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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 XXXXXXXXXXXXXXXX X, Individually,) CASE NO.
11 and as Personal Representative of the)
Estate of XXXXXXXXXXXX, deceased,) COMPLAINT FOR WRONGFUL DEATH
12) AND SURVIVAL;
Plaintiff,)
13)
vs.) JURY DEMAND
14)
ALASKA AIR GROUP, INC., ALASKA)
15 AIRLINES, INC., MCDONNELL)
DOUGLAS CORPORATION, THE)
16 BOEING COMPANY, a successor in)
interest to the McDonnell Douglas)
17 Corporation, PEACOCK AEROSPACE,)
INC., DERLAN INDUSTRIES, INC.,)
18 DERLAN INC., USA, and TRIG)
AEROSPACE, INC., a successor in)
19 interest to Peacock Aerospace, Inc.,)
Derlan Industries, Inc., and/or Derlan Inc.)
20 USA)
Defendants.)

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22 **COMPLAINT**

23 Plaintiff, XXXXXXXX, Personal Representative of the Estate of XXXXXXXX, deceased, by
24 his attorneys, Baum, Hedlund, Aristei, Guilford & Downey, for this complaint against Defendants,
25 Alaska Air Group, Inc., Alaska Airlines, Inc., McDonnell Douglas Corporation, The Boeing
26 Company, Peacock Aerospace, Inc., Derlan Industries, Inc., Derlan, Inc., USA and Trig Aerospace,
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2 7. Defendant PEACOCK AEROSPACE, INC. (hereinafter “Peacock”) is a corporation
3 duly organized and existing under the laws of the State of Oklahoma, maintains its principal place
4 of business in California, and is engaged in business in California.

5 8. Defendants DERLAN, INC. USA, and DERLAN INDUSTRIES, INC. (hereinafter
6 “Derlan”) are corporations duly organized and existing under the laws of the State of Delaware,
7 with their principal place of business in California, and are engaged in business in California.

8 9. Defendant TRIG AEROSPACE, INC. (hereinafter “Trig”) is a corporation duly
9 organized and existing under the laws of the State of California, maintains its principal place of
10 business in California, and is engaged in business in California.

11 **JURISDICTION AND VENUE**

12 10. Jurisdiction as to Alaska Airlines is also based on federal question, 28 U.S.C. §1331,
13 under a treaty of the United States, the Convention for the Unification of Certain Rules Relating to
14 International Carriage by Air, Signed at Warsaw on 12 October 1929, (commonly known as the
15 “Warsaw Convention”) 49 Stat., Part II, p. 3000, 2 Bevans 983, 137 L.N.T.S. 11, as modified by
16 the 1996 IATA/ATA Inter-carrier Agreement which, among other things, eliminates any limitation
17 on damages.

18 11. This Court has supplemental jurisdiction, pursuant to 28 U.S.C. §1367, with respect
19 to the claims against the remaining defendants in that those claims form part of the same case or
20 controversy.

21 12. Venue is based on 28 U.S.C. §1391 (a) because a substantial part of the events or
22 omissions giving rise to the claim occurred in this Judicial District. Defendants are doing business
23 and aircraft maintenance occurred in whole or in part in this Judicial District.

24 **GENERAL ALLEGATIONS**

25 13. On or about January 31, 2000, XXXXXXXX was a fare paying passenger on board
26 Alaska Airlines Flight 261, a McDonnell Douglas MD-80 series (MD-83) aircraft, registration
27 number N963AS, (hereinafter referred to as “the aircraft”), en route from Puerto Vallarta, Mexico

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1 to San Francisco, California.

2 14. At or about said date, said aircraft experienced ongoing and worsening problems
3 with the aircraft's flight controls, including the horizontal stabilizer, which were reported to air
4 traffic controllers.

5 15. For a measurable period of time, said airplane flew out of control, violently moved
6 in unexpected directions, dove, inverted, and subjected the passengers and contents to unusual g-
7 forces, all of which resulted in physical personal injuries, property damage, and other damages to
8 persons aboard the aircraft, including plaintiff's decedent.

9 16. Thereafter the plane crashed into the coastal waters between Pt. Mugu, California
10 and Anacapa Island, California, resulting in further damages and injuries to plaintiff's decedent and
11 damage to the personal property of plaintiff's decedent which ultimately resulted in the death of
12 plaintiff's decedent.

13 17. As a direct and proximate result of the conduct of defendants herein, and each of
14 them, there was a measurable and significant period of time from the first trauma causing injury to
15 decedent and/or the time the decedent was otherwise first injured before decedent's death such that
16 decedent consciously suffered injuries and damages for a measurable period of time before
17 decedent's death.

18 18. As a direct and proximate result of the conduct of defendants, and each of them,
19 before decedent's death, decedent's personal property, and the use thereof, were damaged,
20 destroyed, and tortiously interfered with, all to the damage of decedent, according to proof.

21 19. As a direct and proximate result of the conduct of defendants, and each of them,
22 plaintiff's decedent died and her heirs and survivors have been, and continue to be, deprived of
23 decedent's future services, support, and other economic losses, according to proof.

24 20. As a direct and proximate result of the conduct of defendants, and each of them,
25 plaintiff's decedent died and her heirs and survivors have suffered, and continue to suffer, non -
26 economic damages, which include, among other things, loss of comfort, care, society, love,
27 affection, guidance, presence, attention, companionship, and protection, according to proof.

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2 21. As a direct and proximate result of the conduct of defendants, and each of them,
3 plaintiff's decedent died and decedent's heirs and survivors have incurred funeral, burial, travel, and
4 related expenses and property damage, according to proof.

5 22. Before and on January 31, 2000, Defendant Alaska Airlines was a commercial carrier
6 engaged in the business of carrying passengers for hire in interstate and international commerce in
7 that, among other things, it operated regularly scheduled passenger flights and further performed
8 aircraft inspection, service, and maintenance in this Judicial District.

9 23. Before and on January 31, 2000, defendant Alaska Air Group was the parent
10 company of Alaska Airlines and owned, controlled, inspected, serviced, maintained, repaired,
11 scheduled, crewed, monitored, and operated the aircraft and its component parts and systems
12 including, but not limited to, the aircraft's flight control system, stabilizer system, electrical system,
13 and flight instrumentation system, and, with defendants MDC, Boeing, Peacock, Derlan, and/or
14 Trig, wrote and/or approved instructions and warnings for the aircraft and its component parts and
15 systems, including, but not limited to, its flight manual, maintenance manual, inspection instructions,
16 maintenance instructions, service bulletins, and inspection schedules.

17 24. Before and on January 31, 2000, defendant Alaska Airlines was a wholly owned
18 subsidiary of Alaska Air Group, and owned, controlled, inspected, serviced, maintained, repaired,
19 scheduled, crewed, monitored, and operated the aircraft and its component parts and systems
20 including, but not limited to, the aircraft's flight control system and stabilizer system, electrical
21 system, and flight instrumentation system, and, with defendants MDC, Boeing, Peacock, Derlan,
22 and/or Trig, wrote and/or approved instructions and warnings for the aircraft and its component
23 parts and systems, including, but not limited to, its flight manual, maintenance manual, inspection
24 instructions, maintenance instructions, service bulletins, and inspection schedules.

25 25. At all times relevant hereto, the aircraft was owned and/or operated, maintained,
26 controlled, manned, scheduled, flight followed, inspected, repaired, serviced and monitored by
27 defendant Alaska Airlines and Alaska Air Group, acting by and through their authorized agents,

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1 servants, officers, employees and/or designees.

2 26. Defendant MDC designed, manufactured, assembled, inspected, tested, distributed,
3 serviced, maintained, monitored, repaired, marketed and introduced into the stream of commerce
4 the aircraft, and its component parts, including, but not limited to, the flight control system,
5 stabilizer system, electrical system, mechanical system, hydraulic system, flight instrumentation
6 system, along with instructions and warnings for the aircraft and its component parts which it
7 approved, wrote, prepared, provided, monitored which were sold, delivered, and provided to
8 defendant, Alaska Airlines, and, thereafter, MDC monitored the aircraft for service and mechanical
9 reliability and airworthiness.

10 27. After the sale of the aircraft to defendant Alaska Airlines by defendant MDC, but
11 before the crash of Alaska Airlines Flight 261 on January 31, 2000, defendant Boeing acquired the
12 assets of defendant MDC and assumed the liabilities of MDC, and, by reason of Boeing's acquisition
13 of MDC and in consequence of the underlying agreements by and between Boeing and MDC and
14 their related corporate subsidiaries, Boeing became and is the successor-in-interest to all MDC
15 assets and liabilities and, accordingly, has assumed legal responsibilities for the injuries, damages,
16 and claims alleged herein.

17 28. Before January 31, 2000, Defendant Trig acquired the assets of defendant Peacock
18 through Defendant Derlan Industries, Inc., and/or Derlan Inc., USA and assumed the liabilities by
19 reason of said transaction and the underlying agreements among those corporate entities and their
20 subsidiaries such that, Trig became a successor in interest of all Peacock and Derlan assets and
21 liabilities and assumed responsibility for the injuries, damages, and claims alleged herein.

22 29. All defendants, their aggregates, corporates, associates, and partners, at all times
23 pertinent hereto, and each of them, were the agent, servant, employee, assignee, successor in
24 interest or joint venturer of each other, and were acting within the time, purpose or scope of such
25 agency or employment; and all acts or omissions alleged herein of each such defendant were
26 authorized adopted, approved, or ratified by each of the other defendants.

27 30. At all times herein mentioned, all defendants, and each of them, were fully

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1 informed of the actions of their agents and employees and thereafter no officer, director, or
2 managing agent of defendants repudiated those actions, which failure to repudiate constituted
3 adoption and approval of said actions and then all defendants, and each of them, thereby ratified
4 those actions.

5 **COUNT I**

6 **(Treaty Liability Against Defendant Alaska Air Group and Alaska Airlines)**

7 31. Plaintiff incorporates by reference all prior allegations of this Complaint.

8 32. At all relevant times here, the involved flight was under the operation, control,
9 direction, and instruction of Alaska Air Group and Alaska Airlines, their officers, agents, servants,
10 and/or employees.

11 33. The events alleged herein which occurred in the air during Alaska Airlines Flight 261
12 constituted an accident or unexpected unusual event external to decedent under the applicable
13 provisions of the Warsaw Convention.

14 34. Before January 31, 2000, Defendant Alaska Airlines and Alaska Air Group signed
15 and incorporated into their tariffs the International Air Transport Association (IATA) Inter-carrier
16 Agreement on Passenger Liability modifying the terms of the Warsaw Convention to assume
17 unlimited liability for passengers injury caused by an accident or unexpected unusual event within
18 the meaning of Article 17 unless it is proved by the carrier that it took all necessary measures to
19 avoid the incident alleged herein or that it was impossible for Alaska Airlines and /or Alaska Air
20 Group to take such measures.

21 35. Said Inter-carrier Agreement was intended, among other things, to be for the benefit
22 of plaintiff's decedent as a member of the traveling public and to induce the patronage of plaintiff's
23 decedent.

24 36. Alaska Airlines' employees failed to take all necessary measures to avoid the crash,
25 which was avoidable. Therefore, Article 20 (1) of the Warsaw Convention does not apply. Pursuant
26 to Article 17 of the Warsaw Convention, Alaska Airlines, Inc. is liable for damages due to the
27 wrongful death of XXXXXXXX.

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2 37. The limitations on recoverable damages contained in Article 22 of the Warsaw
3 convention do not apply for one or more of the following reasons: 1) due to the IATA Inter-carrier
4 Agreement, previously alleged herein, and/or 2) because Alaska Airlines, and /or Alaska Air Group
5 by and through their officers, agents, servants and/or employees, were guilty of wilful misconduct
6 within the meaning of Article 25 of the Warsaw Convention in one or more of the following
7 respects, among other things: (a) failure to properly service and maintain the aircraft's stabilizing
8 equipment, and/or (b) electing to fly an airplane they knew was unsafe, and/or (c) failing to make
9 a precautionary landing when the control problems first occurred.

10 38. As a direct and legal result of the foregoing, plaintiff XXXXXXXX, is entitled to
11 recover the damages alleged herein and defendants are liable to plaintiff for compensatory damages
12 in a sum within the jurisdiction of this court.

13 39. The events in the air and crash of Alaska Airlines Flight 261 were caused by the
14 wanton and wilful misconduct of defendants Alaska Air Group and Alaska Airlines including their
15 officers, agents, servants, and/or employees as alleged here, whose conduct were conscious callous
16 indifference and disregard for the safety of plaintiff's decedent and were despicable conduct.

17 40. As a direct and legal result of the conduct of defendants, and each of them, they are
18 liable to plaintiff for punitive damages in a sum within the jurisdiction of this court.

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20 **COUNT II**

21 **(Negligence Against Defendant Alaska Air Group and Alaska Airlines)**

22 41. Plaintiff incorporates by reference all prior allegations in this Complaint.

23 42. At all relevant times herein, defendants Alaska Airlines and Alaska Air Group
24 operated an authorized common carrier by air transportation and owed a duty of care to plaintiff's
25 decedent and to plaintiff to operate and maintain the aircraft with the utmost of care and to the
26 highest degree of safety.

27 43. At all relevant times herein, defendants breached the duties owed and engaged in

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1 conduct which was negligent, wrongful, unlawful, careless, and willful and wanton misconduct
2 which were the direct and legal cause of the out of control flight and ultimate crash of Alaska
3 Airlines Flight 261 alleged herein.

4 44. As a direct and legal result of the foregoing, plaintiff sustained the injuries and
5 damages alleged herein.

6 **COUNT III**

7 **(Strict Liability Against Defendants MDC, Boeing, Peacock, Derlan, and Trig)**

8 45. Plaintiff incorporates by reference all prior allegations in this Complaint.

9 46. The aircraft and its component parts, systems, manuals, instructions, and warnings
10 were defective and unreasonably dangerous by reason of defective design, manufacture, or
11 marketing and the failure of defendants to give adequate and proper warnings of the dangers
12 existing therein and adequate instructions regarding the avoidance of such dangers. The defective
13 and unreasonably dangerous condition in such aircraft exposed plaintiff's decedent and the public
14 in general to an unreasonable risk of harm and were a producing cause of plaintiff's injuries and
15 damages. The unreasonably dangerous conditions/defect(s) involved, among other things, the
16 jackscrew and gimbal nut in the horizontal gimbal stabilizer, and the absence of adequate warnings
17 and instructions regarding such dangers.

18 47. Since the defendants are in the business of designing, manufacturing, selling,
19 marketing, and/or distributing products of the types in question, which are distributed and sold
20 throughout the United States, as well as the State of California, they are liable to the plaintiff for
21 their damages under the theory of products liability.

22 48. At the time the subject aircraft and its jackscrew and/or gimbal nut in the horizontal
23 gimbal stabilizer were sold and/or marketed and/or placed into the stream of commerce by the
24 defendants, such products were defective and unreasonably dangerous as that term is defined in law
25 to persons who could reasonably be expected to use same, including plaintiff, and which defective
26 and unreasonably dangerous conditions were a producing cause of plaintiff's damages. The subject
27 aircraft was also defective by reason of such defendants' failure to include or place with it adequate

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1 or proper warnings and instructions as to dangers associated with the design and foreseeable use
2 of the products and how to avoid such dangers, and which defects rendered the subject aircraft
3 unreasonably dangerous and a producing cause of plaintiff's injuries and damages.

4 49. Because the subject aircraft was defective and unreasonably dangerous to the
5 plaintiff and to the public generally, plaintiff invokes the doctrine of strict liability as adopted by the
6 State of California.

7 50. Defendants MDC, Boeing, Peacock, Derlan, and Trig are aerospace manufacturers
8 who hold and have held themselves out to the public as having superior knowledge, skill and
9 experience in the design, construction, assembly, manufacture, testing and inspection of jet transport
10 category aircraft and their components, and, in the course of their business as an aerospace
11 manufacturer, defendants designed, constructed, assembled, manufactured, inspected, tested and
12 caused to be certified under Part 25 of the Federal Aviation Regulations an MD-80 jet transport
13 category aircraft which defendants expressly and impliedly warranted was fit for its intended
14 purpose use as a vehicle in air transportation, being airworthy and free of unreasonably dangerous
15 defects; and, further, defendants marketed, sold, distributed and caused to be introduced into the
16 stream of commerce by sale to defendant Alaska Airlines the MD-80 model aircraft heretofore and
17 hereinafter identified as the aircraft and its component parts.

18 51. The uncontrolled flight and crash alleged herein and the injury, damage, and death
19 of plaintiff's decedent were proximately caused and/or substantially contributed to by a latent and
20 unreasonably dangerous defect in the design and/or manufacture of the aircraft and its component
21 parts.

22 52. By reason of the foregoing, defendants MDC, Boeing, Peacock, Derlan, and Trig
23 are strictly liable in tort to plaintiff for the decedent's injury and death and the damages sustained
24 by plaintiffs herein.

25 **COUNT IV**

26 **(Negligence Against Defendants MDC, Boeing, Peacock, Derlan, and Trig)**

27 53. Plaintiff incorporates by reference all prior allegations of this Complaint.

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1 54. Defendants were negligent in the design, manufacture and marketing of the aircraft
2 and its component parts, systems, manuals, instructions, and warnings. Such defendants knew, or
3 in the exercise of ordinary care should have known, that the aircraft, its flight control systems,
4 and/or its jackscrew gimbal nut and horizontal and/or stabilizer, were defective and unreasonably
5 dangerous to those persons likely to use the products for the purpose and in the manner for which
6 they were intended to be used and for the purposes reasonably foreseeable to such defendants.
7 Defendants were negligent in the particulars set forth in this and the preceding paragraphs, among
8 other reasons, and said negligence was a proximate cause of the occurrence made the basis of this
9 suit and plaintiff's injuries and damages.

10 55. Defendants knew, or in the exercise of ordinary care should have known, of the
11 means of designing or equipping the subject aircraft and/or its jackscrew gimbal nut and horizontal
12 and/or stabilizer, such that the type of incident and resulting injuries as described herein would be
13 prevented. Defendants had actual knowledge of the means of designing an aircraft and/or its
14 jackscrew gimbal nut and horizontal and/or stabilizer, such that they would not be inadequate or
15 unreasonably dangerous. These defendants were additionally negligent in that they failed to give
16 adequate or proper warnings or instructions to ordinary users thereof, including plaintiffs, and failed
17 to recall or timely recall the products or make appropriate post-marketing efforts to prevent
18 incidents such as the one included herein.

19 56. Defendants owed plaintiffs the duty of reasonable care in designing, manufacturing,
20 and marketing the products in question. Such defendants violated their duty and were negligent,
21 said negligence including those acts of omission or commission previously described. These
22 defendants' negligent acts, collectively and/or severally, were the proximate cause or causes of the
23 accident made the basis of this suit, the injury to and death of decedent, and the injuries and
24 damages sustained by the plaintiff.

25 57. The defective condition and consequent crash of N963AS were proximately caused
26 by the negligence, wrongdoing, tortious conduct, careless acts and omissions of said defendants in
27 design, manufacture, assembly, construction, testing, inspection, certification, marketing,

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1 monitoring, and sale of N963AS and in their failure to warn of and to take appropriate remedial
2 action with respect to a known dangerously defective condition.

3 58. By reason of the foregoing, said defendants are liable to plaintiffs in negligence for
4 the injury and death to the decedent and plaintiff's resulting damages.

5 **COUNT V**

6 **(Breach of Express and Implied Warranty Against**
7 **Defendants MDC, Boeing, Peacock, Derlan, and Trig)**

8 59. Plaintiff incorporates by reference all prior allegations of this Complaint.

9 60. Defendants, by and through the sale of the products in question, expressly and
10 impliedly warranted to the public generally, and to the plaintiff specifically, that the products in
11 question were fit for the purposes for which they were intended.

12 61. Plaintiff made use of the products as alleged herein, and relied on the express and
13 implied warranties.

14 62. Contrary thereto, the products were not fit for their intended and foreseeable uses,
15 thereby rendering the products in question unreasonably dangerous.

16 63. Defendants breached their express and implied warranties because of the products'
17 failure and defective components as alleged above, and because of the improper marketing involving
18 defendants' failure to warn of the products' inadequacies or defects and failure to instruct in the safe
19 operation of the products.

20 64. Defendants' breach of warranties and the above-mentioned defects rendered the
21 products unreasonably dangerous and a proximate cause and producing cause of the occurrence in
22 question and the resulting injuries suffered by plaintiffs. Further, these defendants' conduct was
23 done knowingly and intentionally.

24 65. The crash of the aircraft and death of plaintiff's decedent was proximately caused
25 and/or substantially contributed to by defendants' breach of express and implied warranties of the
26 said airplane's fitness for use and defendants' breach of its representations that MD-80 aircraft, and
27 N963AS in particular, were free of latent and unreasonably dangerous defects in design and/or

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1 manufacture.

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3 66. As a member of the traveling public, plaintiff's decedent relied to her detriment upon
4 defendants' representations.

5 67. By reason of the foregoing, said defendants are liable to plaintiff in breach of
6 warranty for the injuries and damages to decedent and decedent's personal property and the
7 resulting damages sustained by plaintiff.

8 WHEREFORE, plaintiff prays judgment against defendants as hereinafter set forth:

- 9 1. For general damages in an amount according to proof at trial;
- 10 2. For economic damages in an amount according to proof at trial;
- 11 3. For property damage and loss of use of property according to proof;
- 12 4. For funeral, burial, transportation, and related expenses according to proof;
- 13 5. For damages for the Estate of XXXXXXXX for survival damages.
- 14 6. For punitive damages as allowed by law.
- 15 7. For pre-judgment interest as provided by law.
- 16 8. For costs of suit incurred herein;
- 17 9. For such other and further relief as the Court may deem just and proper.

18 Dated: September 13, 2000

BAUM, HEDLUND, ARISTEI, GUILFORD
& DOWNEY

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Paul J. Hedlund, Esq.
Attorney for Plaintiffs

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DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a jury trial.

Dated: September 13, 2000

BAUM, HEDLUND, ARISTEI, GUILFORD
& DOWNEY

Paul J. Hedlund, Esq.
Attorney for Plaintiffs

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