

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

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Debra M. Douglas,  
On behalf of herself and all others  
similarly situated,

v.

Allegiant Air, LLC

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JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT  
CIVIL CASE No:

NOW COMES the plaintiff, Debra M. Douglas, individually, and on behalf of herself and all others similarly situated, who hereby brings this class action suit against Allegiant Air, LLC (“Allegiant” or the “Defendant”) and allege on personal knowledge, investigation of her counsel, and on information and belief as follows:

**NATURE OF THE ACTION**

1. Plaintiff brings this action for damages, and other legal and equitable remedies, resulting from the reckless and illegal actions of Allegiant in sending a group email on November 8, 2018, announcing a new Emotional Support Service or Psychiatric Service Animal policy. The email contained over 400 email addresses with a majority of the addresses including the name of the person involved. For instance, your Plaintiff Debra Douglas’s email was in the 5 ½ pages of single-spaced names as: [DEBRADOUGLAS1@gmail.com](mailto:DEBRADOUGLAS1@gmail.com).

2. The email came from [aca@allegiantair.com](mailto:aca@allegiantair.com) to your plaintiff. On November 11, 2018, your plaintiff responded as follows at 5:37 p.m.

## **Allegiant's NEW Emotional Support and Service Animal Policies**

Debra Douglas <debradouglas1@gmail.com>  
To: acaa@allegiantair.com

Sun, Nov 11, 2018 at 5:37 PM

Sir/Madam:

This email is very disturbing and an invasion of my privacy. This action is one that cannot be undone.

Do you have any idea how many hundreds of people that you have embarrassed and upset by including email addresses of everyone that you were trying to reach concerning an **Emotional Support, Service or Psychiatric Service Animal**? Many or most have a person's entire name within the email address. Does your legal department have any clue as to what the HIPAA law provides to patients relating to their health records or information? If not, PLEASE READ:

Definition of HIPAA - MedicineNet

<https://www.medicinenet.com/script/main/art.asp?articlekey=31785>

**HIPAA: Acronym** that **stands for** the Health Insurance Portability and Accountability Act, a US law designed to provide privacy standards to protect patients' medical records and other health information provided to health plans, doctors, hospitals and other health care providers.

*Debra Douglas*

3. Less than an hour later Allegiant sent out another email again listing over 400 names with a new message at 6:21 p.m. on November 11 saying: "ACAA would like to recall the message 'Allegiant's NEW Emotional Support and Service Animal Policies'."

4. The exposure of hundreds of email addresses of people who properly submitted medical or psychiatric information to Allegiant constitutes an invasion of privacy and a breach of contract with Allegiant.

5. Plaintiff brings this action to remedy these harms on behalf of herself and all similarly situated Allegiant customers whose privacy was invaded. Plaintiff seeks to

recover damages, including actual and statutory damages, compensatory damages, and injunctive relief including an order requiring Allegiant to implement improved privacy and security measures.

### **JURISDICTION AND VENUE**

6. The matter in controversy exceeds \$5,000,000 and the class is comprised of hundreds of individuals. Plaintiff has citizenship diverse from the defendant. Accordingly, this Court has jurisdiction pursuant to 28 U.S.C. § 1332(d)(2).

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)-(c) and 1441(a), in that Defendant is deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced. Defendant's use of Portsmouth (Pease Tradeport/Airport) for its airline business within this District is sufficient to subject it to personal jurisdiction.

### **PARTIES**

8. Plaintiff, Debra Douglas, is an individual citizen of the State of New Hampshire and resides at 40 Stone Sled Lane in Bow, Merrimack County, New Hampshire.

9. Defendant Allegiant is a foreign limited liability company which was formed in Nevada and with a principal place of business located at 1201 North Town Center Drive, Las Vegas, NV 89144. It is authorized to do business in New Hampshire with a registered agent of Corporation Service Company, 10 Ferry Street, Suite 313, Concord, NH 03301.

## CLASS ACTION ALLEGATIONS

10. Plaintiff brings all claims as class claims under Federal Rules of Civil Procedure, Rule 23(b)(1), (b)(2), (b)(3), and (c)(4).

11. **Class:** Plaintiff brings her claim on behalf of:

All natural persons whose personally identifiable information in the form of email addresses, were disclosed in a group email from Allegiant dated November 8, 2018.

12. Collectively, all these persons will be referred to as “Class Members.”

Plaintiff is a representative member of the Class.

13. Plaintiff reserves the right to amend or modify the class definition after discovery has been conducted.

### **Certification of the Proposed Classes Is Appropriate**

14. Each member of the proposed Class meets the requirements of Fed. R. Civ. P. 23(a), (b)(1), (b)(2), (b)(3) and (c)(4).

15. **Numerosity.** Over 400 names were included in the November 8, 2018, email from Allegiant. So far class members from 15 different states have asked counsel to join this suit. The joinder of all Class Members is impracticable due to the size. The disposition of the claims in a class action will provide substantial benefit to the parties and the Court in avoiding a multiplicity of identical suits. The Class can be identified easily through records maintained by Allegiant.

16. **Commonality.** There are well-defined, nearly identical, questions of law and fact affecting the Class. The questions of law and fact involving the class claims

predominate over questions that may affect individual Class Members. Those common questions of law and fact include, but are not limited to, the following:

- a. Whether Allegiant failed to adequately safeguard Plaintiff's and the Class's Personal Information;
- b. Whether Allegiant failed to protect Plaintiff's and the Class's Personal Information, as promised;
- c. Whether Defendant's computer systems and data security practices used to protect Plaintiff's and the Class's Personal Information violated federal, state and local laws, or Defendant's duties;
- d. Whether Defendant acted negligently in failing to safeguard Plaintiff's and the Class's Personal Information;
- e. Whether Plaintiff and the members of the Class are entitled to damages as a result of Defendant's wrongful conduct;
- f. What equitable relief is appropriate to redress Defendant's wrongful conduct; and

17. **Typicality.** All Plaintiff's claims are typical of the claims of the Class.

18. **Adequacy.** Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff has no interests that are adverse to, or in conflict with, the Class Members. There are no claims or defenses that are unique to Plaintiff. Likewise, Plaintiff has retained counsel experienced in class action and complex litigation that has sufficient resources to prosecute this action vigorously.

19. **Superiority.** A class action is the superior method for the fair and efficient adjudication of this controversy. The interests of Class Members in individually controlling an individual action are small.

20. Defendant has acted on grounds generally applicable to the Class, thereby making final injunctive relief and corresponding declaratory relief with respect to the Class as a whole appropriate.

21. **Injunctive and /or Declaratory Relief:** In addition, Defendant has acted and/or refused to act on grounds that apply generally to the Class, making injunctive and/or declaratory relief appropriate with respect to the class under Federal Rule of Civil Procedure 23(b)(2). Defendant continues to (1) maintain the private information of Class Members, and (2) failed to adequately protect their private information.

## CAUSES OF ACTION

### COUNT I NEGLIGENCE

22. Plaintiff incorporates all prior paragraphs as if fully set forth herein.

23. Allegiant owed a duty to Plaintiff and Class Members, arising from the sensitivity of the information, to exercise reasonable care in safeguarding personal medical or psychiatric information being publically alluded to as well as disclosure of email addresses.

24. Allegiant's privacy policy acknowledged its duty to adequately protect each Class Member. The October 1, 2018, policy provides that: "Allegiant Air is concerned about your right to privacy. When you visit the Allegiant Air website, you can be assured that any information you share with us will be treated confidentially."

25. With specific regard to email addresses, the October 1, 2018, policy also states: "E-mail addresses provided by you to Allegiant Air shall not be shared with any

third parties that are not contractually obligated to a relationship with Allegiant Air or Allegiant Travel.” Rather than a blind copy email, the Defendant put its entire affected data base in the email.

26. The damages to Plaintiff and the Class Members were a proximate, reasonably foreseeable result of Allegiant’s breaches of its duties.

27. Therefore, Plaintiff and Class Members are entitled to damages in an amount to be proven at trial.

## COUNT II

### BREACH OF CONTRACT

28. Plaintiff incorporates all prior paragraphs as if fully set forth herein.

29. Allegiant’s Contract of Carriage in Section 48 recognizes that emotional support or comfort animals may accompany a passenger.

30. Documentation from a psychiatrist, psychologist, licensed clinical social worker, or a physician is needed thus making the paperwork to Allegiant part of the customer’s private health or mental health record, the mere existence of which is not to be shared nationwide, with hundreds of fellow customers, let alone sharing email addresses of persons with sensitive issues related to panic attacks, anxiety, PTSD, etc.

31. As a result of Allegiant’s failure to safeguard such information, it is reasonably foreseeable that Plaintiff’s and Class Members’ private personal information

was publicly disclosed thereby breaking the Contract of Carriage for which compensatory damages are sought.

### COUNT III

#### INVASION OF PRIVACY PUBLIC DISCLOSURE OF PRIVATE FACTS

32. Plaintiff incorporates all prior paragraphs as if fully set forth herein.

33. The disclosure to over 400 people of email addresses of individuals with medical, emotional, psychiatric, or psychological needs for a support animal constitutes publication of private facts, constituting the tort of invasion of privacy.

34. The tort of public disclosure of private facts is accepted nationwide as well as having long been the law in New Hampshire. Hamberger v. Eastman, 106 N.H. 107 (1965).

#### PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court grant Plaintiff and Class Members the following relief against Defendant:

A. An order certifying this action as a class action under Federal Rule of Civil Procedure 23, defining the Class requested herein, appointing the undersigned as Class Counsel, and finding that Plaintiff is a proper representative of the Class requested herein;

B. Injunctive relief requiring Defendant to (1) strengthen their data security systems that maintain private information to comply with best practices under industry standards;

- C. An order requiring Defendants to pay all costs associated with Class notice and administration of Class-wide relief;
- D. An award to Plaintiff and all Class Members of compensatory and consequential damages in an amount to be determined at trial;
- F. An award of attorneys' fees, costs, and expenses, as provided by law or equity;
- G. An order requiring Defendant to pay pre-judgment and post-judgment interest, as provided by law or equity; and
- H. Such other or further relief as the Court may allow.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury.

Respectfully submitted,  
DEBRA DOUGLAS, *ET AL.*  
By their attorneys,  
DOUGLAS, LEONARD & GARVEY, P.C.,

Date: November 13, 2018

By: /s/Charles G. Douglas, III  
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