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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA

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9 Garza Aviation Services, LLC, an Arizona  
limited liability company,

No. CV11-1762-PHX-DGC

10 Plaintiff,

**ORDER**

11 vs.

12 County of Yuma, et al.,

13 Defendants.  
14

15 Pending before the Court are Defendant Yuma County Airport Authority's motion  
16 to dismiss (Doc. 8) and Plaintiff Garza Aviation Services' motion to remand (Doc. 10).  
17 The motion to remand has been fully briefed. Docs. 10, 14, 15. No party has requested  
18 oral argument. For the reasons below, the Court will grant the motion to remand.

19 **I. Background.**

20 Pursuant to a patent from the United States Department of the Interior dated  
21 February 14, 1956, Defendant Yuma County obtained a revocable license to the Yuma  
22 International Airport. Doc. 1-2, at 2. Yuma County gave Defendant Yuma County  
23 Airport Authority (the "Airport Authority") the power to enter into subleases and fee  
24 agreements with fixed base operators, providing that the Airport Authority must comply  
25 with all federal statutes and regulations concerning the use and operation of public  
26 airports. *Id.* at 3. Plaintiff and the Airport Authority entered a Sublease and License  
27 Agreement on August 1, 2010 (the "Agreement"), through which the Airport Authority  
28 granted Plaintiff as lessee a "non-exclusive right and obligation to occupy, equip, furnish,

1 operate, and maintain an Aircraft Maintenance Fixed Base Operation on the stated  
2 Premises,” and expressly covenanted that “the use of the Premises will include all aircraft  
3 maintenance activities customarily provided by aircraft maintenance providers  
4 throughout the United States.” *Id.* at 2-3. On April 12, 2010, the Airport Authority  
5 entered into a similar Sublease and License Agreement with Freeman Holdings of  
6 Arizona, LLC, dba Million Air, for a non-exclusive fixed base operation and fuel sales  
7 concession at the airport. *Id.* at 4-5.

8 CSI Aviation Services, Inc. (“CSI”) has a federal contract with the United States  
9 Department of Homeland Security to charter aircraft and transport persons who are  
10 subject to final deportation orders to the Yuma International Airport. *Id.* at 4. Until  
11 approximately June 23, 2011, CSI’s flights received services from Million Air upon  
12 arrival at Yuma International Airport. *Id.* at 6. Million Air charged CSI \$1,500 per flight  
13 and required that CSI uplift at least 1,200 gallons of fuel per night. *Id.*

14 CSI requested assistance with these services from the Airport Authority. Plaintiff  
15 contends that, rather than using its own employees and resources to perform CSI’s  
16 requested services as it claimed it would, the Airport Authority simply delegated the  
17 work back to Million Air. *Id.* at 6-7.

18 On July 11, 2011, CSI’s operational officer sent correspondence to Plaintiff’s  
19 operations manager requesting maintenance and ground services. *Id.* at 7-8. Plaintiff  
20 accepted CSI’s request. *Id.* at 8. On July 19, 2011, a CSI manager advised Million Air  
21 that CSI would no longer require ground services from Million Air. *Id.* at 9. Million  
22 Air’s CEO then filed a complaint with the Airport Authority’s director, arguing that the  
23 ground services fall outside the scope of Plaintiff’s contractually permitted activities. *Id.*  
24 Plaintiff contends that ground services are not an exclusive right granted to either Million  
25 Air or itself pursuant to their Sublease and License Agreements, and that neither contract  
26 contains a definition of such services. *Id.*

27 The Airport Authority directed Plaintiff to cease providing ground services to CSI  
28 immediately. It warned that Plaintiff’s continuing to provide these services would

1 constitute a material breach of the Agreement. *Id.* at 10.

2 Plaintiff responded by filing a complaint for special action in the Yuma County  
3 Superior Court. Doc. 1-2 at 2. The complaint alleged that the Airport Authority was  
4 attempting to create an exclusive right in favor of Million Air in violation of federal law  
5 as stated in the Federal Aviation Authority (“FAA”) compliance manual. *Id.* at 11-13.  
6 The Airport Authority removed the case to this Court on the basis of federal question  
7 jurisdiction. Doc. 1 at 2. Plaintiff seeks remand to superior court on the basis of a forum  
8 selection clause contained in the Agreement.

## 9 **II. Plaintiff’s Motion to Remand.**

### 10 **A. Legal Standard for Forum Selection Clauses.**

11 The enforceability and interpretation of a forum selection clause in federal court is  
12 an issue of federal law. *Manetti-Farrow, Inc. v. Gucci Am., Inc.*, 858 F.2d 509, 513  
13 (9th Cir. 1988). The Supreme Court has held that forum selection clauses in commercial  
14 contexts are prima facie valid. *The Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 10  
15 (1972) (international forum selection question); *Pelleport Investors, Inc. v. Budco Quality*  
16 *Theatres, Inc.*, 741 F.2d 273, 279 (9th Cir. 1984) (applying the *Bremen* framework to a  
17 domestic forum selection question). Such clauses should not be set aside unless the  
18 challenging party can “clearly show that enforcement would be unreasonable and unjust,  
19 or that the clause was invalid for such reasons as fraud or overreaching.” *Bremen*,  
20 407 U.S. at 15. The Ninth Circuit has held that the party resisting enforcement of a  
21 forum selection clause has a “heavy burden” to establish the unreasonableness of the  
22 clause. *Pelleport*, 741 F.2d at 281 (citing *Bremen*, 407 U.S. at 18).

### 23 **B. The Forum Selection Clause is Enforceable.**

24 Paragraph 26.07 of the Agreement provides that “[v]enue of any action brought  
25 under this Agreement shall lie in Yuma County, Arizona, exclusively, and any action  
26 shall be maintained in such County.” Doc. 1-2 at 81. Plaintiffs rely on this provision in  
27 seeking remand to Yuma County Superior Court.

28 The Airport Authority argues that “the basis for this Court’s jurisdiction is a

1 federal question and thus there is no basis for remand based on a forum selection clause  
2 in a contract between the parties,” and that “even if the contract were at issue, there is no  
3 basis to remand a case based on a forum selection clause when the federal district court  
4 has original jurisdiction.” Doc. 14, at 2-3. The Airport Authority cites no authority in  
5 support of this argument. *Id.*

6 Plaintiff’s complaint alleges that the Airport Authority has acted to establish an  
7 “exclusive right” as prohibited by Section 303 of the Civil Aeronautics Act of 1938 and  
8 subsequent federal acts and as described by the FAA in its compliance manual. *See*  
9 Doc. 1-2, at 4. This kind of a dispute was not unanticipated by the parties. The  
10 Agreement expressly grants Plaintiff non-exclusive rights. *See* Doc. 1-2, §§ 4.01, 4.02.

11 The Agreement then provides:

12  
13 The Authority shall have the right to enter into any agreements with other  
14 parties whatsoever providing such parties with rights, privileges and  
investments similar to those contained herein.

15  
16 In recognition of the above, both Parties accept the FAA’s position that an  
17 exclusive right is defined as a power, privilege, or other right excluding or  
debaring another from enjoying or exercising a like power, privilege or  
18 right.

19 Doc. 1-2, at 65, Ex. D, § 4.03. Clearly, the parties contemplated that the Agreement  
20 would grant non-exclusive rights to Plaintiff, that the Airport Authority could grant  
21 “similar” rights to other, and that the parties accepted the FAA’s interpretation and  
22 prohibition of exclusive rights.

23 Possible disputes over this issue were therefore foreseeable at the time of  
24 contracting. Moreover, the Airport Authority, which is located in Yuma County, clearly  
25 understood and anticipated the consequences of specifying that any litigation be brought  
26 in that County. As the Supreme Court has held, “[i]n such circumstances it should be  
27 incumbent on the party seeking to escape his contract to show that trial in the contractual  
28

1 forum will be so gravely difficult and inconvenient that he will for all practical purposes  
2 be deprived of his day in court.” *The Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 18  
3 (1972). Yuma County Airport Authority has made no such showing. Nor has the Airport  
4 Authority shown that “enforcement would be unreasonable and unjust, or that the clause  
5 was invalid for such reasons as fraud or overreaching.” *Id.* The Court accordingly  
6 concludes that the parties’ forum selection clause is enforceable.

7 **C. The Forum Selection Clause is Mandatory.**

8 As noted, the forum selection clause provides that “[v]enue of any action brought  
9 under this Agreement shall lie in Yuma County, Arizona, exclusively, and any action  
10 shall be maintained in such County.” Doc. 1-2 at 81. Emphasizing the word  
11 “exclusively,” Plaintiff argues that the clause is mandatory and that the Airport Authority  
12 waived its right to removal. The Airport Authority argues that the clause is permissive  
13 because the phrase “shall lie in Yuma County” neither provides for exclusive venue nor  
14 contains mandatory language.

15 The forum selection clause is mandatory. It states that venue “shall” lie in Yuma  
16 County, not that it “may” lie there. The clause is expressly exclusive, meaning that venue  
17 shall not lie in any other location. This language satisfies the Ninth Circuit’s standard for  
18 mandatory forum selection clauses. *See Northern California Dist. Counsel of Laborers v.*  
19 *Pittsburgh-Des Moines Steel Co.*, 69 F.3d 1034, 1037 (9th Cir. 1995) (“To be mandatory,  
20 a clause must contain language that clearly designates a forum as the exclusive one.”).

21 The clause at issue here is similar to the clause in *Air Ion Devices, Inc. v. Air Ion,*  
22 *Inc.*, No. C 02-1717 SI, 2002 WL 1482665 (N.D. Cal. July 5, 2002). The *Air Ion* clause  
23 stated that “[a]ny action commenced by AID to enforce its rights against AI shall be  
24 brought in the County of Marin, State of California.” The court concluded that the  
25 language established Marin County as the mandatory venue. 2002 WL 1482665, at \*2;  
26 *see also Siren, Inc. v. Redd*, No. CV-06-1529-PHX-DGC, 2006 WL 2850333, at \*3  
27 (D. Ariz. Oct. 4, 2006).

28 The Yuma County venue is not merely a geographic limitation. *Cf. Simonoff v.*

1 *Expedia, Inc.*, 643 F.3d 1202, 1205-06 (9th Cir. 2011) (“[W]e observed in *Doe 1* that a  
2 forum selection clause referring to ‘courts in’ a state imposes a geographic limitation, not  
3 one of sovereignty.”) (citation omitted)). The Airport Authority cites the Ninth Circuit  
4 rule adopted in *Doe 1 v. AOL LLC*, 552 F.3d 1077 (9th Cir. 2009), that “a forum selection  
5 clause that specifies ‘courts of’ a state limits jurisdiction to state courts, but specification  
6 of ‘courts in’ a state includes both state and federal courts.” *See* Doc. 14, at 3 (citing  
7 *Simonoff v. Expedia, Inc.*, 643 F.3d 1202, 1206 (9th Cir. 2011)). It argues that the clause  
8 at issue “provides venue shall lie ‘in Yuma County, Arizona,’ where a federal district  
9 court also lies, in this case 325 West 19th Street, Yuma, Arizona, 85364.” Doc. 14, at 3.  
10 The Ninth Circuit has recognized that “when a federal court sits in a particular county,  
11 the district court is undoubtedly ‘in’ that county.” *Simonoff*, 643 F.3d at 1206. The  
12 United States District Court for the District of Arizona has an office located at the Yuma  
13 address. However, as Plaintiff points out, the office houses the U.S. Bankruptcy Court,  
14 the U.S. Magistrate, the U.S. Marshals Services, and the Court’s Probation and Parole  
15 Office. *See* Doc. 15, at 3. The District Court does not “sit” in Yuma County. Therefore,  
16 actions brought under the Agreement must be maintained in Yuma County state court.

17 Courts must strictly construe the removal statute against removal jurisdiction. *See*  
18 *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1195 (9th Cir. 1988); *Boggs v. Lewis*,  
19 863 F.2d 662, 663 (9th Cir. 1988). A mandatory forum selection clause is enforceable  
20 unless the resisting party can establish its unreasonableness by showing that “trial in the  
21 chosen forum would be so difficult and inconvenient that the party effectively would be  
22 denied a meaningful day in court.” *Pelleport*, 741 F.2d at 281 (citing *Bremen*, 407 U.S.  
23 at 18). Yuma County Airport Authority has offered no such evidence.

### 24 **III. Plaintiff’s Request for Attorneys’ Fees.**

25 “An order remanding the case may require payment of just costs and any actual  
26 expenses, including attorney fees, incurred as a result of the removal.” 28 U.S.C.  
27 § 1447(c). “An award of attorney’s fees pursuant to section 1447(c) . . . is within the  
28 discretion of the district court, and bad faith need not be demonstrated. Further, because

1 the award of attorney's fees pursuant to 28 U.S.C. § 1447(c) is collateral to the decision  
2 to remand, the district court retain[s] jurisdiction after remand to entertain Plaintiff's  
3 motion for attorney's fees." *Moore v. Permanente Med. Group, Inc.*, 981 F.2d 443, 447  
4 (9th Cir. 1992). Absent unusual circumstances, courts may award attorney's fees under  
5 § 1447(c) only where the removing party lacked an objectively reasonable basis for  
6 seeking removal. Conversely, when an objectively reasonable basis exists, fees should be  
7 denied. *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141 (2005).

8 The Court declines to award attorneys' fees to Plaintiff. The Court believes that  
9 the removal involved a genuine issue of law regarding the interpretation of the forum  
10 selection clause in the context of federal question jurisdiction.


11 **IV. Yuma County Airport Authority's Motion to Dismiss.**

12 The Airport Authority claims that the enforcement of federal aviation law and  
13 regulations promulgated by the FAA is within the purview of the FAA's enforcement  
14 system and that there is no private right of action for enforcement. Doc. 8, at 1. In light  
15 of the Court's conclusion that the parties' forum selection clause is mandatory, the Court  
16 will not rule on the motion to dismiss. That motion may be pursued in state court.

17 **IT IS ORDERED:**

- 18 1. Plaintiff's motion to remand (Doc. 10) is **granted**.
- 19 2. The Clerk shall remand this action to Yuma County Superior Court.

20 Dated this 2nd day of December, 2011.

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25 David G. Campbell  
26 United States District Judge  
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