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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 TONY SCHULTZ, individually, and on
11 behalf of a class of others similarly
situated,

12 Plaintiffs,

13 v.

14 UNITED AIRLINES, INC., a Delaware
15 corporation d/b/a UNITED AIRLINES;
16 NORTHWEST AIRLINES, INC., a
17 Delaware corporation; and DELTA AIR
LINES, INC., a Delaware corporation,

18 Defendants.

CASE NO. C10-1263 RSM

ORDER GRANTING DEFENDANT
UNITED AIRLINES' MOTION TO
DISMISS

19 **I. INTRODUCTION**

20 This matter comes before the Court on a Motion to Dismiss (Dkt. #24) brought by
21 Defendant United Airlines, Inc. ("Defendant"). Plaintiff Tony Schultz ("Plaintiff") alleges in his
22 First Amended Complaint (Dkt. #20) that Defendant breached a contract as a result of its failure
23 to load his baggage onto his flight after Plaintiff paid the checked baggage fee. Plaintiff seeks to
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1 bring a class action consisting of all passengers whose baggage was lost, delayed, or damaged
2 after having been charged a baggage fee by Defendant. Plaintiff brings claims for breach of
3 contract, breach of covenant of good faith and fair dealing, and negligent misrepresentation.
4 Defendant seeks dismissal of all claims on the grounds that Plaintiff lacks standing, that
5 Plaintiff's claims are preempted by the Airline Deregulation Act, and that Plaintiff does not state
6 a claim for breach of contract.

7 **II. BACKGROUND**

8 Plaintiff alleges that on October 26, 2009, Defendant charged him a baggage fee to
9 deliver his bag on a flight from Seattle to Sydney, Australia. Defendant allegedly failed to load
10 Plaintiff's baggage onto the flight. Plaintiff alleges that by charging a fee, a contract was
11 created. However, Defendant contends that no contract was created by Plaintiff's payment; and
12 therefore Plaintiff has no right to a refund. Rather, Defendant argues that the terms of the ticket
13 establish the contract of carriage, also known as the Conditions of Carriage, which is the
14 controlling contract in this dispute.

15 **III. DISCUSSION**

16 The fee that Plaintiff paid to Defendant was not a baggage fee. Rather, it was a fee
17 charged by the airline when Plaintiff changed his flight reservation. Defendant confirms that
18 Plaintiff never paid a fee to check baggage, which is consistent with its International Checked
19 Baggage policy that allows two free checked bags on international flights. Plaintiff's claims all
20 derive from the allegation that he paid a baggage fee. Without having paid a baggage fee
21 Plaintiff's claims must be dismissed. Absent payment of a baggage fee, Plaintiff lacks standing
22 to bring the claims that he has alleged. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992).

1 **IV. CONCLUSION**

2 Having reviewed the relevant pleadings, declarations, and the remainder of the record,
3 the Court hereby finds and ORDERS:

4 (1) Defendant United Airlines' Motion to Dismiss (Dkt. #24) is GRANTED.

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6 Dated January 28, 2011.

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9 RICARDO S. MARTINEZ
10 UNITED STATES DISTRICT JUDGE