

IN THE DISTRICT COURT FOR POLK COUNTY

MARK OMAN, STEVE BRUERE, and WILLIAM (DUKE) REICHARDT, Plaintiffs, v. UNITED AIRLINES, INC., Defendant.	Case No. _____ PETITION AT LAW AND JURY DEMAND
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COME NOW the Plaintiffs, Mark Oman, Steve Bruere, and William (Duke) Reichardt, by and through the undersigned counsel, and for their Petition at Law and Jury Demand, state as follows:

INTRODUCTORY ALLEGATION

1. The negligent, reckless, willful, and wrongful actions of United Airlines, Inc. (“UA”) caused the death and burning of Simon, the soon-to-be world’s largest rabbit, and denied his owners of the opportunity to generate substantial revenue to preserve the Iowa State Fair through charitable contributions to the Iowa State Fair Blue Ribbon Foundation.

PARTIES

2. Plaintiffs Mark Oman, Steve Bruere, and Duke Reichardt are individuals and are collectively known as the Simon Ownership/Investment Group (“Simon Group”) headed by Plaintiff Mark Oman.

3. Defendant United Airlines, Inc., (“UA”) is a major American airline. UA provides air transportation services in North America and internationally. It transports people and cargo

through its main line and regional operations. The company was founded in 1934 and is headquartered in Chicago, Illinois. UA is a Delaware corporation and a subsidiary of United Continental Holdings, Inc.

4. The Chief Executive Officer of Defendant UA is Oscar Munoz. Munoz previously served as President and Chief Operating Officer of CSX Corporation, a freight transportation company. Munoz has served on the Board of Directors for United Continental Holdings, Inc. since 2010.

5. Mark Oman is a resident of Polk County, Iowa. He is retired from Wells Fargo and Company where he held numerous positions, including Chief Executive Officer of Wells Fargo Home Mortgage and Senior Executive Vice President of Wells Fargo and Company overseeing the Wells Fargo Home and Consumer Finance Group, composed of Wells Fargo Home Mortgage, Wells Fargo Financial, and Wells Fargo Consumer Credit.

6. Steve Bruere is a resident of Warren County, Iowa. Bruere is President of Peoples Company, a leading land brokerage, appraisal, management, and investing service operating in fourteen states. Bruere spearheads Peoples' annual land investment expo, a conference bringing together major players in the land business and featuring high-profile speakers such as Jim Rogers, T. Boone Pickens, and Donald J. Trump.

7. Duke Reichardt is a resident of Polk County, Iowa. Reichardt is a partner in the Bening Financial Organization, Inc., a Principal Financial Broker. Reichardt has more than twenty-five years of financial and asset-management experience.

8. The Iowa State Fair is an internationally-acclaimed event in the State of Iowa and one of the oldest and largest agricultural and industrial expositions in the United States. Annually attracting more than one million people from all over the world, the Iowa State Fair in Des Moines

is a salute to the state's best in agriculture, industry, entertainment, and achievement. The Iowa State Fair has served as the inspiration for an original novel, *State Fair*, three motion pictures, and a Rodgers and Hammerstein's Broadway musical.

9. Plaintiffs are supporters of the Iowa State Fair and the fundraising organization for the Iowa State Fair, the Iowa State Fair Blue Ribbon Foundation.

10. The Iowa State Fair Blue Ribbon Foundation was established by the Iowa State Fair Board to conduct capital campaign for renovation and preservation of the historic Iowa State Fair. The Iowa State Fair Blue Ribbon Foundation is a 501(c)(3) non-profit organization. Since its inception in 1993, the Foundation has generated more than \$135 million in renovations to the Iowa State Fair grounds.

11. In recognition of the Blue Ribbon Foundation's twenty-five years of renovations to the Iowa State Fair, the Foundation kicked-off a twenty-fifth anniversary fundraising campaign in 2017.

JURISDICTION AND VENUE

12. This court has personal and subject jurisdiction of this matter. The Defendant conducts business in Polk County, Iowa, and the amount of damages in controversy exceeds the jurisdictional amount for the Iowa District Court.

13. Venue is proper in the Iowa District Court for Polk County, Iowa.

FACTS

14. The Simon Group purchased Simon, a ten-month-old, three-foot long Continental Giant black rabbit for the purposes of creating a fundraising vehicle for the Iowa State Fair Blue Ribbon Foundation.

15. The Simon Group planned to show Simon at the Iowa State Fair and to market and merchandise Simon as the “world’s largest rabbit,” a title held by his father, Darius, as certified by the Guinness Book of World Records. It was widely expected Simon would eventually attain this crown and be a feature attraction at the Iowa State Fair and elsewhere.

16. The Simon Group intended to market and merchandise Simon, for example, by way of apparel and other related products, such as hats, shirts, miniature versions, books, etc.

17. In April 2017, Simon Group representative Bryan Bergdale (“Bergdale”) contacted renowned British rabbit breeder, Annette Edwards, in order to purchase Simon.

18. On April 4, 2017, Annette Edwards issued Invoice No. 26 to Bryan Bergdale for purchase of Simon stating in part:

- (a) x1 Continental Giant Black with Blue Eyes D.O.B. 28th June 2016;
- (b) His name is Simon;
- (c) Simon is the son of Darius www.dariusbiggestbunny.co.uk;
- (d) Full checkup with the vet and letter fit to fly; and
- (e) Driver to take him to airport.

19. On April 5, 2017, Bergdale fully paid the Edwards invoice for the purchase of Simon before his transport to the United States.

20. Bergdale arranged with Jets4Pets, a global freight management company, to provide for transport of Simon from the United Kingdom to the United States via Defendant UA.

21. Jets4Pets is a division of Global Freight Management (GFM) Ltd., which holds itself out as “dedicated to organizing worldwide pet travel on behalf of clients.”

22. Bergdale wired the necessary funds for the transportation of Simon and arranged to pick up Simon from his international flight from the United Kingdom to the United States at the Kansas City International Airport on April 20, 2017.

23. Prior to his travel from the United Kingdom to the United States, Simon was examined by a veterinarian, who generated a written report following the physical examination of Simon, reporting that Simon appeared to be good physical condition and fit to travel. Indeed, Edwards has described Simon as being, “fit as a fiddle” at this time.

24. Simon’s transportation was to be on UA Flight 929 aboard a Boeing 767-322 from London’s Heathrow Airport for eventual transportation to Kansas City, Missouri, via Chicago’s O’Hare International Airport.

25. In anticipation of Simon’s arrival, Bergdale constructed, at significant time and expense, a pen for Simon and acquired the necessary items for his care, including toys.

26. Bergdale drove to Kansas City, Missouri, (two days before his wedding) on the morning of April 20, 2017, to pick up Simon from the Kansas City International Airport and transport him to Iowa.

27. Simon arrived on UA Flight 929 at O’Hare International Airport for his layover to Kansas City at approximately 10:25 a.m.

28. Upon landing, Simon’s crate was reportedly placed in a UA kennel facility while he waited to board his UA flight to Kansas City.

29. Sometime later Simon was reported motionless and was later found dead.

30. Defendant UA did not contact Bergdale or any member of the Simon Group to request or propose a necropsy.

31. Then, without authorization from Bergdale or any member of the Simon Group, Defendant UA cremated Simon's body.

32. Defendant UA did not deliver Simon's remains to the Simon Group.

33. The circumstances and cause of Simon's death remain highly suspicious.

34. Notably, one report of a Defendant UA employee explains Simon's untimely death by stating that Defendant UA negligently locked Simon in a freezer prior to his Kansas City transportation flight.

35. Other possible causes of Simon's death have been identified by aviation experts, including:

(a) Simon may not have been loaded properly in the bulk cargo compartment and could not withstand exposure to lower temperatures;

(b) the pilots on the flight may not have been notified that Simon was loaded onboard and the higher temperature selection on the bulk cargo switch may never have been activated;

(c) the bulk cargo compartment feature that provides a higher temperature may have malfunctioned; and

(d) dry ice associated with some type of perishable shipment product may have mistakenly been in the same compartment as Simon, which may have caused respiratory stress.

36. Whatever the cause of Simon's death, Defendant UA has not provided an explanation to the Simon Group as to the cause of his death.

UNITED AIRLINES ANIMAL DEATH RECORD

37. Defendant UA accounted for one-third of all animal deaths via air travel in the United States during the past five years.

38. In 2016, Defendant UA had the most animal deaths of all U.S. airlines for the second year in a row on scheduled domestic or international passenger flights according to Department of Transportation data.

39. The statistics regarding Defendant UA were the highest figures for each category among U.S. carriers.

40. From January 2012 through February 2017, Defendant UA reported fifty-three (53) animals died on its flights.

41. Simon's death is not unique.

42. Defendant UA holds itself out as having a "specially designed program for transporting animals" called PetSafe®. Defendant UA claims the PetSafe® "program includes a dedicated 24-hour PetSafe desk, the ability to track your pets from origin to destination, and much more."

43. Notwithstanding the representations made by Defendant UA's PetSafe® program and the transportation of pets, former handlers for Defendant UA have spoken out regarding animal neglect in the Defendant UA's PetSafe® program.

44. Indeed, two former pet handlers hired by Defendant UA have reportedly stated that the promises made by Defendant UA's PetSafe® program are "false promises."

45. These former pet handlers for Defendant UA have reported that "sometimes animals would actually be deceased upon arrival."

46. Additionally, a former pet handler hired by Defendant UA has stated that the "bottom line is [UA] needs to change regulations for the health of the animals. Not for the sake of making money."

47. Advocates say the PetSafe® program betrays conditions unsuitable for pets.

48. For example, in 2017 just months before Simon's death, a seven-year-old golden retriever, Jacob, endured a twenty-hour layover at a PetSafe® boarding facility at the Chicago airport due to his crate being too large for the flight after a Defendant UA agent assured Jacob's owner the crate would fit.

49. Jacob died within hours after arriving at his destination airport in Portland, Oregon.

50. Defendant UA's Cargo Claims department refused to accept responsibility for Jacob's death.

51. Also in 2017, several weeks after Jacob died and before Simon's death, a three-year-old American terrier, Sadie, was transported by Defendant UA using Defendant UA's PetSafe® program on a flight from Hawaii to San Diego, California. Sadie arrived at the airport in San Diego, California, dead.

52. The Safe Air Travel for Animals Act requires carriers such as Defendant UA to report incidents of loss, injury, or death of animals on their flights and improve employee training in the handling of animals humanely.

53. The Air Travel Consumer Report is a monthly publication of the Department of Transportation's Office of Aviation Enforcement and Proceedings (OAEP). The report is designed to assist customers with information on the quality of services provided by airlines.

54. As part of the monthly Air Travel Consumer Report, the Department of Transportation publicly releases the number of incidents each airline reported during the month as well as a copy of each incident report filed by the airline.

55. Title 14 of the Code of Federal Regulations, § 235.3 requires airlines to report "any incidents involving the loss, injury, or death of an animal during air transport." Airlines like

Defendant UA are required to report all such incidents that occur during a particular month by the fifteenth (15th) day of the following month.

56. Simon died on April 20, 2017. As such, Defendant UA was required to report the incident no later than May 15, 2017.

57. Defendant UA failed to file the required narrative description of the incident, narrative description of the cause of the incident, and any corrective action taken in response to the incident as required by 14 CFR § 235.3(a). The failure of Defendant UA to file the required incident report regarding Simon's death, in conjunction with the cremation of Simon's body without the consent of the Simon Group, is shameful, outrageous, and unlawful. It is evidence of the willful, wanton, and reckless disregard for the rights of the Simon Group.

58. This is not the first time Defendant UA has failed to follow federal law.

59. Prior to Simon's death and Defendant UA's failure to report his death, the U.S. Department of Transportation found that UA violated federal law by failing to file reports of incidents involving animals during air transport in a timely manner.

60. The U.S. Department of Transportation entered a consent order as a consequence of Defendant UA's various failures and directed Defendant UA to cease and desist from further violations and assessed a civil penalty of \$350,000.00. In doing so, the U.S. Department of Transportation said the civil penalty was assessed to be a "strong deterrent to future similar unlawful practices by United and other carriers."

61. In spite of the order of the U.S. Department of Transportation, Defendant UA has continued its unlawful practices.

62. Defendant UA's willful and wanton cremation of Simon before he could undergo a necropsy and Defendant UA's failure to file the required Department of Transportation report of his death demonstrates a cover-up regarding the transportation and death of Simon.

COUNT I: NEGLIGENCE

63. The Simon Group repleads paragraphs 1 through 62 as though set forth herein.

64. Defendant UA was negligent in the care and transportation of Simon during his transport from Heathrow, London, UK, until his death at O'Hare International Airport in Chicago, Illinois.

65. Defendant UA had a duty to exercise reasonable and ordinary care in the transportation of Simon. Such duty was non-delegable.

66. Defendant UA failed to exercise reasonable care in the handling and transportation of Simon.

67. Defendant UA was in exclusive control of Simon's care and custody from the time he was transported from the United Kingdom until his death at O'Hare International Airport in Chicago, Illinois.

68. Defendant UA's negligence was a direct and proximate cause of Simon's death and the Simon Group's damages.

69. Defendant UA's decision to destroy his remains establishes a reckless disregard for the Plaintiffs' rights and is indicative of the negligent care Defendant UA provided Simon and for other pets it transports.

70. Moreover, Defendant UA's dismissive, negligent attitude towards the health and safety of pets it transports is reflected by CEO Munoz's statement following Simon's death where he dispassionately compared the loss of a beloved pet, in this case Simon, with the loss of luggage.

71. This comment by Defendant UA's CEO Munoz was insensitive and displays Defendant UA's corporate indifference to matters of this type.

COUNT II: CONVERSION

72. The Simon Group repleads paragraphs 1 through 71 as though fully set forth herein.

73. Defendant UA intentionally and willfully took control over Simon's remains and destroyed them by cremation without notice to or approval of the Simon Group.

74. The intentional and willful taking was in denial of the Simon Group's title and right to Simon, as well as his remains, such that the Simon Group has been deprived of the right to possess Simon's remains.

75. As a result of Defendant UA's conversion, Defendant has denied the Simon Group's possessory right to Simon's remains.

76. The Simon Group has been damaged by the conversion of Simon's remains by Defendant UA.

COUNT III: SPOILIATION AND COVER-UP

77. The Simon Group repleads paragraphs 1 through 76 as though fully set forth herein.

78. Defendant UA had a duty to refrain from destroying relevant evidence in this matter, including the corpse of Simon.

79. Defendant UA intentionally, recklessly, or negligently destroyed Simon and the evidence relevant to his death.

80. The conduct of Defendant UA was classic spoliation of evidence.

81. Under applicable law of spoliation inference when a party such as Defendant UA destroys evidence, it is reasonable to infer that Defendant UA had a "consciousness of guilt" or other motivation to avoid the evidence.

82. Here, the spoliation of evidence inference is warranted given the facts and circumstances surrounding the transportation, death, and cremation of Simon.

83. Plaintiffs in this matter will be entitled to an instruction to the jury that they may conclude that the evidence destroyed by Defendant UA would be unfavorable to Defendant UA.

84. In spite of demands made by Plaintiffs in this case more than eleven (11) weeks ago requesting an independent investigation into the circumstances of Simon's death and a review of Defendant UA's policies related to the treatment, safety, and transportation of pets, Defendant UA has taken no action regarding these requests.

85. Defendant UA has also failed to provide any documentation, investigative report, closed-circuit TV, or other detailed explanation or proof to support their claim that Simon did not die as a result of their negligence or willful conduct.

86. Defendant UA has failed to own up to its responsibility and rectify what occurred regarding the death of Simon.

COUNT IV: DAMAGES

87. The Simon Group repleads paragraphs 1 through 86 as though fully set forth herein.

88. The Simon Group purchased, owned, and paid for Simon prior to his transportation from the United Kingdom to the United States.

89. No agreement of consignment or consignee was made with breeder Edwards. Indeed, Invoice No. 26 for the purchase of Simon was fully paid to the breeder prior to his transport and the fees for the transport of Simon, as arranged through Jets4Pets (GFM), was also fully paid by the Simon Group.

90. Ownership of Simon at the time of his death was with the Simon Group.

91. The Simon Group has suffered damages, including the cost of purchasing Simon, the cost incurred in shipping, the cost incurred in the transportation of Simon, Bergdale's time traveling to and from Kansas City, materials and time expended by Bergdale in building Simon's new enclosure, and the economic loss of the merchandising and marketing of Simon as the world's largest rabbit.

92. Defendant UA has engaged in wanton, willful, reckless, and unlawful conduct warranting the award of punitive damages.

WHEREFORE, the Plaintiffs pray for judgment against Defendant UA for the injury and loss to them as outlined herein, including recovery of both compensatory and punitive damages and costs as proper and just under the facts and circumstances of this case. Plaintiffs further pray for interests and costs as allowed by Iowa law; and for further relief to which they are entitled.

JURY DEMAND

Plaintiffs hereby request a jury trial on all the issues raised in this Petition.

Electronically filed.

Respectfully submitted,

GREFE & SIDNEY, P.L.C.

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