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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

FATEMEH SAJAJED,

Plaintiff,

vs.

EMIRATES AIRLINES, a foreign
corporation, DOES 1-20, inclusive,

Defendants.

Case No: C 16-06659 SBA

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS**

Dkt. 15

Plaintiff Fatemeh Sajajed (“Plaintiff”) brings the instant personal injury action against Defendant Emirates Airlines (“Defendant” or “Emirates”). The matter is presently before the Court on Defendant’s Motion to Dismiss. Dkt. 15. Having read and considered the papers filed in connection with this matter and being fully informed, the Court hereby GRANTS the motion. The Court, in its discretion, finds this matter suitable for resolution without oral argument. See Fed. R. Civ. P. 78(b); N.D. Cal. Civ. L.R. 7-1(b).

I. BACKGROUND

A. FACTUAL BACKGROUND

Plaintiff is a citizen of Iran and a permanent resident of the United States, with her domicile in California. Compl. ¶ II.¹ Defendant is incorporated and has its principal place

¹ Plaintiff’s Complaint is attached as Exhibit A to the Notice of Removal. Dkt. 1-1.

1 of business in Dubai, United Arab Emirates (“UAE”). Id. Defendant does business in
2 California and serves the state with regularly scheduled commercial aviation transport. Id.

3 On or about October 15, 2014, Plaintiff was a paying passenger in international
4 travel aboard Emirate’s flight EK 255 from Dubai, UAE to San Francisco, California.
5 Compl. ¶ V. During the flight, cabin staff caused Plaintiff to be burned by hot tea. Id.
6 Plaintiff sustained immediate and painful burn injuries to her lap, abdomen and genital
7 area. Id. She alleges ongoing physical and mental suffering and seeks unspecified
8 damages for her injuries. Id. ¶¶ VII-IX.

9 At the time of the incident, Plaintiff was traveling with Emirates on passenger ticket
10 number 1762410418653, which provided roundtrip transportation from and to Tehran, Iran,
11 with intermediate stopping places in Dubai and San Francisco. Hussain Decl. ¶ 5, Ex. A,
12 Dkt. 15-2; Sajajed Decl. ¶ 15, Ex. D, Dkt. 18-2. Specifically, the ticket included legs:
13 (1) from Tehran to Dubai; (2) from Dubai to San Francisco; (3) from San Francisco to
14 Dubai; and (4) from Dubai to Tehran. Hussain Decl., Ex. A; Sajajaed Decl., Ex. D.

15 Plaintiff lives in the United States and travels to Iran somewhat regularly to visit
16 family and friends. Sajajed Decl. ¶¶ 3,7-8. Having learned that tickets purchased in Iran
17 are “considerably cheaper,” it was her custom and practice to purchase a ticket in Iran with
18 a scheduled date of travel to the United States and an open date of return to Iran. Id. ¶ 14.
19 In accordance with that custom and practice, Plaintiff purchased the ticket at issue in
20 Tehran, Iran. Id. ¶¶ 14-15, Ex. D; Hussain Decl. ¶ 5, Ex. A.

21 **B. PROCEDURAL BACKGROUND**

22 On October 13, 2016, Plaintiff filed a personal injury action against Defendant in the
23 Superior Court of California, Alameda County. After removing the action to this Court,
24 Dkt. 1, Defendant filed the instant motion to dismiss for lack of subject matter jurisdiction.
25 Dkt. 15. The motion is fully briefed and ripe for adjudication.

26 **II. LEGAL STANDARD**

27 A complaint may be dismissed under Rule 12(b)(1) for lack of subject matter
28 jurisdiction. “A jurisdictional challenge under Rule 12(b)(1) may be made either on the

1 face of the pleadings or by presenting extrinsic evidence.” Warren v. Fox Family
2 Worldwide, Inc., 328 F.3d 1136, 1139 (9th Cir. 2003). “The district court resolves a facial
3 attack as it would a motion to dismiss under Rule 12(b)(6): Accepting the plaintiff’s
4 allegations as true and drawing all reasonable inferences in the plaintiff’s favor, the court
5 determines whether the allegations are sufficient as a legal matter to invoke the court’s
6 jurisdiction.” Leite v. Crane Co., 749 F.3d 1117, 1121 (9th Cir. 2014). In the case of a
7 “speaking” motion, the court may review evidence outside the pleadings, such as affidavits
8 and testimony, “to resolve factual disputes concerning the existence of jurisdiction.”
9 McCarthy v. United States, 850 F.2d 558, 560 (9th Cir. 1988). “When the defendant raises
10 a factual attack, the plaintiff must support [his] jurisdictional allegations with ‘competent
11 proof,’ . . . under the same evidentiary standard that governs in the summary judgment
12 context.” Leite, 749 F.3d at 1121 (citations omitted). “Once challenged, the party asserting
13 subject matter jurisdiction has the burden of proving its existence.” Rattlesnake Coal. v.
14 EPA, 509 F.3d 1095, 1102 n.1 (9th Cir. 2007).

15 **III. DISCUSSION**

16 Defendant moves to dismiss the complaint for lack of subject matter jurisdiction,
17 arguing that the United States is not a proper forum for the action under the Warsaw
18 Convention, which governs personal injury claims arising out of international air travel.

19 **A. APPLICABILITY OF THE WARSAW CONVENTION²**

20 The Warsaw Convention is a comprehensive international treaty that governs
21 liability with regard to “all international carriage of persons, baggage, or cargo performed
22 by aircraft for reward.” W.C. Art. 1(1); Carey v. United Airline, 255 F.3d 1044, 1047 (9th
23 Cir. 2001). The Convention has preemptive effect, i.e., it provides the exclusive remedy for
24 conduct that falls within its provisions. El Al Israel Airlines, Ltd. v. Tsui Yuan Tseng, 525
25 U.S. 155, 161 (1999).

27 ² Convention for the Unification of Certain Rules Relating to International
28 Transportation by Air, Oct. 12, 1929, 49 Stat. 3000, T.S. No. 876 (1934), reprinted in note
following 49 U.S.C. § 401505 (“Warsaw Convention” or “W.C.”).

1 For purposes of the Warsaw Convention, “international carriage” means:

2 [A]ny carriage in which, according to the agreement between the parties, the
3 place of departure and the place of destination, whether or not there be a break
4 in the carriage or a transshipment, are situated either within the territories of
5 two High Contracting Parties or within the territory of a single High
Contracting Party if there is an agreed stopping place within the territory of
another State, even if that State is not a High Contracting Party.”

6 W.C. Art. 1(2). Accordingly, the Convention governs if the agreement between the parties
7 (e.g., the plane ticket) provides for travel: (1) between two High Contracting Parties; or
8 (2) from one High Contracting Party, to stops abroad, with a return to the same High
9 Contracting Party. Lee v. China Airlines Ltd., 669 F. Supp. 919, 980 (C.D. Cal. 1987).

10 Here, Plaintiff’s ticket with Emirates provided roundtrip transportation from and to
11 Tehran, Iran, with agreed stopping places abroad in San Francisco and Dubai. Hussain
12 Decl. ¶ 5, Ex. A; Sajajed Decl. ¶ 15, Ex. D. Iran is a signatory to the Warsaw Convention.
13 See List of Signatories to the Warsaw Convention,
14 http://www.icao.int/secretariat/legal/List%20of%20Parties/WC-HP_EN.pdf; see also Alemi
15 v. Qatar Airways, 812 F. Supp. 2d 847, 850 n.2 (D. Md. 2012) (noting that Iran is a party to
16 the Warsaw Convention). Consequently, the Warsaw Convention governs.

17 **B. JURISDICTION UNDER THE WARSAW CONVENTION**

18 Article 28 provides four potential fora for an action under the Warsaw Convention:
19 (1) the carrier’s domicile; (2) the carrier’s principal place of business; (3) the place where
20 the passenger purchased the ticket; or (4) the passenger’s place of destination. W.C. Art.
21 28(1); see also Coyle v. P.T. Garuda Indonesia, 363 F.3d 979, 986 (9th Cir. 2007).

22 “[U]nless one of these enumerated places is within the United States, no American court
23 can take cognizance of a suit predicated on the Warsaw Convention.” Coyle, 363 F.3d at
24 986; see also Kapar v. Kuwait Airways Corp., 845 F.2d 1100, 1104 (D.C. Cir. 1988)
25 (“Article 28(1) ‘operates as an absolute bar to federal jurisdiction in cases falling outside its
26 terms.’”) (quoting Gayda v. LOT Polish Airlines, 702 F.2d 424, 425 (2d Cir. 1983)).

27 In the instant action, it is undisputed that Emirates’ domicile and principal place of
28 business is Dubai, UAE. See Hussain Decl. ¶ 7. It is further undisputed that Plaintiff

1 purchased her ticket in Tehran, Iran. See id. ¶¶ 4-5, Ex. A; Sajajed Decl. ¶¶ 14-15, Ex. D.
2 Thus, “the only way that an American court can take cognizance of [this] action is if
3 [Plaintiff’s] ‘place of destination was in the United States.’” Coyle, 353 F.3d at 986.
4 Defendant asserts that Plaintiff’s place of destination was Tehran, Iran, and thus,
5 jurisdiction is lacking. Plaintiff disputes that her destination was Tehran.

6 **1. Place of Destination**

7 For purposes of the Warsaw Convention, each journey can only have one final
8 “destination.” Coyle, 363 F.3d at 991 (noting that intermediate stops are construed as
9 “agreed stopping places” that do not disturb the final destination). The intent of the parties
10 as expressed in the contract of transportation, i.e., the plane ticket, determines the final
11 destination. Id. at 987 (citing Sopcak v. N. Mountain Helicopter Serv., 52 F.3d 817, 819
12 (9th Cir. 1995)). “[S]uch contracts should be interpreted according to the objective, rather
13 than the subjective, intent of the parties.” Id. (quoting Sopcak, 52 F.3d at 819). Thus, the
14 court’s inquiry focuses on “the objective manifestation of the parties’ intent expressed by
15 the tickets for commercial passenger carriage.” Id.

16 Plaintiff’s ticket with Emirates provided roundtrip transportation from and to
17 Tehran, Iran, with intermediate stops in Dubai and San Francisco. Hussain Decl. ¶ 5, Ex.
18 A; Sajajed Decl. ¶ 15, Ex. D. In the case of a roundtrip ticket, the destination is “the place
19 where the trip began.” Lee, 669 F. Supp. at 981; accord Alemi, 842 F. Supp. 2d at 850; see
20 also Swaminathan v. Swiss Air Transp. Co., Ltd., 962 F.2d 387, 389 (5th Cir. 1992)
21 (“[w]hen a person purchases a round-trip ticket, there can be but one destination, where the
22 trip originated”); Klos v. Lotnicze, 133 F.3d 164, 167 (2nd Cir. 1997) (“the place of final
23 destination for purposes of jurisdiction under the Warsaw Convention is the return city
24 appearing on a round-trip ticket”).

25 Accordingly, Plaintiff’s destination under Article 28 of the Warsaw Convention was
26 Iran. See, e.g., Lee, 669 F. Supp. at 981 (finding that the passenger’s destination was Hong
27 Kong on a roundtrip ticket out of Hong Kong with intermediate stops in Taipei, Taiwan and
28 San Francisco, California); Alemi, 842 F. Supp. 2d at 850 (finding that the passenger’s

1 destination was Iran on a roundtrip ticket out of Tehran, Iran, with intermediate stops in
2 Doha, Qatar and Chantilly, Virginia).

3 2. Iran’s Status as a “Place of Destination”

4 Plaintiff makes several arguments in opposition to the motion to dismiss, none of
5 which is persuasive. As an initial matter, Plaintiff argues that Iran is “not a party to the
6 transportation in question” due to “political factors.” Opp’n at 2. Specifically, Plaintiff
7 notes that the United States does not have diplomatic or consular relations with Iran and
8 that there is no direct commercial air service between the two countries. Id. at 2-3.

9 Plaintiff thus argues that, as far as the United States is concerned, Iran “cannot be a ‘High
10 Contracting Party’ under the Warsaw Convention” and “does not exist” when determining
11 whether a flight constitutes international carriage. Id. at 2.

12 Tellingly, Plaintiff cites no authority in support of her argument, and the Court finds
13 none. For purposes of the Convention, the availability of direct or nonstop travel between
14 two destinations or countries is irrelevant. See W.C. Art. 1(2) (providing that the Warsaw
15 Convention applies to certain carriage “whether or not there be a break” in the same).
16 Likewise, the lack of diplomatic relations between the United States and Iran is irrelevant.
17 A High Contracting Party refers to a nation “whose ratification of or adherence to the
18 Convention has become effective and whose denunciation thereof has not become
19 effective.” W.C., Art 40A. The Convention nowhere suggests that a court may disregard a
20 signatory as such due to the perceived political relationship between particular nations.

21 Plaintiff’s approach is also practically untenable. Plaintiff argues that Iran “cannot
22 be a final destination” because the United States “does not recognize it.” Opp’n at 2.
23 However, the Court cannot ignore Iran’s existence as a destination in international carriage.
24 As noted by Defendant, neither the absence of direct air travel nor the absence of
25 diplomatic relations prevented Plaintiff from purchasing a ticket that transported her
26 between the United States and Iran. The Court would therefore be indulging in a fiction
27 were to find that Iran does not constitute a place of destination.

1 **3. The Montreal Convention³**

2 Plaintiff also attempts to invoke the Montreal Convention. The Montreal
3 Convention is the successor to the Warsaw Convention. Narayanan v. British Airways, 747
4 F.3d 1125, 1127 (9th Cir. 2014). In addition to the four fora provided under the Warsaw
5 Convention, the Montreal Convention adds a fifth jurisdictional forum, i.e., the place where
6 the passenger has his or her “principal and permanent residence.” M.C. Art. 33(2).
7 Plaintiff wishes to avail herself of this fifth forum, asserting that she is a permanent resident
8 of the United States. See Opp’n at 4.⁴

9 Notably, Plaintiff fails to address a critical threshold matter—the applicability of the
10 Montreal Convention. The Montreal Convention governs liability with regard to “all
11 international carriage of persons . . . for reward.” M.C. Art.1(1). Like the Warsaw
12 Convention, the Montreal Convention defines “international carriage” as that with its
13 “place of departure” and “place of destination” either within the territories of two State
14 Parties or within the territory of a single State Party if there is an agreed stopping place
15 abroad. M.C. Art. 1(2). Thus, if the place of departure and/or destination is not within the
16 territory of a State Party, the Montreal Convention does not apply. See Polanski v. KLM
17 Royal Dutch Airlines, 378 F. Supp. 2d 1222, 1227 (S.D. Cal. 2005) (finding the Montreal
18 Convention inapplicable to carriage between the United States and Poland because Poland
19 is not a signatory); Alemi, 842 F. Supp. 2d at 850 n.2 (finding the Montreal Convention
20 inapplicable to roundtrip carriage out of Iran because Iran is not a signatory).

21 Plaintiff traveled on a roundtrip ticket out of Tehran, Iran, and thus, “both the place
22 of departure and the place of destination are Iran.” Alemi, 842 F. Supp. 2d at 850 n.2. Iran
23

24 ³ Convention for the Unification of Certain Rules for International Carriage by Air,
25 May 28, 1999, reprinted in S. Treaty Doc. No. 106-45, 1999 WL 33292734 (2000)
26 (“Montreal Convention” or “M.C.”).

27 ⁴ In the opening of her opposition brief, Plaintiff asserts that the incident in question
28 clearly constitutes an “accident” under “either the Montreal [Convention] or the Warsaw
29 Convention, whichever, if either, if found applicable.” Opp’n at 1. Although Plaintiff does
30 not explicitly take the position that the Montreal Convention governs this action, she goes
31 on to discuss its substantive provisions. See id. at 4-5.

1 is not a signatory to the Montreal Convention. See List of Signatories to the Montreal
2 Convention, http://www.icao.int/secretariat/legal/List%20of%20Parties/Mtl99_EN.pdf; see
3 also Alemi, 842 F. Supp. 2d at 850 n.2. Hence, the Montreal Convention does not apply.

4 **4. Plaintiff’s Subjective Intent**

5 Finally, Plaintiff argues that a court should determine the place of destination
6 according to “where the passenger wishes to end up.” Opp’n at 5. Accordingly, she argues
7 that San Francisco was her “actual ‘destination’” because that is where she intended to
8 return after visiting family and friends in Iran. Id. This approach is contrary to both the
9 Warsaw Convention and Ninth Circuit authority interpreting the same.

10 First, Plaintiff attempts to divide her roundtrip ticket into separate “legs,” noting that
11 the purpose of the flight upon which the accident occurred was “to fly her from Dubai to
12 San Francisco.” Opp’n at 6. However, the Ninth Circuit has agreed with other courts “that
13 there can only be one ‘destination’ for Warsaw Convention purposes.” Coyle, 363 F.3d at
14 991 (citing In re Alleged Food Poisoning Incident, 770 F.2d 3, 6-7 (2nd Cir. 1985) (holding
15 that the Warsaw Convention “uses the term ‘destination’ in the singular,” implying that
16 there can only be one destination for purposes of treaty jurisdiction)). Thus, the Court
17 cannot examine individual “legs” of a single ticket.⁵

18 Second, Plaintiff focuses solely on the subjective intent of the passenger, and argues
19 that the terms of the Warsaw Convention do not limit a court’s inquiry to the “last line of
20 the itinerary or ticket.” Opp’n at 5. However, both the Warsaw Convention and binding
21 Ninth Circuit authority direct this Court to consider the intent of *both* the passenger and the
22 carrier. W.C. Art 1(2) (providing that the “agreement between the *parties*” determines the
23 “place of destination”) (emphasis added); Coyle, 363 F. 3d at 987 (holding that “the
24 intention of the *parties* . . . determines the final destination) (emphasis added). Moreover,

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26 ⁵ The Court notes that, although Plaintiff sometimes refers to multiple “tickets”, both
27 the Passenger Itinerary Receipt provided by Plaintiff and the Passenger Name Records
28 (“PNR”) provided by Defendant confirm that the travel in question was booked as a single
roundtrip ticket. Sajajed Decl., Ex D; Hussain Decl., Ex. A. The distinct segments of the
ticket are more aptly characterized as legs or flights. See Sajajed Decl., Ex. D (listing a
single ticket number and four flight numbers); Hussain Decl., Ex A (same).

1 “although a passenger’s intent is accorded considerable weight in ascertaining the final
2 destination, when a contract is unambiguous, the instrument alone is taken to express the
3 intent of the parties.” Coyle, 363 F.3d at 987 (citations omitted). Thus, provided there is
4 no ambiguity, “the tickets . . . are *exactly* where we must look to find the parties’ objective
5 intent.” Id. at 991.

6 As discussed above, the ticket in this case is unambiguous, providing roundtrip
7 transportation out of Tehran, Iran, with intermediate stops in Dubai and San Francisco.


8 **IV. CONCLUSION**

9 Plaintiff cannot escape the applicability of the Warsaw Convention or the limit of its
10 jurisdictional reach. Under the Warsaw Convention, jurisdiction will lie in only four fora.
11 Plaintiff did not file suit in one of those four fora, and thus, subject matter jurisdiction is
12 lacking. Accordingly,

13 IT IS HEREBY ORDERED THAT Defendant’s Motion to Dismiss is GRANTED,
14 and Plaintiff’s complaint is DISMISSED. The Clerk shall terminate all pending matters
15 and close the file.

16 IT IS SO ORDERED.

17 Dated: 3/28/17


SAUNDRA BROWN ARMSTRONG
Senior United States District Judge

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