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16 UNITED STATES DISTRICT COURT
 17 NORTHERN DISTRICT OF CALIFORNIA
 18

19 JOSEF ROBINSON,

20 Plaintiff,

21 vs.

22 DIGNITY HEALTH d/b/a CHANDLER
 23 REGIONAL MEDICAL CENTER,

24 Defendant.
 25
 26
 27
 28

No. 3:16-cv-03035-YGR

**DEFENDANT’S NOTICE OF MOTION AND
 MOTION TO DISMISS OR TRANSFER
 FOR IMPROPER VENUE (FED. R. CIV. P.
 12(B)(3), 28 U.S.C. § 1406(a)); OR IN THE
 ALTERNATIVE TO TRANSFER FOR
 CONVENIENCE (28 U.S.C. § 1404(a))**

Date: August 23, 2016
 Time: 2:00 p.m.
 Location: Oakland Courthouse, Courtroom 1,
 Fourth Floor
 Judge: Hon. Yvonne Gonzalez Rogers

Complaint Filed: June 6, 2016
 Trial Date: None Set

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	Page
NOTICE OF MOTION AND MOTION	1
MEMORANDUM OF POINTS AND AUTHORITIES	1
I. STATEMENT OF ISSUES TO BE DECIDED	1
II. INTRODUCTION	1
III. FACTUAL BACKGROUND	3
A. Robinson’s Arizona Employment	3
B. The Arizona Health Plan	3
1. Robinson’s Enrollment in the Arizona Health Plan	3
2. Background Regarding the Arizona Health Plan	4
3. Administration of Dignity Health’s Arizona Health Plan	4
4. The Arizona Health Plan’s Exclusion of Services Related to Sex Transformation	5
5. The Arizona Health Plan Appeal Process	6
C. The Alleged Employment Discrimination	6
D. Arizona EEOC’s Investigation	8
IV. THIS ACTION SHOULD TRANSFERRED TO THE DISTRICT OF ARIZONA UNDER RULE 12(B)(3) AND SECTION 1406(A)	8
A. Legal Standard Under Rule 12(b)(3)	8
B. Section 1406(a) Mandates That This Action Be Transferred	8
V. ALTERNATIVELY, THIS ACTION SHOULD BE TRANSFERRED TO THE DISTRICT OF ARIZONA ON CONVENIENCE GROUNDS PURSUANT TO 28 U.S.C. § 1404	14
VI. CONCLUSION	16

TABLE OF AUTHORITIES
(continued)

		Page
1		
2		
3	CASES	
4	<i>A.J. Indus., Inc. v. United States Dist. Ct.</i> ,	
5	503 F.2d 384 (9th Cir. 1974).....	14
6	<i>Cheng v. Schlumberger</i> ,	
7	2013 WL 5814272 (N.D. Cal. Oct. 29, 2013).....	8
8	<i>Davidson v. Korman</i> ,	
9	2010 WL 3515760 (N.D. Cal. Sept. 8, 2010)	9, 12, 13
10	<i>Decker Coal Co. v. Commonwealth Edison Co.</i> ,	
11	805 F.2d 834 (9th Cir. 1986).....	15, 16
12	<i>Dehaemers v. Wynne</i> ,	
13	522 F. Supp. 2d 240 (D.D.C. 2007)	10
14	<i>Doe 1 v. AOL LLC</i> ,	
15	552 F.3d 1077 (9th Cir. 2009).....	8
16	<i>Ellis v. Costco Wholesale Corp.</i> ,	
17	372 F. Supp. 2d 530 (N.D. Cal. 2005)	14
18	<i>Goodyear Tire & Rubber Co. v. McDonnell Douglas Corp.</i> ,	
19	820 F. Supp. 503 (C.D. Cal. 1992)	14
20	<i>Haller v. Maybus</i> ,	
21	2016 WL 1366823 (S.D. Cal. Apr. 5, 2016)	11
22	<i>Hawkes v. Hewlett-Packard Co.</i> ,	
23	2012 WL 506569 (N.D. Cal. Feb. 15, 2012).....	12, 15
24	<i>Hong v. Morgan Stanley & Co., LLC</i> ,	
25	2012 WL 5077066 (N.D. Cal. Oct. 18, 2012).....	14, 16
26	<i>Johnson v. Payless Drug Stores</i> ,	
27	950 F.2d 586 (9th Cir. 1991).....	10
28	<i>Jones v. GNC Franchising, Inc.</i> ,	
	211 F.3d 495 (9th Cir. 2000).....	14
	<i>McCormack v. Safeway Stores, Inc.</i> ,	
	2012 WL 5948965 (N.D. Cal. Nov. 28, 2012).....	11, 15
	<i>Passantino v. Johnson & Johnson Consumer Products</i> ,	
	212 F.3d 493 (9th Cir. 2000).....	9, 12, 13
	<i>Piedmont Label Co. v. Sun Garden Packing Co.</i> ,	
	598 F.2d 491 (9th Cir. 1979).....	8
	<i>Ramos v. Molina Healthcare, Inc.</i> ,	
	2012 WL 3104849 (C.D. Cal. July 27, 2012)	8, 10

TABLE OF AUTHORITIES
(continued)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

SP Inv. Fund I, LLC v. Lowry,
2016 WL 590192 (C.D. Cal. Feb. 11, 2016).....12, 15

Stebbins v. State Farm Mutual Ins.,
413 F.2d 1100 (D.C. Cir. 1969).....9

Walker v. United States DOC,
2012 U.S. Dist. LEXIS 57421 (E.D. Cal. Apr. 24, 2012).....10

Wood v. Santa Barbara Chamber of Commerce,
705 F.2d 1515 (9th Cir. 1983).....9

STATUTES

28 U.S.C. § 133114

28 U.S.C. § 13912

28 U.S.C. § 140414

28 U.S.C. § 1404(a)1, 14, 15

28 U.S.C. § 1406(a)1, 8, 9, 14

42 U.S.C. § 198110

42 U.S.C. § 2000e-5(f)(3) passim

42 U.S.C. § 2000e-162, 14

Patient Protection and Affordable Care Act § 1557, 42 U.S.C. § 18116.....2

RULES

Fed. R. Civ. Proc. 12(b)(3).....8, 11

1 **NOTICE OF MOTION AND MOTION**

2 TO PLAINTIFF AND HIS ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that this motion will be heard on August 23, 2016, at 2:00 p.m.
4 or as soon thereafter as counsel may be heard before the Honorable Yvonne Gonzalez Rogers,
5 United States District Judge for the Northern District of California, in Courtroom 1, Fourth Floor,
6 located at 1301 Clay Street, Oakland, California 94612.

7 Defendant Dignity Health dba Chandler Regional Medical Center (“Chandler”) will and
8 hereby does move the Court pursuant to Federal Rule of Civil Procedure 12(b)(3) for an order
9 dismissing this action, or alternatively transferring this action to the U.S. District Court for the
10 District of Arizona, pursuant to 28 U.S.C. § 1406(a) on the ground that venue in this district is
11 improper. In the alternative, Chandler will and hereby does move the Court for an order
12 transferring this action to the said district for convenience of parties and witnesses under 28
13 U.S.C. § 1404(a).

14 This motion is and will be based on this Notice of Motion and attached Memorandum of
15 Points and Authorities filed concurrently herewith, the Declarations of Eva-Maria Palermo and
16 Maureen Sterbach, Chandler’s Motion to Dismiss Pursuant to Federal Rule of Civil Procedure
17 12(b)(6), all pleadings and papers on file in this matter and all other such evidence or argument as
18 may be submitted to the Court at or prior to the hearing.

19 **MEMORANDUM OF POINTS AND AUTHORITIES**

20 **I. STATEMENT OF ISSUES TO BE DECIDED**

21 1. Whether this action must be dismissed, or alternatively transferred to the U.S.
22 District Court for the District of Arizona, under 28 U.S.C. § 1406(a) because venue is improper in
23 the Northern District of California under 42 U.S.C. § 2000e-5(f)(3).

24 2. Whether this action should be transferred to the U.S. District Court for the District
25 of Arizona under 28 U.S.C. § 1404(a) on convenience grounds.

26 **II. INTRODUCTION**

27 Plaintiff Josef Robinson filed this employment discrimination lawsuit against Defendant
28 Dignity Health dba Chandler Regional Medical Center (“Chandler”) in the Northern District of

1 California. However, the proper venue for this action is the U.S. District Court for the District of
2 Arizona. Robinson's complaint alleges a cause of action for violation of Title VII of the Civil
3 Rights Act of 1964, 42 U.S.C. § 2000e-16. Title VII includes a specific venue provision, which
4 supersedes the general venue statute (28 U.S.C. § 1391). The Title VII venue provisions requires
5 that an action be brought in: (i) the district in which the alleged unlawful employment practice
6 was committed; (ii) the district in which the employment records are maintained and
7 administered; or (iii) the district in which the plaintiff would have worked but for the alleged
8 employment practice. 42 U.S.C. § 2000e-5(f)(3). Under Title VII, the only proper venue for this
9 case is the District of Arizona, because:

- 10 • Robinson is and was employed by Chandler in Arizona;
- 11 • Robinson alleges discrimination that arises from health coverage exclusions
12 contained in a health benefits plan that applies exclusively to Arizona employees,
13 and that is managed and administered in Arizona;
- 14 • Robinson's employment-related records are maintained and administered in
15 Arizona; and
- 16 • Most of the witnesses with relevant knowledge regarding Robinson's allegations
17 reside in Arizona.

18 As discussed below, Robinson's inclusion of a non-Title VII claim in the complaint (for violation
19 the Patient Protection and Affordable Care Act § 1557, 42 U.S.C. § 18116) does not change this
20 result, as Title VII's venue provision trumps the general venue statute.

21 In an apparent effort to justify venue in the Northern District of California, Robinson's
22 complaint includes a number of inaccurate and incomplete factual allegations, which are
23 contradicted by the declarations filed in support of this motion. This Court should reject
24 Robinson's attempt to avoid an Arizona venue, which is the *mandatory* venue dictated by his own
25 Title VII claim. The complaint was filed in an improper forum and must, therefore, be dismissed
26 or transferred.

1 **III. FACTUAL BACKGROUND**

2 **A. Robinson's Arizona Employment.**

3 Robinson is a resident of Arizona. (Compl. ¶ 15.) He is, and at all relevant times has
4 been, employed as a nurse at Chandler, a Dignity Health hospital located in Chandler, Arizona.
5 (Compl. ¶¶ 17, 30.) Robinson joined Chandler after being recruited by Chandler's talent
6 acquisition office, based in Phoenix, Arizona. (Declaration of Maureen Sterbach ("Sterbach
7 Decl."), ¶ 9.) Robinson has never been a regular employee of any Dignity Health hospital outside
8 of Arizona. (*Id.*, ¶ 10.)

9 Robinson's employment records were and are created, maintained, and administered at his
10 place of employment in Chandler, Arizona. (*Id.*, ¶¶ 4, 11.) The employment records are also
11 processed and uploaded to an electronic database—a task that is performed by Dignity Health's
12 corporate office located in Phoenix, Arizona. (*Id.*) In addition to the electronic copy, a hard copy
13 of Robinson's personnel records is maintained locally by the Human Resources Department at
14 Chandler. (*Id.*, ¶ 11.)

15 Robinson's allegation that employment records relevant to the alleged unlawful
16 employment practices "are maintained and administered at Dignity Health's corporate
17 headquarters in San Francisco" is factually incorrect. (Compl., ¶ 12.) The employment records
18 for employees of Chandler are not physically maintained or administered by Dignity Health's San
19 Francisco headquarters. (Sterbach Decl., ¶ 12.)

20 **B. The Arizona Health Plan.**

21 **1. Robinson's Enrollment in the Arizona Health Plan.**

22 When hired as an employee of Dignity Health in 2015, Robinson was offered the choice
23 of coverage under one of two self-funded health plans available to Dignity Health's Arizona
24 employees. (Declaration of Eva-Maria Palermo ("Palermo Decl."), ¶ 11.) Robinson did not
25 actively elect to enroll in a medical plan, and was therefore enrolled by default in the Dignity
26 Health Arizona Preferred Plan (the "Arizona Health Plan" or the "Plan"). (*Id.*) And Robinson
27 did not subsequently change his medical plan election during open enrollment. (*Id.*)

1 **2. Background Regarding the Arizona Health Plan.**

2 Dignity Health’s Arizona Health Plan dates back prior to 1999 when Dignity Health was
3 named Catholic Healthcare West (“CHW”). At the time, there was only one CHW hospital in
4 Arizona, St. Joseph’s Medical Center in Phoenix, Arizona, which was owned by CHW subsidiary
5 Mercy Healthcare Arizona, Inc. Employees of St. Joseph’s were covered by the Mercy
6 Healthcare Arizona, Inc. Employee Health Care Plan, which was offered under the system-wide
7 CHW Flexible Benefits Plan. (*Id.*, ¶ 4.) The Mercy Healthcare Arizona, Inc. Employee Health
8 Care Plan excluded coverage for “transsexual or gender reassignment procedures.” (*Id.*)

9 Effective January 1, 2000, the Mercy Healthcare Arizona, Inc. Employee Health Care
10 Plan changed its name to the “Catholic Healthcare West - Arizona Medical Plan.” (*Id.*, ¶ 5.) The
11 restated plan continued to be available only to CHW’s employees in Arizona and continued to
12 exclude coverage for “transsexual or gender reassignment procedures.” (*Id.*)

13 CHW acquired Chandler Regional Medical Center—where Robinson works—in 1999
14 and, shortly thereafter in October 2000, Chandler’s employees become covered under the
15 Catholic Healthcare West – Arizona Medical Plan. (*Id.*, ¶ 6.) The Catholic Healthcare West -
16 Arizona Medical Plan was amended and/or restated several times between 2000 and the present,
17 including by changing the name of the plan in 2013 to reflect the hospital system’s name change
18 from CHW to Dignity Health (which occurred in 2012) and to provide two component plans – the
19 Dignity Health Arizona Preferred Plan (in which Robinson is enrolled) and the Dignity Health
20 Arizona Premier Plan. (*Id.*, ¶ 7.) These component plans continue to be offered only to Dignity
21 Health employees in Arizona and continue to exclude coverage for gender transition surgery and
22 related benefits. These plans are not offered to Dignity Health employees in any state other than
23 Arizona. (*Id.*)

24 **3. Administration of Dignity Health’s Arizona Health Plan.**

25 Dignity Health’s Health and Welfare Benefits Department, which is based in Arizona, is
26 responsible for the management and administration of all of the employee health plans in each
27 state in which Dignity Health operates, including the Arizona Health Plan. (*Id.*, ¶ 8.) The Health
28 and Welfare Benefits Department is also responsible for the compliance function for all of

1 Dignity Health’s employee medical plans. (*Id.*) The Arizona Health Plan documents,
 2 amendments, and other compliance-related records are created and maintained in Arizona. (*Id.*, ¶
 3 9.)

4 In addition to the Health and Welfare Benefits Department, Dignity Health has an Arizona
 5 Steering Committee, which is also based in Arizona, responsible for reviewing the Plan’s
 6 performance on a quarterly basis and for making decisions regarding benefits and coverage
 7 exclusions in the self-funded health plans offered to Dignity Health employees in Arizona.
 8 (Sterbach Decl., ¶ 13; Palermo Decl., ¶ 10.) Membership of the Arizona Steering Committee
 9 includes:

- 10 ○ Maureen Sterbach, Vice President, Human Resources – Arizona Service Area
- 11 ○ Chuck Sowers, Vice President, Chief Financial Officer – Chandler Regional
 12 Medical Center and Mercy Gilbert Medical Center;
- 13 ○ Marc Lato, MD, Medical Staff Offices – St. Joseph’s Hospital and Medical Center;
- 14 ○ Jeffrey Jackson, Vice President, Chief Financial Officer – St. Joseph’s Hospital
 15 and Medical Center;
- 16 ○ Doneen Grimm, Pharmacy Director – St. Joseph’s Hospital and Medical Center;
- 17 ○ Todd Ricotta, Executive Director – Arizona Care Network;
- 18 ○ Eva-Maria Palermo, Health & Welfare Manager – System Office Phoenix, and
- 19 ○ Larita Knight, Manager, Human Resources – Arizona Service Area.

20 (Sterbach Decl., ¶ 13.)

21 **4. The Arizona Health Plan’s Exclusion of Services Related to Sex**
 22 **Transformation.**

23 The Arizona Health Plan contains 90 enumerated coverage exclusions, one of which is an
 24 exclusion of coverage for “[t]reatment, drugs, medicines, services and supplies for, or leading to,
 25 sex transformation surgery.” (Compl. Ex. C, pg. 58.) This coverage exclusion constitutes the
 26 purported “unlawful” discriminatory practice that gives rise to Robinson’s claims against Dignity
 27 Health. (Compl. ¶¶ 55-58, 64-70.) Notably, this coverage exclusion is contained in the Arizona
 28 Health Plan, and is applicable *exclusively* to Dignity Health employees who work in Arizona.

1 (Palermo Decl., ¶ 7.) As explained above, the exclusion of services related to sex transformation
 2 surgery originated prior to 1999 as an exclusion in the Mercy Healthcare Arizona, Inc., Employee
 3 Health Care Plan, and has existed in every version of the Arizona Health Plan since that time.

4 (Palermo Decl., ¶¶ 4, 5, 7.)

5 **5. The Arizona Health Plan Appeal Process.**

6 Benefits coverage determinations under the Plan are administered by third-party
 7 administrator, United Medical Resources (“UMR”), in accordance with the terms of the Plan.¹
 8 (Compl. ¶ 31.) All Plan coverage decisions are made by UMR based on Plan provisions specified
 9 in the Plan Document, without input from Dignity Health’s corporate headquarters in San
 10 Francisco regarding individual coverage determinations. (Palermo Decl., ¶ 17.)

11 If an employee seeks to dispute a denial of benefits coverage by UMR under the Arizona
 12 Health Plan, the employee is afforded three levels of appeal. First, the employee may appeal to
 13 UMR by submitting a written request for review to UMR’s Claims Appeal Unit in Salt Lake City,
 14 Utah. (Compl. Ex. C, pg. 68.) If the first appeal is denied, the employee may then submit a
 15 second-level appeal to UMR. (*Id.* at p. 70.) Finally, if the second-level appeal is denied, the
 16 employee may file a third-level appeal with the Dignity Health Employee Benefits Administrative
 17 Committee in Phoenix, Arizona. (*Id.* at p. 71.)

18 **C. The Alleged Employment Discrimination.**

19 Robinson is a transgender individual who identifies as male. (Compl. ¶ 22.) He is
 20 currently in the process of physically transitioning from a female to a male. (Compl., Ex. G.)
 21 Robinson brought the present suit because he was denied coverage under the Arizona Health Plan
 22 for services related to his sex transformation surgery. In June 2015, Robinson filed a benefits
 23 claim under the Arizona Health Plan for pre-authorization of a double mastectomy related to his
 24 transition. (Palermo Decl., ¶ 13.) In response, UMR issued a pre-service opinion denying the
 25 claim based on the Plan exclusion of coverage for sex transformation surgery. (*Id.*) Robinson
 26 appealed the denial of pre-authorization in July 2015. In a second pre-service response, UMR
 27 again denied the appeal based on the Plan exclusion. (*Id.* ¶ 14.) In August 2015, Robinson paid

28 ¹ UMR is based in Salt Lake City, Utah and Wausau, Wisconsin. (Compl., Ex. C.)

1 out-of-pocket for a double mastectomy. (Compl. ¶ 38.) After receiving the procedure, Robinson
2 filed a post-service appeal. (Palermo Decl., ¶ 16.) UMR issued its denial of the post-service
3 appeal on February 10, 2016, again based on the Plan exclusion. (*Id.*) Robinson was provided
4 information regarding additional appeal options; however, he chose not to pursue a second-level
5 post-service appeal to UMR or a voluntary appeal to Dignity Health’s Employee Benefits
6 Administrative Committee, which is available to review individual coverage determinations as
7 described in the Plan documents. (*Id.*) All of Robinson’s appeals were decided by UMR, which
8 makes all individual coverage determinations without input from Dignity Health. (Palermo Decl.,
9 ¶ 17.)

10 Importantly, Robinson does not allege that any Dignity Health employee, manager, or
11 executive administered the Plan in an intentionally discriminatory matter. Nor does he allege that
12 any Dignity Health employee, manager, or executive had discretion to make exceptions to the
13 coverage exclusion. Rather, he alleges the purported discrimination is implicit in the Plan
14 exclusion itself. (Compl. ¶¶ 55-57, 64-70, Ex. C.)

15 The only alleged communication with any Dignity Health employee based outside of
16 Arizona was an email chain initiated by Robinson’s fiancée, Melissa Mayo, with Dignity Health’s
17 Chief Human Resources Officer Darryl Robinson (forwarded to him by Dignity Health CEO,
18 Lloyd Dean), more than a month after plaintiff Robinson underwent the double mastectomy for
19 which he had been denied insurance coverage. (Compl. Ex. G.) Darryl Robinson is based in
20 Dignity Health’s corporate office in San Francisco, California. By the time of Ms. Mayo’s first
21 email in September 2015, the purported “unlawful” employment practice (*i.e.* the Arizona Health
22 Plan’s denial of coverage) was already complete, and plaintiff Robinson had already begun the
23 appeal process through UMR contemplated in the Plan. Ms. Mayo’s email communication with
24 Darryl Robinson requested that Dignity Health provide Robinson with a fully inclusive plan that
25 would provide coverage for gender transition surgery and related services. (*Id.*) However, the
26 Arizona Health Plan does not contemplate the involvement of Darryl Robinson (or any other
27 Dignity Health personnel, for that matter) in the review of individual coverage determinations,
28 such as the denial of coverage at issue here. (*See* Compl. Ex. C; Palermo Decl., ¶ 17.) Rather,

1 the Plan calls for individual coverage determinations to be made by UMR (not located in
 2 California). (See Compl. Ex. C at p. 70-71; Palermo Decl., ¶ 17.) Furthermore, Plan benefits and
 3 exclusions are reviewed and decided upon by Dignity Health’s Arizona-based Health and Welfare
 4 Benefits Department and Arizona Steering Committee. (Sterbach Decl., ¶ 13.)

5 **D. Arizona EEOC’s Investigation.**

6 Robinson ultimately filed a charge of discrimination with the Phoenix, Arizona office of
 7 the EEOC on December 3, 2015. (Compl. ¶ 18, Ex. A.) On May 12, 2016, the Arizona office of
 8 the EEOC issued a Determination, concluding that “[Robinson was] denied authorization in two
 9 separate letters based on [Chandler’s] decision on the ‘sex transformation’ exclusion in their
 10 health care plan. . . . [Robinson] alleged [Chandler’s] health care plan deprives him of a valuable
 11 employment benefit on the basis of sex.” (Compl. Ex. A.) Robinson was issued a Notice of
 12 Right to Sue by the Phoenix, Arizona office of the EEOC on May 16, 2016. (Compl. Ex. B.)

13 **IV. THIS ACTION SHOULD TRANSFERRED TO THE DISTRICT OF ARIZONA**
 14 **UNDER RULE 12(b)(3) AND SECTION 1406(a).**

15 **A. Legal Standard Under Rule 12(b)(3).**

16 A defendant may raise a contention of improper venue in a motion under Federal Rule of
 17 Civil Procedure 12(b)(3). On a Rule 12(b)(3) motion, “Plaintiff ha[s] the burden of showing that
 18 venue [is] properly laid in the Northern District of California.” *Piedmont Label Co. v. Sun*
 19 *Garden Packing Co.*, 598 F.2d 491, 496 (9th Cir. 1979); *see also Cheng v. Schlumberger*, 2013
 20 WL 5814272, at *2 (N.D. Cal. Oct. 29, 2013) (“Because [defendant] challenges venue, [plaintiff]
 21 bears the burden to establish that venue in this District is proper.”). “Pleadings need not be
 22 accepted as true, and facts outside the pleadings may be considered.” *Doe I v. AOL LLC*, 552
 23 F.3d 1077, 1081 (9th Cir. 2009); *see also Ramos v. Molina Healthcare, Inc.*, 2012 WL 3104849,
 24 at *2 (C.D. Cal. July 27, 2012) (“When determining proper venue, a court can look beyond the
 25 pleadings of the claim, and does not have to take a plaintiff’s factual allegations as true.”).

26 **B. Section 1406(a) Mandates That This Action Be Transferred.**

27 Section 1406(a) provides in mandatory terms: “[t]he district court of a district in which is
 28 filed a case laying venue in the wrong division or district *shall* dismiss, or if it be in the interest of

1 justice, transfer such case to any district or division in which it could have been brought.” 28
 2 U.S.C. § 1406(a) (emp. added).² Venue in the Northern District of California is plainly improper
 3 as Robinson’s own Title VII claim mandates that the case be heard in the District of Arizona.

4 Title VII contains a specific venue provision that authorizes suit in: (i) the district in
 5 which the alleged unlawful employment practice was committed; (ii) the district in which the
 6 employment records are maintained and administered; or (iii) the district in which the plaintiff
 7 would have worked but for the alleged employment practice.³ 42 U.S.C. § 2000e-5(f)(3);
 8 *Passantino v. Johnson & Johnson Consumer Products*, 212 F.3d 493, 504 (9th Cir. 2000). “**Only**
 9 where the putative employer cannot be brought before the court in one of those districts may the
 10 action be filed in the judicial district in which he has ‘his principal office.’” *Stebbins v. State*
 11 *Farm Mutual Ins.*, 413 F.2d 1100, 1102 (D.C. Cir. 1969) (emp. added). “[V]enue should be
 12 found where the effect of the unlawful employment practice is felt: where the plaintiff works, and
 13 where the decision to engage in that practice is implemented.” *Passantino*, 212 F.3d at 505 (emp.
 14 added). The mere fact that an employee had job-related interactions with his or her employer in a
 15 foreign district does not give rise to proper venue in the foreign district. *Davidson*, 2010 WL
 16 3515760, at *4-5 (ruling that Title VII venue was not authorized in the Northern District of
 17 California notwithstanding the plaintiff’s allegations that, *inter alia*: (1) plaintiff negotiated her
 18 employment agreement via telephone communications with corporate representatives in San
 19 Francisco, and (2) plaintiff was supervised by, and had frequent discussions with, a manager who
 20 was based in San Francisco).

21 The fact that Robinson alleges a cause of action under the Affordable Care Act, in

22 _____
 23 ² Chandler acknowledges that “[t]he interest of justice generally requires transferring an action
 24 brought in an improper venue instead of dismissing it.” *Davidson v. Korman*, 2010 WL 3515760,
 25 at *3 (N.D. Cal. Sept. 8, 2010). However, a court has the discretion to dismiss a case under
 26 section 1406(a) if it finds that “the plaintiff ‘purposefully sought to avoid’ prosecution of his case
 27 in a different jurisdiction ‘through blatant forum shopping.’” *Id.* (citing *Wood v. Santa Barbara*
 28 *Chamber of Commerce*, 705 F.2d 1515 (9th Cir. 1983)). Here, the Court should exercise its
 discretion to dismiss the complaint pursuant to section 1406(a) because Robinson’s choice to file
 in the Northern District of California—despite Arizona’s clear and exclusive connection to and
 interest in the action—constitutes “blatant forum shopping.”

³ The third criterion is irrelevant in this case because Robinson continues to be employed at
 Chandler.

1 addition to his Title VII claim, does not change the result. “[W]hen a plaintiff brings a Title VII
2 action, which is covered by Title VII’s restrictive venue provision, as well as an action governed
3 by the general venue provision, the narrower venue provision of § 2000e-5(f)(3) controls.”
4 *Dehaemers v. Wynne*, 522 F. Supp. 2d 240, 249 (D.D.C. 2007); *see also Walker v. United States*
5 *DOC*, 2012 U.S. Dist. LEXIS 57421, 21-22 (E.D. Cal. Apr. 24, 2012) (ruling that Title VII venue
6 provision controls, notwithstanding plaintiff’s assertion of a second cause of action that would
7 otherwise be subject to the general venue statute); *Ramos*, 2012 WL 3104849, at *3 (ruling that
8 Title VII’s venue provision required transfer of plaintiff’s entire action, including the non-Title
9 VII claims under the ADEA, FEHA, 42 U.S.C. § 1981, and common law); *Johnson v. Payless*
10 *Drug Stores*, 950 F.2d 586, 587-88 (9th Cir. 1991) (“given the conflict between the two statutes,
11 well settled principles of statutory construction dictate that the later, specific venue provision
12 (section 2000e-5(f)(3)) applies rather than the earlier, general venue provision (section 1391b”).

13 Robinson alleges that venue is proper in California because “the unlawful employment
14 practice was committed at Dignity Health’s corporate headquarters in San Francisco and
15 employment records relevant to such practice are maintained and administered at Dignity
16 Health’s corporate headquarters in San Francisco.” (Compl. ¶ 12.) Each of these two alleged
17 bases for venue is factually incorrect and is disproven by the sworn declarations accompanying
18 this Motion.

19 *First*, the “unlawful employment practice” upon which Robinson bases his Title VII claim
20 is the Plan coverage exclusion related to sex transformation surgery. (Compl. ¶¶ 58, 70 (“By
21 excluding all healthcare related to ‘sex transformation surgery’ from the only available health
22 plan it provides to employees, Dignity Health has unlawfully discriminated against Mr.
23 Robinson”).) This exclusion was not, as the Complaint alleges, “committed at Dignity Health’s
24 corporate headquarters in San Francisco.” (Compl. ¶ 12.) Rather, the exclusion is contained in
25 Dignity Health’s Arizona Health Plan, which exclusively covers employees working in Arizona,
26 and which is managed and administered by Dignity Health’s Health and Welfare Benefits
27 Department and Arizona Steering Committee, both of which are based in Arizona. (Compl. Ex.
28 C, pg. 58; Palermo Decl., ¶¶ 8, 10; Sterbach Decl., ¶ 13.) The exclusion was implemented in

1 Arizona, and applied to an Arizona employee, to deny coverage for a medical procedure that was
2 sought and performed in Arizona. There is no allegation in this case regarding any Dignity
3 Health benefits plan or health coverage exclusion that applies to California employees. To the
4 contrary, the complaint indicates that such benefits coverage for sex transformation surgery is
5 already available to Dignity Health employees in California, and is only excluded for Arizona
6 employees. (Compl., Ex. G.)

7 *Second*, Robinson’s allegation that “employment records relevant to such practice are
8 maintained and administered at Dignity Health’s corporate headquarters in San Francisco” is also
9 incorrect. Robinson’s employment records were and are created and maintained at the hospital in
10 Chandler, Arizona where he is employed. (Sterbach Decl., ¶¶ 4, 11.) In addition to Robinson’s
11 personnel records, the Arizona Health Plan documents, amendments, and other compliance-
12 related records are created and maintained in Arizona. (Palermo Decl., ¶ 9.) Thus, the location of
13 Robinson’s employment and Plan-related records does not support venue in the Northern District
14 of California. *See McCormack v. Safeway Stores, Inc.*, 2012 WL 5948965, at *2-3 (N.D. Cal.
15 Nov. 28, 2012) (granting employer’s Rule 12(b)(3) venue motion based on employer’s
16 declaration that “it does not ‘maintain’ or ‘administer’ employment records relevant to its Arizona
17 employees [at its corporate headquarters] in California. Rather, such records are maintained and
18 administered through its Phoenix District office, located in Tempe, Arizona.”); *see also Haller v.*
19 *Maybus*, 2016 WL 1366823, at *1 (S.D. Cal. Apr. 5, 2016) (“Even though the records are
20 electronic and accessible in multiple districts, the Southern District of California is not a proper
21 venue under the statute because, if nothing more, the employment records were created in
22 Arizona.”).

23 Consequently, Robinson has failed to meet his burden of establishing that venue is proper
24 in the Northern District of California under any of the three prongs set forth in 42 U.S.C. § 2000e-
25 5(f)(3). Robinson’s sole alleged connection to this District is a handful of emails – to which **he**
26 **was not even a party** – initiated by his fiancée and with Dignity Health executives in San
27 Francisco. Ms. Mayo’s sent her first email **after** the alleged unlawful employment practice was
28 already complete—*i.e.*, after Robinson had already obtained his double mastectomy and was

1 denied coverage under the Arizona Health Plan. A self-serving email, sent to a California
2 executive, by someone other than Robinson, after the alleged discrimination had occurred, and in
3 contemplation of filing the instant lawsuit, cannot manufacture venue in the Northern District of
4 California. *See, e.g., SP Inv. Fund I, LLC v. Lowry*, 2016 WL 590192, at *6 (C.D. Cal. Feb. 11,
5 2016) (finding that phone and mail communications to a California defendant were not sufficient
6 to support the plaintiff's choice of venue in California because the plaintiff made no *physical*
7 contact with California and all relevant employment acts took place in New York); *Hawkes v.*
8 *Hewlett-Packard Co.*, 2012 WL 506569, at *6 (N.D. Cal. Feb. 15, 2012) (rejecting the plaintiff's
9 choice of venue in California where all relevant employment acts took place in Virginia, and the
10 only connections to California were: (i) the defendant's corporate headquarters, and (ii)
11 communications between the plaintiff's counsel and defendant's California employees).

12 In *Davidson*, 2010 WL 3515760, a plaintiff who lived within the Northern District of
13 California but worked elsewhere sued her employer in the Northern District under Title VII. The
14 employer-defendant moved to dismiss or transfer the suit pursuant to 42 U.S.C. § 2000e-5(f)(3)
15 on the ground that Plaintiff did not work in the Northern District and none of the alleged unlawful
16 employment practices took place in the Northern District. In response, the plaintiff argued that
17 venue was proper in the Northern District under *Passantino* because the supposed "effects" of the
18 unlawful employment practice were felt in the Northern District. Relying on the language of
19 *Passantino*, the *Davidson* plaintiff specifically cited the following facts in support of her
20 argument that the "effects" of the defendant's adverse employment decision were felt in the
21 plaintiff's chosen forum:

- 22 (1) Plaintiff currently resides in San Francisco and continues to
- 23 feel the effects of Defendants' adverse employment practices; (2)
- 24 Plaintiff negotiated her employment agreement over the phone
- 25 from her San Francisco home; (3) Plaintiff's hire letter was sent to
- 26 her San Francisco home; (4) Plaintiff sometimes traveled for her
- 27 job, and after would return directly to her home in San Francisco;
- 28 (5) Plaintiff was supervised by and had frequent discussions with
- an individual who was based in San Francisco; (6) Plaintiff once
- worked on a research project at a San Francisco law library; and
- (7) Plaintiff is aware that attorneys in her Sacramento office
- sometimes traveled to San Francisco to work on projects.

1 *Id.* at *8. The court found these facts insufficient to support venue in the Northern
2 District, explaining:

3 “Plaintiff’s reliance on an out-of-context quotation from the
4 *Passantino* decision is misplaced. . . . The Ninth Circuit [stated]
5 ‘venue should be found where the effect of the unlawful
6 employment practice is felt: *where the plaintiff works*, and the
7 decision to engage in that practice is implemented.’ . . . *Passantino*
8 fails to support Plaintiff’s argument that venue for her wrongful
9 discharge claim is proper in this district, where Plaintiff lives. Nor
10 does *Passantino* support Plaintiff’s argument that venue is proper
11 in this district because she had interactions with this district in
12 connection with her job.”

13 *Id.* at *9 (emphasis in original; citation omitted).

14 The *Davidson* decision demonstrates the force of Title VII’s requirement that venue be
15 based on the location of the plaintiff’s employment, and it establishes that venue in the Northern
16 District of California is not proper in this case. Indeed, the *Davidson* plaintiff, unlike Robinson,
17 had some real contacts with the Northern District of California. The *Davidson* plaintiff not only
18 had significant communications with her employer in San Francisco, but also she lived in San
19 Francisco, had occasionally worked in San Francisco, and had been supervised by a manager
20 based in San Francisco. Still, these forum contacts were *insufficient* to authorize venue under
21 Title VII. By comparison, Robinson’s connections to the Northern District are negligible. He
22 does not allege that he lived here, worked here, reported to any manager based here, or personally
23 communicated with any corporate representative here. His complaint’s sole contact with this
24 forum is a *post hoc* email chain initiated by his fiancée.

25 Accordingly, under Title VII’s specific venue provision, venue is improper in the
26 Northern District of California. The complaint must be transferred to the District of Arizona,
27 which is the *only* district “where the effect of the [alleged] unlawful employment practice is felt:
28 where the plaintiff works, and where the decision to engage in that practice is implemented.”
Passantino, 212 F.3d at 505.

1 **V. ALTERNATIVELY, THIS ACTION SHOULD BE TRANSFERRED TO THE**
2 **DISTRICT OF ARIZONA ON CONVENIENCE GROUNDS PURSUANT TO 28**
3 **U.S.C. § 1404.**

4 Even if the Court does not find that Robinson filed this action in an improper venue
5 mandating transfer under section 1406(a) and Title VII, the Court should nonetheless transfer this
6 action to the District of Arizona because Arizona is the most convenient venue. Under
7 Section 1404(a), a district court, “[f]or the convenience of the parties and witnesses, [and] in the
8 interest of justice . . . may transfer a case to another district court in which the case might have
9 been brought.” “While Title VII’s venue provision does not displace the traditional section 1404
10 analysis, ‘[t]he factors expressly identified as a basis for venue under Title VII . . . should . . . be
11 key factors in analyzing the ‘interests of justice’ prong of section 1404(a) analysis.” *Hong v.*
12 *Morgan Stanley & Co., LLC*, 2012 WL 5077066, at *2 (N.D. Cal. Oct. 18, 2012) (citing *Ellis v.*
13 *Costco Wholesale Corp.*, 372 F. Supp. 2d 530, 537 (N.D. Cal. 2005)). To support a motion to
14 transfer under Section 1404(a), the moving party must establish that (i) venue would be proper in
15 the transferee district and the action could have been brought in the transferee district; and (ii)
16 transfer will serve the convenience of the parties and witnesses, and will promote the interests of
17 justice. *See Goodyear Tire & Rubber Co. v. McDonnell Douglas Corp.*, 820 F. Supp. 503, 506
18 (C.D. Cal. 1992); *accord A.J. Indus., Inc. v. United States Dist. Ct.*, 503 F.2d 384, 386-87 (9th
19 Cir. 1974).

20 Here, there can be no dispute that venue is proper in Arizona. Chandler is located in
21 Arizona and does business in Arizona, and Robinson resides and works in Arizona. Also, the
22 action could have been filed in Arizona because federal courts in Arizona have federal question
23 jurisdiction over this action—just as this Court does. *See* 28 U.S.C. § 1331. Therefore, Chandler
24 has easily met its burden on the first prong of Section 1404(a).

25 Chandler also meets its burden on the second prong: convenience and interests of justice.
26 To determine whether transfer would promote the interests of justice, courts consider multiple
27 factors, including the plaintiff’s choice of forum; the convenience of the parties; the convenience
28 of the witnesses; the ease of access to evidence; the familiarity of each forum with the applicable
law; and any local interest in the controversy. *See Jones v. GNC Franchising, Inc.*, 211 F.3d 495,

1 498-99 (9th Cir. 2000); *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th
2 Cir. 1986). An analysis of these factors supports transfer to Arizona.

3 **Plaintiff's choice of forum.** Although a plaintiff's choice of forum is typically entitled to
4 deference, that choice receives less weight when the chosen forum is not the plaintiff's residence.
5 *Hawkes*, 2012 WL 506569, at *4 ("Because Hawkes does not reside in California, her choice of
6 forum receives less weight."); *SP Inv. Fund I, LLC*, 2016 WL 590192, at *6 ("The deference
7 afforded a plaintiff's choice of forum is substantially reduced . . . however, when the venue lacks
8 a significant connection to the activities alleged in the complaint."). "[A] fundamental principle
9 underpinning the § 1404(a) analysis is that litigation should proceed in that place where the case
10 finds its center of gravity. Deference to the plaintiff's choice of forum should be minimized
11 where, as here, the forum selected by plaintiffs is not the situs of material events." *McCormack v.*
12 *Safeway Stores, Inc.*, 2012 WL 5948965, at *4 (N.D. Cal. Nov. 28, 2012) (internal citations
13 omitted).

14 Here, Robinson's choice of forum in the Northern District of California does not warrant
15 deference because he does not reside in the chosen venue, the venue lacks significant connection
16 to the health insurance coverage that represents the "center of gravity" for his discrimination
17 claim, and the venue is not the situs of material events. Further, it would not inconvenience
18 Robinson to litigate in the District of Arizona, as he lives there. Nor would it inconvenience his
19 legal counsel, given that three of Plaintiff's attorneys of record have already had to seek
20 admission in this District *pro hac vice* because they practice outside of California.

21 **Ease of access to evidence and convenience of the parties and witnesses.** As discussed
22 above, the situs of material events in this case is Arizona – not the Northern District of California.
23 Like Robinson, the vast majority of the witnesses reside and work in Arizona, including most of
24 the benefits and human resources personnel with whom Robinson communicated regarding the
25 Arizona Health Plan coverage exclusion. For example, members of Dignity Health's Health and
26 Welfare Benefits Department and Arizona Steering Committee—which are responsible for
27 making decisions regarding Plan benefits and coverage exclusions—all reside and work in
28 Arizona. (Sterbach Decl., ¶ 13; Palermo Decl., ¶ 10.) Additionally, any employment records or

1 health plan records that may become relevant in this action are created and primarily maintained
2 in Arizona. (Palermo Decl., ¶¶ 8-9; Sterbach Decl., ¶¶ 4, 11.)

3 Therefore, the Arizona location of virtually all witnesses and evidence weighs in favor of
4 transferring venue to Arizona.

5 **The local interest in the controversy.** “Among the public factors for a court considering
6 a motion to transfer is the ‘local interest in having localized controversies decided at home.’”
7 *Hong*, 2012 WL 5077066, at *6 (citing *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d
8 834, 843 (9th Cir. 1986)).

9 Here, the Northern District has no discernable interest in an Arizona Health Plan that
10 applies exclusively to employees who work at one of Dignity Health’s four Arizona hospitals.
11 Robinson does not, and cannot, allege that a single California resident is affected by the Arizona
12 Plan coverage exclusion underlying his Title VII claim. A court sitting in California should not
13 adjudicate health care coverage issues that implicate the laws and policies of a different state, and
14 that solely impacts employees of a different state.

15 For all these reasons, the Court should exercise its discretion to transfer this action to the
16 district in which Robinson lives and works, and in which the witnesses with whom he personally
17 interacted also live and work: the District of Arizona.

18 **VI. CONCLUSION**

19 For the foregoing reasons, Chandler respectfully requests that this Court enter an order
20 transferring the action to the District of Arizona.

21 Dated: July 15, 2016

MANATT, PHELPS & PHILLIPS

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