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Attorneys for Defendants UAL Corporation and United Air Lines, Inc.

15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 SAN FRANCISCO DIVISION

18 Michael C. Malaney, et al.,
 19 Plaintiffs,
 20 vs.
 21 UAL CORPORATION, UNITED AIR
 22 LINES, INC., and CONTINENTAL
 23 AIRLINES, INC.,
 24 Defendants.

CASE NO. 3:10-CV-02858-RS

ANSWER OF DEFENDANTS UAL
 CORPORATION AND UNITED AIR
 LINES, INC. TO PLAINTIFFS'
 COMPLAINT FOR INJUNCTIVE RELIEF
 AGAINST VIOLATIONS OF SECTION 7
OF THE CLAYTON ANTITRUST ACT

1 Defendants UAL Corporation and United Air Lines, Inc. (collectively, “United”), as for
2 their Answer to plaintiffs’ Complaint, state as follows:

3 **I. INTRODUCTION**

4 PARAGRAPH 1: On May 3, 2010, the defendants announced that they had agreed to
5 combine in an all stock transaction, valued at more than \$8 billion, merging United and
6 Continental Airlines (“Continental”), eliminating the substantial competition between them, and
7 merging to create the world’s largest airline. It is proposed that the unlawful combine would
8 operate under the United name.
9

10 UNITED’S RESPONSE:

11 United denies Paragraph 1, except admits that on May 3, 2010, United and Continental
12 Airlines (“Continental”) announced a definitive agreement to merge through an all-stock
13 transaction and that the merged entity would operate under the United name.
14

15 PARAGRAPH 2: The effect of the announced merger between United and Continental
16 may be substantially to lessen competition, or to tend to create a monopoly, in the transportation
17 of airline passengers in the United States and certain submarkets and in violation of Section 7 of
18 the Clayton Antitrust Act, 15 U.S.C. § 18.

19 UNITED’S RESPONSE:

20 Paragraph 2 states a legal conclusion to which no response is required. To the extent a
21 response is required, United denies Paragraph 2.
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23 PARAGRAPH 3: The probable and planned anticompetitive effects of this unlawful
24 combination are increases in prices and fares, elimination and/or curtailment of services,
25 elimination or curtailment of frequency of flights, curtailment of capacity of aircraft and available
26 seats for passage, elimination of tens of thousands of jobs, the deterioration of quality of service,
27 the addition of charges for amenities otherwise considered part and parcel of the service, the
28 elimination or substantial cutback of traffic to hubs, the creation of monopolies for passenger air

1 traffic from and to major cities, and the encouragement and trend to further concentrate the
2 industry toward ultimate monopoly.

3 UNITED’S RESPONSE:

4 United denies Paragraph 3.

5 PARAGRAPH 4: Plaintiffs are individuals who have purchased airline tickets from one or
6 both of the defendants in the past, and expect to continue to do so in the future. They are
7 threatened with loss or damage by the defendants’ merger in violation of Section 7 in the form of
8 higher ticket prices and diminished service, and, accordingly, they bring this action for preliminary
9 and permanent injunctive relief against the merger pursuant to Section 16 of the Clayton Antitrust
10 Act, 15 U.S.C. § 26.
11

12 UNITED’S RESPONSE:

13 United lacks knowledge or information sufficient to form a belief as to the accuracy of the
14 first sentence of Paragraph 4. United denies the remainder of Paragraph 4, except admits that
15 plaintiffs purport to bring an action pursuant to 15 U.S.C. § 26.
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17 **II. JURISDICTION**

18 PARAGRAPH 5: This action is brought under Section 16 of the Clayton Antitrust Act, 15
19 U.S.C. § 26, to prohibit the consummation and the effectuation of defendants’ planned unlawful
20 merger in violation of Section 7 of the Clayton Antitrust Act, 15 U.S.C. § 18. This Court has
21 subject matter jurisdiction of the federal antitrust claims asserted in this action under Section 16 of
22 the Clayton Antitrust Act, 15 U.S.C. § 26, and Title 28 United States Code Sections 1331 and
23 1337.
24

25 UNITED’S RESPONSE:

26 United admits that Plaintiffs purport to bring this action under Sections 7 and 16 of the
27 Clayton Antitrust Act, 15 U.S.C. §§ 18 and 26, and that this Court has subject matter jurisdiction
28 of any properly pled federal antitrust claims pursuant to 15 U.S.C. § 26 and 28 U.S.C. §§ 1331 and

1 1337. The remainder of Paragraph 5 states legal conclusions to which no response is required. To
2 the extent a response is required, United denies the remainder of Paragraph 5.

3 **III. THE PARTIES**

4 PARAGRAPH 6: Each of the plaintiffs named herein below is an individual and a citizen
5 of the state listed as the address for each such plaintiff, and in the four years next prior to the filing
6 of this action, each plaintiff has purchased airline tickets from one or both of the defendants, and
7 each plaintiff expects to continue to purchase airline tickets from one or both of the defendants or
8 their merged entity in the future:
9

10 Michael C. Malaney, 5395 Egypt Creek NE., Ada, MI 49301;

11 Katherine R. Arcell, 4427 S. Miro St., New Orleans, LA 70125;

12 Keith Dean Bradt, 690 W 2nd St., Suite 200, Reno, NV 89503;

13 Jose M. Brito, 2715 Sage Bluff Ct., Reno, NV 89523;

14 Jan Marie Brown, 975 Kennedy Dr., Carson City, NV, 89706;

15 Robert D. Conway, 6160 W. Brooks Ave., Las Vegas, NV 89108;

16 Rosemary D'Augusta, 347 Madrone St., Millbrae, CA 94030;

17 Brenda K. Davis, 11022 Old Military Trail, Forney, TX 75126;

18 Pamela Faust, 6227 Whileaway Dr., Loveland, OH 45140;

19 Carolyn Fjord, 4405 Putah Creek Road, Winters, CA 95694;

20 Don Freeland, 73801 White Sands Dr., Thousand Palms, CA 92276;

21 Ted Friedli, 8 Chelton Way, Long Branch, NJ 07740;

22 Donald V. Fry, 6750 Northrim Ln., Colorado Springs, CO 80919;

23 Gabriel Garavanian, 104 Sequoia Road, Tyngsboro, MA 01879;

24 Harry Garavanian, 104 Sequoia Road, Tyngsboro, MA 01879;

25 Yvonne Jocelyn Gardner, 10-Gold Coin Ct., Colorado Springs, CO 80919;

26 Lee M. Gentry, 7021 Forestview Dr., West Chester, OH 45069-3616;

- 1 Jay Glikman, 4265 Marina City Dr. #809, Marina del Rey, CA 90292;
- 2 Donna M. Johnson, 1864 Masters Dr., DeSoto, TX 75115;
- 3 Valarie Ann Jolly, 2121 Dogwood Loop, Mabank, TX 75156;
- 4 Gail S. Kosach, 4085 Ramrod Cir., Reno, NV 89519;
- 5 Rozann Kunstle, 7210 Fleetwood Ct., Colorado Springs, CO 80919;
- 6 Steve Kunstle, 7210 Fleetwood Ct., Colorado Springs, CO 80919;
- 7 John Lovell, 1834 Whirlaway Ct., Kentwood, MI 49546;
- 8 Len Marazzo, 1260 Springer Ct., Reno, NV 89511;
- 9 Lee McCarthy, 35 Lancashire Place, Naples, FL 34104;
- 10 Lisa McCarthy, 35 Lancashire Place, Naples, FL 34104;
- 11 Patricia Ann Meeuwsen, 1062 Wedgewood, Plainwell, MI 49080;
- 12 L. West Oehmig, Jr., 1017 East Brow Road, Lookout Mountain, TN 37350
- 13 Cynthia Prosterman, 527 20th Ave., San Francisco, CA 94121;
- 14 Deborah M. Pulfer, 16264 E. Mason Rd., Sidney, OH 45365;
- 15 Sharon Holmes Reed, 622 Grandview Ave., Kingman, AZ 86401;
- 16 Dana L. Robinson, 127B Palm Bay Terrace, Palm Beach Gardens, FL 33418;
- 17 Robert A. Rosenthal, 4659 Bridle Pass Drive, Colorado Springs, CO 80923;
- 18 Bill Rubinsohn, 261 Old York Road, Jenkintown, PA 19046;
- 19 Sondra K. Russell, 1206 N. Loop 340, Waco, TX 76705;
- 20 Sylvia N. Sparks, 3320 Conte Drive, Carson City, NV 89701;
- 21 June Stansbury, 363 Smithridge Park, Reno, NV 89502;
- 22 Clyde D. Stensrud, 1529 10th St W., Kirkland, WA 98033;
- 23 Sherry Lynne Stewart, 6565 Foxdale Cir., Colorado Springs, CO 80919;
- 24 Wayne Taleff, 768 Farmsworth Ct., Cincinnati, OH 45255;
- 25 Gary Talewsky, 14 Cow Hill Rd., Sharon, MA 02067;

1 Annette M. Tippetts, 2783 East Canyon Crest Dr., Spanish Fork, Utah 84660;

2 Diana Lynn Ultican, 9039 NE Juanita Dr. #102, Kirkland, WA 98034;

3 J. Michael Walker, 11865 Heather Ln., Grass Valley, CA 95949;

4 Pamela S. Ward, 1322 Creekwood Dr., Garland, TX 75044;

5 David P. Wendell, 100 Vine St., Reno, NV 89503;

6 Christine O. Whalen, 1131 Pine St., New Orleans, LA 70118; and

7 Suraj Zutshi, 3333 Saratoga Ct., Sparks, NV 89431.

8 UNITED'S RESPONSE:

9 United lacks knowledge or information sufficient to form a belief as to the accuracy of
10 Paragraph 6.

11 PARAGRAPH 7: Defendant UAL Corporation ("UAL") is a corporation incorporated
12 under the laws of the State of Delaware with its principal place of business in Chicago, Illinois.

13 UNITED'S RESPONSE:

14 United admits Paragraph 7.

15 PARAGRAPH 8: Defendant UAL is a holding company that owns and operates defendant
16 United.

17 UNITED'S RESPONSE:

18 United admits Paragraph 8.

19 PARAGRAPH 9: United operates the world's fourth largest airline and the third largest
20 domestic carrier, with more than 108 billion revenue passenger miles ("RPMs") in 2008.

21 UNITED'S RESPONSE:

22 United denies Paragraph 9, except admits that it had more than 108 billion RPMs in 2008.

23 PARAGRAPH 10: One RPM equals one passenger flown one mile. RPMs are the
24 commonly accepted measure of airline sizes in the industry.

1 UNITED’S RESPONSE:

2 United denies Paragraph 10, except admits that one RPM equals one paying passenger
3 flown one mile.

4 PARAGRAPH 11: United is engaged in the business of transporting passengers and cargo
5 and has approximately 43,700 full-time employees.

6 UNITED’S RESPONSE:

7 United denies Paragraph 11, except admits it is engaged in the business of transporting
8 passengers and cargo.

9 PARAGRAPH 12: United operates domestic hubs at Los Angeles, San Francisco, Denver,
10 Chicago, and Washington, D.C.

11 UNITED’S RESPONSE:

12 United admits Paragraph 12.

13 PARAGRAPH 13: United operates a foreign hub in Tokyo to serve its Asia-Pacific route
14 system.

15 UNITED’S RESPONSE:

16 United admits Paragraph 13.

17 PARAGRAPH 14: United serves European cities.

18 UNITED’S RESPONSE:

19 United admits Paragraph 14.

20 PARAGRAPH 15: United serves Latin American cities.

21 UNITED’S RESPONSE:

22 United admits Paragraph 15.

23 PARAGRAPH 16: United will serve African cities beginning in the second quarter 2010.

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1 UNITED’S RESPONSE:

2 United denies Paragraph 16, except admits that United began serving Accra, Ghana on
3 June 20, 2010.

4 PARAGRAPH 17: United is a founding member in the so-called Star Alliance, a global
5 airline alliance with defendant Continental as well as Adria, Air Canada, Air China, Air New
6 Zealand, ANA, Asiana Airlines, Austrian Airlines, Blue 1, bmi, Brussels Airlines, Croatia
7 Airlines, Egyptair, Polish Airlines, Lufthansa, Scandinavian Airlines, Shanghai Airlines,
8 Singapore Airlines, South Africa Airways, Spanair, Swiss International Air Lines, TAP Portugal,
9 Thai Airways International, Turkish Airlines, and US Airways. Star Alliance members have a
10 combined 19,700 daily flights to 1,077 airports in 175 countries.

11 UNITED’S RESPONSE:

12 United denies Paragraph 17, except admits that it is a member of the Star Alliance.
13

14 PARAGRAPH 18: By reason of that Star Alliance association “the management teams [of
15 United and Continental] have come to know one another really very well.”
16

17 UNITED’S RESPONSE:

18 United lacks knowledge or information sufficient to form a belief as to the accuracy of
19 Paragraph 18, including the source of the quoted excerpt.

20 PARAGRAPH 19: United has agreements with eight domestic feeder/regional carriers,
21 including Atlantic Southeast Airlines, Colgan Airlines, ExpressJet, GoJet Airlines, Mesa Airlines,

22 Shuttle America, SkyWest Airlines, and Trans States Airlines.
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24 UNITED’S RESPONSE:

25 United admits Paragraph 19.

26 PARAGRAPH 20: United has membership in United Express, which includes Air
27 Wisconsin, SkyWest, Mesa, Republic Airlines, Chautauqua Airlines, Shuttle America, and Trans
28 States Airlines.

1 UNITED’S RESPONSE:

2 United denies Paragraph 20, except admits that SkyWest, Mesa, Shuttle America and
3 Trans States Airlines operate flights under the United Express brand and livery.

4 PARAGRAPH 21: Defendant Continental is a corporation incorporated under the laws of
5 the State of Delaware with its principal place of business in Houston, Texas.

6 UNITED’S RESPONSE:

7 United admits Paragraph 21.

8 PARAGRAPH 22: Continental is the fourth largest domestic carrier and the fifth largest
9 airline in the world, with more than 80 billion RPMs in 2008.

10 UNITED’S RESPONSE:

11 United lacks knowledge or information sufficient to form a belief as to the accuracy of
12 Paragraph 22.

13 PARAGRAPH 23: Continental, together with its subsidiaries and divisions Continental
14 Express (consisting of ExpressJet Airlines and Chautauqua Airlines) and Continental Connection
15 (comprised of Cape Air, Colgan Air, CommutAir, and Gulfstream International Airlines), has
16 more than 2,700 daily departures throughout the Americas, Europe and Asia, serving 132
17 domestic and 137 international destinations.

18 UNITED’S RESPONSE:

19 United lacks knowledge and information sufficient to form a belief as to the accuracy of
20 Paragraph 23.

21 PARAGRAPH 24: Through its alliance partners, including its membership in Star
22 Alliance, of which defendant United is also a member, Continental serves more than 750
23 additional destinations.

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1 UNITED’S RESPONSE:

2 United lacks knowledge or information sufficient to form a belief as to the accuracy of
3 Paragraph 24, except admits that United is a member of the Star Alliance.

4 PARAGRAPH 25: Continental has and operates hubs in Houston, Cleveland, Guam, and
5 Newark.

6 UNITED’S RESPONSE:

7 United admits that Continental has and operates hubs at New York/Newark Liberty
8 International Airport in Newark, NJ; George Bush Intercontinental Airport in Houston, TX;
9 Cleveland Hopkins International Airport in Cleveland, OH; and Agana Field International Airport
10 in Guam.

11 PARAGRAPH 26: With its regional partners, Continental carries approximately 63
12 million passengers per year.

13 UNITED’S RESPONSE:

14 United admits Paragraph 26.

15 PARAGRAPH 27: Continental also provides scheduled transportation of cargo throughout
16 the United States and around the world.

17 UNITED’S RESPONSE:

18 United admits Paragraph 27.

19 PARAGRAPH 28: Continental has more than 40,000 full-time employees.

20 UNITED’S RESPONSE:

21 United admits Paragraph 28.

22 **IV. NATURE OF TRADE AND COMMERCE**

23 PARAGRAPH 29: The relevant product and geographic markets for purposes of this
24 action are the transportation of airline passengers in the United States, and the transportation of
25 airline passengers to and from the United States on international flights.
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1 UNITED’S RESPONSE:

2 Paragraph 29 states a legal conclusion to which no response is required. To the extent a
3 response is required, United denies Paragraph 29.

4 PARAGRAPH 30: United and Continental are substantial rivals and competitors in the
5 relevant market.

6 UNITED’S RESPONSE:

7 United denies Paragraph 30.

8 PARAGRAPH 31: United and Continental are substantial potential rivals and potential
9 competitors in the relevant market.

10 UNITED’S RESPONSE:

11 United denies Paragraph 31.

12 PARAGRAPH 32: Not only do United and Continental provide competing passenger
13 service against each other on a number of passenger routes, but also they are potentially able to
14 provide competing passenger service against each other on any route anywhere in the United
15 States if they believe it would be profitable to do so.

16 UNITED’S RESPONSE:

17 United denies Paragraph 32.

18 PARAGRAPH 33: United has the capability to serve every major market in the United
19 States above 5,000 population.

20 UNITED’S RESPONSE:

21 United denies Paragraph 33.

22 PARAGRAPH 34: Continental has the capability to serve every major market in the
23 United States above 5,000 population.

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1 UNITED’S RESPONSE:

2 United lacks knowledge or information sufficient to form a belief as to the accuracy of
3 Paragraph 34.

4 PARAGRAPH 35: The behavior of United is constrained by the actual and potential
5 competition from Continental throughout the entire relevant market and submarkets.

6 UNITED’S RESPONSE:

7 United denies Paragraph 35.

8 PARAGRAPH 36: The behavior of Continental is constrained by the actual and potential
9 competition from United throughout the entire relevant market and submarkets.

10 UNITED’S RESPONSE:

11 United denies Paragraph 36.

12 PARAGRAPH 37: The market for the transportation of airline passengers in the United
13 States is in and part of interstate commerce, makes extensive use of the instrumentalities of
14 interstate commerce, and substantially affects interstate commerce. Airline passengers travel in a
15 continuous and uninterrupted flow of interstate commerce. Airline travel is a continuous and
16 uninterrupted flow of interstate commerce. Materials used in the construction of airplanes are
17 purchased and shipped in a continuous and uninterrupted flow of interstate commerce.

18 UNITED’S RESPONSE:

19 United denies Paragraph 37, except admits that some transportation of airline passengers
20 and aircraft construction materials affects interstate commerce.

21 PARAGRAPH 38: Any restraint of trade in the transportation of airline passengers in the
22 United States, including the restraints specifically alleged in this complaint, directly and
23 substantially restrains and affects interstate commerce.

24 UNITED’S RESPONSE:

25 United denies Paragraph 38.

1 **V. CONDUCT GIVING RISE TO VIOLATIONS OF LAW**

2 PARAGRAPH 39: On May 3, 2010, United and Continental announced an agreement in
3 which the two carriers will combine to form a new company with an equity value of \$8.3 billion.

4 UNITED'S RESPONSE:

5 United denies Paragraph 39, except admits that it and Continental issued a press
6 announcement on May 3, 2010 concerning an agreement to merge the two airlines and refers to
7 that announcement for its contents.

8 PARAGRAPH 40: The new airline will be called United.

9 UNITED'S RESPONSE:

10 United admits Paragraph 40.

11 PARAGRAPH 41: The chief executive officer of the combined company will be Jeff
12 Smisek, the current chairman, president, and CEO of Continental.

13 UNITED'S RESPONSE:

14 United admits Paragraph 41.

15 PARAGRAPH 42: Glenn Tilton, chairman, president, and CEO of defendant UAL
16 Corporation will serve as non-executive chairman of the combined company's Board of Directors
17 through December 31, 2010, or the second anniversary of closing, whichever is later.

18 UNITED'S RESPONSE:

19 United admits Paragraph 42.

20 PARAGRAPH 43: Mr. Smisek will become executive chairman of the Board when Mr.
21 Tilton ceases to be non-executive chairman.

22 UNITED'S RESPONSE:

23 United admits Paragraph 43.

24 PARAGRAPH 44: Through secret and private meetings, Mr. Smisek of Continental met
25 on more than one occasion with Mr. Tilton of UAL.

1 UNITED’S RESPONSE:

2 United denies Paragraph 44, except admits that (i) Mr. Tilton and Continental’s CEO, Mr.
3 Smisek, were involved in discussions between United and Continental leading up to the agreement
4 to enter into the planned transaction, and (ii) these discussions were intended to be confidential
5 while they were occurring.

6 PARAGRAPH 45: One or more of the secret and private meetings of Mr. Smisek and Mr.

7 Tilton were carried on outside of their offices, including hotel rooms.
8

9 UNITED’S RESPONSE:

10 United denies Paragraph 45, except admits that Mr. Tilton met with Mr. Smisek outside of
11 their offices.

12 PARAGRAPH 46: At one or more of the secret and private meetings, Messrs. Smisek and

13 Tilton discussed the purposes and probable effects of the merger.
14

15 UNITED’S RESPONSE:

16 United denies Paragraph 46, except admits that Messrs. Tilton and Smisek discussed the
17 rationale for the proposed merger in their meetings.

18 PARAGRAPH 47: At one or more of the secret and private meetings, Messrs. Smisek and

19 Tilton discussed airline fares in general and specifically.
20

21 UNITED’S RESPONSE:

22 United denies Paragraph 47.

23 PARAGRAPH 48: At one or more of the secret and private meetings, Messrs. Smisek and

24 Tilton discussed the frequency of flights.

25 UNITED’S RESPONSE:

26 United denies Paragraph 48.

27 PARAGRAPH 49: At one or more of the secret and private meetings, Messrs. Smisek and

28 Tilton discussed the elimination or curtailment of the use of hubs.

1 UNITED’S RESPONSE:

2 United denies Paragraph 49.

3 PARAGRAPH 50: At one or more of the secret and private meetings, Messrs. Smisek and
4 Tilton discussed the curtailment of capacity.

5 UNITED’S RESPONSE:

6 United denies Paragraph 50.

7 PARAGRAPH 51: At one or more of the secret and private meetings, Messrs. Smisek and
8 Tilton discussed the firing of employees.

9 UNITED’S RESPONSE:

10 United denies Paragraph 51, except admits that in their meetings to discuss a possible
11 merger, Messrs. Tilton and Smisek discussed the likelihood that a merger of United and
12 Continental would result in the separation of significantly fewer employees than would a merger
13 with other airlines.
14

15 PARAGRAPH 52: At one or more of the secret and private meetings, Messrs. Smisek and
16 Tilton discussed the type of aircraft to be eliminated.

17 UNITED’S RESPONSE:

18 United denies Paragraph 52.

19 PARAGRAPH 53: At one or more of the secret and private meetings, Messrs. Smisek and
20 Tilton discussed the charges for services previously given to the passengers for free.
21

22 UNITED’S RESPONSE:

23 United denies Paragraph 53.

24 PARAGRAPH 54: At one or more of the secret and private meetings, Messrs. Smisek and
25 Tilton discussed the possible combination of American Airlines and US Airways.
26

27 UNITED’S RESPONSE:

28 United denies Paragraph 54.

1 PARAGRAPH 55: At one or more of the secret and private meetings, Messrs. Smisek and
2 Tilton discussed the potential fare increases in the monopoly submarkets that would be created by
3 the combine.

4 UNITED'S RESPONSE:

5 United denies Paragraph 55.

6 PARAGRAPH 56: At one or more of the secret and private meetings, Messrs. Smisek and
7 Tilton discussed the potential duopoly submarkets created by the combine.
8

9 UNITED'S RESPONSE:

10 United denies Paragraph 56.

11 PARAGRAPH 57: The combined company and its regional partners will carry over 120
12 million passengers per year, provide access to more than 370 destinations in 59 countries, have
13 approximately \$30 billion in annual aggregate revenues and \$7.4 billion in unrestricted cash,
14 operate a mainline fleet of 693 aircraft, and employ approximately 76,900 people worldwide.
15

16 UNITED'S RESPONSE:

17 United denies Paragraph 57, except admits that, according to public filings, United and
18 Continental together carry over 120 million passengers per year, provide access to 59 countries,
19 have approximately \$30 billion in annual aggregate revenues and \$7.4 billion in unrestricted cash,
20 operate 693 aircraft in their mainline fleets, and employ approximately 76,900 people worldwide.
21

22 PARAGRAPH 58: Combined, United and Continental will have more than 203 billion
23 RPMs. Domestically, their combined RPMs comprise 21 percent of domestic capacity, which
24 tops the current domestic leader, Delta Air Lines, Inc., which had 189 billion RPMs in 2009,
25 which comprises a market share of 20 percent.

26 UNITED'S RESPONSE:

27 United lacks knowledge or information sufficient to form a belief as to the accuracy of
28 Paragraph 58.

1 PARAGRAPH 59: Globally, the combined company will control 53 percent of all traffic
2 on Pacific routes.

3 UNITED’S RESPONSE:

4 United denies Paragraph 59.

5 PARAGRAPH 60: Together, United and Continental serve 30 common international
6 destinations, representing 65% of their total international seat capacity.

7 UNITED’S RESPONSE:

8 United denies Paragraph 60.

9 PARAGRAPH 61: If the merger is consummated, the new combined United will surpass
10 Delta as the largest domestic airline for flights across the Atlantic ocean, with 40 percent of
11 passenger traffic, and would control 53 percent of traffic across the Pacific ocean.

12 UNITED’S RESPONSE:

13 United denies Paragraph 61.

14 PARAGRAPH 62: If the merger is consummated, the United States will be left with just
15 three international airlines: the new combined United, Delta, and American, while US Airways
16 Group, Inc. will trail a distant fourth with less than one-third the share of American’s.

17 UNITED’S RESPONSE:

18 United denies Paragraph 62.

19 PARAGRAPH 63: If the merger is consummated, it will result in lower capacity; that is,
20 fewer seats in the sky, which, in turn, will result in higher ticket fares for consumers.

21 UNITED’S RESPONSE:

22 United denies Paragraph 63.

23 PARAGRAPH 64: J.P. Morgan estimates that, if the merger closes, defendants would
24 reduce their overall capacity by 8 percent.

1 UNITED’S RESPONSE:

2 United lacks knowledge or information sufficient to form a belief as to the accuracy of
3 Paragraph 64, including the content of the J.P. Morgan statement to which Paragraph 64
4 purportedly refers.

5 PARAGRAPH 65: Defendants’ merger would take place in and further concentrate an
6 already highly concentrated market, characterized by mergers, including the most recent merger of
7 Delta and Northwest Airlines in 2006, which made Delta the world’s largest carrier, a title that
8 will be passed to the new combined United.
9

10 UNITED’S RESPONSE:

11 United denies Paragraph 65.

12 PARAGRAPH 66: In addition, defendants themselves are products of mergers and
13 acquisitions.
14

15 UNITED’S RESPONSE:

16 United denies Paragraph 66.

17 PARAGRAPH 67: In 1985, United bought its Pacific routes from Pan American World
18 Airways, making United a major international carrier.

19 UNITED’S RESPONSE:

20 United denies Paragraph 67, except admits that it bought Pacific routes from Pan American
21 in 1985.
22

23 PARAGRAPH 68: For its part, Continental acquired Frontier, People Express, and New
24 York Air in 1987.

25 UNITED’S RESPONSE:

26 United admits Paragraph 68.

27 PARAGRAPH 69: Other mergers include that between Northwest and Republic Airlines
28 in 1986, and between US Airways and America West in 2005.

1 UNITED'S RESPONSE:

2 United admits Paragraph 69.

3 PARAGRAPH 70: Attached hereto as Exhibit A and hereby incorporated herein by
4 reference is a chart depicting the history of mergers and increasing concentration in the United
5 States airline industry. Attached hereto as Exhibits B and C are the rankings of the top airlines in
6 the United States pre-merger and post-merger.

7 UNITED'S RESPONSE:

8 United denies paragraph 70, except admits Exhibits A, B and C are attached to Plaintiffs'
9 Complaint, and denies the content of Exhibits A, B and C.

10 PARAGRAPH 71: The new United will operate 8 hubs, including hubs in the four largest
11 U.S. cities.

12 UNITED'S RESPONSE:

13 United denies Paragraph 71, except admits that the merger of Continental and United will
14 result in the new entity operating eight hubs in the continental United States, including: Cleveland
15 Hopkins International Airport; Denver International Airport; Dulles International Airport outside
16 of Washington, DC; George Bush Intercontinental Airport in Houston, TX; Los Angeles
17 International Airport; New York/ Newark Liberty International Airport in Newark, NJ; O'Hare
18 International Airport in Chicago, IL; and San Francisco International Airport.

19 PARAGRAPH 72: Defendants' merger will increase market concentration in four of the
20 100 largest U.S. cities, namely, Washington, D.C., San Diego, Seattle, and New Orleans.

21 UNITED'S RESPONSE:

22 United denies Paragraph 72.

23 PARAGRAPH 73: In addition, at the airport level, the following 17 domestic airports will
24 experience undue increases in market concentration as a result of the defendants' merger:

25 Houston Intercontinental (combined United will control 40 percent market share), Newark Liberty

1 International (55 percent market share on domestic routes; 65 percent for international travel), San
2 Francisco International (40 percent market share), Chicago O'Hare International (35 percent
3 market share), Los Angeles International, New Orleans, Cleveland Hopkins, Denver, San Diego,
4 Orange County, Honolulu (HNL), Ontario California, Las Vegas, Tampa, Sacramento, Yampa
5 Valley Colorado, and Vail.

6 UNITED'S RESPONSE:

7 United denies Paragraph 73.

8 PARAGRAPH 74: The new combined company's dominance at the airports listed in
9 paragraph 21 is substantially likely to result in higher fare prices for flights to or from those
10 airports.
11

12 UNITED'S RESPONSE:

13 United denies Paragraph 74.

14 PARAGRAPH 75: Defendants have overlapping non-stop flights on 12 routes, including
15 inter alia, Newark to Chicago, Cleveland to Chicago, Denver to Newark, and Houston to Denver.
16 Defendants' combination is likely to result in higher fare prices on these routes.
17

18 UNITED'S RESPONSE:

19 United denies Paragraph 75, except admits that United and Continental offer non-stop
20 service from New York/Newark to Chicago, Cleveland to Chicago, Denver to New York/Newark,
21 and Houston to Denver.
22

23 PARAGRAPH 76: If the combination of United and Continental were allowed, ten
24 airports would be a monopoly. This creation of monopolies in these markets will likely result in
25 increases in fares and reduction of service.

26 UNITED'S RESPONSE:

27 United denies Paragraph 76.
28

1 PARAGRAPH 77: If the combination of United and Continental were allowed, 120
2 airports would be a duopoly. This creation of a duopoly in these markets will likely result in
3 increases in fares and reduction of service.

4 UNITED'S RESPONSE:

5 United denies Paragraph 77.

6 PARAGRAPH 78: If the combination of United and Continental were allowed, 454
7 airports would be reduced to three competitors. This creation of a triumvirate in these markets
8 will likely result in increases in fares and reduction of service.

9 UNITED'S RESPONSE:

10 United denies Paragraph 78.

11 PARAGRAPH 79: If the combination of United and Continental were allowed, 387
12 airports would be reduced to four competitors. This creation of an oligopoly in these markets will
13 likely result in increases in fares and reduction of service.

14 UNITED'S RESPONSE:

15 United denies Paragraph 79.

16 PARAGRAPH 80: If the combination of United and Continental were allowed, 143
17 airports would be reduced to five competitors. This creation of an oligopoly in these markets will
18 likely result in increases in fares and reduction of service.

19 UNITED'S RESPONSE:

20 United denies Paragraph 80.

21 PARAGRAPH 81: If the combination of United and Continental were allowed, the
22 combine would have monopoly service from San Francisco to Houston, from San Francisco to
23 Newark, from Denver to Newark, from Newark to Dulles, Washington, D.C., from Cleveland to
24 Dulles, Washington, D.C. This creation of monopolies in these markets will likely result in
25 increases in fares and reduction of service.
26
27
28

1 UNITED'S RESPONSE:

2 United denies Paragraph 81.

3 PARAGRAPH 82: Non-stop service is typically preferred by some passengers.

4 UNITED'S RESPONSE:

5 United lacks knowledge or information sufficient to form a belief as to the accuracy of
6 Paragraph 82.

7 PARAGRAPH 83: United and Continental overlap on 12 non-stop airport pair routes. For
8 seven of the 12 non-stop overlapping airport routes (generally between a United hub and a
9 Continental hub), there are currently no other competitors.

10 UNITED'S RESPONSE:

11 United denies Paragraph 83, except admits that United and Continental offer service on
12 some of the same routes.

13 PARAGRAPH 84: In March 2010, Continental initiated non-stop service between Los
14 Angeles and Kahului Airport in Hawaii, which is also served by United.

15 UNITED'S RESPONSE:

16 United admits Paragraph 84.

17 PARAGRAPH 85: Relevant competition exists between airports in which at least one of
18 the end point cities of the two airlines exist. For example, passengers traveling from San
19 Francisco to Newark could consider airlines serving other airports at both end point -- Oakland or
20 San Jose instead of San Francisco and John F. Kennedy and La Guardia instead of Newark.

21 UNITED'S RESPONSE:

22 United is without knowledge or information sufficient to form a belief as to the accuracy of
23 Paragraph 85, except it admits that passengers traveling from San Francisco to New York/Newark
24 could consider airlines serving other airports at both end points.

1 PARAGRAPH 86: In addition, there is overlap between markets served by United out of
2 Chicago and Continental out of Cleveland. For example, 52 out of 62 domestic airports served by
3 Continental from Cleveland are also served by United from Chicago.

4 UNITED'S RESPONSE:

5 United denies Paragraph 86.

6 PARAGRAPH 87: A passenger traveling internationally may view alternate routes to a
7 location in Europe as substitutable. Continental and United serve many of the same international
8 destinations in Europe and the Americas from their Newark and Dulles hubs, respectively. These
9 include, for example, Amsterdam, Brussels, Frankfurt, London, Montreal, Paris, Rome, San Paulo,
10 and Toronto.

11 UNITED'S RESPONSE:

12 United lacks knowledge or information sufficient to form a belief as to the accuracy of
13 Paragraph 87, except it admits that Amsterdam, Brussels, Frankfurt, London, Montreal, Paris,
14 Rome and Toronto are served by Continental and United from New York/Newark and
15 Washington, DC, respectively.

16 PARAGRAPH 88: Similarly, both airlines also serve many international destinations from
17 their mid-West hubs -- most notably United's hub at Chicago and Continental's hub at Houston.
18 Such destinations include Amsterdam, Cancun, Edmonton, London, Paris, San Jose, Cabo, Tokyo,
19 and Vancouver.

20 UNITED'S RESPONSE:

21 United denies Paragraph 88, except admits that United serves Amsterdam, Cancun,
22 Edmonton, London, Paris, San Jose, Tokyo and Vancouver from its Chicago hub.

23 PARAGRAPH 89: United and Continental serve 30 common international destinations,
24 representing 65 percent of their total international seat capacity.

1 UNITED’S RESPONSE:

2 United denies Paragraph 89.

3 PARAGRAPH 90: Following deregulation in 1978, many mergers and acquisitions took
4 place: Delta Air Lines merged with Western Airlines; United Airlines acquired Pan American
5 Airlines’ Pacific routes; Northwest acquired Republic Airlines; American Airlines and Air
6 California merged; American acquired TWA; AmericanWest acquired US Airways; and in
7 October 2008, Delta acquired Northwest.
8

9 UNITED’S RESPONSE:

10 United denies Paragraph 90, except admits that Delta Air Lines merged with Western
11 Airlines, United Airlines acquired Pan American World Airways’ Pacific routes, Northwest
12 acquired Republic Airlines, American Airlines and Air California merged, American acquired
13 assets from TWA, America West merged with US Airways and Delta merged with Northwest.
14

15 PARAGRAPH 91: In addition, since deregulation, the legacy carriers bought or controlled
16 the new and growing feeder airlines with the specific purpose and intent of preventing them from
17 becoming major competitors.

18 UNITED’S RESPONSE:

19 United denies Paragraph 91.

20 PARAGRAPH 92: In addition, defendants compete now on hundreds of domestic
21 connecting routes, where competition will be reduced or eliminated as a result of defendants’
22 merger.
23

24 UNITED’S RESPONSE:

25 United denies Paragraph 92.

26 PARAGRAPH 93: Continental also competes with United on service to Europe, Canada,
27 Asia, and Latin America, where competition will be eliminated or substantially diminished by
28 defendants’ merger. For example, defendants’ merger would substantially lessen competition on

1 routes between the U.S. and Beijing, where United and Continental provide substantial connecting
2 services.

3 UNITED'S RESPONSE:

4 United denies Paragraph 93.

5 PARAGRAPH 94: Furthermore, the new airline will operate in a more highly
6 concentrated market. The Herfindahl-Hirschman Index or HHI for the United States airline
7 industry will increase from 2251 from 2790 for the so-called Legacy carriers (major hubbed
8 airlines), and from 1912 to 2343 for the Legacy carriers plus Southwest Airlines. As a result,
9 prospects for effective collusion among the airlines remaining after defendants' merger will
10 substantially increase.
11

12 UNITED'S RESPONSE:

13 United denies Paragraph 94.

14 PARAGRAPH 95: The potential for increased collusion among the remaining airlines is
15 significant, because the domestic passenger airlines, including *inter alia*, these defendants, have in
16 the past colluded to fix prices with regard to airfares, surcharges, and cargo prices, and to fix other
17 terms and conditions of air transportation and travel.
18

19 UNITED'S RESPONSE:

20 United denies Paragraph 95.

21 PARAGRAPH 96: In addition to the degree of market concentration, there are significant
22 barriers to entry in the relevant market, as well as a history of a lack of successful new entry.
23

24 There have been only two major carriers in recent years: Southwest Airlines and Jet Blue, and
25 both of these entrants took substantial time to develop and still remain small factors in the market.

26 On the contrary, the relevant market has been characterized by the exit, rather than the entry, of
27 firms. In addition, defendants' combination will create an airline with ten hubs, making entry into
28 markets between such hubs particularly difficult for a non-hub carrier because the intended entrant

1 does not have access to feed traffic and because the combined United, as hub carrier, will have
2 significant marketing advantages. The prospect of new entry is therefore unlikely to eliminate any
3 of the anticompetitive effects that will eventuate from the defendants' merger and the increasingly
4 concentrated structure of the relevant market.

5 UNITED'S RESPONSE:

6 United denies Paragraph 96.

7
8 PARAGRAPH 97: The defendants' proposed merger will cause harm to consumers,
9 including the plaintiffs, by generating higher airfares, by reducing the number of flights on
10 particular routes, and by eliminating air service to smaller communities. Consumers, including the
11 plaintiffs, will thus pay more for less airline service than would be the case in the absence of
12 defendants' merger.

13 UNITED'S RESPONSE:

14 United denies Paragraph 97.

15
16 PARAGRAPH 98: The defendants' proposed merger is also likely to lead to other
17 mergers and further concentration in the already highly concentrated market. If defendants'
18 merger closes, American Airlines, which until the Delta-Northwest merger was the largest
19 domestic airline, will likely combine with another carrier, like US Airways, the only remaining
20 medium-sized carrier. Both of the CEO's of American and US Airways have already indicated
21 publicly their approval of the elimination of capacity and of their desire to further concentrate the
22 industry and eliminate even more capacity, with the obvious result of higher fares.

23 UNITED'S RESPONSE:

24 United denies Paragraph 98, except states that it is without knowledge or information
25 sufficient to form a belief as to statements purportedly made by executives of other airlines.

26
27 PARAGRAPH 99: United States Representative James Oberstar (D-Minn.), chairman of
28 the House Committee on Transportation and Infrastructure, has publicly opposed defendants'

1 merger. He wrote in a May 5, 2010 letter to the Department of Justice that, if defendants' merger
2 is consummated, "carriers will concentrate their efforts on fortress hubs and on the routes they
3 dominate. There will be strong incentives to refrain from competition. There will be less service
4 and fares will rise."

5 UNITED'S RESPONSE:

6 United admits that Plaintiffs purport to refer to a May 5, 2010 letter from Representative
7 James Oberstar (D-Minn.) to the Department of Justice in Paragraph 99, and refers to that
8 document for its contents. To the extent Paragraph 99 can be construed as containing any
9 allegations as to United, United denies those allegations.
10

11 PARAGRAPH 100: There are 29 major airports in the United States, located in the
12 following cities: Atlanta, Baltimore, Boston, Charlotte, Chicago, Dallas, Denver, Detroit, Fort
13 Lauderdale, Houston, Las Vegas, Los Angeles, Miami, Minneapolis, New York, Newark,
14 Orlando, Philadelphia, Phoenix, Portland, Salt Lake City, San Diego, San Francisco, Seattle,
15 Tampa, and Washington, D.C.
16

17 UNITED'S RESPONSE:

18 United denies Paragraph 100, except admits that there are airports in the cities listed in
19 Paragraph 100.
20

21 PARAGRAPH 101: Each major U.S. passenger airline, including defendants United and
22 Continental, has the ability and financial capacity to establish a competitive presence in any of the
23 major airports located throughout the United States by, inter alia, leasing or otherwise utilizing
24 terminal slots, hiring employees, and directing more flights to and from the given airport.
25

26 UNITED'S RESPONSE:

27 United denies Paragraph 101.
28

1 PARAGRAPH 102: Each major U.S. passenger airline, including defendants United and
2 Continental, has the ability and financial capacity to offer competitive flights between any two
3 major cities in the United States, whether or not they are currently offering such flights.

4 UNITED'S RESPONSE:

5 United denies Paragraph 102.

6 PARAGRAPH 103: Since the major airlines already offer flights to and from various
7 major U.S. cities, each such airline, including defendants United and Continental, necessarily has
8 the managerial expertise to offer similar flights between any two major cities in the United States.

9 UNITED'S RESPONSE:

10 United denies Paragraph 103.

11 PARAGRAPH 104: The major U.S. passenger airlines, including defendants United and
12 Continental, frequently trade, sell, lease or purchase slots from other airlines in each of the major
13 29 airports throughout the United States.

14 UNITED'S RESPONSE:

15 United denies Paragraph 104, except admits that slots can be transferred between airlines.

16 PARAGRAPH 105: The major U.S. passenger airlines with significant market share in
17 specific regions or major airports, including defendants United and Continental, endeavor to keep
18 other major airlines from entering the market with competitive flights. However, Continental has
19 entered the Maui market against United and Delta has entered the Chicago market against United
20 and American, showing that the potential competition without a merger allows new entry into
21 markets.

22 UNITED'S RESPONSE:

23 United denies Paragraph 105.

24 PARAGRAPH 106: On information and belief, each of the major U.S. passenger airlines,
25 including defendants United and Continental, has created internal documents reflecting a financial

1 and economic cost/benefit analysis of increasing its presence in each or many of the major U.S.
2 airports.

3 UNITED’S RESPONSE:

4 United denies Paragraph 106, except admits that it creates certain financial and economic
5 cost/benefit analyses concerning various aspects of United’s business and states that United lacks
6 knowledge and information sufficient to form a belief as to the accuracy of allegations concerning
7 third parties.
8

9 PARAGRAPH 107: According to the United States Government Accountability Office,
10 the combination of United and Continental would “result in the loss of one effective competitor
11 (defined as having at least five percent of total traffic between airports) in 1,135 markets (called
12 airport pairs) effecting almost 35,000,000 passengers . . .”

13 UNITED’S RESPONSE:

14 United denies Paragraph 107, except admits that Plaintiffs purport to refer to a publication
15 of the United States Government Accountability Office and refers to that document for its content.
16

17 PARAGRAPH 108: Paragraph 107 is true and correct.

18 UNITED’S RESPONSE:

19 United denies Paragraph 108, except admits that Plaintiffs purport to refer to a publication
20 of the United States Government Accountability Office in Paragraph 107 and refers to that
21 document for its content.
22

23 PARAGRAPH 109: On information and belief, each of the major U.S. passenger airlines,
24 including defendants United and Continental, has created internal documents reflecting its analysis
25 of how the market for air transportation would be impacted within each regional market or major
26 U.S. airport by the entry of another major U.S. passenger airline into that region or major airport.
27
28

1 UNITED’S RESPONSE:

2 United denies Paragraph 109, except admits that it creates internal documents reflecting its
3 analyses of the air transportation industry and states that United lacks knowledge and information
4 sufficient to form a belief as to the accuracy of allegations concerning third parties.

5 PARAGRAPH 110: The entry of United or Continental into regions or major airports that
6 are dominated, controlled, or serviced by other major passenger airlines would result in lower
7 prices, increased service levels, and/or other pro-competitive effects on flights within the region to
8 or from the given major airport.

9 UNITED’S RESPONSE:

10 United denies Paragraph 110, except admits that entry or potential entry of new airline
11 service at airports (including adjacent airports) can result in pro-competitive effects.

12 PARAGRAPH 111: As the foregoing paragraphs show, the effect of the defendants’
13 merger, if consummated, may be substantially to lessen competition, or to tend to create a
14 monopoly in the relevant markets.

15 UNITED’S RESPONSE:

16 United denies Paragraph 111.

17 PARAGRAPH 112: By reason of the defendants’ proposed merger, the plaintiffs are
18 threatened with loss or damage in the form of higher ticket prices and diminished service. If the
19 defendants’ merger is consummated, the plaintiffs will sustain irreparable harm for which
20 damages will be unable to compensate plaintiffs, in that service once lost cannot easily be
21 restored. Accordingly, plaintiffs bring this action for both preliminary and permanent injunctive
22 relief against defendants’ merger.

23 UNITED’S RESPONSE:

24 United denies Paragraph 112, except admits that Plaintiffs purport to bring an action for
25 preliminary and permanent injunctive relief.

1 **VI. VIOLATION ALLEGED - CLAYTON ACT, SECTION 7**

2 United incorporates by reference its responses in the preceding Paragraphs 1-112.

3 **PARAGRAPH 113:** The conduct of defendants described hereinabove, specifically their
4 agreement to merge, constitutes a violation of Section 7 of the Clayton Antitrust Act, 15 U.S.C. §
5 18, in that the effect of the proposed merger of defendants may be substantially to lessen
6 competition, or to tend to create a monopoly in the transportation of airline passengers in the
7 United States and the transportation of airline passengers to and from the United States on
8 international flights; by reason of which violation the plaintiffs are threatened with loss of damage
9 in the form of higher ticket prices and diminished service, as well as irreparable harm for which
10 damages will be inadequate to compensate plaintiffs, such that plaintiffs are entitled to bring suit
11 under Section 16 of the Clayton Antitrust Act, 15 U.S.C. § 26, to obtain preliminary and
12 permanent injunctive relief against defendants' merger, and to recover their cost of suit, including
13 a reasonable attorney's fee.
14

15 **UNITED'S RESPONSE:**

16 Paragraph 113 states a legal conclusion to which no response is required. To the extent
17 Paragraph 113 requires a response, United denies Paragraph 113.
18

19 **PRAYER FOR RELIEF**

20 The Prayer for Relief contains statements of law or fact that do not require a response by
21 United. To the extent that a response is required, United denies the allegations of the Prayer for
22 Relief.
23

24 **DEFENSES**

25 United alleges the following as separate and distinct defenses to plaintiffs' alleged cause of
26 action. United does not agree or concede that it has the burden of proof or persuasion on any of
27 these issues, and it does not assume any burden that it would not otherwise bear.
28

1 FIRST DEFENSE

2 1. Plaintiffs' Complaint fails to allege facts sufficient to constitute a claim upon which
3 relief can be granted.

4 SECOND DEFENSE

5 2. Plaintiffs' claims are barred because Plaintiffs lack standing to maintain some or all
6 of their claims.

7 THIRD DEFENSE

8 3. Plaintiffs' claims are barred, in whole or in part, because United's international
9 operations and activities have been granted antitrust immunity in the United States. In particular,
10 on July 10, 2009, the U.S. Department of Transportation conferred limited antitrust immunity on
11 United and Continental to coordinate prices, schedules, and other aspects of competition for
12 international air passenger service. See Docket OST-2008-0234, Final Order, Joint Application of
13 Air Canada, The Austrian Group, British Midland Airways Ltd, Continental Airlines, Inc.,
14 Deutsche Lufthansa Ag, Polskie Linie Lotnicze Lot S.A., Scandinavian Airlines System, Swiss
15 International Air Lines Ltd., Tap Air Portugal, United Air Lines, Inc. to Amend Order 2007-2-16
16 under 49 U.S.C. §§ 41308 and 41309 so as to Approve and Confer Antitrust Immunity.

17 FOURTH DEFENSE

18 4. Plaintiffs' claims are barred, in whole or in part, because any actions taken by
19 United do not lessen competition in the relevant market.

20 FIFTH DEFENSE

21 5. Plaintiffs' claims are barred, in whole or in part, because they have suffered and
22 will suffer no injury or damage as a result of the matters alleged in the Complaint by virtue of any
23 conduct by United.
24
25
26
27
28

1 SIXTH DEFENSE

2 6. United adopts by reference any defense, not otherwise expressly set forth herein,
3 that is pleaded by any other defendant in this action and that is applicable to United.

4 DEFENSES RESERVED

5 The foregoing defenses are raised by United without waiver of any other defenses that may
6 become known during the discovery proceedings in this case or otherwise. United hereby reserves
7 the right to amend or supplement its Answer to assert any other related defenses as they become
8 available.
9

10 Dated: August 5, 2010

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