

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 SECURITIES AND EXCHANGE COMMISSION,)
4)
5 Plaintiff,)
6 vs.)
7 INTELIGENTRY, LTD.; PLASMERG, INC.; PTP)
8 LICENSING, LTD.; and JOHN P. ROHNER,)
9 Defendants.)

Case No.: 2:13-cv-00344-GMN-NJK

ORDER

10 Before the Court is Defendant John P. Rohner’s Motion to Change Venue (ECF No. 41).

11 For the reasons discussed below, the Motion is denied.

12 I. BACKGROUND

13 This action arises out of Defendant John P. Rohner’s (“Rohner”) alleged violations of
14 securities laws in connection with his solicitation of investments for Inteligentry, Ltd.,
15 PlasmERG, Inc., and PTP Licensing, Ltd. (the “Rohner Companies”). Plaintiff Securities and
16 Exchange Commission (“SEC”) alleges that Rohner is a resident of Las Vegas, Nevada, and is
17 the Founder, President, Chief Executive Officer, Treasurer, and Director of each of the Rohner
18 Companies. The Rohner Companies are Nevada corporations with their principal place of
19 business in Las Vegas. Allegedly, the Rohner Companies’ employees worked in Nevada, their
20 shareholder meetings took place in Nevada, and Defendants invited potential investors to
21 presentation at their facilities in Nevada.

22 Since the action was filed, Rohner has relocated to Iowa. Rohner now moves to transfer
23 the action to the Southern District of Iowa.

24 II. LEGAL STANDARD

25 Under 28 U.S.C. § 1404(a), “[f]or the convenience of parties and witnesses, in the

1 interest of justice, a district court may transfer any civil action to any other district or division
2 where it might have been brought.” A motion to transfer lies within the broad discretion of the
3 district court, and is determined on an “individualized, case-by-case consideration of
4 convenience and fairness.” *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988) (citing
5 *Van Dusen v. Barrack*, 376 U.S. 612, 622 (1964)).

6 The case-by-case approach has led courts to balance a number of factors in determining
7 if transfer is appropriate. Although the relevant factors vary with facts of specific cases, see
8 *Williams v. Bowman*, 157 F.Supp.2d 1103, 1106 (N.D. Cal. 2001), the following factors are
9 generally considered in a transfer motion: (1) the plaintiff’s choice of forum; (2) the location
10 where a majority of the facts giving rise to the case occurred; (3) the potential litigation costs
11 and convenience of the parties; (4) the convenience of potential witnesses; (5) ease of access to
12 the evidence; (6) the parties’ contacts with the forum; (7) any local interest in the controversy;
13 and (8) the availability of compulsory process to compel unwilling witnesses. See *Jones v.*
14 *GNC Franchising Inc.*, 211 F.3d 495, 498-99 (9th Cir. 2000); *Decker Coal Co. v.*
15 *Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986). The movant bears the burden
16 of showing that transfer is appropriate. *Operation: Heroes, Ltd. v. Procter and Gamble Prods.,*
17 *Inc.*, 903 F.Supp.2d 1106, 1111 (D. Nev. 2012).

18 **III. DISCUSSION**

19 Rohner does not contend that the District of Nevada is an inappropriate venue.
20 Likewise, the SEC does not directly attack Rohner’s motion by arguing that the action could
21 not have originally been brought in the Southern District of Iowa. Thus, the only question
22 before the Court is whether, considering convenience and fairness, a transfer to the Southern
23 District of Iowa is in the interest of justice. Because the balance of factors weighs in favor of
24 trying the case in Nevada, the Court concludes that it is not.

25 Rohner’s main contention in support of transfer is that litigating in Nevada would be

1 expensive and inconvenient. Rohner avers that since April 1, 2013, he has permanently resided
2 in Iowa. Rohner also claims that he is handicapped and “[a] car trip of 2 hours to appear in
3 court is preferable to a plane trip of many hours and overnight lodging.” Rohner additionally
4 asserts that many defense witnesses are “close to [the] Iowa court,” though Rohner does not
5 identify any specific witness.

6 Although this Court recognizes that it may be inconvenient for Rohner to travel and
7 defend this action in Nevada, Rohner has not met his burden of showing that a transfer would
8 be in the interest of justice because the majority of the factors weigh against transfer. The
9 SEC’s choice of forum does not appear to be driven by forum shopping, but rather by the fact
10 that the Rohner Companies are Nevada corporations and most of the facts giving rise to this
11 action took place in Nevada. Consequently, the SEC’s choice of forum is afforded substantial
12 weight. *Decker*, 805 F.2d at 843.

13 Further, because most of the facts giving rise to this action took place in Nevada, the
14 bulk of the evidence and the majority of witnesses are likely to be located here. Consequently,
15 the costs of litigation and convenience of witnesses weigh in favor of Nevada proceedings. The
16 defense witnesses referenced in Rohner’s motion only appear to relate to the SEC’s allegations
17 involving “some illicit behavior on some business based in Iowa.” However, the allegations
18 relating to Iowa are only a small fraction of the total allegations of the Complaint. Employees
19 of the Rohner Companies, stockholders, and investors are all much more connected with
20 Nevada. Accordingly, the local interests are greater in Nevada and this Court is more likely to
21 have authority to subpoena witnesses under the 100-mile restriction in Fed. R. Civ. P. 45(b)(2)
22 and (c)(3)(A)(ii), than a court in Iowa.

23 Finally, Rohner has extensive contacts with Nevada. Even accepting Rohner’s
24 contention that his primary residence has always been in Iowa and that any residences in Las
25 Vegas were only temporary, Rohner resided, owned property, and incorporated companies in

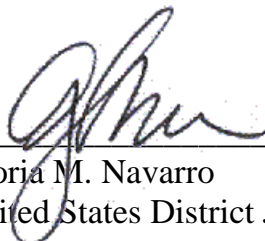
1 Nevada. In fact, Rohner was residing in Las Vegas at the time he was served with the
2 Complaint. Rohner's relocation did not occur until after he was apprised of and had appeared
3 in this action.

4 Consequently, the balance of factors weighs against transferring the action to the
5 Southern District of Iowa. The Court finds that such a transfer would not be for the
6 convenience of the parties and the witnesses in the interest of justice.

7 **IV. CONCLUSION**

8 **IT IS THEREFORE ORDERED** that Defendant John P. Rohner's Motion to Change
9 Venue (ECF No. 41) is **DENIED**.

10 **DATED** this 23rd day of July, 2013.

11
12 
13 _____
14 Gloria M. Navarro
15 United States District Judge
16
17
18
19
20
21
22
23
24
25