

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PRECEDENTIAL VALUE	unpublished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)