

BACKGROUND¹

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3 Plaintiff is a pediatric gastroenterology and endoscopy doctor and was living in
4 Abu Dhabi at the time of the incident, working as a medical consultant at a military
5 hospital. In July 2013, Plaintiff received a massage at the spa at the Hilton Abu Dhabi
6 from massage therapist, Mildred Mayo Cadalig. Plaintiff alleges that about thirty minutes
7 into the massage, Cadalig forcibly tilted Plaintiff's head and neck to the left, while
8 pushing down in the opposite direction on Plaintiff's right shoulder. Thereafter, a
9 piercing pain shot into the right side of Plaintiff's neck and moved down to his right
10 thumb.

11 In August of 2013, after the incident, Plaintiff saw an orthopedist in Beirut and
12 shortly thereafter consulted a neurosurgeon in Abu Dhabi. An MRI showed Plaintiff
13 suffered a disc herniation. At the direction of the neurosurgeon, Plaintiff began physical
14 therapy treatments in Abu Dhabi. In February of 2014, after an MRI revealed that
15 physical therapy was not helping, the neurosurgeon recommended surgery.

16 It is unclear exactly when Plaintiff moved to California, but he left the United Arab
17 Emirates ("UAE") in April 2014, and underwent his first surgery in March 2015 at
18 Stanford Hospital in Redwood City, California. He underwent a second surgery in
19 August 2015 at the University of California San Francisco in San Francisco, California,
20 and was scheduled for a third surgery on November 2, 2017, the date of oral argument
21 for the present motion, to take place in San Francisco. Plaintiff claims he has continued
22 to experience pain such that he cannot perform daily activities, and was forced to take
23 medical leave from work in March 2015.

24 The Hilton Abu Dhabi is operated and managed by Hilton Worldwide. Plaintiff
25 therefore maintains that Hilton Worldwide manages the hotel, the hotel spa, and its
26 employees. According to Plaintiff, Hilton operates the hotel through an agreement with

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28 ¹ The following facts are derived from Plaintiff's Complaint, ECF No. 1, as well as Plaintiff's
Opposition to Defendants' Motion to Dismiss, ECF No. 34.

1 Abu Dhabi National Hotels, a hospitality group that owns the Hilton Abu Dhabi.
2 According to Defendant, the hotel is owned by H.E. Sheikh Khalifa Bin Zayed, acting on
3 the authority conferred on him by the Ruler of Abu Dhabi. Defendant therefore claims
4 that the individuals working at the Hilton Abu Dhabi are employed by H.E. Sheikh Khalifa
5 Bin Zayd, but have conceded that Cadalig was employed by Hilton Worldwide at the
6 time of the incident. See Pl.'s Opp at 3, citing Defs' Answer at ¶¶ 10-12, 39-40, 42.

8 STANDARD

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10 "A federal court has discretion to dismiss a case on the ground of forum non
11 conveniens" Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp., 549 U.S. 422, 429
12 (2007). Although dismissal "reflects a court's assessment of a range of considerations,"
13 id., "[a] party seeking dismissal . . . must show two things: (1) the existence of an
14 adequate alternative forum, and (2) that the balance of private and public interest factors
15 favors dismissal," Loya v. Starwood Hotels & Resorts Worldwide, Inc., 583 F.3d 656, 664
16 (9th Cir. 2009). The Ninth Circuit has identified the following private interest factors:

17 (1) the residence of the parties and the witnesses; (2) the
18 forum's convenience to the litigants; (3) access to physical
19 evidence and other sources of proof; (4) whether unwilling
20 witnesses can be compelled to testify; (5) the cost of bringing
witnesses to trial; (6) the enforceability of the judgment; and
(7) all other practical problems that make trial of a case easy,
expeditious and inexpensive.

21 Boston Telecomms. Grp., Inc. v. Wood, 588 F.3d 1201, 1206-07 (9th Cir. 2009). The
22 Ninth Circuit has also identified the following public interest factors: "(1) the local interest
23 in the lawsuit, (2) the court's familiarity with the governing law, (3) the burden on local
24 courts and juries, (4) congestion in the court, and (5) the costs of resolving a dispute
25 unrelated to a particular forum." Id. at 1211.

26 "A defendant invoking forum non conveniens ordinarily bears a heavy burden in
27 opposing the plaintiff's chosen forum," particularly when the plaintiff has chosen its home
28 forum. Sinochem Int'l, 549 U.S. at 430; see also Dole Food Co. v. Watts, 303 F.3d

1 1104, 1118 (9th Cir. 2002) (“Forum non conveniens is an exceptional tool to be
2 employed sparingly, not a doctrine that compels plaintiffs to choose the optimal forum for
3 their claim.”). A district court abuses its discretion when it “fails to hold a party to its
4 ‘burden of making a clear showing of facts which establish such oppression and vexation
5 of a defendant as to be out of proportion to plaintiff’s convenience.” Carijano v.
6 Occidental Petroleum Corp., 643 F.3d 1216, 1236 (9th Cir. 2011) (quoting Boston
7 Telecomms., 588 F.3d at 1212).

8 9 ANALYSIS

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11 At first blush, this may seem like an action that would more appropriately be tried
12 in the UAE. The action arises from an injury that occurred in Abu Dhabi, at an Abu
13 Dhabi hotel, when Plaintiff was residing in Abu Dhabi. Moreover, the action arises under
14 the laws of the UAE, with which this Court admittedly does not have significant
15 experience. The standard set forth above, however, requires the Court to not only
16 determine that an adequate alternative forum exists in the UAE, but to consider a
17 number of private and public interest factors, and to award proper deference to the
18 Plaintiff’s choice of forum. Though the UAE appears to be an adequate alternative
19 forum,² as described further below, the balance of private and public interest factors tips
20 against granting Defendants’ motion.

21 A. Private Interest Factors

22 The private interest factors to be considered are: (1) the residence of the parties
23 and the witnesses; (2) the forum’s convenience to the litigants; (3) access to physical
24 evidence and other sources of proof; (4) whether unwilling witnesses can be compelled
25 to testify; (5) the cost of bringing witnesses to trial; (6) the enforceability of the judgment;

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27 ² Though it is immaterial to the Court’s ruling here, the Court finds the UAE to be an adequate
28 alternative forum. Plaintiff briefly argues that the UAE is inadequate because its courts do not provide the
right to certain discovery or the right to a jury trial. Such procedural differences do not render the forum
inadequate where that forum does in fact provide a remedy for the present action. Because the UAE is
adequate, the Court’s focus in this Order is on the balance of the private and public interest factors.

1 and (7) all other practical problems that make trial of a case easy, expeditious and
2 inexpensive. Boston Telecomms. Grp., Inc. v. Wood, 588 F.3d at 1206-07.

3 On balance, these factors weigh in favor of denying Defendants' motion and
4 keeping the case in this Court. First, the parties are both residents of the United States
5 (indeed Plaintiff resides in Granite Bay, California, which is less than thirty miles from the
6 Eastern District of California's Sacramento Courthouse, where this Court sits), and this
7 forum should therefore be relatively convenient for both litigants, despite Defendants'
8 argument to the contrary.

9 As for witnesses, Defendants argue that sources of proof and key witnesses are
10 more accessible in the UAE, but the Court finds the opposite to be true. While it may be
11 true that certain unnamed employees of the Hilton Abu Dhabi are actually employees of
12 H.E. Sheikh Khalifa Bin Zayed, and are therefore outside the subpoena power of this
13 Court, Defendants have failed to specifically name any such witness with knowledge
14 pertinent to this action. In fact, the only witness to the event aside from Plaintiff himself
15 is Ms. Cadalig, who—as the Court understands it—is no longer employed by Defendant
16 and now resides in Qatar, outside the subpoena power of either forum. And Wolfgang
17 Maier, the general manager who allegedly has at least some knowledge of Ms. Cadalig's
18 general training, is a resident of Egypt and has agreed to be deposed via
19 videoconference. Pl's Opp at 12-13, citing Bell Decl. at ¶ 21, Ex. 16, and ¶ 9, Ex. 8.³

20 Moreover, Plaintiff received significant treatment for his injuries upon his return to
21 California and has been treated by at least seven doctors in California, including those
22 doctors involved in Plaintiff's three surgeries. Though Plaintiff received some treatment
23 for his injury in the nine months immediately following the incident, that treatment was
24 minor compared to the surgeries he underwent in California. All witnesses and the

25 ³ There is some dispute over the identity of the person most knowledgeable from Hilton Worldwide
26 regarding Ms. Cadalig's training. According to Defendants' own discovery responses, it appears this
27 person is Mr. Maier, Bell Decl. at ¶ 21, Ex. 16, though Defendants hedge that claim in their Reply brief,
28 ECF No. 35 at 5, and addressed the same at oral argument. Regardless, the Court's analysis does not
change because pursuant to the parties' stipulation, that person will also be deposed via videoconference.
Bell Decl. at ¶ 9, Ex. 8. And lastly, Defendants' claim that another potential witness located in the UAE
may have more knowledge or more specific knowledge is only speculative.

1 extensive medical records related to those surgeries are in California. And while
2 Defendants claim that the medical records related to Plaintiff's nine months of treatment
3 abroad are unattainable, Plaintiff claims he has already provided those records to
4 Defendants. See Pl's Opp at 13, citing Bell Decl. at ¶ 20. In any event, those records
5 alone would not warrant dismissal based on forum non conveniens.

6 Lastly, Defendants implore that access to Plaintiff's friends and coworkers in Abu
7 Dhabi is essential to this action. But the Court is not convinced that any witnesses
8 Defendants have yet to identify in Abu Dhabi are more essential to the action than
9 Plaintiff's family, friends, coworkers, and employer in California. As raised during oral
10 argument, a large part of this action will likely involve a dispute over damages. Plaintiff's
11 California witnesses—with their ability to testify as to Plaintiff's present-day pain, activity
12 level, and ability or inability to work and/or perform daily tasks—will be instrumental to
13 establishing those damages. As with the other sources of proof discussed above, the
14 Court is not persuaded that the need for the testimony of people who knew Plaintiff
15 within the nine months following the incident outweighs the need for the testimony of
16 more recent associates.

17 For these reasons, the balance of the private interest factors tip in favor of
18 denying the present motion.

19 **B. Public Interest Factors**

20 The public interest factors to be considered are: (1) the local interest in the
21 lawsuit, (2) the court's familiarity with the governing law, (3) the burden on local courts
22 and juries, (4) congestion in the court, and (5) the costs of resolving a dispute unrelated
23 to a particular forum. Boston Telecomms. Grp., Inc. v. Wood, 588 F.3d at 1211.

24 As mentioned above, the Court is not directly familiar with the laws of Abu Dhabi.
25 Additionally, the Eastern District has one of the highest caseloads in the country and is
26 probably more impacted than the UAE court system (though the Court has not confirmed
27 this fact). These factors therefore weigh in favor of granting Defendants' motion. The
28 Court finds the remaining factors, however, are neutral at best. While Defendants argue

1 that there is little local interest in the lawsuit, there is interest to the extent that Plaintiff is
2 a resident of this district, and Defendants are residents of the United States. The public
3 has an interest in ensuring the safety of its residents and the actions of its businesses,
4 even abroad.

5 Regarding the burden on local courts and juries and the costs of resolving the
6 dispute, there is no doubt that trials are a burden on everyone involved, regardless of the
7 forum. But—and even though timeliness is not a direct factor as described above—
8 Defendants’ delay in bringing the present motion weighs on the Court’s analysis of these
9 factors. More specifically, because this case has already been litigated in this forum for
10 a year and a half, the Court has already been burdened and costs have already been
11 incurred. Though a trial is of course more burdensome and costly, at some point it
12 becomes an issue of diminishing returns because a year and a half has already been
13 invested in this action in this District. For those reasons, the Court finds the public
14 interest factors to be neutral; at a minimum, the additional burden on this Court of
15 keeping the action in the Eastern District of California for the remainder of discovery, trial
16 preparation, and trial, does not outweigh the Plaintiff’s choice of forum or the private
17 interest factors that tip more sharply in favor of denying the present motion.

18 Finally, Plaintiff’s argument that Defendants simply wanted to take advantage of
19 the more liberal discovery rules of this District before moving the case to Abu Dhabi—
20 where Plaintiff has no right to a jury trial—is well taken. Hilton Worldwide has
21 propounded written discovery and requests for production, has noticed depositions and
22 subpoenaed medical records. According to Plaintiff, Defendants scheduled depositions
23 for October 18, 20, and 30. And the parties have agreed to “make all party witnesses
24 and third party witnesses (within their control) available for depositions via
25 videoconference,” to save time and expense. As a result, it makes little sense to dismiss
26 this action and require Plaintiff to refile it in the UAE.

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CONCLUSION

For the reasons set forth above, the Court finds that Defendants have failed to meet their “burden of making a clear showing of facts which establish such oppression and vexation of a defendant as to be out of proportion to plaintiff’s convenience.” Carijano v. Occidental Petroleum Corp., 643 F.3d 1216, 1236 (9th Cir. 2011) (quoting Boston Telecomms., 588 F.3d at 1212). Consequently, Defendants’ Motion to Dismiss based on forum non conveniens, ECF No. 33, is DENIED.

IT IS SO ORDERED.

Dated: November 27, 2017


MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE