

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

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

STEVEN A. SUGARMAN, et al.,
Plaintiffs,
v.
MUDDY WATERS CAPITAL LLC, et al.,
Defendants.

Case No. 19-cv-04248-MMC

**ORDER GRANTING DEFENDANTS'
MOTION TO TRANSFER VENUE**

United States District Court
Northern District of California

Before the Court is a "Motion to Transfer Venue," filed September 11, 2020, by defendants Muddy Waters Capital, LLC, Muddy Waters Research LLC, MLAF LP, MWCP LLC, Carson Block, Castalian Partners, LLC, Castalian Partners Value Fund, LP, James Gibson, QKM, LLC, David Q. Matthews, Gary R. Matthews, Kalyn M. Denno, Adam J. Denno, Keith Allen Dilling, and Rosemary Norris Hall.¹ Plaintiffs Steven A. Sugarman ("Sugarman"), COR Capital, LLC, and COR Advisors, LLC (collectively, "COR Plaintiffs") have filed opposition, to which the defendants have replied. Having read and considered the papers filed in support of and in opposition to the motions, the Court rules as follows.²

In the instant action, plaintiffs allege that defendants, along with others not named as defendants, entered into a "conspiracy to destroy the reputation and business prospects of [] Sugarman and his limited liability companies, the COR Plaintiffs." (See First Amended Complaint ("FAC") ¶ 2.) According to plaintiffs, defendant Galanis, an

¹ An additional defendant, Jason Galanis ("Galanis"), although not identified in the motion as a moving defendant, filed a declaration in support of the instant motion.

²By order filed October 9, 2020, the Court took the matter under submission.

1 individual who has been convicted of "two separate financial frauds" and is presently
2 serving a sentence in federal prison (see FAC ¶ 9, Exs. P, Q), "furnished false and
3 misleading information" to the other defendants (see FAC ¶ 88), who, in turn, used such
4 information to "create false and intentionally misleading papers, blogs, posts, websites,
5 and other material to support or serve as the basis for several separate attacks on []
6 Sugarman and the COR Plaintiffs" (see FAC ¶ 99). The "[a]ttacks," plaintiffs allege,
7 consisted of statements that "Sugarman and the COR Plaintiffs had material business
8 partnerships with Galanis and were involved in his financial crimes" (see FAC ¶ 99), and
9 that "criminals" had "gained control" over the Banc of California ("Banc") (see FAC
10 ¶ 114),³ such statements appearing primarily on the website SeekingAlpha.com (see
11 FAC ¶ 112). Based on said allegations, plaintiffs allege two claims under the Racketeer
12 Influenced Corrupt Organizations Act ("RICO"), as well as three claims under state law,
13 specifically, one claim alleging defamation and two claims alleging unfair competition.

14 By the instant motion, defendants seek an order, pursuant to 28 U.S.C. § 1404(a),
15 transferring the above-titled action to the Central District of California ("Central District"),
16 where plaintiffs reside, the harm allegedly was incurred and, defendants contend, other
17 cases related to the instant action are or were pending.

18 As set forth in § 1404, a district court, "[f]or the convenience of parties and
19 witnesses, in the interest of justice, . . . may transfer any civil action to any other district
20 or division where it might have been brought." See 28 U.S.C. § 1404(a).

21 The Court first considers whether the instant action could have brought in the
22 Central District. Defendants argue, and plaintiffs do not disagree, a proper venue for a
23 RICO action is a district in which one defendant resides. See 18 U.S.C. § 1965
24 (providing RICO claim "against any person may be instituted in the district court of the
25 United States for any district in which such person resides, is found, has an agent, or
26

27 ³ At the time such statements allegedly were made, Sugarman was the Chairman
28 of the Board, President, and Chief Executive Officer of Banc. (See FAC ¶ 4.)

1 transacts his affairs"). In that regard, defendants argue Galanis, although presently in the
2 custody of the Bureau of Prisons, is considered to be a resident of the Central District.

3 In response to the initial complaint, defendants sought transfer to the Central
4 District on the same grounds as set forth in the instant motion. The Court denied that
5 motion, finding defendants had failed to show Galanis is a resident of the Central District.
6 In support of the instant motion to transfer, defendants now offer a declaration by
7 Galanis, in which he declares that "Los Angeles is [his] home," that, "[b]efore [his]
8 incarceration, [he] resided at [a specified street address] in Los Angeles," and that he
9 "intend[s] to return to Los Angeles for [his] residence after [he is] released from
10 incarceration." (See Galanis Decl. ¶ 3.) As a "rebuttable presumption [exists] that an
11 incarcerated individual retains residency in the judicial district where he lived prior to
12 incarceration," see United States v. Arango, 670 F.3d 988, 998 (9th Cir. 2012), and, as
13 plaintiffs offer no evidence to support a finding that Galanis did not reside in Los Angeles
14 prior to his incarceration or that he plans to live elsewhere upon his release, the Court
15 finds the instant action could have been brought in the Central District.

16 The Court next considers whether a transfer to the Central District is warranted
17 "[f]or the convenience of parties and witnesses" and is "in the interest of justice." See 28
18 U.S.C. § 1404(a). In deciding whether transfer is appropriate, courts consider a number
19 of factors, including: "(1) plaintiff's choice of forum, (2) convenience of the parties,
20 (3) convenience of the witnesses, (4) ease of access to the evidence, (5) familiarity of
21 each forum with the applicable law, (6) feasibility of consolidation of other claims, (7) any
22 local interest in the controversy, and (8) the relative court congestion and time of trial in
23 each forum." See Williams v. Bowman, 157 F. Supp. 2d 1103, 1106 (N.D. Cal. 2011).⁴
24 The Court considers the factors in turn.

25 //

26

27 _____
28 ⁴ Although this list is not "exhaust[ive]," see id., the parties do not identify any
additional factors that should be considered.

1 First, although a plaintiff's choice of forum ordinarily is entitled to deference, in this
2 instance plaintiffs neither reside nor were harmed in this District. Nevertheless, there is
3 at least some alleged connection. (See FAC ¶¶ 10, 89, 95 (alleging defendants "Muddy
4 Waters Entities" and attorney who formerly represented Galanis reside in San
5 Francisco).) Consequently, this factor weighs against transfer, albeit only slightly.

6 With respect to the convenience of the parties, the three plaintiffs reside in the
7 Central District but wish to keep the case in the Northern District, the five Muddy Waters
8 Entities reside in the Northern District but wish to transfer the case to the Central District,
9 Galanis is incarcerated in New York, and the remaining defendants reside in,
10 respectively, Minnesota, Texas, Kansas and Colorado, all approximately equidistant from
11 both the Northern District and the Central District. Consequently, this factor weighs
12 neither in favor of nor against transfer.

13 With respect to the convenience of non-party witnesses, defendants have
14 identified one such witness residing in the Central District, namely, a reporter for the Los
15 Angeles Times to whom one defendant is alleged to have made "false and misleading
16 claims" about plaintiffs (see FAC ¶¶ 161), and plaintiffs have identified one such witness
17 residing in this District, namely, the above-referenced attorney who, according to
18 plaintiffs, provided defendants with "forged" and other "misleading" documents about
19 plaintiffs (see FAC ¶¶ 95). Consequently, this factor weighs neither in favor of nor against
20 transfer.

21 As to ease of access to evidence, no party has shown such access would differ in
22 any material manner as a result of the action remaining in this District or being
23 transferred to the Central District. Consequently, this factor also weighs neither in favor
24 of nor against transfer.

25 Similarly, the familiarity of the forums with the applicable law weighs neither in
26 favor of nor against transfer, as both this District and the Central District are equally
27 familiar with the applicable law, namely, federal law as to the RICO claims and California
28 law as to the state law claims.

1 The sixth factor, feasibility of consolidation, the factor to which the parties devote
2 the greatest attention, has been held to weigh in favor of transfer where a related action
3 is pending in the proposed transferee court and such transfer would avoid "duplicitous
4 litigation and inconsistent results." See Brice v. California Faculty Ass'n, 2019 WL
5 2053586, at *4 (E.D. Cal. May 9, 2019) (internal quotation and citation omitted); see also
6 A. J. Industries, Inc. v. United States District Court, 503 F.2d 384, 389 (9th Cir. 1974)
7 (holding district court, in transferring action, properly relied on pendency of related action
8 in transferee district, irrespective of whether actions could be consolidated). Here, in
9 support of the instant motion, defendants rely on two groups of cases that are or were
10 pending in the Central District.

11 The first such group consists of (1) two consolidated putative class actions alleging
12 securities fraud by Banc, Sugarman and others, and (2) three miscellaneous motions to
13 compel responses to discovery requests filed by Sugarman in the securities fraud cases
14 and served on non-parties. In the consolidated securities fraud complaint, the
15 defendants named therein allegedly withheld from Banc's shareholders "the truth about
16 connections" between Sugarman and Galanis, for example, the alleged fact that "Galanis
17 was using COR to perpetrate a [Ponzi] Scheme," which fact, according to the plaintiffs,
18 was disclosed on SeekingAlpha.com. (See In re Banc of California Securities Litig., Case
19 No. 17-00118, Doc. No. 4, ¶¶ 4-6, 59(a).)⁵ Those statements, which, according to the
20 securities fraud plaintiffs, were true (see id. ¶ 84), are the same statements plaintiffs
21 herein allege are false (see FAC ¶ 112-14).

22 The second group of cases identified by defendants consists of three shareholder
23 derivative actions that have been consolidated in a single proceeding that remains
24 pending in the Central District. In the operative consolidated complaint, the plaintiffs
25

26 ⁵ The Court grants defendants' unopposed request to take judicial notice of the
27 contents of filings in the Central District. See Lee v. City of Los Angeles, 250 F.3d 668,
28 689 (9th Cir. 2001) (holding "court may take judicial notice of matters of public record")
(internal quotation and citation omitted).

1 allege that nine individuals, each of whom is or was a director or officer of Banc,
2 breached his fiduciary duties to Banc. (See In re Banc of California, Inc. Stockholder
3 Derivative Litig., Case No. 19-00621, Doc. No. 65 ¶¶ 27-35, 203.) In particular, the
4 plaintiffs therein allege that, prior to publication of the above-referenced statements on
5 SeekingAlpha.com, the defendants "convened an internal investigation into Galanis'
6 control over COR" and, that although "Banc became aware of not only Galanis' troubled
7 history with white collar crime, but his use of Banc's goodwill and name in furtherance of
8 his schemes while running them from COR offices," the defendants "concealed the
9 impact of [Banc's] internal investigation from shareholders at the expense of the
10 Company's integrity and reputation." (See id. ¶¶ 65-66.) Additionally, the plaintiffs
11 therein allege that, although the defendants, on the date the statements on
12 SeekingAlpha.com were published, issued a press release in which they "denied the
13 existence of ties between Galanis and Banc" (see id. ¶ 2), the press release "falsely
14 conveyed the true extent and nature of the Board's prior investigation into possible
15 relationships between Galanis and corporate insiders" (see id. ¶ 73), including Sugarman
16 (see id. ¶ 53).

17 All of the cases in the above-referenced two groups seek relief for injuries that
18 stem from SeekingAlpha.com's publication of statements implicating Sugarman and the
19 COR Plaintiffs in Galanis's criminal conduct. Moreover, as defendants observe, other
20 than the instant case, every case pertaining in some manner to the alleged connections
21 between plaintiffs herein and Galanis has been heard in the Central District. In response,
22 plaintiffs argue the pendency of the above-referenced Central District cases nonetheless
23 does not support transfer, noting that the securities fraud cases were dismissed last year
24 pursuant to a court-approved settlement (see In re Banc of California Securities Litig.,
25 Case No. 17-00118, Doc. No. 614),⁶ and that the shareholder derivative actions, although

26
27
28

⁶ The order of dismissal was filed March 16, 2020, approximately six months before the instant motion was filed.

1 still pending, do not include the legal claims made in the instant action.

2 There is no dispute that the instant action raises legal issues different from the
3 cases that remain pending in the Central District. On the other hand, there is no dispute
4 that the Central District has spent a considerable amount of time addressing the facts
5 giving rise to the claims alleged in the instant action, namely, the publication of
6 statements linking Sugarman, the COR Plaintiffs, and others associated with Banc to
7 Galanis's criminal activities. Additionally, although the securities fraud cases were
8 dismissed prior to a judgment on the merits, numerous discovery disputes, including
9 disputes between Sugarman and a number of the defendants named herein, were, prior
10 to the dismissal, resolved in the Central District by a single assigned magistrate judge.⁷
11 The same or similar discovery disputes appear likely to arise in the instant action, and, if
12 the instant action were transferred, such matters are likely to be assigned to that same
13 magistrate judge. See A. J., 503 F.2d at 389 (noting "importan[ce]" and "positive effects"
14 of "possible consolidation of discovery").

15 In light of all the circumstances discussed above, the Court finds the sixth factor
16 weighs in favor of transfer.

17 As to local interest in the controversy, persons residing in the Central District
18 would have a significant interest in this case, given that all three plaintiffs, as well as
19 Banc, are located there and are alleged to have been harmed there. Moreover, the
20 statements plaintiffs challenge as false, and defendants may well argue are true, see,
21 e.g., Campanelli v. Regents of Univ. of California, 44 Cal. App. 4th 572, 581 (1996
22 (holding "[t]ruth, of course, is an absolute defense to any libel action"), accuse plaintiffs of
23 engaging in wrongful acts in the Central District. Indeed, as discussed above, a number
24 of lawsuits arising from those statements have been filed, and all of those actions have

25 _____
26 ⁷ In fact, a number of those disputes were initially raised in this District and
27 thereafter transferred to the Central District pursuant to Rule 45(f) of the Federal Rules of
28 Civil Procedure. (See In re Subpoenas, Case No. 18-147, Order, filed October 29, 2018,
by U.S. Magistrate Judge Thomas S. Hixson (Doc. No. 13) (noting moving parties'
consent to transfer; further noting parties' "lengthy and factually complex briefs").)

1 been or continue to be heard in the Central District. Although, as plaintiffs note, persons
2 residing in this District may, as a general matter, have an interest in defendants who
3 reside in this District, such as the Muddy Waters Entities, no particular event is alleged to
4 have occurred here. Consequently, this factor weighs in favor of transfer.

5 Lastly, as to relative court congestion, although the statistics cited by defendants
6 show the median time from the filing of a case to disposition is shorter in the Central
7 District, "administrative considerations such as docket congestion are given little weight in
8 this circuit in assessing the propriety of a § 1404(a) transfer." See Securities and
9 Exchange Comm'n v. Christian Stanley, Inc., 2012 WL 13012496, at *4 (C.D. Cal. April 4,
10 2012) (internal quotation, alteration, and citation omitted). Consequently, this factor
11 weighs in favor of transfer but does so only slightly.

12 In sum, of the four factors that weigh in the balance here, three weigh in favor of
13 transfer whereas only one weighs against transfer, and as to those weighing in favor, one
14 in particular, the sixth, carries considerable weight.

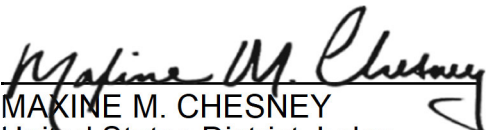
15 Accordingly, the motion to transfer is hereby GRANTED, and the above-titled
16 action is hereby ordered TRANSFERRED to the United States District Court for the
17 Central District of California.

18 **IT IS SO ORDERED.**

19

20 Dated: February 16, 2021

21


22 MAKINE M. CHESNEY
23 United States District Judge
24
25
26
27
28