

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF  
CALIFORNIA

Braik v. Southwest Airlines Co., et al.

Braik · No. 25-cv-10083-VKD · Decided December 30, 2025

SUMMARY

The court recommends dismissal of Victoria Braik’s amended complaint for lack of subject matter jurisdiction and orders reassignment of the case to a district judge because not all parties consented to magistrate judge jurisdiction. The court concludes that the Montreal Convention does not plausibly apply to the separately purchased domestic Southwest flight, and that the Airline Deregulation Act and Foreign Sovereign Immunities Act do not provide a basis for federal jurisdiction over the asserted state-law claims. Dismissal is recommended without leave to amend and without prejudice to filing an appropriate complaint in state court.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                 |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States District Court for the Northern District of California                                                                                                                                                                                                                            |
| WRITING FOR THE COURT | Virginia K. DeMarchi, United States Magistrate Judge                                                                                                                                                                                                                                            |
| JURISDICTION          | United States District Court for the Northern District of California                                                                                                                                                                                                                            |
| DECIDED               | December 30, 2025                                                                                                                                                                                                                                                                               |
| DOCKET                | 25-cv-10083-VKD                                                                                                                                                                                                                                                                                 |
| DISPOSITION           | other                                                                                                                                                                                                                                                                                           |
| PROCEDURAL POSTURE    | Report and recommendation by a magistrate judge recommending dismissal of an amended complaint for lack of subject matter jurisdiction. Because not all parties consented to magistrate judge jurisdiction, the matter was ordered reassigned to a district judge.                              |
| STANDARD OF REVIEW    | The court screened the amended complaint for subject matter jurisdiction and plausibility, construing the pro se pleading liberally but requiring facts sufficient to state a plausible claim. Federal courts have an independent duty to determine whether subject matter jurisdiction exists. |
| PRECEDENTIAL VALUE    | unpublished                                                                                                                                                                                                                                                                                     |
|                       |                                                                                                                                                                                                                                                                                                 |

## PARTIES

Victoria Braik v. Southwest Airlines Co., Travelport, LP, Sabre GBLB, Inc., Amadeus North America, Inc., Deutsche Lufthansa Aktiengesellschaft

## TOPICS

subject matter jurisdiction

civil procedure

motions to dismiss

contracts

consumer protection

## PRACTICE AREAS

federal civil procedure

subject matter jurisdiction

air transportation law

contracts

consumer protection

## QUESTIONS PRESENTED

1. Whether the amended complaint plausibly established federal subject matter jurisdiction under the Montreal Convention based on a separately ticketed domestic Southwest flight following international travel.
2. Whether the Airline Deregulation Act provided a basis for federal jurisdiction over plaintiff's state-law claims.
3. Whether the Foreign Sovereign Immunities Act provided a basis for federal jurisdiction over plaintiff's claims against the defendants.
4. Whether the amended complaint should be dismissed without further leave to amend after a prior opportunity to amend.

## HOLDINGS

1. The amended complaint did not plausibly allege that the separately purchased Southwest flight from Los Angeles to San Jose was part of international carriage subject to the Montreal Convention. The allegations therefore did not establish federal-question jurisdiction under the Convention.
2. The Airline Deregulation Act did not provide a basis for federal jurisdiction over plaintiff's state-law claims because the ADA does not create a private right of action to enforce its provisions.
3. The Foreign Sovereign Immunities Act did not establish federal jurisdiction because the complaint did not allege that any defendant was an agency or instrumentality of a foreign state or that an exception to sovereign immunity applied.
4. Dismissal without further leave to amend was recommended because plaintiff had already received an opportunity to amend and the amended allegations were not materially different from the original allegations.

## KEY QUOTATIONS

*“it cannot be reasonably inferred that her Southwest flight is part of her international travel and subject to the Montreal Convention simply because she had a “short connection” that all airlines using the ticketing system could have observed.” (Section III.A)*

*“Accordingly, because Ms. Braik asserts no claim “arising under the Constitution, laws, or treaties of the United States,” she fails to plausibly allege a basis for the Court to exercise subject matter jurisdiction in this action.” (Section III.B)*

*“For the reasons explained above, the Court recommends the amended complaint be dismissed, without leave to amend, for lack of subject matter jurisdiction, but without prejudice to filing an appropriate complaint in state court.” (Section IV)*

## FACTUAL BACKGROUND

Victoria Braik purchased international air travel from Warsaw, Poland, to Los Angeles, California, on United/Lufthansa and separately purchased a Southwest ticket from Los Angeles to San Jose, California. After arriving in Los Angeles with her dog, Southwest initially refused boarding because she had not paid Southwest's separate pet fee. Braik paid the \$125 fee and was permitted to board, then asserted claims based on the theory that the Southwest domestic flight was a continuation of her international trip because the airlines used the same ticketing systems.

## PROCEDURAL HISTORY

Plaintiff filed the action and an application to proceed in forma pauperis. The court granted IFP status but found that the original complaint did not plausibly establish federal subject matter jurisdiction and granted leave to amend. Plaintiff filed an amended complaint asserting eleven claims. The magistrate judge concluded that the amended complaint still failed to establish federal-question jurisdiction and recommended dismissal without leave to amend and without prejudice to filing an appropriate complaint in state court.

## DISPOSITION

other

## REMAND INSTRUCTIONS

No remand was ordered. The magistrate judge recommended dismissal without leave to amend, without prejudice to filing an appropriate complaint in state court, and ordered reassignment to a district judge because not all parties had consented to magistrate judge jurisdiction.

## CASES CITED

- Ngoc Lam Che v. San Jose/Evergreen Cmty. Coll. Dist. Found., No. 17-cv-00381-BLF, 2017 WL 2954647, at \*2 (N.D. Cal. July 11, 2017)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 545, 570 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Negrete v. City of Oakland, 46 F.4th 811, 816 (9th Cir. 2022), cert. denied sub nom. Negrete v. City of Oakland, California, 143 S. Ct. 781 (2023)
- Yakub v. Qatar Airways Grp. (Q.C.S.C.), No. 25-cv-04142-JCS, 2025 WL 1927599, at \*3 (N.D. Cal. July 14, 2025), report and recommendation adopted, No. 25-cv-04142-CRB, 2025 WL 2402684 (N.D. Cal. Aug. 19,

2025), appeal dismissed sub nom. Yakub v. Qatar Airways Grp. QCSC, No. 25-5592, 2025 WL 3530626 (9th Cir. Nov. 12, 2025)

- Firsov v. Frontier Airlines, Inc., No. 25-cv-02898-SVK, 2025 WL 3239326, at \*3 (N.D. Cal. Nov. 20, 2025)
- Biscone v. JetBlue Airways Corp., 681 F. Supp. 2d 383, 387 (E.D.N.Y. 2010)
- Best v. BWIA W. Indies Airways Ltd., 581 F. Supp. 2d 359, 363 (E.D.N.Y. 2008)
- Selke v. Germanwings GmbH, 261 F. Supp. 3d 666, 679 (E.D. Va. 2017)
- Jensen v. Virgin Atl., No. 12-cv-06227-YGR, 2013 WL 1207962, at \*4 (N.D. Cal. Mar. 25, 2013)
- Wayne v. DHL Worldwide Express, 294 F.3d 1179, 1184 (9th Cir. 2002)
- Morales v. Trans World Airlines, Inc., 504 U.S. 374, 378 (1992)
- Saudi Arabia v. Nelson, 507 U.S. 349, 355 (1993)
- Loumena v. Kennedy, No. 15-cv-00951-LHK, 2015 WL 5963988, at \*11-13 (N.D. Cal. Oct. 13, 2015), *aff'd*, 671 F. App'x 446 (9th Cir. 2016)
- Cato v. United States, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995)
- O'Loughlin v. Doe, 920 F.2d 614, 618 (9th Cir. 1990)