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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Sidi Spaces LLC,

10 Plaintiff,

11 v.

12 CGS Premier Incorporated,

13 Defendant.
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No. CV16-01670-PHX-DGC

ORDER

15 Defendant moves to transfer this case to the U.S. District Court for the Eastern
16 District of Wisconsin. Doc. 7. Plaintiff has filed an opposition, to which Defendant has
17 replied. Docs. 15, 16. No party has requested oral argument. For the reasons that
18 follow, the Court will deny the motion.

19 **I. Background.**

20 For purposes of this motion, the allegations in the complaint are accepted as true,
21 unless contradicted by Defendant's declarations.¹ Plaintiff is an Arizona corporation, and
22 Defendant is a Wisconsin corporation with operations in the Eastern District of
23 Wisconsin. Doc. 1-1 at 4-9 (hereinafter *Complaint*), ¶¶ 1-2; Doc. 8, ¶ 2. On December 4,
24 2013, the parties entered an agreement (Doc. 1-1 at 10-19) whereby Plaintiff granted
25 Defendant the exclusive right to manufacture and sell mobile stores employing its
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27 ¹ Each party submits a declaration from its president. Docs. 15-1 (declaration of
28 Charles Sidi, hereinafter *Sidi Decl.*); 8 (declaration of Gregory Peterson). Defendant also
submits a declaration from its CFO. Doc. 17 (declaration of Thomas Berte, hereinafter
Berte Decl.).

1 BizBox design.² *Complaint*, ¶ 4. Defendant agreed to pay a 15% royalty on each BizBox
2 it sold and to refrain from selling any products below a specified minimum price. ¶¶ 10,
3 12. Defendant also agreed that Plaintiff would retain exclusive ownership rights to the
4 BizBox design. ¶ 13. The parties agreed that the contract would be “construed under the
5 laws of the state of Wisconsin.” Doc. 1-1 at 14.

6 Plaintiff alleges that Defendant has violated the agreement by stealing the BizBox
7 design, building knock-off products, and selling its knock-offs without paying royalties to
8 Plaintiff. *Complaint*, ¶ 17-18. “Moreover, on at least one occasion, Defendant sold
9 BizBox Product at a discount, in violation of the Agreement, in order to steal a valuable
10 client away from Plaintiff.” ¶ 21. Based on these allegations, Plaintiff asserts claims for
11 breach of contract, breach of the implied covenant of good faith and fair dealing, and
12 tortious interference with business expectancy or contractual relations. ¶¶ 22-40.

13 Defendant has filed an answer and asserted a counterclaim. Defendant alleges that
14 before initiating this action, Plaintiff’s counsel sent a letter to Defendant demanding
15 payment of \$1,766,000 for alleged wrongdoing including “multiple counts of patent
16 infringement.” Doc. 6 at 13-16, ¶ 1. Defendant alleges that this letter constituted a
17 “patent notification” letter for purposes of Wis. Stat. § 100.197. ¶ 4. Defendant further
18 alleges that Plaintiff violated the Wisconsin statute by (1) failing to include certain
19 required information in the letter, including the number of each relevant patent, and
20 (2) including false, misleading, or deceptive information in the letter. ¶¶ 4-5.

21 **II. Legal Standard.**

22 “For the convenience of parties and witnesses, in the interest of justice, a district
23 court may transfer any civil action to any other district or division where it might have
24 been brought or to any district or division to which all parties have consented.” 28
25 U.S.C. § 1404(a). The Court must decide a motion to transfer under this provision
26 “according to an individualized, case-by-case consideration of convenience and fairness.”

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28 ² A mobile store is a structure similar to a mobile home that is used as a storefront.
An image is available at www.bizbox4u.com/model2point0.asp.

1 *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000) (quotation marks
2 omitted). The Ninth Circuit has identified eight non-exclusive factors that are relevant to
3 this determination:

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

9 *Id.* at 498-99. The movant has the burden of showing that transfer is appropriate, *see*
10 *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 255-256 (1981), and "must make a strong
11 showing of inconvenience to warrant upsetting the plaintiff's choice of forum," *Decker*
12 *Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986).

13 **III. Analysis.**

14 Because Defendant resides in the Eastern District of Wisconsin, this action could
15 have been brought in that district, 28 U.S.C. § 1391(b)(1), and could be transferred there
16 if such transfer would serve "the interest of justice," 28 U.S.C. § 1404(a). But a review
17 of the relevant factors shows that transfer would not serve the interest of justice.

18 The first factor favors Arizona. Plaintiff's president, Charles Sidi, avers that he
19 twice met with Defendant's CFO Tom Berte in Arizona during contract negotiations.
20 *Sidi Decl.* ¶ 4(a), (b). Sidi also met with Berte in Arizona the day after the agreement
21 was executed. *Id.* ¶ 4(d). Berte acknowledges that he met with Sidi more than once
22 during contract negotiations. *Berte Decl.* ¶ 3. Defendant does not contend that Sidi ever
23 travelled to Wisconsin during the negotiations.

24 The second factor favors Wisconsin. Plaintiff concedes that Wisconsin law
25 applies to its claims because of the choice of law provision in the agreement. Doc. 15 at
26 4. Moreover, Defendant's counterclaim is based on a Wisconsin statute. But the legal
27 issues raised by the parties do not appear to be especially complex, reducing the weight
28 of this factor.

1 The third factor favors Arizona. Courts do not lightly disturb a plaintiff’s choice
2 of forum, particularly where, as here, the “forum chosen is not only the plaintiff’s
3 domicile but also has a significant connection with the subject matter of the case.” *L.A.*
4 *Mem’l Coliseum v. Nat’l Football League*, 89 F.R.D. 497, 499-500 (C.D. Cal. 1981).

5 The fourth factor favors Arizona. Plaintiff is an Arizona corporation and an
6 Arizona resident. Defendant also has contacts with Arizona. Sidi avers that he met with
7 Defendant’s principals in Arizona on eight occasions to discuss the manufacture and sale
8 of BizBox units. *Sidi Decl.*, ¶ 4; *cf. Berte Decl.* ¶ 3 (“I did meet with Mr. Sidi on a
9 number of occasions in Arizona. Most of those meetings took place prior to the
10 execution” of the agreement.). Berte also owns a home in Arizona, where he conducts
11 business approximately six months out of the year. *Sidi Decl.* ¶ 6; *Berte Decl.* ¶ 8. By
12 contrast, Plaintiff does not appear to have significant ties to Wisconsin.³

13 The fifth factor is neutral. Plaintiff’s claims arise partly out of Defendant’s
14 conduct in Arizona – namely, its entry into an agreement with Plaintiff – and partly out of
15 Defendant’s conduct in Wisconsin – namely, its manufacture and sale of mobile stores.
16 Defendant’s counterclaim arises from a letter sent from Arizona to Wisconsin.

17 The sixth factor favors Wisconsin. Plaintiff identifies four specific witnesses he
18 intends to call: “former employee of [Defendant], Jeff Polzin; Mr. Polzin’s supervisor
19 Brad Thomas; and, two of Defendant’s principals (Tom Bert[e] and Greg Peterson).”
20 *Sidi Decl.* ¶ 9. Plaintiff also indicates that it will call one or two individuals who are or
21 were employed by Defendant. ¶ 11. All of these witnesses are from Wisconsin. *Berte*
22 *Decl.* ¶¶ 9-10. Sidi appears to be the only potential witness who resides in Arizona. ¶ 11.

23 The seventh factor is neutral. Neither side identifies any unwilling nonparty
24 witnesses it intends to subpoena. Because Defendant is able to compel the attendance of

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26 ³ Defendant argues that the Court should look to 28 U.S.C. § 1400(b), the patent
27 venue statute, for guidance on this factor, on the theory that Plaintiff could have asserted
28 a patent infringement claim. The Court declines to do so. Plaintiff is master of its
complaint, and has elected to assert contract and tort claims rather than patent
infringement claims. The Court will not depart from the standard § 1404(a) analysis
simply because Plaintiff might have brought a patent claim.

1 its current employees, and depositions may be taken of witnesses who cannot attend trial,
2 it is not material whether these employees are subject to compulsory process in Arizona.

3 The eighth factor is neutral. Defendant argues that this factor favors Wisconsin
4 because its mobile stores are located in Wisconsin. Defendant does not explain why it
5 will be necessary for the factfinder to physically inspect the mobile stores, rather than
6 comparing photographs, blueprints, etc. The Court therefore deems it unlikely that it will
7 be necessary to transport the mobile stores to Arizona. *Cf. Vassallo v. Niedermeyer*, 495
8 F. Supp. 757, 760 (S.D.N.Y. 1980) (“Of little significance is defendants’ contention that a
9 jury visit to the site of the accident may be appropriate. Defendants have presented
10 nothing to the Court that could support the highly unusual practice of having a jury view
11 the scene of an automobile accident.”).

12 Of the eight factors considered, three favor Arizona, two favor Wisconsin, and
13 three are neutral. Defendant has not made the “strong showing” required for transfer
14 under § 1404(a). *Decker Coal*, 805 F.2d at 843.

15 **IT IS ORDERED** that Defendant’s motion to transfer (Doc. 7) is **denied**.

16 Dated this 6th day of July, 2016.

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21 David G. Campbell
22 United States District Judge
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