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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE DISTRICT OF ARIZONA**

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11 Edip Yuksel,

12 Plaintiff,

13 v.

14 Twitter Incorporated,

15 Defendant.

No. CV-21-00137-TUC-RM

ORDER

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17 Pending before the Court are multiple motions in the above-captioned matter: (1)
18 Defendant's Motion to Dismiss Plaintiff's Complaint Under Rule 12(b)(6) (Doc. 17); (2)
19 Defendant's Motion to Change Venue/Transfer Case to the to the U.S. District Court for
20 the Northern District of California (Doc. 18); (3) Plaintiff's Motion to Deny Twitter's
21 Request to Change Venue (Doc. 23)¹; and (4) Defendant's Motion to Strike Plaintiff's

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25 ¹ Plaintiff, who is proceeding pro se, filed this document as a Motion for the Court to rule
26 on. However, the Motion is more properly construed as a Response to Defendant's
27 Motion to Change Venue/Transfer Case. Plaintiff did not file a Response to the Motion to
28 Change Venue/Transfer Case, and the Motion to Deny Twitter's Request to Change
Venue responds to that Motion. Therefore, the Court will construe the Motion as a
Response to Defendant's Motion to Change Venue/Transfer Case. *See Castro v. United
States*, 540 U.S. 375, 381–82 (2003) (courts may recharacterize a pro se motion to "create
a better correspondence between the substance of a pro se motion's claim and its
underlying legal basis.")

1 Second Response (Doc. 28).² The Court will grant the Motion to Change Venue/Transfer
2 Case.

3 **I. Background**

4 Plaintiff Edip Yuksel filed this action alleging breach of contract and a violation of
5 the Racketeer Influenced and Corrupt Organizations (“RICO”) Act arising out of
6 Defendant Twitter, Inc.’s suspension of his Twitter account. (Doc. 1.) Plaintiff alleges
7 that Twitter “permanently suspended [his] account without any specific reason” despite
8 his multiple appeals. (*Id.*) Plaintiff seeks reinstatement of his Twitter account and \$142
9 million in damages. (*Id.*)

10 **II. Motion to Change Venue/Transfer Case**

11 Defendant Twitter moves to transfer this case to the U.S. District Court for the
12 Northern District of California pursuant to 28 U.S.C. § 1404(a). (Doc. 18.) Defendant
13 argues that, when Plaintiff created his Twitter account, he agreed to be bound by
14 Twitter’s Terms of Service (the “Terms of Service”). (*Id.*) Defendant argues that the
15 Terms contain a valid forum selection clause that requires Plaintiff to bring his claims
16 exclusively in San Francisco County, California, where the U.S. District Court for the
17 Northern District of California is located. (*Id.*)

18 The Terms’ forum selection clause states:

19 All claims, legal proceedings or litigation arising in
20 connection with the Services³ will be brought solely in San
21 Francisco County, California, and you consent to the
22 jurisdiction of and venue in such courts and waive any
objection as to inconvenient forum.

23 (*Id.* at 8; Doc. 18-2 at ¶ 6; Doc. 18-5 at 3.) Defendant argues that (1) the forum selection
24 clause is mandatory; (2) Plaintiff’s claims fall within the scope of the forum selection
25 clause because they arise in connection with his access to and use of Twitter’s services;
26 and (3) no extraordinary circumstances, such as invalidity of the forum selection clause,

27 ² The Court finds the Motions suitable for resolution without oral argument.

28 ³ The “Services” refers to a user’s access to and use of Twitter’s services and website.
(Doc. 18-5 at 2.) The Terms state that a user’s “access to and use of the Services is
conditioned on [the user’s] acceptance of and compliance with these Terms” and that a
user agrees that, by accessing or using the services, he is bound by the Terms. (*Id.*)

1 contravention of Arizona public policy, or grave difficulty or inconvenience to the
2 Plaintiff, are present that would justify non-enforcement of the clause. (Doc. 18 at 10-13.)

3 In response, Plaintiff argues that the Court should deny the Motion because
4 transferring this action to the Northern District of California would require him to travel
5 to San Francisco and stay at a hotel, which would be “too costly for [his] mini budget”
6 and “Twitter can afford travel expenses [for] their troops of lawyers.” (Doc. 23.) Plaintiff
7 states that he is a retired teacher and current philosophy professor, and has created
8 popular written and video content but, for “ethical reasons,” receives little to no royalties
9 from them. (*Id.*) He further states that he donates any extra money he has to charity and
10 as a result has little cash in his bank account. (*Id.*) He states that his wife earns more than
11 he does, that they are investing in a technology startup company, and that they have
12 refinanced one of their homes. (*Id.*)

13 **III. Applicable Law**

14 “For the convenience of parties and witnesses, in the interest of justice, a district
15 court may transfer any civil action to any other district or division where it might have
16 been brought or to any district or division to which all parties have consented.” 28 U.S.C.
17 § 1404(a). “By permitting transfer to any district ‘to which the parties have agreed by
18 contract or stipulation,’ Section 1404(a) ‘provides a mechanism for enforcement of
19 forum-selection clauses.’” *Baker v. Am. Soc’y of Composers, Authors & Publishers*, No.
20 CV-21-00022-TUC-RM, 2021 WL 6125710, at *4 (D. Ariz. Dec. 28, 2021) (citing *Atl.*
21 *Marine Constr. Co. v. U.S. Dist. Ct. for W. Dist. of Tex.*, 571 U.S. 49, 59-60 (2013)).

22 Under Section 1404(a), “the district court [o]rdinarily . . . would weigh the
23 relevant factors and decide whether, on balance, a transfer would serve the convenience
24 of parties and witnesses and otherwise promote the interest of justice.” *Brittain v. Twitter,*
25 *Inc.*, No. CV-18-01714-PHX-DGC, 2019 WL 110967, at *1 (D. Ariz. Jan. 4, 2019)
26 (citing *Atl. Marine*, 571 U.S. at 62-63; 28 U.S.C. § 1404(a)) (internal quotation omitted).
27 However, “[w]hen parties have agreed to a valid forum selection clause, [] the calculus
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1 changes because the clause represents the parties' agreement as to the most proper
2 forum." *Id.* at *1 (internal quotation and citation omitted).

3 "As a general rule, when the parties have agreed to a valid forum-selection clause,
4 a district court should ordinarily transfer the case to the forum specified in that clause."
5 *Yei A. Sun v. Advanced China Healthcare, Inc.*, 901 F.3d 1081, 1087 (9th Cir. 2018)
6 (internal citation and quotation omitted). "Unlike the situation where there is no forum-
7 selection clause, the plaintiff must bear the burden of showing why the court should not
8 transfer the case to the forum to which the parties agreed." *Id.* at 1087 (internal citation
9 and quotation omitted). "The plaintiff's subsequent choice of forum merits no weight."
10 *Id.* (citing *Atl. Marine*, 571 U.S. at 63-63). "The party seeking to avoid the forum
11 selection clause bears a heavy burden of proof that the clause should be set aside and [a]
12 court evaluating a motion to transfer should afford no weight to [] the plaintiff's selected
13 forum." *Trump v. Twitter, Inc.*, No. 21-22441-CIV, 2021 WL 8202673, at *3 (S.D. Fla.
14 Oct. 26, 2021) (internal citation and quotation omitted).

15 "[A] court must deem all factors relating to the private interests of the parties . . .
16 as weighing entirely in favor of the preselected forum." *Yei A. Sun*, 901 F.3d at 1087-88
17 (citing *Atl. Marine*, 571 U.S. at 64, 62 n. 6). "[A] forum-selection clause should control
18 except in unusual cases." *Id.* at 1088 (internal citation and quotation omitted). "This
19 result is required . . . because a forum-selection clause represents the parties' agreement
20 as to the most proper forum." *Id.* (internal citation and quotation omitted). "[O]nly under
21 extraordinary circumstances unrelated to the convenience of the parties should a motion
22 to enforce a forum-selection clause be denied." *Id.* (internal citation and quotation
23 omitted).

24 To establish the existence of an extraordinary circumstance under which a forum
25 selection clause is not given controlling weight, a plaintiff must make a "strong showing"
26 that: "(1) the clause is invalid due to fraud or overreaching, (2) enforcement would
27 contravene a strong public policy of the forum in which suit is brought, whether declared
28 by statute or by judicial decision, or (3) trial in the contractual forum will be so gravely

1 difficult and inconvenient that the litigant will for all practical purposes be deprived of
2 his day in court.” *Id.* at 1088 (citing *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1,
3 15-16 (1972)) (internal quotations omitted).

4 Multiple courts have found Twitter’s forum selection clause valid and enforceable.
5 *See Brittain*, 2019 WL 110967, at *2; *Trump*, 2021 WL 8202673, at *3 (forum selection
6 clause was “valid and mandatory,” forum selection clause encompassed plaintiff’s
7 claims, and plaintiffs did not satisfy burden to show that case should not be transferred);
8 *Doshier v. Twitter, Inc.*, 417 F. Supp. 3d 1171, 1180 (E.D. Ark. 2019). Arizona public
9 policy favors enforcing forum selection clauses. *Desert Autosports LLC v. Auto. Fin.*
10 *Corp.*, No. CV-13-01211-PHX-DGC, 2013 WL 4231151, at *2 (D. Ariz. Aug. 14, 2013);
11 *see also Brittain*, 2019 WL 110967, at *3 (Arizona courts routinely hold forum selection
12 clauses presumptively valid). That a litigant is self-represented and indigent is not a basis
13 for non-enforcement of a forum selection clause. *Brittain*, 2019 WL 110967, at *3.
14 “Where the parties have agreed to a forum-selection clause, they waive the right to
15 challenge the preselected forum as inconvenient or less convenient for themselves or their
16 witnesses, or for their pursuit of the litigation.” *Yei A. Sun*, 901 F.3d at 1091.

17 **IV. Analysis**

18 The law mandates transfer of this case to the Northern District of California. The
19 Court agrees with the findings of other district courts that Twitter’s forum selection
20 clause is valid and enforceable. Plaintiff consented to the Terms of Service when he
21 agreed to use Twitter’s services, and those Terms contained the forum selection clause.
22 Here, Plaintiff bears the burden to show why the forum selection clause should not be
23 enforced, and he has not done so. Though he argues that litigation in the Northern District
24 of California will be cost-prohibitive, this is not a sufficient basis to find the clause
25 unenforceable, especially considering Plaintiff’s own description of his financial
26 situation. It appears likely, based on Plaintiff’s averments regarding his financial
27 situation, that he could obtain the funds needed to litigate in California. The Court notes
28 that Plaintiff does not have in forma pauperis status in this action. (*See* Doc. 5.) Further,

1 Plaintiff does not indicate that he would not be able to appear by telephone or virtually
2 for court proceedings in California, which many jurisdictions permit. Plaintiff has not
3 shown the existence of any extraordinary circumstances that would justify not giving the
4 forum selection clause controlling weight.

5 Accordingly,

6 **IT IS ORDERED** that Defendant's Motion to Change Venue/Transfer Case to the
7 U.S. District Court for the Northern District of California (Doc. 18) is **granted**. The
8 Clerk of Court **shall transfer** this case to the United States District Court for the
9 Northern District of California.

10 Dated this 21st day of September, 2022.

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Honorable Rosemary Márquez
United States District Judge