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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION**

PILOT Y, individually and on behalf of all those)
similarly situated,)
)
Plaintiff,)
)
v.)
)
THE BOEING COMPANY, a Delaware corporation,)
)
Defendant.)

Case No:

**CLASS ACTION COMPLAINT
JURY TRIAL DEMANDED**

FILED DATE: 7/5/2019 2:59 PM 2019CH08031

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Plaintiff Pilot Y (the “Plaintiff”), individually and on behalf of all those similarly situated, by and through the undersigned counsel, brings this action for relief against The Boeing Company (“BOEING”), and in support thereof states as follows:

INTRODUCTION

This Complaint seeks compensation on behalf of the Plaintiff and more than 100 pilots (the “Class”) qualified to fly the Boeing 737 MAX series of aircraft (the “MAX”) as employees of an international airline (“Airline Y”). Plaintiff’s personal and professional life was disrupted when BOEING and the Federal Aviation Administration (the “FAA”) engaged in an unprecedented cover-up of known design flaws of the MAX, which predictably resulted in the crashes of two MAX aircraft and grounding of all MAX aircraft worldwide. The Plaintiff relied on BOEING’s representations that the MAX was safe when the Plaintiff chose to qualify to fly the MAX, and the Plaintiff suffered significant lost wages, among other economic and non-economic damages, when the MAX was grounded with no end in sight. Additionally, the Plaintiff suffered severe emotional and mental distress when the Plaintiff was compelled to fly the MAX – placing the Plaintiff’s life and the lives of the crews and passengers in danger – despite the growing awareness of the dangerous nature of the Maneuvering Characteristics Augmentation System (the “MCAS”) and other problems that BOEING had previously concealed or failed to disclose to the Plaintiff. For the reasons set forth herein, the Plaintiff, individually and on behalf of all those similarly situated, requests entry of a judgment against BOEING in an amount that will make the Plaintiff whole and deter BOEING and other manufacturers from valuing corporate profits over human life.

JURISDICTION AND VENUE

1. This Court has jurisdiction over BOEING pursuant to 735 ILCS 5/2-209(a)(1), (a)(2) and (b)(4) because BOEING’s principal place of business is located in Cook County, Illinois, and BOEING does business in the State of Illinois by designing, promoting, marketing, and selling airplanes in the State of Illinois.

2. Venue is proper in this jurisdiction pursuant to 735 ILCS 5/2-101, because one or more of the subject transactions that gave rise to this action took place in Cook County.

PARTIES

3. At all relevant times, Plaintiff¹ was a citizen of Switzerland, and a licensed pilot employed by an international airline that employs approximately 100 pilots who are qualified to operate the MAX, and who are citizens of many different nations, including the United States.

4. At all relevant times, BOEING was, and remains, a Delaware corporation registered with the Illinois Secretary of State as doing business in Illinois, with its corporate headquarters and principal place of business located in Chicago, Illinois.

5. At all relevant times, BOEING made critical representations and fateful decisions regarding the design, manufacture and marketing of the MAX airplane at its corporate headquarters in Chicago, Illinois.

¹ Due to BOEING’s substantial influence in the commercial aviation industry, the Plaintiff is in fear of reprisal from BOEING and discrimination from BOEING customers, including Airline Y at BOEING’s behest and has, therefore, chosen to file this Complaint using a pseudonym. The identity of Pilot Y and Airline Y will be made available to Defendant and this Court on a confidential basis. Protecting the Plaintiff’s identity will not prejudice the Defendant or the Court in the administration of this case.

CLASS ALLEGATIONS

6. Plaintiff brings this action individually and on behalf of the following persons similarly situated, pursuant to 735 ILCS 5/2-801: all individuals qualified to fly the MAX on behalf of Airline Y (the "Class").

7. The following people are excluded from the Class: (1) any Judge or Magistrate presiding over this action and the members of their family; (2) Defendant, Defendant's subsidiaries, parents, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current or former employees, officers and directors; (3) persons who properly execute and file a timely request for exclusion from the Class; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiff's counsel and Defendant's counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons.

8. **Numerosity:** The exact number of members of the Class is unknown, but individual joinder in this case is impracticable. The Class likely consists of over 100 individuals. Members of the Class can be easily identified through Airline Y's and/or BOEING's records.

9. **Commonality and Predominance:** There are many questions of law and fact common to the claims of Plaintiff and the other members of the Class, and those questions predominate over any questions that may affect individual members of the Class. Common questions for the Class include but are not limited to the following:

- a. Whether Defendant's conduct constitutes product liability under Illinois law;
- b. Whether Defendant's conduct constitutes negligence under Illinois law;
- c. Whether Defendant's conduct constitutes breach of warranty under Illinois law;
- d. Whether the Defendant's conduct constitutes fraudulent misrepresentation under Illinois law; and

- e. Whether the Defendant's conduct constitutes the intentional and/or negligent infliction of emotional distress.

10. **Typicality:** Plaintiff's claims are typical of the claims of the other members of the Class in that Plaintiff and the members of the Class sustained damages arising out of Defendant's uniform wrongful conduct.

11. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Class, and Plaintiff has retained counsel competent and experienced in complex litigation and class actions. Plaintiff has no interests antagonistic to those of the Class, and Defendant has no defenses unique to Plaintiff. Plaintiff is committed to vigorously prosecuting this action on behalf of the members of the Class, and Plaintiff has the resources to do so. Neither Plaintiff nor proposed counsel have any interest adverse to those of the other members of the Class.

12. **Superiority:** This class action is also appropriate for certification because class proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy and joinder of all members of the Class is impracticable. The damages suffered by the individual members of the Class will likely be small relative to the burden and expense of individual prosecution of the complex litigation necessitated by Defendant's wrongful conduct. Thus, it would be virtually impossible for the individual members of the Class to obtain effective relief from Defendant's misconduct. Even if members of the Class could sustain such individual litigation, it would not be preferable to a class action because individual litigation would increase the delay and expense to all parties due to the complex legal and factual controversies presented in this Complaint. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court. Economies of time, effort, and expense will be fostered, and uniformity of decisions will be ensured.

GENERAL ALLEGATIONS

13. BOEING and Airbus SE (“Airbus”) maintain a global duopoly of the commercial aircraft manufacturing industry with the two companies making up 99% of commercial jet orders worldwide.

14. In 2011, BOEING learned that some of its most important customers were planning to place orders for the Airbus A320neo, a new airplane model that Airbus advertised as the world’s most advanced and fuel-efficient single-aisle aircraft.

15. If it could not compete with the A320neo, BOEING stood to lose a tremendous amount of money and market share.

16. BOEING determined that it would take too long to design and manufacture a new airplane to compete with the Airbus A320neo, and instead made the fateful decision to modify an existing 737 model, the BOEING 737NG, to what would become the MAX.

17. In August 2011, BOEING’s Board of Directors approved the launch of the MAX program.

18. BOEING’s decision to approve the MAX program was made in Chicago, Illinois, at the highest levels of the company.

19. The program included developing a product that could compete with the Airbus A320neo based on the Boeing 737NG model, rather than designing a new airplane. This decision was made by BOEING to increase BOEING’s profit, because:

- a. Using the existing BOEING 737NG design saved BOEING significant design and development costs;
- b. Using the existing BOEING 737NG design permitted BOEING to rush the design and manufacture of the MAX and get it to market quickly so that BOEING would not lose business or market share to Airbus;
- c. Using the existing BOEING 737NG design permitted BOEING to offer the MAX to its customers with an added selling point that pilots already qualified to fly the

Boeing 737NG could qualify to fly the MAX without undergoing any costly or significant training, and without needing to be trained and tested in flight simulators and/or in the airplane before flying revenue-generating flights; and

- d. Using the existing BOEING 737NG framework permitted BOEING to take advantage of its Organization Designation Authorization (the “ODA”), granted to it by the FAA, to streamline and speed the certification of the MAX as an amendment to the Boeing 737 type certificate, rather than an entirely new aircraft design type.

BOEING KNEW THAT THE MAX WAS NOT SAFE

20. In designing the MAX, BOEING made multiple modifications and updates to the structure and flight control systems of the BOEING 737NG.

21. BOEING replaced the CFM56-7 engines used on the Boeing 737NG with larger, more fuel-efficient CFM LEAP-1B engines.

22. Because the CFM LEAP-1B engines were substantially larger than the CFM56-7 engines, BOEING had to mount the engines higher and farther forward on the MAX’s wings and modify the airplane’s nose gear to provide ground clearance for the new, bigger engines.

23. The more powerful engines and their new location gave the MAX a propensity to abnormally pitch up under certain flight conditions, creating a risk that the airplane would suffer an aerodynamic stall and crash.

24. BOEING knew that the design of the MAX was in contravention of FAA regulatory standards, including but not limited to the FAA’s Airworthiness Standards for Commercial Aircraft, 14 C.F.R. Sec. 25.203(a) – Stall Characteristics, which states in relevant part as follows:

No abnormal nose-up pitching may occur.... In addition, it must be possible to promptly prevent stalling and to recover from a stall by normal use of the controls.

25. Nonetheless, BOEING pressed on with the development of the MAX and incorporated the newly developed MCAS to mitigate the risk of a potential stall and to force the MAX to “feel” more like the BOEING 737NG.

26. The MCAS, however, failed to mitigate such a risk and, at least as early as mid-2018, BOEING knew and/or should have known of that failure but did not take action thereby creating the likelihood that the MAX would crash, leading to the inevitable grounding of the MAX.

27. BOEING decided not to provide MAX pilots and did not provide MAX pilots, including Plaintiff, with information or knowledge that the MCAS was incorporated into the airplane.

28. BOEING decided not to provide MAX pilots and did not provide MAX pilots, including Plaintiff, with the ability to disengage a malfunctioning MCAS without losing their ability to control pitch with the airplane’s electric pitch trim.

29. BOEING decided not to inform MAX pilots and did not inform MAX pilots, including Plaintiff, that the MCAS would automatically force the airplane’s nose toward the ground if an angle of attack (“AOA”) sensor “told” the system that the nose of the airplane was angled too high.

30. BOEING decided that MAX pilots, including Plaintiff, should not be required and ensured that MAX pilots would not be required to undergo any MCAS training.

31. Each of BOEING’s decisions set forth here was made by BOEING to facilitate sales of the MAX, regardless and in spite of safety concerns, so that BOEING could continue to tell its airline customers that MAX pilots could fly revenue-generating routes as quickly as possible and sell more MAX planes.

32. As a result of BOEING’s decisions, Plaintiff did not receive any suitable training or testing on how to handle emergencies caused by or exacerbated by the MCAS or its malfunctioning.

33. BOEING knowingly failed to conduct a proper failure modes and effects analysis during development of the MAX because such testing would have exposed the MAX's faulty design and prevented BOEING from representing that the airplane's MCAS was safe.

34. BOEING either failed to properly consider the likelihood that AOA sensors may fail and mistakenly trigger the MCAS to push MAX airplanes into a dive toward the ground, or ignored that scenario because acknowledging it would negatively impact sales of the MAX.

35. BOEING did not sufficiently test the MCAS during development to ensure that the automated system would not create a safety of flight problem if it were to receive erroneous data from one of the airplane's AOA sensors.

36. The MCAS was essential to BOEING's aggressive business plan of quickly designing, manufacturing, and selling the MAX, because the airplane could not otherwise appear certifiable to the FAA and BOEING could not compete with Airbus without it.

BOEING DELAYED A "FIX" OF KNOWN MAX DESIGN DEFECTS

37. In marketing the MAX to potential owners and operators, BOEING offered a number of optional for-purchase safety upgrades, once again placing its business interests ahead of safety.

38. Those optional safety upgrades included the AOA Indicator which was found by BOEING in 2017 to be erroneously linked by display system software to the AOA Disagree alert, which meant that the AOA Disagree alert did not meet relevant requirements. In particular, only if the AOA Indicator was purchased and installed would the AOA Disagree alert provide valuable safety information to pilots and assist them in the diagnosis of a safety issue.

39. BOEING did not offer the AOA Indicator as standard in the MAX because it wanted to be able to offer a base model of the MAX at a low price point in order to make it more competitive

relative to the Airbus A320neo, while at the same time profiting on the sale of the optional safety features to the airline customers that ordered it.

40. BOEING and the FAA permitted the MAX to be certified and sold without AOA Indicator and Disagree alert, thus depriving flight crews of critical information and in doing so, contributing directly to the crashes of Lion Air flight JT610 (“JT610”) and Ethiopian Airlines flight ET302 (“ET302”) and the inevitable grounding of the MAX fleets.

41. Even aircraft equipped with the AOA Indicator and Disagree alert were unreasonably dangerous, as BOEING failed to disclose the existence of the MCAS to the airlines and their pilots and failed to provide adequate training on the new aspects of the MAX’s design and equipment.

42. Even if purchased, the optional AOA Indicator and Disagree alert alone are insufficient for pilots to diagnose pitch control issues such as why the nose of the aircraft continues to pitch down, and thus is not enough to prevent an accident triggered by the MCAS.

43. Knowledge of the presence of the MCAS was essential for pilots to understand why the nose of the aircraft might repeatedly pitch down. An awareness and understanding of the MCAS could have allowed pilots to take proper action quickly, thus increasing survivability chances in emergency situations.

44. BOEING’s failure to disclose the existence of the MCAS to pilots, including Plaintiff, practically ensured that, in the event of a malfunctioning AOA sensor, the MCAS would drive the MAX into the ground killing everyone onboard.

45. Furthermore, BOEING’s failure to develop training on how to recover from MCAS-created nose down situations, including manual trim training when in a severe out of trim situation, increased the risk of accidents.

46. Thus, by not disclosing the existence of the MCAS and by not developing adequate training or at the very least indicating to MAX pilots that specific training might be required for MCAS-induced and MCAS-error situations, BOEING knowingly compromised the safety of the Plaintiff and others similarly situated, as well as the crews and passengers entrusted to their care.

47. BOEING also drove its employees and contractors to unsafe work production levels and ignored complaints that its significantly expedited production schedule for the MAX was inherently unsafe.

48. BOEING was fairly warned that issues in design and production that faced the MAX were perceptible to its workers because it ignored its employees' and contractors complaints that its work production expectations and production schedule were causing manufacturing mistakes, including dangerous mistakes concerning the airplane's wiring. Indeed, employees reported that BOEING's manufacturing process had caused foreign object debris to be left in MAX airplanes which could pose dangers to the airplane's wiring, including wiring associated with the airplane's AOA sensors and Flight Control Computer.

**THE CRASHES OF JT610 AND ET302 PROVIDED TRAGIC PROOF THAT THE MAX
WAS UNSAFE AND REQUIRED GROUNDING**

49. On October 28, 2018, Flight JT610 crashed into the Java Sea about 11 minutes after takeoff from Jakarta, Indonesia, killing everyone onboard.

50. At least as early as the crash of JT610, BOEING knew and accepted that the MCAS was defective and was secretly working on a software fix to address its defects.

51. At least as early as the crash of JT610, BOEING knew and accepted that the AOA Indicator and Disagree alert software link on the MAX display system software was defective and was secretly working on a software fix to address its defects.

52. Despite knowing that the AOA Indicator and Disagree alert software link on the MAX display system software were flawed, BOEING did not intend to release a fix until it issued its normal software update in 2020.

53. On November 6, 2018, BOEING issued Flight Crew Operations Manual Bulletin No. TBC-19, to MAX pilots warning that the MAX's AOA sensors can produce erroneous indications causing the MAX to enter into an aggressive dive.

54. The Bulletin made no mention of the MCAS or how to disable it. The Bulletin also did not inform MAX pilots that the MCAS would repeatedly cause the MAX to enter an aggressive dive; in short, the Bulletin alerted MAX Pilots to a danger, but provided them with wholly inadequate means of managing it.

55. On November 8, 2018, the FAA the issued an Emergency Airworthiness Directive (the "AD") ordering Boeing to correct its omissions:

This emergency AD was prompted by analysis performed by the manufacturer showing that if an erroneously high single AOA sensor input is received by the flight control system, there is a potential for repeated nose-down trim commands of the horizontal stabilizer. This condition, if not addressed, could cause the flight crew to have difficulty controlling the airplane, and lead to excessive nose-down attitude, significant altitude loss, and possible impact with terrain.

* * * *

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. Due to the need to correct an urgent safety of flight situation, good cause exists to make this AD effective in less than 30 days.

56. The AD went on to order BOEING to modify its manual on the MAX to include the specific warnings and instructions on procedures to respond to an erroneously triggered MCAS.

57. Despite BOEING's knowledge that these design flaws existed and likely were responsible for crash of JT610 and the deaths of everyone onboard, BOEING continued to represent that the MAX was safe to fly.

58. On March 10, 2019, less than five months later after the crash of JT610, Flight ET302 crashed about 6 minutes after takeoff from Addis Ababa, Ethiopia, killing everyone onboard.

59. The MAX aircraft involved in the JT610 and ET302 were two of only 357 MAX aircraft in service at the time.

60. Following the crash of ET302, BOEING revealed to the public that it had been developing a flight control software "enhancement" for the MAX for several months, supposedly to make an already safe aircraft "even safer."

61. The crashes demonstrated what BOEING secretly knew: the MAX was unsafe; it violated the FAA's Airworthiness Standards for Commercial Aircraft, and it had to either be grounded until the design flaws could be fixed, or its design could be significantly overhauled.

62. Either of these options, however, was untenable to BOEING because they threatened future deliveries of the MAX to BOEING's customers who had already purchased the planes.

63. Despite the two devastating crashes and loss of life and its awareness of the design flaws, BOEING continued to represent that the MAX was safe; BOEING also used its influence over the FAA to convince the FAA not to ground the planes and keep them in service.

64. Nonetheless, after the crash of ET302, several airlines recognized that the MAX was not safe and voluntarily grounded their MAX fleets.

65. Underscoring the danger imposed by the MAX, several major national aviation authorities ordered that MAXs on their territory be grounded, and at least one national aviation authority took the additional step of refusing to allow non-revenue ferrying of a MAX aircraft – without any passengers onboard – to enter its national airspace.

66. The grounding of the MAX effectively put the Plaintiff and other pilots qualified to fly the MAX out of work and required them to either wait out the grounding or initiate training to transition to other aircraft.

MAX PILOTS SUFFERED EMOTIONAL DISTRESS PRIOR TO THE GROUNDING

67. The world of commercial pilots is a closely-knit, international network where word travels fast.

68. Following the crash of JT610, rumors spread among pilots that some combination of malfunctioning AOA sensors and the MCAS were the cause of the crash, that it could happen again to any of the MAX aircraft in service, and that the MAX was unsafe to operate.

69. These rumors were substantiated by the Bulletin issued by BOEING, and the AD issued by the FAA, and the MAX pilot's growing distrust of BOEING was exacerbated by BOEING's unwillingness to fully disclose the systems onboard the MAX to pilots.

70. On or about November 27, 2018, American Airlines' pilots representing its union met with BOEING officials and the following exchange occurred:

“We flat out deserve to know what is on our airplanes,” one pilot said.

“These guys didn't even know the damn system was on the airplane—nor did anybody else. We're the last line of defense to being in that smoking hole. And we need the knowledge,” another stated.

When pressed as to why Boeing had not introduced immediate fix to the MCAS system, even if this involved grounding the Max fleet temporarily, a Boeing

executive named Mike Sinnett rejected this idea, and he also denied that the company should have informed pilots about the new feature and how it could malfunction.

“In a million miles² you’re going to maybe fly this airplane, maybe once you’re going to see this, ever,” Sinnett said. “So we try not to overload the crews with information that’s unnecessary.”

71. Nonetheless, following the crash of JT610, pilots were required to fly the MAX and endanger their own lives as well as the lives of the crews and passengers entrusted to their care, or risk losing their jobs.

72. The stress caused by this untenable situation manifested itself in the form of frequent headaches, nausea, aches, pains, and tense muscles, chest pain and rapid heartbeat, and insomnia; physical symptoms that are not conducive to operating a commercial aircraft.

73. At least one pilot was asked by a passenger about to board a MAX aircraft whether the aircraft was safe. The pilot responded that it was. The pilot now feels deep regret for having effectively lied to that passenger and placing that passenger’s life in danger based on their misplaced trust in BOEING.

MAX PILOTS SUFFERED SUBSTANTIAL ECONOMIC DAMAGES AS A RESULT OF THE GROUNDING

74. Pilots typically undergo extensive training to become “rated” to fly one type of aircraft. In other words, a pilot rated to fly the Boeing 787 cannot simply switch to flying the Boeing 747 or the Airbus A380.

² Conservatively, in its first year of service alone (to May 2018 according to Boeing’s own figures) the MAX flew 118,000 flight hours worldwide equating to approximately 59,000,000 miles.

75. Additionally, ratings must be constantly maintained with additional training and flight time, so that a pilot rated to fly the Boeing 747 who transitions to the 737 will quickly lose their rating on the 747 and not be “current” to fly the 747.

76. Many pilots, including Pilot Y, transitioned to the MAX based on BOEING’s representation that it was a safe aircraft that would remain in operation for years.

77. When the MAX was grounded, MAX pilots, including Pilot Y, were suddenly without aircraft to fly or their flying time was reduced or eliminated altogether. Many of them were terminated and forced to spend significant personal time, effort and finances to train to receive a rating on a different aircraft, including regaining currency on those flown previously.

78. The grounding of the MAX directly reduced, or in some cases eliminated, MAX pilots’ income and significantly interrupted their careers; the grounding was especially costly to pilots just starting their careers as well as those changing jobs to work for an airline that operated the MAX, or those nearing mandatory retirement at the age of 65.

79. As a result of the grounding of the MAX, many pilots have had to relocate their “base airport” at their own expense, disrupting their personal lives and the lives of their families.

80. Safety should never be an option in the design, manufacture and sale of a commercial airplane. BOEING maintains that: “[s]afety is the primary consideration when Boeing engineers design an airplane. In addition to meeting regulatory requirements before certification, each airplane model must meet Boeing's time-proven design standards. Often these standards are more stringent than regulatory requirements.”

81. BOEING's acts and omissions detailed throughout this Complaint demonstrate that BOEING placed – and continues to place – corporate profits over human life.

COUNT 1 – STRICT PRODUCTS LIABILITY

82. Plaintiff hereby incorporates and realleges each of the preceding paragraphs as though fully set forth herein.

83. At the time when BOEING sold the MAX, the design of the airplane was defective and unreasonably dangerous in at least one or more of the following respects:

- a. The engine placement on the MAX negatively disrupted the airplane's longitudinal stability, causing a propensity for dangerous nose-up pitching during critical phases of flight;
- b. The MAX was equipped with defective AOA sensors that were prone to failure;
- c. The AOA sensors transmitted inaccurate, invalid and/or implausible data that could trigger the airplane's stall warning system which in turn activated the airplane's MCAS, causing the airplane to experience uncommanded pitches down toward the ground;
- d. BOEING's defective design causes the MCAS to activate based on the single input of a failed AOA sensor without cross-checking its data with another properly functioning AOA sensor;
- e. BOEING's defective design causes the MCAS to accept erroneous and even implausible data or information inputs as valid;
- f. BOEING's defective design causes the MCAS to repeatedly activate based on inaccurate and implausible data supplied by a malfunctioning AOA sensor; even as pilots might desperately fight to pull the airplane out of a dive commanded by the MCAS;
- g. BOEING failed to design the MAX with the capability to provide the Plaintiff and the members of the Class with sufficient and timely warning that the airplane's MCAS system has been activated;
- h. The MAX's design was defective, in part, because it was not as standard equipped with the AOA Indicator;
- i. The MAX's design was defective, in part, because it was not as standard equipped with the AOA Disagree alert; and
- j. The MAX's design was defective because its manual pitch trim wheel is too difficult for the average pilot to control with authority in an emergency situation.

84. By reason of BOEING's design choices, the MAX was vulnerable to a single point of failure.

85. BOEING knew the MAX could fail to perform as safely as airlines and pilots would expect.

86. BOEING failed to come up with a safer design even though the technology available to them enabled them to design a safer product.

87. At the time when BOEING sold the MAX, there was a manufacturing defect and the aircraft was unreasonably dangerous in at least one or more of the following respects:

- a. BOEING equipped the MAX with defective AOA sensors that were prone to failure;
- b. The AOA sensors at times transmitted inaccurate, invalid and/or implausible data that could trigger the airplane's stall warning system, which in turn would cause the airplane to experience uncommanded pitches down toward the ground; and
- c. BOEING's design of the MCAS required input from only one rather than two or more redundant AOA sensors thus introducing a single point of failure.

88. At the time when the MAX was sold, BOEING failed to give adequate warning to airlines and pilots:

- a. BOEING failed to properly and effectively warn the airlines and pilots of the existence of the MCAS when they knew such system involved risks;
- b. BOEING failed to properly and effectively warn pilots that the MCAS was capable of causing the MAX's horizontal stabilizer to repeatedly pitch the airplane's nose down;
- c. BOEING failed to properly and effectively warn airlines and pilots that inaccurate data inputs supplied by the MAX's AOA sensors could cause the MCAS to initiate repeated uncommanded nose-down conditions;
- d. BOEING failed to properly and effectively warn MAX pilots that the MCAS would reset itself each time pilots pulled the nose of the airplane up after the MCAS caused the airplane to dive as a result of erroneous and implausible data from a malfunctioning AOA sensor;

- e. BOEING failed to properly and effectively warn MAX pilots after the crash of JT610 that the MAX was defective, and that BOEING was developing a software fix to cure the defect that contributed to the JT610 crash;
- f. BOEING failed to properly and effectively instruct MAX pilots how to recognize runaway stabilizer trim caused by the improper activation of the MCAS; and
- g. BOEING failed to properly and effectively instruct MAX pilots how to recover from a severe out of trim situation manually.

89. As a direct and proximate cause of one or more of the aforesaid defective and unreasonably dangerous conditions in the MAX airplane, the crashes of JT610 and ET302 occurred, and thereafter the predictable and foreseeable grounding of the MAX ensued.

90. By reason of the foregoing, the MAX was an unreasonably dangerous and defective airplane and BOEING should be held strictly liable for the damages sustained by the Plaintiff and the members of the Class.

91. As a direct and legal result of foregoing, the Plaintiff and the members of the Class have suffered, and will continue to suffer, pecuniary damages, including loss of wages and flight time, medical expenses, and severe emotional and mental suffering.

COUNT 2 – NEGLIGENCE AND WILLFUL AND WANTON CONDUCT

92. Plaintiff hereby incorporates and realleges each of the preceding paragraphs as though fully set forth herein.

93. At all relevant times, BOEING owed a duty to the pilots, including Plaintiff, to use reasonable care in designing, manufacturing, assembling, testing, maintaining, servicing and selling the MAX so as to not cause the MAX to be unsafe and not operational.

94. BOEING negligently, with conscious disregard and reckless indifference, breached its duty of care owed to pilots flying the MAX through one or more of the following acts and omissions set forth herein.

95. Upon information and belief, the System Safety Analysis (the “SSA”) of the MCAS performed by BOEING, which was utilized by the FAA in its certification of the flight control system on the MAX, contained multiple understatements and omissions related to the system’s automated capabilities:

- a. The SSA significantly understated the MCAS’s authority to command the number and length of trim movements affecting the horizontal stabilizer;
- b. The MAX was capable of moving the airplane’s horizontal stabilizer more than four times farther than originally indicated in the SSA, causing flight conditions that would be nearly impossible for pilots to manually fight against due to aerodynamic forces on the horizontal stabilizer;
- c. The SSA failed to account for the fact that the MCAS was designed so that it would reset itself after the pilot countermanded the MCAS automatic nose down trim, thereby ignoring the real and not far-fetched possibility that the plane’s nose would be pushed down repeatedly based on the erroneous data supplied by a single failed AOA sensor;
- d. The SAA failed to disclose that the MAX design violated a fundamental rule in airplane design that a single point of failure should not cause an aviation disaster;
- e. The SAA failed to disclose that the MAX was not designed with redundant systems, so that the failure of one system cannot cause an aviation disaster; and
- f. The SSA assessed potential MCAS failure as “hazardous,” a classification that should have precluded certification for a design which allowed the MCAS to activate based on input from a single sensor, without cross-checking the data against the data supplied by another AOA sensor or otherwise verifying potentially erroneous data.

96. BOEING negligently failed to provide pilots flying the MAX, including Plaintiff, with sufficient guidance and instructions to regain control of an airplane endangered by the MAX’s defects.

97. Through NASA’s Aviation Safety Reporting System, which allows anonymous reports, one MAX captain said “The Flight Manual is inadequate and almost criminally insufficient.”

98. BOEING’s conduct amounted to gross negligence and demonstrated a wanton disregard for the safety of the pilots and crew and all passengers it exposed to the defects of the MAX.

99. Strong public policy supports the imposition of punitive damages against BOEING because:

- a. BOEING intentionally, recklessly and negligently designed and added an unsafe feature to the MAX because adding that feature was a cheap, easy way to mask the airplane's inherent aerodynamic problems;
- b. BOEING's intentional, reckless and negligent actions throughout the design, manufacture and certification process of the MAX demonstrated time and time again that BOEING knowingly put its financial interests ahead of aviation safety;
- c. The JT610 and the ET302 disasters were not enough to move BOEING to admit that the MAX was unsafe and recommend that its customers and aviation regulators worldwide immediately ground their MAX airplanes;
- d. Even after ET302, BOEING continued to fight against grounding the MAX, causing airlines to put their pilots, crews and passengers at risk for several days until the weight of enormous international public pressure forced the FAA to ground the airplane;
- e. BOEING continues to deny that it made mistakes in its design and manufacture of the MAX and refuses to admit that the MAX is defective, even as it works to fix the design defects proven to have caused two aviation disasters with attendant loss of life, and the grounding of the MAX worldwide;
- f. BOEING CEO Dennis Muilenburg has publicly admitted that Boeing "owns" the responsibility to correct the MCAS software, and knows how to do it, yet refuses to admit that the MCAS software was unsafe;
- g. BOEING has announced that it will seek to remove pending cases filed by the families of the victims of JT610 and ET302 in Chicago, Illinois to Indonesia and Ethiopia, respectively, in a shameless, disrespectful, and insulting effort to minimize compensation to the families of those whose relatives were killed by BOEING's negligent design and inaction before and after the devastating crashes of JT610 and ET302; and
- h. BOEING continues to be led by the same officials who approved the MAX project, who rushed the design and manufacture of the airplane and who continue to deny the existence of problems with the MAX or properly respond to the tragic events which revealed that the airplane's MCAS was a deadly defect.

100. By reason of the foregoing, the MAX was an unreasonably dangerous and defective airplane that inevitably had to be taken out of operation, and BOEING should be held liable for the damages sustained by the Plaintiff and the members of the Class.

101. As a direct and legal result of foregoing, the Plaintiff and the members of the Class have suffered, and will continue to suffer, pecuniary damages, including loss of wages and flight time, medical expenses, relocation expenses, and severe emotional and mental suffering.

COUNT 3 – BREACH OF WARRANTY

102. Plaintiff incorporates and realleges each of the paragraphs set forth above as though fully set forth herein.

103. BOEING expressly and/or impliedly warranted and represented that its MAX airplanes, all component parts, and all instructions and warnings regarding the use of its MAX airplanes, were airworthy, of merchantable quality and safe for the purpose of commercial air transport for which BOEING designed, manufactured, sold and intended the airplane to be used.

104. BOEING breached its express and/or implied warranties in that the MAX was not airworthy, was not of merchantable quality and was not safe to be used for commercial air transport. To the contrary, the MAX was not airworthy and was unsafe.

105. The Plaintiff was an intended third-party beneficiary of BOEING’s warranties.

106. The Plaintiff reasonably relied on BOEING’s warranties to the Plaintiff’s detriment.

107. As a direct and legal result of BOEING’s breach of its warranties, the Plaintiff and the members of the Class have suffered, and will continue to suffer, pecuniary damages, including loss of wages and flight time, medical expenses, relocation expenses, and severe emotional and mental suffering.

COUNT 4 – FRAUDULENT MISREPRESENTATION

108. Plaintiff hereby incorporates and realleges each of the preceding paragraphs as though fully set forth herein.

109. BOEING represented to Plaintiff that the MAX was a safe aircraft.

110. BOEING failed to disclose to Plaintiff that the MCAS was incorporated on the MAX and could under certain conditions cause the plane to crash.

111. BOEING represented to Plaintiff that MAX pilots did not need additional substantive training or testing to fly revenue-generating flights.

112. BOEING's representations and omissions were false and misleading.

113. Plaintiff relied on BOEING's material representations and omissions by qualifying to operate and operating the MAX.

114. BOEING knew or should have known that Plaintiff would rely on its representations and omissions.

115. BOEING made the representation and omissions with malice and with knowledge that the statement was false or with a reckless disregard as to the veracity of the statement or omission.

116. BOEING made the misrepresentations and omissions with the intention of inducing the Plaintiff to act.

117. BOEING misrepresentations and omissions were a proximate cause for the damages suffered by the Plaintiff.

118. As a result of BOEING's representations and omissions, Plaintiff is left to wonder what else BOEING has failed to disclose.

119. Plaintiff's confidence in operating BOEING aircraft has forever irrevocably been diminished in circumstances where BOEING is one of only two major civil airline manufacturers supplying airliners of the kind operated by Airline Y.

120. As a direct and legal result of BOEING's misrepresentations and omissions, the Plaintiff and the members of the Class have suffered, and will continue to suffer, pecuniary damages, including loss of wages and flight time, medical expenses, relocation expenses, and severe emotional and mental suffering.

COUNT 5 – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

124. Plaintiff hereby incorporates and realleges each of the preceding paragraphs as though fully set forth herein.

125. At all times relevant to this Complaint, BOEING knew or should have known that the MAX was defective and unreasonably dangerous in one or more of the following respects:

- a. The engine placement disrupted the airplane's longitudinal stability, causing a propensity for dangerous nose-up pitching;
- b. The flawed aerodynamic characteristics increased the risk of aerodynamic stall during flight;
- c. The AOA sensors were prone to failure;
- d. The MCAS design was defective;
- e. The defective design could cause and eventually did cause the MCAS to repeatedly activate based on the inaccurate and implausible data supplied by a single AOA sensor; and
- f. The recommended emergency procedures provided by BOEING and approved by the FAA were inadequate.

126. BOEING knew or should have known that the design choices made by BOEING allowed for inaccurate, invalid and/or implausible AOA data to cause the MCAS to unsafely push the plane's nose down at low altitude and propel it into terrain killing everyone onboard.

127. Nonetheless, BOEING repeatedly represented to its customers, including Airline Y, and the Plaintiff that the MAX was safe – even after the crash of JT610.

128. After the crash of JT610, BOEING informed pilots, including Plaintiff, that the MCAS was incorporated into the MAX design, but provided pilots, including the Plaintiff, with inadequate instructions and no training regarding how to manage the MCAS in the case of a malfunction.

129. Based on BOEING's representations, pilots flying the MAX, including Plaintiff, knew that they were flying an aircraft that they did not fully understand and could not control, placing Plaintiff's life and the lives of the crews and passengers entrusted to Plaintiff's care in danger.

130. BOEING knew or should have known that its representations would require pilots to continue to operate the MAX despite known or suspected design flaws, resulting in severe emotional distress, which disrupted their professional and personal lives and causing them to suffer actual damages, including lost wages, risk of termination by the airline, and lost flight time.

131. At all relevant times, BOEING owed a duty to the Plaintiff to design aircraft, including the MAX, so that aircraft that are likely to cause injury and death are not sold to its customers.

131. BOEING intentionally, and/or negligently, with conscious disregard and reckless indifference to the safety of the Plaintiff, breached its duty of care owed to the Plaintiff, through one or more of the following acts and omissions:

- a. Inadequately performing the System Safety Analysis of the MCAS;
- b. Designing an aircraft that provided that a single point of failure could cause an aviation disaster;

- c. Misclassifying the BOEING SSA that assessed potential MCAS failure;
- d. Failing to provide the AOA Indicator and Disagree alert as standard features of the MAX; and
- e. Failing to provide guidance as to how to recover from an MCAS-induced situation.

132. As a direct and legal result of BOEING's acts and omissions, the Plaintiff suffered extreme fear, pain and suffering in their professional and private lives, which was foreseeable to BOEING.

133. As a direct and legal result of one or more of BOEING's acts and omissions, the Plaintiff has suffered, and will continue to suffer actual damages in an amount to be determined at trial and pecuniary damages, including but not limited to loss of employment, missed flight pay, and medical and related past and future expenses.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays:

- a. that the Court determine that this action may be maintained as a class action under 735 ILCS 5/2-801;
- b. that the Plaintiff is a proper class representative;
- c. that the best practicable notice of this action be given to members of the Class represented by the Plaintiff;
- d. that judgment against the Defendant be entered in an amount to be determined at trial for compensatory damages alleged, plus in an amount to be determined at trial for punitive damages;
- e. interest, litigation costs, and attorneys' fees; and
- f. that the Court grant such other and further relief as is just.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: July 4, 2019
Chicago, Illinois

Respectfully submitted by:



Patrick M. Jones, One of the
Attorneys for Plaintiff and proposed Class

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