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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.

AMENDED COMPLAINT

Complainant Washington State Human Rights Commission (the Commission) submits this amended complaint and states as follows:

I. UNFAIR PRACTICES ALLEGED

1. This is an action under the Washington Law Against Discrimination (WLAD) to correct unlawful and discriminatory employment practices, and to provide appropriate relief to Justin Wetherell (Justin), who has been adversely affected by such practices. Justin uses the pronouns they, them, and their. The Commission alleges that Respondent Alaska Airlines, Inc. (Alaska) unlawfully discriminated against Justin in the terms and conditions of their employment because of Justin’s gender identity and gender expression, in violation of RCW 49.60.030(1)(a), 49.60.180(3), RCW 49.60.040(27), and WAC 162-32-050(2).

1 **II. JURISDICTION**

2 2. The Commission has jurisdiction to prosecute this case. RCW 49.60.240, .250.
3 RCW 49.60.240 requires the Commission to evaluate and investigate complaints of
4 discrimination and, once it makes a finding of reasonable cause to believe discrimination has
5 occurred, to seek relief for such discrimination. If an agreement to eliminate the unfair practice
6 is not reached, RCW 49.60.250(1) directs the Commission to request appointment of an
7 administrative law judge to hear its complaint.

8 **III. FACTUAL BASIS FOR ALLEGATIONS**

9 3. Justin’s gender identity is non-binary, meaning that Justin’s gender identity is
10 not exclusively male or female. Justin’s gender expression is fluid, meaning that Justin’s external
11 manifestations of gender are not exclusively masculine or feminine. Consistent with their gender
12 identity and gender expression, Justin dresses and grooms in a manner that is not associated with
13 traditional, rigid male or female dress or grooming standards. For example, Justin maintains
14 facial hair, has long hair, wears makeup, and dresses in a manner not typical of the gender binary.

15 4. Approximately 1.2 million adults in the United States identify as non-binary.

16 5. Washington law recognizes non-binary persons. For example,
17 RCW 70.58A.500(4) requires the Washington State Registrar to include a non-binary
18 designation as an option on birth certificates issued in the state. Consistent with this statute,
19 WAC 246-490-075(1)(c) recognizes that some individuals have “a gender that is not exclusively
20 male or female.” Similarly, the Washington Department of Licensing has adopted
21 WAC 308-104-0150, which provides that an “X” gender marker on a state driver’s license,
22 instruction permit, or identification card means “a sex that is not exclusively male or female.”

23 6. Respondent Alaska is a corporation employing more than eight employees in the
24 State of Washington, and has its principal office in SeaTac, Washington.

25 7. Justin was hired on July 7, 2015, as a flight attendant by Respondent Alaska.
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1 8. Justin later began working as a flight attendant instructor for Respondent in
2 addition to working as a flight attendant. Flight attendant instructors are regarded as leaders and
3 role models, and are hired through a competitive application process.

4 9. Justin currently works for Respondent both as a flight attendant and as a flight
5 attendant instructor.

6 10. Throughout Justin’s employment, Respondent has set uniform policies that apply
7 to customer-facing positions, including flight attendants. Respondent’s uniform policies contain
8 standards for all aspects of a flight attendant’s appearance, including clothing, hair, grooming,
9 cosmetics, jewelry, and shoes.

10 11. When working as a flight attendant, Justin has been and continues to be required
11 to dress and groom according to the standards of Respondent’s uniform policy. When working
12 as a flight attendant instructor, by contrast, Justin is not required to follow the uniform policy
13 that applies to flight attendants and only needs to dress and groom in a professional manner.

14 12. When Justin was hired by Respondent in 2015, Respondent had a uniform policy
15 in place that divided employee uniforms for flight attendants into “male” and “female” uniform
16 kits and established a corresponding set of grooming standards for each uniform kit. Justin wore
17 the “male” uniform at this time. However, Justin felt that the “male” uniform did not allow them
18 to fully dress and groom according to their gender identity and gender expression because long
19 hair, makeup, nail polish, earrings, and uniform pieces from the “female” uniform kit were not
20 allowed to be worn with the “male” uniform.

21 13. In February 2016, Respondent announced that new uniforms would be designed
22 for its customer-facing positions, including flight attendants. In November 2019, Respondent
23 created its “2020 Uniform Policy” to detail the dress and grooming standards for the new
24 uniforms. Respondent implemented the 2020 Uniform Policy company-wide by March 2020.

25 14. These newly-designed uniforms were again divided into “male” and “female”
26 uniform kits. The two uniform kits shared some pieces, such as dress shirts, pants, and jackets,

1 although the fit and styling of these pieces differed between the two kits. The “male” uniform
2 kit included several uniform pieces not present in the “female” kit, such as vests and ties. The
3 “female” uniform kit also included several pieces not present in the “male” kit, such as dresses,
4 skirts, and scarves.

5 15. Respondent’s 2020 Uniform Policy expanded some dress and grooming options
6 for employees, including allowing employees wearing the “male” uniform kit to wear long hair,
7 makeup, nail polish, and earrings. However, the 2020 Uniform Policy specified different
8 standards for wearing these items in the “male” and “female” uniform kits. For example:

- 9 a. In the “male” uniform kit, employees with hair shoulder-length or longer were
10 required to keep their hair tied back at all times, a restriction that was not present
11 for those wearing the “female” uniform kit.
- 12 b. In the “male” uniform kit, employees were prohibited from wearing any makeup
13 other than light concealer or a light tinted moisturizer, while those wearing the
14 “female” uniform kit were allowed to wear a broad range of makeup items,
15 including eye shadow, eye liner, mascara, blush, and lipstick.
- 16 c. In the “male” uniform kit, employees were only allowed to wear clear nail polish,
17 while those wearing the “female” uniform kit were allowed to wear any color of
18 nail polish except fluorescent/neon colors or pure black.
- 19 d. In the “male” uniform kit, employees were only allowed to wear one small earring
20 per ear, while employees wearing the “female” uniform kit were allowed up to
21 two earrings per ear that could be of a larger size.
- 22 e. Facial hair was only permitted for employees wearing the “male” uniform kit.

23 16. Under the 2020 Uniform Policy, Respondent’s employees were allowed to
24 self-select either the “male” or “female” uniform kit, regardless of their gender identity or their
25 sex assigned at birth, but they were not allowed to mix pieces from the two uniform kits. Flight
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1 attendants like Justin who are non-binary were required to choose to wear either the “male” or
2 “female” uniform kit.

3 17. In the fall of 2019, Respondent posted its new 2020 Uniform Policy for all
4 employees on its internal website. Upon seeing the uniform policy, Justin emailed several
5 members of Respondent’s management, including Respondent’s Vice President of Human
6 Resources, Vice President of Inflight, Vice President of Marketing, and Vice President of Legal
7 and General Counsel. In this email, Justin expressed their concerns with the 2020 Uniform
8 Policy.

9 18. In response to Justin’s email, several members of Respondent’s management,
10 including the Director of Diversity, Equity, and Inclusion and a Human Resources Manager, met
11 with Justin on December 17, 2019. At this meeting, Justin expressed concern that the new
12 uniform policy was discriminatory towards employees who do not identify as either male or
13 female.

14 19. After this meeting with Respondent’s management, Justin was asked by their
15 union to serve as a “subject matter expert” on the topic of gender identity. In this capacity, Justin
16 met with Respondent’s management several more times throughout the next year as part of the
17 union’s larger efforts to make Respondent’s uniform policy more inclusive.

18 20. Based on the dress and grooming standards of Respondent’s 2020 Uniform
19 Policy, Justin felt forced to wear the “male” uniform kit even though it was not consistent with
20 their gender identity or gender expression. The “male” uniform kit standards began to feel
21 increasingly more uncomfortable and restrictive on Justin’s ability to dress and groom according
22 to their gender identity and gender expression.

23 21. In October 2020, Respondent informed Justin that it would not make any of the
24 changes to its uniform policy or grooming standards that Justin had requested. However,
25 Respondent informed Justin that they could request an individual exception to the uniform policy
26 by contacting Respondent’s Human Resources.

1 22. On November 2, 2020, Justin sent an email to Respondent’s People Resource
2 Line to request an accommodation to Respondent’s uniform policy in order to be allowed to
3 dress and groom consistent with their gender identity and gender expression. In this email, Justin
4 wrote that “the current binary standard (‘male’ and ‘female’) does not provide for my gender
5 identity or expression” and requested the following accommodations:

- 6 a. Ability to wear makeup, nail polish, earrings, and heels in accordance with
7 “female” uniform standards;
- 8 b. Ability to wear hair down at all times except during food and beverage service in
9 accordance with the “female” uniform standards;
- 10 c. Ability to order and wear both “female” and “male” uniform pieces, and to wear
11 these pieces in conjunction with each other and the above accommodations.

12 23. On November 20, 2020, Justin sent another email to multiple members of
13 Respondent’s management team, including various Human Resources Managers, Respondent’s
14 Senior Vice President of People, and Respondent’s Senior Vice President of Legal and General
15 Counsel. In this email, Justin wrote: “I spent over a year and a half fighting for this change.
16 I provided research supporting the validity of my gender identity. I crafted an updated policy
17 and an implementation timeline, as well as multiple other documents requested by management.
18 I have endured stress, anxiety, insomnia, and depression as a direct result of putting my gender
19 identity and personal truth on the line to try and move this company forward.”

20 24. In response to Justin’s email of November 20, 2020, Respondent’s Vice President
21 of Marketing Sangita Woerner scheduled a meeting with Justin and other members of
22 management to discuss the uniform policy. However, on December 5, 2020, Sangita Woerner
23 cancelled the planned meeting with Justin and stated that they would be discussing the uniform
24 policy directly with Justin’s union instead.

25 25. In response to the cancellation of the meeting, Justin indicated that their intent
26 was to meet with Respondent as an individual employee to “resolve the discriminatory impact

1 of the current [uniform policy] in the short term while [the union] and management work to find
2 a long term solution.”

3 26. On December 8, 2020, Sangita Woerner wrote in an email to Justin: “I want to be
4 fully transparent with you. The company worked hard to provide employees with flexibility
5 when choosing uniform pieces with regard to factors such as body type, gender identity, and
6 personal level of comfort. Our uniform is a critical component of our brand, especially for
7 customer facing employees such as flight attendants. Therefore, we do ask that an employee
8 choose between a male or female uniform kit and corresponding grooming standards . . . Again,
9 in full transparency, we do not anticipate that our general approach will change.”

10 27. On December 17, 2020, Justin filed an ethics complaint with Respondent in
11 which Justin alleged discrimination on the basis of gender identity and gender expression.

12 28. In response to Justin’s complaint, Respondent asserted that its uniform policy and
13 grooming standards were not discriminatory and wrote: “Our dress code provides employees of
14 either sex with the ability to dress in a relatively gender neutral manner if they so choose. In
15 addition, Alaska Airlines does not require a person who has transitioned or is transitioning from
16 male to female to dress and present as a male, or a person who has transitioned or is transitioning
17 from female to male to dress and present as female. Overall, Alaska Airlines’ uniform policy
18 and grooming standards are consistent with guidance from the WA Human Rights Commission
19 on application of a company’s dress code to transgender employees. I understand this is not the
20 outcome you were seeking, however, your concern of discrimination was unsubstantiated based
21 on the law.”

22 29. Justin clarified to Respondent that they are non-binary, not transgender, and took
23 issue with Respondent’s use of “employees of either sex” because this language does not account
24 for non-binary employees. Justin wrote: “The [uniform] policy does in fact require employees
25 to dress and present as either male or female. I am neither, but I am forced to dress and present
26 as male or female because the policy invalidates my identity as gender-fluid/non-binary.”

1 30. On January 5, 2021, Respondent reiterated to Justin its position that its uniform
2 policy and grooming standards were not discriminatory and stated: “While we support furthering
3 discussion around gender identity and our Flight Attendant uniform, we do not feel it would be
4 productive to continue this discussion directly with you. Management will continue any future
5 discussions with [the union].”

6 31. On January 22, 2021, Respondent sent Justin a letter denying Justin’s request for
7 modifications of Respondent’s uniform policy, writing: “After a careful review of your request,
8 we have determined that we are unable to permit the requested changes to the uniform policy at
9 this time. Alaska Airlines’ uniform policy and grooming standards are a component of the
10 company’s branding and intended to maintain a consistent image for customers. Your requests
11 are inconsistent with this business purpose. Alaska Airlines continues to permit employees to
12 dress in a manner that is consistent with their gender identity or expression, while still complying
13 with its uniform policy and grooming standards.”

14 32. On June 4, 2021, the American Civil Liberties Union (ACLU) sent a letter to
15 Respondent on behalf of Justin. In this letter, the ACLU argued that Respondent’s uniform policy
16 and grooming standards discriminate against non-binary employees by requiring these
17 employees to dress and groom according to the binary standards of Respondent’s “male” and
18 “female” uniform kits.

19 33. The same day as receiving this letter from the ACLU, Respondent announced to
20 its employees that it would be making some changes to its uniform policy. The announced
21 changes included allowing all employees to wear their hair down (except during food and
22 beverage service) regardless of whether they wear the “male” or “female” uniform. Notably, this
23 was a change that Justin had specifically requested on November 2, 2020, and which Respondent
24 had previously denied on January 22, 2021 as “inconsistent” with its “branding.” Additionally,
25 employees would now be able to order and wear the pants and arctic parka from either the “male”
26 or “female” uniform kit. In this announcement, Respondent stated that these “uniform and

1 grooming updates have been in the works for some time and are unrelated to [the letter sent by
2 the ACLU].”

3 34. As noted above, the changes Respondent announced on June 4, 2021, allowed
4 Justin to wear their hair down (except during food and beverage service). However, the
5 June 4, 2021, announcement did not address the other uniform exception requests that Justin had
6 made on November 2, 2020. Justin still felt forced to wear the “male” uniform because the
7 announced changes neither modified nor standardized the different dress and grooming standards
8 in place for the “male” and “female” uniform kits.

9 35. On March 28, 2022, Respondent publicly announced it would be making several
10 additional changes to its uniform and grooming standards.

11 36. According to this announcement, these changes would include: renaming the
12 “male” and “female” uniforms to “masculine” and “feminine” looks; providing optional pronoun
13 pins for employees to wear to identify their pronouns; allowing for tattoos in more places;
14 allowing more hair style options; allowing all employees to wear up to two earrings per ear and
15 one nose piercing; and allowing all employees to wear fingernail polish and makeup, albeit with
16 restrictions.

17 37. Respondent also provided its employees with its new 2022 Uniform Policy Guide
18 on March 28, 2022. This guide outlined the same uniform policy changes that were announced
19 publicly but included more details about certain restrictions that would still be in place regarding
20 some dress and grooming standards, including the following requirements:

- 21 a. Employees must dress and groom according to the “masculine” uniform standard
22 when wearing the vest, tie, or pocket square, and must dress and groom according
23 to the “feminine” uniform standard when wearing uniform pieces such as the
24 dress, skirt, and scarf.

1 b. Although all employees would now be allowed to wear makeup, those wishing to
2 wear red, bright pink, or berry colored lipstick/tinted lip gloss would only be
3 allowed to do so in the “feminine” look.

4 c. Facial hair would only be permitted when wearing the “masculine” look.

5 38. Respondent’s public announcement on March 28, 2022, also indicated that
6 Respondent had “launched work to develop new, gender-neutral uniform pieces anyone can
7 wear” and stated that “[o]ver the next few months, we’re partnering with employees and Luly
8 Yang on the design and details to create gender-neutral pieces for a more inclusive uniform,
9 enabling everyone to feel and look their best.” However, Respondent has not provided these
10 gender-neutral uniform options.

11 39. The uniform policy changes that Respondent announced on March 28, 2022, went
12 into effect that same day. Notably, some of these policy changes announced by Respondent (*e.g.*,
13 having the same policies for all employees regarding nail polish and earrings) had been
14 previously requested by Justin on November 2, 2020, but were rejected by Respondent on
15 January 22, 2021, as “inconsistent” with its “branding.” However, these policy changes still
16 require employees to dress and groom according to either a “masculine look” or a “feminine
17 look” and do not allow Justin to dress and groom in a manner that is consistent with their gender
18 identity and gender expression.

19 40. Respondent’s dress and grooming policies for flight attendants have not allowed
20 Justin to dress and groom in a manner that is consistent with their gender identity and gender
21 expression. This has resulted in Justin being frequently misgendered at work by both co-workers
22 and customers, exacerbated Justin’s stress, anxiety, depression, and insomnia, and caused Justin
23 to frequently avoid working as a flight attendant in favor of working as a flight attendant
24 instructor so that they can dress and groom in a manner consistent with their gender identity and
25 gender expression.

1 41. Justin has experienced panic attacks leading up to shifts when they were
2 scheduled to work as a flight attendant. These panic attacks resulted in Justin trading out of shifts
3 or calling out sick multiple times.

4 42. In addition to Justin, other of Respondent's employees may have experienced
5 discrimination and harm as a result of Respondent's uniform policies.

6 **IV. FIRST CAUSE OF ACTION**

7 **(Violation of the Washington Law Against Discrimination – Gender Identity)**

8 43. The Commission realleges and incorporates by reference the allegations set forth
9 in each of the preceding paragraphs of this Amended Complaint.

10 44. Individuals have a right to employment free from discrimination because of their
11 sexual orientation. RCW 49.60.030(1)(a), RCW 49.60.180. For the purposes of the WLAD,
12 “sexual orientation” includes “gender expression or identity.” RCW 49.60.040(27).

13 45. Respondent is an employer subject to the WLAD. RCW 49.60.040(11).

14 46. It is unlawful for employers covered by the WLAD to discriminate against
15 individuals in the terms or conditions of their employment because of their gender identity.
16 RCW 49.60.030(1)(a), RCW 49.60.180(3). As defined by statute, “gender expression or
17 identity” means “having or being perceived as having a gender identity, self-image, appearance,
18 behavior, or expression, whether or not that gender identity, self-image, appearance, behavior,
19 or expression is different from that traditionally associated with the sex assigned to that person
20 at birth.” RCW 49.60.040(27).

21 47. Consistent with the requirements of RCW 49.60.030(1)(a) and
22 RCW 49.60.180(3), WAC 162-32-050(2) provides that covered employers “cannot require an
23 individual to dress or groom in a manner that is not consistent with that individual's gender
24 expression or gender identity.”

25 48. Through its actions described above, Respondent has violated
26 RCW 49.60.030(1)(a), RCW 49.60.180(3), and WAC 162-32-050(2) by requiring Justin to dress

1 or groom in a manner that is not consistent with Justin’s non-binary gender identity and by
2 denying Justin’s requests for modifications of the uniform policies.

3 **V. SECOND CAUSE OF ACTION**

4 **(Violation of the Washington Law Against Discrimination – Gender Expression)**

5 49. The Commission realleges and incorporates by reference the allegations set forth
6 in each of the preceding paragraphs of this Amended Complaint.

7 50. Individuals have a right to employment free from discrimination because of their
8 sexual orientation. RCW 49.60.030(1)(a), RCW 49.60.180. For the purposes of the WLAD,
9 “sexual orientation” includes “gender expression or identity.” RCW 49.60.040(27).

10 51. Respondent is an employer subject to the WLAD. RCW 49.60.040(11).

11 52. It is unlawful for employers covered by the WLAD to discriminate against
12 individuals in the terms or conditions of their employment because of their gender expression.
13 RCW 49.60.030(1)(a), RCW 49.60.180(3). As defined by statute, “gender expression or
14 identity” means “having or being perceived as having a gender identity, self-image, appearance,
15 behavior, or expression, whether or not that gender identity, self-image, appearance, behavior,
16 or expression is different from that traditionally associated with the sex assigned to that person
17 at birth.” RCW 49.60.040(27).

18 53. Consistent with the requirements of RCW 49.60.030(1)(a) and 49.60.180(3),
19 WAC 162-32-050(2) provides that covered employers “cannot require an individual to dress or
20 groom in a manner that is not consistent with that individual’s gender expression or gender
21 identity.”

22 54. Through its actions described above, Respondent has violated
23 RCW 49.60.030(1)(a), RCW 49.60.180(3), and WAC 162-32-050(2) by requiring Justin to dress
24 or groom in a manner that is not consistent with Justin’s gender expression and by denying
25 Justin’s requests for modifications of the uniform policies.
26

1 **VI. REQUEST FOR RELIEF**

2 55. The Commission requests an order declaring that Respondent has engaged in the
3 conduct complained of herein, and that said conduct violated the Washington Law Against
4 Discrimination, RCW 49.60.030(1)(a), RCW 49.60.180(3), and WAC 162-32-050(2).

5 56. Justin Wetherell should be awarded damages for harm caused by Respondent’s
6 unlawful conduct; the inconvenience caused by participating in the investigation and prosecution
7 of their discrimination complaint; pain and suffering; financial hardship; embarrassment;
8 emotional distress; expenses for medical treatment or reduced quality of life based on medical
9 conditions proximately caused by Respondent’s unlawful conduct; and other damages to be
10 proved at hearing.

11 57. Damages should be awarded to any other of Respondent’s Washington
12 employees who have been harmed by Respondent’s discriminatory conduct related to its uniform
13 policy.

14 58. Respondent should be ordered to require its employees in supervisory or
15 managerial positions to attend gender identity and gender expression discrimination training
16 approved by the Commission.

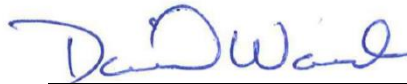
17 59. Respondent should be enjoined from discriminating against non-binary
18 employees based on their gender identity and gender expression, and should be required to
19 change their policies and procedures to comply with this injunction.

20 60. Other equitable relief should be ordered which this tribunal finds necessary to
21 eliminate the effects of past discrimination, to prevent future discrimination, and to restore Justin
22 Wetherell as closely as possible to the position they would have been in, but for Respondent’s
23 discrimination. This includes retaining jurisdiction to fully effectuate this tribunal’s order.

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1 DATED this 12th day of December, 2022.

2 ROBERT W. FERGUSON
3 Attorney General

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