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6 Attorneys for Plaintiffs
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8 Individually and as Guardians Ad Litem of Minor
9 Benjamin Hyo-Ik Machorro

10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

ORIGINAL FILED
JUL 15 2013
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

CV 13 3286
Case No.

EDL

12 HECTOR MACHORRO, JR. and YOUNGA JUN
13 MACHORRO, individually and as Guardians Ad
14 Litem and Parents of Minor BENJAMIN HYO-IK
15 MACHORRO,

16 Plaintiffs,

17 v.

18 ASIANA AIRLINES, INC.,

19 Defendant.

COMPLAINT FOR DAMAGES
DEMAND FOR JURY TRIAL

20 Plaintiffs HECTOR MACHORRO, JR. and YOUNGA JUN MACHORRO, individually and as
21 Guardians Ad Litem and Parents of Minor child BENJAMIN HYO-IK MACHORRO, through their
22 undersigned attorneys, allege as follows:

23 **I. JURISDICTION**

24 1. This Court has jurisdiction over the subject matter of this case pursuant to Article 33 of the
25 Convention for the Unification of Certain Rules for International Carriage by Air Montreal,
26 May 28, 1999 (hereafter the "Montreal Convention"), which both the United States of America
27 and the Republic of Korea have signed and adopted. Specifically, under Article 33(1) and (2) of
28 the Montreal Convention, Plaintiffs YOUNGA JUN MACHORRO and her minor son

1 BENJAMIN HYO-IK MACHORRO purchased their tickets for the subject flights in this
2 District (and Defendant has a place of business and does business in this District); the place of
3 ultimate destination in the contracts of carriage of Plaintiffs YOUNGA JUN MACHORRO and
4 her minor son BENJAMIN HYO-IK MACHORRO was San Francisco International Airport,
5 located in this District; and the principal and permanent residence of Plaintiffs YOUNGA JUN
6 MACHORRO and her minor son BENJAMIN HYO-IK MACHORRO is in this District, to
7 which Defendant operates services for the carriage of passengers by air. As the Montreal
8 Convention is a treaty of the United States, this Court has subject matter jurisdiction over this
9 case under 28 U.S.C.A § 1331.

10 II. VENUE

- 11 2. Venue in the Northern District of California, San Francisco Division, is proper pursuant to 28
12 U.S.C. 1398(a) and Local Rule 3-2 because a substantial part of the events and omissions
13 giving rise to the claims as alleged herein occurred in this District.

14 III. PARTIES

- 15 3. Plaintiffs restate and hereby incorporate by reference the allegations of each of the above
16 paragraphs.
- 17 4. Plaintiffs HECTOR MACHORRO, JR. (hereafter "HECTOR") and his natural minor son,
18 BENJAMIN HYO-IK MACHORRO (hereafter "BENJAMIN") are citizens of the United
19 States of America and maintain their principal and permanent residence in this District.
- 20 5. Plaintiff YOUNGA JUN MACHORRO (hereafter "YOUNGA") is a citizen of the Republic of
21 Korea but was issued a Permanent Resident Card by the United States of America on
22 September 9, 2005 and has maintained her principal and permanent residence in this District
23 ever since. She is the wife of HECTOR and natural mother of minor son BENJAMIN.
- 24 6. Plaintiffs YOUNGA and her minor son, BENJAMIN, were passengers on board Asiana
25 Airlines Flight No. OZ 214 bound for San Francisco, California when it crashed on July 6,
26 2013 at San Francisco International Airport (hereafter "ASIANA Crash"). YOUNGA and
27 BENJAMIN suffered, and continue to suffer, from extreme bodily and mental injuries and
28 economic losses as a direct result thereof.

- 1 7. Plaintiff HECTOR has lost, and will continue to lose, the comfort and consortium of his wife,
2 YOUNGA, as a direct result of the crash and has suffered, and continues to suffer, damages
3 therefrom.
- 4 8. Defendant ASIANA AIRLINES, INC. (hereafter "ASIANA") is registered as a business entity
5 with the California Secretary of State, with an active status. ASIANA routinely engages in
6 continuous and systematic business in this District, sufficient to subject it to personal
7 jurisdiction of this Court. ASIANA'S principal place of business is in Seoul, Republic of
8 Korea.
- 9 9. At all material times, ASIANA entered into the contracts of carriage with Plaintiffs YOUNGA
10 and her minor son BENJAMIN and was in control of, and responsible for, their safe transport
11 from Seoul, Republic of Korea to San Francisco, California.

12 IV. GENERAL ALLEGATIONS

- 13 10. Plaintiffs restate and hereby incorporate by reference the allegations of each of the above
14 paragraphs.
- 15 11. On July 6, 2013, Asiana Flight No. OZ 214 (hereafter "Flight 214") departed Incheon
16 International Airport, South Korea at 5:04 p.m. KST (08:04 UTC) for a transpacific flight to
17 San Francisco International Airport, California, USA (hereafter "SFO"). The aircraft in use was
18 a Boeing 777-200ER, Registration No. HL7742 (hereafter "Subject Aircraft"), with 307 total
19 souls on board, including both crew and passengers. YOUNGA and BENJAMIN were among
20 the passengers on board.
- 21 12. This fateful flight did not reach its destination safely. The Asiana Crash occurred at
22 approximately 11:26 a.m. PDT (18:26 UTC) on July 6, 2013, when the Subject Aircraft landed
23 short of Runway 28L's threshold at SFO and struck the seawall that projects into San Francisco
24 Bay, separating the tail section of the Subject Aircraft from the aircraft's fuselage and causing
25 passengers, including Plaintiffs, to be violently thrown about the cabin and to suffer extreme
26 and catastrophic injuries and emotional distress, as well as causing the deaths of three Chinese
27 passengers.
- 28 13. The Asiana Crash occurred due to the gross negligence and recklessness of the ASIANA flight

1 crew on Flight 214, in woeful violation of numerous international and United States airline
2 industry standards and established flight rules. Among a extensive litany of errors and
3 omissions, the Flight 214 flight crew failed to observe the most fundamental procedures for a
4 visual landing approach into SFO, failed to appropriately monitor flight conditions on
5 approach, and failed to communicate and react in the cockpit to those flight conditions.

6 14. Moreover, the flight crew of Flight 214 was inadequately trained and supervised by ASIANA
7 and failed to comply with the most rudimentary cockpit resource management protocols.

8 15. Defendant's failures constituted a gross, wanton, and willful disregard for the rights and safety
9 of all passengers aboard Flight 214 and needlessly caused injuries, damages, and deaths to
10 innocent passengers.

11 **FIRST CAUSE OF ACTION**
12 **(Montreal Convention Article 17)**

13 16. Plaintiffs restate and hereby incorporate by reference the allegations of each of the above
14 paragraphs.

15 17. Pursuant to Article 17 of the Montreal Convention, Defendant ASIANA is absolutely liable for
16 damages sustained by Plaintiffs YOUNGA and her minor son BENJAMIN as passengers
17 aboard Flight 214, as said injuries and damages occurred while they were on board the Subject
18 Aircraft and/or in the course of the operations of disembarking from the Subject Aircraft.
19 Defendant ASIANA is also liable for loss of consortium and other damages suffered by
20 Plaintiff HECTOR in that said claims derive from damages suffered by Plaintiff YOUNGA.

21 18. Defendant ASIANA was in exclusive control of Flight 214 and owed non-delegable duties to
22 all passengers for its safe operation at all modes of flight, including the landing approach into
23 SFO on July 6, 2013.

24 19. Defendant ASIANA breached those duties by failing to observe the most fundamental
25 procedures for a visual landing approach into SFO, failing to appropriately monitor flight
26 conditions on approach, and failing to communicate and react in the cockpit to those flight
27 conditions.

28 20. As a direct and proximate result of Defendant ASIANA's acts and omissions that caused the

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ASIANA crash, plaintiffs were seriously injured and damaged as alleged herein and will continue to suffer from their physical, mental, and economic injuries for the foreseeable future.

21. The ASIANA Crash occurred due to the negligence, wrongful acts and omissions of Defendant ASIANA and its servants and agents, and not due to the sole negligence or other wrongful act or omission of any third party.

WHEREFORE, Plaintiffs pray for judgment as fully set forth herein.

SECOND CAUSE OF ACTION
(Gross Negligence)

22. Plaintiffs restate and hereby incorporate by reference the allegations of each of the above paragraphs.

23. The ASIANA Crash occurred due to the gross negligence and recklessness of the ASIANA flight crew on Flight 214 and the inadequate training and supervision provided to said crew by ASIANA as hereinabove alleged.

24. As a direct and proximate result of Defendant's acts and omissions that caused the ASIANA Crash, Plaintiffs were severely injured and damaged as alleged herein, and will continue to suffer from their physical, mental, and economic injuries for the foreseeable future.

WHEREFORE, Plaintiffs pray for judgment as fully set forth herein.

THIRD CAUSE OF ACTION
(On Behalf of HECTOR MACHORRO, JR.)

25. Plaintiffs restate and hereby incorporate by reference the allegations of each of the above paragraphs.

26. Before the ASIANA Crash, YOUNGA was able to and did perform all the duties of a wife and mother, including assisting in maintaining the home, caring for the couple's child, working to help support the family, and providing support and comfort to her husband, HECTOR.

27. As a direct and proximate result of the injuries, damages, and mental distress and suffering from the ASIANA Crash, YOUNGA has been unable to perform the duties as hereinabove cited and will continue to be unable to fully perform those duties for the foreseeable future.

PRAYER FOR RELIEF

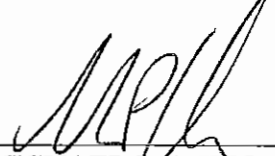
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Plaintiffs pray for judgment against Defendants as follows:

- A. Damages to be awarded in an amount to be determined at trial, including general, special, and compensatory damages, but no less than \$5,000,000;
- B. Prejudgment interest;
- C. Costs incurred in bringing this suit;
- D. Such other and further relief as the Court may deem just and proper.

Dated: July 15, 2013

BOWLES & VERNA LLP


By: 
MICHAEL P. VERNA
Attorneys for Plaintiffs
HECTOR MACHORRO, JR. and YOUNGA
JUN MACHORRO, individually and as
Guardians ad Litem and Parents of
BENJAMIN HYO-IK MACHORRO

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury for all claims for which a jury trial is available pursuant to Federal Rules of Civil Procedure Sections 38(a) and (b).

Dated: July 15, 2013

BOWLES & VERNA LLP

By: 
MICHAEL P. VERNA
Attorneys for Plaintiffs
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JUN MACHORRO, individually and as
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