

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

ERIC F. CAPDEVILLE,
on behalf of himself and all
others similarly situated

Plaintiff,

v.

SOUTHWEST AIRLINES CO.,

Defendant.

CASE NO.

SECTION:

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff, ERIC F. CAPDEVILLE (“Capdeville” 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 Airlines Company (“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.

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

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.

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

System Failures Impacts on Southwest's Operations

5. Beginning Friday, December 23, 2022, Southwest Airlines began cancelling flights nationwide blaming the failure on a weather-driven issue. Subsequently, Southwest continued to cancel flights blaming weather through Wednesday, December 28, 2022 resulting in more than 14,500 flights cancelled since the prior Friday. Wednesday, December 28, 2022 alone Southwest cancelled 2500 flights. Southwest CEO Bob Jordan confirmed the airline needed to upgrade its legacy systems. The Department of Transportation also confirmed that the cancellations came about as a result of Southwest's decision and actions.

6. Southwest's response to the internally created crisis was to suggest customers could submit receipts for flight cancellations from December 24, 2022 through January 2, 2023 for consideration reimbursement.

7. Southwest's Contract of Carriage mandates refunds in this situation as well as full compensation for incurred costs and resultant cancellations for the failure of the carriage contract.

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

PARTIES, JURISDICTION, AND VENUE

9. ERIC F. CAPDEVILLE is a Louisiana citizen who resides in Marrero, Louisiana, Parish of Jefferson.

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

11. 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.

12. 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

13. On or about October 10, 2022, Plaintiff purchased two tickets for travel Tuesday, December 27, 2022 from New Orleans, Louisiana (MSY) to Portland, Oregon (PDX) for himself and his daughter, which included a connecting flight to Pheonix, Arizona (PHX) (the “Trip”) through Southwest Airlines.

14. Prior to departing Plaintiff checked saw the news that thousands of flights had been cancelled by Southwest Airlines. Upon checking, he confirmed that his Southwest flight had been cancelled and hos reservations and stay in Portland would be lost without reimbursement.

15. After speaking to customer service Capdeville confirmed that in fact Plaintiff's flights had been canceled.

16. 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.

17. Every Southwest passenger air travel ticket incorporates by reference (including in some cases by hyperlink) and is governed by Southwest's Contract of Carriage. Southwest drafted the Contract of Carriage.

18. 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.

19. Section 4(c)(4) specifies that the refused for the "unused transportation" must be "in accordance with the form of payment utilized for the Ticket."

20. Further, under Southwest’s Customer Service Commitment and 14 C.F.R. § 259.5, which are both incorporated into the Contract of Carriage, 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.”

21. 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.

22. 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.

23. 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 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.

CLASS ACTION ALLEGATIONS

24. 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 December 24, 2022 through the date of a class certification

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