IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:18-mc-00225-RBJ-KLM

JENNIFER WEDDLE,

Movant,

v.

LULA WILLIAMS,
GLORIA TURNAGE,
GEORGE HENGLE,
DOWIN COFFY, and
MARCELLA P. SINGH,
on behalf of themselves and all others similarly situated,

Respondents.

RESPONSE IN OPPOSITION TO MOTION TO TRANSFER

Rule 45 places the burden on the party seeking a transfer to show that "exceptional circumstances" warranting a transfer are present. But Plaintiffs[1] give only conclusory assertions as to why Ms. Weddle's motion to quash their Subpoena should be litigated in the Eastern District of Virginia, and not here, where Ms. Weddle lives, is admitted to practice, works, and has hired counsel to defend her. They point to other subpoena-related motions that have been transferred to the issuing court and say that court is more familiar with the underlying litigation. The transferred motions, however, raise issues easily distinguishable from those presented in Ms. Weddle's motion. And if it were "exceptional" that a court is familiar with a case on its own docket, a transfer would always be proper and Rule 45(f)'s "exceptional circumstances"

[1] This response, like Ms. Weddle's motion to quash and reply in support of that motion, refers to Respondents as "Plaintiffs."

requirement would be meaningless. Plaintiffs fail to meet their burden, so Ms. Weddle respectfully requests that this Court deny their motion to transfer.

I. FACTS

In *Williams et al. v. Big Picture Loans, LLC et al.*, No. 3:17-cv-00461 (E.D. Va.) ("*Williams*"), Plaintiffs allege that certain consumer-lending companies owned by the Lac Vieux Desert Band of Lake Superior Chippewa Indians (the "Tribe") made loans to them in violation of state usury law. The Tribe responds that its companies are entitled to tribal sovereign immunity from suit. Yet Plaintiffs claim that, due to the nature of the 2015 sale transferring control of consumer-lending company Bellicose Capital, LLC ("Bellicose") to the Tribe, the defendant companies are not in fact Tribal, and so are not immune from suit. The *Williams* court denied the Tribe's assertion of immunity. The Tribe appealed to the U.S. Court of Appeals for the Fourth Circuit and has asked that court to stay discovery against the Tribal entities until the appeal is decided. *See Williams et al. v. Big Picture Loans, LLC et al.*, No. 18-1827 (4th Cir.), *Mot. to Stay* [#48-1] at 8-9.

Meanwhile, Plaintiffs have sought discovery from people and entities across the country, including (among others) the Tribe's attorneys, employees of the Tribal companies, and Matt Martorello, a former principal of Bellicose and a named defendant. In response to interrogatories, Mr. Martorello stated that he intends to assert a good-faith defense based on "non-privileged information" provided by Ms. Weddle and other attorneys. *Objections and Responses to Interrogatories* [#11-4] at 3-4. He also identified Ms. Weddle as someone having relevant information. *Am. Initial Disclosures* [#11-2] at 4.

But it is incorrect that Ms. Weddle gave Mr. Martorello legal advice on the matters at issue or has discoverable information. Since 2011, Greenberg Traurig has represented certain entities in which Mr. Martorello is or was a principal, including Bellicose. *Aff. of Jennifer Weddle* [#1-1] at ¶ 6. And in 2018, Mr. Martorello retained Greenberg Traurig to represent him individually in a class-action lawsuit in the Northern District of California. *Decl. of Jennifer Weddle* [#17-1] at ¶ 4. Before then, however, Greenberg Traurig had not given Mr. Martorello legal advice in an individual capacity. *Id.* And Greenberg Traurig did not represent any person or entity involved in the 2015 sale in which Mr. Martorello sold Bellicose to the Tribe. *Id.* ¶ 6. Per the terms of the 2015 sale contract, the Tribe acquired all of Bellicose's privileges. The sale contract also required that Mr. Martorello certify that all company files were transferred to the Tribe or destroyed. *Id.* ¶ 5. Mr. Martorello informed Greenberg Traurig of that requirement, and, in turn, Greenberg Traurig contacted the Tribe's counsel requesting direction as to the client files in the firm's custody. *Id.* ¶¶ 5, 7. After confirming that the Tribe did not intend to engage Greenberg Traurig going forward and understood the files to be working files and/or duplicative of those the Tribe had in its possession or had acquired, the Tribe directed Greenberg Traurig's deletion of the Bellicose files, and Greenberg Traurig complied with that direction. *Id.* ¶¶ 7-8. Even if Greenberg Traurig had the files Plaintiffs seek, Greenberg Traurig is a mere custodian; any such files would be the Tribe's files and the Tribe holds the privilege as to those files. But this is an academic point, because Ms. Weddle and other Greenberg Traurig lawyers complied with the privilege holder's direction in 2016 and deleted the Bellicose files and disposed of them by secure methods. *Id.* ¶ 8.

In any event, Plaintiffs delivered to a secretary at Greenberg Traurig, LLP's ("Greenberg Traurig") Denver office a subpoena duces tecum ("the Subpoena"),[2] demanding that Ms. Weddle produce documents and communications covering a broad range of subject-matters and without date limitations. *Subpoena* [#1-2] at 7-8. Ms. Weddle moved to quash the Subpoena, arguing that it demands the production of information that is privileged, confidential, and not within Ms. Weddle's control; that it demands information irrelevant to the claims and disproportionate to the needs of the case; and that compliance would subject her and Greenberg Traurig to undue burden. *See generally Mot. to Quash* [#1]. Plaintiffs filed a response, *Opp'n to Mot. to Quash* [#12], to which Ms. Weddle replied, *Reply in Support of Mot. to Quash* [#17].

Plaintiffs also filed a motion to transfer the motion to quash to the Eastern District of Virginia. *Mot. to Transfer* [#11]. In that motion, Plaintiffs argue that a transfer is warranted because (1) this dispute "involves fact-intensive issues touching on issues of tribal sovereign immunity and attorney-client privilege for acquired corporate entities," *id.* at 12; (2) they have served subpoenas to "multiple witnesses, including other lawyers," *id.*; (3) Judge Payne, who is presiding over *Williams*, is familiar with the case, *id.* at 12-13; and (4) a transfer will not burden Ms. Weddle because Greenberg Traurig has a Virginia office, and Ms. Weddle's counsel can appear in Virginia by telephone, *id.* at 13-14. Those arguments are insufficient to meet Plaintiffs' burden to show that exceptional circumstances warrant a transfer, so this Court should deny Plaintiffs' motion.

[2] Plaintiffs state that they "served" the Subpoena on Ms. Weddle. *Mot to Transfer* [#11] at 2. Plaintiffs have not served any subpoena on Ms. Weddle.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 45(f) authorizes the court where compliance with a subpoena is required to transfer a subpoena-related motion to the issuing court "if the person subject to the subpoena consents or if the court finds exceptional circumstances." The court's "prime concern" in ruling on a motion to transfer "should be avoiding burdens on local nonparties subject to subpoenas, and it should not be assumed that the issuing court is in a superior position to resolve subpoena-related motions." Fed. R. Civ. P. 45(f) Advisory Committee's Notes (2013 amendment). "The [Advisory] Committee's reasoning is evident: local nonparties should be burdened as little as practicable by litigation in which they are not involved, and local resolution of the motion will typically impose a lighter burden." *Woods ex rel. United States v. SouthernCare, Inc.*, 303 F.R.D. 405, 407 (N.D. Al. 2014).

The party seeking a transfer bears the burden of showing that exceptional circumstances warranting a transfer are present. Fed. R. Civ. P. 45(f) Advisory Committee's Notes (2013 amendment). That party satisfies its burden only by showing that there is a strong need to avoid disrupting the underlying litigation, as when the issuing court "has already ruled on issues presented by the motion or the same issues are likely to arise in discovery in many districts." *Id.* And even if the proponent of a transfer makes that showing, "[t]ransfer is appropriate *only if* [the exceptional circumstances] outweigh the interests of the nonparty served with the subpoena in obtaining local resolution of the motion." *Google, Inc. v. Dig. Citizens All.*, Misc. Action No. 15-00707 JEB/DAR, 2015 WL 4930979, at *4 (D.D.C. July 31, 2015) (quoting Fed. R. Civ. P. 45(f) Advisory Committee's Notes (2013 amendment)) (emphasis added). To balance the exceptional circumstances against the burden that transfer would impose on the subpoenaed party, courts

weigh factors relating to the underlying litigation, "includ[ing] the complexity, procedural posture, duration of pendency, and the nature of the issues pending before, or already resolved by, the issuing court in the underlying litigation," against the undue burden and cost that would be imposed on the nonparty if she were required to litigate her motion in the issuing court. *Judicial Watch, Inc. v. Valle Del Sol, Inc.*, 307 F.R.D. 30, 34 (D.D.C. 2014).

III. ARGUMENT

Ms. Weddle does not consent to a transfer, so Plaintiffs must show that exceptional circumstances are present. Plaintiffs attempt to satisfy their burden with two paragraphs of conclusory claims that the *Williams* court is entertaining similar discovery issues and must decide them all given its familiarity with the case. *Mot. to Transfer* [#11] at 12-13. Plaintiffs do not meet their burden. The *Williams* court has not already ruled on the issues presented in Ms. Weddle's motion, those issues cannot arise in multiple districts, and a transfer would impose a significant burden on Ms. Weddle. Accordingly, this Court should deny Plaintiffs' motion.

A. The *Williams* Court has not Ruled on the Issues Presented by Ms. Weddle's Motion, and Those Issues Cannot Arise in Many Districts

A transfer "may be warranted" to avoid disrupting the underlying litigation when the issuing court "has already ruled on issues presented by the motion or the same issues are likely to arise in discovery in many districts." Fed. R. Civ. P. 45(f) Advisory Committee's Notes (2013 amendment). Neither of these two circumstances is present here.

1. The *Williams* court has not already ruled on the issues presented by Ms. Weddle's motion to quash.

The first circumstance is present only if the issuing court has actually ruled on the *specific* arguments presented by the nonparty's motion to quash, meaning that the decision not to

transfer would frustrate an already issued court order in the underlying litigation. *See, e.g.*, *Daggett v. Scott*, No. 15-mc-00065-CMA-MJW, 2015 WL 3407314, at *4 (D. Colo. May 26, 2015) (finding that transfer is unwarranted because the issuing court's rulings that the information sought was not protected by the attorney-client privilege had "little (if anything) to do with" the nonparty's argument that, because she is an unretained expert, the court should quash the subpoena under Fed. R. Civ. P. 45(d)(3)(B)(ii)); *Moon Mountain Farms, LLC v. Rural Community Ins. Co.*, 301 F.R.D. 426, 427, 429-30 (N.D. Cal. 2014) (noting that the issuing court had granted the plaintiff's motion to compel discovery of certain documents and communications and found that the defendant had waived attorney-client privilege over the information sought) (cited in *Mot. to Transfer* [#11] at 11); *Valle Del Sol, Inc. v. Kobach*, No. 14-mc-219-JAR, 2014 WL 3818490, at *4 (D. Kan. Aug. 4, 2014) (noting that the issuing court had already ruled that the communications sought were unprotected by the attorney-client privilege) (cited in *Mot. to Transfer* [#11] at 11); *Judicial Watch, Inc.*, 307 F.R.D. at 35-36 (noting that the issuing court had already ordered compliance with a "substantively identical" subpoena issued to another nonparty, rejecting the nonparty's attorney-client privilege and work-product arguments) (cited in *Mot. to Transfer* [#11] at 11-12); *XY, LLC v. Trans Ova Genetics, L.C.*, 307 F.R.D. 10, 11 (D.D.C. 2014) (noting that the issuing court had extended the discovery deadline to enable the plaintiff to attempt to obtain the subpoenaed materials) (cited in *Mot. to Transfer* [#11] at 12). Judge Payne has not ruled that any of the documents or communications that Plaintiffs seek must be produced, are not privileged, are not confidential under Colo. RPC 1.6, or are within Ms. Weddle's control.

Plaintiffs say that "[i]t is reasonable to expect" that other subpoena-related motions that have been transferred to the *Williams* court "will raise the same issues as [Ms. Weddle's] motion." *Mot. to Transfer* [#11] at 12. But a transfer might be appropriate only if "the issuing court has **already** ruled on the issues, not if it might or will rule on them in the future." *Woods*, 303 F.R.D at 408. And, in any event, the issues raised in Ms. Weddle's motion are necessarily unique to her: they involve her clients' privilege, her duty of confidentiality, her obligations under the Colorado Rules of Professional Conduct, her lack of control over the information sought, and the undue burden that compliance with the Subpoena would impose on her. Indeed, to briefly discuss the issues in the five other motions that have been transferred to the *Williams* court, *see Mot. to Transfer* [#11] at 3; *Notice of Suppl. Authority* [#14] at 1-2, is to distinguish them from the issues raised in Ms. Weddle's motion:

1. In the Eastern District of Virginia (Alexandria Division), Plaintiffs moved to compel the production of communications and documents relating to the Tribe's lending operations from the law firm Rosette, LLP ("Rosette"), which serves as the Tribe's outside counsel and is trial counsel to the Tribal defendants in *Williams*. *Williams et al. v. Big Picture Loans, LLC, et al.*, No. 3:19-mc-00001-REP (E.D. Va. Alexandria Div.), *Mem. in Support of Mot. to Strike Objs. & Compel Resp.* [#2] at 2. In response, Rosette argued (among other things) that Plaintiffs' motion should be stayed while the interlocutory appeal in the Fourth Circuit is pending, *Mem. in Opp'n* [#12] at 4-5, and that it enjoys tribal sovereign immunity as the Tribe's general counsel, *id.* at 7. Plaintiffs replied to those arguments and suggested alternatively that, "[i]f the Court has any doubt on how to proceed with the issues in [their] motion," the court

should "transfer this matter to Judge Payne." *Reply* [#14] at 12. After a hearing, the court transferred Plaintiffs' motion to compel to the *Williams* court. *Order* [#22].

2. In the District of Arizona, Rosette moved to quash subpoenas demanding the production of records that it had generated or maintained in its capacity as the Tribe's counsel. *Williams et al. v. Big Picture Loans, LLC, et al.*, No. 2:18-mc-00066-JJT, *Mot. to Quash* [#2] at 3. In response, Rosette argued (among other things) that it shares the Tribe's sovereign immunity, and that the *Williams* court lacks jurisdiction to issue discovery-related subpoenas pending the Fourth Circuit appeal. *Id.* at 8-12. Plaintiffs then suggested that a transfer would be appropriate, given that Judge Payne had already ruled on immunity and is considering whether discovery against the Tribal defendants may continue. *Opp'n to Mot. to Quash* [#8] at 10. The court ordered that Rosette's motion be transferred. *Order* [#13] at 3. In doing so, the court reasoned that any burden on Rosette would be minimal because it "has a law office in [the Eastern District of Virginia] and, in any event, [Plaintiffs] already filed a Motion to Compel the same subpoena in that District." *Id.*

3. In the Western District of Michigan, the president of one of the Tribal defendants moved to quash a subpoena that demanded him to testify at a deposition, arguing (as relevant here) that he is entitled to tribal sovereign immunity and that the pending appeal before the Fourth Circuit divests the *Williams* court of jurisdiction to issue subpoenas against the Tribal defendants. *Williams, et al. v. Big Picture Loans, LLC, et al.*, No. 1:18-mc-83-ESC (W.D. Mich), *Am. Mot. to Quash* [#4-1] at 11-14. In response, Plaintiffs argued that "[i]f the Court determines that it needs to decide issues related to sovereign immunity, it should transfer the case to the

[*Williams* court] for consideration." *Opp'n to Am. Mot. to Quash* [#6] at 7. The court transferred the employee's motion to quash to the *Williams* court. *Stipulated Order* [#14].

4. In the District of South Carolina, an officer of one of the Tribal defendants moved to quash a subpoena that demanded him to testify at a deposition, asserting the same immunity and jurisdictional arguments that the nonparty in the Western District of Michigan had made. *Williams, et al. v. Big Picture Loans, LLC, et al*, No. 6:18-cv-00303-DCC (D. S.C.), *Am. Mot to Quash* [#3] at 7-11. Plaintiffs, in response, asserted (again) that Judge Payne is in the best position to decide issues of tribal sovereign immunity. *Opp'n to Am. Mot. to Quash* [#7] at 6-9. Plaintiffs also noted that the subpoenaed nonparty is represented by the same attorneys who represent the Tribal defendant in *Williams*, and those attorneys "indicated that they would not oppose a transfer." *Id.* at 10-11. Given the "very complex and nuanced issues involving sovereignty and the scope of discovery permissible during the pending [Fourth Circuit] appeal," the court found that the *Williams* court "is in the best position to determine whether [the nonparty's] subpoena should be quashed." *Text Order* [#22].

5. In the Northern District of California, *Williams, et al. v. Big Picture Loans, LLC, et al.*, No. 5:17-mc-80166-SVK (N.D. Cal.), Mr. Martorello moved to quash or modify Plaintiffs' subpoena to a nonparty research and analytics firm that had done tax-related work either for him (says Mr. Martorello) or for Bellicose (say Plaintiffs). *Compare Mot to Quash* [#1] at 2-3, *with Opp'n to Mot. to Quash* [#7] at 5-6. The parties disputed whether that work was entitled to any privilege or work-product protections. *Compare Mot to Quash* [#1] at 5-8, *with Opp'n to Mot. to Quash* [#7] at 9-20. The court ordered that the motion to quash be transferred, noting that the subpoenaed firm "has not participated in the briefing on the motion to quash" and

"is simply awaiting the outcome of the parties' jurisdictional and privilege fights and will comply with whatever a court may order." *Order* [#14] at 3.

For many reasons, the issues in these motions are not the "same issues" as those in Ms. Weddle's motion to quash. First, Ms. Weddle's motion presents different arguments that bear no relation to an issue that Judge Payne has decided. Whereas certain of the subpoenaed nonparties claimed entitlement to Tribal sovereign immunity or made jurisdictional arguments, Ms. Weddle raises neither argument. The issues presented in Ms. Weddle's motion are unique to her and have not been ruled on by Judge Payne. Even if those issues were to arise in the *Williams* litigation at a future date, "[t]he risk of overlapping future rulings, in the name of judicial economy or otherwise, does not constitute an exceptional circumstance." *Woods*, 303 F.R.D. at 408. Second, unlike certain of the subpoenaed nonparties, Ms. Weddle is not an employee of a party to the *Williams* lawsuit or represented by counsel already involved in that litigation. Nor is she trial counsel to a party. And third, Plaintiffs directed their Subpoena not to the Greenberg Traurig law firm, but to Ms. Weddle, an individual attorney who lives and practices in Denver and has no connection to Virginia. Contrary to Plaintiffs' conclusory assertions, Ms. Weddle's motion presents issues that are easily distinguishable from those that have been transferred, and this Court's ruling on Ms. Weddle's motion will not frustrate any ruling on the transferred motions.[3]

[3] Plaintiffs also submit as supplemental authority in support of their motion to transfer an order denying a motion to quash that was filed by an attorney who represented the Tribal defendants when she was employed by Rosette. *See Opinion & Order* [#15-2]. That order does not address any arguments relating to Rule 45's transfer standard, much less mention transfer. The motion to quash nonetheless bears little, if any, relation to this litigation, as the subpoenaed attorney raised the sovereign-immunity and jurisdictional arguments that Ms. Weddle has not asserted. *Id.* at 3.

Plaintiffs presumably will reply that they have filed a motion to compel the production of documents that Mr. Martorello withheld on the basis of attorney-client privilege, arguing both that Mr. Martorello has waived the attorney-client privilege and that the crime-fraud exception to the privilege applies. *Williams et al. v. Big Picture Loans, LLC et al.*, No. 3:17-cv-00461 (E.D. Va.), *Mot. to Compel* [#341] at 2-4. Yet not even that creates an exceptional circumstance warranting a transfer. Ms. Weddle's motion to quash bears no relation to any privilege that Mr. Martorello may claim—she did not represent him individually. *Decl. of Jennifer Weddle* [#17-1] at ¶ 4. And even if Plaintiffs' motion to compel did raise the same issues that Ms. Weddle's motion does, "[t]he risk of overlapping future rulings, in the name of judicial economy or otherwise, does not constitute an exceptional circumstance." *Woods*, 303 F.R.D. at 408.

Plaintiffs cannot show that the *Williams* court has already ruled on the issues presented by Ms. Weddle's motion to quash, so a transfer on this ground would be improper.

2. The same issues as those presented in Ms. Weddle's motion cannot arise in many districts.

The second circumstance is present only if motions involving "the *same issues* are likely to arise in discovery in many districts," Fed. R. Civ. P. 45(f) Advisory Committee's Notes (2013 amendment) (emphasis added), such that judicial economy requires one court to decide them all. The issues here are whether information Plaintiffs seek is privileged, confidential, and within Ms. Weddle's control; whether any privilege-holder has waived that privilege; whether the Subpoena's demands are relevant and proportionate to the case's needs; and whether compliance would impose an undue burden on Ms. Weddle. Those issues, by definition, are unique to Ms. Weddle and can arise in one district only—this one.

B. The Issuing Court's Familiarity With the Underlying Litigation is not an "Exceptional Circumstance" Warranting a Transfer

In their two-paragraph explanation of why they think "[e]xceptional circumstances exist here," Plaintiffs hang their hats largely on Judge Payne's familiarity with the underlying case. *Mot. to Transfer* [#11] at 12-13.[4] That Judge Payne is familiar with the case is not an "exceptional circumstance" warranting a transfer, and Plaintiffs' argument runs contrary to the plain text of Rule 45 and the unambiguous meaning of the Advisory Committee's Notes.

Absent consent, a transfer is appropriate only "if the court finds exceptional circumstances." Fed. R. Civ. P. 45(f). It is not exceptional, but *expected*, that the issuing court will have a better understanding than any other court of a case on its docket. *See In re Garden City Emp.s' Ret. Sys.*, Misc. Action No. 13-238, 2014 WL 272088, at *3 (E.D. Pa. Jan. 24, 2014) (noting that the issuing court's "undeniably . . . greater familiarity with the [underlying litigation]" does not itself create an exceptional circumstance). If the issuing court's superior knowledge of its own case created an exceptional circumstance, a transfer would always be warranted. Plaintiffs' interpretation of Rule 45 renders the word "exceptional" meaningless and reads out of the Advisory Committee's Notes two clear mandates: (1) that "the proponent of transfer bears the burden of showing that [exceptional] circumstances are present," and (2) that

[4] Plaintiffs also seem to suggest (but they do not expressly argue) that the underlying litigation is sufficiently complex to warrant a transfer. *See Mot. to Transfer* [#11] at 12 (citing *Wultz v. Bank of China, Ltd.*, 304 F.R.D. 38 (D.D.C. 2014)). Even had Plaintiffs expressly argued that point, the underlying litigation is not sufficiently complex as to warrant a transfer. *Compare Wultz*, 304 F.R.D. at 40, 46 (emphasizing the "highly complex and intricate nature of the underlying litigation," which involved six cases pending in state and federal court claiming that a Chinese bank facilitated transfers of funds to a terrorist organization that killed Americans and Israelis in Tel Aviv) (cited in *Mot. to Transfer* [#11] at 12), *with Flynn v. FCA US LLC*, 216 F. Supp. 3d 44, 47 (D.D.C. 2016) (noting that the underlying litigation, a class-action lawsuit involving claims arising under state consumer-protection laws, is insufficiently complex to warrant a transfer).

"it should not be assumed that the issuing court is in a superior position to resolve subpoena-related motions." Fed. R. Civ. P. 45(f) Advisory Committee's Notes (2013 amendment). This Court cannot accept Plaintiffs' invitation to overlook the plain and ordinary meaning of Rule 45(f) and the Advisory Committee's Notes.

C. The Burden that a Transfer Would Impose on Ms. Weddle Outweighs any Exceptional Circumstances

Even if Plaintiffs had satisfied their burden to show exceptional circumstances, those circumstances would not justify a transfer when weighed against the significant burden Ms. Weddle will face if she is forced to litigate her motion in the Eastern District of Virginia. Ms. Weddle is a Colorado attorney, her only office is in Denver, and her counsel is in Denver. *Compare In re Garden City Emp.s' Ret. Sys.*, 2014 WL 272088, at *3 (emphasizing the burden that would be imposed by a transfer when both the subpoenaed party and its counsel are located in the district where compliance is required), *with Venus Med. Inc. v. Skin Cancer & Cosmetic Dermatology Ctr. PC*, No. 15-00062MC, 2016 WL 159952, at *3 (D. Ariz. Jan. 14, 2016) (finding that burden would be minimal where the nonparty, who had already been deposed in connection with the underlying litigation, regularly travels to the same state as the issuing court and is represented by attorneys there) (cited in *Mot. to Transfer* [#11] at 13). An attorney with significant litigation experience, Ms. Weddle understands well that appearances by telephone are in no way as effective as in-person advocacy. She does not wish to incur the significant expense of paying for her counsel, who already are well-versed in the substance of this dispute, to travel to and from Virginia, nor does she wish to incur the expense of hiring yet one more set of

attorneys in Virginia to represent her in this litigation.[5] *See Platinum Props. Inv'r Network, Inc. v. AMCO Ins. Co.*, No. 15-mc-213-JAR-TJJ, 2015 WL 5883819, at *6 (D. Kan. Oct. 8, 2015) (finding that a transfer would impose "additional and unnecessary burdens" on subpoenaed nonparty lawyers and law firms, as they "would be required to incur the expense of obtaining local counsel . . . and potentially traveling to [the issuing court] for any hearings on the motions").

It is irrelevant that Greenberg Traurig has an office in Virginia. Greenberg Traurig is an international law firm, but Plaintiffs addressed the Subpoena to Ms. Weddle, not Greenberg Traurig. *See id.* (emphasizing the "unnecessary burdens" that transfer would impose on subpoenaed nonparty lawyers in another state).

Plaintiffs have not met their burden of showing "exceptional circumstances" warranting the transfer of Ms. Weddle's motion to quash from the District of Colorado to the Eastern District of Virginia, especially considering the significant burden that Ms. Weddle would incur if she were forced to litigate there.

IV. CONCLUSION

For the reasons stated, Ms. Weddle respectfully requests that this Court deny Plaintiffs' motion to transfer.

[5] Even if this Court finds that a transfer would impose little burden on Ms. Weddle, "while burden would weigh heavily *against* transfer, lack of it does not weigh equally as heavily *for* transfer." *In re Subpoena on Sorrento Therapeutics, Inc.*, No. 3:17-cv-2442-WQH-NLS, 2018 WL 788899, at *3 (S.D. Cal. Feb. 8, 2018).

Dated: January 31, 2019

Respectfully submitted,

s/ William D. Hauptman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 31, 2019, I electronically filed the foregoing **Response in Opposition to Motion to Transfer** with the Clerk of Court via the CM/ECF System, which will send electronic notice of the same to the following counsel of record:

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