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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Michael C. Malaney, et al.,

Plaintiffs,

vs.

UAL CORPORATION, UNITED AIR
LINES, INC., and CONTINENTAL
AIRLINES, INC.,

Defendants.

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

~~PROPOSED~~ SCHEDULING ORDER

1 RICHARD SEEBORG, District Judge:

2 WHEREAS, all counsel in this civil action having appeared before the Court for a scheduling
3 conference on August 6, 2010;

4 WHEREAS, on or before August 9, 2010, Plaintiffs expect to file a motion for preliminary
5 injunction;

6 The Court orders the following:

7 1. On or before August 5, 2010, subject to an agreement on confidentiality, each
8 Defendant will provide Plaintiffs with a list of custodians from whom documents were produced in
9 response to the United States Department of Justice's Request for Additional Information and
10 Documentary Material (the "Second Request"). On or before August 6, 2010, Plaintiffs will identify
11 up to a total of ten (10) such custodians whose Second Request documents will be produced by
12 Defendants on or before August 10, 2010, in the form that they were produced to the Department of
13 Justice, subject to an appropriate Protective Order. On or before August 10, 2010, subject to an
14 appropriate Protective Order, Defendants will also produce (a) all filings with the United States
15 Department of Transportation concerning their proposed merger and (b) the 4(c) documents filed
16 with the United States Department of Justice with Defendants' respective Hart-Scott-Rodino filings.

17 2. On or before August 11, 2010, Plaintiffs shall list their witnesses (including any
18 experts) from whom live or written testimony, affidavits or declarations will be offered at the
19 hearing. Defendants will do the same on or before 10 a.m. PDT on August 13, 2010.

20 3. On or before August 12, 2010, Plaintiffs shall produce to Defendants (a) all
21 documents (or where there are no documents with such information, a written description) relating to
22 each Plaintiffs' air travel to, from or within the United States for the past five (5) years and indicate
23 whether the Plaintiff in question paid for the air travel and whether the Plaintiff was reimbursed or
24 compensated for the ticket; (b) for each Plaintiff (i) identify each action to which he or she has been
25 a party against an airline and produce a copy of the complaint in that action; and (ii) identify each
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1 action not identified in response to (3)(b)(i) to which he or she was a named party and was
2 represented by any of the counsel for Plaintiffs in this action and produce a copy of the complaint in
3 that action. For each action identified in response to 3(b), the Court will determine the scope of
4 discovery regarding the settlement of each action including the nature of any consideration paid in
5 the settlement. In addition, Defendants expressly reserve their right to ask any questions at
6 depositions regarding these actions and the settlement thereof.

7 4. On or before August 13, 2010, the Parties shall exchange lists of fact witnesses whom
8 they wish to depose.

9 5. The Parties may take depositions of fact and expert witnesses during the period from
10 August 16 to August 27, 2010. Plaintiffs shall be allowed no more than a total of six (6) fact
11 depositions collectively from Defendants with no more than four (4) depositions from either of
12 Continental Airlines, Inc. or collectively of UAL Corporation and United Air Lines, Inc. Defendants
13 shall be limited to four (4) fact depositions.

14 6. On or before August 20, 2010, the Parties shall exchange expert reports, except that
15 Defendants shall provide the expert report of Dan Rubinfeld to Plaintiffs' counsel twenty-four (24)
16 hours before his deposition, if that deposition occurs prior to August 21, 2010. On or before August
17 25, 2010, each side's expert(s) may submit rebuttal reports.

18 7. The Parties shall simultaneously submit pre-hearing memoranda no later than August
19 24, 2010. Along with pre-hearing memoranda, the Parties shall submit (a) any written direct
20 examination or declaration in support of their claims or defenses; (b) all exhibits to be used at the
21 hearing that are available; and (c) designations of the deposition testimony of fact or expert
22 witnesses they intend to offer at the hearing that are available. The Parties shall be allowed to
23 supplement the submissions in 7(b)-(c) and shall do so promptly after the supplemental submissions
24 become available, but in no event later than 9:00 a.m. PDT on August 30, 2010. The Parties shall
25 submit any counter-designations no later than two (2) days after receipt of designations, but in no
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1 event later than 9:00 a.m. PDT on August 31, 2010. The Parties shall submit any responses to the
2 pre-hearing memoranda no later than August 30, 2010. All material covered by this paragraph shall
3 be provided to the other Party simultaneously with its submission to the Court.

4 8. A preliminary injunction hearing will be conducted on August 31, 2010, and
5 September 1, 2010, with the possibility of additional time, if the Court deems it necessary, on
6 September 3, 2010. The Court will permit evidence to be presented at the hearing in sworn written
7 declarations or orally, as each party shall so elect, but each party shall have the right to present oral
8 testimony at the hearing in the form of cross-examination of witnesses for whom written direct
9 testimony was submitted.

10 9. The Parties shall submit and exchange post-hearing briefs no later than September 10,
11 2010.

12 10. The discovery outlined in this Scheduling Order is the only discovery permitted in
13 advance of the preliminary injunction hearing unless permitted by the Court for good cause.

14
15 IT SO ORDERED.

16 Dated: August 9, 2010



17 Richard Seeborg
18 United States District Judge