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**BEFORE THE ADMINISTRATIVE LAW JUDGE
FOR A HUMAN RIGHTS COMMISSION HEARING**

WASHINGTON STATE HUMAN RIGHTS COMMISSION, presenting the case in support of the complaint filed by JUSTIN WETHERELL,

Complainant,

v.

ALASKA AIRLINES, INC.,

Respondent.

WSHRC Case No. 17EX-0549-20-1
OAH Docket No. 12-2022-HRC-00009

~~CONSENT DECREE~~

I. INTRODUCTION

1.1. The Washington State Human Rights Commission (the Commission), by and through its attorneys, Robert W. Ferguson, Attorney General, David Ward and Alfredo González Benítez, Assistant Attorneys General, filed this action against Alaska Airlines, Inc. (Alaska) to enforce the Washington Law Against Discrimination (WLAD), and to correct unlawful and discriminatory employment practices against Justin Wetherell (Justin)¹ pursuant to RCW 49.60.030(1)(a), RCW 49.60.180(3), RCW 49.60.040(27), and WAC 162-32-050(2). Pursuant to WAC 162-08-261, Justin entered an independent appearance in this action through counsel, the American Civil Liberties Union Foundation and the American Civil Liberties Union of Washington Foundation.

¹ Justin is a nonbinary person and uses they/them pronouns.

1 1.2. Defendant Alaska is a for-profit corporation that provides passenger airline travel
2 services to the general public. To provide these services, Alaska employs flight attendants.
3 Alaska conducts business at various locations throughout the State of Washington, including in
4 King County, Washington where Alaska maintains its principal office in SeaTac, Washington.

5 1.3. Alaska is an employer subject to the WLAD within the meaning of
6 RCW 49.60.040(11).

7 1.4. The Commission alleges that Alaska violated the WLAD, RCW 49.60.030(1)(a),
8 RCW 49.60.180(3), RCW 49.60.040(27), and WAC 162-32-050(2), by discriminating against
9 Alaska flight attendant Justin Wetherell in the terms and/or conditions of Justin's employment
10 because of Justin's gender identity and gender expression, particularly by requiring Justin to
11 dress and/or groom in a manner not consistent with Justin's gender identity and gender
12 expression.

13 1.5. Alaska expressly denies that it engaged in any unlawful, actionable, or prohibited
14 conduct.

15 1.6. Alaska agrees that it will not oppose entry of this Consent Decree on the ground
16 that it fails to comply with Rule 65(d) of the Superior Court Civil Rules and hereby waives any
17 objection based thereon.

18 1.7. The parties waive any right they may have to appeal from this Consent Decree.

19 1.8. The parties now agree to resolve the allegations made by the Commission without
20 the need for additional investigation or litigation.

21
22 **NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, and DECREED as follows:**

23 **II. INJUNCTIONS**

24 2.1. The injunctive provisions of this Consent Decree shall apply to Alaska and its
25 successors, assigns, transferees, officers, agents, servants, employees, representatives, affiliated
26 entities, and all other persons in active concert or participation with Alaska. Affiliated entities

1 are defined as partnerships, limited liability companies, companies, or trusts directly or indirectly
2 controlled by Alaska or its shareholders. None of the injunctive provisions shall be considered
3 an admission of a violation for any purpose.

4 2.2. Alaska shall immediately inform all successors, assigns, transferees, officers,
5 directors, affiliated entities, and all other persons in active concert or participation with Alaska
6 of the terms and conditions of this Consent Decree.

7 2.3. Alaska shall be enjoined and restrained from engaging in the following acts or
8 practices:

9 2.3.1. Requiring any Alaska flight attendant to dress or groom in a manner that
10 is not consistent with that individual's gender expression or gender
11 identity, provided that Alaska may require standards of dress or
12 grooming that serve a reasonable business or institutional purpose, such
13 as promoting safety, developing a company identity, or projecting a
14 professional, positive public image. *See* WAC 162-32-050.

15 2.3.2. Using gendered language in its uniform policy for flight attendants,
16 including but not limited to using gender references in connection with
17 uniform kits or articles of clothing for flight attendants. Alaska is not
18 prohibited from describing any article of clothing in terms of fit or cut,
19 using non-gendered references to distinguish between articles of
20 clothing, or from depicting any article of clothing in photographs or
21 illustrations being worn by models of any gender.

22 2.3.3. Prohibiting any Alaska flight attendant from wearing an approved look,
23 as the term "approved look" is defined in Appendix A, under any Alaska
24 flight attendant uniform policy.

25 2.3.4. Restricting the ability of any Alaska flight attendant from styling their
26 hair, maintaining facial hair, wearing nail polish, wearing cosmetics,

1 wearing jewelry, and/or any combination thereof, in a manner consistent
2 with that flight attendant's gender identity and/or gender expression, if
3 such individual hairstyle, facial hair style, nail polish, jewelry,
4 cosmetics, and/or any combination thereof is permitted under any
5 Alaska flight attendant uniform policy.

6 2.3.5. Restricting the ability of any Alaska flight attendant from wearing any
7 specific article of clothing or approved look, as the term "approved
8 look" is defined in Appendix A, based on the flight attendant
9 maintaining facial hair and/or wearing nail polish, cosmetics, jewelry,
10 and/or any combination thereof that is permitted under any Alaska flight
11 attendant uniform policy regarding hairstyle, facial hair style, nail
12 polish, jewelry, or cosmetics.

13 III. IMPLEMENTATION

14 3.1. Alaska will implement the changes to its uniform policy set forth in Appendix A
15 to this Consent Decree within ninety (90) days of entry of this Consent Decree, with the
16 exception of paragraphs 1 and 2 of Appendix A. To implement paragraphs 1 and 2 of
17 Appendix A, Alaska needs to restructure and update its ordering website. Alaska will complete
18 the changes in paragraphs 1 and 2 of Appendix A as soon as possible and no later than nine (9)
19 months from the signing of this Consent Decree, and will thus certify its adherence to paragraphs
20 1 and 2 of Appendix A within nine (9) months of the signing of this Consent Decree. If this task
21 is not completed within six (6) months of the signing of this Consent Decree, Alaska will provide
22 the Commission, through counsel, with a report regarding the status of its compliance with
23 paragraphs 1 and 2 of Appendix A.

24 3.2. Alaska shall, within sixty (60) days of entry of this Consent Decree:

25 3.2.1. Eliminate any provision of any Alaska flight attendant uniform policy
26 that prohibits flight attendants from dressing and/or grooming in a

1 manner consistent with their gender identity and/or gender expression
2 as required by WAC 162-32-050(2);

3 3.2.2. Provide written notice to current Alaska flight attendants that Alaska's
4 flight attendant uniform policies will not discriminate on the basis of
5 gender identity or gender expression, and that the flight attendant
6 uniform policies will allow flight attendants to select uniform
7 components consistent with their gender identity and/or gender
8 expression as required by RCW Ch. 49.60 and WAC 162-32-050(2), and
9 reference the process set forth in paragraph 11 of Appendix A. This
10 notice should be provided via email and by any other means through
11 which Alaska commonly communicates with flight attendants in writing
12 to such current Alaska flight attendants, and by publication in a
13 conspicuous place where Alaska habitually posts announcements for
14 flight attendants. The Commission, through counsel, shall review and
15 approve the contents of this notice before Alaska distributes it to current
16 Alaska flight attendants. The notice need not contain any admission of
17 violation by Alaska.

18 **IV. TRAINING**

19 4.1. Alaska will ensure completion of at least sixty (60) minutes of live training by all
20 flight attendant Supervisors, Managers, Directors and Managing Directors; inflight training
21 Supervisors, Managers, Directors and Managing Directors; Alaska Vice Presidents and above;
22 Human Resource Business Partners, Recruiters, Supervisors, Managers, Directors and Managing
23 Directors of the Alaska People Team; employees conducting new hire training; and uniform fit
24 center employees, regarding creating an environment that that is respectful and inclusive of
25 nonbinary and transgender people and free from discrimination on those bases. This training will
26 include general discussion of the Washington Law Against Discrimination (WLAD) and

1 Title VII of the Civil Rights Act of 1964 (Title VII), specifically on the application of such
2 protections to gender identity, nonbinary gender identity, and gender expression. In advance of
3 such training, Alaska will provide the Commission, through counsel, information regarding the
4 identity and qualifications of the proposed trainer(s), as well as the agenda and associated
5 materials for the proposed training, for the Commission's review and approval, which shall not
6 be unreasonably withheld.

7 4.2. Alaska currently provides training regarding DEI, anti-harassment,
8 anti-discrimination, allyship and unconscious bias during employee onboarding and will
9 incorporate into this existing training an integrated training module on the topics described in
10 paragraph 4.1. Alaska will provide the Commission, through undersigned counsel, the agenda
11 and associated materials for the proposed integrated training module (i.e. slides/content relating
12 to gender identity and gender expression), for the Commission's review and approval, which
13 shall not be unreasonably withheld.

14 4.3. Alaska will supplement its Annual Compliance Training to all employees with an
15 integrated training module regarding gender identity and gender expression. Alaska will provide
16 the Commission, through undersigned counsel, the agenda and associated materials for the
17 proposed integrated training module (i.e. slides/content relating to gender identity and gender
18 expression), for the Commission's review and approval, which shall not be unreasonably
19 withheld.

20 4.4. Alaska will make available to all employees resources and digital training
21 materials regarding respectful treatment of nonbinary and transgender people, and will
22 encourage employees to access these resources and training materials.

23 4.5. On or before December 31, 2023, Alaska shall certify, using the attached
24 Appendix B, that the provisions of paragraphs 4.1 through 4.4 have been completed.

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1 **V. RECORD KEEPING AND REPORTING**

2 5.1. For a period of three (3) years following the entry of this Consent Decree, Alaska
3 shall preserve all records related to its obligations under this Consent Decree in a centralized
4 location, including all documents, whether in paper or electronic form, that relate to the
5 following:

6 5.1.1. Records of any changes to Alaska’s flight attendant uniform policy,
7 including an explanation of the reason, purpose, and need for any such
8 change.

9 5.1.2. Records of any complaints of gender identity/gender expression
10 discrimination related in any way to Alaska’s flight attendant uniform
11 policies.

12 5.1.3. Records of any adverse employment or disciplinary action to which any
13 flight attendant was subjected because of failure to comply with
14 Alaska’s flight attendant uniform policy where such adverse
15 employment or disciplinary action relates in any way to gender identity
16 and/or gender expression.

17 5.1.4. For a period of three (3) years following entry of this Consent Decree,
18 Alaska shall provide the Commission with biannual compliance reports,
19 on the six-month and yearly anniversaries each year of the entry of this
20 Consent Decree, which shall identify and describe any and all changes
21 to Alaska’s flight attendant uniform policies that impact the ability of
22 Alaska flight attendants to dress and/or groom in a manner consistent
23 with their gender identity and/or gender expression.

24 5.2. For a period of three (3) years following the entry of this Consent Decree, before
25 Alaska imposes any new limitations not in effect as of January 1, 2023, on the ability of flight
26 attendants to style their hair, show tattoos, maintain facial hair, wear nail polish, wear cosmetics,

1 wear jewelry, and/or any combination thereof, it will obtain the pre-approval of the Commission,
2 through undersigned counsel, which shall not be unreasonably withheld.

3 5.3. To assure compliance with the terms of this Consent Decree, representatives of
4 the Commission shall be permitted (upon notice to Alaska and its counsel of at least three
5 business days prior) to inspect the records maintained by Alaska under provisions 4.1.1-4.1.3 of
6 the Consent Decree. In addition, to assure compliance with the terms of this Consent Decree,
7 representatives of the Commission shall be permitted upon notice to Alaska and its counsel of at
8 least three business days prior (or the soonest mutually agreeable day and time), to interview
9 Alaska and its officers, managers, employees, and/or agents (Alaska may have a representative
10 and/or legal counsel present during any interview). To assure compliance with the terms of this
11 Consent Decree, representatives of the Commission shall be permitted to propound written
12 discovery on Alaska related to compliance with the provisions of this Consent Decree, and to
13 enforce this Consent Decree through any other lawful means.

14 5.4. Alaska shall notify the Commission at least thirty (30) days prior to any change
15 in control of Alaska that would change the identity of the corporate entity responsible for
16 compliance obligations arising under this Consent Decree, including but not limited to
17 dissolution, assignment, sale, merger, or other action that would result in the emergence of a
18 successor corporation; or the creation or dissolution of a subsidiary, parent, or affiliate that
19 engages in any acts or practices subject to this order.

20 VI. PAYMENT

21 6.1. Within fourteen (14) days of entry of this Consent Decree, Alaska agrees to pay
22 a total amount of \$70,000 to Justin Wetherell ("settlement amount") and to pay \$40,000 in
23 attorneys' fees to the American Civil Liberties Union ("attorneys' fee payment").

24 6.2. Payment of the settlement amount and attorneys' fee payment shall be made by
25 three wire transfers, which shall be initiated within fourteen (14) days of entry of this Consent
26 Decree. The payment of the settlement amount shall be made via wire transfer to

1 Justin Wetherell. The attorneys' fee payment shall be made via the following two wire transfers:
2 (1) \$13,333.34 shall be wire transferred to the American Civil Liberties Union of Washington
3 Foundation; and (2) \$26,666.66 shall be wire transferred to the American Civil Liberties Union
4 Foundation. The American Civil Liberties Union will provide instructions to Alaska to complete
5 the wire transfer.

6 6.3. Failure by Alaska to make the payments required by this Consent Decree within
7 the time prescribed shall constitute a material breach of this Consent Decree.

8 VII. DURATION AND ENFORCEMENT

9 7.1. With the exception of the provisions of paragraphs 2.3.1-2.3.5, this Consent
10 Decree shall be in effect for a period of three (3) years from the date of its entry. The provisions
11 of paragraphs 2.3.1-2.3.5 shall remain in effect permanently. This permanent injunction does not
12 preclude Alaska from ending approved looks and shifting to another uniform policy, so long as
13 the new policy does not otherwise conflict with the provisions of paragraphs 2.3.1-2.3.5. The
14 Court shall retain jurisdiction for the duration of this Consent Decree to enforce its terms.

15 7.2. The Commission may move the Court to enforce the Consent Decree, or to extend
16 its duration in the event of noncompliance, whether intentional or not, with any of its terms, or
17 if it believes the interests of justice so require.

18 7.3. If, after notice to Alaska and an opportunity to be heard at an evidentiary hearing,
19 the Court finds by the governing standard that Alaska has violated a material condition of the
20 Consent Decree, the Commission may seek imposition of additional conditions, damages,
21 injunctive relief, or such other remedies as the Court may deem appropriate.

22 7.4. In any successful action to enforce this Consent Decree against Alaska, Alaska
23 shall bear the Commission's reasonable costs, including attorneys' fees.

24 VIII. ADDITIONAL PROVISIONS


25 8.1. This Consent Decree resolves all claims the Commission and Justin Wetherell
26 may have under the Washington Law Against Discrimination, RCW 49.60, against Alaska

1 arising out of the facts described in the Amended Complaint filed in this action, except that
2 Alaska's failure to comply with this Consent Decree shall permit the Commission to take such
3 further action against Alaska as provided in this Consent Decree, or otherwise allowed by law.

4 8.2. The parties agree that, as of the date of entry of this Consent Decree, litigation is
5 not "reasonably foreseeable" concerning the matters described above. To the extent that any
6 party previously implemented a litigation hold to preserve documents, electronically stored
7 information, or things related to the matters described above, the party is no longer required to
8 maintain such litigation hold, except to the extent such materials are necessary to comply with
9 this Consent Decree. Nothing in this paragraph relieves any party of any other obligations
10 imposed by this Consent Decree.

11 APPROVED on this 28th day of April, 2023.

12 The Case Schedule in this matter is hereby STRICKEN.



13 Terry Schuh
14 Administrative Law Judge

15 Presented by:

16 ROBERT W. FERGUSON
17 Attorney General



18 DAVID WARD, WSBA #28707
19 ALFREDO GONZÁLEZ BENÍTEZ,
20 WSBA #54364
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*Attorneys for Washington State Human
Rights Commission*

Agreed to and approved for entry by:

SEYFARTH SHAW, LLP

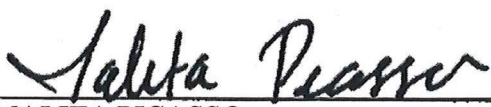


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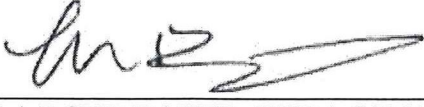
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION



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Attorneys for Complainant Justin Wetherell

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baker@aclu-wa.org

Attorneys for Complainant Justin Wetherell

1 pieces, i.e. all buttoned collared shirts will be subject to the same restrictions, regardless of cut
2 or paired bottoms or layering pieces.

3 7. Alaska will maintain a single policy for flight attendants regarding cuffing short-
4 sleeve shirts and maintain a single policy for flight attendants regarding cuffing long-sleeve
5 shirts.

6 8. Alaska will maintain a single heel policy for footwear that is approved in-flight
7 and does not differ based on the employee's gender identity, gender expression, or approved
8 look.

9 9. Alaska will maintain a single heel policy for footwear that is approved on the
10 concourse and does not differ based on the employee's gender identity, gender expression, or
11 approved look.

12 10. Any future changes made by Alaska to its hair, facial hair, cosmetics, grooming,
13 nails, and visible tattoos policies will be applicable to all approved looks and to all flight
14 attendants regardless of gender.

15 11. For the time period between the entry of the Consent Decree and the rollout of
16 "approved looks" discussed in paragraphs 1 and 2 above, flight attendants may request to mix
17 and match pieces from the current kits. Alaska will facilitate this process by providing sizing
18 information for pieces to assist in ordering and fit. Alaska will not restrict selection choice based
19 on gender identity or expression. Alaska will approve mix and match requests based on the
20 approved looks approved by the Commission and the ACLU on April 17, 2023.

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APPENDIX B:
CERTIFICATION OF COMPLETION

I, _____, do hereby state, under the pains and penalties of perjury, that:

1. Alaska Airlines, Inc. (Alaska) has provided all employees listed in Paragraph 4.1 of the Consent Decree training on the Washington Law Against Discrimination (WLAD) and Title VII of the Civil Rights Act of 1964 (Title VII), specifically on the application of such protections to gender identity, nonbinary gender identity, and gender expression, and on creating an environment that is respectful and inclusive of nonbinary and transgender people and free from discrimination on those bases.

2. Alaska has incorporated training on the topics described in paragraph 1 of this Appendix into the onboarding of each new employee and has provided the agenda and associated materials for its proposed integrated training module (i.e. slides/content relating to gender identity and gender expression) to the Commission, through counsel at the Washington State Office of the Attorney General Civil Rights Division, which has reviewed and approved the integrated training module.

3. Alaska has supplemented its Annual Compliance Training to all employees with an integrated training module regarding gender identity and gender expression and provided the agenda and associated materials for its proposed integrated training module (i.e. slides/content relating to gender identity and gender expression) to the Commission, through counsel at the Washington State Office of the Attorney General Civil Rights Division, which has reviewed and approved the integrated training module.

4. Alaska has made available to all employees resources and digital training materials regarding respectful treatment of nonbinary and transgender people and related topics,

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and will inform all employees of the availability of such resources and training materials that, while not mandated, is strongly encouraged to be reviewed.

Dated this _____ day of _____ 2023, at _____
[City, State]

Signature: _____

Name: _____

Title/Position: _____

CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 12-2022-HRC-00009

I certify that true copies of this document were served on those listed below, from Tacoma, Washington via Consolidated Mail Services by one of the following: First Class Mail, Certified Mail, Hand Delivery via Messenger, Campus Mail, Facsimile, or by email.

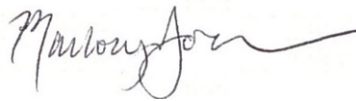
<p>Justin Wetherell c/o Taryn Darling American Civil Liberties Union of Washington PO Box 2728 Seattle, WA 98111 Complainant</p>	<p><input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> E-mail</p>
<p>Taryn Darling Malita Picasso Li Nowlin-Sohl Linda Morris American Civil Liberties Union of Washington PO Box 2728 Seattle, WA 98111 Complainant Representatives</p>	<p><input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input checked="" type="checkbox"/> E-mail: tdarling@aclu-wa.org LindaM1@aclu.org lnowlin-sohl@aclu.org MPicasso@aclu.org</p>
<p>Alaska Airlines, Inc. PO Box 68900 Seattle, WA 98124 Respondent</p>	<p><input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> E-mail</p>
<p>Nicholas A. Gillard-Byers Seyfarth Shaw LLP 999 Third Avenue, Suite 4700 Seattle, WA 98104 Respondent Representative</p>	<p><input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input checked="" type="checkbox"/> E-mail: ngillard-byers@seyfarth.com</p>

Alfredo Gonzalez Benitez, AAG
David Ward, AAG
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Agency Representatives

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Date: Monday, May 01, 2023

OFFICE OF ADMINISTRATIVE HEARINGS



Mallory Jordan
Legal Assistant 2