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WO NOT FOR PUBLICATION

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Realty Executives International Services
LLC,

Plaintiff,

v.

Brokers Holdings LLC,

Defendant.

No. CV-17-00213-PHX-JJT

ORDER

At issue is Defendant Brokers Holdings LLC’s Motion to Dismiss or Transfer Venue (Doc. 7, Mot.), to which Plaintiff Realty Executives International Services, LLC filed a Response (Doc. 13, Resp.), and in support of which Defendant filed a Reply (Doc. 14, Reply). The Court finds these matters appropriate for decision without oral argument. *See* LRCiv 7.2(f).

I. BACKGROUND

Plaintiff, an Arizona limited liability company with its principal place of business in Arizona, filed its Complaint (Doc. 1, Ex. B) alleging tortious interference with a contract in the Superior Court of the State of Arizona on September 2, 2016. Defendant, a Utah limited liability company with its principal place of business located in Utah, removed to this Court on January 23, 2017. (Doc. 1.) Presently, Plaintiff alleges that Defendant tortiously interfered with a regional developer agreement entered into by Plaintiff and Intermountain Region, LLC, a Nevada limited liability company, by executing a Stock Purchase Agreement governing the sale of stock in FJM Corporation,

1 which is incorporated under the laws of Nevada. Previously, on June 24, 2016, Plaintiff
2 filed a lawsuit in the District of Nevada against Defendant, and others, alleging several
3 counts, including tortious interference with contract, albeit under a separate but related
4 agreement. *See Realty Executive Intl. Servs., LLC v. FJM Corp., et al.*, Case No. 2:16-cv-
5 01511-RFB-NJK (D. Nev. 2016). In similar fashion, the Nevada action alleges that
6 Defendant interfered with a franchise agreement entered into by Defendant and FJM
7 Corporation when it executed the same Stock Purchase Agreement at issue here.
8 Although explicitly given the opportunity to amend the Nevada action and include the
9 claims brought here (Mot. at 4), Plaintiff chose to bring suit in Arizona. The Court now
10 considers Defendant’s Motion to Dismiss for lack of personal jurisdiction and improper
11 venue, or, in the alternative, transfer to the United States District Court for the District of
12 Nevada, where the previously filed action is ongoing.

13 **II. LEGAL ANALYSIS**

14 Section 1404(a) provides that “[f]or the convenience of the parties and witnesses,
15 in the interest of justice, a district court may transfer any civil action to any other district
16 or division where it might have been brought.” 28 U.S.C. § 1404(a). The purpose of this
17 statute “is to prevent the waste of time, energy and money and to protect litigants,
18 witnesses and the public against unnecessary inconvenience and expense.” *Airbus DS*
19 *Optronics GmbH v. Nivisys LLC*, No. CV-14-02399-PHX-JAT, 2015 WL 3439143, at *2
20 (D. Ariz. May 28, 2015) (citation and internal quotation marks omitted). It is the
21 defendant’s burden to show transfer is warranted and “[t]he defendant must make a
22 strong showing of inconvenience to warrant upsetting the plaintiff’s choice of forum.”
23 *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986); *see*
24 *also Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 499 (9th Cir. 2000).

25 Courts employ a two-step analysis when determining whether a transfer is proper.
26 *Airbus DS Optronics*, 2015 WL 3439143, at *2. First, a court considers whether “the case
27 could have been brought in the forum to which the moving party seeks to transfer the
28 case.” *Id.* In order to meet this requirement, the court in the proposed transferee district

1 “must have subject matter jurisdiction and proper venue, and the defendant must be
2 amenable to service of process issued by that court.” *Id.* “Second, a court must consider
3 whether the proposed transferee district is a more suitable choice of venue based upon the
4 convenience of the parties and witnesses and the interests of justice.” *Id.* The Ninth
5 Circuit has set forth factors that a court may consider in making this determination:

6 (1) the location where the relevant agreements were negotiated and
7 executed, (2) the state that is most familiar with the governing law, (3) the
8 plaintiff’s choice of forum, (4) the respective parties’ contacts with the
9 forum, (5) the contacts relating to the plaintiff’s cause of action in the
10 chosen forum, (6) the differences in the costs of litigation in the two
11 forums, (7) the availability of compulsory process to compel attendance of
12 unwilling non-party witnesses, and (8) the ease of access to sources of
13 proof.

14 *Jones*, 211 F.3d at 498–99.

15 **III. ANALYSIS**

16 Because a parallel action with at least partial, if not substantial, overlap was
17 previously filed and remains ongoing, the Court first considers Defendant’s Motion to
18 Transfer, which can dispose of the briefed controversies in their entirety. In that Motion,
19 Defendant seeks to transfer this action to the District of Nevada pursuant to 28 U.S.C.
20 § 1404(a). Plaintiff concedes that this action could have been brought in the District of
21 Nevada and does not allege that it is an improper venue, and Defendant does not contest
22 jurisdiction there, as it does here. (Resp. at 7; Mot. at 13-16.) Accordingly, the Court
23 limits its analysis to whether the convenience of the parties and witnesses and interests of
24 justice justify a change of venue.

25 **A. Location of Agreement Negotiation**

26 Defendant contends that this factor favors transfer because the transaction at issue
27 was negotiated, executed, and largely implemented in Nevada. (Mot. at 13.) The Court
28 agrees. Defendant contends, and Plaintiff does not dispute, that the agreement at issue
governed the sale of stock in a Nevada corporation by a Nevada limited liability
company, and the members of the LLC are residents of Nevada. (Mot. at 13.) While

1 Plaintiff notes that, by virtue of its location, the alleged harm caused by such agreements
2 was caused in Arizona, this factor nonetheless weighs heavily in favor of transfer.

3 **B. State Most Familiar with Governing Law**

4 This case involves whether Defendant’s conduct—purchasing a Nevada
5 company—constitutes tortious interference with Plaintiff’s contract. Presumably, this
6 should be determined under Nevada law. However, Plaintiff states that its claim is in fact
7 subject to Arizona law, but admits that there are not significant differences between the
8 possible forums. (Resp. at 10.) Thus, the Court finds this factor neutral or slightly
9 favoring transfer.

10 **C. Plaintiff’s Choice of Forum**

11 When a plaintiff brings suit in his or her home forum, plaintiff’s choice of forum is
12 generally accorded great weight. *Lou v. Belzberg*, 834 F.2d 730, 739 (9th Cir. 1987).
13 While Plaintiff originally brought this suit against Defendant in Arizona state court, it is
14 uncontroverted that it originally chose Nevada as the appropriate forum for a similar suit
15 against Defendant. While other claims and defendants are present in that action, it
16 nonetheless includes one for tortious interference against Defendant, regarding similar
17 facts, stemming from the same contract, and was filed months previous to the current
18 action. Accordingly, Plaintiff’s choice of forum has been both Nevada and Arizona—the
19 former first. This factor militates towards transferring the case.

20 **D. Respective Parties’ Contacts with the Forum**

21 Defendant contends that this factor weighs in favor of transfer because Defendant
22 has no contacts whatsoever with Arizona, while both parties have substantial contacts
23 with Nevada. (Mot. at 15.) Plaintiff responds that while witnesses may be located in
24 Nevada, it is located in Arizona and Defendant in Utah, rendering the factor neutral.
25 (Resp. at 9.) While some dispute exists as to Defendant’s subsidiary’s contacts with
26 Arizona, as well as the degree to which those can be imputed to Defendant, Plaintiff has
27 yet to allege that any such contacts are germane to this suit. On the other hand, both
28 parties have substantial contacts with Nevada, favoring transfer.

1 The relative convenience to witnesses is often considered the most important
2 factor in resolving a motion to transfer under § 1404(a). *Airbus DS Optronics*, 2015 WL
3 3439143, at *4 (internal quotations omitted). In considering whether the convenience of
4 the particular venue to witnesses weighs in favor of transfer, the court must consider the
5 number of witnesses each party has, their location, and the importance of the witnesses.
6 *Leyvas*, 2008 WL 2026276, at *3.

7 Here, Plaintiff is offensively litigating a separate but related suit in the proposed
8 transferee district which vastly undercuts any convenience argument against transfer.
9 Indeed, any overlapping witnesses—whether they be located in Nevada, Utah, or
10 Arizona—will already be compelled to travel to Nevada to serve as a witness in that
11 action. Thus, regardless of their location, failure to transfer the case will cause the most
12 inconvenience to the parties, causing dual testifying obligations for witnesses in each
13 state. Accordingly, the Court finds that this factor favors transfer.

14 **E. Contacts Relating to the Plaintiff’s Cause of Action in Arizona**

15 Plaintiff argues that its contacts justify its choice of forum, even though
16 Defendant’s contacts are minimal. (Resp. at 10.) Defendant argues that even its minimal
17 contacts, which are of its subsidiary, do not support jurisdiction or permitting the case to
18 remain in Arizona. (Mot. at 14-16.) Given the unresolved issues regarding Defendant’s
19 contacts, the Court finds this factor neutral.

20 **F. Differences in the Cost of Litigation in the Two Forums**

21 Defendant contends that the costs of litigation favor transfer as costs associated
22 with the present action will be duplicative and intentionally burdensome. (Mot. at 16.)
23 Plaintiff responds that the burden will be shared by the parties and does not address the
24 relevance of the pending action in Nevada. (Resp. at 10.) Because the parties are already
25 litigating an action in Nevada which has at least some degree of overlap in terms of
26 evidence and witnesses, the Court agrees with Defendant. *See Amazon.com v. Cendant*
27 *Corp.*, 404 F. Supp. 2d 1256, 1259 (W.D. Wash. 2005) (“The purpose of [28 U.S.C. §
28 1404(a)] is to prevent the waste of time, energy, and money and to protect litigants,

1 witnesses and the public against unnecessary inconvenience and expense.”) (internal
2 citations omitted). Thus, the Court finds that this factor weighs in favor of transfer.

3 **G. The Availability of Compulsory Process**

4 Plaintiff does not argue that its witnesses will be unavailable to testify should the
5 case be transferred to Nevada, but Defendant states that Plaintiff will be unable to compel
6 “a single Nevada resident to testify at trial in Arizona regarding any harm to [Plaintiff’s]
7 brand occurring as a result” of the alleged tortious interference. (Reply at 11.) Given that
8 at least some witnesses will already be required to testify in the existing Nevada action,
9 this factor weighs slightly in favor of transfer.

10 **H. Ease of Access to Sources of Proof**

11 Defendant argues that the ease of access to sources of proof favors transfer as most
12 of the parties, as well as their documents, are located in Nevada, significant discovery has
13 been completed in Nevada, and proving harm to Plaintiff’s brand in that state will require
14 Nevada sources. (Mot. at 17.) Plaintiff responds that the parties and their documents are
15 located across Arizona, Nevada, and Utah. (Resp. at 9.) Since it appears that the slight
16 majority of documents and parties will be found in Nevada, and that some of the Utah or
17 Arizona-based sources of proof will be relevant to the existing Nevada action, this factor
18 supports transfer.

19 **III. CONCLUSION**

20 The Court finds that each factor weighs either in favor of transfer or is neutral and
21 will therefore transfer the action. In so deciding, the Court is informed by the Honorable
22 Richard F. Boulware, II’s willingness to accept this related matter, as stated on the
23 record. *See Realty Executive Intl. Servs., LLC v. FJM Corp., et al.*, Case No. 2:16-cv-
24 01511-RFB-NJK (D. Nev. 2016) (“this Court would be willing to have [the Arizona
25 action] consolidated here, and I’ll just state that on the record so that my colleagues in
26 Arizona are fully aware of my position”). Thus, the District of Nevada, in addition to
27 welcoming this action, is presumably well-versed in the parties and facts underlying the
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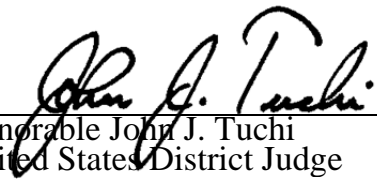
1 relevant transactions. Should issues of jurisdiction, duplication, or consolidation require
2 further action, Judge Boulware is best suited to make that determination.

3 **IT IS THEREFORE ORDERED** granting in part and denying in part Defendant
4 Brokers Holdings LLC's Motion to Dismiss or Transfer Venue (Doc. 7). The Clerk of
5 Court shall take all necessary steps to ensure the prompt transfer of this action to the
6 United States District Court for the District of Nevada.

7 **IT IS FURTHER ORDERED** that the Clerk of Court shall close this case after
8 ensuring prompt transfer.

9 Dated this 19th day of April, 2017.

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Honorable John J. Tuchi
United States District Judge