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United States District Court, S.D. California.

Kevin CAMPBELL, individually and on behalf of all others similarly situated, Plaintiff,
v.
FAF, INC.; Forward Air Corporation; Priority Capital Group, d/b/a Priority Leasing; and Odyssey Transport, LLC, Defendants.

Case No.: 19-CV-142-WQH-BLM
|
Signed 06/18/2019
|
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Attorneys and Law Firms

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ORDER

HAYES, Judge:

***1** The matters before the Court are the Motion to Dismiss filed by Defendant Odyssey Transport, LLC (ECF No. 21), the Motion to Transfer filed by all Defendants (ECF No. 22), the Motion to Dismiss filed by Defendant Priority Capital Group (ECF No. 23), and the Motion to Dismiss filed by all Defendants (ECF No. 24).

I. BACKGROUND

On January 22, 2019, Plaintiff Kevin Campbell initiated this action on behalf of himself and all others similarly situated by filing a complaint against Defendants FAF, Inc. (Defendant FAF), Forward Air Corporation (Defendant Forward), Priority Capital Group (Defendant Priority), and Odyssey Transport, LLC (Defendant Odyssey). (ECF No. 1). Plaintiff brings claims for violation of the Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq. (FLSA); violations of California and Ohio labor and consumer protection statutes; and common law constructive fraud, negligent misrepresentation, and unjust enrichment. Plaintiff's claims are based on allegations that Defendants misclassified truck drivers as independent contractors rather than employees, did not permit drivers to take meal and rest periods, did not reimburse drivers' expenses, did not keep accurate records of drivers' hours, and did not provide accurate itemized wage statements. Plaintiff seeks damages, statutory penalties, restitution, injunctive relief, an equitable accounting, and declaratory judgments that Defendants have violated the California Labor Code and the California Business & Professions Code.

On March 29, 2019, Defendant Odyssey filed a Motion to Dismiss for lack of personal jurisdiction. (ECF No. 21).

On March 29, 2019, all Defendants filed a Motion to Transfer this action to the Eastern District of Tennessee. (ECF No. 22). Defendants move to transfer on the grounds that Plaintiff's claims are based on an agreement with a valid, enforceable forum-selection clause; further, this action resembles an action already filed in the Eastern District of Tennessee, and transfer would promote judicial efficiency and avoid conflicting rulings.

On March 29, 2019, Defendant Priority filed a Motion to Dismiss for lack of personal jurisdiction and failure to state a claim. (ECF No. 23).

On March 29, 2019, all Defendants filed a Motion to Dismiss for lack of supplemental subject matter jurisdiction, lack of personal jurisdiction, and failure to state a claim. (ECF No. 24).

On May 3, 2019, Plaintiff filed Responses opposing Defendants' Motion to Transfer (ECF No. 33), Defendant

Odyssey's Motion to Dismiss (ECF No. 34), Defendant Priority's Motion to Dismiss (ECF No. 35), and Defendants' Motion to Dismiss (ECF No. 36).

On May 24, Defendant Odyssey filed a Reply in support of its Motion to Dismiss (ECF No. 37), Defendant Priority filed a Reply in support of its Motion to Dismiss (ECF No. 38), and Defendants filed Replies in support of their Motion to Transfer (ECF No. 39) and Motion to Dismiss (ECF No. 40).

II. DISCUSSION

Defendants contend that transfer to the Eastern District of Tennessee is proper pursuant to 28 U.S.C. § 1404(a) because the agreement between Plaintiff and Defendant Odyssey contains a valid forum-selection clause, which is given controlling weight. Defendants assert that transfer would not contravene California public policy. Defendants contend that public interest factors support transfer because the Southern District of California is one of the twenty-seven most overworked district courts in the country, unlike the Eastern District of Tennessee. Defendants assert that a local interest in the controversy favors transfer because Defendant FAF conducts business in Tennessee. Defendants assert that Plaintiff lives in the Central District of California and provided no services in the Southern District of California. Defendants assert that transfer would promote judicial economy because of the overlapping claims and parties in the case previously filed in the Eastern District of Tennessee.

***2** Plaintiff contends that enforcement of the forum-selection clause would violate strong California public policy regarding the **California Franchise Investment Law** (CFIL), as protected by California Business and Professions Code § 20040.5. Plaintiff contends that enforcement would violate strong California public policy regarding employment law, as set forth in the California Labor Code. Plaintiff contends that public interest factors weigh against transfer because Defendant Odyssey and Defendant Priority are based in Iowa and the California has an interest in local resolution of California-law claims.

A valid forum selection clause is "enforced through a motion to transfer under § 1404(a)." *Atl. Marine Const. Co., Inc. v. U.S. Dist. Court for W. Dist. of Tex.*, 571 U.S. 49, 59, 62 n.5 (2013). The statute provides:

> 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 or to any district or division to which all parties have consented.

28 U.S.C. § 1404(a). The statute "does not condition transfer on the initial forum's being 'wrong.' And it permits transfer ... to any other district to which the parties have agreed by contract or stipulation." *Atl. Marine*, 571 U.S. at 59. District courts apply federal law to interpret forum selection clauses. *Sun v. Advanced China Healthcare, Inc.*, 901 F.3d 1081, 1086 (9th Cir. 2018). "In the typical case not involving a forum-selection clause, a district court considering a § 1404(a) motion ... must evaluate both the convenience of the parties and various public-interest considerations," then "weigh the relevant factors and decide whether, on balance, a transfer would serve 'the convenience of parties and witnesses' and otherwise promote 'the interest of justice.' " *Atl. Marine*, 571 U.S. at 62–63 (quoting § 1404(a)).

The ordinary "calculus" under § 1404(a) "changes, however, when the parties' contract contains a valid forum-selection clause, which 'represents the parties' agreement as to the most proper forum.' " *Id.* at 63 (quotation omitted). "As a general rule, '[w]hen the parties have agreed to a valid forum-selection clause, a district court should ordinarily transfer the case to the forum specified in that clause.' " *Sun*, 901 F.3d at 1087–88 (quoting *Atl. Marine*, 571 U.S. at 62). The plaintiff "bear[s] the burden of showing why the court should not transfer the case to the forum to which the parties agreed" and "[t]he plaintiff's subsequent choice of forum merits no weight." *Id.* (quoting *Atl. Marine*, 571 U.S. at 63–64).

The "court must deem all factors relating to the private interests of the parties (such as the 'relative ease of access to sources of proof ... and all other practical problems that make trial of a case easy, expeditious and inexpensive') as weighing 'entirely in favor of the preselected forum.' " *Id.* at 1087–88 (quoting *Atl. Marine*, 571 U.S. at 64, 62 n.6). "While a court may consider factors relating to the public interest (such as 'the administrative difficulties flowing from court congestion; the local interest in having localized controversies decided at home; and the interest in having the trial of a diversity case in a forum that is at home with the

law' ... those factors will rarely defeat a transfer motion." *Id.* at 1088 (quoting *Atl. Marine*, 571 U.S. at 64, 62 n.6).

"The practical result is that a forum-selection clause 'should control except in unusual cases.' " *Id.* at 1088 (quoting *Atl. Marine*, 571 U.S. at 64). "[A] forum-selection clause [i]s controlling unless the plaintiff ma[kes] a strong showing that: (1) the clause is invalid due to 'fraud or overreaching,' (2) 'enforcement would contravene a strong public policy of the forum in which suit is brought, whether declared by statute or by judicial decision,' or (3) 'trial in the contractual forum will be so gravely difficult and inconvenient that the litigant will for all practical purposes be deprived of his day in court.' " *Id.* (quoting *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 15, 18 (1972)). "[I]n order to prove that enforcement of such a clause 'would contravene a strong public policy of the forum in which suit is brought' ... the plaintiff must point to a statute or judicial decision that clearly states such a strong public policy." *Id.* at 1090 (quoting *M/S Bremen*, 407 U.S. at 15).

***3** In this case, Plaintiff contends that transfer would contravene strong California public policy as to franchise law and employment law. As the party challenging the forum-selection clause, Plaintiff has the burden to make a "strong showing" that transfer contravene strong California public policy as to franchise law and employment law. *See Sun*, 901 F.3d at 1088; *see also Fraser v. Brightstar Franchising LLC*, Case No. 16-cv-01966-JSC, 2016 WL 4269869, at *5 (N.D. Cal. Aug. 15, 2016) ("[T]he party challenging the clause bears the burden of establishing exceptional circumstances unrelated to the convenience of the parties that make transfer unwarranted.").

Defendants submit an agreement titled "Independent Contractor Operating Agreement" in support of the Motion to Transfer. (Ex. A to Zenk Decl., ECF No. 22-3 at 6-55). Plaintiffs reference owner-operator agreements in the complaint. *See* ECF No. 1 ¶ 145. Plaintiffs do not dispute the authenticity of the agreement submitted by Defendants. The Court finds that consideration of the agreement is proper at this stage in the proceedings. *See Doe 1 v. AOL LLC*, 552 F.3d 1077, 1081 (9th Cir. 2009) ("A motion to enforce a forum selection clause is treated as a motion to dismiss pursuant to Rule 12(b)(3); pleadings need not be accepted as true, and facts outside the pleadings may be considered."); *see also Steinle v. City & Cty. of S.F.*, 919 F.3d 1154, 1162–63 (9th Cir. 2019) ("[T]he incorporation by reference doctrine ... permits a court to consider a document if the plaintiff refers extensively to the document or the document forms the basis of the plaintiff's claim.") (quotation omitted).

The agreement includes a clause that provides:

> GOVERNING LAW AND CHOICE OF FORUM. This Agreement shall be governed by the laws of the United States and of the State of Tennessee, without regard to the choice-of-law rules of that State or any other jurisdiction. THE PARTIES FURTHER AGREE THAT ANY CLAIM OR DISPUTE ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT OR OTHERWISE WITH RESPECT TO THE OVERALL RELATIONSHIP BETWEEN THE PARTIES, WHETHER UNDER FEDERAL, STATE, LOCAL, OR FOREIGN LAW (INCLUDING BUT NOT LIMITED TO 49 C.F.R. PART 376), SHALL BE BROUGHT EXCLUSIVELY IN STATE OR FEDERAL COURTS SERVING Greene County, Tennessee. COMPANY & CARRIER AND CONTRACTOR HEREBY CONSENT TO THE JURISDICTION OF THESE COURTS.

(Ex. A to Zenk Decl. ¶ 24, ECF No. 22-3 at 30–31).

A. California Franchise Law Policy

Defendants contend that transfer of this action does not contravene California franchise law policy because Plaintiff fails to allege nonconclusory facts showing that the contract qualifies as a franchise under California law. Defendants contend that payments for a truck rental are ordinary business expenses, not a franchise fee.

Plaintiff contends that strong California public policies prohibit compulsory transfer of CFIL claims "[a]s a matter of settled, binding law." (ECF No. 33 at 11). Plaintiff contends that the determination of whether payments constitute a franchise fee is a mixed question of law and fact improper for disposition at this stage in the litigation. Plaintiff contends that the elements of the CFIL "should be construed

liberally to broaden the group of individuals protected by the law and to carry out California's protective legislative intent": "to protect individuals who invest in a business, or assume significant financial risk in investing in a business." (ECF No. 36) (quotations omitted). Plaintiff asserts that he assumed significant financial risk while driving for Defendants because Plaintiff paid fees and invested in the business. Plaintiff asserts that he paid a franchise fee.

***4** The CFIL provides the following definition of "franchise":

> (a) "Franchise" means a contract or agreement, either expressed or implied, whether oral or written, between two or more persons by which:
>
> (1) A franchisee is granted the right to engage in the business of offering, selling or distributing goods or services under a marketing plan or system prescribed in substantial part by a franchisor; and
>
> (2) The operation of the franchisee's business pursuant to such plan or system is substantially associated with the franchisor's trademark, service mark, trade name, logotype, advertising or other commercial symbol designating the franchisor or its affiliate; and
>
> (3) The franchisee is required to pay, directly or indirectly, a franchise fee.

Cal. Corp. Code § 31005. The Court of Appeals has held that § 20040.5 of the California Business and Professions Code "expresses a strong public policy of the State of California to protect California franchisees from the expense, inconvenience, and possible prejudice of litigating in a non-California venue." *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000). District courts have concluded that plaintiffs who fail to allege a franchise within the meaning of California Corporations Code § 31005 cannot rely on California Business and Professions Code § 20040.5 to show that a forum-selection clause is unenforceable. *See, e.g.*, *Roberts v. C.R. England, Inc.*, 848 F. Supp. 2d 1087, 1090 (N.D. Cal. 2012); *Musavi v. Burger King Corp.*, No. EDCV 13-00970 DDP SP, 2013 WL 5798551, at *3 (C.D. Cal. Oct. 25, 2013); *Sharpe v. AmeriPlan Corp.*, No. CV1205531SJOPLAX, 2012 WL 13014337, at *5 (C.D. Cal. July 25, 2012). Stating a claim for relief "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting Fed. R. Civ. P. 8(a)(2)).

In this case, Plaintiff alleges that "Defendants prevent Drivers from engaging in business with anyone other than Defendants," and that "Drivers make deliveries on behalf of Defendants." (ECF No. 1 ¶ 3). Plaintiff alleges that "[i]n or around July of 2018, Defendants offered and sold Plaintiff the owner-operator opportunity." *Id.* ¶ 143. Plaintiff alleges, "Defendants charged, and Plaintiff and the Class paid, direct fees for the right to purchase the owner-operator opportunity. Specifically, Plaintiff and Class members were required to purchase lease agreements and equipment for the trucks." *Id.* ¶ 144. Plaintiff alleges, "Defendants provided Plaintiff and Class members the owner-operator agreements under a marketing plan and/or system prescribed in substantial part by Defendants. The purchase and operation of the owner-operator agreements was substantially associated with the trademarks, service marks, trade name, logotype, advertising, or other commercial symbols designated one or more of the Defendants." *Id.* ¶ 145.

The Court finds that Plaintiff fails to allege nonconclusory facts to support a plausible inference of a franchise within the meaning of § 31005. *See Lads Trucking Co. v. Sears, Roebuck & Co.*, 666 F. Supp. 1418, 1420 (C.D. Cal. 1987) (determining no franchise existed when "[t]he essence of the agreement is that [the plaintiff] provides a delivery service for goods sold by [the defendant] to its customers" and "[a]ny complaint em[a]nating from the customer would be addressed directly to [the defendant] and the customer looks upon the delivery person as having had no participation in the contract of sale"); *Roberts*, 848 F. Supp. 2d at 1090 (determining that allegations that the plaintiffs "broke down pallets" and "provided a variety of services directly to third party customers and often acted at the customers direction" failed to demonstrate that "the plaintiffs actively cultivated customer relationships and, in this way, offered and distributed services and goods to third party customers within the meaning of the CFIL"); *Zentner v. Farmers Grp., Inc.*, No. B235767, 2012 WL 5448208, at *5 (Cal. Ct. App. Nov. 8, 2012) ("[T]he franchisee must be granted the right to offer, sell, or distribute goods or services to others rather than solely to the franchisor.") (quotation omitted). Plaintiff fails to carry the burden of a "strong showing" that

enforcement of the forum-selection clause in this case would contravene strong California public policy as to franchise law. *See Sun*, 901 F.3d at 1088; *see also Roberts*, 848 F. Supp. 2d at 1091 ("Because Plaintiffs have failed to allege a franchise under the CFIL, [*Jones*] does not bar enforcement of the forum selection clauses ... and the transfer of this action ... is required under 28 U.S.C. § 1406(a).").

B. California Employment Law Policy

1. California Labor Code § 925

***5** Defendants contend that California Labor Code § 925(a) does not apply because Plaintiff worked primarily outside of California. Defendants assert that Plaintiff spent almost no time performing services in California. Plaintiff contends that transfer would violate the strong California public policy set forth at California Labor Code § 925, which prohibits forum-selection clauses in employment agreements.

California Labor Code § 925 provides:

> (a) An employer shall not require an employee who primarily resides and works in California, as a condition of employment, to agree to a provision that would do either of the following:
>
> (1) Require the employee to adjudicate outside of California a claim arising in California.
>
> (2) Deprive the employee of the substantive protection of California law with respect to a controversy arising in California.

District courts have determined that § 925 expresses California's strong public policy against forum-selection clauses in employment agreements. *See Karl v. Zimmer Biomet Holdings, Inc.*, No. C 18-04176 WHA, 2018 WL 5809428, at *3 (N.D. Cal. Nov. 6, 2018); *Depuy Synthes Sales Inc. v. Stryker Corp.*, No. EDCV181557FMOKKX, 2019 WL 1601384, at *4 (C.D. Cal. Feb. 5, 2019) (quoting *Karl*, 2018 WL 5809428, at *4); *Friedman v. Glob. Payments Inc.*, No. CV183038FMOFFMX, 2019 WL 1718690, at *3 (C.D. Cal. Feb. 5, 2019); *Alabsi v. Savoya, LLC*, No. 18-CV-06510-KAW, 2019 WL 1332191, at *6–7 (N.D. Cal. Mar. 25, 2019) (quoting *Karl*, 2018 WL 5809428, at *2). *But see Sun*, 901 F.3d at 1089-90 & n.7 (noting that statutory provisions "preclud[ing] enforcement of a forum-selection clause would contradict *Atlantic Marine's* general rule that forum-selection clauses are enforceable except in the exceptional case"). District courts have determined that § 925 does not control claims arising outside California or claims by plaintiffs who did not primarily reside and work in California. *See Mechanix Wear, Inc. v. Performance Fabrics, Inc.*, No. 216CV09152ODWSS, 2017 WL 417193, at *7 (C.D. Cal. Jan. 31, 2017); *Felley v. Am. Fujikura Ltd.*, No. 2:17-CV-02204-MCE-DB, 2018 WL 3861574, at *2 (E.D. Cal. Aug. 14, 2018); *see also Gountoumas v. Giaran, Inc.*, No. CV 18-7720-JFW(PJWX), 2018 WL 6930761, at *10 (C.D. Cal. Nov. 21, 2018) (determining § 925 did not render arbitration agreement's choice-of-law and forum-selection clauses unconscionable partly because "the parties agreed, or anticipated, that Plaintiff would primarily reside and work in Boston, Massachusetts by February 2017").

In this case, Plaintiff alleges, "Plaintiff is a resident of the State of California. Plaintiff was employed as a Driver for Defendants until approximately September of 2018 .... Plaintiff would regularly engage in Defendants' business in the city and county of San Diego, California." (ECF No. 1 ¶ 14). Defendants provide the declaration of William Zenk, an LLC member of Defendant Odyssey. Zenk states,

> Plaintiff provided transportation services for Odyssey for only a short period of time, during which he spent very little time in California. Plaintiff picked up his truck in Ontario, CA, and a few days later drove a short distance to pick up his first load in Carson, CA. He then hauled loads primarily in the Midwest and Southern states (including in Tennessee) before returning to California with his last load.

(Zenk Decl. ¶ 12, ECF No. 22-3 at 3). Zenk references a summary of Plaintiff's loads showing an order with an August 2, 2018 dispatch from Ontario, CA and an August 9, 2018 delivery in Carson, CA corresponding to 48 miles. *Id.* ¶ 13. The summary also shows an order with an August 9, 2018 dispatch from Carson, CA and an August 9, 2018 delivery in Phoenix, AZ corresponding to 375 miles. *Id.* The summary shows eight orders between August 10, 2018 and August 18, 2018 with dispatches and deliveries in states

other than California corresponding to 5,336 miles. *Id.* The summary shows an order with an August 20, 2018 dispatch from Las Vegas, NV and an August 20, 2018 delivery in Carson, CA corresponding to 282 miles. *Id.*

***6** The Court finds that Plaintiff fails to put forth evidence, or allege facts, to demonstrate that Plaintiff "primarily resides and works in California" as required for § 925 to apply in this case.[1] *See* Cal. Lab. Code § 925(a). The cases Plaintiff relies on are not analogous to this case. *See Karl*, 2018 WL 5809428, at *1 (N.D. Cal. Nov. 6, 2018) ("Plaintiff James Karl is a resident of Novato, California.... Plaintiff thereafter began working for defendants as a sales representative in California."); *Depuy*, 2019 WL 1601384, at *3 ("Here, there is no dispute that [Plaintiff] is a California citizen who primarily lives and works in California ..."); *Friedman*, 2019 WL 1718690, at *4 ("Plaintiffs – California citizens formerly employed by defendants primarily in California...."); *Alabsi*, 2019 WL 1332191, at *8 (N.D. Cal. Mar. 25, 2019) ("Here, Plaintiff is a resident of this district, and worked for Defendant exclusively in San Francisco."). Plaintiff fails to carry the burden of a "strong showing" that enforcement of the forum-selection clause in this case would contravene strong California public policy as to California Labor Code § 925. *See Sun*, 901 F.3d at 1088, 1090 n.7; *see also Felley*, 2018 WL 3861574, at *2 (ordering transfer "despite Plaintiff's residence in Sacramento" because § 925 expresses a strong California interest only as to claims arising in California).

2. Choice of Law

Defendants contend that choice-of-law clauses do not determine whether enforcing a forum-selection clause contravenes strong public policy. Defendants assert that the choice-of-law clause does not preclude transfer because the Tennessee district court can apply California law. Plaintiff contends that the choice-of-law clause is relevant to determine whether enforcement of the forum-selection clause violates California public policy. Plaintiff asserts that transfer would dissolve Plaintiff's ability to vindicate unwaivable wage and hour rights from the California Labor Code because "Tennessee has no wage and hour laws that could be used to protect Plaintiff and California drivers, leaving the FLSA as Plaintiff's sole avenue for redress." *Id.* at 16.

In *Sun*, the Court of Appeals stated that analysis of the three *M/S Bremen* exceptions to forum-selection clause enforcement—which are (1) fraud or overreaching, (2) strong public policy of the original forum, and (3) practical deprivation of the litigant's day in court "does not change when the agreement includes a choice-of-law clause in addition to a forum-selection clause. We generally treat the analysis as coextensive and consider the clauses' impact together." 901 F.3d at 1088 n.4. In terms of the second *M/S Bremen* exception—contravening the original forum's strong policy—the Court of Appeals has determined that loss of state statutory remedies does not preclude enforcement of forum-selection clauses, even if a statutory provision has invalidated waivers of statutory remedies unavailable in the other forum. *Id.* at 1089. The Court of Appeals stated, "We note that we would give more weight to [a state's] public policy interests if plaintiffs would be denied any relief in [the other] forum." *Id.* at 1089 n.6 (comparing *Richards v. Lloyd's of London*, 135 F.3d 1289, 1296 (9th Cir. 1998) ("[W]ere English law so deficient that the [plaintiffs] would be deprived of any reasonable recourse, we would have to subject the [forum-selection and choice-of-law] clauses to another level of scrutiny."), with *Doe 1*, 552 F.3d at 1084 (holding a forum-selection clause unenforceable when a state court held that enforcement would deprive California consumers of any remedy in Virginia courts)).

***7** The Court of Appeals observed that the second *M/S Bremen* exception "tracks the third *M/S Bremen* exception"—deprivation of the plaintiff's day in court—when enforcement of forum-selection and choice-of-law clauses may preclude remedies. *Id.* at 1089 n.6. In terms of the third *M/S Bremen* exception, "courts must enforce a forum-selection clause unless the contractually selected forum affords the plaintiffs no remedies whatsoever ... even when the contractually selected forum may afford the plaintiffs less effective remedies than they could receive in the forum where they filed suit." *Id.* at 1092. "It is the *availability* of a remedy that matters, not predictions of the likelihood of a win on the merits.... [T]he fact that certain types of remedies are unavailable in the foreign forum does not change the calculus if there exists a basically fair court

system in that forum that would allow the plaintiff to seek some relief." *Id.* (quotation omitted).

At this stage in the litigation, the Court cannot conclude that transfer to the Eastern District of Tennessee precludes application of California law in this case. *See Atl. Marine*, 571 U.S. at 67 ("[F]ederal judges routinely apply the law of a State other than the State in which they sit."); *see also LaCross v. Knight Transp., Inc.*, 95 F. Supp. 3d 1199, 1206 (C.D. Cal. 2015) ("The Court has no reason to suspect that the District Court of Arizona would have any trouble applying the California labor laws at issue in this case, if it deems such application appropriate."). The Court cannot conclude that transfer precludes remedies under California law with respect to every one of Plaintiff's claims. *See LaCross*, 95 F. Supp. 3d at 1206 n.4 (determining that "arguments concerning the differences in the labor laws of California and Arizona ... are largely irrelevant" where the choice-of-law provision governed only the agreement itself, as opposed to all claims "related to" the agreement and subject to the choice-of-forum clause). In addition, Plaintiff states that the FLSA can provide redress if California law is not applied in this case. *See* ECF No. 33 at 16. The Court cannot conclude that transfer deprives Plaintiff of "any reasonable recourse." *See Sun*, 901 F.3d at 1089 n.6. Plaintiff fails to carry the burden of a "strong showing" that enforcement of the forum-selection clause would contravene strong California public policy or deprive Plaintiff of his day in court based on the choice-of-law provision. *See id.* at 1088.

Plaintiff's assertion that Defendant Odyssey and Defendant Priority are based in Iowa does not demonstrate any local controversy as to California. Plaintiff's remaining grounds for contending that public interest factors prohibit transfer of this case notwithstanding the valid forum-selection clause, were raised and addressed above with respect to the enforceability of the forum-selection clause. Plaintiff fails to demonstrate that is the "rare[ ]" case in which public interest factors "defeat a transfer motion." *See id.*

III. CONCLUSION

IT IS HEREBY ORDERED that the Motion to Transfer Venue filed by Defendants (ECF No. 22) is GRANTED.

IT IS FURTHER ORDERED that the Clerk of the Court is directed to transfer this action to the United States District Court for the Eastern District of Tennessee, and to send a copy of this Order to that court.

IT IS FURTHER ORDERED that the remaining Motions to Dismiss (ECF Nos. 21, 23, 24) are DENIED as moot.

All Citations

Not Reported in Fed. Supp., 2019 WL 2574119

Footnotes

[1] Plaintiff asserts that "the location of the miles Plaintiff drove is a fundamentally different inquiry that the amount of time that Plaintiff worked in the State of California," and requests "discovery on this issue before the Court concludes Section 925 does not apply." (ECF No. 33 at 14 n.4). Defendants assert that discovery is unnecessary because Plaintiff knows whether he primarily worked in California.
The Court DENIES Plaintiff's request for discovery. *See* *Cohen v. Versatile Studios, Inc.*, No CV134121GAFMANX, 2013 WL 12130019, at *3 (C.D. Cal. Nov. 15, 2013) (first citing *Saleh v. Titan Corp.*, 361 F. Supp. 2d 1152, 1168 (S.D. Cal. 2005) ("There is scant published authority regarding whether a party is entitled to discovery directed toward the issue of transfer."), then citing *Wood v. Zapata Corp.*, 482 F.2d 350, 357 (3rd Cir. 1973) ("[T]here is no procedural rule or decisional authority requiring a district court to permit discovery in connection with a transfer motion....")).