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November 21, 2016

Via ECF

Honorable Carol Bagley Amon
United States District Judge
United States District Court for the
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Maribel Martinez and A.M., an infant by his Mother and Natural Guardian, Maribel
Martinez v. JetBlue Airways Corporation, No. 1:16-cv-06326 (CBA) (RML)*
REQUEST FOR A PRE-MOTION CONFERENCE

Dear Judge Amon:

We represent JetBlue Airways Corporation in the above matter. Pursuant to Rule 3.A. of Your Honor's Individual Motion Practices and Rules, we write to request a pre-motion conference with respect to JetBlue's intention to file a pre-answer motion to dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(6). This letter provides a brief statement of the bases of the anticipated motion, and also serves as JetBlue's request for the Court to stay JetBlue's time to respond to the Complaint until after the conference.

Plaintiffs' state law claims are exclusively governed and completely preempted by the Montreal Convention¹ and must be dismissed as a matter of law. The Airline Deregulation Act of 1978 ("ADA"), 49 U.S.C. § 41713(b)(1), further preempts Plaintiffs' state law claims because they relate to JetBlue's boarding procedures and services concerning the transport of unaccompanied minors. Finally, Plaintiffs' claims must be dismissed because they fail to state a claim upon which relief may be granted.

I. Allegations in the Complaint

This personal injury action seeks damages arising from the international transportation of an unaccompanied minor from Santiago, Dominican Republic to Queens, New York. Plaintiff Martinez arranged for the transportation of her five-year-old son, Plaintiff A.M., to travel as an

¹ Convention for the Unification of Certain Rules for International Carriage by Air, concluded at Montreal, Canada, May 28, 1999, *reprinted in* S. Treaty Doc. No. 106-45, 1999 WL 33292734.

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unaccompanied minor on JetBlue Flt. 436 on August 17, 2016 from Cibao International Airport in Santiago, Dominican Republic to John F. Kennedy International Airport in Queens, New York. *See* Compl., ¶¶ 11-15.

On August 17, 2016, rather than travel on JetBlue Flt. 436, Plaintiff A.M. boarded and traveled on JetBlue Flt. 924 from Santiago to Logan International Airport in Boston, Massachusetts. *Id.*, ¶¶ 16, 23, 32. Upon realizing that Plaintiff A.M. had boarded and traveled on the wrong flight, JetBlue crewmembers traveled with him from Boston to New York where he was reunited with his mother.

Plaintiffs contend that JetBlue acted negligently and recklessly and caused them severe emotional distress as a result of JetBlue's conduct during the boarding and transportation of Plaintiff A.M. from the Dominican Republic to New York. *Id.*, ¶¶ 25, 41. The Complaint alleges five causes of action: (1) negligent infliction of emotional distress on behalf of Plaintiff Martinez; (2) negligent infliction of emotional distress on behalf of Plaintiff A.M.; (3) negligent supervision of a minor on behalf of Plaintiff A.M.; (4) negligent hiring, supervision, retention, and training on behalf of both Plaintiffs; and (5) punitive damages.

II. The Montreal Convention Completely Preempts Plaintiffs' State Law Claims

The Montreal Convention is a multinational treaty that covers "all international carriage of persons, baggage or cargo performed by aircraft for reward." Montreal Convention, Art. 1(1). It is well established that when a passenger's claim arises out of international carriage, the rights and liabilities of the parties are governed exclusively by the treaty. *See El Al Israel Airlines, Ltd. v. Tseng*, 525 U.S. 155, 161 (1999); *King v. Am. Airlines, Inc.*, 284 F.3d 352, 357 (2d Cir. 2002).

Article 17 creates the exclusive cause of action for personal injury claims under the Convention. Article 29 establishes the preemptive effect of the treaty and provides that "any action for damages, however founded, . . . can only be brought subject to the conditions and such limits of liability as are set out in this Convention . . ." Montreal Convention, Art. 29. Article 29 further prohibits any recovery for punitive damages.

The "Convention's preemptive effect on local law extends to all causes of action for injuries to persons and baggage suffered in the course of international airline transportation." *King*, 284 F.3d at 357. Thus, even when a passenger cannot establish a cause of action under the treaty, they are "prohibited from circumventing its restrictions by bringing a suit under local law." *Id.* at 359.

Here, Plaintiff A.M.'s transportation constituted "international carriage" because the places of departure (Santiago, Dominican Republic) and destination (New York) are situated within the territories of State Parties to the treaty—the Dominican Republic and the United States.² Accordingly, the treaty governs all claims for damages asserted against JetBlue and preempts all state law claims arising out of this incident.

² *See* International Civil Aviation Organization, Legal Affairs and External Bureau, *Treaty Collection*, at <http://www.icao.int/icao/en/leb/mtl99.pdf> (identifying parties).

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III. The ADA Completely Preempts Plaintiffs' State Law Claims

The ADA contains an express preemption clause, which provides, in relevant part, that "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. § 41713(b)(1). The Supreme Court has repeatedly emphasized the breadth of this provision and has held that any state law claims "having a connection with or reference to airline 'rates, routes, or services' are preempted [under the ADA]." *Morales v. Trans World Airlines, Inv.*, 504 U.S. 374, 383-84 (1992); see *Northwest, Inc. v. Ginsberg*, 134 S. Ct. 1422, 1429 (2014) ("[S]tate common-law rules fall comfortably within the language of the ADA pre-emption provision.").

The Second Circuit has interpreted the term "services" broadly and has recognized that boarding procedures are part of an air carrier's services for purposes of ADA preemption. See *Air Transp. Ass'n of Am., Inc. v. Cuomo*, 520 F.3d 218, 222-23 (2d Cir. 2008). Plaintiffs' state law tort claims fall squarely within the "services" provision of the ADA (boarding and transportation of an unaccompanied minor) and thus are expressly preempted by the ADA.


IV. Plaintiffs State Law Claims Fail As A Matter Of Law

Plaintiffs fail to state a claim upon which relief may be granted because Plaintiffs cannot establish the elements of their various causes of action. See, e.g., *Johnson v. Jamaica Hosp.*, 62 N.Y.2d 523, 526-28 (1984) (dismissing emotional distress claim because no direct duty was owed to parents of child abducted from nursery); *Util. Metal Research Inc. v. Coleman*, No. 03 Civ. 1463, 2008 WL 850456, at *9 (E.D.N.Y. Mar. 28, 2008) (conclusory allegations of negligent hiring, retention and supervision are insufficient). The claim for punitive damages also must be stricken as a matter of state law. *Stickler v. Halevy*, 794 F. Supp. 2d 385, 404 (E.D.N.Y. 2011) (punitive damages are available only in extremely limited circumstances where defendant acts maliciously, fraudulently, or with an evil motive). Each of Plaintiffs' state law claims fail as a matter of law.

Thank you for your consideration of the above.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: 
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SR/pb

cc: Counsel of Record (via ECF)