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ATTORNEYS FOR PLAINTIFF

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

GERALD HESTER, on behalf of himself)
and all others similarly situated,)
)
Plaintiff,)
)
v.)
)
VISION AIRLINES, INC.,)
)
Defendant.)
_____)

Case No. _____

CLASS ACTION COMPLAINT

JURY DEMAND

In the years after the devastating attacks of September 11, the United States government sought contractors to provide logistical support to enhance its overtaxed supply lines to Iraq and Afghanistan. The government knew the work was extremely dangerous. One such mission involved establishing an air bridge, flying large, slow commercial aircraft into war zones in Baghdad and Kabul to deliver supplies for United States diplomatic posts and other related

activities. Accordingly, to compensate the civilian pilots and air crews completing these critical missions for the additional dangers they faced, the United States government contracts establishing these operations mandated that contractors pass through to their personnel payments in addition to their normal pay. These payments are known as hazard pay, and they are ubiquitous in the war zones in which the United States is engaged.

Vision Airlines, Inc. ("Vision"), is a government subcontractor, operating the air bridge to Kabul and Baghdad from May 1, 2005 to the present time. Its pilots and flight crews have risked their lives on a daily basis, and were supposed to receive the hazard pay funded and mandated by the United States government. However, despite its legal and moral obligations, Vision chose to keep this money for itself. Accordingly, Plaintiff Gerald Hester ("Plaintiff"), on behalf of himself and all others similarly situated, sues Vision, and alleges as follows on personal knowledge as to all matters relating to himself, and on information and belief based upon the investigation of his counsel as to all other matters:

PARTIES

1. Plaintiff Gerald Hester resides in Colleyville, Texas and is a retired Captain in the United States Navy where he served on active and reserve duty for a total of 24 years. After receiving an honorable discharge, Mr. Hester was employed as a captain at AirCal, a commercial airline that was purchased by American Airlines in October 1987. Mr. Hester worked for more than twenty-two years at American Airlines and AirCal. He retired in September 2000 upon reaching the mandatory retirement age Congress imposes on commercial airline pilots. After retiring, Mr. Hester worked as an independent contract pilot and flew to various destinations in Europe, the United States and Asia. On September 24, 2006, Vision hired Mr. Hester as a pilot to fly its Boeing 737s, and later its Boeing 767s, to and from the airports in Baghdad, Iraq and

Kabul, Afghanistan.

2. Vision is a specialty charter airline located in North Las Vegas, Nevada. Vision is incorporated and has its principal place of business in Nevada. All personnel decisions, including those decisions related to hiring, termination, and employee compensation, are made at Vision's headquarters in North Las Vegas. Vision operates commercial and charter flights to various destinations throughout the southwest region of the United States. In addition, Vision operates as a subcontractor for the United States government and provides air charter services, transporting personnel and cargo, to Baghdad, Iraq and Kabul, Afghanistan.

JURISDICTION

3. This Court has subject matter jurisdiction because the amount in controversy exceeds \$75,000 and diversity exists between the Plaintiff and the Defendant. 28 U.S.C.A. § 1332(a)(1).

4. This Court also has subject matter jurisdiction because the amount in controversy exceeds \$5 million and diversity exists between the Plaintiff and the Defendant. 28 U.S.C.A. § 1332(d)(2).

5. This Court has personal jurisdiction over the Defendant, and venue is proper in the District of Nevada, because: a) Vision is incorporated in the District of Nevada; b) Vision's principal place of business is in the District of Nevada; and c) Vision's wrongful conduct occurred in the District of Nevada. *See* 28 U.S.C.A. § 1391(a). Moreover, the acts and omissions alleged herein occurred, in whole or in part, within Nevada.

FACTS

6. Vision asked its employees to risk their lives and fly into two of the world's most dangerous locations in order to support the efforts of the United States government. Vision's

employees answered the call, and in return, the United States government provided Vision hazard pay for those employees who risked their lives as crew members on those flights. Despite receiving more than \$21 million in hazard pay intended for its employees, Vision has failed to pay its employees the hazard pay to which they are entitled. Instead, Vision has wrongfully retained that hazard pay for its own benefit.

The Role Of Private Contractors In Support Of The United States Government's Efforts In Iraq And Afghanistan

7. After September 11, the United States government implemented a global strategy designed to eradicate terrorist organizations that threatened the security of the United States and its allies. The United States government contracted with numerous private contractors to work in combat zones, such as Iraq and Afghanistan, to implement its global strategy. Private contractors were hired to provide support for the United States embassies, armed-forces and other government agencies operating in those countries.

8. While more than 4,186 U.S. soldiers have died in the wars in Iraq and Afghanistan and more than 35,856 have been wounded, significant numbers of U.S. government contractors have also died or been severely injured. In February 2008, Reuters reported that more than 1,000 government contractors have died in Iraq and Afghanistan since the wars began and more than 13,000 have been severely wounded or injured.

9. To support its efforts in Iraq and Afghanistan, the United States government established an air bridge that relies primarily on charter airlines to transport supplies and personnel to these countries. Accordingly, the United States government contracts directly with various contractors to provide air transport services to Iraq and Afghanistan. In limited instances, the government contractor provides the air transport services, but more often these

services are subcontracted to various charter airlines.

10. Flying aircraft to and from the airports in Baghdad and Kabul is extremely dangerous. Aircraft typically arrive or depart these airports under the cover of darkness to avoid light arms fire, rocket propelled grenades and missile attacks. In fact, all flights arriving and departing from the airports in Baghdad and Kabul must be authorized by either the United States or British military operational command centers located in those cities.

11. To reduce the likelihood of rocket and missile attacks, aircraft arriving and departing Baghdad International Airport must observe blackout procedures which require all exterior and interior aircraft lighting (except for cockpit instruments) to be turned off. In addition, aircraft arriving and departing Baghdad must utilize a dangerous corkscrew procedure, which requires the airplane to fly in a spiral directly above the airport in order to stay within the areas most heavily fortified by the United States military. This procedure requires a high degree of skill and judgment and significantly increases the risk of death and serious injury for the crews on these flights.

12. Despite flying under the cover of darkness and extensive security precautions, numerous aircraft have been targeted and shot down flying to and from the airports in Baghdad and Kabul. For example, on November 22, 2003, an A-300 cargo plane made an emergency landing after take-off from Baghdad International Airport, because its engine exploded after it was struck by a surface to air missile. Similarly, on February 1, 2005, a C-130 cargo plane crashed after take-off from Baghdad International Airport when it sustained light arms fire, killing one of the crew members onboard.

Hazard Pay

13. Congress, pursuant to 5 C.F.R. 550.901 *et seq.*, requires the United States

government to pay government employees hazard pay, in addition to their regular salary, when they work under hazardous conditions or in combat zones. Hazard pay is to compensate the employee for the additional risk the employee incurs in performing his or her job under hazardous conditions.

14. Similarly, the United States government provides members of the United States Armed Services with imminent danger pay. Pursuant to 37 U.S.C § 310, members of the Armed Services receive imminent danger pay when they operate “in a foreign area in which [the service member] was subject to the threat of physical harm or imminent danger on the basis of civil insurrection, civil war, terrorism, or wartime conditions.”

15. In support of a bill to raise hazard pay for military personnel in Iraq and Afghanistan, Congressman McNerney stated, “[t]he multiple consecutive deployments that our troops face in Iraq and Afghanistan often include traumatic experiences such as sectarian violence and serious personal injuries that call for difficult rehabilitation. Raising pay for soldiers who encounter such injuries, [including] hazardous duty pay . . . is simply the right thing to do.”

16. The United States government recognizes that employees of government contractors in Iraq and Afghanistan confront some of the same dangerous conditions encountered by government employees and members of the Armed Services. Accordingly, the United States government has extended the practice of paying hazard and imminent danger pay to the employees of government contractors that work in Iraq and Afghanistan. Specifically, the United States government pays the contractor hazard pay, which the United States government requires the contractor to pay to its employees based on a predetermined formula.

17. Moreover, the danger of working in Iraq and Afghanistan has made it difficult for

government contractors to recruit employees to work in those countries. Due to the United States government's reliance on contractors, the shortage of individuals willing to work in those countries threatens the government's ability to successfully implement its global defense strategy. To help contractors recruit individuals willing to work in the war zones, the United States government has increased the amount of hazard pay for contractor employees.

18. Because the United States government contracts with numerous contractors for the support it requires in Iraq and Afghanistan, it has developed a standardized model for the way it compensates contractors. Specifically, the United States government provides the contractor with funds for the following: (1) the contracted services; and (2) hazard pay for the contractor's employees that work in Iraq and Afghanistan.

19. The first category, payment for the contracted services, is the amount the government pays the contractor for the services the contractor is to provide under the contract. The second category, hazard pay, is compensation the United States government provides contractors for the benefit of the contractors' employees who operate in combat zones.

20. Prior to the creation of separate categories for payment purposes, government contractors were required to pay hazard pay out of the money they received for performing the contracted services. Accordingly, private contractors favored the creation of a separate category for hazard pay, because it prevented profit erosion by no longer requiring the contractors to pay their employees the hazard pay out of the compensation the contractors received for performing the contract.

21. The United States government utilizes various hazard pay formulas, depending on the type of services the contract requires, to determine the total amount of hazard pay an employee should receive. Those formulas, however, are typically uniform for all contractors that

provide the same type of service.

22. Hazard pay compensation is incorporated into a pass-through provision contained in the contract between the government and the contractor. Accordingly, if the contractor subcontracts with another company to perform the contracted services, the pass-through provision requires that the contractor “pass through” the hazard pay that it collects from the United States government to the subcontractor, *i.e.*, the contractor pays the subcontractor the hazard pay, which the subcontractor is required to pass through to the employees that work in the combat zones, without taking a cut of those funds.

23. Further, to ensure that the employees receive the hazard pay, the United States government requires contractors and their subcontractors to execute affidavits, under oath, certifying that the hazard pay was paid to those employees that performed the work in the combat zones.

24. The United States government’s air bridge to and from Iraq and Afghanistan involves numerous charter airlines. The risks the crews encounter flying into those countries is substantial, but similar. Accordingly, the United States government has standardized the amount of hazard pay that crew members on the flights to Baghdad and Kabul receive for every take-off and landing. Specifically, every captain, first officer and international relief officer receives \$2,500 each, for every take-off and landing at the airports in Baghdad and Kabul, making a total of \$5,000 in hazard pay per round-trip. In addition, every other crew member, including flight attendants and mechanics, receive \$1,500 each, for every take-off and landing at those airports, making a total of \$3,000 in hazard pay per round-trip.

The United States Government Contracts To Provide Air Transport Services To Afghanistan

25. The United States government in 2004 contracted with Capital Aviation to

provide air transport services to fly personnel and cargo twice weekly on a Boeing 737 to the airports located in Baghdad and Kabul. The contract provided funds to Capital Aviation in the following manner: (1) payment for air transport services to Baghdad and Kabul twice weekly; and (2) hazard pay for the crew members on the flights to and from Baghdad and Kabul.

26. Specifically, the contract between the United States government and Capital Aviation provided that every pilot, first officer and international relief officer would receive \$2,500 each for every take-off and landing at the Baghdad and Kabul airports, making a total of \$5,0000 in hazard pay per round-trip. In addition, every other crew member on those flights, including flight attendants and mechanics, were to receive \$1,500 each, for every take-off and landing at those airports, making a total of \$3,000 in hazard pay per round-trip.

27. In contracting with Capital Aviation for air transport services, the United States government incorporated the hazard pay into a pass-through provision of the contract. Because the employee hazard pay was incorporated into a pass-through provision, it required Capital Aviation to pay the hazard pay it received from the United States government to any subcontractor, who was required to pass those funds through to the air crews completing the work.

28. Capital Aviation subcontracted with Vision to provide the air transport services it agreed to provide to the United States government.

29. Pursuant to the terms of the contract between Capital Aviation and Vision, Capital Aviation agreed to pay Vision for providing air transport services twice weekly to and from the airports in Baghdad and Kabul.

30. In addition, Capital Aviation provided Vision the hazard pay that the United States government gave Capital Aviation for the benefit of Vision's employees, which Vision

