

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS**

UNITED STATES OF AMERICA	)	
	)	
and	)	
	)	
ANTHONY FOXX,	)	
United States Secretary of Transportation,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	COMPLAINT
JUSTIN SMITH,	)	
	)	
ASI AVIATION, LLC,	)	
	)	
and	)	
	)	
AIRCRAFT CHARTER MANAGEMENT	)	
SERVICES, LLC	)	
	)	
Defendants.	)	

**PLAINTIFFS' COMPLAINT SEEKING INJUNCTIVE RELIEF**

Plaintiffs, the United States of America and Anthony Foxx, United States Secretary of Transportation, bring this complaint against Defendants Justin Smith, ASI Aviation, LLC, and Aircraft Charter Management Services, LLC (collectively, “Defendants”) to enforce the Emergency Cease and Desist Order issued by the Federal Aviation Administration (“FAA”) on May 20, 2015 (Dkt. No. 2015FS000019) (“Cease and Desist Order”). In support, Plaintiffs allege as follows:

## **PARTIES**

1. Anthony Foxx is the Secretary of the United States Department of Transportation, an agency within the Executive Branch. The FAA is a component of the Department of Transportation.
2. Defendant Smith (“Smith”) is the President and/or Manager of Defendants ASI Aviation, LLC (“ASI”) and Aircraft Charter Management Services, LLC (“ACMS”).
3. ASI is a limited liability company located in Houston, Texas, and registered in the State of Texas. ASI operates aircraft for charter flights based out of David Wayne Hooks Memorial Airport in Harris County, Texas, Columbus Metropolitan Airport in Columbus, Georgia, and Scottsdale Airport in Scottsdale, Arizona.
4. ACMS is a limited liability company located in Houston, Texas, and registered in the State of Delaware. ACMS provides flight crew services for chartered airplane flights.

## **JURISDICTION**

5. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1345, 28 U.S.C. § 1331, and 49 U.S.C. § 46107(a).

## **VENUE**

6. Venue is appropriate in the Southern District of Texas under 28 U.S.C. § 1391(b)(2) because a substantial portion of the events giving rise to this action occurred in this judicial district. ASI operates aircraft for charter flights out of the David Wayne Hooks Memorial Airport in Houston, Texas, which is located in this judicial district. Defendant ACMS provides flight crews for those flights.

## REGULATORY BACKGROUND

7. All commercial operators of aircraft, regardless of size, must possess the appropriate air carrier certificate. 14 C.F.R. § 119.5(g). Obtaining these certificates requires that the operators demonstrate compliance with various FAA safety and regulatory requirements. *See generally id.*, pt. 119.
8. FAA regulatory requirements for commercial aircraft operators do not apply to aircraft owners who lease their aircraft under “dry” leases. *See* 14 C.F.R. §§ 119.33(a)(2), (2)(3), (b)(2). In a legitimate dry lease, the lessee retains “operational control” of the flight, meaning he or she has “authority over initiating, conducting, or terminating [the] flight.” 14 C.F.R. § 1.1. The lessee therefore is responsible for complying with the FAA’s safety requirements applicable to non-commercial flights. *See* 14 C.F.R. §§ 119.33(a)(2), (2)(3), (b)(2); FAA, Truth in Leasing, Advisory Circular No. 91-37B, ¶¶ 5.1, 6 (2016).
9. Some aircraft owners use unlawful sham dry leases in an attempt to avoid complying with FAA regulations for commercial aircraft operators. *See* Advisory Circular No. 91-37B, ¶ 3.1. Although a sham dry lease includes language stating that lessees have operational control over the aircraft, the owner (or lessor) in fact provides everything necessary for the flight, such as a flight crew and aircraft servicing. *Id.* ¶ 5.1. Such an owner therefore is required to comply with applicable FAA regulations for commercial aircraft operators and cannot avoid his or her obligations by using a sham dry lease. *Id.* Therefore, “[t]he determination in each situation as to whether the lessor or lessee exercises operational control requires consideration of all relevant factors present in each situation.” *Id.*

10. When the FAA determines that an aircraft owner has violated regulations by using a sham dry lease, it is authorized to issue a cease and desist order under 49 U.S.C. § 40113(a), 49 U.S.C. § 46105(c), and 14 C.F.R. § 13.20.

### **FACTUAL ALLEGATIONS**

11. ASI enters into “aircraft share dry lease agreements” with its lessees. These agreements purport to be dry leases whereby ASI provides only the aircraft for a charter flight and the lessee has operational control of the flight.
12. After lessees sign their agreements with ASI, ASI commonly directs them to sign an “aircraft crew services agreements” with ACMS. Under these agreements, ACMS provides a flight crew for the lessee but does not assume operational control of the flight.
13. Defendants present the agreements with ASI and ACMS as a package deal, and lessees do not understand that the arrangement differs from a charter or other commercial flight.
14. Many of Defendants’ lessees believe that they are entering into contracts like those offered by legitimate charter flight companies (*i.e.*, wet leases). Defendants do not tell their lessees that the agreements with ASI and ACMS purport to assign the lessee the obligation of complying with FAA commercial aircraft operator regulations.
15. After investigating these practices by Defendants, the FAA determined that Defendants were employing a sham dry lease to avoid the regulations applicable to commercial aircraft operators. The FAA therefore issued an emergency cease and desist Order to Defendants on May 20, 2015.

16. The Cease and Desist Order reads in relevant part:

Justin Smith, ASI, ACMS, and/or any other associated individuals or entities are ordered to immediately cease and desist operating as an air carrier or offering to provide air transportation . . . until Justin Smith, ASI, ACMS, obtains a valid, effective, and properly issued air carrier operating certificate issued to it by the FAA.

FAA, Emergency Cease & Desist Order, Dkt. No. 2015FS000019, 8 (May 20, 2015) (attached as Exhibit A).

17. The Cease and Desist Order was effective immediately because the FAA found that

Defendants' conduct created "an emergency . . . related to safety in air commerce."

*Id.*

18. Although Defendants have challenged the Cease and Desist Order in the D.C. Circuit

Court of Appeals, that court denied Defendants' motion to stay the Cease and Desist

Order pending their challenge in the D.C. Circuit. *See* Petition for Review, Doc.

#1556395, *ASI Aviation, LLC v. FAA*, 15-1159 (D.C. Cir. Jun. 3, 2015); Order, Doc.

#1565914, *ASI Aviation, LLC v. FAA*, 15-1159 (D.C. Cir. Aug. 3, 2015).

19. Since May 20, 2015, and through the present, Defendants have continued operating as

an air carrier and offering to provide air transportation.

20. Since May 20, 2015, and through the present, Smith continues to control ASI and

ACMS.

21. Since May 20, 2015, and through the present, Defendants' lessees continue to pay for

package deal charter flights from ASI and ACMS whereby ASI provides the aircraft

and ACMS provides the flight crew without either assuming operational control for

the flight.

22. Since May 20, 2015, and through the present, Defendants' lessees continue to be unaware that the flights provided by Defendants differ from standard charter flights.

23. Since May 20, 2015, Defendants have not obtained an air carrier operating certificate from the FAA.

**COUNT I – ENFORCEMENT OF FAA ORDERS UNDER 49 U.S.C. § 46107**

24. Plaintiffs incorporate the allegations in paragraphs 1-23, as if set forth fully herein.

25. From May 20, 2015, through the present, Defendants have operated as an air carrier and/or offered to provide air transportation without an air carrier operating certificate.

26. From May 20, 2015, through the present, Defendants have violated the Cease and Desist Order.

27. The FAA issued the Cease and Desist Order pursuant to its statutory authority under 49 U.S.C. § 40113(a) and § 46105(c), both of which are within Part A of Title 49 of the United States Code.

28. Under 49 U.S.C. § 46107(b)(1)(A), "the Attorney General may bring a civil action in an appropriate court . . . to enforce . . . an order" issued pursuant to Part A of Title 49 of the United States Code.

**PRAYER FOR RELIEF**

For the foregoing reasons, Plaintiffs respectfully request that judgment be entered in its favor awarding the following relief:

- a. An order enjoining Defendants from engaging in activities prohibited by the Cease and Desist Order; and
- b. Such other relief as the Court deems just and proper.

Dated: April 1, 2016

Respectfully submitted,

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