

United States District Court
Northern District of California

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

JUNIPER NETWORKS, INC.,
Plaintiff,
v.
BRUNO ANDRADE,
Defendant.

Case No. 20-cv-02360-BLF

**ORDER GRANTING MOTION TO
DISMISS UNDER THE DOCTRINE OF
FORUM NON CONVENIENS; AND
TERMINATING AS MOOT
ALTERNATIVE MOTION TO STAY**

[Re: ECF 74]

Plaintiff Juniper Networks, Inc. (“Juniper”) claims that it was defrauded when it acquired software company HTBase Corporation (“HTBase”) in reliance on misrepresentations made by HTBase’s founder and CEO, Defendant Bruno Andrade (“Andrade”). Juniper sues Andrade for breach of contract, fraudulent misrepresentation, and negligent misrepresentation.

Andrade moves to dismiss or stay this lawsuit under the doctrine of *forum non conveniens* and principles of comity. He asserts that Ontario, Canada is a more appropriate forum for Juniper’s claims, in part because the parties are litigating a related action there. Andrade asks the Court to dismiss the present lawsuit or, alternatively, to stay it pending resolution of the Ontario Action. Juniper opposes Andrade’s motion, arguing that there is little overlap between the present suit and the Ontario Action, there is no risk of inconsistent judgments if both proceed, and Juniper’s choice of forum is entitled to deference.

1 For the reasons discussed below, the motion to dismiss is GRANTED, and the alternative
2 motion to stay is TERMINATED AS MOOT.

3 **I. BACKGROUND**

4 *Juniper's Acquisition of HTBase*

5 Juniper is a California-based corporation that designs and sells networking products. In
6 2018, Juniper became interested in investing in or acquiring HTBase, a Canadian software
7 developer. *See* Hutchins Decl. ¶¶ 5-7, ECF 27-4.¹ Juniper was particularly interested in the
8 storage capabilities of HTBase's Juke product. *See id.* ¶¶ 16-17. Juniper negotiated with HTBase
9 throughout 2018, dealing primarily with HTBase's founder and CEO, Andrade. *See id.* ¶¶ 16-26.
10 Andrade is a Brazilian citizen and a permanent resident of Canada. *See* Andrade Decl. ¶ 2, ECF
11 21-1. Andrade traveled to California on several occasions to meet with Juniper officers and
12 employees at Juniper's headquarters in Sunnyvale, California. *See* Hutchins Decl. ¶¶ 16-26, ECF
13 27-4; Minnis Decl. ¶ 8, ECF 28-12. Andrade also was in regular contact with Juniper employees
14 in California through emails and telephone calls. *See* Hutchins Decl. ¶ 25. Andrade later
15 purchased a home in Mountain View, California, where he currently resides. *See* Suppl. Bobrow
16 Decl. ¶ 11, ECF 77-4; Andrade Decl. ¶ 3, ECF 21-1; Statement of Claim ¶ 2, Bernstein Decl. Exh.
17 A, ECF 28-10.

18 Juniper ultimately acquired HTBase in December 2018 through a wholly owned Canadian
19 subsidiary that Juniper created specifically for the transaction, 1187474 B.C. Unlimited Liability
20 Company ("118 ULC"). *See* Hutchins Decl. ¶¶ 28-30, ECF 27-4. Juniper, 118 ULC, HTBase,
21 and HTBase's shareholders (referred to as "Vendors") entered into a Share Purchase Agreement
22 ("SPA") under which 118 ULC purchased all common and preferred shares of HTBase and
23 Juniper acted as guarantor of the purchase price. *See* SPA, Compl. Exh. A, ECF 23-1. The
24 purchase price was \$22,500,000. *See id.* ¶ 10. The SPA authorized Juniper and 118 ULC
25 (collectively, "Juniper") to hold back \$2,500,000 of the purchase price (the "Holdback Amount")

26 _____
27 ¹ The parties' briefing on Andrade's renewed motion cites to evidence submitted with the Vendor
28 Parties' prior motion to dismiss or stay. While it has considered this evidence, the Court generally
requires parties to provide all evidence *with* the briefing on motions submitted to the Court for
decision.

1 for one year after closing as a potential set-off for damages that might arise should the Vendors
2 breach the SPA. *See id.* ¶¶ 3.4. 7.13.

3 In the SPA, the Vendors made certain representations and warranties, including that:
4 HTBase’s financial disclosures were accurate and complete; all third-party technology and
5 intellectual property incorporated into HTBase products had been disclosed; and HTBase owned
6 or had licenses to all source code in its software. *See* SPA ¶ 4.2. The SPA requires the Vendors to
7 indemnify the other parties to the SPA for damages arising from the Vendors’ breach of their
8 representations and warranties. *See* SPA ¶ 7.2. In order to recover such damages, the
9 “Indemnified Party” must submit a Claim Notice to each relevant Vendor through the “Vendors’
10 Representative.” SPA ¶ 7.4. The Vendors’ Representative has authority to give and receive
11 notices, settle claims, and take other action on behalf of each Vendor. *See* SPA ¶ 12.4(2). The
12 SPA designates Andrade as the Vendors’ Representative. *See* SPA ¶ 12.4(1).

13 The SPA contains an Attornment clause providing in relevant part that “[e]ach Party agrees
14 (a) that any Legal Proceeding relating to this Agreement may (but need not) be brought in any
15 court of competent jurisdiction in the Province of Ontario, and for that purpose now irrevocably
16 and unconditionally attorns and submits to the jurisdiction of such Ontario court.” SPA ¶ 12.12.
17 The SPA also contains a choice-of-law provision stating that “[t]his Agreement shall be governed
18 by and construed in accordance with the laws of the Province of Ontario and the laws of Canada
19 applicable in such Province and this Agreement shall be treated, in all respects, as an Ontario
20 contract.” SPA ¶ 12.13.

21 *Juniper’s Claim Notice under the SPA Re Vendors’ Alleged Breaches of SPA*

22 On December 5, 2019, Juniper sent a Claim Notice to Andrade in his role as the Vendors’
23 Representative, asserting breaches of the SPA by the Vendors, including breach of representations
24 and warranties regarding the amount of HTBase’s accounts receivable, and breach of
25 representations and warranties regarding HTBase’s intellectual property. *See* Claim Notice,
26 Bobrow Decl., Ex. C, ECF 28-4. With respect to the accounts receivable claim, Juniper asserted
27 that the Vendors falsely stated that HTBase had more than \$700,000 in accounts receivable when
28 in fact there were no purchase orders or invoices that supported such accounts receivable. *See id.*

1 With respect to the intellectual property claim, Juniper asserted among other things that the
2 Vendors had failed to disclose that HTBase’s Juke product includes open source software
3 components. *See id.* Juniper took the position that the damages arising from the alleged breaches
4 of the SPA would exceed the Holdback Amount of \$2,500,000 and it declined to release any
5 portion of the Holdback Amount at the one-year anniversary of the transaction closing. Statement
6 of Claim ¶ 23, Bernstein Decl. Exh. A, ECF 28-10.

7 *The Present Lawsuit*

8 On February 28, 2020, Juniper filed the present lawsuit in the Santa Clara County Superior
9 Court, asserting a claim for breach of contract against five Vendors: Andrade, Mars Investment
10 Accelerator Fund Inc. (“Mars”), Northspring Capital Partners Inc. (Northspring”), Josomeyr Alves
11 De Oliveira (“Oliveira”), and Ruben Marcos Seidl (“Seidl”) (collectively, “Vendor Parties”). *See*
12 *Compl.*, ECF 23. Juniper alleges that the Vendor Parties breached the accounts receivable
13 representations and warranties in the SPA by falsely stating that HTBase had more than \$700,000
14 in accounts receivable. *See id.* ¶¶ 86-91. Juniper also alleges that the Vendor Parties breached the
15 intellectual property representations and warranties by failing to disclose that HTBase’s Juke
16 product is based on open source software rather than on proprietary technology. *See id.*

17 In addition, Juniper asserts claims for fraudulent and negligent misrepresentation against
18 Andrade. *See Compl.* ¶¶ 94-125. As part of Juniper’s due diligence prior to acquiring HTBase,
19 Juniper arranged for HTBase to submit source code and binary files to be scanned by Black Duck,
20 a company specializing in determining whether a company’s software incorporates open source
21 software. *See id.* ¶ 34. Open source software is software that a developer can use, generally free
22 of charge, subject to licensing restrictions. *See id.* ¶ 35. Juniper claims that Andrade personally
23 selected which source code and binary files HTBase sent to Black Duck for scanning. *See id.* ¶
24 40. Black Duck’s scan did not identify any open source software in HTBase’s source code or
25 binary files. *See id.* ¶ 41. Nor did Andrade disclose any open source software contained in Juke
26 when engineers and project managers from Juniper and HTBase met in Toronto to discuss
27 HTBase’s intellectual property. *See id.* ¶ 43. According to Juniper, Andrade stated that Juke’s file
28 system was proprietary to HTBase, was HTBase’s intellectual property, and was a core component

1 of Juke. *See id.* ¶ 45. Juniper claims that after acquiring HTBase, Juniper discovered that Juke
 2 contains open source software. *See id.* ¶¶ 58-68. Upon making that discovery, Juniper removed
 3 Juke from its product catalog. *See id.* ¶ 68. After investigating the matter, Juniper concluded that
 4 Andrade had not submitted Juke to Black Duck for scanning and/or had altered the Juke code to
 5 conceal the open source software. *See id.* ¶¶ 64-67. Juniper alleges that it relied on Andrade’s
 6 material misrepresentations regarding Juke in deciding to enter into the SPA. *See id.* ¶¶ 107, 123.

7 The Vendor Parties removed the suit to federal district court on April 8, 2020. *See* Not. of
 8 Removal, ECF 1.

9 *The Ontario Action*

10 Approximately one month after removal, on May 7, 2020, the Vendor Parties – Andrade,
 11 Mars, Northspring, Oliveira, and Seidl – filed a Statement of Claim against Juniper in the Superior
 12 Court in Ontario, Canada (“Ontario Action”). *See* Statement of Claim, Bernstein Decl. Exh. A,
 13 ECF 28-10. A Statement of Claim filed in Ontario is akin to a complaint filed in a United States
 14 District Court. *See* Bernstein Decl. ¶ 34, ECF 28-9. In the Ontario Action, the Vendor Parties
 15 dispute Juniper’s set-offs relating to its accounts receivable and intellectual property claims. *See*
 16 Statement of Claim ¶¶ 18-36, Bernstein Decl. Exh. A, ECF 28-10. The Vendor Parties allege that
 17 Juniper and its subsidiary, 118 ULC, “have breached the terms of the SPA and breached their duty
 18 of good faith and honesty in performing the agreement by arbitrarily retaining the Holdback
 19 Amount in bad faith.” ¶ 37. The Ontario Action is ongoing.

20 *Dismissal of all Vendor Parties Except Andrade from Present Lawsuit*

21 The day after commencing the Ontario Action, the Vendor Parties moved to dismiss or
 22 stay the present suit under the doctrine of *forum non conveniens* and principles of comity, arguing
 23 that the present suit should be dismissed or stayed pending resolution of the Ontario Action. *See*
 24 Mot. to Dismiss or Stay, ECF 26. In addition, all the Vendor Parties except Andrade moved to
 25 dismiss the present suit for lack of personal jurisdiction. *See id.* The Court granted the latter
 26 motion, dismissing Vendor Parties Mars, Northspring, Oliveira, and Seidl for lack of personal
 27 jurisdiction, with leave to amend. *See* Order Granting Motion to Dismiss, ECF 66. The Court
 28 deferred consideration of the *forum non conveniens* and comity issues until it was clear which

1 Vendor Parties would remain in the case. *See id.* Juniper chose not to amend, leaving Andrade as
2 the only defendant.

3 **II. LEGAL STANDARD**

4 **A. *Forum Non Conveniens***

5 “Federal district courts have discretion to dismiss an action under the doctrine of *forum*
6 *non conveniens.*” *Ayco Farms, Inc. v. Ochoa*, 862 F.3d 945, 948 (9th Cir. 2017). “Dismissal is
7 appropriate only if the defendant establishes (1) the existence of an adequate alternative forum,
8 and (2) that the balance of private and public interest factors favors dismissal.” *Id.* (quotation
9 marks and citation omitted). “[A] plaintiff is generally entitled to deference in its choice of forum,
10 especially if the plaintiff is a U.S. citizen or resident.” *Id.* at 949-50. “For a U.S. citizen’s choice
11 of forum to be rejected, the private and public interest factors must strongly favor trial in a foreign
12 country.” *Id.* at 950 (quotation marks and citation omitted).

13 “The private interest factors are: (1) the residence of the parties and the witnesses; (2) the
14 forum’s convenience to the litigants; (3) access to physical evidence and other sources of proof;
15 (4) whether unwilling witnesses can be compelled to testify; (5) the cost of bringing witnesses to
16 trial; (6) the enforceability of the judgment; and (7) all other practical problems that make trial of a
17 case easy, expeditious and inexpensive.” *Ayco Farms*, 862 F.3d at 950 (quotation marks and
18 citation omitted). “The public interest factors are (1) [the] local interest of [the] lawsuit; (2) the
19 court’s familiarity with governing law; (3) [the] burden on local courts and juries; (4) [the amount
20 of] congestion in the court; and (5) the costs of resolving a dispute unrelated to [the] forum.” *Id.*
21 (quotation marks and citation omitted, alterations in original).

22 **B. Comity**

23 “International comity is a doctrine of prudential abstention, one that counsels voluntary
24 forbearance when a sovereign which has a legitimate claim to jurisdiction concludes that a second
25 sovereign also has a legitimate claim to jurisdiction under principles of international law.” *Mujica*
26 *v. AirScan Inc.*, 771 F.3d 580, 598 (9th Cir. 2014) (quotation marks and citation omitted). The
27 aspect of the doctrine referred to as “comity among courts” or “adjudicatory comity,” is “viewed
28 as a discretionary act of deference by a national court to decline to exercise jurisdiction in a case

1 properly adjudicated in a foreign state.” *Id.* (quotation marks and citation omitted). “[C]ourts
2 have struggled to apply a consistent set of factors in their comity analyses.” *Id.* at 603.

3 The Ninth Circuit has found the following factors to be a useful starting point: (1) “the
4 strength of the United States’ interest in using a foreign forum”; (2) “the strength of the foreign
5 governments’ interests”; and (3) “the adequacy of the alternative forum.” *Mujica*, 771 F.3d at 603
6 (quotation marks and citation omitted). With respect to the first factor, U.S. interests, the Ninth
7 Circuit has articulated a non-exclusive list of considerations, including: “(1) the location of the
8 conduct in question, (2) the nationality of the parties, (3) the character of the conduct in question,
9 (4) the foreign policy interests of the United States, and (5) any public policy interests.” *Id.* at
10 604. With respect to the second factor, foreign interests, the Ninth Circuit has held that “[t]he
11 proper analysis of foreign interests essentially mirrors the consideration of U.S. interests.” *Id.* at
12 607. Finally, with respect to the third factor, adequacy of the alternative forum, the Court
13 considers whether the plaintiff has shown that the alternative forum is “clearly unsatisfactory” or
14 would result in “manifest injustice.” *Id.* at 614.

15 **III. DISCUSSION**

16 Andrade argues that the Court should dismiss Juniper’s lawsuit under the doctrine of *forum*
17 *non conveniens*. Next, Andrade asserts that the Court should dismiss Juniper’s suit under
18 principles of comity. Finally, if the Court is not inclined to dismiss the present suit, Andrade asks
19 the Court to stay it pending resolution of the Ontario Action. Juniper contends that all of
20 Andrade’s arguments are without merit and that the motion should be denied in its entirety.

21 **A. Motion to Dismiss under Doctrine of *Forum Non Conveniens***

22 In order to prevail on his motion to dismiss on *forum non conveniens* grounds, Andrade
23 must establish that (1) there is an adequate alternative forum and (2) the balance of private and
24 public interest factors favors dismissal. *See Ayco*, 862 F.3d at 948. With respect to the first prong,
25 Andrade asserts that Ontario, Canada is an adequate alternative forum for Juniper’s claims. “An
26 alternative forum is deemed adequate if: (1) the defendant is amenable to process there; and (2) the
27 other jurisdiction offers a satisfactory remedy.” *Carijano v. Occidental Petroleum Corp.*, 643
28 F.3d 1216, 1225 (9th Cir. 2011). Under the SPA, Defendant Andrade agreed to accept service in

1 Ontario; all parties agreed that legal proceedings relating to the SPA may be brought in Ontario;
 2 and all parties expressly consented to jurisdiction in Ontario. SPA ¶¶ 12.3, 12.12. Several district
 3 courts within the Ninth Circuit have found that the Canadian judicial system provides an adequate
 4 alternative forum for civil suits involving breach of contract and related claims. *See, e.g., Carl's*
 5 *Jr. Restaurants LLC v. 6Points Food Servs. Ltd.*, No. CV 15-9827-GHK (ASX), 2016 WL
 6 3671116, at *5 (C.D. Cal. July 7, 2016) (finding Canada an adequate alternative forum for contract
 7 claims); *Tradin Organics USA, LLC v. Advantage Health Matters, Inc.*, No. 5:14-CV-02041-EJD,
 8 2015 WL 1306929, at *9 (N.D. Cal. Mar. 23, 2015) (finding Ontario, Canada an adequate
 9 alternative forum for contract claims); *Etaliq, Inc. v. Cisco Sys., Inc.*, No. CV 11-3672 GAF
 10 (FFMx), 2011 WL 13220445, at *3 (C.D. Cal. July 20, 2011) (finding Canada an adequate
 11 alternative forum for contract and trade secrets claims). Juniper concedes that Ontario, Canada, is
 12 an adequate alternative forum. *See* Pl.'s Opp. at 6, ECF 77. Accordingly, the Court finds that
 13 Andrade has established that Ontario, Canada is an adequate alternative forum for Juniper's
 14 claims.

15 Andrade's *forum non conveniens* motion thus turns on the second prong, the balance of
 16 private and public interest factors. As noted above, those factors "must strongly favor trial in a
 17 foreign country" for a U.S. citizen's choice of forum to be rejected. *Ayco*, 862 F.3d at 950.
 18 Juniper alleges in its complaint, and Andrade does not dispute, that it was incorporated under the
 19 laws of Delaware and maintains its principal place of business in California. *See* Compl. ¶ 5, ECF
 20 23. Juniper therefore is a citizen of both Delaware and California and, more generally, of the
 21 United States. *See Hertz Corp. v. Friend*, 559 U.S. 77, 80 (2010) (a corporation is a citizen of the
 22 state of incorporation and the state where it had its principal place of business). Consequently,
 23 Juniper's choice of forum is entitled to deference unless the private and public interest factors
 24 strongly favor Ontario as a more appropriate forum.

25 Andrade first addresses the public interest factors, then the private interest factors.

26 1. Public Interest Factors

27 The public interest factors are: "(1) [the] local interest of [the] lawsuit; (2) the court's
 28 familiarity with governing law; (3) [the] burden on local courts and juries; (4) [the amount of]

1 congestion in the court; and (5) the costs of resolving a dispute unrelated to [the] forum.” *Ayco*
2 *Farms*, 862 F.3d at 950 (quotation marks and citation omitted, alterations in original).

3 **a. Local Interest**

4 In evaluating the first public interest factor, local interest in the lawsuit, the Court asks
5 “only if there is an identifiable local interest in the controversy, not whether another forum also
6 has an interest.” *Bos. Telecommunications Grp., Inc. v. Wood*, 588 F.3d 1201, 1212 (9th Cir.
7 2009) (quotation marks and citation omitted). “Jurisdictions generally have an interest in
8 providing a forum for their citizens to seek redress.” *Summers v. Starwood Hotels*, No. CV 11-
9 10608 GAF (MANx), 2013 WL 12113227, at *11 (C.D. Cal. Feb. 27, 2013) (finding local interest
10 factor satisfied for purposes of *forum non conveniens* analysis where plaintiff was a citizen of the
11 forum state); *see also Dole Food Co. v. Watts*, 303 F.3d 1104, 1115-16 (9th Cir. 2002) (holding in
12 context of personal jurisdiction analysis that “California has a strong interest in providing a forum
13 for its residents and citizens who are tortiously injured”). California plainly has an interest in
14 providing a forum for its citizen, Juniper, to seek redress for Andrade’s alleged misconduct.

15 Andrade argues that this case has little connection with California, characterizing it as “a
16 Canadian contract dispute” concerning “the purchase of a Canadian company by another Canadian
17 company.” Mot. at 6, ECF 74. The Court finds this argument to be unpersuasive. While
18 Juniper’s Canadian subsidiary, 118 ULC, was designated as the purchaser under the SPA, it is
19 clear from the record that Juniper made the decision to acquire HTBase, engaged in substantial
20 negotiations with Andrade in California prior to the acquisition, and created 118 ULC solely for
21 purposes of the acquisition. *See Hutchins Decl.* ¶¶ 5-28, ECF 27-4; *Minnis Decl.* ¶ 8, ECF 28-12.
22 The Court also finds unpersuasive Andrade’s argument that California lacks a sufficient interest in
23 the suit because much of the conduct giving rise to Juniper’s claims occurred in Ontario, for
24 example, execution of the SPA and certain of Andrade’s alleged misrepresentations. *See SPA* ¶
25 5.1; *Compl.* ¶¶ 43-46. This Court “need not hold . . . that California is the principal locus of the
26 case or that California has more of an interest than any other jurisdiction in order to conclude that
27 California has a meaningful interest in this litigation.” *Bos. Telecommunications*, 588 F.3d at 1212
28 (quotation marks omitted). The fact that California citizen Juniper seeks redress against Andrade,

1 who currently resides in California, is sufficient to give California an interest in this suit.

2 This factor weighs against dismissal.

3 **b. Court's Familiarity with Governing Law**

4 The second public interest factor is this Court's familiarity with the governing law. The
 5 SPA provides that "[t]his Agreement shall be governed by and construed in accordance with the
 6 laws of the Province of Ontario and the laws of Canada applicable in such Province and this
 7 Agreement shall be treated, in all respects, as an Ontario contract." SPA ¶ 12.13. "Many *forum*
 8 *non conveniens* decisions have held that the need to apply foreign law favors dismissal." *Piper*
 9 *Aircraft Co. v. Reyno*, 454 U.S. 235, 260 n. 29 (1981) (collecting cases). Juniper argues that the
 10 similarity between California law and Ontario law renders this factor neutral. The Court
 11 disagrees. "Although this Court is capable of applying Canadian law, such application would
 12 impose a substantial burden on both the Court and the jurors, to research, understand, and apply
 13 the foreign law." *Gund v. Philbrook's Boatyard*, 374 F. Supp. 2d 909, 914 (W.D. Wash. 2005).
 14 While "this factor alone is not sufficient to warrant dismissal," it does weigh in favor of dismissal.
 15 *Piper Aircraft*, 454 U.S. at 260 n. 29.

16 Andrade's discussion of this public interest factor in his moving papers includes a citation
 17 to a Canadian decision, *Blue Note*. See *Blue Note Mining Inc. v. CanZinco Ltd.* 2008 CarswellOnt
 18 5154. Andrade cites *Blue Note* for the proposition that the permissive Attornment clause
 19 contained in the SPA became a mandatory forum selection clause when the Vendor Parties
 20 commenced the Ontario Action. See Mot. at 8, ECF 74. In its opposition, Juniper argues that *Blue*
 21 *Note* does not deprive this Court of jurisdiction over the present suit, and that at most *Blue Note*
 22 suggests that the Ontario court would be unlikely to grant a motion to dismiss or stay the Ontario
 23 Action on *forum non conveniens* grounds. See Opp. at 15-17, ECF 77. In his reply, Andrade
 24 agrees that *Blue Note* does not deprive this Court of jurisdiction. See Reply at 9-12, ECF 78. He
 25 argues, however, that under *Blue Note* the mandatory nature of the Attornment clause once the
 26 Ontario Action was commenced means that the Ontario Action will go forward regardless of this
 27 Court's rulings. See *id.* Andrade contends that this Court should consider the burdens that would
 28 be imposed by requiring the parties to pursue simultaneous parallel actions when ruling on his

1 motion. *See id.*

2 At the hearing, Juniper argued persuasively that Andrade’s reply shifted the thrust of his
3 motion from the traditional *forum non conveniens* argument made in the moving papers to a new
4 argument based primarily on the asserted overlap between the present suit and the Ontario Action.
5 Juniper disputed Andrade’s characterization of the two actions as parallel, and it sought leave to
6 address that issue in a sur-reply. The Court granted Juniper leave to file a short sur-reply
7 addressing the overlap, or lack therefore, between the present suit and the Ontario Action. *See*
8 Sur-Reply, ECF 83. In the Court’s view, *Blue Note* and the extent to which this suit overlaps with
9 the Ontario Action do not bear on the second public interest factor, the Court’s familiarity with the
10 governing law. However, parallel actions properly may be considered as part of the private
11 interest factors in a *forum non conveniens* analysis. The Court therefore addresses *Blue Note* and
12 the weight to be given the pendency of the Ontario Action in the context of the seventh private
13 interest factor, addressing “all other practical problems,” below.

14 The second public interest factor, this Court’s familiarity with the governing law, weighs
15 in favor of dismissal.

16 **c. Burden on Local Courts and Juries**

17 The third public interest factor is the burden the litigation would place on local courts and
18 juries. Andrade asserts that the present lawsuit would impose a significant burden on this Court,
19 especially in light of the disruption caused by the COVID-19 pandemic. Although the COVID-19
20 pandemic unquestionably has been disruptive to this Court’s operations, Andrade has not
21 presented evidence that the burdens of litigation imposed on this Court would be any different
22 than those imposed on the Ontario court. Moreover, despite the COVID-19 pandemic, this Court
23 has heard two motions to dismiss in the case, referred the parties to a magistrate judge for a
24 settlement conference, and set the case for trial. *See* Minute Entries, ECF 50, 72, 80; Case
25 Management Scheduling Order, ECF 52.

26 Accordingly, the Court finds that this factor is neutral.

27 **d. Court Congestion**

28 The fourth public interest factor considers the relative congestion of the dockets of this

1 forum and the proposed alternative forum, and whether the alternative forum would offer a
 2 speedier trial. *See Gates Learjet Corp. v. Jensen*, 743 F.2d 1325, 1337 (9th Cir. 1984) (“The real
 3 issue is not whether a dismissal will reduce a court’s congestion but whether a trial may be
 4 speedier in another court because of its less crowded docket.”). Andrade has not submitted any
 5 evidence regarding congestion in the Ontario courts. In opposition, Juniper points out that the
 6 present action has been assigned a trial date, while the Ontario Action has not. *See Suppl.*
 7 *Bernstein Decl.* ¶ 9, ECF 77-1. Juniper apparently means to suggest that the present suit is further
 8 along than the Ontario Action. However, this Court does not have sufficient information to make
 9 that determination.

10 This factor is neutral.

11 **e. Costs of Resolving a Dispute Unrelated to the Forum**

12 The fifth public interest factor is the costs of resolving a dispute unrelated to the forum.
 13 Andrade cites *Gulf Oil* for the proposition that “[j]ury duty is a burden that ought not to be
 14 imposed upon the people of a community which has no relation to the litigation.” *Gulf Oil Corp.*
 15 *v. Gilbert*, 330 U.S. 501, 508-09 (1947). Andrade’s reliance on the cited language from *Gulf Oil*
 16 is misplaced, as this case arises out of a transaction entered into by a local corporation, which has
 17 brought suit in its home forum against an individual who currently resides in the forum.

18 This factor weighs slightly against dismissal.

19 **f. Balancing of Public Interest Factors**

20 Balancing these factors, the Court finds that the first factor (local interest) weighs strongly
 21 against dismissal and the second factor (familiarity with governing law) weighs strongly in favor
 22 of dismissal. The third and fourth factors are neutral, and the fifth factor weighs slightly against
 23 dismissal. Thus, the public interest factors weigh fairly evenly for and against dismissal.

24 **2. Private Interest Factors**

25 The private interest factors are: “(1) the residence of the parties and the witnesses; (2) the
 26 forum’s convenience to the litigants; (3) access to physical evidence and other sources of proof;
 27 (4) whether unwilling witnesses can be compelled to testify; (5) the cost of bringing witnesses to
 28 trial; (6) the enforceability of the judgment; and (7) all other practical problems that make trial of a

1 case easy, expeditious and inexpensive.” *Ayco Farms*, 862 F.3d at 950 (quotation marks and
2 citation omitted).

3 **a. Residence of Parties and Witnesses**

4 The first private interest factor is the residence of parties and witnesses. “In assessing the
5 weight to be accorded to the residence of the parties and witnesses, courts look to ‘the materiality
6 and importance of the anticipated witnesses’ testimony.” *Kleiner v. Spinal Kinetics, Inc.*, No.
7 5:15-CV-02179-EJD, 2016 WL 1565544, at *4 (N.D. Cal. Apr. 19, 2016) (quoting *Gates Learjet*
8 *Corp.*, 743 F.2d at 1335-36). Juniper’s fraud claims are based on Andrade’s alleged negligent and
9 intentional misrepresentations regarding Juke during negotiation of the SPA and the pre-
10 acquisition due diligence process. In particular, Juniper claims that Andrade concealed the fact
11 that Juke contains open source software and misrepresented that Juke is based on proprietary code
12 developed by HTBase. *See* Compl. ¶¶ 98-108, 116-25. As part of that concealment, Juniper
13 alleges, Andrade ensured that the code sent to Black Duck during the due diligence process would
14 not reveal the inclusion of the open source code in Juke. *See id.* ¶¶ 99, 117. Juniper’s contract
15 claim is based on Andrade’s alleged breach of representations and warranties contained in the SPA
16 regarding Juke and HTBase’s accounts receivable. *See id.* ¶¶ 85-91.

17 The witnesses with information most material to these claims are Andrade himself and the
18 Juniper employees involved in the contract negotiations, the due diligence, and the discovery that
19 Juke contains open source software. Andrade currently resides in California. *See* Suppl. Bobrow
20 Decl. ¶ 11, ECF 77-4. At least a dozen current and former Juniper employees who dealt with
21 Andrade, were involved in the due diligence process, or were involved in the discovery of the
22 open source software also reside in California. *See* Hutchins Decl. ¶¶ 33-34, ECF 27-4; Suppl.
23 Bobrow Decl. Exh. A, ECF 77-5. It thus appears that most, if not all, of the relevant witnesses are
24 located in California.

25 Andrade contends that the Court should give substantial weight to the fact that the Vendor
26 Parties who have been dismissed from this action – Mars, Northspring, Oliveira, and Seidl – reside
27 in Canada and Brazil. Andrade argues that, “Undoubtedly, each of the Foreign Defendants, who
28 were once named defendants in the present action, are relevant witnesses and cannot be compelled

1 to testify in the U.S. proceedings.” Mot. at 11, ECF 74. However, Andrade does not present any
 2 evidence showing what information those witnesses might have with respect to Andrade’s alleged
 3 misrepresentations, the inclusion of open source software in Juke, or any other issue material to
 4 Juniper’s claims. Andrade argues that the conduct giving rise to Juniper’s claims occurred in
 5 Toronto, pointing to Juniper’s allegations that he made misrepresentations during a meeting of
 6 engineers and project managers that occurred in Toronto. *See* Compl. ¶¶ 43-46. The only
 7 individuals that the complaint identifies as being at that meeting are Andrade and Joshua George,
 8 Vice President of Engineering at Juniper. *See id.* Both Andrade and George reside in California.
 9 *See* Suppl. Bobrow Decl. ¶ 11 & Exh. A, ECF 77-4; Hutchins Decl. ¶ 33, ECF 27-4. Andrade has
 10 not identified any attendee at the Toronto meeting who does not reside in California.

11 This factor weighs against dismissal.

12 **b. Forum’s Convenience to Litigants**

13 The second private interest factor is the forum’s convenience to the litigants. Juniper’s
 14 headquarters is located in this district, and Andrade currently resides in this district. *See* Hutchins
 15 Decl. ¶ 16, ECF 27-4; Suppl. Bobrow Decl. ¶ 11, ECF 77-4.

16 This factor weighs against dismissal.

17 **c. Access to Physical Evidence and Other Proof**

18 The third private interest factor is access to physical evidence and other proof. Neither
 19 party has identified any particular physical evidence that will be critical to Juniper’s claims.
 20 Andrade argues that any such evidence necessarily is in the control of one of the parties, and
 21 therefore can be provided in either California or Ontario. Juniper argues that its witnesses,
 22 documents, and computer media are concentrated in California, and that the same is true for
 23 Andrade, who resides in California. Because it appears that all relevant physical evidence is in
 24 control of the parties, and therefore can be provided in either forum, the Court concludes that this
 25 factor is neutral. *See Mullaney v. Nutribullet, L.L.C.*, No. 2:19-cv-00447-DDP (SSx), 2020 WL
 26 1067006, at *2 (C.D. Cal. Jan. 14, 2020) (“[P]hysical evidence is in control of the parties and can
 27 be provided in either forum.”).

28 This factor is neutral.

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28**d. Whether Unwilling Witnesses can be Compelled**

The fourth private interest factor is whether unwilling witnesses can be compelled to testify. Andrade asserts that the dismissed Vendor Parties, Andrade, Mars, Northspring, Oliveira, and Seidl, cannot be compelled to testify in the United States. As discussed above, Andrade has not explained what testimony these parties could offer that would be material to Juniper's claims.

Juniper contends that it does not have the power to force its former employees to participate in the Ontario Action, and travel restrictions arising from COVID-19 may raise barriers to such participation even if the former employees are willing. Juniper identifies several former employees that dealt with Andrade or otherwise played key roles in the acquisition of HTBase, all of whom reside in California. *See* Hutchins Decl. ¶¶ 33-34, ECF 27-4; Suppl. Bobrow Decl. Exh. A, ECF 77-5. However, Juniper does not present evidence that these witnesses would not be willing to testify voluntarily in the Ontario Action, or that they would be unable to travel there. *See* Carijano, 643 F.3d at 1231 (“[T]he initial question is not whether the witnesses are beyond the reach of compulsory process, but whether it has been alleged or shown that witnesses would be unwilling to testify.”).

This factor is neutral.

e. Cost of Bringing Witnesses to Trial

The fifth private interest factor is the cost of bringing witnesses to trial. As discussed above, Andrade has failed to identify any material witnesses who reside outside of California. Thus, the cost of bringing witnesses to trial in this district would be minimal. The cost of bringing witnesses from California to Ontario likely would be significant, particularly if COVID-19 quarantine requirements are in effect.

This factor weighs against dismissal.

f. Enforceability of Judgment

The sixth private interest factor is the enforceability of the judgment. Judgments rendered by United States District Courts and Canadian courts are enforceable in both countries. *See Cinematix, LLC v. Einthusan*, No. 19-CV-02749-EMC, 2020 WL 227180, at *3 (N.D. Cal. Jan. 15, 2020) (Canadian judgments are enforceable in the United States); *Kellerman v. Inter Island*

1 *Launch*, No. 2:14-CV-01878-RAJ, 2015 WL 6620604, at *5 (W.D. Wash. Oct. 30, 2015) (United
2 States judgments are enforceable in Canada). The parties do not argue otherwise.

3 This factor is neutral.

4 **g. All Other Practical Problems**

5 The seventh and final private interest factor allows the Court to consider “all other
6 practical problems that make trial of a case easy, expeditious and inexpensive.” *Ayco Farms*, 862
7 F.3d at 950. Each side raises practical considerations that properly may be evaluated under this
8 factor. Andrade argues that in light of the parallel action pending in Ontario, the Court should
9 dismiss the present suit to avoid duplication of resources and the risk of inconsistent judgments.
10 Juniper argues that if it were required to litigate its claims in Ontario instead of in this Court,
11 Canadian discovery practice would add additional expense and burdens.

12 Addressing Juniper’s argument first, the Court finds the declaration of Andrew Bernstein
13 sufficient to establish that litigation of Juniper’s claims in Ontario would be more difficult in some
14 respects than litigating in this forum. *See* Bernstein Decl. ¶¶ 29-33, ECF 28-9. Mr. Bernstein
15 describes the particular aspects of Canadian discovery practice that would create additional
16 hurdles Juniper would have to overcome in order to depose witnesses before trial and obtain other
17 evidence in the Ontario Action. *See id.* The Court finds that this consideration weighs slightly
18 against dismissal.

19 Turning to Andrade’s argument that dismissal is appropriate in light of the parallel Ontario
20 Action, the Ninth Circuit has made clear that parallel litigation properly may be considered in
21 weighing the private interest factors in a *forum non conveniens* analysis. *See Lueck v. Sundstrand*
22 *Corp.*, 236 F.3d 1137, 1147 (9th Cir. 2001) (“Given the existence of the related proceedings, it is
23 all the more clear that the private interest factors weigh in favor of dismissal.”). District courts
24 within the Ninth Circuit have considered the impact of parallel actions under the seventh private
25 interest factor, addressing “all other practical problems.” *Globatrac LLC v. JB Squared Ltd.*, No.
26 CV-15-9278-MWF (SPX), 2016 WL 9045479, at *5 (C.D. Cal. Feb. 5, 2016) (considering parallel
27 litigation in England under seventh private interest factor in *forum non conveniens* analysis). This
28 Court likewise considers the impact of the Ontario Action in the context of the seventh private

1 interest factor.

2 The impact of the Ontario Action on the present lawsuit is illuminated by the Canadian
3 *Blue Note* decision cited by Andrade and discussed briefly above. *Blue Note* involved a non-
4 exclusive contractual jurisdiction provision stating that any action relating to the contract “may
5 (but need not) be brought in any court of competent jurisdiction in the Province of Ontario.” *Blue*
6 *Note*, 2008 CarswellOnt 5154 ¶ 3. One of the parties to the contract, Blue Note, filed a statement
7 of claim in Ontario, seeking among other things declaratory relief that it was not obligated to
8 indemnify other parties to the contract, CanZinco and Breakwater, with respect to costs arising
9 from pending litigation in the Province of New Brunswick. *Id.* CanZinco and Breakwater moved
10 for an order staying the Ontario Action on the basis of *forum non conveniens*. The Ontario court
11 denied the motion, finding that “while the parties’ contract contains a non exclusive jurisdiction
12 provision, once an action is brought in Ontario, the bar against motions such as this one renders
13 the situation analogous to an exclusive jurisdiction contract.” *Id.* ¶ 18. The Ontario court went on
14 to hold that although CanZinco and Breakwater were not estopped from bringing a *forum non*
15 *conveniens* motion, they had to “show strong cause” to prevail. *Id.* The Ontario court found that
16 CanZinco and Breakwater had not met their burden to show “strong cause” for a stay, and
17 therefore denied the motion. *Id.* ¶ 26. The Ontario court was not swayed by the fact that the New
18 Brunswick litigation had been filed first, observing that “the order of commencement of
19 proceedings is not a determinative factor.” *Id.* ¶ 21.

20 Andrade argues that the *Blue Note* decision is significant here because it indicates that if
21 Juniper were to file a *forum non conveniens* motion to dismiss or stay in the Ontario Action –
22 Juniper has not done so to date – such motion likely would be denied. Thus, Andrade contends,
23 “the question presented to this Court is whether the Parties should have to simultaneously litigate
24 the same issues both in the Ontario Action and this action.” Reply at 12, ECF 78. This Court
25 agrees that under *Blue Note*, any *forum non conveniens* motion filed in the Ontario Action likely
26 would be denied. Consequently, this Court must presume that the Ontario Action will proceed to
27 conclusion. The critical question for purposes of Andrade’s *forum non conveniens* motion, then, is
28 the degree of overlap between the Ontario Action and the present lawsuit. While Andrade asserts

1 that the two actions will require determination of the same issues under Ontario law, Juniper
2 disputes that assertion and argues that there is little overlap between the two actions.

3 In the present lawsuit, Juniper claims that Andrade breached the SPA by falsely stating that
4 HTBase had more than \$700,000 in accounts receivable by failing to disclose that HTBase's Juke
5 product is based on open source software rather than on proprietary technology. *See* Compl. ¶¶
6 86-91. Juniper also asserts claims for fraudulent and negligent misrepresentation against Andrade
7 based on his alleged material misrepresentations regarding Juke. *See* Compl. ¶¶ 94-125. In the
8 Ontario Action, the Vendors Parties (including Andrade) claim that Juniper and its subsidiary, 118
9 ULC, "have breached the terms of the SPA and breached their duty of good faith and honesty in
10 performing the agreement by arbitrarily retaining the Holdback Amount in bad faith." Juniper
11 Statement of Claim ¶ 37, Bernstein Decl. Exh. A, ECF 28-10. The Vendor Parties contend that
12 Juniper did not have a valid basis for retaining the Holdback Amount because Juniper's claims
13 against them for breach of the SPA, arising from the accounts receivable and open source
14 software, are without merit and did not cause any damages to Juniper. *See id.* ¶¶ 24-36.

15 The Court finds that there is substantial overlap between these two actions. Both will
16 require factual determinations whether the Vendor Parties, including Andrade, made material
17 misrepresentations regarding HTBase's accounts receivable and Juke, and whether such material
18 misrepresentations caused damages to Juniper. The Court finds unpersuasive Juniper's argument
19 that those factual determinations will not be made in the Ontario Action. Juniper argues that the
20 Vendor Parties' claim in the Ontario Action turns on whether *Juniper* acted in bad faith, while
21 Juniper's claims in the present lawsuit turn on whether *Andrade* breached the SPA and made
22 material misrepresentations. Juniper correctly points out that those claims have different elements.
23 *See* Bernstein Decl. ¶¶ 1-15 (elements of breach of contract under Canada law), ¶¶ 16-27
24 (elements of fraudulent and negligent misrepresentation under Canada law), ECF 28-9. What
25 Juniper's argument ignores, however, is that the basis for the Vendor Parties' bad faith claim
26 against Juniper is that they did *not* breach the SPA and thus that Juniper did not have a good faith
27 basis to retain the Holdback Amount. To prevail on that theory, the Vendor Parties will have to
28 present evidence on the merits of Juniper's contract claims against them, and Juniper necessarily

1 will have to respond in kind. The litigation of the Vendor Parties' bad faith claim in the Ontario
2 Action will substantially overlap with litigation of Juniper's contract claim in the present lawsuit.

3 Juniper argues that any factual determinations by the Ontario court regarding the merits of
4 Juniper's claims against the Vendor Parties will be merely incidental to the ultimate determination
5 whether Juniper acted arbitrarily and in bad faith in retaining the Holdback Amount. "Preclusive
6 force attaches to determinations that were necessary to support the court's judgment in the first
7 action," but litigants "are not precluded from relitigating an issue if its determination was merely
8 incidental to the judgment in the prior action." *Resol. Tr. Corp. v. Keating*, 186 F.3d 1110, 1115
9 (9th Cir. 1999). Juniper points out that even if its claims against Andrade are determined to lack
10 merit, Juniper in good faith could have believed them to be meritorious and retained the Holdback
11 Amount on that basis. Consequently, Juniper argues, no preclusive effect would attach to factual
12 determinations regarding the Vendor Parties' conduct. The Court does not find Juniper's
13 argument on this point persuasive. As framed in the Statement of Claim filed in the Ontario
14 Action, whether the Vendor Parties breached the SPA and whether Juniper suffered resulting
15 damages appear to be inextricably intertwined with the Vendor Parties' claim that Juniper
16 breached the SPA by arbitrarily retaining the Holdback Amount in bad faith.

17 This conclusion is supported by the discovery plan proposed by Juniper's counsel in the
18 Ontario Action. *See* Proposed Discovery Plan, Suppl. Elliott Decl. Exh. 1, ECF 78-1. Juniper's
19 counsel identified the "Legal Issues for Determination at Trial" in the Ontario Action to include
20 whether Juniper suffered any damages as a result of the Vendor Parties' alleged breaches of the
21 SPA. *See id.* Juniper's counsel indicated that the Ontario Action will require discovery of the
22 numerous "Relevant Documents," including those pertaining to:

- 23 (a) Juke product and any related software, including but not limited to:
24 i. Juniper's use of, and plan for use of, Juke by the Defendants;
25 ii. Juniper's replacement of JukeFS with Red Hat;
26 iii. Juniper's integration of Juke with Contrail;
27 iv. Juniper's efforts and discussions relating to open-sourcing Juke;
28 v. forensic analysis allegedly conducted by Juniper of Juke on or
around November 15, 2019;
vi. Juniper's plans to shelve the Juke product;
vii. HTBase's development of Juke (including Maestro), including the
identity and role of all persons involved in the same;

1 (b) SPA and generally Juniper's acquisition of HTBase including, (1) all
2 due diligence documents, (2) Juniper's internal communications about
3 the HTBASE acquisition or due diligence, and (3) HTBASE's internal
4 documents, whether communications or otherwise, about HTBASE's
5 acquisition by Juniper or due diligence relating thereto, (4)
6 communications amongst and/or between HTBASE and its
7 shareholders about HTBASE acquisition or due diligence[.]

8 *Id.*

9 In the view of Juniper's own counsel in the Ontario Action, then, discovery in the Ontario
10 Action will involve virtually all documents relating to the SPA and any damages suffered by
11 Juniper as a result of the Vendor Parties' alleged breach of the SPA. Factual determinations
12 regarding those issues thus may well have preclusive effect in the present action. Even if that
13 were not the case, it appears that the Ontario Action will involve litigation of many of the same
14 issues raised in the present suit, many of the same witnesses, and much of the same evidence.

15 The Court finds that the seventh private interest factor weighs heavily in favor of
16 dismissal. As a practical matter, it would make little sense for two courts to oversee litigation
17 involving the SPA, its breach, and damages flowing therefrom. While the additional burdens that
18 Canadian discovery practice would impose on Juniper weighs slightly against dismissal, those
19 burdens are far outweighed by the duplication of cost and effort, as well as the risk of inconsistent
20 rulings, that would result from allowing the two cases to proceed on parallel tracks.

21 **h. Balancing of Private Interest Factors**

22 The Court finds that the first factor (residence of parties and witnesses), second factor
23 (forum's convenience to the litigants), and the fifth factor (cost of bringing witnesses to trial)
24 weigh against dismissal. The third factor (access to evidence), fourth factor (whether unwilling
25 witnesses can be compelled), and sixth factor (enforceability of judgment) are neutral. The
26 seventh factor (all other practical problems) weighs in favor of dismissal.

27 Balancing these factors overall, the Court finds that they tip in favor of dismissal. The
28 three factors favoring Juniper, relating to the convenience of this forum for the parties and
witnesses, weigh less heavily than they otherwise might because the Ontario Action will proceed
regardless of this Court's rulings. Because Juniper and Andrade must litigate issues relating to the
SPA in that forum in any event, the inconvenience of litigating all issues there is entitled to only

1 moderate weight. In contrast, the duplication of resources and risk of inconsistent rulings that
2 would result from ongoing parallel litigation regarding the SPA weighs heavily in favor of
3 dismissal. *See Lueck v. Sundstrand Corp.*, 236 F.3d 1137, 1147 (9th Cir. 2001) (“Given the
4 existence of the related proceedings, it is all the more clear that the private interest factors weigh
5 in favor of dismissal.”).

6 **3. Overall Balancing of Public and Private Interest Factors**

7 As discussed above, the Court finds that the public interest factors weigh fairly evenly for
8 and against dismissal. The private interest factors, however, weigh heavily in favor of dismissal in
9 light of the parallel Ontario Action. In this Court’s view, it makes little sense to require the parties
10 to litigate the alleged breaches of the SPA and closely related issues in two jurisdictions. Doing so
11 would result in added expense to the parties, waste of judicial resources, and the risk of
12 inconsistent rulings. The Court finds these considerations especially compelling given the parties’
13 contractual agreement to the jurisdiction of Ontario and the fact that all issues will be decided
14 under Ontario law. After considering the parties’ arguments, the record as a whole, and the
15 applicable legal authorities, the Court concludes that Andrade has met his burden to show that the
16 public and private interest factors “strongly favor trial in a foreign country” as required for
17 Juniper’s choice of forum to be rejected. *See Ayco*, 862 F.3d at 950.

18 Andrade’s motion to dismiss under the doctrine of *forum non conveniens* is GRANTED.

19 **B. Other Arguments Raised in Motion**

20 Having concluded that this action is subject to dismissal on *forum non conveniens* grounds,
21 the Court need not and does not reach Andrade’s alternative argument for dismissal under the
22 principles of comity.

23 With respect to Andrade’s alternative motion to stay, the Court has considered whether it
24 might be more appropriate to stay the present action under the doctrine of *forum non conveniens*,
25 rather than dismiss it. District courts within the Ninth Circuit have found that a balancing of the
26 *forum non conveniens* factors may warrant a stay of litigation rather than dismissal. *See, e.g.,*
27 *MGA Entm’t Inc. v. Deutsche Bank AG*, No. CV 11-4932-GW(RZX), 2012 WL 12892902, at *9
28 (C.D. Cal. Feb. 27, 2012) (finding that either dismissal or stay was appropriate on *forum non*

1 *conveniens* grounds); *Ministry of Health, Province of Ontario, Canada v. Shiley Inc.*, 858 F. Supp.
2 1426, 1442 (C.D. Cal. 1994) (staying action on *forum non conveniens* grounds). Under the
3 circumstances presented here, however, the Court finds that dismissal is the more appropriate
4 result. As discussed above, Juniper and Andrade will be addressing the breach of the SPA and
5 resulting damages in the Ontario Action. This Court sees no benefit to having the parties litigate
6 those issues in the Ontario Action, only to re-litigate the same or closely related issues here.

7 Accordingly, Andrade's alternative motion to stay is TERMINATED AS MOOT.

8 **IV. ORDER**

- 9 (1) Defendant Andrade's motion to dismiss is GRANTED on *forum non conveniens*
10 grounds and his alternative motion to stay is TERMINATED AS MOOT;
11 (2) This order terminates ECF 74; and
12 (3) The Clerk shall close the file.

13
14 Dated: August 10, 2021



15
16 BETH LABSON FREEMAN
United States District Judge