

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

U.S. COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

LIONS WEALTH HOLDINGS, INC.; LIONS
WEALTH SERVICES, INC.; 20/20
PRECIOUS METALS, INC.; and BHARAT
ADATIA,

Defendants.

Case No. 2:13-cv-01787-APG-PAL

ORDER TRANSFERRING CASE

(Dkt. #12)

On November 13, 2013, Defendants filed a motion seeking to have this case dismissed or transferred for improper venue, or to transfer the case based on 28 U.S.C. §1404. [Dkt. #12.] After consideration of the briefs and declarations filed in support and opposition to the Motion, and for the reasons set forth below, the court grants the motion in part and transfers this case to the United States District Court for the Southern Division of the Central District of California.

I. This Court is not a Proper Venue.

Venue is proper in a “judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located.” 28 U.S.C. §1391(b)(1). Individual Defendant Bharat Adatia is not a resident of Nevada. [Dkt. #12 at 3:22-23.] Therefore, venue is not proper pursuant to that provision.

1 Venue also is proper in “a judicial district in which a substantial part of the events or
2 omissions giving rise to the claim occurred, or a substantial part of property that is the subject of
3 the action is situated.” 28 USC §1391(b)(2). Plaintiff contends in its Response that “Defendants’
4 acts and practices in violation of the Act have occurred within this District, among other places.”
5 [Dkt. #16 at p. 6.] But Plaintiff does not support that naked contention with any factual
6 allegations. Nor does Plaintiff rebut Defendants’ contention that they “never engaged in any of
7 the disputed transactions with any residents of Nevada.” [Dkt. #12 at 4:23-24.] Moreover,
8 Plaintiff contends that Defendants solicited customers in all 50 states. [Dkt. #16 at p. 4.] Finally,
9 it appears that the Corporate Defendants maintained their principal places of business in the
10 Central District of California. [*Id.* at 4:11-14.]

12 Plaintiff admits that “[o]nce a defendant raises objection to venue, the plaintiff bears the
13 burden of establishing that the selected venue is proper.” [Dkt. #16 at p. 3, citing *Rio Props., Inc.*
14 *v. Rio Intern. Interlink*, 284 F.3d 1007, 1019 (9th Cir. 2002).] Plaintiff has failed to satisfy its
15 burden of establishing that this court is a proper venue for this case. The court does not find that
16 Plaintiff deliberately filed this case in the wrong venue; therefore, the interests of justice suggest
17 that the case should be transferred rather than dismissed. 28 U.S.C. §1406(a). Defendants admit
18 that jurisdiction and venue are proper in the Southern Division of the Central District of
19 California. Therefore, this case will be transferred there.

21 **II. In the Alternative, This Case Should be Transferred Pursuant to 28 U.S.C.**
22 **§1404(a).**

23 Even if venue is proper in this district, the case should be transferred to the Central
24 District of California pursuant to 28 U.S.C. §1404(a).

25 A motion to transfer venue under § 1404(a) requires the court to weigh multiple
26 factors in its determination whether transfer is appropriate in a particular case. For
27 example, the court may consider: (1) the location where the relevant agreements
28 were negotiated and executed, (2) the state that is most familiar with the governing
law, (3) the plaintiff's choice of forum, (4) the respective parties' contacts with the

1 forum, (5) the contacts relating to the plaintiff's cause of action in the chosen
2 forum, (6) the differences in the costs of litigation in the two forums, (7) the
3 availability of compulsory process to compel attendance of unwilling non-party
4 witnesses, and (8) the ease of access to sources of proof. . . . We also conclude that
5 the relevant public policy of the forum state, if any, is at least as significant a
6 factor in the § 1404(a) balancing.

7 *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498-99 (9th Cir. 2000). In the present case, these
8 factors favor transfer to the Central District of California.

9 It is unclear where the relevant contracts were negotiated and executed, but Plaintiff
10 contends that Defendants solicited customers in all 50 states. [Dkt. #16 at p. 4.] The relevant
11 contracts apparently contain either Nevada or California choice of law provisions, and the
12 Plaintiff's primary claims will be governed by federal law. [Dkt. #17 at 4:1-14.] Thus, factors
13 one and two are neutral. Most, if not all, of the relevant documents are maintained electronically.
14 [Dkt. #16 at p. 4.] The three Corporate Defendants are Nevada entities, but maintained their
15 principal places of business in California; they now are out of business. [Dkt. #12 at 4:7-10.] It is
16 unclear how much contact Individual Defendant Adatia has with Nevada. Plaintiff is not a
17 Nevada resident and has no little, if any, contact with Nevada. Thus, factors four and five are
18 neutral. Plaintiff's primary witnesses reside in Chicago, Miami and London, with one additional
19 witness in Nevada. [*Id.* at pp. 12-13.] However, at least 14 of the Defendants' witnesses reside in
20 southern California. [Dkt. #12 at 10:24-25.] Compulsory process would not be available to
21 compel attendance of any of these non-party witnesses at trial in Nevada. Even if they agreed to
22 travel to Nevada, the costs for travel and lodging could be significant.¹ Thus, factors six, seven
23 and eight favor California, as that is where much of the Defendants' source of proof is; at a
24 minimum, these factors do not favor Nevada.

25
26
27 ¹ On the other hand, Plaintiff's witnesses in Chicago, Miami and London will have to travel to
28 Las Vegas or California, or be deposed. Thus, the incremental litigation costs associated with
those witnesses is minimal.

1 For the foregoing reasons, even if this court is a proper venue for this dispute, this case
2 should be transferred to the Southern Division of the Central District of California.

3 **IT IS HEREBY ORDERED** that this case is transferred to the Southern Division of the
4 Central District of California.

5 Dated: December 9, 2013.



7 _____
8 ANDREW P. GORDON
9 UNITED STATES DISTRICT JUDGE
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28