

1 Donald A. Wall (Arizona Bar No. 007522)
dwall@ssd.com
2 David E. Rogers (Arizona Bar No. 019274)
drogers@ssd.com
3 Thomas C. Raine (Arizona Bar No. 024122)
4 traine@ssd.com
5 SQUIRE, SANDERS & DEMPSEY L.L.P.
Two Renaissance Square
6 40 North Central Avenue, Suite 2700
Phoenix, Arizona 85004-4498
7 Telephone: (602) 528-4000
8 Facsimile: (602) 253-8129
9 Attorneys for Mesa Airlines, Inc.

10
11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE DISTRICT OF ARIZONA**

13 MESA AIRLINES, INC., an Arizona) Case No:
14 Corporation,)
15 Plaintiff,)
16 v.) **COMPLAINT**
17) **(Jury Trial Demanded)**
18 MIKE USLAN, an individual, and John Does)
I-X,)
19 Defendants.)
20

21 Plaintiff Mesa Airlines, Inc. (“Mesa Airlines”) for its Complaint against defendants Mike
22 Uslan (“Uslan”) and John Does I-X (collectively, “Defendants”) alleges as follows:

23 **PARTIES, JURISDICTION AND VENUE**

24 1. This is a civil action arising under: (a) the United States Trademark Act of 1946,
25 as amended, 15 U.S.C. § 1051, *et seq.* (“Lanham Act”), for unfair competition, false
26 representations, descriptions and designations of origin, and false advertising, and (b) the laws
27 of the State of Arizona relating to unfair competition, trademark infringement and defamation.
28

1 2. Mesa Airlines is an Arizona corporation with its principal place of business at 410
2 North 44th Street, Phoenix, Arizona 85008.

3 3. On information and belief, Mike Uslan is a resident of the State of Hawaii,
4 residing at 98-1060 Komo Mai Drive, Aiea, Hawaii 96701.

5 4. On information and belief, John Does I-X are unnamed members of an
6 organization called “H.E.R.O.,” which is an acronym for “Hawaii’s airline Employees Repelling
7 Ornstein,” and/or are other entities or persons responsible for disseminating information posted
8 on a website located at www.dontflygo.com. On information and belief, John Does I-X are
9 residents of the State of Hawaii and the members of H.E.R.O. are employees or associates of
10 Hawaiian Airlines, Inc. (“HAI”), Aloha Airlines, Inc. (“AAI”) or Hawaii Island Air, Inc.
11 (“Island Air”).

12 5. HAI, AAI, and Island Air are each corporations of the State of Delaware and each
13 maintains a place of business in Hawaii.

14 6. HAI, AAI, and Island Air are each competitors of Mesa Airlines.

15 7. The true names or capacities, whether individual, corporate, associate, or
16 otherwise, of John Does I-X are currently unknown to Mesa Airlines, who therefore sues said
17 defendants by such fictitious names. When the true names and capacities of John Does I-X are
18 known to Mesa Airlines, Mesa Airlines will amend this Complaint by inserting their true names
19 and capacities. Mesa is informed and believes, and therefore alleges, that each of the
20 Defendants designated herein is legally responsible in some manner for the events and
21 happenings herein referred to, and has illegally caused injury and damages to Mesa Airlines as
22 herein alleged.

23 8. This Court has personal jurisdiction over Defendants because Defendants
24 purposefully directed defamatory statements at Mesa Airlines and the Chief Executive Officer of
25 its parent company, Mesa Air Group, Inc., in the State of Arizona.

26 9. This Court has personal jurisdiction over Defendants because Defendants directly
27 or indirectly compete with Mesa Airlines and have made literally false statements and
28 misleading statements about Mesa Airlines with the intent to mislead relevant consumers in

1 order to cause said consumers to purchase Defendants' and/or their employers' services instead
2 of those offered by Mesa Airlines.

3 10. On information and belief, Defendants intended for their defamatory, false and
4 misleading statements to harm Mesa Airlines' finances and reputation in the State of Arizona.

5 11. This Court has personal jurisdiction over Defendants because they have
6 intentionally and with actual knowledge of Mesa Airlines' trade names and service marks
7 infringed same by using them in metatags on Defendants' website located at
8 www.dontflygo.com.

9 12. Venue is proper under 28 U.S.C. § 1391(a) because Defendants' tortious actions
10 were directed toward, and have caused harm in, the District of Arizona.

11 13. This Court has subject matter jurisdiction over this matter pursuant to 15 U.S.C.
12 §§ 1121(a) and 28 U.S.C. § 1331 and has supplemental jurisdiction over the state law claims
13 under 28 U.S.C. § 1367.

14 **GENERAL ALLEGATIONS**

15 14. Mesa Airlines is an airline headquartered in Phoenix, Arizona. Founded in 1982,
16 Mesa Airlines has grown from operating one aircraft serving two cities to 188 aircraft serving 46
17 states, the District of Columbia, Canada, Mexico and the Bahamas.

18 15. In 2006, Mesa Airlines created a new division called *go!* for the purpose of
19 providing commercial flights within the Hawaiian Islands.

20 16. Mesa Airlines' website address for its *go!* division is located at
21 <http://www.iflygo.com>. On the *go!* website, consumers can make flight reservations and learn
22 more about *go!*

23 17. Mesa Airlines' *go!* division competes directly with HAI, AAI, and Island Air.

24 18. Another website, located at <http://dontflygo.com>, has posted content that
25 constitutes business defamation of Mesa Airlines, false advertising and unfair competition (since
26 it uses Mesa Airlines' trade names and service marks as metatags). Hereafter, this website is
27 sometimes referred to as the "Defamatory Website."
28

1 19. On information and belief, the content for the website located at
2 <http://dontflygo.com> is provided by Defendants.

3 20. The Defamatory website features numerous statements and positions by a group
4 known as "H.E.R.O."

5 21. "H.E.R.O." is an acronym for "Hawaii's airline Employees Repelling Ornstein."

6 22. Jonathan Ornstein is the Chief Executive Officer ("CEO") of Mesa Air Group,
7 Inc., which is the parent of Mesa Airlines.

8 23. Defendant Uslan has identified himself as one of the leaders of H.E.R.O. and has
9 admitted involvement in providing content for the <http://dontflygo.com> website.

10 24. Originally, <http://dontflygo.com> was registered to Domains by Proxy ("DBP"), a
11 company that hosts websites while allowing the content providers to remain anonymous.

12 25. On October 18, 2006, counsel for Mesa Airlines wrote to DBP and requested that
13 the website at <http://dontflygo.com> be modified to remove infringing content. A true and correct
14 copy of the October 18, 2006 letter is attached hereto as Exhibit 1.

15 26. On approximately October 20, 2006, the website at <http://dontflygo.com> was taken
16 down.

17 27. On approximately November 9, 2006, the website at <http://dontflygo.com> again
18 became active, but in a new format.

19 28. On November 9, 2006, counsel for Mesa Airlines again wrote to DBP and
20 requested that the infringing and/or false content be removed from the Defamatory Website and
21 that DBP provide Mesa Airlines with the name(s) of the entities or persons responsible for the
22 content of the site. A true and correct copy of the November 9, 2006 letter is attached hereto as
23 Exhibit 2.

24 29. On or about November 21, 2006, DBP ceased hosting the <http://dontflygo.com>
25 website.

26 30. On or about November 21, 2006, Defendants hired a company in China to host the
27 Defamatory Website.

28

1 31. By utilizing the Chinese hosting company the owner(s) of the defamatory website
2 is able to conceal its identity.

3 32. As of the filing of this Complaint the website at <http://dontflygo.com> is still active.

4 33. The Defamatory Website contains the following terms in its metadata to direct
5 customers or potential customers of Mesa Airlines (including its go! division) to the website at
6 dontflygo.com: “www.iflygo.com,” “go airline,” “go! airline,” “mesa airline,” “mesa air
7 group,” “jonathan ornstein,” and “mesa airlines.” A printout of the metadata of the Defamatory
8 Website is attached hereto as Exhibit 3.

9 34. The metadata on the <http://dontflygo.com> website improperly uses Mesa Airlines’
10 trade names and service marks to direct people searching for Mesa Airlines to the Defamatory
11 Website.

12 35. The website located at <http://dontflygo.com> has posted and continues to post false,
13 misleading and defamatory statements about Mesa Airlines and the CEO of its parent company.

14 36. The website at <http://dontflygo.com> falsely claimed that Mesa Air Group, Inc.’s
15 CEO wrote a book entitled “From First to Worst.”

16 37. The website also contained a link to a false book review of “From First to Worst.”
17 A true and correct copy of the website page is attached hereto as Exhibit 4.

18 38. The link referenced in the preceding paragraph led to a fake Amazon.com web
19 page wherein Defendants made several false and defamatory statements.

20 39. Further, the fake Amazon.com page referenced in the preceding paragraph
21 contained “Key Phrases” falsely implying that Mesa Airlines’ CEO and, by implication, Mesa
22 Airlines, is engaged in illegal conduct. The “Key Phrases” included the defamatory phrases
23 “Insider Trading,” “Enron,” “Breach of Fiduciary Duty,” “Fraud,” and “Breach of Contract,”
24 among other things.

25 40. On or about November 20, 2006, Defendants, with reckless disregard for the truth,
26 posted an allegation on the Defamatory Website that Mesa Airlines’ employees may have been
27 involved in a plot to murder or seriously injure a H.E.R.O member by removing the lug nuts
28 from the member’s vehicle. A copy of the text of the allegation is attached hereto as Exhibit 5.

1 41. By November 22, 2006, the defamatory statements in the preceding paragraph
2 were removed from the Defamatory Website.

3 42. A prior link on the Defamatory Website entitled, “go! Passengers” falsely implied
4 that it related to or was sponsored by passengers of go! and sent website visitors to the
5 homepage of the Defamatory Website where Defendants used strategically placed links to
6 falsely assert that Mesa Airlines was in trouble with its customers, the communities it services,
7 its investors, the S.E.C. and Congress. A true and correct copy of this webpage is attached
8 hereto as Exhibit 6.

9 43. The Defamatory Website falsely implied that Mesa Airlines “cannot retain pilots
10 because of its repeated contract violations and poor treatment of its employees.” A true and
11 correct copy of this statement by Defendants is attached hereto as Exhibit 7.

12 44. The Defamatory Website falsely implies that Mesa Airlines is unsafe and that
13 Mesa Airlines’ pilot staffing in Hawaii is inadequate. A true and correct copy of this statement
14 by Defendants is attached hereto as Exhibit 8.

15 45. The Defamatory Website falsely claims that Mesa Airlines has not supported
16 Hawaiian communities. A true and correct copy of this statement by Defendants is attached
17 hereto as Exhibit 9.

18 46. The Defamatory Website falsely states that Mesa Airlines is “dumping tickets
19 below cost.” A true and correct copy of this statement by Defendants is attached hereto as
20 Exhibit 10.

21 47. The Defamatory Website falsely implies that Mesa Airlines “abuses” its
22 employees and that it has poor service in Hawaii due to employee turnover and dissatisfaction.
23 A true and correct copy of this statement by Defendants is attached hereto as Exhibit 11.

24 48. The Defamatory Website falsely implies that Mesa Airlines’ go! division ranks at
25 the bottom of airlines in terms of complaints, lost baggage, cancellations, delays and over
26 bookings. A true and correct copy of this statement by Defendants is attached hereto as Exhibit
27 12.

1 49. The Defamatory Website falsely claims that Mesa Airlines is violating Federal and
2 Hawaii laws regarding predatory pricing. A true and correct copy of this statement by
3 Defendants is attached hereto as Exhibit 13.

4 50. The Defamatory Website falsely stated: "We should probably mention that the
5 S.E.C., Capitol Hill, and a federal court judge aren't happy, either." When a reader followed the
6 "S.E.C" link, the reader was taken to an anti-Mesa Airlines blog referencing a SEC action that
7 did not appear to involve any of the airlines in the Mesa Air Group. The other two links to
8 "Capitol Hill" and "federal court judge" were not functioning. Without following the links, a
9 website visitor would have been under the false impression that Mesa Airlines had run afoul of
10 the S.E.C., Congress, and the federal judiciary. A true and correct copy of this statement by
11 Defendants is attached hereto as Exhibit 14.

12 51. On information and belief, Defendants or others acting in concert with them
13 intended that the website at <http://dontflygo.com> would mislead Mesa Airlines' customers and
14 potential customers into visiting the website where they would be exposed to false, misleading
15 and defamatory statements about Mesa Airlines.

16 52. On information and belief, defendant Uslan and other Defendants have provided
17 the infringing, defamatory, false and misleading content for the Defamatory Website.

18 **(COUNT I)**

19 **UNFAIR COMPETITION UNDER 15 U.S.C. § 1125(a)(1)(A)**

20 53. Mesa Airlines hereby incorporates by reference all previous allegations of this
21 Complaint as if specifically set forth herein.

22 54. Mesa Airlines has used the mark "Mesa Airlines" in commerce to identify its air
23 travel services since at least as early as 1982 and the mark "go!" since at least as early as 2006.
24 Mesa Airlines has rights in and to "Mesa Airlines," "Mesa Air Group," "Mesa Air Lines" and
25 "go!" trade names and service marks (collectively, "Marks").

26 55. Defendants, through their actions, use Mesa Airlines' Marks in metadata in an
27 attempt to direct Mesa Airlines' customers and potential customers away from Mesa Airlines'
28 website and to Defendants' website at <http://dontflygo.com> where Defendants make numerous

1 false, defamatory and misleading statements about Mesa Airlines in order to unfairly direct
2 business away from Mesa Airlines and to its competitors.

3 56. On information and belief Defendants have used and continue to use metadata on
4 the Defamatory Website that includes the marks “mesa airlines,” “go!,” “mesa air group,”
5 “iflygo,” “go! airline” and “jonathan ornstein” in a manner likely to cause initial confusion, to
6 cause mistake, or to deceive as to the affiliation, connection, sponsorship, approval or
7 association of Defendants with Mesa Airlines in violation of § 43(a) of the Lanham Act, 15
8 U.S.C. § 1125(a).

9 57. As a direct and proximate cause of Defendants’ conduct, Mesa Airlines has been
10 damaged in an amount not totally ascertainable and will continue to suffer irreparable injury to
11 its goodwill, rights and businesses, unless and until Defendants (and others in active concert) are
12 restrained from continuing their wrongful acts.

13 **(COUNT II)**

14 **COMMON LAW UNFAIR COMPETITION AND TRADEMARK INFRINGEMENT**

15 58. Mesa Airlines incorporates by reference all previous allegations of this Complaint
16 as if specifically set forth herein.

17 59. Mesa Airlines owns and enjoys common law rights in the State of Arizona, State
18 of Hawaii and elsewhere in and to the Marks.

19 60. Defendants, through their actions, use Mesa Airlines’ Marks in metadata in an
20 attempt to lure Mesa Airlines’ customers away from Mesa Airlines’ website and to Defendants’
21 website at <http://dontflygo.com> where Defendants make numerous false and defamatory
22 statements about Mesa Airlines in order to convince Mesa Airlines’ customers to fly with its
23 competitors.

24 61. On information and belief Defendants have used and continue to use metadata on
25 the Defamatory Website that includes the marks “mesa airlines,” “go!,” “mesa air group,”
26 “iflygo,” “go! airline” and “jonathan ornstein” in a manner likely to cause initial confusion, to
27 cause mistake, or to deceive as to the affiliation, connection, sponsorship, approval or
28 association of Defendants with Mesa Airlines in violation of Arizona common law.

1 62. Through Defendants' use, or aiding and abetting others in the use, of "go airline,"
2 "go! airline," "mesa airline," "mesa air group," "jonathan ornstein" and "mesa airlines" in the
3 metatags of the Defamatory Website, Defendants are attempting to direct individuals searching
4 for Mesa Airlines' website(s) to the Defamatory Website where they will see false, defamatory
5 and misleading statements about Mesa Airlines.

6 63. As a direct and proximate cause of Defendants' conduct, Mesa Airlines has been
7 damaged in an amount not totally ascertainable and will continue to suffer irreparable injury to
8 its goodwill, its rights and to its business, unless and until Defendants (and others in active
9 concert) are restrained from continuing their wrongful acts.

10 (COUNT III)

11 FALSE ADVERTISING UNDER 15 U.S.C. § 1125(a)(1)(B)

12 64. Mesa Airlines hereby incorporates by reference all previous allegations of this
13 Complaint as if specifically set forth herein.

14 65. Defendants have made and continue to make false statements of fact about Mesa
15 Airlines and its services.

16 66. Defendants' false statements have a tendency to deceive a substantial segment of
17 the relevant consumers for Mesa Airlines' services.

18 67. On information and belief, Defendants intend that Mesa Airlines' customers
19 and/or potential customers will visit the Defamatory Website and, through the false statements
20 therein, decide to fly with Mesa Airlines' competitors rather than with Mesa Airlines.

21 68. Defendants' deception of relevant consumers is material in that it is likely to
22 influence purchasing decisions.

23 69. Defendants have caused their false or misleading statements to enter interstate
24 commerce.

25 70. Defendants' false and misleading statements about Mesa Airlines constitutes false
26 advertising under the Lanham Act.

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28

1 (COUNT IV)

2 COMMON LAW DEFAMATION PER SE

3 71. Mesa Airlines hereby incorporates by reference all previous allegations of this
4 Complaint as if specifically set forth herein.

5 72. The website located at <http://dontflygo.com> contains and has contained several
6 false and defamatory statements about Mesa Airlines.

7 73. The Defamatory Website exists in the public domain and is available for people
8 around the world to view.

9 74. Defendants have published, or caused to be published, content concerning Mesa
10 Airlines that was intended to, and has, defamed Mesa Airlines.

11 75. On information and belief, Defendants have acted with intentional or reckless
12 disregard of Mesa Airlines by publishing or allowing to be published matter that impugns the
13 honesty, integrity, and business reputation of Mesa Airlines.

14 76. The statements on the website at <http://dontflygo.com> falsely depict Mesa Airlines
15 as, among other things, dishonest and engaged in unsafe or illegal behavior, thus impugning the
16 honesty, integrity and business reputation of Mesa Airlines.

17 77. Defendants' publications are harming Mesa Airlines' reputation in such a way as
18 to lower Mesa Airlines in the estimation of the community with customers and potential
19 customers, with stock holders and potential stockholders, and may make it difficult for Mesa
20 Airlines to attract or retain employees.

21 78. Upon information and belief, as a direct and proximate result of the wrongful acts
22 described herein, Mesa Airlines sustained and continues to sustain immediate and irreparable
23 harm and injury including, but not limited to, loss of profits, loss of goodwill, loss of business
24 relations with existing and future customers, with existing and future employees, with existing
25 and future contracting parties, with existing and future business prospects, and loss of
26 competitive business advantage, opportunity and/or expectancy.

27 79. Mesa Airlines has no adequate remedy at law.
28

1 80. There is a substantial risk that Defendants will continue to irreparably injure Mesa
2 Airlines unless they and others acting in concert with them are preliminarily and/or permanently
3 enjoined.

4 **WHEREFORE**, Mesa Airlines requests that judgment be entered against Defendants as
5 follows:

6 A. To enjoin Defendants' use of Mesa Airlines' trade names and service marks,
7 including use as metadata;

8 B. To enjoin Defendants from making false and defamatory claims or statements
9 about Mesa Airlines including on any website that they own, host or the content of which they
10 control;

11 C. To order defendant Uslan to reveal the identities of (i) the owner(s) of the website
12 located at www.dontflygo.com, and (ii) all persons known to him who provided or sponsored
13 content for, or published content on, the website located at www.dontflygo.com;

14 D. For Mesa Airlines' attorneys' fees and costs pursuant to 15 U.S.C. § 1117;

15 E. For punitive damages for Defendants' common-law trademark infringement and
16 unfair competition; and

17 F. For such other relief as the Court may deem appropriate.

18 **DEMAND FOR JURY TRIAL**

19 Mesa Airlines hereby demands a jury trial as provided by Rule 38(c) of the Federal Rules
20 of Civil Procedure.

21 DATED this 24th day of January, 2007.

22 /s/ Thomas C. Raine

23 Donald A. Wall

24 David E. Rogers

25 Thomas C. Raine

26 SQUIRE, SANDERS & DEMPSEY L.L.P.

Two Renaissance Square

40 North Central Avenue, Suite 2700

Phoenix, Arizona 85004-4498

28 Attorneys for Mesa Airlines, Inc.