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INCORP SERVICES, INC.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

INCORP SERVICES, INC., a Nevada
corporation,

Plaintiff,

vs.

LEGALZOOM.COM, INC., a Delaware
corporation,

Defendant.

Case No. 2:09-cv-00273-RLH-LRL

**PLAINTIFF'S OPPOSITION TO
LEGALZOOM.COM, INC.'S MOTION
TO TRANSFER VENUE PURSUANT
TO 28 U.S.C. § 1404(a)**

1 Plaintiff Incorp Services, Inc. (“Incorp”) hereby opposes LegalZoom.com, Inc.
2 (“LegalZoom”)’s Motion to Transfer Venue Pursuant to 28 U.S.C. §1404(a) (hereinafter,
3 “Motion”).

4 **I. INTRODUCTION**

5 According to its Motion, LegalZoom didn’t do anything wrong. And none of
6 LegalZoom’s employees or agents know of any wrongdoing. Yet, LegalZoom claims
7 that all of the witnesses to this nonexistent wrongdoing are located in Southern
8 California. Even if the Court were to accept this twisted logic, LegalZoom’s Motion still
9 fails for a variety of reasons. Significantly, LegalZoom ignores several of the relevant
10 factors for analyzing a motion to transfer venue under 28 U.S.C. §1404(a). Had
11 LegalZoom conducted a thorough analysis of these factors, it could only have concluded
12 that a transfer is wholly unwarranted. Among other things:

- 13 • LegalZoom completely ignored the significant deference afforded to Plaintiff’s
14 choice of venue;
- 15 • LegalZoom ignored the substantial contacts that both parties have with the
16 State of Nevada, particularly where LegalZoom serves as the Nevada
17 registered agent for nearly 2,000 companies;
- 18 • While LegalZoom complains that 187 of its witnesses are located in Southern
19 California, it does not—and cannot—claim that it has identified these
20 individuals as trial witnesses. And that is the relevant inquiry;
- 21 • LegalZoom ignored this Court’s greater familiarity with Nevada law;
- 22 • LegalZoom ignored the accepted rule that documents and electronic data can
23 be transported between states with minimal expense; and
- 24 • LegalZoom asked that this action to be transferred to one of the busiest and
25 congested court systems in the United States.

26 In light of these facts, it’s hard to accept LegalZoom’s Motion as a bona fide
27 request to transfer based on convenience. More likely, LegalZoom filed this Motion in a

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1 strategic effort to gain geographic leverage. This is not an acceptable reason to
2 transfer. For all of these reasons, LegalZoom’s Motion must be denied.

3 II. BACKGROUND

4 Incorp is a Nevada corporation headquartered in Henderson, Nevada.
5 (Complaint ¶2; Declaration of Tennie Sedlacek In Support of Plaintiff’s Opposition to
6 LegalZoom.com, Inc.’s Motion to Transfer Venue (“Sedlacek Decl.”) ¶2.) Incorp offers
7 registered agent and other corporate services to businesses. Incorp has about 45
8 employees, all of whom are located in Nevada. (Sedlacek Decl. ¶3.)

9 Since at least 2008, LegalZoom, as a regular business practice, has made—and
10 continues to make—false and defamatory statements about Incorp. Several of Incorp’s
11 employees have witnessed LegalZoom’s misconduct first hand as well as the harm
12 suffered by Incorp as a result of LegalZoom’s misconduct. (*Id.*) Incorp intends to call at
13 least three of these employees as witnesses at trial to testify about LegalZoom’s
14 publication of defamatory statements and about Incorp’s damages. (*Id.*) In addition to
15 Incorp employees, several third-parties witnessed LegalZoom’s misconduct. (*Id.* ¶5.)
16 Incorp has identified two of these third-parties as witnesses it intends to call at trial to
17 testify about the false and defamatory statements made by LegalZoom. (*Id.*) These
18 third-party witnesses are located in Nevada and Texas. (*Id.*)

19 Like Plaintiff, LegalZoom offers its customers registered agent services.
20 Additionally, LegalZoom offers its customers incorporation and business registration
21 services. In contrast to Incorp’s 45 employees, LegalZoom has approximately 500
22 employees. Because Incorp has far fewer employees than LegalZoom, transferring this
23 case to the Central District of California would expose Incorp to a disproportionate
24 hardship. (*Id.* ¶¶4, 6.) Specifically, compelling roughly 7% of Incorp’s employees to
25 travel to California for a trial would greatly hinder Incorp’s ability to carry out its day-to-
26 day operations and fulfill its obligations to its customers. (*Id.* ¶4.)

27 LegalZoom has significant contacts with Nevada, serving as the Nevada
28 registered agent for over 1,000 businesses. (Declaration of Jeffrey M. Rosenfeld in

1 Support of Plaintiff’s Opposition to Defendant LegalZoom.com, Inc.’s Motion to Transfer
2 Venue (“Rosenfeld Declaration”) ¶3 & Ex. B.)

3 **III. ARGUMENT**

4 LegalZoom does not argue that this Court is an improper venue. And LegalZoom
5 admits that Incorp is based in Nevada. And LegalZoom cannot deny that it has a
6 significant presence in Nevada itself, serving as the Nevada registered agent for nearly
7 2,000 businesses. (Rosenfeld Decl. ¶3 & Ex. B.) Even so, LegalZoom argues that this
8 case should be transferred to California for convenience.

9 However, LegalZoom’s Motion is fundamentally flawed. LegalZoom ignores
10 several of the relevant factors for analyzing a motion to transfer venue under 28 U.S.C.
11 §1404(a).¹ Had LegalZoom conducted a thorough analysis of the relevant factors, it
12 could only have concluded that a transfer is wholly unwarranted. The Court should
13 reject LegalZoom’s Motion.

14 **A. LegalZoom completely disregards the substantial deference afforded to
15 Plaintiff’s choice of venue.**

16 In its Motion, LegalZoom conveniently ignores that Plaintiff’s choice of forum is
17 given “paramount consideration.” *Galli v. Travelhost, Inc.*, 603 F. Supp. 1260, 1262 (D.
18 Nev. 1985); see *Miracle Blade, LLC v. Ebrands Commerce Group, LLC*, 207 F. Supp. 2d
19 1126, 1155 (D. Nev. 2002). In examining a section 1404(a) motion, the plaintiff’s choice
20 of forum is entitled to considerable weight. *Duramed Pharmaceuticals, Inc. v. Watson
21 Laboratories, Inc.*, No. 08-001166, slip op., 2008 WL 5232908, *2-3 (D. Nev. Dec. 12,

22 _____
23 ¹ LegalZoom provides the Court with an incomplete list of factors. (Mot. at 5:19-24.)
24 The complete list of relevant factors includes: (1) the location where the relevant
25 agreements were negotiated and executed, (2) the state that is most familiar with the
26 governing law, (3) the plaintiff’s choice of forum, (4) the respective parties’ contacts with
27 the forum, (5) the contacts relating to the plaintiff’s cause of action in the chosen forum,
28 (6) the differences in the costs of litigation in the two forums, (7) the availability of
compulsory process to compel attendance of unwilling non-party witnesses, and (8) the
ease of access to sources of proof. *Jones v. GNC Franchising, Inc.*
211 F.3d 495, 498-99 (9th Cir. 2000). Additionally, courts consider public factors such
as the level of congestion of the local docket, the local public interest in the outcome of
the case, and avoidance of conflict of laws issues. *Decker Coal Co. v. Commonwealth
Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986).

1 2008), *citing Lou v. Belzberg*, 834 F.2d 730, 739 (9th Cir. 1987). A defendant must
2 make a “strong showing of inconvenience to warrant upsetting the plaintiff’s choice of
3 forum.” *Id.*, *quoting Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843
4 (9th Cir. 1986). And even then, a transfer of venue is appropriate only where it would
5 eliminate the inconvenience, rather than merely shift it. *See Decker*, 805 F.2d at 843.
6 This deference is particularly robust where the plaintiff resides within the selected forum.
7 *See Miracle Blade*, 207 F.Supp. 2d at 1155.

8 Plaintiff has been headquartered in Nevada for over a decade and has
9 established a substantial presence within the State. LegalZoom has produced no
10 evidence that Plaintiff’s choice should not be afforded the customary robust deference.

11 **B. Both parties have significant contacts with Nevada.**

12 Both parties have significant contacts with Nevada. Plaintiff is a registered
13 Nevada corporation with its principal place of business in Nevada. (Complaint ¶2;
14 Selacek Decl. ¶2.) Plaintiff has always been based in Nevada, and all of Plaintiff’s
15 employees are located in Nevada. (Sedlacek Decl. ¶3.)

16 While LegalZoom is headquartered in California, LegalZoom has a significant
17 presence in Nevada, serving as the Nevada resident agent for over 1,000 companies.
18 (Rosenfeld Decl. ¶3 & Ex. B.) In addition to LegalZoom’s contacts with Nevada,
19 LegalZoom purposefully directed its defamatory statements towards Nevada, and
20 witnesses to LegalZoom’s misconduct reside in Nevada.

21 **C. A substantial part of the events giving rise to Plaintiff’s claim occurred in
22 Nevada.**

23 While LegalZoom claims that “all of the operative facts giving rise to Plaintiff’s
24 claims occurred . . . in California,” it provides no authority for this analysis. In fact, the
25 case law makes clear that a substantial part of the events giving rise to Plaintiff’s claims
26 occurred in Nevada.

27 Ninth Circuit case law establishes that for defamation and antitrust claims, the
28 locus of misconduct occurs in the state where the misconduct was directed. *See, e.g.*,

1 *Williamson v. American Mastiff Breeders Council*, No. 08-336, 2009 WL 634231, *7-8 (D.
2 Nev. March 6, 2009) (examining location of substantial part of events giving rise to claim
3 and finding location of harm felt by plaintiff from alleged defamation and anti-trust
4 violations was appropriate venue); *Larson v. Galliher*, No. 06-1471, 2007 WL 81930, *3-
5 4 (D. Nev. Jan. 5, 2007) (finding that events giving rise to defamation claim occurred in
6 Nevada where the tortious conduct was aimed at residents of the State); *Cummings v.*
7 *Western Trial Lawyers Ass'n*, 133 F. Supp. 2d 1144, 1150-51 (D. Ariz. 2001) (finding
8 that a substantial part of the events giving rise to defamation claim clearly occurred
9 within Arizona where defendant directed defamatory letters into Arizona).

10 Here, LegalZoom engaged in defamation and anti-competitive misconduct
11 directed towards Plaintiff in Nevada. Plaintiff has been headquartered in Nevada for
12 over a decade, LegalZoom's misconduct specifically targeted Plaintiff, and the harm
13 from LegalZoom's misconduct was felt most prominently in Nevada. Moreover, at least
14 some of LegalZoom's defamatory statements were made directly to residents of Nevada,
15 and these statements were made in violation of Nevada's antitrust law.

16 LegalZoom omits this relevant Ninth Circuit case law in favor of a single,
17 inapposite Pennsylvania case. Even if *Lomanno* were controlling—and it is not—
18 *Lomanno* does not address a situation where the defamatory statements were made
19 to residents of the forum state. That is the situation here. As mentioned above, at least
20 some of LegalZoom's defamatory statements were spoken to residents of Nevada.²
21 LegalZoom's arguments to the contrary are simply wrong.

22 **D. While LegalZoom provides some general information about potential**
23 **witnesses, it fails to identify a single witness who will testify at trial.**

24 Plaintiff has identified several witnesses who it expects to give trial testimony in
25 this action. (Sedlacek Decl. ¶¶3, 5.) Plaintiff expects these witnesses to testify about
26 LegalZoom's publication of defamatory statements and about Plaintiff's damages. (*Id.*)

27 _____
28 ² Telephone communications are necessarily made in two locations: 1) the location of
the speaker, and 2) the location of the recipient.

1 These witnesses are located in Nevada. (*Id.*) The presence of these witnesses in
2 Nevada weighs strongly in favor of keeping this action here. Moreover, because Plaintiff
3 employs far less people than LegalZoom, compelling one of Plaintiff's employees to
4 travel for a trial would have a much graver impact than compelling a LegalZoom
5 employee to travel. (*Id.* ¶4.)

6 LegalZoom's vague reference to 187 California witnesses does not alter this
7 calculus. While the convenience of third party witnesses is important in evaluating a
8 motion to transfer, the critical inquiry is whether a particular witness is likely to be called
9 as a witness at trial. *Van Slyke v. Capital One Bank*, 503 F. Supp. 2d 1353, 1363-64
10 (N.D. Cal. 2007); see also *Mason v. Smithkline Beecham clinical Laboratories*, 146 F.
11 Supp. 2d 1355, 1361 (S.D. Fla. 2001). Trial convenience is what matters. *Id.* "Given
12 the early stage of this action, witness lists are far from definite at this time." *Id.* And
13 where witness lists are in this preliminary stage, with no particular witnesses identified to
14 testify at trial, this factor loses much of its importance. *Id.*

15 While LegalZoom refers to 187 California witnesses who might have relevant
16 information, LegalZoom fails to identify a single one of these witnesses, or explain what
17 specific information they might have.³ But even if LegalZoom had identified all 187 of
18 these witnesses and explained their knowledge, this factor would still only cut a small
19 figure, because LegalZoom does not contend that these 187 witnesses will testify at trial.
20 If these witnesses do have relevant information, it can be collected by deposition or
21 interrogatory.

22 LegalZoom talks out of both sides of its mouth in describing its witnesses. On the
23 one hand, it says that none of its employees or agents engaged in the misconduct. But
24 then, LegalZoom says that 187 of their employees and agents would have knowledge of
25 the misconduct if the allegations are true. Even if this distended logic were accepted, as
26 discussed in *Van Sylke*, a witness does not become a trial witness simply because he or

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28 ³ Interestingly, LegalZoom doesn't even know if its former employees and agents are in California. Ms. Pellman makes this statement on "information and belief."

1 she has relevant knowledge. LegalZoom does not identify one of the purported 187
2 witnesses who will testify at trial or the scope of that testimony. And Plaintiff has no
3 intention to compel the attendance of 187 witnesses for the trial of this action.⁴ Thus,
4 despite LegalZoom's lengthy discussion, this factor actually weighs against a transfer.

5 **E. Nevada is the most familiar with the governing law.**

6 In considering whether to transfer or retain an action, a court must consider what
7 court is the most familiar with the law that will govern the claims. In this case, the
8 answer is this Court. Plaintiff has asserted two Nevada-specific claims: for defamation
9 and for violations of Nevada antitrust laws. These claims will be governed by Nevada
10 common law and statutory law. *See Hanley v. Tribune Pub. Co.*, 527 F.2d 68, 69 (9th
11 Cir. 1975), *citing* RESTATEMENT OF THE LAW (SECOND), CONFLICT OF LAWS §379E (stating
12 that in defamation cases, the law of a plaintiff's domicile usually governs, which is
13 typically the locus of the parties and the defamatory communications). This Court has
14 considerable familiarity in applying Nevada law. By comparison, the Central District of
15 California does not have the same depth of experience. Accordingly, this factor weighs
16 strongly against transferring this action.

17 **F. There is no appreciable difference in the ease of access to sources of proof.**

18 The ease of access to sources of proof does not cut either way in determining
19 whether to transfer this action. While this factor may come into play when the source of
20 proof comprises an immovable object, like a piece of land or a structure, it generally
21 does not have an effect when documents or computer data are at issue. "With
22 technological advances in document storage and retrieval, transporting documents does
23 not generally create a burden." *Van Slyke*, 503 F. Supp. 2d at 1364-65; *see also*
24

25 ⁴ LegalZoom's compulsory process argument fails for the same reason: Because
26 LegalZoom has not identified one trial witness, it cannot say that compulsory process
27 would be unavailable for its defense. LegalZoom simply speculates that there are at
28 least 73 *potential* non-party witnesses to LegalZoom's liability who reside in Southern
California. The location of potential non-party witnesses, with an unknown degree of
knowledge regarding LegalZoom's liability, does not weigh in favor of transferring the
case when Plaintiff has identified specific non-party witnesses who reside in the forum.

1 *Magedson v. Whitney Information Network, Inc.*, No. 08-1715, slip op., 2009 WL
2 113477, *5 (D. Ariz. Jan. 16, 2009).

3 LegalZoom’s analysis of this factor fails for a variety of reasons. First, while
4 LegalZoom states that its training manuals, policies, and email templates are in
5 California, it fails to explain why these documents are relevant to this action. Second,
6 LegalZoom disregards the other sources of proof in this action, which are located
7 outside of California, such as documents evidencing LegalZoom’s misconduct which are
8 in the possession of customers, and documents evidencing injury to Incorp which are in
9 Incorp’s possession in Nevada. Finally, LegalZoom has made no showing that
10 transporting its records, or reducing them to electronic form, would cause LegalZoom
11 significant hardship. While transferring this action “may reduce discovery costs
12 somewhat, at least for [LegalZoom], [t]his factor, however, is of diminished importance
13 and is neutral toward transfer.” The Court should simply disregard LegalZoom’s analysis
14 of this factor.

15 **G. LegalZoom has presented no evidence that it would be more expensive to**
16 **litigate this action in Nevada.**

17 LegalZoom presents no evidence that it would be more expensive to litigate this
18 action in Nevada except for its spurious argument regarding the location of 187
19 supposed witnesses. No matter where this action ends up, one party will have to travel
20 to another state for hearings, conferences, and trial. *See Panavision Intern., L.P. v.*
21 *Toeppen*, 141 F.3d 1316, 1323 (9th Cir. 1998) (“in this era of fax machines and discount
22 air travel” requiring a party to litigate in another state is not unreasonable). Given
23 LegalZoom’s substantial presence in Nevada, LegalZoom’s larger employee base to
24 buffer against lost employee time, and the seriousness of LegalZoom’s misconduct in
25 Nevada, this factor tips toward keeping this action in Nevada.

26 **H. The Central District of California is far more congested than the District of**
27 **Nevada.**

28 LegalZoom asks the Court to transfer this action to one of the busiest and
congested judicial districts in the United States. In deciding whether to transfer an

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action, a court should consider public factors, such as the relative congestion of the two courts' dockets. This Court has a far less congested docket than the Central District of California, with about 80% less cases than the Central District of California. (Rosenfeld Decl. ¶2 & Ex. A.) There is no reason for the people and court of the Central District of California to be burdened by a case where the operative facts most predominantly affected the State of Nevada.

IV. CONCLUSION

For the foregoing reasons, the court should deny LegalZoom's Motion to transfer this action to the United States District Court for the Central District of California.

DATED: April 6, 2009

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