

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

JENHANCO, INC.,
Plaintiff,
v.
HERTZ GLOBAL HOLDINGS, INC.,
HERTZ CORPORATION, DOLLAR
RENT A CAR, INC., DOLLAR
THRIFTY AUTOMOTIVE GROUP,
INC., and DOES 1–10,
Defendants.

Case No. 2:15-cv-04191-ODW (PJW)

**ORDER DENYING MOTION TO
REMAND [16]**

I. INTRODUCTION

Plaintiff Jenhanco Inc. (“Plaintiff”) moves to remand this action to Los Angeles County Superior Court based upon the contractual language set forth in the forum selection clause of a governing License Agreement. Plaintiff argues the term “appropriate district court” can only be interpreted as “state courts” in Los Angeles and, therefore, should be remanded to the Los Angeles Superior Court. Defendants Hertz Global Holdings, Inc. and The Hertz Corporation (collectively, “Defendants”) argue the clause is read to include both state and federal district courts rendering the removal to this court proper. For the reasons discussed below, the Court finds the

1 forum selection clause to include federal district courts. Therefore, this Court
2 **DENIES** Plaintiff’s Motion to Remand.¹ (ECF No. 16.)

3 **II. FACTUAL BACKGROUND**

4 In 1982, Plaintiff entered into a licensing agreement with Dollar Rent a Car
5 (“Dollar Corporate”), which through a series of mergers and acquisitions would
6 become a wholly owned subsidiary of Defendants. (ECF No. 1, Compl. Ex. A. ¶¶ 1-
7 2.) Plaintiff paid a certain percentage of its gross revenue in exchange for, among
8 other things, first right over any other entity to expand its rental car operation within
9 Plaintiff’s operating locality. (*Id.* ¶ 3.) In or about August 2013, Defendants
10 allegedly denied Plaintiff the opportunity to expand its operations for the benefit of
11 Defendants’ other non-franchisee subsidiaries. (*Id.* ¶ 4.) Plaintiff filed this action on
12 April 23, 2015, in the Los Angeles Superior Court. (Compl.) Plaintiff’s Complaint
13 contains four causes of action against the Defendants: (1) breach of the License
14 Agreement; (2) breach of covenant of good faith and fair dealing; (3) promissory
15 fraud; and (4) tortious interference with prospective economic relations. (*Id.*) The
16 subject License Agreement contains the following relevant provisions:

17
18 5.9. All actions between the parties hereto shall be litigated in
19 the appropriate district court in the city or county of Los Angeles,
20 California and said courts within the city and county of Los Angeles shall
21 have exclusive jurisdiction over the subject matter of this agreement and
22 any dispute or disagreement arising out of said agreement. This
23 agreement shall be construed in accordance with the laws of the State of
24 Licensee’s Operating Locality.

25 5.10. Licensee irrevocably authorizes [Licensor] to designate and
26 appoint an agent in the city and county of Los Angeles, California as
27 agent of Licensee to receive and accept, on behalf of Licensee service of
28 summons, complaint and other court process and orders in the event suit
is filed by Licensor against Licensee in any state or federal court in the

¹ After carefully considering the papers filed in support of and in opposition to the Motion, the Court deems the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

1 State of California. In the event of any such suit, personal jurisdiction
2 over Licensee may be obtained by the court in which such action is
3 brought if a copy of the summons and complaint in such action is
4 personally served upon said agent; and a copy thereof is mailed to
5 Licensee by registered or certified mail addressed to Licensee at
6 Licensee's address as shown herein or at such other address as may
7 hereinafter be designated by Licensee by notice given accordance with
8 the requirements of paragraph 5.3. Licensee hereby consents to such
9 California jurisdiction. Dollar shall promptly notify Licensee of the
10 appropriate agent appointed for service of process herein.

11 (ECF No. 16, Ex. A, "License Agreement.")

12 Defendants removed the action on June 4, 2015. (ECF No. 1.) On July 2,
13 2015, Plaintiff moved to remand. (ECF No. 16.) Defendants timely opposed and
14 Plaintiff timely replied. (ECF Nos. 25, 30.) That Plaintiff's Motion is now before the
15 Court for consideration.

16 **III. LEGAL STANDARD**

17 Federal courts are courts of limited jurisdiction, having subject-matter
18 jurisdiction only over matters authorized by the Constitution and Congress. U.S.
19 Const. art. III, § 2, cl. 1; *e.g.*, *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S.
20 375, 377 (1994). A suit filed in state court may be removed to federal court if the
21 federal court would have had original jurisdiction over the suit. 28 U.S.C. § 1441(a).
22 But courts strictly construe the removal statute against removal jurisdiction, and
23 "[f]ederal jurisdiction must be rejected if there is any doubt as to the right of removal
24 in the first instance." *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The
25 party seeking removal bears the burden of establishing federal jurisdiction. *Durham v.*
26 *Lockheed Martin Corp.*, 445 F.3d 1247, 1252 (9th Cir. 2006) (citing *Gaus*, 980 F.2d
27 at 566).

28 Federal courts have original jurisdiction where an action presents a federal
question under 28 U.S.C. § 1331, or diversity of citizenship under 28 U.S.C. § 1332.
A defendant may remove a case from a state court to a federal court pursuant to the

1 federal removal statute, 28 U.S.C. § 1441, on the basis of a federal question or
2 diversity jurisdiction. To exercise diversity jurisdiction, a federal court must find
3 complete diversity of citizenship among the adverse parties, and the amount in
4 controversy must exceed \$75,000.00, usually exclusive of interest and costs. 28
5 U.S.C. § 1332(a).

6 IV. DISCUSSION

7 Defendants argue the forum selection clause of the License Agreement includes
8 both state and federal courts because (1) the plain and normal meaning of the phrase
9 “appropriate district court” leads to the conclusion that it includes federal district
10 courts in the city or county of Los Angeles; and (2) interpretation of both Section 5.9
11 and 5.10 provide a consistent and harmonized interpretation of the provisions. (Opp’n
12 4–7.) Alternatively, Plaintiff argues the parties’ License Agreement expressly states
13 that the language in the forum selection clause limits all actions between parties to Los
14 Angeles state courts, and the federal court is not a permissible venue.² (Mot. 2.) To
15 interpret the forum selection clause, the Court will look at both the plain meaning and
16 the consistency between the agreement clauses.

17 A. Plain Language of Forum Selection Clause

18 When interpreting a forum selection clause, the “plain language of the contract
19 should be considered first.” *Siminoff v. Expedia, Inc.*, 643 F.3d 1202, 1205 (9th Cir.
20 2011) (quoting *Doe 1 v. AOL LLC*, 552 F.3d 1077, 1081 (9th Cir. 2009). “[T]he
21 ‘common or normal meaning of language will be given to the words of a contract
22 unless circumstances show that in a particular case a special meaning should be
23 attached to it.’” *Id.*

24 In *Doe 1*, the court concluded that the preposition “of” in the phrase “the courts
25 of Virginia” was determinative—“of” being a term “denoting that from which

26
27 ² Defendant removes based upon diversity jurisdiction. Plaintiff does not dispute that the parties are
28 citizens of different states or that the amount in controversy exceeds \$75,000.00. (Mot. 5.) The only
dispute is regarding the interpretation of the forum selection clause in the License Agreement.

1 anything proceeds; indicating origin, source, descent, and the like.” *Id.* at 1082. In
2 other words, the phrase “the courts of” a state refers only to state courts. *Id.* at 1081-
3 82.

4 In contrast, the court observed that a forum selection clause referring to “courts
5 in” a state imposes a geographic limitation, not one of sovereignty. *Id.* at 1082.
6 (quoting *Black’s Law Dictionary* 1080 (6th ed. 1990)). The word “in” means to
7 “‘express[] relation of presence, existence, situation, inclusion . . .; in-closed or
8 surround by limits as in a room.’” *Id.* at 8 (quoting *Black’s Law Dictionary* 758 (6th
9 ed. 1990)). Therefore, the court held that the phrase “courts in” a state include any
10 court within the physical boundaries of the state, even if the court does not derive its
11 power and authority from the sovereignty of the state.

12 The Court applies this latter interpretation to the present License Agreement.
13 Section 5.9 of the Agreement states, “[a]ll actions between the parties hereto shall be
14 litigated in the appropriate district court **in** the city or county of Los Angeles,
15 California” (emphasis added.) Consistent with *Doe I*, when a federal court sits
16 in a particular city or county, it is “in” that city or county. Therefore, the forum
17 selection clause here provides venue in both the state and federal courts located within
18 the city or county of Los Angeles, California.

19 Furthermore, it was unlikely that Plaintiff was confused on the meaning of
20 “district court” within the License Agreement. Plaintiff exists pursuant to the laws of
21 the state of Utah. (Compl. ¶ 7, Ex. A.) In Utah, the state’s District Court is a trial
22 court of general jurisdiction. U.C.A. 1953 § 78A-5-101(1). Therefore, Plaintiff may
23 have construed the phrase “appropriate district court” to mean “state court” based on
24 Utah law. However, the word “district” means “[a] territorial area into which a
25 country, state, county, municipality, or other political subdivision is divided for
26 judicial, political, electoral or administrative purposes.” *Black’s Law Dictionary* 509
27 (8th ed. 1999). The plain meaning of the word “district” does not point to venues
28 within a particular area, but instead to the larger territorial area within which the

1 federal system lies. Moreover, “district court” is not capitalized in the forum selection
2 clause here, which gives support of the broad definition.

3 **B. Consistency Between Agreement Clauses**

4 The cardinal principle of contract interpretation is that a document should be
5 read to give effect to all of its provisions and to render them consistent with each
6 other. *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 63 (1995).
7 Therefore, consistency between sections 5.9 and 5.10 of the License Agreement is
8 preferred over inconsistency. Section 5.10 unambiguously provides, in part:

9
10 Licensee irrevocably authorizes Dollar to designate and appoint an agent
11 in the city or county of Los Angeles, California as agent of Licensee to
12 receive and accept, on behalf of Licensee service of summons, complaint
13 and other court process and order in the event suit is filed by Licensor
against licensee **in any state or federal court in the State of California.**

14 (emphasis added.) Section 5.9 of the License Agreement requires “[a]ll actions
15 between the parties . . . [to] be litigated in the appropriate district court.” Because
16 section 5.10 is unambiguous and clearly includes both state and federal courts, section
17 5.9 must adhere to its same meaning. Therefore, in order for the two sections to be
18 consistent with each other, section 5.9 must also mean both state and federal court as
19 it refers to “all actions between the parties.”

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

V. CONCLUSION

For the reasons discussed above, the Court finds the forum selection clause to include both state and federal courts. Accordingly, the Court **DENIES** Plaintiff's Motion to Remand. (ECF No. 16.)

IT IS SO ORDERED.

September 16, 2015



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