UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

LINDSAY PENHALL, on behalf of herself and a class of all others similarly situated, Plaintiff, v. YOUNG LIVING ESSENTIAL OILS, LC, Defendant.	Case No.: 19-CV-2340 JLS (RBB) **ORDER GRANTING DEFENDANT'S MOTION TO TRANSFER VENUE** (ECF No. 10)

Presently before the Court are Defendant's Motion to Dismiss Under Rule 12(b)(3) or Transfer Under § 1404(a) ("Mot.," ECF No. 10), Plaintiff's Opposition to Defendant's Motion ("Opp'n," ECF No. 11), Defendant's Reply to Plaintiff's Opposition ("Reply," ECF No. 14), and Plaintiff's Sur-Reply in Opposition to Defendant's Motion ("Sur-Reply," ECF No. 17). The Court took this matter under submission without oral argument pursuant to Civil Local Rule 7.1(d)(1). *See* ECF No. 15. Having reviewed the Parties' arguments and the law, the Court finds that transfer under 28 U.S.C. § 1404(a) is appropriate. Accordingly, the Court **GRANTS** Defendant's Motion.

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BACKGROUND

According to the Complaint, Defendant sells essential oils through a multilevel marketing operation. *See* ECF No. 1 ("Compl.") ¶ 22. Plaintiff asserts that Defendant recruits new members, or "distributors," into its sales force through "false and misleading representations." *Id.* ¶¶ 27–29.

Plaintiff joined Young Living as a distributor in May 2018 and worked for Defendant until December 2018. *Id.* ¶ 75. During that time, Plaintiff purchased approximately $2,150 of product from Defendant, but earned only approximately $300 in commissions. *Id.* ¶ 80. Plaintiff asserts that she would not have become a distributor had Defendant "disclosed that it was an illegal pyramid scheme" and "not misrepresented the financial success [she] was likely to achieve." *Id.* ¶ 82.

On December 6, 2019, Plaintiff filed this action against Defendant on behalf of herself and all others similarly situated. *See generally id.* Plaintiff brings California state law claims for operation of an endless chain scheme, unfair and unlawful business acts and practices, deceptive advertising practices, fraudulent omission, negligent misrepresentation, and unjust enrichment. *See generally id.* ¶¶ 95–143. Defendant filed the instant motion on March 19, 2020, seeking to transfer this action to the United States District Court for the District of Utah, Salt Lake City Division. *See generally* Mot.

LEGAL STANDARD

"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." 28 U.S.C. § 1404(a). "Section 1404(a) is merely a codification of the doctrine of *forum non conveniens* for the subset of cases in which the transferee forum is within the federal court system; in such cases, Congress has replaced the traditional remedy of outright dismissal with transfer." *Atl. Marine Constr. Co. Inc. v. U.S. Dist. Ct. for the W. Dist. of Texas*, 571 U.S. 49, 60 (2013).

A section 1404(a) motion is the proper mechanism to enforce a forum-selection clause when the plaintiff's chosen venue is otherwise proper. *Id.* at 59. "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." *Id.* at 62. "When parties have contracted in advance to litigate disputes in a particular forum, courts should not unnecessarily disrupt the parties' settled expectations. . . . In all but the most unusual cases, therefore, 'the interest of justice' is served by holding parties to their bargain." *Id.* at 66.

"A motion to transfer under § 1404(a) thus calls on the district court to weigh in the balance a number of case-specific factors. The presence of a forum-selection clause . . . will be a significant factor that figures centrally in the district court's calculus." *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988). When the parties have agreed to a valid forum-selection clause, the court must adjust the ordinary section 1404(a) analysis so that (1) no weight is given to the plaintiff's choice of forum, (2) all private interest factors are deemed to weigh entirely in favor of the preselected forum, and (3) the original venue's choice-of-law rules will not carry to the new venue upon transfer. *Atl. Marine*, 571 U.S. at 63–64.

"[I]n order to defeat transfer, [a p]laintiff must show that the forum-selection clause is not valid and enforceable or does not apply to his claims, or that § 1404(a) 'public-interest factors overwhelmingly disfavor a transfer.'" *Dolin v. Facebook, Inc.*, 289 F. Supp. 3d 1153, 1158 (D. Haw. 2018) (quoting *Atl. Marine*, 571 U.S. at 67). The public interest factors that a court may consider include "the administrative difficulties flowing from court congestion; the local interest in having localized controversies decided at home; the interest in having the trial of a diversity case in a forum that is at home with the law that must govern the action; the avoidance of unnecessary problems in conflict of laws . . . ; and the unfairness of burdening citizens in an unrelated forum with jury duty." *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986). The party resisting the enforcement of a forum-selection clause has the burden of showing that these factors "overwhelmingly disfavor a transfer." *Atl. Marine*, 571 U.S. at 67.

DISCUSSION

Defendant moves to transfer this case based on two forum-selection clauses contained in the Membership Agreement ("the Agreement"), *see* Mot. Ex. A, and the Policies and Procedures (the "P&P"), *see* Mot. Ex. B, that govern Defendant's relationships with its distributors, including Plaintiff.

The first forum-selection clause ("FSC #1"), which is found in the Agreement, states that "[a]ny legal action concerning the Agreement will be brought in the state and federal courts located in Salt Lake City, Utah." Mot. Ex. A § 9. The second forum-selection clause ("FSC #2"), found in the P&P, states that "[j]urisdiction and venue of any matter not subject to arbitration will reside in any state or federal court located in Salt Lake City, Utah." Mot. Ex. B § 13.2.3.

Plaintiff notes that there is a third forum-selection clause ("FSC #3"), also found in the P&P, which states:

> Notwithstanding the foregoing, nothing in these Policies and Procedures will prevent either party from applying to and obtaining from any court having jurisdiction a writ of attachment, a temporary injunction, a preliminary injunction, a permanent injunction, or other relief available to safeguard and protect its intellectual property rights and/or to enforce its rights under the non-solicitation provision of Section 3.11.1.*2*.

Mot. Ex. B § 13.2.2.

Plaintiff argues that the forum-selection clauses (1) are not applicable to her specifically, (2) are unenforceable, (3) are not mandatory, and (4) do not encompass her claims. *See generally* Opp'n at 3–15.

I. Plaintiff is Bound by the Forum-Selection Clauses

Plaintiff contends that Defendant has failed to show that Plaintiff is bound by the Agreement or the P&P, and has thus failed to establish that Plaintiff is bound by the forum-selection clauses these documents contain. *See* Opp'n at 3–4. Plaintiff contends Defendant has not met its burden to show the forum-selection clauses are applicable to Plaintiff because Defendant did not produce the actual agreements that Plaintiff signed. *Id.*

Defendant asserts that Plaintiff had to agree to the terms of the Agreement in order to become a distributor with Defendant, so she is bound by forum-selection clauses. *See* Reply at 2.

The party seeking to enforce a forum-selection clause has the burden of demonstrating the applicability of the clause. *Alcatel Lucent USA, Inc. v. Dugdale Commc'ns, Inc.*, No. CV 09-2140, 2010 WL 883831, at *13 (C.D. Cal. Mar. 5, 2010). Defendant attached to its Motion the Agreement and the P&P that govern Defendant's relationships with its distributors. *See generally* Mot. Ex. A, Ex. B. Although Defendant has not produced a signed agreement, Defendant has submitted Declarations showing that Plaintiff agreed to the Agreement and P&P it produced. *See* Reply Ex. 1 ¶ 8; Ex. 2 ¶ 9–13. Plaintiff does not actually argue that she never signed or accepted the terms of the Agreement or the P&P; instead, she insists only that Defendant has not presented sufficient evidence. *See* Opp'n at 3–4. Having considered Defendant's evidence and the Parties' arguments, the Court finds that Defendant has met its burden of establishing that Plaintiff is bound by the forum-selection clauses.[1]

II. The Forum-Selection Clauses Are Enforceable

Plaintiff asserts that the forum-selection clauses are unenforceable because they "irreconcilably conflict" with an arbitration clause in the P&P (the "Arbitration Clause"). *See* Opp'n at 4–7. The Arbitration Clause states that "any controversy or claim arising out of or relating to the Agreement . . . will be settled by arbitration," Mot. Ex. B § 13.2.2, and FSC #1 states that "[a]ny legal action concerning the Agreement will be brought in the state and federal courts located in Salt Lake City, Utah," Mot. Ex. A § 9. Plaintiff contends that the clauses conflict because "one clause would send a dispute to state or federal court

[1] It its Reply, Defendant produced updated versions of the Agreement and P&P, which it contends Plaintiff agreed to. Reply at 8–10; Exs. 8–9. The Court considers only the original agreements, as the original contained a clause that stated any "[a]mendments will not apply retroactively to conduct that occurred prior to the effective date of the amendment." *See* Sur-Reply at 4–5. Moreover, the Courts analysis would not change under the updated Agreement and P&P.

in Salt Lake City, Utah, and the other clause would require that the exact same dispute be arbitrated." Opp'n at 5.

In addition to the requirement that any claims must be arbitrated, the Arbitration Clause also states that "[a]ll arbitration proceedings *will be held in Salt Lake City, Utah*," Mot. Ex. B § 13.2.2 (emphasis added). Likewise, FSC #1 provides that all legal actions "will be brought in the state and federal courts *located in Salt Lake City, Utah*," Mot. Ex. A § 9 (emphasis added). While the clauses may conflict as to whether arbitration or adjudication is the appropriate means of dispute resolution, the clauses are consistent as to *where* the resolution must be brought. Moreover, the presence of both an arbitration clause and a venue provision does not necessarily create a conflict as to venue because, "no matter how broad the arbitration clause, it may be necessary to file an action in court to enforce an arbitration agreement, or to obtain a judgment enforcing an arbitration award, and the parties may need to invoke the jurisdiction of a court to obtain other remedies." *Mohamed v. Uber Techs., Inc.*, 848 F.3d 1201, 1209 (9th Cir. 2016) (alterations and quotations omitted). The Court therefore finds that these clauses do not "irreconcilably conflict" as to venue.

Plaintiff points to *O'Shaughnessy v. Young Living Essential Oils, LC*, in which a Texas district court found that these exact clauses fatally conflict. *See* Opp'n at 5–6 (citing *O'Shaughnessy v. Young Living Essential Oils, LC*, No. 1:19-CV-412-LY, 2019 WL 5296359 (W.D. Tex. Oct. 18, 2019), *report and recommendation adopted*, 2019 WL 8587182 (W.D. Tex. Nov. 27, 2019), *aff'd*, 810 Fed. App'x. 308 (5th Cir. 2020)). In *O'Shaughnessy*, after the defendant moved to compel arbitration, the plaintiff argued the arbitration clause could not be enforced because it conflicted with other clauses in the agreement. The court found that "[t]he conflict between these provisions would not leave the Plaintiff with a definite understanding that she agreed to arbitrate all claims arising out of the Member Agreement." *O'Shaughnessy*, 2019 WL 5296359, at *4. Reasoning "there was no 'meeting of the minds' *with respect to arbitration*," *id.* (emphasis added), the court denied the defendants' motion to compel arbitration. *Id.* at *5.

The Court is not persuaded that *O'Shaughnessy* is dispositive here. In *O'Shaughnessy*, the court found the provisions unenforceable in regard only to arbitration, not venue. *See id.* at *4. In fact, the court in *O'Shaughnessy* did not address the issue of venue or the enforceability of the forum-selection clauses. *See generally id.* Moreover, in *O'Shaughnessy*, the *defendant* had the burden of showing that a valid arbitration agreement existed and applied to the claims. *Id.* Here, *Plaintiff* "bears a 'heavy burden' to establish a ground upon which [the Court] will conclude the clause is unenforceable." *Doe 1 v. AOL LLC*, 552 F.3d 1077, 1083 (9th Cir. 2009). The Court finds Plaintiff has failed to meet this burden.

Plaintiff further argues that FSC #3 makes the Agreement "even more ambiguous" because it allows Plaintiff to seek injunctive relief in any court of competent jurisdiction. *See* Opp'n at 6–7. As noted above, FSC #3 states:

> Notwithstanding the foregoing, nothing in these Policies and Procedures will prevent either party from applying to and obtaining from any court having jurisdiction a writ of attachment, a temporary injunction, a preliminary injunction, a permanent injunction, or other relief available *to safeguard and protect its intellectual property rights and/or to enforce its rights under the non-solicitation provision of Section 3.11.1.2*.

Mot. Ex. B § 13.2.2 (emphasis added). In arguing that she can pursue her requests for injunctive relief in any court of competent jurisdiction, *see* Opp'n at 7, Plaintiff fails to acknowledge that FSC #3 allows injunctive relief in any court only to "protect [the Parties'] intellectual property rights" or enforce "the non-solicitation provision of Section 3.11.1.2."[2] Mot. Ex. B. § 13.2.2. FSC #3 therefore applies only to a specific subsection of

[2] Plaintiff argues that FSC #3 should not be interpreted to limit the injunctive relief a party may seek to only those injunctions that are necessary to "safeguard and protect its intellectual property rights and/or enforce its rights under the nonsolicitation and noncompetition provisions of Section 3.12." *See* Opp'n at 7 n.5. Plaintiff erroneously relies on the "last antecedent rule," which provides that "a limiting clause or phrase . . . should ordinarily be read as modifying only the noun or phrase that it immediately follows." *See Lockhart v. United States*, 136 S.Ct. 958, 962 (2016) (quoting *Barnhart v. Thomas*, 540 U.S. 20, 26 (2003)). The last-antecedent rule, however, is not absolute, and words in a phrase must be interpreted within their context. *Id.* Within the context of FSC #3, the limiting phrase does not apply only to "other

claims and does not create a conflict with the other provisions. And because none of Plaintiff's claims fall into the narrow categories for which Plaintiff may seek injunctive relief from "any court having jurisdiction," *see generally* Compl, FSC #3 is inapplicable to Plaintiff's claims.

Finally, Defendant contends that even if other portions of the forum-selection clauses are found to be invalid, the consistent venue terms should remain enforceable. *See* Reply at 6–7. As Defendant notes, *see id.* at 6, the Agreement contains a severance provision that provides that if "any court of competent jurisdiction will declare any portion of the Agreement to be invalid, the remainder of the Agreement will not be invalidated thereby but will remain in full force and effect." Mot. Ex. A § 10. The P&P contains a severance provision that similarly provides that, if any provision of the Agreement is found to be invalid, "only the invalid portion(s) of the provision will be severed." Mot. Ex. B § 15.2. Given the presence of these provisions, even if the Court found it appropriate to sever portions of the relevant clauses, the valid portions, which consistently provide that venue be in Salt Lake City, Utah, would remain. *See Sosa v. Paulos*, 924 P.2d 357, 363 (Utah 1996) ("[C]ontract provisions are severable if the parties intended severance at the time they entered into the contract and if the primary purpose of the contract could still be accomplished following severance."). Thus, the Court finds the forum-selection clauses are enforceable.

III. The Forum-Selection Clauses Are Mandatory

Plaintiff next argues that venue is appropriate in the Southern District of California because the forum-selection clauses are permissive, rather than mandatory. *See* Opp'n at 7–12. Plaintiff argues that the forum-selection clauses are permissive because (1) they are ambiguous, and (2) they contain language indicating they are permissive. *See id.*

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relief available." The use of the word "other" implies that the limiting phrase applies to all the preceding terms.

"Courts have distinguished permissive forum-selection clauses from mandatory ones. 'In the former, the parties agree that jurisdiction and venue would be proper in a particular forum; in the latter, they agree the suit is only proper in that forum.'" *Goldschmied v. Brifil*, No. CV 18-7092 PSG (SKx), 2018 WL 6430545, at *7 (C.D. Cal. Oct. 17, 2018) (quoting *Wu v. Sunrider Corp.*, No. CV 17-4825 DSF (SSx), 2017 WL 3475665, at *1 (C.D. Cal. Aug. 11, 2017)). "To be mandatory, a [forum-selection] clause must contain language that clearly designates a forum as the exclusive one." *N. Cal. Dist. Council of Laborers v. Pittsburgh-Des Moines Steel Co.*, 69 F.3d 1034, 1037 (9th Cir. 1995). More specifically, the clause "must use mandatory language like 'shall' or 'will' in conjunction with language indicating exclusivity." *Hendrickson v. Octagon Inc.*, No. C 14-01416 CRB, 2014 WL 2758750, at *3 (N.D. Cal. June 17, 2014). The clause "must be extremely deliberate in selecting a specific and exclusive venue and in indicating that all action must be brought solely in that venue, and no other." *Id.*

If a forum-selection clause is ambiguous as to whether it is permissive or mandatory, it must be interpreted against the drafter. *Id.* The court must reject an ambiguous forum-selection clause "to the extent it does not clearly designate a particular forum as the exclusive venue." *QSR Mgmt., Inc. v. Dunkin Brands, Inc.*, No. EDCV 08-3 VAP (OPx), 2008 WL 2856456, at *2 (C.D. Cal. Mar. 3, 2008).

A. The Forum-Selection Clauses Are Not Ambiguous

Plaintiff argues that the forum-selection clauses are ambiguous because they collectively conflict with the Arbitration Clause. *See* Opp'n at 9. Plaintiff asserts that the Arbitration Clause, FSC #1, and FSC #2, simultaneously subject all disputes to both binding arbitration and litigation in state or federal court making them ambiguous. *See id.* Because they are ambiguous, Plaintiff contends that the Court need not enforce them. *Id.*

Plaintiff primarily relies on two cases, *Goldschmied* and *Hendrickson*, to support her arguments. *See id.* at 9–11. In *Goldschmied*, one provision in an agreement required any action to brought "exclusively in the courts of the State of Florida, County of Palm Beach," while another provision allowed the parties to seek injunctive relief in any state or federal

court. *See Goldschmied*, 2018 WL 6430545, at *7. The court found that the provisions created ambiguity as to the proper forum for resolving disputes. *Id.* at *8. Similarly, in *Hendrickson*, the court found a forum-selection clause ambiguous where the clause "d[id] not use specific, determinative language." *See Hendrickson*, 2014 WL 2758750, at *2.

The present case is distinguishable from both *Goldschmied* and *Hendrickson* because the forum selection clauses are not ambiguous as to the proper venue. While the provisions in *Goldschmied* simultaneously required all actions to be brought in Palm Beach, Florida, and allowed requests for injunctive relief to be brought in any state or federal court, the relevant clauses here consistently require all actions, other than the specific claims carved out in FSC #3, to be brought in Salt Lake City, Utah.[3] *See supra*, Section I. And unlike in *Hendrickson*, the forum-selection clauses here use "specific, determinative language" to designate Salt Lake City as the exclusive venue. *See infra*, Section II.B. Thus, while the relevant provisions may be ambiguous as to whether arbitration is mandatory, the provisions are not ambiguous as to venue.[4]

B. The Forum-Selection Clauses Designate Exclusive Jurisdiction in Salt Lake City, Utah

Plaintiff argues that the forum-selection clauses are facially permissive because they do not contain words such as "exclusive," "sole," or "only." *See* Opp'n at 12–13.

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[3] As explained above, FSC #3 is does not conflict with the general venue provisions and is inapplicable to Plaintiff's claims. *See supra*, Section I.

[4] Plaintiff also seems to contend that the choice-of-law provisions in the agreements are invalid and therefore render the forum-selection clauses ambiguous. The Agreement and the P&P contain choice-of-law provisions indicating that Utah law governs the Agreement. *See* Mot. Ex. A § 9; Ex. B § 13.2.3. Plaintiff argues that the choice-of-law provisions are "fatally inconsistent" because one provision states that the Agreement "will be interpreted and construed in accordance with the laws of the State of Utah *applicable to contracts to be performed therein*," while the other provision states that "[t]he laws of the state of Utah will govern disputes involving the Agreement." *See* Reply at 12 n.10. The Court is not persuaded that the clauses conflict simply because one clause contains language limiting the choice-of-law to that "applicable to contracts to be performed therein," while the other clause does not. And regardless, Plaintiff provides no authority to support her argument that this conflict is pertinent to whether a forum-selection clause is ambiguous.

Defendant asserts that the use of the word "will" in the clauses renders them mandatory. *See* Reply at 8–9.

Plaintiff asserts that *BrowserCam Inc. v. Gomez, Inc.,* No. C 08-02959 WHA, 2008 WL 4408053 (N.D. Cal. Sept. 26, 2008) is "instructive" on this issue. *See* Opp'n at 12. In *BrowserCam*, the forum-selection clause stated that "[a]ny claim arising under or relating to this agreement shall be governed by the integral substantive laws of the Commonwealth of Massachusetts . . . . Each party hereby agrees to jurisdiction and venue in the courts of the City of New York or the federal courts therein." 2008 WL 4408053, at *1. The court found the clause permissive because the operative word, "shall," did not appear in the sentence that would designate New York as the exclusive venue. *Id.* at *2.

Plaintiff also points to *Hendrickson* for support once again. *See* Opp'n at 12 (citing *Hendrickson*, 2014 WL 2758750, at *3). There, the defendant attempted to enforce a clause that stated, "The location for any dispute shall be Fairfax County, Virginia." *Id.* As the court noted, however, "[t]he clause [did] not use the terms 'venue,' 'lawsuit,' 'legal,' 'court,' or any other determinative terms." *Id.* Also, despite designating Fairfax County, Virginia as a proper location, the clause did not indicate a specific state or federal court in which the action should be brought. *Id.* The court reasoned that the defendant "merely named a county, with no additional guiding terms, effectively asking this Court to fill in the blanks and interpret the [forum-selection clause] to mean that whichever federal court has jurisdiction over the named county is the exclusive venue." *Id.*

Rebutting these cases, Defendant turns to *Vogt-Nem, Inc. v. M/V Tramper*, 263 F. Supp. 2d 1226, 1229 (N.D. Cal. 2002), *see* Reply at 9. The clause in *Vogt-Nem* stated, "Any dispute between [plaintiff] and [defendant] will be settled first amicably but in the case of disagreement . . . will be submitted to the competent court in Rotterdam." *Id.* (first alteration in original). The court reasoned that for the purposes of establishing exclusive jurisdiction, "will" and "shall" are analogous and both are mandatory. *Id.* at 1231. Further, the court recognized that the clause "specifie[d] the court where disputes will be submitted." *Id.*

Here, the language in the forum-selection clauses most closely resembles the language in *Vogt-Nem*. FSC #1 provides that "[a]ny legal action . . . *will be brought* in the state and federal courts located in Salt Lake City, Utah," Mot. Ex. A § 9 (emphasis added), and FSC #2 provides that "[j]urisdiction and venue . . . *will reside* in any state or federal court located in Salt Lake City, Utah," Mot. Ex. B § 13.2.2 (emphasis added). As in *Vogt-Nem*, these clauses use the operative word "will" to establish mandatory jurisdiction and specify that disputes will be submitted to the courts within Salt Lake City. Unlike *BrowserCam*, the operative word in these clauses appears in the same sentence that designates Salt Lake City as the exclusive venue. And unlike *Hendrickson*, the clauses use "determinative terms" such as "courts" and "venue." The plain language of the forum-selection clauses is therefore mandatory, not permissive. *See O'Shaughnessy v. Young Living Essential Oils, LC*, No. 1:19-CV-412-LY, at 7 (W.D. Tex. June 29, 2020), ECF No. 31-1 (finding that the language of these exact clauses renders them mandatory).

IV. The Forum-Selection Clauses Encompass Plaintiff's Claims

Next, Plaintiff argues that her claims fall outside the scope of the forum-selection clauses because her claims do not require the court to "interpret" the Agreement. *See* Opp'n at 13–15. Defendant argues that the forum-selection clauses apply broadly and are not limited to claims involving the interpretation or performance of the Agreement. *See* Reply at 10.

The forum-selection clauses apply to "[a]ny legal action concerning the Agreement," Mot. Ex. A § 9, and "any matter not subject to arbitration," Mot. Ex. B § 13.2.3. Plaintiff has brought causes of action for operation of an endless chain scheme, unfair and unlawful business acts and practices, deceptive advertising practices, fraudulent omission, negligent misrepresentation, and unjust enrichment, all under California Law. *See generally* Compl. ¶¶ 95–143. Plaintiff contends that, excluding negligent misrepresentation, these causes of action are identical to claims that fell outside the scope of a forum-selection clause in *Yan Guo v. Kyani, Inc.*, 311 F. Supp. 3d 1130, 1137 (C.D. Cal. 2018). *See* Opp'n at 14–15.

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In *Yan Guo*, the plaintiffs alleged that the defendants operated an "illegal pyramid scheme," and brought claims for operation of an endless chain scheme, unfair and deceptive business practices, false advertising, fraudulent concealment and nondisclosure, and unjust enrichment, all under California state law. 311 F. Supp. 3d at 1137. The "illegal pyramid scheme" was governed by a Distributor Agreement containing a forum-selection clause which applied to "any claims or related litigation to interpret or enforce the terms of the . . . Distributor Agreement." *Id.* at 1138. The court reasoned that the plaintiffs' causes of action "ar[o]se out of alleged conduct outside of what . . . was contemplated by the agreement," and could be "adjudicated without analyzing whether the parties were in compliance" with the agreement. *Id.* at 1141–42. The plaintiffs' claims were therefore not encompassed by the forum-selection clause. *Id.*

The applicability of a forum-selection clause, however, depends on the breadth of language used in the clause. *See Yei A. Sun v. Advanced China Healthcare, Inc.*, 901 F.3d 1081, 1086 (9th Cir. 2018). For example, the "arising out of" language, as used in *Yan Guo*, typically indicates that a forum-selection clause only applies to disputes "relating to the interpretation and performance of the contract itself." *See id.* In contrast, language such as "relating to," "with reference to," or "in connection with," indicate that a forum-selection clause applies to any dispute that references the agreement or has some "logical or causal connection to the agreement." *See id.* (citing *Huffington v. T.C. Grp., LLC*, 637 F.3d 18, 22 & n.2 (1st Cir. 2011)). Here, the phrase "[a]ny legal action *concerning* the Agreement," as used in FSC #1, is more akin to language such as "related to" than "arising out of." Also, neither FSC #1 nor FSC #2 contain language limiting their scope to "litigation to *interpret or enforce*" the Agreement, as in *Yan Guo*. *See* 311 F. Supp. 3d at 1138 (emphasis added). Thus, the forum-selection clauses here encompass a broader range of disputes than in *Yan Guo*.

Under this interpretation, the Court finds Plaintiff's claims all stem from her role as a distributor for Defendant. Given that Plaintiff's role as a distributor is governed by the Agreement, the Court finds that Plaintiff's claims are logically connected to the

Agreement, even if these claims do not turn on the interpretation or performance of the Agreement itself. These claims are therefore encompassed by the forum-selection clauses. *See Yei A. Sun*, 901 F.3d at 1087 (holding that the plaintiff's claim of fraudulent contact prior to entering into an agreement fell within the scope of the forum-selection clause because it was "logically connected to the parties' agreement").

IV. The Public Interest Factors Do Not Disfavor Transfer

Finally, because there is a valid forum-selection clause, the Court considers whether the "public-interest factors overwhelmingly disfavor a transfer." *Atl. Marine*, 571 U.S. at 67.

First, Plaintiff asserts that the court congestion factor "weighs heavily against transfer" because civil actions proceed to trial quicker in the Southern District of California than the District of Utah. *See id.* at 21. Plaintiff does not show, however, that either this District or the "the District of Utah are congested to the 'exceptional' degree required to deny the [P]arties' forum-selection clause 'controlling weight.'" *See O'Shaughnessy*, No. 1:19-CV-412-LY, at 8. The Court therefore finds this factor neutral. *See id.*

Second, Plaintiff argues that the local interest factor disfavors transfer because California "clearly has an interest in addressing harm to one of its citizens," and California will likely have a larger percentage of the putative class than Utah. *See* Opp'n at 22. But as Defendant notes, "Utah also has an interest in resolving legal actions asserting that a company based in its state engages in fraudulent business practices." Reply at 12 (citing *Hawkins v. Gerber Prod. Co.*, 924 F. Supp. 2d 1208, 1216 (S.D. Cal. 2013)). Because these interests in each forum offset, the Court finds this factor neutral as well.

Third, Plaintiff argues that the governing law factor disfavors transfer, "[b]ecause California's choice-of-law rules would govern even if the case were to be transferred." *See* Opp'n at 23. Under *Atlantic Marine*, however, California's choice-of-law rules would not govern upon transfer because of the presence of a valid and enforceable forum-selection clause. *See Atl. Marine*, 571 U.S. at 64. Therefore, this factor does not weigh in favor of transfer.

On balance, the Court finds that Plaintiff has not met her burden of showing that the public interest factors "overwhelmingly disfavor a transfer." *See id.* at 67. Accordingly, the Court finds that the forum-selection clauses are enforceable and, therefore, this case must be transferred to the designated forum.

CONCLUSION

For the above reasons, Defendant's Motion to Transfer Under § 1404(a) is **GRANTED**. This case is hereby **TRANSFERRED** to the United States District Court for the District of Utah, Salt Lake City Division.

IT IS SO ORDERED.

Dated: August 17, 2020

Janis L. Sammartino
Hon. Janis L. Sammartino
United States District Judge