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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LARRY D. KUDSK,
Plaintiff,
v.
BARA INFOWARE, INC., et al.,
Defendants.

Case No. [17-cv-05350-SI](#)

**ORDER GRANTING MOTION TO
TRANSFER VENUE AND DENYING
AS MOOT MOTION TO DISMISS OR
FOR JUDGMENT ON THE
PLEADINGS**

Re: Dkt. Nos. 52, 53

This case is before the Court on two motions filed by use-plaintiff and counter-defendant Larry D. Kudsk, doing business as Kudsk Construction Services (“Kudsk”). The first is a motion for dismissal of counterclaims and/or for judgment on the pleadings. Dkt. No. 52. The second is a motion to dismiss counterclaims or transfer for improper venue or, in the alternative, to transfer for convenience. Dkt. No. 53. These motions came on for hearing on June 28, 2019.

BACKGROUND

On September 15, 2017, Kudsk filed suit in this district against defendants Bara Infoware, Inc. (“Bara”)¹ and Fidelity and Deposit Company of Maryland (“F&D”). Dkt. No. 1. Kudsk amended the complaint the following day, bringing two claims for relief: (1) breach of written contract against Bara, and (2) action upon Miller Act payment bond against Bara and F&D. Dkt. No. 5. Kudsk alleged that on October 13, 2015, the Air Force National Guard awarded Bara a prime contract to replace the roof at Building 681 at Moffett Field in Santa Clara County, California. *Id.*

¹ The case caption on the complaint lists this defendant as “Bara Inforware, Inc.” but the text of the pleadings refers to the entity as “Bara Infoware, Inc.”

1 ¶ 7. F&D acted as surety under the Miller Act, 40 U.S.C. § 3133, “whereby F&D guaranteed the
2 payment to all entities supplying the labor, services and material in the prosecution of the work
3 provided for in the Contract for the Project and all duly requested and/or authorized modifications
4 thereto.” *Id.* ¶ 8. On March 27, 2016, Bara and Kudsk entered into a written subcontract agreement
5 in which Kudsk agreed to perform the roofing work for \$375,000.00. *Id.* ¶ 9. Kudsk alleges “that
6 during construction of the Project, BARA directed KUDSK to perform additional roofing work . . .
7 and issued Change Orders to the Subcontract Agreement increasing the final amount to the sum of
8 \$443,000.00.” *Id.* ¶ 10. Kudsk further alleges that Bara has since paid a portion of the total sum to
9 Kudsk and a portion to his suppliers, but “that an unpaid subcontract balance of \$93,190.50 remains
10 unpaid.” *Id.* This is the amount over which Kudsk is suing Bara and F&D.

11 F&D answered the amended complaint on November 10, 2017. Dkt. No. 11. On November
12 29, 2017, the Court Clerk entered default against Bara. Dkt. No. 23. At the initial case management
13 conference before this Court in January 2018, the parties indicated that the case may settle prior to
14 trial. Dkt. No. 30. The Court then approved several requests to extend the deadline to conduct early
15 neutral evaluation, as the parties indicated they were waiting on documents from the United States
16 Department of Labor (“DOL”) that were not yet available and that were material to the case. Dkt.
17 Nos. 34, 39. On June 4, 2018, upon notification that the parties had settled, the Court entered an
18 order conditionally dismissing the case and giving the parties ninety days to inform the Court if
19 settlement had not in fact occurred. Dkt. Nos. 41, 42. On August 30, 2018, counsel for Kudsk filed
20 a certification that settlement had not occurred because, according to Kudsk, “Use-Plaintiff has been
21 unable to resolve the unrelated United States Department of Labor claim, and therefore the condition
22 precedent upon which the settled [sic] was based has not occurred,” and asked the Court to restore
23 this matter to its docket. Dkt. No. 43 ¶ 9.

24 The Court set a case management conference for September 28, 2018. In the joint case
25 management statement, F&D indicated that it intended to seek the Court’s leave “to file a Counter-
26 Claim against KUDSK based upon the DOL claim against KUDSK Use-Plaintiff KUDSK
27 does not oppose this request.” Dkt. No. 45 at 2. The parties further stated, “While counsel has not
28 yet been provided a draft copy of the proposed Counter-Claim, Use-Plaintiff KUDSK will not

1 oppose a Motion for Leave to file a Counter-Claim based upon the DOL’s wage claim against
2 KUDSK.” *Id.* At the case management conference, the Court granted F&D leave to file its
3 counterclaim, ordered that the parties complete early neutral evaluation in February 2019, and set
4 dates for the dispositive motion hearing (June 28, 2019) and for the bench trial (August 19, 2019).
5 Dkt. No. 46.

6 On October 9, 2018, F&D filed an answer to the amended complaint and filed its
7 counterclaim. Dkt. No. 48. That counterclaim is now the subject of the present motions to dismiss.
8 In the counterclaim, F&D alleges the following. “Third-party Federal Solutions Group, Inc. (‘FSG’)
9 was awarded . . . six federal construction projects by the United States Air Force to be performed at
10 Vandenberg Air Force Base” located in Santa Barbara County, California. Counterclaim ¶ 5. These
11 included contracts to repair the entire HVAC system in Building 91-90 and to repair the fire
12 detection system at the Temporary Living Facility (“TLF”). *Id.* “FSG as principal and F&D as
13 surety executed and delivered to the United States Air Force separate Performance and Payment
14 Bonds for each of the Vandenberg Projects, in accordance with the requirements of the *Miller Act*
15 (40 U.S.C. §3131-3134).” *Id.* ¶ 6. In November 2017, FSG issued Letters of Voluntary Default
16 notifying the United States that it was unable to perform or complete its work on the projects, and
17 the United States thereafter made demand upon F&D to perform and complete performance of the
18 construction work on the projects. *Id.* ¶¶ 7-8. F&D states that “[a]s completing surety, F&D will
19 be entitled to the contract funds earmarked for the Vandenberg Projects” *Id.* ¶ 10. “F&D has
20 arranged for the completion or performance of the bonded work on the Vandenberg projects through
21 The Vertex Companies, Inc. (‘Vertex’)” and Vertex “retained Kudsk to complete the work on all of
22 the Vandenberg Projects. The HVAC Project must be completed by November 5, 2018[,]” or in
23 slightly less than one month from the filing of F&D’s counterclaim. *See id.* ¶¶ 9, 11.

24 F&D alleges that Kudsk began work on the HVAC Project in May 2018 and that the
25 agreement between Vertex and Kudsk required Kudsk to complete work on the HVAC Project by
26 August 16, 2018. *Id.* ¶ 12. F&D alleges that “[b]eginning in or about July 2018, Kudsk failed to
27 supply sufficient manpower to meet project milestones causing the project to fall behind schedule
28 and Kudsk failed to meet the August 16, 2018 completion date on the HVAC Project.” *Id.* ¶ 13.

1 “F&D is informed and believes that it may incur damages to the extent the HVAC Project is not
2 delivered to the United States Air Force by November 5, 2018.” *Id.* ¶ 14.

3 The counterclaim also raises allegations related to a contract awarded to FSG by the Federal
4 Bureau of Prisons to re-roof buildings at the Federal Correctional Institute in Dublin, California.
5 *See id.* ¶ 15. “FSG entered into a subcontract with Kudsk, or a company controlled by Kudsk, . . .
6 to perform work on the BOP Project[,]” and the counterclaim alleges that Kudsk did perform such
7 work. *Id.* ¶ 16. Following this work, the DOL conducted an investigation into Kudsk’s compliance
8 with prevailing wage and fringe benefit obligations related to the BOP Project and determined that
9 Kudsk failed to pay the required prevailing wages, resulting in approximately \$111,000 in back
10 wages owed. *Id.* ¶¶ 18-19. “F&D is informed and believes that Kudsk has not agreed to pay the
11 back wages and, as a result, the DOL has issued a Withhold Request Letter requested [sic] the
12 Contracting Officer for the United States Air Force to withhold approximately \$111,000 from
13 payments due on the” contract for repair of the fire detection system at TLF that is part of the
14 Vandenberg Projects. *See id.* ¶ 22. As a result, the counterclaim alleges, “money that would
15 otherwise be paid to F&D will not be available to offset the costs of completing” the contract for
16 repair of the fire detection system at TLF. *Id.* ¶ 23. Moreover, “F&D is informed and believes that
17 with the exception of the HVAC Project, Kudsk’s problems with the DOL have delayed the
18 commencement of the remaining work on the Vandenberg Projects potentially increasing F&D’s
19 completion costs to complete these projects.” *Id.* ¶ 24.

20 F&D brings two claims for relief: (1) declaratory relief, seeking a declaration that “F&D is
21 entitled to an offset from any amounts Kudsk proves he is owed on the Amended Complaint [in] an
22 amount equivalent to the monies deducted from the contract funds earmarked for the Vandenberg
23 Projects as a result of . . . the DOL withhold request” and an offset in “an amount equivalent to any
24 damages [F&D] sustains in completing the Vandenberg Projects . . . as a result of Kudsk’s failure
25 to fulfill its obligations in completing the work on the HVAC Project;” and (2) equitable indemnity
26 “[f]or an amount equal to any monies deducted from F&D out of the contract funds earmarked for
27 the Vandenberg Projects as a resulting [sic] of Kudsk’s labor issues and the DOL withhold request”
28 and “[f]or any damages incurred by F&D in completing the Vandenberg Project as a resulting [sic]

1 of Kudsk’s labor issues and the DOL withhold request and its failure to fulfill its obligations in
2 completing the work on the HVAC Project[.]” *Id.* at 14-15.

3 On October 30, 2018, Kudsk answered the counter-complaint, alleging, among other things,
4 that because the counterclaim contains allegations regarding the HVAC Project based in Santa
5 Barbara County, “venue for KUDSK’s Counter-Claim against Counter-Claimant FIDELITY AND
6 DEPOSIT COMPANY OF MARYLAND . . . upon the Miller Act bond issued for the HVAC
7 Project would be vested in the United States District Court, Southern District of California pursuant
8 to Title 40, U.S.C. §3133(b)(3), not within the Northern District of California. To the extent F&D
9 intends to withhold funds from KUDSK based upon these allegations, it is KUDSK’s intention to
10 file suit on the Miller Act bond in the United States District Court, Southern District of California.”
11 Dkt. No. 50 ¶ 2.²

12 In the meantime, on January 17, 2019, Kudsk filed a separate action in the Central District
13 of California, alleging breach of written subcontract against FSG, breach of the ratification
14 agreement and action upon Miller Act payment bond against F&D, and breach of written subcontract
15 against Vertex, all related to the Vandenberg HVAC Project. *Kudsk v. Fed. Sols. Grp.*, No. 19-cv-
16 00389-SVW-RAO (C.D. Cal. Jan. 17, 2019). On March 13, 2019, F&D filed a counterclaim for
17 equitable indemnity and declaratory relief also related to construction projects at Vandenberg.
18 According to Kudsk, the parties met and conferred regarding Kudsk’s intent to file a Rule 12(b)(6)
19 motion to dismiss, and on April 30, 2019, F&D filed an amended counterclaim. *See* Dkt. No. 53 at
20 7. In the amended counterclaim in that case, F&D brought claims for relief for contractual
21 indemnity, breach of contract, and declaratory relief, the same counterclaims it seeks to bring in a
22 proposed amended counterclaim here, as explained further below.

23 In this case, after settlement efforts failed in February 2019, Kudsk filed the present motions
24 on May 24, 2019, setting them for hearing on June 28. *See* Dkt. Nos. 51, 52, 53. This case is set
25 for a bench trial beginning August 19, 2019. Trial in the Central District of California case is set
26

27 ² This allegation seems to misapprehend in which district Santa Barbara County is located.
28 It is located in the Central District of California, not the Southern District. *See*
<https://www.cacd.uscourts.gov/jurisdiction>.

1 for August 20, 2019.

2
3 **DISCUSSION**

4 The Court first analyzes Kudsk’s motion to transfer venue, as the outcome of that motion
5 will determine the outcome of the Court’s ruling on the motion to dismiss.

6
7 **I. Motion to Dismiss or Transfer for Improper Venue or, In the Alternative, to Transfer**
8 **for Convenience (Dkt. No. 53)**

9 Kudsk moves to dismiss or transfer F&D’s counterclaims for improper venue or,
10 alternatively, asks that the Court transfer the counterclaims for convenience, citing Federal Rule of
11 Civil Procedure 12(b)(3) and 28 U.S.C. § 1404(a). Kudsk states that under 28 U.S.C. § 1404(a) the
12 interests of justice and convenience of the parties would be served by transferring the counterclaims
13 to the Central District of California, where the Vandenberg Project was located.³

14 In opposition, F&D makes clear that its true concern is with attorneys’ fees. If the
15 counterclaims are transferred to another district, all that will remain in this case are Kudsk’s claims
16 related to the \$93,190.50 that Kudsk states it is owed on the Moffett Field project. F&D argues that
17 “Kudsk attempts to dismiss or transfer F&D’s affirmative claims to protect Kudsk’s ability to be the
18 prevailing party in this lawsuit” and that such an outcome is unjust. Dkt. No. 55 at 1. F&D
19 repeatedly states in its papers that its “litigation objective and strategy is that its Counterclaim will
20 yield a return greater than Kudsk’s claim.” *See id.* at 8.

21
22 ³ Kudsk argues that venue for the counterclaims is improper under Rule 12(b)(3) because
23 “the Counterclaim of F&D is based upon different construction projects located in other counties
24 and in other judicial districts.” Dkt. No. 53 at 8. He states that he preserved his objection to venue
25 under Rule 12(b)(3) in his answer, when he stated that “venue for Kudsk’s Counterclaim against
26 Counterclaimant [F&D] upon the Miller Act bond issued for the HVAC Project would be vested in
27 the United States District Court, Southern District of California pursuant to Title 40, U.S.C.
28 §3133(b)(3), not within the Northern District of California.” Dkt. No. 53 at 8 (citing Dkt. No. 50
¶ 2). F&D argues that Kudsk waived his ability to bring a motion under Rule 12(b)(3) by not
objecting to venue in an affirmative defense and through Kudsk’s actions such as consenting at the
September 2018 case management conference to F&D’s filing its counterclaim in this district and
by participating in discovery regarding the counterclaim. The Court has doubts about whether
Kudsk properly reserved any right to object to venue as improper under Rule 12(b)(3), for the
reasons F&D cites in its opposition. Accordingly, the Court analyzes his request under 28 U.S.C.
§ 1404.

1 In reply, Kudsk argues that F&D should be prevented from recovering twice on the same
2 claims in two different districts and that litigating the counterclaims in both the Northern and Central
3 districts would be a waste of judicial resources. Kudsk also notes that at the time he agreed to the
4 filing of the counterclaims here, the Central District action did not yet exist. Kudsk filed that case
5 in January 2019, and F&D filed its counterclaim in that case in March 2019.

6 “For the convenience of parties and witnesses, in the interest of justice, a district court may
7 transfer any civil action to any other district or division where it might have been brought or to any
8 district or division to which all parties have consented.” 28 U.S.C. § 1404(a). The purpose of
9 § 1404(a) is to “prevent the waste of time, energy, and money and to protect litigants, witnesses and
10 the public against unnecessary inconvenience and expense.” *Van Dusen v. Barrack*, 376 U.S. 612,
11 616 (1964) (internal citations and quotation omitted).

12 “Under § 1404(a), the district court has discretion to adjudicate motions for transfer
13 according to an ‘individualized, case-by-case consideration of convenience and fairness.’ *Jones v.*
14 *GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000) (quoting *Stewart Org. v. Ricoh Corp.*,
15 487 U.S. 22, 29 (1988) (internal quotation marks omitted)). In making the determination, a court
16 may consider: “(1) plaintiff’s choice of forum, (2) convenience of the parties, (3) convenience of
17 the witnesses, (4) ease of access to the evidence, (5) familiarity of each forum with the applicable
18 law, (6) feasibility of consolidation of other claims, (7) any local interest in the controversy, and (8)
19 the relative court congestion and time of trial in each forum.” *Lax v. Toyota Motor Corp.*, 65 F.
20 Supp. 3d 772, 776 (N.D. Cal. 2014).

21 Here, the Court concludes that transferring the case to the Central District of California is
22 appropriate under 28 U.S.C. § 1404(a). Transferring the case will resolve both Kudsk’s and F&D’s
23 primary concerns. Kudsk states that the Central District is a more convenient venue for trial because
24 the Vandenberg Projects were located there and also argues that F&D should not be allowed to
25 litigate its counterclaims in two different districts at the same time. F&D is concerned that splitting
26 its counterclaims off from Kudsk’s primary claim will unfairly leave Kudsk as the prevailing party
27 in the case pending in this district. While the Court is not persuaded that attorney’s fees
28 considerations should dictate where this case is litigated, the broader point that F&D makes is that

1 the claims at issue here are part of a larger world of claims that Kudsk and F&D have against each
2 other based on various construction projects. The convenience of the parties and interests of judicial
3 economy weigh in favor of resolving all of these claims together at once. Moreover, Kudsk's point
4 about convenience for the purposes of trial is well taken; while there appear to be a number of factual
5 disputes at this stage about what occurred on the Vandenberg projects (located in Santa Barbara
6 County) and who is owed what as a result, the parties seem almost to concede the facts of what is
7 owed to whom as a result of the projects that took place in this district (i.e. the Moffett Field project
8 in Santa Clara County and the BOP project in Alameda County). At the hearing on the motions,
9 F&D represented that the only witness it plans to call on Kudsk's Moffett Field claim is plaintiff
10 Larry Kudsk. Thus, it appears that the bulk of the disputed facts to be resolved at trial arise out of
11 events that occurred in the Central District.

12 Although courts typically give substantial deference to a plaintiff's choice of forum, and
13 Kudsk chose to file his claims here, this case is atypical in that Kudsk is the party now moving for
14 a change of forum (albeit for the counterclaims only). Neither party will be prejudiced or
15 inconvenienced by litigation in the Central District of California, as evidenced by the fact that both
16 parties are simultaneously litigating related or identical claims in that district and have not raised
17 venue-related concerns there. Of additional note is that, in its opposition to Kudsk's motion to
18 dismiss, F&D asks the Court for leave to amend its counterclaims. The proposed amended
19 counterclaim that F&D attaches precisely mirrors the amended counterclaim currently on file in the
20 case in the Central District. *Compare* Dkt. No. 54-1 with Case No. 19-cv-00389, Dkt. No. 25 (C.D.
21 Cal. Apr. 30, 2019).

22 Transfer to the Central District of California will not raise choice of law issues, as both
23 venues are located within California, and the parties appear to agree from their briefing that
24 California provides the applicable state law here. Finally, the timing of trial does not weigh against
25 transfer, as trial in the Central District case is set to begin on August 20, 2019, only one day later
26 than trial in this case is set to begin here.

27 At the hearing, when the Court proposed transferring the entirety of this case to the Central
28 District, F&D consented to such a transfer, objecting only to a transfer that would create piecemeal

1 litigation by separating off the counterclaims. When asked whether Kudsk objected to transfer of
2 the entire case, counsel for Kudsk stated only that she did not think it was possible to transfer
3 Kudsk’s claims because the statute provides that a Miller Act claim must be filed in the district in
4 which the project occurred.⁴ In response, F&D stated that the venue provision is for the protection
5 of the defendant, that the defendant could waive such an objection, and that F&D in fact would
6 waive its objection to transferring this whole case to the Central District.

7 The parties did not brief this issue in their papers, and the Court concludes that Kudsk’s
8 position is incorrect. 40 U.S.C. § 3133(b)(3) states:

9 **(3) Venue.**-- A civil action brought under [the Miller Act] must be brought--

10 . . .

11 **(B)** in the United States District Court for any district in which the contract was to
12 be performed and executed, regardless of the amount in controversy.

13 Prior to August 2002, the relevant venue provision of the Miller Act provided, “Every suit instituted
14 under this section shall be brought . . . in the United States District Court for any district in which
15 the contract was to be performed and executed *and not elsewhere*, irrespective of the amount in
16 controversy in such suit” See 40 U.S.C. § 270(b) (West 2001) (emphasis added).

17 The Supreme Court has described Section 270(b) as “merely a venue requirement[.]” See
18 *F.D. Rich Co. v. U.S. for Use of Indus. Lumber Co.*, 417 U.S. 116, 125 (1974). In so doing, the
19 Supreme Court cited to a decision from the Second Circuit Court of Appeals, collecting cases
20 finding this provision of the Miller Act to be a venue requirement, rather than a jurisdictional
21 limitation, and whose “purpose is to give some incidental protection to Miller Act defendants.” See
22 *id.* at 125 n.10; *U.S. for Use & Benefit of Capolino Sons, Inc., v. Elec. & Missile Facilities, Inc.*, 364
23 F.2d 705, 707 (2d Cir. 1966). In *F.D. Rich*, the Supreme Court looked beyond the project location
24 where the disputed plywood shipments were diverted (South Carolina) and found venue was proper
25 where the contract for the shipments was executed and where the plywood was intended to be
26 delivered (California). In so doing, the Supreme Court noted that the contractor and surety being

27 _____
28 ⁴ Counsel for Kudsk also raised concerns about whether Bara would consent to transfer, but Kudsk sought and obtained a default against Bara in November 2017. See Dkt. Nos. 17, 23.

1 sued “have pointed to no prejudice resulting from the case’s being heard in the California court and
2 considerations of judicial economy and convenience clearly support venue in the District Court
3 where all of respondent’s claims arising from the . . . contract could be adjudicated in a single
4 proceeding.” *F.D. Rich*, 417 U.S. at 125-26. Since that ruling, other courts have found that venue
5 for a Miller Act claim may properly lie in a district other than the one in which the contract was to
6 be performed and executed, for instance, where the parties’ contract contains a valid forum selection
7 clause or where the defendant waives any objection to venue. *See, e.g., U.S. for Use & Benefit of*
8 *Kashulines v. Thermo Contracting Corp.*, 437 F. Supp. 195, 197 n.1 (D.N.J. 1976); *Harold E. Nutter*
9 *& Son Inc. v. Tetra Tech Tesoro Inc.*, No. 14-cv-2060-JCS, 2014 WL 4922525, at *3 (N.D. Cal.
10 July 28, 2014). Similar considerations to those at play in *F.D. Rich* factor into the Court’s decision
11 here, namely, the judicial economy and convenience of trying all the claims together, an absence of
12 prejudice to Kudsk in having the claims heard in the Central District, and the fact that the defendant,
13 for whose protection the venue provision exists, consents to transfer.

14 In sum, the Court concludes that under the circumstances of this case, the Miller Act does
15 not bar transfer of venue, and further finds that transfer of this case (i.e., Kudsk’s claims and F&D’s
16 counterclaims together) to the Central District of California is warranted, for the convenience of
17 parties and witnesses and in the interests of justice. *See* 28 U.S.C. § 1404(a).

18
19 **II. Motion to Dismiss or for Judgment on the Pleadings (Dkt. No. 52)**

20 Kudsk also moves for an order dismissing the counterclaims under Federal Rule of Civil
21 Procedure 12(b)(6) or for an order granting judgment on the pleadings under Federal Rule of Civil
22 Procedure 12(c). Kudsk argues that dismissal or judgment on the pleadings is proper because F&D
23 has failed to state a claim for equitable indemnity, stating that that claim requires joint liability in
24 tort owed by both F&D and Kudsk and that the allegations of the counterclaim are based on
25 contractual obligations that do not sound in tort. Kudsk argues the claim for declaratory relief
26 likewise fails because it is predicated on the equitable indemnity theory.

27 F&D opposes the motion but does not dispute Kudsk’s analysis of the equitable indemnity
28 claim. *See* Dkt. No. 54. Rather, F&D states that “[t]he fact that the Counterclaim relies on an

1 incorrect legal theory, ‘equitable indemnity,’ does not warrant dismissal because the Subcontractor
2 Agreement pled in paragraphs 11 and 12 supports a contractual indemnity claim.” *Id.* at 4. F&D
3 asks that the Court grant leave to amend the counterclaim and attaches a proposed Amended
4 Counterclaim. The proposed amendment brings counterclaims against Kudsk for contractual
5 indemnity (for damages over \$200,000 for delays on the Vandenberg HVAC Project), breach of
6 contract (for damages of roughly \$111,000 on the Vandenberg TLF subcontract due to the DOL
7 withholding based on Kudsk’s prevailing wages owed on the BOP Project), and declaratory relief.
8 These are the same counterclaims that F&D has already filed against Kudsk in the Central District
9 case. *See* Case No. 19-cv-00389, Dkt. No. 25 (C.D. Cal. Apr. 30, 2019).

10 In its reply brief, Kudsk argues that leave to amend must be denied because “[i]f granted
11 leave, F&D will have two identical counterclaims pending in two different district courts at the same
12 time.” Dkt. No. 56 at 2.

13 To summarize, F&D concedes that the counterclaims currently on file in this case state an
14 incorrect legal theory, and F&D seeks leave to amend its counterclaims to bring claims identical to
15 those it already has pending in the Central District of California case. Accordingly, in light of the
16 above ruling transferring this case in its entirety to the Central District of California, the Court finds
17 Kudsk’s motion to dismiss is MOOT.

18
19 **CONCLUSION**

20 For the foregoing reasons and for good cause shown, the Court hereby GRANTS Kudsk’s
21 motion to transfer and TRANSFERS this case in its entirety to the United States District Court for
22 the Central District of California. The Court DENIES AS MOOT Kudsk’s motion to dismiss or for
23 judgment on the pleadings as to the counterclaims.

24 The Clerk shall TRANSFER this case to the Central District of California.

25 **IT IS SO ORDERED.**

26 Dated: July 2, 2019

27 

28

SUSAN ILLSTON
United States District Judge