

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CLERK'S CERTIFICATE AND APPEALS COVER SHEET

ABBREVIATED ELECTRONIC RECORD

Case Caption: Colin Bower v. El-Nady Bower, et al

District Court Number: 10-cv-10405

Fee: Paid? Yes ___ No [X] Government filer ___ In Forma Pauperis Yes ___ No [X]

Motions Pending Yes ___ No [X] Sealed documents Yes [X] No ___
If yes, document # 165 Exhibit

Ex parte documents Yes ___ No [X] Transcripts Yes [X] No ___
If yes, document # 92

Notice of Appeal filed by: Plaintiff/Petitioner ___ Defendant/Respondent [X] Other: ___

Appeal from: #144, #175

Other information:

I, Sarah Allison Thornton, Clerk of the United States District Court for the District of Massachusetts, do hereby certify that the annexed electronic documents:

Notice of Appeal, #144, #175

with the electronic docket sheet, constitute the abbreviated record on appeal in the above entitled case for the Notice of Appeal, document # 180, filed on 4/19/2012.

In testimony whereof, I hereunto set my hand and affix the seal of this Court on 4/19/2012.

SARAH ALLISON THORNTON
Clerk of Court

/s/ Jeanette Ramos
Deputy Clerk



COURT OF APPEALS DOCKET NUMBER ASSIGNED:

PLEASE RETURN TO THE USDC CLERK'S OFFICE

**United States District Court
District of Massachusetts (Boston)
CIVIL DOCKET FOR CASE #: 1:10-cv-10405-RGS**

Bower v. El-Nady Bower et al
Assigned to: Judge Richard G. Stearns
Case in other court: Essex Superior Court, 10-00278
First Circuit, 12-01427
Cause: 28:1332 Diversity-Notice of Removal

Date Filed: 03/08/2010
Jury Demand: Plaintiff
Nature of Suit: 360 P.I.: Other
Jurisdiction: Diversity

Plaintiff

Colin Bower
*on his own behalf and on behalf of his
minor children N and R*

represented by **Barry S. Pollack**
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V.

Defendant

Mirvat El-Nady Bower

Defendant

EgyptAir Airlines Company
TERMINATED: 03/22/2012

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Date Filed	#	Page	Docket Text
03/08/2010	<u>1</u>		NOTICE OF REMOVAL by EgyptAir Airlines Company (Filing fee \$ 350 receipt number 0101000000002811931) (Attachments: # <u>1</u> Exhibit A State Court Complaint, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C)(Dougherty, Shalissa) (Additional attachment(s) added on 3/9/2010: # <u>4</u> Notice of Removal) # <u>5</u> Civil Cover and Category Sheets) Entry modified to extract cover sheets from Notice of Removal and add as separate documents. Text also modified. (Cummings, Mary). (Entered: 03/08/2010)
03/09/2010	<u>2</u>		NOTICE of Appearance by Shalissa M. Dougherty on behalf of EgyptAir Airlines Company (Dougherty, Shalissa) (Entered: 03/09/2010)
03/09/2010	<u>3</u>		CORPORATE DISCLOSURE STATEMENT by EgyptAir Airlines Company. (Dougherty, Shalissa) (Entered: 03/09/2010)
03/09/2010	<u>4</u>		NOTICE of Appearance by Brian P. Voke on behalf of EgyptAir Airlines Company (Voke, Brian) (Entered: 03/09/2010)
03/09/2010			ELECTRONIC NOTICE of Case Assignment. Judge Nancy Gertner assigned to case. If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate

		Judge Judith G. Dein (Cummings, Mary) (Entered: 03/09/2010)
03/09/2010		Certified Copy of Notice of Removal Provided to Defense Counsel by Mail. (Cummings, Mary) (Entered: 03/09/2010)
03/12/2010	<u>5</u>	AMENDED COMPLAINT against Mirvat El-Nady Bower, EgyptAir Airlines Company, filed by Colin Bower.(Solomon, Joshua) (Entered: 03/12/2010)
03/24/2010	<u>6</u>	STATE COURT Record. (Dougherty, Shalissa) (Entered: 03/24/2010)
03/26/2010	<u>7</u>	<i>Defendant EgyptAir Airlines Company</i> ANSWER to Complaint (Notice of Removal) <i>Answer to Plaintiff's Amended Complaint</i> by EgyptAir Airlines Company. (Dougherty, Shalissa) (Entered: 03/26/2010)
03/26/2010	<u>8</u>	SUMMONS Returned Executed (Solomon, Joshua) (Entered: 03/26/2010)
03/26/2010	<u>9</u>	SUMMONS Returned Executed (Solomon, Joshua) (Entered: 03/26/2010)
04/08/2010	<u>10</u>	Letter/request (non-motion) from Barry S. Pollack, Esq. requesting that the Court schedule an initial Rule 16 conference as soon as the Court's schedule permits. (Hourihan, Lisa) (Entered: 04/08/2010)
04/09/2010	<u>11</u>	NOTICE of Scheduling Conference: Scheduling Conference set for 5/4/2010 11:00 AM in Courtroom 2 before Judge Nancy Gertner. (Molloy, Maryellen) (Entered: 04/09/2010)
04/27/2010	<u>12</u>	REPORT of Rule 26(f) Planning Meeting. (Solomon, Joshua) (Entered: 04/27/2010)
04/27/2010	<u>13</u>	CERTIFICATION pursuant to Local Rule 16.1 . (Solomon, Joshua) (Entered: 04/27/2010)
04/29/2010	<u>14</u>	CERTIFICATION pursuant to Local Rule 16.1 <i>Egyptair Airlines Company, Incorrectly Named as Egyptair Airlines Local Rule 16.1(D)(3) Certification.</i> (Dougherty, Shalissa) (Entered: 04/29/2010)
05/04/2010		ELECTRONIC Clerk's Notes for proceedings held before Judge Nancy Gertner: Scheduling Conference held on 5/4/2010. Initial disclosures due 5/28/10, court adopts joint statement. Motion to dismiss due by 6/18/2010; response in opposition 7/9/10. Motion hearing set for 7/29/10 at 10:00am. (Court Reporter: No Court Reporter Used.)(Attorneys present: Soloman, Salvucci, Voke) (Molloy, Maryellen) (Entered: 05/04/2010)
05/04/2010		ELECTRONIC NOTICE Setting Hearing on Motion. (note: mtn to dismiss will be filed on 6/18/10). Motion Hearing set for 7/29/2010 10:00 AM in Courtroom 2 before Judge Nancy Gertner. (Molloy, Maryellen) (Entered: 05/04/2010)
05/25/2010	<u>15</u>	NOTICE of Appearance by Lisa G. Arrowood on behalf of Colin Bower (Arrowood, Lisa) (Entered: 05/25/2010)
06/18/2010	<u>16</u>	MOTION to Dismiss <i>For Lack of Personal Jurisdiction or, Alternatively, to Dismiss or Transfer Pursuant to 28 U.S.C. Section 1406(a) Or U.S.C. Section 140(a)</i> by EgyptAir Airlines Company.(Voke, Brian) (Entered: 06/18/2010)

06/18/2010	<u>17</u>		MEMORANDUM in Support re <u>16</u> MOTION to Dismiss <i>For Lack of Personal Jurisdiction or, Alternatively, to Dismiss or Transfer Pursuant to 28 U.S.C. Section 1406(a) Or U.S.C. Section 140(a)</i> filed by EgyptAir Airlines Company. (Attachments: # <u>1</u> Exhibit Declaration of Sameh A. Aziz Helmi in Support of Defendant EgyptAir Airlines Company's Motion to Dismiss)(Voke, Brian) (Entered: 06/18/2010)
06/24/2010	<u>18</u>		Emergency MOTION for Discovery (<i>Jurisdictional Discovery</i>) by Colin Bower. (Attachments: # <u>1</u> Exhibit A: Proposed Order)(Solomon, Joshua) (Entered: 06/24/2010)
06/25/2010			Judge Nancy Gertner: ELECTRONIC ORDER entered entered <u>18</u> Motion for Discovery. Defendant is to respond by by 6/28/10. (Patch, Christine) (Entered: 06/25/2010)
06/25/2010			Set/Reset Deadlines as to <u>18</u> Emergency MOTION for Discovery (<i>Jurisdictional Discovery</i>). Responses due by 6/28/2010 (Patch, Christine) (Entered: 06/25/2010)
06/28/2010	<u>19</u>		RESPONSE to Motion re <u>18</u> Emergency MOTION for Discovery (<i>Jurisdictional Discovery</i>) filed by EgyptAir Airlines Company. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Dougherty, Shalissa) (Entered: 06/28/2010)
06/29/2010			Judge Nancy Gertner: ELECTRONIC ORDER entered granting <u>18</u> Motion for Discovery. Merits discovery is stayed pending a ruling on the motion to dismiss. (Hourihan, Lisa) (Entered: 06/29/2010)
07/02/2010			ELECTRONIC NOTICE Resetting Hearing on Motion <u>16</u> MOTION to Dismiss <i>For Lack of Personal Jurisdiction or, Alternatively, to Dismiss or Transfer Pursuant to 28 U.S.C. Section 1406(a) Or U.S.C. Section 140(a)</i> : Motion Hearing set for 10/19/2010 03:00 PM in Courtroom 2 before Judge Nancy Gertner. (Patch, Christine) (Entered: 07/02/2010)
07/30/2010	<u>20</u>		Emergency MOTION for Extension of Time to 9/2/10 to To Respond or Object to Plaintiff's Request for Production of Jurisdictional Documents by EgyptAir Airlines Company.(Dougherty, Shalissa) (Entered: 07/30/2010)
07/30/2010	<u>21</u>		Opposition re <u>20</u> Emergency MOTION for Extension of Time to 9/2/10 to To Respond or Object to Plaintiff's Request for Production of Jurisdictional Documents filed by Colin Bower. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C)(Pollack, Barry) (Entered: 07/30/2010)
07/30/2010	<u>22</u>		REPLY to Response to <u>20</u> Emergency MOTION for Extension of Time to 9/2/10 to To Respond or Object to Plaintiff's Request for Production of Jurisdictional Documents filed by EgyptAir Airlines Company. (Dougherty, Shalissa) (Entered: 07/30/2010)
08/05/2010			Judge Nancy Gertner: ELECTRONIC ORDER entered GRANTING re <u>20</u> Emergency Motion for Extension of Time. Defendants must respond to Plaintiff's request for production of jurisdictional documents by 9/2/10. However, the Court will lift its 6/29/10 stay of merits discovery. The obvious difficulties in obtaining documents from and coordinating with Cairo suggest that efforts to respond to merits and jurisdictional discovery should be done in a coordinated fashion. (Geraldino-Karasek, Clarilde) (Entered: 08/05/2010)

			08/05/2010)
08/05/2010			Set Deadlines as to Responses due by 9/2/2010. (Geraldino–Karasek, Clarilde) (Entered: 08/05/2010)
08/17/2010	<u>23</u>		NOTICE of Appearance by Alexis V. D'Arcy on behalf of Colin Bower (D'Arcy, Alexis) (Entered: 08/17/2010)
08/20/2010	<u>24</u>		NOTICE of Withdrawal of Appearance by Carla A. Salvucci (Salvucci, Carla) (Entered: 08/20/2010)
09/16/2010	<u>25</u>		Assented to MOTION Issuance of Subpoena as "So Ordered" by Colin Bower. (Attachments: # <u>1</u> Exhibit A)(Solomon, Joshua) (Entered: 09/16/2010)
09/17/2010	<u>26</u>		Assented to MOTION for Extension of Time to File Response/Reply as to <u>16</u> MOTION to Dismiss <i>For Lack of Personal Jurisdiction or, Alternatively, to Dismiss or Transfer Pursuant to 28 U.S.C. Section 1406(a) Or U.S.C. Section 140(a)</i> by Colin Bower.(Solomon, Joshua) (Entered: 09/17/2010)
09/20/2010			Judge Nancy Gertner: ELECTRONIC ORDER entered granting <u>26</u> Assented to Motion for Extension of Time to File Response/Reply re <u>16</u> MOTION to Dismiss <i>For Lack of Personal Jurisdiction or, Alternatively, to Dismiss or Transfer Pursuant to 28 U.S.C. Section 1406(a) Or U.S.C. Section 140(a)</i> . Responses due by 12/6/2010. (Gaudet, Jennifer) (Entered: 09/20/2010)
09/28/2010	<u>27</u>		Subpoena Issued for Hollis Telephone Company and TDS Long Distance Corp. (original mailed to counsel) (Gaudet, Jennifer) (Entered: 09/29/2010)
09/29/2010			Judge Nancy Gertner: ELECTRONIC ORDER entered granting <u>25</u> Assented to Motion Issuance of Subpoena as "So Ordered." (Gaudet, Jennifer) (Entered: 09/29/2010)
10/08/2010	<u>28</u>		MOTION to Compel <i>documents from Grand Circle</i> by Colin Bower.(Solomon, Joshua) (Entered: 10/08/2010)
10/08/2010	<u>29</u>		MEMORANDUM in Support re <u>28</u> MOTION to Compel <i>documents from Grand Circle</i> filed by Colin Bower. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C)(Solomon, Joshua) (Entered: 10/08/2010)
10/18/2010			NOTICE Canceling Motion to Dismiss hrg set for 10/19/10. Parties will file a mtn to continue to Jan 2011. (Molloy, Maryellen) (Entered: 10/18/2010)
10/21/2010	<u>30</u>		MOTION to Compel <i>Response to Subpoena from Michael Traft</i> by Colin Bower.(Solomon, Joshua) (Entered: 10/21/2010)
10/21/2010	<u>31</u>		MEMORANDUM in Support re <u>30</u> MOTION to Compel <i>Response to Subpoena from Michael Traft</i> filed by Colin Bower. (Solomon, Joshua) (Entered: 10/21/2010)
10/21/2010	<u>32</u>		AFFIDAVIT in Support re <u>30</u> MOTION to Compel <i>Response to Subpoena from Michael Traft</i> filed by Colin Bower. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G)(Solomon, Joshua) (Entered: 10/21/2010)
10/22/2010	<u>33</u>		ASSENTED to Motion for Extension of Time to file Response to Motion re <u>28</u> MOTION to Compel <i>documents from Grand Circle</i> filed by Grand Circle

		LLC, Grand Circle Holdings, LLC. (Re, James) Modified on 10/25/2010 (Gaudet, Jennifer). (Entered: 10/22/2010)
10/25/2010		Judge Nancy Gertner: ELECTRONIC ORDER entered granting <u>33</u> Motion for Extension of Time to File Response/Reply re <u>28</u> MOTION to Compel <i>documents from Grand Circle</i> . Responses due by 10/29/2010 (Gaudet, Jennifer) (Entered: 10/25/2010)
10/27/2010	<u>34</u>	Assented to MOTION for Leave to Appear Pro Hac Vice for admission of Christopher Carlsen Filing fee: \$ 50, receipt number 0101-3125768 by EgyptAir Airlines Company. (Attachments: # <u>1</u> Affidavit Affidavit of Christopher Carlsen in Support of Assented to Motion for Admission Pro Hac Vice)(Dougherty, Shalissa) (Entered: 10/27/2010)
10/27/2010	<u>35</u>	Assented to MOTION for Leave to Appear Pro Hac Vice for admission of Deborah Elsasser Filing fee: \$ 50, receipt number 0101-3125819 by EgyptAir Airlines Company. (Attachments: # <u>1</u> Affidavit Affidavit of Deborah Elsasser in Support of Assented to Motion for Admission Pro Hac Vice)(Dougherty, Shalissa) (Entered: 10/27/2010)
10/28/2010		Judge Nancy Gertner: ELECTRONIC ORDER entered granting <u>34</u> Assented to Motion for Leave to Appear Pro Hac Vice. Added Christopher Carlsen. Attorneys admitted Pro Hac Vice must register for electronic filing. To register go to the Court website at www.mad.uscourts.gov. Select Case Information, then Electronic Filing (CM/ECF) and go to the CM/ECF Registration Form. (Gaudet, Jennifer) (Entered: 10/28/2010)
10/28/2010		Judge Nancy Gertner: ELECTRONIC ORDER entered granting <u>35</u> Assented to Motion for Leave to Appear Pro Hac Vice. Added Deborah Elsasser. Attorneys admitted Pro Hac Vice must register for electronic filing. To register go to the Court website at www.mad.uscourts.gov. Select Case Information, then Electronic Filing (CM/ECF) and go to the CM/ECF Registration Form. (Gaudet, Jennifer) (Entered: 10/28/2010)
10/29/2010	<u>36</u>	ASSENTED TO MOTION for Two-Day Extension of Time for Opposition re <u>28</u> MOTION to Compel <i>documents from Grand Circle</i> filed by Grand Circle Holdings, LLC, Grand Circle LLC. (Re, James) (Entered: 10/29/2010)
11/01/2010		Judge Nancy Gertner: ELECTRONIC ORDER entered granting <u>36</u> Assented to Motion for Extension of Time to File Response/Reply re <u>28</u> MOTION to Compel <i>documents from Grand Circle</i> . Responses due by 11/2/2010. (Gaudet, Jennifer) (Entered: 11/01/2010)
11/02/2010	<u>37</u>	Opposition re <u>28</u> MOTION to Compel <i>documents from Grand Circle</i> filed by Grand Circle Holdings, LLC, Grand Circle LLC. (Re, James) (Entered: 11/02/2010)
11/04/2010	<u>38</u>	MOTION to Compel <i>Yahoo! and Google to Comply with Subpoena</i> by Colin Bower.(D'Arcy, Alexis) (Entered: 11/04/2010)
11/04/2010	<u>39</u>	MEMORANDUM in Support re <u>38</u> MOTION to Compel <i>Yahoo! and Google to Comply with Subpoena</i> filed by Colin Bower. (D'Arcy, Alexis) (Entered: 11/04/2010)
11/04/2010	<u>40</u>	AFFIDAVIT in Support re <u>38</u> MOTION to Compel <i>Yahoo! and Google to Comply with Subpoena</i> filed by Colin Bower. (Attachments: # <u>1</u>

		Exhibit)(D'Arcy, Alexis) (Entered: 11/04/2010)
11/08/2010	<u>43</u>	Letter/request (non-motion) from Attorney Joshua L. Solomon regarding Motion to Compel. (Gaudet, Jennifer) (Entered: 11/10/2010)
11/10/2010	<u>41</u>	NOTICE of Receipt of Limited Opposition by Colin Bower re <u>30</u> MOTION to Compel <i>Response to Subpoena from Michael Traft</i> (Solomon, Joshua) (Entered: 11/10/2010)
11/10/2010	<u>42</u>	DECLARATION re <u>41</u> Notice (Other) by Colin Bower. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D)(Solomon, Joshua) (Entered: 11/10/2010)
11/10/2010	<u>44</u>	MOTION for Protective Order by Bruce Bower.(Hogan, William) (Entered: 11/10/2010)
11/10/2010	<u>45</u>	MEMORANDUM in Support re <u>44</u> MOTION for Protective Order filed by Bruce Bower. (Attachments: # <u>1</u> Exhibit A)(Hogan, William) (Entered: 11/10/2010)
11/18/2010	<u>46</u>	Assented to MOTION for Order to Issue Subpoena as "So Ordered" by Colin Bower. (Attachments: # <u>1</u> Exhibit A)(Solomon, Joshua) (Entered: 11/18/2010)
11/19/2010	<u>47</u>	PLEASE DISREGARD, INCORRECT FILING <i>Amended Certificate of Service</i> Letter/request (non-motion) from Alexis D'Arcy, Esq.. (D'Arcy, Alexis) Modified on 11/19/2010 (Gaudet, Jennifer). (Entered: 11/19/2010)
11/19/2010	<u>48</u>	<i>Amended Certificate of Service</i> Letter/request (non-motion) from Alexis D'Arcy, Esq.. (D'Arcy, Alexis) (Entered: 11/19/2010)
11/19/2010	<u>49</u>	Letter/request (non-motion) from Joshua L. Solomon as follow-up to 11/8/2010 letter. (Gaudet, Jennifer) (Entered: 11/22/2010)
11/19/2010		Judge Nancy Gertner: ELECTRONIC ORDER entered granting <u>46</u> Motion for Issuance of Subpoena as "So Ordered." (Gaudet, Jennifer) (Entered: 11/22/2010)
11/22/2010	<u>50</u>	Subpoena Issued "So Ordered" for Charter Communications, Inc. and Charter Communications Holding Company, LLC. (Gaudet, Jennifer) (Entered: 11/22/2010)
11/23/2010	<u>51</u>	NOTICE of Appearance by Allison D. Burroughs on behalf of Google Inc. (Burroughs, Allison) (Entered: 11/23/2010)
11/23/2010	<u>52</u>	NOTICE of Appearance by Sarah P. Kelly on behalf of Google Inc. (Kelly, Sarah) (Entered: 11/23/2010)
11/23/2010	<u>53</u>	CORPORATE DISCLOSURE STATEMENT by Google Inc.. (Kelly, Sarah) (Entered: 11/23/2010)
11/23/2010	<u>54</u>	Assented to MOTION for Extension of Time to December 3, 2010 to File Response/Reply as to <u>38</u> MOTION to Compel <i>Yahoo! and Google to Comply with Subpoena</i> by Google Inc..(Kelly, Sarah) (Entered: 11/23/2010)
11/24/2010	<u>55</u>	Opposition re <u>44</u> MOTION for Protective Order filed by Colin Bower. (D'Arcy, Alexis) (Entered: 11/24/2010)

11/24/2010	<u>56</u>		DECLARATION re <u>55</u> Opposition to Motion by Colin Bower. (D'Arcy, Alexis) (Entered: 11/24/2010)
11/24/2010	<u>57</u>		DECLARATION re <u>55</u> Opposition to Motion by Colin Bower. (Attachments: # <u>1</u> Exhibit)(D'Arcy, Alexis) (Entered: 11/24/2010)
11/29/2010			Judge Nancy Gertner: ELECTRONIC ORDER entered granting <u>54</u> Assented to Motion for Extension of Time to File Response/Reply re <u>38</u> MOTION to Compel <i>Yahoo! and Google to Comply with Subpoena</i> . Responses due by 12/3/2010 (Gaudet, Jennifer) (Entered: 11/29/2010)
11/29/2010	<u>58</u>		Joint MOTION for Extension of Time to Oppose Motion to Dismiss or Transfer and Discovery Deadlines by Colin Bower, EgyptAir Airlines Company. (Attachments: # <u>1</u> Exhibit A)(Solomon, Joshua) (Entered: 11/29/2010)
11/30/2010	<u>59</u>		MOTION to Quash <i>Subpoena to Third-Party Charter Communications Holding Company, LLC and Charter Communications, Inc.</i> by Bruce Bower.(Hogan, William) (Entered: 11/30/2010)
11/30/2010	<u>60</u>		MEMORANDUM in Support re <u>59</u> MOTION to Quash <i>Subpoena to Third-Party Charter Communications Holding Company, LLC and Charter Communications, Inc. and Bruce Bower's Opposition to Plaintiff's Unopposed Motion for Issuance of a Subpoena as "So Ordered"</i> filed by Bruce Bower. (Hogan, William) (Entered: 11/30/2010)
12/01/2010			Judge Nancy Gertner: ELECTRONIC ORDER entered granting <u>58</u> Joint Motion for Extension of Time to Oppose Motion to Dismiss or Transfer and Discovery Deadlines (Gaudet, Jennifer) (Entered: 12/01/2010)
12/01/2010			Set/Reset Deadlines as to <u>16</u> MOTION to Dismiss <i>For Lack of Personal Jurisdiction or, Alternatively, to Dismiss or Transfer Pursuant to 28 U.S.C. Section 1406(a) Or U.S.C. Section 140(a)</i> . Responses due by 1/21/2010. (Gaudet, Jennifer) (Entered: 12/01/2010)
12/01/2010			Set/Reset Scheduling Order Deadlines: Fact Discovery to be completed by 3/1/2011; Expert reports served on or before 5/27/2011; Responsive expert reports served on or before 6/28/2011; Expert depositions completed on or before 7/25/2011. (Gaudet, Jennifer) (Entered: 12/01/2010)
12/02/2010	<u>61</u>		Assented to MOTION for Extension of Time to December 10, 2010 to File Response/Reply as to <u>38</u> MOTION to Compel <i>Yahoo! and Google to Comply with Subpoena</i> by Google Inc..(Kelly, Sarah) (Entered: 12/02/2010)
12/03/2010			Judge Nancy Gertner: ELECTRONIC ORDER entered granting <u>61</u> Assented to Motion for Extension of Time to File Response/Reply re <u>38</u> MOTION to Compel <i>Yahoo! and Google to Comply with Subpoena</i> . Responses due by 12/10/2010. (Gaudet, Jennifer) (Entered: 12/03/2010)
12/03/2010	<u>62</u>		NOTICE of Appearance by Hanson S. Reynolds on behalf of Yahoo! Inc. (Reynolds, Hanson) (Main Document 62 replaced on 12/17/2010) (Gaudet, Jennifer). (Entered: 12/03/2010)
12/03/2010	<u>63</u>		MOTION for Leave to Appear Pro Hac Vice for admission of Jacob A. Sommer Filing fee: \$ 50, receipt number 0101-3177411 by Yahoo! Inc.. (Attachments: # <u>1</u> Affidavit Statement of Jacob A. Sommer)(Reynolds,

		Hanson) (Entered: 12/03/2010)
12/03/2010	<u>64</u>	RESPONSE to Motion re <u>38</u> MOTION to Compel <i>Yahoo! and Google to Comply with Subpoena</i> filed by Yahoo! Inc.. (Reynolds, Hanson) (Entered: 12/03/2010)
12/03/2010	<u>66</u>	Copy of Letter from Maria Sahagun-Sanchez to Alexis V. D'Arcy regarding representation. (Attachments: # <u>1</u> Exhibit)(Gaudet, Jennifer) (Entered: 12/13/2010)
12/10/2010	<u>65</u>	Opposition re <u>38</u> MOTION to Compel <i>Yahoo! and Google to Comply with Subpoena</i> filed by Google Inc.. (Burroughs, Allison) (Entered: 12/10/2010)
12/14/2010	<u>67</u>	MEMORANDUM in Opposition re <u>59</u> MOTION to Quash <i>Subpoena to Third-Party Charter Communications Holding Company, LLC and Charter Communications, Inc.</i> filed by Colin Bower. (D'Arcy, Alexis) (Entered: 12/14/2010)
12/14/2010	<u>68</u>	DECLARATION re <u>67</u> Memorandum in Opposition to Motion to <i>Quash</i> by Colin Bower. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F)(D'Arcy, Alexis) (Entered: 12/14/2010)
01/03/2011		Judge Nancy Gertner: ELECTRONIC ORDER entered granting <u>63</u> Motion for Leave to Appear Pro Hac Vice Added Jacob A. Sommer. Attorneys admitted Pro Hac Vice must register for electronic filing. To register go to the Court website at www.mad.uscourts.gov. Select Case Information, then Electronic Filing (CM/ECF) and go to the CM/ECF Registration Form. (Gaudet, Jennifer) (Entered: 01/03/2011)
01/10/2011	<u>69</u>	Judge Nancy Gertner: ORDER entered. REFERRING CASE to Ch. Magistrate Judge Judith G. Dein. Referred for: full pretrial proceedings and RRon <u>16</u> Motion to Dismiss. Motions referred: <u>16</u> MOTION to Dismiss <i>For Lack of Personal Jurisdiction or, Alternatively, to Dismiss or Transfer Pursuant to 28 U.S.C. Section 1406(a) Or U.S.C. Section 140(a)</i> , <u>59</u> MOTION to Quash <i>Subpoena to Third-Party Charter Communications Holding Company, LLC and Charter Communications, Inc.</i> , <u>38</u> MOTION to Compel <i>Yahoo! and Google to Comply with Subpoena</i> , <u>44</u> MOTION for Protective Order, <u>30</u> MOTION to Compel <i>Response to Subpoena from Michael Traft</i> , <u>28</u> MOTION to Compel <i>documents from Grand Circle</i> (Gaudet, Jennifer) Motions referred to Judith G. Dein. (Entered: 01/10/2011)
01/13/2011		ELECTRONIC NOTICE Setting Hearing on <u>16</u> Defendant's MOTION to Dismiss, <u>28</u> , <u>30</u> & <u>38</u> Plaintiff's MOTIONS to Compel, <u>44</u> Bruce Bower's MOTION for Protective Order, and <u>59</u> Bruce Bower's MOTION to Quash Subpoena: Motion Hearing set for 1/25/2011 11:00 AM in Courtroom 15 before Ch. Magistrate Judge Judith G. Dein. (Dambrosio, Jolyne) (Entered: 01/13/2011)
01/21/2011	<u>70</u>	Opposition re <u>16</u> MOTION to Dismiss <i>For Lack of Personal Jurisdiction or, Alternatively, to Dismiss or Transfer Pursuant to 28 U.S.C. Section 1406(a) Or U.S.C. Section 140(a)</i> filed by Colin Bower. (Attachments: # <u>1</u> Declaration of Joshua L. Solomon, # <u>2</u> Exhibit A to Solomon Declaration, # <u>3</u> Exhibit B to Solomon Declaration, # <u>4</u> Exhibit C to Solomon Declaration, #

		<p><u>5</u> Exhibit D to Solomon Declaration, # <u>6</u> Exhibit E to Solomon Declaration, # <u>7</u> Exhibit F to Solomon Declaration, # <u>8</u> Exhibit G to Solomon Declaration, # <u>9</u> Exhibit H to Solomon Declaration, # <u>10</u> Exhibit I to Solomon Declaration, # <u>11</u> Exhibit J to Solomon Declaration, # <u>12</u> Exhibit K to Solomon Declaration, # <u>13</u> Exhibit L to Solomon Declaration, # <u>14</u> Exhibit M to Solomon Declaration, # <u>15</u> Exhibit N to Solomon Declaration, # <u>16</u> Exhibit O to Solomon Declaration, # <u>17</u> Exhibit P to Solomon Declaration, # <u>18</u> Exhibit Q to Solomon Declaration, # <u>19</u> Exhibit R to Solomon Declaration, # <u>20</u> 11/23/2010 Declaration of Colin Bower)(Solomon, Joshua) (Entered: 01/21/2011)</p>
01/21/2011	<u>71</u>	<p>NOTICE by Colin Bower re <u>28</u> MOTION to Compel <i>documents from Grand Circle Notice of Withdrawal of Motion</i> (Attachments: # <u>1</u> Exhibit A)(Solomon, Joshua) (Entered: 01/21/2011)</p>
01/24/2011		<p>ELECTRONIC NOTICE Canceling a Hearing. Hearing rescheduled or canceled: Motion Hearing for 1/25/11 is canceled and will be rescheduled for a future date. Counsel are asked to confer and contact Deputy Clerk Quinn(617-748-9040) with future dates to reschedule this hearing before USMJ Dein. (Quinn, Thomas) (Entered: 01/24/2011)</p>
01/24/2011		<p>ELECTRONIC NOTICE issued requesting courtesy copy of <u>70</u> Plaintiff's Opposition to Motion to Dismiss. Counsel is requested to submit a courtesy copy of this document to Ch. M.J. Dein by 1/28/11. The document must be clearly marked as a Courtesy Copy and reflect the document number assigned by CM/ECF. (Dambrosio, Jolyne) (Entered: 01/24/2011)</p>
02/03/2011		<p>ELECTRONIC NOTICE Setting Hearing on Motion <u>44</u> MOTION for Protective Order, <u>16</u> MOTION to Dismiss <i>For Lack of Personal Jurisdiction or, Alternatively, to Dismiss or Transfer Pursuant to 28 U.S.C. Section 1406(a) Or U.S.C. Section 140(a)</i>, <u>38</u> MOTION to Compel <i>Yahoo! and Google to Comply with Subpoena</i>, <u>30</u> MOTION to Compel <i>Response to Subpoena from Michael Traft</i>, <u>28</u> MOTION to Compel <i>documents from Grand Circle</i>, <u>59</u> MOTION to Quash <i>Subpoena to Third-Party Charter Communications Holding Company, LLC and Charter Communications, Inc.</i> : Motion Hearing set for 2/10/2011 10:00 AM in Courtroom 15 before Ch. Magistrate Judge Judith G. Dein. (Quinn, Thomas) (Entered: 02/03/2011)</p>
02/04/2011	<u>72</u>	<p>MOTION for Leave to File <i>Reply Memorandum of Law in Support of its Motion to Transfer Pursuant to 28 U.S.C. Section 1406(a) OR 28 U.S.C. Section 1404(a)</i> by EgyptAir Airlines Company. (Attachments: # <u>1</u> Exhibit A)(Dougherty, Shalissa) (Entered: 02/04/2011)</p>
02/04/2011	<u>73</u>	<p>AFFIDAVIT in Support of <i>Defendant EgyptAir Airlines Company's Motion to Transfer Venue</i>. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Dougherty, Shalissa) (Entered: 02/04/2011)</p>
02/07/2011		<p>Ch. Magistrate Judge Judith G. Dein: ELECTRONIC ORDER entered granting <u>72</u> EgyptAir's Motion for Leave to File Reply Memorandum. Counsel should now file the document for which leave to file has been granted in accordance with the CM/ECF Administrative Procedures. Counsel must include – Leave to file granted on (date of order)– in the caption of the document. (Dambrosio, Jolyne) (Entered: 02/07/2011)</p>
02/08/2011	<u>74</u>	

		REPLY MEMORANDUM in Support re <u>16</u> MOTION to Dismiss <i>For Lack of Personal Jurisdiction or, Alternatively, to Dismiss or Transfer Pursuant to 28 U.S.C. Section 1406(a) Or U.S.C. Section 140(a)</i> filed by EgyptAir Airlines Company. (Attachments: # <u>1</u> Declaration of Christopher Carlsen, # <u>2</u> Exhibit A to the Declaration of Christopher Carlsen, # <u>3</u> Exhibit B to the Declaration of Christopher Carlsen)(Dougherty, Shalissa) Modified on 2/8/2011 (Gaudet, Jennifer). (Entered: 02/08/2011)
02/10/2011		Ch. Magistrate Judge Judith G. Dein: ELECTRONIC ORDER entered withdrawing <u>28</u> Plaintiff's Motion to Compel Documents from Grand Circle in accordance with Docket No. 71. (Dambrosio, Jolyne) (Entered: 02/10/2011)
02/11/2011	<u>75</u>	Ch. Magistrate Judge Judith G. Dein: ORDER entered granting in part and denying in part <u>30</u> Plaintiff's Motion to Compel Response to Subpoena from Michael Traft; denying <u>44</u> Bruce Bower's Motion for Protective Order; granting in part and denying in part <u>59</u> Bruce Bower's Motion to Quash Subpoena; and taking under advisement <u>38</u> Plaintiff's Motion to Compel Yahoo! and Google to Comply with Subpoena, and <u>16</u> Defendant EgyptAir's Motion to Dismiss or Transfer Venue. (Dambrosio, Jolyne) (Entered: 02/11/2011)
02/24/2011	<u>76</u>	Document disclosure by Michael J Traft.(Traft, Michael) (Entered: 02/24/2011)
03/09/2011	<u>77</u>	MEMORANDUM OF LAW by Colin Bower. (Solomon, Joshua) (Entered: 03/09/2011)
03/09/2011	<u>78</u>	DECLARATION re <u>77</u> Memorandum of Law of <i>Joshua L. Solomon in Support of Plaintiff's Memorandum In Response To Court's Sua Sponte Request For Briefing Concerning Service of Process Or, In the Alternative, In Support of Motion To Direct Service of Process By Alternative Means</i> by Colin Bower. (Attachments: # <u>1</u> Exhibit A)(Solomon, Joshua) (Entered: 03/09/2011)
03/11/2011	<u>79</u>	MOTION for Order to Enforce Order Granting Motion to Compel Response to Subpoena from Michael Traft by Colin Bower.(Solomon, Joshua) (Entered: 03/11/2011)
03/11/2011	<u>80</u>	MEMORANDUM in Support re <u>79</u> MOTION for Order to Enforce Order Granting Motion to Compel Response to Subpoena from Michael Traft filed by Colin Bower. (Solomon, Joshua) (Entered: 03/11/2011)
03/11/2011	<u>81</u>	AFFIDAVIT in Support re <u>79</u> MOTION for Order to Enforce Order Granting Motion to Compel Response to Subpoena from Michael Traft filed by Colin Bower. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C)(Solomon, Joshua) (Entered: 03/11/2011)
03/14/2011	<u>82</u>	Ch. Magistrate Judge Judith G. Dein: ORDER entered. REPORT AND RECOMMENDATIONS re <u>16</u> EgyptAir's Motion to Dismiss or Transfer. Recommendation: that the Motion be denied. Objections to RRdue by 3/28/2011. (Dambrosio, Jolyne) (Entered: 03/14/2011)
03/28/2011	<u>83</u>	OBJECTION to <u>82</u> Report and Recommendations filed by EgyptAir Airlines Company. (Dougherty, Shalissa) (Entered: 03/28/2011)

03/29/2011		Judge Nancy Gertner: ELECTRONIC ORDER entered Affirming <u>82</u> Report and Recommendations, after reviewing the objections filed by the defendant. (Gertner, Nancy) (Entered: 03/29/2011)
03/29/2011		Judge Nancy Gertner: ELECTRONIC ORDER entered denying <u>16</u> Motion to Dismiss For Lack of Personal Jurisdiction or, Alternatively, to Dismiss or Transfer Pursuant to 28 U.S.C. Section 1406(a) Or U.S.C. Section 140(a). See Report and Recommendation of Magistrate Dein. (Gertner, Nancy) (Entered: 03/29/2011)
03/31/2011		Ch. Magistrate Judge Judith G. Dein: ELECTRONIC ORDER entered regarding <u>79</u> Plaintiff's Motion to Enforce Order Granting Motion to Compel Response to Subpoena from Michael Traft. There being no opposition, plaintiff's motion is allowed. The information Attorney Traft provided is inadequate and fails to comply with Fed. R. Civ. P. 45 or this Court's Order. Attorney Traft shall produce all responsive documents to plaintiff within 14 days of the date of this order. (Dambrosio, Jolyne) (Entered: 03/31/2011)
04/05/2011	<u>84</u>	Ch. Magistrate Judge Judith G. Dein: ORDER entered. MEMORANDUM OF DECISION AND ORDER denying <u>38</u> Plaintiff's Motion to Compel Yahoo! and Google to Comply with Subpoena. (Dambrosio, Jolyne) (Entered: 04/05/2011)
04/05/2011	<u>85</u>	MOTION to Vacate <i>Order Allowing Plaintiff's Motion to Compel Response to Subpoena</i> by Michael J Traft.(Traft, Michael) (Entered: 04/05/2011)
04/05/2011		ELECTRONIC NOTICE of Hearing: Status Conference set for 5/2/2011 10:15 AM in Courtroom 15 before Ch. Magistrate Judge Judith G. Dein. The parties shall submit a brief joint statement no later than three business days before the conference addressing the status of the case, scheduling for the remainder of the case through trial, use of alternative dispute resolution programs, and consent to trial before the Magistrate Judge. (Dambrosio, Jolyne) (Entered: 04/05/2011)
04/06/2011	<u>86</u>	Emergency MOTION for Extension of Time to 8/9/2011 to File Motion for Summary Judgment, MOTION for Extension of Time to 8/9/2011 to File (Responses due by 4/20/2011) by EgyptAir Airlines Company.(Dougherty, Shalissa) (Entered: 04/06/2011)
04/07/2011		Ch. Magistrate Judge Judith G. Dein: ELECTRONIC ORDER entered granting <u>86</u> Egypt Air's Emergency Motion for Extension of Time to 8/9/11 to file Dispositive Motions. Any further issues regarding scheduling shall be addressed at the Status Conference on 5/2/11. (Dambrosio, Jolyne) (Entered: 04/07/2011)
04/13/2011	<u>87</u>	Opposition re <u>85</u> MOTION to Vacate <i>Order Allowing Plaintiff's Motion to Compel Response to Subpoena</i> filed by Colin Bower. (Solomon, Joshua) (Entered: 04/13/2011)
04/13/2011	<u>88</u>	AFFIDAVIT of Joshua L. Solomon in Opposition re <u>85</u> MOTION to Vacate <i>Order Allowing Plaintiff's Motion to Compel Response to Subpoena</i> filed by Colin Bower. (Solomon, Joshua) (Entered: 04/13/2011)
04/15/2011	<u>89</u>	Ch. Magistrate Judge Judith G. Dein: ORDER entered regarding <u>85</u> Michael Traft's Motion to Vacate 3/31/11 Court Order. (Dambrosio, Jolyne) (Entered: 04/15/2011)

		04/15/2011)
04/19/2011	<u>90</u>	MOTION for Reconsideration of <i>Order Denying Motion to Compel Yahoo and Google to Comply With Third-Party Document Subpoenas with Certificate of Compliance with Local Rule 7.1</i> by Colin Bower.(Pollack, Barry) (Entered: 04/19/2011)
04/19/2011	<u>91</u>	MEMORANDUM in Support re <u>90</u> MOTION for Reconsideration of <i>Order Denying Motion to Compel Yahoo and Google to Comply With Third-Party Document Subpoenas with Certificate of Compliance with Local Rule 7.1</i> filed by Colin Bower. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C)(Pollack, Barry) (Entered: 04/19/2011)
04/26/2011	<u>92</u>	Transcript of Motion Hearing held on February 10, 2011, before Chief Magistrate Judge Judith G. Dein. The Transcript may be purchased through Maryann Young at 508-384-2003, viewed at the public terminal, or viewed through PACER after it is released. Court Reporter Name and Contact Information: None. Digital Recording transcribed by Maryann Young. Redaction Request due 5/17/2011. Redacted Transcript Deadline set for 5/27/2011. Release of Transcript Restriction set for 7/25/2011. (Scalfani, Deborah) (Entered: 04/26/2011)
04/27/2011	<u>93</u>	Cover Letter/request (non-motion) from Michael J. Traft <i>re: in camera response to 4/15/11 order</i> . (Traft, Michael) (Entered: 04/27/2011)
04/27/2011	<u>94</u>	STATUS REPORT <i>Joint Report</i> by Colin Bower, EgyptAir Airlines Company. (Solomon, Joshua) (Entered: 04/27/2011)
04/28/2011	<u>95</u>	NOTICE by Colin Bower <i>re in camera review</i> (Attachments: # <u>1</u> Exhibit A)(Solomon, Joshua) (Entered: 04/28/2011)
05/02/2011	<u>96</u>	Ch. Magistrate Judge Judith G. Dein: ORDER entered. SCHEDULING ORDER: Fact discovery to be completed by 6/1/2011. Joint proposed schedule due by 8/1/2011. (Dambrosio, Jolyne) (Entered: 05/02/2011)
05/02/2011		ELECTRONIC Clerk's Notes for proceedings held before Ch. Magistrate Judge Judith G. Dein: Status Conference held on 5/2/2011. Counsel report current discovery status. USMJ Dein extends schedule and will issue order. (Court Reporter: Digital Recording.) (Quinn, Thomas) (Entered: 05/03/2011)
05/03/2011	<u>97</u>	Opposition re <u>90</u> MOTION for Reconsideration of <i>Order Denying Motion to Compel Yahoo and Google to Comply With Third-Party Document Subpoenas with Certificate of Compliance with Local Rule 7.1</i> filed by Google Inc.. (Kelly, Sarah) (Entered: 05/03/2011)
05/03/2011	<u>98</u>	Opposition re <u>90</u> MOTION for Reconsideration of <i>Order Denying Motion to Compel Yahoo and Google to Comply With Third-Party Document Subpoenas with Certificate of Compliance with Local Rule 7.1</i> filed by Yahoo! Inc.. (Attachments: # <u>1</u> Exhibit A)(Sommer, Jacob) (Entered: 05/03/2011)
05/09/2011	<u>99</u>	Ch. Magistrate Judge Judith G. Dein: FURTHER ORDER entered re <u>30</u> Plaintiff's Motion to Compel Response to Subpoena from Michael Traft. (Dambrosio, Jolyne) (Entered: 05/09/2011)
05/13/2011	<u>100</u>	

		Emergency MOTION for Order to Enforce Order and Prevent Destruction of Evidence by Colin Bower. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Text of Proposed Order)(Solomon, Joshua) (Entered: 05/13/2011)
05/13/2011	<u>101</u>	Judge Nancy Gertner: ORDER entered granting <u>100</u> Motion for Order. Bruce Bower shall take forthwith all steps necessary to recover all emails from all Gmail accounts he holds or has held;By May 20, 2011, Bruce Bower must show cause why contempt proceedings should not proceed against him; and,Until further order of this Court, Google shall preserve any emails in Bruce Bowers present and former Gmail accounts that have been identified to it as such through counsel and subpoenas issued in this matter.So Ordered this 13th day of May, 2011 (Nicewicz, Craig) (Entered: 05/13/2011)
05/16/2011	<u>102</u>	NOTICE of Appearance by Michael J. Connolly on behalf of Bruce Bower (Connolly, Michael) (Entered: 05/16/2011)
05/17/2011		Ch. Magistrate Judge Judith G. Dein: ELECTRONIC ORDER entered regarding <u>90</u> Plaintiff's Motion for Reconsideration of Order Denying Motion to Compel Yahoo and Google to Comply With Third-Party Document Subpoenas. After consideration of the pleadings, the Motion is denied on the merits. The subscriber agreements of Yahoo and Google do not constitute the subscriber's express consent to release her emails in response to the third-party subpoenas. (Dambrosio, Jolyne) (Entered: 05/17/2011)
05/17/2011	<u>103</u>	Document disclosure by Michael J Traft.(Traft, Michael) (Main Document 103 replaced on 5/18/2011 to disclose attachments properly) (Geraldino-Karasek, Clarilde). (Additional attachments added on 5/18/2011: # <u>1</u> Exhibits) (Geraldino-Karasek, Clarilde). (Entered: 05/17/2011)
05/18/2011	<u>104</u>	MOTION for Order to grant relief based on Defendant EgyptAir's discovery violations by Colin Bower. (Attachments: # <u>1</u> Text of Proposed Order)(Solomon, Joshua) (Entered: 05/18/2011)
05/18/2011	<u>105</u>	MEMORANDUM in Support re <u>104</u> MOTION for Order to grant relief based on Defendant EgyptAir's discovery violations filed by Colin Bower. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E)(Solomon, Joshua) (Entered: 05/18/2011)
05/19/2011	<u>106</u>	NOTICE OF APPEAL OF MAGISTRATE JUDGE DECISION to District Court by Colin Bower re <u>99</u> Order (Solomon, Joshua) (Entered: 05/19/2011)
05/20/2011	<u>107</u>	Opposition re <u>100</u> Emergency MOTION for Order to Enforce Order and Prevent Destruction of Evidence filed by Bruce Bower. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Connolly, Michael) (Entered: 05/20/2011)
05/20/2011	<u>108</u>	DECLARATION re <u>107</u> Opposition to Motion to Enforce Court Order by Bruce Bower. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C)(Connolly, Michael) (Entered: 05/20/2011)
05/24/2011	<u>109</u>	Assented to MOTION for Leave to File <i>Response to Bruce Bower's Submission on Order to Show Cause why he Should not be Held in Contempt</i> by Colin Bower. (Attachments: # <u>1</u> Exhibit 1)(Solomon, Joshua) (Entered: 05/24/2011)
05/26/2011	<u>110</u>	Assented to MOTION for Order to for Issuance of an Order Directing Google, Inc. and Bruce Bower to Exchange the Necessary Consent to

		Produce EMails in Bruce Bower's EMail Account by Colin Bower. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C)(D'Arcy, Alexis) (Entered: 05/26/2011)
05/26/2011	<u>111</u>	MOTION for Extension of Time to complete discovery by Colin Bower.(D'Arcy, Alexis) (Main Document 111 replaced on 6/8/2011 to describe attachments properly) (Geraldino–Karasek, Clarilde). (Attachments added on 6/8/2011 to describe attachments properly: # <u>1</u> Exhibit) (Geraldino–Karasek, Clarilde). (Entered: 05/26/2011)
05/27/2011	<u>112</u>	NOTICE OF APPEAL OF MAGISTRATE JUDGE DECISION to District Court by Colin Bower re Order on Motion for Reconsideration, (Pollack, Barry) (Entered: 05/27/2011)
05/31/2011	<u>113</u>	Ch. Magistrate Judge Judith G. Dein: ORDER entered granting <u>110</u> Plaintiff's Assented to Motion for Order Directing Google, Inc. and Bruce Bower to Exchange Necessary Consent. (Dambrosio, Jolyne) (Entered: 05/31/2011)
06/01/2011	<u>114</u>	MEMORANDUM in Opposition re <u>104</u> MOTION for Order to grant relief based on Defendant EgyptAir's discovery violations <i>Memorandum of Law in Opposition to Plaintiff's Motion for Relief Based on Egyptair's Alleged Discovery Violations</i> filed by EgyptAir Airlines Company. (Voke, Brian) (Entered: 06/01/2011)
06/01/2011	<u>115</u>	DECLARATION re <u>114</u> Memorandum in Opposition to Motion, <i>Declaration of Christopher Carlsen In Opposition to Plaintiff's Motion for Relief Based on Discovery Violations</i> by EgyptAir Airlines Company. (Attachments: # <u>1</u> Exhibit A – Part 1 of 4 – Depo of Helmi, # <u>2</u> Exhibit A – Part 2 of 4 – Depo of Helmi, # <u>3</u> Exhibit A – Part 3 of 4 – Depo of Helmi, # <u>4</u> Exhibit A – Part 4 of 4 – Depo of Helmi, # <u>5</u> Exhibit B – Pgs from Helmi Dep 11–2–10, # <u>6</u> Exhibit C – Pgs from Singh Depo 5–6–11, # <u>7</u> Exhibit D – Pgs from Yan Depo 5–6–11)(Voke, Brian) (Entered: 06/01/2011)
06/01/2011	<u>116</u>	Assented to MOTION for Leave to File <i>Reply Brief and Supplemental Declaration</i> by Bruce Bower. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Connolly, Michael) (Entered: 06/01/2011)
06/02/2011		ELECTRONIC NOTICE issued requesting courtesy copy of <u>115</u> Declaration of Christopher Carlsen In Opposition to Plaintiff's Motion for Relief. Counsel is requested to submit a courtesy copy of this document to Ch. M.J. Dein by 6/8/11. The document must be clearly marked as a Courtesy Copy and reflect the document number assigned by CM/ECF. (Dambrosio, Jolyne) (Entered: 06/02/2011)
06/02/2011		Judge Nancy Gertner: ELECTRONIC ORDER entered granting <u>116</u> Motion for Leave to File Document ; Counsel using the Electronic Case Filing System should now file the document for which leave to file has been granted in accordance with the CM/ECF Administrative Procedures. Counsel must include – Leave to file granted on (date of order)– in the caption of the document. (Duong, Diep) (Entered: 06/02/2011)
06/02/2011		Judge Nancy Gertner: ELECTRONIC ORDER entered granting <u>109</u> Motion for Leave to File Document ; Counsel using the Electronic Case Filing System should now file the document for which leave to file has been

		granted in accordance with the CM/ECF Administrative Procedures. Counsel must include – Leave to file granted on (date of order)– in the caption of the document. (Duong, Diep) (Entered: 06/02/2011)
06/02/2011	<u>117</u>	Response by Colin Bower to <u>107</u> Opposition to Motion. (Attachments: # <u>1</u> Exhibit A)(Solomon, Joshua) (Entered: 06/02/2011)
06/02/2011	<u>118</u>	RESPONSE to Motion re <u>109</u> Assented to MOTION for Leave to File <i>Response to Bruce Bower's Submission on Order to Show Cause why he Should not be Held in Contempt (Reply to Plaintiff's Response to Bruce Bower's Submission on Order to Show Cause)</i> filed by Bruce Bower. (Connolly, Michael) (Entered: 06/02/2011)
06/02/2011	<u>119</u>	DECLARATION re <u>118</u> Response to Motion, (<i>Supplemental Declaration</i>) by Bruce Bower. (Connolly, Michael) (Entered: 06/02/2011)
06/03/2011	<u>120</u>	MOTION for Leave to File <i>Reply Brief</i> by Colin Bower. (Attachments: # <u>1</u> Exhibit A)(Solomon, Joshua) (Entered: 06/03/2011)
06/06/2011		Ch. Magistrate Judge Judith G. Dein: ELECTRONIC ORDER entered granting <u>120</u> Plaintiff's Motion for Leave to File Reply Brief. Counsel should now file the document for which leave to file has been granted in accordance with the CM/ECF Administrative Procedures. Counsel must include – Leave to file granted on (date of order)– in the caption of the document. (Dambrosio, Jolyne) (Entered: 06/06/2011)
06/06/2011	<u>121</u>	REPLY to Response to <u>104</u> MOTION for Order to grant relief based on Defendant EgyptAir's discovery violations filed by Colin Bower. (Solomon, Joshua) (Entered: 06/06/2011)
06/07/2011		ELECTRONIC NOTICE Setting Hearing on Plaintiff's <u>104</u> MOTION for Relief Based on Defendant EgyptAir's Discovery Violations and <u>111</u> MOTION for Extension of Time to Complete Discovery: Motion Hearing set for 6/16/2011 10:00 AM in Courtroom 15 before Ch. Magistrate Judge Judith G. Dein. (Dambrosio, Jolyne) (Entered: 06/07/2011)
06/08/2011	<u>122</u>	Response by Google Inc. to <u>112</u> Notice of Appeal of Magistrate Judge Decision to District Court <i>Dated May 17, 2011</i> . (Kelly, Sarah) (Entered: 06/08/2011)
06/09/2011	<u>123</u>	Opposition re <u>111</u> MOTION for Extension of Time to complete discovery filed by EgyptAir Airlines Company. (Voke, Brian) (Entered: 06/09/2011)
06/09/2011	<u>124</u>	DECLARATION re <u>123</u> Opposition to Motion <i>Declaration of Christopher Carlsen in Opposition to Plaintiff's Motion for Enlargement of Time to Complete Discovery</i> by EgyptAir Airlines Company. (Attachments: # <u>1</u> Exhibit A – EgyptAir's Resp to Pltfs Ints, # <u>2</u> Exhibit B – Swissport's letter 11–10–10, # <u>3</u> Exhibit C – Part 1 – Kim Yan Depo, # <u>4</u> Exhibit C – Part 2 – Kim Yan Depo, # <u>5</u> Exhibit D – Part 1 – Satya Cindy Singh Depo, # <u>6</u> Exhibit D – Part 2 – Satya Cindy Singh Depo)(Voke, Brian) (Entered: 06/09/2011)
06/10/2011		ELECTRONIC NOTICE issued requesting courtesy copy of <u>124</u> Declaration of Christopher Carlson. Counsel is requested to submit a courtesy copy of this document to Ch. M.J. Dein by 6/14/11. The document must be clearly marked as a Courtesy Copy and reflect the document number assigned

			by CM/ECF . (Dambrosio, Jolyne) (Entered: 06/10/2011)
06/10/2011	<u>125</u>		Response by Yahoo! Inc. to <u>112</u> Notice of Appeal of Magistrate Judge Decision to District Court. (Sommer, Jacob) (Entered: 06/10/2011)
06/16/2011	<u>126</u>		NOTICE of Appearance by Laura B. Angelini on behalf of Bruce Bower (Angelini, Laura) (Entered: 06/16/2011)
06/16/2011	<u>127</u>		Ch. Magistrate Judge Judith G. Dein: ORDER entered denying <u>104</u> Plaintiff's Motion for Relief, and granting <u>111</u> Plaintiff's Motion for Extension of Time. (Dambrosio, Jolyne) (Entered: 06/16/2011)
06/16/2011			ELECTRONIC Clerk's Notes for proceedings held before Ch. Magistrate Judge Judith G. Dein: Motion Hearing held on 6/16/2011 re <u>104</u> MOTION for Order to grant relief based on Defendant EgyptAir's discovery violations filed by Colin Bower. USMJ Dein hears arguments from counsel and denied motion. Court addressed scheduling and will issue order. (Court Reporter: Digital Recording.) (Quinn, Thomas) (Entered: 06/16/2011)
07/20/2011	<u>128</u>		Assented to MOTION to Withdraw as Attorney by Bruce Bower.(Hogan, William) (Entered: 07/20/2011)
07/25/2011			Ch. Magistrate Judge Judith G. Dein: ELECTRONIC ORDER entered granting <u>128</u> Motion to Withdraw as Attorney. Attorney William T. Hogan, III terminated. (Dambrosio, Jolyne) (Entered: 07/25/2011)
08/03/2011			Judge Nancy Gertner: ELECTRONIC ORDER entered: On April 5, 2011, Magistrate Judge Dein issued an order denying plaintiff's motion to compel production by Yahoo! and Google of emails from and to all email accounts registered to the defendant El-Nady from July 1, 2009 to the date of the order (document #84). Subsequently, plaintiff filed a Motion for Reconsideration of Order Denying Motion to Compel (document #90) which Judge Dein also denied. On May 27, 2011, plaintiff appealed Judge Dein's decision to me (docket # 112). The issue is fully briefed. For the reasons outline in Judge Dein's initial decision, the appeal is DENIED. Judge Dein's decision stands. (Gertner, Nancy) (Entered: 08/03/2011)
08/04/2011	<u>129</u>		NOTICE of Withdrawal of Appearance by Lisa G. Arrowood (Arrowood, Lisa) (Entered: 08/04/2011)
08/05/2011	<u>130</u>		NOTICE of Withdrawal of Appearance by Lisa G. Arrowood (Arrowood, Lisa) (Entered: 08/05/2011)
08/16/2011	<u>131</u>		NOTICE of Withdrawal of Appearance by Alexis V. D'Arcy (D'Arcy, Alexis) (Entered: 08/16/2011)
09/23/2011			ELECTRONIC NOTICE of Reassignment. Judge Richard G. Stearns added. Judge Nancy Gertner no longer assigned to case. (Costello2, Helen) (Entered: 09/23/2011)
09/29/2011	<u>132</u>		Joint MOTION Set Briefing Schedule by Colin Bower, EgyptAir Airlines Company.(Solomon, Joshua) (Entered: 09/29/2011)
09/30/2011	<u>133</u>		NOTICE of Appearance by Julie E. Green on behalf of Colin Bower (Green, Julie) (Entered: 09/30/2011)
10/04/2011			

		Ch. Magistrate Judge Judith G. Dein: ELECTRONIC ORDER entered granting <u>132</u> Joint Motion to Set Briefing Schedule. (Dambrosio, Jolyne) (Entered: 10/04/2011)
10/14/2011	<u>134</u>	MOTION To Exclude Expert Testimony of Fatma El-Hamidi and Jeffrey C. Price by Colin Bower.(Solomon, Joshua) (Entered: 10/14/2011)
10/14/2011	<u>135</u>	MEMORANDUM in Support re <u>134</u> MOTION To Exclude Expert Testimony of Fatma El-Hamidi and Jeffrey C. Price filed by Colin Bower. (Solomon, Joshua) (Entered: 10/14/2011)
10/14/2011	<u>136</u>	DECLARATION re <u>134</u> MOTION To Exclude Expert Testimony of Fatma El-Hamidi and Jeffrey C. Price of <i>Joshua L. Solomon</i> by Colin Bower. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F)(Solomon, Joshua) (Entered: 10/14/2011)
10/14/2011	<u>137</u>	MOTION in Limine to Preclude Plaintiff's Expert by EgyptAir Airlines Company.(Dougherty, Shalissa) (Entered: 10/14/2011)
10/14/2011	<u>138</u>	MEMORANDUM in Support re <u>137</u> MOTION in Limine to Preclude Plaintiff's Expert filed by EgyptAir Airlines Company. (Dougherty, Shalissa) (Entered: 10/14/2011)
10/17/2011		ELECTRONIC NOTICE issued requesting courtesy copy of <u>136</u> Declaration of Joshua L. Solomon. Counsel is requested to submit a courtesy copy of this document to Ch. M.J. Dein by 10/24/11. The document must be clearly marked as a Courtesy Copy and reflect the document number assigned by CM/ECF. (Dambrosio, Jolyne) (Entered: 10/17/2011)
10/17/2011	<u>139</u>	EXHIBIT re <u>138</u> Memorandum in Support of Motion to Preclude the Testimony of Plaintiff's Expert Witness Jameel Joseph by EgyptAir Airlines Company. (Attachments: # <u>1</u> Exhibit Part 2 of Exhibit A, # <u>2</u> Exhibit Part 1 of Exhibit B, # <u>3</u> Exhibit Part 2 of Exhibit B)(Dougherty, Shalissa) (Entered: 10/17/2011)
10/18/2011		ELECTRONIC NOTICE issued requesting courtesy copy of <u>139</u> Exhibit to Egypt Air's Memorandum in Support of Motion to Preclude. Counsel is requested to submit a courtesy copy of this document to Ch. M.J. Dein by 10/24/11. The document must be clearly marked as a Courtesy Copy and reflect the document number assigned by CM/ECF. (Dambrosio, Jolyne) (Entered: 10/18/2011)
10/26/2011	<u>140</u>	Assented to MOTION for Extension of Time to November 4, 2011 to Oppose Motions to Exclude Expert Testimony by Colin Bower.(Solomon, Joshua) (Entered: 10/26/2011)
10/27/2011		Ch. Magistrate Judge Judith G. Dein: ELECTRONIC ORDER entered granting <u>140</u> Plaintiff's Assented to Motion for Extension of Time to 11/4/11 to Oppose Motions to Exclude Expert Testimony. (Dambrosio, Jolyne) (Entered: 10/27/2011)
11/04/2011	<u>141</u>	MEMORANDUM in Opposition re <u>134</u> MOTION To Exclude Expert Testimony of Fatma El-Hamidi and Jeffrey C. Price filed by EgyptAir Airlines Company. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D)(Dougherty, Shalissa) (Entered: 11/04/2011)

11/04/2011	<u>142</u>		MEMORANDUM in Opposition re <u>137</u> MOTION in <i>Limine to Preclude Plaintiff's Expert Jameel Joseph</i> filed by Colin Bower. (Solomon, Joshua) (Entered: 11/04/2011)
11/04/2011	<u>143</u>		AFFIDAVIT of Joshua L. Solomon in Opposition re <u>137</u> MOTION in <i>Limine to Preclude Plaintiff's Expert Jameel Joseph</i> filed by Colin Bower. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Solomon, Joshua) (Entered: 11/04/2011)
11/07/2011			Case no longer referred to Ch. Magistrate Judge Judith G. Dein. (Dambrosio, Jolyne) (Entered: 11/07/2011)
11/10/2011	<u>144</u>	27	Judge Richard G. Stearns: ORDER entered granting <u>134</u> Motion Preclude Expert Witness Testimony; granting <u>137</u> Motion in <i>Limine</i> (RGS, law3) (Entered: 11/10/2011)
11/11/2011	<u>145</u>		MOTION for Reconsideration re <u>144</u> Order on Motion for Miscellaneous Relief, Order on Motion in <i>Limine</i> by Colin Bower.(Solomon, Joshua) (Entered: 11/11/2011)
11/11/2011	<u>146</u>		MEMORANDUM in Support re <u>145</u> MOTION for Reconsideration re <u>144</u> Order on Motion for Miscellaneous Relief, Order on Motion in <i>Limine</i> filed by Colin Bower. (Solomon, Joshua) (Entered: 11/11/2011)
11/14/2011			Judge Richard G. Stearns: ELECTRONIC ORDER entered denying <u>145</u> Motion for Reconsideration. (Zierk, Marsha) (Entered: 11/14/2011)
12/06/2011	<u>147</u>		Assented to MOTION for Extension of Time <i>Regarding Deadlines for Motions for Summary Judgment</i> by Colin Bower.(Solomon, Joshua) (Entered: 12/06/2011)
12/06/2011			Judge Richard G. Stearns: ELECTRONIC ORDER entered granting <u>147</u> Motion for Extension of Time Summary judgment motions will be filed with the court no later than close of business on December 14, 2011 and any oppositions will be filed no later than close of business on January 24, 2012. (RGS, law3) Modified on 12/6/2011 (RGS, law3). (Entered: 12/06/2011)
12/09/2011	<u>148</u>		Assented to MOTION for Leave to File <i>Papers Slightly in Excess of the Twenty Page Limit Provided under Local Rule 7.1(B)(4)</i> by EgyptAir Airlines Company.(Dougherty, Shalissa) (Entered: 12/09/2011)
12/09/2011			Judge Richard G. Stearns: ELECTRONIC ORDER entered granting <u>148</u> Motion for Leave to File Document ; Counsel using the Electronic Case Filing System should now file the document for which leave to file has been granted in accordance with the CM/ECF Administrative Procedures. Counsel must include – Leave to file granted on (date of order)– in the caption of the document. (RGS, law3) (Entered: 12/09/2011)
12/14/2011	<u>149</u>		MOTION for Summary Judgment by EgyptAir Airlines Company.(Dougherty, Shalissa) (Entered: 12/14/2011)
12/14/2011	<u>150</u>		Statement of Material Facts L.R. 56.1 re <u>149</u> MOTION for Summary Judgment filed by EgyptAir Airlines Company. (Dougherty, Shalissa) (Entered: 12/14/2011)
12/14/2011	<u>151</u>		MEMORANDUM in Support re <u>149</u> MOTION for Summary Judgment filed

		by EgyptAir Airlines Company. (Dougherty, Shalissa) (Entered: 12/14/2011)
12/14/2011	<u>152</u>	AFFIDAVIT of Christopher Carlsen in Support re <u>149</u> MOTION for Summary Judgment filed by EgyptAir Airlines Company. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit L)(Dougherty, Shalissa) (Entered: 12/14/2011)
12/14/2011	<u>153</u>	AFFIDAVIT of Sameh A. Aziz Helmi in Support re <u>149</u> MOTION for Summary Judgment filed by EgyptAir Airlines Company. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, Part 1, # <u>5</u> Exhibit D, Part 2, # <u>6</u> Exhibit D, Part 3)(Dougherty, Shalissa) (Entered: 12/14/2011)
12/14/2011	<u>154</u>	AFFIDAVIT of Sayta Cindy Singh in Support re <u>149</u> MOTION for Summary Judgment filed by EgyptAir Airlines Company. (Dougherty, Shalissa) (Entered: 12/14/2011)
12/14/2011	<u>155</u>	AFFIDAVIT of Rachel Lopez in Support re <u>149</u> MOTION for Summary Judgment filed by EgyptAir Airlines Company. (Dougherty, Shalissa) (Entered: 12/14/2011)
01/18/2012	<u>156</u>	Assented to MOTION for Leave to File <i>Summary Judgment Opposition Brief in Excess of Page Limitation</i> by Colin Bower.(Solomon, Joshua) (Entered: 01/18/2012)
01/19/2012		Judge Richard G. Stearns: ELECTRONIC ORDER entered granting <u>156</u> Motion for Leave to File Document. Counsel using the Electronic Case Filing System should now file the document for which leave to file has been granted in accordance with the CM/ECF Administrative Procedures. Counsel must include – Leave to file granted on (date of order)– in the caption of the document. (RGS, law3) (Entered: 01/19/2012)
01/24/2012	<u>157</u>	MOTION for Ruling Resolving Subject Matter Jurisdiction by Colin Bower.(Solomon, Joshua) (Entered: 01/24/2012)
01/24/2012	<u>158</u>	MEMORANDUM in Support re <u>157</u> MOTION for Ruling Resolving Subject Matter Jurisdiction filed by Colin Bower. (Attachments: # <u>1</u> Exhibit A)(Solomon, Joshua) (Entered: 01/24/2012)
01/24/2012	<u>159</u>	MEMORANDUM in Opposition re <u>149</u> MOTION for Summary Judgment filed by Colin Bower. (Solomon, Joshua) (Entered: 01/24/2012)
01/24/2012	<u>160</u>	DECLARATION re <u>159</u> Memorandum in Opposition to Motion of <i>Joshua L. Solomon in Support of Opposition to Motion for Summary Judgment</i> by Colin Bower. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit L, # <u>13</u> Exhibit M, # <u>14</u> Exhibit N, # <u>15</u> Exhibit O, # <u>16</u> Exhibit P)(Solomon, Joshua) (Entered: 01/24/2012)
01/24/2012	<u>161</u>	DECLARATION re <u>159</u> Memorandum in Opposition to Motion of <i>Colin Bower in Opposition to Motion for Summary Judgment</i> by Colin Bower. (Attachments: # <u>1</u> Exhibit A)(Solomon, Joshua) (Entered: 01/24/2012)
01/24/2012	<u>162</u>	Statement of Material Facts L.R. 56.1 re <u>149</u> MOTION for Summary Judgment (<i>in Opposition</i>) filed by Colin Bower. (Solomon, Joshua) (Entered: 01/24/2012)

		01/24/2012)
02/02/2012		ELECTRONIC NOTICE Setting Hearing on <u>149</u> MOTION for Summary Judgment : Motion Hearing set for 3/1/2012 at 3:00 PM in Courtroom 21 before Judge Richard G. Stearns. (Seelye, Terri) (Entered: 02/02/2012)
02/03/2012		Judge Richard G. Stearns: ELECTRONIC ORDER entered. This order refers to plaintiff's motion for a ruling resolving subject matter jurisdiction (Dkt # 158). While the court will consider entertaining this motion, counsel must first explain the theory under which Mirvat El-Nady Bower (El-Nady) could be deemed a "fugitive from justice." While the court accepts as a broad proposition of law that where a person is a fugitive from justice her place of domicile for diversity jurisdiction purposes is the place from which she fled, see <i>Howell v. Tribune Entm't Co.</i> , 106 F.3d 215, 218 (7th Cir. 1997), a fugitive from justice in both the common law and statutory contexts is defined as a person fleeing from a criminal prosecution or seeking to avoid providing testimony in a criminal proceeding. See generally <i>United States v. 939 Salem Street, Lynnfield, Ma.</i> , 2011 WL 3652525, at *2 (D. Mass. Aug. 19, 2011), quoting <i>Collazos v. United States</i> , 368 F.3d 190, 199 (2nd Cir. 2004) (the term "fugitives" includes those who 'learned that their arrests were sought and who then refused to return to the United States in order to avoid prosecution.'). See also 18 U.S.C. § 921(a)(15) ("The term 'fugitive from justice' means any person who has fled from any State to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding.") The court is not aware that El-Nady was either the subject of an arrest warrant or had been subpoenaed or otherwise given notice that her testimony was required in a criminal proceeding in either state or federal court prior to her leaving New York for Egypt. (RGS, law3) (Entered: 02/03/2012)
02/06/2012	<u>163</u>	RESPONSE to to Plaintiff's Rule 56.1 Statement of Facts filed by EgyptAir Airlines Company. (Dougherty, Shalissa) Modified on 2/7/2012 (Flaherty, Elaine). (Entered: 02/06/2012)
02/06/2012	<u>164</u>	REPLY to Response to <u>149</u> MOTION for Summary Judgment filed by EgyptAir Airlines Company. (Attachments: # <u>1</u> Exhibit Exhibit A, # <u>2</u> Exhibit Exhibit B)(Dougherty, Shalissa) (Entered: 02/06/2012)
02/06/2012	<u>165</u>	Response to Court Order from Joshua L. Solomon <i>concerning February 3, 2012 Order</i> . (Solomon, Joshua) Modified on 2/7/2012 (Flaherty, Elaine). (Additional attachment(s) added on 2/13/2012: # <u>1</u> exhibits) (Flaherty, Elaine). (Entered: 02/06/2012)
02/06/2012		Judge Richard G. Stearns: ELECTRONIC ORDER entered. This Order refers to plaintiff's Letter/request (non-motion), Dkt # 165. Defendant shall respond and show cause why this action should not be remanded to the state court in which it was initially filed.(RGS, law3) (Entered: 02/06/2012)
02/07/2012	<u>166</u>	RESPONSE to Motion re <u>157</u> MOTION for Ruling Resolving Subject Matter Jurisdiction filed by EgyptAir Airlines Company. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit Part 1 of F, # <u>7</u> Exhibit Part 2 of F)(Dougherty, Shalissa) (Entered: 02/07/2012)
02/07/2012	<u>167</u>	MOTION for Leave to File <i>Reply Memorandum Concerning Opposition to Motion for Ruling Resolving Subject Matter Jurisdiction</i> by Colin Bower. (Attachments: # <u>1</u> Proposed Reply)(Solomon, Joshua) (Entered: 02/07/2012)

02/08/2012			Judge Richard G. Stearns: ELECTRONIC ORDER entered granting <u>167</u> Motion for Leave to File Document. (RGS, law3) (Entered: 02/08/2012)
02/08/2012			ELECTRONIC NOTICE Setting Hearing on Motion <u>157</u> for Ruling Resolving Subject Matter Jurisdiction : Motion Hearing set for 2/10/2012 at 3:15 PM in Courtroom 21 before Judge Richard G. Stearns. (Seelye, Terri) (Entered: 02/08/2012)
02/08/2012	<u>168</u>		REPLY to Response to <u>157</u> MOTION for Ruling Resolving Subject Matter Jurisdiction filed by Colin Bower. (Solomon, Joshua) (Entered: 02/08/2012)
02/10/2012			ELECTRONIC Clerk's Notes for proceedings held before Judge Richard G. Stearns: Hearing re Motion for Ruling on Subject Matter Jurisdiction held on 2/10/2012. The court will take this matter under advisement. Parties should file any additional briefings with the court by the close of business on February 17, 2012. (Court Reporter: Debra Joyce at joycedebra@gmail.com.) (Attorneys present: Joshua Solomon & Julie Green for plaintiff Colin Bower; Christopher Carlsen for defendant EgyptAir) (RGS, law3) (Entered: 02/10/2012)
02/17/2012	<u>169</u>		Supplemental MEMORANDUM in Support re <u>157</u> MOTION for Ruling Resolving Subject Matter Jurisdiction filed by Colin Bower. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B) (Green, Julie) (Entered: 02/17/2012)
02/17/2012	<u>170</u>		Supplemental RESPONSE to Motion re <u>157</u> MOTION for Ruling Resolving Subject Matter Jurisdiction filed by EgyptAir Airlines Company. (Attachments: # <u>1</u> Exhibit A) (Dougherty, Shalissa) (Entered: 02/17/2012)
02/21/2012	<u>171</u>		Judge Richard G. Stearns: ORDER entered re: <u>157</u> Motion to Rule on Subject Matter Jurisdiction. (RGS, law3) (Entered: 02/21/2012)
03/01/2012			ELECTRONIC Clerk's Notes for proceedings held before Judge Richard G. Stearns: Motion Hearing held on 3/1/2012 re <u>149</u> MOTION for Summary Judgment filed by EgyptAir Airlines Company. The court will take this motion under advisement. (Court Reporter: James Gibbons at jmmsgibbons@yahoo.com.) (Attorneys present: Green and Solomon for plaintiff and Carlsen and Voke for defendant) (RGS, law3) (Entered: 03/01/2012)
03/06/2012	<u>172</u>		NOTICE by EgyptAir Airlines Company re <u>149</u> MOTION for Summary Judgment (Attachments: # <u>1</u> Exhibit A) (Dougherty, Shalissa) (Entered: 03/06/2012)
03/08/2012	<u>173</u>		Supplemental MEMORANDUM in Opposition re <u>149</u> MOTION for Summary Judgment <i>Addressing Ko v EVA Airlines</i> filed by Colin Bower. (Green, Julie) (Entered: 03/08/2012)
03/09/2012	<u>174</u>		ADDENDUM re <u>149</u> MOTION for Summary Judgment <i>Responding to Plaintiff's Supplemental Memorandum regarding Andrew Ko v. EVA Airways</i> filed by EgyptAir Airlines Company. (Attachments: # <u>1</u> Exhibit A) (Dougherty, Shalissa) (Entered: 03/09/2012)
03/21/2012	<u>175</u>	29	Judge Richard G. Stearns: ORDER entered granting <u>149</u> EgyptAir's Motion for Summary Judgment (RGS, law3) (Entered: 03/21/2012)
03/22/2012	<u>176</u>		

			Judge Richard G. Stearns: ORDER entered. Separate and final judgment entered for EgyptAir pursuant to Fed. R. Civ. P. 54(b).(RGS, law3) (Entered: 03/22/2012)
03/22/2012	<u>177</u>		Judge Richard G. Stearns: JUDGMENT for defendant EgyptAir, ENTERED. (Flaherty, Elaine) (Entered: 03/22/2012)
04/10/2012	<u>178</u>		NOTICE OF APPEAL as to <u>171</u> Order on Motion for Miscellaneous Relief, <u>176</u> Order, <u>175</u> Order on Motion for Summary Judgment, <u>144</u> Order on Motion for Miscellaneous Relief, Order on Motion in Limine, <u>177</u> Judgment, Order on Motion for Reconsideration by Colin Bower Filing fee: \$ 455, receipt number 0101-3895896 Fee Status: Not Exempt. NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at http://www.ca1.uscourts.gov MUST be completed and submitted to the Court of Appeals. Counsel shall register for a First Circuit CM/ECF Appellate Filer Account at http://pacer.psc.uscourts.gov/cmecf. Counsel shall also review the First Circuit requirements for electronic filing by visiting the CM/ECF Information section at http://www.ca1.uscourts.gov/efiling.htm. US District Court Clerk to deliver official record to Court of Appeals by 4/30/2012. (Solomon, Joshua) (Entered: 04/10/2012)
04/11/2012	<u>179</u>		Certified and Transmitted Abbreviated Electronic Record on Appeal to US Court of Appeals re <u>178</u> Notice of Appeal, (Ramos, Jeanette) (Entered: 04/11/2012)
04/11/2012			USCA Case Number 12-1427 for <u>178</u> Notice of Appeal, filed by Colin Bower. (Ramos, Jeanette) (Entered: 04/11/2012)
04/19/2012	<u>180</u>	57	NOTICE OF CROSS APPEAL as to <u>175</u> Order on Motion for Summary Judgment, <u>144</u> Order on Motion for Miscellaneous Relief, Order on Motion in Limine by EgyptAir Airlines Company. (Reason the filer is exempt from the payment of the fee: Filing Fee paid.) NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at http://www.ca1.uscourts.gov MUST be completed and submitted to the Court of Appeals. Counsel shall register for a First Circuit CM/ECF Appellate Filer Account at http://pacer.psc.uscourts.gov/cmecf. Counsel shall also review the First Circuit requirements for electronic filing by visiting the CM/ECF Information section at http://www.ca1.uscourts.gov/efiling.htm. US District Court Clerk to deliver official record to Court of Appeals by 5/9/2012. (Dougherty, Shalissa) (Entered: 04/19/2012)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 10-10405-RGS

COLIN BOWER

v.

MIRVAT EL-NADY and EGYPTAIR AIRLINES

MEMORANDUM AND ORDER ON PARTIES CROSS-MOTIONS TO
PRECLUDE THE TESTIMONY OF EXPERT WITNESSES JAMEEL JOSEPH,
FATMA EL-HAMIDI, AND JEFFREY C. PRICE

November 10, 2011

STEARNS, D.J.

Plaintiff Colin Bower brought this action on his own behalf and as the guardian and legal custodian of his two minor children after his ex-wife, defendant Mirvat El-Nady, abducted their children in August of 2009 without his consent and in violation of a court order granting full custody to Bower. Bower claims that EgyptAir, the airline on which El-Nady flew with the children from New York to Egypt, is liable for interference with Bower's custodial relations, negligence, negligent infliction of emotional distress, and loss of filial consortium. *See* Bower's Am. Compl. (Dkt # 5).

The issue in this case is not whether EgyptAir violated a legal duty under federal law to investigate potential terrorist activity or a duty under international law to divert harm away from its passengers, its aircraft, or John F. Kennedy Airport. The issue

rather is whether EgyptAir owed a legal duty to Bower to investigate the possibility that the two children traveling with their mother on an EgyptAir flight to Cairo were the subject of a court order granting custody to Bower. The expert testimony both parties propose might have relevance in a terrorist case, however, it has no bearing on any potential legal duty in this case.

Mr. Joseph, Mr. Price, and Ms. El-Hamidi can offer no assistance in answering this question. *See United States v. Sepulveda*, 15 F.3d 1161, 1183 (1st Cir. 1993) (“Because gauging an expert witness’s usefulness is almost always a case-specific inquiry, the law affords trial judges substantial discretion in connection with the admission or exclusion of opinion evidence.”).

ORDER

For the foregoing reasons, both motions to preclude the experts’ witness testimony are ALLOWED.

SO ORDERED.

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 10-10405-RGS

COLIN BOWER, on his own behalf
and on behalf of his minor children, N and R

v.

MIRVAT EL-NADY,
and EGYPTAIR AIRLINES

MEMORANDUM AND ORDER ON DEFENDANT
EGYPTAIR AIRLINES' MOTION
FOR SUMMARY JUDGMENT

March 21, 2012

STEARNS, D.J.

Plaintiff Colin Bower brought this action on his own behalf and in his capacity as the guardian of his two minor children after his former wife, defendant Mirvat El-Nady, fled to Cairo, Egypt, in August of 2009, taking the children with her without his consent and in violation of a Massachusetts court order granting custody to Bower. This decision does not affect the validity of the custody order, or the criminal prosecution of Mirvat El-Nady. Rather, it involves a related but separate claim against defendant EgyptAir, the airline on which El-Nady flew with her children from New York to Cairo. Bower alleges that EgyptAir should have refused passage to El-Nady and the children, and by failing to do so is liable for interference with his custodial

relations, negligence, negligent infliction of emotional distress, and loss of filial consortium.

PROCEDURAL BACKGROUND

On February 5, 2010, Bower brought this action in the Massachusetts Superior Court. On March 8, 2010, EgyptAir removed the case to the federal district court on both diversity and preemption grounds. After the removal, Bower filed an Amended Complaint on March 12, 2010. The case was assigned to Judge Gertner. On June 18, 2010, EgyptAir filed a motion to dismiss for lack of personal jurisdiction, or, in the alternative, to dismiss or transfer venue to New York pursuant to 28 U.S.C. § 1406(a) or § 1404(a). A number of jurisdictional discovery motions ensued, including motions to compel the deposition testimony of Bruce Bower (Colin Bower's father), a motion to compel Michael Traft, El-Nady's attorney, to respond to a subpoena for an in camera inspection by the court of a privilege log and retention agreement with El-Nady, as well as motions to quash various subpoenas to third-parties. The resolution of these motions was referred by Judge Gertner to Magistrate Judge Dein. On March 29, 2011, Judge Gertner adopted a Report and Recommendation that she deny EgyptAir's motion to dismiss.¹

¹ On June 16, 2011, Magistrate Judge Dein, in a separate decision, denied Bower's motion for relief based on EgyptAir's alleged discovery violations.

On September 23, 2011, following Judge Gertner's retirement, the case was assigned to this session. On February 21, 2012, the court resolved a subject matter jurisdiction dispute among the parties, finding the existence of diversity jurisdiction pursuant to 28 U.S.C. § 1332. *See Bower v. El-Nady*, --- F. Supp. 2d ----, 2012 WL 542589 (D. Mass. Feb. 21, 2012). Presently before the court is EgyptAir's motion for summary judgment. The court heard oral argument on March 1, 2012. Neither El-Nady nor her representative appeared at the hearing.

FACTUAL BACKGROUND

The facts, in the light most favorable to Bower as the nonmoving party, are as follows.² El-Nady, an Egyptian citizen, and Bower, a United States citizen, met in Cairo, Egypt, and were married there in 1998. They later moved to London, where their two sons, N and R, were born. The children are citizens of both the United Kingdom and the United States.³ In 2005, the family moved to Massachusetts, but by December of 2008, the marriage had deteriorated into a divorce. Bower was given sole legal custody of the children, but shared physical custody with his ex-wife. Judgment of Divorce ¶ 1. Under the terms of the divorce decree, El-Nady was not permitted to

² *See LeBlanc v. Great Am. Ins. Co.*, 6 F.3d 836, 841 (1st Cir. 1993).

³ Under a 2004 change in Egyptian law, the children are also eligible to become citizens of Egypt.

take the children out of Massachusetts. *Id.* ¶ 8. Between December of 2008 and August of 2009, El-Nady lived in an apartment in Newton and the children attended private school in Boston.

On August 11, 2009, during a scheduled multi-day visit, El-Nady drove the children to John F. Kennedy International Airport (JFK) in New York and purchased three one-way business-class tickets to Cairo on a departing EgyptAir flight. Am. Compl. ¶ 11. El-Nady paid for the tickets, which cost nearly \$10,000, with cash. Statement of Facts (SOF) ¶¶ 34-35, 38, 84.⁴ El-Nady produced her own Egyptian passport, as well as Egyptian passports for N and R. SOF ¶ 36. The last name on her passport – El-Nady – differed from the name on her sons’ passports.⁵ *Id.* Bower contends that he had no knowledge that his sons had been issued Egyptian passports and that he had never consented to the issuance.⁶ *Id.* ¶ 37.

EgyptAir did not examine the children’s passports for prior entry visas to the

⁴ Bower responded to EgyptAir’s statement of facts using the same paragraph numbers. *See* Dkt # 150 & # 162.

⁵ The boys’ passports listed their last name as “Power” instead of “Bower.”

⁶ EgyptAir maintains that the passports appeared facially valid. *Id.* ¶ 37, citing Helmi Decl. ¶ 10.

United States, nor were there any.⁷ *Id.* ¶¶ 34, 87. Bower asserts that EgyptAir also failed to request I-94 forms from El-Nady for herself and the children.⁸ *Id.* ¶ 88.

On August 16, 2009, Bower discovered that the children were missing and filed a police report. As a result, El-Nady was charged with both state and federal criminal kidnapping offenses. Am. Compl. ¶¶ 7, 24. Since August of 2009, Bower has seen his children four times. SOF ¶ 80. Each of the visits took place in Cairo and were arranged through the United States Embassy; the visits were supervised by El-Nady and members of her family. *Id.* During the visits, Bower observed a “shift in the behavior of his children reflecting serious psychological injury and trauma” and that “both boys appeared physically unhealthy.” *Id.* ¶ 103. Bower alleges that he has

⁷ EgyptAir states that when a passenger flies from New York to Cairo with an Egyptian passport, his or her passport is not checked for the presence of an entry visa issued by either the United States or Egypt. “An Egyptian citizen is not required to have a visa to enter Egypt, and a United States entry visa is not required in order for a passenger to travel out of the United States.” *Id.* ¶ 54.

⁸ A Form I-94 is an arrival/departure record submitted by non-U.S. citizens traveling to and from the United States. As a general rule, a non-citizen who is not a permanent resident of the United States is required to surrender the Form upon departing from the United States. In addition, an airline “departing from the United States to any place outside the United States must present a properly completed departure portion of an Arrival/Departure Record, Form I-94, to the Customs and Border Protection (CBP) officer at the port of departure for each person on board. Whenever possible, the departure Form I-94 presented must be the same form given to the alien at the time of arrival in the United States. The carrier must endorse the I-94 with the departure information on the reverse of the form” 8 C.F.R. § 231.2(b).

personally suffered “intense emotional distress which has been accompanied by physical manifestations including headaches, stomachaches, loss of sleep, scabs on his scalp, loss of hair, and heart palpitations.” *Id.*

DISCUSSION

Summary judgment is appropriate when “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.” Fed. R. Civ. P. 56(a). “To succeed, the moving party must show that there is an absence of evidence to support the nonmoving party’s position.” *Rogers v. Fair*, 902 F.2d 140, 143 (1st Cir. 1990). If this is accomplished, the burden then “shifts to the nonmoving party to establish the existence of an issue of fact that could affect the outcome of the litigation and from which a reasonable jury could find for the [nonmoving party].” *Id.* “[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-248 (1986) (emphases in original). A material fact is one which has the “potential to affect the outcome of the suit under applicable law.” *Nereida-Gonzalez v. Tirado-Delgado*, 990 F.2d 701, 703 (1st Cir. 1993). Rule 56 “mandates the entry of summary judgment . . . upon motion against a party who fails to make a showing sufficient to establish the existence of an element

essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

The nub of Bower's case against EgyptAir is the allegation that the airline "failed to use any reasonable pre-embarkation safeguards to protect against the use of its services by a customer to abduct children." Am. Compl. ¶ 15. Bower alleges that "[t]he circumstances surrounding the pre-embarkation arrangements for the unlawful flight provided reasons for EgyptAir to know that N and R were being transported out of the United States and to Egypt without the consent of their custodial father. Yet EgyptAir failed to act on these circumstances and instead facilitated the travel arrangements necessary for El-Nady to abduct the children." *Id.* ¶ 22. Moreover, "EgyptAir knew or should have known of the particular risk of child abductions to Egypt because of the difficulty in apprehending abductors in and recovering children kidnapped to Egypt." *Id.* ¶ 19.

For its part, EgyptAir asserts that it owed Bower no duty to investigate whether a citizen of Egypt, traveling to Cairo with her children (both of whom appeared to have valid Egyptian passports and who showed no signs of distress), was in fact doing so in violation of a court order. EgyptAir contends that the "red flags" to which Bower refers – principally El-Nady's use of cash to buy expensive same-day one-way tickets to Cairo – would not have alerted it to a parental child abduction. Because it owed

Bower no legal duty, EgyptAir maintains that Bower cannot succeed on any of his claims.⁹

Preemption by the Airline Deregulation Act and/or The Warsaw Convention, as amended by the Montreal Agreement

As a preliminary matter, EgyptAir asserts that Bower's common-law tort claims are preempted by the Airline Deregulation Act (ADA), which prohibits any state from "enact[ing] or 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). On this issue, the court disagrees. Even accepting the proposition that the ticketing and checking-in of passengers are "services," that determination does not conclude the matter. "The ADA does not preempt *all* claims arising from an airline service, but only those arising under state laws that are 'related to' that service." *Gill v. JetBlue Airways Corp.*, --- F. Supp. 2d ----, 2011 WL 6258518, at *6 (D. Mass. Dec. 14, 2011). "[I]n cases involving personal injury, courts have generally held that negligence claims were not preempted by the ADA on the grounds that the enforcement

⁹ EgyptAir argues, although not strenuously, that New York law should govern the resolution of the common-law claims. For purposes of this motion, the court will assume that Massachusetts law applies, as it would appear that Massachusetts has a greater interest in punishing the violation of an order of its courts than does New York in policing the conduct of international air carriers providing service to JFK. In any event, the ultimate decision does not turn on the choice of law.

of tort remedies is not sufficiently ‘related to’ airline services.” *Id.*, at *7 (omitting cited cases).

These holdings are consistent with the Congressional intent – “the ultimate touchstone of pre-emption analysis” – underlying the ADA. *Id.*, at *3, quoting *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992). *See also Margolis v. United Airlines, Inc.*, 811 F. Supp. 318, 321 (E. D. Mich. 1993). “Congress enacted this [preemption] provision ‘to ensure that the States would not undo federal deregulation with regulation of their own.’” *Gill*, 2011 WL 6258518, at *3, quoting *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 378 (1992). “There is little reason to believe that the clause was intended to extend to personal injury actions, which were not the subject of federal regulation in the first place.” *Gill*, 2011 WL 6258518, at *7.

EgyptAir points the court to a recent opinion of Judge Wu in the Central District of California, *Ko v. Eva Airways Corp.*, No. 11-cv-05995-GW (Feb. 13, 2012), which presented a nearly identical set of facts.¹⁰ Judge Wu held that the father’s claims of negligence were preempted by the ADA because “[i]t is not so clear to this Court that effectively imposing on airlines operating in California the obligation to perform certain

¹⁰ In *Ko*, a mother took her children from California to Singapore without the consent of the father, who shared custody with his ex-wife.

measures to determine the proper custodial status of children traveling with only one adult would not ‘adversely affect the economic deregulation of the airlines and the forces of competition within the airline industry.’” *Id.* at 10, quoting *Charas v. Trans World Airlines, Inc.*, 160 F.3d 1259, 1261 (9th Cir. 1998).

Although Judge Wu’s opinion is well reasoned, to my mind the negligence claims asserted by Bower more closely resemble tort claims related to passenger safety (claims that all courts agree are not preempted by the ADA) than they do state regulatory actions that might have a significant impact on airline competition in a deregulated market. *Cf. Rowe v. New Hampshire Motor Transp. Ass’n*, 552 U.S. 364, 370-371 (2008), citing *Morales*, 504 U.S. at 378 (noting that the preemption provision of the ADA, as in the 1994 Act governing the deregulation of trucking, had as its focus state enforcement actions impacting the federal regulatory regime). *See also Sedigh v. Delta Airlines, Inc.*, 850 F. Supp. 197, 200, 201 (E.D.N.Y. 1994) (“Most district courts have found broad preemption inappropriate in ‘services’ cases.”); *Hodges v. Delta Airlines, Inc.*, 4 F.3d 350, 355 (5th Cir. 1993) (“If liability for personal injuries were preempted, such insurance would hardly be necessary, because there is no federal compensation scheme for injuries to airline passengers.”).

The thrust of Bower’s claims is that EgyptAir “employees breached a standard of care imposed on society as a whole (or, at least, one imposed on all common

carriers).” *Gill*, 2011 WL 6258518, at *7. It is true that if Bower were to succeed on his claims, the result might have an incidental impact on the handling of the sale of over-the-counter tickets to single parents traveling with minor children. But because the impact would be a generalized one affecting all carriers, it is difficult to imagine why any one airline would be put at a competitive disadvantage with others subject to the same rules. *See id.* (“This generalized duty of care [to accommodate disabled passengers in the boarding of an aircraft] is therefore unlike the consumer-protection statutes held preempted in *Morales* and [*American Airlines, Inc. v. Wolens*, [513 U.S. 219 (1995)], which require courts to play a quasi-regulatory role by adapting statutory standards for trade practices to the particular practices of the airline industry.”).

I am similarly unpersuaded by EgyptAir’s argument that Bower’s claims are preempted by the Warsaw Convention, as amended by the Montreal Agreement. *See Acevedo-Reinoso v. Iberia Lineas Aereas de Espana S.A.*, 449 F.3d 7, 11 n.4 (1st Cir. 2006). The Warsaw Convention “governs the liability of international air carriers for passenger injuries occurring ‘on board the aircraft or in the course of any of the operations of embarking or disembarking.’” *Id.* at 11, quoting *El Al Israel Airlines, Ltd. v. Tsui Yuan Tseng*, 525 U.S. 155, 172 (1999). “The Convention is preemptive: a carrier is not subject to liability under local law for passenger injuries ‘covered by’ the Convention.” *Acevedo-Reinoso*, 449 F.3d at 11 (citing Warsaw Convention Article

17).

“[T]he language of Article 17 – which speaks to accidents that occur ‘in the course of any of the operations of embarking’ – strongly suggests that there must be a tight tie between an accident and the physical act of entering an aircraft.” *McCarthy v. Northwest Airlines, Inc.*, 56 F.3d 313, 317 (1st Cir. 1995) (citations omitted). A ticket transaction is by definition both “spatially and temporally” distinct from the act of embarking (or disembarking) an airplane. While the purchase of a ticket is a condition precedent to accessing a commercial flight, there is no rule that the ticket be bought in person or at a physical location (most tickets are today purchased over the Internet), or that it be purchased in temporal proximity to the flight (most airlines will sell tickets as much as a year in advance). While the transaction here occurred at a ticket counter at JFK, the counter salesperson had no more relationship to El-Nady’s and the children’s physical act of boarding the aircraft than did the taxi driver who presumably ferried them to the terminal or the porter who presumably checked their luggage.¹¹ And the omission of which Bower complains, the failure to verify whether

¹¹ As *McCarthy* explains, courts use a three-pronged approach to interpret the term “embarking.” “The inquiry focuses on (1) the passenger’s activity at the time of injury, (2) his or her whereabouts when injured, and (3) the extent to which the carrier was exercising control at the moment of injury.” *Id.* The ticketing salesperson has no control over whether a would-be passenger will ultimately be permitted to board the plane; that authority lies in the crew’s discretion, with sole final authority resting with

El-Nady was violating a court order by taking the children out of the country with her, was complete at the time the tickets were sold, which was well before the flight began to board. Because the purchase of an airplane ticket is clearly not within the scope of Article 17 preemption, EgyptAir “is indisputably subject to liability [if at all] under local law for injuries arising outside of that scope: *e.g.*, for passenger injuries occurring before any of the operations of embarking or disembarking.” *Acevedo-Reinoso*, 449 F.3d at 11.

Interference with Bower’s Custodial Relations

“‘The common law has traditionally recognized a parent’s interest in freedom from tortious conduct harming his relationship with his child,’ and the parent ‘may be compensated therefor when there is interference with the normal parent-child relationship.’” *Murphy v. I.S.K. Con. of New England, Inc.*, 409 Mass. 842, 859-860 (1991) (internal citations omitted). The Supreme Judicial Court (SJC) of Massachusetts “acknowledge[s] the tort of *intentional* interference with the parent-child relationship as a contemporary expression encompassing actions for abduction, enticement, harboring, and secreting of a minor child from the parent having legal custody.” *Id.* at 861 (emphasis added).

The SJC has made clear that the tort has as its first premise the requirement of

the plane’s captain.

knowledge on the part of a defendant that the custodial parent has not consented to the alleged interference. *See id.* Under no reasonable view of the facts could EgyptAir be said to have had actual knowledge of El-Nady's abduction scheme when it sold her the tickets and permitted her to board the aircraft with her children. Nor could it have known that Bower – the custodial parent – had not consented to the children's travel. SOF ¶¶ 25-31. Bower has alleged no facts even hinting otherwise.¹²

Negligence

Bower alleges more plausibly in the second count of the Complaint that “[a]s a result of agreeing to transport and facilitating the transportation of N and R, EgyptAir owed legal duties to Bower, N and R to exercise reasonable care to protect N and R from, among other things, being wrongfully removed from the United States without the consent of their custodial father. As an international carrier transporting minors, EgyptAir owed duties to them and to Bower, their non-passenger parent.” Am. Compl. ¶ 34.

Non-passenger parents are foreseeable victims of international child

¹² Bower asserts that EgyptAir did in fact *know* that “it had received no consent from the father” and was aware of the “many flags of suspicious behavior.” Bower Opp’n at 28. The assertion, however, makes no sense. EgyptAir knew no more about whether Bower consented to the children’s travel than whether N and R even had a living father. Even assuming for the moment that the “flags of suspicious behavior” were auspicious, Bower cannot plausibly refute EgyptAir’s argument that “flags of suspicion” do not equate to actual *knowledge* that an *abduction* was underway.

abductions to air carriers that fly internationally, particularly to Egypt. The foreseeability of the abductions at issue here was heightened by the specific circumstances surrounding El-Nady's purchase of tickets from and presentation of documents to EgyptAir. By facilitating international travel for N and R without consent from their father, who did not accompany them, EgyptAir breached the duties of care it owed to Bower. Its breaches in this regard constituted negligence.

Id. ¶ 35.

Common-law negligence in Massachusetts consists of the breach of a duty of care that directly and proximately causes harm to a plaintiff. Whether a person owes a duty to another (a prerequisite for a finding of negligence) is a question of law. *Leavitt v. Brockton Hosp., Inc.*, 454 Mass. 37, 40 (2009). *See also Brown v. United States*, 514 F. Supp. 2d 146, 152 (D. Mass. 2007). "The concept of 'duty' . . . 'is not sacrosanct in itself, but is only an expression of the sum total of . . . considerations of policy which lead the law to say that the plaintiff is entitled to protection. . . . No better general statement can be made than that the courts will find a duty where, in general, reasonable persons would recognize it and agree that it exists.'" *Luoni v. Berube*, 431 Mass. 729, 735 (2000), quoting Prosser & Keeton on Torts § 53 at 358-359 (5th ed. 1984).

Duty Owed to Bower

The essential question is whether EgyptAir owed a legal duty to Bower to investigate the possibility that two minor children traveling with their mother on an

international flight to her country of origin were the subject of a United States court order granting custody to an absent and unknown father. If EgyptAir had such a duty, and failed to act on it, then liability on the part of EgyptAir for negligence might well follow. “Generally speaking, [however,] a defendant’s duty is more limited when negligence consists of an omission rather than an act of commission.¹³ . . . So too, as a general matter, ‘[t]here is no duty . . . to control the conduct of a third person as to prevent him from causing physical harm to another.’” *McCloskey v. Mueller*, 446 F.3d 262, 267 (1st Cir. 2006), quoting Restatement (Second) of Torts § 315 (1965).¹⁴ There are two exceptions to this general rule. First, a duty may arise when “a special relation exists between the actor and the [plaintiff] which gives [the plaintiff] a right to protection.” *Id.* at 268 (citations omitted). “The second exception arises when ‘a

¹³ Bower attempts to re-label EgyptAir’s negligence as malfeasance rather than nonfeasance by arguing that EgyptAir facilitated the abduction by providing the mode of transportation. This is a damp squib. EgyptAir can only be negligent if it breached a duty, and the breach caused a proximate harm. Here, the alleged breach is the failure to deploy safeguards – such as dual consent forms – that might have given EgyptAir reason to believe that a mother was traveling without her ex-husband’s permission and that her children were the subject of a court order giving legal custody to the father. The alleged failure fits the classical definition of nonfeasance – inaction that results in harm to another. Malfeasance, on the other hand, is the doing of an act which is positively unlawful and wrongful. There is nothing unlawful about failing to require a dual consent form before allowing a single parent to board an airplane with his or her children.

¹⁴ “Massachusetts courts have recognized the generic applicability of relevant Restatement of Torts principles” to a duty analysis. *McCloskey*, 446 F.3d at 267.

special relation exists between the actor and the third person which imposes a duty upon the actor to control the third person's conduct.” *Id.*

The first exception is plainly inapplicable, as Bower and EgyptAir had no special relationship (or, for that matter, any relationship whatsoever). Nor is the second exception relevant as it applies only to three specific relationships: “parent and dependent children, master and servant, and possessor of land or chattels and licensee – none of which is applicable here.” *See Leavitt*, 454 Mass. at 44 n.9. “In the absence of a special relationship sufficient to trigger one of these exceptions, a private party is not liable for failing, either intentionally or inadvertently, to exercise control over the actions of a third party so as to protect others from harm. . . . This is so even if the prospective harm is substantial and ‘the actor realizes that he has the ability to control the conduct of [the] third person, and could do so with only the most trivial of efforts.’” *McCloskey*, 446 F.3d at 268 (citations omitted).¹⁵

¹⁵ Bower maintains that *Stanford v. Kuwait Airways Corp.*, 1992 WL 295978 (S.D.N.Y. Oct. 6, 1992), establishes an exception to this otherwise settled statement of law. In *Stanford*, the issue was whether Middle East Airliban, S.A. (MEA) “owed the [plaintiff-passengers] a duty of care to screen passengers boarding and deplaning from MEA interline flights” after armed hijackers traveling on an MEA flight transferred to a Kuwait Airways Corp. (KAC) plane. *Id.*, at *2. The court held that MEA owed a duty of care to the KAC passengers who were killed or injured during the subsequent hijacking because “MEA should have recognized that security measures were necessary for the protection of passengers boarding connecting flights.” *Id.*, at *3. The facts in *Stanford* bear no resemblance to those here. In *Stanford*, the court found

Duty Owed to N and R

That EgyptAir and the children were in a special relationship is not a matter of dispute. Under Massachusetts law “[a] common carrier ‘is required to exercise the utmost care consistent with the nature and extent of its business to carry its passengers to their destination in security and enable them to alight there with safety.’” *Commerce Ins. Co. v. Ultimate Livery Serv., Inc.*, 452 Mass. 639, 641 n.4 (2008), quoting *Glennen v. Boston Elevated Ry.*, 207 Mass. 497, 498 (1911).¹⁶ Once a special relationship is imposed by law, the scope of the duty owed is a function of the foreseeability of the given harm. *Cf. McCloskey*, 446 F.3d at 469 n.8. *See also Brown*, 514 F. Supp. 2d at 152-153, citing Restatement (Second) of Torts § 302 cmt. a (1965). “[T]he carrier is not an insurer of the safety of its passengers, nor is it obliged by law

that MEA had failed “to maintain operational x-ray devices, metal detectors, etc.,” *id.*, despite widespread terrorist activity, much of which was centered in Beirut (where the MEA flight originated) and which had the pirating of airplanes as one of its principal objects. The foreseeable risk and the need to screen passengers prior to boarding as a precaution against terrorist violence was in the circumstances of *Stanford* a far cry from any need to guard against a violation of a court order.

¹⁶ The Restatement of Torts, which Massachusetts has adopted, states: “(1) A common carrier is under a duty to its passengers to take reasonable action (a) to protect them against unreasonable risk of physical harm, and (b) to give them first aid after it knows or has reason to know that they are ill or injured, and to care for them until they can be cared for by others.” Restatement (Second) of Torts § 314A (1965).

to foresee and to guard against unlikely dangers and improbable harms. *Isenberg v. New York, N. H. & H. R. Co.*, 221 Mass. 182, 183 [1915]; *Sack v. Dir. Gen. of R.R.*, 245 Mass. 114, 139 [1923]; *Pearson v. Dir. Gen. of R.R.*, 245 Mass. 158, [1923].” *Quigley v. Wilson Line of Mass., Inc.*, 338 Mass. 125, 128 (1958).

“In deciding the [duty] question, [the court will] take into account social conditions and contemporary public policy concerns.” *Commerce Ins. Co.*, 452 Mass. at 646, citing *Jupin v. Kask*, 447 Mass. 141, 146-147 (2006).

A precondition to this duty is, of course, that the risk of harm to another be recognizable or foreseeable to the actor. *See Foley v. Boston Hous. Auth.*, 407 Mass. 640, 646 (1990), quoting *Husband v. Dubose*, 26 Mass. App. Ct. 667, 669 (1988) (“There is no duty owed when the risk which results in the plaintiff’s injury is not one which could be reasonably anticipated by the defendant”). *See also Husband*, [26 Mass. App. Ct. at 669] (determination whether person has duty to protect another from harm caused by third party “involve[s], to some extent, the foreseeability of the harm.”).

Jupin, 447 Mass. at 147.

Bower contends that El-Nady’s abduction of the children was foreseeable by EgyptAir because: (1) aspects of her behavior prior to the flight should have been recognized as “red flags” of suspicion; (2) the U.S. State Department, the U.S. CBP, and airline associations had issued bulletins warning of international parental kidnappings; and (3) dual-parental consent forms were provided by some airlines and required upon arrival in some countries (although not Egypt or the United States).

Among the “red flags” cited by Bower are: (1) El-Nady’s purchase of the tickets with cash; (2) the ticket purchase was made for same-day travel; (3) the children’s passports listed a different family name; and (4) El-Nady was traveling without a male companion.¹⁷

Taken singly or as a whole, these supposed “red flags” fell well short of giving EgyptAir a warning of the possibility that a parental child abduction was afoot. As EgyptAir points out, the purchase of same-day travel tickets with cash is not an uncommon event given the Egyptian custom of conducting business in cash.¹⁸ SOF ¶¶

¹⁷ Bower suggests that the failure of El-Nady to produce a Form I-94 should have been regarded by EgyptAir as an additional “red flag.” In the first place, the Form I-94 is meant to assist immigration officials in tracking the comings and goings of non-resident foreign visitors to the United States, and not to prevent international parental child abductions. *See Roberts v. Southwick*, 415 Mass. 465, 475-476 (1993) (O’Connor, J. concurring) (“A statute, ordinance, or regulation ‘is evidence of negligence on the part of a violator as to all consequences that the statute, ordinance or regulation was intended to prevent.’”) (citation omitted). Nor is it mandatory, as Bower implies, that the same form issued on arrival be produced at departure. *See* 8 C.F.R. § 231.2(b) (“*Whenever possible*, the departure Form I-94 presented must be the same form given to the alien at the time of arrival in the United States.”) (emphasis added). Even if EgyptAir had requested a Form I-94 from El-Nady, her failure to produce one would merely have led to her being asked to fill out a substitute Form I-94 before boarding.

¹⁸ EgyptAir contends that “[p]laintiff cannot challenge the fact that at least one ‘emergency’ ticket for same day travel to Cairo is sold by EgyptAir at JFK Airport every day . . . that none of these tickets are purchased with advance reservations, that they frequently are for one-way travel, and that almost half of them are paid for in cash.” EgyptAir’s Reply at 17, citing SOF ¶¶ 41-47.

40-50. Similarly, the fact that El-Nady's last name differed from the last name of her children was not all that unusual given what EgyptAir asserts is a custom among Egyptian women of keeping their family name while giving the children the family name of the father. See SOF ¶¶ 39, 40, 51-53. Although Bower disputes the prevalence of this custom, I need go no further than to note that numerous professional women in the United States (who earn enough money to purchase international business class tickets without raising eyebrows) now keep their "maiden" names for business or personal reasons.

American society is also well past the point of looking askance at a woman traveling with her children unaccompanied by a husband or male relative.¹⁹ This point is important as legal duties are by and large based on "the great significance given to widely shared social expectations," as Justice Souter explained in assessing third-party consent under the Fourth Amendment in *Georgia v. Randolph*, 547 U.S. 103, 111 (2006). See also *Cremins v. Clancy*, 415 Mass. 289, 292 (1993) (legal duties should reflect "existing social values and customs and appropriate social policy"); *Juliano v. Simpson*, 461 Mass. 527, 537 (2012), quoting *Remy v. MacDonald*, 440 Mass. 675,

¹⁹ As EgyptAir points out, Bower admits that on occasion he traveled internationally with the two boys unaccompanied by El-Nady, and without carrying a parental consent form signed by her. SOF ¶ 62.

678 (2004) (“[W]e are reluctant to impose a duty of care in the absence of ‘clear existing social values and customs’ supporting such a step.”). It is doubtful that Americans would be prepared to accept a court-imposed duty that – however laudable its goal – had the effect of diminishing the social freedoms of women, and particularly those who are single parents.²⁰

As a fallback, Bower asserts that the risk of an international parental kidnapping by El-Nady was foreseeable because “Egypt is not a signatory to the Hague Convention on the International Aspects of Child Abductions, enhancing the risk of child abductions to Egypt due to the difficulty in apprehending abductors in and recovering children kidnapped to Egypt.” Bower Opp’n at 4. Bower further contends that because the State Department’s website posts information explaining “how the ease of international travel has contributed substantially to the growing problem of abductions,” EgyptAir should have known of the special risk of harm to its child passengers (and the left-behind parent).²¹ *Id.* EgyptAir counters that not only Egypt but fifty-seven other

²⁰ In 2009, out of 11.6 million single parents living with their children in the United States, 9.9 million were single mothers. *See* America’s Families and Living Arrangements: 2009. <http://www.census.gov/population/www/socdemo/hh-fam/cps2009.htm>single parents

²¹ Bower also argues that “a high-profile international abduction to Egypt out of Connecticut highlighted the risk of child abductions to Egypt and underscored the seriousness of such matters for international carriers.” *Id.* at 5. The “high-profile” case to which Bower refers is *Streeter v. Executive Jet Management*, 2005 WL 4357633

countries are also not party to the Hague Convention and that the State Department's website contains substantially identical comments about all fifty-eight.²²

However, even assuming that these warnings were sufficient to put international air carriers in general on notice of the risk of parental child abductions, Bower has still failed to point to any specific reason why EgyptAir should have anticipated that El-Nady posed a risk of harm to her children. In *Leavitt*, the SJC distinguished the duty of care owed by a licensed commercial establishment to an intoxicated patron from the facts presented. In that case, a medicated patient was permitted to leave a hospital

(Conn. Super. Nov. 10, 2005). In that case, a father hired a privately chartered airliner operated by Executive Jet Management (EJM) to take his Massachusetts-domiciled children from Connecticut to Egypt without the mother's consent. EJM's employees or agents made special arrangements with the father for the flight on less than thirty hours notice. The request for one-way international service was almost unheard of by EJM, and the bill for the flight to Egypt amounted to \$160,000. Of the total charge, \$15,000 was billed to the limit of the father's credit card, while the rest was sent by a wire transfer. The company failed to abide by its standard procedure when receiving payment by wire, which required gathering information about the source of the funding prior to the flight. The company also failed to abide by the charter industry's "Know Your Customer" rule, which included taking precautionary measures when booking a flight for a new (or "pop-up") customer such as determining "whether the potential client was 'established' by inquiring whether he owned a home, had a bank account, etc." *Id.*, at *5. Finally, EJM made a point of marketing the "privacy" and "discretion" of its service, which provided reason enough to expect it to undertake a modicum of precautionary monitoring of its customers. *Id.*, at *6. Under the circumstances, it was not unreasonable for the court to charge EJM with constructive knowledge of the father's illegal conduct.

²² EgyptAir also notes that the State Department advisory makes no special mention of air travel.

unaccompanied and was subsequently struck by a car. In responding to the accident scene, the plaintiff police officer was injured when his cruiser collided with another vehicle. The Court observed that

[i]n a negligence case against a tavern owner or bartender, liability is premised on a defendant's failure to refrain from serving liquor to an intoxicated patron in circumstances (a) in which the defendant should have known that the patron was intoxicated and (b) where the patron's subsequent operation of a motor vehicle was reasonably foreseeable. *See, e.g., Cimino v. Milford Keg, Inc.*, 385 Mass. 323, 331-332 & n. 9 [] (1982). Liability is not premised on a tavern owner or bartender's "discharg[ing]" an intoxicated person "onto the roadway." *See O'Gorman v. Antonio Rubinaccio & Sons*, 408 Mass. 758, 761-762 [] (1990).

454 Mass. at 44 n.13. The analogy is instructive. EgyptAir had no more reason to anticipate that by permitting El-Nady to board the plane harm might come to the children than the hospital in *Leavitt* had reason to anticipate the officer's injury.

Bower also contends that EgyptAir should have been aware of the risk of child abductions because CBP²³ and the National Air Transportation Association (NATA)

²³ "Due to the increasing incidents of child abduction in disputed custody cases and as possible victims of child pornography, [CBP] strongly recommends that unless the child is accompanied by both parents, the adult have a note from the child's other parent (or, in the case of a child traveling with grandparents, uncles or aunts, sisters or brothers, or friends, a note signed by both parents) stating 'I acknowledge that my wife/husband/etc. is traveling out of the country with my son/daughter. He/she/They has/have my permission to do so.' . . . Adults traveling with children should also be aware that, while the U.S. does not require this documentation, many other countries do" CBP Information, Bower Opp'n, Ex. K.

recommend that travelers take certain precautions when traveling with children. EgyptAir points out that the CBP recommendations cited by Bower come from “The Frequently Asked Questions Page” on the CBP website, and are directed to *passengers*, not commercial airlines. The purpose is to ensure that single American parents are not embarrassed or frustrated when attempting to enter a foreign country with their children. NATA recommendations similarly carry little weight as NATA is a non-airline trade group.²⁴ Even if employees of Swissport (a member of NATA), who worked at EgyptAir’s ticketing counter, were aware of the NATA recommendation, Bower’s contention is that EgyptAir, not Swissport, was legally responsible for the passengers on the New York-to-Cairo flight. He has not alleged that any

²⁴ “This guide will assist NATA members in developing their own policy for transporting minors internationally. . . . If a minor child is traveling with only one parent (or legal guardian), the association recommends requiring a notarized consent from the absent parent/guardian before transporting the minor over international borders. The consent form should include the traveling parent’s name, country of origin and destination, dates of travel, and contact information for the non-traveling parent. If only one parent has legal custody, that parent should be prepared to provide a court order of child custody. . . . Although some countries do not require these documents for entry, and they are not necessarily required for departures from the United States, the association recommends following these guidelines for all international travel with minors to guard against legal action resulting from the transportation of minors.” NATA’s Guide for International Transportation of Minors, Bower Opp’n, Ex. L. EgyptAir is not a member of NATA, as NATA does not represent airlines. Swissport, the service provider EgyptAir employed to staff the ticket counter and check-in desk for El-Nady’s flight, is a member of NATA. SOF ¶¶ 4, 82, 96.

recommendation directed to Swissport is applicable, or was even made known to EgyptAir.²⁵

Finally, Bower urges the court to find that because dual consent forms are a reasonable precaution, are used by some airlines²⁶ and required by some countries, and because they *may* sometime in the future be required by the United States, EgyptAir had a duty to require them of parents traveling alone with children.²⁷ It is not the role of a federal district court to create duties that do not exist under common law or by statute.

In sum, I conclude that EgyptAir did not owe a duty to N and R to investigate

²⁵ Bower (correctly) does not argue that these recommendations should be treated as statutes, rules, or regulations supporting a finding of negligence. “A duty of care must already exist before a plaintiff can use a defendant’s statutory violation to support a claim of tort liability.” *Juliano*, 461 Mass. at 532.

²⁶ Bower has given the court only one such example, Alaska Airlines (which does not operate from JFK). That airline recommends (but does not require) that passengers document child custody because some countries require proof of custody as a condition for entry. EgyptAir’s Reply at 18-19.

²⁷ Bower contends that because EgyptAir required the parents of children traveling alone to sign indemnification forms, it in effect has “admitted” that a duty was owed Bower to require a dual consent form from El-Nady. The court disagrees. A child traveling unaccompanied by any adult cannot be equated to a child traveling with his or her parent.

whether their mother was traveling with them in violation of a court order.²⁸ “While dispositive motions are disfavored in negligence actions, where a defendant is determined to owe no duty of care, summary judgment must be granted.” *Brown*, 514 F. Supp. 2d at 152, citing *Westerback v. Harold F. LeClair Co., Inc.*, 50 Mass. App. Ct. 144, 146 (2000). That is the case here.²⁹

²⁸ The Second Circuit reached the same conclusion in *Pittman v. Grayson*, 149 F.3d 111 (2d Cir. 1998), a case involving similar facts. In *Pittman*, a mother flew with her daughter to Iceland in violation of a court order. The daughter’s step-father telephoned two of the airline’s corporate offices and gave oral warnings to various employees about the mother’s impending flight and that the girl was being taken from Florida in violation of a court order. The Second Circuit affirmed the district court’s setting aside of a jury verdict in favor of the plaintiff father (individually, and on behalf of his daughter). With respect to the father’s request to remand the case on a claim of negligence, the Court declined, holding that the commercial airline owed no duty to the father or to the daughter as a passenger, “either generally or based on oral representations – to ensure that a minor traveling with a custodial parent is not being transported in violation of a court order.” *Id.* at 125.

The California Appeals Court, Second Division, endorsed the Second Circuit’s conclusion in a case again involving very similar facts (a mother took her child to Japan in violation of a court order not to do so). “Plaintiff lacks a viable negligence claim because ANA [the air carrier] owed him no duty of care; plaintiff was a member of the general public and had not entered into a special relationship with ANA; and although ANA certainly owed some duties of care to Melissa as a passenger, we have seen no authority for the proposition that a common carrier has a duty to ensure that a minor traveling with a custodial parent is not being transported in violation of a court order.” *Braden v. All Nippon Airways Co., Ltd.*, 2010 WL 3993215, at *4 (Cal. App. 2 Dist. Oct. 13, 2010).

²⁹ The claims for negligent infliction of emotional distress fail as they are premised on a finding of negligence. *See Rodriguez v. Cambridge Hous. Auth.*, 443

ORDER

For the foregoing reasons, defendant EgyptAir's motion for summary judgment is ALLOWED. The Clerk will enter judgment for EgyptAir and dismiss it from the case.

SO ORDERED.

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE

Mass. 697, 700-701 (2005). Absent legal responsibility, Bower's claim against EgyptAir for loss of filial consortium also fails. *See* Mass. Gen. Laws ch. 231, § 85X ("The parents of a minor child or an adult child who is dependent on his parents for support shall have a cause of action for loss of consortium of the child who has been seriously injured *against any person who is legally responsible for causing such injury.*") (emphasis added).

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

COLIN BOWER, on his own behalf and on behalf of his minor children, N and R,)	
)	
Plaintiff,)	
)	
v.)	DOCKET NO: 10-cv-10405 - RGS
)	
MIRVAT EL-NADY BOWER and EGYPTAIR AIRLINES,)	
)	
Defendants.)	

NOTICE OF CONDITIONAL CROSS-APPEAL

Pursuant to Federal Rules of Appellate Procedure 3 and 4, notice is hereby given that EgyptAir Airlines Company, incorrectly sued herein as EgyptAir Airlines and hereafter "EgyptAir," hereby conditionally cross-appeals to the United States Court of Appeals for the First Circuit, from this Court's Memorandum and Order dated November 10, 2011 insofar as it granted Plaintiff's Motion to Preclude the Testimony of Expert Witnesses Fatma El-Hamidi and Jeffrey C. Price, and from those parts of the Court's Memorandum and Order dated March 21, 2012 that held that plaintiff's claims are (1) not completely preempted and barred by the Airline Deregulation Act ("ADA"), 49 U.S.C. § 41713(b)(1), and (2) not completely preempted and barred by the Montreal Convention (Convention on the Unification of Certain Rules of International Carriage by Air, done at Montreal on 28 May, 1999, ICAO Doc. No. 9740 (entered into force November 4, 2003), *reprinted in* S. Treaty Doc. 106-45, 1999 WL 333292734).

This cross-appeal is conditional in that EgyptAir seeks affirmance of the Court's dismissal of the claims against EgyptAir on the grounds set forth in the Court's Memorandum and Order dated March 21, 2012, and seeks review only in the event that the First Circuit grants the appeal of plaintiff and reverses the dismissal of plaintiff's claims.

Dated: Boston, Massachusetts
April 19, 2012

Respectfully submitted,

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Certificate of Service

I hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on April 19, 2012.

/s/ Shalissa M. Dougherty
Shalissa M. Dougherty