IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

WEBSEED, INC. and BRIGHTEON MEDIA, INC., Plaintiffs, v. DEPARTMENT OF STATE, et al., Defendants.	)	Civil Action No. 1:24-cv-00576-DII

DEFENDANT GOOGLE LLC'S OPPOSED MOTION TO TRANSFER VENUE TO THE NORTHERN DISTRICT OF CALIFORNIA

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

I. INTRODUCTION

Plaintiffs should not have filed this case in this District. Instead, they should have filed it in Santa Clara County, California, where they agreed to litigate any dispute "arising out of or relating to" the terms of service that they agreed to when they used Google's services. Courts in this Circuit and across the country have enforced the forum selection clause in Google's terms of service, and this case is far from the rare and "truly extraordinary" case that would permit a deviation from the parties' agreements. Google therefore requests that the Court enforce the forum selection clause and transfer this case to the Northern District of California.[1]

II. BACKGROUND

A. The Parties' Alleged Incorporation and Headquarters

Plaintiffs Webseed Inc. ("Webseed") and Brighteon Media, Inc. ("Brighteon Media") publish online content through their websites naturalnews.com and brighteon.com. *See* Dkt. 4 ("Am. Compl.") 1-2, Exs. A-B. According to naturalnews.com, Natural News "warns its readers about . . . 'crimes' against humanity," including "GMOs and 'genetic pollution,'" "hidden cancer viruses in polio vaccines," and "continued use of mercury in vaccines and dental amalgams." Declaration of Joshua Lerner in Support of Google's Motion to Transfer ("Lerner Decl.") Ex. A at 1-2. The website also states that in 2018:

> Natural News and the Health Ranger launched Brighteon.com, the free 'YouTube alternative' that protects free speech and provides video content creators with a platform to participate in news, conversations and public debate. Notably, YouTube, Google, Facebook and Twitter are now aggressively banning all conservative speech, somehow believing that 'diversity' is achieved through the censorship of opposing views.

Id. at 3.

[1] In addition to Google, defendants Meta Platforms, Inc and X Corp. (collectively with Google, the "Platform Defendants") intend to seek transfer of this action to NDCA. *See* Dkt. 34 (joint motion to stay case deadlines pending Platform Defendants' motions to transfer venue), Dkt. 35 (order granting stay). No other defendant opposes transfer; Plaintiffs oppose transfer.

In their complaint, Plaintiffs claim both Webseed and Brighteon Media are "incorporated in Wyoming, with [] principal place[s] of business / nerve center / headquarters in Bastrop County, Texas." Am. Compl. ¶¶ 23-24. But Webseed's 2024 Annual Report, filed with the Wyoming Secretary of State, lists the company's "Principal Office Address" ***in Wyoming***, not Texas, and lists two Officers and Directors with ***Wyoming***, not Texas, addresses. Lerner Decl. Ex. B.[2] Brighteon Media's 2024 Annual Report, also filed with the Wyoming Secretary of State, also lists its Principal Office Address in Wyoming, and again lists the President with a Wyoming address. *Id.* Ex. C. While Brighteon Media's 2024 Annual Report lists Sheh Adams as a Director, Secretary, and Treasurer with a Bastrop, Texas address, it appears that this address is actually for a UPS Store. *Id.* Exs. C, F. The same Bastrop, Texas address is included in both Webseed and Brighteon Media's Applications for Registration of a Foreign For-Profit Corporation, filed with the Texas Secretary of State. *Id.* Exs. D, E.

Google's corporate headquarters and principal place of business are in Mountain View, California—which is located in Santa Clara County, California. Declaration of Christopher Boorman in Support of Google's Motion to Transfer ("Boorman Decl.") ¶ 2.

B. Plaintiffs' Allegations Arise Out Of And Relate To Google's Terms Of Service

Plaintiffs have brought claims against Google and nine other defendants—among them federal agencies, social media platforms, and private companies that provide content moderation

[2] Google respectfully requests that, under Fed. R. Evid. 201(c)(2), the Court take judicial notice of the corporate disclosures filed with the Wyoming and Texas Secretaries of State and attached as Exhibits B-E to the Declaration of Joshua Lerner in Support of Google's Motion to Transfer because they are publicly filed documents. "Courts are generally permitted to take judicial notice of matters of public record." *Bargain Software Shop, LLC v. Adobe Sys., Inc.*, 2014 WL 12884982, at *2 (W.D. Tex. Dec. 29, 2014) (Lane, M.J.) (citing *Norris v. Hearst Tr.*, 500 F.3d 454, 461 n.9 (5th Cir. 2007)), *report & recommendation adopted by* 2015 WL 13808138 (W.D. Tex. Jan. 22, 2015) (Yeakel, J.).

tools—for the alleged "censorship" of Plaintiffs' online content. Am. Compl. ¶¶ 1-22. As to Google specifically, Plaintiffs allege that they maintained a "merchant account" with Google that Google suspended. *Id.* ¶ 15. Google's Merchant Center is a tool that helps retailers advertise and sell their products pursuant to the Google Merchant Center Program Policies. Boorman Decl. ¶ 3. With a Merchant Account, retailers can upload and manage the product data that appears for their products across Google platforms such as Search and YouTube. *Id.* Plaintiffs further allege that they previously had a "NaturalNews app" available on Google Play, which they allege Google removed. Am. Compl. ¶ 15. Google Play is Google's platform for distributing apps on the Android operating system. *See* Declaration of Kobi Gluck in Support of Google's Motion to Transfer ("Gluck Decl.") ¶ 3. Plaintiffs' Amended Complaint also makes reference to their use of Google's search engine, Google Search, and news aggregator, Google News, including through allegations that the "search engine results" for Plaintiffs' online content "were being artificially and deceptively reduced (*i.e.*, shadow-banned) by Google," Am. Compl. ¶ 15, and that Google "curat[es]" the online content that "shows up in Google News" and in Google Search results, *id.* ¶ 107.

Both Google Merchant Center and Google Play require users to maintain a Google Account. *See* Boorman Decl. ¶ 5; Gluck Decl. ¶ 6. To create a Google Account, users must agree to Google's general Terms of Service, *see id.*, which also apply to Google Search and Google News, *see* Lerner Decl. Ex. G at 11, 12. Google's Terms of Service include a choice of law and forum selection clause specifying that:

> California law will govern all disputes arising out of or relating to these terms, service-specific additional terms, or any related services, regardless of conflict of laws rules. These disputes will be resolved exclusively in the federal or state courts of Santa Clara County, California, USA, and you and Google consent to personal jurisdiction in those courts.

Id. Ex. H at 16.

Google Merchant Center and Google Play require users to agree to additional terms of service that contain the same choice of law and forum selection clause. *See* Boorman Decl. ¶ 8, Ex. A at 3 (Google Merchant Center Terms of Service, Section 12, providing that "[a]ll claims arising out of or relating to these Terms or GMC will be governed by California law, excluding California's conflict of laws rules, and will be litigated exclusively in the federal or state courts of Santa Clara County, California, USA[.]"); Gluck Decl. ¶ 9, Ex. A at 8 (Google Play Developer Distribution Agreement, Section 16.8, providing that "[a]ll claims arising out of or relating to this Agreement or Your relationship with Google under this Agreement will be governed by the laws of the State of California, excluding California's conflict of laws provisions. You and Google further agree to submit to the exclusive jurisdiction of the federal or state courts located within the county of Santa Clara, California to resolve any legal matter arising from or relating to this Agreement or your relationship with Google under this Agreement[.]").

All of Plaintiffs' claims against Google arise out of or relate to the services covered by these terms: Google's alleged suspension of Plaintiffs' Merchant Account, *see* Am. Compl. ¶ 15; Google's alleged removal of Plaintiffs' NaturalNews app from Google Play, *id.*; Google's alleged removal of Plaintiffs' online content from Google Search and Google News results, *see id.* ¶¶ 15, 107; and/or Google's support for and use of content moderation tools in connection with its services, *see, e.g.*, *id*. ¶¶ 212, 216, 259-261, 270, 275, 277-279, 282-284, 286-289, 291-294.

III. LEGAL STANDARD FOR MANDATORY FORUM SELECTION CLAUSES

Forum selection clauses "may be enforced by a motion to transfer under § 1404(a), which provides that '[f]or 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.'" *Atl. Marine Constr. Co. v. U.S. Dist. Ct. for the W. Dist. of Tex.*, 571 U.S. 49, 52 (2013) (quoting 28 U.S.C. § 1404(a)).

"When a defendant files such a motion … a district court should transfer the case unless extraordinary circumstances unrelated to the convenience of the parties clearly disfavor a transfer." *Id*.

The Fifth Circuit "applies a strong presumption in favor of the enforcement of mandatory [forum selection clauses]" which can be overcome only by: (1) "a clear showing that the clause is 'unreasonable' under the circumstances," or (2) public interest factors that "favor keeping a case despite the existence of a valid and enforceable [forum selection clause]." *Weber v. PACT XPP Techs, AG*, 811 F.3d 758, 773, 776 (5th Cir. 2016). To determine whether enforcement is "unreasonable under the circumstances," courts in the Fifth Circuit consider whether:

> (1) the incorporation of the [FSC] into the agreement was the product of fraud or overreaching; (2) the party seeking to escape enforcement 'will for all practical purposes be deprived of his day in court' because of the grave inconvenience or unfairness of the selected forum; (3) the fundamental unfairness of the chosen law will deprive the plaintiff of a remedy; or (4) enforcement of the [FSC] would contravene a strong public policy of the forum state.

Id. at 773 (quoting *Haynsworth v. The Corporation*, 121 F.3d 956, 963 (5th Cir. 1997)). The public interest factors relevant to a motion to transfer include:

> (1) the administrative difficulties flowing from court congestion; (2) the local interest in having local issues decided at home; (3) the forum's familiarity with the governing law; and (4) the avoidance of unnecessary conflict-of-law problems involving the application of foreign law.

BuzzBallz LLC v. MPL Brands NV, Inc., 2024 WL 3282492, at *7 (W.D. Tex. July 2, 2024) (Pitman, J.) (citing *In re Volkswagen AG*, 371 F.3d 201, 203 (5th Cir. 2004) ("*Volkswagen I*")). Plaintiffs seeking to avoid enforcement of a mandatory forum selection clause under the unreasonableness or public interest factors face "a high burden of persuasion" that is met only in "truly exceptional cases." *Weber*, 811 F.3d at 776.

IV. THE FORUM SELECTION CLAUSE CONTROLS

The forum selection clause provided in each of Plaintiffs' agreements with Google is mandatory and enforceable and, under the modified Section 1404 analysis applicable in cases implicating a mandatory and enforceable forum selection clause, warrants transfer of this case to the Northern District of California ("NDCA"). *See Atl. Marine*, 571 U.S. at 52; *Weber*, 811 F.3d at 773.

A. The Mandatory Forum Selection Clause Requires Transfer Of This Case

1. The Forum Selection Clause Applies To Plaintiffs' Claims

The forum selection clause encompasses all of Plaintiffs' claims against Google. To determine whether a forum selection clause applies to a particular cause of action, courts look to "the language of the parties' contracts." *Marinechance Shipping, Ltd. v. Sebastian*, 143 F.3d 216, 222 (5th Cir. 1998). "Clauses that extend to all disputes that 'relate to' or 'are connected with' the contract are construed broadly." *Pinnacle Interior Elements, Ltd. v. Panalpina, Inc.*, 2010 WL 445927, at *5 (N.D. Tex. Feb. 9, 2010) (Fish, J.). Here, the forum selection clause applies to "[a]ll disputes arising out of or relating to" the Terms of Service, "service-specific additional terms, or any related services."[3] This plainly applies to Plaintiffs' claims against Google, all of which are premised on the removal of their Merchant Center account, NaturalNews app, and other online content from Google's online platforms. While Plaintiffs have not asserted a breach of contract

[3] For simplicity, quotes and references to "the forum selection clause" refer to the forum selection clause included in Google's general Terms of Service. However, Google's arguments apply equally to the forum selection clauses included in the Merchant Center Terms of Service and Google Play Developer Distribution Agreement Plaintiffs separately agreed to, which also apply to "[a]ll claims arising out of or relating to" those agreements, and expressly state that such claims "will be litigated exclusively in the federal or state courts of Santa Clara County, California," or are subject to the "exclusive jurisdiction" of those courts. *See* Boorman Decl. ¶ 8, Ex. A at 3; Gluck Decl. ¶ 9, Ex. A at 8.

claim directly implicating Google's Terms of Service, they cannot "avoid a forum selection clause with 'artful pleading.'" *Giner ex rel. Ballard v. Belcher, Prendergast & Laporte*, 536 F.3d 439, 444-45 (5th Cir. 2008); *see also Marinechance Shipping, Ltd.*, 143 F.3d at 222-23 (finding nothing to justify limiting the application of forum selection clause to contract claims where clause applied to "'[a]ny and all disputes or controversies arising out of or by virtue of this Contract'").

2. The Forum Selection Clause Is Mandatory

The forum selection clause is unambiguously mandatory, as it provides that "*[a]ll* disputes arising out of or relating to these terms, service-specific additional terms, or any related services … will be resolved *exclusively* in the federal or state courts of Santa Clara County, California, USA." Lerner Decl. Ex. H at 16. (emphasis added). A forum selection clause "is mandatory [] if it contains clear language specifying that litigation *must* occur in the specified forum." *Weber*, 811 F.3d at 768; *see also Sabal Ltd. LP v. Deutsche Bank AG*, 209 F. Supp. 3d 907, 919 (W.D. Tex. 2016) (Ezra, J.) (finding unambiguously mandatory a forum selection clause stating that the parties "submit to the *exclusive* jurisdiction of the courts of … New York and the federal courts in New York City"). "Mandatory forum-selection clauses that require all litigation to be conducted in a specified forum are enforceable if their language is clear." *UNC Lear Servs., Inc. v. Kingdom of Saudi Arabia*, 581 F.3d 210, 219 (5th Cir. 2009). Given its clear language establishing that Plaintiffs' claims are subject to the exclusive jurisdiction of the courts of Santa Clara County, California, the forum selection clause is mandatory. Indeed, in other cases where the same forum selection clause was at issue, courts have concluded that the clause was mandatory in nature. For example, in considering an identical forum selection clause in Google's terms for YouTube and AdSense, the court in *Ray v. Google, LLC* reasoned that the inclusion of "[t]he word 'exclusively' demonstrates the parties' intent to litigate any disputes only in Santa Clara County, California." 2023 WL 7329562, at *3 (S.D. Miss. Aug. 18, 2023). So too here.

B. Plaintiffs Cannot Rebut The Presumption That The Mandatory Forum Selection Clause Is Enforceable

Under Fifth Circuit precedent, a mandatory forum selection clause "dramatically alters" the traditional transfer analysis in two significant ways. First, Plaintiffs' choice of forum "merits no weight" and Plaintiffs instead must demonstrate that transfer to NDCA is unwarranted. *See Weber*, 811 F.3d at 767. Second, *only* public interest (and not private interest) factors should be considered because Plaintiffs have "waive[d] the right to challenge their [contractually] preselected forum," here, NDCA, "as inconvenient." *Id.* (quoting *Atl. Marine*, 571 U.S. at 64); *In re Rolls Royce Corp.*, 775 F.3d 671, 678 (5th Cir. 2014) ("[A] valid forum selection clause … alters the normal section 1404 analysis."); *Atl. Marine*, 571 U.S. at 63 (the "presence of a valid forum-selection clause requires district courts to adjust their usual § 1404(a) analysis").[4]

The Fifth Circuit, "in keeping with Supreme Court precedents, applies a strong presumption in favor of the enforcement of mandatory [forum selection clauses]." *Weber*, 811 F.3d at 773. Consequently, "[f]or cases where all parties signed a forum selection contract, the analysis is easy: except in a truly exceptional case, the contract controls." *In re Rolls Royce Corp.*, 775 F.3d at 679. *See also Calix-Chacon v. Glob. Int'l Marine, Inc.*, 493 F.3d 507, 513 (5th Cir.

[4] Given the mandatory and enforceable forum selection clause, the Court need not reach the question of whether Google's transfer motion satisfies the private interest factors considered under "the normal section 1404 analysis." *In re Rolls Royce Corp.*, 775 F.3d at 678. However, Google notes here that transfer is warranted under the private interest factors as well because: this case could have been brought in NDCA; Google witnesses and relevant evidence are concentrated in NDCA; and transfer would not impact judicial efficiency or present other practical problems given that the case has been stayed pending the outcome of the Platform Defendants' transfer motions. *See Volkswagen I*, 371 F.3d at 203 (identifying private interest factors relevant to Section 1404 analysis); *XR Commc'ns, LLC v. Google LLC*, 2022 WL 3702271 (W.D. Tex. Aug. 26, 2022) (Albright, J.) (granting Google's motion to transfer under traditional Section 1404 analysis). Plaintiffs also cannot demonstrate a connection to WDTX sufficient to outweigh Google's interests in litigating in NDCA, given the evidence that Plaintiffs' officers and principal places of business are located in Wyoming. *See* Lerner Decl. Exs. B-E.

2007) ("'[A] valid forum selection clause is given controlling weight in all but the most exceptional cases.'"). Plaintiffs cannot meet their burden of demonstrating that this is such an "exceptional" case—enforcement of the mandatory forum selection clause is not unreasonable under the circumstances, and this is not "one of the rare cases in which the public-interest [] factors favor keeping a case despite the existence of a valid and enforceable [forum selection clause]." *Weber*, 811 F.3d at 776.

1. Plaintiffs Cannot Show That Enforcement Of The Mandatory Forum Selection Clause Would Be Unreasonable Under The Circumstances

A party resisting enforcement of a mandatory forum selection clause on the grounds that enforcement would be unreasonable under the circumstances "bears 'a heavy burden of proof.'" *Haynsworth*, 121 F.3d at 963 (quoting *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 17 (1972)). Enforcement of a mandatory forum selection clause is unreasonable only if:

> (1) the incorporation of the forum selection clause into the agreement was the product of fraud or overreaching; (2) the party seeking to escape enforcement 'will for all practical purposes be deprived of his day in court' because of the grave inconvenience or unfairness of the selected forum; (3) the fundamental unfairness of the chosen law will deprive the plaintiff of a remedy; or (4) enforcement of the forum selection clause would contravene a strong public policy of the forum state.

Id. None of these factors apply.

First, the forum selection clause is not the product of fraud or overreaching. This exception only applies where a plaintiff establishes that "inclusion *of that clause* in the contract was the product of fraud or coercion." *Haynsworth*, 121 F.3d at 963 (emphasis added). No such circumstances are present here. Also cutting against any suggestion of fraud or overreach is the fact that courts in the Fifth Circuit and across the country routinely enforce Google's forum selection clauses. *See, e.g.*, *SMS Telecom LLC v. Google, Inc.*, 2014 WL 12606655 (E.D. Tex. Feb. 13, 2014) (Davis, J.) (granting motion to transfer based on Google AdSense terms); *Flowbee*

Int'l, Inc. v. Google, Inc., 2010 WL 11646901 (S.D. Tex. Feb. 8, 2010) (Jack, J.) (same).[5]

Second, Plaintiffs cannot demonstrate that litigating in NDCA would be so burdensome as to effectively deprive them of their day in court. The possibility that litigation in California may not be as convenient, or may be more expensive, is insufficient grounds for bypassing a mandatory forum selection clause. *See, e.g.*, *Roof Toppers of El Paso, Inc. v. Weatherproofing Techs., Inc.*, 949 F. Supp. 2d 669, 676 (W.D. Tex. 2012) (Montalvo, J.) (finding that "the increased costs Roof Toppers faces [litigating] in Ohio do not make enforcement of the forum selection clause unreasonable"); *Bancroft Life & Cas. ICC, Ltd. v. FFD Res. II, LLC*, 884 F. Supp. 2d 535, 559 (S.D. Tex. 2012) (Harmon, J.) (the necessity of traveling to a remote forum "does not render the forum selection clause … fundamentally unfair"); *Abramson v. Am. Online, Inc*., 393 F. Supp. 2d 438, 443 (N.D. Tex. 2005) (Lynn, J.) ("the expense of trying a case in a particular forum is insufficient to satisfy a party's burden" of proving grave inconvenience); *Auto Wax Co. v. Weaver*, 1998 WL 892312, at *1 (N.D. Tex. Dec. 15, 1998) (Fitzwater, J.) ("[M]ere inconvenience or additional expense will not suffice to establish unreasonableness, because these are exactly the burdens that were allocated by the parties' agreement.").

Third, Plaintiffs cannot demonstrate that they will be deprived of a remedy. A forum selection clause is only unenforceable under this exception "when the remedies available in the chosen forum are so inadequate that enforcement would be fundamentally unfair." *Calix-Chacon*,

[5] *See also, e.g.*, *Ray v. Google, LLC*, 2023 WL 7329562 (S.D. Miss. Aug. 18, 2023) (granting motion to transfer based on YouTube and AdSense terms); *Muhammad v. YouTube, LLC*, 2019 WL 2338503 (M.D. La. June 3, 2019) (same, based on YouTube terms)*; Lewis v. Google, Inc*., 2019 WL 10749715 (D. Colo. Dec. 31, 2019) (same); *Ramani v. YouTube LLC*, 2019 U.S. Dist. LEXIS 197106 (S.D.N.Y. Nov. 12, 2019) (same); *Biltz v. Google, Inc*., 2018 WL 3340567 (D. Haw. July 6, 2018) (same); *Kijimoto v. YouTube, LLC*, 2018 WL 5116415 (C.D. Cal. Jan. 30, 2018) (same); *Song Fi, Inc. v. Google Inc*., 72 F. Supp. 3d 53 (D.D.C. 2014) (same); *Rojas-Lozano v. Google, Inc*., 2015 WL 4779245 (D. Mass. Aug. 12, 2015) (same, based on Google's general Terms of Service).

493 F.3d at 515. Here, "California provides sufficient remedies that transfer will not deprive [Plaintiffs] of any substantive rights[.]" *SMS Telecom LLC*, 2014 WL 12606655, at *4.

Finally, Plaintiffs cannot demonstrate that enforcement would contravene a strong public policy interest of the state of Texas. Plaintiffs have brought claims against federal government actors, national and international companies that provide content moderation tools, and globally used internet platforms. *See* Am. Compl. ¶¶ 25-34. Plaintiffs' claims against these parties are grounded in their federal constitutional rights and Plaintiffs allege that "America"—not Texas—"is plagued by the Defendants [sic] foul play." *Id.* ¶ 20. Given the scope of Plaintiffs' claims and the parties involved, "the citizens of Texas do not have a particularized interest in deciding this dispute[.]" *SMS Telecom LLC*, 2014 WL 12606655, at *4.

2. Plaintiffs Cannot Show That Public-Interest Factors Justify Retaining The Case

Unable to demonstrate that enforcement of the forum selection clause would be unreasonable under the circumstances, Plaintiffs can only defeat transfer if they prove that this is "one of the rare cases in which the public-interest [] factors favor keeping a case despite the existence of a valid and enforceable [forum selection clause]." *Weber*, 811 F.3d at 776. They cannot. Three public interest factors *favor* transfer, and the final factor is neutral.

The first public interest factor considers "the administrative difficulties flowing from court congestion." *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 315 (5th Cir. 2008) ("*Volkswagen II*"). The relevant inquiry under this factor is "[t]he speed with which a case can come to trial and be resolved." In this case, Plaintiffs cannot demonstrate such "'significant differences in caseload or time-to-trial statistics' between [WDTX] and [NDCA]" for this factor to overcome a valid forum selection clause. *XR Commc'ns, LLC v. Google LLC*, 2022 WL 3702271, at *9 (W.D. Tex. Aug. 26, 2022) (Albright, J.). While time to trial may be faster in WDTX overall, here, this factor favors

transfer given this Court's current caseload. *See BuzzBallz LLC*, 2024 WL 3282492, at *7.[6] This case has not yet been assigned to a District Judge for trial, and no Scheduling Order has been entered.

The second factor considers whether there is a local interest in deciding local issues in the transferor forum. *See Volkswagen II*, 545 F.3d at 315. Local interests that "'could apply virtually to any judicial district or division in the United States'" are disregarded in favor of particularized local interests. *In re TS Tech USA Corp.*, 551 F.3d 1315, 1321 (Fed. Cir. 2008); *Volkswagen II*, 545 F.3d at 318 (disregarding local interest of citizens who used the widely sold product within the transferor venue in a products liability suit). As discussed above, Plaintiffs' interests—which implicate federal agencies and federal rights, and the use of products and services used across the country—are not specific to this District. In contrast, NDCA has a local interest in having controversies that involve Google and that are subject to California law decided in the California federal district where Google is headquartered.

Under the third public interest factor, courts consider the transferor district's "familiarity of the forum with the law that will govern the case." *Volkswagen II*, 545 F.3d at 315. Since, under the terms of the forum selection clause, "California law [] govern[s]" Plaintiffs' claims, *see* Lerner Decl. Ex. H at 16, this factor also weighs in favor of transferring, rather than retaining, the case.

Finally, the fourth public interest factor considers "the avoidance of unnecessary problems of conflict of laws" or "the application of foreign law." *Volkswagen II*, 545 F.3d at 315. Consistent with the third public interest factor, in this case the application of California law under the terms

[6] "While WDTX may be faster than NDCA as a whole, the Austin Division of this district has a particularly heavy civil caseload. The undersigned has over 900 active civil cases and is the only active judge in Austin. Because WDTX's faster trial time is somewhat offset by the undersigned's particularly heavy civil caseload, the first public interest factor only slightly weighs against transfer." *BuzzBallz LLC*, 2024 WL 3282492, at *7.

of the forum selection clause prevents any potential conflict of law problems, which in any event are not implicated by Plaintiffs' claims. As such, this factor is at best neutral.

V. CONCLUSION

For the foregoing reasons, Google respectfully requests a transfer of this case to the Northern District of California under § 1404(a).

Dated: September 27, 2024

Respectfully submitted,

/s/ Joshua Lerner
Joshua H. Lerner *(pro hac vice)*
joshua.lerner@wilmerhale.com
WILMER CUTLER PICKERING HALE AND DORR LLP
One Front Street, Suite 3500
San Francisco, CA 94111
Tel: (628) 235-1000
Fax: (628) 235-1001

Paige Arnette Amstutz (TX Bar # 00796136)
pamstutz@scottdoug.com
SCOTT DOUGLASS MCCONNICO LLP
303 Colorado Street, Suite 2400
Austin, TX 78701
Tel: (512) 495-6300
Fax: (512) 495-6399

Sonal N. Mehta (*pro hac vice*)
sonal.mehta@wilmerhale.com
WILMER CUTLER PICKERING HALE AND DORR LLP
2600 El Camino Real, Suite 400
Palo Alto, CA 94306
Tel: (650) 858-6000
Fax: (650) 858-6100

James Bor-Zale (*pro hac vice*)
james.bor-zale@wilmerhale.com
WILMER CUTLER PICKERING HALE AND DORR LLP
60 State Street
Boston, MA 02109
Tel: (617) 526-6000
Fax: (617) 526-5000

Attorneys for Defendant Google LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of the foregoing document via the Court's CM/ECF system per Local Rule CV-5(a) on September 27, 2024.

/s/ Joshua Lerner
Joshua H. Lerner

CERTIFICATE OF CONFERENCE

Pursuant to Local Rule CV-7(g), counsel for the parties met and conferred telephonically on September 20, 2024. Jeffrey Greyber attended for Plaintiffs. Joshua Lerner attended for Defendant. The parties discussed their positions on this motion. The discussions conclusively ended in an impasse, leaving an open issue for the court to resolve. Plaintiffs indicated that they oppose this motion.

/s/ Joshua Lerner
Joshua H. Lerner