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11 WORLDWIDE, INC., JAMES HOWARD  
RIDINGER, LOREN RIDINGER and  
12 MARC ASHLEY

13  
14 UNITED STATES DISTRICT COURT  
15 CENTRAL DISTRICT OF CALIFORNIA

16  
17 CHUANJIE YANG, an individual;  
OLLIE LAN, an individual; LIU LIU,  
18 an individual; and all those similarly  
situated ,

19 Plaintiff,

20 vs.

21 MARKET AMERICA, INC., a North  
Carolina Corporation; MARKET  
22 AMERICA WORLDWIDE, INC., a  
North Carolina Corporation; JAMES  
23 HOWARD RIDINGER, an  
individual; LOREN RIDINGER, an  
24 individual; MARC ASHLEY, an  
individual; and DOES 1- 100,

25 Defendants.  
26

Case No. CV 17-4012-GW-JEMx  
ORDER TRANSFERRING ACTION TO  
THE UNITED STATES DISTRICT  
COURT FOR THE MIDDLE DISTRICT  
OF NORTH CAROLINA  
ARBITRATION

1 This matter is before the Court on the Motion to Transfer Action of  
2 Defendants MARKET AMERICA, INC., MARKET AMERICA WORLDWIDE,  
3 INC., JAMES HOWARD RIDINGER, LOREN RIDINGER, and MARC  
4 ASHLEY. (Dkt No. 39; hereinafter “Motion to Transfer”.)

5 I. BACKGROUND

6 A. Proceedings in this Action.

7 This action was originally filed by plaintiffs CHUANJIE YANG (“Yang”)  
8 and OLLIE LAN (“Lan”) on May 30, 2017. (Dkt No. 1.) Defendants thereafter  
9 filed a Motion to Compel Arbitration and Dismiss Complaint or Stay Proceedings  
10 Or, in the Alternative, Transfer to the Middle District of North Carolina on June 29,  
11 2017 (Dkt No. 19), which was fully briefed by July 17, 2017. (See Dkt No. 32.)  
12 On July 20, 2017, Plaintiffs filed an amended complaint, so the Court took  
13 Defendants’ motion off calendar, deeming that the motion no longer addressed  
14 what had then become the operative pleading. (See Dkt No. 35.)

15 On August 3, 2017, Defendants filed the Motion to Transfer. (Dkt No. 39.)  
16 At a hearing on September 28, 2017, the Court took the motion under submission  
17 after providing the parties with a tentative order raising the issue of the Court’s  
18 authority under pertinent Ninth Circuit precedent (*Continental Grain Co. v. Dant &*  
19 *Russell*, 118 F.2d 967 (9th Cir. 1941)) to order arbitration outside of the Court’s  
20 judicial district. (See Dkt No. 54.)

21 B. Proceedings in North Carolina

22 At the Court’s suggestion, Defendants filed, on October 5, 2017, a Petition  
23 for Order Compelling Arbitration in the United States District Court for the Middle  
24 District of North Carolina (the “North Carolina Petition”) in an action styled  
25 *Market America, Inc., et al. v. Yang, et al.*, NO. 1:17CV897 (U.S.D.C., M.D.N.C.).  
26 (See Dkt No. 62-1). The pending motions in this action were stayed in order to  
27 allow the court in North Carolina to rule on the North Carolina Petition.  
28

1 On June 19, 2018, this Court entered an order re-activating the Motion to  
2 Transfer (which had previously been taken under submission). A hearing on the  
3 Motion to Transfer was held in this Court on August 20, 2018 (Dkt No. 108).  
4 Subsequently, a number of status conferences were during which counsel reported  
5 to this Court on the status of the North Carolina Petition.

6 After various motions and hearings in North Carolina, on April 10, 2019, the  
7 North Carolina court issued an Order compelling this dispute to arbitration. (*See*  
8 Dkt No. 132-1.)

9 II. MOTION PRESENTED

10 Pending before this Court is the Motion to Transfer. (Dkt. No. 39.)

11 III. LEGAL STANDARD

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

16 In the words of the Supreme Court:

17 In the typical case not involving a forum-selection clause,  
18 a district court considering a § 1404(a) motion ... must  
19 evaluate both the convenience of the parties and various  
20 public-interest considerations. The calculus changes,  
21 however, when the parties’ contract contains a valid  
22 forum-selection clause, which represents the parties’  
23 agreement as to the most proper forum. The enforcement  
24 of valid forum-selection clauses, bargained for by the  
25 parties, protects their legitimate expectations and furthers  
26 vital interests of the justice system. For that reason, and  
27 because the overarching consideration under § 1404(a) is  
28 whether a transfer would promote the interest of justice, a  
valid forum-selection clause [should be] given controlling  
weight in all but the most exceptional cases.

1 *Atl. Marine Const. Co. v. U.S. Dist. Court for W. Dist. of Texas (Atlantic Marine)*,  
2 134 S. Ct. 568, 581 (2013) (alteration in original) (quotations and citations  
3 omitted); Schwarzer, Tashima & Wagstaffe, *Cal. Prac. Guide: Fed. Civ. Proc.*  
4 *Before Trial* (“Schwarzer”) § 4:741 (The Rutter Group 2016). The party defying the  
5 forum-selection clause bears the burden of establishing that transfer to the forum  
6 for which the parties bargained is unwarranted. *See id.* at 134 S. Ct. at 581-82. The  
7 challenging party must show whether the forum-selection clause “designates a  
8 forum so gravely inconvenient that for all practical purposes it will deprive the  
9 complaining party of its day in court.” Schwarzer § 4:874. “A forum selection  
10 clause is presumptively valid; the party seeking to avoid a forum selection clause  
11 bears a ‘heavy burden’ to establish a ground upon which we will conclude the  
12 clause is unenforceable.” *Doe I v. AOL LLC (AOL)*, 552 F.3d 1077, 1083 (9th Cir.  
13 2009) (citing and quoting *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 5  
14 (1972)).

#### 15 IV. DISCUSSION

16 Arbitration clauses are “in effect, a specialized kind of forum-selection  
17 clause.” *Scherk v. Alberto-Culver Co.*, 417 U.S. 506 (1974). The arbitration clause  
18 between the parties, in pertinent part, states that:

19  
20 The arbitration shall be heard by one arbitrator, and it  
21 shall take place in Greensboro, North Carolina. Either  
22 party may seek emergency or provisional relief in the  
23 General Court of Justice, Guilford County, North  
24 Carolina, prior to invoking the arbitration remedy.

25 *See*, Dkt No. 104-2, at § 29 (emphasis added).

26 Defendants invoked the arbitration remedy, and the North Carolina court, on  
27 this point, ruled against Plaintiffs by holding that the North Carolina court was “an  
28 appropriate forum to consider whether arbitration may be compelled” because “the  
parties agreed to arbitrate” in the Middle District of North Carolina. (*See* North  
Carolina Ruling at p. 9 (Dkt No. 103-1, at p. 134).)

1 In this Court, plaintiffs have failed to carry their burden that transfer to the  
2 forum for which the parties bargained is unwarranted. Accordingly, the parties'  
3 agreement, designating Greensboro, North Carolina and Guilford County, North  
4 Carolina as the appropriate forum for the parties' dispute, is enforceable.

5 For the foregoing reasons, the Motion to Transfer Action of Defendants  
6 MARKET AMERICA, INC., MARKET AMERICA WORLDWIDE, INC.,  
7 JAMES HOWARD RIDINGER, LOREN RIDINGER, and MARC ASHLEY  
8 ("Defendants"), pursuant to 28 U.S.C. § 1404(a), is granted, and this case is hereby  
9 transferred to the United States District Court for the Middle of North Carolina.  
10 The Clerk of the Central District of California is hereby directed to take all steps  
11 necessary to effect this transfer.

12 IT IS SO ORDERED.

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14 Dated: May 13, 2019



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Hon. George H. Wu  
United States District Judge

17 Submitted by:

18 WOMBLE BOND DICKINSON (US) LLP  
19 BUCHALTER, A Professional Corporation

21 By \_\_\_\_\_ /s/  
22 Lawrence B. Steinberg  
23 Attorneys for defendants  
24 MARKET AMERICA, INC.,  
25 MARKET AMERICA WORLDWIDE, INC.,  
26 JAMES HOWARD RIDINGER,  
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