UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

NICOLE MARIE SWIGER, *on behalf of herself and all individuals similarly situated*,	:	CIVIL ACTION
Plaintiffs,	:	NO. 2:19-cv-12014-BAF-RSW
v.	:	
JOEL ROSETTE, TED WHITFORD, TIM MCINERNEY, and KENNETH E. REES,	:	
Defendants.	:	

DEFENDANT KENNETH E. REES'S MOTION TO TRANSFER VENUE UNDER 28 U.S.C. § 1412

Defendant Kenneth E. Rees moves the Court for an Order transferring venue of this proceeding to the United States District Court for the Northern District of Texas, where related chapter 11 bankruptcy proceedings are currently pending. The grounds for this motion are set forth in the accompanying Brief in support of this Motion.

Under Local Rule 7.1(a)(1), Defendants sought concurrence after a conference between the parties' attorneys, during which the nature of the motion and its legal basis were explained. Plaintiff declined to concur in the relief requested.

Respectfully Submitted,

s/ Michelle L. Alamo

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BRIEF IN SUPPORT OF DEFENDANT KENNETH E. REES'S MOTION TRANSFER VENUE UNDER 28 U.S.C. § 1412

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STATEMENT OF THE ISSUE PRESENTED

This is one among a number of putative class actions filed against Defendant Kenneth E. Rees and others across the country alleging essentially the same facts and claims against Rees. The issue presented in this motion is whether the claims against Rees in this case, like those in three other cases before this one, should be transferred under 28 U.S.C. § 1412 to the Northern District of Texas, where related bankruptcy proceedings are pending and it is both in the interests of justice and would convenience the parties to do so.

CONTROLLING AUTHORITIES

Three other cases before this one involving largely the same claims and factual allegations have been transferred from their respective districts to the Northern District of Texas, where related bankruptcy proceedings are pending, under 28 U.S.C. § 1412. Transfer under Section 1412 is within the Court's discretion and there are, therefore, no "controlling" authorities that mandate the Court's decision one way or the other. But the Court should find particularly helpful and compelling the analysis conducted by the Honorable M. Hannah Lauck of the United States District Court for the Eastern District of Virginia in *Gibbs, et al. v. Rees, et al.*, Civ.A. No. 3:17cv386, 2018 WL 1460705 (E.D. Va. Mar. 23, 2018). As outlined further below, Judge Lauck thoughtfully examined, in careful detail, most if not all of the questions this Court is called upon to answer here, and concluded that the relevant factors "decidedly favor[ed]" transfer to the Northern District of Texas. *Id.* at *16.

INTRODUCTION

Defendant Kenneth E. Rees ("Rees") submits this brief in support of his Motion to transfer venue under 28 U.S.C. § 1412. For the reasons below, the Court should apply the same reasoning as in the related case of *Gibbs, et al. v. Rees, et al.*, No. 3:17cv386, 2018 WL 1460705 (E.D. Va. Mar. 23, 2018) ("*Gibbs*"), and transfer the claims against Rees to the United States District Court for the Northern District of Texas. Pending in the Bankruptcy Court of that district (the "Bankruptcy Court") are the related bankruptcy proceedings filed by the primary company at issue in the various cases, Think Finance, LLC (f/k/a Think Finance, Inc.), and related entities, which includes an adversary proceeding raising essentially the same core issues that are the subject of this action. Material to the *Gibbs* court's decision, Rees is also party to an indemnification agreement requiring Think Finance to indemnify him for the types of conduct alleged in the Complaint. Because, among other things, this case is therefore related to the bankruptcy proceedings and an adverse judgment against Rees in this case could impact the administration of the estate in the bankruptcy proceedings, the prerequisite conditions for transfer under Section 1412 are met. Rees asks the Court to therefore grant Rees's transfer request.

I. BACKGROUND.

This case is one among a number of related putative class actions that various individual plaintiffs have brought related to activities undertaken by Think Finance, LLC, and other related entities and persons, including Rees, Think Finance's former

CEO. This genre of now largely copycat litigation generally alleges, as here, that those parties were part of a supposedly improper online lending scheme in which they are said to have operated a "rent-a-tribe" lending operation.

During the time these litigations were accumulating across the country, Think Finance, LLC, along with other related entities—TC Loan Service, LLC, Tailwind Marketing, LLC, and TC Decision Sciences, LLC, Think Finance SPV, LLC, TC Administrative Services, LLC, and Financial U, LLC—(collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101, *et seq.*, in the United States Bankruptcy Court for the Northern District of Texas. The bankruptcy cases are jointly administered under Case No. 17-33964 (HDH) (the "Bankruptcy Cases").

Confronting substantively the same motion Rees advances here, one federal district court has already exercised its authority under 28 U.S.C. § 1412 to transfer one of the other putative class actions to the Northern District of Texas. That case, *Gibbs*, likewise involved not only the same transfer issues, but a cursory comparison of the complaint in *Gibbs* and that filed here reveals that the *Gibbs* plaintiffs forwarded essentially the same factual allegations and theories of liability, at least as against Rees, that Plaintiffs do here. *See* Exhibit "A" (Complaint filed in *Gibbs*). And, in conducting that comparison, a quick skim of the claims being advanced in an adversary proceeding filed in the Bankruptcy Cases reveals the same equivalence. *See* Exhibit "B" (Complaint filed in bankruptcy case).

Along with the efficiencies that would attend litigating the claims brought against Rees by the various putative consumer classes across the country in one place, at one time, a predecessor-in-interest to Debtor Think Finance, LLC, and Rees are parties to a Director Indemnification Agreement, dated September 1, 2005 (the "Indemnification Agreement"). This Indemnification Agreement obligates Think Finance to "indemnify, defend, and hold harmless Indemnitee, to the fullest extent permitted by the laws of the State of Delaware in effect on the date hereof or as such laws may from time to time hereafter be amended to increase the scope of such permitted indemnification, against any and all Indemnifiable Claims and Indemnifiable Losses. *See* Exhibit "C" (Indemnification Agreement) at ¶ 2.[1] Under that agreement, covered "Losses" include "any and all Expenses, damages, losses, liabilities, judgments, fines, penalties (whether civil, criminal or other) and amounts paid or payable in connection with or in respect of any of the foregoing." *Id.* ¶ 1(1).

The Indemnification Agreement also provides, "Indemnitee shall have the right to advancement by the Company prior to the final disposition of any Indemnifiable Claim of any and all Expenses relating to any Indemnifiable Claim paid or incurred by Indemnitee or which Indemnitee determines are reasonably likely to be paid or incurred by Indemnitee." *Id.* ¶ 3. Rees was also named as a defendant in the consumer

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[1] Rees is also entitled to indemnification under Think Finance's by-laws and operation of Delaware law. See 8 Del. Code § 145.

litigation pending against the Debtors in Florida and California district courts—both of which have already been transferred to the Northern District of Texas—as well as in an enforcement action against the Debtors in the Eastern District of Pennsylvania.[2] These litigations all provide for Indemnifiable Claims and Indemnifiable Losses under the Indemnification Agreement.

As a result, and as Think Finance has asserted in related proceedings in Pennsylvania, all legal fees incurred by Rees, as well as any liability or settlement, in this case and others, may ultimately end up back in front of the Bankruptcy Court for the purposes of indemnification and advancement. *See* Exhibit "D" at page 23 of 36 (Think Finance Pennsylvania Brief in Support of Transfer Motion) ("The claims asserted against Defendant Rees, the former Chief Executive Officer and director of Think Finance, Inc., the predecessor entity to Think Finance, are similarly 'related to' the bankruptcy proceedings because [of the] Indemnification Agreement, which, among other things, states that the Debtors must advance certain of Rees's defense

2 After the *Gibbs* decision, Plaintiffs' counsel in similar litigations in Florida and California agreed to transfer of those matters to the Northern District of Texas, and those requests for transfer were granted by the respective district courts. *See Banks, et al. v. Rees, et al.*, No. 8:17-02201, ECF No. 65 (M.D. Fla.) (order transferring case); *Brice, et al. v. Rees, et al.*, No. 3:18-cv-01200, ECF No. 66 (N.D. Cal.) (order transferring case). The Pennsylvania litigation remains pending in the Eastern District of Pennsylvania, but solely because it is in the nature of an enforcement action by the state Attorney General and not a private consumer lawsuit. *See generally Commonwealth of Pennsylvania v. Think Finance, Inc., et al.*, No. 2:14-07139 (E.D. Pa.).

costs and potentially indemnify Rees for any liability arising from this civil proceeding.").

In granting transfer, the *Gibbs* court found that (1) Section 1412, and not Section 1404(a), was the appropriate mechanism to effect transfer, (2) *Gibbs* was "related to" the bankruptcy case, and (3) in weighing the relevant factors, the circumstances present here "strongly counsel[ed] in favor of transferring [that] case." 2018 WL 1460705 at *14. As outlined below, the same is true here.

II. THE CLAIMS AGAINST REES SHOULD BE TRANSFERRED TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS.

Rees requests that the claims against him be transferred to the Northern District of Texas, where the district court there may refer the case to the Bankruptcy Court to be heard along with the related Bankruptcy Cases currently being administered in that district.[3] Such a transfer is appropriate under 28 U.S.C. § 1412,[4] where the matter to be transferred is "related to" the bankruptcy proceedings and where transfer is either in the interest of justice or conveniences the parties. Because this case, like *Gibbs*, is related to the Bankruptcy Cases, the Texas court would have

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[3] See N.D.Tex. Misc. Order No. 33 (providing for automatic referral of bankruptcy and related matters to the Bankruptcy Court).

[4] 28 U.S.C. § 1412 allows that "[a] district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties."

subject-matter jurisdiction over it,[5] and because transfer would serve both the interest of justice and convenience the parties, transfer of the claims against Rees is warranted.

A. Section 1412 applies here.

As a prefatory matter, Rees recognizes that the Court will first need to confront an apparent split of authority in the district courts of the Sixth Circuit (the Court of Appeals appearing silent to date), and the other circuits, as to whether to apply Section 1412 in the context of a request for transfer of a case "related to" bankruptcy proceedings. *See, e.g.*, *KFC Corp. v. Wagstaff*, 502 B.R. 484, 499 (W.D. Ky. 2013) ("There is a split of authority between the Circuit Courts of Appeal regarding whether § 1412's provisions for transfer of cases 'under title 11' applies to cases that are 'related to' bankruptcy proceedings."); *Mello v. Hare, Wynn, Newell & Newton, LLP*, No. 3:10-cv-243, 2010 WL 2253535, at *3 (M.D. Tenn. May 30, 2010) ("there is a split of authority on the question of whether § 1412 or § 1404 governs the transfer of actions

[5] The Northern District of Texas would have subject-matter jurisdiction over the claims against Rees for at least two reasons. First, it would have jurisdiction under 28 U.S.C. § 1331, given Plaintiffs' allegations under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), and supplemental jurisdiction under 28 U.S.C. § 1367 over the related state law claims. Second, and in addition, under 28 U.S.C. § 1334(b), "district courts shall have original but not exclusive jurisdiction of all proceedings arising under title 11, or in arising in *or related to cases* under title 11." 28 U.S.C. § 1334(b) (emphasis added). Thus, because as explained below, this case is "related to" the Bankruptcy Cases, the Northern District of Texas would have subject-matter jurisdiction for this reason, as well.

'related to' bankruptcy proceedings"; also recognizing case law observing no Sixth Circuit authority on point).

The Court should find, as the *KFC* court, *Mello* court, other courts within the Circuit, and indeed, the *Gibbs* court did, that Section 1412 governs transfer of cases "related to" bankruptcy proceedings. Perhaps most instructive is the *Gibbs* court's extensive examination of governing law in its circuit to conclude that "the language of § 1412, properly considered in the context of the statute as a whole, makes clear that § 1412 must apply to all cases 'related to' bankruptcy proceedings." *Gibbs*, 2018 WL 1460705, at *10. The court there described the various authorities upon which it founded its conclusion to have performed a "thorough analysis … finding that § 1412 governs in situations like this." *Id.* at *9.

And one of those authorities, "[t]he leading case within the Fourth Circuit," *id.* at *7, *Dunlap v. Friedman's, Inc.*, 331 B.R. 674 (S.D. W.Va. 2005), is the decision undergirding the line of case law in this Circuit finding Section 1412 applies in these circumstances. *See RFF Family P'ship, L.P. v. Wasserman*, No. 1:07 CV 1617, 2010 WL 420014, at *5 (N.D. Ohio Jan. 29, 2010) ("Under these circumstances, the Court finds the analysis of *Dunlap* persuasive. This Court agrees … the *Dunlap* court's reasoning is sensible, logical, and well-articulated."); *Mello*, 2010 WL 2253535, at *3 (agreeing with *RFF Family P'ship*'s adoption of *Dunlap*, and concluding in concert with those courts that "the plain language of § 1412, read in the context of § 1409 and the legislative history of the venue provisions of the bankruptcy code, compel the conclusion that

Congress intended § 1412 to apply to proceedings 'related to' a bankruptcy proceeding.") (cleaned up); *KFC Corp.*, 502 B.R. at 499 (relying on *Mello* and *RFF Family P'ship* to apply Section 1412 in these circumstances).[6]

The Court should therefore find that Section 1412 applies here. The next question, once it does, is whether the claims against Rees are, in fact, "related to" the Bankruptcy Cases.

B. Plaintiffs' claims against Rees are "related to" the Bankruptcy Cases.

The claims against Rees are "related to" the Bankruptcy Cases pending in the Northern District of Texas. In that respect, the *Gibbs* court explained,

> In general "[a] civil case filed in a district court is related to a case in bankruptcy if the outcome in the civil case '*could conceivably have any effect on the estate being administered in bankruptcy* … if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (positively or negatively) and which in any way impacts the handling and administration of the bankruptcy estate."

Gibbs, 2018 WL 1460705, at *10 (quoting *New Horizon of NY LLC v. Jacobs*, 231 F.3d 143, 151 (4th Cir. 2000)) (all alterations and emphasis in original). In other words, a

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6 Rees acknowledges the existence of the contrary authorities on the other side of the "split" identified by the various district courts of this Circuit on this question. But those authorities, for example, *DDR Corp. v. Control Bldg. Servs., Inc.*, No. 1:13-cv-925, 2013 WL 3776736, (N.D. Ohio Jul. 17, 2013), and *Anchor Tool & Die Co. v. Chrysler Grp. LLC*, No. 1:09-CV-1524, 2009 WL 10713715 (N.D. Ohio Jul. 21, 2009), reached the opposite conclusion in perfunctory fashion and without the kind of "thoughtful analysis" that brought the *Gibbs* court (and the others) to the proper conclusion that Section 1412 applies in these circumstances. *See Gibbs*, 2018 WL 1460705, at *10.

civil case is "related to" a bankruptcy case, if the civil case could in any fashion have an effect one way or the other on the estate that is in bankruptcy. *Gibbs*, 2018 WL 1460705, at *10 ("The possibility of such alteration or impact is sufficient for a case to be 'related to' a bankruptcy case.") (internal quotation marks omitted); *accord KFC Corp.*, 502 B.R. at 499 ("The Sixth Circuit [has] explained … that courts determine whether a case is 'related to' bankruptcy proceedings by asking '*whether the outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy*.'") (quoting *Robinson v. Mich. Consol. Gas Co., Inc.*, 918 F.2d 579, 583 (6th Cir. 1990) (emphasis in original)).

The Court should simply apply the rationale of *Gibbs* to find that this case is "related to" the Think Finance Bankruptcy Cases. Relying on the director indemnification agreement described above and attached as Exhibit "C," the *Gibbs* court reasoned that three provisions and definitions in the agreement were relevant to Rees's claim for indemnification for the subject claims. *Gibbs*, 2018 WL 1460705 at *12. The first:

> [T]he Company shall indemnify, defend and hold harmless [Rees], to the fullest extent permitted by the laws of the State of Delaware in effect on the date hereof or as such laws may from time to time hereafter be amended to increase the scope of such permitted indemnification, against any and all Indemnifiable Claims and Indemnifiable Losses ….

Ex. C at ¶ 2.

The second provision, paragraph three, provides: "[Rees] shall have the right to advancement by the Company prior to the final disposition of any Indemnifiable Claim of any and all Expenses relating to any Indemnifiable Claim paid or incurred by [Rees] or which [Rees] determines are reasonably likely to be paid or incurred by [Rees]." *Id.* at ¶ 3. And third, paragraph fifteen states that "[t]his Agreement shall be binding upon and inure to the benefit of the Company and any successor to the Company, ... (and such successor will thereafter be deemed the 'Company' for purposes of this Agreement), but shall not otherwise be assignable or delegatable by the Company." *Id.* at ¶ 15. As outlined in *Gibbs*, the terms "Indemnifiable Claim," "Indemnifiable Losses," "Losses," and "Expenses" are each defined such that Think Finance must indemnify Rees for any liability in this case and the costs of his defense. *Gibbs*, 2018 WL 1460705 at *12.

As likewise found in *Gibbs*, "the claims against Rees in this case are premised, at least in part, on actions he took 'in his capacity as a director, officer, employee or agent of' Think Finance. *Id.* Thus, "the action against Rees is likely covered by the" indemnification agreement, rendering the case "related to" the Bankruptcy Cases. *Id.* And, at a minimum, "the outcome in th[is] civil case could conceivably have an effect on the Bankruptcy Case because Think Finance would likely be required to indemnify Rees of any liability in this case, thereby altering its liabilities." *Id.* (internal alterations, quotation marks, and citation omitted); *see also, e.g.*, *KFC Corp.*, 502 B.R. at 500 ("Where the adjudication of a case may subsequently result in indemnification claims

by the defendant against a debtor's estate, the case is 'related to' that debtor's bankruptcy proceedings and qualifies for transfer under § 1412, given the obvious effects that such indemnification claims would have upon the bankruptcy estates.") (citing *In re Dow Corning*, 86 F.3d 482, 494 (6th Cir. 1996)).

The *Gibbs* court's rationale applies with equal force here. The allegations against Rees are largely the same and are premised in part, if not in whole, on actions he took in his capacity as a director, officer, employee, or agent of Think Finance. Those claims are therefore within the scope of the indemnification agreement and thus an adverse judgment in this case not only conceivably, but definitely would have an effect on the bankruptcy estate.

Moreover, the claims asserted against Rees here significantly overlap with those in the adversary proceeding pending in the bankruptcy court, such that any outcome resolving Plaintiffs' theories of liability here would affect the likelihood of success as to the merits of the claims against the Debtors in the bankruptcy proceedings. Plaintiffs' claims, factual allegations, and theories of liability in both cases are nearly identical, risking not only that the debtors may have to pay for the defense (and potential liability) of those claims twice, but also risk inconsistent judgments. These inefficiencies and conflicting obligations will have a clear impact on the handling and administration of the bankruptcy estate, and may even impact the potential for the debtors to successfully exit their bankruptcy proceedings. Accordingly this action is "related to" the Think Finance Bankruptcy Cases.

C. Transfer of the claims against Rees would serve the interest of justice and convenience of the parties.

With relatedness established, transfer of this action is appropriate under Section 1412 either in the interest of justice or for the convenience of the parties. 28 U.S.C. § 1412; *see also, e.g.*, *MD Acquisition, LLC v. Myers*, No. 2:08-cv-494, 2009 WL 466383, at *6 (S.D. Ohio Feb. 23, 2009) ("The 'interest of justice' and 'convenience of the parties' standards in § 1412 are disjunctive and separate, and transfer is appropriate even if only one is met.") (citations omitted); *RFF Family P'ship*, 2010 WL 420014, at *7 (similar). Both prongs are satisfied here.

1. *Transfer would serve the interests of justice.*

Much like *Gibbs*, courts in this Circuit weighing whether transfer under Section 1412 is in the interest of justice "examine seven factors in determining whether a discretionary transfer of venue under § 1412" is warranted:

> (1) the 'strong presumption' in favor of transfer to the district court where the bankruptcy proceedings are pending; (2) the economics of estate administration; (3) judicial efficiency; (4) the ability to receive a fair trial; (5) the state's interest in having local controversies decided within its borders; (6) the enforceability of any judgment rendered; and (7) the plaintiff's original choice of forum.

KFC Corp., 502 B.R. at 502 (citation omitted). The interest of justice standard these factors comprise "is a 'broad and flexible standard which must be applied on a case-by-case basis.'" *Quesenberry v. Chrysler Grp., LLC*, Civ. No. 12-48-ART, 2012 WL 3109431, at *5 (E.D. Ky. Jul. 31, 2012) (quoting *In re Manville Forest Prods. Corp.*, 896

F.2d 1384, 1391 (2d Cir. 1990)). Still, in weighing the relevant factors, the *Gibbs* court readily concluded that "[t]he balance, overall, strongly counsels in favor of transferring this case." *Gibbs*, 2018 WL 1460705, at *14.

As to the first factor, the presumption of trying cases "related to" a bankruptcy proceeding "obviously favors transferring this case." *Id.*; *see also In re Manville Forest Prods. Corp.*, 896 F.2d at 1391 ("[T]he district in which the underlying bankruptcy case is pending is presumed to be the appropriate district for hearing an determination of a proceeding in bankruptcy."); *Quesenberry*, 2012 WL 3109431, at *4 ("Under this 'home court presumption,' the 'court in which the bankruptcy case itself is pending is the proper venue for adjudicating all related litigation, including those suits which have been filed in other state or federal courts.").

The second factor, the economics of estate administration, is the "most important consideration." *Quesenberry*, 2012 WL 3109431, at *5 ("The 'most important consideration,' though, is whether the transfer would 'promote the economic and efficient administration of the estate.') (quoting *In re Commonwealth Oil Refining Co.*, 596 F.2d 1239, 1247 (5th Cir. 1979)). Echoing this refrain, the *Gibbs* court found it "most important[ ]" to its transfer analysis that the bankruptcy estate would be more efficiently and economically administered by transferring the case to Texas, where it would be heard alongside the adversary proceeding that alleges many of the same facts and claims as those alleged against Rees in the complaint there, and here. *Gibbs*, 2018 WL 1460705, at *14. "And, given the indemnification agreement that Rees has

with Think Finance, which requires certain of the Think Finance Defendants to indemnify Rees for the costs of litigation, litigating the same facts and legal contentions in this Court and the Bankruptcy Court will result in duplicative legal costs, which would be paid from the bankruptcy estate. Moreover, if the Court kept this action here, Rees would need to litigate the substance of Plaintiffs' claims in this Court and separately litigate the issue of indemnification in Bankruptcy Court, also resulting in duplicative legal costs to be borne by the estate. *Id.* This critical factor strongly favors transfer.

Third, it will serve judicial efficiency for the claims at issue to be litigated only once. The central allegations here are the same as those that will be decided before the Bankruptcy Court. The identical claims against Rees, as the former Chief Executive Officer and Director of Think Finance, and the Debtors, coupled with the Debtors' indemnification obligations necessarily implicate Think Finance's potential liability, thus risking the possibility of inconsistent judgments absent transfer.

And, as the *Gibbs* court found, the remaining factors do not diminish the desirability of transfer in these circumstances. *Gibbs*, 2018 WL 1460705 at *15–16. "No party suggests any reason that Plaintiffs would be unable to receive a fair trial in the Northern District of Texas." *Id.* at *15. And a judgment entered by the Texas district court would have the identical force as a judgment entered in this case. While the *Gibbs* court found that the fifth and seventh factors— the state's interest in deciding issues locally and deference to Plaintiffs' choice of forum—weighed against

transfer, "a plaintiffs' choice of forum is not entitled to as much deference when analyzing transfer under § 1412 as when analyzing transfer under 28 U.S.C. § 1404, *id.* (collecting cases), and while Michigan may have an interest in deciding this case locally, "that interest cannot outweigh the other relevant considerations." *Id.*

In short, the relevant interest of justice factors "decidedly favor" transferring this case to the Northern District of Texas. *Id.* at *16.

2. *Transfer would also promote the convenience of the parties and witnesses.*

The convenience of the parties independently also favors transfer. The Bankruptcy Court already has pending before it numerous related cases, and will decide the indemnification arguments Rees and others have advanced. And Think Finance itself and its employees, books, and records, are all located in the Northern District of Texas. In other words, the bulk of the evidence and those whose testimony would be sought are located there, meaning that the presumptive key witnesses would be convenienced by transferring this case to be adjudicated in Dallas, Texas, nearby to Think Finance. *See Koh v. MicroTek Int'l, Inc.*, 250 F. Supp. 2d 627, 636 (E.D. Va. 2003) ("Witness convenience is often dispositive in transfer decisions."). It will likewise convenience all parties for the Think Finance related claims and issues to be decided one time, in one forum, the most convenient potential forum being that where a critical mass of related claims is already pending—the Bankruptcy Court in Texas. Accordingly, transfer is warranted for this reason as well.

CONCLUSION

For the foregoing reasons, the claims against Defendant Kenneth E. Rees should be transferred to the Northern District of Texas.

Respectfully Submitted,

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

NICOLE MARIE SWIGER, *on behalf of herself and all individuals similarly situated*,	:	CIVIL ACTION
Plaintiffs,	:	NO. 2:19-cv-12014-BAF-RSW
v.	:	
JOEL ROSETTE, TED WHITFORD, TIM MCINERNEY, and KENNETH E. REES,	:	
Defendants.	:	

[PROPOSED] ORDER

AND NOW, this _ day of _____, 2019, upon consideration of Defendant Kenneth E. Rees's Motion to Transfer Venue under 28 U.S.C. § 1412, and any responses and replies thereto, it is hereby **ORDERED** that the Motion is **GRANTED**. The claims against Rees are hereby transferred to the United States District Court for the Northern District of Texas.

_____

, J.

CERTIFICATE OF SERVICE

I, MICHELLE L. ALAMO, hereby certify that on this 30h day of September 2019, I filed electronically a copy of the foregoing *Defendant Kenneth E. Rees's Motion to Transfer Venue under 28 U.S.C. § 1412*. This document is available for viewing and downloading from the ECF system and electronic notification has been sent to all counsel of record via the court's CM/ECF system.

s/ Michelle L. Alamo [DRAFT]
Michelle L. Alamo