

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**CIVIL MINUTES - GENERAL**

Case No.	CV 08-03401 GAF (AGR _x)	Date	December 17, 2008
Title	George et al. v. Nat'l Collegiate Athletic Ass'n et al.		

Present: The
Honorable**GARY ALLEN FEES**

Renee Fisher

None

N/A

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

None

None

Proceedings: (In Chambers)**ORDER RE: MOTION TO TRANSFER****I. INTRODUCTION**

This putative class action involves an allegedly illegal ticket distribution scheme operated by defendants National Collegiate Athletic Association (“NCAA”) and Ticketmaster, Inc. (“Ticketmaster”) for tickets to several collegiate athletic tournaments, including the NCAA Division I Men’s Basketball Championship. Plaintiffs, individuals who have purchased or attempted to purchase tickets to these various tournaments through the ticket distribution process, allege that the process constitutes an illegal lottery under Indiana and California law. Accordingly, Plaintiffs have asserted the following claims: (1) violation of the Indiana Uniform Declaratory Judgment Act, Ind. Code § 34-14-1 *et seq.*; (2) unjust enrichment; (3) civil conspiracy; (4) violation of sections 17200 *et seq.* of the California Business & Professions Code; (5) money had and received; and (6) violation of the Indiana Deceptive Consumer Sales Act, Ind. Code §§ 24-5-0.5-1 *et seq.* Plaintiffs have asserted the Fourth Claim only against Ticketmaster, and the Fifth and Sixth Claims only against the NCAA.

The NCAA moves to transfer the case to the Southern District of Indiana, where the NCAA maintains its principal place of business (Docket No. 28), and to dismiss the action under Rules 9(b) and 12(b)(6) (Docket No. 32). Plaintiffs move for preliminary approval of their class action settlement with Ticketmaster. (Docket No. 42.) The motion to transfer presents a threshold question; therefore, the Court addresses it first. Because the case against Ticketmaster is near settlement, the remaining claims involve parties and witnesses for whom litigation in

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Indiana would be substantially more convenient. Accordingly, as discussed in greater detail below, the motion to transfer is **GRANTED**.

II. BACKGROUND

The NCAA, an unincorporated association with its principal place of business in Indianapolis, Indiana, “is a voluntary organization through which the nation’s colleges and universities govern their athletic programs.” (Second Amended Compl. (“SAC”) ¶ 15; Martin Decl. ¶ 3.) Among other things, the NCAA is in charge of coordinating the championship tournaments for the various sports under its control, including the Division I NCAA men’s and women’s basketball and hockey championship tournaments. (SAC ¶ 17.) Ticketmaster, a Delaware corporation with its principal place of business in West Hollywood, California, is “the world’s leading live entertainment ticketing and marketing company.” (SAC ¶ 117 (internal quotation marks omitted).)

Since at least 1994, the NCAA has used a ticket distribution system by which it sells tickets to championship tournament games for men’s and women’s basketball and hockey, and possibly additional sports. (SAC ¶¶ 17–19.) The system is fairly simple: an individual who wishes to purchase tickets to a preliminary round tournament game must pay an up-front service fee of \$10.00 to submit an “application” for tickets (one application per household) in addition to the ticket price. Payment of the service fee and ticket price results in the purchaser’s application being placed into a pool of potential ticket-holders. If the number of tickets requested exceeds the number of tickets available, which is usually the case, the NCAA randomly chooses applications and awards tickets to the individuals who filled those applications. Thus, there is no guarantee that a purchaser will receive the desired tickets. Those purchasers whose applications are not chosen receive a full refund of the money spent on the tickets (sometimes not until several months later), but are not reimbursed the service fee. And of course, those who do receive tickets are not reimbursed the service fee either. (SAC ¶¶ 27–28.)

The ticket distribution system is similar for the three Final Four games, but is modified to allow each purchaser to submit up to ten “entries,” at \$6.00 each. Thus, the system is set up to incentivize purchasers to spend \$60.00 to purchase ten entries, because doing so increases the chances of being selected for the desired tickets. The catch, however, is that for each entry, the purchaser must again pay the price of the tickets up front, and must do so for each entry even though the purchaser cannot obtain more than one set of tickets. Thus, an individual who desires two tickets to a Final Four game, at \$150.00 each, must pay \$306.00 for each entry, or \$3060.00, up front. Again, the purchaser will eventually be reimbursed for all monies spent on tickets she

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does not receive, but in no event will the purchaser be refunded the entry fee. (SAC ¶¶ 30–40.)

While the NCAA has had this system in place since at least 1994, Ticketmaster's involvement in the alleged lottery scheme began much more recently. Ticketmaster was the NCAA's ticketing agent only for the upcoming 2009 Division I Men's Basketball Championship. (Martin Decl. ¶ 11.) As explained below, Plaintiffs have, in essence, admitted that their claims against Ticketmaster are tenuous at best. As a result, Plaintiffs have agreed to release or not prosecute their various claims in exchange for Ticketmaster's reimbursement of the service charges to those individuals who did not receive tickets for the upcoming 2009 Division I Men's Basketball Championship, and for Ticketmaster's promise to no longer participate in the NCAA's ticket distribution process. (See Mot. Prelim. App., Ex. A [Settlement Agreement] at 3.)

Plaintiff Tom George, a resident of Arizona, has been attempting to purchase tickets to the men's basketball Final Four for at least the past five years. (SAC ¶¶ 11, 50.) He attempted to purchase tickets to the 2009 men's basketball Final Four on April 15, 2008 using a website owned by the NCAA, but operated and serviced by Ticketmaster. (SAC ¶¶ 52–54.) George paid a total of \$346.00 for two tickets, which included a \$6.00 entry fee. (SAC ¶ 53.) George did not receive tickets to the 2008 Final Four. (SAC ¶ 54.) The remaining named plaintiffs, Chris Vitron, Lori Chapko, and Edward Snead are residents of Oregon and New York and have had similar experiences as George in purchasing or attempting to purchase tickets to NCAA tournaments. (See generally SAC ¶¶ 57–80.)

III. DISCUSSION

A. LEGAL STANDARD FOR MOTIONS TO TRANSFER UNDER 28 U.S.C. § 1404(a)

Section 1404(a) 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.” 28 U.S.C. § 1404(a). “Under § 1404(a), the district court has discretion to adjudicate motions for transfer according to an individualized, case-by-case consideration of convenience and fairness.” *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000) (internal quotation marks omitted) (quoting *Stewart Org. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988)). “To support a motion for transfer the moving party must show: (1) that venue is proper in the transferor district; (2) that the transferee district is one where the action might have been brought; and (3) that the transfer will serve the convenience of the parties and witnesses and will promote the interest of justice.” *Goodyear Tire & Rubber Co. v. McDonnell*

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Douglas Corp., 820 F. Supp. 503, 506 (C.D. Cal. 1992).

B. APPLICATION***1. Venue and Jurisdiction***

The parties concede that venue lies in the Central District of California to hear this case. (SAC ¶¶ 2, 3.) See 28 U.S.C. § 1391; Braun v. Berenson, 432 F.2d 538, 544 (5th Cir. 1970). Likewise, the Court has no doubt that the lawsuit could have been brought in the Southern District of Indiana. 17 James Wm. Moore, Moore's Federal Practice § 111.12[1][a], at 111-54 (3d ed. 2002) (stating the test). Plainly the NCAA is subject to personal jurisdiction in its home state, and Ticketmaster, which entered into its lucrative contract with the NCAA to sell tickets throughout the 50 states, and offers to sell and in fact sells throughout the United States, has purposefully availed itself of the privilege of doing business in Indiana. E.g., Haisten v. Grass Valley Med. Reimbursement Fund, Ltd., 784 F.2d 1392, 1398 (9th Cir. 1986). Ticketmaster could hardly argue that it would be unreasonable to require it to litigate in an Indiana court. And with respect to subject matter jurisdiction, the district court in Indiana would have had the power to adjudicate this dispute on the same basis as this Court, namely under the Class Action Fairness Act where there is minimal diversity among the parties. 28 U.S.C. § 1332(d)(2). Thus, the Court focuses its attention on the question of whether the Southern District of Indiana would be a more convenient forum than the Central District of California.

2. Convenience

To determine whether to grant a motion to transfer, a district court must weigh various factors, such as:

(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, 211 F.3d at 498–99. The relevant public policy of the forum state may also be a factor the district court considers. Id. at 499. These factors are similar to those which courts consider

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when adjudicating motions to dismiss on forum non conveniens grounds, and indeed, the Ninth Circuit has previously held that the “public interest” and “private interest” factors relevant to the forum non conveniens inquiry may also be relevant on a motion to transfer. See Decker Coal Co. v. Commonwealth Edison Co., 805 F.2d 834, 843 (9th Cir. 1986). Moreover,

[a]lthough great weight is generally accorded plaintiff’s choice of forum, when an individual brings a derivative suit or represents a class, the named plaintiff’s choice of forum is given less weight. In judging the weight to be accorded [the plaintiff’s] choice of forum, consideration must be given to the extent of both [parties’] contacts with the forum, including those relating to [the plaintiff’s] cause of action. If the operative facts have not occurred within the forum and the forum has no interest in the parties or subject matter, [the plaintiff’s] choice is entitled to only minimal consideration.

Lou v. Belzberg, 834 F.2d 730, 739 (9th Cir. 1987) (citations omitted).

In the present case, the Southern District of Indiana would plainly be a more convenient forum than the Central District of California. The NCAA has identified eight witnesses who possess “significant experience and knowledge concerning the NCAA’s ticket processes,” all of whom are located in Indiana. (Martin Decl. ¶ 6.) By contrast, Plaintiffs merely refer to witnesses who are associated with Ticketmaster and, thus, presumably located in California. Plaintiffs’ failure to produce a witness list suggests that Plaintiffs’ contentions regarding such witnesses are speculative. Moreover, the bulk of relevant evidence in this case will likely come out of Indiana, not California, because Ticketmaster did not become involved in the NCAA’s ticket distribution process until 2008, meaning that the relevant knowledge of Ticketmaster witnesses would likely be limited. The Court also is not persuaded by Plaintiffs’ conclusory assertions that the District Court for the Southern District of Indiana would lack the ability to compel Ticketmaster’s testimony. Plaintiffs likewise do not sufficiently explain how or why they would be inconvenienced if the District Court for the Southern District of Indiana were to oversee the class action settlement with Ticketmaster.

In addition, the proposed class action settlement agreement between Plaintiffs and Ticketmaster confirms that the focal point of Plaintiffs’ suit is the NCAA’s design and implementation of the allegedly illegal ticket distribution scheme. (See Mot. Prelim. App., Ex. A [Settlement Agreement] at 2–3.) As Plaintiffs themselves admit, Ticketmaster has played a “short and limited role in the challenged practice.” (Id. at 3.) Furthermore, once the proposed settlement agreement is finalized and Ticketmaster is dismissed from this lawsuit, Plaintiffs’ suit

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will no longer implicate California law because Plaintiffs' sole California claim was their section 17200 claim, which they asserted only against Ticketmaster. All that will remain will be a nationwide class action lawsuit brought by residents of Arizona, Oregon, and New York against an unincorporated association that has its principal place of business in Indiana, and involving claims arising under Indiana statutory and common law. Thus, as a matter of public policy, the Southern District of Indiana has a much stronger interest in adjudicating this action than does this Court.

IV. CONCLUSION

For the foregoing reasons, the Court concludes that the interests of convenience and justice favor transferring the present action to the Southern District of Indiana. Accordingly, the NCAA's motion to transfer venue is **GRANTED** pursuant to 28 U.S.C. § 1404(a). The Court does not address the merits of the NCAA's motion to dismiss or Plaintiffs' motion for preliminary approval of class action settlement because those motions are moot in light of the Court's ruling. The hearing previously scheduled for Monday, December 22, 2008 is **VACATED**.

IT IS SO ORDERED.