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4 UNITED STATES DISTRICT COURT  
5 NORTHERN DISTRICT OF CALIFORNIA

6 REDWOOD HILL FARM & CREAMERY,  
7 INC.,

Case No. 16-cv-03200-JST

8 Plaintiff,

**ORDER GRANTING MOTION TO  
REMAND**

9 v.

Re: ECF No. 12

10 BARRY-WEHMILLER DESIGN GROUP,  
11 INC.,

12 Defendant.

13 Before the Court is Plaintiff Redwood Hill Farm and Creamery, Inc.'s ("Redwood Hill")  
14 Motion to Remand. ECF No. 12. The Court will grant the motion.

15 **I. BACKGROUND**

16 In 2013, Redwood Hill contracted with Defendant Barry-Wehmiller Design Group, Inc.  
17 ("Design Group"), an engineering consulting firm, to provide services and equipment to upgrade  
18 Redwood Hill's production facility located in Sonoma County, California. ECF No. 1 at 12.  
19 Dissatisfied with Design Group's work, Redwood Hill sued Design Group in Sonoma County  
20 Superior Court for (1) breach of contract; (2) negligence; (3) breach of express and implied  
21 warranty; (4) fraud; (5) concealment; (6) negligent misrepresentation; and (7) unlawful business  
22 practices under the California Business and Professions Code section 17200. ECF No. 1 at 10.

23 On June 10, 2016, Design Group removed the action to this Court based on diversity  
24 jurisdiction. ECF No. 1 at 3. Redwood Hill filed a motion to remand on June 30, 2016, relying on  
25 two paragraphs in the underlying contracts, which allegedly permit litigation related to the  
26 contracts only in Sonoma County Superior Court.<sup>1</sup> ECF No. 12. Paragraph 18(4)(a), entitled

27  
28 <sup>1</sup> Design Group performed construction for Redwood Hill under two separate written contracts containing identical versions of the disputed provisions. ECF No. 12 at 6.

1 “Legal Action,” provides, in relevant part:

2           Owner and Contractor agree that jurisdiction for any legal action  
3           shall be the Sonoma County Superior Court for the State of  
4           California.

5 ECF No. 1 at 35. Paragraph 24, entitled “Venue and Jurisdiction,” provides:

6           Any legal proceeding arising from this contract shall be brought  
7           only in a court of competent jurisdiction in the county in which the  
8           construction is being performed.

9 Id.

10 **II. LEGAL STANDARD**

11           In diversity cases, federal law governs the enforceability and interpretation of forum  
12           selection clauses. Manetti-Farrow, Inc. v. Gucci Am., Inc., 858 F.2d 509, 513 (9th Cir. 1988)  
13           (citing The Bremen v. Zapata Off-Shore Co., 407 U.S. 1 (1972)). In interpreting a forum selection  
14           clause, “we look for guidance to general principles for interpreting contracts.” Doe 1 v. AOL  
15           LLC, 552 F.3d 1077, 1081 (9th Cir. 2009) (internal quotation marks omitted). “[A] forum  
16           selection clause is ‘prima facie valid and should be enforced unless enforcement is shown by the  
17           resisting party to be unreasonable under the circumstances.’” Pelleport Investors, Inc. v. Budco  
18           Quality Theatres, Inc., 741 F.2d 273, 279 (9th Cir. 1984) (quoting The Bremen, 407 U.S. at 10).  
19           “A district court may remand a case to state court to effectuate a forum selection clause.” Calisher  
20           & Assocs, Inc. v. RGCMC, LLC, Nos. 08-cv-06523-MMM, 08-cv-06540-MMM, 2008 WL  
21           4949041, at \*2 (C.D. Cal. Nov. 17, 2008); see also Pelleport, 741 F.2d at 275, 281 (affirming  
22           district court’s remand to state court based on a forum selection clause).

23 **III. ANALYSIS**

24 **A. Motion to Remand**

25           The parties dispute the meaning of the forum selection clauses in paragraphs 18(4)(a) and  
26           24 of the underlying contracts. Redwood Hill contends that these two clauses mandate exclusive  
27           jurisdiction in the Sonoma County Superior Court. Design Group disagrees. First, Design Group  
28           argues that the relevant language in paragraph 18(4)(a) is permissive, not mandatory. ECF No. 21  
29           at 5–8. Second, Design Group contends that this district court meets paragraph 24’s requirement  
30           that legal action be brought in “a court of competent jurisdiction in Sonoma County” because the

1 Northern District of California encompasses Sonoma County. ECF No. 21 at 10–13. As a result,  
2 Design Group argues that the contracts permit litigation in state court but do not require it.

3 Redwood Hill has the better argument. Paragraph 24, the “Venue and Jurisdiction”  
4 provision, states that “[a]ny legal proceeding arising from this contract shall be brought only in a  
5 court of competent jurisdiction in the county in which the construction is being performed.” ECF  
6 No. 1 at 35. The parties do not dispute that this clause is mandatory, as it provides that legal  
7 proceedings “shall be brought only in a court of competent jurisdiction in the county in which the  
8 construction is being performed.” ECF No. 13-2 at 5 (emphasis added). The parties also do not  
9 dispute that because Design Group’s work was to be performed in Sonoma County, Paragraph 24  
10 provides in essence that “[a]ny legal proceeding arising from this contract shall be brought only in  
11 a court of competent jurisdiction in [Sonoma County].” ECF No. 1 at 35. Thus, the crux of the  
12 issue is whether this Court, a federal district court located in San Francisco, California, “qualifies  
13 as a court of competent jurisdiction [in Sonoma County] when there is no appropriate federal  
14 courtroom located within the physical boundaries of Sonoma County.” ECF No. 21 at 10.

15 Redwood Hill argues that “a federal court is not located ‘in’ a county over which it  
16 exercises jurisdiction if there is no federal courthouse located in that county.” ECF No. 22 at 9.  
17 Redwood Hill relies on the Ninth Circuit’s decision in Simonoff v. Expedia, Inc., 643 F.3d 1202  
18 (9th Cir. 2011) for the proposition that the physical location of a federal courthouse crucial in  
19 determining whether a federal court is “in” a county. See id. at 1206–07 (“When a federal court  
20 sits in a particular county, the district court is undoubtedly ‘in’ that county” for purposes of a  
21 forum selection clause vesting “‘exclusive jurisdiction and venue’ in the courts ‘in’ a county.”).  
22 However, Simonoff is not dispositive because Simonoff did not decide whether a federal district  
23 court physically located in one county could also be considered to be “in” another county over  
24 which the district court also has jurisdiction. Rather, Simonoff simply held that “a forum selection  
25 clause that vests ‘exclusive jurisdiction and venue’ in the courts ‘in’ a county provides venue in  
26 the state and federal courts located in that county.” 643 F.3d at 1207.

27 Nonetheless, the Court concludes that the weight of authority in this Circuit supports the  
28 proposition that in construing a forum selection clause, a federal district court cannot be

1 considered to be “in” a county over which the district court has jurisdiction, but in which the  
 2 district court does not have a physical presence. See FCE Benefit Administrators, Inc. v. Training,  
 3 Rehab., & Dev. Inst., Inc., No. 15-cv-01160-JST, 2015 WL 2173744, at \*2 (N.D. Cal. May 7,  
 4 2015) (“Because the clause mandates that ‘venue . . . will be San Mateo County, California,’ and  
 5 there is no federal courthouse in San Mateo County, the Court also concludes that the clause  
 6 unambiguously requires that disputes under the agreement be resolved in San Mateo County  
 7 Superior Court.”); Stone v. County of Lassen, No. 12-cv-01946-MCE, 2013 WL 269085, at \*3  
 8 (E.D. Cal. Jan. 23, 2013) (“A forum selection clause stating that venue ‘shall be in’ a particular  
 9 county means that venue lies in state court when there is no federal court in that particular county  
 10 – even though that county may be part of a judicial district whose courthouse lies elsewhere.”);  
 11 Gold Canyon Mining & Const., LLC v. Robinson Nevada Mining Co., No. 11-cv-00095-LRH,  
 12 2011 WL 6400295, at \*1 (D. Nev. Dec. 20, 2011) (concluding that forum selection clause  
 13 providing that any dispute arising under the contract “shall be decided by a court of competent  
 14 jurisdiction in Ely, Nevada,” required adjudication in state court “because there is no federal  
 15 courthouse located in Ely, Nevada”); Air Ion Devices, Inc. v. Air Ion, Inc., No. 02-cv-1717-SI,  
 16 2002 WL 1482665, at \*2–3 (N.D. Cal. July 5, 2002) (forum selection clause stating that “any  
 17 action . . . shall be brought in the County of Marin, State of California” established that action  
 18 should be remanded to Marin County Superior Court “because there is no federal court in Marin  
 19 County”); but see Merrell v. Renier, No. 06-cv-404, 2006 WL 1587414, at \*2 (W.D. Wash. June  
 20 6, 2006) (holding that “a forum selection clause that mandates venue ‘in the county of residence of  
 21 the non-breaching party,’ does not “prohibit filing or removing an action in a federal district court  
 22 that encompasses the county, but has no courthouse within the county”).<sup>2</sup>

23 \_\_\_\_\_  
 24 <sup>2</sup> Courts in other Circuits have likewise disagreed on this issue. Compare Yakin v. Tyler Hill  
 25 Corp., 566 F.3d 72, 76 (2d Cir. 2009) (holding that remand to state court was proper because “[a]  
 26 reasonable person reviewing the statement ‘It is agreed that the venue and place of trial of any  
 27 dispute that may arise out of this Agreement . . . shall be in Nassau County, New York,’ would  
 28 necessarily conclude that the parties intended that litigation take place in an appropriate venue in  
 Nassau County” and there was no “federal court located in Nassau County at the time of th[e]  
 litigation”), with Nahigian v. Juno-Loudoun, LLC, 661 F. Supp. 2d 563, 568 (E.D. Va. 2009)  
 (noting that “a split of authority exists on the following issue: whether a forum selection clause  
 that sets jurisdiction in a particular county—but not a particular court system—gives jurisdiction

1 Design Group’s arguments to the contrary are unpersuasive. In particular, the Court finds  
 2 Project Development Group, Inc. v. Sonoma County Junior College District, the principal case  
 3 relied on by Design Group, ECF No. 21 at 10–12, distinguishable because the forum selection  
 4 clause in that case included an express reference to federal court. No. 07-cv-02987-WHA, 2007  
 5 WL 2518034 (N.D. Cal. Aug. 31, 2007), at \*1 (“The agreement contained a forum-selection  
 6 clause stating that ‘venue shall be with the appropriate state or federal court located in Sonoma  
 7 County, California.’”) (emphasis added); see also id. (“Even though there is no appropriate federal  
 8 district courthouse literally in Sonoma County, the inclusion of language supporting federal court  
 9 as an appropriate venue supports the interpretation that our district is an appropriate forum.”);  
 10 Guenther v. Crosscheck Inc., No. 09-cv-01106-WHA, 2009 WL 1248107, at \*4 (N.D. Cal. Apr.  
 11 30, 2009) (distinguishing Project Development Group because it “concerned a[] . . . forum-  
 12 selection clause that expressly referred to ‘the appropriate state or federal court located in Sonoma  
 13 County.’” (emphasis in Guenther)). Here, no such express reference to federal court is present in  
 14 paragraph 24.

15 Ultimately, the Court concludes that the forum selection clause in paragraph 24 is  
 16 mandatory, exclusive, and unambiguous, requiring that disputes will be resolved in Sonoma  
 17 County Superior Court. The fact that paragraph 18(4)(a) provides that “jurisdiction for any legal  
 18 action shall be the Sonoma County Superior Court for the State of California” only reinforces the  
 19 Court’s conclusion.<sup>3</sup>

20 **B. Attorneys’ Fees**

21 Redwood Hill moves for attorney’s fees. Courts may award attorney’s fees where the  
 22 removing party lacked an objectively reasonable basis for seeking removal. Martin v. Franklin  
 23 Capital Corp., 546 U.S. 132, 141 (2005). Because Design Group raised legitimate arguments for  
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25 to the federal district court that encompasses but is not located in the county,” and denying a  
 26 motion to remand in such circumstances).

27 <sup>3</sup> Because the contracts’ language is unambiguous, the Court need not consider Design Group’s  
 28 arguments that: (1) ambiguous contract language should be construed against the drafter,  
 Redwood Hill; and (2) Redwood Hill’s alleged rejection of a proposed exclusive jurisdiction  
 clause during contract negotiations means that the two disputed paragraphs are permissive. ECF  
 No. 21 at 13–14.

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its interpretation of the forum selection clauses, based on relevant cases in this Circuit, the Court concludes that attorney's fees are not warranted.

**CONCLUSION**

Redwood Hill's motion to remand is granted. The action is remanded to the Sonoma County Superior Court. Redwood Hill's request for attorneys' fees is denied.

IT IS SO ORDERED.

Dated: September 9, 2016

  
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JON S. TIGAR  
United States District Judge