



November 1, 2023

Mr. Scott Kirby
Chief Executive Officer and Director
United Airlines Holdings, Inc.
233 South Wacker Drive
Chicago, IL 60606

Re: Violations of Federal Law and Waste of Corporate Assets

Dear Mr. Kirby,

America First Legal Foundation (“AFL”) is a national, nonprofit organization working to protect the rule of law, due process, and equal protection for all Americans. We write for concerned shareholders and customers of United Airlines Holding, Inc. (“the Company”). The purpose of this letter is to alert you to apparent mismanagement that is causing overt violations of federal civil rights laws, threatening to waste the Company’s assets and breach your fiduciary duty to shareholders.

I. Background

The Company is a major airline with “the most comprehensive route network among North American carriers” and transports people “throughout North America and to destinations in Asia, Europe, Africa, the Pacific, the Middle East and Latin America.”¹ The Company’s self-stated shared purpose is to “Connecting People. Uniting the World,” and it claims that its ability to make the necessary connections and “build long-term value for [its] shareholders and contribute to the broader community, depends on [its] commitment to attract and retain the best talent at all levels of [the Company’s] organization and across [its] global workforce.”²

The Company recognizes that “damage to [its] reputation or brand image could adversely affect [its] business or financial result” and that damage could come in the form of “stakeholders not being satisfied with [its] ESG goals or strategy or efforts to meet the goals; public pressure from investors or policy groups to change [its] policies,” and “customer perceptions of statements made by us, our employees and executives, agents or other third parties,” which could lead to, among other things, “negative or inaccurate posts of comments about [the Company] on any social

¹ *Id.* at 3.

² *Id.* at 10.

networking website.”³ The Company further recognizes that “[a]n adverse resolution of lawsuits, arbitrations, investigation or other proceedings or actions could have a material adverse effect on our financial condition and operating results.”⁴

II. Evidence of Unlawful Employment Practices

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2, prohibits the Company from discriminating against an employee or an applicant for employment because of race, color, religion, sex, or national origin; to limit, segregate, or classify employees or applicants in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of race, color, religion, sex, or national origin; or to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training. Yet, the Company openly acknowledges—even touts—its unlawful discrimination in its recruitment, hiring, and development programs.

Despite its stated importance of attracting the best talent at all levels of its organization, management appears to be more focused on “Diversity, Equity, and Inclusion” benchmarks, classifications, and quotas than on hiring the most skilled employees. For example, the Company states on its website that it is “committed to doing [its] part to create a more diverse, equitable and inclusive workplace and world.”⁵ To that end, management has chosen to “attract, retain, and advance diverse leaders”⁶ by using race, color, national origin, religion, and/or sex as decisive factors in hiring, training, and promotion. In its 2022 Corporate Responsibility Report,⁷ management admitted to the following discriminatory conduct:

- “Include a diverse makeup of candidates in 90% of new hire interview slates for management and administrative roles.”
- “Continue to meet United Aviate Academy diversity goal: 50% of enrolled students who are women and/or people of color.”

Management further admitted:

³ United Airlines Holdings, Inc., Annual Report at 26, 28 (Form 10-K) (Dec. 31, 2022) (available at <https://tinyurl.com/yxyzpaam>).

⁴ *Id.* at 30.

⁵ *Diversity, Equity and Inclusion (DEI)*, UNITED AIRLINES, <https://tinyurl.com/4hxsnn2y> (last visited October 25, 2023).

⁶ *Id.*

⁷ UNITED AIRLINES, *Inclusion Among Our Workforce*, 2022 CORPORATE RESPONSIBILITY REPORT, <https://tinyurl.com/3y22u6mz> (last visited October 25, 2023).

- Its U.S. workforce “saw a 3% increase in representation of women and 6% increase in representation of underrepresented racial and ethnic groups when comparing December 2020 to December 2022.”
- “Representation of women and traditionally underrepresented racial and ethnic groups in our new hire management and administrative population is higher in January 2022: 5% higher for women and 9% higher for people from underrepresented racial and ethnic groups.”
- “In 2022, almost half of all promotions at the Senior Professional and Senior Leader level were of those belonging to underrepresented racial and ethnic groups. Growing diversity in our leadership will continue to be an essential focus in 2023 and beyond.”
- “[W]e have committed to increase the number of women in senior positions and underrepresented areas by a minimum of 25% by 2025.”
- “In 2022, we welcomed 200 students to the Academy and celebrated the graduation of our inaugural class of pilots, that included 51 students – with nearly 80% being women or people of color.”
- “We partnered with i.c. Stars, a Chicago-based nonprofit dedicated to providing underrepresented individuals the opportunity to expand their horizons through technology internship programs, representing a new source of talent for Digital Technology.”
- “[L]aunched Innovate to create a new digital technology talent pool from diverse and non-traditional backgrounds, with plans to identify, reskill and place more than 500 technology candidates in the next five years and a goal of 50% being women and/or people of color.”

Such workforce “balancing” based on racial, color, national origin, religion, or sex is patently illegal.⁸ Decades of case law holds that management’s conduct in this regard is prohibited.⁹ Consequently, management has needlessly created material risk.

III. Unlawful Contracting Practices

42 U.S.C. § 1981 proscribes “discrimination in making or enforcement of contracts against, or in favor of, any race.”¹⁰ However, management admits that:

⁸ 42 U.S.C. §§ 2000e-2(a), (d).

⁹ See, e.g., *United Steelworkers of America v. Weber*, 443 U.S. 193, 208 (1979); *Johnson v. Transp. Agency*, 480 U.S. 616, 621, 632 (1987).

¹⁰ *McDonald v. Santa Fe Trail Transp. Corp.*, 427 U.S. 273, 295 (1976) (holding that Section 1981 bars discrimination against white persons, as well as discrimination against racial minorities).

- “200 team members from underrepresented racial and ethnic groups attended these [McKinsey Connected Leadership Academies] in 2022, which equip future leaders with a peer network that will help them achieve their aspirations and assist them in developing new capabilities, mindsets and behaviors for growth. These programs are implemented in identity-based communities and provide a unique lens on leadership from the perspective of diverse leaders.”¹¹ White males were denied an opportunity to contract and participate solely because of their race.
- The Company will spend “at least \$1 billion annually with women-and-diverse-owned businesses by 2050,” and has advanced on that goal by spending \$151 million with such businesses in 2021-22.¹² In other words, management is steering contracts and making contracting decisions based explicitly on the contracting party’s race or color.

Management’s decision to contract based on race poses grave risks as it appears widespread, and Section 1981 actions have no damages cap. Many successful plaintiffs also receive punitive damages reaching into the millions. For example, a recent Section 1981 race discrimination verdict in the Eastern District of Texas resulted in a judgment of over 70 million dollars (plus fees and pre/post-judgment interest).¹³ In a different Section 1981 case, a white employee brought action against her employer for race discrimination (and related state laws), resulting in a jury verdict of over 25 million dollars.¹⁴ Because of management’s intentionally discriminatory actions, there are potentially thousands of plaintiffs with redressable Section 1981 claims. Collectively, these claims, which all flow from management’s decision to discriminate based on race, may pose a material risk to the Company.

IV. Conclusion

To prevent the waste of the Company’s assets, to safeguard the Company’s brand, goodwill, and reputation, to protect the Company’s shareholders, to fulfill your fiduciary duties to the Company and its shareholders, and to ensure compliance with civil rights laws, we demand that the Company 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, promotion, and contracting

¹¹ *Inclusion Among Our Workforce*, *supra* note 7.

¹² UNITED AIRLINES, *Amplifying Progress Through Supplier Partnership*, 2022 CORPORATE RESPONSIBILITY REPORT, <https://tinyurl.com/399vcjhh> (last visited October 25, 2023).

¹³ *Yarbrough v. Glow Networks, Inc.*, No. 4:19-CV-905-SDJ, 2022 WL 1143295 (E.D. Tex. Apr. 18, 2022).

¹⁴ J. in Favor of Pl., *Phillips v. Starbucks Corp.*, 624 F. Supp. 3d 530 (D.N.J. 2022) (No. 19-19432), ECF No. 153.

practices for admittedly race-based and sex-based purposes. To avoid the expense and disruption of court action 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 analytics data that it possesses demonstrating that these policies enhance the Company's brand reputation and promote 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 and contracting practices that discriminate based on race, color, sex, or ethnicity, and/or that are designed to hire or promote individuals on the basis of race, color, sex, or ethnicity; (b) immediately cease and desist from making any statements or representations promoting or promising employment outcomes or contracts based on race, color, sex, and/or ethnicity; and (c) retain an independent counsel to conduct a compliance audit of the Company's hiring, promotion, recruitment, and purchasing practices to ensure compliance with federal civil rights laws, and to ensure that the Company is not risking its shareholders significant value by making unnecessarily controversial political and social statements that alienate a majority of the Company's customer base. Again, to avoid the expense and disruption of court action enforcing the Company's disclosure obligations under 8 Del. Code § 220, the compliance audit and all relevant emails and other management communications should be made promptly and fully available. In anticipation 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/ Ian D. Prior

Senior Advisor

America First Legal Foundation

Cc: Edward M. Philip, Chairman of the Board of Directors
Carolyn Corvi, Board of Directors
Matthew Friend, Board of Directors
Barney Harford, Board of Directors
Michele J. Hooper, Board of Directors
Walter Isaacson, Board of Directors
Richard Johnsen, Board of Directors
James A.C. Kennedy, Board of Directors
Edward L. Shapiro, Board of Directors
Captain Garth Thompson, Board of Directors
Elaine Mendoze, Board of Directors
Laysha Ward, Board of Directors
James M. Whitehurst, Board of Directors

APPENDIX

INCLUSION AMONG OUR WORKFORCE

As we announced our growth plans last year, which included hiring 50,000 employees over the next five years—we created company-wide DEI goals for the first time in our history and tied them to specific metrics in our executive long-term incentive plan to ensure accountability for progress.

These goals focus on three key areas related to talent:

1. Increasing demographically diverse representation;	2. Creating new pathways to United careers; and	3. Assessing and refining HR policies and practices.
Goal	Progress	
1: Include a diverse makeup of candidates in 90% of new hire interview slates for management and administrative roles	We identified women and people of color in leadership roles as areas of opportunity and introduced this measure to bring more demographic diversity into our candidate funnel for consideration.	
2: Update 50% of job postings to appeal to a broader labor market and eliminate biased verbiage	We introduced a tool that checks for language that may be perceived as biased and/or may create feelings of exclusion in order to replace them with statements that are more inclusive and are expected to appeal to a broader audience of diverse job seekers.	
3. Continue to meet United Aviate Academy diversity goal: 50% of enrolled students who are women and/or people of color	To attract diverse candidates, we partnered with diverse professional organizations to amplify the United Aviate Academy and, in partnership with JPMorgan Chase & Co., established a scholarship fund to provide more than \$5 million in scholarships for prospective academy students.	

1. Increasing demographically diverse representation

We exceeded all three of our goals in these areas:

Goal	Progress
1: Include a diverse makeup of candidates in 90% of new hire interview slates for management and administrative roles	We identified women and people of color in leadership roles as areas of opportunity and introduced this measure to bring more demographic diversity into our candidate funnel for consideration.
2: Update 50% of job postings to appeal to a broader labor market and eliminate biased verbiage	We introduced a tool that checks for language that may be perceived as biased and/or may create feelings of exclusion in order to replace them with statements that are more inclusive and are expected to appeal to a broader audience of diverse job seekers.
3. Continue to meet United Aviate Academy diversity goal: 50% of enrolled students who are women and/or people of color	To attract diverse candidates, we partnered with diverse professional organizations to amplify the United Aviate Academy and, in partnership with JPMorgan Chase & Co., established a scholarship fund to provide more than \$5 million in scholarships for prospective academy students.

2. Creating new pathways to United careers

We met our primary goal in this area

Goal	Progress
1: Launch apprenticeship program for Maintenance Technicians with a focus on underrepresented groups	Calibrate, our new in-house apprenticeship program, was launched in November 2022, supporting our ambitious goal of hiring 7,000 maintenance technicians by 2026

In-house apprenticeship program

Calibrate, our new in-house apprenticeship program, launched in November 2022. It will be a key strategic component in ensuring that we achieve our ambitious goal of hiring 7,000 maintenance technicians by 2026. We plan to train more than 1,000 new technicians by 2026, with a goal that at least half will be students who identify as women and/or people of color.

In the 36-month program, apprentices will gain the skills and knowledge they need to obtain their Airframe & Powerplant Certificate, including hands-on and classroom training and mentorship alongside United's experienced technicians.

Our first cohort was comprised of 80% people of color. The Calibrate program plans to expand to over a dozen locations in 2023 and will be open to United's global employee base and external candidates.



Our strategy

Our DEI strategy is centered around transforming the future of aviation. It is recognized as an essential driver of our growth and sustainable financial and operational success.

In 2022, we built on our progress to embed DEI throughout the business with a focus on leading the aviation industry by:

- Cultivating greater opportunities and access for underrepresented groups so they can build long, lucrative careers at United and enhance our uniquely inclusive culture;
- Offering a more accessible and culturally sensitive travel experience for all of our customers;
- Empowering and uplifting the communities we serve; and
- Demonstrating active leadership in building a strong pipeline for business diversity.

We are proud to share how we exceeded our DEI goals in 2022, made additional progress beyond these goals and established ongoing DEI commitments among our employees, customers, communities and commercial partners.

Communities	Support our DEI aims through engagement with community organizations	<ul style="list-style-type: none"> • Support United recruitment and workforce programs • Craft a public policy agenda that includes a DEI focus • Grow partnerships and engagement
Read about our performance against community goals		
Suppliers and commercial partners	Support women- and diverse-owned businesses through membership in the Billion Dollar Roundtable	<ul style="list-style-type: none"> • Direct \$1 billion+ of spending annually towards women- and diverse-owned businesses by 2025 • Implement business policy and practices to ensure program sustainability and diverse business growth and development.

The next stop on our journey: Billion Dollar Roundtable

In 2021, we announced our intention to become a member of the Billion Dollar Roundtable (BDR), a group of corporations recognized for:

- Spending at least \$1 billion¹ annually with women- and diverse-owned businesses by 2050.
- Implementing business policy and practices to ensure program sustainability and diverse business growth and development.

¹Spend is BDR-qualified only if the supplier is certified by one of five agencies: Disability:IN, the National LGBT Chamber of Commerce, the National Minority Supplier Development Council, the National Veteran's Business Development Council or the Women's Business Enterprise National Council (WBENC).

We are making significant progress:



Additional progress toward more diverse representation

We are building customized multi-year strategies for each functional area of our business in order to attract, develop and support diverse talent in the advancement of their careers at United. Our officers and HR teams monitor how hiring, promotion and attrition are impacting our progress using talent dashboards and develop ways to use that data to inform our strategies and programs.

Building on our commitment to increased transparency, we are sharing our [US workforce demographic data](#) for the third year in a row.

Measurable highlights from 2022 include:

1. Higher representation of women and underrepresented racial and ethnic groups

Our US workforce saw a 3% increase in representation of women and 6% increase in representation of underrepresented racial and ethnic groups when comparing December 2020 to December 2022.

2. New hires are improving diverse representation

Representation of women and traditionally underrepresented racial and ethnic groups in our new hire management and administrative population is higher than in January 2022: 5% higher for women and 9% higher for people from underrepresented racial and ethnic groups.

3. Voluntary turnover remains low

In a time period known by many as “the Great Resignation” when many employers experienced layoffs and a spike in voluntary exits, we actually grew, bringing in almost 2,000 new management and administrative employees. Our team members are staying with us to build careers, as evidenced by our voluntary turnover rate of only 7%. We remain a destination for lifelong careers, with an average tenure of 16 years of service for United employees.

4. Progress has been made at senior levels

We made progress in our efforts to have our leadership reflect the diversity of the communities we serve. In 2022, almost half of all promotions at the Senior Professional and Senior Leader level were of those belonging to underrepresented racial and ethnic groups. Growing diversity in our leadership will continue to be an essential focus in 2023 and beyond.