

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

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. JURISDICTION

13

AUSTRIAN AIRLINES AG, Re: ECF 1

14 Defendant. 15

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 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 26 allege a § 1983 claim, a plaintiff “must show that the alleged deprivation was 27 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; 2 it is not enough to state that Defendant “acted under close government 3 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 5 more, was not sufficient to justify a characterization of that party as a ‘state 6 actor.’”). Firsov therefore did not sufficiently allege a violation of 42 U.S.C. § 7 1983. 8 4. Breach of Contract – Firsov alleges a breach of contract in Counts Four and 9 Six. However, breach of contract is a state law claim and not a federal law 10 claim. *Gomez v. Celebrity Home Health & Hospice Inc.*, No. cv-16-02754- 11 PHX-JJT, 2017 WL 1282803, at *4 (D. Ariz. Apr. 6, 2017) (stating that the 12 plaintiff’s breach of contract claim is a state law claim). Firsov therefore did not 13 allege a federal claim by alleging a breach of contract. 14 5. Animal Welfare Act (AWA) – In Count Nine, Firsov references the Animal 15 Welfare Act (AWA), 7 U.S.C. § 2131 et seq., when alleging that Defendant 16 committed animal abuse. Compl. at 14. However, Firsov does not specify what 17 section of AWA he is suing under. *Id.* Firsov therefore did not sufficiently 18 allege a violation of AWA. 19 6. Animal Abuse – In Counts Seven and Nine, Firsov alleges that Defendant 20 committed animal abuse. Beyond AWA, Firsov also references PETS Act, 42 21 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 23 the PETS Act¹ or what other federal statutes he is seeking relief under. While he 24 conclusorily states that an airline has a “duty of care [to] passengers, baggage 25 and toward animals to ensure that basic needs were met,” he does not cite

to any 26 statutes creating this right or providing relief under this right. Firsov therefore 27 1 did not sufficiently allege any federal violations regarding animal abuse. 2 In conclusion, Firsov's Complaint, as currently pleaded, is insufficient to establish 3 || the Court's federal subject matter jurisdiction because it fails to adequately allege a federal 4 || claim. Firsov is ordered to file a first amended complaint or a writing explaining how 5 || federal subject matter is satisfied. The first amended complaint or written response to this 6 || Order must be filed by June 30, 2025. Firsov is cautioned that if he does not timely 7 || respond the Court will recommend the dismissal of his case. Firsov is guided to the free 8 || legal resources available for self-represented litigants at the Federal Pro Se Help Desk, 9 || telephone 408.297.1480. 10 11 IT IS SO ORDERED. 12 bbe <—— ~ = 13 [] Dated: May 30, 2025 □

NATHANAEL M. COUSINS

14 United States Magistrate Judge 15 A 16 © 17 1g 19 20 21 22 23 24 25 26 27 28