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NOT FOR PUBLICATION

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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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9 HTA-SCW Webb Medical A LLC, *et al.*,

No. CV-17-01237-PHX-JJT

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Plaintiffs,

ORDER

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v.

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Roskamp Management Company, *et al.*,

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Defendants.

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At issue is Defendants Roskamp Management Company, LLC (“RMC”), Daniel Sevick, Frazer/Exton Development LP (“Frazer/Exton”), and Whiteland Village Limited’s (“Whiteland Village”) Consolidated Motion to Dismiss for Lack of Personal Jurisdiction, for Abstention/Stay Under *Colorado River*, Comity, and the First-to-File Rule, for Transfer of Venue Pursuant to 28 U.S.C. § 1404(a), and to Dismiss for Failure to State a RICO Claim (Doc. 47, MTD), which Defendants Whiteland Holdings LP (“Whiteland Holdings”), Robert Roskamp, Philip Kaltenbacher, PDK Family Trust UAD 10-24-2006 (“PDK Family Trust”), Paul Woodruff, and Woodruff CCRC Partnership, L.P. (“Woodruff CCRC”) join (Docs. 48, 49, 51, 52). The seventeen HTA LLC Plaintiffs (collectively, “HTA”) filed a Response in Opposition (Doc. 55, Resp.) to which RMC, Sevick, and Whiteland Village filed a Reply (Doc. 65, Reply), and which Whiteland Holdings, Roskamp, Kaltenbacher, PDK Family Trust, Woodruff, and Woodruff CCRC join (Docs. 66, 67, 68, 69). The Court finds these matters appropriate for resolution without oral argument. *See* LRCiv 7.2(f). The Court grants Defendants’ Motion to

1 Transfer to the Eastern District of Pennsylvania. The Court, however, denies the
2 remainder of Defendants' Motion as moot.

3 **I. BACKGROUND**

4 RMC is a Delaware limited liability corporation owned by Roskamp, PDK Family
5 Trust, and Woodruff CCRC, and managed by Sevick, who serves as the President of the
6 company. (Sevick Decl. ¶¶ 11, 27.) In 2009, two RMC subsidiaries, KRW MOB A and
7 KRW MOB B (collectively, "KRW") contracted to sell 17 medical office buildings in
8 Sun City, Arizona to HTA for \$107 million. In conjunction with the sale, KRW agreed to
9 a four year, \$7 million obligation to lease back the property as the master tenant. (Compl.
10 ¶ 21.) As a condition of the entire transaction, RMC executed a Master Lease Guaranty in
11 which it agreed to maintain a net worth of \$20 million during the four year lease period.
12 (Compl. ¶ 22.) KRW, however, ceased making its monthly lease payments to HTA in
13 November 2011 and RMC failed to make payments under the Master Lease Guaranty.
14 (Compl. ¶ 23.) After RMC and KRW's failure to pay under the agreements, HTA sent
15 notices of default to each for the breach of the agreements. (Compl. ¶ 23.)

16 On January 18, 2013, HTA filed suit in Maricopa County Superior Court against
17 RMC for breach of the Master Lease Guaranty (the "Guaranty Action"). (Compl. ¶ 24.)
18 Simultaneously, HTA filed an arbitration demand against KRW as required by the Master
19 Lease. (Compl. ¶ 24.) In September 2014, an arbitrator issued an interim award in favor
20 of HTA before granting a final award to HTA for \$4,621,195.35 in January 2015.
21 (Compl. ¶ 25.) The final judgment against KRW was later confirmed by the Maricopa
22 County Superior Court and KRW did not appeal. (Compl. ¶ 25.) After recovering
23 \$1,050,614.41 from an escrow account held by KRW, HTA pursued the remainder of the
24 arbitration award against RMC in the Guaranty Action. (Compl. ¶ 26.) On September 9,
25 2016, the Superior Court issued a final judgment against RMC for \$4,126,173.34.
26 (Compl. ¶ 26.) The Arizona Court of Appeals confirmed the judgment against RMC.
27 (Doc. 73, Notice of Suppl. Authority.) To date, RMC has not made any payment to HTA
28 on this judgment. (Compl. ¶ 28.)

1 In addition to KRW, RMC is also associated with two Pennsylvania limited
2 partnerships—Frazer/Exton and Whiteland Village—to which RMC issued loans totaling
3 close to \$24 million that RMC has not collected on. (Compl. ¶ 34.) In 2007, Frazer/Exton
4 and Whiteland Village entered into a \$23 million loan agreement with Santander Bank
5 (“Santander”) with RMC, KRW Pennsylvania LP, Roskamp, Woodruff, and
6 Kaltenbacher acting as guarantors. (Compl ¶¶ 40–41; Woodruff CCRC Decl. ¶¶ 22, 23.)
7 As collateral for the loan, Santander received mortgages on two parcels of land (the
8 “Whiteland Properties”) totaling 130 acres in Chester County, Pennsylvania. (Compl. ¶
9 15–16; Woodruff CCRC Decl. ¶ 22.) The parties later increased the loan amount by \$6
10 million and extended the loan maturity date to April 15, 2009. (Compl. ¶ 41.) However,
11 after a dispute between Santander and the two partnerships, Santander initiated
12 foreclosure proceedings and filed claims against the loan guarantors in Pennsylvania state
13 court. (Compl. ¶ 44.) The guarantors, Frazer/Exton, and Whiteland Village subsequently
14 filed counterclaims against Santander in the state court action for fraudulent and
15 negligent misrepresentation, breach of fiduciary duty, and breach of contract. (Compl.
16 ¶ 44.) In December 2014, the parties entered into a settlement agreement (the “Whiteland
17 Settlement”) which resulted in Santander selling its mortgage on the Whiteland
18 Properties to another entity affiliated with Defendants, Whiteland Holdings LP. (Compl.
19 ¶¶ 45–47.) Around this time, RMC, Frazer/Exton, and Whiteland Village also settled
20 claims held against HSH Nordbank AG (“Nordbank”) related to construction financing
21 on the Whiteland Properties from which RMC derived little value. (Compl. ¶¶ 55–57,
22 81.)

23 After acquiring the mortgage, Whiteland Holdings foreclosed on the property,
24 resulting in a sheriff’s sale in November 2016. (Compl. ¶ 51.) Prior to the sale, RMC had
25 the property appraised and learned that the fair market value exceeded \$20 million.
26 However, Whiteland Holdings purchased the property for \$1 during the eventual sale
27 with RMC failing to place any bid. (Compl. ¶ 53.) Following the sale of the property,
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1 Frazer/Exton and Whiteland Village lacked any assets to repay loans made by RMC to
2 the partnerships. (Compl. ¶ 54.)

3 Plaintiffs filed suit in this Court raising a variety of claims against Defendants,
4 including: (1) four claims of fraudulent transfer; (2) conspiracy to defraud judgment
5 creditors; (3) fraudulent inducement; (4) aiding and abetting fraudulent inducement; (5)
6 piercing the corporate veil; (6) civil RICO; (7) constructive trust; and (8) two claims of
7 unjust enrichment.

8 Defendants now move to dismiss the Complaint, arguing that Plaintiffs fail to
9 establish that this Court has personal jurisdiction over any Defendant other than RMC.
10 (MTD at 3–11.) Additionally, Defendants move for a dismissal of Plaintiffs’ civil RICO
11 claims under Rule 12(b)(6). (MTD at 24–28.)

12 In the alternative, Defendants move for a stay of the matter under the *Colorado*
13 *River* doctrine,¹ or a stay or abstention because of a similar matter currently being
14 litigated in the Eastern District of Pennsylvania. (MTD at 11–17.) Finally, Defendants
15 move to transfer this matter to the Eastern District of Pennsylvania. (MTD at 18–24.)

16 **II. MOTION TO TRANSFER**

17 Because a parallel action with partial, if not substantial, overlap has been filed and
18 is ongoing, *see Branch Banking & Trust Co. v. Roskamp Mgmt. Co.*, No. 17-cv-01214-
19 NIQA (E.D. Pa. filed March 3, 2017) (the “Interpleader Action”), and because substantial
20 questions exist surrounding the propriety of this Court exerting personal jurisdiction over
21 a number of the Defendants, the Court first considers Defendants’ Motion to Transfer.
22 Defendants seek to transfer this action to the Eastern District of Pennsylvania pursuant to
23 28 U.S.C. § 1404(a). (MTD at 18.) Plaintiffs do not contest that this action could have
24 been brought in the Eastern District of Pennsylvania, and Defendants do not object to
25 personal jurisdiction in Pennsylvania, as they do here. (*See* MTD at 3–11.) Accordingly,

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28 ¹ Defendants concede that this basis for the Motion is now moot due to the
conclusion of Defendants’ appeal in the Arizona state court action. (Doc. 75, Notice of
Suppl. Authority.)

1 the Court limits its analysis to whether the convenience of the parties and witnesses and
2 interests of justice justify a change of venue.

3 Under 28 U.S.C. § 1404(a), “[f]or the convenience of parties and witnesses, in the
4 interest of justice, a district court may transfer any civil action to any other district or
5 division where it might have been brought.” 28 U.S.C. § 1404(a). A district court has
6 discretion “to adjudicate motions for transfer according to an ‘individualized, case-by-
7 case consideration of convenience and fairness.’” *Stewart Org., Inc. v. Ricoh Corp.*, 487
8 U.S. 22, 29 (1988) (quoting *Van Dusen v. Barrack*, 376 U.S. 612, 622 (1964)). In making
9 this determination, a court must balance numerous factors, including: (1) the state that is
10 most familiar with the governing law, (2) the plaintiff’s choice of forum, (3) the
11 respective parties’ contacts with the forum, (4) the contacts relating to the plaintiff’s
12 cause of action in the chosen forum, (5) the differences in the costs of litigation in the two
13 forums, (6) the availability of compulsory process to compel attendance of unwilling,
14 non-party witnesses, and (7) the ease of access to sources of proof. *Jones v. GNC*
15 *Franchising, Inc.*, 211 F.3d 495, 498–99 (9th Cir. 2000).

16 When weighing these factors, a court must be cognizant of the “strong
17 presumption in favor of plaintiff’s choice of forums” and should not grant transfers
18 freely. *Gherebi v. Bush*, 352 F.3d 1278, 1303 (9th Cir. 2003) (citation omitted), *vacated*
19 *on other grounds*, 542 U.S. 952 (2004); *see also Lou v. Belzberg*, 834 F.2d 730, 739 (9th
20 Cir. 1987) (“[G]reat weight is generally accorded plaintiff’s choice of forum.”); *Decker*
21 *Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (“The defendant must make a
22 strong showing of inconvenience to warrant upsetting the plaintiff’s choice of forum.”).
23 Transfer is not appropriate if the result is merely to shift the inconvenience from one
24 party to another. *Gherebi*, 352 F.3d at 1303 (“Section 1404(a) provides for transfer to a
25 more convenient forum, ‘not to a forum likely to prove equally convenient or
26 inconvenient.’” (quoting *Van Dusen*, 376 U.S. at 645-46)). Thus, “unless the balance is
27 strongly in favor of the defendant, the plaintiff’s choice of forum should rarely be
28 disturbed.” *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947).

1 **A. Location of Agreement Negotiation**

2 Turning to the first factor, Plaintiffs argue that the location of the negotiations
3 between HTA and KRW weighs against transfer because the agreements at the heart of
4 this matter were negotiated in Arizona for the sale of property in the state. (Resp. at 25.)
5 Defendants, however, argue that the relative importance of that location is diminished in
6 this case because that contract has been reduced to a judgment that Plaintiffs are now
7 attempting to collect on. (MTD at 21.)

8 Defendants’ argument is well-struck. Although the agreement between HTA and
9 KRW was negotiated in Arizona, the obligations created by that agreement have been
10 reduced to an enforceable judgment by the courts in Arizona. (Compl. ¶¶ 25–28.) The
11 crux of Plaintiffs’ Complaint, however, concerns acts and transactions in Pennsylvania by
12 Defendants. (*See* Compl. ¶¶ 39–58.) Nevertheless, Defendants’ analysis of the factor
13 plainly ignores Plaintiffs’ allegations of fraudulent inducement and aiding and abetting
14 fraudulent inducement, which pertain directly to the negotiation of the contracts at the
15 heart of the Sun City Transaction in Arizona. (Compl. ¶ 96–112.) Because of this, the
16 Court weighs this factor neither in favor of, nor against, transfer of the matter.

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

18 This case involves Arizona state law claims and a federal claim under 18 U.S.C.
19 §§ 1961 *et seq.* This weighs against transferring the case because the District of Arizona
20 is more likely to be familiar with the governing law relating to the state law claims.

21 **C. Plaintiff’s Choice of Forum**

22 When a plaintiff brings suit in his or her home forum, plaintiff’s choice is
23 generally accorded great weight. *Lou v. Belzberg*, 834 F.2d 730, 739 (9th Cir. 1987).
24 Plaintiffs are Delaware LLCs with their headquarters and principle place of business in
25 Scottsdale, Arizona. (Compl ¶ 6; Edwards Decl. ¶ 3.) As such, Plaintiffs have a legitimate
26 connection to this forum. *See Leyvas v. Bezy*, No. CV07-1032-PHX-SMM, 2008 WL
27 2026276, at *5 (D. Ariz. May 9, 2008). Although Defendants suggest that Plaintiffs have
28 engaged in forum shopping because Plaintiffs have asserted counterclaims in the

1 Pennsylvania Interpleader Action, (MTD at 21), the Court recognizes Plaintiffs’ position
2 that those claims were asserted to preserve Plaintiffs’ rights rather than in an attempt at
3 forum shopping. (Resp. at 24.) Thus, this factor weighs in favor of keeping the case in the
4 District of Arizona.

5 **D. Respective Parties’ Contacts with the District of Arizona**

6 Of the two potential forums for the lawsuit, Plaintiffs have contact solely with
7 Arizona, and maintain no connection to Pennsylvania. (Resp. at 24; Edwards Decl. ¶ 3.)
8 Conversely, other than RMC, Defendants’ connection to Arizona is tenuous at best.²

9 However, the relative convenience to witnesses is often considered “the most
10 important factor in resolving a motion to transfer” under § 1404(a). *Airbus DS Optronics*
11 *GmbH v. Nivisys LLC*, No. CV-14-02399-PHX-JAT, 2015 WL 3439143, at *4 (D. Ariz.
12 May 28, 2015) (internal quotations omitted). In considering whether the convenience of
13 the particular venue to witnesses weighs in favor of transfer, the court must consider the
14 number of witnesses each party has, their location, and the importance of the witnesses.
15 *Leyvas*, 2008 WL 2026276, at *3.

16 Because the fraudulent transactions in the Complaint occurred in Pennsylvania,
17 Defendants argue that the majority of the witnesses to the proceeding will come from
18 Pennsylvania. In litigating the action, Defendants anticipate the use of expert witnesses to
19 testify as to Pennsylvania creditors’ and debtors’ rights, bankruptcy, mortgage
20 foreclosure, and sheriff’s sales, all of whom would similarly be located in Pennsylvania.
21 (MTD at 22–23.) Although Plaintiffs argue that their witnesses and evidence are located
22 entirely in Arizona (Resp. at 24; Edwards Decl. ¶ 3), they do not provide the Court with
23 any indication as to the number of witnesses or their importance to proving the
24 allegations in the Complaint. *See Leyvas*, 2008 WL 2026276, at *3.

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27 ² Indeed, each Defendant contests this Court’s ability to exercise personal
28 jurisdiction. (MTD at 3–11.) Although the Court need not reach the question for the
purpose of the Motion to Transfer, it appears that at least one of the Defendants—if not
more—is not subject to personal jurisdiction in Arizona.

1 Moreover, Plaintiffs are currently litigating counter-claims in a concurrent action
2 in the Eastern District of Pennsylvania. *See Branch Banking & Trust Co. v. Roskamp*
3 *Mgmt. Co.*, No. 17-cv-01214-NIQA (E.D. Pa. filed March 3, 2017). Because of this, both
4 Plaintiffs and any of Plaintiffs’ overlapping witnesses will already be required to travel to
5 Pennsylvania to serve as a witness in that matter. Accordingly, the Court finds that this
6 factor strongly favors transfer of the matter.

7 **E. Contacts Relating to Plaintiffs’ Cause of Action in Arizona**

8 As discussed under the first factor, although Plaintiffs’ causes of action stem from
9 an alleged scheme by Defendants to deprive Plaintiffs of the ability to collect upon a
10 judgment issued by the courts in Arizona, Plaintiffs’ claims concern fraudulent activity
11 alleged to have occurred in in Pennsylvania, rather than Arizona. Accordingly, the Court
12 finds that this factor weighs in favor of transfer.

13 **F. Cost of Litigation**

14 When the moving party seeks to transfer a matter to a district in which the parties
15 are litigating a similar case with “some degree of overlap in terms of evidence and
16 witnesses,” the cost of litigation weighs in favor of transfer. *See Realty Executives Int’l*
17 *Servs. LLC v. Brokers Holdings LLC*, No. CV-17-00213-PHX-JJT, 2017 WL 1407676, at
18 *3 (D. Ariz. Apr. 20, 2017). That is the case here, as the parties are currently in the midst
19 of litigating the Interpleader Action in the Eastern District of Pennsylvania, which is
20 proceeding apace. *See Branch Banking & Trust Co. v. Roskamp Mgmt. Co.*, No. 17-cv-
21 01214-NIQA (E.D. Pa. filed March 3, 2017). As Defendants argue, and Plaintiffs fail to
22 rebut, the legal issues in the Interpleader Action substantially overlap with the issues at
23 play in this matter. Indeed, the pleadings in the Interpleader Action indicate that HTA has
24 pursued cross-claims against Whiteland Holdings and the RMC Defendants which are
25 premised on HTA’s allegation of fraudulent transactions by Defendants in Pennsylvania.
26 *See Branch Banking & Trust Co. v. Roskamp Mgmt. Co.*, No. 17-cv-01214-NIQA, ECF
27 18 (E.D. Pa. May 5, 2017). As such, it appears that the two matters overlap substantially.

1 Thus, the cost to the parties, and to the Court, of duplicating the proceedings in two
2 District Courts weighs in favor of transfer.

3 **G. Availability of Compulsory Process / Access to Sources of Proof**

4 Finally, because Plaintiffs' allegations against Defendants concern the release
5 claims by RMC, Frazer Exton and Whiteland Village against Santander Bank in
6 Pennsylvania, a settlement agreement negotiated between RMC, Frazer Exton, Whiteland
7 Village, and Nordbank in Pennsylvania, and a sheriff's auction in Pennsylvania (Compl.
8 ¶¶ 59–83), it appears that any non-party witness necessary to testify in this matter would
9 be located in Pennsylvania and thus not subject to compulsory process in this Court.
10 Similarly, the sources of proof for these allegations are likely to be located only in
11 Pennsylvania. As such, both factors weigh in favor of transfer to the Eastern District of
12 Pennsylvania.

13 **III. CONCLUSION**

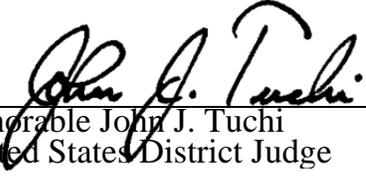
14 Although the Court affords substantial weight both to Plaintiffs' decision to
15 litigate in Arizona and the Court's familiarity with Arizona law, the remaining factors are
16 either neutral or weigh in favor of transferring the matter to the Eastern District of
17 Pennsylvania. The Court's principle consideration in transferring this matter, however, is
18 the avoidance of any expense and cost to the parties of duplicating litigation in this matter
19 and the Pennsylvania Interpleader Action. Additionally, the Court affords substantial
20 weight to the fact that most of the witnesses in this matter are located in Pennsylvania. As
21 such, the Court will grant Defendants' Motion to Transfer. Because the Court grants this
22 aspect of the Motion, it does not reach the remaining bases for Defendants' Motion,
23 which may be re-raised before the transferee court as applicable. Thus, the Court denies
24 the balance of Defendants' Motion.

25 **IT IS THEREFORE ORDERED** granting in part and denying in part
26 Defendants' Consolidated Motion to Dismiss for Lack of Personal Jurisdiction, for
27 Abstention/Stay Under *Colorado River*, Comity, and the First-to-File Rule, for Transfer
28 of Venue Pursuant to 28 U.S.C. § 1404(a), and to Dismiss for Failure to State a RICO

1 Claim (Doc. 47). The Court grants the Motion to Transfer. The remaining bases for
2 Defendants' Motion are denied as moot. The Clerk of Court shall take all necessary steps
3 to ensure the prompt transfer of this action to the United States District Court for the
4 Eastern District of Pennsylvania.

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

7 Dated this 14th day of March, 2018.

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11 Honorable John J. Tuchi
12 United States District Judge
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