

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Jeanne Vergeldt, on behalf of herself
and all others similarly situated,

Plaintiff,

CIVIL ACTION NO. 04-126 PAM/JSA

CLASS ACTION COMPLAINT

vs.

Northwest Airlines Corporation, and
Northwest Airlines, Inc.,

Defendants.

JURY TRIAL DEMANDED

Plaintiff, on behalf of herself and all other persons similarly situated, by Plaintiff's undersigned attorneys, alleges the following for Plaintiff's Complaint; based upon the investigation by Plaintiff's counsel. Furthermore, this Complaint is based upon Plaintiff's personal knowledge as to the Plaintiff's own acts, and upon information and belief as to all other matters, based upon the aforementioned investigation.

INTRODUCTION

1. This is a class action brought against defendants Northwest Airlines Corporation ("NWA Corp.") and Northwest Airlines, Inc. ("Northwest") (collectively, "NWA" or "defendants") for their violations of the Electronic Communications Privacy Act, 18 U.S.C. §2701 *et seq.*, and state and federal law.

2. Defendants, in violation of federal and state law, provided personally identifiable information for more millions of NWA's customers to the National Aeronautics and Space Administration (NASA) for NASA's "research and development work" following the September 11, 2001 terrorist attacks. At no time did NWA seek its customers' consent, nor did it inform its customers about the unauthorized disclosure of their personal information.

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3. As a result of defendants' improper and illegal actions, defendants have violated state and federal laws. Defendants' violations resulted in damage to Plaintiff and members of the class for which Plaintiff and members of the class seek injunctive, compensatory and punitive relief.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 18 U.S.C. §2701. The Court also has supplemental jurisdiction pursuant to 28 U.S.C. §1367(a).

5. Venue is proper in the district pursuant to 28 U.S.C. §1391 because defendants have their headquarters in this district, and, all times relevant to the acts complained of herein, conducted substantial business in this district.

6. Defendants, directly and indirectly, used the means and instrumentalities of interstate commerce, including the mails, telephone communications and the facilities of interstate commerce in connection with the acts, conduct, and other wrongs complained of herein.

THE PARTIES

7. Plaintiff Jeanne Vergeldt, a resident of the State of Minnesota, obtained one or more tickets from NWA for air flight transportation in July, August or September, 2001, and in conjunction with that ticket, provided personally identifiable information to NWA.

8. Defendant NWA Corp. is a Delaware corporation with its principal place of business at 2700 Lone Oak Parkway, Eagan, MN 55121. NWA is the fourth largest passenger carriers in the world, and had more than 60 million passengers in 2000.

9. Defendant Northwest is a wholly-owned subsidiary of NWA Corp, and is a Minnesota corporation with its principal place of business at 2700 Lone Oak Parkway, Eagan, MN 55121. Northwest generates than 95% of NWA Corp's operating revenue, which exceeded \$11 billion in 2000.

CLASS ACTION ALLEGATIONS

10. Plaintiff brings this action as a class action pursuant to Federal Rule 23(a) and (b)(3) on behalf of a class defined as:

all persons who provided personally identifiable information to NWA prior to October, 2001, and whose information has been transferred to or accessed by another person or entity without the person's authorization or fully-informed consent.

11. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. It is believed there are millions of class members located throughout the United States.

12. There is a well-defined community of interest in the questions of law and fact involved in this case. The questions of law and fact common to the members of the Class which predominate over questions which may affect individual Class members include the following:

(a) Whether Defendants violated the Electronic Communications Privacy Act, 18 U.S.C. §2701 *et seq.*

(b) Whether Defendants violated the common law in the State of Minnesota, and to the extent applicable, substantially similar laws of other states, as alleged herein;

(c) Whether Defendants devised and used a scheme or artifice to defraud or conceal from Plaintiff and members of the class Defendants' practice of transferring and/or accessing class members' personally identifiable information without class members' authorization or fully-informed consent;

(d) Whether defendants engaged in deceptive acts and practices in connection with its undisclosed and systematic practice of transferring and/or accessing Plaintiff's and class member' electronically stored personally identifiable information;

(e) Whether Defendants' conduct was willful and/or intentional;

(f) Whether plaintiff and class members have sustained damages and are entitled

recover those damages or restitution as a result of Defendants' wrongful conduct;

(g) What is the proper measure to determine damages suffered by Plaintiff and Class members; and

(h) Whether Plaintiffs and class members are entitled to declaratory, injunctive and/or other equitable relief.

13. Plaintiff's claims are typical of those of the Class because plaintiff and the Class sustained damages from defendants' wrongful conduct.

14. Plaintiff will adequately protect the interests of the Class and has retained counsel who are experienced in class action securities litigation. Neither plaintiff nor plaintiff's counsel have interests which conflict with those of the Class.

15. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

16. The prosecution of separate actions by individual Class members would create a risk of inconsistent and varying adjudications.

FACTUAL ALLEGATIONS

17. As a result of the nature of its business, Northwest collects large amounts of information about its customers. NWA is aware that its customers value their privacy, and are concerned about identity theft. Therefore, NWA maintains a privacy policy on its website.

18. NWA's privacy policy assures consumers that "[a]s a User of nwa.com Reservations you are in complete control of your travel planning needs. This includes controlling the use of information you provide to Northwest Airlines, its airline affiliates, and WorldPerks partners." (emphasis added).

19. NWA's privacy policy includes a section entitled "With whom do you share my information?" NWA states that it does not sell information to any third parties, and shares the information only with frequent flyer partners "for specific and pertinent promotional use" only if the

individual has "opted-in" to receive this information.

20. NWA claims to have security measures to protect against the loss, misuse and alteration of consumer information under NWA's control. "SSL safe connection and secure transaction technology has effectively protected hundreds of thousands of nwa.com Reservations customers who have transmitted their credit card numbers online and made a purchase since we launched."

21. Beginning on or about December 11, 2001, employees from NASA met with employees from NWA, including NWA's manager of security, to discuss automatic passenger identification, threat assessment and human factors issues for aviation security. One of the topics concerned the requirements of an "effective passenger screening system," which "must address privacy and 'big brother' issues to the extent possible."

22. During one conversation on December 11, 2001, NASA asked NWA's manager of security to provide three months of NWA passenger data (also referred to as "PNR data") for NASA's use in "research and development." In a subsequent letter, NASA specifically requested "system-wide Northwest Airlines passenger data from July, August and September 2001."

23. Sometime in December 2001, after the meetings described above, NWA turned over to NASA Airline Passenger and Reservation database, containing the personal information of approximately 10 million of its customers that had flown NWA during July, August and September, 2001. On information and belief, the database contained passenger names, addresses, telephone numbers, information regarding Class members' itineraries, and credit card numbers.

24. There is no evidence that NWA provided notice to, received authorization or consent from its passengers whose personal information was provided to NASA, despite the fact that NWA has the phone number and/or email addresses its customers who purchased tickets on-line.

25. It is not known what security measures NASA used to protect NWA's customers' information obtained from NWA. Furthermore, it is not known what NASA did with NWA's customers'

information, or whether NASA disclosed NWA's customers' information to anyone else.

26. On September 22, 2003, another airline, JetBlue Airways, acknowledged that it had provided personal information about its customers to the U. S. Department of Defense.

27. The next day, Richard Anderson, CEO of NWA stated "Northwest Airlines will not share customer information, as JetBlue Airways has." This statement was false when made.

28. On or about January 19, 2004, NWA tried to explain how its CEO could make a false statement regarding the actions of his company. NWA alleges that Mr. Anderson was unaware that his company had agreed to provide personal information on more than 10 million customers.

29. NWA's explanation, even if true, provides little comfort. Mr. Anderson was made aware of his company's decision to provide personal information only three days after he made the false statement. Nonetheless, for more than three months, neither Mr. Anderson nor NWA refrained from correcting Mr. Anderson's statement until its falsity was publicly revealed.

30. The value of NWA's explanation is further minimized because it conflicts with Mr. Anderson's statement. NWA's explanation argues that "it was the responsibility of the airline industry to cooperate with these efforts." Mr. Anderson's statement is inconsistent with the position that it was NWA's responsibility to cooperate with the government. Mr. Anderson previously stated that his company stood apart from JetBlue, which cooperated with the government.

31. In addition, contrary to NWA's explanation, the airline industry has not cooperated with the government. JetBlue, the 11th largest domestic airline, is the only other airline to have cooperated with the government.

32. Mr. Anderson was not the only NWA employee to make false representations about the company's decision to provide its customers' personal information to NASA. Kurt Ebenoch, one of NWA's spokesmen, was quoted in a September 23, 2003 New York Times article as saying, "We [NWA] do not provide that type of information to anyone." This statement was false when made.

33. On or about January 19, 2004, NWA tried to explain how one of its spokesmen could make a false statement regarding the company. NWA alleges that Mr. Ebenoch was unaware that his company had agreed to provide personal information on more than 10 million customers. Again, however, despite knowing for more than three months that his statement was false, neither Mr. Ebenoch nor NWA ever sought to correct Mr. Ebenoch's statement until its falsity was publicly revealed.

34. On September 23, 2003, the day after JetBlue acknowledged it had provided customers' information to the U.S. Department of Defense, a NASA employee informed NWA's manager of security that he believed that "NASA management decided that they did not want to continue working with passenger data in order to avoid creating the appearance that we are violating people's privacy." He further stated, "You may have heard about the problems that JetBlue is now having after providing passenger data for a project similar to ours."

35. On information and belief, NASA returned NWA's customers' personal information to NWA. It is not known whether NASA retained copies of any of this information.

36. On October 3, 2003, the Electronic Privacy Information Center ("EPIC") submitted a Freedom of Information Act (FOIA) request to NASA seeking documents reflecting the disclosure of NWA passenger data to NASA, or relating to the negotiation of communication between any airline, including NWA, and NASA for passenger data.

37. On December 16, 2003, NASA responded to EPIC's FOIA request. NASA produced various documents, which implied that NWA was the only one that had provided passenger data to NASA. Prior to the release of this information, NASA held discussion with NWA about the propriety of releasing certain documents.

38. NWA continues its pattern of contradicting its previous positions. NWA now admits it provided its customers' personal information to NASA, but alleges that the disclosure, which was made without its customers' knowledge or consent, was justifiable. "In a recent press release, Northwest

claims it "had a duty and an obligation to cooperate with the federal government for national security reasons." Northwest provides no basis for the "duty" or "obligation." NWA's statement is also minimized by the fact that it didn't allege the existence of a duty and obligation until two years after it first released the information - and after its conduct was publicly revealed. In addition, NWA's claims are further minimized by the fact that no other airlines felt compelled to comply with the same "duty" and "obligation" cited by NWA.

COUNT I
VIOLATION OF THE ELECTRONIC COMMUNICATIONS PRIVACY ACT - STORED
ELECTRONIC COMMUNICATIONS, 18 U.S.C. §2701, ET SEQ.

39. Plaintiff repeats and realleges the allegations contained above, as if fully set forth herein.

40. Each instance of Defendants' wrongful course of conduct, as set forth above, constitutes a violation of the Electronic Communications Privacy Act, 18 U.S.C. §2701, *et seq.*, in that Defendants, by and through their herein-described wrongful course of conduct, intentionally transferred and/or accessed without authorization and/or intentionally exceeded its authorization to access Plaintiff's and the Class members' electronically stored personally identifiable information and obtained access while in electronic storage and/or knowingly divulged the personally identifiable information while in electronic storage.

41. Pursuant to 18 U.S.C. §2707, Plaintiff and the Class members are entitled to such preliminary or other equitable or declaratory relief as may be appropriate, at least \$1,000 per Class member in statutory damages, actual and punitive damages, costs and reasonable attorneys' fees, plus disgorgement of any profits Defendants earned as a result of such violations of law.

COUNT II
NEGLIGENT MISREPRESENTATION

42. Plaintiff repeats and realleges the allegations contained above, as if fully set forth herein.

43. Defendants falsely stated and misrepresented to Plaintiff and members of the class that Plaintiff and members of the class' personally identifiable information would not be disclosed to third parties.

44. Defendants owed to Plaintiffs and the other members of the class a duty of due care to state accurately and completely all material facts concerning the uses of Plaintiff and members of the class' personally identifiable information.

45. At the time defendant made statements and representations, they were both material and false. Defendants failed to exercise due care in making these false statements and in failing to disclose accurate material facts to Plaintiff and the class.

46. Plaintiff and members of the class, at the time these misrepresentations and omissions were made, did not know the truth, but believed defendant's representations to be true, reasonably and justifiably relied upon them.

47. Defendants' negligent misrepresentations have caused Plaintiff and other members of the class irreparable injuries. Plaintiff and the class are entitled to an award of compensatory damages in an amount to be determined at the trial of this action.

COUNT III TRESPASS TO PROPERTY

48. Plaintiff repeats and realleges the allegations contained above, as if fully set forth herein.

49. As set forth in greater detail above, Defendants transferred and/or used Plaintiff's and the Class members' personal property, namely their personally identifiable information contained in electronic storage.

50. Pursuant to the common law, Plaintiff and members of the Class are entitled to such preliminary or other equitable or declaratory relief as may be appropriate, compensatory damages, actual damages, including any profits made by Defendants and punitive damages.

**COUNT IV
INVASION OF PRIVACY - INTRUSION UPON SECLUSION**

51. Plaintiff repeats and realleges the allegations contained above, as if fully set forth herein.

52. Defendants breached their duty to Class members to protect the privacy of Plaintiff's and the other members of the Class' personally identifiable information by intentionally providing it to third parties as alleged herein.

53. Defendants have, either directly or by aiding, abetting and/or conspiring to do so, knowingly disclosed, exploited, misappropriated and/or engaged in widespread commercial usage of private and sensitive information concerning the Plaintiff's and the Class members' personal affairs without the knowledge, authorization, or beyond the consent of Plaintiff and members of the Class. Such conduct constitutes a highly offensive and dangerous invasion of Plaintiff's and the Class members' privacy, and intrudes upon their seclusion.

54. NWA's privacy policy, as well as its statutory and law duties, provided plaintiff with a legitimate expectation of privacy regarding the information provided to NWA.

55. Defendants' intrusion would be highly offensive to a reasonable person.

56. Plaintiff and the other members of the Class are entitled to damages and injunctive relief for Defendants' violation of the Class' right to privacy.

**COUNT V
DECLARATORY JUDGMENT**

57. Plaintiff repeats and realleges the allegations contained above, as if fully set forth herein.

58. Plaintiff and the members of the Class are entitled to a declaratory judgment that by commission of the acts and omissions alleged herein, defendants have violated the Electronic Communications Privacy Act – Stored Electronic Communications, 18 U.S.C. §2701 *et seq.*, and/or Plaintiff's and Class members' common law rights against trespass to property, negligent misrepresentation and invasion of privacy.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, respectfully requests that the Court enter judgment in her favor and against Defendants:

- (a) Declaring this action to be a proper class action under the Federal Rules of Civil Procedure and certifying Plaintiffs as representatives of the class.
- (b) Ordering the temporary and preliminary off-site storage, under strict independent monitoring, of all information collected and/or shared as a result of Defendants' wrongful conduct described herein in order to preserve the *status quo* pending the Court's resolution of the issues raised by this Complaint;
- (c) Ordering a temporary and preliminary asset freeze or constructive trust on all monies wrongfully obtained, and all profits wrongfully derived, as a result of the conduct alleged in this Complaint in order to preserve the *status quo* pending the Court's resolution of the issues raised by this Complaint;
- (d) Declaring the acts and practices complained of herein to be in violation of the statutory and common laws set forth above;
- (e) Enjoining and restraining the Defendants from any further acts in violation of the statutory and common laws set forth above;
- (f) Directing the Defendants to take such affirmative steps as are necessary to ensure both that the causes and effects of their unlawful information-handling acts and practices are eliminated and no longer continue and that all Class members are specifically notified of NWA's information-handling acts and practices and the existence and availability of a remedy to correct the illegal activities set forth above. At a minimum, such affirmative steps must include: (i) ordering the Defendants to conduct a corrective advertising and information campaign advising consumers whose electronically stored personal information has already been transferred and/or accessed how to determine

if their information was improperly transferred and/or accessed how to determine if their information was improperly transferred and/or accessed, and (ii) ordering the destruction and/or purging, under court monitoring, of all personally identifiable information transferred by NWA to any person as a result of Defendants' wrongful conduct described herein.

(g) Awarding compensatory and statutory damages in favor of Plaintiffs and the other members of the class against Defendants for damages sustained as a result of the wrongdoings of Defendants, together with interest thereon;

(h) Awarding Plaintiffs and the other members of the class their costs and expenses incurred in this action, including reasonable allowance of fees for Plaintiffs' attorneys, experts, and reimbursement of Plaintiffs' and counsel's expenses;

(i) Awarding Plaintiff and members of the Class punitive damages;

(j) Directing Defendants to disgorge all monies wrongfully obtained as a result of the conduct alleged in this Complaint and awarding to Plaintiff and the Class members all profits derived or monies saved as a result of the unlawful acts and practices alleged herein.

(k) Awarding Plaintiff and members of the Class pre-and post-judgment interest;
and

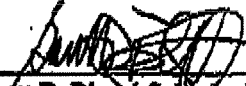
(l) Granting such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury in this action of issues so triable.

Dated: JANUARY 20 2004

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