

IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF TEXAS
 SHERMAN DIVISION

THE STATE OF TEXAS, et al.,	§	
	§	
Plaintiffs,	§	
v.	§	
	§	Civil Action No. 4:20-CV-957-SDJ
GOOGLE LLC,	§	
	§	
Defendant.	§	

**DEFENDANT GOOGLE LLC’S MOTION TO TRANSFER VENUE
 PURSUANT TO 28 U.S.C. § 1404(a) AND MEMORANDUM IN SUPPORT**

The first case alleging that Google has monopolized online display advertising was filed in May 2020 by an advertiser, seeking to represent a putative class of advertisers and publishers. An identical case was filed a month later in June 2020, followed by a consolidated class action complaint in September 2020.¹ Three more similar cases were filed in December 2020, and, in January 2021, a sixth. All of these private class actions were filed in the Northern District of California, the venue where Google is headquartered and where more relevant witnesses and documents are located than in any other district in the country.²

Like all these cases filed in the Northern District of California, this case alleges violations of Section 2 of the Sherman Act, plus state antitrust and unfair competition law claims, and seeks injunctive relief and damages. This case also alleges a violation of Section 1 of the Sherman Act, based on Google’s alleged “unlawful agreement with Facebook ... to manipulate advertising auctions.” Compl. ¶ 2. Facebook, like Google, has its principal place of business in the Northern District of California.

¹ *In re Google Digital Advertising Antitrust Litig.*, No. 20-cv-03556 (N.D. Cal.), Dkt. 1, 24, 25.

² *Sweepstakes Today LLC v. Google LLC*, No. 20-cv-08984 (N.D. Cal.); *Genius Group Media, Inc. v. Google LLC*, No. 20-cv-09092 (N.D. Cal.); *Sterling Int’l Consulting Group v. Google LLC*, No. 20-cv-9321 (N.D. Cal.); *Astarita v. Google LLC*, No. 21-cv-00022 (N.D. Cal.).

Yet, Plaintiffs brought this case in the Sherman Division of the Eastern District of Texas—a venue that has no special connection to the case. The Complaint contains no factual allegations that connect Google’s alleged conduct to this division or District, or even this State. One might expect that the State of Texas would want to sue in Texas court. But nine other states are plaintiffs as well. Those states range from the far north (North Dakota) to the far west (Idaho) to the midwest (Indiana) to the deep south (Mississippi), and plainly their claims—particularly, the *parens patriae* claims on behalf of their individual citizens—have no particular connection to the Eastern District of Texas. If Arkansas, Idaho, Indiana, Kentucky, Mississippi, Missouri, North Dakota and South Dakota would not be inconvenienced by trying this case in Texas—a venue with no connection to their claims—then they would not be inconvenienced by trying it almost anywhere in the country, and certainly not in the Northern District of California. As certain class action plaintiffs said in opposition to a motion filed with the Judicial Panel on Multidistrict Litigation to consolidate various private antitrust litigation against Google (including various digital advertising class actions) in the District of Columbia, “[t]he Northern District of California is the location of the defendant and the most witnesses and evidence for purposes of these cases.” *In re: Google Antitrust Litigation*, Dkt. 34 at 9 (MDL No. 2981). The private-interest factors that guide a § 1404(a) analysis therefore strongly favor transfer of this case to the Northern District of California. And the public-interest factors tilt in favor of transfer as well. For those reasons, we request that the Court grant Google’s motion and transfer the case.

ARGUMENT

The legal criteria for transferring a case pursuant to § 1404(a) are well-established. The court must first determine whether the case “might have been brought” in the proposed transferee forum and, if so, then consider eight factors—four “private interest” factors and four “public interest” factors. *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 312–15 (5th Cir. 2008) (en banc).

The private interest factors are: “(1) the relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) the cost of attendance for willing witnesses; and (4) all other practical problems that make trial of a case easy, expeditious and inexpensive.” *Id.* at 315 (internal citation omitted).

The public interest factors are: “(1) the administrative difficulties flowing from court congestion; (2) the local interest in having localized interests decided at home; (3) the familiarity of the forum with the law that will govern the case; and (4) the avoidance of unnecessary problems of conflict of laws [or in] the application of foreign law.” *Id.*

Under the general venue statute, as the Fifth Circuit has recognized, “large corporations ... often have sufficient contacts to satisfy the requirement of § 1391(c) for most, if not all, federal venues,” such that the statute “has the effect of nearly eliminating venue restrictions in suits against corporations.” *Id.* at 313 (quoting 14D Wright, Miller & Cooper, *Federal Practice & Procedure* § 3802 (3d ed. 2007)). Section 1404(a) serves to “prevent plaintiffs from abusing their privilege under § 1391 by subjecting defendants to venues that are inconvenient under the terms of § 1404(a).” *Id.* at 315; *Veba-Chemie A.G. v. M/V Getafix*, 711 F.2d 1243, 1247 (5th Cir. 1983) (§ 1404(a) “requires only that the transfer be ‘[f]or the convenience of the parties, in the interest of justice.’”); *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 254 (1981) (noting the “relaxed standards for transfer” under § 1404(a)).

It is indisputable that Plaintiffs could have brought this case in the Northern District of California, as have the plaintiffs in the *In re Google Digital Advertising Antitrust Litig.*, *Genius Media Group*, *Sweepstakes Today*, *Sterling Int’l Consulting Group*, and *Astarita* cases.³ The issue is whether the private- and public-interest factors favor transfer to the Northern District of California as the more convenient and appropriate forum. They do.

³ *In re Volkswagen*, 545 F.3d at 312 (“The preliminary question under § 1404(a) is whether a civil action ‘might have been brought’ in the destination venue.”).

I. The Private-Interest Factors Favor Transfer to the Northern District of California

All four private-interest factors favor transfer.

Relative ease of access to sources of proof. *In re Volkswagen* arose from an automobile accident on a Dallas freeway. It was undisputed that (i) the accident occurred in Dallas, (ii) the vehicle was purchased there, (iii) Dallas residents witnessed the accident, (iv) Dallas police and paramedics responded, (v) a Dallas doctor performed the autopsy, and (vi) the third-party defendant (the driver of the car that struck the plaintiff) lived in Dallas. It was also undisputed that none of the plaintiffs lived in the Marshall Division (where they filed the case), no witness lived there, no source of proof was located there, and none of the facts giving rise to the case occurred there.

The plaintiffs argued nevertheless that the relative ease of access to sources of proof was the same for Dallas and Marshall because of “copying technology and information storage.” 545 F.3d at 316. The Fifth Circuit rejected plaintiffs’ argument out of hand, underscoring that “the sources of proof requirement is a meaningful factor in the analysis” and that improved information-sharing technology “does not render this factor superfluous.” *Id.*

Here, the challenged conduct occurred in the Northern District of California, where Google has its headquarters and where its executives and most of its employees work, or in New York City, where a number of employees concerned with display advertising work. **None** of the alleged anticompetitive conduct is alleged to have occurred in this District, or even in Texas. Plaintiffs’ allegations acknowledge as much. The Complaint’s allegations of wrongdoing identify nine Google employees by name,⁴ but **none** of them work in Texas. The Complaint’s allegations of wrongdoing also quote or characterize a number of Google communications⁵—documents that were authored by, sent to, or possessed by more than 150 Google employees in all. But, again,

⁴ *E.g.*, Compl. ¶¶ 104, 160, 168.

⁵ *E.g.*, *id.* ¶¶ 5, 11, 13.

none of these employees work in Texas. The vast majority work at Google’s Mountain View headquarters or satellite offices in San Francisco or Sunnyvale (all in the Northern District of California) or in New York City. While this District would be inconvenient for all of these witnesses, the Northern District of California would be more convenient for dozens of them.⁶

The same is true of third-party witnesses and sources of documentary proof according to the Complaint. It identifies various relevant third parties, a majority of which have their headquarters or offices in Northern District of California (or elsewhere in California or Washington State). *None* has its headquarters or offices in the Eastern District of Texas. The Complaint names fourteen alleged rivals, Facebook, foremost among them. Facebook, like Google, has its headquarters in the Northern District of California (in Facebook’s case, in Menlo Park, California). The Complaint devotes 25 paragraphs to allegations that “the two giants reached an illegal agreement” to prevent competitive bidding for display ads.⁷ There is no allegation they did so in this District, however. To the contrary, the Complaint alleges that the “illegal agreement” was the product of “formal negotiations” between executives of Facebook and Google. And where are the other alleged rivals located?

- Apple (Compl. ¶¶ 142, 190): headquartered in Cupertino, California in N.D. Cal.
- Project Rubicon (*id.* ¶¶ 46, 76-77, 260): headquartered in Los Angeles, California; offices in N.D. Cal.
- OpenX (*id.* ¶¶ 203, 205, 254): headquartered in Pasadena, California; offices in N.D. Cal.
- The Trade Desk, Inc. (*id.* ¶¶ 54, 71, 230): headquartered in Ventura, California; offices in N.D. Cal.
- 24/7 Real Media (*id.* ¶¶ 64, 99, 104): headquartered in New York, New York; offices in N.D. Cal.
- Index Exchange (*id.* ¶¶ 76-77); headquartered in New York, New York; offices in N.D. Cal.

⁶ See Decl. of Andrew Rope ¶¶ 4-11, regarding the foregoing facts.

⁷ Compl. ¶¶ 171-96. These paragraphs follow the heading, “Facebook helps Google kill Header bidding with an unlawful agreement.”

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.