

DISTRICT COURT CIVIL COVER SHEET A-15-727524-C

Clark

County, Nevada

Case No. _____
(Assigned by Clerk's Office)

XV

I. Party Information (provide both home and mailing addresses if different)


Plaintiff(s) (name/address/phone): <p align="center">Jason Kinzer</p>	Defendant(s) (name/address/phone): <p align="center">Allegiant Air, LLC; and Allegiant Travel Co. 1201 N Town Center Drive Las Vegas, Nevada 89144 (702) 851-7300</p>
Attorney (name/address/phone): Michael A. Urban, Esq. NSB# 3875, Sean W. McDonald, Esq. NSB# 12817 The Urban Law Firm, 4270 S. Decatur Blvd., Suite A-9 Las Vegas, Nevada 89103 (702) 968-8087	Attorney (name/address/phone):

II. Nature of Controversy (please select the one most applicable filing type below)

Civil Case Filing Types		
<p align="center">Real Property</p> <p>Landlord/Tenant</p> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <p>Title to Property</p> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <p>Other Real Property</p> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<p>Negligence</p> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <p>Malpractice</p> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<p align="center">Torts</p> <p>Other Torts</p> <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input checked="" type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
<p align="center">Probate</p> <p>Probate (select case type and estate value)</p> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate <p>Estate Value</p> <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	<p align="center">Construction Defect & Contract</p> <p>Construction Defect</p> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <p>Contract Case</p> <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	<p align="center">Judicial Review/Appeal</p> <p>Judicial Review</p> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <p>Nevada State Agency Appeal</p> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <p>Appeal Other</p> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<p align="center">Civil Writ</p> <p>Civil Writ</p> <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant		<p align="center">Other Civil Filing</p> <p>Other Civil Filing</p> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

November 10, 2015
Date


Signature of initiating party or representative

See other side for family-related case filings.



CLERK OF THE COURT

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11
12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 JASON KINZER, an individual;

15 Plaintiff,

16 vs.

17 ALLEGIANT AIR, LLC, a Nevada limited
liability company; and ALLEGIANT TRAVEL
18 CO. a Nevada corporation,

19 Defendants.

20 Serve:

21 Scott Sheldon,
Registered Agent
22 1201 N Town Center Drive
Las Vegas, NV 89144
23

Case No.: A-15-727524-C

Dept. No.: XV

VERIFIED COMPLAINT

24 Comes now, James Kinzer, by and through undersigned counsel, and brings this action
25 against the defendants, Allegiant Air LLC, an operating subdivision of Allegiant Travel Co.
26 (hereinafter collectively as "defendant," "Allegiant Air," or "Allegiant"), and alleges as follows:
27
28

1 **I. THE PARTIES**

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

5 2. Defendant, Allegiant Air, LLC, is a limited liability company organized and
6 existing under the laws of the State of Nevada. Defendant Allegiant Travel Co. is the parent
7 company of Allegiant Air, LLC, is a corporation organized and existing pursuant to the laws of
8 the State of Nevada. Both defendants have its principal place of business located in Clark
9 County, Nevada, and this court has jurisdiction over the subject matter and parties thereto.

10 **II. GENERAL ALLEGATIONS**

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

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

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

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

26 7. At all times relevant, the defendant, Allegiant Air leased and operated a
27 McDonnell Douglas model MD-80 aircraft, registration No. N869GA (hereinafter "subject
28

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

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

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

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

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

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

23 13. At all times relevant, the defendant, Allegiant Air, was obligated and required to
24 assure that the operation of its aircraft, including the subject aircraft, was done in accordance
25 with the FAA-approved General Operation Manual and in the manner in which it periodically
26 trained its pilots in the simulator and in addition to its duty to exercise a high degree of care, all
27 of which mandated the evacuation of an aircraft in the event of a fire or possibility of a fire or
28 any condition that might possibly affect the health and safety of the passengers and crew.

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

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

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

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

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

24 19. After landing and clearing the active runway, Captain Kinzer advised the air
25 traffic ground controller that Flight 864 was going to stop where they were and, having been met
26 at that location by the vehicles and personnel of the St Petersburg Airport Crash/Fire Rescue,
27 (hereinafter "Fire Rescue"), in order to have the Fire Rescue personnel check out the aircraft
28 before proceeding to the terminal. The air traffic ground controller asked the Fire Rescue

1 personnel if they copied Flight 864, to which they answered in the affirmative. The Fire Rescue
2 personnel asked Flight 864, "...what do you need us to check out?" to which the cockpit crew
3 responded that the flight attendants reported to them a "burning smell" immediately after they
4 departed and asked Fire Rescue if they could see any smoke or scorching. After further
5 checking, Fire Rescue reported to Captain Kinzer and his First Officer, "I'm showing some
6 smoke on your No. 1 engine" and urged the crew to shut it down.

7 20. Captain Kinzer and his First Officer shut down the engines and the First Officer
8 proceeded to discharge the on board engine fire extinguisher into the engine

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

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

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

1 24. In compliance with the Federal Aviation Regulations, particularly 14 C.F.R. §
2 121.417(4), Allegiant Air was obligated in the training of its pilots to review and discuss
3 previous aircraft accidents and incidents pertaining to actual emergency situations. Among those
4 situations reviewed were instances where a delay in landing or evacuation, particularly in the
5 presence of smoke, caused serious injury and death.

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

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

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

26 28. At all times relevant, Captain Kinzer has had a perfectly clean record with no
27 violations, sanctions, warnings or reprimands of any kind, and was determined to be rated and
28

1 certificated by the Federal Aviation Administration and competent to act as pilot in command of
2 large aircraft carrying passengers and cargo for hire.

3 **FIRST CAUSE OF ACTION**

4 **FOR WRONGFUL AND TORTIOUS TERMINATION OF EMPLOYMENT**

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

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

12 31. The acts and omissions of the defendant, Allegiant Air, toward Captain Kinzer are
13 retaliatory in that it essentially demanded of the plaintiff, and others similarly situated, to
14 participate in an activity, policy and/or practice of his employer which violate the Federal
15 Aviation Regulations and potentially endanger the lives and limbs of his passengers and the
16 general public.

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

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

1 SECOND CAUSE OF ACTION

2 FOR DEFAMATION

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

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

8 36. By providing a copy of the discharge letter to Greg Baden, who was not
9 privileged to receive the same, as well as retaining a copy in Captain Kinzer's personnel file and
10 by not controlling access to this file to exclusively those who had a legitimate management
11 reason to review the file, there was unprivileged publications to third parties. In addition to the
12 discharge letter, Allegiant Air management, agents and employees have made other unprivileged
13 publication to third parties of false and defamatory statements concerning Captain Kinzer.

14 37. The publication to Mr. Baden and to Captain Kinzer's file, as well as to others,
15 was at least negligent and may have in fact been an intentional attempt to send a message to
16 other Allegiant pilots concerning an unlawful company protocol on smoke in the cabin by
17 Allegiant management.

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

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

1 **THIRD CAUSE OF ACTION**

2 **FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

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

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

7 a. Taking advantage of the position of trust and confidence given to it by the
8 FAA and placing its own financial own financial benefit above that of fare paying
9 passengers;

10 b. Failing to abide by FAA Rules and Regulations and permitting Captain
11 Kinzer to operate its aircraft in the best interest of his passengers; and

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

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

17 **FOURTH CAUSE OF ACTION**

18 **FOR PUNITIVE OR EXEMPLARY DAMAGES**

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

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

Exhibit “1”

FEDERAL AVIATION ADMINISTRATION

RE: ACCIDENT PIE/ATCT 0024

PIE/ATCT 0024
38:00 to 45:00

THE FOLLOWING WAS TRANSCRIBED:
FEDERAL AVIATION ADMINISTRATION
ST. PETE/CLEARWATER AIR TRAFFIC CONTROL TOWER

06-08-15
2138:00 to 2145:00

No Court Reporter Present

CP REPORTING, LLC
20006 North Cove Road, Suite 100
Cornelius, NC 28031

(704) 682-0747

PIE/ATCT 0024

INDEX

Radio transmissions in order of speakers:

864 - Allegiant Flight 864

GC - Ground Control

RF - Rescue and Fire (unable to determine which unit)

RF2 - Rescue and Fire Unit 2

1417Y - Cessna 1417Y

RF3 - Rescue and Fire Unite 3

N728RH - Beech 728 RH

Abbreviations:

FLIR - Forward Looking Infrared

1 (2138:00)

2 2138:26 864 Ground Allegiant 864 clearing
3 on alpha

4 2138:28 GC This is 864 Ground say
5 intention

6 2138:32 GC Yeah we're going to stop once
7 we clear the runway and have
8 the emergency equipment just
9 check us out

10 2138:38 GC This is 864 roger if you just
11 want to round the corner then
12 and stopped there

13 2138:44 GC Okay uh we're actually going
14 to stop right here and have
15 them just check us out if you
16 could

17 2138:49 GC Allegiant 864 roger we'll do
18 and the emergency vehicle did
19 you copy that

20 2138:54 RF Yeah, we copy

21 2138:55 864 Roger

22 2139:10 GC And emergency vehicles can you
23 advise you're not clear 36
24 right then correct

25 2139:20 RF We're not clear 36 right

1 2139:22 GC Okay let me know let me know
2 as soon as you're clear runway
3 36 right please
4 2139:35 1417 Good afternoon Ground Cessna
5 1417 Yankee any idea for
6 landing
7 2139:39 GC Number 1417 Yankee (inaudible)
8 2139:42 1417 Yes sir with the activity I
9 hear are we going to be able
10 to take off this afternoon or
11 everything going to be closed
12 for a while?
13 2139:47 GC 1417 Yankee and you may want
14 to depart runway 4
15 2139:54 1417 Okay we'll go ahead and fire
16 up and call you back thanks
17 2140:00 GC 17 Yankee roger
18 2140:02 RF2 St. Pete Ground, ARFF2
19 2140:03 GC RF 2 semi ground
20 2140:05 RF2 Can I talk to the pilot on
21 this channel or do you want me
22 to move to the discreet
23 channel
24 2140:11 GC RF 2 and you can go ahead for
25 right now if it becomes

1 lengthy I'll let you know

2 2140:16 RF2 Copy RF 2 Allegiant Aircraft

3 what do you need us to check

4 out

5 2140:24 864 All right the flight

6 attendants reported a burning

7 smell immediately after

8 departure so do you guys have

9 a way of checking to see

10 anything out of the ordinary

11 in the airplane do you see

12 smoke do you see any scorching

13 2140:35 Unknown Yeah there's fire

14 2140:37 GC Yeah we don't have any any

15 signs of that I'll swing

16 around your other side there,

17 starboard side and we'll do a

18 FLIR check on that side as

19 well

20 2140:47 864 Okay thanks very much we'll be

21 standing by this frequency so

22 if you give us a clear we'll

23 taxi back to the gate

24 afterward

25 And is it better for you guys

1 if we clean the airplane's
2 configuration or do you -- is
3 the flare better with the flap
4 or the flaps (inaudible)
5 deployed like this
6 2041:05 RF I'm -- I'm showing some smoke
7 on your number one engine
8 2041:14 864 Verify you're showing smoke on
9 the number one engine
10 2041:16 RF That's affirmative -- if you
11 want to shut number one down
12 that's the pilot side
13 2041:21 864 All right number one here we
14 go
15 2041:53 864 Tower Ground Allegiant 864
16 we're going to be evacuating
17 2041:58 GC Allegiant 864 roger okay and
18 at that -- at that position
19 correct
20 2042:03 864 Yes right here we're going to
21 be evacuating
22 2042:05 RF 864 roger
23 2042:07 Unknown 864 hold off on your
24 evacuation please
25 2042:13 864 Who said to hold off

1 2042:15 Unknown Yes please hold off on your
2 evacuation
3 2042:16 864 Yes who is this
4 2042:22 GC Be advised when you guys are
5 making transmissions identify
6 yourself first so everybody
7 knows who's talking to who
8 2042:29 864 Yeah Allegiant 864 who's
9 telling us not to evacuate
10 2042:34 Unknown Airport Command RF 2 I'm
11 telling you not to evacuate
12 yet
13 2042:37 864 All right
14 2043:01 864 Allegiant 864 why do you want
15 us to hold
16 2043:17 864 We need answer please why do
17 you want us to hold on the
18 evacuation
19 2043:27 GC RF 2 Command safety ground did
20 you copy Allegiant's
21 transmission
22 2043:36 GC Ops 1 are you on St. Pete
23 ground
24 2043:44 GC Okay are there any emergency
25 vehicles any of the RF

1 vehicles on ground frequency
2 2043:51 RF3 Affirmative RF 3 on
3 2043:53 GC Okay RF 3 on Allegiant 864 is
4 requesting why do you want
5 them to hold on the evacuation
6 they need an answer please
7 2044:04 RF RF 3 give me one second I'll
8 contact the man on the ground
9 2044:16 N728RH St. Pete Ground November 728
10 Romeo go
11 2044:45 Unknown (inaudible)
12 2044:46 N728RH St. Pete Ground November 728
13 Romeo Hotel
14 2044:50 GC Number 728 Romeo Hotel, St.
15 Pete Ground
16 2044:53 N728RH How much out there
17 I was in transition to the
18 landings am I going to be able
19 to do it
20 2045:00 GC November 728 Romeo roger and I
21 should be able to work that
22 out for you just -- are you
23 ready to taxi now
24 2045:07 N728RH I'd have to start off and then
25 I'll call you but I just

1 wanted -- I want to make sure
2 I could go to the landing so
3 I'll call you when I start up
4 in a few minutes

5 2045:13 GC (inaudible) tower roger let me
6 know when you're ready to taxi

7 WHEREUPON, at 2145:13, the transcription
8 ended.

9
10
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PIE/ATCT 0024

CERTIFICATION

I, Michael Lawrence, Notary Public in and for the County of Guilford, State of North Carolina at Large, do hereby certify:

That the hearing was taken before me and recorded by Stenomask, thereafter reduced to typewriting under my direct supervision, and the foregoing consecutively numbered pages are a complete and accurate record of all the testimony.

That the undersigned is not of kin, nor in anywise associated with any of the parties to said cause of action, nor their counsel, and that I am not interested in the event(s) thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this
the 4th day of November, 2015.

Notary No.: 201315500163
CP REPORTING, LLC
20006 North Cove Road, Suite 200
Cornelius, NC 28031

Exhibit "2"



July 23, 2015

Jason Kinzer

[REDACTED]
[REDACTED]
[REDACTED] FL 3 [REDACTED]

Dear Captain Kinzer,

This letter is to notify you that we have concluded our investigation of your conduct as Captain of Allegiant Flight 864 on June 8, 2015.

As an Allegiant Captain, you are considered the "on-scene commander" and should always demonstrate professionalism, maturity and concern for our customers and your coworkers during their daily work assignments. You do this by operating each aircraft safely, smoothly and efficiently and striving to preserve the Company's assets, aircraft, ground equipment, fuel and the personal time of our employees and customers.

You failed to exhibit these behaviors during Flight 864. You ordered an evacuation that was entirely unwarranted and, as a result, your conduct and decision-making on June 8, compromised the safety of your crew and your passengers and led directly to the injuries. Furthermore, during a review of the event and in subsequent conversations you have repeatedly insisted that you made a good decision to evacuate the aircraft and, if faced with a similar situation, you would follow the same course of action.

It is for these reasons that your employment with Allegiant is terminated effective immediately.

Sincerely,

A handwritten signature in black ink, appearing to read "M Grock", written over the word "Sincerely,".

Mark Grock
System Chief Pilot
Allegiant Air

cc. Greg Baden, VP Flight Operations



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