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JEFFREY EISENBERG,)	
)	
<i>Complainant,</i>)	
)	Case No. 2025-AIR-00014 [OALJ]
v.)	Case No. 301043445 [OSHA]
)	
UNITED AIRLINES, INC.)	
233 South Wacker Dr. 14th Fl.)	
Chicago, IL 60606,)	
)	
<i>Respondent.</i>)	
)	

Complainant Jeffrey Eisenberg (“Complainant” or “Eisenberg”) files this Complaint of whistleblower retaliation against Respondent United Airlines, Inc. (“United”) for violations of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. §42121, *et seq.* (“AIR-21”), and the Sarbanes-Oxley Act of 2002, 18 U.S.C. § 1514A *et seq.* (“SOX”).”) alleging United unlawfully retaliated against Eisenberg for his protected activities under AIR-21 and SOX.

1. Complainant is a resident of Chicago, Illinois, and was employed by United prior to his unlawful termination on or about September 2, 2024.
2. United is a Delaware corporation that maintains its principal place of business in Chicago, Illinois.

Factual Allegations

Background

3. United hired Eisenberg on or about May 15, 2017.
4. Eisenberg initially served as United's Senior Manager for Network Planning before United promoted him to be its Director of Flight Profitability and Network Analysis in or about February 2020.
5. United invited Eisenberg, based on his positive performance in his new role as Director, to participate in its leadership class for talented director-level employees that took place from January 2022 to May 2022.
6. Ankit Gupta ("Gupta"), United's Chief Air Operations Officer, recruited Eisenberg to fill a vacant director-level position within the operations team in or about June of 2022, shortly after Eisenberg completed this exclusive development programming.
7. Eisenberg accepted the position offered by Gupta and began working in the new director-level role within operations in or about August 2022.
8. United promoted Eisenberg once again in or about September 2023 to a position as Managing Director of Operations, Strategy and Performance.
9. Gupta served as Eisenberg's immediate supervisor after Eisenberg was promoted to the new role as a managing director.

Whistleblowing events

10. Within two weeks in the new role, Eisenberg became aware of a software bug affecting the flight information system that United principally relies on for flight tracking. The underlying defect was incorrect maintenance data to display and thereby relayed aircraft

readiness to fly statuses that also were not correct. Ron Italiano (“Italiano”), Eisenberg’s new direct report, oversaw the business development for and business unit upkeep of this system (known as “Volare” internally). Italiano and a select few of his direct reports knew of the issue as early as the beginning of September and had initiated research with Digital Technology to explore fix options, but Italiano did not report it to the Safety Department or to any United officers with oversight of the matter. Eisenberg overrode Italiano’s decision not to report this to either an officer within the chain of command or to the Safety Department or to the Ground Safety Action Program (“GSAP”) it administers. After multiple requests, Italiano delegated reporting the matter to his direct report Darreon Atkins. At Eisenberg’s request, Italiano wrote a brief technical summary of the matter to SVP and Chief Air Officer Gupta, Eisenberg’s supervisor. Eisenberg also kept Gupta apprised in weekly email updates that Gupta was known to read reliably and thoroughly according to his self-report.

11. The error that Eisenberg caused to be reported were discrepancies between the maintenance data from the official maintenance systems of record used primarily by and for aircraft technicians and the data on display in Volare. Volare is currently designed to retrieve its data from the source system and thereby to match. When this process works as intended, maintenance data from the source of record can be seen along side other flight data primarily for airport staff. This led to two types of operations risks and defects. The first type when the data mismatch had Volare displaying an aircraft as ready for operation when in fact it needed repairs. The second type was when the data mismatch caused Volare to indicate the presence of maintenance problems on an aircraft certified with a clean bill of health in the official

maintenance system. Besides inconvenience, these data discrepancies increase workload unnecessarily and lead to risk of reduced situational awareness, itself a serious operations risk.

12. Italiano told Eisenberg that Italiano did not think that the issue should be reported to Global Safety, a department within United, which administers the GSAP. This program tracks safety incidents during ground operations and their root causes. This data is also used by Global Safety in liaising with the FAA and making periodic disclosures on safety matters. Italiano was reluctant to report the information to Global Safety's GSAP because Italiano feared potential reprisal. Eisenberg insisted that Italiano or someone he delegates from his team with strong knowledge of the situation team submit the discovery to GSAP, leading Italiano to delegate disclosures of the issues to GSAP in or about October 2023.

13. Eisenberg attempted to reduce Italiano's performance rating for 2023, in whole or in part because of Italiano's decision not to report the maintenance readiness issue to GSAP in a timely manner, in or about January of 2024, but United's human resources department prevented Eisenberg from doing so.

14. Nearly a year after the issue was discovered and long after it was fixed, United was aware of the nature of Eisenberg's claims by August 2024. Around this time, United leaders began to cover their tracks where Eisenberg's claims were concerned. So, when in August 2024, Network Operations Leadership published an installment of its weekly newsletter, that contained an article called "The importance of confidentiality in ASAP reporting," it crossed a line beyond cynical and beyond careless to the "unsafe."

Technology glitch

15. Eisenberg also objected to and raised concerns about United's neglect to fix a glitch that had left United exposed to mistakenly boarding passengers without the required minimum number of flight attendants on active duty. While this had been an issue at the top of mind for Corporate Safety going back to at least fall 2023, it registered on Eisenberg's radar in the Spring of 2024 because of his team's work on a tool enhancement to improve flight crew tracking. Moreover, the project would display that data more prominently as the project charter envisioned, but as summer became nearer and the data fix lingered, it looked like turning on the neat interface with questionable data would lead to worse decision-making. To act in time for the summer operational products improvements, this issue needed to be escalated which Eisenberg attempted first to do by bringing it as the primary topic of a scheduled Executive Steering Committee meeting on March 29, 2024. Vice President of Digital Technology Stacey Wronkowski who is ultimately accountable for fulfilling the Technology team's delivery promises got upset while reviewing draft working group materials. Wronkowski successfully worked with Gupta's chief of staff to have the meeting cancelled. Eisenberg continued his efforts to raise his concerns in April and May 2024 including by keeping Gupta apprised. The next structured opportunity to escalate Eisenberg's concern was on June 5, 2024.

16. By middle 2024, Eisenberg was the *de facto* spokesman for prioritizing this fix. Eisenberg was asked to advocate this position at a Digital Technology Change Control Forum on June 25, 2025, but the members of the review board elected to proceed with prioritizing coding aspects of the new pilot contract at the time.

Skylinx - Conflict of Interest

17. Eisenberg relayed concerns to Gupta about a project that Eisenberg inherited when Eisenberg was promoted to managing director because the project had exceeded its budget and at that time was beyond the initially planned completion due date by two years. This project involved United working with a third-party contractor, Skylinx, to develop a software program called Skyplan for United's eventual use. United assigned Amar Murthy ("Murthy") a leadership position on the Skyplan project before Eisenberg assumed his new position.

18. United initiated an investigation in response to Eisenberg's reports on the Skyplan project to Gupta.

19. Eisenberg reported his mismanagement concerns in the Skyplan project to United Managing Director of HR Marcel Delhommeau ("Delhommeau") on January 10, 2024, and Eisenberg also provided Delhommeau with an email from Faiz Hanif ("Hanif"), United's director of digital technology, that suggested that Murthy's mismanagement could lead to safety compliance issues and that some members of Hanif's team believed Murthy potentially had a conflict of interest related to the Skyplan project because of a perceived personal interest that Murthy held in Skylinx.

20. Eisenberg reported Murthy's perceived conflict of interests and potential violation of Murthy's duty of loyalty to United on or about January 10, 2024.

21. United leaders learned of dissension among the Skylinx founders in November 2023 upon receipt of a memo from CEO Christian Grill indicating owners/founders were involved in a court dispute in Austria.

22. In December 2023, Murthy and his then direct report Steven Boliek were spending significant time in Austria or in transit. This left scarce time to perform the core function to document, design, test and liaise with United dispatchers who worked locally in Arlington Heights, Illinois.

23. United concluded its investigation into Murthy on or about February 7, 2024 and found no evidence of any wrongdoing.

Coincidentally, United had decided to wind down the Skylinx agreement in favor of repatriating the work to United. An envoy consisting of Eisenberg, Sreedhar Nara, Mohit Jain, and Faiz Hanif traveled to Salzburg, Austria in the first week of February to negotiate an orderly wind down and transfer of knowledge. Prior to the group's arrival, Skylinx issued an announcement that it would be adding former Airbus Sales executive Tom Ronnel to its top management as its fourth member. An agreement was reached during the visit and United agreed to ~\$1.2 million to obtain approximately two months of ongoing support to ease in the transition.

HR Investigation

24. On February 19, 2024, HR Director Beth Nettles who oversees the HR Investigations unit and reports to Delhommeau called a meeting with Eisenberg for the next day, February 20, 2024. Nettles reviewed the allegations, which were submitted anonymously. The first allegation was that Eisenberg writes long emails, the second is that he discusses employee performance with others. The last one presented is that people on the team are unhappy and may quit. Eisenberg sometimes writes long emails and does not see any company policy prescribing email length. The complaint that the team was unhappy seems to conflict with Eisenberg's Pulse Survey Results. Eisenberg proffered in the interview with Nettles that Skyplan is co-managed

with Sreedhar Nara – Managing Director of Digital Technology and Gary Zeman – Managing Director Flight Dispatch.

25. On February 28, 2024, Director of Digital Technology, Faiz Hanif notified Sreedhar Nara and Eisenberg that Skylinx CEO Christian Grill had informed Hanif that Amar Murthy was the fourth member of the leadership team. This cohered with what Grill conveyed in a January visit to United in Chicago that initiated the first report – specifically that Murthy used his position at United and the access to steer business to the faction of owners he favored. Ronnell was effectively Murthy’s surrogate. Grill also reported that in between the three negotiating sessions, Murthy was on the phone with the Skylinx owners

26. Eisenberg emailed ShaVonne Richardson, Sreedhar Nara, and other senior leaders tasked with resolving the flight attendants’ minimum issues present in Volare on or about March 11, 2024, and on or about March 22, 2024, Eisenberg reports concerns that the issues were unresolved.

27. United awarded Eisenberg a performance related pay raise on or about March 13, 2024. Gupta wrote: “Jeff – Pls see attached your 2024 comp statement, and the increase in your salary. Congrats again, and thanks for all your hard work.”

28. Eisenberg reported concerns to his supervisors in or about May of 2024 related to United’s plan hastily to retire its Unimatic system (which was used for flight tracking, fuel planning, and weight and load planning) without an adequately prepared successor system in place.

29. Eisenberg identified inadequacies and inaccuracies in United’s Safety Risk Assessment process and brought concerns about the issues to Alex Burnett, Managing Director

of Internal Audit on January 30, 2024 at McCormick Place Convention Center where United held its annual leadership conference.

30. United conducted an internal “Pulse” survey in or about May of 2024 to measure its employees’ satisfaction level with their supervisors. Eisenberg’s team participated in the Pulse survey at more than double the company-wide average, and 90% of respondents rated Eisenberg favorably (this was far better than the 69% company-wide average).

31. Eisenberg’s inclusivity responses were 95% favorable (better than the 70% company-wide average), and Eisenberg’s overall employee satisfaction rating was a 4.14 (out of 5.0), which was far better than the 3.72 company-wide average.

32. The Pulse results are running 12 month totals that randomly sample ~ one out of 12 employees per month. For the June 2024 Pulse report covering the 12 months ending in May 2024, the company modified would turn out to be Eisenberg’s final Pulse report at United – and for this last Pulse of Eisenberg’s the company went back and requested participation of anyone that had abstained prior to May. In that sense the results of May were uniquely more like a census than a survey.

33. United elected to increase the size of the team led by Eisenberg by approximately 30% in a reorganization that was effectuated on or about May 29, 2024.

34. Gupta commented in a team meeting on or about June 1, 2024, that Eisenberg had accomplished more in six months than Eisenberg’s predecessor had in three years. Gupta made the same remark in a meeting with Gupta’s boss Toby Enqvist on May 1, 2024. This meeting was used to walk Toby Enqvist through team achievements since Eisenberg took over leadership

of the team. Gupta repeated the remark about how accomplished Eisenberg is relative to his predecessor in spite of much shorter relative tenure in a meeting on or about May 17, 2024.

35. Eisenberg reported continued non-compliance by United regarding the required minimum number of flight attendants on active duty during the boarding procedure with Gupta and other senior leaders in a meeting on or about June 5, 2024.

36. Gupta asked Eisenberg to meet with Gupta and a human resources representative on or about June 6, 2024, and informed Eisenberg of Gupta's intent to remove Eisenberg from his position as managing director of operations, strategy and performance. Gupta did not provide Eisenberg with any clarity on the timeline for when this change might be carried out, stating at times during the meeting that Eisenberg might be transitioned out of his current role in a month and stating at other times that Eisenberg may remain in the position through the end of the summer or for up to four months.

37. United, through Gupta, told Eisenberg on or about June 6, 2024, that United would work with Eisenberg to identify a mutually agreeable new position for Eisenberg if United did move him.

38. Gupta advised Eisenberg on or about June 13, 2024, that Gupta thought Eisenberg should accept an offer to fill a vacant director level position in the financial portion of United's corporate structure. Gupta told Eisenberg during this conversation why Gupta thought Eisenberg was well-suited for the role and stated that Gupta hoped or knew they would work together again in the future.

39. Gupta's statement to Eisenberg on June 13, 2024, misled Eisenberg into holding a reasonable belief that United did not intend to terminate Eisenberg's employment.

40. Gupta also placed a call to Eisenberg in the evening on July 10, 2024. Eisenberg missed the call and noticed the next day, writing Gupta an email on July 11, 2024 that he noticed Gupta's missed call, and that he can chat at Gupta's convenience. Gupta wrote back he would call Eisenberg again later that day. However, Eisenberg never received a phone call or any further direct communication with Gupta from that point forward. The last direct communication Gupta and Eisenberg had had outside of this interaction was the previously discussed meeting on June 13, 2024.

41. United's human resources personnel, including Krista Fischer, and United's chief financial officer, Michael Leskinen engaged in conversation with Eisenberg about United's efforts to identify potential new roles for Eisenberg throughout the remainder of June, misleading Eisenberg reasonably to believe that United did not intend to terminate Eisenberg's employment.

42. United informed Eisenberg on or about June 25, 2024, that it intended to announce his position's replacement in a town hall meeting that would take place on or about June 26, 2024.

43. Captain Joe Heins, the Vice President of the Network Operations Center ("NOC") and Eisenberg's newly appointed boss as of the May 29, 2024 reorganization called Eisenberg on the morning of June 25, 2024. Gupta had sprung on Heins that Gupta intended to announce Eisenberg's replacement at an all Air Operations Virtual Town Hall the next day, June 26, 2024. Heins therefore intended to notify his direct reports that morning in advance of an expected 4pm deadline to send an announcement email to all of Air Operations about the new reorganizations ahead of the Town Hall the next day. All the hustle to beat that deadline was in the end unnecessary as for whatever the reason, the announcement email from Gupta ended up going out

on June 26, 2024 anyway. Captain Heins told Eisenberg the name of his selected successor and moreover confided that he did not even have the replacement's signed offer as of that moment. Heins also confided that he did not know Eisenberg's backfill well (in fact, he was selected by Gupta as opposed to Captain Heins). Eisenberg told Captain Heins that his named replacement is high quality. The two were enrolled in a half year long Director level leadership training program spanning the first half of 2022 and Eisenberg was sincere about his kind words toward his successor.

44. As soon as Eisenberg began to worry the sentiment to find a home for him at United was changing – surely the publicity would make an internal job search significantly harder - an unexpected thing occurred. Someone on the virtual town hall posed the question: “What’s going to happen with Eisenberg?” Gupta’s delivery seemed to Eisenberg to turn warm and in direct contrast to the cold tone of the announcement email. Gupta, perhaps to appease the questioner or to portray himself more favorably, said that United is “working on something” for Eisenberg. The statement was effective at being soothing and seeming to reassure that an adverse outcome was to be avoided. It both irritated and soothed Eisenberg who now chalked up the poor execution and written announcements to surrogates of Gupta rather than Gupta himself. In summary, Gupta’s statement on or about June 26, 2024, misled Eisenberg and others reasonably to believe that United intended to reassign Eisenberg to a new position rather than terminate his employment with the company.

45. Eisenberg informed Leskinen on or about June 30, 2024, that a finance role they had discussed as a potential position for Eisenberg within United was not a suitable fit because it represented too large of a demotion.

46. Eisenberg initiated an internal complaint of retaliation with United on or about July 3, 2024, indicating that Gupta's decision to remove Eisenberg from his position was made in retaliation for Eisenberg's safety and corporate governance related disclosures and complaints of non-compliance.

47. Eisenberg served this internal complaint memo to HR Director Leia DeVita on July 3, 2024.

48. The relevant passage in Eisenberg's July 3rd memo for SOX retaliation is: "I have strong conviction that the initial action taken on June 6 and the series of events since are ***retaliation primarily for whistleblowing concerns over corruption in an employee's relations with an international business vendor partner*** and retaliation for reporting safety concerns in late 2023." (emphasis added here). Eisenberg's original complaint via the online OSHA whistleblowing portal included: "In another example, I reported violations of company policy and what seemed to me to be clear corruption under the FCPA. I reported this to HR and to my boss, and multiple times."

49. HR Director Leia DeVita replied to the Memorandum of July 3, 2024 on July 5, 2024. She writes: "Hi Jeff – Thank you for your email. I have forwarded this complaint to the appropriate parties for their review. I will be in touch when I have more information."

50. United failed to complete an investigation into Eisenberg's internal complaint of retaliation. In fact, Eisenberg was officially separated on September 2, 2024 and there was still no investigation to speak of. It was not until 86 days after July 3, 2024 that United's Deputy General Counsel and Chief Compliance Officer sought a meeting with Eisenberg. On September 20, 2024, an article in United's daily newsletter was published discussing Corporate Safety's

roles and there it plainly said they are responsible for handling whistleblower investigations. Eisenberg reconfirmed with Ms. DeVita who had promised to forward the complaint to the appropriate parties for review” on July 5th, and she advised she had or would send it to them as well. United’s Deputy General Counsel in contrast and in contradiction with the article in the company-wide newsletter asserted that he has oversight of Corporate Safety which sat organizationally within Operations and not with Legal. When Mr. Garrison Phillips, Deputy General Counsel and Chief Compliance Officer, would not consent to the interview he requested being recorded, any investigation involving Eisenberg ended.

51. United’s director of human resources partners, Leia DeVita, invited Eisenberg on or about July 23, 2024, to meet with her on or about August 8, 2024.

52. United, through DeVita, presented Eisenberg with a separation agreement on or about August 8, 2024. DeVita made no mention of Eisenberg’s placement into a new role during their brief meeting on or about August 8, 2024, a departure from Eisenberg’s past conversations with United’s human resources.

53. This also marked an important change of circumstance in that the severance proposal labeled the event a Reduction In Force or a RIF.

54. Indeed the severance proposal contained required language because of the confluence of the OWBPA and a RIF triggering a 45 day consideration window.

55. Ms. DeVita in the course of a month – all documented – tells Eisenberg he is in a RIF, then that he is not in a RIF, and then that he is in a RIF of 1. Also cited were a qualifying separation event, a furlough, and then only after Eisenberg was separated did DeVita cite performance as the reason for Eisenberg’s separation. DeVita prepared a response to a personnel

records request that Illinois state law requires an employer to share. The 2nd page of the 96 pages tendered is a sheet labeling Eisenberg's departure as a Reduction in Force.

56. Notably despite Eisenberg asking to see the list of Reduction in Force demographics as is required by law to be provided, United refused to comply with the law.

57. It so happens that the 96 page employee file was over 70 pages of old performance reviews.

58. United misled Eisenberg into reasonably believing that United intended to identify a new role for him within the company up until at least on or about August 8, 2024.

59. United did not engage in conversation with Eisenberg about potential new roles within the company after August 8, 2024.

60. United retaliated against Eisenberg for his past protected activities on or about September 2, 2024, when United ended Eisenberg's employment.

61. United intentionally did not inform Eisenberg in clear terms at any point prior to his eventual termination on September 2, 2024, that United was disengaging or ceasing its efforts to find Eisenberg a mutually agreeable new role.

62. Eisenberg initiated a complaint of retaliation with the Department of Labor on or about October 9, 2024.

63. Eisenberg's initial written complaint focused upon the safety-related aspects of his protected activity.

64. Eisenberg completed an oral interview with OSHA investigator Steward on or about October 11, 2024. Eisenberg informed Steward during the interview on or about October 11, 2024, that, in addition to engaging in protected activity related to air safety concerns,

Eisenberg also provided information to United as part of its investigation regarding Murthy's management of, and potential conflicts of interest related to, a United contract with an outside software development company, Skylinx.

65. Eisenberg informed Steward during their call on or about October 11, 2024, that United misled Eisenberg into believing that United intended to reassign Eisenberg to a new position rather than terminate his employment.

66. Steward provided Eisenberg with a template to fill in information regarding his complaint following their call on or about October 11, 2024. The template Steward provided to Eisenberg prompted Eisenberg to provide written summaries of Eisenberg's engaging in protected activities under AIR-21, but it did not ask Eisenberg to provide any information about the *prima facie* case of SOX retaliation that Eisenberg reported to Steward during their call.

67. Steward failed to identify Eisenberg's complaint as implicating SOX's anti-retaliation provisions and did not ask Eisenberg any follow up questions about the Skyplan project management issues that Eisenberg raised in their October 11, 2024 interview as a factor in United's decision to reassign and ultimately terminate him.

68. Eisenberg informed Steward, during OSHA's investigation of his complaint, that Gupta and other employees of United made comments in the months following June 6, 2024, that continued to mislead Eisenberg into believing that United intended to place Eisenberg into a new position rather than terminate his employment.

69. United learned of Eisenberg's October 9, 2024, complaint of retaliation to the Department of Labor on or shortly before October 21, 2024.

70. United subsequently informed Eisenberg on or about October 21, 2024, that it was altering Eisenberg's eligibility to obtain future employment within United and that Eisenberg was similarly ineligible for hire with any of United's regional carrier airlines.

71. The Department of Labor's Occupational Safety and Health Administration ("OSHA") dismissed Eisenberg's complaint initiated on or about October 9, 2024, on or about December 17, 2024.

72. OSHA's dismissal of Eisenberg's complaint initiated on or about October 9, 2024, identified the complaint as untimely under AIR-21 because it erroneously accepted that United clearly informed Eisenberg of its intent to terminate his employment on or about June 6, 2024, when United misled Eisenberg into a reasonable belief that it intended to reassign him into a mutually agreeable position until at least August 8, 2024.

73. OSHA's dismissal of Eisenberg's complaint initiated on or about October 9, 2024, identified the complaint as untimely because it failed to acknowledge that Eisenberg orally provided a summary of events that made out a *prima facie* case of retaliation in violation of SOX.

74. Eisenberg filed a timely appeal with the Department of Labor's Office of Administrative Law Judges of OSHA's dismissal of his complaint initiated on or about October 9, 2024, on or about January 16, 2025. Eisenberg initiated a complaint of retaliation with the Department of Labor on or about January 21, 2025, alleging that United's decision to blacklist him from eligibility for future employment in retaliation for his protected activities under AIR-21 and SOX. This blacklisting claim will be ripe for amendment to this Complaint on or after March 24, 2025.

Timeliness of Complaint

75. Complainant initiated his first complaint of retaliation with the Department of Labor on or about October 9, 2024.

76. Under Seventh Circuit precedent, two elements must be shown in a discriminatory discharge case to establish the date of the “unlawful employment practice.” *Flannery v. Recording Indus. Ass'n of Am.*, 354 F.3d 632, 640 (7th Cir. 2004). First, “there must be a final, ultimate, non-tentative decision to terminate the employee.” *Id.* Second, “the employer must give the employee ‘unequivocal’ notice of its final termination decision.” *Id.*

77. United failed to provide Eisenberg with unequivocal notice of its final termination decision and engaged in actions which had a clear effect of misleading Eisenberg into a reasonable belief that, though he would no longer serve in his former position reporting to Gupta, that United intended to reassign Eisenberg into a mutually agreeable position.

78. United represented to Eisenberg that United had disengaged from efforts to find him a new position and that he would be terminated on September 2, 2024, when he met with DeVita on August 8, 2024, was presented with a separation agreement for the first time, and when conversation of finding Eisenberg a new position within United ceased.

79. Calculated from United’s August 8, 2024, provision of a separation agreement to Eisenberg, which served as Eisenberg’s first notice that United was contemplating terminating his employment rather than reassigning him to a new role, Eisenberg’s October 9, 2024 complaint of retaliation in violation of AIR-21 is indeed timely, as it was filed 62 days after he received notice of the adverse action that was effectuated on September 2, 2024. Eisenberg’s complaint of retaliation under AIR-21 should not have been dismissed as untimely.

80. Equitable tolling is appropriate when the defendant has actively misled the plaintiff respecting the cause of action. *School Dist. of Allentown v. Marshall*, 657 F.2d 16 (3d Cir. 1981).

81. *Arguendo*, even if United evidenced an intent to terminate Eisenberg's employment on June 6, 2024, a conclusion that is not supported by the facts in this case, the circumstances in this case indicate that the 90-day statute of limitations under AIR-21 should be equitably tolled.

82. Complainant Eisenberg's October 9, 2024, complaint also represents a timely complaint under SOX.

83. The procedures for the Department of Labor's handling of retaliation complaints under Section 806 of SOX dictate that "a complaint will be dismissed unless the complainant has made a *prima facie* showing that a protected activity was a contributing factor in the adverse action alleged in the complaint." 29 C.F.R. § 1980.104 (e)(1). These same procedures proscribe that "the complaint, supplemented as appropriate by interviews of the complainant" must make the *prima facie* showing. 29 C.F.R. § 1980.104 (e)(1). Further, the procedures for filing a retaliation complaint under Section 806 of SOX provides that "oral complaints will be reduced to writing by OSHA." 29 C.F.R. § 1980.103 (b).

84. Eisenberg's written complaint initiated on or about October 9, 2024, was followed by an oral interview with OSHA investigator Kathy Steward on or about October 11, 2024, during which Eisenberg made a *prima facie* showing that his protected activity under SOX was a contributing factor in the adverse action alleged in his complaint.

COUNT 1
The Aviation Investment and Reform Act for the 21st Century (AIR-21),
39 US.C. § 42121 *et seq.*

85. Complainant adopts and incorporates by reference the averments of the preceding paragraphs as if fully set forth herein.

86. Respondent unlawfully retaliated against Complainant for engaging in protected activity as described by the anti-retaliation provisions of AIR-21's subsection (a)(1).

87. Respondent is a covered employer under AIR-21 because it is a holder of a certificate under 49 U.S.C. § 44705.

88. AIR-21 prohibits a covered certificate holder from retaliating or discriminating against an employee in the terms and conditions of employment for making a protected disclosure.

89. Complainant engaged in activity protected under this statute when he overrode Italiano's directive not to report the false positive maintenance readiness reporting issue to United's GSAP team in September and October of 2023 and when Eisenberg voiced concerns with United's practices that permitted passenger boarding to occur with fewer than the required number of flight attendants on board, and when Eisenberg renewed his concerns and his opposition to the fact that the issue had still not been addressed in a meeting on or about June 5, 2024, just one day before Eisenberg was informed that he would be removed from his position.

90. Respondent retaliated against Complainant in retaliation for his protected disclosures when United removed Eisenberg from his position as a Managing Director, when it terminated his employment at United, and when it blacklisted him from eligibility for future employment with United as well as its regional carriers.

91. As a result of Respondent's violations of AIR-21, Complainant has suffered and is continuing to suffer injuries, including but not limited to, damage to his career and professional and personal reputation, attorney's paying attorney's fees and costs, and suffering economic damages, special damages, and compensatory damages. Complainant seeks all this relief, and any other relief available under AIR-21.

COUNT II
Sarbanes-Oxley Whistleblower Retaliation
Sarbanes Oxley Act of 2002 – 18 U.S.C. §1514A *et seq.*

92. Complainant reasserts and incorporates by reference all paragraphs set forth above as if restated herein.

93. Section 806 of SOX applies to any publicly traded company that holds a class of securities registered under Section 12 of the Exchange Act or any publicly traded company that is subject to the periodic reporting requirements of Section 15(d), or any officer, employee, contractor, subcontractor or agent of such company. 18 U.S.C. § 1514A(a).

94. United is a publicly traded company that holds a class of securities registered under § 12 of the Securities Exchange Act of 1934 (15 U.S.C. § 78l). United is listed on NASDAQ and files reports with the SEC. United is publicly traded on the New York Stock Exchange under the symbol UAL.

95. Eisenberg is a covered employee under SOX.

96. Section 806 of SOX protects employees who engage in protected conduct by “provid[ing] information, caus[ing] information to be provided, or otherwise assist[ing] in an investigation regarding any conduct which the employee reasonably believes constitutes” securities fraud, wire fraud, bank fraud, or violation of “any rule or regulation of the Securities

and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.”18 U.S.C. § 1514A(a)(1).

97. Engaging in protected activity under Section 806 of SOX does not require an employee to report fraud, but only to disclose conduct the employee reasonably believes may violate any SEC rules or regulations, or any federal statute relating to fraud.

98. Eisenberg reasonably believed that his predecessor’s failure to address the significant cost and timeline overruns of the Skyplan project and United’s failure to take action regarding Murthy’s apparent conflict of interests in managing the project, constituted a violation of rules or regulations of the Securities and Exchange Commission and Federal laws relating to fraud against shareholders.

99. Eisenberg placed United on notice of his concerns when he reported concerns about his predecessor’s oversight of the Skyplan project that permitted the project to overrun deadlines and budgetary allocations over the previous two years and when he informed United investigators as well as Ankit Gupta of allegations that Murthy had potentially violated his duty of loyalty to United by developing a personal interest within Skylinx, the third party company whose work for United Murthy was tasked with overseeing.

100. In violation of SOX, 18 U.S.C. § 1514A, and in retaliation for Eisenberg’s protected activity of reporting a reasonable belief that United had failed to implement proper corporate governance procedures to prevent wasteful overspending and fraud and abuse on the part of one its employees who held a private interest in the project he was overseeing for United, United unlawfully removed Eisenberg from his position as a Managing Director, terminated his

employment at United, and blacklisted him from eligibility for future employment with United as well as its regional carriers.

101. As a result of Respondent's violations of SOX, Complainant has suffered and is continuing to suffer injuries, including but not limited to, damage to his career and professional and personal reputation, paying attorneys fees and costs, and suffering economic damages, special damages, and compensatory damages. Complainant seeks all this relief, and any other relief available under SOX.

PRAYER FOR RELIEF

WHEREFORE, Complainant Jeffrey Eisenberg prays that judgment be entered against Respondent for violation of the foregoing statutory causes of action as follows:

- a) Back pay;
- b) Reinstatement to his former position, or in the alternative, front pay;
- c) Compensatory, non-economic damages;
- d) Equitable relief;
- e) Special damages;
- f) Punitive damages under all counts for which punitive damages are available;
- g) Pre-judgment interest;
- h) Reasonable attorneys' fees, litigation costs, and court costs; and
- i) Any other such relief that the Court may deem just and equitable.

Respectfully submitted,

/s/ Adam Augustine Carter

R. Scott Oswald

Adam Augustine Carter

The Employment Law Group, PC

1717 K St. NW, Ste. 1110

Washington, DC 20006

202-261-2803

soswald@employmentlawgroup.com

acarter@employmentlawgroup.com

Counsel for Complainant Jeffrey Eisenberg

CERTIFICATE OF COUNSEL

Complainant has met and conferred with Respondent on March 18, 2025 in a good faith effort to identify uncontroverted facts and legal issues. The parties have agreed once the pleading complaint is filed to meet and confer further to determine if any stipulations may be agreed upon.

/s/ Adam Augustine Carter

Adam Augustine Carter