

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

The Wornick Company,	:	
	:	Case No. 1:09-cv-931
Plaintiff,	:	
	:	Chief Judge Susan J. Dlott
v.	:	
	:	ORDER GRANTING MOTION TO
Trans-Packers Services, Corporation,	:	DISMISS, OR IN THE
	:	ALTERNATIVE, TO TRANSFER
Defendant.	:	VENUE

This matter is before the Court on Defendant’s Motion to Dismiss Complaint Pursuant to Fed. R. Civ. P. 12(b)(2), or in the Alternative, to Transfer Venue Pursuant to 28 U.S.C. § 1404(a) (docs. 7, 9). Defendant Trans-Packer Services, Corporation (“Trans-Packers”) moves to dismiss on the grounds that the Court lacks personal jurisdiction over it, and alternatively, moves to transfer this action to the United States District Court for the Eastern District of New York for the convenience of parties and witnesses and in the interests of justice. Plaintiff Wornick Company (“Wornick”) opposes both dismissal and transfer. For the reasons that follow, Defendant’s Motion is **GRANTED** and Wornick’s claims are **DISMISSED WITHOUT PREJUDICE**.

I. BACKGROUND

A. Introduction to Parties

Trans-Packers, a New York corporation, has a core business of blending and packaging dry food and non-food products for retail, institutional, industrial, and military customers. (Weiss Dec. ¶ 7.) Trans-Packers conducts its operations from a facility in Brooklyn, New York. (Stip. ¶¶ 14, 16.) Trans-Packers has been a supplier to the United States for approximately

twenty-nine years. (Weiss Dec. ¶ 4.) Trans-Packers manufactures Dairy Shakes, a dehydrated powdered product used primarily by the United States military in its meals-ready-to-eat (“MRE”) program. (*Id.*; Stip. ¶¶ 16-17.)

Because of Trans-Packers’ participation in the MRE program, the United States Department of Agriculture (“USDA”), USDA Dairy, the U.S. military, and other federal and state agencies monitor sanitary conditions at Trans-Packers’ facility in New York. (Weiss Dec. ¶ 7.) Trans-Packers had six USDA and four FDA inspectors on site in New York during the relevant time period. (Stip. ¶ 18.) During the relevant time period, samples of each lot of Dairy Shakes were tested by a USDA-approved laboratory, Certified Laboratories, Inc., for salmonella prior to shipping. (*Id.* ¶ 19; Weiss Dec. ¶ 15.) Trans-Packers sells the Dairy Shakes to the Government directly, including to the Defense Supply Center Philadelphia (“DSCP”), and to three assembler clients, including Plaintiff Wornick. (Weiss Dec. ¶ 4.)

Wornick is a Delaware corporation. (Stip. ¶ 2.) Its principal place of business currently is Cincinnati, Ohio. (*Id.* ¶¶ 7-8.) Wornick acts as a supply-chain integrator or assembler of MREs on behalf of the Government. (*Id.* ¶ 35.) In other words, Wornick purchases the component items for MREs from manufacturers, consolidates them into a final MRE package, and sells them to the Government. (*Id.* ¶¶ 35-36.) Wornick has entered into multi-year contracts with the Government to provide MREs for the United States Military since 1979, at which time it conducted its MRE operations in Texas. (*Id.* ¶¶ 40, 42.) The form of the multi-year contracts is divided into a base year plus Government options for up to four additional years. (*Id.* ¶ 43.) Wornick has included Trans-Packers’ products in the MREs from the beginning of its tenure as an MRE assembler. (*Id.* ¶ 42.) Wornick issued purchase orders to Trans-Packers for its products

from Texas from 1979 through 2006. (*Id.* ¶¶ 3, 5, 42.) In October 2006, Wornick consolidated its operations, including the MRE operations, in Ohio.¹ (*Id.* ¶¶ 5-7.)

Likewise, Trans-Packers shipped its Dairy Shakes to Wornick in Texas from 1979 through August 2006. (*Id.* ¶ 52.) After October 2006, Trans-Packers shipped Dairy Shakes to Wornick in Ohio. (*Id.*) Wornick packaged the Dairy Shakes from Trans-Packers with other products to form MREs for sale and delivery to the Government, specifically to DSCP. (Hyche Dec. ¶ 3; Weiss Dec. ¶ 4; Stip. ¶ 35.) Wornick never sold the MREs to any person or party other than the Government. (Stip. ¶ 37.) The MREs are not available for purchase or consumption by the general public in Ohio. (*Id.* ¶¶ 38, 39.)²

B. Facts Relevant to the Underlying Dispute

On June 14, 2005, Lester Weiss of Trans-Packers sent a letter to Wornick's Elva Charles in Texas regarding Wornick's bid to secure a new multi-year Government MRE contract to begin in 2006. (Stip. ¶ 57; Def. Ex. 9.)³ Weiss discussed Trans-Packers' interest in supplying Dairy Shakes for inclusion in the MREs and stated that its price quotes would "apply to whatever contract quantities you are awarded." (Def. Ex. 9.) Trans-Packer completed price quote sheets for its Dairy Shakes on forms provided by Wornick and on June 27, 2005 provided the

¹ Wornick employs 552 people, 551 of whom are employed in Ohio and one of whom is employed in Texas. (Hyche Dec. ¶ 32; Stip. ¶ 9.)

² Trans-Packers also sells to Wornick products other than Dairy Shakes for inclusion in the MREs. (Hyche Dec. ¶ 34.) Likewise, the Government buys some products directly from Trans-Packers which then are shipped to Wornick in Ohio for inclusion in the MREs. (Hyche Dec. ¶ 35.)

³ References to Defendant's Exhibits and Plaintiff's Exhibits refer to those exhibits submitted by the parties for the hearing held by the Court on July 20, 2010.

completed quote sheets to Wornick in Texas. (Stip. ¶ 58; Tr. 98-104, 109; Def. Ex. 2 at 41-46.)⁴ The quote sheets anticipated a Government MRE contract with a base year of 2006 and Government options to continue the contract each year through 2010. (Tr. 99; Def. Ex. 2 at 41-46.) Weiss did not know that Wornick intended to move its operations to Ohio when he completed the price quote sheets on behalf of Trans-Packers and submitted them to Wornick. (Tr. 111.) The completed price quote sheets assisted Wornick to prepare its pricing on the final bid for the 2006 Government MRE contract. (*Id.* at 102.)

The quote sheets for each flavor of Dairy Shake included Wornick's terms and conditions. (*Id.* at 103; Def. Ex. 2 at 42, 44, 46.) One of the terms and conditions stated that "This is a contract to sell to the Wornick Company Through January 2011." (Def. Ex. 2 at 42, 44, 46.) Nonetheless, Michael Hyche, a vice-president of operations for Wornick, testified that Trans-Packers' submission of the quote sheets alone did not obligate Wornick to purchase the Dairy Shakes from Trans-Packers. (Tr. 55.) He pointed out that the quote sheets did not state a minimum amount which Wornick had to purchase and Trans-Packers supply. (*Id.* at 57.)

Weiss of Trans-Packers testified that Charles informed him in person at an industry-wide meeting held in Kentucky in November 2005 that Wornick had awarded the Dairy Shakes component of the Government MRE contract bid to Trans-Packers. (*Id.* at 122.) In reliance upon Charles' representation, Trans-Packers procured the materials needed to fulfill its obligations. (*Id.* at 122-23.) On or about March 30, 2006, Wornick finalized the relevant MRE contract with the Government. (Stip. ¶ 60; Def. Ex. 14.)

This litigation involves recalled products that were manufactured from June 2007

⁴ "Tr." refers to the transcript of the hearing held on July 20, 2010.

through June 2009 (“the relevant time period”). (Hyche Dec. ¶ 36; Weiss Dec. ¶ 3.) Trans-Packers purchased instant non-fat dry milk during the relevant time period from Franklin Farms East, Inc. (“Franklin Farms”), located in New Jersey, and used the dry milk at its Brooklyn, New York facilities to make Dairy Shakes. (Weiss Dec. ¶¶ 4, 19; Stip. ¶¶ 50-51.) The Franklin Farms dry milk was manufactured by the Plainview Milk Cooperative (“Plainview”), a dairy cooperative located in Minnesota. (Weiss Dec. ¶ 3; Stip. ¶ 49.)

During the relevant time period, Trans-Packers filled at least ten purchase orders to supply Dairy Shakes to Wornick in Ohio. (Stip. ¶ 64.) The purchase orders between Trans-Packers and Wornick specified that the agreed delivery address for all Dairy Shake blends was in Ohio. (Hyche Dec. ¶ 38; Doc. 1-1.) The purchase orders also provided that they were to be “interpreted and enforced under the laws of the State of Ohio.” (Doc. 1-1.)

Michael Hyche of Wornick offered the following testimony regarding the relevant time period for the purchase orders. He stated that Wornick conducted all communications with Trans-Packers related to the purchase orders from Ohio. (Hyche Dec. ¶ 39.) Those communications originated from either Ohio by Wornick or from New York by Trans-Packers. (*Id.*) Hyche identified multiple employees located in Ohio who could testify as to those communications. (*Id.*) At the court hearing, Hyche testified that Wornick had no obligation to purchase Dairy Shakes from Trans-Packers, and Trans-Packers had no obligation to sell Dairy Shakes to Wornick, absent the submission of a purchase order by Wornick to Trans-Packers. (Tr. 51, 53.) However, he also testified that it was Wornick’s “expectation” that Trans-Packers was “obligated to comply with [any] purchase order” which Wornick sent to Trans-Packers. (*Id.* at 58.)

Lester Weiss of Trans-Packers, at the court hearing, described the purchase orders as “shipping orders” because “the pricing was established prior to receiving the purchase orders.” (*Id.* at 105.) He further stated that the parties did not negotiate over the individual purchase orders. (*Id.*) The parties have stipulated that Trans-Packers never changed the pricing on Dairy Shakes based on any negotiations. (Stip. ¶ 65.)

Trans-Packers shipped at least 2 million Dairy Shake blends to Wornick in Ohio pursuant to the purchase orders. (*Id.* ¶ 64.) Trans-Packers mailed invoices to Wornick in Ohio. (*Id.* ¶ 66.) Wornick paid Trans-Packers millions of dollars between 2007 and 2009. (Hyche Dec. ¶ 37.)

Wornick took delivery of the Dairy Shakes at one of its facilities in Ohio. (Hyche Dec. ¶¶ 30, 42.) Wornick assembled the Dairy Shake blends with other components, including an entree and other food or dried items, to make the MREs. (*Id.* ¶¶ 30, 42; Weiss Dec. ¶¶ 5, 13; Stip. ¶ 53.) Wornick then offered the MREs to the Government for inspection in Ohio. (Hyche Dec. ¶¶ 30, 42.) The Government maintained five full-time personnel on-site at Wornick’s Blue Ash, Ohio facility to inspect the MREs. (Hyche Dec. ¶ 31.) In addition, four to five USDA employees worked full-time on-site at Wornick to perform quality control functions with respect to the food processing plant. (*Id.* ¶ 31.) However, Wornick’s inspection of the MREs in Ohio did not include testing Dairy Shakes for salmonella. (Tr. 79.) Instead, Wornick relied on the USDA certification of conformance submitted by Trans-Packers. (*Id.*) Wornick shipped MREs from its Ohio facilities (FOB Ohio terms) to various facilities in the United States and in foreign countries as directed by the Government. (Stip. ¶ 54.) During the relevant time period, Wornick made no MRE shipments to any facility in Ohio. (*Id.*)

In June 2009, Plainview conducted a voluntary recall of certain products, including its dry milk. (Stip. ¶ 71.) The recall of products extended to end users. (Hyche Dec. ¶ 5; Doc. 1-3.) As part of the Plainview recall, Dairy Shakes were recalled worldwide. (Weiss Dec. ¶ 6.) Trans-Packers sent a recall notice to Wornick after receiving the recall notice from Franklin Farms. (Stip. ¶ 73.) Also, the Government issued three “Do Not Consume” orders with respect to the Dairy Shakes. (*Id.* ¶ 74; Pltf. Ex. 25-27.) Some of the affected Dairy Shakes are located at Wornick’s facility in Ohio. (Stip. ¶ 75.)

The Government informed Wornick that it will invoke a breach of warranty action against Wornick related to the recalled goods. (Hyche Dec. ¶ 12.) The Government demanded that Wornick bear all costs associated with re-working the goods, including recalling the goods, shipping them back to Wornick’s facility, removing and replacing the recalled products, and re-shipping the products to the Government. (*Id.* ¶ 13, 27.)

C. Other Facts Relevant to Jurisdiction

Trans-Packers does not have an office nor own property in Ohio. (Stip. ¶ 20.) Trans-Packers has no agents or employees in Ohio and no agents or employees have traveled to Ohio in connection with the sale of products to Ohio. (*Id.* ¶ 21; Weiss Dec. ¶ 8.) Conversely, on two occasions during the relevant time period, Wornick representatives visited Trans-Packers’s facilities in New York. (Weiss Dec. ¶ 21.) Trans-Packers performed all of its services in regards to its relationship with Wornick outside of Ohio, primarily in New York. (*Id.* ¶ 23.)

D. Procedural Posture

Wornick filed a Complaint against Trans-Packers on December 23, 2009 alleging breach of contract and breach of warranties. In lieu of filing an answer, Trans-Packers filed the pending

motion to dismiss or transfer. The Court held a hearing on this matter on July 20, 2010. The motion is ripe for adjudication.

II. DEFENDANT’S MOTION TO DISMISS

A. Standard of Law for Rule 12(b)(2) Motions

Trans-Packers moves for dismissal based on lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2). Wornick bears the burden of proving that the Court may properly exercise personal jurisdiction over Trans-Packers. *Intera Corp. v. Henderson*, 428 F.3d 605, 615 (6th Cir. 2005). The Court has discretion to hold an evidentiary hearing when, as here, material facts are disputed. The plaintiff must establish jurisdiction by a preponderance of the evidence when an evidentiary hearing has been held. *Dean v. Motel 6 Operating L.P.*, 134 F.3d 1269, 1272 (6th Cir. 1998).

B. Analysis

In a diversity case, a district court looks to the law of the forum state to determine whether personal jurisdiction exists. *Calphalon Corp. v. Rowlette*, 228 F.3d 718, 721 (6th Cir. 2000). The exercise of personal jurisdiction is valid only if it meets both the state long-arm statute and constitutional due process requirements. *Id.* Ohio’s long-arm statute, Ohio Revised Code § 2307.382, does not extend to the constitutional limits of the Due Process Clause. *Id.*; *Goldstein v. Christiansen*, 70 Ohio St. 3d 232, 238 n. 1, 638 N.E.2d 541 (1994). However, Trans-Packers does not contest that its activities satisfy Ohio’s long-arm statute. (Doc. 15 at 4.) Therefore, the Court must determine only whether the exercise of jurisdiction over Trans-Packers is constitutional.

To satisfy the Due Process Clause, a defendant must have had “minimum contacts” with

the forum state “such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *Int’l Shoe Co. v. Wash.*, 326 U.S. 310, 316 (1945) (internal quotation and citation omitted). A defendant’s contacts with the forum state can give rise to either general or specific jurisdiction. “General jurisdiction is established when a defendant has continuous and systematic contacts with the forum state sufficient to justify the state’s exercise of judicial power with respect to any and all claims.” *Fortis Corp. Ins. v. Viken Ship Mgmt.*, 450 F.3d 214, 218 (6th Cir. 2006) (internal quotation and citation omitted). Specific jurisdiction subjects a defendant to jurisdiction for claims that arise from or relate to the defendant’s specific contacts with the state. *Id.* To establish specific jurisdiction, a plaintiff must show: “1) the defendant purposefully availed itself of benefits from acting or caused a consequence within Ohio; 2) the cause of action arose from the defendant’s acts or such consequences; and 3) the connection between the defendant and Ohio was sufficiently substantial to make jurisdiction reasonable.” *Beightler v. Produkte Fur Die Medizin AG*, 610 F. Supp. 2d 847, 852-53 (N.D. Ohio 2009).

Here, Wornick asserts that the Court has specific jurisdiction over Trans-Packers. Trans-Packers opposes the exercise of jurisdiction over it on the grounds that it did not purposefully avail itself of benefits of acting in Ohio and that the exercise of personal jurisdiction would be unreasonable. Trans-Packers points out that Wornick operated its MRE business in Texas when Wornick solicited Trans-Packers, that Trans-Packers performed its essential duties of supplying Wornick with Dairy Shakes from New York, and that Trans-Packers does not maintain an office or employees in Ohio. The Court agrees that each of these factors weighs against the exercise of personal jurisdiction.

To begin, Trans-Packer's contractual relationship with Wornick, a company with its principal place of business in Ohio, is not sufficient in and of itself to make the exercise of jurisdiction reasonable. "The [Supreme] Court has held that a contract with an out-of-state party, standing alone, is not sufficient to establish minimum contacts." *Reynolds v. Int'l Amateur Athletic Fed.*, 23 F.3d 1110, 1118 (6th Cir. 1994) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 478 (1985)). Instead, a court should evaluate "prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing" to determine if the defendant purposefully established minimum contacts with a state. *Burger King*, 471 U.S. at 479. "[P]arties who reach out beyond one state and create continuing relationships and obligations with citizens of another state are subject to regulation and sanctions in the other State for the consequences of their activities." *Id.* (internal citation and quotation omitted).

There is a dispute between the parties as to what document(s) contain the terms of their contract(s) for the Dairy Shakes. Trans-Packers states that the contract terms are set forth in the price quote sheets submitted by Trans-Packers to Wornick in 2005. Wornick states that the terms are contained in the purchase orders submitted from Wornick to Trans-Packers after Wornick was awarded the 2006 Government MRE contract. However, the Court finds that it can resolve the pending jurisdictional issue without defining the terms of the contract.

It is undisputed that Wornick conducted its MRE operations in Texas when it first solicited Trans-Packers in 1979. Wornick still operated out of Texas in 2005 when it solicited the Dairy Shakes quote sheets from and later awarded the Dairy Shakes component of the Government MRE contract to Trans-Packers. Both parties anticipated a relationship whereby

Trans-Packers would supply Wornick with Dairy Shakes for the Government MRE contract for up to five years. Trans-Packers did not know in 2005 that Wornick intended to relocate its MRE operations to Ohio the following year. Thus, Trans-Packers did not knowingly avail itself of the privileges of doing business in Ohio when it undertook to supply Wornick with Dairy Shakes for the duration of the Government MRE contract.

. The testimony of Michael Hyche, the vice-president of operations for Wornick—that Wornick expected Trans-Packers to comply with the purchase orders which Wornick issued—indicates that Wornick understood that the parties had made obligations to each other which predated the purchase orders. Stated differently, Hyche’s testimony implies that Wornick believed that Trans-Packers had an obligation to accept and fill the purchase orders for Dairy Shakes. That obligation had to arise from communications which occurred when Wornick still conducted its MRE operations in Texas prior to October 2006.

The fact that Trans-Packers continued its business relationship with Wornick after Wornick relocated to Ohio in October 2006 also does not suffice to satisfy the purposeful availment element. Trans-Packers should not have been required to choose whether to terminate the business relationship both parties intended to last for up to five years—until the Government MRE contract expired—or be subjected to jurisdiction in Ohio based on Wornick’s unilateral move. *See Am. Intern’l Rent-A-Car Corp. v. Cross*, 709 F. Supp. 272, 277 n.4 (D. Mass. 1989) (finding no personal jurisdiction where, after the plaintiff relocated, defendants’ options were to cancel contractual obligations or be subjected to jurisdiction in the new forum). Weiss testified that Trans-Packers did not receive a strategic or commercial benefit from Wornick’s relocation

to Ohio with the possible exception of lower shipment costs. (Tr. 124, 136.)⁵ Courts have found that a defendant is not subject to jurisdiction in a forum state when jurisdiction would be based primarily on the defendant continuing or renewing a pre-existing contract with a plaintiff after the plaintiff relocated to the forum state. *See Intern'l Council of E-Commerce Consultants v. Security Univ. LLC*, No. CV-08-780 WDS/ACT, slip op. at 2, 5-6 (D.N.M Apr. 17, 2009) (“[T]he Court is not convinced that the mere renewal of an ongoing contract after one of the parties has moved to a new state is sufficient minimum contact to invoke jurisdiction in the new state over the other party to the contract.”); *GMAC Real Estate, LLC v. E.L. Cutler & Assocs., Inc.*, 472 F. Supp. 2d 960, 964-65 (N.D. Ill. 2006).

Relatedly, Trans-Packers’ shipment of more than a million Dairy Shakes into Ohio does not compel a finding of personal jurisdiction over Trans-Packers. Ordinarily, the shipment of products into the forum state could be an indication of purposeful availment of the benefits of acting in the state. However, this is not a typical case. Trans-Packers did not ship the Dairy Shakes to Wornick in Ohio for use in Ohio or for re-sale to customers in Ohio. Instead, Trans-Packers sent the Dairy Shakes to Wornick, a Government contractor, to be assembled into MREs to be shipped to various Government facilities in the United States and in foreign countries. This practice did not change whether Wornick was located in Texas or Ohio. As such, Trans-Packers was not seeking to “exploit any market for its products” in Ohio. *Calphalon*, 228 F.3d at 722-23. Trans-Packer’s contacts with Ohio on the basis of the shipment of products, therefore, was

⁵ Weiss’s testimony on whether shipment to Texas or Ohio was more expensive was unclear. At one point he seemed to indicate that it was more expensive to ship to Texas, but he later stated that it was less expensive to ship to Texas. (Tr. 124, 136.) Counsel did not request Weiss to clarify the apparent inconsistency.

attenuated and the result of Wornick's decision to relocate. *See id.* (finding that where the defendant did not seek to exploit the forum market for its products, and where defendant would have done business with the plaintiff regardless of where the plaintiff resided, the defendant's contacts with the forum state were "fortuitous" and "attenuated"). Trans-Packers' shipments to Ohio did not indicate that Trans-Packers sought to invoke the protections which arise from conducting business in Ohio. *Cf. Paglioni & Assocs. v. WinnerComm, Inc.*, 2006-CV-00276, 2007 WL 852055, at *7 (S.D. Ohio Mar. 16, 2007) ("[A] contract is insufficient to constitute purposeful availment if the defendant, through the contract, was not attempting to exploit the state's market, but rather had contact with the state only because the plaintiff chose to reside there.").

Finally, the Court asked the parties to examine the relevancy of the case of *Cincinnati Milacron Indus., Inc. v. Aqua Dyne, Inc.*, 592 F. Supp. 1113 (S.D. Ohio 1984), which also involved the shipment of products from a defendant to a government contractor plaintiff in Ohio. Milacron, an Ohio company, had a contractual obligation to supply a cleaning system for armored tanks to the Army. *Id.* at 1115. Aqua Dyne was a Texas corporation with its principal place of business in Texas. *Id.* at 1116. It was not registered to do business in Ohio, had no agents or property in Ohio, and did not solicit business in Ohio. *Id.* Milacron contacted Aqua Dyne and issued purchase orders to Aqua Dyne for a high pressure water pump. *Id.* at 1115-16. Aqua Dyne shipped two water pumps to Milacron in Lebanon, Ohio and also, pursuant to the contract, assisted with the start-up of the pump in Ohio. *Id.* Milacron sued Aqua Dyne in Ohio after the pump failed to meet the Army's specifications. *Id.* The district court found that the exercise of personal jurisdiction over Aqua Dyne in Ohio was reasonable under these facts. *Id.*

at 1117.

The Court finds that *Aqua Dyne* is distinguishable in key respects. First, Wornick conducted its MRE operations in Texas when it first solicited Trans-Packers in 1979 and when it solicited Trans-Packers to supply Dairy Shakes for the 2006 Government MRE contract. Aqua Dyne, on the other hand, contracted with Milacron knowing it was an Ohio company. Second, no Trans-Packers employees or agents traveled to Ohio to provide technical assistance to Wornick. The Court concludes that *Aqua Dyne* does not compel a holding that Trans-Packers is subject to personal jurisdiction in Ohio.

For the foregoing reasons, the Court holds that Trans-Packers has not purposefully availed itself of the privileges of acting in Ohio. The exercise of personal jurisdiction over Trans-Packers in Ohio under these particular circumstances would be unreasonable. The Court will **GRANT** Trans-Packers' Motion to Dismiss on this basis of lack of personal jurisdiction.⁶

⁶ The Court need not adjudicate the Motion to Transfer given the Court's holding on the Motion to Dismiss. However, the Court notes that the convenience of the witnesses, specifically the Government witnesses who inspected the Dairy Shakes for salmonella, weighs in favor of transfer.

III. CONCLUSION

For the foregoing reasons, Defendant's Motion to Dismiss Complaint Pursuant to Fed. R. Civ. P. 12(b)(2) or in the Alternative, to Transfer Venue Pursuant to 28 U.S.C. § 1404(a) (doc. 7) is **GRANTED**. Wornick's claims are **DISMISSED WITHOUT PREJUDICE**.

IT IS SO ORDERED.

s/Susan J. Dlott
Chief Judge Susan J. Dlott
United States District Court