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11 ARIZONA SUPERIOR COURT
12 MARICOPA COUNTY

13 MESA AIR GROUP, INC., a Nevada
14 corporation; JONATHAN ORNSTEIN,
15 an individual,

16 Plaintiffs,

17 v.

18 PLANE BUSINESS, L.L.C., an
19 Louisiana corporation; HOLLY
20 HEGEMAN, an individual; JOHN DOE
21 HEGEMAN, an individual,

22 Defendants.

No. CV2007-019041

**PLANE BUSINESS, L.L.C. AND HOLLY
HEGEMAN'S STATEMENT OF FACTS
IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

(Assigned to the Hon. Robert Miles)

1 1. Defendant Holly Hegeman owns and operates PlaneBusiness, L.L.C. and is
2 the publisher and editor of PlaneBusiness Banter, a weekly airline industry subscription
3 publication. [Declaration of Counsel, Exhibit (“Ex.”) 8 at ¶ 1 (Hegeman Declaration)]

4 2. Ms. Hegeman posts her views regarding the airline industry on her weblog,
5 “PlaneBuzz,” and those postings form the basis of the Plaintiffs’ claims in this action, but
6 Ms. Hegeman did not create the picture at issue in the PlaneBusiness Banter article dated
7 December 13, 2007. [*Id.* at ¶ 3]

8 3. In September and October of 2007, Ms. Hegeman posted information
9 regarding Hawaiian Airlines lawsuit against Mesa Air Group (“Mesa Air”) in the
10 bankruptcy court in Hawaii (the “Hawaii litigation”). [*Id.* at ¶ 4]

11 4. In preparation for writing the PlaneBuzz postings, Ms. Hegeman reviewed
12 and relied on information that she received from eyewitnesses to the Hawaii litigation.
13 [*Id.* at ¶ 5]

14 5. Ms. Hegeman also relied on information that is readily available to the
15 public through various media outlets, including the *Arizona Republic*, the *Honolulu Star-*
16 *Bulletin*, and the *Washington Post*. [*Id.* at ¶ 5]

17 6. In January 2003, Ms. Hegeman had dinner with Benet Wilson, the former
18 Director of Corporate Communications for Mesa Air. [Ex. 9 at ¶ 5 (Wilson Declaration)]

19 7. At that dinner, Ms. Wilson shared information with Ms. Hegeman that
20 Jonathan Ornstein, Chief Executive Officer of Mesa Air, had a partial ownership interest
21 in a gentleman’s club in Phoenix, Arizona. [*Id.*]

22 8. Ms. Hegeman relied on the information from Ms. Wilson regarding Mr.
23 Ornstein’s gentlemen’s club business interest when she posted a comment regarding that
24 interest on PlaneBuzz. [Ex. 8 at ¶ 7]

25 9. Ms. Hegeman believed, and continues to believe, that all of the information
26 she posted on PlaneBuzz and printed in PlaneBusiness Banter was true. [*Id.* at ¶ 8]

27 10. Hawaiian Airlines filed for bankruptcy in federal Bankruptcy Court in the
28 State of Hawaii. [Ex. 1 at 2]

1 11. During Hawaiian Airlines' bankruptcy, Mesa Air signed a confidentiality
2 agreement with Hawaiian Airlines as a potential investor. [*Id.*]

3 12. Hawaiian Airlines alleged that Mesa Air used that confidential information
4 in its decision to enter the inter-island Hawaii market in June 2006. [*Id.* at 2-3]

5 13. Plaintiff Mesa Air launched its inter-island carrier "go!" on June 6, 2006.
6 [Complaint at ¶ 12]

7 14. Hawaiian Airlines filed an action against Mesa Air seeking unspecified
8 damages and a one-year injunction prohibiting Mesa Air from operating "go!" because of
9 its improper use of the confidential information. [Ex. 1 at 2-3]

10 15. Before trial began on Hawaiian Airlines' claims, in September 2006 the
11 bankruptcy court held an evidentiary hearing on Hawaiian Airlines' motion for sanctions
12 based on Mesa Air's destruction of evidence. [*Id.* at 3]

13 16. In its sanctions motion, Hawaiian Airlines claimed that Mesa Air's chief
14 financial officer, Peter Murnane, deleted computer evidence that Hawaiian Airlines sought
15 in discovery and which it hoped would prove its case. [Ex. 1 at 3; Ex. 6 at 21:3-9 (9/25/07
16 Hawaiian litigation trial transcripts)]

17 17. Mr. Murnane hired his own criminal defense attorney in light of Hawaiian
18 Airlines' allegation of destruction of evidence. [Ex. 1 at 3; Ex. 2 at 3]

19 18. At the evidentiary hearing, Mesa Air claimed that Mr. Murnane used his
20 computer to browse pornographic websites and that is why he sought to permanently
21 delete information from his computers. [Ex. 2 at 1; Ex. 6 at 10:2-12 (9/25/07 Hawaiian
22 litigation trial transcripts)]

23 19. Mesa Air distanced itself from Mr. Murnane, claiming that he was single-
24 handedly responsible for the evidence destruction. [Ex. 2 at 1; Ex. 6 at 68:5-16 (9/25/07
25 Hawaiian litigation trial transcripts)]

26 20. At the evidentiary hearing, Hawaiian Airlines counsel solicited testimony
27 from Jefford Englander, a computer forensics expert, who stated that he discovered
28 multiple deleted files on Mr. Murnane's computers but did not investigate whether there

1 was evidence that pornographic website had been viewed on those computers. [Ex. 2 at 2;
2 Ex. 6 at 33:20-25, 34:1-8, 47:11-20, 54:18-55:1 & 85:8-13 (9/25/07 Hawaiian litigation
3 trial transcripts)]

4 21. Mesa Air admitted in the evidentiary hearing that a virus did not cause the
5 deletion of the computer data, and evidence was presented that the deletion must have
6 been accomplished by Mr. Murnane's deliberate actions. [Ex. 6 at 18:16-19:7 (9/25/07
7 Hawaiian litigation trial transcripts)]

8 22. At the evidentiary hearing, Mesa Air's counsel solicited the following
9 testimony from Mr. Englander to demonstrate that the data destruction was the work of
10 only Mr. Murnane:

11 Q If I understand listening to your testimony, the only
12 shenanigans or hanky panky you were describing were
performed by Mr. Murnane?

13 A That is my understanding.

14 Q You have no evidence or indication that any other Mesa
15 person deleted, overwrote, wiped out any computer or
other data?

16 A I'm not sure I understand.

17 Q Any other Mesa person. You have no evidence that any
18 other person at Mesa engaged in the same kind of
activities you've described for Mr. Murnane?

19 A That is correct.

20 Q So we're looking only at Mr. Murnane?

21 A I'm sorry?

22 Q Only at Mr. Murnane?

23 A Yes.

24 [Exhibit 6 at 68:1-16 (9/25/07 Hawaiian litigation trial transcripts)]

25 23. The *Honolulu Star-Bulletin* reported on the Hawaii litigation, noting that
26 Mesa Air placed the blame for the lost data only on Mr. Murnane:

27 Mesa Air Group, distancing itself from one of its top
28 executives, said its chief financial officer was single-handedly
responsible for the decision to delete computer data sought by
Hawaiian Airlines and that he may have done so to cover up
his interest in pornography.

1 [Ex. 2 at 1]

2 24. Mesa Air chief executive officer Jonathan Ornstein testified at the
3 evidentiary hearing on September 26, 2006. [Ex. 3 at 1; Ex. 10 (9/26/07 Hawaii litigation
4 trial transcripts)]

5 25. Mr. Ornstein played a prominent role in the creation of the inter-island
6 carrier “go!” and the subsequent Hawaii litigation. [Exs. 1-5; Ex. 10 at 108:25-109:2
7 (9/26/07 Hawaii litigation trial transcripts)]

8 26. During his testimony at the evidentiary hearing, Hawaiian Airlines’ counsel
9 asked Mr. Ornstein to review a Mesa Air press release that claimed that Mesa Air
10 maintained the “highest ethical standards”:

11 Q (By Mr. Levinson) Do you see the highlighted area? It
12 says, “Peter to serve Mesa and its shareholders well for
13 many years.” Do you see that?

14 A Yes.

15 Q Okay. Is there any mention in this press release of the
16 fact to Mesa’s investors that he’s alleged to have
17 destroyed evidence?

18 A No.

19 [Ex. 10 at 131:11-18 (9/26/07 Hawaii litigation trial transcripts)]

20 27. Hawaiian Airlines’ attorney continued its cross-examination of Mr. Ornstein
21 about the propriety of the press release:

22 Q (By Mr. Levinson) Is there -- Is there any mention in the
23 press release so that Mr. Murnane is alleged to have
24 provided false testimony?

25 A No.

26 Q Okay. And any mention in the press release to Mesa’s
27 investors of the fact that Mr. Murnane had retained a
28 criminal defense attorney?

A No.

Q And in your mind, is the -- is the fact that Mr. Murnane
has been alleged to have engaged in destruction of
evidence and providing false testimony material to
Mesa’s investors?

1 A Again, this was written by our legal counsel with the
2 help of outside counsel. I signed off on it with the
3 understanding that this was the appropriate disclosure.

4 [*Id.* at 132:12-133:1]

5 28. The bankruptcy judge, Robert Faris, granted Hawaiian Airlines’ motion for
6 sanctions in part:

7 I’m going to grant the motion in part. I think that based on the
8 evidence, Mr. Murnane did commit spoliation of evidence by
9 intentionally destroying or concealing potentially relevant
 evidence and I also think that Mesa [Air] should be held
 responsible for that conduct.

10 [Exhibit 7 at 61:14-18 (9/27/07 Hawaii litigation trial transcripts)]

11 29. Judge Faris continued,

12 I think that the only reasonable explanation consistent with the
13 evidence for what Mr. Murnane did is that he was trying to
14 destroy evidence. . . . I don’t accept the explanation that he
 was trying to get rid of potentially pornographic material.

15 [*Id.* at 62:4-6, 22-24]

16 30. The *Honolulu-Star Bulletin* reported on Judge Faris’ findings, noting that
17 that he “ruled that Mesa Chief Financial Officer Peter Murnane concealed and destroyed
18 evidence that could have been useful to Hawaiian [Airlines] in its lawsuit over the
19 Phoenix-based carrier’s decision to come into the Hawaii market.” [Ex. 4]

20 31. In partially granting Hawaiian Airlines’ motion, Judge Faris entered
21 findings of fact that Mesa Air did not destroy Hawaiian Airlines’ confidential information
22 as it was required to do, that Mesa Air misused that information, and that Mesa Air’s
23 misuse of the confidential information was a substantial factor in its decision to enter the
24 Hawaii market. [Ex. 7 at 66:10-67:3 (9/27/07 Hawaii litigation trial transcripts); Exs. 4 & 5]

25 32. Following the evidentiary hearing, Emil Steiner, who writes the nationally
26 syndicated OFF/beat weblog for the *Washington Post*, nominated Mr. Murnane for
27 “OFF/beat’s Idiot of the Year” for his claimed excuse that he deleted evidence from his
28 computers because he was viewing pornography on them. [Ex. 11]

1 33. On October 30, 2007, Judge Faris of the federal bankruptcy court in Hawaii
2 entered judgment against Mesa Air in the amount of \$80 million. [Ex. 14 (Judgment) &
3 Exs. 15-17 (newspaper articles regarding the judgment)]

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5 Dated: March 3, 2008

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6
7 By: /s/ Daniel C. Barr

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14 Copy of the foregoing hand delivered
this 3rd day of March, 2008, to:

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