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9 **ATTORNEYS FOR** Defendants  
10 **UNITED AIR LINES, INC.,**  
11 **UAL CORPORATION and DAVID NEVINS**

12 **UNITED STATES DISTRICT COURT**  
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

14 RAHINAH IBRAHIM, an individual,  
15 Plaintiff,

16 vs.

17 DEPARTMENT OF HOMELAND  
18 SECURITY; et al.,

19 Defendants.

No. C 06-0545 WHA

SUPPLEMENTAL MEMORANDUM IN  
SUPPORT OF MOTION TO DISMISS  
FILED BY "THE UNITED AIR LINES  
DEFENDANTS" [FRCP 12(b)(1);  
12(b)(6)]

Date: July 20, 2006  
Time: 8:00 a.m.  
Courtroom: 9 – 19<sup>th</sup> Floor

Honorable William H. Alsup  
United States District Judge

20 Defendants UNITED AIR LINES, INC., UAL CORPORATION and DAVID NEVINS  
21 (hereinafter referred to collectively as "the United defendants") respectfully submit the following  
22 supplemental memorandum in accordance with this Court's order filed July 20, 2006 (Doc. 90), as  
23 amended by the July 21, 2006 order (Doc. 92).

24 **I.**

25 **PROCEDURAL HISTORY**

26 On April 17, 2006, the United defendants moved to dismiss plaintiff's complaint against  
27 them. The twin bases for the motion were that (1) the Court lacks subject matter jurisdiction by  
28 virtue of the application of 49 U.S.C. § 46110 and (2) the complaint fails to state – and cannot state  
– facts sufficient to constitute a cause of action against the United defendants. In order to conserve

1 judicial resources, the United defendants agreed, on more than one occasion, to continue the hearing  
2 on their motion so the motion could be heard at the same time as motions to dismiss filed by other  
3 defendants, including, *inter alia*, the Department of Homeland Security and John Bondanella.  
4 Ultimately, all the motions to dismiss were set for hearing on July 20, 2006.

5 Prior to the hearing date, however, plaintiff sought the agreement of all parties to allow her  
6 complaint to be amended. The stated purpose of the amendment was to substitute three named  
7 entities for previously unnamed “Doe” defendants.<sup>1</sup> And, in fact, the only substantive changes to  
8 the complaint were the addition of allegations identifying and defining each of the newly named  
9 defendants and generally specifying the role each allegedly played in the incident at bar.<sup>2</sup> Plaintiff  
10 filed her motion to amend the complaint on May 31, 2006 (Doc. 68) and the United defendants filed  
11 their statement of non-opposition on June 29, 2006 (Doc. 84).

12 In the statement of non-opposition, it was explained that:

13 The United defendants’ non-opposition is, however, made with the  
14 understanding that the filing of the amended complaint will not moot  
15 their pending motion to dismiss (which is directed to the original  
16 complaint) because the amended complaint makes no substantive  
17 change as respects the United defendants. (Doc. 84 at 2).

18 On July 20, 2006, the Court heard oral argument on, *inter alia*, each of the pending motions  
19 to dismiss. (Doc. 89). Later that day, the Court issued its order finding “that the proposed  
20 amendment to plaintiff’s original complaint renders it procedurally awkward for the Court to rule  
21 at this time on defendants’ motions to dismiss aimed at that original complaint.” (Doc. 90). The  
22 motions were all “deemed denied, without prejudice to defendants to renew any and all of these  
23 arguments with respect to the amended complaint.” (*Id.*) Each of the moving defendants was  
24 invited to file and serve a supplemental brief addressing the purported grounds for dismissing  
25 plaintiff’s amended complaint. (*Id.*) The briefing schedule was slightly altered in the Court’s July  
26 21, 2006 order. (Doc. 92).

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27 <sup>1</sup>These entities are the Transportation Security Operations Center (“TSOC”), Transportation  
28 Security Intelligence Service (“TSIS”) and U.S. Intelligence Services, Inc. (“USIS”).

<sup>2</sup>The only other change was to substitute the USIS for the TSIS as defendant John Bondanella’s  
employer.

1 The United defendants accordingly offer this timely submission in support of their motion  
2 to dismiss.

3 **II.**  
4 **ARGUMENT**

5 The position of the United defendants is as simple as it is indisputable. As it pertains to  
6 them, plaintiff’s first amended complaint is substantively no different from her original pleading.  
7 Nothing has been added to, or deleted from, the original complaint which in any way impacts  
8 plaintiff’s purported claims against the United defendants or which affects those defendants’  
9 challenge to the viability of the claims against them.

10 Though the Court expressed some uncertainty about whether “[p]laintiff’s amended  
11 complaint may substantially alter the jurisdictional landscape in this case,” the fact is the  
12 jurisdictional issues are completely unaffected by the amendment of plaintiff’s complaint.

13 Even if the inclusion of the three new defendants somehow provided a basis for subject  
14 matter jurisdiction over plaintiff’s claims, or certain of them, that would not do anything to create  
15 subject matter jurisdiction over plaintiff’s claims against the United defendants.

16 More to the point, setting aside the threshold issue of subject matter jurisdiction, the bottom  
17 line is that plaintiff failed to state actionable claims for relief against the United defendants in her  
18 original complaint and her amended pleading is no different – and no better. If anything, as the  
19 Court observed, “[p]laintiff had the benefit of defendants’ moving papers in framing her amended  
20 complaint.”

21 Yet, even with that acknowledged benefit, plaintiff came up woefully short in her allegations  
22 against the United defendants. As the United defendants argued at the July 20 hearing, nowhere in  
23 (a) the complaint, (b) the first amended complaint, (c) plaintiff’s initial disclosures, (d) plaintiff’s  
24 responses to interrogatories propounded by the City and County of San Francisco defendants or (e)  
25 plaintiff’s lengthy opposition to the motions to dismiss can *any* legitimate basis be discerned for  
26 sustainable claims against the United defendants.

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**III.**

**CONCLUSION**

Nothing at all about plaintiff's first amended complaint, or any other *bona fide* iteration she might conceivably craft, supports or would support any viable, actionable claims against the United defendants. At bottom, the most she can say is that the United defendants did what federal law required; that included placing an (absolutely privileged) call to law enforcement to make what even plaintiff has alleged was a truthful and accurate report.

Accordingly, for all the reasons set forth in the United defendants' original moving papers, in their reply papers, in this supplemental memorandum, and as argued at the July 20, 2006 hearing, the claims against the United defendants should be dismissed without leave to amend. Judgment should properly be entered in favor of the United defendants and against plaintiff Rahinah Ibrahim.

Dated: July 27, 2006

Respectfully submitted,

CODDINGTON, HICKS & DANFORTH

/s/

By

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United Air Lines, Inc., UAL Corporation and  
David Nevins