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

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9 Control ESI, Inc. d/b/a Softwrench  
Solutions,

10 Plaintiff,

11 v.

12 University of Denver,

13 Defendant.  
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No. CV-12-01639-PHX-DGC

**ORDER**

15 On September 19, 2012, the University of Denver (“DU”) filed a motion to  
16 transfer this case to the United States District Court for the District of Colorado pursuant  
17 to 28 U.S.C. § 1404(a). Control ESI, Inc. d/b/a SoftWrench Solutions (“SoftWrench”)   
18 has filed a response (Doc. 29) and DU has filed a reply (Doc. 32). For the reasons that  
19 follow, the Court will grant the motion.<sup>1</sup>

20 **I. Background.**

21 Evolved Systems, Inc. d/b/a Supply & Service (“Supply & Service”) was an  
22 Arizona corporation that provided implementation and hosting of facilities management  
23 services. Doc. 1 at 2. As part of those services, Supply & Service would sell licenses to  
24 use a computer software product called Maximo, a product that was acquired by IBM in  
25 2006. Doc. 1 at 3. In June 2005, DU and Supply & Service entered into an agreement  
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28 <sup>1</sup> The request for oral argument is denied because the issues have been fully  
briefed and oral argument will not aid the Court’s decision. *See* Fed. R. Civ. P. 78(b);  
*Partridge v. Reich*, 141 F.3d 920, 926 (9th Cir. 1998).

1 for assessment of DU's software needs, implementation of the new software, on-site  
2 training for users, and ongoing technical support services. Doc. 1 at 3; Doc. 29-2. As  
3 part of the arrangement, DU purchased licenses to use the Maximo product at its Denver  
4 campus from Supply & Service. Doc. 1 at 3.

5 In 2007, SoftWrench, a Delaware corporation with its principal place of business  
6 in Columbus, Ohio, acquired Supply & Service. Doc. 1 at 2, 4, 6. Although it did not  
7 assume all of that company's liabilities, it continued to provide services pursuant to the  
8 DU contract. *Id.* In March 2011, IBM informed both parties that it had conducted an  
9 audit and concluded that some of the licenses had been used in an unauthorized manner.  
10 Doc. 1 at 2, 4-5.

11 SoftWrench claims it was directed to negotiate with IBM on DU's behalf. Doc. 1  
12 at 5. DU disputes that claim. Doc. 22 at 4. SoftWrench settled with IBM and sent DU  
13 an invoice in the amount of \$701,590 for reimbursement. Doc. 1 at 1. After DU disputed  
14 its liability to reimburse SoftWrench under the terms of their agreement, SoftWrench  
15 initiated this suit to enforce its interpretation of the contract. *Id.* DU now moves to  
16 transfer the case to the District of Colorado and SoftWrench objects.

## 17 **II. Legal Standard.**

18 28 U.S.C. § 1404(a) provides: "For the convenience of the parties and witnesses, in  
19 the interest of justice, a district court may transfer any civil action to any other district or  
20 division where it might have been brought." The Court has discretion "to adjudicate  
21 motions for transfer according to an 'individualized, case-by-case consideration of  
22 convenience and fairness.'" *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th  
23 Cir.2000). In *Jones*, the Ninth Circuit provided the following list of non-exclusive  
24 factors to consider:

- 25 (1) the location where the relevant agreements were  
26 negotiated and executed; (2) the state that is most familiar  
27 with the governing law; (3) the plaintiffs choice of forum; (4)  
28 the respective parties' contacts with the forum; (5) the  
contacts relating to the plaintiff's cause of action in the  
chosen forum (6) the differences in the costs of litigation in  
the two forums; (7) the availability of compulsory process to

1                   compel attendance of unwilling non-party witnesses; and (8)  
2                   the ease of access to sources of proof.

3                   *Id.* at 498–99. DU has the burden of demonstrating that transfer is appropriate, *see Piper*  
4                   *Aircraft Co. v. Reyno*, 454 U.S. 235, 255–256 (1981), and “must make a strong showing  
5                   of inconvenience to warrant upsetting the plaintiff’s choice of forum,” *Decker Coal Co. v.*  
6                   *Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir.1986).

7                   **III. Analysis.**

8                   After considering all of the relevant factors, the Court will grant DU’s motion to  
9                   transfer. With respect to factors one and two, the agreement at issue in this case provides  
10                  that it “is executed and intended to be performed in the State of Colorado and the laws of  
11                  the State of Colorado shall govern its interpretation and effect.” Doc. 29-2 at 19.  
12                  Although this is a choice of law clause and not a choice of forum clause, the District  
13                  Court in Colorado clearly is more familiar with Colorado law than this Court.

14                  SoftWrench focuses on factors three, four, five, and eight. It argues that many of  
15                  the employees of the original servicing company are Arizona residents and that the  
16                  hosting facilities in Arizona will be important sources of proof. It further contends that  
17                  DU reached out to the Arizona forum when it sought services from Supply & Service,  
18                  and that ultimately DU has not made “a strong showing of inconvenience to warrant  
19                  upsetting [Plaintiff’s] choice of forum.” *Decker Coal Co. v. Commonwealth Edison Co.*,  
20                  805 F.2d 834, 843 (9th Cir. 1986).

21                  SoftWrench’s arguments are unpersuasive. While “a court should not lightly  
22                  disturb a plaintiff’s choice of forum,” *Holder Corp v. The Main Street Distrib., Inc.*. No.  
23                  CV-86-1285-PHX-RCB, 1987 WL 14339, at \*8 (D. Ariz. Jan. 16, 1987), the choice is  
24                  given less deference when the plaintiff is not a resident of the forum. *Reaves v. Cable*  
25                  *One, Inc.*, No. CV-11-00469-PHX-JAT, 2011 WL 5331695, at \*2 (D. Ariz. Nov. 7,  
26                  2011) (citing *Pupo-Leyvas v. Bezy*, No. CV-07-1032-PHX-SMM, 2008 WL 2026276 at  
27                  \*5 (D. Ariz. May 9, 2008)). Supply & Service was an Arizona corporation, but it has  
28                  since been purchased by SoftWrench, which is incorporated in Delaware and has its

1 principal place of business in Ohio. Furthermore, while relevant witnesses may reside in  
2 Arizona, the substance of the dispute does not arise from the hosting services provided in  
3 Arizona but from the manner in which the software was used in Denver, Colorado. Some  
4 of the Arizona employees may be called to testify about the scope and terms of the  
5 agreement, but the relevant agreement was executed and intended to be performed in the  
6 State of Colorado.

7 A significant factor is the cost of litigation and the relative congestion of the  
8 courts' dockets. The docket of the District Court in Colorado is less congested than this  
9 Court's. Doc. 22 at 12. In 2011, the median time to dispose of a civil lawsuit in this  
10 Court was 8 months, whereas in the District of Colorado the median time was 5.7  
11 months. *Id.* (citing Judicial Business of the United States Courts, 2011 Annual Report of  
12 the Director Honorable Thomas F. Hogan, Director, Table C-5, [http://www.uscourts.gov/  
13 statistics/JudicialBusiness.aspx](http://www.uscourts.gov/statistics/JudicialBusiness.aspx)). This case can expect a speedier resolution in the  
14 District of Colorado, a fact that will reduce litigation costs for both parties. *Leyvas*, 2008  
15 WL 2026276 at \*5; *see also Gates Learjet Corp. v. Jensen*, 743 F.2d 1325, 1337 (9th Cir.  
16 1984).

17 **IT IS ORDERED:**

- 18 1. Defendant's motion to transfer venue (Doc. 22) is **granted**.
- 19 2. The Clerk of the Court is instructed to transfer this case to the District  
20 Court for the District of Colorado.

21 Dated this 18th day of December, 2012.

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26 David G. Campbell  
27 United States District Judge  
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