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VICTOR YUSTMAN, VICTORIA FELLOWS,  
7 MARIA DEGLAUVE, RON OZAKI,  
BERNHARD J. ORNELLAS, and ERNEST  
8 HEWSON, individually and on behalf of all others  
similarly situated  
9

10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**  
12

13 VICTOR YUSTMAN, VICTORIA  
14 FELLOWS, MARIA DEGLAUVE,  
RON OZAKI, BERNHARD J.  
15 ORNELLAS, and ERNEST HEWSON,  
individually and on behalf of all others  
16 similarly situated

17 Plaintiffs,

18 vs.

19 UNITED AIRLINES, INC., UNITED  
20 AIRLINES FRONTLINE  
VOLUNTARY SEPARATION LEAVE  
21 PROGRAM, UNITED AIRLINES  
CONSOLIDATED WELFARE  
22 BENEFIT PLAN, and UNITED  
AIRLINES RETIREE MEDICAL  
23 PROGRAM,  
24

25 Defendants.  
26  
27  
28

Case No.:

**CLASS ACTION**

**COMPLAINT FOR:**

**BREACH OF THE EMPLOYEE  
RETIREMENT INCOME  
SECURITY ACT OF 1974;  
ENFORCEMENT AND  
CLARIFICATION OF RIGHTS;  
PRE-JUDGMENT AND POST-  
JUDGMENT INTEREST; AND  
ATTORNEYS' FEES AND COSTS**

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1 Plaintiffs, Victor Yustman, Victoria Fellows, Maria Deglauve, Ron Ozaki,  
2 Bernhard J. Ornellas, and Ernest Hewson, individually and on behalf of all others  
3 similarly situated, herein set forth the allegations of their Complaint against  
4 Defendants United Airlines, Inc., United Airlines Frontline Voluntary Separation  
5 Leave Program, United Airlines Consolidated Welfare Benefit Plan, and United  
6 Airlines Retiree Medical Program.

7  
8 **JURISDICTION**

9 1. This Court has subject matter jurisdiction over Plaintiffs’ federal  
10 claims pursuant to 28 U.S.C. § 1331 and the specific jurisdictional statute for claims  
11 brought pursuant to the Employee Retirement Income Security Act of 1974  
12 (“ERISA”), 29 U.S.C. § 1132(e) and (f). This Court has supplemental subject  
13 matter jurisdiction of the state-law claim pursuant to 28 U.S.C. § 1367(a), because  
14 that claim forms part of the same case or controversy and exceeds the sum or value  
15 of \$75,000.

16 **VENUE**

17 2. Venue lies in the Central District of California pursuant to ERISA  
18 Section 502(e)(2), 29 U.S.C. § 1132(e)(2), because United Airlines, Inc. (“United”)  
19 may be found in this judicial district and because the actions or inactions  
20 constituting the breaches occurred in this district.

21 **NATURE OF THE CASE**

22 3. Plaintiffs Victor Yustman, Victoria Fellows, Maria Deglauve, Ron  
23 Ozaki, Bernhard J. Ornellas, and Ernest Hewson bring this suit against Defendants  
24 under ERISA, for benefits under United Airline’s Frontline Voluntary Separation  
25 Leave Program (“VSL Program”) offered to certain employees in January 2021, as  
26 well as for injunctive and other equitable relief to enforce rights under and remedy  
27 violations of ERISA.  
28

**THE PARTIES**

1  
2 4. Plaintiff Victor Yustman is a resident of Moreno Valley, County of  
3 Riverside, State of California. Mr. Yustman was an employee of United Airlines  
4 (“United”), who retired within 36 months prior to January 21, 2021.

5 5. Plaintiff Victoria Fellows is a resident of Carson City, County of Los  
6 Angeles, State of California. She was an employee of United who retired within  
7 36 months prior to January 21, 2021.

8 6. Plaintiff Maria Deglauve is a resident of the City of Santa Clarita,  
9 County of Los Angeles, State of California. She was an employee of United who  
10 retired within 36 months prior to January 21, 2021.

11 7. Plaintiff Ron Ozaki is a resident of the City of Los Angeles, County of  
12 Los Angeles, State of California. He was an employee of United who retired  
13 within 36 months prior to January 21, 2021.

14 8. Plaintiff Bernhard J. Ornellas is a resident of Playa del Rey, County of  
15 Los Angeles, State of California. He was an employee of United who retired  
16 within 36 months prior to January 21, 2021.

17 9. Plaintiff Ernest Hewson is a resident of Los Angeles, County of Los  
18 Angeles, State of California. He was an employee of United who retired within 36  
19 months prior to January 21, 2021.

20 10. Defendant United is an Illinois corporation headquartered in Chicago,  
21 Illinois, which operates throughout the United States. Upon information and  
22 belief, United is the plan sponsor and plan administrator of the VSL Program, the  
23 United Airlines Retiree Medical Program, and the United Airlines Consolidated  
24 Welfare Benefit Plan and in those capacities and others in an ERISA fiduciary.

25 11. Defendant VSL Program is an employee welfare benefit plan within  
26 the meaning of ERISA Section 3(1), 29 U.S.C. § 1002(1).  
27  
28

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1 offered medical and travel pass benefits for retiree eligible employees, as well as  
2 COBRA for non-retiree eligible employees.

3 17. On August 17, 2017, Oscar Munoz, who was the CEO of United from  
4 2015 to 2020, sent out an announcement to all United employees saying that  
5 “[d]uring my visits throughout the system, a frequent question that arises from our  
6 colleagues is: When can we expect to have another early out opportunity so that we  
7 can plan for retirement?” In response, Mr. Munoz said that he had looked into  
8 this question “with the seriousness and depth that the issue and our people  
9 deserve.” He continued by saying that “an early out makes sense when a  
10 company is getting smaller,” but at that time an early out did not make sense  
11 because the company was growing.

12 18. Nevertheless, Mr. Munoz recognized that some long-term employees  
13 were hesitant to retire, sometimes waiting for an early out program to decide to end  
14 their long careers. In order to remove this hesitancy and encourage retirement by  
15 such workers, Mr. Munoz made a promise to employees designed, in his words, to  
16 “give [them] greater confidence when [they] make the decision to retire.” He  
17 promised that a new clause would be added to the United retirement policy stating  
18 that if an early out program was offered within 36 months after retirement, the  
19 retired employee would be allowed to participate in the program.

20 19. Mr. Munoz stated that this change in policy was because he “wanted to  
21 be upfront and transparent” with the employees about United’s future plans so that  
22 employees could “make the best plans for [themselves] and [their] family.”

23 20. In accordance with this promise, in August 2017 a policy was  
24 established for employees who retired within 36 months of an early out program  
25 offering would be offered the right to participate in the early out program.

26 21. In 2020, when the COVID-19 pandemic began to hit the United States  
27 and the globe, the airline industry was significantly impacted due to travel  
28 restrictions and the decreased demand for travel during early phases of the

1 pandemic. As a result, United, along with many other airlines, found itself in a  
2 downward financial trajectory.

3 22. In May 2020, in response to a reporter's questions, Kate Gebo,  
4 United's Executive Vice President of Human Resources and Labor Relations, said  
5 that United planned to cut more than 3,400 management jobs, which represented  
6 approximately 30% of United's management and administrative employees.  
7 Employees were to be notified in July, with an effective date of October 1, 2020.

8 23. Ms. Gebo also stated that United intended to announce a voluntary  
9 separation package for domestic management and administrative employees by  
10 mid-May 2020. This package allowed certain employees to keep their travel  
11 privileges and medical benefits for an extended period along with some  
12 continuation of pay.

13 24. Ms. Gebo also stated that starting October 1, 2020, white-collar  
14 employees who were laid off would not receive any cash severance packages. In  
15 the interview she stated that United is "trying to give everyone as much notice as  
16 possible that changes are coming, and we're making the voluntary option as  
17 attractive as possible."

18 25. By this time, United was already receiving financial assistance from  
19 the CARES Act (Coronavirus Aid, Relief, and Economic Security Act, March 27,  
20 2020). By accepting the financial assistance from the CARES Act, United was  
21 prevented from reducing its employment levels more than 10% below its March  
22 24, 2020 level until September 30, 2020.

23 [https://home.treasury.gov/system/files/136/Procedures%20and%20Minimum%20R  
24 equirements%20for%20Loans.pdf](https://home.treasury.gov/system/files/136/Procedures%20and%20Minimum%20Requirements%20for%20Loans.pdf)

25 26. On October 30, 2020, United announced it would be ending its policy  
26 to allow retired employees to participate in early out programs offered within 36  
27 months of retirement. The announcement said that this was due to uncertainty in  
28

1 the airline industry, but also because policy was “limit[ing] [United’s] available  
2 options.”

3 27. United officially terminated its retiree early out participation policy  
4 effective January 1, 2021.

5 28. On January 21, 2021, United announced that it was offering the VSL  
6 Program. According to the VSL Program’s terms that were distributed to  
7 employees who were members of the IAM (International Association of  
8 Machinists), employees who were at least 45 years old and had at least 15 years of  
9 service were eligible to participate. Such employees could choose to voluntarily  
10 separate from employment and choose between two programs.

11 29. On information and belief, the VSL Program was a company-wide  
12 program offered to employees other than the IAM group of employees who were at  
13 least 45 years old and had at least 15 years of service.

14 30. The VSL Program A offered payment of 33% of the employee’s wages  
15 up to \$20,000 through the end of 2021 (referred to as the “pre-separation period”),  
16 \$125,000 contribution to a Retiree Health Account, continued medical coverage  
17 through December 31, 2021, and active travel privileges through December 31,  
18 2026.

19 31. The VSL Program B offered payment of 100% of an eligible  
20 employee’s base wages up to \$112,500 through August 31, 2022, and active travel  
21 privileges through December 31, 2026.

22 32. At the end of the pre-separation period, employees who were  
23 considered eligible for “retiree” status as defined by United (determined by age and  
24 years of service) would be eligible for retiree medical and retiree pass travel under  
25 certain circumstances. If they were not retiree-eligible for medical, they were  
26 entitled to COBRA. If they were not eligible for retiree pass travel, they could be  
27 eligible for Retiree Lite Travel passes (depending on their age and years of  
28 service).



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1           38. Between 2010 and 2012 the two companies continued to operate  
2 separately until they could fully integrate their operations, which was completed in  
3 or around March 2012.

4           39. Mr. Yustman began his employment with Continental Airlines at LAX  
5 on April 5, 1975. He worked in ramp services, which continued after he became  
6 an employee of United. Mr. Yustman retired from United on February 12, 2019.  
7 He retired secure in the knowledge that, if an early out incentive program was  
8 offered in the following 36 months, he would be informed of this and be able to  
9 participate. However, United did not inform him or other retirees about the VSL  
10 Program. Instead, through others he knew who were still employed with United,  
11 Mr. Yustman became aware of the program on approximately February 24, 2021,  
12 the day before the application window for the VSL Program closed. He  
13 immediately contacted Arno Hohn, the IAM union representative for LAX  
14 employees. Mr. Yustman asked how he could apply for the early out program.  
15 Mr. Hohn explained the two options that were available under the VSL Program,  
16 but stated that he was not sure whether Mr. Yustman was eligible to participate.  
17 Mr. Yustman reminded Mr. Hohn about the August 2017 announcement from Mr.  
18 Munoz. Mr. Hohn said that he did not recall the retirement policy, but informed  
19 Mr. Yustman that he would look into it and get back to Mr. Yustman later in the  
20 day.

21           40. When Mr. Hohn called Mr. Yustman back, he informed Mr. Yustman  
22 that the VSL Program was not an early out program. When Mr. Yustman  
23 questioned Mr. Hohn about this, Mr. Hohn told Mr. Yustman to forget about the  
24 VSL Program and not to waste his time with a lawyer because no lawyer could  
25 compete with United's top lawyers.

26           41. Not satisfied with this response, Mr. Yustman contacted several people  
27 within United, including the United Director of Retirement, the human resources  
28

1 office, the employee services office and a retirement specialist. No one was  
2 willing to help him.

3 42. In fact, all of the United personnel with whom Mr. Yustman spoke said  
4 they did not recall the announcement from Mr. Munoz about the 2017 early out  
5 policy for anyone who retired within 36 months of an early out offering, despite  
6 the very recent cancellation of the policy only a month earlier, as well as a Q&A  
7 that was provided to the VSL participants specifically about the 2017 retiree early  
8 out policy.

9 43. Ms. Fellows began her employment with Continental Airlines at LAX  
10 on July 16, 1989. She worked in ramp services, which continued after she  
11 became an employee of United. In March of 2019, Ms. Fellows injured her knee  
12 opening an aircraft door and went on workers' compensation. She eventually had  
13 a total knee replacement. Due to the surgery and subsequent complications from  
14 the surgery, she remained off work for many months. In October 2020, her  
15 doctor released her to return to work but with restrictions and limitations.  
16 Because of her restrictions, United told her they did not have a position to which  
17 she could return and told her she either needed to resign or retire. Around  
18 December 8th or 9th of 2020, Ms. Fellows talked to a human resources  
19 representative from United and was told she needed to give a date of resignation or  
20 retirement. Having worked for over 30 years and being 67 years old, Ms. Fellows  
21 decided to retire. Her official retirement date was set for December 10, 2020.  
22 Ms. Fellows was not informed by United that an early out package was going to be  
23 announced on January 21, 2021, nor did she receive any communication directly  
24 about the package when it was announced on January 21, 2021. Ms. Fellows  
25 certainly would have postponed her retirement date if she had been given the  
26 opportunity and informed that by doing so, she would qualify for additional  
27 valuable benefits. She learned there was a package because she was still friends  
28 with many United employees. She tried to contact United to find out more about

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1 the early out and whether she qualified, but no one would answer or return her  
2 calls.

3 44. Ms. Deglaube began her employment with Continental Airlines at  
4 LAX on April 7, 1986. In January 2020, at the age of 65 and just shy of 34 years  
5 of service, she decided to retire. Ms. Deglaube never received any direct  
6 communication from United about the early out program announced on January 21,  
7 2021.

8 45. Mr. Ozaki began his employment with Continental Airlines at LAX on  
9 December 13, 1978. In 2019, although hoping for early out offering, Mr. Ozaki  
10 decided it was time to retire. He retired effective June 2, 2019. Ms. Ozaki never  
11 received any direct communication from United about the early out program  
12 announced on January 21, 2021.

13 46. Mr. Ornellas began his employment with Continental Airlines at LAX  
14 on December 28, 1977, at the age of 19. After COVID-19 began to affect United  
15 employees, Mr. Ornellas decided to use his many hours of unused sick time and  
16 stay home. At that point, he had accumulated approximately 1,500 hours of sick  
17 time and he took seven months off work and returned in October 2020. He was  
18 planning on working through the end of December 2021, but after being back for a  
19 couple of months during a peak of COVID-19 cases, he decided he was ready to  
20 retire after 43 years of employment. Around December 10, 2020, Mr. Ornellas  
21 called United and spoke to Teri Gallardo, the LAX Human Resources Operations  
22 Supervisor to inform her of his intent to retire. Ms. Gallardo told Mr. Ornellas  
23 that he would receive more from the Continental Airlines Retirement Plan if he  
24 retired in December than he would if he retired in January because the interest rates  
25 used to adjust the lump sum would be changing effective January 2021. Based on  
26 this conversation, Mr. Ornellas decided he would retire in December 2020.

27 47. United set Mr. Ornellas' official retirement date as effective December  
28 28, 2020, although he, in fact, continued to work with United's human resources

1 for the first two weeks of January 2021 to finalize the required paperwork.  
2 Indeed, from December 10, 2020, through early January 2021, Mr. Ornellas had  
3 approximately 15 calls with human resources personnel in order to complete  
4 required forms and to have his questions answered. On or about January 7, 2021,  
5 Mr. Ornellas received an official letter confirming his termination from active  
6 employment. The letter was dated January 4, 2021. Nowhere in this letter and  
7 at no time during any of his conversations between December 10, 2020 and  
8 January 7, 2021, did United inform him of the imminent early out program that  
9 United was about to offer to employees, and he never directly received any  
10 communication from United about the program. Mr. Ornellas was shocked and  
11 outraged when he learned from Mr. Yustman about the early out that was being  
12 offered to others so close after his date of retirement. He certainly would have  
13 waited a few weeks to retire in order to qualify for these valuable benefits if he had  
14 been informed that this was necessary. He contacted human resources and was  
15 told there was nothing they could do because he was retired and no longer an  
16 active employee.

17 48. Mr. Hewson was employed by Continental Airlines at LAX starting in  
18 November 1988. After more than 30 years of service, he decided to retire  
19 effective April 1, 2019, at the age of 66. He never received any direct  
20 communication from United about the early out program announced on January 21,  
21 2021.

22 49. By failing to provide Plaintiffs and the Class members with the notices  
23 about the VSL Program and access to apply for the benefits thereunder, United  
24 prevented Plaintiffs and the Class members from applying for the VSL Program.  
25 In fact, the application process was only available through an online platform for  
26 employees, to which Plaintiffs and Class members, as retirees, no longer could  
27 access.  
28

1 50. Nevertheless, Mr. Yustman made a written claim for benefits through a  
2 letter dated September 15, 2021, from counsel for Mr. Yustman to the  
3 administrator of the VSL Program. No response was received.

4 **Application of ERISA to the VSL**

5 51. ERISA governs employee benefits plan that are established or  
6 maintained by any employer engaged in commerce and includes both employee  
7 welfare benefit plans and employee pension benefit plans. 29 U.S.C. §§ 1002 and  
8 1003(a).

9 52. 29 U.S.C. § 1002(3) provides that an employee welfare benefit plan is  
10 “any plan, fund, or program which was heretofore or is hereafter established or  
11 maintained by an employer to provide, in part, medical, disability, or  
12 unemployment benefits.

13 53. 29 C.F.R. § 2510.3–1(a)(3) provides that “include[d] within the  
14 definition of ‘welfare plan’ [are] those plans which provide holiday and severance  
15 benefits, and benefits which are similar (for example, benefits which are in  
16 substance severance benefits, although not so characterized).”

17 54. The VSL Program is an employee benefit plan that was established and  
18 is maintained by United that provides salary continuation and ancillary benefits that  
19 constitute or are similar to severance benefits. It is, therefore, a welfare plan or  
20 program governed by ERISA.

21 **CLASS ACTION ALLEGATIONS**

22 1. **Class Definition.** Plaintiffs bring this action as a class action pursuant  
23 to Rules 23(a), (b)(1) and (b)(2) of the Federal Rules of Civil Procedure on behalf of  
24 themselves and the following class of persons similarly situated (the “Class”):

25 All employees of United who retired from United within 36  
26 months prior to January 21, 2021, and who were at least 45  
27 years old with at least 15 years of service at the time of  
28 retirement.

1           2.     **Numerosity.** Upon information and belief, the Class is so numerous  
2 that joinder of all persons in the class is impracticable. Numerosity of the class  
3 will be ascertained and confirmed by discovery. The number and identity of the  
4 class members are determinable from the Defendants’ records.

5           3.     **Commonality.** There are questions of law or fact common to all  
6 members of the Class that concern Defendants’ actions, including without  
7 limitation:

- 8           a. Whether the VSL Program is an early out program to which the  
9           retiree early out policy applies;
- 10          b. Whether Defendants acted arbitrarily and capriciously in determining  
11          that Plaintiffs and the Class of retirees were not eligible to participate  
12          in the VSL Program;
- 13          c. Whether Defendants owed a fiduciary duty to Plaintiffs and the Class  
14          with regard to the VSL Program;
- 15          d. Whether Defendants prevented employees who retired within 36  
16          months prior to January 21, 2021, from being eligible to participate in  
17          and applying for benefits under the VSL Program;
- 18          e. Whether Defendants breached their fiduciary duties by preventing  
19          Plaintiffs and the Class from participating in the VSL Program.

20           Resolution of these questions will not require individual inquiry into the  
21 actions or circumstances of individual employees. These common questions of  
22 law or fact center upon whether Plaintiffs are entitled to benefits under the VSL  
23 Program and whether Defendants violated their duties under ERISA by, among  
24 other things, promising Plaintiffs that they could participate in any early retirement  
25 programs offered within 36 months of their retirements but then renege on this  
26 promise by offering such a program within the 36-month period and determining  
27 Plaintiffs could not participate in it.  
28



1 plan, to enforce his rights under the terms of the plan, or to clarify his rights to  
2 future benefits under the terms of the plan.

3 58. The VSL Program is an ERISA plan.

4 59. The VSL Program is an early out program as it meets all of the criteria  
5 and is substantially similar to all other prior early out programs offered by United  
6 Airlines.

7 60. Plaintiffs and the Class all retired within 36 months of the offering of  
8 the VSL Program and are therefore eligible to participate in the VSL Program and  
9 the ancillary benefits thereto offered through United Airlines Consolidated Welfare  
10 Benefit Plan and Retiree Medical Program.

11 61. Plaintiffs and the Class were not provided any communication about  
12 the VSL Program or the ability to apply within the application window. Mr.  
13 Yustman was specifically discouraged and prevented from applying for the VSL  
14 Program.

15 62. Despite United's attempt to prevent Mr. Yustman from applying for  
16 the VSL Program, Mr. Yustman, through his counsel, filed a claim for benefits on  
17 October 5, 2021. As of the date of the filing of this Complaint none of the  
18 Defendants have responded to the claim. Therefore, the Plaintiffs and the Class  
19 are deemed to have exhausted any administrative procedure applicable to the VSL  
20 Program. In addition, Plaintiffs and the Class are deemed to have exhausted any  
21 administrative procedures applicable to the VSL because they were not provided  
22 any information on how to apply, how to file a claim or any appeal rights they  
23 would have under ERISA and were not given access to the online platform through  
24 which employees were instructed to apply.

25 63. Such application would also have been futile given that Defendants  
26 designed the VSL Program in an attempt to evade the earlier promises made to  
27 recent retirees.  
28



1 breached its fiduciary duties by actively misinforming employees in a Q&A that the  
2 VSL was not an early out program when, in actuality, the VSL Program was not  
3 different in any material way from prior early out programs offered by United.

4 72. Plaintiffs and the Class have been harmed by Defendant United's  
5 breach of fiduciary duties.

6 **PRAYER FOR RELIEF**

7 **WHEREFORE**, Plaintiffs pray this Court enter judgment as follows:

8 As to Count I

- 9 A. Certify the Class under Federal Rule of Civil Procedure 23, appoint  
10 Plaintiffs as Class Representatives and appoint their attorneys as  
11 Class Counsel to represent the members of the Class.
- 12 B. Declare and clarify that Plaintiffs and members of the Class are  
13 entitled to participate in the January 21, 2021, VSL Program.
- 14 C. Order that benefits be awarded to Plaintiffs and Class members.
- 15 D. Award Plaintiffs attorneys' fees and costs pursuant to ERISA Section  
16 502(g), 29 U.S.C. § 1132(g).
- 17 E. Award such other and further relief as the Court deems equitable and  
18 just.

19 As to Count II

- 20 A. Certify the Class under Federal Rule of Civil Procedure 23, appoint  
21 Plaintiffs as Class Representatives and appoint their attorneys as  
22 Class Counsel to represent the members of the Class.
- 23 B. Declare that Defendant United has breached its fiduciary duties to  
24 Plaintiffs and the Class members.
- 25 C. Surcharge Defendants in the amount necessary to place Plaintiffs and  
26 the Class in the position they would have been in but for the  
27 Defendants' fiduciary breaches.
- 28

- 1 D. Equitably estop Defendants from denying that Plaintiffs and the Class
- 2 are entitled to benefits under the VSL program.
- 3 E. Award Plaintiffs attorneys’ fees and costs pursuant to ERISA Section
- 4 502(g), 29 U.S.C. § 1132(g).
- 5 F. Award such other and further relief as the Court deems equitable and
- 6 just.

7 Respectfully submitted,

8 Dated: December 6, 2021

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9  
10 By: /s/ Elizabeth Hopkins

11 Elizabeth Hopkins  
 12 Susan L. Meter  
 Attorneys for Plaintiffs  
 VICTOR YUSTMAN, VICTORIA  
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