

APPENDIX

Pursuant to Supreme Court Rule 14.1(i), the following items are included in the Appendix:

The six items below constitute the complete appendix required under Supreme Court Rule 14.1(i). They are reproduced in the order listed and paginated sequentially beginning at Appendix A.

Appendix A — Order of the United States Court of Appeals for the Second Circuit dismissing appeal, Case No. 25-2393 (February 12, 2026) [Judges Jacobs, Calabresi, Nathan] — judgment under review

Appendix B — Order of the United States Court of Appeals for the Second Circuit dismissing appeal sua sponte, Case No. 23-849 (September 27, 2023) [Judges Parker, Bianco, Rakoff]

Appendix C — Order of the United States Court of Appeals for the Tenth Circuit dismissing appeal for lack of jurisdiction, Case No. 23-8074 (February 21, 2024) [Judges Bacharach, Moritz, Federico]

Appendix D — Memorandum-Decision and Order transferring action to the District of Wyoming under 28 U.S.C. § 1406(a), Northern District of New York, Case No. 1:22-cv-00814-BKS-ATB (May 12, 2023, Dkt. No. 19) [Chief Judge Brenda K. Sannes]

Appendix E — Text Order of Chief Judge Sannes declining to certify transfer order under 28 U.S.C. § 1292(b), Northern District of New York (June 1, 2023, Dkt. No. 21)

Appendix F — Order Dismissing Plaintiff's Action and Closing Case, District of Wyoming, Case No. 2:23-cv-00098-ABJ (September 2, 2025, Dkt. No. 50) [Judge Alan B. Johnson]

N.D.N.Y.
22-cv-814
Sannes, C.J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 12th day of February, two thousand twenty-six.

Present:

Dennis Jacobs,
Guido Calabresi,
Alison J. Nathan,
Circuit Judges.

Ming Hong Zheng,

Plaintiff-Appellant,

v.

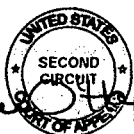
25-2393

Halliburton Energy Services, Inc.,

Defendant-Appellee.

Appellant, pro se, appeals from an order transferring her case from the Northern District of New York to the District of Wyoming. Judgment has been entered in the transferred case. *Zheng v. Halliburton Energy Services, Inc.*, No. 23-cv-98 (D. Wyo. Sep. 2, 2025). However, this Court has determined sua sponte that it lacks jurisdiction over this appeal because review of a transfer order is available on appeal from a final judgment in the transferee circuit; in this case, that is the Tenth Circuit. See *Songbyrd, Inc. v. Estate of Grossman*, 206 F.3d 172, 177 (2d Cir. 2000). Upon due consideration, it is hereby ORDERED that the appeal is DISMISSED.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

Catherine O'Hagan Wolfe


**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

MING HONG ZHENG,

Plaintiff,

1:22-cv-00814 (BKS/ATB)

v.

HALLIBURTON ENERGY SERVICES, INC.,

Defendant.

Appearances:

Plaintiff pro se:

Ming Hong Zheng
New York, NY 10001

For Defendant:

Marisa Antonelli
Vinson & Elkins, LLP
1114 Avenue of Americas, 32nd Floor
New York, NY 10036

Hon. Brenda K. Sannes, Chief United States District Judge:

MEMORANDUM-DECISION AND ORDER

I. INTRODUCTION

On August 2, 2022, Plaintiff Ming H. Zheng commenced this action pro se, asserting claims under the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12101–12213, and Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. §§ 2000e–2000e-17, against Defendant Halliburton Energy Services, Inc.¹ (Dkt. No. 1). Plaintiff alleges that Defendant violated the ADA and Title VII by terminating her because of her disability, national origin,

¹ Plaintiff’s Complaint only asserts that she brings claims pursuant to the ADA but she also alleges discrimination and retaliation “due to national origin, ethnicity, religion, race and gender.” (Dkt. No. 1, at 9–31). Construing her allegations liberally, these claims are properly brought under Title VII, rather than the ADA, which only covers employment-based retaliation and discrimination due to disability.

ethnicity, religion, race, and gender, by retaliating against her, and by failing to accommodate her disability. (*See generally id.*). Presently before the Court is Defendant's motion to dismiss Plaintiff's Complaint under Federal Rules of Civil Procedure 12(b)(2) for lack of personal jurisdiction and to dismiss or, in the alternative, to transfer under Rule 12(b)(3) for improper venue. (Dkt. No. 13). The parties have filed responsive briefing. (Dkt. Nos. 15, 18). For the following reasons, Defendant's motion to dismiss for lack of personal jurisdiction is granted and Defendant's motion to transfer to the District of Wyoming is granted.

II. FACTS

A. Background²

In February 2019, Plaintiff accepted a job from Defendant and moved to South Dakota. (Dkt. No. 1, at 32). One month later, Plaintiff started working for Defendant. (*Id.*). Plaintiff alleges that she "worked in" North Dakota, (*id.*), but "never worked in the field rig location in Wyoming," (Dkt. No. 15, at 2). However, she alleges that Defendant's "local office" was in Wyoming, that Defendant's headquarters was in Texas, and that she was "fired by [the] office" in Colorado. (Dkt. No. 1, at 32). Plaintiff "is currently a resident of Manhattan in New York." (*Id.*). Further, Plaintiff asserts that Defendant "has a branch in Albany, New York" and submits New York Department of State Division of Corporations Entity Information to support her allegation. (*Id.*; *see* Dkt No. 15, at 7); *see* NYS Department of State, Division of Corporations, Entity Information for "Halliburton Energy Services, Inc.",

² The following allegations are taken from the Complaint, the attached exhibits, exhibits attached to Plaintiff's response, and affidavits from Defendant. (Dkt. Nos. 1, 13-2, 13-3, 15). The Court assumes that all well-pleaded facts in the complaint are true and draws all reasonable inferences in Plaintiff's favor. *Faber v. Metro. Life Ins. Co.*, 648 F.3d 98, 104 (2d Cir. 2011). When evaluating a motion to dismiss for lack of personal jurisdiction under Fed. R. Civ. P. 12(b)(2) and a motion to dismiss for improper venue under Fed. R. Civ. P. 12(b)(3), the Court may look not only to a plaintiff's complaint, but also to affidavits and other supporting materials. *See A.I. Trade Fin., Inc. v. Petra Bank*, 989 F.2d 76, 79-80 (2d Cir. 1993) (citing *Hoffritz for Cutlery, Inc. v. Amajac, Ltd.*, 763 F.2d 55, 57 (2d Cir. 1985)).

<https://apps.dos.ny.gov/publicInquiry/> (last visited May 9, 2023). This document lists Defendant as a foreign business corporation with the agent for service of process as Capitol Services Inc in Albany, New York. Addresses for the chief executive officer and principal executive office are in Houston, Texas. (Dkt. No. 15, at 7).

Throughout her employment with Defendant, Plaintiff alleges that Defendant's employees, including her supervisors, discriminated against her based on her national origin, ethnicity, religion, race, gender, and disability and that they retaliated against her. (*See* Dkt. No. 1, at 9–31). Plaintiff alleges, inter alia, that she was discriminated against based upon the fact that she was born in China. (*Id.* at 10). In May 2019, Plaintiff was injured on the job in North Dakota. (*Id.* at 32; Dkt. No. 15, at 2). She alleges that injuries to her feet have left her with “instability and [an] inability to move around.” (Dkt. No. 1, at 2, 10). On June 30, 2021, Plaintiff was “[i]nformed that [she] ran out of leave and that [she would] be terminated effective[] [] July 1, 2022.” (*Id.* at 34). On July 1, 2022, Plaintiff was officially terminated. (*Id.*)³

B. EEOC Charge

Plaintiff alleges that she filed a charge with the Equal Employment Opportunity Commission (“EEOC”) in February 2021, but did not pursue this charge in court because she did not have the ability or resources to proceed pro se.⁴ (Dkt. No. 1, at 33). Plaintiff filed another charge with the EEOC in April 2022. (*Id.*). The EEOC issued a right-to-sue letter on April 29, 2022. (*Id.* at 5).

³ The Court notes that Defendant states that Plaintiff was terminated effective July 1, 2021, (Dkt. No. 13-3, at 1), but the date is not material to this decision.

⁴ Plaintiff also alleges that she sought to have her payment reinstated by Wyoming Workers' Compensation, (*see* Dkt. No. 1, at 28–31), but that the action was “only filed in the State of Wyoming under the guidance of [] [D]efendant even though the injuries took place in North Dakota,” (Dkt. No. 15, at 2).

C. Defendant's Declarations

In a declaration, John E. Deering, Defendant's Managing Counsel and Corporate Secretary, states that Defendant "is a Delaware corporation, with its principal place of business in Houston, Texas" and that "[t]o the best of [his] knowledge and after reasonable enquiry, [he] declare[s] that [Defendant] has no operations, facilities, offices, or branches in Albany, New York or elsewhere in the State of New York." (Dkt. No. 13-2, ¶¶ 3, 4). Further, Deering states that the Albany address referenced on the New York State Corporate Entity Information is the address for a registered agent for service of process. (*Id.* ¶ 5).

Defendant also submits a declaration from Sheri Whitaker, Defendant's Senior Human Resources Business Partner Manager. (Dkt. Nos. 13-2, 13-3). Whitaker states that Plaintiff lived in Rapid City, South Dakota, which was "within 300 miles of Casper[,] [Wyoming], her base of work, as required at that time by [Defendant]," and that Plaintiff "worked in the field at various rig locations throughout Wyoming, as well as in North Dakota." (Dkt. No. 13-3, ¶¶ 4, 5, 10). According to Whitaker, Plaintiff was injured on May 26, 2019 "while working at a rig in Wyoming" and was terminated on July 1, 2021 "due to the expiration of her medical leave of absence." (*Id.* ¶¶ 6, 8). Whitaker also states that neither Plaintiff nor "any of her management worked in New York at any time during her employment," that no records related to Plaintiff's employment are in New York, and that "during her active employment, her supervisors were based in Wyoming." (*Id.* ¶¶ 10, 12). Finally, Whitaker states that Defendant's "employees in Wyoming and later in Canada, as well as Human Resources employees physically located in Colorado[,] made or communicated decisions regarding accommodating [Plaintiff's] restrictions, her potential return to work, and ultimately the termination of employment due to the expiration of medical leave." (*Id.* ¶ 11).

III. STANDARD OF REVIEW

“A plaintiff bears the burden of demonstrating personal jurisdiction over a person or entity against whom it seeks to bring suit.” *Troma Ent., Inc. v. Centennial Pictures, Inc.*, 729 F.3d 215, 217 (2d Cir. 2013) (quoting *Penguin Grp. (USA) Inc. v. Am. Buddha*, 609 F.3d 30, 34 (2d Cir. 2010)). When the issue of personal jurisdiction is decided “on the pleadings and without discovery, the plaintiff need show only a prima facie case.” *Volkswagenwerk Aktiengesellschaft v. Beech Aircraft Corp.*, 751 F.2d 117, 120 (2d Cir. 1984). A prima facie showing “must include an averment of facts that, if credited by [the ultimate trier of fact], would suffice to establish jurisdiction over the defendant.” *Metro. Life Ins. Co. v. Robertson-Ceco Corp.*, 84 F.3d 560, 567 (2d Cir. 1996) (alteration in original) (quoting *Ball v. Metallurgie Hoboken-Overpelt, S.A.*, 902 F.2d 194, 197 (2d Cir. 1990)). The plaintiff’s allegations must provide “factual specificity necessary to confer jurisdiction.” *Jazini ex rel. Jazini v. Nissan Motor Co.*, 148 F.3d 181, 185 (2d Cir. 1998). Conclusory statements, including legal conclusions, without supporting facts are insufficient. *Id.*

In reviewing a Rule 12(b)(2) motion, the Court “may refer to evidence outside the pleadings.” *Shepherd v. Annucci*, 921 F.3d 89, 95 (2d Cir. 2019) (citation omitted). “[W]here the issue is addressed on affidavits, all allegations are construed in the light most favorable to the plaintiff and doubts are resolved in the plaintiff’s favor, notwithstanding a controverting presentation by the moving party.” *A.I. Trade Fin., Inc.*, 989 F.2d at 79–80 (citing *Hoffritz for Cutlery, Inc.*, 763 F.2d at 57); see *Dorchester Fin. Sec., Inc. v. Banco BRJ, S.A.*, 722 F.3d 81, 86 (2d Cir. 2013) (declining to adopt a standard wherein if a defendant rebuts a plaintiff’s unsupported allegations with “direct, highly specific testimonial evidence regarding a fact essential to jurisdiction,” the “allegation is deemed refuted”).

The Court employs “the same standard of review in Rule 12(b)(3) dismissals for improper venue as we do in Rule 12(b)(2) dismissals for lack of personal jurisdiction.” *Gulf Ins. Co. v. Glasbrenner*, 417 F.3d 353, 355 (2d Cir. 2005). Thus, it is the plaintiff’s burden to make a prima facie showing of proper venue when faced with a motion to dismiss pursuant to Rule 12(b)(3). *Id.* Where a party seeks to transfer a case, the proponent of the transfer bears the burden of showing that venue and jurisdiction are proper in the proposed district court. *Krisko v. Marvel Ent., LLC*, 473 F. Supp. 3d 288, 301 (S.D.N.Y. 2020) (citing *Wohlbach v. Ziady*, No. 17-cv-5790, 2018 WL 3611928, at *4, 2018 U.S. Dist. LEXIS 126190, at *3 (S.D.N.Y. July 27, 2018)).

IV. MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

A. General Jurisdiction

Defendant argues that the Complaint’s sole allegation regarding its presence in New York—that Defendant has a branch office in Albany, New York—is insufficient to show it is “at home” in New York for purposes of general jurisdiction. (Dkt. No. 13-1, at 7–8). The Court agrees.

General jurisdiction subjects a defendant to suit on any claims, whether or not they arise from the defendant’s dealings in the forum state. *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 318 (1945). “For a court to exercise general jurisdiction over a defendant, 1) state law must authorize general jurisdiction; and 2) jurisdiction ‘must comport with constitutional due process principles.’” *Reich v. Lopez*, 858 F.3d 55, 62–63 (2d Cir. 2017) (quoting *Licci ex rel. Licci v. Lebanese Canadian Bank, SAL*, 673 F.3d 50, 59–60 (2d Cir. 2012)). In *Daimler AG v. Bauman*, the Supreme Court explained that “[a]side from ‘an exceptional case,’ . . . a corporation is at home (and thus subject to general jurisdiction, consistent with due process) only in a state that is the company’s formal place of incorporation or its principal place of business.” *Gucci Am., Inc.*

v. *Weixing Li*, 768 F.3d 122, 135 (2d Cir. 2014) (quoting *Daimler AG v. Bauman*, 571 U.S. 117, 139 & n.19 (2014)).

Here, the record reflects that Defendant is a Delaware corporation with its principal place of business in Houston, Texas. (Dkt. No. 13-2, ¶ 3; Dkt. No. 15 at 7; Dkt. No. 1 at 32). Plaintiff alleges that Defendant has a “Halliburton branch office” in New York. (Dkt. No. 1, at 32). The New York State Entity Information that Plaintiff submitted in opposition to Defendant’s motion lists “Capitol Services Inc.” in Albany, New York under “Service of Process Name and Address.” (Dkt. No. 15, at 7). Defendant argues that Plaintiff misconstrues the in-state agent it designated for service purposes as a “branch office.” (Dkt. No. 13-1, at 4). To the extent Defendant has merely registered an in-state agent for service of process that would not, in and of itself, be a basis for general jurisdiction. “[A] foreign corporation does not consent to general personal jurisdiction in New York by merely registering to do business in the state and designating an in-state agent for service of process.” *Chufen Chen v. Dunkin’ Brands, Inc.*, 954 F.3d 492, 499 (2d Cir. 2020); see *Aybar v. Aybar*, 37 N.Y.3d 274, 283 (2021) (finding that having an in-state agent for service of process is required by New York law and “comply[ing] with these conditions” does not “afford general jurisdiction to New York courts over foreign corporations”); Business Corporation Law § 1304(a)(6) (requiring an in-state agent for service of process to conduct business in New York).

But even accepting as true Plaintiff’s allegation that Defendant has a “branch office” in New York, it is undisputed that Defendant’s principal place of business is in Texas and Plaintiff herself acknowledges that Defendant conducts operations in at least three other states—North Dakota, Wyoming, and Colorado. Plaintiff alleges that she worked in North Dakota, that Defendant had a “local office” in Wyoming, and that she was “fired by” Defendant’s Colorado

office. (Dkt. No. 1, at 32). Because “[g]eneral jurisdiction calls for an appraisal of a corporation’s activities in their entirety, nationwide and worldwide,” *Daimler AG*, 571 U.S. at 139 n.20, on balance, the allegation that a Delaware corporation based in Texas and conducting operations in at least three other states has one branch office in New York is insufficient to show that Defendant’s operations in New York are “so substantial and of such a nature as to render the corporation at home in the state,” *id.* at 139 n.19. Thus, the Court concludes that this is not an “exceptional case” warranting the exercise of general jurisdiction. *Id.*; see *Brown v. Lockheed Martin Corp.*, 814 F.3d 619, 628–30 (2d Cir. 2016) (holding that Defendant’s contacts in Connecticut “fall far short of the relationship that Due Process requires” when its Connecticut business included running operations at four leased locations, employing between 30 and 70 workers and deriving “about \$160 million in revenue for its Connecticut-based work” but the Connecticut business “constitute[d] only a very small part of [the defendant’s] portfolio”); *Mali v. British Airways*, No. 17-cv-685, 2018 WL 3329858, at *6, 2018 U.S. Dist. LEXIS 112994, at *15 (S.D.N.Y. July 6, 2018) (finding that the defendant’s contacts did not render it at home in New York even though it “maintain[ed] at least one office in New York” and “operate[d] flights in to and out of New York airports” (citation omitted)).

B. Specific Jurisdiction

“Specific jurisdiction exists when a court ‘exercises personal jurisdiction over a defendant in a suit arising out of or related to the defendant’s contact with the forum.’” *In re Platinum & Palladium Antitrust Litig.*, 61 F.4th 242 (2d Cir. 2023) (quoting *SPV OSUS, Ltd. v. UBS AG*, 882 F.3d 333, 343 (2d Cir. 2018)). “In the absence of a federal statute specifically directing otherwise, and subject to limitations imposed by the United States Constitution, we look to the law of the forum state to determine whether a federal district court has personal jurisdiction over a foreign corporation.” *Brown*, 814 F.3d at 624; see also *U.S. Bank Nat’l Assoc.*

v. Bank of Am. N.A., 916 F.3d 143, 149 (2d Cir. 2019) (“To determine personal jurisdiction, a federal court applies the long-arm statute of the state in which it sits.” (citing *Chloé v. Queen Bee of Beverly Hills, LLC*, 616 F.3d 158, 163 (2d Cir. 2010))).

New York’s long arm statute provides three statutory bases for the Court to exercise personal jurisdiction: C.P.L.R. § 302(a)(1)—transaction of business within the state; § 302(a)(2)—commission of a tortious act within the state; and § 302(a)(3)—injury within the state. Here, Defendant argues that § 302(a)(2) does not provide jurisdiction. The Court finds that it does not have personal jurisdiction over Defendant.

1. Transacting Business – C.P.L.R. § 302(a)(1)

C.P.L.R. § 302(a)(1) permits the exercise of jurisdiction over a nondomiciliary when the claim arises from the “transact[ion of] any business within the state or contract[] anywhere to supply goods or services in the state.” A finding of jurisdiction under this provision requires a showing that: (1) a defendant “transacts any business” in New York; and (2) the claim “aris[es] from” such a transaction. *Best Van Lines, Inc. v. Walker*, 490 F.3d 239, 246 (2d Cir. 2007) (alteration in original). A defendant transacts business if it is engaged in “some act by which the defendant purposefully avails itself of the privileges of conducting activities within [New York].” *Ehrenfeld v. Bin Mahfouz*, 9 N.Y.3d 501, 508 (2007) (alteration in original) (quoting *McKee Elec. Co. v. Rauland-Borg Corp.*, 20 N.Y.2d 377, 382 (1967)). Such “purposeful availment occurs when the non-domiciliary ‘seeks out and initiates contact with New York, solicits business in New York, and establishes a continuing relationship.’” *D&R Glob. Selections, S.L. v. Bodega Olegario Falcon Pineiro*, 29 N.Y.3d 292, 298 (2017) (quoting *Paterno v. Laser Spine Inst.*, 24 N.Y.3d 370, 377 (2014)). At a minimum, the defendant must, on its “own initiative,” project itself into the state to engage in a “sustained and substantial

transaction of business.” *Fischbarg v. Doucet*, 9 N.Y.3d 375, 382 (2007) (quoting *Parke-Bernet Galleries, Inc. v. Franklyn*, 26 N.Y.2d 13, 17 (1970)).

Here, even crediting her allegations and supporting materials, Plaintiff has not made a prima facie showing that Defendant transacts any business in New York. Plaintiff alleges that Defendant “has a branch in Albany, New York,” (Dkt. No. 1, at 32), that she is “currently a resident of Manhattan,” (*id.*), and that Plaintiff heard from a volunteer attorney with New York Legal Assistance Group that Defendant “do[es] business out of the Northern District of New York,” (Dkt. No. 15, at 1). Without any factual details, Plaintiff’s conclusory allegation that Defendant “do[es] business out of” New York is insufficient. Further, as Defendant notes, Plaintiff “does not allege that her claims arise out of and are related to any Halliburton conduct that took place” in New York. (Dkt. No. 13-1, at 9); *see Sole Resort, S.A. de C.V. v. Allure Resorts Mgmt., LLC*, 450 F.3d 100, 103 (2d Cir. 2006) (explaining that “a claim ‘aris[es] from’ a particular transaction when there is ‘some articulable nexus between the business transacted and the cause of action sued upon,’ or when ‘there is a substantial relationship between the transaction and the claim asserted’” (citation omitted) (first quoting *McGowan v. Smith*, 52 N.Y.2d 268, 272 (1981); and then quoting *Kreutter v. McFadden Oil Corp.*, 71 N.Y.2d 460, 467 (1988))).

Therefore, Plaintiff has not met her burden to demonstrate that this Court has the statutory authority to exercise specific personal jurisdiction over Defendant under C.P.L.R. § 302(a)(1).

2. Tortious Act Within State – C.P.L.R. § 302(a)(2)

C.P.L.R. § 302(a)(2), in relevant part, provides for jurisdiction when the claim arises from a defendant’s “commi[ssion of] a tortious act within the state.” A “defendant’s physical presence in New York is a prerequisite to jurisdiction under § 302(a)(2).” *Bank Brussels Lambert*

v. Fiddler Gonzalez & Rodriguez, 171 F.3d 779, 790 (2d Cir. 1999); *see also Thackurdeen v. Duke Univ.*, 130 F. Supp. 3d 792, 803 (S.D.N.Y. 2015) (remarking that “the Second Circuit continues to adhere to the traditional, stricter rule . . . requiring the defendant to physically commit the tortious act within New York”), *aff’d*, 660 F. App’x 43 (2d Cir. 2016) (summary order). Here, C.P.L.R. § 302(a)(2) does not provide a statutory basis for specific personal jurisdiction: there are no allegations that Defendant committed a tortious act while “physically present” in New York. (*See generally* Dkt Nos. 1, 15).

3. Injury Within State – C.P.L.R. § 302(a)(3)

Under C.P.L.R. § 302(a)(3), a court may exercise specific jurisdiction over a defendant when the action arises from the defendant’s “commission of a tortious act without the state causing injury to person or property within the state,” as long as defendant: “(i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state”; or (ii) “expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce.” Thus, Plaintiff must allege that “(1) the defendant committed a tortious act outside New York; (2) the cause of action arose from that act; (3) the tortious act caused an injury to a person or property in New York; (4) the defendant expected or should reasonably have expected the act to have consequences in New York; and (5) the defendant derived substantial revenue from interstate or international commerce.” *Spin Master Ltd. v. 158*, 463 F. Supp. 3d 348, 365 (S.D.N.Y. 2020) (citing *Penguin Grp. (USA) Inc. v. Am. Buddha*, 16 N.Y.3d 295, 302 (2011)). Plaintiff has not provided any facts that would indicate that C.P.L.R. § 302(a)(3) provides a statutory basis for specific personal jurisdiction.

Accordingly, the Court grants Defendant’s motion to dismiss for lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2).

V. MOTION TO DISMISS FOR IMPROPER VENUE OR TO TRANSFER VENUE

Defendant further argues that Plaintiff's Complaint should be dismissed for improper venue or, in the alternative, that the Court should transfer the case to the District of Wyoming. (Dkt. No. 13-1, at 9–11). Plaintiff responds that transfer to the District of Wyoming is improper because she never worked there. (Dkt. No. 15, at 2).

Under both the ADA and Title VII, venue is appropriate:

[1] in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, [2] in the judicial district in which the employment records relevant to such practice are maintained and administered, or [3] in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, [4] but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of Title 28, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

42 U.S.C. § 2000e-5(f)(3) (venue provision for claims brought under Title VII of the Civil Rights Act of 1964); *see* 42 U.S.C. § 12117 (incorporating by reference Title VII's venue provision for claims brought under Title I of the ADA).

As an initial matter, Plaintiff has not made a *prima facie* showing that venue is proper in New York. Plaintiff does not allege that any of the unlawful employment practices occurred in New York, that her employment records are maintained and administered in New York, or that she would have worked in New York but for the alleged unlawful employment practice. Moreover, it is undisputed that Defendant's principal place of business is in Texas.

As venue is improper in New York, the Court has “discretion under 28 U.S.C. § 1406(a) either to transfer the action in accord with Title VII's venue provision or to dismiss it.”⁵ *Minnette*

⁵ 28 U.S.C. § 1406(a) provides that “[t]he district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.”

v. *Time Warner*, 997 F.2d 1023, 1026 (2d Cir. 1993). A district court may “transfer venue even if it lacks personal jurisdiction over the defendants.” *Fort Knox Music, Inc. v. Baptiste*, 257 F.3d 108, 112 (2d Cir. 2001) (citations omitted). In light of Plaintiff’s pro se status, the Court declines to dismiss this case and concludes that transfer to a proper forum is in the interest of justice.⁶ See *Gonsalves-Carvalho v. Aurora Bank, FSB*, No. 12-cv-2790, 2014 WL 201502, at *7, 2014 U.S. Dist. LEXIS 6068, at *27 (E.D.N.Y. Jan. 16, 2014) (transferring the plaintiff’s claims pursuant to 28 U.S.C. § 1406 “[i]n light of the fact that dismissal would require [the] pro se [p]laintiff to incur additional filing costs, and re-filing the Amended Complaint in the appropriate district would delay the proceeding” (citations omitted)).

As the proponent of transfer, Defendant bears the burden of establishing that venue is proper in the District of Wyoming. See *Krisko*, 473 F. Supp. 3d at 301 (citation omitted). Here, there is some dispute about where Plaintiff worked. According to Whitaker, Plaintiff’s “position required her to work out of the Casper location on rigs located in Wyoming and North Dakota.” (Dkt. No. 13-3, ¶ 10). Plaintiff, on the other hand, denies working “in the field rig location in Wyoming”; she states that she “worked in” North Dakota and that her injuries occurred in North Dakota. (Dkt. No. 15, at 2). However, regarding the first prong for proper venue under Title VII and the ADA—the judicial district where the alleged unlawful employment practice was committed, Plaintiff has alleged discriminatory and retaliatory conduct both on the rig sites and during her training in Evansville, Wyoming. (See, e.g., Dkt. No. 1, at 11 (alleging that an employee “on Rig X 24,” who was responsible for training Plaintiff “became passive aggressive” after questioning Plaintiff about “China stealing US technology”)), 13 (alleging that Plaintiff was

⁶ The Court notes that Plaintiff says that she “ha[s] no knowledge of the law besides the internet and other entertainment sources” and that “it is really hard for [her] to obtain an attorney . . . due to financial restraints.” (Dkt. No. 15, at 3).

the only employee during her class in Wyoming chosen to be drug tested and that after she took pictures during class an employee compared her to “an Asian tourist” taking “pictures of everything at Yellowstone National Park”), 14 (alleging that two employees “laugh[ed]” while Plaintiff took a “portion of the test for the class” because she “could not tell that [a connector] was a male connector and instead mistook it as the female connector”)).

Plaintiff further alleges that Defendant’s “local office” was in Wyoming. (*Id.* at 32). While she alleges that she was “fired by [the] office” in Colorado, (*id.*), she has not disputed the assertions in the affidavit of Defendant’s human resources professional that Plaintiff’s “supervisors were based in Wyoming” and that “management employees in Wyoming” were involved with other employees in Canada and Colorado in making or communicating decisions regarding accommodations and Plaintiff’s ultimate termination. (Dkt. No. 13-3, ¶¶ 10, 11).

On this record, the Court finds that Defendant has met its burden of establishing that venue is proper in the District of Wyoming. 42 U.S.C. § 2000e-5(f)(3); *see Doe #1 v. JetBlue Airways Corp.*, No. 19-cv-1542, 2020 WL 4605216, at *5, 2020 U.S. Dist. LEXIS 143890, at *13–15 (E.D.N.Y. Aug. 11, 2020) (finding that venue was improper in New York and transferring the plaintiff’s Title VII action to Massachusetts “because all of the alleged unlawful employment practices alleged in the amended complaint occurred in Puerto Rico and Boston, not New York”); *see also Hale v. Iancu*, No. 19-cv-1963, 2021 WL 9405460, at *4, 2021 U.S. Dist. LEXIS 37058, at *11 (D. Conn. Feb. 23, 2021) (noting that “Title VII’s special venue rule recognizes that there may be multiple proper venues available to an aggrieved employee” (citing 42 U.S.C. § 2000e-5(f)(3) (“Such an action may be brought in *any* judicial district in the State in which the unlawful employment practice is alleged to have been committed.” (emphasis in original)))).

Accordingly, the Court, in its discretion, grants Defendant's motion to transfer Plaintiff's claims to the District of Wyoming pursuant to 28 U.S.C. § 1406(a).

VI. CONCLUSION

For these reasons, it is hereby

ORDERED that Defendant's motion to dismiss under Federal Rule of Civil Procedure 12(b)(2) for lack of personal jurisdiction (Dkt. No. 13) is **GRANTED**; and it is further

ORDERED that Defendant's motion to dismiss or transfer under Federal Rule of Civil Procedure 12(b)(3) for improper venue (Dkt. No. 13) is **GRANTED** insofar as the Court **GRANTS** Defendant's request to transfer this action and is otherwise **DENIED**; and it is further


ORDERED that, pursuant to 28 U.S.C. § 1406(a), the Clerk of the Court is directed to transfer this action in its entirety to the United States District Court of Wyoming; and it is further

ORDERED that the Clerk of the Court advise the Clerk of the District of Wyoming of the entry of this Order and provide all information necessary for the Clerk of the District of Wyoming to electronically access the documents filed in this action; and it is further

ORDERED that the Clerk serve a copy of this Order upon the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: May 12, 2023
Syracuse, New York


Brenda K. Sannes
Chief U.S. District Judge

**Additional material
from this filing is
available in the
Clerk's Office.**