-American counterparts in the  
23 terms and conditions of their employment.  
24

25 106. Because many African-American Captains, including Plaintiff, are often more qualified  
26 than those hand-picked for UAL management, it can be logically inferred that Plaintiff has been  
27 individually, and African-American Captains collectively, excluded from management due to  
28

1 their race. The aforementioned long documented pattern and practice of willfully and  
2 maliciously excluding blacks from management can only be remedied by judicial intervention.

3 **1. Unposted Positions**

4 107. As set forth above in paragraphs 68 through 75, Plaintiff was discriminated against on  
5 the basis of his race in the filling of the vacancies of permanent managerial positions: all  
6 unposted permanent executive management positions, Chief Pilot, Assistant Chief Pilot, FODM,  
7 Director of Safety and Security, Director of Pilot Recruitment and Development, and Standards  
8 Captain, from 2008 to the present in every domicile.  
9

10 **2. Special Assignments**

11 108. As set forth in paragraphs 76 through 82 above, Defendants' policy and practice of not  
12 posting Special Assignments Positions, while using those assignments to groom non-African-  
13 Americans, and using them as qualifiers for permanent positions discriminates against African-  
14 American Captains, including Plaintiff.

15 109. With respect to these unposted Special Assignments, Plaintiff took reasonable efforts to  
16 make Defendants aware of his interest in Special Assignment positions.  
17

18 110. Plaintiff was not aware of Special Assignment positions as they came open and vacant  
19 Special Assignment positions were not well known throughout the company.

20 111. An employee is not allowed to apply for a particular position that is currently filled.

21 112. An employee is not allowed to apply for a position at United in the absence of posting.

22 113. There is no way for an employee at United to have advance knowledge that a particular  
23 position is soon to become available without word of mouth communication from management.  
24

25 **3. Posted Positions**

26 114. As set forth in paragraphs 82 through 95 above, Plaintiff applied for numerous positions,  
27 and continues to apply for such positions, yet despite being equally or more qualified in terms of  
28



1 one or more of education, seniority and/or experience at United or on a particular aircraft type, or  
2 total flight hours, United continues to deny Plaintiff promotions based upon his race.

3 115. The conduct of Defendants set forth above in maintaining unlawful employment practices  
4 that intentionally discriminate against African-American captains was willful, malicious, and  
5 done in conscious disregard for Plaintiff's rights. As set forth above, Defendants have a pattern  
6 and practice of discriminating against African-Americans in their workforce, and have long been  
7 on notice of the wrongfulness of the employment practices set forth above.

8 116. The conduct of Defendants set forth above was engaged in, condoned, and ratified by  
9 Defendants and the officers and managing agents. Accordingly, Plaintiff is entitled to punitive  
10 damages in an amount sufficient to punish Defendants and exemplary damages to deter future  
11 unlawful conduct.  
12

13 117. Defendants have not offered a legitimate, non-discriminatory reason for treating Plaintiff  
14 less favorably than his non-African-American counterparts in terms of the promotions set forth  
15 above.  
16

17 118. The foregoing conduct violates Title VII of the Civil Rights Act of 1964, 42 U.S.C.  
18 §§2000(e), *et seq.*, by treating African-Americans, including Plaintiff, less favorably than their  
19 non-African-American counterparts in the terms and conditions of their employment.

20 119. As a result of Defendant's conduct, Plaintiff has suffered damages as set forth below.

21 WHEREFORE, Plaintiff prays judgment as set forth below.  
22

23 **THIRD CLAIM**  
24 **RACE DISCRIMINATION IN**  
25 **VIOLATION OF THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT**  
26 **(Alleged Against All Defendants)**

27 120. Plaintiff re-alleges as though fully set forth herein, the factual allegations of paragraphs 1  
28 through 119 set forth above.

1 121. Defendants are employers covered by the provisions of the California Fair Employment  
2 and Housing Act (Cal. Gov. Code §12940 *et. seq.*).

3 122. Several promotional practices and procedures implemented by Defendants for filling  
4 vacant management positions in California are discriminatory against African-Americans by  
5 treating African-Americans less favorably than their non-African-American counterparts in the  
6 terms and conditions of their employment.

7 **1. Special Assignments**

8 123. Below are examples of non-African-Americans who were selected pursuant to  
9 Defendants' policies and practices for non-flying management functions a.k.a. special  
10 assignments and temporary management positions, for which Plaintiff was denied the ability to  
11 apply despite being equally and/or more qualified in terms of one or more of education, total  
12 flight time, seniority, type ratings, and/or experience:  
13

- 14
- 15 • From January to April 2012, Airbus Captain SW Wright (Seniority #5854), a non-  
16 African-American, performed a non-flying special management assignment in Change  
17 Management in the San Francisco Flight Office.
  - 18 • In March 2012, Airbus Captain CS Difeo (Seniority #4181), a non-African-American,  
19 performed a non-flying special management assignment in Change Management in the  
20 San Francisco Flight office.
  - 21 • In April 2012, Airbus Captain CS Difeo (Seniority #4181), a non-African-American,  
22 performed a non-flying special management assignment in Change Management in the  
23 San Francisco flight office.
  - 24 • In April 2012, Airbus Captain Plaskon (Seniority #5717), a non-African-American,  
25 performed a non-flying special management assignment in HFCR in the San Francisco  
26 flight office.
- 27  
28

- 1 • In May 2012, Al Calder (Seniority #5532), a non-African-American, performed a non-  
2 flying special management assignment as a Sabre Training Instructor in the Los Angeles  
3 Flight Office.
- 4 • In June 2012, Vince Krammer (Seniority #5055), a non-African-American, performed a  
5 non-flying special management assignment on the i-Pad development team at LAX.
- 6 • In September 2012, RL Aiken (Seniority #4217), a non-African-American, performed a  
7 non-flying special management assignment in HFCR at SFO.
- 8 • In September 2012, Flett (Seniority #3807), a non-African-American, performed a non-  
9 flying special management assignment as a Human Factors at SFO.
- 10 • In October 2012, BT Mead (Seniority # 4140), a non-African-American, performed a  
11 non-flying special management assignment in Change Management at SFO.

## 12 **2. Posted Positions**

13  
14 124. Plaintiff applied for numerous positions, and continues to apply for such positions, yet  
15 despite being equally or more qualified in terms of one or more of education, seniority and/or  
16 experience at United or on a particular aircraft type, or total flight hours, United continues to  
17 deny Plaintiff promotions based upon his race.

18  
19 125. On or about July 25, 2012, Plaintiff applied for the Flight Operations Duty Manager  
20 promotion in SFO; however, despite Plaintiff being well-qualified, the promotion was awarded  
21 to Caucasian Steve Adams.

22 126. Defendants have not offered a legitimate, non-discriminatory reason for treating Plaintiff  
23 less favorably than his non-African-American counterparts in terms of this promotion.

24 127. The foregoing conduct violates the California Fair Employment and Housing Act by  
25 treating African-Americans, including Plaintiff, less favorably than their non-African-American  
26 counterparts in the terms and conditions of their employment.

27  
28 128. As a result of Defendant's conduct, Plaintiff has suffered damages as set forth below.

1 129. The conduct of Defendants set forth above in maintaining unlawful employment practices  
2 that intentionally discriminate against African-American captains was willful, malicious, and  
3 done in conscious disregard for Plaintiff's rights. As set forth above, Defendants have a pattern  
4 and practice of discriminating against African-Americans in their workforce, and have long been  
5 on notice of the wrongfulness of the employment practices set forth above.

6 130. The conduct of Defendants set forth above was engaged in, condoned, and ratified by  
7 Defendants and the officers and managing agents. Accordingly, Plaintiff is entitled to punitive  
8 damages in an amount sufficient to punish Defendants and exemplary damages to deter future  
9 unlawful conduct.  
10

11 WHEREFORE, Plaintiff prays judgment as set forth below.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff prays for relief as follows:

- 14 1. A mandatory injunction directing Defendants to cease and desist in discriminating  
15 against Plaintiff on the basis of race; and providing for proactive procedures and the monitoring  
16 of the same to remedy the pattern and practice of racial discrimination;  
17  
18 2. General damages in amounts according to proof and in no event in an amount less than  
19 the jurisdictional limit of this court;  
20  
21 3. For special damages in amounts according to proof;  
22  
23 4. For back pay and front pay;  
24  
25 5. For punitive damages sufficient to punish defendant for the conduct alleged herein, and  
26 to deter such conduct in the future;  
27  
28 6. For attorneys' fees as provided by law;  
7. For interest as provided by law;  
8. For costs of suit herein;

1 9. For such other and further relief as the Court deems fair and just.

2 **JURY DEMAND**

3 Plaintiff hereby demands trial by jury of all matters so triable.

4  
5 Respectfully submitted this 30th day of June, 2015.

SMITH PATTEN

6  
7 /s/ Spencer F. Smith

8 SPENCER F. SMITH  
9 DOW W. PATTEN  
10 Attorneys for Plaintiff  
11 LEO SHERMAN  
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