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DANIEL CARD

Plaintiff,

v.

UNITED AIRLINES, INC., JOHN
AND JANE DOES 1-10
(fictitious and presently
unidentifiable individuals),
ABC CORPORATIONS 1-10
(fictitious corporations or
other business entities
presently unidentifiable)

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY

DOCKET NO.:

CIVIL ACTION

COMPLAINT

Plaintiff Daniel Card, through his counsel, Einhorn, Harris, Ascher, Barbarito & Frost, P.C. by way of Complaint says as follows:

THE PARTIES

1. Plaintiff, Daniel Card ("Card"), is an individual and resident of the State of New Jersey. Card resides at 46 Ladd Street, Township of Pequannock, New Jersey. Card was a passenger on United Flight 1871, on June 12, 2017.

2. Defendant, United Airlines, Inc. ("United") is an airline headquartered in Chicago, Illinois, with principal business address of Terminal C, Newark Liberty International Airport, Newark, New Jersey, and engaged in operating flights both to and from Newark Liberty International Airport, in New Jersey.

3. Defendant, John Doe ("Doe" or "the Passenger"), is an individual, presently unknown, and on information and belief, a resident of the State of New Jersey. Doe was a passenger on United Flight 1871 on June 12, 2017.

4. John and Jane Does 1-10 are presently unidentifiable individuals, other than the Passenger who may have aided, abetted or participated in the unlawful conduct engaged in by the other Defendants identified in the Complaint.

5. ABC Corporations 1-10 are presently unidentifiable corporations or other business entities that may have aided, abetted or participated in the unlawful conduct engaged in by the other Defendants identified in the Complaint.

FACTS COMMON TO ALL COUNTS

6. On June 12, 2017, Plaintiff Daniel Card boarded United Flight 1871 from Los Angeles International Airport bound for Newark Liberty International Airport, on a return flight to his residence in New Jersey.

7. Upon boarding the aircraft, Card was seated in seat 24E. Seated next to him was another unidentified male passenger, John Doe in Seat 24F.

8. The passenger seated in 24E was heavily intoxicated prior to entering the flight, and had fallen into a drunken stupor sitting next to Card.

9. While sitting next to the intoxicated passenger, Card noticed that a powerful odor of alcohol was emanating from the passenger's breath and body.

10. As the flight was getting ready to take off, the passenger seated in 24E took out his penis, and aimed it at Card and proceeded to urinate all over Card's leg, while Card was confined to his seat due to an imminent departure of the flight.

11. Upon being soaked in the passenger's urine, Card further noticed that the odor of the urine also emitted a powerful scent of alcohol.

12. Shaken and disturbed by these events, Card attempted to wake the passenger from his drunken stupor to make him cease, but was unable to wake him due to the extent of the passenger's intoxication.

13. To this point, all flight crew members on United's staff had not taken any action to intervene on Card's behalf.

14. Accordingly, Card was forced to notify the flight attendants, and requested that his seat be moved. United initially refused Card's request to relocate his seat to avoid the continued humiliation, assault and inhumane experience of sitting in urine soaked clothes on a urine soaked seat.

15. After repeated requests, Card was subsequently moved to another seat. Upon information and belief, the seat where Card was relocated to was occupied by a friend traveling with the passenger.

16. Card was then forced to endure the remainder of the flight to Newark, New Jersey, while remaining in his urine drenched clothing.

17. United failed and refused to change the flight itinerary as a result of the assault and thus risked the health and safety of not only Card, but also Doe and various other passengers on the flight.

18. During the flight, Card contacted his father to make him aware of the events. Card's father then contacted law enforcement while Card was on the flight to Newark Liberty International Airport. Upon information and belief, but for Card and/or his father contacting law enforcement, no one would have intervened to contacted law enforcement.

19. Upon landing at Newark Liberty International Airport, law enforcement intervened. Once the flight arrived at the arrival gate, both Card and the Passenger were removed from the plane and interviewed.

20. In an interview by the FBI, the passenger in 24E stated that he had no recollection of the events on the flight, and only remembered being at a bar inside of Los Angeles International Airport, and then landing at Newark Airport.

21. The passenger also stated in his interview that to his recollection, he had consumed at least four Rum and Cokes while at the airport bar at Los Angeles International Airport prior to boarding the flight.

22. Upon information and belief, the passenger was visibly intoxicated prior to boarding the flight, but regardless was not only allowed to board the flight at the

gate, but was also allowed to be seated on the flight while in an intoxicated state by United personnel.

23. What is more, the intoxicated passenger was allowed to board the flight by United despite clear indications that the passenger was intoxicated and posed a serious health and safety risk to himself and to others, including Card.

24. While boarding the flight, the Passenger emitted a powerful odor of alcohol prior to the flight taking off, which was known, or should have been known by the United flight crew.

25. Additionally, the Passenger's unresponsive state upon being seated should have been a clear indication to United of the Passenger's heavy intoxication.

26. Pursuant to United's own Contract of Carriage, it had an obligation to remove Passenger, for the following applicable reasons:

- A. Passengers whose conduct is disorderly, offensive, abusive, or violent;
- B. Passengers who assault any employee of UA, including the gate agents and flight crew, or any UA Passenger;
- C. Passengers who are barefoot or not properly clothed;
- D. Passengers who appear to be intoxicated or under the influence of drugs to a degree that the Passenger may endanger the Passenger or another Passenger or

members of the crew (other than a qualified individual whose appearance or involuntary behavior may make them appear to be intoxicated or under the influence of drugs);

- E. Unless they comply with Rule 6 I), Passengers who are unable to sit in a single seat with the seat belt properly secured, and/or are unable to put the seat's armrests down when seated and remain seated with the armrest down for the entirety of the flight, and/or passengers who significantly encroach upon the adjoining passenger's seat;
- F. Passengers who have resisted or may reasonably be believed to be capable of resisting custodial supervision;
- G. Passengers who are incapable of completing a flight safely, without requiring extraordinary medical assistance during the flight, as well as Passengers who appear to have symptoms of or have a communicable disease or condition that could pose a direct threat to the health or safety of others on the flight, or who refuse a screening for such disease or condition.
- H. Passengers who have or cause a malodorous condition (other than individuals qualifying as disabled);
- I. Passengers whose physical or mental condition is such that, in United's sole opinion, they are rendered or likely to be rendered incapable of comprehending or complying with safety instructions without the assistance of an escort. The escort must accompany the escorted passenger at all times;

23. United breached its Contract of Carriage to Card for the reasons set forth above.

24. United failed to act in a reasonably prudent manner for consequences that were reasonably foreseeable.

25. As a result of the foregoing, Plaintiff has been damaged and continues to be damaged as a result of the conduct of Defendants.

FIRST COUNT

**NEGLIGENCE
(UNITED)**

26. Plaintiff reiterates and incorporates by reference the factual allegations set forth above as it fully set forth herein.

27. Pursuant to 14 C.F.R. §91.17(b), Defendant United had a duty to ensure cabin safety by preventing intoxicated passengers from boarding its flights, and by preventing intoxicated passengers from harming other United passengers.

28. Defendant United breached this duty by performing its screening and boarding process in a negligent manner, proximately causing damages to Plaintiff.

29. On information and belief, United knew or should have known, of the passenger's intoxication upon passing through its security procedures in passing through the boarding gate, and upon the intoxicated passenger being seated on the flight. Indeed, the passenger stated in a police report that he was so intoxicated that he had no

recollection of boarding; the passenger then was seated while in an unresponsive state.

30. Defendant United breached this duty by failing to alter the flight itinerary to address the health and safety of Card and all other passengers on the flight.

31. As a direct and proximate result of United's negligence, the intoxicated passenger was permitted to expose his penis on a flight and urinate on Plaintiff as a fellow passenger causing severe distress, as Plaintiff was not only suffered from the passenger's direct actions, but was forced to endure a flight in which he remained with urine soaked clothing.

32. The negligence of Defendant United in failing to prevent passenger Doe from boarding the flight in an intoxicated state, and in failing to take remedial measures once United learned of Doe's level of intoxication is a proximate cause of Plaintiff's damages.

WHEREFORE, Plaintiff, Daniel Card, demands judgment against United together with interest, attorney's fees, costs of suit, and such other relief as the Court may deem equitable and just.

SECOND COUNT

**NEGLIGENCE
(DOE)**

33. Plaintiff reiterates and incorporates by reference the factual allegations set forth above as it fully set forth herein.

34. Defendant Doe had a duty to exercise reasonable care, and to avoid injury to those around him.

35. Doe breached this duty by consuming excessive amounts of alcohol prior to the boarding of a flight, to the extent that his intoxication caused him to expose himself, and to urinate on a fellow passenger, thus causing Plaintiff severe distress.

36. Defendant Doe's negligence is a direct and proximate cause of Plaintiff's damages.

WHEREFORE, Plaintiff, Daniel Card, demands judgment against Doe together with interest, attorney's fees, costs of suit, and such other relief as the Court may deem equitable and just.

THIRD COUNT

**ASSAULT AND BATTERY
(DOE)**

37. Plaintiff reiterates and incorporates by reference the factual allegations set forth above as it fully set forth herein.

38. Passenger Doe while seated in 24E next to Card, intentionally took out his penis and urinated on Card.

39. Card, who was confined in his seat due to the imminent departure of the flight to Newark, New Jersey, was placed in a state of apprehension of offensive contact on behalf of Doe, and Card subsequently suffered from the passenger's non-consensual contact when Doe then proceeded to urinate on Card.

40. These events caused Card to suffer severe distress based on the incident, and when he was forced to endure the remainder of his flight in urine drenched clothing.

WHEREFORE, Plaintiff, Daniel Card, demands judgment against Doe together with interest, attorney's fees, costs of suit, and such other relief as the Court may deem equitable and just.

FOURTH COUNT

**NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
(UNITED AND DOE)**

41. Plaintiff reiterates and incorporates by reference the factual allegations set forth above as it fully set forth herein.

42. Defendant Doe knew or should have known that by taking out his penis in a public environment within a confined space, and subsequently urinating on a fellow passenger, that this conduct had a high probability of causing emotional distress.

43. Defendant United knew or should have reasonably known of the risks to the health and safety of Card as a direct and proximate result of Doe's intoxication. United improperly permitted Doe to board and remain on the United flight.

44. Doe's indecent and outrageous actions were a direct and proximate cause of Card's emotional distress.

45. Due to Doe's reckless disregard in which he took out his penis and urinated on Plaintiff Card while Card remained in a confined space next to Doe, Card suffered severe

emotional distress that no reasonable individual could be expected to endure.

WHEREFORE, Plaintiff, Daniel Card, demands judgment against Defendants United and Doe together with interest, attorney's fees, costs of suit, and such other relief as the Court may deem equitable and just.

FIFTH COUNT

**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(DOE)**

46. Plaintiff reiterates and incorporates by reference the factual allegations set forth above as it fully set forth herein.

47. Defendant Doe knew or should have known that by intentionally taking out his penis in a public environment within a confined space, and subsequently urinating on a fellow passenger, that this conduct was highly probable to cause emotional distress to Card.

48. Doe's indecent and outrageous actions were a direct and proximate cause of Card's emotional distress.

49. Due to Doe's actions in which he took out his penis and urinated on Plaintiff Card while Card remained in a confined space next to Doe, Card suffered severe emotional distress that no reasonable individual could be expected to endure.

WHEREFORE, Plaintiff, Daniel Card, demands judgment against Doe together with interest, attorney's fees, costs of suit, and such other relief as the Court may deem equitable and just.

SIXTH COUNT

BREACH OF CONTRACT

(UNITED)

50. Plaintiff reiterates and incorporates by reference the factual allegations set forth above as it fully set forth herein.

51. Defendant United maintained a Contract of Carriage with Plaintiff, based on Plaintiff's status as a passenger on United Flight 1871, on June 12, 2017.

52. Pursuant to Defendant United was contractually obligated to ensure cabin safety by preventing intoxicated

passengers from boarding its flights, and by preventing intoxicated passengers from harming other United passengers.

53. This applied to among other characteristics: (1) Passengers who appear to be intoxicated or under the influence of drugs to a degree that the Passenger may endanger the Passenger or another Passenger or members of the crew, (2) malodorous Passengers, (3) Passengers whose conduct is disorderly, offensive, abusive, or violent; (4) Passengers who assault any employee of UA, including the gate agents and flight crew, or any UA Passenger; (5) Passengers who are barefoot or not properly clothed.

54. United breached the above contract by allowing an intoxicated passenger to pass through its security procedures, and enter the boarding gate, and to allow the intoxicated passenger to be seated on the flight while in an unresponsive state.

55. The contract was further breached because the passenger was malodorous due to his extreme intoxication, and acted in a manner that was disorderly, and offensive, based on his exposing himself to other passengers by removing his penis from his clothing, and by urinating on his fellow passengers.

WHEREFORE, Plaintiff, Daniel Card, demands judgment against United together with interest, attorney's fees, costs of suit, and such other relief as the Court may deem equitable and just.

DEMAND FOR TRIAL BY JURY

Demand is hereby made for trial by a jury on all issues so triable.

DESIGNATION OF COUNSEL

Pursuant to the provisions of Rule 4:25-4, the Court is advised that **Timothy J. Ford, Esq.** is hereby designated as trial counsel.

**EINHORN, HARRIS, ASCHER,
BARBARITO & FROST, P.C.**
Attorneys for Plaintiff

By: 

Timothy J. Ford, Esq.

Dated: October 11, 2017