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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

4 Edgar Ortiz,
5 Plaintiff
6 v.
7 Reliance Standard Life Insurance Company,
8 Defendant

Case No.: 2:17-cv-00580-JAD-GWF

Order Granting in Part Motion to Dismiss
Under FRCP 12(b)(3)
[ECF No. 9]

10 Edgar Ortiz sues Reliance Standard Life Insurance Company for wrongful denial of
11 disability benefits and attorney's fees and costs under the Employee Retirement Income Security
12 Act of 1974 (ERISA), 29 U.S.C. §§ 1001–1461.¹ Reliance argues that venue in this district is
13 improper and moves to dismiss Ortiz's claims or, alternatively, to transfer them to the U.S.
14 District Court for the Eastern District of Pennsylvania.² I find that Ortiz has not met his burden
15 to show that venue is proper in this district, and Reliance has not met its burden to show that this
16 case might have been brought in the Eastern District of Pennsylvania. I therefore grant
17 Reliance's motion in part and dismiss Ortiz's claims without prejudice to their refile in a court
18 of competent jurisdiction.

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Discussion

20 As the plaintiff, Ortiz bears the burden of showing that venue is properly laid in the
21 District of Nevada.³ ERISA's venue provision broadly allows civil-enforcement actions like this
22 one to "be brought in the district where the plan is administered, where the breach took place, or
23 where a defendant resides or may be found . . ."⁴ The parties argue about whether Reliance

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¹ ECF No. 1.

² ECF No. 9.

³ *Piedmont Label Co. v. Sun Garden Packaging Co.*, 598 F.2d 491, 496 (9th Cir. 1979).

⁴ 29 U.S.C. § 1132(e)(2).

1 may be found here. In the Ninth Circuit, a defendant is “found” in a district for ERISA-venue
2 purposes if “personal jurisdiction is properly asserted over the” defendant there.⁵ So, the
3 defendant’s contacts with the forum must be “sufficient to satisfy the ‘minimum contacts’ test for
4 personal jurisdiction” as stated in *International Shoe Co. v. Washington*, 326 U.S. 310, 316
5 (1945).⁶ So, to survive this dismissal motion, Ortiz must show that Reliance is subject to either
6 general or specific jurisdiction in Nevada.⁷

7 Although not entirely clear, Ortiz appears to argue that general jurisdiction exists,⁸ so he
8 must show that Reliance’s activities within Nevada are “substantial” or “continuous and
9 systematic,” such that “there is a sufficient relationship between [Reliance] and [Nevada] to
10 support jurisdiction even if the cause of action is unrelated to [Reliance’s] forum activities”⁹
11 In deciding a motion to dismiss for improper venue, I need not accept the pleadings as true, and I
12 “may consider facts outside of the pleadings.”¹⁰

13 Ortiz provides little in the way of allegation or evidence to support his contention that
14 venue properly lies in this district. The only facts that Ortiz alleges about venue are that
15 Reliance issued the disability-benefits policy that he was insured under and that Reliance is
16 “doing business in the District of Nevada.”¹¹ Reliance does not deny that it sells insurance or
17 that it does business in Nevada. Reliance’s attorney admits that Reliance is “licensed to sell
18 insurance here.”¹² Oddly, Reliance’s motion and the accompanying declaration of its trial
19 attorney both discuss this activity as being a contact that Reliance has with “California,” not

20 ⁵ *Varsic v. U.S. Dist. Ct. for Cen. Dist. of Cal.*, 607 F.2d 245, 248 (9th Cir. 1979).

21 ⁶ *Id.* at 248–49.

22 ⁷ *Id.* at 249.

23 ⁸ *See* ECF No. 11 at 2–4.

24 ⁹ *See Varsic*, 607 F.2d at 249 (internal quotation marks omitted) (quoting *Data Disc, Inc. v. Sys.*
25 *Tech. Assoc., Inc.*, 557 F.2d 1280, 1287 (9th Cir. 1977)).

26 ¹⁰ *Murphy v. Schneider Nat. Inc.*, 362 F.3d 1133, 1137 (9th Cir. 2004).

27 ¹¹ ECF No. 1 at ¶¶ 3, 5, 7, 9.

28 ¹² ECF No. 9 at 6.

1 Nevada.¹³ I assume these are typos because Reliance’s contacts with California are not relevant,
2 and Ortiz provided evidence that tends to show that Nevada’s Commissioner of Insurance is
3 Reliance’s agent for service of process in this state.¹⁴ This would not be needed if Reliance were
4 not, in fact, registered to sell insurance in Nevada. The bare fact that Reliance sells insurance in
5 Nevada is not sufficient, however, for me to determine that its contacts with this state are
6 “substantial” or “continuous and systematic.” I therefore find that Ortiz has not met his burden
7 to show that Nevada is the proper venue for his claims against Reliance.

8 Reliance moves in the alternative to transfer this case to the U.S. District Court for the
9 Eastern District of Pennsylvania. The party moving to transfer to another venue must
10 demonstrate that the case could have been brought in the proposed transferee district.¹⁵ None of
11 the facts necessary for me to determine if this case could have been brought in the Eastern
12 District of Pennsylvania have been established by any factual allegation or competent
13 evidence.¹⁶ I therefore find that Reliance has not met its burden to show that this case could
14 have been brought in the Eastern District of Pennsylvania.

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22 ¹³ See ECF Nos. 9 at 6; 9-3 at 3, ¶ 17.

23 ¹⁴ ECF No. 11 at 8–11.

24 ¹⁵ See *Commodity Futures Trading Comm. v. Savage*, 611 F.2d 270, 279 (9th Cir. 1979); see also
25 28 U.S.C. § 1404(a) (allowing for transfer for the convenience of the parties to any other district
where the case “might have been brought”); 28 U.S.C. § 1406(a) (allowing for transfer from an
improper venue to a district in which the case “could have been brought”).

26 ¹⁶ Reliance offers the declaration of its trial attorney to establish many facts. ECF No. 9-3. I do
27 not consider any part of this declaration because several of the statements are conclusory, the
28 declarant does not state that the information offered is based on his personal knowledge, and no
foundation has been laid for the authenticity of the documents that he attaches.

1 **Conclusion**

2 Accordingly, IT IS HEREBY ORDERED that Reliance Standard Life Insurance
3 Company's motion to dismiss or, alternatively, to transfer venue [ECF No. 9] is **GRANTED in**
4 **part**: this case is **DISMISSED** without prejudice. The motion is **DENIED** in all other respects.
5 The **Clerk of Court** is directed to **CLOSE THIS CASE**.

6 Dated: January 24, 2018

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9 U.S. District Judge Jennifer A. Dorsey
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