UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BAHRAM KHANKHANIAN,	
Plaintiff,	
-against-	
SOHEIL KHANIAN,	
Defendant.	

No. 16 Civ. 8396 (JFK)
OPINION & ORDER

APPEARANCES

FOR PLAINTIFF BAHRAM KHANKHANIAN:
Jeffrey Lichtstein, Esq.
COHEN, TAUBER, SPIEVACK & WAGNER, P.C.

FOR DEFENDANT SOHEIL KHANIAN:
Stuart Sanders, Esq.
KAZLOW & KAZLOW

JOHN F. KEENAN, United States District Judge:

Before the Court is Defendant Soheil Khanian's ("Defendant") motion to dismiss Plaintiff Bahram Khankhanian's ("Plaintiff") complaint for lack of personal jurisdiction, failure to state claims for an accounting and conversion, and under the doctrine of forum non conveniens. For the reasons that follow, Defendant's motion to dismiss is denied in its entirety. The Clerk of the Court is respectfully directed to transfer this case to the Central District of California.

I. Background

Unless otherwise noted, the following facts are drawn from the complaint and the affidavits and declarations submitted by

both parties in relation to this motion. Plaintiff is a resident of Roslyn Heights, New York who at one time owned a business in Bronx, New York. (Compl. ¶ 1; Khankhanian Decl. ¶ 7.) Defendant, Plaintiff's cousin, is a resident of Los Angeles, California. (Compl. ¶ 2.)

Sometime in 2003, Defendant called Plaintiff to ask Plaintiff to join him in purchasing a parcel of commercial real property located at 4601 S. Broadway, Los Angeles, CA 90037 (the "Premises"). (Id. ¶ 5.) Defendant subsequently made multiple trips to the Plaintiff's Bronx business in 2003 to persuade him to invest in the purchase of the Premises. (Id. ¶ 6.)

After finalizing their agreement, on January 16, 2004, Plaintiff and Defendant purchased the Premises and took title in their own names as joint tenants and equal partners. (Id. ¶ 7.) Plaintiff contributed approximately $250,000 to the purchase price, Defendant contributed "a lesser amount" in consideration for finding the Premises and for performing property manager duties thereafter, and the remaining funds came from a mortgage loan of $537,000. (Id. ¶ 8.)

On March 22, 2004, Defendant formed Golden Star, LLC ("Golden Star") under California law, and the parties became equal members in Golden Star. (Id. ¶¶ 9–10.) Defendant served as Golden Star's manager and exercised sole control over its books and records. (Id. ¶¶ 10, 12.) The parties transferred

ownership of the Premises to Golden Star on July 9, 2004, and Golden Star owned the Premises until it sold the Premises to Central, LLC on November 21, 2014. (Id. ¶ 11.) During this time, Defendant continued to communicate with Plaintiff about the Premises via telephone calls, text messages, and occasional in-person meetings at Plaintiff's place of business. (Id. ¶ 17.)

On November 21, 2014, Golden Star sold the Premises for $1.75 million, resulting in net proceeds of $1,123,320.69 after payment of the mortgage balance and other costs and fees. (Id. ¶ 18.) The sale of the Premises also ended Golden Star's business, which entitled Plaintiff to a distribution of half its assets, totaling $561,660.35. (Id. ¶¶ 19, 21.)

On December 17, 2015, Defendant wired $470,000 to the Plaintiff's TD Bank account, leaving a $91,660.35 shortfall. (Id. ¶ 22.) After repeated requests for an accounting of Golden Star's assets, Defendant sent Golden Star's 2014 tax return. (Id. ¶¶ 23–24.) The 2014 tax return provided more questions than it did answers. First, it listed the gross sales price of the Premises as $1,067,500 ($55,820.69 less than the $1,123,320.69 actual net sales proceeds). (Id. ¶ 25.) Second, it listed Golden Star's remaining assets to be $1,028,535 in cash, which would have made Plaintiff's share $514,267.50 ($44,267.50 greater than the $470,000 distribution he received). (Id. ¶ 26.) Third, it listed Plaintiff's ending capital account

for 2014 as $526,082 ($56,000 greater than the $470,000 distribution and $35,578.85 less than Plaintiff's share of the net sales proceeds). (Id. ¶ 29.) Finally, it listed $49,486 in unexplained "Legal and other professional fees" and an unexplained $23,949 distribution to Defendant. (Id. ¶¶ 27, 30.)

On May 5, 2016, Plaintiff's counsel requested a detailed accounting of monies received and disbursed by Golden Star since its creation. (Id. ¶ 31.) To date, Defendant has provided only Golden Star's tax returns for 2004-2008 and 2010-2014. (Id.)

Plaintiff seeks to recover against Defendant for breach of fiduciary duty and conversion of the $91,660.35 shortfall, and demands a full accounting of the revenues and assets of Golden Star. (Id. ¶¶ 35–49.) On February 1, 2017, Defendant moved to dismiss Plaintiff's complaint for lack of personal jurisdiction, failure to state claims for an accounting and conversion, and under the doctrine of forum non conveniens. (Def.'s Mem. of L. in Support of Mot. to Dismiss at 1–2.)

II. Discussion

A. Lack of Personal Jurisdiction

1. Legal Standard

The showing a plaintiff must make to defeat a motion to dismiss for lack of personal jurisdiction varies depending on the procedural posture of the litigation. Dorchester Fin. Sec., Inv. v. Banco BRJ, S.A., 722 F.3d 81, 84 (2d Cir. 2013). When,

as here, the motion is to be decided on affidavits, a plaintiff only needs to make a prima facie showing of jurisdiction, and the court construes the jurisdictional facts in favor of the plaintiff. S. New Eng. Tel. Co. v. Global NAPs, Inc., 624 F.3d 123, 138 (2d Cir. 2010).

In a diversity case before this Court, personal jurisdiction is determined by New York law. DiStefano v. Carozzi N. Am., 286 F.3d 81, 84 (2d Cir. 2001). Under New York law, a court may exercise general jurisdiction over a defendant under N.Y. C.P.L.R. § 301 or specific jurisdiction under New York's long arm statute, N.Y. C.P.L.R. § 302. New Asia Enters. Ltd. v. Fabrique, Ltd., No. 13 CIV. 5271 (JFK), 2014 WL 3950901, at *2 (S.D.N.Y. Aug. 13, 2014). Plaintiff asserts that this Court has personal jurisdiction over Defendant under § 302(a)(1). (Pl.'s Mem. of L. in Opp. to Def.'s Mot. to Dismiss at 5.)

Under § 302(a)(1), a non-domiciliary may be subject to specific jurisdiction when (1) the non-domiciliary transacts any business in New York and (2) the cause of action arises from a New York business transaction. See Licci ex rel. Licci v. Lebanese Canadian Bank, SAL, 732 F.3d 161, 168 (2d Cir. 2013). Whether a company transacts business in New York is evaluated by the totality of the circumstances, with relevant factors including "(i) whether the defendant has an on-going contractual relationship with a New York corporation; [and] (ii) whether the

contract was negotiated or executed in New York and whether, after executing a contract with a New York business, the defendant has visited New York for the purpose of meeting with parties to the contract regarding the relationship." Sunward Elecs., Inc. v. McDonald, 362 F.3d 17, 22 (2d Cir. 2004) (internal quotations marks omitted). A plaintiff's claim arises from a business transaction if "there is an articulable nexus, or a substantial relationship, between the claim asserted and the actions that occurred in New York." Best Van Lines, Inc. v. Walker, 490 F.3d 239, 246 (2d Cir. 2007) (internal quotation marks omitted).

The Court must also determine that the exercise of jurisdiction is consistent with due process. See Licci, 732 F.3d at 168. The due process inquiry has two parts: (1) whether the defendant has "certain minimum contacts" with the forum and (2) whether the exercise of jurisdiction would be reasonable under the circumstances. In re Terrorist Attacks on Sept. 11, 2001, 714 F.3d 659, 673 (2d Cir. 2013).

2. Analysis

Plaintiff asserts that "in or about 2003," Defendant made multiple trips to Plaintiff's place of business in the Bronx to "persuade [P]laintiff to invest money in the purchase of the Premises." (Compl. ¶ 6.) Plaintiff further claims that the agreement to purchase the Premises "was reached at [his] store

in the Bronx" and that certain terms were finalized at Plaintiff's place of business including (1) Plaintiff and Defendant would be equal partners, (2) Plaintiff would contribute $250,000 towards the price and Defendant would pay a lesser amount, and (3) Plaintiff and Defendant would take out a mortgage to pay the balance of the purchase price. (Khankhanian Decl. ¶ 11.) Finally, after the purchase of the Premises in 2004, Defendant continued to communicate with Plaintiff about the Premises and Golden Star via telephone calls and several in-person meetings at Plaintiff's place of business. (Id. ¶ 14.)

Defendant denies ever discussing or transacting business related to the Premises in New York and claims he has not traveled to New York since 2003, at the latest. (Khanian Aff. ¶ 14.) Because at this stage, the Court must view the facts in the light most favorable to Plaintiff, the factual disputes over Defendant's business activities in New York are resolved in Plaintiff's favor. See Dorchester Fin. Sec., 722 F.3d at 85–86.

Accordingly, the Court concludes that Plaintiff has satisfied his jurisdictional burden. The "overriding criterion necessary to establish a transaction of business is some act by which the defendant purposefully avails itself of the privilege of conducting activities within New York . . . thereby invoking the benefits and protections of its laws." Licci ex rel. Licci v. Lebanese Canadian Bank, SAL, 673 F.3d 50, 61 (2d Cir. 2012)

(internal quotation marks omitted). Purposeful availment occurs when "the defendant projects itself into New York for the purpose of creating a business relationship." Madison Capital Markets, LLC v. Starneth Europe B.V., No. 15 CIV. 7213 (RWS), 2016 WL 4484251, at *9 (S.D.N.Y. Aug. 23, 2016). Defendant purposefully availed himself of the privilege of doing business in New York when he traveled to Plaintiff's place of business to persuade him to invest in the Premises. Even after the purchase of the Premises, Defendant continued to communicate with Plaintiff in New York through text messages and phone calls, and visited Plaintiff in New York to discuss their joint business—Golden Star.

Moreover, as this Court has previously held, negotiations in New York that "substantially advance a business relationship culminating in a contract are alone sufficient for a prima facie showing of transacting business." New Asia Enters., 2014 WL 3950901, at *4; see also Persh v. Petersen, No. 15 CIV. 1414 (LGS), 2016 WL 4766338, at *7 (S.D.N.Y. Sept. 13, 2016) (plaintiff established specific jurisdiction where defendant and plaintiff structured and finalized their agreement in New York); Deutsche Bank Sec., Inc. v. Montana Bd. of Invs., 850 N.E.2d 1140, 1143 (N.Y. 2006) (defendant transacted business when he entered New York to pursue negotiations with New York plaintiff that culminated in significant sale of bonds). Here, Plaintiff

alleges that over the course of several meetings at his Bronx business, the parties negotiated key terms—including the amount each party would pay towards the purchase price and that Defendant and Plaintiff would be equal partners—and finalized their agreement to purchase the Premises. (Khankhanian Decl. ¶ 11.) This alone is sufficient to establish that Defendant transacted business in New York.

Plaintiff has also made a prima facie showing that the causes of action alleged in his complaint arise from Defendant's transaction of business in New York. Defendant argues that Plaintiff's claims arise not from the purchase of the Premises but from its sale, which took place in California. (Def.'s Mem. of L. in Support of Mot. to Dismiss at 10.) However, the "arising from" prong of 302(a)(1) requires only a "relatedness between the transaction and legal claim such that the latter is not completely unmoored from the former." Licci, 732 F.3d at 168–69 (internal citations omitted). Defendant's business transactions in New York, which culminated in a business agreement and fiduciary relationship with Plaintiff, are sufficiently related to Plaintiff's claims that Defendant breached his fiduciary duties and converted assets in violation of the parties' agreement. Thus, Defendant's business transactions are not "unmoored" from Plaintiff's claims and Plaintiff has satisfied both prongs of § 302(a)(1).

A separate due process inquiry is required although it is rare that the New York long-arm statute is satisfied but not due process. See Licci, 732 F.3d at 170. There are minimum contacts necessary to support a finding of specific jurisdiction where "the defendant purposefully availed [himself] of the privilege of doing business in the forum and could foresee being haled into court there." Id. (internal quotation marks omitted). As discussed above, Plaintiff alleges that Defendant traveled to New York and visited Plaintiff at his Bronx business to negotiate and finalize their agreement. Thus Defendant could foresee be haled into court here. See Grand River Enters. Six Nations, Ltd. v. Pryor, 425 F.3d 158, 167 (2d Cir. 2005) (party could foresee being subject to suit where the negotiation and execution of underlying agreement took place).

As to whether the Court's exercise of specific jurisdiction would be reasonable, courts consider several factors, including "(1) the burden that the exercise of jurisdiction will impose on the defendant; (2) the interests of the forum state in adjudicating the case; [and] (3) the plaintiff's interest in obtaining convenient and effective relief." Licci, 732 F.3d at 170 (internal quotation marks omitted). Where a plaintiff has sufficiently alleged minimum contacts, the burden is on the defendant to "present a compelling case that the presence of some other considerations would render jurisdiction

unreasonable." Burger King Corp. v. Rudzewicz, 471 U.S. 462, 477 (1985). The only burden Defendant alludes to is that his health has deteriorated and traveling to New York would "put a great deal of stress on [his] physical and emotional state." (Khanian Aff. ¶ 17.) But the inconvenience of traveling to a distant forum alone "falls short of overcoming the plaintiff's threshold showing of minimum contacts." Metro. Life Ins. Co. v. Robertson-Ceco Corp., 84 F.3d 560, 574 (2d Cir. 1996); see also Licci, 732 F.3d at 174 (finding personal jurisdiction over parties in Lebanon and Israel reasonable because modern communication and transportation ease the burden of litigating in distant forums). Thus, the Court finds that the exercise of personal jurisdiction here is reasonable and comports with the requirements of due process.

Plaintiff has made a prima facie showing of specific jurisdiction under N.Y. C.P.L.R. § 302(a)(1). Defendant's motion to dismiss for lack of personal jurisdiction is denied.

B. Dismissal on Grounds of Forum Non Conveniens

Defendant initially moved to dismiss on the ground of forum non conveniens, (see Def's Mem. of L. in Support of Mot. to Dismiss at 19), but in his reply brief stated that he instead moved to dismiss this action for improper venue pursuant to Federal Rule of Civil Procedure 12(b)(3), or in the alternative, to transfer this case to the Central District of California

under 28 U.S.C. § 1404(a). (Def's Mem. of L. in Further Support of Mot. to Dismiss at 5–6.) Because, as discussed below, the doctrine of forum non conveniens is inapplicable here, the Court treats Defendant's motion to dismiss as a motion to transfer under § 1404(a).

1. Legal Standard

a. Forum Non Conveniens

Federal courts apply the doctrine of forum non conveniens to dismiss an action only where the alternative forum is international, or "perhaps in rare instances where a state or territorial court serves litigational convenience best." Sinochem Int'l Co. Ltd. v. Malaysia Int'l Shipping Corp., 549 U.S. 422, 430 (2007) (citations omitted). "Congress has codified the doctrine and has provided for transfer, rather than dismissal, when a sister federal court is the more convenient place for trial of the action." Id. (citing 28 U.S.C. § 1404(a)); see also Capital Currency Exch., N.V. v. Nat'l Westminster Bank PLC, 155 F.3d 603, 607 (2d Cir. 1998) ("Section 1404(a) thus supplanted the common law doctrine of forum non conveniens for transfers between United States district courts."); Russell v. Hilton Int'l of Puerto Rico, Inc., No. 93 CIV. 2552 (KMW), 1994 WL 38516, at *4 (S.D.N.Y. Feb. 4, 1994) (treating Defendant's motion to dismiss for forum non conveniens

as a motion to transfer under § 1404(a) where Defendant argued that the proper forum was the District of Puerto Rico).

Where, as here, a defendant has moved for dismissal under forum non conveniens but the proposed alternative forum is a sister federal court, i.e. the Central District of California, (See Def.'s Mem. of L. in Further Support of Mot. to Dismiss at 6.), the court may consider whether transfer is appropriate under § 1404(a).

b. Transfer under 28 U.S.C. § 1404(a)

"For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a). Transfer is appropriate only if "(a) the transferee district would be a proper venue and would have had personal jurisdiction over the defendant at the time the plaintiff commenced the action; and (b) transfer is deemed appropriate after 'considering the convenience of the parties and witnesses, and the interest of justice.'" New Asia Enters. Ltd., 2014 WL 3950901, at *7 (quoting Balance Point Divorce Funding, LLC v. Scrantom, 978 F. Supp. 2d 341, 355 (S.D.N.Y. 2013)). A district court has broad discretion in determining the convenience of the parties. Id. at *8. The defendant bears the burden of demonstrating that transfer is

appropriate by "clear and convincing evidence." Id. at *8. Relevant factors relating to convenience and fairness include:

> (1) the plaintiff's choice of forum, (2) the convenience of witnesses, (3) the location of relevant documents and relative ease of access to sources of proof, (4) the convenience of parties, (5) the locus of operative facts, (6) the availability of process to compel the attendance of unwilling witnesses, [and] (7) the relative means of the parties.

Id. (internal quotation marks omitted). In addition, "courts in this district routinely consider judicial economy, the interest of justice, and 'the comparative familiarity of each district with the governing law.'" Rosen v. Ritz-Carlton Hotel Co. LLC, No. 14-CV-1385 (RJS), 2015 WL 64736, at *2 (S.D.N.Y. Jan. 5, 2015) (quoting CYI, Inc. v. Ja-Ru, Inc., 913 F. Supp. 2d 16, 19 (S.D.N.Y. 2012)).

2. Analysis

Plaintiff does not dispute that the Central District of California was an appropriate alternative forum for this action. (Pl.'s Mem. of L. in Opp. to Def.'s Mot. to Dismiss at 17.) Thus, the only question is whether transfer is appropriate considering the factors listed above.

In his reply brief, Defendant argues that transfer is appropriate under § 1404(a) because (1) nearly all witnesses and documents are located in California, (2) the center of the operative events occurred in California, (3) California law applies to at least one claim, and (4) the interests of justice

support litigating the sale of California real estate and administration of a California LLC in California. (Def.'s Mem. of L. in Further Support of Mot. to Dismiss at 9.)

As discussed below, the balance of factors weighs towards transfer to the Central District of California.

a. Locus of Operative Facts

First and foremost, the locus of operative facts heavily favors transfer. The locus of operative facts is a "primary factor" in determining whether transfer is appropriate under § 1404(a). Mattel, Inc. v. Procount Bus. Servs., No. 03 Civ. 7234 (RWS), 2004 WL 502190, at *3 (S.D.N.Y. Mar. 10, 2004). "To determine where the locus of operative facts lies, courts look to 'the site of events from which the claim arises.'" Age Grp. Ltd. v. Regal Logistics, Corp., No. 06 CIV. 4328 (PKL), 2007 WL 2274024, at *3 (S.D.N.Y. Aug. 8, 2007) (quoting 800-Flowers, Inc. v. Intercontinental Florist, Inc., 860 F. Supp. 128, 134 (S.D.N.Y. 1992)). In actions involving claims for breach of fiduciary duty and conversion, courts in this Circuit have held that the locus of operative facts lies the district where the alleged breach or conversion occurred. See, e.g., Aguiar v. Natbony, No. 10 CIV. 6531 (PGG), 2011 WL 1873590, at *9 (S.D.N.Y. May 16, 2011) (finding that locus of operative facts was in New York where the "actual breaches of fiduciary duty" occurred); Chiste v. Hotels.com L.P., 756 F. Supp. 2d 382, 400

(S.D.N.Y. 2010) (granting motion to transfer where alleged breach of fiduciary duty and conversion occurred in the proposed alternate forum); Quan v. Computer Scis. Corp., No. CV 06-3927 (CBA)(JO), 2008 WL 89679, at *6 (E.D.N.Y. Jan. 7, 2008) (finding that California was the locus of operative facts where "to the extent the defendants breached their fiduciary duties to the plaintiffs, those breaches occurred in California").

Here, a substantial portion of the events that gave rise to Plaintiff's claims occurred in California. To the extent that Defendant, a California resident, breached his fiduciary duty to Plaintiff and converted Plaintiff's half of Golden Star's assets, those acts occurred in California. Further, Plaintiff's claim for an accounting seeks information regarding the "revenues and assets" of Golden Star, an LLC formed under California law whose sole business was managing, renting, and selling a California property. (See Compl. ¶¶ 13, 19, 44.) Therefore, the locus of operative facts is clearly California and this factor weighs heavily in favor of transfer.

b. Plaintiff's Choice of Forum

Although a plaintiff's choice of forum is entitled to substantial deference, "the weight afforded to a plaintiff's choice is diminished 'where the operative facts lack a meaningful connection to the [chosen] forum.'" Rosen, 2015 WL 64736, at *2 (quoting GlaxoSmithKline Biologicals, S.A., v.

Hospira Worldwide, Inc., No. 13–CV–1395 (PKC), 2013 WL 2244315, at *3 (S.D.N.Y. May 21, 2013)); see also Kai Wu Lu v. Tong Zheng Lu, No. 04 CV 1097 (CBA), 2007 WL 2693845, at *6 (E.D.N.Y. Sept. 12, 2007) (plaintiff's choice of forum is a "far less compelling factor" where a great majority of the operative facts did not take place in the chosen forum). As discussed above, Plaintiff's claims concern a California defendant, a California property, and a California LLC. Moreover, any alleged wrongdoing on the part of Defendant took place in California. Thus, the operative facts in this action lack a meaningful connection to the Southern District of New York and Plaintiff's choice of forum is not entitled to substantial deference.

c. The Location of Relevant Documents and Ease of Access to Sources of Proof

The location of relevant documents and ease of access to sources of proof also points in favor of transfer to California. Although the "location of relevant documents is largely a neutral factor in today's world of faxing, scanning, and emailing," Am. Steamship Owners Mut. Prot. & Indent. Ass'n, Inc. v. Lafarge N. Am., Inc., 474 F. Supp. 2d 474, 484 (S.D.N.Y. 2007), Plaintiff alleges in the complaint that "Defendant is in sole possession, custody and control of the books and records of Golden Star, LLC." (Compl. ¶ 40.) According to Defendant, "Golden Star LLC's financial statements, closing documents

related to the purchase . . . [and] sale of the Property, property tax records, rental income statements, and accounting records, are located in California." (Khanian Suppl. Aff. ¶ 14.) Thus, the location of relevant documents is California and this factor points towards transfer.

d. Convenience of the Witnesses

The convenience of the witnesses also tilts in favor of transfer. "Courts typically regard the convenience of witnesses as the most important factor in considering a § 1404(a) motion to transfer." Herbert Ltd. P'ship v. Elec. Arts Inc., 325 F. Supp. 2d 282, 286 (S.D.N.Y. 2004). The party moving for transfer "must provide the Court with a detailed list of probable witnesses who will be inconvenienced if required to testify in the current forum." Kiss My Face Corp. v. Bunting, No. 02 Civ. 2645 (RCC), 2003 WL 22244587, at *2 (S.D.N.Y. Sept. 30, 2003). In considering the convenience of witnesses, "a Court should not just tally the various witnesses and their locations—the materiality of the proposed testimony is what matters most." Rosen, 2015 WL 64736, at *3. Both Plaintiff and Defendant claim that there are several witnesses who would be inconvenienced by having to travel to California and New York, respectively. Defendant states that "all potential witnesses in this matter" are located in California, including the building engineer, individuals from the LLC that purchased the Premises,

and Golden Star's accountant. (Khanian Suppl. Aff. ¶ 15.) Plaintiff lists several potential witnesses who reside in New York and witnessed "various meetings with [D]efendant in New York[,]" including Plaintiff's wife, father, mother, brothers, and aunt. (Khankhanian Decl. ¶ 18.)

Although Defendant's witness list is not remarkably "detailed," his list includes individuals that, given their job titles, would presumably testify about the sale of the Premises and Golden Star's business. Given that the locus of operative facts is California and any alleged breach of fiduciary duty or conversion of Golden Star's assets occurred there, the testimony of these California witnesses is likely to be the most significant and the Court's ease of access to their testimony is an "important consideration[]." Seltzer v. Omni Hotels, No. 09 CIV. 9115 (BSJ)(JCF), 2010 WL 3910597, at *3 (S.D.N.Y. Sept. 30, 2010). On the other hand, Plaintiff lists individuals who are witnesses only to meetings between Plaintiff and Defendant in New York. Plaintiff does not claim that these witnesses have any knowledge of Golden Star's assets or of the sale of the Premises. Accordingly, the probable value of live testimony from Defendant's California witnesses outweighs that of Plaintiff's New York witnesses. See id. (holding that even though neither party provided a detailed witness list, the convenience of the parties weighed in favor of transfer where

locus of operative facts was California and "the probable value of live testimony from California-based witnesses outweighs that of New York-based witnesses"). This factor weighs in favor of transfer.

e. Convenience of the Parties

Both parties claim that litigating the case in the other party's preferred forum would be inconvenient due to health issues. (See Khankhanian Decl. ¶ 20; Khanian Suppl. Aff. ¶¶ 16–17). Although "simply shifting inconvenience from one party to another does not support transfer, it is clear that when the convenience of witnesses weighs in one direction, the convenience of the parties will likely weigh in that direction as well." Rosen, 2015 WL 64736, at *3 (citing ESPN, Inc. v. Quiksilver, Inc., 581 F. Supp. 2d 542, 550 (S.D.N.Y. 2008)). Because the convenience of the witnesses weighs towards transfer, this factor likewise favors transfers to the Central District of California.

f. Judicial Economy and the Interest of Justice

The usual concern with judicial economy when considering a transfer motion is whether transfer "would require a new court to familiarize itself with the facts of the case." Rosen, 2015 WL 64736, at *5. Since the only matter the parties have briefed before this Court is Defendant's motion to dismiss, this concern

is not present here and it would not undermine judicial economy to transfer this action to California.

Transferring this case to the Central District of California would further the interest of justice. Where the "natural focus" of the case is in the transferee forum, transfer to that district is consistent with the interest of justice. See Delarosa v. Holiday Inn, No. 99 CIV. 2873 (RWS), 2000 WL 648615, at *5 (S.D.N.Y. May 19, 2000). Because the locus of operative facts, the location of relevant documents and access to sources of proof, and the convenience of the witnesses all weigh in favor of transfer, California is clearly the forum with the most "meaningful connection" to the underlying facts of Plaintiff's claims. Rosen, 2015 WL 64736, at *5. Thus, the interest of justice weighs in favor of transfer.

g. Remaining 1404(a) Factors

The remaining factors—relative means of the parties, availability of process to compel the attendance of unwilling witnesses, and comparative familiarity with the governing law—are neutral as to the Court's analysis under § 1404(a). First, neither party has shown evidence that litigating the case in California or New York would be financially burdensome, thus the relative means of the parties is neutral. Second, if neither party asserts that a witness would be unwilling to testify voluntarily, "the availability of process to compel testimony is

irrelevant to the transfer analysis." Rosen, 2015 WL 64736, at *4. Neither Plaintiff nor Defendant has claimed that any witnesses would not testify voluntarily in New York or California, thus this factor is also neutral. Third, familiarity with the governing law is "generally given little weight in federal courts." Am. Eagle Outfitters, Inc. v. Tala Bros. Corp., 457 F. Supp. 2d 474, 479 (S.D.N.Y. 2006). Although this factor becomes more important when the suit is premised on state law claims, this importance is diminished when those claims involve only "common causes of action." Rosen, 2015 WL 64736, at *5. Plaintiff's claims for breach of fiduciary duty, conversion, and an accounting are all common causes of action. Thus, familiarity with governing law is also neutral.

h. Transfer is Appropriate under § 1404(a)

Weighing the factors set forth above, the Court determines that Defendant has met his burden of demonstrating by clear and convincing evidence that transfer to the Central District of California is appropriate under § 1404(a).

C. Failure to State Claims for an Accounting and Conversion

Because this case should be transferred to the Central District of California, the Court declines to reach the portion of Defendant's motion that seeks dismissal of Plaintiff's claims. See Age Grp. Ltd., 2007 WL 2274024, at *1 (declining to consider defendant's motion to dismiss for failure to state a

claim under Rule 12(b)(6) because question of transfer under § 1404(a) was dispositive).

CONCLUSION

For the reasons stated above, it is hereby ORDERED that this case be transferred to the United States District Court for the Central District of California. The Clerk of the Court is respectfully directed to TRANSFER this case accordingly and remove the case from the Court's docket. Defendant's motion to dismiss is DENIED without prejudice with leave to re-file in the Central District of California.

SO ORDERED.

Dated: New York, New York
April 6, 2017

John F. Keenan
United States District Judge