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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

FRED G.,  
Plaintiff,  
v.  
ANTHEM BLUE CROSS LIFE & HEALTH  
INSURANCE COMPANY, et al.,  
Defendants.

Case No. [22-cv-01259-RS](#)

**ORDER GRANTING MOTION TO  
TRANSFER**

**I. Introduction**

In this action averring violations of the Employee Retirement Income Security Act of 1974 (“ERISA”), Defendant Directors Guild of America—Producer Health Plan (the “Plan”) brings a motion to dismiss for improper venue, or in alternative to transfer the case to the Central District of California. The second defendant, Anthem Blue Cross Life & Health Insurance Company (“Anthem”), has not challenged venue. As explained below, venue is not proper in the Northern District of California as to the Plan, because none of the requirements of ERISA’s venue provision, 29 U.S.C. § 1132(e), are met. In contrast, the Central District of California is a proper venue as to both Defendants. Further, even if the Northern District was a proper venue, transfer under 28 U.S.C. § 1404(a) would be appropriate because this litigation appears to have little connection to the Northern District. The Plan’s motion to transfer is granted, and the case will be transferred to the Central District of California.

1 **II. Background**

2 Plaintiff Fred G. is a participant in the Plan, an employee welfare benefit plan. Mental  
3 health benefits under the Plan were administered by Anthem. Plaintiff’s son J.G., a beneficiary of  
4 the Plan, received mental health treatment at a residential treatment center, Catalst, in Utah. The  
5 Plan and Anthem approved an initial 21-day period of treatment at Catalst, but denied Plaintiff’s  
6 claims for further treatment at Catalst. On February 28, 2022, Plaintiff filed this lawsuit for  
7 recovery of benefits due and breach of fiduciary duty under ERISA. On April 8, 2022, the Plan  
8 filed this motion to dismiss, or in the alternative, transfer venue. Anthem has not filed a motion to  
9 dismiss or otherwise challenged venue.

10 **III. Rule 12(b)(3) Motion to Dismiss, or in the Alternative Transfer**

11 **A. Legal Standard**

12 The Federal Rule of Civil Procedure 12(b)(3) governs motions to dismiss for improper  
13 venue. The plaintiff has the burden of establishing that venue is proper in the district where the  
14 case was filed. *Piedmont Label Co. v. Sun Garden Packing Co.*, 598 F.2d 491, 496 (9th Cir.  
15 1979). ERISA is governed by a special venue provision, 29 U.S.C. § 1132(e)(2), which states that  
16 venue is proper (1) “where the plan is administered,” (2) “where the breach took place,” or (3)  
17 “where the defendant resides or may be found[.]” 29 U.S.C. § 1132(e)(2).

18 **B. Discussion**

19 Although 29 U.S.C. § 1132(e)(2) outlines multiple ways to establish venue in an ERISA  
20 case, Plaintiff only argues that venue is proper because the Plan “may be found” in the Northern  
21 District. Due to this concession, only the “may be found” prong of 29 U.S.C. § 1132(e)(2) will be  
22 addressed. In *Varsic vs. U.S. District Court for the Central District of California*, 607 F.2d 245  
23 (9th Cir. 1979), the Ninth Circuit held that a defendant may be “found” in a district for the  
24 purposes of the ERISA venue provision if the defendant’s “contacts with the [district] are  
25 sufficient to satisfy the ‘minimum contacts’ test for personal jurisdiction[.]” 607 F.2d at 248-49  
26 (citing *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).

27 Personal jurisdiction may be established via either general or specific jurisdiction. General

1 jurisdiction is satisfied if the defendant’s interactions with the forum “are so ‘continuous and  
2 systematic’ as to render them essentially at home[.]” *Daimler AG v. Bauman*, 571 U.S. 117, 127  
3 (2014) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)).  
4 Plaintiff makes no argument that general jurisdiction applies here, thus leaving only the issue of  
5 whether specific jurisdiction applies.<sup>1</sup> There are three requirements to establish specific  
6 jurisdiction: “(1) [t]he nonresident defendant must do some act or consummate some transaction  
7 with the forum or perform some act by which he purposefully avails himself of the privilege of  
8 conducting activities in the forum, thereby invoking the benefits and protections of its laws[;] (2)  
9 [t]he claim must be one which arises out of or results from the defendant’s forum-related  
10 activities[;] and (3) [e]xercise of jurisdiction must be reasonable.” *Varsic*, 607 F.2d at 249  
11 (quoting *Data Disc, Inc. v. Systems Technology Assocs., Inc.*, 557 F.2d 1280, 1287 (9th Cir.  
12 1977)).

13 Applying the standard as set out in *Varsic* and *Data Disc*, there are not sufficient contacts  
14 in the Northern District. First, there is little indication that the Plan has purposefully conducted  
15 activities in the Northern District. Plaintiff argues that “[b]y its own admission, the Plan conducts  
16 activities in this Northern District.” Opposition to Motion to Dismiss, p.4. Plaintiff, however,  
17 never specifies what those “activities” are. Unlike in *Bohara v. Backus Hosp. Med. Benefit Plan*,  
18 390 F. Supp. 2d 957 (C.D. Cal. 2005), where the plan at issue pre-certified and case-managed  
19 treatment in the forum district and paid partial benefits to a hospital in the forum, Plaintiff alleges  
20 no such facts concerning any affirmative actions by the Plan towards the Northern District.  
21 Plaintiff argues “[t]he Plan acknowledges that a percentage of its members are residents of the San  
22 Francisco Bay Area” and thus “the Plan ‘may be found’ in the Northern District.” Opposition to  
23 Motion to Dismiss, p.5. Less than one percent of Plan members, however, live in Northern  
24 California. See Declaration of Lisa Read (“Read Decl.”), ¶ 2. In *Waeltz v. Delta Pilots Retirement*  
25 *Plan*, 301 F.3d 804 (7th Cir. 2002), the Seventh Circuit rejected the notion that “the mere presence

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26 <sup>1</sup> Further, as described in the discussion of specific jurisdiction, the Plan’s contacts with the  
27 Northern District of California are minimal, and thus insufficient to demonstrate general  
28 jurisdiction.

1 in a district of participants in a [] plan renders the plan ‘found’ in the district.” *Id.* at 810. Like in  
2 this case, in *Waeltz* fewer than one percent of plan participants lived in the forum. The existence of  
3 a small number of plan participants, without any additional contacts, is insufficient to establish  
4 that a plan has purposefully directed activities towards a forum.

5 Next, even if the presence of a small number of plan participants in the Northern District  
6 was enough to establish purposeful availment, the claim would not be “one which arises out of or  
7 results from the defendant’s forum-related activities.” *Data Disc*, 557 F.2d at 1287. Plaintiff does  
8 not allege that he lives in the Northern District.<sup>2</sup> Plaintiff has not identified any acts or events  
9 relevant to this case that occurred in the Northern District. Finally, given the absence of any  
10 connection between this action and the Northern District, the reasonableness prong of the specific  
11 jurisdiction inquiry is also not satisfied. In short, the requirements of specific jurisdiction are not  
12 satisfied. The absence of minimum contacts as to the Northern District of California means that  
13 the Plan may not be “found” in this district within the meaning of 29 U.S.C. § 1132(e)(2), and thus  
14 venue is improper.

15 If venue is improper in the district where the case is filed, the district court “shall dismiss,  
16 or if it be in the interest of justice, transfer such case to any district or division in which it could  
17 have been brought.” 28 U.S.C. § 1406(a). “Courts have significant discretion in determining  
18 whether to dismiss or transfer an action.” *Luminence, LLC v. Leach*, No. 20-CV-89-BEN (MDD),  
19 2020 WL 3487822, at \*6 (S.D. Cal. June 26, 2020) (internal quotation marks omitted). “In  
20 general, transfer is preferable to dismissal. It saves the parties time, energy, money, and  
21 inconvenience.” *Nat’l Cas. Co. v. Burns & Wilcox Ltd.*, No. CV-19-04854-PHX-DWL, 2020 WL  
22 4039119, at \*14 (D. Ariz. July 17, 2020) (citing 14D Wright & Miller, Fed. Practice & Proc. §  
23 3827 (2020)). Here, transfer to the Central District of California is most efficient, and would save  
24 time and expense. Plaintiff does not dispute that venue is proper in the Central District. *See*

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27 <sup>2</sup> The Plan notes that his address on file with the Plan is in the Central District, but Plaintiff denies  
28 that he lives in the Central District, without ever stating where he lives.

1 Opposition to Motion to Dismiss, p.4 (arguing that “venue in this case is proper in both the  
2 Northern District and the Central District”). Indeed, it is “where the plan is administered.” 29  
3 U.S.C. § 1132(e)(2); Read Decl., ¶ 5 (“The Plan is wholly administered in Los Angeles.”).

4 Finally, there is the question of how to handle the claims against Anthem, which has not  
5 challenged venue. “In the situation where venue is proper for one defendant but not for another  
6 and dismissal is inappropriate, the district court has a choice. One option is to transfer the entire  
7 case to another district that is proper for both defendants. Another alternative is to sever the  
8 claims, retaining jurisdiction over one defendant and transferring the case as to the other defendant  
9 to an appropriate district.” *Cottman Transmission Sys., Inc. v. Martino*, 36 F.3d 291, 296 (3d Cir.  
10 1994). Generally speaking, “judicial economy is . . . better served in a single action in [a district]  
11 where venue will be proper for all defendants[.]” *Fitzgerald v. Vogel*, No. CIV. 02-7849, 2003 WL  
12 203562, at \*3 (E.D. Pa. Jan. 29, 2003). Here, venue is proper as to Anthem in the Central District  
13 for the same reason that venue is proper as to the Plan: the Plan is administered in Los Angeles.  
14 Judicial economy would be better served by transferring the entire action to the Central District of  
15 California.

16 In sum, the Plan’s motion is granted. Instead of dismissing the case, transfer of the entire  
17 action to the Central District of California is appropriate.

18 **IV. Motion to Transfer under 28 U.S.C. § 1404(a)**

19 In the alternative, even if venue was proper in the Northern District, transfer to the Central  
20 District would be appropriate under 28 U.S.C. § 1404(a). “[A] district court may transfer any civil  
21 action to any other district or division where it might have been brought” if it is “[f]or the  
22 convenience of the parties and witnesses, [and] in the interest of justice[.]” 28 U.S.C. §1404(a). As  
23 discussed above, this action could have been brought in the Central District of California. Whether  
24 transfer under § 1404(a) would also be appropriate thus turns on convenience and the interest of  
25 justice. The Ninth Circuit has identified nine factors to consider in this analysis:

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27 (1) the location where the relevant agreements were negotiated and executed, (2) the state  
28 that is most familiar with the governing law, (3) the plaintiff’s choice of forum, (4) the

1           respective parties' contacts with the forum, (5) the contacts relating to the plaintiff's cause  
2           of action in the chosen forum, (6) the differences in the costs of litigation in the two  
3           forums, (7) the availability of compulsory process to compel attendance of unwilling non-  
4           party witnesses, and (8) the ease of access to sources of proof.

5           *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498-99 (9th Cir. 2000).

6           Here, multiple factors weigh in favor of transfer. It appears that most, if not all, of the  
7           relevant agreements were negotiated and executed in the Central District. All parties have more  
8           contacts with the Central District than the Northern District, given that the Plan is administered in  
9           the Central District, and Plaintiff even lists an address in the Central District in Plan documents,  
10          indicating a connection to that district. Further, as explained above, there are no contacts relating  
11          to Plaintiff's cause of action in the Northern District, but there are plenty in the Central District.  
12          To the extent there are any issues with ease of access to sources of proof, access would likely be  
13          easier in the Central District, where the Plan is administered. Similarly, given the availability of  
14          remote depositions and proceedings, issues concerning of the availability of compulsory process  
15          may not arise, but it does appear that more of the relevant witnesses are in the Central District, as  
16          compared to the Northern District.

17          The other factors lean slightly in Plaintiff's favor or appear neutral. Plaintiff did choose to  
18          litigate in the Northern District, but in an ERISA case "where a plaintiff does not reside in the  
19          forum and the operative facts occurred outside the forum, the Court may afford his choice [of  
20          forum] considerably less weight." *Ansari v. UnitedHealthcare Ins. Co.*, No.  
21          LACV1904068JAKJPRX, 2019 WL 6729716, at \*3 (C.D. Cal. Sept. 25, 2019) (internal quotation  
22          marks and citation omitted). Further, while costs may be lower in the Central District due to  
23          proximity to witnesses, both the Plan and Plaintiff have retained San Francisco-based lawyers. As  
24          for the state familiar with the governing law, the factor is neutral since this case involves the  
25          application of federal law, and even if transferred the case would remain in the same state.

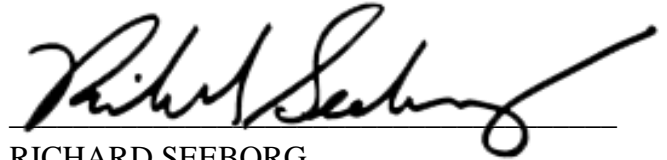
26          In conclusion, weighing the factors shows that transferring the case to the Central District  
27          of California would be "[f]or the convenience of the parties and witnesses, [and] in the interest of  
28          justice[.]" 28 U.S.C. §1404(a). If dismissal or transfer was not required under 28 U.S.C. § 1406(a)  
29          and 29 U.S.C. § 1132(e)(2), transfer under 28 U.S.C. § 1404(a) would be appropriate.

1 **V. Conclusion**

2 For all the foregoing reasons, the Plan’s motion is granted and this case will be transferred  
3 to the Central District of California.

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5 **IT IS SO ORDERED.**

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7 Dated: August 10, 2022



8  
9 RICHARD SEEBORG  
Chief United States District Judge

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