



May 24, 2023

Mr. Ben Minicucci  
President, Chief Executive Officer, and Director  
Alaska Air, Inc.  
19300 International Boulevard  
Seattle, Washington 98188

Dear Mr. Minicucci,

We write to you in your capacity as President and Chief Executive Officer and on behalf of Alaska Air, Inc. (the “Company”) shareholders and customers.

The purpose of this letter is to alert you to apparent mismanagement and violations of federal civil rights laws that threaten the waste of the Company’s assets. As you may know, workplace anti-discrimination mandates are an essential and mission-critical regulatory compliance risk. You and the Board, among your other fiduciary obligations, have a duty of oversight and must put into place a reasonable board-level system of compliance monitoring and reporting relating to these mandates.<sup>1</sup> However, it appears that you and the Board have failed to do these critical things, suggesting both a lack of internal controls and an inappropriate disregard for your fiduciary duties to the Company and its shareholders.

The Company describes itself as “the fifth largest airline in the United States, offering unparalleled guest service, connectivity and schedules for [its] hub markets along the west coast.”<sup>2</sup> It acknowledges that it “operates in a highly visible industry that has significant exposure to social media and other media channels” and that “negative publicity” due to “misconduct” by its employees could damage “the Company’s brand and reputation” and “[s]uch harm could have a negative impact on our financial results.”<sup>3</sup> It further acknowledges that importance of “oversight of the strategy, goals, and public disclosure on ESG matters,”<sup>4</sup> and “a portion of long-term executive compensation has been tied to achievement of [racial equity and diversity] goals.”<sup>5</sup>

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<sup>1</sup> See *Marchand v. Barnhill*, 212 A.3d 805, 824 (Del. 2019); *In re Clovis Oncology, Inc. Derivative Litig.*, No. CV 2017-0222-JRS, 2019 WL 4850188, at \*12 (Del. Ch. Oct. 1, 2019).

<sup>2</sup> Alaska Air Group, Inc., Form 10-K at 4, [bit.ly/43pwwf7](https://bit.ly/43pwwf7), (last visited May 24, 2023).

<sup>3</sup> *Id.* at 27.

<sup>4</sup> *Id.* at 13.

<sup>5</sup> *Id.* At 15.

As you know, an unlawful employment practice is established when the evidence demonstrates that race, color, religion, sex, or national origin is a motivating factor for any employment practice.<sup>6</sup> Here, the evidence is that the Company is knowingly and intentionally discriminating with respect to compensation, terms, conditions, or privileges of employment because of race and sex in violation of 42 U.S.C. § 2000e-2(a)(1).

On February 18, 2021, the Company announced on its website a commitment to “a more inclusive workforce by 2025.”<sup>7</sup> In that announcement, the Company stated that it had “30%+ racial diversity within [its] frontline and manager levels compared to 16% racial diversity within our leadership levels.”<sup>8</sup>

The Company further stated that by 2025 it would “increase [the] Company’s ‘Inclusion Index Score’ by 10 points, and it would “increase racial diversity at all levels to at least 30%” by:

- Updating our recruiting strategies to diversify our talent pool.
- Supporting the education pipeline that enables career pathways for diverse talent within aviation.
- Creating leadership development and sponsorship programs that help us attract and retain more diverse talent.”<sup>9</sup>

The Company also forced employees to sit through equity training with outside Consultant “Courageous Conversations,” it launched “racial equity training” for all employees, it “[e]mbedded Diversity, Equity, and Inclusion into [its] new Talent Acquisition system, and “[r]equired 50% diverse candidate slates and interview panels for senior leadership roles.”<sup>10</sup>

On April 23, 2021, the Company provided the following updates on its website:

- The Company increased its “Inclusion Index Score” by 9 points.
- The Company completed “racial equity training” for all its employees and “conducted workplace equity workshops for all leaders and intervention training for frontline employees.”<sup>11</sup>

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<sup>6</sup> 42 U.S.C. § 2000e-2(m).

<sup>7</sup> *Alaska Air Group commits to a more inclusive workforce by 2025*, ALASKA AIRLINES (last visited May 24, 2023), <https://bit.ly/3ODbLfB>.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Diversity, Equity & Inclusion progress on our journey to a more inclusive workforce*, ALASKA AIRLINES (last visited May 24, 2023), <https://bit.ly/423tPCP>.

On February 15, 2022, the Company shared further information on its “progress.”<sup>12</sup> Among the updates the Company provided were several graphs showing that its efforts had increased the workforce representation of Asian, Hispanic, and Islanders, while concurrently decreasing the workforce representation of white employees.<sup>13</sup> The Company cited as one of their key efforts to increase diversity, equity and inclusion “[c]reating and embedding DEI concepts and education across learning programs (e.g., Inflight training).”<sup>14</sup>

Finally, on March 6, 2023, the Company released its most recent update on its “progress” towards “a more inclusive workforce by 2025.”<sup>15</sup> In that update, the Company highlighted that frontline and manager level employees racial “diversity” increased from 34.3% in February of 2022 to 38% on December 31, 2022 and the racial “diversity” of leadership increased from 17.5% to 18% during that same time.<sup>16</sup>

The Company also highlighted that its new leadership pilot mentoring program “boast 45% diversity!” and that of its new hires in 2022, “56% identify as Black, Indigenous or People of Color (BIPOC), and 61% identify as women.”<sup>17</sup> The Company noted with that its workforce representation increase during 2022 for 8.7% to 9.3% for Asian employees, 5.8% to 6.6% for black employees, 10.8% to 12.1% for Hispanic employees, 3.9% to 4.4% for Islander employees, and that the workforce representation decreased from 66.5% to 62.6% for white employees.<sup>18</sup> The Company further pointed out that the female representation in its workforce grew from 53.6% to 55.4% during that time, while the male representation dropped from 46.4% to 44.6%.<sup>19</sup>

Even if legal, these actions raise serious concerns regarding management’s commitment to maximizing shareholder value. We note with concern that you cited no facts suggesting that using this race-based and sex-based program as a pipeline to increase potential human capital is in the Company’s best interests.

Further, in its most recent 10-K filing, the Company states that it is “committed to advancing equity in all forms, and ha[s] set specific and measurable goals to deliver

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<sup>12</sup> *What’s the latest on our DEI commitments?* ALASKA AIRLINES (last visited May 24, 2023), <https://bit.ly/3BPTjcl>.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *It’s the halfway point for our 2025 DEI commitments – how are we doing?* ALASKA AIRLINES (last visited May 24, 2023), <https://bit.ly/426ROkL>.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

on our commitments to racial equity and diversity by 2025,” and that a primary goal is “to increase racial diversity in our leadership team.”<sup>20</sup>

These “goals” are affirmed and repeated by the Company on its website, where it explicitly states that by 2025 it would “increase [the] Company’s ‘Inclusion Index Score’ by 10 points, and it would “increase racial diversity at all levels to at least 30%.”<sup>21</sup>

However, all of these measures are patently illegal. First, since the Civil Rights Act of 1866 (codified at 42 U.S.C. 1981), federal law has prohibited all forms of racial discrimination in private contracting. As the late Justice Ginsburg noted, Section 1981 is a “‘sweeping’ law designed to ‘break down all discrimination between black men and white men’ regarding ‘basic civil rights.’”<sup>22</sup> If, as represented, the Company’s employment decisions are driven or influenced by race, color, or national origin, then management is violating the law, creating significant legal and reputational risk, and wasting the Company’s assets, reputation, and goodwill. If race, color, sex, or national origin are not influencing or driving the Company’s contracting decisions, then management’s public representations to the contrary are cynical misrepresentations. There can be no other alternative.

Second, racial, color, sex, and national origin “balancing” in hiring, training, internships, and promotion is prohibited by Title VII of the Civil Rights Act of 1964.<sup>23</sup> Decades of case law have held that policies seeking to impose racial balancing or quotas in employment, training, or recruitment, such as those presented on the Company’s website, are prohibited.<sup>24</sup> Again, either management is violating state and federal civil rights laws prohibiting employment discrimination based on race, color, sex, or national origin, or it is lying to shareholders and regulators. This is not a close question.

Management’s conduct, as outlined above, has needlessly exposed the Company to potential state and/or federal civil rights investigations and enforcement actions and suggests either a disregard for its fiduciary obligations or a major breakdown in its compliance controls. It has also exposed the Company to negative publicity that will materially affect shareholder value.<sup>25</sup> However, management apparently is

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<sup>20</sup> Alaska Air Group, Inc., Form 10-K at 15, [bit.ly/43pwwf7](https://bit.ly/43pwwf7), (last visited May 24, 2023).

<sup>21</sup> *Alaska Air Group commits to a more inclusive workforce by 2025*, ALASKA AIRLINES, (last visited May 24, 2023), <https://bit.ly/3ODbLfB>.

<sup>22</sup> *Comcast Corp. v. Nat’l Ass’n of Afr. Am.-Owned Media*, 140 S.Ct. 1009, 1020 (2020) (Ginsburg, J. concurring) (quoting *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 432 (1968)).

<sup>23</sup> 42 U.S.C. §§ 2000e-2(a), (d).

<sup>24</sup> See, e.g., *United Steelworkers of America v. Weber*, 443 U.S. 193, 208 (1979); *Johnson v. Transp. Agency*, U.S. 616, 621, 632 (1987).

<sup>25</sup> Alaska Air Group, Inc., Form 10-k at 27, *supra*; see also Steve Goldstein, ‘There is a subset of American consumers who will not drink a Bud Light for the foreseeable future.’ *Anheuser-Busch InBev’s U.S. profits may tumble, JPMorgan says*, MarketWatch (May 23, 2023), <https://bit.ly/43tdAQN>.

unconcerned about “negatively [affecting] our reputation with some of our existing customer base” due to its illegal hiring, promotion, and contracting practices.<sup>26</sup> The Company is organized and carried on primarily for the profit of its shareholders, and the powers of its officers and directors are to be employed solely for that end. If the Company’s officers and directors are unable to demonstrate that the above-described conduct and policies clearly and concretely create shareholder value, then they have violated their fiduciary duty to shareholders by spending the Company’s funds to advance idiosyncratic political and social views.

Therefore, to prevent the waste of the Company’s assets, to repair and safeguard the Company’s brand, goodwill, and reputation among its core customers, to protect the Company’s shareholders, and in fulfillment of your fiduciary duty to ensure the Company’s compliance with civil rights laws, we demand that you and the Board immediately take the following steps:

1. Retain an independent counsel for a full investigation of and a report on the events and circumstances behind management’s decision to explicitly focus on a clear pattern of unlawful hiring, training, and promotion practices for admittedly race-based and sex-based purposes. To avoid the expense and disruption of litigation enforcing the Company’s disclosure obligations under 8 Del. Code § 220, the Board should affirmatively and transparently disclose all of management’s contemporaneous emails and other communications on this topic to the Company’s employees and shareholders. Among other things, all communications to or from the Company’s General Counsel regarding this matter should be made available. The Company should promptly and transparently publish all studies and analytic data that it possesses demonstrating that this policy enhances the Company’s brand reputation and promotes alignment between its business and the tastes and preferences of its core customers.
2. Compel the Company to: (a) Immediately cease and desist from all employment practices that discriminate based on race, color, sex, or national origin, and/or that are designed to “match the combined demographics” of any racial or other group; (b) immediately cease and desist from making any statements or representations promoting or promising employment outcomes based on race, color, sex, and/or national origin; and (c) retain an independent counsel to conduct a compliance audit of the Company’s hiring, promotion, recruitment, and purchasing practices comply with federal civil rights laws. Again, to avoid the expense and disruption of litigation enforcing the Company’s disclosure obligations under 8 Del. Code § 220, the compliance audit and all relevant emails and other management communications regarding the racial balancing and other prohibited hiring and contracting practices described in the Company’s 10-K should be made promptly and fully available. In anticipation

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<sup>26</sup> See Alaska Air Group, Inc., Form 10-k at 27, *supra*.

of litigation, direct the Company to preserve all records relevant to the issues and concerns noted above, including but not limited to paper records and electronic information, including email, electronic calendars, financial spreadsheets, PDF documents, Word documents, and all other information created and/or stored digitally. This list is intended to give examples of the types of records you should retain. It is not exhaustive. Thank you in advance for your cooperation.

Sincerely,

/s/ Gene P. Hamilton

Vice President and General Counsel  
America First Legal Foundation

Cc: Patricia M. Bedient, Chairwoman of the Board of Directors  
James A. Beer, Director  
Raymond L. Conner, Director  
Daniel K. Ewell, Director  
Dhiren R. Fonseca, Director  
Kathleen T. Hogan, Director  
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