

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

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| EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, | } | |
| | } | |
| Plaintiff, | } | CIVIL ACTION NO. |
| | } | |
| v. | } | COMPLAINT 5:18-cv-817 |
| | } | |
| UNITED AIRLINES, INC. | } | |
| | } | <u>JURY TRIAL DEMANDED</u> |
| Defendant. | } | |
| | } | |
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NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of sex and to provide appropriate relief to Jane Doe.¹ As alleged with greater particularity below, Defendant United Airlines, Inc., discriminated against Ms. Doe by subjecting her to harassment because of her sex for a period of several years, which created, enabled and perpetuated a hostile work environment from which she did not receive protections or relief by her employer, all in violation of its Title VII responsibilities to prevent and correct a sexually hostile working environment.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 706(f)(1) and (3) of

¹ Given the public interest in protecting the identities of victims of stalking and preventing further psychological harm, the EEOC is utilizing a pseudonym for the United flight attendant who was subjected to harassment.

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) and (3) (“Title VII”) and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the Western District of Texas, San Antonio Division.

PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission (the “Commission”), is the agency of the United States of America charged with the administration, interpretation and enforcement of Title VII and is expressly authorized to bring this action by Sections 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1).

4. At all relevant times, Defendant, (“United Airlines” or “United”), has continuously been doing business in the State of Texas, the City of San Antonio, Texas, and across the United States, and has continuously had at least 15 employees.

5. At all relevant times, Defendant United Airlines has continuously been an employer engaged in an industry affecting commerce under Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

ADMINISTRATIVE PROCEDURES

6. More than thirty days prior to the institution of this lawsuit, Jane Doe filed a charge with the Commission alleging violations of Title VII by Defendant.

7. On September 12, 2017, the Commission issued to Defendant a Letter of Determination finding reasonable cause to believe that Title VII was violated and inviting Defendant to join with the Commission in informal methods of conciliation to endeavor to eliminate the unlawful employment practices and provide appropriate relief.

8. On November 30, 2017, the Commission issued to Defendant a Notice of Failure of Conciliation advising Defendant that the Commission was unable to secure from Defendant a conciliation agreement acceptable to the Commission.

9. All conditions precedent to the institution of this lawsuit have been fulfilled.

STATEMENT OF CLAIMS

10. Since at least May of 2011, and thereafter until at least July of 2016, Defendant engaged in unlawful employment practices, in violation of Section 703(a)(1) of Title VII, 42 U.S.C. 2000(e)(a)(1).

11. Defendant United Airlines is an American international airline company that offers passenger and cargo air transportation services. United Airlines' corporate headquarters is located in Chicago, IL, and the company operates in over 300 airports across five continents. United Airlines operates mainland hubs in Chicago, Denver, Houston, Los Angeles, New York/Newark, San Francisco, and Washington, D.C., and employs more than 80,000 employees.

12. Defendant subjected Jane Doe to a hostile work environment based on her sex (female).

13. Ms. Doe has been employed with the Defendant as a Flight Attendant since about November of 1989.

14. From about 2002 until 2006, Ms. Doe was in a consensual intimate relationship with her United Airlines coworker, Mark Uhlenbrock ("Uhlenbrock"), a pilot and Captain, who also exercises supervisory authority over Flight Attendants during flights due to the nature of his job and rank.

15. At various times during the private and consensual sexual interactions of their relationship, Ms. Doe allowed Uhlenbrock to take photographic images and/or video of her in

provocative poses. Uhlenbrock also took at least one photograph and/or video of Ms. Doe without her knowledge or permission.

16. In about 2006, one of Ms. Doe's coworkers, a male San Antonio Gate Agent, informed her that he had seen nude photos of her on an internet website for "swingers." The coworker also informed her that he was led to believe that he had been "chatting" with her online and that she appeared to have sent him additional photos via email. Ms. Doe realized that Uhlenbrock had been posting and/or circulating nude images of her which were never intended to be anything other than intimate and private between them as a couple. These images were posted by Uhlenbrock to pornographic websites on the internet without her knowledge or consent. Ms. Doe ended her relationship with Uhlenbrock in 2006, when the Captain refused to cease the offensive and harmful conduct.

17. Over the next decade, Uhlenbrock continued to regularly post sexually explicit photos, videos, and stories about Ms. Doe on the internet. Ms. Doe came to learn that these images had been viewed by at least two of her United Airlines coworkers and were presumably accessible to tens of thousands of United Airlines personnel and coworkers, along with countless other people in the U.S. and around the world who are passengers of United Airlines, and who would have access to the internet.

18. Uhlenbrock's posts were reasonably expected, if not calculated, to affect her terms and conditions at work. At least some of Uhlenbrock's internet posts explicitly implicated Ms. Doe's job as a Flight Attendant by occupation, and in some cases as a Flight Attendant for United Airlines. Uhlenbrock posted partially nude images of Ms. Doe in her United Airlines Flight Attendant uniform. He also repeatedly referred to her by her name, identified her occupation and home airport, and made clear by implication, that her employer was Defendant

United Airlines. One post instructed prospective airline passengers to “look for her when you fly!” because she was a “new reason to ‘Fly the Friendly Skies.’” (a reference to United’s advertising slogan).

19. Ms. Doe diligently and aggressively pursued efforts to stop the sexually offensive conduct, which caused her intimidation, embarrassment and anxiety. This conduct interfered with the performance of her work as a Flight Attendant as personal rapport and congeniality with United’s staff and customers are key elements of her successful job performance. Ms. Doe filed three civil lawsuits of public record against Uhlenbrock in Bexar County, Texas in 2009 and 2010. However, despite paying damages and being subject to an injunctive court order, Uhlenbrock continued to post nude images of the Flight Attendant.

20. In or about May of 2011, Ms. Doe complained to two United officials, the Dulles In-Flight Base Operations Manager and an In-Flight Supervisor, that Uhlenbrock was posting nude images of her on the internet without her permission. Ms. Doe provided Defendant with copies of Uhlenbrock’s internet postings, including the photo of her in her Flight Attendant uniform. Defendant, however, failed or refused to take appropriate preventative or corrective action in response to Ms. Doe’s complaint and information. Uhlenbrock’s actions and the failure of Defendant to address the matter effectively had the consequence of interfering with Ms. Doe’s ability to perform her job and altering her working conditions.

21. On November 8, 2011, after Defendant’s management officials failed to adequately address her concerns about the sex harassment, Ms. Doe filed a more formal complaint with the United Airlines Human Resources Department. She was then interviewed and gave Defendant’s managers evidence of postings, incriminating deposition testimony of Uhlenbrock, as well as information about her own efforts to stop the harassment by the Captain.

Ms. Doe advised the Defendant's managers that she was concerned for her safety and that Uhlenbrock's conduct adversely affected her daily work life.

22. As a result of the harassment by Captain Uhlenbrock, Flight Attendant Doe had no reasonable alternative but to bid on only those flights or schedules by which she could most likely avoid working together with Uhlenbrock.

23. Defendant was aware as early as 2012, that Uhlenbrock had violated Defendant's company policies, including but not limited to its *Social Networking* and its *Built on Dignity and Respect* employer-employee policies articulating the employer's requirements and expectations for its employees.

24. Upon review of Ms. Doe's claims, United Airlines advised her that Uhlenbrock's conduct purportedly did not constitute sex harassment in the workplace and concluded that it did not warrant intervention or action by the employer. No written discipline was issued to Uhlenbrock.

25. After Ms. Doe complained about the hostile work environment to the Defendant's managers in 2012, Uhlenbrock's Chief Pilot, Captain James Simons, provided a letter of reference for Uhlenbrock stating that he did not have any "flight related or training issues that have required discipline, counseling, or extra training."

26. On or about May 11, 2012, Ms. Doe's private attorney wrote a letter to United's Executive Vice President for General Counsel and Corporate Secretary to express concerns about Uhlenbrock's continued employment. The letter detailed Uhlenbrock's sexual harassment of Ms. Doe, her earlier complaints, and her fears about possibly having to fly with him. Copies of court orders against Uhlenbrock from 2009 and 2010, as well as earlier emails she exchanged

with various United Airlines managers, were included with the letter seeking an appropriate response from the Defendant.

27. Ms. Doe was never advised by Defendant as to what action the employer took to address her complaints about the sex harassment. No discipline was placed in Uhlenbrock's personnel file.

28. In 2013, another Flight Attendant based in Houston, Texas, told Ms. Doe that he had found nude images of her on a pornographic website.

29. On or about September 18, 2013, Ms. Doe filed yet another complaint about Uhlenbrock's new internet postings with United's Human Resources Department. She again provided information, including dates and IP addresses, indicating that Uhlenbrock had posted the images, including but not limited to times while he was on layovers while working for the airline. During layovers, United restricts its employees' activities and pays their lodging and a per diem.

30. On or about November 1, 2013, Defendant interviewed Uhlenbrock, but otherwise failed or refused to meet its responsibilities to conduct sufficient investigation that could be reasonably calculated to be effective. As was the case at the time of the prior complaints by Ms. Doe, no adequate disciplinary, preventative or corrective action was taken by the Defendant at the time of this complaint and interview.

31. In May of 2015, the Federal Bureau of Investigations ("FBI") arrested Uhlenbrock and charged him with stalking for his continual posting of nude images of Ms. Doe without her knowledge or consent, in spite of her objections and despite the legal processes which she had pursued against him.

32. In August of 2015, a search warrant was issued and Uhlenbrock's computers were seized by the FBI. Defendant also interviewed Uhlenbrock, at which time he admitted to reposting the images of Ms. Doe online in early summer of 2015. At the time of the interview, Defendant was aware of the FBI's involvement. Despite this information, Defendant continued to employ Uhlenbrock throughout the FBI investigation and court proceedings.

33. Uhlenbrock made various admissions to the FBI, and in June of 2016, he pleaded guilty to stalking in violation of Title 18, USC 2261A(2)(B) and was sentenced to 41 months in prison.

34. Defendant granted Uhlenbrock long-term disability in January of 2016. He was paid by United Airlines and received benefits during this time.

35. Uhlenbrock remained on Defendant's payroll until July of 2016 when he was allowed to retire with full benefits.

36. Despite having employee rules of conduct, disciplinary mechanisms, applicable policies and procedures and the authority to prevent and correct the continued unlawful conduct of Uhlenbrock, Defendant failed or refused to take reasonably necessary actions to protect Flight Attendant Doe from harassment while Captain Uhlenbrock was employed.

37. Ms. Doe suffered humiliation, emotional pain and suffering, stress, inconvenience, loss of self-esteem and loss of enjoyment of life as a result of Uhlenbrock's conduct and Defendant's passive and ineffective approach to prevent and correct the reported and continued harassment. Ms. Doe suffered emotional harm attributable to the hostile environment which was perpetuated by Defendant's failure to meet its responsibilities as an employer under the law.

38. Defendant failed or refused to take appropriate preventative or corrective action in response to Ms. Doe's multiple, repeated and specific complaints which were accompanied by information on which the employer could and should have acted.

40. Due to the emotional harm suffered as a result of the continuous harassment and the inaction by the employer, it became necessary for Ms. Doe to utilize her leave under the Family Medical Leave Act ("FMLA") in April of 2015.

41. The effect of the practices complained of in paragraphs 10-40 above has been to deprive Jane Doe of equal employment opportunities and otherwise adversely affect her status as an employee because of her sex.

42. The unlawful employment practices complained of in paragraphs 10-40 above were intentional.

43. The unlawful employment practices complained of in paragraphs 10-40 above were done with malice or with reckless indifference to the federally protected rights of Jane Doe.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining the Defendant, its officers, agents, servants, employees, attorneys and all persons in active concert or participation with it from engaging in any employment practice that facilitates, condones or encourages a hostile work environment based on sex (female), and from engaging in any other employment practices that discriminate on the basis of sex (female);

B. Order the Defendant to institute and carry out policies, practices and programs which provide equal employment opportunities for women and which eradicate the effects of its past and present unlawful employment practices;

C. Order the Defendant to make whole Jane Doe by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraphs 10-40 above, in amounts to be determined at trial;

D. Order the Defendant to make whole Jane Doe by providing compensation for past and future non-pecuniary losses resulting from the unlawful employment practices described in paragraphs 10-40 above, including but not limited to, humiliation, mental anguish, emotional pain and suffering, stress, inconvenience, and loss of enjoyment of life, in amounts to be determined at trial;

E. Order the Defendant to pay Jane Doe punitive damages for its malicious or reckless conduct described in paragraphs 10-40 above, in amounts to be determined at trial;

F. Grant such further relief as the Court deems necessary and proper in the public interest; and

G. Award the Commission its costs in this action.

JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its complaint.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Lists various legal categories and codes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district (specify), 6 Multidistrict Litigation, 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23, DEMAND \$, CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE, DOCKET NUMBER

DATE, SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #, AMOUNT, APPLYING IFP, JUDGE, MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.