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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CALIFORNIA WRITER'S CLUB,

Case No. C-11-02566 JCS

Plaintiff,

v.

**ORDER DENYING DEFENDANT SCOTT
SONDERS' MOTION TO TRANSFER
VENUE [Docket No. 12]**

SCOTT ALIXANDER SONDERS, ET AL.,

Defendant(s)

I. INTRODUCTION

On Friday, September 30, 2011, at 9:30 a.m., a hearing was held on Defendant's Motion to Change Venue to the Central District of California (the "Motion"). In the Motion, Defendant Scott Alixander Sonders ("Sonders") requests that the Court transfer this action to the Federal District Court for the Central District of California pursuant to 28 U.S.C. § 1404(a). The parties have consented to the jurisdiction of a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c). For the reasons stated below, the Motion is DENIED.

II. BACKGROUND

A. Procedural Background

On May 26, 2011, Plaintiff, the California Writers Club ("CWC"), filed a complaint in the United States District Court for the Northern District of California against Defendants Sonders and the California Writers Coalition, Inc. ("Coalition"). Sonders, a pro se defendant, filed the instant Motion on June 21, 2011. The Coalition has not appeared or otherwise responded to the Complaint and the Court entered default against the Coalition on June 28, 2011.

B. The Complaint

In its Complaint, Plaintiff CWC alleges it was founded in 1909 in Alameda, California and was incorporated in 1913. Complaint at ¶¶ 5, 8. According to CWC, its first two branches - the

1 Berkeley and Sacramento branches - opened in 1925. *Id.* at ¶ 5. Subsequently, additional branches
2 have opened throughout California. *Id.* CWC alleges that since its creation it has been run by a
3 Central Board of Directors ("Central Board") and that its corporate structure has not changed even as
4 the number of branches has increased. *Id.* According to CWC, it has used as its corporate business
5 address, P.O. Box 1281, Berkeley, CA, 94701, for decades. *Id.* CWC further claims that it is
6 currently a certified 501c3 nonprofit educational corporation with 18 branches and more than 1,300
7 paying members throughout California. *Id.* at ¶ 8. CWC asserts that it recruits its members through
8 its own events and activities and through advertising, both print and online. *Id.* at ¶ 5.

9 CWC maintains it is the sole owner of U.S. Trademark No. 3,701,007, registered October 27,
10 2009, for its "California Writers Club Sail On" words plus design (logo). *Id.* at ¶ 11. Additionally,
11 CWC asserts it is the sole owner of a U.S. Trademark corresponding to application No. 85/104,452,
12 filed August 10, 2010, for the word mark "California Writers Club." *Id.* at ¶ 12. This trademark was
13 published on March 15, 2011, received no opposition during the publication period, and was
14 subsequently registered within 12 weeks of the date of publication. *Id.* CWC asserts it has been
15 using the "California Writers Club Sail On" logo and "California Writers Club" word mark in the
16 United States in connection with the services listed in the trademark registrations since as early as
17 June 20, 1959. *Id.* at ¶ 13 and Exhibits 3-4. Furthermore, CWC claims its earliest usage of the mark
18 dates back to 1913. *Id.* CWC also asserts that these trademarks are inherently distinctive and have
19 acquired distinctiveness through continuous and widespread use in the United States and worldwide.
20 *Id.* at ¶ 14.

21 The CWC San Fernando Valley branch ("CWC-SFV") was established around 1986 when
22 the San Fernando Valley Writers, a separate entity, entered into a partnership agreement with the
23 CWC Central Board. *See* Complaint at Exhibit 1, p. 1. CWC claims that CWC-SFV is under
24 complete control of CWC and is bound by CWC's policies, procedures and bylaws in accordance
25 with Internal Revenue Service Publication, "Tax-Exempt Status for Your Organization." *Id.* at ¶ 9.
26 Furthermore, CWC maintains that CWC-SFV publishes an online newsletter entitled "The Valley
27 Scribe." *Id.* CWC also claims that Defendant Sonders, a resident of Sherman Oaks, California, was
28 the president of CWC-SFV from 2006 to 2008. *Id.* at ¶ 6.

1 CWC alleges that as early as April 2008 Sonders founded and was President of Defendant
2 Coalition and that he subsequently held the position of Executive Director of the Coalition. *Id.*
3 CWC alleges that the Coalition is a California corporation authorized to do business in California
4 with its principal place of business at P.O. Box 17897, Encino, California. *Id.* CWC further alleges
5 that the Coalition's registered agent is Bruce Zacuto, located at business address 5895 White Oak,
6 Encino, California, 91416. *Id.* According to CWC, the Coalition claims to be a non-profit
7 organization and holds various activities and events for its over 800 members, such as monthly
8 meetings, talks by high-profile speakers, networking events, open mics, and critique groups. *Id.*
9 CWC also asserts that the Coalition publishes an online newsletter, entitled "The Scribe." *Id.*

10 CWC claims that in October 2008 it became aware that CWC-SFV had suffered a sharp
11 decline in membership renewals and events/activities. *Id.* ¶ 21. According to CWC, even Sonders,
12 who was President of CWC-SFV at the time, did not renew his membership to CWC-SFV. *Id.*

13 CWC asserts that in January 2009, Sonders declared to the CWC Central Board in an email
14 that he was resigning from his position as President of CWC-SFV and dissolving his membership
15 agreement with CWC.¹ *Id.*; *See also* Complaint at Exhibit 1.

16 CWC claims that in June 2009 it became aware that Sonders had created the Coalition while
17 he was the President and Executive Director of CWC-SFV. *Id.* at ¶ 15. CWC alleges that Sonders,
18 while he was President of CWC-SFV, used CWC's funds to pay for the Coalition's incorporation
19 fees. *Id.* at ¶ 22. CWC asserts that Sonders recruited new Coalition members from the San
20 Fernando Valley and greater Los Angeles areas and also directly from CWC-SFV and CWC-West
21 Valley branch membership rosters. *Id.* at ¶ 15. CWC claims that Sonders and the Coalition
22 organized the Coalition's events through its own website and other websites such as Facebook.com
23 and Google.com. *Id.* CWC claims that various pages from these website and from the Coalition's
24 publication, "The Scribe," feature prominently CWC's name and its registered trademark, "California
25 Writers Club Sail On." *Id.* CWC maintains that neither Sonders nor the Coalition were given
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27
28 ¹The email that is attached to the Complaint is styled as a "Declaration of Independence" on the
part of a group that calls itself the "San Fernando Valley Writers." This group sets forth a list of
grievances against CWC and states that it is terminating its association with CWC and returning to the
independent status it maintained before 1986 when it became CWC-SFV.

1 authorization to use CWC's name or trademarks in connection with the Coalition. *Id.*

2 CWC claims that in September 2009 it sent Sonders and the Coalition a cease-and-desist
3 letter informing Defendants of the alleged infringement and demanding they immediately
4 discontinue all usage of CWC trademarks and property. *Id.* at ¶ 16 and Exhibit 6. CWC further
5 claims that in December 2009, the then-President of the Coalition sent a letter in response that
6 acknowledged receipt of CWC's September 2009 letter. *Id.* at ¶ 17. CWC alleges it sent Sonders
7 another cease-and-desist letter in December 2009, demanding his response and compliance with the
8 September 2009 letter. *Id.* at ¶ 21 and Exhibit 6. CWC also asserts that in August 2010 it sent a final
9 cease-and-desist letter to Sonders and the Coalition, this time through its legal counsel. *Id.* at ¶ 18.

10 CWC alleges that despite knowledge of CWC's trademarks, Defendants continue to
11 intentionally use CWC's "California Writers Club" and "California Writers Club Sail On"
12 trademarks. *Id.* at ¶ 19. Furthermore, CWC believes that the Coalition applied for and received the
13 Los Angeles Fictitious Business Name (FBN) "California Writers Club." *Id.* CWC believes that
14 Defendants are likely to expand their willful and unauthorized use of CWC's trademarks and will
15 continue to unfairly compete with CWC by using these marks, unless restrained by the Court. *Id.* at ¶
16 20. CWC also alleges that despite its demands in the September and December 2009 letters and
17 other informal requests, Sonders has refused to return CWC property, including monies, branch
18 records, membership rosters and other trade secrets, and other personal property. *Id.* at ¶ 21.

19 Based on the factual allegations summarized above, CWC asserts the following claims: 1)
20 Federal trademark infringement under 15 U.S.C. §§ 1114, et seq., 15 U.S.C. §§ 1065, et seq.; 2)
21 Federal laws of common law trademark and unfair competition, 15 U.S.C. §§ 1125(a) et seq.; 3)
22 violation of California Business and Professions Code §§ 17200 et seq.; 4) Federal copyright
23 infringement, 17 U.S.C. §§ 101 et seq.; 5) Federal theft of trade secret, 18 U.S.C. § 1832; 6) Federal
24 false designation of origin, Trademark Act Section 2(a), 15 U.S.C. § 1125(a); 7) California
25 embezzlement, C.C.P. §§ 503-515; and 8) California fraud, C.C.P. § 430.10(g), § 930. *Id.* at ¶ 1.

26 **C. The Motion**

27 In the Motion, Sonders maintains that even though venue is proper in the Northern District of
28 California, transfer to the Central District is appropriate because: (1) Sonders is disabled and resides

1 in the Central District, (2) many witnesses and pieces of evidence are located in the Central District,
2 (3) the alleged tortious conduct occurred in the Central District and the only connection this lawsuit
3 has with the Northern District is it is where Plaintiff and Plaintiff's counsel reside, and (4) the action
4 could have been brought in the Central District. Motion 1-2; Sonders' Memorandum of Points and
5 Authorities in Support of Motion ("MPA") (Dkt. No. 13) 1.

6 In support of his contention in the Motion that he suffers from a physical disability, Sonders
7 provides a declaration in which he states he is currently on Social Security Disability and has been
8 issued a California DMV handicapped placard due to his physical disability. Declaration of Scott
9 Sonders in Support of Motion ("Sonders Decl.") (Dkt. No. 14) at ¶ 4.

10 With respect to witnesses, Sonders states that he expects seven witnesses to testify in this
11 case, all of whom reside in the Central District and "have jobs, careers, families, and other
12 responsibilities in Los Angeles that prevent them from traveling to San Francisco" to participate in
13 this case.² *Id.* at ¶¶ 2-3. Regarding the evidence, Sonders argues that all relevant documents and
14 records are located at Defendants [sic] principal place of business in the Central District. MPA 4.

15 Sonders asserts that Plaintiff's choice of forum should not be given substantial weight
16 because the alleged conduct in the Complaint lacks any significant contact with the Northern District
17 other than the fact it is where Plaintiff and Plaintiff's counsel resides. Sonders argues that
18 convenience of counsel is irrelevant in a venue motion (citing *Solomon v. Continental American Life*
19 *Ins. Co.*, 472 F.2d 1043, 1047 (3rd Cir. 1973)). Sonders also claims that he maintains no contacts in
20

21 ²Sonders claims those witnesses and their expected testimony are:
22 a. Pauline Williams: President of the Coalition, and a resident of Los Angeles
23 County, will attest to how long Exhibit 5 of Plaintiff Allegations existed and why.
24 Will testify regarding Casey Wilson, the "unregistered SFV, and the "Club" Central
25 Board allegations in the complaint.
26 b. Carol Wood, President of the CWC-SFF, and a resident of Los Angeles County,
27 will testify to the origins of the membership dispute.
28 c. Mike Austin: A resident of the county of Los Angeles, will testify to the tortious
conduct of the Club Central Board Officers.
d. Leorna Smalley, James Gannatta and Ron Gregus, all residents of Los Angeles
County, will testify regarding elections, bookkeeping and membership related issues.
e. Matt Schliessman, VP of the SFV Coalition, a resident of the County of Los
Angeles, will discuss the Club Central Board and membership issues.

Sonders' Decl. at ¶ 2.

1 the Northern District other than his "rocky business relationship with [CWC]." MPA 3.

2 Finally, Sonders claims all of the incidents that are the subject of this case occurred in the Central
3 District. *Id.* at 4.

4 **D. Sonders' Letter Brief**

5 On June 29, 2011, before Plaintiff filed its Opposition brief, Sonders filed a two-page
6 supplemental letter brief, offering additional exhibits in support of his Motion ("Sonders Letter
7 Brief") (Dkt. No. 19). The letter is, in large part, a response to issues that were raised in an email
8 dated June 23, 2011 from CWC's counsel, Ray Shahani, to Sonders. *See* Sonders' Letter Brief,
9 Exhibit 1(June 23, 2011 email). In the email, Mr. Shahani states that venue is proper for the
10 following reasons: 1) CWC resides in the Northern District and therefore has been damaged in this
11 district; 2) CWC's corporate officers, who are the witnesses to Sonders' alleged wrongdoing, are in
12 the Northern District; 3) Sonders held the position of President of CWC-SFV and as such was
13 contractually bound to attend Central Board meetings; and 4) Sonders in fact attended several
14 meetings of the Central Board in 2007.

15 In the Letter Brief, Sonders challenges CWC's assertion that it "resides" in the Northern
16 District, pointing to the P.O. Box address listed as CWC's address on the Patent and Trademark
17 offices' certificate of registration for the CWC logo. *Id.* at Exhibit 2. According to Sonders, CWC
18 cannot "reside" in a post office box. Sonders' Letter Breif 1. Instead, Sonders claims that CWC only
19 exists through its branch organizations, half of which are located in Southern California. *Id.* Further,
20 Sonders claims that the only branches with any connection to the allegations in the Complaint are
21 located in Southern California. *Id.*

22 Second, Sonders challenges CWC's assertion that the alleged infringements and "wrong
23 doings" have caused damage in the Northern District. *Id.* Sonders claims that CWC has contradicted
24 itself because it repeatedly claims in its Complaint that the Los Angeles based Coalition infringed on
25 the Los Angeles based CWC-SFV – both of which are in the Central District. *Id.* at 1-2.

26 Third, Sonders argues that CWC attempts to mislead the Court in stating that Sonders has
27 attended CWC meetings in Northern California. Sonders argues that two of the three Central Board
28 meetings he attended occurred in Riverside and Orange Counties, and that this is provable by the

1 minutes of those meetings. *Id.* at 2. Sonders does not provide copies of the minutes, however.

2 Fourth, Sonders challenges CWC's assertion that all of the witnesses are based in Northern
3 California because that is where the corporate offices are based, claiming that there are at least 11
4 witnesses that reside in the Central District. *Id.* Specifically, Sonders provides page three of the
5 January 2009 email (described above) listing 11 members (including Sonders) of the San Fernando
6 Valley Writers who stated that they "absolved their allegiance" to the CWC Central Board. *See Id.*
7 at Exhibit 3. Additionally, Sonders provides a draft of a witness list that includes nine individuals,
8 seven of which were previously named in his Motion. *Id.* at Exhibit 4. The additional witnesses are
9 Leila Morris and Casey Wilson. *Id.* Sonders claims that Leila Morris is the Secretary of the San
10 Fernando Valley Writers, and will testify about CWC "harassment." *Id.* Sonders claims that Casey
11 Wilson resides in Ridgecrest, which is closer to Los Angeles than San Francisco. *Id.* This witness
12 list also states generally that more than one dozen witnesses for the Defendant reside in Los Angeles
13 and "most" of them are elderly and "many" have disabilities. *Id.*

14 Furthermore, the witness list also states that "Defendant, Scott Sonders, is currently and
15 verifiably on Social Security, has mobility issues, and have been issued a CA-DMV 'placard'
16 indicating such." *Id.* Sonders further supports his disability claim by providing a copy of his
17 California DMV issued handicapped parking placard. *Id.* at 2 and Exhibit 7.

18 Sonders also argues that Shahani is engaging in intentional misconduct because he knows
19 that Sonders is "barely surviving on Social Security," and therefore CWC will be unable to recover
20 any of its claimed damages. *Id.* at 2. In support of this contention, Sonders provides a copy of the
21 Coalition's Annual Registration Renewal Fee Report, indicating the Coalition's total assets are
22 \$500.00. *Id.* at Exhibit 6.

23 In the Letter Brief, Sonders also claims that Shahani has threatened Sonders and is trying to
24 force a settlement by coercion. Sonders Letter Brief 1. He claims that Shahani has shown a lack of
25 due diligence, has engaged in intentional misconduct, and has deliberately misrepresented material
26 evidence. *Id.*

27 **E. CWC's Opposition**

28 CWC filed its Opposition to Sonders' Motion for Change of Venue ("Opposition") on August

1 19, 2011. In its Opposition, CWC argues that transfer to the Central District is inappropriate
2 because the Northern District is where a substantial part of the events giving rise to the claim
3 occurred. Opposition 6. Further, CWC claims that all 18 branches are subservient to CWC, and
4 must abide by its Constitution, bylaws, policies and procedures. Declaration of Robert A. Garfinkle
5 in Support of Opposition ("Garfinkle Decl.") (Dkt. No. 26) at ¶¶ 6, 20. CWC argues that Sonders,
6 by becoming a member of CWC and an officer of CWC-SFV, agreed to the terms of the CWC
7 Constitution, bylaws, policies and procedures and therefore submitted to the jurisdiction and venue
8 in the Northern District of California for disputes arising out of CWC business. Opposition 6.
9 According to Robert A. Garfinkle, the current CWC President, the wording of CWC's bylaws during
10 the time Sonders was on the Central Board stated, "[t]he Central Board shall meet four times yearly,
11 one meeting being the general membership meeting required by California state law." Garfinkle
12 Decl. at ¶ 6. CWC claims that Sonders personally traveled to Northern California to attend quarterly
13 Central Board meetings as part of his duty to the CWC corporate body. Opposition 6. Garfinkle
14 states that Sonders attended the following meetings: the April 15, 2007 meeting at the Clarion Hotel
15 in San Jose; the July 15, 2007 meeting at the Fairfield Inn in San Jose, wherein Sonders was elected
16 Vice President of CWC; and the October 21, 2007 meeting at the Wyndham Inn in San Jose. *Id.* at
17 ¶¶ 9-12. Minutes from these meetings are attached to Garfinkle's Declaration as Exhibits 2-4.

18 CWC also argues that transfer is inappropriate because a plaintiff's choice of forum should
19 not be disturbed. Opposition at 8. First, CWC asserts that its choice of forum is presumptively
20 reasonable because several CWC officers and board members, including Garfinkle, Kathy Urban
21 and George Dave, reside within an hour's travel of the San Francisco courthouse. *Id.* (citing *Park v.*
22 *CAS Enterprises, Inc.*, Case No. 08-cv-0385 (Dkt. No. 9), at *3 (S.D. Cal. June 9, 2008)). Second,
23 CWC claims that Sonders ignores the nature of the allegations in the Complaint. *Id.* Specifically,
24 CWC claims that the alleged trademark and copyright infringement is inherently portable because it
25 is occurring online and is available to anyone who accesses Sonders' websites on the internet.
26 Therefore, CWC argues that due to this connection to the Northern District, its choice of forum
27 should not be overturned. *Id.* CWC acknowledges that a plaintiff's choice of forum may be afforded
28 less deference where it is found that the plaintiff has engaged in forum shopping but contends that

1 there is no evidence, nor has Sonders alleged, that CWC has engaged in forum shopping. *Id.* (citing
2 *Royal Queentex v. Sara Lee Corp.*, 2000 U.S. Dist. LEXIS 10139 (N.D. Cal. Mar. 1, 2000) (noting
3 that a plaintiff's choice of forum is accorded less weight where it is apparent plaintiff engaged in
4 forum shopping)).

5 CWC further asserts that transfer is inappropriate because it would merely shift the
6 inconvenience from one party to the other. *Id.* at 10. CWC claims that most of the Central Board
7 members reside within one hour of the San Francisco courthouse and transfer would only shift the
8 burden of inconvenience to plaintiff. *Id.* Additionally, CWC challenges Sonders' claim of having a
9 physical disability, submitting declarations of current and former CWC Central Board members who
10 claim they have never known Sonders to be physically or mentally disabled. Garfinkle Decl. at ¶¶
11 22-24 ("I have always known Sonders to be an energetic, fully-functioning individual. . . .The
12 photograph which Sonders himself uses for personal purposes . . . seems more acrobatic than might
13 be considered possible by a physically handicapped person[.]"); Declaration of Edward C. Wilson
14 AKA Casey Wilson in Support of Opposition (Dkt. No. 27) at ¶¶ 3-5 ("I have never seen Sonders in
15 a wheelchair. I know of no mobility issues[.]"); Declaration of Pauline Williams in Support of
16 Opposition (Dkt. No. 28) at ¶¶ 3-4 ("I currently have no knowledge that Sonders is disabled or uses
17 a disabled parking placard."). CWC further challenges Sonders' physical disability by claiming that
18 the copy Sonders provided of his handicapped placard is incomplete, cutting off the dates and
19 showing a personal address for Sonders that is not his current residence. MPA 14.

20 In response to Sonders' argument that transfer is appropriate for the convenience of the
21 witnesses, CWC claims that Sonders has failed to provide sufficient information about his witnesses
22 to allow the court to make a determination of how important their testimony will be. Opposition 11.
23 CWC asserts that Sonders' sole declaration in support of the Motion does not explain why his
24 witnesses may be called to testify on his behalf. *Id.* CWC urges that the moving party may not rely
25 on vague generalizations of inconvenience, but instead must demonstrate, through affidavits or
26 declarations, who the key witnesses are and the general substance of their testimony. *Id.* at 10-11.
27 CWC further asserts that where a moving party has failed to provide sufficient information for the
28 court to determine the importance of the witnesses' testimony, the motion to transfer should be

1 denied. *Id.* at 11. (citing *Day v. Harrah's Hotel & Casino Las Vegas*, 2010 U.S. Dist. LEXIS
2 116817, at *19-20 (S.D. Cal. Nov. 2, 2010)). CWC also provides a list of its own potential witnesses
3 that may have knowledge relating to the allegations.³ *Id.* at 11-12.

4 CWC further argues that transfer to the Central District is improper because its
5 embezzlement, unfair competition, breach of contract, breach of fiduciary duties, and fraud claims
6 are based on the embezzlement of funds from CWC, which occurred specifically in the Northern
7 District. *Id.* at 12-13. In particular, because the CWC-SFV branch is under complete control of the
8 Central Board, the alleged embezzled funds belong, at least in part, to the CWC corporate body,
9 whose corporate address is in Berkeley, California. *Id.* at 13.

10 Plaintiff also claims that there is no expected reduction in litigation costs by transferring to
11 the Central District. *Id.* at 13. CWC claims that because witnesses and parties are scattered
12 throughout California, travel costs to either venue would be about the same. *Id.*

13 CWC also argues that Sonders' Letter Brief should be stricken or otherwise ignored in
14 deciding this Motion because it is an improper ex parte communication with the Court and a copy
15 was never served on CWC. *Id.* at 5; First Amended Declaration of Ray K. Shahani in Support of
16 Opposition ("Shahani Decl.") (Dkt. No. 30) at ¶ 5-6. Additionally, CWC argues that the Letter Brief
17 should also be stricken or ignored because it was an improper filing in support of his Motion, in
18 violation of Fed. R. Civ. P. 4(a). Opposition 5-6.

19 Lastly, CWC claims that Sonders has acted in bad faith in his communications with CWC's
20 counsel, Ray Shahani. *Id.* at 14. CWC claims that Sonders has made threats of filing various
21 motions with the sole purpose of increasing CWC's costs and frustrating CWC's efforts to enforce its
22 intellectual and other rights. *Id.* Shahani claims that he received an email from Sonders in which
23 Sonders demanded \$10,000 if CWC filed an opposition to this Motion. Shahani Decl. at ¶ 3.
24 Shahani also states that Sonders threatened to increase his demand an additional \$5,000 "for every
25

26
27 ³Plaintiff lists the following individuals as potential witnesses: Robert A. Garfinkle, current
28 CWC President; David George, former Central Board Membership chair; Kathy Urban, will testify
about financial issues with regard to membership dues and unauthorized expenditures; Barbara Truax,
former CWC President; David LaRoche, Central Board "Policy and Procedures" chair; Anthony
Folcarelli, former CWC President while Sonders was VP; Dave Sawle, former CWC-Berkely branch
President; Margie Lee Webb, former Central Board Representative; Nancy Alexander, Gil Mansergh,
Carol O'Hara, ADA considerations at Asilomar conferences; Jay-Marie Garcia and/or Ron Garcia, from
Jay-Marie Garcia Insurance Agency; and Joyce Krieg, Central Board member. Opposition at 11-12.

1 related and future action Sonders makes" and has also threatened to file an Answer and counterclaim
2 against CWC and demand damages for one million dollars. *Id.* at ¶¶ 3-4. Furthermore, Shahani
3 claims that Sonders has threatened to abuse the legal and discovery process by "issuing witness
4 subpoenas for numerous past & present members of the Club" if the case is not quickly settled to his
5 satisfaction. *Id.* at ¶ 3. Shahani has attached copies of these email communications to his declaration
6 as Exhibits 1-2. CWC requests that the Court recognize that Sonders has filed this Motion to
7 improperly interfere with the current action and unfairly increase the costs of litigation. Opposition
8 14.

9 **F. September 15, 2011 Pleading**

10 On September 15, 2011, Sonders filed an "Answer to Plaintiff's Opposition in Support of
11 Motion for Change of Venue to the Central District of California," which the Court construes as his
12 "Reply" brief. Sonders first argues that CWC's Opposition should be disregarded in deciding this
13 Motion because its contents are "irrelevant, scandalous, inflammatory, and . . . false[.]" Reply 2.
14 Sonders also renews his argument that transfer is proper in this case because the Northern District
15 lacks any significant contact with the conduct alleged in the Complaint *Id.* at 3. In support, Sonders
16 now claims that CWC has committed perjury by stating its corporate address has been for decades a
17 post office box in Berkeley, California. *Id.* at 2. Instead, Sonders claims, for numerous recent years,
18 CWC "has posted in official government documents addresses as various as Ridgecrest, CA and
19 Laguna Niguel, CA - both of which are closer to the Central District." *Id.* In further support,
20 Sonders files an additional declaration ("Sonders Reply Decl.") (Dkt. No. 35), to which he attaches:
21 1) a printout from the California Secretary of State's website of a page indicating that CWC's agent
22 for service as of January 2009 is located in Laguna Niguel, and 2) a screenshot of the Attorney
23 General's website showing what appears to be a charity registration record for "Ridge Writers," with
24 an address listed in Ridgecrest, California. Sonders' Reply Decl. at Exhibits 1-2.

25 Sonders renews his argument that transfer is appropriate for the convenience of his
26 witnesses. Reply 3. He now claims that there are 24 "material witnesses" that reside in the Central
27 District, whereas the CWC has only listed two witnesses based in the Northern District. *Id.* See
28 Sonders Reply Decl. at Exhibit 3 (list of 24 witnesses).

1 In furtherance of his disability claim, Sonders has submitted his own Reply declaration, the
2 declarations of Bruce Zacuto and Ceri Williams, and additional pieces of evidence. In his
3 declaration, Sonders states he is legally disabled, that everyone who "truly knows" him knows he is
4 disabled, and that he has extensive medical documentation of his disabilities. Sonders' Reply Decl.
5 at ¶¶ 4-6. Sonders also states that the CWC declarants were mistaken in their claims about Sonders'
6 physical state. *Id.* at ¶¶ 17, 23-24.

7 Specifically,

8 Pauline [Williams] seems to have a poor memory. . . . She has seen my [d]isabled
9 [p]lacard on many occasions. She knows well that I am [d]isabled. . . .[Casey]
10 Wilson does not actually "know" me. He has only momentarily seen me. . . .He
11 could not pick me out of a line-up. He. . . mistakenly describ[ed] me not from
12 personal experience but from his inaccurate observation of a very hazy and
20-year old photo. . . .[Robert] Garfinkle does not actually "know" me. He has
only momentarily seen me. . . .We have never had a one-on-one, in person
conversation. . . . [Williams, Wilson and Garfinkle have] no capacity to evaluate
my physical condition but declare[] under oath otherwise.

13 Sonders Reply Decl. at ¶¶ 17, 23-24. Bruce Zacuto states he has known Sonders for 15 years and
14 has personally witnessed Sonders' several disabilities over the past many years. Declaration of
15 Bruce Zacuto in Support of Motion ("Zacuto Decl.") (Dkt. No. 36) at ¶¶ 3-4. He also claims that he
16 volunteered to physically assist Sonders at CWC meetings and with many other ordinary tasks,
17 including driving. *Id.* at ¶¶ 7-8. Finally, Zacuto states he has seen Sonders' health increasingly
18 deteriorate since the filing of CWC's Complaint. *Id.* at ¶ 9.

19 The declaration of Ceri Williams states that Williams has known Sonders for 24 years and
20 has personally witnessed Sonders' declining health and several disabilities, and that his health has
21 worsened since the filing of CWC's Complaint. Declaration of Ceri Williams in Support of Motion
22 ("C. Williams Decl.") (Dkt. No. 37) at ¶¶ 3, 5, 10. Williams also claims that Sonders has a disabled
23 parking placard which he received after "rigorous medical examination" by state-licensed
24 physicians. *Id.* at ¶ 4. Williams further states that Sonders rarely leaves his home and that Williams
25 assists Sonders with tasks and chores. *Id.* at ¶¶ 7-8, 11. Finally, the declaration also claims that
26 Williams is the author of the photograph relied on by the CWC declarants to judge Sonders' health,
27 and that said photograph is 20 years old. *Id.* at ¶¶ 13-14.

28 In further support of his physical disability, Sonders has provided a letter from a doctor that

1 reads as follows:

2 Honorable Judge,

3 This letter is to request that there be a quick resolution to the case against Mr.
4 Sonders. The enormous stress from this law suit is having an adverse effect upon his
5 health, both physically and mentally. Due to his condition, Mr. Sonders is unable to
6 travel more than 25 miles from his home. If he must report to court to settle this
7 matter he will need for the case to be transferred to the Court House in Los Angeles.
8 Thank you for your attention to this court case.

9 Sincerely,

10 John H(redacted) M.D.

11 Sonders' Reply Decl. at Exhibit 4-A. Sonders also provides an additional copy of his handicapped
12 parking placard and a letter from the Social Security Administration to Sonders indicating that
13 Sonders receives SSI benefits. *Id.* at Exhibit 4-B and 4-C.

14 Also in his Reply, Sonders for the first time makes the argument that transfer is warranted
15 because he will face financial hardship if he is required to litigate in the Northern District. Reply 3.

16 Sonders also argues for the first time that CWC has failed to establish that personal
17 jurisdiction exists in the Northern District. *Id.* at 4.

18 Finally, in his declaration, Sonders asserts that CWC's complaint is a sham and the case
19 should be dismissed, that CWC has claimed breach of contract but no contract actually exists, that
20 Sonders has "Absolute Immunity from any perceived liability pursuant to Section 720-a of the not-
21 for-profit corporation law," and that CWC's counsel, Ray Shahani, has made numerous threats
22 against Sonders, including threatening to sue Sonders' friends if CWC is unable to collect damages
23 from Sonders. Sonders' Reply Decl. at ¶¶ 9-15.

24 **III. ANALYSIS**

25 **A. Consideration of Sonders' Letter Brief and Late Reply Brief.**

26 As a preliminary matter, the Court addresses CWC's contention that Sonders' Letter Brief
27 should be stricken or otherwise disregarded in deciding this Motion because it was an improper ex
28 parte communication with the Court and an improper filing in support of the Motion. The Court also
29 addresses the fact that Sonders filed his Reply brief on September 15, 2011, 20 days after the filing
30 deadline set by the Court. *See* Order re Motion for Extension of Time (Dkt. No. 22).

The Court will take Sonders' Letter Brief and Reply into consideration in deciding this

1 Motion because Sonders is a pro se defendant and CWC will not suffer any prejudice as a result.
2 Courts have routinely held that pro se parties should be afforded special leniency with respect to
3 procedural matters. *See Haines v. Kerner*, 404 U.S. 519, 520-521 (1972) (pro se complaint is held to
4 less stringent standard than formal pleadings drafted by lawyers); *Boydston v. Asset Acceptance*
5 *LLC*, 496 F.Supp.2d 1101, 1106 (N.D. Cal. 2007) (“The Court must construe a pro se litigant’s
6 pleadings liberally.”). Here, Sonders failed to follow the Local Rules by filing what amounted to a
7 supplemental brief in support of the Motion with his Letter Brief, failing to serve the Letter Brief on
8 Plaintiff, and filing his Reply brief several weeks late. Nonetheless, CWC received notice of the
9 Letter Brief when it was filed by the Court over seven weeks before CWC's opposition was due and
10 had sufficient time to respond to Sonders' additional arguments in its Opposition brief. Moreover,
11 the late Reply brief was filed several weeks before the Motion hearing and CWC had an opportunity
12 to address Sonders' arguments at oral argument. Therefore, the Court concludes that CWC will not
13 be prejudiced by its consideration of these pleadings.

14 **B. Legal Standard**

15 Pursuant to 28 U.S.C. § 1404(a), a case may be transferred to any district where venue is
16 proper “[f]or the convenience of parties and witnesses, in the interest of justice[.]” A party seeking
17 transfer must make “a strong showing . . . to warrant upsetting the plaintiff's choice of forum.”
18 *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986). The district
19 court has discretion to transfer cases based on the individualized facts of each case and
20 considerations of convenience and fairness. *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th
21 Cir. 2000). In determining whether to transfer an action under § 1404(a), courts may consider the
22 following factors:

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

27 *Id.* at 498-499.

28

1 **C. Whether the Action Should be Transferred.**

2 Sonders argues that this action should be transferred because he resides in the Central
3 District and is physically disabled, many witnesses and pieces of evidence are located in the Central
4 District, and Plaintiff's claims have little connection with the Northern District other than the fact
5 that it is where CWC and its counsel are located. Having reviewed the submissions of the parties
6 and considered the factors listed above, the Court concludes that although venue is proper in the
7 Central District of California, Sonders has not made an adequate showing that the convenience of
8 the parties and witnesses, the contacts with the forums and the access to proof are significant enough
9 to upset CWC's choice of forum.

10 **1. Whether Venue is Proper in the Central District of California**

11 Pursuant to 28 U.S.C. § 1404(a), a case may be transferred only to a venue where the case
12 could have been brought. Here, CWC does not dispute that venue is proper in the Central District
13 and the Court agrees. Under § 1391(b) venue is proper in "(1) a judicial district where any
14 defendant resides . . . , (2) a judicial district in which a substantial part of the events or omissions
15 giving rise to the claim occurred, or a substantial part of property that is the subject of the action is
16 situated" Similarly, under 28 U.S.C. § 1400(a), "[c]ivil actions, suits or proceedings arising
17 under any Act of Congress relating to copyrights . . . may be instituted in the district in which the
18 defendant or his agent resides or may be found." As Sonders resides in the Central District, venue is
19 proper in that district. Therefore, the Court considers the factors listed above to decide whether a
20 transfer to the Central District of California is appropriate.

21 **2. Convenience of the Parties**

22 The Court recognizes the inconvenience imposed on parties forced to litigate away from their
23 home jurisdiction. However, the Court will not transfer a case that merely shifts the inconvenience
24 to the other party. *U.S. v. Covenant Care, Inc.*, 2003 U.S. Dist. LEXIS 19489, at *2 (N.D. Cal. Sep.
25 8, 2003). The defendant must be able to make a strong showing of inconvenience in order to upset
26 the plaintiff's choice of forum. *Decker Coal Co.*, 805 F.2d at 843. Here, Sonders claims this case
27 should be transferred based on the convenience of the parties because he suffers from a physical
28 disability and faces financial hardship.

1 **a. Sonders' Physical Disability**

2 "[Under 28 U.S.C. § 1404(a),] the medical condition of a party. . . , and the potential danger
3 posed if such persons are required to travel, are considerations that can be weighed by the court in
4 determining the appropriateness of transferring venue." *Nature Path, Inc. v. Howell*, 2009 U.S. Dist.
5 LEXIS 114282, *15-16 (D. Idaho Dec. 8, 2009) (citing *Cohen v. State Farm and Cas. Co.*, 2009
6 U.S. Dist. LEXIS 77758, *14-15 (E.D. Cal. Aug. 13, 2009)). However, courts have generally
7 maintained a high standard of proof and persuasion in making transfer determinations based on a
8 party's medical condition. *See, e.g., Nature Path*, 2009 U.S. Dist. LEXIS 114282; *XCEL Data*
9 *Systems, Inc. v. Best*, 2009 U.S. Dist. LEXIS 35013, (E.D. Cal. Apr. 7, 2009). As discussed below,
10 the Court is not persuaded that Sonders' asserted physical disability justifies a transfer in this case.

11 Where a party's medical condition is at issue in making the determination as to whether a
12 transfer under § 1404(a) is appropriate, courts have declined to attach great weight to a party's
13 medical condition where there was not clear evidence of a severe disability. For example, in *Nature*
14 *Path*, 2009 U.S. Dist. LEXIS 114282, at *10-11, the Defendant sought to dismiss for improper
15 venue, or in the alternative, transfer venue from Idaho to California.. The defendant argued that
16 transfer was appropriate, in part, because she was "diagnosed with an aggressive, inflammatory,
17 intraductal breast cancer at an advanced stage," and according to a letter from her doctor, "she is
18 unable to travel or work (presumably including having to defend a civil law suit as a pro se
19 defendant) without 'causing severe consequences.'" *Id.* at *15. In denying the defendant's motion to
20 transfer, the court reasoned that although a party's medical condition is a consideration, the medical
21 information was not provided in an admissible form, by way of affidavit or otherwise. *Id.* at *16-17.
22 Furthermore, the doctor's note suggested that the defendant would not be able to defend herself in
23 general, whether the case was in Idaho or California. *Id.* at *16.

24 Similarly, in *XCEL Data Systems*, 2009 U.S. Dist. LEXIS 35013, at *13-14, the defendant
25 claimed transfer was appropriate because he suffered from "progressive neurological disorder known
26 as multifocal motor neuropathy that requires four or five consecutive days of intravenous treatment
27 every four weeks that is closely monitored by a trained IV nurse." The defendant's doctor wrote a
28 letter stating, "[the defendant's] insurance provider likely will not make arrangements for treatment

1 in California and. . . missing regularly scheduled treatment is detrimental to [his] health." *Id.* at *14.
2 The doctor further explained that the defendant was significantly impaired with weakness in his
3 upper extremities and was unable to perform routine activities of daily living without support from
4 his wife. *Id.* While the court recognized the inconvenience that the defendant would endure, it was
5 determined that his disability did not warrant a transfer. *Id.* at *15. The court reasoned that the
6 defendant failed to provide any evidence from his insurance carrier or doctor that treatment could
7 not be performed in California. *Id.* Furthermore, the court claimed that hearings, appearances and
8 trial could be scheduled in a manner to accommodate his treatment schedule. *Id.*

9 Here, Sonders has not provided information as to the precise nature of his disability.
10 Therefore, the Court concludes this factor does not warrant a transfer to the Central District.
11 Nonetheless, the Court is sensitive to the fact that conducting proceedings in the Northern District
12 may impose some burden on Sonders. Therefore, Sonders will be permitted to attend all pretrial
13 proceedings, other than evidentiary hearings, telephonically.⁴

14 **b. Sonders' Financial Situation**

15 Next, the court addresses Sonders' assertion that the case should be transferred in view of his
16 current financial situation. Although "the parties' relevant financial position is not entitled to great
17 weight," it is a relevant consideration in determining whether a § 1404 transfer is appropriate.
18 *Brackett v. Hilton Hotels Corp.*, 88 U.S.P.Q.2d 1012, 1019 (N.D. Cal. 2008) (denying defendant's
19 motion to transfer and finding that where plaintiff was an individual artist and defendant was a
20 multinational corporation, the relative financial abilities of the parties weighed against transfer). In
21 his Reply, Sonders argues that he will face financial hardship if he is required to litigate in the
22 Northern District of California. Reply 3. He supports this argument with his own sworn declaration
23 and evidence of receipt of SSI benefits. *See* Sonders' Reply Decl. at Exhibit 4-C.

25 ⁴As the Court explained at the Motion hearing, the question as to whether Sonders will be
26 required to appear in person at the settlement conference is up to the Magistrate Judge to whom the
27 settlement conference is assigned. Therefore, if Sonders wishes to appear telephonically for the
28 settlement conference he should make his request directly to the settlement conference judge once the
parties have been notified of the Magistrate Judge assigned to conduct the settlement conference. In
addition, prior to any hearing or proceeding before the undersigned Magistrate Judge at which Sonders
would like to appear telephonically, he should contact Courtroom Deputy Karen Hom at 415-522-2035
to provide the Court with the telephone number at which he can be reached.

1 This factor does not weigh in favor of transfer for two reasons. First, Sonders does not raise
2 this point until his Reply brief, and it is well-established that arguments raised for the first time in a
3 reply brief are not to be considered in deciding a motion. *See United States v. Romm*, 455 F.3d 990,
4 997 (9th Cir. 2006). Second, even if the Court were to consider this factor, Sonders has not provided
5 sufficient evidence to establish that his financial situation warrants transfer of venue. Therefore, this
6 factor does not weigh in favor of transfer.

7 3. Convenience of the Witnesses

8 One of the most important factors in determining whether to grant a motion to transfer is the
9 convenience of the witnesses. *Royal Queentex Enterprises Inc. v. Sara Lee Co.*, 2000 WL 246599,
10 at *6 (N.D. Cal. Mar. 1, 2000). "To demonstrate an inconvenience to witnesses, the moving party
11 must identify relevant witnesses, state their location and describe their testimony and its relevance."
12 *Security and Exchange Commission v. Rose Fund, LLC*, 2004 WL 2445242, at *3 (N.D. Cal. Jan. 9,
13 2004). Where transfer of venue would merely shift the inconvenience from the witnesses for one
14 party to the witnesses of the other, the factor does not weigh in favor of transfer. *See Decker Coal*
15 *Co.*, 805 F.2d at 843. However, the court will accord less weight to the inconvenience of witnesses
16 who are the employees of one of the parties since they can be compelled to testify regardless of the
17 forum. *Allstar Marketing Group, LLC v. Your Store Online, LLC*, 666 F.Supp.2d 1109, 1132-33
18 (C.D. Cal. 2009).

19 Sonders has provided a witness list that includes 24 witnesses that reside in the Central
20 District, along with very brief descriptions of the subjects on which he contends these witnesses will
21 testify. Sonders' Reply Decl. at Exhibit 3. Sonders asserts generally that "most" of these witnesses
22 are elderly and "many" are disabled. *Id.* Sonders also states that the witnesses all "have jobs,
23 careers, families, and other responsibilities in Los Angeles that prevent them from traveling to San
24 Francisco" to participate in this case. Sonders' Decl. at ¶ 3.

25 Sonders fails, however, to state with any particularity why participation in litigation in the
26 Northern District would impose a significant burden on any individual witness. In addition, the brief
27 statements describing the issues to which these individuals will testify do not provide a sufficient
28 basis on which to evaluate the importance of any of these individual's testimony. In light of Sonders'

1 vague and conclusory assertions regarding the inconvenience of participating in litigation in the
2 Northern District, as well as the lack of details as to the subject matter of these witnesses' testimony,
3 the Court is not persuaded that a transfer will result in anything other than a transfer of the burden
4 from Defendant's witnesses to Plaintiff's witnesses who reside in the Northern District. Therefore,
5 this factor does not weigh in favor of transfer of venue.

6 4. **Contacts With the Forum**

7 As a general rule, a plaintiff's choice of forum is entitled to substantial weight in deciding
8 whether to grant a motion to transfer venue. *Decker Coal Co.*, 805 F.2d at 843. However, "[i]f the
9 operative facts have not occurred within the forum of original selection and that forum has no
10 particular interest in the parties or the subject matter, the plaintiff's choice of forum is only entitled
11 to minimal consideration." *Pacific Car & Foundry Co. v. Pence*, 403 F.2d 949, 954 (9th Cir. 1968).
12 Furthermore, if it appears that a plaintiff's choice of forum is the result of forum shopping, then that
13 selection is accorded less weight. *Williams v. Bowman*, 157 F.Supp.2d 1103, 1106 (N.D. Cal. 2001).

14 In order for this factor to weigh in favor of transfer, the forum must lack any significant
15 contact with the activities alleged in the complaint. For example, in *Nordquist v. Complete Wellness*
16 *Family Chiropractic*, 2006 U.S. Dist. LEXIS 64495, at *1 (W.D. Wash. Sep. 11, 2006), the
17 defendant sought to transfer venue from the Western District of Washington to the Northern District
18 of Texas. In that case, the plaintiff, while a resident of Texas, negotiated the sale of his Texas-based
19 business to the defendant. *Id.* at *2-3. Before the sale was finalized, the plaintiff moved to
20 Washington, and subsequently signed the final contract in Washington. *Id.* In granting the
21 defendant's motion to transfer, the Court reasoned that the plaintiff signing the contract in
22 Washington was not significant when compared to the fact that the business was located in Texas,
23 the defendant resided in Texas, and the contract negotiations took place in Texas while the plaintiff
24 resided there. *Id.* at *7, 10-11.

25 The Court concludes that CWC's choice of forum should be given its due weight because
26 CWC's claims have a significant connection with the Northern District. The undisputed evidence
27 establishes that CWC was founded in the Northern District and has been based in Northern
28 California since its creation, almost a century ago. The claims in this case are based on the alleged

1 agreement for a writers group in the San Fernando Valley to become affiliated with CWC and
2 subsequent disputes that arose between the two groups. Thus, the alleged harm was inflicted in the
3 Northern District. The evidence also shows that Sonders came to Northern California to participate
4 in several CWC board meetings.⁵ Therefore, the Court concludes that in this case, in contrast to
5 *Nordquist*, CWC's claims have a significant connection to the Northern District and that this factor
6 does not support a transfer to the Central District.

7 Finally, there is no evidence that CWC's choice of forum was the result of improper forum
8 shopping or that its choice is so oppressive or vexatious to Sonders as to be out of proportion to
9 CWC's convenience.

10 5. Access to Proof

11 Another factor that the court weighs in determining whether to transfer venue is the ease of
12 access to evidence and documentary proof needed for trial. *Decker Coal Co.*, 805 F.2d at 843.
13 Sonders claims that all of the relevant documents and records are located in the Central District at
14 Defendants' principal place of business. Motion 4. CWC, on the other hand, claims that all
15 business and financial records and evidence of the infringements and other claims are located in
16 CWC's Union City corporate offices in the Northern District. Opposition at 4.

17 The Court concludes that this factor does not weigh in favor of transfer because Sonders has
18 failed to make an adequate showing that transfer is necessary. "As with witnesses, general
19 allegations that transfer is needed for the ease of obtaining records and books are not enough."
20 *DeFazio v. Hollister Employee Share Ownership Trust*, 406 F.Supp.2d 1085, 1091 (E.D. Cal. 2005)
21 (citing Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure §§ 3853-54 at 438.)
22 "The moving party must show the location and the importance of the documents in question." *Id.*
23 Furthermore, the court should also consider whether moving records would cause any hardships. *Id.*
24 In *DeFazio*, the Court denied Defendant's motion to transfer, in part, because Defendant had
25 generally stated that the relevant documents were generated and kept in Illinois, but had failed to
26 explain how they would suffer any hardship or prejudice. *Id.*

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28

⁵The Court notes that Sonders does not challenge the evidence produced by CWC indicating that Sonders attended several CWC board meetings in Northern California. *See* Garfinkle Decl. at Exhibits 2-4 (minutes from CWC board meetings).

1 Similarly, although Sonders states that relevant documents are located in the Central District,
2 he has failed to explain their importance and how he might suffer any hardship by having to move
3 these documents to the Northern District. Therefore, this factor does not weigh in favor of transfer
4 to the Central District.

5 **IV. CONCLUSION**

6 Having considered the relative burdens of litigating in the Central District compared to the
7 Northern District and the general rule that a plaintiff's choice of forum is entitled to substantial
8 weight, the Court concludes that Sonders has failed to make an adequate showing that transfer is
9 warranted for the convenience of the parties and witnesses and in the interest of justice. Therefore,
10 the Motion is DENIED.

11 IT IS SO ORDERED.

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13 Dated: October 3, 2011

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16 _____
17 JOSEPH C. SPERO
18 United States Magistrate Judge
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