

1 **UNITED STATES DISTRICT COURT**

2 **DISTRICT OF NEVADA**

3 CHARLES BRENDON and DANIEL
4 CHECKMAN, Individually And On Behalf Of
5 All Others Similarly Situated,

6 Plaintiffs,

7 v.

8 ALLEGIANT TRAVEL COMPANY,
9 MAURICE J. GALLAGHER, JR., SCOTT
10 SHELDON, STEVEN E. HARFST, and JUDE I.
11 BRICKER,

12 Defendants.

Case No. 2:18-cv-01758-APG-BNW

**ORDER GRANTING PLAINTIFFS'
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

11 Lead Plaintiffs Charles Brendon (“Brendon”) and Named Plaintiff Daniel Checkman
12 (“Checkman”) (collectively, “Plaintiffs”), on behalf of themselves and the Settlement Class
13 (defined below), and Allegiant Travel Company (“Allegiant” or the “Company”), Maurice J.
14 Gallagher, Jr. (“Gallagher”), Scott Sheldon (“Sheldon”), Steven E. Harfst (“Harfst”), and Jude I.
15 Bricker (“Bricker”) (collectively, “Defendants”), have entered into the Stipulation and Agreement
16 of Settlement dated December 27, 2019 (the “Settlement Stipulation”), which is subject to review
17 under Rule 23 of the Federal Rules of Civil Procedure and which, together with the exhibits
18 annexed thereto, sets forth the terms and conditions for the proposed settlement and dismissal of
19 this class action pending before me (the “Action”). I read and considered the Settlement
20 Stipulation, its exhibits, and the submissions related to it. Substantial and sufficient grounds exist
21 for entering this Order, and the Parties having consented to the entry of this Order;

22 I THEREFORE ORDER that:

23 1. Capitalized terms used herein have the meanings defined in the Settlement
Stipulation.

1 2. Pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure and for
2 the purposes of the Settlement only, the Action is hereby preliminarily certified as a class action
3 on behalf of all persons and entities that purchased or acquired the publicly traded securities of
4 Allegiant between June 8, 2015 and May 9, 2018, both dates inclusive. Excluded from the Class
5 are Defendants, Allegiant’s officers and directors, their immediate family members, and entities
6 in which such excluded person hold a controlling interest. Also excluded from the Settlement Class
7 are those persons who file valid and timely requests for exclusion in accordance with this
8 Preliminary Approval Order and persons with no compensable damages.

9 3. I find, preliminarily and for purposes of this Settlement only, that the prerequisites
10 for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been
11 satisfied in that: (a) the number of Settlement Class Members is so numerous that joinder of all
12 members of the Settlement Class is impracticable; (b) there are questions of law and fact common
13 to the Settlement Class; (c) the claims of Plaintiffs are typical of the claims of the Settlement Class
14 they seek to represent; (d) Plaintiffs fairly and adequately represent the interests of the Settlement
15 Class; (e) questions of law and fact common to the Settlement Class predominate over any
16 questions affecting only individual members of the Settlement Class; and (f) a class action is
17 superior to other available methods for the fair and efficient adjudication of the Action.

18 4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, preliminarily and for
19 the purposes of this Settlement only, I certify Plaintiffs as the class representatives on behalf of
20 the Settlement Class (“Class Representatives”) and I appoint Lead Counsel, whose selection by
21 Lead Plaintiff was previously approved, as Lead Counsel for the Settlement Class (“Class
22 Counsel”).

23 5. I find that (a) the Settlement Stipulation resulted from good faith, arm’s length

1 negotiations, and (b) the Settlement Stipulation is sufficiently fair, reasonable and adequate to the
2 Settlement Class Members to warrant providing notice of the Settlement to Settlement Class
3 Members and holding a Settlement Hearing.

4 6. I hereby preliminarily approve the Settlement, subject to further consideration at a
5 hearing (the “Settlement Hearing”) pursuant to Federal Rule of Civil Procedure 23(e), which is
6 scheduled for May 14, 2020 at 9:30 a.m. for the following purposes:

7 (a) to determine finally whether the applicable prerequisites for class action treatment
8 under Federal Rules of Civil Procedure 23(a) and (b) are satisfied;

9 (b) to determine finally whether I should approve the Settlement as fair, reasonable,
10 and adequate;

11 (c) to determine finally whether the Order and Final Judgment as provided under the
12 Settlement Stipulation should be entered, dismissing the Action on the merits and with prejudice,
13 and to determine whether the release by the Plaintiffs and the Settlement Class of the Released
14 Claims against the Released Parties, as set forth in the Settlement Stipulation, should be ordered,
15 along with a permanent injunction barring efforts to prosecute or attempt to prosecute any Released
16 Claims extinguished by the release against any of the Released Parties, as also set forth in the
17 Settlement Stipulation;

18 (d) to determine finally whether I should approve the proposed Plan of Allocation for
19 the distribution of the Net Settlement Fund as fair and reasonable;

20 (e) to consider the application of Class Counsel for an award of attorneys’ fees with
21 interest and expenses and an award to the Class Representatives;

22 (f) to consider Settlement Class Members’ objections to the Settlement, if any; and

23 (g) to rule upon such other matters as I deem appropriate.

1 7. I may adjourn the Settlement Hearing to a later date and may approve the
2 Settlement without modification, or with such modifications as may be agreed to by the Parties,
3 and with or without further notice of any kind. I may enter an Order and Final Judgment approving
4 the Settlement and dismissing the Action, on the merits and with prejudice, regardless of whether
5 I approve the Plan of Allocation or awarded attorneys' fees and expenses.

6 8. I approve the form, substance, and requirements of (a) the Notice of Pendency and
7 Proposed Settlement of Class ("Long Notice"), (b) the Summary Notice of Pendency and Proposed
8 Class Action Settlement ("Summary Notice"), (c) the Proof of Claim and Release Form ("Claim
9 Form"); and (d) the Postcard Notice, all of which are exhibits to the Settlement Stipulation.

10 9. Class Counsel have the authority to enter into the Settlement on behalf of the
11 Settlement Class and have the authority to act on behalf of the Settlement Class with respect to all
12 acts or consents required by or that may be given pursuant to the Settlement Stipulation or such
13 other acts that are reasonably necessary to consummate the Settlement.

14 10. For settlement purposes only, Strategic Claims Services ("SCS") is appointed and
15 approved as the Claims Administrator to supervise and administer the notice procedure as well as
16 the processing of claims.

17 11. Class Counsel, through the Claims Administrator, shall cause the Postcard Notice
18 substantially in the forms annexed to the Settlement Stipulation, to be mailed, by first class mail,
19 postage prepaid, within 16 calendar days of the entry of this Order, to all Settlement Class
20 Members who can be identified with reasonable effort by Class Counsel, through the Claims
21 Administrator.

22 12. The Escrow Agent may, at any time after entry of this Order and without further
23 approval from Defendants or me, disburse at the direction of Class Counsel up to \$200,000 from

1 the Settlement Fund prior to the Effective Date to pay Administrative Costs.

2 13. No later than five business days after the date of this Order, the Company shall
3 provide or cause its transfer agent to provide to Class Counsel a list of the record owners of
4 Allegiant securities during the Settlement Class Period in a usable electronic format, such as an
5 Excel spreadsheet containing the names and addresses of Settlement Class Members. This
6 information will be kept confidential and not used for any purpose other than to provide the notice
7 contemplated by this Order.

8 14. Class Counsel, through the Claims Administrator, shall make all reasonable efforts
9 to give notice to nominees or custodians who held Allegiant securities during the Settlement Class
10 Period as record owners but not as beneficial owners. Such nominees or custodians shall, within
11 10 calendar days of receipt of the Postcard Notice, either: (i) request additional copies of the
12 Postcard Notice sufficient to send the Postcard Notice to all beneficial owners for whom they are
13 nominee or custodian, and within 10 calendar days after receipt thereof send copies to such
14 beneficial owners; or (ii) provide the Claims Administrator with lists of the names, last known
15 addresses and email addresses (to the extent known) of such beneficial owners, in which event the
16 Claims Administrator shall promptly deliver the Postcard Notice to such beneficial owners.
17 Nominees or custodians who elect to send the Postcard Notice to their beneficial owners shall send
18 a written certification to the Claims Administrator confirming that the mailing has been made as
19 directed. Additional copies of the Postcard Notice shall be made available to any nominee or
20 custodian requesting same for the purpose of distribution to beneficial owners. The Claims
21 Administrator shall, if requested, reimburse nominees or custodians out of the Settlement Fund
22 solely for their reasonable out-of-pocket expenses incurred in providing notice to beneficial
23 owners, up to a maximum of \$0.05 plus postage at the pre-sort rate used by the Claims

1 Administrator per Postcard Notice actually mailed or \$0.05 per name and address provided to the
2 Claims Administrator, which expenses would not have been incurred except for the sending of
3 such notice, and subject to my further order with respect to any dispute concerning such
4 reimbursement.

5 15. Class Counsel shall, at least seven calendar days before the Settlement Hearing,
6 serve upon counsel for Defendants and file with the court proof of the mailing of the Postcard
7 Notice as required by this Order.

8 16. Class Counsel, through the Claims Administrator, shall cause the Settlement
9 Stipulation and its exhibits, this Order, and a copy of the Notice to be posted on the Claims
10 Administrator's website within 16 calendar days after entry of this Order.

11 17. Class Counsel, through the Claims Administrator, shall cause the Summary Notice
12 to be published electronically once on the *GlobeNewswire* and in print once in the *Investor's*
13 *Business Daily* within 16 calendar days after the entry of this Order. Class Counsel shall, at least
14 seven calendar days before the Settlement Hearing, serve upon counsel for Defendants and file
15 with the court proof of publication of the Summary Notice.

16 18. These forms and methods of notifying the Settlement Class Members of the
17 Settlement meet the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure,
18 and Section 21D(a)(7) of the Exchange Act, 15 U.S.C. 78u-4(a)(7), as amended by the Private
19 Securities Litigation Reform Act of 1995; constitute the best notice practicable under the
20 circumstances; and constitute sufficient notice to all persons and entities entitled to it. No
21 Settlement Class Member will be relieved from the terms of the Settlement, including its releases,
22 based upon the contention or proof that such Settlement Class Member failed to receive actual or
23 adequate notice.

1 19. In order to be entitled to participate in recovery from the Net Settlement Fund after
2 the Effective Date, each Settlement Class Member shall take the following action and be subject
3 to the following conditions:

4 (a) A properly completed and executed Claim Form must be submitted to the Claims
5 Administrator: (a) electronically through the Claims Administrator's website,
6 www.strategicclaims.net by 11:59 p.m. EST on April 23, 2020; or (b) at the Post Office Box
7 indicated in the Notice, postmarked no later than April 23, 2020. By Order, I may further extend
8 that deadline. Each Proof of Claim and Release Form shall be deemed to have been submitted
9 when: (a) the claim receives a confirmation notice from Strategic Claims Services for electronic
10 submissions; or (b) legibly postmarked (if properly addressed and mailed by first class mail)
11 provided such Proof of Claim and Release Form is actually received before the filing of a motion
12 for an Order approving distribution of the Net Settlement Fund. Any Proof of Claim and Release
13 Form submitted in any other manner shall be deemed to have been submitted when it was actually
14 received by the Claims Administrator at the address designated in the Notice.

15 (b) The Claim Form submitted by each Settlement Class Member must satisfy the
16 following conditions: (i) it must be properly completed, signed and submitted in a timely manner
17 in accordance with the provisions of the preceding subparagraph; (ii) it must be accompanied by
18 adequate supporting documentation for the transactions reported therein, in the form of broker
19 confirmation slips, broker account statements, an authorized statement from the broker containing
20 the transactional information found in a broker confirmation slip, or such other documentation as
21 is deemed adequate by the Claims Administrator or Class Counsel; (iii) if the person executing the
22 Claim Form is acting in a representative capacity, a certification of his current authority to act on
23 behalf of the Settlement Class Member must be provided with the Claim Form; and (iv) the Claim

1 Form must be complete and contain no material deletions or modifications of any of the printed
2 matter contained therein and must be signed under penalty of perjury.

3 (c) Once the Claims Administrator has considered a timely submitted Claim Form, it
4 shall determine whether such claim is valid, deficient, or rejected. For each claim determined to
5 be either deficient or rejected, the Claims Administrator shall send a deficiency letter or rejection
6 letter as appropriate, describing the basis on which the claim was so determined. Persons who
7 timely submit a Claim Form that is deficient or otherwise rejected shall be afforded a reasonable
8 time (at least 10 calendar days) to cure any deficiency that may be cured. If any Claimant whose
9 claim has been rejected in whole or in part wishes to contest such rejection, the Claimant must,
10 within 10 calendar days after the date of mailing of the notice, serve upon the Claims Administrator
11 a notice and statement of reasons indicating the Claimant's ground for contesting the rejection
12 along with any supporting documentation, and requesting that I review that determination. If an
13 issue concerning a claim cannot be otherwise resolved, Class Counsel shall present to me the
14 request for review.

15 (d) As part of the Claim Form, each Settlement Class Member shall submit to the
16 jurisdiction of the court with respect to the claim submitted, and shall, upon the Effective Date,
17 release all claims as provided in the Settlement Stipulation. No discovery shall be allowed on the
18 merits of the Action or the Settlement in connection with processing of the Claim Form, nor shall
19 any discovery from or of Defendants be allowed on any topic.

20 20. All Settlement Class Members who do not submit valid and timely Claim Forms
21 will be forever barred from receiving any payments from the Net Settlement Fund but will in all
22 other respects be subject to and bound by the provisions of the Settlement Stipulation and the Order
23 and Final Judgment, if entered.

1 21. Settlement Class Members shall be bound by all determinations and judgments in
2 this Action whether favorable or unfavorable, unless such Persons request exclusion from the
3 Settlement Class in a timely and proper manner. A Settlement Class Member wishing to make
4 such request for exclusion shall mail it, in written form, by first class mail, postage prepaid, or
5 otherwise deliver it, so that it is received no later than April 23, 2020 (the “Exclusion Deadline”),
6 to the addresses listed in the Notice. In order to be valid, such request for exclusion must (A)
7 clearly indicate the name and address and phone number and e-mail contact information (if any)
8 of the Person seeking exclusion, and state that the sender specifically “requests to be excluded
9 from the Settlement Class in *Brendon v. Allegiant Travel Company, et al.*, No. 2:18-cv-01758-
10 APG-PAL (D. Nev.)” and (B) state the date, number of shares and dollar amount of each Allegiant
11 securities purchased or acquired during the Settlement Class Period, and any sale transactions as
12 well as the number of shares of Allegiant securities held by the Person as of June 8, 2015 through
13 May 9, 2018. In order to be valid, such request for exclusion must be submitted with documentary
14 proof: (i) of each purchase or acquisition and, if applicable, sale transaction of Allegiant securities
15 during the Settlement Class Period; and (ii) demonstrating the Person’s status as a beneficial owner
16 of the Allegiant securities. Any such request for exclusion must be signed and submitted by the
17 beneficial owner under penalty of perjury. The request for exclusion shall not be effective unless
18 it provides the required information, is legible, and is made within the time stated above, or I
19 otherwise accept the exclusion. Class Counsel may contact any Person filing a request for
20 exclusion, or their attorney if one is designated, to discuss the exclusion.

21 22. The Claims Administrator shall provide all requests for exclusion and supporting
22 documentation (including untimely requests and revocations of requests) to counsel for the Parties
23 as soon as possible and no later than the Exclusion Deadline, or upon the receipt if later than the

1 Exclusion Deadline. The Settlement Class will not include any Person who delivers a valid and
2 timely request for exclusion.

3 23. Any Person that submits a request for exclusion may thereafter submit to the Claims
4 Administrator a written revocation of that request for exclusion, provided that it is received no
5 later than two Business Days before the Settlement Hearing, in which event that Person will be
6 included in the Settlement Class.

7 24. All Persons who submit a valid, timely, and unrevoked request for exclusion will
8 be forever barred from receiving any payments from the Net Settlement Fund.

9 25. I will consider comments and objections to the Settlement, the Plan of Allocation,
10 and the Fee and Expense Application. However, no Settlement Class Member or other Person
11 shall be heard or entitled to contest the approval of the terms and conditions of the proposed
12 Settlement or, if approved, the Order and Final Judgment, or any other order, unless that Person
13 has served copies of objections, papers, and briefs to each of the following counsel no later than
14 April 23, 2020:

15 LEAD COUNSEL
16 THE ROSEN LAW FIRM, P.A.
17 Jacob A. Goldberg
18 101 Greenwood Avenue, Suite 440
19 Jenkintown, PA 19012

COUNSEL FOR DEFENDANTS
GREENBERG TRAUIG, LLP
Daniel J. Tyukody
1840 Century Park East, Suite 1900
Los Angeles, CA 90067

And

20 GREENBERG TRAUIG, LLP
21 Mark F. Ferrario
22 Jacob D. Bundick
23 10845 Griffith Peak Drive, Suite 600
Las Vegas, NV 89135

and by April 23, 2020, that Person has filed those objections, papers, and briefs, showing due proof

1 of service upon counsel identified above, with the Clerk of the Court, U.S. District Court, District
2 of Nevada, 333 South Las Vegas Boulevard, Las Vegas, NV 89101. To be valid, any such
3 objection must contain the Settlement Class Member's: (1) name, address, and telephone number;
4 (2) a list of all purchases and sales of Allegiant securities during the Settlement Class Period in
5 order to show membership in the Settlement Class; (3) all grounds for the objection, including any
6 legal support known to the Settlement Class Member and/or his, her, or its counsel; (4) the name,
7 address, and telephone number of all counsel who represent the Settlement Class Member,
8 including former or current counsel who may be entitled to compensation in connection with the
9 objection; and (5) the number of times the Settlement Class Member or his, her, or its counsel has
10 filed an objection to a class action settlement in the last five years, the nature of each such objection
11 in each case, the jurisdiction in each case, and the name of the issuer of the security or seller of the
12 product or service at issue in each case. Attendance at the Settlement Hearing is not necessary but
13 Persons wishing to be heard orally in opposition to the approval of the Settlement Stipulation, the
14 Plan of Allocation, or the Fee and Expense Application are required to indicate in their written
15 objection (or in a separate writing that is submitted in accordance with the deadline) that they
16 intend to appear at the Settlement Hearing and identify any witnesses they may call to testify or
17 exhibits they intend to introduce into evidence at the Settlement Hearing. Settlement Class
18 Members do not need to appear at the Settlement Hearing or take any other action to indicate their
19 approval.

20 26. Any Settlement Class Member who does not object in this manner shall be deemed
21 to have waived all such objections and shall forever be foreclosed from making any objection to
22 the fairness, adequacy, or reasonableness of the Settlement, the Order and Final Judgment, the
23 Plan of Allocation, and/or the Fee and Expense Application, unless I otherwise order; shall be

1 bound by all the terms and provisions of the Settlement Stipulation and by all proceedings, orders,
2 and judgments in the Action; and shall be foreclosed from appealing from any judgment or order
3 entered in this Action.

4 27. I may adjourn the Settlement Hearing without any further notice other than entry
5 of an order. I may approve the Settlement without further notice to the Settlement Class.

6 28. All papers in support of the Settlement, the Plan of Allocation, or the Fee and
7 Expense Application shall be filed and served no later than 28 calendar days before the Settlement
8 Hearing.

9 29. Any submissions filed in response to any objections or in support of the Settlement,
10 the Plan of Allocation, or the Fee and Expense Application shall be filed no later than seven
11 calendar days prior to the Settlement Hearing.

12 30. Defendants, their counsel, their Insurers and other Released Defendant Parties shall
13 have no responsibility for, or liability with respect to, the Plan of Allocation or any application for
14 attorneys' fees and interest, or expenses or payments to the Class Representatives submitted by
15 Class Counsel, and such matters will be considered separately from the fairness, reasonableness,
16 and adequacy of the Settlement.

17 31. Pending final determination of whether the Settlement should be approved, all
18 Releasing Parties shall be enjoined from commencing, prosecuting, or attempting to prosecute any
19 Released Claims against any Released Party in any court or tribunal or proceeding. Unless and
20 until the Settlement Stipulation is cancelled and terminated pursuant to the Settlement Stipulation,
21 all proceedings in the Action, other than such proceedings as may be necessary to carry out the
22 terms and conditions of the Settlement Stipulation, are hereby stayed until I further order.

23 ////

1 32. All funds held by the Escrow Agent shall be deemed and considered to be in the
2 custody of the court and shall remain subject to my jurisdiction until they are distributed or returned
3 under the Settlement Stipulation and Plan of Allocation or I further order.

4 33. Neither the Settlement Stipulation nor any of the negotiations or proceedings
5 connected with it shall be construed as an admission by Defendants, their counsel, their Insurers,
6 or any of the other Released Parties of the truth of any of the allegations in the Action, or of any
7 liability, fault, or wrongdoing of any kind, and shall not be construed as, or deemed to be, evidence
8 of or an admission that Class Representatives or any Settlement Class Members have suffered any
9 damages, harm, or loss. Further, neither the Settlement Stipulation, nor any of the negotiations or
10 proceedings connected with it, nor this Order, shall be construed as an admission by the Class
11 Representative of the validity of any factual or legal defense or of the infirmity of any of the claims
12 or facts alleged in this Action.

13 34. In the event the Settlement is not consummated in accordance with the terms of the
14 Settlement Stipulation, then the Settlement Stipulation and this Order shall be null and void and
15 may not be introduced as evidence or used in any action or proceeding by any Person against the
16 Parties or the Released Parties, and each Party shall be restored to his, her, or its respective
17 litigation positions as they existed prior to December 27, 2019.

18 35. I may alter the time or the date of the Settlement Hearing without further notice to
19 the Class Members, but the Settlement Hearing will not be set at a time or date earlier than the
20 time and date set forth in ¶ 6 above.

21 Dated: January 14, 2020.

22 
23 _____
ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE