

The JS44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

I. (a) PLAINTIFF(S)

Jean Marie Cinotto, on behalf of herself and all others similarly situated,

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANT(S)

DELTA AIR LINES, INC., The Administrative Committee, The Administrative Sub-Committee of Delta Air Lines, Inc., Lisa A. Brown, Cherie Caldwell, Lidia Chiang, Esther Hammond, Suzanne M. Arpin, Annette Frazier, Beverly C. Hord, Michael H. Campbell, Elizabeth Johnston, Robert L. COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS)

David J. Worley
Page Perry LLC
1040 Crown Pointe Pkwy., Suite 1050
Atlanta, GA 30338
770-673-0047
dworley@pageperry.com

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. GOVERNMENT PLAINTIFF
2 U.S. GOVERNMENT DEFENDANT
3 FEDERAL QUESTION (U.S. GOVERNMENT NOT A PARTY)
4 DIVERSITY (INDICATE CITIZENSHIP OF PARTIES IN ITEM III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (FOR DIVERSITY CASES ONLY)

- PLF DEF 1 1 CITIZEN OF THIS STATE
2 2 CITIZEN OF ANOTHER STATE
3 3 CITIZEN OR SUBJECT OF A FOREIGN COUNTRY
PLF DEF 4 4 INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE
5 5 INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE
6 6 FOREIGN NATION

IV. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- 1 ORIGINAL PROCEEDING
2 REMOVED FROM STATE COURT
3 REMANDED FROM APPELLATE COURT
4 REINSTATED OR REOPENED
5 TRANSFERRED FROM ANOTHER DISTRICT (Specify District)
6 MULTIDISTRICT LITIGATION
7 APPEAL TO DISTRICT JUDGE FROM MAGISTRATE JUDGE JUDGMENT

V. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE - DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Section 502 of the Employee Retirement Income Securities Act. Defendants violated ERISA Section 502(a)(2), 29 U.S.C. Section 1132(a)(2).

(IF COMPLEX, CHECK REASON BELOW)

- 1. Unusually large number of parties.
2. Unusually large number of claims or defenses.
3. Factual issues are exceptionally complex.
4. Greater than normal volume of evidence.
5. Extended discovery period is needed.
6. Problems locating or preserving evidence.
7. Pending parallel investigations or actions by government.
8. Multiple use of experts.
9. Need for discovery outside United States boundaries.
10. Existence of highly technical issues and proof.

CONTINUED ON REVERSE

FOR OFFICE USE ONLY
RECEIPT # AMOUNT \$ APPLYING IFP MAG. JUDGE (IFP)
JUDGE MAG. JUDGE (Referral) NATURE OF SUIT CAUSE OF ACTION

VI. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT - "0" MONTHS DISCOVERY TRACK

- 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- 151 RECOVERY OF DEFAULTED STUDENT LOANS (Excl. Veterans)
- 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS

CONTRACT - "4" MONTHS DISCOVERY TRACK

- 110 INSURANCE
- 120 MARINE
- 130 MILLER ACT
- 140 NEGOTIABLE INSTRUMENT
- 151 MEDICARE ACT
- 160 STOCKHOLDERS' SUITS
- 190 OTHER CONTRACT
- 195 CONTRACT PRODUCT LIABILITY
- 196 FRANCHISE

REAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 210 LAND CONDEMNATION
- 220 FORECLOSURE
- 230 RENT LEASE & EJECTMENT
- 240 TORTS TO LAND
- 245 TORT PRODUCT LIABILITY
- 290 ALL OTHER REAL PROPERTY

TORTS - PERSONAL INJURY - "4" MONTHS DISCOVERY TRACK

- 310 AIRPLANE
- 315 AIRPLANE PRODUCT LIABILITY
- 320 ASSAULT, LIBEL & SLANDER
- 330 FEDERAL EMPLOYERS' LIABILITY
- 340 MARINE
- 345 MARINE PRODUCT LIABILITY
- 350 MOTOR VEHICLE
- 355 MOTOR VEHICLE PRODUCT LIABILITY
- 360 OTHER PERSONAL INJURY
- 362 PERSONAL INJURY - MEDICAL MALPRACTICE
- 365 PERSONAL INJURY - PRODUCT LIABILITY
- 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

TORTS - PERSONAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 370 OTHER FRAUD
- 371 TRUTH IN LENDING
- 380 OTHER PERSONAL PROPERTY DAMAGE
- 385 PROPERTY DAMAGE PRODUCT LIABILITY

BANKRUPTCY - "0" MONTHS DISCOVERY TRACK

- 422 APPEAL 28 USC 158
- 423 WITHDRAWAL 28 USC 157

CIVIL RIGHTS - "4" MONTHS DISCOVERY TRACK

- 441 VOTING
- 442 EMPLOYMENT
- 443 HOUSING/ ACCOMMODATIONS
- 444 WELFARE
- 440 OTHER CIVIL RIGHTS
- 445 AMERICANS with DISABILITIES - Employment
- 446 AMERICANS with DISABILITIES - Other

IMMIGRATION - "0" MONTHS DISCOVERY TRACK

- 462 NATURALIZATION APPLICATION
- 463 HABEAS CORPUS- Alien Detainee
- 465 OTHER IMMIGRATION ACTIONS

PRISONER PETITIONS - "0" MONTHS DISCOVERY TRACK

- 510 MOTIONS TO VACATE SENTENCE
- 530 HABEAS CORPUS
- 535 HABEAS CORPUS DEATH PENALTY
- 540 MANDAMUS & OTHER
- 550 CIVIL RIGHTS - Filed Pro se
- 555 PRISON CONDITION(S) - Filed Pro se

PRISONER PETITIONS - "4" MONTHS DISCOVERY TRACK

- 550 CIVIL RIGHTS - Filed by Counsel
- 555 PRISON CONDITION(S) - Filed by Counsel

FORFEITURE/PENALTY - "4" MONTHS DISCOVERY TRACK

- 610 AGRICULTURE
- 620 FOOD & DRUG
- 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
- 630 LIQUOR LAWS
- 640 R.R. & TRUCK
- 650 AIRLINE REGS.
- 660 OCCUPATIONAL SAFETY / HEALTH
- 690 OTHER

LABOR - "4" MONTHS DISCOVERY TRACK

- 710 FAIR LABOR STANDARDS ACT
- 720 LABOR/MGMT. RELATIONS
- 730 LABOR/MGMT. REPORTING & DISCLOSURE ACT
- 740 RAILWAY LABOR ACT
- 790 OTHER LABOR LITIGATION
- 791 EMPL. RET. INC. SECURITY ACT

PROPERTY RIGHTS - "4" MONTHS DISCOVERY TRACK

- 820 COPYRIGHTS
- 840 TRADEMARK

PROPERTY RIGHTS - "8" MONTHS DISCOVERY TRACK

- 830 PATENT

SOCIAL SECURITY - "0" MONTHS DISCOVERY TRACK

- 861 HIA (1395f)
- 862 BLACK LUNG (923)
- 863 DIWC (405(g))
- 863 DIWW (405(g))
- 864 SSID TITLE XVI
- 865 RSI (405(g))

FEDERAL TAX SUITS - "4" MONTHS DISCOVERY TRACK

- 870 TAXES (U.S. Plaintiff or Defendant)
- 871 IRS - THIRD PARTY 26 USC 7609

OTHER STATUTES - "4" MONTHS DISCOVERY TRACK

- 400 STATE REAPPORTIONMENT
- 430 BANKS AND BANKING
- 450 COMMERCE/ICC RATES/ETC.
- 460 DEPORTATION
- 470 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
- 480 CONSUMER CREDIT
- 490 CABLE/SATELLITE TV
- 810 SELECTIVE SERVICE
- 875 CUSTOMER CHALLENGE 12 USC 3410
- 891 AGRICULTURAL ACTS
- 892 ECONOMIC STABILIZATION ACT
- 893 ENVIRONMENTAL MATTERS
- 894 ENERGY ALLOCATION ACT
- 895 FREEDOM OF INFORMATION ACT
- 900 APPEAL OF FEE DETERMINATION UNDER EQUAL ACCESS TO JUSTICE
- 950 CONSTITUTIONALITY OF STATE STATUTES
- 890 OTHER STATUTORY ACTIONS

OTHER STATUTES - "8" MONTHS DISCOVERY TRACK

- 410 ANTI TRUST
- 850 SECURITIES / COMMODITIES / EXCHANGE

OTHER STATUTES - "0" MONTHS DISCOVERY TRACK

- ARBITRATION (Confirm / Vacate / Order / Modify)

(Note: Mark underlying Nature of Suit as well)

*** PLEASE NOTE DISCOVERY TRACK FOR EACH CASE TYPE. SEE LOCAL RULE 26.3**

VII. REQUESTED IN COMPLAINT:

CHECK IF CLASS ACTION UNDER F.R.Civ.P. 23 DEMAND \$ _____

JURY DEMAND YES NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)

VIII. RELATED/REFILED CASE(S) IF ANY

JUDGE _____ DOCKET NO. _____

CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES: (CHECK APPROPRIATE BOX)

- 1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 2. SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 4. APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE.
- 5. REPETITIVE CASES FILED BY PRO SE LITIGANTS.
- 6. COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S)):

7. EITHER SAME OR ALL OF THE PARTIES AND ISSUES IN THIS CASE WERE PREVIOUSLY INVOLVED IN CASE NO. _____, WHICH WAS DISMISSED. This case IS IS NOT (check one box) SUBSTANTIALLY THE SAME CASE.

SIGNATURE OF ATTORNEY OF RECORD

DATE

6-29-09

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta

JUN 29 2009

JAMES N. HATTEN, Clerk
By: *JK* Deputy Clerk

JEAN MARIE CINOTTO, on behalf of herself)
and all others similarly situated,)

Plaintiff,)

vs.)

DELTA AIR LINES, INC.; THE)
ADMINISTRATIVE COMMITTEE; THE)
ADMINISTRATIVE SUBCOMMITTEE OF)
DELTA AIR LINES, INC.; LISA A. BROWN;)
CHERIE CALDWELL; LIDIA CHIANG;)
ESTHER HAMMOND; SUZANNE M. ARPIN;)
ANNETTE FRAZIER; BEVERLY C. HORD;)
MICHAEL H. CAMPBELL; ELIZABETH)
JOHNSTON; ROBERT L. KIGHT; and JOHN)
DOES 1 through 20,)

Defendants.)

ECF Case

Civil Action No. 09-cv-

**CLASS ACTION COMPLAINT
AND JURY TRIAL DEMAND**

1:09-CV-1739

Plaintiff Jean Marie Cinotto ("Plaintiff") brings this action on behalf of certain participants and beneficiaries of the Delta Retirement Plan, as amended and restated effective as of January 1, 2009 (the "Plan") under § 502(a)(2) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132(a)(2). Plaintiff alleges the following based upon her personal knowledge and a review of available documents governing the Plan's operation.

NATURE OF THE ACTION

1. In a blatant violation of their fiduciary duties under ERISA, Defendants concocted a new formula to recalculate the retirement benefits of tens of thousands of Plan participants and beneficiaries. Under this new formula, the affected participants and beneficiaries have lost or will lose millions of dollars in accrued benefits during retirement. Because these accrued benefits are protected under ERISA, Plaintiff brings this action to right Defendants' wrong.

2. Plaintiff's claims arise from Defendants' illegal conduct in: (a) designing, enacting, and implementing the Eighth Amendment to the Plan; and (b) failing to provide the Plan's participants and beneficiaries with adequate, timely notice of the Eighth Amendment. The class period begins on March 31, 2007, the effective date of the Eighth Amendment, and continues through the present (the "Class Period").

3. The Eighth Amendment changed the calculation formula of the Social Security benefit of participants who were under age 52 on March 31, 2007 and would retire after age 52 (collectively, the "Class").

4. As set forth fully below, the amended calculation formula has decreased or will decrease accrued benefits for Class members in violation of the "anti-cutback" rule under ERISA § 204(g), 29 U.S.C. § 1054(g), as well as other applicable statutes and regulations.

5. The decrease of accrued benefits resulting from the Eighth Amendment is projected to cost Class members millions of dollars during their retirement.

6. Furthermore, Defendants provided inadequate, untimely notice regarding the Eighth Amendment to the Class in violation of ERISA § 204(h), 29 U.S.C. § 1054(h), as well as other applicable regulations.

7. Therefore, Defendants are liable for breaches of their fiduciary duties under ERISA.

8. Plaintiff brings this action as a class action under Federal Rule of Civil Procedure 23 and ERISA §§ 409(a) and 502(a)(2) on behalf of the Plan's participants and beneficiaries whose accrued benefits have been or will be decreased as a result of the Eighth Amendment.

9. In addition to damages, Plaintiff seeks declaratory judgment, injunctive relief, and an award of reasonable attorney's fees and costs.

10. Because Plaintiff lacks access to all information and documents on which her claims are based, certain of her allegations are made by necessity upon information and belief. After Plaintiff has had the opportunity to conduct discovery, she will, to the extent necessary and appropriate, amend or seek leave to amend this Complaint.

JURISDICTION AND VENUE

11. The Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 and ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

12. ERISA provides for nationwide service of process. ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2). On information and belief, all Defendants either reside in the United States or are subject to service in the United States. Therefore, this Court has personal jurisdiction over them. This Court also has personal jurisdiction over Defendants under Federal Rule of Civil Procedure 4(k)(1)(A) because they would all be subject to the jurisdiction of a court of general jurisdiction in the State of Georgia.

13. Venue is proper in this District under ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because the Plans were administered in Atlanta, Georgia, some or all of the fiduciary breaches for which relief is sought occurred in this District, and/or some Defendants reside or maintain their primary place of business in this District.

PARTIES

14. **Plaintiff Jean Marie Cinotto** is a Plan participant within the meaning of ERISA § 3(7), 29 U.S.C. § 1102(7), during the Class Period.

15. **Defendant Delta Air Lines, Inc. ("Delta")** is incorporated under the laws of the State of Delaware and is headquartered in Atlanta, Georgia.

16. On information and belief, at all relevant times, Delta was the Plan's sponsor and exercised control over the Plan's operation because Delta's employees had the authority to appoint and remove the Plan's fiduciaries.

17. **Defendant Administrative Committee** was the "Administrator of the Plan" at all relevant times. The Administrative Committee held the "exclusive power" to interpret the Plan and was responsible for carrying out the Plan. In addition, the Administrative Committee had the sole authority to make rules and regulations necessary or proper for the administration and/or operation of the Plan. Specifically, the Plan delegated the following powers to the Administrative Committee:

In addition to powers and duties stated in this Plan, the Administrative Committee shall have such duties and powers as may be necessary to discharge its responsibilities under the Plan, including, but not limited to, the following:

- (a) to establish and enforce such rules, regulations, and procedures as it shall deem necessary or proper for the efficient operation and administrative of the Plan;
- (b) the discretionary authority to interpret the Plan and to decide all questions of eligibility of any employee to participate in the Plan or to receive benefits at any time or in any amount or form under the Plan, its interpretations or determination thereof to be final and conclusive;
- (c) to determine the amount, manner, and time of payment of benefits which shall be payable to any Participant or beneficiary in accordance with the provisions of the Plan, and to determine the person or persons to whom such benefits shall be paid;
- (d) to authorize the payment of benefits and reasonable expenses for administering the Plan;
- (e) to prescribe procedures to be followed by Participants and beneficiaries filing applications for benefits;

- (f) to prepare and distribute, in such manner as the Administrative Committee determines to be appropriate, information explaining the Plan;
- (g) to decide all questions concerning the Plan; and
- (h) to furnish the Board, upon request, and government agencies, as required, such reports with respect to the administrative of the Plan as are requested or required, as the case may be.

The Administrative Committee shall have the broadest discretionary authority permitted under law in the exercise of all its functions including, but not limited to, deciding questions of eligibility, interpretation and the right to benefits hereunder but shall act in an impartial and non-discriminatory manner with respect thereto.

18. Delta's Executive Vice President-Human Resources appointed the members of the Administrative Committee. The members of the Administrative Committee were named fiduciaries of the Plan under ERISA during the Class Period. Upon information and belief, members of the Administrative Committee are identified below.

19. **Defendant Lisa A. Brown ("Brown")** was a member of the Administrative Committee at all relevant times. During the Class Period, Brown was a fiduciary within the meaning of ERISA §§ 3(21)(A) and 402(a), 29 U.S.C. §§ 1002(21)(A), 1102(a), because she possessed discretionary authority or discretionary responsibility in the administration of the Plan.

20. **Defendant Cherie Caldwell ("Caldwell")** was a member of the Administrative Committee at all relevant times. During the Class Period, Caldwell was a fiduciary within the meaning of ERISA §§ 3(21)(A) and 402(a), 29 U.S.C. §§

1002(21)(A), 1102(a), because she possessed discretionary authority or discretionary responsibility in the administration of the Plan.

21. **Defendant Lidia Chiang (“Chiang”)** was a member of the Administrative Committee at all relevant times. During the Class Period, Chiang was a fiduciary within the meaning of ERISA §§ 3(21)(A) and 402(a), 29 U.S.C. §§ 1002(21)(A), 1102(a), because she possessed discretionary authority or discretionary responsibility in the administration of the Plan.

22. **Defendant Esther Hammond (“Hammond”)** was a member of the Administrative Committee at all relevant times. During the Class Period, Hammond was a fiduciary within the meaning of ERISA §§ 3(21)(A) and 402(a), 29 U.S.C. §§ 1002(21)(A), 1102(a), because she possessed discretionary authority or discretionary responsibility in the administration of the Plan.

23. **Defendant Suzanne M. Arpin (“Arpin”)** was the secretary of the Administrative Committee at all relevant times. During the Class Period, Arpin was a fiduciary within the meaning of ERISA §§ 3(21)(A) and 402(a), 29 U.S.C. §§ 1002(21)(A), 1102(a), because she possessed discretionary authority or discretionary responsibility in the administration of the Plan.

24. **Defendant Annette Frazier (“Frazier”)** was an analyst with the Administrative Committee at all relevant times. During the Class Period, Frazier was a fiduciary within the meaning of ERISA §§ 3(21)(A) and 402(a), 29 U.S.C. §§ 1002(21)(A), 1102(a), because she possessed discretionary authority or discretionary responsibility in the administration of the Plan.

25. Defendants Administrative Committee, Brown, Caldwell, Chiang, Hammond, Arpin, and Frazier are collectively referred to as the “Administrative Committee Defendants.”

26. **Defendant Administrative Subcommittee of Delta Air Lines, Inc. (the “Administrative Subcommittee”)** was authorized to hear appeals from decisions of the Administrative Committee regarding claims for benefits. On information and belief, in exercise of this authority, the Administrative Subcommittee possessed discretionary authority or discretionary responsibility in the administration of the Plan.

27. **Defendant Beverly C. Hord (“Hord”)** was a member of the Administrative Subcommittee at all relevant times. During the Class Period, Hord was a fiduciary within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), because she possessed discretionary authority or discretionary responsibility in the administration of the Plan.

28. Defendants Administrative Subcommittee and Hord are collectively referred to as the “Administrative Subcommittee Defendants.”

29. Upon information and belief, the following Delta employees participated in designing, enacting, and implementing the Eighth Amendment.

30. **Defendant Michael H. Campbell (“Campbell”)** was the Executive Vice President-Human Resources at Delta at all relevant times. On information and belief, Campbell appointed the members of the Administrative Committee during the Class Period. Accordingly, Campbell was a fiduciary within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), during the class period because he possessed discretionary authority or discretionary responsibility in the administration of the Plan.

31. **Defendant Elisabeth Johnston (“Johnston”)** was the Senior Vice President-Human Resources at Delta. On information and belief, Johnston was a fiduciary within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), during the class period because she possessed discretionary authority or discretionary responsibility in the administration of the Plan.

32. **Defendant Robert L. Kight (“Kight”)** was the Vice President-Compensation, Benefits & Services at Delta. On information and belief, Kight was a fiduciary within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), during the class period because he possessed discretionary authority or discretionary responsibility in the administration of the Plan.

33. Defendants Campbell, Johnston, and Kight are collectively referred to as the “Delta Employee Defendants.”

34. **Defendants John Does 1 through 20.** Because Plaintiff lacks access to all information and documents relating to the management of the Plan, she is currently unaware of the true identities and capacities of all members of the Administrative Committee and the Administrative Subcommittee, as well as all other Delta employees, officers, directors, or agents who are fiduciaries of the Plan. Accordingly, she names these unknown Defendants as John Does 1 through 20 and will substitute the real names of the John Does 1 through 20 when they are identified through discovery.

35. On information and belief, each Defendant was an agent, principal, representative, and/or employee of the other Defendants for the purposes of the unlawful conduct alleged in this Complaint. And in engaging in such unlawful conduct,

Defendants acted within their agency, representation, and employment with permission of each co-Defendant.

DEFENDANTS' FIDUCIARY STATUS

A. The Nature of Fiduciary Status

36. **Named Fiduciaries.** ERISA requires every plan to have one or more “named fiduciaries.” ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1). The person named as the “administrator” in the plan document is automatically a named fiduciary, and in the absence of such a designation, the sponsor is the administrator. ERISA § 3(16)(A), 29 U.S.C. § 1002(16)(A).

37. **De Facto Fiduciaries.** ERISA treats as fiduciaries not only persons explicitly named as fiduciaries under § 402(a)(1), but also any other persons who in fact perform fiduciary functions. *See* ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A). Thus, a person is a fiduciary to the extent that he (a) “exercises any discretionary authority or discretionary control respecting management of such plan”; or (b) “has any discretionary authority or discretionary responsibility in the administration of such plan.” *Id.*

38. During the Class Period, Defendants were fiduciaries with respect to the Plan and owed fiduciary duties to the Plan and its participants and beneficiaries in the manner and to the extent set forth in the Plan’s documents and ERISA.

39. As fiduciaries, Defendants were required by ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), to manage and administer the Plan solely in the interests of its participants and beneficiaries and with the care, skill, prudence, and diligence under the circumstances.

40. Plaintiff does not allege that each Defendant was a fiduciary with respect to all aspects of the Plan’s management and administration. Rather, as set forth below,

Defendants were fiduciaries to the extent of the fiduciary discretion and authority assigned to or exercised by each of them, and the claims against each Defendant are based on such specific discretion and authority.

41. Instead of delegating all fiduciary responsibility for the Plan to external service providers, Delta chose to delegate its responsibility regarding the administration of the Plan to the Administrative Committee.

42. ERISA permits fiduciary functions to be delegated to insiders without an automatic violation of the rules against prohibited transactions. ERISA § 408(c)(3), 29 U.S.C. § 1108(c)(3). Like external fiduciaries, insider fiduciaries must act solely in the interests of participants and beneficiaries, not in the interests of the Plan's sponsor.

B. Defendant Delta's Fiduciary Status

43. On information and belief, as the Plan's sponsor, Delta exercised responsibility through the Administrative Committee and the Administrative Subcommittee for managing the Plan and for communicating with participants regarding the Plan in a plan-wide, uniform, mandatory manner by providing participants with information and materials required by ERISA.

44. On information and belief, Delta exercised control over the activities of its employees, officers, directors, and agents who performed fiduciary functions with respect to the Plan. On information and belief, Delta could hire or appoint, terminate, and replace such employees, officers, directors, and agents at will. Thus, Delta was responsible for the activities of its employees as fiduciaries with respect to the Plan through agency principles and *respondeat superior* liability.

45. Moreover, under basic tenets of corporate law, Delta was imputed with the knowledge its employees, officers, directors, and agents (including other Defendants) had

regarding the misconduct alleged in this Complaint, even if such knowledge is not communicated to Delta.

46. In light of the foregoing duties, responsibilities, and actions, Delta was both a named fiduciary of the Plan under ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1), and a *de facto* fiduciary of the Plan within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), during the Class Period because Delta was the Plan's sponsor and because Delta exercised discretionary authority or discretionary control over and/or had discretionary responsibility for Plan's administration and management.

C. Administrative Committee Defendants' Fiduciary Status

47. The Administrative Committee was the Plan's administrator and a "Named Fiduciary" during the Class Period.

48. During the Class Period, Delta relied on the Administrative Committee Defendants to carry out its fiduciary responsibilities under the Plan and ERISA.

49. Accordingly, the Administrative Committee Defendants were both named fiduciaries of the Plan pursuant to ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1), and *de facto* fiduciaries of the Plan within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), during the Class Period because they exercised discretionary authority or discretionary control over and/or had discretionary responsibility for the Plan's administration and management.

D. Administrative Subcommittee Defendants' Fiduciary Status

50. The Administrative Subcommittee was authorized to hear appeals from the Plan's participants and beneficiaries. And in fact, as set forth fully below, the Administrative Subcommittee did hear Plaintiff's appeal relating to the Eighth Amendment.

51. During the Class Period, Delta relied on the Administrative Subcommittee Defendants to carry out its fiduciary responsibilities under the Plan and ERISA.

52. In light of the foregoing duties, responsibilities, and actions, the Administrative Committee Defendants were *de facto* fiduciaries of the Plan within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), during the Class Period because they exercised discretionary authority or discretionary control over and/or had discretionary responsibility for the Plan's administration and management.

E. Delta Employee Defendants' Fiduciary Status

53. On information and belief, during the Class Period, the Delta Employee Defendants participated in (a) appointing the members of the Administrative Committee; (b) designing, enacting, and implementing the Eighth Amendment; (c) disseminating to the Plan's participants and beneficiary inadequate, untimely information relating to the Eighth Amendment; and (d) otherwise exercising discretionary authority or control over the Plan's administration and management.

54. Consequently, the Delta Employee Defendants were *de facto* fiduciaries of the Plan within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), during the Class Period.

THE PLAN

55. The Plan is a defined benefit plan designed to provide participants and beneficiaries with a supplemental source of income, in addition to their Social Security benefits.

56. The Plan was first adopted as the Delta Family-Care Retirement Plan, effective February 1, 1971. The current Plan was restated effective January 1, 2009.

57. The Plan is a legal entity that can sue and be sued. ERISA § 502(d)(1), 29 U.S.C. § 1132(d)(1). In a breach of fiduciary duty action such as this, the Plan is neither a defendant nor a plaintiff. Rather, pursuant to ERISA § 409, 29 U.S.C. § 1109, and the law interpreting it, the relief requested in this action is for the benefit of the Plan and its participants and beneficiaries.

CLASS ACTION ALLEGATIONS

58. **Class Definition.** Plaintiff brings this action as a class action under Federal Rule of Civil Procedure 23(a), (b)(1), (b)(2), and (b)(3) on behalf of herself and the following Class of persons similarly situated:

All persons, other than Defendants, who (a) are participants in or beneficiaries of the Plan between March 31, 2007 through the present; (b) were under age 52 on March 31, 2007; (c) retired or will retire after age 52; and (d) suffered or will suffer a decrease of retirement benefits as a result of the Eighth Amendment of the Plan.

59. **Class Period.** The Class Period begins on March 31, 2007 and continues through the present.

60. **Numerosity.** The members of the Class are so numerous that joinder of all members is impracticable. Although the exact number of Class members is currently unknown to Plaintiff and can only be ascertained through discovery, Plaintiff reasonably believes that the Class includes tens of thousands of participants and beneficiaries of the Plan.

61. **Commonality.** Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the Class are:

- whether Defendants each owed a fiduciary duty to Plaintiff and members of the Class;

- whether Defendants breached their fiduciary duties to Plaintiff and members of the Class by failing to act prudently and solely in the interests of the Plan's participants and beneficiaries;
- whether Defendants violated ERISA by designing, enacting, and implementing the Eighth Amendment;
- whether Defendants' notice relating to the Eighth Amendment was defective under ERISA; and
- whether the Plan and the Class members have suffered losses and, if so, what the proper measure of damages is.

62. **Typicality.** Plaintiff's claims are typical of those of other Class members because the Eighth Amendment improperly changed the formula to calculate the Social Security benefit offset for her and other Class members in an identical manner and as a result, decreased or will decrease the accrued benefits of all Class members.

63. **Adequacy.** Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in complex class actions and ERISA litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

64. **Rule 23(b)(1)(B) Requirements.** Class action status in this ERISA action is warranted under Rule 23(b)(1)(B) because prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the actions, or substantially impair or impede their ability to protect their interests.

65. **Other Rule 23(b) Requirements.** Class action status is also warranted under the other subsections of Rule 23(b) because: (a) prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of

conduct for Defendants; (b) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive, declaratory, or other appropriate equitable relief with respect to the Class as a whole; and (c) questions of law or fact common to members of the Class predominate over any questions affecting only individual members and a class action is superior to the other available methods for the fair and efficient adjudication of this controversy.

DEFENDANTS' BREACHES OF FIDUCIARY DUTIES

66. Under the Plan, a participant's monthly retirement benefits equal to 60% of his Final Average Earnings ("FAE")¹ minus 50% of his Social Security benefit.

67. The deduction of Social Security benefit from retirement benefits is commonly known as the "Social Security benefit offset."

68. Before Defendants enacted the Eighth Amendment, the Plan adopted the following formula to calculate Social Security benefit offset for participants who were under age 52 on March 31, 2007:² "the Participant's Primary Social Security Benefit (regardless of the Participant's age on June 30, 2010) shall be determined by assuming the Participant had *no income* after the earlier of the date the Participant attains age 52 or June 30, 2010." [Emphasis added.]

69. The Eighth Amendment, however, changed the formula for calculating Social Security benefit offset of participants who were under age 52 on March 31, 2007 and would retire from Delta after age 52: "the Participant's Primary Social Security

¹ Although not at issue here, the FAE is determined based on (1) the average of a participant's highest 36 consecutive months of earnings; and (2) the number of years of credited service.

² The formula was also applicable to Plan participants who were under age 52 on an earlier date – June 30, 2003.

Benefit shall be determine by *assuming the Participant had 2003 Level Pay until the Participant attains age 65.*" [Emphasis added.]

70. Because Plaintiff was under age 52 on March 31, 2007 and currently remains employed at Delta at age 53, her Social Security benefit offset is estimated to increase by hundreds of dollars a month based on the formula adopted in the Eighth Amendment.

71. The increase of Plaintiff's Social Security benefit offset will in turn cause a decrease in her retirement benefits from the Plan by hundreds of dollars every month during her retirement.

72. Accordingly, the Eighth Amendment will decrease Plaintiff's accrued benefits within the meaning of ERISA § 204(g), 29 U.S.C. § 1054(g), as well as other applicable statutes and regulations.

73. By decreasing the accrued benefits of Plaintiff and other Class members, Defendants failed to act in the interests of the Plan's participants and beneficiaries.

74. In connection with the Eighth Amendment, Defendants sent a notice dated February 13, 2007 to the Plan's participants.

75. This notice was defective under ERISA § 204(h), 29 U.S.C. § 1054(h), and related regulations, because, among other things, the notice failed to provide (a) adequate information on the decrease of accrued benefits; and (b) sufficient time for the Plan's participants and beneficiaries to consider and possibly object to the Eighth Amendment.

76. Defendants' conduct set forth above constitutes breaches of their fiduciary duties under ERISA.

77. Because Plaintiff does not seek to enforce the terms of the Plan, but instead seeks to enforce rights granted by ERISA, her claims do not require exhaustion of administrative remedies.

78. Nonetheless, as demonstrated in Exhibits A and B, Plaintiff has filed appeals with the Administrative Subcommittee on August 10, 2007 and with the Administrative Committee on February 21, 2008, arguing that the Eighth Amendment violated ERISA and other applicable laws.

79. By letter dated September 17, 2007, Defendant Hord rejected Plaintiff's appeal to the Administrative Subcommittee.

80. By letter dated June 16, 2008, Defendant Arpin rejected Plaintiff's appeal to the Administrative Committee.

81. Accordingly, Plaintiff has exhausted all administrative remedies.

CAUSATION

82. The Class members have suffered and will suffer millions of dollars in damages because the Eighth Amendment has caused and will cause decreases of their accrued benefits within the meaning of ERISA § 204(g), 29 U.S.C. § 1054(g), as well as other applicable statutes and regulations.

83. Had Defendants properly discharged their fiduciary and co-fiduciary duties, the Class members would have avoided their damages.

CAUSES OF ACTION

Count I: Breach of Fiduciary Duty

84. Plaintiff realleges all paragraphs set forth above.

85. During the Class Period, Defendants were named fiduciaries pursuant to ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1), *de facto* fiduciaries within the meaning of

ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), or both. Thus, they were bound by the duties of loyalty, exclusive purpose, and prudence.

86. Contrary to their duties and obligations under ERISA, Defendants designed, enacted, and implemented the Eighth Amendment, which has decreased or will decrease the accrued benefits of Plaintiff and other Class members.

87. Defendants also failed to provide Plaintiff and other Class members with adequate, timely notice of the Eighth Amendment.

88. As a direct and proximate result of Defendants' breaches of fiduciary duties, tens of thousands of Class members, including Plaintiff, have lost or will lose millions of dollars in accrued benefits.

89. Under ERISA §§ 409 and 502, 29 U.S.C. §§ 1109(a), 1132(a)(2), Defendants are liable for breach of fiduciary duties and are required to restore the losses caused by their breaches alleged in this Count and to provide other equitable relief as appropriate.

Count II: Co-Fiduciary Liability

90. Plaintiff realleges all paragraphs set forth above.

91. ERISA § 405(a), 29 U.S.C. § 1105, imposes liability on a fiduciary, in addition to any liability which he may have under any other provision, for a breach of fiduciary responsibility of another fiduciary with respect to the same plan, if he knows of a breach and fails to remedy it, knowingly participates in a breach, or enables a breach.

92. **Knowledge of a Breach and Failure to Remedy.** ERISA § 405(a)(3), 29 U.S.C. § 1105, imposes co-fiduciary liability on a fiduciary for a breach by another fiduciary if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

93. **Knowing Participation in a Breach.** ERISA § 405(a)(1), 29 U.S.C. § 1105(1), imposes liability on a fiduciary for a breach of fiduciary responsibility of another fiduciary with respect to the same plan if he participates knowingly in or knowingly undertakes to conceal an act or omission of such other fiduciary, knowing such act or omission is a breach.

94. **Enabling a Breach.** ERISA § 405(a)(2), 29 U.S.C. § 1105(2), imposes liability on a fiduciary if, by failing to comply with ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled another fiduciary to commit a breach.

95. Here, each Defendant breached all three provisions. As set forth above, each Defendant participated in designing, enacting, and implementing the Eighth Amendment. Each Defendant also failed to provide Class members with adequate, timely notice of the Eighth Amendment.

96. As a direct and proximate result of Defendants' breaches of fiduciary duties, Plaintiff and other Class members have lost and will lose millions of dollars in accrued benefits.

97. Under ERISA §§ 409 and 502, 29 U.S.C. §§ 1109(a), 1132(a)(2), each Defendant, as a co-fiduciary, is liable for each other's breach of fiduciary duties and is required to restore the losses caused by the breaches alleged in this Count and to provide other equitable relief as appropriate.

Count III: Declaratory Judgment

98. Plaintiff realleges all paragraphs set forth above.

99. The Eighth Amendment violates the anti-cutback rule under ERISA § 204(g), 29 U.S.C. § 1054(g), as well as other applicable statutes and regulations.

100. Furthermore, Defendants failed to provide adequate, timely notice to the Class regarding the Eighth Amendment under ERISA § 204(h), 29 U.S.C. § 1054(h), and related regulations.

101. Thus, the Eighth Amendment is substantively and procedurally defective.

102. Accordingly, Plaintiff and the other Class members are entitled to a declaration that (a) Defendants are liable for breaches of fiduciary duties; and (b) the Eighth Amendment is void.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for:

A. An Order certifying this action as a class action for all purposes of liability and relief and appointing Plaintiff's counsel as class counsel;

B. A Declaration that each Defendant has breached fiduciary duties to the Plan and its participants and beneficiaries;

C. A Declaration that the Eighth Amendment is void;

D. A Order directing Defendants to rescind the Eighth Amendment and to implement the Plan as if the Eighth Amendment never occurred;

E. An Order compelling Defendants to make good to the Class members all damages resulting from Defendants' breaches of their fiduciary duties;

F. An Order awarding costs and attorney's fees pursuant to 29 U.S.C. § 1132(g) and other applicable laws; and

G. An Order granting the Class such other and further relief as the Court deems just and proper.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury of all triable issues.

Dated: June 29, 2009

PAGE PERRY LLC



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Counsel for Plaintiff

EXHIBIT A

Jean Marie Cinotto
P.O. Box 425
Colleyville, TX 76034
817-788-1330

August 10, 2007

Secretary, Administrative Subcommittee
Delta Retirement Plan
Delta Air Lines, Inc.
Department 844
P.O. Box 20706
Atlanta, Georgia 30320-6001

Dear Ladies and Gentlemen,

I am appealing the decision by Delta detailed in a notice and letter from Robert Kight dated February 13, 2007. In it, he detailed plans to reduced accrued benefits of employees who were not yet 52 by March 31, 2007.

This decision is in direct violation of the Pension Protection Act and the IRS Code. Specifically, Delta is treating employees who will retire in the future under Article 5 of the Plan as if they are terminating employment under Article 6 of the Plan. If employees continue past age 52 and meet all other eligibility requirements, then retire, they must be considered under Article 5, not Article 6.

An additional violation occurs when Delta decreases the benefits to these participants. The anti-cutback rule of the IRS Code will not allow decreases to accrued benefits including social security supplements. If Delta considers the higher retirement income up to age 62 as a social security supplement, then they can't reduce it. If they consider retirement pay after 62 as a social security supplement, then they can't reduce it. If they consider it an accrued benefit at either time, they can not reduce it. They simply can not legally reduce or decrease these earned benefits.

This must be corrected in order for the Plan to comply with the Pension Protection Act and the IRS Code and be funded properly. I am filing this appeal on behalf of all interested parties.

Sincerely,

Jean Marie Cinotto
604828
Dept. 611, ATL

EXHIBIT B

Jean Marie Cinotto
P.O. Box 425
Colleyville, TX 76034
817-788-1330

February 21, 2008

Secretary, Administrative Committee
Delta Retirement Plan
Delta Air Lines, Inc.
Department 844
P.O. Box 20706
Atlanta, Georgia 30320-6001

Dear Committee Members,

Attached is my appeal to the Administrative Committee. The appeal is for the Delta Retirement Plan to comply with federal laws including the Pension Protection Act, ERISA, the IRS Code and other applicable laws. The negative impact to my benefits and other participants' benefits is at issue as a result of the changes that are not in compliance.

Additionally, because you have accepted the duty to act as a fiduciary for the Plan, you have the responsibility to interpret the terms of the plan and determine claims. As fiduciaries, you can not allow the plan to violate federal laws and the IRS Code.

I have not received your response unless it has been sent very recently and is in the mail. I would like for you to respond to my appeal. This, too, is a responsibility that is a part of fiduciary duties. If you need additional time to respond, please send me your written timeline for considering the appeal. You may also correspond with me through email at JMCinotto@sbcglobal.net. Email is much more efficient given my schedule of travel. Either way you choose, I do expect to hear from you within 10 days of the receipt of this letter since a sufficient amount of time has passed since you received my original letter.

Sincerely,



Jean Marie Cinotto
604828
Dept. 611, ATL

ATTACHMENT "A"

DELTA AIRLINES, INC.; THE ADMINISTRATIVE COMMITTEE; THE ADMINISTRATIVE SUBCOMMITTEE OF DELTA AIR LINES, INC.; LISA A. BROWN; CHERIE CALDWELL; LIDIA CHIANG; ESTHER HAMMOND; SUZANNE M. ARPIN; ANNETTE FRAZIER; BEVERLY C. HORD; MICHAEL H. CAMPBELL; ELIZABETH JOHNSTON; ROBERT L. KIGHT; and JOHN DOES 1 through 20,

ATTACHMENT "B"
Service List

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Atlanta, Georgia 30320-6001

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Atlanta, Georgia 30320

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