

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Firsov v. Austrian Airlines AG

Firsov · No. 25-cv-03504-NC · Decided May 30, 2025

SUMMARY

The United States District Court for the Northern District of California ordered Plaintiff Sergey Firsov to show cause why his case should not be dismissed for lack of federal subject matter jurisdiction. The court found that the complaint inadequately alleged claims under the Montreal Convention, Air Carrier Access Act, 42 U.S.C. § 1983, the Animal Welfare Act, and other federal laws. Firsov was ordered to file an amended complaint or supplemental briefing by June 30, 2025.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Nathanael M. Cousins
JURISDICTION	United States District Court for the Northern District of California
DECIDED	May 30, 2025
DOCKET	25-cv-03504-NC
DISPOSITION	other
PROCEDURAL POSTURE	The court issued a sua sponte order to show cause concerning federal subject matter jurisdiction and directed Plaintiff to file a first amended complaint or supplemental briefing explaining the basis for federal jurisdiction.
STANDARD OF REVIEW	The federal court has an independent duty to determine whether subject matter jurisdiction exists, and the party invoking federal jurisdiction bears the burden of establishing it. If subject matter jurisdiction is lacking, dismissal is required under Federal Rule of Civil Procedure 12(h)(3).
PRECEDENTIAL VALUE	unpublished

TOPICS

- subject matter jurisdiction
- pleadings
- civil procedure
- civil rights
- contracts

PRACTICE AREAS

federal civil procedure

subject matter jurisdiction

international air carriage

civil rights

disability discrimination

QUESTIONS PRESENTED

1. Whether the complaint adequately established federal question jurisdiction under 28 U.S.C. § 1331.
2. Whether the complaint sufficiently alleged a federal claim under the Montreal Convention.
3. Whether the complaint adequately alleged a claim under the Air Carrier Access Act.
4. Whether the complaint stated a claim under 42 U.S.C. § 1983 against a private airline.
5. Whether the breach-of-contract, Animal Welfare Act, and animal-abuse allegations supplied a basis for federal subject matter jurisdiction.

HOLDINGS

1. A federal court must independently determine whether it has subject matter jurisdiction, and the parties cannot waive or forfeit that requirement.
2. The complaint, as currently pleaded, did not sufficiently allege a federal claim and therefore did not adequately establish federal question jurisdiction under 28 U.S.C. § 1331.
3. The complaint did not sufficiently allege a violation of the Montreal Convention because it did not establish carrier fault, identify a Convention-created duty or remedy for the alleged conduct, or adequately support the requested damages.
4. The complaint did not sufficiently allege a violation of the Air Carrier Access Act because it did not allege that Plaintiff had a physical or mental impairment substantially limiting one or more major life activities or otherwise plead the required elements of an ACAA claim.
5. The complaint did not sufficiently allege a § 1983 claim because it did not allege that Austrian Airlines acted under color of state law.

KEY QUOTATIONS

“Federal courts are courts of limited jurisdiction.” (at 1)

“A federal court has an independent duty to determine whether it has subject matter jurisdiction over a case.”
(at 1)

“Firsov is ordered to file a first amended complaint or a writing explaining how federal subject matter is satisfied.” (at 5)

FACTUAL BACKGROUND

Plaintiff Sergey Firsov sought reimbursement for airline tickets for himself and his dogs, along with other damages, arising from a multi-leg international trip in March 2023 involving Austrian Airlines. He alleged that airline personnel restricted his and his dogs' access to an airplane corridor and bathroom, resulting in damage allegedly caused by dog urine and odor and other injuries.

PROCEDURAL HISTORY

Plaintiff filed a pro se civil complaint concerning an international airline trip and asserted claims under the Montreal Convention, the Air Carrier Access Act, 42 U.S.C. § 1983, breach of contract, the Animal Welfare Act, and other animal-abuse laws. The court had previously denied Plaintiff's application to proceed without paying the filing fee and set a deadline for payment. Before proceeding, the court independently examined subject matter jurisdiction and ordered Plaintiff to amend or explain the jurisdictional basis by June 30, 2025, warning that failure to respond would result in a recommendation of dismissal.

DISPOSITION

other

CASES CITED

- Kokkonen v. Guardian Life Insurance Co. of America, 511 U.S. 375, 377 (1994)
- Arbaugh v. Y&H Corp., 546 U.S. 500, 514 (2006)
- Leite v. Crane Co., 749 F.3d 1117, 1121 (9th Cir. 2014)
- Brooks v. Geico Insurance, No. 23-cv-05085 RFL, 2023 WL 8852738, at *1 (N.D. Cal. Dec. 21, 2023)
- Sullivan v. First Affiliated Securities, Inc., 813 F.2d 1368, 1371 (9th Cir.)
- ARCO Environmental Remediation, LLC v. Department of Health & Environmental Quality of Montana, 213 F.3d 1108, 1113 (9th Cir. 2000)
- Franchise Tax Board v. Construction Laborers Vacation Trust for Southern California, 463 U.S. 1, 27-28 (1983)
- Nankin v. Continental Airlines, Inc., No. 09-cv-7861 MMM (RZx), 2010 WL 342632, at *3 (C.D. Cal. Jan. 29, 2010)
- Bassam v. American Airlines, 287 F. App'x 309, 317 (5th Cir. 2008)
- West v. Atkins, 487 U.S. 42 (1988)
- Lugar v. Edmondson Oil Co., 457 U.S. 922, 939 (1982)
- Gomez v. Celebrity Home Health & Hospice Inc., No. cv-16-02754-PHX-JJT, 2017 WL 1282803, at *4 (D. Ariz. Apr. 6, 2017)

OPINION

Firsov v. Austrian Airlines AG

PER CURIAM.

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7 UNITED STATES DISTRICT COURT

8 NORTHERN DISTRICT OF CALIFORNIA

9 10 SERGEY FIRSOV, Case No. 25-cv-03504-NC 11 Plaintiff, ORDER TO SHOW CAUSE RE:

12 FEDERAL SUBJECT MATTER

v. JURISDCTION

16 17 In this civil case, Plaintiff Sergey Firsov seeks reimbursement for the cost of tickets 18 for himself and his dogs, as well as other damages, in connection with a multi-leg 19 international airplane trip he took in March 2023 in part with Defendant Austrian Airlines. 20 ECF 1 (Compl.). The Complaint asserts Defendant violated federal and state laws when it 21 restricted Firsov and his dogs' access to the plane corridor and bathroom. Compl. at 3. 22 Firsov pursues his case without an attorney. The Court previously denied Firsov's 23 application to proceed without paying the Court filing fee and set a deadline of June 30, 24 2025, for Firsov to pay his filing fee or risk his case being dismissed. ECF 9; ECF 17. 25 This Order discusses a second procedural hurdle in Firsov's case: federal subject 26 matter jurisdiction. Federal law requires the Court to ensure it has subject matter 27 jurisdiction before it hears the case, even if the parties do not raise the issue. Here, as 1 currently sufficient to support the Court's federal subject matter jurisdiction. Firsov must 2 address this by filing a first amended complaint (or, if he believes the Court's analysis to 3 be incorrect, by filing supplemental briefing) by June 30, 2025. 4 "Federal courts are courts of limited jurisdiction." *Kokkonen v. Guardian Life Ins. 5 Co. of Am.*, 511 U.S. 375, 377 (1994). A federal court has an independent duty to 6 determine whether it has subject matter jurisdiction over a case. *Arbaugh v. Y&H Corp.*, 7 546 U.S. 500, 514 (2006). The parties cannot waive or forfeit this requirement. *Id.* The 8 party bringing the case in federal court (here, Plaintiff Firsov) has the responsibility of 9 proving that there is subject matter jurisdiction. See *Leite v. Crane Co.*, 749 F.3d 1117, 10 1121 (9th Cir. 2014). If a federal court determines that it does not have subject matter 11 jurisdiction, it must dismiss the case. Fed. R. Civ. P. 12(h)(3); *Brooks v. Geico Ins.*, No. 12 23-cv-05085 RFL, 2023 WL 8852738, at *1 (N.D. Cal. Dec. 21, 2023). 13 There are two common ways to establish federal subject matter jurisdiction under 14 statute: (1) diversity jurisdiction, 28 U.S.C. § 1332, and (2) federal question jurisdiction, 15 28 U.S.C. § 1331. In this case, Firsov's Complaint indicates that subject matter 16 jurisdiction is satisfied by a federal question. Compl. at 2. 17 "Federal district courts have original federal question jurisdiction of actions 'arising 18 under the Constitution, laws, or treaties of the United States.'" *Sullivan v. First Affiliated 19 Secs., Inc.*, 813 F.2d 1368, 1371 (9th Cir.) (quoting 28 U.S.C. § 1331). Generally, under 20 the "well-pleaded complaint rule," a claim "arises under" federal law only if a federal 21 question appears on the face of Plaintiff's complaint. See *ARCO Env't Remediation, LLC 22 v. Dep't of Health & Env't Quality of Mont.*, 213 F.3d 1108, 1113 (9th Cir. 2000); 23 *Franchise Tax Bd. v. Constr. Laborers Vacation Tr. for S. Cal.*, 463 U.S. 1, 27–28 (1983) 24 ("federal courts have jurisdiction to hear . . . only those cases in which a well-pleaded 25 complaint establishes either that federal law creates the cause of action or that the 26 plaintiff's right to relief necessarily depends on resolution of a substantial question of 27 federal law"). 1 under the "Montreal Convention, Discrimination [], Civil Rights, Breach of contract, 2 AWA,

[and] Animal abuse.” Compl. at 2. The Court, as it explains below, finds that 3 Firsov did not sufficiently allege any valid federal claims, and that he therefore does not 4 have federal question jurisdiction. 5 1. Montreal Convention – Firsov alleges Defendant violated the Montreal 6 Convention in Counts 1 and 2. Compl. at 5, 6. The Montreal Convention is an 7 international treaty also known as the Convention for the Unification of Certain 8 Rules for International Carriage by Air, May 28, 1999, S. Treaty Doc. No. 106- 9 45 (2000), 1999 WL 33292734 (2000); see *Nankin v. Continental Airlines, Inc.*, 10 No. 09-cv-7861 MMM (RZx), 2010 WL 342632, at *3 (C.D. Cal. Jan. 29, 11 2010). Firsov did not sufficiently allege a violation of the Montreal Convention 12 in either count. 13 a. In Count 1, Firsov cites to Articles 1, 17, 20, 21, and 22 to argue that 14 Defendant is responsible for the damage of his baggage. Compl. at 5. 15 While it is true that carriers can be responsible for damage of unchecked 16 baggage, this is only so “if the damages resulted from its fault or that of 17 its servants or agents.” Montr. Convention, Art. 17. Firsov has not 18 shown that Defendant is at fault. He argues that his baggage was 19 damaged “by dog pee and . . . bad smell” when Defendant’s agents 20 restricted his access to the plane corridor and bathroom with his dogs and 21 bag, and thus breached their “duty of care for passangers [sic] and 22 baggage.” Compl. at 5. However, Firsov does not explain where the 23 Montreal Convention (or any other statute) creates this alleged duty such 24 that Defendant is at fault. Firsov also fails to explain how the Montreal 25 Convention gives him his requested remedy of being awarded the “cost 26 of dogs, cost of Plaintiff ticket, cost of dog ticket, pay interest 10% per 27 year from whole amount, pay for emotional distress and pay punitive 1 “damages sustained.” Compl. at 5; see e.g., *Bassam v. American 2 Airlines*, 287 F. App’x 309, 317 (5th Cir. 2008) (stating that damages for 3 purely emotional injuries are not available under the Montreal 4 Convention). 5 b. In Count Two, Firsov claims that Defendant violated the Montreal 6 Convention when it “failed to inform passengers that access to toilet is 7 restricted with animal or with ANY bag” because “airlines have a duty to 8 provide information about future flights, configuration of toilets and 9 access to public places.” Compl. at 6. Again, Firsov does not explain 10 where the Montreal Convention creates this duty or where it gives him a 11 remedy for the alleged violation. 12 2. Discrimination (ACAA) – In Count Three, Firsov alleges that Defendant 13 discriminated against him under the Air Carrier Access Act (ACAA), 49 U.S.C. 14 § 41705, when it denied him “access to restroom and public corridor to feed 15 animal and make some bathroom needs.” Compl. at 7. The ACAA prohibits air 16 carriers from discriminating against individuals with physical or mental 17 impairments. Here, Firsov does not allege any elements required for the ACAA, 18 such as that he has a “physical or mental impairment that substantially limits one 19 or more major life activities.” 49 U.S.C. § 41705(a)(1); see Compl. at 7 (merely 20 stating he has a “mental disorder [sic]”). He instead appears to argue that 21 Defendant discriminated against him “because he is Russian,” which is 22 irrelevant to an ACAA inquiry. Compl. at 7. Firsov therefore did not 23 sufficiently allege a violation of ACAA. 24 3. Civil Rights – In Count Eight, Firsov alleges that Defendant violated his civil 25 rights under

the 14th Amendment pursuant to 42 U.S.C. § 1983. To sufficiently allege a § 1983 claim, a plaintiff “must show that the alleged deprivation was committed by person acting under color of state law.” *West v. Atkins*, 487 U.S. 1 under the color state law when it allegedly violated the Fourteenth Amendment; it is not enough to state that Defendant “acted under close government regulation.” *Compl.* at 13; see *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 939 4 (1982) (“Action by a private party pursuant to this statute, without something more, was not sufficient to justify a characterization of that party as a ‘state actor.’”). Firsov therefore did not sufficiently allege a violation of 42 U.S.C. § 1983.

4. Breach of Contract – Firsov alleges a breach of contract in Counts Four and Six. However, breach of contract is a state law claim and not a federal law claim. *Gomez v. Celebrity Home Health & Hospice Inc.*, No. cv-16-02754- PHX-JJT, 2017 WL 1282803, at *4 (D. Ariz. Apr. 6, 2017) (stating that the plaintiff’s breach of contract claim is a state law claim). Firsov therefore did not allege a federal claim by alleging a breach of contract.

5. Animal Welfare Act (AWA) – In Count Nine, Firsov references the Animal Welfare Act (AWA), 7 U.S.C. § 2131 et seq., when alleging that Defendant committed animal abuse. *Compl.* at 14. However, Firsov does not specify what section of AWA he is suing under. *Id.* Firsov therefore did not sufficiently allege a violation of AWA.

6. Animal Abuse – In Counts Seven and Nine, Firsov alleges that Defendant committed animal abuse. Beyond AWA, Firsov also references PETS Act, 42 U.S.C. § 5121 et seq., and “[a]nimal cruelty laws (federal and state).” *Compl.* at 22 12, 14. However, like his AWA claim, Firsov does not specify what sections of the PETS Act or what other federal statutes he is seeking relief under. While he conclusorily states that an airline has a “duty of care [to] passengers, baggage and toward animals to ensure that basic needs were met,” he does not cite to any statutes creating this right or providing relief under this right. Firsov therefore did not sufficiently allege any federal violations regarding animal abuse.

In conclusion, Firsov’s Complaint, as currently pleaded, is insufficient to establish the Court’s federal subject matter jurisdiction because it fails to adequately allege a federal claim. Firsov is ordered to file a first amended complaint or a writing explaining how federal subject matter is satisfied. The first amended complaint or written response to this Order must be filed by June 30, 2025. Firsov is cautioned that if he does not timely respond the Court will recommend the dismissal of his case. Firsov is guided to the free legal resources available for self-represented litigants at the Federal Pro Se Help Desk, telephone 408.297.1480.

IT IS SO ORDERED.

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Dated: May 30, 2025 □

NATHANAEL M. COUSINS

United States Magistrate Judge A © 17 1g 19 20 21 22 23 24 25 26 27 28