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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

FEDERAL TRADE COMMISSION, )

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Plaintiff, )

)

vs. )

)

KEVIN WRIGHT; HCG PLATINUM, LLC, a )

Utah Limited Liability Company; and RIGHT )

WAY NUTRITION, LLC, a Utah Limited )

Liability Company, )

)

Defendants, and )

)

WEEKES HOLDING, LLC, an Arizona )

No. 2:13 cv 2215 HRH

## Background

Plaintiff is the Federal Trade Commission. Defendants are Kevin Wright; HCG Platinum, LLC (HCGP); and Right Way Nutrition, LLC. Relief defendant are Weekes Holdings, LLC; Primary Colors, LLC; KMATT Holdings, LLC; Nutrisport Holdings, LLC; Ty D. Mattingly; Julie Mattingly; and Annette Wright.

Plaintiff commenced this action on October 30, 2013 by filing a complaint for a permanent injunction and other equitable relief.<sup>3</sup> In the complaint, plaintiff alleges that defendants have violated the Federal Trade Commission Act by making false and unsubstantiated claims about their product, HCG Platinum, which is a weight loss supplement.<sup>4</sup> Plaintiff alleges that “HCGP and Right Way ... have operated as a common enterprise while engaging in the deceptive acts and practices” described in the complaint and that “Kevin Wright has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the [c]orporate [d]efendants that constitute the common enterprise.”<sup>5</sup>

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<sup>3</sup>Docket No. 1. Prior to filing the complaint, plaintiff sent a demand letter and draft complaint to Kevin Wright and HCGP, which alleged that venue was appropriate in the



Discussion

Defendants' and relief defendants' motion is brought pursuant to 28 U.S.C. § 1404(a),  
which provides:

that consideration of the Jones factors weigh in favor of a transfer to the District of Utah.

Plaintiff argues that consideration of the Jones factors weigh against a transfer.

State most familiar with the governing law. This factor is neutral because this case involves federal claims.

Plaintiff's choice of forum. This factor weighs against transfer since plaintiff has chosen an Arizona forum. But, this factor is given minimal weight because plaintiff does not "reside" in Arizona and the operative facts giving rise to plaintiff's claims did not occur

Weekes Holding is an Arizona limited liability company, its principal place of business is in Bluffdale, Utah. <sup>12</sup> Thus, it would be more convenient for Weekes Holding if this case were litigated in Utah. And, it would not inconvenience plaintiff, which is a Washington, D.C.



that his “primary residence” was in Utah, but that this residence was leased or rented.<sup>20</sup>

Plaintiff also cites to a court document filed by Mr. Wright in Arizona state court in which he averred that he had lived in Arizona for 40 years and that Mrs. Wright had lived in Arizona for 39 years.<sup>21</sup> Plaintiff also points out that in 2002, Mr. Wright filed for bankruptcy in Arizona<sup>22</sup>



residence.<sup>27</sup> And, plaintiff points out that the Wrights filed personal income tax returns in Arizona using a form that can only be used by full time residents of the state and that on their Utah state tax return for 2012, they indicated that they were “nonresidents” and that their home state was Arizona.<sup>28</sup> Plaintiff also offers a declaration from Larry Clark, Jr., who is a Arizona highway patrolman, who avers that on October 1, 2013, he stopped Mr. Wright for speeding and that Mr. Wright told him that “he was living in Arizona and was driving to Utah for work purposes.”<sup>29</sup>

The evidence plaintiff offers demonstrates that the Wrights have a connection to

Cal. September 8, 2008)). Defendants and relief defendants have identified three witnesses who may be material witnesses.<sup>30</sup> These witnesses are Michael Walker, who is HCGP's former chief marketing officer; Mark Todd, who formerly worked in HCGP's marketing

Contacts relating to the cause of action. Defendants and relief defendants argue that this factor weighs in favor of transfer. Mr. Wright avers that “[v]irtually, if not all, of [his]

nationwide.<sup>38</sup> And, in a related class action regarding defendants' product, HCGP and Right Way provided the claims administrator with "the names and addresses of over 4,000 likely purchasers of HCG Platinum" and notices were sent to 177 individuals in Arizona and 67 in Utah.<sup>39</sup>

While plaintiff's evidence shows that Arizona consumers bought defendants' product and that HCGP and Right Way conducted business on a national level, that evidence does not show that defendants had more contact with Arizona than Utah. The fact that the business "hub" of the corporate defendants and relief defendants is in Utah means that defendants and relief defendants had more substantial contact with Utah, than Arizona. This factor weighs in favor of transfer.

Differences in cost. It will be less costly to litigate this case in Utah, primarily because most of defendants and relief defendants are domiciled or reside in Utah and because most of the witnesses are located in Utah. While advances in electronic communications and document production have eliminated some of the costs associated with discovery, if this case were litigated in Arizona, some of the parties and witnesses would incur travel costs, costs which could be avoided by litigating this case in Utah. This factor weighs in favor of transfer.

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<sup>38</sup>See SEALED Pickerrell Declaration at 13 14, ¶¶ 26 27, Docket No. 25.

<sup>39</sup>Declaration of David Garcia [etc.] at ¶¶ 2 3, attached to Plaintiff's Opposition to Defendants' Motion to Transfer Venue, Docket No. 20.

Availability of compulsory process. As discussed above, there are several likely witnesses who reside in Utah. These individuals are outside the subpoena power of this court and thus this factor “weigh[s] strongly in favor of transfer.” U Haul Int’l, Inc. v. Hire

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case is greater, given that it is against multiple Utah companies and citizens. This factor weighs slightly in favor of transfer.

Case congestion. This factor is neutral. Although it takes longer for a case to reach trial in Utah than it does in Arizona, <sup>41</sup> the difference is slight.

#### Conclusion

Defendants and relief defendants' motion <sup>42</sup> to transfer venue to the District of Utah is granted. It will be more convenient for the parties and for non party witnesses if this case is litigated in Utah. It will be less costly, non party witnesses will be subject to the court's subpoena power, and access to proof will be easier, if this case is litigated in Utah. And, Utah has a greater interest than Arizona in this case, which involves Utah companies and Utah residents.

DATED at Anchorage, Alaska, this 8th day of April, 2014.

/s/ H. Russel Holland  
United States District Judge

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<sup>41</sup>SEALED Pickerrell Declaration at 16 17, ¶ 29, Docket No. 25 (noting that U.S Courts website shows median time from filing to disposition for civil cases in Utah is 38.8 months and 31 months in Arizona).

<sup>42</sup>Docket No. 17.