IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RACHEL DELOACHE WILLIAMS, Plaintiff, v. NETFLIX, INC., Defendant.	C.A. No. 22-cv-1132-CFC

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO TRANSFER

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INTRODUCTION

Netflix frames its Motion to Transfer as governed by the Third Circuit's "*Jumara* test." Williams challenges this formulation. The governing standard is not "*Jumara*," but "*Shutte* / *Jumara*," for the *two* salient Third Circuit precedents, both of which have been recognized by this Court as seminal and controlling. *See Pragmatus AV, LLC v. Yahoo! Inc.*, C.A. 11-902-LPS-CJB, 2012 WL 4889438, at *2 (D. Del. Oct. 15, 2012), *report and recommendation adopted*, C.A. 11-902-LPS-CJB, 2013 WL 174499 (D. Del. Jan. 16, 2013) ("In two seminal cases regarding the transfer inquiry, *Shutte v. Armco Steel Corp.*, 431 F.2d 22 (3d Cir.1970) and *Jumara v. State Farm Ins. Co.*, 55 F.3d 873 (3d Cir.1995), the Third Circuit clearly emphasized the hurdle that a defendant faces when it seeks to have a matter transferred to another jurisdiction pursuant to Section 1404(a)."). Netflix does not cite *Shutte* nor engage it. Nor does Netflix cite or make any attempt to engage the Supreme Court's controlling decisions in *Hoffman v. Blaski*, 363 U.S. 335 (1960) or *Van Dusen v. Barrack*, 376 U.S. 612 (1964).

Disposition of the Netflix Motion to Transfer, of course, is not a battle of citations, but a battle over principle. Williams responds to the Netflix Motion by advancing three principles:

First, Netflix has failed to satisfy its threshold burden of demonstrating that the Southern District of New York is a district in which the action filed by Williams

initially "might have been brought," an essential baseline requirement for transfer under § 1404(a). The controlling Third Circuit rule is that Netflix must establish that Williams possessed an *unqualified right* to bring her action in New York. In fact, it is not at all clear that Williams could have commenced her action against Netflix in New York, because it is not at all clear that either the New York long-arm statute or the Due Process Clause would have permitted the exercise of personal jurisdiction over Netflix in a suit arising from the *Inventing Anna* broadcast.

Netflix seemingly seeks to sneak one by this Court by blithely professing on the fly that it now consents to personal jurisdiction in New York. But this self-serving after-the-fact consent to jurisdiction in New York, the Supreme Court held in *Hoffman*, will not do. Third Circuit precedent established in *Schutte*, applying the learning of the Supreme Court in *Hoffman*, clearly confirms that it *does not matter* that Netflix now cavalierly represents that it would not contest personal jurisdiction in New York. What matters is that New York was never a jurisdiction in which jurisdiction over Netflix was an established *unqualified right*. Personal jurisdiction in New York was shrouded in ambiguity, and far from an unqualified right. In this posture, the Motion to Transfer fails under the threshold gatekeeper requirement that the Southern District of New York was originally an available forum.

Second, contrary to the submission of Netflix, the decision of Williams to elect Delaware as her choice of forum is entitled to a high level of deference. Netflix again presents to this Court an incomplete and inaccurate articulation of the governing legal standard, making much of the assertion that Delaware is not Williams' "home turf." But the law of the Third Circuit, as often applied by decisions of this Court, make it clear that the high degree of deference owed to a plaintiff's choice of forum is activated *either* by a decision to bring the case on the plaintiff's "home turf," *or* because the plaintiff *selected its forum for other rational and legitimate reasons*.

Numerous prior decisions from this Court establish a *per se* rule that the selection of Delaware as a forum because a plaintiff knows with certainty that Delaware is a forum in which a corporate defendant is subject to general personal jurisdiction qualifies *automatically* as a "rationale and legitimate reason" triggering the strong presumption of deference to the plaintiff's forum choice.

Third, turning to the myriad public and private convenience factors to be weighed in adjudicating the Motion to Transfer, Williams argues that some of the factors moderately favor Williams, some of the factors moderately favor Netflix, and some of the factors are a tie, or irrelevant to this particular case. At most they total a wash, coming nowhere near making the exceedingly strong case that Netflix must make to prevail.

ARGUMENT

I. NETFLIX HAS NOT MET ITS BURDEN OF ESTABLISHING THAT THE SOUTHERN DISTRICT OF NEW YORK IS A DISTRICT IN WHICH THE ACTION MIGHT HAVE BEEN BROUGHT

A. The Entitlement to Jurisdiction must be Absolute and Unqualified

The Third Circuit in *Schutte* held that transfer was not appropriate when doubt existed as to whether personal jurisdiction existed in Missouri, the transferee forum, under the Missouri long-arm statute. *Schutte*, 431 F.2d at 24-25. *Schutte* sternly admonished that transfer under § 1404(a) is only available "if the plaintiff had an 'unqualified right' to bring the action in the transferee forum at the time of the commencement of the action; i.e., venue must have been proper in the transferee district and the transferee court must have had power to command jurisdiction over all of the defendants." *Id.* at 24 (citing *Van Dusen,* 376 U.S. 612 and *Hoffman v. Blaski*, 363 U.S. 335 .

When in doubt, the Court may not send it out. "If there is a 'real question' whether a plaintiff could have commenced the action originally in the transferee forum, . . . it is evident that he would not have an unqualified right to bring his cause in the transferee forum." *Schutte*, 431 F.2d at 24.

B. After-the-Fact Consent to Jurisdiction Is Not Sufficient

In *Hoffman v. Blaski*, the Supreme Court held "that the power of a District Court under § 1404(a) to transfer an action to another district is made to depend not upon the wish or waiver of the defendant but, rather, upon whether the transferee district was one in which the action 'might have been brought' by the plaintiff. 363 U.S. at 343-44.

Netflix hinges its entire case on its consent to jurisdiction in New York. As a matter of law, this will not do. It "is immaterial that the defendant subsequently makes himself subject, by consent, waiver of venue and personal jurisdiction defenses or otherwise, to the jurisdiction of some other forum," *Id.* at 344 (cleaned up) (quoting *Blaski v. Hoffman*, 260 F.2d 317, 321 (7th Circ. 1958) ("When Congress provided for the transfer of a case to a district 'where it might have been brought,' it meant the district where plaintiff has a recognized right to bring his case under the Venue Act and that this right was *unqualified and absolute*, not depending upon consent of the defendant, evidenced by waiver, entry of appearance, or otherwise.")) (emphasis added). As the Supreme Court in *Hoffman* unequivocally established: "We do not think the § 1404(a) phrase 'where it might have been brought' can be interpreted to mean, as petitioners' theory would required [sic], 'where it may now be rebrought, with defendants' consent.'" *Hoffman*, 363 U.S. at 343-43. The "conduct of a defendant after suit has been instituted" cannot "add to the forums

where 'it might have been brought.'" *Id.* at 343 (quoting *Paramount Pictures v. Rodney*, 186 F.2d 111, 119 (3rd Cir. 1950) (Hastie and McLaughlin, JJ, dissenting)).

C. Jurisdiction in New York is not "Absolute," "Unqualified," or Beyond "Real Question"

Jurisdiction over Netflix in New York cannot be deemed "absolute" or "unqualified" or beyond any "real question," whether analyzed under the Due Process Clause or the New York long-arm statute. Personal jurisdiction may be based either on an assertion of "general jurisdiction" or "specific jurisdiction." *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014). General jurisdiction over Netflix exists only in California, its principal place of business, or Delaware, where it is incorporated. Thus, jurisdiction in New York over Netflix could only be grounded in specific jurisdiction. "[E]ven if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient location for litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment." *World–Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 294 (1980).

Under the Due Process Clause, the mere fact that a plaintiff resides in a state is not enough, in an interstate defamation action, to guarantee personal jurisdiction. Courts are loathe to assume that content broadcast nationwide generates nationwide jurisdiction. State and federal courts around the country routinely reject personal jurisdiction in defamation cases over non-resident defendants on due process

grounds, even when the plaintiff resides in the forum state. *See Marten v. Godwin*, 499 F.3d 290, 298 (3d Cir. 2007) ("Applying these principles to Marten's defamation and retaliation claims, we conclude Marten has not carried his burden of establishing personal jurisdiction under the effects test."); *Johnson v. TheHuffingtonPost.com, Inc*., 21 F.4th 314, 318 (5th Cir. 2021); *Clemens v. McNamee,* 415 F.3d 419 (5th Cir.2005). *Young v. New Haven Advocate*, 315 F.3d 256, 263 (4th Cir. 2002).

The uncertainty facing a defamation plaintiff in specific jurisdiction cases is compounded in New York, due to that state's peculiarly restrictive long-arm statute, which has an especially onerous provision dealing with defamation actions. New York's long-arm statute is codified 35 N.Y. C.P.L.R. § 302(a). "Importantly for present purposes, sections 302(a)(2) and (3), which permit jurisdiction over tortious acts committed in New York and those committed outside New York that cause injuries in the state, respectively, explicitly exempt causes of action for the tort of defamation from their scope, whether or not such jurisdiction would be consistent with due process protection." *Best Van Lines, Inc. v. Walker*, 490 F.3d 239, 244–45 (2nd Cir. 2007). "The defamation exceptions thus create a 'gap' between the jurisdiction conferred by the New York statute and the full extent of jurisdiction permissible under the federal Constitution." *Id.* (citing *Ingraham v. Carroll*, 687 N.E.2d 1293, 1294–95(N.Y. 1997) ("[S]ubdivision [302(a)(3)] was not designed to

go to the full limits of permissible jurisdiction. The limitations contained in subparagraphs (i) and (ii) were deliberately inserted to keep the provision well within constitutional bounds.")

Indeed, some jurists have suggested that New York essentially *never* permits its long-arm statute to be applied against out-of-state residents in defamation cases. See *Vardinoyannis v. Encyclopedia Britannica, Inc.*, 89 Civ. 2475, 1990 WL 124338, at *6 n. 3, (S.D.N.Y. Aug. 20, 1990) (Leval, J.) ("Because §§ 302(a)(2) and (3) expressly exclude actions for defamation, there are strong arguments that the legislature intended to bar use of the long-arm statute in defamation cases."). But this Court need not go to that extreme to hold that at the very least, Williams' entitlement to jurisdiction over Netflix in New York would be far from absolute, unqualified, or beyond real question. That is enough to defeat transfer.

II. WILLIAMS' CHOICE OF DELAWARE IS ENTITLED TO STRONG DEFERENCE.

A. The Plaintiff's Choice is Entitled to Strong Deference

As the Third Circuit has instructed: "It is black letter law that a plaintiff's choice of a proper forum is a paramount consideration in any determination of a transfer request, and that choice should not be lightly disturbed." *Schutte*, 431 F.2d at 26 (cleaned up). "The burden is on the moving party to establish that a balancing of proper interests weigh in favor of the transfer." *Id.* "Consequently, the burden rests squarely on the party seeking a transfer 'to establish that a balancing of proper

interests weighs in favor of the transfer.'" *Intellectual Ventures I LLC v. Altera Corp*., 842 F. Supp. 2d 744, 750–51 (D. Del. 2012) (citing *Schutte,* 431 F.2d at 26, and *Jumara*, 55 F.3d at 879). "That burden is a heavy one: 'unless the balance of convenience of the parties is *strongly* in favor of defendant, the plaintiff's choice of forum should prevail.'" *Intellectual Ventures*, 842 F. Supp. 2d at 750-51, *quoting Shutte*, 431 F.2d at 25 (emphasis in original); *see also CNH Am. LLC v. Kinzenbaw*, 2009 WL 3737653, at *2 (D. Del. Nov. 9, 2009). It follows that "transfer will be denied if the factors are evenly balanced or weigh only slightly in favor of the transfer." *Angiodynamics, Inc. v. Vascular Solutions, Inc*., 2010 WL 3037478, at *2 (D. Del. July 30, 2010)*; see also Illumina, Inc. v. Complete Genomics, Inc*., 2010 WL 4818083, at *2 (D. Del. Nov. 9, 2010).

B. The Deference Owed to Williams' Choice is Not Lost Merely Because Delaware is not Her "Home Turf," Provided that She has Other Rational and Legitimate Reasons for Selecting Delaware.

Netflix argues that Williams is not entitled to the high degree of deference normally owed to her choice of forum because Delaware is not her "home turf." This is an incomplete account of the governing legal standard. The correct standard is that the high degree of deference owed to a plaintiff's choice of forum is activated *either* by a decision to bring the case on the plaintiff's "home turf," *or* selected its forum for "legitimate and rationale" reasons. *Intellectual Ventures*, 842 F. Supp. 2d

at 754-55; Smart *Audio Techs., LLC v. Apple, Inc*., 910 F. Supp. 2d 718, 727–28 (D. Del. 2012).

C. This Court has Recognized that a Plaintiff's Selection of Delaware in Suing a Defendant Incorporated in Delaware because Jurisdiction is Thereby Assured is *Per Se* a Legitimate and Rationale Reason Triggering the Strong Deference Owed to the Plaintiff's Choice, Whether or Not Delaware is the Defendant's "Home Turf."

"This Court 'has repeatedly found that it is plainly rational and legitimate for a plaintiff to choose to sue a defendant in that defendant's state of incorporation.'" *FG SRC LLC v. Xilinx, Inc*., No. CV 20-601-LPS, 2021 WL 495614, at *3 (D. Del. Feb. 10, 2021).

Plaintiffs in defamation actions have a strong interest in moving cases along expeditiously. Defendants generally are content to let things move slowly. A plaintiff, knowing that media defendants are notorious for fighting tooth and nail at every juncture to slow things down, may seek to limit the battles they may face, including potential battles over personal jurisdiction. This often makes a forum where jurisdiction is certain a perfectly legitimate and rationale plaintiff's choice, requiring great deference. *Papst Licensing GmbH & Co. KG v. Lattice Semiconductor Corp.*, 126 F. Supp. 3d 430, 438 (D. Del. 2015) ("Our Court has repeatedly found that it is plainly rational and legitimate for a plaintiff to choose to sue a defendant in that defendant's state of incorporation—a district where a plaintiff

can have some certainty that there will be personal jurisdiction over the defendant.") (citing *TSMC Tech., Inc. v. Zond, LLC*, C.A. 14–721–LPS–CJB, 2014 WL 7251188, at *15 (D. Del. Dec. 19, 2014) (citing cases), adopted by 2015 WL 328334 (D. Del. Jan. 26, 2015) and *Helicos Biosciences Corp. v. Illumina, Inc.*, 858 F. Supp. 2d 367, 373 (D. Del. 2012)).

As the Declaration of Alexander Rufus-Isaacs attests, counsel for Williams, Mr. Smolla and Mr. Rufus-Isaacs, considered filing the action in New York, but elected to file in Delaware to avoid the risk that the New York court might reject the case on jurisdictional grounds. It was instead decided that to accelerate Williams' legitimate interest in pursuing justice as swiftly as possible, it was best to bring the case in a forum in which jurisdiction was clear. Declaration of Rufus-Isaacs at ¶ 3. This Court has previously recognized the rationality and legitimacy of this decision by a plaintiff. *TSMC Technology,* 2014 WL 7251188, at *6 ("Indeed, at oral argument Plaintiffs' counsel asserted that Plaintiffs first considered filing the instant suit in the Northern District of California—the site of TSMC NA's and TTI's principal places of business, where a number of relevant case documents are located. (Tr. at 21, 29–30) Concerned, however, as to whether personal jurisdiction over Zond would exist in that District, Plaintiffs instead filed suit in the District of Delaware, where personal jurisdiction over Zond was clear.").

III. NETFLIX HAS NOT MET ITS BURDEN OF ESTABLISHING THAT THE PUBLIC AND PRIVATE FACTORS STRONGLY FAVOR TRANSFER

A. The Public and Private Factors

If the Court agrees with Williams that New York is not a qualifying forum, the Court need not weigh the various public and private factors. But donning both belt and suspenders, even if weighed, the factors here are at most in equipoise. As most recently listed by this Court, the factors to be weighed include: (1) plaintiff's forum preference as manifested in the original choice; (2) the defendant's preference; (3) whether the claim arose elsewhere; (4) the convenience of the parties as indicated by their relative physical and financial condition; (5) the convenience of the witnesses—but only to the extent that the witnesses may actually be unavailable for trial in one of the fora; (6) the location of books and records (similarly limited to the extent that the files could not be produced in the alternative forum); (7) the enforceability of the judgment; (8) practical considerations that could make the trial easy, expeditious, or inexpensive; (9) the relative administrative difficulty in the two fora resulting from court congestion; (10) the local interest in deciding local controversies at home; (11) the public policies of the fora; and (12) the familiarity of the trial judge with the applicable state law in diversity cases. *Cisco Systems, Inc. v. Ramot at Tel Aviv University, Ltd.*, C.A. 21-1365-GBW, 2022 WL 16921988, at *3–4 (D. Del. Nov. 14, 2022).

B. Application of the Factors

1. Plaintiff's Forum Preference

The first factor is the "plaintiff's forum preference, as manifested in its original choice." As discussed above, this factor entirely favors Williams.

2. The Defendant's Preference

The second factor is the defendant's preference, which favors Netflix.

3. Where the Claim Arose

Defamation actions accrue upon "publication," a term of art. *See generally* RODNEY SMOLLA, LAW OF DEFAMATION, § 4:78 (2d ed. 2022 update) (collecting authorities). This is a universal rule, followed in every state, including New York, the state proffered by Netflix: "A cause of action for defamation does not arise until there is a publication." *Curti v. Girocredit Bank*, No. 93 Civ. 1782 (PKL), 1994 WL 48835, at *3 (S.D.N.Y. Feb. 14, 1994); *In Touch Concepts, Inc. v. Cellco Partnership*, 949 F. Supp. 2d 447, 484 (S.D.N.Y. 2013). Publication by Netflix here took place in California, its principal place of business from which its world-wide publication of *Inventing Anna* was launched. As between Delaware and New York as a forum, this factor favors neither party.

4. Convenience of the Parties as Indicated by Their Relative Physical and Financial Condition

In considering the relative convenience of the parties as measured by their relative financial condition, Williams is to Netflix as David was to Goliath. Netflix

is a dominant world media giant with over 209 million subscribers. In 2020, it reported total revenue of over 24.9 billion dollars. Rufus-Isaacs Declaration at ¶ 4, Exhibit 1. Netflix has the financial wherewithal to litigate anywhere in the country. *See Smart Audio,* 910 F. Supp. 2d at 731 ("The court agrees with Smart Audio that any inconvenience imposed upon Apple must be examined in light of Apple's vast financial resources.").

Netflix relies heavily on the convenience to *its* legal counsel in litigating in New York. Understandably so. Netflix chose experienced First Amendment and media law counsel from New York (Ms. Strom and the Davis Wright Tremaine defense team) to defend it, as was its right. Yet Williams chose experienced First Amendment and media law counsel from Delaware and California (Mr. Smolla, Mr. Farnan, and Mr. Rufus-Isaacs), as was *her* right. As between the two jurisdictions in the United States in which personal jurisdiction over Netflix was *assured*, California (where Netflix has its principal place of business) and Delaware (where Netflix is incorporated), it was more convenient, on balance, to *Williams'* counsel to litigate in Delaware. And as this Court well knows, lawyers from New York take the easy train to Wilmington to litigate matters in Delaware state and federal courts all the time, at no great discomfiture. At the end of the day, however, the convenience of *counsel* ought to have only minimal weight on the register, if it should register at all. One may well argue that in litigation such as this, involving a

world-wide media enterprise such as Netflix and a plaintiff who chose lawyers nationally experienced in such matters, the convenience to the *lawyers* should be given no weight at all. But to the extent that convenience is counted at all, it should be deemed to favor Williams for "[t]here is nothing, however, in the language or policy of § 1404(a) to justify its use by defendants to defeat the advantages accruing to plaintiffs who have chosen a forum which, although it was inconvenient, was a proper venue." *Van Dusen*, 376 U.S. at 633-34.

5. Convenience of Witnesses to the Extent they May be Actually Unavailable

As the chart attached to the Declaration of Alexander Rufus-Isaacs indicates, virtually all of the individuals responsible for the content of *Inventing Anna* reside in the Los Angeles area. Of the 21 persons Williams has been able to identify from the information made publicly available by Netflix regarding the series, including the producers, directors, and writers responsible for the content of *Inventing Anna*, it appears that 12 live and work in the Los Angeles area. Another 6 appear to divide their time between Los Angeles and other locations, including New York, Toronto, and London. Rufus-Isaacs Declaration at ¶ 5, and Exhibit 2.

Netflix lists various non-party witnesses who are located outside of Delaware, but it does nothing to demonstrate that those witnesses would actually be unavailable for discovery or trial. *Smart Audio,* 910 F.Supp.2d at 731("The court agrees with Smart Audio and has recognized that this factor is only given weight when there is

some reason to believe that a witness actually will refuse to testify absent a subpoena.").

Netflix cannot meet its burden of prevailing on this factor through its mere off-hand description of where various witnesses reside. "It is the defendant's burden to show both the unavailability of a particular witness and that witness' importance to the defendant's case." *Tessera, Inc. v. Sony Elecs. Inc*., C.A. 10-838-RMB-KW, 2012 WL 1107706, at *6 (D. Del. Mar. 30, 2012). "[W]hile a showing that a non-party witness is outside the Court's subpoena power is a necessary predicate for, and supports, a finding of unavailability, courts have recognized that third-party fact witnesses may voluntarily be willing to appear at trial and that a particularized assessment of a witness' availability is appropriate." *Id. See also ADE Corp. v. KLA–Tencor Corp.*, 138 F. Supp. 2d 565, 570–71 (D. Del. 2001) ("Previous decisions in this court have suggested that the better approach is to recognize that witnesses have and will appear here without having to be subpoenaed.").

In this posture, the submission of Netflix on this issue is insufficient to tilt this factor in favor of either party.

6. Location of Records

Records relating to the creation of *Inventing Anna* involving the internal communications among Netflix employees or agents responsible for creating the series likely "reside" in California, the center of gravity for the persons responsible

for the content of the series. Declaration of Rufus-Isaacs at ¶ 5, and Exhibit 2. To the extent that the "records" involve underlying events, those records likely exist in New York, California, and Morocco. In today's world, however, to worry about where such evidence is "located" is entirely fiction, as the ease of digital transmission of text messages, e-mails, or other documents largely obviates this factor as a factor at all. Netflix makes no showing that there are any records that would be available in New York that would not be equally available in Delaware. The location of books and records is only material "to the extent that the files could not be produced in the alternative forum." *Jumara*, 55 F.3d at 879. While "it is improper to ignore" this factor "entirely" it is often irrelevant today because of "recent technological advances" that enable the documents at issue in the litigation to be readily produced in even a distant forum. *Tessera*, 2012 WL 1107706, at *8. "With new technologies for storing and transmitting information, the burden of gathering and transmitting documents 3,000 miles is probably not significantly more than it is to transport them 30 miles." *ADE Corp. v. KLA-Tencor Corp.*, 138 F. Supp. 2d 565, 571 (D. Del. 2001). *See also Cypress Semiconductor Corp., Intern. Microcircuits, Inc. v. Integrated Circuit Systems, Inc.,* C.A. 01-199-SLR, 2001 WL 1617186, at *3 (D. Del. Nov. 28, 2001) ("Advances in technology have significantly lessened the burden of litigating in a distant district. These technologies have shortened the time it takes to transfer information, reduced the bulk or size of

documents or things on which information is recorded . . . and have lowered the cost of moving that information from one place to another.").

This factor favors neither party.

7. Enforceability of a Judgment

This factor is a non-issue here and favors neither party.

8. Other Practical Considerations

Williams is unaware of any "practical considerations" not already subsumed within the factors weighed above that should count in the mix in either direction. Williams observes, however, that given the resources and international presence of Netflix, it is difficult to conjure any practical considerations that would meaningfully distinguish between Delaware and New York. "When transfer is sought by a defendant with operations on a national or international scale, that defendant 'must prove that litigating in Delaware would pose a unique or unusual burden on [its] operations.'" *Intellectual Ventures*, 842 F. Supp. 2d at 751 (quoting *L'Athene, Inc. v. EarthSpring LLC*, 570 F. Supp. 2d 588, 592 (D. Del. 2008)). *See also In re TCW/Camil Holding, L.L.C.*, C.A. No. 03–10717, 03–53929, 03–1154–SLR, 2004 WL 1043193, at *1 (D. Del. Apr. 30, 2004).

9. Docket Congestion

The Southern District of New York is a notoriously congested District, and this Court is well-aware of the caseloads in this District, and also well aware of

Delaware's ethic of speedy justice in its federal and state systems. The problem of congested court dockets is national. Netflix has not submitted any data indicating the relative congestion and prospects for expeditious disposition as between this District and the Southern District of New York, and thus by default this factor favors Williams.

10. Local Interests in Deciding Local Controversies

Delaware, New York, and California share equally in the interest in safeguarding the integrity of public discourse. As the Supreme Court has recognized, a state has an interest in "safeguarding its populace from falsehoods." *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 777 (1984). In a sense, all states share equally in vindicating the interests of protecting individual reputations, by virtue of defamation law's "single publication rule." *Id.* ("New Hampshire also has a substantial interest in cooperating with other States, through the 'single publication rule,' to provide a forum for efficiently litigating all issues and damage claims arising out of a libel in a unitary proceeding."). On the other side of the coin, all states share equally in protecting freedom of speech, enshrined in the First Amendment that all states share commonly as the law of the land.

To the extent that there are any peculiarly "local" interests, both California and Delaware have localized interests in protecting the free speech rights of Netflix, where Netflix has its principal place of business and is incorporated, and

correspondingly, have a localized interest in regulating the conduct of Netflix, and its legal obligation to respect the rights of those it depicts in its broadcasts, as reflected in the law of defamation. The "local controversy" at stake here—whether Netflix did or did not gratuitously defame Williams, is arguably as much a California or Delaware controversy as a New York controversy, and favors neither party. To the extent the notion of "local controversy" is deemed wrapped up in the underlying events in which the actions in the drama occurred, those events took place in New York, California, and Morocco, creating some measure of especially localized interest in all those jurisdictions. Giving Netflix the benefit of some doubt, at best this "underlying events" notion of the "local controversy" moderately favors Netflix.

11. Public Policies of the Fora

The public polices of Delaware, New York, and California as they respect the values of protecting individual reputation and the values of freedom of speech are identical. This factor favors neither party.

While Netflix underplays the California connection, this is in reality a heavily bicoastal case, in which most of the action leading to the *Inventing Anna* series occurred in California and New York.

12. Familiarity with Controlling Law

Modern defamation law is an amalgam of First Amendment and state law doctrines. The First Amendment doctrines that will be in play in this litigation, such

as those raised by Netflix in its parallel pending Motion to Dismiss for Failure to State a Claim, are national in dimension, and this Court is as able as any other federal court to adjudicate them. To the extent that there may be state-law defamation concepts also at issue, Williams is not aware, and Netflix has not identified, any New York defamation law concepts (such as those raised in its substantive motion to dismiss relating to defamatory meaning or the fact / opinion distinction or substantial truth) that differ in any usual way from the commonly applied state defamation law concepts applicable in Delaware and most other jurisdictions. This factor favors neither party.

IV. CONCLUSION

For the reasons discussed, Plaintiff respectfully requests that the Court deny Defendant's motion to transfer.

Dated: December 9, 2022

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE

The foregoing document complies with the type-volume limitation of this Court's November 9, 2022 form Scheduling Order for All Cases. The text of this brief, including footnotes, was prepared in Times New Roman, 14 point. According to the word processing system used to prepare it, the brief contains 4,946 words, excluding the case caption, signature block, table of contents and table of authorities.

/s/ Brian E. Farnan
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Dated: December 9, 2022