

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

**RICHARD CUSICK,** )  
**DORRIS MCDOWELL SAMSIL, JR.,** )  
**JAMES KAMBURIS, JR., and** )  
**MITCHELL HUNGERPILLER,** )  
**individually and on behalf of a** )  
**class of similarly situated persons;** )

**Plaintiffs,** )

**Case No.: 2:08-CV-0650-RRR**

**v.** )

**SOUTHWEST AIRLINES CO.,** )  
**a Texas Corporation,** )

**Defendant.** )

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**MEMORANDUM OPINION**

This is a civil action filed by the plaintiffs, Richard Cusick, Dorris McDowell Samsil, Jr., James Kamburis, Jr., and Mitchell Hungerpiller (the “named plaintiffs”), against the defendant, Southwest Airlines, Co. (“Southwest”). The named plaintiffs, four residents of Alabama, filed this suit on April 11, 2008. They allege that they have paid for and received air transportation service from Southwest. (Compl. ¶¶ 2-5.) They also claim that they allegedly flew on Southwest airplanes that were not in compliance with various federal laws and regulations. (Compl. ¶ 9.) The plaintiffs allege that Southwest breached the terms of its contract and its express warranty, because it allegedly violated its Contract of Carriage and safe flying promises.

(Compl. ¶¶ 29-49.) The named plaintiffs purport to represent a class of individuals, although no class has yet been certified.

The case is presently before the court on the motion to transfer or stay filed by the defendant. (Doc. 17.) The motion is brought, in part because a similar suit has been filed in federal court in the Western District of Texas. It is also brought in part because Southwest argues that the Northern District of Texas is a better venue for this action. Southwest argues that this case should be transferred to one of these two districts in Texas, or stayed.

On December 5, 2008, the Magistrate recommended that the court exercise its discretion to transfer this matter pursuant to 28 U.S.C. § 1404(a). Because of this recommendation, the magistrate noted that there was no reason to consider the alternative motion to transfer, or the motion to stay. The plaintiff filed objections to the magistrate's report and recommendation.

Having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation, and the objections thereto, the Court is of the opinion that the magistrate judge's report is due to be and is hereby **ADOPTED** and his recommendation is **ACCEPTED**. An appropriate order will be entered.

**DONE** this the 29th day of December, 2008.

A handwritten signature in black ink, appearing to read "V. Emerson Hopkins", written in a cursive style.

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**VIRGINIA EMERSON HOPKINS**

United States District Judge