

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

ZHAOYIN WANG  
Plaintiff,

v.

BETA PHARMA, INC., DON ZHANG,  
AND ZHEJIANG BETA PHARMA  
CO., LTD.,  
Defendants.

Civil Action No. 3:14-cv-01790-VLB

DECEMBER 24, 2014

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO TRANSFER

Defendants move to transfer this matter to the United States District Court for the District of New Jersey under 28 U.S.C. §1404(a), arguing that transfer would promote convenience and justice. The circumstances of this case, however, do not provide clear and convincing evidence that transfer to New Jersey would be proper. Contrary to defendants' arguments, analysis of the relevant factors demonstrates that they weigh in favor of the case proceeding in the District of Connecticut.

I. BACKGROUND

This case arises from the business relationship between plaintiff, Zhaoyin Wang, and the defendants. Plaintiff has brought claims for breach of contract, negligent misrepresentation, fraudulent misrepresentation, breach of fiduciary duty, and declaratory judgment. In particular, plaintiff alleges that Beta Pharma, Inc., ("Beta Pharma") is a privately owned Delaware corporation with a principal

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place of business in Branford, Connecticut as of the time of the transactions alleged herein and until January, 2013. Beta Pharma is in the business of researching, developing and marketing pharmaceuticals. Beta Pharma continues to do business in Branford, but represents that its principal place of business is now in New Jersey.

When the parties entered into the agreement at issue here, and for a long time thereafter, defendant Don Zhang ("Zhang") was a citizen and resident of the State of Connecticut, did business in this state, made contracts to be performed here, and committed tortious acts in Connecticut that have injured plaintiff inside and outside Connecticut. Currently, defendant Zhang represents to the Connecticut Secretary of State, and the public, that his current residence address as President of Beta Pharma, Inc. is 5 Vaughn Drive, Suite 106, Princeton, N.J. 08540, but his current residence address as President of Beta Pharma Scientific, Inc., and President of Branford Research Lab, Inc., is 31 Business Park Drive, Branford, Connecticut. Current copies of these filings are attached as Exhibit A. At all time relevant to this action, defendant Zhang has been the majority stockholder and President of Beta Pharma.

In approximately 2002 and 2003, Beta Pharma scientists invented, patented and synthesized Icotinib, a molecule which showed promise as a treatment for non-small cell lung cancer. Beta Pharma's development work on Icotinib continued thereafter. In approximately 2002, Beta Pharma joined with other investors to form a joint venture to develop, test and market Icotinib in the People's Republic of China. These joint venturers formed Zhejiang Beta Pharma

Co. Ltd., ("ZBP"), a privately owned corporation organized under the laws of China. Beta Pharma contributed the patent rights to Icotinib to the joint venture and received in exchange a 45% interest in ZBP. Further, defendant Zhang is, and has been, Vice-President of ZBP and a director thereof.

Plaintiff Wang, is a medicinal chemist who earned his Ph.D. at Yale and now resides in Quebec, Canada. On March 26, 2010, when defendant Beta Pharma's principal place of business was in Connecticut, it entered into a written partnership agreement with plaintiff - - executed in Connecticut by defendant Zhang -- pursuant to which plaintiff was to perform professional services for Beta Pharma in Connecticut and elsewhere, as well as to go into business with Beta Pharma. In exchange, plaintiff was to receive valuable consideration including a salary of 850,000 Chinese RMB yuan per year (about U.S. \$140,000 per year), 2 million shares or about 2% of the stock in Beta Pharma, and 3 million shares or 1% of the stock in ZBP.

In reliance on the promises contained in the agreement, and in performance of his obligations under that agreement, plaintiff (a) formed Beta Pharma Canada, ("BPC") a Canadian corporation owned 51% by plaintiff and 49% by defendant Zhang; (b) invested approximately \$300,000 of his funds into setting up and operating the BPC laboratory; (c) worked for BPC full time for approximately 3 years, performing drug discovery research and developing new medicinal molecules for treatment of cancer and inflammatory disease; (d) applied for patents for the new molecules he discovered while working at BPC; (e) worked with Beta Pharma to develop Icotinib and reinforce the Icotinib patent;

and (f) performed other work and did other business to advance Beta Pharma, BetaPharma Canada and Zhang.

Defendants, however, failed to pay plaintiff Wang his salary under the agreement, discontinued funding for Beta Pharma Canada, failed to deliver promised shares of Beta Pharma to plaintiff; failed to register the shares of ZBP in plaintiff's name on the records of ZBP in China such that plaintiff could participate in the planned initial public offering of ZBP shares in China; and failed to cause plaintiff to participate in the anticipated ZBP public offering in China – all in violation in the agreement and applicable law.

Defendants state that Beta Pharma's corporate offices and principal place of business is now located in Princeton, New Jersey, and that defendant Zhang permanently resides and works in New Jersey. Defendants also maintain that in November of 2011, Beta Pharma moved its offices from Connecticut to Princeton, New Jersey, and that since that time all of Beta Pharma's computers, and nearly all of its documents have been located in New Jersey. Further, defendants claim that all of Beta Pharma's employees have worked in New Jersey since November of 2011.

However, the developed record demonstrates that Beta Pharma continued to maintain its principal place of business in Connecticut long after 2011, that employees of Beta Pharma continued to operate in Connecticut, and that numerous potential witnesses in this matter, both Beta Pharma employees and third party witnesses, are located in Connecticut.

Specifically, Beta Pharma represented to the Secretary of State of Connecticut and the public that its principal place of business was located at 31 Business Park Drive, Branford, Connecticut, until at least March 17, 2014. (Exhibit B) ( Depo at 19- 20 and Deposition Exhibit 1; remaining cited portions of Dr. Kamal's testimony follow in Exhibit B).<sup>1</sup> Further, Beta Pharma identified its officers as Don Zhang, President, resident at 31 Business Park Drive, Branford; Mehrnaz Kamal, Vice President, resident in Oxford, Connecticut; and Guojian Xie, resident of Cheshire, Connecticut.<sup>2</sup>

Dr. Kamal has held various positions in Beta Pharma since 2001, including human resources manager (2004 to 2007) and Vice President of Operations (2007 to April, 2011). (Exhibit B, Kamal Depo. at 19-20) Dr. Kamal was deposed on May 28, 2014 in Guojian Xie v. Beta Pharma, and testified that Beta Pharma continued to maintain a place of business in Branford, Connecticut as of the date of her deposition (Exhibit B) (Kamal Depo. at 120). Dr. Kamal further testified that Beta Pharma maintains documents in "our office" in Branford, and at a condominium storage facility in West Haven, Connecticut owned by Don Zhang individually. (Exhibit B) (Kamal Depo. at 58-59). Indeed, when Dr. Kamal was required to make a search of Beta Pharma's records in connection with the Xie case, she did not go to Princeton and did not think there would be relevant documents found there. (Exhibit B) (Kamal Depo. at 61).

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<sup>1</sup>This document is Exhibit 1 to the deposition of Mehrnaz Kamal, taken in the case of Guojian Xie v. Beta Pharma, Inc., Connecticut Superior Court, Complex Litigation at Waterbury, Docket Number X06-UWY-CV13-6025526-S.

<sup>2</sup> All three of these individuals are potential witnesses in this case, and may testify regarding the formation of Beta Pharma Canada, and plaintiff Wang's role with Beta Pharma.

Dr. Kamal further testified that defendant Zhang created two other companies, Beta Pharma Scientific, Inc. and Branford Research Lab, Inc. (Exhibit B) (Kamal Depo. at 10 - 11). Both are Connecticut corporations with principal places of business in Branford. According to the reports of these companies filed with the Connecticut Secretary of State, defendant Zhang is President of both companies, with both having headquarters at 31 Business Park Drive in Branford, Connecticut. (Exhibit A). Defendant Zhang also lists this Branford, Connecticut address as his residence. (Id.). Branford Research Lab was dissolved on November 10, 2014 and, as of the report filed on that date, defendant Zhang did not "correct" his address to reflect a residence in New Jersey. (Exhibit A).

Moreover, as recently as August 9, 2012, defendant Zhang was sending emails signed by "Don Zhang, President and CEO of Beta Pharma, Inc., 31 Business Park Dr. Branford, CT 06405 (203)315-5062. (Exhibit C). Additionally, Amy Chen, Beta Pharma's "Manager of Finance and Legal Affairs," was using the Business Park, Branford, Connecticut address on her e-mail correspondence as of December 13, 2011 (Exhibit D); Victoria Guiliano, Beta Pharma's Director of Regulatory Affairs, was using the 31 Business Park, Branford, Connecticut address on her e-mail correspondence as of July 10, 2012. (Exhibit E.) As recently as March 24, 2014, Beta Pharma was granting stock options to employees, showing that notice of exercise was to be given to Beta Pharma at its Branford address. (Exhibit B, Kamal Depo. at 118-120.)

## II. ARGUMENT

**THE CLEAR AND CONVINCING RECORD EVIDENCE DOES NOT DEMONSTRATE THAT TRANSFERRING THIS CASE TO NEW JERSEY WOULD PROMOTE CONVENIENCE AND JUSTICE SUCH THAT PLAINTIFF'S CHOICE OF FORUM SHOULD BE DISREGARDED.**

Defendants argue that this matter should be transferred to the United States District Court for the District of New Jersey because no connection exists between this case and Connecticut. Defendants contend that since there are "substantial connections" between this case and New Jersey, a transfer will promote convenience and justice. Defendants' argument and motion to transfer lack merit. Not only does the record show an extensive relationship between this Connecticut forum and plaintiff's claims, several other §1404(a) considerations weigh in favor of denying transfer.

Defendants move to transfer under 28 U.S.C. §1404(a). Section 1404(a) provides:

(a) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented.

"Defendant bears the burden of establishing by clear and convincing evidence that transfer would be proper." Nelson v. Myrtle Beach Collegiate Summer Baseball League, LLC, No. 3:12cv1655, 2013 WL 6273890 (D.Conn. Dec. 4, 2013) (Arterton, J.) (citing N.Y. Marine & General Insurance Co. v. Lafarge North America, Inc., 599 F.3d 102, 114 (2d Cir. 2010)). Indeed, "[a]bsent a clear and convincing showing that the balance of convenience strongly favors the alternate

forum . . . discretionary transfers are not favored.” Tucker v. American International Group, Inc., 728 F.Supp.2d 114 (D.Conn. 2010) (Haight, J.) (quoting Li v. Hock, 371 Fed.Appx. 171, 175 (2d Cir. 2010)).

“In determining whether a transfer of venue pursuant to 28 U.S.C. §1404(a) is appropriate, district courts engage in a two-part inquiry, asking: (1) whether [the] action might have been brought in the proposed transferee forum, and, if so, (2) whether the transfer promotes convenience and justice.” Id. at \*9 (quoting Costello v. Home Depot U.S.A., Inc., 888 F.Supp.2d 258, 266 (D.Conn. 2012)).

A. Defendants have not demonstrated that venue in New Jersey is proper over all defendants.

The first consideration for the Court is whether this action could have been properly brought in the District of New Jersey in the first instance. “In assessing whether an action ‘might have been brought’ in the proposed transferee forum, the court must determine whether the defendants were subject to personal jurisdiction in that forum when the action was commenced and whether venue would properly lie there.” MAK Marketing, Inc. v. Kalapos, 620 F.Supp.2d 295, 307-08 (D.Conn. 2009) (Hall, J.).

“In an action where jurisdiction is founded on diversity of citizenship, as this suit is, venue is generally proper in a district where any defendant resides, if all defendants reside in the same state.” Id. at 308 (citing 28 U.S.C. § 1391(a)). In turn, 28 U.S.C. § 1391(c) provides that “a defendant that is a corporation is deemed to reside in any judicial district in which it is subject to personal

jurisdiction at the time the action is commenced.” See Kalapos, 620 F.Supp.2d at 308.

Given defendant Beta Pharma’s representation that its principal place of business, as of the commencement of this suit, is New Jersey, and defendant Zhang’s representation that he resides in Plainsboro, New Jersey and works at Beta Pharma’s Princeton, New Jersey office, it appears that these defendants “reside” in New Jersey for purposes of personal jurisdiction and venue. However, defendants Beta Pharma and Zhang have failed to demonstrate that New Jersey is the proper venue for suit against defendant Zhejiang Beta Pharma Company, Ltd. (“ZBP”).

Specifically, defendants have not shown that the District of New Jersey has personal jurisdiction over ZBP as is required to demonstrate that the case against ZBP could properly have been brought in New Jersey initially. Failure to show that ZBP is subject to personal jurisdiction in New Jersey defeats both prongs of the § 1404(a) jurisdictional inquiry, including the venue analysis.

ZBP has sufficient contacts with this District of Connecticut forum to provide this Court with personal jurisdiction over it. In particular, plaintiff alleges in his complaint that although ZBP is a corporation incorporated under the laws of China, it does business in the State of Connecticut, engaging in the research developing and marketing of prescription drugs. ZBP is a partially owned subsidiary of Beta Pharma which, at the time of the events in the complaint, had its principal place of business in Branford, Connecticut. Moreover, to date, Beta Pharma still maintains a business presence in Connecticut. ZBP’s Chief

Executive Officer and Chief Scientific Officer, Yinxiang Wang, is a resident of Cheshire, Connecticut. (See Docket Entry, Document 15, Page 8, evidencing abode service on Yinxiang Wang in Cheshire, Connecticut) . ZBP's Vice President, defendant Don Zhang, was a Connecticut resident at the time of the transactions giving rise to this lawsuit, and is President and majority shareholder of Beta Pharma, which still has a business presence here. ZBP has employed Connecticut scientists to do work for ZBP in Connecticut and China. Its employees have traveled to Connecticut to transact ZBP business in this state. Further, ZBP, acting by its Vice President defendant Don Zhang, has sold or transferred ZBP shares in Connecticut, both to Connecticut residents and others, including plaintiff.

To the contrary, defendants have made no showing that ZBP has such contacts with the District of New Jersey such that the New Jersey District Court has personal jurisdiction over ZBP. Accordingly, defendants have not shown that this case could have been brought in New Jersey, and defendants have not met their burden of showing that transfer is proper.

Defendants argue that it is unnecessary to consider ZBP in this transfer analysis because ZBP is a fraudulently joined defendant. The allegations of plaintiff's complaint, however, demonstrate that ZBP has not been fraudulently joined in this matter. Thus, defendants have failed to carry their heavy burden of demonstrating that ZBP should not be considered in the Court's transfer analysis because of fraudulent joinder.

“Under the doctrine of fraudulent joinder, ‘courts overlook the presence of a non-diverse defendant if from the pleadings there is no possibility that the claims against that defendant could be asserted in state court.’” Retirement Program for Employees of the Town of Fairfield v. NEPC, LLC, 642 F.Supp.2d 92, 95 (2009) (quoting Briarpatch Ltd. v. Phoenix Pictures, Inc., 373 F.3d 296, 302 (2d Cir. 2004)). Defendants cite Pecorino v. Vutec Corp., 934 F.Supp.2d 422, 431 (E.D.N.Y. 2012) for the proposition that fraudulent joinder precedent in the context of remand is instructive to a fraudulent joinder inquiry on a motion to transfer.

“The defendant bears the heavy burden of proving of proving [fraudulent joinder] by clear and convincing evidence with all factual and legal ambiguities resolved in favor of plaintiff.” Retirement Program for Employees of the Town of Fairfield, 642 F.Supp.2d at 95 (internal quotation marks and citation omitted). See also Wise v. Lincoln Logs, Ltd., 889 F.Supp. 549, 552 (D.Conn. 1995) (“A claim that joinder is fraudulent must be asserted with particularity and supported by clear and convincing evidence.”).

“The test for determining whether or not a defendant has been fraudulently joined has been summarized as follows:

[a] joinder may be fraudulent and a sham if the allegations in the plaintiff [’s] pleading with reference to the resident defendants are shown to be so clearly false and fictitious that no factual basis exists for an honest belief on the part of plaintiff that there is liability-in short that the joinder is without any reasonable basis in fact and is made without any purpose to prosecute the cause in good faith....”

Wise, 889 F.Supp. at 552 (citing Metropolitan Property & Casualty Insurance Co. v. J.C. Penney Casualty Insurance Co., 780 F.Supp. 885, 887 (D.Conn. 1991)

(stating that the “stringent test for fraudulent joinder” requires that if any reasonable basis exists for predicting that relief will be granted against the allegedly fraudulently joined defendant, the court will not disregard that defendant for jurisdictional purposes). See also Nemazee v. Premier, Inc., 232 F.Supp.2d 172, 178 (S.D.N.Y. 2002) (“Any possibility of recovery, even if slim, militates against a finding of fraudulent joinder; only where there is ‘no possibility’ of recovery is such a finding warranted.”) (citing Whitaker v. American Telecasting, Inc., 261 F.3d 196, 207 (2d Cir.2001)).

Defendants contend that plaintiff has fraudulently named ZBP as a defendant in this action because the 2010 agreement attached to plaintiff’s complaint is with Beta Pharma and not ZBP. Defendants’ argument, however ignores the fact that the 2010 agreement promised plaintiff substantial shares of ZBP stock, and that the agreement was executed by defendant Zhang -- an officer of both ZBP and Beta Pharma (owner of a substantial minority interest in the shares of ZBP)<sup>3</sup>. Furthermore, defendants’ assertion ignores the additional allegations in plaintiff’s complaint concerning misrepresentations made by Beta Pharma and defendant Zhang, individually and on behalf of ZBP and Beta Pharma, about providing plaintiff with a stock interest in ZBP.<sup>4</sup>

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<sup>3</sup> The full extent of Beta Pharma’s interest in ZBP is disputed. In the related case of Shao, et al., v. Beta Pharma, et al., United States District Court, District of Connecticut, 3:14cv01177(CSH) , plaintiffs contend that defendants Beta Pharma and Zhang sold them shares of ZBP pursuant to ZBP stock sale transactions in Connecticut. These share sales reduce Beta Pharma’s percentage interest in ZBP.

<sup>4</sup> In his complaint, plaintiff alleges in the Ninth Count at paragraph 2 that “[o]n or about March 26, 2010, for valuable consideration, BP and ZBP, acting through their officer Don Zhang and pursuant to a written contract made in Connecticut and to be performed in Connecticut, sold or transferred 1% of all issued and

The allegations of plaintiff's complaint, construed in plaintiff's favor, demonstrate that ZBP is a proper defendant in this case. In view of these allegations, it cannot be said that, plaintiff's claim against ZBP "is so flawed that it would be impossible for the plaintiff to recover." Retirement Program for Employees of the Town of Fairfield, 642 F.Supp.2d at 97. Thus, defendant ZBP is a proper defendant in this action, the District of New Jersey lacks personal jurisdiction over ZBP, and this case could not have been brought there in the first instance, defeating transfer.

B. The relevant factors weigh in favor of this case proceeding in the District of Connecticut, and no clear and convincing evidence has been presented that transfer to the District of New Jersey would promote convenience and justice.

In any event, transfer of this case to the District of New Jersey is not in the interests of convenience and justice. When considering whether a transfer under §1404(a) promotes convenience and justice, district courts consider several factors: "(1) the plaintiff's choice of forum, (2) the convenience of witnesses, (3) the location of relevant documents and relative ease of access to sources of proof, (4) the convenience of parties, (5) the locus of operative facts, (6) the availability of process to compel the attendance of unwilling witnesses, (7) the relative means of the parties, (8) the forum's familiarity with the governing law, and (9) the efficiency and the interests of justice based on the totality of the

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outstanding ZBP stock (represented by defendants' officer Zhang to be 3 million shares) to plaintiff Zhaoyin Wang." Plaintiff further alleges that "[o]n or about March 26, 2010, Zhang represented to plaintiff, in writing, that 'Your total ownership of Zhejiang Betapharma is one percent.'" (Ninth Court at paragraph 3).

circumstances.” Nelson, 2013 WL 6273890 at \*9 (citing D.H. Blair & Co. v. Gottdiener, 462 F.3d 95, 106-07 (2d Cir. 2006)).

“After weighing those factors, a plaintiff’s choice of forum ‘should rarely be disturbed unless the balance is strongly in favor of the defendant.’” Tross v. Ritz Carlton Hotel Co., LLC, 928 F.Supp.2d 498 (2013) (quoting Garnet Analytics, Inc. v. Diversified Solutions, Inc., No. 12-CV-716, 2012 WL 5878664 at \*5 (D.Conn. Nov. 21, 2012)).

As discussed more fully below, evaluation of the §1404(a) factors does not reveal clear and convincing evidence that transferring this case to New Jersey would promote convenience, justice or fairness such that plaintiff’s choice of forum should be disregarded.

1. Plaintiff’s Choice of Forum and the Locus of Operative Facts

Plaintiff Wang brought his case in the District of Connecticut because all of the actions underlying and surrounding this lawsuit took place in this District.

“In considering a motion to transfer, a district court ordinarily affords the plaintiff’s choice of forum substantial weight.” Nelson, supra, 2013 WL 6273890 at \*9. (internal quotation marks and dictation omitted).

Defendants contend that plaintiff’s choice of forum should be entitled to little weight because plaintiff resides in Canada and not Connecticut, relying on Costello v. Home Depot U.S.A, Inc., 888 F.Supp.2d 258 (2012). Defendant’s reliance is misplaced. Plaintiff’s non-residence in Connecticut was not the sole factor upon which the Costello court based its decision to accord less weight to

the plaintiff's choice of the Connecticut forum. Rather, the court found that the non-Connecticut plaintiff's claims themselves lacked a connection to Connecticut. Specifically, the Costello court held, "[b]ecause the non-Connecticut plaintiffs' claims lack any connection to Connecticut, these plaintiffs' choice of forum is accorded little deference, and therefore this factor is neutral or tips only very slightly in favor of plaintiffs." Id. at 268 (footnote and citation omitted).

Although a plaintiff's choice of forum may be given less weight where a case's operative facts have little connection to the chosen forum, the operative facts of this case clearly focus on the District of Connecticut. See Hawley v. Accor North America, Inc., 552 F.Supp.2d 256, 259 (2008) (Hall, J.) (although the operative facts of the case were largely based in Arizona, the court was nevertheless "deferential to plaintiffs' choice of forum, and this factor weigh[ed] against transfer;" the court recognized that plaintiff's choice of forum would weigh even more heavily against transfer if the operative facts of the case centered in Connecticut).

The law in this District is clear that in order to determine the locus of operative facts, courts look at where the events from which the claim arises occurred. Nelson, supra, 2013 WL 6273890 at 10. Moreover, "[w]hen examining claims for misrepresentation on a motion to transfer venue, 'misrepresentations and omissions are deemed to occur in the district where they were transmitted or withheld, not where they are received.'" Dethier v. National Liquidators, No. 3:09cv1507, 2010 WL 991573 at \*6 (D.Conn. March 18, 2010) (Eginton, J.).

The agreement underlying plaintiff's claims in this matter was negotiated and executed with Beta Pharma's president, defendant Zhang, in Connecticut out of Beta Pharma's corporate headquarters in Branford, Connecticut. The misrepresentations made by Beta Pharma, and Zhang on behalf of both Beta Pharma and ZBP, to plaintiff Wang were made in Connecticut. Additionally, both prior to and after the agreement with Beta Pharma was negotiated and executed, plaintiff Wang regularly visited Beta Pharma sites in Connecticut. Further, Wang regularly conducted Beta Pharma business in Connecticut by site visit, phone or e-mail communications directed to Beta Pharma in Connecticut.

Plaintiff's complaint clearly pleads facts demonstrating that the events surrounding his business relationship with defendants occurred in the District of Connecticut. Under these circumstances, the "locus of operative facts" factor weighs against transfer, and plaintiff's choice of forum should be given the substantial weight it is accorded under Second Circuit authority. In re Warrick, 70 F.3d 736, 741 (2d Cir. 1995).

## 2. The Convenience of the Witnesses

Defendants baldly assert that "it is unlikely" that there will be non-party witnesses from Connecticut because the parties to the agreement underlying plaintiff's case are currently non-residents. Defendants then assert that because Beta Pharma employees "all" work in New Jersey, this factor weighs in favor of transfer.

Defendants bear the burden of demonstrating that transfer of this case to New Jersey is proper. Indeed, despite prevailing authority, defendants have not even attempted to demonstrate how the convenience of non-party witnesses would be promoted by transfer. "A party moving for transfer on the ground of the convenience or availability of witnesses must specify the identity of key witnesses and the nature of their likely testimony, and support these statements with affidavits." Nelson, supra, 2013 WL 6273890 at \*9. See also MAK Marketing, Inc. v. Kalapos, 620 F.Supp.2d 295, 309 (D.Conn. 2009) ("A party moving under section 1404(a) must specify the key witnesses to be called and make a general statement of what their testimony will cover."). Defendants have not made any such showing.

To the contrary, however, facts exist demonstrating that several potential witnesses are located in Connecticut. In particular, many of the witnesses with corporate and financial knowledge relevant to the breach of promise alleged in this case are located in Connecticut. Dr. Kamal and Dr. Xie, who were Beta Pharma corporate officers as of March, 2010, both reside in Connecticut. Beta Pharma has identified four corporation counsel: (1) Pepe & Hazard (now dissolved, but the relevant records are likely held by the Hartford, Connecticut firm of McElroy Deutsch; (2) Edward Duffy, Esq., a member of the Connecticut Bar; (3) Lance Liu, Esq., who resides in Middlebury, Connecticut; and (4) Fox Rothschild, which maintains an office in Stamford, Connecticut.

Additionally, Beta Pharma's corporate accountant for the relevant years was Teplitzky & Company, of Woodbridge, Connecticut, followed by Deloitte &

Touche, a national firm with offices in Stamford and Wilton, Connecticut. Beta Pharma's banking records for the relevant period are located at Connecticut branches of national banks: (1) JPMorgan Chase, which is located at 234 Church St., New Haven, Connecticut; and (2) Bank of America, located at 1081 West Main Street, Branford, Connecticut, where defendant Zhang, who individually owns 49% of Beta Pharma Canada, has banking records.

As alleged in the complaint, plaintiff Wang was promised stock in Zhejiang Beta Pharma Co., Ltd., ("ZBP"), incorporated under Chinese law, that grew out of a joint venture among Beta Pharma (in Connecticut) and additional joint investors. Beta Pharma contributed the patent rights to its developed cancer drug, Icotinib, to the ZBP joint venture. In discovery in the Xie case, Beta Pharma has identified its Icotinib patent lawyer as Todd Garabedian, formerly of Wiggin & Dana in New Haven, Connecticut, now employed by Cantor Colburn in Hartford, Connecticut.

Furthermore, one of the inventors of Icotinib (and some of its other, later-patented formulations) is Yinxiang Wang. Yinxiang Wang is also the Chief Executive Officer of co-defendant Zhejiang Beta Pharma. Dr. Yinxiang Wang lives in Cheshire, Connecticut. In fact, it may well be that the only relevant New Jersey witness who does not have substantial ties to Connecticut is Jirong Peng, a Beta Pharma Vice President, and his involvement in this case is actually undetermined at this time.

As Judge Arterton concluded in Nelson, supra, 2013 WL 6273890 at \*9, "[h]ere, Defendant has not specified the identity of any of its key witnesses, or

described the nature of their likely testimony. Further, there are likely relevant witnesses located in both fora. Thus, Defendant has not met its burden to establish that this factor weighs in favor of transfer.”

### 3. The Location of Relevant Documents

Defendants maintains that the “vast majority” of documents concerning this case are located in New Jersey because Beta Pharma’s headquarters has moved to that forum. Assuming, arguendo, that many documents exist in New Jersey, this factor still does not weigh in favor of transfer. Indeed, courts have recognized that modern technology limits any weight given to this factor.

“Modern technology, such as e-mail, facsimile, expedited mailing services and electronic storage and transfer techniques deprive [the issue of location of relevant documents] of practical or legal weight.” ICG America, Inc. v. Wine of

the Month Club, Inc., No. 3:09cv133, 2009 WL 2843261 (D.Conn. Aug. 28, 2009)

(Dorsey, J.) (internal quotation marks and citation omitted) (alteration in original).

See also Wilson v. DirectBuy, Inc., 821 F.Supp.2d 510, 517 (D.Conn. 2011)

(Recognizing that modern technology limits the weight of this factor, depriving it of practical or legal weight.); Discover Property & Casualty Insurance Company v.

Tetco, 932 F.Supp.2d 304 (D.Conn. 2013) (Arterton, J.) (stating that “it is difficult

to imagine that the parties would be unable to produce relevant documents with relative ease, regardless of where they needed to be produced.). “Given the

realities of electronic discovery, this factor does not weigh in favor of either

forum.” Nelson, supra, 2013 WL 6273890 at \*10.

#### 4. The Convenience of the Parties

Defendants maintain that New Jersey is a more convenient forum because they have documents and employees located there. Plaintiff argues that Connecticut is the more convenient forum because many witnesses are located here, Beta Pharma still has a presence here, and the locus of operative facts is focused on Connecticut. Thus, whether the case is located in New Jersey or Connecticut, “inconvenience is unavoidable.” Nelson, supra, 2013 WL 6273890 at 10. “District Courts have broad discretion in making determinations of convenience under Section 1404(a) and notions of convenience and fairness are considered on a case-by-case basis.” Hawley, 552 F.Supp.2d at 260. “A transfer order should not be used ‘to do nothing more than shift the burden of inconvenience from one party to another.’” Nelson, supra, 2013 WL 6273890 at 10 (quoting Pitney Bowes, Inc. v. National Presort, Inc., 33 F.Supp.2d 130, 132 (D.Conn. 1998)). In sum, this factor does not militate toward transferring this case to New Jersey.

#### 5. The Availability of Process to Compel Witnesses

Defendants have failed to specify the identity of their witnesses, aside from defendant Zhang, nor have any witnesses shown that they would be unwilling or unable to travel to the District of Connecticut in order to testify. See Tross v. Ritz Carlton Hotel Co., LLC, 928 F.Supp.2d 498, 506 (2013) (Hall, J.). “The ability to compel unwilling witnesses is only relevant for potential witnesses whose presence the court would need to compel because employees of the parties will

as a practical matter be available in any venue by virtue of the employment relationship.” Dethier, 2010 WL 991573 at \*6. See also Tross, 928 F.Supp.2d at 506 (“Finally to the extent that any of the defendants’ witnesses are employees under the control of any of the defendants, the defendants have not shown why they could not provide those witnesses to testify in either forum.”).

Defendants have not provided any information that potential non-party witnesses would be unwilling to travel to Connecticut to testify in this matter, nor have defendants shown that the testimony of any potential non-party witness is unique. See Kalapos, 620 F.Supp.2d at 311.<sup>5</sup> Accordingly, defendants have not demonstrated that this factor weighs in favor of removing this case from its Connecticut forum.

#### 6. The Relative Means of the Parties

“The relative financial hardship on the litigants and their respective abilities to prosecute or defend an action in a particular forum are legitimate factors to consider.” Dethier, 2010 WL 991573 at \*7 (internal quotation marks and citation omitted). In Dethier, the plaintiffs were individuals, while the defendants were “two large corporations,” which the court found to weigh “strongly” against transfer. Id. See also Hawley v. Accor North America, Inc., 552 F.Supp.2d 256, 259 (2008) (factor “clearly and strongly” weighed against transfer where plaintiffs were individuals and defendant was a “nation-wide business”). In this case, the plaintiff is a single individual, while defendants include two corporations.

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<sup>5</sup> “Further, the ability to conduct video depositions of witnesses reduces the chance that the choice of a particular forum will significantly hamper either side’s ability to provide testimony of individuals otherwise unable to travel to testify in person.” Id.

Defendant Zhang has represented that ZBP has been valued at \$600 million, (Exhibit F). and Beta Pharma would be worth, at a minimum, its proportionate share of ZBP.

**7. The Forum's Familiarity with Governing Law.**

"The governing law factor is to be accorded little weight on a motion to transfer venue because federal courts are deemed capable of applying the substantive law of other states." Nelson, supra, 2013 WL 6273890 at 11 (quoting MAK Marketing, Inc. v. Kalapos, 620 F.Supp.2d 295, 311-12 (D.Conn. 2009)). Further, because plaintiff makes claims under Connecticut state law in his complaint, this factor weighs in favor of denying transfer. As Judge Arterton concluded in Nelson, "[h]owever, Plaintiffs' claims are based on Connecticut statutory and common law, and therefore even if this Court were to give weight to this factor, it can hardly be said to weigh in favor of a transfer out of Connecticut." Id. See also Adams v. Time Warner, 83 F.Supp.2d 296 (D.Conn. 1999) (Eginton, J.) (where Connecticut law governed the action, the court held: "[w]hile this factor does not weigh significantly in favor of retaining a Connecticut venue, it refutes a transfer of this case.").

**8. Trial Efficiency and the Interest of Justice**

Defendants contend that transfer to New Jersey would promote trial efficiency because Beta Pharma's headquarters and defendant Zhang's residence are located very close to the Trenton, New Jersey vicinage, and "since no

witnesses are in Connecticut,” transferring the case to New Jersey will further trial efficiency. However, there are several non-party Connecticut witnesses that would have to travel to New Jersey to give testimony, which clearly does not promote trial efficiency. Further, Beta Pharma and Zhang are parties, who need not be compelled to testify.

Additionally, defendants’ assertion that justice requires transfer to New Jersey because there are “nonexistent connections between the parties and Connecticut,” is plainly belied by the facts. As explained, supra, the locus of operative facts underlying this action is focused on Connecticut; Beta Pharma still has a presence here; and there are several witnesses having corporate and financial knowledge relevant to defendants’ breach of promise located in Connecticut.<sup>6</sup> Under these circumstances, the interests of justice do not militate in favor of transferring this matter from the District of Connecticut.

It is worth noting that Beta Pharma and defendant Zhang appear to have consistently adopted a policy of attempting to change venue. For example, the case of Guojian Xie v. Beta Pharma, Docket Number, UWY-cv13-6025526-S, currently pending in Connecticut Superior Court, proceeded on the regular civil docket in New Haven for almost two years before the defendants won a contested second motion to transfer it to Waterbury. Recently, the matter of Shao, et al. v.

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<sup>6</sup> In addition, plaintiff Wang’s counsel, who has considerable knowledge concerning plaintiff’s case, is located in Connecticut. See Demato v. Northwestern Mutual Life Insurance Co., No. Civ. A. 3:02CV34, 2002 WL 31559967 (D.Conn. Nov. 19, 2002) (Droney, J.) (denying motion to transfer under 1404(a) where, inter alia, plaintiff had a long-standing relationship with present Connecticut counsel and would likely have to retain alternate counsel should case be transferred).



**CERTIFICATE OF SERVICE**

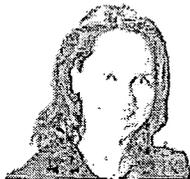
I hereby certify that on December 24, 2014, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

*/s/*

---

Jonathan Katz, Esq.  
Jacobs & Dow, LLC  
350 Orange Street  
New Haven, Connecticut 06511  
Telephone: (203) 772-3100  
Facsimile: (203) 772-1691  
Federal Juris No.: ct00182  
Email [jkatz@jacobsllaw.com](mailto:jkatz@jacobsllaw.com)

**EXHIBIT A**



DENISE W. MERRILL  
CONNECTICUT SECRETARY OF THE STATE

Business Inquiry

HOME HELP

Business Details

Business Name: BETA PHARMA, INC.

Citizenship/State Inc: Foreign/DE

Business ID: 0668571

Last Report Filed Year: 2014

Business Address: 5 VAUGHN DRIVE, SUITE 106, PRINCETON, NJ, 08540

Business Type: Stock

Mailing Address: 5 VAUGHN DRIVE, SUITE 106, PRINCETON, NJ, 08540

Business Status: Active

Date Inc/Registration: Feb 08, 2001

Name in State of INC: BETA PHARMA, INC.

Commence Business Date: Feb 01, 2001

Principals Details

Name/Title	Business Address	Residence Address
DON ZHANG PRESIDENT	5 VAUGHN DRIVE, SUITE 106, PRINCETON, NJ, 08540	5 VAUGHN DRIVE, SUITE 106, PRINCETON, NJ, 08540
JIRONG PENG VICE PRESIDENT	5 VAUGHN DRIVE, SUITE 106, PRINCETON, NJ, 08540	5 VAUGHN DRIVE, SUITE 106, PRINCETON, NJ, 08540

Agent Summary

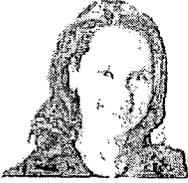
Agent Name SECRETARY OF THE STATE

Agent Business Address 30 TRINITY STREET, HARTFORD, CT, 06106-0470

Agent Residence Address NONE







DENISE W. MERRILL  
CONNECTICUT SECRETARY OF THE STATE

Business Inquiry

HOME HELP

Business Details

Business Name: **BETA PHARMA SCIENTIFIC, INC.**      Citizenship/State Inc: **Domestic/CT**

Business ID: **1024811**      Last Report Filed Year: **2012**

Business Address: **31 BUSINESS PARK DR, BRANFORD, CT, 06405**      Business Type: **Stock**

Mailing Address: **31 BUSINESS PARK DR, BRANFORD, CT, 06405**      Business Status: **Active**

Date Inc/Registration: **Jan 05, 2011**

Principals Details

Name/Title	Business Address	Residence Address
DON ZHANG PRESIDENT	31 BUSINESS PARK DR, BRANFORD, CT, 06405	31 BUSINESS PARK DR STE B, BRANFORD, CT, 06405
DON ZHANG DIRECTOR	31 BUSINESS PARK DR, BRANFORD, CT, 06405	31 BUSINESS PARK DR STE B, BRANFORD, CT, 06405
MEHRNAZ KAMAL VICE PRESIDENT	31 BUSINESS PARK DRIVE, BRANFORD, CT, 06405	31 BUSINESS PARK DRIVE, BRANFORD, CT, 06405

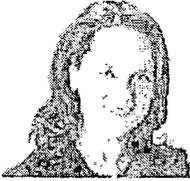
Agent Summary

Agent Name **HYDEN ZHANG**

Agent Business Address **140 CAPTAIN THOMAS BLVD, WEST HAVEN, CT, 06516**

Agent Residence Address **4 RIDGE ST, NEW HAVEN, CT, 06511**





DENISE W. MERRILL  
CONNECTICUT SECRETARY OF THE STATE

Business Inquiry

HOME

HELP

Business Details

Business Name: **BRANFORD RESEARCH  
LAB, INC.**

Citizenship/State Inc: **Domestic/CT**

Business ID: **1024810**

Last Report Filed Year: **2012**

Business Address: **31 BUSINESS PARK DR,  
BRANFORD, CT, 06405**

Business Type: **Stock**

Mailing Address: **31 BUSINESS PARK DR,  
BRANFORD, CT, 06405**

Business Status: **Dissolved**

Date  
Inc/Registration: **Jan 05, 2011**

Principals Details

Name/Title	Business Address	Residence Address
DON ZHANG PRESIDENT	31 BUSINESS PARK DR, BRANFORD, CT, 06405	31 BUSINESS PARK DR STE B, BRANFORD, CT, 06405
DON ZHANG DIRECTOR	31 BUSINESS PARK DR, BRANFORD, CT, 06405	31 BUSINESS PARK DR STE B, BRANFORD, CT, 06405
MEHRNAZ KAMAL VICE PRESIDENT	31 BUSINESS PARK DRIVE, BRANFORD, CT, 06405	5 FIDDLEHEAD RD., OXFORD, CT, 06478

Agent Summary

Agent Name **HYDEN ZHANG**

Agent Business Address **140 CAPTAIN THOMAS BLVD, WEST HAVEN, CT, 06516**

Agent Residence Address **4 RIDGE ST, NEW HAVEN, CT, 06511**

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DENISE W. MERRILL  
CONNECTICUT SECRETARY OF THE STATE

Business Inquiry

HOME HELP

Filing History

Business ID                      Business Name  
1024810                              BRANFORD RESEARCH LAB, INC.

Filing Number	Filing Date/Time	Effective Date/Time	Filing Type	Volume Type	Volume	Start Page	Page #
0004304177	Jan 05, 2011 12:30 PM		INCORPORATION	B	01482	3535	2
0004304180	Jan 05, 2011 12:30 PM	Jan 05, 2011 12:30 PM	ORG REPORT	B	01482	3540	2
0004712658	Sep 06, 2012 11:42 AM		REPORT (2012)	B	01717	1895	3
0005215212	Nov 10, 2014 11:56 AM	Nov 10, 2014 4:30 PM	DISSOLUTION	B	02000	0625	1

[Back](#)



**EXHIBIT B**

5/28/2014

Kamal, Mehrnaz

STATE OF CONNECTICUT

DOCKET NO. NNH-CV13-6035116-S	SUPERIOR COURT
-----)	
GUOJIAN XIE,	)
	)
Plaintiff,	)
vs.	)
	)
BETA PHARMA, INC., ET AL.,	)
	)
Defendants.	)
-----)	

VIDEOTAPED DEPOSITION OF: MEHRNAZ KAMAL, Ph.D.

DATE: MAY 28, 2014

HELD AT:

JACOBS & DOW, LLC  
350 ORANGE STREET  
NEW HAVEN, CONNECTICUT

- - -

Reporter: Sandra V. Semevolos, RMR, CRR, LSR #74

BRANDON HUSEBY REPORTING & VIDEO  
(800) 852-4589  
249 Pearl Street  
Hartford, Connecticut 06103

5/28/2014

Kamal, Mehrnaz

1     A P P E A R A N C E S :

2

3     For the Plaintiff:

4             JACOBS & DOW, LLC  
5             350 Orange Street  
6             New Haven, Connecticut 06511-6415  
7             203.772.3100

8

9             BY: JONATHAN KATZ, ESQ.  
10             jkatz@jacobsllaw.com

11

12     For the Defendants:

13             LAW OFFICES OF ALTSCHULER & ALTSCHULER  
14             Altschuler Building  
15             509 Campbell Avenue  
16             West Haven, Connecticut 06516  
17             203.932.6464

18

19             BY: DONALD ALTSCHULER, ESQ.  
20             altschuler.don@snet.net

21

22     Also Present:

23

24             Ed Giovanni, Video Operator  
25             Brandon Huseby Reporting & Video

26

27

28

29

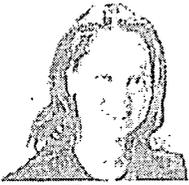
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DENISE W. MERRILL  
CONNECTICUT SECRETARY OF THE STATE

Business Inquiry

HOME HELP

Business Details

Business Name: BETA PHARMA, INC.      Citizenship/State Inc: Foreign/DE

Business ID: 0668571      Last Report Filed Year: 2010

Business Address: 31 BUSINESS PARK DRIVE, BRANDFORD, CT, 06405      Business Type: Stock

Mailing Address: 31 BUSINESS PARK DRIVE, BRANDFORD, CT, 06405      Business Status: Active

Date Inc/Registration: Feb 08, 2001      Name in State of INC: BETA PHARMA, INC.

Commence Business Date: Feb 01, 2001

Principals Details

Name/Title	Business Address	Residence Address
DON ZHANG PRESIDENT	31 BUSINESS PARK DRIVE, BRANDFORD, CT, 06405	31 BUSINESS PARK DRIVE, BRANDFORD, CT, 06405
MEHRNAZ KAMAL PH.D. VICE PRESIDENT	31 BUSINESS PARK DRIVE, BRANDFORD, CT, 06405	8 BELINSKY CIRCLE, OXFORD, CT, 06478
GUOJIAN XIE PH.D. VICE PRESIDENT	31 BUSINESS PARK DRIVE, BRANDFORD, CT, 06405	239 BATES DRIVE, CHESHIRE, CT, 06410

Agent Summary

Agent Name WALTER W. SIMMERS

Agent Business Address PEPE & HAZARD, LLP, GOODWIN SQUARE, HARTFORD, CT, 06103-4302

Agent Residence Address 92 DARYL DR, VERNON, CT, 06066

PLAINTIFF'S EXHIBIT

1 ID  
5-28-14 SS

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Kamal, Mehrnaz

1 A. Sure.

2 Q. Fair enough?

3 A. Sure.

4 Q. And if you don't stop me, I'm going to  
5 assume that you have understood my question; correct?

6 A. Sure.

7 Q. And that you will answer it truthfully?

8 A. Sure.

9 Q. Have you ever testified before?

10 A. No.

11 Q. Okay. So this is a first for you?

12 A. Right.

13 Q. All right. Again, as I say, if it gets  
14 confusing, stop me, because I want to make sure that  
15 we have good communications.

16 A. Sure.

17 Q. Okay. Who are you currently employed by?

18 A. Beta Pharma Scientific and Branford  
19 Research Lab.

20 Q. You are employed by Beta Pharma Scientific  
21 and Branford Research Lab?

22 A. Right.

23 Q. And are those two separate companies?

24 A. Not really. Branford Research Lab is the  
25 lab division of Beta Pharma Scientific. So basically

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Kamal, Mehmaz

1 Beta Pharma Scientific is the distribution side, and  
2 Branford Research Lab is the lab, chemistry labs.

3 Q. How do those two companies relate to Beta  
4 Pharma, Incorporated?

5 A. Same ownership, but the two companies, Beta  
6 Pharma Scientific and Branford Research Lab, they  
7 work with each other. Branford Research Lab make  
8 compounds for Beta Pharma Scientific, and we  
9 distribute the chemical compounds through Beta Pharma  
10 Scientific.

11 But currently, we are doing some custom  
12 synthesis projects, some compounds for Beta Pharma.  
13 But Beta Pharma is the drug discovery division. It's  
14 located at New Jersey, Princeton, New Jersey. We  
15 don't work with them closely. The only thing we are  
16 doing for them is outsourcing. They have projects.  
17 They have drug discovery projects, some organic  
18 compounds to synthesize, and we synthesize the  
19 organic compounds for them. In terms of accounting  
20 and other related things, we are totally separate.

21 Q. Was there a time when you worked for Beta  
22 Pharma, Incorporated?

23 A. Yes.

24 Q. When did you work for them?

25 A. From year 2001 up to year 2010. In January

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Kamal, Mehrnaz

1 2010, I think Don Zhang decided to separate the  
2 companies and make it Beta Pharma, Inc., Beta Pharma  
3 Scientific and Branford Research Lab. So I worked  
4 from 2001 up to 2010, but I was -- I left the company  
5 in summer 2001, and I was back there few months  
6 later. So basically I worked there for entire time.  
7 The only few months didn't work, it was sometimes  
8 between June 2001 up to November 2001. Then I  
9 returned to company. And then I can say from 2002 up  
10 to 2010 I worked full-time for Beta Pharma.

11 Q. Why did you take the little summer absence  
12 in 2001?

13 A. Because when I joined the company, when  
14 actually I interview the company year 2000, the  
15 company's name was Beta Chemical, and the company  
16 didn't have any direct discovery activity and didn't  
17 have any catalog neither. The only work the company  
18 had, it was the custom synthesis project. The  
19 company used to work for larger pharmaceutical  
20 companies, especially Pfizer, so we had a lot of  
21 custom synthesis projects from Pfizer. So basically  
22 we worked for Schering-Plough, Pfizer. We used to  
23 make compounds for them.

24 Later on, company started to lose all those  
25 business from this big Pharma, and then the company

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Kamal, Mehrnaz

1 did both.

2 Q. You then indicate that you became manager  
3 of Beta Pharma from 2004 through 2007?

4 A. Yes.

5 Q. And did that involve more of the financial  
6 end of the company and less of the time in the  
7 chemistry lab?

8 A. Yeah.

9 Q. And then you became vice president of  
10 operations in 2007?

11 A. Yes.

12 Q. And your bio, online biography indicates  
13 that you were vice president of operations until  
14 April of 2011; is that correct?

15 A. I think yes, because I sort of managed the  
16 company -- the company, but in year 2010, beginning  
17 of 2010, they divided the three companies, so we had  
18 Beta Pharma, Beta Pharma Scientific and Branford  
19 Research Lab. And currently in company's paperwork,  
20 my name is not listed as an officer. But I was  
21 listed as an officer pretty much, I think, from the  
22 year 2007 up to 2010.

23 Q. Let me show you Exhibit 1 for  
24 identification, and this is a printout of the records  
25 of the Connecticut Secretary of State as of 2014, as

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Kamal, Mehrnaz

1 of March 17th of 2014.

2 A. Yeah, but the books, right now the two  
3 books for Beta Pharma Scientific and Branford  
4 Research Lab is in New Jersey, and they have -- the  
5 books have been done in the office of an Attorney  
6 Duffy in Middlebury. You can check the records with  
7 them.

8 Back to year beginning of 2010, when they  
9 divided the company, my name is not as a registered  
10 officer.

11 Q. Okay.

12 A. I can also give you their information, but  
13 I know the office because I even went there once.  
14 The name of the attorney is Duffy, and it's in  
15 Middlebury, Connecticut.

16 Q. In Middlebury, Connecticut, not New Jersey?

17 A. Right.

18 Q. All right. So looking at Exhibit 1, there  
19 was a time, correct, when you were in fact a vice  
20 president of Beta Pharma, Incorporated?

21 A. Sure.

22 Q. And that lasted until when?

23 A. As I said, until January 2010, when they  
24 divided Beta Pharma to Beta Pharma, Inc., Beta Pharma  
25 Scientific and Branford Research Lab.

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Kamal, Mehrnaz

1 Q. And is that a division that Attorney Duffy  
2 handled?

3 A. Yes. They went to -- Don and Lisa at that  
4 time, they both went to this office in Middlebury and  
5 took care of the paperwork.

6 Q. Was there a time when Guojian Xie, Jeff  
7 Xie, was a vice president of Beta Pharma?

8 A. Yes.

9 Q. Did he remain a vice president of Beta  
10 Pharma after the company was divided?

11 A. No.

12 Q. What corporate officer status did he hold,  
13 if any, in Beta Pharma, after the company was  
14 divided?

15 A. I don't know.

16 Q. You mentioned two people, Don and Lisa.  
17 Don is Don Zhang?

18 A. Right.

19 Q. Who is Lisa?

20 A. At that time, she was helping him with the  
21 company's paperwork and accounting and other things,  
22 but around, I think, March 2010, she left the  
23 company.

24 Q. What was her last name?

25 A. I think it was Huang, H-u-a-n-g. I don't

1 A. No.

2 Q. Have you ever seen any documents that  
3 consisted of Jeff's personnel file?

4 A. I saw his offer letter. Once we were  
5 cleaning, I saw the original offer letter back to  
6 year 2000. That's what I remember I saw.

7 Q. And when you say "offer letter," do you  
8 mean a letter from Don to Jeff saying come to work  
9 for me?

10 A. Yes. I think he got layoff in  
11 San Francisco area, he lost the job. Through a  
12 friend, he was introduced to Don, and Don helped him  
13 and gave him a job. And then for a while, his family  
14 lived in San Francisco area, and he was in New Haven.

15 Q. Do you remember what the terms and  
16 conditions of the offer were?

17 A. I don't remember.

18 Q. When was the last time you saw the offer  
19 letter?

20 A. It was a couple of years ago when we were  
21 cleaning the office, and we find that offer letter.

22 Q. Whose office were you cleaning?

23 A. Our office.

24 Q. Okay. And was that offer letter in some  
25 particular file that was located in your office?

1           A.       It was, but one of our people -- I'm sorry,  
2 I think it's my phone -- they file everything, so  
3 everything, you must have a personnel file, but it's  
4 in the boxes. What they did, they took all the old  
5 documents, they put it in the boxes, and I don't know  
6 where the boxes are. That's something Lisa did with  
7 Caroline at that time.

8           Q.       Who is Caroline?

9           A.       She used to do our accounting for a year or  
10 so.

11          Q.       And these boxes that you saw, were they at  
12 Business Park Drive in Branford?

13          A.       No.

14          Q.       Where were they kept?

15          A.       I think they put it in West Haven. They  
16 are mainly customers' invoicing and bills that we  
17 paid. Some people left the company, they had like  
18 offer letter, insurance identification number, that  
19 kind of things.

20          Q.       And those things were stored in West Haven?

21          A.       I think so.

22          Q.       Where in West Haven?

23          A.       We have an apartment -- it's kind of condo  
24 in West Haven.

25          Q.       What is the address of that, please?

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Kamal, Mehrnaz

1 A. I don't know. I don't remember the exact.

2 Q. You don't have the mailing address for  
3 that?

4 A. No. I know it's West Haven, Connecticut.

5 Q. And do you know who owns that?

6 A. Don owns that.

7 Q. Don owns it personally?

8 A. Yeah, it's a condo.

9 MR. KATZ: Okay. Do you need to take  
10 a break? Want to take a break?

11 THE WITNESS: No, I'm okay.

12 MR. ALTSCHULER: In about a half hour,  
13 Jonathan, I'm going to want to take a break.

14 MR. KATZ: Yeah, that's fine.

15 BY MR. KATZ:

16 Q. Let me just show you Exhibit 2, which is  
17 the personnel file that was produced to me. I just  
18 want to ask, once again, did you have any involvement  
19 at all in assembling those documents?

20 A. These documents? I did, yes.

21 Q. You did?

22 A. Yes.

23 Q. Okay. Tell me what you did to get those  
24 documents together.

25 A. It was beginning of this year, I did all

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Kamal, Mehrnaz

1 this documents. Attorney Altschuler asked for the  
2 records of all his payments for the last few years,  
3 and that's -- I found in the office. Yes, I  
4 collected all those documents, as much as I could,  
5 and I couldn't find some of them. And as I said, the  
6 reason I couldn't find some of them is because they  
7 boxed the documents a couple of years ago. Yes, but  
8 those are the documents I gave to Attorney  
9 Altschuler.

10 Q. When you put that pile together, Exhibit 2,  
11 did you go to West Haven and see what was in the  
12 boxes in West Haven?

13 A. No.

14 Q. Did you ask anybody to do that for you?

15 A. Nobody want to do it. We didn't have time.

16 Q. Okay. So there may be documents in  
17 West Haven that pertain to Jeff's employment;  
18 correct?

19 A. Maybe.

20 Q. And these would include his offer letter?

21 A. Maybe. But it's not difficult to find his  
22 offer letter. You may even have a copy of his offer  
23 letter so --

24 Q. So the pile that we've marked there does  
25 not consist of the entire record of Jeff's employment

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Kamal, Mehrnaz

1 at Beta Pharma; correct?

2 A. No.

3 Q. Where else, other than West Haven, would  
4 there be documents pertaining to him?

5 A. I don't know.

6 Q. Would they be in Princeton?

7 A. I don't think so.

8 Q. What offices does Beta Pharma have in  
9 New Jersey now?

10 A. How many offices?

11 Q. Yes.

12 A. As far as I know, one.

13 Q. And the address of that is -- it's here  
14 somewhere. Do you know the address in the New Jersey  
15 office?

16 A. I think it's 5 Vaugh Drive, V-a-u-g-h,  
17 Drive, and it's Princeton, New Jersey.

18 Q. How many people work out of that office?

19 A. Currently, I don't know.

20 Q. Do you know whether Jeff has a personnel  
21 file with Zhejiang Beta Pharma in China?

22 A. I don't know.

23 Q. Did you communicate with those people to  
24 find out whether he had a personnel file?

25 A. No, not at all.

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Kamal, Mehmaz

1 Q. He gave no explanation?

2 A. No.

3 Q. And he never told you whether you were  
4 entitled to any of it?

5 A. He recently -- he just recently told me  
6 that he wants also to give us some stock option of  
7 the Beta Pharma in Princeton, New Jersey.

8 Q. And when he says "Beta Pharma," does he  
9 mean Beta Pharma, Inc.?

10 A. Yeah.

11 Q. But he hasn't delivered the documents for  
12 that?

13 A. No, not yet.

14 MR. KATZ: Would you mark this one,  
15 please?

16 (Exhibit 13, Beta Pharma, Inc.  
17 Stock Option Award Agreement, March  
18 24, 2012, Nos. BP 0004 through BP  
19 0008, marked for identification.)

20 BY MR. KATZ:

21 Q. Plaintiff's Exhibit 13 was produced to me  
22 as part of your personnel file, and it is incomplete,  
23 but if you turn to the fourth page in, does Don  
24 Zhang's signature appear there?

25 A. Yes.

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Kamal, Mehrnaz

1 Q. And is that an original signature as  
2 opposed to a signature stamp?

3 A. No, it's an original signature.

4 Q. Okay. And can we agree that this grants  
5 Dr. Xie the right to purchase 500,000 shares of Beta  
6 Pharma common stock at 75 cents a share?

7 A. Yes, it is. According to what is in that  
8 agreement, yes, it is.

9 Q. And there is a vesting schedule on the last  
10 page of the document.

11 A. Right.

12 Q. Okay. And that indicates that these  
13 options are exercisable until March 23rd of 2018?

14 A. I think so. This is the first time I see  
15 this document.

16 Q. Okay. Well, you saw it when you put the  
17 personnel file together?

18 A. I didn't see a copy of that. I don't  
19 remember seeing a copy of this document.

20 Q. Okay. So did you know that as of March 24,  
21 2012, Don was granting stock options to Dr. Xie?

22 A. I didn't know that, no.

23 Q. Do you know whether he grantsed stock  
24 options to anyone else?

25 A. He said something about it, but I don't

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Kamal, Mehrnaz

1 know whether he granted to anyone else.

2 Q. Okay. And he certainly didn't grant any to  
3 you, did he?

4 A. As I said, he just -- that was just some  
5 talk, but not anything in writing.

6 Q. This indicates that notice is to be given  
7 to the corporation at 31 Business Park Drive in  
8 Branford. Beta Pharma still has an office there; is  
9 that right?

10 A. Yes, we do.

11 Q. And does Don come to that office?

12 A. Not anymore.

13 Q. Where does he live?

14 A. He lives in New Jersey right now.

15 Q. What is his address in New Jersey?

16 A. I don't know. His personal address?

17 Q. Yes.

18 A. I don't know.

19 Q. When did he move?

20 A. I'm not sure. I think a couple of years  
21 ago. In 2011, 2000 -- I don't remember exactly. A  
22 couple of years ago.

23 Q. Do you know whether Beta Pharma has ever  
24 sent to any employee any notice that they have an  
25 opportunity to exercise options?

5/28/2014

Kamal, Mehrnaz

1 A. I don't know.

2 Q. That was nothing that you were responsible  
3 for when you were managing the company?

4 A. Not at all.

5 Q. Do you know how this document was created?

6 A. This one?

7 Q. Yes.

8 A. I have no idea.

9 Q. You were human resources director for Beta  
10 Pharma?

11 A. I was taking care of the office work.

12 Q. How long did you hold that position?

13 A. End of 2001, up to end of 2000 -- I don't  
14 remember exactly when we hired our first office  
15 manager. I don't remember. But for a few years, I  
16 did all the office work.

17 Q. And during those few years, did Don Zhang  
18 ever tell you, we have a stock option program that  
19 needs to be administered for our employees?

20 A. I don't remember.

21 Q. You would have taken notice if he told you  
22 that, right, since you were an employee?

23 A. I don't recall. I don't remember. But  
24 obviously he gave some stock options to Jeff.

25 Q. Okay. You don't know the full extent of

**EXHIBIT C**



Guojian Xie &lt;jeff.xie0929@gmail.com&gt;

**Re: Fw: DATA: BET001**

7 messages

Don Zhang &lt;don.pharmaman@gmail.com&gt;

Thu, Aug 9, 2012 at 11:02 AM

To: kathy.laska@merckgroup.com

Cc: guojian xie &lt;jeff.xie0929@gmail.com&gt;, jirong\_peng@betapharma.com

Dear Kathy,

Hope you are doing very well! We have our sample finally organized and prepared and ready for shipping. Just wonder the quotes you gave us is still valid. We will have our samples (12) shipped out as soon as we get your positive reply.

Thanks a lot for your helps!

Don  
BetaPharma, Inc.  
31 Business Park Dr.  
Branford, CT 06405  
Phone; 203-315-5062  
Fax; 203-315-5081

On Wed, May 16, 2012 at 5:28 PM, &lt;kathy.laska@merckgroup.com&gt; wrote:

Hi Don. I apologize for the delay. I misunderstood and thought we need a bit more information, but I should be able to get you the quote tomorrow. Thanks for your patience.

Best regards,  
Kathy

---

Kathy Laska  
Discovery & Development Solutions Specialist

At the forefront of scientific and quality driven drug discovery and bioanalytical services

EMD Millipore Corporation, USA

Mobile: +1 508-254-9068

<http://www.millipore.com>

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**EXHIBIT D**



Guojian Xie &lt;jeff.xie0929@gmail.com&gt;

**stock purchase**

8 messages

**Amy Chen** <amy.chen@betapharma.com>

Tue, Dec 13, 2011 at 9:05 AM

To: chaohui.lin@yahoo.com

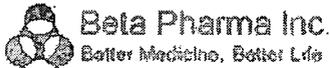
Cc: Don Zhang &lt;don\_zhang@betapharma.com&gt;, jirong\_peng@betapharma.com, jeff.xie0929@gmail.com

Dear Miss Lin:

The enclosed is the corporation paper work for your information.

By the way, we kindly want let you know that the RMB 5.00 already expired, investors now purchase our stocks at the price RMB 5.3, and the RMB5.3 price will expired at Dec. 31, 2011.

Regards,



Amy Chen (MBA)

Manager of Finance and Legal Affairs

BetaPharma, Inc.

31 Business Park Drive, Branford, CT 06405

Tel: 203-315-5062

Cell: 203-506-3839

Email: amy.chen@betapharma.com

amy4624@gmail.com

**Beta\_Pharma,\_Inc.\_Incorporation\_paperwork.pdf**  
2967K**Don Zhang** <don\_zhang@betapharma.com>

Tue, Dec 13, 2011 at 11:07 AM

To: Amy Chen &lt;amy.chen@betapharma.com&gt;

Cc: jirong\_peng@betapharma.com, jeff.xie0929@gmail.com

**EXHIBIT E**

Applications must be submitted online via PRISM. Guidance on the submission via PRISM is available here.

Please note that the local applicant company has to be registered with HSA CRIS in order to submit the application via PRISM. The person submitting the application must be authorized by the company CRIS administrator to submit the applications on behalf of the company. Information on CRIS can be found here.

Hope the above clarifies.

Thank you.

Sincerely,

HSA MedProd Registration

**Pharmaceuticals & Biologics Branch / Generics & Biosimilars Branch** | Pre-Marketing Division | Health Products Regulation Group  
11 Biopolis Way, #11-01, Singapore 138667 | Visit us at <http://www.hsa.gov.sg>

**Health Sciences Authority** | To be the leading innovative authority protecting & advancing national health & safety  
To wisely regulate health products ☒ To serve the administration of justice ☒ To secure the nation's blood supply ☒ To safeguard public health

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Taxonomy

[3S-Id=03fa00b2-1c56-4532-bcb7-95a624a11fa2:655809d]

**From:** Vickie [mailto:[vickie\\_guiliano@betapharma.com](mailto:vickie_guiliano@betapharma.com)]

**Sent:** Tuesday, 10 July, 2012 3:45 AM

**To:** Cheng Leng CHAN (HSA)

**Cc:** Huei-Xin LOU (HSA); Yang Tong FOO (HSA)

**Subject:** Icotinib

Good Day,

I hope all is well. I am the Director of Regulatory Affairs for Beta Pharma Inc. I would like to introduce our company and our Non-Small Cell Lung Cancer drug, Icotinib. Icotinib is a kinase inhibitor indicated for the treatment of patients with locally advanced or metastatic non-small cell lung cancer (NSCLC) that is EGFR mutation positive. Currently Icotinib has been approved and is being sold in China. So far it is being used to treat over 7,000 patients. We are interested in expanding into the global market, and would like to register our drug in your country. Since we are a small company with limited resources we were hoping to contact someone first to best understand how we should proceed to register our drug. Please feel free to contact me if you are

interested in any further information regarding Icotinib. I look forward to hearing from you.

Sincerely,

Victoria

## Victoria Guiliano

Director of Regulatory Affairs

31 Business Park Drive

Branford, CT 06405

203-315-5062

203-315-5081 (Fax)

vickie\_guiliano@betapharma.com

**EXHIBIT F**

BetaPharma

On Sun, Oct 6, 2013 at 12:19 PM, Ken Qian Liu <[qian\\_liu60@hotmail.com](mailto:qian_liu60@hotmail.com)> wrote:

Hi Don:

Please show us how the share prices and regulatory taxes are applied and calculated for the purpose of transparency. Bear in mind that our original purpose of investment was for the IPC of ZJBP. From shares trading perspective, I believe the principals and the growth are in one piece and are not separatable.

Furthermore, amongst the 4 questions I asked in the previous email, please let me know who the proceeds can be paid to my bank account in China.

I understand you are probably very busy as ZJBP moves forward. Your attention to your investors are highly appreciated.

Yours truly,

Qian Liu  
Cell +1 514 865 5506

Date: Wed, 2 Oct 2013 16:35:24 -0400

Subject: Re: Decision?

From: [don.pharmaman@gmail.com](mailto:don.pharmaman@gmail.com)

To: [qian\\_liu60@hotmail.com](mailto:qian_liu60@hotmail.com)

CC: [jpeng108@gmail.com](mailto:jpeng108@gmail.com); [zwang.ca@gmail.com](mailto:zwang.ca@gmail.com)

Hi Qian,

Please see the email below I have sent to many others for your info. In terms of RMB value each share, it is not finalized since we do not know how much taxes we have to pay in USA. It is about 10-12 Yuan based on our estimation based on the share numbers we had in 2010. We want to return your preliminary first which is non-tax liability attached. And other interest parts are attached with taxation both from China and the IRS of USA. Please see the email below for your info:

I am very pleased to inform you that we have partially closed the deal on sale part of our shares of ZJBP with the purchasers in China. The legal paper works were completed on April 2nd and actually closing transaction done recently and we have US dollars in our account now. The evaluation of ZJBP we have closed is \$600 millions of USA! Prior to this transaction, we tried to transfer the shares of ZJBP under your name but ZJBP cannot do so due to the regulations of Chinese Security Exchange Committee (Chinese SEC). So we have to return your cash both preliminary and interest or capital gain to you based on the current price we sold. So please let us know your decision and we would like to return your money plus profit as soon as we can.

We need your authorization to handle returning. So please let us know your current account info so that we can handle your payments. This will also involve taxation either capital gain or interest so we also need your social security number for USA citizens or

tax payers for your tax filing for capital gain part. Please let me know should you have any more questions. Please contact me should you have any questions, concerns, or problems.

Thanks a lot for your trust in both BetaPharma (USA) and myself!  
Sincerely

Don  
BetaPharma, Inc.  
5 Vaughn Dr.  
Princeton, NJ 08540 USA  
Phone: 609-436-4096  
Fax: 609-919-1516

On Sun, Sep 29, 2013 at 10:40 PM, Ken Qian Liu <[qian\\_liu60@hotmail.com](mailto:qian_liu60@hotmail.com)> wrote:

Dear Don:

Thanks for your note. We trust that our investment in BetaPharma was a good one and we appreciate the exceptional returns. Would you please shed us some lights on some details and confirm a couple of questions?

- confirmed share price in RMB;
- transactions to be kept in RMB to our bank account in China; In Canada, any transfer of Canadian dollar or US dollar to our Canadian bank account is subject to federal surveillance or even investigations.
- tax obligations on your part in China (Business tax, corporate income tax, etc) about how the income would be generated and taxes implied? This would show us how our profit would be calculated.
- some detailed steps of this transaction.

My contact details are as following:

Mr. Qian Liu  
3 Place Dubonnet  
Kirkland, QC  
Canada H9H 5J7

Cell in Canada: +514 865 5506

From Oct 10 to Oct 31, I can be reached at my China mobile +86 158 0058 4873.

Best regards,  
Qian Liu  
Cell +1 514 865 5506

Date: Sat, 28 Sep 2013 21:05:13 -0400  
Subject: Re: Decision?  
From: [don.pharmaman@gmail.com](mailto:don.pharmaman@gmail.com)  
To: [qian\\_liu60@hotmail.com](mailto:qian_liu60@hotmail.com)