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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Captain Jason Kinzer, an individual;

Plaintiff,

vs.

**Allegiant Air, LL.C., and Allegiant Travel
Co.**

Defendants

**Serve:
Scott Sheldon
1201 N Town Center Drive
Las Vegas, NV 89144**

CASE NO.:

DEPT NO.:

VERIFIED COMPLAINT

Comes now, James Kinzer, by and through undersigned counsel, and brings this action against the defendants, Allegiant Air LLC, an operating subdivision of Allegiant Travel Co. (hereinafter collectively as “defendant,” “Allegiant Air” or “Allegiant”), and alleges as follows:

I. THE PARTIES

1. The plaintiff, Jason Kinzer (hereinafter “Captain Kinzer”), is a citizen and resident of the State of Florida, and at all times relevant was hired and trained by the defendant , Allegiant Air, in the State of Nevada to act as pilot in command of its aircraft.

2. The defendant, Allegiant Air is a corporation organized and existing pursuant to the laws of the State of Nevada and its principal place of business located in Enterprise, Clark County, Nevada, and this court has jurisdiction over the subject matter and parties thereto.

II. GENERAL ALLEGATIONS

3. At all times relevant, Allegiant Air is a common carrier by air of passengers for hire and holds itself out to the general public as a provider of air transportation to and from cities in the United States, including Las Vegas Nevada and St. Petersburg, Florida.

4. At all times relevant, Allegiant Air holds a certificate for which it applied for and was issued by the Federal Aviation Administration (hereinafter FAA) for the carriage of passengers by air in accordance with the regulations mandated by 14 Code of Federal Regulations, Part 121 (hereinafter “Part 121”) and was obligated to operate its aircraft in the carriage of passengers for hire in accordance with said regulations and a high degree of care with which it is charged as a common carrier.

5. At all times relevant, the defendant Allegiant Air is by regulation obligated to conduct operations in accordance with the Operation Specifications for which it sought and was approved by the FAA, as required by Part 121.

6. The Federal Aviation Regulations with which Allegiant Air was to comply as well as its obligation as a common carrier for hire required its operations to be conducted with a high degree of care.

7. At all times relevant, the defendant, Allegiant Air leased and operated a McDonnell Douglas, MD 80 aircraft, registration No. N869GA, (hereinafter “subject aircraft”)

and was using it for the carriage of passengers for hire and was required to comply with said Part 121 in the operation of subject aircraft.

8. At all times relevant, the plaintiff held a valid Airline Transport Certificate issued by the FAA with appropriate rating that allowed him to act as pilot in command of the subject aircraft, and he was entrusted by the defendant to act as pilot in command of the subject aircraft.

9. On June 8, 2015, the defendant, Allegiant Air, assigned and or designated the plaintiff to act as pilot in command of the subject aircraft in order to carry fare paying passengers from St Petersburg, FL to Hagerstown, MD on a flight designated as Flight No. 864.

10. The defendant, Allegiant Air, in so assigning the plaintiff the position of pilot in command of the subject flight, was obligated to make all reasonable assurances as mandated by Part 121 to determine that the plaintiff, Captain Kinzer, was fully qualified and trained as required under Part 121 and its FAA approved Operations Specifications and expected Captain Kinzer to carry out his responsibilities both under Part 121 and the applicable General Operating and Flight Rules contained in 14 Code of Federal Aviation Regulations, Part 91.

11. The General Operating and Flight Rules, particularly 14 Code of Federal Regulations 91.3, at all times relevant, mandated Captain Kinzer and the defendant, Allegiant Air, that he was to be directly responsible for , and the final authority as to, the operation of the subject aircraft on said Flight No. 864.

12. At all times relevant, the defendant, Allegiant Air, was responsible and obligated under the Federal Aviation Regulation, particularly 14 CFR 121.533(d) to assure that its pilots in command, including the plaintiff on Flight No. 864, remain responsible for the safety of the passengers, crewmembers and the airplane.

13. At all times relevant, the defendant, Allegiant Air, was obligated and required to assure that the operation of its aircraft, including the subject aircraft, was done in accordance with the FAA approved General Operation Manual and in the manner in which it periodically

trained its pilots in the simulator and in addition to its duty to exercise a high degree of care, all of which mandated the evacuation of an aircraft in the event of a fire or possibility of a fire or any condition that might possibly affect the health and safety of the passengers and crew.

14. At all times relevant, the defendant, Allegiant Air, was obligated and responsible to comply with the Federal Aviation Regulations, particularly 14 CFR 121 557(a), to assure that in emergency situations arising during flight that requires immediate decision action that the pilot in command, including the plaintiff, Captain Kinzer, may take any action that he considers necessary under the circumstances and may deviate from prescribed operation procedures to the extent required in the interest of the safety of his passengers, crew as well as the aircraft.

15. The Federal Aviation Regulations have the force and effect of law and, at no times relevant, did Allegiant Air apply for or receive a waiver or exemption from the regulations pertaining to the authority and responsibility of the pilot in command of its aircraft.

16. On June 8, 2015 at about 4:30 EDT (or 2030 Zulu), the subject aircraft operated by the defendant, Allegiant Air as Flight No.864 took off from St. Petersburg, FL bound for Hagerstown, MD with Captain Kinzer assigned by the defendant as the pilot in command along with a first officer, four cabin crewmembers and one hundred and forty one (141) fare paying passengers on board.

17. Shortly after takeoff as the said flight was climbing to its Air Traffic Control assigned altitude and before it reached five thousand feet, one or more of the cabin crew reported to Captain Kinzer and the first officer that acrid smoke or chemical fumes from an undetectable source was emanating from the rear of the passenger cabin and that it was being detected and inhaled by the passengers as well.

18. Captain Kinzer, in accordance with his regulatory duty and his common law obligation to provide a high degree of care for the safety of his passengers, declared an emergency to Air Traffic Control and returned for a landing to the St. Petersburg airport, which was still the closest useable airport to his position.

19. After landing and clearing the active runway, Capt. Kinser advised the air traffic ground controller that Flight 864 was going to stop where they were and, having been met at that location by the vehicles and personnel of the St Petersburg Airport Crash/Fire Rescue, (hereinafter "Fire Rescue"), in order to have the Fire Rescue personnel check out the aircraft before proceeding to the terminal. The air traffic ground controller asked the Fire Rescue personnel if they copied Flight 864 to which they answered in the affirmative. The Fire Rescue personnel asked Flight 864, "...what do you need us to check out?" to which the cockpit crew responded that the flight attendants reported to them a "burning smell" immediately after they departed and asked Fire Rescue if they could see any smoke or scorching. After further checking, Fire Rescue reported to Capt Kinser and his First Officer, "I'm showing some smoke on your No1 engine" and urged the crew to shut it down.

20. Capt Kinser and his First Officer shut down the engines and the First Officer proceeded to discharge the on board engine fire extinguisher into the engine

21. Capt Kinser and the First Officer checked with the cabin crew to learn that the acrid burning smell was not resolved and, for the safety of his passengers and crew and in accordance with his training and responsibility, ordered the cabin crew to prepare for an evacuation and notified the air traffic ground controller of that intention.

22. After Flight 864 reported to the air traffic ground controller of the decision to evacuate, a person who did not identify himself or his authority, over the air traffic control frequency, commanded the cockpit crew to "hold off on your evacuation." The air traffic controller admonished the persons on the frequency that they must identify themselves when using the air traffic control frequency to which there was no response. Capt. Kinser requested an identification of the person making this command to which a response from the unidentified person was a repeat of the command: "I'm telling you not to evacuate yet" without giving the source of authority or reason to make such a command.

23. After approximately another minute passed, the Capt. Kinzer asked the unidentified person for the reason why evacuation was being held off and that: "We need an answer, please." The air traffic ground controller asked Fire Rescue, "Did you copy that?" to which no one responded. The air traffic ground controller interceded and repeated the request to the unknown caller that Flight 864 needed to know why evacuation was to be delayed to which no identifiable response, reason or authority was given. A true and correct copy of the pertinent communications over the Air Traffic Ground Control frequency is annexed hereto and made a part hereof as Exhibit 1.

24. In compliance with the Federal Aviation Regulations, particularly 14 CFR 121.417(4) Allegiant Air was obligated in the training of its pilots to review and discuss previous aircraft accidents and incidents pertaining to actual emergency situations. Among those situations reviewed were instances where a delay in landing or evacuation, particularly in the presence of smoke, caused serious injury and death.

25. The unauthorized command over the air traffic control frequency, given without adequate identification, citation of authority or reason, attempting to usurp the legal final command responsibility of Capt. Kinzer, particularly after an emergency landing due to smoke in the passenger cabin from an unknown source and report of smoke coming out of one of the engines, caused additional alarm on the part of Capt. Kinzer for the safety of his passengers and crew and, with the concurrence of his First Officer, ordered an evacuation in accordance with the duty and responsibility imposed upon him by law, his training and the high degree of care with which he was charged.

26. While personally checking the passenger cabin to assure himself that the passengers were safely evacuated, Captain Kinzer noted that a passenger was still on board saying, "help me, I cannot walk." He was a paraplegic. Captain Kinzer lifted the disabled passenger out of his seat, and with the assistance of one of the flight attendants, carried the passenger to the exit where he could be safely evacuated. Captain Kinzer then rechecked the cabin to assure personally that all souls were evacuated before he left the plane himself.

27. Because Captain Kinzer ordered the said evacuation, Allegiant Air corporate management accused him for not taking into primary account “the Company’s assets, ground equipment, fuel and the personal time of our employees and customers” above his command responsibility of caring for the safety of his passengers and crew, essentially not placing company profits above safety and, for that reason, fired him. Attached hereto and incorporated by reference as Exhibit “2” is a true copy of the Allegiant Air termination letter.

28. At all times relevant, Capt. Kinzer’s has had a perfectly clean record with no violations, sanctions, warnings or reprimands of any kind and was determined to be rated, certificated by the Federal Aviation Administration, and competent to act as pilot in command of large aircraft carrying passengers and cargo for hire.

FIRST CAUSE OF ACTION
FOR WRONGFUL AND TORTIOUS TERMINATION OF EMPLOYMENT

29. The plaintiff, Captain Kinzer, repeats, realleges and incorporates each and every of the above allegations as though fully set forth herein.

30. Allegiant Air wrongfully and maliciously fired Captain Kinzer for not placing monetary concern such as company assets, cost of rescheduling, fuel and cost of company personnel in his decision, above his command responsibility for the safety of his passengers and crew as required by law the high degree of due care he and the company was supposed to maintain.

31. The acts and omissions of the defendant Allegiant Air toward Captain Kinzer are retaliatory in that it essentially demanded of the plaintiff, and others similarly situated, to participate in activity, policy and/ or practice of his employer which are in violation of the Federal Aviation Regulations and potentially dangerous to life and limb of his passengers and the general public.

32. The acts and omissions of the defendant, Allegiant Air, toward Captain Kinzer is deleterious and contrary to and amounts to a reckless disregard of the public policy of all states, including the State of Nevada, particularly by reason of the application of the Federal Aviation Regulations that establish a uniform public policy to be recognized by all states concerning operation of aircraft, unauthorized use of air traffic control frequencies and air transportation of fare paying passengers.

33. As a direct and proximate cause of the wrongful and tortious conduct on the part of the defendant, Allegiant Air, the plaintiff suffered and will continue to suffer, among other things, compensatory loss of income, humiliation, embarrassment, loss of reputation as a pilot, loss of his ability to find similar employment as a pilot or employee in the aviation industry and probably in other fields of employment as well and has been damaged in an amount in excess of TEN THOUSAND DOLLARS (\$10,000.00) exclusive of interest and costs.

SECOND CAUSE OF ACTION DEFAMATION

34. The plaintiff, Captain Kinzer, repeats, realleges and incorporates each of the above allegations as though fully set forth herein.

35. The discharge letter (Exhibit "2") signed by Mark Grock, Allegiant's Chief Pilot, as well as other writings and emails created by Allegiant, contain false and defamatory statements concerning Captain Kinzer.

36. By providing a copy of the discharge letter to Greg Baden, as well as retaining a copy in Captain Kinzer's personnel file, there was unprivileged publication to third parties. In addition to the discharge letter, Allegiant Air management, agents and employees have made other unprivileged publication to third parties of false and defamatory statements concerning Captain Kinzer.

37. The publication to Mr. Baden and to Captain Kinzer's file as well as others was at least negligent and may have in fact been an intentional attempt to send a message to other

Allegiant pilots concerning an unlawful company protocol on smoke in the cabin by Allegiant management.

38. As a result of the publication to Captain Kinzer's personnel file, as well as the comments made to others, Captain Kinzer has been blackballed by the aviation industry and is unable to find employment in the aviation field and difficulty in finding employment, aside from possibly self-employment, in other areas as well.

39. As a direct and proximate cause of the wrongful and tortious conduct on the part of the defendant, Allegiant Air, the plaintiff suffered and will continue to suffer, among other things, compensatory loss of income, humiliation, embarrassment, loss of reputation as a pilot, loss of his ability to find similar employment as a pilot or employee in the aviation industry and probably in other fields of employment as well and has been damaged in an amount in excess of TEN THOUSAND DOLLARS (\$10,000.00) exclusive of interest and costs.

**THIRD CAUSE OF ACTION INTENTIONAL
INFLICTION OF EMOTIONAL DISTRESS**

40.. The plaintiff, Captain Kinzer, repeats Plaintiffs reallege and reaver the foregoing paragraphs as if fully rewritten here.

41. At all times relevant, Defendant Allegiant Air engaged in extreme and outrageous conduct in the following ways, including but not limited to:

- a. Taking advantage of the position of trust and confidence given to it by the FAA and placing its own financial own financial benefit above that of fare paying passengers; and/or,
- b. Failing to abide by FAA Rules and Regulations and permitting Captain Kinzer to operate its aircraft in the best interest of his passengers; and/or

- c. Attempting to send a warning message to the line pilots of Allegiant Air by firing Captain Kinzer without cause or indeed any legal justification.

42. At all times relevant, Defendant Allegiant Air's conduct was recklessly indifferent to the likelihood that its actions would cause severe emotional distress to the Plaintiff, and caused and will continue to cause severe emotional distress to the Plaintiff.

**FOURTH CAUSE OF ACTION FOR PUNITIVE
OR EXEMPLARY DAMAGES**

43. The plaintiff, Captain Kinzer, repeats, realleges and incorporates each of the above allegations as though fully set forth herein.

44. The acts and omissions on the part of the defendant, Allegiant Air, towards Captain Kinzer were not only malicious, retaliatory and in a reckless disregard of his rights and responsibilities, but also a reckless disregard of the Federal Aviation Regulations and the high degree of a duty of due care with which it is charged for the safety of the public. Moreover, it sends a dangerous warning message to other Allegiant Air pilots to place corporate financial concerns and profits as a priority over safety of the passengers, crew and the general public in times of emergency or else jeopardize their continued employment with this defendant.

45. In the interest of safety and welfare of the public, both flying and on the ground, plaintiff demands that punitive damages be awarded in order to deter future similar conduct on the part of this defendant and others similarly situated in an amount to be determined by the jury as appropriate under the law of the State of Nevada.

WHEREFORE, plaintiff demands judgment against the defendant in an amount in excess of TEN THOUSAND DOLLARS (\$10,000.00) to be determined by the jury to compensate him for compensatory losses stated above and for punitive damages, together with appropriate

interest and costs and for such other and further relief this Honorable court may deem just and proper.

Respectfully submitted,

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