IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THOR ZURBRIGGEN, DENA CATAN, HALEY JOHNSON, LYNNETTE CHESTER, KIMBERLY JOHNSON, JOSEPH CATAN, BARBARA BELL, LAURA URQUHART, DOUG CRUMRINE, LUJUAN PRESTON, and TIMOTHY TERRY, on behalf of themselves and on behalf of all others similarly situated, Plaintiffs, v. TWIN HILL ACQUISITION COMPANY, INC., a California corporation, and AMERICAN AIRLINES, INC., a Delaware corporation, Defendants.	Case No. 1:17-cv-05648 Honorable John J. Tharp, Jr. Magistrate Judge Jeffrey Cole

DEFENDANT AMERICAN AIRLINES, INC.'S MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT

For its Motion to Dismiss Plaintiffs' First Amended Complaint ("FAC") pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendant American Airlines, Inc. ("American") states as follows:

1. Plaintiffs are 11 current employees of American who claim unspecified injuries that they allege arise from chemicals on uniforms that American introduced to its workforce in September 2016. (FAC ¶¶ 2-4, 13-23.) Based on their use of these uniforms, Plaintiffs purport to assert three state law claims against American for battery, intentional infliction of emotional distress ("IIED"), and medical monitoring.

2. Pursuant to Illinois choice-of-law rules, the law of Plaintiffs' respective states of residence—Connecticut, Illinois, Indiana, Iowa, Nevada, North Carolina, and Texas ("Applicable States")—govern their claims.

3. For the reasons detailed below, Plaintiffs' allegations are insufficient to state a claim as to American, and the FAC should be dismissed pursuant to Rule 12(b)(6).

4. Because Plaintiffs' alleged injuries all arise in the course of their employment with American, the workers' compensation statutes of Plaintiffs' respective states of residence provide their exclusive remedy. Plaintiffs' transparent attempt to avoid this conclusion by concocting an intentional tort theory is ineffective as a matter of law. They make no factual allegations to establish (or even suggest) that American knowingly and purposefully intended to harm Plaintiffs. Instead, they rely on their theory that American must have known that the uniforms were harmful because employees complained of health symptoms after wearing them and that by giving employees the choice to wear their old uniforms in response to these concerns, American somehow admitted this knowledge. This is not only pure speculation, but illogical. Plaintiffs' conclusory assertion is also belied by their allegation that American relied on test results showing the uniforms do not contain chemicals at levels sufficient to cause health effects. Plaintiffs' factual allegations fall dramatically short of being sufficient to come within the intentional tort exception in any of the applicable workers' compensation acts. Because all of Plaintiffs' claims are barred by the workers' compensation acts of Plaintiffs' respective states of residence, all of Plaintiffs' claims as to American should be dismissed pursuant to Rule 12(b)(6), with prejudice.

5. Plaintiffs' allegations are also insufficient to state a claim because they do not allege facts to support the essential elements of each claim.

6. Plaintiffs fail to state a claim for battery (Count I) because, in addition to not alleging facts supporting intent, Plaintiffs fail to allege harmful or offensive contact. Unlike a typical chemical exposure case, Plaintiffs do not identify a single chemical allegedly associated with their purported injuries, and do not allege the presence of any chemicals at levels known to cause injury. Plaintiffs merely string together a list of chemicals present on everyday clothing items, and then suggest—under a wholly unsubstantiated theory—that such chemicals may "synergistically contribute to [] reactions." Exposure to low levels of chemicals is a fact of modern life, and Plaintiffs' allegations that unspecified chemicals present at unspecified levels caused unspecified injuries due to unspecified "synergistic effects" are insufficient to establish harmful or offensive contact. Because Plaintiffs' have failed to state a claim for battery, Count I should be dismissed pursuant to Rule 12(b)(6), with prejudice.

7. Plaintiffs also fail to state an IIED claim (Count II) because they do not allege facts sufficient to constitute extreme and outrageous conduct by American and they fail to include any allegation of the requisite severe emotional distress. Because Plaintiffs have failed to state a claim for IIED, Count II should be dismissed pursuant to Rule 12(b)(6), with prejudice.

8. Plaintiffs likewise fail to state a medical monitoring claim (Count V) because they do not allege exposure to a hazardous substance, much less at high enough concentrations to cause injury. Nor do Plaintiffs identify the maladies related to such alleged exposure for which a known medical monitoring procedure can be used. The medical monitoring claims of the Connecticut, Nevada, North Carolina, and Texas Plaintiffs also fail because those states declined to recognize medical monitoring as an independent cause of action. Because Plaintiffs have failed to state a claim for medical monitoring, Count V should be dismissed pursuant to Rule 12(b)(6), with prejudice.

WHEREFORE, American respectfully requests that its Motion be granted, that Plaintiffs' First Amended Complaint be dismissed with prejudice, and for all other relief this Court deems just.

Dated: November 17, 2017

Respectfully submitted,

By: /s/ Mark W. Robertson

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that, on this 17th day of November, 2017, copies of the foregoing document and all exhibits thereto were filed with the Clerk of the Court through the CM/ECF system, which will send notification of such filing to all counsel of record at the email addresses on file with the Court.

By: /s/ Mark W. Robertson
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