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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

SECOND JUDICIAL DISTRICT AT NOME

STACEY MONCUR as Personal
Representative of the ESTATE OF JADEE
MONCUR, and as Wife of JADEE
MONCUR;

Plaintiff,

vs.

BERING AIR, INC., an Alaska
Corporation;

Defendant.

COMPLAINT

Case No. 2NO-26-_____ CI

COMPLAINT

COMES NOW Plaintiff STACEY MONCUR as Personal Representative of the ESTATE OF JADEE MONCUR and as Wife of JADEE MONCUR, hereby alleges in this, her complaint for injuries and wrongful death, survival, and punitive damages sustained by the ESTATE OF

JADEE MONCUR, and sustained by all wrongful death and survival claim beneficiaries thereof, as follows:

I. NATURE OF ACTION

1.1 This is an action for wrongful death, survival claims, and for punitive damages brought by Plaintiff whose decedent JADEE MONCUR was a passenger in a plane crash, Bering Air Flight 445, that occurred on February 6, 2025, Southeast of Nome, Alaska. Defendant Bering Air, Inc. lost control of the airplane, resulting in the crash and deaths of all onboard, which occurred within (less than) 12 miles of the Alaska shore and within the state territorial waters of Alaska.

II. PRELIMINARY ALLEGATIONS
(Jurisdiction, Venue, and Capacity of the Parties)

2.1 As is hereinafter more fully set forth, the accident that gave rise to this lawsuit occurred upon the navigable waters of the United States, had an actual and potential impact on maritime commerce, involved a traditional maritime activity, and is therefore subject to admiralty tort jurisdiction.

2.2 This Court has subject matter jurisdiction over this action pursuant to the “saving-to-suitors” clause set forth in the Federal Judiciary Act of 1789, 28 U.S.C. § 1333(1).

2.3 Plaintiff STACEY MONCUR is, at all times material hereto, a citizen and resident of the State of Alaska, as was her husband, Decedent JADEE MONCUR.

2.4 Plaintiff STACEY MONCUR is the “spouse” and duly appointed “personal representative” of the Estate of JADEE MONCUR, (“Decedent MONCUR”), and is

1 recognized as those terms are used in 46 U.S.C. § 30302 and incorporated into general
2 maritime law.

3 2.5 Decedent MONCUR was born in March 1972 and was a “non-seafarer” at all times
4 material hereto as that term is used in *Yamaha Motor Corp. v. Calhoun*, 516 U.S. 199,
205 (1996). Decedent MONCUR’s beneficiaries include:

5 a. His three adult children: Carter Moncur, Ethan Moncur, and Olivia
6 Moncur, each of whom is a “child” as that term is used in 46 U.S.C. § 30302
and incorporated into general maritime law, and:

7 b. His mother, Darlene Moncur, and father, Brent Moncur, both of
8 whom are “parents” as that term is used in 46 U.S.C. § 30302 and
incorporated into general maritime law.

9 2.6 At all times herein mentioned, Defendant Bering Air, Inc. (hereinafter, “Bering Air”)
10 is an Alaska Corporation organized and existing under the laws of the State of Alaska,
11 is an Alaska resident, and has its principal place of business in Alaska and is doing
12 business in Alaska, by, among other things, providing commercial services transporting
people and cargo by aircraft throughout Alaska.

13 2.7 At all times material hereto, Defendant owned, maintained, and publicly operated
14 numerous aircraft, including one Textron Aviation Cessna 208B Grand Caravan with
15 U.S. registration number N321BA and serial number 208B5613. Defendant was
16 certified by the FAA and authorized to transport passengers and cargo for the public on
approved routes and schedules.

17 2.8 Decedent MONCUR was a passenger on board Defendant’s aircraft N321BA on
18 February 6, 2025, on a scheduled flight from Unalakleet to Nome, which crashed,

1 killing Decedent MONCUR and all the other passengers and the pilot who were on
2 board the aircraft.

3 2.9 Venue is also proper in this Court because it is the judicial district where the aircraft
4 was prepared for the flight, where the passengers boarded the aircraft, where the
5 Defendant Bering Air has a flight hub, where the flight departed, where it operated,
6 where its destination was, and where the aircraft ultimately crashed and where the
7 damages arose. It is also the district in which the claim arose, including where the all
8 or part of the tortious conduct of Bering Air occurred.

9 2.10 Jurisdiction is proper in the Second Judicial District Superior Court in Nome as the
10 amount in controversy exceeds \$100,000.

11 **III. OPERATIVE FACTS**

12 *(The Events and Instrumentalities Leading up to the Accident)*

13 3.1 The following facts are preliminary facts, including facts set forth in the NTSB
14 preliminary report. These facts are subject to verification, are preliminary, and may
15 change if warranted. The NTSB is in exclusive possession of many of these and other
16 facts related to the accident. As of the filing of this complaint, the NTSB has not yet
17 released evidence related to the accident, nor has it opened its accident investigation
18 docket, nor released the wreckage.

3.2 Bering Air is certified by the Federal Aviation Administration (FAA) pursuant to Title
14 CFR part 119 (Part 119) as a Commuter and On-Demand Operator with air carrier
certificate number FXTA050A.

3.3 Bering Air has three hub bases of operation: Nome, Unalakleet, and Kotzebue, all three
of which are located in Alaska's second judicial district.

- 1 3.4 On February 6, 2025, Flight 445 was operating under Bering Air's Part 119 certificate,
2 which authorizes Bering Air to conduct operations under 14 CFR Part 135 as a
3 scheduled commuter flight from Unalakleet, Alaska, to Nome, Alaska, which would
4 take the flight near or over areas of Norton Sound and the Bering Sea.
- 5 3.5 The aircraft operating Flight 445 was a Textron Aviation Inc. (Cessna) 208B Grand
6 Caravan with U.S. registration number N321BA and serial number 208B5613.
- 7 3.6 N321BA was equipped with a TKS ice protection system that was designed to prevent
8 the accumulation of airframe ice, including on the leading edges of the flight control
9 surfaces including the wings.
- 10 3.7 For the TKS system to be fully functioning, the pilot operating handbook and
11 supplement related to the TKS system specified that a minimum indicated airspeed of
12 95 knots be maintained for operations in icing conditions. The TKS system also needed
13 to be properly maintained and prepared for the flight, including but not limited to,
14 having sufficient de-ice fluid for the planned flight.
- 15 3.8 The handbook also contained the maximum allowable takeoff gross weight for flight
16 into known or forecast icing conditions as 8,807 pounds.
- 17 3.9 The NTSB's post-accident weight calculations determined that N321BA's weight was
18 approximately 9,865 pounds.
- 3.10 According to the FAA approved aircraft manual for N321BA, this would place the
aircraft 1,058 pounds over the maximum takeoff gross weight for flight into known
icing conditions and 803 pounds over the maximum gross takeoff weight for any flight
operation.
- 3.11 N321BA was configured to accommodate two pilots and nine passengers.

- 1 3.12 Bering Air employee and/or agent Chad Antill was the pilot of Flight 445.
- 2 3.13 There was no copilot for Flight 445.
- 3 3.14 JADEE MONCUR was one of the paying passengers on Flight 445.
- 4 3.15 Mr. Antill, a Bering Air employee, was the plane's pilot in command and was
5 responsible for the safety of the flight and the safety of all passengers.
- 6 3.16 At all relevant times, Mr. Antill was an employee of Bering Air and acting within the
7 scope of his employment.
- 8 3.17 Mr. Antill was also an agent and/or employee and/or servant and/or partner of Bering
9 Air and was acting within the scope of employment and/or agency and/or partnership
10 before and during the accident flight.
- 11 3.18 Bering Air authorized Mr. Antill's acts and/or omissions and/or ratified or approved
12 the same. As a result, Bering Air is vicariously liable for the acts and omissions of Mr.
13 Antill in causing and/or contributing to the cause of the accident and is liable for
14 Plaintiff's damages, as alleged herein.
- 15 3.19 FAA operating specification A002 for Bering Air provides that, as the certificate
16 holder, Bering Air "is accountable and liable for the acts or omissions of each of its
17 agents."
- 18 3.20 N321BA was equipped with automatic dependent surveillance-broadcast (ADS-B) that
periodically broadcasted its position, which allowed the plane to be tracked.
- 3.21 On February 6, 2025, Bering Air Flight 445 was scheduled to fly from Nome to Saint
Michael, then from Saint Michael to Unalakleet, and then from Unalakleet back to
Nome. N321BA was the aircraft operating as Flight 445.
- 3.22 Flight 445 arrived in Unalakleet at approximately 10:28 a.m. and was scheduled to

1 return to Nome that afternoon.

2 3.23 At 2:36 p.m., Mr. Antill contacted Anchorage Air Route Traffic Control Center
3 (AARTCC) to report that he was on the ground in Unalakleet and requested an
4 instrument flight rules clearance to Nome. AARTCC cleared Flight 445 to Nome via
5 the EMMMO waypoint intersection at a cruising altitude of 8,000 feet above mean sea
6 level (ft msl).

7 3.24 At 2:37 p.m., Flight 445 departed from runway 33 at Unalakleet and proceeded west
8 over Norton Sound towards Nome.

9 3.25 At 2:40 p.m., AARTCC advised Mr. Antill that radar contact was established.
10 AARTCC then contacted the Alaska Flight Service Station (FSS) at Nome to inform
11 them that Flight 445 was estimated to arrive in Nome at approximately 3:35 p.m.

12 3.26 At about 2:49 p.m., Flight 445 leveled at a cruising altitude of 8,000 ft msl. It was about
13 20 miles west of Unalakleet at this time.

14 3.27 At 2:56 p.m., the air traffic controller cleared Flight 445 to descend and maintain 6,000
15 ft msl at Mr. Antill's discretion.

16 3.28 At 3:05 p.m., Nome weather was reported as: wind calm; visibility 10 miles or greater;
17 light snow; broken ceiling at 2,700 feet; broken clouds at 3,500 feet; overcast skies at
18 5,500 feet; a temperature of minus 10 degrees Celsius; a dew point of minus 12 degrees
Celsius; and an altimeter setting of 30.20 inches of mercury. Remarks noted that snow
began at 3:03 p.m. and trace icing started at 2:53 p.m.

3.29 The National Weather Service issued two airmen's meteorological information
advisories at 12:37 p.m., which forecasted IFR conditions and mountain obscuration
due to light snow and mist, clouds and precipitation, and occasional moderate icing

1 between 2,000 and 8,000 ft msl.

2 3.30 At 3:11 p.m., Mr. Antill let the controller know that he was initiating a descent from
3 8,000 feet. Mr. Antill also informed the controller that he had received the current
4 weather and airport information at Nome. During the descent, the aircraft's airspeed
5 increased from about 150 knots to about 160 knots.

6 3.31 At 3:12 p.m. Nome Airport operations advised the Nome FSS that runway 10/28 was
7 being closed temporarily for deicing. Nome FSS subsequently advised AARTCC of
8 the runway closure. Deicing was estimated to take 10-15 minutes. The icing was
9 estimated to be completed between 3:22 p.m. and 3:27 p.m. Flight 445 was estimated
10 to arrive at 3:35 p.m.

11 3.32 At 3:14 p.m., the controller informed Mr. Antill that the runway was closed and
12 expected to reopen in 10-15 minutes. From the NTSB Preliminary Report, it is unclear
13 which runway the controller was referring to. The controller added that if the pilot
14 wanted to "slow down a little bit" to prevent Flight 445 from arriving before the runway
15 reopened, that would be fine, and the pilot acknowledged. About that same time, the
16 aircraft's airspeed began to decrease and was accompanied by a reduction in engine
17 power.

18 3.33 At about 3:15 p.m. Flight 445 leveled at 6,000 feet. About 15 seconds later, the airspeed
19 increased to approximately 110 knots. Minutes later the airspeed was up to 120 knots.

20 3.34 At about 3:16 p.m., the controller instructed Mr. Antill to descend and maintain 4,000
21 feet at Mr. Antill's discretion. Mr. Antill acknowledged that instruction. Shortly
22 thereafter, Flight 445 began to descend.

23 3.35 At about 3:19 p.m., Flight 445 leveled off at 4,000 feet and the engine power started to

gradually increase. The aircraft's airspeed was about 112 knots and gradually decreasing.

3.36 At 3:19 p.m. and 35 seconds, the autopilot disengaged. At that time, the airspeed was 99 knots. About 19 seconds later, the airspeed decreased to about 70 knots and Flight 445 had ascended to 3,100 feet.

3.37 At 3:20 p.m. and 7 seconds, the controller instructed Mr. Antill to climb and maintain 4,000 ft msl.

3.38 At 3:20 p.m. and 9 seconds, the final ADS-B data point was recorded. Flight 445 was at 1,325 ft msl and located roughly 32 miles east of Nome and offshore over the Norton Sound, and within 12 miles of shore.

3.39 At 3:20 p.m. and 17 seconds, a third-party satellite tracking vendor recorded Flight 445 at 200 feet.

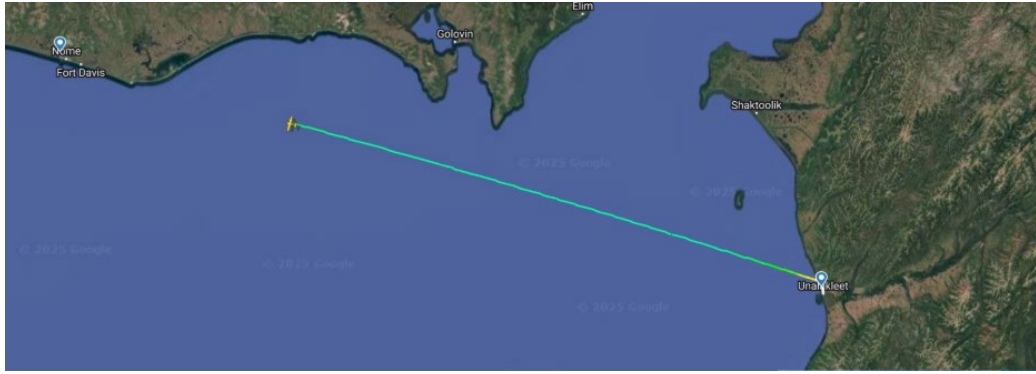
3.40 At 3:20 p.m. and 18 seconds, the controller transmitted a low altitude alert to the pilot. The controller's efforts to contact the pilot were not successful, and no further communications were received.

3.41 Flight 445 crashed onto the ice, killing all on board. The location of the crash at the moment of impact was within 12 miles of the Alaskan shore, in navigable water.

3.42 Over the next two days, the Coast Guard, Air Force, Civil Air Patrol, Nome Volunteer Fire Department, Bering Air, and Alaska State Troopers, among others, joined the search for the missing plane which search may have been affected by moving sea ice.

3.43 On February 7, 2025, the Coast Guard located and reached the crash site. They confirmed all ten on board had died.

3.44 On February 9, 2025, the bodies of all ten persons who were on board were recovered.



(Image of accident flight from Flightradar24.com)

3.45 The flight route from Unalakleet to Nome is almost entirely over navigable waters. There is no roadway between these two towns, and travel between them is performed (and historically has been performed) by vessels on the ocean. If not by ocean vessel, travel between these towns is performed by aircraft over the ocean. Air travel between these two towns, including the accident flight herein, bears a significant relationship to traditional maritime activity. In addition, the accident location on the ocean is a maritime locality, and is where an aircraft accident could have a potentially disruptive impact on maritime commerce.

IV. FIRST CAUSE OF ACTION

(For Wrongful Death Due to Simple Negligence under General Maritime Law and/or Other Applicable Law)

4.1 Plaintiff realleges and incorporates by reference all allegations contained in the previous paragraphs of this Complaint, as more fully set forth herein.

4.2 This cause of action arises under the General Maritime law of the United States as set forth in *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375 (1970), *Sea-Land Services v. Gaudet*, 414 U.S. 573 (1974), *Norfolk Shipbuilding & Drydock Corp. v. Garriss*, 532

U.S. 811 (2001), and *Yamaha Motor Corp. v. Calhoun*, 516 U.S. 199 (1996), and by operation of the Supremacy Clause in Article XI, Clause 2 of the United States Constitution and the caselaw handed down in *Chandris, Inc. v. Latsis*, 515 U.S. 347, 356 (1995), *Freeze v. Lost Isle Partners* (2002) 96 Cal. App. 4th 45, 51, *Chan v. Society Expeditions, Inc.*, 39 F.3d 1398, 1402 (9 Cir. 1994), and *Thibodaux v. Atlantic Richfield Co.*, 580 F.2d 841, 847 (5th Cir. 1978) *inter alia*.

4.3 During all applicable times, Defendant Bering Air, owner and operator of the aircraft, owed a duty of care to plaintiff. At all times material hereto, Defendant had a legal duty to Decedent MONCUR and to all passengers, to properly inspect, maintain, and prepare and keep N321BA in a condition that was airworthy and safe for flight, and in full compliance with all applicable certificates, maintenance manuals, operations manuals and checklists, inspection checklists, operation specifications, and federal aviation regulations.

4.4 Defendant also had a legal duty to maintain make any repair or alteration to N321BA in a manner that left said aircraft airworthy and safe for flight.

4.5 Defendant also had a legal duty to properly instruct, train, and provide timely check rides to its pilot, Chad Antill, the pilot of the accident flight, and to its employees, including flight dispatchers.

4.6 FAA operating specification A008 for Bering Air provides that, as an air carrier certificate holder, Bering Air “retains all responsibility for the operational control of aircraft operations, and thus the safety of each flight conducted under this certificate and operations specification, including the actions or inactions of all direct employees and agents of the certificate holder.”

1 4.7 Defendant as a common carrier and as operator of the subject accident flight, owed a
2 special/fiduciary duty to paying passengers, including Plaintiff, to act with the utmost
3 and highest standard of care for the health, welfare, and safety of its passengers.

4 4.8 Defendant owed a duty to Decedent MONCUR to exercise reasonable care for his
5 health, welfare, and safety.

6 4.9 On or around February 6th, 2025, at or near Norton Sound, the defendant performed
7 acts that a reasonable person of ordinary prudence in the same or similar circumstances
8 would not have done by (including but not limited to):

9 a. Overloading the aircraft well beyond the maximum certified allowable
10 weight and balance,

11 b. Failing to properly prepare and dispatch aircraft,

12 c. Failing to plan for appropriate icing conditions,

13 d. Failing to prepare the aircraft and TKS icing system sufficiently for the
14 flight,

15 e. Flying into known icing conditions,

16 f. Failing to recognize icing build-up,

17 g. Failing to properly respond to icing build-up,

18 h. Failing to properly operate the autopilot,

i. Allowing the aircraft to fly too slow and not in compliance with the
aircraft operating handbook, safe practices, and the Federal Aviation
Regulations, and

j. Allowing the aircraft to fly exceedingly slow, and allowed the aircraft to
dangerously lose lift, stall, spin, and ultimately crash.

1 4.10 As the operator of the accident flight, Defendant breached their duty of care. Defendant
2 overloaded the aircraft beyond its gross weight, and beyond the limits of weight for
3 flight into known icing conditions, making the aircraft unairworthy and unsafe to fly.
4 Defendant knew (or certainly should have known) of the aircraft's unairworthy
condition and chose to release and approve the aircraft for flight.

5 4.11 Defendant chose to fly the aircraft when defendant knew (or should have known) of its
6 unairworthy condition. Defendant failed to operate the aircraft in a reasonably safe
7 manner by failing to properly prepare the aircraft for flight into known icing conditions,
8 flying it into an area of icing, failed to take appropriate measures to address the rapid
9 accumulation of ice on the aircraft, failed to check the autopilot for excess trim, failed
10 multiple times to fly at a proper and safe speed, lost control of the aircraft, stalled, and
11 caused it to plummet into a dangerous spin and crash, all while the aircraft weighed
well over its permissible maximum weight limit. In doing so, Defendant failed to
comply with the Cessna Pilot Operating Handbook, the Bering Air Service Operation
Specifications, and the Federal Aviation Regulations.

12 4.12 Defendant failed to ensure and use proper and safe loading of cargo, safety oversight
13 of weight and balance, and to have proper and adequate training in place, including for
14 the accident aircraft and the accident flight.

15 4.13 Defendant failed to have adequate safe operating practices and procedures regarding
16 operations in icing conditions. It failed to provide adequate training on flying in icing
17 conditions, on supplying and operating the deicing system, on operating the autopilot
18 in icing conditions, and on the risks of operating an overloaded, out-of-proper-weight-
and-balance aircraft in dangerous icing conditions.

1 4.14 Defendant also breached their contractual, special/fiduciary, and Federal Aviation
2 Regulation duty to safely transport Plaintiff, as set forth above.

3 4.15 Defendant was responsible for the safety of the accident flight under Title 14 of the
4 Code of Federal Regulations, including, but not limited to, parts 91, 119, and 135.

5 4.16 As an FAA-certified Part 119 operator, Defendant had a duty to comply with all
6 regulations regarding flight operations and air carrier operations. Those regulations
7 include the Federal Aviation Regulations and Defendant's FAA-authorized operation
8 specifications.

9 4.17 Negligence per se is asserted on the grounds that Defendant violated public safety
10 regulations that were designed to protect a class of persons, including the Plaintiff, from
11 the type of harm that occurred here. Violation of aviation safety regulations constitutes
12 negligence per se, and Defendant violated multiple regulations while operating the
13 accident flight.

14 4.18 Defendant violated 14 CFR 91.9 by failing to comply with the operating limitations of
15 the aircraft.

16 4.19 Defendant violated 14 CFR 91.13 by operating the aircraft in a careless and/or reckless
17 manner, which not only endangered the lives of others but led to the plaintiff's deaths.

18 4.20 Defendant violated 14 CFR 91.7, 91.13, and 91.103 because they were unaware of all
available information concerning the flight, failed to note possible icing conditions on
the route of the flight, failed to operate the flight within approved and allowed
maximum weight limits, and failed to take appropriate measures to mitigate the risks
to the flight that icing presented.

4.21 Defendant violated 14 CFR 91.7 and 91.13 by operating an aircraft in an unairworthy

condition with a weight and balance in excess of the published limitations.

4.22 Defendant violated 14 CFR 91.9(a) and 91.13, and the operation specifications, by operating the aircraft without complying with the operating limitations specified in the Airplane Flight Manual, by operating the aircraft with a gross weight in excess of its limitations for flight, and well in excess of flight into icing conditions. Defendants also violated the regulations by operating the aircraft with a weight and/or center of gravity in excess of the published limitations.

4.23 Defendant failed to operate the aircraft in a reasonably safe manner. Defendant failed to properly pre-flight the aircraft, flew the aircraft into dangerous icing conditions, failed to recognize those conditions, failed to take corrective action, failed to fly at a proper and safe speed, failed to monitor the condition of the autopilot, failed to safely control the aircraft, allowing it stall, spin, and crash. Each one of these failures was negligent and also in violation of 14 CFR 91.13 because it was careless and reckless. .

4.24 Violations of regulations while operating a commercial flight is an automatic per se violation of 14 CFR 91.13.

4.25 Defendant violated 14 CFR 91.527 and 14 CFR 135.227 by flying the aircraft into known icing conditions without a functioning deicing or anti-icing equipment.

4.26 Defendant violated 14 CFR 91.527 and 14 CFR 135.227 by flying the aircraft into dangerous icing conditions.

4.27 Regulations 14 CFR 91.7, 91.9, 91.105, 91.527, and 135.227 were intended to protect the aircraft's occupants. As a passenger, the plaintiff belonged to the class of people the law intended to protect.

1 4.28 Defendant was subject to FAA-approved operations specifications, which were
2 mandatory during commercial operations. A violation of those operations
3 specifications during commercial operations also constitutes a violation of 14 CFR
91.13. Defendant violated multiple operating specifications on the accident flight.

4 4.29 Defendant violated operations specification A015 by failing to operate the autopilot in
5 the aircraft according to the approved flight manual supplement.

6 4.30 Defendant violated operations specification A041 by failing to conduct a pre-takeoff
7 contamination check to confirm aircraft anti-icing systems were functional.

8 4.31 Defendant violated operations specification A096 by failing to use actual weights of all
9 passengers and bags when loading the aircraft.

10 4.32 Defendant violated operations specification A096 by failing to use the pilot operating
11 handbook or SEE GEE center of gravity calculator to determine the weight and balance
12 of the aircraft before takeoff.

13 4.33 Defendant failed to comply with their FAA-approved Operation Specifications, and
14 failed to comply with all requisite aircraft maintenance manuals and/or aircraft
15 operating manuals, practices, and proper procedures, which also caused and/or
16 contributed to the accident.

17 4.34 The above acts caused or contributed to the cause of the aircraft's crash, breaching
18 Defendant's duties of care to Decedent MONCUR, leading to the death of all onboard.

4.35 The breaches of all duties were foreseeable and were likely to result in the damages
claimed herein, including wrongful death damages, and emotional distress and mental
injury.

4.36 Defendant's negligence, including its violations of the above duties of care, were a

1 direct and proximate cause of the underlying accident, and Plaintiff's damages as
2 alleged herein. These damages include physical injury, and severe and serious
3 emotional distress and mental injury to Plaintiff.

4.37 The beneficiaries herein have suffered past economic losses, past noneconomic losses,
4 future economic losses, and future noneconomic losses as herein alleged below.

5 **V. SECOND CAUSE OF ACTION**

6 *(For Wrongful Death Due to Gross Negligence and Recklessness*
7 *under General Maritime Law and/or Other Applicable Law)*

8 5.1 Plaintiff herewith refers to, and by that reference incorporates as though fully set forth
9 herein, each and every allegation set forth in this complaint, including the First Cause
10 of Action.

11 5.2 Defendant, acting through themselves, their agents, managing agents, and employees,
12 acted with "gross negligence" and/or "recklessness," as those phrases and that term are
13 used in *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 493-494 (2008), *Colombo v. BRP*
14 *US Inc.*, 230 Cal. App. 4th 1442, 1446 (2014), *In re Exxon Valdez*, 270 F.3d 1215,
15 1226, 1232 (9th Cir. 2001), *Protectus Alpha Navigation Co. v. North Pacific Grain*
16 *Growers, Inc.*, 767 F.2d 1379, 1385 (9th Cir. 1985), and *Royal Ins. Co. of America v.*
17 *Southwest Marine*, 194 F.3d 1009, 1015 (9th Cir. 1999), which conduct caused and/or
18 contributed to the accident. By knowingly and intentionally overloading N321BA well
beyond its allowed weight and balance limits, Defendant prioritized and placed their
own profits ahead of the interest of the safety of the passengers, including Decedent
MONCUR, on the accident flight.

5.3 Defendant's failure to comply with the published weight and balance standards was

1 motivated by their financial gain to allow the transportation of more paid cargo and
2 persons. Defendant was fully aware of the adverse consequences of this conduct, which
3 sacrificed safety for additional financial gain. This proximately caused, in whole or in
part, the accident.

4 5.4 Defendant's choice of operating the flight into weather that was forecast for icing
5 conditions rather than cancel, delay, or reroute the flight was made to save time and
6 increase Defendant's profits. A canceled flight costs money, and a rerouted flight
7 increases costs and disrupts other flight schedules. The choice to continue the flight,
8 even after entering dangerous conditions, provided the Defendant with greater revenue
but at an increased risk of safety to Plaintiff. This proximately caused, in whole or in
part, the accident.

9 5.5 The choice to sacrifice safety margins for profit is outrageous, grossly negligent,
10 reckless, was made with malice and bad motive, and evidences a reckless indifference
by the Defendant to the Plaintiff's interests and safety.

11 5.6 Defendant's conduct was outrageous, grossly negligent, reckless, done with malice or
12 bad motive, and evidences a reckless indifference to the interests of plaintiffs, all
13 entitling plaintiffs to punitive damages as per Maritime Law and per AS 09.17.020
against all Defendants.

14 5.7 The Federal Aviation Administration establishes many requirements for aircraft, pilots,
15 and operators. A lot of these requirements are safety standards.

16 5.8 Amongst the safety standards are those that limit aircraft to a certain weight under
17 varying circumstances.

1 5.9 Defendant knew (or should have known) of these safety standards set forth above and
2 those related to weight limitations.

3 5.10 Defendant chose to operate N321BA well in excess of the aircraft's weight limitations.

4 5.11 Defendant chose to operate N321BA into known icing conditions.

5 5.12 Defendant's actions demonstrate a reckless indifference to human life as per both
6 Maritime Law and AS 09.17.020.

7 5.13 In committing the acts and omissions alleged herein, Defendant acted outrageously,
8 and committed gross negligence, willful, wanton, and reckless indifference for the
9 rights of others, justifying an award of punitive damages in an amount to be determined
10 at trial. Defendant's conduct was outrageous, done with malice or bad motive, and
11 evidences a reckless indifference to the life and interests of Decedent MONCUR, all
12 entitling Plaintiff to punitive damages.

13 5.14 WHEREFORE, Plaintiff prays judgment against Defendant as is herein more fully set
14 forth.

15 **VI. THIRD CAUSE OF ACTION**

16 *(For Survival Damages Due to Simple Negligence under General Maritime Law or
17 Otherwise Applicable Law)*

18 6.1 Plaintiff herewith refers to, and by that reference incorporates as though fully set forth
herein, each and every allegation set forth in their First Cause of Action hereinabove.

6.2 Just as the within cause of action arose in his favor, Decedent MONCUR, who would
have been a Plaintiff in this action had he lived, died as is hereinabove more fully
alleged.

6.3 As a direct and proximate result of the hereinabove alleged delicts of the Defendant,
Decedent MONCUR was placed in great fear for his life and physical well-being, and

1 consciously suffered extreme, severe, and relentless mental anguish and physical pain,
2 and continued to suffer such pain and anguish for a substantial period of time until he
3 died.

4 6.4 WHEREFORE, Plaintiff prays judgment against Defendant as is herein more fully set
5 forth.

6 **VII. FOURTH CAUSE OF ACTION**

7 *(For Survival Damages Due to Gross Negligence*

8 *and Recklessness under General Maritime Law or Otherwise Applicable Law)*

9 7.1 Plaintiff herewith refers to, and by that reference incorporate as though fully set forth
10 herein, each and every allegation set forth hereinabove.

11 7.2 In committing the acts and omissions alleged herein, Defendant acted outrageously,
12 and committed gross negligence, willful, wanton, and reckless indifference for the
13 rights of others, justifying an award of punitive damages in an amount to be determined
14 at trial. Defendant's conduct was outrageous, done with malice or bad motive, and
15 evidences a reckless indifference to the life and interests of Decedent MONCUR, all
16 entitling Plaintiff to punitive damages

17 7.3 Just as the within cause of action arose in his favor, Decedent MONCUR, who would
18 have been a Plaintiff in this action had he lived, died as is hereinabove more fully
alleged.

As a direct and proximate result of the hereinabove alleged delicts of the Defendant,
Decedent MONCUR was placed in great fear for his life and physical well-being, and
consciously suffered extreme, severe, and relentless mental anguish and physical pain,
and continued to suffer such pain and anguish for a substantial period of time until he

died.

7.5 WHEREFORE, Plaintiff prays judgment against Defendant as is herein more fully set forth.

VIII. DAMAGES

8.1 Plaintiff realleges and incorporates by reference all allegations contained in the previous paragraphs of this Complaint, as though fully set forth herein, and allege as follows:

8.2 As the direct and proximate cause of the crash previously described herein, the estate of Plaintiff's decedent, and their wrongful death and survival action beneficiaries, suffered damages, including but not limited to the following:

8.3 General damages and special damages for the personal injuries to JADEE MONCUR, and for which occasioned his death, for his awareness and fear of impending doom, and pre-death pain and suffering, and personal injury. This cause of action is maintained for the benefit of all wrongful death and survival claim beneficiaries under the law.

8.4 Damages for the death of JADEE MONCUR as a husband to STACEY MONCUR, and the loss of that husband-wife relationship, loss of love, care, companionship, guidance, financial support, and emotional support.

8.5 Damages for the death of JADEE MONCUR as a son, and the loss of that parent-child relationship, loss of love, care, companionship, guidance, and emotional support that he gave his parents..

- 1 8.6 Damages for the death of JADEE MONCUR as a father, and the loss of that parent-
2 child relationship, loss of love, care, companionship, guidance, and emotional support
3 for his three children.
- 4 8.7 All recoverable wrongful death and survival action damages under all applicable law.
- 5 8.8 Special damages for the destroyed earning capacity and loss to the Estate of Jadee
6 Moncur occasioned by his premature death, loss of financial support of beneficiaries,
7 and all other recoverable damages. This includes, but is not limited to, all lost future
8 earnings, loss of future earning capacity, loss of income and employment
9 opportunities, and all related damages arising from his death.
- 10 8.9 Damages for decedent, JADEE MONCUR, who was placed in great fear for his life
11 and physical well-being and consciously suffered extreme, severe, and relentless
12 mental and emotional anguish, terror, fear of impending doom, and physical pain,
13 physical injury, and continued to suffer such terror, pain, and anguish during the time
14 while the plane flew out of control and crashed onto Norton Sound.
- 15 8.10 Pre-judgment interest, attorney fees, costs, and expenses under General Maritime
16 Law and under Alaska state law.
- 17 8.11 Past and future non-economic damages, including damages for pain, suffering,
18 inconvenience, physical impairment, disfigurement, loss of enjoyment of life, loss of
consortium, and other nonpecuniary damage.
- 8.12 All recoverable damages under General Maritime law and under AS 09.17.010.
- 8.13 All punitive damages under General Maritime law and under AS 09.17.020.
- 8.14 All prejudgment and post-judgment interest under General Maritime Law and AS
09.30.070.

1 8.15 All permissible claims for attorneys fees under General Maritime Law and under AS
2 09.60.010 & Alaska R. Civ. P. Rule 82, according to the applicable statutory
3 calculations.

4 IX. PRAYER FOR RELIEF

5 WHEREFORE, Plaintiff having stated their case, pray for judgment against the above-
6 named Defendant, as set forth above and as follows:

- 7 1. For all past and future economic damages in an amount to be proven at the time of
8 trial for Plaintiff;
- 9 2. For all past and future non-economic damages in an amount to be proven at trial
10 for Plaintiff;
- 11 3. For all property damage, including cargo damages;
- 12 4. For past and future loss of love, care, companionship, and all recoverable damages,
13 arising due to the injuries sustained by Plaintiff's respective parents, and children;
- 14 5. For all survival damages alleged herein;
- 15 6. For costs of suit incurred herein;
- 16 7. For punitive/exemplary damages against Defendant;
- 17 8. For attorney fees, costs, and expenses, as allowed under applicable law, pursuant
18 to General Maritime Law, CR 82 and AS § 09.60.010;
9. For prejudgment and post-judgment interest as allowed by law;
10. For such other and further relief as the Court may deem just and appropriate.

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*Attorneys for Stacey Moncur as Personal Representative of the ESTATE OF JADEE MONCUR
and as wife of decedent JADEE MONCUR.*

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