

**IN THE UNITED STATES DISTRICT COURT FOR THE
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ADRIAN BOMBIN, on behalf of himself and
all others similarly situated

CASE NO.

Plaintiff,
v.

JURY TRIAL DEMANDED

SOUTHWEST AIRLINES CO.,

Defendant.

CLASS ACTION COMPLAINT

Plaintiff, ADRIAN BOMBIN (“Bombin” or “Plaintiff”), on behalf of himself and all others similarly situated, by and through undersigned counsel, files this Class Action Complaint against Southwest Airlines Co (“Southwest” or “Defendant”), and alleges the following:

INTRODUCTION

1. Southwest became the nation’s largest domestic air carrier in 2003 and maintains that ranking based on the U.S. Department of Transportation’s most recent reporting of domestic originating passengers boarded.¹

2. In its 49th year of service, Dallas-based Southwest services over 130 million passengers annually.²

3. In peak travel seasons, Southwest operates more than 4,000 weekday departures among a network of 102 destinations in the United States and 10 additional countries.³

4. Southwest does not sell airline tickets on any third-party global distribution

¹ Southwest Airlines, *Southwest Corporate Fact Sheet*, <https://www.swamedia.com/pages/corporate-fact-sheet> (last visited April 6, 2020).

² *Id.*

³ *Id.*

platform, requiring all customers to purchase directly from Southwest whether it be through its website or by calling a Southwest booking line to make a reservation.

Declining Demand in Light of Novel Coronavirus Severely Impacts Southwest’s Operations

5. On December 31, 2019, governmental entities in Wuhan, China confirmed that health authorities were treating dozens of cases of a mysterious, pneumonia-like illness. Days later, researchers in China identified a new virus that had infected dozens of people in Asia, subsequently identified and referred to as the novel coronavirus, or SARS-CoV-2. The illness caused by the virus has been termed COVID-19. By January 21, 2020, officials in the United States were confirming the first known domestic cases of COVID-19.

6. Due to an influx of thousands of new cases in China, on January 30, 2020, the World Health Organization officially declared COVID-19 as a “public health emergency of international concern.”

7. On March 11, 2020, the World Health Organization declared COVID-19 a pandemic.

8. In efforts to curb the spread of the virus, federal, state and local governments have implemented temporary travel restrictions and guidelines advising against essential travel. In the United States, the federal government has limited travel from China, Europe, and the United Kingdom, permitting only the return of U.S. citizens and permanent residents. The Department of State also advised on March 31, 2020, that U.S. citizens should temporarily avoid all international travel, with the exception that U.S. residents abroad should arrange for immediate return to the United States where possible.

9. State and local governments have also restricted local travel. On March 16, 2020, seven counties in the San Francisco, California area announced shelter-in-place orders to reduce

local traffic to activities necessary to perform “essential” activities. Other states, counties, and municipalities have since implemented similar shelter-in-place orders, and as of the drafting of this Class Action Complaint, at least 316 million people in at least 42 states, three counties, nine cities, the District of Columbia, and Puerto Rico are living under such orders

10. As the travel limitations expanded and virus fears mounted, consumer demand for air travel, particularly leisure and non-essential business travel, quickly declined. In response to this declining demand, Southwest has cancelled many flights in the United States to avoid flying planes with too many empty seats to be profitable.

11. The main way that airlines like Southwest determine operational capacity (*i.e.*, how many flights it markets and flies) is by looking at passenger “load factors” on each route. Load factors measure the percentage of seats filled on an aircraft (or set of aircraft) scheduled to depart. Load factors can be determined for an overall schedule (all flights to all destinations), for particular routes (all flights between two airports), or for particular flight service (a specific scheduled flight with its own flight number). If load factors fall too low, airlines will determine that operating flight service as scheduled would not be profitable (or otherwise economically desirable) and will then typically modify the schedule—including by canceling previously scheduled flights

12. Southwest’s overall load factor is typically around 83%. But with declining customer demand in light of COVID-19, the airline has seen significant drops in its load factors.

13. “[D]riven by the drop in travel demand,” Southwest revised its flight schedules for April 14 through June 5, 2020, to reduce the number of routes flown by 20%.

14. Beginning on March 22, 2020, Southwest implemented additional cuts, canceling 1,000 of its nearly 4,000 daily flights, and canceling other flights on a rolling basis as it assessed

the demand.⁴ Southwest also canceled all international flights.⁵

15. On March 24, 2020, Southwest announced that, as it “continue[d] to react to decreased Customer demand,” the airline would cancel an additional 500 daily flights from March 27 through April 14, 2020. In other words, Southwest canceled 1,500 daily flights, or about 40% of its typical daily service, due to declining demand.

Southwest Offers Credit Rather than Refunds

16. Despite canceling 20 to 40% of its flights, Southwest offered its passengers only two options: (1) rebook your flight to a route that Southwest has not canceled, or (2) obtain travel credit.⁶ In an attempt to appear benevolent, Southwest stated that these travel credits will be available “to use through June 30, 2021 (an extension from our previous time limit of one year from date of purchase).”⁷

17. However, as will be explained below, Southwest’s Contract of Carriage mandates refunds, not credits, in this situation.

18. As numerous customers complained about this practice by Southwest and other airlines, the DOT issued an Enforcement Notice Regarding Refunds by Carriers Given the Unprecedented Impact of the COVID-19 Public Health Emergency on Air Travel (“DOT Notice”). The DOT Notice provides that the airlines must refund tickets if they cancel flights due to the novel coronavirus:

The U.S. Department of Transportation’s Office of Aviation Enforcement and Proceedings (Aviation Enforcement Office), a unit within the Office of the General Counsel, is issuing this notice to remind the traveling public, and U.S. and foreign

⁴ Press Release, Southwest Airlines, Additional Schedule Modifications through April 13, 2020 (last updated March 24, 2020), <https://www.swamedia.com/releases/release-d7c9c7e4452f7b911b76a0ddc220ea99>.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

carriers, operating at least one aircraft having a seating capacity of 30 or more seats, that passengers should be *refunded promptly* when their scheduled flights are cancelled or significantly delayed. Airlines have long provided such refunds, including during periods when air travel has been disrupted on a large scale, such as the aftermath of the September 11, 2001 attacks, Hurricane Katrina, and presidentially declared natural disasters. Although the COVID-19 public health emergency has had an unprecedented impact on air travel, *the airlines' obligation to refund passengers for cancelled or significantly delayed flights remains unchanged.*

The Department is receiving an increasing number of complaints and inquiries from ticketed passengers, including many with non-refundable tickets, who describe having been denied refunds for flights that were cancelled or significantly delayed. In many of these cases, the passengers stated that the carrier informed them that they would receive vouchers or credits for future travel. But many airlines are dramatically reducing their travel schedules in the wake of the COVID-19 public health emergency. As a result, passengers are left with cancelled or significantly delayed flights and vouchers and credits for future travel that are not readily usable. *Carriers have a longstanding obligation to provide a prompt refund to a ticketed passenger when the carrier cancels the passenger's flight or makes a significant change in the flight schedule and the passenger chooses not to accept the alternative offered by the carrier. The longstanding obligation of carriers to provide refunds for flights that carriers cancel or significantly delay does not cease when the flight disruptions are outside of the carrier's control (e.g., a result of government restrictions). The focus is not on whether the flight disruptions are within or outside the carrier's control, but rather on the fact that the cancellation is through no fault of the passenger.* Accordingly, the Department continues to view any contract of carriage provision or airline policy that purports to deny refunds to passengers when the carrier cancels a flight, makes a significant schedule change, or significantly delays a flight to be a violation of the carriers' obligation that could subject the carrier to an enforcement action.⁸

(emphasis added).

19. Thus, Southwest's failure to provide prompt refunds for canceled flights violates not only its own Contract of Carriage, but also federal law.

⁸ U.S. Dep't of Transportation, Enforcement Notice Regarding Refunds by Carriers given the Unprecedented Impact of the COVID-19 Public Health Emergency on Air Travel (Apr. 3, 2020), https://www.transportation.gov/sites/dot.gov/files/2020-04/Enforcement%20Notice%20Final%20April%203%202020_0.pdf.

PARTIES, JURISDICTION, AND VENUE

20. Adrian Bombin is a Pennsylvania citizen who resides in Lancaster, Pennsylvania.

21. Defendant is a Texas for-profit corporation having its principal place of business in Dallas, Texas.

22. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d). The amount in controversy exceeds the sum of \$5,000,000 exclusive of interest and costs, there are more than 100 putative class members, and minimal diversity exists because many putative class members are citizens of a different state than Defendant.

23. Venue is proper in this Court pursuant to 28 U.S.C. §1391, because this is the judicial district in which a substantial part of the events giving rise to the claims asserted herein occurred.

GENERAL ALLEGATIONS

24. On or about February 27, 2020, Plaintiff purchased two tickets for travel from BWI to Havana, Cuba, for himself and a companion, which included a connecting flight to Fort Lauderdale, Florida (the “Trip”) through Southwest Airlines’ owned and operated Mobile App (the “Southwest App”).

25. On or about March 23, 2020, Plaintiff checked his Southwest App which included a notice that read in part that his “travel itinerary had been interrupted.”

26. A couple days later when Plaintiff checked Southwest App again, he noticed that the destination leg of the Trip (*i.e.*, the flight from Ft Lauderdale to Havana) had been canceled. Therefore, Plaintiff, immediately called Southwest Airlines Customer Service (“CS”) to inquire.

27. CS confirmed that in fact Plaintiff’s final destination flight had been canceled.

Accordingly, CS initiated the cancellation of the connecting leg of his Trip from BWI to Fort Lauderdale. During that call with CS, Plaintiff requested a refund, which CS denied. Instead, Southwest offered Plaintiff a credit voucher subject to expiration.

28. Despite the fact that Plaintiff could not take the flight he booked, and Defendant could not offer any comparable accommodations on another flight, Plaintiff was not given a refund, but was only offered a credit for use on a future flight.

The Contract

29. Every Southwest passenger air travel ticket incorporates by reference (including in some cases by hyperlink) and is governed by Southwest's Contract of Carriage. **See Contract of Carriage, attached as Exhibit A.** Southwest drafted the Contract of Carriage.

30. Section 9 of the Contract of Carriage governs in a situation where the Carrier cancels a flight, as was the case for Plaintiff and other Class members. Specifically, with respect to Service Interruptions, the Contract of Carriage states:

a. Failure to Operate as Scheduled

(1) Canceled Flights or Irregular Operations. In the event Carrier cancels or fails to operate any flight according to Carrier's published schedule, or changes the schedule of any flight, Carrier will, at the request of a Passenger with a confirmed Ticket on such flight, take one of the following actions:

(i) Transport the Passenger at no additional charge on Carrier's next flight(s) on which space is available to the Passenger's intended destination, in accordance with Carrier's established reaccommodation practices; or

(ii) **Refund the unused portion of the Passenger's fare**

in accordance with Section 4c.

Ex. A at § 9 (emphasis added).

31. Section 4(c)(4) specifies that the refund for the “unused transportation” must be “in accordance with the form of payment utilized for the Ticket.” Ex. A at § 4(c)(4).

32. Further, under Southwest’s Customer Service Commitment and 14 C.F.R. § 259.5, which are both incorporated into the Contract of Carriage, *see* Ex. A § 10(b), Southwest reiterates that “in the event a flight is delayed, canceled, or diverted” by Southwest, the airline will provide one of two options to customers: (1) rebooking on the next available Southwest flight(s) with seats available to the customer’s ticketed destination, or (2) a “refund of the unused portion of your Southwest ticket.” **Exhibit B, Southwest Customer Service Commitment, ¶ 12.**

33. Both Section 9 of the Contract of Carriage and paragraph 12 of the Customer Service Commitment clearly provide for either rebooking or a refund in the event that Southwest cancels a flight. Neither provision provides for any “credit” for use on a future Southwest flight.

34. Paragraph 5 of the Customer Service Commitment further provides that refunds are to be issued within seven business days from the date of a refund request for tickets purchased with a credit card, and within 20 days of a refund request for tickets purchased with cash. Ex. B, ¶ 5.

35. Here, Plaintiff was not given the choice of being transported on the next available flight at no additional charge. His flight was canceled and there were no alternative Southwest flights to accommodate him from the Trip’s origin (BWI) to his destination. He had not used any portion of the ticket for his Trip. Thus, pursuant to the terms of the Contract of Carriage, Plaintiff is entitled to a refund of the fare for the entire Trip in U.S. Dollars to his original form of payment.

Ex. A at §§ 4(c)(4) and 9(a)(1); Ex. B at ¶¶ 5, 12.

CLASS ACTION ALLEGATIONS

36. Pursuant to Fed. R. Civ. P. 23(a), (b)(1), (b)(2) and (b)(3), as applicable, Plaintiff seeks certification of the following nationwide class (the “Class”):

All persons in the United States who purchased tickets for travel on a Southwest Airlines flight scheduled to operate from March 1, 2020 through the date of a class certification order, whose flight(s) were canceled by Southwest, and who were not provided a refund.

37. Excluded from the Class are Defendant, any entity in which Defendant has a controlling interest, and Defendant’s officers, directors, legal representatives, successors, subsidiaries, and assigns. Also excluded from the Class are any judicial officer presiding over this matter, members of their immediate family, and members of their judicial staff, and any Judge sitting in the presiding court system who may hear an appeal of any judgment entered.

38. Plaintiff reserves the right to amend or modify the Class definition with greater specificity or division after having had an opportunity to conduct discovery.

39. The Class meets the criteria for certification under Rule 23(a), (b)(1), (b)(2), (b)(3) and (c)(4).

40. **Risk of Inconsistent or Varying Adjudications. Fed. R. Civ. P. 23(b)(1).** As the proposed class members include thousands of persons across all 50 states, there is significant risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the Defendant. For example, declaratory relief may be entered in multiple cases, but the ordered relief may vary, causing the Defendant to have to choose the court order with which it will comply.

41. **Numerosity. Fed. R. Civ. P. 23(a)(1).** Consistent with Rule 23(a)(1), the members of the Class are so numerous and geographically dispersed that the joinder of all members is

impractical. While the exact number of class members is unknown to Plaintiff at this time, it is believed that the Class is comprised of tens of thousands if not hundreds of thousands of members geographically dispersed throughout the United States. Affected consumer's names and addresses are available from Southwest's records, and class members may be notified of the pendency of this action by recognized, court-approved notice dissemination methods, which may include electronic mail, U.S. Mail, internet notice, and/or published notice.

42. Predominance of Common Issues. Fed. R. Civ. P. 23(a)(2) and (b)(3).

Consistent with Rule 23(a)(2) and with 23(b)(3)'s predominance requirement, this action involves common questions of law and fact that predominate over any questions affecting individual class members. The common questions include:

- a. Whether Defendant's conduct breaches its Contract of Carriage;
- b. Whether Defendant is required to give a refund, rather than credit on a future flight when it cancels a flight and cannot reaccommodate the passengers within a reasonable time of the original flight schedule;
- c. Whether Plaintiff and members of the Class are entitled to damages, costs, or attorneys' fees from Defendant; and
- d. Whether Plaintiff and members of the Class are entitled to compensatory damages.

43. Typicality. Fed. R. Civ. P. 23(a)(3). Plaintiff's claims are typical of other Class members' claims because Plaintiff and Class members were subjected to the same unlawful conduct and damaged in the same way. Defendant's conduct that gave rise to the claims of Plaintiff and other Class members (i.e., canceling flights without giving refunds in breach of the Contract of Carriage) is the same for all Class members.

44. **Adequacy. Fed. R. Civ. P. 23(a)(4).** Consistent with Rule 23(a)(4), Plaintiff is an adequate representative of the Class because Plaintiff is a member of the Class and is committed to pursuing this matter against Defendant to obtain relief for the Class. Plaintiff has no conflicts of interest with the Class. Plaintiff's counsel are competent and experienced in litigating class actions, including extensive experience in litigating consumer claims. Plaintiff intends to vigorously prosecute this case and will fairly and adequately protect the interests of the Class.

45. **Superiority. Fed. R. Civ. P. 23(b)(3).** Consistent with Rule 23(b)(3), a class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The purpose of the class action mechanism is to permit litigation against wrongdoers even when damages to individual plaintiffs and class members may not be sufficient to justify individual litigation. Here, the damages suffered by Plaintiff and the Class members are relatively small compared to the burden and expense required to individually litigate their claims against Defendant, and thus, individual litigation to redress Defendant's wrongful conduct would be impracticable. Individual litigation by each Class member would also strain the court system. Moreover, individual litigation creates the potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties and provides the benefits of a single adjudication, economies of scale, and comprehensive supervision by a single court.

46. **Declaratory Relief.** Class certification is also appropriate under Rule 23(b)(2) and (c). Defendant, through its uniform conduct, acted or refused to act on grounds generally applicable to the Class as a whole, making injunctive and declaratory relief appropriate to the Class as a whole. Moreover, Defendant continues to offer credits instead of refunds to Plaintiff and Class

members for flights that they cancel, thus making declaratory relief a live issue and appropriate to the Class as a whole.

COUNT I - BREACH OF CONTRACT

47. Plaintiff realleges and reincorporates its allegations in paragraphs 1 through 46 above as if fully set forth herein.

48. This claim for breach of contract damages or, in the alternative, specific performance of the contract's refund terms, is based on Defendant's breaches of its Contract of Carriage, including its Customer Service Commitment (the "Contract").

49. Plaintiff, along with all putative class members, entered into a Contract with Defendant for provision of air travel in exchange for payment. This Contract was drafted by Defendant.

50. Plaintiff, and all putative class members performed under the Contract, specifically, by tendering payment for the airline tickets to Defendant and complied with all conditions precedent under the Contract.

51. Due to Defendant's cancellation of their flights, Plaintiff, and all putative class members cannot use their airline tickets through no fault of their own and they are not getting the benefit of their bargain with Defendant.

52. Under the terms of the Contract of Carriage drafted by Defendant, Plaintiff and putative class members are entitled to refunds because Southwest canceled their flights and did not rebook the customers on another flight. Contract of Carriage § 9(a)(1); Customer Service Commitment ¶ 12. By failing to provide refunds, Southwest has breached its Contract of Carriage.

53. Southwest has further breached its Contract of Carriage by failing to provide refunds within seven days for canceled tickets purchased with credit cards.

54. As a result of Defendant's breaches of contract, Plaintiff and the putative class members have incurred damages in an amount to be proven at trial.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all putative Class members, respectfully requests that the Court enter judgment in their favor and against Defendant as follows:

1. For an Order determining at the earliest possible time that this matter may proceed as a class action under Rule 23 and certifying this case as such;
2. For himself and each Class member their actual compensatory damages, or in the alternative, for specific performance of the refund provisions of the Contract of Carriage;
3. For reasonable attorneys' fees and costs of suit;
4. For pre-judgment interest; and
5. Such further and other relief the Court deems reasonable and just.

JURY DEMAND

Plaintiff, on behalf of himself and the Class of all others similarly situated, hereby demands a trial by jury on all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Dated: April 13, 2020

Respectfully submitted,

/s/ James C. Shah

James C. Shah
**SHEPHERD, FINKELMAN, MILLER
& SHAH, LLP**

1845 Walnut Street, Suite 806
Philadelphia, PA 19103
Telephone: (610) 891-9880
Facsimile: (866) 300-7367
Email: jshah@sfmslaw.com

Jeff Ostrow
Jonathan M. Streisfeld

Joshua R. Levine
**KOPELOWITZ OSTROW
FERGUSON WEISELBERG GILBERT**
1 West Las Olas Blvd. Suite 500
Fort Lauderdale, FL 33301
Telephone: (954) 525-4100
Facsimile: (954) 525-4300
Email: streisfeld@kolawyers.com
ostrow@kolawyers.com

Hassan A. Zavareei*
TYCKO & ZAVAREEI LLP
1828 L Street NW, Suite 1000
Washington, D.C. 20036
Telephone: (202) 973-0900
Facsimile: (202) 973-0950
Email: hzavareei@tzlegal.com

Melissa S. Weiner*
Joseph C. Bourne*
PEARSON, SIMON & WARSHAW, LLP
800 LaSalle Avenue, Suite 2150
Minneapolis, Minnesota 55402
Telephone: (612) 389-0600
Facsimile: (612) 389-0610
Email: mweiner@pswlaw.com
jbourne@pswlaw.com

Daniel L. Warshaw*
PEARSON, SIMON & WARSHAW, LLP
15165 Ventura Boulevard, Suite 400
Sherman Oaks, CA 91403
Telephone: (818) 788-8300
Facsimile: (818) 788-8104

**pro hac vice application forthcoming*

*Counsel for Plaintiff and the Proposed
Class*