

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

EXPEDIA, INC.,

Plaintiff,

- against -

UNITED AIRLINES, INC.,

Defendant.

Index No.: 19-cv-01066 (PKC)

**ANSWER TO COMPLAINT**

Defendant United Airlines, Inc. (“United”), by its undersigned attorneys, Kirkland & Ellis LLP, for its Answer to the Complaint dated February 4, 2019 (the “Complaint”), filed by Plaintiff Expedia, Inc. (“Expedia”), hereby state as follows:

**INTRODUCTORY STATEMENT**

Expedia’s lawsuit is a transparent attempt to force United to do business with Expedia after their contract expires. Recognizing that United now intends to walk away from Expedia upon the September 30, 2019 expiration of their contractual relationship, Expedia has resorted to litigation to maximize the number of Expedia customers holding United tickets for flights after the expiration of the parties’ contract. The reason is simple: Expedia hopes that the frustration, disruption, and expense that would otherwise result to these customers will force United to continue working with it after the contract expires. Indeed, Expedia readily admits that it will be unable to service customers who purchased United flights once its contract with United expires—and that those customers, *its customers*, will be frustrated and face disruption. But rather than heed United’s responsible request for an orderly wind-down of the parties’ relationship, where Expedia customers would not be permitted to book United flights for travel after the parties’ contract

expires, Expedia resorted to litigation. There is no basis in the parties' contract or in common sense to grant Expedia the relief it seeks.

There is no dispute that Expedia is contractually obligated to service those who book United flights through Expedia through the end of the contract. This includes, for example, helping customers change flights and reserve seats. It is likewise undisputed that Expedia *will not be able to perform these functions* once its contract with United expires on September 30, 2019. After that, United's relationship with Expedia will be over. Hundreds of thousands of people who used Expedia to book United flights for dates after their contract's expiration will accordingly be left with tickets that they cannot change. As Expedia admits, these customers will be subject to "unexpected delays, logistical burdens, and potential increased costs." (Compl. ¶ 4).

United has been focused on this problem for months. It tried to negotiate a new contract that would take effect after their contract expired so that United travelers who booked through Expedia would not be stuck in a no-man's-land after September 30, 2019. But Expedia refused to negotiate, even as Expedia customers began in greater numbers to book flights set to depart after their contract expired—and even though Expedia, with ample opportunity to protect its customers, now claims it will be irreparably harmed by not being able to service these same customers. The reason why Expedia refused to negotiate a successor contract is straightforward: by leaving hundreds of thousands of flyers who booked United tickets through Expedia without customer service, Expedia intended to create a situation so untenable for United that United would be forced to extend the contract on terms United does not want.

Given that there is no agreement governing post-September 30, 2019 flights, United notified Expedia that it would suspend Expedia's ability to book United flights with departures after that date. This was necessary to prevent Expedia from continuing to sell tickets to United

travelers for which it would have no ability to meet its contractual service obligations (and from improperly charging United fees for doing so). This case is accordingly not about some ulterior desire by United to gain “leverage” and to “pressure Expedia” in negotiations for a new contract. (*Id.* ¶ 5). To the contrary, United is planning for the *end* of its relationship with Expedia. This case is instead about an effort by United to ensure an orderly winding down of its relationship with Expedia while Expedia endeavors to use litigation to convert this relationship into an evergreen, never-ending contract. An orderly winding down of the relationship is necessary to ensure that Expedia does not issue hundreds of thousands of tickets for flights that depart after its agreement with United expires—leaving all of those customers without even basic forms of service from Expedia.

Limiting ticketing authority to flights that depart during the duration of the parties’ contract is a commonsense solution to an obvious and impeding problem, and a solution that is entirely permissible and appropriate under the parties’ contract. There is no reason why Expedia should be allowed to continue issuing tickets for which it cannot meet its contractual obligation of providing customer service. Expedia’s Complaint is meritless.

#### **GENERAL DENIAL**

Except as to those allegations that United expressly admits below or those as to which United denies knowledge or information sufficient to form a belief as to their truth, United denies each and every allegation contained in Paragraphs 1 through 87 of the Complaint, including, without limitation, any footnotes, headings, and subheadings contained therein. United expressly reserves the right to amend and/or supplement this Answer.

**SPECIFIC RESPONSES**

1. United admits that United and Expedia are parties to a Ticketing Agreement that terminates on September 30, 2019 and refers to the cited material for its complete content and context, but otherwise denies the allegations contained in Paragraph 1 of the Complaint and the corresponding footnote.

2. The allegations in Paragraph 2 of the Complaint purport to state a legal conclusion to which no response is required. In the event a response is required, United denies the allegations in Paragraph 2 of the Complaint, except that it admits that it has given notice to Expedia that United intends to suspend Expedia's access to fares for post-September 30, 2019 United flights and refers to the cited material for its complete content and context.

3. The allegations in Paragraph 3 of the Complaint purport to state a legal conclusion to which no response is required. In the event a response is required, United lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 of the Complaint and otherwise denies the allegations in Paragraph 3 of the Complaint.

4. The allegations in Paragraph 4 of the Complaint purport to state a legal conclusion to which no response is required. In the event a response is required, United denies the allegations in Paragraph 4 of the Complaint.

5. United denies the allegations in Paragraph 5 of the Complaint.

6. The allegations in Paragraph 6 of the Complaint purport to state a legal conclusion to which no response is required. In the event a response is required, United lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6 and otherwise denies the allegations in Paragraph 6 of the Complaint.

7. The allegations in Paragraph 7 of the Complaint purport to state a legal conclusion to which no response is required. In the event a response is required, United denies the allegations in Paragraph 7 of the Complaint.

8. United lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8 of the Complaint.

9. United lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9 of the Complaint. In the event a response is required, United denies the allegations in Paragraph 9 of the Complaint.

10. United admits the allegations in Paragraph 10 of the Complaint.

11. United denies the allegations in Paragraph 11 of the Complaint and the corresponding footnote.

12. The allegations in Paragraph 12 of the Complaint purport to state a legal conclusion to which no response is required.

13. The allegations in Paragraph 13 of the Complaint purport to state a legal conclusion to which no response is required.

14. United lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14 of the Complaint and the corresponding footnote.

15. United lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15 of the Complaint.

16. United lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16 of the Complaint, except that United admits that Expedia has a contractual obligation to service customers who book United flights through Expedia.

17. United lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17 of the Complaint.

18. United lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 of the Complaint.

19. United lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19. In the event a response is required, United denies the allegations in Paragraph 19 of the Complaint.

20. United lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20 of the Complaint.

21. United lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21 of the Complaint.

22. United lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22. In the event a response is required, United denies the allegations in Paragraph 22 of the Complaint.

23. United lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 23. In the event a response is required, United denies the allegations in Paragraph 23 of the Complaint.

24. United admits that it entered into a Ticketing Agreement with Expedia effective as of September 1, 2011 regarding Expedia's sale of United flights and refers to the cited material for its complete content and context and otherwise denies the allegations in Paragraph 24 of the Complaint.

25. United lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 25 of the Complaint, except that it admits that some Expedia customers book travel in advance of when travel is to occur.

26. The allegations in Paragraph 26 of the Complaint purport to state a legal conclusion to which no response is required. To the extent a response is required, United denies the characterizations of the Ticketing Agreement in Paragraph 26 of the Complaint.

27. The allegations in Paragraph 27 of the Complaint purport to state a legal conclusion to which no response is required. To the extent a response is required, United refers to the cited material for its complete content and context, but otherwise denies the allegations in Paragraph 27 of the Complaint.

28. The allegations in Paragraph 28 of the Complaint purport to state a legal conclusion to which no response is required. To the extent a response is required, United denies the allegations in Paragraph 28 of the Complaint and the corresponding footnote.

29. The allegations in Paragraph 29 of the Complaint purport to state a legal conclusion to which no response is required. In the event a response is required, United denies the allegations in Paragraph 29 of the Complaint and the corresponding footnote.

30. The allegations in Paragraph 30 of the Complaint purport to state a legal conclusion to which no response is required. In the event a response is required, United denies the allegations in Paragraph 30 of the Complaint.

31. The allegations in Paragraph 31 of the Complaint purport to state a legal conclusion to which no response is required. In the event a response is required, United denies the allegations in Paragraph 31 of the Complaint.

32. United admits the allegations in Paragraph 32 of the Complaint.

33. United denies the allegations in Paragraph 33 of the Complaint.

34. The allegations in Paragraph 34 of the Complaint purport to state a legal conclusion to which no response is required. In the event a response is required, United denies the allegations in Paragraph 34 of the Complaint and refers to the cited material for its complete content and context.

35. United denies the allegations in Paragraph 35 of the Complaint and refers to the cited material for its complete content and context.

36. The allegations in Paragraph 36 of the Complaint purport to state a legal conclusion to which no response is required. In the event a response is required, United denies the allegations in Paragraph 36 of the Complaint and refers to the cited material for its complete content and context.

37. The allegations in Paragraph 37 of the Complaint purport to state a legal conclusion to which no response is required. In the event a response is required, United lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 37 of the Complaint regarding Expedia's customers, refers to the cited material for its complete content and context and otherwise denies the allegations in Paragraph 37 of the Complaint.

38. The allegations in Paragraph 38 of the Complaint purport to state a legal conclusion to which no response is required. In the event a response is required, United lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 38 of the Complaint, except to admit that United has a more than seven-year relationship with Expedia.

39. United lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 39 of the Complaint.

40. United denies the allegations in Paragraph 40 of the Complaint.



41. United denies the allegations in Paragraph 41 of the Complaint.

42. United denies the allegations in Paragraph 42 of the Complaint.

43. United denies the allegations in Paragraph 43 of the Complaint.

44. The allegations in Paragraph 44 of the Complaint purport to state a legal conclusion to which no response is required. In the event a response is required, United admits that it sent Expedia an email titled “legal notice” and refers to the cited material for its complete content and context and otherwise denies the allegations in Paragraph 44 of the Complaint.

45. United refers to the cited material for its complete content and context and otherwise denies the allegations in Paragraph 45 of the Complaint.

46. United denies the allegations in Paragraph 46 of the Complaint.

47. United denies the allegations in Paragraph 47 of the Complaint, except that it admits that Expedia’s inability to service post-September 2019 United travelers caused and continues to cause United serious concern.

48. United denies the allegations in Paragraph 48 of the Complaint.

49. The allegations in Paragraph 49 of the Complaint purport to state a legal conclusion to which no response is required. In the event a response is required, United denies the allegations in Paragraph 49 of the Complaint.

50. United denies the allegations in Paragraph 50 of the Complaint.

51. United denies the allegations in Paragraph 51 of the Complaint.

52. United denies the allegations in Paragraph 52 of the Complaint.

53. United admits that United sent a letter to Expedia on February 1, 2019, refers to the cited material for its complete content and context and otherwise denies the allegations in Paragraph 53 of the Complaint.

54. United admits that its February 1, 2019 letter informed Expedia that Expedia's access to fares for post-expiration United travel will be suspended, but refers to the cited material for its complete content and context and otherwise denies the allegations in Paragraph 54 of the Complaint.

55. United denies that the purported text of the letter is complete, fair, and accurate, refers to the cited material for its complete content and context and otherwise denies the allegations in Paragraph 55 of the Complaint.

56. The allegations in Paragraph 56 of the Complaint purport to state a legal conclusion to which no response is required. In the event a response is required, to the extent that Paragraph 56 contains any factual allegations that relate to United, United denies them. To the extent that Paragraph 56 contains any factual allegations that do not relate to United, United denies having knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

57. The allegations in Paragraph 57 of the Complaint purport to state a legal conclusion to which no response is required. In the event a response is required, to the extent that Paragraph 57 contains any factual allegations that relate to United, United denies them. To the extent that Paragraph 57 contains any factual allegations that do not relate to United, United denies having knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

58. The allegations in Paragraph 58 of the Complaint purport to state a legal conclusion to which no response is required. In the event a response is required, to the extent that Paragraph 58 contains any factual allegations that relate to United, United denies them. To the extent that Paragraph 58 contains any factual allegations that do not relate to United, United denies having

knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

59. United denies the allegations in Paragraph 59 of the Complaint.

60. United lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 60 of the Complaint.

61. The allegations in Paragraph 61 of the Complaint purport to state a legal conclusion to which no response is required. In the event a response is required, United lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 61 of the Complaint.

62. The allegations in Paragraph 62 of the Complaint purport to state a legal conclusion to which no response is required. In the event a response is required, to the extent that Paragraph 62 contains any factual allegations that relate to United, United denies them. To the extent that Paragraph 62 contains any factual allegations that do not relate to United, United denies having knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

63. The allegations in Paragraph 63 of the Complaint purport to state a legal conclusion to which no response is required. In the event a response is required, United lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 63 of the Complaint.

64. The allegations in Paragraph 64 of the Complaint purport to state a legal conclusion to which no response is required. In the event a response is required, United lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 64 of the Complaint.

65. The allegations in Paragraph 65 of the Complaint purport to state a legal conclusion to which no response is required. In the event a response is required, United denies the allegations in Paragraph 65 of the Complaint.

66. The allegations in Paragraph 66 of the Complaint purport to state a legal conclusion to which no response is required. In the event a response is required, United denies the allegations in Paragraph 66 of the Complaint.

67. United lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 67 of the Complaint. In the event a response is required, United denies the allegations in Paragraph 67 of the Complaint.

68. United lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 68 of the Complaint. In the event a response is required, United denies the allegations in Paragraph 68 of the Complaint.

69. United denies the allegations in Paragraph 69 of the Complaint.

70. The allegations in Paragraph 70 of the Complaint purport to state a legal conclusion to which no response is required. In the event a response is required, United denies the allegations in Paragraph 70 of the Complaint.

71. United lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 71 of the Complaint.

72. United lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 72 of the Complaint.

73. The allegations in Paragraph 73 of the Complaint purport to state a legal conclusion to which no response is required. In the event a response is required, United lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 73 of the

Complaint regarding Expedia's customers and otherwise denies the allegations in Paragraph 73 of the Complaint.

74. United repeats and restates its answers set forth in the proceeding Paragraphs, inclusive, as though fully set forth herein.

75. The allegations in Paragraph 75 of the Complaint purport to state a legal conclusion to which no response is required. In the event a response is required, United refers to the cited material for its complete content and context and otherwise denies the allegations in Paragraph 75 of the Complaint.

76. The allegations in Paragraph 76 of the Complaint purport to state a legal conclusion to which no response is required. In the event a response is required, United refers to the cited material for its complete content and context and otherwise denies the allegations in Paragraph 76 of the Complaint.

77. United admits that United's February 1, 2019 letter informed Expedia that Expedia's access to fares for post-September 30, 2019 United travel will be suspended, refers to the cited material for its complete content and context and otherwise denies the allegations in Paragraph 77 of the Complaint.

78. The allegations in Paragraph 78 of the Complaint purport to state a legal conclusion to which no response is required. In the event a response is required, United denies the allegations in Paragraph 78 of the Complaint.

79. The allegations in Paragraph 79 of the Complaint purport to state a legal conclusion to which no response is required. In the event a response is required, United denies the allegations in Paragraph 79 of the Complaint.

80. The allegations in Paragraph 80 of the Complaint purport to state a legal conclusion to which no response is required.

81. The allegations in Paragraph 81 of the Complaint purport to state a legal conclusion to which no response is required.

82. United repeats and restates its answers set forth in the proceeding Paragraphs, inclusive, as though fully set forth herein.

83. The allegations in Paragraph 83 of the Complaint purport to state a legal conclusion to which no response is required. In the event a response is required, United refers to the cited material for its complete content and context and otherwise denies the allegations in Paragraph 83 of the Complaint.

84. The allegations in Paragraph 84 of the Complaint purport to state a legal conclusion to which no response is required. In the event a response is required, United refers to the cited material for its complete content and context and otherwise denies the allegations in Paragraph 84 of the Complaint.

85. The allegations in Paragraph 85 of the Complaint purport to state a legal conclusion to which no response is required. In the event a response is required, United refers to the cited material for its complete content and context and otherwise denies the allegations in Paragraph 85 of the Complaint.

86. The allegations in Paragraph 86 of the Complaint purport to state a legal conclusion to which no response is required. In the event a response is required, United denies the allegations in Paragraph 86 of the Complaint.

87. The allegations in Paragraph 87 of the Complaint purport to state a legal conclusion to which no response is required.

United denies all other contentions in the Complaint that are not expressly admitted herein.

**AFFIRMATIVE DEFENSES**

Without admitting liability as to any of the claims asserted in the Complaint, and without assuming the burden of proof on any claims, defenses, or legal or factual issues that otherwise would rest with Plaintiff, United asserts the following affirmative and other defenses. United's investigation in this matter is ongoing, and United reserves the right to supplement or modify any portion of this Answer, including, but not limited to, by asserting additional affirmative or other defenses or claims not yet asserted herein.

**FIRST AFFIRMATIVE DEFENSE**

The Complaint fails to state any claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

The Complaint, and each and every purported cause of action therein, is barred by Plaintiff's own breaches of the parties' contract.

**THIRD AFFIRMATIVE DEFENSE**

United's alleged actions and/or alleged failures to act, as set forth in the Complaint were excused, in whole or in part, by the acts or omissions of Expedia.

**FOURTH AFFIRMATIVE DEFENSE**

The Complaint, and each and every purported cause of action alleged therein, is barred by Expedia's own conduct, actions, and inactions under the doctrine of unclean hands.

**FIFTH AFFIRMATIVE DEFENSE**

The damages sought in the Complaint are speculative, conjectural, not recoverable, and without any basis in law or fact, including because Expedia has failed to act reasonably to mitigate its claimed damages, if any.

**SIXTH AFFIRMATIVE DEFENSE**

At all times, United's conduct was justified and performed in good faith and in a commercially reasonable and lawful manner without malice, spite, or conscious, reckless, or negligent disregard of Expedia's rights, if any, and without improper purpose or motive, maliciousness, or ill will of any kind.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because any recovery would result in unjust enrichment to the Plaintiff.

WHEREFORE, United respectfully requests that the Court (a) enter a judgment in its favor on all claims alleged in the Complaint and dismiss this action with prejudice and (b) grant any such other and further relief the Court may deem just and proper.

Dated: New York, New York  
February 22, 2019

/s/ Atif Khawaja, P.C.  
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