

1 THE HONORABLE JOHN C. COUGHENOUR

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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 KEVIN KIHNKE, *et al.*,

CASE NO. C21-0011-JCC

10 Plaintiffs,

ORDER

11 v.

12 LM INSURANCE CORPORATION, *et al.*,

13 Defendants.

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15 This matter comes before the Court on Defendants LM Insurance Corporation and
16 Liberty Insurance Corporation’s (collectively “Liberty Mutual”) motion to dismiss or
17 alternatively to transfer venue (Dkt. No. 21). Having thoroughly considered the parties’ briefing
18 and the relevant record, the Court finds oral argument unnecessary and hereby GRANTS in part
19 and DENIES in part the motion and TRANSFERS this case to the Western District of Michigan
20 —Southern Division (1) for the reasons explained herein.

21 **I. BACKGROUND**

22 This case arises out of an insurance coverage dispute involving Liberty Mutual’s alleged
23 duty to defend and indemnify Plaintiffs L&K Coffee LLC *dba* Magnum Roastery, and Kevin
24 Kihnke, the sole member of L&K Coffee LLC (“L&K”). (*See generally* Dkt. No. 27.) Plaintiffs
25 are two of many defendants named in a putative class action pending in this District, *Bruce*
26 *Corker, et al., v. L&K Coffee Co. LLC, et al.*, Case No. C19-0290-RSL (W.D. Wash.). In that

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1 uncertified putative class action, Kona coffee farmers located in Hawaii allege that a variety of
2 defendants, including L&K and Kihnke, sell “run-of-the-mill commodity coffee and label[] it as
3 Kona coffee.” (Dkt. No. 27¹ at 6 (citing *Corker*, Case No. C19-0290-RSL).) The Kona coffee
4 farmers assert that by doing so, L&K and Kihnke “disparage[] the authentic coffee grown,
5 harvested, and sold” by the coffee farmers because the product sold by L&K and Kihnke is
6 “inferior” to the product produced by the Kona coffee farmers. (*Id.* at 6–7.) While some of the
7 defendants in the putative class action have entered into court-approved class settlement
8 agreements, no such agreement has been reached as of the date of this order between the Kona
9 coffee farmers and L&K and Kihnke. *See generally Corker*, Case No. C19-0290-RSL (W.D.
10 Wash.).

11 In this case, Plaintiffs L&K and Kihnke allege that Liberty Mutual breached its insurance
12 agreements with Plaintiffs and engaged in bad faith and unlawful consumer trade practices when
13 it declined to adequately investigate its coverage obligations resulting from the putative class
14 action. (*See* Dkt. No. 27 at 10–25.) Liberty Mutual now moves to dismiss or alternatively
15 transfer this case to the Western District of Michigan, where Liberty Mutual first brought a
16 declaratory judgment action seeking a declaration that it is not obligated to cover L&K in the
17 putative class action. (*See* Dkt. No. 21 at 7 (citing *LM Ins. Corp., et al., v. L&K Coffee LLC*,
18 Case No. C20-0806-JTN (W.D. Mich. 2021)).)

19 In moving to dismiss or alternatively transfer this coverage dispute to the Western
20 District of Michigan, Liberty Mutual argues dismissal is warranted because (1) this Court lacks
21 subject matter jurisdiction, (2) venue is improper, and (3) Plaintiff’s suit should be dismissed
22 under the “first to file” rule. (Dkt. No. 21 at 13–19.) Liberty Mutual further asks the Court, if it
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24 ¹ After receiving leave from the Court, (*see* Dkt. No. 26), Plaintiffs filed a Second
25 Amended Complaint (“SAC”) (Dkt. No. 27) solely to cure deficiencies in their prior complaint’s
26 diversity jurisdiction allegations. As indicated in the Court’s minute order (Dkt. No. 26) the SAC
is now the operative complaint for purposes of Liberty Mutual’s motion to dismiss or transfer
venue (Dkt. No. 21).

1 finds that dismissal is not warranted, to transfer this case to the Western District of Michigan for
2 further consideration. (*Id.* at 19–22.) The first argument was mooted by Plaintiffs’ subsequently
3 filed Second Amended Complaint, which the Court now considers to be the operative complaint
4 for purposes of Liberty Mutual’s motion. (*See* Dkt. Nos. 26, 27.) The remaining arguments are
5 addressed below.

6 **II. DISCUSSION**

7 Liberty Mutual filed its declaratory judgment complaint with the District Court for the
8 Western District of Michigan–Southern Division (1) on August 24, 2020, *see LM Ins. Corp.*,
9 Case No. C20-0806-JTN, Dkt. No. 1. At the time, only L&K was named as a defendant in the
10 putative class action. *See Corker*, Case No. C19-0290-RSL, Dkt. No. 271. The Kona coffee
11 farmers added Mr. Kihnke as a defendant on January 8, 2021. *See id.* at Dkt. No. 381. Liberty
12 Mutual attempted, that same day, to add Mr. Kihnke to its declaratory judgment action by filing
13 an amended complaint, but the Honorable Janet T. Neff, District Judge for the Western District
14 of Michigan–Southern Division (1), struck the proposed complaint. *See LM Ins. Corp.*, Case No.
15 C20-0806-JTN, Dkt. No. 31. Liberty Mutual has since moved for reconsideration of that order.
16 *Id.* at Dkt. No. 32. Moreover, Liberty Mutual represents to this Court that, should its motion for
17 reconsideration be denied by Judge Neff, it will seek leave to amend its declaratory judgment
18 complaint to add Mr. Kihnke as a Defendant in that action. (Dkt. No. 25 at 11.)

19 **A. Venue**

20 Liberty mutual seeks to dismiss the case for improper venue or transfer to the Western
21 District of Michigan. The venue statute provides that a civil action based on diversity generally
22 must be brought in either “(1) a judicial district where any defendant resides, if all defendants
23 reside in the same State, [or] (2) a judicial district in which a substantial part of the events or
24 omissions giving rise to the claim occurred, or a substantial part of property that is the subject of
25 the action is situated.” *See* 28 U.S.C. § 1391 (also allowing a case to be brought in a district “in
26 which any defendant is subject to personal jurisdiction at the time the action is commenced,” but

1 only if no other district satisfies either of the first two criteria). Pursuant to 28 U.S.C. § 1404(a),
2 the Court may transfer a civil action to any other district court in which the action may have been
3 brought “[f]or the convenience of parties and witnesses, in the interest of justice.”

4 A court has discretion “to adjudicate motions for transfer according to an ‘individualized,
5 case-by-case consideration of convenience and fairness.’” *Jones v. GNC Franchising, Inc.*, 211
6 F.3d 495, 498 (9th Cir. 2000) (internal citation omitted). A motion to transfer venue requires a
7 court to weigh multiple factors in its determination whether transfer is appropriate, including:

8 (1) the location where the relevant agreements were negotiated and executed, (2)
9 the state that is most familiar with the governing law, (3) the plaintiff’s choice of
10 forum, (4) the respective parties’ contacts with the forum, (5) the contacts relating
11 to the plaintiff’s cause of action in the chosen forum, (6) the differences in the costs
12 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.

13 *Id.* at 498–99.

14 Plaintiffs, in opposing dismissal or a transfer, argue that the subject matter of their suit is
15 Liberty Mutual’s failure to defend or indemnify them in a suit brought in the Western District of
16 Washington and, on this basis, venue is most appropriate here. (Dkt. No. 24 at 19–23.) The Court
17 disagrees. An application of the *Jones* factors compels a transfer of this case to the Western
18 District of Michigan—Southern Division (1).

19 The Court concludes that the subject matter of the suit is the insurance agreements
20 between the parties, which were indisputably negotiated and executed in Michigan, where
21 Plaintiffs’ base of operations is. (Dkt. Nos. 27 at 3, 15, 16; 21 at 21.) Moreover, while the parties
22 contest whether a court will need apply Washington or Michigan law to resolve Plaintiffs’
23 claims, it is irrelevant for purposes of this Court’s determination. Any federal court is equipped
24 to apply a distant state law when the law is not complex, as is the case here—insurance coverage
25 disputes are amongst the most common disputes federal courts are asked to resolve. *See Jones*,
26 211 F.3d at 498; *Stanbury Elec. Engr., LLC v. Energy Prods., Inc.*, 2016 WL 3255003, slip op. at

1 4 (W.D. Wash. 2016). And here, neither party asserts that the relevant law will be particularly
2 complex. (See Dkt. Nos. 21 at 22–30, 24 at 27–29.)

3 Although a plaintiff’s choice of forum receives substantial deference and a defendant
4 must “make a strong showing of inconvenience” to upset that choice, see *Decker Coal Co. v.*
5 *Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986), a plaintiff’s preference is not
6 dispositive, see *Norwood v. Kirkpatrick*, 349 U.S. 29, 32 (1955). Courts are hesitant to defer to a
7 plaintiff’s choice of forum when the case lacks strong ties to that district. See *Amazon.com v.*
8 *Cendant Corp.*, 404 F. Supp. 2d 1256, 1260 (W.D. Wash. 2005). This is just such a case.

9 Fundamentally, this is a dispute regarding the terms of an insurance contract negotiated
10 and executed in Michigan that contains Michigan-specific insurance provisions and applies to
11 actions Plaintiffs take nationally. (See Dkt. No. 27 at 53, 113, 115, 122, 266 (policy language)².)
12 Moreover, Plaintiffs’ alleged Lanham Act violations, the subject of the Washington litigation,
13 occurred throughout the country and have no more connection to Washington than any other
14 state. (See Dkt. No. 27 at 14–19.) Even considering the presumption in favor of Plaintiff’s choice
15 of forum, the Court finds that the lack of strong connections to Washington weigh in favor of
16 transfer.

17 In addition, Plaintiffs do not plausibly argue that their Washington contacts exceed their
18 contacts in Michigan, nor would the Court expect they could reasonably do so, given the fact that
19 L&K’s principal place of business is Nunica, Michigan and, by Plaintiffs’ own admission, it
20 “sells coffee products throughout the United States.” (See Dkt. No. 27 at 3.) Similarly, the Court
21 is at pains to discern how, given the location of L&K’s operations, the parties’ litigation costs
22 would be higher in Michigan than in Washington. For the same reasons, it would appear that the
23 sources of proof would similarly be at least equally accessibly in Michigan versus Washington.

24 ² The Court may take judicial notice of documents attached to the complaint, documents
25 incorporated by reference in the complaint, and matters of judicial notice without converting a
26 motion to dismiss into a motion for summary judgment. See *Van Buskirk v. CNN*, 284 F.3d 977,
980 (9th Cir.2002); *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir.1994).

1 In light of this analysis, transfer is the appropriate remedy in this case. Although a
2 plaintiff's choice is afforded substantial deference, the Court concludes that Plaintiffs' choice
3 here does not overcome the other factors that are either neutral or weigh in favor of transfer.
4 While Washington and Michigan courts are equally equipped to handle the case, Michigan
5 provides the most appropriate venue. Because venue in Michigan is appropriate, the Court need
6 not decide whether venue is improper in Washington. Instead, the Court finds that transfer to the
7 Western District of Michigan is "in the interest of justice." 28 U.S.C. § 1404(a).³

8 **III. CONCLUSION**

9 For the foregoing reasons, the Court hereby GRANTS in part and DENIES in part
10 Liberty Mutual's motion to dismiss or, in the alternative, transfer venue, (Dkt. No. 21), and
11 TRANSFERS this case to the U.S. District Court for the Western District of Michigan—
12 Southern Division (1). The Clerk is DIRECTED to close this case.

13 DATED this 14th day of April 2021.

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17 John C. Coughenour
18 UNITED STATES DISTRICT JUDGE

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24 ³ The Court also declines Liberty Mutual's request to dismiss this suit based upon the
25 "first to file" rule, given the rule's discretionary nature. *See Alltrade, Inc. v. Uniweld Products,*
26 *Inc.*, 946 F.2d 622, 628 (9th Cir. 1991) ("The most basic aspect of the first-to-file rule is that it is
discretionary; an ample degree of discretion, appropriate for disciplined and experienced judges,
must be left to the lower courts.") (internal citation and quotation marks omitted).