

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL D. FREEMAN,
Plaintiff,
v.
SUMMIT FILTRATION TECHNOLOGY,
LLC, et al.,
Defendants.

Case No. 21-cv-06838-JSC

**ORDER RE: PARTIAL MOTION TO
DISMISS FOR LACK OF PERSONAL
JURISDICTION OR TRANSFER
VENUE**

Re: Dkt. No. 19

Before the Court is Defendants’ partial motion to dismiss for lack of personal jurisdiction or, alternatively, to transfer venue.¹ (Dkt. No. 19.)² After carefully considering the parties’ briefing, and having had the benefit of oral argument on November 18, 2021, the Court DENIES the motion to dismiss for lack of personal jurisdiction and declines to transfer venue.

BACKGROUND

I. Complaint Allegations

Plaintiff is a former employee and former member of Summit Filtration Technology, LLC (“Summit”), which he sues along with its owner and managing member Stanley E. Kieffer.³ (Dkt. No. 8 ¶ 1.) Plaintiff originally filed in Alameda County Superior Court and Defendants removed to federal court on the basis of diversity jurisdiction. (Dkt. No. 1.) Plaintiff then filed the operative First Amended Complaint (“FAC”), the gravamen of which is that Defendants withheld

¹ All parties have consented to the jurisdiction of a magistrate judge pursuant to 28 U.S.C. § 636(c). (Dkt. Nos. 7, 11.)

² Record citations are to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of the documents.

³ Plaintiff’s original complaint also named Peak Partnership, LLC, but the operative First Amended Complaint does not. (Dkt. No. 8 ¶ 5; see Dkt. No. 20 at 7.)

1 his wages and other monies in an attempt to pressure Plaintiff to buy out Mr. Kieffer’s majority
2 interest in Summit. (Dkt. No. 8 ¶¶ 3–4, 38–47, 52–61.) Plaintiff brings claims under the laws of
3 California and Wisconsin. (*Id.* ¶¶ 62–119.)

4 Mr. Kieffer, a citizen of Wisconsin, founded Summit in 2001 and served as its sole
5 member. (*Id.* ¶¶ 8–9, 20.) In 2006, Summit hired Plaintiff as a W-2 employee. (*Id.* ¶ 21.) In
6 2007, Plaintiff became a member of Summit; he owned a 40% stake and Mr. Kieffer retained a
7 60% majority stake. (*Id.* ¶¶ 23, 25–26.) By 2013, Plaintiff had moved to California and become a
8 California citizen. (*Id.* ¶¶ 29, 7.) That year, Plaintiff and Mr. Kieffer executed the “True-Up
9 Agreement,” which provided that they would earn equal compensation from Summit through
10 different percentages of profits and W-2 wages, allowing Plaintiff to retain 40% control and Mr.
11 Kieffer to retain 60%. (*Id.* ¶¶ 29–30.) Plaintiff was compensated pursuant to the True-Up
12 Agreement from 2013 through 2019. (*Id.* ¶ 32.)

13 In 2020, Mr. Kieffer wanted to sell his 60% stake in Summit. (*Id.* ¶ 38.) Mr. Kieffer
14 discussed selling to Plaintiff, but they did not reach an agreement. (*Id.* ¶ 39.) Thereafter, Mr.
15 Kieffer caused Summit to withhold Plaintiff’s 2020 wages in order to “strong-arm [Plaintiff] into
16 paying an exorbitant price” and “artificially inflat[e] the value of Summit to make [Mr. Kieffer’s]
17 majority interest look more valuable to potential third-party purchasers in the event he could not
18 come to terms with [Plaintiff].” (*Id.* ¶¶ 3, 41.) On April 2, 2021, Plaintiff resigned from
19 employment with Summit and dissociated his membership, leaving Mr. Kieffer the sole member
20 of Summit. (*Id.* ¶¶ 53–55, 9.) Mr. Kieffer caused Summit to not pay out Plaintiff’s membership
21 distribution. (*Id.* ¶¶ 4, 56–57.) Plaintiff contends he is owed at least \$200,000 in wages and
22 \$1,666,666.67 in profit distributions. (*Id.* ¶¶ 47, 66, 87, 95, 102, 106, 112.)

23 **II. Mr. Kieffer’s Affidavit**

24 In an affidavit supporting Defendants’ motion, Mr. Kieffer attests that he is a citizen of
25 Wisconsin and has never been a citizen of or owned property in California. (Dkt. No. 19-2 ¶¶ 4–
26 6.) According to Mr. Kieffer, Plaintiff lived in Illinois at the time of his hire in 2007. (*Id.* ¶ 10.)
27 Plaintiff traveled to Wisconsin frequently as part of his work for Summit. (*Id.*) Plaintiff
28 “requested that Summit allow him to move to California because his wife’s employer requested

1 that she move to California.” (*Id.* ¶ 13.) With Summit’s approval, Plaintiff moved to California in
2 2012, and continued to communicate extensively with Mr. Kieffer and Summit staff in Wisconsin.
3 (*Id.* ¶¶ 13–15; *see* Dkt. No. 24-1 ¶¶ 2–5.)

4 **III. Plaintiff’s Affidavit**

5 In an affidavit supporting his opposition to Defendants’ motion, Plaintiff disputes Mr.
6 Kieffer’s declaration. (Dkt. No. 20-1.) According to Plaintiff, he did not request permission to
7 move, but rather “told Mr. Kieffer of my family’s intention to relocate and discussed with him the
8 possible effects of the move with regard to Summit’s business and operations. Mr. Kieffer did not
9 oppose my move to California. To the contrary, with Mr. Kieffer’s blessing, Summit took
10 advantage of my move and began advertising that Summit now had a formal business presence in
11 California.” (*Id.*) Plaintiff submits an Illinois K-1-P tax form showing his address in Pleasanton,
12 California as of December 2012. (*Id.* at 8.)

13 **DISCUSSION**

14 Defendants move to dismiss Mr. Kieffer for lack of personal jurisdiction or, alternatively,
15 to transfer the case to the Eastern District of Wisconsin. Defendants conceded at oral argument
16 that the Court has personal jurisdiction over Summit. Summit was a citizen of California from at
17 2013 to April 2, 2021, because Plaintiff was a member of Summit and a citizen of California. *See*
18 *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006) (“[A]n LLC is a
19 citizen of every state of which its owners/members are citizens.”).

20 **I. Dismissal Under Rule 12(b)(2)**

21 When a defendant moves to dismiss for lack of personal jurisdiction, the plaintiff bears the
22 burden of demonstrating that the court has jurisdiction over the defendant. *See Harris Rutsky &*
23 *Co. Ins. Servs., Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1128–29 (9th Cir. 2003). “Where, as
24 here, the motion is based on written materials rather than an evidentiary hearing, the plaintiff need
25 only make a prima facie showing of jurisdictional facts.” *Schwarzenegger v. Fred Martin Motor*
26 *Co.*, 374 F.3d 797, 800 (9th Cir. 2004) (internal quotation marks and citation omitted). Moreover,
27 “for the purpose of this demonstration, the court resolves all disputed facts in favor of the
28 plaintiff.” *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006). Thus, “[c]onflicts

1 between the parties over statements contained in affidavits must be resolved in the plaintiff's
2 favor." *Schwarzenegger*, 374 F.3d at 800.

3 In diversity jurisdiction cases, federal courts apply the law of the forum state to determine
4 whether they may exercise personal jurisdiction over foreign parties. *See Harris Rutsky*, 328 F.3d
5 at 1129. "California's long-arm statute allows courts to exercise personal jurisdiction over
6 defendants to the extent permitted by the Due Process Clause of the United States Constitution.
7 Hence, we need only determine whether personal jurisdiction in this case would meet the
8 requirements of due process." *Id.* (internal quotation marks and citations omitted).

9 Plaintiff asserts that the Court may exercise specific personal jurisdiction over Mr. Kieffer.
10 Plaintiff must satisfy two elements. First, that Mr. Kieffer purposefully directed his activities to
11 California, consummated some transaction within California, or performed some act by which he
12 purposefully availed himself of the privilege of conducting activities in California, thereby
13 invoking the benefits and protections of California's laws. Second, Plaintiff's claims must arise
14 out of or relate to Mr. Kieffer's forum-related activities. *See Schwarzenegger*, 374 F.3d at 801–
15 02; *Core-Vent Corp. v. Nobel Indus. AB*, 11 F.3d 1482, 1485 (9th Cir. 1993). If Plaintiff satisfies
16 those elements, then specific personal jurisdiction is present unless Mr. Kieffer demonstrates that
17 the Court's exercise of personal jurisdiction would be unreasonable. *Schwarzenegger*, 374 F.3d at
18 802; *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476–78 (1985).

19 **A. Purposeful Availment and Direction**

20 "Under the first prong of the specific-jurisdiction inquiry, . . . [p]urposeful availment
21 generally provides a more useful frame of analysis for claims sounding in contract, while
22 purposeful direction is often the better approach for analyzing claims in tort." *Glob. Commodities*
23 *Trading Grp., Inc. v. Beneficio de Arroz Choloma, S.A.*, 972 F.3d 1101, 1107 (9th Cir. 2020).
24 "However, our cases do not impose a rigid dividing line When both contract and tort claims
25 are at issue, both tests are relevant. At bottom, both purposeful availment and purposeful direction
26 ask whether defendants have voluntarily derived some benefit from their interstate activities such
27 that they will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated
28 contacts." *Id.* Here, Plaintiff's claims sound in both contract (*e.g.*, wage claims, breach of

1 contract) and tort (*e.g.*, breach of fiduciary duty), so both tests are relevant. (Dkt. No. 8 at 11–19.)

2 Plaintiff relies primarily on the True-Up Agreement to show purposeful availment and
 3 direction. (Dkt. No. 20 at 14.) The Agreement was executed in 2013, (Dkt. No. 8 ¶ 29), at which
 4 point Plaintiff was a citizen of California, (*see* Dkt. No. 24 at 4 n.3). Plaintiff argues that the
 5 Agreement evinces a long-term, continuing business relationship that ties Mr. Kieffer to
 6 California. But the Agreement focused on the terms of Mr. Kieffer and Plaintiff’s compensation
 7 through Summit, (Dkt. No. 8 ¶¶ 29–30), which falls short of purposeful availment or direction on
 8 Mr. Kieffer’s part. “[A] contract alone does not automatically establish minimum contacts in the
 9 plaintiff’s home forum.” *Boschetto v. Hansing*, 539 F.3d 1011, 1017 (9th Cir. 2008) (finding no
 10 purposeful availment where defendant made a “lone transaction for the sale of one item”). Rather,
 11 the plaintiff must show the defendant has “business activities [that] reach out beyond one state and
 12 create continuing relationships and obligations.” *Id.* (citation omitted). Courts use “a highly
 13 realistic approach” to evaluate the “prior negotiations and contemplated future consequences,
 14 along with the terms of the contract and the parties’ actual course of dealing.” *Burger King*, 471
 15 U.S. at 479. In particular, the analysis does not “allow[] a plaintiff’s contacts with the defendant
 16 and forum to drive the jurisdictional analysis.” *Walden v. Fiore*, 571 U.S. 277, 289 (2014). The
 17 “inquiry is limited to examining contacts that proximately result from actions by the
 18 defendant *himself*.” *Picot v. Weston*, 780 F.3d 1206, 1213 (9th Cir. 2015) (internal quotation
 19 marks and citation omitted).

20 *Picot* is instructive. There, the parties made an oral agreement for the plaintiff to pay for
 21 the defendant’s services. *Id.* at 1212. “The agreement was formed in Michigan, where
 22 [defendant] lived, where it was understood [defendant] would perform the majority of his work,
 23 and where [defendant] did indeed discharge most of his contractual duties.” *Id.* The plaintiff
 24 argued that the defendant had minimum contacts in California because “[plaintiff], a co-party to
 25 the agreement, fulfilled his obligations under the agreement by seeking out investors and buyers in
 26 California.” *Id.* at 1213. The Ninth Circuit rejected the argument: “that a contract envisions one
 27 party discharging his obligations in the forum state cannot, standing alone, justify the exercise of
 28 jurisdiction over another party to the contract.” *Id.* Moreover, the parties’ “actual course of

1 dealing” did not support minimum contacts; the defendant’s two trips to the forum state were not
2 envisioned in the initial agreement, “grew incidentally out of broader efforts,” and had “no special
3 place in his performance under the agreement as a whole.” *Id.*

4 Here, the True-Up Agreement’s only link to California is Plaintiff’s domicile. That link
5 does not result from actions that Mr. Kieffer himself took and thus it cannot, without more, satisfy
6 minimum contacts. *See id.*; *Walden*, 571 U.S. at 289 (“Such reasoning improperly attributes a
7 plaintiff’s forum connections to the defendant and makes those connections decisive in the
8 jurisdictional analysis.”); *cf. Glob. Commodities*, 972 F.3d at 1108–09 (finding minimum contacts
9 where defendant undertook “lengthy and ongoing course” of “commodities transactions” from the
10 forum state). “[A] defendant does not purposefully direct its activities at the forum state when the
11 unilateral activity of the plaintiff or a third party is all that connects the defendant to the forum
12 state. . . . [I]t is the defendant’s own conduct that must form the necessary connection[.]” *Cisco*
13 *Sys., Inc. v. Dexon Comput., Inc.*, No. 20-cv-04926-CRB, 2021 WL 2207343, at *3 (N.D. Cal.
14 June 1, 2021) (internal quotation marks and citations omitted).

15 Accordingly, Plaintiff has not made a prima facie showing of purposeful availment or
16 direction, the first prong of the specific jurisdiction analysis.

17 **1. Guiding Spirit**

18 Under an alternative theory of personal jurisdiction, Plaintiff argues that Mr. Kieffer was
19 the “guiding spirit” behind the conduct of Summit, which is subject to personal jurisdiction in
20 California. “Under the fiduciary shield doctrine a person’s mere association with a corporation
21 that causes injury in the forum state is not sufficient in itself to permit that forum to assert
22 jurisdiction over the person.” *Davis v. Metro Prods., Inc.*, 885 F.2d 515, 520 (9th Cir. 1989).
23 However, “[c]orporate officers can be liable for corporate actions where they are the guiding spirit
24 behind the wrongful conduct, or the central figure in the challenged corporate activity.” *In re*
25 *Boon Glob. Ltd.*, 923 F.3d 643, 651 (9th Cir. 2019) (internal quotation marks and citation
26 omitted). “[T]ortious acts by corporate officers that create contact with the forum state are not
27 only acts of the corporation but also acts of the individual, and may be considered contacts of the
28 individual for purposes of determining whether long-arm jurisdiction may be exercised over the

1 individual.” *j2 Glob. Commc’ns, Inc. v. Blue Jay, Inc.*, No. C 08-4254 PJH, 2009 WL 29905, at
2 *7 (N.D. Cal. Jan. 5, 2009) (citing *Seagate Tech. v. A. J. Kogyo Co.*, 268 Cal. Rptr. 586 (Cal. Ct.
3 App. 1990)).

4 The complaint’s allegations support a plausible inference that Mr. Kieffer was the guiding
5 spirit behind Summit’s alleged tortious acts. Plaintiff alleges that Mr. Kieffer, who owned a
6 majority stake in Summit, caused the company to withhold Plaintiff’s wages for Mr. Kieffer’s
7 personal financial gain. He also alleges that, after Plaintiff had dissociated from Summit and Mr.
8 Kieffer was the sole member, Mr. Kieffer caused Summit to not pay out Plaintiff’s membership
9 distribution. Plaintiff also submits an email sent by Mr. Kieffer to Plaintiff in August 2020, which
10 includes the following:

11
12 I feel you are being unreasonable so ***here is what I am prepared to do.***

13 ***I have already instructed Lauren*** to pay us the majority of the cash
14 on hand . . . 60/40.

15 If you do not take the offer ***I will pay us*** by our legal agreement . . .
16 Straight 60/40 moving forward from now on. Salary & Ownership
17 distribution. NO equalization.

18 Per our contract.

19 ***I will cancel your credit cards*** so you will need to use your own &
20 submit expense reports ***for my approval.***

21 If needed ***I can redirect your phone calls to the office.*** . . .

22 (Dkt. No. 20-1 at 12 (emphasis by Plaintiff).) Taken together, the complaint allegations,
23 affidavits, and email make out a prima facie showing that Mr. Kieffer was the central figure in the
24 challenged activity—the improper withholding of Plaintiff’s wages and membership distribution.
25 *See Boon Glob.*, 923 F.3d at 652; *Alexis v. Rogers*, No. 15cv691-CAB-BLM, 2016 WL 11707630,
26 at *4–6 (S.D. Cal. Feb. 26, 2016) (finding guiding spirit personal jurisdiction, where defendants
27 hired, fired, drew and mailed paychecks, and sexually assaulted and harassed plaintiff); *Matsunoki*
28 *Grp., Inc. v. Timberwork Or., Inc.*, No. C 08–04078 CW, 2009 WL 1033818, at *3–5 (N.D. Cal.
Apr. 16, 2009) (same, where defendant had “significant if not complete control over” company
decisions); *Wolf Designs, Inc. v. DHR Co.*, 322 F. Supp. 2d 1065, 1072–73 (C.D. Cal. 2004)
(same, where defendant had final say on company policies and plaintiff made prima facie showing

1 that defendant “personally directed, participated in, and authorized the alleged infringing
2 activity”).

3 Defendants argue that *Walden* precludes personal jurisdiction over Mr. Kieffer. 571 U.S.
4 at 283–91. But *Walden* analyzed traditional purposeful availment and direction, not the “guiding
5 spirit” theory of personal jurisdiction, and the Ninth Circuit’s explanation of that theory in *Boon*
6 *Global*, 923 F.3d 643, post-dates *Walden*. Moreover, the facts in *Walden* show a much more
7 attenuated relationship between the defendant and the forum state than in this case. There, the
8 defendant stopped the plaintiffs at a Georgia airport on their way home to Nevada. The defendant
9 “never traveled to, conducted activities within, contacted anyone in, or sent anything or anyone to
10 Nevada. In short, when viewed through the proper lens—whether the defendant’s actions connect
11 him to the forum—[he] formed no jurisdictionally relevant contacts with Nevada.” *Walden*, 571
12 U.S. at 289. The defendant’s only connection to Nevada was that the plaintiffs had experienced
13 harm there as a result of the defendant’s actions in Georgia. Here, by contrast, there is a prima
14 facie showing that Mr. Kieffer conducted business with Plaintiff (who was in California) over a
15 period of years and directed Summit (a California citizen) to withhold monies that would
16 necessarily harm Plaintiff in California. *E.g.*, *Atkins v. Calypso Sys., Inc.*, No. CV-14-02706-
17 PHX-NVWD, 2015 WL 5856881, at *5, 7 (D. Ariz. Oct. 8, 2015) (distinguishing *Walden*).

18 Accordingly, there is a prima facie showing that Mr. Kieffer was the guiding spirit behind
19 Summit’s alleged wrongful conduct of withholding Plaintiff’s pay and distribution; Summit’s
20 contacts with California (including that it was a California citizen until Plaintiff resigned earlier
21 this year) can be imputed to Mr. Kieffer for personal jurisdiction purposes. The Court cautions
22 that it is not holding that it has personal jurisdiction of Mr. Kieffer merely because he was a
23 member of an LLC that also had a California member; rather, it is because the allegations support
24 a prima facie showing that Mr. Kieffer was the guiding spirit behind the LLC’s alleged wrongful
25 conduct directed at its California member.

26 2. Alter Ego

27 Plaintiff also contends that specific personal jurisdiction exists under an alter ego theory.
28 California recognizes the theory “where two conditions are met: First, where there is such a unity

1 of interest and ownership that the individuality, or separateness, of the said person and corporation
2 has ceased; and, second, where adherence to the fiction of the separate existence of the corporation
3 would sanction a fraud or promote injustice.”⁴ *Boon Glob*, 923 F.3d at 653. “Alter ego is an
4 extreme remedy, sparingly used.” *Sonora Diamond Corp. v. Superior Court*, 99 Cal. Rptr. 2d 824,
5 836 (Cal. Ct. App. 2000).

6 Plaintiff does not allege facts that suggest fraud or injustice if Mr. Kieffer is not subjected
7 to personal jurisdiction based on his use of Summit’s corporate form. He does allege that, in
8 August 2020, Mr. Kieffer caused Summit to be undercapitalized “for at least a period of time” by
9 directing an improper cash distribution. (Dkt. No. 8 ¶ 15.) But that does not suggest that Plaintiff
10 would have any present difficulty enforcing a judgment against Summit or that injustice would
11 result if Mr. Kieffer “hide[s] behind the corporate form.” *Sonora Diamond*, 99 Cal. Rptr. 2d at
12 837. Accordingly, Plaintiff has not made a prima facie showing that Mr. Kieffer and Summit were
13 alter egos in order for the Court to exercise personal jurisdiction over Mr. Kieffer.

14 **B. Claims Arising Out of Forum-Related Activities**

15 Plaintiff’s claims arise out of Mr. Kieffer’s forum-related activities as the guiding spirit
16 behind Summit. *See Schwarzenegger*, 374 F.3d at 801–02. But for Mr. Kieffer’s causing Summit
17 to withhold monies, Summit—then a California citizen—would not have injured Plaintiff in
18 California. *See Ziegler v. Indian River County*, 64 F.3d 470, 474 (9th Cir. 1995).

19 **C. Reasonableness**

20 Because the first and second prongs of specific personal jurisdiction are met, then the
21 Court may exercise personal jurisdiction over Mr. Kieffer unless Defendants demonstrate that
22 doing so would be unreasonable. *Schwarzenegger*, 374 F.3d at 802. Defendants must present a
23 “compelling case” based on the seven factors derived from *Burger King*. 471 U.S. at 477; *Core-*
24 *Vent Corp. v. Nobel Indus. AB*, 11 F.3d 1482, 1487–88 (9th Cir. 1993).

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26
27 ⁴ The parties agree that the tests under California and Wisconsin law are interchangeable here.
28 (Dkt. No. 19-1 at 15–16; Dkt. No 20 at 17–18); *see Consumer’s Co-op. of Walworth Cnty. v. Olsen*, 419 N.W.2d 211, 218 n.5 (Wis. 1988); *see also Wehlage v. EmpRes Healthcare Inc.*, 821 F. Supp. 2d 1122, 1126–30 (N.D. Cal. 2011) (performing alter ego choice of law analysis).

1 Defendants have not met that burden. First, the extent of interjection into the forum state
 2 was moderate. *See Ziegler*, 64 F.3d at 475; *see also Roth v. Garcia Marquez*, 942 F.2d 617, 623
 3 (9th Cir. 1991) (suggesting that where purposeful availment or an alternative theory is satisfied,
 4 then analysis of first reasonableness factor is “redundant”). Second, Mr. Kieffer’s burden of
 5 litigating in California is equal to Plaintiff’s burden of litigating elsewhere, weighing slightly
 6 against jurisdiction. *See Ziegler*, 64 F.3d at 475. The third and fourth factors counterbalance one
 7 another. *See id.* Although Wisconsin has a sovereignty interest in disputes related to LLCs that
 8 are located in and citizens of Wisconsin, the forum state has a countervailing interest because
 9 Summit and Plaintiff were also citizens of California. Moreover, Plaintiff’s claims arise under the
 10 laws of both states. Fifth, efficient resolution of the controversy weighs slightly against
 11 jurisdiction because witnesses and evidence may be located in Wisconsin, although much of the
 12 evidence is likely store electronically. *See id.* at 475–76. Sixth, Plaintiff’s interest in convenient
 13 and effective relief weighs slightly, if at all, in favor of jurisdiction; there is no indication that
 14 relief would be unavailable to Plaintiff in Wisconsin. *See id.* at 476. Seventh, likewise, an
 15 alternative forum exists. *See id.* In sum, factors 1, 4, and 6 weigh slightly in favor of jurisdiction
 16 while factors 2, 3, 5, and 7 weigh slightly against. Thus, Defendants have not presented a
 17 “*compelling case*” to rebut the “presumption” that the exercise of personal jurisdiction over Mr.
 18 Kieffer is reasonable. *Roth*, 942 F.2d at 625.

19 Accordingly, the Court may exercise personal jurisdiction over Mr. Kieffer consistent with
 20 the requirements of due process. Defendants’ motion to dismiss for lack of personal jurisdiction is
 21 DENIED.

22 **II. Transfer**

23 In the alternative, Defendants ask the Court to transfer this case to the Eastern District of
 24 Wisconsin pursuant to 28 U.S.C. § 1404(a). Section 1404(a) permits transfer “to any other district
 25 or division where [the case] might have been brought,” subject to the court’s “individualized, case-
 26 by-case consideration of convenience and fairness.” *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S.
 27 22, 29 (1988) (citation omitted). Plaintiff does not dispute that his claims could have been brought
 28 in the Eastern District of Wisconsin.

1 Defendants argue that the following factors related to convenience and fairness weigh
2 strongly in favor of transfer: convenience of the parties; convenience of witnesses; ease of access
3 to evidence; local interest in the controversy; and differences in the cost of litigation in the two
4 forums. *See Jones v. GNC Franchising*, 211 F.3d 495, 498–99 (9th Cir. 2000). Given the
5 practical realities of this case, which is essentially a business dispute between a person who lives
6 in California and a person who lives in Wisconsin, there is no apparent fairness or justice interest
7 in transferring the case from one state to the other. *See Decker Coal Co. v. Commonwealth Edison*
8 *Co.*, 805 F.2d 834, 843 (9th Cir. 1986) (“[T]ransfer would merely shift rather than eliminate the
9 inconvenience.”). While Summit’s office is in Wisconsin, Defendants have not rebutted
10 Plaintiff’s assertion that most if not all of the relevant records are stored electronically and could
11 be accessed anywhere. (Dkt. No. 20-1 ¶¶ 7–8.) Nor have they explained with particularity which
12 witnesses, if any, they expect will be called on to participate in this case and who would be
13 inconvenienced by litigating in California. (*See id.* ¶ 9.)

14 Accordingly, the Court finds that transfer is not in the interests of justice.

15 **CONCLUSION**

16 For the reasons explained above, the Court DENIES Defendants’ partial motion to dismiss
17 for lack of jurisdiction and declines to transfer venue.

18 This Order disposes of Docket No. 19.

19 **IT IS SO ORDERED.**

20 Dated: November 19, 2021

21 
22 JACQUELINE SCOTT CORLEY
23 United States Magistrate Judge
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