JS-6

LINK:

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	**CV 13-06771 BRO (JCGx)**	Date	December 4, 2013
Title	RONALD RICHARDS V. SINGAPORE AIRLINES LTD.		

Present: The Honorable	**BEVERLY REID O'CONNELL, United States District Judge**	
Renee A. Fisher	Not Present	N/A
Deputy Clerk	Court Reporter	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Not Present	Not Present

Proceedings: (IN CHAMBERS)

ORDER GRANTING PLAINTIFF'S MOTION TO REMAND [10] AND DENYING DEFENDANT'S MOTION TO DISMISS [8]

Pending before the Court is Plaintiff Ronald Richards's motion to remand, (Dkt. No. 10), and Defendant Singapore Airlines Ltd.'s motion to dismiss, (Dkt. No. 8). For the following reasons, Plaintiff's motion is **GRANTED** and Defendant's motion is **DENIED** as moot.

I. BACKGROUND

On June 5, 2013, Plaintiff filed a complaint in state court against Defendant alleging breach of contract, breach of the implied covenant of good faith and fair dealing, and negligence. (Not. Removal, Ex. A at 10–11, Dkt. No. 1.)[1] Plaintiff claims that, on July 30, 2012, he purchased from Defendant two first-class tickets to travel from Bangkok to Los Angeles via Singapore. (Ex. A at 9 ¶ 4.) According to Plaintiff, he purchased these tickets because they promised an internet connection, and Plaintiff intended to work during the flight. (Ex. A at 9 ¶ 7.) The internet connection, however, was inoperable throughout the January 2, 2013 flight, due to a faulty component. (Ex. A at 9 ¶ 6.) Plaintiff claims that he would not have purchased the tickets had he known the

[1] The page numbers used for *this document only* are those added by the Court at the time of filing and can be found at the top of each page after the filing date.

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internet would not be available. (Ex A at 9 ¶ 7.) Therefore, he seeks to recover the full $16,442.20 cost of the two tickets plus $6,500 in lost billings.[2] (Ex. A at 9 ¶ 7.)

On July 11, 2013, Defendant served Plaintiff with a set of special interrogatories. (Opp'n 4, Dkt. No. 13.) Special Interrogatory No. 1 requested of Plaintiff, "State YOUR complete routing for YOUR travel to Asia on or about December-January 2012-2013, including, but not limited to, YOUR flight from the United States to Asia and YOUR return travel from Asia to the United States." (Opp'n 4.) Plaintiff answered on September 4, 2013, stating, "Los Angeles to San Francisco to Hong Kong to Macau, to Bangkok, Thailand, to Singapore, back to Los Angeles."[3] (Decl. of Scott Cunningham, Ex. D at 4:5–6, Dkt. No. 13-11.) Defendant then removed to this Court on September 13, 2013, arguing the Montreal Convention completely preempted Plaintiff's state law claims. (Removal 3–6.) On September 20, 2013, Defendant moved to dismiss on the same grounds. (Mot. to Dismiss 1, Dkt. No. 8.) Plaintiff subsequently moved to remand on September 30, 2013, (Mot. 1, Dkt. No. 10), Defendant duly opposed, (Opp'n 1), and, on October 11, 2013, Plaintiff filed his reply, (Reply 1, Dkt. No. 15).

II. LEGAL STANDARD

A defendant's right to remove a case from state to federal court is entirely governed by Congress's statutory authorization. *Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1064 (9th Cir. 1979). Under 28 U.S.C. § 1441, a civil action may be removed to the district court only if that court has original jurisdiction over the issues alleged in the state court complaint. Because federal courts are courts of limited jurisdiction, they possess original jurisdiction only as authorized by the Constitution and federal statute. *See, e.g., Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994).

Pursuant to 28 U.S.C. § 1331, a federal district court has "original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." A

[2] Plaintiff is an attorney who charged $650 per hour in January 2013. (Ex. A at 9 ¶ 7.) He alleges he would have billed ten hours on the flight had the internet been operable. (Ex. A. at 9 ¶ 7.)

[3] Plaintiff also objected to the use of the term "routing" as "vague and ambiguous." (Cunningham Decl., Ex. D at 4:5–6.)

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case "arises under" federal law if a plaintiff's "well-pleaded complaint establishes either that federal law creates the cause of action" or that the plaintiff's "right to relief under state law requires resolution of a substantial question of federal law in dispute between the parties." *Franchise Tax Bd. v. Constr. Laborers Vacation Trust for S. Cal.*, 463 U.S. 1, 13 (1983). There are, however, several exceptions to the well-pleaded complaint rule. One such exception is the doctrine of complete preemption, which applies in cases where "the preemptive force of a statute is so extraordinary that it converts an ordinary state common-law complaint into one stating a federal claim for purposes of the well-pleaded complaint rule." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 393 (1987) (internal citations and quotation marks omitted). Put another way, "when [a] federal statute completely pre-empts [a] state-law cause of action, a claim which comes within the scope of that cause of action, even if pleaded in terms of state law, is in reality based on federal law." *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 8 (2003).

In determining whether removal in a given case is proper, a court should "strictly construe the removal statute against removal jurisdiction"; "[f]ederal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance." *Gaus v. Miles*, 980 F.2d 564, 566 (9th Cir. 1992). As such, the removing party bears a heavy burden of establishing proper removal to—and original jurisdiction in—the district court in order to rebut the strong presumption against removal jurisdiction. *See id.*

III. DISCUSSION

In his motion to remand, Plaintiff argues that the Montreal Convention does not preempt his state law claims because Defendant's breach of the contract did not occur on a flight recognized by the Convention. Assuming the Convention did apply, Plaintiff argues, it may be raised only as an affirmative defense and not as grounds for removal. Defendant contends, however, that Plaintiff's flight was cognizable under the Montreal Convention, the Convention completely preempts Plaintiff's state law claims, and, accordingly, removal was proper. As the preemptive force of the Montreal Convention is irrelevant if it does not apply to Plaintiff's flight, the Court first addresses whether, the Montreal Convention applies.

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A. Plaintiff's Flight Does Not Constitute "International Carriage" as Defined by the Montreal Convention

Plaintiff seeks to escape the Montreal Convention by arguing that the only flight at issue is his one-way trip from Bangkok, Thailand, to Los Angeles, via Singapore. (Reply 1.) As Thailand is not a party to the Convention, he argues his flight was not "international carriage" as defined by the Treaty. (Reply 1.) In answer, Defendant maintains that Plaintiff's response to its Special Interrogatory No. 1 admitted that he originally departed from Los Angeles, thus, bringing this action within the Convention—and consequently this Court's jurisdiction. (Opp'n 8.) For the following reasons, the Court agrees with Plaintiff.

The Convention for the Unification of Certain Rules for International Carriage by Air ("Montreal Convention") took effect on November 4, 2003, building upon the scheme of uniform liability established by its predecessor, the Convention for the Unification of Certain Rules Relating to International Transportation by Air ("Warsaw Convention").[4] The Montreal Convention's purpose is to promote uniformity and predictability in the laws governing air carrier liability for the "international carriage of persons, baggage or cargo performed by aircraft." *Serrano v. Am. Airlines, Inc.*, No. 08-2256-AHM-FFMX, 2008 WL 2117239 (C.D. Cal. May 15, 2008) (citing 49 U.S.C. § 40105 note). There are currently 104 parties to the Convention including the United States.[5] *See List of Signatories to the Convention for the Unification of Certain Rules for International Carriage by Air Done at Montreal on May 28, 1999*, International Civil Aviation Organization, http://www.icao.int/secretariat/legal/List%20of%20Parties/Mtl99_EN.pdf (last visited November 26, 2013).

The Montreal Convention encompasses "all international carriage of persons, baggage or cargo performed by aircraft for reward." Montreal Convention art. 1(1), May 28, 1999, S. Treaty Doc. No. 106-45, 2242 U.N.T.S. 309. The Convention defines "international carriage" as:

[4] The Warsaw Convention was originally signed on October 12, 1929 and ratified in the United States in 1935. Warsaw Convention, October 12, 1929, 49 Stat. 3000, 137 L.N.T.S. 11.

[5] The European Union is counted as one party.

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> 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 . . . are situated either [1] within the territories of two States Parties or [2] 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.

Id. art. 1(2). With regard to carriage performed by more than one carrier, article 1(3) states:

> 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 . . . .

Id. art. 1(3) (emphasis added).

Plaintiff asserts that the only basis for his complaint—and by extension, Defendant's removal—is his one-way flight from Bangkok to Los Angeles via Singapore. (Reply 1.) He maintains that the Court has no evidence of any other relevant air travel. (Reply 1–2.) Regarding his response to the special interrogatory, Plaintiff argues it proves nothing because it "simply asks for the complete routing to Asia . . . . [which] is not indicative of international carriage." (Reply 1.) Plaintiff continues, "It does not provide how the Plaintiff got there, does not concede or suggest it was part of the same record, does not contend Singapore [Airlines] was used throughout the routing, etc." (Reply 1.)

This argument is unpersuasive. The special interrogatory plainly states in full:

> State YOUR complete routing for YOUR travel to Asia on or about December-January 2012-2013, including, but not limited to, YOUR flight from the United States to Asia and YOUR return travel from Asia to the

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> United States. (The terms YOU and YOUR shall mean and refer to plaintiff Ronald Richards.)

(Cunningham Decl., Ex. C at 2, Dkt. No. 13-9.) The interrogatory clearly asks for Plaintiff's round trip itinerary of which the Bangkok to Los Angeles flight was the final leg. Plaintiff, moreover, was not mystified by the request; he responded, "United States to San Francisco to Hong Kong to Macau, to Bangkok to Los Angeles."[6] (*Id.*, Ex. D at 4:5–6). Plaintiff's response also makes clear that the place of departure and place of destination were within the territory of a single state party—the United States—and his flight stopped within the territory of another state—Hong Kong, Macau, Bangkok, and Singapore. Plaintiff's flight, therefore, appears, at this point, to be "international carriage" as defined by article 1(2) of the Montreal Convention.

Plaintiff argues, however, that even if the interrogatory was clear, Ninth Circuit precedent does not allow the Court to consider it in determining whether his flight is cognizable under the Convention. (Reply 2–3.) While courts may usually consider answers to interrogatories when deciding remand motions, *see Durham v. Lockheed Martin Corp.*, 445 F.3d 1247 (9th Cir. 2006) (holding removal was not untimely because Defendant only became aware of federal question after receiving plaintiff's answer to its interrogatories), in *Coyle v. P.T. Garuda Indonesia*, the Ninth Circuit stated:

> Absent an objective showing of actual knowledge by the air carrier of the passengers' overall itinerary—that is, an admission that the airline . . . actually understood the disputed flight to have been part of the decedent's international journey— . . . other kinds of extrinsic evidence are not appropriately introduced to contradict what the tickets (and the objective facts of the ticketing) unambiguously reveal.

363 F.3d 979, 989 (9th Cir. 2004). On this basis, Plaintiff contends that Defendant cannot base its removal on knowledge gained from the interrogatory because that

[6] In his answer, Plaintiff also objected to the term "routing" as "vague and ambiguous." The Court struggles to see how "routing" is ambiguous when connected with a query for flight information where both the time period and point of departure and arrival are specified.

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information was not known at the time of contract—the ticket evidences only a flight from Bangkok to Los Angeles, via Singapore. (Reply 2–3.)

This argument carries more weight. In *Coyle*, the Ninth Circuit made clear that when determining whether a flight is "international carriage" under the Treaty, the intent of the parties is dispositive. 363 F.3d at 987. The court explained, moreover, that the parties' intent is established "by reference to [its] expression in the contract of transportation, i.e., the ticket or other instrument." *Id.* Extrinsic evidence may be "call[ed] upon . . . to make sense of the objective indicia presented by those tickets" and "*to a limited degree* . . . [to] connect flights together as, or rule out the possibility that certain flights were, part of an undivided transportation even when the flight coupons do not *themselves* evince such a connection (or its absence)." *Id.* 988–89 (emphasis in original).

With this in mind, Defendant's special interrogatory is robbed of any relevance because it does not bear on the intent of the parties at the time of contract. Without the special interrogatory, the only objective evidence of the parties' intent before the Court is the "Passenger Name Record" for Plaintiff attached as exhibit to the Declaration of Katherine Robertson, a Human Resources and Administration Supervisor for Defendant. (Decl. of Katherine Robertson, Ex A., Dkt. No. 13-2; *see* Decl. of Katherine Robertson 2–3 ¶¶ 5–9, Dkt. No. 13-1.) That record, as attested to by Ms. Robertson, shows only transportation "from Bangkok to Los Angeles with an intermediate stopping point in Singapore." (*Id.*) As the place of departure, Thailand, is not a signatory to the Montreal Convention, the Court finds Plaintiff's flight is not subject to the Treaty's provisions.

The Court is bound by the clear guidance of the Ninth Circuit in *Coyle* and the evidence introduced by the parties. That evidence does not support a finding that Defendant was aware of Plaintiff's full itinerary. Indeed, the Court finds it significant that *Defendant* provided the only objective evidence of a portion of Plaintiff's flight. Plaintiff's passenger record came from Defendant's records, attested to by Defendant's employee. (*See* Dkt. Nos. 13-1, 13-2.) The fact that Defendant has not provided Plaintiff's full itinerary creates an inference such evidence does not exist because it would have been reasonable to provide the full itinerary had it been in Defendant's possession.

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IV. CONCLUSION

In summary, based on the evidence presented, the Court must find that Plaintiff's flight is not subject to the Montreal Convention. As stated above, when there is any doubt as to whether removal was proper, the Court has clear instructions to remand. *Gaus v. Miles*, 980 F.2d 564, 566 (9th Cir. 1992). The Court finds Defendant has not met its heavy burden in this case and, accordingly, must remand the action to state court. Accordingly, Plaintiff's motion to remand to state court is **GRANTED.** Defendant's motion to dismiss is **DENIED** as moot.

IT IS SO ORDERED.

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