UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

YVONNE BECKER,

Plaintiff,

v.

WELLS FARGO & CO., et al.,

Defendants.

Case No. 20-cv-01803-JST

ORDER GRANTING MOTION TO TRANSFER VENUE

Re: ECF No. 41

Before the Court is Defendants' motion to transfer venue. ECF No. 41. The Court will grant the motion.

I. BACKGROUND

Plaintiff Yvonne Becker is a former employee of Wells Fargo & Company ("Wells Fargo"). ECF No. 1 ¶ 12. She worked for Wells Fargo for approximately 26 years, and her last employment period ended on December 5, 2013. ECF No. 1 ¶12; ECF No. 41-1 ¶18. Becker became a participant in the Wells Fargo 401(k) Plan ("the Plan") on July 1, 1988. ECF No. 41-1 ¶18. The Plan is a "defined contribution pension plan subject to [the Employee Retirement Income Security Act of 1974 ("ERISA")], 29 U.S.C. § 1001 *et. seq.*, that allows Wells Fargo employees to save for retirement by means of pre-tax contributions to the Plan, which are matched by Wells Fargo up to a prescribed percentage." ECF No. 41 at 8; *see* ECF No. 1 ¶59, 62, 64. The Plan contains a forum selection clause which states:

> All controversies, disputes, and claims arising hereunder shall be submitted to the United States District Court for the District of Minnesota, except as otherwise provided for in the Trust Agreement.

ECF 41-2 § 1.4. The Plan is administered jointly by the Wells Fargo Director of Human Resources and the Director of Compensation and Benefits, with the Plan Administrator's office

located in Minneapolis, Minnesota. ECF No. 41 at 10; ECF No. 41-1 ¶ 9; 41-3 at 39.

On March 13, 2020, Becker brought this putative class action on behalf of "[a]ll participants and beneficiaries in the Wells Fargo & Company 401(k) Plan from March 13, 2014 through the date of judgment." ECF No. 1 ¶¶ 1, 170. Becker alleges that Defendants Wells Fargo; Wells Fargo Bank, National Association ("WFBNA")[1]; Galliard Capital Management, Inc.; the Employee Benefit Review Committee; the Human Resources Committee of the Board of Directors of Wells Fargo (the "HRC"); and the HRC's individual members mismanaged the Plan by engaging in "corporate self-dealing at the expense of the retirement savings of company employees" participating in the Plan. ECF No. 1 ¶¶ 2-3, 21, 24, 31-36 43, 54. The complaint asserts claims for: (1) breach of fiduciary duties for failing to prudently and loyally select and monitor investments for the Plan in violation of ERISA Section 404, 29 U.S.C. §1104; (2) engaging in prohibited transactions under ERISA Section 406(a), 29 U.S.C. §1106(a); (3) decision-making based on Defendants' own self-interest in violation of ERISA Section 406(b), 29 U.S.C. §1106(b); and (4) failure to monitor other fiduciaries in violation of ERISA Section 404, 29 U.S.C. §1104.[2] ECF No. 1 ¶¶180-239.

On May 8, 2020, Defendants filed the instant motion to transfer venue. ECF No. 41. Becker opposes the motion, ECF No. 47, and Defendants have filed a reply, ECF No. 50.

II. LEGAL STANDARD

Where venue is proper, "[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). Section 1404(a) places "discretion in the district court to adjudicate motions for transfer according to an 'individualized, case-by-case consideration of convenience and fairness.'" *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988) (quoting *Van Dusen v. Barrack*, 376 U.S. 612, 622 (1964)).

[1] The complaint refers to WFBNA as "Wells Fargo Bank, National." ECF No. 1 ¶ 43.

[2] Count IV was voluntarily dismissed without prejudice, pursuant to ECF Nos. 39, 40.

Section 1404(a) is the proper "mechanism for enforcement of forum-selection clauses that point to a particular federal district." *Atl. Marine Const. Co. v. U.S. Dist. Court for W. Dist. of Texas*, 571 U.S. 49, 59 (2013). "[W]hen the parties' contract contains a valid forum-selection clause," that clause "represents the parties' agreement as to the most proper forum." *Id.* at 63 (citing *Stewart*, 487 U.S. at 31). Therefore, "a valid forum-selection clause [should be] given controlling weight in all but the most exceptional cases." *Id.* (quoting *Stewart*, 487 U.S. at 33). Specifically, the presence of a valid forum-selection clause requires district courts to adjust their usual § 1404(a) analysis in three ways: (1) "the plaintiff's choice of forum merits no weight," (2) "a court evaluating a defendant's § 1404(a) motion to transfer based on a forum-selection clause should not consider arguments about the parties' private interests," and (3) "when a party bound by a forum-selection clause flouts its contractual obligation and files suit in a different forum, a § 1404(a) transfer of venue will not carry with it the original venue's choice-of-law rules." *Id.* at 63-64.

III. DISCUSSION

Venue in the target district would be proper under 28 U.S.C. § 1404(a), as it is a venue in which this action could have been brought. The District of Minnesota would have subject matter jurisdiction over this ERISA action pursuant to 28 U.S.C. § 1331. Because the Plan is administered in and relevant investment decisions are made in the District of Minnesota, ERISA's venue provisions permit a plaintiff to bring an action within this district. ECF No. 41 at 10, 12-13; ECF No. 41-1 ¶ 9; 41-3 at 39; *see Varsic v. United States Dist. Ct. for the Cent. Dist. of Cal.*, 607 F.2d 245, 248 (9th Cir. 1979) (noting that ERISA's venue provisions permit a plaintiff to bring an action where "(1) a plan is administered, or (2) a breach took place, or (3) a defendant resides or (4) a defendant may be found." (citing 29 U.S.C. § 1132(e)(2)); *Nozolino v. Hartford Life and Accident Ins. Co.*, No. 12-cv-04314-JST, 2013 WL 2468350, at *2 (N.D. Cal. June 7, 2013) (same). Defendants are also subject to personal jurisdiction in the District of Minnesota.

Becker opposes the motion to transfer venue, arguing that the Plan's forum selection clause is invalid and should not be enforced because it contradicts the venue provisions provided in ERISA. ECF 47 at 12-13. Becker also argues that the case should not be transferred under the

convenience factors considered pursuant to 28 U.S.C. §1404(a). *Id.* at 21-23.

A. The Forum Selection Clause is Valid

Absent other arguments regarding the enforceability of the clause, the Court begins with the presumption that the forum selection clause is "prima facie valid." *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 589 (1991) (quoting *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 10 (1972)). "[T]he party seeking to avoid a forum selection clause bears a 'heavy burden' to establish a ground upon which we will conclude the clause is unenforceable." *Doe 1 v. AOL LLC*, 552 F.3d 1077, 1083 (9th Cir. 2009) (quoting *Bremen*, 407 U.S. at 17). A forum selection clause may be deemed unreasonable, and a court may decline to enforce it, under the following circumstances:

> (1) if the inclusion of the clause in the agreement was the product of fraud or overreaching; (2) if the party wishing to repudiate the clause would effectively be deprived of his day in court were the clause enforced; and (3) if enforcement would contravene a strong public policy of the forum in which suit is brought.

Holland Am. Line Inc. v. Wartsila N. Am., Inc., 485 F.3d 450, 457 (9th Cir. 2007).

Becker does not allege any fraud or overreaching on the part of Defendants. *See* ECF No. 47. Instead, Becker argues that the forum selection clause at issue conflicts with ERISA's venue provision. *Id.* at 13. However, courts in this District have routinely held that the enforcement of forum selection clauses does not contradict or contravene the terms or policy rationales of ERISA. *See, e.g.*, *Marin v. Xerox Corp.*, 935 F. Supp. 2d 943, 947 (N.D. Cal. 2013) ("This district has . . . found that 'limiting claims to one federal district encourages uniformity in the decisions interpreting that plan, which furthers ERISA's goal of enabling employers to establish a uniform administrative scheme") (citation omitted); *Rodriguez v. PepsiCo Long Term Disability Plan*, 716 F. Supp. 2d 855, 861 (N.D. Cal. 2010)) ("Nothing in the statutory language bars those negotiating ERISA plans from narrowing that menu of options to one venue in particular. As many other district courts have already observed, Congress could have—but has not—expressly barred parties from agreeing to restrict ERISA's venue provisions."); *see also Almont Ambulatory Surgery Ctr., LLC v. UnitedHealth Grp., Inc.*, No. CV-14-02139-MWF (VBKx), 2015 WL 12733443, at *12 (C.D. Cal. Apr. 10, 2015) ("[I]t appears that decisions invalidating forum selection clauses in

the ERISA context are outliers, and decisions upholding forum selection clauses in ERISA cases follow the more mainstream approach."); *Laasko v. Xerox Corp.*, 566 F. Supp. 2d 1018, 1023 (C.D. Cal. 2008) ("[E]nforcement of the forum selection clause in this case is not inconsistent with the federal policy.").

Becker cites several Ninth Circuit and U.S. Supreme Court cases and asserts that these cases should govern the enforcement of forum selection clauses in the ERISA context. ECF No. 47 at 14-16. Becker first cites *Smallwood v. Allied Van Lines, Inc.*, in which the Ninth Circuit found that a shipping contract's foreign arbitration clause violated the plain language of the Carmack Amendment, 49 U.S.C. §14706. 660 F.3d 1115, 1125 (9th Cir. 2011) ("The parties' arbitration clause is unenforceable under 49 U.S.C. § 14706 because it contravenes a shipper's right to select his forum after the dispute arises, and thus violates the plain language of the Carmack Amendment."). Becker then references *Boyd v. Grand Trunk Western Railroad* as an instance where the U.S. Supreme Court did not enforce a forum selection clause in a case involving the Federal Employers Liability Act, due to the Act's mandatory language barring changes in venue. 338 U.S. 263, 266 (1949). Finally, Becker argues that the instant action is similar to *Varsic*, where the Ninth Circuit reversed a district court's transfer order in an ERISA case. 607 F.2d at 252.

As Becker acknowledges, *Varsic* did not involve a forum selection clause. ECF No. 47 at 15. None of the cases which Becker cites discuss forum selection clauses in the ERISA context. Additionally, unlike the mandatory language in *Boyd*, ERISA's venue provision uses permissive language. *See Clause v. Sedgwick Claims Mgmt. Servs., Inc.*, No. CIV 15-388-TUC-CKJ, 2016 WL 213008, at *4 (D. Ariz. Jan. 19, 2016) (noting that "the venue statute in *Boyd* was mandatory, while the ERISA venue provision has permissive language"); *see also In re Mathias*, 867 F.3d 727, 732 (7th Cir. 2017) (ERISA's "'may be brought' phrasing is entirely permissive, and no other statutory language precludes the parties from contractually narrowing the options to one of the venues listed in the statute."). Therefore, the Court is not persuaded by Becker's arguments and finds that the forum selection clause in the Plan is valid and enforceable.

B. The Applicable Public Interest Factors Favor Enforcement of the Forum Selection Clause

In deciding a motion to transfer under section 1404, a court ordinarily weighs "a number of case-specific factors." *Id.*

> [T]he court may consider: (1) the location where the relevant agreements were negotiated and executed, (2) the state that is most familiar with the governing law, (3) the plaintiff's choice of forum, (4) the respective parties' contacts with the forum, (5) the contacts relating to the plaintiff's cause of action in the chosen forum, (6) the differences in the costs of litigation in the two forums, (7) the availability of compulsory process to compel attendance of unwilling non-party witnesses, and (8) the ease of access to sources of proof.

Jones v. GNC Franchising, Inc., 211 F.3d 495, 498-99 (9th Cir. 2000). When venue is putatively governed by a valid forum selection clause, however, this calculus changes in three ways. *See Atl. Marine*, 571 U.S. at 63. First, the court may not give any weight to the plaintiff's choice of forum. *Id.* Second, the court may not consider the parties' private interests. *Id.* at 64. Third, if venue is transferred, the original venue's choice-of-law rules will not apply. *Id.* Thus, when a court considers a motion to transfer venue involving a valid forum selection clause, it may consider only public interest factors. *Id.* "In all but the most unusual cases, therefore, 'the interest of justice' is served by holding parties to their bargain." *Id.* at 66.

Public interest factors may include: (1) "the administrative difficulties flowing from court congestion;" (2) "the local interest in having localized controversies decided at home;" and (3) "the interest in having the trial of a diversity case in a forum that is at home with the law." *Id.* at 62 n.6; *see e.g., Rui Chen v. Premier Fin. All., Inc.*, No. 18-CV-3771 YGR, 2019 WL 6911263, at *2 (N.D. Cal. Dec. 19, 2019) ("Public interest factors to be considered include relative court congestion, local interest in the controversy, and familiarity with the applicable law.").

Defendants argue that the applicable public interest factors support the transfer of this action to the District of Minnesota." ECF No. 41 at 17. The Court agrees. Concerns of court congestion neither weigh in favor nor against transfer. *See* ECF No. 41 at 17-18 ("The District of Minnesota has a median time from filing to disposition of 10.1 months and the average time from filing to disposition in this District is 7.9 months. The average time from filing to trial in this District is 25.9 months, compared to 30.1 months in the District of Minnesota"); *see Peters v.*

Wells Fargo Bank, N.A., No. 17-cv-4367-JST, 2018 WL 398238, at *6 (N.D. Cal. Jan. 12, 2018) (noting that "the relative court congestion and time of trial in each forum is neutral" where the caseload in the respective districts is "similar"). Moreover, the Plan's administration in Minnesota "giv[es] the [Minnesota] courts a strong interest in resolving the action." *Rapp v. Henkel of Am., Inc.*, No. 8:18-cv-01128-JLS-E, 2018 WL 6307904, at *5 (C.D. Cal. Oct. 3, 2018) ("[T]he Plan is administered in Connecticut, giving the Connecticut courts a strong interest in resolving the action. Further, that the benefits accrued in California is not enough to defeat transfer given that ERISA allows suits to be brought where the defendant resides, making this far from an "unusual case.").

1. Enforcement of the Forum Selection Clause Would Not Contravene the Public Interest in Conserving Judicial Resources

Becker asserts that, because the only two parties to the Plan are Becker and Wells Fargo, the forum selection clause may only be enforced and the case may only be transferred as to the single claim asserted against Wells Fargo. ECF No. 47 at 22-23. Thus, Becker argues, transfer of this action would mandate splitting the action and would "contravene the public interest in 'efficient resolution of controversies.'" *Id.* at 23. Defendants respond that the forum selection clause applies to all parties because each asserted cause of action involves the Plan and the fiduciaries of the Plan. ECF No. 50 at 15-16.

"Where the alleged conduct of the nonparties is closely related to the contractual relationship, 'a range of transaction participants, parties and non-parties, should benefit from and be subject to forum selection clauses.'" *Holland Am. Line*, 485 F.3d at 456 (quoting *Manetti-Farrow, Inc. v. Gucci America, Inc.*, 858 F.2d 509, 514 n.5 (9th Cir. 1988)); *see Bronstein v. U.S. Customs & Border Prot.*, No. 15-CV-02399-JST, 2016 WL 861102, at *5 (N.D. Cal. Mar. 7, 2016) (noting that "[t]here are circumstances in which a contractual forum selection clause can be enforced against a non-party to the contract" (citing *Manetti-Farrow*, 858 F.2d at 514 n.5)). "In order to bind a non-party to a forum selection clause, the party must be closely related to the dispute such that it becomes 'foreseeable' that it will be bound." *Hugel v. Corp. of Lloyd's*, 999 F.2d 206, 209 (7th Cir.1993) (internal quotations and citations removed).

Here, each Defendant who is not a party to the Plan is either a Wells Fargo employee or

affiliated entity. ECF No. 1 ¶¶ 21-30, 31-58. "Defendants are all fiduciaries of the Wells Fargo Plan." *Id.* ¶ 1. Additionally, Defendants have jointly brought the instant motion to transfer venue, demonstrating that they certainly "do not object to being governed by the forum selection clause." *See TAAG Linhas Aereas de Angola v. Transamerica Airlines, Inc.*, 915 F.2d 1351, 1354 (9th Cir. 1990) ("As for Transamerica Corporation and the individual defendants, they do not object to being governed by the forum selection clause, and they have all agreed to submit to the jurisdiction of the Swiss courts. It is not unreasonable or unjust to enforce the clause even though some of them did not sign the agreement."). Thus, the Court finds that the forum selection clause is enforceable as to each Defendant in this action. *See Gipson v. Wells Fargo & Co.*, 563 F. Supp. 2d 149, 151, 159 (D.D.C. 2008) (enforcing the Plan's forum selection clause in a case against Wells Fargo Bank, National Association and the Employee Benefit Review Committee).

2. There is no Conflict with California Labor Code Section 925

Becker also argues that she cannot be compelled to litigate in Minnesota due to California Labor Code Section 925. ECF No. 47 at 19. Under Section 925(a), "[a]n 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" (1) "[r]equire the employee to adjudicate outside of California a claim arising in California" or (2) "[d]eprive the employee of the substantive protection of California law with respect to a controversy arising in California." Section 925(a) applies to contracts "entered into, modified, or extended on or after January 1, 2017." Cal. Labor Code § 925(f).

Becker became a Plan participant on July 1, 1988 and was employed by Wells Fargo between 1985 and 2013. ECF No. 41-1 ¶ 18. *Id.* As such, Becker terminated her employment four years before Section 925 went into effect. *See Scales v. Badger Daylighting Corp.*, No. 1:17-cv-00222-DAD-JLT, 2017 WL 2379933, at *5 (E.D. Cal. June 1, 2017) ("Plaintiff entered into the contract at issue here in August 2014 and terminated his employment with defendant in July 2016, *before* § 925 took effect. Therefore, by its very terms § 925 does not apply to the Agreement.") (emphasis in original). Additionally, participation in the Plan was not a condition of Becker's employment with Wells Fargo. As Becker alleges in her complaint, the Plan provided

participants with the opportunity to make "voluntary tax-deferred contributions." ECF No. 1 ¶59-66. Therefore, Section 925 is not applicable.

C. Requests for Stay and Certification

Becker requests that the Court stay the transfer of this action to allow her to file for a writ of mandamus or, alternatively, that the Court certify the question of whether the forum selection clause is invalid for interlocutory appeal under 28 U.S.C. § 1292. ECF No. 47 at 27. The Court denies both requests. "First, interlocutory appeals are appropriate 'only in extraordinary cases where decision of an interlocutory appeal might avoid protracted and expensive litigation' and are 'not intended merely to provide review of difficult rulings in hard cases.'" *Powell v. United Rentals (N. Am.), Inc.*, No. C17-1573JLR, 2019 WL 1489149, at *8 (W.D. Wash. Apr. 3, 2019) (citing *U.S. Rubber Co. v. Wright*, 359 F.2d 784, 785 (9th Cir. 1966)). "Moreover, the Ninth Circuit Court of Appeals has 'long held that in extraordinary circumstances involving a grave miscarriage of justice, [it] ha[s] power via mandamus to review an order transferring a case to a district court in another circuit,' even after the case has been docketed in the transferee court." *Id.* (quoting *NBS Imaging Sys., Inc. v. United States Dist. Ct. for the E. Dist. of Cal.*, 841 F.2d 297, 297 (9th Cir. 1988)). Therefore, Becker is not precluded from seeking mandamus in the Ninth Circuit even after transfer is complete. *See id.*

CONCLUSION

The Court concludes that enforcement of the Plan's forum selection clause does not contravene ERISA's venue provisions or California Labor Code Section 925. The Court also finds that the applicable public interest factors favor enforcement of the forum selection clause. Accordingly, Defendants' motion to transfer venue is granted.

IT IS SO ORDERED.

Dated: September 21, 2020

JON S. TIGAR
United States District Judge