IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SEAFARERS PENSION PLAN, derivatively on behalf of THE BOEING COMPANY,

Plaintiff,

vs.

ROBERT A. BRADWAY, DAVID L. CALHOUN, ARTHUR D. COLLINS, LINDA Z. COOK, KENNETH M. DUBERSTEIN, ADMIRAL EDMUND P. GIAMBASTIANI JR., LYNN J. GOOD, LAWRENCE W. KELLNER, CAROLINE B. KENNEDY, EDWARD M. LIDDY, W. JAMES MCNERNEY, JR., DENNIS A. MUILENBURG, SUSAN C. SCHWAB, RANDALL L. STEPHENSON, RONALD A. WILLIAMS, MIKE S. ZAFIROVSKI, KEVIN MCALLISTER RAYMOND L. CONNER, GREG SMITH, J. MICHAEL LUTTIG, GREG HYSLOP, DIANA SANDS, SCOTT FANCHER, and JOHN TRACY,

Defendants.

and

THE BOEING COMPANY

Nominal Defendant

Civ. Action No. 19-cv-08095

JURY TRIAL DEMANDED

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VERIFIED STOCKHOLDER DERIVATIVE COMPLAINT

Plaintiff, the Seafarers Pension Plan, derivatively on behalf of The Boeing Company (the "Company" or "Boeing"), brings the following Verified Stockholder Derivative Complaint (the "Complaint") against certain current and former directors and officers of the Company (the "Defendants") for breaches of fiduciary duty, violations of securities laws, and unjust enrichment. Except for allegations specifically pertaining to Plaintiff's own acts, the allegations in the Complaint are based upon information and belief, which include but are not limited to: (i) documents obtained from the Company pursuant to Section 220 of the Delaware General Corporation Law (the "220 Production"); (ii) the Company's public filings with the United States ("U.S.") Securities and Exchange Commission (the "SEC"); (iii) media reports; (iv) transcripts of Congressional hearing testimony; (v) various investigative reports; and (vi) other public sources.

SUMMARY OF THE ACTION

1. This is a shareholder derivative action brought on behalf of nominal defendant, Boeing, against certain current and/or former officers and board members for utterly failing to exercise their fiduciary duty of oversight with respect to safety, regulatory and compliance matters pertinent to Boeing's commercial airline business ("BCA").

2. In 2011, faced with the prospect of losing billions in revenues and significant market share to its primary competitor, Airbus SE ("Airbus"), Boeing embarked on a course to develop a new aircraft, the 737 MAX. The touchstone for developing the 737 MAX was emphasizing the speed of getting it to market. In short, making the 737 MAX profitable while ignoring safety issues. Only after 346 passengers perished in two 737 MAX airplane crashes over a five-month period did Boeing's deception and malfeasance at all levels of the Company come to

light. Specifically, in just over six months, a litany of the Defendants' failures and deceptions have been revealed, including, among others:

- placing profits over safety in the development and production of the 737 MAX;
- violating safety and regulatory guidelines by bringing an unsafe aircraft to market;
- concealing known fatal design defects in the 737 MAX's Maneuvering Characteristics Augmentation System ("MCAS") – a purported safety system;
- manipulating the Federal Aviation Administration's (the "FAA") self-certification process to illegally obtain a certificate of airworthiness for the 737 MAX fleet;
- failing to establish internal monitoring and reporting functions designed to oversee safety risks and compliance;
- concealing pertinent safety information from Congress and other investigators;
- refusing to ground the 737 MAX fleet after the initial crash despite knowing further safety protections were necessary due to the known design defects in the 737 MAX's MCAS system;
- misleading stockholders and investors into believing the Company had adequate risk controls and oversight protocols when, in fact, Boeing's board of directors (the "Board") and its senior executives had none;

In addition to the loss of life in the two devastating crashes, the culmination of Boeing's deceit and malfeasance has led to the commencement of multiple investigations worldwide, Congressional hearings, a Department of Justice ("DOJ") criminal probe, dozens of lawsuits affecting all facets of Boeing's business, an indefinite grounding of the 737 MAX fleet, billions in lost revenues which continue to grow, and a permanent stain on Boeing's reputation with its customers, passengers and stockholders. This episode, which occurred largely under the purported oversight of the current Board and senior executives, can be described as nothing less

than devastating to the Company and its business. Boeing's Board and senior executives must be held accountable for these monumental failings.

3. As one of the world's leading manufacturers of commercial airplanes, Boeing's commercial airplanes are required to comply with federal safety regulations set by the FAA both in their design and operation. If Boeing's products do not comply with the FAA's safety regulations, the results can be fatal. Boeing, unfortunately, has a long history of safety violations related to its commercial airplanes since at least the 1990s.

4. Notably, despite its critical importance to Boeing's business success, Boeing's charters for its Board and subcommittees did not even mention the word "safety" until approximately five months after the second fatal 737 MAX crash. In fact, shortly after the second 737 MAX crash, "former Boeing board members who asked for anonymity have told the *Washington Post* that the board considered 'safety was just a given' and that 'the board doesn't have any tools to oversee' safety."

5. The Boeing Board's failure to implement any systems to monitor whether BCA's products complied with federal and international laws created serious deficiencies in the Company's internal controls, and exposed Boeing to an undue amount of risk, which the Board repeatedly concealed from its stockholders in its annual proxy statements issued in connection with the Company's annual stockholder meetings. As such, from 2017 to 2019, Boeing's stockholders lacked material information in violation of Section 14(a) of the Exchange Act when voting on important issues concerning the re-election of directors, executive compensation, and stockholder proposals to require an independent Chairman.

6. Moreover, by 2009, the FAA had delegated virtually all of its oversight responsibilities to Boeing to ensure that its commercial airplanes complied with the FAA's safety

regulations, thereby making it all the more critical for Boeing to have processes and safeguards in place to ensure compliance with the FAA's safety regulations. Under the FAA's program, Boeing was expected to self-certify essentially all safety aspects of its commercial aircrafts. However, Boeing had no systems in place for its directors and senior executives to monitor those activities.

7. At the helm of Boeing, at this time, was W. James McNerney ("McNerney"), who the Board hired in 2005 to serve as its Chief Executive Officer ("CEO"), President and Chairman. McNerney, a former General Electric ("GE") executive, was well known for implementing cost-cutting measures to increase revenues and brought that focus to Boeing. At the end of 2013, Dennis Muilenburg ("Muilenburg"), a long-time Boeing employee, was chosen as McNerney's successor, and the two worked together with Muilenburg formally taking over as CEO and President in July 2015 and Chairman in February 2016. In these roles, Muilenburg continued McNerney's focus on reducing costs and maximizing profits, which included cutting Boeing's workforce while increasing the production rates of its commercial airplanes. McNerney, along with Muilenburg and other Boeing senior executives, thus, created a culture where profits were put ahead of safety, and employees who reported safety violations were retaliated against for doing so.

8. In this toxic environment without any Board oversight of Boeing's safety compliance and regulatory issues, Boeing began developing its 737 MAX airplane to compete against its main rival, Airbus, in 2011. The 737 MAX was the latest model of the 737 airplane designed and originally certified by the FAA in the 1960s. When marketing the 737 MAX to its customers, Boeing emphasized that the 737 MAX would not require any simulator training for its pilots – a key cost-saving feature. This cost-saving feature, in turn, influenced the entire development of the 737 MAX as Boeing's managers and engineers exclusively focused on

designing an airplane that would require minimal pilot training, without heed to its compliance with safety regulations.

9. By the beginning of 2016, Boeing assumed heightened obligations to ensure that the 737 MAX complied with the FAA's regulations as the result of a settlement with the FAA. Specifically, at the end of 2015, Boeing entered into a settlement agreement with the FAA related to thirteen investigations concerning BCA's failure to comply with certain safety regulations with respect to ***all*** of its commercial airplane products. This comprehensive settlement agreement required BCA to implement and improve its internal controls related to its commercial airplanes' compliance with FAA regulations over a five-year period, along with the immediate payment of a $12 million fine and another $24 million in deferred penalties. The settlement further provided that BCA's CEO was required to inform Boeing's CEO annually about the Company's compliance with the FAA's regulations.

10. Notably, [redacted]

For example, the *Wall Street Journal* in an article dated December 22, 2015, called it a "*sweeping, first-of-its kind settlement*." (Emphasis added.) [redacted]

11. Nor did the Board disclose this settlement or its impact on the Company to its stockholders when soliciting their votes at the Company's annual meeting. Instead, Boeing tried to conceal the FAA's findings, forcing journalists at the *Seattle Times* to make Freedom of Information Act ("FOIA") requests to obtain documents in 2017, which revealed more details concerning Boeing's lack of internal controls related to safety regulations. Notably, the *Seattle Times* obtained documents showing that the FAA found a disquieting pattern of falsified paperwork and repeated failures to follow protocols designed to guard against production errors that put safety at risk.

12. In 2016, the 737 MAX's development continued in violation of federal and international safety laws, and the Company's obligations under its settlement with the FAA. Specifically, Boeing implemented a flight control software system called MCAS to address certain anti-stall issues on the 737 MAX, but MCAS had several fatal design flaws. Those design flaws included MCAS's repeated activation based on a single sensor, which the pilot could not counteract using the control column alone.

13. Moreover, even though Boeing expected the 737 MAX pilots to act as the ultimate backstop if MCAS activated improperly, Boeing did not inform that pilots about the existence of MCAS. In fact, Boeing did the exact opposite. On March 30, 2016, Mark Forkner, the 737 MAX's Chief Test Pilot, emailed an FAA official requesting that MCAS be omitted from the pilot manuals and not mentioned in pilot training. The FAA acceded to Boeing's request. This was so important to Boeing that in mid-January 2017, Forkner reminded the FAA official, "We decided we weren't going to cover [MCAS]" in the flight manual and training course.

14. In August 2017, after the deliveries of the first 737 MAX aircrafts to customers occurred, Boeing became aware that MCAS did not meet its design requirements, but nobody at

Boeing did anything to address this fatal safety issue. Furthermore, the Board and Boeing's senior executives had no monitoring systems in place to alert them to this critical safety issue on the 737 MAX, so they continued to purportedly govern the Company unaware of it.

15. On October 29, 2018, a Lion Air 737 MAX plane crashed shortly after takeoff, killing all 189 people aboard the airplane (the "Lion Air Crash"). Less than a week later, media reports were blaming the 737 MAX's MCAS system for its role in the crash. Internally, Boeing's engineers and senior executives had also concluded that MCAS was at fault for causing this crash and began secretly working on a software update to fix MCAS to make it compliant with FAA safety regulations. However, publicly, Boeing's senior executives blamed the pilots for the Lion Air Crash, and repeatedly insisted that the 737 MAX was a "safe" airplane.

16. After the Lion Air Crash, the DOJ and other regulatory authorities, including the U.S. National Transportation Safety Board ("NTSB") and Indonesian officials, began investigations related to the crash. In addition, the media continued its investigations with many front-page news articles from the *Wall Street Journal*, *The New York Times*, the *Washington Post*, and the *Seattle Times* detailing MCAS's purported defects. Boeing, nevertheless, continued to publicly insist that the 737 MAX was safe for flight.

17. In fact, after the Lion Air Crash, Boeing's Board had the opportunity to exercise their business judgment to ground the 737 MAX [redacted]. The Boeing Board, in breach of its fiduciary duties, repeatedly refused to do so. Rather, [redacted] Notably, Muilenburg [redacted] despite his knowledge that

Boeing's engineers were secretly working on a fix to correct MCAS's unsafe and non-compliant design.

18. Less than five months later, on March 10, 2019, another 737 MAX from the Ethiopian Airlines fleet crashed shortly after takeoff. Once again, all the passengers and crew were tragically killed. The similarities between the two 737 MAX crashes caused certain countries to immediately ground the 737 MAX fleet. Boeing's executives, however, continued to argue that the 737 MAX was safe, even though they knew the Company had been working on a software fix for MCAS for months to correct its fatal flaws. Indeed, on March 12, 2019, Muilenburg called the U.S. President claiming that the 737 MAX should continue to fly. By March 13, 2019, the U.S. government determined that the 737 MAX should be grounded, and the Board begrudgingly agreed to ground the 737 MAX fleet [redacted] after the Ethiopian Airlines crash.

19. Even after the grounding, Boeing continued to insist that the 737 MAX was safe for flight. In fact, Boeing refused to concede its role in the 737 MAX crashes until months after those crashes and in the face of mounting evidence related to the 737 MAX's design and operational defects. Finally, at Congressional hearings held at the end of October 2019, Muilenburg began to concede Boeing's role in those fatal crashes. For example, Muilenburg testified that Boeing "got some things wrong" on the 737 MAX's design. Muilenburg also conceded that "***one of the key learnings from this whole process is we need to elevate the visibility on safety issues that might come up at the ground floor level, make sure [that] they get the right visibility and action."*** Significantly, Muilenburg admitted that Boeing should have grounded the 737 MAX fleet shortly after the Lion Air Crash.

20. The fallout from the 737 MAX crashes and its related grounding have caused Boeing to suffer ***more than $9 billion*** in damages. Moreover, Boeing's damages continue to climb as the 737 MAX fleet remains grounded, regulatory investigations continue, and numerous lawsuits are filed against Boeing related to the 737 MAX crashes. In contrast, Defendants have received ***over $500 million*** in compensation from the start of Boeing's development of the 737 MAX in 2011 through the Ethiopian Airlines crash in March 2019. Notably, the Board has failed to claw back any compensation from Boeing's executives despite their repeated unlawful behavior.

21. Accordingly, Plaintiff brings this derivative action on Boeing's behalf to hold its former and current directors and senior officers liable for: (1) their oversight failures, (2) their breaches of fiduciary duties, (3) unjust enrichment, and (4) their failures to disclose material information in the Company's annual proxy statements issued in connection with its stockholders annual meetings in violation of Section 14(a) of the Exchange Act.

JURISDICTION AND VENUE

22. This shareholder derivative action is brought pursuant to Rule 23.1 of the Federal Rules of Civil Procedure. This Court has subject matter jurisdiction pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa, as well as 28 U.S.C. § 1331 for the claims asserted herein for violations of the Exchange Act. This Court has supplemental jurisdiction over the remaining claims under 28 U.S.C.§ 1367. In connection with the acts, conduct and other wrongs complained of herein, Defendants directly or indirectly used the means and instrumentalities of interstate commerce, the United States mails and the facilities of a national securities market.

23. This Court has jurisdiction over each defendant named herein, because each defendant is either an individual or corporation that has sufficient minimum contacts with this District to render the exercise of jurisdiction by the District courts permissible under traditional

notions of fair play and substantial justice. In addition, Nominal Defendant Boeing conducts business in and maintains operations in this District.

24. Venue is proper in this Court in accordance with 28 U.S.C. § 1391 because (1) nominal defendant Boeing maintains its principal place of business in this District; (ii) one or more of the Defendants either resides or maintains their principal place of business in the District; (iii) a substantial portion of the transactions and wrongs complained of herein, occurred in the District, including the Defendants' primary participation in the wrongful acts detailed herein; and (iv) Defendants have engaged in numerous activities that had an effect in this District.

PARTIES

I. Plaintiff

25. Plaintiff, the Seafarers Pension Plan ("Plaintiff" or the "Fund") is a pension fund located in Camp Springs, Maryland. The Fund owns Boeing common stock and has been a shareholder at all times relevant to the claims asserted herein.

II. Defendants

1. Nominal Defendant

26. Nominal Defendant Boeing is an international aerospace company that manufactures commercial jetliners and other products for the airline, aerospace and defense industries. Boeing is incorporated in Delaware. Boeing's corporate offices are located in Chicago, Illinois, while its commercial airplane division is based near Seattle, Washington and North Charleston, South Carolina. Boeing's defense business is located outside of Washington, D.C., with production facilities near St. Louis and Philadelphia. Boeing's stock trades on the NASDAQ stock market under the symbol "BA".

2. Defendants

27. Defendant Robert A. Bradway ("Bradway") joined the Board in 2016 and is a member of the Audit Committee. Bradway also serves on the Finance Committee and the Aerospace Safety Committee. From 2016-2018, Bradway received nearly $800,000 in compensation for his role as a Boeing director.

28. Defendant David L. Calhoun ("Calhoun") joined the Board in 2009 and was Lead Director, from April 30, 2018 until October 11, 2019, when he became the Board's Chairman. Calhoun is also a member of the Compensation Committee, along with being Chair of the Governance, Organization and Nominating Committee (the "GON Committee"). From 2009-2018, Calhoun received nearly $3 million in compensation for serving as a Boeing director.

29. Defendant Arthur D. Collins ("Collins") joined the Board in 2007 and is Chair of the Compensation Committee. Collins is also a member of the GON Committee. From 2007-2018, Collins received over $3.6 million in compensation for serving as a Boeing director.

30. Defendant Linda Z. Cook ("Cook") joined the Board in 2003 and stepped down in 2015. During her service on the Board, Cook was a member of the Compensation Committee and Chair of the GON Committee. From 2003-2015, Cook received over $3 million in compensation for her role as a Boeing director.

31. Defendant Kenneth M. Duberstein ("Duberstein") joined the Board in 1997 and served until 2018. Duberstein was a member of the Compensation Committee and GON Committee. Duberstein also served as the Lead Independent Director from December 15, 2005 through April 29, 2018. From 1997-2018, Duberstein received over $5 million in compensation for his role as a Boeing director.

32. Defendant Admiral Edmund P. Giambastiani Jr. ("Giambastiani") joined the Board in 2009 and is a member of the Audit Committee. Giambastiani also is Chair of the Aerospace

Safety Committee and a member of the Finance Committee. From 2009-2018, Giambastiani received over $2.9 million in compensation for his role as a Boeing director.

33. Defendant Lynn J. Good ("Good") joined the Board in 2015 and is a member of the Compensation Committee. Good is also a member of the GON Committee and the Aerospace Safety Committee. From 2015-2018, Good received over $1.1 million in compensation for serving as a Boeing director.

34. Defendant Lawrence W. Kellner ("Kellner") joined the Board in 2011 and is Chair of the Audit Committee. Kellner also is a member of the Finance Committee. From 2011-2018, Kellner received over $2.3 million in compensation for his role as a Boeing director.

35. Defendant Caroline B. Kennedy ("Kennedy") joined the Board in 2017 and is a member of the Audit Committee and the Finance Committee. From 2017-2018, Kennedy received nearly $500,000 in compensation for her role as a Boeing director.

36. Defendant Edward M. Liddy ("Liddy") joined the Board in 2007, and then stepped down in 2009, before re-joining the Board in 2010. He is a member of the Compensation Committee, the GON Committee and the Aerospace Safety Committee. Liddy also served as the Chair of the Audit Committee. Between 2007-2008, and 2010-2018, Liddy received over $2.8 million in compensation for serving as a Boeing director.

37. Defendant W. James McNerney, Jr. ("McNerney") joined the Board in 2001 and served until his retirement in February 2016. McNerney became Boeing's CEO, President and Chairman of the Board in 2005. From 2001-2016, McNerney received over $231 million in compensation for his roles at Boeing. In addition, McNerney's retirement package entitled him to at least $58.5 million over a fifteen-year period.

38. Defendant Dennis A. Muilenburg has served as Boeing's CEO since July 2015, and President since December 2013. Muilenburg also served as Boeing's Chairman from March 1, 2016 until October 11, 2019, when the Board stripped him of that title but allowed him to remain a director. Muilenburg was Vice Chairman and Chief Operating Officer of Boeing from December 2013 to July 2015. Previously, he was Executive Vice President ("EVP"), President and CEO of Boeing Defense, Space & Security from September 2009 to December 2013. Since 2011, Muilenburg received more than $106 million in compensation for his roles at Boeing. Notably, after the Lion Air Crash, in December 2018, the Board awarded Muilenburg the highest pay of his tenure, over $31 million, including a $13 million cash award purportedly reflecting short and long-term performance.

39. Defendant Susan C. Schwab ("Schwab") joined the Board in 2010 and is a member of the Compensation Committee and the GON Committee. From 2010-2018, Schwab received over $2.6 million in compensation for serving as a Boeing director.

40. Defendant Randall L. Stephenson ("Stephenson") joined the Board in 2016 and stepped down by 2018. Stephenson was a member of the Audit Committee and the Finance Committee. From 2016-2017, Stephenson received nearly $600,000 in compensation for his role as a Boeing director.

41. Defendant Ronald A. Williams ("Williams") joined the Board in 2010 and is a member of the Audit Committee. Williams is also Chair of the Finance Committee. From 2011-2018, Williams received over $2.5 million in compensation for his role as a Boeing director.

42. Defendant Mike S. Zafirovski ("Zafirovski") joined the Board in 2004 and is a member of the Compensation Committee and the GON Committee. From 2004-2018, Zafirovski received over $4 million in compensation for serving as a Boeing director.

43. Defendant Kevin McAllister ("McAllister") was the Company's EVP and President and CEO of BCA from November 2016 to October 22, 2019. He was responsible for the delivery of a record backlog of commercial airplanes and for growing Boeing's commercial plane programs, along with BCA's compliance with its 2015 settlement agreement with the FAA. From 2016-2017 alone, McAllister received more than $28 million in compensation from Boeing. Notably, in 2018, McAllister was no longer one of Boeing's top five paid executives, so Boeing did not disclose his 2018 compensation, which was presumably still millions of dollars.

44. Defendant Raymond L. Conner ("Conner") served as Boeing's vice chairman, president and CEO of BCA from December 31, 2013 until his retirement in 2017. Connor began his career at Boeing as an airplane mechanic. He also served as the head of BCA's Sales, Marketing and Commercial Aviation Services unit, among other roles in his more than 35-year career at Boeing. From 2012-2017, Conner received more than $57.5 million in compensation from Boeing.

45. Defendant Greg Smith ("Smith") has served as Boeing Chief Financial Officer ("CFO") since 2011. From 2011-2018, Smith received more than $54 million in compensation from Boeing.

46. Defendant J. Michael Luttig ("Luttig") served as Boeing's EVP and General Counsel from May 2006 to May 2019. In May 2019, Luttig was named counselor and senior advisor to Boeing's CEO Muilenburg and the Board. From 2011-2018, Luttig received more than $59 million in compensation from Boeing.

47. Defendant Greg Hyslop ("Hyslop") has served as the Company's Chief Technology Officer ("CTO") since April 2016. He is responsible for overseeing Boeing's technology vision, strategy, and investment, and leads Boeing's 56,000 engineers worldwide. In 2018 alone, Hyslop

received more than $8.5 million in compensation from Boeing, and upon information and belief, received millions more in compensation since April 2016.

48. Defendant Diana Sands ("Sands") has served as Senior Vice President ("SVP") of Boeing's Office of Internal Governance and Administration since April 1, 2014. Sands is responsible for the advancement and effective implementation of Boeing's internal governance policies and plans. Moreover, as the Company's chief ethics and compliance officer, Sands purportedly leads Boeing's ethics, compliance, corporate audit and trade controls activities. Sands reports to Boeing's President and CEO and to the Audit Committee. From 2014-2018, upon information and belief, Sands earned millions of dollars in compensation for serving in her current role at Boeing.

49. Defendant John Tracy ("Tracy") served as Boeing's CTO and SVP of Engineering, Operations & Technology from June 2006 until his retirement in July 2016. From 2006-2016, upon information and belief, Tracy received millions of dollars in compensation from Boeing.

50. Defendant Scott Fancher ("Fancher") worked at Boeing for approximately forty years until his retirement in September 2017. From 2007 through 2017, Fancher served as a Vice President and BCA's General Manager of Airplane Development. In his forty years of working at Boeing, upon information and belief, Fancher received millions of dollars in compensation.

51. Defendants Bradway, Calhoun, Collins, Cook, Duberstein, Giambastiani, Good, Kellner, Kennedy, Liddy, McNerney, Muilenburg, Schwab, Stephenson, Williams, and Zafirovski are collectively referred to as the "Director Defendants".

52. Defendants Conner, Fancher, Hyslop, Luttig, McAllister, McNerney, Muilenburg, Sands, Smith, and Tracy are collectively referred to as the "Officer Defendants".

FACTUAL BACKGROUND

I. Boeing's Commercial Airlines Division Is the Company's Primary Revenue Driver

53. Boeing was founded in 1916. Currently, Boeing is one of the U.S.'s top manufacturers and exporters of goods, employing approximately 153,000 people in the U.S. Boeing sells its products and services to governments and airlines in over 150 countries.

54. Boeing consists of four reportable units: (1) Commercial Airplanes (*i.e.*, BCA), (2) Defense, Space and Security, (3) Global Services, and (4) Capital.

55. In 2018, Boeing received more than $101 billion in revenues, reporting net income of over $10.4 billion.

56. Boeing's primary revenue driver comes from BCA. For example, in 2018, BCA produced over $60 billion of Boeing's revenues, or approximately 60% of Boeing's annual revenue. Moreover, at the end of 2018, Boeing's backlog for the production of 5,900 new commercial airplanes was worth over $400 billion in revenues to the Company. In this regard, Boeing typically only collects 1% to 5% of the purchase price of the plane as a down payment, with the final 50% due on delivery and the balance coming in payments as the delivery date approaches. Currently, 737 MAXs' purchase prices range from approximately $100 million to $135 million per airplane.

57. BCA produces different types of airplanes, including the wide-body 787 Dreamliner and narrow-body 737 models. BCA specializes in the "single aisle aircraft" segment of the commercial airplane industry, where it sells its 737 – the best-selling model of all-time.

58. Publicly, Boeing has stated that its Board and senior executives' primary focus was increasing Boeing's future revenues by a ramp-up of its newest 737 model, the MAX, in 2019. For example, in Boeing's Q3 2018 Form 10-Q, which was filed with the SEC on October 24, 2018, Boeing touted how its 737 MAX airplane's production rate increased from "47 per month to 52

per month in the second quarter of 2018", and how Boeing "continue[s] to plan to increase the production rate to 57 per month in 2019."

59. Similarly, during a conference call with investors on October 24, 2018, Boeing's CEO Defendant Muilenburg stated:

> The 737 program continues to make good progress on its recovery plans to overcome supply chain challenges with 61 aircrafts delivered in September, an improvement from July and August. In the third quarter, we delivered 138 737s. We expect to recover the 737 line by the end of the year with fourth quarter deliveries expected to be above the production rate. The MAX production ramp-up continues. To-date, we have delivered 219 MAXs, 57 of them in the quarter. We continue to expect MAX to account for between 40% and 45% of total 737 deliveries in 2018.

60. During this call, Boeing's CFO Defendant Smith also stated that: "BCA margin guidance is increased now by between 12% and 12.5% from our prior guidance of greater than 11.5%, again reflecting strong performance and timing of some period expenses."

61. Likewise, Boeing's Form 10-K, filed with the SEC on February 8, 2019 (the "2018 10-K"), highlighted how the 737 MAX "production rate increased from 47 per month to 52 per month in the second quarter of 2018…We continue to plan to increase the production rate to 57 per month in 2019." The 2018 10-K also stated that "BCA revenues increased by $2,701 million due to higher 737 and 787 deliveries."

62. None of these disclosures from Boeing about its 737 MAX discuss whether those airplanes complied with safety rules and regulations; instead, Defendants exclusively focused on how Boeing would maximize revenues through increasing the 737 MAX's production rates. [redacted]

[redacted]

II. Boeing's Commercial Airplanes Must Comply with Domestic Safety Regulations

A. The Development of the FAA and its Regulatory Scheme

63. When Boeing began producing commercial airplanes, it was subject to the Air Mail Act of 1925, which established a means to produce and regulate commercial airliners. By 1938, President Franklin Roosevelt created the Civil Aeronautics Act, which outlined ways to prevent airline accidents, regulated airline fares, and determined airline routes.

64. Two years after a fatal air traffic accident over the Grand Canyon, in 1958, the Federal Aviation Agency was established pursuant to the Federal Aviation Act. Then, in 1967, upon the creation of the Department of Transportation ("DOT"), the Federal Aviation Agency was renamed the Federal Aviation Administration.

65. The FAA is responsible for the regulation and oversight of civil aviation within the U.S., as well as the operation and development of the National Airspace System. Its primary mission is to ensure safety of civil aviation. The DOT oversees the FAA.

66. The FAA is ultimately responsible for ensuring that a manufacturer, such as Boeing, complies with its regulations. However, in the first instance, Boeing is responsible for designing its airplanes and conducting tests in a manner that complies with FAA regulations.

67. The FAA's certification process is how the FAA manages risk through a structured "safety assurance" process. This process provides the FAA with confidence that a proposed product or operation will meet FAA safety expectations to protect the public. When an airplane receives a certificate, it means that FAA requirements have been met.

68. The FAA's 14 *Code of Federal Regulations* ("CFR") Part 21 defines three separate certifications: type, production, and airworthiness. Specifically, "type certification" is the approval of the design of the aircraft and all component parts, including propellers, engines and control stations. A type certification signifies that the design is in compliance with applicable

airworthiness, noise, fuel venting, and exhaust emissions standards. Next, a "production certification" is the approval to manufacture duplicate products under an FAA-approved type design. A production certification signifies that an organization and its personnel, facilities, and quality system can produce a product or article that conforms to its approved design. Finally, an "airworthiness certification" is necessary for the operation of a civil aircraft. An airworthiness certification signifies that an aircraft meets its approved type design, if applicable, and is in a condition for safe operation.[1]

69. The FAA may amend a type certificate when a holder of that certificate receives FAA approval to modify an aircraft design from its original design. An amended type certificate approves not only the modification, but also how that modification affects the original design.

70. The Federal Aviation Act allowed the FAA to hand off many aspects of the certification process to Boeing and other manufacturers. In 2003, Congress ordered the FAA to delegate more nuts and bolts compliance work to plane manufacturers themselves.

71. In 2005, the FAA shifted even more authority to manufacturers under an approach pushed by then-chief Marion Blake, who described the changes as a way to promote efficiency. Under new rules, which took effect in 2009, the FAA let Boeing pick the employees who would vouch for its aircraft's safety. Previously, Boeing could only nominate such employees, subject to the FAA's approval. Michael J. Dreikorn, a former FAA official and onetime vice president of quality and compliance for jet-engine maker Pratt & Whitney, criticized the FAA's self-certification process stating, "Conceptually, yes, it makes sense because the FAA can't be everywhere, but the reality is it is flawed, you have the fox watching the henhouse."

[1] In addition, "transport-category" airplanes (*i.e.*, commercial airplanes) must also comply with Title 14 CFR Part 25, which includes demonstrating that the airplane's design meets all regulations to be deemed airworthy.

B. Boeing's Expansive Self-Certification Authorization Rights

72. Beginning in 2009, under the FAA's program called Organization Designation Authorization ("ODA"), Boeing was allowed to perform self-certification of its commercial airplanes. Specifically, under Title 49 of the U.S. Code ("49 U.S.C.") 44702(d) (2010), the FAA may delegate to a qualified private person a matter related to issuing certificates, or related to the examination, testing, and inspection necessary to issue a certificate on behalf of the FAA Administrator as authorized by statute to issue under 49 U.S.C. 44702(a) (2010). ODA holders are typically authorized to conduct the types of FAA functions, which they would normally otherwise seek from the FAA. For example, airplane manufacturers, like Boeing, may be authorized to approve design changes in their products.

73. Boeing is qualified for the following ODA Types: TC, PC, and MRA. First, Boeing, as a holder of a TC ODA, may manage and make findings for type certification programs. In addition to the engineering and manufacturing approvals that are part of the certification program, a TC ODA holder may issue airworthiness certificates, but may not issue an original type certificate or an amended type certificate. Next, Boeing, as a holder of a PC ODA, may issue airworthiness certificates and approvals, determine conformity, perform evaluation leading to amendment of its production limitation record, and approve minor changes to its quality control manual. Finally, Boeing, as a holder of an MRA ODA, may approve data for major repairs and alterations, issue airworthiness certificates and approvals, and perform aging aircraft inspections and records review.

74. Under FAA Order 8100.15 dated August 18, 2006, Boeing has a duty of honesty and integrity in its dealings with the FAA when acting as an ODA. For example, Boeing must show that it has "demonstrated sound judgment and integrity" to qualify as an ODA. Moreover, a

"Lack of Care, Judgment, or Integrity" can provide cause to suspend or terminate an ODA like Boeing.

75. The FAA is required to have regular oversight of an ODA holder through a team of FAA engineers and inspectors to ensure the ODA holder functions properly and that any approvals or certificates issued meet FAA safety standards. Boeing's work is purportedly monitored by the FAA certification office in the Seattle area, where most of its jetliners are designed and assembled. Although the ODA program as intended provided the FAA with oversight over Boeing, in reality, it did not function that way.

76. For example, in a June 29, 2011 report, the DOT's Inspector General criticized the FAA's handling of Boeing's "self-certification" after meeting with Boeing management officials who were responsible for the administration of its ODA program. The report stated, the "FAA needs to strengthen its risk assessment and oversight approach for Organization Designation Authorization and risk-based resources targeting programs". Specifically, it recommended that the FAA "improve the new oversight for large ODA holders by: A. developing training for FAA engineers and disseminating comprehensive procedures on the new oversight structure for large ODA holders. B. assessing the effectiveness of the new oversight structure before implementing it at other large ODA holders."

77. Moreover, in an official government report dated October 15, 2015, the DOT's Inspector General revealed that:

> [T]he largest ODA oversight office – which is currently dedicated to Boeing and encompasses about 40 staff – is not currently included in FAA's staffing model. A key FAA manager responsible for developing the Agency's aviation safety budget requests told us that FAA did not include this office initially because Boeing is a large and unique organization, and the Agency wants to improve other parts of its model before adding to it. FAA expects to add this office to the model by October 2015 and have an initial forecast by fiscal

> year 2016. Until then, FAA does not know whether it has adequate staffing levels needed to meet the workload requirements at the largest ODA oversight office or how the inclusion of its largest office will impact overall staffing numbers.

78. At a congressional hearing in 2015, a Boeing executive described the ODA program as effectively having an "arm of the F.A.A. within the Boeing Company," and said that 1,000 Boeing employees were part of the program.

79. Under the FAA Reauthorization Act of 2018, the FAA let Boeing certify 96% of its own work, which included critical issues related to safety as allowed under its three ODA types. Notably, when this bill was being written, the FAA said it would "not be in the best interest of safety." Once enacted, the FAA described this legislation as "streamlin[ing] the FAA certification process to ensure that U.S. aviation manufacturers can compete globally and get their products to market on time".

80. Accordingly, due to the FAA's known lack of supervision during the certification process of Boeing's commercial airplanes, Boeing's Board and its senior management's oversight duties related to Boeing's compliance with the FAA's safety regulations took on even greater importance. Those fiduciaries, however, did nothing to ensure that Boeing's commercial airplanes complied with federal or international safety laws. Moreover, Boeing did not even have in place any standardized reporting systems to provide critical information about safety issues related to its products to the Board or Boeing's senior executives, despite their oversight responsibilities under Delaware law and Boeing's corporate documents.

III. Although Boeing's Success Depends on Selling Safe Products, its Corporate Governance Documents Ignored Safety Issues

81. The success of Boeing's products depends on those products being safely manufactured in compliance with federal and international laws. Indeed, the consequences can be

fatal if Boeing fails to adhere to the FAA regulations concerning the airworthiness of its commercial airplanes.

82. Boeing highlighted the importance of its commercial aircrafts' compliance with FAA regulations in its 2018 10-K:

> In the U.S., our commercial aircraft products are required to comply with FAA regulations governing production and quality systems, airworthiness and installation approvals, repair procedures and continuing operational safety. Outside the U.S. the similar requirements exist for airworthiness, installation and operations approvals. These requirements are generally administered by the national aviation authorities of each country, and in the case of Europe, coordinated by the European Joint Aviation Authorities.

83. Moreover, a company's board of directors and its senior management are required to set the appropriate tone and cultivate a corporate culture to ensure that its company sells safe products. For example, some corporate boards, such as JetBlue and Dow Chemical, mandate "safety" oversight in their bylaws, thereby acknowledging the importance of safety compliance in fulfilling their fiduciary duty to manage risk.

84. In contrast to other corporations supplying products and services that depend on safety, none of Boeing's Board Committee Charters or the Company's bylaws even mentioned that word until additions were made in late August 2019 – approximately five months after the second 737 MAX crash, the entire 737 MAX fleet was grounded world-wide, and manufacturing and sales of the 737 MAX came to an abrupt halt while Boeing was facing intense public scrutiny and lawsuits stemming from the 737 MAX crashes. As demonstrated by those 737 MAX crashes, and as discussed infra, the fallout that ensued shows that Boeing's success truly depends on its safety record. Despite its responsibility to manufacture and sell safe products, and the clearly foreseeable consequences of its failure to do so, Boeing had no oversight systems in place to ensure

that the Board and Boeing's senior management could monitor safety regulation issues for years on end.

85. In fact, shortly after the second 737 MAX crash, "former Boeing board members who asked for anonymity have told the *Washington Post* that the board considered 'safety was just a given' and that 'the board doesn't have any tools to oversee' safety." In addition, on May 6, 2019, Boeing's current Chairman, Defendant Calhoun commented to the *Washington Post* that he "doesn't think it makes sense for [Boeing's] board to be filled with aviation or safety experts."

86. Notably, Boeing's Board did not have a single director with expertise in aircraft safety from at least 2010 through October 24, 2019. Nor did the Board implement any reporting processes or monitoring systems to ensure Boeing's commercial airplanes complied with FAA safety regulations and international laws, in violation of their fiduciary duties.

IV. Historically, Boeing Has Repeatedly Failed to Maintain Safe and Legally Compliant Operations

87. Boeing has a long record of failing to adhere to FAA regulations, which resulted in, among other things, (1) two fatal 737 planes crashes in the 1990s due to known design flaws and a related cover-up, and (2) the grounding of an entire fleet of 787 Dreamliners because its batteries caused potentially catastrophic fires in 2013. These violations of FAA regulations caused Boeing to incur at least $1 billion in damages, but, they did not cause Boeing to implement any systems for Boeing's Board and its senior directors to oversee the Company's compliance with FAA regulations as required by law and their fiduciary duties.

88. Moreover, throughout its history, Boeing's senior management has repeatedly expressed a deep reluctance to even examine potential design flaws in the Company's products, especially if such an examination could affect Boeing's bottom line. Indeed, Boeing's senior management and Board have created a disturbing culture where there is a stubborn resistance to

publicly admit that Boeing has ever made any mistakes, while internally Boeing's managers have retaliated against Boeing employees who alerted those managers to potential design flaws related to critical safety issues in Boeing's various products. Further, the FAA has served as Boeing's enabler for decades, which has only further fostered this culture at Boeing.

A. In the 1990s, Boeing Violated the FAA's Safety Regulations and Then Concealed Similar Safety Flaws

89. The FAA's Airworthiness Standards for Commercial Aircraft, 14 CFR § 25.203(a) "Stall Characteristics", requires, among other things: "It must be possible to produce and to correct roll and yaw by unreversed use of the aileron and rudder controls, up to the time the airplane is stalled. No abnormal nose-up pitching may occur…."

90. In the 1990s, Boeing experienced problems with its 737 model because it was nose-diving itself into the ground without the pilots' command, and it was impossible for the pilots to stop the plane's action. Accordingly, Boeing was violating 14 CFR § 25.203(a) of the FAA's regulations, and its 737 should have lost its certificate of airworthiness.

91. Specifically, on March 3, 1991, United flight 585 ("Flight 585") crashed near Colorado Springs, Colorado, killing all on board. At this time, the 737 was the only commercial jet in the U.S. with a one power control unit system and a single rudder panel, which could put the plane in a deadly dive. Other commercial aircrafts had two or more control systems that provided a back-up system redundancy. Notably, a 1969 Boeing service memo cited reports of rudders moving inadvertently, and during the 1970s through the 1980s, hundreds of pilots filed reports concerning rudder problems.

92. When the NTSB investigated Flight 585's crash, it could not figure out why this plane had crashed. Boeing knew the reason but concealed the 737's defect related to its single rudder panel from the NTSB. Boeing held what became to be known as its secret and infamous

"We have a Problem" meeting on October 8, 1992. In this meeting, Boeing's management secretly met and admitted to the design problem that should have caused the 737 to lose its certificate of airworthiness. In this regard, the then-current model of the 737 did not meet the "fail safe design intent" in violation of FAA safety regulations. Instead of taking immediate action to ground the 737 while Boeing fixed this deadly design flaw to comply with the laws, Boeing's management devised options designed to spread the costs out over several years to fix it. Boeing did so despite knowing that its design flaw on the 737 had already killed 25 people, and the airplane was illegal to fly under domestic and international laws.

93. Publicly, Boeing and the FAA continued to blame Rocky Mountain winds called "rotors" and the pilots of Flight 585. But, then the NTSB discovered that pilot safety reports existed about the 737 nose-diving issues. The NTSB followed up with the FAA informing it about the pilots' pre-existing complaints. The FAA, however, continued to parrot Boeing and blame the winds and the pilots of Flight 585. The NTSB relied on the FAA's and Boeing's explanations, and issued an erroneous report blaming the winds, instead of the 737 for the crash.

94. In 1994, in response to the NTSB's report, the FAA allowed Boeing to adopt the less costly options developed by Boeing during its "We have a Problem" secret meeting, which spread the purported repairs over months, years and/or not occurring at all. The FAA took no steps to ground the deadly 737, and neither did Boeing.

95. Later, on September 8, 1994, a 737 – USAir Flight 427 ("Flight 427") – began its final approach to Pittsburgh International Airport on a clear and warm evening. Less than fifteen minutes before the flight was supposed to land, the jetliner suddenly and inexplicably yawed to the left, rolled over and began to spiral downward. In 23 terrifying seconds, the 737 plummeted

6,000 feet and struck the ground at 300 mph, disintegrating on impact and killing all 132 people aboard the flight.

96. After the Flight 427 crash, Boeing and the FAA again blamed pilot error and again would not ground the 737 fleet. The NTSB released a statement that recommended design changes in the Boeing 737 to eliminate the single-point failure, which the pilots could not counteract. Boeing rejected the NTSB's recommendation, and instead recommended that airlines teach their 737 pilots ***special aerobatic maneuvers*** to counter inadvertent rudder deflections that could put the 737 into a deadly nose dive. The FAA endorsed Boeing's idea of additional training. Boeing, thus, got away with its cost-saving strategy by blaming the pilots and concealing that the 737 was fatally defective under the FAA regulations while it secretly worked on a fix for the 737's rudders.

97. In 1997, Boeing announced that it would significantly change its rudder controls on all 737s and retrofit the entire fleet at a cost of $120 million to $140 million. The NTSB investigator revealed that during the course of the investigation, he would typically get five to ten reports a week about rudder issues on 737s. After Boeing made the modifications to the rudders, the NTSB inspector received no further reported complaints about them.

98. On March 24, 1999, the NTSB delivered its final report, blaming Flight 427's crash on the 737's rudder, and recommending ways to help pilots deal with a jammed rudder.[2]

B. Boeing Disregarded Safety Issues When Building its 787 Dreamliner Model, Resulting in Violations of FAA Regulations

99. In January 2013, after Boeing's 787 Dreamliner had flown 52,000 hours with paying customers, the FAA grounded the fleet when lithium-ion batteries on two planes caught

[2] In 1998, another 737 nose-dived and crashed in Indonesia. Irregularities in the production of the 737 were found. Boeing had to shut down its 737 production lines because of improper activities. While Boeing and others again blamed the pilots for this crash, a U.S. trial decided otherwise, finding that the 737 dove itself into the ground.

fire within a week. It was the first time that the FAA had grounded a Boeing model since 1979. Notably, the FAA grounded these aircrafts even though no lives were lost. Boeing designed an FAA-approved fix and the planes were flying again within three months.

100. Afterwards, certain FAA managers were called before an NTSB hearing that laid bare the scope of the FAA's reliance on Boeing. The NTSB later found that a test for the battery's flammability – driving a nail into it – was inadequate and faulted the FAA for failing to catch the design deficiency. A NTSB investigation further alleged unsatisfactory oversight of the manufacturing processes by both the FAA and Boeing. Notably, Boeing was forced to compensate carriers while its Dreamliners were out of commission. In total, Boeing spent hundreds of millions of dollars in damages for this failure to adhere to the FAA's safety regulations.

101. However, problems with the 787 Dreamliners have continued. For example, according to a *New York Times* article dated April 21, 2019, Boeing's South Carolina factory, which produces the 787 Dreamliner, "has been plagued by shoddy production and weak oversight that have threatened to compromise safety." With the 787 Dreamliner, the Company's culture valued production speed over quality. Facing long manufacturing delays, Boeing's senior management pushed its work force to quickly turn out Dreamliners, at times ignoring safety issues raised by employees. Dreamliner workers have filed nearly a dozen whistle-blower claims and safety complaints with federal regulators, describing issues like defective manufacturing, debris left on planes, and pressure not to report violations. Others have sued Boeing, saying they were retaliated against for flagging manufacturing mistakes.

102. For example, Joseph Clayton, a technician at Boeing's North Charleston plant, one of two facilities where the Dreamliner is built, said he routinely found debris dangerously close to wiring beneath cockpits. "I've told my wife that I never plan to fly on it. It's just a safety issue."

103. In addition, John Barnett, a former quality control manager who worked at Boeing for nearly three decades and retired in 2017, discovered clusters of metal slivers hanging over the wiring that commands the flight controls. If the sharp metal pieces – produced when fasteners were fitted into nuts – penetrate the wires, he said, it could be "catastrophic." Barnett filed a whistleblower complaint with regulators, stating that he had repeatedly urged his bosses to remove the shavings, but they refused and moved him to another part of the plant. Barnett also contends that he was reprimanded in 2014 for documenting errors. In this regard, a senior manager downgraded him for "using email to express process violations," instead of engaging "FAF," or face to face. Barnett took the comment to mean that he should not put problems in writing.

104. Several former Boeing employees also said that high-level managers pushed internal quality inspectors to stop recording defects in the Dreamliners. For example, Cynthia Kitchens, a former quality manager, said her Boeing superiors penalized her in a performance review and berated her on the factory floor after she flagged wire bundles rife with metal shavings and defective metal parts that had been installed in planes. "It was intimidation," she said. "Every time I started finding stuff, I was harassed."

105. Notably, a spokesman for the FAA, Lynn Lunsford, said that the agency had inspected several planes certified by Boeing as free of such debris and found those same metal slivers. In certain circumstances, the problem can lead to electrical shorts and cause fires. Officials also believe that the shavings may have damaged an in-service airplane on one occasion in 2012. By 2017, the FAA had to issue a directive requiring that Dreamliners be clear of metal shavings before they are delivered. In response, Boeing claimed that it had determined that this issue did not present a flight safety issue.

C. Boeing Continues to Violate Proper Safety Guidelines and Regulations

106. In March 2019, Will Roper, an assistant secretary of the Air Force, told a House Armed Services subcommittee that he had visited Boeing in the past week after the Air Force grew alarmed with the amount of trash, tools and other items that were being left behind in new KC-46 tanker planes that Boeing was delivering. Boeing began delivering the tankers in January 2019, which was two years late, and approximately $3 billion over budget. Significantly, foreign debris can be sucked through an aircraft's engines and damage or destroy them. Ropers told lawmakers, "To say it bluntly, this is unacceptable. FOD, or foreign object debris, is something we treat very seriously in the Air Force. Our flight lines are spotless. Our depots are spotless, because debris translates into a safety issue." The Air Force further stated that it told Boeing it would not accept any more tanker planes until Boeing fixed the safety issues, at its own expense.

107. Similarly, in April 2019, Boeing's customers were also complaining about finding random objects in their new Dreamliners. At the North Carolina Boeing plant, current and former workers described a losing battle with debris. Rich Mester ("Mester"), a former technician who reviewed planes before delivery, stated, "I've found tubes of sealant, stuff from the build process." Mester was subsequently fired and filed a claim with the National Labor Relations Board over his termination. In fact, employees have also found a ladder and a string of lights left inside the tails of planes, near the gears of the horizontal stabilizer, which could have locked up the gears.

108. Likewise, an American Airlines employee, Dan Ormson ("Ormson") said that he regularly found debris while inspecting Dreamliners in North Charleston. Specifically, Ormson discovered loose objects touching electrical wiring and rags near the landing gear. He often collected bits and pieces in zip-lock bags to show one of the plant's top executives, Dave Cabon. Notably, debris can create hazardous situations. In fact, Ormson once found that a bolt was loose

inside one of the Dreamliner's engines after that plane was given a test flight. That small piece of metal could have caused the engine to malfunction.

109. Moreover, in October 2019, Boeing discovered that approximately 5% of its older 737 jets, which recently underwent urgent inspections worldwide, have cracks in a structure connecting the wings to the fuselage and will have to be temporarily grounded. The FAA said in its order, "This condition could adversely affect the structural integrity of the airplane and result in loss of control of the airplane". The FAA's order further required jets with cracks to be grounded until they can be fixed, creating additional damages for Boeing based another safety violation. Significantly, on December 6, 2019, the FAA announced a proposed fine of nearly $4 million against Boeing related to this safety failure and noted that Boeing installed substandard parts on 133 737NG aircrafts and did not properly oversee its suppliers.

V. Defendants, including CEOs McNerney and Muilenburg, Fostered a Culture at Boeing that Rewarded Maximizing Profits And Punished Employees Who Raised Safety Concerns

110. Instead of overseeing safety regulatory and compliance issues over the last few decades, Boeing's Board encouraged senior management to create a culture focused on maximizing profits and retaliating against employees who raised safety concerns that could adversely impact Boeing's bottom line.

111. For example, McNerney, who began serving on Boeing's Board in 2001, was a former GE executive and rose up through the GE ranks when that company was run by Jack Welch, who increased GE's market value from $12 billion to $410 billion over the period from 1981 to 2001. Notably, executives with GE backgrounds had a reputation for cutting costs to increase profits. McNerney had implemented such strategies at GE when he held the top executive positions of President and CEO of GE Aircraft Engines and GE Lighting. Boeing's Board

expected that he would implement similar strategies at the Company to increase its profitability. In fact, the Board provided McNerney with broad authority for decision-making by appointing him in 2005 as the first Boeing executive to start his tenure at the Company with the three titles of President, CEO, and Chairman.

112. With the Board's support, McNerney fostered a culture at Boeing that placed a premium on maximizing profits at all costs. For example, after the development and production of Boeing's 787 Dreamliner experienced multiple delays caused by problems with Boeing's global chain of suppliers completing their work, McNerney inaugurated the "Partnering for Success" program in 2012. This program demanded discounts of about 15% from suppliers, whose margins were often higher than Boeing's, sometimes double or triple. Companies that balked risked banishment to a "no-fly-list" barring them from bidding on new programs.

113. Moreover, McNerney had a reputation for keeping Boeing employees in line with his cost-cutting efforts. For example, in July 2014, when asked by journalists if he planned to retire next year, McNerney commented, "The heart will still be beating, the employees will still be cowering." Indeed, Mark Rabin, who worked in the flight test group that supported the 737 MAX and was laid off in 2015 after a 17-year Boeing career, confirmed that, "It was pretty intense low morale because of all the layoffs—constant, grinding layoffs, year after year. So you really watched your step and were careful about what you said."

114. When the Board decided to implement a succession plan for McNerney, the directors looked to replace him with someone who would continue to foster Boeing's culture of maximizing profits while cutting costs. The Board identified Muilenburg, a Boeing "lifer", who had steadily risen in the corporation's ranks for 28 years. Muilenburg further had a "track record of keeping things profitable through thick and thin." For example, from 2009-2013, Muilenburg

served as the Executive VP, President and CEO of Boeing's Defense, Space & Security unit, and he managed it through the era of Pentagon cost-cutting, shrinking operations to match falling revenue. Muilenburg, with degrees in aerospace engineering and aeronautics, had managerial skills, as well as an engineering background.

115. Effective December 31, 2013, Muilenburg became Boeing's vice chairman, president and chief operating officer. With his promotion, Muilenburg joined the corporate team in Chicago and began sharing oversight duties with McNerney of the day-to-day operations of the Company. Boeing's press release dated December 18, 2013 explained that "[i]n their new roles as corporate vice chairmen, Connor and Muilenburg will join McNerney in managing a number of core Boeing corporate processes and activities…As Boeing scales up for growth, Muilenburg, as president and COO, will share with McNerney oversight of the company's business operations…".

116. On July 1, 2015, Muilenburg officially became Boeing's CEO, and later Chairman of the Board when McNerney retired in February 2016. Muilenburg followed in McNerney's footsteps with a laser focus on financial discipline, including boosting profits by wringing discounts from suppliers. In fact, suppliers say Muilenburg's own squeeze, which they called "Partnering for Success 2.0", demanded additional price cuts of about 10%. Muilenburg also cut Boeing's workforce by almost 7% in 2016 and an additional 6% in 2017.

117. In 2016, Boeing hired the first "outsider" to run its commercial air business, Defendant McAllister. McAllister, however, was not really an outsider because he was another former GE executive, who had worked closely with Boeing on sales campaigns at GE because Boeing's jetliner portfolio often relies on GE engines. Muilenburg commented, "I'm not sure I'd call him an outsider. He's been very close to us for a couple of decades." As a product of GE's

own lean culture, McAllister sought even more "efficiencies" in Boeing's BCA unit under Muilenburg's command.

118. Moreover, McNerney, Muilenburg, and McAllister, along with Boeing's other senior executives, had personal financial reasons to emphasize productivity and cost-cutting at the Company. Boeing's incentive pay plans for executives and rank-and-file employees for years emphasized profitability, with revenue, cash, and share performance more recently playing a role. In fact, since 2012, Boeing has beat its revenue targets every year, contributing to Muilenburg's and McNerney's receipt of $209 million in total pay. Moreover, in 2016 alone, the Board approved a compensation package worth $20.9 million for McAllister, which included a $2 million signing bonus and restricted shares to replace unvested stock and pension benefits forfeited when he left GE for Boeing.

119. Together Muilenburg and McAllister heaped more cost reduction demands on engineers at the expense of safety compliance. Adam Dickson, a manager of the fuel system for the 737 MAX, retired in November 2018 after almost 30 years at Boeing – in part, because of dismay over performance targets that risked sacrificing safety for profits. "It was engineering that would have to bend," he says. "The Company's priorities were expressed in annual performance reviews in which engineers were measured in part on how much their designs had cost. "Idea's [sic] are measured in dollars," as a manager put it in one engineer's annual review.

120. Dickson further explained that managers were pressured to hit ambitious cost targets because Boeing's sales team would sell planes for delivery four years out at prices Boeing could not yet achieve from an engineering standpoint – creating immense pressure throughout the organization to drive down costs. In fact, in 2016, Boeing started asking for specific time and cost

reductions as part of managers' performance evaluations, and by 2018, Dickson's superiors warned in "very directly and threatening ways" that pay was at risk if the targets were not met.

121. Similarly, another engineer who worked on the 737 MAX, Richard Ludtke also confirmed that Boeing was cutting costs by "targeting the highly paid, highly experienced engineers [for layoffs]. Over time that's eroded the company's ability to successfully design and manage programs. They do it strictly by cost, and they do it more so with every plane." Likewise, Mark Rabin, a former Boeing software engineer who worked in a flight-test group that supported the 737 MAX, stated that he recalled a manager saying at an all-hands meeting that Boeing did not need senior engineers because its products were mature. Rabin commented that "I was shocked that in a room full of a couple hundred mostly senior engineers we were being told that we weren't needed." Rabin was then laid off in 2015.

122. Another example of Boeing putting profits first and ignoring or minimizing safety regulations occurred in 2014, when a Boeing engineer, Michael Neely took a temporary assignment on the 777X at Boeing's offices near Seattle. His managers asked him to evaluate a plan to adapt a power-distribution system from the preceding version of the 777. The idea was to require "minimal changes." After a month of work, Neely reported that the plan was not feasible or safe. Boeing's managers, however, ignored Neely, and sent the plan on to a GE unit that was serving as the electrical contractor. According to Neely, GE found Boeing's plan was inadequate and would need to be substantially expanded. After Neely sued Boeing as a whistleblower, he was fired in 2016.

123. Boeing's shop floor workers also reported similar demands on schedule and cost. For example, in 2016, William Hobek, a quality manager at Boeing's 787 plant in South Carolina, filed suit in federal court claiming he had been fired after repeatedly reporting defects up the chain

of command. When he complained, a supervisor replied, "Bill, you know we can't find all defects." Hobek called over an FAA inspector, who quickly found 40 problems.

124. Thus, Muilenburg, McNerney and McAllister, with the Board's support, successfully created an environment where the tone from the top was that profits came first, and safety was left behind. Moreover, despite their fiduciary duties to oversee safety regulatory and compliance issues, these fiduciaries utterly failed to do so. Instead, they continued to push production rate increases, along with cost-cutting measures, to increase Boeing's revenues and their respective compensation packages.

VI. To Compete with its Rival Airbus, Boeing's Senior Management and the Board Rushed Boeing Employees to Produce the 737 MAX as Cheaply as Possible

125. In 2010, Boeing was already under enormous pressure to complete its 787 Dreamliner, which was billions of dollars over budget, when its competitor, Airbus announced its new A320neo (*i.e.*, "new engine option") model, a fuel-efficient plane that would rival Boeing's single aisle 737 model. This news was bad for Boeing because it would require more work to put new engines into the 737 than the A320, if Boeing wanted to compete against Airbus' latest model.

126. At a meeting in January 2011, James F. Albaugh ("Albaugh"), then-CEO of BCA, told employees that Airbus would probably go over budget creating a plane that carriers did not really want. Albaugh also critiqued Airbus's decision to refit the A320 with bigger engines, which could alter the aerodynamics and require big changes to the plane. Specifically, Albaugh stated, "It's going to be a design change that will ripple through the airplane. I think they will find it more challenging than they think it will be." Albaugh further boasted that carriers were already paying more for Boeing's single-aisle jet than the Airbus version. He recommended that Boeing wait until the end of the decade to produce a new plane from scratch.

127. As late as February 2011, McNerney was still considering BCA's plan to design a totally new aircraft to compete with Airbus' A320neo by the end of the decade. For example, on an analyst call, McNerney stated, "We're not done evaluating this whole situation yet, but our current bias is to move to a newer airplane, an all-new airplane, at the end of the decade, beginning of next decade. It's our judgment that our customers will wait for us."

128. Then, in the spring of 2011, Boeing faced an unthinkable defection when American Airlines, an exclusive Boeing customer for more than a decade, was ready to place an order for hundreds of new, fuel-efficient jets from Airbus. American Airlines' CEO, Gerard Arpey called McNerney to say a deal was close with Airbus, and if Boeing wanted the business, it would need to move aggressively.

129. To win over American Airlines, in July 2011, Boeing ditched the idea of developing a new passenger plane, which would take a decade to build. Instead, it decided to update its workhorse 737, promising American Airlines that the plane would be done in six years. McNerney's decision, ***without the Board's prior approval***, to update the 737 rather than replace it was controversial with some executives pushing for an all new plane. Indeed, Albaugh, who had pushed for a new airplane, retired within a year, and Defendant Conner replaced him as BCA's head.

130. By certifying the plane with a so-called amended type certificate, the FAA would allow Boeing to get the 737 MAX flying years sooner than if the Company introduced a brand-new plane that had to be certified for the first time.

131. In August 2011, Boeing's senior executives and Board met, and the Board approved the 737 MAX program. The Board's approval of the 737 MAX program came one month after McNerney had already decided to move forward with it.

132. The *Washington Post's* article dated May 5, 2019, entitled, "'Safety was just a given': Inside Boeing's boardroom amid the 737 Max crisis" provides more detail about this Board meeting. It states that "[b]efore approving plans for a new jetliner called the 737 Max, Boeing's board of directors discussed how quickly and cheaply it could be built to compete with a rival – but the members didn't ask detailed questions about the airplane's safety, according to three people present for the meeting. 'Safety was just a given,' said one former Board member, speaking on the condition of anonymity."

133. This *Washington Post* article further states that "[d]uring a series of meetings in 2010 and 2011, Boeing's Board discussed how the company should respond to the threat of a new, more fuel-efficient line of Airbus jets…Several directors worried that a new plane would be too costly and take too much time to bring to market, especially since Boeing was at that time over budget and years past its deadline for launching the 787 Dreamliner…The board talked about how it would be faster and cheaper to revamp an older version of a Boeing jet."

134. The Board, however, never discussed safety issues related to the redesign of the 737. In fact, John H. Biggs, a Boeing director from 1997 to 2011, told the Washington Post that he "doesn't remember anyone in that group questioning whether a reconfiguration of the 737 with larger engines would create trade-offs that would affect safety." ***Biggs further stated that "the [Boeing] board doesn't have any tools to oversee [safety]."***

135. Moreover, knowing that the FAA had delegated essentially all certification issues related to the 737 MAX to the Company, it was critical that the Board and Boeing's senior management ensure the safety of the 737 MAX through its compliance with FAA regulations. As discussed above in Section III, Boeing's corporate charters did not even mention the word "safety", and Boeing had no systems in place for its Board and senior executives to oversee safety related

issues for any of BCA's products. Indeed, Boeing's public filings with the SEC [redacted]

136. On November 3, 2011, Boeing announced significant design changes, including larger engines for its 737 MAX. At this time, Boeing had no firm orders for its 737 MAX, while Airbus had 918 orders for its A320neo.

137. On December 14, 2011, Boeing finally scored a much-needed win for its new 737 MAX when Southwest Airlines ordered 150 737 MAX aircrafts. Notably, Southwest has flown only 737s in its fleet for nearly fifty years, and it is the world's largest operator of such aircrafts.[3]

138. Extolling its decision to forgo designing a new airplane to compete with Airbus's 320neo, McNerney's February 9, 2012 letter to stockholders in the Company's 2011 annual report stated:

> With development costs and risks far below an all-new airplane, the 737 MAX will provide customers the capabilities they want, at a price they are willing to pay, on a shorter, more certain timeline. This approach is an all-around winner for Boeing, too. We maintain our qualitative advantage over competitors in the segment, we free up resources to invest in other growth products, and we reduce our business risk for the next decade.

139. From the start of the 737 MAX 8's development, however, Boeing was months behind Airbus, and had to play catch-up. Moreover, it was harder for Boeing to catch-up because the 737 is lower to the ground than the Airbus A320, making it more difficult to implement new, more fuel-efficient engines, which are larger in diameter, on the 737. The message from Boeing's

[3] Ultimately, American Airlines agreed to buy planes from both Boeing and Airbus.

Board and senior management, however, was to catch up to Airbus as soon as possible in the cheapest way, regardless of safety compliance issues.

140. Accordingly, the pace of the work on the 737 MAX was frenetic. Engineers were pushed to submit technical drawings and designs at roughly double the normal pace. Facing tight deadlines and strict budgets, managers quickly pulled workers from other departments when someone left the MAX project. The specter of Boeing's chief rival was constant. Airbus had been delivering more jets than Boeing for several years and losing the American Airlines account (and others) would have been gutting, costing Boeing billions in lost sales and potentially thousands of jobs.

141. Indeed, a variety of Boeing employees have described internal pressures to advance the 737 MAX to completion, as Boeing hurried to catch up with the hot-selling A320neo from its rival Airbus. For example, Mark Rabin, an engineer who did flight-testing work, said that there was always talk about how delays of even one day can cost substantial amounts, and that Boeing's staff were expected to stay in line. Rabin stated, "It was all about loyalty. I had one manager tell me, 'Don't rock the boat. You don't want to be upsetting executives.'"

VII. Boeing's Senior Management Made No Simulator Training for Pilots A Key Selling Feature of the 737 MAX, Which Created Intense Pressure on Boeing's Rank and File Employees to Achieve This Goal with the FAA's Approval

142. One of the 737 MAX's biggest selling points was that previously trained 737 pilots would not be required to be drilled on the aircraft's finer points in a flight simulator. Boeing sold the 737 MAX to its customers as being so similar to the last generation of 737 airplanes that pilots could teach themselves about the MAX via a take-home iPad course in less than an hour.

143. In fact, early in the process of selling the 737 MAX, Boeing promised to give Southwest Airlines a substantial rebate for every plane if the 737 MAX required simulator training.

One former 737 MAX worker, Rick Ludtke, an engineer who helped design the 737 MAX cockpit and spent 19 years at Boeing, said that rebate reported to him by managers was $1 million per plane. Moreover, Ludtke stated that "This [737 MAX] program was a much more intense pressure cooker than I've ever been in. The company was trying to avoid costs and trying to contain the level of change. They wanted the minimum change to simplify the training conditions, minimum change."

144. Ludtke and two other former workers described internal pressures during the 737 MAX certification process to avoid any changes to the design of the plane that might cause the FAA to lean toward a simulator mandate. Ludtke explained, "Any designs we created could not drive any new training that required a simulator. That was a first." Similarly, Mike Renzelmann, an engineer who worked on the MAX's flight controls said, "They wanted to A, save money and B, to minimize the certification and flight-test costs."

145. Indeed, Boeing engineers repeatedly invited FAA officials to look over their designs in one of the Company's Seattle simulators. One purpose was to find out how to ensure that pilots switching to the new plane from previous 737 models never had to get inside of a simulator for what is called "Level D" training. "We showed them all these scenarios and then we'd ask, 'Would this change equal Level D?" recalls former Boeing engineer Ludtke.

146. Moreover, Boeing managers did not merely insist to employees that no designs should lead to Level D training. They also made their desires known to the FAA team in charge of 737 training requirements, which was led by Stacey Klein, who had previously been a pilot at now-defunct Skyway Airlines for six years and had no engineering background.

147. When upgrading the cockpit with a digital display, Ludtke said that his team wanted to redesign the layout of information to give pilots more data that was easier to read, but that may

have required new pilot training. So instead, they simply recreated the decades-old gauges on the screen.

148. Indeed, avoiding simulator training became a significant point of attention of Michael Teal, the 737 MAX program manager, and Keith Leverkuhn, vice president and general manager of the 737 MAX program. They felt confident based on past experience that the 737 MAX would be approved without simulator training, but they were wary. Mark Forkner ("Forkner"), Boeing's chief technical pilot on the 737 MAX, was also facing pressure, and was often anxious about the deadlines and went to some of his peers in the piloting world for help. In fact, according to a fellow pilot who worked closely with Forkner at Boeing, Forkner repeatedly indicated to this ex-colleague that he feared losing his job if the FAA rejected Boeing's arguments to minimize training.

VIII. The Board and Senior Management Failed to Ensure that the 737 MAX Complied with Federal Safety Regulations As Required By Their Oversight Duties

149. [redacted]

[redacted] As pointed out by Charles Elson, director of the John L. Weinberg Center for Corporate Governance at the University of Delaware, "Directors are not to stick their fingers in the design of the aircraft, they are here to assure themselves that the processes by which the aircraft was designed were effective and safe." Boeing's Board, however, had no processes in place to ensure themselves or Boeing's senior executives that any of its airplanes were safe, much less complied with federal and international laws.

150. Moreover, given the lack of FAA oversight, it was even more critical that the Boeing Board and its senior executives take an active oversight role during the certification process of the 737 MAX. These fiduciaries knew or should have known that by 2009 the FAA had essentially delegated all of the certification process for its airplanes, including critical aspects of the 737 MAX's compliance with FAA safety regulations, to Boeing's employees.

151. In addition, during the middle of the 737 MAX's development, two of the most seasoned engineers in Boeing's ODA office left. These FAA engineers had a combined 50 years of experience, having joined the office at its creation in 2009, and had assumed responsibility for the 737 MAX's flight control systems. Both engineers grew frustrated with the work, which they saw as mainly paper pushing. In their place, the FAA appointed an engineer who had little experience in flight controls, and a new hire, who had gotten his master's degree just three years prior.

152. Moreover, during the 737 MAX certification process, senior leaders at the FAA would sometimes override their own staff members when Boeing pushed back. For example, for safety reasons, many FAA engineers wanted Boeing to redesign a pair of cables, which was part of a major system on the 737 MAX. Specifically, the 737 MAX was built with more fuel-efficient engines, with a larger fan and a high-pressure turbine. A bigger, more complex engine could do more damage if it broke apart midair. The FAA engineers were particularly concerned about pieces hitting the cables that control the rudder. In this regard, a severed cable during takeoff can make it difficult for pilots to regain control, potentially bringing down the jet. The FAA engineers suggested a couple of solutions, including adding a second set of cables or installing a computerized system for controlling the rudder. Boeing refused to make these changes stating that

a redesign could have caused delays and arguing that it was unlikely that an engine would break apart and shrapnel would hit the rudder.[4]

IX. In 2012, Boeing Began Developing the 737 MAX's MCAS While the Board Continued to Ignore its Oversight Duties Related to the 737 MAX's Compliance with FAA Regulations

153. In February 2012, the FAA determined that the 737 MAX would be an eligible project for an amended FAA certification. Boeing then submitted its formal application for an amended certificate in June 2012.

154. In 2012, the Board and Boeing's senior management did not consider any issues related the 737 MAX's compliance with federal regulations, including ones related to the safety of that airplane. Nor did anyone bring any safety related issues to their attention, despite the fact that multiple critical and potentially fatal safety issues concerning the 737 MAX arose during 2012, and the Board met seven times.

155. For example, early in the development of the 737 MAX, during 2012, Boeing engineers gathered at Boeing's transonic wind tunnel in Seattle to test the jet's aerodynamics. This testing allowed Boeing engineers to analyze how the airplane's aerodynamics would handle a range of extreme maneuvers. When the data came back, according to an engineer involved in the testing, it was clear that there was an issue to address. In this regard, the engineers observed a tendency for the plane's nose to pitch upward during a specific extreme maneuver, a banked spiral called a wind-up turn that brings the plane through a stall.

156. Notably, the FAA's Airworthiness Standards for Commercial Aircraft, 14 CFR § 25.203(a) "Stall Characteristics", requires, among other things: "No abnormal nose-up pitching

[4] Similarly, FAA managers also broke with their own employees' assessment and allowed Boeing to remove copper foil, which was designed to protect against lightning strikes, from the 787 Dreamliner.

may occur…In addition, it must be possible to promptly prevent stalling and to recover from a stall by normal use of the controls." The 737 MAX's pitching up made it non-compliant and unairworthy.

157. 14 CFR § 25.203(a) "Stall Characteristics" also requires that a plane handle with smoothly changing stick forces. During the 2012 testing, Boeing engineers determined that on the 737 MAX, the force that the pilots felt in the control column or "stick" as they executed this maneuver was not smoothly and continuously increased. The lack of smooth feel was caused by the jet's tendency to pitch up, influenced by shock waves that form over the wing at high speeds and the extra lift surface provided by the pods around the 737 MAX's engines, which are bigger and farther forward on the wing than on previous 737s.

158. While this problem was narrow in scope, it was not insignificant and proved difficult for the Boeing engineers to deal with. The engineers first tried tweaking the plane's aerodynamic shape, according to two workers familiar with the testing. The aerodynamic solutions, however, did not produce enough effect, so the solution that they arrived at was a piece of software – the Maneuvering Characteristics Augmentation System (*i.e.*, MCAS) – that would move a powerful control surface at the tail to push the airplane's nose down.

159. A Boeing MCAS "Preliminary Design Decision Memo", dated November 8, 2012, outlined the proposed design of the pilot's flight control panel on the 737 MAX, which included an indicator for failure of the MCAS flight control system. Significantly, that indicator was left out of the final version of the pilot's flight control panel on the 737 MAX.

160. The initial design for MCAS also included two factors to trigger the software. According to two people familiar with the details, it was activated only if two distinct sensors indicated an extreme maneuver: a high angle of attack and a high G-force. The initial design plans

for MCAS further said the goal was to limit the system's effect, giving it as little control as possible. A 0.6-degree limit was embedded in Boeing's system's safety review for the FAA.

161. The revised design, however, allowed MCAS to trigger on the inputs of a single sensor, instead of two factors considered in the original plan. Boeing engineers purportedly considered the lack of redundancy acceptable, according to proprietary information reviewed by the *Seattle Times*, because they calculated the probability of a "hazardous" MCAS malfunction to be virtually inconceivable.

162. When Boeing was ready to certify the 737 MAX, it laid out its plan for MCAS in documents for the FAA. Under the proposal, MCAS would trigger in narrow circumstances. In a separate presentation made for foreign safety regulators, Boeing described MCAS as providing "a nose down command to oppose the pitch up. Command is limited to 0.6 degrees from trimmed position."

163. Boeing's submission to the FAA also included an analysis that calculated the effect of possible MCAS failures. Notably, in each failure scenario, Boeing categorized those events as a "minor", a "major", or "hazardous" failure. These categories determine how much redundancy must be built into an aircraft to prevent the event. A "major" failure is not expected to produce any serious injuries, and therefore, typically allowed to rely on a single input sensor.

164. For instance, Boeing calculated what would happen on a normal flight if somehow the MCAS system kept running for three seconds at its standard rate of 0.27 degrees per second, producing 0.81 degrees of movement, thus exceeding the supposed maximum authority. Boeing assessed that failure as "major." Boeing's analysis also looked at the inadvertent operation of MCAS during a wind-up turn, which was assessed as "hazardous" (*i.e.*, an event causing serious or fatal injuries to a small number of people, but short of losing the plane – which would qualify

as a "catastrophic" failure). Notably, usually hazardous events demand more than one sensor, except when they are outside normal flight conditions and unlikely to be encountered, like a wind-up turn.

165. As such, even though Boeing's original version of MCAS required two factors to activate, Boeing indicated that just one sensor would be acceptable in all circumstances to the FAA. Notably, and in contrast, Boeing did not follow the same logic for a system on its KC-46 Air Force tanker aircraft, which was also called MCAS. That MCAS system had two sensors and its system compared the two readings. Accordingly, Boeing should have known that placing too much trust in one sensor was not safe and did not comply with federal regulations requiring two sensors to prevent catastrophic failures.

166. Boeing's managers, however, played down the importance of MCAS from the outset to the FAA. Moreover, the FAA engineers who had been overseeing MCAS never received another safety assessment of it after the Company submitted its initial paperwork to the FAA, despite Boeing making additional changes to MCAS several years later in 2016.

X. Boeing Maximized Profits and Violated Safety Regulations by Charging Airlines Extra for Standard Safety Features on the 737 MAX Airplanes

167. In 2013, around the same time that Boeing started to market its 737 MAX 8, an airline would expect to spend between $800,000 to $2 million on various options for such a narrow-body aircraft according to a report by Jackson Square Aviation. Boeing charged extra, for example, for a backup fire extinguisher in the cargo hold. Past incidents have shown that a single extinguishing system may not be enough to put out flames that spread rapidly through the plane. Regulators in Japan require airlines there to install backup fire extinguishing systems, but the FAA does not.

168. Mark H. Godrich, an aviation lawyer and former engineering test pilot, commented that "There are so many things that should not be optional, and many airlines want the cheapest airplane you can get. And Boeing is able to say, 'Hey, it was available.'" But what Boeing does not say, he added is that it has become "a great profit center" for the manufacturer.

169. On the 737 MAX, Boeing decided to charge customers $80,000 for an indicator light, the "Angle-of-Attack Indicator", a safety feature in the cockpit that would instantly display real-time data from both angle-of-attack sensors to the pilots, providing valuable safety information to them. Another "extra" safety feature, the "disagree" light would alert the pilots if there were significant differences between the two angle-of-attack sensors and was able to do so through MCAS, which compares the readings of the angle-of-attack sensors. Many customers, like Lion Air and Ethiopian Airlines, did not purchase these "optional" safety features for their 737 MAXs.

XI. In 2013, the Board and Boeing's Senior Management Ignored Their Oversight Duties Related to the FAA's Safety Regulations Despite Several Pending FAA Investigations Concerning Failures of BCA's Internal Controls

170. By 2013, the FAA had already sent Boeing several letters of investigation ("LOI") concerning certain alleged violations of FAA safety regulations at BCA. After sending those LOIs, the FAA began investigations into BCA's alleged violations. During the investigations, the FAA placed all "evidence" of the potential violations into Enforcement Investigative Reports ("EIR"). At a minimum, the EIRs contained "the name of the alleged violator, a description of the incident, witnesses, a summary of the incident including specific regulatory non-compliance, all items of proof, and the inspector's analysis and recommendations."

171. Notably, EIRs are "reviewed first by the local office at which time several results may occur," including a review by the FAA's regional office if the local office does not clear the

matter. Moreover, if the FAA "deems that an administrative action is sufficient, it may take two forms: a warning notice, or a letter of correction. A warning notice recites available facts and information about the incident or condition and indicates that it may have been a violation. A letter of correction confirms the FAA decision in the matter and states the necessary corrective action the alleged violator has taken or agrees to take. If the agreed corrective action is not fully completed, legal enforcement action may be taken." Significantly, the FAA takes legal enforcement action where the FAA legal staff determines that a violation has occurred. Legal enforcement action may take the form of a civil penalty or a certificate action.

172. Despite the FAA's pending investigations against BCA in 2013, the Board and Boeing's senior management paid no attention to safety compliance issues, as they focused on increasing the Company's revenues through BCA's 737 line, including the new MAX.

173. [redacted]

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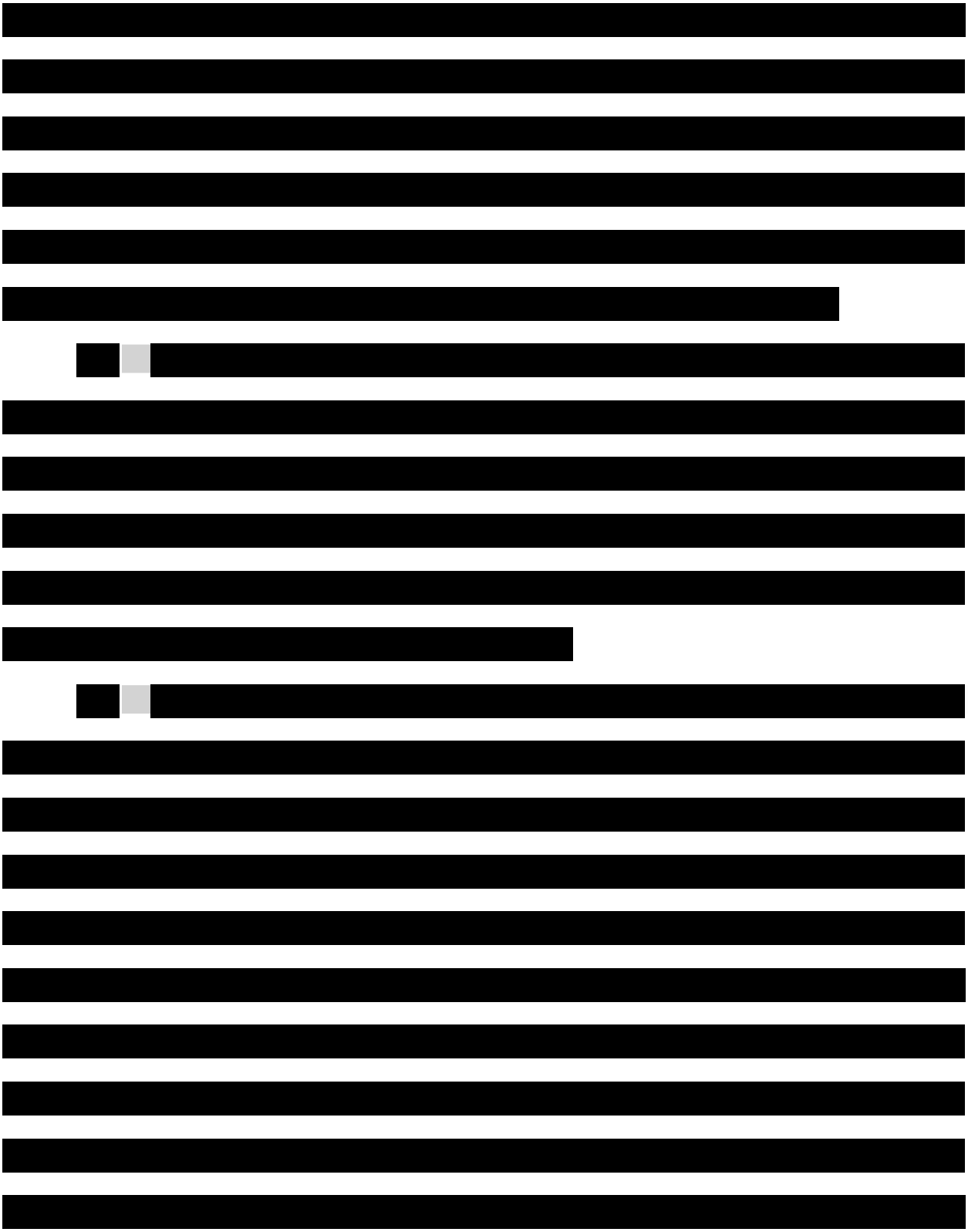
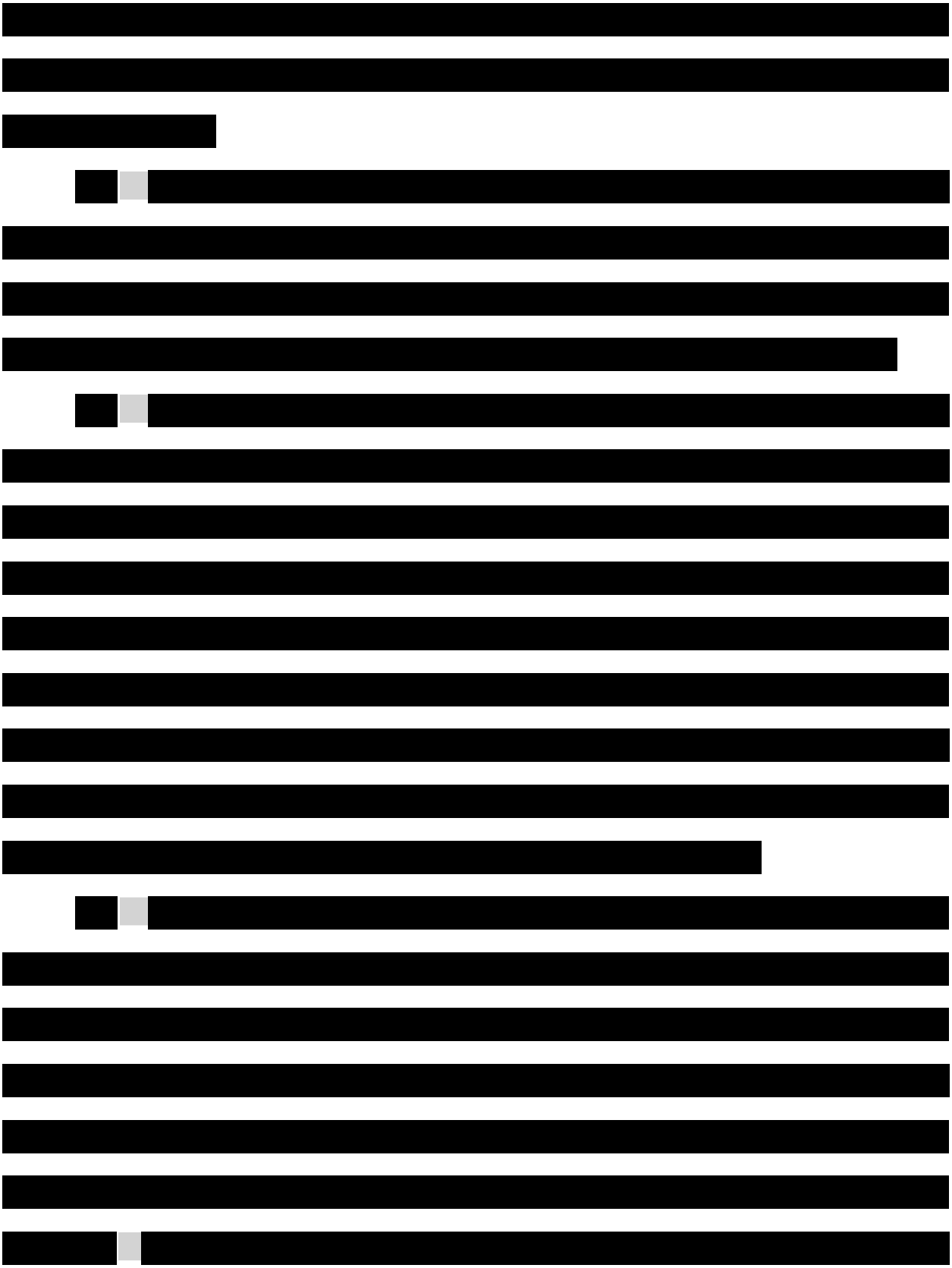
5 [redacted]





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XII. In 2014, Boeing Managers Refused to Implement Significant Safety Upgrades on the 737 MAX While the Board and Boeing's Senior Management Continued to Ignore their Oversight Duties Related to Safety Regulation Issues In the Midst of the FAA's Investigations of BCA's Alleged Violations

193. As the certification process for the 737 MAX progressed, the Board and Boeing's senior executives remained unaware of any safety compliance issues related to that aircraft because Boeing continued to have no systems in place for that type of information to be conveyed to the Board or Boeing's senior executives. In addition, Boeing's managers continued to adhere to the Board's and senior management's mantra of maximizing profits, which meant foregoing implementing necessary safety features on the 737 MAX.

194. For example, in 2014, a Boeing engineer, Chris Ewbank and his group, whose job involved studying past crashes and using that information to make new planes safer, made a presentation to Boeing's managers and certain executives to add various safety upgrades to the 737 MAX. Determined to keep costs down for airline customers, those managers and executives blocked significant safety improvements during the 737 MAX's development.

195. Specifically, Ewbank stated that Boeing managers twice rejected adding a new safety system on the basis of "cost and potential (pilot) training impact". When his group raised these safety features a third time in a meeting with the 737 MAX chief project engineer, Michael Teal, he cited the same objections as he killed the proposal. This proposal would have addressed certain safety issues by detecting a false angle-of-attack signal that was critical to MCAS's

operation and potentially stopping it from activating and repeatedly pushing down the nose of each jet.

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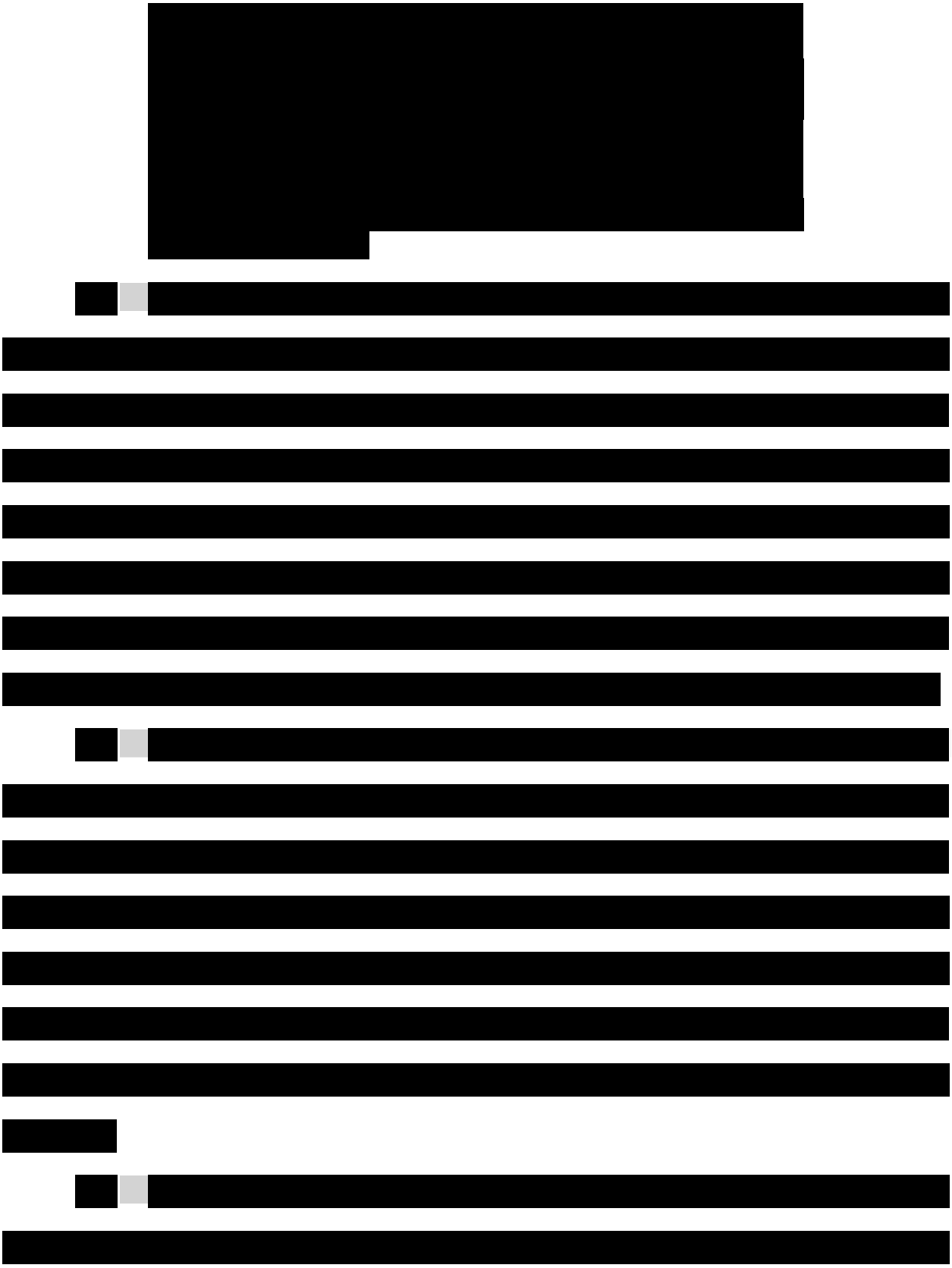
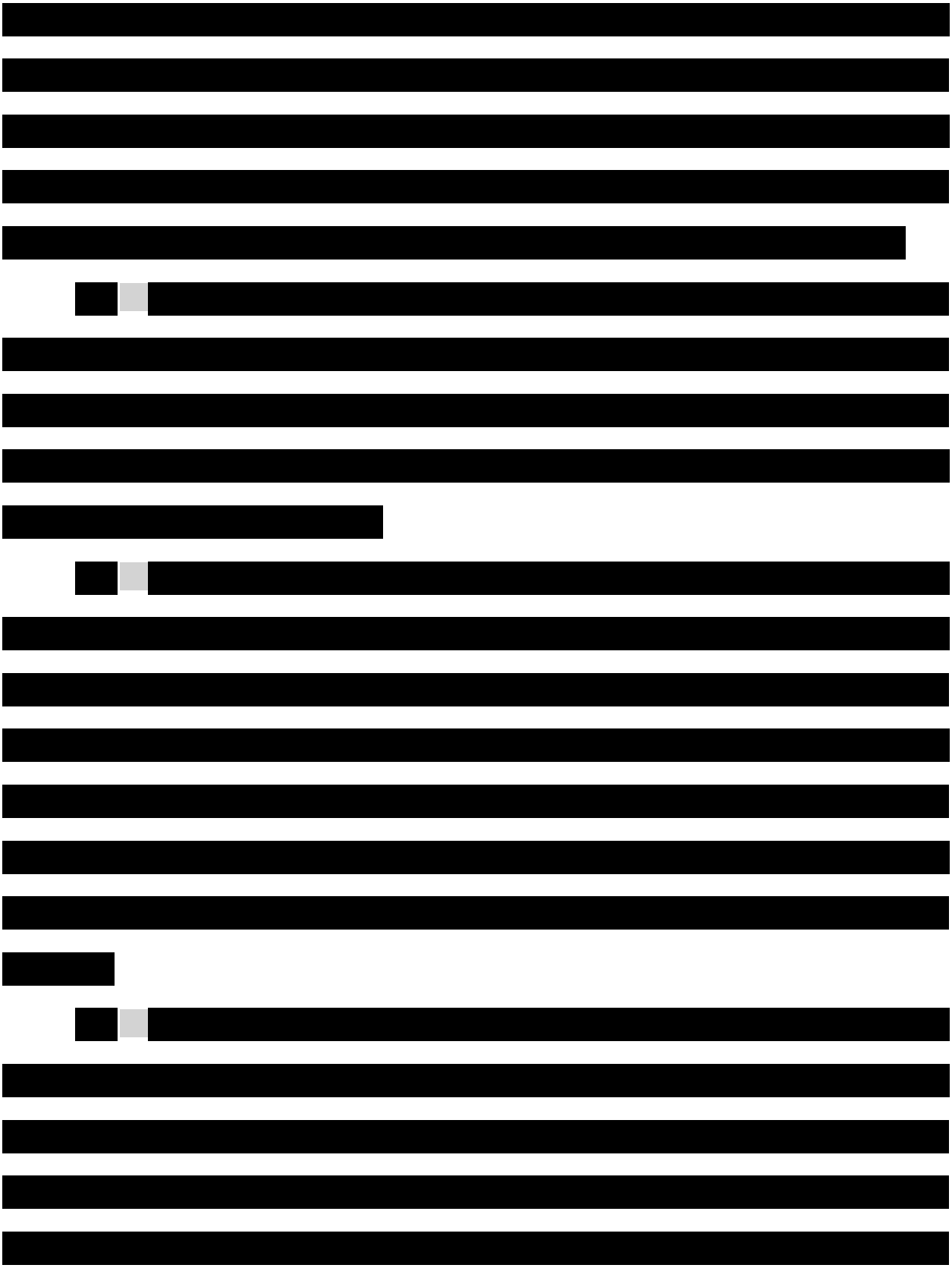
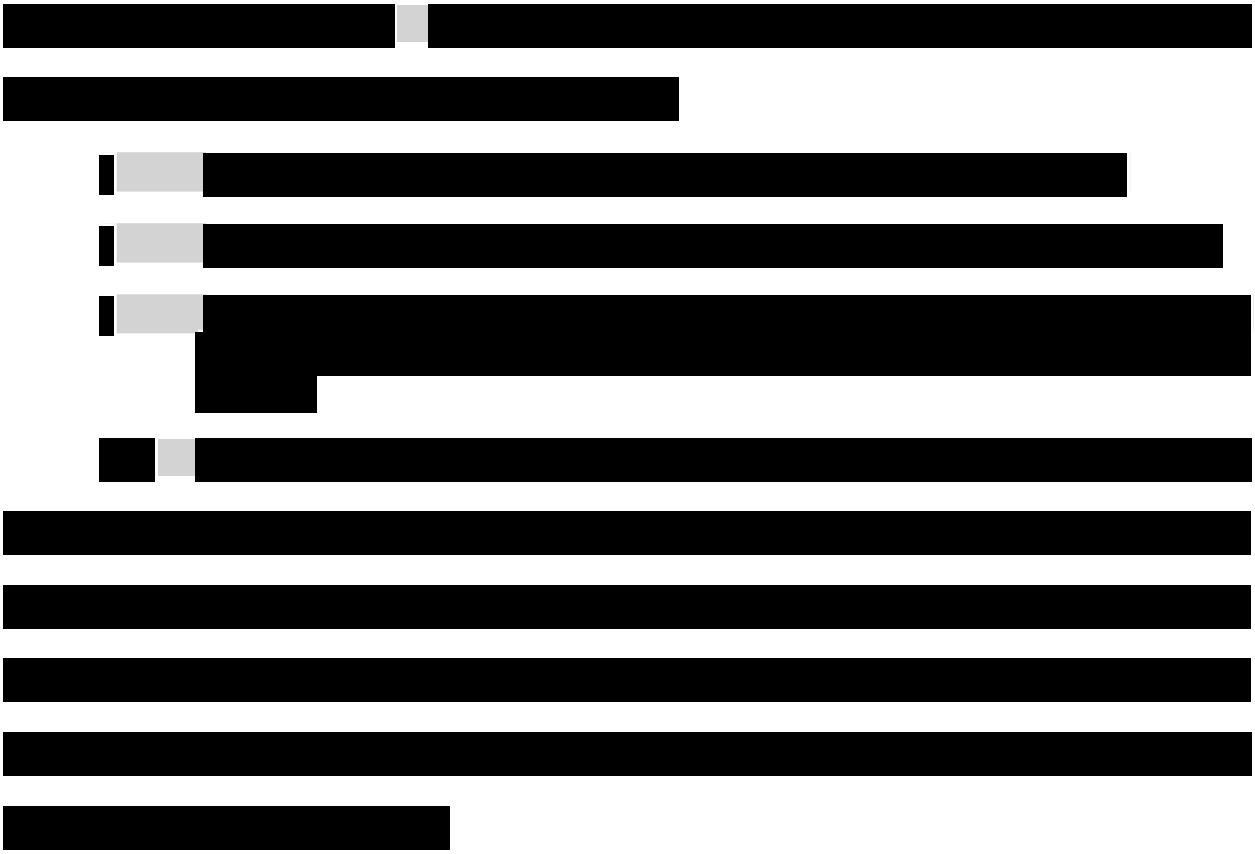
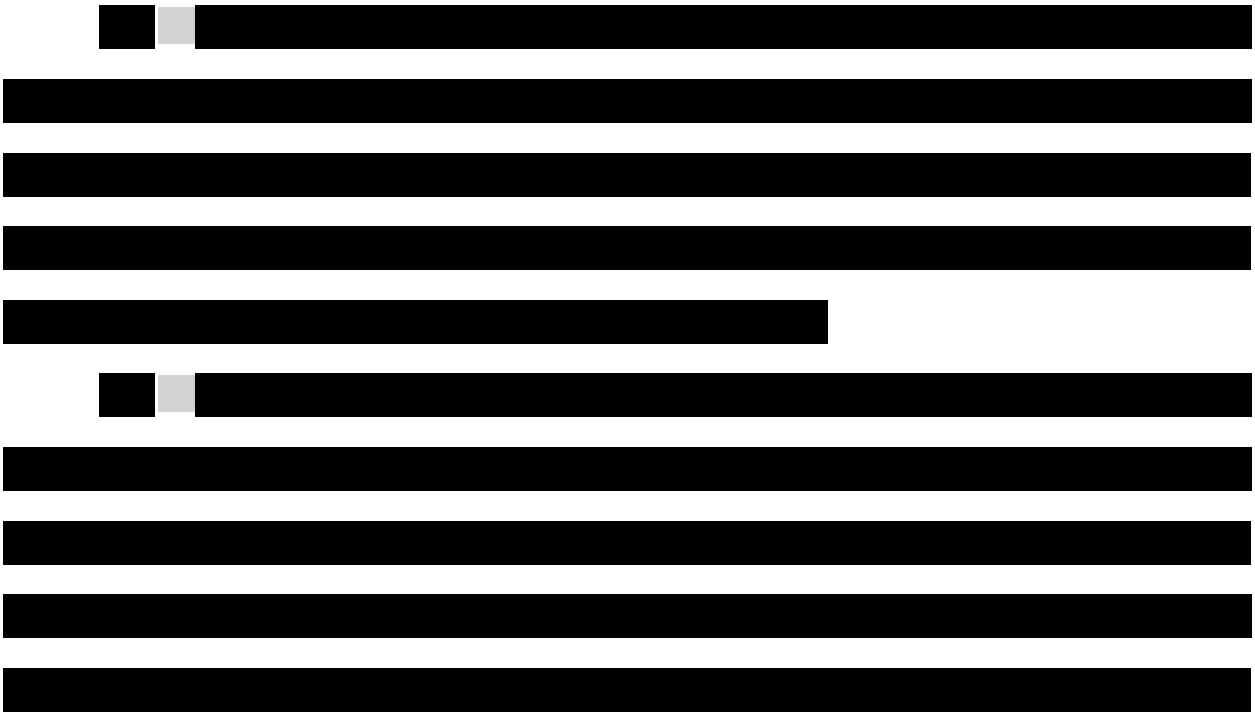
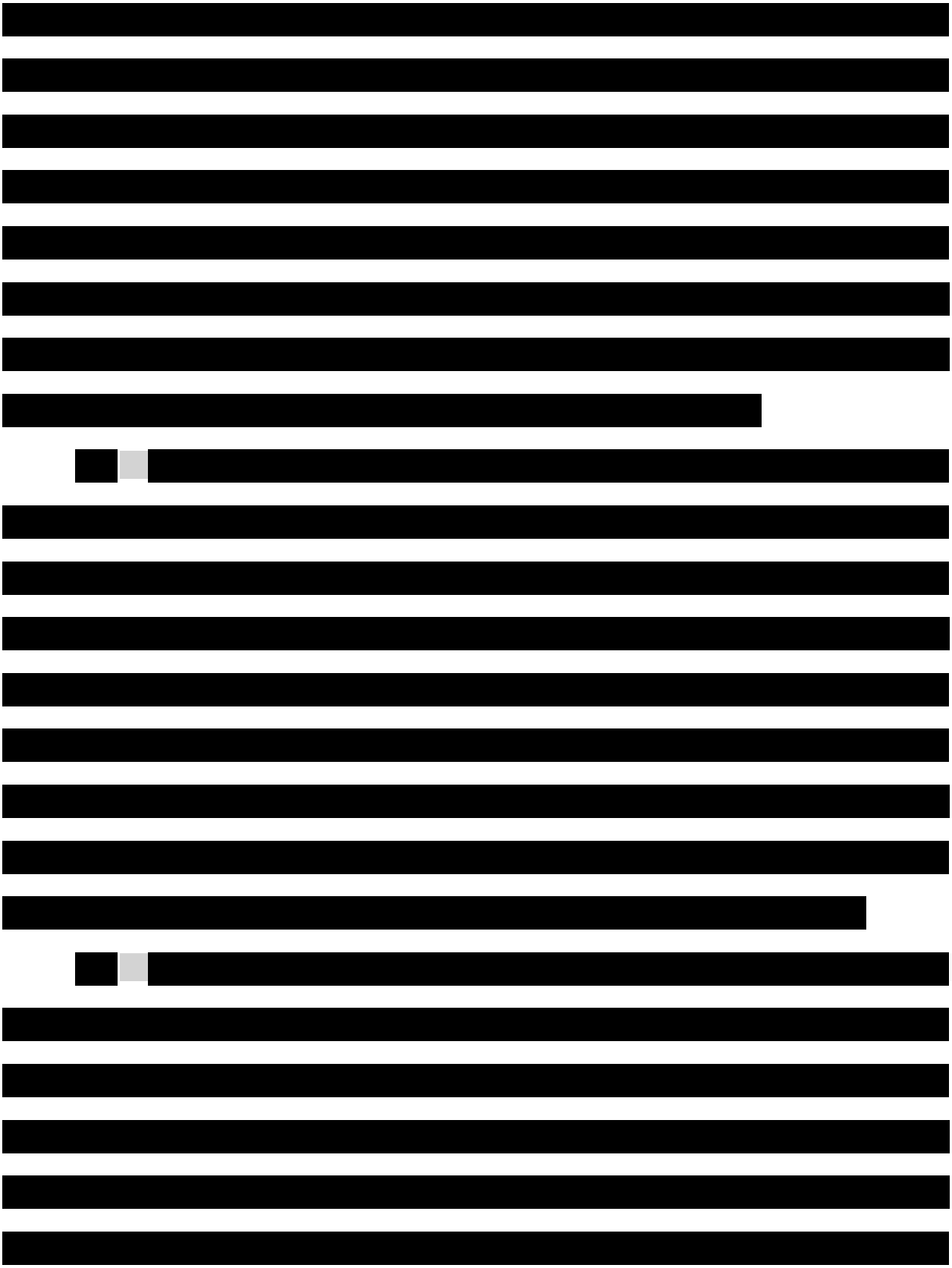






210. On October 3, 2014, Boeing announced an unprecedented production ramp-up of 737s, including the new MAX, at its Renton plant.





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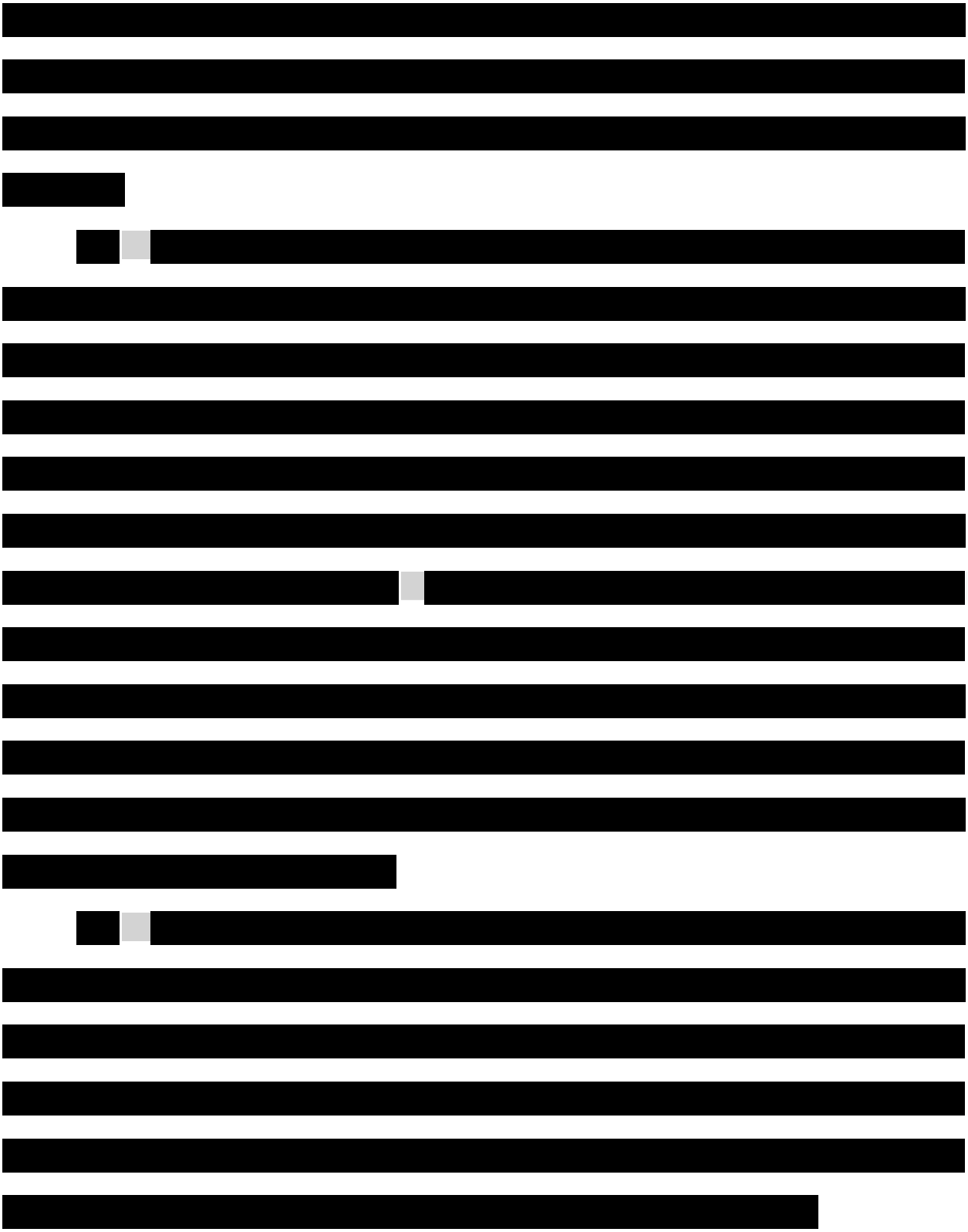
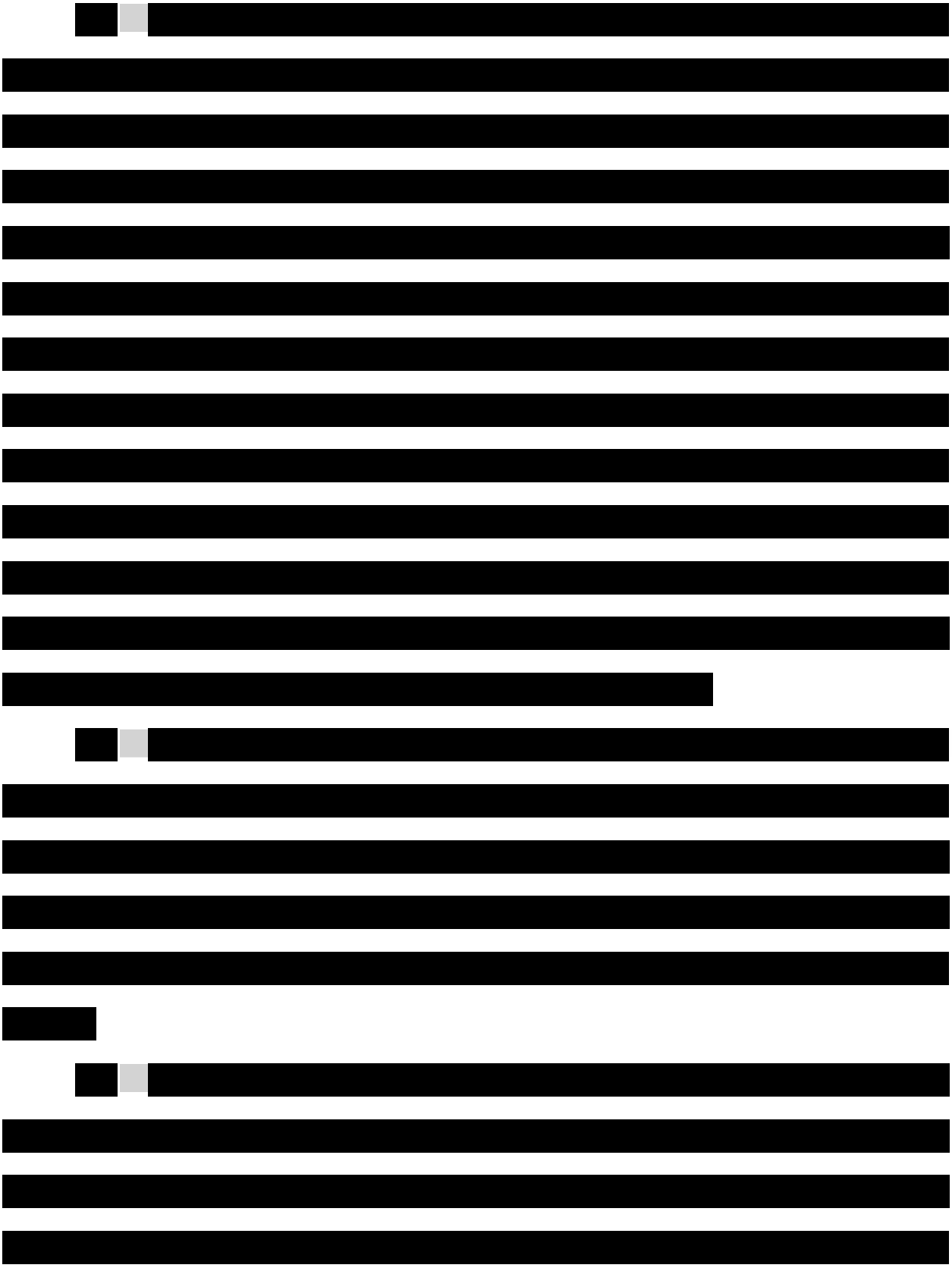
XIII. Despite A Specific Warning from the Inspector General and a Comprehensive Settlement with the FAA, the Board and Boeing's Senior Executives Continued to Ignore their Oversight Duties Related to the 737 MAX's Compliance with FAA Regulations in 2015

219. As 2015 began, Boeing's BCA was facing multiple FAA investigations concerning its various products, including its 737 line. [redacted]

[redacted]





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230. On October 15, 2015, with the first 737 MAX 8 under construction, the DOT's Inspector General wrote in a report, the "FAA lacks an effective staffing model and risk-based oversight process for Organization Designation Authorization", finding that those designated to sign off on safety issues were often doing checks "not related to high-risk issues – *e.g.*, issues that could directly impact the potential loss of critical systems or other safety concerns." Moreover, the Inspector General specifically singled out the FAA's oversight of the Seattle-area FAA office that supervised Boeing's certifications. For example, the report stated that, the "FAA does not know whether it has adequate staffing levels needed to meet workload requirements." In responding to this report, the FAA conceded that it agreed with much of the criticism, but also defended the outsourcing of certification, writing to the Inspector General that the "ever expanding magnitude of the U.S. aerospace industry requires that the agency delegate an increasing number of oversight functions" to the companies it regulates. Notably, [redacted]

[redacted]

235. On December 8, 2015, Boeing rolled out its first 737 MAX in Renton.

[redacted]

[redacted]

240. On December 17, 2015, a Boeing employee from its Aero-Stability & Control Group sent an email questioning, "Are we vulnerable to single AOA sensor failures with the MCAS implementation or is there some checking that occurs?" At this time, no Boeing employee took any actions to address the concerns raised in this email.

241. On December 18, 2015, Boeing's Vice President and Assistant General Counsel of BCA, Brett Gerry[7] signed a settlement agreement with the FAA to resolve thirteen EIRs (the "FAA Settlement Agreement"). The FAA Settlement Agreement required Boeing to make an immediate payment to the U.S. Treasury of $12 million and deferred another $24 million in potential fines.

242. The FAA Settlement Agreement stated that BCA's design of its 737, 747, 757, 767, 777 and 787 models were the subjects of the thirteen EIRs, which the settlement resolved. Specifically, the FAA Settlement Agreement explained:

> WHEREAS, subpart G of 14 CFR part 21 requires production certificate holders to maintain and implement a quality assurance program that has been approved by the FAA.
>
> WHEREAS, to determine whether BCA is complying with its quality assurance program, the FAA conducts surveillance of BCA's production processes.
>
> WHEREAS, following such surveillance, the FAA compiled evidence into investigations, and opened 13 EIRs, which are pending cases and the subject of this Agreement.
>
> ***WHEREAS, the FAA, upon reviewing the evidence contained in the pending cases and applying the agency's compliance and enforcement policies, determined that civil penalty action against BCA is appropriate.***

[7] Notably, Gerry replaced Luttig as Boeing's General Counsel in May 2019. In 2008, Luttig hired Gerry from the DOJ.

> ***WHEREAS, the FAA has identified most of the pending cases as involving apparent failures of corrective action.***
>
> WHEREAS, BCA recognizes that regulatory compliance is critical to the quality, safety, and prompt delivery of its products. BCA therefore has committed and further committing with this Agreement, to continue to improve its processes and practices for ensuring compliance with regulatory commitments…
>
> ***WHEREAS, The FAA would not have agreed to the monetary amounts set forth in this Agreement absent BCA's current and planned remedial efforts***… (Emphasis added.)

243. The FAA Settlement Agreement further stated that it was to "assist and strengthen BCA's compliance systems by instituting processes and practices to identify and eliminate conditions that may lead to noncompliance, whether the root cause of such condition be individual or systemic."

244. The FAA Settlement Agreement covered twelve (12) specified regulatory compliance areas at Boeing that would have specific metrics and requirements imposed upon them. Those areas included "Safety Management," "Regulatory Compliance Plan," "Organization Designation Authorization [ODA] and Internal Auditing System for Regulatory Compliance," "Quality of Submissions," "Timeliness of Submissions," "Sustained Effectiveness of Implemented Letter of Investigation [LOI] Corrective Actions," and "Compliance Reporting."

245. The FAA Settlement Agreement was effective as of January 1, 2016 and outlined various deadlines for Boeing to meet with respect to its internal controls and compliance efforts over the course of the next five years. Notably, BCA was required to adopt a new comprehensive "Regulatory Compliance Plan" or "RCP", which required "no less than annual, communications from the BCA Chief Executive Officer [CEO] to all employees regarding expectations of regulatory performance, and other periodic communications of regulatory issues important to the company." BCA was further required to provide "Annual Comprehensive Reports on BCA's regulatory compliance and performance" to BCA's CEO and the FAA by January 15 of 2017,

2018, 2019, and 2020. BCA is also required to submit a "Final Compliance Report" by October 15, 2020, which it can also submit in lieu of its 2020 Annual Comprehensive Report.

246. On December 22, 2015, the FAA issued a press release, "Boeing Agrees to Pay $12 Million and Enhance its Compliance Systems to Settle Enforcement Cases." This press release stated that "Under the agreement, BCA pledged to implement and improve several certification processes to further enhance the airworthiness and continued compliance of all BCA products." It further quoted FAA Administrator Michael Huerta as stating, "Compliance requires all certificate holders to develop and implement internal controls that ensure they're operating according to the highest standards. Boeing has agreed to implement improvements in its design, planning, production and maintenance planning processes…." The press release explained that the FAA Settlement Agreement "settle[d] two initiated cases and 11 other matters that were opened during the last several years."

247. The FAA's press release further explained how the FAA Settlement Agreement was "designed to enhance BCA's early discovery and self-disclosure of potential regulatory compliance problems, as well as the timely development and implementation of effective corrective actions."

248. Significantly, the FAA's press release stated that "BCA's obligations [under the FAA Settlement Agreement] include: Improved Management Oversight and Accountability", which required BCA to, among other things:

- Use the FAA's safety analysis modeling, in addition to BCA's proprietary risk modeling, to assess all identified compliance issues.
- Comply with a new Regulatory Compliance Plan, which requires BCA to assign each compliance matter to a manager-level employee for resolution and accountability.
- Require review of the regulatory compliance performance of BCA managers.

249. BCA's obligations further included issues related to "Internal Auditing", where BCA was required to:

- Improve its internal audit processes, audit teams will be required to report directly to BCA's Vice President of Quality, and conduct audits across all processes (Engineering, Supplier Management, Production, Modification, Repair and Customer Support) at all sites.
- Assess the effectiveness of its internal audit systems.
- Appoint audit team members with appropriate technical expertise to assess the extent of regulatory compliance.
- Conduct an evaluation of regulatory compliance procedures among different facilities and programs.
- Implement risk-based criteria for selecting the subjects of audits.

250. The FAA Settlement Agreement also contained obligations related to BCA's "Quality and Timeliness Regulatory Submissions", where BCA was required to "[m]eet progressively more stringent performance metrics in the quality and timeliness of its written submissions to the FAA." Moreover, the FAA Settlement Agreement required BCA to "[c]onduct mandatory training of all engineering employees on their regulatory compliance obligations", and "[d]uring each year of the agreement, conduct at least three internal audits of each product line."

251. Notably, due to the lack of systems to monitor issues related to Boeing's compliance with FAA regulations, [redacted].

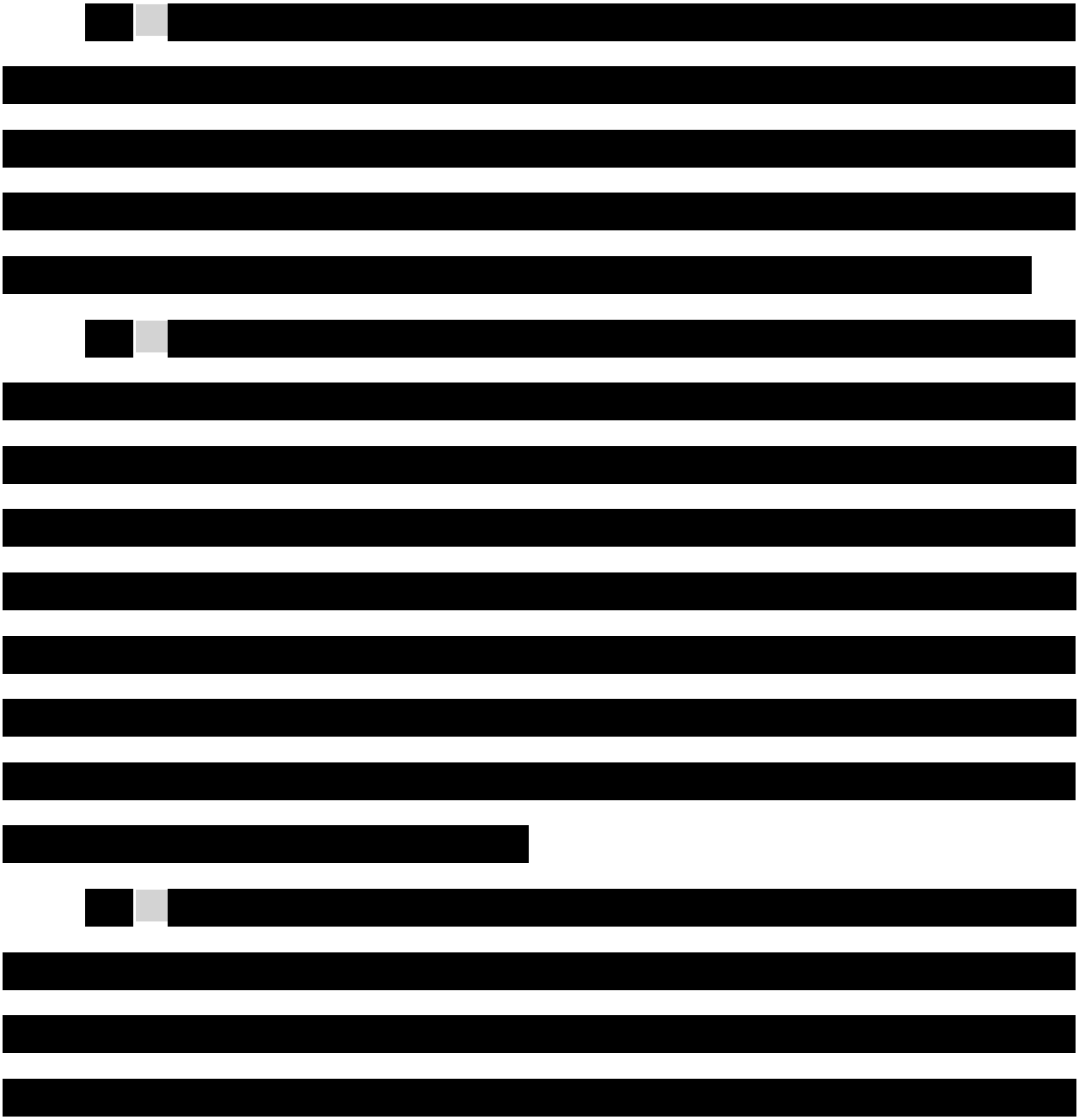
252. The Board, however, knew or should have known about the FAA Settlement Agreement because it was widely reported by various news outlets. For example, on December 22, 2015, the *Wall Street Journal* published an article, "Boeing Accepts FAA Penalties Over Quality Control, Plane maker agrees to pay $12 million in sweeping, first-of-its kind settlement."

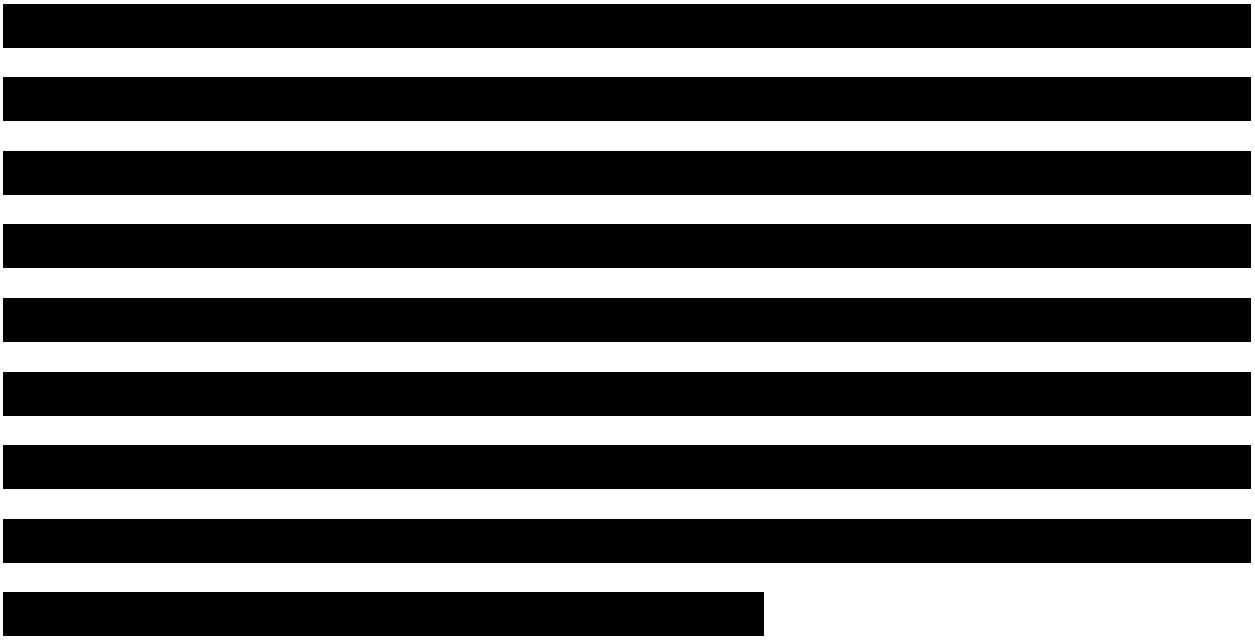
Specifically, this article stated, "The agreement is unusual because it raises questions about how Boeing's commercial-airplane unit has implemented some of its core quality, safety and compliance programs. Some of the alleged lapses stretch back several years—and span various offices and product lines. The broad nature of Tuesday's move indicates FAA enforcement officials had alleged or suspected systemic shortcomings." The article also noted how the FAA "typically makes public copies of settlement agreements with airlines. An FAA spokeswoman said that the Boeing document wasn't released because it contains extensive proprietary information that needs to be redacted."

253. Indeed, Boeing concealed and continues to conceal the details of the problems that led to the FAA Settlement Agreement. In this regard, in 2017, the *Seattle Times* uncovered more of these problems' details by making a Freedom of Information Act request. It then obtained documents that showed the FAA's cases against Boeing "revealed a disquieting pattern of falsified paperwork and ignored procedures that created quality issues on the production lines of Boeing and its suppliers." In fact, the "FAA found that Boeing repeatedly failed to follow protocols designed to guard against production errors that put safety at risk. Some tasks were signed off as completed and checked when they were not. Other work was done without authorization. The result was multiple errors in manufacturing, some of which passed right through the system to airplanes in service. Boeing also failed to take corrective action in a timely way after issues were discovered." In response to the *Seattle Times*, Boeing defended its purported commitment to quality and safety, contending that "None of these matters involved immediate safety of flight."

XIV. By 2016, the Board and Boeing's Senior Executives Pushed Employees to Maximize Profits by Increasing Production Rates While These Fiduciaries Failed to Exercise their Oversight Duties Related to the FAA's Safety Regulations

254. On January 20, 2016, the Lufthansa Group, Airbus' largest airline customer and operator took delivery of the first A320neo. Airbus touted how its model was the world's best-selling and most fuel-efficient single aisle aircraft. Airbus highlighted how it had received almost 4,500 orders from nearly 80 customers since the launch of the A320neo in 2010, representing 60% of the market.





258. In March 2016, when Boeing was about a third of the way through flight testing of the 737 MAX, it made substantial changes to MCAS. In this regard, the flight-test pilots had found another problem – the same lack of smooth stick forces was also occurring in certain low-speed flight conditions. To cover that issue too, the engineers decided to expand the scope and power of MCAS. Because at low speeds a control surface must be deflected more to have the same effect, Boeing's engineers increased the power of the system at low speed from 0.6 degrees of stabilizer nose-down deflection to 2.5 degrees each time it was activated. On the stabilizer, maximum nose down is about 4.7 degrees away from level flight. As a result, the new increased authority could push it to that maximum after just a couple of iterations. In addition, because there are no excessive G-forces at low speed, Boeing's engineers removed the G-force factor as a trigger, meaning that MCAS was now activated by a single angle-of-attack sensor.

259. Accordingly, MCAS as it was implemented differed substantially from what was described in the safety analysis provided to the FAA. Specifically, the failure analysis did not appear to consider the possibility that MCAS could trigger repeatedly. In other words, if the pilots

did not intervene, MCAS effectively had unlimited authority to move multiple times in 0.6 or 2.5 degrees increments depending on the 737 MAX's speed.

260. Discussions about the new MCAS design were limited during Boeing's flight testing. In fact, two former Boeing test pilots described a culture of pressure inside the Company to limit flight testing, which can delay projects at a time when orders are stacking up and cost Boeing money. Significantly, Boeing never flight-tested a scenario in which a broken angle-of-attack sensor triggered MCAS on its own, instead relying on simulator analysis. Indeed, one of the former test pilots later expressed bewilderment that the angle-of-attack failure was never explored in the air.

261. As Boeing and the FAA advanced the 737 MAX toward production, they further limited the scrutiny and testing of the MCAS design. They also agreed not to inform pilots about the MCAS in manuals, even though Boeing's safety analysis expected pilots to be the primary backstop in the event the system went haywire. Specifically, on March 30, 2016, Mark Forkner ("Forkner"), the 737 MAX's Chief Test Pilot, emailed an FAA official requesting that that MCAS be omitted from the pilot manuals and not mentioned in pilot training. In this regard, Forkner's email stated, "Are you OK with us removing all references to MCAS from the FCOM [Flight Crew Operating Manual] and training as we discussed, as it's completely transparent to the flight crew and only operated WAY outside of the normal operating envelope". The FAA official agreed with Forkner.

262. On May 11, 2016, Conner announced at Boeing's annual investor conference that the first 737 MAX was on track to deliver ahead of schedule. Specifically, Connor stated that Boeing was accelerating delivery to the first half of 2017, rather than 2017's third quarter as

scheduled. Boeing leaders contended that the accelerated delivery schedule was a testament to the progress being made by employees in the MAX test flight program and in production.

[redacted]

272. Also, in August 2016, Boeing's chief technical pilot, Forkner, sent an email to a large group at Boeing, stating that the FAA approved Level B training, noting that "this culminates more than three years of tireless and collaborative efforts across many business units."

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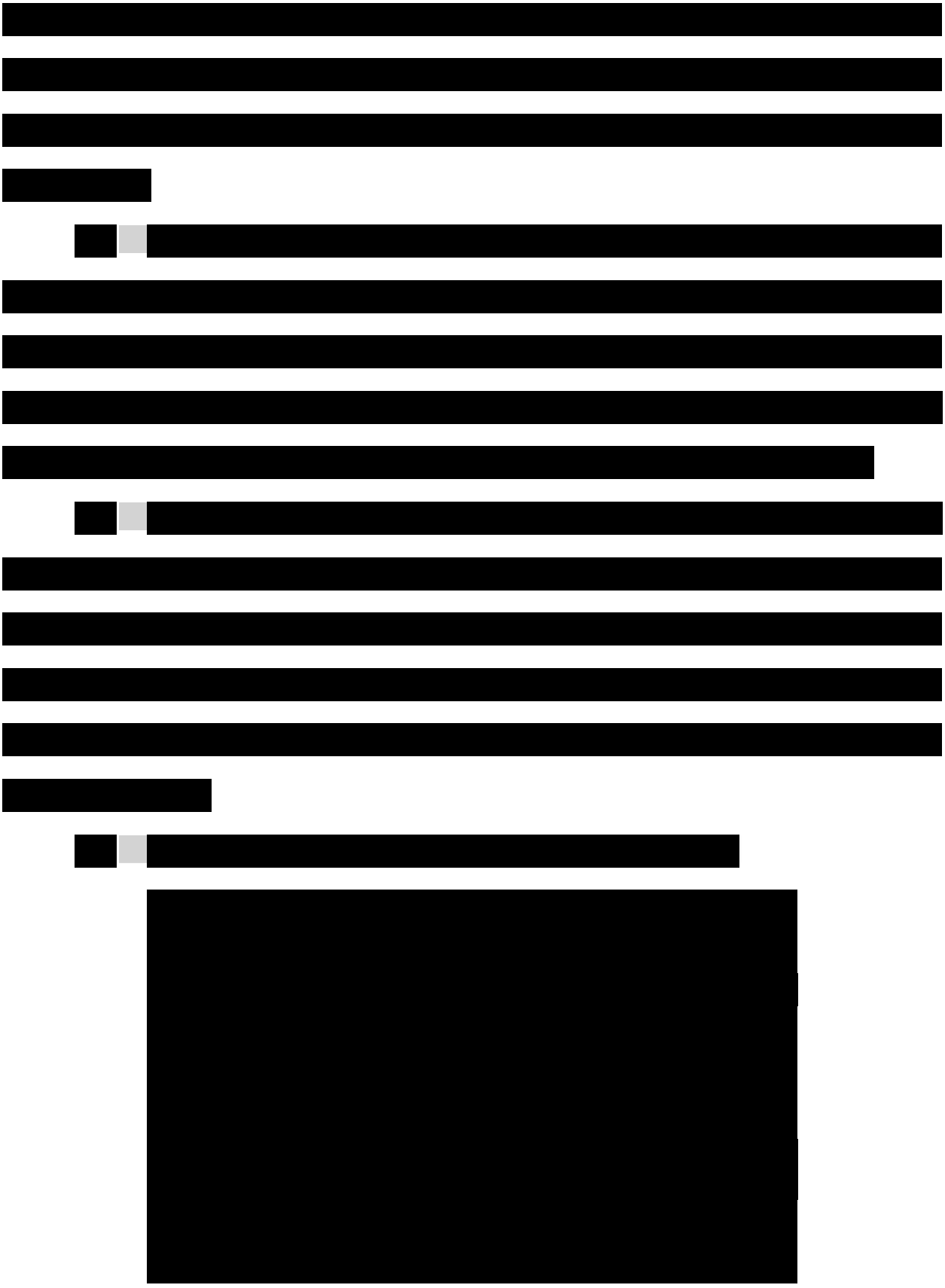
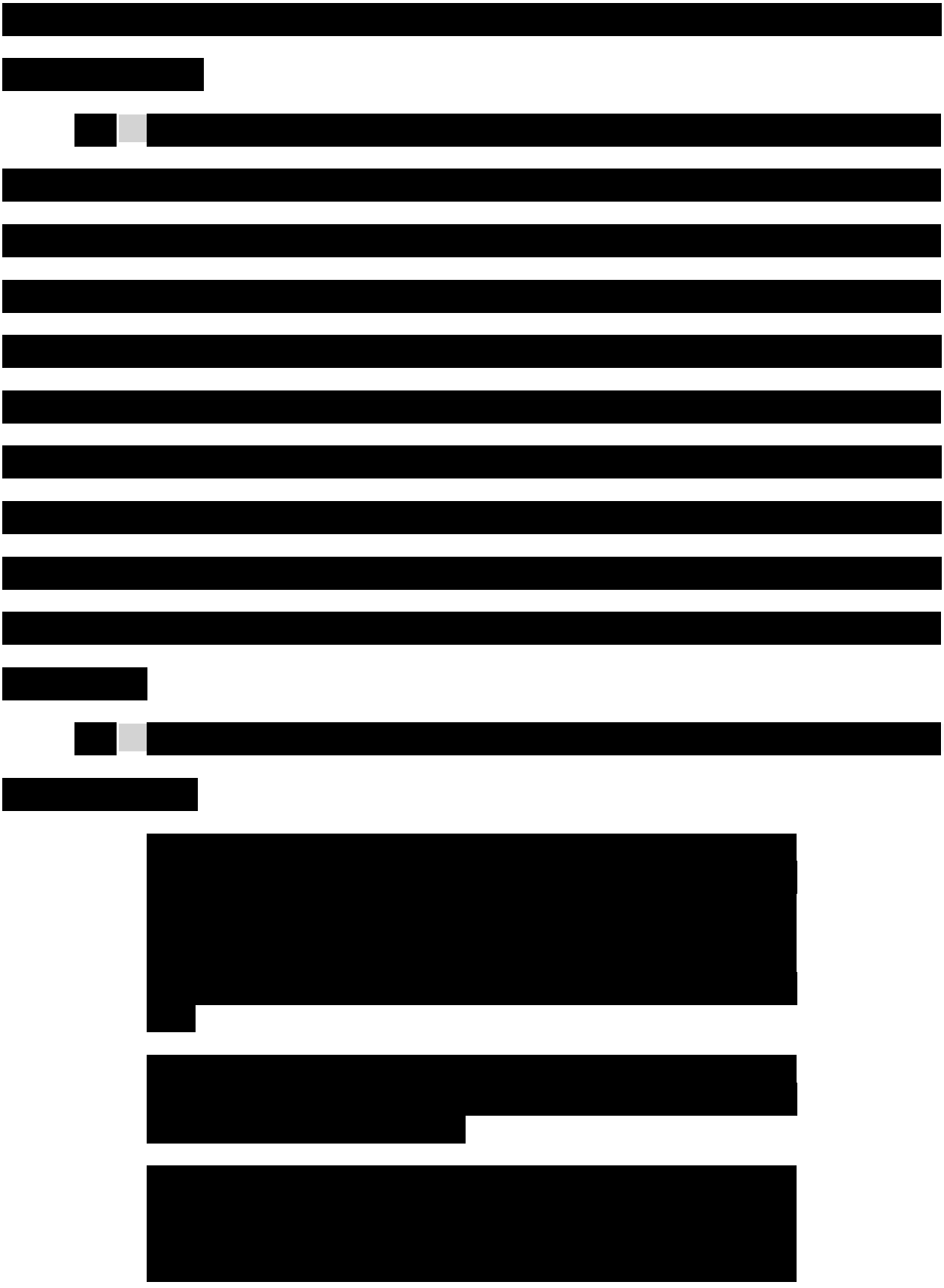




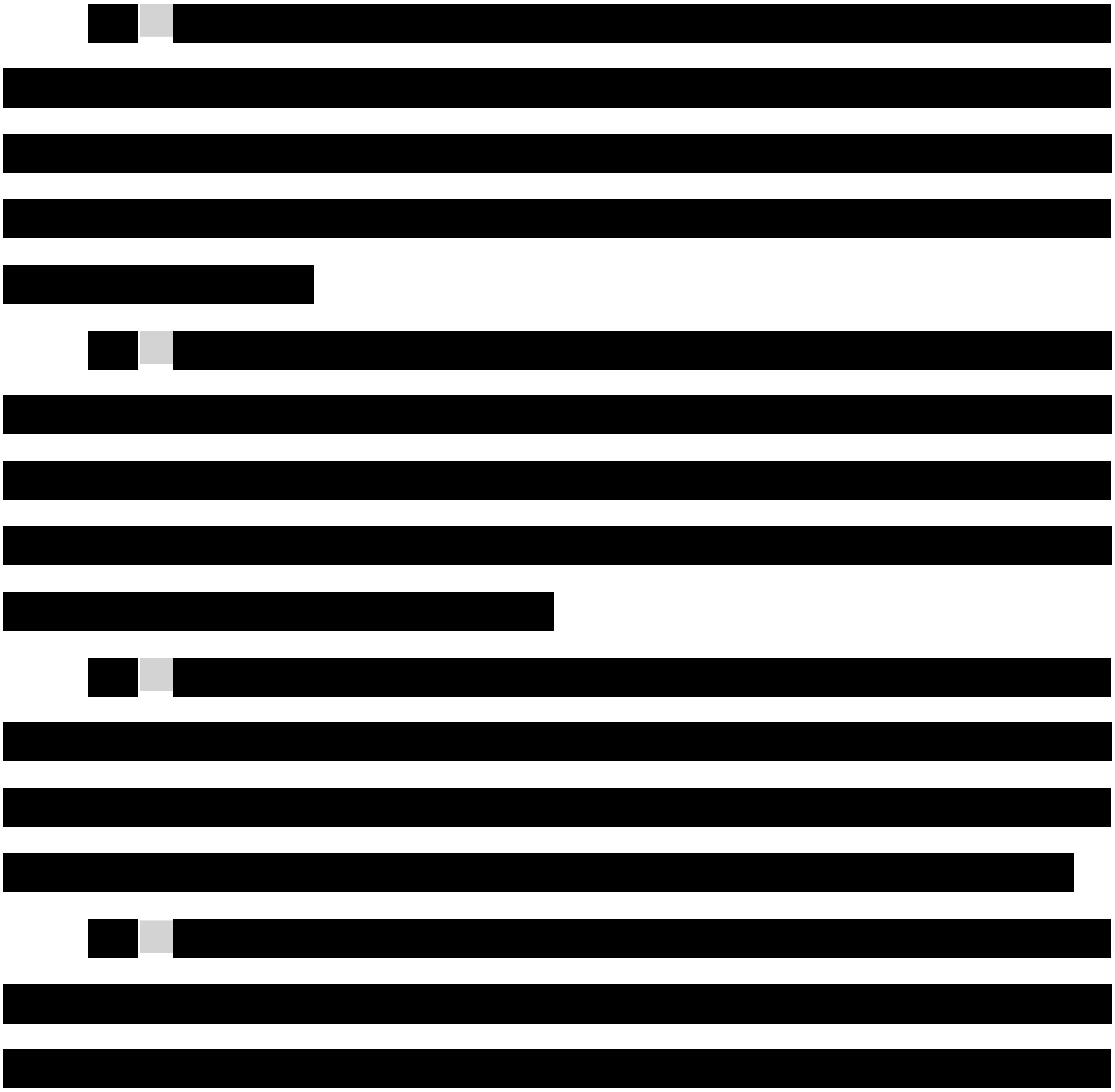
284. On November 15, 2016, the 737 MAX's Chief Test Pilot, Forkner, texted his Boeing colleague Patrik Gustavsson ("Gustavsson"), a 737 test pilot, about problems MCAS was causing him during simulator testing. Specifically, Forkner stated, "It's running rampant in the sim. I'm levelling off at like 4000ft, 230 knots and the plane is trimming itself like crazy [sic]. I'm like, WHAT? Granted, I suck at flying, but even this was egregious." Forkner further texted that it will now be necessary to update the description of the system, presumably referring to material that Boeing previously provided to the FAA, stating, "So I basically lied to the regulators (unknowingly)."

285. During his exchange with Gustavsson, Forkner further asked, "Why are we just now hearing about this?" Gustavsson responded, "The tests pilots have kept us out of the loop. It's really only [C]hristine [Walsh, an engineering test pilot on the MAX program] that is trying to work with us, but she has been too busy." Forkner then concurred about the test pilots, "They're all so damn busy, and getting pressure from the program."

286. Despite this exchange about MCAS's dangers and the seriousness of the system's existing flaws, Forkner did not inform the FAA about it. Nor did any of this information about MCAS, which was critical to the 737 MAX's certificate of airworthiness, reach the Board or

Boeing's senior executives because they had no systems in place to oversee the Company's compliance with FAA regulations.

287. Notably, in November 2016, Forkner sent an email to someone in the FAA stating that he was working to "jedi-mind trick[] regulators into accepting the training that I got accepted by FAA."



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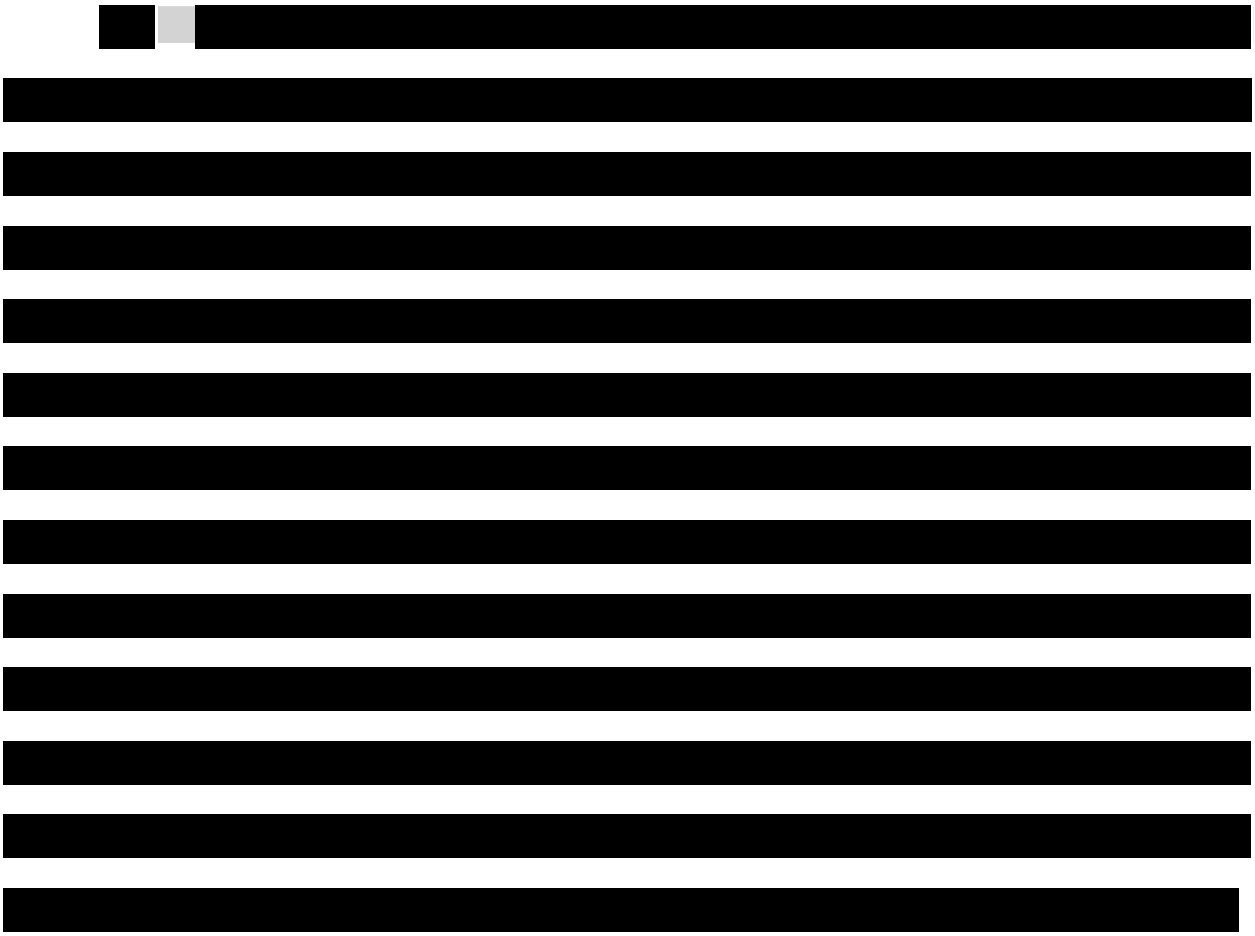
XV. In 2017, Defendants' Failures to Exercise their Oversight Duties Related to the 737 MAX's Safety and Compliance with FAA Regulations Continued

293. At the end of January 2017, BCA submitted its annual report to the FAA concerning its purported compliance with its obligations under the FAA Settlement Agreement. [redacted]

294. In mid-January 2017, Boeing's Chief Test Pilot for the 737 MAX, Forkner, suggested two changes to the "difference training" that pilots were to undergo in order to move from flying the prior 737 model to the MAX in the flight manual and related training course, including to delete the reference to MCAS. In this regard, Forkner reminded the FAA official, "We decided we weren't going to cover it" in the flight manual and training course. Moreover, ultimately, Boeing won the FAA's approval to give pilots just an hour of training through an iPad

about the differences between the MAX and the previous 737 generation. MCAS was not mentioned.



296. Instead of exercising their oversight duties as required, Boeing's senior management took advantage of the FAA's abdication of its oversight responsibilities concerning the 737 MAX's compliance with its safety regulations during the certification process to speed that product to market. In fact, Boeing's senior management even praised the FAA's hands-off approach. For example, on a 2017 conference call with Wall Street investors, Muilenburg commended the FAA's "streamlined" certification process, which had helped to bring new models, including the 737 MAX more quickly to market. Muilenburg further complimented the government's "focus on deregulation and simplifying processes." Muilenburg also stated that

"Things like FAA certification processes is one place we're seeing some solid progress. That's helping us more efficiently work through certification on some of our new model aircraft such as the MAX as it's going through tests and entering into service." This "efficiency", where Boeing failed to sufficiently perform the certification process, resulted in a benefit for Boeing's short-term profits, but not the safety of its airplanes, including the 737 MAX.

297. In fact, Boeing misused the FAA ODA system to gain certification of its 737 MAX in March 2017. The certification ostensibly signified that the airplane met a "minimum level of safety" because its design purportedly complied with federal safety requirements. But, the 737 MAX did not comply with those regulations due to safety design flaws related to MCAS. On March 9, 2017, Boeing announced that the FAA had certified the 737 MAX 8.

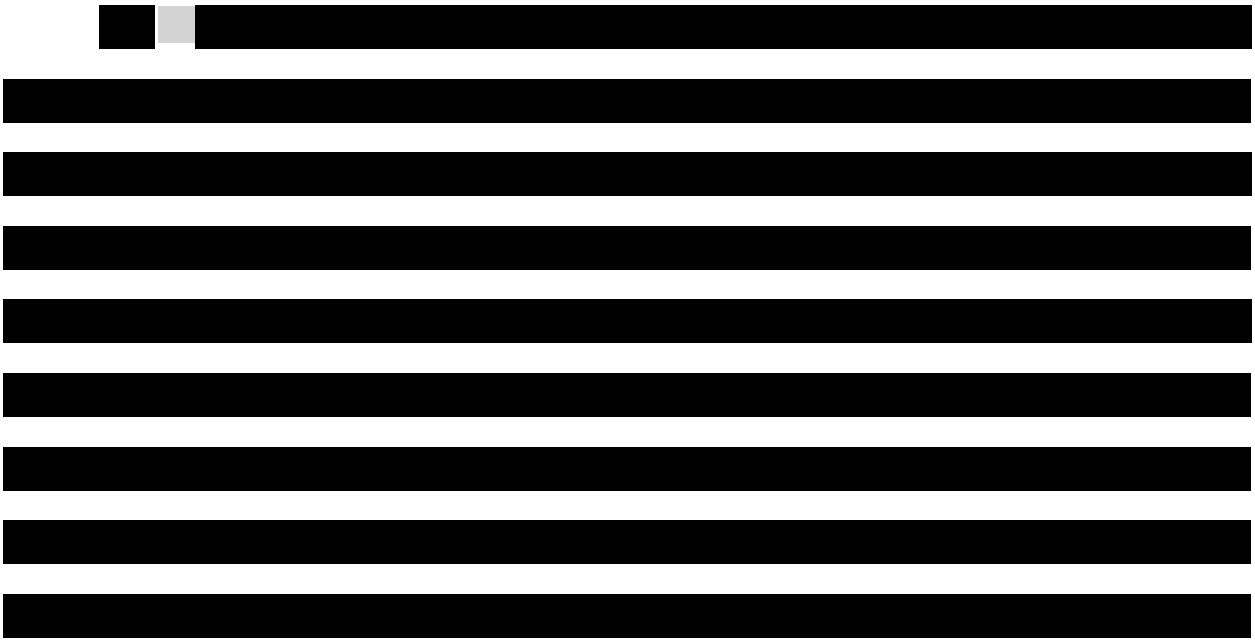
[redacted]

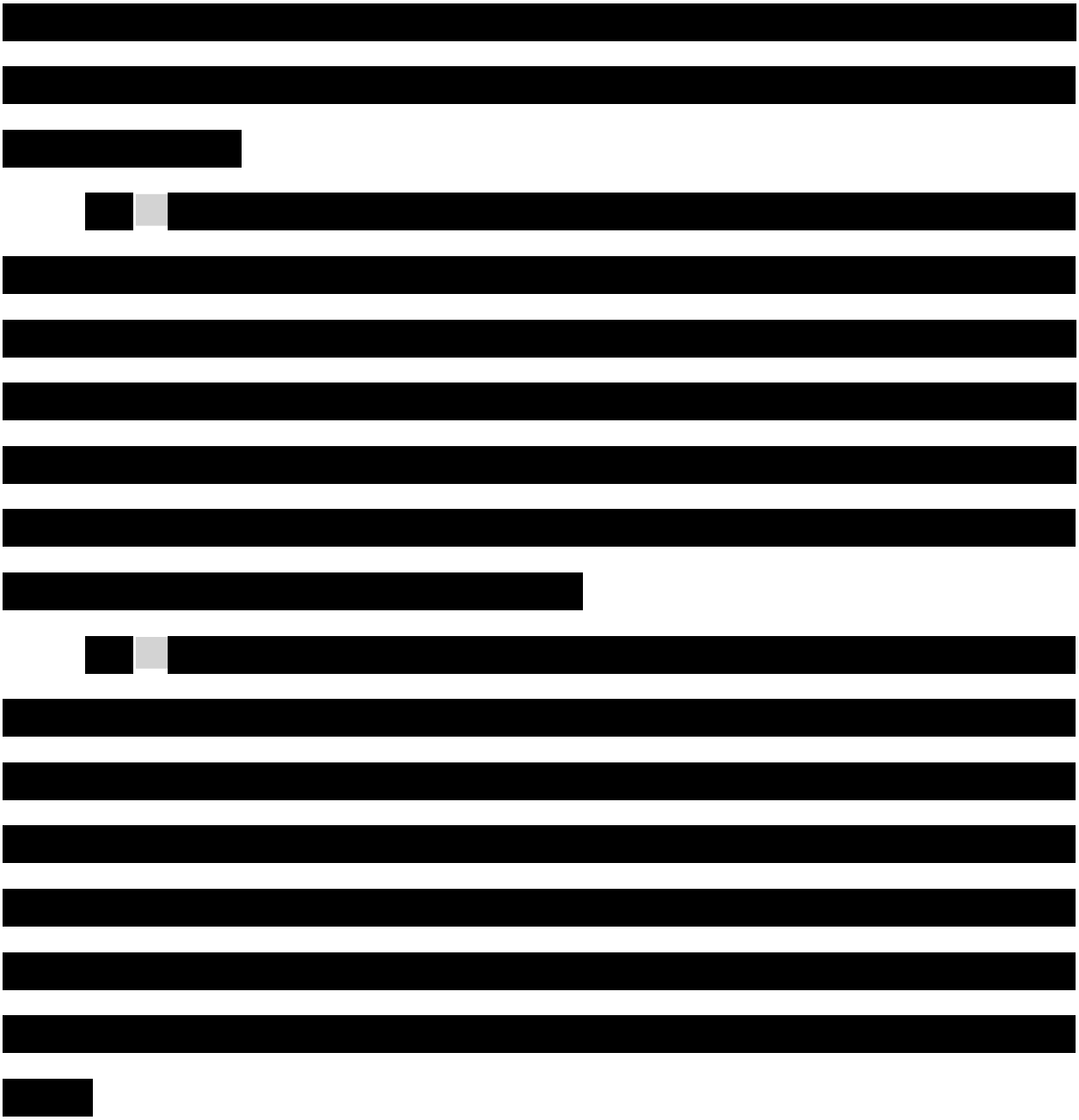
299. On May 10, 2017, the *Seattle Times* published an article, "Boeing grounds 737 MAX planes over quality issue with engine." Specifically, this article detailed how CFM International informed Boeing of "a potential manufacturing quality escape with low pressure

turbine discs (LPT)" in the engines already delivered. This issue could lead to cracking. As such, all 737 MAX airplanes with the defective engines had to be replaced. Boeing told the *Seattle Times* that, "We will work closely with CFM to understand the precise scope and root cause of the quality issue. MAX production will continue, as will production and delivery of our (current model) 737 airplanes."

300. On May 16, 2017, Boeing delivered the first 737 MAX 8 to Malaysia-based Malindo Air, a subsidiary of Lion Air.

301. As Boeing pushed to complete the 737 MAX 8, new flight simulators designed specifically for the MAX were not ready. Southwest Airlines Pilots Association's President, Jon Weaks, said, "We would have liked to have had a simulator, but it wasn't practical because it wasn't built yet." In fact, Greg Bowen, the training and standards chair at the Southwest Pilots Association, said that Boeing's senior leadership told him that "they were building the airplane and still designing it. The data to build a simulator didn't become available until about when the plane was ready to fly."





305. In August 2017, after the deliveries of the first 737 MAX aircrafts to customers, Boeing discovered that one of its suppliers, Rockwell, had delivered flight control software (*i.e.*, MCAS) that did not meet its requirements. A safety review committee at Boeing, which did not involve any of Boeing's senior executives, determined that this issue was a "low-risk" problem, and that the planes were safe to fly without any remedial measures to fix this issue. As the Board

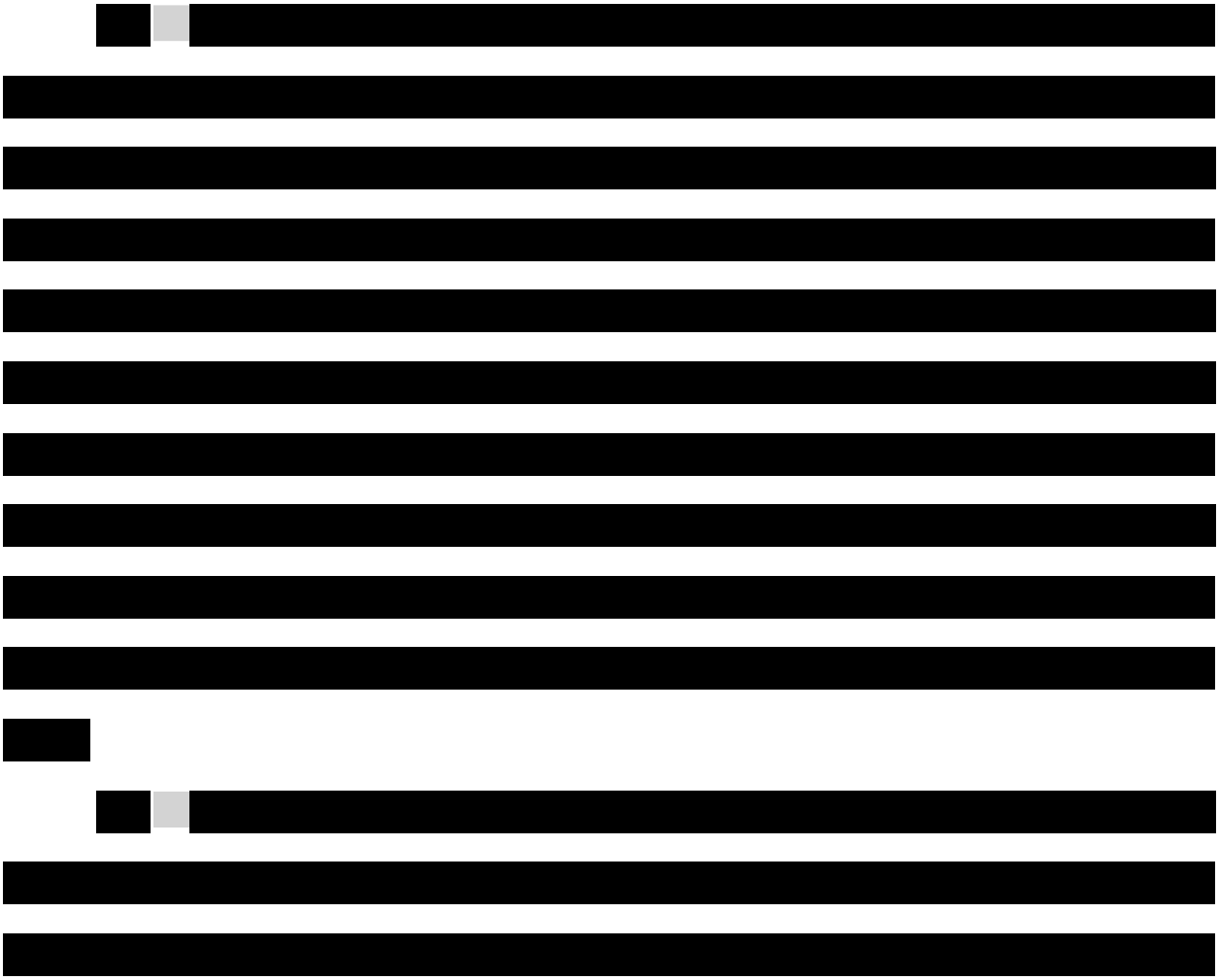
and Boeing's senior executives had no controls or reporting mechanisms in place to alert them to issues related to safety, they never received any information about this potentially fatal safety issue related to MCAS. Nor did the safety review committee provide any information to these fiduciaries about this issue.

[redacted]

308. In October 2017, Brazilian regulators flew to Miami to test out the brand new 737 MAX 8. This team scrutinized the new jetliner's flight systems and soon published a list of over 60 operational changes, from landing systems to cockpit displays, that Brazilian pilots would need

to learn. Among the new features, Brazilian regulators said pilots would need to familiarize themselves with the MCAS, a system that could nose the plane downward if it sensed a potential stall. The Brazilian regulators further mandated an interactive course for pilots to go over the changes and recommended "two legs of SLF" or supervised flight.

309. In contrast, at the same time the FAA was making its final revision to a 53-page report that would make up the backbone of 737 MAX 8 training for pilots across the U.S. and in almost every other country around the world. It did not mention MCAS, and it further suggested that pilots would find nothing surprising in the cockpit of the new 737 MAX 8 just as Boeing's managers had instructed the FAA to do despite their knowledge about the new and unsafe MCAS.



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XVI. In 2018, Defendants Pushed for 737 MAX Production Increases While Continuing to Ignore Safety and Regulatory Issues

312. At the end of January 2018, BCA submitted its annual report to the FAA concerning its purported compliance with its obligations under the FAA Settlement Agreement. [redacted]

[redacted] Instead, in 2018, the Board continued its focus on how the 737 MAX could increase Boeing's revenues. [redacted]

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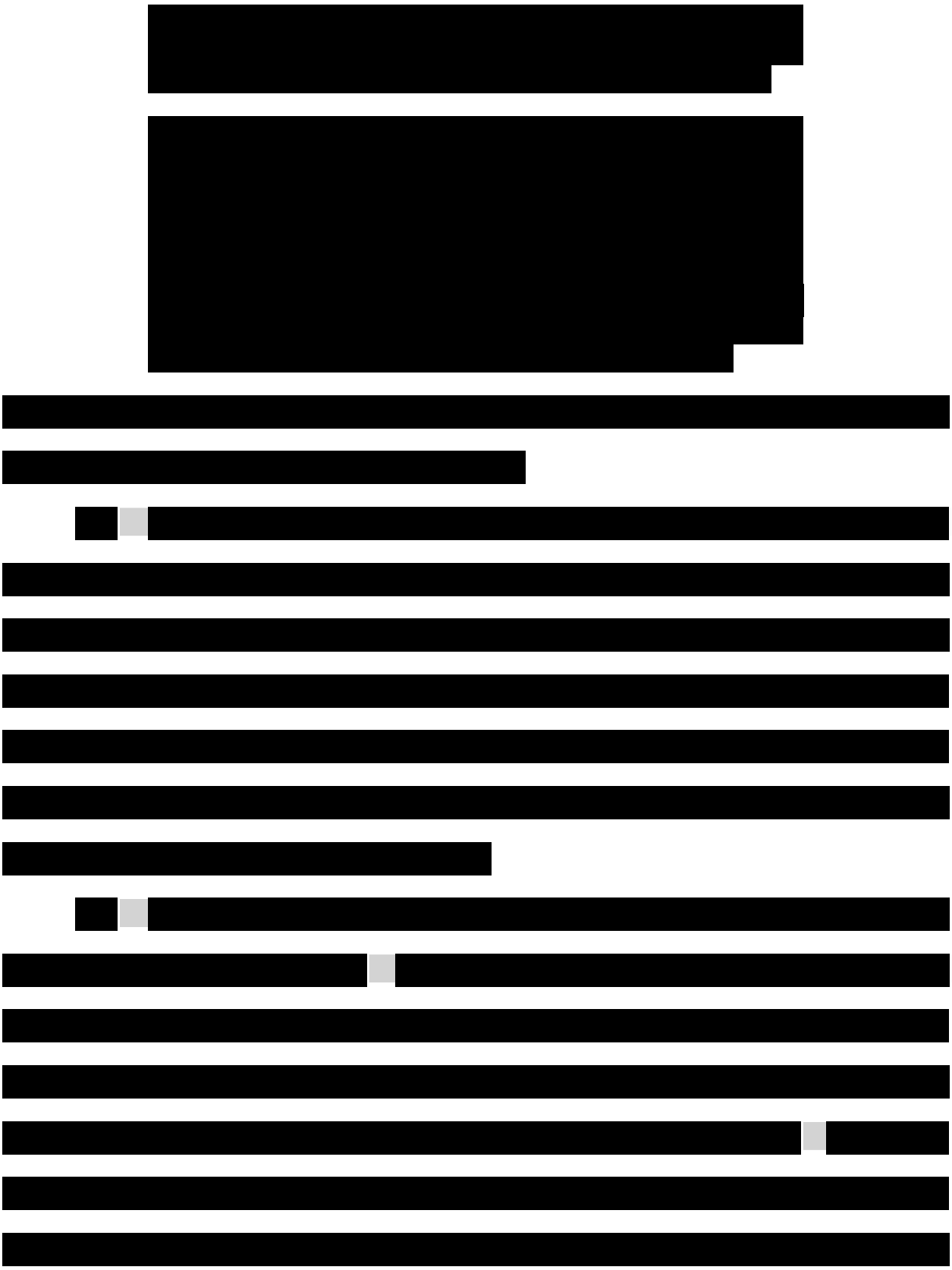

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319. As of March 2018, over 300 Boeing 737 MAX planes were in operation, and over 5,000 more had been ordered.

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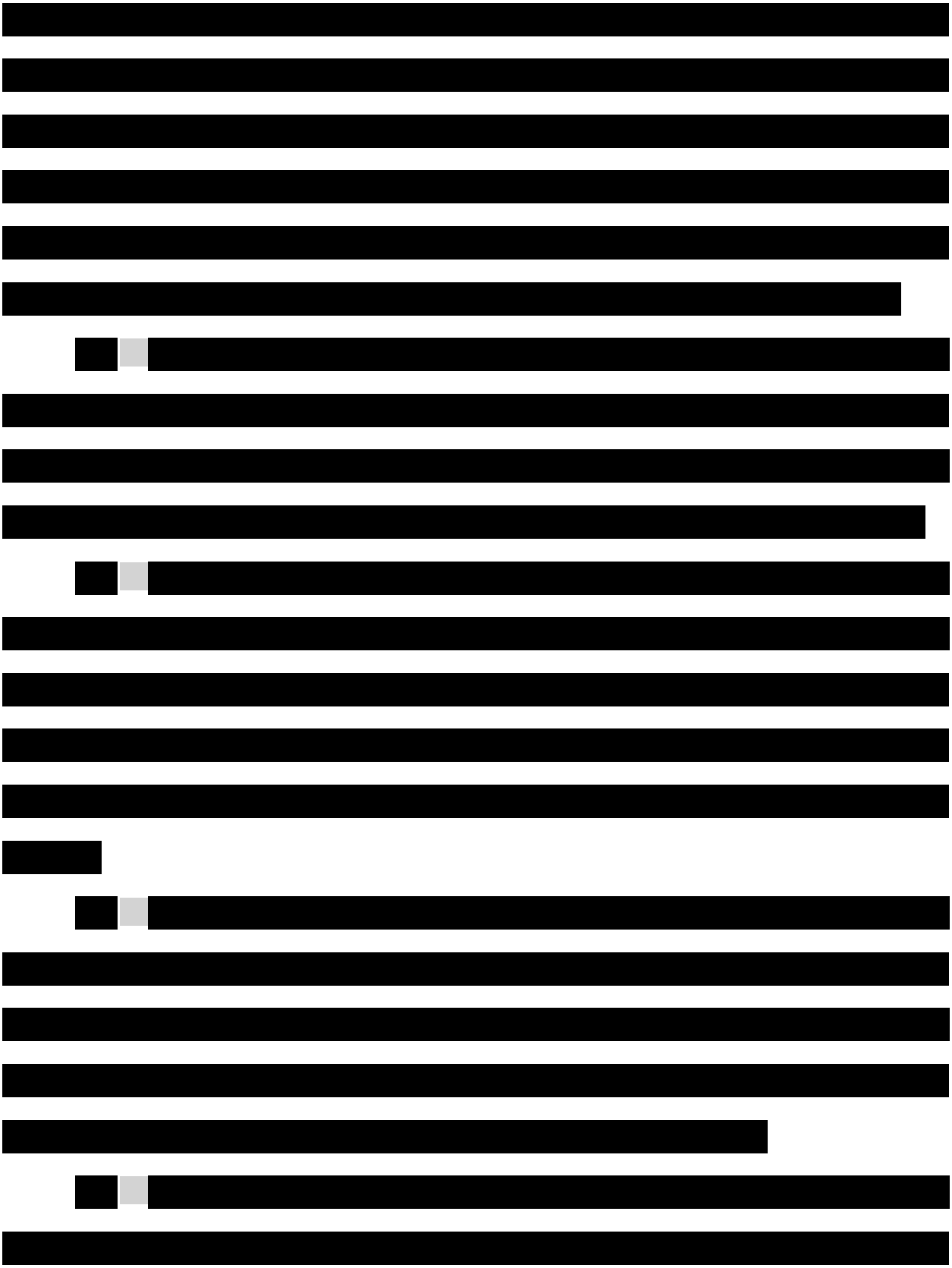
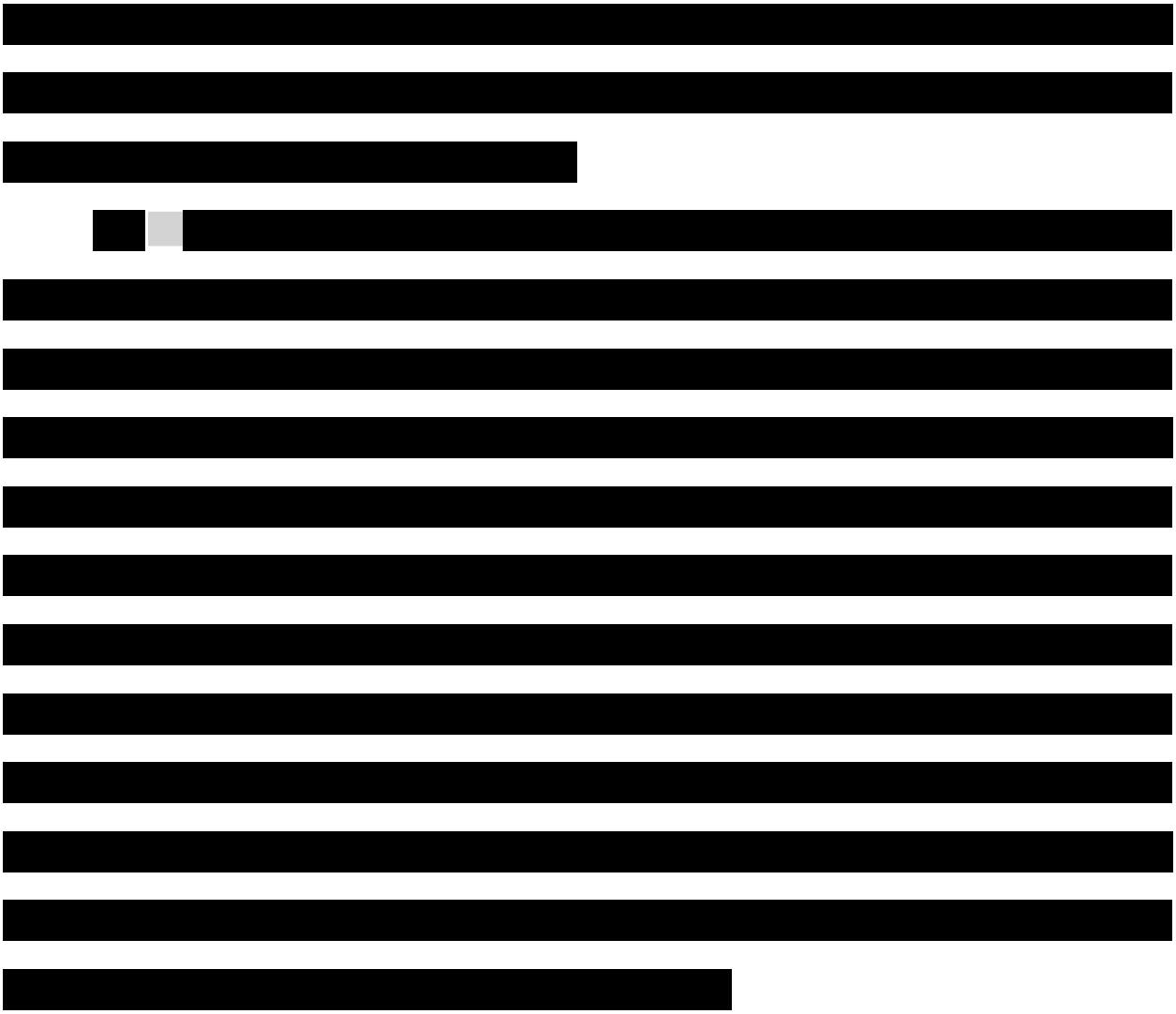




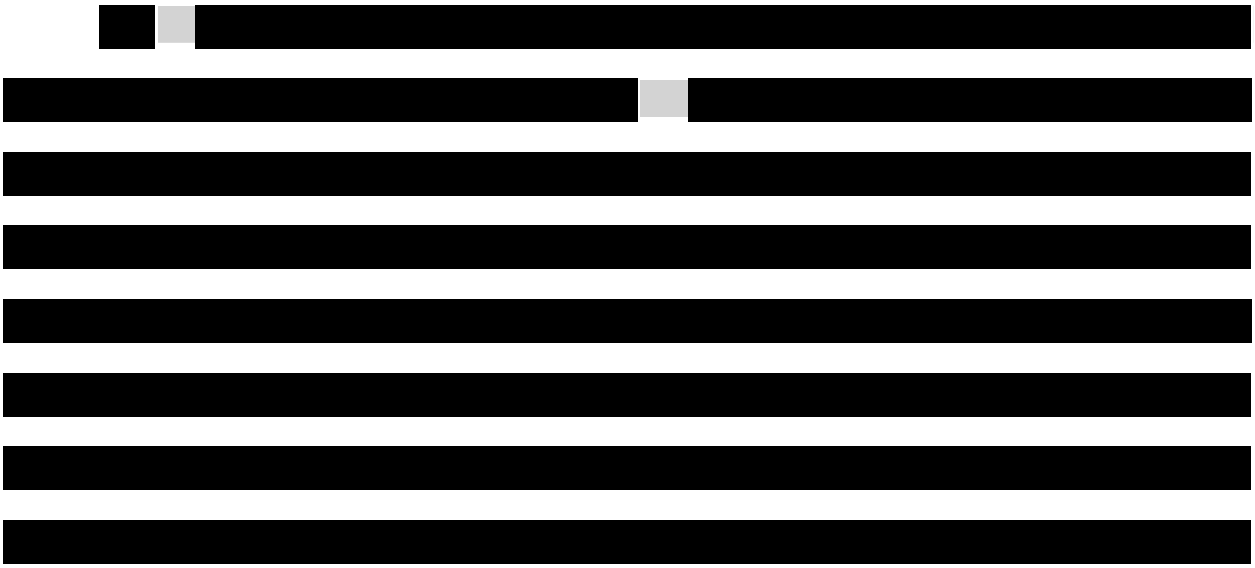
326. In June 2018, however, Boeing's engineers were documenting that if 737 MAX pilots took 10 seconds to respond once MCAS was activated, the result could be "catastrophic". In addition, Ed Pierson ("Pierson"), a senior manager of the 737 MAX final assembly team in Renton, emailed Scott Campbell, who was vice-president and general manager of the 737 program, expressing deep safety concerns over the high production rate at the time. Specifically, Pierson wrote:

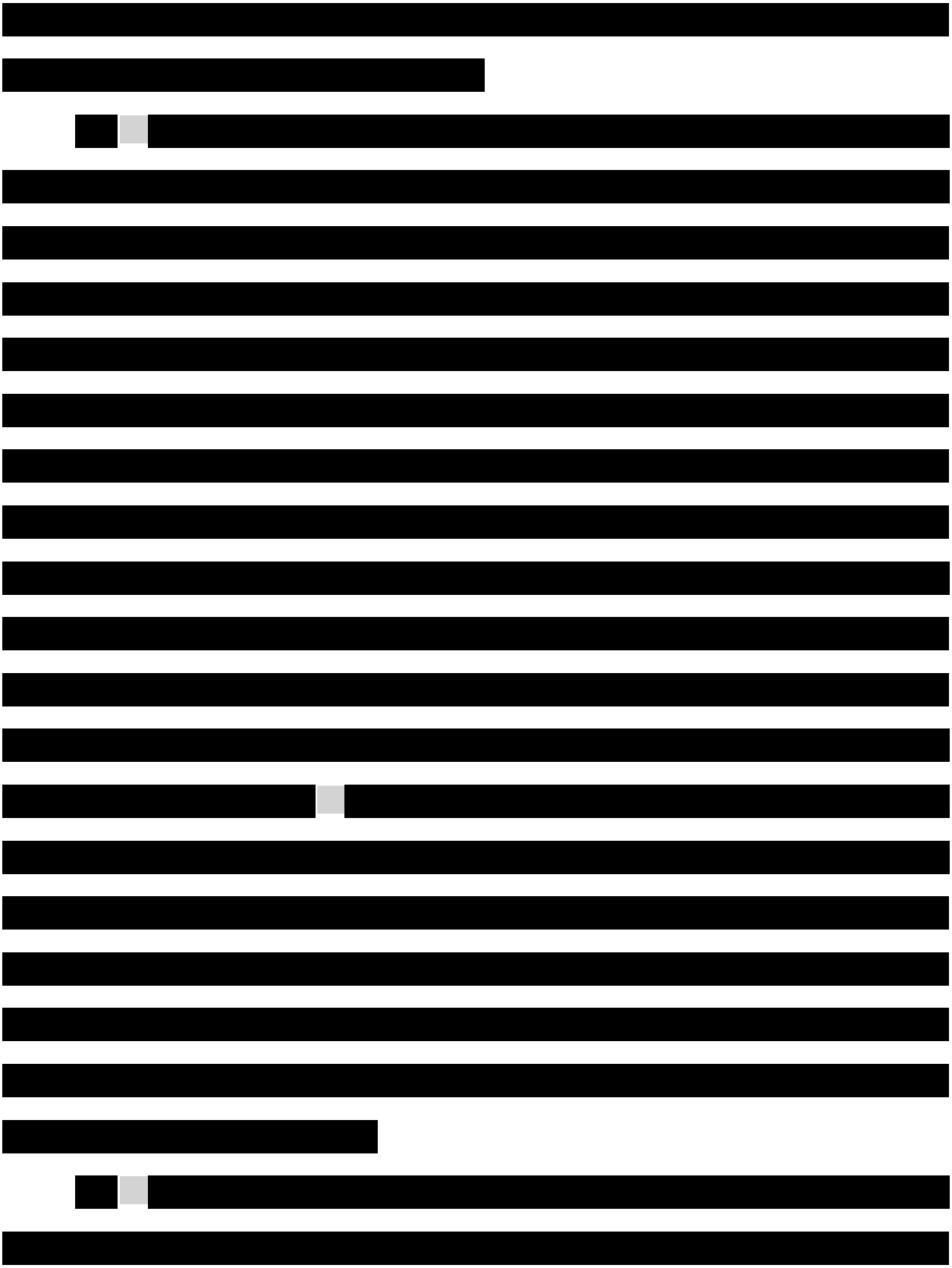
> I have some safety concerns that I need to share with you as the leader of the 737 program. Today, we have 38 unfinished airplanes located outside the factory. The following concerns are based on my own observations and 30 years of aviation safety experience.

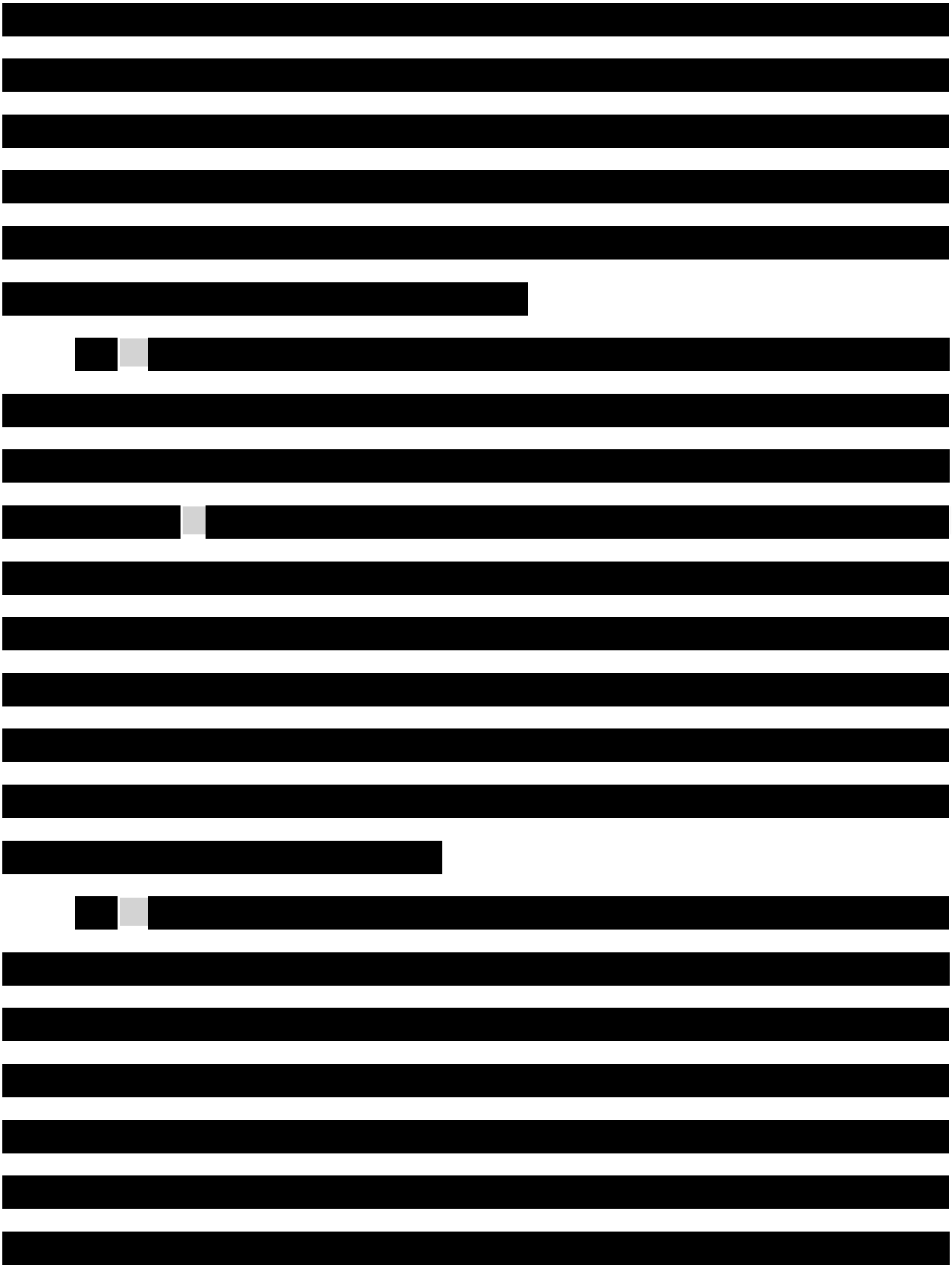
> My first concern is that our workforce is exhausted. Employees are fatigued from having to work at a very high pace for an extended period of time. Fatigued employees make mistakes.
>
> My second concern is schedule pressure (combined with fatigue) is creating a culture where employees are either deliberately or unconsciously circumventing established processes. Breakdowns some in a variety of forms adversely impacting quality. Frankly, right now, all my internal warning bells are going off. And for the first time in my life, I'm sorry to say that I'm hesitant about putting my family on a Boeing airplane.

Pierson then recommended shutting down the production, stating, "I don't make this recommendation lightly. I know it will take a lot of planning but the alternative to rushing to build is far riskier. Nothing we do is so important that it is worth hurting someone."

327. Notably, Muilenburg knew of this June 2018 communication because he was copied on it. Muilenburg, along with the rest of Boeing's senior management, however, did nothing to lower the production rate to address Pierson's valid safety concerns. Nor did they tell the Board about this employee's safety concerns. Instead, Boeing's senior management and the Board remained focused on driving revenues by further ramping up the production rate of the 737 MAX.







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XVII. The Board Further Breached its Fiduciary Duties After the Lion Air Crash [redacted]

334. On October 29, 2018, shortly after takeoff at 6:30 am, Lion Air Flight 610 nose-dived into the Java Sea after departing Jakarta, Indonesia, killing all 189 people aboard the brand new 737 MAX airplane (the "Lion Air Crash"). At takeoff, the weather was sunny with little wind, and the plane had only begun flying in August 2018. Experts were quick to note that brand new airplanes do not normally crash in good weather conditions.

335. Boeing immediately sought to blame the Lion Air pilots for the crash, despite its knowledge that MCAS was defective since at least 2017, and most likely caused the crash. Moreover, it was easy for Boeing to try to shift the blame to Lion Air's pilots due to Lion Air's troubling air-safety record, with at least fifteen (15) major incidents in its 20-year history. In addition, two days before Flight 610 began its final journey, there were repeated indications that the pilots were being fed faulty data. Ground engineers tried to address the issue at least three

times. On the resort island of Bali, engineers swapped out a sensor (*i.e.*, the angle-of-attack sensor) that measures angles at which oncoming wind crosses the airplane. As Boeing knew, but had not informed pilots of 737 MAXs, if that sensor's data was wrong, the MCAS system would cause the plane to nose-dive, and Boeing was counting on pilots to save the plane.

336. Lion Air Flight 610 was captained by Mr. Suneja, a 31-year old Indian citizen, who had worked for Lion Air for seven years and had 6,000 flight hours under his belt. Within a couple of minutes after take-off, the flight crew radioed Jakarta air-traffic control and requested permission to return, which was immediately granted. The airplane then banked sharply left and embarked on a roller coaster trajectory that surely terrified the passengers. When the 11th minute of Flight 610 began, the 737 MAX was still in nearly level flight at an altitude of about 5,000 feet. By the end of that minute, the aircraft had shattered into a kaleidoscope of pieces in the water, after hurtling earthward nose-first at 400 miles per hour. When the plane crashed, those pilots did not know that MCAS – a critical safety item – existed. Thus, the pilots could not know that it was the cause of the plane's nose-down movement, or how to counteract it, even though Boeing expected the pilots to act as a backstop for MCAS, if it malfunctioned.

337. Days after the Lion Air Crash, the FAA invited Boeing executives to the FAA's Seattle headquarters. The FAA officials sat incredulous as Boeing explained the details of MCAS. In the middle of this conversation, an FAA employee, interrupted to ask a question on the mind of several FAA engineers: "Why hadn't Boeing updated the safety analysis of a system that had become so dangerous?"

[redacted]

339. A week after the Lion Air Crash, on November 6, 2018, Boeing continued its cover-up of its failure to inform 737 MAX pilots about the new MCAS system by issuing a bulletin, "Boeing Statement on Operations Manual Bulletin". This Bulletin described how 737 MAX pilots should purportedly override the automated system (*i.e.*, MCAS) that was already publicly suspected of causing the Lion Air Crash. The Bulletin stated: "The Indonesian Transportation Safety Committee has indicated that Lion Air flight 610 experienced erroneous input from one of its AOA (angle of Attack) sensors. Whenever appropriate, Boeing, as part of its usual processes, issues bulletins or makes recommendations regarding the operation of its aircraft." On November 6th, Boeing also issued an Operations Manual Bulletin (OMB) directing operators to existing flight crew procedures to address where there is erroneous input from an AOA sensor. These bulletins were Boeing's ***first identification and description*** of MCAS, as pilots and airlines were previously unaware that this system even existed on the 737 MAX.

340. In fact, older versions of the 737 had a reputation among pilots for being easy to adjust the angle of the airplane's nose should a problem arise, said John Cox, the former executive air safety chairman of the Air Line Pilots Association, and now chief executive of Safety Operating Systems, a consulting firm. In this regard, previous iterations of 737s would have switched off key automatic control features when the pilot first pulled back the control column, a standard manual override feature in generations of airplanes. In fact, the investigators of the Lion Air Crash

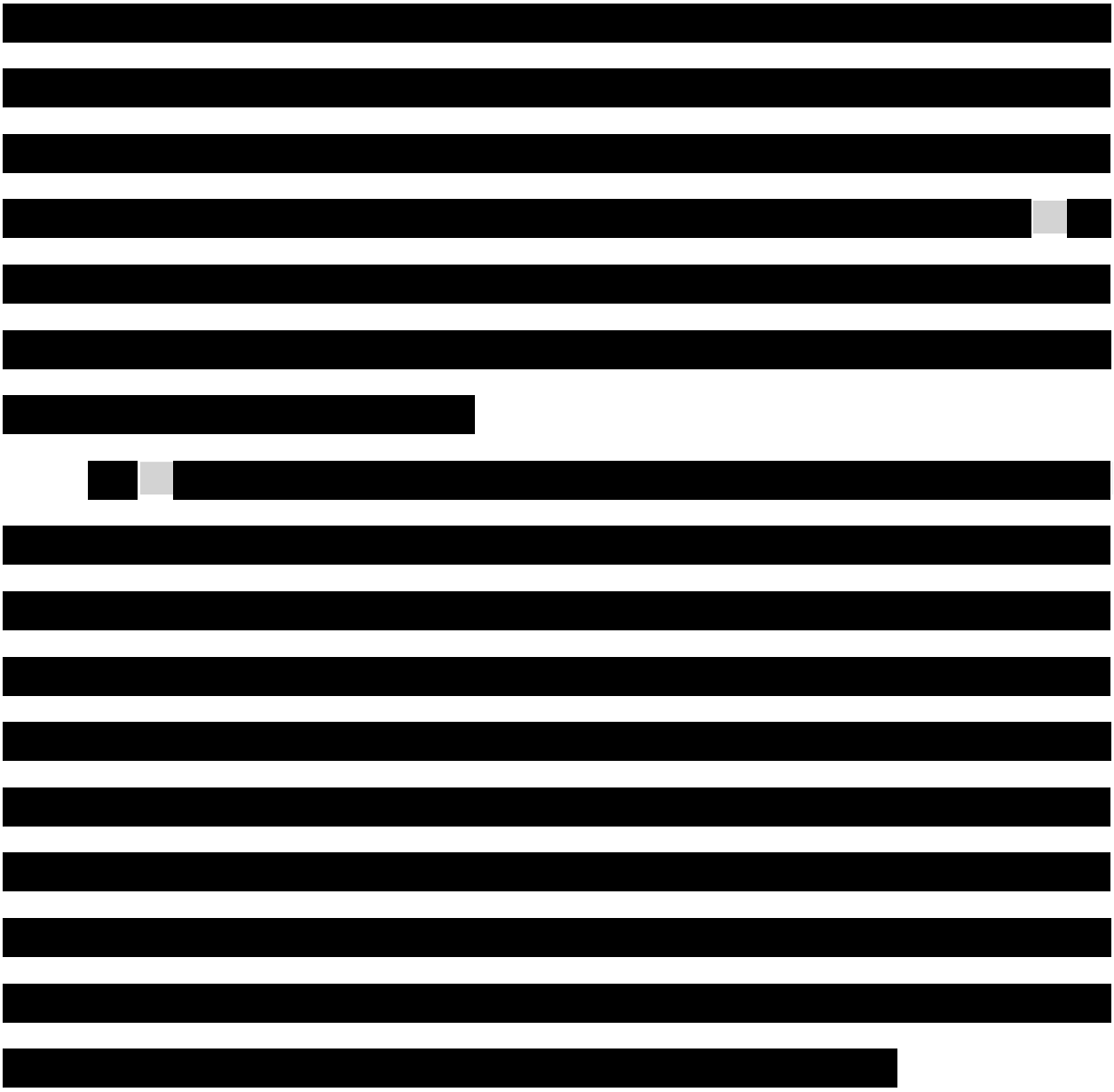
found that the pilots' final yank on the control column registered almost 100 pounds of pressure, suggesting desperation in the cockpit as the plane plummeted, as the pilots did what their 737 training had instructed them to do.

341. Experts immediately criticized Boeing's directive concerning how the pilots could take actions to disable MCAS. They noted that Boeing's procedures required pilots in a near-certain panic state to react and make decisions within the matter of seconds to initiate a four-step process to shut off the power to the electric motors in the aircraft's tail that were wrongly causing the airplane's nose to pitch forward. If not initiated within seconds, the aircraft would be at serious risk of entering a death dive. Alvin Lie, an Indonesian aviation expert and the country's ombudsman, stated, "To expect someone at a moment of high pressure to do everything exactly right is really tough. That's why you don't want to ever put a pilot in that situation if there's anything that you can do to stop it." As Boeing's 737 MAX managers and engineers knew, there were several ways to prevent this situation, but each would have cost Boeing more money to produce the 737 MAX, so nothing was done to reduce these compliance deficiencies on the 737 MAX during its development.

342. In the days following the Lion Air Crash, engineers at the FAA came to a troubling realization: They did not fully understand MCAS, and their files did not have much information about that system. The FAA had never independently assessed the risks of MCAS when it approved the 737 MAX in 2017. Despite this hazy understanding of MCAS, the FAA decided against grounding the 737 MAX after the Lion Air Crash. Instead, per Boeing's plan, the FAA published a notice reminding pilots of emergency procedures on how to respond to events similar to those in the Lion Air Crash.

343. Specifically, on November 7, 2018, the FAA issued an "Emergency Airworthiness Directive" to pilots of Boeing's 737 MAX aircrafts, stressing that only two cockpit switches can override MCAS; rather than pulling back on the column or "yoke" as in prior versions of 737 aircrafts. In addition, the FAA stated that this "emergency AD was prompted ***by analysis performed by the manufacturer*** showing that if an erroneously high single angle of attack (AOA) sensor input is received by the flight control system, there is a potential for repeated nose-down trim commands of the horizontal stabilizer. This condition, if not addressed, could cause the flight crew to have difficulty controlling the airplane, and lead to excessive nose-down attitude, significant altitude loss, and possible impact with terrain." (Emphasis added.) Notably, the FAA's notice did not describe how MCAS worked. In fact, at the last minute, an FAA manager told agency engineers to remove the only mention of MCAS; instead, allowing Boeing to inform airlines about it.

344. On November 7, 2018, Haryo Satmiko, the deputy chief of the Indonesian safety agency said that he has discussed the possibility with Boeing representatives that inaccurate readings from one of the angle-of-attack sensors could have made the Lion Air Flight 610 suddenly descend, and said, "this case is something for Boeing to reflect upon." Boeing then released a statement acknowledging that Indonesian officials had told it about repeated errant data readings experienced by the airplane, which could have set off MCAS forcing the plane into a nose-dive, even if the plane was not on autopilot. Shortly thereafter, pilots around the world expressed outrage about the 737 MAX's changing of the nature of its flight controls and Boeing's delayed disclosure of the change.



347. Boeing's Board and senior management continued to tout the 737 MAX as a "safe" plane, refusing to take any action that would disrupt Boeing's revenue flow. Internally, Boeing's senior management knew it had a problem with its 737, so it did exactly what Boeing's management had done in the 1990s, it quietly worked on the quickest and cheapest ways to fix its deadly MCAS software. Publicly, Boeing continued to blame the pilots for the Lion Air Crash as

Boeing's senior executives attempted to cover-up the 737 MAX's MCAS design flaw by influencing the public's opinion through the media.

348. More negative publicity came out for Boeing on November 13, 2018, when the pilots' union for American Airlines, which also flies the 737 MAX 8, announced that MCAS was not included by Boeing in the aircraft's standard operating manual.[8] This union further stated that the aircraft's flight checklist – which contains information for manually overriding MCAS – was incorrect. That evening, Boeing sent a letter to the FAA requesting permission to update the 737 MAX 8's flight manual, but said nothing to the public, much less the pilots or the thousands of people who continued to fly the fatally defective 737 MAX aircrafts on a daily basis.

[redacted]

350. [redacted] because Boeing's chief test pilot for the 737 MAX, Forkner had repeatedly told FAA officials not to include information about MCAS in the 737 MAX's training manual. Moreover, [redacted]

[8] An Indonesian transportation official had also repeatedly stated that the 737 MAX 8 manual used in its country did not contain crucial information about MCAS.

[redacted] because, in interviews, Defendants Calhoun and Kellner both confirmed that the Board "was never briefed on the MCAS software before the Lion Air crash."

[redacted]

353. On or about November 15, 2018, Boeing delivered newly manufactured 737 MAX airplanes to Ethiopian Airlines.

[redacted]

355. Right before Thanksgiving on November 22, 2018, Boeing executives met with American Airlines pilots in a testy meeting, where those pilots demanded an explanation for why the MCAS software was not highlighted as a key difference to them. In fact, Dennis Tajer, a 737 captain and a spokesperson for the American pilots union stated, "Our entire relationship changed after that meeting. I don't need to know about every rivet, but I do need to know about something that's going to take over my plane." American Airlines' union safety chairman, Michael Michaelis said, "It was a very frank discussion. This is to our knowledge the first time pilots were not informed of a major system on an airplane that could affect flight controls."

356. At this meeting, the American Airlines pilots told Boeing that it should update its flight-control software, provide more training, modify the external sensors that measure the direction of the aircraft, and make changes to how MCAS is activated.

[redacted]

358. If Boeing's senior executives and the Board had fulfilled their fiduciary duties, they would have demanded that the unsafe 737 MAX aircrafts were grounded immediately after the Lion Air Crash. Indeed, their duties required them to pull Boeing's defective product off the market until the Company and/or regulators could determine why it crashed, killing more than 100 people, and created a fix to make the 737 MAX airworthy as required by FAA regulations. Their duties also required these fiduciaries to commission an independent review to determine whether the 737 MAX complied with federal and international regulations. In breach of their fiduciary duties, these directors and executives put profits first, and failed to do so.

359. Boeing's senior management and Board knew, however, that air crash investigations are painstakingly slow, complex processes that usually discover answers after months or years of efforts. Putting Boeing's profits ahead of safety, Muilenburg, therefore, continued to publicly insist that the 737 MAX was safe to fly before a fix for the system was designed or implemented, and before any pilots received training on how to compensate for MCAS's shortcomings after the Lion Air Crash.

360. On Sunday, November 25, 2018, three Boeing managers, the 737 MAX's Chief Pilot, Craig Bomben, Boeing's Senior Director of State and Local Government Affairs, John Moloney, and Boeing's Vice President of Product Development, Mike Sinnett, met with the

leadership of Southwest Airlines Pilots Association at the Reno-Tahoe International Airport to brief them on what Boeing had learned in the wake of the Lion Air Crash. Notably, Southwest had been Boeing's client for nearly 50 years, and 4.5% of its then-current fleet consisted of 737 MAX airplanes. At this meeting, the Boeing executives shared Boeing's plan for a software update to MCAS. Boeing officials also told Southwest Pilots' leaders that they did not believe any extra training would be necessary beyond informing the pilots of how this software fix would operate. John Weaks, the President of the Southwest Pilots Association, said, "We were mad as hell that Boeing didn't tell us about [MCAS]." At this meeting, Weaks asked Boeing's executives, "Are there any more surprises?"

361. In addition to the pilots directly telling Boeing executives about their continued concerns about the 737 MAX's safety defects, over a dozen pilots filed complaints with a federal flight-safety reporting system expressing exasperation about systems that limited their control of the 737 MAX. Nearly two-thirds of the complaints were mainly flagging perceived faults with the aircraft or shortcomings and ambiguities in instruction. For example, in November 2018, one pilot wrote, "I think it is unconscionable that a manufacturer, the FAA and the airlines would have pilots flying an airplane without adequately training, or even providing available resources and sufficient documentation to understand the highly complex systems that differentiate this aircraft from prior models. The fact that this airplane requires such jury rigging to fly is a red flag. Now we know the systems employed are error prone – even if the pilots aren't sure what those systems are, what redundancies are in place, and failure modes. I am left to wonder: what else don't I know?" Another captain called the flight manual "inadequate and almost criminally insufficient."

362. Pilots also expressed confusion about the 737 MAX's features. For instance, a pilot wrote, "I reviewed in my mind our automation setup and flight profile but can't think of any reason

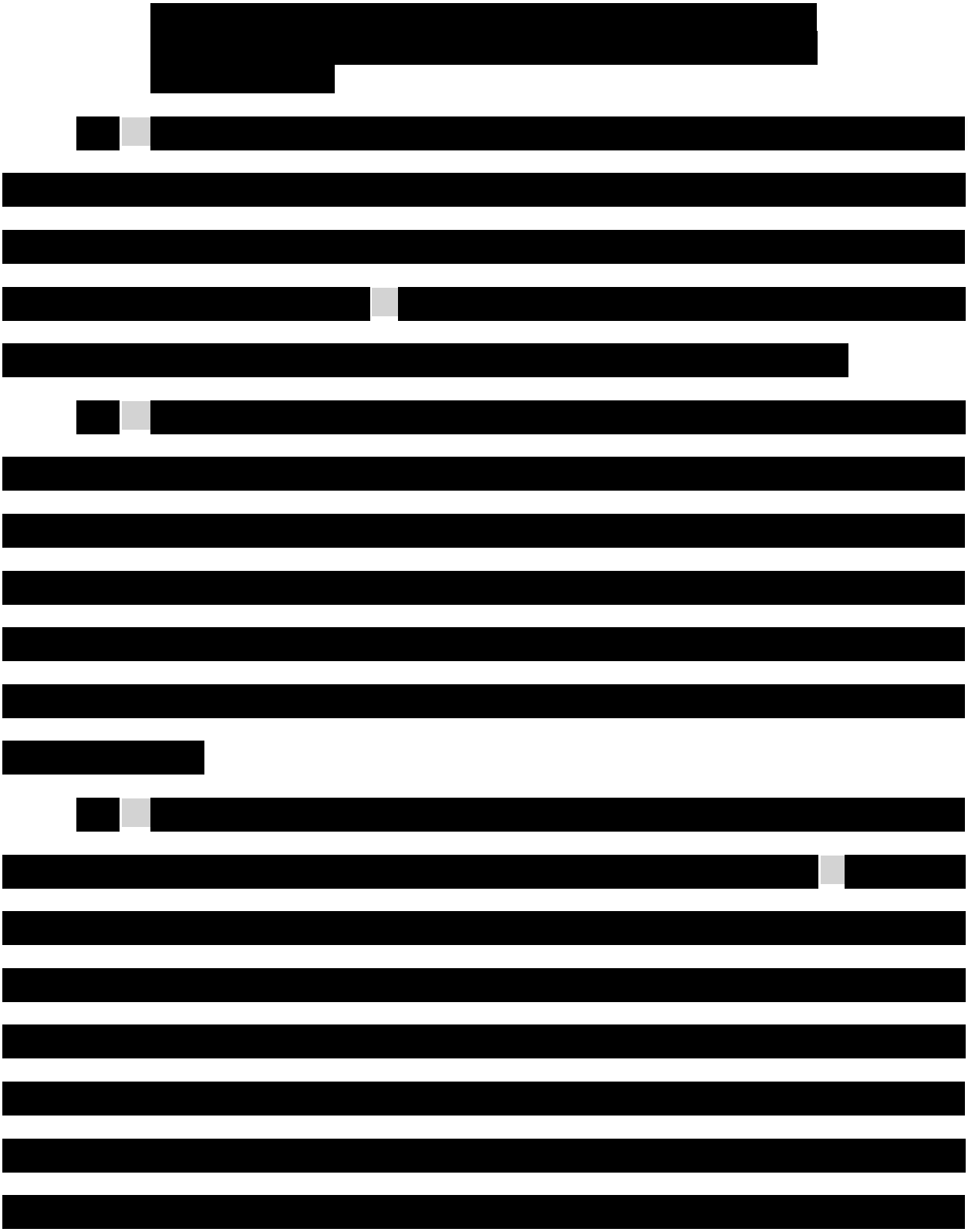
the aircraft would pitch nose down so aggressively." While another pilot mused, "How can a Captain not know what switch is meant during preflight setup? Poor training and even poorer documentation; that is how."

363. In response to the investigation by Indonesia's Transportation Safety Committee into the causes of the Lion Air Crash, Boeing issued its November 21, 2018 "Statement on Lion Air Flight JT 610 Investigation". Boeing defended the 737 MAX stating, "We are confident in the safety of the 737 MAX…While we can't discuss specifics of an ongoing investigation, we have provided two updates for our operators around the world that re-emphasize existing procedures for these situations."

364. Boeing further focused on blaming Lion Air's pilots for the Lion Air Crash in its November 27, 2018 "Statement on Lion Air Flight 610 Preliminary Report" responding to an interim report released by Indonesia's Transportation Safety Committee concerning the causes of the crash. In fact, Lion Air's founder, Rusdi Kirana felt "betrayed" by Boeing's shifting of the blame to Lion Air's employees for causing the crash; rather than acknowledging that the 737 MAX was defectively designed. After Boeing released this Statement, Kirana had a private conference call with Muilenburg, where he hurled expletives at him, according to a person who heard the exchange and asked for anonymity.

367. Despite assuring the airlines that the 737 MAX jets were safe, with the FAA's knowledge, Boeing was secretly working on a software fix for MCAS because those jets were

anything but safe and never complied with the FAA's airworthiness regulations. In addition, Boeing belatedly further informed the FAA about its engineer's June 2018 determination that the result could be "catastrophic" if 737 MAX pilots took 10 seconds to respond once MCAS was activated. Boeing and the FAA, however, continued to allow the 737 MAX fleet fly despite these known fatal safety defects.



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376. On January 8, 2019, Boeing issued a press release entitled, "Boeing Sets New Airplane Delivery Records, Expands Order Backlog, Delivered 806 commercial jets in 2018 with record-setting fourth quarter, Won nearly 900 net orders valued at $143.7 billion after finalizing more than 200 orders in December, 737 MAX family surpassed 5,000 orders; 777 family exceeded 2,000 orders." The press release stated, among other things:

> "Boeing raised the bar again in 2018 thanks to our teammates' incredible focus on meeting customer commitments, and continuously improving quality and productivity," said Boeing Commercial Airlines President & CEO Kevin McAllister. "In a dynamic year, our production discipline and our supplier partners helped us build and deliver more airplanes than ever before to satisfy the strong demand for air travel across the globe."
>
> With a seven-year order backlog, Boeing increased production of the popular 737 in the middle of 2018 to 52 airplanes per month. Nearly half of the year's 580 737 deliveries were from the more fuel-efficient and longer-range MAX family, including the first MAX 9 airplanes.

377. Notably, this press release omitted all reference to the Lion Airlines Crash, much less its potential impact on Boeing's bottom line or its executives' compensation if the 737 MAX's MCAS was at fault, causing the airplane fleet to be grounded for potentially months.

[redacted]

[redacted]

379. On January 21, 2019, Boeing submitted a proposed plan to fix the 737 MAX's MCAS to the FAA for certification.

380. On January 30, 2019, Boeing issued a press release entitled, "Boeing Reports Record 2018 Results and Provides 2019 Guidance", which reported "total backlog remains robust at $490 billion, including nearly 5,900 commercial airplanes." Boeing made no mention that it had submitted a purported fix to the FAA for the defective MCAS system on all 737 MAX airplanes.

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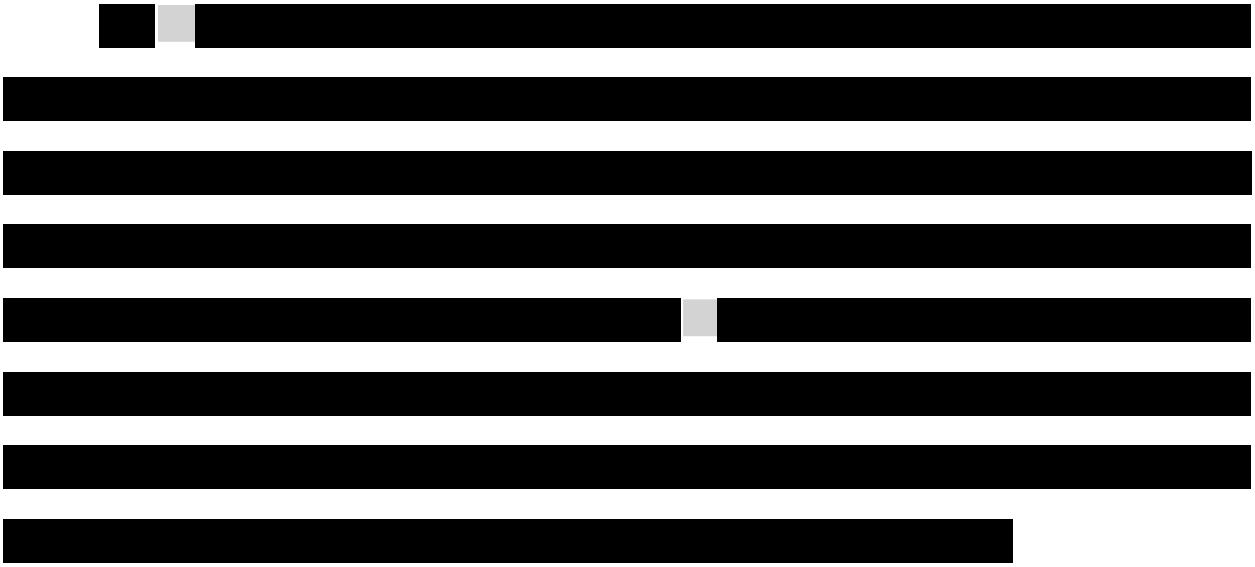
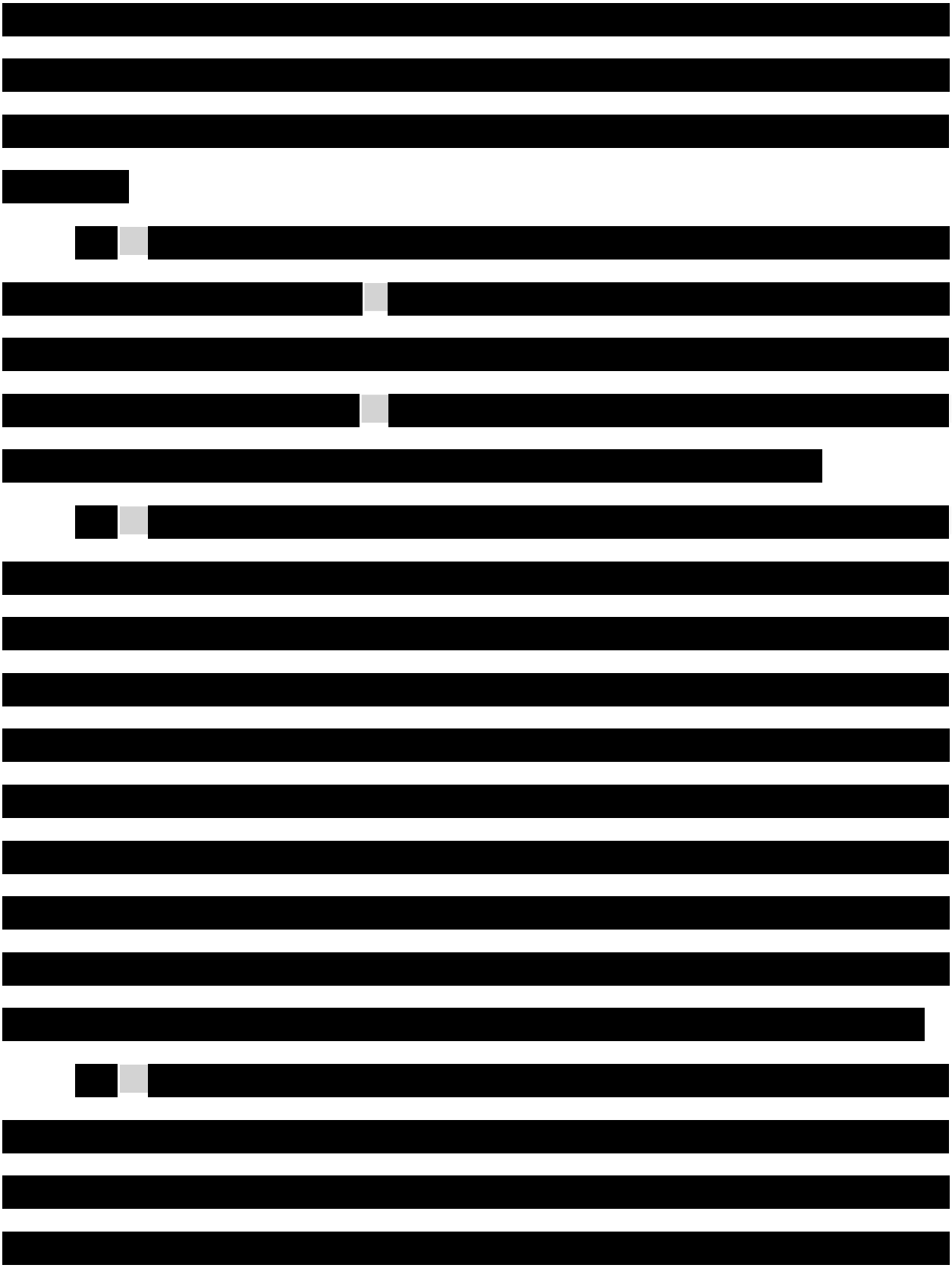
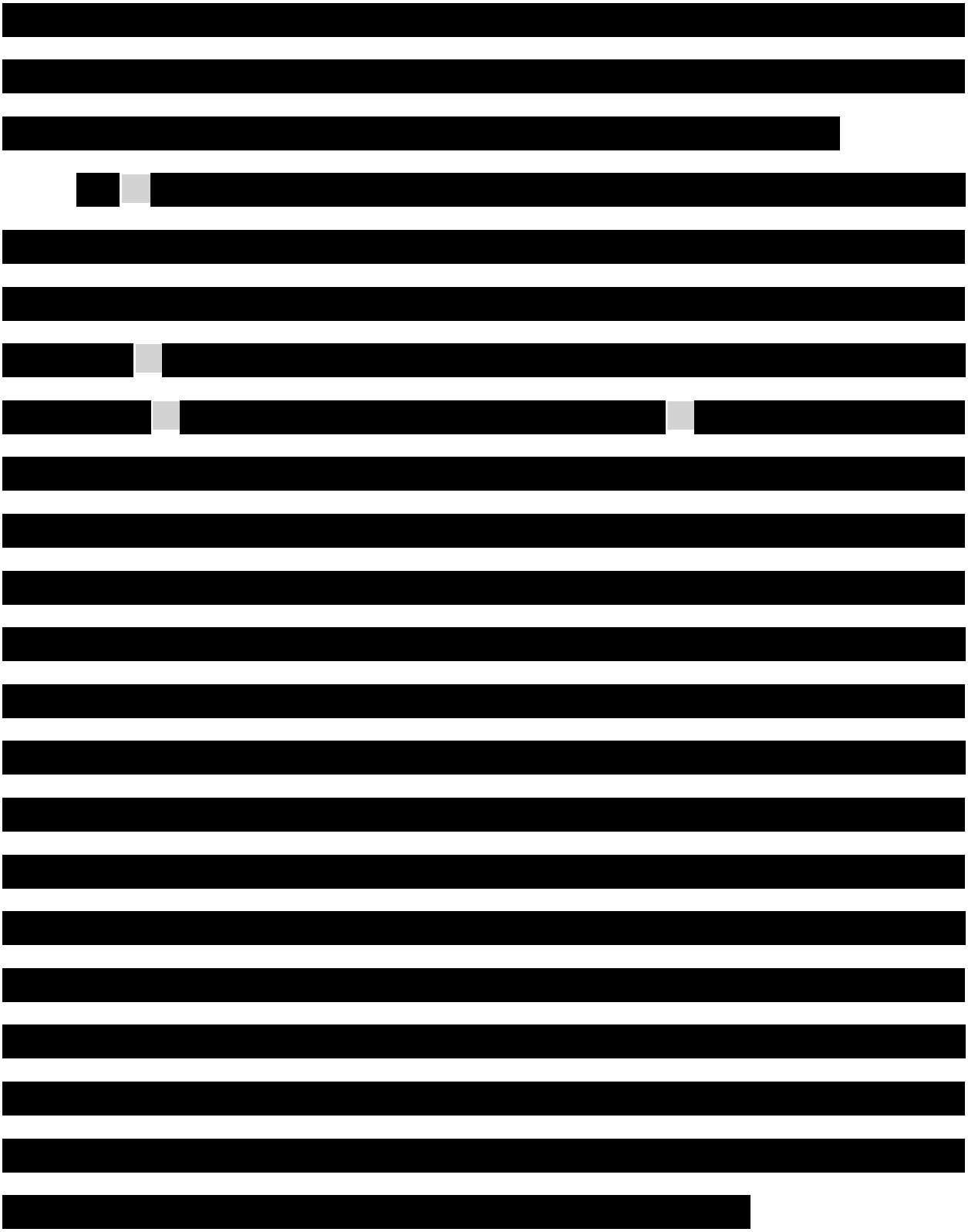


383. In February 2019, Boeing provided the DOJ with documents, including Forkner's 2016 text messages highlighting how MCAS was malfunctioning in the flight simulator. At this point, Muilenburg and other members of Boeing's senior management were aware of these texts but did nothing to ground the 737 MAX to address its fatal flaws, again favoring Boeing's profits over safety.

384. On February 8, 2019, Boeing filed a false and misleading Form 10-K with the SEC. First, the 2018 10-K was misleading because it omitted any reference to the Lion Air Crash, much less the potential impact on Boeing's bottom line if the cause of such crash was – a design flaw in the 737 MAX's MCAS – which could potentially ground the fleet for months on end and cost Boeing billions in damages. Next, the 2018 10-K highlighted that "***Our Commercial Airplanes business depends on our ability to…meet or exceed stringent performance and reliability standards.***" Yet the 2018 10-K failed to mention anything about the 737 MAX's safety compliance failures involvement in the Lion Air Crash or the MCAS software fix that Boeing's engineers were secretly working on to bring the airplane into compliance with the FAA safety

regulations. Nor did the 2018 10-K mention the FAA Settlement Agreement or Boeing's compliance with such Agreement's obligations.





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XVIII. Defendants Continued to Contend the 737 MAX Was "Safe" after Another Fatal 737 MAX Crash

392. By early March 2019, Boeing still had not repaired its defective MCAS, so thousands of lives remained at risk as the 737 MAX continued to fly with fatal design flaws and in noncompliance with federal safety regulations. In fact, Boeing had not even updated the 737 MAX's official manual with a full explanation of how MCAS worked, nearly four months after it had privately requested permission from the FAA to do so following the Lion Air Crash.

393. On March 10, 2019, Ethiopian Airlines Flight 302 crashed six minutes after takeoff, killing all 157 people on board. The flight data showed the plane ascending, then descending, then ascending sharply again while accelerating to speeds in excess of what is standard during a takeoff. Later, an investigation would determine that the pilots of the Ethiopian Airlines Flight 203 performed all the procedures recommended by Boeing after the Lion Air Crash concerning MCAS, but still could not pull the aircraft out of a flight-system induced nose-dive.

394. Notably, Ethiopian Airlines is well-regarded in the aviation industry for its safety record. Its last major crash was in 2010. Ethiopian Airlines also subjects its pilots to rigorous training and serves as a training hub for Africa and surrounding countries in the Middle East, Asia and Europe. As such, it was harder for Boeing to blame the Ethiopian Airlines' pilots for this 737 MAX crash, but Boeing did so any way.

[redacted]

397. After the Ethiopian Airlines Crash, Muilenburg and the FAA again insisted that the 737 MAX was safe to fly. In fact, Boeing and the FAA both argued that the 737 MAX could not be grounded because similarities between the two 737 MAX crashes had not been conclusively proven. The FAA issued a "Continued Airworthiness Notification to the International Community", which noted that external reports were drawing similarities between the two crashes, but that, "this investigation has just begun and to date we have not been provided data to draw any conclusions or take any actions."

398. On March 11, 2019, taking a rare leading role with respect to safety issues, China was the first country to order the grounding of the 737 MAX after the Ethiopian Airlines Crash. Notably, the FAA has historically been the leading authority on airworthiness directives, issuing guidance that other countries are not legally obliged to follow, but almost always defer to voluntarily. Moreover, the Civil Aviation Administration of China said it grounded its fleet of 100 737 MAXs in "view of the fact that the two air crashes newly delivered" 737 MAX 8 planes, that

both happened during takeoff, and "they have certain similarities." China's government regulator said the decision reflected "zero tolerance" for safety risks. Carriers in South Korea and Latin America also announced, on March 11, 2019, that they were grounding the 737 MAX.

399. In contrast, on March 11, 2019, the FAA issued an update: "Today, the FAA will issue a Continued Airworthiness Notification to the International Community (CANIC) for Boeing 737 MAX operators. The FAA continuously assesses and oversees the safety performance of U.S. commercial aircraft. If we identify an issue that affects safety, the FAA will take immediate and appropriate action."

400. Also, on March 11, 2019, Boeing issued a "Statement on 737 MAX Software Enhancement", which again stated that the "737 MAX is a safe airplane." Boeing then disclosed that "[f]or the past several months and in the aftermath of Lion Air Flight 610, Boeing has been developing a flight control software enhancement for the 737 MAX, designed to make an already safe aircraft even safer. This includes updates to the Maneuvering Characteristics Augmentation System (MCAS) flight control law, pilot displays, operation manuals and crew training…The FAA says it anticipates mandating this software enhancement with an Airworthiness Directive (AD) no later than April. We have worked with the FAA in development of this software enhancement. It is important to note that the FAA is not mandating any further action at this time." This Boeing statement, however, was false because the 737 MAX was not "already [a] safe aircraft" as it did not comply with the FAA's safety regulations. Nor was the purported "software enhancement" just making the 737 MAX "safer", because that fix was necessary to make the 737 MAX compliant with FAA safety regulations.

[redacted]

403. On March 12, 2019, officials in the United Kingdom, France, Germany and at least 10 other countries broke with the FAA and grounded the 737 MAX. The UK Civil Aviation Authority barred all 737 MAX aircrafts from flying in the country's airspace "[i]n the interests of safety of operation and to protect the public." Moreover, unlike top U.S. aviation officials, the U.K. authority said the absence of information about what caused the Ethiopian Airlines plane to crash requires immediate action. Specifically, its stated, "Given the similarity of the two accidents, it has been decided that as a precautionary measure that all" 737 MAX flights "should stop until appropriate safeguards are in place. This is needed to assure the [UK Civil Aviation Authority] that the aircraft involved are fully compliant with internationally recognized standards."

404. On March 12, 2019, John Samuelsen, President of a union representing transportation workers, called for the 737 MAX planes to be grounded, stating, "The United States

should be leading the world in aviation safety. And yet, because of the lust for profit in the American aviation, we're still flying planes that dozens of other countries and airlines have now said need to be grounded."

405. On March 12, 2019, Muilenburg called President Trump to argue that he should not ground the 737 MAX fleet by stressing to the President that the aircrafts were safe.

406. Later that day, the FAA issued another statement in which it continued to justify not grounding Boeing's defective 737 MAX airplanes. The FAA claimed its "review show no systemic performance issues and provides no basis to order grounding the aircraft. Nor have civil aviation authorities provided data to us that would warrant action."

407. Relying on the FAA's statement, also on March 12, 2019, Boeing issued the following "Statement on 737 MAX Operation":

> Safety is Boeing's number one priority and we have full confidence in the safety of the 737 MAX. We understand that regulatory agencies and customers have made decisions that they believe are most appropriate for their home markets. We'll continue to engage with them to ensure they have the information needed to have confidence in operating their fleets. The United States Federal Aviation Administration is not mandating any further action at this time, and based on the information currently available, we do not have any basis to issue new guidance to operators.

408. Muilenburg and the Board took this position despite their knowledge that Boeing's engineers were still working frantically to come up with crucial update to the jet's software to make it airworthy as required by FAA regulations. In violation of the laws, Muilenburg and the Board, therefore, affirmatively placed people's lives at risk in order to continue selling and flying 737 MAX airplanes without addressing their fatal safety issues.

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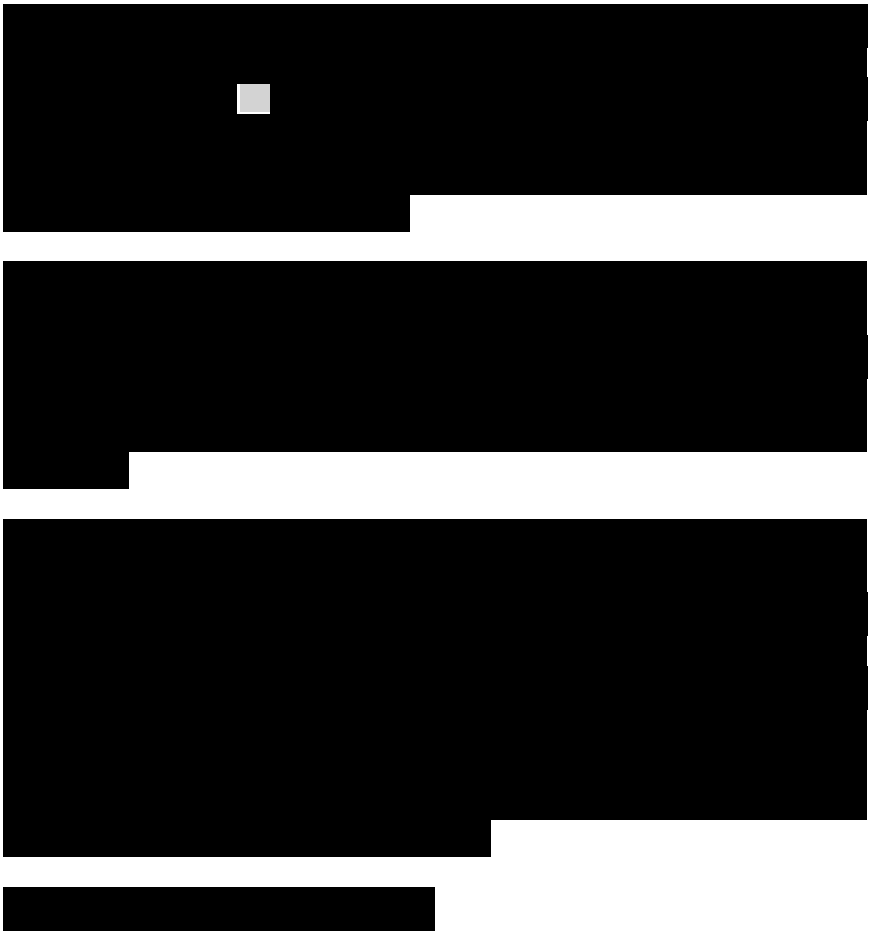


410. At this point, the FAA was one of the last regulatory holdouts, and certain U.S. senators called on the FAA to ground the 737 MAXs. For example, Senator Dianne Feinstein was joined by Sens. Richard Blumenthal, Mitt Romney and Elizabeth Warren urging Boeing to ground the 737 MAX planes, stating, "Until the cause of the crash is known and it's clear that similar risks aren't present in the domestic fleet, I believe all Boeing 737 Max 8 series aircraft operating in the United States should be temporarily grounded. This aircraft model represents only a small fraction of the domestic fleet, and several other countries have already taken this important step, including China and Indonesia."

411. The union that represents flight attendants at American Airlines also joined the call to ground the planes urging American Airlines CEO Doug Parker to take action, stating, "While

we cannot draw premature conclusions, it is critical to work with manufacturers, regulators and airlines to take steps to address our important safety concerns. The safety of our crews and passengers is paramount. Our flight attendants will not be forced to fly if they feel unsafe."

412. Late on March 12, 2019, India became the latest country to ground the 737 MAX, with Hong Kong, New Zealand, and the United Arab Emirates following suit.

413. Former U.S. Transportation secretary Ray LaHood, who was a GOP congressman before being appointed by President Obama, commented that current Secretary Elaine Chao should immediately ground the aircraft. Specifically, he stated, "Those planes should be pulled down and inspected. The flying public is owed that." LaHood further explained that he took the precautionary step to ground Boeing's 787 Dreamliners after lithium-ion batteries on those aircrafts had overheated, causing acrid smoke and alarms. In contrast, acting FAA administrator Daniel K. Elwell stated that his agency's review of "aggregate safety performance from operators and pilots of the Boeing 737 MAX… shows no systematic performance issues and provides no basis to order grounding the aircraft." At this point, the U.S. and Canada were the only ones defying the global aviation community by keeping the 737 MAX aircraft in the skies. At least 222 other 737 MAX were grounded worldwide, but an additional 158 remained eligible for service.

414. In the morning of March 13, 2019, the Board had a phone call to review purported "new evidence from 'a Canadian source' that showed the MCAS had likely been activated." The Board also found out that the FAA was going to ground the 737 MAX. At this point, the Board had to concede that the 737 MAX should be grounded because it would be grounded world-wide regardless of Boeing's view on the matter.

415. In an attempt to get ahead of the FAA's order, Muilenburg called President Trump to urge reversing course, and recommending a grounding of the 737 MAX planes. According to

an administration official, Muilenburg said he wanted to work with the White House to coordinate an announcement about the grounding. President Trump, however, delivered a stern message to Muilenburg that the decision to ground the plane had nothing to do with commercial concerns, and it had everything to do with safety concerns.

416. Soon after the call, President Trump told White House reporters, at the start of what was scheduled to be a briefing on drug trafficking at the U.S. border. "We're going to be issuing an emergency order of prohibition to ground all flights of the 737 Max 8 and the 737 Max 9 and the planes associated with that line. The FAA is preparing to make an announcement of new information and physical evidence we've received from the site" of the Ethiopian Airlines crash.

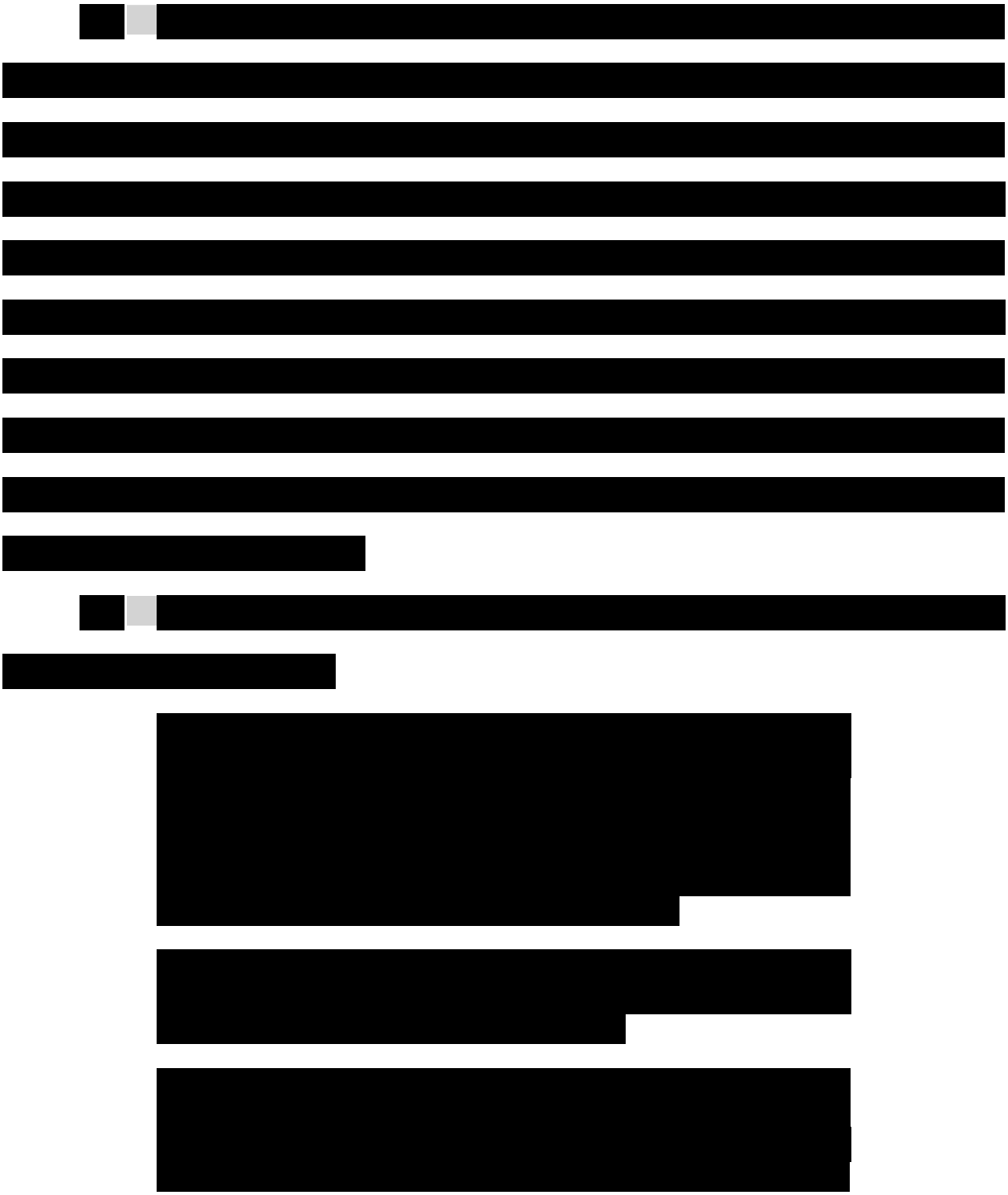
417. Following Trump's announcement, Boeing issued a statement saying that "out of an abundance of caution and in order to reassure the flying public of the aircraft's safety," it agreed with the FAA's decision to ground the airplanes. Boeing, however, also stated that it "continues to have full confidence in the safety of the 737 MAX." Defendants, however, knew that the 737 MAX was not safe, and its engineers had already spent nearly five months working on a fix for its deadly MCAS without success, along with knowing about this defect since at least 2017.

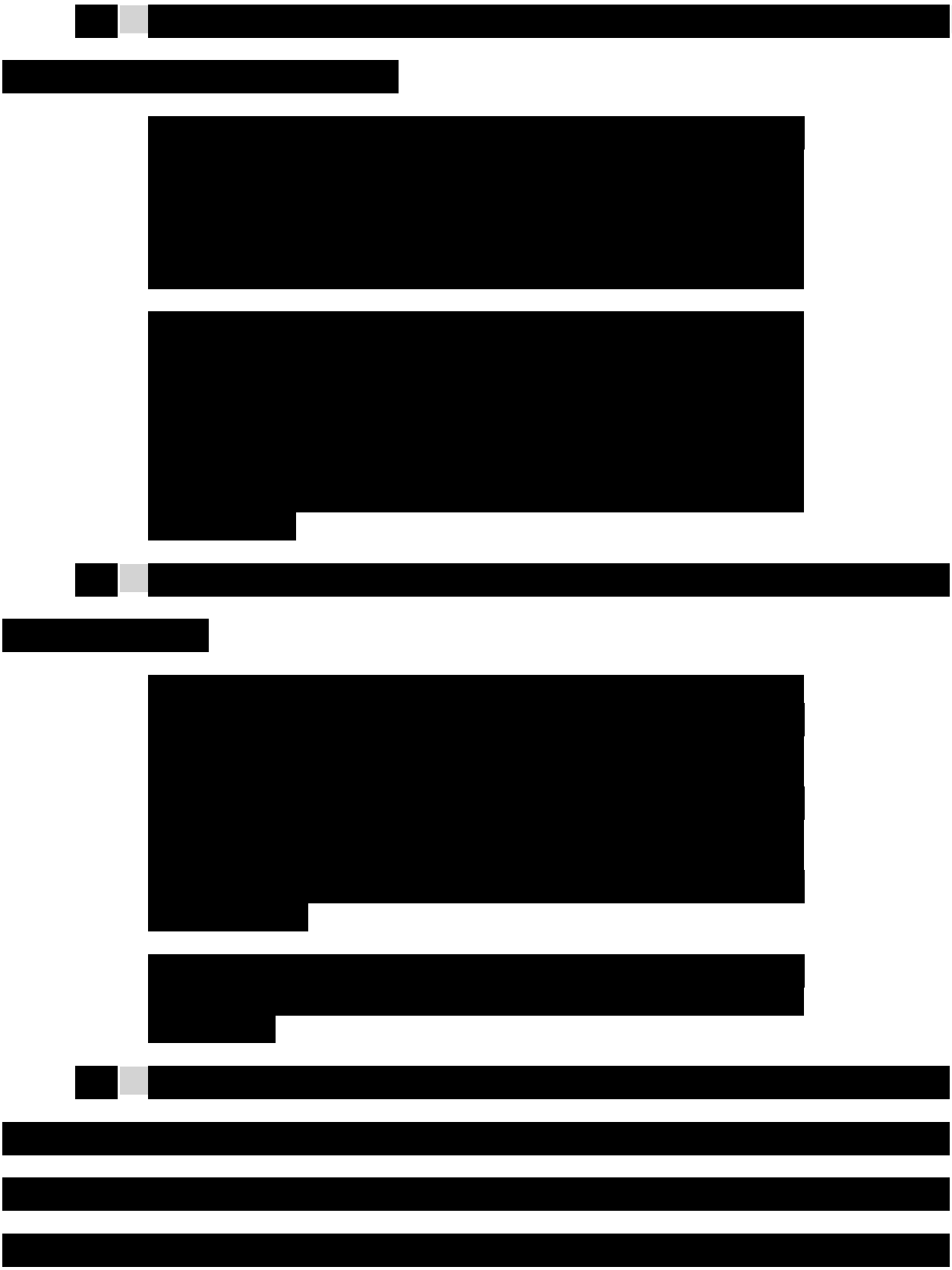
418. The FAA then issued an official order grounding the 737 MAX aircrafts, stating the basis was new data from the Ethiopian Airlines Crash that warranted "further investigation of the possibility of a shared cause for the two incidents that needs to be better understood and addressed."

419. Notably, it was the second grounding in six years for a nearly new Boeing model, and both groundings occurred after the FAA had shifted more of its oversight role to Boeing, while the Board and Boeing's senior executives had no systems in place to alert them to safety regulation issues related to the 737 MAX or any of its other products.

425. In the aftermath of the two crashes, Boeing continued to defend the safety of the 737 MAX and reject calls to overhaul its aircraft development process. For example, on March 17, 2019, Muilenburg issued a statement on the Ethiopian Airlines Crash's investigation stating that, "while investigators continue to work to establish definitive conclusions, Boeing is finalizing its development of a previously-announced software update and pilot training revision that will address the MCAS flight control law's behavior in response to erroneous sensor inputs." Muilenburg also stated that the software update was part of Boeing's "standard practice following any accident" to "when appropriate, institute product updates to further improve safety." Again,

Boeing covered up that the MCAS software update was a required fix to make the 737 MAX compliant with FAA regulations.





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431. On March 22, 2019, Boeing issued a new statement in which it continued to defend the 737 MAX, contending it was safe and complied with FAA regulations:

> All Boeing airplanes are certified and delivered to the highest levels of safety consistent with industry standards. Airplanes are delivered with a baseline configuration, which includes a standard set of flight deck displays and alerts, crew procedures and training materials that meet industry safety norms and most customer requirements. Customers may choose additional options, such as alerts and indications, to customize their airplanes to support their individual operations or requirements.

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On March 27, 2019, the U.S. Senate Commerce Subcommittee on Aviation and Space held a hearing on airline safety. [redacted]

436. Pressure from the media and lawmakers, however, continued to mount on Boeing to disclose the truth about its defective MCAS system on the 737 MAX. Thus, on March 27, 2019, Boeing admitted that it needed to make the following changes to the 737 MAX:

- The MCAS system will rely on data from two sensors instead of just one to determine whether the plane is in danger of aerodynamic stall;
- If MCAS is activated, the system will act only once instead of repeatedly forcing the nose of the plane down;
- Pilots will be able to override the automates system by pulling back on the control column;
- Warning lights alerting pilots to a problem with the sensors will become standard instead of a more expensive option; and

- Boeing will enhance training for pilots on MCAS, incorporating all of the changes that it makes once approved by regulators.

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441. On April 1, 2019, a federal grand jury issued a subpoena in a criminal probe into Boeing's 737 MAX's certification. On this day, the FAA also made a statement acknowledging that Boeing's timing for submitting a software update for the 737 MAX to the FAA was delayed.

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443. On April 2, 2019, the FAA announced it was establishing a Joint Authorities Technical Panel to conduct a comprehensive review of the certification of the automated flight control system on the 737 MAX.

444. On April 4, 2019, a preliminary crash report confirmed that Ethiopian 737 MAX pilots lost control despite following Boeing's instructions on how to shut down MCAS. A spokesperson for American Airlines pilots union and a 737 pilot, Dennis Tajer, who read the report, stated "The captain was not able to recover the aircraft with the procedures that he was trained on and told by Boeing."

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XIX. Defendants Continue to Deny That Boeing Created a Defective Airplane that Violated FAA Regulations

446. On April 4, 2019, Muilenburg stated that "It's our responsibility to eliminate this risk" of "the erroneous activation of the MCAS function." Muilenburg further stated that "We own it and we know how to do it." Many people criticized Muilenburg's statement of "we own it", pointing out that Muilenburg had not acknowledged that anything was wrong with the design of the 737 MAX, by continuing to say that the design process followed standard procedures. Indeed, Muilenburg's April 4, 2019 Statement in response to the Ethiopian Airlines Flight 302 Preliminary Report, continued to tout that "We remain confident in the fundamental safety of the 737 MAX."

447. On April 11, 2019, at the George W. Bush Presidential Center Forum on Leadership, Muilenburg made similar comments about the 737 MAX, contending that the software update for "will make the 737 MAX even safer."

448. At Boeing's annual shareholders meeting on April 29, 2019, Muilenburg continued to defend Boeing, sticking to a script that the Company "owns" some responsibility for "improving the safety" of the 737 MAX. But, to the frustration of some shareholders in attendance, he stopped short of accepting that the plane was built with any flaw design. Instead, Muilenburg repeatedly stated that the crashes were caused by a "chain of events," of which Boeing's software and its sensors were only one part, continuing to blame the pilots too. Some, like Tarek Milleron, the uncle of a 24-year old American killed on the Ethiopian Airlines Crash, called Boeing's response "a farce", further stating, "It's a hollow denial. They talk about chains of events in accidents, but we need to know the chain of events inside Boeing that led to these crashes."

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451. At the late April 2019 Board meetings, the directors failed to take any actions against Muilenburg for his role in the 737 MAX crisis. In this regard, when the "executive session" occurred without Muilenburg, it was "brief". In fact, in May 2018, then Lead Independent Director Defendant Calhoun told the *Washington Post* that "Dennis has our complete and total confidence…We feel very strongly that he is doing the right things."

452. On April 29, 2019, the FAA reported that on April 5, 2019, it had received at least four calls from whistleblowers reporting possible problems with the 737 MAX. The complaints alleged damage to the wiring of the plane's angle-of-attack sensor caused by foreign object debris. Notably, these complaints are similar to the FOD complaints made by customers of Boeing's 787 Dreamliners and KC-46. Another whistleblower's call dealt with concerns over the shutoff switches for MCAS.

453. In addition, near the end of April 2019, Curtis Ewbank, whose safety designs were rejected during the development of the 737 MAX by his superiors to keep costs down in 2014, submitted a scathing internal ethics complaint about those issues. In his complaint, Ewbank stated that installing his safety designs on the 737 MAX would likely have meant 737 MAX pilots would need extra training in flight simulators, which would have delayed the plane's entry into service and added substantial costs for Boeing and its customers. Ewbank further described Boeing's management as "more concerned with cost and schedule than safety and quality." He also alleged that in one instance Boeing hid inflight safety incident data from the European Aviation Safety Agency. Ewbank alleged that MAX program managers, concerned with avoiding higher costs and more pilot training, were intent on "shutting down trade studies that attempted to modernize the airplane and avoiding awareness of known issues encountered in historical 737 operation." Ewbank described Boeing's corporate culture as "expediency of design-to-market and cost-cutting." He also stated that "The 737 MAX was designed via piecemeal updates to prevent triggering expensive certification and (pilot) training." Former Boeing engineer, Ludtke, agreed with Ewbank's complaint, commenting that "The MAX program leaders had always mandated that, if it's not required for function or certification, it's not going on the airplane…we still tried."

454. Ewbank's complaint also attacked Muilenburg's statement on a quarterly earnings teleconference, which occurred four days before he filed his complaint. Specifically, Muilenburg denied that the two MAX crashes were due to any "technical slip" by Boeing during the jet's design or certification. Ewbank called this "a false statement".

455. Notably, Ewbank's ethics complaint expressed concern about the possible personal consequences of stepping forward inside the Company, "Given the nature of this complaint, the fear of retaliation is high, despite all official assurances that this should not be the case. There is

a suppressive cultural attitude towards criticism of corporate policies – especially if that criticism comes as a result of fatal accidents." Ewbank further wrote that co-workers told him in private that they are afraid to speak up about similar safety concerns out of "fear for their jobs." The F.B.I. is currently investigating Ewbank's complaint.

456. On April 29, 2019, Boeing admitted – what it had known since at least 2017 – that some 737 MAX aircrafts had a safety problem with a standard cockpit alert that would warn pilots when sensors outside of the plane were feeding incongruous data – a problem that contributed to both crashes. Specifically, Boeing explained that this safety alert only worked in the aircraft as an optional feature:

> The disagree alert was intended to be a standard, stand-alone feature on MAX airplanes. However, the disagree alert was not operable on all airplanes because the feature was not activated as intended.
>
> The disagree alert was tied or linked into the angle of attack indicator, which is an optional feature on the MAX. Unless an airline opted for the angle of attack indicator, the disagree alert was not operable.

457. In its April 29, 2019 Statement, Boeing continued to falsely assert that: "on every airplane delivered to our customers, including the MAX, all flight data and information needed to safely operate the aircraft is provided in the flight deck on the flight deck displays."

458. On May 5, 2019, Boeing issued a "Statement on AOA Disagree Alert", in which it continued to falsely contend that the MAX was delivered to its customers with all flight data and information necessary to "safely operate" the airplane. Boeing, however, admitted, that "[i]n 2017, within several months after beginning 737 MAX deliveries, engineers at Boeing identified that the 737 MAX display software did not correctly meet the AOA Disagree alert requirements…When the discrepancy between the requirements and the software was identified, Boeing followed its standard process for determining the appropriate resolution of such issues. That

review…determined that the absence of the AOA Disagree alert did not adversely impact airplane safety or operation." Boeing conceded that its "standard process" did not include any review by the Company's senior management. Notably, Boeing did not have any systems in place to alert its senior management about this potential safety compliance issue or any others. In fact, Boeing stated that its "senior company leadership" first became aware of this AOA Disagree alert safety issue after the Lion Air Crash. Boeing further conceded that it would need to issue a "display system software update, to implement the AOA Disagree alert as a standard, standalone feature before the MAX returns to service. When the MAX returns to service, all MAX production aircraft will have an activated and operable AOA Disagree alert and an optional angle of attack indicator. All customers with previously delivered MAX airplanes will have the ability to activate the AOA Disagree alert."

459. Notably, the Disagree Light was standard equipment on prior Boeing 737 models. In fact, Boeing initially decided that the Disagree Light would be standard equipment on the Boeing 737 MAX 8, but then decided to make it active only for airlines who paid extra for this safety feature. Indeed, airlines like Ethiopian Airlines, relied on Boeing's representations that the 737 MAX airplane was safe and airworthy without the angle-of-attack indicator or the Disagree Light when they purchased the aircrafts from Boeing without these features.

460. Notably, during the Congressional hearings on May 15, 2019, both the FAA and Boeing continued to blame the pilots of the Lion Air Crash and the Ethiopian Airlines Crash for failing to take the appropriate actions to deal with Boeing's malfunctioning MCAS, which was forcing the plane's nose downward. NTSB chairman Robert L. Sumwalt, however, said that it would be a mistake to dismiss the problems uncovered by the two crashes as revolving primarily around international training issues, "If an aircraft manufacturer is going to sell airplanes all across

the globe, then it's important that pilots who are operating those airplanes in those parts of the globe know how to operate them. Just to say that the U.S. standards are good – this might be a problem with other parts of the globe. I don't think that's part of the answer. And I hate to use this term, but the airplane has to be trained to the lowest common denominator."

461. Moreover, on May 17, 2019, Ethiopian Airlines officials immediately disputed the FAA's chief's testimony that its pilots failed to adhere to the emergency procedures issued by the FAA after the Lion Air Crash. The airline said that although its pilots followed the procedures set up by the FAA and Boeing, "none of the expected warnings appeared in the cockpit, which deprived the pilots of necessary and timely information on the critical phase" of the six-minute flight. In fact, Ethiopian Airlines accused Boeing and the FAA of making such claims to "divert public attention" from problems with the 737 MAX's flight control system. Ethiopian Airlines' statement further noted the Ethiopian Airlines was one of only a small number of airlines around the world that bought a full flight simulator for the 737 MAX 8, which allowed pilots to become familiar with the system. The airline pointed out that "it's unfortunate that the B737 Max 8 simulator was not configured to simulate the MCAS operation by [Boeing]." The airline further stated that it was a "major failure" that the MCAS feature was "designed to be activated by a single source of information."

462. Shortly thereafter, an organization representing European pilots from more than 30 countries, the European Cockpit Association said that Boeing and the FAA had failed to resolve fundamental questions about the oversight and design of the 737 MAX, adding that it is "deeply disturbing" that the FAA and manufacturer are pushing to allow the planes back in the sky before addressing systemic problems. Its statement further stated that it was "extremely worrying" that "the manufacturer and the authorities are difficult to distinguish" in the FAA's certification system,

which delegates broad safety oversight responsibilities to Boeing. According to Jon Horne, the President of the European Cockpit Association:

> Boeing essentially built a plane to a wish list that would sell well – meeting attractive fuel, cost and performance metrics, with minimal additional pilot training requirements. But the problem is that it seems there was no independent regulator to look at this in-depth from a safety perspective and scrutinize what appears to be a design philosophy driven by commercial priorities.

463. In addition, the European Union Aviation Safety Agency indicated to the FAA that it will not commit to clearing the troubled jet to resume flights until its own safety questions are answered.

464. In mid-May 2019, Boeing discovered that its 737 MAX simulators could not accurately replicate the difficult conditions created by a malfunctioning anti-stall system, which played a role in both 737 MAX crashes. Specifically, the simulators did not reflect the immense force that it would take for pilots to regain control of the aircraft once MCAS activated on a plane traveling at a high speed.

465. Moreover, on June 7, 2019, Representatives Peter DeFazio and Rick Larsen revealed that they obtained information suggesting the Boeing knew about the faulty anti-stall feature on its 737 MAX airliners as early as November 2017, but that Boeing did not plan to fix the defect until ***2020***. DeFazio further stated, "The fact that Boeing knew about a defect for more than a year before disclosing it to the FAA is of great concern to me, which is why Chair Larsen and I are asking for further documentation to get a more fulsome picture of who knew what and when."

466. On June 19, 2019, the House Committee on Transportation & Infrastructure, Subcommittee on Aviation held hearings, where Boeing was repeatedly criticized with respect to

its 737 MAX. For example, David Carey, a 35-year career captain with American Airlines and president of the Allied Pilots Association, testified:

> The most important issue now is the question of the airworthiness of the 737 MAX fleet. I believe that the Boeing engineers have indeed made significant positive changes with the new software fixes, many of which our pilots demanded when we met with Boeing officials in November 2018. There are now redundancies embedded in the aircraft in the event of the "firing" of MCAS. However, at APA we remained concerned about whether the new training protocol, materials and method of instruction suggested by Boeing are adequate to ensure that pilots across the globe flying the MAX fleet can do so in absolute complete safety.

467. At the same hearing, famed retired pilot, Chesley B. Sullenberger III testified, "We shouldn't be blaming the dead pilots…. We shouldn't expect pilots to have to compensate for flawed designs."

XX. In June 2019, the FAA Discovers Another Safety Design Flaw in the MAX, and Boeing's Troubles Continue to Mount

468. In June 2019, Boeing's troubles mounted for the 737 MAX's return to flight when the FAA discovered a potential problem connected to a microprocessor in its flight control computer, where in rare circumstances, could force the plane to dive in a dangerous, uncontrolled fashion. Highly experienced FAA test pilots were concerned that they could not "quickly and easily follow the required recovery procedures." Notably, this problem is not the same as the faulty data issue that Boeing had already admitted it was required to fix on MCAS.

469. The FAA made this discovery during simulator sessions meant to test the plane's overall flight control software and Boeing's proposed fixes to its MCAS feature. This particular test was requested by the European Union Aviation Safety Agency. This discovery also made the FAA reject Boeing's assumption that the plane's pilots can be relied upon as the backstop safeguard in situations like the ones in involved in the two 737 MAX crashes. That notion was

ruled out during testing of the effect of a glitch in the computer hardware, when one out of three pilots in a simulation failed to save the aircraft. Specifically, one pilot took sixteen (16) seconds to identify and react to the malfunction, significantly lower than current FAA certification rules and safety guidelines permit. This failure changed everything for Boeing. Specifically, Boeing had previously classified this failure mode as a "major fault,", a category that can be mitigated by flight-crew action. The one pilot's failure to recover immediately changed the classification to "catastrophic." FAA regulations require that no single fault can be permitted to lead to a catastrophic outcome. As a result, Boeing was required to fix that fault by eliminating its possibility.

470. In response to the FAA finding that new glitch, Boeing finally had to implement proper safety procedures to develop a plan to fundamentally change the software architecture of the 737 MAX flight-control system and take input simultaneously from the two flight-control computers that are standard on the earlier 737 models. In other words, the new system will detect not only any disagreement between the sensors, but also check for any processing error in interpreting the information from the sensors.

471. This latest problem with the 737 MAX supposedly even took Muilenburg by surprise as he stated at a conference in Aspen, Colorado that the 737 MAX would be carrying passengers by the end of summer. Later that day, on June 26, 2019, Boeing announced this new problem with its 737 MAX in a SEC filing, and soon after projected that it could add a further three months' delay to the 737 MAX's return to flight.

472. Shortly thereafter, on July 6, 2019, the European Aviation Safety Agency ("EASA") identified five major flaws that Boeing must address before it will authorize the 737 MAX to return to flight. EASA listed a number of already-disclosed issues with the planes: the

pilots' difficulty turning the manual trim wheel, the unreliability of the MAX's sensors to determine the plane's angle, inadequate training, and computer chip issues affecting the plane's software. However, EASA identified a new issue as well: the pilots' inability to disengage autopilot in certain circumstances, which could lead the planes to stall. Fixing these issues will be time consuming and may well keep the 737 MAX grounded much longer than originally contemplated.

473. Moreover, on September 26, 2019, the NTSB issued a report with seven (7) safety recommendations to the FAA, which were derived from the NTSB's examination of the safety assessments conducted as part of the original design of Boeing's MCAS on the 737 MAX. Significantly, the NTSB issued these safety recommendations because of its "concern that the process needs improvement given its ongoing use in certifying current and future aircraft and system designs." These safety recommendations, included, among others:

> Require that Boeing (1) ensure that system safety assessments for the 737 MAX in which it assumed immediate and appropriate pilot corrective actions in response to uncommanded flight control inputs, from systems such as MCAS, consider the effect of all possible flight deck alerts and indications on pilot recognition and response; and (2) incorporate design enhancements (including flight deck alerts and indications), pilot procedures, and/or training requirements, where needed, to minimize the potential for and safety impact of pilot actions that are inconsistent with manufacturer assumptions.

474. On October 11, 2019, the Joint Authorities Technical Review, a group of international and American aviation safety experts, released a report that identified broad failures in the design and oversight of Boeing's 737 MAX. Christopher Hart, a former chairman of the NTSB chaired the panel. The report found evidence that Boeing's certification engineers were subject to "undue pressure", and that such pressure may be explained by "conflicting priorities" within Boeing and "an environment that does not support FAA requirements."

475. Boeing faced even more criticism, on October 18, 2019, when U.S. Representative Peter DeFazio issued the following statement after Boeing belatedly disclosed Forkner's and Gusstavson's November 15, 2016 texts about MCAS's "egregious" malfunctions to the FAA and Congress:

> Today we received documents from Boeing, which apparently they have had in their possession for several months, including the outrageous instant message chain between two Boeing employees indicating Boeing withheld damning information from the FAA. This exchange is shocking, but disturbingly consistent with what we've seen so far in our ongoing investigation of the 737 MAX, especially with regard to production pressures and a lack of candor with regulators and customers. This is no isolated incident, and underscores why it is so important that Members of Congress have a chance to question Boeing, in public. This is not about one employee; this is about a failure of a safety culture at Boeing in which undue pressure is placed on employees to meet deadlines and ensure profitability at the expense of safety. Boeing will have to answer for this and other questions at our hearing on October 30th.

476. On October 25, 2019, the Indonesian authorities issued their final accident report concerning the Lion Air Crash. This report concluded that Boeing's design of a flight-control system, MCAS, along with Boeing withholding information about MCAS from the pilot manuals, played a significant role in the Lion Air Crash. The report stated that MCAS's reliance on one sensor that measures the angle of the plane's nose, rather than both, led to the pilots' inability to regain control once the system pushed them into a nosedive. Indonesian investigators also cited Boeing's failure to activate malfunctioning alerts that could have told pilots and maintenance crews that the airplane's angle-of-attack sensors were sending divergent data to cockpit computers. Notably, Boeing had planned to wait until 2020 to eliminate that defect, which it had known about since 2017.

XXI. Boeing Implements Insufficient Remedial Measures to Address Safety Failures

477. After two 737 MAX crashes killed 346 people and the 737 MAX fleet was grounded world-wide, the Boeing Board finally conceded that it lacked any systems to convey safety issues concerning its products to the Boeing senior management, including its directors. Kellner admitted that only now are he and other board members working to understand whether there were questions they should have asked about the plane's safety sooner.

478. Moreover, Boeing's senior management took the lead after the crashes with Muilenburg asking the Board to establish a committee to review Boeing's policies and processes for the design and development of airplanes, which Boeing announced on April 5, 2019. The members of the new safety oversight committee include Defendants Giambastiani, Bradway, Good and Liddy – all culpable Board members during the critical period when the Board had no procedures in place to oversee safety and regulatory matters. The committee hired an independent engineering expert familiar with safety-regulated industries to evaluate Boeing's safety policies and practices.

479. The Committee, however, fell short in its review. It did not conduct an independent investigation, nor did it examine the Company's culture of placing profits and production above safety. Notably, a report issued after an independent investigation could expose Boeing and Defendants (including the Committee members) to further liability.

480. Several months later, in late September 2019, the Board recommended changes to put in a system for Boeing's CEO and Chairman to oversee Boeing's engineers to ensure that Boeing complies with safety regulations. In this regard, top engineers in Boeing's commercial and defense units will report directly to the Company's chief engineer rather than division heads. The chief engineer in turn reports to Boeing's CEO. Boeing further announced that it would a create a group focused on the safety of its products and services. This unit will investigate safety

concerns and oversee accident investigators as well as employees who represent the FAA on certification matters. This unit will report to Boeing's chief engineer and also to a newly created Board committee focused on aerospace safety.

481. Further conceding that Boeing's Board was lacking critical expertise, the Board also amended the Company's governance rules to make safety-related experience a criterion for choosing future directors.

482. On October 11, 2019, the Board stripped Muilenburg of his Chairman title, even though the directors had resisted doing so for months, repeatedly expressing their confidence in him. Indeed, pressure was mounting on the Board to take some action to hold Boeing's senior executives accountable for the 737 MAX crisis before Muilenburg's scheduled testimony before Congress on October 29 and 30, 2019. According to *The New York Times* article, "Boeing's Board Acted After Months of Mounting Pressure", "the board was eager to make a move before the hearing to avoid the perception that scrutiny from lawmakers prompted a change, according to a person close to the board who spoke on the condition of anonymity to discuss internal matters." Stripping Muilenburg of the Chairman title was hardly going far enough as the Board allowed Muilenburg to remain a Boeing director. Indeed, the Board should have fired Muilenburg for his wrongful conduct, and clawbacked millions of dollars of his compensation.

483. In addition, the Board elevated Defendant Calhoun to the Chairman position despite his many oversight failures and other violations of the law related to the 737 MAX. Calhoun should have resigned, rather than becoming the head of Boeing's Board.

484. Likewise, on October 22, 2019, although the Board fired McAllister as head of BCA, it failed to take any actions to clawback the tens of millions in compensation that McAllister was paid while doing his wrongful acts that caused significant harm to the Company.

XXII. The October 2019 Congressional Hearings Confirm that Boeing Failed to Comply with Safety Regulations in Favor of Generating Profits When Developing and Operating the 737 MAX

485. Muilenburg and John Hamilton ("Hamilton"), Boeing chief engineer for commercial airplanes, both testified in front of Congressional members on October 29 and 30, 2019 about the 737 MAX.

A. The October 29, 2019 Senate Hearing

486. On October 29, 2019, the Senate's Commerce, Science and Transportation Committee held a hearing on "Aviation Safety and the Future of Boeing's 737 MAX". At the beginning of the hearing, Senator Wicker stated, "Both of these [737 MAX] accidents were entirely preventable…….We have many concerns that Boeing should address today…….I invite Mr. Muilenburg to describe the steps Boeing is taking to improve aviation safety and to ensure that technical experts never experience undue pressure to put profits and relationships ahead of safety."

487. At this hearing, Muilenburg began his testimony by admitting that both the Lion Air and Ethiopian Airlines Crashes "involved the repeated activation of a flight control system called MCAS, which responded to erroneous signals from a sensor [that] measures the airplane[']s angle of attack." Muilenburg then conceded that Boeing "got some things wrong", including "in the case of the angle of attack disagree alert, we got the implementation wrong." Muilenburg further conceded that Boeing had to modify MCAS in three ways to correct this design defect as it will now: (1) "compare information from both sensors instead of one before activating", (2) "only activate a single time", and (3) "never provide more input than a pilot can counteract using the control column alone."

488. Hamilton conceded that Boeing had wrongly assessed the hazard level related to MCAS.

489. Muilenburg also admitted that he knew about Forkner's November 2016 messages about MCAS's deficiencies "prior to the second crash earlier this year." Muilenburg, however, further contended that he did not know the specific details about Forkner's exchange until a few weeks before the October 29, 2019 hearing. In fact, Muilenburg blamed Boeing's legal counsel for failing to disclose such documents to the FAA for months after their discovery.

490. In response, Senator Blumenthal highlighted how "loved ones lost lives because of an accident that was not only preventable, as the chairman said at the very start, but was the result of a pattern of deliberate concealment." Senator Blumenthal further explained that "Boeing came to my office shortly after these crashes and said they were the result of pilot error. Those pilots never had a chance. These loved ones never had a chance. They were flying in coffins as a result of Boeing deciding that it was going to conceal [MCAS] from the pilots. And the best evidence is this message from Mark Forkner saying in effect we[']re going to conceal MCAS, delete it from the manual used in training." Senator Blumenthal further accused Boeing of "putting profits over safety, rushing the certification process with you [*i.e.*, Muilenburg] in charge of that certification, and prioritizing speed and cost over safety."

491. Likewise, Senator Peters stated that the 737 MAX crashes show that "Safety cannot be taken for granted." Similarly, Senator Udall stated, "You and others in your company blamed the deceased pilots and the culture of the countries where the crashes occurred for the accidents but from what we have seen in the last year since the first crash it appears that Boeing's own culture is more blameworthy for installing a faulty system that resulted in too many deaths and could have caused more. This culture starts at the top…."

492. Moreover, Senator Duckworth accused Boeing of lying to the Senate Committee, stating, "Time and again, …Boeing has not told the whole truth to this committee and to the families and to the people looking at this…You knew in 2016. You knew [in] 2016 that this was happening [with MCAS] and your team at Boeing decided we didn't need to fix that because of well understood piloting techniques and procedures. But the problem is that well understood piloting technique and procedures is to pull back, and that's it. But you added something else. You put in a system and you didn't tell pilots about and then you put in an override by resetting the system five seconds later…"

493. Senator Scott pressed Muilenburg about his own accountability for Boeing's safety failures and the 737 MAX crashes, inquiring ***"so whether it's engineers or non-engineers, if somebody has a concern in the future about safety, what's the process [that] you [have] created to make sure it gets to you and you can react to it?" Muilenburg responded, conceding that Boeing had lacked the necessary systems prior to the 737 MAX crashes, "Yeah, Senator, that's been one of the key learnings from this whole process is we need to elevate the visibility on safety issues that might come up at the ground floor level, make sure [that] they get the right visibility and action. So a couple of things we've done there, one is, again, restructuring our safety review boards. So now I get a weekly update on safety review boards from across the Boeing enterprise at a detailed level, which I found to be very helpful. We've also, with the [setup] of our new safety organization under Beth Pastor, instead of having those teams underneath our businesses, they are now separated and report up through our chief engineer. Any safety concerns that employees have will come through that organization. We set up a new anonymous reporting system for those employees that might want to make anonymous reports to facilitate"*** (emphasis added).

494. Notably, Muilenburg also admitted that Boeing should have grounded the 737 MAX fleet earlier. Specifically, Muilenburg testified that "if we could go back, we would have made a different decision" about when to ground the 737 MAX fleet.

495. In response to this criticism about Boeing's safety failures, Muilenburg acknowledged how Boeing had to create new safety committees and restructure its safety review board in light of the 737 MAX crashes to address those failures. He stated that "We at Boeing need to make some improvements in communication and we own that…." Muilenburg further conceded that "we have learned lessons" from the two 737 MAX crashes.

B. The October 30, 2019 House Hearing

496. On October 30, 2019, the House Transportation and Infrastructure Committee held a hearing on "The Boeing 737 Max: Examining the Design, Development, and Marketing of the Aircraft." The Committee's Chairman, Representative Peter DeFazio began the hearing by stating:

> There are a lot of unanswered questions that we need to get to the bottom of…We do know that at one point Boeing had planned to inform pilots about MCAS, in fact, it was the first version of the flight manual when it was a relatively benign system but when it became a radical system which could trigger a catastrophic failure it came out. Some of that was discussed in the Senate yesterday, it will be discussed here again today…there's been a lack of candor all through this. Boeing learned that the AOA, angle of attack disagree light, which was a standard feature on all Boeing 737s did not work on this plane unless someone bought the upgraded package. We were told that was an inadvertent software error in developing the upgraded package. But, that may be so, but Boeing decided to delay the fix for three years until 2020. They didn't tell the FAA, they didn't tell the customers, and they didn't tell the pilots about this until after the Lion Air crash. That's inexplicable….We know there was tremendous pressure on production. You know, we have Boeing whistleblowers who contacted us, you know, regarding features engineers wanted to put on the MAX, but were denied because of the rush to get this plane out the door and compete. We have an internal whistleblower survey conducted November [20]16 that 39 percent of Boeing employees surveyed they experienced undue pressure, 29 percent said they were concerned about

> consequences, consequences. You might lose your job, I guess, if they reported these instances….There's a lot we don't know…This hearing today and investigation is not just about getting answers to our questions, but how to make the system safer and prevent future tragedies.

497. Similar to his opening for the Senate committee, Muilenburg began his testimony before the House Committee by identifying the three changes that Boeing intended to make MCAS to correct its design flaws. Muilenburg further stated that "But no number other than zero accidents is ever acceptable. We can and must do better. We have been challenged and changed by these accidents. We have made mistakes and we have learned and we are still learning and we are improving."

498. After Representative DeFazio started questioning him, Muilenburg again admitted that "we made some mistakes on MCAS." Specifically, DeFazio used a document dated December 17, 2015, in which one of Boeing's engineers inquired, "Are we vulnerable to a single AoA sensor failure with the MCAS implementation or is there some checking that occurs?" DeFazio then acknowledged that Boeing's new design of MCAS would correct this defect, but asked, "why wasn't it that way from day one?" In response, Muilenburg conceded that, "we've asked ourselves that same question, over and over, and if—if back then we knew everything that we know now, we would have made a different decision."

499. Similarly, Hamilton conceded that Boeing's assumption that the pilots could serve as the backup if there was an erroneous activation of MCAS was "flawed."

500. Next, Representative Norton questioned Muilenburg and Hamilton about the FAA Settlement Agreement, stating that such agreement required "improved management and accountability, internal auditing and supplier management, more stringent quality and timeliness – timelessness of regulatory submissions…Yet in –in designing and developing and manufacturing

the 737 MAX, Boeing has run into issues problems, characterize them as you will – in meeting the obligations in most of these categories. Would you agree, Mr. Muilenburg?" In response, Muilenburg conceded that "we've identified many of those challenges throughout the MAX development program."

501. Then, Representative Johnson questioned Muilenburg and Hamilton about why Forkner asked the FAA to remove all references to MCAS in the flight crew operations manual and training materials in March 2016. Muilenburg and Hamilton continued to blame the pilots for Boeing's concealment of this critical safety feature on the 737 MAX. In this regard, Muilenburg contended that the original decision to conceal MCAS from the pilots was based on Boeing's "focus" to "provide the information that the pilot needs to fly the airplane rather than the information that would be used to diagnose a failure." Hamilton then testified that "since these accidents, we understand that pilots do want more information and we are going to incorporate that in our flight crew training manual and the flight crew operations manual."

502. Representative Larsen grilled Muilenburg about Boeing's "mistakes," asking, "Can you name three specific mistakes that Boeing made in this [737 MAX certification] process?" To which Muilenburg admitted that "I would point out implementation of the angle of attack disagree alert. We got that wrong upfront. The implementation was-- was a mistake and we've subsequently fixed that going forward…Secondly, we've learned about the MCAS architecture, the changes that we've – we've already talked about. Clearly, we have some areas to improve there…thirdly, I would say in the broader area of communication documentation across all of the stakeholders and doing that in an efficient and comprehensive manner. We've identified some improvements we need to make there."

503. Representative Larsen then asked Muilenburg whether he could "identify individuals, then, who made these mistakes within Boeing?" Muilenburg responded, "There's no one individual that makes decisions…These generally are engineering teams that build consensus with all of the stakeholders." Representative Larsen then inquired, "So, does that make this an organizational or a cultural problem as opposed to an individual problem that led to these mistakes?" Muilenburg then conceded, "I think it's important, from an—from an accountability standpoint, you know, my company and I are accountable. That accountability starts with me and our board recently took some actions regarding my position…and I fully support that… [Boeing has taken] organizational or structural actions. And these are equally important." Muilenburg then described those changes:

> [W]e've recently announced changes to our Safety Review Board structures to elevate them and make them more transparent. I now receive weekly data reports, a very detailed level on our safety review boards. We [set] up a new safety organization under Beth Pastor (SP). She now reports directly to our chief engineer who reports to me instead of being down in the business.
>
> Our board has set up a new Aerospace Safety Committee…Just Friday, we announced the addition of Admiral Richardson who has a deep, deep background in safety [to the Board]… and then we've also realigned our entire engineering organization, 50,000—roughly 50,000 engineers now all reports directly toward our chief engineer who reports to me.

504. Chairman Representative DeFazio then took a turn to ask a "quick question", saying:

> part of this process really, is taking full accountability for what went wrong for the death of...346 innocent people on two 737 MAX flights. So, my question is a simple one and I hope you can give me a direct response – who bears the principal responsibility at Boeing for the cascading events that resulted in the crash of Lion Air flight 610 and Ethiopian Airlines flight 302? I know you've lost your board chair. You are still CEO. You still serve on the board. I did happen to look at your compensation last year – you received after

> that crash a $15 million bonus. What are the consequences? Who is taking principal responsibility? Who is going to be held accountable? Fully accountable. I know you fired one person.

505. Muilenburg responded to Representative DeFazio's question by conceding that, "my company and I are responsible. We're responsible for our airplanes. And we know there are things that we need to improve…I am responsible…. I'm also accountable.

506. Representative Cohen then followed up asking Muilenburg: "[w]hat does accountability mean? Are you taking a cut in pay? Are you working for free from now until you can cure this problem? These people's relatives are not coming back. They're gone. Your salary is still on. Is anybody at Boeing taking a cut or working for free to try to rectify this problem like the Japanese would do?...Are you giving up any money?" To which Muilenburg responded, "[O]ur board will make those determinations." Cohen then told Muilenburg, "You're not accountable then. You're saying the board is accountable."

507. Representative Babin asked Muilenburg and Hamilton, "what did Boeing do after the Lion Air crash to ensure that those circumstances were not repeated?" Hamilton testified that, "In the hours following [the] Lion Air accident we convened a group of experts from around the company and started postulating on what possibly could have happened given the limited data that was available. ***We quickly identified that this MCAS activation could have been a scenario…And, once the flight data recorder came up later in the week and—and verif[ied] what we had we started working on a software change immediately to start working that"*** (emphasis added). As such, Hamilton conceded that less than a week after the Lion Air Crash, Boeing knew MCAS played a critical role in it, and would require a software fix to correct this fatal noncompliant deficiency in the 737 MAX. Yet Boeing's Board and senior management

allowed the 737 MAX fleet to continue flying for months until the entire world grounded the fleet days after the Ethiopian Airlines Crash, and the Board had no other choice.

508. Muilenburg also admitted that as Boeing's CEO, he "set the pace for the company", its "standards" and the Company's "purpose and goal". Muilenburg further admitted that Boeing does "incentivize our team to perform from a cost and schedule standpoint."

509. Representative Garamendi hammered Muilenburg about Boeing's safety failures across many products. He stated, "you have a systemic problem in your company. You are—you are reaching for profit, which incidentally was very, very significant [in] 2018, was it not, $15 billion in cash plus a significant increase in the profit. You're driving profit. You're not driving quality and you're sure as heck not driving safety." Representative Garamendi highlighted how "[t]hree of your principal product lines, the MAX—737 MAX, the KC-46, and the Dreamliner all have quality issues. They certainly all – certainly in the case of the MAX, they have a serious safety issue."

510. Representative Titus then questioned Muilenburg about Forkner's messages about "Jedi mind tricking" customers into buying airplanes, and regulators into accepting the limited training that Forkner got accepted by the FAA. Specifically, Representative Titus asked, "I would ask you what Jedi mind tricking is and if given these comments would it be fair to state that your company misled foreign regulators to get your aircraft certified?" Muilenburg responded by stating that he did not know what Forkner meant in his messages.

511. Chairman Representative DeFazio again took over the questioning to further grill Muilenburg about his lack of accountability:

> I'm a Star Wars fan, so I know what Jedi mind tricking means…here's one observation that I'd like to make…. [S]o far, the consequences to you has been, oh, you're not chairman of the board anymore. I don't know what extra bonus the chairman gets…So I

> haven't seen convincingly that there have been consequences except one guy got fired, and the chief – the leader of the 737 program retired in disgust because he wouldn't want to put his family on the airplane.

512. Representative Malinowski asked Muilenburg whether "it's fair to say that -- that Boeing pushed the FAA and regulatory agencies around the world to not require simulator training to fly the MAX." Muilenburg responded that Boeing's "design objective was level B training." Muilenburg further testified that "one of our design requirements that we worked with our airline customers was to do what we call Level B training, computer-based training as a design objective."

513. Representative Mucarsel-Powell stated, "Mr. Muilenburg, if you had an ounce of integrity, you would know that the right thing to do is to step down." Representative Allred also stated:

> Mr. Muilenburg, I hope that you are gathering from today's hearing… that mistakes happen, even the greatest companies make mistakes. It's the concealment, it's the purposeful concealment that bothers so many of us. With an obvious financial drive behind it, that the pilots didn't know about this is unacceptable. That you implemented this new system and had airlines rely on you to deliver a safe and reliable aircraft and you did not do that, is unacceptable…You come here and you're telling us how sorry you are about what has happened but, yet, we have to have whistleblowers tell us some of this information about what's going on inside [of] Boeing.… This is about catastrophic design flaw and regulatory failure that has caused us to lose hundreds of lives.

514. Finally, Representative Craig asked Muilenburg, "when should you have grounded this plane?" Muilenburg admitted that "if we knew back then what we know now, we would have grounded it right after the first accident. If we could have saved one life, we—we would have done it." Boeing's Board and senior executives, however, knew everything that they needed to know about the 737 MAX's fatally flawed MCAS at the time of the Lion Air Crash and after the

Ethiopian Airlines Crash, yet putting profits over safety, repeatedly decided not to ground the 737 MAX fleet until the U.S. government and a world-wide grounding forced them to do so.

XXIII. Boeing has Already Suffered Billions in Damages Due to Defendants' Wrongdoing

515. Boeing is a Delaware corporation. Under Delaware law, "[t]he business and affairs of every corporation…shall be managed by or under the direction of a board of directors, except as otherwise provided in [the DGCL] or its certificate of incorporation." 8 Del. C. § 141(a). The Company's certificate of incorporation included no exception. The Company's Amended and Restated Certificate of Incorporation states, "The business of the Corporation shall be managed by its Board of Directors, and the Board of Directors shall have power to exercise all the powers of the Corporation."

516. Here, the Company's Board willfully failed to exercise its fundamental authority to govern management and to institute a system of controls for legal compliance and safe operations of the Company's BCA unit. Those failures have caused billions of dollars in damages to Boeing as follows:

- In a few short weeks after the Ethiopian Airlines Crash, Boeing's stock had lost about **$40 billion** in value;
- In April, Boeing suffered additional damages because it had to cut 737 MAX production by almost a fifth to 42 aircrafts monthly amid the grounding. Before the grounding, Boeing had intended to boost 737 MAX production for 52 to 57 aircrafts a month in 2019.
- After grounding the 737 MAX, Norwegian Air announced that it will demand that Boeing pay for its lost flight time;
- Indonesian airline, Garuda also cancelled a batch of orders for 49 737 MAXs due to "consumers' low confidence" in the airplanes following the crashes;
- In June 2019, over 400 pilots from an undisclosed major international airline filed a class action suit against Boeing;
- In early July 2019, Boeing announced that it pledged $100 million in financial support to families and communities affected by the two fatal 737 MAX crashes.

Boeing said that the funds would cover costs including living expenses for families, community development and education efforts. Notably, this $100 million pledge is independent of lawsuits against Boeing related to the crashes, and Boeing noted that it would have no bearing on litigation or mediation;

- On July 8, 2019, Saudi Arabian airline, Flyadeal announced that it had cancelled its order for almost $6 billion worth of 737 MAX airplanes. Instead, Flyadeal stated it will order up to 50 planes from Airbus' A320neo family;

- On July 18, 2019, Boeing announced that it would take a $5.6 billion charge for the quarter related to the prolonged grounding of the 737 MAX fleet. Boeing also disclosed that it was anticipating an additional $1.7 billion in costs associated with the production of the MAX, which has had a factory slowdown. In total, Boeing announced it already had more than $8 billion in costs related to the 737 MAX crashes;

- On July 24, 2019, Muilenburg and Smith both raised the prospect of halting production of the 737 MAX on a conference call discussing Boeing's second-quarter earnings for 2019. Specifically, Muilenburg stated that "We might need to consider possible further rate reductions or other options including a temporary shutdown of the MAX production.";

- In late September 2019, Icelandair disclosed it had reached an agreement with Boeing to cover costs associated with the airline's fleet of six grounded 737 MAX jets;

- On October 23, 2019, Boeing filed its Form 10-Q for the quarter ended on September 30, 2019, and announced an additional $0.9 billion charge related to the 737 MAX airplanes crashes, bringing Boeing's total costs to approximately $9 billion;

- In October 2019, a union representing Southwest Airlines pilots sued Boeing alleging that the Company provided pilots with false information about the safety of the 737 MAX airplanes;

- In addition, many other lawsuits were filed against Boeing and its directors and officers. These litigations include wrongful death suits, a securities class action case and an ERISA case;

- Shortly after the Lion Air Crash, the DOJ began a probe into the development of the 737 MAX, including an examination of the way Boeing was regulated by the FAA. As part of the federal investigation, the F.B.I. is also supporting the Department of Transportation's inspector general in its inquiry. On June 29, 2019, federal prosecutors expanded their criminal probe to include demands for records related to Boeing's Dreamliners manufactured in both Washington and South Carolina. These criminal investigations may result in fines;

- Shortly after the Ethiopian Airlines crash, the U.S. Senate launched an investigation into Boeing's alleged failure to respond to whistleblower claims by employees who stated that government inspectors reviewing the 737 MAX did not have the proper training needed to adequately inspect the plane. Both the Senate Committee on Science, Commerce, and Transportation and the Senate Subcommittee on Aviation and Space are investigating Boeing's conduct;

- The DOT asked the Inspector General to conduct a formal audit of the Boeing 737 MAX. Additionally, the DOT has created a special committee to review the current process for plane certification more generally; and

- Boeing is paying for multiple government investigations worldwide related to the crashes of the 737 MAX.

XXIV. The Board Unjustly Enriched Defendants Despite Their Oversight Failures Related to the Noncompliant 737 MAX Airplanes

517. At Boeing, the Board members award themselves significant fees each year. For example, each director earns an average of $324,000 in cash and stock annually – the 29th-highest paid board pay in a recent survey of the 100 largest companies by compensation researcher Equilar.

518. Unsurprisingly, Defendant McNerney's compensation packages were extremely lavish. Notably, the Compensation Committee lacked independence from McNerney. In this regard, two of the four members of the Compensation Committee from 2011 to 2016, were McNerney's former GE colleagues (*i.e.*, Defendants Calhoun and Zafirovski). Notably, from 2005 to 2015, McNerney collected a whopping $222.5 million in compensation, of which 39% was stock based and 35% profited based.

519. When McNerney stepped down as CEO on July 1, 2015, he did not go empty handed. Instead, he walked away with pension benefits that would provide him with at least $3.9 million for fifteen years (*i.e.*, at least $58.5 million). McNerney also received a $1.5 million salary to continue serving as Boeing's Chairman until his retirement in February 2016 and was eligible for an annual cash incentive award targeted at $2.25 million.

520. When McNerney left the Board in 2016, Muilenburg was given the powerful dual role of CEO and Chairman of the Board. In 2016, the Board approved a pay package for Muilenburg worth approximately $15.1 million – 14% more than the previous year of $13.2 million. His pay included $5.2 million in stock awards, and a $6.43 million cash bonus.

521. Muilenburg, however, was not Boeing's top paid executive in 2016 – that title went to McAllister, who received $20.9 million in compensation. In addition, Conner, Boeing's vice chairman and BCA's head, received $8.95 million, while EVP Luttig got a $9.37 million package.

522. In 2018, the Board approved a pay package for Muilenburg worth approximately $23.4 million in compensation – a 27% raise from the prior year.

523. Moreover, in 2013, Boeing began spending billions of dollars on stock buybacks to boost its stock price, which in turn increased compensation for Boeing's senior management. For example, in 2013, Boeing spent $2.8 billion on stock buybacks. In 2014, Boeing increased its spending on stock buybacks to $6 billion. Boeing then spent $6.8 billion in buybacks in 2015, $7 billion in 2016, $9.2 billion in 2017, and $9 billion in 2018. In total, Boeing spent $43.1 billion on stock buybacks from the first quarter of 2013 to the first quarter of 2019, equal to 104% of Boeing's profit.

524. Notably, Boeing's stock price began to steadily increase during 2013 as the 737 MAX orders rolled in and the Company began doing large-scale buybacks. In fact, between January 1, 2013 and March 1, 2019, Boeing's stock increased by a multiple of 6.7, hitting a record high of $446 per share just ten days before the Ethiopian Airlines Crash.

525. Moreover, on December 17, 2018 – less than two months after the Lion Air Crash – the Board authorized a new stock-repurchase program of $20 billion, making it possible for Muilenburg and Smith, to execute at their discretion, even greater amounts of buybacks in 2019

than the $9.1. billion average for the previous two years. In the first quarter of 2019, Boeing repurchased $2.3 billion in stock buybacks before the Ethiopian Airlines Crash.

526. Notably, the primary beneficiaries of Boeing's stock buybacks are its senior executives, who realize huge gains from their stock-based compensation. In fact, Boeing's 2014 Proxy Statement disclosed to its shareholders that, "beginning in 2014, a significant portion of our named executive officers' long-term compensation will be tied to Boeing's total shareholder return as compared to a group of 24 peer companies."

527. For example, from 2015 through 2018, Muilenburg banked $95.9 million in gross pay, even though his annual salary never exceeded $1.7 million. Of this compensation, 51% consisted of realized gains from exercising stock options and the vesting of stock awards. Another 34% was nonequity compensation, based in 2013-2016 on Boeing's profitability and in 2017-2018 on a more complicated set of metrics. In 2018, Muilenburg took home $31.3 million in total compensation with 49% from realized gains from vested stock awards and another 42% from a nonequity bonus based on various financial metrics.

528. Boeing's other named executive officers, including Defendants Smith, Conner, Luttig, McAllister, Sands, and Hyslop, earned an average of $9.8 million in 2012, $5.7 million in 2013, $8.4 million in 2014, $7.2 million in 2015, $16.5 million in 2016, $13.9 million in 2017, and $14.2 in 2018.

529. Boeing did not suspend its stock buybacks program until April 24, 2019 when the future of its 737 MAX revenues were in doubt.

530. Significantly, despite the wrongdoings by the Officer Defendants outlined above, the Director Defendants have refused to clawback any of the Officer Defendants' unjust compensation based on their roles in the 737 MAX airplanes' compliance failures, which has

already cost Boeing billions of dollars in damages. Moreover, Boeing's clawback policy does not require a financial restatement for the Compensation Committee to request an executive officer to provide reimbursement of incentive compensation.

DUTIES OF THE DEFENDANTS

I. Defendants Violated Delaware law and Boeing's Corporate Governance Requirements When They Failed to Fulfill Their Fiduciary Duties

531. Defendants, due to their positions of control and authority as officers and/or board members of Boeing, were able to, and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein, as well as the contents of the various misleading SEC filings and other statements disseminated by the Company.

532. Because of their advisory, executive, managerial, and directorial positions, each of the Defendants had access to adverse, non-public information about Boeing's products.

533. At all times relevant hereto, each of the Defendants was the agent of each of the other Defendants and of Boeing, and was at all times acting within the course and scope of such agency.

534. To discharge their duties, the officers and board members of Boeing were required to exercise reasonable and prudent supervision over the management, policies, practices, and controls of the business and financial affairs of the Company. Specifically, under Delaware law, Boeing's directors and senior executives have fiduciary duties to the Company and its shareholders, including the duties of loyalty, good faith, care, and candor. To discharge their duties, the officers and directors of Boeing were required to exercise reasonable and prudent supervision over the management, policies, practices, and controls of the affairs of the Company. By virtue of such duties, Boeing's directors and officers were required to, among other things,

a. Ensure that the Company complies with its legal obligations and requirements, including acting only within the scope of its legal authority;

b. Remain informed as to how Boeing conducts its operations, and upon, receipt or notice of information concerning imprudent or unsound conditions or practices, to make a reasonable inquiry in connection therewith, and to take steps to correct such conditions or practices, as well as make such disclosures as necessary to comply with applicable laws;

c. Ensure that the Company is operated in a diligent, honest, and prudent manner in compliance with all applicable laws, rules and regulations; and

d. Conduct the Company's affairs in an efficient, business-like manner so as to make it possible to provide the highest quality performance of its business, and to maximize the value of the Company's stock.

535. In addition, Boeing's foundational corporate documents, (*e.g.*, Boeing's Corporate Governance Principles and the Board's subcommittees' charters), expressly detail the requirements of Defendants' duties, including, *inter alia*, that the Board must actively monitor Boeing's performance, ensure that the Company's management and employees operate in a legal and ethically responsible manner, and report violations of Boeing's policies and procedures, and the law.

536. For example, Boeing's Corporate Governance Principles describe the Board's oversight responsibilities to include[9]:

> (1) advising management regarding long-range strategic issues and risks facing the Company;
>
> (2) overseeing management in the execution of its risk management responsibilities and assessing the Company's overall approach to risk management; and
>
> (3) approving policies of corporate conduct that continue to promote and maintain the integrity of the Company. ***In addition, the Board shall be knowledgeable about the content and operation of Boeing's ethics and compliance program, and shall exercise oversight with respect to the program's implementation and effectiveness.*** In discharging these responsibilities, the Board and its committees, as appropriate, shall have access to and are entitled to rely on the advice, reports and opinions of management and outside financial, compensation, legal or other advisors. (Emphasis added.)

[9] *Corporate Governance Principles*, The Boeing Company, 2–3 (June 24, 2019).. (Emphasis added).

537. In addition, Boeing's Code of Conduct "outlines expected behaviors for all Boeing employees. Boeing will conduct its business…in full compliance with all applicable laws and regulations." Boeing's Code of Conduct further states that "[Employees] will ensure that…without exception, [they] will comply with all applicable laws, rules, and regulations[, and they] will promptly report any illegal or unethical behavior to management or other appropriate authorities (i.e., Ethics, Law, Security, EEO)." Boeing's Code of Conduct is also recited in Boeing's "Ethical Business Conduct Guidelines" for its employees.

538. Next, the Audit Committee Charter specifically tasked its members with the "primary purpose of assisting the Board in oversight of... Company's compliance with legal and regulatory requirements."

539. The Audit Committee Charter also laid out specific "Responsibilities" for its members, including, to "[o]btain and review, on an annual basis, a formal written report prepared by the independent auditor describing:

- The firm's internal quality-control procedures;
- Any material issues raised by the most recent internal quality-control review, or peer review, of the firm, or by any inquiry or investigation by governmental or professional authorities, within the preceding five years, respecting one or more independent audits carried out by the firm, and any steps taken to deal with such issues…"[10]

540. The Audit Committee members' responsibilities also include, "[d]iscuss[ing] with management the Company's policies, practices, and guidelines with respect to risk assessment and risk management."[11]

[10] *The Boeing Company Audit Committee Charter*, The Boeing Company, 3 (, Dec. 15, 2014).
[11] *Id.* at 3.

541. Moreover, the Audit Committee Charter required that the "Company's Senior Vice President, Office of Internal Governance (the "SVP-OIG") and the Company's Vice President, Corporate Audit (the "VP-Corporate Audit") shall attend all meetings." It further required the members to "[a]t least annually receive reporting by the SVP-OIG on the Company's compliance with its risk management processes, and by the General Counsel on pending Law Department investigations of alleged or potentially significant violations of laws, regulations, or Company policies." The Audit Committee Charter also required its members to "[m]eet with the SVP-OIG to review the Company's ethics and business conduct programs and the Company's compliance with related laws and regulations."

542. Finally, the Audit Committee Charter instructed its members to "[r]eport regularly to the Board regarding the execution of the Committee's duties and responsibilities as well as any issues that arise with respect to…the Company's compliance with legal and regulatory requirements [and]…the implementation and effectiveness of the Company's ethics and compliance programs to support the Board's oversight responsibility."

543. The 2019 Proxy Statement also sets forth the Audit Committee's duties under "Risk Oversight." Specifically, the 2019 Proxy Statement states that the Audit Committee's risk oversight, includes "evaluat[ing] overall risk assessment and risk management practices" and to "perform central oversight role with respect to…compliance risks".

544. The following Defendants served on the Audit Committee during the Relevant Period: Bradway, Collins, Cook, Giambastiani, Good, Kellner (Chair), Kennedy, Liddy (Chair), Schwab, Stephenson, and Williams. In addition, Defendant Sands served as SVP-OIG during that time period.

545. During that time, none of these officer and director Defendants fulfilled their responsibilities as required by the Audit Committee Charter to ensure that Boeing complied with federal regulations concerning the safety of their airplane, including the 737 MAX. Notably, the Audit Committee met a total of eleven (11) times each year from 2011 through 2017, and a total of ten (10) times in 2018. [redacted]

546. The members of the Compensation Committee also have specific responsibilities under the terms of their Committee's Charter. Specifically, the Compensation Committee Charter makes its members responsible for reviewing and approving the total compensation of Boeing's CEO and reviewing the CEO's performance.[12] The Compensation Committee Charter further provides its members with the authority to "as appropriate, recoup incentive compensation pursuant to the Company's clawback policy."

547. From 2010 through 2019 the following directors served on the Compensation Committee: Defendants Calhoun, Collins, Duberstein, Liddy, Williams, and Zafirovski. These director Defendants unjustly enriched Boeing's senior management, including its CEOs and heads of its BCA unit, by awarding them compensation packages when they were taking actions that harmed the Company. For example, the Compensation Committee members awarded Muilenburg a pay package worth over $30 million in 2018 – after the Lion Air Crash. Indeed, the Compensation Committee did not even try to clawback any of that more than $30 million in compensation after the Ethiopian Airlines Crash, or after the 737 MAX fleet was grounded around

[12] *Compensation Committee Charter*, The Boeing Company, 1 (, May 2, 2016).

the world. Instead of taking action to penalize Muilenburg and his team of executives for building a flawed airplane that did not comply with federal regulations, certain members of the Compensation Committee, including Defendant Calhoun, even praised Muilenburg's performance in May 2019.

II. The Director Defendants Violated Section 14(a) of the Exchange Act and SEC Rule 14a-9, and Breached their Fiduciary Duties of Disclosure, By Causing the Company to File Materially Misleading Proxy Statements

548. The Director Defendants also violated Section 14(a) of the Exchange Act and SEC Rule 14a-9 by causing Boeing to issue proxy statements that failed to disclose that: (1) Boeing developed and operated the 737 MAX fleet in violation of federal and international laws and then attempted to conceal its illegal actions, and (2) Boeing had serious deficient internal controls that encouraged this illegal activity.

A. Numerous Director Defendants Caused Boeing to Issue the Materially False or Misleading 2017 Proxy Statement

[redacted]

550. On March 17, 2017, Defendants Bradway, Calhoun, Collins, Duberstein, Giambastiani, Good, Kellner, Liddy, Muilenburg, Schwab, Stephenson, Williams, and Zafirovski caused Boeing to file its annual proxy statement (the "2017 Proxy Statement") in connection with the 2017 annual stockholders meeting to be held on May 1, 2017. In the 2017 Proxy Statement, these Defendants solicited stockholder votes to, among other things, (i) re-elect themselves to the

Board; and (ii) approve executive compensation. With each of these solicited votes, these Defendants issues materially false or misleading statements.

551. With respect to Board re-elections, the 2017 Proxy Statement represented:

> The GON Committee is responsible for identifying and assessing potential candidates and recommending nominees for the Board's approval. The GON Committee assesses the qualifications of incumbent directors and other candidates for nomination on an ongoing basis, including with respect to the following factors:
>
> - **Experience.** The GON Committee considers each candidate's experience and leadership record in such areas as operations, international business, manufacturing, risk management, finance, government, marketing, technology, and public policy.
>
> - **Industry Experience.** The GON Committee ensures that a number of directors possess aerospace and/or defense industry, as well as technology, expertise. This broad industry expertise allows the Board to assess Company performance and provide strategic guidance with respect to each of our principal businesses….
>
> - **Professional Reputation.** As set forth in our Corporate Governance Principles, our directors are expected to have a reputation for personal and professional integrity, honesty, and adherence to the highest ethical standard….
>
> - **Regulatory Compliance.** All director nominees must satisfy regulatory requirements for Board service, including those with respect to any committee on which such director would be asked to serve.
>
> * * *
>
> **Governance, Organization and Nominating Committee**
>
> The GON Committee's principal responsibilities include:
>
> - identifying and recommending to the Board candidates who are qualified to become directors under the criteria set forth in our Corporate Governance Principles; [and]
>
> - reviewing corporate governance developments and, where appropriate, making recommendations to the Board on corporate governance, including any revisions to our Corporate Governance Principles.
>
> * * *

CORPORATE GOVERNANCE

Our corporate governance materials, including our Corporate Governance Principles, the charters of each of the Board's standing committees, our Director Independence Standards and our codes of conduct for directors, finance employees and all employees, may be viewed on our website at www.boeing.com/company/general-info/corporate-governance.page. The GON Committee regularly reviews our governance practices and policies and proposes appropriate modifications for adoption by the Board.

* * *

Codes of Conduct

The Board expects directors, officers and employees to act ethically, including by adhering to all applicable codes of conduct, at all times…. Waivers with respect to these codes for directors and officers may be granted only by the Board, and any such waiver will be promptly disclosed on our website. No waivers were requested during 2016.

552. With respect to the Board's role in risk oversight, the 2017 Proxy Statement represented:

Governance Highlights

- Extensive Board oversight of risk management, with particular focus on Boeing's key strategic, operational, and compliance risks.

* * *

Risk Oversight

The Board is responsible for overseeing management in the execution of risk management responsibilities and for assessing the Company's approach to risk management. The Board regularly assesses significant risks to the Company in the course of reviews of corporate strategy and our long-range business plan, including significant new development programs.

As part of its responsibilities, the Board and its standing committees also regularly review material strategic, operational, financial, compensation, and compliance risks with senior management.

Audit Committee Risk Oversight

- Evaluate overall risk assessment and risk management practices;

- Perform central oversight role with respect to financial statement, disclosure and compliance risks;

- Receive regular reports from our Senior Vice President, Office of Internal Governance and Administration with respect to compliance with our ethics and risk management policies; [and]

- Meet in executive session…periodically with our Vice President, Corporate Audit, our Senior Vice President, Office of Internal Governance and Administration, and our Executive Vice President and General Counsel to discuss…compliance risks, and report any findings to the Board…

GON Committee Risk Oversight

- Oversee risks related to the Company's corporate governance, including overseeing management's shareholder outreach efforts on governance-related matters and ensuring the Board's continued ability to provide independent oversight of management.

Compensation Committee Risk Oversight

- Evaluate risk in connection with the design and oversight of compensation programs, in consultation with Committee's independent compensation consultant.

* * *

Compensation and Risk

We believe that our compensation programs create appropriate incentives to drive sustained, long-term increases in shareholder value. These programs have been designed and administered in a manner that discourages undue risk-taking by employees…. Relevant features of these programs include:…

- Incorporation of an individual performance score for each executive as a critical factor in the annual incentive calculation, thereby enabling the Compensation Committee to direct a zero payout to any executive in any year if the executive is deemed to have sufficiently poor performance or is found to have engaged in activities or misconduct that pose a financial, operational or other undue risk to the Company…

In light of these features, we conclude that the risks arising from our executive and employee compensation policies and practices are not reasonably likely to have a material adverse effect on the Company.

553. Those statements conveyed that the Board: (i) maintained sufficient compliance, risk controls, review, and reporting programs to identify and address misconduct; (ii) was unaware

of existing material risks that could affect the Company; (iii) had policies to deter unnecessary or "undue risk-taking," including compensation and ethics policies, (v) maintained adequate internal controls, and (v) maintained risk management practices with "[e]xtensive Board oversight of risk management."

554. The 2017 Proxy Statement failed to disclose material facts regarding: (i) Boeing's ineffective internal and disclosure controls; (ii) the existence of the FAA Settlement Agreement as well as BCA's performance of its continuing obligations under such Agreement, including annual reports to the FAA; (iii) operational and reporting failures that did not appropriately address Boeing's development of the 737 MAX fleet in violation of federal and international laws, along with Boeing's requirements under the FAA Settlement Agreement, and Boeing's retaliatory practices against its employees reporting these safety violations; and (iv) the Board-approved compensation programs that incentivized the concealment of the 737 MAX fleet's illegal design flaw. The 2017 Proxy Statement also omitted any disclosures reflecting or acknowledging that Defendants failed to take appropriate steps to address the 737 MAX fleet's illegal and fatally defective design.

555. The 2017 Proxy Statement harmed Boeing by interfering with the proper governance on its behalf that follows stockholders' informed voting for directors. As a result of the false or misleading statements in the 2017 Proxy Statement, Boeing stockholders voted to re-elect Defendants Bradway, Calhoun, Collins, Duberstein, Giambastiani, Good, Kellner, Liddy, Muilenburg, Schwab, Stephenson, Williams, and Zafirovski.

556. The 2017 Proxy Statement also urged stockholders to approve an advisory resolution regarding compensation paid to named executives. In support of the requested approval, the 2017 Proxy Statement said:

Shareholders are being asked to approve, on an advisory basis, the compensation of the named executive officers as set forth under the heading "Compensation Discussion and Analysis." **The Board recommends that you vote FOR the resolution approving named executive officer compensation…**

Pay for Performance:

- Capped payouts and other protections to avoid excessive risk;

* * *

Program Objectives

Reduce Risk

* * *

Additional Drivers of Three-Year Performance

- Long-term risk reduction

* * *

COMPENSATION DISCUSSION AND ANALYSIS

- Mr. Muilenburg's success in maintaining strong profitability and improving operating cash flow while executing Boeing's business strategies, including strengthening the Company's market leadership at Commercial Airplanes through effective management of production rates, strong capture of new orders, and achievement of product-development milestones; while also continuing to advance productivity and cost-reduction goals at Boeing Defense, Space & Security's production and services programs, advancing product development, and capturing new business. Mr. Muilenburg also ensured continued positive progress on enterprise-wide strategic initiatives to further improve productivity, safety, quality, and leadership development.

- Mr. Smith's leadership in strengthening Boeing's financial position through improved productivity and affordability, disciplined management of working capital that contributed to record operating cash flow, efficient cash deployment, strong liquidity, and reduction of financial risk.

- Mr. Conner's achievements as leader of the Commercial Airplanes business, including delivery of 748 commercial airplanes, while successfully managing production-rate changes strengthening profitability and reducing risk. Mr. Conner also led the business through several major product development milestones including the first flight of the 737 MAX and the commencement of final assembly for the 787-10; while also

ensuring continued overall improvements in safety, productivity, and quality.

- Mr. McAllister's transition to leading the Commercial Airplanes business near year-end, successfully meeting commitments on customer deliveries, orders, safety, productivity and quality goals.

Based on 2016 Company, business unit and individual performance results (as detailed above), the Compensation Committee believes the annual incentive compensation awarded to the NEOs for 2016 was appropriate and achieved the objectives of the executive compensation program.

557. Those statements conveyed that Boeing's compensation system encouraged proper risk management and advanced long-term shareholder value. In reality, Boeing's compensation system actually encouraged – and consistently rewarded – extreme risk-taking and illegal practices. Defendants knew or should have known the executives had breached their fiduciary duties to the Company and exposed it to significant and material risks and liability through their conduct and the resulting violations of federal and international laws, as well as failures to comply with Boeing's obligations under the FAA Settlement Agreement, with respect to the development of the 737 MAX fleet.

558. Under this false impression, numerous Boeing shareholders voted in support of compensation to Defendants Muilenburg, Smith, Conner, Luttig, and McAllister, totaling over $60 million, respectively in 2016, without the benefit of material information regarding these Defendants' continued and ongoing failures, which resulted in violations of federal and international laws and the FAA Settlement Agreement, and the related concealment of such practices and control deficiencies, and their continued and ongoing failure to reform the Company's compensation structures to ensure they did not promote this widespread illegal activity at Boeing.

B. Numerous Director Defendants Caused Boeing to Issue the Materially False or Misleading 2018 Proxy Statement

[redacted]

560. On March 16, 2018, Defendants Bradway, Calhoun, Collins, Duberstein, Giambastiani, Good, Kellner, Kennedy, Liddy, Muilenburg, Schwab, Williams, and Zafirovski caused Boeing to file its annual proxy statement (the "2018 Proxy Statement") in connection with the 2018 annual stockholders meeting to be held on April 30, 2018. In the 2018 Proxy Statement, these Defendants solicited stockholder votes to, among other things, (i) re-elect themselves to the Board; (ii) approve executive compensation; and (iii) decide whether to adopt a policy requiring an independent Chairman. With respect to each of these solicited votes, these Defendants issued materially false or misleading statements.

561. With respect to Board re-elections, the 2018 Proxy Statement represented:

> The Governance, Organization and Nominating Committee, or the GON Committee, is responsible for identifying and assessing potential candidates and recommending nominees for the Board's approval. The GON Committee assesses the qualifications of incumbent directors and other candidates for nomination on an ongoing basis, including with respect to the following key factors:
>
> - **Experience.** The GON Committee considers each candidate's experience and leadership record in such areas as operations, international business, manufacturing, risk management, finance, government, marketing, technology, and public policy.
>
> - **Industry Experience.** The GON Committee ensures that a number of directors possess aerospace and/or defense industry, as well as technology, expertise. This broad industry expertise allows the Board to assess Company performance and provide strategic guidance with respect to each of our principal businesses….

- **Professional Reputation.** As set forth in our Corporate Governance Principles, our directors are expected to have a reputation for personal and professional integrity, honesty, and adherence to the highest ethical standards.

- **Regulatory Compliance.** All director nominees must satisfy regulatory requirements for Board service, including those with respect to any committee on which such director would be asked to serve.

* * *

CORPORATE GOVERNANCE

Our corporate governance materials, including our Corporate Governance Principles, the charters of each of the Board's standing committees, our Director Independence Standards, and our codes of conduct for directors, finance employees and all employees, may be viewed on our website at www.boeing.com/company/general-info/corporate-governance.page. The GON Committee regularly reviews our governance practices and policies and proposes appropriate modifications for adoption by the Board.

* * *

Codes of Conduct

The Board expects directors, officers and employees to act ethically, including by adhering to all applicable codes of conduct, at all times.… Waivers with respect to these codes for directors and officers may be granted only by the Board, and any such waiver will be promptly disclosed on our website. No waivers were requested in 2017.

* * *

Governance, Organization and Nominating Committee

The GON Committee's principal responsibilities include:…

- identifying and recommending to the Board candidates who are qualified to become directors under the criteria set forth in our Corporate Governance Principles; [and]…

- reviewing corporate governance developments and, where appropriate, making recommendations to the Board on corporate governance policies and practices, including any revisions to our Corporate Governance Principles.

* * *

562. With respect to the Board's role in risk oversight, the 2018 Proxy Statement represented:

Governance Highlights

Extensive Board oversight of risk management, with particular focus on key strategic, operational, and compliance risks

* * *

Risk Oversight

We believe taking calculated risks is a critical element of Boeing's commitment to its customers and shareholders, as well as its mandate to be an enduring global industrial champion. However, we believe avoiding imprudent risks and mitigating the many strategic, technological, operational, and compliance risks we face every day is equally critical to Boeing's long-term success…The Board is responsible for overseeing management in the execution of its risk management responsibilities and for assessing the Company's approach to risk management. The Board regularly assesses significant risks to the Company in the course of reviews of corporate strategy and the development of our long-range business plan, including significant new development programs.

As part of its responsibilities, the Board and its standing committees also regularly review strategic, operational, financial, compensation, and compliance risks with senior management.

Audit Committee Risk Oversight

- Evaluate overall risk assessment and risk management practices;
- Perform central oversight role with respect to financial statement, disclosure and compliance risks;
- Receive regular reports from our Senior Vice President, Office of Internal Governance and Administration with respect to compliance with our ethics and risk management policies; [and]
- Meet in executive session…periodically with our Vice President, Corporate Audit, our Senior Vice President, Office of Internal Governance and Administration, and our Executive Vice President and General Counsel to discuss…compliance risks, and report any findings to the Board…

GON Committee Risk Oversight

- Oversee risks related to the Company's governance, including overseeing shareholder outreach efforts on governance-related matters and ensuring the Board's continued ability to provide independent oversight of management.

Compensation Committee Risk Oversight

- Evaluate risk in connection with the design and oversight of compensation programs, in consultation with the Committee's independent compensation consultant.

* * *

Compensation and Risk

We believe that our compensation programs create appropriate incentives to drive sustained, long-term increases in shareholder value. These programs have been designed and administered in a manner that discourages undue risk-taking by employees…. Relevant features of these programs include:…

- Incorporation of an individual performance score for each executive as a critical factor in the annual incentive calculation, thereby enabling the Compensation Committee to direct a zero payout to any executive in any year if the executive is deemed to have sufficiently poor performance or is found to have engaged in activities or misconduct that pose a financial, operational, or other undue risk to the Company…

In light of these features, we conclude that the risks arising from our executive and employee compensation policies and practices are not reasonably likely to have a material adverse effect on the Company.

563. Those statements conveyed that the Board: (i) maintained sufficient compliance, risk controls, review, and reporting programs to identify and address misconduct; (ii) was unaware of existing material risks that could affect the Company; (iii) had policies to deter unnecessary or "undue risk-taking," including compensation and ethics policies; (iv) maintained adequate internal controls; and (v) maintained risk management practices with "[e]xtensive Board oversight of risk management."

564. The 2018 Proxy Statement failed to disclose material facts regarding: (i) Boeing's ineffective internal and disclosure controls; (ii) the existence of the FAA Settlement Agreement as well as BCA's performance of its continuing obligations under such Agreement, including annual

reports to the FAA; (iii) operational and reporting failures that did not appropriately address how Boeing developed and operated the 737 MAX fleet in violation of federal and international laws, and Boeing's requirements under the FAA Settlement Agreement, and Boeing's retaliatory practices against its employees reporting these safety violations; and (iv) the Board-approved compensation programs that incentivized the concealment of the 737 MAX fleet's illegal design flaw. The 2018 Proxy Statement also omitted any disclosures reflecting or acknowledging that Defendants failed to take appropriate steps to address the 737 MAX fleet's illegal and defective design.

565. The 2018 Proxy Statement harmed Boeing by interfering with the proper governance on its behalf that follows stockholders' informed voting for directors. As a result of the false or misleading statements in the 2018 Proxy Statement, Boeing stockholders voted to re-elect Defendants Bradway, Calhoun, Collins, Duberstein, Giambastiani, Good, Kellner, Kennedy, Liddy, Muilenburg, Schwab, Williams, and Zafirovski.

566. The 2018 Proxy Statement also urged stockholders to approve an advisory resolution regarding compensation paid to named executives. In support of the requested approval, the 2018 Proxy Statement said:

> Shareholders are being asked to approve, on an advisory basis, the compensation of the named executive officers as set forth under the heading "Compensation Discussion and Analysis." **The Board recommends that you vote FOR the resolution approving named executive officer compensation.…**
>
> **Pay for Performance**
>
> - Capped payouts and other protections to avoid excessive risk;
>
> * * *
>
> **Program Objectives**
>
> **Reduce Risk**

* * *

Additional Drivers of Three-Year Performance

- Long-term risk reduction

* * *

COMPENSATION DISCUSSION AND ANALYSIS

- Mr. Muilenburg's successful execution of Boeing's business strategies in 2017, as evidenced by record operating earnings, commercial airplane deliveries, and cash flow, as well as increased backlog.…
- Mr. Smith's achievements in driving shareholder value through his continued leadership in overall financial and strategic management, managing financial risk, and ensuring liquidity while delivering strong execution of the Company's cash deployment strategy.…
- Mr. Conner's role in successfully transitioning the leadership of our Commercial Airplanes business to Mr. McAllister, as well as his effective leadership of enterprise-wide initiatives to improve productivity and pursue strategic imperatives for the commercial airplanes business….
- Mr. McAllister's achievements as leader of our Commercial Airplanes business, including successfully transitioning the 737 production system to the 737 MAX while increasing delivery rates, securing 912 net new orders, and delivering a record 763 airplanes. Under Mr. McAllister's leadership, the Commercial Airplanes business also launched the 737 MAX 10 and flew the 737 MAX 9 and 787-10 for the first time.

567. Those statements conveyed that Boeing's compensation system encouraged proper risk management and advanced long-term shareholder value. In reality, Boeing's compensation system actually encouraged – and consistently rewarded – extreme risk-taking and illegal practices. Defendant knew or should have known the executives had breached their fiduciary duties to the Company and exposed it to significant and material risks and liability through their conduct, resulting in violations of federal and international laws, and the Company's obligations under the FAA Settlement Agreement.

568. Under this false impression, numerous Boeing shareholders voted in support of compensation to Defendants Muilenburg, Smith, Conner, and McAllister, totaling over $52 million, respectively in 2017, without the benefit of material information regarding these Defendants' continued and ongoing failures, which resulted in violations of federal and international laws, the related concealment of such practices and control deficiencies, and their continued and ongoing failure to reform the Company's compensation structures to ensure they did not promote widespread illegal activity.

569. The 2018 Proxy Statement also contained a stockholder proposal to adopt a policy to require an independent Chairman. The Board recommended voting against this proposal for the following reasons:

- The Board understands that views differ on whether, as a general matter, boards are best served with an independent chairman. However, the Board is not aware of clear evidence demonstrating that splitting the CEO and Chairman roles is good for all companies in all circumstances.

- As a result, the Board believes that it is critical that the Board choose its own leadership structure, provided that at all times there is strong independent oversight of management and, absent an independent Chairman, meaningful leadership from an independent lead director—and independent board—with robust, well-defined duties.

- ***Boeing's strong independent Lead Director role, combined with other governance features, already provides the management oversight and independent leadership requested by the proposal.***

- The Board has determined that Dennis Muilenburg, our President and CEO, should also serve as Chairman of the Board at this time. Over his 32-year career at Boeing, Mr. Muilenburg has developed extensive knowledge of, and unrivaled experience in, Boeing and the aerospace industry. In addition, Mr. Muilenburg has demonstrated exceptional leadership abilities, unquestioned integrity, and the strategic vision necessary to create sustainable long-term value for our shareholders in an increasingly competitive marketplace. Meanwhile, our Board continues to include 12 independent directors, who collectively bring vast senior government and business leadership experience, aerospace expertise, and other critical skills, and each of whom individually has demonstrated the willingness to think and act independently on behalf of shareholders. Based on this

> combination of Mr. Calhoun's demonstrated independent leadership; Mr. Muilenburg's knowledge, experience, leadership, and integrity; and the independence, experience, and integrity of our other independent directors, the Board believes that the Board's current leadership structure is in the best interests of our shareholders.

570. Those statements conveyed that Boeing's corporate governance structure was "in the best interests of our shareholders" and provided "strong independent oversight of management". In reality, Boeing's corporate governance structure allowed senior executives and the Board to sidestep real accountability and instead punish ground-level employees who reported safety violations, in order to continue perpetuating Defendants' concealment of the fundamental design flaws that violated federal and international laws, along with the Company's obligations under the FAA Settlement Agreement, in the 737 MAX fleet.

571. The 2018 Proxy Statement, which contained materially misleading statements and omitted material facts, thus deprived shareholders of adequate information necessary to make a reasonably informed decision, caused the Company's stockholders to vote down the proposed policy to require an independent Chairman.

C. Numerous Director Defendants Caused Boeing to Issue the Materially False or Misleading 2019 Proxy Statement

[redacted]

573. On March 15, 2019, Defendants Bradway, Calhoun, Collins, Giambastiani, Good, Kellner, Kennedy, Liddy, Muilenburg, Schwab, Williams, and Zafirovski caused Boeing to file its annual proxy statement (the "2019 Proxy Statement"), in connection with the 2019 annual stockholders meeting to be held on April 29, 2019. In the 2019 Proxy Statement, these Defendants solicited stockholder votes to, among other things, (i) re-relect themselves to the Board; (ii) approve executive compensation; and (iii) decide whether to adopt a policy requiring an independent Chairman. With respect to each of these solicited votes, these Defendants issued materially false or misleading statements.

574. Specifically, with respect to Board re-elections, the 2019 Proxy Statement represented:

> The Governance, Organization and Nominating Committee, or the GON Committee, is responsible for identifying and assessing potential candidates and recommending nominees for the Board's approval. The GON Committee assesses the qualifications of incumbent directors and other candidates for nomination on an ongoing basis, including with respect to the following key factors:
>
> - **Experience.** The GON Committee considers each candidate's experience and leadership record in such areas as operations, international business, manufacturing, risk management, finance, government, marketing, international affairs, technology, and public policy.
>
> - **Industry Experience.** The GON Committee ensures that a number of directors possess aerospace and/or defense industry, as well as technology, expertise. This broad industry expertise allows the Board to assess Company performance and provide strategic guidance with respect to each of our principal businesses….
>
> - **Professional Reputation.** As set forth in our Corporate Governance Principles, our directors are expected to have a reputation for personal and professional integrity, honesty, and adherence to the highest ethical standards.
>
> - **Regulatory Compliance.** All director nominees must satisfy regulatory requirements for Board service, including those with respect to any committee on which such director would be asked to serve.

* * *

CORPORATE GOVERNANCE

Our corporate governance materials, including our Corporate Governance Principles, the charters of each of the Board's standing committees, our Director Independence Standards, and our codes of conduct for directors, finance employees and all employees, may be viewed on our website at www.boeing.com/company/general-info/corporate-governance.page. The GON Committee regularly reviews our governance practices and policies and proposes appropriate modifications for adoption by the Board.

* * *

Codes of Conduct

The Board expects directors, officers and employees to act ethically, including by adhering to all applicable codes of conduct, at all times.… Waivers with respect to these codes for directors and officers may be granted only by the Board, and any such waiver must be promptly disclosed on our website. No waivers were requested in 2018.

* * *

Governance, Organization and Nominating Committee

The GON Committee's principal responsibilities include:

- identifying and recommending to the Board candidates who are qualified to become directors under the criteria set forth in our Corporate Governance Principles; [and]
- reviewing corporate governance developments and, where appropriate, making recommendations to the Board on corporate governance policies and practices, including any revisions to our Corporate Governance Principles.

* * *

575. With respect to the Board's role in risk oversight, the 2018 Proxy Statement represented:

Governance Highlights

- Independent Lead Director empowered with broad responsibilities and significant governance duties

- Extensive Board oversight of key strategic, operational and compliance risks

- Significant Board oversight of all aspects of business strategy

* * *

Risk Oversight

We believe taking calculated risks is a critical element of Boeing's commitment to its customers and shareholders, as well as its mandate to be the best in aerospace and an enduring global industrial champion. However, we believe avoiding imprudent risks and mitigating the many strategic, technological, operational, and compliance risks we face every day is equally critical to Boeing's long-term success…The Board is responsible for overseeing management in the execution of its risk management responsibilities and for assessing the Company's approach to risk management. The Board regularly assesses significant risks to the Company in the course of reviews of corporate strategy and the development of our long-range business plan, including significant new development programs.

As part of its responsibilities, the Board and its standing committees also regularly review strategic, operational, financial, compensation, and compliance risks with senior management.

Audit Committee Risk Oversight

- Evaluate overall risk assessment and risk management practices

- Perform central oversight role with respect to financial statement, disclosure, and compliance risks

- Receive regular reports from our Senior Vice President, Office of Internal Governance and Administration with respect to compliance with our ethics and risk management policies

- Meet in executive session…periodically with our Chief Financial Officer, Vice President, Corporate Audit, our Senior Vice President, Office of Internal Governance and Administration, and our Executive Vice President and General Counsel to discuss…compliance risks, and report any findings to the Board…

GON Committee Risk Oversight

- Oversee risks related to the Company's governance, including shareholder outreach efforts on governance-related matters and ensuring the Board's continued ability to provide independent oversight of management…

Compensation Committee Risk Oversight

- Evaluate risk in connection with the design and oversight of compensation programs, in consultation with the Committee's independent compensation consultant

* * *

Compensation and Risk

We believe that our compensation programs create appropriate incentives to drive sustained, long-term increases in shareholder value. These programs have been designed and administered in a manner that discourages undue risk-taking by employees. Relevant features of these programs include:…

- Limited Compensation Committee discretion to adjust financial results to reflect certain extraordinary circumstances affecting the core operating performance of the Company;

- Incorporation of an individual performance score for each executive as a critical factor in the annual incentive calculation, thereby enabling the Compensation Committee to direct a zero payout to any executive in any year if the executive is deemed to have sufficiently poor performance of is found to have engaged in activities or misconduct that pose a financial, operational or other undue risk to the Company…

In light of these features, we conclude that the risks arising from our executive and employee compensation policies and practices are not reasonably likely to have a material adverse effect on the Company.

576. Those statements conveyed that the Board: (i) maintained sufficient compliance, risk controls, review, and reporting programs to identify and address misconduct; (ii) was unaware of existing material risks that could affect the Company; (iii) had policies to deter unnecessary or "undue risk-taking," including compensation and ethics policies, (iv) maintained adequate internal controls; and (v) maintained risk management practices with "[e]xtensive Board oversight of risk management."

577. The 2019 Proxy Statement failed to disclose material facts regarding: (i) Boeing's ineffective internal and disclosure controls; (ii) the existence of the FAA Settlement Agreement as well as BCA's performance of its continuing obligations under such Agreement, including annual reports to the FAA; (iii) operational and reporting failures that did not appropriately address how Boeing developed and operated the 737 MAX fleet in violation of federal and international laws, and Boeing's requirements under the FAA Settlement Agreement, or Boeing's illegal retaliatory practices against its employees reporting these safety violations; (iv) the Board-approved compensation programs that incentivized the concealment of the 737 MAX fleet's illegal design flaw; (v) the grounding of the 737 MAX fleet, and its effect on the Company's bottom line and its executives' compensation; (vi) the DOJ's criminal investigation – which began in October 2018 – into the certification and marketing of the 737 MAX; and (vii) the pending investigations by various regulatory agencies, including the NTSB, and the Indonesian and Ethiopian authorities concerning the 737 MAX's role in the two crashes due to safety regulation failures. The 2019 Proxy Statement also omitted any disclosures reflecting or acknowledging that Defendants failed to take appropriate steps to address the 737 MAX fleet's illegal and defective design. Nor did the Proxy Defendants supplement the 2019 Proxy Statement before the 2019 annual stockholder meetings as the fallout from the two 737 MAX crashes continued to mount and damages to Boeing continued to rise (and both of which continue to this day).

578. The 2019 Proxy Statement harmed Boeing by interfering with the proper governance on its behalf that follows stockholders' informed voting for directors. As a result of the false or misleading statements in the 2019 Proxy Statement, Boeing stockholders voted to re-elect Defendants Bradway, Calhoun, Collins, Giambastiani, Good, Kellner, Kennedy, Liddy, Muilenburg, Schwab, Williams, and Zafirovski.

579. The 2019 Proxy Statement also urged stockholders to approve an advisory resolution regarding compensation paid to named executives. In support of the requested approval, the 2019 Proxy Statement said:

> Shareholders are being asked to approve, on an advisory basis, the compensation of the named executive officers as set forth under the heading "Compensation Discussion and Analysis." **The Board recommends that you vote FOR the resolution approving named executive officer compensation.…**
>
> **Pay for Performance:**
>
> - annual and long-term incentive metrics that align with our business strategy, focusing our executives on increasing revenues, reducing costs, effectively managing net assets to optimize cash flow, and generating sustainable increases in shareholder value;…
>
> - Capped payouts and other protections to avoid excessive risk;…
>
> We believe that our executive compensation program plays a key role in driving Boeing's long-term performance, as evidenced by Boeing's recent strong financial and operating results. In future years, we expect to continue to reward executives who deliver strong results by tying compensation to demonstrated individual and Company performance.
>
> In 2018, our shareholders approved the compensation of our named executive officers with a FOR vote of 93%. This year, we once again request your vote supporting the following nonbinding resolution:
>
> > RESOLVED: That the compensation paid to the named executive officers, as disclosed pursuant to the compensation disclosure rules of the SEC, including the Compensation Discussion and Analysis, compensation tables and narrative discussion, is hereby approved.
>
> * * *
>
> **<u>Program Objectives</u>**
>
> **Reduce Risk**
>
> * * *
>
> **Additional Drivers of Three-Year Performance**
>
> - Long-term risk reduction
>
> * * *

COMPENSATION DISCUSSION AND ANALYSIS

- Mr. Muilenburg's leadership in successfully executing Boeing's business strategies in 2018, as evidenced by record operating cash flow, revenue, operating earnings and commercial airplane deliveries….

- Mr. Smith's leadership of overall financial performance and strategic management, as well as his achievements in managing financial risk and ensuring liquidity, while delivering record financial results and strong execution of the Company's cash deployment strategy….

- Mr. Hyslop's leadership in aerospace innovation, including the launch of Boeing NeXt, a new organization focused on future mobility solutions. Mr. Hyslop also led research and development efforts in a broad range of advanced technologies, such as autonomy, artificial intelligence, additive manufacturing and advanced computing, that support current Boeing programs and future customer solutions.

- Mr. Luttig's leadership with respect to successful strategic legal matters and his reducing substantial business and legal risk to the Company.

580. Those statements conveyed that Boeing's compensation system encouraged proper risk management and advanced long-term shareholder value. In reality, Boeing's compensation system actually encouraged – and consistently rewarded – extreme risk-taking and illegal practices. Defendant knew or should have known the executives had breached their fiduciary duties to the Company and exposed it to significant and material risks and liability through their conduct and resulting violations of federal and international laws, and the FAA Settlement Agreement. Moreover, the 2019 Proxy Statement failed to mention whether Muilenburg or any other senior Boeing executive's compensation would be impacted by the 737 MAX crashes and the fleet's related grounding, which had the potential to cause Boeing billions of dollars of damages.

581. Under this false impression, numerous Boeing shareholders voted in support of compensation to Defendants Muilenburg, Smith, Hyslop, and Luttig, totaling nearly $50 million, respectively in 2018, without the benefit of material information regarding these Defendants'

continued and ongoing failures, which resulted in violations of federal and international laws, the related concealment of such practices and control deficiencies, and their continued and ongoing failure to reform the Company's compensation structures to ensure they did not promote widespread illegal activity.

582. The 2019 Proxy Statement also contained a stockholder proposal to adopt a policy to require an independent Chairman. The Board recommended voting against this proposal for the following reasons:

- The Board understands that views differ on whether, as a general matter, boards are best served with an independent chairman. However, the Board is not aware of clear evidence demonstrating that splitting the CEO and Chairman roles is good for all companies in all circumstances.

- As a result, the Board believes that it is critical that the Board choose its own leadership structure, provided that at all times there is strong independent oversight of management and, absent an independent Chairman, meaningful leadership from an independent lead director—and independent board—with robust, well-defined duties.

- ***Boeing's strong independent Lead Director role, combined with other governance features, already provides the management oversight and independent leadership requested by the proposal.***

- The Board has determined that Dennis Muilenburg, our President and CEO, should also serve as Chairman of the Board at this time. Over his 33-year career at Boeing, Mr. Muilenburg has developed extensive knowledge of, and unrivaled experience in, Boeing and the aerospace industry. In addition, Mr. Muilenburg has demonstrated exceptional leadership abilities, unquestioned integrity, and the strategic vision necessary to create sustainable long-term value for our shareholders in an increasingly competitive marketplace. Meanwhile, our Board continues to include 12 independent directors, who collectively bring vast senior government and business leadership experience, aerospace expertise, and other critical skills, and each of whom individually has demonstrated the willingness to think and act independently on behalf of shareholders. Based on this combination of Mr. Calhoun's demonstrated independent leadership; Mr. Muilenburg's knowledge, experience, leadership, and integrity; and the independence, experience, and integrity of our other independent directors, the Board believes that the Board's current leadership structure is in the best interests of our shareholders.

583. Those statements conveyed that Boeing's corporate governance structure was "in the best interests of our shareholders" and provided "strong independent oversight of management". In reality, Boeing's corporate governance structure allowed senior executives and the Board to sidestep real accountability and instead punish ground-level employees who reported safety violations, in order to continue perpetuating Defendants' concealment of the fundamental illegal design flaws in the 737 MAX fleet.

584. The 2019 Proxy Statement, which contained materially misleading statements and omitted material information, thus deprived shareholders of adequate information necessary to make a reasonably informed decision, caused the Company's stockholders to vote down the proposed policy to require an independent Chairman.

DEMAND ON THE BOARD IS EXCUSED BECAUSE IT IS FUTILE

585. Plaintiff has not made a demand on Boeing's Board to bring suit asserting the claims set forth herein because pre-suit demand is excused as a matter of law.

586. Boeing's Board presently consists of fourteen (14) directors: Defendant Bradway, Defendant Calhoun, Defendant Collins, Defendant Giambastiani, Defendant Good, Nikki Haley, Defendant Kellner, Defendant Kennedy, Defendant Liddy, Defendant Muilenburg, John Richardson, Defendant Schwab, Defendant Williams, and Defendant Zafirovski. As set forth below, with respect to each claim for relief asserted by Plaintiff, there is not a majority of the Board disinterested and independent to consider any demand.

A. THE FIRST CLAIM FOR RELIEF AGAINST THE PROXY DEFENDANTS FOR VIOLATIONS OF SECTION 14(a) OF THE EXCHANGE ACT

587. As set forth below, Plaintiff asserts Claim I against Defendants Muilenburg, Bradway, Calhoun, Collins, Duberstein, Giambastiani, Good, Kellner, Kennedy, Liddy, Schwab, Stephenson, Williams and Zafirovski (collectively, the "Proxy Defendants") for violating Section

14(a) of the Exchange Act by releasing the false and misleading 2017 Proxy Statement, 2018 Proxy Statement, and 2019 Proxy Statement to solicit Boeing's stockholders' votes to elect Boeing directors and vote on other issues at its 2017- 2019 annual shareholder meetings.

588. All the Proxy Defendants were serving on the Board when they negligently issued, caused to be issued, and participated in the issuance of materially false and misleading statements to stockholders which were contained in the 2017 Proxy Statement, the 2018 Proxy Statement, and the 2019 Proxy Statement. In seeking the stockholders' votes for Boeing's directors and other issues, these Proxy Statements falsely stated that Boeing: (i) maintained sufficient compliance, risk controls, review, and reporting programs to identify and address misconduct; (ii) was unaware of existing material risks that could affect the Company; (iii) had policies to deter unnecessary or "undue risk-taking," including compensation and ethics policies, (iv) maintained adequate internal controls; and (v) maintained risk management practices with "[e]xtensive Board oversight of risk management." As such, the Proxy Defendants knew that they were violating Section 14(a) of the Exchange Act when they issued the 2017 Proxy Statement, the 2018 Proxy Statement, and the 2019 Proxy Statement.

589. In addition, the 2019 Proxy Statement contained materially false and misleading statements and omissions described above concerning Boeing's 737 MAX. The omissions included no mention of the Ethiopian Airlines Crash and the world-wide grounding of Boeing 737 MAX fleet, much less the effect of such grounding on the Company's bottom line or its executives' compensation, or any of the regulatory agencies' investigations into 737 MAX crashes. The Proxy Defendants then never supplemented the 2019 Proxy Statement as the fallout surrounding Boeing's fatally defective 737 MAX airplane continued.

590. Accordingly, there is not a majority of the Board that can impartially consider a demand to bring the First Claim for Relief against the Proxy Defendants because:

(b) eleven (11) of the fourteen current Board members face a substantial likelihood of personal liability for violating Section 14(a) of the Exchange Act by issuing the false and misleading 2017 Proxy Statement. Specifically, Proxy Defendants, Bradway, Calhoun, Collins, Giambastiani, Good, Kellner, Liddy, Muilenburg, Schwab, Williams and Zafirovski all served on the Board when Boeing filed the 2017 Proxy Statement with the SEC;

(c) twelve (12) of the fourteen current Board members face a substantial likelihood of personal liability for violating Section 14(a) of the Exchange Act by issuing the false and misleading 2018 Proxy Statement. Specifically, Proxy Defendants, Bradway, Calhoun, Collins, Giambastiani, Good, Kellner, Kennedy, Liddy, Muilenburg, Schwab, Williams and Zafirovski all served on the Board when Boeing filed the 2018 Proxy Statement with the SEC;

(d) twelve (12) of the fourteen current Board members face a substantial likelihood of personal liability for violating Section 14(a) of the Exchange Act by issuing a false and misleading 2019 Proxy Statement. Specifically, Proxy Defendants, Bradway, Calhoun, Collins, Giambastiani, Good, Kellner, Kennedy, Liddy, Muilenburg, Schwab, Williams and Zafirovski all served on the Board when Boeing filed the 2019 Proxy Statement with the SEC.

591. The Proxy Defendants, therefore, face a substantial likelihood of liability for breaching their fiduciary duties, and are interested for purposes of any demand related to Claim I.

B. THE SECOND CLAIM FOR RELIEF AGAINST DEFENDANTS FOR OVERSIGHT BREACHES OF DUTIES RELATED TO 737 MAX

592. As set forth below, Plaintiff asserts Claim II against all Defendants for failing to exercise their oversight duties related to the 737 MAX. There is not a majority of the Board that can impartially consider a demand to bring the Second Claim for Relief against Defendants because: eleven (11) of the fourteen current Board members face a substantial likelihood of personal liability for breaching their fiduciary duties concerning the 737 MAX. Specifically, Boeing had no systems in place for the Board and Boeing's senior management to monitor Boeing's compliance with the FAA's regulations concerning the 737 MAX's certificate of airworthiness. Nor did Defendants ask questions or provide information to other Defendants about the 737 MAX's certificate of airworthiness, which was essential for the 737 MAX to legally fly. Moreover, seven of the fourteen current Board members served on the Audit Committee, and therefore face a substantial likelihood of liability for their failures to fulfill their duties of oversight related to Boeing's compliance with federal and international regulations as required by the Audit Committee Charter.

593. Defendant Muilenburg is a director, President and CEO of Boeing. In February 2016, Muilenburg became Chairman of the Board, and served in that role until October 11, 2019. Muilenburg is not an independent director under NYSE listing standards. Nor is Muilenburg independent because he serves as an officer of the Company. Muilenburg faces personal liability for his breaches of fiduciary duties as both an officer and a director under Claims I-IV. The allegations in Claims I-IV against Muilenburg overlap with and are substantially similar to the allegations against all other Defendants in Claim II. For this reason, it would not be in Muilenburg's interest to pursue a lawsuit alleging breaches of fiduciary duty against any other directors and officers of Boeing arising from the same factual allegation. In addition, Schwab, Calhoun, and Muilenburg serve on Caterpillar Inc.'s board of directors together. Muilenburg

would not want to jeopardize his collegial relationships with Schwab and Calhoun by bringing suit against them. Muilenburg also faces potential personal liability in a securities class action, which involves some of the same subject matters as this litigation. Accordingly, Muilenburg is interested and cannot impartially consider any demand.

594. Defendant Calhoun has served on the Board since 2009. Calhoun himself faces personal liability for his breaches of fiduciary duty as a director under Claims I-III, and the allegations against him overlap with and are substantially similar to the allegations against all other Defendants in Claim II. For this reason, it would not be in Calhoun's interest to pursue a lawsuit alleging breaches of fiduciary duty against any other directors and officers of Boeing arising from the same factual allegation. In addition, Defendants Calhoun, Zafirovski, McNerney, and McAllister all worked at GE as members of senior management, and therefore, Calhoun would not want to jeopardize his long-standing personal and business relationships with his former GE colleagues by bringing lawsuits against them. Notably, Calhoun and Zafirovski's relationship is particularly close as they also worked together at Blackstone since 2014, where Calhoun is a Senior Managing Director and Zafirovski serves an Executive Advisor. Moreover, Schwab, Calhoun, and Muilenburg serve on Caterpillar Inc.'s board of directors together. Calhoun would not want to jeopardize his collegial relationships with Schwab and Muilenburg by bringing suit against them. Calhoun, therefore, is interested for purposes of any demand.

595. Defendant Collins has served on the Board since 2007. Collins himself faces personal liability for his breaches of fiduciary duty as a director under Claims I-III, and the allegations against him overlap with and are substantially similar to the allegations against all other Defendants in Claim II. For this reason, it would not be in Collins' interest to pursue a lawsuit

alleging breaches of fiduciary duty against any other directors and officers of Boeing arising from the same factual allegation. As such, Collins cannot impartially consider a demand.

596. Defendant Giambastiani has served on the Board since 2009 and is a member of the Audit Committee. Giambastiani himself faces personal liability for his breaches of fiduciary duty as a director under Claims I-III, and the allegations against him overlap with and are substantially similar to the allegations against all other Defendants in Claim II. For this reason, it would not be in Giambastiani's interest to pursue a lawsuit alleging breaches of fiduciary duty against any other directors and officers of Boeing arising from the same factual allegation. Giambastiani, therefore, is interested and cannot impartially consider a demand.

597. Defendant Kellner has served on the Board since 2011 and is currently Chair of the Audit Committee. Kellner himself faces personal liability for his breaches of fiduciary duty as a director under Claims I-III, and the allegations against him overlap with and are substantially similar to the allegations against all other Defendants in Claim II. For this reason, it would not be in Kellner's interest to pursue a lawsuit alleging breaches of fiduciary duty against any other directors and officers of Boeing arising from the same factual allegation. Moreover, Kellner and Schwab serve on Marriott International, Inc.'s board of directors together. Kellner would not want to jeopardize his collegial relationship with Schwab by bringing suit against her. As a result, Kellner is interested for purposes of demand.

598. Defendant Liddy has served on the Board since 2010. Liddy himself faces personal liability for his breaches of fiduciary duty as a director under Claims I-III, and the allegations against him overlap with and are substantially similar to the allegations against all other Defendants in Claim II. For this reason, it would not be in Liddy's interest to pursue a lawsuit

alleging breaches of fiduciary duty against any other directors and officers of Boeing arising from the same factual allegation. Accordingly, Liddy cannot impartially consider a demand.

599. Defendant Schwab has served on the Board since 2010 and is currently a member of the Audit Committee. Schwab herself faces personal liability for her breaches of fiduciary duty as a director under Claims I-III, and the allegations against her overlap with and are substantially similar to the allegations against all other Defendants in Claim II. For this reason, it would not be in Schwab's interest to pursue a lawsuit alleging breaches of fiduciary duty against any other directors and officers of Boeing arising from the same factual allegation. In addition, Schwab Calhoun, and Muilenburg serve on Caterpillar Inc.'s board of directors together. Schwab would not want to jeopardize this collegial relationship with Calhoun and Muilenburg by bringing suit against them. Likewise, Schwab and Kellner serve on Marriott International, Inc.'s board of directors together. Schwab would not want to jeopardize her collegial relationship with Kellner by bringing suit against him. Schwab, therefore, is interested for purposes of any demand.

600. Defendant Williams has served on the Board since 2010 and is a current member of the Audit Committee. Williams himself faces personal liability for his breaches of fiduciary duty as a director under Claims I-III, and the allegations against him overlap with and are substantially similar to the allegations against all other Defendants in Claim II. For this reason, it would not be in Williams' interest to pursue a lawsuit alleging breaches of fiduciary duty against any other directors and officers of Boeing arising from the same factual allegation. As a result, Williams cannot impartially consider any demand.

601. Defendant Zafirovski has served on the Board since 2004. Zafirovski himself faces personal liability for his breaches of fiduciary duty as a director under Claims I-III, and the allegations against him overlap with and are substantially similar to the allegations against all other

Defendants in Claim II. For this reason, it would not be in Zafirovski's interest to pursue a lawsuit alleging breaches of fiduciary duty against any other directors and officers of Boeing arising from the same factual allegation. In addition, Defendants Calhoun, Zafirovski, McNerney, and McAllister all worked at GE as members of senior management. As a result, Zafirovski would not want to jeopardize his long-standing personal and business relationships with his former GE colleagues by suing them. Zafirovski, therefore, is interested for purposes of any demand. Notably, Calhoun's and Zafirovski's relationship is particularly close as they also worked together at Blackstone since 2014, where Calhoun is a Senior Managing Director and Zafirovski serves an Executive Advisor.

602. Defendant Good has served on the Board since 2015 and is a current member of the Audit Committee. Good herself faces personal liability for his breaches of fiduciary duty as a director under Claims I-III, and the allegations against her overlap with and are substantially similar to the allegations against all other Defendants in Claim II. For this reason, it would not be in Good's interest to pursue a lawsuit alleging breaches of fiduciary duty against any other directors and officers of Boeing arising from the same factual allegation. Good, therefore, is interested for purposes of any demand.

603. Defendant Bradway has served on the Board since 2016 and is a current member of the Audit Committee. The 2019 Proxy Statement further boasted that Bradway brings to the Board "critical skills in the areas of…product development…and risk oversight" as Bradway's experience includes serving as CEO, Chief Operating Officer, and CFO of the biotechnology company, Amgen, Inc. Bradway himself faces personal liability for his breaches of fiduciary duty as a director under Claims I-III, and the allegations against him overlap with and are substantially similar to the allegations against all other Defendants in Claim II. For this reason, it would not be

in Bradway's interest to pursue a lawsuit alleging breaches of fiduciary duty against any other directors and officers of Boeing arising from the same factual allegation. As a result, Bradway cannot impartially consider any demand.

C. THE THIRD CLAIM FOR RELIEF AGAINST THE BOARD DEFENDANTS FOR BREACHES OF FIDUCIARY DUTIES FOR THEIR REPEATED REFUSAL TO GROUND THE 737 MAX FLEET AFTER THE LION AIR AND THE ETHIOPIAN AIRLINES CRASHES

604. As set forth below, Plaintiff asserts Claim III against the Board Defendants (*i.e.*, Bradway, Calhoun, Collins, Giambastiani, Good, Kellner, Kennedy, Liddy, Muilenburg, Schwab, Williams, and Zafirovski) for breaching their fiduciary duties by repeatedly refusing to ground the 737 MAX fleet after the Lion Air and the Ethiopian Airlines Crashes. The Board Defendants knowingly violated their fiduciary duties because they let an airplane continue flying that they knew or should have known failed to comply with the FAA's safety regulations (and the FAA Settlement Agreement), which resulted in the deaths of 346 people and billions of dollars of damages to Boeing. There is not a majority of the Board that can impartially consider a demand to bring the Third Claim for Relief against the Board Defendants because: twelve (12) of the fourteen current Board members face a substantial likelihood of personal liability for breaching their fiduciary duties by affirmatively permitting the 737 MAX fleet to remain in flight after two deadly crashes and their knowledge that the 737 MAX airplane was defectively designed in violation of federal and international laws. In addition, these twelve current Board members face further personal liability for breaching their fiduciary duties by concealing information about the safety risks related the 737 MAX's MCAS from Congress, the FAA, and other regulatory agencies.

605. Defendant directors, Bradway, Calhoun, Collins, Giambastiani, Good, Kellner, Kennedy, Liddy, Muilenburg, Schwab, Williams and Zafirovski all served on the Board when the Lion Air and the Ethiopian Airlines Crashes occurred, and Boeing declared that the 737 MAX was

still a "safe" airplane, and they repeatedly refused to ground the 737 MAX fleet. Those decisions breached the Board directors' duty of loyalty because they allowed airplanes, which they knew or should have known, did not comply with federal and international safety regulations to continue to fly, putting thousands of lives at risk, not to mention killing 346 people. These Board Defendants, therefore, face a substantial likelihood of liability for breaching their fiduciary duties, and are interested for purposes of any demand related to Claims III and IV.

606. In addition, demand is further excused with respect to the Claim III because defendant directors, Bradway, Calhoun, Collins, Giambastiani, Good, Kellner, Kennedy, Liddy, Schwab, Williams and Zafirovski all lacked independence from Muilenburg. In this regard, [redacted]. Despite a steady stream of media reports to the contrary, which should have alerted these directors that the 737 MAX's MCAS was a fatal flaw design and at fault for the 737 MAX crashes, [redacted].

D. THE FOURTH CLAIM FOR RELIEF AGAINST THE OFFICER DEFENDANTS FOR UNJUST ENRICHMENT

607. As set forth below, Plaintiff asserts Claim IV against the Officer Defendants (*i.e.*, Conner, Fancher, Muilenburg, McNerney, McAllister, Hyslop, Luttig, Sands, Smith, and Tracy) for unjust enrichment.

608. There is not a majority of the Board who can impartially consider any demand with respect to the Fourth Claim for Relief because at least twelve of the current fourteen directors (*i.e.*, Bradway, Calhoun, Collins, Giambastiani, Good, Kellner, Kennedy, Liddy, Muilenburg, Schwab, Williams, and Zafirovski) cannot impartially consider any demand because Claim IV overlaps

with and implicates the claims asserted these directors in Counts I-III. It is, therefore, not in their interest to pursue the Fourth Claim for Relief against the Officer Defendants.

CLAIMS FOR RELIEF

CLAIM I

VIOLATION OF SECTION 14(a) OF THE EXCHANGE ACT AGAINST THE PROXY DEFENDANTS

609. Plaintiff incorporates by reference the allegations set forth above as though fully restated herein, except to the extent those allegations plead knowing or reckless conduct by the Proxy Defendants (*i.e.*, collectively, Defendants Muilenburg, Bradway, Calhoun, Collins, Duberstein, Giambastiani, Good, Kellner, Kennedy, Liddy, Schwab, Stephenson, Williams and Zafirovski). This claim is based solely on negligence, not on any allegation of reckless or knowing conduct by or on behalf of the Proxy Defendants. Plaintiff specifically disclaims any allegations of, reliance upon any allegation of, or reference to any allegation of fraud, scienter, or recklessness with regard to this claim.

610. SEC Rule 14a-9 (17 C.F.R. § 240.14a-9), promulgated under Section 14(a) of the Exchange Act provides:

> No solicitation subject to this regulation shall be made by means of any proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.

611. The Proxy Defendants negligently issued, caused to be issued, and participated in the issuance of materially false and misleading written statements to stockholders that were

contained in the 2017 Proxy Statement, the 2018 Proxy Statement, and the 2019 Proxy Statement. The 2017 Proxy Statement, the 2018 Proxy Statement, and the 2019 Proxy Statement contained proposals to Boeing's stockholders urging them to re-elect the members of the Board and approve executive compensation. The 2018 Proxy Statement and the 2019 Proxy Statement further urged Boeing's stockholders to vote against stockholder proposals for the Company to adopt a policy to require an independent Chairman. These Proxy Statements, however, misstated or failed to disclose: (i) Boeing's inadequate internal and disclosure controls, as well as ineffective risk management systems; (ii) the existence of the FAA Settlement Agreement as well as BCA's performance of its continuing obligations under such Agreement, including annual reports to the FAA; (iii) operational and reporting failures that did not appropriately address how Boeing developed and operated the 737 MAX fleet in violation of federal and international laws, and Boeing's requirements under the FAA Settlement Agreement, and Boeing's retaliatory practices against its employees reporting safety violations; and (iv) the Board-approved compensation programs that incentivized the concealment of the 737 MAX fleet's illegal design flaw. The Proxy Statements also omitted any disclosures reflecting or acknowledging that Defendants failed to take appropriate steps to address the 737 MAX fleet's illegal and defective design. Finally, the 2019 Proxy Statement omitted any disclosures related to: (i) the grounding of the 737 MAX fleet, and its effect on the Company's bottom line and its executives' compensation, (ii) the DOJ's criminal investigation – which began in October 2018 – into the certification and marketing of the 737 MAX; and (iii) the pending investigations by regulatory agencies, including the NTSB, and the Indonesian and Ethiopian authorities concerning the 737 MAX's role in those crashes due to safety regulation failures. Nor did Boeing update the 2019 Proxy Statement to account for the growing fallout related to the grounding of the 737 MAX fleet prior to the 2019 annual stockholder meeting.

By reasons of the conduct alleged in this Complaint, the Proxy Defendants violated Section 14(a) of the Exchange Act and SEC Rule 14a-9. As a direct and proximate result of the Proxy Defendants' wrongful conduct, Boeing misled or deceived its stockholders by making misleading statements that were an essential link in stockholders heeding Boeing's recommendation to re-elect those directors, approve certain executive compensation, and vote against stockholder proposals to adopt a policy to require an independent Chairman.

612. The misleading information contained in the 2017 Proxy Statement, the 2018 Proxy Statement, and the 2019 Proxy Statement was material to Boeing's stockholders in determining whether or not to elect the Proxy Defendants, approve certain executive compensation, and vote against stockholder proposals to adopt a policy to require an independent Chairman. This information was also material to the integrity of the directors that were proposed for election to the Board. The proxy-solicitation process in connection with the Proxy Statements was an essential link in (i) the re-election of nominees to the Board, (ii) the approval of executive compensation, and (iii) the decision not to require an independent Chairman.

613. Plaintiff, on behalf of Boeing, thereby seeks relief for damages inflicted on the Company based on the misleading 2017, 2018, and 2019 Proxy Statements in connection with the improper re-election of the members of the Board, approval of executive compensation, and vote against stockholder proposals for the Company to adopt a policy to require an independent Chairman.

614. This action was timely commenced within three years of the date of each Proxy Statement and within one year from the time Plaintiffs discovered or reasonably could have discovered the facts on which this claim is based.

CLAIM II

FOR BREACH OF FIDUCIARY DUTY AGAINST ALL DEFENDANTS FOR THEIR OVERSIGHT FAILURES RELATED TO THE 737 MAX AIRPLANE

615. Plaintiff incorporates by reference and reallege each and every allegation set forth above, as though fully set forth herein.

616. Defendants all owed and owe fiduciary duties to Boeing. By reason of their fiduciary relationships, Defendants specifically owed and owe Boeing the highest obligation of good faith and loyalty in the administration of the affairs of Boeing, including assuring that Boeing complied with federal laws governing, among other things, the certification of their commercial aircrafts' airworthiness under the FAA's regulations. The Board also had specific duties as defined by the Company's corporate governance documents and principles that, had they been discharged in accordance with the Board's obligations, would have prevented the misconduct and consequential harm to Boeing alleged herein.

617. Defendants also had a duty to develop and implement a system to ensure that Defendants could fulfill their fiduciaries duties of oversight to ensure that Boeing complied with the FAA regulations related to its certification of the 737 MAX. As Boeing makes a product with the potential to kill hundreds of people aboard a single aircraft, federal laws require all aspects of an airplane to be considered "safe" to earn and maintain a certificate of airworthiness. As such, Defendants had to specifically implement systems so that information concerning safety problems with the 737 MAX was brought to their attention.

618. Defendants willfully ignored their obligations under federal law, as Boeing had no systems in place to alert Defendants to any safety issues related to the 737 MAX. Defendants also made no good faith effort to find out any information about whether any critical safety issues were arising concerning the 737 MAX. Moreover, Defendants further ignored glaring red flags, like the FAA Settlement Agreement, which attracted wide-spread media attention because it concerned

BCA's repeated failures to comply with the FAA's safety regulations in all of its product lines, including the 737. Defendants, therefore, utterly failed to exercise their oversight duties with respect to ensuring that the 737 MAX complied with FAA regulations, including ones related to safety.

619. Moreover, Defendants Bradway, Collins, Cook, Giambastiani, Good, Kellner (Chair), Kennedy, Liddy (Chair), Schwab, Stephenson, and Williams further failed to fulfill their oversight duties to ensure that Boeing complied with laws and regulations as charged by the Audit Committee Charter.

620. In addition, since 2016, BCA's CEO (*i.e.*, Defendants Conner and McAllister) had additional duties imposed on them to report regulatory compliance issues at BCA to Boeing's CEO (and the Board) under the FAA Settlement Agreement on at least an annual basis and failed to do so.

621. Defendants, by their oversight failures and by engaging in the wrongdoing described herein, abandoned and abdicated their responsibilities and duties with regard to prudently managing the business of Boeing in a manner consistent with the duties imposed upon them by law.

622. By committing the misconduct alleged herein, Defendants breached their duties of due care, diligence, oversight, good faith, and loyalty in the management and administration of Boeing's affairs and in the use and preservation of Boeing's assets.

623. As a direct and proximate result of the Defendants' oversight failures, Boeing has sustained significant damages, not only monetarily, but also to its corporate image and goodwill. Such damages include compensation for the victims' families and local communities affected by the two 737 MAX crashes, litigation expenses, substantial costs related to multiple investigations

both in the U.S. and internationally, costs for remediating the 737 MAX, expenses related to reimbursements for airlines suffering a loss in business, sales and production suspension and expenses described herein, totaling more than $9 billion.

624. As a result of the misconduct alleged herein, Defendants are liable to the Company.

CLAIM III

FOR BREACH OF FIDUCIARY DUTY AGAINST DEFENDANTS BRADWAY, CALHOUN, COLLINS, GIAMBASTIANI, GOOD, KELLNER, KENNEDY, LIDDY, MUILENBURG, SCHWAB, WILLIAMS, AND ZAFIROVSKI FOR REPEATEDLY REFUSING TO GROUND THE DEADLY 737 MAX AFTER THE LION AIR AND ETHIOPIAN AIRLINES CRASHES

625. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

626. Defendants Bradway, Calhoun, Collins, Giambastiani, Good, Kellner, Kennedy, Liddy, Muilenburg, Schwab, Williams, and Zafirovski (collectively, the "Board Defendants") all owed and owe fiduciary duties to Boeing. By reason of their fiduciary relationships, the Board Defendants specifically owed and owe Boeing the highest obligation of good faith and loyalty in the administration of the affairs of Boeing, including assuring that Boeing complied with federal laws governing, among other things, maintaining the certification of their commercial aircrafts' airworthiness under the FAA's regulations. The Board Defendants also had specific duties as defined by the Company's corporate governance documents and principles that, had they been discharged in accordance with the Board's obligations, would have prevented the misconduct and consequential harm to Boeing alleged herein.

627. The Board Defendants knew or should have known that Boeing's 737 MAX fleet had to comply with FAA regulations to remain in operation. The Lion Air Crash and the related media reports provided multiple red flags for the Board Defendants that unquestionably brought

to their attention that the Company's 737 MAX was potentially suffering from fatal design defects, which required the fleet to be grounded. Instead of investigating whether the 737 MAX had fatal design defects, the Board Defendants allowed Boeing to keep the 737 MAX in the air after the Lion Air Crash, while its engineers secretly worked on a software fix for the 737 MAX's MCAS, which Boeing managers had known was defective since no later than 2017, and which had caused the Lion Air Crash. The Board Defendants further sanctioned Muilenburg and other Boeing executives making false disclosures in claiming that the 737 MAX was safe to fly despite their knowledge to the contrary. Then less than five months later, the Ethiopian Airlines Crash occurred. Notably, the Board Defendants repeatedly refused to ground the 737 MAX fleet [redacted]. Indeed, the Board Defendants were forced to make the decision to ground the 737 MAX fleet after virtually every other country around the world had already done so, and the U.S. President had informed Muilenburg of his intent to ground the 737 MAX fleet and the FAA's impending announcement of such grounding. Moreover, at the October 30, 2019 hearing before the House Subcommittee on Transportation and Infrastructure, Muilenburg admitted that Boeing was wrong not to ground the 737 MAX fleet right after the Lion Air Crash, which would have prevented the Ethiopian Airlines Crash and saved over 150 lives.

628. The Board Defendants, therefore, breached their fiduciary duties by refusing [redacted] that the 737 MAX fleet did not need to be grounded after the Lion Air and the Ethiopian Airlines Crashes. Instead, the Board Defendants allowed Boeing to work on a secret software fix while publicly they allowed Muilenburg and other executives to falsely claim that the 737 MAX airplanes were safe for flight.

629. By committing the misconduct alleged herein, Defendants breached their duties of due care, diligence, candor, oversight, good faith, and loyalty in the management and administration of Boeing's affairs and in the use and preservation of Boeing's assets.

630. As a direct and proximate result of the Defendants' breaches of fiduciary duty that repeatedly sanctioned the 737 MAX to continue to fly after red flags, including: (1) the Lion Air Crash, (2) the Ethiopian Airlines Crash, and (3) the media reports about the 737 MAX's design flaws related to MCAS and its role in the Lion Air and Ethiopian Airlines Crashes, and (4) the internal evidence showing that Boeing knew that MCAS had those design flaws since at least 2017, if not earlier, Boeing has sustained significant damages, not only monetarily, but also to its corporate image and goodwill. Such damages include compensation for the victims' families and local communities affected by the two 737 MAX crashes, litigation expenses, sales and production suspension and expenses described herein, totaling more than $9 billion.

631. As a result of the misconduct alleged herein, Defendants are liable to the Company.

CLAIM IV

UNJUST ENRICHMENT AGAINST THE OFFICER DEFENDANTS

632. Plaintiff incorporates by reference the allegations set forth above as though fully restated herein.

633. Defendants Muilenburg, McAllister, Conner, Fancher, Hyslop, McNerney, Sands, Smith, and Tracy (collectively, the "Officer Defendants") were unjustly enriched at the expense of Boeing. Despite their misconduct and gross negligence, the Officer Defendants were rewarded with undeserved compensation to the detriment of Boeing. The Officer Defendants were awarded lavish compensation that did not account for their roles in fostering an environment that favored profit over safety, leading to the Company's violations of the FAA' regulations in its 737 MAX

airplane, which ultimately caused the deaths of 346 people when two 737 MAXs crashed within the span of less than five months. The Officer Defendants' breaches of fiduciary duties have exposed Boeing to numerous lawsuits, and unrelated damages of more than $9 billion.

634. The award of this lavish and undeserved compensation was unjust under the circumstances.

635. The Officer Defendants should be ordered to disgorge all profits, benefits and other compensation received as a result of their wrongful conduct and breaches of fiduciary duty owed to Boeing.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

A. Determining that this action is a proper derivative action maintainable under law and demand on the Boeing Board is excused;

B. Declaring that Defendants have breached their fiduciary duties to Boeing;

C. Awarding against all Defendants and in favor of the Company the amount of damages sustained by the Company as a result of Defendants' breaches of fiduciary duties;

D. Awarding to Boeing restitution from Defendants, and each of them, and ordering disgorgement of all profits, benefits, and other compensation obtained by Defendants;

E. Directing Boeing to take all necessary steps to reform and improve its corporate governance and internal procedures to comply with the Company's governance obligations and all applicable laws and to protect the Company and its shareholders from a recurrence of the damaging events described herein, including putting

forward stockholder vote resolutions for amendments to the Company's by-laws or articles of incorporation, and taking such other actions as may be necessary to place before stockholders for a vote the following corporate governance policies:

i. A proposal to strengthen Board oversight and supervision of Boeing's compliance of federal and international safety regulations;

ii. A proposal to strengthen the Company's disclosure controls to ensure material information is adequately and timely disclosed to the SEC and the public;

iii. A proposal to ensure that all Board members take appropriate action to rid the Company of its lawless culture, particularly in BCA, where the unit has a history of failing to comply with FAA regulations and is under continuing obligations to make certain compliance efforts under the FAA Settlement Agreement;

iv. A proposal to strengthen the Board's supervision of operations and develop and implement procedures for greater stockholder input into policies and guidelines of the Board; and

v. A proposal to permit the stockholders of Boeing to nominate at least 5 candidates for election to the Board.

F. Extraordinary equitable or injunctive relief as permitted by law or equity, including attaching, impounding, imposing a constructive trust on, or otherwise restricting Defendants' assets so as to assure that Plaintiff, on behalf of Boeing, have an effective remedy;

G. Canceling the vote to re-elect the Proxy Defendants in connection with the annual meetings in 2017, 2018, and 2019 and ordering the Proxy Defendants to disgorge to the Company all compensation that they received for service on the Board following those invalid elections;

H. Awarding to Plaintiff the cost and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and

I. Granting such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

Respectfully submitted,

Dated: December 17, 2019

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/s/ Carol V. Gilden

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Attorneys for Seafarers Pension Plan

VERIFICATION

STATE OF MARYLAND)
) ss. :
COUNTY OF PRINCE GEORGE)

I, Maggie Bowen, verify and declare under penalty of perjury that the following is true and correct to the best of my knowledge, information, and belief:

1. I am Fund Administrator of the Seafarers Pension Fund ("Seafarers"), in the above-entitled action and am authorized to execute this verification on behalf of the Seafarers.

2. I have reviewed the Verified Stockholder Derivative Action Complaint (the "Complaint') prepared on behalf of Seafarers, and I authorize its filing.

3. I have reviewed the allegations made in the Complaint, and to those allegations of which I have personal knowledge, I believe those allegations to be true. As for the allegations of which I do not have personal knowledge, I rely on our counsel and their investigation and for that reason believe them to be true.

4. I further declare that Seafarers is a current shareholder, and has been a continuous holder, of the common stock of The Boeing Company during the time period in which the wrongful conduct alleged and complained of in the Complaint was occurring.

Dated: December 10th, 2019

Maggie Bowen
Maggie Bowen
Fund Administrator