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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA and
12 PETE BUTTIGIEG, in his official capacity as
13 United States Secretary of Transportation,

14 Plaintiffs,

15 v.

16 Southwest Airlines Co.,

17 Defendant.
18

Case No.

COMPLAINT

19 The United States of America and Pete Buttigieg, in his official capacity as the United States
20 Secretary of Transportation, file this complaint against Southwest Airlines Co. (“Southwest”) and allege
21 as follows:

22 **INTRODUCTION**

23 1. In today’s busy and fast-paced world of airline travel, it is critical that passengers have
24 accurate information about the time that flights will arrive at their destinations. Passengers rely on this
25 information to ensure sufficient time to transfer to connecting flights, to arrive punctually to important
26 meetings or events, and to coordinate airport transportation. Delayed flights result in potential missed
27 connections, disruption to travel plans or other plans, increased costs due to unexpected accommodation
28 needs, and a negative impact on overall customer satisfaction.

1 the head of the United States Department of Transportation, an executive department of the United
2 States that is headquartered at 1200 New Jersey Avenue SE, Washington, District of Columbia 20590.

3 9. Defendant Southwest is an air carrier, as defined by 49 U.S.C. § 40102(a)(2), that holds
4 a certificate of public convenience and necessity and is a “reporting carrier” as defined in 14 C.F.R. Part
5 234. Southwest is incorporated in Texas and has its principal place of business in Dallas, Texas.

6 **JURISDICTION, VENUE, AND DIVISIONAL ASSIGNMENT**

7 10. This Court has jurisdiction over this action under 28 U.S.C. § 1331, 28 U.S.C. § 1345, 49
8 U.S.C. § 46106, 49 U.S.C. § 46107(b), and 49 U.S.C. § 46305.

9 11. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), 28 U.S.C. § 1395, and 49
10 U.S.C. § 46106, because Southwest does business in this District and violations giving rise to this action
11 occurred in this District.

12 12. Pursuant to Civil Local Rule 3-2, assignment to either the San Francisco Division or the
13 Oakland Division is appropriate because a substantial part of the events or omissions giving rise to the
14 claim occurred in Alameda County.

15 **FACTS**

16 13. In October 2022, pursuant to 49 U.S.C. § 41712(a), the U.S. Department of
17 Transportation’s Office of Aviation Consumer Protection (OACP) initiated an investigation to determine
18 whether Southwest had been or was engaging in an unfair or deceptive practice and unfair method of
19 competition by holding out chronically delayed flights for more than four consecutive months.

20 14. A “chronically delayed flight” means any domestic flight that is operated at least 10
21 times a month and arrives more than 30 minutes late (including cancelled flights) more than 50 percent
22 of the time during that month. 14 C.F.R. § 399.81(c)(2). For purposes of determining chronically
23 delayed flights, the Department considers all of a carrier’s flights that are operated in a given city-pair
24 market whose scheduled departure times are within 30 minutes of the most frequently occurring
25 scheduled departure time to be one single flight. *Id.* § 399.81(c)(3).

26 15. The holding out (*i.e.*, offering to the public) of a chronically delayed flight for more than
27 four consecutive one-month periods represents one form of unrealistic scheduling and is an unfair or
28

1 deceptive practice and unfair method of competition within the meaning of 49 U.S.C. § 41712. 14
2 C.F.R. § 399.81(d).

3 16. The Department of Transportation, Bureau of Transportation Statistics tracks the on-time
4 performance of domestic flights operated by large air carriers, including Southwest.

5 17. After reviewing flight performance data submitted by Southwest to the Department's
6 Bureau of Transportation Statistics, OACP determined that Southwest operated two chronically delayed
7 flights in 2022 for four consecutive one-month periods from April 2022 through July 2022.

8 a. From April 2022 through July 2022, Southwest operated a chronically delayed
9 flight between Chicago and Oakland, California (operated as Flight 1029 in April and May 2022
10 and as Flight 1767 in June, July, and August 2022):

- 11 i. In April 2022, Flight 1029 was more than 30 minutes late 19 out of 25
12 trips, by an average of 74 minutes.
- 13 ii. In May 2022, Flight 1029 was more than 30 minutes late 16 out of 27
14 trips, by an average of 80 minutes.
- 15 iii. In June 2022, Flight 1767 was more than 30 minutes late 19 out of 26
16 trips, by an average of 87 minutes.
- 17 iv. In July 2022, Flight 1767 was more than 30 minutes late 17 out of 26 trips,
18 by an average of 69 minutes.

19 b. From April 2022 through July 2022, Southwest operated a chronically delayed
20 flight between Baltimore, Maryland and Cleveland, Ohio (operated as Flight 1614 in April and
21 May 2022 and as Flight 2556 in June, July, and August 2022):

- 22 i. In April 2022, Flight 1614 was more than 30 minutes late 22 out of 26
23 trips, by an average of 66 minutes.
- 24 ii. In May 2022, Flight 1614 was more than 30 minutes late 19 out of 27
25 trips, by an average of 70 minutes.
- 26 iii. In June 2022, Flight 2556 was more than 30 minutes late 19 out of 29
27 trips, by an average of 96 minutes.

1 iv. In July 2022, Flight 2556 was more than 30 minutes late 17 out of 31 trips,
2 by an average of 69 minutes.

3 18. After having operated these chronically delayed flights for four consecutive one-month
4 periods from April to July 2022, Southwest continued to hold out these flights without adjusting their
5 schedules, and they continued to be chronically delayed. In August 2022, Flight 1767 between Chicago
6 and Oakland was held out to be operated 27 times. Seventeen of those flights were more than 30
7 minutes late, by an average of 61 minutes. In August 2022, Flight 2556 between Baltimore and
8 Cleveland was held out to be operated 31 times. Eighteen of those flights were more than 30 minutes
9 late, by an average of 63 minutes.

10 19. Holding out these chronically delayed flights disregarded consumers’ need to have
11 reliable information about the real arrival time of a flight and harmed thousands of passengers traveling
12 on these Southwest flights by causing disruptions to travel plans or other plans.

13 **FIRST CAUSE OF ACTION**

14 **Engaging in Unfair or Deceptive Practices and Unfair Methods of Competition**
15 **in Violation of 49 U.S.C. § 41712(a), 14 C.F.R. § 399.81(a), and 14 C.F.R. § 399.81(c)(4)**

16 20. The United States and the Secretary of Transportation incorporate by reference
17 paragraphs 1 through 19 above as if set forth in full.

18 21. 49 U.S.C. § 41712(a) prohibits an air carrier, foreign air carrier, or ticket agent from
19 engaging in “an unfair or deceptive practice or unfair method of competition in air transportation or the
20 sale of air transportation.” Department of Transportation regulations provide that an air carrier engages
21 in an unfair or deceptive practice and an unfair method of competition when it holds out a chronically
22 delayed flight for more than four consecutive one-month periods or otherwise engages in the unrealistic
23 scheduling of flights. 14 C.F.R. § 399.81(a), (c)(4).

24 22. Southwest is an air carrier as defined in 49 U.S.C. § 40102(a)(2).

25 23. Southwest operated “chronically delayed” flights, as defined by 14 C.F.R. § 399.81(c):

26 a. between Baltimore, Maryland and Cleveland, Ohio each month between April
27 2022 and August 2022; and
28

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COMPLETING THE CIVIL COVER SHEET

Complete the form as follows:

- I. Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.
- Attorney/Pro Se Litigant Information.** Enter the firm name, address, telephone number, and email for attorney of record or pro se litigant. If there are several individuals, list them on an attachment.
- II. Jurisdiction.** Under Federal Rule of Civil Procedure 8(a), pleadings must establish the basis of jurisdiction. If multiple bases for jurisdiction apply, prioritize them in the order listed:
- (1) *United States plaintiff.* Jurisdiction based on 28 U.S.C. §§ 1345 and 1348 for suits filed by the United States, its agencies or officers.
 - (2) *United States defendant.* Applies when the United States, its agencies, or officers are defendants.
 - (3) *Federal question.* Select this option when jurisdiction is based on 28 U.S.C. § 1331 for cases involving the U.S. Constitution, its amendments, federal laws, or treaties (but use choices 1 or 2 if the United States is a party).
 - (4) *Diversity of citizenship.* Select this option when jurisdiction is based on 28 U.S.C. § 1332 for cases between citizens of different states and complete Section VI to specify the parties’ citizenship. Note: Federal question jurisdiction takes precedence over diversity jurisdiction.
- III. Cause of Action.** Enter the statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless jurisdiction is based on diversity. Example: U.S. Civil Statute: 47 U.S.C. § 553. Brief Description: Unauthorized reception of cable service.
- IV. Nature of Suit.** Check one of the boxes. If the case fits more than one nature of suit, select the most definitive or predominant.
- V. Origin.** Check one of the boxes:
- (1) *Original Proceedings.* Cases originating in the United States district courts.
 - (2) *Removed from State Court.* Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C. § 1441. When the petition for removal is granted, check this box.
 - (3) *Remanded from Appellate Court.* Check this box for cases remanded to the district court for further action, using the date of remand as the filing date.
 - (4) *Reinstated or Reopened.* Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) *Transferred from Another District.* Check this box for cases transferred under Title 28 U.S.C. § 1404(a). Do not use this for within-district transfers or multidistrict litigation (MDL) transfers.
 - (6) *Multidistrict Litigation Transfer.* Check this box when a multidistrict (MDL) case is transferred into the district under authority of Title 28 U.S.C. § 1407.
 - (7) *Multidistrict Litigation Direct File.* Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket.
- VI. Residence (citizenship) of Principal Parties.** Mark for each principal party *only* if jurisdiction is based on diversity of citizenship.
- VII. Requested in Complaint.**
- (1) *Jury demand.* Check this box if plaintiff’s complaint demanded a jury trial.
 - (2) *Monetary demand.* For cases demanding monetary relief, check this box and enter the actual dollar amount being demanded.
 - (3) *Class action.* Check this box if plaintiff is filing a class action under Federal Rule of Civil Procedure 23.
 - (4) *Nationwide injunction.* Check this box if plaintiff is seeking a nationwide injunction or nationwide vacatur pursuant to the Administrative Procedures Act.
- VIII. Related Cases.** If there are related pending case(s), provide the case name(s) and number(s) and the name(s) of the presiding judge(s). If a short-form MDL complaint is being filed, furnish the MDL case name and number.
- IX. Divisional Assignment.** Identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.” Note that case assignment is made without regard for division in the following case types: Property Rights (Patent, Trademark and Copyright), Prisoner Petitions, Securities Class Actions, Anti-Trust, Bankruptcy, Social Security, and Tax.