UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JUSTIN HART,

Plaintiff,

v.

FACEBOOK, INC.; TWITTER, INC.; VIVEK MURTHY in his official capacity as United States Surgeon General; JOSEPH R. BIDEN, JR. in his official capacity as President of the United States; the DEPARTMENT OF HEALTH AND HUMAN SERVICES; and the OFFICE OF MANAGEMENT AND BUDGET,

Defendants.

Case No.: 3:21-cv-01543-W (WVG)

ORDER GRANTING DEFENDANTS FACEBOOK AND TWITTER'S MOTIONS TO TRANSFER VENUE TO THE NORTHERN DISTRICT OF CALIFORNIA [DOCS. 33, 34]

Pending before the Court are Defendant Facebook, Inc.'s ("Facebook") and Defendant Twitter, Inc.'s ("Twitter") motions to transfer venue to the Northern District of California. (*Facebook Mot.* [Doc. 33]; *Twitter Mot.* [Doc. 34].) Plaintiff Justin Hart jointly opposes both motions. (*Opp'n* [Doc. 36].)

The Court decides the matter on the papers submitted and without oral argument. See Civ. L. R. 7.1(d.1). For the reasons stated below, the Court **GRANTS** Defendants Facebook and Twitter's motions to transfer venue [Docs. 33, 34] to the Northern District of California.

I. BACKGROUND

Plaintiff Justin Hart is a citizen of California who resides in San Diego County, California. (*Compl.* [Doc. 1] ¶¶ 12, 26.) On or around July 13, 2021, Hart posted a graphic to his personal Facebook page entitled, "Masking Children is Impractical and Not Backed by Research or Real World Data." (*Id.* ¶ 1.) In response, Defendant Facebook—a social media company with its principal place of business in San Mateo County, California—flagged Hart's post because it violated Facebook's Community Standards. (*Id.* ¶¶ 13, 4.) Facebook prohibited Hart from posting or commenting on Facebook for three days. (*Id.* ¶ 4.) On or around July 18, 2021, Hart shared a similar post to his personal Twitter account, casting doubt on the efficacy of wearing masks to protect against Covid-19. (*Id.* ¶ 5.) In response, Defendant Twitter—a social media company with its principal place of business in San Francisco, California—locked Hart's account for violating the Twitter Rules. (*Id.* ¶ 6.)

Plaintiff allegedly agreed to comply with Twitter's terms of service before using its platform. (*See Opp'n* at 5:15-17.) The terms include a forum-selection clause, which provides:

> The laws of the State of California, excluding its choice of law provisions, will govern these Terms and any dispute that arises between you and Twitter. All disputes related to these Terms or the Services will be brought solely in the federal or state courts located in San Francisco County, California, United States, and you consent to personal jurisdiction and waive any objection as to inconvenient forum.

(*Jonathan Patchen Decl. ISO Twitter Mot.*, Ex. 1.)

Plaintiff also allegedly agreed to comply with Facebook's terms of service before using its platform. (*See Opp'n* at 5:15-17.) Facebook's terms likewise include a forum-selection clause, which provides:

> For any claim, cause of action, or dispute you have against us that arises out of or relates to these Terms or the Facebook Products ("claim"), you agree that it will be resolved exclusively in the U.S. District Court for the Northern District of California or a state court located in San Mateo County. You also agree to submit to the personal jurisdiction of either of these courts for the purpose of litigation any such claim, and that the laws of the State of California will govern these Terms and any claim, without regard to conflict of law provisions.

(*Jenny Pricer Decl. ISO Facebook Mot.*, Ex. A.)

Plaintiff Hart alleges that Defendants Joseph Biden and Vivek Murthy (the President and Surgeon General of the United States, respectively) "directed Defendants Facebook and Twitter to remove Hart's social media posts because they disagreed with the viewpoints he espoused in them and conspired with Facebook and Twitter to do so." (*Compl.* ¶ 20.) To prove this alleged collusion, on July 22, 2021, Plaintiff Hart submitted a request for documents[1] under the Freedom of Information Act ("FOIA"), 5 U.S.C. Section 552, to the Department of Health and Human Services ("HHS") and the Office of Management and Budget ("OMB"). (*Id.* ¶ 67.) Plaintiff has allegedly not received the requested records to date. (*Id.* ¶ 69.)

As a result, Plaintiff brought the instant suit against Defendants Facebook, Twitter, Mr. Biden, and Mr. Murthy for violating his right to free speech under the First Amendment and the California Constitution (Counts I and III); against Defendants HHS and OMB for violating FOIA (Count II); against Facebook and Twitter for promissory estoppel (Count IV); and against Facebook alone for intentional interference with a

[1] Plaintiff sought records that would "serve the purpose of showing how the Defendants colluded to violate Plaintiff's First Amendment and contractual rights." (*Opp'n* at 8.)

contract, and negligent interference with a prospective economic advantage (Counts V and VI). (*See generally*, *id.*)

Defendants Facebook and Twitter now move independently to transfer venue to the Northern District of California under 28 U.S.C. Section 1404(a). They argue that Plaintiff is bound by the forum-selection clauses he signed with each company, which require that claims *related* to the companies' terms of service be litigated in the Northern District of California. In opposition, Plaintiff argues that the forum-selection clauses are not binding and that his FOIA claim requires that the entire action be heard in this Court in the Southern District of California.

II. LEGAL STANDARD

Section 1404(a) provides, "[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." 28 U.S.C. § 1404(a); Atl. Marine Const. Co., Inc. v. U.S. Dist. Ct. for W. Dist. Of Tex., 571 U.S. 49, 59 (2013) (Section 1404(a) "permits transfer to any district where venue is also proper (*i.e.*, 'where [the case] might have been brought') or to any other district to which the parties have agreed by contract or stipulation."). Section 1404(a) was designed to ensure the "efficient administration of the court system." Our Children's Earth Found. v. U.S. E.P.A., 2008 WL 3181583, at *4 (N.D. Cal. Aug. 4, 2008) (quoting Coffey v. Van Dorn Iron Works, 796 F.2d 217, 220-21 (7th Cir. 1989)).

"When 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. Only under extraordinary circumstances unrelated to the convenience of the parties should a § 1404(a) motion be denied." Atl. Marine, 571 U.S. at 62. "[T]he plaintiff's choice of forum merits no weight. Rather, as the party defying the forum-selection clause, the plaintiff bears the burden of establishing that transfer to the forum for which the parties bargained is unwarranted." Id. at 63. With a valid forum-selection clause in place, a

court "should not consider arguments about the parties' private interests. Id. at 64. "[A] district court may consider arguments about public-interest factors only." Id.

III. DISCUSSION

Defendants Facebook and Twitter argue that this case should be transferred to the Northern District of California because Plaintiff agreed to and is bound by valid and enforceable forum-selection clauses. (*Twitter Mot.* at 5; *Facebook Mot.* at 4.) In opposition, Plaintiff argues that first, he did not retain any bargaining power over Defendants Facebook's and Twitter's terms of service. (*Opp'n* at 6.) Second, Plaintiff alleges that Facebook and Twitter acted jointly with the Federal Government Defendant to deprive him of his rights to free speech. (*Id.*) According to Plaintiff, this allegation of joint action is therefore not covered by the forum selection clauses. (*Id.*) And third, Plaintiff argues that even if the forum-selection clauses are valid, his FOIA claim requires venue to lie in the Southern District of California. (*Id.* at 3.)

A. Enforceability of the Forum-Selection Clauses

Defendants Facebook and Twitter contend that the forum-selection clauses are valid and enforceable. (*Twitter Mot.* at 6-7; *Facebook Mot.* at 4.) In opposition, Plaintiff argues that the forum-selection clauses are not enforceable because he did not retain any bargaining power over the terms of service. (*Opp'n* at 5-6.)

Under federal law, forum-selection clauses "are prima facie valid and should be enforced unless enforcement is shown by the resisting party to be "unreasonable" under the circumstances." M/S Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 10 (1972) ("Bremen"). A forum-selection clause may be found unreasonable if the movant shows: (1) that it is the product of fraud or overreaching; (2) enforcement of the clause effectively deprives plaintiff of his or her day in court; and (3) that it violates a strong public policy of the forum. Murphy v. Schneider Nat'l, Inc., 362 F.3d 1133, 1140 (9th Cir. 2004). "The party challenging the clause bears a 'heavy burden of proof' and must

'clearly show that enforcement would be unreasonable and unjust, or that the clause was invalid for such reasons as fraud or over-reaching.'" Id. (quoting Bremen, 407 U.S. at 17).

Plaintiff does *not* argue that the forum-selection clauses are the product of fraud or overreaching, that enforcement of the clauses would deprive him of his day in court, or that they violate a strong public policy of the forum. (*See, generally Opp'n*.) Instead, Plaintiff argues that he was "forced to check a box to continue using the services provided by Facebook and Twitter," and that he did not retain any bargaining power over the terms of service. (*Id.* at 5-6.) However, unequal bargaining power, alone, is insufficient to meet the "heavy burden" in establishing invalidity of a forum-selection clause. See Carnival Cruise Lines, Inc. v. Shute, 499 U.S. 585, 593 (1991) (a "nonnegotiated forum-selection clause in a form ticket contract" is not unenforceable "simply because it is not the subject of bargaining"); see also Tompkins v. 23andMe, Inc., 840 F.3d 1016, 1028 (9th Cir. 2016) ("A forum selection clause within an adhesion contract will be enforced as long as the clause provided adequate notice to the [party] that he was agreeing to the jurisdiction cited in the contract." (citation omitted)).

Thus, with no evidence of fraud or unjust enforcement, the forum selection clauses are valid and enforceable.

B. Scope of the Forum-Selection Clauses

Defendants Facebook and Twitter contend that the forum-selection clauses cover all claims in this suit because they "relate to" Facebook and Twitter's terms of service. (*Twitter Mot.* at 7-8; *Facebook Mot.* at 4.) In opposition, Plaintiff argues that the clauses do not cover the claims against the Federal Government Defendants (Counts I-III) because they are not parties to the forum-selection clauses and contracts at issue. (*Opp'n* at 6.) The issue is whether forum-selection clauses can bind non-signatories parties like the Federal Government Defendants here.

"[F]orum-selection clauses covering disputes "relating to" a particular agreement apply to any disputes that reference the agreement or have some "logical or causal connection" to the agreement." Yei A. Sun v. Advanced China Healthcare, Inc., 901 F.3d 1081, 1086 (9th Cir. 2018). "The dispute need not grow out of the contract or require interpretation of the contract in order to relate to the contract." Id.

Plaintiff's claims against Defendants Facebook and Twitter for promissory estoppel (Count IV), and against Facebook alone for intentional interference with a contract, and negligent interference with a prospective economic advantage (Counts V and VI), unquestionably "relate to" and have some "logical connection" to Facebook's and Twitter's terms of service. Plaintiff does not attempt to argue otherwise. They are thus covered by the forum-selection clauses.

A closer call is whether the free speech and FOIA claims are covered by the forum-selection clauses. Plaintiff alleges that Facebook, Twitter, and the Federal Government Defendants acted jointly in suppressing Plaintiff's right to free speech (Counts I and III), and that the OMB and HHS violated FOIA by unlawfully withholding records, which would prove the government's collusion with Defendants Facebook and Twitter (Count II). According to Plaintiff, these allegations of joint action are not covered by the forum-selection clauses because the federal government Defendants did not sign the terms of service at issue. (*Opp'n* at 6.) But forum-selection clauses *can* apply to non-signatory parties, particularly in situations like this where a plaintiff alleges that all of the defendants acted jointly in wronging him. See Manetti-Farrow, Inc. v. Gucci America, Inc., 858 F.2d 509, 511, 514 n.5 (9th Cir. 1988) (holding that the forum-selection clause applied to all defendants, even though only one defendant signed the contract, because "the alleged conduct of the nonparties [was] so closely related to the contractual relationship."); see also Holland America Line Inc. v. Warsila N. America, Inc., 485 F.3d 450, 456 (9th Cir. 2007).

Therefore, because of the alleged joint conduct among the Defendants, the forum-selection clauses apply to each Defendant and claim in this suit.

C. FOIA and Venue

Plaintiff next argues that regardless of the forum-selection clauses, his FOIA claim requires venue to lie in the Southern District of California. (*Opp'n* at 3.) The FOIA statute, 5 U.S.C. Section 552(a)(4)(B), states in relevant part:

> On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.

In other words, the FOIA statute states that venue is proper: (1) where the plaintiff resides or has his principal place of business; (2) where the records are located; or (3) in the District of Columbia.

As noted above, Plaintiff submitted a FOIA request to Defendants HHS and OMB seeking records showing "how the Defendants colluded to violate Plaintiff's First Amendment and contractual rights." (*Opp'n* at 4, 8.) The anticipated records allegedly lie in the District of Columbia and Plaintiff resides and maintains his principal place of business in the Southern District of California. Therefore, according to Plaintiff, FOIA provides for venue in *only* two locations: the District of Columbia or the Southern District of California. (*Id.*) Because the District of Columbia allegedly may not have personal jurisdiction over Defendants Facebook and Twitter, Plaintiff argues that venue is only proper in this Court. (*Id.* at 4.)

Plaintiff, however, is mistaken. FOIA does not *require* venue to lie in only those two locations. That might have been the law in the past (see Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22, 30 (1988)) but Congress amended Section 1404(a) in 2011 to not only allow transfer to a district where it "might have been brought," but also to any district "to which the parties have consented." 28 U.S.C. § 1404(a); Atl. Marine, 571 U.S. at 59. Here, the forum-selection clauses, which Plaintiff entered into voluntarily, require venue to lie in the Northern District of California. Thus, with Plaintiff's consent,

and with the forum-selection clauses covering each Defendant and claim, transfer to the Northern District of California is proper. See Atl. Marine, 571 U.S. at 59 (stating that Section 1404(a) permits transfer to any district where venue is proper *or* "to any other district to which the parties have agreed by contract or stipulation."); see also Huawei Techs. Co., Ltd v. Yiren Huang, 2018 WL 1964180, at *6-9 (E.D. Tex. 2018) (finding that venue was proper in the district where originally filed even though venue was not satisfied under 28 U.S.C. Section 1391(b) because the parties consented to it in a mandatory forum-selection clause and that this outcome does not risk "running afoul [of] Congress' intent to have venue lie in at least one federal court").

This holding also makes sense from a judicial-efficiency standpoint. Rather than severing the FOIA claim from the remaining claims and having two similar lawsuits operate simultaneously in the Northern and Southern Districts of California, transferring the entire action to the Northern District holds the parties to their bargain[2] and limits duplicative litigation efforts. After all, the free speech and FOIA claims are inextricably intertwined among all the Defendants so eventual discovery and dispositive motions would inevitably overlap.

D. Public Interest Factors

The final issue is whether the "public interest factors" compel a denial of transfer. The public interest factors a court can consider are: "[1] the administrative difficulties flowing from court congestion; [2] the local interest in having localized controversies decided at home; [3] and the interest in having the trial of a diversity case in a forum that is at home with the law." Yei A. Sun, 901 F.3d 1088 (citation omitted and cleaned up). Plaintiff Hart, the party opposing the forum-selection clauses, "must bear the burden of

[2] "In all but the most unusual cases, therefore, "the interest of justice" is served by holding parties to their bargain." Atl. Marine, 571 U.S. at 66.

showing that public-interest factors overwhelmingly disfavor a transfer." See Atl. Marine, 571 U.S. at 67.

Plaintiff fails to meet his burden. There are no administrative difficulties flowing from court congestion in the Northern District of California. (*Twitter Mot.* at 9.) Plaintiff does not argue to the contrary. The second factor is neutral given that the Northern District and Southern District of California would be resolving a California-based dispute and would be relying on the same principles of Federal and California law. And the third factor is inapplicable because this case is not exclusively based on diversity jurisdiction. Thus, the public interest factors do not compel a denial of transfer.

IV. CONCLUSION & ORDER

For all these reasons, the Court finds that transfer to the Northern District of California is proper. Accordingly, Defendants Facebook and Twitter's motions to transfer venue to the Northern District of California are **GRANTED** [Docs. 33, 34].

IT IS SO ORDERED.

Dated: February 2, 2022

Hon. Thomas J. Whelan
United States District Judge