

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
San Francisco Division

ISMAEL AGASINO,  
Plaintiff,  
v.  
AMERICAN AIRLINES INC.,  
Defendant.

Case No. 19-cv-03243-LB

**ORDER DENYING DEFENDANT'S  
MOTION TO DISMISS FOR  
IMPROPER VENUE BUT GRANTING  
MOTION TO TRANSFER CASE  
UNDER 28 U.S.C. § 1404**

Re: ECF No. 12

**INTRODUCTION**

Plaintiff Ismael Agasino, who does not live in California and does not allege any connection to California, brings this lawsuit against defendant American Airlines, Inc., which is not a citizen of California, for injuries he suffered on a flight that had no connection to California. American Airlines moved to dismiss for improper venue under Federal Rule of Civil Procedure 12(b)(3) or, in the alternative, to transfer the case under 28 U.S.C. § 1404.

The court can decide this motion without oral argument. N.D. Cal. Civ. L.R. 7-1(b). The court denies American Airlines's motion to dismiss but finds that transfer is appropriate under 28 U.S.C. § 1404 and transfers this case to the Northern District of Texas.

1 **STATEMENT**

2 Plaintiff Ismael Agasino is a citizen and resident of the United States.<sup>1</sup> Mr. Agasino does not  
3 allege that he is a citizen or resident of California.<sup>2</sup> Mr. Agasino does not allege that he has any  
4 connection to California.<sup>3</sup>

5 Defendant American Airlines is a citizen of Texas, where it maintains its principal business  
6 offices.<sup>4</sup> More specifically, American Airlines maintains its principal offices in Fort Worth,  
7 Texas.<sup>5</sup> Fort Worth is in the Northern District of Texas.

8 Mr. Agasino booked a flight on American Airlines Flight 60, flying on June 1, 2018.<sup>6</sup> Flight  
9 60 flew from Tokyo, Japan to Dallas, Texas.<sup>7</sup> Dallas is in the Northern District of Texas. On that  
10 flight, a bag fell from an overhead storage compartment and hit Mr. Agasino in the head.<sup>8</sup> Mr.  
11 Agasino lost consciousness and suffered injuries, including a concussion, cervical strain, and  
12 cognitive impairment.<sup>9</sup> Mr. Agasino makes a claim under the Convention for the Unification of  
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16 <sup>1</sup> Compl. – ECF No. 1 at 2 (¶ 1). Citations refer to material in the Electronic Case File (“ECF”);  
pinpoint citations are to the ECF-generated page numbers at the top of documents.

17 <sup>2</sup> See generally Compl. – ECF No. 1; see also Civil Cover Sheet – ECF No. 1-1 (stating that Mr.  
Agasino’s county of residence is “Middlesex,” which is not a county of California); Pl. Opp’n – ECF  
18 No. 17 at 9 (stating that Mr. Agasino would have to “travel[] to San Francisco” to litigate this case).  
Mr. Agasino does not disclose in either his complaint or his opposition where he lives.

19 <sup>3</sup> See generally Compl. – ECF No. 1.

20 <sup>4</sup> Id. at 2 (¶ 2).

21 <sup>5</sup> See, e.g., American Airlines, Inc., Form 10-K (2019), available at <https://www.sec.gov/Archives/edgar/data/4515/000000620119000009/a10k123118.htm> (last visited July 26, 2019). The court can  
take judicial notice of the location of American Airlines’s principal offices. Fed. R. Evid. 201(b); cf.  
22 *Miller v. Roundpoint Mortg. Serv. Corp.*, No. 3:18-cv-00106-BEN-BLM, 2018 WL 1069433, at \*2  
(C.D. Cal. Feb. 23, 2018) (taking judicial notice of company’s principal place of business based on  
23 Secretary of State’s website) (citing *Franklin v. Eisner*, No. 96-CV-935 JSB, 1996 WL 406795, at \*1  
(N.D. Cal. July 12, 1996)).

24 <sup>6</sup> Compl. – ECF No. 1 at 3 (¶ 3).

25 <sup>7</sup> Jackson Decl. – ECF No. 12-2 at 1–2 (¶¶ 3–4). On a motion to dismiss for improper venue, “the  
pleadings need not be accepted as true, and the court may consider facts outside of the pleadings.”  
26 *Murphy v. Schneider Nat’l, Inc.*, 362 F.3d 1133, 1137 (9th Cir. 2004) (citations omitted).

27 <sup>8</sup> Compl. – ECF No. 1 at 5 (¶ 5).

28 <sup>9</sup> Id.

1 Certain Rules for International Carriage by Air, Treaty No. 106-45 (the “Montreal Convention”),  
2 against American Airlines for not less than \$400,000.<sup>10</sup>

3 Mr. Agasino does not allege that he booked his flight from California.<sup>11</sup> Mr. Agasino does not  
4 allege that the flight departed from, arrived in, had a layover in, or otherwise had any connection  
5 to California.<sup>12</sup> Mr. Agasino alleges that American Airlines generally operates numerous flights  
6 into and out of San Francisco International Airport (“SFO”), leases space at SFO, has hundreds of  
7 employees at SFO, and regularly solicits business from citizens in the Northern District of  
8 California<sup>13</sup> — but he does not allege that he, his flight, or any allegations relating to his claim  
9 have any connection to California.<sup>14</sup>

## 11 ANALYSIS

### 12 1. Montreal Convention

13 Mr. Agasino contends that venue for this case is governed by the Montreal Convention. He  
14 argues that the Convention contains its own venue rules and that those rules supersede the general  
15 venue statute, 28 U.S.C. § 1391.<sup>15</sup> Not so. The Convention does not govern venue within the  
16 United States.

17 The Convention states:

- 18 1. An action for damages must be brought, at the option of the plaintiff, in the  
19 territory of one of the States Parties, either before the court of the domicile of  
20 the carrier or of its principal place of business, or where it has a place of  
21 business through which the contract has been made or before the court at the  
22 place of destination.

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23 <sup>10</sup> Id. at 4.

24 <sup>11</sup> See generally Compl. – ECF No. 1.

25 <sup>12</sup> See generally id.

26 <sup>13</sup> Compl. – ECF No. 1 at 2.

27 <sup>14</sup> See generally Compl. – ECF No. 1; accord Jackson Decl. – ECF No. 12-2 at 1–2 (¶¶ 3–4)  
(American Airlines attesting that Flight 60 never stopped at SFO); Pl. Opp’n – ECF No. 17 at 7 (Mr.  
Agasino agreeing that it was “never in dispute” that Flight 60 never stopped at SFO).

28 <sup>15</sup> Pl. Opp’n – ECF No. 17 at 2–5.

1           2. In respect of damage resulting from the death or injury of a passenger, an action  
2           may be brought before one of the courts mentioned in paragraph 1 of this  
3           Article, or in the territory of a State Party in which at the time of the accident  
4           the passenger has his or her principal and permanent residence and to or from  
5           which the carrier operates services for the carriage of passengers by air, either  
6           on its own aircraft, or on another carrier's aircraft pursuant to a commercial  
7           agreement, and in which that carrier its business of carriage of passengers by air  
8           from premises leased or owned by the carrier itself or another carrier with  
9           which it has a commercial agreement.

7 Montreal Convention ch. 3, art. 33. Courts have held that the Montreal Convention (and its  
8 predecessor, the Warsaw Convention) does not govern venue within a signatory "State Party."  
9 Avalon Techs., Inc. v. EMO-Trans, Inc., No. 14-14731, 2015 WL 1952287, at \*5 (E.D. Mich. Apr.  
10 29, 2015) ("Numerous courts have considered the proper interpretation of Article 33 of the  
11 Montreal Convention and its predecessor under the Warsaw Convention. The consensus appears to  
12 be that Article 33 confers jurisdiction on the courts of a nation-state, rather than a particular court  
13 within that nation-state.") (citing cases). As the Ninth Circuit explained in connection with the  
14 Montreal Convention's predecessor, the Warsaw Convention,<sup>16</sup> the Convention "does not . . .  
15 affect whether venue is proper and convenient in a particular federal court" or "alter a federal  
16 court's power to transfer a case within the United States pursuant to 28 U.S.C. § 1404(a)." Hosaka  
17 v. United Airlines, Inc., 305 F.3d 989, 1004 (9th Cir. 2002) (emphasis in original) (citing In re Air  
18 Crash Disaster Near New Orleans, 821 F.2d 1147, 1161 n.21 (5th Cir. 1987) (en banc), vacated  
19 on other grounds sub nom. Pan Am. World Airways, Inc. v. Pampin Lopez, 490 U.S. 1032 (1989)).  
20 A "[p]laintiff's choice of forum within [a] country is governed by the internal law [of that  
21 country], with all its intricacies and complexities, not by the [ ] Convention. Once a plaintiff files  
22 suit in a country with jurisdiction over his or her claims, that country's procedural rules govern  
23 venue." Avalon, 2015 WL 1952287, at \*5 (quoting Mertens v. Flying Tiger Line, Inc., 341 F.2d  
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27 <sup>16</sup> Courts have held that the Montreal Convention should be "construed consistently with the precedent  
28 developed under the Warsaw Convention and its related instruments." Avalon Techs., 2015 WL  
1952287, at \*5 n.3 (quoting Byrd v. Comair, Inc. (In re Air Crash at Lexington), 501 F. Supp. 2d 902,  
908 (E.D. Ky. 2007)).

1 851, 855 (2d Cir. 1965), abrogated on other grounds by *Chan v. Korean Air Lines, Ltd.*, 490 U.S.  
2 122 (1989)).

3 The Montreal Convention does not vest venue in this district.<sup>17</sup>

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5 **2. 28 U.S.C. § 1391**

6 Venue is nonetheless proper in this district under the United States’s standard procedural rules.

7 Within the United States, venue for civil actions filed in federal court is governed by 28 U.S.C.  
8 § 1391, which states in relevant part that:

9 A federal civil action may be brought in:

10 (1) a judicial district in which any defendant resides, if all defendants are residents  
11 of the State in which the district is located;

12 (2) a judicial district in which a substantial part of the events or omissions giving  
13 rise to the claim occurred, or a substantial part of property that is the subject of the  
14 action is situated; or

15 (3) if there is no district in which an action may otherwise be brought as provided  
16 in this section, any judicial district in which any defendant is subject to the court’s  
17 personal jurisdiction with respect to such action.

18 28 U.S.C. § 1391(b). For the purposes of venue, a corporate entity like American Airlines “shall  
19 be deemed to reside, if a defendant, in any judicial district in which such defendant is subject to  
20 the court’s personal jurisdiction with respect to the civil action in question[.]” 28 U.S.C.  
21 § 1391(c)(2).

22 American Airlines moved to dismiss for improper venue but did not move to dismiss for lack  
23 of personal jurisdiction.<sup>18</sup> It therefore has waived any personal-jurisdiction arguments and is

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23 <sup>17</sup> Mr. Agasino’s reliance on *In re Air Crash at Lexington*, 501 F. Supp. 2d 902, to argue that the  
24 Montreal Convention provides for venue in any federal court, is misplaced. That case — which, unlike  
25 this one, was being litigated in the federal district where the flight originated and where the accident  
26 took place, *id.* at 905 — did not address venue. (Instead, it addressed whether the Warsaw or Montreal  
27 Conventions applied to the plaintiff’s claims at all in the first instance and whether they preempted  
28 state-law causes of action. *Id.*)

<sup>18</sup> See Def. Mot. – ECF No. 12. American Airlines makes one passing reference to Federal Rule of  
Civil Procedure 12(b)(2) (personal jurisdiction), *id.* at 8, but its notice of motion refers only to Rule  
12(b)(3) (venue) and 28 U.S.C. § 1404, and not 12(b)(2), *id.* at 2, and its brief makes no arguments and  
cites no authorities addressing personal jurisdiction. Cf. N.D. Cal. Civ. L.R. 7-4(a)(5) (brief in support  
of motion must contain “[a]rgument by the party, citing pertinent authorities”).

1 subject to personal jurisdiction here with respect to this case. Fed. R. Civ. P. 12(g)(2), (h)(1)(A).  
 2 Because American Airlines is subject to personal jurisdiction, venue is also proper under 28  
 3 U.S.C. § 1391(b)(1) and (c)(2). Cf. *Ward v. Certain Underwriters at Lloyd’s of London*, No. 18-  
 4 cv-07551-JCS, 2019 WL 2076991, at \*4 (N.D. Cal. May 10, 2019) (“As far as this Court is aware,  
 5 every court to consider the issue has held that personal jurisdiction even based on waiver is  
 6 sufficient to establish ‘residency’ for the purpose of § 1391(c)(2).”) (citing cases); *AT&T Corp. v.*  
 7 *Teliix, Inc.*, No. 16-cv-01914-WHO, 2016 WL 4241910, at \*2 (N.D. Cal. Aug. 11, 2016) (“A  
 8 party waives a defense based on lack of personal jurisdiction by omitting it from its first Rule  
 9 12(b) motion. . . . [B]ecause [defendant] did not contest personal jurisdiction, it is therefore  
 10 ‘subject to personal jurisdiction’ in this district for the purposes of establishing venue.”) (citing  
 11 cases and treatise); *Markel Am. Ins. Co. v. Pac. Asian Enters., Inc.*, No. C-07-5749 SC, 2008 WL  
 12 2951277, at \*2 (N.D. Cal. July 28, 2008) (“[Defendants], each having brought a Rule 12 motion  
 13 without challenging personal jurisdiction, have waived that defense. As each of the Defendants is  
 14 subject to personal jurisdiction in this district, each is considered to reside here for the purposes of  
 15 venue.”) (citations omitted).

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 17 **3. 28 U.S.C. § 1404**

18 While venue is proper under 28 U.S.C. § 1391, the court nonetheless transfers this case to the  
 19 Northern District of Texas under 28 U.S.C. § 1404.

20 **3.1 Governing Law**

21 “For the convenience of parties and witnesses, in the interest of justice, a district court may  
 22 transfer any civil action to any other district or division where it might have been brought or to  
 23 any district or division to which all parties have consented.” 28 U.S.C. § 1404(a).

24 “A motion under section 1404(a) must first show that the transferee district is one where the  
 25 action might have been brought.” *EEOC v. United Airlines, Inc.*, No. C 09-2469 PJH, 2009 WL  
 26 7323651, at \*1 (N.D. Cal. Dec. 3, 2009) (citing 28 U.S.C. § 1404(a)). “The movant must  
 27 demonstrate that the alternate district would have subject matter jurisdiction, personal jurisdiction,  
 28 and proper venue.” *Id.* (citing *Hoffman v. Blaski*, 363 U.S. 335, 343–44 (1960)). “If the transferee

1 district is one in which the action might have been brought, the court assesses various factors  
2 related to convenience and the interests of justice.” Id. (citing Jones v. GNC Franchising, Inc., 211  
3 F.3d 495, 498–99 (9th Cir. 2000)). “Courts apply a multi-factor balancing test to determine if  
4 transfer would serve the convenience of the parties and witnesses, and would be in the interests of  
5 justice.” Id. (citing Jones, 211 F.3d at 498–99). Factors relevant to this case that the court may  
6 consider include:

- 7 (1) the plaintiff’s choice of forum; (2) the convenience of the parties; (3) the  
8 convenience of the witnesses; (4) the relative ease of access to the evidence; (5) the  
9 familiarity of each forum with the applicable law; (6) the feasibility of  
10 consolidation with other claims; (7) any local interest in the controversy; and  
11 (8) the relative court congestion and time to trial in each forum.

12 Id. (citing Decker Coal Co. v. Commonwealth Edison Co., 805 F.2d 834, 843 (9th Cir. 1986)).

13 **3.2 Application**

14 This case could have been brought in the Northern District of Texas. The Northern District of  
15 Texas has as much subject-matter jurisdiction over a claim brought under the Montreal  
16 Convention as this court does, and American Airlines is headquartered in the Northern District of  
17 Texas and thus is subject to personal jurisdiction there (which means that venue is proper there as  
18 well).

19 Additionally, all but one of the factors in the multi-factor balancing test weigh favor transfer to  
20 the Northern District of Texas (or are neutral).

21 The one factor that could even partially weigh against transfer is the plaintiff’s choice of  
22 forum. But where, as here, “a plaintiff does not reside in the forum, . . . the operative facts have  
23 not occurred within the forum of original selection[,] and that forum has no particular interest in  
24 the parties or the subject matter, the plaintiff’s choice is entitled to only minimal consideration.”  
25 *Stambanis v. TBWA Worldwide, Inc.*, No. 19-cv-00821-TSH, 2019 WL 1979949, at \*3 (N.D. Cal.  
26 May 3, 2019) (quoting *Pac. Car & Foundry Co. v. Pence*, 403 F.2d 949, 954 (9th Cir. 1968)).

27 The convenience-of-the-parties factor favors transfer. American Airlines is headquartered in  
28 the Northern District of Texas, and it would be more convenient for it to litigate there. Mr.  
Agasino argues that American Airlines can fly its employees from Texas to this district to litigate

1 this case.<sup>19</sup> “[T]he fact that [American Airlines] operates an airline does not eliminate the expense  
2 and disruption associated with having to transport witnesses to California.” Cf. *United Airlines*,  
3 2009 WL 7323651, at \*3. “[E]very seat taken by a witness is one that cannot be sold to a  
4 customer.” Cf. *id.* “Moreover, the company would likely suffer a loss of productivity and  
5 disruption due to the time it would take for each employee to travel to California.” Cf. *id.* “In  
6 addition, [American Airlines] would be forced to pay for other travel expenses, such as hotels,  
7 taxis, and meals.” Cf. *id.* By contrast, the Northern District of Texas is no less convenient than this  
8 district is for Mr. Agasino. Mr. Agasino does not live here and, in filing this case here, made the  
9 choice to litigate outside his home district. He affirmatively says he has no objection to traveling  
10 to this district to litigate this case.<sup>20</sup> If he can travel here, he can travel there as well.

11 The convenience-of-the-witnesses and the relative-ease-of-access-to-the-evidence factors favor  
12 transfer. American Airlines is headquartered in the Northern District of Texas. The flight where  
13 Mr. Agasino was injured landed in the Northern District of Texas. There may be relevant  
14 witnesses and evidence in the Northern District of Texas. By contrast, there has been no showing  
15 that there is a single witness or a single piece of evidence in this district, which has no connection  
16 to any fact in this case.<sup>21</sup>

17 The familiarity-of-each-forum-with-the-applicable-law factor is neutral. The Northern District  
18 of Texas is equally familiar with federal law as this court is.

19 The feasibility-of-consolidation-with-other-claims factor is inapplicable and thus neutral.

20 The local-interest-in-the-controversy factor favors transfer. American Airlines is  
21 headquartered in the Northern District of Texas. The flight where Mr. Agasino was injured landed  
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23 <sup>19</sup> Pl. Opp’n – ECF No. 17 at 6.

24 <sup>20</sup> *Id.* at 9.

25 <sup>21</sup> Mr. Agasino says that his doctors, whom he intends to call as witnesses, are located in the District of  
26 Connecticut. Pl. Opp’n – ECF No. 17 at 9. He also says, however, that he expects that all of his  
27 doctors will testify through video depositions. *Id.* Given that he is willing to have them testify through  
28 video depositions in any event, Mr. Agasino has not established that this factor weighs more heavily in  
favor of transfer to the District of Connecticut than to the Northern District of Texas — and this factor  
certainly does not weigh in favor of leaving the case here, where none of Mr. Agasino’s doctors are  
located.



1 in the Northern District of Texas. The Northern District of Texas may have a local interest in the  
2 controversy. By contrast, this district has no relation to and no local interest in the controversy.

3 Neither party has made a showing regarding the relevant court congestion and time to trial, and  
4 this factor appears neutral.<sup>22</sup>

5 As all factors (other than the minimal weight given to Mr. Agasino's choice in filing this case  
6 in a district where he does not live and that has no relation to this case) are either neutral or weigh  
7 in favor of transfer, the court grants American Airlines's motion to transfer this case.

8  
9 **CONCLUSION**

10 The court denies American Airlines's motion to dismiss but grants its motion to transfer and  
11 transfers this case to the Northern District of Texas.

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13 **IT IS SO ORDERED.**

14 Dated: July 26, 2019

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17 LAUREL BEELER  
18 United States Magistrate Judge

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28 <sup>22</sup> The Federal Court Management Statistics for March 2019 do not show a significant difference in  
congestion between the Northern District of Texas and this district.