# UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON

No.

Plaintiff, v.	COMPLAINT
SOUTHWEST AIRLINES CO.,	
Defendant.	
The United States of America, by its undersigned	attorneys, seeks to recover civil
penalties pursuant to 49 U.S.C. § 46301(a) for Southwest Airlines Co.'s multiple violations of	
Federal Aviation Administration regulations, and states its claims as follows:	
JURISDICTION AND V	/ENUE
1. This Court has jurisdiction over the subject	t matter of this action pursuant to 49

for the recovery of fines, penalties, or forfeitures, 28 U.S.C. § 1395(a), and the general federal

venue provision, 28 U.S.C. § 1391(b), because most of the proposed civil penalties accrued in

Venue is proper in the Western District of Washington under the venue provision

U.S.C. § 46301, 49 U.S.C. § 46305, 28 U.S.C. § 1331, and 28 U.S.C. § 1345.

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UNITED STATES OF AMERICA,

1	this district, a	a substantial part of the events giving rise to the claims occurred in this district, and
2	the defendant	t conducts business in this district.
3		PARTIES
4	3.	The Plaintiff is the United States of America, which has acted through its agency
5	the Federal A	viation Administration ("FAA"). The FAA is authorized to regulate the operation
6	of commercia	al aircraft within the United States pursuant to Title 49 of the United States Code.
7	4.	The Defendant is Southwest Airlines Co. ("Southwest"), which at all times
8	relevant to th	is action has held a certificate issued by the FAA under 14 C.F.R. Part 121 ("Part
9	121") authori	zing it to engage in scheduled passenger carrying operations as a domestic air
10	carrier.	
11		REGULATORY BACKGROUND
12	5.	As part of its mission to ensure the safe operation of aircraft in the United States,
13	the FAA requ	uires that all civil aircraft in operation be "airworthy." See 14 C.F.R. § 91.7; see
14	also 14 C.F.I	R. § 121.153(a)(2) ("no certificate holder [under Part 121] may operate an aircraft
15	unless that ai	rcraft [i]s in an airworthy condition").
16	6.	The FAA has also set forth specific requirements for scheduled passenger air
17	carriers, such	as Southwest. See 14 C.F.R. § 119.1(a) ("air carriers") and § 121.1(a) ("domestic,
18	flag, and sup	plemental operations" of air carriers). Among these are requirements that direct air
19	carriers such	as Southwest must operate in compliance with "appropriate operations
20	specification	s." 14 C.F.R. § 119.5(g). See also 14 C.F.R. § 119.5(l) (prohibiting operation of
21	aircraft pursu	ant to Part 121 that do not comply with an operations specification).
22	7.	Southwest's Operations Specification D072 requires that its aircraft be maintained
23	in accordanc	e with a maintenance program, its Continuous Airworthiness Maintenance Program

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- 1 ("CAMP"). Accordingly, Southwest violates 14 C.F.R. § 119.5(g) and § 119.5(l) if it operates
- 2 aircraft that are not maintained pursuant to its CAMP.
- 3 8. Although an air carrier such as Southwest may delegate alterations or
- 4 maintenance work, such delegation does not relieve the air carrier of the responsibility to ensure
- 5 that maintenance is performed properly and that the aircraft is airworthy upon return to service.
- 6 See 14 C.F.R. § 121.363.
- 7 9. The FAA issues Airworthiness Directives ("ADs"), which are legally enforceable
- 8 rules, when it determines that a product has an unsafe condition and that condition is likely to
- 9 exist or develop in other products of the same design. See 14 C.F.R. §§ 39.3, 39.5. Operating an
- aircraft that does not meet the requirements of an AD makes an aircraft un-airworthy and is
- against the law. See 14 C.F.R. § 39.7.
- 12 10. In some cases, an AD may incorporate by reference a manufacturer's service
- 13 document. See 14 C.F.R. § 39.27.
- 14 11. Aircraft operators must comply with an applicable AD unless they request and
- receive FAA approval of an Alternative Method Of Compliance ("AMOC"). See 14 C.F.R.
- 16 §§ 39.9, 39.19. An AMOC is binding on aircraft operators with the same effect as an AD.
- 17 Until December 29, 2010, large air carriers, such as Southwest, that violated the
- 18 FAA's regulations could be assessed civil penalties of up to \$25,000 per violation. See 49
- 19 U.S.C. § 46301(a)(1). Beginning on December 29, 2010, this amount was increased to \$27,500
- per violation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C.
- § 2461 (note), as amended by the Debt Collection Improvement Act of 1996, § 31001, Pub. L.
- 22 No. 104-134 (April 26, 1996). See 14 C.F.R. § 13.305 (setting forth revised civil penalty
- 23 amounts).

1	13. In addition to any civil penalties assessed for incorrectly performed maintenance
2	itself, a separate civil penalty may be assessed for each flight for which the aircraft operator was
3	out of compliance. See 49 U.S.C. § 46301(a)(2). Accordingly, the calculation of the maximum
4	civil penalty amount for each of the violations described below requires taking into account the
5	number of aircraft that operated in violation of the regulations and the number of flights that each
6	aircraft made while out of compliance.
7	FACTS
. 8	14. This case involves three separate types of maintenance violations by Southwest.
9	The first two categories of violations relate to approximately forty-four un-airworthy aircraft that
10	Southwest flew prior to and throughout 2009 whose fuselages had been improperly maintained
11	by, first, improperly installing fasteners and, second, improperly supporting (shoring) the aircraft
12	during maintenance. The third category of violations involves Southwest flying two aircraft in
13	2012 whose drain masts had been improperly altered.
14	Maintenance Requirements Related to Fasteners and Shoring
15	15. The fuselage of a Boeing 737 aircraft is comprised of a patchwork of layered skin
16	panels. The fuselage must be able to withstand extreme forces and massive variations in altitude
17	and temperature, while supporting the immense weight of the aircraft and its contents.
18	16. The FAA issued the following Airworthiness Directives related to maintaining the
19	safe operation of the fuselages of Boeing 737 aircraft: 2002-07-08, 2003-14-16, 2004-18-06,
20	2005-17-19, and 2006-07-12.
21	17. Southwest, which operates a fleet of Boeing 737s, was obliged to comply with
22	these ADs or to obtain an AMOC.

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1	18.	The FAA authorized Southwest to follow Boeing Service Bulletin 737-53-1273
2	R2 as an AMO	C to the ADs identified in paragraph 16.
3	19.	Southwest issued Aircraft Change Orders to Aviation Technical Services, Inc.
4	("ATS") direct	ing it to perform major alterations and maintenance on Southwest aircraft
5	pursuant to Boo	eing Service Bulletin 737-53-1273 R2.
6	20.	ATS is an aircraft maintenance, repair, and overhaul company, with its principal
7	place of busine	ss in Everett, Washington. ATS routinely performs maintenance work for
8	commercial air	lines such as Southwest.
9	21.	The Aircraft Change Orders issued to ATS are part of Southwest's CAMP, which
10	is part of South	west's Operations Specification D072.
11	22.	Between 2006 and 2009, ATS performed maintenance pursuant to the Aircraft
12	Change Orders	on Southwest aircraft. ATS did so improperly with regard to requirements
13	related to faste	ners and shoring, which are described in further detail below, on approximately
14	forty-four of th	lese aircraft. Although ATS performed the maintenance, Southwest is ultimately
15	responsible for	ensuring that the maintenance was performed properly and that the aircraft were
16	airworthy upor	return to service. See 14 C.F.R. § 121.363.
17	23.	Because of the improperly performed maintenance, when Southwest subsequently
18	operated these	aircraft in passenger service it violated numerous FAA regulations. The FAA
19	now seeks civi	l penalties for the operation of the aircraft from September 3, 2009 onward.
20		Improperly Installed Fasteners
21	24.	Boeing Service Bulletin 737-53-1273 R2 required that individuals performing
22	aircraft mainte	nance use a particular type of sealant between skin panels and that they install all
23	parts within the	e applicable time and all permanent fasteners within the squeeze out time of the

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1	sealant. This requirement related to maintaining the structural integrity of the fuselages. These
2	instructions were repeated in the Aircraft Change Orders that were incorporated into the
3	Southwest CAMP.
4	25. For approximately forty-four of the aircraft that it altered for Southwest, ATS
5	installed the skin panels without installing all of the permanent fasteners within the squeeze out
6	time of the sealant. Indeed, ATS only installed permanent fasteners in some of the fastener holes
7	on the skin panels during the squeeze out time of the sealant. Doing so was a violation of
8	Southwest's CAMP and Operations Specification D072, and made the aircraft un-airworthy.
9	26. Southwest operated the aircraft with the improperly installed fasteners in
10	passenger service from the dates that they were returned to service (2006-2009) until September
11	26, 2009, when it requested and obtained from the FAA permission to use an AMOC, which
12	allowed deviation from the requirement that all permanent fasteners be installed within the
13	squeeze out time of the sealant. Southwest operated the non-compliant aircraft until September
14	26, 2009, even though the FAA alerted Southwest to its concerns about the maintenance
15	violations by letter of investigation dated April 14, 2009.
16	Improperly Shored Aircraft
17	27. Boeing Service Bulletin 737-53-1273 R2 also required that while performing
18	maintenance, the fuselage of the aircraft be supported ("shored") in the specific manner set forth
19	in Boeing Structural Repair Manual 51-50-02. This requirement related to safeguarding and
20	maintaining the structural integrity of the aircraft during maintenance.
21	28. For approximately forty-four of the aircraft that it modified for Southwest, while
22	performing maintenance, ATS did not comply with the shoring requirement set forth in Boeing

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1	Structural Repair Manual 51-50-02. This was a violation of Southwest's CAMP and Operations
2	Specification D072, and made the aircraft un-airworthy.
3	29. Southwest operated the aircraft that had been improperly shored in passenger
4	service from the dates that they were returned to service (2006-2009) until October 16, 2009,
5	when it requested and obtained from the FAA permission to use an AMOC, which allowed
6	deviation from the previously required shoring procedures. Southwest operated the non-
7	compliant aircraft until October 16, 2009, even though the FAA alerted Southwest to its concerns
8	about the maintenance violations by letter of investigation dated April 15, 2009.
9	Drain Masts
10	30. As part of its ongoing efforts to ensure that aircraft operated in passenger service
11	are safe, the FAA also issued Airworthiness Directive 2008-08-22, which required air carriers,
12	including Southwest, to perform inspections of and modifications to aircraft gray water drain
13	masts. Gray water drain masts allow waste water from the galley and lavatory sinks of aircraft to
14	flow overboard. The AD addressed the concern that lightning strikes to aircraft could cause fires
15	and electrical disruptions in the electrical components that are in and around drain masts.
16	31. AD 2008-08-22 required that the inspection and modifications of gray water drain
17	masts be done in compliance with Boeing Service Bulletin 737-30-1056. Boeing Service
18	Bulletin 737-30-1056 in turn specified requirements for relocation and connection of a case
19	ground wire terminal as part of the gray water drain mast modifications.
20	32. Southwest issued Aircraft Change Orders for this maintenance and performed the
21	required inspection and maintenance on two aircraft, Numbers N229WN and M412WN, on or
22	around December 21, 2011 and January 4, 2012, respectively. These Aircraft Change Orders
23	were part of Southwest's CAMP.

1	33.	On or around January 13, 2012, Southwest discovered that the case ground wire
2	terminal on th	nese two aircraft had not been properly relocated and connected.
3	34.	Nevertheless, Southwest continued to operate these two aircraft in passenger
4	service witho	ut correcting the error until on or around January 17, 2012.
5	35.	By letter of July 28, 2014, the FAA notified Southwest of the alleged regulatory
6	violations ari	sing from the improper maintenance relating to fasteners, shoring, and drain masts
7	and proposed	civil penalties. The parties were not able to reach a compromise on the proposed
8	civil penalties	S.
9		COUNT 1 - FASTENERS
0	36.	Plaintiff incorporates by reference paragraphs 1-26 and 35, above. These events
1	give rise to th	ne following regulatory violations:
12	37.	By failing to comply with the applicable AMOC, and thereby failing to comply
13	with five AD	s, Southwest violated 14 C.F.R. § 39.7, which states that "[a]nyone who operates a
14	product that of	loes not meet the requirements of an applicable airworthiness directive is in
15	violation of the	nis section."
16	38.	By returning aircraft to service after failing to comply with ADs, Southwest
17	operated airc	raft in an unsafe condition, and therefore in an un-airworthy condition in violation
18	of 14 C.F.R.	§ 121.153(a)(2) ("no certificate holder may operate an aircraft unless that aircraft
19	[i]s in an	airworthy condition and meets the applicable airworthiness requirements of this
20	chapter.").	
21	39.	By failing to comply with the requirements of its CAMP (which was set forth in
22	Operations S	pecification D072), as specified in Boeing Service Bulletin 737-53-1273 and the
23	applicable Ai	rcraft Change Orders, and subsequently operating the aircraft, Southwest violated

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1	14 C.F.R. § 119.5(g) ("No person may operate as a direct air carrier in violation of
2	appropriate operations specifications") and 14 C.F.R. § 119.5(l) ("No person may operate an
3	aircraft under Part 121 of this chapter in violation of operations specification.").
4	40. Pursuant to 49 U.S.C. § 46301(a), each flight operated in violation of FAA
5	regulations was a violation for which the Defendant is liable to the United States for civil
6	penalties of not more than \$25,000.
7	COUNT 2 - SHORING
8	41. Plaintiff incorporates by reference paragraphs 1-23, 27-29, and 35, above. The
9	events give rise to the following regulatory violations:
10	42. By failing to comply with the applicable AMOC, and thereby failing to comply
11	with five ADs, Southwest violated 14 C.F.R. § 39.7.
12	43. By returning aircraft to service after failing to comply with ADs, Southwest
13	operated aircraft in an unsafe condition, and therefore in an un-airworthy condition in violation
14	of 14 C.F.R. § 121.153(a)(2).
15	44. By failing to comply with the requirements of its CAMP (which was set forth it
16	Operations Specification D072), as specified in Boeing Service Bulletin 737-53-1273 and the
17	applicable Aircraft Change Orders, and subsequently operating the aircraft, Southwest violated
18	14 C.F.R. § 119.5(g) and 14 C.F.R. § 119.5(l).
19	45. Pursuant to 49 U.S.C. § 46301(a), each flight operated in violation of FAA
20	regulations was a violation for which the Defendant is liable to the United States for civil
21	penalties of not more than \$25,000.
22	
23	

1	COUNT 3 - DRAIN MASTS
2	46. Plaintiff incorporates by reference paragraphs 1-23, and 30-35, above. These
3	events give rise to the following regulatory violations:
4	47. By failing to comply with AD 2008-08-22 or an AMOC to that AD, Southwest
5	violated 14 C.F.R. § 39.7.
6	48. By failing to follow required maintenance directives properly, Southwest violated
7	14 C.F.R. § 43.13(a) ("Each person performing maintenance, alteration, or preventive
8	maintenance on an aircraft shall use the methods, techniques, and practices prescribed in the
9	current manufacturer's maintenance manual.").
10	49. By returning the aircraft to service in their improperly altered state, the aircraft no
11	longer complied with their "type certificate," and were therefore not airworthy. See 49 U.S.C.
12	§ 44704(d). Operating the aircraft in this state violated 14 C.F.R. § 121.153(a)(2).
13	50. By failing to comply with the requirements of its CAMP (which was set forth in
14	an operations specification) and subsequently operating the aircraft, Southwest violated 14
15	C.F.R. § 119.5(g) and 14 C.F.R. § 119.5(l).
16	51. Pursuant to 49 U.S.C. § 46301(a) and 14 C.F.R. §13.305(d) (authorizing inflation
17	adjustment pursuant to 28 U.S.C. § 2461 (note), as amended by the Debt Collection
18	Improvement Act of 1996, § 31001, Pub. L. No. 104-134 (April 26, 1996)), each flight operated
19	in violation of FAA regulations was a violation for which the Defendant is liable to the United
20	States for civil penalties of not more than \$27,500.
21	RELIEF REQUESTED
22	WHEREFORE, the United States of America prays that this Court enter judgment against
23	the defendant, Southwest Airlines Co., as follows:

- 1 A. Assess the full civil penalties and interest as provided by law; and
- 2 B. Grant the plaintiff such further relief as the Court may deem just and equitable.
- 3 including the plaintiff's costs.
- 4 Respectfully submitted this 3rd day of November, 2014.

JOYCE R. BRANDA Acting Assistant Attorney General

ANNETTE L. HAYES Acting United States Attorney

ARTHUR R. GOLDBERG Assistant Branch Director Federal Programs Branch

RÓBIN F. THURSTON

Trial Attorney (Illinois Bar)

United States Department of Justice

Civil Division, Federal Programs Branch

Phone: (202) 616-8188 Fax: (202) 616-8470

Email: robin.f.thurston@usdoi.gov

Mailing Address: Post Office Box 883 Washington, D.C. 20044

Courier Address:

20 Massachusetts Avenue, N.W.

Washington, D.C. 20001

DAVID R. EAST, WSBA #31481

Assistant United States Attorney United States Attorney's Office

Phone: 206-553-7970 Fax: 206-553-4073

E-mail: david.east@usdoj.gov 700 Stewart Street, Suite 5220 Seattle, Washington 98101-1271

Counsel for Defendants