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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Andrew Harrington, et al.,

10 Plaintiffs,

11 v.

12 Cracker Barrel Old Country Store  
13 Incorporated,

14 Defendant.

No. CV-21-00940-PHX-DJH

**ORDER**

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”)<sup>1</sup> 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 <sup>1</sup> 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  
18 Section 216(b) of the FLSA to individuals whom the Court has  
19 determined to be bound by an enforceable arbitration  
20 agreement; and

21 (2) Whether *Bristol-Myers Squibb Co. v. Superior Ct. of*  
22 *California, San Francisco Cty.*, 582 U.S. 255, 265 (2017),  
prevents a District Court from sending notice under Section  
216(b) of the FLSA to individuals over whom the Court lacks  
specific personal jurisdiction.

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 statutes<sup>2</sup> 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

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27 <sup>2</sup> Although the Court lays out the differences in these statutes, practically, it makes no  
28 difference which statute the Court chooses to transfer the case. 14D Wright & Miller's  
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.<sup>3</sup> (Doc. 119 at 4). The Court does

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25 <sup>3</sup> Cracker Barrel cites to inapposite cases to argue that dismissal is appropriate. For  
26 instance, *Clark v. Busey* held that the district court lacked *subject matter* jurisdiction, not  
27 *personal* jurisdiction, as it does here. *Clark v. Busey*, 959 F.2d 808, 814 (9th Cir. 1992).  
28 *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  
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.  
2015 WL 5436700, at \*4 (E.D. Cal. Sept. 15, 2015).

1 not find either party’s legal support for its arguments particularly persuasive<sup>4</sup> 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-

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23 <sup>4</sup> Liptak’s analysis of the different transfer statutes collapses all three and focuses the  
24 inquiry on whether the “interests of justice” endorse a transfer. Cracker Barrel’s rebuttal  
25 of Liptak’s position, on the other hand, states that Section 1631 only allows transfer for  
26 lack of subject matter jurisdiction. Both parties are mistaken. The three transfer statutes  
27 are used for distinct purposes and operate to achieve different results. *See infra* Section II.  
28 And Cracker Barrel’s argument that Section 1631 only applies to address a lack of subject  
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)  
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  
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  
3 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-  
6 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  
9 Massachusetts, Central Division.

10 Dated this 27th day of May, 2026.

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Honorable Diane J. Humetewa  
United States District Judge