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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

ADDAS SAADAT and ARMIN REA  
SAADAT, Individually and as Personal  
Representatives and Successor-in-Interest  
to the Estate of SARA SAADAT,  
  
Plaintiffs,  
  
v.  
  
UKRAINE INTERNATIONAL  
AIRLINES,  
  
Defendant.

Case No.: 3:22-cv-00014-H-JLB

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

[Doc. No. 12.]

On January 6, 2022, Plaintiffs Addas Saadat and Armin Rea Saadat (collectively, “Plaintiffs”) filed a complaint against Defendant Ukraine International Airlines (“Defendant.”) (Doc. No. 1.) On September 9, 2022, Plaintiffs filed a motion for an order permitting service by publication, which the Court granted on October 17, 2022. (Doc. Nos. 4, 7.) On April 26, 2023, Plaintiffs filed a request for entry of clerk default against Defendant. (Doc. No. 11.) On May 4, 2023, Defendant filed the present motion to dismiss. (Doc. No. 12.) On June 26, 2023, Plaintiffs filed their opposition to the motion to dismiss. (Doc. No. 15.) On July 17, 2023, Defendant filed its reply in support of Defendant’s motion to dismiss. (Doc. No. 18.) For the reasons below, the Court grants Defendant’s

1 motion to dismiss.

2 **BACKGROUND**

3 On January 6, 2022, Plaintiffs Addas Saadat and Armin Rea Saadat (“Plaintiffs”)   
4 filed a complaint against Defendant Ukraine International Airlines (“Defendant”). (Doc.   
5 No. 1.) Plaintiffs allege that on or about January 8, 2020, Defendant operated a Boeing   
6 737-800 flight from Khomeini International Airport in Tehran, Iran to Boryspil   
7 International Airport in Kyiv, Ukraine. (Doc. No. 1.) The decedent, Sara Saadat, was a   
8 passenger onboard this flight. (Doc. No. 1.) Sara Saadat was a clinical psychology student   
9 at Alliant International University in San Diego, California at the time of the accident.   
10 (Doc. No. 1.) On or about January 8, 2020, Sara Saadat was ticketed to land in Kyiv,   
11 Ukraine where she was to connect with another flight operated by Defendant to Toronto,   
12 Canada and then on to Edmonton, Canada. (Doc. No. 1.) Plaintiffs allege that on or about   
13 January 8, 2020, Sara Saadat was on her way to her final destination of San Diego,   
14 California and that Sara Saadat began her round-trip travels in San Diego, California. (Doc.   
15 No. 1.) While the decedent was onboard the flight, approximately three minutes after   
16 taking off from Tehran, Iran, the aircraft was struck by two surface-to-air missiles. (Doc.   
17 No. 1.)

18 In the days leading up the crash, Iran and other nations were openly engaged in acts   
19 of aggression. (Doc. No. 1.) On January 8, 2020, at 2 a.m. local time, Iran launched a   
20 series of ballistic missiles which struck two Iraqi bases housing U.S. troops. (Doc. No. 1.)   
21 An hour and a half later, at 3:37 a.m. local time, the U.S. Federal Aviation Administration   
22 issued an Emergency Order NOTAM which prohibited all U.S. operators from flying over   
23 the airspace of Iran “due to heightened Military activities and increased political tensions   
24 in the Middle East, which present an inadvertent risk to U.S. civil aviation operations due   
25 to the potential for miscalculation or mis-identification.” (Doc. No. 1.) Although this   
26 emergency order was only binding on U.S. air carriers and commercial operators, it was   
27 immediately available to all air carriers, including Defendant. (Doc. No. 1.) Plaintiffs   
28 allege that Defendant knew or should have known about the emergency order and should

1 have had updated risk assessments for their flight as a result. (Doc. No. 1.)

2 Despite the F.A.A. order, Defendant dispatched the flight for take-off from Tehran,  
3 Iran to Kyiv, Ukraine on January 8, 2020. (Doc. No. 1.) As a result of the missile strike,  
4 the plane crashed just minutes after taking off from the airport in Iran, and Sara Saadat,  
5 along with all the other passengers, passed away. (Doc. No. 1.)

## 6 DISCUSSION

### 7 **I. Legal Standards**

8 Defendant argues that the Court should dismiss this complaint pursuant to Federal  
9 Rules of Civil Procedure 12(b)(2) and 12(b)(5) on the grounds of lack of personal  
10 jurisdiction and insufficient service of process. (Doc. No. 12 at 5.) Defendant also argues  
11 that the Court should dismiss the complaint on the grounds of lack of subject matter  
12 jurisdiction and *forum non conveniens*. (Doc. No. 12 at 6.)

#### 13 **a. Legal Standards for *Forum Non Conveniens***

14 “A defendant invoking forum non conveniens ordinarily bears a heavy burden in  
15 opposing the plaintiff’s chosen forum.” Sinochem Intern. Co. Ltd. V. Malaysia Intern.  
16 Shipping Corp., 549 U.S. 422, 430 (2007). “To prevail on a motion to dismiss based upon  
17 forum non conveniens, a defendant bears the burden of demonstrating an adequate  
18 alternative forum, and that the balance of private and public interest factors favors  
19 dismissal.” Carijano v. Occidental Petroleum Corp., 643 F.3d 1216, 1224 (9th Cir. 2011).  
20 “The forum non conveniens determination is committed to the sound discretion of the trial  
21 court.” Piper Aircraft Co. v. Reyno, 454 U.S. 235, 257 (1981).

#### 22 **b. Legal Standards for 12(b)(1) Motion to Dismiss**

23 “Federal courts are courts of limited jurisdiction.” Kokkonen v. Guardian Life Ins.  
24 Co. of Am., 511 U.S. 375, 377 (1994). Under Federal Rule of Civil Procedure 12(b)(1), a  
25 complaint may be dismissed for lack of subject matter jurisdiction. Fed. R. Civ. P.  
26 12(b)(1). “Rule 12(b)(1) jurisdictional attacks can be either facial or factual.” White v.  
27 Lee, 227 F.3d 1214, 1242 (9th Cir. 2000). “In a facial attack, the challenger asserts that  
28 the allegations contained in a complaint are insufficient on their face to invoke federal

1 jurisdiction. By contrast, in a factual attack, the challenger disputes the truth of the  
2 allegations that, by themselves, would otherwise invoke federal jurisdiction.” Safe Air for  
3 Everyone v. Meyer, 373 F.3d 1035, 1039 (9th Cir. 2004).

4 Federal district courts can only adjudicate cases “arising under the Constitution,  
5 laws, or treaties of the United States.” Mims v. Arrow Financial Services, LLC, 565 U.S.  
6 368, 376-77 (2012). The Montreal Convention “provides the exclusive remedy for  
7 international passengers seeking damages against airline carriers.” Narayanan v. British  
8 Airways, 747 F.3d 1125, 1127 (9th Cir. 2014). Where there is no jurisdiction under the  
9 terms of the Montreal Convention, there is not federal subject matter jurisdiction under 28  
10 U.S.C. Section 1331(a). See Sopcak v. N. Mountain Helicopter Serv., 52 F.3d 817, 818-  
11 19 (9th Cir. 1995).

### 12 c. Legal Standards for 12(b)(2) Motion to Dismiss

13 Under Federal Rule of Civil Procedure 12(b)(2), a complaint may be dismissed for  
14 lack of personal jurisdiction. Fed. R. Civ. P. 12(b)(2). “Personal jurisdiction over a  
15 nonresident defendant is tested by a two-part analysis. First, the exercise of jurisdiction  
16 must satisfy the requirements of the applicable state long-arm statute. Second, the exercise  
17 of jurisdiction must comport with federal due process.” Dow Chemical Co. v. Calderon,  
18 422 F.3d 827, 830 (9th Cir. 2005) (quoting Chan v. Society Expeditions, 39 F.3d 1398,  
19 1404-05 (9th Cir. 1994)). California's long-arm statute permits a court to “exercise  
20 jurisdiction on any basis not inconsistent with the Constitution of [California] or of the  
21 United States.” Cal. Civ. Proc. Code § 410.10. Thus, California's long-arm statute permits  
22 courts to exercise personal jurisdiction within the limits of due process. Daimler AG v.  
23 Bauman, 571 U.S. 117, 125 (2014).

24 “For a court to exercise personal jurisdiction over a nonresident defendant, that  
25 defendant must have at least ‘minimum contacts’ with the relevant forum such that the  
26 exercise of jurisdiction ‘does not offend traditional notions of fair play and substantial  
27 justice.’” Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 801 (9th Cir. 2004)  
28 (quoting International Shoe Co. v. Washington, 326 U.S. 210, 216 (1945)). There are two

1 bases for exercising personal jurisdiction over a non-resident defendant: (1) general  
2 personal jurisdiction, and (2) specific personal jurisdiction.

3 “For a court to exercise general personal jurisdiction over a defendant corporation,  
4 the defendant’s contacts with the forum state must be ‘so continuous and systematic as to  
5 render [it] essentially at home in the forum state.’” Yamashita v. LG Chem, Ltd., 62 F.4th  
6 496, 503 (9th Cir. 2023) (quoting Goodyear Dunlop Tires Operations, S.A. v. Brown, 564  
7 U.S. 915, 919 (2011)). In general, a corporation is “at home” such that personal jurisdiction  
8 exists in its “place of incorporation and principal place of business.” Daimler AG v.  
9 Bauman, 571 U.S. 117, 118 (2014).

10 The Ninth Circuit employs a three-part test for determining specific personal  
11 jurisdiction. A defendant is subject to specific personal jurisdiction in a particular state if  
12 “(1) the defendant performed an act or consummated a transaction by which it purposely  
13 directed its activity toward the forum state; (2) the claims arose out of defendant’s forum-  
14 related activities; and (3) the exercise of personal jurisdiction is reasonable.” San Diego  
15 County Credit Union v. Citizens Equity First Credit Union, 65 F.4th 1012, 1034-35 (9th  
16 Cir. 2023).

17 The plaintiff bears the burden of establishing personal jurisdiction. Martinez v. Aero  
18 Caribbean, 764 F.3d 1062, 1066 (9th Cir. 2014). “[T]he plaintiff need only make a prima  
19 facie showing of jurisdictional facts.” Glob. Commodities Trading Grp. V. Beneficio de  
20 Arroz Choloma, S.A., 972 F.3d 1101, 1106 (9th Cir. 2020).

#### 21 **d. Legal Standards for 12(b)(5) Motion to Dismiss**

22 This Court lacks jurisdiction over defendants who have not been properly served in  
23 accordance with Federal Rule of Civil Procedure 4. S.E.C. v. Ross, 504 F.3d 1130, 1138  
24 (9th Cir. 2007). Rule 12(b)(5) of the Federal Rules of Civil Procedure permits a court to  
25 dismiss an action for insufficient service of process. Fed. R. Civ. P. 12(b)(5). The burden  
26 is on the plaintiff to prove that service was valid under Rule 4. Brockmeyer v. May, 383  
27 F.3d 798, 801 (9th Cir. 2004).

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## 1 II. Analysis

### 2 a. *Forum Non Conveniens*

3 Defendant argues that this action should be dismissed on the grounds of *forum non*  
4 *conveniens*. (Doc. No. 12 at 22.) Defendant asserts that Canada, where two actions related  
5 to the decedent for the same accident are currently pending, is an available and adequate  
6 forum and that the private and public interest factors favor dismissal. (Doc. No. 12 at 22-  
7 23); see Carijano, 643 F.3d at 1224. In response, Plaintiffs do not dispute that “Canada has  
8 courts which undoubtedly can handle such cases and dispense justice.” (Doc. No. 15 at  
9 14-15.) Instead, Plaintiffs assert that Defendant is not arguing whether Canada has courts  
10 that can handle such cases, but rather, that Defendant is arguing that it can be served, or  
11 will accept service, in Canada. (Doc. No. 15 at 14-15.) The Court disagrees. Defendant  
12 first argues that Canada is an available and adequate forum and then states that “to the  
13 extent Plaintiffs believe a third action for decedent’s death needs to be commenced in  
14 Canada, UIA Canadian counsel will accept service of process on behalf of UIA.” (Doc.  
15 No. 12 at 22-23.)

16 Plaintiffs, in their opposition, do not argue that Canada is not an adequate alternative  
17 forum. Nor do Plaintiffs argue that the balance of private and public interest factors favor  
18 dismissal. Instead, Plaintiffs merely assert that the decedent does not need a liability trial,  
19 as “her case is ready for and deserves a damages trial here” and that the decedent’s damages  
20 evidence is in San Diego. (Doc. No. 15 at 15.) Plaintiffs are incorrect that the decedent’s  
21 case is ready for a damages trial in this Court. The Clerk of Court has yet to enter default  
22 against the Defendant in this case. (Doc. No. 11.) Further, it is longstanding Ninth Circuit  
23 policy that as a general rule, “default judgments are ordinarily disfavored” and “[c]ases  
24 should be decided upon their merits whenever reasonably possible.” NewGen, LLC v. Safe  
25 Cig, LLC, 840 F.3d 606, 616 (9th Cir. 2016) (quoting Eitel v. McCool, 782 F.2d 1470,  
26 1472 (9th Cir. 1986)).

27 With this in mind, the Court first considers whether Canada is an adequate  
28 alternative forum. “An alternative forum is deemed adequate if: (1) the defendant is

1 amenable to process there; and (2) the other jurisdiction offers a satisfactory remedy.” Id.  
2 at 1225 (citing Piper, 454 U.S. at 254 n. 22.) Whether an alternative forum offers a  
3 satisfactory remedy is a relatively low bar. The Ninth Circuit and Supreme Court have  
4 made clear that “a foreign forum will be deemed adequate unless it offers no practical  
5 remedy for the plaintiff’s complained of wrong.” Lueck v. Sundstrand Corp., 236 F.3d  
6 1137, 1144 (9th Cir. 2001) (citing Piper, 454 U.S. at 250, 254 n.22.). It is undisputed that  
7 Canada offers a satisfactory remedy for Plaintiffs. Indeed, Plaintiffs, in their opposition to  
8 Defendant’s motion to dismiss, state that “[t]here is no question Canada has courts which  
9 undoubtedly can handle such cases and dispense justice.” (Doc. No. 15 at 14-15.) It is  
10 also clear that the Defendant is amenable to process in Canada. There are already 100  
11 actions related to this incident pending in Canada, including two actions related to this  
12 decedent. (Doc. No. 12-2, Hunter Decl.; Exh. B, Choupennejad Statement of Claim; Exh.  
13 C, Hakimi Statement of Claim.) Further, Defendant has explicitly stated that to the extent  
14 Plaintiffs want to commence a third action in Canada, Defendant will accept service in  
15 Canada. (Doc. No. 12 at 23.) The Court concludes that Canada is an adequate, alternative  
16 forum.

17 Having determined that Canada is an adequate, alternative forum, the Court must  
18 now balance the private and public interest factors. See Carijano, 643 F.3d at 1224. “There  
19 is ordinarily a strong presumption in favor of the plaintiff’s choice of forum, which may  
20 be overcome only when the private and public interest factors clearly point towards trial in  
21 the alternative forum.” Piper, 454 U.S. at 255. The strong presumption in favor of a  
22 plaintiff’s choice of forum is lessened for foreign plaintiffs. See Carijano, 643 F.3d at  
23 1227. Here, the decedent was a Canadian citizen who was living in San Diego, California  
24 while completing her doctoral program. (Doc. No. 12-2, Hunter Decl.; Exh. E, Saadat  
25 Passport). Plaintiffs have not provided any evidence that the decedent was a legal  
26 permanent resident in the United States, nor that she was a citizen of the United States.  
27 Keeping in mind that although Plaintiffs are not entitled to a strong presumption in favor  
28 of the plaintiffs’ forum, “less deference is not the same thing as no deference.” Ravelo

1 Monegro v. Rosa, 211 F.3d 509, 514 (9th Cir. 2000). Recognizing this, the Court considers  
2 the private and public interest factors.

3 The private interest factors favor dismissal. The private interest factors include “(1)  
4 relative ease of access to sources of proof; (2) the availability of compulsory process for  
5 attendance of hostile witnesses, and cost of obtaining attendance of willing witnesses; (3)  
6 possibility of viewing subject premises; and (4) all other factors that render trial of the case  
7 expeditious and inexpensive.” Ranza v. Nike, Inc., 793 F.3d 1059, 1078 (9th Cir. 2015)  
8 (quoting Loya v. Starwood Hotels & Resorts Worldwide, Inc., 583 F.3d 656, 664 (9th Cir.  
9 2009)). Defendant Ukraine International Airlines is headquartered in and has its principal  
10 place of business in Ukraine. (Doc. No. 12-1, Kabolina Decl.) However, because of the  
11 100 pending actions in Toronto, Canada, discovery in Canada has been ongoing for  
12 months. (Doc. No. 12-1, Hunter Decl.) Relevant witnesses and physical evidence related  
13 to liability are located outside of the United States. On the contrary, no evidence or sources  
14 of proof as to Defendant’s liability is in California. Defendant does not operate any flights  
15 to or from the state of California and Defendant has no physical presence in the state of  
16 California. (Doc. No. 12-1, Kabolina Decl.)

17 Finally, the public interest factors favor dismissal. The public interest factors  
18 include “(1) administrative difficulties flowing from court congestion; (2) imposition of  
19 jury duty on the people of a community that has no relation to the litigation; (3) local  
20 interest in having localized controversies decided at home; (4) the interest in having a  
21 diversity case tried in a forum familiar with the law that governs the action; [and] (5) the  
22 avoidance of unnecessary problems in conflicts of law.” Ranza, 793 F.3d at 1078 (quoting  
23 Loya, 583 F.3d at 664). Here, related cases are already pending before the courts in  
24 Canada, and a trial on liability is scheduled for November 2023. (Doc. No. 12-2, Hunter  
25 Decl.) The courts in Canada will almost certainly reach a verdict on the claims pending in  
26 Canada before any court in the United States would be able to litigate the merits of this  
27 action. As the Ninth Circuit concluded in Ranza, “the United States’ interest is  
28 significantly diminished here because the district court would be relitigating claims already

1 decided in a foreign proceeding.” 793 F.3d at 1079. This controversy is far from localized  
2 in San Diego – the crash involved a Defendant headquartered in the Ukraine and an injury  
3 that occurred on a flight between Iran and Ukraine. Accordingly, because the Court  
4 concludes that Canada is an adequate alternative forum and the private and public interest  
5 factors favor dismissal, the Court grants Defendant’s motion to dismiss on the basis of  
6 forum non conveniens.

#### 7 **b. Subject Matter Jurisdiction**

8 Defendant argues that this Court does not have subject matter jurisdiction to hear  
9 this claim under Article 33 of the Montreal Convention. (Doc. No. 12 at 18-22.) The  
10 Montreal Convention, which was signed in 1999 and entered into force in November 2003,  
11 governs the “international carriage of persons, baggage or cargo performed by aircraft for  
12 reward.” Montreal Convention, art. 1(1). The Montreal Convention establishes a system  
13 for passenger claims, including personal injury and wrongful death, arising out of an airline  
14 accident. Montreal Convention, arts. 17-19. The Montreal Convention “provides the  
15 exclusive remedy for international passengers seeking damages against airline carriers.”  
16 Narayanan v. British Airways, 747 F.3d 1125, 1127 (9th Cir. 2014). “Questions of  
17 jurisdiction and procedure . . . are governed by Article 28’ of the Warsaw Convention and  
18 Article 33 of the Montreal Convention.” Wendelberger v. Deutsche Lufthansa AG, No.  
19 18-cv-01055-PJH, 2018 WL 2387858, at \*3 (N.D. Cal. May 25, 2018) (quoting Hosaka v.  
20 United Airlines, Inc., 305 F.3d 989, 994-96 (9th Cir. 2002)). Because Article 33 of the  
21 Montreal Convention was adopted from Article 28 of the Warsaw Convention, “in  
22 interpreting the Montreal Convention, courts have routinely relied upon Warsaw  
23 Convention precedent where the equivalent provision in the Montreal Convention is  
24 substantively the same.” Narayanan, 747 F.3d at 1127 n.2. Where there is not jurisdiction  
25 under the terms of the Montreal Convention, there is not federal subject matter jurisdiction  
26 under 28 U.S.C. Section 1331(a). See Sopcak v. N. Mountain Helicopter Serv., 52 F.3d  
27 817, 818-19 (9th Cir. 1995) (affirming dismissal of a claim under the Warsaw Convention  
28 for “lack of subject matter jurisdiction” where “plaintiffs had failed to allege subject matter

1 jurisdiction under Article 28(1)"); see also Hornsby v. Lufthansa German Airlines, 593 F.  
2 Supp. 2d 1132, 1135-36 (C.D. Cal. Jan. 6, 2009) (“Under the terms of the [Montreal]  
3 Convention, this remedy can be pursued only in certain jurisdictions; if the United States  
4 is not one of these jurisdictions under the particular facts of this case, than this Court does  
5 not have treaty jurisdiction, and must dismiss the matter for lack of subject matter  
6 jurisdiction.”)

7 Under Article 33 of the Montreal Convention, a passenger injured on an international  
8 flight must bring an action for damages in one of the following five places: “(1) where the  
9 carrier has its domicile; (2) where the carrier has its principal place of business; (3) where  
10 [the carrier] has a place of business through which the contract has been made; (4) at the  
11 place of destination; or (5) in the territory of a State Party in which at the time of the  
12 accident the passenger has his or her principal and permanent residence (so long as the  
13 carrier operates services to/from – and conducts business from leased or owned premises  
14 in – such territory.)” Motlagh v. Qatar Airways, Q.C.S.C., 445 F. Supp. 3d 852, 855-56  
15 (S.D. Cal. Apr. 3, 2020) (internal quotation marks omitted); see also Montreal Convention,  
16 art. 33(1)-(3). Plaintiffs argue that this Court has jurisdiction under the Montreal  
17 Convention because San Diego was the decedent’s place of destination. (Doc. No. 15 at  
18 12.) Defendant argues that Plaintiffs have failed to provide sufficient evidence to establish  
19 that the United States was the decedent’s destination for purposes of Article 33 of the  
20 Montreal Convention, and thus, this Court lacks subject matter jurisdiction over the present  
21 matter. (Doc. No. 18 at 9-10.)

22 Under the Montreal Convention, as under the Warsaw Convention, there can “only  
23 be one destination” and “intermediate stops on trips are to be construed as agreed stopping  
24 places that do not disturb that final destination.” Coyle v. P.T. Garuda Indonesia, 363 F.3d  
25 979, 991 (9th Cir. 2004). Under Article 33, the place of destination is determined by the  
26 “intention of the parties as expressed in the contract of transportation, i.e., the ticket or  
27 other instrument.” Sopcak v. Northern Mountain Helicopter Service, 52 F.3d 817, 819 (9th  
28 Cir. 1995). “Such contracts should be interpreted according to the objective, rather than

1 the subjective, intent of the parties.” Id. Although “a passenger’s intent is accorded  
2 considerable weight in ascertaining the final destination, “[w]hen a contract is  
3 unambiguous, the instrument alone is taken the express the intent of the parties.”” Id.  
4 (quoting Swaminathan v. Swiss Air Transport Co., 962 F.2d 387, 389 (5th Cir. 1992)).  
5 Courts in the Ninth Circuit have expressly considered whether tickets were purchased at  
6 the same time and place in determining whether the parties intended “a single operation of  
7 undivided transportation.” Petrire v. Spantax, S.A., 756 F.2d 263, 266 (2d Cir. 1985). See  
8 e.g., In re Air Crash at San Francisco, California, on July 6, 2013, No. 14-cv-02038, 2017  
9 WL 3484643 (N.D. Cal. Aug. 14, 2017) (concluding that the purchased tickets were part  
10 of a “single operation of undivided operation transportation” in part because the plaintiffs  
11 purchased their tickets at the same time and place and the tickets bear sequential numbers).  
12 In determining whether there was a single undivided operation, “one party’s unilateral  
13 expectation that a domestic flight is part of a single international trip is not enough to  
14 convert that expectation into a reality.” Kruger v. United Air Lines, Inc., No. C-06-04907-  
15 MHP, 2007 WL 3232443, at \*5 (N.D. Cal. Nov. 1, 2007) (quoting Lemly v. Trans World  
16 Airlines, Inc., No. 85-cv-7043-MJL, 1986 WL 5107, at \*1 (S.D.N.Y. Apr. 29, 1986) aff’d  
17 807 F.2d 26 (2d Cir. 1986)).

18 Here, the evidence presented by Defendant demonstrates that the decedent had  
19 purchased a round-trip ticket from Edmonton, Canada to Tehran, Iran, with stops in  
20 Toronto, Canada and Kiev, Ukraine. (Exh. A, PNR of Sara Saadat). Plaintiffs have  
21 submitted two affidavits from their attorneys stating that the decedent intended to travel to  
22 San Diego following her arrival in Edmonton, Canada. (Doc. No. 15-1, Schiavo Decl.;  
23 Doc. No. 15-2, Genova Decl.) Despite these affidavits, Plaintiffs have submitted no  
24 evidence demonstrating that these flights were part of one larger itinerary connected to San  
25 Diego. Plaintiffs have not proffered evidence demonstrating that the decedent purchased  
26 her round-trip tickets from San Diego to Edmonton at the same time and place as her round-  
27 trip tickets from Edmonton to Tehran. Plaintiffs’ flights to and from San Diego are not  
28 reflected on the itinerary from Edmonton, Canada to Tehran, Iran. Thus, the clear

1 “intention of the parties as expressed in the contract of transportation” suggests that the  
2 incident occurred while the decedent was travelling round-trip between Edmonton, Canada  
3 and Tehran, Iran. See Sopcak, 52 F.3d at 819.

4 The Ninth Circuit’s decision in Coyle is instructive. In Coyle, plaintiffs were  
5 residents of Oregon who decided to visit Indonesia. 363 F.3d at 982. While in Indonesia,  
6 Plaintiffs purchased two tickets for a round-trip flight from Jakarta, Indonesia to Medan,  
7 Indonesia aboard Flight 152. Id. While plaintiffs were aboard, Flight 152 crashed into the  
8 side of a mountain, and all passengers died. Id. Plaintiffs’ estate filed suit in the United  
9 States District Court for the District of Oregon. Id. at 983. The Ninth Circuit concluded  
10 that the federal courts lacked subject matter jurisdiction to hear this case because the  
11 objective evidence presented demonstrates that “the [plaintiffs’] flight to Medan was a  
12 side-trip, unconnected to their larger international itinerary.” Id. at 993-94. The Ninth  
13 Circuit noted that they “do not doubt the [plaintiffs’] desire to return to their Oregon home  
14 at the end of their vacation” recognizing that “the final destination of their international  
15 trip was Portland.” Id. at 991. Nonetheless, the court emphasized that “the crux of this  
16 litigation is whether Flight 152 *was a part of* that larger international trip for purposes of  
17 the Warsaw Convention – whether it was a component of “one undivided transportation . .  
18 . regarded by the parties as a single operation . . .” Id. Here, Plaintiffs have not provided  
19 any evidence to suggest that the flight from Edmonton to Tehran was part of a “single  
20 operation of undivided transportation” between San Diego and Tehran, rather than a “side-  
21 trip” unconnected to her trip to visit Edmonton from San Diego. Accordingly, because  
22 jurisdiction is not proper in this Court under the Montreal Convention, this Court lacks  
23 subject matter jurisdiction over the claims.

### 24 **c. Personal Jurisdiction**

25 Defendant also argues that the Court lacks personal jurisdiction over Plaintiffs.  
26 (Doc. No. 12 at 15-17.) Plaintiffs, in their opposition, do not address whether or not this  
27 Court has personal jurisdiction over the Defendant. “In opposition to a defendant’s motion  
28 to dismiss for lack of personal jurisdiction, the plaintiff bears the burden of establishing

1 that jurisdiction is proper.” Boschetto v. Hansing, 539 F.3d 1011, 1015 (9th Cir. 2008).  
2 Because Plaintiffs fail to address whether this Court has personal jurisdiction, the Court  
3 concludes that Plaintiffs have failed to meet their burden of establishing personal  
4 jurisdiction. Nonetheless, the Court concludes that Defendant is not subject to personal  
5 jurisdiction in this Court.

6 Plaintiffs fail to establish that this Court has general jurisdiction over Defendant.  
7 “With respect to a corporation, the place of incorporation and principal place of business  
8 are paradigm bases for general jurisdiction.” Daimler AG v. Bauman, 671 U.S. 117, 137  
9 (2014). Here, Defendant Ukraine International Airlines has its place of incorporation and  
10 principal place of business in Ukraine. Defendant has no offices in California and operates  
11 no flights to and from California, such that it could be considered “at home” in California.  
12 The Court does not have general jurisdiction over Defendant.

13 The Court next considers whether there is specific personal jurisdiction over  
14 Defendant. A defendant is subject to specific personal jurisdiction in a particular state if  
15 “(1) the defendant performed an act or consummated a transaction by which it purposely  
16 directed its activity toward the forum state; (2) the claims arose out of defendant’s forum-  
17 related activities; and (3) the exercise of personal jurisdiction is reasonable.” San Diego  
18 County Credit Union v. Citizens Equity First Credit Union, 65 F.4th 1012, 1034-35 (9th  
19 Cir. 2023). The activity in issue here – the missile strike – occurred on a flight between  
20 Iran and Ukraine. The evidence shows that the decedent on this flight booked a roundtrip  
21 ticket between Edmonton, Canada and Tehran, Iran, with stops in Toronto, Canada and  
22 Kiev, Ukraine. The fact that the decedent was attending school in San Diego, California,  
23 is insufficient to confer specific personal jurisdiction upon Defendant for this claim.  
24 Defendant does not operate flights to and from California, maintain offices in California,  
25 or have employees in California. Defendant did not at the time of the missile strike and  
26 does not at the present moment have any minimum contacts with California. Accordingly,  
27 the Court concludes that it lacks personal jurisdiction over Defendant in this action.

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