UNITED STATES DISTRICT COURT

FOR THE NORTHERN MARIANA ISLANDS

JUNIOR LARRY HILLBROOM, an individual, **Plaintiff,** **v.** **DAVID J. LUJAN, an individual; and DOES 1 through 10, inclusive,** **Defendants.**	**CASE NO. CV 10-09** **O R D E R GRANTING IN PART AND DENYING IN PART MOTION TO DISMISS**

Before the Court is Defendant David J. Lujan ("Lujan")'s Motion to Dismiss (the "Motion"). After considering the moving, opposing, replying papers, and supplemental papers[1] as well as the parties' oral argument, the Court GRANTS IN PART AND DENIES IN PART the Motion.

[1] At the hearing on this matter, counsel for Defendant sought leave of Court to submit supplemental briefing addressed to the Court's tentative order within two days of the hearing. Defendant has filed no supplemental briefing as of the date of this Order.

I. Background

In May 1995, Larry L. Hillblom ("Hillblom"), the billionaire founder of DHL Worldwide Express ("DHL"), perished in an airplane crash. Compl. ¶ 15. Plaintiff Junior Larry Hillbroom ("Hillbroom"), a child living in poverty in the Republic of Palau (*id.* ¶ 16), filed a claim against Hillblom's estate in CNMI Superior Court claiming to be Hillblom's neglected heir. In this lawsuit, filed nearly fifteen years after the dissolution of Hillblom's estate, Hillbroom alleges that he was defrauded by the attorneys who represented his claims against the estate.

Hillbroom retained a number of entities and individuals to represent him in connection with his claims against the Hillblom estate. In or about June 1995, Hillbroom retained Family and Immigration Law Clinic (FILC) to represent him in exchange for a 20% contingency interest in Hillbroom's eventual recovery. *Id.* ¶ 17. Hillbroom then hired Defendant Lujan and signed a *new* retainer agreement that evenly divided a 22% contingency interest in Hillbroom's eventual recovery between Lujan and FILC. *Id.* ¶ 18. Allegedly seeking to obtain a more generous contingency interest, Lujan and his co-counsel solicited Hillbroom's appointed guardian — his grandmother Naoko Imeong ("Naoko") — "to execute a retainer providing [Lujan] with a 38% contingency fee of the gross amounts [Hillbroom] recovered from the Hillblom estate and any other subsequent related litigation or settlement." *Id.* ¶ 23. The proposed retainer agreement drafted by Lujan and his co-counsel "eliminat[ed] FILC from the picture" and included language noting the intensive nature of the attorneys' representation. *Id.* ¶¶ 23,24.

Before Naoko signed the proposed retainer agreement, a DNA test confirmed Hillbroom's relation to Hillblom, resulting in a settlement of Hillbroom's claims against Hillblom's estate for approximately 15% of the $550 million left behind by Hillblom. *Id.*¶ 4. The CNMI Superior Court, in which the probate case was pending, appointed Naoko and Hillbroom's mother to serve as Hillbroom's guardians. *Id.* ¶¶ 2,3,19,20. The court approved the interim use of the funds for essentials (*see id.* ¶ 25) and appointed a special master to immediately distribute $7.5 million of the roughly $82.5 million owed to Hillbroom. *Id.* ¶¶ 28-29. By April 5, 2000, the rest of Hillbroom's entitlement was paid into the JLH Trust ("JLH") of which Hillbroom was the beneficiary and a third-party named Keith A. Waibel ("Waibel") was co-trustee. *Id.* ¶ 30.

The execution of this relatively simple arrangement was complicated by a separate guardianship proceeding pending in the Guam Superior Court not specifically identified in the Complaint. That court, like the CNMI Superior Court overseeing the Hillblom probate case, appointed Naoko to serve as Hillbroom's co-guardian. *Id.* ¶ 19. The Guam Superior Court also acted in parallel with the probate court by approving the JLH Trust and agreeing to supervise the trust until Hillbroom reached majority at 18. *Id.* ¶ 31. The Guam Superior Court further approved the proposed retainer agreement in June 1997, entitling Lujan and his co-counsel to 38% of Hillbroom's recovery, although Hillblom alleges that the probate court's failure to *independently* approve the agreement rendered the agreement a nullity by its own terms. *See id.* ¶ 25,27.

At some time after the initial distribution of funds from Hillblom's estate, Hillbroom's attorneys and grandparents successfully petitioned the Guam Superior Court to admit Hillbroom to a hospital in Port Hueneme, California for reasons not identified in the Complaint. *Id.* ¶ 38. Waibel (the trustee) served as Hillbroom's guardian in the United States. *Id.* While Hillbroom was admitted to a hospital in California, and later enrolled in an American university, Lujan and Waibel allegedly conspired to increase the attorneys' contingency fee award from 38% to 56% of Hillbroom's share of the Hillblom estate. Specifically, unbeknownst to Hillbroom, his attorneys allegedly coerced Waibel into approving a "56% Retainer that entirely superseded and replaced the prior retainer." *Id.* ¶ 41. The revised fee agreement was allegedly backdated to April 15, 1999, so that the attorneys could recover 56% of sums *already* distributed by the Hillblom estate to the JLH Trust. *See id.* ¶ 42. After Lujan allegedly appeared before the Guam Superior Court *ex parte*, and allegedly lied to that court about Hillbroom's guardians' approval of the revised contingency fee, the court approved the agreement. *See id.* ¶¶ 41-46.

Hillbroom was first alerted to these facts years later by an agent of the Federal Bureau of Investigation (FBI), and discovered that about $12 million remained in the JLH Trust for his benefit. *Id.* He now brings claims against Lujan for (1) legal malpractice; (2) breach of fiduciary duty; (3) fraud; (4) violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961, *et seq.*; (5) civil conspiracy; and (6) violations of California Business &

Professions Code § 17200.

II. Discussion

Lujan moves to dismiss or, in the alternative, to transfer this action to the Untied States District Court for the District of Guam.

A. Motion to Dismiss

Fed. R. Civ. P. 12(b)(6) provides that a party may move to dismiss a complaint on the grounds that it fails to state a claim upon which relief can be granted. When ruling on a motion to dismiss under Rule 12(b)(6), "[a]ll allegations and reasonable inferences are taken as true, and the allegations are construed in the light most favorable to the non-moving party." *Adams v. Johnson*, 355 F.3d 1179, 1183 (9th Cir. 2004) (citing *Sprewell v. Golden State Warriors*, 265 F.3d 979, 988 (9th Cir. 2001)). To survive a motion to dismiss, a complaint cannot present "unadorned" and conclusory allegations, but must "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, - - - U.S. - - -, 129 S.Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 555, 570, 127 S.Ct. 1955 (2007)).

Lujan moves to dismiss on six grounds: (1) that Hillbroom's claims are barred by the doctrines of res judicata and collateral estoppel; (2) that Hillbroom lacks standing to bring claims for legal malpractice; (3) that Hillbroom failed to join necessary an indispensable parties; (4) that Hillbroom's claims are barred by the applicable statutes of limitations; (5) that this Court cannot exercise jurisdiction over the claims in the Complaint; and (6) that Hillbroom fails to state a claim upon which relief can be granted.

1. Issue Preclusion

Lujan argues that the Guam Superior Court's approval of the most recent iteration of the contingency fee agreement precludes Hillbroom's claims. On October 31, 2002, the Guam Superior Court approved a final accounting of the JLH Trust's assets after finding Lujan's request for attorneys' fee distributions "proper in all respects." Declaration of Lujan, Ex. 43.

The Guam Superior Court's determination about the reasonableness of the attorneys' fee distributions to Lujan does not have preclusive effect on Hillbroom's claims in this lawsuit for

two reasons. First, Hillbroom does not simply seek a re-adjudication of those fee payments; his claims instead arise out of Lujan's alleged failure to apprise Hillbroom of his request for an increased contingency fee award, as well as Lujan's corresponding failure to faithfully represent Hillbroom's interests by knowingly submitting baseless attorneys' fees calculations to the Guam Superior Court. Compl. ¶¶ 55-63. The Guam Superior Court did not resolve, or even purport to resolve, Hillbroom's concerns about the quality of Lujan's representation. Second, and to the extent Hillbroom challenges the attorneys' fees distributions approved by the Guam Superior Court, the Complaint expressly alleges that the Guam Superior Court's approval was induced by Lujan's fraudulent conduct, including but not limited to (1) Lujan's omission of material facts in his *ex parte* argument to the Guam Superior Court; (2) Lujan's failure to inform the Guam Superior Court about the fact that the proposed retainer agreement had been backdated; and (3) Lujan's failure to inform the Guam Superior Court that Waibel (Hillbroom's guardian and the trustee to the JLH Trust) had been fraudulently induced to agree to the revised attorneys' fee agreement. It is well-established that such allegations of extrinsic fraud act as an exception to general rules of issue preclusion. *C.f. Estate of Charters*, 46 Cal.2d 227, 234 (1956) (holding that court's finding lacks preclusive effect if "a party has been prevented from fully presenting his case and there has therefore been no adversary trial of the issue.").

2. Standing

Lujan argues that since he represented only the JLH Trust and Naoko, Hillbroom lacks standing to bring claims for legal malpractice and breach of fiduciary duty against Lujan. The Complaint, however, alleges that Lujan "represented [Hillbroom] and his interests." Compl. ¶ 2; *see also id.* ¶ 4 (alleging that Hillbroom was Lujan's client).

Lujan challenges this allegation by submitting as exhibits the retainer agreements and pointing to language suggesting that Hillbroom was never a signatory to the agreements. *See, e.g.*, Lujan Decl., Ex. 15. However, the authenticity of the retainer agreements submitted in support of Lujan's motion to dismiss is not "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned" — *i.e.*, the Court cannot confirm that these were the actual and only agreements entered into by Lujan in connection with

the claims against the Hillblom estate. Fed. R. Evid. 201.[2] Since the Court cannot take judicial notice of these documents, it may consider only the allegations in the Complaint, which are adequate to preliminarily establish Hillbroom's standing to bring direct claims for breach of fiduciary duty and legal malpractice against Lujan. *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994).

Even if the Court were to impermissibly consider the retainer agreements submitted by Lujan, it would find that the agreements do not defeat Hillbroom's standing. First, the actual text of the retainer agreements do not corroborate Lujan's claim that "there was never an attorney-client relationship" between Lujan and Hillbroom. (Mot. at 8.) For example, the July 13, 1996 retainer agreement — pursuant to which Lujan secured a 38% contingency interest any distribution to Hillbroom by the Hillblom estate — states that Lujan has "been vigorously representing [Hillbroom's] claim." Lujan Decl., Ex. 15 at 00216. Since the agreement was entered into by Naoko *in her capacity as Hillbroom's guardian*, Hillbroom is deemed to be the contracting party under well established principles of guardianship. *C.f. Deja Marie J ex. rel Jerry J v. San Francisco Unified School Dist.*, 2006 WL 2348884, at *2 (N.D. Cal. Aug. 11, 2006).

In all events, the Complaint satisfies Hillbroom's burden of establishing that he has standing under Article III, which is a prerequisite to the Court's exercise of subject matter jurisdiction over his claims. To establish standing under Article III of the Constitution, a plaintiff must demonstrate: "(1) an 'injury in fact' – an invasion of a legally protected interest which is (a) concrete and particularized," meaning that the injury must "affect the plaintiff in a personal and individual way," and (b) "'actual or imminent,' not 'conjectural' or 'hypothetical;'" (2) "there must be a causal connection between the injury and the conduct complained of – the injury has to be 'fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court;'" (3) "it must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable

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[2] Lujan's separately filed Request for Judicial Notice is STRICKEN AS MOOT.

decision.'" *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130 (1992) (internal citations omitted). Hillbroom was allegedly injured in fact when the attorneys' fee payouts diminished his share of the Hillblom estate. The attorneys' fee pay outs were made after Lujan allegedly committed a fraud upon the Guam Superior Court, colluded with Waibel, and tortiously neglected Hillbroom's interests. This harm is redressable by the monetary and declaratory relief sought by Hillbroom in the instant lawsuit. For the foregoing reasons, the Court finds that the Complaint's allegations are sufficient to confer standing upon Hillbroom at this preliminary stage.

3. Statute of Limitations

Lujan argues that the statute of limitations has run on Hillbroom's claims, which accrued at the time Naoko (his guardian) learned of Lujan's alleged conduct. Assuming a guardian's knowledge is imputed to the minor for the purposes of measuring the date of discovery, the Complaint alleges that Naoko was not aware that Lujan appeared *ex parte* before the Guam Superior Court, misrepresented the facts to the Guam Superior Court, and successfully petitioned to recover 56% of Hillbroom's distribution. Compl. ¶¶ 41-46. In fact, the Complaint that Lujan allegedly misled the Guam Superior Court to believe that Naoko approved of the increase in Lujan's contingency interest, even though Naoko had been left in the dark. *Id.*[3]

It may be the case that Hillbroom (or Naoko) had knowledge of the factual basis for one or more of Hillbroom's claims at the time of the events giving rise to those claims. Such an inquiry is ill-fit for resolution at this stage in the litigation and can be better addressed at summary judgment and/or trial.

4. Failure to State a Claim

Lujan argues that even assuming Hillbroom's Complaint has satisfied the procedural issues discussed above, it fails to state claims for legal malpractice, breach of fiduciary duty, fraud, violation of the Racketeer Influenced and Corrupt Organizations Act (RICO), civil

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[3] In his Motion, Lujan attempts to contest these allegations by citing to exhibits outside the pleadings. (Mot. at 11.) These exhibits are not subject to judicial notice, Fed. R. Evid. 201, and may not be considered in adjudicating Lujan's Motion.

conspiracy, and violation of Cal. Bus. & Prof. Code § 17200.

(i) Legal Malpractice and Breach of Fiduciary Duty

Lujan challenges Hillbroom's claims for legal malpractice and breach of fiduciary duty on identical grounds. Under California law, which the parties cite due to the dearth of applicable law specific to the Northern Mariana Islands, both claims rely upon the existence of a duty, a breach of that duty, and damages. *Budd v. Nixen*, 6 Cal.3d 195, 200 (1971) (legal malpractice); *Pellegrini v. Weiss*, 165 Cal. App. 4th 515, 524 (2008) (breach of fiduciary duty).

Lujan argues that he owed no duty to Hillbroom because he represented the JLH Trust and Naoko, and not Hillbroom. As explained above, the Complaint's allegations dispute Lujan's description of the scope of his representation, which Lujan attempts to corroborate with exhibits that the Court may not consider in adjudicating his Motion. This dispute between the parties is one best resolved at summary judgment and/or trial, and upon consideration of a factual record developed during discovery.

Lujan also argues that the Guam Superior Court already concluded that the amounts paid to attorneys were proper. As discussed in the context of issue preclusion, Hillbroom's legal malpractice and breach of fiduciary duty claims arise out of more than just the distribution of attorneys' fees to Lujan. These claims arise out of Lujan's failure to properly represent Hillbroom's interests, as well as Lujan's coercion of Waibel (and potentially Naoko) to take action inimical to the best interests of Hillbroom.

(ii) Fraud

The elements of a claim for fraud are (1) misrepresentation; (2) knowledge of falsity; (3) intent to defraud or induce reliance; (4) justifiable reliance; and (5) injury. *Taitano v. Calvo Fin. Corp.*, 2008 Guam 12 (2008). Rule 9(b) of the Federal Rules of Civil Procedure requires that allegations of fraud be pled with particularity. Fed. R. Civ. P. 9(b). Specifically, a plaintiff alleging fraud must identify the who, what, when, where, and how of the alleged fraud, so as to put the defendant(s) on notice of the particular conduct that gives rise to the claim. *See Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003). Lujan argues that he made no material misrepresentations, since he disclosed the terms of the revised attorneys' fee agreement

to Hillbroom's guardians as well as the Guam Superior Court, but Hillbroom's claims arise out of the backdating of that agreement and the representation to the Guam Superior Court that the amounts charged in attorneys fees were reasonable, which induced the Guam Superior Court to agree. These misrepresentations were also made by Waibel, which created the impression of consent. Finally, the allegations of fraud are pled with particularity, since Hillbroom identifies the role played by Lujan through his inducement of Waibel and his backdating of the agreement.

(iii) Violation of the Racketeer Influenced and Corrupt Organizations Act

18 U.S.C. § 1964(c) allows a civil plaintiff to recover treble damages, costs and attorneys' fees for injury to business or property suffered by reason of a violation of one of the Racketeer Influenced and Corrupt Organizations Act (RICO)'s substantive provisions, including 18 U.S.C. § 1962(c), which proscribes the participation in the conduct of an enterprise's affairs through a pattern of racketeering activity. Lujan raises two challenges to Hillbroom's RICO claim.

First, Lujan argues that Hillbroom's claim fails to allege that Lujan directed the affairs of the alleged enterprise. "In order to 'participate, directly or indirectly, in the conduct of such enterprise's affairs,' one must have some part in directing those affairs." *Reves v. Ernst & Young*, 507 U.S. 170, 179 (1993). Contrary to Lujan's argument, the Complaint adequately alleges Lujan's role in "directing the affairs" of the enterprise through the commission of the following acts: (1) fraudulently inducing Waibel and Naoko to betray Hillbroom's interests; (2) backdating the proposed retainer agreement eventually approved by the Guam Superior Court; (3) making material misrepresentations to the Guam Superior Court about the nature of Lujan's representation and Naoko's consent to the proposed retainer agreement; and (4) drafting the proposed retainer agreement in contravention of Lujan's common law duties to Hillbroom.

Second, Lujan argues that Hillbroom fails to allege the predicate acts of mail fraud and wire fraud with the particularity required by Fed. R. Civ. P. 9(b). However, allegations of mail fraud and/or wire fraud are not *always* subject to Rule 9(b)'s particularity requirements, since even non-fraudulent communications through the mails or wires may execute a scheme to defraud. *See Bryant v. Mattel, Inc.*, 2010 WL 3705668, at *7 (C.D. Cal. Aug. 2, 2010) (Carter,

J.). As a result, Rule 9(b) only applies to (1) the scheme itself; and (2) those mail and/or wire communications alleged to be fraudulent. *Id.* Lujan does not and cannot dispute that the Complaint alleges the scheme to defraud with particularity.

(iv) Civil Conspiracy

Since "there is no substantive tort of civil conspiracy" under Commonwealth law, Hillbroom's claim for civil conspiracy must be dismissed. *See I.G.I. General Contractor & Dev., Inc. v. Public School System*, 1999 WL 33595880, at *3 (N. Mariana Islands 1999).

(v) Violation of Cal. Bus. & Prof. Code § 17200

The "extra-territorial application of the UCL is improper where [1] non-residents of California raise claims based on conduct that [2] allegedly occurred outside the state." *Parkinson v. Hyundai Motor Am.*, 258 F.R.D. 580, 599 (C.D. Cal. 2008). Both requirements are met here. Moreover, Hillbroom alleges that he is a resident of Idaho, and not California Compl. ¶ 1. Hillbroom's claim for a violation of California's unfair competition law relies upon conduct that occurred in the Northern Mariana Islands, and not California; none of the conduct giving rise to any of Hillbroom's claims occurred in California. *See, e.g., id.* ¶¶ 102-103. For the foregoing reasons, the Complaint's claim for a violation of Cal. Bus. & Prof. Code § 17200 is dismissed.

5. Failure to Join Necessary and Indispensable Parties

A complaint may be dismissed if it fails to join a party under Rule 19. Fed. R. Civ. P. 12(b)(7); *see also United States v. Bowen*, 172 F.3d 682, 688 (9th Cir. 1999). A party must be joined under Rule 19 in two circumstances: "(1) when complete relief is not possible without the absent party's presence, or (2) when the absent party claims a legally protected interest in the action." Fed. R. Civ. P. 19(a). If it is impracticable to join a necessary party, the Court must "determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed." Fed. R. Civ. P. 19(b).

Lujan argues that the Complaint's failure to join the JLH Trust and its trustees, including Waibel, warrants dismissal. Neither the trust nor Waibel have "claim[ed] a legally protected interest" in this action. The burden therefore falls to Lujan to show that complete relief is not

possible without one or both parties' presence. *Makah Indian Tribe v. Verity*, 910 F.2d 555, 558 (9th Cir.1990). Lujan's Motion fails to specifically explain why either the trust or its trustees must be joined; instead, Lujan summarily cites to three cases out of the Ninth Circuit for the proposition that "a trustee . . . is an indispensable party to an action arising out of a dispute involving the trust." (Mot. at 9.)

None of the cases cited by Lujan so holds. *Bowles v. Reade* involved a claim brought by certain ERISA plans and not, as here, the individual beneficiary of those plans. 198 F.3d 752, 760-61 (9th Cir. 1999). *Dolch v. United California Bank* did not directly address the issue of indispensability, but instead discussed the realignment of parties, such that a co-trustee would be joined as plaintiff with a trust beneficiary asserting common claims against the other co-trustee. 702 F.2d 178, 181-82 (9th Cir. 1983). *Walter v. Drayson* involved claims brought by the trust beneficiary against a trustee, though the complaint in that case failed to join a successor trustee as defendant. 538 F.3d 344, 1249-1250 (9th Cir. 2008). Unlike any of these cases, this lawsuit does not involve a claim by the trust itself or by Hillbroom (as beneficiary) against a trustee. Nor do Hillbroom's claims, contrary to Lujan's argument, arise out of Lujan's representation of the JLH Trust. As dicussed earlier, the Complaint alleges that Lujan failed in his representation *of Hillbroom*, and that such failure amounted to legal malpractice, breach of fiduciary duty, fraud, and a violation of the Racketeer Influenced and Corrupt Organizations Act. Lujan's conclusory reference to inapposite Ninth Circuit authority does not satisfy his burden of establishing that complete relief cannot be accorded absent the joinder of the trust or its trustees.

6. Venue

Lujan finally argues that Hillbroom's claims should be dismissed for improper venue pursuant to Fed. R. Civ. P. 12(b)(3) because the District of Guam, and not the District for the Northern Mariana Islands, is the proper venue for this dispute. Lujan argues for dismissal, or transfer, on three grounds.

First, Lujan argues that 38% retainer agreement entered into between Lujan and the JLH Trust and/or Hillbroom contained a forum selection clause, providing that any disputes arising out of a breach of that agreement be tried in a Guam court. *See* Lujan Decl., Ex. 15 at 000226

("Any and all disputes arising out of this Agreement shall be brought in the U.S. District Court of Guam."). However, Hillbroom does not bring a claim alleging that Lujan breached that agreement, which renders the forum selection clause irrelevant to the instant dispute. Even if Hillbroom alleged that Lujan breached his contractual duties, the Complaint alleges that the 38% retainer agreement (in which the forum selection clause is found) was superseded by the 56% retainer agreement fraudulently executed by Lujan. Compl. ¶ 46. Finally, Hillbroom alleges that the *procurement* of the retainer agreement(s), including the forum selection clauses contained therein, was fraudulent in all respects. It therefore makes little sense to bind Hillbroom to a forum selection clause in an agreement that he alleges is void on its face.

Second, Lujan argues that the hearing before the Guam Superior Court was the significant event giving rise to Hillbroom's claims. 28 U.S.C. § 1391(b) provides that "[a] civil action . . . may . . . be brought only in . . . a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of the property that is the subject of the action is sustained." Here, the Complaint alleges a variety of additional misconduct by Lujan, including (1) the backdating of the proposed retainer agreement; (2) Lujan's collusive and coercive behavior with respect to Waibel; and (3) Lujan's omissions in the context of his representations to both Hillbroom and Hillbroom's guardians. Lujan does not argue that any of this misconduct occurred in Guam, and failed to address the issue at the hearing on this matter. Since discovery may reveal that all of this alleged misconduct also occurred in Guam, Lujan's motion to dismiss for improper venue is denied without prejudice to his ability to later seek dismissal or transfer on the basis of an expanded factual record.

Third, Lujan argues that 28 U.S.C. § 1404 compels the transfer of this action to the U.S. District Court for the District of Guam. The factors relevant to section 1404 transfer are: "(1) the location where the relevant agreements were negotiated and executed; (2) the state that is most familiar with the governing law; (3) the plaintiff's choice of forum; (4) the respective parties' contacts with the forum; (5) the contacts relating to the plaintiff's cause of action in the chosen forum; (6) the differences in the costs of litigation in the two forums; (7) the availability of compulsory process to compel attendance of unwilling nonparty witnesses; (8) the ease of

access to sources of proof and (9) any relevant public policy of the forum state." *Inherent.com v. Martindale-Hubbell*, 420 F. Supp. 2d 1093, 1098 (N.D. Cal. 2006). As discussed above, there is no reliable evidence in the record about the location in which the retainer agreements were drafted. The remaining factors do not meaningfully compel in favor of (or against) transfer in light of Guam's proximity to the Northern Mariana Islands. Lujan, Hillbroom, Waibel, and Naoko are undoubtedly the critical witnesses, and these individuals are not concentrated in Guam; to the contrary, they can be found in the continental United States, Guam, and potentially the CNMI. The costs of litigation are significantly lower in the CNMI for two reasons: (1) counsel for both parties are located in Southern California and enjoy the convenience of being able to appear for hearings in California before one of the many California judges who sits by designation in the U.S. District Court for the Northern Mariana Islands; and (2) the transfer of this lawsuit would cause the district court in Guam to expend tremendous and duplicative resources to familiarize itself with the complex factual allegations in Hillbroom's complaint. Since most of the section 1404 factors are of marginal relevance, and the remaining factors weigh against transfer, Lujan's request for a transfer of this action is denied.

IV. Disposition

For the foregoing reasons, the Motion is GRANTED as to the Complaint's fifth and sixth claims. The Motion is otherwise DENIED.

IT IS SO ORDERED.

DATED: November 30, 2010

David O. Carter

DAVID O. CARTER
United States District Judge