

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**

LEGALFORCE, INC., a Delaware corporation,

Plaintiff,

v.

LEGALZOOM.COM, INC., a Delaware corporation,

Defendant.

Case No. 2:18-cv-06147-ODW-GJS

**ORDER GRANTING
DEFENDANT’S MOTION TO
TRANSFER VENUE [20]**

I. INTRODUCTION

Presently before the Court is Defendant Legalzoom.com, Inc.’s Motion to Transfer Venue to the United States District Court for the Northern District of California, San Francisco Division. For the following reasons, the Court **GRANTS** Defendant’s Motion to Transfer Venue.¹

¹ After carefully considering the papers filed in support of the Motion, the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

II. FACTUAL AND PROCEDURAL BACKGROUND

1
2 Defendant Legalzoom.com, Inc. (“LegalZoom”) is in the business of providing
3 access to legal self-help solutions and pre-paid legal service plans to the public. (Mot.
4 to Transfer Venue (“Mot.”) 2, ECF No. 20-1.) Plaintiff Legalforce.com, Inc.
5 (“LegalForce”) is purportedly one of LegalZoom’s competitors. (*Id.*)

6 On December 19, 2017, LegalForce filed a complaint in the Northern District of
7 California, styled *LegalForce RAPC Worldwide, P.C. et al. v. LegalZoom.com, Inc. et*
8 *al.*, 3:17-cv-07194-MMC (the “Northern District Action”), asserting several claims
9 against LegalZoom and other defendants. (Mot. 2; *see also* Decl. of Michelle C.
10 Doolin (“Doolin Decl.”) ¶ 2, ECF No. 20-2.) LegalForce filed a First Amended
11 Complaint on January 2, 2018. (Mot. 3.) Then, LegalForce subsequently sought
12 leave to amend the First Amended Complaint, which the court rejected due to
13 LegalForce’s failure to file a proposed Second Amended Complaint. (*Id.*) The
14 defendants moved to dismiss the First Amended Complaint. (*Id.*) While
15 LegalZoom’s motion to dismiss was pending, LegalForce renewed its request for
16 leave to amend the First Amended Complaint and voluntarily dismissed every
17 defendant except LegalZoom. (*Id.*) The court then granted LegalZoom’s motion to
18 dismiss the First Amended Complaint for failure to state a claim. (*Id.*) The court
19 granted LegalForce’s request to file a Second Amended Complaint for the sole
20 purpose of curing the deficiencies identified by the court in the order granting
21 dismissal of the First Amended Complaint. (*Id.* at 3–4.)

22 On May 17, 2018, LegalForce filed its Second Amended Complaint. (Doolin
23 Decl. Ex. 1, ECF No. 20-3.) This complaint included no new claims. (Mot. 4.) On
24 the following day, LegalForce filed a motion for leave to file a Third Amended
25 Complaint, which included six additional claims. (Doolin Decl. Ex. 6, ECF No.
26 20-3.) LegalZoom moved to dismiss the Second Amended Complaint and Legalforce
27 filed a statement of non-opposition, and instead, requested the court grant leave to file
28 a Third Amended Complaint. (*See* Doolin Decl. Ex. 8, ECF No. 20-3.)

1 The court denied LegalForce’s motion for leave to amend a Third Amended
2 Complaint, finding that disregarding the Second Amended Complaint in favor of the
3 Third Amended Complaint would “not serve the interests of judicial economy, as it
4 will unnecessarily prolong the pleading stage.” (Doolin Decl. Ex. 8.) Nonetheless,
5 the court provided LegalForce with a second opportunity to oppose LegalZoom’s
6 motion to dismiss the Second Amended Complaint. (Mot. 5.) On July 9, 2018, before
7 the court ruled on the motion to dismiss, LegalForce voluntarily dismissed the Second
8 Amended Complaint. (*Id.*) Without an operative complaint, the court in the Northern
9 District Action closed the case for “statistical purposes.” (Doolin Decl. Ex. 1.)

10 On July 16, 2018, LegalForce filed a complaint against LegalZoom in this
11 Court. (*See generally* Compl., ECF No. 1.) The Complaint contains the same claims
12 for trademark infringement and cyberpiracy that LegalForce asserted in its Third
13 Amended Complaint in the Northern District of California. (*See* Ex. 11, ECF No.
14 20-3.)

15 III. LEGAL STANDARD

16 A district court may transfer an action to any district or division “where the
17 action might have originally been brought” to promote the convenience of the parties
18 and witnesses and the interests of justice. 28 U.S.C. § 1404(a). Section 1404(a)
19 “gives a district court broad discretion to transfer a case to another district where
20 venue is also proper.” *Amini Innovation Corp. v. JS Imports, Inc.*, 497 F. Supp. 2d
21 1093, 1108 (C.D. Cal. 2007); *see also Commodity Futures Trading Comm’n v.*
22 *Savage*, 611 F.2d 270, 279 (9th Cir. 1979) (“Weighing of the factors for and against
23 transfer involves subtle considerations and is best left to the discretion of the trial
24 judge.”).

25 Alternatively, a district court has the inherent power to transfer or dismiss an
26 action if it believes the case arises from judge-shopping. *Alvarado v. Bank of Am.,*
27 *N.A.*, No. CIV. S-08-2862 LKK/DAD, 2009 WL 720875, at *2 (E.D. Cal. Mar. 17,
28 2009) (citing *Hernandez v. City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998)).

1 Pursuant to this district’s Local Rules, “[i]t is not permissible to dismiss and thereafter
2 refile an action for the purpose of obtaining a different judge.” C.D. Cal. L.R.
3 83-1.2.1. Moreover, “[w]henver an action is dismissed by a party or by the Court
4 before judgment and thereafter the same or essentially the same claims, involving the
5 same or essentially the same parties, are alleged in another action, the later-filed
6 action shall be assigned to the judge to whom the first-filed action was assigned.”
7 C.D. Cal. L.R. 83-1.2.2.

8 IV. DISCUSSION

9 The Court finds this case is appropriate for transfer back to the Northern
10 District of California pursuant to both § 1404(a) and the Court’s inherent authority to
11 prevent judge shopping.

12 A. Transfer Pursuant to § 1404(a)

13 To transfer this case to the Northern District of California, the Court must find:
14 1) the transferee court is one where the action “might have been brought,” and 2) the
15 parties’ and witnesses’ conveniences, as well as the interests of justice, favor transfer.
16 *Metz v. U.S. Life Ins. Co.*, 674 F. Supp. 2d 1141, 1145; *see also Hatch v. Reliance Ins.*
17 *Co.*, 758 F.2d 409, 414 (9th Cir. 1985).

18 1. The transferee court is one where the action “might have been 19 brought.”

20 Transferring pursuant to § 1404(a) requires “demonstrating that subject matter
21 jurisdiction, personal jurisdiction, and venue would have been proper if the plaintiff
22 had filed the action in the district to which transfer is sought.” *Metz*, 674 F. Supp. 2d
23 at 1145. Here, subject matter jurisdiction exists because LegalForce’s infringement
24 claims arise under federal law and the remaining claims are a part of the same case or
25 controversy. *See* 28 U.S.C. §§ 1331, 1367. Personal jurisdiction is also proper
26 because both parties’ principal place of business is in California. *See Daimler AG v.*
27 *Bauman*, 571 U.S. 117, 137 (1990); (*see also* Compl. ¶¶ 2, 3.). Lastly, venue is proper
28 in the Northern District of California because both parties assert that a substantial part

1 of the events giving rise to this claim occurred there. (Doolin Decl. Ex. 6.)
2 Accordingly, LegalForce could have brought, and actually did bring, this action in the
3 Northern District of California.

4 **2. Convenience and interests of justice.**

5 As the Northern District of California is a proper venue, as established above,
6 the decision to transfer turns on the convenience of parties and witnesses, and the
7 interests of justice. *See Young Props. Corp. v. United Equity Corp.*, 534 F.2d 847,
8 852 (9th Cir. 1976).

9 **a. Convenience of the parties and witnesses.**

10 Generally, “[t]he weight given to the plaintiff’s choice of forum diminishes
11 when the plaintiff resides outside the chosen forum.” *Siddiqi v. Gerber Prods. Co.*,
12 No. CV 12-1188 PA (RZx), 2012 WL 11922412, at *4 (C.D. Cal. Mar. 26, 2012).
13 Here, LegalForce does not reside in the Central District of California. (Mot. 2.)
14 LegalForce is a Delaware corporation with its principal place of business in Mountain
15 View, California. (*Id.*) Thus, LegalForce’s choice of forum is given minimal weight.
16 Alternatively, the Northern District of California is a convenient forum for both
17 parties, given that LegalForce originally filed this case in the Northern District’s San
18 Francisco division, and LegalZoom is moving to transfer the case back to that district.
19 (Doolin Decl. Ex. 1.) Regarding witnesses, LegalZoom does not anticipate that any
20 witnesses will be called. (Mot. 13.) LegalForce offers nothing more than conjecture
21 and speculation regarding the location of possible witnesses. LegalForce fails to
22 identify the witnesses that would have information sufficient to support its claims and
23 notes only that they would “probably” be found in the Central District of California.
24 (LegalForce’s Opp’n to LegalZoom’s Mot. to Transfer (“Opp’n”) 11, ECF No. 23.)
25 However, to the extent LegalForce has any witnesses, they are more likely located in
26 the Northern District, where LegalForce’s principal place of business is located.
27 Accordingly, transferring this case to the Northern District does not appear to cause
28 inconvenience to the parties or witnesses.

1 **b. The interests of justice favor transfer.**

2 In deciding whether the interests of justice favor transfer to another district
3 court, a court should consider:

- 4 (1) the location where the relevant agreements were negotiated
5 and executed, (2) the state that is most familiar with the
6 governing law, (3) the plaintiff’s choice of forum, (4) the
7 respective parties’ contacts with the forum, (5) the contacts
8 relating to the plaintiff’s cause of action in the chosen forum,
9 (6) the differences in the costs of litigation in the two forums,
10 (7) the availability of compulsory process to compel attendance
of unwilling non-party witnesses, and (8) the ease of access to
sources of proof.

11 *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498–99 (9th Cir. 2000). Since many
12 of the factors are inapplicable to the case at hand, the Court will discuss only the
13 relevant factors.

14 **i. Plaintiff’s choice of forum is a result of judge-**
15 **shopping.**

16 Generally, a “[p]laintiff’s choice of forum, while taken into account, is not a
17 sufficiently strong factor to deny the motion to transfer” venue. *F.T.C. v. Watson*
18 *Pharm., Inc.*, 611 F. Supp. 2d 1081, 1090 (C.D. Cal. 2009). A key “‘interest of
19 justice’ factor is the prevention of forum shopping.” *Wireless Consumers All., Inc. v.*
20 *T-Mobile USA, Inc.*, No. C 03-3711 MHP, 2003 WL 22387598, at *5 (N.D. Cal. Oct.
21 14, 2003). “If there is any indication that plaintiff’s choice of forum is the result of
22 forum shopping, plaintiff’s choice will be accorded little deference.” *Williams v.*
23 *Bowman*, 157 F. Supp. 2d 1103, 1106 (N.D. Cal. 2001). Moreover, “concerns of
24 forum-shopping are potentially present when a plaintiff pursues litigation outside his
25 home district.” *Mitchell v. Deutsche Bank Nat’l Tr. Co.*, No. SAVC 15-01307-CJC
26 (JCGx), 2015 WL 12867746, at *3 (C.D. Cal. Oct. 29, 2015). Forum shopping could
27 reasonably be inferred if the plaintiff files the same or similar case represented by the
28 same law firm in a different district after receiving unfavorable rulings there. *See*

1 *Carrera v. First Am. Home Buyers Prot. Co.*, No. CV 11-10242-GHK (FFMx), 2012
2 WL 13012698, at *6 (C.D. Cal. Jan. 24, 2012); *see also Alexander v. Franklin*
3 *Resources, Inc.*, No. C 06–7121 SI, 2007 WL 518859, at *4 (N.D. Cal. Feb. 14, 2007).
4 “[E]vidence of plaintiff’s attempt to avoid a particular precedent from a particular
5 judge weighs heavily in the context of [the interests of justice] and would often make
6 the transfer of venue proper.” *Wireless Consumers All.*, 2003 WL 22387598, at *5.

7 Here, LegalForce’s actions indicate forum-shopping. LegalForce filed its
8 claims in this district after receiving unfavorable rulings in the Northern District.
9 Judge Chesney granted LegalZoom’s motion to dismiss the First Amended Complaint,
10 eventually allowed a limited revision through a Second Amended Complaint, and
11 denied leave to file a Third Amended Complaint. (Mot. 8.) When LegalForce did not
12 get the result it wanted in the Northern District Action, it dismissed that action and
13 refiled the same case here. (Mot. 8.)

14 LegalForce argues, “[i]f plaintiff is seeking a new judge, defendant also has
15 reasons to reverse-forum shop and be heard before a judge that has once ruled in its
16 favor.” *Shields v. Amerigas Propane, Inc.*, No. 2:15-cv-00754-KJM-EFB, 2015 WL
17 5436772, at *4 (E.D. Cal. Sept. 15, 2015). LegalForce also contends that “the record
18 supports an equal likelihood of forum and/or judge shopping by both parties, weighing
19 neither for nor against transfer.” (Opp’n 13 (quoting *Shields*, 2015 WL 5436772, at
20 *4).) However, unlike *Shields*, the parties in this case did not stipulate to dismiss the
21 Northern District Action. Plaintiff LegalForce, on its own accord, decided to
22 voluntarily dismiss its case. Further, this Court has not issued any orders and has not
23 decided any substantive motions (except for the one currently before this Court).
24 LegalForce’s attempt to find a new court for claims previously rejected by the
25 Northern District Action is not well taken by this Court. Accordingly, this factor
26 weighs in favor of transferring back to the Northern District.

27 ///

28 ///

1 **ii. Difference in cost of litigation in the two forums.**

2 For purposes of judicial economy, a court’s familiarity with the facts of a case
3 and legal issues weigh in favor of transferring to that district. *See Carrera*, 2012 WL
4 13012698, at *6. “[T]his instant case will require consideration of many of the issues
5 considered in [the previous action], . . . [and] [j]udicial resources are conserved when
6 an action is adjudicated by a court that has already committed judicial resources to the
7 contested issues and is familiar with the facts of the case.” *Shields*, 2015 WL
8 5436772, at *6–7 (E.D. Cal. Sept. 15, 2015).

9 Here, LegalForce alleged essentially the same claims based on the same
10 underlying facts as asserted in the Northern District Action. (Mot. 5.) Moreover,
11 since Judge Chesney presided over the matter for nearly 8 months, she is readily
12 familiar with the parties and the facts of this case. Judge Chesney issued numerous
13 substantive orders in that case, and in many instances, attempted to resolve the
14 numerous pleading issues caused by LegalForce’s lack of diligence in properly
15 pleading its case. LegalForce argues that Judge Chesney does not have familiarity
16 with the new claims that were also present in the Third Amended Complaint because
17 she rejected the complaint as premature. (Opp’n 5, 14.) However, Judge Chesney
18 recognized LegalForce’s attempt to waste judicial resources (as it has done in this case
19 as well) by prematurely attempting to file another amended complaint without
20 addressing the deficiencies identified by LegalZoom in the motion to dismiss. *See*
21 Order Den. as Premature Pl.’s Mot. for Leave to File Third Am. Compl., Northern
22 District Action (N.D. Cal. June 20, 2018). That Judge Chesney did not allow
23 LegalForce to plead new causes of action as identified in the proposed Third
24 Amended Complaint does not mean that Judge Chesney was not familiar with the
25 underlying facts of the case.

26 For the reasons discussed above, it is appropriate to transfer this case to the
27 Northern District of California pursuant to U.S.C. § 1404(a).

28 ///

1 **B. Court’s Inherent Power to Prevent Judge-Shopping**

2 Additionally, the Court finds it proper to transfer this case back to the Northern
3 District pursuant to its inherent authority. Courts possess inherent powers that are
4 “governed not by rule or statute but by the control necessarily vested in courts to
5 manage their own affairs so as to achieve the orderly and expeditious disposition of
6 cases.” *Link v. Wabash R. Co.*, 370 U.S. 626, 630–31 (1996). Judge shopping abuses
7 the judicial process and a court may dismiss the action or impose other suitable
8 sanctions. *Hernandez*, 138 F.3d at 398–99. Moreover, “[w]henever an action is
9 dismissed by a party or by the Court before judgment and thereafter the same or
10 essentially the same claims, involving the same or essentially the same parties, are
11 alleged in another action, the later-filed action shall be assigned to the judge to whom
12 the first-filed action was assigned.” C.D. Cal. L.R. 83-1.2.2.

13 Here, LegalForce abused the judicial process by judge-shopping. LegalForce
14 voluntarily dismissed the Northern District Action and refiled the case in this district.
15 LegalForce’s only basis for dismissing its case and refileing in this district is
16 speculation that “Judge Chesney made it clear that she did not wish for this case to
17 come before her.” (Opp’n 5.) However, Judge Chesney closed the case because
18 LegalForce voluntarily dismissed its Second Amended Complaint. *See* Notice of
19 Voluntary Dismissal, Northern District Action (N.D. Cal. July 9, 2018). Without an
20 operative complaint, there is no case or controversy before the court. Based on the
21 Court’s review of the pleadings before this Court and those in the Northern District
22 Action, the only basis the Court can infer from LegalForce’s voluntary dismissal and
23 subsequent refileing in another district is to forum shop. Although the Court is inclined
24 to levy monetary sanctions against LegalForce for its blatant forum-shopping, the
25 Court will instead exercise its inherent authority to transfer this case back to the
26 United States District Court for the Northern District of California.

27 ///

28 ///

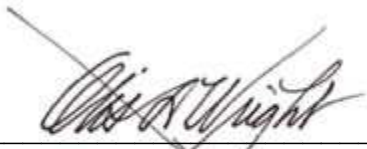
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

V. CONCLUSION

For the reasons discussed above, the Court **GRANTS** LegalZoom’s Motion to Transfer Venue. The Clerk of the Court shall transfer this case to the United States District Court for the Northern District of California.

IT IS SO ORDERED.

November 27, 2018



OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE