

1 Ms. Kekona was returning home from a trip she had taken to visit her children in Hawaii.
2 (*Id.* at 5, 8–9.) When purchasing her round-trip ticket with Alaska, Ms. Kekona requested
3 “‘mobility/wheelchair’ assistance for the entire trip.” (*Id.* at 5) For a passenger with an electric
4 wheelchair, this includes assistance on and off the airplane and a “gate-to-gate” escort. (*Id.* at 5–
5 6.) Alaska includes passengers requesting the service on a “Special Services” list it keeps for
6 each flight. (*Id.*) Ms. Kekona was on that list for the entirety of her round trip. (*Id.* at 7.)

7 In Portland, Alaska contracts with Defendant Huntleigh USA Corporation (“Huntleigh”)
8 to provide this service. (*Id.* at 8.) Ms. Kekona’s family contacted Alaska three times to confirm
9 the airline would provide the service before Ms. Kekona’s return flight, the final time being at
10 the gate in Maui, just prior to her departure. (*Id.* at 7.) Alaska claims it notified Huntleigh that
11 Ms. Kekona requested gate-to-gate service in Portland. (*Id.* at 8.) Huntleigh asserts Alaska failed
12 to notify it that Ms. Kekona requested anything more than assistance exiting the aircraft. (*Id.*)
13 Accordingly, when Ms. Kekona’s flight from Miami arrived in Portland, Huntleigh employees
14 assisted Ms. Kekona off the aircraft and transferred her to her electric wheelchair at the bottom
15 of the sky bridge. (*Id.*) Huntleigh employees left Ms. Kekona when she reached the top of the
16 sky bridge. (*Id.*) Ms. Kekona then showed her ticket to an Alaska employee, who pointed her in
17 the direction of her next gate and did no more. (*Id.*)

18 Ms. Kekona attempted to find her gate, but ended up driving her wheelchair onto the top
19 of an escalator. (*Id.* at 9.) She tumbled down the escalator, with her motorized wheelchair
20 landing on top of her. (*Id.*) She suffered serious injuries. (*Id.*) She indicated to responding
21 emergency personnel that she “just got confused” and mistook the top of the escalator for an
22 elevator. (*Id.*) Ms. Kekona died three-and-a-half months later from complications resulting from
23 her June 7, 2017 injuries. (*Id.* at 15, 17.)

24 Ms. Kekona’s estate brought negligence, negligent training and supervision, survival, and
25 wrongful death actions against Alaska and Huntleigh in King County Superior Court. (Dkt. No.
26 1-2 at 1, 15–21.) Alaska removed the matter to this Court pursuant to 28 U.S.C. sections 1441

1 and 1446, based on the federal question implicated by the complaint, which asserts a breach of
2 Alaska’s duty to Ms. Kekona, as established by the Air Carrier Access Act (“ACAA”), 49 U.S.C.
3 § 41705, *et seq.* (Dkt. No. 1 at 1); *see* 28 U.S.C. § 1331. Alaska now moves to dismiss pursuant
4 to Federal Rule of Civil Procedure 12(b)(6), asserting Ms. Kekona’s estate fails to state a claim
5 upon which relief can be granted. (Dkt. No. 14 at 1.) Specifically, Alaska alleges that: (1) the
6 complaint fails to plead plausible grounds to pierce Alaska Air Group’s corporate form, thereby
7 precluding liability for acts or omissions of a subsidiary, Alaska Airlines, Inc.; (2) the AACA
8 and its associated regulations preempt claims presented in the complaint; and (3) the complaint
9 fails to plead plausible grounds that Alaska negligently trained or supervised its employees. (Dkt.
10 No. 14 at 1–2.)

11 **II. DISCUSSION**

12 **A. Legal Standard: Motion to Dismiss¹**

13 A defendant may move to dismiss a complaint when a plaintiff “fails to state a claim
14 upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). To grant a motion to dismiss, the
15 Court must be able to conclude that the moving party is entitled to judgment as a matter of law,
16 even after accepting all factual allegations in the complaint as true and construing them in the
17 light most favorable to the non-moving party. *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir.
18 2009). To survive a motion to dismiss, a plaintiff must merely cite facts supporting a “plausible”
19 cause of action. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555–56 (2007). A claim has
20 “facial plausibility” when the party seeking relief “pleads factual content that allows the court to
21 draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v.*
22 *Iqbal*, 556 U.S. 662, 672 (2009). Although the Court must accept as true a complaint’s well-
23 pleaded facts, conclusory allegations of law and unwarranted inferences will generally not defeat

24
25 ¹ The Court declines Plaintiff’s request to convert Alaska’s motion to one seeking
26 summary judgment. (Dkt. No. 17 at 19–20.) Accordingly, the Court will not consider facts
outside of those presented in the complaint in rendering this decision. *See U.S. v. Ritchie*, 342
F.3d 902–03, 908 (9th Cir. 2003).

1 an otherwise proper Rule 12(b)(6) motion. *Vasquez v. L.A. County*, 487 F.3d 1246, 1249 (9th
2 Cir. 2007). However, “‘some latitude’ may be appropriate where a plausible claim may be
3 indicated ‘based on what is known,’ at least where . . . ‘some of the information needed may be
4 in control of [the] defendants.’” *Menard v. CSX Transp., Inc.*, 698 F.3d 40, 45 (1st Cir. 2012)
5 (quoting *Pruell v. Caritas Christi*, 678 F.3d 10, 15 (1st Cir. 2012)) (alteration in original); *see*
6 *Soo Park v. Thompson*, 851 F.3d 910, 928 (9th Cir. 2017), *cert. denied sub nom.* 138 S. Ct. 642
7 (2018) (citing *Arista Records, LLC v. Doe 3*, 604 F.3d 110, 120 (2d Cir. 2010)) (facts included in
8 complaint need only be “suggestive” of unlawful conduct to survive a motion to dismiss); *see*
9 *also Williams v. Yamaha Motor Co.*, 851 F.3d 1015, 1028 (9th Cir. 2017) (information that could
10 only be obtained through discovery need not be included in a complaint).

11 **B. Piercing the Corporate Veil**

12 Alaska asserts the complaint “fails to state plausible factual allegations to pierce Alaska
13 Air Group’s corporate form and impose liability against it for the alleged acts or omissions of its
14 separately incorporated subsidiary, Alaska Airlines, Inc.” (Dkt. No. 14 at 5–6.) To pierce the
15 corporate veil, a plaintiff must show that the corporate form was used to violate or evade a duty
16 and that the corporate veil must be disregarded in order to prevent loss to an innocent party.
17 *Wash. Water Jet Workers Ass’n v. Yarbrough*, 90 P.3d 42, 58 (Wash. 2004).

18 Plaintiff alleges upon information and belief that, “[Alaska Air Group, Inc. is the] holding
19 company for Alaska Airlines, Inc. and is responsible for the acts, omissions and other wrongful
20 conduct of Alaska Airlines, Inc. At all relevant times, Alaska Air Group, Inc. exercised such
21 dominion and control over Alaska Airlines, Inc. that it is liable.” (Dkt. No. 1-2 at 3.) Plaintiff
22 goes on to plead Alaska’s duty to Ms. Kekona, the manner in which that duty was violated, and
23 Ms. Kekona’s resulting pain, injury, and eventual death. (*See generally* Dkt. No. 1-2.)

24 Information necessary to demonstrate the relationship between Alaska Air Group, Inc.
25 and Alaska Airlines, Inc. is solely within Alaska’s control and knowledge. Therefore, additional
26 facts supporting Plaintiff’s allegations are only available through discovery. Accordingly, the

1 Court finds Plaintiff’s allegations regarding Alaska’s corporate structure sufficient to survive
2 Alaska’s motion to dismiss. “The critical question under *Twombly* and *Iqbal* is plausibility.”
3 *Montantes v. Inventure Foods*, C14-1128-MWF, slip op. at 7 (C.D. Cal. July 2, 2014). Plaintiff
4 has plead sufficient facts to plausibly support liability on the part of Alaska Air Group, Inc. for
5 the alleged actions of Alaska Airlines, Inc. and its agents. Accordingly, the Court DENIES
6 Alaska’s motion to dismiss.

7 **C. Preemption**

8 Alaska asserts the ACAA preempts Plaintiff’s tort claims, as described in the complaint.
9 First, Alaska alleges that the complaint fails to address Defendants’ standard of care for Ms.
10 Kekona, as provided by the ACAA, or to provide facts demonstrating that Defendants breached
11 this standard of care. (Dkt. No. 14 at 8–20.) Second, Alaska alleges that the imposition of tort
12 liability under the circumstances described in the complaint conflict with the ACAA. (*Id.* at 20–
13 23.)

14 The Supreme Court has identified two “cornerstones” of preemption jurisprudence.
15 *Wyeth v. Levine*, 555 U.S. 555, 565 (2009). “First, the purpose of Congress is the ultimate
16 touchstone in every preemption case.” *Id.* (internal quotation marks and citation omitted).
17 Second, there is a “presumption against preemption”—the Court assumes that Congress does not
18 intend to supersede a state act, particularly in traditional areas of state regulation, “unless that
19 was the clear and manifest purpose of Congress.” *Id.* Congress may preempt state law either
20 expressly, by using clear statutory language, or implicitly. *See Whistler Invs., Inc. v. Depository*
21 *Trust & Clearing Corp.*, 539 F.3d 1159, 1164 (9th Cir. 2008). There are two types of implied
22 preemption: field preemption and conflict preemption. *Id.* Field preemption describes when
23 Congress has “so thoroughly occupie[d] a legislative field” that states simply have no room to
24 regulate conduct in that field. *Id.* Conflict preemption describes a situation when it is either
25 impossible for a party to comply both with federal and state requirements or when, “in light of
26 the federal statute’s purpose and intended effects, state law poses an obstacle to the

1 accomplishment of Congress’s objectives.” *Id.* The Ninth Circuit has previously held that the
2 ACAA and associated U.S. Department of Transportation (“DOT”) regulations do not preempt
3 tort claims against an air carrier, but do provide the relevant standard for the Court to consider in
4 claims brought by disabled passengers. *Gilstrap v. United Air Lines, Inc.*, 709 F.3d 995 at 1006
5 (2013).

6 Alaska first alleges that the complaint is deficient in not providing facts to support
7 Defendants’ violation of the standard of care as provided by the ACAA. The Court disagrees.
8 The complaint describes the relevant standard of care, as provided by DOT regulations.
9 According to the complaint, “14 C.F.R. § 382.91 provides that air carriers such as Defendant
10 Alaska Airlines are required to ensure that individuals with disabilities are provided with
11 assistance in making flight connections and transportation between gates, among other
12 requirements, when requested by on or on behalf of a passenger with a disability.” (Dkt. No. 1-2
13 at 16.) The complaint then provides sufficient facts to demonstrate that Alaska failed to provide
14 this assistance, despite repeated requests by Ms. Kekona and her family to do so. (*Id.* at 5–10,
15 15–22.)

16 Nor does the Court agree with Alaska’s argument that, because the complaint does not
17 allege that Ms. Kekona affirmatively sought assistance from Alaska representatives once
18 Huntleigh personnel left, Alaska was absolved of its obligation. (See Dkt. No. 19 at 8.) The
19 complaint alleges that Ms. Kekona affirmatively sought Alaska’s assistance at the top of the jet
20 way and that insubstantial assistance was rendered. According to the complaint, Ms. Kekona was
21 on a “special services” list, she “showed [the Alaska agent] her ticket” at the top of the jet way,
22 yet the agent merely “pointed [Ms. Kekona] where to go, but again, failed to provide her the
23 gate-to-gate assistance as required.” (See Dkt. No. 1-2 at 6, 8). Furthermore, the complaint
24 alleges that Ms. Kekona and her family, some of whom held a power of attorney on Ms.
25 Kekona’s behalf, repeatedly requested gate-to-gate assistance before she boarded her outbound
26

1 flight from Maui. (*Id.* at 5–10, 15–22.)²

2 Alaska next alleges that conflict preemption applies to Plaintiff’s claims. (Dkt. No. 14 at
3 20.) But the Ninth Circuit has previously rejected Alaska’s argument in a comparable case.

4 *Gilstrap*, 709 F.3d at 1008–11.³

5 Accordingly, the Court DENIES Alaska’s motion to dismiss on this basis.

6 **D. Failure to Train or Supervise**

7 Finally, Alaska asserts the complaint is deficient in failing to provide sufficient facts to
8 establish plausible negligence claims based on a failure to train and/or supervise. (Dkt. No. 14 at
9 23.) This argument fails for the same reason that Alaska’s first argument fails. *See supra* section
10 II.B. According to the complaint, “Defendants . . . were negligent in failing to properly train
11 and/or supervise their agents and/or employees in the legally responsible way of dealing with a
12 passenger with disabilities.” (Dkt. No. 1-2 at 20.) The complaint includes facts that support this
13 assertion: repeated requests for assistance by Ms. Kekona and her family before her flight, Ms.
14 Kekona’s inclusion on the special services list, and her attempt to seek assistance at the top of the
15 jet way. (*See generally* Dkt. No. 1-2 at 5–10, 15–22.) Yet no assistance was provided. (*Id.*) This
16 plausibly implies negligent training and/or supervision. *See Arista Records*, 604 F.3d at 120
17 (describing a plausible “inference of culpability”). Any additional facts regarding Defendants’
18 training and supervision policies are not available to Plaintiff at this pre-discovery stage in the
19 proceedings. *See id.* (relaxing *Iqbal*’s plausibility standard for a complaint lacking facts that are
20 “peculiarly within the possession and control of the defendant”). Plaintiff has plead sufficient
21 facts to bring a plausible claim of negligent training and/or supervision.

22 ² In addition, the cases Alaska cites in its motion to dismiss are easily distinguishable
23 from this case. (*See* Dkt. No. 14 at 13–16) (citing *Auditori v. Sky Harbor Int’l Airport*, 880 F.
24 Supp. 696, 699 (D. Ariz. 1995); *Glass v. Nw. Airlines, Inc.*, 761 F. Supp. 2d 734, 739–47 (W.D.
Tenn. 2011); *Glatfalter v. Delta Airlines, Inc.*, 558 S.E. 2d 793, 796–97 (Gt. Ct. App. 2002)).

25 ³ The cases Alaska cites are again easily distinguishable. (*See* Dkt. No. 14 at 20–22)
26 (citing *Ventress v. Japan Airlines*, 747 F.3d 716, 719–22 (9th Cir. 2014); *Montalvo v. Spirit
Airlines*, 508 F.3d 464, 472–73 (9th Cir. 2007)).

1 Accordingly, the Court DENIES Alaska's motion to dismiss.

2 **III. CONCLUSION**

3 For the foregoing reasons, Alaska's motion to dismiss (Dkt. No. 14) is DENIED, as is
4 Plaintiff's request to convert Alaska's motion to one seeking summary judgment (Dkt. No. 17 at
5 19-20.)

6 DATED this 14th day of March 2018.

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10 John C. Coughenour
11 UNITED STATES DISTRICT JUDGE
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