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6 IN THE UNITED STATES DISTRICT COURT
7
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 KATHLEEN HANNI, individually and on
10 behalf of all others similarly
11 situated, TIMOTHY T. HANNI, CHASE L.
12 COSTELLO, and LANDEN T. HANNI, a
minor, by and through his parent and
Natural Guardian, Kathleen Hanni,

13 Plaintiffs,

14 v.

15 AMERICAN AIRLINES, INC., and DOES 1
16 through 20, inclusive,

17 Defendants.
18 _____/

No. C 08-00732 CW

ORDER DENYING
PLAINTIFFS'
MOTION FOR CLASS
CERTIFICATION,
GRANTING
DEFENDANT'S
MOTION FOR
SUMMARY JUDGMENT
AND DENYING
COLLEEN
O'CONNER'S MOTION
FOR INTERVENTION

19 On December 29, 2006, the Dallas-Fort Worth area experienced
20 unseasonably severe weather that generated massive lightning storms
21 and a tornado warning, all of which caused the airport to shut
22 down. As a result, American Airlines diverted over 100 flights and
23 many passengers were stranded on the tarmac for several hours.
24 Only September 11, 2001 recorded more diversions than December 29,
25 2006. Plaintiffs were some of the many passengers on diverted
26 American Airlines' aircraft on that date. They sued Defendant
27 American Airlines under many legal theories for its conduct
28 surrounding the delays.

1 After several rounds of motions to dismiss, Plaintiffs' claims
2 have been narrowed to three:

- 3 (1) A negligence claim based on Defendant's failure to
4 provide adequate food, water, restroom facilities and
5 ventilation in violation of its duties as a common
6 carrier,
7 (2) a breach of contract claim based on paragraph five of the
8 Conditions of Carriage (COC) or the portions of paragraph
9 eighteen of the COC identified in paragraphs 124(e) and
10 (g) of the First Amended Complaint and
11 (3) a conversion claim.

12 Defendant has moved to adjudicate these claims summarily and
13 to deny class certification. Plaintiffs have moved for summary
14 judgment on the contract claim, class certification and leave to
15 file a motion to reconsider the Court's order dismissing
16 Plaintiffs' false imprisonment cause of action. Colleen O'Connor
17 has also filed a motion to intervene. The Court addresses these
18 motions in detail below but, in sum, the Court (1) denies
19 O'Connor's motion to intervene; (2) grants Defendant's motion to
20 deny class certification and denies Plaintiffs' motion for class
21 certification; (3) grants Defendant's motion for summary judgment
22 and denies Plaintiffs' motion for partial summary; and (4) grants
23 Plaintiffs' motion for leave to file a motion for reconsideration.

24 BACKGROUND

25 Throughout December 29, 2006, successive waves of
26 thunderstorms buffeted the Dallas-Fort Worth International Airport.
27 These thunderstorms greatly impacted the flow of air-traffic to and
28 from DFW.

The Department of Transportation Inspector General described
the events that day as follows:

1 On December 29, 2006, severe weather that generated massive
2 lightning storms and a tornado warning in the Dallas-Fort
3 Worth area caused American to cancel, divert, or delay over
4 1,100 of its 1,600 (69 percent) scheduled flights into DFW,
5 disrupting holiday travel plans for over 13,000 passengers
6 system-wide. American diverted 130 flights; 124 flights were
7 bound for DFW but had to be diverted to 24 nearby airports.
8 The number of diversions on December 29 ranked as the second
9 largest in American's history, the first being September 11,
10 2001.

11 Office of Inspector General Report No. AV-2007-077. These flights
12 originated from airports in Arizona, California, Colorado, Florida,
13 Illinois, Indiana, Iowa, Kentucky, Maryland, Mississippi, North
14 Carolina, Ohio, New Jersey, New York, Virginia and Puerto Rico.
15 The aircraft were diverted to the following airports: Little Rock
16 and Northwest Arkansas Regional Airport, Arkansas; Baton Rouge and
17 Shreveport, Louisiana; Oklahoma City and Tulsa, Oklahoma; Abilene,
18 Austin, Houston, Longview, Lubbock, Midland, San Antonio and Waco,
19 Texas; and Nashville and Memphis, Tennessee. The passengers on
20 these aircraft have mailing addresses in forty-eight states,
21 several United States territories and twenty foreign countries.

22 Named Plaintiffs Kathleen Hanni, Timothy Hanni, Landen Hanni
23 and Chase Costello were on one of those diverted planes. Their
24 flight left San Francisco and was to arrive in Mobile, Alabama,
25 connecting at Dallas-Fort Worth Airport (DFW). In San Francisco,
26 the flight was delayed by approximately one hour due to mechanical
27 difficulty. Toward the end of the flight to Dallas, the captain
28 notified the passengers that bad weather in Dallas prevented the
plane from landing there. Instead, the plane was diverted to
Austin to wait for the weather to clear. While on the ground in
Austin, the flight attendants handed out bags of snacks and served

1 beverages. After the plane was on the ground in Austin for
2 approximately three or four hours, the pilot announced that a bus
3 would come to the airplane and allow the elderly, individuals
4 traveling with small children, the sick, and people whose final
5 destination was Austin to disembark. After the announcement,
6 passengers stood up and filled the aisles. Plaintiffs were seated
7 towards the front of the plane, in row 11, and were not able to get
8 to the back of the plane where people were disembarking. As a
9 consequence, Plaintiffs missed the opportunity to leave the plane.

10 While the plane was on the ground in Austin, the bathroom at
11 the front of the plane smelled of human waste and the toilet was
12 overflowing. During their last three hours on the plane,
13 Plaintiffs could smell the stench of the bathroom from their seats.
14 At some point, Plaintiff Kathleen Hanni told a flight attendant and
15 the pilot that being confined on the airplane for so long was
16 triggering a strong emotional response that she related back to an
17 attack she suffered six months earlier. The pilot offered to
18 arrange for an ambulance to take her to the terminal, but she
19 declined because she did not want to separate from her family.
20 After four more hours of waiting on the plane, the pilot taxied the
21 aircraft to a gate and Plaintiffs disembarked. In total,
22 Plaintiffs waited over nine hours on the tarmac in Austin.

23 Defendant handed out hotel vouchers to the passengers of the
24 flight, but Plaintiffs did not want to wait in the long line for a
25 voucher and they thought the voucher was only for a ten dollar
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1 discount.¹ Plaintiffs then waited for their luggage in the baggage
2 area for three hours, but their luggage never arrived.

3 The next morning, December 30, Plaintiffs took a plane to
4 Dallas but were not able to board a connecting flight from there to
5 Mobile because the flight was overweight due to excess baggage.
6 However, Plaintiffs' bags made it onto the flight. Plaintiffs
7 spent another night in Dallas and caught a flight to Mobile the
8 next day, December 31. Plaintiffs picked up their bags in Mobile
9 when they arrived.

10 The first complaint filed in this case was on behalf of
11 Kathleen Hanni only. Her complaint included claims for false
12 imprisonment, intentional infliction of emotional distress,
13 negligence, breach of contract and intentional misrepresentation.
14 Defendant moved pursuant to Federal Rules of Civil Procedure 9(b)
15 and 12(b)(6) to dismiss the complaint. The Court granted the
16 motion in part and denied it in part, giving Ms. Hanni leave to
17 file an amended complaint. April 25, 2008 Order. On May 15, 2008,
18 Ms. Hanni filed her first amended complaint (FAC). She again
19 alleged claims for false imprisonment, negligence, breach of
20 contract and fraud, and included additional causes of action for
21 conversion, civil conspiracy and a claim pursuant to the Racketeer
22 Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1961.

23
24 ¹Plaintiffs cannot remember if an airport official or
25 Defendant told them that the voucher was for ten dollars. Ms.
26 Hanni told a Department of Transportation Investigator that "Mr.
27 [Timothy] Hanni attempted to obtain [a voucher], but decided not to
28 remain in a long line for what was rumored to be a \$10 voucher."
Kaus Decl. in Support of Motion to Deny Class Cert., Exh. D at
TH000196.

1 Defendant again moved pursuant to Federal Rule of Civil Procedure
2 12(b)(6) to dismiss the FAC.

3 On July 11, 2008, the Court issued an order granting the
4 motion in part and denying it in part. The Court dismissed with
5 prejudice Ms. Hanni's claims for false imprisonment, intentional
6 infliction of emotional distress and fraud and dismissed her claim
7 for breach of contract to the extent it was based on paragraphs
8 three, ten, nineteen or the specified portions of paragraph
9 eighteen of the Conditions of Carriage (COC). The Court dismissed
10 without prejudice Ms. Hanni's claims for civil conspiracy and RICO.
11 July 11, 2008 Order at 6, 16, 19-20. The Court gave Ms. Hanni
12 leave to file a second amended complaint that could include: (1) a
13 negligence claim based on Defendant's failure to provide adequate
14 food, water, restroom facilities and ventilation in violation of
15 its duties as a common carrier; (2) a breach of contract claim
16 based on paragraph five of the COC or the portions of paragraph
17 eighteen of the COC identified in paragraphs 124(e) and (g) of the
18 FAC; and (3) a conversion claim. The Court also allowed Ms. Hanni
19 to include a claim for civil conspiracy if, consistent with Rule
20 11, she could name at least one alleged conspirator as a defendant
21 and allege facts to support a finding that the individual conspired
22 with other individuals with unlawful intent. July 11, 2008 Order
23 at 20.

24 On July 31, 2008, Ms. Hanni filed her second amended complaint
25 (SAC). On August 12, 2008, the parties stipulated that Ms. Hanni
26 would file a third amended complaint (TAC) that included Ms.
27 Hanni's husband, Timothy Hanni, and sons, Chase Costello and Landen
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1 Hanni, as plaintiffs and that modified the allegations of the
2 complaint. Stipulation to File an Amended Complaint, August 12,
3 2008. On August 13, 2008, Plaintiffs filed their TAC alleging
4 claims for negligence, breach of contract, conversion and civil
5 conspiracy. TAC, August 13, 2008 ¶ 87-109. The Court dismissed
6 many of the causes of action in the TAC; however Plaintiffs were
7 allowed pursue the negligence, breach of contract and conversion
8 causes of action outlined above. November 21, 2008 Order at 17.

9 On July 10, 2009, in response to discovery orders issued by a
10 Magistrate Judge compelling the production of Ms. Hanni's medical
11 records, Kathleen and Landen Hanni moved voluntarily to dismiss
12 their claims. The Court granted their motion on July 20, 2009.
13 Thus, Timothy Hanni and Chase Costello remain as Plaintiffs in this
14 case.²

15 In sum, Plaintiffs represent classes of passengers who allege
16 that, after their flights were diverted, they were confined to
17 their respective aircraft for a period of two to twelve hours.
18 They allege that, during this time, Defendant did not provide
19 passengers with adequate food, hydration, ventilation or properly
20 working toilets. They allege that Defendant purposefully confined
21 passengers for extended lengths of time to prevent costly
22 "passenger migration" to other airlines or modes of transportation.
23 Plaintiffs allege that airlines prevent "passenger migration" by
24 holding an aircraft on the tarmac, which (1) prohibits passengers
25 from exiting so that the airline may avoid obligations and expenses

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27 ²Hereinafter, Timothy Hanni and Chase Costello will be
28 referred to as Plaintiffs unless otherwise specified.

1 associated with mass flight delays and cancellations and
2 (2) prevents passengers from obtaining alternate transportation.

3 Plaintiffs also claim that Defendant withheld their baggage
4 and failed to provide or fully reimburse them for overnight
5 lodging, meals, ground transportation, telephone and other
6 passenger expenses incurred due to the events of December 29, 2006.

7 Plaintiffs now seek certification pursuant to Rule 23(b)(3) to
8 represent the following classes:

9 Breach of Contract Class: All domestic travelers who traveled
10 on an American Airlines flight scheduled to land at DFW on
11 December 29, 2006, that was diverted to another airport, who
12 did not reach his/her final destination on the scheduled date
of arrival, and who incurred unreimbursed out-of-pocket
expenses as a result of the delay;

13 Negligence Class: All domestic travelers who traveled on an
14 American Airlines flight scheduled to land at DFW on December
29, 2006, that was diverted to another airport, and whose
flight was stranded on the tarmac for a period of hours; and

15 Conversion Class: All domestic travelers who traveled on an
16 American Airlines flight scheduled to land at DFW on December
17 29, 2006, that was diverted to another airport, who did not
18 reach his/her final destination on the scheduled date of
arrival, and whose luggage was not returned to him/her on
December 29, 2006.

19 If the Court declines to certify one or more of the above-
20 proposed classes, Plaintiffs seek certification pursuant to Rule
21 23(b)(2) to represent the following class:

22 Declaratory/Injunctive Relief Class: All domestic travelers
23 who traveled on an American Airlines flight scheduled to land
24 at DFW on December 29, 2006, that was diverted to another
airport, whose flight was stranded on the tarmac for a period
of hours, and who were not provided with the essential needs
identified in Section 19 of the Conditions of Carriage
contract.

25 Excluded from the proposed classes are Defendant, any entity
26 or division in which Defendant has a controlling interest, and its
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1 legal representatives, officers, directors, assigns and successors,
2 as well as the judges to whom this case is assigned and any member
3 of the judges' immediate families. Plaintiffs seek the appointment
4 of Timothy Hanni and Colleen O'Connor as class representatives.
5 Law Offices of Paul S. Hudson, P.C. and Andrus Anderson, LLP seek
6 appointment as class counsel.

7 DISCUSSION

8 I. Intervention

9 Before Plaintiffs moved for class certification, Colleen
10 O'Connor moved to intervene as a plaintiff in this action as of
11 right under Federal Rule of Civil Procedure 24(a)(2), or, in the
12 alternative, permissively under Federal Rule of Civil Procedure
13 24(b)(2).

14 To intervene as a matter of right under Federal Rule of Civil
15 Procedure 24(a)(2), "an applicant must claim an interest the
16 protection of which may, as a practical matter, be impaired or
17 impeded if the lawsuit proceeds without" the applicant. Forest
18 Conservation Council v. United States Forest Serv., 66 F.3d 1489,
19 1493 (9th Cir. 1995). The Ninth Circuit applies a four-part test
20 to motions under Rule 24(a). An applicant seeking intervention as
21 of right must show that:

- 22 (1) it has a significant protectable interest relating to the
23 property or transaction that is the subject of the action;
24 (2) the disposition of the action may, as a practical matter,
25 impair or impede the applicant's ability to protect its
26 interest; (3) the application is timely; and (4) the existing
27 parties may not adequately represent the applicant's interest.

28 Donnelly v. Glickman, 159 F.3d 405, 409 (9th Cir. 1998) (citing
Cabazon Band of Mission Indians v. Wilson, 124 F.3d 1050, 1061 (9th

1 Cir. 1997), cert. denied, 524 U.S. 926 (1998)).

2 The Ninth Circuit interprets Rule 24(a) broadly in favor of
3 intervention. Id. In evaluating a motion to intervene under Rule
4 24(a), a district court is required "to take all well-pleaded,
5 nonconclusory allegations in the motion . . . as true absent sham,
6 frivolity or other objections." Southwest Ctr. for Biological
7 Diversity v. Berq, 268 F.3d 810, 820 (9th Cir. 2001).

8 A court may also at its discretion permit intervention "when
9 an applicant's claim or defense and the main action have a question
10 of law or fact in common." Fed. R. Civ. P. 24(b)(2). In
11 exercising its discretion, a court is to "consider whether the
12 intervention will unduly delay or prejudice the adjudication of the
13 rights of the original parties." Id.

14 A. Intervention as of Right

15 1. Timeliness

16 The most important consideration in evaluating the timeliness
17 of a motion to intervene is whether any delay in moving for
18 intervention may prejudice existing parties; as long as prejudice
19 is not likely to result from the timing of the motion, courts
20 interpret the timeliness requirement liberally. See, e.g.,
21 Cummings v. United States, 704 F.2d 437, 439 (9th Cir. 1983)
22 (motion to intervene timely even though made after interrogatories
23 and two weeks before date set for close of discovery). The Court
24 considers three factors in evaluating whether a motion to intervene
25 is timely: "(1) the stage of the proceeding at which an applicant
26 seeks to intervene; (2) the prejudice to other parties; and (3) the
27 reason for and length of the delay." California Dep't of Toxic

1 Substances Control v. Commercial Realty Projects, Inc., 309 F.3d
2 1113, 1119 (9th Cir. 2002) (quoting United States v. State of
3 Washington, 86 F.3d 1499, 1503 (9th Cir. 1996)).

4 Defendant argues that the motion to intervene is untimely,
5 based on the length of time between the original complaint and the
6 instant motion. As Defendant notes, over seventeen months have
7 passed since the filing of the original complaint and this
8 intervention motion. However, this fact alone is not dispositive.
9 In analyzing timeliness, the "focus is on the date the person
10 attempting to intervene should have been aware his 'interest[s]
11 would no longer be protected adequately by the parties,' rather
12 than the date the person learned of the litigation." Officers for
13 Justice v. Civil Serv. Comm'n of the City and County of San
14 Francisco, 934 F.2d 1092, 1095 (9th Cir. 1991) (quoting Legal Aid
15 Soc'y v. Dunlop, 618 F.2d 48, 50 (9th Cir. 1980)). Here, O'Connor
16 claims to have learned of the present litigation only when she
17 received a letter dated April 9, 2009 from Plaintiffs' attorneys
18 notifying her about the lawsuit. Moreover, O'Connor moved to
19 intervene within two days after Kathleen Hanni filed her motion to
20 withdraw from the case.

21 However, the matter is no longer in the early stages of its
22 life-cycle. In this order the Court rules on the parties' summary
23 judgment motions and determines class certification. Moreover,
24 fact discovery for class certification has closed.

25 Defendant would be prejudiced by the intervention of O'Connor
26 because she seeks to add three new causes of action to the case.
27 The deadline to add new claims or parties was April 16, 2009.

1 O'Connor asserts that any additional discovery required by these
2 claims will be minimal because they arise out of the same events
3 and conduct as those alleged in the TAC. While O'Connor's claims
4 indeed arise from the events on December 29, 2006, they concern
5 several significantly different factual allegations. These new
6 allegations would require Defendant to depose many new witnesses.
7 The purpose of intervention is to allow outsiders with an interest
8 in a lawsuit to come in as a party, not to allow an outsider to
9 side-step discovery rules and deadlines in order to assert new
10 claims and facts.

11 For these reasons, the Court finds the motion to intervene is
12 untimely.

13 2. Protectable Interests and Impairment of Ability to
14 Protect Interests

15 As noted above, under Rule 24(a)(2), an applicant may
16 intervene as of right when the applicant "claims an interest
17 relating to the property or transaction which is the subject of the
18 action." The interest asserted need not be a "specific legal or
19 equitable interest," but it must be "significantly protectable."
20 Portland Audubon Soc'y v. Hodel, 866 F.2d 302, 309 (9th Cir. 1989),
21 cert. denied, 492 U.S. 911 (1989) (citations omitted). Applicants
22 must also be situated such that "disposition of the action may as a
23 practical matter impair or impede the applicant's ability to
24 protect" its asserted interests. Forest Conservation Council, 66
25 F.3d at 1493.

26 Interests the Ninth Circuit has held sufficient to support
27 intervention as of right include a city's interest in preventing
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1 modification of water permits held under the Clean Water Act,
2 Sierra Club, 995 F.2d at 1482; a state's interest in preventing
3 action on federal lands that could impair the state's legal duty to
4 manage its own adjacent lands, Forest Conservation Council, 66 F.3d
5 at 1497; a power company's interest in preventing federal action
6 that could hinder construction of a power plant and the company's
7 duty to ensure a water supply, Churchill County v. Babbitt, 150
8 F.3d 1072, 1084 (9th Cir. 1998), as amended by 158 F.3d 491 (9th
9 Cir. 1998); and a city's interests in taxing and regulating
10 contested land, Scotts Valley Band of Pomo Indians of Sugar Bowl
11 Rancheria v. United States, 921 F.2d 924, 927-28 (9th Cir. 1990).
12 In contrast, the Ninth Circuit has held that timber companies'
13 economic interest in ensuring an ongoing supply of timber was not a
14 "protectable" interest sufficient for intervention as of right when
15 those companies did not assert existing contracts for the timber in
16 question. Portland Audubon, 866 F.2d at 309; see also Sierra Club,
17 995 F.2d at 1482.

18 O'Connor asserts that her interest in this action is that her
19 "experiences and claims are nearly identical to those alleged in
20 the Hanni Third Amended Complaint." Motion at 7. She claims that
21 her ability to protect her interests will be impaired because,
22 without her presence, there would not be a class representative.
23 Without a class representative, the class action may not be
24 certified and litigation of these claims individually would be
25 "highly inefficient and waste judicial resources." Id. However,
26 O'Connor's fear that the Court will decline to certify the class
27 but for intervention of a new proposed class representative is
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1 unfounded. Timothy Hanni and Chase Costello remain as Plaintiffs
2 in the case and Plaintiffs have proposed that Timothy Hanni serve
3 as the class representative. The Court addresses the question of a
4 class representative when it considers the motion for class
5 certification below. Accordingly, the Court concludes that
6 O'Connor's protectable interests will not be impaired.

7 Therefore, O'Connor's motion to intervene as of right is
8 denied.

9 B. Permissive Intervention

10 As for permissive intervention, the Court declines to exercise
11 its discretion to permit O'Connor to intervene in the case. As
12 noted above, O'Connor seeks to add new claims and make her
13 complaint the operative pleading in the case. Her intervention
14 would require additional discovery which would push back deadlines
15 and delay the resolution of this case. Judicial economy would
16 suffer with the addition of O'Connor's new claims and issues.

17 II. Class Certification

18 Plaintiffs move for class certification proposing Timothy
19 Hanni and Colleen O'Connor as class representatives. Although the
20 Court denies O'Connor's motion to intervene, Plaintiffs did not
21 have the benefit of the Court's ruling on that motion before filing
22 their motion for class certification. Nevertheless, in the
23 interest of judicial economy, the Court will address the merits of
24 both O'Connor and Timothy Hanni as class representatives.

25 Plaintiffs seeking to represent a class must satisfy the
26 threshold requirements of Rule 23(a) as well as the requirements
27 for certification under one of the subsections of Rule 23(b). Rule
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1 23(a) provides that a case is appropriate for certification as a
2 class action if: "(1) the class is so numerous that joinder of all
3 members is impracticable; (2) there are questions of law or fact
4 common to the class; (3) the claims or defenses of the
5 representative parties are typical of the claims or defenses of the
6 class; and (4) the representative parties will fairly and
7 adequately protect the interests of the class." Fed. R. Civ. P.
8 23(a). Rule 23(b) further provides that a case may be certified as
9 a class action only if one of the following is true:

10 (1) prosecuting separate actions by or against individual
11 class members would create a risk of:

12 (A) inconsistent or varying adjudications with
13 respect to individual class members that would
14 establish incompatible standards of conduct for the
15 party opposing the class; or

16 (B) adjudications with respect to individual class
17 members that, as a practical matter, would be
18 dispositive of the interests of the other members
19 not parties to the individual adjudications or would
20 substantially impair or impede their ability to
21 protect their interests;

22 (2) the party opposing the class has acted or refused to
23 act on grounds that apply generally to the class, so that
24 final injunctive relief or corresponding declaratory
25 relief is appropriate respecting the class as a whole; or

26 (3) the court finds that the questions of law or fact
27 common to class members predominate over any questions
28 affecting only individual members, and that a class
action is superior to other available methods for fairly
and efficiently adjudicating the controversy. The
matters pertinent to these findings include:

(A) the class members' interests in individually
controlling the prosecution or defense of separate
actions;

(B) the extent and nature of any litigation
concerning the controversy already begun by or
against class members;

1 (C) the desirability or undesirability of
2 concentrating the litigation of the claims in the
particular forum; and

3 (D) the likely difficulties in managing a class
4 action.

5 Fed. R. Civ. P. 23(b).

6 Plaintiffs seeking class certification bear the burden of
7 demonstrating that each element of Rule 23 is satisfied, and a
8 district court may certify a class only if it determines that the
9 plaintiffs have borne their burden. General Tel. Co. v. Falcon,
10 457 U.S. 147, 158-61 (1982); Doninger v. Pac. Nw. Bell, Inc., 564
11 F.2d 1304, 1308 (9th Cir. 1977). In making this determination, the
12 court may not consider the merits of the plaintiffs' claims.
13 Burkhalter Travel Agency v. MacFarms Int'l, Inc., 141 F.R.D. 144,
14 152 (N.D. Cal. 1991). Rather, the court must take the substantive
15 allegations of the complaint as true. Blackie v. Barrack, 524 F.2d
16 891, 901 (9th Cir. 1975). Nevertheless, the court need not accept
17 conclusory or generic allegations regarding the suitability of the
18 litigation for resolution through a class action. Burkhalter, 141
19 F.R.D. at 152. In addition, the court may consider supplemental
20 evidentiary submissions of the parties. In re Methionine Antitrust
21 Litig., 204 F.R.D. 161, 163 (N.D. Cal. 2001); see also Moore v.
22 Hughes Helicopters, Inc., 708 F.2d 475, 480 (9th Cir. 1983) (noting
23 that "some inquiry into the substance of a case may be necessary to
24 ascertain satisfaction of the commonality and typicality
25 requirements of Rule 23(a);" however, "it is improper to advance a
26 decision on the merits at the class certification stage").
27 Ultimately, it is in the district court's discretion whether a
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1 class should be certified. Burkhalter, 141 F.R.D. at 152.

2 As a preliminary matter, Defendant does not dispute
3 Plaintiffs' assertion that this action satisfies the numerosity
4 requirement of Rule 23(a)(1), and the Court finds that it does.
5 See 1 Alba Cone & Herbert B. Newberg, Newberg on Class Actions
6 § 3.3 (4th ed. 2002) (where "the exact size of the class is
7 unknown, but general knowledge and common sense indicate that it is
8 large, the numerosity requirement is satisfied").

9 Defendant asserts that class certification must fail because
10 (1) Plaintiffs cannot meet the commonality and typicality
11 requirements of Rule 23(a)(2) and (3); (2) Plaintiffs cannot
12 protect the interests of all class members as required by Rule
13 23(a)(4); and (3) Plaintiffs cannot meet the requirements of Rule
14 23(b). The Court addresses each argument in turn.

15 A. Class Definition

16 "[I]n order to maintain a class action, the class sought to be
17 represented must be adequately defined and clearly ascertainable."
18 DeBremaeker v. Short, 433 F.2d 733, 734 (5th Cir. 1970) (citing
19 Weisman v. MCA Inc., 45 F.R.D. 258 (D. Del. 1968)). "A class is
20 ascertainable if it identifies a group of unnamed plaintiffs by
21 describing a set of common characteristics sufficient to allow a
22 member of that group to identify himself or herself as having a
23 right to recover based on the description." Moreno v. Autozone,
24 Inc., 251 F.R.D. 417, 421 (N.D. Cal. 2008) (quoting Bartold v.
25 Glendale Federal Bank, 81 Cal. App. 4th 816, 828 (2000)). "A class
26 definition is inadequate if a court must make a determination of
27 the merits of the individual claims to determine whether a person
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1 is a member of the class." 5 James W. Moore, Moore's Federal
2 Practice § 23.21[3][c] (2001).

3 Defendant claims that Plaintiffs have failed to propose a
4 proper class definition in that each of the proposed definitions
5 would require one or more individualized fact-finding proceeding,
6 per passenger, merely to determine whether that passenger is in the
7 proposed class. Plaintiffs note that the breach of contract class
8 "consists of passengers whose claims for damages arise from
9 Defendant's failure to provide or fully reimburse them for
10 reasonable overnight accommodations, including meals, lodging and
11 transportation." Plaintiffs' Motion at 8. Under that definition,
12 the Court, before ascertaining whether a passenger is in this
13 proposed class, would have to take evidence from each prospective
14 class member as to (1) whether that passenger incurred "out of
15 pocket expenses" that (2) resulted from the "delay," (3) what those
16 expenses were, (4) whether the expenses were "reasonable,"
17 (5) whether that passenger made a demand on Defendant to defray or
18 reimburse the expenses, (6) whether Defendant did defray or
19 reimburse those expenses, and (7) whether Defendant's defrayal or
20 reimbursement was "full." A class that is dependant on so many
21 individualized variables is not sufficiently ascertainable.

22 Similarly, Plaintiffs' negligence class is not clearly
23 ascertainable. Plaintiffs note that the negligence class "consists
24 of passengers who suffered injury as a consequence of Defendant's
25 negligent failure to provide adequate food, water, restrooms and
26 ventilation during their confinement on December 29, 2006."
27 Plaintiffs' Motion at 8. Under this definition, the Court would
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1 have to determine first which proposed class members have injuries
2 before proceeding with the case. Plaintiffs argue that Defendant
3 bears the burden to proffer evidence that "some of the members of
4 the proposed Class suffered no injury or enjoyed their hours-long
5 confinement." Reply at 4. However, it is Plaintiffs who bear the
6 burden to show that all class members suffered an injury. See
7 General Tel. Co., 457 U.S. at 158-61.

8 Moreover, the negligence class is also defined vaguely. The
9 amorphous concept of Defendant's failure to provide "adequate"
10 food, water, restrooms and ventilation will vary from passenger to
11 passenger and aircraft to aircraft. See, e.g., 5 Moore's Federal
12 Practice § 23.21[3][c] ("[T]he class could not be determined in
13 terms of whether its members were treated 'properly,' 'adequately,'
14 'reasonably,' or 'constitutionally,' because then class membership
15 depends on a determination of the merits as to each potential class
16 member."). Further, the phrase, "for a period of hours," is
17 equally vague. This definition presumably includes any time period
18 two hours and above. Individuals in an aircraft sitting on the
19 tarmac for two hours did not necessarily suffer the same types of
20 injuries as individuals in an aircraft sitting on the tarmac for
21 ten hours. These groups of individuals should not be in a class
22 together.

23 Plaintiffs' conversion class does not suffer from the same
24 faults as the breach of contract and negligence classes. Those
25 class members can easily discern whether their bags were returned
26 to them on December 29, 2006. See Moreno, 251 F.R.D. at 421.

1 C. Class Certification: Commonality

2 "A class has sufficient commonality 'if there are questions of
3 fact and law which are common to the class.'" Hanlon v. Chrysler
4 Corp., 150 F.3d 1011, 1019 (9th Cir. 1998) (quoting Fed. R. Civ. P.
5 23(a)(2)). "All questions of fact and law need not be common to
6 satisfy this rule. The existence of shared legal issues with
7 divergent factual predicates is sufficient, as is a common core of
8 salient facts coupled with disparate legal remedies within the
9 class." Id. Thus, the fact that class members have suffered
10 different degrees of injury and damages will not preclude a finding
11 of commonality. Blackie v. Barrack, 524 F.2d 891, 905 (9th Cir.
12 1975).

13 Here, all of Plaintiffs' claims emanate from the grounding of
14 flights on December 29, 2006. The decision to hold flights on the
15 tarmac was made by Defendant's System Operations Control Center at
16 DFW, which is the "nerve center of the worldwide American Airlines
17 route network, coordinating the day-to-day, minute-by-minute
18 operation of the airline . . . [where] decisions on a centralized,
19 system-wide basis" are made. Anderson Decl., Exh. D at 2-3; see
20 also Anderson Reply Decl. Ex. A at AA 000472. However, while it is
21 true that Defendant's decision to keep aircraft on the tarmac
22 affected all class members in some way, it did not affect each
23 class member similarly. Some class members were grounded for ten
24 hours, while others were waiting for two hours; some class members
25 complained of a lack of food and water, while others saw the
26 experience as a mere inconvenience. Class members' varied
27 experiences of sitting on a tarmac during a storm are not

1 sufficiently "common" to fulfill Rule 23(a)(2)'s commonality
2 requirement with respect to the negligence claim. Moreover, the
3 manner in which Defendant returned proposed class members' luggage
4 and reimbursed them for overnight accommodations is similarly too
5 varied to satisfy Rule 23(a)(2) with respect to the breach of
6 contract and conversion claims.

7 D. Class Certification: Typicality

8 The typicality prerequisite of Rule 23(a) is fulfilled if "the
9 claims or defenses of the representative parties are typical of the
10 claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). The
11 test for typicality is "whether other members have the same or
12 similar injury, whether the action is based on conduct which is not
13 unique to the named plaintiffs, and whether other class members
14 have been injured by the same course of conduct." Hanon v.
15 Dataproducts Corp., 976 F.2d 497, 508 (9th Cir. 1992) (quoting
16 Schwartz v. Harp, 108 F.R.D. 279, 282 (C.D. Cal. 1985)). "Under
17 the rule's permissive standards, representative claims are
18 'typical' if they are reasonably co-extensive with those of absent
19 class members; they need not be substantially identical." Hanlon,
20 150 F.3d at 1020.

21 Here, it is not clear whether representative Plaintiffs'
22 claims are typical of the claims of the class members. Mr. Hanni,
23 one of the proposed class representatives, testified that he
24 suffered no physical or emotional injuries from his experience on
25 the aircraft. The other proposed representative, Colleen O'Connor,
26 claims to have suffered hunger, thirst and exhaustion during her
27 confinement, but it is not clear that she suffered any physical or
28

1 emotional injuries. As discussed below, without any claim of an
2 injury, the negligence claims of Plaintiffs' proposed class
3 representatives cannot survive.

4 As to the breach of contract claim, Mr. Hanni did not stand in
5 line to request a hotel voucher on December 29, and he did not
6 provide any receipts to Defendant when he requested reimbursement
7 for a hotel charge. Ms. O'Connor received a hotel voucher. These
8 circumstances are not typical of class members who made claims for
9 unreimbursed out-of-pocket expenses.

10 E. Class Certification: Adequate Representation

11 Rule 23(a)(4) requires that "the representative parties will
12 fairly and adequately protect the interests of the class." Fed. R.
13 Civ. P. 23(a)(4). The adequacy requirement consists of two
14 inquiries: "(1) do the representative plaintiffs and their counsel
15 have any conflicts of interest with other class members, and
16 (2) will the representative plaintiffs and their counsel prosecute
17 the action vigorously on behalf of the class?" Staton v. Boeing
18 Co., 327 F.3d 938, 958 (9th Cir. 2003).

19 Nothing in the record shows that Mr. Hanni and Ms. O'Connor
20 and their counsel have any conflicts of interest with other class
21 members. However, they will not be able to prosecute the action
22 vigorously because, as noted above, their claims are not typical of
23 all the class members' claims. Therefore, Plaintiffs have not
24 satisfied Rule 23(a)(4).

25 F. Class Certification: Predominance

26 Plaintiffs assert that this action falls under the ambit of
27 Rule 23(b) because common issues will predominate over any
28

1 individualized issues and because a class action is the superior
2 method of adjudicating this matter. "The Rule 23(b)(3)
3 predominance inquiry tests whether proposed classes are
4 sufficiently cohesive to warrant adjudication by representation."
5 Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 623 (1997). "When
6 common questions present a significant aspect of the case and they
7 can be resolved for all members of the class in a single
8 adjudication, there is clear justification for handling the dispute
9 on a representative rather than an individual basis." Hanlon, 150
10 F.3d at 1022 (internal quotation marks omitted).

11 To determine whether the predominance requirement is
12 satisfied, "courts must identify the issues involved in the case
13 and determine which are subject to 'generalized proof,' and which
14 must be the subject of individualized proof." In re Dynamic Random
15 Access Memory (DRAM) Antitrust Litig., 2006 WL 1530166, at *6 (N.D.
16 Cal.).

17 There are individualized issues about what happened on
18 December 29th from diversion airport to airport, from aircraft to
19 aircraft, and from person to person. For instance, the amount of
20 food on each aircraft differed depending on an aircraft's estimated
21 travel time to its next destination. Short commuter flights from
22 Dallas stocked less food than flights to coastal cities. Further,
23 some aircraft were permitted to dock during their delay whereas
24 others waited on the tarmac. Some passengers on aircraft on the
25 tarmac were removed from the aircraft and transported by bus to the
26 terminal whereas others stayed on the aircraft during the entirety
27 of the delay.

1 Specifically as to the negligence claim, Mr. Hanni noted that
2 everybody on his plane was affected differently by the delay. T.
3 Hanni Depo. at 53-54. He observed that some people were sanguine
4 and dealt with it better than others. Id. Further, Plaintiffs
5 cannot prove, through generalized evidence, that each member of the
6 class suffered an actual injury proximately caused by Defendant's
7 breach of a legal duty. Mr. Hanni testified that he himself did
8 not suffer any physical or mental harm from the incident.
9 Similarly, Andrew Welch, another passenger on the same plane as Mr.
10 Hanni, testified that neither he nor his wife suffered any physical
11 illness from the events. Kaus Decl., Exh. C at 43:16-21. Thus,
12 the Court concludes that common issues do not predominate with
13 respect to Plaintiffs' negligence claim.

14 Similarly, each passenger's breach of contract claim will be
15 highly dependant on the individual facts pertaining to his or her
16 experiences. Individual class members plan to sue for breach of
17 contract under various sections of Defendant's Conditions of
18 Carriage (COC). For example, Mr. Hanni claims a breach of the
19 "bumping" provision of the COC because he claims that he had a
20 reserved seat on a December 30th flight to Mobile, but was not
21 allowed to board. Ms. O'Connor does not make a bumping claim.
22 Rather, she claims that Defendant failed to provide her with
23 "reasonable overnight accommodations," because, although she
24 received a hotel voucher, she was not separately reimbursed for
25 out-of-pocket expenses. Each individual claim by class members
26 will turn on a variety of clauses within the COC. Specific facts
27 pertaining to each individual class member and his or her
28

1 experiences with respect to breaches of various provisions of the
2 COC predominate with respect to the contract claim.

3 Individual questions also predominate in Plaintiffs' proposed
4 conversion class. Plaintiffs have not carried their burden to show
5 that there will be generalized proof of whether each class member
6 checked baggage, received baggage at the diversion airport, or even
7 made a demand for return of his or her baggage that Defendant
8 refused.

9 G. Superiority

10 Rule 23(b)(3) also requires that class resolution must be
11 "superior to other available methods for the fair and efficient
12 adjudication of the controversy." Fed. R. Civ. P. 23(b)(3). "The
13 policy at the very core of the class action mechanism is to
14 overcome the problem that small recoveries do not provide the
15 incentive for any individual to bring a solo action prosecuting his
16 or her rights." Amchem Prod., Inc. v. Windsor, 521 U.S. 591, 617
17 (1997). However, if "each class member has to litigate numerous
18 and substantial separate issues to establish his or her right to
19 recover individually, a class action is not 'superior.'" Zinser v.
20 Accufix Research Institute, Inc., 253 F.3d 1180, 1192 (2001). The
21 complexities of this class action weigh heavily against class
22 certification. The evidence suggests that there are just too many
23 individual issues for the Court to manage for class adjudication to
24 be deemed superior.

25 H. Rule 23(b)(2)

26 Plaintiffs request in the alternative that the Court certify a
27 class pursuant to Rule 23(b)(2) for the claims arising from
28

1 Defendant's breach of the Conditions of Carriage contract clause
2 guaranteeing, "In the case of extraordinary events that result in
3 very lengthy onboard delays, American Airlines and American Eagle
4 will make every reasonable effort to ensure that essential needs of
5 food (snack bar such as Nutri-Grain®), water, restroom facilities
6 and basic medical assistance are met." Because the Court concludes
7 that Plaintiffs have failed to meet the requirements of Rule 23(a),
8 their request to certify a class under Rule 23(b)(2) also fails.

9 In sum, the Court concludes that Plaintiffs' claims are not
10 appropriate for determination on a class-wide basis. The Court
11 GRANTS Defendant's motion to deny class certification and DENIES
12 Plaintiffs' motion for class certification.³

13 II. Summary Judgment Motions

14 Defendant has moved for summary judgment on all of Plaintiffs'
15 claims and Plaintiffs have moved for summary judgment on the breach
16 of contract claim. Although the parties dispute whether Texas or
17 California law governs this case, neither party has argued that the
18 law of the two states conflicts with respect to any of the
19 underlying causes of action in any way relevant to a decision on
20 these motions. Therefore, the Court will apply California law.

21 A. Negligence Claim

22 Plaintiffs allege that Defendant negligently failed to provide
23 adequate food, water, restroom facilities and ventilation in
24 violation of its duties as a common carrier. Defendant counters

25
26 ³Because the Court denies certification on the above-mentioned
27 grounds, it need not determine whether Plaintiffs' choice of law
28 proposal would violate due process.

1 that it owes no duty to Plaintiffs apart from the contractual
2 provisions of its COC. The COC states that Defendant will provide
3 food, water and other basic necessities in the case of
4 extraordinary events that result in very lengthy onboard delays.
5 COC, ¶ 19.

6 Under California law, "conduct amounting to a breach of
7 contract becomes tortious only when it also violates a duty
8 independent of the contract arising from principles of tort law."
9 Erlich v. Menezes, 21 Cal. 4th 543, 552 (1999). Here, as a common
10 carrier, Defendant owes Plaintiffs "both a duty of utmost care and
11 the vigilance of a very cautious person towards [its] passengers."
12 Acosta v. Southern Cal. Rapid Transit Dist., 2 Cal. 3d 19, 27
13 (1970); see Cal. Civ. Code § 2100 ("a carrier of persons for reward
14 must use the utmost care and diligence for safe carriage, to
15 provide everything necessary for that purpose, and to exercise to
16 that end a reasonable degree of skill"). Although Defendant is
17 "responsible for any, even the slightest, negligence and [is]
18 required to do all that human care, vigilance, and foresight
19 reasonably can do under all the circumstances," Acosta, 2 Cal. 3d
20 at 27, it is not an insurer of its passengers' safety, Lopez v.
21 Southern Cal. Rapid Transit Dist., 40 Cal. 3d 780, 785 (1985).
22 "[T]he degree of care and diligence which [it] must exercise is
23 only such as can reasonably be exercised consistent with the
24 character and mode of conveyance adopted and the practical
25 operation of [its] business" Lopez, 40 Cal. 3d at 785.
26 Thus, as a common carrier, Defendant may be liable for "failure to
27 act affirmatively to prevent harm." Ingham v. Luxor Cab Co.,

1 93 Cal. App. 4th 1045, 1050 (2001).

2 Defendant argues that Plaintiffs' negligence claim fails
3 because, while it has a duty to exercise care for their safety,
4 Defendant does not have a duty to provide passengers with food,
5 drink, operational lavatory services and fresh air. Defendant
6 characterizes Plaintiffs' negligence claim as asking for a "legal
7 requirement that a common carrier ensure that passengers never
8 suffer discomfort or inconvenience." Motion at 10.

9 However, Plaintiffs' negligence claim fails for a different
10 reason. Plaintiffs have not suffered any physical injuries and it
11 is not even clear that they suffered emotional injuries. Without
12 evidence of physical injuries, an individual may sue under
13 negligence with emotional injuries in very limited circumstances.
14 See Burgess v. Superior Court of Los Angeles County, 2 Cal. 4th
15 1064, 1077 (1992) (defendant doctor liable for "damages for
16 emotional distress suffered by mothers whose children were harmed
17 or died as a result of obstetrical malpractice"); Molien v. Kaiser
18 Foundation Hospitals, 27 Cal. 3d 916, 933 (1980) ("severe"
19 emotional injury from an erroneous diagnosis of syphilis).
20 Plaintiffs have not presented evidence that they have suffered such
21 an emotional injury. The only individual that arguably may have
22 suffered such a severe emotional injury, Kathleen Hanni, is no
23 longer a plaintiff in this case.

24 Plaintiffs cite many cases for the proposition that similarly
25 situated plaintiffs have "recovered damages for 'inconvenience' and
26 'mental' or 'emotional distress' without physical harm."
27 Opposition at 12. However, none of the cases Plaintiffs cite

1 actually stands for this proposition. Ingham v. Luxor Cab Co., 93
2 Cal. App. 4th 1045 (plaintiff suffered hip and knee injury after
3 walking away from cab); McGettigan v. Bay Area Rapid Transit Dist.,
4 57 Cal. App. 4th 1011 (1979) (plaintiff physically injured on train
5 platform after exiting train); Lopez, 40 Cal. 3d 780 (plaintiff
6 physically injured from fight on bus); Tameny v. Atlantic Richfield
7 Co., 27 Cal. 3d 167 (1980) (not a common carrier case); J'Aire
8 Corp. v. Gregory, 24 Cal. 3d 799 (1979) (not a common carrier
9 case); Lathigra v. British Airways PLC, 41 F. 3d 535, 538 (9th Cir.
10 1994) (no discussion of whether plaintiff can bring negligence
11 claim without asserting physical injuries); Rogers v. American
12 Airlines, 192 F. Supp. 2d 661, 665 (N.D. Tex. 2001) (same);
13 Chendrimada v. Air India, 802 F. Supp. 1089 (S.D.N.Y. 1992) (same);
14 Sassouni v. Olympic Airways, 769 F. Supp. 537, 539-40 (S.D.N.Y.
15 1991) (same); Kupferman v. Pakistan Int'l. Airlines, 438 N.Y.S. 2d
16 189 (Civ. Ct. 1981) (same). Because Plaintiffs did not suffer any
17 physical damages, the Court grants summary judgment against
18 Plaintiffs on the negligence claim.

19 III. Conversion

20 Conversion is the wrongful exercise of dominion over personal
21 property of another. Farmers Ins. Exchange v. Zerin, 53 Cal. App.
22 4th 445, 451 (1997). The elements of a conversion are (1) the
23 plaintiff's ownership or right to possession of the property at the
24 time of the conversion, (2) the defendant's conversion by a
25 wrongful act or disposition of property rights and (3) damages.
26 Id. "To establish a conversion, it is incumbent upon the plaintiff
27 to show an intention or purpose to convert the goods and to
28

1 exercise ownership over them, or to prevent the owner from taking
2 possession of the property." Zaslow v. Kroenert, 29 Cal. 2d 541,
3 550 (1946). The "act of removing personal property from one place
4 to another, without an assertion of ownership or preventing the
5 owner from exercising all rights of ownership in such personal
6 property, is not enough to constitute a conversion." Itano v.
7 Colonial Yacht Anchorage, 267 Cal. App. 2d 84, 89 (1968). Further,
8 a "common carrier incurs no liability for conversion in receiving
9 and forwarding goods tendered in the usual course of business."
10 Simonian v. Patterson, 27 Cal. App. 4th 773, 782 (1994).

11 Here, Defendant did nothing more than move Plaintiffs'
12 personal property from their point of origin to their destination.
13 At no point did Defendant exercise dominion, assert ownership, or
14 prevent Plaintiffs from asserting ownership of their luggage.
15 Plaintiffs have not presented any evidence to the contrary.
16 Therefore, the Court grants Defendant summary judgment against
17 Plaintiffs on the conversion claim.

18 IV. Breach of Contract for Denied Boarding Compensation

19 Plaintiffs assert a breach of contract claim under paragraph
20 five of the Conditions of Carriage (COC). That paragraph provides:

21 If a flight is oversold (more passengers hold confirmed
22 reservations than there are seats available), and you are
23 denied boarding involuntarily at the airport, you will be
entitled to a payment of Denied Boarding Compensation from
American

24 Defendant argues that Plaintiffs have no breach of contract claim
25 under this provision because they were not confirmed passengers on
26 the flight from Dallas to Mobile on December 30. Defendant relies
27 on the passenger name record (PNR), which is a regularly updated
28

1 document that Defendant maintains for each flight and which
2 includes the travel itinerary for each passenger. The PNR for the
3 flight in question did not include Plaintiffs' names. Moreover,
4 nothing in Plaintiffs' depositions supports their allegation that
5 they had a reservation for the flight on December 30. At most,
6 Plaintiff Timothy Hanni noted that "to the best of my recollection,
7 we were un-ticketed, but to go standby for that [flight] to see if
8 we could get on it." Decl. Stephen Kaus, Exh. B at 74. Mr. Hanni
9 could not "recall if we were re-ticketed or not, or if we were just
10 using the ticket from the [] previous day's flight." Id. at 75.
11 However, in a declaration filed along with Plaintiffs' opposition
12 to Defendant's summary judgment motion, Mr. Hanni states that
13 Defendant told him that his "reservation on the 12/30/06 flight
14 from DFW to Mobile Alabama . . . was still good" as long as he
15 arrived at the airport on time. Hanni Decl. ¶ 4. Mr. Hanni's more
16 recent declaration contradicts his deposition testimony. Mr. Hanni
17 "cannot create a triable issue by contradicting his own sworn
18 testimony." Nunez v. City of Los Angeles, 147 F.3d 867, 871 (9th
19 Cir. 1998). Therefore, the Court grants Defendant's summary
20 judgment motion as it relates to Plaintiffs' breach of contract
21 claim for denied boarding compensation.

22 V. Breach of Contract for Reasonable Accommodations and Re-
23 routing

24 Plaintiffs assert a breach of contract claim under two
25 sections of paragraph eighteen of the COC. The paragraph provides:

26 When cancellations and major delays are experienced, you will
27 be rerouted on our next flight with available seats. If the
28 delay or cancellation was caused by events within our control
and we do not get you to your final destination on the

1 expected arrival day, we will provide reasonable overnight
2 accommodations, subject to availability.

3 In extreme circumstances, it is possible that a flight will
4 cancel while on the ground in the city to which it was
5 diverted. When this happens you will be rerouted on the next
6 American Airlines or American Eagle flight with available
7 seats, or in some circumstances on another airline or some
8 other alternative means of transportation. If we are unable
9 to reroute you, reasonable overnight accommodations will be
10 provided by American Airlines or American Eagle, subject to
11 availability.

12 Defendant argues that it did not breach its obligation to provide
13 Plaintiffs with a voucher for an overnight accommodation on
14 December 29 in Austin because Plaintiffs never asked Defendant for
15 such a voucher. Further, Defendant has presented evidence that it
16 provided vouchers for hotel stays to at least eighteen other
17 passengers on Plaintiffs' flight. Plaintiffs respond that the line
18 for the vouchers was too long and that an official at the airport
19 said that the vouchers were for only ten dollars. However,
20 Plaintiffs cannot recall whether the airport official was an
21 American Airline employee or an airport official or if instead they
22 learned this information from a "rumor." See Kaus Decl. in Support
23 of Motion to Deny Class Cert., Exh. D at TH000196. Such an
24 ambiguous assertion does not support Plaintiffs' contention that
25 Defendant made this statement to Plaintiffs. Without proof that
26 Plaintiffs sought a voucher from Defendant, Defendant cannot be
27 responsible for failing to provide such a voucher that night.
28 Moreover, when Plaintiffs later requested a refund from Defendant
for their overnight accommodation, Defendant requested proof of the
expense in the form of receipts. Plaintiffs did not provide
Defendant with such receipts. Therefore, Plaintiffs' breach of

1 contract claim for failing to provide Plaintiffs with a reasonable
2 accommodation fails. Further, Plaintiffs do not present any
3 evidence to dispute Defendant's assertion that they were rerouted
4 on the next available flight to Mobile. Thus, the Court grants
5 Defendant's summary judgment motion as it relates to Plaintiffs'
6 breach of contract claim under paragraph eighteen of the COC. For
7 the same reasons, the Court denies Plaintiffs' summary judgment
8 motion.

9 VI. Rule 56(f) Motion

10 Rule 56(f) of the Federal Rules of Civil Procedure provides
11 that the court may deny or continue a motion for summary judgment
12 "[i]f a party opposing the motion shows by affidavit that, for
13 specified reasons, it cannot present facts essential to justify its
14 opposition." The requesting party must show (1) it has set forth
15 in affidavit form the specific facts it hopes to elicit from
16 further discovery, (2) the facts sought exist and (3) the sought-
17 after facts are essential to oppose summary judgment. Family Home
18 and Finance Center, Inc. v. Federal Home Loan Mortgage Corp., 525
19 F.3d 822, 827 (9th Cir. 2008).

20 Because the Court grants summary judgment on the negligence
21 and conversion claims based solely on issues of law, further
22 discovery on these claims would be fruitless. Further, the Court
23 also finds that further discovery on the claims for breach of the
24 COC paragraphs regarding reasonable accommodations and rerouting
25 would not reveal essential facts that would successfully oppose
26 summary judgment. Plaintiffs have not shown that further discovery
27 on this issue will uncover evidence that Plaintiffs did in fact
28

1 request a voucher from Defendant or that Defendant told Plaintiffs
2 that the travel voucher was for only ten dollars. Moreover,
3 Plaintiffs have not presented any argument as to how further
4 discovery would establish that Plaintiffs had a reservation on
5 December 30.

6 VII. Motion For Leave to Seek Reconsideration

7 Plaintiffs move for leave to file a motion to reconsider the
8 July 11, 2008 Order dismissing the false imprisonment cause of
9 action. In that Order the Court concluded that Plaintiff Kathleen
10 Hanni did not sufficiently allege that her confinement on the
11 aircraft was unlawful. In the instant motion, Plaintiffs argue
12 that discovery uncovered new material facts that permit Plaintiffs
13 to make factual allegations which would establish Defendant's lack
14 of legal authority to keep Plaintiffs on the tarmac for over nine
15 hours. See Civ. L.R. 7-9(b)(1) and (2). In light of Plaintiffs'
16 arguments and the exhibits attached in support thereof, the Court
17 grants Plaintiffs leave to file a motion for reconsideration.
18 Plaintiffs shall combine this motion in a single brief with a
19 motion for leave to file a fourth amended complaint and a motion to
20 certify a false imprisonment class. Plaintiffs' motion will be due
21 two weeks from the date of this order; Defendant's opposition will
22 be due two weeks thereafter; and Plaintiffs' reply will be due one
23 week later. The motion will taken under submission and decided on
24 the papers.

25 CONCLUSION

26 For the foregoing reasons, the Court (1) DENIES O'Connor's
27 motion to intervene (Docket No. 302), (2) GRANTS Defendant's motion
28

1 to deny class certification (Docket No. 201) and DENIES Plaintiffs'
2 motion for class certification (Docket No. 311), (3) GRANTS
3 Defendant's motion for summary judgment (Docket No. 196), DENIES
4 Plaintiffs' motion to continue Defendant's motion for summary
5 judgment (Docket No. 259) and DENIES Plaintiffs' motion for partial
6 summary judgment (Docket No. 351) and (4) GRANTS Plaintiffs' motion
7 for leave to file a motion for reconsideration (Docket No. 337).

8 IT IS SO ORDERED.

9 Dated: 01/15/10

Claudia Wilken

CLAUDIA WILKEN
United States District Judge