UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Gov. Jesse Ventura, a/k/a James G. Janos,

Plaintiff,

vs.

TAYA KYLE, as Executor of the Estate of Chris Kyle,

Defendant.

Civil No. 12-0472 (RHK/AJB)

MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO TRANSFER VENUE

Introduction

The newly substituted Defendant in this case is a recently widowed mother of two children, ages eight and seven. From her home in Midlothian, Texas, a suburb of Dallas, Taya Kyle is attempting to juggle the responsibilities of a single parent while also managing the affairs of her late husband, who was tragically murdered in February, while this case against him was pending. She is preparing for the murder trial of her husband's suspected killer, all while attempting to process her own grief (and helping her children process theirs). These formidable challenges likely will endure for some time.

Trial in this case will probably take two, or even three, weeks. As the newly named defendant, Taya Kyle should attend the entire trial. However, it would be a significant burden and inconvenience for Taya Kyle to travel to and stay in Minnesota for that length of time. Among other reasons, her two children need the comfort and stability provided by their mother's regular presence. Leaving them behind for a two- to three-

week trial would disrupt that presence, and bringing them to a strange city where they would lack their support network of family and friends is a poor alternative.

Pursuant to 28 U.S.C. §1404(a), Taya Kyle therefore moves the Court to transfer this case to her home jurisdiction, the Dallas Division of the U.S. District Court for the Northern District in Texas, at least for the trial. Transfer prior to trial might not be necessary, as motion practice does not require her physical presence in Minnesota. Consequently, she defers entirely to the Court as to the appropriate time for transfer.[1] Taya Kyle also takes no position as to who should preside over a Texas trial and defers to the Court on whether to seek an inter-circuit assignment so as to remain with the case.

A trial in Texas would not necessarily inconvenience Ventura, who winters in Mexico. Texas would be a significantly more convenient trial location than Minnesota for a number of key fact witnesses, two of whom live in Texas and none of whom lives in Minnesota. Finally, this motion should be granted in the interests of justice, as transfer to Taya Kyle's home jurisdiction would significantly reduce the serious burdens imposed on her by a lawsuit that—whatever its legal merit (which will be determined by later dispositive motion or trial)—thwarts, by its mere continuance, Ventura's stated purpose of restoring his reputation, because the lawsuit itself at this point conveys the message

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[1] If this Court wishes to decide dispositive motions, it should postpone ruling on this motion until after it rules on such motions, so as not to forfeit its jurisdictional ability to do so. *See In re Flight Transp. Corp. Sec. Litigation*, 764 F.2d 515, 516 (8th Cir. 1985) ("It is well established that the transferor court under §1404 loses all jurisdiction over a case once transfer has occurred."). If the Court grants Taya Kyle's motion for summary judgment, there will be no trial and transfer would be unnecessary.

that Ventura has little or no regard for the feelings of mourning family members of deceased veterans.

Statement of Facts

I. Procedural history

Chris Kyle, author of *American Sniper*, and the original defendant in this case, was tragically killed on February 2, 2013, by a fellow veteran he was trying to help. On May 16, 2013, Chris Kyle's widow, Taya Kyle, formally noted the death of her husband and identified herself as the duly appointed executor of his estate. *See* Statements Noting Death of Defendant Chris Kyle. (Dkts. 135, 150.) Ventura sought, and the Court granted, the substitution of the executor in place of Chris Kyle. (Dkts. 151, 171.)

Plaintiff Jesse Ventura had sued Chris Kyle for defamation, misappropriation of name and likeness, and unjust enrichment based on a short subchapter in Chris Kyle's book *American Sniper*. That subchapter described an incident in which grieving friends and family of a fallen SEAL, while attending a wake at a San Diego bar frequented by military personnel, overheard Ventura's loud criticisms of the Iraq war and American political leaders; Kyle asked Ventura to "keep it down" out of respect for the occasion; Ventura rebuffed the suggestion and commented "you deserve to lose a few;" Ventura made aggressive gestures toward Kyle; and Kyle responded by hitting Ventura, knocking him down, and then leaving. *See* Complaint (Dkt. 1-1) Ex. A.

II. Taya Kyle's responsibilities in Texas.

Taya Kyle's responsibilities as executor of Chris Kyle's estate include a collection of diverse, complicated issues, ranging from the publication and promotion of his

posthumously published book *American Gun*, to the production of a screen adaptation of *American Sniper*. To put it starkly, in one fateful moment, Taya Kyle went from a stay-at-home mom, who had not worked outside the home in eight years, to a single parent who must work more than 40 hours per week so that she can support her family, as well as advance the charitable causes her husband held dear. Taya Kyle also anticipates testifying at and observing the murder trial of Eddie Ray Routh, the man accused of killing Chris Kyle and his friend Chad Littlefield. *See generally* Declaration of Taya Kyle ¶¶2–11.

Argument

"For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented." 28 U.S.C. §1404(a).

"An action may be transferred under §1404(a) at any time during the pendency of the case." *Chrysler Credit Corp. v. Country Chrysler, Inc.*, 928 F.2d 1509, 1516 (10th Cir. 1991); *see also Leonard v. Mylan, Inc.*, 718 F.Supp.2d 741, 744 (S.D. W.Va. 2010) ("[U]nlike a §1406(a) motion, a §1404 transfer request carries no time restraints. Indeed, because it is based on convenience, §1404(a) invites case development."); *Am. Standard, Inc. v. Bendix Corp.*, 487 F. Supp. 254, 261 (W.D. Mo. 1980) ("Section 1404(a) sets no time limit on when a motion to transfer can be made.").

Congress intended for §1404 to permit transfer, even where venue is proper in the plaintiff's chosen court, so as "to prevent the waste of time, energy and money and to

protect litigants, witnesses and the public against unnecessary inconvenience and expense." 17-111 Moore's Federal Practice—Civil §111.11 (internal citation marks and quotations omitted).

This Court has the authority to transfer this action to the Dallas Division of the Northern District of Texas if: (1) that district is one where the action "might have been brought" originally and (2) transfer will enhance the convenience of the parties and witnesses and is in the interest of justice. *Id.*; *see also Terra Int'l, Inc. v. Miss. Chem. Corp.*, 119 F.3d 688, 691 (8th Cir. 1997). The circumstances of this action meet both requirements.

I. This action might have been brought in the U.S. District Court for the Northern District of Texas.

The "might have been brought" language in §1404 simply means that the proposed transferee district (here, the Northern District of Texas), must be one in which Ventura properly could have filed this lawsuit initially. Moore's, *supra* §111.12[1][b]. In other words, this Court must consider whether, at the time Ventura commenced suit, that district would have had proper venue, subject-matter jurisdiction, and personal jurisdiction over the parties. *Id.*

At the time Ventura sued Chris Kyle, Chris Kyle was a resident of Texas, Ventura was not, and Ventura alleged damages in excess of $75,000. *See* Complaint (Dkt. 1-1) ¶¶ 1–2 and p.17; Answer (Dkt. 2) ¶¶1–2. Thus, any federal court had subject-matter jurisdiction over the lawsuit pursuant to 28 U.S.C. §1332. The Northern District of Texas

would have had personal jurisdiction over Chris Kyle and would have been an appropriate venue by virtue of Chris Kyle's residence in that state and district.

The first prong of §1404 is satisfied.

II. Transfer will enhance the convenience of the parties and witnesses and is in the interest of justice.

The decision whether to transfer venue under §1404(a) lies within the broad discretion of the district court. *See, e.g.*, *Terra Int'l,* 119 F.3d at 691; *see also Ventress v. Japan Airlines,* 486 F.3d 1111, 1118 (9th Cir. 2007); *Sullivan v. Tribley,* 602 F. Supp.2d 795, 799–800 (E.D. Mich. 2009). Courts exercise that discretion "according to an 'individualized, case-by-case consideration of convenience and fairness.'" *Stewart Org., Inc. v. Ricoh Corp.,* 487 U.S. 22, 29 (1988) (quoting *Van Dusen v. Barrack,* 376 U. S. 612, 622 (1964)). The Eighth Circuit has "declined to offer an 'exhaustive list of specific factors to consider' in making the transfer decision." *In re Apple, Inc.*, 602 F.3d 909, 912 (8th Cir. 2010) (quoting *Terra Int'l,* 119 F.3d at 691 (8th Cir. 1997)). However, frequent factors include:

> (1) the convenience of the parties; (2) the convenience of the witnesses; (3) the relative ease of access to sources of proof; (4) the availability of process to compel attendance of unwilling witnesses; (5) the cost of obtaining unwilling witnesses; (6) the practical problems associated with trying the case most expeditiously and inexpensively; and (7) the interest of justice.

Sullivan, 602 F. Supp. 2d at 800; *see also In re Radmax, Ltd.*, No. 13-40462, slip op. at 2–3 (5th Cir. June 18, 2013) (reciting similar factors); *Terra Int'l,* 119 F.3d at 696 (same). Each factor favors transfer of venue to the Dallas Division of the Northern District of Texas.

A. A trial in Texas would inconvenience Ventura much less than a trial in Minnesota would inconvenience Taya Kyle.

For the reasons discussed above, trial in Texas would be significantly more convenient for Taya Kyle than trial in Minnesota. Transfer would allow Taya Kyle to avoid not only expenses for airfare, meals, and lodging, but more significantly would minimize the "'personal costs associated with being away from work, family, and community.'" *In re Apple*, 602 F.3d at 913 (quoting *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 317 (5th Cir. 2008) (en banc)).

Although there is a general practice of according some deference to a plaintiff's choice of forum, that practice is "based on an assumption that the plaintiff's choice will be a convenient one." *Id.* (citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 255–56 (1981)). Moreover, plaintiff's choice of forum is simply one factor to be considered, and is not entitled to the great weight given it under the doctrine of forum non conveniens. *Ahlstrom v. Clarent Corp.*, No. Civ. 02-780-RHK/SRN, 2002 WL 31856386, at *3 n.9 (D. Minn. Dec. 19, 2002). Plaintiff's choice of forum receives significantly less deference where the plaintiff does not reside in the forum or where the underlying facts did not occur in the chosen forum. *Id.* at *4. Both issues have relevance here, because Ventura is only a part-time resident of Minnesota and because (as discussed in Point II-B below) the underlying facts occurred in California, Texas, and New York.

Ventura resides in Minnesota for part of the year, but he testified that he spends his winters, specifically January through May, in the Mexican state of Baja California (and he has, on multiple occasions, expressed interest in applying for Mexican

citizenship). *See* December 11, 2012, Walker Decl. Ex. O (Dkt. 114-15) at 17, 106, 116, 318 (Ventura deposition transcript). Ventura also testified at his deposition that he does not fly, and that he will never fly commercially again. *Id.* at 79, 100, 116, 119. If trial in this case occurs during the winter or early spring, Ventura would have to travel further to the Twin Cities than to Dallas. At least by this measure, trial in Texas could be more convenient for Ventura than trial in Minnesota. *See, e.g.*, *In re Apple*, 602 F.3d at 914 (where plaintiff was located outside of both Arkansas and California, the two venues were roughly equivalent—plaintiff's witnesses would "be required to travel a significant distance no matter where they testify"). Trial in Minnesota is "more convenient" for Ventura only if the Court fashions its trial schedule to accommodate Ventura's personal plans to be in Minnesota—a deference to which Ventura can claim no entitlement

Defendant has proposed a pretrial schedule with a trial-ready date of May 1, 2014, based upon a logical sequence of completing discovery, dispositive motion, and trial readiness. That date falls roughly during the period that Ventura in the past has transitioned from his home in Mexico to his home in Minnesota, and therefore is "location neutral" for trial either in Dallas (on his car trip back to Minnesota) or in Minnesota (adjusting for a slightly earlier return to Minnesota).

The circumstances here do not involve simply switching one party's desire and convenience for a similar level of desire and convenience by the other party, as appears to have been the situation in *Quality Bicycle Products, Inc. v. BikeBaron, LLC*, No. Civ. 12-2397-RHK/TNL, 2013 U.S. Dist. LEXIS 96158, at *13 (D. Minn. July 10, 2013). Rather, the "*comparative* costs to the parties of litigating in each forum" are an element in the

significant, and possibly determinative, "interest of justice" part of a §1404(a) analysis. *Ahlstrom v. Clarent Corp.*, 2002 WL 31856386, at *4 (emphasis added). On such a comparative basis, the inconvenience to Ventura in trying this case in Texas pales beside the inconvenience to Taya Kyle in trying this case in Minnesota.[2]

B. Operative events occurred and third-party witnesses are located outside of Minnesota.

The second through fifth factors from *Sullivan* examine (2) the convenience of the witnesses; (3) the relative ease of access to sources of proof; (4) the availability of process to compel attendance of unwilling witnesses; (5) the cost of obtaining unwilling witnesses. Each of these favors transfer to the Dallas Division of Northern District of Texas.

First, sources of proof (factor no. 3) are not in Minnesota—operative events occurred elsewhere. Just as the plaintiff's choice of forum is given less weight when the plaintiff lives elsewhere, it also is given less weight when operative events occurred elsewhere. *See, e.g., IBM Credit Corp. v. Definitive Comp. Servs., Inc.*, 1996 U.S. Dist. LEXIS 2385 (N.D. Cal. 1996) ("Ordinarily, where the forum lacks any significant contact with the activities alleged in the complaint, plaintiff's choice of forum is given considerably less weight, even if the plaintiff is a resident of the forum."); *In re Eastern District Repetitive Stress Injury Litig.*, 850 F.Supp. 188, 194 (E.D. N.Y 1994) ("[W]hen a

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[2] The parties' Minnesota counsel can try this case in Texas. "The convenience of the parties' counsel is given little or no weight in the convenience analysis." Moore's, *supra* § 111.13[1][e][iii].

plaintiff's chosen forum has no connection to the events which gave rise to the claim for relief, 'plaintiff's choice of forum is a less weighty consideration.'" (quoting *Helfant v. Louisiana & Southern Life Ins. Co.*, 82 F.R.D. 53, 57 (E.D.N.Y.1979))); *see also In re Radmax*, No. 13-40462, at 6 ("[T]he district court should have been fully aware of the inadvisability of denying transfer where only the plaintiff's choice weighs in favor of denying transfer and where the case has no connection to the transferor forum and virtually all of the events and witnesses regarding the case ... are in the transferee forum.").

Here, no "operative event" occurred uniquely in Minnesota. Chris Kyle's book *American Sniper* was distributed nationwide. As to other operative events, they took place outside of Minnesota:

1. Neither the research for nor the writing or publication of *American Sniper* took place in Minnesota. James DeFelice, Chris Kyle's co-author and a New York resident, was primarily responsible for drafting the manuscript, based on interviews between himself and Chris Kyle that occurred in Texas and New York. Chris Kyle edited DeFelice's manuscript drafts from Texas. William Morrow, an imprint of HarperCollins Publishers, which is headquartered in New York, then published the book. *See* Complaint (Dkt. 1-1) ¶ 17; January 4, 2013, Borger Decl. Ex. A (Dkt. 129-1) at 131–33, 140 (Chris Kyle deposition transcript), Ex. C (Dkt. 129-3) at 5–6, 51, 74 (James DeFelice Deposition Transcript); October 11, 2012, Hunn Decl. and attached exhibits (Dkt. 70) (showing New York address).

2. The media interviews in which Chris Kyle participated and about which Ventura complains, *see* Complaint (Dkt. 1-1) ¶¶ 21, 22, 24, occurred outside of Minnesota. Chris Kyle participated in these interviews either by phone, from his home in Texas, or by travelling to New York. January 4, 2013, Borger Decl. Ex. A (Dkt. 129-1) at 186–87, 202–03, 231(Chris Kyle deposition transcript).

3. Finally, the events most central to the dispute—what did or did not transpire at McP's in October 2006—took place in California. *See* Complaint (Dkt. 1-1) Ex. A.

Second, as to factor nos. 2, 4, and 5, transfer will not inconvenience third-party witnesses and may, in fact, facilitate access to certain witnesses. Other than Ventura and Chris Kyle, twelve fact witnesses have been deposed in this case—nine of whom were eye witnesses to the events at McP's. As shown from deposition transcripts, they live in the following states:

State	Witness(es)
California	Ivan Krusic[3]
	Andrew Paul[4]
	Scott McEwen[5]
Texas	John Jones[6]
	John Kelly[7]
Arizona	Debbie Lee[8]
Mississippi	Jeremiah Dinnell[9]
Missouri	Bob Gassoff[10]

[3] December 11, 2012, Walker Decl. Ex. B (Dkt. 114-2) at 8.

[4] *Id.* Ex. C (Dkt. 114-3) at 7.

[5] Ventura's Memorandum In Support of Motion to Amend Scheduling Order (Dkt. 90) at 2.

[6] December 11, 2012, Walker Decl. Ex. I (Dkt. 114-9) at 5.

[7] *Id.* Ex. H (Dkt. 114-8) at 7.

[8] *Id.* Ex. E (Dkt. 114-5) at 9.

[9] Jeremiah Dinnell was an active-duty SEAL at the time of his deposition and was splitting his time between California (where he was deposed) and his home in Mississippi. *See id.* Ex. D (Dkt. 114-4) at 9.

[10] *Id.* Ex. A (Dkt. 114-1) at 10.

State	Witness(es)
New Hampshire	Guy Budinscak[11]
New York	James L. DeFelice[12]
North Carolina	Kevin Lacz[13]
Washington	Debbie Job[14]

None of these key witnesses live in Minnesota. In fact, other than Ventura himself, the only material witness who does live in Minnesota is Defendant's expert, David Schultz, who is willing to travel to Texas for trial. In any event, courts give little weight to the convenience of expert witnesses on a motion to transfer venue. Moore's, *supra* §111.13[1][f][iv].

The testimony of the nine eyewitnesses to the October 12, 2006, events at McP's is highly material to resolution of this case. As shown in the table below, six of them heard Ventura make insensitive comments. One of them saw Chris Kyle punch Ventura. Three of them saw Chris Kyle and Ventura engaged in discussion before the punch. And seven of them saw the immediate aftermath of the punch, as Ventura began to get up from the ground.

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11 *Id.* Ex. J (Dkt. 114-10) at 6.

12 January 4, 2013, Borger Decl. Ex. D (Dkt. 129-4) at 5–6.

13 December 11, 2012, Walker Decl. Ex. G (Dkt. 114-7) at 7.

14 *Id.* Ex. F (Dkt. 114-6) at 6.

Witness name	Heard Ventura make insensitive comments	Saw Kyle-Ventura discussion before punch	Heard Ventura say "deserve to lose a few"	Saw Kyle punch Ventura	Saw Ventura on ground/ getting up	Heard about/ discussed event within 24 hours
Budinscak	Tr.-55–56, 61–62				Tr.-39–41, 65–71	Tr.-67–74
Dinnell	Tr.-41–50, 110–14	Tr.-54–57, 65–66	Tr.-54–57, 116–24	Tr.-54–57, 124–27	Tr.-57–62, 121–28, 149–50	Tr. -68–69
Gassoff					Tr.-51–56	Tr.-55–58
Job						Tr.-41–43
Jones					Tr.-52–62	Tr.-54–55, 61–69
Kelly	Tr.-60–69	Tr.-84–85, 91–92			Tr.-80–92	Tr.-84–88, 96–98
Lacz	Tr.-39–41, 101–08, 132	Tr.-49–50	[15]		Tr.-47–54	Tr.-51–52
Lee	Tr.-59–61, 66–68, 110–19, 122–23; 111–18					Tr.-70–73
Paul	Tr.-38–43, 104–09				Tr.-51–61, 112–29	Tr.-61–66

The transcript pages cited in the table (and in the referenced footnote) have been filed with the Court as Exhibits A, C–J to the December 11, 2012, Walker Declaration (Dkt. 114).

Ventura also deposed Chris Kyle's co-authors: James DeFelice, who lives in New York, and Scott McEwen, who lives in California. Employees of publisher HarperCollins (identified by Chris Kyle as possible witnesses for trial) are based in New York City.

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[15] Lacz testified that he heard Ventura saying "something along the lines of … it's a matter of time that SEALS lose guys when you do those sorts of things. … I guess you can classify it as like you got what you had coming." Lacz. Tr.-39-41; *cf.* January 4,

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In addition to the witnesses deposed, Ventura named in response to discovery requests eight additional witnesses he might call at trial. *See* November 30, 2012, Walker Decl. Ex. O (Dkt. 97-2) at 7–10 (response to interrogatory No. 4). Two of the eight were his wife and son. Presumably, Ventura's wife travels south with him for the winter, and he testified that his son, though a legal resident of Minnesota, currently lives in California. December 11, 2012, Walker Decl. Ex. O (Dkt. 114-15) at 17 (Ventura deposition transcript). Regardless, in opposing a change of venue, Ventura bears the burden of showing the materiality of the testimony of his wife and son. *See* Moore's, *supra* §111.13[1][f][v] ("both parties should submit specific information on these matters in order to indicate which material witnesses will be inconvenienced"). The other six witnesses identified by Ventura are scattered across four states: Colorado, Georgia, Missouri, and Tennessee. *See* November 30, 2012, Walker Decl. Ex. O (Dkt. 97-2) at 5, 7–10 (response to interrogatory Nos. 2, 4).

Pursuant to Fed. R. Civ. P. 45(c)(3)(A)(ii), none of the key witnesses in this case can be compelled to testify at a Minnesota trial. Thus, unless they voluntarily do so, a jury would have to rely on recorded deposition testimony to decide various fact issues, which is not ideal. *See In re Eastern District Repetitive Stress Injury Litig.*, 850 F.Supp. at 194 (E.D.N.Y 1994) ("Depositions ..., even when videotaped, are no substitute for live testimony."). If the trial were moved to Texas, at least two witnesses—John Jones and

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2013, Borger Decl. Ex. C (Dkt. 129-3) at 120–27 (James DeFelice Deposition Transcript; viewing Lacz comments as confirming Kyle's account of incident).

John Kelly, both of whom witnessed events at McP's—would be subject to the transferee court's subpoena power as residents of that state. Under Fed. R. Civ. P. 45(c)(3)(B)(iii), because Jones and Kelly live in or around Austin, Texas, which is more than 100 miles from Dallas, the Northern District would be *permitted* to quash a subpoena served on them, but would not be *required* to do so.

As to any witness who is not subject to the subpoena power but is nonetheless willing to attend trial and testify, transfer to Texas will not increase the inconvenience that such volunteer participation might cause that witness. Both Dallas and Minneapolis have major airports. In fact, several witnesses reside in the southern half of the United States, which might make participation in a Texas trial more convenient than participation in a Minnesota trial. This is a factor upon which many courts put great weight. *See In re Eastern District Repetitive Stress Injury Litig.*, 850 F.Supp. at 194 ("Convenience of witnesses is the most powerful factor governing the decision to transfer a case."); *Gundle Lining Constr. Corp. v. Fireman's Fund Ins. Co.*, 844 F. Supp. 1163, 1166 (S.D. Tex. 1994) ("The relative convenience to the witnesses is often recognized as the most important factor to be considered in ruling on a motion under § 1404(a).").

C. The case can be resolved as expeditiously and inexpensively in Texas as in Minnesota.

Any "garden-variety delay associated with transfer" should not weigh heavily in the Court's analysis. *In re Radmax*, No. 13-40462, at 5. If it did, "delay would militate against transfer in every case." *Id.* As for where the case can be resolved with least expense, there is no reason to believe that a trial in Texas would be more expensive than

a trial in Minnesota. As discussed above, consideration of the travel expenses of the parties and witnesses actually favors transfer.

In any event, the issue of judicial economy should not weigh heavily in the Court's decision whether to transfer venue. "[W]hether one court would move any given case to trial faster is 'speculative,' because 'case-disposition statistics may not always tell the whole story.'" *In re Apple*, 602 F.3d at 915. That is particularly true here, where transfer need not occur until after discovery and dispositive-motion practice are complete.

D. Transfer is in the interest of justice.

The interest of justice—"the most important factor," according to the court in *Gibson Trucking, Inc. v. Allied Waste Indus.*, Civ. No. 01-710-ADM/AJB, 2001 U.S. Dist. LEXIS 18299, *21 (D. Minn. Nov. 2, 2001)—favors transfer to the Northern District of Texas.

In weighing this factor, courts tend to revisit some of the issues previously addressed: "(1) judicial economy, (2) the plaintiff's choice of forum, (3) the comparative costs to the parties of litigating in each forum, (4) each party's ability to enforce a judgment, (5) obstacles to a fair trial, (6) conflict of law issues, and (7) the advantages of having a local court determine questions of local law." *Terra Int'l*, 119 F.3d at 696; *see also Gibson Trucking*, 2001 U.S. Dist. LEXIS 18299, *21 ("The interest of justice … is determined by considering *the relative ability of the parties to bear the expenses of litigating in a distant forum*, and the relative familiarity of the two courts with the law to be applied. Other factors relating to the interest of justice include judicial economy, the

plaintiff's choice of forum, obstacles to a fair trial, and the ability of parties to enforce a judgment." (internal citation omitted) (emphasis added)).

Most of these factors (as discussed above) either favor Taya Kyle's position or are neutral on the issue of transfer. With regard to the few new considerations listed—enforcement of the judgment, obstacles to a fair trial, and conflict of law issues—none is material to the analysis in this case. There is no reason to believe, no matter where the case is tried, that either party will have difficulty enforcing a judgment (including a judgment for costs) or that their respective abilities to obtain a fair trial will be impacted by transfer. As to conflict of law issues, Supreme Court jurisprudence on central First Amendment issues apply with equal force nationwide.[16]

Ultimately, the interest of justice in this case boils down to this: In his pursuit of this lawsuit after the death of Chris Kyle, Ventura has added to the burdens and trauma of a widow whose distinguished husband was brutally murdered. Taya Kyle accepts the Court's discretionary decision granting Ventura's motion to substitute. But she believes wholeheartedly that his claims will ultimately fail—and that no conceivable resolution of

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[16] Those First Amendment issues dominate Ventura's defamation claim and—as construed by this Court (Dkt. 125)—also dominate his claims for misappropriation and unjust enrichment, if Minnesota law applies. The Court's interpretation of Minnesota law conflicts with the law applicable to such claims in Texas, where Kyle resided, and in New York, where he physically made statements during broadcast interviews. Neither of those states would permit those claims at all. *See* Dkt. 25 at 14–15, n. 6. Defendant respectfully maintains the positions that (1) even Minnesota law does not support Ventura's claims for misappropriation and unjust enrichment, and (2) if there is a conflict of substantive law on these claims, the law of Texas or New York should apply, rather than the law of Minnesota.

this case actually could accomplish Ventura's stated purpose of restoring his reputation. In the interest of justice, Taya Kyle should not have to come to Minnesota for trial.

Conclusion

For the reasons stated above, Taya Kyle requests that the Court grant her motion to transfer venue to the Dallas Division of the Northern District of Texas, at whatever stage of the litigation the Court believes is appropriate, but at least for the purpose of trial.

Dated: August 5, 2013

FAEGRE BAKER DANIELS LLP

By: *s/Leita Walker*
John P. Borger, #9878
Leita Walker, #387095
90 South Seventh Street, Suite 2200
Minneapolis, MN 55402
Telephone: (612) 766-7000
Fax: (612) 766-1600
john.borger@FaegreBD.com
leita.walker@FaegreBD.com

Attorneys for Taya Kyle, Executor of the Estate of Chris Kyle