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Case No. 2024-0375-PAF

A putative stockholder class action complaint, styled as *Colleen Witmer v. Scott Kirby, et al.* C.A. No. 2024-0375-PAF (the "Action" or the "Complaint") was filed on April 10, 2024 in the Delaware Court of Chancery (the "Court"), along with a motion for expedited proceedings and entry of temporary restraining order. The plaintiff in the Action ("Plaintiff") alleged, among other things, that the members of the board of directors of United Airlines Holdings, Inc. (the "Company") breached their fiduciary duties by adopting a stockholder rights plan, or "poison pill," with sweeping antitakeover and entrenching measures designed to protect the Board's incumbency. Particularly, Plaintiff alleged that the Company's poison pill (the "Amended NOL Pill") was not narrowly tailored as it carried a 4.9% trigger and an overbroad definition of "Beneficial Ownership" that aggregated shares subject to "agreements, arrangements or understandings" ("AAUs") between stockholders that did not concern economic ownership. Plaintiff further alleged that the Amended NOL Pill also had a daisy chain feature that aggregated shares owned by stockholders unaware of each other's existence.

In her Complaint, Plaintiff also alleged that the Board purportedly adopted the Amended NOL Pill to protect the Company's net operating loss ("NOL") carryforwards, which are subject to limitation and eventual loss under relevant provisions of the Internal Revenue Code (the "IRC") absent a pill protecting them. According to Plaintiff, although trading in company shares of 5% or greater holders implicates the tax provisions, those relevant provisions are only concerned with "economic ownership"—*i.e.*, the right to dividends and stock sale proceeds. Accordingly, Plaintiff alleged that the Amended NOL Pill's AAU and daisy chain features, which went beyond mere economic ownership, were not necessary to protect the Company's NOLs and served only to preserve the Board's incumbency in the face of an activist threat. Plaintiff alleged that the Board also issued a false and misleading proxy statement when soliciting stockholder approval of the Amended NOL Pill. The Company disputes Plaintiff's position.

The Company disagrees with Plaintiff's allegations about the definition of Beneficial Ownership in the Amended NOL Pill and the application of Section 382 of the IRC thereto. The Company believes that Plaintiff's claims were not meritorious when filed because the Amended NOL Pill was a reasonable response to the threat that the Company's NOL carryforwards could be permanently limited or lost under Section 382 of the IRC. According to the Company, Plaintiff's characterization of the AAU language in the Amended NOL Pill, as well as Plaintiff's claim that the IRC regulations apply only to "economic ownership," are not accurate or complete. The Company has argued that the relevant IRC regulations also treat "a group of persons who have a formal or informal understanding among

themselves to make a coordinated acquisition of stock" as relevant for determining whether an ownership change has occurred for purposes of Section 382 of the IRC (whether or not any particular member of such group has economic ownership of such stock on an individual basis). *See* 26 C.F.R. § 1.382-3(a)(1). The Amendment (defined below) clarified that the intent of the AAU language in the Amended NOL Pill was to conform to this definition. The Company believes that Plaintiff's claims regarding the supposed "daisy chain" are also erroneous because the relevant definitions in the supposed "daisy chain" referred only to a person's affiliates or associates, no court has held such a definition to be overbroad or improper, and the language is a far cry from the "acting-in-concert" language that courts have found to be unreasonable. Finally, Plaintiff did not plead the existence of any activist stockholder or other attempted takeover of the Company, and the Company consequently believes that there is nothing in Plaintiff's complaint to suggest that the Amended NOL Pill was intended as an entrenchment device. To the contrary, the same definition that Plaintiff challenged in 2024 was first adopted by the Board in 2021 and then recommended by two independent proxy advisory firms before being approved by the Company's stockholders. Notably, no stockholder challenged the Company's NOL Pill between 2021 and 2024 until Plaintiff filed this Action. Plaintiff disputes the Company's position.

After the Action was commenced, the parties began discussing potential resolution of Plaintiff's claims. On May 8, 2024 the parties stipulated to dismissal, which the Court so-ordered, based on their agreement that the Company's actions discussed immediately below would moot Plaintiff's claims. Specifically, the Board approved amendments (the "Amendment") to the Amended NOL Pill that (1) provided that Persons would only be aggregated based on AAUs if the effect of such AAU would result in treatment of such Persons as an "entity" under Section 1.382-3(a)(1) of the Treasury Regulations and (2) removed certain references to "Related Persons" of primary stockholders. The Company disputes that these changes caused any benefit to the Company or its stockholders.

On April 23, 2024, the Company filed a Form 8-K with the SEC in which it disclosed the Amendment.

Also on April 23 2024, the Company filed an amendment to the Definitive Proxy (the "Proxy Amendment") in which it disclosed the Amendment and additional background information related to the adoption of the Amended NOL Pill. The Company disclosed, amongst other things, the existence of this Action.

On May 8, 2024, the Court entered a stipulated order pursuant to which the Court dismissed the Action as moot and retained jurisdiction solely for the purpose of deciding any application of Plaintiff's counsel for an award of attorneys' fees and expenses. On May 10, 2024, Plaintiff's counsel filed their motion for an award of attorneys' fee and expenses for benefits they contend were conferred on the Company and its stockholders in connection with the Action (the "Fee Application"), seeking an award of attorneys' fee and expenses in the amount of $2,400,000. The Company and the defendants in the Action oppose such relief and filed a brief in opposition to the Fee Application on July 12, 2024. Plaintiff will file a reply brief in further support of any Fee Application on or before August 23, 2024. The Court has scheduled a hearing to consider the Fee Application at 3:15 p.m. on September 17, 2024 before the Honorable Paul A Fioravanti, Vice Chancellor, in person at the Court of Chancery of the State of Delaware, Leonard L. Williams Justice Center, located at 500 North King Street Wilmington, DE 19801 (the "Hearing").

Any current Company stockholder may object to the Fee Application ("Objector"); provided, however, that no Objector shall be heard or entitled to object unless, on or before August 21, 2024, such person: (1) files his, her, or its written objection, together with copies of all other papers and briefs supporting the objection, with the Register in Chancery at the address set forth below; (2) serves such papers (electronically by File & ServeXpress, by hand, by first-class U.S. mail, or by express service) on Plaintiff's counsel and Defendants' counsel at the addresses set forth below; and (3) emails a copy of the written objection to:

christopher.orrico@blbglaw.com ckupka@fksfirm.com
sandra.goldstein@kirkland.com koch@rlf.com

REGISTER IN CHANCERY	
Register in Chancery Court of Chancery of the State of Delaware New Castle County Leonard L. Williams Justice Center 500 North King Street Wilmington, Delaware 19801	
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Any objections must: (i) identify the case name and civil action number, "*Colleen Witmer v. J. Scott Kirby, et al.* C.A. No. 2024-0375-PAF"; (ii) state the name, address, and telephone number of the Objector and, if represented by counsel, the name, address, and telephone number of the Objector's counsel; (iii) be signed by the Objector; (iv) contain a specific, written statement of the objection(s) and the specific reason(s) for the objection(s), including any legal and evidentiary support the Objector wishes to bring to the Court's attention, and if the Objector has indicated that he, she, or it intends to appear at the Hearing, the identity of any witnesses the Objector may call to testify and any exhibits the Objector intends to introduce into evidence at the hearing; and (v) include documentation sufficient to prove that the Objector is a current Company stockholder. Documentation establishing that an Objector is a current Company stockholder must consist of copies of monthly brokerage account statements, a screen shot of an official brokerage account, or an authorized statement from the Objector's broker containing the transactional and holding information found in an account statement. Plaintiff's counsel may request that the Objector submit additional information or documentation sufficient to prove that the Objector is a current Company stockholder.

An Objector may file a written objection without having to appear at the Hearing. An Objector may not, however, appear at the Hearing to present his, her, or its objection unless the Objector first files and serves a written objection in accordance with the procedures described above, unless the Court orders otherwise.

If an Objector wishes to be heard orally at the Hearing in opposition to the approval of the Fee Application (assuming the Objector timely files and serves a written objection as described above), the Objector must also file a written notice of his, her, or its intention to appear with the Register in Chancery and serve it on Plaintiff's counsel and on Defendants' counsel at the mailing and email addresses set forth above so that the notice is received on or before September 3, 2024. Persons who intend to object and desire to present evidence at the Hearing must include in

their written objection or notice of appearance the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the hearing. Such persons may be heard orally at the discretion of the Court.

Objectors are not required to hire an attorney to represent them in making written objections or in appearing at the Hearing. However, if an Objector decides to hire an attorney, it will be at the Objector's own expense, and that attorney must file a notice of appearance with the Court and serve it on Plaintiff's counsel and Defendants' counsel at the mailing and email addresses set forth above so that the notice is received on or before September 3, 2024.

The Hearing may be adjourned by the Court without further written notice to Company stockholders. If an Objector intends to attend the Hearing, the Objector should confirm the date and time with Plaintiff's counsel.

Unless the Court orders otherwise, any Company stockholder who does not object in the manner described above will be deemed to have waived any objection (including the right to appeal) and shall be forever foreclosed from making any objection to the Fee Application.

Company stockholders who do not wish to object do not need to appear at the Hearing or take any other action.