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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92062364
Party	Defendant Raihana Heuer
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK TRIAL AND APPEAL BOARD

In re the matter of: Trademark Registration Nos: 4078032, 4052051 and 4717526 For the Marks: KANDUI and KANDUI VILLAS Anom Suheri, et. al, Petitioners v. Raihana Heuer, Registrant	Proceeding No.: 92062364 **Notice of Withdrawal of Motion to Suspend Pending Civil Action**

TO THE TRADEMARK TRIAL AND APPEAL BOARD, INTERLOCUTORY ATTORNEY ROBERT COGGINS, PETITIONERS AND THEIR ATTORNEY OF RECORD:

Registrant, Raihana Heuer, respectfully withdraws her Motion to Suspend Pending Civil Action filed on March 28, 2016 (Docket No. 10) (the "Motion"). Subsequent to Registrant's filing of the Motion, the civil action that served as the basis for the Motion was dismissed. Attached hereto as Exhibit A is the order dismissing Civil Action No. 15-CV-2156-RGK-DFM, *PT Saraina Koat Mentawai, PT Kandui Resort Mentawai, PT Kandui Beach Villas, and Raihana Heuer v. Anthony Marcotti, D3 Holdings, LLC, Joseph Dowling, Raymond Wilcoxen, and Anom Suheri*, issued by the U.S. District Court for the Central District of California.

Respectfully submitted,

Date: March 31, 2016

/lmh/

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **Notice of Withdrawal of Motion to Suspend Pending Civil Action** has been served on Petitioners **Anom Suheri, Anthony Marcotti, Raymond Wilcoxen and D3 Holdings, LLC** by mailing said copy on March 31, 2016, via US Postal Service, Express Mail, postage prepaid to its counsel of record in this case as follows:

Counsel of Record:

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with courtesy copy via electronic mail to counsel's email address of record to:

litigation@ipla.com; jrichman@ipla.com

By: _____*/lmh/*_____
Lindy M. Herman, Esq.

EXHIBIT A

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	**CV 15-02156 RGK (DFMx)**	Date	March 28, 2016
Title	***PT Saraina Koat Mentawai, et. al. v. Anthony Marcotti, et. al.***		

Present: The Honorable	R. GARY KLAUSNER, U.S. DISTRICT JUDGE	
Sharon L. Williams (Not Present)	Not Reported	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Not Present	Not Present

Proceedings: **(IN CHAMBERS) Order Re: Defendants' Motion to Dismiss (DE 27); Plaintiffs' Motion to Strike Declarations (DE 29)**

I. INTRODUCTION

On February 8, 2016, Raihana Heuer ("Heuer"), PT Saraina Koat Mentawai ("SKM"), PT Kandui Resort Mentawai ("Kandui Resort"), and PT Kandui Beach Villas ("Kandui Villas") (collectively, "Plaintiffs") filed a First Amended Complaint against Anthony Marcotti ("Marcotti"), D3 Holdings, LLC ("D3"), Joseph Dowling ("Dowling"), Raymond Wilcoxen ("Wilcoxen"), and Anom Suheri ("Suheri") (collectively "Defendants"). Plaintiffs allege the following claims: (1) Breach of Fiduciary Duty - Failure to Use Reasonable Care; (2) Breach of Fiduciary Duty - Duty of Undivided Loyalty; (3) Breach of Fiduciary Duty - Duty of Confidentiality; (4) Misappropriation of Trade Secrets; (5) Accounting; (6) Declaratory Judgment of Non-Infringement of Copyright; (7) Trademark Infringement; and (8) Declaratory Judgment of Non-Infringement of Trademark.

On February 22, 2016, Defendants filed the present Motion to Dismiss, based among other things, on the doctrine of forum non conveniens. On February 29, 2016, Plaintiffs filed a Motion to Strike certain declarations filed in support of Defendants' Motion to Dismiss. For the reasons set forth below, the Court **GRANTS** Defendants' Motion to Dismiss, and **DENIES as moot** Plaintiffs' Motion to Strike.

II. FACTUAL BACKGROUND

The following facts are alleged in the Complaint.

SKM, Kandui Resort, and Kandui Villas are separate partnerships organized under the laws of Indonesia. Kandui Resort and Kandui Villas are hotels that provide recreational services in the Mentawai Islands of Indonesia. Plaintiff Heuer and Defendants own Kandui Resort. Plaintiff Heuer and Defendant Suheri also own SKM and Kandui Villas.

A. Facts Regarding the Citizenship and Residence of Parties

All the entity Plaintiffs (SKM, Kandui Resort, and Kandui Villas) are Indonesian partnerships located in the Mentawai Islands of Indonesia. Plaintiff Heuer is a citizen of Indonesia and resides in Indonesia. Defendant Marcotti is a U.S. citizen who resides in California part-time, and Australia part-time. (Dfs.' Mot. To Dismiss 1:26, ECF No. 27.) Defendant D3 is a Delaware Corporation located in Connecticut and owned by Defendant Dowling, who is a U.S. citizen residing in Connecticut. Defendant Wilcoxen is a U.S. citizen residing in Indonesia. Defendant Suheri is an Indonesian citizen residing in Indonesia.

B. Facts Regarding Plaintiff SKM

SKM provides charter cruise services and owns the licenses under which Kandui Resort operates. As 50% owners of SKM, Plaintiff Heuer and Defendant Suheri entered into a profit sharing agreement with Marcotti in 2001. SKM booked surf charter tours and Marcotti worked as the booking agent for SKM in exchange for one third of SKM's profits. In connection with SKM, Heuer alleges Marcotti breached his fiduciary duties by unilaterally implementing poor business plans, transferring business to a competitor, eventually going to work for a competitor, and paying personal tax obligations with SKM funds.

C. Facts Regarding Plaintiff Kandui Resort

In June 2003, Plaintiff Heuer and Defendant Suheri obtained investment to build Kandui Resort, agreeing to place the land certificates in both of their names, 50% to each.

Heuer hired Marcotti to build and maintain the resort website, manage the promotions and advertising, and book guests. In exchange, Heuer agreed to give Marcotti an ownership interest in Kandui Resort, which would yield dividend payments only, at the end of each year.

After giving Marcotti an ownership interest in Kandui Resort, Heuer and Suheri brought in two other investors. In 2005, the ownership interests were equally divided amongst the five partners. Subsequently, Defendant Wilcoxen also obtained an ownership stake in the resort. In 2009, Defendant Dowling purchased an interest in Kandui Resort from one of the investors. In 2012, Dowling transferred his interest to Defendant D3, a company in which Dowling is the sole and managing member. As of now, there are seven partners in Kandui Resort, five of whom are parties to this lawsuit.

Plaintiffs allege that Defendants engaged in various misconduct related to Kandui Resort. With regard to Marcotti, Plaintiffs allege that he was responsible for collecting money from guests. Since 2006, Marcotti failed to provide bank statements or guest booking data to Heuer.[1] In 2006 and 2007, Marcotti co-mingled the SKM and Kandui Resort funds by depositing the funds into a single bank account in the U.S. Marcotti then transferred the funds to SKM's bank account in Indonesia and provided Heuer with vague accounting reports. In October 2007, Marcotti started to demand commissions in addition to the dividend payments from his ownership stake. The founders did not agree to his commissions proposal. Nonetheless, in 2009, Marcotti began paying himself thousands of dollars in commissions and misappropriating Kandui Resort funds. In addition to using SKM funds, Marcotti also used Kandui Resort funds to pay personal tax obligations. Further, Marcotti unilaterally implemented business plans for the operation of SKM and Kandui Resort, including advertising budgets, rates, and discounts. Finally, Plaintiffs allege that Marcotti paid himself "bonuses" and

[1]According to the Complaint, however, Marcotti did provide that information to Suheri.

"salaries" in unknown amounts. As to Suheri and Wilcoxen, Plaintiffs allege that Suheri, without Heuer's consent, used Kandui Resort funds to purchase at least five more parcels and failed to name Heuer as 50% owner of those parcels per their agreement. Suheri, along with Wilcoxen, allegedly also paid themselves "bonuses" and "salaries" in unknown amounts. Lastly, Plaintiffs allege that when Dowling acquired his interest in Kandui Resort in 2009, neither Heuer nor Suheri were notified of this transaction and no Indonesian government taxes were paid on the sale.

D. Facts Regarding Plaintiff Kandui Villas

In August 2007, Plaintiff Heuer, Defendant Suheri, and three other investors started Kandui Villas. Although Heuer and Suheri offered an interest to Marcotti and Wilcoxen, Wilcoxen declined the offer and Marcotti demanded too much in return. Marcotti has since tried to prevent other travel sites and agents from promoting Kandui Villas. Additionally, without the knowledge of Kandui Resort partners, Heuer registered the "Kandui" and "Kandui Villas" trademark. Heuer now brings a trademark infringement claim against her Kandui Resort defendant partners for their use of the Kandui trademark. Defendants currently have a petition before the United States Patent & Trademark Office to cancel the trademark for fraud on the trademark application.

III. JUDICIAL STANDARD

Under the doctrine of *forum non conveniens*, "a federal district court may dismiss an action on the ground that a court abroad is the more appropriate and convenient forum for adjudicating the controversy." *Sinochem Int'l Co. Ltd. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 425 (2007). "A court need not resolve whether it has authority to adjudicate the case (subject-matter jurisdiction) or personal jurisdiction over the defendant if it determines that, in any event, a foreign tribunal is plainly the more suitable arbiter of the merits of the case." *Id.* Use of the doctrine "is a drastic exercise of the court's 'inherent power' because, unlike a mere transfer of venue, it results in the dismissal of a plaintiff's case." *Carijano v. Occidental Petroleum Corp.*, 643 F.3d 1216, 1224 (9th Cir. 2011). "A defendant invoking *forum non conveniens* ordinarily bears a heavy burden in opposing the plaintiff's chosen forum," but "[w]hen the plaintiff's choice is not its home forum . . . the presumption in the plaintiff's favor applies with less force." *Sinochem*, 549 U.S. at 430 (internal quotations omitted).

IV. DISCUSSION

To prevail on forum non conveniens, Defendants bear the burden of demonstrating (1) an adequate alternative forum exists, and (2) that the balance of private and public interest factors favors dismissal. *Carijano*, 643 F.3d at 1224. Defendants must clearly show facts establishing "oppression and vexation" out of proportion to Plaintiffs' convenience. *Boston Telecomms. Grp., Inc. v. Wood*, 588 F.3d 1201, 1206 (9th Cir. 2009). "Adjudication of a forum non conveniens motion is committed to the sound discretion of the trial court." *Isr. Disc. Bank Ltd. v. Schapp*, 505 F. Supp. 2d 651, 658-59 (C.D. Cal. 2007) (internal quotations omitted). For the reasons stated below, the Court **GRANTS** Defendants' forum non conveniens motion.

A. Indonesia is an Adequate Alternative Forum

"At the outset of any forum non conveniens inquiry, the court must determine whether an adequate alternative forum exists." *Isr. Disc. Bank Ltd.*, 505 F. Supp. 2d at 658. An adequate alternative forum exists where: (1) the defendant is amenable to service of process in the foreign forum, and (2) the forum provides plaintiff with a sufficient remedy for his or her wrong. *Carijano*, 643 F.3d at 1225. "The defendant bears the burden of proving the existence of an adequate alternative forum." *Lueck v. Sundstrand Corp.*, 236 F.3d 1137, 1143 (9th Cir. 2001) (internal quotations omitted).

1. *Defendants are Amenable to Service of Process in Indonesia.*

"[V]oluntary submission to service of process suffices to meet the first requirement for establishing an adequate alternative forum." *Carijano*, 643 F.3d at 1225 (internal quotations omitted). In addition to either residing or doing business in Indonesia, Defendants filed a case in Indonesia regarding the same dispute. Moreover, Defendants have expressly consented to service of process in Indonesia. (Def.s' Mot. to Dismiss 14:25-26, ECF No. 27.) Therefore, the Court finds that Defendants are amenable to service of process in Indonesia.

2. *Indonesia Offers a Sufficient Remedy.*

An alternative forum is adequate if it provides "some remedy" for plaintiff's alleged injury. *Carijano*, 643 F.3d at 1225-26. The Ninth Circuit has deemed this requirement "easy to pass" because a forum will generally be found inadequate "only where the remedy provided is 'so clearly inadequate or unsatisfactory, that it is no remedy at all.'" *Id.* "[A] foreign country [is] not an inadequate forum merely because its laws offer[] the plaintiff a lesser remedy than he could expect to receive in the Untied States." *Lueck*, 236 F.3d at 1143.

Here, Plaintiffs' only argument is that the congestion of the Indonesian courts is causing Defendants' current suit in the District of Padang to "languish" in the court for years, suggesting that Indonesia is not an available forum for this action. (Pl.'s Opp'n. to Mot. to Dismiss 15:12-16, ECF No. 27.) This argument is unpersuasive. *See Tuazon v. R.J. Reynolds Tobacco Co.*, 433 F.3d 1163, 1179 (9th Cir. 2006). Indonesian law provides for claims and remedies relating to the business disputes brought by Plaintiffs. Further, United States judgments are unenforceable in Indonesia. Rather, as stated in Indonesian Civil Procedure Regulation, issues adjudicated in foreign jurisdictions may be relitigated for adjudication in Indonesian, and the foreign judgment may be considered as evidence. Reglement of de Rechtsvodering Article 436. Therefore, Indonesia offers a sufficient remedy for Plaintiff's claims.

Based on the foregoing, the court in Indonesia is an adequate alternate forum.

B. The Balance of Private and Public Interest Factors Favor Dismissal.

"[T]here is ordinarily a strong presumption in favor of plaintiff's choice of forum, which may be overcome only when the private and public interest factors clearly point towards trial in the alternative forum." *Carijano*, 643 F.3d at 1227 (internal quotations omitted). However, the presumption "applies with less force" when the plaintiff's choice is not its home forum. *Sinochem*, 549 U.S. at 430 (internal quotations omitted).

Here, Plaintiff Heuer is a citizen of Indonesia and resides in Indonesia. Plaintiffs SKM, Kandui Resort, and Kandui Villas are all partnerships organized under Indonesian laws and located in Indonesia. As such, the presumption in favor of Plaintiffs' choice of forum applies with less force.

1. *The Private Interest Factors Strongly Support Dismissal.*

The private interest factors include: "(1) the residence of the parties and the witnesses; (2) the forum's convenience to the litigants; (3) access to physical evidence and other sources of proof; (4) whether unwilling witnesses can be compelled to testify; (5) the cost of bringing witnesses to trial; (6) the enforceability of the judgment; and (7) all other practical problems that make trial of a case easy, expeditious, and inexpensive." *Carijano*, 643 F.3d at 1229 (quoting *Boston Telecomms.* 588 F.3d at 1206-07). "The district court should look to any or all of the above factors which are relevant to the case before it, giving appropriate weight to each . . . It should consider them together in arriving at a balanced conclusion." *Lueck v. Sundstrand Corp.*, 236 F.3d 1137, 1145 (9th Cir. 2001).

a. *The Residence of the Parties*

All Plaintiffs are citizens and residents of Indonesia. Defendant Suheri is both a citizen and resident of Indonesia. Defendant Wilcoxen is a United States citizen, but resides in Indonesia. Defendants D3 Holdings, Dowling, and Marcotti are United States citizens, but hold an ownership interest in Kandui Resort, which is located in Indonesia. Marcotti is the only Defendant who is a California resident, but Marcotti resides part-time in Australia. (Df.s' Mot. To Dismiss 1:26, ECF No. 27.) Further, as partners in Kandui Resort, all parties are familiar with Indonesia and frequently do business in Indonesia. In fact, Defendants have already filed a lawsuit in Indonesia against which Plaintiffs will be defending. Based on the citizenship of the parties, it is clear that this factor weighs toward litigating the dispute in Indonesia.

b. *The Residence of the Witnesses and Location of Evidence*

The following allegations form the core facts giving rise to Plaintiffs' claims: (1) Marcotti encouraged SKM customers to follow him to an Indonesian competitor; (2) Suheri used Kandui Resort funds to purchase land in Indonesia without Heuer's consent; (3) Marcotti unilaterally implemented business plans for SKM and Kandui Resort; (4) Marcotti co-mingled SKM and Kandui Resort funds in a U.S. bank account, then transferred the funds to an Indonesian bank account; (5) Defendant Dowling participated in a sale of his interest in Kandui Resort without consent from Heuer and Suheri; (6) Marcotti, who managed resort bookings in Indonesia, refused to provide Heuer with financial summaries; (7) Marcotti wrongfully paid himself booking commissions; (8) Marcotti wrongfully withheld Heuer's dividends; (9) Marcotti, Suheri, and Wilcoxen paid themselves "bonuses" and "salaries" without the approval of the other partners; (10) Wilcoxen usurped Kandui Resort's photography business without Heuer's consent; and (11) Marcotti actively interfered with Kandui Villas' business. (FAC ¶¶ 20-52, ECF No. 26.)

As to witnesses, Defendants have not provided a specific list of anticipated witnesses nor have they provided facts demonstrating the materiality of each testimony. However, the vast majority of the alleged conduct described above occurred in Indonesia and involved Indonesian entities. Therefore, it is reasonable to infer that most of the witnesses to this alleged conduct reside in Indonesia. Further, Indonesia is not a member of the Hague Convention concerning international service of process. Already, there has been a motion filed in this Court for leave to serve Defendants Wilcoxen and Suheri in Indonesia. (Pl.s' Mot. to Serve Defs., ECF No. 41). Compelling unwilling witnesses will require the same, if not more, effort from the parties and the Court. Given the remoteness of potential witnesses, effecting subpoenas would be extremely difficult.

Plaintiffs contend that the majority of the evidence is in the United States, but Plaintiffs provide no evidentiary support for this proposition. Plaintiffs seek access to Kandui Resort's books, which include bank records of both U.S. and Indonesian accounts. The land dispute, however, involves property in Indonesia. Further, because all of the alleged conduct occurred in Indonesia, any evidence relating to that conduct, except for the bank account records allegedly in Marcotti's possession, is located significantly closer to the District Court of Padang.

c. *The Enforceability of the Judgment*

Perhaps most importantly, a judgment from this Court will be difficult to enforce in Indonesia, especially any judgment regarding the Indonesian land disputes. Under Article 436 of the RV (Reglement of de Rechtsvordering - an Indonesian civil procedure regulation), a foreign court judgment cannot be enforced in Indonesia directly. For the judgment to be enforced, a new lawsuit must be filed in Indonesian court. Defendants have already filed a lawsuit in the District Court of Padang relating to the same conduct alleged here. Rather than this Court utilizing its resources to adjudicate this dispute, then

the District Court of Padang re-adjudicating the dispute to enforce any potential judgment, it is surpassingly more efficient for this dispute to be adjudicated once, in the District Court of Padang.

d. *All Other Factors Favor Dismissal.*

Plaintiffs and Defendants have Indonesian counsel, so lack of representation in Indonesia is not an issue. Further, as previously stated, there is a related case pending in Indonesia. To avoid duplicative proceedings and inconsistent rulings, it is in the interest of justice to dismiss this case so the claims can be brought in the District Court of Padang and determined alongside the case currently litigated in Padang.

2. *The Public Interest Factors Favor Dismissal*

The public interest factors are: "(1) the local interest of the lawsuit, (2) the court's familiarity with the governing law, (3) the burden on local courts and juries, (4) congestion in the court, and (5) the costs of resolving a dispute unrelated to a particular forum." *Carijano*, 643 F.3d at 1232 (quoting *Boston Telecomms.*, 588 F.3d at 1211). For the following reasons, the public interest factors favor dismissal.

a. *This Court's Interest in the Lawsuit*

California has little interest in adjudicating this dispute. Plaintiffs argue that California has an interest in resolving disputes involving intellectual property rights and disputes arising out of a partnership between citizens of the United States and Indonesia. This argument bears little weight when viewed in the context of the entire case. All of the alleged conduct occurred in Indonesia and involves Indonesian businesses and Indonesian residents (except for Marcotti who is a California resident involved in an Indonesian partnership). The fact that Kandui Resort services are marketed to residents of California has no bearing on the issues herein. Although Marcotti continues to collect funds from California residents, the conduct giving rise to this action relates primarily to his other duties owed to an Indonesian partnership.

b. *This Court's Familiarity with the Governing Law*

Plaintiffs argue that they bring no claims under Indonesian law. However, the partnership was formed under Indonesian law. While Plaintiffs bring United States Trademark and Copyright claims, there is no indication that the District Court of Padang is unable to resolve these claims. Further, as Defendants argue, Plaintiffs' Claim for Declaratory Judgment of Non-Infringement of Copyright arises out of a demand letter sent by Defendants to Plaintiffs accusing Plaintiffs of copyright infringement under *Indonesian* law. (Df.s' Mot. to Dismiss 7:7-13, ECF No. 27.) Plaintiffs fail to allege that Defendants own a United States copyright to be declared non-infringed. Thus, the copyright non-infringement claim does not involve United States copyright law, but rather, Indonesian copyright law. Notwithstanding any slight favor in adjudicating the trademark claims in California, the weight of this single factor is not so heavy to outweigh the numerous other factors.

c. *The Burden and Cost of Litigating in this Court*

Litigating this suit will be more burdensome, create more congestion, and cost more in this Court than litigating in the District Court of Padang. The contracts are currently written in Indonesian and there already exists conflicting translations. Many of the witnesses may require translators and the case will likely require experts in Indonesian business law and real estate. These aspects of the litigation create burdensome challenges for the parties and the Court. Lastly, Plaintiffs argue litigation is more costly in Indonesia because the Indonesian courts are remote from the Indonesian island on which Plaintiffs are located. Plaintiffs seem to be underestimating the size of the Pacific Ocean relative to the

distance between the islands of Indonesia.

V. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Defendants' Motion to Dismiss. The Court **DENIES as moot** Plaintiff's Motion to Strike, as none of the declarations at issue were relied upon by the Court.

IT IS SO ORDERED.

_____ : _____

Initials of Preparer _____