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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

VALVE CORPORATION,

Plaintiff,

v.

LEIGH ROTHSCHILD; ROTHSCHILD
BROADCAST DISTRIBUTION
SYSTEMS, LLC; DISPLAY
TECHNOLOGIES, LLC; PATENT
ASSET MANAGEMENT, LLC;
MEYLER LEGAL, PLLC; SAMUEL
MEYLER,

Defendants.

CASE NO. 23-cv-1016

ORDER DENYING DEFENDANTS'
MOTION TO TRANSFER

This matter comes before the Court on Defendants' Motion to Transfer, Dkt. No. 26. For the reasons stated below, the motion is DENIED.

1. BACKGROUND

This is a patent lawsuit. In June 2015, Defendant Display Technologies sued Plaintiff Valve Corp. for patent infringement in the Eastern District of Texas. Dkt. No. 38 at 3. The parties resolved the litigation by entering the "2016 Global Settlement and License Agreement" ("GSLA") on November 14, 2016. *Id.* Under the

1 GSLA, Display Technologies granted Valve the rights to numerous patents. *See id.*

2 The GSLA also included a choice of law provision:

3 The construction, validity and performance of the Agreement shall be
4 governed in all respects (without regard to conflict of law provisions) by
5 the law of the State of Texas, United States of America, as such law
6 applies to contracts signed and fully performed in the State of Texas.
7 The Parties hereby submit to the jurisdiction of, and waive any venue
8 objections against, the State and Federal courts in Texas.

9 Dkt. No. 38-1 § 11.1.

10 Years later, Valve sued Defendants Leigh Rothschild, Display Technologies,
11 Rothschild Broadcast Distribution Systems, and Patent Asset Management in this
12 District. Dkt. No. 1. Valve alleges Rothschild controls the other Defendants. *See*
13 Dkt. No. 38. Valve also named Rothchild’s lawyers, Meyler Legal LLC and Samuel
14 Meyler, as defendants. Dkt. No. 1. Defendants moved to transfer this matter to
15 United States District Court for the Eastern District of Texas, Marshall Division,
16 under the GSLA and 28 U.S.C. § 1404(a). Dkt. No. 26 at 5.

17 2. ANALYSIS

18 “A motion to transfer an action pursuant to 28 U.S.C. § 1404(a) presents two
19 basic questions (1) whether the action ‘might have been brought’ in the transferee
20 district; and (2) whether the transfer would be for the convenience of parties and
21 witnesses, in the interest of justice.” *Authenticate Pat. Co., LLC v. StrikeForce Techs.,*
22 *Inc.*, 39 F. Supp. 3d 1135, 1148 (W.D. Wash. 2014) (citation omitted). The second
23 question involves balancing several public and private factors provided in *Jones v.*
GNC Franchising, Inc., 211 F.3d 495, 498–99 (9th Cir. 2000). “The burden is on
defendants to demonstrate that the transfer is warranted.” *Amazon.com v. Cendant*

1 Corp., 404 F. Supp. 2d 1256, 1259 (W.D. Wash. 2005) (citing *Saleh, et al., v. Titan*
2 *Corp., et al.*, 361 F. Supp. 2d 1152, 1155 (C.D.Cal.2005)).

3 The Court finds this matter could have been brought in the Eastern District
4 of Texas, but before reaching the *Jones* factors, the Court first considers whether
5 the GSLA requires this matter to be transferred to the Eastern District of Texas.
6 *See Authentify Pat. Co., LLC*, 39 F. Supp. 3d at 1148.

7 When parties are subject to a valid forum-selection clause, “a district court
8 should ordinarily transfer the case,” and “must deem all factors relating to the
9 private interests of the parties . . . as weighing ‘entirely in favor of the preselected
10 forum.’” *Nw. Frozen LLC v. Victory Packaging LP*, No. C22-0084-JCC, 2022 WL
11 1136786, at *2 (W.D. Wash. Apr. 18, 2022) (quoting *Yei A. Sun v. Advanced China*
12 *Healthcare, Inc.*, 901 F.3d 1081, 1087–88 (9th Cir. 2018) (quoting *Atl. Marine*
13 *Constr. Co. v. U.S. Dist. Ct. for W. Dist of Tex.*, 571 U.S. 49, 63–64, 62 n.6 (2013)).
14 “[A] forum-selection clause should control except in unusual cases.” *Yei A. Sun*, 901
15 F.3d at 1088 (internal quotation marks omitted).

16 When present, “[a] mandatory forum selection clause requires litigation to
17 proceed in a particular jurisdiction, while a permissive forum selection clause
18 simply bestows jurisdiction to that forum.” *Meridian PO Fin. LLC v. OTR Tire Grp.*
19 *Inc.*, 507 F. Supp. 3d 1148, 1159 (D. Ariz. 2020) (citing *Hunt Wesson Foods, Inc. v.*
20 *Supreme Oil Co.*, 817 F.2d 75, 77 (9th Cir. 1987)). “[W]here venue is specified with
21 mandatory language the clause will be enforced . . . [But] [w]hen only jurisdiction is
22 specified the clause will generally not be enforced without some further language
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1 indicating the parties' intent to make jurisdiction exclusive.” *Docksider, Ltd. v. Sea*
2 *Tech., Ltd.*, 875 F.2d 762, 764 (9th Cir. 1989).

3 The Court finds that the GLSA, on the subject of venue, is permissive and
4 does not require a transfer to Texas. Defendants’ arguments otherwise are
5 unconvincing and ignore the distinction between choice of law and choice of venue.
6 The GLSA’s plain language states that Texas law “shall” govern the “construction,
7 validity, and performance” of the GLSA. Dkt. No. 38-1 § 11. On the subject of
8 venue—i.e., where any dispute would be litigated—the GLSA merely states that the
9 parties “submit to the jurisdiction of, and waive any venue objections against, the
10 State and Federal courts in Texas.” But there is no language in the GSLA stating
11 Texas is the exclusive venue for litigation; for example, the agreement *does not*
12 state that future cases “shall be litigated only” in the Eastern District of Texas. *See*
13 *Hunt Wesson Foods*, 817 F.2d at 77 (9th Cir. 1987) (“Although the word ‘shall’ is a
14 mandatory term, here it mandates nothing more than that the Orange County
15 courts have jurisdiction.”); *see also C21FC LLC v. NYC Vision Cap. Inc.*, No. CV-22-
16 00736-PHX-SPL, 2022 WL 2646168, at *3 (D. Ariz. July 8, 2022) (holding that a
17 similar provision that “you irrevocably submit to the jurisdiction of [Maricopa
18 County, Arizona] and waive any objection you may have to either the jurisdiction or
19 venue of such court,” was permissive.)). Because the GSLA’s forum-selection clause
20 is permissive, rather than mandatory, the Court need not transfer the case to
21 Texas.

22 The Court now determines whether the *Jones* factors compel a transfer to
23 Texas. These factors include consideration of “(1) the location where the relevant

1 agreements were negotiated and executed, (2) the state that is most familiar with
2 the governing law, (3) the plaintiff's choice of forum, (4) the respective parties'
3 contacts with the forum, (5) the contacts relating to the plaintiff's cause of action in
4 the chosen forum, (6) the differences in the costs of litigation in the two forums, (7)
5 the availability of compulsory process to compel attendance of unwilling non-party
6 witnesses . . . , (8) the ease of access to sources of proof,” and (9) “relevant public
7 policy of the forum state, if any.” *Jones v. GNC Franchising, Inc.*, 211 F.3d 495,
8 498–99 (9th Cir. 2000). The *Jones* factors favor the Court retaining this lawsuit.

9 First, Valve’s Chief Operating Officer, Scott Lynch, a Washington resident,
10 negotiated and executed the GSLA with Karl Quackenbush, in Washington. Dkt.
11 No. 30 at 1-2. The first factor favors Valve’s position.

12 Second, Valve concedes that its breach of contract claims are governed by
13 Texas law. Defendants urge that Texas courts have an interest in interpreting
14 Texas contract law. But Valve also brings a claim under Washington’s Patent Troll
15 Prevention Act. This factor breaks even for the parties.

16 The third factor strongly favors Valve since, as the plaintiff, it chose the
17 Western District of Washington as its venue. *See* Dkt. No. 1. Further, under the
18 fourth factor, Lynch explains that Valve is incorporated in Washington and that
19 most of its employees are based here, including those “believed to have information
20 relevant to this case,” and point to Defendant Meyler Legal PLLC’s contacts in
21 Washington. Dkt. Nos. 29 at 2; 30 ¶ 6. Defendants simply point to their lawsuits
22 pending in the Eastern District of Texas as “contacts” to that venue. Dkt. No. 31 at
23 6. Similarly, for the fifth factor, Valve highlights that its allegations are based on

1 actions that took place in or were directed to Washington, while Defendants again
2 simply point to their pending lawsuits in Texas. Valve demonstrates the fourth and
3 fifth factors disfavor transfer.

4 The sixth factor also favors this Court retaining the case because “[t]he vast
5 majority of all witnesses are within this District.” Dkt. No. 29 at 16. Defendants
6 concede “that [Valve’s] willing witnesses reside in Washington, it is equally correct
7 that none of Defendants’ do . . .,” pointing to one witness who lives in Pennsylvania.
8 Dkt. No. 31 at 6. But this argument is not persuasive as Defendants can always
9 subpoena reluctant witnesses.

10 Valve contends factor seven is neutral, arguing that it weighs in their favor
11 because “the individuals at the law firm of Kizzia Johnson PLLC . . . are likely to
12 have information relevant to this matter . . .” Dkt. No. 31 at 7. Defendants do not
13 say where it believes these potential witnesses reside. *See id.* The Court agrees with
14 Valve that this factor is neutral.

15 Finally, factors eight and nine also fall in Valve’s favor. Defendants do not
16 address factor eight, but Valve reiterates “the vast majority of witnesses and the
17 witnesses containing the most relevant information are located in this District,” and
18 emphasize its documents and record keeping is also in Washington. Dkt. No. 29 at
19 16. For factor nine, Defendants argue public policy favors transferring this case to
20 the Eastern District of Texas because it is familiar with the parties’ other lawsuits,
21 and the average time to trial for lawsuits in that district is quicker than in this
22 district. Dkt. No. 26 at 13-5. Indeed, related cases in a forum may be a significant
23 factor for the transfer of a lawsuit to a jurisdiction, *see Amazon.com v. Cendant*

1 *Corp.*, 404 F. Supp. 2d at 1261, but Defendants provide no details about the pending
2 actions in Texas except to say that they are patent infringement cases between
3 Valve and “an entity controlled by the Rothschild Defendants.” Dkt. No. 26 at 14.
4 The Court finds it more compelling that Valve is a Washington company bringing a
5 cause of action under Washington’s Patent Troll Prevention Act.

6 In sum, Defendants fail to meet their burden to demonstrate this lawsuit
7 should be transferred to the Eastern District of Texas.

8 **3. CONCLUSION**

9 For the reasons stated above, Defendants’ motion to transfer is DENIED.
10 Dkt. No. 26.

11 Dated this 10th day of May, 2024.

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14 Jamal N. Whitehead
15 United States District Judge
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