

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Braik v. Southwest Airlines Co., et al.

Braik · No. 25-cv-10083-VKD · Decided December 30, 2025

SUMMARY

The court recommends dismissal of Victoria Braik’s amended complaint for lack of subject matter jurisdiction and orders reassignment of the case to a district judge because not all parties consented to magistrate judge jurisdiction. The court concludes that the Montreal Convention does not plausibly apply to the separately purchased domestic Southwest flight, and that the Airline Deregulation Act and Foreign Sovereign Immunities Act do not provide a basis for federal jurisdiction over the asserted state-law claims. Dismissal is recommended without leave to amend and without prejudice to filing an appropriate complaint in state court.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Virginia K. DeMarchi, United States Magistrate Judge
JURISDICTION	United States District Court for the Northern District of California
DECIDED	December 30, 2025
DOCKET	25-cv-10083-VKD
DISPOSITION	other
PROCEDURAL POSTURE	Report and recommendation by a magistrate judge recommending dismissal of an amended complaint for lack of subject matter jurisdiction. Because not all parties consented to magistrate judge jurisdiction, the matter was ordered reassigned to a district judge.
STANDARD OF REVIEW	The court screened the amended complaint for subject matter jurisdiction and plausibility, construing the pro se pleading liberally but requiring facts sufficient to state a plausible claim. Federal courts have an independent duty to determine whether subject matter jurisdiction exists.
PRECEDENTIAL VALUE	unpublished

PARTIES

Victoria Braik v. Southwest Airlines Co., Travelport, LP, Sabre GBLB, Inc., Amadeus North America, Inc., Deutsche Lufthansa Aktiengesellschaft

TOPICS

subject matter jurisdiction

civil procedure

motions to dismiss

contracts

consumer protection

PRACTICE AREAS

federal civil procedure

subject matter jurisdiction

air transportation law

contracts

consumer protection

QUESTIONS PRESENTED

1. Whether the amended complaint plausibly established federal subject matter jurisdiction under the Montreal Convention based on a separately ticketed domestic Southwest flight following international travel.
2. Whether the Airline Deregulation Act provided a basis for federal jurisdiction over plaintiff's state-law claims.
3. Whether the Foreign Sovereign Immunities Act provided a basis for federal jurisdiction over plaintiff's claims against the defendants.
4. Whether the amended complaint should be dismissed without further leave to amend after a prior opportunity to amend.

HOLDINGS

1. The amended complaint did not plausibly allege that the separately purchased Southwest flight from Los Angeles to San Jose was part of international carriage subject to the Montreal Convention. The allegations therefore did not establish federal-question jurisdiction under the Convention.
2. The Airline Deregulation Act did not provide a basis for federal jurisdiction over plaintiff's state-law claims because the ADA does not create a private right of action to enforce its provisions.
3. The Foreign Sovereign Immunities Act did not establish federal jurisdiction because the complaint did not allege that any defendant was an agency or instrumentality of a foreign state or that an exception to sovereign immunity applied.
4. Dismissal without further leave to amend was recommended because plaintiff had already received an opportunity to amend and the amended allegations were not materially different from the original allegations.

KEY QUOTATIONS

“it cannot be reasonably inferred that her Southwest flight is part of her international travel and subject to the Montreal Convention simply because she had a “short connection” that all airlines using the ticketing system could have observed.” (Section III.A)

“Accordingly, because Ms. Braik asserts no claim “arising under the Constitution, laws, or treaties of the United States,” she fails to plausibly allege a basis for the Court to exercise subject matter jurisdiction in this action.” (Section III.B)

“For the reasons explained above, the Court recommends the amended complaint be dismissed, without leave to amend, for lack of subject matter jurisdiction, but without prejudice to filing an appropriate complaint in state court.” (Section IV)

FACTUAL BACKGROUND

Victoria Braik purchased international air travel from Warsaw, Poland, to Los Angeles, California, on United/Lufthansa and separately purchased a Southwest ticket from Los Angeles to San Jose, California. After arriving in Los Angeles with her dog, Southwest initially refused boarding because she had not paid Southwest's separate pet fee. Braik paid the \$125 fee and was permitted to board, then asserted claims based on the theory that the Southwest domestic flight was a continuation of her international trip because the airlines used the same ticketing systems.

PROCEDURAL HISTORY

Plaintiff filed the action and an application to proceed in forma pauperis. The court granted IFP status but found that the original complaint did not plausibly establish federal subject matter jurisdiction and granted leave to amend. Plaintiff filed an amended complaint asserting eleven claims. The magistrate judge concluded that the amended complaint still failed to establish federal-question jurisdiction and recommended dismissal without leave to amend and without prejudice to filing an appropriate complaint in state court.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand was ordered. The magistrate judge recommended dismissal without leave to amend, without prejudice to filing an appropriate complaint in state court, and ordered reassignment to a district judge because not all parties had consented to magistrate judge jurisdiction.

CASES CITED

- Ngoc Lam Che v. San Jose/Evergreen Cmty. Coll. Dist. Found., No. 17-cv-00381-BLF, 2017 WL 2954647, at *2 (N.D. Cal. July 11, 2017)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 545, 570 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Negrete v. City of Oakland, 46 F.4th 811, 816 (9th Cir. 2022), cert. denied sub nom. Negrete v. City of Oakland, California, 143 S. Ct. 781 (2023)
- Yakub v. Qatar Airways Grp. (Q.C.S.C.), No. 25-cv-04142-JCS, 2025 WL 1927599, at *3 (N.D. Cal. July 14, 2025), report and recommendation adopted, No. 25-cv-04142-CRB, 2025 WL 2402684 (N.D. Cal. Aug. 19,

2025), appeal dismissed sub nom. Yakub v. Qatar Airways Grp. QCSC, No. 25-5592, 2025 WL 3530626 (9th Cir. Nov. 12, 2025)

- Firsov v. Frontier Airlines, Inc., No. 25-cv-02898-SVK, 2025 WL 3239326, at *3 (N.D. Cal. Nov. 20, 2025)
- Biscone v. JetBlue Airways Corp., 681 F. Supp. 2d 383, 387 (E.D.N.Y. 2010)
- Best v. BWIA W. Indies Airways Ltd., 581 F. Supp. 2d 359, 363 (E.D.N.Y. 2008)
- Selke v. Germanwings GmbH, 261 F. Supp. 3d 666, 679 (E.D. Va. 2017)
- Jensen v. Virgin Atl., No. 12-cv-06227-YGR, 2013 WL 1207962, at *4 (N.D. Cal. Mar. 25, 2013)
- Wayne v. DHL Worldwide Express, 294 F.3d 1179, 1184 (9th Cir. 2002)
- Morales v. Trans World Airlines, Inc., 504 U.S. 374, 378 (1992)
- Saudi Arabia v. Nelson, 507 U.S. 349, 355 (1993)
- Loumena v. Kennedy, No. 15-cv-00951-LHK, 2015 WL 5963988, at *11-13 (N.D. Cal. Oct. 13, 2015), *aff'd*, 671 F. App'x 446 (9th Cir. 2016)
- Cato v. United States, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995)
- O'Loughlin v. Doe, 920 F.2d 614, 618 (9th Cir. 1990)

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6
SAN JOSE DIVISION 7 8 VICTORIA BRAIK, Case No. 25-cv-10083-VKD 9 Plaintiff, ORDER
FOR REASSIGNMENT TO A DISTRICT JUDGE; v. 10 REPORT AND RECOMMENDATION
11 SOUTHWEST AIRLINES CO., et al., FOR DISMISSAL 12 Defendants. Re: Dkt. No. 7 13 14
On November 21, 2025, plaintiff Victoria Braik, who is representing herself, filed a 15 complaint
asserting ten claims against defendants Southwest Airlines Co.; Travelport, LP; Sabre 16 GLBL,
Inc.; Amadeus North America, Inc.; and Deutsche Lufthansa Aktiengesellschaft.

Dkt. No. 17 1. Ms. Braik also filed an application to proceed in forma pauperis (“IFP”). Dkt. No.
2. On 18 December 3, 2025, the Court granted Ms. Braik’s IFP application but found her
complaint failed 19 to plausibly allege a basis for the Court’s exercise of subject matter
jurisdiction. Dkt. No. 6.

The 20 Court gave Ms. Braik an opportunity to amend her complaint. *Id.* On December 22, 2025,
Ms. 21 Braik filed an amended complaint now asserting eleven claims against the same
defendants. Dkt. 22 No. 7. 23 For the reasons discussed below, the Court directs the Clerk of the
Court to reassign this 24 matter to a district judge, with the recommendation that the amended
complaint be dismissed for 25 lack of subject matter jurisdiction, without prejudice to filing an
appropriate complaint in state 26 court.

27 1 REPORT AND RECOMMENDATION 2 I. BACKGROUND 3 A. Ms. Braik’s Amended
Claims 4 In the amended complaint, Ms. Braik invokes the Court’s federal question jurisdiction 5
under 28 U.S.C. § 1331, citing the Montreal Convention, the Airline Deregulation Act of 1978 6

(“ADA”), and the Foreign Sovereign Immunities Act of 1976 (“FSIA”). Dkt. No. 7 at 2. Ms. 7 Braik asserts eleven claims against defendants.

Id. at 6-16. The factual allegations in the 8 amended complaint do not differ in any material respect from those of the original complaint. 9 Compare Dkt. No. 1 with Dkt. No. 7. As in the original complaint, Ms. Braik alleges that on 10 August 26, 2025, she purchased a ticket from United Airlines (“United”) to travel from San 11 Francisco, California, to Warsaw, Poland, and then to Los Angeles, California.

Dkt. No. 7 at 4. 12 She “separately” booked a flight with defendant Southwest Airlines Co. (“Southwest”) to fly from 13 Los Angeles, California to San Jose, California after her Warsaw to Los Angeles flight. Id. 14 On September 14, 2025, she traveled with her dog from Warsaw, Poland to Los Angeles, 15 California on a United/Lufthansa Airlines flight. Id.; see also id. at 21.

On the same date, Ms. 16 Braik paid a \$150 pet fee to defendant Lufthansa Aktiengesellschaft (“Lufthansa”). Id. at 4. 17 When she arrived in Los Angeles, Ms. Braik alleges that Southwest would not permit her and her 18 dog to board the flight to San Jose because she had not paid a pet fee for her dog. Id. 19 Ms. Braik contends that because she had flown in from Poland to Los Angeles earlier in 20 the day, the Southwest flight to San Jose should be considered a “continu[ance] of international 21 trip,” and not a separate domestic flight.

Id. Specifically, she alleges that because Southwest, 22 United, and Lufthansa use the same “global distribution systems” for ticketing, defendants “knew 23 in advance (or should have known)” that Ms. Braik was arriving on an international 24 United/Lufthansa flight from Poland and that she had a short connection for her domestic 25 Southwest flight from Los Angeles to San Jose, and therefore, the “next domestic flight to [San 26 Jose]” must be considered a “continuance of [her] international flight.” Id. at 5.

27 Ultimately, Ms. Braik paid Southwest a \$125 pet fee and was permitted to board the flight 1 pet fee. Id. Ms. Braik alleges that Southwest has not responded to her request. Id. 2 In her amended complaint, Ms. Braik asserts two claims against Southwest: (1) unjust 3 enrichment and (2) unfair and deceptive business practices in violation of California’s Unfair 4 Competition Law.

Id. at 7, 9. She asserts five claims against Southwest and Lufthansa: (1) 5 violation of the Montreal Convention and the Warsaw Convention; (2) false advertising in 6 violation of California Business and Professions Code §§ 17500 et seq.; (3) breach of the covenant 7 of good faith and fair dealing; (4) breach of contract; and (5) negligent infliction of emotional 8 distress.

Id. at 6, 8, 10-12. Finally, she asserts four claims against three companies that provide 9 global distribution systems—defendants Travelport, LP; Sabre GBLB, Inc.; Amadeus North 10 America, Inc. (collectively, “GDS defendants”): (1) detrimental reliance/promissory estoppel; (2) 11 tortious

interference with contracts; (3) false advertising; and (4) unfair and deceptive business practices in violation of California's Unfair Competition Law.

Id. at 13-16. Ms. Braik continues to seek injunctive relief and monetary damages in different amounts for each of her claims, as well as punitive damages. *Id.* at 17. Ms. Braik's Prior Action (Braik I) As noted in the screening order, Ms. Braik admits that this action "raise[s] claims that have been presented in other lawsuits." Dkt. No. 2 at 4.

On September 29, 2025, Ms. Braik filed an action in this District, asserting seven claims against Southwest, including claims for violation of the Montreal Convention and the Warsaw Convention, unjust enrichment, and breach of contract. See *Braik v. Southwest Airlines Co.*, No. 25-cv-08269-EJD ("Braik I"), Dkt. No. 1.

The claims in Braik I are based on the same allegations that form the basis for Ms. Braik's amended complaint— i.e., her dispute with Southwest regarding payment of a pet fee in connection with her September 14, 2025 flight from Los Angeles to San Jose. Compare *id.* with Dkt. No. 7. On October 15, 2025, this Court granted Ms. Braik's IFP application in Braik I, but determined that the complaint failed to plausibly allege a violation of the Montreal Convention,¹ and therefore, failed to plausibly allege a basis for the Court's exercise of subject matter jurisdiction.

Braik I, Dkt. No. 7 at 5. The Court gave Ms. Braik leave to file an amended complaint. *Id.* Ms. Braik's amended complaint in Braik I also failed to plausibly allege a basis for federal subject matter jurisdiction. Braik I, Dkt. No. 13 at 6.

The Court noted that the "amended complaint [did] not differ in any material respect from the original complaint." *Id.* at 2. Because not all parties had consented to magistrate judge jurisdiction, the Court directed that the case be reassigned to a district judge, with a report and recommendation that the amended complaint be dismissed without further leave to amend for lack of subject matter jurisdiction, and without prejudice to filing an appropriate complaint in state court.

Id. at 6. After the case was reassigned to the Honorable Edward J. Davila, Ms. Braik filed a motion for leave to further amend the complaint to join three defendants, Sabre GBL, Inc., Travelport, LP, and Amadeus North America, Inc.—the same GDS defendants she names in her amended complaint in this action. See Braik I, Dkt. No. 16 at 1. Ms. Braik claimed the three new defendants prevented Southwest from seeing Ms. Braik's earlier international flight from Poland to Los Angeles on the ticketing system, resulting in Southwest's failure to consider her Los Angeles to San Jose flight as a continuation of her international trip—the same allegations she makes in her amended complaint here.

Id. at 2. Ms. Braik also filed an objection to the 18 undersigned's report and recommendation. Braik I, Dkt. No. 18. On November 19, 2025, Judge 19 Davila adopted the undersigned's report and recommendation in full over Ms. Braik's objection 20 and dismissed the amended complaint in Braik I without prejudice to filing an appropriate 21 complaint in state court.

Braik I, Dkt. No. 19 at 3. Judge Davila stated that Ms. Braik's objection 22 "merely reasserts the same arguments that Judge DeMarchi squarely addressed in the Report." Id. 23 at 2. He also rejected Ms. Braik's argument that dismissal of the prior action would result in an 24 official withdrawal of the United States from the Montreal Convention because Ms. Braik "[did] 25 not cite—nor can the Court find—any authority supporting these broad assertions." Id. at 2-3.

In 26 the same order, Judge Davila also denied Ms. Braik's motion for leave to further amend her 27 complaint, stating that Ms. Braik had already been "given an opportunity to amend her complaint 1 allege on further amendment that would establish the requisite subject matter jurisdiction for the 2 Court to hear this case." Id. at 3. Judge Davila entered judgment in Braik I on November 19, 3 2025, and the Clerk closed the case.

Braik I, Dkt. No. 20. 4 II. LEGAL STANDARD 5 A complaint must establish a basis for the Court to exercise federal subject matter 6 jurisdiction. See *Ngoc Lam Che v. San Jose/Evergreen Cmty. Coll. Dist. Found.*, No. 17-cv- 7 00381-BLF, 2017 WL 2954647, at *2 (N.D. Cal. July 11, 2017) ("Limits upon federal jurisdiction 8 must not be disregarded or evaded."). Federal courts have original jurisdiction over civil actions 9 "arising under the Constitution, laws, or treaties of the United States," 28 U.S.C. § 1331, as well 10 as civil actions where there is diversity of citizenship and the matter in controversy exceeds the 11 sum or value of \$75,000 (exclusive of interest and costs), 28 U.S.C. § 1332.

The Court has a duty 12 to determine whether it has subject matter jurisdiction. Fed. R. Civ. P. 12(h). 13 While pro se pleadings are liberally construed, a complaint does not state a claim if it fails 14 to set forth "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. 15 Twombly*, 550 U.S. 544, 570 (2007); see also Fed.

R. Civ. P. 12(b)(6). A complaint must include 16 facts that are "more than labels and conclusions, and a formulaic recitation of a cause of action's 17 elements will not do." *Twombly*, 550 U.S. at 545. "Threadbare recitals of the elements of a cause 18 of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 19 662, 678 (2009).

A claim is plausible if the facts pled permit the court to draw a reasonable 20 inference that the defendant is liable for the alleged misconduct. Id. 21 III. DISCUSSION 22 As noted above, the amended complaint invokes the Court's federal question jurisdiction 23 under 28 U.S.C. § 1331, citing the Montreal Convention, the ADA, and the FSIA. Dkt. No. 7 at 2.

24 Because the sole basis for federal subject matter jurisdiction is the assertion of claims arising
25 under federal law, the Court considers whether the allegations of the amended complaint
plausibly 26 support the exercise of federal question jurisdiction. 27 A. Montreal Convention 1 the
Constitution, laws, or treaties of the United States.” *Negrete v. City of Oakland*, 46 F.4th 811, 2
816 (9th Cir.

2022), cert. denied sub nom. *Negrete v. City of Oakland, California*, 143 S. Ct. 781 3 (2023)
(citation omitted). Here, Ms. Braik asserts a claim for relief based on an alleged violation 4 of the
“Montreal/Warsaw conventions.” Dkt. No. 7 at 6.

The Montreal Convention is an 5 international treaty that covers “all international carriage of
persons, baggage or cargo performed 6 by aircraft for reward.” Convention for the Unification of
Certain Rules for International Carriage 7 by Air (“Montreal Convention”), Art. 1, May 28, 1999,
S. Treaty Doc. No. 106-45, 1999 WL 8 33292734.

The United States is a party to the Montreal Convention. See Int’l Civil Aviation Org., 9
Convention for the Unification of Certain Rules for International Carriage by Air Done at 10
Montreal on 28 May 1999, 11
https://www.icao.int/sites/default/files/secretariat/legal/CurrentListofParties/Mtl99_EN.pdf.

As 12 Ms. Braik appears to acknowledge, see Dkt. No. 7 at 6, the Montreal Convention supersedes
the 13 much older Warsaw Convention. *Yakub v. Qatar Airways Grp. (Q.C.S.C)*, No. 25-cv-04142-
JCS, 14 2025 WL 1927599, at *3 (N.D. Cal. July 14, 2025) (citation omitted). 15 Ms. Braik
alleges that Southwest violated articles 1(3), 19, 22(2), 26, and 36 of the 16 Montreal Convention
by “caus[ing] a delay of Plaintiff forever when she argued at the gate with 17 representative.” Dkt.

No. 7 at 6. The amended complaint’s allegations do not state a plausible 18 claim for violation of
the Montreal Convention because they concern a purely domestic flight from 19 Los Angeles to
San Jose, rather than an international flight. See *id.* Citing articles 1(3) and 36 of 20 the Montreal
Convention, Ms. Braik contends that her flight from Los Angeles to San Jose should 21 be
considered part of her international flight from Poland.

See *id.* Article 1, section 3 of the 22 Montreal Convention provides: 23 Carriage to be performed
by several successive carriers is deemed, 24 for the purposes of this Convention, to be one
undivided carriage if 25 it has been regarded by the parties as a single operation, whether it had
been agreed upon under the form of a single contract or of a 26 series of contracts, and it does not
lose its international character merely because one contract or a series of contracts is to be 27
performed entirely within the territory of the same State.

1 Montreal Convention, Art. I, sec. 3. Article 36 provides that where carriage is performed by 2
“successive carriers,” liability is limited to the carrier “which performed the carriage during which

3 the accident or the delay occurred, save in the case where, by express agreement, the first carrier
4 has assumed liability for the whole journey.” Id., Art. 36.

There are no factual allegations in the 5 amended complaint to support any inferences that United, Lufthansa, and Southwest regarded 6 themselves as a single operation in connection with Ms. Braik’s travel itinerary ending in San 7 Jose, California, or that the ticket Ms. Braik obtained from Southwest for a flight from Los 8 Angeles to San Jose was sold pursuant to an interline agreement with United or Lufthansa.

To the 9 contrary, Ms. Braik alleges unambiguously that she “separately” purchased her flight for travel 10 between Los Angeles and San Jose— i.e., a domestic flight—from Southwest. Dkt. No. 7 at 4. 11 Ms. Braik also advocates the following theory of liability: Because Southwest uses the 12 same systems for ticketing as Lufthansa and United, Southwest knew or should have known that 13 Ms. Braik was arriving on an international Lufthansa/United flight from Poland and that she had a 14 short connection for her domestic Southwest flight from Los Angeles to San Jose, and therefore, 15 the “next domestic flight to [San Jose]” must be considered a “continuance of [her] international 16 flight.” Id. at 5.

However, given Ms. Braik’s allegations that she purchased a ticket for 17 international travel between Warsaw, Poland and Los Angeles, California from Lufthansa/United, 18 and then “separately” purchased a ticket for domestic travel between Los Angeles and San Jose 19 from Southwest, it cannot be reasonably inferred that her Southwest flight is part of her 20 international travel and subject to the Montreal Convention simply because she had a “short 21 connection” that all airlines using the ticketing system could have observed.

22 Accordingly, the Court concludes that the amended complaint does not plausibly allege a 23 basis for application of the Montreal Convention to Ms. Braik’s dispute with defendants regarding 24 the pet fee for a purely domestic flight between Los Angeles and San Jose. See, e.g., *Firsov v. 25 Frontier Airlines, Inc.*, No. 25-cv-02898-SVK, 2025 WL 3239326, at *3 (N.D.

Cal. Nov. 20, 26 2025) (finding no subject matter jurisdiction under the Montreal Convention where case involved 27 a domestic flight purchased on a separate ticket from a prior international flight); *Yakub v. Qatar* 1 2025) (finding that plaintiff did not plausibly plead a basis for application of the Montreal 2 Convention where plaintiff “alleges that he purchased his tickets with the three airlines 3 separately”), report and recommendation adopted, No. 25-cv-04142-CRB, 2025 WL 2402684 4 (N.D.

Cal. Aug. 19, 2025), appeal dismissed sub nom. *Yakub v. Qatar Airways Grp.* QCSC, No. 5 25-5592, 2025 WL 3530626 (9th Cir. Nov. 12, 2025); *Biscone v. JetBlue Airways Corp.*, 681 F. 6 Supp. 2d 383, 387 (E.D.N.Y. 2010) (finding that plaintiff, who experienced delay of a domestic 7 flight, lacked standing for a claim under the Montreal Convention because she was not “an 8

international traveler”); see also *Best v. BWIA W. Indies Airways Ltd.*, 581 F. Supp. 2d 359, 363 9 (E.D.N.Y.

2008) (defendant airline qualified as “successive carrier” where it sold plaintiff a ticket 10 for both her flight on defendant’s plane and her flight on another airline); *Selke v. Germanwings 11 GmbH*, 261 F. Supp. 3d 666, 679 (E.D. Va. 2017) (“[T]ickets sold pursuant to and for the 12 purposes of an interline agreement qualify the carriers for each leg of the journey, even the first, as 13 successive carriers under the Montreal Convention.”).

14 B. ADA and FSIA 15 With respect to her state law claims for unjust enrichment, false advertising, unfair and 16 deceptive business practices, breach of the covenant of good faith and fair dealing, breach of 17 contract, and negligent infliction of emotional distress, Ms. Braik invokes the ADA and the FSIA 18 on the basis that the two laws “provide[] [the] framework to sue airlines in federal court for state 19 claims, because superior courts could not hear this federal type of case for civil aviation.” See 20 Dkt.

No. 7 at 7-12, 15-16. 21 First, the ADA expressly prohibits states from enacting or enforcing any law or regulation 22 relating to “price, route, or service of an air carrier.” *Jensen v. Virgin Atl.*, No. 12-cv-06227 YGR, 23 2013 WL 1207962, at *4 (N.D. Cal. Mar. 25, 2013) (citing 49 U.S.C. § 41713(b)(1)). “Congress’s 24 intent in enacting the ADA was to deregulate the airlines and rely on market forces to provide 25 variety and quality of air transportation service.” *Wayne v. DHL Worldwide Express*, 294 F.3d 26 1179, 1184 (9th Cir.

2002) (citing *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 378 27 (1992)). The ADA does not provide for a private right of action to enforce its provisions, and 1 *Airlines Co.*, No. 15-cv-04567-HSG, 2017 WL 1478624, at *2 (N.D. Cal. Apr. 25, 2017) 2 (dismissing breach of contract claim because the ADA does not create a private right of 3 action), *aff’d*, 747 F. App’x 629 (9th Cir.

2019). Therefore, Ms. Braik may not invoke the ADA 4 as a basis for the Court to exercise federal jurisdiction over any of her claims. 5 Second, the FSIA “provides the sole basis for obtaining jurisdiction over a foreign state in 6 the courts of this country.” *Saudi Arabia v. Nelson*, 507 U.S. 349, 355 (1993).

Under the FSIA, 7 “a foreign state is presumptively immune from the jurisdiction of United States courts; unless a 8 specified exception applies, a federal court lacks subject-matter jurisdiction over a claim against a 9 foreign state.” *Id.* The FSIA defines a “foreign state” as an “agency or instrumentality of a 10 foreign state.” 28 U.S.C. § 1603(b). There are no allegations in the amended complaint that any 11 defendant is an “agency or instrumentality of a foreign state” within the meaning of the FSIA.

12 Even if defendants were “foreign states,” Ms. Braik has not shown that an exception to
sovereign 13 immunity applies such that the Court may exercise federal jurisdiction over any of
Ms. Braik’s 14 claims. 15 Accordingly, because Ms. Braik asserts no claim “arising under the
Constitution, laws, or 16 treaties of the United States,” she fails to plausibly allege a basis for the
Court to exercise subject 17 matter jurisdiction in this action.

See 28 U.S.C. § 1331. 18 IV. CONCLUSION 19 Ms. Braik has already been given one
opportunity to amend her complaint. In addition, 20 Ms. Braik was previously advised that if “the
amended complaint fails to cure the defects 21 described [in the December 3, 2025 screening
order], the Court may issue an order reassigning the 22 case to a district judge with a
recommendation that the complaint be dismissed for lack of subject 23 matter jurisdiction and
without prejudice to filing an appropriate complaint in state court.” Dkt.

24 No. 7 at 1. As discussed above, the allegations in the amended complaint are not materially 25
different from those in the original complaint, and the Court finds no basis to conclude that there
26 are additional facts that could be alleged on a further amendment to cure the deficiencies
identified 27 above. 1 of Braik I suggests that this action is frivolous.

See *Loumena v. Kennedy*, No. 15-cv-00951-LHK, 2015 WL 5963988, at *11-13 (N.D. Cal. Oct.
13, 2015) (ordering sanctions and declaring plaintiff 3 a vexatious litigant after plaintiff filed
duplicative frivolous actions which were dismissed for lack 4 || of subject matter jurisdiction),
aff’d, 671 F. App’x 446 (9th Cir. 2016); see also *Cato v. United 5 States*, 70 F.3d 1103, 1105 n.2
(9th Cir.

1995) (“There is no abuse of discretion where a district 6 || court dismisses under § 1915(d) a
complaint ‘that merely repeats pending or previously litigated 7 || claims.’”) (citations omitted);
O’Loughlin v. Doe, 920 F.2d 614, 618 (9th Cir. 1990) (“[District 8 courts] bear an affirmative
obligation to ensure that judicial resources are not needlessly 9 squandered on repeated attempts
by litigants to misuse the courts.”).

10 For the reasons explained above, the Court recommends the amended complaint be 11
dismissed, without leave to amend, for lack of subject matter jurisdiction, but without prejudice to
12 || filing an appropriate complaint in state court. 5 13 Because not all parties have consented to
magistrate judge jurisdiction, it is ordered that 14 || this case be reassigned to a district judge.

3 15 Any party may serve and file objections to this report and recommendation within 14 days a
16 after being served. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72; Civil L.R. 72-3. IT IS SO
ORDERED. 18 Dated: December 30, 2025 19. □ 20 Varauic®, Qu □□□□□ 4 Virginia K.
DeMarchi United States Magistrate Judge 22 23 24 25 26 27 28

