

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 0:22-CV-61407-SMITH**

SHENZHEN HAPPY VAPING  
TECHNOLOGY LTD.,

Plaintiff,

v.

LOGIC TECHNOLOGY DEVELOPMENT  
LLC, and  
JAPAN TOBACCO INTERNATIONAL  
U.S.A., INC.,

Defendants.

**REPLY MEMORANDUM IN SUPPORT OF DEFENDANTS’  
RENEWED MOTION TO STAY DISCOVERY AND OTHER DEADLINES**

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## I. INTRODUCTION

Rather than grapple with the legal authority on the propriety of a stay when a case dispositive motion is pending, or offer any justification for its improper attempts to obtain jurisdictional discovery without first seeking this Court’s permission, Plaintiff hinges its opposition to Defendants’ Renewed Motion to Stay on a false and blatantly disingenuous claim alleging a procedural deficiency. Plaintiff’s entire opposition rests upon a fundamental fallacy: that Defendants’ Notice to Reassert its Motion to Dismiss (ECF 24, hereinafter “Reasserted Motion to Dismiss”) explicitly invoking Rule 12(b)(3) and “mov[ing] the Court to [] dismiss Plaintiff’s Amended Complaint,” (*id.* at 2), is somehow not an “*actual* Rule 12 motion.” ECF 50 at 3 (emphasis added). Plaintiff’s contentions are not only unfounded, but indicative of its tenuous position on the merits. Insofar as this Court has sufficient evidence to rule on a dispositive motion to dismiss based on improper venue, and Plaintiff offers no reason for engaging in unnecessary and irrelevant discovery prior to adjudicating this legal issue, this matter should be stayed in its entirety pending a ruling on Defendants’ Reasserted Motion to Dismiss (ECF 24).

## II. ARGUMENT

### A. A Stay Is Warranted Pending Resolution of Defendants’ Case Dispositive Motion to Dismiss the First Amended Complaint

When an outstanding motion to dismiss is directed to the type of procedural improprieties at issue here—improper venue—district courts routinely grant motions to stay where a “preliminary peek” at the merits reveals that the dismissal motion is “clearly meritorious and truly case dispositive.” *United States v. Med-Care Diabetic & Med. Supplies, Inc.*, No. 9:10-cv-81634, 2014 WL 12284078, at \*1 (S.D. Fla. June 17, 2014) (citing *McCabe v. Foley*, 233 F.R.D. 683, 685 (M.D. Fla. 2006)); *see also Tradex Glob. Master Fund SPC Ltd. v. Palm Beach Capital Mgmt., LLC*, No. 1:09-cv-21622, 2009 WL 10664410, at \*1 (S.D. Fla. Nov. 24, 2009) (finding

stay of discovery appropriate pending ruling on motion to dismiss); *Allmond v. City of Jacksonville*, No. 3:07-cv-1139, 2008 WL 2704426, at \*3 (M.D. Fla. July 8, 2008) (granting motion to stay discovery pending resolution of motions to dismiss); *Lewis v. Mercedes-Benz USA, LLC*, No. 9:19-cv-81220, 2020 WL 4923640, at \*3-4 (S.D. Fla. Mar. 25, 2020) (awarding stay because defendants “should not be forced to expend substantial resources answering discovery given the jurisdictional and facial challenges pending before the Court.”). These criteria are clearly met here, where the patent venue statute precludes venue in this district, where neither Defendant has sufficient contacts, and a ruling in Defendants’ favor would result in the entire case being dismissed or transferred to an appropriate district. *See* ECF 25 at 9-12; ECF 13 at 8-15. Plaintiff’s opposition fails to meaningfully dispute either of these points. Instead, Plaintiff transparently attempts to gain a procedural advantage by litigating this case in a district where venue does not exist, and in doing so, urges this Court to ignore the record when considering the Reasserted Motion to Dismiss (ECF 24).

# **1. Defendants Timely Filed a Pending Motion to Dismiss the First Amended Complaint**

Plaintiff fails to cite a single case in support of its erroneous allegation that “Defendants did not respond (and have yet to respond) to the First Amended Complaint.” ECF 50 at 5. Instead—and inconsistent with Plaintiff’s actions to date—Plaintiff alleges for the first time in a filing before the Court that Defendants’ currently pending Reasserted Motion to Dismiss (ECF 24), filed in January 2023, is not actually a motion to dismiss. *See* ECF 50 at 3 (alleging that Defendants did not file “an actual Rule 12 motion”). Yet, Defendants’ Reasserted Motion to Dismiss:

(a) explicitly states that it is made “[p]ursuant to Fed. R. Civ. P. 12(b)(3),” the Federal Rule providing that improper venue is challenged via motion;

(b) explicitly states that it is made pursuant to Rule 7(b)(1), the Federal Rule for specifying that a request for court order is made by motion; and

(c) explicitly states that Defendants “*respectfully move the Court to: (1) dismiss Plaintiff’s Amended Complaint [ECF 21] for improper venue or, in the alternative, to transfer venue to the District of New Jersey where venue is proper; (2) reassert and incorporate herein Defendants’ Motion to Dismiss or Transfer for Improper Venue [ECF 13] (‘Defendants’ Motion’).*” ECF 24 at 2 (emphasis added).

Plaintiff never addresses any of these facts. Instead, Plaintiff tries to latch onto just one word (“Notice”) in the title of the document: “Defendants’ Notice to Reassert Motion to Dismiss for Improper Venue or to Transfer Venue.” *Id.* at 1; ECF 50 at 4 (characterizing ECF 24 as a “Notice”). Beyond its simplistic assertion that “a notice is not a motion,” (ECF 50 at 3), Plaintiff offers no support for construing Defendants’ unambiguous request for relief from the Court in its Reasserted Motion to Dismiss (ECF 24) as merely a notice.

To the extent that this Court even entertains Plaintiff’s disingenuous notice argument, federal courts routinely look beyond the linguistic form of a document to its substance in determining its nature and legal effect. *See, e.g., Peterson v. Islamic Republic of Iran*, 224 F. Supp. 3d 17, 25 (D.D.C. 2016) (explaining that “[c]ourts ‘must determine the proper characterization of a motion by the nature of the relief sought,’ and not by its heading or legend.”) (citations omitted); *Andersen v. United States*, 298 F.3d 804, 807 (9th Cir. 2002) (construing motion in accordance with the relief sought therein, rather than its styling, because “[t]he substance of the motion, not its form, controls its disposition.”); *Monte Vista Lodge v. Guardian Life Ins. Co. of Am.*, 384 F.2d 126, 129 (9th Cir. 1967) (binding a party to the “proper nomenclature” for its filing “would be a retreat to the strict common law.”); *Sturgis Motorcycle Rally, Inc. v. Rushmore Photo & Gifts, Inc.*,

908 F.3d 313, 343 (8th Cir. 2018) (finding that mislabeling a filing does not subject the filing to “the rules that apply to that label.”); *Britt v. Whitmire*, 956 F.2d 509, 513 (5th Cir. 1992) (explaining that “the true nature of the relief sought,” rather than the “label that a party places on a motion,” determines its classification). Here, the substance of the Reasserted Motion to Dismiss (ECF 24) reveals that it is a motion to dismiss the First Amended Complaint. The document directly referenced the Federal Rules on motions in general and motions to dismiss based on improper venue. ECF 24 at 2. Moreover, in it, Defendants moved the Court for the specific type of relief a Rule 12(b)(3) motion seeks—dismissal of the First Amended Complaint for improper venue. *Id.* The Reasserted Motion to Dismiss (ECF 24) is thus properly characterized as a motion to dismiss the First Amended Complaint.

Plaintiff’s insinuation that the title somehow changes this inevitable conclusion is legally unsupportable. In essence, Plaintiff’s argument boils down to a request that this Court subordinate the substance of a document to its title. However, “in the federal courts, pleadings, motions, and supporting memoranda are measured by their content, not their title.” *See In re Sulfuric Acid Antitrust Litig.*, 446 F. Supp. 2d 910, 914 (N.D. Ill. 2006); *see also Guyton v. United States*, 453 F.3d 425, 427 (7th Cir. 2006) (finding that the substance of a document determines its legal effect “no matter what title the [party] plasters on the cover.”); *United States ex rel. Hoggett v. Univ. of Phoenix*, 863 F.3d 1105, 1108 (9th Cir. 2017) (explaining that “[a] motion’s ‘nomenclature is not controlling,’” requiring that a court “look to the substance, not simply the title” of a filing to determine its nature) (citations omitted); *Aetna Cas. & Sur. Co. v. William M. Mercer, Inc.*, 173 F.R.D. 235, 236 (N.D. Ill. 1997) (looking to the content of a party’s filing rather than its label because “courts are not constrained by the tyranny of labels, so they may instead treat a mislabeled motion as its substantive equivalent.”). Again, the content of Defendants’ Reasserted Motion to

Dismiss makes clear that it is a motion under Rule 12(b)(3) to dismiss the First Amended Complaint. *See* ECF 24 at 2.

None of Plaintiff's remaining arguments can change the result of this analysis. Plaintiff's next argument—that ECF 24 “does not direct its arguments against the allegations in the First Amended Complaint”—is simply wrong. *See* ECF 50 at 3. Defendants' Reasserted Motion to Dismiss expressly “incorporated herein by reference” the parties' briefing on the initial motion to dismiss, (ECF 13), and the allegations in the First Amended Complaint were addressed in that briefing. *See, e.g.,* ECF 25 at 9-12 (devoting Section B to explaining why “The Amended Complaint Does Not Moot Defendants' Motion”). Specifically, Defendants explained why they were “renew[ing] the prior motion at ECF 13” and how the additional allegations in the Amended Complaint fail to confer venue in this district. *Id.*

Plaintiff also errs in alleging that “problems” would result if Defendants were allowed to incorporate arguments directed at the Complaint in response to the First Amended Complaint. *See* ECF 50 at 6. This argument is unfounded, as Plaintiff's First Amended Complaint continued to rely on the same Florida addresses that its original one did to support patent venue. *Compare* ECF 21, ¶¶ 7-9 *with* ECF 1, ¶¶ 7-9. And the same paragraph numbers apply to the allegations addressed in both complaints, such that no logical or clerical problems exist with incorporating the original briefing by reference, despite Plaintiff's allegations that some irrelevant paragraph numbers are different.

Moreover, Plaintiff is again incorrect in asserting that “Defendants have waived any challenge to these new allegations [of patent venue] because Defendants did not address them in a motion.” ECF 50 at 6. The Reasserted Motion to Dismiss incorporated the briefing that explained why the additional allegations in the First Amended Complaint are insufficient to establish venue

in this district. ECF 24 at 2 (“Defendants’ Motion is fully briefed by the parties, and that briefing is incorporated herein by reference. Additionally, for the reasons stated in Defendants’ Reply brief, the new allegations in Plaintiff’s Amended Complaint do not moot Defendants’ []Motion. No new briefing is necessary because the Amended Complaint does not raise any venue considerations that have not already been addressed by the parties.”); *see also* ECF 25 (explaining why the First Amended Complaint did not change the outcome of the venue analysis). Plaintiff also overlooks that Defendants’ streamlined approach to reasserting its fully briefed motion conserves the parties’ and this Court’s resources by eliminating duplicative briefing on an already fully briefed issue.

Further, Plaintiff’s position, as reflected in its filings with the Court since Defendants’ Reasserted Motion to Dismiss was filed on January 17, 2023, is wholly inconsistent with its newly raised argument that ECF 24 is not a pending motion. Notably, its opposition to the present motion is the first filing with the Court in which Plaintiff took the position that ECF 24, filed in January 2023, is not a pending motion to dismiss the First Amended Complaint. Plaintiff’s previous filings acknowledged the pendency and nature of ECF 24, failed to raise any challenge to its status as a motion, and/or failed to request any relief based on an alleged failure to respond to the First Amended Complaint. *See, e.g.*, ECF 31 at 8 (indicating that the issue of venue was “pending before this Court”; ECF 37 at 2 (showing that Plaintiff took no action to correct Defendants’ statements that a motion to dismiss was pending); ECF 42 at fn. 1 (acknowledging that “Defendants renewed its Motion to Dismiss as to Plaintiff’s Amended Complaint on January 17, 2023. *See* Defendants’ Notice to Reassert Motion to Dismiss for Improper Venue or to Transfer Venue (ECF 24).”). Plaintiff cannot seriously contend that it was not on notice of the Reasserted Motion to Dismiss, nor can Plaintiff explain why ECF 24 should now be ignored by the Court. This disingenuous

behavior is only consistent with Plaintiff's continuing efforts to clog up this Court's resources and force this Court to address a patent litigation that belongs in New Jersey.

In its eagerness to preclude the Court from recognizing the shortcomings of its venue analysis, Plaintiff now asks the Court to ignore ECF 24, even when doing so would be fundamentally unjust, result in judicial inefficiencies, and prevent the Court from reaching a resolution on the merits of Defendants' meritorious motion for dismissal based on a lack of patent venue. In contrast, Defendants have followed the streamlined approach of addressing the First Amended Complaint during the briefing of the original motion to dismiss, as well as concurrently filing a notice to reassert the motion. The Reasserted Motion to Dismiss remains pending before the Court,<sup>1</sup> and Plaintiff's effort to thwart its consideration on the merits is unfounded. The Court should reject Plaintiff's strained arguments, adhere to the weight of direct legal authority on the propriety of motions to stay in view of case dispositive motions, and issue a stay pending the outcome of Defendants' Reasserted Motion to Dismiss the First Amended Complaint.

## **2. Defendants' Motion to Dismiss Is Meritorious and Case Dispositive, Favoring a Stay**

Defendants have moved to dismiss or transfer on the threshold jurisdictional issue of whether Plaintiff brought this case in an improper venue. *See* ECF 24. Defendants' Reasserted Motion to Dismiss demonstrates why venue is not proper before this Court as to either Defendant and was supported by several sworn declarations of corporate officers and directors of the Defendants—declarations Plaintiff never challenged. Defendants' Reasserted Motion to Dismiss

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<sup>1</sup> It is beyond dispute that ECF 24 is pending and awaits this Court's ruling. Nevertheless, since Defendants have become aware that Plaintiff is now taking a contrary position—again, inconsistent with Plaintiff's previous behavior—Defendants have concurrently filed herewith a Motion for Clarification or, in the alternative, leave to refile ECF 24 with an amended title (e.g., by removing "Notice" from the title), or in any other manner, as directed by the Court, for the Court's ruling on the merits.

is particularly likely to succeed on the merits because “[o]n a motion to dismiss based on improper venue, the plaintiff has the burden of showing that venue in the forum is proper,” a burden that Plaintiff has fallen woefully short of meeting here. *See Wai v. Rainbow Holdings*, 315 F. Supp. 2d 1261, 1268 (S.D. Fla. 2004). The First Amended Complaint relies on the same Florida addresses as the original Complaint to try to establish venue, even after Defendants explained why none of those addresses constitute a “regular and established place of business” of either Defendant—a requirement to show patent venue. *See* ECF 13 at 5; ECF 25 at 5-7; *see also TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 137 S. Ct. 1514, 1517-21 (2017); 28 U.S.C. § 1400(b).

The law is clear that in considering Defendants’ Reasserted Motion to Dismiss, the “court must accept all allegations of the complaint as true, unless contradicted by the defendants’ affidavits.” *Wai*, 315 F. Supp. 2d at 1268. Since Plaintiff’s factual allegations regarding the Florida addresses in the First Amended Complaint are contradicted by Defendants’ affidavits, those facts will not be accepted as true when the Court considers Defendants’ Reasserted Motion to Dismiss. Plaintiff thus lacks the factual support needed to support its opposition to Defendants’ motion and is unlikely to prevail in its opposition. Therefore, a stay of this case pending resolution of the meritorious case-dispositive motion on the threshold issue of venue is appropriate.

### **3. A Stay Would Conserve Judicial Resources Without Prejudicing Plaintiff**

A stay pending this Court’s decision on venue will in no way prejudice Plaintiff, and, in fact, will prevent the unnecessary expenditure of the parties’ and the Court’s resources adjudicating a case in a district where venue is not proper. *See, e.g., In re Managed Care Litig.*, No. 1:00-md-01334, 2001 WL 664391, at \*3 (S.D. Fla. June 12, 2001) (finding that engaging in discovery with a case dispositive motion pending “has the potential to consume vast resources”); *Gibson v. Lynn Univ., Inc.*, No. 9:20-cv-81173, 2020 WL 6700448, at \*2 (S.D. Fla. Oct. 29, 2020)

(granting stay after “having balanced the minimal harm produced by a brief delay in discovery in this case against the possibility that the Motion to Dismiss will be granted and eliminate the need for discovery”). For example, Plaintiff has already served multiple sets of requests for production on Defendants, including requests seeking documents that are irrelevant to the substantive question of patent infringement that underlies Plaintiff’s cause of action, instead aiming for facts to support Plaintiff’s baseless allegations of venue. *See, e.g.*, ECF 30-1 at Request Nos. 1-14, 17. Plaintiff should not be allowed to try to substantiate their unsupportable venue allegations by burdening Defendants before the Court has even ruled that Plaintiff is entitled to jurisdictional discovery.

The Court would also be substantially burdened if discovery is not stayed, as it would be required to devote its judicial resources to addressing discovery disputes in an action for which the Court may ultimately find venue is not proper. A wide range of discovery disputes are common in, and unique to, patent litigation. *Suncast Techs., L.L.C. v. Patrician Prods., Inc.*, No. 9:07-cv-80414, 2008 WL 179648, at \*9 (S.D. Fla. Jan. 17, 2008). Here, the parties already have a fully briefed discovery dispute ripe for the Court’s intervention. *See* ECF 38 (Plaintiff’s Motion to Compel); ECF 42 (Defendants’ Opposition to Plaintiff’s Motion to Compel); ECF 43 (Plaintiff’s Reply in Support of its Motion to Compel). A short stay while the Court decides the Reasserted Motion to Dismiss will reduce the burden on the Court’s resources needed for resolving these disputes.

No harm to the Plaintiff would result from such a stay. Even if discovery is stayed and the case proceeds after the Reasserted Motion to Dismiss is decided, “Plaintiff will have ample opportunity to conduct discovery.” *See Goldstein v. Costco Wholesale Corp.*, No. 9:21-cv-80601, 2021 WL 2827757, at \*2 (S.D. Fla. July 8, 2021). Conversely, if Defendants’ Reasserted Motion to Dismiss is granted, Plaintiff will also benefit from a stay by avoiding Plaintiff’s efforts propounding discovery requests and engaging in discovery disputes for a case that is ultimately

dismissed. None of Plaintiff's allegations to the contrary are well founded. For example, Plaintiff's allegation that the Renewed Motion to Stay "rel[ies] on even shakier grounds" than the original motion overlooks that the Court's denial was based on the mootness of the motion, not its legal merits. *See* ECF 45.

Plaintiff's request that the Renewed Motion to Stay be denied in part because "Defendants refuse to cooperate" in discovery, prejudicing Plaintiff, is premised on Plaintiff's selective memory as to the communications the parties have undertaken with respect to this very issue. Prior to filing the Renewed Motion to Stay, Defendants held a meet-and-confer with Plaintiff's counsel. During the meeting, Defendants presented a proposal for engaging in limited, non-jurisdictional discovery and approaching the Court with a joint motion for a status conference to discuss amending the procedural schedule. Plaintiff, however, was unwilling to agree to Defendants' proposals and now opposes the Renewed Motion to Stay.

### III. CONCLUSION

Defendants respectfully request that the Court stay the present case until the pending Reasserted Motion to Dismiss (ECF 24) is resolved.

Dated: July 21, 2023

Respectfully submitted,

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