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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Jessica A. Salvini, Circuit Court Judge

Appellate Case No. 2025-001494

Joshua Hawkins.....Appellant,

v.

Delta Airlines.....Respondent.

RECORD ON APPEAL
VOLUME I

C. Daniel Atkinson (S.C. Bar #72721)
Emma L. Allison (S.C. Bar #107944)
Wilkes Atkinson & Joyner, LLC
127 Dunbar Street, Suite 200
Spartanburg, SC 29306
(864) 591-11 13
datkinson@wajlawfirm.com
eallison@wajlawfirm.com
Attorneys for Respondent
Delta Air Lines, Inc

Joshua T. Hawkins, S.C. Bar #78470
Helena L. Jedziniak, S.C. Bar #100825
Hawkins & Jedziniak, LLC
1225 South Church Street
Greenville, South Carolina 29605
(864) 275-8142 (telephone)
(864) 752-0911 (facsimile)
josh@hjlsc.com
helena@hjlsc.com
Attorneys for Appellant

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EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE COURT
	)	
COUNTY OF GREENVILLE	)	Case No.: 2024CV2310302415
	)	
Joshua Hawkins,	)	
	)	
Plaintiff,	)	ORDER
	)	
vs.	)	
	)	
Delta Air Lines, Inc.	)	
	)	
Defendant.	)	
	)	

This matter came before the Court on Defendant Delta Air Lines, Inc.'s Motion to Dismiss in Lieu of Answer, filed August 15, 2024. The Parties submitted Briefs, which the Court has reviewed. On December 3, 2024, the Court heard arguments on Defendant's Motion to Dismiss. There are no issues of fact barring a ruling on the Motion. The Court rules as follows:

1. The Court grants Defendant's Motion to Dismiss for the reasons set forth in the Motion, in the Defendant's Briefing, and in the arguments made at the Hearing.
 - a. This Court does not have subject matter jurisdiction over a majority of Plaintiff's Complaint, and accordingly, the Court dismisses, with prejudice, the following causes of action:
 - i. The Warsaw Convention cause of action with respect to all three flights;
 - ii. The "Claim for a Declaratory Judgment and Breach of Contract" cause of action with respect to all three flights;
 - iii. The Fraud cause of action with respect to all three flights.
 - b. This Court finds the Complaint fails to state facts sufficient to constitute the following causes of action
 - i. The Montreal Convention cause of action with respect to the Domestic

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EAST GREENVILLE
SUMMARY COURT

EXHIBIT A

Flight; and

- ii. The Montreal Convention cause of action with respect to the two International Flights to the extent Plaintiff seeks damages for Plaintiff's inconvenience.

2. The Court, *sua sponte*, dismisses the Complaint for the following independent reasons:

- a. A Greenville County Court is not the proper forum to entertain claims arising from flight(s) initiated in Spartanburg County, as alleged in the Complaint; and
- b. Any surviving Montreal Convention causes of action are so intertwined with the dismissed claims that such claims cannot be heard as presently alleged in the Complaint without substantial prejudice to the Parties, the Court, and a jury.

For the reasons set forth above, this Court hereby dismisses Plaintiff Joshua Hawkins' Complaint.

IT IS SO ORDERED.

December 4, 2024

By: _____

JUDGE

EAST GREENVILLE SUMMARY COURT

ELECTRONICALLY FILED - 2025 Apr 04 10:01 AM - GREENVILLE - COMMON PLEAS - CASE#2024CP2307485

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
Joshua Hawkins,	)	
	)	
Plaintiff,	)	ORDER
	)	
vs.	)	
	)	
Delta Air Lines, Inc.,	)	
	)	
Defendants.	)	Case No.: 2024CP2307485

This matter came before the Court on Respondent's Motion to Dismiss Appellant's Appeal from the Magistrates' Court for lack of subject matter jurisdiction. Present at the call of the case were Appellant and Respondent's attorney, Brian Peters, Jr.

Respondent moves this Court for an order dismissing Appellant's Appeal in the above captioned matter pursuant to Rules 12(b)(1), 12(h)(3), SCRCP and Rule 18(a), SCRMC asserting this Court lacks subject matter jurisdiction to address the merits of the appeal based on a claim that Appellant failed to timely file his "Notice of Appeal to the Circuit Court" in accordance with Rule 18(a), SCRMC.

ORDER

Rule 18(a), SCRMC provides in relevant part:

Within thirty (30) days after delivery of written notice of judgment to the parties or their attorneys, a party wishing to appeal shall serve on the respondent and file a notice of appeal... with the magistrate rendering the judgment and with the Circuit Court of the County where the judgment was rendered.... The right of appeal from a judgment exists for thirty (30) days after the denial of a motion for a new trial.

The timely service of the notice of appeal is a jurisdictional requirement. Thus, an appellate court lacks the authority to hear and decide cases if the notice of appeal is not served within the prescribed timeframe. *See Wells Fargo Bank, N.A. v. Fallon Properties South Carolina, LLC*, 422

S.C. 211 (2018). Rule 18(a), SCRMC requires that the notice of appeal be served within thirty days after the final decision of the Magistrate.

In the instant matter, the parties agree the Magistrate executed a written order on December 4, 2024, which the parties received on that same date. Appellant did not file a motion for a new trial or a motion to reconsider, alter or amend the Magistrate's order. Thus, pursuant to Rule 18(a), SCRMC Appellant's thirty-day period began on December 4, 2024 and ended on January 3, 2025.

Appellant timely filed his "Notice of Appeal to the Circuit Court" with this Court on December 26, 2024. Respondent was served with the same on January 3, 2025. Appellant however, mailed his "Notice of Appeal to the Circuit Court" to the Magistrate. The Appellant provided documentation that his Notice of Appeal was sent to the Magistrate on December 30, 2024. Nevertheless, the Magistrate filed a Return indicating that the Magistrate was served on January 6, 2025, which was the date the Appellant's "Notice of Appeal to the Circuit Court" was received.

Respondent asserts the Magistrates' receipt of the Appellant's "Notice of Appeal to the Circuit Court" on January 6, 2025 renders it untimely and divests this Court of jurisdiction. Appellant on the other hand argues that the mailing of his "Notice of Appeal to the Circuit Court" within the prescribed timeframe renders it timely filed with the Magistrate.

In *State v. Funderburk* the Court established that service by mail of a notice of appeal from the Magistrates' Court to the Circuit Court is sufficient if it is actually received within the due time. See *State v. Funderburk*, 130 S.C. 352 (1925). However, subsequent cases have clarified that the receipt of the notice of appeal within the statutory period is crucial. In *Inabinet v. Housing Authority of City of Columbia*, the court held that evidence of mailing within the statutory period, absent evidence of receipt by the Magistrate, was insufficient to show substantial compliance with

the statute requiring service of notice of appeal within ten days after the magistrate's judgment. *See Inabinet v. Housing Authority of City of Columbia*, 270 S.C. 509 (1978). Similarly, in *State v. Gandy*, the court dismissed an appeal where the notice and grounds of appeal were mailed but not received by the magistrate until after the statutory period had expired. *See State v. Gandy*, 87 S.C. 523 (1911).

The requirement of timely service of the notice of appeal is jurisdictional. If the notice of appeal is not served within the prescribed timeframe, the appellate court lacks jurisdiction to consider the appeal. This principle was reinforced in *Wells Fargo Bank, N.A. v. Fallon Properties South Carolina, LLC*, 413 S.C. 642 (2015), where the court dismissed an appeal because the notice of appeal was served more than thirty days after receipt of written notice of entry of the order. *See id.* The court emphasized that the requirement of service of the notice of appeal is jurisdictional and cannot be extended or ignored.

Based on this Court's review of the controlling caselaw, this Court must find that an appeal from Magistrates' Court to Circuit Court is not considered timely filed if the Notice of Appeal is received by the Magistrate after the thirty-day timeframe, even if it was timely mailed. Rule 18(a), SCRMC, requires that the Magistrate receive it within the due timeframe. The jurisdictional requirement of Rule 18(a), SCRMC, mandates that the notice must be received within the statutory period to be considered timely. *See Wells Fargo Bank, N.A. v. Fallon Properties South Carolina, LLC*, 413 S.C. 642 (2015).

Respondent's motion is granted. Appellant's appeal is dismissed as untimely.

AND IT IS SO ORDERED.

Presiding Judge's Signature Page to Follow.



Greenville Common Pleas

Case Caption: Joshua Hawkins VS Delta Air Lines Inc
Case Number: 2024CP2307485
Type: Order/Other

So Ordered

Jessica A. Salvini

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
Joshua Hawkins,	)	
Appellant,	)	
	)	FINAL ORDER REGARDING
vs.	)	MOTION TO RECONSIDER
	)	
Delta Airlines, Inc.,	)	
	)	
Respondent.	)	Case No.: 2024-CP-23-07485

A Motion to Reconsider and to alter or amend has been received, filed with the Court on May 15, 2025, and provided to the Court by the Clerk's Office on May 19, 2025. As previously explained, pursuant to Rule 59(f), SCRCP, the Court, in its discretion, may decide the motion based on briefs without oral argument. The Court indicated to the parties by prior order in the Initial Order Regarding Motion to Reconsider that it would decide the issues on written submissions. Further, the Court informed the parties that written submissions were not required by the non-moving party, and that the moving party could rely upon its filings or supplement. The deadlines to file written submissions regarding these motions has now passed.

After careful consideration of the able arguments and filings of Counsel and review of the record, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered.

Accordingly, the Motion for Reconsideration made pursuant to Rule 59, SCRCP, ¹ is respectfully DENIED.

AND IT IS SO ORDERED.

Presiding Judge's Signature Page to Follow.

¹ The Court, in its discretion, has determined this Motion on the filings, without oral argument, pursuant to Rule 59(f), SCRCP.



Greenville Common Pleas

Case Caption: Joshua Hawkins VS Delta Air Lines Inc
Case Number: 2024CP2307485
Type: Order/Other

So Ordered

Jessica A. Salvini

Electronically signed on 2025-07-01 14:39:13 page 2 of 2

The South Carolina Court of Appeals

Joshua Hawkins, Appellant,

v.

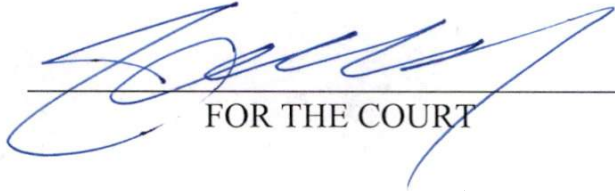
Delta Airlines, Inc., Respondent.

Appellate Case No. 2025-001494

ORDER

On November 24, 2025, Respondent filed a motion to dismiss this appeal, stating Appellant failed to timely file their initial brief. Appellant filed a return opposing the motion to dismiss, and Respondent filed a reply. Additionally, on November 25, 2025, Appellant filed a motion for an extension of time to file and serve Appellant's initial brief.

After careful consideration, we deny the motion to dismiss. However, within ten days of the date of this order, Appellant must serve and file Appellant's initial brief and designation of matter. Failure to comply will result in dismissal of the appeal.



FOR THE COURT

Columbia, South Carolina

cc:

Joshua Thomas Hawkins, Esquire
Helena LeeAnn Jedziniak, Esquire
Brian Michael Peters, Jr., Esquire
Charles Daniel Atkinson, Esquire

FILED
Mar 04 2026

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

2023CV2310304093
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

SUMMONS

2024-CP-23-00556

Joshua Hawkins
1225 S. Church Street
Greenville, SC 29605
(864) 275-8142
PLAINTIFF(S)

Vs

Delta Airlines

DEFENDANT(S)

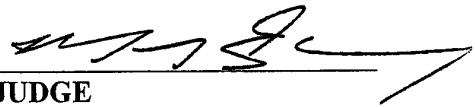
TO THE DEFENDANT(S) NAMED ABOVE:

YOU ARE SUMMONED and required to answer the allegations of the attached complaint and present any appropriate counterclaims/crossclaims to the attached Complaint within THIRTY days from the first day after receipt of this summons. Your Answer must be received by the:

East Greenville Summary Court
320 West Main St
Taylors, SC 29687
Phone: (864) 467-4625
Fax: (864) 244-6232

If you fail to answer within the prescribed time, a judgment by default may be rendered against you for the amount or other remedy requested in the attached complaint, plus interest and costs. **If you desire a jury trial, you must request one in writing at least five (5) working days prior to the date set for trial.** If no jury trial is timely requested, the matter will be heard and decided by the Judge.

Given under my hand:


JUDGE

READ ATTACHED INSTRUCTIONS CAREFULLY

September 18, 2023

IN THE MAGISTRATE COURT

CASE NO. 2023CV2310304093

COMPLAINT
(Jury Trial Requested)

(Jury Trial Requested)

2024-CP-23-0556

2024-CP-23-0556

2024-CP-23-0556

PARTIES, JURISDICTION, AND VENUE

1. Joshua Hawkins is a citizen and resident of Greenville County, South Carolina.
2. Delta Airlines is a company doing business in South Carolina.
3. A significant portion of the events giving rise to this action occurred in Greenville County, South Carolina.
4. The amount in controversy does not exceed \$75,000.00, and this action is not removable to federal court.
5. Jurisdiction and venue are proper for the foregoing reasons.

FACTUAL BACKGROUND

6. The plaintiff incorporates the foregoing paragraphs as if repeated here, verbatim.
7. The plaintiff booked a round trip from Greenville Spartanburg International Airport to LaGuardia International Airport to depart on September 7, 2023, and return on September 10, 2023.
8. The plaintiff traveled to GSP on the scheduled date, and traveled to New York.

9. When the plaintiff traveled to LaGuardia to return home, he noticed Delta cancelled several flights. This was peculiar because weather conditions seemed to fine and there was no indication any flight should be cancelled.
10. The plaintiff then noticed Delta unilaterally delayed his flight. The plaintiff then noticed that Delta unilaterally cancelled his flight altogether. As a result, the plaintiff was stranded in New York with no flights available for two more days.
11. Upon information and belief, Delta cancelled many flights during the time in question for no apparent reason. Likely, Delta will claim weather caused flights to be cancelled with no proof to corroborate its claim. The plaintiff observed incoming and outgoing planes on the day in question, so any claim related to weather is likely an attempt to avoid making Delta customers whole, maximize profits, and place Delta's interests ahead of its customers' interests. Moreover, flights continued to come and go from neighboring airports in the area.
12. Ultimately, the plaintiff incurred the costs of Uber rides, meals, a rental car, pet lodging fees, additional airport parking fees, and lost 12 hours as a direct and proximate result of Delta's tortious conduct. The plaintiff was forced to rent a vehicle and drive through the night from New York to Greenville, South Carolina. Now, because Delta has refused to compensate the plaintiff, the plaintiff has incurred court costs and spent time drafting this complaint.
13. The plaintiff attempted to chat Delta using Delta's app, and then tried calling the Platinum Medallion number provided by Delta so that Delta could compensate the plaintiff for the damages it caused by its reckless conduct. Delta refused to compensate the plaintiff for his losses.
14. The defendant likely violated policies and procedures, and those violations contributed to the plaintiff's injuries.

15. Some or all of the defendant's actions were motivated by the unreasonable pursuit of financial gain.
16. The plaintiff is therefore informed and believes that he is entitled to judgment against the defendant for actual, punitive, and statutory damages.

FOR A FIRST CAUSE OF ACTION
(Common Law Liability for Negligence, Gross Negligence, and Recklessness)

17. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby re-alleged as if set forth herein verbatim.
18. The defendant owed duties, including the duty to exercise due care in dealing with the public and the plaintiff, a duty to treat customers fairly and equitably, a duty to take reasonable measures to determine whether flights should be cancelled, a duty to take reasonable measures to make customers such as the plaintiff whole, a duty to treat customers with fairness and honesty following a cancelled flight, and other duties as will be shown through discovery and at trial.
19. Breaches of duties constitute negligence and, in some circumstances, recklessness.
20. The defendant breached one or more of its duties in a negligent, reckless, and grossly negligent manner in one or more of the following ways:
 - a. by causing injury and damages to the plaintiff through reckless and negligent acts;
 - b. by failing to exercise even slight care;
 - c. by authorizing, adopting, and ratifying the Delta's employees' conduct toward the plaintiff;
 - d. by hiring employees who were incompetent, lacked proper education and training, or were otherwise unfit;
 - e. by promoting an atmosphere where the events described herein were likely to occur;

- f. by mishandling claims in order to unfairly maximize profits;
- g. by making fraudulent statements related to the issues described herein;
- h. by acting in bad faith to avoid payment of monies owed;
- i. by causing unnecessary stress and delay;
- j. by engaging in unfair and deceptive business practices;
- k. in causing additional damage by creating and directing customers to needless bureaucratic red tape following cancelled flights;
- l. by engaging in the unreasonable pursuit of financial gain; and,
- m. in other such particulars as the evidence may show.

21. As a direct and proximate result of the negligent, grossly negligent, and reckless acts and omissions of the defendant, the plaintiff sustained injuries and damages, including some or all of the following:

- a. monetary damages;
- b. loss of ability to work for a time;
- c. out-of-pocket expenses;
- d. psychological trauma;
- e. mental anguish;
- f. mental distress;
- g. anxiety;
- h. emotional injury;
- i. discomfort and inconvenience;
- j. pain and suffering;
- k. loss of enjoyment of life;

- l. litigation time and expense; and,
 - m. such other damages as will be shown through discovery and at trial.
22. The plaintiff is therefore informed and believes that he is entitled to judgment against the defendant for actual and punitive damages.

FOR A SECOND CAUSE OF ACTION
(Unfair Trade Practices Act Violation)

23. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby re-alleged as if set forth herein verbatim.
24. The defendant's actions concerning the plaintiff were unfair, deceptive, and adverse to public interests. Upon information and belief, it is standard business practice for the defendant to act in the ways described above, and potentially, to civilly conspire with other companies in order to profit from commerce with members of the public like the plaintiff.
25. Upon information and belief, the defendant frequently blames cancelled flights on weather in an effort to defraud customers and avoid liability for the incalculable damage it causes to countless people each year.
26. The egregiousness of the defendant's actions are compounded by the fact that after the defendant has inconvenienced customers for financial gain, instead of compensating those customers, it directs them to frustrating and time consuming processes, which further wastes customers' time and money.
27. The defendant's actions are capable of repetition. In fact, Delta cancelled scores of flights on the day in question, causing many, many customers to incur damages similar to those sustained by the plaintiff. The defendant does business with a large number of people. Upon information and belief, its actions are repeated frequently.
28. As a direct and proximate result of the defendant's unfair trade practices and illegal acts, the

plaintiff has been damaged as set forth above.

29. The plaintiff is entitled to relief pursuant to *South Carolina Code Ann.* §§ 39-5-10 through 39-5-180. Pursuant to South Carolina Magistrate Court Rule 17(a), a plaintiff, "shall also recover those costs provided for by law, which shall not be included when determining the jurisdictional amount of the court." Therefore, although damages are capped by stipulation not to exceed \$75,000.00, plaintiff's claim for treble damages and attorneys' fees are not limited by the jurisdictional limit of the Court.
30. The plaintiff is therefore informed and believes that he is entitled to judgment against the defendant for actual damages, punitive damages, multiple damages, costs, and reasonable attorney's fees.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act)

31. The plaintiff incorporates the foregoing paragraphs as if repeated here, verbatim.
32. The plaintiff entered into a binding contract with the defendant wherein the defendant agreed to perform certain services in exchange for payment.
33. The defendant breached its contract by failing to provide the agreed-upon services while also refusing to refund the money (in this case, miles) that the plaintiff paid and also refused to compensate the plaintiff for expenses resulting from the defendant's actions.
34. As a direct and proximate cause of the defendant's breach, the plaintiff was damaged.
35. The defendant had fraudulent intent when forming the contract with the plaintiff. The defendant made false representations about willingness to perform services for the plaintiff in exchange for payment. The defendant knew that it would not perform some of the agreed-upon services if it chose not to, and that it would refuse to return payment or cover consequential damages if it failed to perform those services. The defendant nevertheless accepted payment

for those services.

36. A fraudulent act accompanied the defendant's breach. The defendant was dishonest in fact about the services that it agreed to provide and was unfair in its dealings with the plaintiff.

37. As a direct and proximate result of the defendant's breaches, fraudulent intent, and fraudulent acts, the plaintiff has sustained damages.

38. The plaintiff is therefore informed and believes that he is entitled to judgment against the defendant for actual and punitive damages.

WHEREFORE, the plaintiff requests a jury trial and judgment against the defendant for:

- a. actual damages;
- b. statutory damages, which are "costs provided by law," pursuant to SCMCR 17(a), and are not limited;
- c. punitive damages;
- d. costs; and,
- e. such other relief the Court deems just and equitable.

Respectfully submitted,

Hawkins & Jedziniak, LLC

Joshua T. Hawkins, S.C. Bar No. 78470
Helena L. Jedziniak, S.C. Bar No. 100825
Ethan L. Jedziniak, S.C. Bar No. 105785
1225 South Church Street
Greenville, South Carolina 29605
(864) 275-8142 (telephone)
(864) 752-0911 (facsimile)
josh@hjlsc.com

Greenville, South Carolina
September 13, 2023

helena@hjlsc.com
ethan@hjlsc.com
Attorneys for Plaintiff

Pursuant to Rule 38, *SCRCP*, the plaintiff demands a trial by jury on all issues triable to a jury.

s/ Joshua T. Hawkins
Joshua T. Hawkins

Business Entities Online

File, Search, and Retrieve Documents Electronically

DELTA AIR LINES, INC.

Corporate Information

Entity Id: 00362522

Entity Type: Corporation

Status: Good Standing

Domestic/Foreign: Foreign

Incorporated State: Delaware

Important Dates

Effective Date: 05/26/1967

Expiration Date: N/A

Term End Date: N/A

Dissolved Date: N/A

Registered Agent

Agent: CORPORATION SERVICE COMPANY

Address: 508 Meeting Street
West Columbia, South Carolina 29169

Official Documents On File

Filing Type	Filing Date
Notice of Change of Registered Office or Registered Agent or Both of a Foreign Corporation	08/22/2020
Change of Agent or Office	12/06/2007
Change of Agent or Office	09/03/2002
Amendment	11/05/1993
Merger/Share Exchange	08/22/1988
Merger/Share Exchange	05/12/1987
Amendment	01/13/1987
Amendment	12/01/1986
Amendment	11/18/1986
Amendment	12/20/1985
Amendment	12/07/1982
Amendment	12/28/1981
Amendment	08/24/1972

Filing Type	Filing Date
Amendment	11/24/1971
Amendment	12/02/1968
Amendment	11/01/1967
Amendment	08/03/1967
Incorporation	05/26/1967

Former Names

Name	Filing Date
DELAWARE AIR LINES, INC.	N/A

For filing questions please contact us at 803-734-2158

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24 JAN 26 PM 4:09
Brice Garrett CMC GUL SC

STATE OF SOUTH CAROLINA

) IN THE MAGISTRATE COURT

COUNTY OF GREENVILLE

) CASE NO. 23-4093

Joshua Hawkins,

) 1225 S. Church St.
) Greenville, SC 29605
) (864) 275-8142
) Plaintiff,

SUMMONS

vs.

Delta Airlines,

) Corporation Service Company 2024-CP-23-0556
) 508 Meeting St.
) West Columbia, SC 29169
) Defendant.

YOU ARE HEREBY SUMMONED and required to answer the complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your answer to the said complaint on the subscriber at his office, 1225 South Church, Greenville, South Carolina, 29605, within thirty (30) days after service thereof exclusive of the day of such service, and if you fail to answer the complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the complaint.

Respectfully submitted,

Hawkins & Jedziniak, LLC

Joshua T. Hawkins, S.C. Bar No. 78470
Helena L. Jedziniak, S.C. Bar No. 100825
Ethan L. Jedziniak, S.C. Bar No. 105785
1225 South Church Street
Greenville, South Carolina 29605
(864) 275-8142 (telephone)
(864) 752-0911 (facsimile)
josh@hjlsc.com
helena@hjlsc.com
ethan@hjlsc.com

Greenville, South Carolina
September 13, 2023

Attorneys for Plaintiffs

7008 1140 0004 0752 8201

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Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

23-4093

Sent To
Corporation Service Company
 Street, Apt. No. or PO Box No. **508 MEETING STREET**
 City, State, ZIP+4 **West Columbia, SC 29169**
 PS Form 3800, August 2006 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Corporation Service Company
508 MEETING STREET
West Columbia, SC 29169



9590 9402 5961 0062 1393 30

2. Article Number (Transfer from service label)
7008 1140 0004 0752 8201

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X *[Signature]* ☐ Agent ☐ Addressee
 B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
 If YES, enter

Delivered
10/2/2023
11⁰⁰ PM

3. Service Type
☐ Adult Signature
☐ Adult Signature
☒ Certified Mail®
☐ Certified Mail®
☐ Collect on Delivery
☐ Collect on Delivery
☐ Insured Mail
☐ Insured Mail® (over \$500)

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE'S COURT
	)	
COUNTY OF GREENVILLE	)	Case No.: 2023CV2310304093
	)	
Joshua Hawkins,	)	
	)	
Plaintiff,	)	DEFENDANT DELTA AIR LINES, INC.'S
	)	MOTION TO DISMISS PLAINTIFF'S
vs.	)	COMPLAINT
	)	
Delta Airlines,	)	
	)	
Defendant.	)	
_____	)	

COMES NOW Delta Air Lines, Inc. ("Delta"), improperly named as "Delta Airlines," by and through the undersigned counsel, and pursuant to Rules 12(b)(1), 12(b)(3), and 12(b)(6), as made applicable to this proceeding by Rule 81, SCRPC and Rule 2, SCRMC, files its Motion to Dismiss Plaintiff Joshua Hawkins' Complaint:

I. Rule 12(b)(1), SCRPC¹ Motion to Dismiss for Lack of Subject Matter Jurisdiction.

Plaintiff's causes of action arise out of a transaction or occurrence arising out of the price, route, or service of Delta as an air carrier. The Airline Deregulation Act of 1978 expressly preempts "a State" from "enforce[ing] a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier[.]" 49 U.S.C. § 41713(b)(1). The United States Supreme Court has held that the Airline Deregulation Act "stops States from imposing their own substantive standards with respect to rates, routes, or services, but not from affording relief to a party who claims and proves that an airline dishonored a term the airline itself stipulated. This distinction between what the State dictates and what the airline itself

¹ Should this Court deny Delta's Motion to Amend to file an Amended Answer, this Court still may properly rule on its own jurisdiction over the subject matter of a case at any time during the proceeding. *Tatnall v. Gardner*, 350 S.C. 135, 137, 564 S.E.2d 377, 378 (Ct. App. 2002). This Court even has the responsibility to itself raise and evaluate the issue of the Court's jurisdiction over the subject matter of a case. *Id.*

undertakes confines courts, in breach-of-contract actions, to the parties' bargain, with no enlargement or enhancement based on state laws or policies external to the agreement." *Am. Airlines, Inc. v. Wolens*, 513 U.S. 219, 232–33, 115 S. Ct. 817, 826, 130 L. Ed. 2d 715 (1995); *see also Nw., Inc. v. Ginsberg*, 572 U.S. 273, 287–88, 134 S. Ct. 1422, 1432–33, 188 L. Ed. 2d 538 (2014).

Therefore, pursuant to Rule 12(b)(1), SCRCP, made applicable to this proceeding by Rule 81, SCRCP and Rule 2, SCRMC, Delta moves to dismiss the First and Second Causes of Action in Plaintiff's Complaint, because this Court lacks jurisdiction over the subject matter. Furthermore, pursuant to Rule 12(b)(1), SCRCP, made applicable to this proceeding by Rule 81, SCRCP and Rule 2, SCRMC, Delta moves to dismiss the Third Cause of Action for Breach of Contract accompanied by Fraudulent Act, because this Court lacks jurisdiction over the subject matter, because the Third Cause of Action seeks enforcement of state law that enlarges or enhances the terms Delta itself stipulated in the alleged contract, by allowing for the award of punitive damages. *See Am. Airlines, Inc. v. Wolens*, 513 U.S. 219, 232–33, 115 S. Ct. 817, 826, 130 L. Ed. 2d 715 (1995); *see also Nw., Inc. v. Ginsberg*, 572 U.S. 273, 287–88, 134 S. Ct. 1422, 1432–33, 188 L. Ed. 2d 538 (2014); *Smith v. Canal Ins. Co.*, 275 S.C. 256, 260, 269 S.E.2d 348, 350 (1980).

II. Rule 12(b)(6), SCRCP Motion to Dismiss for Failure to Allege Facts Sufficient to Constitute a Cause of Action.

a. Cause of Action II is Insufficient because Plaintiff Alleges the Only Harm Was a Private, Contractual Harm, and because Plaintiff Fails to Allege Specific Facts Demonstrating Public Harm.

Pursuant to Rule 12(b)(6), SCRCP, made applicable to this proceeding by Rule 81, SCRCP and Rule 2, SCRMC, Delta moves to dismiss Plaintiff's cause of action for damages brought under the South Carolina Unfair Trade Practices Act, S.C. Code §§ 39-5-10, et seq.,

because Plaintiff fails to allege specific facts showing the public interest was actually adversely affected as opposed to affecting the parties to the transaction. *Woodson v. DLI Prop., LLC*, 406 S.C. 517, 530 (2014).

b. Cause of Action III is Insufficient because Plaintiff Fails to Plead Facts about Harm with Particularity required by Rule 9(b), SCRCP.

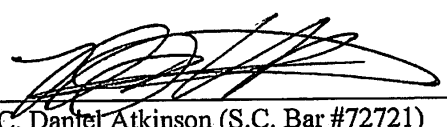
Pursuant to Rule 12(b)(6), SCRCP, made applicable to this proceeding by Rule 81, SCRCP, Delta moves to dismiss Plaintiff's Third Cause of Action for Breach of Contract accompanied by Fraudulent Act, because Plaintiff fails to allege the cause of action with the particularity required under Rule 9(b), SCRCP, made applicable to this proceeding by Rule 81, SCRCP and Rule 2, SCRMC. See also *Maro v. Lewis*, 389 S.C. 216, 223–24, 697 S.E.2d 684, 688 (Ct. App. 2010).

These Motions are based upon the Complaint, South Carolina law, and any Memorandum of Authority to be filed hereafter. Pursuant to Rule 11, SCRCP, the undersigned certifies that no consultation was required prior to filing, because this is a Motion to Dismiss.

WHEREFORE, Delta respectfully requests an Order dismissing Plaintiff's Complaint.

Respectfully submitted,

December 22, 2023

By: 

C. Daniel Atkinson (S.C. Bar #72721)

datkinson@wajlawfirm.com

Biran M. Peters, Jr. (S.C. Bar #105911)

bpeters@wajlawfirm.com

WILKES ATKINSON & JOYNER, LLC

127 Dunbar Street, Suite 200

Spartanburg, SC 29306

(864) 591-1113

Attorneys for Defendants

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Joshua Hawkins,)
)
Plaintiff,)
)
vs.)
)
Delta Airlines,)
)
Defendant.)
_____)

IN THE MAGISTRATE'S COURT

Case No.: 2023CV2310304093

**CONSENT ORDER GRANTING
DEFENDANT'S MOTION TO AMEND
ANSWER**

THIS MATTER comes before the Court by way of Consent Order allowing Defendant Delta Air Lines, Inc., improperly named as Delta Airlines, to file an Amended Answer, attached hereto as **Exhibit A**. On December 22, 2023, counsel for the parties conferred regarding Delta's desire to amend the form Answer, and Plaintiff's counsel did not oppose Delta's desire to amend the Answer. Rule 14, SCRMC, requires that "[t]he court shall be lenient in the allowance of changes or amendments to complaints, answers, and counterclaims[.]" Rule 14, SCRMC. Further, the South Carolina Rules of Magistrates Court "shall be construed to secure the just, speedy, and inexpensive determination of every civil case within the jurisdiction of the magistrates court." Scope & Purpose, SCRMC. Here, substantial justice requires that Delta be allowed to file an Amended Answer in order to ensure the just, speedy, and inexpensive determination of this civil case.

IT IS THEREFORE ORDERED Defendant's Amended Answer shall be deemed filed as of the date of this Order.

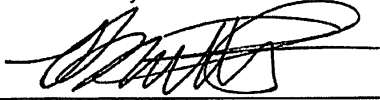
December __, 2023

Judge for the East Greenville Summary Court

[COUNSELS' SIGNATURES ON FOLLOWING PAGE 2 OF 2.]

WE SO MOVE:

December 22, 2023

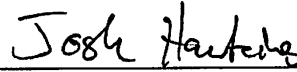


C. Daniel Atkinson (S.C. Bar #72721)
datkinson@wajlawfirm.com
Brian M. Peters, Jr. (S.C. Bar #105911)
bpeters@wajlawfirm.com

WILKES ATKINSON & JOYNER, LLC
127 Dunbar Street, Suite 200
Spartanburg, SC 29306
(864) 591-1113
Attorneys for Defendant

WE SO CONSENT:

December 22, 2023

Josh Hawkins with express permission

Joshua T. Hawkins, S.C. Bar No. 78470
josh@hjlsc.com

Helena L. Jedziniak, S.C. Bar No. 100825
Ethan L. Jedziniak, S.C. Bar NO. 105785

HAWKINS & JEDZINIAK, LLC
1225 South Church Street
Greenville, SC 29605
Telephone Number: (864) 275-8142
Fax Number: (864) 752-0911
Attorneys for Plaintiff

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE'S COURT
	)	
COUNTY OF GREENVILLE	)	Case No.: 2023CV2310304093
	)	
Joshua Hawkins,	)	
	)	
Plaintiff,	)	DEFENDANT DELTA AIR LINES, INC.'S
	)	INITIAL OPPOSITION BRIEF TO
vs.	)	PLAINTIFF'S MOTION FOR DEFAULT
	)	JUDGMENT AND DAMAGES HEARING OR,
Delta Airlines,	)	IN THE ALTERNATIVE,
	)	FOR SUMMARY JUDGMENT
Defendant.	)	
	)	

COMES NOW Delta Air Lines, Inc. ("Delta"), improperly named as "Delta Airlines," by and through the undersigned counsel, and files its Initial Opposition Brief to Plaintiff's Motion for Default Judgment and Damages Hearing or, in the alternative, for Summary Judgment:

I. Defendant Timely Filed a Rule 24, SCRMC, form Answer with a General Denial of Plaintiff's Complaint.

Plaintiff's Motion for Default Judgment is patently inappropriate. Rule 7(a), SCRMC, is clear as to how a defendant may respond to a Complaint in Magistrate's Court: a simple total denial. Rule 7(a), SCRMC, states: "The defendant may reply to the plaintiff's complaint by filing a written statement in a form approved by the magistrate[.] . . . The defendant's answer may deny in total or in part any or all of the material allegations made in the plaintiff's complaint[.]" Rule 7(a), SCRMC (emphasis added). Plaintiff served Defendant such "a form approved by the magistrate" as part of his Summons and Complaint. This is the very form that Plaintiff now criticizes.

The form Answer has four boxes, which directs a defendant to "CHECK ONE." Only one of the boxes contains a denial: Box D, which states "I deny that I am responsible **at all** because: (use additional pages if necessary)[.]" (emphases added). In Delta's filled-out form Answer, timely filed on November 1, 2023, Delta put an "X" in Box D and attached a letter explaining its "at all"

denial: thunderstorms caused the cancellation of Plaintiff's return flight at LaGuardia Airport in New York.

In an attempt to overcomplicate the clear text of Rule 7(a), SCRMC, Plaintiff argues that the "simpl[e] check[ing]" of this option "failed to comply with pleading requirements," causing Delta to "fail[] to respond to each of the allegations of the complaint" and "entitl[ing] [Plaintiff] to a default judgment and a damages hearing." Plaintiff attempts to rely on Rule 8, SCRCP's standard for responding to allegations. Yet, Plaintiff ignores the fact that the Magistrate's Rules govern, and the Rules of Civil Procedure can only apply when there is "no procedure [] provided by these rules[.]" Rule 2, SCRMC. Consequently, Plaintiff has no real legal justification for arguing that Defendant's checking of the total denial on the form Answer Plaintiff served Defendant—the same form being approved and generated by this Court—is insufficient to deny Plaintiff's Complaint. This Court should reject Plaintiff's Motion for Default Judgment.

II. Defendant's Total Denial of Plaintiff's Complaint Means There is a Genuine Issue of Material Fact.

This Court can only entertain a Motion for Summary Judgment when there is no genuine dispute of the material facts, and the moving party is entitled to judgment as a matter of law. *See* Rule 56(c), SCRCP. To bypass the "no genuine dispute" requirement, Plaintiff builds off of his contrived theory of Magistrate Court pleading requirements and attempts to twist the arm of Defendant's Answer to "deem" as "admitted" facts patently denied by the Answer. Here, as Defendant's to-the-point form Answer makes clear, Defendant genuinely disputes the material facts.

Plaintiff alleges there was no legitimate reason to delay his flight at LaGuardia Airport; Defendant wholly denied such allegations and set forth a legitimate reason: thunderstorms. Plaintiff alleges that Delta never provided a substitute return flight within a reasonable time;

Defendant wholly denied such allegations and set forth that it offered Plaintiff that remedy.

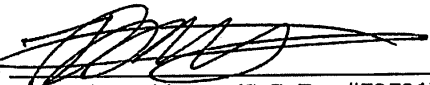
Moreover, Plaintiff does not demonstrate to this Court—even if such material facts were not in dispute—how he is entitled to judgment as a matter of law. In total, Plaintiff’s “alternative” Motion for Summary Judgment is a thinly veiled attempt to take a second bite at the apple of obtaining a default judgment.

This Opposition is based upon the pleadings, South Carolina law, and any further Brief or Memorandum of Authority to be filed hereafter.

WHEREFORE, Delta respectfully requests an Order denying Plaintiff’s Motion for Default Judgment and Damages Hearing or, in the alternative, for Summary Judgment.

Respectfully submitted,

December 22, 2023

By: 

C. Daniel Atkinson (S.C. Bar #72721)

datkinson@wajlawfirm.com

Biran M. Peters, Jr. (S.C. Bar #105911)

bpeters@wajlawfirm.com

WILKES ATKINSON & JOYNER, LLC

127 Dunbar Street, Suite 200

Spartanburg, SC 29306

(864) 591-1113

Attorneys for Defendants

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Joshua Hawkins,)
)
Plaintiff,)
)
vs.)
)
Delta Airlines,)
)
Defendant.)
_____)

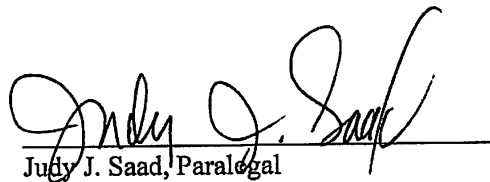
IN THE MAGISTRATE'S COURT

Case No.: 2023CV2310304093

CERTIFICATE OF SERVICE

I certify that on December 22, 2023, I caused to be served a true and correct copy of the foregoing *Defendant's Notices of Appearance of C. Daniel Atkinson and Brian M. Peters, Jr.; Motion to Dismiss; Consent Order to Amend Answer; Amended Answer; and Initial Brief in Opposition to Plaintiff's Motion for Default Judgment/Motion for Summary Judgment* via U.S. Mail, postage pre-paid, and E-mail, addressed as follows:

Hawkins & Jedziniak, LLC
Joshua T. Hawkins, Esq.
Helena L. Jedziniak, Esq.
Ethan L. Jedziniak, Esq.
1225 South Church St.
Greenville, SC 29605
josh@hillcsc.com
helena@hillcsc.com
ethan@hillcsc.com



Judy J. Saad, Paralegal
jsaad@wajlawfirm.com
Wilkes Atkinson & Joyner, LLC

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE'S COURT
	)	
COUNTY OF GREENVILLE	)	Case No.: 2023CV2310304093
	)	
Joshua Hawkins,	)	
	)	
Plaintiff,	)	
	)	AMENDED ANSWER, AFFIRMATIVE
vs.	)	DEFENSES, AND MOTIONS TO DISMISS
	)	
Delta Airlines,	)	
	)	
Defendant.	)	
_____	)	

COMES NOW Delta Air Lines, Inc. ("Delta"), improperly named as "Delta Airlines," by and through the undersigned counsel, who responding to Plaintiff Joshua Hawkins' Complaint, states the following:

FIRST DEFENSE

(Paragraphs 1 through 38 correspond to the allegations of Plaintiff's Complaint.)

1. Admitted, upon information and belief.
2. Denied as phrased. Delta Air Lines, Inc., improperly named as "Delta Airlines," is a corporation registered to do business in South Carolina.
3. Denied. The occurrence Plaintiff complains of is alleged to have occurred in New York, not South Carolina.
4. Admitted inasmuch as the amount in controversy does not exceed \$75,000.00; Delta denies the remaining allegations in Paragraph 4.
5. Denied.
6. Delta incorporates its responses to Paragraphs 1 through 5, to the extent consistent herewith.
7. Admitted, upon information and belief.
8. Admitted upon information and belief.

EXHIBIT A

9. Denied.
10. Denied.
11. Denied.
12. Denied.
13. Delta denies Plaintiff is entitled to damages; otherwise, Delta is without information sufficient to admit or deny the allegations in Paragraph 13, therefore Delta denies the allegations in Paragraph 13.
14. Denied.
15. Denied.
16. Denied.
17. Delta incorporates its responses to Paragraphs 1 through 16, to the extent consistent herewith.
18. Denied.
19. Paragraph 19 appears to be a legal argument, and therefore, Delta craves reference to the governing law for the governing standards therein. Otherwise, Delta denies the allegations in Paragraph 19.
20. Denied; Delta states Paragraph 20 is insufficiently pleaded, violating Rule 9(b), SCRCF, made applicable to this proceeding by Rule 81, SCRCF.
21. Denied.
22. Denied.
23. Delta incorporates its responses to Paragraphs 1 through 22, to the extent consistent herewith.
24. Denied.

EXHIBIT A

25. Denied.
26. Denied.
27. Denied.
28. Denied.
29. Paragraph 29 appears to be a legal argument, and therefore, Delta craves reference to the governing law for the governing standards therein. Otherwise, Delta denies the allegations in Paragraph 29.
30. Denied.
31. Delta incorporates its responses to Paragraphs 1 through 30, to the extent consistent herewith.
32. Delta craves reference to the Contract of Carriage for the terms therein.
33. Denied.
34. Denied.
35. Denied; Delta states Paragraph 35 is insufficiently pleaded, violating Rule 9(b), SCRCP made applicable to this proceeding by Rule 81, SCRCP and Rule 2, SCRMC.
36. Denied; Delta states Paragraph 36 is insufficiently pleaded, violating Rule 9(b), SCRCP made applicable to this proceeding by Rule 81, SCRCP and Rule 2, SCRMC.
37. Denied; Delta states Paragraph 37 is insufficiently pleaded, violating Rule 9(b), SCRCP made applicable to this proceeding by Rule 81, SCRCP and Rule 2, SCRMC.
38. Denied.
39. Delta denies each and every allegation of Plaintiff's Complaint not expressly admitted above.

EXHIBIT A

SECOND DEFENSE

40. Plaintiff's claims are barred by the doctrines of waiver, estoppel, and/or laches.

THIRD DEFENSE

41. Upon information and belief, Plaintiff failed to mitigate any alleged damages, and any recovery by Plaintiff should be offset by the amount of such failure to mitigate damages.

FOURTH DEFENSE

42. Plaintiff's own fault is pleaded as a complete defense to Plaintiff's claims, or, in the alternative, in proportionate reduction thereof.

FIFTH DEFENSE

43. Punitive damages, as presently awarded in South Carolina, violate the United States and South Carolina constitutions.

44. With regard to punitive damages, Delta pleads the limitations, caps, and procedures contained in S.C. Code § 15-32-510, *et seq.*

SIXTH DEFENSE

45. Delta incorporates by reference the Contract of Carriage (last modified June 22, 2023) entered into by Delta and Plaintiff.

46. Delta pleads the limitations, caps, and procedures contained in the Contract of Carriage (last modified June 22, 2023), including but not limited to, the following:

- a. Delta is not liable to Plaintiff for any damages, pursuant to the Contract of Carriage, because the subject flight was cancelled due to a *force majeure* event.
- b. In the event Delta is found liable to Plaintiff for any damages, Delta pleads the limitations, caps, and procedures contained in the Contract of Carriage, Rules 19 and 22.

EXHIBIT A

- c. In any event, Delta is not liable to Plaintiff for any punitive, incidental, consequential or special damages, pursuant to the Contract of Carriage.

SEVENTH DEFENSE AND MOTION TO DISMISS

47. Plaintiff's causes of action arise out of a transaction or occurrence arising out of the price, route, or service of Delta as an air carrier.

48. The Airline Deregulation Act of 1978 expressly preempts "a State" from "enforce[ing] a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier[.]" 49 U.S.C. § 41713(b)(1).

49. The United States Supreme Court has held that the Airline Deregulation Act "stops States from imposing their own substantive standards with respect to rates, routes, or services, but not from affording relief to a party who claims and proves that an airline dishonored a term the airline itself stipulated. This distinction between what the State dictates and what the airline itself undertakes confines courts, in breach-of-contract actions, to the parties' bargain, with no enlargement or enhancement based on state laws or policies external to the agreement." *Am. Airlines, Inc. v. Wolens*, 513 U.S. 219, 232–33, 115 S. Ct. 817, 826, 130 L. Ed. 2d 715 (1995); *see also Nw., Inc. v. Ginsberg*, 572 U.S. 273, 287–88, 134 S. Ct. 1422, 1432–33, 188 L. Ed. 2d 538 (2014).

50. Pursuant to Rule 12(b)(1), SCRCP, made applicable to this proceeding by Rule 81, SCRCP and Rule 2, SCRMC, Delta moves to dismiss the First and Second Causes of Action in Plaintiff's Complaint, because this Court lacks jurisdiction over the subject matter.

51. Pursuant to Rule 12(b)(1), SCRCP, made applicable to this proceeding by Rule 81, SCRCP and Rule 2, SCRMC, Delta moves to dismiss the Third Cause of Action for Breach of Contract accompanied by Fraudulent Act, because this Court lacks jurisdiction over the subject

EXHIBIT A

matter, because the Third Cause of Action seeks enforcement of state law that enlarges or enhances the terms Delta itself stipulated in the alleged contract, by allowing for the award of punitive damages. *See Am. Airlines, Inc. v. Wolens*, 513 U.S. 219, 232–33, 115 S. Ct. 817, 826, 130 L. Ed. 2d 715 (1995); *see also Nw., Inc. v. Ginsberg*, 572 U.S. 273, 287–88, 134 S. Ct. 1422, 1432–33, 188 L. Ed. 2d 538 (2014); *Smith v. Canal Ins. Co.*, 275 S.C. 256, 260, 269 S.E.2d 348, 350 (1980).

EIGHTH DEFENSE AND MOTION TO DISMISS

52. Pursuant to Rule 12(b)(6), SCRPC, made applicable to this proceeding by Rule 81, SCRPC and Rule 2, SCRMC, Delta moves to dismiss Plaintiff's cause of action for damages brought under the South Carolina Unfair Trade Practices Act, S.C. Code §§ 39-5-10, *et seq.*, because Plaintiff fails to allege specific facts showing the public interest was actually adversely affected as opposed to affecting the parties to the transaction. *Woodson v. DLI Prop., LLC*, 406 S.C. 517, 530 (2014).

NINTH DEFENSE AND MOTION TO DISMISS

53. Pursuant to Rule 12(b)(6), SCRPC, made applicable to this proceeding by Rule 81, SCRPC, Delta moves to dismiss Plaintiff's Third Cause of Action for Breach of Contract accompanied by Fraudulent Act, because Plaintiff fails to allege the cause of action with the particularity required under Rule 9(b), SCRPC, made applicable to this proceeding by Rule 81, SCRPC and Rule 2, SCRMC. *See also Maro v. Lewis*, 389 S.C. 216, 223–24, 697 S.E.2d 684, 688 (Ct. App. 2010).

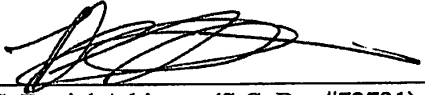
WHEREFORE, having fully answered Plaintiff's Complaint, Defendant Delta Air Lines, Inc., improperly named as "Delta Airlines," respectfully requests the following relief:

1. Dismissal of certain causes of action, pursuant to Delta's Motions to Dismiss;
2. Dismissal of Plaintiff's causes of action against Delta in this matter with prejudice;

EXHIBIT A

3. For the costs of this action; and
4. Such other and further relief as this Court deems just and proper.

December 22, 2023

By: 

C. Daniel Atkinson (S.C. Bar #72721)
datkinson@wajlawfirm.com
Biran M. Peters, Jr. (S.C. Bar #105911)
bpeters@wajlawfirm.com

WILKES ATKINSON & JOYNER, LLC
127 Dunbar Street, Suite 200
Spartanburg, SC 29306
(864) 591-1113

Attorneys for Defendant

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CASE NO. 2024-CP-23-00556
	)	
Joshua Hawkins,	)	
	)	SECOND AMENDED SUMMONS
Plaintiff,	)	
	)	
vs.	)	
	)	
Delta Airlines,	)	
	)	
Defendant.	)	

YOU ARE HEREBY SUMMONED and required to answer the complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your answer to the said complaint on the subscriber at his office, 1225 South Church, Greenville, South Carolina, 29605, within thirty (30) days after service thereof exclusive of the day of such service, and if you fail to answer the complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the complaint.

Respectfully submitted,

Hawkins & Jedziniak, LLC

s/Joshua T. Hawkins

Joshua T. Hawkins, S.C. Bar No. 78470

Helena L. Jedziniak, S.C. Bar No. 100825

Ethan L. Jedziniak, S.C. Bar No. 105785

1225 South Church Street

Greenville, South Carolina 29605

(864) 275-8142 (telephone)

(864) 752-0911 (facsimile)

josh@hjllcsc.com

helena@hjllcsc.com

ethan@hjllcsc.com

Attorneys for Plaintiffs

Greenville, South Carolina

March 15, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CASE NO. 2024-CP-23-00556
	)	
Joshua Hawkins,	)	
	)	SECOND AMENDED COMPLAINT
Plaintiff,	)	FILED WITHIN 30 DAYS OF A
	)	PLEADING
vs.	)	(Jury Trial Requested)
	)	
Delta Airlines,	)	
	)	
Defendant.	)	
	)	

COMES NOW, the plaintiff, alleging and complaining of the defendant as follows:

PARTIES, JURISDICTION, AND VENUE

1. Joshua Hawkins is a citizen and resident of Greenville County, South Carolina.
2. Delta Airlines is a company doing business in South Carolina.
3. A significant portion of the events giving rise to this action occurred in Greenville County, South Carolina.
4. Jurisdiction and venue in the Greenville County Court of Common Pleas is proper for the foregoing reasons.

FACTUAL BACKGROUND

5. The plaintiff incorporates the foregoing paragraphs as if repeated here, verbatim.
6. The plaintiff files this complaint as a matter of course within 30 days of the filing of Delta's answer in compliance with 15(a) SCRCF.
7. The plaintiff booked a round trip from Greenville Spartanburg International Airport to LaGuardia International Airport to depart on September 7, 2023, and return on September 10, 2023.
8. The plaintiff traveled to GSP on the scheduled date and traveled to New York. When the plaintiff traveled to LaGuardia to return home, he noticed Delta cancelled several flights. This

was peculiar because weather conditions seemed to fine and there was no indication any flight should be cancelled.

9. The plaintiff then noticed Delta unilaterally delayed his flight. The plaintiff then noticed that Delta unilaterally cancelled his flight altogether. As a result, the plaintiff was stranded in New York with no flights available for two more days.
10. Upon information and belief, Delta cancelled many flights during the time in question for no apparent reason. Likely, Delta claims weather caused flights to be cancelled as an excuse for cancelling partially empty flights in order to unreasonably pursue financial gain, at the expense of inconvenience to customers.
11. The plaintiff observed incoming and outgoing planes on the day in question, so any claim related to weather is likely an attempt to avoid making Delta customers whole, maximize profits, and place Delta's interests ahead of its customers' interests. Flights continued to come and go from neighboring airports in the area during the time Delta cancelled the flights described above. The fact that Delta continued to double down on its position after originally filing this action in Magistrate Court is evidence of Delta's unreasonableness and deceptive business practices.
12. Ultimately, the plaintiff incurred the costs of Uber rides, meals, a rental car, pet lodging fees, additional airport parking fees, and lost 12 hours of personal time as a direct and proximate result of Delta's tortious conduct. The plaintiff was forced to rent a vehicle and drive through the night from New York to Greenville, South Carolina. During the drive from New York to South Carolina, the plaintiff observed mostly clear conditions, and did not observe conditions consistent with Delta cancelling flights. This is important because after suit was filed, Delta

sent a letter to the plaintiff with a weather map that is inconsistent with the plaintiff's observations. At a minimum, this creates a fact question for a jury.

13. Now, because Delta has refused to acknowledge responsibility, the plaintiff has incurred court costs and spent time drafting several court documents in addition to the damages already caused by Delta. After filing this action, Delta took the untenable position that it is not responsible for any consequential damages, no matter how egregious and deceptive its conduct and no matter how many damages Delta caused the plaintiff to incur. Delta took the unbelievable position that since it offered a flight two days later, which would cause the plaintiff to incur lodging, food, and other expenses, it discharged any duty to make the plaintiff whole. Such a position can only be viewed as harmful to the public, deceptive, and wholly unfair. To the extent Delta relies on any terms that must be agreed to when purchasing tickets, any such terms should be found to be terms of cohesion by a jury and such terms offer no meaningful choice.
14. The plaintiff attempted to chat Delta using Delta's app, and then tried calling the Platinum Medallion number provided by Delta so that Delta could compensate the plaintiff for the damages it caused by its reckless conduct. Delta refused to compensate the plaintiff for his losses. This is consistent with Delta's conduct following the filing of this action. After the plaintiff filed suit as a last resort, he tried repeatedly to resolve the claim with Delta, even offering to resolve the case for SkyMiles, which would cost Delta nothing. In an apparent attempt to strong arm a member of the community and flex corporate muscle, Delta doubled down and communicated that it would not take responsibility or be reasonable in any way whatsoever.

15. The defendant likely violated policies and procedures, and those violations contributed to the plaintiff's injuries. Delta definitely violated public policy and its business practices appear to be not only unfair, but dangerous to consumers.
16. In January, the plaintiff was scheduled to leave for New Zealand on a Delta flight. Again, consistent with its unfair and deceptive business practices, Delta unilaterally cancelled the plaintiff's flight and again blamed weather. As a result, the plaintiff lost a Qantas flight he had purchased for the following day from Auckland to Melbourne. The plaintiff also lost the upgraded Delta seats for which consideration had been paid, either through gained status or cash, and also lost, in addition to the cost of the Qantas flight, the cost of upgraded seats on that flight. In addition to all this, Delta lost on of the plaintiff's bags containing thousands of dollars in equipment, causing the plaintiff to have no access to that equipment the entire time he was in Australia.
17. Some or all of the defendant's actions were motivated by the unreasonable pursuit of financial gain.
18. The plaintiff is therefore informed and believes that he is entitled to judgment against the defendant for actual, punitive, and statutory damages.

FOR A FIRST CAUSE OF ACTION

(Common Law Liability for Negligence, Gross Negligence, and Recklessness)

19. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby re-alleged as if set forth herein verbatim.
20. The defendant owed duties, including the duty to exercise due care in dealing with the public and the plaintiff, a duty to treat customers fairly and equitably, a duty to take reasonable measures to determine whether flights should be cancelled, a duty to take reasonable measures to make customers such as the plaintiff whole, a duty to treat customers with fairness and

honesty following a cancelled flight, and other duties as will be shown through discovery and at trial.

21. Breaches of duties constitute negligence and, in some circumstances, recklessness.
22. The defendant breached one or more of its duties in a negligent, reckless, and grossly negligent manner in one or more of the following ways:
 - a. by causing injury and damages to the plaintiff through reckless and negligent acts;
 - b. by failing to exercise even slight care;
 - c. by causing the plaintiff to miss subsequent flights with other airlines;
 - d. by losing the plaintiff's bags and making no effort to find those bags;
 - e. by misleading the plaintiff about his lost bags through Delta's application;
 - f. by delegating locating of lost bags to incompetent third parties;
 - g. by authorizing, adopting, and ratifying the Delta's employees' conduct toward the plaintiff;
 - h. by hiring employees who were incompetent, lacked proper education and training, or were otherwise unfit;
 - i. by promoting an atmosphere where the events described herein were likely to occur;
 - j. by mishandling claims in order to unfairly maximize profits;
 - k. by making fraudulent statements related to the issues described herein;
 - l. by acting in bad faith to avoid payment of monies owed;
 - m. by causing unnecessary stress and delay;
 - n. by engaging in unfair and deceptive business practices;
 - o. in causing additional damage by creating and directing customers to needless bureaucratic red tape following cancelled flights;

- p. by engaging in the unreasonable pursuit of financial gain; and,
- q. in other such particulars as the evidence may show.

23. As a direct and proximate result of the negligent, grossly negligent, and reckless acts and omissions of the defendant, the plaintiff sustained injuries and damages, including some or all of the following:

- a. monetary damages;
- b. loss of ability to work for a time;
- c. out-of-pocket expenses;
- d. psychological trauma;
- e. mental anguish;
- f. mental distress;
- g. anxiety;
- h. emotional injury;
- i. discomfort and inconvenience;
- j. pain and suffering;
- k. loss of enjoyment of life;
- l. litigation time and expense; and,
- m. such other damages as will be shown through discovery and at trial.

24. The plaintiff is therefore informed and believes that he is entitled to judgment against the defendant for actual and punitive damages.

FOR A SECOND CAUSE OF ACTION
(Unfair Trade Practices Act Violation)

25. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby re-alleged as if set forth herein verbatim.

26. The defendant's actions concerning the plaintiff were unfair, deceptive, and adverse to public interests. Upon information and belief, it is standard business practice for the defendant to act in the ways described above, and potentially, to civilly conspire with other companies in order to profit from commerce with members of the public like the plaintiff.
27. Upon information and belief, the defendant frequently blames cancelled flights on weather in an effort to defraud customers and avoid liability for the incalculable damage it causes to countless people each year.
28. The egregiousness of the defendant's actions are compounded by the fact that after the defendant has inconvenienced customers for financial gain, instead of compensating those customers, it directs them to frustrating and time consuming processes, which further wastes customers' time and money.
29. The defendant's actions are capable of repetition. In fact, Delta cancelled scores of flights on the day in question, causing many, many customers to incur damages similar to those sustained by the plaintiff. The defendant does business with a large number of people. Upon information and belief, its actions are repeated frequently.
30. As a direct and proximate result of the defendant's unfair trade practices and illegal acts, the plaintiff has been damaged as set forth above.
31. The plaintiff is entitled to relief pursuant to *South Carolina Code Ann.* §§ 39-5-10 through 39-5-180. Delta has taken the position that the plaintiff's claims are preempted by federal law. While the doctrine of preemption does give federal law precedent over state laws governing the same conduct, upon information and belief, it does not apply in this context because the state law at issue is sufficiently similar to a federal law governing the same conduct.
32. The plaintiff is informed and believes that he is entitled to judgment against the defendant for

actual damages, punitive damages, multiple damages, costs, and reasonable attorney's fees.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act)

33. The plaintiff incorporates the foregoing paragraphs as if repeated here, verbatim.
34. The plaintiff entered into a binding contract with the defendant wherein the defendant agreed to perform certain services in exchange for payment.
35. The defendant breached its contract by failing to provide the agreed-upon services and also refused to compensate the plaintiff for expenses resulting from the defendant's actions.
36. As a direct and proximate cause of the defendant's breach, the plaintiff was damaged.
37. The defendant had fraudulent intent when forming the contract with the plaintiff. The defendant made false representations about willingness to perform services for the plaintiff in exchange for payment. The defendant knew that it would not perform some of the agreed-upon services if it chose not to, and that it would refuse to return payment or cover consequential damages if it failed to perform those services. The defendant nevertheless accepted payment for those services.
38. A fraudulent act accompanied the defendant's breach. The defendant was dishonest in fact about the services that it agreed to provide and was unfair in its dealings with the plaintiff. Delta's dishonest and disingenuous conduct continued after this suit was filed. Although Delta's counsel appears to be a fine and able lawyer, Delta itself has refused to acknowledge its unfair and deceptive conduct, despite evidence of that conduct. For example, Delta has taken the position that this cause of action must be pled with all the elements of fraud, which is not the law. As our Court of Appeals stated in *Conner v. City of Forest Acres*, 560 S.E.2d 606 (Supp. Ct. 2002), the elements of breach of contract accompanied by fraudulent act are "(1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract...; and

(3) a fraudulent act accompanying the breach.” *Id.* at 466. The plaintiff has alleged these elements and facts to support them. Despite that, Delta has taken a position add odds with the law.¹ “The fraudulent act is any act characterized by dishonesty in fact or unfair dealing. [] ‘Fraud,’ in this sense, ‘assumes so many hues and forms, that courts are compelled to content themselves with comparatively few general rules for its discovery and defeat and allow the facts and circumstances peculiar to each case to bear heavily upon the conscience and judgment of the court or jury in determining its presence or absence.’” *Id.* citing *Sullivan v. Calhoun*, 108 S.E. 189 (1921). See also *Harper v. Ethridge*, 348 S.E.2d 374 (Ct. App. 1986). There is no requirement to plead fraud elements with particularity in a cause of action for breach of contract accompanied by fraudulent act.

39. As a direct and proximate result of the defendant’s breaches, fraudulent intent, and fraudulent acts, the plaintiff has sustained damages.
40. The plaintiff is therefore informed and believes that he is entitled to judgment against the defendant for actual and punitive damages.

FOR A FOURTH CAUSE OF ACTION
(Montreal Convention)

41. The plaintiff repeats the foregoing allegations as if repeated here, verbatim.
42. Delta unilaterally cancelled the plaintiff’s flight to Auckland, which caused him to lose a flight from Auckland to Melbourne the following day, and then lost the plaintiff’s bag when the plaintiff finally flew to Auckland.
43. As a result, the plaintiff did not have the equipment he needed the entire time he was in Australia, and the plaintiff spent significant time on wild goose chases effectuated by Delta.

¹ The plaintiff assumes *Conner* has not been overruled and has no knowledge of it being overruled as of the date of this filing.

Delta could not accurately tell the plaintiff where his bags were, gave him misleading information, and ultimately lost the bag for good. It was only because the plaintiff went to the Melbourne airport on his own accord, going from third-party handler to third-party handler, that he finally tracked down his bag – through his own effort and investigation – that he finally found his bag in an airport back room.

44. Delta is liable to the plaintiff pursuant to the Montreal Convention, including one or more of its articles, including Article 17, 18, 19, 22, and 24².

45. Pursuant to Article 22, Delta is liable to the plaintiff for \$4,150 and Delta is liable for additional damages provided by law.³

46. Delta's actions before and after embarking and disembarking proximately caused the plaintiff's injuries.

47. Delta caused the plaintiff delay, inconvenience, and monetary loss.

48. The plaintiff gave notice to the defendant of damages caused by the defendants' actions.

49. As a direct and proximate result of the defendants' acts and omissions, the plaintiff has been damaged.

WHEREFORE, the plaintiff requests a jury trial and judgment against the defendant for:

- a. actual damages;
- b. statutory damages,;
- c. punitive damages;
- d. damages pursuant to the Montreal Convention;
- e. costs; and,

² The plaintiff's claims are not completely preempted by the Montreal Convention. See *Sonoco Prods. Co. v. Physicians Health Plan, Inc.* 338 F.3d 366 (4th Cir. 2003).

³ The plaintiff may recover additional damages for other causes of action. See *Tseng v. El Al Israel Airlines, Ltd.*, 525 U.S.155 (1999).

f. such other relief the Court deems just and equitable.

Respectfully submitted,

Hawkins & Jedziniak, LLC

s/ Joshua T. Hawkins

Joshua T. Hawkins, S.C. Bar No. 78470

Helena L. Jedziniak, S.C. Bar No. 100825

Ethan L. Jedziniak, S.C. Bar No. 105785

1225 South Church Street

Greenville, South Carolina 29605

(864) 275-8142 (telephone)

(864) 752-0911 (facsimile)

josh@hjllcsc.com

helena@hjllcsc.com

ethan@hjllcsc.com

Attorneys for Plaintiff

Greenville, South Carolina

March 15, 2024

Pursuant to Rule 38, *SCRCP*, the plaintiff demands a trial by jury on all issues triable to a jury.

s/ Joshua T. Hawkins

Joshua T. Hawkins

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Case No.: 2024-CP-23-00556
	)	
Joshua Hawkins,	)	
	)	
Plaintiff,	)	JOINT STIPULATION OF DISMISSAL
	)	WITHOUT PREJUDICE
vs.	)	
	)	
Delta Airlines,	)	
	)	
Defendant.	)	
_____	)	

Pursuant to Rule 41(a)(1)(B), SCRPC, Plaintiff Joshua Hawkins and Defendant Delta Air Lines, Inc., improperly named as “Delta Airlines,” by and through the undersigned counsel, consent to and file this Joint Stipulation of Dismissal without Prejudice of the Second Amended Complaint, subject to the below conditions:

1. The following of Plaintiff Hawkins’ causes of action shall be dismissed **WITH PREJUDICE**:

- a. “Common Law Liability for Negligence, Gross Negligence, and Recklessness”;
- b. “Unfair Trade Practices Act Violation”; and
- c. “Breach of Contract Accompanied by Fraudulent Act”;

2. Plaintiff Hawkins’ causes of action for Breach of Contract, “Montreal Convention,” and/or any available legislative remedies are dismissed **WITHOUT PREJUDICE**;

3. If Plaintiff Hawkins desires to refile an action arising from or relating to the transactions or occurrences alleged in the Second Amended Complaint, then Hawkins must file such an action on or before October 12, 2024. If Hawkins does not file such an action on or before October 12, 2024, then this Stipulation of Dismissal shall be **WITH PREJUDICE**,

notwithstanding the above paragraph related to Plaintiff Hawkins' causes of action for Breach of Contract, "Montreal Convention," and/or any available legislative remedies;

4. By agreeing to this Joint Stipulation of Dismissal without Prejudice, Defendant does not waive any objections under Rule 12, SCRCP;

5. If Plaintiff refiles an action, Defendant expressly reserves its rights to assert Rule 12, SCRCP defenses, along with all other defenses available to Defendant;

6. If Plaintiff refiles an action on or before October 12, 2024, Defendant's undersigned counsel will accept service of the Complaint;

7. If Plaintiff refiles an action on or before October 12, 2024, Defendant shall not remove the action to federal court; and

8. Each Party shall bear its own costs.

WE SO CONSENT:

April 9, 2024

By: s/ Joshua T. Hawkins
Joshua T. Hawkins, S.C. Bar No. 78470
Helena L. Jedziniak, S.C. Bar No. 100825
Ethan L. Jedziniak, S.C. Bar No. 105785

HAWKINS & JEDZINIAK, LLC
1225 South Church Street
Greenville, South Carolina 29605
(864) 275-8142 (telephone)
(864) 752-0911 (facsimile)
josh@hjllcsc.com

Attorneys for Plaintiff

April 9, 2024

By: s/ Brian M. Peters, Jr.
C. Daniel Atkinson (S.C. Bar #72721)
datkinson@wajlawfirm.com
Brian M. Peters, Jr. (S.C. Bar #105911)
bpeters@wajlawfirm.com

WILKES ATKINSON & JOYNER, LLC
127 Dunbar Street, Suite 200
Spartanburg, SC 29306
(864) 591-1113

Attorneys for Defendant

ELECTRONICALLY FILED - 2024 Apr 09 8:45 AM - GREENVILLE - COMMON PLEAS - CASE#2024CP2300556

) IN THE MAGISTRATE COURT

1) CASE NO. 2024 CV 232915

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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Joshua Hawkins,

Plaintiff,

vs.

Delta Air Lines, Inc.,

Defendant.

) IN THE MAGISTRATE COURT

)

) CASE NO. 2024-CP-23-2415

)

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24-2415

COMPLAINT

(Jury Trial Requested)

COMES NOW, the plaintiff, alleging and complaining of the defendant as follows:

PARTIES, JURISDICTION, AND VENUE

1. Joshua Hawkins is a citizen and resident of Greenville County, South Carolina.
2. Delta Air Lines, Inc. ("Delta") is a company doing business in South Carolina.
3. A significant portion of the events giving rise to this action occurred in Greenville County, South Carolina.
4. Previously, an action was filed which involved the parties captioned, and an agreement was reached whereby the plaintiff's claims could be litigated without certain causes of action raised in that suit, as long as suit was filed before October 8, 2024. Delta agreed not to remove the new action to federal court and to accept service of the complaint.
5. This Court, a Court of general jurisdiction, has subject matter jurisdiction to hear the causes of action contained herein pursuant to the conventions, law and authority cited herein, the common law, and other authority.
6. Jurisdiction and venue in the Greenville County Court of Common Pleas is proper for the foregoing reasons.

FACTUAL BACKGROUND

7. The plaintiff incorporates the foregoing paragraphs as if repeated here, verbatim.

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EAST GREENVILLE
SUMMARY COURT

8. The plaintiff files this complaint pursuant to the agreement referenced above.
9. This action stems from several occurrences and Delta's tortious conduct on several occasions.
10. The plaintiff booked a round trip from Greenville Spartanburg International Airport to LaGuardia International Airport to depart on September 7, 2023, and return on September 10, 2023.
11. The plaintiff traveled to GSP on the scheduled date, held up his end of the bargain, and traveled to New York. When the plaintiff traveled to LaGuardia to return home, he noticed Delta unilaterally cancelled several flights. This was peculiar because weather conditions were fine, there was no indication any flight should be cancelled, planes were observed arriving and departing at LaGuardia, and planes were arriving and departing from airports just a few miles away.
12. The plaintiff then noticed Delta unilaterally delayed the specific flight he was supposed to leave on. The plaintiff then noticed that Delta unilaterally cancelled his flight altogether. As a result, the plaintiff was set to be stranded in New York with no flights available for two more days.
13. Upon information and belief, Delta cancelled many flights during the time in question for no valid reason. By all appearances, Delta has claimed weather caused flights to be cancelled in bad faith and as an excuse for cancelling partially empty flights in order to unreasonably pursue financial gain at the expense of inconvenience to customers. This was confirmed in the first suit when Delta attempted to use weather maps as an excuse for flight cancellations. It should be noted that the cancellations at issue took place when airports in the same general area – and presumably subject to the same whether – saw flights land and depart on schedule. Delta's

“bad weather” claims directly conflict with the plaintiff’s and others’ observations of the weather in the area and planes arriving and departing during the time in question.

14. The fact that Delta continued to double down on its position in the first suit is evidence of Delta’s unreasonableness and deceptive business practices. It is also evidence that Delta has engaged in fraud in an attempt to fit the cancellations described herein into its terms of service, even though the cancellations do not actually fit within Delta’s terms or arise from circumstances where cancellation is permissible. At a minimum, a fact question for a jury exists on the issue.
15. At no time has Delta ever offered to correct the situation it created or the damage it caused by offering compensation for lodging, food, rental car travel, fuel, personal and/or psychological injury, or any other expenses and damages. Upon information and belief, this is true for all the passengers involved, and the plaintiff reserves the right to certify a class and litigate a class action lawsuit pursuant to SCRCF 23, to the extent allowed by law.
16. Ultimately, the plaintiff incurred the costs of Uber rides, meals, a rental car, pet lodging fees, additional airport parking fees, and lost 12 hours of personal time as a direct and proximate result of Delta’s tortious conduct. The plaintiff was deprived of sleep, which constitutes a physical injury. The plaintiff was forced to rent a vehicle and drive through the night from New York to Greenville, South Carolina. During the drive from New York to South Carolina, the plaintiff observed mostly clear conditions, and did not observe conditions consistent with Delta’s claim that its cancellations were due to weather. This is important because after suit was filed, Delta submitted a weather map that is inconsistent with the plaintiff’s observations. At a minimum, a fact question on the issue exists for a jury.

17. Now, because Delta has refused to acknowledge responsibility, the plaintiff has incurred court costs and spent time drafting several court documents in addition to the damages already caused by Delta. After filing this action, Delta took the untenable position that it is not responsible for any consequential damages, no matter how egregious and deceptive its conduct and no matter how many damages Delta caused the plaintiff to incur. Delta took the unbelievable position that since it offered a flight two days later, which would cause the plaintiff to incur lodging, food, and other expenses, it discharged any duty to make the plaintiff whole. Such a position can only be viewed as harmful to the public, deceptive, and wholly unfair. To the extent Delta relies on any terms that must be agreed to when purchasing tickets, any such terms should be found to be terms of cohesion by a jury and such terms are evidence that plaintiffs have no meaningful choice in purchasing tickets with Delta.
18. The plaintiff provided written notice to Delta using Delta's app, and then tried calling the Platinum Medallion number provided by Delta so that Delta could compensate the plaintiff for the damages it caused by its tortious, fraudulent, and reckless conduct. Delta refused to compensate the plaintiff for his losses. This is consistent with Delta's conduct following the filing of this action. After the plaintiff filed suit as a last resort, he tried repeatedly to resolve the claim with Delta, even offering to resolve the case for SkyMiles, which would cost Delta nothing. In an apparent attempt to strong arm a member of the community and flex corporate muscle, Delta doubled down and communicated that it would not take responsibility or be reasonable in any way whatsoever. the plaintiff also reached out to Delta about resolution before filing this action. Again, Delta communicated unequivocally that it would take no responsibility for its conduct.

19. The defendant likely violated policies and procedures, and those violations contributed to the plaintiff's injuries. Delta definitely violated public policy and its business practices appear to be not only unfair, but dangerous to consumers. Delta violated its own "RULE 22: REFUNDS," A. 2) b) which states "No refund will apply when alternate transportation is provided by Delta and accepted by the passenger." The plaintiff never accepted what Delta proposed, which was a flight days later or a refund of SkyMiles, which did nothing to get the plaintiff home as scheduled. Delta therefore violated its own rules and terms.
20. Delta's conduct outside and beyond the flights that it cancelled and the luggage that it lost caused damage. Delta's claim that it is not "liable for any punitive, consequential or special damages arising out of...carriage or other services performed by Delt..." (Emphasis added.) does not bar damages arising from Delta's fraud and tortious conduct following its cancellations. Delta's terms also contain statements that patently show its terms are unconscionable and unenforceable. For instance, Delta claims that "Election or failure by Delta to enforce any provision of the contract of carriage shall not constitute a waiver of its rights and remedies with regard to such provision." Delta has attempted to claim that it can pick and choose whether to follow any of its terms or none of its terms, but always retain the right to rely on its terms to shield itself from liability, which cannot be the law.
21. Delta denied the plaintiff boarding for one or more of the flights described herein, and only offered alternative flights days later, which would have required the plaintiff to stay in New York overnight. Delta's terms state that if denied boarding "requires that the passenger stay overnight before continuing his/her travel, Delta will provide hotel accommodations to the passenger at no additional cost." Delta refused to honor its terms and forced the plaintiff to incur travel costs as a result.

22. In January of 2024, the plaintiff was scheduled to leave for New Zealand on a Delta flight.

Again, consistent with its unfair and deceptive business practices, Delta unilaterally cancelled the plaintiff's flight and again blamed weather. As a result, the plaintiff lost a Qantas flight he had purchased for the following day from Auckland to Melbourne. The plaintiff also lost the upgraded Delta seats for which consideration had been paid, either through gained status or cash, and also lost, in addition to the cost of the Qantas flight, the cost of upgraded seats on that flight. In addition to all this, Delta lost one of the plaintiff's bags containing thousands of dollars in equipment, causing the plaintiff to have no access to that equipment the entire time he was in Australia. Delta violated its own terms and contract of coverage, which is incorporated herein by reference, because it did not issue a full refund to include the price of upgrades, which the plaintiff paid valuable consideration in exchange for a certain seat. Delta simply pocketed as profit the extra money paid by the plaintiff without performing under the contract. Delta also never refused to lodge the plaintiff overnight, even though Delta denied the plaintiff boarding.

23. In April of 2024, the plaintiff booked purchased a trip to Lisbon, Portugal. Despite the plaintiff taking steps to make sure baggage was properly handled, Delta lost the plaintiff's bag through its failure to properly process and handle bags. As a result of Delta's violation of its own terms and general policies governing handling and moving luggage, Delta failed to deliver the plaintiff's luggage to his destination as scheduled. As a result, the plaintiff was without clothing and essential items for a significant period of time and the plaintiff's luggage was damaged. The plaintiff timely notified Delta in writing and used Delta's chat option to speak with Delta employees named Angela and Juvielyn.

24. Delta caused the plaintiff to sustain damages on several occasions as set forth above. Any monetary limits set by the Montreal Convention, the Warsaw Convention, or any other authority must be multiplied by the number of times Delta caused the plaintiff damage through delays, violations of its own terms, failure to lodge or reimburse the plaintiff as required, losing the plaintiff's luggage, and damaging the plaintiff's luggage.
25. Some or all of the defendant's actions were motivated by the unreasonable pursuit of financial gain.
26. The plaintiff is informed and believes that he is entitled to judgment against the defendant for actual, punitive, and statutory damages.
27. Delta caused the plaintiff to sustain damages in one or more of the following ways:
- a. by causing injury and damages to the plaintiff through reckless and negligent acts;
 - b. by failing to exercise even slight care;
 - c. by causing the plaintiff to miss subsequent flights with other airlines;
 - d. by losing the plaintiff's bags, making no effort to find those bags, and refusing to compensate the plaintiff for delay of and damage to his bags;
 - e. by misleading the plaintiff about his lost bags through Delta's mobile app;
 - f. by delegating locating of lost bags to incompetent and incompetent third parties;
 - g. by authorizing, adopting, and ratifying the Delta's employees' conduct toward the plaintiff;
 - h. by hiring employees who were incompetent, lacked proper education and training, or were otherwise unfit;
 - i. by promoting an atmosphere where the events described herein were likely to occur;
 - j. by mishandling claims in order to unfairly maximize profits;

- k. by making fraudulent statements related to the issues described herein;
- l. by acting in bad faith to avoid payment of monies owed;
- m. by causing unnecessary stress and delay;
- n. by causing physical injury;
- o. by engaging in unfair and deceptive business practices;
- p. in causing additional damage by creating and directing customers to be caught in needless bureaucratic red tape following cancelled flights;
- q. by engaging in the unreasonable pursuit of financial gain;
- r. by violating its own terms;
- s. by refusing to compensate the plaintiff for lost upgrades, delay, lodging, and damaged bags as required by its own terms; and
- t. in other such particulars as the evidence may show.

28. As a direct and proximate result of the defendant's conduct, the plaintiff sustained injuries and damages, including some or all of the following:

- a. monetary damages;
- b. loss of ability to work for a time;
- c. out-of-pocket expenses;
- d. psychological trauma;
- e. mental anguish;
- f. mental distress;
- g. anxiety;
- h. emotional injury;
- i. pain, suffering, and physical injury;

- j. discomfort and inconvenience;
 - k. loss of enjoyment of life;
 - l. litigation time and expense; and,
 - m. such other damages as will be shown through discovery and at trial.
29. The defendant's actions concerning the plaintiff were unfair, deceptive, and adverse to public interests. Upon information and belief, it is standard business practice for the defendant to act in the ways described above, and potentially, to civilly conspire with other companies in order to profit from commerce with members of the public like the plaintiff. Civil conspiracy and the special damages caused by that conspiracy are outside of any contract or terms. Delta caused special damages by delegating and/or conspiring with third parties in order to avoid liability for lost and damaged bags.
30. The egregiousness of Delta's conduct is compounded by the fact that after the defendant has inconvenienced customers for financial gain, instead of compensating those customers, it directs them to frustrating and time-consuming processes, which further wastes customers' time and money. This is evidenced by text chats between the plaintiff and Delta where the plaintiff has timely notified Delta following the events described above, and Delta has repeatedly refused to take measure to make the plaintiff whole. The plaintiff has submitted excerpts of certain text exchanges to Delta in the past and Delta has full logs of those chats, so Delta cannot deny timely notice in good faith.
31. The plaintiff entered into adhesion contracts with Delta wherein the Delta agreed to perform certain services in exchange for payment and agreed to certain reimbursements and compensations for delay, lodging, lost or damaged baggage, and injury.
32. Delta breached the contract it drafted, and which must be construed against it, by failing to

provide the agreed-upon services and also refused to compensate the plaintiff for expenses resulting from Delta's conduct.

33. Delta violated one or more of its own terms that included in its unfair contract of adhesion.

34. As a direct and proximate cause of the defendant's breach, the plaintiff was damaged.

35. Delta made false representations about willingness to perform services for the plaintiff in exchange for payment. The defendant knew that it would not perform some of the agreed-upon services if it chose not to, and that it would refuse to return payment or cover consequential damages if it failed to perform those services. The defendant nevertheless accepted payment for those services.

36. The defendant was dishonest in fact about the services that it agreed to provide and was unfair in its dealings with the plaintiff. Delta's dishonest and disingenuous conduct continued after suit was filed. Although Delta's counsel appears to be a fine and able lawyer, Delta itself has refused to acknowledge its unfair, deceptive, and tortious conduct, despite evidence of that conduct.

37. Upon information and belief, the plaintiff gave Delta timely written notice related to all of Delta's tortious conduct listed above. Some of the written notice was submitted to Delta before the last action was dismissed without prejudice. Delta also set forth several defenses with no basis in law or fact in prior litigation, including waiver, failure to mitigate, plaintiff's own fault (for cancelling the flight?), accord and satisfaction, *force majeure*, a defense that seems to be *res judicata*, even though the action referenced by Delta was not fully and finally litigated on the merits, a SCRCP 12(f) defense (see *Alladin Plastics, Inc. v. Wintenna, Inc.*, 390 S.E.2d 370 (1990)), and a SCRCP 12(b)(6) defense. Should Delta reassert these defenses knowing they are unfounded, Delta will have engaged in further bad faith.

38. The plaintiff seeks damages for the breach of contract, described above, and all causes of action allowed by the Airline Deregulation Act and the FAA's saving clause, including § 1106, 49 U.S.C. App. § 1506, which preserves "the remedies now existing at common law or by statute." Although violations of certain C.F.R. may not provide separate causes of action, violations are evidence of liability, and the plaintiff reserves the right to show evidence of such violations at trial.
39. Delta's actions violated and were inconsistent with public convenience and necessity
40. As a direct and proximate result of Delta's breaches, fraudulent intent, and fraudulent acts, the plaintiff has sustained damages.
41. The plaintiff is therefore informed and believes that he is entitled to judgment against the defendant for actual and punitive damages.

FOR A FIRST CAUSE OF ACTION
(Montreal Convention)

42. The plaintiff repeats the foregoing allegations as if repeated here, verbatim.
43. Delta unilaterally cancelled the plaintiff's flight to Auckland, which caused him to lose a flight from Auckland to Melbourne the following day, and then lost the plaintiff's bag when the plaintiff finally flew to Auckland. Delta also lost the plaintiff's bag when he flew to Lisbon.
44. As a result, the plaintiff did not have the equipment he needed the entire time he was in Australia, and the plaintiff spent significant time on wild goose chases effectuated by Delta. Delta also deprived the plaintiff of his bag and essential contents for a significant period of time when he was in Lisbon.
45. The plaintiff immediately notified Delta in writing and through other means that his Delta has lost/delayed/damaged his baggage on both occasions.

46. In Auckland and Melbourne, Delta could not accurately tell the plaintiff where his bags were, gave him misleading information, and ultimately lost the bag for good. It was only because the plaintiff went to the Melbourne airport on his own accord, going from third-party handler to third-party handler, that he finally tracked down his bag – through his own effort and investigation – that he finally found his bag in an airport back room. Upon information and belief, Delta conspires with and uses third-party vendors to avoid liability and limitations on liability in Delta's terms are void. Delta has non-delegable duties that it cannot escape by claiming its liability related to baggage ends when it gives bags to incompetent third parties.
47. Delta is liable to the plaintiff pursuant to the Montreal Convention, including one or more of its articles, including Article 17, 18, 19, 22, and 24¹.
48. Pursuant to Article 22, Delta is liable to the plaintiff for \$4,150 and Delta is liable for additional damages provided by law.²
49. Delta's actions before and after embarking and disembarking proximately caused the plaintiff's injuries.
50. Delta caused the plaintiff delay, inconvenience, and monetary loss. Delta caused damage to the plaintiff's bags on both occasions that does not amount to normal or preexisting wear and tear. Because of Delta's loss and delay of the bags, it forced the bags to be mishandled, crammed into delivery trucks, scratched, scraped, torn, become wet, piled haphazardly onto other luggage, and to generally be mishandled.
51. The plaintiff gave notice to the defendant of damages caused by the defendants' actions.

¹ The plaintiff's claims are not completely preempted by the Montreal Convention. See *Sonoco Prods. Co. v. Physicians Health Plan, Inc.* 338 F.3d 366 (4th Cir. 2003).

² The plaintiff may recover additional damages for other causes of action. See *Tseng v. El Al Israel Airlines, Ltd.*, 525 U.S.155 (1999).

52. Delta never provided the plaintiff with any supplies or reimbursement for items purchased as a result of lost and damaged baggage.

53. As a direct and proximate result of the defendants' acts and omissions, the plaintiff has been damaged.

FOR A SECOND CAUSE OF ACTION
(Warsaw Convention)

54. The plaintiff repeats the foregoing allegations as if repeated here, verbatim.

55. Delta caused the plaintiff to sustain damages, including one or more, but not limited to the following:

- a. Delay and damage as contemplated by Article 17, including subparts 2. and 3.;
- b. Delay and damages as contemplated by Article 18;
- c. Delay and damages as contemplated by Article 19;
- d. Other damages as contemplated by other Articles of the Convention;
- e. Physical injury and/or pain;
- f. Retention or loss of weight; and
- g. Other physical manifestations as may be shown through discovery and at trial.

56. For the reasons listed above, some or all of Delta's terms are invalid as contemplated by Article 26.

57. The plaintiff timely notified Delta of the damage and delay it caused in a timely fashion and satisfied the requirements of Article 31 of the Convention.

FOR A THIRD CAUSE OF ACTION
(Claim for a Declaratory Judgment and Breach of Contract)

58. The plaintiff repeats the foregoing allegations as if repeated here, verbatim.

59. Delta's terms and contract of carriage does not allow a bargained-for exchange, is wholly one-sided and unfair, is not presented in a fair way, is unconscionable, and presents a contract of

adhesion. Delta's uses its one-sided terms to engage in deceptive business practices with impunity and at its whim.

60. Delta's contract and its terms should be ruled to be void and unconscionable.
61. Pursuant to the South Carolina Uniform Declaratory Judgments Act, S.C. Code § 15-53-10 *et seq.*, the plaintiff seeks a judicial declaration of the rights, status, and other legal relationships of the parties to this action regarding the various claims against the defendant.
62. The plaintiff seeks a declaration as to the rights and obligations of the parties affected by Delta's terms and its contract of carriage.
63. Delta has failed to present its one-sided terms in a reasonable way, engaged in fraud, and sought to absolve itself of virtually all responsibility for tortious conduct in a way that is not at odds with the law, and which violates the constitutions of South Carolina and the United States.
64. Upon information and belief, Delta's terms violate either one or more of the Conventions cited herein and governing law or the spirit of those Conventions and law.
65. Upon information and belief, Delta engaged in one or more of the following:
 - a. Violation and breach of general duties of good faith and fair dealing;
 - b. Fraud and tortious conduct, including violation of rules and governing policies promulgated by itself, administrative bodies, or other entities;
 - c. Creation of unfair terms and contracts of adhesion customers have no meaningful choice in accepting;
 - d. Tortious conduct outside the parameters of and what is contemplated by its terms and contract, the liability for which conduct is not limited by its terms and contract; and
 - e. Other tortious, unfair, and deceptive conduct as will be shown through discovery and at trial.

66. The plaintiff therefore seeks several declarations, including the validity of Delta's terms and contract, which conduct is governed by Delta's terms and contract, and whether Delta's conduct and rules adhere to governing law.
67. Pursuant to the plain language of the Declaratory Judgments Act, the Act must "be construed liberally. S.C. Code § 15-53-130 *et seq.*
68. All determinations of facts, rights, status, and other issues prayed for herein and related to this action must be made by a "in the same manner as issues of fact are tried and determined in other civil actions" and the right to a jury trial is preserved. S.C. Code § 15-53-9 *et seq.*

FOR A FOURTH CAUSE OF ACTION
(Fraud)

69. The plaintiff repeats the foregoing allegations as if repeated here, verbatim.
70. Delta engaged in fraudulent conduct as described above, and the conduct described above satisfies the elements of fraud.
71. Delta made one or more (1) false (2) statements or representations which were (3) material to the damages sustained by the plaintiff, the breach of the adhesion contracts from which it sought to profit, damage, delay, and loss related to luggage, and other issues. Delta had (4) knowledge of the falsity and misrepresentation of its statements. By all appearances, Delta's primary motivation for cancellations and disregard for luggage and customers is profit-driven. Delta has perceived impunity for tortious conduct, reflected in its contract of carriage, which must be construed against Delta. Delta's actions and its one-sided terms are evidence of Delta's (5) intent that its falsity and disregard for truth be acted upon. Whether it was profits or weather that pushed Delta's decisions to cancel flights and mislead the plaintiff and other customers about loss and damage related to luggage is a fact question for a jury. In this case, the hearer had no choice but to believe Delta, and the hearer was (6) ignorant of falsity, at least initially

before observations were made that proved Delta's deception, including observations of planes, and then later, observations related to luggage that proved Delta had lied about luggage it had lost. The plaintiff and others (7) relied on Delta's lies as if they were true, as shown in the correspondence related to some or all of Delta's tortious conduct described herein. The plaintiff had a (8) right to rely on Delta's deceptive representations and Delta's deceptions (9) proximately caused the plaintiff to be damaged. The circumstances constituting Delta's fraud is stated with particularity in this paragraph and the other paragraphs of the complaint. See *Ardis v. Cox*, 431 S.E.2d 267 (1993).

72. The plaintiff is therefore informed and believes he is entitled to judgment against Delta.

73. Delta cannot contract out of liability for its fraudulent conduct, and liability for such conduct is not limited by Delta's one-sided terms.

WHEREFORE, the plaintiff requests a jury trial and judgment against Delta for:

- a. actual damages;
- b. all statutory damages, punitive damages, consequential damages, and incidental damages allowed by law;
- c. damages pursuant to the Montreal Convention;
- d. damages pursuant to the Warsaw Convention;
- e. costs; and,
- f. such other relief the Court deems just and equitable.

Respectfully submitted,

Hawkins & Jedziniak, LLC

s/Joshua T. Hawkins

Joshua T. Hawkins, S.C. Bar No. 78470

Helena L. Jedziniak, S.C. Bar No. 100825

Greenville, South Carolina
May 31, 2024

Ethan L. Jedziniak, S.C. Bar No. 105785
1225 South Church Street
Greenville, South Carolina 29605
(864) 275-8142 (telephone)
(864) 752-0911 (facsimile)
josh@hjlsc.com
helena@hjlsc.com
ethan@hjlsc.com
Attorneys for Plaintiff

Pursuant to Rule 38, *SCRCP*, the plaintiff demands a trial by jury on all issues triable to a jury.

s/ Joshua T. Hawkins
Joshua T. Hawkins

MICHAEL B.T. WILKES, P.A. ♦
C. DANIEL ATKINSON ▪
J. ALEXANDER JOYNER ▪
BRIAN M. PETERS, JR. *
JUSTIN M. MOFFITT •
M. TAYLOR PETTY



WILKES
ATKINSON &
JOYNER, LLC
ATTORNEYS AT LAW

COPY

Reply to: SPARTANBURG OFFICE
127 DUNBAR STREET, SUITE 200
SPARTANBURG, SC 29306
PHONE: 864.591.1113
TOLL FREE: 866.920.1113
FAX: 864.591.1767

- CHARLESTON OFFICE
- ALSO MEMBER GA BAR
- ALSO MEMBER NC BAR
- ♦ CERTIFIED MEDIATOR
- * ALSO MEMBER OF FL BAR

CHARLESTON OFFICE
320 BROAD STREET, SUITE 220
CHARLESTON, SC 29401
PHONE: 843.737.6229

WWW.WAJLAWFIRM.COM

August 15, 2024

Via U.S. Mail Only

Michelle Pegg
East Greenville Summary Court
320 W. Main St.
Taylors, SC 29687

Re: *Joshua Hawkins, Plaintiff v Delta Air Lines, Inc., Defendant*
East Greenville Summary Court
Case Number: 2024-CV- 23-2415

Dear Michelle:

On behalf of Delta Air Lines, Inc., please find enclosed an original and one copy of the *Notice of Appearance of C. Daniel Atkinson and Brian M. Peters, Jr., Motion to Dismiss in Lieu of Answer*, and *Certificate of Service*. Please file the originals and return filed stamped copies to me in the envelope provided.

By copy of this letter, I am serving Plaintiff's counsel with same. If you have any questions, please advise.

Sincerely,

Judy J. Saad
jsaad@wajlawfirm.com

Enclosures

cc: Joshua T. Hawkins, Esq. ✓

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Joshua Hawkins,)
)
)
Plaintiff,)
)
vs.)
)
Delta Air Lines, Inc.)
)
)
Defendant.)
_____)

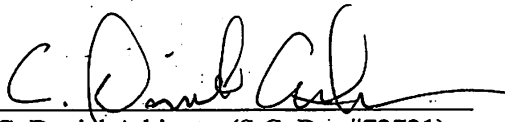
IN THE MAGISTRATE COURT

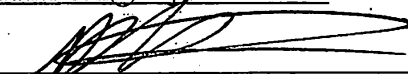
Case No.: 2024-CV-23-2415

**NOTICE OF APPEARANCE OF
C. DANIEL ATKINSON
AND BRIAN M. PETERS**

PLEASE TAKE NOTICE that the undersigned hereby gives notice of appearance as counsel for Defendant Delta Air Lines, Inc., in the referenced action, and requests the receipt of all notices given or required to be given in this matter by the Clerk of Magistrate's Court and any other persons or parties involved herein.

August 14, 2024


C. Daniel Atkinson (S.C. Bar #72721)
datkinson@wajlawfirm.com


Brian M. Peters, Jr. (S.C. Bar #105911)
bpeters@wajlawfirm.com

WILKES ATKINSON & JOYNER, LLC
127 Dunbar Street, Suite 200
Spartanburg, SC 29306
(864) 591-1113

Attorneys for Defendant

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE COURT
	)	
COUNTY OF GREENVILLE	)	Case No.: 2024-CV-23-2415
	)	
Joshua Hawkins,	)	
	)	
Plaintiff,	)	MOTION TO DISMISS
	)	IN LIEU OF ANSWER
vs.	)	
	)	
Delta Air Lines, Inc.	)	
	)	
Defendant.	)	
	)	

COMES NOW, Delta Air Lines, Inc. (“Delta”), by and through the undersigned counsel, and pursuant to Rule 2, SCRMC, and Rules 9(b), 10(c), 12(b)(1), 12(b)(6), and 12(h)(3), SCRCP, files its Motion to Dismiss Plaintiff Joshua Hawkins’ Complaint, and in support thereof, states as follows:

I. Lack of Subject Matter Jurisdiction.

1. Pursuant to Rule 12(b)(1), SCRCP, this Court does not have subject matter jurisdiction over any cause of action related to Plaintiff’s domestic flight, because such causes of action are preempted by the Airline Deregulation Act, 49 U.S.C. § 41713(b)(1), (“ADA”). Therefore, such causes of action must be dismissed to the extent they seek recovery for the domestic flight. *Am. Airlines, Inc. v. Wolens*, 513 U.S. 219, 232–33, 115 S. Ct. 817, 826, 130 L. Ed. 2d 715 (1995); *Baker Hosp. v. Isaac*, 301 S.C. 248, 250, 391 S.E.2d 549, 551 (1990) (“The [Court of Appeals of Michigan] properly noted that the pre-emption contention was one involving subject matter jurisdiction.”); *Hawkins v. Am. Airlines*, No. 2020-001150, 2024 WL 1655457, at *1 (S.C. Ct. App. Apr. 17, 2024) (“As to Hawkins’s claims regarding insufficient services rendered, the circuit court properly found these claims were preempted by the Airline Deregulation Act of 1978 (ADA).”).

2. Pursuant to Rule 12(b)(1), SCRCF, this Court does not have subject matter jurisdiction over the state law causes of action related to Plaintiff's international flights, because such causes of action are preempted by the Montreal Convention.¹ Therefore, such causes of action must be dismissed to the extent they seek recovery for the international flights. *See We CBD, LLC v. Planet Nine Priv. Air, LLC*, 109 F.4th 295, 303 (4th Cir. 2024) ("As reflected above, the Montreal Convention provides the exclusive remedy for claims within its scope."); *Hawkins v. Am. Airlines*, No. 2020-001150, 2024 WL 1655457, at *1 (S.C. Ct. App. Apr. 17, 2024) ("[I]f an action for damages, however founded, falls within one of the [Montreal] Convention's three damage provisions, the Convention provides *the sole cause of action* under which a claimant may seek redress for her injuries.") (internal quotations omitted) (emphasis in original).

II. Failure to Allege Facts Sufficient to Constitute Causes of Action.

a. First Cause of Action: Montreal Convention.

1. Pursuant to Rule 12(b)(6), SCRCF, and with respect to the domestic flight, Plaintiff fails to allege facts sufficient to constitute a cause of action under the Montreal Convention, because domestic flights are not actionable under the Montreal Convention. *See* Montreal Convention, arts. 1, 29.

2. Pursuant to Rule 12(b)(6), SCRCF, Plaintiff fails to allege facts sufficient to constitute a cause of action under Article 18 of the Montreal Convention, because Plaintiff does not allege any facts about "cargo."

3. Pursuant to Rule 12(b)(6), SCRCF, Plaintiff fails to allege facts sufficient to constitute a cause of action under Article 19 of the Montreal Convention, because recovery for

¹ The full name of the Montreal Convention is "The Convention for the Unification of Certain Rules for International Carriage by Air." Convention for the Unification of Certain Rules for Int'l Carriage by Air, May 28 1999, S. Treaty Doc. No. 106-45, 2242 U.N.T.S. 309, 1999 WL 33292734 (entered into force Nov. 4, 2003), (hereinafter, "Montreal Convention").

“purely mental injuries,” including “inconvenience damages” is not allowed under the Montreal Convention. *E. Airlines, Inc. v. Floyd*, 499 U.S. 530, 534, 111 S. Ct. 1489, 1493, 113 L. Ed. 2d 569 (1991); *Lee v. Am. Airlines Inc.*, 355 F.3d 386, 387 (5th Cir. 2004); *Seshadri v. Brit. Airways PLC*, No. 3:14-CV-00833-BAS, 2014 WL 5606542, at *10 (S.D. Cal. Nov. 4, 2014); Montreal Convention, art. 29.

b. Second Cause of Action: Warsaw Convention.

1. Pursuant to Rules 12(b)(1) and 12(b)(6), SCRCF, Plaintiff fails to allege facts sufficient to constitute a cause of action under the Warsaw Convention, because the Warsaw Convention has been superseded by the Montreal Convention, and therefore this Court does not have subject matter jurisdiction to hear claims brought under the Warsaw Convention. *See We CBD, LLC v. Planet Nine Priv. Air, LLC*, 109 F.4th 295, 301 (4th Cir. 2024); *Hawkins v. Am. Airlines*, No. 2020-001150, 2024 WL 1655457, at *1 (S.C. Ct. App. Apr. 17, 2024) (“[I]f an action for damages, however founded, falls within one of the Convention’s three damage provisions, the Convention provides *the sole cause of action* under which a claimant may seek redress for her injuries.”) (internal quotations omitted) (emphasis in original).

c. Third Cause of Action: “Claim for a Declaratory Judgment and Breach of Contract.”

1. Pursuant to Rule 12(b)(6), SCRCF, to the extent the “Claim for a Declaratory Judgment and Breach of Contract” cause of action is not preempted by the ADA and the Montreal Convention, Plaintiff fails to state a cause of action for declaratory judgment or breach of contract for the following reasons:

- a. This Court cannot provide a declaratory judgment on a contract that is regulated exclusively by the federal government. *See Ord. of Ry. Conductors of Am. v. S. Ry. Co.*, 339 U.S. 255, 256, 70 S. Ct. 585, 586, 94 L. Ed. 811 (1950).

- b. For the international flights, Plaintiff fails to specify the specific contract provision(s) breached, which is necessary to state a cause of action for breach of contract under Georgia law, which governs these contracts.² *Brooks v. Branch Banking & Tr. Co.*, 107 F. Supp. 3d 1290, 1296 (N.D. Ga. 2015).
- c. To the extent Plaintiff alleges any provisions of the applicable Contracts of Carriage, the Contracts of Carriage negate Plaintiff's allegations and therefore Plaintiff fails to allege a breach of contract cause of action. *See Estate of Revis by Revis v. Revis*, 326 S.C. 470, 480, 484 S.E.2d 112, 118 (Ct. App. 1997); *see also Goines v. Valley Cmty. Servs. Bd.*, 822 F.3d 159, 166 (4th Cir. 2016) (“[I]f a plaintiff ‘attaches documents and relies upon the documents to form the basis for a claim or part of a claim, dismissal is appropriate if the document negates the claim.’”) (quoting *Thompson v. Illinois Dep’t of Prof’l Regulation*, 300 F.3d 750, 754 (7th Cir. 2002)); *Gardner v. Newsome Chevrolet-Buick, Inc.*, 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991) (“Since our Rules of Procedure are based on the Federal Rules [and] where there is no South Carolina law, we look to the construction placed on the Federal Rules of Procedure.”).³
- d. Plaintiff cannot recover on a claim for breach of the covenant of good faith and fair

² For Plaintiff's September 2023 domestic flight (*see* Compl. at ¶ 10), the full Domestic Contract of Carriage is attached hereto as **Exhibit A**. For Plaintiff's January 2024 flight to New Zealand (*see* Compl. at ¶ 22) and Plaintiff's April 2024 flight to Portugal (*see* Compl. at ¶23), the full International Contract of Carriage is attached hereto as **Exhibit B**.

³ Because Plaintiff incorporated these Contracts by reference in his Complaint and they are central to Plaintiff's third cause of action, they are a part of the Complaint for all purposes pursuant to Rule 10(c), SCRPC—even a Motion to Dismiss. *See, e.g., Day v. Taylor*, 400 F.3d 1272, 1276 (11th Cir. 2005) (“Our prior decisions also make clear that a document need not be physically attached to a pleading to be incorporated by reference into it[.]”).

dealing without alleging a breach of an express term of the contract. *Brooks v. Branch Banking & Tr. Co.*, 107 F. Supp. 3d 1290, 1296 (N.D. Ga. 2015).

- e. Based on the facts alleged in this cause of action, Plaintiff's "Claim for a Declaratory Judgment and Breach of Contract" is *res judicata*, pursuant to the Joint Stipulation of Dismissal without Prejudice filed in the Court of Common Pleas Case No.: 2024-CP-23-00556.⁴

d. Fourth Cause of Action: "Claim for a Declaratory Judgment and Breach of Contract."

1. Pursuant to Rules 9(b) and 12(b)(6), SCRCF, to the extent the "Fraud" cause of action is not preempted by the ADA and the Montreal Convention, Plaintiff fails to allege the circumstances constituting the fraud with particularity, and therefore, such cause of action should be dismissed.

2. Based on the facts alleged in this cause of action, Plaintiff's cause of action for "Fraud" is *res judicata*, pursuant to the Joint Stipulation of Dismissal without Prejudice filed in the Court of Common Pleas Case No.: 2024-CP-23-00556. *See Ball v. Canadian Am. Exp. Co.*, 314 S.C. 272, 276, 442 S.E.2d 620, 623 (Ct. App. 1994) ("Breach of contract accompanied by a fraudulent act is different. It requires proof of fraudulent intent relating to the breaching of the contract and not merely to its making.").

These Motions are based upon the Complaint, federal law, Georgia law, South Carolina law, and any Brief of Law to be filed hereafter. Pursuant to Rule 11, SCRCF, the undersigned certified that no consultation was required prior to filing because this is a Motions to Dismiss.

⁴ A copy of the Joint Stipulation of Dismissal without Prejudice is attached hereto as **Exhibit C**.

August 15, 2024

By: 

C. Daniel Atkinson (S.C. Bar #72721)

datkinson@wajlawfirm.com

Brian M. Peters, Jr. (S.C. Bar #105911)

bpeters@wajlawfirm.com

WILKES ATKINSON & JOYNER, LLC

127 Dunbar Street, Suite 200

Spartanburg, SC 29306

(864) 591-1113

Attorneys for Defendant

5

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Joshua Hawkins,)
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Plaintiff,)
)
vs.)
)
Delta Air Lines, Inc.,)
)
Defendant.)
)

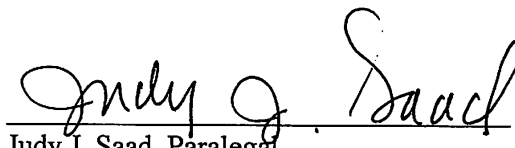
IN THE MAGISTRATE'S COURT

Case No.: 2024-CV-23-2415

CERTIFICATE OF SERVICE

I certify that on **August 15, 2024**, I caused to be served a true and correct copy of the foregoing *Defendant's Notices of Appearance of C. Daniel Atkinson and Brian M. Peters, Jr.* and *Motion to Dismiss in Lieu of Answer* via U.S. Mail, postage pre-paid, and E-mail, addressed as follows:

Joshua T. Hawkins, Esq.
Helena L. Jedziniak, Esq.
Ethan L. Jedziniak, Esq.
Hawkins & Jedziniak, LLC
1225 South Church St.
Greenville, SC 29605
josh@hillcsc.com
helena@hillcsc.com
ethan@hillcsc.com



Judy J. Saad, Paralegal

jsaad@wajlawfirm.com

Wilkes Atkinson & Joyner, LLC

MICHAEL B.T. WILKES, P.A. ♦
C. DANIEL ATKINSON ▪ ▪
J. ALEXANDER JOYNER ▪
BRIAN M. PETERS, JR. *
JUSTIN M. MOFFITT ▪
M. TAYLOR PETTY



WILKES
ATKINSON &
JOYNER, LLC
ATTORNEYS AT LAW

COPY

Reply to: SPARTANBURG OFFICE
127 DUNBAR STREET, SUITE 200
SPARTANBURG, SC 29306
PHONE: 864.591.1113
TOLL FREE: 866.920.1113
FAX: 864.591.1767

CHARLESTON OFFICE
320 BROAD STREET, SUITE 220
CHARLESTON, SC 29401
PHONE: 843.737.6229

WWW.WAJLAWFIRM.COM

- CHARLESTON OFFICE
- ALSO MEMBER GA BAR
- ALSO MEMBER NC BAR
- ♦ CERTIFIED MEDIATOR
- * ALSO MEMBER OF FL BAR

September 23, 2024

Via Email and U.S. Mail

Michelle Pegg
East Greenville Summary Court
320 W. Main St.
Taylors, SC 29687
dpegg@greenvillecounty.org

Re: *Joshua Hawkins, Plaintiff v Delta Air Lines, Inc., Defendant*
East Greenville Summary Court
Case Number: 2024-CV- 23-2415

Dear Michelle:

On behalf of Delta Air Lines, Inc., please find enclosed an original and one copy of the *Brief in Support of Defendant's Motion to Dismiss in Lieu of Answer*, and *Certificate of Service*. Please file the originals and return filed stamped copies to me in the envelope provided.

By copy of this letter, I am serving Plaintiff's counsel with same. If you have any questions, please advise.

Sincerely,

Judy J. Saad
jsaad@wajlawfirm.com

Enclosures
cc: Joshua T. Hawkins, Esq.

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE COURT
	)	
COUNTY OF GREENVILLE	)	Case No.: 2024-CV-23-2415
	)	
Joshua Hawkins,	)	
	)	
Plaintiff,	)	BRIEF IN SUPPORT OF
	)	DEFENDANT’S MOTION TO DISMISS
vs.	)	IN LIEU OF ANSWER
	)	
Delta Air Lines, Inc.	)	
	)	
Defendant.	)	
_____	)	

COMES NOW, Delta Air Lines, Inc. (“Delta”), by and through the undersigned counsel, and files its Brief in Support of its Motion to Dismiss Plaintiff Joshua Hawkins’ Complaint in Lieu of Answer, and in support thereof, states as follows:

INTRODUCTION

The United States government has the exclusive authority to regulate commercial airlines. For international flights, the United States has ratified the Montreal Convention,¹ which provides the exclusive remedies for claims arising from international air travel. For domestic flights, the Airline Deregulation Act (“ADA”)² expressly forbids the states from imposing their own standards upon the airlines. Greenville attorney Joshua Hawkins, proceeding *pro se* here, knows this already. In 2020, he sued another airline in a *pro se* action in Circuit Court and he brought similar causes

¹ The full name of the Montreal Convention is “The Convention for the Unification of Certain Rules for International Carriage by Air.” Convention for the Unification of Certain Rules for Int’l Carriage by Air, May 28 1999, S. Treaty Doc. No. 106-45, 2242 U.N.T.S. 309, 1999 WL 33292734 (entered into force Nov. 4, 2003), (hereinafter, “Montreal Convention”).

² 49 U.S.C. § 41713(b)(1).

of action arising from a different international flight.³ The Circuit Court recognized the clear preemptive scope of the Montreal Convention and the ADA and dismissed those causes of action for lack of subject matter jurisdiction. The Court of Appeals affirmed that decision in April.⁴ There is no reason for this Court to do any differently here.

STANDARDS OF REVIEW

I. Rule 12(b)(1), SCRPC: Lack of Subject Matter Jurisdiction.

When this Court considers its own subject matter jurisdiction, this Court is permitted to “consider[] affidavits or other evidence proving lack of jurisdiction.” *Baird v. Charleston Cnty.*, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999). “Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.” Rule 12(h)(3), SCRPC. If the Court grants a Rule 12 Motion, the Court is not required to include specific findings of facts or conclusions of law in its order. Rule 52(a), SCRPC; *Santos v. Harris Inv. Holdings, LLC*, 439 S.C. 214, 219, 886 S.E.2d 483, 485–86 (Ct. App. 2023) (collecting cases), *reh’g denied* (May 15, 2023).

II. Rule 12(b)(6), SCRPC: Failure to Allege Facts Sufficient to State a Cause of Action.

To the extent this Court considers Delta’s Rule 12(b)(6), SCRPC motion to dismiss, this Court is limited to the facts as alleged in a plaintiff’s complaint. *Rice-Marko v. Wachovia Corp.*, 398 S.C. 301, 307, 728 S.E.2d 61, 64 (Ct. App. 2012). Nevertheless, this Court is not bound to

³ *Hawkins v. American Airlines, et al.*, Order Granting Defendant American Airlines, Inc.’s Motion to Dismiss at pp. 3-4 ¶¶ 13-14, Greenville County Court of Common Pleas, Case No. 2020-CP-23-01364 (entered August 5, 2020); *see also* Complaint at pp. 4-6, Greenville County Court of Common Pleas, Case No. 2020-CP-23-01364 (filed March 3, 2020) (bringing causes of action in Negligence, Violation of the South Carolina Unfair Trade Practices Act, and Breach of Contract Accompanied by Fraudulent Act, among others).

⁴ *Hawkins v. Am. Airlines*, No. 2020-001150, 2024 WL 1655457 (S.C. Ct. App. Apr. 17, 2024).

rely on *unreasonable* inferences based on the facts alleged. *See Freemantle v. Preston*, 398 S.C. 186, 192, 728 S.E.2d 40, 43 (2012). Nor is this Court required to submit to conclusory allegations contained in a complaint. *See Power Prod. & Servs. Co. v. Kozma*, 379 S.C. 423, 429–30, 665 S.E.2d 660, 663–64 (Ct. App. 2008); *Jones v. Gilstrap*, 288 S.C. 525, 528, 343 S.E.2d 646, 648 (Ct. App. 1986). Again, if the Court grants a Rule 12 Motion, the Court is not required to include specific findings of facts or conclusions of law in its order. Rule 52(a), SCRCF; *Santos*, 439 S.C. at 219, 886 S.E.2d at 485–86 (collecting cases).

III. Rule 10(c), SCRCF: Documents Attached to or Incorporated by Reference into a Complaint Are Valid to Consider in a Rule 12 Motion.

When a plaintiff attaches a document as an exhibit to a pleading, the document “is a part thereof for all purposes[.]” Rule 10(c), SCRCF. Consequently, if there is a conflict between the exhibit and the plaintiff’s allegations, the exhibit controls. *See Estate of Revis by Revis v. Revis*, 326 S.C. 470, 480, 484 S.E.2d 112, 118 (Ct. App. 1997); *see also Goines v. Valley Cmty. Servs. Bd.*, 822 F.3d 159, 166 (4th Cir. 2016) (“[I]f a plaintiff ‘attaches documents and relies upon the documents to form the basis for a claim or part of a claim, dismissal is appropriate if the document negates the claim.’”) (quoting *Thompson v. Illinois Dep’t of Prof’l Regulation*, 300 F.3d 750, 754 (7th Cir. 2002)).

If the plaintiff incorporates documents by reference in the complaint but fails to attach them to the complaint, the document may still be considered part of the pleading for all purposes, even if the document is only presented to the Court as part of a defendant’s Rule 12(b)(6) Motion to Dismiss. *Brazell v. Windsor*, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009) (“In our view, allowing a trial court to consider documents that are incorporated by reference in the complaint but not actually attached thereto prevents a plaintiff from benefiting from his own oversight or from surviving a motion to dismiss by intentionally omitting documents upon which their claims

are based.”); *see also Santos*, 439 S.C. at 221 n. 1, 886 S.E.2d at 486 n. 1; *Day v. Taylor*, 400 F.3d 1272, 1276 (11th Cir. 2005). If the Court considers such documents, the Rule 12(b)(6) Motion to Dismiss does not convert to a Rule 56 Motion for Summary Judgment. *Brazell*, 384 S.C. at 516, 682 S.E.2d at 826.

Similarly, this Court may consider documents in the public record, such as court filings, when deciding a Motion to Dismiss without automatically converting the Motion to a Motion for Summary Judgment. *See Blue Tree Hotels Inv. (Canada), Ltd. v. Starwood Hotels & Resorts Worldwide, Inc.*, 369 F.3d 212, 217 (2d Cir. 2004) (“[W]e may also look to public records, including complaints filed in state court, in deciding a motion to dismiss.”); *see also McElveen v. Cincinnati Ins. Co.*, 422 F. Supp. 3d 1068, 1075 n. 5 (D.S.C. 2019) (“The Complaint itself quotes the Order, and Plaintiff does not contest its authenticity.”); *Witthohn v. Fed. Ins. Co.*, 164 F. App’x 395, 397 (4th Cir. 2006) (“[T]he fact that Witthohn’s complaint is barred by res judicata is evident from review of the state court documents, even without consideration of the settlement agreement.”).⁵

RELEVANT PROCEDURAL HISTORY AND PLAINTIFF’S ALLEGATIONS

Delta presents the facts as alleged in the Complaint, but Delta does not admit the accuracy of same. Plaintiff’s Complaint arises from three separate flights—two of which he took while he was already suing Delta.

September 10, 2023: Domestic Flight Allegations (“September 2023 Domestic Flight”).

Plaintiff purchased a round-trip ticket for a flight with Delta from Greenville-Spartanburg International Airport to LaGuardia International Airport, departing September 7, 2023 and

⁵ “Since our Rules of Procedure are based on the Federal Rules [and] where there is no South Carolina law, we look to the construction placed on the Federal Rules of Procedure.” *Gardner v. Newsome Chevrolet-Buick, Inc.*, 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991).

returning September 10, 2023. (Compl. at ¶¶ 10-11.) Plaintiff admits he took the first flight, using that portion of his ticket, and the first flight had no issues. (See Compl. at ¶ 11.) On September 10, 2023, when Plaintiff went to LaGuardia to use the remaining portion of his ticket, the flight was delayed and then cancelled due to weather. (See Compl. at ¶¶ 11-13.) Plaintiff refused to take the next available flight Delta offered him, which was scheduled to depart two days later. (See Compl. at ¶¶ 16-17, 19.) Instead, he voluntarily drove himself straight home through the night, which “deprived [him] of sleep, which constitutes a physical injury.” (See Compl. at ¶¶ 16-17, 19.) Plaintiff, from his observation at the airport, alleges the weather was fine and he observed “mostly clear conditions” from the ground as he drove himself home. (Compl. at ¶¶ 11, 16.) Plaintiff alleges that Delta never reimbursed him for the cost of “Uber rides, meals, a rental car, pet lodging fees, additional airport parking fees, and . . . 12 hours of personal time.” (Compl. at ¶ 16.) According to Plaintiff, Delta “[n]ever offered to correct the situation it created or damage it caused by offering compensation for . . . any other expenses and damages,” yet, Plaintiff alleges that he refused a refund of SkyMiles. (Compl. at ¶¶ 15, 19.)

September 15, 2023: Plaintiff Files a Suit for the Domestic Flight in this Magistrate Court.

Five days after the cancelled flight, Plaintiff Hawkins, an attorney, filed a lawsuit on his own behalf against Delta in this Magistrate Court. See Complaint, East Greenville Summary Court Magistrate Court, Case No. 2023CV2310304093 (filed Sept. 15, 2023). Plaintiff eventually amended his Complaint on January 24, 2024, to allege damages in excess of the Magistrate Court jurisdictional limit. A few days later, the case was transferred to the Greenville County Circuit Court. See Certificate of Transmittal, Greenville County Court of Common Pleas, Case No. 2024-CP-23-00556 (entered Jan. 26, 2024).

January 2024: New Zealand International Flight Allegations (“January 2024 New Zealand Flight”)

Ironically, also on January 24,⁶ 2024, Plaintiff was slated to take a Delta flight out of Greenville, with several connecting flights, ultimately arriving in Auckland, New Zealand. (*See* Compl. at ¶ 22.) Delta cancelled this flight due to weather conditions. (*See* Compl. at ¶ 22.) Plaintiff alleges he lost the value of the seat on his booked flight against the seat he accepted on the next available flight to Auckland, New Zealand. (*See* Compl. at ¶ 22.) It is unclear whether that “upgraded” seat was specifically purchased by Plaintiff or was simply a complimentary seat upgrade given to Plaintiff as a part of his Delta loyalty club membership. (*See* Compl. at ¶ 22.) Connected with this cancellation, Plaintiff alleges Delta “lost one of the plaintiff’s bags containing thousands of dollars in equipment[.]” (Compl. at ¶ 22.) Because the bag was “lost,” Plaintiff had “no access to that equipment the entire time” he was on his vacation. (*See* Compl. at ¶¶ 22, 44.)

Additionally, because of the flight cancellation, Plaintiff alleges he lost a separate flight from Auckland, New Zealand to Melbourne, Australia provided by Qantas (an Australian airline). (*See* Compl. at ¶ 22.) Plaintiff similarly alleges he lost the value of the seat on his booked Qantas flight against the seat he accepted on the replacement Qantas flight to Melbourne. (*See* Compl. at ¶ 22.)

Plaintiff advised Delta about the “lost” bag, but “Delta could not accurately tell the plaintiff where his bags were.” (*See* Compl. at ¶ 46.) After Plaintiff “spent significant time on wild goose chases effectuated by Delta,” he found the “lost” bag in the possession of a third-party vendor in a “back room” at the Melbourne Airport. (*See* Compl. at ¶¶ 45-46.) Plaintiff alleges he notified Delta that this bag was damaged. (*See* Compl. at ¶ 45.) Plaintiff appears to have had no issues on his return to the United States. (*See* Compl. at ¶¶ 22, 45-46.)

⁶ The specific date was revealed in the prior case, but this Court need not consider this exact date in rendering its decision.

March and April 2024: Second Amended Complaint, Court of Appeals Ruling, and Joint Stipulation of Dismissal.

After his vacation to New Zealand and Australia, in March 2024, Plaintiff filed a Second Amended Complaint in Circuit Court adding claims for the January 2024 New Zealand Flight. In total, Plaintiff alleged the following causes of action for both the September 2023 and January 2024 flights: (1) Negligence/Gross Negligence/Recklessness; (2) Unfair Trade Practices Act Violation; (3) Breach of Contract Accompanied by a Fraudulent Act; and (4) Montreal Convention. *See* Second Am. Compl., Greenville County Court of Common Pleas, Case No. 2024-CP-23-00556 (filed March 15, 2024). On the morning of April 9, 2024, the day Delta's Motion to Dismiss was set to be heard, Plaintiff and Delta entered into and filed a Joint Stipulation of Dismissal. In that Joint Stipulation, Plaintiff agreed to dismiss the following causes of action with prejudice (1) Negligence/Gross Negligence/Recklessness; (2) Unfair Trade Practices Act Violation; and (3) Breach of Contract Accompanied by a Fraudulent Act. (Exhibit C to Delta's Motion to Dismiss, Joint Stipulation of Dismissal without Prejudice at ¶ 1.) All other causes of action, Plaintiff dismissed without prejudice, with Plaintiff allowed to refile an action on or before October 12, 2024. (Exhibit C to Delta's Motion to Dismiss, Joint Stipulation of Dismissal without Prejudice at ¶ 3.)

Eight days later, and in a separate matter, the Court of Appeals affirmed the Circuit Court's Order dismissing a 2020 lawsuit Plaintiff Hawkins filed against American Airlines and other defendants arising from similar flight and baggage delays. *See Hawkins v. Am. Airlines*, No. 2020-001150, 2024 WL 1655457 (S.C. Ct. App. Apr. 17, 2024) (unpublished). The Court of Appeals affirmed the Circuit Court's ruling that Plaintiff could not bring his state law claims, because they were preempted by the Montreal Convention and the ADA. *See id.*

April 2024: Portugal International Flight Allegations (“April 2024 Portugal Flight”).

At some time in April 2024, Plaintiff again chose to fly with Delta to Lisbon, Portugal. (Compl. at ¶ 23.) While this flight was not cancelled or delayed by weather, Plaintiff only alleges that Delta “failed to deliver the plaintiff’s luggage to his destination as scheduled.” (Compl. at ¶ 23.) Without this luggage, Plaintiff was “without clothing and essential items for a significant period of time.” (Compl. at ¶ 23.) Plaintiff claims the luggage was damaged, and that Delta never reimbursed him for these expenses. (Compl. at ¶¶ 23, 44, 51-52.)

June 2024: Plaintiff Files Suit In this Court, Bringing Claims He Knows Are Preempted and Claims He Voluntarily Dismissed with Prejudice.

On June 11, 2024, Plaintiff filed his new lawsuit in this Court bringing four causes of action ([1] “Montreal Convention”; [2] “Warsaw Convention”; [3] “Claim for a Declaratory Judgment and Breach of Contract”; and [4] “Fraud”) in connection with all three flights. In his Complaint, however, Plaintiff brings causes of action that he knows or should know are preempted by the Montreal Convention and/or the ADA. Further, like a Trojan horse, Plaintiff sets forth the claims he voluntarily dismissed with prejudice under the label of other causes of action. The Court should not hesitate to dismiss these claims.

LEGAL ARGUMENT

I. Rule 12(b)(1) Motion to Dismiss: This Court Lacks Subject Matter Jurisdiction Over the Majority of Plaintiff’s Complaint because Federal Law Preempts the Majority of Plaintiff’s Complaint.

This Court is not the proper tribunal to hear the majority of the causes of action in Plaintiff’s Complaint, and this Court should dismiss them.

a. Preemption is a Subject Matter Jurisdiction Issue.

If a court has “the power to hear and determine cases of the general class to which the proceedings in question belong,” then the court has jurisdiction over the subject matter of those

cases. *McLendon v. S.C. Dep't of Highways & Pub. Transp.*, 313 S.C. 525, 525, 443 S.E.2d 539, 540 (1994). If a federal law and a state law conflict, then the “federal law prevails and state law is preempted.” *Murphy v. Nat’l Collegiate Athletic Ass’n*, 584 U.S. 453, 471, 138 S. Ct. 1461, 1476, 200 L. Ed. 2d 854 (2018) (citing U.S. Const. art. VI, cl. 2). If federal law preempts state law, then a state court does not have the power to hear and determine cases of those preempted state laws, and therefore the state court lacks subject matter jurisdiction. *See, e.g., Baker Hosp. v. Isaac*, 301 S.C. 248, 250, 391 S.E.2d 549, 551 (1990) (“The [Court of Appeals of Michigan] properly noted that the pre-emption contention was one involving subject matter jurisdiction.”).

Whether a court has subject matter jurisdiction is “fundamental,” and therefore no one can “waive” a court’s lack of subject matter jurisdiction. *Anderson v. Anderson*, 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989). Even this Court has the responsibility to examine its own subject matter jurisdiction and may do so at any time upon the Court’s own motion. *Tatnall v. Gardner*, 350 S.C. 135, 137, 564 S.E.2d 377, 378 (Ct. App. 2002); *Nix v. Columbia Staffing, Inc.*, 322 S.C. 277, 280, 471 S.E.2d 718, 719 (Ct. App. 1996); Rule 12(h)(3), SCRCP.

b. The Montreal Convention Preempts All Claims Related to International Travel.

Treaties are “the law of the land” and are construed as federal laws. *See El Al Israel Airlines, Ltd. v. Tseng*, 525 U.S. 155, 167, 119 S. Ct. 662, 671, 142 L. Ed. 2d 576 (1999).⁷ For

⁷ The *Tseng* Court interpreted the preceding Warsaw Convention, upon which the Montreal Convention was based. *See, e.g., Yoly Farmers Corp. v. Delta Air Lines, Inc.*, No. 15 CIV. 2774 BMC, 2015 WL 4546744, at *3 (E.D.N.Y. July 28, 2015). Consequently, cases interpreting substantively similar provisions of the Warsaw Convention are persuasive authority for interpretations of relative Montreal Convention provisions. *We CBD, LLC*, 109 F.4th at 302 n. 4; *Nwokeji*, 2017 WL 4167433, at *8 (collecting cases); *Yoly Farmers Corp.*, 2015 WL 4546744, at *3 (collecting cases).

lawsuits surrounding international flights,⁸ the Montreal Convention governs:

In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable.

Montreal Convention, art. 29 (emphases added). If a claim “falls within one of the Montreal Convention’s three damage provisions,” then that claim is preempted by the Montreal Convention. *We CBD, LLC v. Planet Nine Priv. Air, LLC*, 109 F.4th 295, 303 (4th Cir. 2024) (quoting *Badar v. Swissport USA, Inc.*, 53 F.4th 739, 744 (2d Cir. 2022)). To determine whether a claim falls within the scope of the Montreal Convention, the Court must step back and take “an ‘assessment of the total circumstances’—which assesses the spatial and temporal proximity of and the causal connection between the events giving rise to the claim.” *We CBD, LLC*, 109 F.4th at 303 (quoting *Eid v. Alaska Airlines, Inc.*, 621 F.3d 858, 873 (9th Cir. 2010)). “A passenger whose claim implicates, but is not compensable under the Montreal Convention, has no recourse to an alternate remedy.” *Nwokeji v. Arik Air*, No. CV 15-10802-MLW, 2017 WL 4167433, at *9 (D. Mass. Sept. 20, 2017) (citing *Tseng*, 525 U.S. at 171-72, 119 S. Ct. at 672–73).

i. The Montreal Convention Preempts Causes of Action II through IV as to Both International Flights.

Because Plaintiff’s two international flights implicate the Montreal Convention, all non-Montreal Convention causes of action are preempted. For the January 2024 Flight to New Zealand,

⁸ The United States, New Zealand, and Portugal are all signatories to the Montreal Convention. See International Civil Aviation Organization, Current Lists of Parties to Multilateral Air Law Treaties, Convention for the Unification of Certain Rules for International Carriage by Air, Done at Montreal on 28 May 1999 (available at www.icao.int/secretariat/legal/List%20of%20Parties/Mtl99_EN.pdf).

Plaintiff alleges Delta delayed a flight and such delay caused one of his bags to be delayed. (Compl. at ¶ 22.) Articles 19 and 22 of the Montreal Convention govern disputes related to the delay of passengers and baggage. Therefore, any non-Montreal Convention cause of action arising from Plaintiff's January 2024 flight to New Zealand/Australia is preempted by the Montreal Convention.

For the April 2024 Flight to Portugal, Plaintiff alleges Delta delayed one of Plaintiff's bags and damaged the bag while handling it. (Compl. at ¶ 23.) Again, Articles 19 and 22 of the Montreal Convention govern disputes surrounding baggage delays, and Articles 17 and 22 govern disputes surrounding damage of checked baggage. Likewise, any non-Montreal Convention cause of action arising from Plaintiff's April 2024 flight to Portugal is also preempted by the Montreal Convention.

In other words, because the "total circumstances" of the alleged injuries surrounding these two flights was allegedly caused by a flight delay, baggage delays, and damage to a bag, these two flights are governed by the Montreal Convention only. Each non-Montreal Convention cause of action falls within the Montreal Convention's sweep.

Plaintiff's second cause of action—"Warsaw Convention"—is preempted because the Montreal Convention replaced the Warsaw Convention. "The Montreal Convention is a multilateral treaty negotiated and signed in 1999 . . . to harmonize the private international air laws and also to amend important provisions of the predecessor Warsaw Convention, which was signed in October 1929." *We CBD, LLC*, 109 F.4th at 301. Because the Montreal Convention replaced the Warsaw Convention, this Court lacks subject matter jurisdiction to entertain Plaintiff's causes of action under the Warsaw Convention.

Plaintiff's third cause of action, "Claim for a Declaratory Judgment and Breach of

Contract,” is also preempted by the Montreal Convention. Again, Article 29 catches this third cause of action in its sweep: “In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in this Convention[.]” Montreal Convention, art. 29 (emphasis added). In this “hybrid” cause of action, Plaintiff attempts to escape Article 29 by attacking the “fairness” of the International Contract of Carriage, with respect to these two international flights. (Compl. at ¶¶ 64-65.) However, the “total circumstances” of this controversy boil down to Plaintiff’s grievances surrounding his international flight delay and alleged baggage delays and damage. The Montreal Convention squarely governs these international flights and preempts this third cause of action.⁹

Finally, Plaintiff’s fourth cause of action for Fraud is also preempted by the Montreal Convention, because the alleged fraud is directly connected to the flight/baggage delays and baggage damage. This cause of action, vaguely pleaded, appears to allege that Delta lied to Plaintiff about the loss of his luggage in the international flight(s). (See Compl. at ¶ 71.) Again, in the “total circumstances,” this alleged “fraud” or “lying” directly relates to Delta’s “decisions to **cancel flights** and mislead the plaintiff . . . about **loss and damage related to luggage**[.]” (Compl. at ¶ 71 (emphases added).) This cause of action falls clearly within the scope of the Montreal Convention and is thus preempted by the Montreal Convention.

Plaintiff should know his non-Montreal Convention causes of action are preempted. In a recent case where Plaintiff Hawkins sued American Airlines and others over another international flight, the Greenville County Circuit Court dismissed his state law claims. *Hawkins v. American*

⁹ The ADA, as discussed below, likewise prevents the Court from considering this claim if the Montreal Convention does not apply.

Airlines, et al., Order Granting Defendant American Airlines, Inc.’s Motion to Dismiss at pp. 2-3 ¶¶ 4-8, Greenville County Court of Common Pleas, Case No. 2020-CP-23-01364 (entered Aug. 5, 2020); *see also* Complaint at pp. 4-6, Greenville County Court of Common Pleas, Case No. 2020-CP-23-01364 (filed March 3, 2020) (bringing causes of action in Negligence, Violation of the South Carolina Unfair Trade Practices Act, and Breach of Contract Accompanied by Fraudulent Act, among others). The South Carolina Court of Appeals affirmed that Order in April 2024, writing: “Specifically, we hold the circuit court did not err in finding Hawkins’s tort and Unfair Trade Practices Act (UTPA) claims for damages due to flight delays and delayed baggage were preempted by the Montreal Convention.” *Hawkins v. Am. Airlines*, No. 2020-001150, 2024 WL 1655457, at *1 (S.C. Ct. App. Apr. 17, 2024) (footnote omitted) (unpublished).

Likewise, this Court has no subject matter jurisdiction over the three non-Montreal Convention causes of action with respect to Plaintiff Hawkins’ two international flights. This Court should dismiss them accordingly.

c. The Airline Deregulation Act Preempts All State Law Claims Relating to an Airline’s Price, Route, or Service.

With respect to Plaintiff’s September 2023 Domestic Flight, all Plaintiff’s state law causes of action are preempted by the Airline Deregulation Act (“the ADA”). *See* 49 U.S.C. § 41713(b)(1). The ADA expressly preempts “a State” from “enforc[ing] a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier[.]” 49 U.S.C. § 41713(b)(1). The United States Supreme Court outlined the preemptive scope of the ADA:

[T]he Court determined: (1) that “[s]tate enforcement actions having a connection with, or reference to,” carrier “‘rates, routes, or services’ are pre-empted,” (2) that such pre-emption may occur even if a state law’s effect on rates, routes, or services “is only indirect,” (3) that, in respect to pre-emption, it makes no difference whether a state law is “consistent” or “inconsistent” with federal regulation, and (4) that pre-emption occurs at least where state laws have a “significant impact” related to

Congress' deregulatory and pre-emption-related objectives[.]

Rowe v. New Hampshire Motor Transp. Ass'n, 552 U.S. 364, 370–71, 128 S. Ct. 989, 995, 169 L. Ed. 2d 933 (2008) (emphases omitted) (citations omitted) (citing and quoting *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 112 S. Ct. 2031, 119 L. Ed. 2d 157 (1992)).

“To determine whether a claim has a connection with, or reference to an airline’s prices, routes, or services, we must look at the facts underlying the specific claim.” *Smith v. Comair, Inc.*, 134 F.3d 254, 259 (4th Cir. 1998). If a claim has such a connection, then the claim is preempted by the ADA. *See id.* Like the Montreal Convention, the ADA preemptive scope has a broad sweep, covering state laws like consumer fraud / unfair trade practices acts,¹⁰ causes of action in

¹⁰ Courts routinely dismiss these types of claims. *Román v. Spirit Airlines, Inc.*, No. 19-CIV-61461-RAR, 2020 WL 255202, at *3 (S.D. Fla. Jan. 14, 2020) (“[T]he Court finds that Plaintiffs’ [Florida Deceptive and Unfair Trade Practices Act] claim is preempted by the [Airline Deregulation Act][.]”); *Ferrell v. Air EVAC EMS, Inc.*, 900 F.3d 602, 606 (8th Cir. 2018) (“In our view, preemption applies most obviously to Ferrell’s Second Cause of Action” for violations of the Arkansas Deceptive Trade Practices Act.); *Rivera v. JetBlue Airways Corp.*, No. 3:17-CV-00960 (JAM), 2018 WL 264735, at *2 (D. Conn. Jan. 2, 2018) (“Because a [Connecticut Unfair Trade Practices Act (“CUTPA”)] violation involves a state-imposed regulation that exceeds the obligations imposed by the parties’ contract, the [Airline Deregulation Act] clearly preempts plaintiff’s CUTPA claim.”); *Levitt v. Sw. Airlines Co.*, 846 F. Supp. 2d 956, 960 (N.D. Ill. 2012) (holding Airline Deregulation Act preempted claims brought under the Illinois Consumer Fraud Act and the Pennsylvania Consumer Fraud Act); *Shulick v. United Airlines*, No. CIV.A. 11-1350, 2012 WL 315483, at *4–6 (E.D. Pa. Feb. 2, 2012) (holding the Airline Deregulation Act preempted claim under Pennsylvania Unfair Trade Practices and Consumer Protection Law arising out of flight delays); *Blackwell v. SkyWest Airlines, Inc.*, No. 06CV0307DMSAJB, 2008 WL 5103195, at *20 (S.D. Cal. Dec. 3, 2008) (holding Airline Deregulation Act preempted claim brought under California’s Unfair Business Practices Act); *De Jesus v. Am. Airlines, Inc.*, 532 F. Supp. 2d 345, 355 (D.P.R. 2007) (“[T]he laws and regulations of Puerto Rico prohibiting and regulating deceptive advertising of airline fares are totally preempted by the Airline Deregulation Act.”) (emphasis added); *In re Am. Airlines, Inc., Priv. Litig.*, 370 F. Supp. 2d 552, 563 (N.D. Tex. 2005) (holding action brought under Texas Deceptive Trade Practices-Consumer Protection Act, among other claims, “are expressly preempted because they relate to at least one of American’s services”); *Howell v. Alaska Airlines, Inc.*, 99 Wash. App. 646, 648, 652–53, 994 P.2d 901, 902, 905 (2000) (finding claim under Washington’s Consumer Protection Act preempted by the Airline Deregulation Act). *See also UPS Store, Inc. v. Hagan*, No. 14CV1210, 2015 WL 9256973, at *3 (S.D.N.Y. Nov. 18, 2015) (relying on *Wolens’* interpretation of Airline Deregulation Act preemptive scope to hold New York’s anti-deceptive acts and practices act, New York General

negligence or fraud,¹¹ false imprisonment,¹² intentional infliction of emotional distress,¹³ and declaratory judgment.¹⁴ Again, the Court of Appeals recently affirmed an Order dismissing Plaintiff Hawkins' claims against American Airlines based on the ADA. *See Hawkins*, 2024 WL 1655457, at *1 (unpublished) ("As to Hawkins's claims regarding insufficient services rendered, the circuit court properly found these claims were preempted by the Airline Deregulation Act of 1978 (ADA). . . . Here, it is clear Hawkins's claims relating to airport staffing and the failure to credit him airline rewards miles fall within the scope of claims preempted by the ADA.").

i. The Wolens Exception.

Only certain breach of contract claims are excepted from the ADA's preemptive scope: Those where the plaintiff seeks the Court to enforce "a term the airline itself stipulated." *Am. Airlines, Inc. v. Wolens*, 513 U.S. 219, 232–33, 115 S. Ct. 817, 826, 130 L. Ed. 2d 715 (1995). This exception is sometimes referred to as the "*Wolens* Exception" and is narrow in its scope. *See*,

Business Law § 349, was preempted by Federal Aviation Administration Authorization Act); *Delta Air Lines, Inc. v. Black*, 116 S.W.3d 745, 757 (Tex. 2003) (finding negligent misrepresentation claim preempted by Airline Deregulation Act because negligent misrepresentation regulates trade conduct comparably to a state consumer fraud act).

¹¹ *See e.g., Wolens*, 513 U.S. at 235, 115 S. Ct. at 827 (Steves, J., concurring in part and dissenting in part) (" . . . I do not agree with the Court's disposition of their consumer-fraud claims. In my opinion, private tort actions based on common-law negligence or fraud, or on a statutory prohibition against fraud, are not pre-empted.").

¹² *See Smith v. Comair, Inc.*, 134 F.3d 254, 259 (4th Cir. 1998).

¹³ *See Smith*, 134 F.3d at 259.

¹⁴ *See In re LATAM Airlines Grp. S.A.*, No. 20-11254 (JLG), 2022 WL 3965697, at *16 (Bankr. S.D.N.Y. Aug. 31, 2022) ("Put simply, if the Court granted Plaintiff relief under Count One [for declaratory judgment] and declared the No-Show Policy void, or found that LATAM has an affirmative duty to obtain the consent of its passengers prior to the cancellation of return flights, that would have a significant effect on LATAM's prices because it would not be able to resell the cancelled seats."), *aff'd sub nom. In re Latam Airlines Grp. S.A.*, No. 22-CV-8068 (ER), 2023 WL 4741335 (S.D.N.Y. July 25, 2023).

e.g., *Buck v. Am. Airlines, Inc.*, 476 F.3d 29, 35 (1st Cir. 2007) (“[I]n order to avoid preemption, the plaintiffs in this case must demonstrate either that their state-law claims do not constitute state enforcement related to airline prices or services, or that they can navigate the straits of the *Wolens* exception.”). In *Wolens*, the Court held that a state court may entertain a plaintiff’s claim asking the court to enforce a contract provision in an airline’s contract as is, but the state court *cannot* entertain a breach of contract claim asking the state court to apply a law, policy, or “enlargement or enhancement based on state laws or policies external to the agreement.” *See Wolens*, 513 U.S. at 233, 115 S. Ct. at 826.

For example, the Supreme Court disallowed a breach of contract claim based on the theory of breach of the implied covenant of good faith and fair dealing. *See Northwest, Inc. v. Ginsberg*, 572 U.S. 273, 288, 134 S. Ct. 1422, 1433, 188 L. Ed. 2d 538 (2014). In *Ginsberg*, Minnesota law provided that a covenant of good faith and fair dealing was implied in every contract. *Id.*, 572 U.S. at 286–87, 134 S. Ct. at 1432. That is, no party could contract around that covenant of good faith and fair dealing. *Id.* Because that covenant was imposed on every contract by operation of state law, the Supreme Court held that the covenant of good faith and fair dealing was not a term that “the airline itself stipulated” but a term “external to the agreement.” *See id.*; *see also Wolens*, 513 U.S. at 232–33, 115 S. Ct. at 826. In effect, Minnesota law, as applied to the airline’s contract, acted as a state regulation of the airline’s price, route, or services. *See Ginsberg*, 572 U.S. at 283, 134 S. Ct. at 1430. Therefore, that breach of contract cause of action did not meet the *Wolens* Exception and was preempted by the ADA. *Id.*, 572 U.S. at 287, 134 S. Ct. at 1432.

Similarly, a “breach of contract” claim where a plaintiff asks a state court *not* to enforce the terms of the airline’s contract is also preempted. After all, in such a case, the state court would be doing the *opposite* of enforcing a term “the airline itself [not a state] stipulated.” *See Wolens*,

513 U.S. at 232–33, 115 S. Ct. at 826. The Bankruptcy Court in the Southern District of New York put it like this:

The Plaintiff’s unjust enrichment claim is not based upon a breach of contract. The Plaintiff is not seeking to enforce LATAM’s self-imposed contractual obligations. Rather, it seeks a determination that the No-Show Policy in the Transport Agreement is unenforceable. Further, the unjust enrichment claim is a creature of Florida state common law. Therefore, such claim is within the scope of the ADA’s preemption provision. . . . Plaintiff’s claims seek the opposite of effectuating the parties’ intentions; it maintains that it would be unjust enrichment to allow the No-Show Policy to be effectuated as written and communicated.

In re LATAM Airlines Grp. S.A., 2022 WL 3965697, at *12-13. Again, the *Wolens* Exception must stay within the bounds of the ADA’s language that a “State . . . may not . . . enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier[.]” 49 U.S.C. § 41713(b)(1) (emphasis added). The State does not offend this statute by enforcing the parties’ own contract as is, since neither party is “a State.” *See Wolens*, 513 U.S. at 228–29, 115 S. Ct. at 824.

Ultimately, for a breach of contract cause of action to survive under the *Wolens* Exception, the claim must clearly demonstrate that the Court will be asked only to enforce a specific term of the contract itself as is—not asked to impose a term outside of the contract nor asked to modify the contract. Plaintiff’s Complaint asks for far more.

ii. The Airline Deregulation Act Preempts Causes of Action III and IV¹⁵ as to the September 2023 Domestic Flight.

¹⁵ It does not appear Plaintiff includes the September 2023 Domestic Flight in his first two causes of action for “Montreal Convention” and “Warsaw Convention.” As explained above, the Montreal Convention supersedes the Warsaw Convention, and the Montreal Convention only applies to *international* flights, including domestic flights that are ultimately part of an international trip. *See* Montreal Convention, art. 1(2)-(3). The September 2023 Domestic Flight was wholly domestic.

As noted earlier, to the extent the Montreal Convention fails to preempt any non-Montreal Convention cause of action for Hawkins’ two other international flights, the ADA’s preemptive scope would still apply to such claims.

In Plaintiff's catchall third cause of action, labeled "Claim for a Declaratory Judgment and Breach of Contract," Plaintiff asks this Court to do everything but enforce the Domestic Contract of Carriage with respect to Plaintiff's September 2023 Domestic Flight. Plaintiff begins this cause of action by alleging that "Delta's terms and contract of carriage does not allow a bargained-for exchange, is wholly one-sided and unfair, is not presented in a fair way, is unconscionable, and presents a contract of adhesion." (*See* Compl. at ¶ 59.) The subsequent allegations further repeat these allegations and include a general allegation that "Delta engaged in . . . [a] [v]iolation and breach of general duties of good faith and fair dealing." (Compl. at ¶ 65.) Of course, *Ginsberg* squarely applies to this cause of action because the Supreme Court held that state-imposed covenants of good faith and fair dealing, such as South Carolina's, are preempted by the ADA. *See Ginsberg*, 572 U.S. at 287, 134 S. Ct. at 1432 ("When the law of a State does not authorize parties to free themselves from the covenant, a breach of covenant claim is pre-empted under the reasoning of *Wolens*."); *Com. Credit Corp. v. Nelson Motors, Inc.*, 247 S.C. 360, 366–68, 147 S.E.2d 481, 484 (1966) (South Carolina law) ("[T]here exists in every contract an implied covenant of good faith and fair dealing."); *see also Stuart Enterprises Int'l, Inc. v. Peykan, Inc.*, 252 Ga. App. 231, 233, 555 S.E.2d 881, 883–84 (2001) (Georgia law)¹⁶ ("The implied covenant of good faith and fair dealing in performing a contract has a basis in both statutory and common law. . . . There is also a common law duty to diligently and in good faith seek to comply with all portions of the terms of a contract."). Plaintiff asks this Court to violate such clear and established precedent in this shotgun cause of action.

Moreover, Plaintiff asks for a general, non-particularized "declaration as to the rights and

¹⁶ The Contracts of Carriage are governed by Georgia law. (Exhibit A to Delta's Motion to Dismiss, Contract of Carriage, Rule 24 at p. 25; Exhibit B to Delta's Motion to Dismiss, Contract of Carriage, Rule 26 at p. 31.)

obligations of the parties affected by Delta's terms and its contract of carriage," "the validity of Delta's terms and contract, which conduct is governed by Delta's terms and contract, and whether Delta's conduct and rules adhere to governing law." (*See* Compl. at ¶¶ 62-68.) Plaintiff ultimately asks this Court to declare that "Delta's contract and its terms should be ruled to be void and unconscionable." (Compl. at ¶ 60.) This third cause of action is preempted by the ADA because it asks the Court to apply South Carolina policy to the Domestic Contract of Carriage rather than objectively applying its written terms as is. *See In re LATAM Airlines Grp. S.A.*, 2022 WL 3965697, at *12-13. This cause of action fails to meet the *Wolens* Exception and remains preempted by the ADA.

Equally, Plaintiff's fourth cause of action for Fraud is preempted because it directly relates to Delta's prices, routes, and/or services. Plaintiff sets forth a vague Fraud cause of action, which, as far as is applicable to the September 2023 Domestic Flight, alleges that Delta canceled Plaintiff's return flight from New York without a valid reason. (*See* Compl. at ¶ 71.) This direct connection to the flight service is fatal: Because the "Fraud" directly relates to the provision of a flight, the ADA preempts it.

Other tort claims are similarly preempted when they have a direct connection to the provision of an airline's flight service.¹⁷ For example, when a man was not permitted to board a flight without having any identification, the U.S. Court of Appeals for the Fourth Circuit determined that the ADA preempted the man's false imprisonment and intentional infliction of

¹⁷ Only tort claims that have a genuinely attenuated connection to the flight service are exempt, such as a UPS delivery person's stacking of boxes previously delivered by air. *Eggleston v. United Parcel Serv., Inc.*, 428 S.C. 373, 382, 834 S.E.2d 713, 717 (Ct. App. 2019) (citing New York case against UPS where such claim was not preempted by ADA). Plaintiff's claims here, and his alleged injuries, directly relate to the allegedly wrongful flight delay and cancellation. In other words, if the Court entertained Plaintiff's tort claim, the Court would be directly regulating how Delta decides to delay or cancel flights in the face of weather.

emotional distress claims. *See Smith v. Comair, Inc.*, 134 F.3d 254, 256, 259 (4th Cir. 1998). As referenced above, the Fourth Circuit evaluated the suit using the logical case-by-case test: “To determine whether a claim has a connection with, or reference to an airline’s prices, routes, or services, we must look at the facts underlying the specific claim.” *Id.* at 259. The tort claims in *Smith* were based on the airline’s refusal to let the man board the flight, and as a result, the Fourth Circuit found that “[u]ndoubtedly, boarding procedures are a service rendered by an airline[,] . . . [t]herefore[,] to the extent Smith’s claims are based upon Comair’s boarding practices, they clearly relate to an airline service and are preempted under the ADA.” *Id.*

Here, Plaintiff’s Fraud claim is based on Delta’s flight service, specifically Delta’s justification for delaying and cancelling Plaintiff’s September 2023 Domestic Flight. After all, Plaintiff alleges that Delta wrongfully blamed the cancellation on the weather. Compl. at ¶ 71. Under the *Smith* test, in order for this cause of action for Fraud to survive preemption, it must *not* have any genuine connection with or reference to Delta’s services as an airline. *Smith*, 134 F.3d at 259. The facts surrounding these allegations of fraud, however, directly relate to the provision of Delta’s service—a *flight*. As a result, Plaintiff’s cause of action for Fraud is preempted by the ADA and should be dismissed by this Court.

Ultimately, this Court is not the proper tribunal for Plaintiff to bring the claims preempted by the ADA. And contrary to the fallacy that no relief in *this* Magistrate Court is no relief at all, the Supreme Court listed the ADA’s intended tribunals to regulate the airlines: (1) the court of public opinion and (2) the Department of Transportation:

The ADA is based on the view that the best interests of airline passengers are most effectively promoted, in the main, by allowing the free market to operate. If an airline acquires a reputation for mistreating the participants in its frequent flyer program (who are generally the airline’s most loyal and valuable customers), customers can avoid that program and may be able to enroll in a more favorable rival program.

Federal law also provides protection for frequent flyer program participants. Congress has given the Department of Transportation (DOT) the general authority to prohibit and punish unfair and deceptive practices in air transportation and in the sale of air transportation, 49 U.S.C. § 41712(a), and Congress has specifically authorized the DOT to investigate complaints relating to frequent flyer programs. *See* FAA Modernization and Reform Act of 2012, § 408(6), 126 Stat. 87. Pursuant to these provisions, the DOT regularly entertains and acts on such complaints.

Ginsberg, 572 U.S. at 288–89, 134 S. Ct. at 1433 (2014) (Alito, J., writing for unanimous Court).¹⁸

II. Rule 12(b)(6) Motion to Dismiss: Plaintiff’s Complaint Fails to Allege Facts Sufficient to Constitute Valid Causes of Action.

To the extent portions of Plaintiff’s Complaint survive the preemptive scope of the Montreal Convention or the Airline Deregulation Act, several of Plaintiff’s causes of action should be dismissed.

a. Montreal Convention Cause of Action Cannot Provide for Plaintiff’s “Inconvenience.”

With regard to his flight and baggage delays, Plaintiff places great weight on the allegation that he did not have access to his delayed bag while he was in New Zealand/Australia (Compl. at ¶¶ 22, 44) or in Portugal (Compl. at ¶¶ 23, 44). These delays allegedly caused Plaintiff to suffer “some or all of the following,” including “psychological trauma,” “mental anguish,” “mental distress,” “anxiety,” “emotional injury,” “discomfort and inconvenience,” “loss of enjoyment of

¹⁸ In Paragraph 38 of the Complaint Plaintiff appeals to the Federal Aviation Act’s “savings clause,” which predated the ADA, arguing that it provides an exception to the broad preemptive effect of the ADA. The Supreme Court dispensed with this:

[W]e have described the Federal Aviation Act saving clause as “a relic of the pre-ADA/no pre-emption regime.” . . . That provision applies to the entire, sprawling Federal Aviation Act, and not just to the ADA, and as we held in *Morales*, this “general ‘remedies’ saving clause cannot be allowed to supersede the specific substantive pre-emption provision.”

Ginsberg, 572 U.S. at 282–84, 134 S. Ct. at 1430 (quoting *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 385, 112 S. Ct. 2031, 2037, 119 L. Ed. 2d 157 (1992)).

life,” and “inconvenience.” (*See* Compl. at ¶¶ 28, 50.) These damages are not recoverable.

The Montreal Convention replaced the Warsaw Convention but cases interpreting the Warsaw Convention’s similarly worded provisions are honored as persuasive authority. *See, e.g., We CBD, LLC*, 109 F.4th at 302 n. 4 (joining five other circuit courts of appeals in recognizing such authority). Under the Warsaw Convention, the United States Supreme Court held that a plaintiff could “not allow recovery for purely mental injuries.” *E. Airlines, Inc. v. Floyd*, 499 U.S. 530, 534, 111 S. Ct. 1489, 1493, 113 L. Ed. 2d 569 (1991). “Purely mental injuries” includes “inconvenience damages” and “emotional distress damages.” *See Lee v. Am. Airlines Inc.*, 355 F.3d 386, 387 (5th Cir. 2004) (affirming partial judgment on the pleadings dismissing claims for “inconvenience” and finding the loss of a “full day of a memorable refreshing vacation” not recoverable); *see Seshadri v. Brit. Airways PLC*, No. 3:14-CV-00833-BAS, 2014 WL 5606542, at *10 (S.D. Cal. Nov. 4, 2014) (collecting cases). Of course, as quoted in full above, Article 29 of the Montreal Convention forecloses Plaintiff from recovering any “non-compensatory damages” for a delay in persons or baggage. Montreal Convention, art. 29. He cannot recover for this “loss.”

Accordingly, this Court should dismiss Plaintiff’s Montreal Convention claim to the extent it seeks recovery for “inconvenience.”

b. Any Warsaw Convention Cause of Action Is No Longer Valid.

Plaintiff cannot bring a cause of action under the Warsaw Convention, because each international flight consisted of travel between two Montreal Convention countries: (1) the United States and New Zealand, and (2) the United States and Portugal. (*See* Compl. at ¶¶ 22-23.) As a result, the Montreal Convention governs exclusively, and there is no cause of action available for Plaintiff under the Warsaw Convention. *See* Montreal Convention, arts. 1(2), 29. To the extent Plaintiff seeks recovery under the Warsaw Convention for his wholly domestic September 2023 Flight, the Warsaw Convention provides no relief to him. *See* Warsaw Convention (“Convention

& Additional Protocol Between the United States of Am. & Other Powers Relating to Int'l Air Transportation”), ch. I (“Scope-Definitions”), art. 1, 49 Stat. 3000, 1934 WL 29042 (Oct. 29, 1934). As a result, this cause of action should be dismissed in its entirety.

c. The “Declaratory Judgment and Breach of Contract” Cause of Action Fails to Allege Sufficient Facts to State Any of the Claims in this Catchall Cause of Action.

To the extent any portion of this catchall cause of action survives the preemptive scope of the Montreal Convention or the ADA, Plaintiff fails to state a claim that this Court can entertain.

i. This Court Cannot Provide a Declaratory Judgment on a Contract Regulated Exclusively by the Federal Government.

Plaintiff asks this South Carolina Magistrate Court to declare Delta’s Domestic and International Contracts of Carriage both are “void and unconscionable.” (Compl. at ¶ 60.) Of course, the ADA already prevents this Court from applying South Carolina’s standards of conscionability upon these contracts. *See In re LATAM Airlines Grp. S.A.*, 2022 WL 3965697, at *12-13. Independently, however, this Court may not evaluate the propriety or “validity” of these Contracts under a declaratory judgment action, because they are regulated by the Department of Transportation (or consumer preference). *See Ginsberg*, 572 U.S. at 288–89, 134 S. Ct. at 1433 (citing 49 U.S.C. § 41712(a)).

For example, in *Slocum v. Delaware, L. & W.R. Co.*, the United States Supreme Court evaluated whether a New York court had the authority to adjudicate a declaratory judgment action regarding a railroad labor agreement. 339 U.S. 239, 240, 70 S. Ct. 577, 577–78, 94 L. Ed. 795 (1950). Under the Railway Labor Act, Congress gave the National Railway Adjustment Board the authority to interpret such agreements and to enforce them. *Id.* Nevertheless, once a dispute arose in an existing agreement, a railroad company filed suit for declaratory judgment in New York, which the labor union opposed. *Id.*, 339 U.S. at 241, 70 S. Ct. at 578. The New York court retained

the case. *Id.* The Supreme Court reversed. *Id.*, 339 U.S. at 245, 70 S. Ct. at 580.

The entire purpose of Railway Labor Act's establishment of the National Railway Adjustment Board was to have a designated tribunal comprised of "members [who] understand railroad problems and speak the railroad jargon" render uniform, national decisions. *Id.*, 339 U.S. at 243, 70 S. Ct. at 579. Without such uniformity, states could render various interpretations of the same agreement, leading to regional strikes and disputes affecting the rail industry in various parts of the country. *See id.*, 339 U.S. at 242–43, 70 S. Ct. at 579. In fact, this purpose was demonstrated by the very dispute itself: At the time of the *Slocum* decision, the Supreme Court issued a separate decision in a companion South Carolina case "because it sharply points up the conflicts that could arise from state court intervention in railroad-union disputes." *Ord. of Ry. Conductors of Am. v. S. Ry. Co.*, 339 U.S. 255, 256, 70 S. Ct. 585, 586, 94 L. Ed. 811 (1950).

Like the railroad in the *Slocum* case, the railroad in the *Ord. of Ry. Conductors of Am.* case filed suit for declaratory judgment in a South Carolina state court, asking the court to interpret the collective bargaining agreement. *Id.*, 339 U.S. at 255–57, 70 S. Ct. at 585–86. The South Carolina Supreme Court allowed this declaratory judgment to proceed, but the United States Supreme Court reversed its decision. *Id.* The United States Supreme Court recognized that allowing all states to entertain declaratory judgment actions on nationally regulated contracts for the railways would lead to conflicting rulings and forum shopping: "Sustaining the state court's action would invite races of diligence whenever a carrier or union preferred one forum to the other. And if a carrier or a union could choose a court instead of the [National Railway Adjustment] Board, the other party would be deprived of the privilege conferred by . . . the Railway Labor Act[.]" *Id.*, 339 U.S. at 256, 70 S. Ct. at 586.

Here, Plaintiff asks this state court, instead of the Department of Transportation, to interpret

a national airline's Domestic and International Contracts of Carriage. Plaintiff thinks the terms in those contracts are "wholly one-sided and unfair, [] not presented in a fair way, [] unconscionable, and present[] . . . contract[s] of adhesion." (See Compl. at ¶ 59.). As the Supreme Court acknowledged in *Ginsberg*, however, a state court is not the proper tribunal to make that policy decision. See *Ginsberg*, 572 U.S. at 288–89, 134 S. Ct. at 1433 (Alito, J., writing for unanimous court). Instead, the proper tribunal to determine the fairness and validity of the airlines' contracts and other trade practices is the national Department of Transportation. *Id.* As a result, this Court should refrain from giving a declaratory judgment here, to the extent such cause of action is not already preempted by the Montreal Convention or the ADA.

ii. With Respect to His International Flights, Plaintiff Fails to Identify the Provisions of the Contract Delta Allegedly Breached.

The allegations in Plaintiff's third cause of action in no way state a breach of contract but instead attempt to set forth a declaratory judgment cause of action. (See Compl. at ¶¶ 58-68.) The allegations in Paragraphs 59 to 68 simply challenge the validity of Delta's Domestic and International Contracts of Carriage or accuse Delta of committing torts *outside of* the terms of those contracts. This clearly is not a breach of contract cause of action and fails to plead the essential element: the contract's breach. See *Hotel & Motel Holdings, LLC v. BJC Enterprises, LLC*, 414 S.C. 635, 652, 780 S.E.2d 263, 272 (Ct. App. 2015). Even so, should this Court find that the third cause of action also states a cause of action for breach of contract, Plaintiff fails to allege facts sufficient to state a valid claim.

With regard to his two international flights, Plaintiff fails to identify the specific provisions of the International Contract of Carriage Delta allegedly breached. Both South Carolina law, and Georgia law—the law governing the International Contract of Carriage—require this level of specificity. See *Jones v. Gilstrap*, 288 S.C. 525, 528, 343 S.E.2d 646, 648 (Ct. App. 1986) (“[I]t

is essential in setting forth a breach of contract, either that the substance of the instrument be averred in the pleading, or that the contract itself be set forth.”) (quoting 61A Am. Jur. 2d *Pleading* Section 92 (1981)); *Brooks v. Branch Banking & Tr. Co.*, 107 F. Supp. 3d 1290, 1296 (N.D. Ga. 2015) (“Defendant is correct that a plaintiff asserting a breach of contract claim must allege a particular contractual provision that the defendants violated to survive a motion to dismiss.”) (internal quotations omitted) (applying Georgia law). None of the allegations in this cause of action cite a specific provision of the International Contract of Carriage that was breached with respect to either the January 2024 flight to New Zealand or the April 2024 flight to Portugal. (*See* Compl. at ¶¶ 22-23, 31-32, 58-68.) Therefore, Plaintiff fails to state a cause of action on these facts.

iii. For the Domestic Flight, Plaintiff’s Alleged Breach of Contract Is Contradicted by the Contract of Carriage’s Clear Terms.

Again, in the third cause of action, Plaintiff fails to actually set forth a breach of contract cause of action but instead attempts only to set forth a declaratory judgment action. (*See* Compl. at ¶¶ 58-68.) If this Court deems Plaintiff to allege a claim for breach of contract arising from the September 2023 Domestic Flight, a simple reading of the Domestic Contract of Carriage negates Plaintiff’s claim. Consequently, that cause of action should be dismissed.

Plaintiff alleges that he booked a round-trip flight, took the first flight with no issue, but the return flight was cancelled due to weather. (*See* Compl. at ¶¶ 11-13.) The next available return flight was one scheduled to depart two days later. (*See* Compl. at ¶¶ 16-17, 19.) Instead, Plaintiff drove himself home and decided to drive through the night, incurring costs to do so. (*See* Compl. at ¶¶ 16-17, 19.) Plaintiff alleges that Delta never reimbursed Plaintiff for the costs Plaintiff incurred in driving himself home and Plaintiff refused a refund in SkyMiles for the unused portion of his ticket. (*See* Compl. at ¶¶ 15, 19). A plain reading of the Domestic Contract of Carriage, which Plaintiff quotes in part in his Complaint (*see* Compl. at ¶¶ 19-21), demonstrates that Delta’s

actions, as alleged, complied fully with the Domestic Contract of Carriage. Thus, the Domestic Contract of Carriage negates Plaintiff's claim that Delta breached it.

The following provisions of the Domestic Contract of Carriage clearly outline the procedure in the event a flight is cancelled due to weather or threats of weather. First, the Domestic Contract of Carriage explicitly states the obvious expectation of the basic logistics of flying: published schedules cannot be guaranteed. Rule 2 ("Schedules and Operations") states:

Delta will exercise reasonable efforts to transport you and your baggage from your origin to your destination with reasonable dispatch, **but published schedules, flight times, aircraft types, seat assignments, and similar details reflected in the ticket or Delta's published schedules are not guaranteed** and form no part of this contract. **Delta may substitute alternate Carriers or aircraft, change its schedules, delay or cancel flights, change seat assignments, and alter or omit stopping places shown on the ticket as required by its operations in Delta's sole discretion. Delta's sole liability in the event of such changes is set forth in Rule 22. Delta is not responsible or liable for making connections, failing to operate any flight according to schedule, changing the schedule or any flight, changing seat assignments or aircraft types, or revising the routings by which Delta carries the passenger from the ticketed origin to destination**

(Exhibit A to Delta's Motion to Dismiss, Contract of Carriage, Rule 2 at p. 2 (emphasis added).)

With the expectations outlined, the Domestic Contract of Carriage provides the procedure in the event a flight is cancelled or delayed:

RULE 19: FLIGHT DELAYS/CANCELLATIONS

A. Delta's Liability in the Event of Schedule Changes, Delays and Flight Cancellations

If there is a flight cancellation . . . , Delta will (at passenger's request) cancel the remaining ticket and refund the unused portion of the ticket and unused ancillary fees in the original form of payment in accordance with Rule 22. If the passenger does not request cancellation and refund of the remaining portion of the ticket, Delta will transport the passenger to the destination on Delta's next flight on which seats are available in the class of service originally purchased. At Delta's sole discretion and if acceptable to the passenger, Delta may arrange for the passenger to travel on another Carrier If acceptable to the passenger, Delta may provide transportation in a lower class of service If space on the next available flight is available only in a higher class of service than

purchased, Delta will transport the passenger on the flight **Delta will not be liable under any circumstances for any special, incidental or consequential damages arising from the foregoing.**

B. Delta's Liability for Additional Amenities in the Event of Schedule Changes, Delays and Flight Cancellations

Except as provided above, Delta shall have no liability if the flight cancellation, diversion or delay was due to force majeure. As used in this rule, "force majeure" means **actual, threatened or reported**:

(1) **Weather conditions** or acts of God;

...

(4) Government regulation, demand, directive or requirement; [or]

...

(6) **Any other condition beyond Delta's control** or any fact not reasonably foreseen by Delta.

However, **when a passenger's travel is interrupted for more than 4 hours . . . as a result of flight cancellation or delay on the date of travel other than from force majeure**, Delta will provide the passenger with the following additional amenities during the delay: [hotel, ground transportation to another nearby airport, or amenities for special needs passengers.]

(Exhibit A to Delta's Motion to Dismiss, Contract of Carriage, Rule 19 at pp. 17-18 (emphasis added; "other than" underlined in original).) Rule 22 outlines the following procedure for compensating a passenger for a cancelled flight:

RULE 22: REFUNDS

A. Involuntary Refunds

If a refund is required because of Delta's failure to operate on schedule . . . , the following refund will be made directly to you:

...

2) If a portion of the ticket has been used and termination (interruption) occurs:

a) **At A Fare Breakpoint** - The **refund will be an amount equal to the fare paid for the unused transportation** from the point of termination (interruption) to the destination No refund will apply when alternate transportation is provided by Delta and accepted by the passenger.

(See Exhibit A to Delta's Motion to Dismiss, Contract of Carriage, Rule 22(A)(2)(a) at p. 23 (emphasis added).) If cash or credit card were not used to purchase the ticket originally, the refund will be "issued back to the original form of payment." (See Exhibit A to Delta's Motion to Dismiss, Contract of Carriage, Rule 22(D)(5) at pp. 24-25 (emphasis added).)

In sum, if a flight is cancelled due to actual or threatened weather conditions, then Delta will automatically offer the passenger a seat on the next available flight, and if this is refused, Delta will refund the passenger for the unused portion of the ticket. Yet, Plaintiff complains—and alleges—that Delta did *exactly* that. Delta offered him the next available flight—it is of no consequence in the breach analysis of when that next flight was scheduled to depart. (Compl. at ¶¶ 12, 19, 21.) This is not a breach.

Plaintiff next complains that, when he refused to take that flight, Delta *offered* to refund him in SkyMiles, which Plaintiff alleges *he* refused. Again, this is not a breach by Delta but Delta's fulfilment of Rules 19 and 22. He also complains that Delta did not offer him a hotel or other accommodations. (Compl. at ¶ 21.) But the Domestic Contract of Carriage never obligated Delta to do so, because the flight was cancelled due to a force majeure: actual or threatened weather conditions. (See Compl. at ¶¶ 13, 16.) There is no breach here.

Finally, Plaintiff complains that Delta did not reimburse Plaintiff for the expenses he incurred when he decided to drive himself to Greenville non-stop from New York. (Compl. at ¶ 16.) All these expenses are incidental or consequential damages, and the Domestic Contract of Carriage clearly states: "Delta will not be liable under any circumstances for any special, incidental or consequential damages arising from the foregoing [schedule changes, delays and flight cancellations]." (Exhibit A to Delta's Motion to Dismiss, Contract of Carriage, Rule 19(A) at p. 17.) A similar limitation of liability is included in Rule 24: "Delta shall not be liable for any

punitive, consequential or special damages arising out of or in connection with carriage or other services performed by Delta, whether or not Delta had knowledge that such damage might be incurred.” (Exhibit A to Delta’s Motion to Dismiss, Contract of Carriage, Rule 24 at p. 25.) Delta’s refusal to reimburse Plaintiff for his numerous alleged incidental or consequential damages is not a breach of the contract.

Because Plaintiff’s theory of breach for the September 2023 Domestic Flight is negated by the terms of the Domestic Contract of Carriage, Plaintiff fails to state facts sufficient to constitute a cause of action for breach of contract, and the cause of action should be dismissed.

iv. Because Plaintiff Fails to Allege an Express Breach of Contract, He Cannot Bring a Claim for Breach of the Covenant of Good Faith and Fair Dealing.

Again, in the third cause of action, Plaintiff fails to actually set forth a breach of contract cause of action but instead attempts to only set forth a declaratory judgment action. (See Compl. at ¶¶ 58-68.) In this catchall cause of action, Plaintiff includes an allegation that Delta “breach[ed] general duties of good faith and fair dealing[.]” (Compl. at ¶ 65(a).) Whether this Court applies South Carolina law or applies the law of the Contracts of Carriage, which is Georgia law, Plaintiff fails to state a claim for the breach of covenant of good faith and fair dealing.¹⁹ Both states require a Plaintiff to first allege a specific breach of an express term of the contract. *TRB Mellichamp LLC v. Concrete Supply Co., LLC*, No. CV 2:20-4413-RMG, 2021 WL 6206582, at *3 (D.S.C. Mar. 5, 2021) (“Courts applying South Carolina law regularly dismiss a breach of implied covenant claim where there is no breach of contract claim into which it can be subsumed.”); *Brooks v. Branch Banking & Tr. Co.*, 107 F. Supp. 3d 1290, 1296 (N.D. Ga. 2015) (same) (applying Georgia law). As demonstrated in the prior section, Plaintiff fails to state a claim for breach of contract with

¹⁹ Again, this Court has no authority to entertain a claim for breach of covenant of good faith and fair dealing, because South Carolina and Georgia law cannot impose such requirements on these airline contracts. See *Ginsberg*, 572 U.S. at 287, 134 S. Ct. at 1432.

regard to the September 2023 Domestic Flight. As for both international flights, Plaintiff fails to cite any provision of the International Contract of Carriage that Delta breached. (Compl. at ¶¶ 22-23.) As a result, Plaintiff's Complaint does not support a claim for breach of the covenant of good faith and fair dealing, and this third cause of action should be dismissed accordingly.

v. This Cause of Action Is *Res Judicata* Because It Re-Alleges the Same Theory of Liability that Plaintiff Voluntarily Dismissed with Prejudice.

In the prior action, Plaintiff brought, and voluntarily dismissed with prejudice, a cause of action for "breach of contract accompanied by a fraudulent act." (Exhibit C to Delta's Motion to Dismiss, Joint Stipulation of Dismissal without Prejudice at ¶ 1(c).) The substance of a claim for breach of contract accompanied by a fraudulent act is "fraudulent intent relating to the breaching of the contract and not merely to its making." *Ball v. Canadian Am. Exp. Co.*, 314 S.C. 272, 276, 442 S.E.2d 620, 623 (Ct. App. 1994).

Here, Plaintiff's blended cause of action for "Declaratory Judgment and Breach of Contract" alleges the same theory: "... Delta engage in ... [f]raud and tortious conduct, including violation of rules and governing policies promulgated by itself, administrative bodies, or other entities ... and [o]ther tortious, unfair, and deceptive conduct[.]" (Compl. at ¶ 65(b), (e).) No matter the label Plaintiff gives this new cause of action, the substance of the cause of action is one that Plaintiff chose to dismiss with prejudice. This Court should not allow Plaintiff to escape his voluntary dismissal by entertaining this Trojan horse cause of action.

d. The Fraud Cause of Action Is Insufficiently Pleaded and It Is *Res Judicata* because It Alleges the Same Facts as the Breach of Contract Accompanied By a Fraudulent Act Claim that Plaintiff Stipulated to Dismiss with Prejudice.

To the extent any portion of Plaintiff's Fraud cause of action survives the preemptive scope of the Montreal Convention or the Airline Deregulation Act, Plaintiff fails to state a valid claim for Fraud.

- i. The Fraud Cause of Action Should Be Dismissed as Alleged because it Does Not State the Circumstances of the Alleged Fraud with Particularity, Required by Rule 9(b), SCRCF.

Despite Plaintiff's claim that the Fraud cause of action "is stated with particularity in this paragraph and the other paragraphs of the [C]omplaint," (Compl. at ¶ 70), the Fraud cause of action is anything but particular. The cause of action is simply a recitation of the elements of fraud with Plaintiff's name and Delta's name filled in: No specific details are provided to describe the circumstances surrounding the alleged fraud. (*See* Compl. at ¶ 70). This is fatal to Plaintiff's claim for Fraud.

Rule 9(b), SCRCF requires that "the circumstances constituting fraud . . . shall be stated with particularity." Rule 9(b), SCRCF. This requires Plaintiff to plead the: the who, what, when, where, and how of the alleged fraud. *See, e.g., Coker v. Norwich Com. Grp., Inc.*, No. CV 3:20-03071-MGL, 2021 WL 4037472, at *3 (D.S.C. Sept. 3, 2021) ("[S]outh Carolina Rule of Civil Procedure 9(b) is similar to Federal Rule of Civil Procedure 9(b)"); *U.S. ex rel. Wilson v. Kellogg Brown & Root, Inc.*, 525 F.3d 370, 379 (4th Cir. 2008) (applying Fed. R. Civ. P. 9(b) and requiring the "who, what, when, where, and how" of the alleged fraud).

Plaintiff alleges Fraud arising from three separate flights but gives no details about the statements he was given surrounding each flight or the connection of those statements to his alleged damages. This Rule 9(b) requirement cannot simply be met by telling this Court and Delta, in essence, to "figure it out" by sifting through the prior 70 paragraphs of allegations. Rule 9(b), SCRCF requires Plaintiff to identify and describe the particular facts that constitute the claim.

- ii. The Fraud Cause of Action Is *Res Judicata* because It Realleges the Same Theory of Liability as the Cause of Action Plaintiff Voluntarily Dismissed with Prejudice.

Again, in the prior action, Plaintiff brought, and voluntarily dismissed with prejudice, a cause of action for "breach of contract accompanied by a fraudulent act." (Exhibit C to Delta's

Motion to Dismiss, Joint Stipulation of Dismissal without Prejudice at ¶ 1(c).) The substance of a claim for breach of contract of contract accompanied by a fraudulent act is “fraudulent intent relating to the breaching of the contract and not merely to its making.” *Ball*, 314 S.C. at 276, 442 S.E.2d at 623.

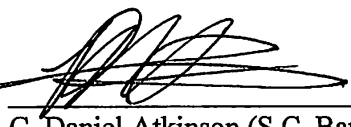
Here, Plaintiff’s Fraud cause of action alleges that Delta “breach[ed] . . . the adhesion contracts from which it sought to profit” by “cancel[ling] flights and mislead[ing] the plaintiff” and by lying “about luggage it had lost.” (*See* Compl. at ¶ 71.) This cause of action clearly attempts to set forth “fraudulent intent relating to the breaching of the contract” that is characteristic of the claim for breach of contract accompanied by a fraudulent act. *Ball*, 314 S.C. at 276, 442 S.E.2d at 623. This Court should not allow Plaintiff to circumvent his own voluntary stipulation to dismiss this claim with prejudice by allowing the same claim to proceed with a different label.

CONCLUSION

Plaintiff should know these claims cannot survive the Montreal Convention’s and the ADA’s preemptive scope. With respect to the International Flights, the Montreal Convention preempts causes of action II through IV. The “Montreal Convention” cause of action is further limited by Plaintiff’s inability to recover for his “inconvenience.” With respect to the Domestic Flight, the ADA preempts causes of action III and IV because they relate to Delta’s flight service and Plaintiff does not ask the Court to enforce the Domestic Contract of Carriage as is. To the extent Plaintiff’s third cause of action is not preempted, Plaintiff fails to show any breach under the terms of the Domestic Contract of Carriage. The majority of Plaintiff’s Complaint may be dismissed by this Court outright.

WHEREFORE, Delta respectfully requests an Order dismissing the aforementioned causes of action in Plaintiff’s Complaint.

September 23, 2024

By: 

C. Daniel Atkinson (S.C. Bar #72721)

datkinson@wajlawfirm.com

Brian M. Peters, Jr. (S.C. Bar #105911)

bpeters@wajlawfirm.com

WILKES ATKINSON & JOYNER, LLC

127 Dunbar Street, Suite 200

Spartanburg, SC 29306

(864) 591-1113

Attorneys for Defendant

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Joshua Hawkins,)
)
Plaintiff,)
)
vs.)
)
Delta Air Lines, Inc.,)
)
Defendant.)
_____)

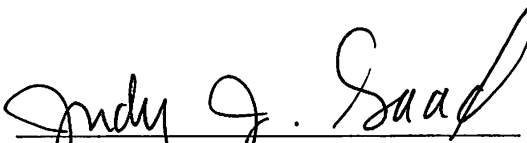
IN THE MAGISTRATE'S COURT

Case No.: 2024-CV-23-2415

CERTIFICATE OF SERVICE

I certify that on **September 23, 2024**, I caused to be served a true and correct copy of the foregoing *Brief in Support of Defendant's Motion to Dismiss in Lieu of Answer* via U.S. Mail, postage pre-paid, and E-mail, addressed as follows:

Joshua T. Hawkins, Esq.
Helena L. Jedziniak, Esq.
Hawkins & Jedziniak, LLC
1225 South Church St.
Greenville, SC 29605
josh@hjlsc.com
helena@hjlsc.com



Judy J. Saad, Paralegal
jsaad@wajlawfirm.com
Wilkes Atkinson & Joyner, LLC

EXHIBIT A



The Supreme Court of South Carolina

JOHN W. KITTREDGE
CHIEF JUSTICE

GREENVILLE COUNTY COURTHOUSE
305 EAST NORTH STREET, SUITE 216
GREENVILLE, SC 29601-2100
TELEPHONE: (864) 467-8593
FAX: (864) 467-8596

MEMORANDUM

TO: Supreme Court
Court of Appeals
Clerks of Court
Circuit Court
Masters-In-Equity
Family Court
Probate Court
Magistrates
Municipal Judges
Registers of Deeds
SCJB Staff

FROM: Chief Justice John W. Kittredge

RE: Hurricane Helene

DATE: September 26, 2024

South Carolina Governor Henry McMaster has issued Executive Order 2024-24, declaring a State of Emergency in preparation for the potential effects from Hurricane Helene. The National Hurricane Center indicates Hurricane Helene will impact South Carolina with strong winds, significant rainfall, flash flooding, and potential for tornadoes overnight into Friday, September 27, 2024.

I remind all county and municipal employees working within the Unified Judicial System that they should follow the decisions made by the respective county or municipal government officials with regard to office delays or closings as a result of this inclement weather. Because weather conditions may vary throughout the state, **all state judicial officers and employees should follow the decisions made by their respective county government officials regarding office delays or closings.**

Judges assigned to counties operating as normal should be flexible in granting continuances to attorneys and parties who experience personal issues caused by the weather conditions that prevent their appearance in court.

Despite the above, the chief judges for administrative purposes at all levels may direct that certain matters or proceedings go forward notwithstanding a closure or delay, and shall ensure that bond hearings continue to be conducted at least once a day, if conditions are safe to do so.

Please refer to the State Emergency Management Division website, www.scemd.org/closings, or individual county government websites, for the status of state government offices for each county.

EXHIBIT B

The Supreme Court of South Carolina

RE: Hurricane Helene and the Computation of Time

ORDER

On September 25, 2024, the Governor of South Carolina issued Executive Order 2024-24 declaring a State of Emergency in preparation for the potential effects of Hurricane Helene. On September 26 and 27, Hurricane Helene caused extensive flooding and wind damage across much of South Carolina.

Numerous county courthouses and other state and local offices were closed on Friday, September 27, 2024, and it is expected that many South Carolina counties may remain closed for several more days. Many thousands of South Carolinians remain without power, and poor road conditions and gasoline shortages make travel difficult. We find these problems adversely affect the ability of many lawyers and litigants to comply with filing and service deadlines in various courts throughout the state.

Accordingly, this Court finds it is necessary to issue this order, pursuant to Rule 611 of the South Carolina Appellate Court Rules, (SCACR) declaring Friday September 27, Monday September 30, and Tuesday, October 1, 2024, to be statewide filing "holidays" for the purpose of computing time under Rule 263 of the South Carolina Appellate Court Rules; Rule 6 of the South Carolina Rules of Civil Procedure; Rule 35 of the South Carolina Rules of Criminal Procedure; and Rule 3 of the South Carolina Rules of Magistrates Court.

The Supreme Court will evaluate conditions to determine whether the filing holidays declared in this order should be further extended. A copy of this order shall be provided to the Chairs of the House and Senate Judiciary Committees in accordance with Rule 611, SCACR.

s/ John W. Kittredge C.J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

s/ D. Garrison Hill J.

s/ Letitia H. Verdin J.

Columbia, South Carolina
September 30, 2024

EXHIBIT C

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE COURT
	)	
COUNTY OF GREENVILLE	)	Case No.: 2024-CV-23-2415
	)	
Joshua Hawkins,	)	
	)	
Plaintiff,	)	CONSENT ORDER FOR CONTINUANCE
	)	
vs.	)	
	)	
Delta Air Lines, Inc.	)	
	)	
Defendant.	)	
	)	

The Parties have conferred and agree that this Court’s Hearing on Defendant’s Motion to Dismiss in Lieu of Answer previously set for October 3, 2024 at 10:00 AM should be continued for fourteen days, with the hearing to be rescheduled to a date not before Thursday, October 17, 2024. This Court is able to continue hearings for good cause shown, pursuant to Rule 14, SCRMC, and pursuant to the Chief Justice’s September 27, 2024 Memorandum regarding Hurricane Helene. The Court takes notice of the circumstances described in the Parties’ Consent Motion and finds that good cause has been shown to continue the October 3, 2024 Hearing for fourteen days, with the hearing to be rescheduled to a date not before Thursday, October 17, 2024.

It is therefore ORDERED that the Hearing on Defendant’s Motion to Dismiss in Lieu of Answer previously set for October 3, 2024 at 10:00 AM shall be continued for fourteen days, with the hearing to be rescheduled to a date not before Thursday, October 17, 2024.

IT IS SO ORDERED.

JUDGE MARK C. EDMONDS

October __, 2024

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE COURT
	)	
COUNTY OF GREENVILLE	)	CASE NO. 2024CV232415
	)	
Joshua Hawkins,	)	
	)	
Plaintiff,	)	RESPONSE IN OPPOSITION TO
	)	DELTA'S MOTION TO DISMISS
	)	
vs.	)	
	)	
Delta Air Lines, Inc.,	)	
	)	
Defendant.	)	
	)	

RECEIVED

OCT 11 2024

**EAST GREENVILLE
SUMMARY COURT**

COMES NOW, the plaintiff, and respectfully requests that Delta's motion to dismiss be denied.

"If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper." *Doe v. marion*, 645 S.E.2d 245 (2007); *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995). Because it is possible for the plaintiff to recover on the allegations and causes of action set forth in the complaint, the Court should deny Delta's motion to dismiss.¹

Delta's Version of the Facts

First, it should be pointed out that Delta offers a version of the facts that is false. Delta contends that flights related to this suit were cancelled due to weather, which is demonstrably

¹ Delta also moves pursuant to SCRCP 12(b)(1) and 10(c). However, because it is undisputed that Delta does business in South Carolina and there is no federal law preempting jurisdiction in this Court, and because no documents incorporated into pleadings suggest dismissal is proper, the Rules appear to be impertinent. Because the plaintiff can recover on at least one theory of relief, the Court should deny Delta's SCRCP 12(b)(6) motion for the reasons set forth above, which are supported by several cases.

untrue. At a minimum, the plaintiff has set forth allegations and evidence that weather could not have caused the delay, and at this stage, the plaintiff's allegations must be taken as true. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999). It appears on this point, and other points to follow, that Delta slyly seeks summary judgment under the guise of a summary judgment motion. While it is true that Delta's attachments related to weather are part of its pleadings, it is also true that the plaintiff set forth observational evidence in a signed pleading which directly contradicts Delta's pleadings and attachments.

Next, Delta states "Plaintiff refused to take the next available flight Delta offered him, which was scheduled to depart two days later," as if the plaintiff "refused." Obviously, most people, like the plaintiff, have jobs, responsibilities, and pets. In this case, the plaintiff had all three and waiting for days in New York – while Delta does not cover lodging, food, or any other expenses – is not a reasonable option by any standards. Besides all that, the plaintiff has offered conflicting evidence and allegations, that must be taken as true over Delta's alternate version of the facts. *Id.*

Delta also, through logical gymnastics, asserts that the plaintiff has brought claims in this case that were dismissed with prejudice in another case, which is flatly false. Delta knows that, which is why, at the tail end of the assertion, Delta admits that the plaintiff did not bring the exact same causes of action, and that they are "other causes of action."

SCRCP 12(b)(1)

Delta cannot genuinely argue the Magistrate Court does not have jurisdiction to hear claims related to its misconduct. In fact, Delta admittedly does business in this State, and its Terms claim to limit liability below the jurisdictional maximum of this Court.

By Delta's rationale, which is wrong, any suit where it is a defendant would be governed by federal law that preempts state law, and would necessarily have to be litigated in federal court. That is simply not the law. State Courts are courts of general jurisdiction, and may hear cases arising from state and federal law, of course. Delta seems to suggest that if causes of action in a controversy are preempted by federal law, the Court cannot hear the controversy. That is not true. Instead, the Court may hear the controversy either way, even if it determines federal law preempts state law. Delta must show a conflict between state and federal law for preemption to apply at all. *Murphy v. Nat'l collegiate Athletic Ass'n*, 584 U.S. 453 (2018); *Mutal Pharmaceutical Co. v. Bartlett*, 570 U.S. 472, 33 S. Ct. 2466, 186 L.Ed.2d 607 (2013); *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 112 S. Ct. 2031, 119 L.Ed.2d 157 (1992). If Delta does show such a conflict, there is no prohibition on this Court hearing this controversy, though.

Delta seems to admit that a Montreal Convention claim exists – which it does – and that alone is reason enough, along with all the other reasons set forth herein, for the Court to deny Delta's motion. It is curious that Delta goes on for pages about the Montreal Convention and also that Delta referenced repeatedly that the plaintiff has another case against American Airlines. What Delta does not say is that in that case – in open Court – American Airlines admitted that the plaintiff had a right to a trial as long as the plaintiff brought suit through the Montreal Convention. In addition to this, that statement was made in a South Carolina Magistrate Court. No doubt, American and Delta are competitors. They should agree, at least, though, that the Montreal Convention and other authority allow customers to bring claims against them. Airlines are not immune from suit simply because they are airlines.

To its credit, Delta does admit that it can be held liable when it breach one or more of its own terms. *Am. Airlines, Inc. v. Wolens*, 513 U.S. 219 (1995). Because the plaintiff has alleged

this as part of his suit, and because that allegation must be taken as true, that is sufficient to deny Delta's motion.

The reason Delta's motion and memorandum is so long is because Delta is trying everything to see what will stick. Delta's position that the plaintiff has no relief – especially at this stage – is not tenable and it is not reasonable. The suggestion that the plaintiff cannot have any relief under the Uniform Declaratory Judgments Act is, honestly, absurd. As Delta knows, the Act gives this Court “the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” *Sunset Cay, LLC v. City of Folly Beach*, 593 S.E.2d 462 (2004). There is certainly no conflict between a statute allowing the Court to declare the rights of the parties and any federal law on which Delta relies.

SCRCP 12(b)(6)

Delta seems to acknowledge that a SCRCP 12(b)(6) motion is improper but argues the Court should dismiss the plaintiff's Montreal Convention “to the extent it seeks recovery for ‘inconvenience.’” The problem is that Delta relies on a case nothing like this one. Delta cites language from *Seshadri v. Brit. Airways PLC*, No. 3:14-cv-00833 addressing a “full day of a memorable refreshing vacation.” Delta omits, of course, that the plaintiff's claim stems not from daydreaming on vacation, but on damages Delta proximately caused by violating its own terms and engaging in conduct causing identifiable money damages, which of course allows recovery. *E. Airlines, Inc. v. Floyd*, 499 U.S. 530 (1991).

Delta betrays its position and the fact that it is looking for a disposal of fact question with what amount to summary judgment in its favor by block quoting Delta's terms. “Delta will exercise **reasonable** efforts to transport you and your bags...” Delta wants this Court, instead of a jury, to summarily decide that it was “reasonable” for Delta to unilaterally to the plaintiff and thousands

of other people they were stuck in New York for days, without any compensation whatsoever, and with no visible signs of the mysterious weather described by Delta as the reason for the breach. Article I, Section 14 of the South Carolina Constitution and the Seventh Amendment of the United States Constitution require that a jury decide that disputed fact because the amount in controversy exceeds twenty dollars.²

Delta also claims, citing its terms, that because cancellations were due to “weather,” it cannot be held responsible, no matter how egregious its conduct. The problem for Delta, legally speaking, is that the plaintiff has alleged the cancellation was not due to weather, and the plaintiff’s allegations must be taken as true *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999). Incredibly, Delta goes on to cite the portion of its terms that reads “when a passenger’s travel is interrupted for more than 4 hours...as a result of flight cancellation or delay on the date of travel other than from force majeure, Delta will provide the passenger with...hotel [and] ground transportation.” The plaintiff has alleged both that Delta did not actually cancel due to weather and that Delta did not compensate for hotel or transportation, which is required by Delta’s terms. Because the plaintiff’s allegations must be taken as true, pursuant to *Baird* and a litany of other cases, Delta’s motion must be denied.

Delta is mistaken in its assertion that fraud is the same cause of action as breach of contract accompanied by fraudulent act. Those causes of action are very different, and our courts have repeatedly articulated the differences between the two. The former, for example, has nine elements,

² Dismissal of this case would violate the plaintiff’s State and Federal constitutional rights, including the right to Due Process, the Equal Protection Clause, specifically, the right to a jury trial under the South Carolina Constitution and the right to a jury trial under the United States Constitution. Although the Seventh Amendment has never been fully incorporated against the States, it is clear from the language of the Amendment that the jury trial guarantee contained in the Seventh Amendment applies to all controversies exceeding twenty dollars, regardless of where they are litigated. The plaintiff preserves all constitutional arguments for appellate review.

while the latter has only three. *Conner v. City of Forest Acres*, 560 S.E.2d 606 (2002); *Harper v. Ethridge*, 290 S.S. 112, 348 S.E.2d 374 (Ct. App. 1986); *Sullivan v. Callhoun*, 117 S.C. 137, 139, 108 S.E. 189, 189 (1921). In an event, res judicata requires that an issue be adjudicated in a prior suit. *Plum Creek Development v. City of Conway*, 512 S.D.2d 106 (1999). None of the plaintiff's claims have been fully adjudicated in any suit, and besides that, the plaintiff has not brought any claims dismissed by agreement in the first suit.

Conclusion

Delta asks the Court to ignore the fact that it violated its terms, lost and damaged luggage, unilaterally cancelled multiple flights for no valid reason, then sent the plaintiff chasing luggage that it lost through multiple airports with multiple third parties for days. Neither equity nor the law allow that. Perhaps most importantly, the cases from South Carolina Courts and federal courts cited above do not allow it. The plaintiff therefore respectfully requests that Delta's motion to dismiss be denied.

Respectfully submitted,

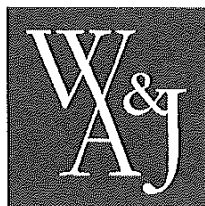
Hawkins & Jedziniak, LLC



Joshua T. Hawkins, S.C. Bar No. 78470
Helena L. Jedziniak, S.C. Bar No. 100825
1225 South Church Street
Greenville, South Carolina 29605
(864) 275-8142 (telephone)

September 27, 2024
Greenville, South Carolina

Attorneys for Plaintiff



WILKES
ATKINSON &
JOYNER, LLC
ATTORNEYS AT LAW

MICHAEL B.T. WILKES, P.A. ♦
C. DANIEL ATKINSON ♦ ♦
J. ALEXANDER JOYNER ♦
BRIAN M. PETERS, JR. *
JUSTIN M. MOFFITT ♦
M. TAYLOR PETTY
JUSTIN M. TAYLOR ♦

♦ CHARLESTON OFFICE
♦ ALSO MEMBER GA BAR
♦ ALSO MEMBER NC BAR
♦ CERTIFIED MEDIATOR
* ALSO MEMBER OF FL BAR

Reply to: SPARTANBURG OFFICE
127 DUNBAR STREET, SUITE 200
SPARTANBURG, SC 29306
PHONE: 864.591.1113
TOLL FREE: 866.920.1113
FAX: 864.591.1767

CHARLESTON OFFICE
320 BROAD STREET, SUITE 220
CHARLESTON, SC 29401
PHONE: 843.737.6229

WWW.WAJLAWFIRM.COM

November 18, 2024

Via Email and U.S. Mail

Michelle Pegg
East Greenville Summary Court
320 W. Main St.
Taylors, SC 29687
dpegg@greenvillecounty.org

Re: *Joshua Hawkins, Plaintiff v Delta Air Lines, Inc., Defendant*
East Greenville Summary Court
Case Number: 2024-CV- 23-2415

Dear Ms. Pegg:

On behalf of Delta Air Lines, Inc., please find enclosed an original and one copy of the *Defendant's Reply Brief in Support of Defendant's Motion to Dismiss in Lieu of Answer* and Certificate of Service. Please file the originals and return filed stamped copies to me in the envelope provided.

By copy of this letter, I am serving Plaintiff's counsel with same. If you have any questions, please advise.

Sincerely,

Brian M. Peters, Jr.
bpeters@wajlawfirm.com

Enclosures
cc: Joshua T. Hawkins, Esq.

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE COURT
	)	
COUNTY OF GREENVILLE	)	Case No.: 2024-CV-23-2415
	)	
Joshua Hawkins,	)	
	)	
Plaintiff,	)	REPLY BRIEF IN SUPPORT OF
	)	DEFENDANT'S MOTION TO DISMISS
vs.	)	IN LIEU OF ANSWER
	)	
Delta Air Lines, Inc.	)	
	)	
Defendant.	)	
_____	)	

COMES NOW, Delta Air Lines, Inc. ("Delta"), by and through the undersigned counsel, and files its Reply Brief in Support of its Motion to Dismiss Plaintiff Joshua Hawkins' Complaint in Lieu of Answer, and in support thereof, states as follows:

INTRODUCTION

Plaintiff's hodge-podge of claims demonstrate that he is unhappy with Delta's alleged business or customer service practices. But whether he approves of Delta's practices or not, the law is clear: He may not assert state law causes of action for the infractions he alleges. Plaintiff is limited to bringing a breach of contract claim based solely upon the terms of Delta's Contracts of Carriage, "as is," without state law interpretation of those terms. He does not. Otherwise, Plaintiff may only bring limited claims for delay under the Montreal Convention. Plaintiff impermissibly asks for more. As a result, this Court should grant Delta's Motion to Dismiss.

LEGAL ARGUMENT

I. This Court Must Resolve the Subject Matter Jurisdiction Issue First.

This Court must dismiss the causes of action that it has no jurisdiction to hear. *See* Rule 12(h)(3), SCRPC. This is "fundamental." *Anderson v. Anderson*, 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989). Plaintiff asks this Court to reinvent the wheel by stating that there must be "a

conflict between state and federal law for preemption to apply at all.” (Response Brief at p. 3.) The law, however, is already well settled: the ADA preempts state law claims relating to an airline’s price, route or service, and the Montreal Convention preempts all other claims within its scope. 49 U.S.C. § 41713(b)(1) (ADA); Montreal Convention, art. 29. Plaintiff should know this is well settled—the Court of Appeals told him so in *Hawkins v. Am. Airlines*, No. 2020-001150, 2024 WL 1655457 (S.C. Ct. App. Apr. 17, 2024) (unpublished).

Here, the Court need only apply this established precedent and dismiss Plaintiff’s preempted causes of action. The Montreal Convention preempts the Warsaw Convention claims, the “Claim for a Declaratory Judgment and Breach of Contract,” and the Fraud claims for the international flights; the ADA preempts the Warsaw Convention claim, the “Claim for Declaratory Judgment and Breach of Contract,” and Fraud claims, as pleaded, for the domestic flight. Once these claims are dismissed, the Court need only consider the legal merits of the Montreal Convention cause of action.

II. The Montreal Convention Does Not Allow Recovery for Plaintiff’s “Wild Goose Chase”¹ Damages.

While the Montreal Convention cause of action may be heard for the international flights, Plaintiff seeks recovery that no Montreal Convention plaintiff is entitled to receive—inconvenience damages. (Compl. at ¶¶ 28, 50.) Citing no case law, Plaintiff argues that inconvenience damages are only damages caused by a lost opportunity to “daydream[] on vacation.” (See Response Brief at p. 4.) The case law, however, considers lost time as inconvenience damages. See *Lee v. Am. Airlines Inc.*, 355 F.3d 386, 387 (5th Cir. 2004) (“Lee alleges American Airlines inconvenienced him by forcing him to spend time in a terminal without adequate food, water, restroom facilities and information regarding the status of his flight, by

¹ See Complaint at ¶ 44.

forcing him to spend the night in a dirty, substandard and unsafe motel room, and caused him to lose a full day of a memorable refreshing vacation. We agree with the district court that, as alleged, Lee's so-called inconvenience damages are not easily quantifiable and do not result in real economic loss.").

Plaintiff's Complaint clearly alleges these impermissible "inconvenience damages": He alleges that the delays caused him (1) to be without "the equipment he needed the entire time he was in Australia," (2) to "spen[d] significant time on wild goose chases," and (3) to be "deprived . . . of his bag and essential contents for significant periods of time he was in Lisbon." (Compl. at ¶ 44.) The Montreal Convention does not allow recovery for these inconvenience damages, and this Court should dismiss them as a matter of law.

III. The *Wolens* Exception Does Not Allow Plaintiff's Catch-All "Declaratory Judgment and Breach of Contract" Cause of Action.

Plaintiff credits Delta for recognizing the *Wolens* Exception² (Response Brief at p. 3)—it would do Plaintiff well to also recognize it. *Wolens* does not allow this Court to interpret the fairness of an airline's contract, but that is exactly what Plaintiff's third cause of action "Claim for a Declaratory Judgment and Breach of Contract" asks. As a whole, this third cause of action is preempted by the ADA.

The *Wolens* Exception only allows this Court to hear a limited breach of contract cause of action not pleaded here.³ Crucially Plaintiff's third cause of action does not cite a specific portion

² The *Wolens* Exception: Only certain breach of contract claims are excepted from the ADA's preemptive scope: Those where the plaintiff seeks the Court to enforce "a term the airline itself stipulated." *Am. Airlines, Inc. v. Wolens*, 513 U.S. 219, 232–33, 115 S. Ct. 817, 826, 130 L. Ed. 2d 715 (1995).

³ Plaintiff places great weight on the ability to put his contested facts before a jury. This puts the cart before the horse. In a Motion to Dismiss under Rule 12(b)(6), the Court must simply assume Plaintiff's factual allegations are true and then make its ruling on the sufficiency of the cause of action as a matter of law. *See, e.g., Rice-Marko v. Wachovia Corp.*, 398 S.C. 301, 307, 728 S.E.2d

of the contract that Delta allegedly breached. Under *Wolens*, the Court can only hear a breach of contract cause of action only if Plaintiff alleges a black letter breach of the contract's own terms. Plaintiff fails to do so.

For the domestic flight, Plaintiff places great weight on the allegation that he allegedly observed no bad weather, and therefore Delta's cancelation was unjustifiably attributed to "weather." (See Compl. at ¶¶ 11-14, 16; Response Brief at pp. 1-2.) Plaintiff argues that whether there actually was bad weather is a jury issue, and therefore he states a claim. (See Response Brief at pp. 1-2.) Plaintiff's theory ignores the black letter of the Contract of Carriage as detailed in Delta's Brief. The Contract of Carriage does not depend solely on the actual occurrence of bad weather in order for the *force majeure* rules to apply—in the Contract of Carriage, "*force majeure*" also means "threatened or reported (1) Weather conditions or acts of God." (Exhibit A to Delta's Motion to Dismiss, Contract of Carriage, Rule 19 at pp. 17-18.) Plaintiff's Complaint states no allegation that bad weather was *not* threatened or reported—only that *he* did not see an occurrence of bad weather himself. (See Compl. at ¶¶ 11, 13, 16.) In fact, the Complaint tacitly admits bad weather was "threatened or reported" by referring to the "weather maps" Delta allegedly "attempted to use . . . as an excuse for flight cancellations." (See Compl. at ¶¶ 12, 16.) Plaintiff makes no rebuttal that Delta followed its *force majeure* procedures—Plaintiff merely complains that he did not like the option of waiting two days for the next *available* flight. This is not a breach of the Contract of Carriage's black letter terms.

In order to state a claim here, Plaintiff must allege facts constituting a breach. Presently, he argues in his Response Brief Delta had no right under the Contract of Carriage to follow the *force*

61, 64–65 (Ct. App. 2012). That is, if those alleged factual allegations do not amount to a legally cognizable cause of action, there is no need for the services of a jury to determine any contested facts, because those facts will never legally suffice. *See id.*

majeure provisions because Plaintiff observed no bad weather and therefore Delta lied about bad weather when delaying and cancelling the domestic flight. (See Response Brief at p. 5.) But that is insufficient, the Contract of Carriage clearly permits Delta to follow the *force majeure* provisions even if bad weather is merely “threatened or reported.” For Plaintiff’s claim to survive, the Complaint must at least allege that no bad weather was “threatened or reported.” It does not. Because those factual allegations are missing from the Complaint, it states no breach of contract cause of action.

IV. Claims Surviving A Rule 12(b)(6) Motion to Dismiss Do Not Rescue Invalid Claims.

This Court may dismiss those claims which fail to constitute causes of action without having to dismiss the whole complaint. Plaintiff argues that if any claim at all can survive a motion to dismiss, then no motion to dismiss can ever be granted. (Response Brief at p. 1, n. 1). This reading of Rule 12(b)(6) is inaccurate. In the same year as the *Doe v. Marion* decision Plaintiff cites, the South Carolina Supreme Court issued its decision in *Doe v. Greenville County School Dist.*, where the Court affirmed the dismissal of some causes of action but not others in a Rule 12(b)(6) Motion to Dismiss. *Doe v. Greenville Cnty. Sch. Dist.*, 375 S.C. 63, 66–67, 73, 651 S.E.2d 305, 307, 310 (2007).⁴ In *Greenville Cnty. Sch. Dist.*, those causes of action that survived the Rule 12(b)(6) motion to dismiss did not save the other insufficient causes of action from dismissal. Here, any valid Montreal Convention cause of action does not save the other invalid causes of

⁴ “Generally, in considering a Rule 12(b)(6), SCRCP, motion to dismiss, the trial court must base its ruling solely upon allegations set forth on the face of the complaint. . . . The motion may not be sustained if the facts alleged in the complaint and the inferences that can be drawn therefrom would entitle the plaintiff to any relief under any theory. . . . For the foregoing reasons, we affirm the trial court’s dismissal of Mr. and Mrs. Doe’s causes of action for negligent infliction of emotional distress, loss of consortium, breach of fiduciary duty, and breach of an assumed duty *in loco parentis*. Additionally, we reverse the trial court’s dismissal of Mr. and Mrs. Doe’s causes of action for negligent supervision.” *Doe v. Greenville Cnty. Sch. Dist.*, 375 S.C. 63, 66–67, 73, 651 S.E.2d 305, 307, 310 (2007).

action in Plaintiff's Complaint.

V. The Court Should Not Allow Plaintiff to Reallege Causes of Action He Voluntarily Dismissed with Prejudice under Different Names.

Courts regularly elevate substance over form.⁵ But Plaintiff wants this Court to elevate form over substance. Plaintiff essentially argues that the claims that he voluntarily dismissed with prejudice (with the advice and consent of himself as a South Carolina attorney) may be revived as long as they are restated as different causes of action. (*See* Response Brief at pp. 5-6.) They cannot.⁶ This Court should ignore the new labels Plaintiff gives to those causes of action and look at the facts constituting those causes of action. Plaintiff alleges the same conduct here that he alleged in his first suit—Delta's alleged pretextual cancelling flights or lying about lost luggage.⁷ What is different now is that these acts allegedly constitute "breach of the covenant of good faith and fair dealing" or "fraud" causes of action instead of only negligence, a violation of the Unfair Trade Practices Act, or a breach of contract accompanied by a fraudulent act.

Should this Court find that these claims survive preemption, this Court must enforce Plaintiff's own voluntary dismissal of the (1) Negligence/Gross Negligence/Recklessness; (2) Unfair Trade Practices Act Violation; and (3) Breach of Contract Accompanied by a Fraudulent

⁵ *See, e.g.*, Rule 12(b)(6), SCRCF ("failure to state facts sufficient **to constitute** a cause of action") (emphasis added); *Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Builders FirstSource-Se. Grp.*, 413 S.C. 630, 633–34, 776 S.E.2d 434, 436 (Ct. App. 2015) ("The circuit court granted summary judgment against Marick on its cross-claims for breach of contract and breach of warranty, finding these claims were 'merely disguised . . . claims for equitable indemnity and are not viable as alternative causes of action.' We affirm."); *Peppertree Resorts, Ltd. v. Cabana Ltd. P'ship*, 315 S.C. 36, 40, 431 S.E.2d 598, 601 (Ct. App. 1993) ("Equity regards substance rather than form.") (citing *Wilkie v. Philadelphia Life Ins. Co.*, 187 S.C. 382, 388, 197 S.E. 375, 378 (1938)).

⁶ A voluntary dismissal with prejudice is a final adjudication on the merits. *Nunnery v. Brantley Const. Co.*, 289 S.C. 205, 208–09, 345 S.E.2d 740, 742–43 (Ct. App. 1986).

⁷ *See* Second Amended Complaint at ¶¶ 22, 37–38, in, Greenville County Court of Common Pleas, Case No. 2024-CP-23-00556 (filed March 15, 2024).

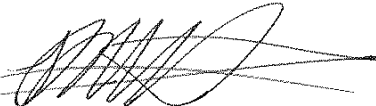
Act causes of action with prejudice. (See Exhibit C to Delta's Motion to Dismiss, Joint Stipulation of Dismissal without Prejudice at ¶ 1.)

CONCLUSION

This Court must dismiss the claims in Plaintiff's Complaint over which it has no jurisdiction: for the domestic flights, no cause of action survives as pleaded; for the international flight, only a remnant of the Montreal Convention claims may survive. Plaintiff is not entitled to waste the Court's resources and a jury's time by insisting a jury determines facts for legally invalid claims because a portion of one claim survives. Accordingly, this Court should dismiss the invalid claims in Plaintiff's Complaint.

Respectfully submitted,

November 18, 2024

By: 
C. Daniel Atkinson (S.C. Bar #72721)
datkinson@wajlawfirm.com
Brian M. Peters, Jr. (S.C. Bar #105911)
bpeters@wajlawfirm.com

WILKES ATKINSON & JOYNER, LLC
127 Dunbar Street, Suite 200
Spartanburg, SC 29306
(864) 591-1113

Attorneys for Defendant

STATE OF SOUTH CAROLINA)
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COUNTY OF GREENVILLE)
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Joshua Hawkins,)
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Plaintiff,)
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vs.)
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Delta Air Lines, Inc.,)
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Defendant.)
_____)

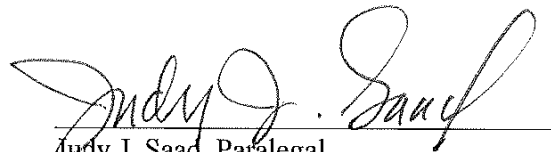
IN THE MAGISTRATE'S COURT

Case No.: 2024-CV-23-2415

CERTIFICATE OF SERVICE

I certify that on November 18, 2024, I caused to be served a true and correct copy of the foregoing *Defendant's Reply Brief in Support of Defendant's Motion to Dismiss in Liew of Answer* via U.S. Mail, postage pre-paid, and E-mail, addressed as follows:

Joshua T. Hawkins, Esq.
Helena L. Jedziniak, Esq.
Hawkins & Jedziniak, LLC
1225 South Church St.
Greenville, SC 29605
josh@hjllcsc.com
helena@hjllcsc.com



Judy J. Saad, Paralegal
jsaad@wajlawfirm.com
Wilkes Atkinson & Joyner, LLC

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

JOSHUA HAWKINS)

Plaintiff)

vs.)

DELTA AIR LINES INC.)

Defendant.)

IN THE MAGISTRATE COURT

2024CV2310302415

2024-CP-23-07485

MAGISTATE'S RETURN

This matter is on appeal from the Magistrate Court of Greenville County South Carolina, Matthew B. Hubbard, presiding Judge.

The Plaintiff filed a Summons and Complaint on June 11, 2024. Service on Defendant was attempted by mail, mailing date of June 13, 2024, with a postal return of August 7, 2024 stating nonservice. On August 14, 2024 the Court received notice of appearance from Defendant's counsel. A Motion hearing was held on December 3, 2024. The Plaintiff, attorney Joshua Hawkins, represented himself, and the Defendant was represented by attorney Ryan Peters.

The Defendant made a Motion to Dismiss based upon Rules 12(b)(1) and 12(b)(6). The Defendant stated this Court lacked jurisdiction over these matters and the Plaintiff has failed to state facts sufficient to support his claims against the Defendant. The Defendant stated the claims are based upon events surrounding three flights, one domestic flight from New York to Greenville, and two international flights, one from the United States to New Zealand, and another from the United States to Portugal. The Plaintiff had four causes of action concerning these flights which implicate the Montreal Convention, the Warsaw Convention, Claim for Declaratory Judgment of a Breach of Contract, and Fraud. This is based on the Plaintiff's claims such as delayed flights, lost luggage, additional expenses because of the Defendant's actions, and untrue claims by the Defendant of bad weather conditions.

The Defendant states the claims surrounding delayed flights and delayed or lost luggage implicate the Montreal Convention which replaced the Warsaw Convention. The Warsaw Convention is still useful in that it's case law is still relevant in disputes concerning international flights. Neither of these conventions apply to domestic flights such as the Plaintiff's first flight from New York to Greenville.

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The Defendant states Delta Air Lines is not responsible for inconvenience damages. Even if one good cause of action is found in the pleadings, it does not save the case in its entirety and all bad causes of action. In regards to subject matter jurisdiction and the domestic flight, the Defendant states the issue is covered by the Airline Deregulation Act. It prevents state laws from being applied to this matter. In a previous case, the Plaintiff voluntarily dismissed claims under the Unfair Trade Practices Act. The Defendant raised the issue of res judicata stating the Plaintiff's stipulation of dismissal in the previous case for the same matters prevents the fraud and breach of contract claims in the present case. The Defendant asserts the Court does not have subject matter jurisdiction and this case should be dismissed. Even though, in regards to the international flights, some Montreal Convention claims can be heard, the Plaintiff does not state a claim fully for the Montreal Convention to apply in that he seeks inconvenience damages.

The Plaintiff claims the domestic flight was cancelled for bad weather conditions. He states he did not observe any such bad weather and claims there is no basis for the delay. The Defendant, Delta Airlines, offered a replacement flight, but it would not depart until two additional days. The Plaintiff was unable to wait those additional days so he rented a car and drove home. In regards to the international flights, he says the flights were delayed, baggage was delayed and even lost. Delta Air Lines lied about the causes of each of these events and provided incorrect and misleading information to the Plaintiff. This was done in violation of its contract with the Plaintiff and in violation of its own rules. He stated he had become tired of this repeatedly happening and decided to take action against the Defendant.

The Plaintiff states if he can recover on any theory, the Court should not dismiss. The South Carolina Constitution guarantees the right to a jury trial and this case should be decided by a jury. He believes the Defendant submitted inadmissible evidence in his Motion by relying on weather reports and additional information that was not contained in his pleadings. This matter is proper in small claims court and the summary court has jurisdiction. He states he did not make a claim of unfair trade practices because it has a punitive aspect to it and it would be improper to make such a claim under these circumstances. The Plaintiff states there are facts included in the pleadings to support his cause of action for fraud and breach of contract with fraudulent intent. He stated he believes he can recover on multiple theories and if he can recover on any theory, the motion to dismiss must be denied. There are multiple issues and they are questions for a jury.

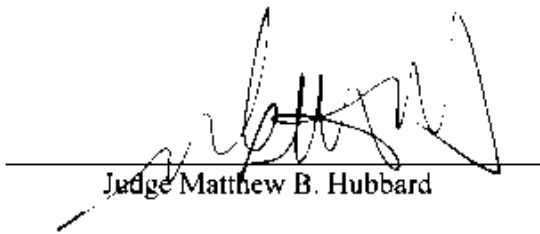
The Plaintiff states the Defendant has filed a Motion to Dismiss in Lieu of an Answer. They have offered defenses, but have proven none of them. The Plaintiff says nothing in his claims is outside of the Court's jurisdiction. The Plaintiff then asked if the Court had any questions of him. The Court asked how this case is filed in this venue rather than in Spartanburg County or in Georgia. The Plaintiff responded that the Defendant does have an argument that Georgia law applies to this case as Delta is based in Georgia, but Delta does business in all counties of South Carolina and flies over every county in South Carolina. While Delta is at the Greenville Spartanburg Airport in Spartanburg County, the airport is in the city limits of Greer which lies in both counties.

The ruling was in favor of the Defendant. The case was dismissed with prejudice for lack of subject matter jurisdiction, the Complaint fails to state facts sufficient to constitute causes of action, and the venue of Greenville County is improper.

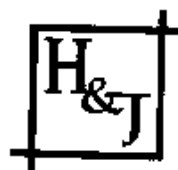
The Notice of Appeal was filed and served on the Court on January 6, 2025.

1. The Plaintiff believes the entire complaint should not have been dismissed when there are facts and causes of action which allow the Plaintiff to recover.
2. The Court erred by considering evidence outside the pleadings without converting the motion to dismiss to a motion for summary judgment.
3. Jurisdiction is proper in the summary court and the Defendant's 12(b)(1) motion should have been denied.

DATED January 31, 2025



Judge Matthew B. Hubbard



Hawkins & Jedziniak, LLC

Joshua T. Hawkins

josh@hjllesc.com

Helena L. Jedziniak *

helena@hjllesc.com

** also licensed in North Carolina*

Ethan L. Jedziniak

ethan@hjllesc.com

1225 South Church Street, Greenville, SC 29605
P: (864) 275-8142 • F: (864) 752-0911 • www.hjllesc.com

December 30, 2024

via -U.S. Certified Mail-
East Greenville Summary Court
320 West Main St.
Taylors, SC 29687

Re: *Joshua Hawkins v. Delta Airlines*
Magistrate Case No.: 2024CV2310302415
Circuit Court Case No.: 2024-CP-23-07485

To Whom It May Concern:

I hope you all had a Merry Christmas and enjoyed a few days off. Please see the attached Notice of Appeal to the Circuit Court in the above-mentioned matter, along with the certificate of service of the same

Sincerely,

Candie Edwards
Paralegal

Enclosures

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE COURT
COUNTY OF GREENVILLE	)	
Joshua Hawkins,	)	CASE NO. 2024CV232415
	)	
Plaintiff,	)	NOTICE OF APPEAL TO THE
	)	CIRCUIT COURT
vs.	)	
Delta Air Lines, Inc.,	)	
	)	
Defendant.	)	
_____	)	

COMES NOW, the plaintiff, pursuant to SCMCR 18, and respectfully submits his appeal to the Circuit Court. The Magistrate Court's dismissal, which is appealed here, was entered on December 3, 2024, and the undersigned received notice the case had been dismissed via email from the Magistrate Court on December 4, 2024. Pursuant to SCMCR 18(a), the plaintiff files this appeal within thirty days of delivery of written notice of the judgment.

INTRODUCTION

"If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper." *Doe v. Marion*, 645 S.E.2d 245 (2007); *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995). Because the plaintiff can recover on the allegations and causes of action set forth in the complaint, the Magistrate Court should have denied Delta's motion to dismiss.¹

¹ Delta also moved pursuant to SCRCP 12(b)(1) and 10(c). However, is undisputed that Delta does business in South Carolina and that subject matter jurisdiction and personal jurisdiction were proper as to at least some of the claims dismissed by the Magistrate Court.

ARGUMENT

- I. **The case should be sent back to the Magistrate because it was a reversible error for the Magistrate to dismiss the entire complaint, which contains facts and causes of action that allow the plaintiff to recover.**

If a plaintiff sets forth allegations and facts, when taken as true, allow him to recover, the Court must deny a motion to dismiss. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999). At the hearing on the defendant's motion to dismiss, opposing counsel seemed to acknowledge that at least some of the plaintiff's claims would survive a motion to dismiss, and took the position that the complaint should be narrowed. Likewise, the Magistrate also seemed to acknowledge the complaint contained viable causes of action, but asserted the Court should not dismiss some claims and retain others. The Court seemed to indicate the case should be heard in another Court, but did not indicate which Court.

Simply put, the plaintiff stated facts that, if assumed true, allow him to recover. The complaint cites portions of Delta's terms that Delta violated, and certain fraudulent conduct Delta engaged in, which proximately caused the plaintiff to sustain damages. Cases like *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999), *Doe v. Marion*, 645 S.E.2d 245 (2007), *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995), a whole host of other cases, and the Rules of Civil Procedure all required the Magistrate to deny the defendant's motion to dismiss.

Moreover, the plaintiff set forth facts and allegations that, if assumed true, allow the plaintiff to recover under the Montreal Convention. "A circuit court must deny a motion to dismiss under Rule 12(b)(6) 'if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case.' *Fleteau v. Harrelson*, 355 S.C. 197, 203, 584

S.E.2d 413, 415 (Ct. App. 2003).² “The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). (Emphasis added.)

The plaintiff alleged “damage occasioned by delay,” contract non-performance, and set forth facts that more than sufficiently described the same. (See Montreal Convention Article 19: “The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo.” See also, *Paradis v. Ghana Airways Ltd*, 348 F. Supp. 2d 106 (So. Dist. N.Y. (2004).) Because the law – the Montreal Convention and the cases interpreting it – allow the plaintiff to recover for the conduct described and alleged in the complaint, the Magistrate should have denied Delta’s motion to dismiss.

The plaintiff has claimed that Delta violated its own terms and engaged in conduct that proximately caused him to sustain identifiable money damages, which of course allows recovery. *E. Airlines, Inc. v. Floyd*, 499 U.S. 530 (1991). Delta reveals that it is looking for determination of a disputed fact question with what amounts to summary judgment in its favor by block quoting Delta’s terms. “Delta will exercise reasonable efforts to transport you and your bags...” Delta wants this Court, instead of a jury, to summarily decide the following fact questions:

1. Was it reasonable for Delta – to the plaintiff and thousands of other people – to unilaterally decree the plaintiff and other customers were stuck in New York for days, without any compensation for food lodging, or anything whatsoever, with no visible signs of the mysterious weather described by Delta?
2. Was it reasonable to tell the plaintiff his bags were in one location, when they were in

² This is a quote from *Watkins v. Hall*, Unpublished Opinion No. 2017-UP-298 (Ct. App. 2017). While *Watkins* has no precedential value, its rationale is based on *Flateau* and other binding authority.

- fact on a different continent, so that the plaintiff spent hours searching for bags containing thousands of dollar's worth of equipment?
3. Was it reasonable to give the plaintiff the name of the wrong third party vendor possessing the bags, when in fact another company held the bags, so that the plaintiff spent hours looking for the bags in vain (the plaintiff never even agreed to entrust the bags to a third-party vendor, and in fact had never heard of either the company Delta told him about or the company that actually had the bags)?
 4. Is it reasonable for Delta to mishandle the plaintiff's bags, causing damage and delay (which is absolutely covered under the Montreal Convention) while the plaintiff repeatedly calls Delta, trying desperately to find the bags?
 5. Is the raft of other outrageous and costly conduct by Delta described in the complaint reasonable?

The reasonableness of a defendant's conduct is a fact question. *Mitchell, Jr. v. Fortis Ins. Co.*, 686 S.E.2d 176 (2009). Article I, Section 14 of the South Carolina Constitution and the Seventh Amendment of the United States Constitution require that a jury decide disputed facts³ such as whether "Delta...exercise[d] reasonable efforts to transport [the plaintiff's] bags." Beyond that, Delta's obligation to act reasonably in the transportation of bags like the plaintiff's bags, which Delta damaged and delayed, is contained in its own terms, which must be construed against Delta as the drafter of the terms. *Mathis v. Brown & Brown of SC*, 689 S.E.2d 773 (2010).

³ The Magistrate's dismissal of this case violated the plaintiff's State and Federal constitutional rights, including the right to Due Process, the Equal Protection Clause, specifically, the right to a jury trial under the South Carolina Constitution and the right to a jury trial under the United States Constitution. Although the Seventh Amendment has never been fully incorporated against the States, it is clear from the language of the Amendment that the jury trial guarantee contained in the Seventh Amendment applies to all controversies exceeding twenty dollars, regardless of where they are litigated. The plaintiff preserves all constitutional arguments for further appellate review.

Delta claims, citing its terms, that because cancellations were due to "weather," it cannot be held responsible, no matter how egregious its conduct. The problem for Delta, legally speaking, is that the plaintiff has alleged the cancellation was *not* due to weather, and the plaintiff's allegations must be taken as true *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999). Delta goes on to cite the portion of its terms that reads "when a passenger's travel is interrupted for more than 4 hours...as a result of flight cancellation or delay on the date of travel other than from force majeure, Delta will provide the passenger with...hotel [and] ground transportation." The plaintiff has alleged both that Delta did not actually cancel due to weather and that Delta did not compensate for hotel or transportation, which is required by Delta's terms. Because the plaintiff's allegations must be taken as true, pursuant to *Baird* and a litany of other cases, the Magistrate should have denied Delta's motion to dismiss.

At the hearing, Delta argued, in error, that fraud is the same cause of action as breach of contract accompanied by fraudulent act. It is black letter law in South Carolina that the two causes of action are not the same, and our courts have repeatedly articulated the differences between the two. The former has nine elements, while the latter has three. *Conner v. City of Forest Acres*, 560 S.E.2d 606 (2002); *Harper v. Ethridge*, 290 S.S. 112, 348 S.E.2d 374 (Ct. App. 1986); *Sullivan v. Callhoun*, 117 S.C. 137, 139, 108 S.E. 189, 189 (1921). If everything the plaintiff alleged is true, all nine elements of fraud are established, and the plaintiff can recover. In an event, *res judicata* requires that an issue be adjudicated in a prior suit. *Plum Creek Development v. City of Conway*, 512 S.D.2d 106 (1999). None of the plaintiff's claims have been fully adjudicated in any suit.

II. The case should be sent back to the Magistrate because it was a reversible error for the Magistrate to consider evidence outside the pleadings without converting the motion to dismiss to a motion for summary judgment.

Delta styled its motion as a motion to dismiss, but it submitted and relied on materials outside the pleadings. When matters and evidence outside the pleadings are submitted and considered, a motion to dismiss must be converted to a motion for summary judgment. SCRCP 12(b); *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); *Brown v. Leverette*, 291 S.C. 364, 367, 353 S.E.2d 697, 698-99 (1987); *Johnson v. Dailey*, 318 S.C. 318, 457 S.E.2d 613 (1995).

The defendant relied on weather reports and other evidence outside of the complaint and even handed up materials at the hearing which were outside of the complaint. The plaintiff, of course, objected to the consideration of materials outside the complaint. Notwithstanding, the Magistrate considered materials outside the complaint and dismissed the plaintiff's entire case. The plaintiff set forth observational evidence in a signed pleading which directly contradicts the evidence outside of the complaint relied on by Delta. To the extent the Magistrate determined the factual disputes related to the weather, that determination is the function of a jury, and it was improper for the Magistrate to decide those disputed facts. *Kitchen Planners v. Friedman*, 892 S.E.2d 297 (2023). If the observational evidence set forth by the plaintiff and alleged in the complaint is true, then the plaintiff may recover, and resolution of fact questions and dismissal were improper.

In its motion, Delta states "Plaintiff refused to take the next available flight Delta offered him, which was scheduled to depart two days later," as if the plaintiff "refused" a valid or reasonable option. Obviously, most people, like the plaintiff, have jobs, responsibilities, and pets. In this case the plaintiff had all three, and waiting for days in New York because Delta refused to follow its own terms and cover lodging, food, or any other expenses is not a reasonable option by any standards. Besides all that, the plaintiff has offered conflicting evidence and allegations that

the Magistrate was required to take as true over Delta's inaccurate and conflicting version of the facts. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999).

III. Jurisdiction is proper in the Magistrate Court, there is no requirement to litigate the case in federal court, and the Magistrate should have denied Delta's SCRCF 12(b)(1) motion to dismiss.

"Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong. *Skinner v. Westinghouse Elec. Corp.*, 380 S.C. 91, 93, 668 S.E.2d 795, 796 (2008). South Carolina trial courts are vested with general original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts. S.C. Const. art. V, § 11." *Dema v. Tenet Physician Services-Hilton*, 678 S.E.2d 430 (2009). Jurisdiction over the plaintiff's claims is proper in Magistrate Court, and there is certainly no exclusive jurisdiction for federal court as to any of the claims dismissed by the Magistrate. The Magistrate Court has subject matter jurisdiction over claims related to international travel pursuant to the Montreal Convention, which does not contain any requirement that the relief it provides be sought in federal court. The Magistrate Court also has subject matter jurisdiction over any other claims which are not preempted by federal law.

The plaintiff's claims that Delta violated its own terms and engaged in conduct which proximately caused identifiable money damages is not barred or preempted. *E. Airlines, Inc. v. Floyd*, 499 U.S. 530 (1991). "A federal statute preempts state action in fields of traditional state regulation only if the clear and manifest intent of Congress in passing the federal statute was 'to occupy the field to the exclusion of the States.'" *Medical Park OB/GYN, PA*, 467 S.E.2d 261 (Ct. App. 1996). See also, *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 209, 105 S.Ct. 1904, 1910, 85 L.Ed.2d 206 (1985); *Hillshorough County, Fla. v. Automated Medical Laboratories, Inc.*, 471 U.S.

707, 719, 105 S.Ct. 2371, 2378, 85 L.Ed.2d 714 (1985); *Jones v. Rath Packing Co.*, 430 U.S. 519, 525, 97 S.Ct. 1305, 1309-10, 51 L.Ed.2d 604 (1977). Not only are some of the plaintiff's claims specifically created for redress against airlines, but Delta cannot show any congressional intent for federal law to preempt them.

Delta must show a conflict between state and federal law for preemption to apply at all. *Murphy v. Nat'l collegiate Athletic Ass'n*, 584 U.S. 453 (2018); *Mutual Pharmaceutical Co. v. Bartlett*, 570 U.S. 472, 33 S. Ct. 2466, 186 L.Ed.2d 607 (2013); *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 112 S. Ct. 2031, 119 L.Ed.2d 157 (1992). There is no conflict between any of the laws pursuant to which the plaintiff seeks relief and any federal law, and none of the relief sought by the plaintiff has any state-created regulatory effect as to airlines. To its credit, Delta does admit that it can be held liable when it breaches one or more of its own terms. *Am. Airlines, Inc. v. Wolens*, 513 U.S. 219 (1995). Because the plaintiff has alleged this as part of his suit, and because that allegation must be taken as true, that is sufficient to deny Delta's motion.

Lastly, the suggestion that the plaintiff cannot have any relief under the Uniform Declaratory Judgments Act is, honestly, absurd. As Delta knows, the Act gives this Court "the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." *Sunset Cay, LLC v. City of Folly Beach*, 593 S.E.2d 462 (2004). There is no conflict between a statute allowing the Court to declare the rights of the parties and any federal law on which Delta relies. In fact, there is a federal analogue, which does exactly the same thing as our State Declaratory Judgments statute.

Conclusion

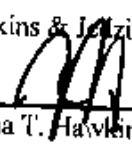
Airlines do not have absolute immunity from suit. Delta asked the Magistrate Court to ignore the fact that it violated its own terms, which is plainly actionable. Delta asked the Magistrate

Court to ignore Delta losing, damaging, and delaying luggage, which the Montreal Convention clearly provides a remedy for, that Delta unilaterally cancelled multiple flights for no contractually allowable reason, and for lying to the plaintiff, causing him to search for and chase luggage the luggage Delta lost through multiple airports with multiple third parties for days.

Neither equity nor the law (including basic contract law and the Montreal Convention) allow dismissal where the allegations of the complaint allow the plaintiff to recover.⁴ The plaintiff therefore respectfully requests that the Court remand this case back to the Magistrate Court for trial.

Respectfully submitted,

Hawkins & Jedziniak, LLC


Joshua T. Hawkins, S.C. Bar No. 78470
Helena L. Jedziniak, S.C. Bar No. 100825
1225 South Church Street
Greenville, South Carolina 29605
(864) 275-8142 (telephone)

Attorneys for Plaintiff

December 18, 2024
Greenville, South Carolina

⁴ As previously stated, the law governing motions to dismiss required the Magistrate to deny Delta's motion to dismiss. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999), *Doe v. Marion*, 645 S.E.2d 245 (2007), *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995)

) IN THE COURT OF COMMON PLEAS
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) CASE NO. 2024-CP-23-07485

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CERTIFICATE OF SERVICE

HAWKINS & JEDZINIAK, LLC

Candie Edwards
Paralegal



WILKES
ATKINSON &
JOYNER, LLC
ATTORNEYS AT LAW

MICHAEL B.T. WILKES, P.A.*
C. DANIEL ATKINSON*
J. ALEXANDER JOYNER*
BRIAN M. PETERS, JR.*
JUSTIN M. MOFFITT*
M. TAYLOR PETTY
JUSTIN M. TAYLOR*

- * CHARLESTON OFFICE
- * ALSO MEMBER GA BAR
- * ALSO MEMBER NC BAR
- * CERTIFIED MEDIATOR
- * ALSO MEMBER OF FL. BAR

Reply to: SPARTANBURG OFFICE
127 DUNBAR STREET, SUITE 200
SPARTANBURG, SC 29306
PHONE: 864.591.1113
TOLL FREE: 866.920.1113
FAX: 864.591.1767

CHARLESTON OFFICE
320 BROAD STREET, SUITE 220
CHARLESTON, SC 29401
PHONE: 843.737.6229

WWW.WAJLAWFIRM.COM

December 4, 2024

Via Email and U.S. Mail

Judge Matthew B. Hubbard
East Greenville Summary Court
320 W. Main St.
Taylors, SC 29687
c/o Michelle Pegg
dpegg@greenvillecounty.org

Re: *Joshua Hawkins, Plaintiff v Delta Air Lines, Inc., Defendant*
East Greenville Summary Court
Case Number: 2024-CV- 23-2415

Dear Judge Hubbard:

Per your instructions at yesterday's hearing, please find enclosed a copy of Delta Air Lines, Inc.'s proposed Order dismissing the Complaint for your review.

By copy of this letter, I am serving Plaintiff's counsel with same. If you have any questions, please advise.

Sincerely,

Brian M. Peters, Jr.
bpeters@wajlawfirm.com

Enclosures
cc: Joshua T. Hawkins, Esq.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Joshua Hawkins,

Plaintiff,

vs.

Delta Air Lines, Inc.

Defendant.

IN THE MAGISTRATE COURT

Case No.: 2024CV2310302415

ORDER

— — — — —)
This matter came before the Court on Defendant Delta Air Lines, Inc.'s Motion to Dismiss in Lieu of Answer, filed August 15, 2024. The Parties submitted Briefs, which the Court has reviewed. On December 3, 2024, the Court heard arguments on Defendant's Motion to Dismiss. There are no issues of fact barring a ruling on the Motion. The Court rules as follows:

1. The Court grants Defendant's Motion to Dismiss for the reasons set forth in the Motion, in the Defendant's Briefing, and in the arguments made at the Hearing.
 - a. This Court does not have subject matter jurisdiction over a majority of Plaintiff's Complaint, and accordingly, the Court dismisses, with prejudice, the following causes of action:
 - i. The Warsaw Convention cause of action with respect to all three flights;
 - ii. The "Claim for a Declaratory Judgment and Breach of Contract" cause of action with respect to all three flights;
 - iii. The Fraud cause of action with respect to all three flights.
 - b. This Court finds the Complaint fails to state facts sufficient to constitute the following causes of action
 - i. The Montreal Convention cause of action with respect to the Domestic

Flight; and

- ii. The Montreal Convention cause of action with respect to the two International Flights to the extent Plaintiff seeks damages for Plaintiff's inconvenience.

2. The Court, *sua sponte*, dismisses the Complaint for the following independent reasons:
- a. A Greenville County Court is not the proper forum to entertain claims arising from flight(s) initiated in Spartanburg County, as alleged in the Complaint; and
 - b. Any surviving Montreal Convention causes of action are so intertwined with the dismissed claims that such claims cannot be heard as presently alleged in the Complaint without substantial prejudice to the Parties, the Court, and a jury.

For the reasons set forth above, this Court hereby dismisses Plaintiff Joshua Hawkins' Complaint.

IT IS SO ORDERED.

December 6, 2024

By: _____

JUDGE

EAST GREENVILLE SUMMARY COURT

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Joshua Hawkins,

Plaintiff,

vs.

Delta Air Lines, Inc.,

Defendant.

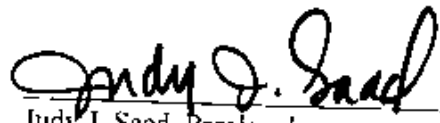
IN THE MAGISTRATE'S COURT

Case No.: 2024-CV-23-2415

CERTIFICATE OF SERVICE

I certify that on December 4, 2024, I caused to be served a true and correct copy of the foregoing Defendant's proposed Order Dismissing Complaint via U.S. Mail, postage pre-paid, and E-mail, addressed as follows:

Joshua T. Hawkins, Esq.
Helena L. Jedziniak, Esq.
Hawkins & Jedziniak, LLC
1225 South Church St.
Greenville, SC 29605
josh@hjllesc.com
helena@hjllesc.com



Judy J. Saad, Paralegal

jsaad@wailawfirm.com

Wilkes Atkinson & Joyner, LLC



**WILKES
ATKINSON &
JOYNER, LLC**
ATTORNEYS AT LAW

MICHAEL H.T. WILKES, P.A.*
C. DANIEL ATKINSON**
J. ALEXANDER JOYNER*
BRIAN M. PETERS, JR.*
JUSTIN M. MOFFITT*
M. TAYLOR PEITY
JUSTIN M. TAYLOR*

* CHARLESTON OFFICE
* ALSO MEMBER GA BAR
* ALSO MEMBER NC BAR
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PHONE: 843.737.6229

WWW.WAJLAWFIRM.COM

December 4, 2024

Via Email and U.S. Mail

Judge Matthew B. Hubbard
East Greenville Summary Court
320 W. Main St.
Taylors, SC 29687
c/o Michelle Pegg
dpegg@greenvillecounty.org

Re: *Joshua Hawkins, Plaintiff v Delta Air Lines, Inc., Defendant*
East Greenville Summary Court
Case Number: 2024-CV- 23-2415

Dear Judge Hubbard:

Per your instructions at yesterday's hearing, please find enclosed a copy of Delta Air Lines, Inc.'s proposed Order dismissing the Complaint for your review.

By copy of this letter, I am serving Plaintiff's counsel with same. If you have any questions, please advise.

Sincerely,

Brian M. Peters, Jr.
bpeters@wajlawfirm.com

Enclosures

cc: Joshua T. Hawkins, Esq.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Joshua Hawkins,

Plaintiff,

vs.

Delta Air Lines, Inc.

Defendant.

IN THE MAGISTRATE COURT

Case No.: 2024CV2310302415

ORDER

This matter came before the Court on Defendant Delta Air Lines, Inc.'s Motion to Dismiss in Lieu of Answer, filed August 15, 2024. The Parties submitted Briefs, which the Court has reviewed. On December 3, 2024, the Court heard arguments on Defendant's Motion to Dismiss. There are no issues of fact barring a ruling on the Motion. The Court rules as follows:

1. The Court grants Defendant's Motion to Dismiss for the reasons set forth in the Motion, in the Defendant's Briefing, and in the arguments made at the Hearing.
 - a. This Court does not have subject matter jurisdiction over a majority of Plaintiff's Complaint, and accordingly, the Court dismisses, with prejudice, the following causes of action:
 - i. The Warsaw Convention cause of action with respect to all three flights;
 - ii. The "Claim for a Declaratory Judgment and Breach of Contract" cause of action with respect to all three flights;
 - iii. The Fraud cause of action with respect to all three flights.
 - b. This Court finds the Complaint fails to state facts sufficient to constitute the following causes of action
 - i. The Montreal Convention cause of action with respect to the Domestic

Flight; and

- ii. The Montreal Convention cause of action with respect to the two International Flights to the extent Plaintiff seeks damages for Plaintiff's inconvenience.

2. The Court, *sua sponte*, dismisses the Complaint for the following independent reasons:

- a. A Greenville County Court is not the proper forum to entertain claims arising from flight(s) initiated in Spartanburg County, as alleged in the Complaint; and
- b. Any surviving Montreal Convention causes of action are so intertwined with the dismissed claims that such claims cannot be heard as presently alleged in the Complaint without substantial prejudice to the Parties, the Court, and a jury.

For the reasons set forth above, this Court hereby dismisses Plaintiff Joshua Hawkins' Complaint.

IT IS SO ORDERED.

December 4, 2024

By: _____

JUDGE

EAST GREENVILLE SUMMARY COURT

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Joshua Hawkins,

Plaintiff,

vs.

Delta Air Lines, Inc.,

Defendant.

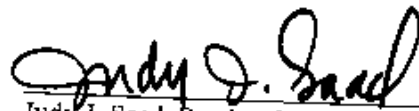
IN THE MAGISTRATE'S COURT

Case No.: 2024-CV-23-2415

CERTIFICATE OF SERVICE

I certify that on December 4, 2024, I caused to be served a true and correct copy of the foregoing Defendant's proposed Order Dismissing Complaint via U.S. Mail, postage pre-paid, and E-mail, addressed as follows:

Joshua T. Hawkins, Esq.
Helena L. Jedziniak, Esq.
Hawkins & Jedziniak, LLC
1225 South Church St.
Greenville, SC 29605
josh@hjlsc.com
helena@hjlsc.com



Judy J. Saad, Paralegal

jsaad@wajlawfirm.com

Wilkes Atkinson & Joyner, LLC

Pegg, Denise

From: Josh Hawkins <josh@hjlsc.com>
Sent: Wednesday, December 4, 2024 11:56 AM
To: Judy Saad; Pegg, Denise
Cc: Dan Atkinson; Helena Jedziniak; Paralegal; Brian Peters
Subject: Re: 24-2415: Joshua Hawkins v Delta Air Lines, Inc.: Defendant's Proposed Order

We object to the order and ruling, as it is at odds with the law. We respectfully submit that the ruling as to subject matter jurisdiction, 12(b)(6), venue, forum, and all other rulings amount to reversible error.

Of course, we do not expect that to change anything, but we don't want to waive anything.

We will file the necessary appeal to the circuit court pursuant to the Magistrate Court Rules.

Sincerely,



Joshua T. Hawkins
Partner • Hawkins & Jedziniak, LLC
Office (864) 275-8142 | Fax (864) 752-0911
josh@hjlsc.com
1225 South Church Street | Greenville, SC 29605
www.hawkinsandjedziniak.com

From: Judy Saad <jsaad@wajlawfirm.com>
Date: Wednesday, December 4, 2024 at 11:11 AM
To: "Pegg, Denise" <DPegg@greenvillecounty.org>
Cc: Dan Atkinson <datkinson@wajlawfirm.com>, Josh Hawkins <josh@hjlsc.com>, Helena <Helena@hjlsc.com>, Paralegal <Paralegal@hjlsc.com>, Brian Peters <bpeters@wajlawfirm.com>
Subject: 24-2415: Joshua Hawkins v Delta Air Lines, Inc.: Defendant's Proposed Order

Denise,

Please see attached correspondence to Judge Hubbard from Attorney Brian Peters, Defendant's proposed Order dismissing Complaint in Word format, and Certificate of Service in the above matter.

A hard copy is also being mailed to you and Plaintiff's attorney.

Thank you,
Judy Saad

Judy Saad

Paralegal



864.591.2355 Spartanburg
843.737.6229 Charleston

127 Dunbar St. | Ste 200 | Spartanburg, SC 29306
320 Broad St. | Ste 220 | Charleston, SC 29401

jsaad@wajlawfirm.com
www.wajlawfirm.com

**STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE**

Wilkes Atkinson & Joyner, LLC
Attn: C. Daniel Atkinson
127 Dunbar Street, Suite 200
Spartanburg, SC 29306

MAGISTRATE SUMMONS

You are hereby summoned to be and appear personally in the

**East Greenville Summary Court
320 West Main St
Taylors, SC 29687**

on **December 3, 2024 at 10:00 AM** to serve as a party in a Motion Hearing in the case of:

✓ RE: **Joshua Hawkins**

Vs ✓ **Delta Air Lines, Inc.**

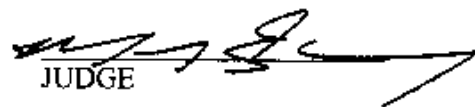
Ryan Rose

PLAINTIFF(S)

DEFENDANT(S)

Civil Case Number: **2024CV2310302415, Summons & Complaint.**

**HEREIN FAIL NOT, ON PAIN OF FORFEITING THE LAWFUL PENALTY IN
SUCH CASE MADE AND PROVIDED.**


JUDGE

**East Greenville Summary Court
320 West Main St
Taylors, SC 29687
Phone: (864) 467-4625
Fax: (864) 244-6232**

October 9, 2024

MV42

**STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE**

Wilkes Atkinson & Joyner, LLC
Attn: Brian Peters Jr.
127 Dunbar Street, Suite 200
Spartanburg, SC 29306

MAGISTRATE SUMMONS

You are hereby summoned to be and appear personally in the

**East Greenville Summary Court
320 West Main St
Taylors, SC 29687**

on **December 3, 2024 at 10:00 AM** to serve as a party in a Motion Hearing in the case of:

RE: **Joshua Hawkins**

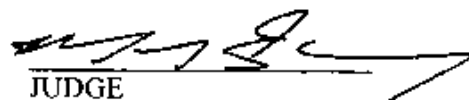
Vs **Delta Air Lines, Inc.**

PLAINTIFF(S)

DEFENDANT(S)

Civil Case Number: **2024CV2310302415, Summons & Complaint.**

**HEREIN FAIL NOT, ON PAIN OF FORFEITING THE LAWFUL PENALTY IN
SUCH CASE MADE AND PROVIDED.**


JUDGE

**East Greenville Summary Court
320 West Main St
Taylors, SC 29687
Phone: (864) 467-4625
Fax: (864) 244-6232**

October 9, 2024

MV42



**WILKES
ATKINSON &
JOYNER, LLC**
ATTORNEYS AT LAW

MICHAEL B.T. WILKES, P.A.*
C. DANIEL ATKINSON *
J. ALEXANDER JOYNER *
BRIAN M. PETERS, JR.*
JUSTIN M. MOFFITT*
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CHARLESTON OFFICE
320 BROAD STREET, SUITE 220
CHARLESTON, SC 29401
PHONE: 843.737.6229

WWW.WAJLAWFIRM.COM

November 18, 2024

Via Email and U.S. Mail

Michelle Pegg
East Greenville Summary Court
320 W. Main St.
Taylors, SC 29687
dpegg@greenvillecounty.org

Re: *Joshua Hawkins, Plaintiff v Delta Air Lines, Inc., Defendant*
East Greenville Summary Court
Case Number: 2024-CV-23-2415

Dear Ms. Pegg:

On behalf of Delta Air Lines, Inc., please find enclosed an original and one copy of the *Defendant's Reply Brief in Support of Defendant's Motion to Dismiss in Lieu of Answer* and Certificate of Service. Please file the originals and return filed stamped copies to me in the envelope provided.

By copy of this letter, I am serving Plaintiff's counsel with same. If you have any questions, please advise.

Sincerely,

Brian M. Peters, Jr.
bpeters@wajlawfirm.com

Enclosures
cc: Joshua T. Hawkins, Esq.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Joshua Hawkins,

Plaintiff,

vs.

Delta Air Lines, Inc.

Defendant.

IN THE MAGISTRATE COURT

Case No.: 2024-CV-23-2415

**REPLY BRIEF IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS
IN LIEU OF ANSWER**

COMES NOW, Delta Air Lines, Inc. ("Delta"), by and through the undersigned counsel, and files its Reply Brief in Support of its Motion to Dismiss Plaintiff Joshua Hawkins' Complaint in Lieu of Answer, and in support thereof, states as follows:

INTRODUCTION

Plaintiff's hodge-podge of claims demonstrate that he is unhappy with Delta's alleged business or customer service practices. But whether he approves of Delta's practices or not, the law is clear: He may not assert state law causes of action for the infractions he alleges. Plaintiff is limited to bringing a breach of contract claim based solely upon the terms of Delta's Contracts of Carriage, "as is," without state law interpretation of those terms. He does not. Otherwise, Plaintiff may only bring limited claims for delay under the Montreal Convention. Plaintiff impermissibly asks for more. As a result, this Court should grant Delta's Motion to Dismiss.

LEGAL ARGUMENT

I. This Court Must Resolve the Subject Matter Jurisdiction Issue First.

This Court must dismiss the causes of action that it has no jurisdiction to hear. *See* Rule 12(h)(3), SCRPC. This is "fundamental." *Anderson v. Anderson*, 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989). Plaintiff asks this Court to reinvent the wheel by stating that there must be "a

conflict between state and federal law for preemption to apply at all.” (Response Brief at p. 3.) The law, however, is already well settled: the ADA preempts state law claims relating to an airline’s price, route or service, and the Montreal Convention preempts all other claims within its scope. 49 U.S.C. § 41713(b)(1) (ADA); Montreal Convention, art. 29. Plaintiff should know this is well settled—the Court of Appeals told him so in *Hawkins v. Am. Airlines*, No. 2020-001150, 2024 WL 1655457 (S.C. Ct. App. Apr. 17, 2024) (unpublished).

Here, the Court need only apply this established precedent and dismiss Plaintiff’s preempted causes of action. The Montreal Convention preempts the Warsaw Convention claims, the “Claim for a Declaratory Judgment and Breach of Contract,” and the Fraud claims for the international flights; the ADA preempts the Warsaw Convention claim, the “Claim for Declaratory Judgment and Breach of Contract,” and Fraud claims, as pleaded, for the domestic flight. Once these claims are dismissed, the Court need only consider the legal merits of the Montreal Convention cause of action.

II. The Montreal Convention Does Not Allow Recovery for Plaintiff’s “Wild Goose Chase”¹ Damages.

While the Montreal Convention cause of action may be heard for the international flights, Plaintiff seeks recovery that no Montreal Convention plaintiff is entitled to receive—inconvenience damages. (Compl. at ¶¶ 28, 50.) Citing no case law, Plaintiff argues that inconvenience damages are only damages caused by a lost opportunity to “daydream[] on vacation.” (See Response Brief at p. 4.) The case law, however, considers lost time as inconvenience damages. See *Lee v. Am. Airlines Inc.*, 355 F.3d 386, 387 (5th Cir. 2004) (“Lee alleges American Airlines inconvenienced him by forcing him to spend time in a terminal without adequate food, water, restroom facilities and information regarding the status of his flight, by

¹ See Complaint at ¶ 44.

forcing him to spend the night in a dirty, substandard and unsafe motel room, and caused him to lose a full day of a memorable refreshing vacation. We agree with the district court that, as alleged, Lee's so-called inconvenience damages are not easily quantifiable and do not result in real economic loss.").

Plaintiff's Complaint clearly alleges these impermissible "inconvenience damages": He alleges that the delays caused him (1) to be without "the equipment he needed the entire time he was in Australia," (2) to "spen[d] significant time on wild goose chases," and (3) to be "deprived . . . of his bag and essential contents for significant periods of time he was in Lisbon." (Compl. at ¶ 44.) The Montreal Convention does not allow recovery for these inconvenience damages, and this Court should dismiss them as a matter of law.

III. The *Wolens* Exception Does Not Allow Plaintiff's Catch-All "Declaratory Judgment and Breach of Contract" Cause of Action.

Plaintiff credits Delta for recognizing the *Wolens* Exception² (Response Brief at p. 3) —it would do Plaintiff well to also recognize it. *Wolens* does not allow this Court to interpret the fairness of an airline's contract, but that is exactly what Plaintiff's third cause of action "Claim for a Declaratory Judgment and Breach of Contract" asks. As a whole, this third cause of action is preempted by the ADA.

The *Wolens* Exception only allows this Court to hear a limited breach of contract cause of action not pleaded here.³ Crucially Plaintiff's third cause of action does not cite a specific portion

² The *Wolens* Exception: Only certain breach of contract claims are excepted from the ADA's preemptive scope: Those where the plaintiff seeks the Court to enforce "a term the airline itself stipulated." *Am. Airlines, Inc. v. Wolens*, 513 U.S. 219, 232–33, 115 S. Ct. 817, 826, 130 L. Ed. 2d 715 (1995).

³ Plaintiff places great weight on the ability to put his contested facts before a jury. This puts the cart before the horse. In a Motion to Dismiss under Rule 12(b)(6), the Court must simply assume Plaintiff's factual allegations are true and then make its ruling on the sufficiency of the cause of action as a matter of law. See, e.g., *Rice-Marko v. Wachovia Corp.*, 398 S.C. 301, 307, 728 S.E.2d

of the contract that Delta allegedly breached. Under *Wolens*, the Court can only hear a breach of contract cause of action only if Plaintiff alleges a black letter breach of the contract's own terms. Plaintiff fails to do so.

For the domestic flight, Plaintiff places great weight on the allegation that he allegedly observed no bad weather, and therefore Delta's cancellation was unjustifiably attributed to "weather." (See Compl. at ¶¶ 11-14, 16; Response Brief at pp. 1-2.) Plaintiff argues that whether there actually was bad weather is a jury issue, and therefore he states a claim. (See Response Brief at pp. 1-2.) Plaintiff's theory ignores the black letter of the Contract of Carriage as detailed in Delta's Brief. The Contract of Carriage does not depend solely on the actual occurrence of bad weather in order for the *force majeure* rules to apply—in the Contract of Carriage, "*force majeure*" also means "threatened or reported (1) Weather conditions or acts of God." (Exhibit A to Delta's Motion to Dismiss, Contract of Carriage, Rule 19 at pp. 17-18.) Plaintiff's Complaint states no allegation that bad weather was *not* threatened or reported—only that *he* did not see an occurrence of bad weather himself. (See Compl. at ¶¶ 11, 13, 16.) In fact, the Complaint tacitly admits bad weather was "threatened or reported" by referring to the "weather maps" Delta allegedly "attempted to use . . . as an excuse for flight cancellations." (See Compl. at ¶¶ 12, 16.) Plaintiff makes no rebuttal that Delta followed its *force majeure* procedures—Plaintiff merely complains that he did not like the option of waiting two days for the next *available* flight. This is not a breach of the Contract of Carriage's black letter terms.

In order to state a claim here, Plaintiff must allege facts constituting a breach. Presently, he argues in his Response Brief Delta had no right under the Contract of Carriage to follow the *force*

61, 64–65 (Ct. App. 2012). That is, if those alleged factual allegations do not amount to a legally cognizable cause of action, there is no need for the services of a jury to determine any contested facts, because those facts will never legally suffice. *See id.*

majeure provisions because Plaintiff observed no bad weather and therefore Delta lied about bad weather when delaying and cancelling the domestic flight. (See Response Brief at p. 5.) But that is insufficient, the Contract of Carriage clearly permits Delta to follow the *force majeure* provisions even if bad weather is merely “threatened or reported.” For Plaintiff’s claim to survive, the Complaint must at least allege that no bad weather was “threatened or reported.” It does not. Because those factual allegations are missing from the Complaint, it states no breach of contract cause of action.

IV. Claims Surviving A Rule 12(b)(6) Motion to Dismiss Do Not Rescue Invalid Claims.

This Court may dismiss those claims which fail to constitute causes of action without having to dismiss the whole complaint. Plaintiff argues that if any claim at all can survive a motion to dismiss, then no motion to dismiss can ever be granted. (Response Brief at p. 1, n. 1). This reading of Rule 12(b)(6) is inaccurate. In the same year as the *Doe v. Marion* decision Plaintiff cites, the South Carolina Supreme Court issued its decision in *Doe v. Greenville County School Dist.*, where the Court affirmed the dismissal of some causes of action but not others in a Rule 12(b)(6) Motion to Dismiss. *Doe v. Greenville Cnty. Sch. Dist.*, 375 S.C. 63, 66–67, 73, 651 S.E.2d 305, 307, 310 (2007).⁴ In *Greenville Cnty. Sch. Dist.*, those causes of action that survived the Rule 12(b)(6) motion to dismiss did not save the other insufficient causes of action from dismissal. Here, any valid Montreal Convention cause of action does not save the other invalid causes of

⁴ “Generally, in considering a Rule 12(b)(6), SCRCF, motion to dismiss, the trial court must base its ruling solely upon allegations set forth on the face of the complaint. . . . The motion may not be sustained if the facts alleged in the complaint and the inferences that can be drawn therefrom would entitle the plaintiff to any relief under any theory. . . . For the foregoing reasons, we affirm the trial court’s dismissal of Mr. and Mrs. Doe’s causes of action for negligent infliction of emotional distress, loss of consortium, breach of fiduciary duty, and breach of an assumed duty *in loco parentis*. Additionally, we reverse the trial court’s dismissal of Mr. and Mrs. Doe’s causes of action for negligent supervision.” *Doe v. Greenville Cnty. Sch. Dist.*, 375 S.C. 63, 66–67, 73, 651 S.E.2d 305, 307, 310 (2007).

action in Plaintiff's Complaint.

V. The Court Should Not Allow Plaintiff to Reallege Causes of Action He Voluntarily Dismissed with Prejudice under Different Names.

Courts regularly elevate substance over form.⁵ But Plaintiff wants this Court to elevate form over substance. Plaintiff essentially argues that the claims that he voluntarily dismissed with prejudice (with the advice and consent of himself as a South Carolina attorney) may be revived as long as they are restated as different causes of action. (See Response Brief at pp. 5-6.) They cannot.⁶ This Court should ignore the new labels Plaintiff gives to those causes of action and look at the facts constituting those causes of action. Plaintiff alleges the same conduct here that he alleged in his first suit--Delta's alleged pretextual cancelling flights or lying about lost luggage.⁷ What is different now is that these acts allegedly constitute "breach of the covenant of good faith and fair dealing" or "fraud" causes of action instead of only negligence, a violation of the Unfair Trade Practices Act, or a breach of contract accompanied by a fraudulent act.

Should this Court find that these claims survive preemption, this Court must enforce Plaintiff's own voluntary dismissal of the (1) Negligence/Gross Negligence/Recklessness; (2) Unfair Trade Practices Act Violation; and (3) Breach of Contract Accompanied by a Fraudulent

⁵ See, e.g., Rule 12(b)(6), SCRCF ("failure to state facts sufficient to constitute a cause of action") (emphasis added); *Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Builders FirstSource-Se. Grp.*, 413 S.C. 630, 633-34, 776 S.E.2d 434, 436 (Ct. App. 2015) ("The circuit court granted summary judgment against Marick on its cross-claims for breach of contract and breach of warranty, finding these claims were 'merely disguised . . . claims for equitable indemnity and are not viable as alternative causes of action.' We affirm."); *Peppertree Resorts, Ltd. v. Cabana Ltd. P'ship*, 315 S.C. 36, 40, 431 S.E.2d 598, 601 (Ct. App. 1993) ("Equity regards substance rather than form.") (citing *Wilkie v. Philadelphia Life Ins. Co.*, 187 S.C. 382, 388, 197 S.E. 375, 378 (1938)).

⁶ A voluntary dismissal with prejudice is a final adjudication on the merits. *Nunnery v. Brantley Const. Co.*, 289 S.C. 205, 208-09, 345 S.E.2d 740, 742-43 (Ct. App. 1986).

⁷ See Second Amended Complaint at ¶¶ 22, 37-38, in, Greenville County Court of Common Pleas, Case No. 2024-CP-23-00556 (filed March 15, 2024).

Act causes of action with prejudice. (See Exhibit C to Delta's Motion to Dismiss, Joint Stipulation of Dismissal without Prejudice at ¶ 1.)

CONCLUSION

This Court must dismiss the claims in Plaintiff's Complaint over which it has no jurisdiction: for the domestic flights, no cause of action survives as pleaded; for the international flight, only a remnant of the Montreal Convention claims may survive. Plaintiff is not entitled to waste the Court's resources and a jury's time by insisting a jury determines facts for legally invalid claims because a portion of one claim survives. Accordingly, this Court should dismiss the invalid claims in Plaintiff's Complaint.

Respectfully submitted,

November 18, 2024

By: 
C. Daniel Atkinson (S.C. Bar #72721)
datkinson@wajlawfirm.com
Brian M. Peters, Jr. (S.C. Bar #105911)
bpeters@wajlawfirm.com

WILKES ATKINSON & JOYNER, LLC
127 Dunbar Street, Suite 200
Spartanburg, SC 29306
(864) 591-1113

Attorneys for Defendant

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Joshua Hawkins,

Plaintiff,

vs.

Delta Air Lines, Inc.,

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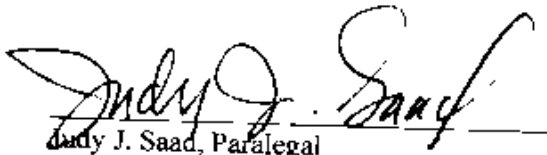
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Case No.: 2024-CV-23-2415

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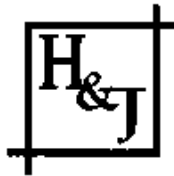
Joshua T. Hawkins, Esq.
Helena L. Jedziniak, Esq.
Hawkins & Jedziniak, LLC
1225 South Church St.
Greenville, SC 29605
josh@hjlsc.com
helena@hjlsc.com



Judy J. Saad, Paralegal

jsaad@wajlawfirm.com

Wilkes Atkinson & Joyner, LLC



Hawkins & Jedziniak, LLC

Joshua T. Hawkins

josh@hjlsc.com

Helena L. Jedziniak *

helena@hjlsc.com

** also licensed in North Carolina*

Ethan L. Jedziniak

ethan@hjlsc.com

1225 South Church Street, Greenville, SC 29605
P: (864) 275-8142 • F: (864) 752-0911 • www.hjlsc.com

October 1, 2024

via -U.S. Mail-
East Greenville Summary Court
320 West Main St.
Taylors, SC 29687

Re: *Joshua Hawkins v. Delta Airlines*
Case No.: 2023CV2310304093

To Whom It May Concern:

Please see enclosed for filing, two (2) copies of the Plaintiff's Response in Opposition to Delta's Motion to Dismiss. Please return a clocked copy to us in the envelope provided.

Should you have any questions, feel free to contact our office.

Sincerely,

Candie Edwards
Paralegal

Enclosures:

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE COURT
	)	
COUNTY OF GREENVILLE	)	CASE NO. 2024CV232415
	)	
Joshua Hawkins,	)	
	)	
Plaintiff,	)	RESPONSE IN OPPOSITION TO
	)	DELTA'S MOTION TO DISMISS
	)	
vs.	)	
	)	
Delta Air Lines, Inc.,	)	
	)	
Defendant.	)	
_____	)	

COMES NOW, the plaintiff, and respectfully requests that Delta's motion to dismiss be denied.

"If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper." *Doe v. marion*, 645 S.E.2d 245 (2007); *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995). Because it is possible for the plaintiff to recover on the allegations and causes of action set forth in the complaint, the Court should deny Delta's motion to dismiss.¹

Delta's Version of the Facts

First, it should be pointed out that Delta offers a version of the facts that is false. Delta contends that flights related to this suit were cancelled due to weather, which is demonstrably

¹ Delta also moves pursuant to SCRCP 12(b)(1) and 10(c). However, because it is undisputed that Delta does business in South Carolina and there is no federal law preempting jurisdiction in this Court, and because no documents incorporated into pleadings suggest dismissal is proper, the Rules appear to be impertinent. Because the plaintiff can recover on at least one theory of relief, the Court should deny Delta's SCRCP 12(b)(6) motion for the reasons set forth above, which are supported by several cases.

untrue. At a minimum, the plaintiff has set forth allegations and evidence that weather could not have caused the delay, and at this stage, the plaintiff's allegations must be taken as true. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999). It appears on this point, and other points to follow, that Delta slyly seeks summary judgment under the guise of a summary judgment motion. While it is true that Delta's attachments related to weather are part of its pleadings, it is also true that the plaintiff set forth observational evidence in a signed pleading which directly contradicts Delta's pleadings and attachments.

Next, Delta states "Plaintiff refused to take the next available flight Delta offered him, which was scheduled to depart two days later," as if the plaintiff "refused." Obviously, most people, like the plaintiff, have jobs, responsibilities, and pets. In this case, the plaintiff had all three and waiting for days in New York – while Delta does not cover lodging, food, or any other expenses – is not a reasonable option by any standards. Besides all that, the plaintiff has offered conflicting evidence and allegations, that must be taken as true over Delta's alternate version of the facts. *Id.*

Delta also, through logical gymnastics, asserts that the plaintiff has brought claims in this case that were dismissed with prejudice in another case, which is flatly false. Delta knows that, which is why, at the tail end of the assertion, Delta admits that the plaintiff did not bring the exact same causes of action, and that they are "other causes of action."

SCRPC 12(b)(1)

Delta cannot genuinely argue the Magistrate Court does not have jurisdiction to hear claims related to its misconduct. In fact, Delta admittedly does business in this State, and its Terms claim to limit liability below the jurisdictional maximum of this Court.

By Delta's rationale, which is wrong, any suit where it is a defendant would be governed by federal law that preempts state law, and would necessarily have to be litigated in federal court. That is simply not the law. State Courts are courts of general jurisdiction, and may hear cases arising from state and federal law, of course. Delta seems to suggest that if causes of action in a controversy are preempted by federal law, the Court cannot hear the controversy. That is not true. Instead, the Court may hear the controversy either way, even if it determines federal law preempts state law. Delta must show a conflict between state and federal law for preemption to apply at all. *Murphy v. Nat'l collegiate Athletic Ass'n*, 584 U.S. 453 (2018); *Mutal Pharmaceutical Co. v. Bartlett*, 570 U.S. 472, 33 S. Ct. 2466, 186 L.Ed.2d 607 (2013); *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 112 S. Ct. 2031, 119 L.Ed.2d 157 (1992). If Delta does show such a conflict, there is no prohibition on this Court hearing this controversy, though.

Delta seems to admit that a Montreal Convention claim exists – which it does – and that alone is reason enough, along with all the other reasons set forth herein, for the Court to deny Delta's motion. It is curious that Delta goes on for pages about the Montreal Convention and also that Delta referenced repeatedly that the plaintiff has another case against American Airlines. What Delta does not say is that in that case – in open Court – American Airlines admitted that the plaintiff had a right to a trial as long as the plaintiff brought suit through the Montreal Convention. In addition to this, that statement was made in a South Carolina Magistrate Court. No doubt, American and Delta are competitors. They should agree, at least, though, that the Montreal Convention and other authority allow customers to bring claims against them. Airlines are not immune from suit simply because they are airlines.

To its credit, Delta does admit that it can be held liable when it breach one or more of its own terms. *Am. Airlines, Inc. v. Wolens*, 513 U.S. 219 (1995). Because the plaintiff has alleged

this as part of his suit, and because that allegation must be taken as true, that is sufficient to deny Delta's motion.

The reason Delta's motion and memorandum is so long is because Delta is trying everything to see what will stick. Delta's position that the plaintiff has no relief – especially at this stage – is not tenable and it is not reasonable. The suggestion that the plaintiff cannot have any relief under the Uniform Declaratory Judgments Act is, honestly, absurd. As Delta knows, the Act gives this Court “the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” *Sunset Cay, LLC v. City of Folly Beach*, 593 S.E.2d 462 (2004). There is certainly no conflict between a statute allowing the Court to declare the rights of the parties and any federal law on which Delta relies.

SCRCP 12(b)(6)

Delta seems to acknowledge that a SCRCP 12(b)(6) motion is improper but argues the Court should dismiss the plaintiff's Montreal Convention “to the extent it seeks recovery for ‘inconvenience.’” The problem is that Delta relies on a case nothing like this one. Delta cites language from *Seshadri v. Brit. Airways PLC*, No. 3:14-cv-00833 addressing a “full day of a memorable refreshing vacation.” Delta omits, of course, that the plaintiff's claim stems not from daydreaming on vacation, but on damages Delta proximately caused by violating its own terms and engaging in conduct causing identifiable money damages, which of course allows recovery. *E. Airlines, Inc. v. Floyd*, 499 U.S. 530 (1991).

Delta betrays its position and the fact that it is looking for a disposal of fact question with what amount to summary judgment in its favor by block quoting Delta's terms. “Delta will exercise reasonable efforts to transport you and your bags...” Delta wants this Court, instead of a jury, to summarily decide that it was “reasonable” for Delta to unilaterally to the plaintiff and thousands

of other people they were stuck in New York for days, without any compensation whatsoever, and with no visible signs of the mysterious weather described by Delta as the reason for the breach. Article I, Section 14 of the South Carolina Constitution and the Seventh Amendment of the United States Constitution require that a jury decide that disputed fact because the amount in controversy exceeds twenty dollars.²

Delta also claims, citing its terms, that because cancellations were due to "weather," it cannot be held responsible, no matter how egregious its conduct. The problem for Delta, legally speaking, is that the plaintiff has alleged the cancellation was not due to weather, and the plaintiff's allegations must be taken as true *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999). Incredibly, Delta goes on to cite the portion of its terms that reads "when a passenger's travel is interrupted for more than 4 hours...as a result of flight cancellation or delay on the date of travel other than from force majeure, Delta will provide the passenger with...hotel [and] ground transportation." The plaintiff has alleged both that Delta did not actually cancel due to weather and that Delta did not compensate for hotel or transportation, which is required by Delta's terms. Because the plaintiff's allegations must be taken as true, pursuant to *Baird* and a litany of other cases, Delta's motion must be denied.

Delta is mistaken in its assertion that fraud is the same cause of action as breach of contract accompanied by fraudulent act. Those causes of action are very different, and our courts have repeatedly articulated the differences between the two. The former, for example, has nine elements,

² Dismissal of this case would violate the plaintiff's State and Federal constitutional rights, including the right to Due Process, the Equal Protection Clause, specifically, the right to a jury trial under the South Carolina Constitution and the right to a jury trial under the United States Constitution. Although the Seventh Amendment has never been fully incorporated against the States, it is clear from the language of the Amendment that the jury trial guarantee contained in the Seventh Amendment applies to all controversies exceeding twenty dollars, regardless of where they are litigated. The plaintiff preserves all constitutional arguments for appellate review.

while the latter has only three. *Conner v. City of Forest Acres*, 560 S.E.2d 606 (2002); *Harper v. Ethridge*, 290 S.S. 112, 348 S.E.2d 374 (Ct. App. 1986); *Sullivan v. Calhoun*, 117 S.C. 137, 139, 108 S.E. 189, 189 (1921). In an event, res judicata requires that an issue be adjudicated in a prior suit. *Plum Creek Development v. City of Conway*, 512 S.D.2d 106 (1999). None of the plaintiff's claims have been fully adjudicated in any suit, and besides that, the plaintiff has not brought any claims dismissed by agreement in the first suit.

Conclusion

Delta asks the Court to ignore the fact that it violated its terms, lost and damaged luggage, unilaterally cancelled multiple flights for no valid reason, then sent the plaintiff chasing luggage that it lost through multiple airports with multiple third parties for days. Neither equity nor the law allow that. Perhaps most importantly, the cases from South Carolina Courts and federal courts cited above do not allow it. The plaintiff therefore respectfully requests that Delta's motion to dismiss be denied.

Respectfully submitted,

Hawkins & Jedziniak, LLC


Joshua T. Hawkins, S.C. Bar No. 78470
Helena L. Jedziniak, S.C. Bar No. 100825
1225 South Church Street
Greenville, South Carolina 29605
(864) 275-8142 (telephone)

September 27, 2024
Greenville, South Carolina

Attorneys for Plaintiff

**STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE**

Hawkins & Jedziniak, LLC
Attn: Joshua Hawkins
1225 S. Church Street
Greenville, SC 29605

MAGISTRATE SUMMONS

You are hereby summoned to be and appear personally in the

**East Greenville Summary Court
320 West Main St
Taylors, SC 29687**

on **December 3, 2024 at 10:00 AM** to serve as a party in a Motion Hearing in the case of:

RE: **Joshua Hawkins**

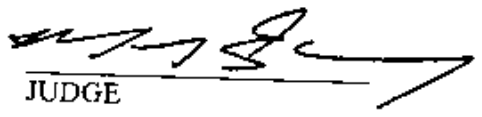
Vs **Delta Air Lines, Inc.**

PLAINTIFF(S)

DEFENDANT(S)

Civil Case Number: **2024CV2310302415, Summons & Complaint.**

**HEREIN FAIL NOT, ON PAIN OF FORFEITING THE LAWFUL PENALTY IN
SUCH CASE MADE AND PROVIDED.**


JUDGE

**East Greenville Summary Court
320 West Main St
Taylors, SC 29687
Phone: (864) 467-4625
Fax: (864) 244-6232**

October 9, 2024

MV42

Pegg, Denise

From: Brian Peters <bpeters@wajlawfirm.com>
Sent: Thursday, October 3, 2024 8:48 AM
To: Pegg, Denise
Cc: Dan Atkinson; josh@hjlsc.com; Helena Jedziniak; Judy Saad; Paralegal
Subject: Re: 24-2415: Joshua Hawkins v Delta Air Lines, Inc.: Consent Motion for Continuance and Exhibits.
Attachments: 10.01.2024 Consent Motion for Continuance (FINAL).pdf

Ms. Pegg,

Thank you for your email. As we discussed, Plaintiff's counsel and I have consented in the Motion to at least a 2 week continuance of the hearing, with the hearing not to be rescheduled for a date before October 17, 2024. Thank you again for taking my call.

Sincerely,
Brian Peters

Sent from my iPhone

On Oct 3, 2024, at 08:42, Pegg, Denise <DPegg@greenvillecounty.org> wrote:

We will continue and I will send out new notices for the Motion Hearing.

Thank you,
Michelle Pegg
East Greenville Summary Court
320 W. Main Street
Taylors, SC 29687
864-467-4625

From: Brian Peters <bpeters@wajlawfirm.com>
Sent: Tuesday, October 1, 2024 1:13 PM
To: Pegg, Denise <DPegg@greenvillecounty.org>
Cc: Dan Atkinson <datkinson@wajlawfirm.com>; josh@hjlsc.com; Helena Jedziniak <Helena@hjlsc.com>; Judy Saad <jsaad@wajlawfirm.com>; Paralegal <Paralegal@hjlsc.com>
Subject: RE: 24-2415: Joshua Hawkins v Delta Air Lines, Inc.: Consent Motion for Continuance and Exhibits.

Good afternoon Ms. Pegg,

One correction to my email below. It should read: "We have been unable to call the East Greenville Summary Court."

Thank you again for your help.

Sincerely,
Brian

Brian M. Peters, Jr.

<image002.jpg>

864.591.2355 Spartanburg
843.737.6229 Charleston

127 Dunbar St. | Ste 200 | Spartanburg, SC 29306
320 Broad St. | Ste 220 | Charleston, SC 29401

bpeters@wajlawfirm.com
www.wajlawfirm.com

From: Brian Peters

Sent: Tuesday, October 1, 2024 12:33 PM

To: Pegg, Denise <DPegg@greenvillecounty.org>

Cc: Dan Atkinson <datkinson@wajlawfirm.com>; josh@hjlsc.com; 'helena@hjlcs.com'
<helena@hjlcs.com>; Judy Saad <jsaad@wajlawfirm.com>; Paralegal <Paralegal@hjlsc.com>

Subject: 24-2415: Joshua Hawkins v Delta Air Lines, Inc.: Consent Motion for Continuance and Exhibits.

Good afternoon Ms. Pegg,

I hope you are safe and doing well in light of current events. Please see attached a copy of correspondence and the *Consent Motion for Continuance of October 3, 2024 Hearing of Defendant's Motion to Dismiss* and exhibits for filing. A Certificate of Service is attached. (We have been able to call the East Greenville Summary Court.)

An original and one of same is being mailed to you, and a hard copy is being mailed to Plaintiff Josh Hawkins, who is copied on this email.

If you have any questions, please advise. Thank you for considering our request.

Sincerely,
Brian

Brian M. Peters, Jr.

<image002.jpg>

864.591.2355 Spartanburg
843.737.6229 Charleston

127 Dunbar St. | Ste 200 | Spartanburg, SC 29306
320 Broad St. | Ste 220 | Charleston, SC 29401

bpeters@wajlawfirm.com
www.wajlawfirm.com

From: Pegg, Denise <DPegg@greenvillecounty.org>
Sent: Tuesday, September 24, 2024 10:53 AM
To: Judy Saad <jsaad@wajlawfirm.com>
Cc: Dan Atkinson <datkinson@wajlawfirm.com>; Brian Peters <bpeters@wajlawfirm.com>;
josh@hjlcs.com; 'helena@hjlcs.com' <helena@hjlcs.com>
Subject: RE: 24-2415: Joshua Hawkins v Delta Air Lines, Inc.: Brief in Support of Def's MTD in Lieu of Answer

Thank you,
Michelle Pegg
East Greenville Summary Court
320 W. Main Street
Taylors, SC 29687
864-467-4625

From: Judy Saad <jsaad@wajlawfirm.com>
Sent: Monday, September 23, 2024 3:52 PM
To: Pegg, Denise <DPegg@greenvillecounty.org>
Cc: Dan Atkinson <datkinson@wajlawfirm.com>; Brian Peters <bpeters@wajlawfirm.com>;
josh@hjlcs.com; 'helena@hjlcs.com' <helena@hjlcs.com>
Subject: 24-2415: Joshua Hawkins v Delta Air Lines, Inc.: Brief in Support of Def's MTD in Lieu of Answer

Hi, Michelle,

Please see attached a copy of correspondence and the *Brief in Support of Defendant's Motion to Dismiss in Lieu of Answer* for filing.
An original and one of same is being mailed to you, and a hard copy is being mailed to Plaintiff Josh Hawkins, who is copied on this email.

If you have any questions, please advise.

Judy

Judy Saad
Paralegal

<[image002.jpg](#)>

864.581.2355 Spartanburg
843.737.6229 Charleston

127 Dunbar St. | Ste 200 | Spartanburg, SC 29306
320 Broad St. | Ste 220 | Charleston, SC 29401

jsaad@wajlawfirm.com
www.wajlawfirm.com

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**WILKES
ATKINSON &
JOYNER, LLC**
ATTORNEYS AT LAW

MICHAEL B.T. WILKES, P.A.*
C. DANIEL ATKINSON**
J. ALEXANDER JOYNER*
BRIAN M. PETERS, JR.*
JUSTIN M. MOFFITT*
M. TAYLOR PETTY

* CHARLESTON OFFICE
* ALSO MEMBER GA BAR
* ALSO MEMBER NC BAR
* CERTIFIED MEDIATOR
* ALSO MEMBER OF FL BAR

Reply to: SPARTANBURG OFFICE
127 DUNBAR STREET, SUITE 200
SPARTANBURG, SC 29306
PHONE: 864.591.1113
TOLL FREE: 866.920.1113
FAX: 864.591.1767

CHARLESTON OFFICE
320 BROAD STREET, SUITE 220
CHARLESTON, SC 29401
PHONE: 843.737.6229

WWW.WAJLAWFIRM.COM

September 23, 2024

Via Email and U.S. Mail

Michelle Pegg
East Greenville Summary Court
320 W. Main St.
Taylors, SC 29687
dpegg@greenvillecounty.org

Re: *Joshua Hawkins, Plaintiff v Delta Air Lines, Inc., Defendant*
East Greenville Summary Court
Case Number: 2024-CV- 23-2415

Dear Michelle:

On behalf of Delta Air Lines, Inc., please find enclosed an original and one copy of the *Brief in Support of Defendant's Motion to Dismiss in Lieu of Answer*, and *Certificate of Service*. Please file the originals and return filed stamped copies to me in the envelope provided.

By copy of this letter, I am serving Plaintiff's counsel with same. If you have any questions, please advise.

Sincerely,

Judy J. Saad
jsaad@wajlawfirm.com

Enclosures
cc: Joshua T. Hawkins, Esq.

RECEIVED

SEP 25 2024

CLERK OF COURT
201 N. 34th Street
Spartanburg, SC 29306

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Joshua Hawkins,)

Plaintiff,)

vs.)

Delta Air Lines, Inc.)

Defendant.)

IN THE MAGISTRATE COURT

Case No.: 2024-CV-23-2415

**BRIEF IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS
IN LIEU OF ANSWER**

original

COMES NOW, Delta Air Lines, Inc. ("Delta"), by and _____, sel,
and files its Brief in Support of its Motion to Dismiss Plaintiff Jo: _____, in lieu
of Answer, and in support thereof, states as follows:

INTRODUCTION

The United States government has the exclusive authority to regulate commercial airlines. For international flights, the United States has ratified the Montreal Convention,¹ which provides the exclusive remedies for claims arising from international air travel. For domestic flights, the Airline Deregulation Act ("ADA")² expressly forbids the states from imposing their own standards upon the airlines. Greenville attorney Joshua Hawkins, proceeding *pro se* here, knows this already. In 2020, he sued another airline in a *pro se* action in Circuit Court and he brought similar causes

¹ The full name of the Montreal Convention is "The Convention for the Unification of Certain Rules for International Carriage by Air." Convention for the Unification of Certain Rules for Int'l Carriage by Air, May 28 1999, S. Treaty Doc. No. 106-45, 2242 U.N.T.S. 309, 1999 WL 33292734 (entered into force Nov. 4, 2003), (hereinafter, "Montreal Convention").

² 49 U.S.C. § 41713(b)(1).

RECEIVED

SEP 25 2024

U.S. DISTRICT COURT
GREENVILLE, SC

of action arising from a different international flight.³ The Circuit Court recognized the clear preemptive scope of the Montreal Convention and the ADA and dismissed those causes of action for lack of subject matter jurisdiction. The Court of Appeals affirmed that decision in April.⁴ There is no reason for this Court to do any differently here.

STANDARDS OF REVIEW

I. Rule 12(b)(1), SCRPC: Lack of Subject Matter Jurisdiction.

When this Court considers its own subject matter jurisdiction, this Court is permitted to “consider[] affidavits or other evidence proving lack of jurisdiction.” *Baird v. Charleston Cnty.*, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999). “Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.” Rule 12(h)(3), SCRPC. If the Court grants a Rule 12 Motion, the Court is not required to include specific findings of facts or conclusions of law in its order. Rule 52(a), SCRPC; *Santos v. Harris Inv. Holdings, LLC*, 439 S.C. 214, 219, 886 S.E.2d 483, 485–86 (Ct. App. 2023) (collecting cases), *reh’g denied* (May 15, 2023).

II. Rule 12(b)(6), SCRPC: Failure to Allege Facts Sufficient to State a Cause of Action.

To the extent this Court considers Delta’s Rule 12(b)(6), SCRPC motion to dismiss, this Court is limited to the facts as alleged in a plaintiff’s complaint. *Rice-Marko v. Wachovia Corp.*, 398 S.C. 301, 307, 728 S.E.2d 61, 64 (Ct. App. 2012). Nevertheless, this Court is not bound to

³ *Hawkins v. American Airlines, et al.*, Order Granting Defendant American Airlines, Inc.’s Motion to Dismiss at pp. 3-4 ¶¶ 13-14, Greenville County Court of Common Pleas, Case No. 2020-CP-23-01364 (entered August 5, 2020); *see also* Complaint at pp. 4-6, Greenville County Court of Common Pleas, Case No. 2020-CP-23-01364 (filed March 3, 2020) (bringing causes of action in Negligence, Violation of the South Carolina Unfair Trade Practices Act, and Breach of Contract Accompanied by Fraudulent Act, among others).

⁴ *Hawkins v. Am. Airlines*, No. 2020-001150, 2024 WL 1655457 (S.C. Ct. App. Apr. 17, 2024).

rely on *unreasonable* inferences based on the facts alleged. See *Freemantle v. Preston*, 398 S.C. 186, 192, 728 S.E.2d 40, 43 (2012). Nor is this Court required to submit to conclusory allegations contained in a complaint. See *Power Prod. & Servs. Co. v. Kozma*, 379 S.C. 423, 429–30, 665 S.E.2d 660, 663–64 (Ct. App. 2008); *Jones v. Gilstrap*, 288 S.C. 525, 528, 343 S.E.2d 646, 648 (Ct. App. 1986). Again, if the Court grants a Rule 12 Motion, the Court is not required to include specific findings of facts or conclusions of law in its order. Rule 52(a), SCRCF; *Santos*, 439 S.C. at 219, 886 S.E.2d at 485–86 (collecting cases).

III. Rule 10(c), SCRCF: Documents Attached to or Incorporated by Reference into a Complaint Are Valid to Consider in a Rule 12 Motion.

When a plaintiff attaches a document as an exhibit to a pleading, the document “is a part thereof for all purposes[.]” Rule 10(c), SCRCF. Consequently, if there is a conflict between the exhibit and the plaintiff’s allegations, the exhibit controls. See *Estate of Revis by Revis v. Revis*, 326 S.C. 470, 480, 484 S.E.2d 112, 118 (Ct. App. 1997); see also *Goines v. Valley Cmty. Servs. Bd.*, 822 F.3d 159, 166 (4th Cir. 2016) (“[I]f a plaintiff ‘attaches documents and relies upon the documents to form the basis for a claim or part of a claim, dismissal is appropriate if the document negates the claim.’”) (quoting *Thompson v. Illinois Dep’t of Prof’l Regulation*, 300 F.3d 750, 754 (7th Cir. 2002)).

If the plaintiff incorporates documents by reference in the complaint but fails to attach them to the complaint, the document may still be considered part of the pleading for all purposes, even if the document is only presented to the Court as part of a defendant’s Rule 12(b)(6) Motion to Dismiss. *Brazell v. Windsor*, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009) (“In our view, allowing a trial court to consider documents that are incorporated by reference in the complaint but not actually attached thereto prevents a plaintiff from benefiting from his own oversight or from surviving a motion to dismiss by intentionally omitting documents upon which their claims

are based.”); *see also Santos*, 439 S.C. at 221 n. 1, 886 S.E.2d at 486 n. 1; *Day v. Taylor*, 400 F.3d 1272, 1276 (11th Cir. 2005). If the Court considers such documents, the Rule 12(b)(6) Motion to Dismiss does not convert to a Rule 56 Motion for Summary Judgment. *Brazell*, 384 S.C. at 516, 682 S.E.2d at 826.

Similarly, this Court may consider documents in the public record, such as court filings, when deciding a Motion to Dismiss without automatically converting the Motion to a Motion for Summary Judgment. *See Blue Tree Hotels Inv. (Canada), Ltd. v. Starwood Hotels & Resorts Worldwide, Inc.*, 369 F.3d 212, 217 (2d Cir. 2004) (“[W]e may also look to public records, including complaints filed in state court, in deciding a motion to dismiss.”); *see also McElveen v. Cincinnati Ins. Co.*, 422 F. Supp. 3d 1068, 1075 n. 5 (D.S.C. 2019) (“The Complaint itself quotes the Order, and Plaintiff does not contest its authenticity.”); *Witthohn v. Fed. Ins. Co.*, 164 F. App’x 395, 397 (4th Cir. 2006) (“[T]he fact that Witthohn’s complaint is barred by res judicata is evident from review of the state court documents, even without consideration of the settlement agreement.”).⁵

RELEVANT PROCEDURAL HISTORY AND PLAINTIFF’S ALLEGATIONS

Delta presents the facts as alleged in the Complaint, but Delta does not admit the accuracy of same. Plaintiff’s Complaint arises from three separate flights—two of which he took while he was already suing Delta.

September 10, 2023: Domestic Flight Allegations (“September 2023 Domestic Flight”).

Plaintiff purchased a round-trip ticket for a flight with Delta from Greenville-Spartanburg International Airport to LaGuardia International Airport, departing September 7, 2023 and

⁵ “Since our Rules of Procedure are based on the Federal Rules [and] where there is no South Carolina law, we look to the construction placed on the Federal Rules of Procedure.” *Gardner v. Newsome Chevrolet-Buick, Inc.*, 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991).

returning September 10, 2023. (Compl. at ¶¶ 10-11.) Plaintiff admits he took the first flight, using that portion of his ticket, and the first flight had no issues. (See Compl. at ¶ 11.) On September 10, 2023, when Plaintiff went to LaGuardia to use the remaining portion of his ticket, the flight was delayed and then cancelled due to weather. (See Compl. at ¶¶ 11-13.) Plaintiff refused to take the next available flight Delta offered him, which was scheduled to depart two days later. (See Compl. at ¶¶ 16-17, 19.) Instead, he voluntarily drove himself straight home through the night, which “deprived [him] of sleep, which constitutes a physical injury.” (See Compl. at ¶¶ 16-17, 19.) Plaintiff, from his observation at the airport, alleges the weather was fine and he observed “mostly clear conditions” from the ground as he drove himself home. (Compl. at ¶¶ 11, 16.) Plaintiff alleges that Delta never reimbursed him for the cost of “Uber rides, meals, a rental car, pet lodging fees, additional airport parking fees, and . . . 12 hours of personal time.” (Compl. at ¶ 16.) According to Plaintiff, Delta “[n]ever offered to correct the situation it created or damage it caused by offering compensation for . . . any other expenses and damages,” yet, Plaintiff alleges that he refused a refund of SkyMiles. (Compl. at ¶¶ 15, 19.)

September 15, 2023: Plaintiff Files a Suit for the Domestic Flight in this Magistrate Court.

Five days after the cancelled flight, Plaintiff Hawkins, an attorney, filed a lawsuit on his own behalf against Delta in this Magistrate Court. See Complaint, East Greenville Summary Court Magistrate Court, Case No. 2023CV2310304093 (filed Sept. 15, 2023). Plaintiff eventually amended his Complaint on January 24, 2024, to allege damages in excess of the Magistrate Court jurisdictional limit. A few days later, the case was transferred to the Greenville County Circuit Court. See Certificate of Transmittal, Greenville County Court of Common Pleas, Case No. 2024-CP-23-00556 (entered Jan. 26, 2024).

January 2024: New Zealand International Flight Allegations (“January 2024 New Zealand Flight”)

Ironically, also on January 24,⁶ 2024, Plaintiff was slated to take a Delta flight out of Greenville, with several connecting flights, ultimately arriving in Auckland, New Zealand. (See Compl. at ¶ 22.) Delta cancelled this flight due to weather conditions. (See Compl. at ¶ 22.) Plaintiff alleges he lost the value of the seat on his booked flight against the seat he accepted on the next available flight to Auckland, New Zealand. (See Compl. at ¶ 22.) It is unclear whether that “upgraded” seat was specifically purchased by Plaintiff or was simply a complimentary seat upgrade given to Plaintiff as a part of his Delta loyalty club membership. (See Compl. at ¶ 22.) Connected with this cancellation, Plaintiff alleges Delta “lost one of the plaintiff’s bags containing thousands of dollars in equipment[.]” (Compl. at ¶ 22.) Because the bag was “lost,” Plaintiff had “no access to that equipment the entire time” he was on his vacation. (See Compl. at ¶¶ 22, 44.)

Additionally, because of the flight cancellation, Plaintiff alleges he lost a separate flight from Auckland, New Zealand to Melbourne, Australia provided by Qantas (an Australian airline). (See Compl. at ¶ 22.) Plaintiff similarly alleges he lost the value of the seat on his booked Qantas flight against the seat he accepted on the replacement Qantas flight to Melbourne. (See Compl. at ¶ 22.)

Plaintiff advised Delta about the “lost” bag, but “Delta could not accurately tell the plaintiff where his bags were.” (See Compl. at ¶ 46.) After Plaintiff “spent significant time on wild goose chases effectuated by Delta,” he found the “lost” bag in the possession of a third-party vendor in a “back room” at the Melbourne Airport. (See Compl. at ¶¶ 45-46.) Plaintiff alleges he notified Delta that this bag was damaged. (See Compl. at ¶ 45.) Plaintiff appears to have had no issues on his return to the United States. (See Compl. at ¶¶ 22, 45-46.)

⁶ The specific date was revealed in the prior case, but this Court need not consider this exact date in rendering its decision.

March and April 2024: Second Amended Complaint, Court of Appeals Ruling, and Joint Stipulation of Dismissal.

After his vacation to New Zealand and Australia, in March 2024, Plaintiff filed a Second Amended Complaint in Circuit Court adding claims for the January 2024 New Zealand Flight. In total, Plaintiff alleged the following causes of action for both the September 2023 and January 2024 flights: (1) Negligence/Gross Negligence/Recklessness; (2) Unfair Trade Practices Act Violation; (3) Breach of Contract Accompanied by a Fraudulent Act; and (4) Montreal Convention. See Second Am. Compl., Greenville County Court of Common Pleas, Case No. 2024-CP-23-00556 (filed March 15, 2024). On the morning of April 9, 2024, the day Delta's Motion to Dismiss was set to be heard, Plaintiff and Delta entered into and filed a Joint Stipulation of Dismissal. In that Joint Stipulation, Plaintiff agreed to dismiss the following causes of action with prejudice (1) Negligence/Gross Negligence/Recklessness; (2) Unfair Trade Practices Act Violation; and (3) Breach of Contract Accompanied by a Fraudulent Act. (Exhibit C to Delta's Motion to Dismiss, Joint Stipulation of Dismissal without Prejudice at ¶ 1.) All other causes of action, Plaintiff dismissed without prejudice, with Plaintiff allowed to refile an action on or before October 12, 2024. (Exhibit C to Delta's Motion to Dismiss, Joint Stipulation of Dismissal without Prejudice at ¶ 3.)

Eight days later, and in a separate matter, the Court of Appeals affirmed the Circuit Court's Order dismissing a 2020 lawsuit Plaintiff Hawkins filed against American Airlines and other defendants arising from similar flight and baggage delays. See *Hawkins v. Am. Airlines*, No. 2020-001150, 2024 WL 1655457 (S.C. Ct. App. Apr. 17, 2024) (unpublished). The Court of Appeals affirmed the Circuit Court's ruling that Plaintiff could not bring his state law claims, because they were preempted by the Montreal Convention and the ADA. See *id.*

April 2024: Portugal International Flight Allegations ("April 2024 Portugal Flight").

At some time in April 2024, Plaintiff again chose to fly with Delta to Lisbon, Portugal. (Compl. at ¶ 23.) While this flight was not cancelled or delayed by weather, Plaintiff only alleges that Delta "failed to deliver the plaintiff's luggage to his destination as scheduled." (Compl. at ¶ 23.) Without this luggage, Plaintiff was "without clothing and essential items for a significant period of time." (Compl. at ¶ 23.) Plaintiff claims the luggage was damaged, and that Delta never reimbursed him for these expenses. (Compl. at ¶¶ 23, 44, 51-52.)

June 2024: Plaintiff Files Suit In this Court, Bringing Claims He Knows Are Preempted and Claims He Voluntarily Dismissed with Prejudice.

On June 11, 2024, Plaintiff filed his new lawsuit in this Court bringing four causes of action ([1] "Montreal Convention"; [2] "Warsaw Convention"; [3] "Claim for a Declaratory Judgment and Breach of Contract"; and [4] "Fraud") in connection with all three flights. In his Complaint, however, Plaintiff brings causes of action that he knows or should know are preempted by the Montreal Convention and/or the ADA. Further, like a Trojan horse, Plaintiff sets forth the claims he voluntarily dismissed with prejudice under the label of other causes of action. The Court should not hesitate to dismiss these claims.

LEGAL ARGUMENT

1. Rule 12(b)(1) Motion to Dismiss: This Court Lacks Subject Matter Jurisdiction Over the Majority of Plaintiff's Complaint because Federal Law Preempts the Majority of Plaintiff's Complaint.

This Court is not the proper tribunal to hear the majority of the causes of action in Plaintiff's Complaint, and this Court should dismiss them.

a. Preemption is a Subject Matter Jurisdiction Issue.

If a court has "the power to hear and determine cases of the general class to which the proceedings in question belong," then the court has jurisdiction over the subject matter of those

cases. *McLendon v. S.C. Dep't of Highways & Pub. Transp.*, 313 S.C. 525, 525, 443 S.E.2d 539, 540 (1994). If a federal law and a state law conflict, then the "federal law prevails and state law is preempted." *Murphy v. Nat'l Collegiate Athletic Ass'n*, 584 U.S. 453, 471, 138 S. Ct. 1461, 1476, 200 L. Ed. 2d 854 (2018) (citing U.S. Const. art. VI, cl. 2). If federal law preempts state law, then a state court does not have the power to hear and determine cases of those preempted state laws, and therefore the state court lacks subject matter jurisdiction. See, e.g., *Baker Hosp. v. Isaac*, 301 S.C. 248, 250, 391 S.E.2d 549, 551 (1990) ("The [Court of Appeals of Michigan] properly noted that the pre-emption contention was one involving subject matter jurisdiction.").

Whether a court has subject matter jurisdiction is "fundamental," and therefore no one can "waive" a court's lack of subject matter jurisdiction. *Anderson v. Anderson*, 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989). Even this Court has the responsibility to examine its own subject matter jurisdiction and may do so at any time upon the Court's own motion. *Tatnall v. Gardner*, 350 S.C. 135, 137, 564 S.E.2d 377, 378 (Ct. App. 2002); *Nix v. Columbia Staffing, Inc.*, 322 S.C. 277, 280, 471 S.E.2d 718, 719 (Ct. App. 1996); Rule 12(h)(3), SCRPC.

b. The Montreal Convention Preempts All Claims Related to International Travel.

Treaties are "the law of the land" and are construed as federal laws. See *El Al Israel Airlines, Ltd. v. Tseng*, 525 U.S. 155, 167, 119 S. Ct. 662, 671, 142 L. Ed. 2d 576 (1999).⁷ For

⁷ The *Tseng* Court interpreted the preceding Warsaw Convention, upon which the Montreal Convention was based. See, e.g., *Yoly Farmers Corp. v. Delta Air Lines, Inc.*, No. 15 CIV. 2774 BMC, 2015 WL 4546744, at *3 (E.D.N.Y. July 28, 2015). Consequently, cases interpreting substantively similar provisions of the Warsaw Convention are persuasive authority for interpretations of relative Montreal Convention provisions. *We CBD, LLC*, 109 F.4th at 302 n. 4; *Nwokeji*, 2017 WL 4167433, at *8 (collecting cases); *Yoly Farmers Corp.*, 2015 WL 4546744, at *3 (collecting cases).

lawsuits surrounding international flights,⁸ the Montreal Convention governs:

In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable.

Montreal Convention, art. 29 (emphases added). If a claim “falls within one of the Montreal Convention’s three damage provisions,” then that claim is preempted by the Montreal Convention. *We CBD, LLC v. Planet Nine Priv. Air, LLC*, 109 F.4th 295, 303 (4th Cir. 2024) (quoting *Badar v. Swissport USA, Inc.*, 53 F.4th 739, 744 (2d Cir. 2022)). To determine whether a claim falls within the scope of the Montreal Convention, the Court must step back and take “an ‘assessment of the total circumstances’—which assesses the spatial and temporal proximity of and the causal connection between the events giving rise to the claim.” *We CBD, LLC*, 109 F.4th at 303 (quoting *Eid v. Alaska Airlines, Inc.*, 621 F.3d 858, 873 (9th Cir. 2010)). “A passenger whose claim implicates, but is not compensable under the Montreal Convention, has no recourse to an alternate remedy.” *Nwokeji v. Arik Air*, No. CV 15-10802-MLW, 2017 WL 4167433, at *9 (D. Mass. Sept. 20, 2017) (citing *Tseng*, 525 U.S. at 171-72, 119 S. Ct. at 672-73).

i. The Montreal Convention Preempts Causes of Action II through IV as to Both International Flights.

Because Plaintiff’s two international flights implicate the Montreal Convention, all non-Montreal Convention causes of action are preempted. For the January 2024 Flight to New Zealand,

⁸ The United States, New Zealand, and Portugal are all signatories to the Montreal Convention. See International Civil Aviation Organization, Current Lists of Parties to Multilateral Air Law Treaties, Convention for the Unification of Certain Rules for International Carriage by Air, Done at Montreal on 28 May 1999 (available at www.icao.int/secretariat/legal/List%20of%20Parties/Mtl99_EN.pdf).

Plaintiff alleges Delta delayed a flight and such delay caused one of his bags to be delayed. (Compl. at ¶ 22.) Articles 19 and 22 of the Montreal Convention govern disputes related to the delay of passengers and baggage. Therefore, any non-Montreal Convention cause of action arising from Plaintiff's January 2024 flight to New Zealand/Australia is preempted by the Montreal Convention.

For the April 2024 Flight to Portugal, Plaintiff alleges Delta delayed one of Plaintiff's bags and damaged the bag while handling it. (Compl. at ¶ 23.) Again, Articles 19 and 22 of the Montreal Convention govern disputes surrounding baggage delays, and Articles 17 and 22 govern disputes surrounding damage of checked baggage. Likewise, any non-Montreal Convention cause of action arising from Plaintiff's April 2024 flight to Portugal is also preempted by the Montreal Convention.

In other words, because the "total circumstances" of the alleged injuries surrounding these two flights was allegedly caused by a flight delay, baggage delays, and damage to a bag, these two flights are governed by the Montreal Convention only. Each non-Montreal Convention cause of action falls within the Montreal Convention's sweep.

Plaintiff's second cause of action—"Warsaw Convention"—is preempted because the Montreal Convention replaced the Warsaw Convention. "The Montreal Convention is a multilateral treaty negotiated and signed in 1999 . . . to harmonize the private international air laws and also to amend important provisions of the predecessor Warsaw Convention, which was signed in October 1929." *We CBD, LLC*, 109 F.4th at 301. Because the Montreal Convention replaced the Warsaw Convention, this Court lacks subject matter jurisdiction to entertain Plaintiff's causes of action under the Warsaw Convention.

Plaintiff's third cause of action, "Claim for a Declaratory Judgment and Breach of

Contract," is also preempted by the Montreal Convention. Again, Article 29 catches this third cause of action in its sweep: "In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in this Convention[.]" Montreal Convention, art. 29 (emphasis added). In this "hybrid" cause of action, Plaintiff attempts to escape Article 29 by attacking the "fairness" of the International Contract of Carriage, with respect to these two international flights. (Compl. at ¶¶ 64-65.) However, the "total circumstances" of this controversy boil down to Plaintiff's grievances surrounding his international flight delay and alleged baggage delays and damage. The Montreal Convention squarely governs these international flights and preempts this third cause of action.⁹

Finally, Plaintiff's fourth cause of action for Fraud is also preempted by the Montreal Convention, because the alleged fraud is directly connected to the flight/baggage delays and baggage damage. This cause of action, vaguely pleaded, appears to allege that Delta lied to Plaintiff about the loss of his luggage in the international flight(s). (See Compl. at ¶ 71.) Again, in the "total circumstances," this alleged "fraud" or "lying" directly relates to Delta's "decisions to **cancel flights** and mislead the plaintiff . . . about **loss and damage related to luggage**["] (Compl. at ¶ 71 (emphases added).) This cause of action falls clearly within the scope of the Montreal Convention and is thus preempted by the Montreal Convention.

Plaintiff should know his non-Montreal Convention causes of action are preempted. In a recent case where Plaintiff Hawkins sued American Airlines and others over another international flight, the Greenville County Circuit Court dismissed his state law claims. *Hawkins v. American*

⁹ The ADA, as discussed below, likewise prevents the Court from considering this claim if the Montreal Convention does not apply.

Airlines, et al., Order Granting Defendant American Airlines, Inc.'s Motion to Dismiss at pp. 2-3 ¶¶ 4-8, Greenville County Court of Common Pleas, Case No. 2020-CP-23-01364 (entered Aug. 5, 2020); *see also* Complaint at pp. 4-6, Greenville County Court of Common Pleas, Case No. 2020-CP-23-01364 (filed March 3, 2020) (bringing causes of action in Negligence, Violation of the South Carolina Unfair Trade Practices Act, and Breach of Contract Accompanied by Fraudulent Act, among others). The South Carolina Court of Appeals affirmed that Order in April 2024, writing: "Specifically, we hold the circuit court did not err in finding Hawkins's tort and Unfair Trade Practices Act (UTPA) claims for damages due to flight delays and delayed baggage were preempted by the Montreal Convention." *Hawkins v. Am. Airlines*, No. 2020-001150, 2024 WL 1655457, at *1 (S.C. Ct. App. Apr. 17, 2024) (footnote omitted) (unpublished).

Likewise, this Court has no subject matter jurisdiction over the three non-Montreal Convention causes of action with respect to Plaintiff Hawkins' two international flights. This Court should dismiss them accordingly.

c. The Airline Deregulation Act Preempts All State Law Claims Relating to an Airline's Price, Route, or Service.

With respect to Plaintiff's September 2023 Domestic Flight, all Plaintiff's state law causes of action are preempted by the Airline Deregulation Act ("the ADA"). *See* 49 U.S.C. § 41713(b)(1). The ADA expressly preempts "a State" from "enforc[ing] a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier[.]" 49 U.S.C. § 41713(b)(1). The United States Supreme Court outlined the preemptive scope of the ADA:

[T]he Court determined: (1) that "[s]tate enforcement actions having a connection with, or reference to," carrier "'rates, routes, or services' are pre-empted," (2) that such pre-emption may occur even if a state law's effect on rates, routes, or services "is only indirect," (3) that, in respect to pre-emption, it makes no difference whether a state law is "consistent" or "inconsistent" with federal regulation, and (4) that pre-emption occurs at least where state laws have a "significant impact" related to

Congress' deregulatory and pre-emption-related objectives[.]

Rowe v. New Hampshire Motor Transp. Ass'n, 552 U.S. 364, 370–71, 128 S. Ct. 989, 995, 169 L. Ed. 2d 933 (2008) (emphases omitted) (citations omitted) (citing and quoting *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 112 S. Ct. 2031, 119 L. Ed. 2d 157 (1992)).

"To determine whether a claim has a connection with, or reference to an airline's prices, routes, or services, we must look at the facts underlying the specific claim." *Smith v. Comair, Inc.*, 134 F.3d 254, 259 (4th Cir. 1998). If a claim has such a connection, then the claim is preempted by the ADA. *See id.* Like the Montreal Convention, the ADA preemptive scope has a broad sweep, covering state laws like consumer fraud / unfair trade practices acts,¹⁰ causes of action in

¹⁰ Courts routinely dismiss these types of claims. *Román v. Spirit Airlines, Inc.*, No. 19-CIV-61461-RAR, 2020 WL 255202, at *3 (S.D. Fla. Jan. 14, 2020) ("[T]he Court finds that Plaintiffs' [Florida Deceptive and Unfair Trade Practices Act] claim is preempted by the [Airline Deregulation Act][.]"); *Ferrell v. Air EVAC EMS, Inc.*, 900 F.3d 602, 606 (8th Cir. 2018) ("In our view, preemption applies most obviously to Ferrell's Second Cause of Action" for violations of the Arkansas Deceptive Trade Practices Act.); *Rivera v. JetBlue Airways Corp.*, No. 3:17-CV-00960 (JAM), 2018 WL 264735, at *2 (D. Conn. Jan. 2, 2018) ("Because a [Connecticut Unfair Trade Practices Act ("CUTPA")] violation involves a state-imposed regulation that exceeds the obligations imposed by the parties' contract, the [Airline Deregulation Act] clearly preempts plaintiff's CUTPA claim."); *Levitt v. Sw. Airlines Co.*, 846 F. Supp. 2d 956, 960 (N.D. Ill. 2012) (holding Airline Deregulation Act preempted claims brought under the Illinois Consumer Fraud Act and the Pennsylvania Consumer Fraud Act); *Shulick v. United Airlines*, No. CIV.A. 11-1350, 2012 WL 315483, at *4–6 (E.D. Pa. Feb. 2, 2012) (holding the Airline Deregulation Act preempted claim under Pennsylvania Unfair Trade Practices and Consumer Protection Law arising out of flight delays); *Blackwell v. SkyWest Airlines, Inc.*, No. 06CV0307DMSAJB, 2008 WL 5103195, at *20 (S.D. Cal. Dec. 3, 2008) (holding Airline Deregulation Act preempted claim brought under California's Unfair Business Practices Act); *De Jesus v. Am. Airlines, Inc.*, 532 F. Supp. 2d 345, 355 (D.P.R. 2007) ("[T]he laws and regulations of Puerto Rico prohibiting and regulating deceptive advertising of airline fares are totally preempted by the Airline Deregulation Act.") (emphasis added); *In re Am. Airlines, Inc., Priv. Litig.*, 370 F. Supp. 2d 552, 563 (N.D. Tex. 2005) (holding action brought under Texas Deceptive Trade Practices-Consumer Protection Act, among other claims, "are expressly preempted because they relate to at least one of American's services"); *Howell v. Alaska Airlines, Inc.*, 99 Wash. App. 646, 648, 652–53, 994 P.2d 901, 902, 905 (2000) (finding claim under Washington's Consumer Protection Act preempted by the Airline Deregulation Act). *See also UPS Store, Inc. v. Hagan*, No. 14CV1210, 2015 WL 9256973, at *3 (S.D.N.Y. Nov. 18, 2015) (relying on *Wolens'* interpretation of Airline Deregulation Act preemptive scope to hold New York's anti-deceptive acts and practices act, **New York General**

negligence or fraud,¹¹ false imprisonment,¹² intentional infliction of emotional distress,¹³ and declaratory judgment.¹⁴ Again, the Court of Appeals recently affirmed an Order dismissing Plaintiff Hawkins' claims against American Airlines based on the ADA. *See Hawkins*, 2024 WL 1655457, at *1 (unpublished) ("As to Hawkins's claims regarding insufficient services rendered, the circuit court properly found these claims were preempted by the Airline Deregulation Act of 1978 (ADA). . . . Here, it is clear Hawkins's claims relating to airport staffing and the failure to credit him airline rewards miles fall within the scope of claims preempted by the ADA.").

i. The Wolens Exception.

Only certain breach of contract claims are excepted from the ADA's preemptive scope: Those where the plaintiff seeks the Court to enforce "a term the airline itself stipulated." *Am. Airlines, Inc. v. Wolens*, 513 U.S. 219, 232–33, 115 S. Ct. 817, 826, 130 L. Ed. 2d 715 (1995). This exception is sometimes referred to as the "*Wolens* Exception" and is narrow in its scope. *See*,

Business Law § 349, was preempted by Federal Aviation Administration Authorization Act); *Delta Air Lines, Inc. v. Black*, 116 S.W.3d 745, 757 (Tex. 2003) (finding negligent misrepresentation claim preempted by Airline Deregulation Act because negligent misrepresentation regulates trade conduct comparably to a state consumer fraud act).

¹¹ *See e.g., Wolens*, 513 U.S. at 235, 115 S. Ct. at 827 (Stevens, J., concurring in part and dissenting in part) (" . . . I do not agree with the Court's disposition of their consumer-fraud claims. In my opinion, private tort actions based on common-law negligence or fraud, or on a statutory prohibition against fraud, are not pre-empted.").

¹² *See Smith v. Comair, Inc.*, 134 F.3d 254, 259 (4th Cir. 1998).

¹³ *See Smith*, 134 F.3d at 259.

¹⁴ *See In re LATAM Airlines Grp. S.A.*, No. 20-11254 (JLG), 2022 WL 3965697, at *16 (Bankr. S.D.N.Y. Aug. 31, 2022) ("Put simply, if the Court granted Plaintiff relief under Count One [for declaratory judgment] and declared the No-Show Policy void, or found that LATAM has an affirmative duty to obtain the consent of its passengers prior to the cancellation of return flights, that would have a significant effect on LATAM's prices because it would not be able to resell the cancelled seats."), *aff'd sub nom. In re Latam Airlines Grp. S.A.*, No. 22-CV-8068 (ER), 2023 WL 4741335 (S.D.N.Y. July 25, 2023).

e.g., *Buck v. Am. Airlines, Inc.*, 476 F.3d 29, 35 (1st Cir. 2007) (“[I]n order to avoid preemption, the plaintiffs in this case must demonstrate either that their state-law claims do not constitute state enforcement related to airline prices or services, or that they can navigate the straits of the *Wolens* exception.”). In *Wolens*, the Court held that a state court may entertain a plaintiff’s claim asking the court to enforce a contract provision in an airline’s contract as is, but the state court *cannot* entertain a breach of contract claim asking the state court to apply a law, policy, or “enlargement or enhancement based on state laws or policies external to the agreement.” See *Wolens*, 513 U.S. at 233, 115 S. Ct. at 826.

For example, the Supreme Court disallowed a breach of contract claim based on the theory of breach of the implied covenant of good faith and fair dealing. See *Northwest, Inc. v. Ginsberg*, 572 U.S. 273, 288, 134 S. Ct. 1422, 1433, 188 L. Ed. 2d 538 (2014). In *Ginsberg*, Minnesota law provided that a covenant of good faith and fair dealing was implied in every contract. *Id.*, 572 U.S. at 286–87, 134 S. Ct. at 1432. That is, no party could contract around that covenant of good faith and fair dealing. *Id.* Because that covenant was imposed on every contract by operation of state law, the Supreme Court held that the covenant of good faith and fair dealing was not a term that “the airline itself stipulated” but a term “external to the agreement.” See *id.*; see also *Wolens*, 513 U.S. at 232–33, 115 S. Ct. at 826. In effect, Minnesota law, as applied to the airline’s contract, acted as a state regulation of the airline’s price, route, or services. See *Ginsberg*, 572 U.S. at 283, 134 S. Ct. at 1430. Therefore, that breach of contract cause of action did not meet the *Wolens* Exception and was preempted by the ADA. *Id.*, 572 U.S. at 287, 134 S. Ct. at 1432.

Similarly, a “breach of contract” claim where a plaintiff asks a state court *not* to enforce the terms of the airline’s contract is also preempted. After all, in such a case, the state court would be doing the *opposite* of enforcing a term “the airline itself [not a state] stipulated.” See *Wolens*,

513 U.S. at 232-33, 115 S. Ct. at 826. The Bankruptcy Court in the Southern District of New York put it like this:

The Plaintiff's unjust enrichment claim is not based upon a breach of contract. The Plaintiff is not seeking to enforce LATAM's self-imposed contractual obligations. Rather, it seeks a determination that the No-Show Policy in the Transport Agreement is unenforceable. Further, the unjust enrichment claim is a creature of Florida state common law. Therefore, such claim is within the scope of the ADA's preemption provision. . . . Plaintiff's claims seek the opposite of effectuating the parties' intentions; it maintains that it would be unjust enrichment to allow the No-Show Policy to be effectuated as written and communicated.

In re LATAM Airlines Grp. S.A., 2022 WL 3965697, at *12-13. Again, the *Wolens* Exception must stay within the bounds of the ADA's language that a "State . . . may not . . . enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier[.]" 49 U.S.C. § 41713(b)(1) (emphasis added). The State does not offend this statute by enforcing the parties' own contract as is, since neither party is "a State." See *Wolens*, 513 U.S. at 228-29, 115 S. Ct. at 824.

Ultimately, for a breach of contract cause of action to survive under the *Wolens* Exception, the claim must clearly demonstrate that the Court will be asked only to enforce a specific term of the contract itself as is- -not asked to impose a term outside of the contract nor asked to modify the contract. Plaintiff's Complaint asks for far more.

ii. The Airline Deregulation Act Preempts Causes of Action III and IV¹⁵ as to the September 2023 Domestic Flight.

¹⁵ It does not appear Plaintiff includes the September 2023 Domestic Flight in his first two causes of action for "Montreal Convention" and "Warsaw Convention." As explained above, the Montreal Convention supersedes the Warsaw Convention, and the Montreal Convention only applies to *international* flights, including domestic flights that are ultimately part of an international trip. See Montreal Convention, art. 1(2)-(3). The September 2023 Domestic Flight was wholly domestic.

As noted earlier, to the extent the Montreal Convention fails to preempt any non-Montreal Convention cause of action for Hawkins' two other international flights, the ADA's preemptive scope would still apply to such claims.

In Plaintiff's catchall third cause of action, labeled "Claim for a Declaratory Judgment and Breach of Contract," Plaintiff asks this Court to do everything but enforce the Domestic Contract of Carriage with respect to Plaintiff's September 2023 Domestic Flight. Plaintiff begins this cause of action by alleging that "Delta's terms and contract of carriage does not allow a bargained-for exchange, is wholly one-sided and unfair, is not presented in a fair way, is unconscionable, and presents a contract of adhesion." (See Compl. at ¶ 59.) The subsequent allegations further repeat these allegations and include a general allegation that "Delta engaged in . . . [a] [v]iolation and breach of general duties of good faith and fair dealing." (Compl. at ¶ 65.) Of course, *Ginsberg* squarely applies to this cause of action because the Supreme Court held that state-imposed covenants of good faith and fair dealing, such as South Carolina's, are preempted by the ADA. See *Ginsberg*, 572 U.S. at 287, 134 S. Ct. at 1432 ("When the law of a State does not authorize parties to free themselves from the covenant, a breach of covenant claim is pre-empted under the reasoning of *Wolens*."); *Com. Credit Corp. v. Nelson Motors, Inc.*, 247 S.C. 360, 366–68, 147 S.E.2d 481, 484 (1966) (South Carolina law) ("[T]here exists in every contract an implied covenant of good faith and fair dealing."); see also *Stuart Enterprises Int'l, Inc. v. Peykan, Inc.*, 252 Ga. App. 231, 233, 555 S.E.2d 881, 883–84 (2001) (Georgia law)¹⁶ ("The implied covenant of good faith and fair dealing in performing a contract has a basis in both statutory and common law. . . . There is also a common law duty to diligently and in good faith seek to comply with all portions of the terms of a contract."). Plaintiff asks this Court to violate such clear and established precedent in this shotgun cause of action.

Moreover, Plaintiff asks for a general, non-particularized "declaration as to the rights and

¹⁶ The Contracts of Carriage are governed by Georgia law. (Exhibit A to Delta's Motion to Dismiss, Contract of Carriage, Rule 24 at p. 25; Exhibit B to Delta's Motion to Dismiss, Contract of Carriage, Rule 26 at p. 31.)

obligations of the parties affected by Delta's terms and its contract of carriage," "the validity of Delta's terms and contract, which conduct is governed by Delta's terms and contract, and whether Delta's conduct and rules adhere to governing law." (See Compl. at ¶¶ 62-68.) Plaintiff ultimately asks this Court to declare that "Delta's contract and its terms should be ruled to be void and unconscionable." (Compl. at ¶ 60.) This third cause of action is preempted by the ADA because it asks the Court to apply South Carolina policy to the Domestic Contract of Carriage rather than objectively applying its written terms as is. See *In re LATAM Airlines Grp. S.A.*, 2022 WL 3965697, at *12-13. This cause of action fails to meet the *Walens* Exception and remains preempted by the ADA.

Equally, Plaintiff's fourth cause of action for Fraud is preempted because it directly relates to Delta's prices, routes, and/or services. Plaintiff sets forth a vague Fraud cause of action, which, as far as is applicable to the September 2023 Domestic Flight, alleges that Delta canceled Plaintiff's return flight from New York without a valid reason. (See Compl. at ¶ 71.) This direct connection to the flight service is fatal: Because the "Fraud" directly relates to the provision of a flight, the ADA preempts it.

Other tort claims are similarly preempted when they have a direct connection to the provision of an airline's flight service.¹⁷ For example, when a man was not permitted to board a flight without having any identification, the U.S. Court of Appeals for the Fourth Circuit determined that the ADA preempted the man's false imprisonment and intentional infliction of

¹⁷ Only tort claims that have a genuinely attenuated connection to the flight service are exempt, such as a UPS delivery person's stacking of boxes previously delivered by air. *Eggleston v. United Parcel Serv., Inc.*, 428 S.C. 373, 382, 834 S.E.2d 713, 717 (Ct. App. 2019) (citing New York case against UPS where such claim was not preempted by ADA). Plaintiff's claims here, and his alleged injuries, directly relate to the allegedly wrongful flight delay and cancellation. In other words, if the Court entertained Plaintiff's tort claim, the Court would be directly regulating how Delta decides to delay or cancel flights in the face of weather.

emotional distress claims. See *Smith v. Comair, Inc.*, 134 F.3d 254, 256, 259 (4th Cir. 1998). As referenced above, the Fourth Circuit evaluated the suit using the logical case-by-case test: "To determine whether a claim has a connection with, or reference to an airline's prices, routes, or services, we must look at the facts underlying the specific claim." *Id.* at 259. The tort claims in *Smith* were based on the airline's refusal to let the man board the flight, and as a result, the Fourth Circuit found that "[u]ndoubtedly, boarding procedures are a service rendered by an airline[,] . . . [t]herefore[,] to the extent Smith's claims are based upon Comair's boarding practices, they clearly relate to an airline service and are preempted under the ADA." *Id.*

Here, Plaintiff's Fraud claim is based on Delta's flight service, specifically Delta's justification for delaying and cancelling Plaintiff's September 2023 Domestic Flight. After all, Plaintiff alleges that Delta wrongfully blamed the cancellation on the weather. Compl. at ¶ 71. Under the *Smith* test, in order for this cause of action for Fraud to survive preemption, it must *not* have any genuine connection with or reference to Delta's services as an airline. *Smith*, 134 F.3d at 259. The facts surrounding these allegations of fraud, however, directly relate to the provision of Delta's service—a *flight*. As a result, Plaintiff's cause of action for Fraud is preempted by the ADA and should be dismissed by this Court.

Ultimately, this Court is not the proper tribunal for Plaintiff to bring the claims preempted by the ADA. And contrary to the fallacy that no relief in *this* Magistrate Court is no relief at all, the Supreme Court listed the ADA's intended tribunals to regulate the airlines: (1) the court of public opinion and (2) the Department of Transportation:

The ADA is based on the view that the best interests of airline passengers are most effectively promoted, in the main, by allowing the free market to operate. If an airline acquires a reputation for mistreating the participants in its frequent flyer program (who are generally the airline's most loyal and valuable customers), customers can avoid that program and may be able to enroll in a more favorable rival program.

Federal law also provides protection for frequent flyer program participants. Congress has given the Department of Transportation (DOT) the general authority to prohibit and punish unfair and deceptive practices in air transportation and in the sale of air transportation, 49 U.S.C. § 41712(a), and Congress has specifically authorized the DOT to investigate complaints relating to frequent flyer programs. See FAA Modernization and Reform Act of 2012, § 408(6), 126 Stat. 87. Pursuant to these provisions, the DOT regularly entertains and acts on such complaints.

Ginsberg, 572 U.S. at 288–89, 134 S. Ct. at 1433 (2014) (Alito, J., writing for unanimous Court).¹⁸

II. Rule 12(b)(6) Motion to Dismiss: Plaintiff's Complaint Fails to Allege Facts Sufficient to Constitute Valid Causes of Action.

To the extent portions of Plaintiff's Complaint survive the preemptive scope of the Montreal Convention or the Airline Deregulation Act, several of Plaintiff's causes of action should be dismissed.

a. Montreal Convention Cause of Action Cannot Provide for Plaintiff's "Inconvenience."

With regard to his flight and baggage delays, Plaintiff places great weight on the allegation that he did not have access to his delayed bag while he was in New Zealand/Australia (Compl. at ¶¶ 22, 44) or in Portugal (Compl. at ¶¶ 23, 44). These delays allegedly caused Plaintiff to suffer "some or all of the following," including "psychological trauma," "mental anguish," "mental distress," "anxiety," "emotional injury," "discomfort and inconvenience," "loss of enjoyment of

¹⁸ In Paragraph 38 of the Complaint Plaintiff appeals to the Federal Aviation Act's "savings clause," which predated the ADA, arguing that it provides an exception to the broad preemptive effect of the ADA. The Supreme Court dispensed with this:

[W]e have described the Federal Aviation Act saving clause as "a relic of the pre-ADA/no pre-emption regime." . . . That provision applies to the entire, sprawling Federal Aviation Act, and not just to the ADA, and as we held in *Morales*, this "general 'remedies' saving clause cannot be allowed to supersede the specific substantive pre-emption provision."

Ginsberg, 572 U.S. at 282–84, 134 S. Ct. at 1430 (quoting *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 385, 112 S. Ct. 2031, 2037, 119 L. Ed. 2d 157 (1992)).

life,” and “inconvenience.” (See Compl. at ¶¶ 28, 50.) These damages are not recoverable.

The Montreal Convention replaced the Warsaw Convention but cases interpreting the Warsaw Convention’s similarly worded provisions are honored as persuasive authority. See, e.g., *We CBD, LLC*, 109 F.4th at 302 n. 4 (joining five other circuit courts of appeals in recognizing such authority). Under the Warsaw Convention, the United States Supreme Court held that a plaintiff could “not allow recovery for purely mental injuries.” *E. Airlines, Inc. v. Floyd*, 499 U.S. 530, 534, 111 S. Ct. 1489, 1493, 113 L. Ed. 2d 569 (1991). “Purely mental injuries” includes “inconvenience damages” and “emotional distress damages.” See *Lee v. Am. Airlines Inc.*, 355 F.3d 386, 387 (5th Cir. 2004) (affirming partial judgment on the pleadings dismissing claims for “inconvenience” and finding the loss of a “full day of a memorable refreshing vacation” not recoverable); see *Seshadri v. Brit. Airways PLC*, No. 3:14-CV-00833-BAS, 2014 WL 5606542, at *10 (S.D. Cal. Nov. 4, 2014) (collecting cases). Of course, as quoted in full above, Article 29 of the Montreal Convention forecloses Plaintiff from recovering any “non-compensatory damages” for a delay in persons or baggage. Montreal Convention, art. 29. He cannot recover for this “loss.”

Accordingly, this Court should dismiss Plaintiff’s Montreal Convention claim to the extent it seeks recovery for “inconvenience.”

b. Any Warsaw Convention Cause of Action Is No Longer Valid.

Plaintiff cannot bring a cause of action under the Warsaw Convention, because each international flight consisted of travel between two Montreal Convention countries: (1) the United States and New Zealand, and (2) the United States and Portugal. (See Compl. at ¶¶ 22-23.) As a result, the Montreal Convention governs exclusively, and there is no cause of action available for Plaintiff under the Warsaw Convention. See Montreal Convention, arts. 1(2), 29. To the extent Plaintiff seeks recovery under the Warsaw Convention for his wholly domestic September 2023 Flight, the Warsaw Convention provides no relief to him. See Warsaw Convention (“Convention

& Additional Protocol Between the United States of Am. & Other Powers Relating to Int'l Air Transportation"), ch. 1 ("Scope-Definitions"), art. 1, 49 Stat. 3000, 1934 WL 29042 (Oct. 29, 1934). As a result, this cause of action should be dismissed in its entirety.

c. The "Declaratory Judgment and Breach of Contract" Cause of Action Fails to Allege Sufficient Facts to State Any of the Claims in this Catchall Cause of Action.

To the extent any portion of this catchall cause of action survives the preemptive scope of the Montreal Convention or the ADA, Plaintiff fails to state a claim that this Court can entertain.

i. This Court Cannot Provide a Declaratory Judgment on a Contract Regulated Exclusively by the Federal Government.

Plaintiff asks this South Carolina Magistrate Court to declare Delta's Domestic and International Contracts of Carriage both are "void and unconscionable." (Compl. at * 60.) Of course, the ADA already prevents this Court from applying South Carolina's standards of conscionability upon these contracts. *See In re LATAM Airlines Grp. S.A.*, 2022 WL 3965697, at *12-13. Independently, however, this Court may not evaluate the propriety or "validity" of these Contracts under a declaratory judgment action, because they are regulated by the Department of Transportation (or consumer preference). *See Ginsberg*, 572 U.S. at 288-89, 134 S. Ct. at 1433 (citing 49 U.S.C. § 41712(a)).

For example, in *Slocum v. Delaware, L. & W.R. Co.*, the United States Supreme Court evaluated whether a New York court had the authority to adjudicate a declaratory judgment action regarding a railroad labor agreement. 339 U.S. 239, 240, 70 S. Ct. 577, 577-78, 94 L. Ed. 795 (1950). Under the Railway Labor Act, Congress gave the National Railway Adjustment Board the authority to interpret such agreements and to enforce them. *Id.* Nevertheless, once a dispute arose in an existing agreement, a railroad company filed suit for declaratory judgment in New York, which the labor union opposed. *Id.*, 339 U.S. at 241, 70 S. Ct. at 578. The New York court retained

the case. *Id.* The Supreme Court reversed. *Id.*, 339 U.S. at 245, 70 S. Ct. at 580.

The entire purpose of Railway Labor Act's establishment of the National Railway Adjustment Board was to have a designated tribunal comprised of "members [who] understand railroad problems and speak the railroad jargon" render uniform, national decisions. *Id.*, 339 U.S. at 243, 70 S. Ct. at 579. Without such uniformity, states could render various interpretations of the same agreement, leading to regional strikes and disputes affecting the rail industry in various parts of the country. *See id.*, 339 U.S. at 242-43, 70 S. Ct. at 579. In fact, this purpose was demonstrated by the very dispute itself: At the time of the *Slocum* decision, the Supreme Court issued a separate decision in a companion South Carolina case "because it sharply points up the conflicts that could arise from state court intervention in railroad-union disputes." *Ord. of Ry. Conductors of Am. v. S. Ry. Co.*, 339 U.S. 255, 256, 70 S. Ct. 585, 586, 94 L. Ed. 811 (1950).

Like the railroad in the *Slocum* case, the railroad in the *Ord. of Ry. Conductors of Am.* case filed suit for declaratory judgment in a South Carolina state court, asking the court to interpret the collective bargaining agreement. *Id.*, 339 U.S. at 255-57, 70 S. Ct. at 585-86. The South Carolina Supreme Court allowed this declaratory judgment to proceed, but the United States Supreme Court reversed its decision. *Id.* The United States Supreme Court recognized that allowing all states to entertain declaratory judgment actions on nationally regulated contracts for the railways would lead to conflicting rulings and forum shopping: "Sustaining the state court's action would invite races of diligence whenever a carrier or union preferred one forum to the other. And if a carrier or a union could choose a court instead of the [National Railway Adjustment] Board, the other party would be deprived of the privilege conferred by . . . the Railway Labor Act[.]" *Id.*, 339 U.S. at 256, 70 S. Ct. at 586.

Here, Plaintiff asks this state court, instead of the Department of Transportation, to interpret

a national airline's Domestic and International Contracts of Carriage. Plaintiff thinks the terms in those contracts are "wholly one-sided and unfair, [] not presented in a fair way, [] unconscionable, and present[] . . . contract[s] of adhesion." (See Compl. at ¶ 59.). As the Supreme Court acknowledged in *Ginsberg*, however, a state court is not the proper tribunal to make that policy decision. See *Ginsberg*, 572 U.S. at 288–89, 134 S. Ct. at 1433 (Alito, J., writing for unanimous court). Instead, the proper tribunal to determine the fairness and validity of the airlines' contracts and other trade practices is the national Department of Transportation. *Id.* As a result, this Court should refrain from giving a declaratory judgment here, to the extent such cause of action is not already preempted by the Montreal Convention or the ADA.

ii. With Respect to His International Flights, Plaintiff Fails to Identify the Provisions of the Contract Delta Allegedly Breached.

The allegations in Plaintiff's third cause of action in no way state a breach of contract but instead attempt to set forth a declaratory judgment cause of action. (See Compl. at ¶¶ 58–68.) The allegations in Paragraphs 59 to 68 simply challenge the validity of Delta's Domestic and International Contracts of Carriage or accuse Delta of committing torts *outside of* the terms of those contracts. This clearly is not a breach of contract cause of action and fails to plead the essential element: the contract's breach. See *Hotel & Motel Holdings, LLC v. BJC Enterprises, LLC*, 414 S.C. 635, 652, 780 S.E.2d 263, 272 (Ct. App. 2015). Even so, should this Court find that the third cause of action also states a cause of action for breach of contract, Plaintiff fails to allege facts sufficient to state a valid claim.

With regard to his two international flights, Plaintiff fails to identify the specific provisions of the International Contract of Carriage Delta allegedly breached. Both South Carolina law, and Georgia law—the law governing the International Contract of Carriage—require this level of specificity. See *Jones v. Gilstrap*, 288 S.C. 525, 528, 343 S.E.2d 646, 648 (Ct. App. 1986) ("[I]t

is essential in setting forth a breach of contract, either that the substance of the instrument be averred in the pleading, or that the contract itself be set forth.”) (quoting 61A Am. Jur. 2d *Pleading* Section 92 (1981)); *Brooks v. Branch Banking & Tr. Co.*, 107 F. Supp. 3d 1290, 1296 (N.D. Ga. 2015) (“Defendant is correct that a plaintiff asserting a breach of contract claim must allege a particular contractual provision that the defendants violated to survive a motion to dismiss.”) (internal quotations omitted) (applying Georgia law). None of the allegations in this cause of action cite a specific provision of the International Contract of Carriage that was breached with respect to either the January 2024 flight to New Zealand or the April 2024 flight to Portugal. (See Compl. at ¶¶ 22-23, 31-32, 58-68.) Therefore, Plaintiff fails to state a cause of action on these facts.

iii. For the Domestic Flight, Plaintiff’s Alleged Breach of Contract Is Contradicted by the Contract of Carriage’s Clear Terms.

Again, in the third cause of action, Plaintiff fails to actually set forth a breach of contract cause of action but instead attempts only to set forth a declaratory judgment action. (See Compl. at ¶¶ 58-68.) If this Court deems Plaintiff to allege a claim for breach of contract arising from the September 2023 Domestic Flight, a simple reading of the Domestic Contract of Carriage negates Plaintiff’s claim. Consequently, that cause of action should be dismissed.

Plaintiff alleges that he booked a round-trip flight, took the first flight with no issue, but the return flight was cancelled due to weather. (See Compl. at ¶¶ 11-13.) The next available return flight was one scheduled to depart two days later. (See Compl. at ¶¶ 16-17, 19.) Instead, Plaintiff drove himself home and decided to drive through the night, incurring costs to do so. (See Compl. at ¶¶ 16-17, 19.) Plaintiff alleges that Delta never reimbursed Plaintiff for the costs Plaintiff incurred in driving himself home and Plaintiff refused a refund in SkyMiles for the unused portion of his ticket. (See Compl. at ¶¶ 15, 19). A plain reading of the Domestic Contract of Carriage, which Plaintiff quotes in part in his Complaint (see Compl. at ¶¶ 19-21), demonstrates that Delta’s

actions, as alleged, complied fully with the Domestic Contract of Carriage. Thus, the Domestic Contract of Carriage negates Plaintiff's claim that Delta breached it.

The following provisions of the Domestic Contract of Carriage clearly outline the procedure in the event a flight is cancelled due to weather or threats of weather. First, the Domestic Contract of Carriage explicitly states the obvious expectation of the basic logistics of flying: published schedules cannot be guaranteed. Rule 2 ("Schedules and Operations") states:

Delta will exercise reasonable efforts to transport you and your baggage from your origin to your destination with reasonable dispatch, **but published schedules, flight times, aircraft types, seat assignments, and similar details reflected in the ticket or Delta's published schedules are not guaranteed** and form no part of this contract. **Delta may** substitute alternate Carriers or aircraft, **change its schedules, delay or cancel flights**, change seat assignments, and alter or omit stopping places shown on the ticket as required by its operations in Delta's sole discretion. **Delta's sole liability in the event of such changes is set forth in Rule 22. Delta is not responsible or liable for making connections, failing to operate any flight according to schedule, changing the schedule or any flight, changing seat assignments or aircraft types, or revising the routings by which Delta carries the passenger from the ticketed origin to destination**

(Exhibit A to Delta's Motion to Dismiss, Contract of Carriage, Rule 2 at p. 2 (emphasis added).)

With the expectations outlined, the Domestic Contract of Carriage provides the procedure in the event a flight is cancelled or delayed:

RULE 19: FLIGHT DELAYS/CANCELLATIONS

A. Delta's Liability in the Event of Schedule Changes, Delays and Flight Cancellations

If there is a flight cancellation . . . , Delta will (at passenger's request) cancel the remaining ticket and refund the unused portion of the ticket and unused ancillary fees in the original form of payment in accordance with Rule 22. If the passenger does not request cancellation and refund of the remaining portion of the ticket, Delta will transport the passenger to the destination on Delta's next flight on which seats are available in the class of service originally purchased. At Delta's sole discretion and if acceptable to the passenger, Delta may arrange for the passenger to travel on another Carrier If acceptable to the passenger, Delta may provide transportation in a lower class of service If space on the next available flight is available only in a higher class of service than

purchased, Delta will transport the passenger on the flight . . . **Delta will not be liable under any circumstances for any special, incidental or consequential damages arising from the foregoing.**

B. Delta's Liability for Additional Amenities in the Event of Schedule Changes, Delays and Flight Cancellations

Except as provided above, Delta shall have no liability if the flight cancellation, diversion or delay was **due to force majeure**. As used in this rule, "force majeure" means **actual, threatened or reported**:

(1) **Weather conditions** or acts of God;

...

(4) Government regulation, demand, directive or requirement; [or]

...

(6) **Any other condition beyond Delta's control** or any fact not reasonably foreseen by Delta.

However, **when a passenger's travel is interrupted for more than 4 hours . . . as a result of flight cancellation or delay on the date of travel other than from force majeure**, Delta will provide the passenger with the following additional amenities during the delay: [hotel, ground transportation to another nearby airport, or amenities for special needs passengers.]

(Exhibit A to Delta's Motion to Dismiss, Contract of Carriage, Rule 19 at pp. 17-18 (emphasis added; "other than" underlined in original).) Rule 22 outlines the following procedure for compensating a passenger for a cancelled flight:

RULE 22: REFUNDS

A. Involuntary Refunds

If a refund is required because of Delta's failure to operate on schedule . . . , the following refund will be made directly to you:

...

2) If a portion of the ticket has been used and termination (interruption) occurs:

a) **At A Fare Breakpoint** - **The refund will be an amount equal to the fare paid for the unused transportation** from the point of termination (interruption) to the destination No refund will apply when alternate transportation is provided by Delta and accepted by the passenger.

(See Exhibit A to Delta's Motion to Dismiss, Contract of Carriage, Rule 22(A)(2)(a) at p. 23 (emphasis added).) If cash or credit card were not used to purchase the ticket originally, the refund will be "issued back to the original form of payment." (See Exhibit A to Delta's Motion to Dismiss, Contract of Carriage, Rule 22(D)(5) at pp. 24-25 (emphasis added).)

In sum, if a flight is cancelled due to actual or threatened weather conditions, then Delta will automatically offer the passenger a seat on the next available flight, and if this is refused, Delta will refund the passenger for the unused portion of the ticket. Yet, Plaintiff complains—and alleges—that Delta did *exactly* that. Delta offered him the next available flight— it is of no consequence in the breach analysis of when that next flight was scheduled to depart. (Compl. at ¶ 12, 19, 21.) This is not a breach.

Plaintiff next complains that, when he refused to take that flight, Delta *offered* to refund him in SkyMiles, which Plaintiff alleges *he* refused. Again, this is not a breach by Delta but Delta's fulfilment of Rules 19 and 22. He also complains that Delta did not offer him a hotel or other accommodations. (Compl. at ¶ 21.) But the Domestic Contract of Carriage never obligated Delta to do so, because the flight was cancelled due to a force majeure: actual or threatened weather conditions. (See Compl. at ¶¶ 13, 16.) There is no breach here.

Finally, Plaintiff complains that Delta did not reimburse Plaintiff for the expenses he incurred when he decided to drive himself to Greenville non-stop from New York. (Compl. at ¶ 16.) All these expenses are incidental or consequential damages, and the Domestic Contract of Carriage clearly states: "Delta will not be liable under any circumstances for any special, incidental or consequential damages arising from the foregoing [schedule changes, delays and flight cancellations]." (Exhibit A to Delta's Motion to Dismiss, Contract of Carriage, Rule 19(A) at p. 17.) A similar limitation of liability is included in Rule 24: "Delta shall not be liable for any

punitive, consequential or special damages arising out of or in connection with carriage or other services performed by Delta, whether or not Delta had knowledge that such damage might be incurred.” (Exhibit A to Delta’s Motion to Dismiss, Contract of Carriage, Rule 24 at p. 25.) Delta’s refusal to reimburse Plaintiff for his numerous alleged incidental or consequential damages is not a breach of the contract.

Because Plaintiff’s theory of breach for the September 2023 Domestic Flight is negated by the terms of the Domestic Contract of Carriage, Plaintiff fails to state facts sufficient to constitute a cause of action for breach of contract, and the cause of action should be dismissed.

iv. Because Plaintiff Fails to Allege an Express Breach of Contract, He Cannot Bring a Claim for Breach of the Covenant of Good Faith and Fair Dealing.

Again, in the third cause of action, Plaintiff fails to actually set forth a breach of contract cause of action but instead attempts to only set forth a declaratory judgment action. (See Compl. at ¶¶ 58-68.) In this catchall cause of action, Plaintiff includes an allegation that Delta “breach[ed] general duties of good faith and fair dealing[.]” (Compl. at ¶ 65(a).) Whether this Court applies South Carolina law or applies the law of the Contracts of Carriage, which is Georgia law, Plaintiff fails to state a claim for the breach of covenant of good faith and fair dealing.¹⁹ Both states require a Plaintiff to first allege a specific breach of an express term of the contract. *TRB Mellichamp LLC v. Concrete Supply Co., LLC*, No. CV 2:20-4413-RMG, 2021 WL 6206582, at *3 (D.S.C. Mar. 5, 2021) (“Courts applying South Carolina law regularly dismiss a breach of implied covenant claim where there is no breach of contract claim into which it can be subsumed.”); *Brooks v. Branch Banking & Tr. Co.*, 107 F. Supp. 3d 1290, 1296 (N.D. Ga. 2015) (same) (applying Georgia law). As demonstrated in the prior section, Plaintiff fails to state a claim for breach of contract with

¹⁹ Again, this Court has no authority to entertain a claim for breach of covenant of good faith and fair dealing, because South Carolina and Georgia law cannot impose such requirements on these airline contracts. See *Ginsberg*, 572 U.S. at 287, 134 S. Ct. at 1432.

regard to the September 2023 Domestic Flight. As for both international flights, Plaintiff fails to cite any provision of the International Contract of Carriage that Delta breached. (Compl. at ¶¶ 22-23.) As a result, Plaintiff's Complaint does not support a claim for breach of the covenant of good faith and fair dealing, and this third cause of action should be dismissed accordingly.

v. This Cause of Action Is *Res Judicata* Because It Re-Alleges the Same Theory of Liability that Plaintiff Voluntarily Dismissed with Prejudice.

In the prior action, Plaintiff brought, and voluntarily dismissed with prejudice, a cause of action for "breach of contract accompanied by a fraudulent act." (Exhibit C to Delta's Motion to Dismiss, Joint Stipulation of Dismissal without Prejudice at ¶ 1(c).) The substance of a claim for breach of contract accompanied by a fraudulent act is "fraudulent intent relating to the breaching of the contract and not merely to its making." *Ball v. Canadian Am. Exp. Co.*, 314 S.C. 272, 276, 442 S.E.2d 620, 623 (Ct. App. 1994).

Here, Plaintiff's blended cause of action for "Declaratory Judgment and Breach of Contract" alleges the same theory: "... Delta engage in ... [f]raud and tortious conduct, including violation of rules and governing policies promulgated by itself, administrative bodies, or other entities . . . and [o]ther tortious, unfair, and deceptive conduct[.]" (Compl. at ¶ 65(b), (e).) No matter the label Plaintiff gives this new cause of action, the substance of the cause of action is one that Plaintiff chose to dismiss with prejudice. This Court should not allow Plaintiff to escape his voluntary dismissal by entertaining this Trojan horse cause of action.

d. **The Fraud Cause of Action Is Insufficiently Pleaded and It Is *Res Judicata* because It Alleges the Same Facts as the Breach of Contract Accompanied By a Fraudulent Act Claim that Plaintiff Stipulated to Dismiss with Prejudice.**

To the extent any portion of Plaintiff's Fraud cause of action survives the preemptive scope of the Montreal Convention or the Airline Deregulation Act, Plaintiff fails to state a valid claim for Fraud.

i. The Fraud Cause of Action Should Be Dismissed as Alleged because it Does Not State the Circumstances of the Alleged Fraud with Particularity, Required by Rule 9(b), SCRCF.

Despite Plaintiff's claim that the Fraud cause of action "is stated with particularity in this paragraph and the other paragraphs of the [C]omplaint," (Compl. at ¶ 70), the Fraud cause of action is anything but particular. The cause of action is simply a recitation of the elements of fraud with Plaintiff's name and Delta's name filled in: No specific details are provided to describe the circumstances surrounding the alleged fraud. (See Compl. at ¶ 70). This is fatal to Plaintiff's claim for Fraud.

Rule 9(b), SCRCF requires that "the circumstances constituting fraud . . . shall be stated with particularity." Rule 9(b), SCRCF. This requires Plaintiff to plead the: the who, what, when, where, and how of the alleged fraud. See, e.g., *Coker v. Norwich Com. Grp., Inc.*, No. CV 3:20-03071-MGL, 2021 WL 4037472, at *3 (D.S.C. Sept. 3, 2021) ("[S]outh Carolina Rule of Civil Procedure 9(b) is similar to Federal Rule of Civil Procedure 9(b) . . ."); *U.S. ex rel. Wilson v. Kellogg Brown & Root, Inc.*, 525 F.3d 370, 379 (4th Cir. 2008) (applying Fed. R. Civ. P. 9(b) and requiring the "who, what, when, where, and how" of the alleged fraud).

Plaintiff alleges Fraud arising from three separate flights but gives no details about the statements he was given surrounding each flight or the connection of those statements to his alleged damages. This Rule 9(b) requirement cannot simply be met by telling this Court and Delta, in essence, to "figure it out" by sifting through the prior 70 paragraphs of allegations. Rule 9(b), SCRCF requires Plaintiff to identify and describe the particular facts that constitute the claim.

ii. The Fraud Cause of Action Is Res Judicata because It Realleges the Same Theory of Liability as the Cause of Action Plaintiff Voluntarily Dismissed with Prejudice.

Again, in the prior action, Plaintiff brought, and voluntarily dismissed with prejudice, a cause of action for "breach of contract accompanied by a fraudulent act." (Exhibit C to Delta's

Motion to Dismiss, Joint Stipulation of Dismissal without Prejudice at ¶ 1(c).) The substance of a claim for breach of contract of contract accompanied by a fraudulent act is "fraudulent intent relating to the breaching of the contract and not merely to its making." *Ball*, 314 S.C. at 276, 442 S.E.2d at 623.

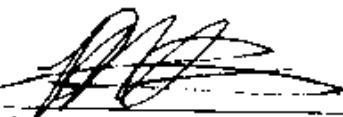
Here, Plaintiff's Fraud cause of action alleges that Delta "breach[ed] . . . the adhesion contracts from which it sought to profit" by "cancel[ling] flights and mislead[ing] the plaintiff" and by lying "about luggage it had lost." (See Compl. at ¶ 71.) This cause of action clearly attempts to set forth "fraudulent intent relating to the breaching of the contract" that is characteristic of the claim for breach of contract accompanied by a fraudulent act. *Ball*, 314 S.C. at 276, 442 S.E.2d at 623. This Court should not allow Plaintiff to circumvent his own voluntary stipulation to dismiss this claim with prejudice by allowing the same claim to proceed with a different label.

CONCLUSION

Plaintiff should know these claims cannot survive the Montreal Convention's and the ADA's preemptive scope. With respect to the International Flights, the Montreal Convention preempts causes of action II through IV. The "Montreal Convention" cause of action is further limited by Plaintiff's inability to recover for his "inconvenience." With respect to the Domestic Flight, the ADA preempts causes of action III and IV because they relate to Delta's flight service and Plaintiff does not ask the Court to enforce the Domestic Contract of Carriage as is. To the extent Plaintiff's third cause of action is not preempted, Plaintiff fails to show any breach under the terms of the Domestic Contract of Carriage. The majority of Plaintiff's Complaint may be dismissed by this Court outright.

WHEREFORE, Delta respectfully requests an Order dismissing the aforementioned causes of action in Plaintiff's Complaint.

September 23, 2024

By: 

C. Daniel Atkinson (S.C. Bar #72721)

datkinson@wajlawfirm.com

Brian M. Peters, Jr. (S.C. Bar #105911)

bpeters@wajlawfirm.com

WILKES ATKINSON & JOYNER, LLC

127 Dunbar Street, Suite 200

Spartanburg, SC 29306

(864) 591-1113

Attorneys for Defendant

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Joshua Hawkins,

Plaintiff,

vs.

Delta Air Lines, Inc.,

Defendant.

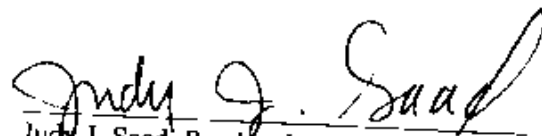
IN THE MAGISTRATE'S COURT

Case No.: 2024-CV-23-2415

CERTIFICATE OF SERVICE

I certify that on **September 23, 2024**, I caused to be served a true and correct copy of the foregoing *Brief in Support of Defendant's Motion to Dismiss in Lieu of Answer* via U.S. Mail, postage pre-paid, and E-mail, addressed as follows:

Joshua T. Hawkins, Esq.
Helena L. Jedziniak, Esq.
Hawkins & Jedziniak, LLC
1225 South Church St.
Greenville, SC 29605
josh@hjlsc.com
helena@hjlsc.com


Judy J. Saad, Paralegal
jsaad@wajlawfirm.com
Wilkes Atkinson & Joyner, LLC

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EAST GREENVILLE
MAGISTRATE COURT

Lee v. Am. Airlines, Inc.

United States Court of Appeals for the Fifth Circuit

January 14, 2004, Filed

No. 03-10178

Reporter

355 F.3d 386 *; 2004 U.S. App. LEXIS 441 **

DARREN M LEE, on behalf of himself and those similarly situated, Plaintiff-Appellant, versus AMERICAN AIRLINES INC, Defendant-Appellee.

Subsequent History: Summary judgment granted, in part, summary judgment denied, in part by Lee v. Am. Airlines, Inc., 2004 U.S. Dist. LEXIS 23380 (N.D. Tex., Nov. 17, 2004)

Prior History: [**1] Appeal from the United States District Court For the Northern District of Texas. 3:01-CV-1179. Jorge A Solis, US District Judge.

Disposition: Affirmed.

Counsel: For DARREN M LEE, on behalf of himself and those similarly situated, Plaintiff - Appellant: George Kevin Buchanan, Buchanan & Burke, Dallas, TX. Howard Marc Spector, Dallas, TX.

For AMERICAN AIRLINES, Defendant - Appellee: Mark Raymond Steiner, David T Moran, Katherine A Staton, Jackson Walker, Dallas, TX.

For AIR TRANSPORT ASSOCIATION OF AMERICA INC, Amicus Curiae: James W Erwin, Thompson Coburn, St Louis, MO.

Judges: Before JONES, EMILIO M. GARZA, and BENAVIDES, Circuit Judges.

Opinion by: EMILIO M. GARZA

Opinion

[*387] EMILIO M. GARZA, Circuit Judge:

Following the delay and ultimate cancellation of Darren Lee's flight from New York to London, Lee filed a federal class action complaint against American Airlines, asserting a claim under Article 19 of the Warsaw Convention.¹ Lee sought to recover damages for delay, inconvenience, assorted expenses, loss of reasonably foreseeable business, loss of prepaid and/or nonrefundable vacation expenses, and loss of a "refreshing, memorable vacation." The district court granted American Airlines partial judgment on the pleadings, pursuant to *FED. R. CIV. P. 12(c)*, as to damages for inconvenience and loss of a refreshing, memorable vacation, reasoning that these allegations amounted to damages for mental injuries, unrecoverable under the Warsaw Convention. The district court subsequently certified this issue for appeal.

[**2] On appeal, Lee contends that his damages claims for inconvenience and loss of a refreshing, memorable vacation are economic damages and not claims for mental anguish damages. Specifically, Lee alleges American Airlines inconvenienced him by forcing him to spend time in a terminal without adequate food, water, restroom

¹ Convention for the Unification of Certain Rules Relating to International Transportation by Air, Oct. 29, 1929, 49 Stat. 3000, T.S. No. 876 (1934), reprinted in 49 U.S.C. § 40105 (note) (2000) (hereinafter "Warsaw Convention").

facilities and information regarding the status of his flight, by forcing him to spend the night in a dirty, substandard and unsafe motel room, and caused him to lose a full day of a memorable refreshing vacation.

We agree with the district court that, as alleged, Lee's so-called inconvenience damages are not easily quantifiable and do not result in real economic loss. These alleged damages are merely an attempted re-characterization of mental anguish damages. Mental injury damages are not recoverable under the Warsaw Convention. See Eastern Airlines v. Floyd, 499 U.S. 530, 113 L. Ed. 2d 569, 111 S. Ct. 1489 (1991) (finding that Article 17 of the Warsaw Convention does not allow recovery for purely mental injuries because the drafters of the Warsaw Convention did not intend to include such a remedy in the Convention). Accordingly, we AFFIRM the ruling of the district [*3] court.

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Hawkins v. Am. Airlines

Court of Appeals of South Carolina

November 1, 2023, Submitted; April 17, 2024, Filed

Unpublished Opinion No. 2024-UP-122

Reporter

2024 S.C. App. Unpub. LEXIS 126 *; 2024 WL 1655457

Josh Hawkins, Appellant, v. American Airlines, The Qantas Group d/b/a Qantas Airlines, Expedia, and Travel Guard Insurance, Defendants, Of Which American Airlines and Expedia are the Respondents.

Notice: THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

Prior History: [*1] Appeal From Greenville County, Appellate Case No. 2020-001150, Perry H. Gravely, Circuit Court Judge.

Disposition: AFFIRMED.

Counsel: Helena LeeAnn Jedziniak and Joshua Thomas Hawkins, both of Hawkins & Jedziniak, LLC, of Greenville, for Appellant.

John Lucius McCants, of Rogers Lewis Jackson Mann & Quinn, LLC, of Columbia; and Kenneth S. Nankin, of Rockville, Maryland, both for Respondent American Airlines.

William S.F. Freeman, of Freeman & Freeman, LLC, of Greenville, for Respondent Expedia.

Judges: WILLIAMS, C.J., and HEWITT and VERDIN, JJ., concur.

Opinion

PER CURIAM: In this civil matter, Josh Hawkins appeals the circuit court's orders (1) dismissing his complaint against American Airlines (American) pursuant to *Rule 12(b)(6)*, *SCRPC* and (2) dismissing his complaint against Expedia, Inc. and compelling arbitration. We affirm.

1. We find the circuit court did not err in granting American's motion to dismiss Hawkins's complaint pursuant to *Rule 12(b)(6)*. See *Sloan Constr. Co. v. Southco Grassing, Inc.*, 377 S.C. 108, 112, 659 S.E.2d 158, 161 (2008) ("In reviewing the dismissal of a claim for failure to state facts sufficient to constitute a cause of action under *Rule 12(b)(6)*, *SCRPC*, the appellate court applies the same standard of review as the trial court."); *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987) ("A ruling on a 12(b)(6) motion to dismiss must be based solely upon the allegations set forth on the face [*2] of the complaint and the motion cannot be sustained if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case."). Specifically, we hold the circuit court did not err in finding Hawkins's tort and Unfair Trade Practices Act (UTPA)¹ claims for damages due to flight delays and delayed baggage were preempted by the Montreal Convention. "The Montreal Convention is self-executing and creates a private right of action in United States courts." 8A Am. Jur. 2d Aviation § 136. "For all air transportation to which the Montreal Convention applies, if an action

¹ S.C. Code Ann. §§ 39-5-10 to -730 (2023).

for damages, however founded, falls within one of the Convention's three damage provisions, the Convention provides the sole cause of action under which a claimant may seek redress for her injuries." *Id.* (emphasis added). Article 19 of the Montreal Convention addresses air carrier liability "for damage occasioned by delay in the carriage by air of passengers, baggage or cargo." Montreal Convention, art. 19.

As to Hawkins's claims regarding insufficient services rendered, the circuit court properly found these claims were preempted by the Airline Deregulation Act of 1978 (ADA).² "The [ADA] expressly preempts state efforts to [*3] regulate the prices, routes, and services of certain air carriers." Air Evac EMS, Inc. v. Cheatham, 910 F.3d 751, 755 (4th Cir. 2018); see also 49 U.S.C. § 41713(b)(1) ("Except as provided in this subsection, a State, political subdivision of a State, or political authority of at least 2 States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier that may provide air transportation under this subpart."). "To determine whether a claim has a connection with, or reference to an airline's prices, routes, or services, we must look at the facts underlying the specific claim." Smith v. Comair, Inc., 134 F.3d 254, 259 (4th Cir. 1998). Here, it is clear Hawkins's claims relating to airport staffing and the failure to credit him airline rewards miles fall within the scope of claims preempted by the ADA. See *id.* at 257 (noting the United States Supreme Court previously held "the ADA preempted the specific application of general state consumer protection statutes to airline fare advertising"); American Airlines, Inc. v. Wolens, 513 U.S. 219, 226-228, 115 S. Ct. 817, 130 L. Ed. 2d 715 (1995) (holding federal law preempts application of states' general consumer protection statutes to airlines' frequent flyer programs). Accordingly, we affirm the circuit court's order as to American's motion.³

² 49 U.S.C. § 41713.

³ Hawkins also filed a claim for a breach of contract

2. We find the two-issue rule precludes this court [*4] from considering whether the circuit court erred in dismissing Hawkins's complaint against Expedia and compelling arbitration. In its order, the circuit court dismissed the complaint, finding arbitration was proper not only on the merits but also procedurally due to Hawkins's failure to oppose Expedia's assertions prior to the hearing. The court stated:

[T]he Plaintiff's denial was made to the Court only after commencement of the hearing. Plaintiff's denial should have been brought to the Court's attention prior to the start of the hearing. The Plaintiff therefore cannot refute the assertions made by Expedia. Therefore, the Plaintiff is bound by the Terms of Use.

Hawkins did not challenge this alternate sustaining ground on appeal. Therefore, it is the law of the case, and we affirm the circuit court's order. See Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 328, 730 S.E.2d 282, 284 (2012) ("Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become law of the case." (quoting Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010), abrogated on other grounds by Repko v. County Of Georgetown, 424 S.C. 494, 818 S.E.2d 743 (2018))); Shirley's Iron Works, 403 S.C. at 573, 743 S.E.2d at 785 ("An unappealed ruling is the law of the case and requires affirmance.").

AFFIRMED.⁴

WILLIAMS, C.J., and HEWITT and VERDIN, [*5]

accompanied by a fraudulent act. In its order granting American's motion to dismiss, the circuit court found Hawkins failed to adequately plead two of the three elements and therefore dismissed the claim pursuant to Rule 12(b)(6). Hawkins does not challenge this finding in his appellate brief, therefore, it is the law of the case. See Shirley's Iron Works, Inc. v. City of Union, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) ("An unappealed ruling is the law of the case and requires affirmance.").

⁴ We decide this case without oral argument pursuant to Rule 215, SCACR.

JJ., concur.

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We CBD, LLC v. Planet Nine Priv. Air, LLC

United States Court of Appeals for the Fourth Circuit

May 9, 2024, Argued; July 26, 2024, Decided

No. 23-1707

Reporter

109 F.4th 295 *, 2024 U.S. App. LEXIS 18500 **: 2024 WL 3543766

WE CBD, LLC; WE C MANAGE, LLC, Plaintiffs —
Appellants, v. PLANET NINE PRIVATE AIR, LLC,
Defendant — Appellee, v. ED CLARK; JET
NORTHWEST, LLC; K&R INTERNATIONAL
SERVICES; KELLY MCFALL, Third Party
Defendants.

Prior History: [**1] Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. (3:21-cv-00352-FDW-SCR). Frank D. Whitney, District Judge.

We CBD, LLC v. Planet Nine Private Air, LLC,
2023 U.S. Dist. LEXIS 102029, 2023 WL 3959925
(W.D.N.C., June 12, 2023)

Disposition: AFFIRMED.

Counsel: ARGUED: William Robert Terpening,
TERPENING LAW PLLC, Charlotte, North
Carolina, for Appellants.

Kathryn Anne Grace, WILSON ELSER
MOSKOWITZ EDELMAN & DICKER, LLP,
McLean, Virginia, for Appellee.

ON BRIEF: Nicole T. Melvani, WILSON ELSER
MOSKOWITZ EDELMAN & DICKER, LLP,
McLean, Virginia, for Appellee.

Judges: Before KING, GREGORY, and
RUSHING, Circuit Judges. Judge King wrote the
opinion, in which Judge Gregory and Judge
Rushing joined.

Opinion by: KING

Opinion

[*298] KING, Circuit Judge:

Plaintiffs We CBD, LLC, and We C Manage, LLC, (the "Plaintiffs") appeal from the district court's summary judgment award in favor of defendant Planet Nine Private Air, LLC, ("Planet Nine") on the Plaintiffs' state law claims regarding the destruction of their air cargo of alleged hemp. See We CBD, LLC v. Planet Nine Private Air, LLC, No. 3:21-cv-00352-FDW-SCR, 2023 U.S. Dist. LEXIS 102029, ECF No. 83 (the "Summary Judgment Order"). The Plaintiffs, as distributors of legal hemp, contend on appeal that the court erred in ruling that their state law claims are preempted by the Convention for the Unification of Certain Rules for International Carriage by Air, May 28, 1999, T.I.A.S. No. 13,038 (2000), reprinted in S. Treaty Doc. No. 106-45, 1999 WL 33292734 (2000) (the "Montreal Convention," or simply the "Convention"). As explained herein, we are also satisfied [**2] that the Montreal Convention preempts the Plaintiffs' state law claims, and therefore affirm the district court.

I.

We begin by summarizing the facts pertinent to this appeal. Because the Plaintiffs are challenging an adverse award of summary judgment, the facts, including reasonable inferences to be drawn

therefrom, are recited in a light most favorable to them. *See Aleman v. City of Charlotte*, 80 F.4th 264, 270 n.1 (4th Cir. 2023).

A.

1.

The Plaintiffs acquire and distribute legal hemp for profit. In October 2020, they sought to transport hemp by air from Oregon to Switzerland. The Plaintiffs approached Ed Clark, a charter broker and founder of a corporate aircraft management firm named Jet Northwest, LLC. After the Plaintiffs informed Clark of their needs, Clark contacted defendant Planet Nine, which provides charter aircraft for global cargo distribution. Through Clark, [**9] Planet Nine was informed that the Plaintiffs' cargo would be legal hemp, with so-called delta-9 THC levels below 0.3 percent.¹ On November 1, 2020, Planet Nine sent a proposed quote for the trip to the Plaintiffs, which was signed and agreed to by them on November 4. That proposal established pricing for the transport — \$147,000 — and stated that, on November 5, 2020, Planet Nine would [**3] begin to fly the Plaintiffs' hemp from Medford, Oregon, to Zurich, Switzerland, with a refueling stop in Charlotte, North Carolina.

Clark advised the Plaintiffs that Planet Nine would accept responsibility for completing the documentation required by United States Customs and Border Protection — a responsibility Planet Nine would normally undertake and satisfy. *See* J.A. 808, 818.² As pertinent here, the necessary

documentation included three filings with U.S. Customs — (1) a general declaration, (2) an air cargo manifest, and (3) Electronic Export Information (commonly referred to as "EEI"). The departure date was revised to November 8, 2020 and, one day earlier, on November 7, Planet Nine submitted the general declaration for the flight. The general declaration, however, did not either list or identify any cargo that was being transported. The other two required filings — the air cargo manifest and Electronic Export Information — were never submitted to U.S. Customs.

On November 8, 2020, at an airport in Medford, Oregon, the Plaintiffs loaded more than 3,300 pounds of alleged hemp onto Planet Nine's aircraft in 93 bags, which consisted of a mix of both duffel bags and trash [**4] bags (the "Cargo"). Law enforcement officials witnessed the Cargo being loaded onto the plane, and they also saw individuals removing seats from the plane. The Cargo and seat removals were both deemed suspicious, and information in that regard was passed along to U.S. Customs authorities in Charlotte, North Carolina.

After departing Oregon, the aircraft landed at the Charlotte-Douglas International Airport in North Carolina, as scheduled. When it landed, U.S. Customs officials noticed that the Cargo was visible from the tarmac, through the plane's windows. The presence of the Cargo was unexpected, because the flight's general declaration identified no cargo, and no Electronic Export Information had been filed. The plane — along with the Cargo — was thus detained and inspected by U.S. Customs. A field test of the Cargo returned a positive result for THC — the active ingredient in marijuana. As a result, the Cargo was detained and removed from the plane for further testing.

2.

The U.S. Customs authorities tested the detained Cargo in San Francisco, California, and those tests determined that eight of nine samples had sufficiently high THC content to constitute marijuana, rather than hemp. [**5] The part of the

¹ The Agriculture Improvement Act of 2018 defines "hemp" to mean "the plant *Cannabis sativa* L. and any part of that plant . . . whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis." *See* 7 U.S.C. § 1639o(1). The term "tetrahydrocannabinol" is generally abbreviated to "THC." If the delta-9 THC levels of the substance are greater than 0.3 percent, however, it must be classified as marijuana, rather than hemp. *See* 21 U.S.C. § 802(16)(B). Although the Plaintiffs maintain that their cargo was legal hemp, Planet Nine asserts that it was destroyed by the federal authorities because it was illegal marijuana.

² Citations herein to "J.A. __" refer to the contents of the Joint Appendix filed by the parties in this matter.

Cargo that [*300] tested as marijuana — a little less than 2,800 pounds (the "First Batch") — was destroyed on March 17, 2021.

On March 19, 2021, the Plaintiffs initiated a lawsuit against the United States — in the Western District of North Carolina — alleging wrongful destruction of the First Batch, and seeking the return of the remaining 500 pounds of the Cargo (the "Second Batch"). In that lawsuit, the Plaintiffs alleged that U.S. Customs had improperly destroyed legal hemp, in part by failing to follow proper testing procedures. Their complaint was dismissed for lack of jurisdiction on March 31, 2022. The United States thereafter filed a forfeiture action against the Second Batch, in the Western District of North Carolina, and secured a default judgment. The Second Batch was thereafter also destroyed.

B.

1.

On July 19, 2021, the Plaintiffs filed their operative complaint in the Western District of North Carolina, naming Planet Nine as a defendant and alleging diversity jurisdiction and five North Carolina state law claims. The complaint also alleged, *inter alia*, that Planet Nine's actions had caused the Plaintiffs "merchandise to be detained, seized, and eventually destroyed," [**6] and sought to recover, *inter alia*, "the loss of . . . merchandise, fees paid to Planet 9, penalties, and other costs." See J.A. 14. Planet Nine lodged counterclaims against the Plaintiffs — one of which sought a declaratory judgment that the Montreal Convention preempted all of the Plaintiffs' claims. Planet Nine also filed a third-party complaint alleging state law claims, and also that several charter brokers — including Clark and his company Jet Northwest — should indemnify Planet Nine for any recovery received by the Plaintiffs.³

After discovery, Planet Nine moved for summary

³Two other parties named in Planet Nine's third-party complaint were charter broker Kelly McFall, and her company K&R International Services, LLC. They were sued for allegedly "guid[ing] Clark and [Jet Northwest] through the customs and exportation process." See J.A. 45.

judgment maintaining, *inter alia*, that the Plaintiffs' state law claims were preempted by the Montreal Convention. On June 12, 2023, the district court agreed and entered a partial summary judgment, *i.e.*, the Summary Judgment Order, in Planet Nine's favor. On June 23, 2023, the Plaintiffs moved for entry of a final judgment, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, in order to expedite appellate review. A few days later, however, on June 26, 2023, Planet Nine voluntarily dismissed its counterclaims and third-party claims, without prejudice.

Shortly thereafter — in light of the stipulated dismissal resolving the claims that remained [**7] after entry of the Summary Judgment Order — the district court entered an order closing the case and denying all pending motions as moot, including the Plaintiffs' motion under Rule 54(b). See *We CBD, LLC* (June 28, 2023), ECF No. 89 (the "Dismissal Order"). The court did not, however, enter a necessary separate document setting out a judgment. See Fed. R. Civ. P. 58(a) ("[e]very judgment . . . must be set out in a separate document").

2.

On June 30, 2023, the Plaintiffs noted this appeal. In that regard, however, the parties erroneously represented in their various initial appellate submissions that the Summary Judgment Order was a [*301] final order. See *Porter v. Zook*, 803 F.3d 694, 696 (4th Cir. 2015) (clarifying that "a district court order is not 'final' until it has resolved *all* claims as to all parties"). After conducting oral argument, we thus requested supplemental briefing as to appellate jurisdiction. With the benefit of those supplemental submissions, we are now satisfied that the Dismissal Order is a final and appealable order, and that we possess jurisdiction pursuant to 28 U.S.C. § 1291.

To briefly explain, although the district court dismissed Planet Nine's claims without prejudice, an order is final "when a district court dismisses . . . all claims without providing leave [**8] to amend," even if the dismissal is without prejudice. See *Britt v. DeJoy*, 45 F.4th 790, 796 (4th Cir. 2022).

Additionally, the prohibition on using "voluntary dismissal as a subterfuge to manufacture jurisdiction" does not apply in these circumstances, in large part because the voluntary dismissal was by the prevailing defendant — Planet Nine — rather than by the aggrieved plaintiffs-appellants. See Affinity Living Group, LLC v. StarStone Specialty Ins. Co., 959 F.3d 634, 637 (4th Cir. 2020) (alteration omitted); see also Microsoft Corp. v. Baker, 582 U.S. 23, 27, 137 S. Ct. 1702, 198 L. Ed. 2d 132 (2017); Keena v. Groupon, Inc., 886 F.3d 360, 362-63 (4th Cir. 2018). Finally, the absence of a separate final judgment does not preclude our exercise of appellate jurisdiction. See Britt, 45 F.4th at 794.

ii.

In conducting our de novo review of a summary judgment award, we apply the same legal standards as those applied by the district court. See Ballengue v. CBS Broad., Inc., 968 F.3d 344, 349 (4th Cir. 2020). Under that standard, "[s]ummary judgment is appropriate if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." See Lawson v. Gault, 828 F.3d 239, 247 (4th Cir. 2016) (internal quotation marks omitted). Important here, a district court's interpretation of an international treaty ratified by the United States is also subject to de novo review. See United States v. Al-Hamdi, 356 F.3d 564, 569 (4th Cir. 2004).

iii.

The central question to be resolved in this appeal is whether the Summary Judgment Order erroneously ruled that the Montreal Convention preempted all of the Plaintiffs' ["9] state law claims. Recognizing that our interpretation of a treaty, "like the interpretation of a statute, begins with its text," we will briefly survey the applicable legal landscape before turning to the merits. See Medellin v. Texas, 552 U.S. 491, 506, 128 S. Ct. 1346, 170 L. Ed. 2d 190 (2008). Our rulings must be guided by the Montreal Convention which, under the Constitution, is part of "the supreme Law of the Land." See U.S. Const. art. 6, cl. 2.

A.

The Montreal Convention is a multilateral treaty negotiated and signed in 1999, and adopted by more than 130 countries, to harmonize the private international air laws and also to amend important provisions of the predecessor Warsaw Convention, which was signed in October 1929.⁴ The Montreal Convention contains ["302] seven chapters, of which Chapters I, II, and III, are relevant in this appeal.⁵

Chapter I of the Montreal Convention confirms that, like its predecessor, it has a broad scope and "applies to all international carriage of persons, baggage or cargo performed by aircraft for reward." See Montreal Convention, art. 1, ¶ 1. The Convention defines "international carriage" as follows:

[A]ny carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break ["10] in the carriage or a transshipment, are situated either within the territories of two State Parties, or within the territory of a single State Party if there is an agreed stopping place within the territory of another State.

Id. at ¶ 2 (emphasis added). Chapter II is entitled

⁴At least five of our sister circuits have recognized that "[p]recedent pertaining to the Warsaw Convention is instructive" on questions regarding the Montreal Convention, "because many provisions of the two Conventions are substantively similar." See Cohen v. Am. Airlines, Inc., 13 F.4th 240, 244 (2d Cir. 2021) (collecting decisions from the First, Sixth, Ninth, and Eleventh Circuits). We join our sister courts of appeals and also recognize that decisions relating to the Warsaw Convention are persuasive on questions regarding the Montreal Convention.

⁵The Montreal Convention is structured in 57 sequentially numbered articles, which are divided by "topic" into seven chapters. Although every article is not specifically relevant to this appeal, Chapters I ("General Provisions"), II ("Documentation and Duties of the Parties Relating to the Carriage of Passengers, Baggage and Cargo"), and III ("Liability of the Carrier and Extent of Compensation for Damage"), are discussed and utilized herein.

"Documentation and Duties of the Parties Relating to the Carriage of Passengers, Baggage and Cargo," and contains fourteen articles. Those articles govern the relative responsibilities of a carrier — i.e., a person or company that undertakes the conveyance of cargo or people by air — and other parties to a carriage contract.

Particularly critical to this appeal is Chapter III of the Montreal Convention, which contains articles relating to the liability of air carriers and the extent of compensation a carrier can owe for damages. Included therein is Article 18, entitled "Damage to Cargo," which assigns strict liability to the carrier, in pertinent part, for the following:

[D]amage sustained in the event of the destruction or loss of, or damage to, cargo upon condition only that the event which caused the damage so sustained took place during the carriage by air.

Montreal Convention, art. 18, ¶ 1.⁶ The term "carriage by air" is defined to mean "the [**11] period during which the cargo is in the charge of the carrier." *Id.* at ¶ 3. Article 18 also affords carriers several defenses to liability. Relevant here, one of these defenses allows a carrier to escape liability "to the extent it proves that the destruction, or loss of, or damage to, the cargo resulted from . . . an act of public authority carried out in connection with the entry, exit or transit of the cargo." *Id.* at ¶ 2.

Chapter III also contains a preemption provision in its Article 29, which provides, in relevant part:

In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in this

⁶The Montreal Convention contains two other damages provisions. Article 17 contemplates carrier liability for damages sustained to passengers and baggage. See Montreal Convention, art. 17, ¶ 1. Article 19 outlines carrier liability for damages occasioned by delays in the carriage of passengers, baggage, or cargo. *Id.* at art. 19.

Convention without prejudice to the question as to who are the persons who have the right to [**303] bring suit and what are their respective rights.

See Montreal Convention, art. 29 (emphasis added). As reflected above, the Montreal Convention provides the exclusive remedy for claims within its scope. See *Cohen v. Am. Airlines, Inc.*, 13 F.4th 240, 246 (2d Cir. 2021); *Dagi v. Delta Airlines, Inc.*, 961 F.3d 22, 27 (1st Cir. 2020); see also *El Al Israel Airlines, Ltd. v. Tsui Yuan Tseng*, 525 U.S. 155, 161, 119 S. Ct. 662, 142 L. Ed. 2d 576 (1999) (applying the Warsaw Convention).

A critical determination in this proceeding, therefore, is whether the alleged claims fall [**12] within the substantive scope of the Montreal Convention. Although our Circuit has no controlling prior decisions outlining how to decide whether a claim falls within the substantive scope of the Montreal Convention, there is substantial guidance from our sister courts of appeals. And in determining whether a claim is within the Convention's scope and preempted, those courts have examined whether the claim "falls within one of the Montreal Convention's three damage provisions." See *Badar v. Swissport USA, Inc.*, 53 F.4th 739, 744 (2d Cir. 2022); see also *Dagi*, 961 F.3d at 27. That examination is usually an "assessment of the total circumstances" — which assesses the spatial and temporal proximity of and the causal connection between the events giving rise to the claim. See *Eid v. Alaska Airlines, Inc.*, 621 F.3d 858, 873 (9th Cir. 2010); see also *Dagi*, 961 F.3d at 33 (ruling that Montreal Convention preempted plaintiffs' claims because plaintiff did not suffer "distinct injury connected to distinct events that took place outside the scope of the Convention.>").

B.

1.

With the foregoing principles in mind, we will address whether the district court erroneously determined that the Plaintiffs' state law claims in these proceedings were preempted by the Montreal Convention. Recognizing that the

Convention cabined its scope to "international carriage," the [**13] court began its analysis by concluding that the carriage at issue was international. And the parties also agree that the Cargo was placed in "international carriage" because, even though the flight had yet to leave the United States, it had an international destination — Switzerland. See Montreal Convention art. 1, ¶ 2 ("international carriage" is "any carriage in which . . . the place of departure and the place of destination . . . are situated . . . within the territories of two State Parties").

Adhering to guidance from our sister circuits, the district court then examined whether the Plaintiffs' claims fell within one of the Montreal Convention's three damages provisions. And like our sister circuits, we are satisfied that the preemptive effect of the Convention requires an inquiry as to whether each alleged claim "falls within one of the Montreal Convention's three damage provisions." See Badar, 53 F.4th at 744; see also Dagi, 961 F.3d at 27.

The district court — recognizing that there is no dispute that the Plaintiffs were pursuing claims regarding destruction of the Cargo — turned specifically to Article 18 of the Montreal Convention. Article 18, as recited above, requires the event causing the damage to have taken place "during the carriage by air." [**14] See Montreal Convention, art. 18, ¶ 1. The Summary Judgment Order ruled that the critical event was the U.S. Customs's "determination — following the Cargo's seizure and testing — that the Cargo was illegal marijuana." See We CBD, LLC, ECF No. 83 at 16. In support of that conclusion, the court [**304] ruled that the Plaintiffs had failed to "provide any evidence refuting [U.S. Customs's] determination that the [C]argo was illegal marijuana." *Id.* at 14.⁷

⁷ The Plaintiffs argue that the Summary Judgment Order erred in ruling that they failed to "provide any evidence refuting [U.S. Customs's] determination that the Cargo was illegal marijuana." See We CBD, LLC, ECF No. 83 at 14. We need not reach or address that contention. As reflected herein, the Plaintiffs' claims are preempted by the Montreal Convention regardless of whether the Cargo was actually hemp or marijuana.

Relying on the public authority defense contained in Article 18, the court also determined that the event was during the carriage by air, because it was "an act of public authority . . . related to its exportation." *Id.* at 17.

2.

On appeal, the Plaintiffs principally maintain that the court improperly identified the "event" causing damage to the Cargo, and contend that the relevant event is either Planet Nine's mishandling of the U.S. Customs documentation, or the alleged erroneous testing and destruction of the Cargo by U.S. Customs. See Appellant's Br. at 34-35.⁸ Those two events, the Plaintiffs argue, take each of their claims outside of the "carriage by air" definition, because (1) Planet Nine filed the documentation before it [**15] possessed the Cargo, and (2) the destruction of the Cargo occurred when it was possessed by U.S. Customs, far away from the Charlotte-Douglas International Airport, and long after the Cargo's seizure. Otherwise stated, the Plaintiffs assert that the relevant events took place before and after the carriage by air — but not during the carriage by air. As explained herein, however, we reject each of the Plaintiffs' contentions.

a.

First, we decline to take an overly segmented approach in identifying the relevant causal event and whether it took place during a carriage by air. And we see the wisdom of conducting "an assessment of the total circumstances." See Eid,

⁸ The Plaintiffs label the mishandling of the U.S. Customs documentation as the "proximate cause" of the damage to the Cargo, and the U.S. Customs's testing and destruction as the "direct cause." See Appellant's Br. at 35. Further, the Plaintiffs maintain that the Montreal Convention is governed by a so-called "direct causation standard." *Id.* at 14. The Supreme Court, however, applied a proximate causation standard to the (Continued) damages provisions in the Warsaw Convention. See Air Fr. v. Saks, 470 U.S. 392, 395-96, 105 S. Ct. 1338, 84 L. Ed. 2d 289 (1985). And at least one court of appeals has done the same under the Montreal Convention. See Moore v. Brit. Airways PLC, 32 F.4th 110, 115 (1st Cir. 2022). We are simply not persuaded, and will not adopt a heretofore unrecognized "direct causation standard."

621 F.3d at 873 (internal quotation marks omitted). Such an approach has been bolstered by the Supreme Court, which — in applying the Warsaw Convention — eschewed an analysis that identified “the precise factual event that caused the injury.” See *Olympic Airways v. Husain*, 540 U.S. 644, 653, 124 S. Ct. 1221, 157 L. Ed. 2d 1146 (2004) (internal quotation marks omitted). That is primarily because such an approach “neglects the reality that there are often multiple interrelated factual events that combine to cause any given injury,” and “the very fact that multiple events will necessarily combine and interrelate to cause any [**16] particular injury makes it difficult to define, in any coherent or non-question-begging way, any single event as the injury producing event.” *Id.* (internal quotation marks omitted).

Assessing the causal chain as a whole, we are readily satisfied that the Plaintiffs’ claims necessarily and inextricably arise [**305] from events that occurred during the carriage by air — namely the plane’s detention in Charlotte, followed by field testing of the Cargo and its seizure at the Charlotte-Douglas Airport. As a result, the Plaintiffs’ claims fall within the scope of Article 18 of the Montreal Convention.

b.

Turning to the Plaintiffs’ argument that Planet Nine’s alleged mishandling of the necessary U.S. Customs documentation removes their claims from the scope of Article 18, that proposition disregards the fact that improperly filed documentation alone would not have resulted in their injury — i.e., destruction of the Cargo. In fact, the Plaintiffs acknowledge that any obligation of Planet Nine to properly submit the required U.S. Customs documentation was not contravened until the Cargo was in possession of Planet Nine and departing from Oregon — and therefore well within the carriage by air period. [**17] See Appellant’s Br. at 57-60; Appellant’s Reply Br. at 7. Put succinctly, for the Cargo to be seized and then destroyed by U.S. Customs, it had to be first placed in the possession of Planet Nine. Even assuming Planet Nine had an obligation to submit the U.S. Customs documentation and improperly

did so, the Cargo could not have been destroyed unless it was in international carriage by air.⁹

The Montreal Convention’s preemptive scope would certainly reach claims with links in the causal chain occurring outside the carriage by air period. Certain events taking place prior to a flight — such as mishandled paperwork, improper maintenance of the aircraft, or negligent training of flight staff — can result in an accident or event causing damage only after an international carriage by air begins. To rule otherwise would greatly diminish the ambit of the Montreal Convention and would concomitantly “encourage artful pleading by plaintiffs seeking to opt out of the Convention’s liability scheme” — a result that the Supreme Court has counseled us to avoid. See *El Al Israel Airlines*, 525 U.S. at 171 (applying Warsaw Convention).

In any event, our conclusion is supported by other provisions of the Montreal Convention. That is, several [**18] articles in Chapter II of the Convention contemplate the completion of pre-flight paperwork, including documents “necessary to meet the formalities of customs, police and similar public authorities.” See Montreal Convention, art. 6; see also art. 5 (“Contents of Air Waybill or Cargo Receipt”), art. 7 (“Description of Air Waybill”), art. 9 (“Non-compliance with Documentary Requirements”), art. 10 (“Responsibility for Particulars of Documentation”). Thus, Planet Nine’s alleged mishandling of the U.S. Customs documentation was not the type of causal event that could remove claims for destruction of cargo from the preemptive effect of the Convention.

c.

We also disagree with the Plaintiffs that the destruction in San Francisco of the Cargo by U.S. Customs — which took place months after its seizure in Charlotte — can somehow remove their

⁹ The parties dispute whether Planet Nine had an obligation to submit the relevant U.S. Customs documentation, or whether that obligation fell to the Plaintiffs. Assuming that Planet Nine had that obligation would not alter the result of this appeal.

claims from the substantive scope of Article 18. The Plaintiffs' contention in that regard fails for at least two reasons — (1) there is a material difference between the event causing damage and the damage itself, and (2) actions by U.S. Customs were [*306] not events that can take a claim outside of Article 18's substantive scope.

First, Article 18 creates liability on the carrier "upon condition only that *the event which caused the damage* so sustained took place during the carriage by air." See Montreal Convention, [**19] art. 18, ¶ 1 (emphasis added). The plain language of Article 18 makes it apparent that "the event" must occur during the carriage by air — not the damage. Although we have not recognized that distinction as to Article 18 of the Montreal Convention, we did as to the Warsaw Convention's Article 17 — which governed carrier liability for damages to passengers. See *Sakaria v. Trans World Airlines*, 8 F.3d 164, 170 (4th Cir. 1993) (ruling that applicable term "accident" refers to the cause of injury rather than the injury itself").

Several other courts, including the Supreme Court, have similarly recognized that there is a difference between the event that causes the injury, on one hand, and the injury itself, on the other. See *Air Fr. v. Saks*, 470 U.S. 392, 398, 105 S. Ct. 1338, 84 L. Ed. 2d 289 (1985) (explaining that "Article 17 [of the Warsaw Convention] refers to an accident *which caused* the passenger's injury, and not to an accident which *is* the passenger's injury"); *Dagi*, 961 F.3d at 33 (ruling that false imprisonment which began on aircraft and ended after prolonged period in airport terminal was within substantive scope of Montreal Convention's Article 17); *Prescod v. AMR, Inc.*, 383 F.3d 861, 869 (9th Cir. 2004) ("The [Warsaw] Convention does not state that the ultimate injury or death, as opposed to the relevant accident, must occur at any particular time following the accident."); *Narayanan v. Brit. Airways*, 747 F.3d 1125, 1128-29 (9th Cir. 2014) (ruling [**20] that Montreal Convention's statute of limitations governs wrongful death claim for failure to provide supplemental in-flight oxygen, even if claim does not accrue until six months after flight). Thus, the fact that destruction of the Cargo

occurred outside the carriage by air period does not alter our conclusion that the events causing the destruction took place during the carriage by air.

Second, an action by the public authorities is not the type of event that would usually remove claims for destruction of cargo from the scope of the Montreal Convention. Indeed, Article 18 explicitly recognizes a defense for damages resulting from "an act of public authority carried out in connection with the entry, exit or transit of the cargo." See Montreal Convention, art. 18, ¶ 2. The public authority defense is an acknowledgment that the substantive scope of Article 18 can cover claims where cargo was destroyed by public officials — which the Plaintiffs concede is what occurred here. Other than the requirement that the action be "in connection with the entry, exit or transit of the cargo," there is no temporal limitation to the public authority defense. In these circumstances, the scope of the Montreal Convention does not hinge [**21] on the speed of government action. And the fact that U.S. Customs waited several months before destroying the Cargo in California does not alter our analysis.

At bottom, the gravamen of each of the Plaintiffs' claims for destruction of the Cargo necessarily and inextricably arises from an event — or series of events — that took place during the carriage by air. The plane's detention and the Cargo's field testing and subsequent seizure occurred in North Carolina en route to an international destination in Switzerland, which underscores the applicability of the Montreal Convention to the Plaintiffs' claims. We are thus satisfied that those state law claims are well within the preemptive scope of the Montreal Convention, and [*307] that the Summary Judgment Order in favor of Planet Nine should be sustained.

IV.

Pursuant to the foregoing, we agree with the district court and affirm the summary judgment award.

AFFIRMED

End of Document

USCS Montreal Convention

Current through changes received November 4, 2023.

United States Convention > Convention for the Unification of Certain Rules for International Carriage by Air

Done at Montreal May 28, 1999; entered into force November 4, 2003

(TIAS 13038)

THE STATES PARTIES TO THIS CONVENTION

RECOGNIZING the significant contribution of the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed in Warsaw on 12 October 1929, hereinafter referred to as the "Warsaw Convention", and other related instruments to the harmonization of private international air law;

RECOGNIZING the need to modernize and consolidate the Warsaw Convention and related instruments;

RECOGNIZING the importance of ensuring protection of the interests of consumers in international carriage by air and the need for equitable compensation based on the principle of restitution;

REAFFIRMING the desirability of an orderly development of international air transport operations and the smooth flow of passengers, baggage and cargo in accordance with the principles and objectives of the Convention on International Civil Aviation, done at Chicago on 7 December 1944;

CONVINCED that collective State action for further harmonization and codification of certain rules governing international carriage by air through a new Convention is the most adequate means of achieving an equitable balance of interests;

HAVE AGREED AS FOLLOWS:

Chapter I. General Provisions

Article 1. Scope of Application

1. This Convention applies to all international carriage of persons, baggage or cargo performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.
2. For the purposes of this Convention, the expression *international carriage* means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two States Parties, or within the territory of a single State Party if there is an agreed stopping place within the territory of another State, even if that State is not a State Party. Carriage between two points within the territory of a single State Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of this Convention.
3. Carriage to be performed by several successive carriers is deemed, for the purposes of this Convention, to be one undivided carriage if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State.

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4. This Convention applies also to carriage as set out in Chapter V, subject to the terms contained therein.

Article 2. Carriage Performed by State and Carriage of Postal Items

1. This Convention applies to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in Article 1.
2. In the carriage of postal items, the carrier shall be liable only to the relevant postal administration in accordance with the rules applicable to the relationship between the carriers and the postal administrations.
3. Except as provided in paragraph 2 of this Article, the provisions of this Convention shall not apply to the carriage of postal items.

Chapter II. Documentation and Duties of the Parties Relating to the Carriage of Passengers, Baggage and Cargo

Article 3. Passengers and Baggage

1. In respect of carriage of passengers, an individual or collective document of carriage shall be delivered containing:
 - (a) an indication of the places of departure and destination;
 - (b) if the places of departure and destination are within the territory of a single State Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place.
2. Any other means which preserves the information indicated in paragraph 1 may be substituted for the delivery of the document referred to in that paragraph. If any such other means is used, the carrier shall offer to deliver to the passenger a written statement of the information so preserved.
3. The carrier shall deliver to the passenger a baggage identification tag for each piece of checked baggage.
4. The passenger shall be given written notice to the effect that where this Convention is applicable it governs and may limit the liability of carriers in respect of death or injury and for destruction or loss of, or damage to, baggage, and for delay.
5. Non-compliance with the provisions of the foregoing paragraphs shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Convention including those relating to limitation of liability.

Article 4. Cargo

1. In respect of the carriage of cargo, an air waybill shall be delivered.
2. Any other means which preserves a record of the carriage to be performed may be substituted for the delivery of an air waybill. If such other means are used, the carrier shall, if so requested by the consignor, deliver to the consignor a cargo receipt permitting identification of the consignment and access to the information contained in the record preserved by such other means.

Article 5. Contents of Air Waybill or Cargo Receipt

The air waybill or the cargo receipt shall include:

- (a) an indication of the places of departure and destination;
- (b) if the places of departure and destination are within the territory of a single State Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place; and
- (c) an indication of the weight of the consignment.

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Article 6. Document Relating to the Nature of the Cargo

The consignor may be required, if necessary to meet the formalities of customs, police and similar public authorities, to deliver a document indicating the nature of the cargo. This provision creates for the carrier no duty, obligation or liability resulting therefrom.

Article 7. Description of Air Waybill

1. The air waybill shall be made out by the consignor in three original parts.
2. The first part shall be marked "for the carrier"; it shall be signed by the consignor. The second part shall be marked "for the consignee"; it shall be signed by the consignor and by the carrier. The third part shall be signed by the carrier who shall hand it to the consignee after the cargo has been accepted.
3. The signature of the carrier and that of the consignor may be printed or stamped.
4. If, at the request of the consignor, the carrier makes out the air waybill, the carrier shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

Article 8. Documentation for Multiple Packages

When there is more than one package:

- (a) the carrier of cargo has the right to require the consignor to make out separate air waybills;
- (b) the consignor has the right to require the carrier to deliver separate cargo receipts when the other means referred to in paragraph 2 of Article 4 are used.

Article 9. Non-Compliance with Documentary Requirements

Non-compliance with the provisions of Articles 4 to 8 shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Convention including those relating to limitation of liability.

Article 10. Responsibility for Particulars of Documentation

1. The consignor is responsible for the correctness of the particulars and statements relating to the cargo inserted by it or on its behalf in the air waybill or furnished by it or on its behalf to the carrier for insertion in the cargo receipt or for insertion in the record preserved by the other means referred to in paragraph 2 of Article 4. The foregoing shall also apply where the person acting on behalf of the consignor is also the agent of the carrier.
2. The consignor shall indemnify the carrier against all damage suffered by it, or by any other person to whom the carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements furnished by the consignor or on its behalf.
3. Subject to the provisions of paragraphs 1 and 2 of this Article, the carrier shall indemnify the consignor against all damage suffered by it, or by any other person to whom the consignor is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements inserted by the carrier or on its behalf in the cargo receipt or in the record preserved by the other means referred to in paragraph 2 of Article 4.

Article 11. Evidentiary Value of Documentation

1. The air waybill or the cargo receipt is *prima facie* evidence of the conclusion of the contract, of the acceptance of the cargo and of the conditions of carriage mentioned therein.
2. Any statements in the air waybill or the cargo receipt relating to the weight, dimensions and packing of the cargo, as well as those relating to the number of packages, are *prima facie* evidence of the facts stated; those relating to the quantity, volume and condition of the cargo do not constitute evidence against the carrier except so far as they both have been, and are stated in the air waybill

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or the cargo receipt to have been checked by it in the presence of the consignor, or relate to the apparent condition of the cargo.

Article 12. Right of Disposition of Cargo

1. Subject to its liability to carry out all its obligations under the contract of carriage, the consignor has the right to dispose of the cargo by withdrawing it at the airport of departure or destination, or by stopping it in the course of the journey on any landing, or by calling for it to be delivered at the place of destination or in the course of the journey to a person other than the consignee originally designated, or by requiring it to be returned to the airport of departure. The consignor must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and must reimburse any expenses occasioned by the exercise of this right.
2. If it is impossible to carry out the instructions of the consignor, the carrier must so inform the consignor forthwith.
3. If the carrier carries out the instructions of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill or the cargo receipt delivered to the latter, the carrier will be liable, without prejudice to its right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air waybill or the cargo receipt.
4. The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Article 13. Nevertheless, if the consignee declines to accept the cargo, or cannot be communicated with, the consignor resumes its right of disposition.

Article 13. Delivery of the Cargo

1. Except when the consignor has exercised its right under Article 12, the consignee is entitled, on arrival of the cargo at the place of destination, to require the carrier to deliver the cargo to it, on payment of the charges due and on complying with the conditions of carriage.
2. Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the cargo arrives.
3. If the carrier admits the loss of the cargo, or if the cargo has not arrived at the expiration of seven days after the date on which it ought to have arrived, the consignee is entitled to enforce against the carrier the rights which flow from the contract of carriage.

Article 14. Enforcement of the Rights of Consignor and Consignee

The consignor and the consignee can respectively enforce all the rights given to them by Articles 12 and 13, each in its own name, whether it is acting in its own interest or in the interest of another, provided that it carries out the obligations imposed by the contract of carriage.

Article 15. Relations of Consignor and Consignee or Mutual Relations of Third Parties

1. Articles 12, 13 and 14 do not affect either the relations of the consignor and the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.
2. The provisions of Articles 12, 13 and 14 can only be varied by express provision in the air waybill or the cargo receipt.

Article 16. Formalities of Customs, Police or Other Public Authorities

1. The consignor must furnish such information and such documents as are necessary to meet the formalities of customs, police and any other public authorities before the cargo can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier, its servants or agents.

2. The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents.

Chapter III. Liability of the Carrier and Extent of Compensation for Damage

Article 17. Death and Injury of Passengers – Damage to Baggage

1. The carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.
2. The carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or during any period within which the checked baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage resulted from its fault or that of its servants or agents.
3. If the carrier admits the loss of the checked baggage, or if the checked baggage has not arrived at the expiration of twenty-one days after the date on which it ought to have arrived, the passenger is entitled to enforce against the carrier the rights which flow from the contract of carriage.
4. Unless otherwise specified, in this Convention the term "baggage" means both checked baggage and unchecked baggage.

Article 18. Damage to Cargo

1. The carrier is liable for damage sustained in the event of the destruction or loss of, or damage to, cargo upon condition only that the event which caused the damage so sustained took place during the carriage by air.
2. However, the carrier is not liable if and to the extent it proves that the destruction, or loss of, or damage to, the cargo resulted from one or more of the following:
 - (a) inherent defect, quality or vice of that cargo;
 - (b) defective packing of that cargo performed by a person other than the carrier or its servants or agents;
 - (c) an act of war or an armed conflict;
 - (d) an act of public authority carried out in connection with the entry, exit or transit of the cargo.
3. The carriage by air within the meaning of paragraph 1 of this Article comprises the period during which the cargo is in the charge of the carrier.
4. The period of the carriage by air does not extend to any carriage by land, by sea or by inland waterway performed outside an airport. If, however, such carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air. If a carrier, without the consent of the consignor, substitutes carriage by another mode of transport for the whole or part of a carriage intended by the agreement between the parties to be carriage by air, such carriage by another mode of transport is deemed to be within the period of carriage by air.

Article 19. Delay

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

Article 20. Exoneration

If the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage. When by reason of death or injury of a passenger compensation is claimed by a person other than the passenger, the carrier shall likewise be wholly or partly exonerated from its liability to the extent that it proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of that passenger. This Article applies to all the liability provisions in this Convention, including paragraph 1 of Article 21.

Article 21. Compensation in Case of Death or Injury of Passengers

1. For damages arising under paragraph 1 of Article 17 not exceeding 100 000 Special Drawing Rights for each passenger, the carrier shall not be able to exclude or limit its liability.
2. The carrier shall not be liable for damages arising under paragraph 1 of Article 17 to the extent that they exceed for each passenger 100 000 Special Drawing Rights if the carrier proves that:
 - (a) such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents; or
 - (b) such damage was solely due to the negligence or other wrongful act or omission of a third party.

Article 22. Limits of Liability in Relation to Delay, Baggage and Cargo

1. In the case of damage caused by delay as specified in Article 19 in the carriage of persons, the liability of the carrier for each passenger is limited to 4 150 Special Drawing Rights.
2. In the carriage of baggage, the liability of the carrier in the case of destruction, loss, damage or delay is limited to 1 000 Special Drawing Rights for each passenger unless the passenger has made, at the time when the checked baggage was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the passenger's actual interest in delivery at destination.
3. In the carriage of cargo, the liability of the carrier in the case of destruction, loss, damage or delay is limited to a sum of 17 Special Drawing Rights per kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the consignor's actual interest in delivery at destination.
4. In the case of destruction, loss, damage or delay of part of the cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the destruction, loss, damage or delay of a part of the cargo, or of an object contained therein, affects the value of other packages covered by the same air waybill, or the same receipt or, if they were not issued, by the same record preserved by the other means referred to in paragraph 2 of Article 4, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.
5. The foregoing provisions of paragraphs 1 and 2 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the carrier, its servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that such servant or agent was acting within the scope of its employment.

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6. The limits prescribed in Article 21 and in this Article shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of the litigation incurred by the plaintiff, including interest. The foregoing provision shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.

Article 23. Conversion of Monetary Units

1. The sums mentioned in terms of Special Drawing Right in this Convention shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of the judgement. The value of a national currency, in terms of the Special Drawing Right, of a State Party which is a Member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund, in effect at the date of the judgement, for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a State Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that State.
2. Nevertheless, those States which are not Members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 of this Article may, at the time of ratification or accession or at any time thereafter, declare that the limit of liability of the carrier prescribed in Article 21 is fixed at a sum of 1 500 000 monetary units per passenger in judicial proceedings in their territories; 62 500 monetary units per passenger with respect to paragraph 1 of Article 22; 15 000 monetary units per passenger with respect to paragraph 2 of Article 22; and 250 monetary units per kilogramme with respect to paragraph 3 of Article 22. This monetary unit corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. These sums may be converted into the national currency concerned in round figures. The conversion of these sums into national currency shall be made according to the law of the State concerned.
3. The calculation mentioned in the last sentence of paragraph 1 of this Article and the conversion method mentioned in paragraph 2 of this Article shall be made in such manner as to express in the national currency of the State Party as far as possible the same real value for the amounts in Articles 21 and 22 as would result from the application of the first three sentences of paragraph 1 of this Article. States Parties shall communicate to the depositary the manner of calculation pursuant to paragraph 1 of this Article, or the result of the conversion in paragraph 2 of this Article as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

Article 24. Review of Limits

1. Without prejudice to the provisions of Article 25 of this Convention and subject to paragraph 2 below, the limits of liability prescribed in Articles 21, 22 and 23 shall be reviewed by the Depositary at five-year intervals, the first such review to take place at the end of the fifth year following the date of entry into force of this Convention, or if the Convention does not enter into force within five years of the date it is first open for signature, within the first year of its entry into force, by reference to an inflation factor which corresponds to the accumulated rate of inflation since the previous revision or in the first instance since the date of entry into force of the Convention. The measure of the rate of inflation to be used in determining the inflation factor shall be the weighted average of the annual rates of increase or decrease in the Consumer Price Indices of the States whose currencies comprise the Special Drawing Right mentioned in paragraph 1 of Article 23.

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2. If the review referred to in the preceding paragraph concludes that the inflation factor has exceeded 10 per cent, the Depositary shall notify States Parties of a revision of the limits of liability. Any such revision shall become effective six months after its notification to the States Parties. If within three months after its notification to the States Parties a majority of the States Parties register their disapproval, the revision shall not become effective and the Depositary shall refer the matter to a meeting of the States Parties. The Depositary shall immediately notify all States Parties of the coming into force of any revision.
3. Notwithstanding paragraph 1 of this Article, the procedure referred to in paragraph 2 of this Article shall be applied at any time provided that one-third of the States Parties express a desire to that effect and upon condition that the inflation factor referred to in paragraph 1 has exceeded 30 per cent since the previous revision or since the date of entry into force of this Convention if there has been no previous revision. Subsequent reviews using the procedure described in paragraph 1 of this Article will take place at five-year intervals starting at the end of the fifth year following the date of the reviews under the present paragraph.

Article 25. Stipulation on Limits

A carrier may stipulate that the contract of carriage shall be subject to higher limits of liability than those provided for in this Convention or to no limits of liability whatsoever.

Article 26. Invalidity of Contractual Provisions

Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Convention.

Article 27. Freedom to Contract

Nothing contained in this Convention shall prevent the carrier from refusing to enter into any contract of carriage, from waiving any defences available under the Convention, or from laying down conditions which do not conflict with the provisions of this Convention.

Article 28. Advance Payments

In the case of aircraft accidents resulting in death or injury of passengers, the carrier shall, if required by its national law, make advance payments without delay to a natural person or persons who are entitled to claim compensation in order to meet the immediate economic needs of such persons. Such advance payments shall not constitute a recognition of liability and may be offset against any amounts subsequently paid as damages by the carrier.

Article 29. Basis of Claims

In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable.

Article 30. Servants, Agents — Aggregation of Claims

1. If an action is brought against a servant or agent of the carrier arising out of damage to which the Convention relates, such servant or agent, if they prove that they acted within the scope of their employment, shall be entitled to avail themselves of the conditions and limits of liability which the carrier itself is entitled to invoke under this Convention.
2. The aggregate of the amounts recoverable from the carrier, its servants and agents, in that case, shall not exceed the said limits.

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3. Save in respect of the carriage of cargo, the provisions of paragraphs 1 and 2 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

Article 31. Timely Notice of Complaints

1. Receipt by the person entitled to delivery of checked baggage or cargo without complaint is *prima facie* evidence that the same has been delivered in good condition and in accordance with the document of carriage or with the record preserved by the other means referred to in paragraph 2 of Article 3 and paragraph 2 of Article 4.
2. In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt in the case of checked baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay, the complaint must be made at the latest within twenty-one days from the date on which the baggage or cargo have been placed at his or her disposal.
3. Every complaint must be made in writing and given or dispatched within the times aforesaid.
4. If no complaint is made within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on its part.

Article 32. Death of Person Liable

In the case of the death of the person liable, an action for damages lies in accordance with the terms of this Convention against those legally representing his or her estate.

Article 33. Jurisdiction

1. An action for damages must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before the court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the contract has been made or before the court at the place of destination.
2. In respect of damage resulting from the death or injury of a passenger, an action may be brought before one of the courts mentioned in paragraph 1 of this Article, or in the territory of a State Party in which at the time of the accident the passenger has his or her principal and permanent residence and to or from which the carrier operates services for the carriage of passengers by air, either on its own aircraft, or on another carrier's aircraft pursuant to a commercial agreement, and in which that carrier its business of carriage of passengers by air from premises leased or owned by the carrier itself or another carrier with which it has a commercial agreement.
3. For the purposes of paragraph 2,
 - (a) "commercial agreement" means an agreement, other than an agency agreement, and between carriers and relating to the provision of their joint services for carriage passengers by air;
 - (b) "principal and permanent residence" means the one fixed and permanent abode of the passenger at the time of the accident. The nationality of the passenger shall not be the determining factor in this regard.
4. Questions of procedure shall be governed by the law of the court seised of the case.

Article 34. Arbitration

1. Subject to the provisions of this Article, the parties to the contract of carriage for cargo may stipulate that any dispute relating to the liability of the carrier under this Convention shall be settled by arbitration. Such agreement shall be in writing.
2. The arbitration proceedings shall, at the option of the claimant, take place within one of the jurisdictions referred to in Article 33.

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3. The arbitrator or arbitration tribunal shall apply the provisions of this Convention.
4. The provisions of paragraphs 2 and 3 of this Article shall be deemed to be part of every arbitration clause or agreement, and any term of such clause or agreement which is inconsistent therewith shall be null and void.

Article 35. Limitation of Actions

1. The right to damages shall be extinguished if an action is not brought within a period of two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.
2. The method of calculating that period shall be determined by the law of the court seised of the case.

Article 36. Successive Carriage

1. In the case of carriage to be performed by various successive carriers and falling within the definition set out in paragraph 3 of Article 1, each carrier which accepts passengers, baggage or cargo is subject to the rules set out in this Convention and is deemed to be one of the parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under its supervision.
2. In the case of carriage of this nature, the passenger or any person entitled to compensation in respect of him or her can take action only against the carrier which performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.
3. As regards baggage or cargo, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier which performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

Article 37. Right of Recourse against Third Parties

Nothing in this Convention shall prejudice the question whether a person liable for damage in accordance with its provisions has a right of recourse against any other person.

Chapter IV. Combined Carriage

Article 38. Combined Carriage

1. In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention shall, subject to paragraph 4 of Article 18, apply only to the carriage by air, provided that the carriage by air falls within the terms of Article 1.
2. Nothing in this Convention shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this Convention are observed as regards the carriage by air.

Chapter V. Carriage by Air Performed by a Person Other than the Contracting Carrier

Article 39. Contracting Carrier — Actual Carrier

The provisions of this Chapter apply when a person (hereinafter referred to as "the contracting carrier") as a principal makes a contract of carriage governed by this Convention with a passenger or consignor or with a person acting on behalf of the passenger or consignor, and another person (hereinafter referred to as "the actual carrier") performs, by virtue of authority from the contracting carrier, the whole or part of the carriage, but is not with respect to such part a successive carrier within the meaning of this Convention. Such authority shall be presumed in the absence of proof to the contrary.

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Article 40. Respective Liability of Contracting and Actual Carriers

If an actual carrier performs the whole or part of carriage which, according to the contract referred to in Article 39, is governed by this Convention, both the contracting carrier and the actual carrier shall, except as otherwise provided in this Chapter, be subject to the rules of this Convention, the former for the whole of the carriage contemplated in the contract, the latter solely for the carriage which it performs.

Article 41. Mutual Liability

1. The acts and omissions of the actual carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the contracting carrier.
2. The acts and omissions of the contracting carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the actual carrier. Nevertheless, no such act or omission shall subject the actual carrier to liability exceeding the amounts referred to in Articles 21, 22, 23 and 24. Any special agreement under which the contracting carrier assumes obligations not imposed by this Convention or any waiver of rights or defences conferred by this Convention or any special declaration of interest in delivery at destination contemplated in Article 22 shall not affect the actual carrier unless agreed to by it.

Article 42. Addressee of Complaints and Instructions

Any complaint to be made or instruction to be given under this Convention to the carrier shall have the same effect whether addressed to the contracting carrier or to the actual carrier. Nevertheless, instructions referred to in Article 12 shall only be effective if addressed to the contracting carrier.

Article 43. Servants and Agents

In relation to the carriage performed by the actual carrier, any servant or agent of that carrier or of the contracting carrier shall, if they prove that they acted within the scope of their employment, be entitled to avail themselves of the conditions and limits of liability which are applicable under this Convention to the carrier whose servant or agent they are, unless it is proved that they acted in a manner that prevents the limits of liability from being invoked in accordance with this Convention.

Article 44. Aggregation of Damages

In relation to the carriage performed by the actual carrier, the aggregate of the amounts recoverable from that carrier and the contracting carrier, and from their servants and agents acting within the scope of their employment, shall not exceed the highest amount which could be awarded against either the contracting carrier or the actual carrier under this Convention, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to that person.

Article 45. Addressee of Claims

In relation to the carriage performed by the actual carrier, an action for damages may be brought, at the option of the plaintiff, against that carrier or the contracting carrier, or against both together or separately.

If the action is brought against only one of those carriers, that carrier shall have the right to require the other carrier to be joined in the proceedings, the procedure and effects being governed by the law of the court seised of the case.

Article 46. Additional Jurisdiction

Any action for damages contemplated in Article 45 must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before a court in which an action may be brought against the contracting carrier, as provided in Article 33, or before the court having jurisdiction at the place where the actual carrier has its domicile or its principal place of business.

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Article 47. Invalidity of Contractual Provisions

Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under this Chapter or to fix a lower limit than that which is applicable according to this Chapter shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Chapter.

Article 48. Mutual Relations of Contracting and Actual Carriers

Except as provided in Article 45, nothing in this Chapter shall affect the rights and obligations of the carriers between themselves, including any right of recourse or indemnification.

Chapter VI. Other Provisions

Article 49. Mandatory Application

Any clause contained in the contract of carriage and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void.

Article 50. Insurance

States Parties shall require their carriers to maintain adequate insurance covering their liability under this Convention. A carrier may be required by the State Party into which it operates to furnish evidence that it maintains adequate insurance covering its liability under this Convention.

Article 51. Carriage Performed in Extraordinary Circumstances

The provisions of Articles 3 to 5, 7 and 8 relating to the documentation of carriage shall not apply in the case of carriage performed in extraordinary circumstances outside the normal scope of a carrier business.

Article 52. Definition of Days

The expression "days" when used in this Convention means calendar days, not working days.

Chapter VII. Final Clauses

Article 53. Signature, Ratification and Entry into Force

1. This Convention shall be open for signature in Montreal on 28 May 1999 by States participating in the International Conference on Air Law held at Montreal from 10 to 28 May 1999. After 28 May 1999, the Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montreal until it enters into force in accordance with paragraph 6 of this Article.
2. This Convention shall similarly be open for signature by Regional Economic Integration Organisations. For the purpose of this Convention, a "Regional Economic Integration Organisation" means any organisation which is constituted by sovereign States of a given region which has competence in respect of certain matters governed by this Convention and has been duly authorized to sign and to ratify, accept, approve or accede to this Convention. A reference to a "State Party" or "States Parties" in this Convention, otherwise than in paragraph 2 of Article 1, paragraph 1(b) of Article 3, paragraph (b) of Article 5, Articles 23, 33, 46 and paragraph (b) of Article 57, applies equally to a Regional Economic Integration Organisation. For the purpose of Article 24, the references to "a majority of the States Parties" and "one-third of the States Parties" shall not apply to a Regional Economic Integration Organisation.
3. This Convention shall be subject to ratification by States and by Regional Economic Integration Organisations which have signed it.

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4. Any State or Regional Economic Integration Organisation which does not sign this Convention may accept, approve or accede to it at any time.
5. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Civil Aviation Organization, which is hereby designated the Depositary.
6. This Convention shall enter into force on the sixtieth day following the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession with the Depositary between the States which have deposited such instrument. An instrument deposited by a Regional Economic Integration Organisation shall not be counted for the purpose of this paragraph.
7. For other States and for other Regional Economic Integration Organisations, this Convention shall take effect sixty days following the date of deposit of the instrument of ratification, acceptance, approval or accession.
8. The Depositary shall promptly notify all signatories and States Parties of:
 - (a) each signature of this Convention and date thereof;
 - (b) each deposit of an instrument of ratification, acceptance, approval or accession and date thereof;
 - (c) the date of entry into force of this Convention;
 - (d) the date of the coming into force of any revision of the limits of liability established under this Convention;
 - (e) any denunciation under Article 54.

Article 54. Denunciation

1. Any State Party may denounce this Convention by written notification to the Depositary.
2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the Depositary.

Article 55. Relationship with Other Warsaw Convention Instruments

This Convention shall prevail over any rules which apply to international carriage by air:

1. between States Parties to this Convention by virtue of those States commonly being Party to
 - (a) the *Convention for the Unification of Certain Rules Relating to International Carriage by Air* Signed at Warsaw on 12 October 1929 (hereinafter called the Warsaw Convention);
 - (b) the *Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929, Done at The Hague on 28 September 1955* (hereinafter called The Hague Protocol);
 - (c) the *Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier*, signed at Guadalajara on 18 September 1961 (hereinafter called the Guadalajara Convention);
 - (d) the *Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 as Amended by the Protocol Done at The Hague on 28 September 1955* Signed at Guatemala City on 8 March 1971 (hereinafter called the Guatemala City Protocol);
 - (e) Additional Protocol Nos. 1 to 3 and Montreal Protocol No. 4 to amend the Warsaw Convention as amended by The Hague Protocol or the Warsaw Convention as amended by both The Hague Protocol and the Guatemala City Protocol Signed at Montreal on 25 September 1975 (hereinafter called the Montreal Protocols); or

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2. within the territory of any single State Party to this Convention by virtue of that State being Party to one or more of the instruments referred to in sub-paragraphs (a) to (e) above.

Article 56. States with More than One System of Law

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.
2. Any such declaration shall be notified to the Depositary and shall state expressly the territorial units to which the Convention applies.
3. In relation to a State Party which has made such a declaration:
 - (a) references in Article 23 to "national currency" shall be construed as referring to the currency of the relevant territorial unit of that State; and
 - (b) the reference in Article 28 to "national law" shall be construed as referring to the law of the relevant territorial unit of that State.

Article 57. Reservations

No reservation may be made to this Convention except that a State Party may at any time declare by a notification addressed to the Depositary that this Convention shall not apply to:

- (a) international carriage by air performed and operated directly by that State Party for non-commercial purposes in respect to its functions and duties as a sovereign State; and/or
- (b) the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by that State Party, the whole capacity of which has been reserved by or on behalf of such authorities.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Convention.

DONE at Montreal on the 28th day of May of the year one thousand nine hundred and ninety-nine in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic. This Convention shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Depositary to all States Parties to this Convention, as well as to all States Parties to the Warsaw Convention, The Hague Protocol, the Guadalajara Convention, the Guatemala City Protocol, and the Montreal Protocols.

Annotations

History; Ancillary Laws and Directives

References in text:

Explanatory notes:

Other provisions:

References in text:

The "Convention for the Unification of Certain Rules Relating to International Carriage by Air signed in Warsaw on 12 October 1929" and the "Warsaw Convention", as referred to in this Convention, refers to the Convention for the Unification of Certain Rules Relating to International Carriage [Transportation] by Air, concluded at Warsaw October

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12, 1929, entered into force February 13, 1933, for the United States October 29, 1934; 49 Stat. 3000, TS 876, 2 Bevans 983, 137 LNTS 11. See USCS Warsaw.

The "Convention on International Civil Aviation, done at Chicago on 7 December 1944", referred to in this Convention, refers to the Convention on International Civil Aviation, done at Chicago December 7, 1944, entered into force April 4, 1947; 61 Stat. 1180, TIAS 1591, 3 Bevans 944, 15 UNTS 295.

The "Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929, Done at The Hague on 28 September 1955" and the "Hague Protocol", referred to in this Convention, refers to the Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on October 12, 1929, done at The Hague September 28, 1955, entered into force August 1, 1963, for the United States December 14, 2003. See USCS Warsaw.

The "Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier, signed at Guadalajara on 18 September 1961" and the "Guadalajara Convention", referred to in this Convention, refers to the Convention Signed at Guadalajara on 18 September, 1961, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed By a Person Other than the Contracting Carrier, entered into force May 1, 1964.

Explanatory notes:

The International Civil Aviation Organization (ICAO) is the official depositary for this Convention. For more information, see <http://www.icao.int/cgi/airlaw.pl>.

Other provisions:

Parties to the Montreal Convention.

Albania

Argentina¹

Armenia

Australia

Austria¹

Azerbaijan¹

Bahrain

Bangladesh

Barbados

Belgium¹

Belize

Benin

¹ With declaration(s).

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Bolivia
Bosnia and Herzegovina
Botswana
Brazil
Brunei Darussalam
Bulgaria
Burkina Faso
Cameroon
Canada¹
Cape Verde
Chile¹
China^{1, 2}
Colombia
Congo
Cook Islands
Costa Rica
Côte d'Ivoire
Croatia
Cuba
Cyprus
Czech Republic¹
Democratic Republic of the Congo
Denmark¹
Dominican Republic
Ecuador
Egypt
El Salvador
Equatorial Guinea

²Applicable to Hong Kong. See note under CHINA in Section 1 of United States Department of State Treaties in Force document.

Estonia
Eswatini
Ethiopia
European Union¹
Fiji
Finland¹
France¹
Gabon
Gambia
Georgia
Germany¹
Ghana
Greece¹
Guatemala¹
Guyana
Honduras
Hungary
Iceland
India
Indonesia
Ireland¹
Israel³
Italy¹
Jamaica
Japan¹
Jordan
Kazakhstan
Kenya

³With reservation.

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Korea, Republic of
Kuwait
Latvia
Lebanon
Lithuania¹
Luxembourg¹
Macedonia
Madagascar
Malaysia³
Maldives
Mali
Malta
Mauritius
Mexico
Moldova
Monaco
Mongolia
Montenegro³
Morocco
Mozambique
Namibia
Nepal
Netherlands¹
New Zealand⁴
Nicaragua
Niger
Nigeria
Norway

¹ Applicable to Tokelau.

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Oman
Pakistan
Panama
Paraguay
Peru
Philippines¹
Poland
Portugal¹
Qatar¹
Romania
Russian Federation
Rwanda
Saint Vincent and the Grenadines
Saudi Arabia
Senegal
Serbia
Seychelles
Sierra Leone
Singapore¹
Slovak Republic
Slovenia
South Africa
Spain¹
Sri Lanka
Sudan
Swaziland
Sweden¹
Switzerland
Syria
Tanzania

USCS Montreal Convention

Thailand

Togo¹

Tonga

Tunisia

Turkey³

Uganda

Ukraine

United Arab Emirates

United Kingdom¹

United States¹

Uruguay

Vanuatu

Vietnam

Zambia

Letter of submittal to United States Senate and State Department report. For the United States President's letter of submittal, along with the report submitted by the United States Department of State to the President, which accompanies the text of the Convention as presented to the Senate, see S. Treaty Doc. No. 106-45.

Resolution of ratification. The resolution of ratification (reported in S. Exec. Rpt. 108-8, and approved by United States Senate July 31, 2003), provides:

"Resolved (two-thirds of the Senators present concurring therein),

"Section 1. Senate Advice and Consent Subject to Reservation.

"The Senate advises and consents to the ratification of the Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal May 28, 1999 (T. Doc. 106-45, in this resolution referred to as the 'Convention'), subject to the reservation in section 2.

"Sec. 2. Reservation.

"The advice and consent of the Senate to the ratification of the Convention is subject to the following reservation, which shall be included in the instrument of ratification: 'Pursuant to Article 57 of the Convention, the United States of America declares that the Convention shall not apply to international carriage by air performed and operated directly by the United States of America for non-commercial purposes in respect to the functions and duties of the United States of America as a sovereign State.'"

Notes

NOTES TO DECISIONS

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While the Convention for the Unification of Certain Rules for International Carriage by Air, May 28, 1999, S. Treaty Doc. No. 106-45 ("Montreal Convention"), incorporated many of the substantive provisions of the Convention for the Unification of Certain Rules Relating to International Transportation by Air, Oct. 12, 1929, 49 Stat. 3000, T.S. No. 876 (1934), reprinted at 49 U.S.C.S. § 40105 note ("Warsaw Convention"), there is no substantively identical article in the Montreal Convention that reflects the provisions of Article 25 of the Warsaw Convention governing the removal of damage caps for willful misconduct. Indeed, there is no provision in the Montreal Convention regarding "willful misconduct" relating to personal injury claims. Cohen v. Am. Airlines, Inc., 13 F.4th 240, 110 Fed. R. Serv. 3d (Callaghan) 981, 2021 U.S. App. LEXIS 27242 (2d Cir. 2021).

Jurisdiction over defendant, who was charged with participating in airline bombing plot, was proper, first, under domestic law; and second, under aut dedere aut punire (extradite or prosecute) jurisdiction created by Montreal Convention, as implemented in statutes prohibiting destruction of aircraft and aircraft piracy; and third, under protective principle of customary international law of criminal jurisdiction. United States v. Yousef, 327 F.3d 56, 61 Fed. R. Evid. Serv. (CBC) 251, 2003 U.S. App. LEXIS 6437 (2d Cir. 2003), cert. denied, 540 U.S. 933, 124 S. Ct. 353, 157 L. Ed. 2d 241, 2003 U.S. LEXIS 7238 (2003), cert. denied, 540 U.S. 993, 124 S. Ct. 492, 157 L. Ed. 2d 392, 2003 U.S. LEXIS 8178 (2003), remanded, 395 F.3d 76, 2005 U.S. App. LEXIS 570 (2d Cir. 2005), transferred, 2011 U.S. Dist. LEXIS 85612 (S.D.N.Y. July 22, 2011).

Ordinarily, particular treaty does not govern conduct that took place before treaty entered into force; therefore, where accident that gave rise to lawsuit took place on May 8, 1999, and action was commenced against airline defendants on September 27, 1999, such events occurred several years before U.S. Senate ratified Montreal Convention and before that treaty entered into force; as such, Court held that neither Montreal Convention nor intentions of its drafters governed appeal. Ehrlich v. Am. Airlines, Inc., 360 F.3d 366, 2004 U.S. App. LEXIS 4403 (2d Cir. 2004).

Convention for Unification of Certain Rules for International Carriage by Air (Montreal Convention), May 28, 1999, S. Treaty Doc. No. 106-45 did not confer personal jurisdiction over airline headquartered in Taiwan because Montreal Convention's jurisdictional provisions spoke only to treaty jurisdiction as form of subject-matter jurisdiction, not personal jurisdiction; personal jurisdiction had to be separately established in accordance with domestic laws and practice. Natl Union Fire Ins. Co. of Pitt., P.A. v. UPS Supply Chain Sols., Inc., 74 F.4th 66, 116 Fed. R. Serv. 3d (Callaghan) 684, 2023 U.S. App. LEXIS 18297 (2d Cir. 2023).

Airline passenger's breach of contract action against airline company, which was based on damages stemming from airline's cancellation of passenger's flight from Sierra Leone, was dismissed because either Warsaw Convention, Convention for Unification of Certain Rules Relating to International Transportation by Air, Oct. 29, 1934, 49 Stat. 3000, T.S. No. 876 (reprinted at 49 USCS § 40105 note), or Montreal Convention, Convention for Unification of Certain Rules for International Carriage by Air Done at Montreal on 28 May 1999, reprinted in S. Treaty Doc. No. 106-45, which replaced Warsaw Convention, preempted claim; because passenger decided to book flight with different carrier that left within several hours of cancelled flight, airline company did not have opportunity to fulfill its contractual obligation and there was no indication that airline company intended to repudiate its contractual obligations. Paradis v. Ghana Airways Ltd., 348 F. Supp. 2d 106, 2004 U.S. Dist. LEXIS 25238 (S.D.N.Y. 2004), aff'd, 194 Fed. Appx. 5, 2006 U.S. App. LEXIS 21517 (2d Cir. 2006).

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Aircraft piracy, 49 USCS § 46502.

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United States International agreements; transmission to Congress, 1 USCS § 112b

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1 Goods in Transit (Matthew Bender), ch 2, Transportation Documents—Bills of Lading, Contracts, Air Waybills, Charter Parties, Sea Waybills, Documentary Credits and Related Documents §§ 2.01, 2.03.

1 Goods in Transit (Matthew Bender), ch 3, Connecting Carriage, Geographic Scope and Multimodal Transportation § 3.09.

1 Goods in Transit (Matthew Bender), ch 4, Termination of Common Carrier Liability §§ 4.09, 4.10.

1 Goods in Transit (Matthew Bender), ch 5, Carrier Litigation §§ 5.01, 5.06, 5.26–5.28.

2 Goods in Transit (Matthew Bender), ch 7, Written Notice of Claim—Notice of Loss, Damage or Delay § 7.24.

2 Goods in Transit (Matthew Bender), ch 9, Jurisdiction and Venue §§ 9.00, 9.10, 9.19.

2 Goods in Transit (Matthew Bender), ch 10, Limitation of Actions § 10.05.

2 Goods in Transit (Matthew Bender), ch 11, Damages §§ 11.06, 11.07.

2 Goods in Transit (Matthew Bender), ch 12, Liability and Damages for Delay § 12.04.

2 Goods in Transit (Matthew Bender), ch 13, Limitation of Damages and Liability §§ 13.08, 13.22.

3 Goods in Transit (Matthew Bender), ch 14, Indemnity, Contribution, Third Parties, and Actions Against Noncarriers § 14.04.

5 Goods in Transit (Matthew Bender), ch 42, Marine Insurance § 42.16.

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Am. Airlines v. Wolens

Supreme Court of the United States

November 1, 1994, Argued ; January 18, 1995, Decided

No. 93-1286

Reporter

513 U.S. 219 *; 115 S. Ct. 817 **; 130 L. Ed. 2d 715 ***; 1995 U.S. LEXIS 690 ****; 63 U.S.L.W. 4066; 95 Cal. Daily Op. Service 419; 95 Daily Journal DAR 766; 8 Fla. L. Weekly Fed. S 526

AMERICAN AIRLINES, INC., PETITIONER v.
MYRON WOLENS ET AL.

Subsequent History: Related proceeding at Ross v. AMR Corp. (In re Amr Corp.), 2013 Bankr. LEXIS 1644 (Bankr. S.D.N.Y., Apr. 22, 2013)

Prior History: [****1] ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

Wolens v. American Airlines, 157 Ill. 2d 466, 626 N.E.2d 205, 1993 Ill. LEXIS 110, 193 Ill. Dec. 172 (1993)

Disposition: 157 Ill. 2d 466, 626 N.E.2d 205, 193 Ill. Dec. 172, affirmed in part, reversed in part, and remanded.

Syllabus

In consolidated state-court class actions brought in Illinois, plaintiffs (respondents here), as participants in American Airlines' frequent flyer program, challenged American's retroactive changes in program terms and conditions — particularly, American's imposition of capacity controls (limits on seats available to passengers obtaining tickets with frequent flyer credits) and blackout dates (restrictions on dates such credits could be used). Plaintiffs alleged that application of these changes to mileage credits they had previously accumulated violated the Illinois

Consumer Fraud and Deceptive Business [****2] Practices Act (Consumer Fraud Act or Act) and constituted a breach of contract. American answered that the Airline Deregulation Act of 1978 (ADA), 49 U.S.C. App. § 1305(a)(1), preempted plaintiffs' claims. The ADA prohibits States from "enacting or enforcing any law . . . or other provision having the force and effect of law relating to [air carrier] rates, routes, or services."

While the Illinois class-action litigation was *sub judice*, this Court decided Morales v. Trans World Airlines, Inc., 504 U.S. 374, 119 L. Ed. 2d 157, 112 S. Ct. 2031. Morales defined § 1305(a)(1)'s "relating to" language to mean "having a connection with, or reference to, airline 'rates, routes, or services,'" id. at 384, and held that National Association of Attorneys General (NAAG) guidelines on airline fare advertising were preempted under that definition. The Illinois Supreme Court, post-Morales, ruled that plaintiffs' monetary claims survived for state-court adjudication. Those claims related only "tangentially" or "tenuously" to "rates, routes, or services," the Illinois court reasoned, because frequent flyer programs are "peripheral, [****3] " not "essential," to an airline's operation.

Held: The ADA's preemption prescription bars state-imposed regulation of air carriers, but allows room for court enforcement of contract terms set by the parties themselves. Pp. 226-235.

(a) Morales does not countenance the Illinois Supreme Court's separation of "essential"

operations from unessential programs. Plaintiffs' complaints, accordingly, state claims "relating to" air carrier "rates" (*i. e.*, American's charges, in the form of mileage credits, for tickets and class-of-service upgrades) and "services" (*i. e.*, access to flights and upgrades unlimited by retrospectively applied capacity controls and blackout dates). P. 226.

(b) The full text of the ADA's preemption clause, and the congressional purpose to leave largely to the airlines themselves, and not at all to States, the selection and design of marketing mechanisms appropriate to the furnishing of air transportation services, impel the conclusion that § 1305(a)(1) preempts plaintiffs' Consumer Fraud Act claims. The Illinois Act is prescriptive, controlling the primary conduct of those falling within its governance; the Act, indeed, is paradigmatic of the [****4] state consumer protection laws that underpin the NAAG guidelines. Those guidelines highlight the potential for intrusive regulation of airline business practices inherent in state consumer protection legislation. The guidelines illustrate that the Illinois Act does not simply give effect to bargains offered by the airlines and accepted by customers, but serves as a means to guide and police airline marketing practices. Pp. 227-228.

(c) The ADA, however, does not bar court adjudication of routine breach of contract claims. The preemption clause leaves room for suits alleging no violation of state-imposed obligations, but seeking recovery solely for the airline's breach of its own, self-imposed undertakings. As persuasively argued by the United States, terms and conditions airlines offer and passengers accept are privately ordered obligations and thus do not fit within the compass of state enactments and directives targeted by § 1305(a)(1). A remedy confined to a contract's terms simply holds parties to their agreements — in this instance, to business judgments an airline made public about its rates and services. Court enforcement of private agreements advances the market efficiency [****5] that the ADA was designed to promote, and comports with provisions of the Federal Aviation

Act of 1958 (FAA) and related Department of Transportation (DOT) regulations that presuppose the vitality of contracts governing air carrier transportation. Such enforcement is responsive to the reality that the DOT lacks the apparatus and resources required to superintend a contract dispute resolution regime. Court adjudication of routine breach-of-contract claims, furthermore, accords due recognition to Congress' retention of the FAA's saving clause, which preserves "the remedies now existing at common law or by statute." Nor can it be maintained that plaintiffs' breach-of-contract claims are identical to, and therefore should be preempted to the same extent as, their Consumer Fraud Act claims. The basis for a contract action is the parties' agreement; to succeed under the state Act, one need not show an agreement, but must show an unfair or deceptive practice. Pp. 228-233.

(d) American's argument that plaintiffs' claims must fail because they depend on state policies independent of the parties' intent assumes the answer to the very contract construction issue on which plaintiffs' claims turn: [****6] Did American, by contract, reserve the right to change the value of already accumulated mileage credits, or only to change the rules for credits earned from and after the date of the change? That pivotal question of contract interpretation has not yet had a full airing and remains open for adjudication on remand. Pp. 233-234.

Counsel: Bruce J. Ennis, Jr., argued the cause for petitioner. With him on the briefs were Jerold S. Solovy, Marguerite M. Tompkins, Donald B. Verrilli, Jr., Richard A. Rothman, Bonnie Garone, and Michael J. Rider.

Gilbert W. Gordon argued the cause for respondents. With him on the brief were Robert Marks, Michael J. Freed, Michael B. Hyman, Nicholas E. Chimicles, Ira Neil Richards, and Steven A. Schwartz.

Cornelia T. L. Pillard argued the cause for the United States as amicus curiae urging reversal. With her on the brief were Solicitor General Days, Assistant Attorney General Hunger, Deputy

Solicitor General Kneeder, Robert V. Zener,
Jonathan R. Siegel, and Paul M. Geier. *

[****7]

Judges: GINSBURG, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and KENNEDY, SOUTER, and BREYER, JJ., joined, and in which STEVENS, J., joined as to Parts I (except for the last paragraph) and II-B. STEVENS, J., filed an opinion concurring in part and dissenting in part, post, p. 235. O'CONNOR, J., filed an opinion concurring in the judgment in part and dissenting in part, in which THOMAS, J., joined except for Part I-B, post, p. 238. SCALIA, J., took no part in the decision of the case.

Opinion by: GINSBURG

Opinion

[**820] [*221] [***721] JUSTICE GINSBURG delivered the opinion of the Court.

[1A]The Airline Deregulation Act of 1978 prohibits States from "enacting or enforcing any law . . . relating to [*222] [air carrier] rates, routes, or services." 49 U.S.C. App. § 1305(a)(1). This case concerns the scope of that preemptive provision, specifically, its application to a state-court suit, brought by participants in an airline's frequent flyer program, challenging the airline's retroactive changes in terms and conditions of the program. We hold that [****8] the ADA's preemption prescription bars state-imposed regulation of air carriers, but allows room for court enforcement of contract terms set by the parties themselves.

[**821]]

*Briefs of amici curiae urging reversal were filed for the Chamber of Commerce of the United States of America by Kenneth B. Alexander and Stephen A. Bokor; for the Air Transport Association of America by John G. Roberts, Jr., Walter A. Smith, Jr., Mary E. Downs, John R. Keys, Jr., and Calvin P. Sawyer; and for United Air Lines, Inc., by Kenneth W. Starr, Paul T. Cappuccio, and J. Andrew Langan.

A

Until 1978, the Federal Aviation Act of 1958 (FAA), 72 Stat. 731, as amended, 49 U.S.C. App. § 1301 *et seq.* [***722] (1988 ed. and Supp. V), empowered the Civil Aeronautics Board (CAB) to regulate the interstate airline industry. Although the FAA, pre-1978, authorized the Board both to regulate fares and to take administrative action against deceptive trade practices, the federal legislation originally contained no clause preempting state regulation. And from the start, the FAA has contained a "saving clause," § 1106, 49 U.S.C. App. § 1506, stating: "Nothing . . . in this chapter shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this chapter are in addition to such remedies."

In 1978, Congress enacted the Airline Deregulation Act (ADA), 92 Stat. 1705, which largely deregulated domestic air transport. "To ensure that the States would not undo federal deregulation with regulation of their [****9] own," *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 378, 119 L. Ed. 2d 157, 112 S. Ct. 2031 (1992), the ADA included a preemption clause which read in relevant part:

"No State . . . shall enact or enforce any law, rule, regulation, standard, or other provision having the force [*223] and effect of law relating to rates, routes, or services of any air carrier . . ." 49 U.S.C. App. § 1305(a)(1).¹

This case is our second encounter with the ADA's preemption clause. In 1992, in *Morales*, we confronted detailed Travel Industry Enforcement

¹Reenacting Title 49 of the U.S. Code in 1994, Congress revised this clause to read:

"[A] State . . . may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier . . ." § 41713(b)(1). Congress intended the revision to make no substantive change. Pub. L. 103-272, § 1(a), 108 Stat. 745.

Guidelines, [****10] composed by the National Association of Attorneys General (NAAG). The NAAG guidelines purported to govern, *inter alia*, the content and format of airline fare advertising. See *Morales*, 504 U.S. at 393-418 (appendix to Court's opinion setting out NAAG guidelines on air travel industry advertising and marketing practices). Several States had endeavored to enforce the NAAG guidelines, under the States' general consumer protection laws, to stop allegedly deceptive airline advertisements. The States' initiative, we determined, "related to [airline] rates, routes, or services," *id.*, at 378-379 (quoting 49 U.S.C. App. § 1305(a)(1)); consequently, we held, the fare advertising provisions of the NAAG guidelines were preempted by the ADA, *id.*, at 379.

[2A] For aid in construing the ADA words "relating to rates, routes, or services of any air carrier," the Court in *Morales* referred to the Employee Retirement Income Security Act of 1974 (ERISA), which provides for preemption of state laws "insofar as they . . . relate to any employee benefit plan." 29 U.S.C. § 1144(a) [****11]. Under the ERISA, we had ruled, a state law "relates to" an employee benefit plan "if it has a connection with or reference to such a plan." *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 97, 77 L. Ed. 2d 490, 103 S. Ct. 2890 (1983). *Morales* analogously defined the "relating to" language in [***723] the ADA preemption clause as "having a connection with, or reference to, airline 'rates, routes, or services.'" *Morales*, 504 U.S. at 384.

[*224] The *Morales* opinion presented much more, however, in accounting for the ADA's preemption of the state regulation in question. The opinion pointed out that the concerned federal agencies -- the Department of Transportation (DOT)² and the Federal Trade Commission (FTC) -- objected to the NAAG fare advertising guidelines

as inconsistent with the ADA's deregulatory purpose; both agencies, *Morales* observed, regarded [**822] the guidelines as state regulatory measures preempted by the ADA. See *id.*, at 379 (DOT and FTC); *id.*, at 386 (DOT); [****12] *id.*, at 390 (FTC). *Morales* emphasized that the challenged guidelines set "binding requirements as to how airline tickets may be marketed," and "imposed [obligations that] would have a significant impact upon . . . the fares [airlines] charge." *id.*, at 388, 390. The opinion further noted that the airlines would not have "carte blanche to lie and deceive consumers," for "the DOT retains the power to prohibit advertisements which in its opinion do not further competitive pricing." *id.*, at 390-391. *Morales* also left room for state actions "too tenuous, remote, or peripheral . . . to have pre-emptive effect." *id.*, at 390 (internal quotation marks omitted).

B

The litigation [****13] now before us, two consolidated state-court class actions brought in Illinois, was *sub judice* when we decided *Morales*. Plaintiffs in both actions (respondents here) are participants in American Airlines' frequent flyer program, AAdvantage. AAdvantage enrollees earn mileage credits when they fly on American. They can exchange those credits for flight tickets or class-of-service upgrades. Plaintiffs complained that AAdvantage program modifications, instituted by American in 1988, devalued credits AAdvantage [*225] members had already earned. Plaintiffs featured American's imposition of capacity controls (limits on seats available to passengers obtaining tickets with AAdvantage credits) and blackout dates (restrictions on dates credits could be used). Conceding that American had reserved the right to change AAdvantage terms and conditions, plaintiffs challenged only the retroactive application of modifications, *i. e.*, cutbacks on the utility of credits previously accumulated. These cutbacks, plaintiffs maintained, violated the Illinois Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act or Act), 815 Ill. Comp. Stat. § 505 (1992) (formerly codified [****14] at Ill. Rev. Stat., ch. 121 1/2, P261 *et seq.* (1991)), and

² Deceptive trade practices regulatory authority formerly residing in the CAB was transferred to the DOT when the CAB was abolished in 1985. Civil Aeronautics Board Sunset Act of 1984, Pub. L. 98-443, § 3, 98 Stat. 1703; 49 U.S.C. App. § 1551.

constituted a breach of contract. Plaintiffs currently seek only monetary relief.³

[**724] In March 1992, several weeks before our decision in *Morales*, the Illinois Supreme Court rejected plaintiffs' prayer for an injunction. Such a decree, the Illinois court reasoned, would involve regulation of an airline's current rendition of services, a matter preempted by the ADA. That court, however, allowed the breach of contract and Consumer Fraud Act monetary relief claims to survive. The ADA's preemption clause, the Illinois court said, ruled [****15] out "only those State laws and regulations that specifically relate to and have more than a tangential connection with an airline's rates, routes or services." *American Airlines, Inc. v. Wolens*, 147 Ill. 2d 367, 373, 589 N.E.2d 533, 536, 168 Ill. Dec. 133 (1992). After our decision in *Morales*, American petitioned for certiorari. The airline charged that the Illinois court, in a decision out of sync with *Morales*, had narrowly construed the ADA's broadly preemptive § 1305(a)(1). We granted the petition, [*226] vacated the judgment of the Supreme Court of Illinois, and remanded for further consideration in light of *Morales*. *American Airlines, Inc. v. Wolens*, 506 U.S. 803, 121 L. Ed. 2d 6, 113 S. Ct. 32 (1992).

On remand, the Illinois Supreme Court, with one dissent, adhered to its prior judgment. Describing frequent flyer programs as not "essential," 157 Ill. 2d 466, 472, 626 N.E.2d 205, 208, 193 Ill. Dec. 172 (1993), but merely "peripheral to the operation of an airline," *ibid.*, the Illinois court typed plaintiffs' state-law claims for money damages as "related to American's rates, routes, and services" only "tangentially" [****16] or "tenuously," *ibid.*

[1B]We granted American's second petition for certiorari, 511 U.S. 1017 [**823] (1994), and we

³Plaintiffs no longer pursue requests they originally made for injunctive relief, or for punitive damages for alleged breach of contract. See Brief for Respondent 2, n. 2 (plaintiffs do not here contest holding of Illinois courts that injunctive relief is preempted); *id.*, at 6, n. 9 (plaintiffs "concede that punitive damages traditionally have not been recoverable for a simple breach of contract").

now reverse the Illinois Supreme Court's judgment to the extent that it allowed survival of plaintiffs' Consumer Fraud Act claims; we affirm that judgment, however, to the extent that it permits plaintiffs' breach-of-contract action to proceed. In both respects, we adopt the position of the DOT, as advanced in this Court by the United States.

II

[1C] [2B] [3]We need not dwell on the question whether plaintiffs' complaints state claims "relating to [air carrier] rates, routes, or services." *Morales*, we are satisfied, does not countenance the Illinois Supreme Court's separation of matters "essential" from matters unessential to airline operations. Plaintiffs' claims relate to "rates," *i. e.*, American's charges in the form of mileage credits for free tickets and upgrades, and to "services," *i. e.*, access to flights and class-of-service upgrades unlimited by retrospectively applied capacity controls and blackout dates. But the ADA's preemption clause contains [****17] other words in need of interpretation, specifically, the words "enact or enforce any law" in the instruction: "No State . . . shall enact or enforce any law . . . relating to [air carrier] rates, routes, or services." 49 U.S.C. App. § 1305(a)(1). Taking into account all the words Congress placed in § 1305(a)(1), we first consider whether plaintiffs' [*227] claims under the Illinois Consumer Fraud Act are preempted, and then turn to plaintiffs' breach-of-contract claims.

A

[4A]The Illinois Consumer Fraud Act declares unlawful

"unfair methods of competition and unfair or deceptive acts or [**725] practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the 'Uniform

Deceptive Trade Practices Act' . . . in the conduct of any trade or commerce . . . whether any person has in fact been misled, deceived or damaged thereby. [****18] " Ill. Comp. Stat., ch. 815, § 505/2 (1992) (formerly codified at Ill. Rev. Stat., ch. 121 1/2, P262 (1991)).

The Act is prescriptive; it controls the primary conduct of those falling within its governance. This Illinois law, in fact, is paradigmatic of the consumer protection legislation underpinning the NAAG guidelines. The NAAG Task Force on the Air Travel Industry, on which the attorneys general of California, Illinois, Texas, and Washington served, see *Morales*, 504 U.S. at 392, reported that the guidelines created no

"new laws or regulations regarding the advertising practices or other business practices of the airline industry. They merely explain in detail how existing state laws apply to air fare advertising and frequent flyer programs." *Ibid*.

The NAAG guidelines highlight the potential for intrusive regulation of airline business practices inherent in state consumer protection legislation typified by the Illinois Consumer [**228] Fraud Act. For example, the guidelines enforcing the legislation instruct airlines on language appropriate to reserve rights to alter frequent flyer programs, and they include transition rules for the [****19] fair institution of capacity controls. See Brief for United States as *Amicus Curiae* 13-14, n. 7.

[1D][4B]As the NAAG guidelines illustrate, the Illinois Consumer Fraud Act serves as a means to guide and police the marketing practices of the airlines; the Act does not simply give effect to bargains offered by the airlines and accepted by airline customers. In light of the full text of the preemption clause, and of the ADA's purpose to leave largely to the airlines themselves, and not at all to States, the selection and design of marketing mechanisms appropriate to the furnishing of air

transportation services,⁴ we conclude that [**824] § 1305(a)(1) preempts plaintiffs' claims under the Illinois Consumer Fraud Act.

[****20] B

[1E] [5A]American maintains, and we agree, that "Congress could hardly have intended to allow the States to hobble [competition for airline passengers] through the application of restrictive state laws." Brief for Petitioner 27. We do not read the ADA's preemption clause, however, to shelter airlines from suits alleging no violation of state-imposed [***726] obligations, but seeking recovery solely for the airline's alleged breach of its own, self-imposed undertakings. As persuasively argued by the United States, terms and conditions airlines offer and passengers accept are privately ordered obligations [**229] "and thus do not amount to a State's 'enact[ment] or enforce[ment] [of] any law, rule, regulation, standard, or other provision having the force and effect of law' within the meaning of [§]1305(a)(1)." ⁵ [****22] Brief for United States as *Amicus Curiae* 9. Cf. *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 526, 120 L. Ed.

⁴We note again, however, that the DOT retains authority to investigate unfair and deceptive practices and unfair methods of competition by airlines, and may order an airline to cease and desist from such practices or methods of competition. See FAA § 411, 49 U.S.C. App. § 1361(a); *Morales*, 504 U.S. at 379; see also Brief for United States as *Amicus Curiae* 3, and n. 2 (reporting that in 1993, the DOT issued 34 cease and desist orders and assessed more than \$ 1.8 million in civil penalties in aviation economic enforcement proceedings).

⁵The United States recognizes that § 1305(a)(1), because it contains the word "enforce" as well as "enact," "could perhaps be read to preempt even state-court enforcement of private contracts." Brief for United States as *Amicus Curiae* 17. But the word series "law, rule, regulation, standard, or other provision," as the United States suggests, "connotes official, government-imposed policies, not the terms of a private contract." *Id.*, at 16. Similarly, the phrase "having the force and effect of law" is most naturally read to "refer to binding standards of conduct that operate irrespective of any private agreement." *Ibid*. Finally, the ban on enacting or enforcing any law "relating to rates, routes, or services" is most sensibly read, in light of the ADA's overarching deregulatory purpose, to mean "States may not seek to impose their own public policies or theories of competition or regulation on the operations of an air carrier." *Ibid*.

2d 407, 112 S. Ct. 2608 (1992) (plurality opinion) ("[A] common-law remedy for a contractual commitment voluntarily undertaken should not be regarded as a 'requirement . . . imposed' [****21] under State law within the meaning of [Federal Cigarette Labeling and Advertising Act] § 5(b)."). A remedy confined to a contract's terms simply holds parties to their agreements -- in this instance, to business judgments an airline made public about its rates and services.⁶

[5B] [5C]

[****23] [*230] The ADA, as we recognized in *Morales*, 504 U.S. at 378, was designed to promote "maximum reliance on competitive market forces." 49 U.S.C. App. § 1302(a)(4). Market efficiency requires effective means to enforce private agreements. See Farber, Contract Law and Modern Economic Theory, 78 Nw. U. L. Rev. 303, 315 (1983) (remedy for breach of contract "is necessary in order to ensure economic efficiency"); R. Posner, Economic Analysis of Law 90-91 (4th ed. 1992) (legal enforcement of contracts is more efficient than a purely voluntary system). As stated by the United States: "The stability and efficiency of the market depend fundamentally on the enforcement of agreements freely made, based on

needs perceived by the contracting parties at the time." Brief for United States as *Amicus Curiae* 23. That reality is key to sensible construction of the ADA.

[**825] [***727] The FAA's text, we note, presupposes the vitality of contracts governing transportation by air carriers. Section 411(b), 49 U.S.C. App. § 1381(b), thus authorizes airlines to "incorporate by reference in any ticket or other [****24] written instrument any of the terms of the contract of carriage" to the extent authorized by the DOT. And the DOT's regulations contemplate that, upon the January 1, 1983, termination of domestic tariffs, "ticket contracts" ordinarily would be enforceable under "the contract law of the States." 47 Fed. Reg. 52129 (1982). Correspondingly, the DOT requires carriers to give passengers written notice of the time period within which they may "bring an action against the carrier for its acts." 14 CFR § 253.5(b)(2) (1994).

American does not suggest that its contracts lack legal force. American sees the DOT, however, as the exclusively competent monitor of the airline's undertakings. American [*231] points to the Department's authority to require any airline, in conjunction with its certification, to file a performance bond conditioned on the airline's "making appropriate compensation . . . as prescribed by the [Department], for failure . . . to perform air transportation services in accordance with agreements therefor." FAA § 401(q)(2), 49 U.S.C. App. § 1371(q)(2).⁷ But neither the DOT nor its predecessor, the CAB, [****25] has ever

⁶American notes that in *Norfolk & Western R. Co. v. Train Dispatchers*, 499 U.S. 117, 129, 113 L. Ed. 2d 95, 111 S. Ct. 1156 (1991), the Court read the word "law" in a statutory exemption, 49 U.S.C. § 11341(a), to include "laws that govern the obligations imposed by contract." But that statute and case are not comparable to the statute and case before us. *Norfolk & Western* concerned the authority of the Interstate Commerce Commission (ICC) to approve rail carrier consolidations. A carrier participating in an ICC-approved consolidation is exempt "from the antitrust laws and from all other law . . . as necessary to let [the participant] carry out the transaction." 49 U.S.C. § 11341(a). We read the exemption clause to empower the ICC to override, individually, a carrier's obligations under a collective-bargaining agreement. Our reading accorded with the ICC's and "made sense of the consolidation provisions," 499 U.S. at 132. "If § 11341(a) did not apply to bargaining agreements . . . , rail carrier consolidations would be difficult, if not impossible, to achieve," *id.* at 133. Similarly in this case, our reading of the statutory formulation accords with that of the superintending agency, here, the DOT, and is necessary to make sense of the statute as a whole.

⁷The preceding subsection, FAA § 401(q)(1), 49 U.S.C. App. § 1371(q)(1), requires an air carrier to have insurance, in an amount prescribed by the DOT, to cover claims for personal injuries and property losses "resulting from the operation or maintenance of aircraft." See Brief for United States as *Amicus Curiae* 19-20, and n. 12. American does not urge that the ADA preempts personal injury claims relating to airline operations. See Tr. of Oral Arg. 4 (acknowledgment by counsel for petitioner that "safety claims," for example, a negligence claim arising out of a plane crash, "would generally not be preempted"); Brief for United States as *Amicus Curiae* 20, n. 12 ("It is . . . unlikely that Section 1305(a)(1) preempts safety-related personal-injury claims relating to airline operations.").

construed or applied this provision to displace courts as adjudicators in air carrier contract disputes. Instead, these agencies have read the provision to charge them with a less taxing task: In passing on air carrier fitness under FAA § 401(d), 49 U.S.C. App. § 1371(d)(1), the DOT and the CAB have used their performance bond authority to ensure that, when a carrier's financial fitness is marginal, funds will be available to compensate customers if the carrier goes under before providing already-paid-for services. See, e.g., *U.S. Bahamas Service Investigation*, CAB Order 79-11-116, p. 3, 84 CAB Reports 73, 75 (1979) ("We . . . find that Southeast [Airlines] is fit to provide scheduled foreign air transportation. However, because of Southeast's current financial condition its operations present an unacceptable risk of financial loss to consumers. Therefore, we shall require the carrier . . . to procure and maintain a bond for the protection of passengers who have paid for transportation not yet performed.").

[****26]

[*232] [6]The United States maintains that the DOT has neither the authority nor the apparatus required to superintend a contract dispute resolution regime. See Brief for United States as *Amicus Curiae* 22. Prior to airline deregulation, the CAB set rates, routes, and services through a cumbersome administrative process of applications and approvals. 72 Stat. 731. When Congress dismantled that regime, the United States emphasizes, the lawmakers indicated no [***728] intention to establish, simultaneously, a new administrative process for DOT adjudication of private contract disputes. See Brief for United States as *Amicus Curiae* 22. We agree.

Nor is it plausible that Congress meant to channel into federal courts the business of resolving, pursuant to judicially fashioned federal common law, the range of contract claims relating to airline rates, routes, or services. The ADA contains no hint of such a role for the federal courts. In this regard, the ADA contrasts markedly with the ERISA, which does channel civil actions into federal courts, see ERISA §§ 502(a), (e), 29 U.S.C. §§ 1132(a), (e), under a comprehensive

scheme, [****27] detailed in the legislation, designed to promote "prompt and fair claims settlement." *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 54, 95 L. Ed. 2d 39, 107 S. Ct. 1549 (1987); see *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 143-145, 112 L. Ed. 2d 474, 111 S. Ct. 478 [**826] (1990) (finding ERISA's comprehensive civil enforcement scheme a "special feature" supporting preemption of common-law wrongful discharge claims).

[7]The conclusion that the ADA permits state-law-based court adjudication of routine breach-of-contract claims also makes sense of Congress' retention of the FAA's saving clause, § 1106, 49 U.S.C. App. § 1506 (preserving "the remedies now existing at common law or by statute"). The ADA's preemption clause, § 1305(a)(1), read together with the FAA's saving clause, stops States from imposing their own substantive standards with respect to rates, routes, or services, but not from affording relief to a party who claims and proves that an airline dishonored a term the airline itself [*233] stipulated. This distinction between what the State dictates and what the airline itself [****28] undertakes confines courts, in breach-of-contract actions, to the parties' bargain, with no enlargement or enhancement based on state laws or policies external to the agreement.⁸

[8]American suggests that plaintiffs' breach-of-contract and Illinois Consumer Fraud Act claims differ only in their labels, so that if Fraud Act claims

⁸ The United States notes in this regard that "some state-law principles of contract law . . . might well be preempted to the extent they seek to effectuate the State's public policies, rather than the intent of the parties." Brief for United States as *Amicus Curiae* 28. Because contract law is not at its core "diverse, nonuniform, and confusing," *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 529, 120 L. Ed. 2d 407, 112 S. Ct. 2608 (1992) (plurality opinion), we see no large risk of nonuniform adjudication inherent in "state-court enforcement of the terms of a uniform agreement prepared by an airline and entered into with its passengers nationwide." Brief for United States as *Amicus Curiae* 27.

are preempted, contract claims must be preempted as well. See Reply Brief 6. But a breach of contract, without more, "does not amount to a cause of action cognizable under the [Consumer Fraud] Act and the Act should not apply to simple breach of contract claims." Golembiewski v. Hallberg Ins. Agency, Inc., 262 Ill. App. 3d 1082, 1093, 635 N.E.2d 452, 460 (1st Dist. 1994). The basis for a contract action is the parties' agreement; to succeed under the consumer protection law, one must show not necessarily an agreement, but in all cases, an unfair or deceptive practice.

III

American ultimately argues that even under the position on preemption advanced by the United States — the one we adopt — plaintiffs' [*729] claims must fail because they "inescapably depend on state policies that are independent of the intent of the parties." Reply Brief 3. "The state court cannot reach the merits," American contends, "unless it first invalidates or limits [American's] express reservation of the right [*234] to change [****30] AAdvantage Program rules contained in AAdvantage contracts." *Ibid.*

[9A]American's argument is unpersuasive, for it assumes the answer to the very contract construction issue on which plaintiffs' claims turn: Did American, by contract, reserve the right to change the value of already accumulated mileage credits, or only to change the rules governing credits earned from and after the date of the change? See Brief for Respondents 5 (plaintiffs recognize that American "reserved the right to restrict, suspend, or otherwise alter aspects of the Program prospectively," but maintain that American "never reserved the right to retroactively diminish the value of the credits previously earned by members"). That question of contract interpretation has not yet had a full airing, and we intimate no view on its resolution.

[10]Responding to our colleagues' diverse opinions dissenting in part, we add a final note. This case presents two issues that run all through the law. First, who decides (here, courts or the

DOT, the latter lacking contract dispute resolution resources for the task)? [****31] On this question, all agree to this extent: None of the opinions in this case would foist on the DOT work Congress has neither instructed nor funded the Department to do. Second, where is it proper to draw the line (here, between what the ADA preempts, and what it leaves to private ordering, backed by judicial enforcement)? JUSTICE STEVENS reads our *Morales* decision [**827] to demand only minimal preemption; in contrast, JUSTICE O'CONNOR reads the same case to mandate total preemption.⁹ The middle course we adopt seems to us best calculated to carry out the congressional design; it also bears the approval of the statute's experienced administrator, the DOT. And while we adhere to our holding in *Morales*, we do not overlook that in our system of adjudication, principles seldom can [*235] be settled "on the basis of one or two cases, but require a closer working out." Pound, *Survey of the Conference Problems*, 14 U. Cin. L. Rev. 324, 339 (1940) (Conference on the Status of the Rule of Judicial Precedent).

[****32] ***

[9B]For the reasons stated, the judgment of the Illinois Supreme Court is affirmed in part and reversed in part, and the case is remanded for proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE SCALIA took no part in the decision of the case.

Concur by: STEVENS (In Part); O'CONNOR (In Part)

Dissent by: STEVENS (In Part); O'CONNOR (In Part)

Dissent

⁹JUSTICE O'CONNOR's "all is pre-empted" position leaves room for personal injury claims, but only by classifying them as matters not "relating to [air carrier] services." See post, at 242-243.

JUSTICE STEVENS, concurring in part and dissenting in part.

Although I agree with the majority that the Airline Deregulation Act [***730] of 1978 (ADA) does not pre-empt respondents' breach-of-contract claims, I do not agree with the Court's disposition of their consumer-fraud claims. In my opinion, private tort actions based on common-law negligence or fraud, or on a statutory prohibition against fraud, are not pre-empted. Under the broad (and in my opinion incorrect¹) interpretation of the words "law . . . relating to rates, routes, or services" that the Court adopted in [****33] *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 119 L. Ed. 2d 157, 112 S. Ct. 2031 (1992), direct state regulation of airline advertising is pre-empted; but I would not extend the holding of that case to embrace the private claims that respondents assert in this case.

Unlike the National Association of Attorneys General (NAAG) guidelines reviewed in *Morales*, the Illinois Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act) does not instruct the airlines about how they can market their services. Instead, it merely requires [*236] all commercial enterprises — airlines included — to refrain from defrauding their customers. The *Morales* opinion said nothing about pre-empting general state laws prohibiting fraud. The majority's extension of the ADA's pre-emptive reach from airline-specific advertising standards [****34] to a general background rule of private conduct represents an alarming enlargement of *Morales*' holding.

I see no reason why a state law requiring an airline to honor its contractual commitments is any less a law relating to its rates and services than is a state law imposing a "duty not to make false statements of material fact or to conceal such facts." *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 528, 120 L.

Ed. 2d 407, 112 S. Ct. 2608 (1992) (finding similar claim not to be pre-empted under Federal Cigarette Labeling and Advertising Act). In this case, the two claims are grounded upon the exact same conduct and would presumably have an identical impact upon American's rates, routes, and services. The majority correctly finds that Congress did not intend to pre-empt a claim that an airline breached a private agreement. I see no reason why the ADA should pre-empt a claim that the airline defrauded its customers in the making and performance of that very same agreement.

I would analogize the Consumer Fraud Act to a codification of common-law negligence rules. Under ordinary tort principles, every person has a duty to exercise reasonable care toward all [***35] other persons with whom he comes into contact. Presumably, if an airline were negligent in a way that somehow affected its rates, routes, or services,² and the [**828] victim of the airline's negligence were to sue in state court, the majority would not hold all common-law negligence rules to be pre-empted by the ADA. See *ante*, at 231, n. 7. Like contract principles, the standard of ordinary care is a general [*237] background rule against which all individuals order their affairs. Surely Congress did not intend to give airlines free rein to commit negligent acts subject only to the supervision of the Department of Transportation, [***731] any more than it meant to allow airlines to breach contracts with impunity. See *ante*, at 230-233. And, if judge-made duties are not pre-empted, it would make little sense to find pre-emption of identical rules codified by the state legislature. The duty imposed by the Illinois Consumer Fraud Act is to refrain from committing fraud in commercial dealings — it is "the duty not to deceive." [****36] *Cipollone*, 505 U.S. at 529. This is neither a novel nor a controversial proscription. It falls no more heavily upon airlines than upon any other business. It is no more or less a state-imposed "public policy" than a negligence rule. In sum, I see

¹ See *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 419-427, 119 L. Ed. 2d 157, 112 S. Ct. 2031 (1992) (dissenting opinion).

² Indeed, every judgment against an airline will have some effect on rates, routes, or services, at least at the margin. In response to adverse judgments, airlines may have to raise rates, or curtail routes or services, to make up for lost income.

no difference between the duty to refrain from deception and the duty of reasonable care, and I see no meaningful difference between the enforcement of either duty and the enforcement of a private agreement.

The majority's extension of *Morales* is particularly untenable in light of the interpretive presumption against pre-emption. As in *Cipollone*, I believe there is insufficient evidence of congressional intent to supersede laws of general applicability to justify a finding that the ADA pre-empts either [****37] the contract or the fraud claim. *Cipollone*, 505 U.S. at 525-530; see also *Morales*, 504 U.S. at 419-421 (STEVENS, J., dissenting) (discussing presumption against pre-emption as an incident of federalism). Indeed, the presumption against pre-emption is especially appropriate to the ADA because Congress retained the "saving clause" preserving state "remedies now existing at common law or by statute." 49 U.S.C. App. § 1506.

Accordingly, while I join the Court's disposition of the breach-of-contract claims,³ I would affirm the entire judgment of the Supreme Court of Illinois.

[*238] JUSTICE O'CONNOR, with whom JUSTICE THOMAS joins as to all but Part I-B, concurring in the judgment in part and dissenting in part.

In permitting respondents' contract action to go forward, the Court arrives at what might be a reasonable policy judgment as to when state [****38] law actions against airlines should be pre-empted if we were free to legislate it. It is not, however, consistent with our controlling precedents, and it requires some questionable assumptions about the nature of contract law. I would hold that none of respondents' actions may proceed.

I

A

³ Accordingly, I join Part I, except for the last paragraph, and Part II-B of the Court's opinion.

The Airline Deregulation Act of 1978 (ADA) says that "no State . . . shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to rates, routes, or services of any air carrier." 49 U.S.C. App. § 1305(a)(1).¹ We considered the scope of that provision in *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 119 L. Ed. 2d 157, 112 S. Ct. 2031 (1992). We noted the similarity of [***732] § 1305's language to the pre-emption provision in ERISA, 29 U.S.C. § 1144(a), and said that, like ERISA's § 1144, § 1305's words "express a broad pre-emptive purpose." 504 U.S. at 383. We concluded that "State enforcement actions having a connection with, or reference to, airline 'rates, routes, or services' are pre-empted." [****39] *Id.*, at 384.

[**829] Applying *Morales* to this case, I agree with the Court that respondents' consumer fraud and contract claims are "related to" airline "rates" and "services." See *ante*, at 226. The Court says, however, that judicial enforcement of a contract's [*239] terms, in accordance with state contract law, does not amount to a "State . . . enforcing any law," § 1305, but instead is simply a State "holding parties to their agreement." See *ante*, at 229, and n. 5. It therefore concludes that § 1305 does not apply to respondents' contract actions. I cannot agree with that conclusion.

[****40] I do not understand the Court to say that a State only "enforces" its "law" when some state employee (e. g., an attorney general, or a judge) orders someone to do something. If that were the meaning of "enforce" in this context, then a diversity action brought by a private party under state law in federal court would never be subject to § 1305 pre-emption, because no state employee is involved, whereas the same action might be pre-empted in state court. That would make little

¹ Congress has recently amended this statute to read: "[A] State . . . may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier." 49 U.S.C. A. § 41713(b)(1). Congress intended this amendment to be "without substantive change." See Pub. L. 103-272, § 1(a), 108 Stat. 745.

sense, and federal courts have routinely considered § 1305 in determining whether a particular state law claim is pre-empted. E. g., Statland v. American Airlines, Inc., 998 F.2d 539, 541-542 (CA7 1993) (contract claim pre-empted), cert. denied, 510 U.S. 1012, 126 L. Ed. 2d 568, 114 S. Ct. 603 (1993); West v. Northwest Airlines, Inc., 995 F.2d 148, 151 (CA9 1993) (tort claim for punitive damages pre-empted), cert. denied, 510 U.S. 1111, 127 L. Ed. 2d 374, 114 S. Ct. 1053 (1994); Cannava v. USAir, Inc., 1993 U.S. Dist. LEXIS 16726, 1993 WL 565341, *6 (D. Mass., 1993) (tort and contract claims pre-empted). [****41] Consequently, one must read "no State . . . shall . . . enforce any law" to mean that no one may enforce state law against an airline when the "enforcement action ha[s] a connection with, or reference to, airline 'rates, routes, or services.'" Morales, supra, at 384. This explains the Court's conclusion, with which I agree, that private parties such as respondents may not enforce the Illinois consumer fraud law against petitioner in an action whose subject matter relates to airline rates and services. Ante, at 228.

As I read § 1305 and Morales, however, respondents' contract claims also must be pre-empted. The Court recognizes, ante, at 227, that the "guidelines" at issue in Morales [*240] did not "create any new laws or regulations" applying to the airline industry; rather, they claimed to "explain in detail how existing state laws apply to air fare advertising and frequent flyer programs." Morales, 504 U.S. at 379. Nonetheless, we stated our holding quite clearly: "We hold that the fare advertising provisions of the NAAG guidelines are pre-empted by [§ 1305]." [****42] Id., at 391. How can it be that the guidelines, which did not themselves constitute "law," were nonetheless pre-empted by a statute whose coverage [***733] is limited to "laws" or other "provision[s] having the force and effect of law"? The answer is that in Morales we held that an action to invoke the State's coercive power against an airline, by means of a generally applicable law, when the subject matter of the action related to airline rates, would constitute "State . . . enforcement" of a "law . . . relating to rates, routes, or services." Id., at 383

(internal quotation marks omitted). Accordingly, we held that § 1305 pre-empted the action. It is not the case, as JUSTICE STEVENS urges, that Morales was limited to "airline-specific advertising standards." Ante, at 236. We examined the content of those standards -- which had no binding force on their own -- only to ascertain whether they "related to" airline rates (and we thought they "quite obviously" did). Morales, supra, at 387. The only "laws" at issue in Morales were generally applicable consumer fraud statutes, not facially related to airlines, much [****43] like the law at issue in respondents' consumer fraud claims here.

The Court concludes, however, that § 1305 does not pre-empt enforcement, by means of generally applicable state law, of a private agreement relating to airline rates and services. I cannot distinguish this case from Morales. In both, the subject matter of the action (the guidelines in Morales, the contract here) relates to airline rates and services. In both, that subject matter has no legal force, except insofar as a generally applicable state law (a consumer fraud law in [***830] [*241] Morales, state contract law here ²) permits an aggrieved party to invoke the State's coercive power against someone refusing to comply with the subject matter's terms (the requirements of the guidelines in Morales, the terms of the contract here). Morales' conclusion that § 1305 pre-empted such an invocation is dispositive here, both of respondents' consumer fraud claims, and of their contract claims. The lower courts seem to agree; as far as I know, no court to have considered ADA pre-emption since we decided Morales has suggested that enforcement of state contract law does not fall within § [****44] 1305 if the necessary relation to airline rates, routes, or services exists. See, e. g., Statland v. American Airlines, supra, at 541-542 (contract claims pre-empted); West v. Northwest Airlines, supra, at 151-152 (contract claims not pre-empted because "too tenuously

² See Norfolk & Western R. Co. v. Train Dispatchers, 499 U.S. 117, 130, 113 L. Ed. 2d 95, 111 S. Ct. 1156 (1991) ("A contract has no legal force apart from the law that acknowledges its binding character"), discussed infra, at 243-244.

connected" to airline rates or services); *Cannava v. U.S. Air, Inc.*, *supra*, at *6 (contract claims pre-empted); *Schaefer v. Delta Airlines*, 1992 U.S. Dist. LEXIS 22450, 1992 WL 558954, *2 (SD Cal., Sept. 18, 1992) (same); *Vail v. Pan Am Corp.*, 260 N.J. Super. 292, 299-300, 616 A.2d 523, 526-527 (App. Div. 1992) (same); *El-Monshawy v. Egypt Air*, 276 N.J. Super. 121, 126, 647 A.2d 491, 493 (Law Div. 1994) (same).

[***45] The Court argues that the words "law, rule, regulation, standard, or other provision" in § 1305 refer only to "official, government-imposed policies, not the terms of a private contract." *Ante*, at 229, n. 5 (quoting Brief for United States as *Amicus Curiae* 17). To be sure, the terms of private contracts are not "laws," any more than the guidelines at issue in *Morales* were "laws." But contract law, and generally applicable consumer fraud statutes, are laws, and *Morales* held that § 1305 prevents enforcement [***734] of "any [state] law" against the airlines when the subject matter of the action [*242] "relates" to airline rates, routes, or services. Thus, where the terms of a private contract relate to airline rates and services, and those terms can only be enforced through state law, *Morales* is indistinguishable. As JUSTICE STEVENS persuasively argues, there is "no reason why a state law requiring an airline to honor its contractual commitments is any less a law relating to its rates and services than is a state law imposing a 'duty not to make false statements of material fact or to conceal such facts,'" *ante*, at 236.

[****46] As the Court recognizes, *ante*, at 234, n. 9, my view of *Morales* does not mean that personal injury claims against airlines are always pre-empted. Many cases decided since *Morales* have allowed personal injury claims to proceed, even though none has said that a State is not "enforcing" its "law" when it imposes tort liability on an airline. In those cases, courts have found the particular tort claims at issue not to "relate" to airline "services," much as we suggested in *Morales* that state laws against gambling and prostitution would be too tenuously related to airline services to be pre-empted, see *Morales, supra*, at 390. E. g.,

Hodges v. Delta Airlines, Inc., 4 F.3d 350, 353-356 (CA5 1993) (arguing that "'services' is not coextensive with airline 'safety,'" so safety-related tort claim should not be pre-empted; urging en banc review to bring Circuit precedent into conformity with that view), rehearing en banc granted, 12 F.3d 426 (1994); *Public Health Trust v. Lake Aircraft, Inc.*, 992 F.2d 291, 294-295 (CA11 1993) (tort claim for defective aircraft design not pre-empted because not related to airline [****47] services); *Cleveland v. Piper Aircraft Corp.*, 985 F.2d 1438, 1443, and n. 11, 1444, n. 13 (CA10) (same), cert. denied, 510 U.S. 908, 126 L. Ed. 2d 240, 114 S. Ct. 291 (1993); *Stagl v. Delta Air Lines, Inc.*, 849 F. Supp. 179, 182 (EDNY 1994) (tort claim against airline for personal injury not pre-empted because not related to airline "services" within the meaning of § 1305); *Curley v. American Airlines, Inc.*, 846 F. Supp. 280, 284 (SDNY 1994) (same); *Bayne v. Adventure Tours USA, Inc.*, 841 F. Supp. 206 (ND Tex. 1994) [*243] (same); *Fenn v. American Airlines, Inc.*, 839 F. Supp. 1218, 1222-1223 (SD Miss. 1993) (same); *Chouest v. American Airlines, Inc.*, 839 F. Supp. 412, 416-417 (ED La. 1993) (same); *O'Hern v. Delta Airlines, Inc.*, [**831] *Inc.*, 838 F. Supp. 1264, 1267 (ND Ill. 1993) (same); *In re Air Disaster*, 819 F. Supp. 1352, 1363 (ED Mich. 1993) (same); [****48] *Butcher v. Houston*, 813 F. Supp. 515, 518 (SD Tex. 1993) (same).

Our recent decision in *Norfolk & Western R. Co. v. Train Dispatchers*, 499 U.S. 117, 113 L. Ed. 2d 95, 111 S. Ct. 1156 (1991), is relevant. The question in that case was whether a rail carrier's statutory exemption from "all other law," which we read to mean "all law as necessary to carry out an ICC-approved transaction," *id.*, at 129, exempted the carrier from contractually imposed obligations. We held that it did. We noted that "[a] contract depends on a regime of common and statutory law for its effectiveness and enforcement," *id.*, at 129-130, that "[a] contract has no legal force apart from the law that acknowledges its binding character," *id.*, at 130, and that "laws which subsist at the time and place of the making [***735] of a contract, and where it is to be performed, enter into and form a part of it, as fully as if they had been expressly

referred to or incorporated in its terms," *ibid.* (quoting [****49] *Farmers and Merchants Bank of Monroe v. Federal Reserve Bank of Richmond*, 262 U.S. 649, 660, 67 L. Ed. 1157, 43 S. Ct. 651 (1923)). Accordingly, we concluded that "the exemption . . . from 'all other law' effects an override of contractual obligations . . . by suspending application of the law that makes the contract binding." 499 U.S. at 130. In so concluding, we specifically rejected the Court of Appeals' views that the "all other law" exemption "nowhere . . . said that the ICC may also override contracts," and that it did not exempt the carrier from "all legal obstacles." *Brotherhood of R. Carmen v. ICC*, 279 U.S. App. D.C. 239, 880 F.2d 562, 567 (CA DC 1989); see *Norfolk & Western, supra*, at 133-134.

The Court does not dispute this reading of *Norfolk & Western*, which in my view makes clear that a State is enforcing its "law" when it brings its coercive power to bear [*244] on a party who has violated a contractual obligation. We reiterated in *Norfolk & Western* that "the obligation of a contract is the law which binds the parties to perform their agreement." [****50] 499 U.S. at 129 (internal quotation marks omitted); see also *Sturges v. Crowninshield*, 17 U.S. 122, 4 Wheat. 122, 197, 4 L. Ed. 529 (1819) (Marshall, C. J.) ("A contract is an agreement, in which a party undertakes to do, or not to do, a particular thing. The law binds him to perform his undertaking, and this is, of course, the obligation of his contract"). We therefore read the words "all other law" in the statutory exemption broadly enough to "suspend application of the law that makes the contract binding." *Norfolk & Western, supra*, at 130. I would give the words "any law" in § 1305 a similar reading.

As support for its theory, the Court cites only a statement in the plurality opinion in *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 120 L. Ed. 2d 407, 112 S. Ct. 2608 (1992); see *ante*, at 229. The *Cipollone* plurality said that "a common-law remedy for a contractual commitment voluntarily undertaken should not be regarded as a 'requirement . . . imposed under State law' within the meaning of § 5(b)." [****51] 505 U.S. at 526.

But the plurality elaborated on this point in a footnote. In rejecting the argument that specific warranty obligations are "imposed under State law," the plurality agreed that preemption might be required "if the Act pre-empted 'liability' imposed under state law . . . ; but instead the Act expressly pre-empts only a 'requirement or prohibition' imposed under state law." *Id.*, at 526, n. 24. It agreed that contractual requirements are "only enforceable under state law," but argued that those requirements are "imposed" by the contracting party upon itself." *Id.* The plurality thus distinguished the situation where substantive requirements contained in a contract are enforceable only under state law from the situation where state law itself imposes substantive requirements, and concluded that the statute before it pre-empted only the latter kind of state law. Here, as in *Cipollone*, the requirements [*245] at issue are contained in a contract, and have no legal force except insofar as state law makes them enforceable. But we concluded in *Morales* that § 1305 [***736] does pre-empt state law in those circumstances, [****52] unlike the statute in *Cipollone*. [**832] The difference between this case and *Cipollone* is the very different language in the two pre-emption statutes.

The Court also concludes that § 1305 only "stops States from imposing their own substantive standards with respect to rates, routes, or services," *ante*, at 232. In *Morales*, however, we specifically rejected an interpretation of § 1305 that would have rewritten it to read: No State shall "regulate rates, routes, and services." See *Morales*, 504 U.S. at 385-386. There is little distinction between "regulating rates, routes, and services" and "imposing substantive standards with respect to rates, routes, and services," and the Court does not explain how *Morales*' rejection of the former allows it now to adopt the latter. The Court relies on the statute's "saving clause," 49 U.S.C. App. § 1506, see *ante*, at 232, but we said in *Morales* that "[a] general 'remedies' saving clause cannot be allowed to supersede the specific substantive pre-emption provision," particularly where, as here, "the 'saving' clause is a relic of the pre-ADA/no pre-emption regime." [****53]

Morales, 504 U.S. at 385.

Without question, *Morales* gave § 1305 a broad pre-emptive sweep. The dissent in that case argued that such a broad interpretation went too far by pre-empting areas of traditional state regulation without a clear expression of congressional intent to do so. *Id.*, at 421-424 (STEVENSON, J., dissenting); see also *ante*, at 235, 237 (STEVENSON, J., concurring in part and dissenting in part). But the Court rejected the dissent's reading, holding instead that § 1305's language demonstrated a clear "statutory intent" to expressly pre-empt generally applicable state law as long as the "particularized application" of that law relates to airline rates, routes, or services. *Morales*, *supra*, at 383, 386, and n. 2.

[*246] B

Congress has recently revisited § 1305, and said that it "did not intend to alter the broad preemption interpretation adopted by the United States Supreme Court in *Morales*," H. R. Conf. Rep. No. 103-677, p. 83 (1994). If the Court nonetheless believes that *Morales* misread § 1305, the proper course of action would be to overrule that case, despite Congress' apparent approval of [****54] it. The Court's reading of § 1305 is not, in my view, a "closer working out" of ADA pre-emption, see *ante*, at 235; rather, it is a new approach that does not square with our decisions in *Morales* and *Norfolk & Western*.

Stare decisis has "special force" in the area of statutory interpretation, see *Allied-Bruce Terminix Cos. v. Dobson*, *post*, at 284 (O'CONNOR, J., concurring) (internal quotation marks omitted). It sometimes requires adherence to a wrongly decided precedent. *Post*, at 283-284. Here, however, Congress apparently does not think that our decision in *Morales* was wrong, nor do I. In the absence of any "special justification," *post*, at 284 (quoting *Arizona v. Rumsey*, 467 U.S. 203, 212, 81 L. Ed. 2d 164, 104 S. Ct. 2305 (1984)), for departing from *Morales*, I would recognize the [***737] import of *Morales* and *Norfolk & Western* here, and render the decision that the language of § 1305, in light of those cases, compels. If, at the

end of the day, Congress believes we have erred in interpreting § 1305, it remains free to correct our mistake.

II

Our decisions in *Morales* and *Norfolk & Western* suffice [****55] to decide this case along the lines I have described. In addition, however, I disagree with the Court's view that courts can realistically be confined, "in breach-of-contract actions, to the parties' bargain, with no enlargement or enhancement based on state laws or policies external to the agreement." *Ante*, at 233. When they are so confined, the Court says, courts are "simply holding parties to their agreements," [247] and are not "enforcing" any "law," *ante*, at 229. The Court also says that "some state-law principles of contract law . . . might well be preempted to the extent they seek to effectuate the State's public policies, rather than the intent of the parties." *Ante*, at 233, n. 8 [***738] (quoting Brief for United States as *Amicus Curiae* 28).

[**833] The doctrinal underpinnings of the notion that judicial enforcement of the "intent of the parties" can be divorced from a State's "public policy" have been in serious question for many years. As one author wrote some time ago:

"A contract, therefore, between two or more individuals cannot be said to be generally devoid of all public interest. [****56] If it be of no interest, why enforce it? For note that in enforcing contracts, the government does not merely allow two individuals to do what they have found pleasant in their eyes. Enforcement, in fact, puts the machinery of the law in the service of one party against the other. When that is worthwhile and how that should be done are important questions of public policy. . . . The notion that in enforcing contracts the state is only giving effect to the will of the parties rests upon an . . . untenable theory as to what the enforcement of contracts involves." Cohen, *The Basis of Contract*, 46 Harv. L. Rev. 553, 562 (1933).

More recent authors have expressed similar views.

See, e. g., Braucher, Contract Versus Contractarianism: The Regulatory Role of Contract Law, 47 Wash. & Lee L. Rev. 697, 699 (1990) ("Mediating between private ordering and social concerns, contract is a socioeconomic institution that requires an array of normative choices. . . . The questions addressed by contract law concern what social norms to use in the enforcement of contracts, not whether social norms will be used at all"). Contract law is a set of policy judgments [****57] concerning how to decide the meaning of private agreements, which private agreements should be legally enforceable, and [*248] what remedy to afford for their breach. The Court fails to recognize that when a State decides to force parties to comply with a contract, it does so only because it is satisfied that state policy, as expressed in its contract law, will be advanced by that decision.

Thus, the Court's allowance that "some state-law principles of contract law . . . might well be preempted to the extent they seek to effectuate the State's public policies, rather than the intent of the parties," *ante*, at 233, n. 8 (quoting Brief for United States as *Amicus Curiae* 28), threatens to swallow all of contract law. For example, the Court observes that on remand, the state court will be required to decide whether petitioner reserved the right to alter the terms of its frequent flyer program retroactively, or instead only prospectively. *Ante*, at 234. The court will presumably decide that question by looking to the usual "rules" of contract interpretation to decide what the contract's language means. If the court finds the language to be ambiguous, it might invoke the [****58] familiar rule that the contract should be construed against its drafter, and thus that respondents should receive the benefit of the doubt. See 2 E. Farnsworth, Farnsworth on Contracts § 7.11, pp. 265-268 (1990) (hereinafter Farnsworth). That rule of contract construction is not essential to a functional contract system. It is a policy choice that our contract system has made. Other such policy choices are that courts should not enforce agreements unsupported by consideration, see 1 Farnsworth § 2.5; but cf. J. Barton, J. Gibbs, V. Li, & J. Merryman, Law in Radically Different Cultures

579 (1983) (other legal systems enforce certain agreements not supported by consideration); that courts should supply "reasonable" terms to fill "gaps" in incomplete contracts, see 2 Farnsworth §§ 7.15-7.17; the method by which courts should decide what terms to supply, see C. Fried, Contract as Promise 60, 69-73 (1981); Chamy, Hypothetical Bargains: The Normative Structure of Contract Interpretation, 89 Mich. L. Rev. 1815, 1816, 1820-1823 [249] (1991); Ayres & Gertner, Filling Gaps in Incomplete Contracts: An Economic Theory of Default Rules, [****59] 99 Yale L. J. 87, 91 (1989) (all suggesting different policy considerations that should inform how courts fill contractual gaps); and that a breach of contract entitles the aggrieved party to expectation damages most of the time, but specific performance only rarely, see 3 Farnsworth, ch. 12; but cf. R. David & J. Brierley, Major Legal Systems in the World Today 302 (1985) (former Soviet Union routinely awarded specific performance). If courts are not permitted to look to these aspects of contract law in airline-related actions, they will find the cases difficult to decide.

[**834] Even the doctrine of unconscionability, which the United States suggests as an aspect of contract law that "might well be preempted" because it "seek[s] to effectuate the State's public policies, rather than the intent of the parties," Brief for United States as *Amicus Curiae* 28, cannot be so neatly categorized. On the one hand, refusing to enforce a contract because it is "unfair" seems quintessentially policy oriented. But on the other, "procedural unconscionability is broadly conceived to encompass not only the employment of sharp practices and the use of fine print and convoluted [****60] language, but a lack of understanding and an inequality of bargaining power." 1 Farnsworth § 4.28, at 506-507 (footnotes omitted). In other words, a determination that a contract is "unconscionable" may in fact be a determination that one party did not intend to agree to the terms of the contract. Thus, the unconscionability doctrine, far from being a purely "policy-oriented" doctrine that courts impose over the will of the parties, instead demonstrates that state public policy cannot easily be separated from

the methods by which courts are to decide what the parties "intended." airline. 41 ALR Fed 532.

"The law itself imposes contractual [***739] liability on the basis of a complex of moral, political, and social judgments." Fried, *supra*, at 69. The rules laid down by contract law for determining what the parties intended an agreement to [*250] mean, whether that agreement is legally enforceable, and what relief an aggrieved party should receive, are the end result of those judgments. Our legal system has decided to allow private parties to invoke the coercive power of the State in the effort to enforce those (and only those) private agreements that conform to rules set by those state policies [****61] known collectively as "contract law." Courts cannot enforce private agreements without reference to those policies, because those policies define the role of courts in deciding disputes concerning private agreements.

For these reasons, I would reverse the judgment of the Illinois Supreme Court.

References

- 8 Am Jur 2d, Aviation 18, 45
- 4 Federal Procedure, L Ed, Aviation and Space 7:613
- 3A Federal Procedural Forms, L Ed, Aviation and Space 7:276
- 49 USCS Appx 1305(a)(1)
- L Ed Digest, States, Territories, and Possessions 36
- L Ed Index, Aviation; Contracts or Agreements; Preemption and Preemptive Rights
- ALR Index, Aviation; Contracts; Pre-emption

Annotation References:

Supreme Court's view as to weight and effect to be given, on subsequent judicial construction, to prior administrative construction of statute. 39 L Ed 2d 942.

Availability [****62] of private civil action for violation of 404(b) of Federal Aviation Act of 1958 (49 USCS 1374(b)), prohibiting discrimination by

End of Document

Northwest, Inc. v. Ginsberg

Supreme Court of the United States

December 3, 2013, Argued; April 2, 2014, Decided

No. 12-462

Reporter

572 U.S. 273 *; 134 S. Ct. 1422 **; 188 L. Ed. 2d 538 ***; 2014 U.S. LEXIS 2392 ****; 82 U.S.L.W. 4244; 24 Fla. L. Weekly Fed. S 661; 2014 WL 1301865

NORTHWEST, INC., et al., Petitioners v. RABBI S. BINYOMIN GINSBERG

Notice: The LEXIS pagination of this document is subject to change pending release of the final published version.

Subsequent History: On remand at, Decision reached on appeal by *Ginsberg v. Northwest, Inc.*, 753 F.3d 1362, 2014 U.S. App. LEXIS 10930 (9th Cir., June 12, 2014)

Prior History: [****1] ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Ginsberg v. Northwest, Inc., 695 F.3d 873, 2012 U.S. App. LEXIS 14393 (9th Cir. Cal., 2012)

Disposition: Reversed and remanded.

Syllabus

[*273] [**1424] Petitioner Northwest, Inc., terminated respondent's membership in its frequent flyer program, apparently based on a provision in the frequent flyer agreement that gave Northwest sole discretion to determine whether a participant had abused the program. Respondent filed suit, asserting, as relevant here, that Northwest had breached its contract by revoking his membership status without valid cause and had

violated the duty of [***542] good faith and fair dealing because it terminated his membership in a way that contravened his reasonable expectations. The District Court found that the Airline Deregulation Act of 1978 (ADA) pre-empted the breach of the duty of good faith and fair dealing claim and dismissed the breach-of-contract claim without prejudice. Respondent appealed only the dismissal of his breach of the duty of good faith and fair dealing claim. The Ninth Circuit reversed, finding that claim "too tenuously connected to airline regulation to trigger" ADA pre-emption.

Held:

1. The ADA pre-empts a state-law claim for breach of the implied covenant of good faith and fair [****2] dealing if it seeks to enlarge the contractual obligations that the parties voluntarily adopt. *Pp.* _____. 188 L. Ed. 2d, at 546-549.

(a) Before the ADA was enacted, air carriers' routes, rates, and services were regulated under the Federal Aviation Act of 1958. And because that Act contained a saving provision preserving pre-existing statutory and common-law remedies, air carriers were also regulated by the States. The ADA did not repeal that saving provision, but it did include a pre-emption provision to prohibit States from "enact[ing] or enforc[ing] a law, regulation, or other provision having the force and effect of law related to [an air carrier's] price, route, or service," 49 U. S. C. §41713(b)(1), thus ensuring that "States would not undo federal deregulation with

regulation of their own," *Morales v. Trans World Airlines, Inc.*, 504 U. S. 374, 378, 112 S. Ct. 2031, 119 L. Ed. 2d 157. In *Morales*, the Court recognized that the key phrase "related to" expresses a "broad pre-emptive purpose," *id.*, at 383, 112 S. Ct. 2031, 119 L. Ed. 2d 157, and held that the ADA pre-empted the use of state consumer protection laws to regulate airline advertising, concluding that "relat[es] to" means "ha[s] a connection with, or reference to, airline 'rates, routes, or services,'" *id.*, at 384, 112 S. Ct. 2031, 119 L. Ed. 2d 157. And [***3] in *American Airlines, Inc.* [*274] v. *Wolens*, 513 U. S. 219, 115 S. Ct. 817, 130 L. Ed. 2d 715, the Court found that the ADA pre-empted the use of an Illinois consumer law to challenge an airline's devaluation of frequent flyer earned miles. But it did not pre-empt breach-of-contract claims because "terms and conditions airlines offer and passengers accept are privately ordered obligations" not "a State's 'enact[ment] or enforce[ment] [of] any law, rule, regulation, standard, or other provision having the force and effect of law' within the [pre-emption provision's] meaning." *Id.*, at 228-229, 115 S. Ct. 817, 130 L. Ed. 2d 715. Pp. - , 188 L. Ed. 2d, at 546-547.

(b) The phrase "other provision having the force and effect of law" includes state common-law rules like the implied covenant at issue. Common-law rules are routinely called "provisions," see, e.g., [*1425] *Madsen v. Women's Health Center, Inc.*, 512 U. S. 753, 765, n. 3, 114 S. Ct. 2516, 129 L. Ed. 2d 593, and they clearly have "the force and effect of law." The pre-emption provision's original language confirms this understanding. As first enacted, the provision also applied to "rule[s]" and "standard[s]," a formulation encompassing common-law rules. See *CSX Transp., Inc. v. Easterwood*, 507 U. S. 658, 664, 113 S. Ct. 1732, 123 L. Ed. 2d 387. And Congress made clear that the deletion of those terms as part [****4] of Title 49's [***543] wholesale recodification effected no "substantive change." §1(a), 108 Stat. 745.

Respondent's reliance on *Sprietsma v. Mercury Marine*, 537 U. S. 51, 123 S. Ct. 518, 154 L. Ed. 2d 466, is misplaced. There, the Court held that the

Federal Boat Safety Act of 1971 did not pre-empt a common-law tort claim, but that Act's pre-emption provision is more narrowly worded than the ADA provision. The Boat Safety Act's saving and pre-emption provisions were also enacted at the same time, while the Federal Aviation Act's general remedies saving clause is "a relic of the pre-ADA/no pre-emption regime," *Morales*, 504 U. S., at 385, 112 S. Ct. 2031, 119 L. Ed. 2d 157, that "cannot be allowed to supersede the specific substantive pre-emption provision," *ibid.*

Exempting common-law claims would also disserve the ADA's central purpose, which was to eliminate federal regulation of rates, routes, and services so they could be set by market forces. Finally, if *all* state common-law rules fell outside the pre-emption provision's ambit, *Wolens* would not have singled out a subcategory, for common-law claims based on the parties' voluntary undertaking, as falling outside that provision's coverage. Pp. - , 188 L. Ed. 2d, at 547-548.

(c) Respondent's claim "relates to" "rates, routes, or services." [****5] It clearly has "a connection with or reference to airline" prices, routes, or services, *Morales, supra*, at 384, 112 S. Ct. 2031, 119 L. Ed. 2d 157. As in *Wolens*, Northwest's program connects to the airline's "rates" by awarding mileage credits redeemable for tickets and upgrades, thus eliminating or reducing ticket prices. It also connects to "services," i.e., access to flights and higher service categories. Respondent's counterarguments are unpersuasive. His claim that he is contesting his termination, not access to flights or upgrades, [*275] ignores his reason for seeking reinstatement: to obtain reduced rates and enhanced services. Although respondent and *amici* claim there have been fundamental changes in the way that frequent flyer miles are earned since *Wolens* was decided, that does not matter here where respondent did not assert that he earned miles from any activity but taking flights or that he attempted to redeem miles for anything but tickets and upgrades. Pp. - , 188 L. Ed. 2d, at 549.

2. Because respondent's implied covenant claim seeks to enlarge his contractual agreement with petitioners, it is pre-empted by §41713(b)(1). Under Minnesota law, which controls here, the implied covenant must be regarded as a state-imposed obligation. [***6] Minnesota law does not permit parties to contract out of the covenant. And when a State's law does not authorize parties to free themselves from the covenant, a breach of covenant claim is pre-empted under *Wolens*. As an independent basis for this conclusion, if, as Minnesota law provides, the implied covenant applies to "every contract" except employment contracts for "policy reasons," then the decision not to exempt other types of contracts must likewise be based on a policy determination, namely, that the policy reason for the employment contract rule does not apply in other contexts.

Petitioners claim that the refusal to pre-empt all implied covenant claims, regardless [***1426] of state law, will lead to a patchwork of rules that will frustrate the ADA's deregulatory aim. [***544] But airlines can avoid such a result if they contract out of covenants where permitted by state law. Nor are participants in frequent flyer programs left without protection. They can avoid an airline with a poor reputation and possibly enroll in a more favorable rival program. Moreover, the Department of Transportation has the authority to investigate complaints about frequent flyer programs. Finally, respondent might have [***7] been able to vindicate his claim of ill treatment by Northwest had he appealed his breach-of-contract claim. *Pp.* 188 L. Ed. 2d, at 549-552.

695 F. 3d 873, reversed and remanded.

Counsel: Paul D. Clement argued the cause for petitioners.

Lewis S. Yelin argued the cause for the United States, as amicus curiae, by special leave of court.

Adina H. Rosenbaum argued the cause for respondent.

Judges: Alito, J., delivered the opinion for a unanimous Court.

Opinion by: Alito

Opinion

[*276] Justice Alito delivered the opinion of the Court.

We must decide in this case whether the Airline Deregulation Act pre-empts a state-law claim for breach of the implied covenant of good faith and fair dealing. Following our interpretation of the Act in *American Airlines, Inc. v. Wolens*, 513 U.S. 219, 115 S. Ct. 817, 130 L. Ed. 2d 715 (1995), we hold that [1] such a claim is pre-empted if it seeks to enlarge the contractual obligations that the parties voluntarily adopt. And because the doctrine is invoked in the present case in an attempt to expand those obligations, we reverse the judgment of the Court of Appeals.

[*277] I

A

Like many airlines, petitioner Northwest, Inc. (Northwest), established a frequent flyer program, its WorldPerks Airline Partners Program, to attract loyal customers. Under this program, members are able to earn "miles" by taking flights operated by Northwest and other "partner" airlines. Members can then redeem these miles for tickets and service upgrades with Northwest or its airline partners.

Respondent [***8] became a member of Northwest's WorldPerks program in 1999, and as a result of extensive travel on Northwest flights, he achieved "Platinum Elite" status (the highest level available) in 2005.

In 2008, however, Northwest terminated respondent's membership, apparently in reliance on a provision of the WorldPerks agreement that provided that "[a]buse of the . . . program (including

... improper conduct as determined by [Northwest] in its sole judgment[] ... may result in cancellation of the member's account." App. 64-65. According to respondent, a Northwest representative telephoned him [**1427] in June 2008 and informed him that his "Platinum Elite" status was being revoked because he had "abused" the program. *Id.*, at 35. In a letter sent about two weeks later, Northwest wrote:

"[Y]ou have contacted our office 24 times since December 3, 2007 regarding travel problems, including 9 incidents of your bag arriving late at the luggage carousel. . . .

"Since December 3, 2007, you have continually asked for compensation over and above our guidelines. We have awarded you \$1,925.00 in travel credit vouchers, 78,500 WorldPerks bonus miles, a voucher [***545] extension for your son, and \$491.00 in [****9] cash reimbursements. . . .

[*278] "Due to our past generosity, we must respectfully advise that we will no longer be awarding you compensation each time you contact us." *Id.*, at 58-59.

Respondent requested clarification of his status, but a Northwest representative sent him an e-mail stating that "[a]fter numerous conversations with not only the Legal Department, but with members of the WorldPerks department, I believe your status with the program should be very clear." *Id.*, at 60.

B

Alleging that Northwest had ended his membership as a cost-cutting measure tied to Northwest's merger with Delta Air Lines, respondent filed a class action in the United States District Court for the Southern District of California on behalf of himself and all other similarly situated WorldPerks members. Respondent's complaint asserted four separate claims.¹ First, his complaint alleged that

Northwest had breached its contract by revoking his "Platinum Elite" status without valid cause. Second, the complaint claimed that Northwest violated the duty of good faith and fair dealing because it terminated his membership in a way that contravened his reasonable expectations with respect to the manner in which Northwest [****10] would exercise its discretion. Third, the complaint asserted a claim for negligent misrepresentation, and fourth, the complaint alleged intentional misrepresentation. Respondent sought damages in excess of \$5 million, as well as injunctive relief requiring Northwest to restore the class members' WorldPerks status and prohibiting Northwest from future revocations of membership.

[*279] The District Court held that respondent's claims for breach of the covenant of good faith and fair dealing, negligent misrepresentation, and intentional misrepresentation were pre-empted by the Airline Deregulation Act of 1978 (ADA or Act), as amended, 49 U.S.C. §41713. These claims, the court concluded, were "relate[d] to" Northwest's rates and services and thus fell within the ADA's express pre-emption clause. App. to Pet. for Cert. 69. Respondent's remaining claim—for breach of contract—was dismissed [****11] without prejudice under *Federal Rule of Civil Procedure* 12(b)(6). The court held that respondent had failed to identify any material breach because the frequent flyer agreement gave Northwest sole discretion to determine whether a participant had abused the program. Respondent appealed the dismissal of his breach of the duty of good faith and fair dealing claim but not the other claims that the court had dismissed.

[**1428] The Ninth Circuit reversed. 695 F. 3d 873 (2012). Relying on pre-*Wolens* Circuit precedent, the Ninth Circuit first held that a breach of implied covenant claim is "too tenuously connected to airline regulation to trigger preemption under the ADA." 695 F. 3d at 879. Such a claim, the Ninth Circuit wrote, "does not interfere with the [Act's] deregulatory mandate" and

¹ Applying California choice-of-law rules, the District Court held that Minnesota law applies because respondent "was . . . a resident of Minneapolis, appears to fly in and out of

Minnesota, and Northwest's principal place of business is Minnesota." App. to Pet. for Cert. 70. That determination was not challenged on appeal.

does not "force the [***546] Airlines to adopt or change their prices, routes or services—the prerequisite for . . . preemption." *Id.*, at 880. In addition, the court held that the covenant of good faith and fair dealing does not fall within the terms of the Act's pre-emption provision because it does not have a "direct effect" on either "prices" or "services." *Id.*, at 877, 881.

We granted certiorari. 569 U. S. 993, 133 S. Ct. 2387, 185 L. Ed. 2d 1103 (2013).

II

A

Before [****12] the enactment of the ADA, the Federal Aviation Act of 1958 empowered the Civil Aeronautics Board to regulate [*280] the interstate airline industry. Pursuant to this authority, the Board closely regulated air carriers, controlling, among other things, routes, rates, and services. See, e.g., *Western Air Lines, Inc. v. CAB*, 347 U. S. 67, 74 S. Ct. 347, 98 L. Ed. 508 (1954); *Federal Aviation Act of 1958*, 72 Stat. 731. And since the Federal Aviation Act contained a saving provision preserving pre-existing statutory and common-law remedies, §1106, *id.*, at 798, air carriers were also regulated by the States. See *Morales v. Trans World Airlines, Inc.*, 504 U. S. 374, 378, 112 S. Ct. 2031, 119 L. Ed. 2d 157 (1992).

In 1978, however, Congress enacted the ADA, which sought to promote "efficiency, innovation, and low prices" in the airline industry through "maximum reliance on competitive market forces and on actual and potential competition." 49 U. S. C. §§40101(a)(6), (12)(A). [2] While the ADA did not repeal the predecessor law's saving provision, it included a pre-emption provision in order to "ensure that the States would not undo federal deregulation with regulation of their own." *Morales*, *supra*, at 378, 112 S. Ct. 2031, 119 L. Ed. 2d 157. In its current form, this provision states that "a State, political [****13] subdivision of a State, or political authority of at least 2 States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier that may provide

air transportation under this subpart." §41713(b)(1).

We have had two occasions to consider the ADA's pre-emptive reach. [3] In *Morales*, we held that the ADA pre-empted the use of state consumer protection laws to regulate airline advertising. We recognized that the key phrase "related to" expresses a "broad pre-emptive purpose." 504 U. S., at 383, 112 S. Ct. 2031, 119 L. Ed. 2d 157. Noting our interpretation of similar language in the pre-emption provision of the Employee Retirement Income Security Act of 1974, 29 U. S. C. §1144(a), we held that a claim "relat[es] to rates, routes, or services," within the meaning of the ADA, if the claim "ha[s] a connection with, or reference to, airline 'rates, routes, or services.'" [*281] 504 U. S., at 384, 112 S. Ct. 2031, 119 L. Ed. 2d 157. The older saving provision, we concluded, did not undermine this conclusion. *Id.*, at 384-385, 112 S. Ct. 2031, 119 L. Ed. 2d 157.

Subsequently, in *Wolens*, 513 U. S. 219, 115 S. Ct. 817, 130 L. Ed. 2d 715 (1995), we considered the application of the ADA pre-emption provision to two types of claims [****14] concerning an airline's frequent flyer program: first, claims under the Illinois Consumer Fraud and Deceptive Business Practices Act challenging an airline's devaluation [***547] of earned miles [**1429] (chiefly as the result of the imposition of "blackout dates" and limits on the number of seats available for customers wishing to obtain tickets by using those miles) and, second, breach-of-contract claims. We reaffirmed *Morales*' broad interpretation of the ADA pre-emption provision and held that this provision barred the claims based on the Illinois statute but not the breach-of-contract claims. [4] "[T]erms and conditions airlines offer and passengers accept," we wrote, "are privately ordered obligations and thus do not amount to a State's 'enact[ment] or enforce[ment] [of] any law, rule, regulation, standard, or other provision having the force and effect of law' within the meaning of [the ADA pre-emption provision]." 513 U. S., at 228-229, 115 S. Ct. 817, 130 L. Ed. 2d 715 (some internal quotation marks omitted).

With this background in mind, we turn to the question whether the ADA pre-empts respondent's claim for breach of the implied covenant of good faith and fair dealing.

B

The first question we address is whether, as respondent now maintains, the ADA's pre-emption provision [****15] applies only to legislation enacted by a state legislature and regulations issued by a state administrative agency but not to a common-law rule like the implied covenant of good faith and fair dealing. We have little difficulty rejecting this argument.

To begin, [5] state common-law rules fall comfortably within the language of the ADA pre-emption provision. As noted above, the current version of this provision applies to state "law[s], regulation[s], or other provision[s] having the force [*282] and effect of law," 49 U. S. C. §41713(b)(1). It is routine to call common-law rules "provisions." See, e.g., Madsen v. Women's Health Center, Inc., 512 U. S. 753, 765, n. 3, 114 S. Ct. 2516, 129 L. Ed. 2d 593 (1994); United States v. Barnett, 376 U. S. 681, 689-700, 84 S. Ct. 984, 12 L. Ed. 2d 23 (1964); Brown v. United Airlines, Inc., 720 F. 3d 60, 68 (CA1 2013) ("[W]hen read in context, the word 'provision' in the ADA preemption provision can most appropriately be construed to include common law"). And a common-law rule clearly has "the force and effect of law." In Wolens, we noted that this phrase is most naturally read to "refe[r] to binding standards of conduct that operate irrespective of any private agreement," 513 U. S. at 229, n. 5, 115 S. Ct. 817, 130 L. Ed. 2d 715, and we see no basis for [****16] holding that such standards must be based on a statute or regulation as opposed to the common law.

This understanding becomes even clearer when the original wording of the pre-emption provision is taken into account. When first enacted in 1978, this provision also applied to "rule[s]" and "standard[s]," and there surely can be no doubt that this formulation encompassed common-law rules. Indeed, we held in CSX Transp., Inc. v. Easterwood, 507 U. S. 658, 664, 113 S. Ct. 1732,

123 L. Ed. 2d 387 (1993), that virtually identical language in the Federal Railroad Safety Act of 1970 includes "[l]egal duties imposed . . . by the common law." See also Riegel v. Medtronic, Inc., 552 U. S. 312, 324, 128 S. Ct. 999, 169 L. Ed. 2d 892 (2008) (holding that a State's "requirements" "includ[e] [the state's] common-law duties").

While "rule[s]" and "standard[s]" are not mentioned in the current version of the statute, this omission is [****548] the result of a recodification that was not meant to affect the provision's meaning. Those additional terms were deleted as part of a wholesale recodification of Title 49 in 1994, but Congress made it clear that this recodification did not effect any "substantive change." § 1(a), 108 Stat. 745.

[**1430] In arguing that common-law rules fall outside [****17] the scope of the ADA pre-emption provision, respondent relies on our decision in Sprietsma v. Mercury Marine, 537 U. S. 51, 123 S. Ct. 518, 154 L. Ed. 2d 466 [****283] (2002), which held that the Federal Boat Safety Act of 1971 did not pre-empt a common-law tort claim, but there are critical differences between the pre-emption provisions in the Boat Safety Act and the ADA. The Boat Safety Act provision applies only to "a law or regulation," 46 U. S. C. §4306, whereas the ADA provision, as just explained, is much more broadly worded.

In addition, the relationship between the ADA's pre-emption provision and the saving provision carried over from the prior law is also quite different. The Sprietsma decision placed substantial weight on the Boat Safety Act's saving provision, which was enacted at the same time as the pre-emption provision, but we have described the Federal Aviation Act saving clause as "a relic of the pre-ADA/no pre-emption regime." Morales, 504 U. S. at 385, 112 S. Ct. 2031, 119 L. Ed. 2d 157. That provision applies to the entire, sprawling Federal Aviation Act, and not just to the ADA, and as we held in Morales, this "general 'remedies' saving clause cannot be allowed to supersede the specific substantive pre-emption provision." *Ibid*. See also Wolens, *supra*, at 245, 115 S. Ct. 817, 130 L. Ed. 2d 715 [****18] (O'Connor, J.,

concurring in judgment in part and dissenting in part). For these reasons, respondent's interpretation of the ADA pre-emption provision cannot be squared with the provision's terms.

Exempting common-law claims would also disserve the central purpose of the ADA. The Act eliminated federal regulation of rates, routes, and services in order to allow those aspects of air transportation to be set by market forces, and the pre-emption provision was included to prevent the States from undoing what the Act was meant to accomplish. Morales, supra, at 378, 112 S. Ct. 2031, 119 L. Ed. 2d 157. What is important, therefore, is the effect of a state law, regulation, or provision, not its form, and the ADA's deregulatory aim can be undermined just as surely by a state common-law rule as it can by a state statute or regulation. See Medtronic, Inc., supra, at 325, 128 S. Ct. 999, 169 L. Ed. 892 (recognizing that state tort law that imposes certain requirements would "disrup[t] the federal scheme no less [*284] than state regulatory law to the same effect"). As the First Circuit has recognized, "[i]t defies logic to think that Congress would disregard real-world consequences and give dispositive effect to the form of a clear intrusion into a federally regulated [****19] industry." Brown, supra, at 66-67.

Finally, if *all* state common-law rules fell outside the ambit of the ADA's pre-emption provision, we would have had no need in *Wolens* to single out a subcategory of common-law claims, *i.e.*, those based on the parties' voluntary undertaking, as falling outside that provision's coverage.

Accordingly, we conclude that [6] the phrase "other provision having the force and effect of law" includes common-law claims.

[***549] C

We must next determine whether respondent's breach of implied covenant claim "relates to" "rates, routes, or services." [7] A claim satisfies this requirement if it has "a connection with, or reference to, airline" prices, routes, or services, Morales, supra, at 384, 112 S. Ct. 2031, 119 L. Ed.

2d 157, and the claim at issue here clearly has such a connection. That claim seeks respondent's reinstatement in Northwest's frequent flyer program so that he can access the program's "valuable . . . benefits," including "flight upgrades, accumulated mileage, [**1431] loyalty program status or benefits on other airlines, and other advantages." App. 49-50.

Like the frequent flyer program in *Wolens*, the Northwest program is connected to the airline's "rates" because the program awards mileage credits that [****20] can be redeemed for tickets and upgrades. See 513 U. S., at 226, 115 S. Ct. 817, 130 L. Ed. 2d 715. When miles are used in this way, the rate that a customer pays, *i.e.*, the price of a particular ticket, is either eliminated or reduced. The program is also connected to "services," *i.e.*, access to flights and to higher service categories. *Ibid*.

Respondent argues that his claim differs from the claims in *Wolens* because he "does not challenge access to flights and upgrades or the number of miles needed to obtain air [*285] tickets" but instead contests "the termination of his WorldPerks elite membership." Brief for Respondent 12, but this argument ignores respondent's reason for seeking reinstatement of his membership, *i.e.*, to obtain reduced rates and enhanced services. Respondent's proffered distinction has no substance.

Respondent and *amici* suggest that *Wolens* is not controlling because frequent flyer programs have fundamentally changed since the time of that decision. We are told that "most miles [are now] earned without consuming airline services" and are "spent without consuming airline services." Brief for State of California et al. 18 (emphasis deleted). But whether or not this alleged change might have some impact in a [****21] future case, it is not implicated here. In this case, respondent did not assert that he earned his miles from any activity other than taking flights or that he attempted to redeem miles for anything other than tickets and upgrades. See Tr. of Oral Arg. 47-48.

III

With these preliminary issues behind us, we turn to the central issue in this case, i.e., whether respondent's implied covenant claim is based on a state-imposed obligation or simply one that the parties voluntarily undertook. Petitioners urge us to hold that implied covenant claims are always pre-empted, and respondent suggests that such claims are generally not pre-empted, but the reasoning of *Wolens* neither dooms nor spares all such claims.

[8] While most States recognize some form of the good faith and fair dealing doctrine, it does not appear that there is any uniform understanding of the doctrine's precise meaning. "[T]he concept of good faith in the performance of contracts 'is a phrase without general meaning (or meanings) of its own.'" *Tymshare, Inc. v. Covell*, 727 F. 2d 1145, 1152, 234 U.S. App. D.C. 46 (CA DC 1984) (Scalia, J.) (quoting Summers, "Good Faith" in General Contract Law and the Sales Provisions of the Uniform [286] Commercial Code, 54 Va. L. [***550] Rev. 195, 201 (1968)); [****22] see also Burton, Breach of Contract and the Common Law Duty To Perform in Good Faith, 94 Harv. L. Rev. 369, 371 (1980). Of particular importance here, while some States are said to use the doctrine "to effectuate the intentions of parties, or to protect their reasonable expectations," *ibid.*, other States clearly employ the doctrine to ensure that a party does not "violate community standards of decency, fairness, or reasonableness." *Universal Drilling Co., LLC v. R & R Rig Service, LLC*, 2012 WY 31, 37, 271 P. 3d 987, 999; *DDP Roofing Services, Inc. v. Indian River School Dist.*, 2010 Del. Super. LEXIS 485, 2010 WL 4657161, *3 (Del. Super. Ct., Nov. 16, 2010); *Allworth v. Howard Univ.*, 890 A. 2d 194, 201-202 (D. C. 2006); *Brunswick Hills Racquet Club, Inc. v. Route 18 Shopping Center Assocs.*, 182 N. J. 210, 224, 864 A. 2d 387, 395-396 (2005); [**1432] *Harper v. Healthsource New Hampshire, Inc.*, 140 N. H. 770, 776, 674 A. 2d 962, 965-966 (1996); *Borys v. Josada Builders, Inc.*, 110 Ill. App. 3d 29, 32-33, 441 N. E. 2d 1263, 1265-1266, 65 Ill. Dec. 749 (1982); *Restatement (Second) of Contracts* §205, Comment a (1979). See also Summers, The General Duty of Good Faith—Its Recognition and Conceptualization, 67 Cornell L. Rev. 810, 812

(1982).

Whatever [****23] may be the case under the law of other jurisdictions, [9] it seems clear [287] that under Minnesota law, which is controlling here, see n. 1, *supra*, the implied covenant must be regarded as a state-imposed obligation. ² Respondent concedes that under Minnesota law parties cannot contract out of the covenant. See Tr. of Oral Arg. 33-34; see also *In re Hennepin Cty. 1986 Recycling Bond Litigation*, 540 N. W. 2d 494, 502 (Minn. 1995); *Sterling Capital Advisors, Inc. v. Herzog*, 575 N. W. 2d 121, 125 (Minn. App. 1998); *Minnwest Bank Central v. Flagship Properties LLC*, 689 N. W. 2d 295, 303 (Minn. App. 2004). And as a leading commentator has explained, a State's "unwillingness to allow people to disclaim the obligation of good faith . . . shows that the obligation cannot be implied, but is law imposed." 3A A. Corbin, Corbin on Contracts §654A, p. 88 (L.

² Like Minnesota, some other States preclude a party from waiving the obligations of good faith and fair dealing. *Hunter v. Wilshire Credit Corp.*, 927 So. 2d 810, 813, n. 5 (Ala. 2005); [****24] *Smith v. Anchorage School Dist.*, 240 P. 3d 834, 844 (Alaska 2010); *Wells Fargo Bank v. Arizona Laborers, Teamsters & Cement Masons Local No. 395 Pension Trust Fund*, 201 Ariz. 474, 491, 38 P. 3d 12, 29 (2002); *Habetz v. Condon*, 224 Conn. 231, 238, 618 A. 2d 501, 505 (1992); *Dunlap v. State Farm Fire & Cas. Co.*, 878 A. 2d 434, 442 (Del. 2005); *Hill v. Mediantic Health Care Group*, 933 A. 2d 314, 333 (D. C. 2007); *Chase Manhattan Bank, N. A. v. Keystone Distributors, Inc.*, 873 F. Supp. 808, 815 (SDNY 1994); *Magruder Quarry & Co., LLC v. Briscoe*, 83 S. W. 3d 647, 652 (Mo. App. 2002) ("When terms are present that directly nullify the implied covenants of good faith and reasonable efforts, . . . the contract is void for lack of mutuality"); *Gillette v. Hladky Constr., Inc.*, 2008 WY 134, ¶131, 196 P. 3d 184, 196.

But other States permit a party to contract out of the duties imposed by the implied covenant. *Steiner v. Thexton*, 48 Cal. 4th 411, 419-420, 106 Cal. Rptr. 3d 252, 226 P. 3d 359, 365 (2010) ("The general rule [regarding the covenant of good faith] is plainly subject to the exception that the parties may, by express provisions of the contract grant the right to engage in the very acts and conduct which would otherwise have [****25] been forbidden by an implied covenant of good faith and fair dealing"); *Shawyer v. Huckleberry Estates, L.L.C.*, 140 Idaho 354, 362, 93 P. 3d 685, 693 (2004); *Farm Credit Servs. of Am. v. Dugan*, 2005 S. D. 94, ¶10, 704 N. W. 2d 24, 28.

Cunningham & A. Jacobsen eds. Supp. 1994). When the law of a State does not authorize parties to free themselves from the covenant, a breach of covenant claim is pre-empted under the reasoning of *Wolens*.

[***551] Another feature of Minnesota law provides an additional, independent basis for our conclusion. [10] Minnesota law holds that the implied covenant applies to "every contract," *In re Hennepin Cty., supra*, at 502, with the notable exception of employment contracts. *Hunt v. IBM Mid America Employees Fed. Credit Union*, 384 N. W. 2d 853, 857-858 (Minn. 1986). The exception for employment contracts is based, in significant part, on "policy reasons," *id.* at 858, and therefore the decision not to exempt other types of contracts must be based on a policy determination, namely, that the "policy reasons" [*288] that support the rule for employment contracts do not apply (at least with the same force) in other contexts. When the application of the implied covenant depends on state policy, a breach of implied covenant claim cannot be viewed as simply an attempt to vindicate the parties' implicit understanding of the contract.

[**1433] For these reasons, the breach of implied covenant claim [****26] in this case cannot stand, but petitioners exhort us to go further and hold that all such claims, no matter the content of the law of the relevant jurisdiction, are pre-empted. If pre-emption depends on state law, petitioners warn, airlines will be faced with a baffling patchwork of rules, and the deregulatory aim of the ADA will be frustrated. But the airlines have means to avoid such a result. [11] A State's implied covenant rules will escape pre-emption only if the law of the relevant State permits an airline to contract around those rules in its frequent flyer program agreement, and if an airline's agreement is governed by the law of such a State, the airline can specify that the agreement does not incorporate the covenant. While the inclusion of such a provision may impose transaction costs and presumably would not enhance the attractiveness of the program, an airline can decide whether the benefits of such a provision are worth the potential costs.

Our holding also does not leave participants in

frequent flyer programs without protection. The ADA is based on the view that the best interests of airline passengers are most effectively promoted, in the main, by allowing the free market [****27] to operate. If an airline acquires a reputation for mistreating the participants in its frequent flyer program (who are generally the airline's most loyal and valuable customers), customers can avoid that program and may be able to enroll in a more favorable rival program.

Federal law also provides protection for frequent flyer program participants. [12] Congress has given the Department of Transportation (DOT) the general authority to prohibit and [*289] punish unfair and deceptive practices in air transportation and in the sale of air transportation, 49 U. S. C. §41712(a), and Congress has specifically authorized the DOT to investigate complaints relating to frequent flyer programs. See FAA Modernization and Reform Act of 2012, §408(6), 126 Stat. 87. Pursuant to these provisions, the DOT regularly entertains and acts on such complaints.³

We note, finally, that respondent's claim of ill treatment by Northwest [***552] might have been vindicated if he had pursued his breach-of-contract claim after its dismissal [****28] by the District Court. Respondent argues that, contrary to the holding of the District Court, the frequent flyer agreement did not actually give Northwest unfettered discretion to terminate his membership in the program, see Brief for Respondent 20-21, and the United States makes a related argument, namely, that even if the agreement gave Northwest complete discretion with respect to a determination regarding abuse of the program, the agreement did not necessarily bar a claim asserting that membership was ended for an ulterior reason, such as an effort to cut costs. If respondent had appealed the dismissal of his breach-of-contract

³ See DOT, Air Travel Consumer Report 44 (Feb. 2014), online at http://www.dot.gov/sites/dot.gov/files/dqcs/2014_February_ATCR.pdf (as visited Mar. 31, 2014, and available in Clerk of Court's case file).

claim, he could have presented these arguments to the Court of Appeals, but he chose not to press that claim. He voluntarily dismissed the breach-of-contract claim and instead appealed only the breach of implied covenant claim, which we hold to be pre-empted.

Because respondent's implied covenant of good faith and fair dealing claim seeks to enlarge his contractual agreement with petitioners, we hold that 49 U.S.C. §41713(b)(1) pre-empts the claim. The judgment of the Court of Appeals for [*290] the [**1434] Ninth Circuit is reversed, and the case is remanded for [****29] further proceedings consistent with this opinion.

It is so ordered.

References

49 U.S.C.S. § 41713(b)(1)

1 Antieau on Local Government Law § 12.02
(Matthew Bender 2d ed.)

L Ed Digest, States, Territories, and Possessions §
46.2

L Ed Index, Aviation

Supreme Court's views as to validity of federal legislation under Federal Constitution's Tenth Amendment, providing that powers not delegated to United States nor prohibited to states are reserved to states or to people. 176 L. Ed. 2d 1269.

End of Document

49 USCS § 41713

Current through Public Law 118-107, approved November 21, 2024.

United States Code Service > **TITLE 49. TRANSPORTATION (§§ 101 — 80504)** > *Subtitle VII. Aviation Programs (Pts. A — E)* > *Part A. Air Commerce and Safety (Subpts. I — IV)* > *Subpart II. Economic Regulation (Chs. 411 — 423)* > **CHAPTER 417. Operations of Carriers (Subchs. I — III)** > *Subchapter I. Requirements (§§ 41701 — 41729)*

§ 41713. Preemption of authority over prices, routes, and service

(a) **Definition.** In this section, “State” means a State, the District of Columbia, and a territory or possession of the United States.

(b) **Preemption.**

(1) Except as provided in this subsection, a State, political subdivision of a State, or political authority of at least 2 States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier that may provide air transportation under this subpart [49 USCS §§ 41101 et seq.].

(2) Paragraphs (1) and (4) of this subsection do not apply to air transportation provided entirely in Alaska unless the transportation is air transportation (except charter air transportation) provided under a certificate issued under section 41102 of this title [49 USCS § 41102].

(3) This subsection does not limit a State, political subdivision of a State, or political authority of at least 2 States that owns or operates an airport served by an air carrier holding a certificate issued by the Secretary of Transportation from carrying out its proprietary powers and rights.

(4) Transportation by air carrier or carrier affiliated with a direct air carrier.

(A) General rule. Except as provided in subparagraph (B), a State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier or carrier affiliated with a direct air carrier through common controlling ownership when such carrier is transporting property by aircraft or by motor vehicle (whether or not such property has had or will have a prior or subsequent air movement).

(B) Matters not covered. Subparagraph (A)—

(i) shall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo, or the authority of a State to regulate motor carriers with regard to minimum amounts of

49 USCS § 41713

financial responsibility relating to insurance requirements and self-insurance authorization; and

(ii) does not apply to the transportation of household goods, as defined in section 13102 of this title [49 USCS § 13102].

(C) Applicability of paragraph (1). This paragraph shall not limit the applicability of paragraph (1).

History

HISTORY:

July 5, 1994, *P. L. 103-272*, § 1(e), *108 Stat. 1143*; Aug. 23, 1994, *P. L. 103-305*, Title VI, § 601(b)(1), (2)(A), *108 Stat. 1605*, 1606; Nov. 20, 1997, *P. L. 105-102*, § 2(23), *111 Stat. 2205*.

United States Code Service
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WILKES
ATKINSON &
JOYNER, LLC
ATTORNEYS AT LAW

MICHAEL B.T. WILKES, P.A.*
C. DANIEL ATKINSON**
J. ALEXANDER JOYNER*
BRIAN M. PETERS, JR.*
JUSTIN M. MOFFITT*
M. TAYLOR PETTY

- CHARLESTON OFFICE
- ALSO MEMBER GA BAR
- ALSO MEMBER NC BAR
- ◊ CERTIFIED MEDIATOR
- * ALSO MEMBER OF FL BAR

Reply to: SPARTANBURG OFFICE
127 DINWIDIE STREET, SUITE 200
SPARTANBURG, SC 29306
PHONE: 864.591.1113
TOLL FREE: 866.920.1113
FAX: 864.591.1767

CHARLESTON OFFICE
320 BROAD STREET, SUITE 220
CHARLESTON, SC 29401
PHONE: 843.737.6229

WWW.WAJLAWFIRM.COM

October 1, 2024

Via Email and U.S. Mail

Michelle Pegg
East Greenville Summary Court
320 W. Main St.
Taylors, SC 29687
dpegg@greenvillecounty.org

Re: *Joshua Hawkins, Plaintiff v Delta Air Lines, Inc., Defendant*
East Greenville Summary Court
Case Number: 2024-CV- 23-2415

Dear Ms. Pegg:

On behalf of Delta Air Lines, Inc., please find enclosed an original and one copy of the *Consent Motion for Continuance of October 3, 2024 Hearing of Defendant's Motion to Dismiss and Certificate of Service*. Please file the originals and return filed stamped copies to me in the envelope provided.

By copy of this letter, I am serving Plaintiff's counsel with same. If you have any questions, please advise.

Sincerely,

Brian M. Peters, Jr.
bpeters@wajlawfirm.com

Enclosures
cc: Joshua T. Hawkins, Esq.

RECEIVED

OCT 03 2024

EAST GREENVILLE
SUMMARY COURT

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Joshua Hawkins,

Plaintiff,

vs.

Delta Air Lines, Inc.

Defendant.

IN THE MAGISTRATE COURT

Case No.: 2024-CV-23-2415

**CONSENT MOTION FOR CONTINUANCE
OF OCTOBER 3, 2024 HEARING OF
DEFENDANT'S MOTION TO DISMISS**

COME NOW, the Parties, Plaintiff Joshua Hawkins and Defendant Delta Air Lines, Inc., by and through the undersigned counsel, and jointly file their Consent Motion for Continuance of October 3, 2024 Hearing of Defendant's Motion to Dismiss, and in furtherance thereof, state as follows:

1. On August 15, 2024, Defendant filed a Motion to Dismiss in Lieu of Answer of Plaintiff's Complaint.
2. On August 30, 2024, this Court issued a Magistrate Summons setting Defendant's Motion to Dismiss for hearing in person at the East Greenville Summary Court for October 3, 2024 at 10:00 AM.
3. On or about September 26 and 27, 2024, Hurricane Helene passed through Greenville and Spartanburg Counties, destroying or affecting several powerlines, internet cable, and trees, causing a loss of both power and internet across Greenville and Spartanburg Counties, among others.
4. To date, Plaintiff's counsel and this Court are located in Greenville County, and Plaintiff's counsel has no power or internet at home or at the office.
5. To date, Defense counsel, located in Spartanburg County, has no power or internet

Page 1 of 3

RECEIVED

OCT 03 2024

EAST GREENVILLE
SUMMARY COURT

at home and no internet at the office. In addition, Defense counsel had a previously scheduled out of state trip for the week of October 7, 2024, to act as the best man in his brother's wedding.

6. On September 26, 2024, the Chief Justice issued a Memorandum to all courts in South Carolina regarding Hurricane Helene, instructing that: "Judges assigned to counties operating as normal should be flexible in granting continuances to attorneys and parties who experience personal issues caused by the weather conditions that prevent their appearance in court." A copy of the September 26, 2024 Memorandum is attached hereto as **Exhibit A**.

7. In addition, on September 30, 2024, the Supreme Court issued Order 2024-09-30-01, re: Hurricane Helene and the Computation of Time (the "Order"). A copy of the Order is attached hereto as **Exhibit B**. In the Order, the Court made the following findings: "Numerous county courthouses and other state and local offices were closed on Friday, September 27, 2024, and it is expected that many South Carolina counties may remain closed for several more days. Many thousands of South Carolinians remain without power, and poor road conditions and gasoline shortages make travel difficult. We find these problems adversely affect the ability of many lawyers and litigants to comply with filing and service deadlines in various courts throughout the state." Thus, the Court found "it is necessary to issue this order . . . declaring Friday September 27, Monday September 30, and Tuesday, October 1, 2024, to be statewide filing 'holidays' for the purpose of computing time" In addition, the Supreme Court will continue to "evaluate conditions to determine whether the filing holidays declared in this order should be further extended."

8. Under Rule 14, SCRMC, this Court "shall be lenient . . . in granting continuances . . . for good cause shown when necessary to serve the ends of justice."

9. Pursuant to Rule 11, SCRCP, the undersigned counsel have conferred and agree

that in light of the circumstances and ongoing conditions, the Court's October 3, 2024 Hearing on Defendant's Motion to Dismiss in Lieu of Answer should be continued for at least fourteen days, with the hearing to be rescheduled to a date not before Thursday, October 17, 2024. The Parties attach a proposed Consent Order hereto as **Exhibit C**.

WHEREFORE, the undersigned counsel respectfully request this Court continue the Hearing set for October 3, 2024 at 10:00 AM for fourteen days, with the hearing to be rescheduled to a date not before Thursday, October 17, 2024.

October 1, 2024

WE SO CONSENT:

s/ Brian M. Peters, Jr.
C. Daniel Atkinson (S.C. Bar #72721)
datkinson@wajlawfirm.com
Brian M. Peters, Jr. (S.C. Bar #105911)
bpeters@wajlawfirm.com

WILKES ATKINSON & JOYNER, LLC
127 Dunbar St., Suite 200
Spartanburg, SC 29306
(864) 591-1113

Attorney for Defendant

October 1, 2024

WE SO CONSENT:

s/ Joshua T. Hawkins
Joshua T. Hawkins (S.C. Bar #78470)
josh@hjllcsc.com
Helena L. Jedziniak (S.C. Bar #100825)
helena@hjllcsc.com

HAWKINS & JEDZINIAK, LLC
1225 South Church St.
Greenville, SC 29605
(864) 275-8142

Attorney for Plaintiff

EXHIBIT A



The Supreme Court of South Carolina

JOHN W. KITTREDGE
CHIEF JUSTICE

GREENVILLE COUNTY COURTHOUSE
335 EAST NORTH STREET, SUITE 216
GREENVILLE, SC 29601-2106
TELEPHONE: (864) 487-8593
FAX: (864) 487-8596

MEMORANDUM

TO: Supreme Court
Court of Appeals
Clerks of Court
Circuit Court
Masters-In-Equity
Family Court
Probate Court
Magistrates
Municipal Judges
Registers of Deeds
SCJB Staff

FROM: Chief Justice John W. Kittredge

RE: Hurricane Helene

DATE: September 26, 2024

South Carolina Governor Henry McMaster has issued Executive Order 2024-24, declaring a State of Emergency in preparation for the potential effects from Hurricane Helene. The National Hurricane Center indicates Hurricane Helene will impact South Carolina with strong winds, significant rainfall, flash flooding, and potential for tornadoes overnight into Friday, September 27, 2024.

I remind all county and municipal employees working within the Unified Judicial System that they should follow the decisions made by the respective county or municipal government officials with regard to office delays or closings as a result of this inclement weather. Because weather conditions may vary throughout the state, all state judicial officers and employees should follow the decisions made by their respective county government officials regarding office delays or closings.

Judges assigned to counties operating as normal should be flexible in granting continuances to attorneys and parties who experience personal issues caused by the weather conditions that prevent their appearance in court.

Despite the above, the chief judges for administrative purposes at all levels may direct that certain matters or proceedings go forward notwithstanding a closure or delay, and shall ensure that bond hearings continue to be conducted at least once a day, if conditions are safe to do so.

Please refer to the State Emergency Management Division website, www.secmd.org/closings, or individual county government websites, for the status of state government offices for each county.

EXHIBIT B

The Supreme Court of South Carolina

RE: Hurricane Helene and the Computation of Time

ORDER

On September 25, 2024, the Governor of South Carolina issued Executive Order 2024-24 declaring a State of Emergency in preparation for the potential effects of Hurricane Helene. On September 26 and 27, Hurricane Helene caused extensive flooding and wind damage across much of South Carolina.

Numerous county courthouses and other state and local offices were closed on Friday, September 27, 2024, and it is expected that many South Carolina counties may remain closed for several more days. Many thousands of South Carolinians remain without power, and poor road conditions and gasoline shortages make travel difficult. We find these problems adversely affect the ability of many lawyers and litigants to comply with filing and service deadlines in various courts throughout the state.

Accordingly, this Court finds it is necessary to issue this order, pursuant to Rule 611 of the South Carolina Appellate Court Rules, (SCACR) declaring Friday September 27, Monday September 30, and Tuesday, October 1, 2024, to be statewide filing "holidays" for the purpose of computing time under Rule 263 of the South Carolina Appellate Court Rules; Rule 6 of the South Carolina Rules of Civil Procedure; Rule 35 of the South Carolina Rules of Criminal Procedure; and Rule 3 of the South Carolina Rules of Magistrates Court.

The Supreme Court will evaluate conditions to determine whether the filing holidays declared in this order should be further extended. A copy of this order shall be provided to the Chairs of the House and Senate Judiciary Committees in accordance with Rule 611, SCACR.

s/ John W. Kittredge _____ C.J.

s/ John Cannon Few _____ J.

s/ George C. James, Jr. J.

s/ D. Garrison Hill J.

s/ Letitia H. Verdin J.

Columbia, South Carolina
September 30, 2024

EXHIBIT C

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE COURT
COUNTY OF GREENVILLE	)	
Joshua Hawkins,	)	Case No.: 2024-CV-23-2415
	)	
Plaintiff,	)	CONSENT ORDER FOR CONTINUANCE
	)	
vs.	)	
	)	
Delta Air Lines, Inc.	)	
	)	
Defendant.	)	
_____	)	

The Parties have conferred and agree that this Court's Hearing on Defendant's Motion to Dismiss in Lieu of Answer previously set for October 3, 2024 at 10:00 AM should be continued for fourteen days, with the hearing to be rescheduled to a date not before Thursday, October 17, 2024. This Court is able to continue hearings for good cause shown, pursuant to Rule 14, SCRMC, and pursuant to the Chief Justice's September 27, 2024 Memorandum regarding Hurricane Helene. The Court takes notice of the circumstances described in the Parties' Consent Motion and finds that good cause has been shown to continue the October 3, 2024 Hearing for fourteen days, with the hearing to be rescheduled to a date not before Thursday, October 17, 2024.

It is therefore ORDERED that the Hearing on Defendant's Motion to Dismiss in Lieu of Answer previously set for October 3, 2024 at 10:00 AM shall be continued for fourteen days, with the hearing to be rescheduled to a date not before Thursday, October 17, 2024.

IT IS SO ORDERED.

JUDGE MARK C. EDMONDS

October __, 2024

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Joshua Hawkins,

Plaintiff,

vs.

Delta Air Lines, Inc.,

Defendant.

IN THE MAGISTRATE'S COURT

Case No.: 2024-CV-23-2415

CERTIFICATE OF SERVICE

I certify that on **October 1, 2024**, I caused to be served a true and correct copy of the foregoing *Consent Motion for Continuance of October 3, 2024 Hearing of Defendant's Motion to Dismiss* via U.S. Mail, postage pre-paid, and E-mail, addressed as follows:

Joshua T. Hawkins, Esq.
Helena L. Jedziniak, Esq.
Hawkins & Jedziniak, LLC
1225 South Church St.
Greenville, SC 29605
josh@hjllesc.com
helena@hjllesc.com

Michelle Pegg
East Greenville Summary Court
320 W. Main St.
Taylors, SC 29687
dpegg@greenvillecounty.org



Brian M. Peters, Jr.
bpeters@wajlawfirm.com
Wilkes Atkinson & Joyner, LLC

**STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE**

Hawkins & Jedziniak, LLC
Attn: Joshua Hawkins
1225 S. Church Street
Greenville, SC 29605

MAGISTRATE SUMMONS

You are hereby summoned to be and appear personally in the Court of the

**East Greenville Summary Court
320 West Main St
Taylors, SC 29687**

On **October 3, 2024 at 10:00 AM** to serve as a party in a Motion Hearing in the case of:

RE: Joshua Hawkins

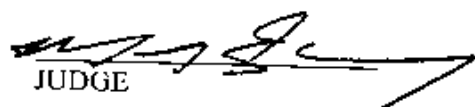
Vs Delta Air Lines, Inc.

PLAINTIFF(S)

DEFENDANT(S)

Civil Case Number: **2024CV2310302415.**

**HEREIN FAIL NOT, ON PAIN OF FORFEITING THE LAWFUL PENALTY IN
SUCH CASE MADE AND PROVIDED.**


JUDGE

**East Greenville Summary Court
320 West Main St
Taylors, SC 29687
Phone: (864) 467-4625
Fax: (864) 244-6232**

August 30, 2024

**STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE**

Wilkes Atkinson & Joyner, LLC
Attn: C. Daniel Atkinson
127 Dunbar Street, Suite 200
Spartanburg, SC 29306

MAGISTRATE SUMMONS

You are hereby summoned to be and appear personally in the Court of the

**East Greenville Summary Court
320 West Main St
Taylors, SC 29687**

On **October 3, 2024 at 10:00 AM** to serve as a party in a Motion Hearing in the case of:

RE: Joshua Hawkins

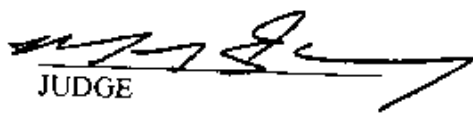
Vs Delta Air Lines, Inc.

PLAINTIFF(S)

DEFENDANT(S)

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JUDGE

**East Greenville Summary Court
320 West Main St
Taylors, SC 29687
Phone: (864) 467-4625
Fax: (864) 244-6232**

August 30, 2024

MVI46

**STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE**

Wilkes Atkinson & Joyner, LLC
Attn: Brian Peters Jr.
127 Dunbar Street, Suite 200
Spartanburg, SC 29306

MAGISTRATE SUMMONS

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RE: Joshua Hawkins

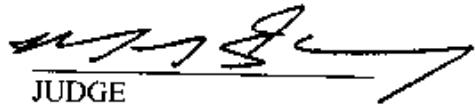
Vs Delta Air Lines, Inc.

PLAINTIFF(S)

DEFENDANT(S)

Civil Case Number: 2024CV2310302415.

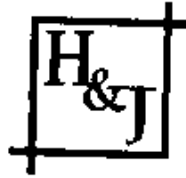
**HEREIN FAIL NOT, ON PAIN OF FORFEITING THE LAWFUL PENALTY IN
SUCH CASE MADE AND PROVIDED.**


JUDGE

**East Greenville Summary Court
320 West Main St
Taylors, SC 29687
Phone: (864) 467-4625
Fax: (864) 244-6232**

August 30, 2024

MVI46



Hawkins & Jedziniak, LLC

Joshua T. Hawkins

josh@hjllcsc.com

Helena L. Jedziniak *

helena@hjllcsc.com

** also licensed in North Carolina*

Ethan L. Jedziniak

ethan@hjllcsc.com

1225 South Church Street, Greenville, SC 29605
P: (864) 275-8142 • F: (864) 752-0911 • www.hjllcsc.com

August 29, 2024

via -U.S. Mail-
East Greenville Summary Court
320 West Main St.
Taylors, SC 29687

Re: *Joshua Hawkins v. Delta Airlines*
Case No.: 2024CV2310302415

To Whom It May Concern:

We recently received a summons for a hearing on Delta's motion to dismiss, and the summons indicated that a bench trial will follow if the case goes forward. We will file a response to Delta's motion to dismiss prior to the hearing, as well as whatever the Court requires.

As to the indication that a bench trial will follow the hearing, we would like to respectfully request a jury trial. A jury trial is requested in our complaint, both in the caption and on the signature page of the complaint. It is our understanding that pursuant to Article I, Section 14 of the South Carolina Constitution, as well as SCMCR 13(c), allows us to have a jury trial if requested. To the extent a request separate from the complaint is required, please consider our request for a jury trial in this case.

Please let us know if the Court will grant our request for a jury trial, and please also let us know if the Court requires anything further from us. We have copied opposing counsel.

Sincerely,

Joshua T. Hawkins

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STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE COURT
	)	
COUNTY OF GREENVILLE	)	Case No.: 2024-CV-23-2415
	)	
Joshua Hawkins,	)	
	)	
Plaintiff,	)	MOTION TO DISMISS
	)	IN LIEU OF ANSWER
vs.	)	
	)	
Delta Air Lines, Inc.	)	
	)	
Defendant.	)	
_____	)	

COMES NOW, Delta Air Lines, Inc. ("Delta"), by and through the undersigned counsel, and pursuant to Rule 2, SCRMC, and Rules 9(b), 10(c), 12(b)(1), 12(b)(6), and 12(h)(3), SCRCP, files its Motion to Dismiss Plaintiff Joshua Hawkins' Complaint, and in support thereof, states as follows:

I. Lack of Subject Matter Jurisdiction.

1. Pursuant to Rule 12(b)(1), SCRCP, this Court does not have subject matter jurisdiction over any cause of action related to Plaintiff's domestic flight, because such causes of action are preempted by the Airline Deregulation Act, 49 U.S.C. § 41713(b)(1), ("ADA"). Therefore, such causes of action must be dismissed to the extent they seek recovery for the domestic flight. *Am. Airlines, Inc. v. Wolens*, 513 U.S. 219, 232–33, 115 S. Ct. 817, 826, 130 L. Ed. 2d 715 (1995); *Baker Hosp. v. Isaac*, 301 S.C. 248, 250, 391 S.E.2d 549, 551 (1990) ("The [Court of Appeals of Michigan] properly noted that the pre-emption contention was one involving subject matter jurisdiction."); *Hawkins v. Am. Airlines*, No. 2020-001150, 2024 WL 1655457, at *1 (S.C. Ct. App. Apr. 17, 2024) ("As to Hawkins's claims regarding insufficient services rendered, the circuit court properly found these claims were preempted by the Airline Deregulation Act of 1978 (ADA).").

2. Pursuant to Rule 12(b)(1), SCRCP, this Court does not have subject matter jurisdiction over the state law causes of action related to Plaintiff's international flights, because such causes of action are preempted by the Montreal Convention.¹ Therefore, such causes of action must be dismissed to the extent they seek recovery for the international flights. See *We CBD, LLC v. Planet Nine Priv. Air, LLC*, 109 F.4th 295, 303 (4th Cir. 2024) ("As reflected above, the Montreal Convention provides the exclusive remedy for claims within its scope."); *Hawkins v. Am. Airlines*, No. 2020-001150, 2024 WL 1655457, at *1 (S.C. Ct. App. Apr. 17, 2024) ("[I]f an action for damages, however founded, falls within one of the [Montreal] Convention's three damage provisions, the Convention provides *the sole cause of action* under which a claimant may seek redress for her injuries.") (internal quotations omitted) (emphasis in original).

II. Failure to Allege Facts Sufficient to Constitute Causes of Action.

a. First Cause of Action: Montreal Convention.

1. Pursuant to Rule 12(b)(6), SCRCP, and with respect to the domestic flight, Plaintiff fails to allege facts sufficient to constitute a cause of action under the Montreal Convention, because domestic flights are not actionable under the Montreal Convention. See Montreal Convention, arts. 1, 29.

2. Pursuant to Rule 12(b)(6), SCRCP, Plaintiff fails to allege facts sufficient to constitute a cause of action under Article 18 of the Montreal Convention, because Plaintiff does not allege any facts about "cargo."

3. Pursuant to Rule 12(b)(6), SCRCP, Plaintiff fails to allege facts sufficient to constitute a cause of action under Article 19 of the Montreal Convention, because recovery for

¹ The full name of the Montreal Convention is "The Convention for the Unification of Certain Rules for International Carriage by Air." Convention for the Unification of Certain Rules for Int'l Carriage by Air, May 28 1999, S. Treaty Doc. No. 106-45, 2242 U.N.T.S. 309, 1999 WL 33292734 (entered into force Nov. 4, 2003), (hereinafter, "Montreal Convention").

“purely mental injuries,” including “inconvenience damages” is not allowed under the Montreal Convention. *E. Airlines, Inc. v. Floyd*, 499 U.S. 530, 534, 111 S. Ct. 1489, 1493, 113 L. Ed. 2d 569 (1991); *Lee v. Am. Airlines Inc.*, 355 F.3d 386, 387 (5th Cir. 2004); *Seshadri v. Brit. Airways PLC*, No. 3:14-CV-00833-BAS, 2014 WL 5606542, at *10 (S.D. Cal. Nov. 4, 2014); Montreal Convention, art. 29.

b. Second Cause of Action: Warsaw Convention.

1. Pursuant to Rules 12(b)(1) and 12(b)(6), SCRCP, Plaintiff fails to allege facts sufficient to constitute a cause of action under the Warsaw Convention, because the Warsaw Convention has been superseded by the Montreal Convention, and therefore this Court does not have subject matter jurisdiction to hear claims brought under the Warsaw Convention. *See We CBD, LLC v. Planet Nine Priv. Air, LLC*, 109 F.4th 295, 301 (4th Cir. 2024); *Hawkins v. Am. Airlines*, No. 2020-001150, 2024 WL 1655457, at *1 (S.C. Ct. App. Apr. 17, 2024) (“[I]f an action for damages, however founded, falls within one of the Convention’s three damage provisions, the Convention provides *the sole cause of action* under which a claimant may seek redress for her injuries.”) (internal quotations omitted) (emphasis in original).

c. Third Cause of Action: “Claim for a Declaratory Judgment and Breach of Contract.”

1. Pursuant to Rule 12(b)(6), SCRCP, to the extent the “Claim for a Declaratory Judgment and Breach of Contract” cause of action is not preempted by the AIA and the Montreal Convention, Plaintiff fails to state a cause of action for declaratory judgment or breach of contract for the following reasons:

- a. This Court cannot provide a declaratory judgment on a contract that is regulated exclusively by the federal government. *See Ord. of Ry. Conductors of Am. v. S. Ry. Co.*, 339 U.S. 255, 256, 70 S. Ct. 585, 586, 94 L. Ed. 811 (1950).

- b. For the international flights, Plaintiff fails to specify the specific contract provision(s) breached, which is necessary to state a cause of action for breach of contract under Georgia law, which governs these contracts.² *Brooks v. Branch Banking & Tr. Co.*, 107 F. Supp. 3d 1290, 1296 (N.D. Ga. 2015).
- c. To the extent Plaintiff alleges any provisions of the applicable Contracts of Carriage, the Contracts of Carriage negate Plaintiff's allegations and therefore Plaintiff fails to allege a breach of contract cause of action. *See Estate of Revis by Revis v. Revis*, 326 S.C. 470, 480, 484 S.E.2d 112, 118 (Cl. App. 1997); *see also Goines v. Valley Cmty. Servs. Bd.*, 822 F.3d 159, 166 (4th Cir. 2016) ("[I]f a plaintiff 'attaches documents and relies upon the documents to form the basis for a claim or part of a claim, dismissal is appropriate if the document negates the claim.'") (quoting *Thompson v. Illinois Dep't of Prof'l Regulation*, 300 F.3d 750, 754 (7th Cir. 2002)); *Gardner v. Newsome Chevrolet-Buick, Inc.*, 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991) ("Since our Rules of Procedure are based on the Federal Rules [and] where there is no South Carolina law, we look to the construction placed on the Federal Rules of Procedure.".)³
- d. Plaintiff cannot recover on a claim for breach of the covenant of good faith and fair

² For Plaintiff's September 2023 domestic flight (*see* Compl. at ¶ 10), the full Domestic Contract of Carriage is attached hereto as **Exhibit A**. For Plaintiff's January 2024 flight to New Zealand (*see* Compl. at ¶ 22) and Plaintiff's April 2024 flight to Portugal (*see* Compl. at ¶ 23), the full International Contract of Carriage is attached hereto as **Exhibit B**.

³ Because Plaintiff incorporated these Contracts by reference in his Complaint and they are central to Plaintiff's third cause of action, they are a part of the Complaint for all purposes pursuant to Rule 10(c), SCRPC—even a Motion to Dismiss. *See, e.g., Day v. Taylor*, 400 F.3d 1272, 1276 (11th Cir. 2005) ("Our prior decisions also make clear that a document need not be physically attached to a pleading to be incorporated by reference into it[.]").

dealing without alleging a breach of an express term of the contract. *Brooks v. Branch Banking & Tr. Co.*, 107 F. Supp. 3d 1290, 1296 (N.D. Ga. 2015).

e. Based on the facts alleged in this cause of action, Plaintiff's "Claim for a Declaratory Judgment and Breach of Contract" is *res judicata*, pursuant to the Joint Stipulation of Dismissal without Prejudice filed in the Court of Common Pleas Case No.: 2024-CP-23-00556.⁴

d. Fourth Cause of Action: "Claim for a Declaratory Judgment and Breach of Contract."

1. Pursuant to Rules 9(b) and 12(b)(6), SCRCP, to the extent the "Fraud" cause of action is not preempted by the ADA and the Montreal Convention, Plaintiff fails to allege the circumstances constituting the fraud with particularity, and therefore, such cause of action should be dismissed.

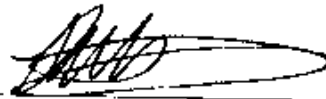
2. Based on the facts alleged in this cause of action, Plaintiff's cause of action for "Fraud" is *res judicata*, pursuant to the Joint Stipulation of Dismissal without Prejudice filed in the Court of Common Pleas Case No.: 2024-CP-23-00556. *See Ball v. Canadian Am. Exp. Co.*, 314 S.C. 272, 276, 442 S.E.2d 620, 623 (Ct. App. 1994) ("Breach of contract accompanied by a fraudulent act is different. It requires proof of fraudulent intent relating to the breaching of the contract and not merely to its making.").

These Motions are based upon the Complaint, federal law, Georgia law, South Carolina law, and any Brief of Law to be filed hereafter. Pursuant to Rule 11, SCRCP, the undersigned certified that no consultation was required prior to filing because this is a Motions to Dismiss.

⁴ A copy of the Joint Stipulation of Dismissal without Prejudice is attached hereto as **Exhibit C**.

August 15, 2024

By:



C. Daniel Atkinson (S.C. Bar #72721)

datkinson@wajlawfirm.com

Brian M. Peters, Jr. (S.C. Bar #105911)

bpeters@wajlawfirm.com

WILKES ATKINSON & JOYNER, LLC

127 Dunbar Street, Suite 200

Spartanburg, SC 29306

(864) 591-1113

Attorneys for Defendant

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Joshua Hawkins,

Plaintiff,

vs.

Delta Air Lines, Inc.,

Defendant.

IN THE MAGISTRATE'S COURT

Case No.: 2024-CV-23-2415

CERTIFICATE OF SERVICE

I certify that on **August 15, 2024**, I caused to be served a true and correct copy of the foregoing *Defendant's Notices of Appearance of C. Daniel Atkinson and Brian M. Peters, Jr.* and *Motion to Dismiss in Lieu of Answer* via U.S. Mail, postage pre-paid, and E-mail, addressed as follows:

Joshua T. Hawkins, Esq.
Helena L. Jedziniak, Esq.
Ethan L. Jedziniak, Esq.
Hawkins & Jedziniak, LLC
1225 South Church St.
Greenville, SC 29605
josh@hjllesc.com
helena@hjllesc.com
ethan@hjllesc.com

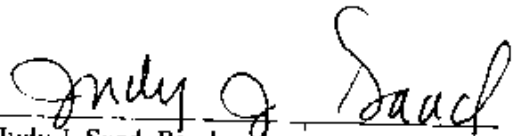

Judy J. Saad, Paralegal
jsaad@wajlawfirm.com
Wilkes Atkinson & Joyner, LLC

EXHIBIT A

DELTA DOMESTIC GENERAL RULES TARIFF [Last Modified June 22, 2023]

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EXHIBIT A

RULE 1: General Provisions

A. Contract of Carriage

When you buy a ticket from or travel on Delta, you enter into a contract with us, and you agree to be bound by its terms. The terms of your contract are set forth in:

- your Ticket;
- these Conditions of Carriage; and
- our published fare rules and regulations, which may govern the calculation of the fare and other charges that apply to your itinerary.

This document is Delta's Domestic Conditions of Carriage. It applies only to travel entirely within the United States of America and states the terms upon which Delta offers to transport passengers.

Any reference to "Delta" in this contract refers to Delta Air Lines, the Delta Shuttle, and the Delta Connection carriers. Some flights marketed by Delta may be operated by the other carriers. If any Carrier other than Delta is operating a flight, we will identify that Carrier in our schedules and in written or oral communications with you during the booking process. The terms of transportation applicable to Delta specified in these Conditions of Carriage apply to flights operated by the Delta Connection and Delta Shuttle carriers, and to codeshare flights marketed by Delta.

Delta may act as an agent to issue tickets, check baggage and book reservations for transportation via other Carriers which have interline agreements with Delta. For interline flights operated by other Carriers, the conditions of carriage of the operating Carrier will apply. Other Carriers may have different terms and conditions applicable to their flights, and these may be obtained directly from the other Carriers.

B. Amendments to Conditions of Carriage

Delta may amend these Conditions of Carriage at any time, except as provided by law. Your travel is governed by the rules that were in effect on the date you purchased your ticket; provided, however, that Delta reserves the right to apply rules currently in effect on the date of your travel where reasonably necessary for operational reasons and where the change in rule does not have a material negative impact upon you. No Delta employee or ticketing agent has the authority to modify any provision of the Conditions of Carriage unless authorized in writing by a Delta corporate officer.

RULE 2: SCHEDULES AND OPERATIONS

Delta will exercise reasonable efforts to transport you and your baggage from your origin to your destination with reasonable dispatch, but published schedules, flight times, aircraft types, seat assignments, and similar details reflected in the ticket or Delta's published schedules are not guaranteed and form no part of this contract. Delta may substitute alternate Carriers or aircraft, change its schedules, delay or cancel flights, change seat assignments, and alter or omit stopping places shown on the ticket as required by its operations in Delta's sole discretion. Delta's sole liability in the event of such changes is set forth in Rule 22. Delta is not responsible or liable for making connections, failing to operate any flight according to schedule, changing the schedule or any flight, changing seat assignments or aircraft types, or revising the routings by which Delta carries the passenger from the ticketed origin to destination.

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RULE 3: DEFINITIONS

Animals, in addition to the usual connotation, include reptiles, birds, and fish.

Applicable Full Fare means the one-way fares, whether specifically published or derived by construction, for the class of service designated in the Carrier's official general schedule for the aircraft, or cabin of the aircraft used by the passenger.

Carrier means any air carrier shown as a participant in this tariff.

Co-Terminal - Two or more relatively adjacent airports which for the purpose of these fares will be considered the same point.

Days - Full calendar days, including weekend days and legal holidays (but not including the date that any notice is sent).

Dependent - The spouse and children of U.S. Military Personnel or U.S. embassy personnel stationed overseas who are dependent upon such personnel for financial support.

Dot Hazardous Materials Regulations means the hazardous materials regulations issued by the Materials Transportation Bureau of the Department of Transportation in Title 49 of the Code of Federal Regulations, Parts 171 through 177 (49 CFR 171-177).

Fare Component - The fare paid for the portion of the itinerary between the origin and destination/Stopover point.

Government Transport Request (GTR) - Form used for ticket payment and travel authorization for passengers traveling on official business for the federal government by the U.S.

Group means the minimum number of passengers specified in conjunction with the fare as provided for in the applicable fare rules. Less than the minimum number of passengers may not travel at group fares, even upon payment of the minimum number of fares, unless specifically permitted in a given fare rule.

Immediate Family means spouse, domestic partner, children, step-children, grandchildren, parents, step-parents, grandparents, brothers, step-brothers, sisters, step-sisters, daughters-in-law, sons-in-law, fathers-in-law, mothers-in-law, aunts, uncles, nieces, nephews, brother-in-law and sisters-in-law.

Interlining means utilizing the services of more than one Carrier in connection with a particular fare.

Military Agencies means departments of the Army, Navy and Air Force; the Marine Corps; the Coast Guard; the respective academies of the Army, Navy, Air Force and Coast Guard; and the National Guard. The Reserve Officer Training Corps is not included.

Military Passenger means military personnel of the U.S. Military Agencies who are on active duty status or who have been discharged from active military service within seven Days of the date of travel.

Person with a Disability means any person who has a physical or mental impairment that, on a permanent or temporary basis, substantially limits one or more major life activities, has a record of

EXHIBIT A

such an impairment, or is regarded as having such an impairment. This term shall be further defined as required by applicable law, including 14 C.F.R. 382.3.

Personal Attendant means the travel companion of a Person with a Disability that is attending to the personal needs of the passenger with a disability.

Qualifying Alternative Transportation means comparable air transportation, or other transportation used by the passenger, at no extra cost to the passenger, that at the time such arrangements are made is scheduled to arrive at the passenger's next Stopover, or, if none, final destination within two hours after the planned arrival time of the passenger's original flight or flights.

Re-route means to issue a new ticket, or honor an existing ticket, covering transportation to the original destination, but via a different routing than that designated on the ticket.

Round Trip means any trip, the ultimate destination of which is the point of origin, and which is legal routing and comprised of an outbound and return segment. Reservations for all segments of a trip for tickets issued at round-trip fares must be confirmed in the same (a single) passenger name record (PNR)

Routing means the Carrier(s) and/or the cities and/or class of service and/or type of aircraft (jet or propeller) via which transportation is provided between two points.

Safety Assistant means a person required by Delta to travel with a Person with a Disability, pursuant to Rule 6(C): to attend to the Person with a Disability's in-flight medical needs; to assist the Person with a Disability's communication with crewmembers; or to assist the Person with a Disability's evacuation from the aircraft in the event of an emergency.

Self-reliant means that a person does not require services related to a disability beyond that normally provided by the Carrier or beyond that which applicable law requires the Carrier to provide.

Standby Passenger - Passenger who will be enplaned on a flight subject to the availability of space at departure time and only after all passengers having reservations for such flight, have been enplaned on such flight. Not all flights will be available for standby. All specific standby rules are governed by Rule 15.

Stopover means a deliberate interruption of a journey by the passenger, agreed to in advance by the Carrier, at a point between the place of departure and the place of destination. Unless otherwise noted, a stopover will occur when a passenger arrives at a point and fails to depart from such point on:

- a) The first flight on which space is available, or
- b) The flight that will provide for the passenger's earliest arrival at an intermediate or junction point(s) or destination point, via the Carrier and class of service as shown on the passenger's ticket, provided however, that in no event will a stopover occur when the passenger departs from the intermediate/junction point on a flight shown in the Carrier's official general schedule as departing within four hours after arrival at such point.

United States of America- The area comprising the 50 states; the District of Columbia; Puerto Rico; the U.S. Virgin Islands; American Samoa; Canton; Guam; Midway and Wake Islands.

U.S. Armed Forces/U.S. Military Agencies - Department of the Army, Navy, Air Force, Marine Corps, and Coast Guard of the United States of America, the respective academies of the Army, Navy, Air Force, and Coast Guard, and does not include the National Guard Bureau or the Reserve Officer Training Corps, or members of the reserves not holding a valid duty armed forces of the United States green identification card.

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U.S. Military Personnel - Unless otherwise indicated, refers only to active duty military personnel, and means Military personnel of the United States Military Agencies holding a valid active duty U.S. Armed Forces green Identification card, on active duty status and traveling on authorized furlough, leave, or pass, but expressly excluding Military Personnel on temporary duty orders traveling to or from their temporary duty station.

RULE 4: PERSONAL DATA

The passenger recognizes that personal data has been given to Carrier for the purposes of making a reservation for carriage, obtaining ancillary services, facilitating immigration and entry requirements, and making available such data to government agencies. For these purposes, the passenger authorizes Carrier to retain such data and to transmit it to its own offices, other Carriers, or the providers of such services, in whatever country they may be located. All passenger information shall be handled in accordance with Delta's Privacy Policy (https://www.delta.com/content/www/en_US/privacy-and-security.html).

RULE 5: INTER-AIRPORT TRANSPORTATION

When a metropolitan area is served by more than one airport and the passenger requires connecting service with arrival at one airport and departure from another airport, transportation between those airports must be arranged by and at the expense of the passenger. Baggage must be claimed and rechecked by the passenger.

RULE 6: CARRIAGE OF PERSONS WITH DISABILITIES

A) Acceptance for Carriage

Delta will make every effort to accommodate a Person with a Disability and will not refuse to transport a person solely based on the person's disability, except as permitted or required by law.

B) Acceptance of Declaration of Self-Reliance

Unless Delta determines a Safety Assistant is essential for safety, pursuant to Rule 6(C), Delta will accept the determination made by or on behalf of a Person with a Disability as to self-reliance. Once advised that the person is "self-reliant", Delta shall not refuse such passenger transportation on the basis that the Person with a Disability is not accompanied by a Personal Attendant or based on the assumption that the passenger may require extraordinary assistance from airline employees in meeting the passenger's needs.

C) Accompanying Safety Assistant Required for Certain Passengers

Delta may require that a Safety Assistant accompany a Person with a Disability as a condition of providing transportation if Delta determines that such an assistant is essential for safety, such as in, but not limited to, the following circumstances:

- 1) A passenger is unable to comprehend or respond appropriately to safety related instructions due to a mental disability;
- 2) A passenger is unable to physically assist in the passenger's own evacuation from the aircraft due to a severe mobility impairment; or
- 3) A passenger is unable to establish a means of communication with Delta personnel sufficient to receive the safety briefing due to having both severe hearing and vision impairments.

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D) Medical Clearance

Delta will not require a medical clearance for a Person with a Disability as a condition of travel, except as permitted by law. Delta may require a medical certificate when, in good faith and using its reasonable discretion, Delta determines there is reasonable doubt that a passenger can complete the flight safely without requiring extraordinary medical assistance.

E) Seating Restrictions and Assignments

When a person identifies the nature of his or her disability, Delta will, to the extent possible, accommodate the passenger with a seat assignment that suits the passenger's needs, including seating the passenger together with any Safety Assistant or Personal Attendant traveling with the passenger. Persons with a disability will not be prohibited from occupying seats in designated emergency exit rows, except to the extent required by law.

F) Acceptance of Aids

In addition to the regular baggage allowance, Delta will accept, without charge, as priority checked baggage, mobility aids, including but not limited to:

- 1) an electric wheelchair, a scooter or a manually operated rigid-frame wheelchair;
- 2) a manually operated, folding wheelchair;
- 3) a walker, a cane, crutches or braces;
- 4) any device that assists the person to communicate; and
- 5) any prosthesis or medical device.

Where space permits, Delta will, without charge, permit the passenger to store a manually operated, folding wheelchair and other small mobility aids in the passenger cabin during the flight. The assembling and disassembling of mobility aids will be provided by Delta, without charge. Wheelchairs and mobility aids will be the last items to be stowed in the aircraft hold and the first items to be removed.

G) Manually Operated Wheelchair Access

To the extent permitted by space and facilities, Delta will permit a passenger using a manually operated wheelchair to remain in the wheelchair.

- 1) until the passenger reaches the boarding gate;
- 2) while the passenger is moving between the terminal and the aircraft door; and
- 3) while the passenger is moving between the terminal and the aircraft.

H) Service Animals

Delta will accept for transportation, without charge, a service Animal required to assist a Person with a Disability. Service Animals are defined as only dogs, regardless of breed, specifically trained to assist a Person with a Disability. To the extent possible, Delta will assign a seat to the person that provides sufficient space for the person and the service Animal. Delta will permit the service Animal to accompany the person onboard the aircraft and to remain on the floor at the person's seat. The service Animal will not be permitted to occupy a passenger seat. To the extent permitted or required by law, Delta reserves the right to deny transportation to any service animal when reasonably necessary, in Delta's sole discretion, for the comfort or safety of passengers or crewmembers or for the prevention of damage to the property of Delta or its passengers or employees.

I) Services to be Provided to Persons with Disabilities

Upon request, Delta will provide the following services to a Person with a Disability:
Delta Domestic General Rules Tariff

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- 1) assistance with registration at the check-in counter;
- 2) assistance in proceeding to the boarding area;
- 3) assistance in boarding and deplaning;
- 4) assistance in stowing and retrieving carry-on baggage and retrieving checked baggage;
- 5) assistance in moving to and from an aircraft lavatory;
- 6) assistance in proceeding to the general public area or, in some cases, to a representative of another Carrier;
- 7) transfer between the person's own mobility aid and a mobility aid provided by Delta;
- 8) transfer between a mobility aid and the passenger's seat;
- 9) limited assistance with meals, such as opening packages, identifying items, and cutting large food portions;
- 10) inquiring periodically during a flight about a passenger's needs; and
- 11) briefing individual passengers with disabilities and any attendant on emergency procedures and the layout of the cabin.

J) Advance Notice for Special Services

To the extent permitted by law, Delta may require advance notice for certain special services desired by a Person with a Disability. Services applicable under this rule include but are not limited to:

- 1) transportation of an electric wheelchair on an aircraft of less than 60;
- 2) provision of hazardous materials packaging for batteries or other assistive device that are required to have such packaging;
- 3) accommodation for a Group of 10 or more passengers with disabilities traveling as a Group;
- 4) provision of an onboard wheelchair on an aircraft of 60 seats or more;
- 5) transportation of a Service Animal in the cabin (unless the ticket is purchased less than 48 hours prior to departure);
- 6) transportation of a Service Animal on a Segment scheduled to take 8 or more hours; or
- 7) accommodation of a passenger with both severe vision and hearing impairments.

Such requests should be made by the passenger at the time of reservation and as far in advance as possible. If a passenger requests a special service at least 48 hours prior to departure, Delta will, to the extent possible, provide the service. If a passenger requests a service less than 48 hours prior to departure, Delta will make a reasonable effort to provide the service.

K) Boarding and Deplaning

Where a Person with a Disability requests assistance in boarding or seating or in stowing carry-on baggage, Delta will allow the passenger to board the aircraft in advance of other passengers where time permits.

L) Communication and Confirmation of Information

Delta will use reasonable efforts ensure that announcements to passengers concerning stops, delays, schedule changes, connections, on-board services, and claiming baggage are communicated to any person with a disability in a manner sufficient for the person to understand the communication.

M) Inquire Periodically

When passengers in wheelchairs that are not independently mobile are waiting to board an aircraft, Delta will inquire periodically about their needs and shall attend to those needs where the services required are usually provided by Delta.

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RULE 7: REFUSAL TO TRANSPORT

Delta may refuse to transport any passenger, and may remove any passenger from its aircraft at any time, for any of the following reasons:

A) **Government Request or Force Majeure**

Whenever necessary to comply with any law, regulation or government directive or request; or when advisable in Delta's sole discretion due to weather or other conditions beyond Delta's control including Acts of God, strikes, civil unrest, embargoes, war, and other similar matters of force majeure.

B) **Search of Passenger or Property**

When a passenger refuses to permit search of his person or property for explosives, weapons, dangerous materials, or other prohibited items.

C) **Proof of Identity**

When a passenger refuses to produce positive identification on request;

D) **Failure to Comply with Delta's Rules or Contract of Carriage**

When a passenger fails or refuses to comply with any of Delta's rules or regulations, or any term of the Contract of Carriage.

E) **Passenger's Conduct or Condition**

Delta will not refuse to provide transportation to a Person with a Disability, as defined in 14 C.F.R. § 382.5 and 382.31, based upon the passenger's disability, except as allowed or required by law. Delta will not refuse to provide transportation based upon race, color, national origin, religion, sex, or ancestry. Subject to those qualifications, Delta may refuse to transport any passenger, or may remove any passenger from its aircraft, when refusal to transport or removal of the passenger is reasonably necessary in Delta's sole discretion for the passenger's comfort or safety, for the comfort or safety of other passengers or Delta employees, or for the prevention of damage to the property of Delta or its passengers or employees. By way of example, and without limitation, Delta may refuse to transport or may remove passengers from its aircraft in any of the following situations.

- 1) When the passenger's conduct is disorderly, abusive or violent, or the passenger appears to be intoxicated or under the influence of drugs;
- 2) When the passenger is barefoot;
- 3) When the passenger interferes with the flight crew's activities, or fails to obey the instruction of any member of the flight crew;
- 4) When the passenger has a contagious disease that may be transmissible to other passengers during the normal course of the flight;
- 5) When the passenger is unable to sit in a seat with the seatbelt fastened;
- 6) When the passenger's behavior may be hazardous or creates a risk of harm to himself/herself, the crew, or other passengers or to the Carrier's aircraft and/or property, or the property of other passengers;
- 7) When the passenger is seriously ill, unless the passenger provides a physician's written permission to fly; or
- 8) When the passenger's conduct, attire, hygiene or odor creates an unreasonable risk of offense or annoyance to other passengers.

G) **Recourse of Passenger**

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Passengers shall not engage in any conduct that would authorize Delta to refuse transport under this Rule. The sole recourse of any passenger refused carriage or removed for any reason specified in this Rule shall be recovery of the refund value of the unused portion of his or her ticket as provided in Rule 22.

RULE 8: ACCEPTANCE OF CHILDREN

A) Accompanied Children

(1) General Rule

Except as set forth in this Rule, children under the age of 15 will not be accepted for transportation unless they are accompanied on the same flight in the same cabin by a parent, legal guardian, or other passenger at least 18 years of age. Delta may require documentation verifying the child's age at check-in. A valid passport, birth certificate or other government-issued identification are all acceptable.

(2) Accompanied Children Less Than 2 Years Old.

One child less than 2 years old not occupying a seat may travel with an adult fare-paying passenger at least 18 years old or parent/legal guardian at no additional charge. Additional infants, and infants occupying a seat, must pay the applicable adult fare. A maximum of 2 infants is permitted for each adult. Delta recommends that any child occupying a seat be placed in an approved safety seat. Infants who will reach their second birthday during a journey must occupy a seat and pay the applicable adult fare for the entire journey.

(3) Accompanied Children 2 Years and Older

The fare for children ages 2 years and older will be the Applicable Adult Fare.

B) Unaccompanied Children Under the age of 15.

Children under the age of 15 may travel unaccompanied on Delta only under the following conditions:

(1) Children under the age of 5

No child under the age of 5 will be accepted for unaccompanied travel.

(2) Children aged 5 through 14

Children ages 5 through 7 may travel unaccompanied on non-stop flights only and may not connect to other airlines. Children ages 8 through 14 may travel unaccompanied on Delta's non-stop or connecting flights, but may not connect to other airlines with the exception of Delta Connection, KLM and Air France.

C) Unaccompanied Minor Service

(1) When Unaccompanied Minor Service is Required

Except as otherwise provided in this Rule, Unaccompanied Minor Service is required for all passengers under the age of 15 that Delta accepts for transportation.

(2) Unaccompanied Minor Service Defined

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Unaccompanied Minor Service means that Delta will provide supervision for the child from the time of boarding until the child is met at the stop over point or destination. Delta will assume no financial or guardianship responsibilities for unaccompanied children beyond those applicable to an adult passenger. Delta has the right, but is not obligated to require identification of the responsible party meeting the child at a transfer point or final destination. An unaccompanied minor must be confirmed to destination and may not be confirmed on the last connecting flight of the evening (with the exception of markets where there is only one connection and it is the last flight of the day, or for flights to or from Alaska or Hawaii), nor may an unaccompanied minor travel on a flight expected to terminate short of, or bypass, the child's destination. Delta may temporarily suspend unaccompanied minor travel and/or rebook the child on an alternate flight if there is a possibility that weather, irregular operations, or other conditions may cause a flight to be diverted. Delta requires that a parent or responsible adult accompany the child until boarding, and this adult must provide the name, telephone number, and address of the party meeting the child at the transfer point or final destination. Delta reserves the right to refuse to release an unaccompanied child to anyone other than the pre-designated party. Delta representatives cannot administer medicine to children flying alone. An unaccompanied minor may not travel on any domestic flight greater than 2 hours in length which departs between 9 PM and 5 AM ("red-eye flight"). This restriction does not apply for red-eye flights to/from Hawaii and Alaska, however, an unaccompanied minor on a red-eye flight from Hawaii or Alaska may not connect to a domestic red-eye flight or to the last flight of the day unless it is the only flight option for the day.

D) Unaccompanied Children Ages 15-17

Although not required, a parent or guardian may request Unaccompanied Minor Service for unaccompanied minors ages 15-17. The applicable unaccompanied minor service charge will apply.

E) Unaccompanied Minor Service Charge

In addition to the applicable fare, unaccompanied minors for whom Unaccompanied Minor Service is required or has been requested must pay an unaccompanied minor service charge in the amounts set forth below. Delta reserves the right to refuse to transport any unaccompanied minor for whom Unaccompanied Minor Services are required or requested but for whom the applicable unaccompanied minor service fee has not been paid. If 2 or more unaccompanied minors who are members of the same immediate Family and ticketed together are traveling together, only one service charge will be assessed.

The unaccompanied minor service charge will be specified at: https://www.delta.com/content/www/en_US/traveling-with-us/special-travel-needs/children.html and is incorporated by reference.

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RULE 9: SPECIALLY TRAINED SERVICE DOGS

Delta accepts for transportation, without charge, dogs trained: (1) to lead the blind, when the dog accompanies a passenger with impaired vision dependent upon such dog; (2) to assist the deaf, when the dog accompanies a passenger with impaired hearing dependent upon such dog; (3) to assist the physically and psychiatrically impaired passengers dependent upon such dog, or (4) in explosive detection or search and rescue, only when such dogs are accompanied by U.S. military and U.S. government handlers. In the cases of (1) and (2) above, Delta will also accept such dogs when accompanied by the dog's trainer and is en-route to the domicile of the owner for completion of training. In all cases, the service dog will be permitted to accompany such passenger into the cabin but will not be permitted to occupy a seat.

RULE 10: SMOKE FREE SERVICE

Delta prohibits smoking and the use of all smokeless tobacco products (including e-cigarettes) on all flights.

RULE 11: PASSENGER MEDICAL OXYGEN

On flights operated by Delta or Delta Connection, only portable oxygen concentrators (POCs) approved by the FAA are accepted for inflight medical oxygen. A 48-hour notice is required. Please see https://www.delta.com/content/www/en_US/traveling-with-us/special-travel-needs/disabilities.html to obtain information regarding the required medical certificate from a licensed physician and medical screening prior to flight. Medical screening service is provided by Delta at no cost to the passenger. If the passenger makes any voluntary change to his/her itinerary after completion of the medical screening, re-screening may be required. Passengers using POCs on a Delta flight must be seated in a row other than an emergency exit or bulkhead.

RULE 12: TICKETS

- A) You must present a valid ticket for transportation, which entitles you to transportation only between points of origin and destination via the ticketed routing.
- B) Tickets are not transferable. The purchaser of the ticket and the passenger are responsible for ensuring that the ticket accurately states the passenger's name. Presentation of a ticket for transportation by someone other than the passenger named on the ticket renders the ticket void.
- C) Tickets are valid for travel only when used in accordance with all terms and conditions of sale.
- D) Where a ticket is invalidated as the result of the passenger's non-compliance with any term or condition of sale, Delta may:
 - A) Cancel any remaining portion of the passenger's itinerary or bookings,
 - B) Confiscate any unused portion of the ticket,
 - C) Refuse to board the passenger or check the passenger's baggage, and/or
 - D) Assess the passenger for the reasonable remaining value of the ticket, which shall be no less than the difference between the fare actually paid and the lowest fare applicable to the passenger's actual itinerary.

E) Ticket Expiration
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A ticket is valid for one year from the date of issue, and all travel must be completed within the validity period. If exchanged, whether travel has commenced or not, the ticket must be reissued and all travel completed within one year from the original date of issue. However, certain fares may have different periods of validity, in which case the specific rules associated with the fare will apply. If the passenger is prevented from using the ticket, or a portion of the ticket, before the one-year expiration date due to lack of space or flight cancellation, the ticket will remain valid until space can be provided.

- F) An electronic ticket (E-Ticket/ET) is the record of agreement maintained and processed within the Carrier's electronic reservation system. A written receipt is provided to the purchaser of the electronic ticket which contains a reference for retrieving the record within the Carrier's reservation system and summary of the ticket information. The Carrier may mandate the issuance of an electronic ticket (ET) regardless of market, Carrier, form of payment, and customer type (including SkyMiles and participating Carrier frequent flyer members).

- G) External Reissue Charge

Delta will collect a nonrefundable fee of USD \$50.00 for reissue by Delta of tickets originally issued in the United States or Canada by any ticketing source other than Delta, however, the charge does not apply to same day confirmed transactions, IROP or schedule change situations, SkyMiles upgrade reissues, tickets reissued on delta.com, or tickets issued at military or government fares. This fee applies to all changes to tickets issued at the request of the passenger.

- H) Capacity Limitations

Delta will limit the number of passengers carried on any one flight in any fare class or cabin, and such fares and fare classes will not necessarily be available on all flights or in all markets. The number of seats which Delta makes available on a given flight is determined by Delta's best judgment of the anticipated total passenger load on each flight.

RULE 13: CONFIRMATION OF RESERVATIONS

No reservation on Delta is valid until the availability and allocation of the reserved space is confirmed by Delta or its agent and entered in Delta's electronic reservations system.

Unless an earlier ticketing deadline is imposed by the applicable fare rule or other agreement between Delta and the passenger, Delta must receive payment and the reservation must be ticketed at least 30 minutes prior to the scheduled flight departure time. Failure to comply with this ticketing deadline or an earlier ticketing deadline imposed by the applicable fare rule or other agreement with the passenger will result in cancellation of the reservation without notice. A list of airports imposing an earlier ticketing deadline is set forth at delta.com and incorporated herein by reference.

RULE 14: CANCELLATION OF RESERVATIONS

- A) Delta Will Cancel reservations of any passenger whenever such action is necessary to comply with any governmental regulation, or to comply with any governmental request for emergency transportation in connection with the national defense, or whenever such action is necessary or advisable by reason of weather or other conditions beyond its control.
- B) The Transportation Security Agency's (TSA) Secure Flight Program requires that Delta collect

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the following additional information from passengers when making a reservation to fly within, into or out of the United States and reservations for point-to-point international flights operated by U.S.-based airlines:

- 1) Full Name (required), as it appears on government-issued I.D. approved for use when traveling
- 2) Date of Birth (required)
- 3) Gender (required)
- 4) Redress Number (optional)

Delta may cancel your reservation if the reservation does not include the required Secure Flight Passenger Data (full name, date of birth and gender) at least 72 hours prior to your scheduled departure. This cancellation policy applies to all Delta tickets, including tickets for our codeshare partners' flights.

C) Failure To Appear

If you fail to appear for any flight in your itinerary without changing or canceling your ticket prior to departure, Delta may cancel your reservation for all remaining flights in your itinerary, and, in the case of a nonrefundable ticket, there will be no remaining value to your ticket.

D) Airport Check-In Time Limits

- 1) Reservations Subject to Cancellation for Failure to Meet Check-in and Boarding Deadlines

Your reservation may be cancelled if you do not comply with all applicable check-in procedures by the check-in deadline for your flight, or if you are not at the gate and ready for boarding by the applicable boarding deadline. The check-in and boarding deadlines in effect on the date of travel will apply and are posted on delta.com.

- 2) Passenger Responsibility to Allow Sufficient Time

You must arrive at the airport with sufficient time to comply with all check-in procedures, complete security screening, comply with all other government requirements and departure processing, and arrive at the gate by the applicable boarding deadline. Delta will not delay flights for passengers who are not at the gate and ready to board on time, and is not liable for any loss or expense due to the passenger's failure to comply with this provision.

RULE 15: VOLUNTARY STANDBY TRAVEL

Tickets may not be used for voluntary standby travel on any flight other than the ticketed flight unless expressly permitted by the fare rules of the ticket. When voluntary standby travel on another flight is permitted, the following provisions apply:

- 1) Voluntary standby travel is subject to the availability of seats at departure time in the same cabin as originally ticketed and does not guarantee transportation on the requested flight(s) including the origin, downline, or connecting flights. Request for voluntary standby travel may be made up to 24 hours prior to original ticketed departure time. Notwithstanding anything set forth herein, Same Day Paid Standby travel is not permitted for Basic Economy fares.

- 2) Voluntary standby travel is limited to passengers with a confirmed ticketed reservation for a later flight on the same day of travel. Delta will not permit changes to the origin, destination, or co-terminals, or to the routing for fares that are flight-specific or require specific routing.

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3) Delta reserves the right to charge a nonrefundable same day standby fee when a passenger requests to standby for an alternate flight for which the passenger does not hold a confirmed reservation. The fee, if any, may be assessed based on each Segment from the passenger's origin to destination or next point of stop over. These fees will be charged if the passenger flies any portion of the Segment, therefore, passengers that are removed at intermediate points on through flights and/or voluntarily deplaned at a destination other than the destination for which the fee was intended will not be eligible for a partial or whole refund. Refer to delta.com for current standby fees.

4) Delta is not liable to pay compensation, including but not limited to, denied boarding compensation and amenities, for a failure to provide transportation and/or accommodate the passenger's request for voluntary standby travel.

5) Delta reserves the right to discontinue accepting and placing passengers on the airport standby list.

6) Eligibility for same day standby is at Delta's discretion and may be restricted based on operational considerations or limited to selected flights, specified booking classes, payment by credit card only. Eligibility may also be restricted by the fare rules governing the passenger's ticket.

7) Delta may choose to accommodate passengers from the airport standby list in any specified order and may take into account ticket value, frequent flyer status, check-in time, and other factors.

8) Delta reserves the right to limit the number of passengers on the airport standby list, only accept the passenger's standby request at an airport location, and limit the minimum and maximum time frames that airport standby listing is allowed.

RULE 16: FARES

A) Fares Applicable Only For Ticketed Itinerary

Fares apply for travel only between the points for which they are published. Tickets may not be issued at fare(s) published to and/or from a more distant point(s) than the points being traveled, even when issuance of such tickets may produce a lower fare.

B) Erroneous Fares

Delta will exercise reasonable efforts to ensure that all fares it publishes are accurate and available for sale, but Delta, as a policy, does not file nor intend to file tickets priced at a zero fare or that are erroneous or reasonably apparent as erroneous. If an erroneous fare is inadvertently published for sale and a ticket is issued at the erroneous fare before it has been corrected, Delta reserves the right to cancel the ticket purchase and refund all amounts paid by the purchaser or, at the purchaser's option, to reissue the ticket for the correct fare.

In this event, Delta will also reimburse any reasonable, actual, and verifiable out-of-pocket expenses incurred by the purchaser in reliance upon the ticket purchase. The purchaser must provide receipts or other evidence of such actual costs incurred in support of any reimbursement request.

C) Circumvention of Published Fares

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Delta prohibits ticketing practices intended to circumvent the published fare that Delta intends to offer for your true itinerary. These practices include:

- 1) **Back to Back Ticketing** - The purchase or usage of two or more tickets issued at round trip fares, or the combination of two or more round trip fares end to end on the same ticket for the purpose of circumventing minimum stay requirements.
- 2) **Throwaway Ticketing** - The purchase or usage of round trip fares for one way travel.
- 3) **Hidden City/Point Beyond Ticketing** - The purchase or usage of a fare from a point before the passenger's actual origin or to a point beyond the passenger's actual destination.
- D) When the fare between any 2 points is not specifically published via the desired routing, the fare will be constructed by combining two or more separate fares, via the desired routing from the passenger's point of origin to point of destination, which produce the lowest fare for the class of service used; provided, however, that combined fare will not exceed the lowest fare determined in accordance with this rule and the applicable fare rules. Delta's direct sales channels will offer customers the lowest applicable published fare for itineraries between points in the United States on Delta, Delta Connection, Delta Shuttle and Delta Codeshare flights for the flights, dates and class of service requested to which our representatives have access. Please note that Delta will quote lowest published fare that we offer for the specific airports and type of itinerary that you request. We do not search for or quote fares for other itineraries, including by combining one-way or other fares. Fares not accessible directly from Delta may include, but are not limited to, unpublished fares, consolidator fares, negotiated fares, tour or package fares, and discounts available only via Internet web sites.
- E) Duplicate, Fictitious and impossible/illogical bookings

Delta prohibits duplicate, impossible, or fictitious bookings, including but not limited to multiple conflicting itineraries for the same passenger on the same day or bookings with connections that depart before the arrival of the inbound flight. Delta reserves the right to cancel any such booking which has not been ticketed, and to cancel and refund any such booking which is ticketed at a refundable fare.

RULE 17: BAGGAGE

A. Checked and Carry-On Baggage Policies and Restrictions

Ticketed passengers may check baggage and carry baggage on board Delta aircraft, subject to this rule. Delta's baggage policies and baggage fees are available at www.delta.com/bags and are incorporated by reference as if set forth in this contract of carriage. These policies restrict the quantity, size and weight of baggage, and govern the carriage of hazardous and dangerous goods, and special items (such as sporting equipment, medical equipment and mobility aids, musical instruments, and fragile and perishable items).

B. Baggage Liability

1. General Limitation of Liability for Loss of, Damage to, or Delay in Delivery of Baggage

Delta's liability for loss, damage, or delay in the delivery of a passenger's checked baggage, carry-on baggage, or other personal property tendered to Delta in connection with air transportation on Delta shall be limited to proven damage or loss. Actual value for reimbursement of lost or damaged property shall be determined by the documented original purchase price less any applicable depreciation for prior usage. Under no circumstances shall the liability for loss, damage, or delay in the delivery of baggage exceed

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\$3,800 per fare-paying passenger. These limitations shall also apply to baggage or personal property if and to the extent accepted by Delta for temporary storage at a city or airport ticket office or elsewhere before or after the passenger's trip.

2. Preexisting Damage/ Ordinary Wear and Tear

Delta is not liable for preexisting damage (including minor cuts, scratches, and broken zippers as a result of over packing) or for wear and tear resulting from ordinary handling of baggage.

3. Special Items

a) Wheelchairs and Personal Assistive Devices

The maximum liability limitations set forth above shall not apply to claims for loss, damage, or delay in the delivery of wheelchairs or other assistive devices. Delta will accept these items as checked baggage regardless of packaging, but will not be responsible for repair or replacement of such items due to damage existing at the time of acceptance (which will be noted by Delta on a release form at the time of acceptance).

b) No Liability for Loss or Damage to Fragile, Perishable, or Precious Items Not Identified to Delta at the Time of Check-In

Delta is not liable for any loss or damage to precious items, nor for deterioration or spoilage resulting from delay in delivery of any perishable items, nor for damage to or damage caused by, fragile articles that are unsuitably packed, if such items are included in the passenger's checked baggage without Delta's knowledge. The passenger must identify such items to Delta at the time of check-in.

c) Fragile or Perishable Items Accepted Pursuant to Limited Liability Release

Delta is not liable for loss, damage, or delay in the delivery of a passenger's baggage or other property accepted by Delta pursuant to the execution of a Limited Liability Release form executed by the passenger for the purpose of inducing Delta to carry the item, except as expressly provided by the Limited Liability Release.

4. Loss Due To Government or Airport Action

Delta is not liable for loss, damage, or delay of a passenger's checked baggage, carry-on baggage, wheelchair or assistive device, or any personal item that may result from a security search of such items conducted by an agent of any local, state, or federal agency in charge of airport security screening, or from confiscation by an agent of any local, state, or federal agency.

5. Time Limitations for Baggage Claims

Delta is not liable for any loss, damage, or delay in the delivery of baggage arising out of or in connection with transportation of, or failure to transport any baggage unless notice of a claim is presented to a Delta office within 24 hours after the alleged occurrence of the events causing the claim, and unless the action is commenced within one year after such alleged occurrence. Any notification received within 24 hours that informs Delta of the nature of the claim will suffice, and Delta may deny any claim not presented within 24 hours of the alleged occurrence. Written notification of loss must be received by Delta's system baggage within 21 Days after the alleged occurrence, and Delta may deny any claim for failure to provide written notice within 21 Days.

6. Carriage By Multiple Carriers

When the transportation includes Delta and one or more Carriers with a limitation of liability exceeding \$3,800 for each fare-paying passenger and responsibility for loss, damage, or delay in delivery of baggage cannot be determined, the liability limit of \$3,800 for each fare-paying passenger will be applied to all Carriers. Whenever responsibility for loss, damage, or delay in delivery of baggage cannot be determined and when transportation is via Delta and one or more Carriers which exclude certain items in checked baggage from their liability, Delta will not be liable for the excluded items.

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C. Governing Rules for Domestic Codeshare Flights

When the passenger's travel involves domestic flights operated by a Delta domestic codeshare partner other than a Delta Connection carrier, the baggage rules of the marketing carrier on the first Segment of a round trip, or the marketing carrier on the first Segment of each one way trip will govern when determining baggage acceptance policies and applicable baggage fees. Notwithstanding the foregoing, the baggage liability provisions set forth above shall govern the liability of Delta and/or any Delta Connection carrier with respect to any transportation subject to this contract of carriage.

RULE 18: ELECTRONIC SURVEILLANCE

Passengers and their baggage are subject to inspection with an electronic detector with or without the passenger's consent or knowledge.

RULE 19: FLIGHT DELAYS/CANCELLATIONS

A. Delta's Liability in the Event of Schedule Changes, Delays and Flight Cancellations

If there is a flight cancellation, diversion, delay of greater than 120 minutes, or that will cause a passenger to miss connections, Delta will (at passenger's request) cancel the remaining ticket and refund the unused portion of the ticket and unused ancillary fees in the original form of payment in accordance with Rule 22. If the passenger does not request cancellation and refund of the remaining portion of the ticket, Delta will transport the passenger to the destination on Delta's next flight on which seats are available in the class of service originally purchased. At Delta's sole discretion and if acceptable to the passenger, Delta may arrange for the passenger to travel on another Carrier or via ground transportation. If acceptable to the passenger, Delta may provide transportation in a lower class of service, in which case the passenger may be entitled to a partial refund. If space on the next available flight is available only in a higher class of service than purchased, Delta will transport the passenger on the flight, although Delta reserves the right to upgrade other passengers on the flight according to its upgrade priority policy to make space in the class of service originally purchased. Delta will not be liable under any circumstances for any special, incidental or consequential damages arising from the foregoing.

B. Delta's Liability for Additional Amenities in the Event of Schedule Changes, Delays and Flight Cancellations

Except as provided above, Delta shall have no liability if the flight cancellation, diversion or delay was due to force majeure. As used in this rule, "force majeure" means actual, threatened or reported:

- (1) Weather conditions or acts of God;
- (2) Riots, civil unrest, embargoes, war, hostilities, or unsettled international conditions;
- (3) Strikes, work stoppages, slowdowns, lockout, or any other labor-related dispute;
- (4) Government regulation, demand, directive or requirement;
- (5) Shortages of labor, fuel, or facilities; or
- (6) Any other condition beyond Delta's control or any fact not reasonably foreseen by Delta.

However, when a passenger's travel is interrupted for more than 4 hours after the scheduled departure time as a result of flight cancellation or delay on the date of travel other than from force majeure, Delta will provide the passenger with the following additional amenities during the delay:

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(a) Hotels

If overnight accommodations are available at Delta contracted facilities, Delta will provide the passenger with a voucher for one night's lodging when the delay is during the period of 10:00 pm to 6:00 am. Delta will provide free public ground transportation to the hotel if the hotel does not offer such service. If accommodations are not available, Delta will provide the passenger with a voucher that may be applied to future travel on Delta equal in value to the contracted hotel rate, up to \$100 USD.

(b) Ground Transportation

In lieu of lodging or other amenities, Delta will furnish ground transportation to the destination airport if a passenger's flight is diverted to an alternative airport and if the destination on the ticket and the diverted airport destination are within the following city groups:

San Francisco, CA (SFO)/ Oakland, CA (OAK)/ San Jose, CA (SJC)
Los Angeles, CA (LAX)/ Long Beach, CA (LGB)/ Ontario, CA (ONT)/ Santa Ana, CA (SNA)
Denver, CO (DEN)/ Colorado Springs (COS)
O'Hare - Chicago, IL (ORD)/ Midway - Chicago, IL (MDW)
Dallas-Ft. Worth, TX (DFW)/ Dallas, TX Love Field (DAL)
Bush Intercontinental - Houston, TX (IAH)/ Hobby - Houston, TX (HOU)
Fort Lauderdale, FL (FLL)/ Miami, FL (MIA)/ West Palm Beach, FL (PBI)
Baltimore, MD (BWI)/ National - Washington, DC (DCA)/ Dulles - Washington, DC (IAD)
Newark, NJ (EWR)/ LaGuardia - New York, NY (LGA)/ John F. Kennedy - New York, NY (JFK)
Orlando, FL (MCO)/ Tampa, FL (TPA)/ Daytona Beach, FL (DAB)/ Melbourne, FL (MLB)/ Sarasota Bradenton, FL (SRQ)

(c) Additional Amenities

Delta will provide such additional or alternative amenities as are necessary to maintain the safety and/or welfare of customers with special needs such as unaccompanied children and customers with disabilities. Such amenities will be furnished consistent with special needs and/or circumstances.

C. Extended Tarmac Delays - Codeshare Services

In the event of extended tarmac delays on flights operated by a Delta codeshare partner, the contingency plan for lengthy tarmac delays of the operating Carrier will apply.

RULE 20: DENIED BOARDING COMPENSATION

A) Overbooking of Flights

Because passengers with confirmed reservations on a flight sometimes fail to show, Delta reserves the right to sell more tickets for travel on each flight than there are seats available on the aircraft. In some cases, this may result in a flight in which Delta cannot accommodate one or more passengers with confirmed reservations (an "oversold flight"). Delta may deny boarding to passengers with confirmed reservations on an oversold flight as set forth in this rule. The rights of passengers who are denied boarding shall be governed by this rule.

B) Request For Volunteers

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Before denying boarding to any passenger holding a confirmed reservation on an oversold flight, Delta will ask other passengers on the flight to voluntarily give up their seat in exchange for compensation in an amount and form to be determined by Delta in its sole discretion. If a sufficient number of volunteers agree to give up their seats in response to Delta's offer, then no passenger with a confirmed reservation will be involuntarily denied boarding due to the oversale of the flight. If there are more volunteers than required, selection of the volunteer(s) to receive compensation will be determined in Delta's sole discretion.

C) Involuntary Denied Boarding

If an insufficient number of passengers volunteer to give up their seats in response to Delta's offer, Delta may involuntarily deny boarding to one or more passengers on the oversold flight according to the following boarding priority rules:

- 1) Passengers Holding Tickets for Travel in Premium Cabin, SkyMiles members identified with a Diamond Medallion ("DM"), Platinum Medallion ("PM"), or Gold Medallion ("GM") elite-status designation, and passengers holding tickets purchased under a DL corporate travel agreement.

Passengers holding tickets for confirmed space in the First or Business class cabin, SkyMiles members identified with a DM, PM, or GM elite-status designation, and passengers holding tickets purchased under a DL corporate travel agreement will be accommodated before other passengers holding tickets and/or boarding passes for confirmed space in the Coach cabin.

- 2) Passengers With Boarding Passes

Subject to the terms set forth in Rule 20(c)(1) and (4), passengers holding boarding passes who check in and present themselves at the departure gate in compliance with Rule 13 will be accommodated before passengers traveling in the same cabin who have not been issued boarding passes or who fail to comply with applicable check-in requirements. Subject to the availability of seats on the aircraft, boarding passes may be obtained by passengers who hold tickets for confirmed reserved space in the following manner:

- a) for passengers traveling on electronic tickets, through the Online Check-in feature on Delta.com within 24 hours of scheduled departure
- b) for passengers traveling on electronic tickets, through a Delta airport kiosk within four hours of scheduled departure
- c) from a Delta airport ticket counter and/or the check-in desk located in the departure area.

- 3) Passengers Without Boarding Passes

Passengers with confirmed reservations who have not been issued a boarding pass and present themselves at the departure gate in compliance with Rule 13 will be accommodated according to the following priority rules:

- a) Passengers who have been rebooked to the present flight as a result of an irregular operation (e.g., delay, cancellation) of a previously booked flight.
- b) SkyMiles members identified with a Silver Medallion ("FO") elite-status designation.
- c) Passengers with a SkyTeam Elite or Elite Plus status.

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- d) Passengers without any elite-status designation.

Within each of the foregoing groups, passengers are prioritized first by class of service and then by time of check-in

4) Special Needs Passengers

Because of the special needs of passengers with disabilities, unaccompanied minors, and aged or infirm passengers, and active members of the U.S. Armed Forces on travel orders, Delta reserves the right to accommodate such passengers without regard to the boarding priorities established by this provision.

D) Transportation For Passengers Denied Boarding

Delta will provide transportation to passengers who volunteer to relinquish their seats or who are denied boarding involuntarily due to the oversale of a flight as follows:

1) Next Available Flight

Delta will transport the passenger on its next flight on which space is available to the passenger's next Stopover, or if none, to the passenger's destination, at no additional cost to the passenger.

2) Transportation on Other Airlines

At Delta's sole discretion, Delta may instead arrange for transportation on any other Carrier or combination of Carriers to the passenger's next Stopover, or if none, to the passenger's destination, at no additional cost to the passenger

3) Overnight Stay Required

If the transportation provided to a passenger pursuant to this section requires that the passenger stay overnight before continuing his/her travel, Delta will provide hotel accommodations to the passenger at no additional cost. If hotel accommodations are unavailable, Delta will compensate the passenger with a credit voucher valid for future purchases from Delta in an amount commensurate in value with the local average contracted hotel rate up to \$100 USD, to be determined by Delta.

E) Compensation For Involuntary Denied Boarding

When a passenger with a confirmed reservation is involuntarily denied boarding on an oversold flight pursuant to this rule, Delta's sole liability to the passenger shall be to provide alternative transportation as provided in paragraph D, above, and to pay denied boarding compensation, if applicable, pursuant to the terms and conditions of this rule.

1) Conditions For Payment of Involuntary Denied Boarding Compensation

The passenger shall not be entitled to any compensation for involuntary denied boarding if:

a) Passenger's Failure to Comply with Contract of Carriage

The passenger has not complied fully with Delta's contract of carriage or tariff provisions regarding ticketing, reconfirmation, check-in, or acceptability for transportation

b) Substitution of Equipment

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The flight for which the passenger holds confirmed space is unable to accommodate that passenger because of substitution of equipment of lesser capacity when required by operational or safety reasons; or, on an aircraft with a designed passenger capacity of 60 or fewer seats, the flight for which the passenger holds confirmed reserved space is unable to accommodate that passenger due to weight/balance restrictions when required by operational or safety reasons.

c) Carriage in Alternative Cabin

Delta offers to accommodate the passenger in a section of the aircraft other than that specified on his/her ticket at no extra charge; provided however that if a passenger is seated in a section for which a lower fare applies, the passenger will be entitled to a refund of the difference in fare.

d) Alternative Transportation

Delta arranges comparable air transportation, or other transportation used by the passenger, at no extra cost to the passenger, that at the time such arrangements are made is scheduled to arrive at the passenger's next Stopover, or, if none, final destination within one hour after the planned arrival time of the passenger's original flight or flights.

F) Amount of Involuntary Denied Boarding Compensation

If all conditions for compensation are met, then Delta shall pay compensation to passengers involuntarily denied boarding in an amount to be calculated as follows:

1) When Delta arranges Qualifying Alternative Transportation

If Delta arranges Qualifying Alternative Transportation, then Delta will pay denied boarding compensation in an amount equal to 200% of the fare (including any surcharges and air transportation taxes) to the passenger's next Stopover, or if none, to his/her final destination, but no more than \$775.00.

2) Where Delta cannot arrange Qualifying Alternative Transportation

If Delta cannot arrange Qualifying Alternative Transportation, then Delta will pay denied boarding compensation in an amount equal to 400% of the fare (including any surcharges and air transportation taxes) to the passenger's next Stopover, or if none, to his/her final destination, but no more than \$1550.00.

G) Time of Payment for Involuntary Denied Boarding Compensation

If all conditions for compensation are met, Delta will pay any involuntary denied boarding compensation on the day and at the place where the denial of boarding occurred, in cash or immediately negotiable check; provided, however, that if the alternative transportation arranged for the passenger's convenience departs before the payment can be made to the passenger, then payment will be made by mail or other means within 24 hours after the denied boarding occurs.

RULE 21: REROUTING

A General Provisions

1. Fare Applicable To Rerouting Or Change In Destination

a. Unless otherwise specified in the fare rule, a passenger may change the routing, destination, Carrier(s), class of service, or dates of travel specified on an unused ticket in accordance with paragraph 2) below, provided that, after transportation has commenced, a one-way ticket will not be converted into any other type of ticket (such as a round-trip, circle-trip or open-jaw trip ticket).

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- b. Except as otherwise provided in Rule 19, the fares and charges applicable, when a rerouting or change in ultimate destination is made at passenger's request prior to arrival at the ultimate destination named on the original ticket, shall be the applicable fare and charges for the entire revised itinerary in effect on the date that the rerouting or change in ultimate destination is entered on the passenger's new ticket.
 - c. Rule 12(E) applies for validity of voluntarily exchanged/reissued tickets.
2. **Fare Applicable To Upgrading Class Of Service While In Flight**
When a passenger moves from one class of service to another while in flight, an additional collection will be made in an amount equal to the difference between:
1. The one-way fare applicable to the class of service used from passenger's point of origin on such flight to the last scheduled stop prior to the passenger's change in class of service, plus the one-way fare in the new class of service from such stop to the passenger's destination on such flight, and
 2. The fare paid for transportation from the passenger's origin to destination on such flight.

When the amount described in 1) above is less than the amount described in 2) above, no additional collection will be made. The acceptance of such passenger in the class of service to which he/she is moving for travel beyond the next scheduled stopping point in the flight is subject to availability. Discounts will not apply.

B. Ticket reissue procedures

-Unless otherwise specified in a fare rule, the following procedures will apply to Delta ticket reissues.

For nonrefundable fares:

- If the price of the new ticket is lower than the ticket being reissued, the difference in ticket price will be provided to the passenger in the form of a non-refundable Delta travel voucher at the time of reissue.
- If the price of the new ticket is equal to or higher than the ticket being reissued any difference in fare will be collected at the time of reissue.

For refundable fares:

- If the price of the new ticket is lower than the ticket being reissued, any difference in fare will be refunded to the original form of payment at the time of reissue.
- If the price of the new ticket is higher than the ticket being reissued, the difference in fare will be collected at the time of reissue.

-Flights must be rebooked and the ticket reissued at the time of the change.

1. Unused tickets

When making changes to an unused ticket, Delta will cancel the itinerary and start over, issuing a new ticket using current fares subject to all applicable fare rules. The value of the original ticket may be applied toward the purchase of the new ticket. If the unused fare is refundable, the value of the original ticket may be applied toward the purchase of the new ticket.

2. Partially Used Tickets

- a. When making changes to partially used tickets, Delta will apply one of the following procedures resulting in the lowest fare:

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i. Reprice the itinerary, attempting to keep fares of the fully flown fare components and replacing the unflown fare components using current fares. No changes are permitted to the fare break points of the fully flown fare components. Delta will validate all fare rules at the time of reissue. The new ticket may be a lower or equal or higher price than the previous ticket.

-OR-

ii. Issue a new ticket using current fares and validating all fare rules at the time of reissue. If the original fare is nonrefundable, the Carrier will apply the remaining value for the unflown Segments of the partially used ticket, if any toward the purchase of a new ticket. For refundable fares, Delta will apply the remaining value from the partially used ticket, if any, toward the purchase of a new ticket.

C. Same Day Confirmed

Unless otherwise specified in the fare rules, a passenger holding a nonrefundable ticket may change to another flight to the same destination operated by Delta or a Delta Connection carrier on the same day, subject to the policies set forth at <https://www.delta.com/content/www/en-US/traveling-with-us/ticket-changes-refunds/sameday-travel-changes.html> and incorporated herein.

RULE 22: REFUNDS

A. Involuntary Refunds

If a refund is required because of Delta's failure to operate on schedule or refusal to transport (except as a result of passenger's failure to comply with the contract of carriage), the following refund will be made directly to you:

- 1) If no portion of the ticket has been used, the refund will be an amount equal to the fare paid.
- 2) If a portion of the ticket has been used and termination (interruption) occurs:
 - a) At A Fare Breakpoint - The refund will be an amount equal to the fare paid for the unused transportation from the point of termination (interruption) to the destination or next Stopover point named on the ticket, or to a point at which transportation is to be resumed. No refund will apply when alternate transportation is provided by Delta and accepted by the passenger.
 - b) Within A Fare Component - The refund will be an amount equal to the percentage of unflown mileage to fare component total mileage by prorating the fare paid for the fare component, from the point of termination/interruption to the destination, or next Stopover point named on the ticket, or to the point at which transportation is to be resumed. No refund will apply when alternate transportation is provided by Delta and accepted by the passenger.

B. Voluntary Refunds

1. Nonrefundable Tickets

Most tickets issued by Delta are nonrefundable. Delta will not refund any portion of a fare that is nonrefundable, and Delta will not refund any taxes or government-imposed fees or charges collected upon nonrefundable tickets. Subject to the applicable fare rules and other provisions of the contract of carriage, Delta Domestic General Rules Tariff

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the value of the unused portion of a nonrefundable ticket (including taxes and government-imposed fees or charges), less applicable charges by Delta, may be applied toward the purchase of future travel on Delta, or to upgrade or downgrade those tickets after purchase. By cancelling or changing your ticket prior to departure, you authorize and consent to Delta receiving any available credit or refund of taxes and government-imposed fees or charges collected by Delta on the unused portion of the ticket. If you cancel or change your ticket prior to departure, Delta may charge a cancellation fee, which will be deducted from any value available toward the purchase of future travel on Delta, or collected at the time the change is processed, as applicable. Any value from a nonrefundable ticket available for the purchase of future travel must be used and all travel completed within one year from the date of issue of the original ticket.

In the event of death of the passenger prior to the date of travel, tickets issued at nonrefundable fares will be refunded to the deceased passengers' estate upon request.

2. Fully Refundable Tickets

If your ticket was purchased at a fare that is fully refundable, Delta will issue a refund of any unused refundable portion of your ticket at your request. You must surrender any unused portion of the ticket at the time of the refund request. No refund will be issued on any ticket unless Delta receives a request for the refund and any unused coupons are surrendered to Delta within one year of the original issue date of the ticket. If a request for refund is not made, then subject to the fare rules and other provisions of this contract of carriage, the value of the unused portion of a refundable ticket (including taxes and government-imposed fees or charges) may be applied toward the purchase of future travel on Delta, or to upgrade or downgrade those tickets after purchase. The amount of the refund or available credit will be calculated as follows:

1. If no portion of the ticket has been used, the total fare and all taxes, fees, and charges paid by you will be refunded or available toward the purchase of future travel.

2. If a portion of the ticket has been used, the amount available for refund or credit will be equal to (a) the total fare and all taxes, fees, and charges paid, minus (b) the fare and taxes, fees, and charges for the used portion of the ticket.

By cancelling or changing your refundable ticket prior to departure, or failing to appear for your flight, you authorize and consent to Delta receiving any available credit or refund of taxes and government-imposed fees or charges collected by Delta on the unused portion of the refundable ticket. Any value from a refundable ticket available for the purchase of future travel must be used and all travel completed within one year from the date of issue of the original ticket.

C. Time Limit for Refund Requests

No refund will be issued on any ticket unless Delta receives a request for the refund and any unused coupons are surrendered to Delta within one year of the original issue date of the ticket.

D. Form of Refund

Delta will issue refunds on eligible tickets as follows:

1. Tickets paid for by credit card will be refunded to the credit card account used to purchase the ticket, typically within seven business days of Delta's initial receipt of refund request.

2. Tickets paid for by cash, if cash is accepted by Delta, will be refunded by check issued to the person named as a passenger on the ticket, typically within 20 business days of Delta's receipt of initial refund request.

3. Tickets charged under a universal air travel plan will be refunded to the subscriber against whose account the ticket was charged.

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4. Tickets issued against governmental transportation requests shall be issued as required by applicable government regulation.

5. Tickets paid with any other form of payment will be issued back to the original form of payment.

D. Overcharges

No claims for overcharge shall be valid and DL shall have no liability if claim is more than forty five (45) days after the date of issue of the ticket.

RULE 23: CURRENCY; DECLINED OR DISPUTED FORMS OF PAYMENT

Except as otherwise provided, all fares and charges between points in the United States are stated in dollars and cents of the lawful currency of the United States. Except as set forth in this contract of carriage, a passenger is liable for the entire ticket price and fees for an issued ticket, notwithstanding any dispute, chargeback or declined form of payment. Delta reserves the right to collect all such amounts at any time, including after transportation has been provided.

RULE 24: GOVERNING LAW; ENTIRE AGREEMENT; LIMITATION OF LIABILITY

Any and all matters arising out of or relating to this Contract of Carriage and/or the subject matter hereof shall be governed by and enforced in accordance with the laws of the United States of America and, to the extent not preempted by Federal law, the laws of the State of Georgia without regard to conflict of law principles, regardless of the legal theory upon which such matter is asserted. This Contract of Carriage, including the Ticket and Fare Rules, represents the entire agreement between the parties relating to transportation by Carrier, and shall supersede all prior representations, understandings or agreements pertaining thereto, either oral or written. No other covenants, warranties, undertakings or understandings may be implied, in law or in equity.

Delta shall not be liable for any punitive, consequential or special damages arising out of or in connection with carriage or other services performed by Delta, whether or not Delta had knowledge that such damage might be incurred. Delta shall not be liable for any damage arising out of its compliance with any laws, government regulations, orders, rules, requirements or security directives or as a result of a passenger's failure to comply with such laws, government regulations, orders, rules, requirements or security directives or as a result of Passenger's reliance on advice provided by Delta regarding such laws, regulations, orders, rules, requirements or security directives.

Election or failure by Delta to enforce any provision of the contract of carriage shall not constitute a waiver of its rights and remedies with regard to such provision or any other provision.

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DELTA INTERNATIONAL GENERAL RULES TARIFF Last Modified: August 17, 2022

RULE 1: General Provisions

A. Contract of Carriage

When you buy a ticket for travel on Delta, you enter into a contract with us, and you agree to be bound by its terms. The terms of your contract are set forth in:

- your Ticket;
- these Conditions of Carriage; and
- our published fare rules and regulations, which may govern the calculation of the fare and other charges that apply to your itinerary.

This document is Delta's International Conditions of Carriage. It applies to travel on any itinerary for International Travel and states the terms upon which Delta offers to transport passengers. Travel entirely within the United States of America is governed by Delta's Domestic General Rules Tariff. Travel between the United States and Canada is governed by our Canadian General Rules Tariff.

Any reference to "Delta" in this contract refers to Delta Air Lines, the Delta Shuttle, and the Delta Connection carriers. Some flights marketed by Delta may be operated by the other Carriers. If any Carrier other than Delta Air Lines is operating a flight, we will identify that Carrier in our schedules and in written or oral communications with you during the booking process. The terms of transportation applicable to Delta specified in these Conditions of Carriage also apply to flights operated by the Delta Connection and Delta Shuttle carriers, and to codeshare flights where Delta is the Marketing Carrier.

Delta may act as an agent to issue tickets, check baggage and book reservations for transportation via other Carriers which have interline agreements with Delta (where Delta is not the Marketing Carrier). For interline flights operated by other Operating Carriers, the conditions of carriage of the Operating Carrier will apply. Other Carriers may have different terms and conditions applicable to their flights, and these may be obtained directly from the other Carriers.

Some provisions of these Conditions of Carriage apply only to residents or passengers traveling to select countries or regions. All country- and region-specific rules and requirements are set forth in Rule 27 of these Conditions of Carriage.

B. Amendments to Conditions of Carriage

Delta may amend these Conditions of Carriage at any time, except as provided by law. Your travel is governed by the rules that were in effect on the date you purchased your ticket; provided, however, that Delta reserves the right to apply rules currently in effect on the date of your travel where reasonably necessary for operational reasons and where the change in rule does not have a material negative impact upon you. No Delta employee or ticketing agent has the authority to modify any provision of the Conditions of Carriage unless authorized in writing by a Delta corporate officer.

RULE 2: SCHEDULES AND OPERATIONS

Delta will exercise reasonable efforts to transport you and your baggage from your origin to your destination with reasonable dispatch, but published schedules, flight times, aircraft types, seat assignments, and similar details reflected in the ticket or Delta's published schedules are not guaranteed and form no part of this contract. Delta may substitute alternate Carriers or aircraft, change its schedules, delay or cancel flights, change seat assignments, and alter or omit stopping places shown on the ticket as required by its operations in Delta's sole discretion. Delta's sole liability in the event of such changes is set forth in Rule 23. Delta is not responsible or liable for making connections, failing to operate any flight according to schedule, changing the schedule or

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any flight, changing seat assignments or aircraft types, or revising the routings by which Delta carries the passenger from the ticketed origin to destination.

RULE 3: DEFINITIONS

Animals, in addition to the usual connotation, include reptiles, amphibians, birds, and fish.

Applicable Full Fare means the one-way fare, whether specifically published or derived by construction, for the class of service designated in the Carrier's official general schedule for the aircraft, or cabin of the aircraft used by the passenger.

Applicable Law means all laws, rules, regulations, orders, treaties, conventions, decrees, and instructions of Carrier, in each case to the extent applicable to the services provided pursuant to the Contract of Carriage.

Carrier means any air carrier shown as a participant in this tariff.

Co-Terminal - Two or more relatively adjacent airports which for the purpose of these fares will be considered the same point.

Conjunction Ticket means two or more tickets concurrently issued to a passenger, which together constitute a single contract of carriage.

Convention means the Convention for the Unification of Certain Rules relating to International Carriage by Air, Signed at Warsaw, October 12, 1929 (Warsaw Convention), Convention for the Unification of Certain Rules for International Carriage by Air, opened for signature on 28 May 1999 (Montreal Convention), or that Convention as amended by the Hague Protocol, 1955 (Hague Convention), whichever may be applicable to carriage hereunder.

Days - Full calendar days, including weekend days and legal holidays (but not including the date that any notice is sent).

Delta Codeshare Partners - Has the meaning set forth in Rule 18(H).

Dependent - The spouse and children of U.S. Military Personnel or U.S. embassy personnel stationed overseas who are dependent upon such personnel for financial support.

DOT Hazardous Materials Regulations means the hazardous materials regulations issued by the Materials Transportation Bureau of the United States Department of Transportation in Title 49 of the Code of Federal Regulations, Parts 171 through 177 (49 CFR 171-177), as the same may be amended from time to time.

Fare Component - The fare paid for the portion of the itinerary between the origin and the destination or Stopover point.

Government Transport Request (GTR) - Form used for ticket payment and travel authorization for passengers traveling on official business for the federal government by the U.S.

Group means the minimum number of passengers specified in conjunction with the fare, as provided for in the applicable fare rules. Fewer than the minimum number of passengers may not travel at group fares, even upon payment of the minimum number of fares, unless specifically permitted in a given fare rule.

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Immediate Family means spouse, domestic partner, children, step-children, grandchildren, parents, step-parents, grandparents, brothers, step-brothers, sisters, step-sisters, daughters-in-law, sons-in-law, fathers-in-law, mothers-in-law, aunts, uncles, nieces, nephews, brother-in-law and sisters-in-law.

Interlining means utilizing the services of more than one Carrier in connection with a particular fare.

International Carriage means (except when the Convention is applicable) carriage in which, according to the contract of carriage, the place of departure and any place of landing are situated in more than one state. As used in this definition, the term "state" includes all territory subject to the sovereignty, mandate, authority or trusteeship thereof.

Marketing Carrier means the Carrier that sells flights under its code.

Military Agencies means departments of the U.S. Army, Navy and Air Force; the Marine Corps; the U.S. Coast Guard; the respective academies of the Army, Navy, Air Force and Coast Guard; and the U.S. National Guard. The Reserve Officer Training Corps is not included.

Military Passenger means military personnel of the Military Agencies who are on active duty status or who have been discharged from active military service within seven Days of the date of travel.

Operating Carrier means the Carrier that operates the actual flight.

Person with a Disability means any person who has a physical or mental impairment that, on a permanent or temporary basis, substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. This term shall be further defined as required by Applicable Law, including U.S. regulations set forth in 14 C.F.R. 382.3.

Personal Attendant means the travel companion of a Person with a Disability that is attending to the personal needs of such Person with a Disability.

Qualifying Alternative Transportation means comparable air transportation, or other transportation used by the passenger, at no extra cost to the passenger, that at the time such arrangements are made is scheduled to arrive at the passenger's next Stopover, or, if none, final destination, within two hours after the planned arrival time of the passenger's original flight(s).

Related Charges means those charges to be shown in the fare construction box of the ticket, cancellation penalties, nonrefundable amounts, rebooking and rerouting charges and excess baggage charges.

Reroute means to issue a new ticket, or honor an existing ticket, covering transportation to the original destination, but via a different routing than that designated on the ticket.

Round Trip means any trip, the ultimate destination of which is the point of origin, and which is legal Routing and comprised of an outbound and return segment. Reservations for all segments of a trip for tickets issued at round-trip fares must be confirmed in the same (a single) passenger name record (PNR).

Routing means the Carrier(s) and/or the cities and/or class of service and/or type of aircraft (jet or propeller) via which transportation is provided between two points.

Safety Assistant means a person required by Delta to travel with a Person with a Disability, pursuant to Rule 6(C): to attend to the Person with a Disability's in-flight medical needs; to assist the Person with a Disability's communication with crewmembers; or to assist the Person with a Disability's evacuation from the aircraft in the event of an emergency.

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Self-reliant means that a person does not require services related to a disability beyond that normally provided by the Carrier or beyond those services which Applicable Law requires the Carrier to provide.

Special Drawing Right means a special unit of currency, the currency values of which fluctuate and are recalculated each banking day. These values are known to most commercial banks and are reported in some newspapers and in the IMF Survey, published weekly by the International Monetary Fund online at: <https://www.imf.org/external/np/fin/data/sdrv.aspx>

Standby Passenger - Passenger who will be enplaned on a flight subject to the availability of space at departure time and only after all passengers having reservations for such flight have been enplaned on such flight. Not all flights will be available for standby.

Stopover - A stopover will occur when a passenger arrives at an intermediate point and is not scheduled to depart within 24 hours of arrival.

Transfer means a change from the flight on one Carrier to the flight of another Carrier; or a change from the flight of a Carrier to another flight of the same Carrier bearing the same flight number; or a change from the flight of a Carrier to another flight (that is) a service bearing a different flight number of the same Carrier, irrespective of whether or not a change of aircraft occurs.

Transfer Point means any point at which the passenger transfers from the services of one Carrier to another service of the same Carrier (bearing a different flight number) or to the service of another Carrier.

United States of America- The area comprising the 50 states; the District of Columbia; Puerto Rico; the U.S. Virgin Islands; American Samoa; Kanton; Guam; Midway and Wake Islands.

U.S. Armed Forces/U.S. Military Agencies - Department of the Army, Navy, Air Force, Marine Corps, and Coast Guard of the United States of America, the respective academies of the Army, Navy, Air Force, and Coast Guard, and does not include the National Guard Bureau or the Reserve Officer Training Corps, or members of the reserves not holding a valid duty armed forces of the United States green identification card.

U.S. Military Personnel - Unless otherwise indicated, refers only to active duty military personnel, and means Military personnel of the United States Military Agencies holding a valid active duty U.S. Armed Forces green identification card, on active duty status and traveling on authorized furlough, leave, or pass, but expressly excluding Military Personnel on temporary duty orders traveling to or from their temporary duty station.

RULE 4: PERSONAL DATA

The passenger recognizes that personal data has been given to Carrier for the purposes of making a reservation for carriage, obtaining ancillary services, facilitating immigration and entry requirements, and making available such data to government agencies. For these purposes, the passenger authorizes Carrier to retain such data and to transmit it to its own offices, other Carriers, or the providers of such services, in whatever country they may be located. All passenger information shall be handled in accordance with Delta's Privacy Policy (https://www.delta.com/content/www/en_US/privacy-and-security.html).

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RULE 5: INTER-AIRPORT TRANSPORTATION

Except as otherwise specified below, Delta does not operate or provide ground transfer service between airports or between airports and city centers. When a metropolitan area is served by more than one airport and the passenger requires connecting service with arrival at one airport and departure from another airport, transportation between those airports must be arranged by and at the expense of the passenger. Any such service is performed by independent operators who are not and shall not be deemed to be agents or servants of Delta. Although Delta may assist you in making arrangements for such ground transfer service, you agree that Delta is not liable for any act or omission of any such independent operator. If we issue you a voucher to cover the cost of services provided by any such independent contractor and you decide not to use the services, the voucher for such services will have no refund value.

When transferring between airports, baggage must be claimed and rechecked by the passenger.

RULE 6: CARRIAGE OF PERSONS WITH DISABILITIES

A) Acceptance for Carriage

Delta will make every effort to accommodate a Person with a Disability and will not refuse to transport a person solely based on the person's disability, except as permitted or required by law.

B) Acceptance of Declaration of Self-Reliance

Unless Delta determines a Safety Assistant is essential for safety, pursuant to Rule 6(C), Delta will accept the determination made by or on behalf of a Person with a Disability as to self-reliance. Once advised that the person is "self-reliant", Delta shall not refuse such passenger transportation on the basis that the Person with a Disability is not accompanied by a Personal Attendant or based on the assumption that the passenger may require extraordinary assistance from airline employees in meeting the passenger's needs.

C) Accompanying Safety Assistant Required for Certain Passengers

Delta may require that a Safety Assistant accompany a Person with a Disability as a condition of providing transportation if Delta determines that such an assistant is essential for safety, such as in, but not limited to, the following circumstances:

- 1) A passenger is unable to comprehend or respond appropriately to safety related instructions due to a mental disability;
- 2) A passenger is unable to physically assist in the passenger's own evacuation from the aircraft due to a severe mobility impairment; or
- 3) A passenger is unable to establish a means of communication with Delta personnel sufficient to receive the safety briefing due to having both severe hearing and vision impairments.

D) Medical Clearance

Delta will not require a medical clearance for a Person with a Disability as a condition of travel, except as permitted by law. Delta may require a medical certificate when, in good faith and using its reasonable discretion, Delta determines there is reasonable doubt that a passenger can complete the flight safely without requiring extraordinary medical assistance.

E) Seating Restrictions and Assignments

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When a person identifies the nature of his or her disability, Delta will, to the extent possible, accommodate the passenger with a seat assignment that suits the passenger's needs, including seating the passenger together with any Safety Assistant or Personal Attendant traveling with the passenger. Persons with a disability will not be prohibited from occupying seats in designated emergency exit rows, except to the extent required by law.

F) Acceptance of Aids

In addition to the regular baggage allowance, Delta will accept, without charge, as priority checked baggage, mobility aids, including but not limited to:

- 1) an electric wheelchair, a scooter or a manually operated rigid-frame wheelchair;
- 2) a manually operated, folding wheelchair;
- 3) a walker, a cane, crutches or braces;
- 4) any device that assists the person to communicate; and
- 5) any prosthesis or medical device.

Where space permits, Delta will, without charge, permit the passenger to store a manually operated, folding wheelchair and other small mobility aids in the passenger cabin during the flight. The assembling and disassembling of mobility aids will be provided by Delta, without charge. Wheelchairs and mobility aids will be the last items to be stowed in the aircraft hold and the first items to be removed.

G) Manually Operated Wheelchair Access

To the extent permitted by space and facilities, Delta will permit a passenger using a manually operated wheelchair to remain in the wheelchair:

- 1) until the passenger reaches the boarding gate;
- 2) while the passenger is moving between the terminal and the aircraft door; and
- 3) while the passenger is moving between the terminal and the aircraft.

H) Service Animals

Delta will accept for transportation, without charge, a service Animal required to assist a Person with a Disability. Service Animals are defined as only dogs, regardless of breed, specifically trained to assist a Person with a Disability. To the extent possible, Delta will assign a seat to the person that provides sufficient space for the person and the service Animal. Delta will permit the service Animal to accompany the person onboard the aircraft and to remain on the floor at the person's seat. The service Animal will not be permitted to occupy a passenger seat. To the extent permitted or required by law, Delta reserves the right to deny transportation to any service animal when reasonably necessary, in Delta's sole discretion, for the comfort or safety of passengers or crewmembers or for the prevention of damage to the property of Delta or its passengers or employees.

I) Services to be Provided to Persons with Disabilities

Upon request, Delta will provide the following services to a Person with a Disability:

- 1) assistance with registration at the check-in counter;
- 2) assistance in proceeding to the boarding area;
- 3) assistance in boarding and deplaning;
- 4) assistance in stowing and retrieving carry-on baggage and retrieving checked baggage;
- 5) assistance in moving to and from an aircraft lavatory;
- 6) assistance in proceeding to the general public area or, in some cases, to a representative of another Carrier;

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- 7) transfer between the person's own mobility aid and a mobility aid provided by Delta;
- 8) transfer between a mobility aid and the passenger's seat;
- 9) limited assistance with meals, such as opening packages, identifying items, and cutting large food portions;
- 10) inquiring periodically during a flight about a passenger's needs; and
- 11) briefing individual passengers with disabilities and any attendant on emergency procedures and the layout of the cabin.

J) Advance Notice for Special Services

To the extent permitted by law, Delta may require advance notice for certain special services desired by a Person with a Disability. Services applicable under this rule include but are not limited to:

- 1) transportation of an electric wheelchair on an aircraft of less than 60 seats;
- 2) provision of hazardous materials packaging for batteries or other assistive device that are required to have such packaging;
- 3) accommodation for a Group of 10 or more passengers with disabilities traveling as a Group;
- 4) provision of an onboard wheelchair on an aircraft of 60 seats or more;
- 5) transportation of a Service Animal in the cabin (unless the ticket is purchased less than 48 hours prior to departure);
- 6) transportation of a Service Animal on a Segment scheduled to take 8 or more hours; or
- 7) accommodation of a passenger with both severe vision and hearing impairments.

Such requests should be made by the passenger at the time of reservation and as far in advance as possible. If a passenger requests a special service at least 48 hours prior to departure, Delta will, to the extent possible, provide the service. If a passenger requests a service less than 48 hours prior to departure, Delta will make a reasonable effort to provide the service.

K) Boarding and Deplaning

Where a Person with a Disability requests assistance in boarding or seating or in stowing carry-on baggage, Delta will allow the passenger to board the aircraft in advance of other passengers where time permits.

L) Communication and Confirmation of Information

Delta will use reasonable efforts ensure that announcements to passengers concerning stops, delays, schedule changes, connections, on-board services, and claiming baggage are communicated to any person with a disability in a manner sufficient for the person to understand the communication.

M) Inquire Periodically

When passengers in wheelchairs that are not independently mobile are waiting to board an aircraft, Delta will inquire periodically about their needs and shall attend to those needs where the services required are usually provided by Delta.

RULE 7: REFUSAL TO TRANSPORT

Delta may refuse to transport any passenger, and may remove any passenger from its aircraft at any time, for any of the following reasons:

- A) Government Request or Force Majeure
Whenever necessary to comply with any law, regulation or government directive or request; or when advisable in Delta's sole discretion due to weather or other conditions beyond Delta's

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control including Acts of God, strikes, civil unrest, embargoes, war, and other similar matters of force majeure.

B) Search of Passenger or Property

When a passenger refuses to permit search of his person or property for explosives, weapons, dangerous materials, or other prohibited items.

C) Proof of Identity

When a passenger refuses to produce positive identification on request;

D) Travel Across International Boundaries

When a passenger is traveling across any international boundary if:

- 1) the travel documents of such passenger are not in order, or
- 2) such transportation would be unlawful

E) Failure to Comply with Delta's Rules or Contract of Carriage

When a passenger fails or refuses to comply with any of Delta's rules or regulations, or any term of the Contract of Carriage.

F) Passenger's Conduct or Condition

Delta will not refuse to provide transportation to a Person with a Disability, as defined in 14 C.F.R. § 382.5 and 382.31, based upon the passenger's disability, except as allowed or required by law. Delta will not refuse to provide transportation based upon race, color, national origin, religion, sex, sexual orientation, or ancestry. Subject to those qualifications, Delta may refuse to transport any passenger, or may remove any passenger from its aircraft, when refusal to transport or removal of the passenger is reasonably necessary in Delta's sole discretion for the passenger's comfort or safety, for the comfort or safety of other passengers or Delta employees, or for the prevention of damage to the property of Delta or its passengers or employees. By way of example, and without limitation, Delta may refuse to transport or may remove passengers from its aircraft in any of the following situations:

- 1) When the passenger's conduct is disorderly, abusive or violent, or the passenger appears to be intoxicated or under the influence of drugs;
- 2) When the passenger is barefoot;
- 3) When the passenger interferes with the flight crew's activities, or fails to obey the instruction of any member of the flight crew;
- 4) When the passenger has a contagious disease that may be transmissible to other passengers during the normal course of the flight;
- 5) When the passenger is unable to sit in a seat with the seatbelt fastened;
- 6) When the passenger's behavior may be hazardous or creates a risk of harm to himself/herself, the crew, or other passengers or to the Carrier's aircraft and/or property, or the property of other passengers;
- 7) When the passenger is seriously ill, unless the passenger provides a physician's written permission to fly; or
- 8) When the passenger's conduct, attire, hygiene or odor creates an unreasonable risk of offense or annoyance to other passengers.

G) Recourse of Passenger

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Passengers shall not engage in any conduct that would authorize Delta to refuse transport under this Rule. The sole recourse of any passenger refused carriage or removed for any reason specified in this Rule shall be recovery of the refund value of the unused portion of his or her ticket as provided in Rule 23.

RULE 8: ACCEPTANCE OF CHILDREN

A) Accompanied Children

(1) General Rule

Except as set forth in this Rule, children under the age of 15 will not be accepted for transportation unless they are accompanied on the same flight in the same cabin by a parent, legal guardian, or other passenger at least 18 years of age. Delta may require documentation verifying the child's age at check-in. A valid passport, birth certificate or other government-issued identification are all acceptable.

(2) Accompanied Children Less Than 2 Years Old.

One child less than 2 years old not occupying a seat may travel with an adult fare-paying passenger at least 18 years old or parent/legal guardian upon payment of the applicable infant-in-arms fare (including taxes). Additional infants, and infants occupying a seat, must pay the applicable adult fare. A maximum of 2 infants is permitted for each adult. Delta recommends that any child occupying a seat be placed in an approved safety seat. Infants who will reach their second birthday during a journey must occupy a seat and pay the Applicable Adult Fare for the entire journey.

(3) Accompanied Children 2 Years and Older

The fare for children ages 2 years and older will be the Applicable Adult Fare.

B) Unaccompanied Children Under the age of 15.

Children under the age of 15 may travel unaccompanied on Delta only under the following conditions:

(1) Children under the age of 5

No child under the age of 5 will be accepted for unaccompanied travel.

(2) Children aged 5 through 14

Children ages 5 through 7 may travel unaccompanied on non-stop flights only and may not connect to other airlines. Children ages 8 through 14 may travel unaccompanied on Delta's non-stop or connecting flights, but may not connect to other airlines with the exception of Delta Connection, KLM and Air France.

C) Unaccompanied Minor Service

(1) When Unaccompanied Minor Service is Required

Except as otherwise provided in this Rule, Unaccompanied Minor Service is required for all passengers under the age of 15 that Delta accepts for transportation.

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(2) Unaccompanied Minor Service Defined

Unaccompanied Minor Service means that Delta will provide supervision for the child from the time of boarding until the child is met at the stop over point or destination. Delta will assume no financial or guardianship responsibilities for unaccompanied children beyond those applicable to an adult passenger. Delta has the right, but is not obligated to require identification of the responsible party meeting the child at a transfer point or final destination. An unaccompanied minor must be confirmed to destination and may not be confirmed on the last connecting flight of the evening (with the exception of markets where there is only one connection and it is the last flight of the day, or for flights to or from Alaska or Hawaii), nor may an unaccompanied minor travel on a flight expected to terminate short of, or bypass, the child's destination. Delta may temporarily suspend unaccompanied minor travel and/or rebook the child on an alternate flight if there is a possibility that weather, irregular operations, or other conditions may cause a flight to be diverted. Delta requires that a parent or responsible adult accompany the child until boarding, and this adult must provide the name, telephone number, and address of the party meeting the child at the transfer point or final destination. Delta reserves the right to refuse to release an unaccompanied child to anyone other than the pre-designated party. Delta representatives cannot administer medicine to children flying alone. An unaccompanied minor may not travel on any domestic flight greater than 2 hours in length which departs between 9 PM and 5 AM ("red-eye flight"). This restriction does not apply for red-eye flights to/from Hawaii and Alaska, however, an unaccompanied minor on a red-eye flight from Hawaii or Alaska may not connect to a domestic red-eye flight or to the last flight of the day unless it is the only flight option for the day.

D) Unaccompanied Children Ages 15-17

Although not required, a parent or guardian may request Unaccompanied Minor Service for unaccompanied minors ages 15-17. The applicable unaccompanied minor service charge will apply.

E) Unaccompanied Minor Service Charge

In addition to the applicable fare, unaccompanied minors for whom Unaccompanied Minor Service is required or has been requested must pay an unaccompanied minor service charge in the amounts set forth below. Delta reserves the right to refuse to transport any unaccompanied minor for whom Unaccompanied Minor Services are required or requested but for whom the applicable unaccompanied minor service fee has not been paid. If 2 or more unaccompanied minors who are members of the same Immediate Family and ticketed together are traveling together, only one service charge will be assessed.

The unaccompanied minor service charge will be specified at: https://www.delta.com/content/www/en_US/traveling-with-us/special-travel-needs/children.html and is incorporated by reference.

F) Proof of Permission to Travel

Minors at least (12) years of age but under (18) years of age traveling unaccompanied by their parents or legal guardians will be required to satisfy the office or agency booking such ticket that their parents or legal guardians are aware of their travel and have given their permission for such travel and to leave their country of origin. If time permits prior to departure, a statement in writing to that effect will be required from parents or guardian and if the travel is international, the statement must also say that the minor(s) will be visiting and in the charge of responsible person(s) while in the country of destination. If reservation has been made so near departure time that written statement cannot be obtained, then oral

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assurance from the parent or legal guardian will be required.

RULE 9: SPECIALLY TRAINED SERVICE DOGS

Delta accepts for transportation, without charge, dogs trained: (1) to lead the blind, when the dog accompanies a passenger with impaired vision dependent upon such dog; (2) to assist the deaf, when the dog accompanies a passenger with impaired hearing dependent upon such dog; (3) to assist the physically and psychiatrically impaired passengers dependent upon such dog, or (4) in explosive detection or search and rescue, only when such dogs are accompanied by U.S. military and U.S. government handlers. In the cases of (1) and (2) above, Delta will also accept such dogs when accompanied by the dog's trainer and is en-route to the domicile of the owner for completion of training. In all cases, the service dog will be permitted to accompany such passenger into the cabin but will not be permitted to occupy a seat.

RULE 10: SMOKE FREE SERVICE

Delta prohibits smoking and the use of all smokeless tobacco products (including e-cigarettes) on all flights.

RULE 11: PASSENGER MEDICAL OXYGEN

On flights operated by Delta or Delta Connection, only portable oxygen concentrators (POCs) approved by the FAA are accepted for inflight medical oxygen. A 48-hour notice is required. Please see <https://www.delta.com/content/www/en-US/traveling-with-us/special-travel-needs/disabilities.html> to obtain information regarding the required medical certificate from a licensed physician and medical screening prior to flight. Medical screening service is provided by Delta at no cost to the passenger. If the passenger makes any voluntary change to his/her itinerary after completion of the medical screening, re-screening may be required. Passengers using POCs on a Delta flight must be seated in a row other than an emergency exit or bulkhead.

RULE 12: TICKETS

- A) You must present a valid ticket for transportation, which entitles you to transportation only between points of origin and destination via the ticketed routing.
- B) Tickets are not transferable. The purchaser of the ticket and the passenger are responsible for ensuring that the ticket accurately states the passenger's name. Presentation of a ticket for transportation by someone other than the passenger named on the ticket renders the ticket void.
- C) Tickets are valid for travel only when used in accordance with all terms and conditions of sale.
- D) Where a ticket is invalidated as the result of the passenger's non-compliance with any term or condition of sale, Delta may:
 - 1) Cancel any remaining portion of the passenger's itinerary or bookings,
 - 2) Confiscate any unused portion of the ticket,
 - 3) Refuse to board the passenger or check the passenger's baggage, and/or

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- 4) Assess the passenger for the reasonable remaining value of the ticket, which shall be no less than the difference between the fare actually paid and the lowest fare applicable to the passenger's actual itinerary.

E) Ticket Expiration

A ticket is valid for one year from the original date of issuance and travel must commence within this validity period. Once travel has commenced then all travel must be completed within one year from the date on which travel commenced. If a ticket is exchanged or reissued-

- a) A wholly unused ticket must be exchanged within the original validity period of one year and will be given a new ticket issue date based on the date of exchange.
- b) If travel has commenced then the ticket must be reissued and all travel completed within one year from the date on which travel commenced.

Note – certain fares may have different periods of validity, in which case the specific rules associated with the fare will take precedence.

- F) An electronic ticket (E-Ticket/ET) is the record of agreement maintained and processed within the Carrier's electronic reservation system. A written receipt is provided to the purchaser of the electronic ticket which contains a reference for retrieving the record within the Carrier's reservation system and summary of the ticket information. The Carrier may mandate the issuance of an electronic ticket (ET) regardless of market, Carrier, form of payment, and customer type (including SkyMiles and participating Carrier frequent flyer members).

G) External Reissue Charge

Delta will collect a nonrefundable fee of USD \$50.00 for reissue by Delta of tickets originally issued in the United States or Canada by any ticketing source other than Delta, however, the charge does not apply to same day confirmed transactions, irregular operations (as designated by Delta in its sole discretion) or schedule change situations, SkyMiles upgrade reissues, tickets reissued on delta.com, or tickets issued at military or government fares. This fee applies to all changes to tickets issued at the request of the passenger.

H) Additional Ticketing Fees

In addition to the otherwise applicable fare, for tickets purchased directly from Delta Reservations in Europe, Delta will collect at the time of ticketing an additional ticketing fee, as set forth at delta.com/https://www.delta.com/content/www/en_US/traveling-with-us/baggage/before-your-trip/checked.html#DirectTicketing. This additional charge is not refundable and shall be included in the total fare quoted to the passenger at the time of ticketing. These additional charges do not apply to tickets purchased directly from Delta at delta.com.

I) Capacity Limitations

Delta will limit the number of passengers carried on any one flight in any fare class or cabin, and such fares and fare classes will not necessarily be available on all flights or in all markets. The number of seats which Delta makes available on a given flight is determined by Delta's best judgment of the anticipated total passenger load on each flight.

RULE 13: CONFIRMATION OF RESERVATIONS

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No reservation on Delta is valid until the availability and allocation of the reserved space is confirmed by Delta or its agent and entered in Delta's electronic reservations system.

Unless an earlier ticketing deadline is imposed by the applicable fare rule or other agreement between Delta and the passenger, Delta must receive payment and the reservation must be ticketed at least 60 minutes prior to the scheduled flight departure time. Failure to comply with this ticketing deadline or an earlier ticketing deadline imposed by the applicable fare rule or other agreement with the passenger will result in cancellation of the reservation without notice. A list of airports imposing an earlier ticketing deadline is set forth at delta.com/checkin and incorporated herein by reference.

RULE 14: CANCELLATION OF RESERVATIONS

- A) Delta Will Cancel reservations of any passenger whenever such action is necessary to comply with any governmental regulation, or to comply with any governmental request for emergency transportation, or whenever such action is necessary or advisable by reason of weather or other conditions beyond its control.
- B) The Transportation Security Agency's (TSA) Secure Flight Program requires that Delta collect the following additional information from passengers when making a reservation to fly within, into or out of the United States and reservations for point-to-point international flights operated by U.S.-based airlines:
- 1) Full Name (required), as it appears on government-issued I.D. approved for use when traveling
 - 2) Date of Birth (required)
 - 3) Gender (required)
 - 4) Redress Number (optional)

Delta may cancel your reservation if the reservation does not include the required Secure Flight Passenger Data (full name, date of birth and gender) at least 72 hours prior to your scheduled departure. This cancellation policy applies to all Delta tickets, including tickets for Delta codeshare partners' flights.

- C) Failure To Appear
If you fail to appear for any flight in your itinerary without giving Delta notice in advance of the departure of the flight, Delta may cancel your reservation for all remaining flights in your itinerary.
- D) Airport Check-In Time Limits

1) Reservations Subject to Cancellation for Failure to Meet Check-in and Boarding Deadlines

Your reservation may be cancelled if you do not comply with all applicable check-in procedures by the check-in deadline for your flight, or if you are not at the gate and ready for boarding by the applicable boarding deadline. The check-in and boarding deadlines in effect on the date of travel will apply and are posted on delta.com.

2) Passenger Responsibility to Allow Sufficient Time

You must arrive at the airport with sufficient time to comply with all check-in procedures, complete security screening, comply with all other government requirements and departure processing, and arrive at the gate by the applicable boarding deadline. Delta will not delay flights for passengers

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who are not at the gate and ready to board on time, and is not liable for any loss or expense due to the passenger's failure to comply with this provision.

RULE 15: FARES

A) Fares Applicable Only For Ticketed Itinerary

Fares apply for travel only between the points for which they are published. Tickets may not be issued at fare(s) published to and/or from a more distant point(s) than the points being traveled, even when issuance of such tickets may produce a lower fare.

B) Erroneous Fares

Delta will exercise reasonable efforts to ensure that all fares it publishes are accurate and available for sale, but Delta, as a policy, does not file nor intend to file tickets priced at a zero fare or that are erroneous or reasonably apparent as erroneous. If an erroneous fare is inadvertently published for sale and a ticket is issued at the erroneous fare before it has been corrected, Delta reserves the right to cancel the ticket purchase and refund all amounts paid by the purchaser or, at the purchaser's option, to reissue the ticket for the correct fare. In this event, Delta will also reimburse any reasonable, actual, and verifiable out-of-pocket expenses incurred by the purchaser in reliance upon the ticket purchase. The purchaser must provide receipts or other evidence of such actual costs incurred in support of any reimbursement request.

C) Circumvention of Published Fares

Delta prohibits ticketing practices intended to circumvent the published fare that Delta intends to offer for your true itinerary. These practices include, but are not limited to:

1) Back to Back Ticketing - The purchase or usage of two or more tickets issued at round trip fares, or the combination of two or more round trip fares end to end on the same ticket for the purpose of circumventing minimum stay requirements.

2) Throwaway Ticketing - The purchase or usage of round trip fares for one way travel.

3) Hidden City/Point Beyond Ticketing - The purchase or usage of a fare from a point before the passenger's actual origin or to a point beyond the passenger's actual destination.

D) When the fare between any 2 points is not specifically published via the desired routing, the fare will be constructed by combining two or more separate fares, via the desired routing from the passenger's point of origin to point of destination, which produce the lowest fare for the class of service used; provided, however, that combined fare will not exceed the lowest fare determined in accordance with this rule and the applicable fare rules. Delta's direct sales channels will offer customers the lowest applicable published fare for itineraries between points in the United States on Delta, Delta Connection, Delta Shuttle and Delta Codeshare flights for the flights, dates and class of service requested to which our representatives have access. Please note that Delta will quote lowest published fare that we offer for the specific airports and type of itinerary that you request. We do not search for or quote fares for other itineraries, including by combining one-way or other fares. Fares not accessible directly from Delta may include, but are not limited to, unpublished fares, consolidator fares, negotiated fares, tour or package fares, and discounts available only via Internet web sites.

E) Duplicate, Fictitious and impossible/illogical bookings

Delta prohibits duplicate, impossible, or fictitious bookings, including but not limited to multiple

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conflicting itineraries for the same passenger on the same day or bookings with connections that depart before the arrival of the inbound flight. Delta reserves the right to cancel any such booking which has not been ticketed, and to cancel and refund any such booking which is ticketed at a refundable fare.

RULE 16: TRAVEL DOCUMENTS, TOURIST CARDS, AND TRAVEL TAXES AND EXPENSES

A) COMPLIANCE WITH APPLICABLE LAWS

The passenger shall comply with all laws, regulations, orders, demands, or travel requirements of countries to be flown from, into, or through, and with Applicable Laws. Carrier is not liable for any assistance, instructions, or information given by Carrier to any passenger in obtaining necessary documents or complying with Applicable Laws, whether given orally or in writing, or for the consequences resulting from passenger's failure to obtain such documents or to comply with Applicable Laws.

B) PASSPORTS AND VISAS

- 1) Each passenger desiring transportation across any international boundary will be responsible for obtaining all necessary travel documents and for complying with all government travel requirements. The passenger must present all exit, entry and other documents required by the Applicable Laws, and, unless Applicable Laws do not permit it, shall indemnify the Carrier for any loss, damage, or expense suffered or incurred by the Carrier from passenger's failure to do so. Carrier is not liable to the passenger for loss or expense due to the passenger's failure to comply with this provision. Carrier reserves the right to refuse carriage to any passenger who has not complied with Applicable Laws, regulations, orders, demands, or requirements or whose documents are not complete. No Carrier shall be liable for any aid or information given by any agent or employee of such Carrier to any passenger in connection with obtaining such documents or complying with such laws, whether given orally or in writing or otherwise.
- 2) Subject to applicable laws and regulations, the passenger agrees to pay the applicable fare whenever Carrier, on government order, is required to return a passenger to his point of origin or elsewhere due to the passenger's inadmissibility into or deportation from a country, whether of transit or of destination. The fare applicable will be the fare that would have been applicable had the original ticket designated the revised destination on the new ticket. Any difference between the fare so applicable and the fare paid by the passenger will be collected from or refunded to the passenger as the case may be. Carrier may apply to the payment of such fares any funds paid by the passenger to Carrier for unused carriage, or any funds of the passenger in the possession of Carrier. The fare collected for carriage to the point of refusal or deportation will not be refunded by the Carrier, unless the law of such country requires that such fare be refunded.
- 3) Passenger Transiting Without VISA (TRWOV) - Service Charge (Applicable to passengers traveling under the Transit Without Visa Agreement): A passenger transiting a point in the U.S.A. without a Visa will be assessed a service charge of USD 25.00 or its equivalent converted at the applicable Banker's Rate when Delta is the Carrier providing the passenger with transportation to the U.S.A.
NOTE: The service charge will be collected upon passenger check in at the last stopover point prior to arrival in the U.S.A. or if there is no stopover, the point of origin.

C) CUSTOMS INSPECTION

If required, the passenger must be present for the inspection of his baggage, checked or unchecked, by customs or other government officials. Carrier is not responsible to the passenger if he or she fails to be present during the inspection. Passenger shall indemnify Carrier for any loss or damage resulting to

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Carrier due to passengers' failure to comply with or be present for such inspection.

D) GOVERNMENT REGULATION

Carrier is not liable if it determines in good faith that Applicable Law requires that it refuse to carry a passenger.

E) TAXES & OTHER GOVERNMENT OR AIRPORT-IMPOSED FEES OR CHARGES

Except as specifically provided to the contrary in any of our regulations that may govern a particular itinerary or fare, your fare excludes any taxes, or other government or airport-imposed service charges or transit taxes. Any tax or other charge imposed by government or airport authority and collectable from a passenger will be in addition to the published fares and charges.

F) MEALS, HOTELS, AND OTHER TRAVEL ARRANGEMENTS

Unless your ticket expressly includes meals, ground transportation, or other travel arrangements, your fare does not include these services or any other expenses you may incur during your travel – including hotel, ground transportation, or meals. If Delta assists you with making any arrangements for these services, it is only as your agent, and Delta is not liable for any loss, damage or expense you may incur in connection with these services (including any failure to provide them, or any incidents related to the services).

RULE 17: BAGGAGE

A. **Checked and Carry-On Baggage Policies and Restrictions**

Ticketed passengers may check baggage and carry baggage on board Delta aircraft, subject to this rule. Delta's baggage policies and baggage fees are available at www.delta.com/bags and are incorporated by reference as if set forth in this contract of carriage. These policies restrict the quantity, size, number and weight of baggage (both checked and unchecked), describe any applicable baggage embargoes, and govern the carriage of hazardous and dangerous goods and special items (such as sporting equipment, medical equipment and mobility aids, musical instruments, and fragile and perishable items).

B. **Baggage Liability**

1. **General Limitation of Liability for Loss of, Damage to, or Delay in Delivery of Baggage**

Delta's liability for loss, damage, or delay in the delivery of a passenger's checked baggage, carry-on baggage, or other personal property tendered to Delta in connection with air transportation on Delta shall be limited to proven damage or loss and shall be governed by Rule 18 of these Conditions of Carriage (Liability of Carriers).

2. **Preexisting Damage/ Ordinary Wear and Tear**

Delta is not liable for preexisting damage or for wear and tear resulting from ordinary handling of baggage.

3. **Loss Due To Government or Airport Action**

Delta is not liable for loss, damage, or delay of a passenger's checked baggage, carry-on baggage, wheelchair or assistive device, or any personal item that may result from a security search of such items conducted by an agent of any local, state, or federal agency in charge of airport security screening, or from confiscation by an agent of any local, state, or federal agency.

C. **Acceptance of In-Bond Baggage**

Subject to advance arrangements being made with the Carrier, in-bond baggage transported at passenger Delta International General Rules Tariff

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request for their convenience, will be subject to a processing fee of USD 50.00 or its equivalent converted at the applicable Banker's Rate for each piece. For the purpose of this rule, in-bond baggage will be defined as baggage transported into the U.S. from a point outside the country that:

- (1) Is placed in DL's custody by custom for:
 - (a) transport to the passenger's U.S. airport of destination or the nearest custom's facility for customs inspection, or
 - (b) transport to the passenger's U.S. port of departure from a point outside the U.S., or
 - (c) export to a point outside the U.S. from the passenger's port of entry.
- (2) must remain inaccessible to the passenger.
- (3) must be delivered into customs, custody for clearance to the passenger
- (4) normal baggage/liability rules apply.

RULE 18: LIABILITY OF CARRIERS; CODESHARE RULES

A) SUCCESSIVE CARRIERS- If one or more successive Carriers are operating flights under a single ticket, or under a Conjunction Ticket, the flights will be deemed a single operation.

B) LAWS AND PROVISIONS APPLICABLE

- 1) The Carrier shall be liable under Article 17 of the Warsaw Convention or Montreal Convention, whichever may apply, for recoverable compensatory damages sustained in the case of death or bodily injury of a passenger, as provided in the following paragraphs:
 - a) The Carrier shall not be able to exclude or limit its liability for damages not exceeding 128,821 Special Drawing Rights for each passenger.
 - b) The Carrier shall not be liable for damages to the extent that they exceed 128,821 Special Drawing Rights for each passenger if the Carrier proves that:
 - 1) such damage was not due to the negligence or other wrongful act or omission of the Carrier or its servants or agents; or
 - 2) such damage was solely due to the negligence or other wrongful act or omission of a third party.
 - c) The Carrier reserves all other defenses and limitations available under the Warsaw Convention or the Montreal Convention, whichever may apply, to such claims including, but not limited to, the exoneration defense of Article 21 of the Warsaw Convention and Article 20 of the Montreal Convention except that the Carrier shall not invoke Articles 20 and 22(1) of the Warsaw Convention in a manner inconsistent with paragraphs (1) and (2) hereof.
 - d) With respect to third parties, the Carrier reserves all rights of recourse against any other person, including without limitation, rights of contribution and indemnity.
 - e) The Carrier agrees that, subject to applicable law, recoverable compensatory damages for such claims may be determined by reference to the laws of the country of the domicile or country of permanent residence of the passenger.
- 2) In cases of bodily injury or death, the Carrier shall make an advance payment where the Carrier determines it is necessary to meet the immediate economic needs of, and hardship suffered by, a passenger as provided in the following paragraphs:
 - a) Unless a dispute arises over the identity of the person to whom an advance payment shall be made, the Carrier shall, without delay, make the advance payment to the passenger in an amount or amounts determined by the Carrier in its sole discretion. In the event of death of a passenger, the amount of the advance payment shall not be less than 16,000 Special Drawing Rights, which shall be paid to a representative of the passenger's next of kin eligible to receive such advance payment as determined by the Carrier in its sole discretion.
 - b) The Carrier shall make the advance payment as an advance against the Carrier's liability under the Warsaw Convention, or the Montreal Convention, whichever may apply. An advance

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payment shall not constitute recognition of liability. An advance payment shall be offset against, or deducted from the payment of, any settlement or judgment with respect to any claim for compensation.

- c) The Carrier, in making an advance payment, does not waive any rights, defenses, or limitations available under the Warsaw Convention, or the Montreal Convention, whichever may apply, to any claim on behalf of the passenger, nor shall acceptance of an advance payment constitute a release of any claim, whatsoever, by any person.
 - d) The Carrier, in making an advance payment, preserves its right to seek contribution or indemnity from any other person for such payment, which shall not be deemed to be voluntary contribution or contractual payment on the part of the Carrier.
 - e) The Carrier may recover an advance payment from any person where it is proven that the Carrier is not liable for any damage sustained by the passenger, or where it is proven that the person was not entitled to receive the payment, or where and to the extent that it is proven that the person who received the advance payment caused, or contributed to, the damage.
- 3) The Carrier shall be liable for damage occasioned by delay in the carriage of passengers by air, as provided in the following paragraphs:
- a) The Carrier shall not be liable if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage, or that it was impossible for it or them to take such measures.
 - b) Airport, air traffic control, security, and other facilities or personnel, whether public or private, not under the control and direction of the Carrier are not servants or agents of the Carrier, and the Carrier is not liable to the extent the delay is caused by these kinds of facilities or personnel.
 - c) Damages occasioned by delay are subject to the terms, limitations and defenses set forth in the Warsaw Convention and the Montreal Convention, whichever may apply. They include foreseeable compensatory damages sustained by a passenger and do not include mental injury damages.
 - d) The Carrier reserves all defenses and limitations available under the Warsaw Convention or the Montreal Convention, whichever may apply, to claims for damage occasioned by delay, including, but not limited to, the exoneration defense of Article 21 of the Warsaw Convention and Article 20 of the Montreal Convention. Under the Montreal Convention, the liability of the Carrier for damage caused by delay is limited to 5,346 Special Drawing Rights per passenger. The limits of liability shall not apply in cases described in Article 25 of the Warsaw Convention or Article 22(5) of the Montreal Convention, whichever may apply.
- 4) The Carrier is liable for damages sustained in the case of destruction or loss of, damage to, or delay of checked and unchecked baggage, as provided in the following paragraphs:
- a) Except as provided below, the liability of the Carrier is limited to 1288 Special Drawing Rights for each passenger in the case of destruction, loss, damage, or delay of baggage, whether checked or unchecked, under the Warsaw Convention or the Montreal Convention, whichever may apply. Unless the passenger proves otherwise:
 - 1) all baggage checked by a passenger shall be considered to be the property of that passenger;
 - 2) a particular piece of baggage, checked or unchecked, shall not be considered to be the property of more than one passenger; and
 - 3) unchecked baggage, including personal items, shall be considered to be the property of the passenger in possession of the baggage at the time of embarkation.
 - b) Normal carrier limit of liability will be waived for substantiated claims involving loss, damage, or delay in delivery to mobility aids such as wheelchairs, walkers, crutches, scooters and other mobility aid, when such items have been accepted into the care of the carrier as checked baggage or otherwise. The liability of carrier for substantiated claims involving the loss of, damage to, or delay in delivery of mobility aids, when such items have been accepted as checked baggage or otherwise, is based on the cost of the repair or replacement value of the

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mobility aid. For damaged or delayed wheelchairs, walkers, crutches, scooters and other mobility aids if a damaged aid can be repaired, carrier will arrange, at its expense, for the prompt and adequate repair of the aid and for its return to the passenger as soon as reasonably possible. Carrier will use reasonable efforts to obtain a temporary without undue delay while the passenger's mobility aid is being repaired or returned.

- c) In the case of unchecked baggage, the Carrier is liable only to the extent the damage resulted from its fault, or that of its servants or agents.
 - d) The Carrier is not liable for destruction, loss, damage, or delay of baggage not in the charge of the Carrier, including baggage undergoing security inspections or measures not under the control and direction of the Carrier.
 - e) The Carrier reserves all defenses and limitations available under the Warsaw Convention, and the Montreal Convention, whichever may apply to such claims including, but not limited to, the defense of Article 20 of the Warsaw Convention and Article 19 of the Montreal Convention, and the exoneration defense of Article 21 of the Warsaw Convention and Article 20 of the Montreal Convention, except that the Carrier shall not invoke Article 22(2) and (3) of the Warsaw Convention in a manner inconsistent with paragraph 4(a) hereof. The limits of liability shall not apply in cases described in Article 25 of the Warsaw Convention or Article 22(5) of the Montreal Convention, whichever may apply.
- 5) Under the Warsaw Convention and the Montreal Convention, whichever may apply, an action for damages must be brought within two years, and a complaint must be made to the Carrier within seven calendar days in the case of damage to baggage, and 21 calendar days in the case of delay thereof.
- C) **LIMITATION OF LIABILITY**- Except as the applicable Convention or other law may otherwise require:
- 1) Carrier is not liable for any death, injury, delay, loss, or other damage of whatsoever nature (hereinafter in this tariff collectively referred to as "damage") to passengers or unchecked baggage arising out of or in connection with carriage or other services performed by Carrier incidental thereto, unless such damage is caused by the negligence of Carrier. Assistance rendered to the passenger by Carrier's employees in loading, unloading, or transshipping baggage shall be considered as gratuitous service to the passenger. Carrier is not liable for damage to such unchecked baggage incurred during, or as a result of such service, irrespective of the negligence of Carrier's employees.
 - 2) Carrier is not liable for any damage directly and solely arising out of its compliance with any laws, government regulations, orders, or requirements or from failure of passenger to comply with same, or out of any cause beyond Carrier's control.
 - 3) Carrier is not to be liable for damage to a passenger's baggage caused by property contained in the passenger's baggage. Any passenger whose property caused damage to another passenger's baggage or to the property of Carrier shall indemnify Carrier for all losses and expenses incurred by Carrier as a result thereof.
 - 4) Delta assumes no liability for preexisting damage, including minor cuts, scratches, and broken zippers as a result of over packing, or for wear and tear resulting from ordinary handling of baggage.
 - 5) When Carrier has exercised the ordinary standard of care, it shall not be liable for spoilage resulting from delay in delivery of any perishables described in Rule 17 (BAGGAGE REGULATIONS), nor for damage to, or damage caused by, fragile articles described in Rule 17 which are unsuitably packed and which are included in a passenger's checked baggage without Carrier's knowledge. Carrier shall not be liable for the damage, or delay in delivery of a passenger's checked baggage and property accepted pursuant to the execution of a Limited Liability Release form to be provided by Delta, to the extent that such release relieves Carrier of liability.
 - 6) Carrier may refuse to accept any articles that do not constitute baggage as such term is defined herein, but if delivered to and received by Carrier, such articles shall be deemed to be within the baggage valuation and limit of liability, and shall be subject to the published rates and charges of Carrier.
 - 7)

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- a) Liability of Carrier for damages shall be limited to occurrences where Delta is the Marketing Carrier, except in the case of checked baggage as to which the passenger also has a right of action against the first or last Carrier.
- b) A Carrier issuing a ticket or checking baggage for carriage over the lines of another Carrier does so only as agent.
- c) Carrier shall not be liable for death or injury of a passenger occurring on a flight where Delta is not the Marketing Carrier.
- 8) Carrier shall not be liable in any event for any consequential or special damage arising from carriage subject to this tariff, whether or not Carrier had knowledge that such damages might be incurred.
- 9) Any exclusion or limitation of liability of Carrier under this tariff or the ticket shall apply to agents, servants, or representatives of the Carrier acting within the scope of their employment and also to any person whose aircraft is used by the Carrier and its agents, servants or representatives acting within the scope of their employment.
- 10) The owner of a pet shall be responsible for compliance with all governmental regulations and restrictions, including furnishing valid health and rabies vaccination certificates when required. Carrier will not be liable for loss or expense due to the passenger's failure to comply with this provision, and Carrier will not be responsible if any pet is refused passage into or through any country, state, or territory.

D) TIME LIMITATIONS ON CLAIMS AND ACTIONS

- 1) No action shall lie in the case of damage to baggage unless the person entitled to delivery complains to the Carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt; and in the case of delay, or loss, complaint must be made at the latest within 21 days from the date on which the baggage has been placed at his disposal (in the case of delay), or should have been placed at his disposal (in the case of loss). Every complaint must be made in writing and dispatched within the time aforesaid. Where carriage is not "international carriage" as defined in the applicable Convention, failure to give notice shall not be a bar to suit where claimant proves that
 - a) it was not reasonably possible for him to give such notice, or
 - b) that notice was not given due to fraud on the part of Carrier, or
 - c) the management of Carrier had knowledge of damage to passenger's baggage.
- 2) Any right to damages against Carrier shall be extinguished unless an action is brought within two years reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

E) OVERRIDING LAW-Insofar as any provision contained or referred to in the ticket or in this tariff may be contrary to a law, government regulation, order or requirement which severally cannot be waived by agreement of the parties, such provisions shall remain applicable and be considered as part of the contract of carriage to the extent only that such provision is not contrary thereto. The invalidity of any provision shall not affect any other part.

F) MODIFICATION AND WAIVER-No agent, servant, or representative of Carrier has authority to alter, modify, or waive any provisions of the contract of carriage or this tariff.

G) GRATUITOUS TRANSPORTATION

- 1) Gratuitous transportation by Carrier of persons as hereinafter described shall be governed by all the provisions of this rule, except subparagraph (2) below and by all other applicable rules of this tariff.
 - a) Transportation of persons injured in aircraft accidents on the lines of Carrier and physicians and nurses attending such persons.

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- b) Transportation of persons, the object of which is that of providing relief in general epidemics, pestilence or other calamitous visitation.
 - c) Transportation of persons, which is required by and authorized pursuant to Part 223 of the Economic Regulations of the Department of Transportation of the United States of America.
 - d) Transportation of persons which is subject to the Convention.
 - e) Transportation of officers, employees and servants of Carrier traveling in the course of their employment and in the furtherance of Carrier's business.
- 2) Except in respect of gratuitous transportation of persons described in paragraph (G) (1) above, Carrier in furnishing gratuitous transportation shall not be liable (the provisions of Rule 18(B) and (C) to the contrary notwithstanding) under any circumstances whether of its own negligence or that of its officers, agents, representatives or employees, or otherwise, and the person using such free transportation on behalf of himself, his heirs, legal representative, defendants and other parties in interest, and their representatives, assignees, releases and agrees to indemnify Carrier, its officers, agents, representatives and employees from all liability (including cost and expenses), for any and all delay, and for failure to complete passage, and from any and all loss or damage to the property of such person.
- 3) Except in respect of gratuitous transportation of persons described in paragraph (G)(1) above, Carrier in furnishing gratuitous transportation shall not be liable under any circumstances whether of its own negligence or that of its officers, agents, representatives or employees, or otherwise, and the person using such free transportation, on behalf of himself, his heirs, legal representatives, defendants and other parties in interest, and their representatives, assignees, releases and agrees to indemnify Carrier, its officers, agents, representatives and employees from all liability (including cost and expenses) for any and all death or injury, to such person.

NOTE: Rules stating any limitation on, or conditions relating to, the liability of Carriers for personal injury or death are not permitted to be included in tariffs filed pursuant to the laws of the United States, except to the extent provided in Rule 18 (B)(1). Insofar as this rule states any such limitation or condition it is included herein; except to the extent provided in Rule 18(B)(1), as part of the tariff filed with governments other than the United States and not as part of this tariff filed with the Department of Transportation of the United States.

H) RULES SPECIFIC TO CODESHARE OPERATIONS

Some flight segments in your itinerary may be operated by airlines other than Delta pursuant to contractual codeshare arrangements with Delta that allow Delta to sell tickets for travel on flights operated by these Carriers ("Delta Codeshare Partners"). If you purchase a Delta ticket where Delta is the Marketing Carrier (your flight has a Delta flight number), your contract of carriage is with Delta regardless of the Operating Carrier. Notwithstanding any other provisions of this contract of carriage, the following rules will apply to flights operated by Delta Codeshare Partners:

1. **Baggage**

For itineraries in which at least one segment is operated by a Delta Codeshare Partner, only standard-sized baggage (not to exceed a maximum outside linear dimension of 62 inches or a maximum weight of 50 lbs) will be accepted. These more restrictive rules apply throughout the whole itinerary, including flights operated by Delta. One carry-on bag not exceeding 11 pounds and 46 linear inches is also permitted.

2. **Unaccompanied Minors**

No unaccompanied minors will be accepted.

3. **Carriage of Animals**

No animals (other than service animals, emotional support animals, and animals owned by members of the U.S. military and their families who are traveling on active transfer orders) will be accepted. With regard to

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emotional support animals, the policy of the Operating Carrier will govern. Please consult with the Operating Carrier for the applicable policy regarding acceptance and carriage of emotional support animals.

4 Check-In Requirements

Minimum Check-in time of 2 hours will apply, except in the case of Moscow, Russia (3 hours minimum), and Istanbul, Turkey (3 hour, 15 minute minimum).

5 Extended Tarmac Delays – Codeshare Services

In the event of extended tarmac delays on flights operated by a Delta Codeshare Partner, the contingency plan for lengthy tarmac delays of the Operating Carrier will apply.

C. Additional Services Provided by Delta Codeshare Partners

Delta Codeshare Partners may, in their discretion, accept more, larger or heavier items of checked baggage, accept specialty baggage items, accept additional carry-on items, accept unaccompanied minors, accept animals in the cabin or as cargo, and permit later check-in times. The Delta Codeshare Partner may charge a fee for any additional discretionary services it provides. Any additional services provided at the discretion of the Delta Codeshare Partner are not within Delta's control, are subject to change at any time, and do not form any part of this contract of carriage between you and Delta.

RULE 19: ELECTRONIC SURVEILLANCE

Passengers and their baggage are subject to inspection with an electronic detector with or without the passenger's consent or knowledge.

RULE 20: FLIGHT DELAYS/CANCELLATIONS

A. Delta's Liability in the Event of Schedule Changes, Delays and Flight Cancellations

If there is a flight cancellation, diversion, delay of greater than 120 minutes, or that will cause a passenger to miss connections, Delta will (at passenger's request) cancel the remaining ticket and refund the unused portion of the ticket and unused ancillary fees in the original form of payment in accordance with Rule 23. If the passenger does not request cancellation and refund of the remaining portion of the ticket, Delta will transport the passenger to the destination on Delta's next flight on which seats are available in the class of service originally purchased. At Delta's sole discretion and if acceptable to the passenger, Delta may arrange for the passenger to travel on another Carrier or via ground transportation. If acceptable to the passenger, Delta may provide transportation in a lower class of service, in which case the passenger may be entitled to a partial refund. If space on the next available flight is available only in a higher class of service than purchased, Delta will transport the passenger on the flight, although Delta reserves the right to upgrade other passengers on the flight according to its upgrade priority policy to make space in the class of service originally purchased. Delta will not be liable under any circumstances for any special, incidental or consequential damages arising from the foregoing.

B. Delta's Liability for Additional Amenities in the Event of Schedule Changes, Delays and Flight Cancellations

Except as provided above, Delta shall have no liability if the flight cancellation, diversion or delay was due to force majeure. As used in this rule, "force majeure" means actual,

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threatened or reported:

- (1) Weather conditions or acts of God;
- (2) Riots, civil unrest, embargoes, war, hostilities, or unsettled international conditions;
- (3) Strikes, work stoppages, slowdowns, lockout, or any other labor-related dispute;
- (4) Government regulation, demand, directive or requirement;
- (5) Shortages of labor, fuel, or facilities; or
- (6) Any other condition beyond Delta's control or any fact not reasonably foreseen by Delta.

However, when a passenger's travel is interrupted for more than 4 hours after the scheduled departure time as a result of flight cancellation or delay on the date of travel other than from force majeure, Delta will provide the passenger with the following additional amenities during the delay:

(a) Hotels

If overnight accommodations are available at Delta contracted facilities, Delta will provide the passenger with a voucher for one night's lodging when the delay is during the period of 10:00 pm to 6:00 am. Delta will provide free public ground transportation to the hotel if the hotel does not offer such service. If accommodations are not available, Delta will provide the passenger with a voucher that may be applied to future travel on Delta equal in value to the contracted hotel rate, up to \$100 USD.

(b) Ground Transportation

In lieu of lodging or other amenities, Delta may furnish ground transportation to the destination airport if a passenger's flight is diverted to an alternative airport and if the destination on the ticket and the diverted airport destination are within the following city groups:

San Francisco, CA (SFO)/ Oakland, CA (OAK)/ San Jose, CA (SJC)
Los Angeles, CA (LAX)/ Long Beach, CA (LGB)/ Ontario, CA (ONT)/ Santa Ana, CA (SNA)
Denver, CO (DEN)/ Colorado Springs (COS)
O'Hare - Chicago, IL (ORD)/ Midway - Chicago, IL (MDW)
Dallas-Ft. Worth, TX (DFW)/ Dallas, TX Love Field (DAL)
Bush Intercontinental - Houston, TX (IAH)/ Hobby - Houston, TX (HOU)
Fort Lauderdale, FL (FLL)/ Miami, FL (MIA)/ West Palm Beach, FL (PBI)
Baltimore, MD (BWI)/ National - Washington, DC (DCA)/ Dulles - Washington, DC (IAD)
Newark, NJ (EWR)/ LaGuardia - New York, NY (LGA)/ John F. Kennedy - New York, NY (JFK)
Orlando, FL (MCO)/ Tampa, FL (TPA)/ Daytona Beach, FL (DAB)/ Melbourne, FL (MLB)/Sarasota Bradenton, FL (SRQ)

(c) Additional Amenities

Delta will provide such additional or alternative amenities as are necessary to maintain the safety and/or welfare of customers with special needs such as unaccompanied children and customers with disabilities. Such amenities will be furnished consistent with special needs and/or circumstances.

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RULE 21: DENIED BOARDING COMPENSATION

A) Overbooking of Flights

Because passengers with confirmed reservations on a flight sometimes fail to show, Delta reserves the right to sell more tickets for travel on each flight than there are seats available on the aircraft. In some cases, this may result in a flight in which Delta cannot accommodate one or more passengers with confirmed reservations (an "oversold flight"). Delta may deny boarding to passengers with confirmed reservations on an oversold flight as set forth in this rule. The rights of passengers who are denied boarding shall be governed by this rule.

B) Request For Volunteers

Before denying boarding to any passenger holding a confirmed reservation on an oversold flight, Delta will ask other passengers on the flight to voluntarily give up their seat in exchange for compensation in an amount and form to be determined by Delta in its sole discretion. If a sufficient number of volunteers agree to give up their seats in response to Delta's offer, then no passenger with a confirmed reservation will be involuntarily denied boarding due to the oversale of the flight. If there are more volunteers than required, selection of the volunteer(s) to receive compensation will be determined in Delta's sole discretion.

C) Involuntary Denied Boarding

If an insufficient number of passengers volunteer to give up their seats in response to Delta's offer, Delta may involuntarily deny boarding to one or more passengers on the oversold flight according to the following boarding priority rules:

- 1) Passengers Holding Tickets for Travel in Premium Cabin, SkyMiles members identified with a Diamond Medallion ("DM"), Platinum Medallion ("PM"), or Gold Medallion ("GM") elite-status designation, and passengers holding tickets purchased under a DL corporate travel agreement.

Passengers holding tickets for confirmed space in the First or Business class cabin, SkyMiles members identified with a DM, PM, or GM elite-status designation, and passengers holding tickets purchased under a DL corporate travel agreement will be accommodated before other passengers holding tickets and/or boarding passes for confirmed space in the Coach cabin.

- 2) Passengers With Boarding Passes

Subject to the terms set forth in Rule 21(c)(1) and (4), passengers holding boarding passes who check in and present themselves at the departure gate in compliance with Rule 14 will be accommodated before passengers traveling in the same cabin who have not been issued boarding passes or who fail to comply with applicable check-in requirements. Subject to the availability of seats on the aircraft, boarding passes may be obtained by passengers who hold tickets for confirmed reserved space in the following manner:

- a) for passengers traveling on electronic tickets, through the Online Check-in feature on Delta.com within 24 hours of scheduled departure
- b) for passengers traveling on electronic tickets, through a Delta airport kiosk within four hours of scheduled departure
- c) from a Delta airport ticket counter and/or the check-in desk located in the departure area.

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3) Passengers Without Boarding Passes

Passengers with confirmed reservations who have not been issued a boarding pass and present themselves at the departure gate in compliance with Rule 14 will be accommodated according to the following priority rules:

- a) Passengers who have been rebooked to the present flight as a result of an irregular operation (e.g., delay, cancellation) of a previously booked flight.
- b) SkyMiles members identified with a Silver Medallion ("FO") elite-status designation.
- c) Passengers with a SkyTeam Elite or Elite Plus status.
- d) Passengers without any elite-status designation.

Within each of the foregoing groups, passengers are prioritized first by class of service and then by time of check-in.

4) Special Needs Passengers

Because of the special needs of passengers with disabilities, unaccompanied minors, and aged or infirm passengers, and active members of the U.S. Armed Forces on travel orders, Delta reserves the right to accommodate such passengers without regard to the boarding priorities established by this provision.

D) Transportation For Passengers Denied Boarding

Delta will provide transportation to passengers who volunteer to relinquish their seats or who are denied boarding involuntarily due to the oversale of a flight as follows:

1) Next Available Flight

Delta will transport the passenger on its next flight on which space is available to the passenger's next Stopover, or if none, to the passenger's destination, at no additional cost to the passenger.

2) Transportation on Other Airlines

At Delta's sole discretion, Delta may instead arrange for transportation on any other Carrier or combination of Carriers to the passenger's next Stopover, or if none, to the passenger's destination, at no additional cost to the passenger.

3) Overnight Stay Required

If the transportation provided to a passenger pursuant to this section requires that the passenger stay overnight before continuing his/her travel, Delta will provide hotel accommodations to the passenger at no additional cost. If hotel accommodations are unavailable, Delta will compensate the passenger with a credit voucher valid for future purchases from Delta in an amount commensurate in value with the local average contracted hotel rate up to \$100 USD, to be determined by Delta.

E) Compensation For Involuntary Denied Boarding

When a passenger with a confirmed reservation is involuntarily denied boarding on an oversold flight pursuant to this rule, Delta's sole liability to the passenger shall be to provide alternative

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transportation as provided in paragraph D, above, and to pay denied boarding compensation, if applicable, pursuant to the terms and conditions of this rule.

1) Conditions For Payment of Involuntary Denied Boarding Compensation

The passenger shall not be entitled to any compensation for involuntary denied boarding if:

a) Passenger's Failure to Comply with Contract of Carriage

The passenger has not complied fully with Delta's contract of carriage or tariff provisions regarding ticketing, reconfirmation, check-in, or acceptability for transportation.

b) Substitution of Equipment

The flight for which the passenger holds confirmed space is unable to accommodate that passenger because of substitution of equipment of lesser capacity when required by operational or safety reasons; or, on an aircraft with a designed passenger capacity of 60 or fewer seats, the flight for which the passenger holds confirmed reserved space is unable to accommodate that passenger due to weight/balance restrictions when required by operational or safety reasons.

c) Carriage in Alternative Cabin

Delta offers to accommodate the passenger in a section of the aircraft other than that specified on his/her ticket at no extra charge; provided however that if a passenger is seated in a section for which a lower fare applies, the passenger will be entitled to a refund of the difference in fare.

d) Alternative Transportation

Delta arranges comparable air transportation, or other transportation used by the passenger, at no extra cost to the passenger, that at the time such arrangements are made is scheduled to arrive at the passenger's next Stopover, or, if none, final destination within one hour after the planned arrival time of the passenger's original flight or flights.

F) Amount of Involuntary Denied Boarding Compensation

If all conditions for compensation are met, then Delta shall pay compensation to passengers involuntarily denied boarding in an amount to be calculated as follows:

1) When Delta arranges Qualifying Alternative Transportation

If Delta arranges Qualifying Alternative Transportation, then Delta will pay denied boarding compensation in an amount equal to 200% of the fare (including any surcharges and air transportation taxes) to the passenger's next Stopover, or if none, to his/her final destination, but no more than \$675.00.

2) Where Delta cannot arrange Qualifying Alternative Transportation

If Delta cannot arrange Qualifying Alternative Transportation, then Delta will pay denied boarding compensation in an amount equal to 400% of the fare (including any surcharges and air transportation taxes) to the passenger's next Stopover, or if none, to his/her final destination, but no more than \$1350.00.

G) Time of Payment for Involuntary Denied Boarding Compensation

If all conditions for compensation are met, Delta will pay any involuntary denied boarding compensation on the day and at the place where the denial of boarding occurred, in cash or immediately negotiable check; provided, however, that if the alternative transportation arranged for the passenger's convenience departs before the payment can be made to the passenger, then payment will be made by mail or other means within 24 hours after the denied boarding occurs.

H) Codeshare Services

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When involuntary denied boarding occurs on a flight operated by a Delta Codeshare Partner (an Operating Carrier), any passenger holding a ticket on such flight governed by these Rules is entitled to denied boarding compensation in accordance with this Rule (the Rules of the Marketing Carrier). Such compensation will generally be paid by the Operating Carrier at the time of denied boarding; provided however that the Operating Carrier may elect to reimburse the passenger in accordance with local laws, regulations or procedures that may differ from these guidelines in some cases. If the compensation actually paid is less than the amount required by this Rule, the passenger will be entitled upon request to Delta's Customer Care department to payment from Delta in the amount of the difference between the compensation due under this Rule and the amount reimbursed by the Operating Carrier at the time of the denial of boarding.

RULE 22: REROUTING

A General Provisions

1. Fare Applicable To Rerouting Or Change In Destination

a. Unless otherwise specified in the fare rule, a passenger may change the routing, destination, Carrier(s), class of service, or dates of travel specified on an unused ticket in accordance with paragraph 2) below, provided that, after transportation has commenced, a one-way ticket will not be converted into any other type of ticket (such as a round-trip, circle-trip or open-jaw trip ticket).

b. Except as otherwise provided, the fares and charges applicable, when a rerouting or change in ultimate destination is made at passenger's request prior to arrival at the ultimate destination named on the original ticket, shall be the applicable fare and charges for the entire revised itinerary in effect on the date that the rerouting or change in ultimate destination is entered on the passenger's new ticket.

c. Rule 12(E) applies for validity of voluntarily exchanged/reissued tickets.

2. Fare Applicable To Upgrading Class Of Service While In Flight

When a passenger moves from one class of service to another while in flight, an additional collection will be made in an amount equal to the difference between:

1. The one-way fare applicable to the class of service used from passenger's point of origin on such flight to the last scheduled stop prior to the passenger's change in class of service, plus the one-way fare in the new class of service from such stop to the passenger's destination on such flight, and
2. The fare paid for transportation from the passenger's origin to destination on such flight.

When the amount described in 1) above is less than the amount described in 2) above, no additional collection will be made. The acceptance of such passenger in the class of service to which he/she is moving for travel beyond the next scheduled stopping point in the flight is subject to availability. Discounts will not apply.

B. Ticket reissue procedures

-Unless otherwise specified in a fare rule, the following procedures will apply to Delta ticket reissues.

For nonrefundable fares:

- If the value of the new ticket is lower than the ticket being reissued, the difference in ticket price, less the change fee, will be provided to the passenger in the form of a non-refundable Delta travel voucher at the time of reissue.

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- If the value of the new ticket is equal to or higher than the ticket being reissued, the change fee and any difference in fare will be collected at the time of reissue.

For refundable fares:

- If the value of the new ticket is lower than the ticket being reissued, any difference in fare will be refunded to the original form of payment at the time of reissue.
- If the value of the new ticket is higher than the ticket being reissued, the difference in fare will be collected at the time of reissue.

-Flights must be rebooked and the ticket reissued at the time of the change.

1. Unused tickets

- When making changes to the outbound portion of an unused ticket, Delta will cancel the itinerary and start over, issuing a new ticket using current fares subject to all applicable fare rules. If the unused fare is nonrefundable, the value of the original ticket, less the change fee, may be applied toward the purchase of the new ticket. If the unused fare is refundable, the value of the original ticket may be applied toward the purchase of a new ticket.
- When making changes to the continuing/return portion of unused tickets, Delta will apply one of the following procedures resulting in the lowest fare:
 - Attempt to keep the fares as ticketed, using historical fares in effect on the date of the original ticket issue date and maintaining the original fares and origin/destination for all fare components. Delta will validate all fare rules at the time of reissue.
-OR-
 - Reprice the itinerary using historical fares in effect on the date of the original ticket issue date, validating all fare rules and booking code provisions at the time of reissue with no changes to the first fare component.
-OR-
 - Cancel the itinerary and start over, issuing a new ticket using current fares with all fare rules validated. If the unused fare is nonrefundable, the value of the original ticket less the change fee may be applied toward the purchase of a new ticket. For refundable fares, the value of the original ticket may be applied toward the purchase of a new ticket.

2. Partially Used Tickets

- When making changes to partially used tickets, Delta will apply one of the following procedures resulting in the lowest fare:
 - Attempt to keep the fares as ticketed using historical fares in effect on the date of the original ticket issue date and maintaining the original fares and origin/destination for all fare components. No changes are permitted to fully flown fare components, and Delta will validate all fare rules at the time of reissue.
-OR-
 - Reprice the itinerary using historical fares in effect on the date of the original ticket issue date, validating all fare rules and booking code provisions at the time of reissue with no changes to fully flown fare components. The new ticket may be a lower or equal or higher value than the previous ticket.
-OR-
 - Reprice the itinerary, replacing the fares of the flown fare components with historical fares in an equal or the next available higher booking. The value of the replacement fare component for the flown fare may be lower than, equal to, or higher than the value of the original ticketed fare component. Replace the unflown fare components using historical fares using lower, equal or the next available higher booking class. The unflown fare component may be in a lower, equal or next available higher booking class and/or value. No changes are permitted to the fare break points of the fully flown fare components and the historical fares are those in effect on the

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date of the original ticket issue date. Delta will validate all fare rules at the time of reissue. The new ticket may be a lower or equal or higher value than the previous ticket. The Carrier will use the following booking class hierarchy (displayed from highest to lowest) when replacing fares for flown fare components:

First Class - F
Delta One - J C D I Z
Delta Premium Select - P A G
Delta Comfort Plus - W S
Main Cabin - Y B M H Q K L U T X V
Basic Economy - E

-OR-

iv. Issue a new ticket using current fares and validating all fare rules at the time of reissue. If the original fare is nonrefundable, the Carrier will apply the remaining value for the unflown segments of the partially used ticket, if any, less the change fee, toward the purchase of a new ticket. For refundable fares, Delta will apply the remaining value from the partially used ticket, if any, toward the purchase of a new ticket.

RULE 23: REFUNDS

A. Involuntary Refunds

If a refund is required because of Delta's failure to operate on schedule or refusal to transport (except as a result of passenger's failure to comply with the contract of carriage), the following refund will be made directly to you:

- 1) If no portion of the ticket has been used, the refund will be an amount equal to the fare paid.
- 2) If a portion of the ticket has been used and termination (interruption) occurs:
 - a) At A Fare Breakpoint - The refund will be an amount equal to the fare paid for the unused transportation from the point of termination (interruption) to the destination or next Stopover point named on the ticket, or to a point at which transportation is to be resumed. No refund will apply when alternate transportation is provided by Delta and accepted by the passenger.
 - b) Within A Fare Component - The refund will be an amount equal to the percentage of unflown mileage to fare component total mileage by prorating the fare paid for the fare component, from the point of termination/interruption to the destination, or next Stopover point named on the ticket, or to the point at which transportation is to be resumed. No refund will apply when alternate transportation is provided by Delta and accepted by the passenger.

B. Voluntary Refunds

1. Nonrefundable Tickets

Most tickets issued by Delta are nonrefundable. Delta will not refund any portion of a fare, fee or surcharge that is nonrefundable. Delta will refund taxes, fees or charges collected upon nonrefundable tickets for international carriage only where required by law or where such taxes were collected in error and the passenger submits evidence of exemption from the tax, fee or charge to Delta in connection with a timely refund request. No request for a refund of taxes, fees, or charges will be processed unless a request for the

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refund is received by Delta on the written or electronic forms provided by Delta within one year of the date of ticket issuance. A refund of taxes, fees, or charges will cancel any remaining credit or value on the applicable ticket. Delta may permit a portion of the fare paid for an unused nonrefundable ticket to be applied toward the purchase of future travel on Delta, or to upgrade or downgrade those tickets after purchase, as set forth in the applicable fare rule. Delta may charge an administrative service charge for processing any permitted changes to nonrefundable tickets, which will be deducted from any credit toward the purchase of future travel on Delta, or collected at the time the change is processed, as applicable.

In the event of death of the passenger prior to the date of travel, tickets issued at nonrefundable fares will be refunded to the deceased passengers' estate upon request. When a passenger is unable to travel due to the death of a member of his/her immediate family (traveling or not) or traveling companion, Delta may waive certain fare restrictions in accordance with its written policy. A death certificate/obituary notice to support the request must be submitted in all cases and is subject to verification by Delta.

If the passenger is unable to travel due to his/her illness or physical incapacity, Delta may waive certain fare restrictions in accordance with its written policy. This also applies to the immediate family (traveling or not) and traveling companion. The illness or physical incapacity must be certified in writing by a physician on his/her letterhead stationery verifying that the passenger could not travel on the date of travel because of illness or physical incapacity.

2. Fully Refundable Tickets

If your ticket was purchased at a fare that is fully refundable, Delta will issue a refund of any unused refundable portion of your ticket at your request. You must surrender any unused portion of the ticket at the time of the refund request. No refund will be issued on any ticket unless Delta receives a request for the refund and any unused coupons are surrendered to Delta within one year of the original issue date of the ticket. The amount of the refund will be calculated as follows:

1. If no portion of the ticket has been used, Delta will refund the total fare and all taxes, fees or charges paid.
2. If a portion of the ticket has been used, Delta will refund an amount equal to (a) the total fare and all taxes, fees or charges paid, minus (b) the fare and taxes, fees or charges for the used portion of the ticket.

C. Time Limit for Refund Requests

No refund will be issued on any ticket unless Delta receives a request for the refund and any unused coupons are surrendered to Delta within one year of the original issue date of the ticket.

D. Form of Refund

Delta will issue refunds on eligible tickets as follows:

1. Tickets paid for by credit card will be refunded to the credit card account used to purchase the ticket, typically within seven business days of Delta's initial receipt of refund request.
2. Tickets paid for by cash, if cash is accepted by Delta, will be refunded by check issued to the person named as a passenger on the ticket, typically within 20 business days of Delta's receipt of initial refund request.
3. Tickets charged under a UATP (universal air travel plan) will be refunded to the subscriber against whose account the ticket was charged.
4. Tickets issued against governmental transportation requests shall be issued as required by applicable government regulation.

EXHIBIT B

5. Tickets paid with any other form of payment will be issued back to the original form of payment.
6. All refunds will be subject to government laws, rules, regulations, or orders of the country in which the ticket was originally purchased and of the country in which the refund is being made.
7. Voluntary refunds of tickets purchased in currency other than U.S. dollars shall be made in the currency of the original purchase and in the country where such purchase was made. Voluntary refunds of tickets purchased in U.S. dollars may be made in U.S. dollars or local currency in any country, provided such refund is not prohibited by applicable law.
8. Involuntary refunds of tickets shall be made in the currency used for such purchase and in the country where such purchase was made, whenever possible. Upon the request of the passenger and where permitted by Applicable Law, Delta may in its sole discretion elect to issue the involuntary refund in USD currency or the currency of the country where the passenger is located at time of request.

E. Overcharges

No claims for overcharge shall be valid and DL shall have no liability if claim is more than 45 days after the date of issue of the ticket.

F. No Refund on Tickets Used as Evidence of Return Travel

Delta will not issue a refund on any ticket which has been presented to government officials of a country or to any carrier as evidence of intention to depart from that country unless the passenger establishes to Delta's satisfaction that he or she has permission to remain in the country or will depart via another carrier or conveyance.

RULE 24: CURRENCY: DECLINED OR DISPUTED FORMS OF PAYMENT

Except as otherwise provided, all fares and charges are stated in dollars and cents of the lawful currency of the United States. Except as set forth in this contract of carriage, a passenger is liable for the entire ticket price and fees for an issued ticket, notwithstanding any dispute, chargeback or declined form of payment. Delta reserves the right to collect all such amounts at any time, including after transportation has been provided.

RULE 25: LIMITATION OF LIABILITY

INTERNATIONAL TRAVEL ON DELTA IS SUBJECT TO THE RULES RELATING TO LIMITATIONS OF LIABILITY AND ALL OTHER PROVISIONS OF THE WARSAW CONVENTION AND MONTREAL CONVENTION, AS AMENDED. FOR INFORMATION ON DELTA'S LIABILITY UNDER THE WARSAW CONVENTION AND MONTREAL CONVENTION, SEE RULE 18 OF THESE CONDITIONS OF CARRIAGE.

RULE 26: GOVERNING LAW: ENTIRE AGREEMENT

Any and all matters arising out of or relating to this Contract of Carriage and/or the subject matter hereof shall be governed by and enforced in accordance with the laws of the United States of America and, to the extent not preempted by Federal law, the laws of the State of Georgia without regard to conflict of law principles, regardless of the legal theory upon which such matter is asserted. This Contract of Carriage, including the Ticket and Fare Rules, represents the entire agreement between the parties relating to transportation by Carrier, and shall supersede all prior representations, understandings or agreements pertaining thereto, either

EXHIBIT B

oral or written. No other covenants, warranties, undertakings or understandings may be implied, in law or in equity.

These Conditions of Carriage are applicable except to the extent that they are contrary to applicable laws, government regulations, or orders, in which event the contrary law, regulation or order shall prevail. If any provision of these Conditions of Carriage is invalid under any applicable law, the other provisions shall remain valid.

The official text of this Contract of Carriage shall be the English language, and any interpretation or construction of this Agreement shall be based thereon. If this Contract of Carriage or any documents or notices relating to it are translated into another language the English version shall be controlling in the event of discrepancy between the two.

Delta shall not be liable for any punitive, consequential or special damages arising out of or in connection with carriage or other services performed by Delta, whether or not Delta had knowledge that such damage might be incurred. Delta shall not be liable for any damage arising out of its compliance with any laws, government regulations, orders, rules, requirements or security directives or as a result of a passenger's failure to comply with such laws, government regulations, orders, rules, requirements or security directives or as a result of Passenger's reliance on advice provided by Delta regarding such laws, regulations, orders, rules, requirements or security directives.

Election or failure by Delta to enforce any provision of the contract of carriage shall not constitute a waiver of its rights and remedies with regard to such provision or any other provision.

RULE 27: GEOGRAPHY AND COUNTRY-SPECIFIC PROVISIONS

In addition to the provisions set forth in these Conditions of Carriage, additional rules may apply to residents and citizens of certain countries which supplement each of Delta's and the passengers obligations in these Conditions of Carriage. These provision are set forth at:
[HTTPS://WWW.DELTA.COM/CONTENT/WWW/EN_US/LEGAL/LEGAL-NOTICES.HTML](https://www.delta.com/content/www/en_us/legal/legal-notice.html)

A. RESIDENTS OF CERTAIN COUNTRIES AND GEOGRAPHIC REGIONS (ISRAEL, EUROPEAN UNION, KOREA, PHILIPPINES, ECUADOR, TAIWAN AND MEXICO) MAY BE SUBJECT TO ADDITIONAL LEGAL RIGHTS AND NOTICES AVAILABLE AT:
[HTTPS://WWW.DELTA.COM/CONTENT/WWW/EN_US/LEGAL/LEGAL-NOTICES.HTML](https://www.delta.com/content/www/en_us/legal/legal-notice.html)

B. ARBITRATION AND ALTERNATIVE DISPUTE RESOLUTION IN GERMANY

- 1) Delta Air Lines participates in conciliation proceedings before the arbitration body sōp (Schlichtungsstelle für den öffentlichen Personenverkehr e.V.).
- 2) The conciliation proceedings apply in the following cases:
 - cancellation of flights
 - delay of flights
 - denied boarding
 - involuntary downgrading in a lower class
 - delay/damage/destruction/loss of luggage
 - breach of duties when carrying disabled passengers or passengers with reduced mobility
- 3) The conciliation proceedings can be commenced under the following conditions:

EXHIBIT B

- Your flight was a private flight and not a business trip.
 - You have already put forward your claim towards Delta Air Lines but you were not satisfied with Delta Air Line's response or Delta Air Lines did not reply to you within 2 months.
 - Your claim amounts to at least € 10.00 and not more than € 5,000.00.
 - Your claim is not pending in court and was never pending in court.
 - Your claim was not settled amicably, neither in a court proceeding nor before any arbitration body nor between you and Delta Air Lines directly.
- 4) The contact details of söp are:

söp_Schlichtungsstelle für den öffentlichen Personenverkehr e.V.
Fasanenstraße 81
10623 Berlin

www.soe-p-online.de

C. FRENCH RESIDENTS – REFUND OF INTERNATIONAL DEPARTURE TAXES AND FEES

If the passenger fails to depart on his or her international flight, Delta will refund the applicable international departure taxes/fees related to the unused portion of the ticket upon request. The refund will be credited, at no charge to the passenger, within thirty days of the refund request provided that the request for refund is received by Delta the written or electronic forms provided by Delta in the conditions provided in Rule 23.

On non-refundable tickets, the passenger retains a credit for any unused travel segments for the remainder of the ticket validity period in the conditions provided in Rule 12. This residual ticket value can be applied to the purchase of a future ticket within the ticket validity period, subject to any applicable ticket change fees and fare difference as described in Rule 23. However, in case of tax refund request, any residual ticket value will be forfeited upon refund of the international departure taxes/fees.

D. CANADA RESIDENTS – INTERLINE BAGGAGE RULES

1. Interline Baggage Acceptance

Definitions

"Airline Designator Code" is an identification code comprised of two-characters which is used for commercial and traffic purposes such as reservations, schedules, timetables, ticketing, tariffs and airport display systems. Airline designators are assigned by IATA. When this code appears on a ticket, it reflects the Carrier that is marketing the flight, which might be different from the Carrier operating the flight.

"Baggage Rules" are the conditions associated with the acceptance of baggage, services incidental to the transportation of baggage, allowances and all related charges.

"Down Line Carrier" is any Carrier, other than the Selecting Carrier, who is identified as providing interline transportation to the passenger by virtue of the passenger's ticket.

"Most Significant Carrier (MSC)" is determined by a methodology, established by IATA (Resolution 302), which establishes, for each portion of a passenger's itinerary where baggage is checked through to a new stopover point, which Carrier will be performing the most significant part of the service. For travelers under the Resolution 302 system, the baggage rules of the MSC will apply. For complex itineraries involving multiple checked baggage points, there may be more than one MSC, resulting in the application of differing baggage rules through an itinerary.

"Most Significant Carrier (MSC) – IATA Resolution 302 as conditioned by the CTA" is determined by applying IATA Resolution 302 methodology as conditioned by the CTA. The CTA's reservation has stipulated that only

EXHIBIT B

a single set of baggage rules may apply to any given interline itinerary. The aim of the Agency's reservation is to allow the Selecting Carrier to use the MSC methodology to determine which Carrier's baggage rules apply to an international interline itinerary to or from Canada, while reinforcing the role of tariffs in the determination of which Carrier's rules apply.

"Participating Carrier(s)" include both the Selecting Carrier and Down Line Carriers who have been identified as providing interline transportation to the passenger by virtue of the passenger's ticket.

"Selected Carrier" is the Carrier whose baggage rules apply to the entire interline itinerary.

"Selecting Carrier" is the Carrier whose designator code is identified on the first flight segment of the passenger's ticket at the beginning of an interline itinerary issued on a single ticket whose origin or ultimate destination is in Canada.

"Interline agreement" is an agreement between two or more Carriers to co-ordinate the transportation of passengers and their baggage from the flight of one Carrier to the flight of another Carrier (through to the next point of stopover).

"Interline itinerary" means all flights reflected on a single ticket involving multiple Carriers. Only travel on a single ticket is subject to the Agency's approach provided the origin or the ultimate ticketed destination is a point in Canada.

"Interline travel" is travel involving multiple Carriers listed on a single ticket that is purchased via a single transaction.

"Single ticket" is a document that permits travel from origin to destination. It may include interline/code-share and intra-line segments. It may also include end-to-end combinations (i.e., stand-alone fares that can be bought separately but combined together to form one price).

"Summary page at the end of an online purchase" is a page on a Carrier's Web site which summarizes the details of a ticket purchase transaction just after the passenger has agreed to purchase the ticket from the Carrier and has provided a form of payment.

"Ultimate ticketed destination": in situations where a passenger's origin is a non-Canadian point and the itinerary includes at least one stop in Canada, as well as at least one stop outside of Canada. If the stop in Canada is the farthest checked point and the stop is more than 24 hours, the Agency would consider the ultimate ticketed destination to be Canada. This rule is applicable to all interline itineraries issued on a single ticket whose origin or ultimate ticketed destination is in Canada. It establishes how the Carrier will determine which Carrier's baggage rules apply to any passenger's entire interline itinerary. For the purposes of interline baggage acceptance:

- i. the Carrier whose designator code is identified on the first segment of the passenger's interline ticket will be known as the Selecting Carrier.
- ii. any Carrier who is identified as providing interline transportation to the passenger by virtue of the passenger's ticket will be known as a "Participating Carrier".

Baggage Rule Determination by Selecting Carrier

The Selecting Carrier will either (1) select and apply its own baggage rules as set out in its tariff to the entire interline itinerary or (2) select the Most Significant Carrier, as determined by IATA Resolution 302 and conditioned by the Canadian Transportation Agency, in order for that Carrier's baggage rules, as established in its tariff, to apply to the entire interline itinerary. The Carrier identified by Selecting Carrier will be known as the "Selected Carrier."

When Delta Air Lines is the Selecting Carrier, Delta Air Lines will select the Most Significant Carrier, as determined by IATA Resolution 302 and conditioned by the Canadian Transportation Agency, in order for that Carrier's baggage rule, as established in its tariff, to apply to the entire interline itinerary.

Each Operating Carrier's carry-on baggage allowances will apply to each flight segment in an interline itinerary. Notwithstanding, the carry-on baggage charges that will apply to the entire interline itinerary will be those of the Selected Carrier.

Baggage Rule Application by Participating Carrier

Where Delta Air Lines is not the Selected Carrier on an interline itinerary but is a Participating Carrier that is

EXHIBIT B

providing transportation to the passenger based on the ticket issued, Delta Air Lines will apply as its own the baggage rules, with the exception of rules as to the acceptance of pets as checked baggage, of the Selected Carrier throughout the interline itinerary. As to the acceptance of pets as checked baggage, Delta's rules will apply.

E. CHINA RESIDENTS AND VISITORS – CONSUMER COMPLAINTS

In compliance with applicable law, passengers originating from or connecting through the People's Republic of China may direct any complaints or inquiries to wecare@delta.com or the Delta Customer Care phone number: 400-120-2364 (China) or (800)221-1212 (USA).

EXHIBIT C

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Case No.: 2024-CP-23-00556
	)	
Joshua Hawkins,	)	
	)	
Plaintiff,	)	JOINT STIPULATION OF DISMISSAL
	)	WITHOUT PREJUDICE
vs.	)	
	)	
Delta Airlines,	)	
	)	
Defendant.	)	
_____	)	

Pursuant to Rule 41(a)(1)(B), SCRCP, Plaintiff Joshua Hawkins and Defendant Delta Air Lines, Inc., improperly named as "Delta Airlines," by and through the undersigned counsel, consent to and file this Joint Stipulation of Dismissal without Prejudice of the Second Amended Complaint, subject to the below conditions:

1. The following of Plaintiff Hawkins' causes of action shall be dismissed WITH PREJUDICE:

- a. "Common Law Liability for Negligence, Gross Negligence, and Recklessness";
- b. "Unfair Trade Practices Act Violation"; and
- c. "Breach of Contract Accompanied by Fraudulent Act";

2. Plaintiff Hawkins' causes of action for Breach of Contract, "Montreal Convention," and/or any available legislative remedies are dismissed WITHOUT PREJUDICE;

3. If Plaintiff Hawkins desires to refile an action arising from or relating to the transactions or occurrences alleged in the Second Amended Complaint, then Hawkins must file such an action on or before October 12, 2024. If Hawkins does not file such an action on or before October 12, 2024, then this Stipulation of Dismissal shall be WITH PREJUDICE,

EXHIBIT C

notwithstanding the above paragraph related to Plaintiff Hawkins' causes of action for Breach of Contract, "Montreal Convention," and/or any available legislative remedies;

4. By agreeing to this Joint Stipulation of Dismissal without Prejudice, Defendant does not waive any objections under Rule 12, SCRCP;

5. If Plaintiff refiles an action, Defendant expressly reserves its rights to assert Rule 12, SCRCP defenses, along with all other defenses available to Defendant;

6. If Plaintiff refiles an action on or before October 12, 2024, Defendant's undersigned counsel will accept service of the Complaint;

7. If Plaintiff refiles an action on or before October 12, 2024, Defendant shall not remove the action to federal court; and

8. Each Party shall bear its own costs.

WE SO CONSENT:

April 9, 2024

By: s/ Joshua T. Hawkins

Joshua T. Hawkins, S.C. Bar No. 78470

Helena L. Jedziniak, S.C. Bar No. 100825

Ethan L. Jedziniak, S.C. Bar No. 105785

HAWKINS & JEDZINIAK, LLC

1225 South Church Street

Greenville, South Carolina 29605

(864) 275-8142 (telephone)

(864) 752-0911 (facsimile)

josh@hjllcsc.com

Attorneys for Plaintiff

April 9, 2024

By: s/ Brian M. Peters, Jr.

C. Daniel Atkinson (S.C. Bar #72721)

datkinson@wajlawfirm.com

Brian M. Peters, Jr. (S.C. Bar #105911)

bpeters@wajlawfirm.com

EXHIBIT C

WILKES ATKINSON & JOYNER, LLC
127 Dunbar Street, Suite 200
Spartanburg, SC 29306
(864) 591-1113

Attorneys for Defendant

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Joshua Hawkins,

Plaintiff,

vs.

Delta Air Lines, Inc.

Defendant.

IN THE MAGISTRATE COURT

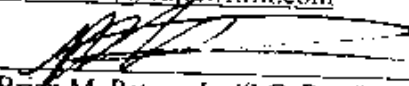
Case No.: 2024-CV-23-2415

**NOTICE OF APPEARANCE OF
C. DANIEL ATKINSON
AND BRIAN M. PETERS**

PLEASE TAKE NOTICE that the undersigned hereby gives notice of appearance as counsel for Defendant Delta Air Lines, Inc., in the referenced action, and requests the receipt of all notices given or required to be given in this matter by the Clerk of Magistrate's Court and any other persons or parties involved herein.

August 14, 2024


C. Daniel Atkinson (S.C. Bar #72721)
datkinson@wajlawfirm.com


Brian M. Peters, Jr. (S.C. Bar #105911)
bpeters@wajlawfirm.com

WILKES ATKINSON & JOYNER, LLC
127 Dunbar Street, Suite 200
Spartanburg, SC 29306
(864) 591-1113

Attorneys for Defendant



WILKES
ATKINSON &
JOYNER, LLC
ATTORNEYS AT LAW

MICHAEL B.T. WILKES, P.A.*
C. DANIEL ATKINSON**
J. ALEXANDER JOYNER*
BRIAN M. PETERS, JR.*
JUSTIN M. MOFFITT*
M. TAYLOR PETTY

- * CHARLESTON OFFICE
- * ALSO MEMBER GA BAR
- * ALSO MEMBER NC BAR
- * CERTIFIED MEDIATOR
- * ALSO MEMBER OF FL BAR

Reply to: SPARTANBURG OFFICE
127 DUNBAR STREET, SUITE 200
SPARTANBURG, SC 29306
PHONE: 864.591.1113
TOLL FREE: 866.920.1113
FAX: 864.591.1767

CHARLESTON OFFICE
320 BROAD STREET, SUITE 220
CHARLESTON, SC 29401
PHONE: 843.737.6229

WWW.WAJLAWFIRM.COM

August 15, 2024

Via U.S. Mail Only

Michelle Pegg
East Greenville Summary Court
320 W. Main St.
Taylors, SC 29687

Re: *Joshua Hawkins, Plaintiff v Delta Air Lines, Inc., Defendant*
East Greenville Summary Court
Case Number: 2024-CV- 23-2415

Dear Michelle:

On behalf of Delta Air Lines, Inc., please find enclosed an original and one copy of the *Notice of Appearance of C. Daniel Atkinson and Brian M. Peters, Jr., Motion to Dismiss in Lieu of Answer*, and *Certificate of Service*. Please file the originals and return filed stamped copies to me in the envelope provided.

By copy of this letter, I am serving Plaintiff's counsel with same. If you have any questions, please advise.

Sincerely,

Judy J. Saad
jsaad@wajlawfirm.com

Enclosures
cc: Joshua T. Hawkins, Esq.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Joshua Hawkins,

Plaintiff,

vs.

Delta Air Lines, Inc.

Defendant.

IN THE MAGISTRATE COURT

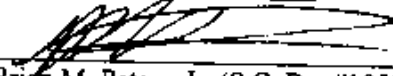
Case No.: 2024-CV-23-2415

**NOTICE OF APPEARANCE OF
C. DANIEL ATKINSON
AND BRIAN M. PETERS**

PLEASE TAKE NOTICE that the undersigned hereby gives notice of appearance as counsel for Defendant Delta Air Lines, Inc., in the referenced action, and requests the receipt of all notices given or required to be given in this matter by the Clerk of Magistrate's Court and any other persons or parties involved herein.

August 14, 2024


C. Daniel Atkinson (S.C. Bar #72721)
datkinson@wajlawfirm.com


Brian M. Peters, Jr. (S.C. Bar #105911)
bpeters@wajlawfirm.com

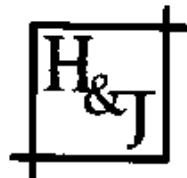
WILKES ATKINSON & JOYNER, LLC
127 Dunbar Street, Suite 200
Spartanburg, SC 29306
(864) 591-1113

Attorneys for Defendant

RECEIVED

AUG 14 2024

EAST GREENVILLE
SUMMARY COURT



Hawkins & Jedziniak, LLC

Joshua T. Hawkins

josh@hjllesc.com

Helena L. Jedziniak *

helena@hjllesc.com

** also licensed in North Carolina*

Ethan L. Jedziniak

ethan@hjllesc.com

1225 South Church Street, Greenville, SC 29605

P: (864) 275-8142 • F: (864) 752-0911 • www.hjllesc.com

August 15, 2024

via -U.S. Mail-

East Greenville Summary Court
320 West Main St.
Taylors, SC 29687

NON SERVICE

Re: *Joshua Hawkins v. Delta Airlines*
Case No.: 2023CV2310304093

To Whom It May Concern:

Please find enclosed, the Certificate of Service for the Summons & Complaint, served on June 13, 2024, to Brian Peters, Attorney for the Defendant, at 127 Dunbar Street, Suite 200, Spartanburg, SC 29306. Last Wednesday, August 7, 2024, the post office returned the service packet to us with a comment that said there was not an attorney at that address. We have sent other correspondence to this address, and it was received without any issues. It is unclear if someone refused the packet, or if they specifically said that this was not Mr. Peters' office address.

Should you have any questions, feel free to contact our office.

Sincerely,

Candie Edwards
Paralegal

Enclosures:

FILED

AUG 17 2024

CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Joshua Hawkins,

Plaintiff,

vs.

Delta Airlines,

Defendant.

IN THE MAGISTRATE COURT

CASE NO. 2024-2415

CERTIFICATE OF SERVICE

I, the undersigned, do affirm that I served/mailed a copy of the foregoing **Summons & Complaint**, to the addresses below, via U.S. Mail, with sufficient postage attached, on this date, June 13, 2024:

datkinson@wajlawfirm.com; bpeters@wajlawfirm.com

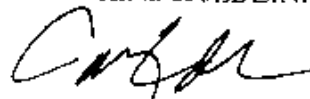
Daniel Atkinson

Brian Peters

127 Dunbar Street, Suite 200

Spartanburg, SC 29306

HAWKINS & JEDZINIAK, I.L.C.



Candie Edwards
Paralegal



EAST GREENVILLE SUMMARY COURT

GREENVILLE COUNTY MAGISTRATE

320 West Main Street • Taylors, South Carolina 29687 • 864.467.4625



August 13, 2024

Joshua T. Hawkins
Attorney at Law
1225 South Church Street
Greenville, SC 29605

Re: Joshua Hawkins vs. Delta Air Lines, Inc.
Case # 2024CV2310302415

Dear Mr. Hawkins:

I need the original record or Affidavit of Service for the civil case listed above. I have left two messages at the 864-275-8142 which is listed on your paperwork that was filed with our court and have not received any return calls. Once the record of service is received I can schedule a Damages Hearing for the above listed case.

If you have any questions, please contact our office at the number located above.

Thank you,

D. M. Pegg
Summary Civil Clerk

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Joshua Hawkins,

Plaintiff,

vs.

Delta Air Lines, Inc.,

Defendant.

) IN THE MAGISTRATE COURT

) CASE NO. 2024CV232415

) **MOTION FOR DEFAULT**

COMES NOW, the plaintiff, and respectfully moves for a default judgment against the defendant.

The summons and complaint in this action were properly served on the defendant on June 13, 2024. More than 30 days have passed, and it appears that no pleading or other document has been filed with the Court in response to service of the summons and complaint being served on the defendant, and no answer or pleading has been served on counsel for the plaintiff. The plaintiff files herewith an affidavit of default with the Court.

Pursuant to Rule 11(a) of the Magistrate Court Rules, the defendant is in default, and a default judgment should be entered against the defendant. The plaintiff therefore requests that either judgment be entered for the plaintiff in the amount of \$7,500.00 or that a damages hearing be scheduled to determine damages.

Respectfully submitted,

Hawkins & Jedziniak, LLC

Joshua T. Hawkins, S.C. Bar No. 78470
Helena L. Jedziniak, S.C. Bar No. 100825
Ethan L. Jedziniak, S.C. Bar No. 105785
1225 South Church Street
Greenville, South Carolina 29605
(864) 275-8142 (telephone)

August 1, 2024
Greenville, South Carolina

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Joshua Hawkins,

Plaintiff,

vs.

Delta Air Lines, Inc.,

Defendant.

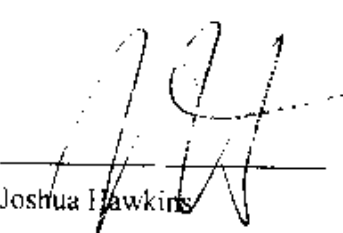
) IN THE MAGISTRATE COURT

) CASE NO. 2024CV232415

) **AFFIDAVIT OF DEFAULT**

I, the undersigned, swear and affirm the following under oath:

1. The summons and complaint in this action were properly served on the defendant on June 13, 2024.
2. More than 30 days have passed, and it appears that no pleading or other document has been filed with the Court in response to service of the summons and complaint being served on the defendant, and no answer or pleading has been served on counsel for the plaintiff.
3. Pursuant to Rule 11(a) of the Magistrate Court Rules, the defendant is in default, and a default judgment should be entered against the defendant.


Joshua Hawkins

Sworn to before me
this 2nd day of August, 2024.

Notary Public

Candie Edwards

My commission expires

June 1, 2031



IN THE MAGISTRATE COURT

) CASE NO. 24-2415

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2
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7

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Respectfully submitted,

6/12/24 945 AM left msg
8/12/24 1247 PM left msg
CONCERNING Affidavit of Service

Joshua T. Hawkins, S.C. Bar No. 78470
Helena L. Jedziniak, S.C. Bar No. 100825
Ethan L. Jedziniak, S.C. Bar No. 105785
1225 South Church Street
Greenville, South Carolina 29605
(864) 275-8142 (telephone)
(864) 752-0911 (facsimile)
josh@hjllese.com
helena@hjllese.com
ethan@hjllese.com

Attorneys for Plaintiffs

RECEIVED

JUN 11 2024

EAST GREENVILLE
SUMMARY COURT

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Joshua Hawkins,

Plaintiff,

vs.

Delta Air Lines, Inc.,

Defendant.

) IN THE MAGISTRATE COURT

) CASE NO. 2024-CP-23-

) 24-2415

) COMPLAINT

) (Jury Trial Requested)

COMES NOW, the plaintiff, alleging and complaining of the defendant as follows:

PARTIES, JURISDICTION, AND VENUE

1. Joshua Hawkins is a citizen and resident of Greenville County, South Carolina.
2. Delta Air Lines, Inc. ("Delta") is a company doing business in South Carolina.
3. A significant portion of the events giving rise to this action occurred in Greenville County, South Carolina.
4. Previously, an action was filed which involved the parties captioned, and an agreement was reached whereby the plaintiff's claims could be litigated without certain causes of action raised in that suit, as long as suit was filed before October 8, 2024. Delta agreed not to remove the new action to federal court and to accept service of the complaint.
5. This Court, a Court of general jurisdiction, has subject matter jurisdiction to hear the causes of action contained herein pursuant to the conventions, law and authority cited herein, the common law, and other authority.
6. Jurisdiction and venue in the Greenville County Court of Common Pleas is proper for the foregoing reasons.

FACTUAL BACKGROUND

7. The plaintiff incorporates the foregoing paragraphs as if repeated here.

RECEIVED

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EAST GREENVILLE
SUMMARY COURT

8. The plaintiff files this complaint pursuant to the agreement referenced above.
9. This action stems from several occurrences and Delta's tortious conduct on several occasions.
10. The plaintiff booked a round trip from Greenville Spartanburg International Airport to LaGuardia International Airport to depart on September 7, 2023, and return on September 10, 2023.
11. The plaintiff traveled to GSP on the scheduled date, held up his end of the bargain, and traveled to New York. When the plaintiff traveled to LaGuardia to return home, he noticed Delta unilaterally cancelled several flights. This was peculiar because weather conditions were fine, there was no indication any flight should be cancelled, planes were observed arriving and departing at LaGuardia, and planes were arriving and departing from airports just a few miles away.
12. The plaintiff then noticed Delta unilaterally delayed the specific flight he was supposed to leave on. The plaintiff then noticed that Delta unilaterally cancelled his flight altogether. As a result, the plaintiff was set to be stranded in New York with no flights available for two more days.
13. Upon information and belief, Delta cancelled many flights during the time in question for no valid reason. By all appearances, Delta has claimed weather caused flights to be cancelled in bad faith and as an excuse for cancelling partially empty flights in order to unreasonably pursue financial gain at the expense of inconvenience to customers. This was confirmed in the first suit when Delta attempted to use weather maps as an excuse for flight cancellations. It should be noted that the cancellations at issue took place when airports in the same general area – and presumably subject to the same whether – saw flights land and depart on schedule. Delta's

"bad weather" claims directly conflict with the plaintiff's and others' observations of the weather in the area and planes arriving and departing during the time in question.

14. The fact that Delta continued to double down on its position in the first suit is evidence of Delta's unreasonableness and deceptive business practices. It is also evidence that Delta has engaged in fraud in an attempt to fit the cancellations described herein into its terms of service, even though the cancellations do not actually fit within Delta's terms or arise from circumstances where cancellation is permissible. At a minimum, a fact question for a jury exists on the issue.
15. At no time has Delta ever offered to correct the situation it created or the damage it caused by offering compensation for lodging, food, rental car travel, fuel, personal and/or psychological injury, or any other expenses and damages. Upon information and belief, this is true for all the passengers involved, and the plaintiff reserves the right to certify a class and litigate a class action lawsuit pursuant to SCRPC 23, to the extent allowed by law.
16. Ultimately, the plaintiff incurred the costs of Uber rides, meals, a rental car, pet lodging fees, additional airport parking fees, and lost 12 hours of personal time as a direct and proximate result of Delta's tortious conduct. The plaintiff was deprived of sleep, which constitutes a physical injury. The plaintiff was forced to rent a vehicle and drive through the night from New York to Greenville, South Carolina. During the drive from New York to South Carolina, the plaintiff observed mostly clear conditions, and did not observe conditions consistent with Delta's claim that its cancellations were due to weather. This is important because after suit was filed, Delta submitted a weather map that is inconsistent with the plaintiff's observations. At a minimum, a fact question on the issue exists for a jury.

17. Now, because Delta has refused to acknowledge responsibility, the plaintiff has incurred court costs and spent time drafting several court documents in addition to the damages already caused by Delta. After filing this action, Delta took the untenable position that it is not responsible for any consequential damages, no matter how egregious and deceptive its conduct and no matter how many damages Delta caused the plaintiff to incur. Delta took the unbelievable position that since it offered a flight two days later, which would cause the plaintiff to incur lodging, food, and other expenses, it discharged any duty to make the plaintiff whole. Such a position can only be viewed as harmful to the public, deceptive, and wholly unfair. To the extent Delta relies on any terms that must be agreed to when purchasing tickets, any such terms should be found to be terms of cohesion by a jury and such terms are evidence that plaintiffs have no meaningful choice in purchasing tickets with Delta.
18. The plaintiff provided written notice to Delta using Delta's app, and then tried calling the Platinum Medallion number provided by Delta so that Delta could compensate the plaintiff for the damages it caused by its tortious, fraudulent, and reckless conduct. Delta refused to compensate the plaintiff for his losses. This is consistent with Delta's conduct following the filing of this action. After the plaintiff filed suit as a last resort, he tried repeatedly to resolve the claim with Delta, even offering to resolve the case for SkyMiles, which would cost Delta nothing. In an apparent attempt to strong arm a member of the community and flex corporate muscle, Delta doubled down and communicated that it would not take responsibility or be reasonable in any way whatsoever. The plaintiff also reached out to Delta about resolution before filing this action. Again, Delta communicated unequivocally that it would take no responsibility for its conduct.

19. The defendant likely violated policies and procedures, and those violations contributed to the plaintiff's injuries. Delta definitely violated public policy and its business practices appear to be not only unfair, but dangerous to consumers. Delta violated its own "RULE 22: REFUNDS," A. 2) b) which states "No refund will apply when alternate transportation is provided by Delta and accepted by the passenger." The plaintiff never accepted what Delta proposed, which was a flight days later or a refund of SkyMiles, which did nothing to get the plaintiff home as scheduled. Delta therefore violated its own rules and terms.
20. Delta's conduct outside and beyond the flights that it cancelled and the luggage that it lost caused damage. Delta's claim that it is not "liable for any punitive, consequential or special damages arising out of...carriage or other services performed by Delt..." (Emphasis added.) does not bar damages arising from Delta's fraud and tortious conduct following its cancellations. Delta's terms also contain statements that patently show its terms are unconscionable and unenforceable. For instance, Delta claims that "Election or failure by Delta to enforce any provision of the contract of carriage shall not constitute a waiver of its rights and remedies with regard to such provision." Delta has attempted to claim that it can pick and choose whether to follow any of its terms or none of its terms, but always retain the right to rely on its terms to shield itself from liability, which cannot be the law.
21. Delta denied the plaintiff boarding for one or more of the flights described herein, and only offered alternative flights days later, which would have required the plaintiff to stay in New York overnight. Delta's terms state that if denied boarding "requires that the passenger stay overnight before continuing his/her travel, Delta will provide hotel accommodations to the passenger at no additional cost." Delta refused to honor its terms and forced the plaintiff to incur travel costs as a result.

22. In January of 2024, the plaintiff was scheduled to leave for New Zealand on a Delta flight. Again, consistent with its unfair and deceptive business practices, Delta unilaterally cancelled the plaintiff's flight and again blamed weather. As a result, the plaintiff lost a Qantas flight he had purchased for the following day from Auckland to Melbourne. The plaintiff also lost the upgraded Delta seats for which consideration had been paid, either through gained status or cash, and also lost, in addition to the cost of the Qantas flight, the cost of upgraded seats on that flight. In addition to all this, Delta lost one of the plaintiff's bags containing thousands of dollars in equipment, causing the plaintiff to have no access to that equipment the entire time he was in Australia. Delta violated its own terms and contract of coverage, which is incorporated herein by reference, because it did not issue a full refund to include the price of upgrades, which the plaintiff paid valuable consideration in exchange for a certain seat. Delta simply pocketed as profit the extra money paid by the plaintiff without performing under the contract. Delta also never refused to lodge the plaintiff overnight, even though Delta denied the plaintiff boarding.
23. In April of 2024, the plaintiff booked purchased a trip to Lisbon, Portugal. Despite the plaintiff taking steps to make sure baggage was properly handled, Delta lost the plaintiff's bag through its failure to properly process and handle bags. As a result of Delta's violation of its own terms and general policies governing handling and moving luggage, Delta failed to deliver the plaintiff's luggage to his destination as scheduled. As a result, the plaintiff was without clothing and essential items for a significant period of time and the plaintiff's luggage was damaged. The plaintiff timely notified Delta in writing and used Delta's chat option to speak with Delta employees named Angela and Juvielyn.

24. Delta caused the plaintiff to sustain damages on several occasions as set forth above. Any monetary limits set by the Montreal Convention, the Warsaw Convention, or any other authority must be multiplied by the number of times Delta caused the plaintiff damage through delays, violations of its own terms, failure to lodge or reimburse the plaintiff as required, losing the plaintiff's luggage, and damaging the plaintiff's luggage.
25. Some or all of the defendant's actions were motivated by the unreasonable pursuit of financial gain.
26. The plaintiff is informed and believes that he is entitled to judgment against the defendant for actual, punitive, and statutory damages.
27. Delta caused the plaintiff to sustain damages in one or more of the following ways:
- a. by causing injury and damages to the plaintiff through reckless and negligent acts;
 - b. by failing to exercise even slight care;
 - c. by causing the plaintiff to miss subsequent flights with other airlines;
 - d. by losing the plaintiff's bags, making no effort to find those bags, and refusing to compensate the plaintiff for delay of and damage to his bags;
 - e. by misleading the plaintiff about his lost bags through Delta's mobile app;
 - f. by delegating locating of lost bags to incompetent and incompetent third parties;
 - g. by authorizing, adopting, and ratifying the Delta's employees' conduct toward the plaintiff;
 - h. by hiring employees who were incompetent, lacked proper education and training, or were otherwise unfit;
 - i. by promoting an atmosphere where the events described herein were likely to occur;
 - j. by mishandling claims in order to unfairly maximize profits;

- k. by making fraudulent statements related to the issues described herein;
- l. by acting in bad faith to avoid payment of monies owed;
- m. by causing unnecessary stress and delay;
- n. by causing physical injury;
- o. by engaging in unfair and deceptive business practices;
- p. in causing additional damage by creating and directing customers to be caught in needless bureaucratic red tape following cancelled flights;
- q. by engaging in the unreasonable pursuit of financial gain;
- r. by violating its own terms;
- s. by refusing to compensate the plaintiff for lost upgrades, delay, lodging, and damaged bags as required by its own terms; and
- t. in other such particulars as the evidence may show.

28. As a direct and proximate result of the defendant's conduct, the plaintiff sustained injuries and damages, including some or all of the following:

- a. monetary damages;
- b. loss of ability to work for a time;
- c. out-of-pocket expenses;
- d. psychological trauma;
- e. mental anguish;
- f. mental distress;
- g. anxiety;
- h. emotional injury;
- i. pain, suffering, and physical injury;

- j. discomfort and inconvenience;
- k. loss of enjoyment of life;
- l. litigation time and expense; and,
- m. such other damages as will be shown through discovery and at trial.

29. The defendant's actions concerning the plaintiff were unfair, deceptive, and adverse to public interests. Upon information and belief, it is standard business practice for the defendant to act in the ways described above, and potentially, to civilly conspire with other companies in order to profit from commerce with members of the public like the plaintiff. Civil conspiracy and the special damages caused by that conspiracy are outside of any contract or terms. Delta caused special damages by delegating and/or conspiring with third parties in order to avoid liability for lost and damaged bags.
30. The egregiousness of Delta's conduct is compounded by the fact that after the defendant has inconvenienced customers for financial gain, instead of compensating those customers, it directs them to frustrating and time-consuming processes, which further wastes customers' time and money. This is evidenced by text chats between the plaintiff and Delta where the plaintiff has timely notified Delta following the events described above, and Delta has repeatedly refused to take measure to make the plaintiff whole. The plaintiff has submitted excerpts of certain text exchanges to Delta in the past and Delta has full logs of those chats, so Delta cannot deny timely notice in good faith.
31. The plaintiff entered into adhesion contracts with Delta wherein the Delta agreed to perform certain services in exchange for payment and agreed to certain reimbursements and compensations for delay, lodging, lost or damaged baggage, and injury.
32. Delta breached the contract it drafted, and which must be construed against it, by failing to

provide the agreed-upon services and also refused to compensate the plaintiff for expenses resulting from Delta's conduct.

33. Delta violated one or more of its own terms that included in its unfair contract of adhesion.
34. As a direct and proximate cause of the defendant's breach, the plaintiff was damaged.
35. Delta made false representations about willingness to perform services for the plaintiff in exchange for payment. The defendant knew that it would not perform some of the agreed-upon services if it chose not to, and that it would refuse to return payment or cover consequential damages if it failed to perform those services. The defendant nevertheless accepted payment for those services.
36. The defendant was dishonest in fact about the services that it agreed to provide and was unfair in its dealings with the plaintiff. Delta's dishonest and disingenuous conduct continued after suit was filed. Although Delta's counsel appears to be a fine and able lawyer, Delta itself has refused to acknowledge its unfair, deceptive, and tortious conduct, despite evidence of that conduct.
37. Upon information and belief, the plaintiff gave Delta timely written notice related to all of Delta's tortious conduct listed above. Some of the written notice was submitted to Delta before the last action was dismissed without prejudice. Delta also set forth several defenses with no basis in law or fact in prior litigation, including waiver, failure to mitigate, plaintiff's own fault (for cancelling the flight?), accord and satisfaction, *force majeure*, a defense that seems to be *res judicata*, even though the action referenced by Delta was not fully and finally litigated on the merits, a SCRCP 12(f) defense (see *Alladin Plastics, Inc. v. Wintenna, Inc.*, 390 S.E.2d 370 (1990)), and a SCRCP 12(b)(6) defense. Should Delta reassert these defenses knowing they are unfounded, Delta will have engaged in further bad faith.

38. The plaintiff seeks damages for the breach of contract, described above, and all causes of action allowed by the Airline Deregulation Act and the FAA's saving clause, including § 1106, 49 U.S.C. App. § 1506, which preserves "the remedies now existing at common law or by statute." Although violations of certain C.F.R. may not provide separate causes of action, violations are evidence of liability, and the plaintiff reserves the right to show evidence of such violations at trial.
39. Delta's actions violated and were inconsistent with public convenience and necessity
40. As a direct and proximate result of Delta's breaches, fraudulent intent, and fraudulent acts, the plaintiff has sustained damages.
41. The plaintiff is therefore informed and believes that he is entitled to judgment against the defendant for actual and punitive damages.

FOR A FIRST CAUSE OF ACTION
(Montreal Convention)

42. The plaintiff repeats the foregoing allegations as if repeated here, verbatim.
43. Delta unilaterally cancelled the plaintiff's flight to Auckland, which caused him to lose a flight from Auckland to Melbourne the following day, and then lost the plaintiff's bag when the plaintiff finally flew to Auckland. Delta also lost the plaintiff's bag when he flew to Lisbon.
44. As a result, the plaintiff did not have the equipment he needed the entire time he was in Australia, and the plaintiff spent significant time on wild goose chases effectuated by Delta. Delta also deprived the plaintiff of his bag and essential contents for a significant period of time when he was in Lisbon.
45. The plaintiff immediately notified Delta in writing and through other means that his Delta has lost/delayed/damaged his baggage on both occasions.

46. In Auckland and Melbourne, Delta could not accurately tell the plaintiff where his bags were, gave him misleading information, and ultimately lost the bag for good. It was only because the plaintiff went to the Melbourne airport on his own accord, going from third-party handler to third-party handler, that he finally tracked down his bag – through his own effort and investigation – that he finally found his bag in an airport back room. Upon information and belief, Delta conspires with and uses third-party vendors to avoid liability and limitations on liability in Delta's terms are void. Delta has non-delegable duties that it cannot escape by claiming its liability related to baggage ends when it gives bags to incompetent third parties.
47. Delta is liable to the plaintiff pursuant to the Montreal Convention, including one or more of its articles, including Article 17, 18, 19, 22, and 24¹.
48. Pursuant to Article 22, Delta is liable to the plaintiff for \$4,150 and Delta is liable for additional damages provided by law.²
49. Delta's actions before and after embarking and disembarking proximately caused the plaintiff's injuries.
50. Delta caused the plaintiff delay, inconvenience, and monetary loss. Delta caused damage to the plaintiff's bags on both occasions that does not amount to normal or preexisting wear and tear. Because of Delta's loss and delay of the bags, it forced the bags to be mishandled, crammed into delivery trucks, scratched, scraped, torn, become wet, piled haphazardly onto other luggage, and to generally be mishandled.
51. The plaintiff gave notice to the defendant of damages caused by the defendants' actions.

¹ The plaintiff's claims are not completely preempted by the Montreal Convention. See *Sonoco Prods. Co. v. Physicians Health Plan, Inc.* 338 F.3d 366 (4th Cir. 2003).

² The plaintiff may recover additional damages for other causes of action. See *Tseng v. El Al Israel Airlines, Ltd.*, 525 U.S.155 (1999).

52. Delta never provided the plaintiff with any supplies or reimbursement for items purchased as a result of lost and damaged baggage.
53. As a direct and proximate result of the defendants' acts and omissions, the plaintiff has been damaged.

FOR A SECOND CAUSE OF ACTION
(Warsaw Convention)

54. The plaintiff repeats the foregoing allegations as if repeated here, verbatim.
55. Delta caused the plaintiff to sustain damages, including one or more, but not limited to the following:
- a. Delay and damage as contemplated by Article 17, including subparts 2. and 3.;
 - b. Delay and damages as contemplated by Article 18;
 - c. Delay and damages as contemplated by Article 19;
 - d. Other damages as contemplated by other Articles of the Convention;
 - e. Physical injury and/or pain;
 - f. Retention or loss of weight; and
 - g. Other physical manifestations as may be shown through discovery and at trial.
56. For the reasons listed above, some or all of Delta's terms are invalid as contemplated by Article 26.
57. The plaintiff timely notified Delta of the damage and delay it caused in a timely fashion and satisfied the requirements of Article 31 of the Convention.

FOR A THIRD CAUSE OF ACTION
(Claim for a Declaratory Judgment and Breach of Contract)

58. The plaintiff repeats the foregoing allegations as if repeated here, verbatim.
59. Delta's terms and contract of carriage does not allow a bargained-for exchange, is wholly one-sided and unfair, is not presented in a fair way, is unconscionable, and presents a contract of

adhesion. Delta's uses its one-sided terms to engage in deceptive business practices with impunity and at its whim.

60. Delta's contract and its terms should be ruled to be void and unconscionable.
61. Pursuant to the South Carolina Uniform Declaratory Judgments Act, S.C. Code § 15-53-10 *et seq.*, the plaintiff seeks a judicial declaration of the rights, status, and other legal relationships of the parties to this action regarding the various claims against the defendant.
62. The plaintiff seeks a declaration as to the rights and obligations of the parties affected by Delta's terms and its contract of carriage
63. Delta has failed to present its one-sided terms in a reasonable way, engaged in fraud, and sought to absolve itself of virtually all responsibility for tortious conduct in a way that is not at odds with the law, and which violates the constitutions of South Carolina and the United States.
64. Upon information and belief, Delta's terms violate either one or more of the Conventions cited herein and governing law or the spirit of those Conventions and law.
65. Upon information and belief, Delta engaged in one or more of the following:
 - a. Violation and breach of general duties of good faith and fair dealing;
 - b. Fraud and tortious conduct, including violation of rules and governing policies promulgated by itself, administrative bodies, or other entities;
 - c. Creation of unfair terms and contracts of adhesion customers have no meaningful choice in accepting;
 - d. Tortious conduct outside the parameters of and what is contemplated by its terms and contract, the liability for which conduct is not limited by its terms and contract; and
 - e. Other tortious, unfair, and deceptive conduct as will be shown through discovery and at trial.

66. The plaintiff therefore seeks several declarations, including the validity of Delta's terms and contract, which conduct is governed by Delta's terms and contract, and whether Delta's conduct and rules adhere to governing law.
67. Pursuant to the plain language of the Declaratory Judgments Act, the Act must "be construed liberally. S.C. Code § 15-53-130 *et seq.*
68. All determinations of facts, rights, status, and other issues prayed for herein and related to this action must be made by a "in the same manner as issues of fact are tried and determined in other civil actions" and the right to a jury trial is preserved. S.C. Code § 15-53-9 *et seq.*

FOR A FOURTH CAUSE OF ACTION
(Fraud)

69. The plaintiff repeats the foregoing allegations as if repeated here, verbatim.
70. Delta engaged in fraudulent conduct as described above, and the conduct described above satisfies the elements of fraud.
71. Delta made one or more (1) false (2) statements or representations which were (3) material to the damages sustained by the plaintiff, the breach of the adhesion contracts from which it sought to profit, damage, delay, and loss related to luggage, and other issues. Delta had (4) knowledge of the falsity and misrepresentation of its statements. By all appearances, Delta's primary motivation for cancellations and disregard for luggage and customers is profit-driven. Delta has perceived impunity for tortious conduct, reflected in its contract of carriage, which must be construed against Delta. Delta's actions and its one-sided terms are evidence of Delta's (5) intent that its falsity and disregard for truth be acted upon. Whether it was profits or weather that pushed Delta's decisions to cancel flights and mislead the plaintiff and other customers about loss and damage related to luggage is a fact question for a jury. In this case, the hearer had no choice but to believe Delta, and the hearer was (6) ignorant of falsity, at least initially

before observations were made that proved Delta's deception, including observations of planes, and then later, observations related to luggage that proved Delta had lied about luggage it had lost. The plaintiff and others (7) relied on Delta's lies as if they were true, as shown in the correspondence related to some or all of Delta's tortious conduct described herein. The plaintiff had a (8) right to rely on Delta's deceptive representations and Delta's deceptions (9) proximately caused the plaintiff to be damaged. The circumstances constituting Delta's fraud is stated with particularity in this paragraph and the other paragraphs of the complaint. See *Ardis v. Cox*, 431 S.E.2d 267 (1993).

72. The plaintiff is therefore informed and believes he is entitled to judgment against Delta.
73. Delta cannot contract out of liability for its fraudulent conduct, and liability for such conduct is not limited by Delta's one-sided terms.

WHEREFORE, the plaintiff requests a jury trial and judgment against Delta for:

- a. actual damages;
- b. all statutory damages, punitive damages, consequential damages, and incidental damages allowed by law;
- c. damages pursuant to the Montreal Convention;
- d. damages pursuant to the Warsaw Convention;
- e. costs; and,
- f. such other relief the Court deems just and equitable.

Respectfully submitted,

Hawkins & Jedziniak, LLC

s/ Joshua T. Hawkins

Joshua T. Hawkins, S.C. Bar No. 78470

Helena L. Jedziniak, S.C. Bar No. 100825

Greenville, South Carolina
May 31, 2024

Ethan L. Jedziniak, S.C. Bar No. 105785
1225 South Church Street
Greenville, South Carolina 29605
(864) 275-8142 (telephone)
(864) 752-0911 (facsimile)
josh@hjllesc.com
helena@hjllesc.com
ethan@hjllesc.com
Attorneys for Plaintiff

Pursuant to Rule 38, *SCRCP*, the plaintiff demands a trial by jury on all issues triable to a jury.

s/ Joshua T. Hawkins
Joshua T. Hawkins

East Greenville Summary Court
320 West Main St
Taylors, SC 29687

AFFIDAVIT OF SERVICE

Personally appeared before me _____

who, being duly sworn, says that, on the

Day of _____ 20 _____

s/he served _____

the defendant within named, the Summons
and Complaint in this action, by delivering
copies thereof to _____

personally, and leaving the same with _____

at _____

_____ the place of residence/work/other of said
Defendant and Deponent is not a party to
The action.

Deputy Sheriff/Constable/Process Server

DATE _____

☐ COURT ORIGINAL

☐ DEFENDANT'S COPY

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE MAGISTRATE'S COURT

SUMMONS AND COMPLAINT

Joshua Hawkins
1225 South Church Street
Greenville, SC 29605

VS

PLAINTIFF(S)

Delta Air Lines, Inc.
2000 GSP Drive
Greer, SC 29615

DEFENDANT(S)

Trial will be scheduled approximately 30 days from date
of service. You will be Notified by mail as to the date
and time for trial.

DISPOSITION OF CASE

☒ PLAINTIFF PRESENT

☐ DEFENDANT PRESENT

☐ LIQUIDATED ACCOUNT

☐ UNLIQUIDATED ACCOUNT

☐ RULED FOR PLAINTIFF

\$ _____ CLAIM

\$ _____ COURT COST

\$ _____ TOTAL

☐ RULED FOR DEFENDANT

☐ DEFAULT

☐ SETTLED

☒ OTHER 2/25/15 \$500

Case No. 2015-00121

JUDGE _____

DATE 12-8-2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Case No.: 2024-CP-23-07485
	)	
Joshua Hawkins,	)	
	)	
Appellant,	)	MOTION TO DISMISS APPEAL
	)	FOR LACK OF SUBJECT MATTER
vs.	)	JURISDICTION
	)	
Delta Air Lines, Inc.	)	
	)	
Respondent.	)	
_____	)	

COMES NOW, Respondent, Delta Air Lines, Inc., by and through the undersigned counsel, and pursuant to Rules 12(b)(1), 12(h)(3), SCRCP and Rule 18(a), SCRMC, files its Motion to Dismiss Appeal for Lack of Subject Matter Jurisdiction, which Respondent, pursuant to Rule 6(d), SCRCP, shall argue before the Court as soon as it may be heard, and in support thereof, states as follows:

1. Appellant Joshua Hawkins, a Greenville, South Carolina attorney, filed suit on his own behalf against Respondent in the East Greenville Summary Court (Case No.: 2024CV2310302415) seeking damages for baggage and flight delays and a cancellation he allegedly experienced while flying with Respondent in one domestic flight and two international flights.

2. Respondent filed a Motion to Dismiss, which was heard by Magistrate Judge Hubbard on December 3, 2024. Appellant Hawkins, an attorney, appeared at the hearing and represented himself.

3. At the end of the hearing, Magistrate Judge Hubbard made an oral ruling granting Respondent's Motion to Dismiss and dismissing Appellant's Complaint for independent reasons. Magistrate Judge Hubbard requested a proposed written Order of such rulings.

4. On December 4, 2024, Magistrate Judge Hubbard received and executed a proposed written Order, which was served on all parties. A copy of the Magistrate Court's December 4, 2024 Order is attached hereto as **Exhibit A**, (hereinafter, "Order").

5. In his Notice of Appeal, which Appellant filed "[p]ursuant to SCMCR 18(a)," Appellant admitted he received notice of the dismissal on December 4, 2024. (*See* Notice of Appeal to the Circuit Court, filed Dec. 26, 2024, at p. 1.)

6. Rule 18(a), SCRMC ("Appeals") states in relevant part:

. . . **Within thirty (30) days** after delivery of written notice of judgment to the parties or their attorneys, **a party wishing to appeal shall serve on the respondent and file a notice of appeal . . . with the magistrate rendering the judgment and with the Circuit Court of the County where the judgment was rendered.** . . . The right of appeal from a judgment exists for thirty (30) days after the denial of a motion for a new trial.

Rule 18(a), SCRMC (emphases added).

7. Appellant never moved for a new trial nor did Appellant file a Motion to Alter or Amend the Judgment with respect to the Order. *See* Rule 19(a)-(b), (d), SCRMC (ten-day deadline to file such motions). Therefore, Appellant's thirty-day period to appeal the Order began on Wednesday, December 4, 2024, and ended on Friday, January 3, 2025. *See* Rule 18(a), SCRMC.

8. On December 26, 2024, Appellant filed his "Notice of Appeal to the Circuit Court" in the Circuit Court only.

9. On January 3, 2025, Appellant caused a copy of his "Notice of Appeal to the Circuit Court" to be hand delivered to an individual at the undersigned law firm as service upon Respondent.

10. Appellant, however, never filed *any* notice of appeal "with the magistrate rendering the judgment," as of the time of this filing. *See* Rule 18(a), SCRMC. A copy of the Magistrate Court's docket for Case No.: 2024CV2310302415 as of the close of business April 3, 2025, is

attached hereto as **Exhibit B**.¹

11. “In interpreting the meaning of the South Carolina Rules of Civil Procedure, the Court applies the same rules of construction used to interpret statutes. . . . If a rule’s language is plain, unambiguous, and conveys a clear meaning, interpretation is unnecessary and the stated meaning should be enforced.” *Maxwell v. Genez*, 356 S.C. 617, 620, 591 S.E.2d 26, 27 (2003)²; *see also Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011) (“Where the statute’s language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.”) (citing *Gay v. Ariail*, 381 S.C. 341, 345, 673 S.E.2d 418, 420 (2009)).

12. “The term ‘shall’ in a statute means that the action is mandatory.” *Wigfall v. Tideland Utils.*, 354 S.C. 100, 111, 580 S.E.2d 100, 105 (2003); *see also Bennett v. ACS Primary Care Physicians-Southeast P.C.*, 444 S.C. 458, 479, 908 S.E.2d 110, 121 (Ct. App. 2024) (“[O]ur supreme court has held that the use of ‘shall’ in a statute ‘means that the action is mandatory.’”) (quoting *Wigfall*, 354 S.C. at 111, 580 S.E.2d at 105); *Liberty Mut. Ins. Co. v. Emp. Res. Mgmt., Inc.*, 176 F. Supp. 2d 510, 540 (D.S.C. 2001) (“This court has held that under South Carolina law,

¹ When this Court considers its own subject matter jurisdiction, this Court is permitted to “consider[] affidavits or other evidence proving lack of jurisdiction.” *Baird v. Charleston Cnty.*, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999). “A court can take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records.” *Freeman v. McBee*, 280 S.C. 490, 494, 313 S.E.2d 325, 327 (Ct. App. 1984); *see also* Rule 201(b), SCRE (“A judicially noticed fact must be one not subject to reasonable dispute in that it is . . . capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.”).

² “If no procedure is provided by these [magistrate court] rules, the court shall proceed in a manner consistent with the statutory law applicable to magistrates and with circuit court practice in similar situations but not inconsistent with these rules.” Rule 2, SCRMC.

ordinarily, the use of the word ‘shall’ in a statute means that the action referred to is mandatory.”) (quotations omitted).³

13. Because Appellant failed to “file a notice of appeal . . . with the magistrate rendering the judgment,” Appellant never timely appealed in accordance with Rule 18(a), SCRMC.

14. “The requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for service of the notice.” *Elam v. S.C. DOT*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004); *see also In re Estate of Cretzmeyer v. Bloch*, 365 S.C. 12, 14, 615 S.E.2d 116, 116-117 (2005) (affirming

³ However, if it is “necessary” to fulfill the intent of the statute or constitutional provision by interpreting “shall” to be permissive, then “shall” may be construed as permissive rather than mandatory. *See Williams v. Benet*, 35 S.C. 150, 158, 14 S.E. 311, 313 (1892). In its 1892 decision, the Supreme Court interpreted whether the Constitution mandated that Supreme Court Justices “shall” complete their six-year terms, without being able to resign:

The view contended for rests largely upon the assumption that the words, “*shall* continue in office until their successors shall be elected and qualified,” must be construed as imperative, and that the effect of these words is to forbid a Justice of the Supreme Court from vacating his office by resignation or otherwise, before the expiration of the term for which he has been elected. But this view ignores the well settled rule that in the construction of a statute or a constitution, the word “shall” may receive a permissive, rather than an imperative, interpretation, when necessary to carry out the true intent of the provision in which such word is found.

Williams, 35 S.C. at 158, 14 S.E. at 313 (emphasis in original). Again, however, when the meaning is unambiguous, the rules of statutory construction do not apply. *Richland Cty. v. S.C. Dep’t of Revenue*, 422 S.C. 292, 309, 811 S.E.2d 758, 767 (2018) (“‘Under the rules of statutory interpretation, use of words such as “shall” or “must” indicates the legislature’s intent to enact a mandatory requirement.’ *Collins v. Doe*, 352 S.C. 462, 470, 574 S.E.2d 739, 743 (2002). Because the Legislature’s use of mandatory language is unambiguous, this Court has no right to impose another meaning. *See Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (‘Where the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.’ (citation omitted)).”).

circuit court's dismissal of probate court appeal, where appellant was required to serve respondent the notice of appeal and file the notice in both the probate court and in circuit court but appellant failed to file the notice in circuit court).

15. "A circuit court's jurisdiction over a magistrate court's judgment is appellate in nature. . . . Moreover, it has been the established rule that a circuit judge cannot reverse a magistrate's judgment when the appellant has failed to serve on the magistrate the proper notice and grounds of appeal within the prescribed time limits. Neither does the circuit judge have the right to extend the time within which to make an appeal or move for a new trial." *De Witt v. S.C. Dep't of Highways & Pub. Transp.*, 274 S.C. 184, 186, 262 S.E.2d 28, 29 (1980) (internal citations omitted).⁴

16. "Subject matter jurisdiction is a court's power to hear and determine cases of the general class to which the proceedings in question belong. . . . Claims of lack of subject matter jurisdiction may be raised at any time, and subject matter jurisdiction may not be waived by filing responsive pleadings or otherwise consenting to the jurisdiction of a particular court." *Myers v. Town of Calhoun Falls & Savannah Valley Trails*, 441 S.C. 146, 153, 892 S.E.2d 514, 518 (Ct. App. 2023) (internal quotations and citations omitted).

17. "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." Rule 12(h)(3), SCRCPP (emphasis added).

18. Therefore, because Appellant failed to file a notice of appeal in the Magistrate

⁴ This decision was relied upon by the Court of Appeals in a recently issued unpublished opinion, which unpublished opinion has no precedential value. *See Grate v. Brown*, No. 2025-UP-026, 2025 S.C. App. Unpub. LEXIS 34, *2 (Ct. App. Jan. 29, 2025) ("We hold the circuit court did not err in dismissing Grate's appeal because Grate did not file his notice of appeal with the magistrate's court.").

Court, this Court lacks appellate jurisdiction to review Magistrate Judge Hubbard's Order and should dismiss Appellant's appeal. *See* Rule 12(b)(1), SCRCP; Rule 18(a), SCRMC.

WHEREFORE, Respondent, Delta Air Lines, Inc., respectfully moves for an Order dismissing Appellant's Notice of Appeal to the Circuit Court.

This Motion to Dismiss is based upon the Notice of Appeal to the Circuit Court, the Magistrate Court docket, South Carolina law, and any Brief of Law to be filed hereafter.

Pursuant to Rule 11(a), SCRCP, the undersigned certifies that no consultation was required prior to filing this Motion, because this Motion is a Motion to Dismiss and because Appellant is proceeding *pro se*.

Respectfully submitted,

April 4, 2025

By: s/ Brian M. Peters, Jr.
C. Daniel Atkinson (S.C. Bar #72721)
datkinson@wajlawfirm.com
Brian M. Peters, Jr. (S.C. Bar #105911)
bpeters@wajlawfirm.com

WILKES ATKINSON & JOYNER, LLC
127 Dunbar Street, Suite 200
Spartanburg, SC 29306
(864) 591-1113

Attorneys for Respondent Delta Air Lines, Inc.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Case No.: 2024-CP-23-07485
	)	
Joshua Hawkins,	)	
	)	
Appellant,	)	REPLY BRIEF IN SUPPORT OF
	)	RESPONDENT’S MOTION TO DISMISS
vs.	)	APPEAL AND IN OPPOSITION TO
	)	APPELLANT’S NOTICE OF APPEAL
Delta Air Lines, Inc.,	)	
	)	
Respondent.	)	
_____	)	

COMES NOW, Respondent, Delta Air Lines, Inc., (“Respondent” or “Delta”) by and through the undersigned counsel, and files its Reply Brief in Support of its Motion to Dismiss Appeal for Lack of Subject Matter Jurisdiction¹ and in Opposition to Appellant’s Notice of Appeal, and in support thereof states as follows:

INTRODUCTION

Appellant represents he “deposited” his Notice of Appeal “with the United States Postal Service” on December 30, 2024, and that such deposit constitutes filing with the Magistrate Court under Rule 18(a), SCRCP. (*See* Memo. in Opp. at p. 3.) “It is clear under South Carolina law that mailing does not constitute filing. When a statute requires the filing of a paper or document, it is filed when delivered to and received by the proper officer.” *Gary v. State*, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001). Appellant’s December 30, 2024 Mailing was “[d]elivered” on January 6,

¹ While styled as a “Motion to Dismiss Appeal for Lack of Subject Matter Jurisdiction,” Respondent clarifies that its Motion is a “Motion to Dismiss Appeal for Lack of Appellate Jurisdiction.” The Circuit Court generally has the power to hear appeals from the Magistrate Court, but the Circuit Court loses appellate jurisdiction if an appellant fails to timely appeal. *State v. Brown*, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004). The Court’s only recourse remains the same: the Court must dismiss the appeal for lack of jurisdiction. *See* Rule 12(h)(3), SCRCP; *Elam v. S.C. DOT*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004); *De Witt v. S.C. Dep’t of Highways & Pub. Transp.*, 274 S.C. 184, 186, 262 S.E.2d 28, 29 (1980).

2025—three days late. (*See* Memo. in Opp. at Ex. 1 at p. 12.) Because Appellant failed to “**file** a notice of appeal . . . with the magistrate rendering the judgment” within thirty days, the appeal is untimely. Rule 18(a), SCRMC (emphasis added). The Court does not have appellate jurisdiction over untimely appeals, and the Court must dismiss this untimely appeal.

LEGAL ARGUMENT

Appellant admits his Notice of Appeal was delivered three days late. (*See* Memo. in Opp. at Ex. 1 at p. 12.) It does not matter when Appellant mailed it. If the language of a court rule is “plain, unambiguous, and conveys a clear meaning,” the Court must enforce the rule as written. *See Wigfall v. Tideland Utils.*, 354 S.C. 100, 111, 580 S.E.2d 100, 105 (2003); Rule 2, SCRMC. The rule here is clear: the Notice of Appeal “shall” be “serve[d]” on all respondents but “*file[d]*” with the Magistrate Court and the Circuit Court within thirty days. Rule 18(a), SCRMC (emphasis added). “It is clear under South Carolina law that mailing does not constitute filing. When a statute requires the filing of a paper or document, it is filed when delivered to and received by the proper officer.” *Gary*, 347 S.C. at 629, 557 S.E.2d at 663. A federal postal worker is not “the proper officer” of the East Greenville Summary Court: the Clerk of Court is. *See* Rule 2, SCRMC; Rule 5(e), SCRCP (“The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court[.]”). Appellant’s untimely appeal divests this Circuit Court of jurisdiction to hear the appeal, and the Circuit Court must dismiss it. *See* Rule 12(h)(3), SCRCP; *Elam*, 361 S.C. at 14-15, 602 S.E.2d at 775; *De Witt*, 274 S.C. at 186, 262 S.E.2d at 29.

For example, in *In re Estate of Cretzmeyer* the appellant’s Notice of Appeal was “mailed” to the Circuit Court the day after the Probate Court issued its Order, but it was not *delivered* to the Circuit Court within the ten day time to appeal. *See In re Estate of Cretzmeyer v. Bloch*, 365 S.C.

12, 13, 615 S.E.2d 116, 116 (2005). The 2005 S.C. Supreme Court found that the Circuit Court properly dismissed the appeal as untimely, because the Notice of Appeal was not “delivered” to the Circuit Court. *See id.*, 365 S.C. at 14, 615 S.E.2d at 116-17 (citing *Gary*, 347 S.C. at 629, 557 S.E.2d at 663. That decision controls. Appellant’s untimely appeal must be dismissed.

Even so, Appellant essentially asks the Court to overrule the longstanding “delivery rule” of filing. He argues “[t]he use of certified mail also ensures adequate proof of service through return receipt, satisfying both procedural requirements and evidentiary standards for effective service.” (Memo in Opp. at p. 4.) This Court is not at liberty to re-write or reinterpret the clear requirements of Rule 18(a), SCRPC. *See Wigfall*, 354 S.C. at 111, 580 S.E.2d at 105. Nevertheless, the S.C. Supreme Court recognized the problems inherent with allowing “mailbox filing” in 1955, quoting the practical, timeless warnings from a 1916 U.S. Supreme Court opinion:

“A court is constrained by the meaning of the words of a statute. They mark the extent of its power, and our attention has not been called to any case which decides that the requirement of a statute, whether to secure or preserve a right or to avoid the guilt of a crime, that a paper shall be filed with a particular officer, is satisfied by a deposit in the post office at some distant place. To so hold would create revolutions in the procedure of the law and the regulation of rights. In instances it might, indeed, be convenient; in others, and most others, it would result in confusion and controversies; and we would have the clash of oral testimonies for the certain evidence of the paper in the files.”

See Fox v. Union-Buffalo Mills, 226 S.C. 561, 566, 86 S.E.2d 253, 255 (1955) (quoting *United States v. Lombardo*, 241 U.S. 73, 78, 36 S. Ct. 508, 510 (1916)). The invention of tracking numbers does not solve the “confusion and controversies.” The issue in the 2001 *Gary* case was that the Post Conviction Relief application was mailed *to the wrong place*. *Gary*, 347 S.C. at 629, 557 S.E.2d at 663.

Further, court filings must be in the possession of the Court and docketed as part of the public record. *See Barnes v. State*, 433 S.C. 399, 402, 859 S.E.2d 260, 261 (2021); *Gary*, 347 S.C.

at 629, 557 S.E.2d at 663. “Mail filing” does not guarantee the Court receives the document, and this is problematic. After all, filings must be in the Court’s possession so they may be available to the public. As the S.C. Supreme Court recognized in 1880:

As is said in 1 Bouv. Law Dict. 524: “A paper is said to be filed when it is delivered to the proper officer and by him received to be kept on file.” In addition to this the proper office of an index is to afford a ready means of finding something else which contains the information desired, and if that something else is not in the office where the index is kept, it would not serve the purpose for which it is intended.

Sternberger v. McSween, 14 S.C. 35, 43 (1880). If this Court ignores the “delivery” rule and adopts Appellant’s “mailing” rule, court documents could be “filed” without ever being delivered to and in the possession of the Court. This would introduce the “confusion and controversies” the *Fox* and *Lombardo* courts forewarned. *See Fox*, 226 S.C. at 566, 86 S.E.2d at 255 (quoting *Lombardo*, 241 U.S. at 78, 36 S. Ct. at 510).

Finally, Appellant’s comment that the Magistrate Court did not file a return under Rule 18(b), SCRMC is of no consequence. Appellant’s untimely filing of the Notice of Appeal divests this Court of appellate jurisdiction, and thus makes the Magistrate Court’s return to the Circuit Court moot. The Circuit Court cannot consider the merits of an untimely appeal and must dismiss it—with or without a return. *See* Rule 12(h)(3), SCRCP; *Elam*, 361 S.C. at 14-15, 602 S.E.2d at 775; *De Witt*, 274 S.C. at 186, 262 S.E.2d at 29.

CONCLUSION

Appellant, a South Carolina attorney proceeding *pro se*, admits he received notice of the Magistrate Court’s judgment on December 4, 2024 and admits that the last day for him to file his Notice of Appeal was Friday, January 3, 2025. (Memo. in Opp. at p. 2.) Appellant admits that his Notice of Appeal was “[d]elivered” to the Magistrate Court on January 6, 2025. (*See* Memo. in Opp. at Ex. 1 at p. 12.) Appellant, citing no case law, argues that the mailing itself is sufficient. (*See* Memo in Opp. at pp. 2-5.) It is not. *Gary*, 347 S.C. at 629, 557 S.E.2d at 663. Because the

Notice of Appeal was not filed with the Magistrate Court within thirty days, this Court does not have appellate jurisdiction to hear the appeal. *See* Rule 18(a), SCRMC; Rule 74, SCRCF. Therefore, this Court must dismiss the appeal for lack of appellate jurisdiction. *See* Rule 12(h)(3), SCRCF; *Elam*, 361 S.C. at 14-15, 602 S.E.2d at 775; *De Witt*, 274 S.C. at 186, 262 S.E.2d at 29.

WHEREFORE, Respondent, Delta Air Lines, Inc., respectfully moves for an Order dismissing Appellant's Notice of Appeal to the Circuit Court, or, in the alternative, for an Order affirming the Magistrate Court's Order in full.

Respectfully submitted,

April 22, 2025

By: s/ Brian M. Peters, Jr.

C. Daniel Atkinson (S.C. Bar #72721)

datkinson@wajlawfirm.com

Brian M. Peters, Jr. (S.C. Bar #105911)

bpeters@wajlawfirm.com

WILKES ATKINSON & JOYNER, LLC

127 Dunbar Street, Suite 200

Spartanburg, SC 29306

(864) 591-1113

Attorneys for Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Case No.: 2024-CP-23-07485
	)	
Joshua Hawkins,	)	
	)	
Appellant,	)	MEMORANDUM IN OPPOSITION TO
	)	RESPONDENT'S MOTION TO DISMISS
vs.	)	
	)	
Delta Airlines, Inc.	)	
	)	
Respondent.	)	
_____	)	

TO: DELTA AIRLINES, INC. BY AND THROUGH THEIR ATTORNEY OF RECORD
BRIAN M. PETERS ESQ.:

The Appellant, Joshua Hawkins, submits this Memorandum in Opposition to Respondent's Motion to Dismiss. For the reasons set forth below, the Appellant will show unto the Court that the Appellant ("Plaintiff") complied with procedural requirements for filing and serving the Notice of Appeal, the Magistrate has not submitted rationale for its ruling, the Magistrate Court's ruling substantively and procedurally conflicts with the law, and the Respondent's ("Defendant") motion should be denied.

I. INTRODUCTION

This memorandum is submitted on behalf of the Plaintiff in opposition to Defendant Delta Air Lines, Inc.'s Motion to Dismiss the appeal for lack of subject matter jurisdiction. The Defendant argues that the Plaintiff failed to properly file and serve the Notice of Appeal in accordance with Rule 18(a) of the South Carolina Rules for Magistrate Courts (SCRMC). However, the Plaintiff properly served the Magistrates Court and Circuit Court via certified mail on December 30, 2024, within the statutory deadline. (Ex. A). Additionally, the Magistrates Court

did not submit rationale for its decision or file a complete record of all proceedings as required by Rule 18(b) of the South Carolina Rules for Magistrate Courts (SCRMC).

II. STATEMENT OF FACTS

The Plaintiff, Joshua Hawkins, filed a Notice of Appeal on December 26, 2024, in the Circuit Court, appealing the Magistrate Court's dismissal of his claims against Delta Air Lines, Inc. (Ex. A). Subsequently, the Plaintiff served the Notice of Appeal on both the Magistrates Court and the Defendant via certified mail on December 30, 2024. (Ex. A). These actions were completed within the statutory deadline prescribed by Rule 18(a) of the South Carolina Rules for Magistrate Courts.

The Magistrate Court had delivered its written judgment on December 4, 2024, which made the applicable 30-day deadline for filing and service of the Notice of Appeal January 3, 2025. Recognizing the procedural requirements, the Plaintiff ensured that the Notice of Appeal was addressed and mailed in conformity with South Carolina procedural standards for certified mail service. Accordingly, all necessary entities, including the Magistrates Court, Circuit Court, and Defendant, were served within the legally mandated period. The Plaintiff's filing and service of the Notice of Appeal were therefore proper and timely.

The Defendant has moved to dismiss the appeal, alleging a failure to comply with Rule 18(a)'s requirements, specifically asserting that the Notice of Appeal was not filed with the Magistrates Court within the 30-day period. However, such an assertion ignores the evidence of compliance and misconstrues both the legal and procedural facts surrounding the Plaintiff's actions.

III. LEGAL STANDARD

Rule 18(a) of the South Carolina Rules for Magistrate Courts requires that a party seeking to appeal a magistrate's court decision must file a Notice of Appeal with both the Magistrates Court and the Circuit Court within 30 days after delivery of written notice of the judgment.

Rule 18(b) of the South Carolina Rules for Magistrates Court mandates that, within thirty days of the filing of a notice to appeal, the magistrate must file a return with the Clerk of Circuit Court. Rule 18(b) of the SCRMC provides:

Within (30) days of the date of filing of the notice of appeal with the Circuit Court, the magistrate shall file the return to the notice of appeal with the Clerk of the Circuit Court for the county wherein the judgment was rendered, together with the record, a statement of all proceedings in the case, and if necessary, the testimony taken at trial. Upon motion for good cause show, the Circuit Court may allow a definite extension of time in which to file the return.

Rule 18(b), SCRMC.

This requirement ensures that the Circuit Court has access to the necessary documentation and context to review the magistrate's judgment.

Rule 75 of the South Carolina Rules of Civil Procedure also requires transmission of the record to the Circuit Court. As Rule 75, SCRCP states:

Appeals to the circuit court shall be made upon the original record in the lower court or administrative agency or tribunal. Upon filing of notice of appeal in an action the original record shall be certified by the clerk of the inferior court or administrative agency or tribunal and transmitted within thirty (30) days to the clerk of the court to which the appeal is taken.

Rule 75, SCRCP.

South Carolina law recognizes certified mail as a valid method of service. Service is considered complete when the document is deposited with the United States Postal Service, provided it is properly addressed with sufficient postage. The use of certified mail is particularly significant in the context of appeals because it ensures that the filing and serving parties have a documented and verifiable evidentiary record of their compliance with procedural rules. This

method also provides transparency and accountability, as it confirms delivery and creates a reliable paper trail. When service is executed by certified mail, it eliminates potential disputes about timeliness, thereby ensuring clarity in the procedural process.

IV. ARGUMENT

A. Compliance with Rule 18(a), SCRMC

The Plaintiff timely filed the Notice of Appeal with the Circuit Court on December 26, 2024, and served the Magistrate's Court and the Defendant via certified mail on December 30, 2024. Rule 18(a), SCRMC, provides specific requirements for filing and serving notices of appeal from Magistrate Court judgments. The operative 30-day period began on December 4, 2024, the date that the Magistrate Court delivered its written notice of judgment to the parties. Based on this timeline, the last day to file and serve the Notice of Appeal was January 3, 2025. The Plaintiff's actions, including filing in the Circuit Court and serving both other required parties via certified mail, were all completed well within this required period. Thus, the Plaintiff satisfied all statutory and procedural requirements for compliance with Rule 18(a).

B. Service by Certified Mail

Service of the Notice of Appeal via certified mail on December 30, 2024, was both timely and proper under South Carolina law. Certified mail is expressly authorized as a permissible method of service, provided it is effectuated before the statutory deadline, and it is deemed complete on the date of deposit with the U.S. Postal Service. Here, Plaintiff complied by sending the Notice of Appeal to both the Magistrate's Court and the Defendant within the 30-day required period. (Ex. A). The use of certified mail also ensured adequate proof of service through return receipt, satisfying both procedural requirements and evidentiary standards for effective service.

These facts demonstrate that the Plaintiff performed all steps necessary to properly serve the required parties.

C. Jurisdictional Arguments

The Defendant's suggestion that the Circuit Court lacks jurisdiction over this appeal is without merit. The Plaintiff fulfilled the two critical jurisdictional prerequisites under Rule 18(a): timely filing of the Notice of Appeal and proper service on the Magistrate's Court, Circuit Court, and Defendant. Consequently, the Court retains its jurisdiction to hear the appeal, as procedural compliance has been fully demonstrated. Importantly, the Defendant's argument fails to account for the timely completion of these steps and instead seeks to impose an elevated standard unsupported by the express language of Rule 18(a).

D. Interpretation of Procedural Rules:

Rule 18(a), SCRMC, sets forth clear, straightforward requirements for appealing a Magistrate Court judgment. Its plain language requires that the Notice of Appeal be filed and served within 30 days and does not subject compliance to unnecessary or extrinsic conditions. Plaintiff fully adhered to these requirements through timely filing and proper service via certified mail. The Defendant's contention that additional steps were required is premised on an overly narrow and restrictive interpretation of procedural rules, contrary to their intended purpose. The goal of such rules is to ensure notice and orderly adjudication, not to create unnecessary obstacles to appeal. The Plaintiff's actions align with the clear mandates of Rule 18(a) and reflect an unequivocal good-faith effort to proceed in accordance with the law.

E. The Magistrate did not provide a record of the case.

Pursuant to Rule 18(b), SCRMC and Rule 75, SCRCP, the Magistrate's Court is required to provide a record of the case for appellate review. The failure to provide such a record constitutes

a significant procedural deficiency that undermines the appellate process and the appellant's ability to seek meaningful review.

V. CONCLUSION

The Plaintiff properly filed and served the Notice of Appeal in compliance with Rule 18(a), SCRMC, and South Carolina law. The Defendant repeatedly quotes language from its own motion in its memorandum in support of its motion as if it is quoting a Court Order, but the quoted language is not from an Order. It is simply the Defendant's argument from another Delta filing. The Defendant's Motion to Dismiss is without merit and should be denied. Further, the Magistrates Court failed to provide a complete record, as required by Rule 18(b), SCRMC. The record is necessary for this Court's review of the magistrate's judgment. The Plaintiff respectfully requests that the Court retain jurisdiction over the appeal and proceed to consider the merits of the case.

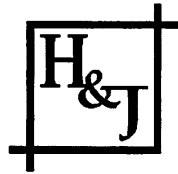
Respectfully Submitted,

HAWKINS & JEDZINIAK, LLC



Joshua T. Hawkins. S.C. Bar #78470
Helena L. Jedziniak, S.C. Bar #100825
1225 South Church Street
Greenville, South Carolina 29605
(864) 275-8142 (telephone)
(864) 752-0911 (facsimile)
josh@hjlsc.com
helena@hjlsc.com
Attorneys for Appellant

Greenville, SC
April 21, 2025



**Hawkins &
Jedziniak, LLC**

EXHIBIT A

Joshua T. Hawkins
josh@hjllcsc.com

Helena L. Jedziniak *
helena@hjllcsc.com
** also licensed in North Carolina*

Ethan L. Jedziniak
ethan@hjllcsc.com

1225 South Church Street, Greenville, SC 29605
P: (864) 275-8142 • F: (864) 752-0911 • www.hjllcsc.com

December 30, 2024

via -U.S. Certified Mail-
East Greenville Summary Court
320 West Main St.
Taylors, SC 29687

Re: *Joshua Hawkins v. Delta Airlines*
Magistrate Case No.: 2024CV2310302415
Circuit Court Case No.: 2024-CP-23-07485

To Whom It May Concern:

I hope you all had a Merry Christmas and enjoyed a few days off. Please see the attached Notice of Appeal to the Circuit Court in the above-mentioned matter, along with the certificate of service of the same

Sincerely,

Candie Edwards
Paralegal

Enclosures

ELECTRONICALLY FILED - 2025 Apr 21 4:56 PM - GREENVILLE - COMMON PLEAS - CASE#2024CP2307485

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE COURT
	)	
COUNTY OF GREENVILLE	)	CASE NO. 2024CV232415
	)	
Joshua Hawkins,	)	
	)	
Plaintiff,	)	NOTICE OF APPEAL TO THE
	)	CIRCUIT COURT
vs.	)	
	)	
Delta Air Lines, Inc.,	)	
	)	
Defendant.	)	
_____	)	

COMES NOW, the plaintiff, pursuant to SCMCR 18, and respectfully submits his appeal to the Circuit Court. The Magistrate Court's dismissal, which is appealed here, was entered on December 3, 2024, and the undersigned received notice the case had been dismissed via email from the Magistrate Court on December 4, 2024. Pursuant to SCMCR 18(a), the plaintiff files this appeal within thirty days of delivery of written notice of the judgment.

INTRODUCTION

"If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper." *Doe v. Marion*, 645 S.E.2d 245 (2007); *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995). Because the plaintiff can recover on the allegations and causes of action set forth in the complaint, the Magistrate Court should have denied Delta's motion to dismiss.¹

¹ Delta also moved pursuant to SCRCF 12(b)(1) and 10(c). However, it is undisputed that Delta does business in South Carolina and that subject matter jurisdiction and personal jurisdiction were proper as to at least some of the claims dismissed by the Magistrate Court.

ARGUMENT

I. The case should be sent back to the Magistrate because it was a reversible error for the Magistrate to dismiss the entire complaint, which contains facts and causes of action that allow the plaintiff to recover.

If a plaintiff sets forth allegations and facts, when taken as true, allow him to recover, the Court must deny a motion to dismiss. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999). At the hearing on the defendant's motion to dismiss, opposing counsel seemed to acknowledge that at least some of the plaintiff's claims would survive a motion to dismiss, and took the position that the complaint should be narrowed. Likewise, the Magistrate also seemed to acknowledge the complaint contained viable causes of action, but asserted the Court should not dismiss some claims and retain others. The Court seemed to indicate the case should be heard in another Court, but did not indicate which Court.

Simply put, the plaintiff stated facts that, if assumed true, allow him to recover. The complaint cites portions of Delta's terms that Delta violated, and certain fraudulent conduct Delta engaged in, which proximately caused the plaintiff to sustain damages. Cases like *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999), *Doe v. Marion*, 645 S.E.2d 245 (2007), *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995), a whole host of other cases, and the Rules of Civil Procedure all required the Magistrate to deny the defendant's motion to dismiss.

Moreover, the plaintiff set forth facts and allegations that, if assumed true, allow the plaintiff to recover under the Montreal Convention. "A circuit court must deny a motion to dismiss under Rule 12(b)(6) 'if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case.' *Flateau v. Harrelson*, 355 S.C. 197, 203, 584

S.E.2d 413, 415 (Ct. App. 2003).”² “The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). (Emphasis added.)

The plaintiff alleged “damage occasioned by delay,” contract non-performance, and set forth facts that more than sufficiently described the same. (See Montreal Convention Article 19: “The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo.” See also, *Paradis v. Ghana Airways Ltd*, 348 F. Supp. 2d 106 (So. Dist. N.Y. (2004).) Because the law – the Montreal Convention and the cases interpreting it – allow the plaintiff to recover for the conduct described and alleged in the complaint, the Magistrate should have denied Delta’s motion to dismiss.

The plaintiff has claimed that Delta violated its own terms and engaged in conduct that proximately caused him to sustain identifiable money damages, which of course allows recovery. *E. Airlines, Inc. v. Floyd*, 499 U.S. 530 (1991). Delta reveals that it is looking for determination of a disputed fact question with what amounts to summary judgment in its favor by block quoting Delta’s terms. “Delta will exercise reasonable efforts to transport you and your bags...” Delta wants this Court, instead of a jury, to summarily decide the following fact questions:

1. Was it reasonable for Delta – to the plaintiff and thousands of other people – to unilaterally decree the plaintiff and other customers were stuck in New York for days, without any compensation for food lodging, or anything whatsoever, with no visible signs of the mysterious weather described by Delta?
2. Was it reasonable to tell the plaintiff his bags were in one location, when they were in

² This is a quote from *Watkins v. Hall*, Unpublished Opinion No. 2017-UP-298 (Ct. App. 2017). While *Watkins* has no precedential value, its rationale is based on *Flateau* and other binding authority.

fact on a different continent, so that the plaintiff spent hours searching for bags containing thousands of dollar's worth of equipment?

3. Was it reasonable to give the plaintiff the name of the wrong third party vendor possessing the bags, when in fact another company held the bags, so that the plaintiff spent hours looking for the bags in vain (the plaintiff never even agreed to entrust the bags to a third-party vendor, and in fact had never heard of either the company Delta told him about or the company that actually had the bags)?
4. Is it reasonable for Delta to mishandle the plaintiff's bags, causing damage and delay (which is absolutely covered under the Montreal Convention) while the plaintiff repeatedly calls Delta, trying desperately to find the bags?
5. Is the raft of other outrageous and costly conduct by Delta described in the complaint reasonable?

The reasonableness of a defendant's conduct is a fact question. *Mitchell, Jr. v. Fortis Ins. Co.*, 686 S.E.2d 176 (2009). Article I, Section 14 of the South Carolina Constitution and the Seventh Amendment of the United States Constitution require that a jury decide disputed facts³ such as whether "Delta...exercise[d] reasonable efforts to transport [the plaintiff's] bags." Beyond that, Delta's obligation to act reasonably in the transportation of bags like the plaintiff's bags, which Delta damaged and delayed, is contained in its own terms, which must be construed against Delta as the drafter of the terms. *Mathis v. Brown & Brown of SC*, 689 S.E.2d 773 (2010).

³ The Magistrate's dismissal of this case violated the plaintiff's State and Federal constitutional rights, including the right to Due Process, the Equal Protection Clause, specifically, the right to a jury trial under the South Carolina Constitution and the right to a jury trial under the United States Constitution. Although the Seventh Amendment has never been fully incorporated against the States, it is clear from the language of the Amendment that the jury trial guarantee contained in the Seventh Amendment applies to all controversies exceeding twenty dollars, regardless of where they are litigated. The plaintiff preserves all constitutional arguments for further appellate review.

Delta claims, citing its terms, that because cancellations were due to “weather,” it cannot be held responsible, no matter how egregious its conduct. The problem for Delta, legally speaking, is that the plaintiff has alleged the cancellation was *not* due to weather, and the plaintiff’s allegations must be taken as true *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999). Delta goes on to cite the portion of its terms that reads “when a passenger’s travel is interrupted for more than 4 hours...as a result of flight cancellation or delay on the date of travel other than from force majeure, Delta will provide the passenger with...hotel [and] ground transportation.” The plaintiff has alleged both that Delta did not actually cancel due to weather and that Delta did not compensate for hotel or transportation, which is required by Delta’s terms. Because the plaintiff’s allegations must be taken as true, pursuant to *Baird* and a litany of other cases, the Magistrate should have denied Delta’s motion to dismiss.

At the hearing, Delta argued, in error, that fraud is the same cause of action as breach of contract accompanied by fraudulent act. It is black letter law in South Carolina that the two causes of action are not the same, and our courts have repeatedly articulated the differences between the two. The former has nine elements, while the latter has three. *Conner v. City of Forest Acres*, 560 S.E.2d 606 (2002); *Harper v. Ethridge*, 290 S.S. 112, 348 S.E.2d 374 (Ct. App. 1986); *Sullivan v. Callhoun*, 117 S.C. 137, 139, 108 S.E. 189, 189 (1921). If everything the plaintiff alleged is true, all nine elements of fraud are established, and the plaintiff can recover. In an event, *res judicata* requires that an issue be adjudicated in a prior suit. *Plum Creek Development v. City of Conway*, 512 S.D.2d 106 (1999). None of the plaintiff’s claims have been fully adjudicated in any suit.

II. The case should be sent back to the Magistrate because it was a reversible error for the Magistrate to consider evidence outside the pleadings without converting the motion to dismiss to a motion for summary judgment.

Delta styled its motion as a motion to dismiss, but it submitted and relied on materials outside the pleadings. When matters and evidence outside the pleadings are submitted and considered, a motion to dismiss must be converted to a motion for summary judgment. SCRC P 12(b); *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); *Brown v. Leverette*, 291 S.C. 364, 367, 353 S.E.2d 697, 698-99 (1987); *Johnson v. Dailey*, 318 S.C. 318, 457 S.E.2d 613 (1995).

The defendant relied on weather reports and other evidence outside of the complaint and even handed up materials at the hearing which were outside of the complaint. The plaintiff, of course, objected to the consideration of materials outside the complaint. Notwithstanding, the Magistrate considered materials outside the complaint and dismissed the plaintiff's entire case. The plaintiff set forth observational evidence in a signed pleading which directly contradicts the evidence outside of the complaint relied on by Delta. To the extent the Magistrate determined the factual disputes related to the weather, that determination is the function of a jury, and it was improper for the Magistrate to decide those disputed facts. *Kitchen Planners v. Friedman*, 892 S.E.2d 297 (2023). If the observational evidence set forth by the plaintiff and alleged in the complaint is true, then the plaintiff may recover, and resolution of fact questions and dismissal were improper.

In its motion, Delta states "Plaintiff refused to take the next available flight Delta offered him, which was scheduled to depart two days later," as if the plaintiff "refused" a valid or reasonable option. Obviously, most people, like the plaintiff, have jobs, responsibilities, and pets. In this case the plaintiff had all three, and waiting for days in New York because Delta refused to follow its own terms and cover lodging, food, or any other expenses is not a reasonable option by any standards. Besides all that, the plaintiff has offered conflicting evidence and allegations that

the Magistrate was required to take as true over Delta's inaccurate and conflicting version of the facts. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999).

III. Jurisdiction is proper in the Magistrate Court, there is no requirement to litigate the case in federal court, and the Magistrate should have denied Delta's SCRCP 12(b)(1) motion to dismiss.

"Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong. *Skinner v. Westinghouse Elec. Corp.*, 380 S.C. 91, 93, 668 S.E.2d 795, 796 (2008). South Carolina trial courts are vested with general original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts. S.C. Const. art. V, § 11." *Dema v. Tenet Physician Services-Hilton*, 678 S.E.2d 430 (2009). Jurisdiction over the plaintiff's claims is proper in Magistrate Court, and there is certainly no exclusive jurisdiction for federal court as to any of the claims dismissed by the Magistrate. The Magistrate Court has subject matter jurisdiction over claims related to international travel pursuant to the Montreal Convention, which does not contain any requirement that the relief it provides be sought in federal court. The Magistrate Court also has subject matter jurisdiction over any other claims which are not preempted by federal law.

The plaintiff's claims that Delta violated its own terms and engaged in conduct which proximately caused identifiable money damages is not barred or preempted. *E. Airlines, Inc. v. Floyd*, 499 U.S. 530 (1991). "A federal statute preempts state action in fields of traditional state regulation only if the clear and manifest intent of Congress in passing the federal statute was 'to occupy the field to the exclusion of the States.'" *Medical Park OB/GYN, PA*, 467 S.E.2d 261 (Ct. App. 1996). See also, *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 209, 105 S.Ct. 1904, 1910, 85 L.Ed.2d 206 (1985); *Hillsborough County, Fla. v. Automated Medical Laboratories, Inc.*, 471 U.S.

707, 719, 105 S.Ct. 2371, 2378, 85 L.Ed.2d 714 (1985); *Jones v. Rath Packing Co.*, 430 U.S. 519, 525, 97 S.Ct. 1305, 1309-10, 51 L.Ed.2d 604 (1977). Not only are some of the plaintiff's claims specifically created for redress against airlines, but Delta cannot show any congressional intent for federal law to preempt them.

Delta must show a conflict between state and federal law for preemption to apply at all. *Murphy v. Nat'l collegiate Athletic Ass'n*, 584 U.S. 453 (2018); *Mutual Pharmaceutical Co. v. Bartlett*, 570 U.S. 472, 33 S. Ct. 2466, 186 L.Ed.2d 607 (2013); *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 112 S. Ct. 2031, 119 L.Ed.2d 157 (1992). There is no conflict between any of the laws pursuant to which the plaintiff seeks relief and any federal law, and none of the relief sought by the plaintiff has any state-created regulatory effect as to airlines. To its credit, Delta does admit that it can be held liable when it breaches one or more of its own terms. *Am. Airlines, Inc. v. Wolens*, 513 U.S. 219 (1995). Because the plaintiff has alleged this as part of his suit, and because that allegation must be taken as true, that is sufficient to deny Delta's motion.

Lastly, the suggestion that the plaintiff cannot have any relief under the Uniform Declaratory Judgments Act is, honestly, absurd. As Delta knows, the Act gives this Court "the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." *Sunset Cay, LLC v. City of Folly Beach*, 593 S.E.2d 462 (2004). There is no conflict between a statute allowing the Court to declare the rights of the parties and any federal law on which Delta relies. In fact, there is a federal analogue, which does exactly the same thing as our State Declaratory Judgments statute.

Conclusion

Airlines do not have absolute immunity from suit. Delta asked the Magistrate Court to ignore the fact that it violated its own terms, which is plainly actionable. Delta asked the Magistrate

Court to ignore Delta losing, damaging, and delaying luggage, which the Montreal Convention clearly provides a remedy for, that Delta unilaterally cancelled multiple flights for no contractually allowable reason, and for lying to the plaintiff, causing him to search for and chase luggage the luggage Delta lost through multiple airports with multiple third parties for days.

Neither equity nor the law (including basic contract law and the Montreal Convention) allow dismissal where the allegations of the complaint allow the plaintiff to recover.⁴ The plaintiff therefore respectfully requests that the Court remand this case back to the Magistrate Court for trial.

Respectfully submitted,

Hawkins & Jedziniak, LLC



Joshua T. Hawkins, S.C. Bar No. 78470
Helena L. Jedziniak, S.C. Bar No. 100825
1225 South Church Street
Greenville, South Carolina 29605
(864) 275-8142 (telephone)

December 18, 2024
Greenville, South Carolina

Attorneys for Plaintiff

⁴ As previously stated, the law governing motions to dismiss required the Magistrate to deny Delta's motion to dismiss. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999), *Doe v. Marion*, 645 S.E.2d 245 (2007), *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CASE NO. 2024-CP-23-07485
	)	
Joshua Hawkins,	)	
	)	
Plaintiff,	)	CERTIFICATE OF SERVICE
	)	
vs.	)	
	)	
Delta Airlines,	)	
	)	
Defendant.	)	
_____	)	

I, the undersigned, do affirm that I served/mailed a copy of the foregoing
Notice of Appeal to the Circuit Court, to the addresses below, via Certified Mail, on this date,
December 30, 2024:

**East Greenville Summary Court
320 West Main St.
Taylors, SC 29687**

HAWKINS & JEDZINIAK, LLC



Candie Edwards
Paralegal

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Case No.: 2024-CP-23-07485
	)	
Joshua Hawkins,	)	
	)	
Appellant,	)	MEMORANDUM IN OPPOSITION TO
	)	RESPONDENT'S MOTION TO DISMISS
vs.	)	
	)	
Delta Airlines, Inc.	)	
	)	
Respondent.	)	
_____	)	

TO: DELTA AIRLINES, INC. BY AND THROUGH THEIR ATTORNEY OF RECORD
BRIAN M. PETERS ESQ.:

The Appellant, Joshua Hawkins, submits this Memorandum in Opposition to Respondent's Motion to Dismiss. For the reasons set forth below, the Appellant will show unto the Court that the Appellant ("Plaintiff") complied with procedural requirements for filing and serving the Notice of Appeal, the Magistrate has not submitted rationale for its ruling, the Magistrate Court's ruling substantively and procedurally conflicts with the law, and the Respondent's ("Defendant") motion should be denied.

I. INTRODUCTION

This memorandum is submitted on behalf of the Plaintiff in opposition to Defendant Delta Air Lines, Inc.'s Motion to Dismiss the appeal for lack of subject matter jurisdiction. The Defendant argues that the Plaintiff failed to properly file and serve the Notice of Appeal in accordance with Rule 18(a) of the South Carolina Rules for Magistrate Courts (SCRMC). However, the Plaintiff properly served the Magistrates Court and Circuit Court via certified mail on December 30, 2024, within the statutory deadline. (Ex. A). Additionally, the Magistrates Court

did not submit rationale for its decision or file a complete record of all proceedings as required by Rule 18(b) of the South Carolina Rules for Magistrate Courts (SCRMC).

II. STATEMENT OF FACTS

The Plaintiff, Joshua Hawkins, filed a Notice of Appeal on December 26, 2024, in the Circuit Court, appealing the Magistrate Court's dismissal of his claims against Delta Air Lines, Inc. (Ex. A). Subsequently, the Plaintiff served the Notice of Appeal on both the Magistrates Court and the Defendant via certified mail on December 30, 2024. (Ex. A). These actions were completed within the statutory deadline prescribed by Rule 18(a) of the South Carolina Rules for Magistrate Courts.

The Magistrate Court had delivered its written judgment on December 4, 2024, which made the applicable 30-day deadline for filing and service of the Notice of Appeal January 3, 2025. Recognizing the procedural requirements, the Plaintiff ensured that the Notice of Appeal was addressed and mailed in conformity with South Carolina procedural standards for certified mail service. Accordingly, all necessary entities, including the Magistrates Court, Circuit Court, and Defendant, were served within the legally mandated period. The Plaintiff's filing and service of the Notice of Appeal were therefore proper and timely.

The Defendant has moved to dismiss the appeal, alleging a failure to comply with Rule 18(a)'s requirements, specifically asserting that the Notice of Appeal was not filed with the Magistrates Court within the 30-day period. However, such an assertion ignores the evidence of compliance and misconstrues both the legal and procedural facts surrounding the Plaintiff's actions.

III. LEGAL STANDARD

Rule 18(a) of the South Carolina Rules for Magistrate Courts requires that a party seeking to appeal a magistrate's court decision must file a Notice of Appeal with both the Magistrates Court and the Circuit Court within 30 days after delivery of written notice of the judgment.

Rule 18(b) of the South Carolina Rules for Magistrates Court mandates that, within thirty days of the filing of a notice to appeal, the magistrate must file a return with the Clerk of Circuit Court. Rule 18(b) of the SCRMC provides:

Within (30) days of the date of filing of the notice of appeal with the Circuit Court, the magistrate shall file the return to the notice of appeal with the Clerk of the Circuit Court for the county wherein the judgment was rendered, together with the record, a statement of all proceedings in the case, and if necessary, the testimony taken at trial. Upon motion for good cause show, the Circuit Court may allow a definite extension of time in which to file the return.

Rule 18(b), SCRMC.

This requirement ensures that the Circuit Court has access to the necessary documentation and context to review the magistrate's judgment.

Rule 75 of the South Carolina Rules of Civil Procedure also requires transmission of the record to the Circuit Court. As Rule 75, SCRCP states:

Appeals to the circuit court shall be made upon the original record in the lower court or administrative agency or tribunal. Upon filing of notice of appeal in an action the original record shall be certified by the clerk of the inferior court or administrative agency or tribunal and transmitted within thirty (30) days to the clerk of the court to which the appeal is taken.

Rule 75, SCRCP.

South Carolina law recognizes certified mail as a valid method of service. Service is considered complete when the document is deposited with the United States Postal Service, provided it is properly addressed with sufficient postage. The use of certified mail is particularly significant in the context of appeals because it ensures that the filing and serving parties have a documented and verifiable evidentiary record of their compliance with procedural rules. This

method also provides transparency and accountability, as it confirms delivery and creates a reliable paper trail. When service is executed by certified mail, it eliminates potential disputes about timeliness, thereby ensuring clarity in the procedural process.

IV. ARGUMENT

A. Compliance with Rule 18(a), SCRMC

The Plaintiff timely filed the Notice of Appeal with the Circuit Court on December 26, 2024, and served the Magistrate's Court and the Defendant via certified mail on December 30, 2024. Rule 18(a), SCRMC, provides specific requirements for filing and serving notices of appeal from Magistrate Court judgments. The operative 30-day period began on December 4, 2024, the date that the Magistrate Court delivered its written notice of judgment to the parties. Based on this timeline, the last day to file and serve the Notice of Appeal was January 3, 2025. The Plaintiff's actions, including filing in the Circuit Court and serving both other required parties via certified mail, were all completed well within this required period. Thus, the Plaintiff satisfied all statutory and procedural requirements for compliance with Rule 18(a).

B. Service by Certified Mail

Service of the Notice of Appeal via certified mail on December 30, 2024, was both timely and proper under South Carolina law. Certified mail is expressly authorized as a permissible method of service, provided it is effectuated before the statutory deadline, and it is deemed complete on the date of deposit with the U.S. Postal Service. Here, Plaintiff complied by sending the Notice of Appeal to both the Magistrate's Court and the Defendant within the 30-day required period. (Ex. A). The use of certified mail also ensured adequate proof of service through return receipt, satisfying both procedural requirements and evidentiary standards for effective service.

These facts demonstrate that the Plaintiff performed all steps necessary to properly serve the required parties.

C. Jurisdictional Arguments

The Defendant's suggestion that the Circuit Court lacks jurisdiction over this appeal is without merit. The Plaintiff fulfilled the two critical jurisdictional prerequisites under Rule 18(a): timely filing of the Notice of Appeal and proper service on the Magistrate's Court, Circuit Court, and Defendant. Consequently, the Court retains its jurisdiction to hear the appeal, as procedural compliance has been fully demonstrated. Importantly, the Defendant's argument fails to account for the timely completion of these steps and instead seeks to impose an elevated standard unsupported by the express language of Rule 18(a).

D. Interpretation of Procedural Rules:

Rule 18(a), SCRMC, sets forth clear, straightforward requirements for appealing a Magistrate Court judgment. Its plain language requires that the Notice of Appeal be filed and served within 30 days and does not subject compliance to unnecessary or extrinsic conditions. Plaintiff fully adhered to these requirements through timely filing and proper service via certified mail. The Defendant's contention that additional steps were required is premised on an overly narrow and restrictive interpretation of procedural rules, contrary to their intended purpose. The goal of such rules is to ensure notice and orderly adjudication, not to create unnecessary obstacles to appeal. The Plaintiff's actions align with the clear mandates of Rule 18(a) and reflect an unequivocal good-faith effort to proceed in accordance with the law.

E. The Magistrate did not provide a record of the case.

Pursuant to Rule 18(b), SCRMC and Rule 75, SCRCP, the Magistrate's Court is required to provide a record of the case for appellate review. The failure to provide such a record constitutes

a significant procedural deficiency that undermines the appellate process and the appellant's ability to seek meaningful review.

V. CONCLUSION

The Plaintiff properly filed and served the Notice of Appeal in compliance with Rule 18(a), SCRMC, and South Carolina law. The Defendant repeatedly quotes language from its own motion in its memorandum in support of its motion as if it is quoting a Court Order, but the quoted language is not from an Order. It is simply the Defendant's argument from another Delta filing. The Defendant's Motion to Dismiss is without merit and should be denied. Further, the Magistrates Court failed to provide a complete record, as required by Rule 18(b), SCRMC. The record is necessary for this Court's review of the magistrate's judgment. The Plaintiff respectfully requests that the Court retain jurisdiction over the appeal and proceed to consider the merits of the case.

Respectfully Submitted,

HAWKINS & JEDZINIAK, LLC



Joshua T. Hawkins. S.C. Bar #78470
Helena L. Jedziniak, S.C. Bar #100825
1225 South Church Street
Greenville, South Carolina 29605
(864) 275-8142 (telephone)
(864) 752-0911 (facsimile)
josh@hjlsc.com
helena@hjlsc.com
Attorneys for Appellant

Greenville, SC
April 21, 2025

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Case No.: 2024-CP-23-07485
	)	
Joshua Hawkins,	)	
	)	
Appellant,	)	REPLY BRIEF IN SUPPORT OF
	)	RESPONDENT’S MOTION TO DISMISS
vs.	)	APPEAL AND IN OPPOSITION TO
	)	APPELLANT’S NOTICE OF APPEAL
Delta Air Lines, Inc.,	)	
	)	
Respondent.	)	
	)	

COMES NOW, Respondent, Delta Air Lines, Inc., (“Respondent” or “Delta”) by and through the undersigned counsel, and files its Reply Brief in Support of its Motion to Dismiss Appeal for Lack of Subject Matter Jurisdiction¹ and in Opposition to Appellant’s Notice of Appeal, and in support thereof states as follows:

INTRODUCTION

Appellant represents he “deposited” his Notice of Appeal “with the United States Postal Service” on December 30, 2024, and that such deposit constitutes filing with the Magistrate Court under Rule 18(a), SCRCP. (*See* Memo. in Opp. at p. 3.) “It is clear under South Carolina law that mailing does not constitute filing. When a statute requires the filing of a paper or document, it is filed when delivered to and received by the proper officer.” *Gary v. State*, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001). Appellant’s December 30, 2024 Mailing was “[d]elivered” on January 6,

¹ While styled as a “Motion to Dismiss Appeal for Lack of Subject Matter Jurisdiction,” Respondent clarifies that its Motion is a “Motion to Dismiss Appeal for Lack of Appellate Jurisdiction.” The Circuit Court generally has the power to hear appeals from the Magistrate Court, but the Circuit Court loses appellate jurisdiction if an appellant fails to timely appeal. *State v. Brown*, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004). The Court’s only recourse remains the same: the Court must dismiss the appeal for lack of jurisdiction. *See* Rule 12(h)(3), SCRCP; *Elam v. S.C. DOT*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004); *De Witt v. S.C. Dep’t of Highways & Pub. Transp.*, 274 S.C. 184, 186, 262 S.E.2d 28, 29 (1980).

2025—three days late. (*See* Memo. in Opp. at Ex. 1 at p. 12.) Because Appellant failed to “**file** a notice of appeal . . . with the magistrate rendering the judgment” within thirty days, the appeal is untimely. Rule 18(a), SCRMC (emphasis added). The Court does not have appellate jurisdiction over untimely appeals, and the Court must dismiss this untimely appeal.

LEGAL ARGUMENT

Appellant admits his Notice of Appeal was delivered three days late. (*See* Memo. in Opp. at Ex. 1 at p. 12.) It does not matter when Appellant mailed it. If the language of a court rule is “plain, unambiguous, and conveys a clear meaning,” the Court must enforce the rule as written. *See Wigfall v. Tideland Utils.*, 354 S.C. 100, 111, 580 S.E.2d 100, 105 (2003); Rule 2, SCRMC. The rule here is clear: the Notice of Appeal “shall” be “serve[d]” on all respondents but “*file[d]*” with the Magistrate Court and the Circuit Court within thirty days. Rule 18(a), SCRMC (emphasis added). “It is clear under South Carolina law that mailing does not constitute filing. When a statute requires the filing of a paper or document, it is filed when delivered to and received by the proper officer.” *Gary*, 347 S.C. at 629, 557 S.E.2d at 663. A federal postal worker is not “the proper officer” of the East Greenville Summary Court: the Clerk of Court is. *See* Rule 2, SCRMC; Rule 5(e), SCRCP (“The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court[.]”). Appellant’s untimely appeal divests this Circuit Court of jurisdiction to hear the appeal, and the Circuit Court must dismiss it. *See* Rule 12(h)(3), SCRCP; *Elam*, 361 S.C. at 14-15, 602 S.E.2d at 775; *De Witt*, 274 S.C. at 186, 262 S.E.2d at 29.

For example, in *In re Estate of Cretzmeyer* the appellant’s Notice of Appeal was “mailed” to the Circuit Court the day after the Probate Court issued its Order, but it was not *delivered* to the Circuit Court within the ten day time to appeal. *See In re Estate of Cretzmeyer v. Bloch*, 365 S.C.

12, 13, 615 S.E.2d 116, 116 (2005). The 2005 S.C. Supreme Court found that the Circuit Court properly dismissed the appeal as untimely, because the Notice of Appeal was not “delivered” to the Circuit Court. *See id.*, 365 S.C. at 14, 615 S.E.2d at 116-17 (citing *Gary*, 347 S.C. at 629, 557 S.E.2d at 663. That decision controls. Appellant’s untimely appeal must be dismissed.

Even so, Appellant essentially asks the Court to overrule the longstanding “delivery rule” of filing. He argues “[t]he use of certified mail also ensures adequate proof of service through return receipt, satisfying both procedural requirements and evidentiary standards for effective service.” (Memo in Opp. at p. 4.) This Court is not at liberty to re-write or reinterpret the clear requirements of Rule 18(a), SCRPC. *See Wigfall*, 354 S.C. at 111, 580 S.E.2d at 105. Nevertheless, the S.C. Supreme Court recognized the problems inherent with allowing “mailbox filing” in 1955, quoting the practical, timeless warnings from a 1916 U.S. Supreme Court opinion:

“A court is constrained by the meaning of the words of a statute. They mark the extent of its power, and our attention has not been called to any case which decides that the requirement of a statute, whether to secure or preserve a right or to avoid the guilt of a crime, that a paper shall be filed with a particular officer, is satisfied by a deposit in the post office at some distant place. To so hold would create revolutions in the procedure of the law and the regulation of rights. In instances it might, indeed, be convenient; in others, and most others, it would result in confusion and controversies; and we would have the clash of oral testimonies for the certain evidence of the paper in the files.”

See Fox v. Union-Buffalo Mills, 226 S.C. 561, 566, 86 S.E.2d 253, 255 (1955) (quoting *United States v. Lombardo*, 241 U.S. 73, 78, 36 S. Ct. 508, 510 (1916)). The invention of tracking numbers does not solve the “confusion and controversies.” The issue in the 2001 *Gary* case was that the Post Conviction Relief application was mailed *to the wrong place*. *Gary*, 347 S.C. at 629, 557 S.E.2d at 663.

Further, court filings must be in the possession of the Court and docketed as part of the public record. *See Barnes v. State*, 433 S.C. 399, 402, 859 S.E.2d 260, 261 (2021); *Gary*, 347 S.C.

at 629, 557 S.E.2d at 663. “Mail filing” does not guarantee the Court receives the document, and this is problematic. After all, filings must be in the Court’s possession so they may be available to the public. As the S.C. Supreme Court recognized in 1880:

As is said in 1 Bouv. Law Dict. 524: “A paper is said to be filed when it is delivered to the proper officer and by him received to be kept on file.” In addition to this the proper office of an index is to afford a ready means of finding something else which contains the information desired, and if that something else is not in the office where the index is kept, it would not serve the purpose for which it is intended.

Sternberger v. McSween, 14 S.C. 35, 43 (1880). If this Court ignores the “delivery” rule and adopts Appellant’s “mailing” rule, court documents could be “filed” without ever being delivered to and in the possession of the Court. This would introduce the “confusion and controversies” the *Fox* and *Lombardo* courts forewarned. *See Fox*, 226 S.C. at 566, 86 S.E.2d at 255 (quoting *Lombardo*, 241 U.S. at 78, 36 S. Ct. at 510).

Finally, Appellant’s comment that the Magistrate Court did not file a return under Rule 18(b), SCRMC is of no consequence. Appellant’s untimely filing of the Notice of Appeal divests this Court of appellate jurisdiction, and thus makes the Magistrate Court’s return to the Circuit Court moot. The Circuit Court cannot consider the merits of an untimely appeal and must dismiss it—with or without a return. *See* Rule 12(h)(3), SCRCP; *Elam*, 361 S.C. at 14-15, 602 S.E.2d at 775; *De Witt*, 274 S.C. at 186, 262 S.E.2d at 29.

CONCLUSION

Appellant, a South Carolina attorney proceeding *pro se*, admits he received notice of the Magistrate Court’s judgment on December 4, 2024 and admits that the last day for him to file his Notice of Appeal was Friday, January 3, 2025. (Memo. in Opp. at p. 2.) Appellant admits that his Notice of Appeal was “[d]elivered” to the Magistrate Court on January 6, 2025. (*See* Memo. in Opp. at Ex. 1 at p. 12.) Appellant, citing no case law, argues that the mailing itself is sufficient. (*See* Memo in Opp. at pp. 2-5.) It is not. *Gary*, 347 S.C. at 629, 557 S.E.2d at 663. Because the

Notice of Appeal was not filed with the Magistrate Court within thirty days, this Court does not have appellate jurisdiction to hear the appeal. *See* Rule 18(a), SCRMC; Rule 74, SCRCP. Therefore, this Court must dismiss the appeal for lack of appellate jurisdiction. *See* Rule 12(h)(3), SCRCP; *Elam*, 361 S.C. at 14-15, 602 S.E.2d at 775; *De Witt*, 274 S.C. at 186, 262 S.E.2d at 29.

WHEREFORE, Respondent, Delta Air Lines, Inc., respectfully moves for an Order dismissing Appellant's Notice of Appeal to the Circuit Court, or, in the alternative, for an Order affirming the Magistrate Court's Order in full.

Respectfully submitted,

April 22, 2025

By: s/ Brian M. Peters, Jr.

C. Daniel Atkinson (S.C. Bar #72721)

datkinson@wajlawfirm.com

Brian M. Peters, Jr. (S.C. Bar #105911)

bpeters@wajlawfirm.com

WILKES ATKINSON & JOYNER, LLC

127 Dunbar Street, Suite 200

Spartanburg, SC 29306

(864) 591-1113

Attorneys for Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Case No.: 2024-CP-23-07485
	)	
Joshua Hawkins,	)	
	)	
Appellant,	)	PLAINTIFF'S MOTION
	)	TO RECONSIDER
vs.	)	
	)	
Delta Airlines, Inc.	)	
	)	
Respondent.	)	
_____	)	

**TO: DELTA AIRLINES, INC. BY AND THROUGH THEIR ATTORNEY OF RECORD
BRIAN M. PETERS ESQ.:**

COMES NOW, Appellant, and moves the Court to reconsider its ruling and alter or amend its judgment. Appellant preserves all substantive and procedural issues related to the case for appeal, including issues related to the Magistrate Court's ruling and this Court's dismissal of the appeal. Appellant moves pursuant to SCRCP 54, 59, including subpart (e), 60, and all other applicable Rules, case law, and authority. Appellant incorporates by reference all documents filed with the Magistrate Court and the Circuit Court and intends to use those documents and any documents referenced herein in a Record on Appeal in any future appeals.

BACKGROUND

This case was original filed in Magistrate Court, and Respondent moved to dismiss some causes of action, but not others. On December 4, 2024, the Magistrate Court dismissed all causes of action, even those Respondent acknowledged existed at the hearing. The Magistrate never delivered or served notice of the judgment on Appellant or, as far as Appellant knows, on anyone. The only reason Appellant knew about the judgment was that the Magistrate Court sent an email to the parties with Respondent's proposed order signed.

Even though the Magistrate Court never served or delivered notice of the judgment, in an abundance of caution, Appellant filed a Notice of Appeal with the Circuit Court within 30 days of learning about the judgment through email on December 26, 2024.

The Magistrate Court, in an email, indicated it would comply with the requirement to deliver notice of judgment in December 4, 2025, email. Michelle Pegg with East Greenville Magistrate Court sent the following email:

I have provided Judge Hubbard with the papers that were emailed. **I will mail a copy of the signed Order.**

Michelle Pegg
East Greenville Summary Court
320 W. Main Street
Taylors, SC 29687
864-467-4625

(Ex. A) (emphasis added).

The signed order was never mailed, but in an abundance of caution, Appellant served the Magistrate Court by mail on December 30, 2024, and served Respondent by mail on January 3, 2025.

The Magistrate Court was required to file a Return to the Notice of Appeal “[w]ithin thirty (30) days of the date of filing the notice of appeal with the Circuit Court.” SCMCR 18(b). The Magistrate Court did not file any Return within thirty days, and in fact, neither Appellant nor Respondent was aware a Return had ever been filed until the Circuit Court instructed as much at the hearing. The Return was both untimely and unavailable on the public index. The public index, to this day, does not provide the date of any formal order being entered, mailed or delivered to any parties.

Notwithstanding all that, Respondent moved to dismiss the appeal based on timeliness. Respondent argued that the Magistrate Court’s email to the parties satisfies delivery and service

of notice of judgment on the parties. Respondent then used the date of the email, which is not the recognized method of service or delivery under the Rules of Civil Procedure, to calculate when thirty days had passed, and argued that it did not matter that Appellant served the Notice of Appeal on the Magistrate 26 days after that date. Respondent argued that because the Magistrate Court physically received the Notice of Appeal in the mail 33 days after the Magistrate Court's email, that the appeal should be dismissed.

Either documents must be physically delivered to start a clock running, and this appeal is timely because no physical notice of judgment has ever been delivered to the parties, or the Rules of Civil Procedure and the Appellate Court Rules apply and this appeal is timely because the Magistrate Court was served by mail less than thirty days after the Magistrate Court dismissed the case. Either way, the appeal is timely.

ARGUMENT

Either "delivery" means physical delivery, and Appellant's appeal is timely, or "delivery" means delivery according to the Rules of Civil Procedure, and Appellant's appeal is timely. Appellant's appeal is timely by any calculation of time.

I. Appellant's appeal is timely.

a. The appeal is timely under the Magistrate Court Rules.

South Carolina Magistrate Court Rule 18(a) states:

Within thirty (30) days after **delivery** of written notice of judgment to the parties or their attorneys, a party wishing to appeal shall serve on the respondent and file a notice of appeal containing a statement of the grounds for appeal with the magistrate rendering the judgment and with the Circuit Court of the County where the judgment was rendered.

South Carolina Rules of Magistrate's Court, Rule 18(a). (emphasis added).

The facts in *Robinson v. Hassiotis* provide a similar fact-pattern as this case. In *Robinson*, the facts were as follows:

The magistrate's court entered a default judgment against Hassiotis because Hassiotis failed to appear at the time set for his trial. Hassiotis appealed to the circuit court. He argued the "Instructions to Defendant" form that he received from the magistrate's court indicated he would receive notice of trial after he filed an answer. He alleged he filed an answer and awaited notice of his trial date, but never received notice. The circuit court remanded the case to the magistrate's court for a decision on the issue of notice. The magistrate found Hassiotis received proper notice because the magistrate's constable personally advised Hassiotis of the trial date. The circuit court affirmed. Hassiotis appeals.

Robinson v. Hassiotis, 364 S.C. 92, 610 S.E.2d 858 (Ct. App. 2005).

The South Carolina Court of Appeals in *Robinson* went on further to note, "In this case, Hassiotis received oral notice concerning his trial date prior to the time that he filed his answer. But oral notice is not sufficient under the Magistrate's Courts Rules. The rules contemplate *written* notice of trial and contemplate delivery of the notice after the filing of the answer." *Id.* The Court of Appeals also explained what delivery constituted under the Magistrate's Courts Rules in this context, establishing, "Rule 6(b) SCRMC, requires service to be made "by personal service, or service by publication in a manner provided for in Title 15 of the South Carolina Code of Law or by mail...." *Id.*

Similarly, Appellant received notice via email which would not be sufficient under the Magistrate's Courts Rules. Under *Robinson*, the Magistrate Court Rules require delivery of a *written notice* to the parties. No such *written notice* was delivered to the Appellant or Respondent.

In fact, Rule 8(b) of the SCRMC provides the process of delivery stating:

Delivery of a copy within this rule means: **handing it** to the attorney or party; or **leaving it** at the office; or, if there is no one in charge, leaving it at the party's usual place of abode **with a resident of suitable age and discretion**; or **mailing it** to the last known address of that party.

South Carolina Rules of Magistrate's Court, Rule 8(b). (emphasis added).

The language of SCRMC Rules 8(b), 18(a), in combination with *Robinson* contemplate delivery of a physical written notice.

Likewise, Respondent has taken the position that “delivery” of a documents means that it was physically delivered. If that is true, then Appellant’s appeal is timely because the Notice of Appeal was delivered “[w]ithin thirty (30) days after delivery of written notice of judgment to the parties...” In fact, the “thirty...days after delivery of...judgment” still has not begun to run because the Magistrate Court never “delivered” notice of judgment to Appellant. If the word “delivered” only means physical delivery, the clock cannot have started because no notice of judgment has ever been physically delivered to Appellant or anyone else. All of this was disclosed in open court.

Although Respondent homed in on the word “delivery,” and insisted it means physical receipt by the Magistrate Court, the Respondent was adamant that “delivery...to the parties” is satisfied by email. Both cannot be true. If “delivery” is only physical, then Appellant is still waiting on the Magistrate Court to deliver notice of the judgment and start the clock running to file the Notice of Appeal. Even if the Magistrate Court had mailed notice of judgment to the parties the very same day it sent the email, it could not have been physically delivered until the next day, which would make the deadline for the appeal January 6, 2025, which is when the Magistrate Court received it (January 4, 2025 is a Saturday.)

The Plaintiff properly served the Magistrates Court and Circuit Court via certified mail on December 30, 2024, within the statutory deadline. (Ex. B). Additionally, the Magistrates Court did not submit rationale for its decision or file a complete record of all proceedings as required by Rule 18(b) of the South Carolina Rules for Magistrate Courts (SCRMC).

b. The appeal is timely under the Rules of Civil Procedure.

SCRCP 6 provides:

Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail or upon a person designated by statute to accept service, five days shall be added to the prescribed period.

South Carolina Rules of Civil Procedure, Rule 6.

As set forth above, the Magistrate Court never served or delivered notice of judgment on either of the parties. Where the Magistrate Court delivers notice of judgment, as required by SCMCR 18(a), five days must be added to the time for Appellant to file the appeal. This means Appellant filed and served the appeal with even more time to spare. To further bolster this argument, look to SCRCF 5(b)(1) which provides that “service by mail is complete upon mailing.”

c. The appeal is timely under the Appellate Court Rules.

SCACR 262(a) provides that filing may be accomplished by “(2) **[d]epositing the document in the U.S. mail**, properly addressed to the clerk of the appellate court, with sufficient first class postage attached. **The date of filing shall be the date of mailing.**” *South Carolina Appellate Court Rules*, Rule 262(a) (emphasis added).

Even if the Magistrate Court’s informal email had satisfied the requirement for the Magistrate Court to “deliver[] written notice of judgment to the parties,” and started the clock running for Appellant to file his Notice of Appeal, by the plain language of the Appellate Court Rules, Appellant’s Notice of Appeal was filed well before the thirty-day deadline. The Magistrate’s Court email was sent on December 4, 2025, and even without adding five days for mailing (again, the Magistrate Court never mailed, delivered, or served notice of judgment), Appellant mailed the Notice of Appeal to the Magistrate Court 26 days later on December 30, 2024.

d. The appeal is timely by any possible computation.

Respondent has advanced the argument that Appellant's appeal is untimely even though the Magistrate Court never delivered notice of judgment to the parties, which must happen to start the thirty (30) day clock for the Notice of Appeal to be filed. The Circuit Court committed reversible error when it adopted that argument, and the order should be amended or altered to conform to the law and the Rules. Adoption of Respondent's flawed argument means that Appellant is punished for filing and serving the Notice of Appeal within 30 days of the informal email in an abundance of caution. There is no Rule or case that allows a Magistrate Court's informal email starts the clock to appeal or cures its failure to conform to the requirement in SCMCr 18(a). Under the strictest analysis possible – if the Magistrate Court had mailed notice of judgment the same day it sent the email, and without adding five days for mailing – Appellant's appeal is still timely. But because the Magistrate Court has still never delivered notice of judgment to the parties, the clock has never started running, and Appellant's appeal is also timely for that reason.

II. The Circuit Court should have reversed the Magistrate Court's dismissal for substantive reasons.

The Circuit Court should alter or amend its dismissal of the appeal based on timeliness because the Magistrate Court has never started the time to appeal running by delivering notice of its judgment to the parties, and even if it had, the appeal would be timely. If the Circuit Court alters or amends its judgment to conform with the Rules and other authority, substantive issues may be addressed after the Circuit Court alters or amends its judgment. However, if an appeal to the Court of Appeals becomes necessary, Appellant wishes to ensure that no issues are waived, and therefore addresses substantive issues below.

a. The Magistrate Court’s dismissal of the entire case was wholly unsupported by the law.

“If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper.” *Doe v. Marion*, 645 S.E.2d 245 (2007); *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995). Respondent acknowledged the plaintiff could recover on some of the allegations and causes of action set forth in the complaint, did not request a total dismissal, and the Magistrate Court should have denied Delta’s motion to dismiss.¹ The Magistrate seemed to acknowledge the complaint contained viable causes of action, but asserted the Court should not dismiss some claims and retain others. The Magistrate seemed to indicate the case should be heard in another Court, but did not indicate which Court.

Simply put, Appellant stated facts that, if assumed true, allow recovery. The complaint cites portions of Delta’s terms that Delta violated, and certain fraudulent conduct Delta engaged in, which proximately caused the plaintiff to sustain damages. Cases like *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999), *Doe v. Marion*, 645 S.E.2d 245 (2007), *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995), a whole host of other cases, and the Rules of Civil Procedure all required the Magistrate to deny the defendant’s motion to dismiss.

Moreover, Appellant set forth facts and allegations that, if assumed true, allow recovery under the Montreal Convention. “A circuit court must deny a motion to dismiss under Rule 12(b)(6) ‘if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff

¹ Delta also moved pursuant to SCRCP 12(b)(1) and 10(c). However, it is undisputed that Delta does business in South Carolina and that subject matter jurisdiction and personal jurisdiction were proper as to at least some of the claims dismissed by the Magistrate Court.

to relief on any theory of the case.’ *Flateau v. Harrelson*, 355 S.C. 197, 203, 584 S.E.2d 413, 415 (Ct. App. 2003).”² “The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). (Emphasis added.)

Appellant alleged “damage occasioned by delay,” contract non-performance, and set forth facts that more than sufficiently described the same. (See Montreal Convention Article 19: “The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo.” See also, *Paradis v. Ghana Airways Ltd*, 348 F. Supp. 2d 106 (So. Dist. N.Y. (2004).) Because the law – the Montreal Convention and the cases interpreting it – allow Appellant to recover for the conduct described and alleged in the complaint, the Magistrate should have denied Respondent’s motion to dismiss.

Appellant claimed that Respondent violated its own terms and engaged in conduct that proximately caused him to sustain identifiable money damages, which of course allows recovery. *E. Airlines, Inc. v. Floyd*, 499 U.S. 530 (1991). Respondent reveals that it is looking for determination of a disputed fact question with what amounts to summary judgment in its favor by block quoting Delta’s terms. “Delta will exercise reasonable efforts to transport you and your bags...” Delta wants this Court, instead of a jury, to summarily decide the following fact questions:

1. Was it reasonable for Delta – to the plaintiff and thousands of other people – to unilaterally decree the plaintiff and other customers were stuck in New York for days, without any compensation for food lodging, or anything whatsoever, with no visible signs of the mysterious weather described by Delta?

² This is a quote from *Watkins v. Hall*, Unpublished Opinion No. 2017-UP-298 (Ct. App. 2017). While *Watkins* has no precedential value, its rationale is based on *Flateau* and other binding authority.

2. Was it reasonable to tell the plaintiff his bags were in one location, when they were in fact on a different continent, so that the plaintiff spent hours searching for bags containing thousands of dollar's worth of equipment?
3. Was it reasonable to give the plaintiff the name of the wrong third party vendor possessing the bags, when in fact another company held the bags, so that the plaintiff spent hours looking for the bags in vain (the plaintiff never even agreed to entrust the bags to a third-party vendor, and in fact had never heard of either the company Delta told him about or the company that actually had the bags)?
4. Is it reasonable for Delta to mishandle the plaintiff's bags, causing damage and delay (which is absolutely covered under the Montreal Convention) while the plaintiff repeatedly calls Delta, trying desperately to find the bags?
5. Is the raft of other outrageous and costly conduct by Delta described in the complaint reasonable?

The reasonableness of a defendant's conduct is a fact question. *Mitchell, Jr. v. Fortis Ins. Co.*, 686 S.E.2d 176 (2009). Article I, Section 14 of the South Carolina Constitution and the Seventh Amendment of the United States Constitution **require** that a jury decide disputed facts³ such as whether "Delta...exercise[d] reasonable efforts to transport [the plaintiff's] bags." Beyond that, Delta's obligation to act reasonably in the transportation of bags like the plaintiff's bags,

³ The Magistrate's dismissal of this case violated the plaintiff's State and Federal constitutional rights, including the right to Due Process, the Equal Protection Clause, specifically, the right to a jury trial under the South Carolina Constitution and the right to a jury trial under the United States Constitution. Although the Seventh Amendment has never been fully incorporated against the States, it is clear from the language of the Amendment that the jury trial guarantee contained in the Seventh Amendment applies to all controversies exceeding twenty dollars, regardless of where they are litigated. The plaintiff preserves all constitutional arguments for further appellate review.

which Delta damaged and delayed, is contained in its own terms, which must be construed against Delta as the drafter of the terms. *Mathis v. Brown & Brown of SC*, 689 S.E.2d 773 (2010).

Delta claims, citing its terms, that because cancellations were due to “weather,” it cannot be held responsible, no matter how egregious its conduct. The problem for Delta, legally speaking, is that the plaintiff has alleged the cancellation was *not* due to weather, and the plaintiff’s allegations must be taken as true *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999). Delta goes on to cite the portion of its terms that reads “when a passenger’s travel is interrupted for more than 4 hours...as a result of flight cancellation or delay on the date of travel other than from force majeure, Delta will provide the passenger with...hotel [and] ground transportation.” The plaintiff has alleged both that Delta did not actually cancel due to weather and that Delta did not compensate for hotel or transportation, which is required by Delta’s terms. Because the plaintiff’s allegations must be taken as true, pursuant to *Baird* and a litany of other cases, the Magistrate should have denied Delta’s motion to dismiss.

At the hearing, Delta argued, in error, that fraud is the same cause of action as breach of contract accompanied by fraudulent act. It is black letter law in South Carolina that the two causes of action are not the same, and our courts have repeatedly articulated the differences between the two. The former has nine elements, while the latter has three. *Conner v. City of Forest Acres*, 560 S.E.2d 606 (2002); *Harper v. Ethridge*, 290 S.S. 112, 348 S.E.2d 374 (Ct. App. 1986); *Sullivan v. Callhoun*, 117 S.C. 137, 139, 108 S.E. 189, 189 (1921). If everything the plaintiff alleged is true, all nine elements of fraud are established, and the plaintiff can recover. In an event, *res judicata* requires that an issue be adjudicated in a prior suit. *Plum Creek Development v. City of Conway*, 512 S.D.2d 106 (1999). None of the plaintiff’s claims have been fully adjudicated in any suit.

b. The Circuit Court should have sent the case back to the Magistrate because it

was a reversible error for the Magistrate to consider evidence outside the pleadings without converting the motion to dismiss to a motion for summary judgment.

Delta styled its motion as a motion to dismiss, but it submitted and relied on materials outside the pleadings. When matters and evidence outside the pleadings are submitted and considered, a motion to dismiss must be converted to a motion for summary judgment. SCRCP 12(b); *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); *Brown v. Leverette*, 291 S.C. 364, 367, 353 S.E.2d 697, 698-99 (1987); *Johnson v. Dailey*, 318 S.C. 318, 457 S.E.2d 613 (1995).

Respondent relied on weather reports and other evidence outside of the complaint and even handed up materials at the hearing which were outside of the complaint. The plaintiff, of course, objected to the consideration of materials outside the complaint. Notwithstanding, the Magistrate considered materials outside the complaint and dismissed the plaintiff's entire case. The plaintiff set forth observational evidence in a signed pleading which directly contradicts the evidence outside of the complaint relied on by Delta. To the extent the Magistrate determined the factual disputes related to the weather, that determination is the function of a jury, and it was improper for the Magistrate to decide those disputed facts. *Kitchen Planners v. Friedman*, 892 S.E.2d 297 (2023). If the observational evidence set forth by the plaintiff and alleged in the complaint is true, then the plaintiff may recover, and resolution of fact questions and dismissal were improper.

In its motion, Delta states "Plaintiff refused to take the next available flight Delta offered him, which was scheduled to depart two days later," as if the plaintiff "refused" a valid or reasonable option. Obviously, most people, like the plaintiff, have jobs, responsibilities, and pets. In this case the plaintiff had all three, and waiting for days in New York because Delta refused to

follow its own terms and cover lodging, food, or any other expenses is not a reasonable option by any standards. Besides all that, the plaintiff has offered conflicting evidence and allegations that the Magistrate was required to take as true over Delta's inaccurate and conflicting version of the facts. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999).

III. Jurisdiction was proper in the Magistrate Court, there is no requirement to litigate the case in federal court, and the Magistrate should have denied Respondent's SCRCP 12(b)(1) motion to dismiss.

"Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong. *Skinner v. Westinghouse Elec. Corp.*, 380 S.C. 91, 93, 668 S.E.2d 795, 796 (2008). South Carolina trial courts are vested with general original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts. S.C. Const. art. V, § 11." *Dema v. Tenet Physician Services-Hilton*, 678 S.E.2d 430 (2009). Jurisdiction over the plaintiff's claims is proper in Magistrate Court, and there is certainly no exclusive jurisdiction for federal court as to any of the claims dismissed by the Magistrate. The Magistrate Court has subject matter jurisdiction over claims related to international travel pursuant to the Montreal Convention, which does not contain any requirement that the relief it provides be sought in federal court. The Magistrate Court also has subject matter jurisdiction over any other claims which are not preempted by federal law.

Appellant's claims that Respondent violated its own terms and engaged in conduct which proximately caused identifiable money damages is not barred or preempted. *E. Airlines, Inc. v. Floyd*, 499 U.S. 530 (1991). "A federal statute preempts state action in fields of traditional state regulation only if the clear and manifest intent of Congress in passing the federal statute was 'to occupy the field to the exclusion of the States.'" *Medical Park OB/GYN, PA*, 467 S.E.2d 261 (Ct.

App. 1996). See also, *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 209, 105 S.Ct. 1904, 1910, 85 L.Ed.2d 206 (1985); *Hillsborough County, Fla. v. Automated Medical Laboratories, Inc.*, 471 U.S. 707, 719, 105 S.Ct. 2371, 2378, 85 L.Ed.2d 714 (1985); *Jones v. Rath Packing Co.*, 430 U.S. 519, 525, 97 S.Ct. 1305, 1309-10, 51 L.Ed.2d 604 (1977). Not only are some of the plaintiff's claims specifically created for redress against airlines, but Respondent cannot show any congressional intent for federal law to preempt them.

Respondent was required to show a conflict between state and federal law for preemption to apply at all. *Murphy v. Nat'l collegiate Athletic Ass'n*, 584 U.S. 453 (2018); *Mutual Pharmaceutical Co. v. Bartlett*, 570 U.S. 472, 33 S. Ct. 2466, 186 L.Ed.2d 607 (2013); *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 112 S. Ct. 2031, 119 L.Ed.2d 157 (1992). There is no conflict between any of the laws pursuant to which the plaintiff seeks relief and any federal law, and none of the relief sought by the plaintiff has any state-created regulatory effect as to airlines. To its credit, Delta does admit that it can be held liable when it breaches one or more of its own terms. *Am. Airlines, Inc. v. Wolens*, 513 U.S. 219 (1995). Because the plaintiff has alleged this as part of his suit, and because that allegation must be taken as true, that is sufficient to deny Delta's motion.

Lastly, the suggestion that Appellant cannot have any relief under the Uniform Declaratory Judgments Act is, honestly, absurd. As Respondent knows, the Act gives this Court "the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." *Sunset Cay, LLC v. City of Folly Beach*, 593 S.E.2d 462 (2004). There is no conflict between a statute allowing the Court to declare the rights of the parties and any federal law on which Delta relies. In fact, there is a federal analogue, which does exactly the same thing as our State Declaratory Judgments statute.

CONCLUSION

No South Carolina case has ever held that an email from Magistrate Court staff is a substitute for the requirement that a Magistrate Court “deliver[.]...written notice of judgment to the parties” to start the thirty day time to appeal to the Circuit Court. It is undisputed that the Magistrate Court never delivered physical written notice of judgment to the parties and electronic filing is not available for Magistrate Court, so the parties must use U.S. Mail for filing. It is not clear that the final written order has ever been available on the public index – as of the filing of this document, Appellant was unable to find it. It is undisputed the Magistrate failed to file a Return with the Circuit Court within 30 days of its judgment. It is undisputed that the appeal was timely filed with this Court, timely served on Respondent, and sent by U.S. mail well under thirty days from the date of the Magistrate Court’s email. This Court should alter or amend its judgment because the appeal is timely, and would be timely if it were filed today because the Magistrate Court has never started the time to appeal running.

Substantively, airlines are not immune from suit. The Magistrate Court’s substantive ruling does not make legal sense and it violates the law. Neither equity nor the law (including basic contract law and the Montreal Convention) allow dismissal where the allegations of the complaint allow the plaintiff to recover.⁴

Most importantly, dismissal of this action violates Appellant’s constitutional rights, including the right to a fair trial by jury.

Appellant therefore respectfully requests the Circuit Court alter or amend its judgment, and remand this case back to the Magistrate Court for trial.

⁴ As previously stated, the law governing motions to dismiss required the Magistrate to deny Delta’s motion to dismiss. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999), *Doe v. Marion*, 645 S.E.2d 245 (2007), *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995)

Respectfully Submitted,

HAWKINS & JEDZINIAK, LLC



Joshua T. Hawkins. S.C. Bar #78470
Helena L. Jedziniak, S.C. Bar #100825
1225 South Church Street
Greenville, South Carolina 29605
(864) 275-8142 (telephone)
(864) 752-0911 (facsimile)
josh@hjlsc.com
helena@hjlsc.com
Attorneys for Appellant

Greenville, SC
April 21, 2025

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Case No.: 2024-CP-23-07485
	)	
Joshua Hawkins,	)	
	)	
Appellant,	)	RESPONDENT DELTA AIR LINES, INC.'S
	)	BRIEF IN OPPOSITION TO APPELLANT'S
vs.	)	MOTION TO RECONSIDER
	)	
Delta Air Lines, Inc.,	)	
	)	
Respondent.	)	
	)	

COMES NOW, Respondent, Delta Air Lines, Inc. ("Delta"), by and through the undersigned counsel, and files its Brief in Opposition to Appellant's Motion to Reconsider, and states as follows:

INTRODUCTION

Appellant, a South Carolina attorney, admitted his deadline to file a Notice of Appeal was January 3, 2025. (Memo. in Opp., filed Apr. 21, 2025, at pp. 2, 4.) He admitted his Notice of Appeal was not delivered to the Magistrate Court until January 6, 2025. (Memo in Opp. at p. 2, Ex. A at p. 12.) He argued the date of mailing, December 30, 2024, was sufficient to meet the filing deadline. (Memo. in Opp. at pp. 1-4.) It is not. *Gary v. State*, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001). In his Motion to Reconsider, Appellant only briefly asks this Court to reconsider this futile argument. Instead, he asks this Court to focus on a series of *new* arguments he could have raised at the outset. These new arguments, which cannot be *re*considered, still do not save Appellant from his late filing. Because the Notice of Appeal was filed after the deadline, this Court correctly recognized it does not have appellate jurisdiction. This Court should affirm its Order dismissing the appeal.

LEGAL ARGUMENT

I. Appellant Hawkins, an Attorney, Admitted in Court Filings His Deadline to File the Notice of Appeal was January 3, 2025—He Cannot Take It Back.

Appellant Hawkins, a South Carolina attorney, wrote the following in his Notice of Appeal: “The Magistrate Court’s dismissal, which is appealed here, was entered on December 3, 2024, and the undersigned received notice the case had been dismissed via email from the Magistrate Court on December 4, 2024.” (Notice of Appeal, filed Dec. 26, 2024, at p. 1.) Delta filed its Motion to Dismiss the Appeal based on the date Appellant himself admitted he received notice of the Magistrate Court’s judgment. This Court entered its Order based on that admission. Now Appellant wants to take it back.

Not only did Appellant admit the date he received notice of the judgment but he also affirmed that admission when it was used against him in Delta’s Motion to Dismiss the Appeal. Appellant signed and filed his Memorandum in Opposition to Delta’s Motion to Dismiss and again admitted the following in his “Statement of Facts”: “The Magistrate Court had delivered its written judgment on December 4, 2024, which made the applicable 30-day deadline for filing and service of the Notice of Appeal January 3, 2025.” (Memo. in Opp. at p. 2.) In the “Argument” section, Appellant represented the same facts: “The operative 30-day period began on December 4, 2024, the date that the Magistrate Court delivered its written notice of judgment to the parties. Based on this timeline, the last day to file and serve the Notice of Appeal was January 3, 2025.” (Memo. in Opp. at p. 4.).

Generally, attorneys and parties are bound by their factual admissions contained in Court filings, without the Court necessarily making a “judicial estoppel” finding. *See In re Murdaugh*, 437 S.C. 15, 15, 875 S.E.2d 625, 626 (2022) (“Respondent [Murdaugh] has admitted in various court proceedings and filings that he engaged in financial misconduct involving theft of money

from his former law firm; that he solicited his own murder to defraud his life insurance carrier; and that he is liable for the theft of \$4,305,000 in settlement funds.”); *In re Murdaugh*, 436 S.C. 636, 638, 875 S.E.2d 58, 59 (2022) (“Respondent [Murdaugh] is bound by the admissions contained in the documents he filed in the *Satterfield* case.”); *Johnson v. Alexander*, 413 S.C. 196, 202, 775 S.E.2d 697, 700 (2015) (“Parties are generally bound by their pleadings and are precluded from advancing arguments or submitting evidence contrary to those assertions.”).¹

Appellant, who is a South Carolina attorney, represents himself in this action. In his Notice of Appeal to this Court, Appellant admitted the date the appeal window opened, December 4, 2025, and he admitted the date it closed, January 3, 2025. This Court should hold Appellant Hawkins to his factual admissions, which this Court relied upon in rendering its Order. This Court should not reconsider its Order because Appellant now regrets making these admissions.

II. This Court Cannot “Reconsider” Arguments Appellant Never Asked the Court to Consider.

Appellant cannot ask this Court to reconsider its Order based on arguments Appellant could have but never made prior to the Court issuing its Order. “[A] party cannot use a Rule 59(e) motion to advance an issue the party could have raised to the circuit court prior to judgment, but did not.” *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014). Appellant nevertheless does so. Even if this Court considers these new arguments, this Court need not change its Order.

¹ In a recent unpublished case (which has no precedential value), even a non-attorney, *pro se* appellant was bound by his representation to the Circuit Court that “he was unsure if” he filed a notice of appeal with the Magistrate Court. *Grate v. Brown*, No. 2025-UP-026, 2025 S.C. App. Unpub. LEXIS 34, at *2 (Ct. App. Jan. 29, 2025) (unpublished) (“We hold the circuit court did not err in dismissing Grate’s appeal because Grate did not file his notice of appeal with the magistrate’s court. . . . We find no merit in Grate’s contention that he was not given an opportunity to argue against dismissal because the circuit court asked Grate if he filed his appeal with the magistrate’s court and Grate indicated he was unsure if he did.”).

a. Email Is a Valid Means to Notify Parties of a Dismissal Judgment.

Appellant now argues that email² was an invalid means for the Magistrate Court to effect “delivery” to him “of written notice of judgment.” *See* Rule 18(a), SCRMC. Appellant appeals to Rule 8(b), SCRMC for the definition of “delivery,” which does not mention email. (Motion to Reconsider, filed May 15, 2025, at p. 4.) But Appellant’s new argument has a critical flaw: It neglects to consider the Supreme Court *has* allowed email service in all trial and summary courts since 2022. *In re Service by E-Mail in the Trial Courts*, 2022 S.C. LEXIS 62, at *1, Order No. 2022-05-06-04 at (b) (May 6, 2022) (“In addition to the methods of service that may be provided for in the rules governing service of pleadings and other papers in the circuit, . . . and summary courts of this state, pleadings and other papers may be served by e-mail pursuant to the provisions of this order.”). “Delivery of written notice of the judgment” to Appellant, a South Carolina attorney, by email,³ was valid and effective. Even if this Court considers this new argument, this Court does not have to change its Order.

² Without providing any citation, Appellant writes: “[Delta] argued that the Magistrate Court’s email to the parties satisfies delivery and service of notice of judgment on the parties.” (Motion to Reconsider at pp. 2-3.) Delta did not even need to make such argument, because Appellant himself admitted he “received notice the case had been dismissed via email from the Magistrate Court on December 4, 2024.” (Notice of Appeal, filed Dec. 26, 2024, at p. 1; *see also* Delta’s Brief in Support of its Motion to Dismiss Appeal, filed Apr. 21, 2025, at p. 9 (“**Appellant admits** he received written notice of the Magistrate Court’s judgment on December 4, 2024.”) (emphasis added).) Thereafter, Appellant himself admitted the deadline to file his notice of appeal based on such email: “The operative 30-day period began on December 4, 2024, the date that the Magistrate Court delivered its written notice of judgment to the parties. Based on this timeline, the last day to file and serve the Notice of Appeal was January 3, 2025.” (Memo. in Opp. at p. 4.). Appellant abandoned his email argument by not making it before this Court issued its Order.

³ *See* Notice of Appeal at p. 1 (“The Magistrate Court’s dismissal, which is appealed here, was entered on December 3, 2024, and **the undersigned received notice the case had been dismissed via email** from the Magistrate Court on December 4, 2024.”) (emphasis added); Magistrate Return at p. 23 (“We object to the order and **ruling**[.]”) (emphasis added); and **Exhibit 1** hereto, which is a full version of the Dec. 4, 2024 email chain notifying the parties of the entry of dismissal, of which Appellant attached only a portion to his Motion to Reconsider as Exhibit A.

b. Appellant Did Not Have 35 Days to File His Notice of Appeal.

Appellant compounds his not-raised anti-email argument with another not-raised argument: Even though Appellant was notified in an email of the judgment of the Magistrate Court (*i.e.*, a dismissal), Appellant argues notice did not begin until the Magistrate Court mailed the Order explaining the judgment, and such mailing adds five extra days to the 30-day deadline to file a Notice of Appeal in Rule 18(a), SCRMC. (*See* Motion to Reconsider at pp. 5-6.) Appellant's new argument fails to address the Supreme Court's holding in *Wells Fargo Bank, N.A. v. Fallon Props. S.C.*:

We granted a writ of certiorari to review . . . the novel issue of whether an email that provides written notice of entry of an order or judgment triggers the time for serving a notice of appeal for purposes of Rule 203(b)(1) of the South Carolina Appellate Court Rules ("SCACR"). As will be discussed, we hold that such an email, if sent from the court, an attorney of record, or a party, triggers the time to serve a notice of appeal.

422 S.C. 211, 213, 810 S.E.2d 856, 857 (2018) (emphasis added). Further, the Court did not consider adding an extra five days for the emailed notice of the judgment:

Although Petitioners also received written notice by mail three days after receiving the email, the time to serve the notice of appeal commenced at the time the parties *first* received written notice of entry of the order. Accordingly, we find the Court of Appeals correctly determined the time to appeal was triggered on the day the parties received the email; therefore, the notice of appeal served thirty-one days thereafter was untimely.

Id., 422 S.C. at 217, 810 S.E.2d at 859 (italics in original; underlines added).

The Supreme Court's 2022 Order outlining email service rules did not overrule *Wells Fargo* when it allowed certain documents served by email to be treated as being served by U.S. mail under Rule 6(e), SCRCP. *See In re Service by E-Mail in the Trial Courts*, 2022 S.C. LEXIS 62, at *1, Order No. 2022-05-06-04 at (e)(5) (May 6, 2022). The Supreme Court's Order does *not* apply Rule 6(e) wholesale to all things transmitted in an email. The 2022 Order only applies Rule

6(e) to deadlines for “responses,” *not* for statutory,⁴ jurisdictional filing deadlines, such as a Notice of Appeal. *See id.*; *see also Witzig v. Witzig*, 325 S.C. 363, 366, 479 S.E.2d 297, 299 (Ct. App. 1996) (“Rule 6(e), SCRCP, does not provide an additional five days to file a notice of intent to appeal.”). The Court’s Order—merely promulgating parameters for email service—did not overrule the clear holdings in *Wells Fargo* and *Witzig*.

The Court need not consider Appellant’s various, new “anti-email” arguments. Even if considered, Appellant’s previous calculation of his deadline was correct, when he admitted: “The operative 30-day period began on December 4, 2024, the date that the Magistrate Court delivered its written notice of judgment to the parties. Based on this timeline, the last day to file and serve the Notice of Appeal was January 3, 2025.” (Memo. in Opp., filed Apr. 21, 2025, at p. 4.). Here, Appellant simply failed to file his Notice of Appeal with the Magistrate Court on or before January 3, 2025. This Court should affirm its Order dismissing the appeal for lack of appellate jurisdiction.

c. The Notice of the Judgment Can Be Oral under Rule 18(a), SCRMC.

Curiously, Appellant argues that the Magistrate Court could not have provided oral notice of the judgment, because under Rule 18(a), SCRMC, which Appellant quotes, the notice must be “delivered.” (*See* Motion to Reconsider at pp. 3-4.) Appellant also relies on a case, *Robinson v. Hassiotis*, where the Court of Appeals held actual, oral notice of a trial date (not a judgment) was

⁴ The jurisdiction of a Circuit Court to hear and decide appeals from the Magistrate Court is set by statute. S.C. Code § 18-7-10. So is the 30-day deadline for a notice of appeal to be filed with the Circuit and Magistrate Courts. *See* S.C. Code §§ 18-7-10, 18-7-20, 18-7-60. The South Carolina court rules are subordinate to statutory law. *See Stokes v. Den. Emergency Med. Servs.*, 315 S.C. 263, 266-67, 433 S.E.2d 850, 852 (1993). It is doubtful the Supreme Court’s 2022 Order attempted to apply Rule 6(e) to provide five extra days to the 30-day deadline to file a Notice of Appeal. But even if the 2022 Order did apply Rule 6(e) here, such application of the Order would be unconstitutional for extending the 30-day statutory deadline to file a notice of appeal. *See Stokes*, 315 S.C. at 266-67, 433 S.E.2d at 852; *see also De Witt v. S.C. Dep’t of Highways & Pub. Transp.*, 274 S.C. 184, 186, 262 S.E.2d 28, 29 (1980).

insufficient. (*See* Motion to Reconsider at pp. 3-4 (citing *Robinson v. Hassiotis*, 364 S.C. 92, 610 S.E.2d 858 (Ct. App. 2005).)

Appellant's argument ignores the following sentence in Rule 18(a), SCRMC: "If the judgment **is announced** at the trial **in the presence of the parties or their attorneys**, the notice of appeal **shall be served and filed within thirty (30) days** of the date the judgment is **announced**." Rule 18(a), SCRMC (emphases added); *see also* S.C. Code § 18-7-10. Appellant, a South Carolina attorney, was present in the courtroom on December 3, 2024 when Judge Hubbard orally dismissed Appellant's entire Complaint and asked for a written order memorializing his ruling. Appellant's reliance on *Robinson* is unfounded and ignores the full text of Rule 18(a), SCRCP. This new argument should not be considered. But even if considered, it lacks merit and does not change the reasoning or result of the Court's Order.

d. Appellant's Absurd Argument: He Never Received *Any* Notice of Judgment and the Time to Appeal Has Not Started, Thus the Appeal Is Timely.

Appellant argues that "because the Magistrate Court has still never delivered notice of judgment to the parties, the clock has never started running, and Appellant's appeal is also timely for that reason." (Motion to Reconsider at p. 7; *see also* p. 5.) Besides the internal inconsistency of that argument, it invites the question: *What* is Appellant appealing? Obviously, Appellant knows he appealed the Magistrate Court's judgment dismissing his Complaint. (Notice of Appeal at p. 1 ("The Magistrate Court's **dismissal**, **which is appealed here**, was entered on December 3, 2024, and the undersigned received **notice the case had been dismissed via email** from the Magistrate Court on December 4, 2024.") (emphasis added)). If Appellant seriously believed there was nothing ripe to appeal, then he could have voluntarily dismissed his appeal. He did not. This Court should not abandon its Order dismissing the appeal based on Appellant's outlandish new argument.

III. This Court Correctly Considered the Arguments Presented and Dismissed Appellant's Late Appeal Accordingly.

This Court need not second-guess itself. Appellant's original arguments were straightforward, and so were their insufficiencies.

a. For Mailed Documents, the Court Correctly Recognized the *Filing* Rules Applied not the *Service* Rules.

First, Appellant argued that the date of mailing is the date of filing in the Magistrate Court. (See Memo. in Opp. at pp. 4-5; Motion to Reconsider at p. 6.) This is not the law: "It is clear under South Carolina law that mailing does not constitute filing. When a statute requires the filing of a paper or document, it is filed when delivered to and received by the proper officer." *Gary*, 347 S.C. at 629, 557 S.E.2d at 663. If an appeal is filed late, the Circuit Court does not have appellate jurisdiction and must dismiss the appeal. *In re Estate of Cretzmeyer v. Bloch*, 365 S.C. 12, 13-14, 615 S.E.2d 116, 116-17 (2005); *De Witt*, 274 S.C. at 186, 262 S.E.2d at 29. To adopt Appellant's position would be to oppose clear precedent. This Court should affirm its Order.

Appellant begins with a fundamentally flawed premise. Appellant continues to conflate the service rules with the filing rules. Appellant argues that because he "served the Magistrates Court . . . via certified mail on December 30, 2024" his appeal was **filed** "within the statutory deadline." (See Motion to Reconsider at p. 5 (emphasis added); *see also* Memo. in Opp. at pp. 4-5.) Appellant ignores the text of Rule 18(a), SCRMC: "a party wishing to appeal **shall** serve on the respondent and file a notice of appeal . . . **with the magistrate** rendering the judgment **and with the Circuit Court** . . ." Rule 18(a), SCRMC (emphasis added). To file a document in the Magistrate Court, one must provide the document to "the clerk of the court, except that the judge may permit the papers to be filed with him[.]" Rule 5(e), SCRCP ("Filing with the Court Defined"); Rules 1 ("Scope of Rules"), 81 ("Applicability"), SCRCP; Rule 2 ("Application of . . . Circuit Court Practice in Absence of Rule"), SCRMC. If the provision of the document to the clerk of court is

done by means of mailing, the document must be “delivered and received by the proper officer,” *i.e.*, the clerk of court, to be “filed.” *Gary*, 347 S.C. at 629, 557 S.E.2d at 663. The December 30, 2024 date of mailing does not matter—the date of delivery, January 6, 2025, was outside the thirty-day deadline to file.

Appellant attempts to rescue his “date of mailing” argument by citing the South Carolina Appellate Court Rules. (*See* Motion to Reconsider at p. 6 (citing Rule 262(a), SCACR).) But Rule 262(a), SCACR applies to the Court of Appeals and the Supreme Court—not to the Circuit Courts or the Magistrate Courts. *See* Rule 101(a), SCACR; Rules 1, 74, 81, SCRCP; Rules 2, 18, SCRMC. Rather, Rule 5(e), SCRCP applies, and Appellant had to deliver the Notice of Appeal to the Magistrate Court. Clearly, a United States postal worker is not also the clerk of a South Carolina trial court. *See Gary*, 347 S.C. at 629, 557 S.E.2d at 663.

Here, Appellant chose to file his Notice of Appeal to the Magistrate Court by mail, and he placed the Notice of Appeal in the U.S. mail⁵ on December 30, 2024. (Memo. in Opp., filed Apr. 21, 2025, at p. 2.) The mailing date is legally irrelevant for filing. The date which *is* legally relevant, and dispositive here, is the date of delivery *to the Magistrate Court*. *See Gary*, 347 S.C. at 629, 557 S.E.2d at 663. Appellant admits this date was Monday, January 6, 2025. (*See* Memo. in Opp. at p. 2, Exhibit A at pp. 12-13.) This January 6 filing was three days late, and the Court correctly dismissed the appeal.

b. The Date the Return Was Filed Is Irrelevant to Appellant’s Untimely Appeal.

Second, Appellant suggests that the purported untimeliness of the filing of the Magistrate’s Return, pursuant to Rule 18(b), SCMCR, has some effect on the merits of Delta’s Motion to

⁵ Appellant writes that “electronic filing is not available for the Magistrate Court, so the parties must use U.S. Mail for filing.” (Motion to Reconsider at p. 15.) Of course, Appellant ignores the fact he simply could have gone to the Magistrate Court and filed his Notice of Appeal in person before January 3, 2025.

Dismiss the untimely appeal. (*See* Motion to Reconsider, filed May 15, 2025, at pp. 2, 5.) Appellant puts the cart before the horse. The date the Magistrate files its return is contingent upon the filing of an appeal—not the other way around. *See* Rule 18(b), SCRMC; Rule 75, SCRCP. Here, Appellant admitted the date he received notice of the judgment, December 4, 2024, and he admitted the date his Notice of Appeal was delivered to the Magistrate Court, thirty-three days later on January 6, 2025. (Notice of Appeal at p. 1; Memo. in Opp. at pp. 2, 4.) Appellant’s appeal was filed late, depriving the Court of appellate jurisdiction. *See In re Estate of Cretzmeyer*, 365 S.C. at 13-14, 615 S.E.2d at 116-17; *De Witt*, 274 S.C. at 186, 262 S.E.2d at 29. The Court’s only recourse was to dismiss the appeal for lack of appellate jurisdiction, which it did. *De Witt*, 274 S.C. at 186, 262 S.E.2d at 29. (Order, entered May 9, 2025, at p. 3.) The date the Magistrate filed its Return and the date it was uploaded to the public index do not matter at all. This Court should affirm its Order.

IV. This Court Cannot Consider the Merits of the Appeal on Appellant’s Motion to Reconsider the Order Dismissing the Untimely Appeal.

This Court correctly made no ruling on the merits, it simply dismissed the appeal as untimely. (Order at p. 3.) In his Motion to Reconsider, Appellant asks this Court to consider his appeal, and copies, almost word for word, his Notice of Appeal in the last eight pages of his Motion to Reconsider. (Motion to Reconsider at pp. 7-16.) This Court need not reconsider the appeal, and has no appellate jurisdiction to do so, because this Court has no grounds to reverse its Order dismissing the appeal as untimely. If this Court does consider the appeal, Delta incorporates herein by reference its Brief and Reply Brief, and the arguments raised therein, filed on April 21 and April 22, 2025, respectively. However, this Court need not reverse itself to consider the merits of the appeal.

CONCLUSION

Appellant knew his Complaint was dismissed on December 4, 2025 by way of email with Delta's counsel and the Magistrate Court. Appellant mistakenly believed his December 30, 2024 mailing date was sufficient for filing in the Magistrate Court. It was not. The Notice of Appeal was delivered to the Magistrate Court on January 6, 2025, three days after the deadline. Appellant persisted in representing this timeline to the Court, even as Delta moved to dismiss for untimeliness based on Appellant's timeline. Appellant, a South Carolina attorney, should be bound by his representations and his original arguments in signed pleadings. Even if the Court entertains Appellant's late arguments, they do not alter Appellant's January 3, 2025 deadline or the January 6, 2025 late filing. This Court should deny the Motion to Reconsider and affirm its Order dismissing the appeal as untimely.

WHEREFORE, this Court should deny Appellant's Motion to Reconsider and affirm the Court's May 9, 2025 Order dismissing the Appeal for lack of appellate jurisdiction.

Respectfully submitted,

June 6, 2025

By: s/ Brian M. Peters, Jr.
C. Daniel Atkinson (S.C. Bar #72721)
datkinson@wajlawfirm.com
Brian M. Peters, Jr. (S.C. Bar #105911)
bpeters@wajlawfirm.com

WILKES ATKINSON & JOYNER, LLC
127 Dunbar Street, Suite 200
Spartanburg, SC 29306
(864) 591-1113

Attorneys for Respondent Delta Air Lines, Inc.

EXHIBIT 1

From: [Brian Peters](#)
To: [Pegg, Denise](#)
Cc: [Judy Saad](#); [Dan Atkinson](#); josh@hjllcsc.com; [Helen Jedziniak](#); [Paralegal](#)
Subject: RE: 24-2415: Joshua Hawkins v Delta Air Lines, Inc.: Defendant's Proposed Order
Date: Wednesday, December 4, 2024 1:19:04 PM

Good afternoon Ms. Pegg,

Thank you for the update. We will be on the lookout for a copy of the signed Order.

(I have copied Plaintiff's counsel to this email.)

Sincerely,
Brian

Brian M. Peters, Jr.



864.591.2355 Spartanburg
843.737.6229 Charleston

127 Dunbar St. | Ste 200 | Spartanburg, SC 29306
320 Broad St. | Ste 220 | Charleston, SC 29401

bpeters@wajlawfirm.com
www.wajlawfirm.com

From: Pegg, Denise <DPegg@greenvillecounty.org>
Sent: Wednesday, December 4, 2024 1:17 PM
To: Brian Peters <bpeters@wajlawfirm.com>
Subject: RE: 24-2415: Joshua Hawkins v Delta Air Lines, Inc.: Defendant's Proposed Order

I have provided Judge Hubbard with the papers that were emailed. I will mail a copy of the signed Order.

Michelle Pegg
East Greenville Summary Court
320 W. Main Street
Taylors, SC 29687
864-467-4625

From: Brian Peters <bpeters@wajlawfirm.com>

EXHIBIT 1

Sent: Wednesday, December 4, 2024 1:03 PM

To: Pegg, Denise <DPegg@greenvillecounty.org>

Cc: Judy Saad <jusaad@wajlawfirm.com>; Dan Atkinson <datkinson@wajlawfirm.com>; josh@hjlsc.com; Helen Jedziniak <Helena@hjlsc.com>; Paralegal <Paralegal@hjlsc.com>

Subject: RE: 24-2415: Joshua Hawkins v Delta Air Lines, Inc.: Defendant's Proposed Order

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

Good afternoon Ms. Pegg,

I understand. We were unsure whether the Judge would still like a formal written Order, given the dismissal entry in the docket (attached). We will be on the lookout for the Judge's entry of a formal Order. Thanks again for your help. Enjoy the rest of your week.

(I have copied Plaintiff's counsel to this email.)

Sincerely,

Brian

Brian M. Peters, Jr.

864.591.2355 Spartanburg
843.737.6229 Charleston

127 Dunbar St. | Ste 200 | Spartanburg, SC 29306
320 Broad St. | Ste 220 | Charleston, SC 29401

bpeters@wajlawfirm.com
www.wajlawfirm.com

From: Pegg, Denise <DPegg@greenvillecounty.org>

Sent: Wednesday, December 4, 2024 12:42 PM

To: Brian Peters <bpeters@wajlawfirm.com>

Subject: RE: 24-2415: Joshua Hawkins v Delta Air Lines, Inc.: Defendant's Proposed Order

I did not tell Judy that the judge would not receive the papers. I just told her that the case was dismissed was reflected in the central index.

Michelle Pegg

EXHIBIT 1

East Greenville Summary Court
320 W. Main Street
Taylors, SC 29687
864-467-4625

From: Brian Peters <bpeters@wajlawfirm.com>
Sent: Wednesday, December 4, 2024 11:34 AM
To: Pegg, Denise <DPegg@greenvillecounty.org>
Cc: Judy Saad <jsaad@wajlawfirm.com>; Dan Atkinson <datkinson@wajlawfirm.com>;
josh@hjllcsc.com; Helen Jedziniak <Helena@hjllcsc.com>; Paralegal <Paralegal@hjllcsc.com>
Subject: RE: 24-2415: Joshua Hawkins v Delta Air Lines, Inc.: Defendant's Proposed Order

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

Good morning Ms. Pegg,

Thank you for the update. At the hearing, Judge Hubbard requested Defendant submit a proposed formal Order. If Judge Hubbard does not intend to enter a formal order, please advise. (Plaintiff's counsel is copied to this email.) Thank you.

Sincerely,
Brian

Brian M. Peters, Jr.

864.591.2355 Spartanburg
843.737.6229 Charleston

127 Dunbar St. | Ste 200 | Spartanburg, SC 29306
320 Broad St. | Ste 220 | Charleston, SC 29401

bpeters@wajlawfirm.com
www.wajlawfirm.com

From: Pegg, Denise <DPegg@greenvillecounty.org>
Sent: Wednesday, December 4, 2024 11:17 AM
To: Judy Saad <jsaad@wajlawfirm.com>

EXHIBIT 1

Subject: RE: 24-2415: Joshua Hawkins v Delta Air Lines, Inc.: Defendant's Proposed Order

Judy

This case has already been dismissed and is reflected in the central index.

Thank you,
Michelle Pegg
East Greenville Summary Court
320 W. Main Street
Taylors, SC 29687
864-467-4625

From: Judy Saad <jraad@wajlawfirm.com>

Sent: Wednesday, December 4, 2024 11:12 AM

To: Pegg, Denise <DPegg@greenvillecounty.org>

Cc: Dan Atkinson <datkinson@wajlawfirm.com>; 'josh@hjllcsc.com' <josh@hjllcsc.com>; 'Helena Jedziniak' <Helena@hjllcsc.com>; 'Paralegal' <Paralegal@hjllcsc.com>; Brian Peters <bpeters@wajlawfirm.com>

Subject: 24-2415: Joshua Hawkins v Delta Air Lines, Inc.: Defendant's Proposed Order

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

Denise,

Please see attached correspondence to Judge Hubbard from Attorney Brian Peters, Defendant's proposed Order dismissing Complaint in Word format, and Certificate of Service in the above matter.

A hard copy is also being mailed to you and Plaintiff's attorney.

Thank you,
Judy Saad

CONFIDENTIALITY NOTICE: *This e-mail and any files transmitted with it are confidential and may contain information which is legally privileged or otherwise exempt from disclosure. They are intended solely for the use of the individual or entity to whom this e-mail is addressed. If you are not one of the named recipients or otherwise have reason to believe that you have received this message in error, please immediately notify the sender and delete this message immediately from your computer. Any other use,*

EXHIBIT 1

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ELECTRONICALLY FILED - 2025 Jun 06 11:35 AM - GREENVILLE - COMMON PLEAS - CASE#2024CP2307485

RECEIVED

Nov 24 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Jessica A. Salvini, Circuit Court Judge

Case No. 2025-001494

Joshua Hawkins, Appellant,

v.

Delta Airlines, Inc., Respondent.

MOTION TO DISMISS

COMES NOW, Respondent Delta Air Lines, Inc. (improperly named “Delta Airlines, Inc.”), by and through the undersigned counsel, and pursuant to Rules 208(a)(4), 240, and 260(a), SCACR, files its Motion to Dismiss the appeal, and in support thereof, states as follows:

1. On October 16, 2025, Greenville attorney and *pro se* Appellant Joshua Hawkins filed with this Court and served on Respondent the transcript of the proceeding in the Circuit Court.
2. Under Rule 208(a)(1), SCACR, Appellant was required both to serve Respondent with a copy of his Initial Brief and to file a copy of the Initial Brief with the Clerk by Monday, November 17, 2025. *See* Rule 263(a), SCACR.
3. On November 17, 2025, Appellant did not electronically or personally serve Respondent or electronically or personally file with the Clerk a copy of his Initial Brief. *See* Rule 262(a)(1), (a)(3), (c)(1), (c)(3), SCACR.

4. As of the time of this filing, several days after November 17, 2025, Respondent's counsel (based nearby in Spartanburg) has not received a copy of Appellant's Initial Brief in the mail, much less one postmarked November 17, 2025. *See* Rule 262(c)(2), SCACR. Likewise, the Court's electronic docket does not indicate Appellant filed his Initial Brief with the Clerk. *See* Rule 262(a)(2), SCACR.

5. "Upon the failure of the appellant to file and serve his brief within the time prescribed, the clerk of the appellate court **shall** sign an order dismissing the appeal, and the appeal shall not be reinstated except as provided by Rule 260." Rule 208(a)(4), SCACR (emphasis added). "Whenever it appears that an appellant . . . has failed to comply with the requirements of these Rules, the clerk **shall** issue an order of dismissal, which shall have the same force and effect as an order of the appellate court." Rule 260, SCACR (emphasis added).

6. If a court rule is plain and unambiguous, the Court "applies the same rules of construction used to interpret statutes" and must apply the rule as written. *See Maxwell v. Genez*, 356 S.C. 617, 620, 591 S.E.2d 26, 27 (2003). "The term '**shall**' in a statute means that the action is **mandatory**." *Wigfall v. Tideland Utils.*, 354 S.C. 100, 111, 580 S.E.2d 100, 105 (2003) (emphasis added).¹

¹ However, if it is "necessary" to fulfill the intent of the statute or constitutional provision by interpreting "shall" to be permissive, then "shall" may be construed as permissive rather than mandatory. *See Williams v. Benet*, 35 S.C. 150, 158, 14 S.E. 311, 313 (1892). In its 1892 decision, the Supreme Court interpreted whether the Constitution mandated that Supreme Court Justices "shall" complete their six-year terms, without being able to resign:

The view contended for rests largely upon the assumption that the words, "*shall* continue in office until their successors shall be elected and qualified," must be construed as imperative, and that the effect of these words is to forbid a Justice of the Supreme Court from vacating his office by resignation or otherwise, before the expiration of the term for which he has been elected. But this view ignores the well settled rule that in the construction of a statute or a constitution, the word "shall"

7. Appellant has neither filed with the Clerk nor served Respondent with his Initial Brief in the time prescribed by Rules 208(a)(1) and 263(a), SCACR.

8. Appellant has not filed a motion to extend the time to file or serve his Initial Brief, nor has this Court extended the time for Appellant to file or serve his Initial Brief.

9. The Clerk, therefore, must dismiss the appeal. Rule 208(a)(4), SCACR.

WHEREFORE, Respondent Delta Air Lines, Inc. (improperly named “Delta Airlines, Inc.”) respectfully requests the Clerk sign an order dismissing the appeal, pursuant to Rule 208(a)(4), SCACR.

Respectfully submitted,

November 24, 2025

s/ Brian M. Peters, Jr.
C. Daniel Atkinson (S.C. Bar # 72721)
datkinson@wajlawfirm.com
Brian M. Peters, Jr. (S.C. Bar # 105911)
bpeters@wajlawfirm.com

WILKES ATKINSON & JOYNER, LLC
127 Dunbar St., Suite 200
Spartanburg, SC 29306
(864) 591-1113
Attorneys for Respondent

may receive a permissive, rather than an imperative, interpretation, when necessary to carry out the true intent of the provision in which such word is found.

Williams, 35 S.C. at 158, 14 S.E. at 313 (emphasis in original). But when the meaning is unambiguous, the rules of statutory interpretation do not apply. *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011) (“Where the statute’s language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.”); *Richland Cty. v. S.C. Dep’t of Revenue*, 422 S.C. 292, 309, 811 S.E.2d 758, 767 (2018) (“‘Under the rules of statutory interpretation, use of words such as “**shall**” or “**must**” indicates the legislature’s intent to enact a **mandatory** requirement.’ *Collins v. Doe*, 352 S.C. 462, 470, 574 S.E.2d 739, 743 (2002).”) (emphases added).

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Nov 24 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Jessica A. Salvini, Circuit Court Judge

Case No. 2025-001494

Joshua Hawkins, Appellant,

v.

Delta Airlines, Inc., Respondent.

PROOF OF SERVICE

I certify that on November 24, 2025, I have served, or caused to be served, the Respondent's

Motion to Dismiss on the following Counsel for Appellant via Email, addressed as follows:

Joshua T. Hawkins (S.C. Bar #78470)

josh@hjllcsc.com

Helena L. Jedziniak (S.C. Bar #100825)

helena@hjllscs.com

Hawkins & Jedziniak, LLC

1225 South Church St.

Greenville, SC 29605

s/ Brian M. Peters, Jr.

C. Daniel Atkinson (S.C. Bar # 72721)

datkinson@wajlawfirm.com

Brian M. Peters, Jr. (S.C. Bar # 105911)

bpeters@wajlawfirm.com

WILKES ATKINSON & JOYNER, LLC

127 Dunbar St., Suite 200

Spartanburg, SC 29306

(864) 591-1113

Attorneys for Respondent