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**United States District Court
Central District of California**

11 DAHDOUL TEXTILES, INC.; IMAD

12 DAHDOUL,

13 Plaintiffs,

14 v.

15 ZINATEX IMPORTS, INC.; MOUSA

16 ABUHADBA; and DOES 1–10, inclusive,

17 Defendants.

Case № 2:15-cv-04011-ODW(ASx)

**ORDER DENYING DEFENDANTS’
MOTION TO DISMISS AND
GRANTING DEFENDANTS’
MOTION TO TRANSFER [16]**

18 **I. INTRODUCTION**

19 Defendants Zinatex Imports, Inc. and Mousa Abuhadba (collectively
20 “Defendants”) move to dismiss the Complaint for lack of personal jurisdiction and
21 improper venue. Abuhadba also moves to dismiss the Complaint for insufficient
22 service of process. Additionally, Defendants move in the alternative to transfer the
23 matter to the Northern District of Illinois. For the reasons discussed below, the Court
24 **DENIES** Defendants’ Motion to Dismiss, but **GRANTS** Defendants’ Motion to
25 Transfer. (ECF No. 16.)

26 **II. FACTUAL BACKGROUND**

27 Plaintiff Imad Dahdoul created a rug design known as “Design #501,” the
28 copyright for which was registered by Plaintiff Dahdoul Textiles, Inc. (Compl. ¶¶ 2,

1 22–23.) At some point, Plaintiffs allegedly discovered that Defendants were selling
2 rugs with designs that bore a “remarkable resemblance” to Design #501. (*Id.* ¶ 5.)

3 During further investigation, a person employed by Plaintiffs “saw a large
4 number of rugs bearing Design #501 packaged up with Defendants’ name on them” at
5 a rug manufacturer’s premises in Turkey. (*Id.* ¶ 6.) The manufacturer previously
6 informed Defendants that the rug design was copyrighted, but Defendants allegedly
7 insisted that the design “could not be copyrighted.” (*Id.* ¶ 7.) Plaintiffs sent
8 Defendants a cease-and-desist letter by certified mail, to which Defendants failed to
9 timely respond. (*Id.* ¶¶ 8, 26; Decl. Dahdoul ¶ 6.) Plaintiffs filed this lawsuit shortly
10 thereafter, alleging one cause of action for willful copyright infringement under the
11 Copyright Act. (ECF No. 1.) Plaintiffs’ Proof of Service of Summons indicates that
12 they served Zinatex by personally delivering the Summons and Complaint to its
13 president, Abuhadba. (ECF No. 22.)

14 Dahdoul Textiles is a California corporation, with its principal place of business
15 in Commerce, California. (Compl. ¶ 15.) Zinatex is an Illinois corporation, with its
16 only two offices located in Cook County, Illinois. (Decl. Abuhadba ¶ 14.) Zinatex
17 has no employees in California, does not own or lease real property in California, and
18 does not otherwise have any assets in California. (*Id.* ¶¶ 16–18.) Abuhadba is a
19 resident of Illinois. (*Id.* ¶¶ 2, 3.) Neither Defendant has sold rugs bearing Design
20 #501 in California (*id.* ¶ 21), although there is conflicting evidence on whether or not
21 Zinatex sells other rugs in California. (*Compare* Decl. Abuhadba ¶ 28, *with* Decl.
22 Rodriquez ¶ 4.)

23 On July 16, 2015, Defendants moved to dismiss the Complaint, or in the
24 alternative, to transfer the case to the Northern District of Illinois. (ECF No. 16.) On
25 August 3, 2015, Defendants submitted a “Reply” that rehashed the arguments made in
26 its Motion and pointed out Plaintiffs’ failure to file an Opposition. (ECF No. 19.)

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1 Later that day, Plaintiffs filed their Opposition. (ECF No. 20.)¹ Defendants did not
2 file a subsequent response. Defendants’ Motion is now before the Court for
3 consideration.

4 III. DISCUSSION

5 Defendants move to dismiss the Complaint for lack of personal jurisdiction and
6 improper venue. Abuhadba also moves to dismiss the Complaint for insufficient
7 service of process. In the alternative, Defendants move to transfer the matter to the
8 Northern District of Illinois. The Court will address each issue in turn.

9 A. Personal Jurisdiction

10 Defendants contend that they are not subject to personal jurisdiction in
11 California because they did not “purposefully direct” their activities toward this state.
12 (Mot. at 8–10.) The Court disagrees.

13 To satisfy due process, a non-resident defendant must be subject to either
14 general jurisdiction in the state or have “certain minimum contacts with [a state] such
15 that the maintenance of the suit does not offend ‘traditional notions of fair play and
16 substantial justice.’” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). In
17 copyright cases, such minimum contacts exist where (1) the defendant “purposefully
18 direct[s]” their activities toward the forum state, (2) the claim arises out of the
19 defendant’s forum-related activities, and (3) the exercise of jurisdiction is reasonable.²
20 *Marvix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1227–28 (9th Cir. 2011).
21 Purposeful direction, in turn, is determined using the *Calder* effects test. That test
22 “requires that ‘the defendant . . . have (1) committed an intentional act, (2) expressly
23 aimed at the forum state, (3) causing harm that the defendant knows is likely to be

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25 ¹ Not only was Plaintiffs’ Opposition brief filed a week late, but Plaintiffs continued filing
26 supplemental documents in support of their Opposition for several days. However, Defendants did
27 not request an opportunity to respond to Plaintiffs’ untimely Opposition, and counsel appeared
28 unprepared to discuss the legal precedent cited by Plaintiffs at the Motion hearing. Given these
circumstances, the Court exercises its discretion to consider the Opposition documents.

² Defendants contest only the “purposeful direction” prong of the test.

1 suffered in the forum state.” *Id.* at 1228 (citation omitted).

2 Despite Defendants’ apparent lack of connection with California, Ninth Circuit
3 law is clear: the willful infringement of a copyright held by a company known to do
4 business in the forum state is sufficient to satisfy the *Calder* effects test. *Wash. Shoe*
5 *Co. v. A-Z Sporting Goods, Inc.*, 704 F.3d 668, 673 (9th Cir. 2012). Like the
6 defendant in *Washington Shoe*, Defendants here (1) performed intentional acts by
7 purchasing the Design #501 rugs from the manufacturer in Turkey, copying the
8 design, and selling the rugs, *id.* at 674, (2) expressly aimed their conduct at the forum
9 state by willfully infringing the copyright of a California corporation after being
10 informed of the copyright by the manufacturer, and after being sent the cease-and-
11 desist letter by Plaintiffs,³ *id.* at 678, and (3) knew or should have known that the
12 economic loss from their infringement would be felt in California, which is where
13 Plaintiffs are doing business, *id.* at 679. As a result, Defendants are subject to
14 personal jurisdiction in California.

15 **B. Insufficient Service of Process**

16 The Court also rejects Abuhadba’s argument that serving him with only one
17 copy of the Summons and Complaint on behalf of both himself and his company
18 constitutes insufficient service. (Mot. at 10–12.) “[A]n individual . . . may be served
19 in a judicial district of the United States by . . . delivering a copy of the summons and
20 of the complaint to the individual personally.” Fed. R. Civ. P. 4(e)(2)(A). “Rule 4 is
21 a flexible rule that should be liberally construed so long as a party receives sufficient
22 notice of the complaint.” *Direct Mail Specialists, Inc. v. Eclat Computerized Tech.,*
23 *Inc.*, 840 F.2d 685, 688 (9th Cir. 1988) (internal citations and quotations omitted).
24 Abuhadba clearly received sufficient notice of the lawsuit when he was hand-
25 delivered a Summons and Complaint identifying both him and Zinatex as defendants

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27 ³ As the cease-and-desist letter was sent by certified mail to Defendants and requested a
28 response from them, it is reasonable to infer that Plaintiffs’ address in California was included
somewhere on the letter or envelope.

1 in the action; the fact that he received only one copy of each is inconsequential. Such
2 service constitutes substantial compliance with Rule 4(e).

3 **C. Venue**

4 Defendants request that the Court dismiss the action for improper venue. 28
5 U.S.C. § 1406(a). In the alternative, Defendants request that the Court transfer the
6 matter to the Northern District of Illinois under 28 U.S.C. § 1404(a). (Mot. at 12–19.)
7 Because venue is proper in this district, the Court cannot dismiss the action under
8 § 1406. However, as the matter would be more conveniently litigated in the Northern
9 District of Illinois, the Court will transfer the case to that district under § 1404.

10 **1. Dismissal for Improper Venue**

11 Section 1406 “authorize[s] dismissal only when venue is ‘wrong’ or ‘improper’
12 in the forum in which it was brought.” *Atl. Marine Const. Co. v. U.S. Dist. Court for*
13 *W. Dist. of Texas*, 134 S. Ct. 568, 577 (2013). Actions arising under the Copyright
14 Act are properly brought in the district where the defendants reside. 28 U.S.C.
15 § 1400(a). “This circuit interprets this provision to allow venue in any judicial district
16 where, if treated as a separate state, the defendant would be subject to personal
17 jurisdiction.” *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1126
18 (9th Cir. 2010). As previously discussed, Defendants are subject to personal
19 jurisdiction in California because they infringed on a copyright held by Plaintiffs,
20 whom they knew to reside in this state. (*See supra* Part III.A.) Because Defendants
21 allegedly further knew that Dahdoul Textiles’ place of business is within this judicial
22 district, the Court’s personal jurisdiction analysis applies with equal force if we treat
23 this district as a separate state. As venue is proper in this district, the case cannot be
24 dismissed under § 1406(a).

25 **2. Convenience Transfer**

26 Transfer to the Northern District of Illinois is appropriate here under § 1404.
27 “For the convenience of parties and witnesses, in the interest of justice, a district court
28 may transfer any civil action to any other district or division where it might have been

1 brought” 28 U.S.C. § 1404(a). “This provision gives a district court broad
2 discretion to transfer a case to another district where venue is also proper.” *Amini*
3 *Innovation Corp. v. JS Imports, Inc.*, 497 F. Supp. 2d 1093, 1108 (C.D. Cal. 2007)
4 (footnote omitted); *see also Commodity Futures Trading Comm’n v. Savage*, 611 F.2d
5 270, 279 (9th Cir. 1979) (“Weighing of the factors for and against transfer involves
6 subtle considerations and is best left to the discretion of the trial judge.”).

7 Analysis under § 1404 is two-fold. First, it must be shown that subject matter
8 jurisdiction, personal jurisdiction, and proper venue exist in the transferee court. *Metz*
9 *v. U.S. Life Ins. Co. in City of New York*, 674 F. Supp. 2d 1141, 1145 (C.D. Cal.
10 2009); *see also Hoffman v. Blaski*, 363 U.S. 335, 344 (1960). All three clearly exist
11 here. Subject matter jurisdiction for claims under the Copyright Act exists in all
12 district courts. 28 U.S.C. §§ 1331, 1338. Defendants concede they are subject to
13 personal jurisdiction in Illinois. Finally, venue is proper in the Northern District of
14 Illinois because Defendants reside in Cook County, Illinois. *See* 28 U.S.C. § 1400(a).

15 Second, the court must weigh a multitude of factors to determine whether
16 transfer is appropriate, including: (1) the convenience of the parties; (2) the
17 convenience of the witnesses; (3) the location where the relevant agreements were
18 negotiated and executed, (4) the state that is most familiar with the governing law, (5)
19 the plaintiff’s choice of forum, (6) the respective parties’ contacts with the forum, (7)
20 the contacts relating to the plaintiff’s cause of action in the chosen forum, (8) the
21 differences in the costs of litigation in the two forums, (9) the availability of
22 compulsory process to compel attendance of unwilling non-party witnesses, and (10)
23 the ease of access to sources of proof. *Metz*, 674 F. Supp. 2d at 1145; *Jones v. GNC*
24 *Franchising, Inc.*, 211 F.3d 495, 498–99 (9th Cir. 2000). Although “great weight is
25 generally accorded plaintiff’s choice of forum,” *Lou v. Belzberg*, 834 F.2d 730, 739
26 (9th Cir. 1987), such deference is “diminished ‘if the moving party establishes one or
27 more of the following factors: (1) the operative facts have not occurred within the
28 forum; (2) the forum has no particular interest in the parties or subject matter; (3) the

1 forum is not the primary residence of either the plaintiff or defendant; or (4) the
2 subject matter of the litigation is not substantially connected to the forum.” *Metz*,
3 674 F. Supp. 2d at 1146 (citations omitted).

4 The Court feels that the factors tip in favor of transferring the matter. While
5 each party would obviously prefer to litigate the case in their respective districts, the
6 Court is inclined to give more weight to Defendants’ convenience given that they are
7 the ones being haled into court with little connection to California. Notably, Plaintiffs
8 are not due the significant deference typically afforded to their choice of forum
9 because the alleged infringement did not occur in California, and because this district
10 is clearly not the primary residence of the Defendants. *Id.*

11 The convenience of the relevant witnesses and location of relevant evidence
12 also favors transfer. In copyright infringement cases, “[a]bsent direct evidence of
13 copying, proof of infringement involves fact-based showings that the defendant had
14 ‘access’ to the plaintiff’s work and that the two works are ‘substantially similar.’”
15 *Three Boys Music Corp. v. Bolton*, 212 F.3d 477, 481 (9th Cir. 2000). Plaintiffs here
16 allege that Defendants had such access by purchasing rugs with the protected pattern
17 from the manufacturer in Turkey. (Compl. ¶ 6.) Plaintiffs also allege that the
18 infringement was willful because Defendants sold infringing rugs after both the
19 manufacturer and Plaintiffs informed Defendants of the copyright. (Compl. ¶¶ 5–9.)

20 The witnesses relevant to proving these allegations appear to be Abuhadba and
21 other Zinatex employees (who are located in Illinois), and the manufacturer in Turkey
22 (which neither favors nor disfavors transfer given the distance). They would also
23 appear to be the ones in possession of the relevant evidence, such as the infringing
24 rugs, the original copyrighted rugs allegedly sold to Defendants, and any related
25 documents. Finally, the evidence needed to establish Defendants’ profits attributable
26 to their sales of infringing rugs would obviously be in possession of Defendants. (*See*
27 Compl. ¶ 31 (requesting disgorgement of such profits from Defendants).)

28 Plaintiffs do not point to any relevant evidence or witness that may be in

1 California. Although Plaintiffs claim they found a Zinatex rug for sale in California,
2 there is no allegation that rugs with the copyrighted design are in California.
3 Moreover, the alleged discussions between Abuhadba's brother and Dahdoul's brother
4 and father (all of whom live in California) regarding possible resolution of the lawsuit
5 do not bear on whether or not Defendants infringed Plaintiffs' rug designs in the first
6 place. (Decl. Dahdoul ¶¶ 10–13.) Even if such conversations are probative of
7 whether or not Defendants received the cease-and-desist letter, the Court finds that
8 such evidence does not outweigh the significant evidence located in Illinois.

9 Plaintiffs do not address the remaining factors under § 1404(a), which appear to
10 be inapplicable or further favor transfer for the above reasons. Given these
11 circumstances, transfer to the Northern District of Illinois is appropriate.

12 **III. CONCLUSION**

13 For the reasons discussed above, the Court **DENIES** Defendants' Motion to
14 Dismiss, but **GRANTS** Defendants' Motion to Transfer. (ECF No. 16.) This matter
15 is hereby transferred to the Northern District of Illinois for further proceedings. The
16 Clerk of the Court will close this case.

17 **IT IS SO ORDERED.**

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19 August 25, 2015

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22 **OTIS D. WRIGHT, II**
23 **UNITED STATES DISTRICT JUDGE**
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