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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Meyers Law PLLC,

10 Plaintiff,

11 v.

12 Tali Arik,

13 Defendant.  
14

No. CV-19-05241-PHX-SMB

**ORDER**

15  
16 Pending before the Court is Defendant’s Motion to Dismiss (Doc. 19.) After  
17 considering the pleadings, the Court grants the Motion to Dismiss and dismisses the action  
18 without prejudice for the reasons explained below.

19 **I. BACKGROUND**

20 Plaintiff, Myers Law, PLLC (“Myers Law”), is an Arizona professional limited  
21 liability company with its principal place of business in Phoenix, Arizona. (Doc. 14 ¶ 1.)  
22 Defendant, Tali Arik (“Dr. Arik”), is a Nevada resident. (*Id.* ¶ 2.)

23 Myers Law brings this action under Arizona’s Revised Uniform Arbitration Act  
24 (“ARUAA”) to compel arbitration pursuant to an alleged agreement between Myers Law  
25 and Dr. Arik which arose out of a *qui tam* action in the United States District Court for the  
26 District of Nevada. (*Id.*) The Fees and Costs Division Agreement with Client Consent (the  
27 “Revised Fee Agreement”), which the parties are alleged to have entered, contains an  
28 arbitration provision pursuant to the ARUAA. (*Id.* ¶ 12.)

1 Dr. Arik allegedly travelled to Arizona and retained Mr. Myers in January of 2014,  
2 while Mr. Myers was an attorney for the law firm of Ridenour, Hienton & Lewis, PLLC.  
3 (*Id.* ¶¶ 5-6.) Dr. Arik retained Mr. Myers services to represent him in a *qui tam* action  
4 pursuant to the False Claims Act, which was brought in the United States District Court  
5 for the District of Nevada. (*Id.* ¶ 6.) The *qui tam* action was settled, and Dr. Arik was  
6 awarded a portion of the recovery as a Relator. (*Id.* ¶ 20.) After the settlement, Myers Law,  
7 on Dr. Arik's behalf, filed an action for attorney's fees and costs pursuant to 31 U.S.C. §  
8 330(d)(1) in the United States District Court for the District of Nevada. (*Id.* ¶ 10.) While  
9 the fee application was pending with the court in the United States District Court for the  
10 District of Nevada, Myers Law, Dr. Arik, and Ridenour Hienton allegedly executed the  
11 Revised Fee Agreement, which contains an arbitration provision in ¶ 6. (*Id.* ¶¶ 11-12, Ex.  
12 2.) Dr. Arik admits in his Motion to Dismiss that he recalls signing the Revised Fee  
13 Agreement on or about June 24, 2019, but later contends that he never actually signed it.  
14 (Doc. 19 at 6, 11.) Dr. Arik then entered a settlement in the action for attorney's fees and  
15 costs against the *qui tam* defendant and was paid an undisclosed amount of money as a  
16 result of the settlement. (Doc. 14 ¶ 13.) Myers Law claims that it is entitled to a portion of  
17 that settlement under the Revised Fee Agreement. (*Id.*) Therefore, Myers Law moves this  
18 Court to compel arbitration pursuant to the Revised Fee Agreement. (*Id.* at 4.)

19 **A. District of Arizona Case**

20 Myers Law filed the Complaint in this action on September 23, 2019, bringing  
21 claims for breach of contract and unjust enrichment against Dr. Arik. (Doc. 1.) Myers Law  
22 filed an Amended Complaint on November 6, 2019. (Doc. 14.) The Amended Complaint  
23 dropped the claims for breach of contract and unjust enrichment and contains a single cause  
24 of action under the ARUAA pursuant to A.R.S. § 12-3007. (*Id.* at 1.) Thereafter, on  
25 November 20, 2019, Dr. Arik filed a Motion to Dismiss the Amended Complaint. (Doc.  
26 19.) On December 4, 2019, Myers Law filed a Response in Opposition to the Motion to  
27 Dismiss. (Doc. 21.) On December 11, 2019, Dr. Arik filed a Reply in Support of the Motion  
28 to Dismiss. (Doc. 22.)

1           **B. District of Nevada Case**

2           On October 29, 2019, Dr. Arik, through his counsel, filed a complaint in U.S.  
3 District Court for the District of Nevada against Myers Law, Mr. Myers, James Hienton,  
4 and Ridenhour Hienton, PLLC, regarding the defendants conduct in connection with the  
5 Revised Fee Agreement, the *qui tam* attorneys’ fees action, and the subsequent settlement  
6 of that action. *See* 2:19-cv-01908-JAD-NJK (Doc. 1) (D. Nev. 2019). The complaint  
7 contains seven causes of action, including claims for declaratory judgment, breach of  
8 fiduciary duty, breach of contract/breach of covenant of faith and fair dealing, fraud, civil  
9 conspiracy, intentional infliction of emotional distress, and attorneys’ fees/special  
10 damages. *Id.* On December 30, 2019, Myers Law and Mr. Myers filed a “Motion to Compel  
11 Arbitration,” which asked the judge assigned to the case—Judge Dorsey—to compel the  
12 arbitration provision found in the Revised Fee Agreement. *Id.* (Doc. 14.) Dr. Arik filed a  
13 response to that motion on January 17, 2020. *Id.* (Doc. 21.) Myers Law and Mr. Myers  
14 filed a Reply on January 30, 2020. *Id.* (Doc. 37.) On July 24, 2020, Judge Dorsey issued  
15 an order that included a denial of the Motion to Compel Arbitration filed by Myers Law  
16 and Mr. Myers. *Id.* (Doc. 54.) Specifically, Judge Dorsey ruled, “Because Myers fails to  
17 show any evidence—much less a preponderance of the evidence—that a valid agreement  
18 to arbitrate exists, I deny his motion to compel arbitration.” *Id.* (Doc. 54 at 12.)

19           **II. JURISDICTION AND VENUE**

20           **A. Jurisdiction**

21           Under 28 U.S.C. § 1332(a)(1), district courts have original jurisdiction of all civil  
22 actions where the matter in controversy exceeds the sum of \$75,000 and is between citizens  
23 of different states. The amount at stake in the underlying litigation is the amount in  
24 controversy for the purposes of diversity jurisdiction when evaluating a petition to compel  
25 arbitration. *CarMax Auto Superstores Cal. LLC v. Hernandez*, 94 F.Supp.3d 1078, 1090  
26 (N.D. Cal. 2015); *Theis Research, Inc. v. Brown & Bain*, 400 F.3d 659, 662 (9th Cir. 2005).

27           Here, diversity jurisdiction is met. Myers Law is an Arizona LLC and Dr. Arik is a  
28 Nevada resident. Further, the Amended Complaint alleges that the amount in controversy

1 in the underlying dispute is more than \$75,000. Therefore, the diversity jurisdiction exists  
2 for the Court to hear this dispute.

3 **B. Venue**

4 When a party challenges venue pursuant to Rule 12(b)(3) of the Federal Rules of  
5 Civil Procedure, “the pleadings need not be accepted as true, and the court may consider  
6 facts outside of the pleadings.” *Prawoto v. PrimeLending*, 720 F.Supp.2d 1149, 1151  
7 (C.D. Cal. 2010) (citing *Murphy v. Schneider Nat’l, Inc.*, 349 F.3d 1224, 1229, 1137 (9th  
8 Cir. 2003)).

9 Venue is proper in a judicial district in which a substantial part of the events or  
10 omissions giving rise to the claim occurred, or where a substantial part of the property that  
11 is subject to the dispute is situated. 28 U.S.C. § 1391(b)(2). “Once a defendant has  
12 challenged venue, the plaintiff has the burden of demonstrating that venue is proper in the  
13 chosen district.” *United Tactical Sys. LLC v. Real Action Paintball, Inc.*, 108 F.Supp.3d  
14 733, 751 (N.D. Cal. 2015) (citing *Piedmont Label Co. v. Sun Garden Packing Co.*, 598  
15 F.2d 491, 496 (9th Cir. 1979)). If the Court determines venue is improper, the Court must  
16 dismiss the action or transfer it to a district or division where it could have been brought.  
17 *Id.* (citing 28 U.S.C. § 1406(a)). “A plaintiff’s choice of venue is generally given  
18 substantial weight and a defendant normally ‘must make a strong showing of  
19 inconvenience to warrant upsetting the plaintiff’s choice of forum.’” *Id.* (citing *Decker*  
20 *Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986)). “However,  
21 ‘where the forum lacks any significant contact with the activities alleged in the complaint,  
22 plaintiff’s choice of forum is given considerably less weight, even if the plaintiff is a  
23 resident of the forum.’” *Id.* (citing *Cohen v. State Farm & Cas. Co.*, 2009 WL 2500729, at  
24 \*3 (E.D. Cal. Aug. 14, 2009)).

25 Here, the District of Arizona lacks significant contact with the activities alleged in  
26 the Complaint, and a substantial portion of the events that gave rise to this action occurred  
27 in the District of Nevada. Although Myers Law alleges that Dr. Arik travelled to Arizona  
28 to secure representation initially in January 2014, that trip has little to do with the events

1 that gave rise to this action. Myers Law brought this action to compel arbitration of the  
2 Revised Fee Agreement. The Revised Fee Agreement was apparently signed by email by  
3 Dr. Arik. The underlying *qui tam* litigation, the action for attorneys' fees and costs after  
4 the *qui tam* action, and the settlement for the attorneys' fees and costs action that gave rise  
5 to the fee dispute took place in the District of Nevada. Further, the Defendant, Dr. Arik is  
6 a resident of Nevada, and the money he received from the settlement was awarded in  
7 Nevada. As Dr. Arik's Motion to Dismiss claims, the money is still in Nevada with Dr.  
8 Arik. Therefore, besides the fact that Myers Law is an Arizona LLC, it appears that the  
9 District of Arizona lacks any significant contact with the activities alleged in the Amended  
10 Complaint. Instead, it appears that a substantial amount of the events giving rise to the  
11 action occurred in the District of Nevada. The Court will dismiss this action so that Myers  
12 Law can bring its claims in the District of Nevada where the parties have apparently already  
13 litigated a motion to compel arbitration brought by Mr. Myers and Myers Law.<sup>1</sup>

14 **III. CONCLUSION<sup>2</sup>**

15 For the reasons discussed above,

16 **IT IS ORDERED** granting Defendants Motion to Dismiss without prejudice  
17 because the proper venue for this action is the United State District Court for the District  
18 of Nevada.

19 Dated this 8th day of September, 2020.

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23   
24 Honorable Susan M. Brnovich  
25 United States District Judge

26 <sup>1</sup> The Court notes that here, it appears that Myers Law improperly attempted to compel  
27 arbitration through a complaint. However, the ARUAA is clear that the proper procedure  
28 to compel arbitration is by a motion to compel arbitration. *See* A.R.S. § 12-3005(B).

<sup>2</sup> Because the Court finds that the proper venue for this case is the District of Nevada, it declines to address the other arguments made in Dr. Arik's Motion to Dismiss.