

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

**Andrew Harrington, et al. v. Cracker Barrel Old Country Store
Incorporated**

Harrington · No. CV-21-00940-PHX-DJH · Decided June 1, 2026

OPINION

1 WO 2 3 4 5 6 IN THE UNITED STATES DISTRICT COURT 7 FOR THE DISTRICT OF
ARIZONA 8 9 Andrew Harrington, et al., No. CV-21-00940-PHX-DJH 10 Plaintiffs, ORDER 11
v. 12 Cracker Barrel Old Country Store Incorporated, 13 Defendant. 14 15 Before the Court in this
collective action is a Motion to Sever and Transfer Non- 16 Arizona Plaintiffs to the District of
Massachusetts, Central Division filed by Plaintiff Sara 17 Liptak (“Liptak”)1 and others similarly
situated.

(Doc. 114). Defendant Cracker Barrel 18 Old Country Store Incorporated (“Cracker Barrel”) has
filed a response in Opposition and 19 Liptak has filed a Reply. (Docs. 119 & 122). For reasons
stated below, the Court will 20 transfer the claims of the non-Arizona Plaintiffs to the District
Court of Massachusetts, 21 Central Division. 22 I. Background 23 More than any other defining
feature, this case is marked by its extensive procedural 24 history.

In short, it concerns an action arising out of the Fair Labor Standards Act (“FLSA”) 25 brought by
several plaintiffs seeking to remedy Cracker Barrel’s alleged failure to pay them 26 proper wages.
(Doc. 1). Cracker Barrel was originally successful on its first Motion to 27 Dismiss because the
Court found that the originally named plaintiffs were subject to a valid 28 1 Liptak states that she
will serve as the named Plaintiff for the non-Arizona group of plaintiffs based in Massachusetts.

(Id. at 2). 1 arbitration agreement. (Doc. 21). But that was not the end for either plaintiffs or
Cracker 2 Barrel. While the original plaintiffs pursued their case in arbitration, Liptak and other 3
former Cracker Barrel employees filed a First Amended Complaint (“FAC”) stating that 4 they
were all minors when they signed the arbitration agreement and therefore were not 5 bound by its
terms.

(Doc. 73). Because none of the named plaintiffs were from Arizona or 6 worked in Cracker
Barrel’s Arizona stores, however, the Court lacked personal jurisdiction 7 over these plaintiffs and
again granted Cracker Barrel’s Motion to Dismiss. (Doc. 62). 8 Plaintiffs were unhindered, even
after this setback, in their pursuit of having this litigation 9 move forward.

They filed a Second Amended Complaint (“SAC”), this time adding an 10 Arizona Cracker Barrel
employee as a plaintiff. (Doc. 74 at ¶¶ 6–9). Ultimately, the Court 11 found that this addition

cured the jurisdictional defect in the FAC and denied Cracker's 12 Barrel's third Motion to Dismiss. (Doc. 82).

The Court also granted conditional 13 certification of a collective action under the FLSA. (Id.) 14 The Court's grant of conditional certification triggered a litany of Motions from 15 Cracker Barrel. One of the motions was a Motion to Certify Interlocutory Appeal 16 (Doc. 84).

The Court ultimately certified for appeal the following two questions: 17 (1) Whether a District Court may allow sending a notice under Section 216(b) of the FLSA to individuals whom the Court has 18 determined to be bound by an enforceable arbitration agreement; and 19 (2) Whether *Bristol-Myers Squibb Co. v. Superior Ct. of California, San Francisco Cnty.*, 582 U.S. 255, 265 (2017), prevents a District Court from sending notice under Section 21 216(b) of the FLSA to individuals over whom the Court lacks specific personal jurisdiction.

22 23 (Doc. 106 at 21). Both questions were answered by the Ninth Circuit in the affirmative. 24 The second question is particularly pertinent to Liptak's Motion to Sever and Transfer. In 25 its Order, the Ninth Circuit held that *Bristol-Myers* applies in collective actions under the 26 FLSA and to that end, specific personal jurisdiction must be analyzed for every individual 27 plaintiff proceeding under the collective action.

(Doc. 117-1 at 15). Practically, this meant 28 that specific personal jurisdiction was not satisfied for all plaintiffs in the collective simply 1 because one was an Arizona resident that worked at an Arizona Cracker Barrel location. 2 Based on the Ninth Circuit's decision, Liptak has now filed a Motion to Sever and Transfer 3 the Non-Arizona Plaintiffs from Massachusetts to the District Court of Massachusetts.

4 (Doc. 114). In its opposition, Cracker Barrel suggests that dismissal of the entire action is 5 more appropriate. For reasons outlined below, the Court will sever the non-Arizona 6 Plaintiffs' claims and transfer them to the District Court of Massachusetts, Central 7 Division. 8 II. Legal Standards 9 Liptak cites three distinct statutes² as a means for achieving transfer: 28 U.S.C. 10 §§ 1404, 1406, and 1631.

11 Section 1404(a) gives the district courts broad discretion to "adjudicate motions for 12 transfer according to an individualized, case-by-case consideration of convenience and 13 fairness." *Stewart Org. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988) (cleaned up).

The district 14 court is required to weigh multiple factors when deciding a motion to transfer under Section 15 1404. The near exhaustive list includes the following: (1) the location where the relevant 16 agreements were negotiated and executed; (2) the state that is most familiar with the 17 governing law; (3) the plaintiff's choice of forum; (4) the respective parties' contacts with 18 the forum; (5) the contacts relating to the plaintiff's cause of action in the chosen forum; 19 (6) the differences in the costs of litigation in the two forums; (7) the availability of 20 compulsory

process to compel attendance of unwilling non-party witnesses; and (8) ease 21 of access to sources of proof.

Stewart Org., 487 U.S. at 29–31. Other factors that are 22 important include the presence of a forum selection clause and the public policy of the 23 forum state, if any. *Id.* at 29. To that end, transfers under Section 1404 are highly 24 discretionary and case specific. See *Badea v. Cox*, 931 F.2d 573, 575 (9th Cir. 1991). 25 By contrast, Section 1406 is the appropriate statute under which to transfer a case if 26 the transferring court is not the proper venue.

See 28 U.S.C. § 1406(a). Importantly, venue 27 2 Although the Court lays out the differences in these statutes, practically, it makes no difference which statute the Court chooses to transfer the case. 14D Wright & Miller's 28 Federal Practice & Procedure § 3842 (4th ed. 2026). 1 is not a jurisdictional component. A court can have personal and specific jurisdiction and 2 still be the wrong venue to hear a case. “In distinguishing between the principles of 3 jurisdiction and venue, we note that ‘[j]urisdiction is the power to adjudicate, while venue, 4 which relates to the place where judicial authority may be exercised, is intended for the 5 convenience of the litigants.’ ” Securities Inv.

Prot. Corp. v. Vigman, 764 F.2d 1309, 1313 6 (9th Cir. 1985) (citing *Still v. Rossville Crushed Stone Co.*, 370 F.2d 324, 325 (6th Cir. 7 1966) (further internal citations omitted) (emphases in original)). Stated differently, 8 transfer under Section 1406 is only proper if “the defendant has moved to dismiss (or 9 transfer) for improper venue.” *Tisher v. Boeing Company*, 2026 WL 982883, at * 12 (D.

10 Or. Apr. 13, 2026). 11 The third statute cited by Liptak, Section 1631, is used specifically to cure 12 deficiencies in jurisdiction. See 14D Wright & Miller's Federal Practice & Procedure 13 § 3842 (4th ed. 2026).

The statute's plain terms highlight this distinction between the other 14 statutes by stating that the statute should be used to transfer a case when there is a “want 15 of jurisdiction.” 28 U.S.C. § 1631. While all circuits and courts agree that the phrase 16 “want of jurisdiction” applies to want of subject matter jurisdiction, there is a circuit split 17 regarding its applicability to personal jurisdiction.

Wright & Miller, *supra*, § 3842. Courts 18 in the Ninth Circuit, however, generally find that it does apply to personal jurisdiction. 19 *Tisher*, 2026 WL 982883, at * 12 (noting the trend and citing examples). 20 III. Discussion 21 Liptak urges the Court to allow transfer under any of three transfer statutes. 22 (Doc. 114 at 5). Cracker Barrel responds by insisting that dismissal of the lawsuit is 23 appropriate because none of the transfer statutes apply.³ (Doc.

119 at 4). The Court does 24 3 Cracker Barrel cites to inapposite cases to argue that dismissal is appropriate. For 25 instance, *Clark v. Busey* held that the district court lacked subject matter

jurisdiction, not personal jurisdiction, as it does here. *Clark v. Busey*, 959 F.2d 808, 814 (9th Cir. 1992). 26 *Froelich v. Petrelli*, 472 F. Supp. 756, 763 (D. Haw.

1979), cited by *Cracker Barrel*, is also distinguishable. In *Froelich*, the district court refused to transfer the case because of a 27 statute of limitations issue. *Id.* And in *NelsonDevlin v. Eli Lilly & Company*, not only was Section 1631 not considered, but the court decided that transfer was indeed appropriate. 28 2015 WL 5436700, at *4 (E.D. Cal. Sept. 15, 2015).

1 not find either party's legal support for its arguments particularly persuasive⁴ but will 2 nonetheless transfer the claims of the non-Arizona plaintiffs based in Massachusetts to that 3 district court, in line with Liptak's request to do so under Section 1631. 4 The Court will sever the Massachusetts-based plaintiffs and transfer their claims to 5 the District of Massachusetts based on its authority under Section 1631.

Here, there is 6 clearly a "want of jurisdiction" regarding the non-Arizona Plaintiffs. Again, courts in the 7 Ninth Circuit generally support the reading of Section 1631 that encompasses a transfer 8 based on a lack of personal jurisdiction. *Tisher*, 2026 WL 982883, at * 12. Indeed, that is 9 exactly what the Ninth Circuit found when this litigation went on appeal: that this Court 10 lacks personal jurisdiction over *Cracker Barrel* for the claims of the non-Arizona plaintiffs.

11 *Harrington v. Cracker Barrel Old Country Store, Inc.*, 142 F.4th 678, 681 (9th Cir. 2025). 12 In other words, the Court finds that Section 1631 allows for a transfer of the non-Arizona 13 Plaintiffs to the District of Massachusetts based on its plain text and legislative history. See 14 *Wright & Miller*, *supra*, § 3842 (explaining the legislative and case history and citing 15 examples).

Therefore, the Court will sever the non-Arizona plaintiffs based in 16 Massachusetts and transfer their claims to the District of Massachusetts under Section 17 1631. 18 Accordingly, 19 IT IS ORDERED that Liptak's Motion to Sever and Transfer Non-Arizona 20 Plaintiffs to the District of Massachusetts, Central Division (Doc. 114) is granted. 21 IT IS FURTHER ORDERED that the parties shall meet and confer to determine 22 which opt-in plaintiffs must be severed and accordingly file a notice identifying these opt- 23 4 Liptak's analysis of the different transfer statutes collapses all three and focuses the inquiry on whether the "interests of justice" endorse a transfer.

Cracker Barrel's rebuttal 24 of Liptak's position, on the other hand, states that Section 1631 only allows transfer for lack of subject matter jurisdiction. Both parties are mistaken. The three transfer statutes 25 are used for distinct purposes and operate to achieve different results. See *infra* Section II. And *Cracker Barrel's* argument that Section 1631 only applies to address a lack of subject 26 matter jurisdiction simply misstates the law.

Tisher, 2026 WL 982883, at * 12. Finally, neither party fully briefed why the multiplicity of factors that go into a Section 1404(a) 27 analysis apply or fail to apply. Without that information from the parties, the Court will not endeavor on its own to wade into that multi-factor test and make the parties' arguments 28 for them.

Finally, Section 1406 only allows for transfer for improper venue, most often done on a motion to dismiss, which are not the circumstances here. 1 || in plaintiffs on or before June 10, 2026. 2 IT IS FURTHER ORDERED that the Clerk of Court shall create a new action || captioned as Sarah Liptak on behalf of herself and all other persons similar situated v. 4|| Cracker Barrel Old Country Store.

Inc. Plaintiffs in that action shall be the severed opt-in 5 || plaintiffs. Dylan Basch shall remain the named representative for the Arizona-based opt- || in plaintiffs in the current case pending before the Court. 7 IT IS FINALLY ORDERED that the Clerk of Court shall take all steps needed to 8 || transfer the newly-formed action to the United States District Court for the District of Massachusetts, Central Division.

10 Dated this 27th day of May, 2026. 11 12 oC.. foe □□ □ 13 norable' Diang/4. Hurtetewa 14 United States District Judge 15 16 17 18 19 20 21 22 23 24 25 26 27 28 -6-