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9 UNITED STATES DISTRICT COURT  
 10 EASTERN DISTRICT OF CALIFORNIA

11 BEVERLY WEAVER, individually  
 12 and on behalf of all current and former  
 13 employees of HALLMARK  
 14 MARKETING CORPORATION,

15 Plaintiffs,

16 v.

17 HALLMARK MARKETING  
 18 CORPORATION, a Corporation  
 19 Conducting Business in California; and  
 20 DOES 1 through 10, inclusive,

21 Defendants.

22 CASE NO. 2:08-CV-02341-WBS-  
23 DAD

24 STIPULATION AND  
25 [PROPOSED] ORDER TO  
26 TRANSFER (28 U.S.C. § 1404)

1 **STIPULATION TO TRANSFER**

2 This stipulation is entered into between Plaintiff Beverly Weaver (“Weaver”)  
3 and Defendant Hallmark Marketing Corporation (“Hallmark”) subject to the  
4 following recitals:

5 1. On July 1, 2008, an action was initiated in the United States District  
6 Court, Central District of California, now entitled *Rochelle Ingalls v. Hallmark*  
7 *Marketing Corporation* (“Ingalls”), Case No. CV08-04342 VBF (Ex), pending  
8 before United States District Judge Valerie Baker Fairbank.

9 2. The Plaintiff in *Ingalls* alleges wage and hour claims similar to those  
10 asserted in the above-captioned action, and purports to represent a class of  
11 Hallmark employees.

12 3. On August 14, 2008, an action was initiated in the United States District  
13 Court, Central District of California, entitled *Nikki Fuzell v. Hallmark Marketing*  
14 *Corporation* (“Fuzell”), Case No. CV08-05330 VBF (FFMx), pending before  
15 United States District Judge Valerie Baker Fairbank.

16 4. The Plaintiff in *Fuzell* also alleges wage and hour claims similar to those  
17 asserted in the above-captioned action and in *Ingalls*, and purports to represent a  
18 class of Hallmark employees.

19 5. While the claims and allegations in *Ingalls* and *Fuzell* are not identical,  
20 they are substantially similar. Both complaints seek relief on behalf of a class of  
21 current and former non-exempt Hallmark employees for so-called “off the clock”  
22 hours allegedly worked, business expenses, and meal and rest periods. As a result  
23 of these similarities, Judge Fairbank consolidated the two actions for all purposes  
24 on October 6, 2008.

25 6. The claims and allegations in the above-captioned action, initiated on July  
26 3, 2008, are also substantially similar to those in *Ingalls* and *Fuzell*. The instant  
27 plaintiff also seeks the certification of a class of current and former non-exempt  
28 Hallmark employees, and has alleged claims for “off the clock” hours allegedly

1 worked and business expenses.

2 7. For the convenience of parties and witnesses, and in the interest of justice,  
3 Weaver and Hallmark seek the transfer of this action to the United States District  
4 Court, Central District of California. 28 U.S.C. § 1404(a).

5 8. Transfer of this action is proper because the Central District of California  
6 is “a district... where it might have been brought.” 28 U.S.C. § 1404(a).

7 9. A diversity action may be brought in “a judicial district where any  
8 defendant resides, if all defendants reside in the same State.” 28 U.S.C. § 1391(a).  
9 The only defendant in this action is Hallmark, a corporation. For purposes of  
10 venue, “a defendant that is a corporation shall be deemed to reside in any judicial  
11 district in which it is subject to personal jurisdiction.” 28 U.S.C. § 1391(c).

12 10. On the face of the complaint, Hallmark is subject to personal jurisdiction  
13 in this action in the Central District of California. *See, e.g., Int’l Shoe v. Wash.*, 326  
14 U.S. 310, 319 (1945) (defendant’s minimum contacts with forum gave forum  
15 jurisdiction over defendant); *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437,  
16 446-47 (1952) (“substantial... continuous and systematic” contacts of defendant to  
17 forum confer jurisdiction).

18 11. Transfer of this action will serve the convenience of parties and  
19 witnesses, and is in the interest of justice, because it can be more inexpensively and  
20 expeditiously resolved in the same forum in which *Ingalls* and *Fuzell* are pending.

21 12. When two cases are simultaneously pending in different District Courts,  
22 permitting such a situation would lead “to the wastefulness of time, energy and  
23 money that Section 1404(a) was designed to prevent.” *Ferens v. John Deere Co.*,  
24 494 U.S. 516, 531 (1990), *quoting Continental Grain Co. v. Barge FBL-585*, 364  
25 U.S. 19, 26 (1960).

26 13. The transfer of this action will promote judicial economy and avoid the  
27 risk of inconsistent results by providing for the resolution of these related actions  
28 before the same District Court. Even if the cases are ultimately not consolidated,

1 the law still favors the resolution of related actions within the same District. *See*  
2 *Fairfax Dental Ltd. v. S.J. Filhol Ltd.*, 645 F. Supp. 89, 92 n.2 (E.D.N.Y. 1986);  
3 *FUL Inc. v. Unified Sch. Dist. No. 204*, 839 F. Supp. 1307, 1313 (N.D. Ill. 1993).

4 14. Removed actions may be transferred. *Hatch v. Reliance Ins. Co.*, 758  
5 F.2d 409, 413-14 (9th Cir. 1985).

6 Plaintiff Beverly Weaver and Defendant Hallmark Marketing Corporation,  
7 by and through their attorneys, hereby enter this stipulation and jointly request that  
8 this action be **TRANSFERRED** to the United States District Court for the Central  
9 District of California.

10 Dated: November \_12, 2008

11 GRACE HOLLIS AND HANSON  
12 KIRK D. HANSON

13 /s/

14 \_\_\_\_\_  
15 Kirk D. Hanson  
16 Attorneys for Plaintiff  
17 Beverly Weaver

18 Dated: November \_12, 2008

19 ORRICK, HERRINGTON & SUTCLIFFE LLP  
20 TIMOTHY J. LONG  
21 TINA M. TRAN

22 /s/

23 \_\_\_\_\_  
24 Timothy J. Long  
25 Attorneys for Defendant  
26 Orrick, Herrington & Sutcliffe LLP

1 **ORDER**

2 Having considered the stipulation of the parties, and having weighed the  
3 factors at issue in this case, the Court finds that this action is appropriate for  
4 transfer to the United States District Court for the Central District of California.

5 Actions may be transferred “[f]or the convenience of parties and witnesses,  
6 in the interest of justice.” 28 U.S.C. § 1404(a). Here, having balanced the  
7 competing interests, the Court finds that justice requires the transfer of this action.

8 The interest in transferring this case to the Central District of California is  
9 substantial. Two consolidated actions, *Ingalls* and *Fuzell*, are pending before  
10 United States District Judge Valerie Baker Fairbank in the Central District of  
11 California. These two actions were consolidated because of their similar character.  
12 Both *Ingalls* and *Fuzell*, like this action, are putative class actions in which a  
13 plaintiff alleges wage and hour claims against Hallmark. The three actions each  
14 allege “off-the-clock” wage claims and business expense indemnification claims.  
15 Each plaintiff seeks the certification of a class of current and former non-exempt  
16 Hallmark employees. The *Ingalls* complaint was filed before the instant action was  
17 commenced. This factor favors the transfer of this case to the forum in which  
18 *Ingalls* is pending. *See, e.g., Church of Scientology of Cal. v. United States Dept.*  
19 *of Army*, 611 F.2d 738, 750 (9th Cir. 1979); *Northwest Airlines, Inc. v. American*  
20 *Airlines, Inc.*, 989 F.2d 1002, 1006 (8th Cir. 1993).

21 Furthermore, judicial economy will be served by the transfer of this action,  
22 because the three cases can be more inexpensively and expeditiously resolved if all  
23 are pending before the same District Court. When two cases are simultaneously  
24 pending in different District Courts, permitting such a situation would lead “to the  
25 wastefulness of time, energy and money that Section 1404(a) was designed to  
26 prevent.” *Ferens v. John Deere Co.*, 494 U.S. 516, 531 (1990), *quoting*  
27 *Continental Grain Co. v. Barge FBL-585*, 364 U.S. 19, 26 (1960). Finally, a  
28 transfer of this action will help to avoid inconsistent results.

1           Transfer of this action to the Central District of California is proper because  
2 that is “a district... where [the action] might have been brought.” 28 U.S.C. §  
3 1404(a). A diversity action may be brought in “a judicial district where any  
4 defendant resides, if all defendants reside in the same State.” 28 U.S.C. § 1391(a).  
5 The only defendant in this action is Hallmark, a corporation. For purposes of  
6 venue, “a defendant that is a corporation shall be deemed to reside in any judicial  
7 district in which it is subject to personal jurisdiction.” 28 U.S.C. § 1391(c). On the  
8 face of the complaint, it therefore appears that Hallmark is subject to personal  
9 jurisdiction in this action in the Central District of California either under “specific”  
10 or “general” jurisdiction analysis. *See, e.g., Int’l Shoe v. Wash.*, 326 U.S. 310, 319  
11 (1945) (defendant’s minimum contacts with forum gave forum jurisdiction over  
12 defendant); *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 446-47 (1952)  
13 (“substantial... continuous and systematic” contacts of defendant to forum confer  
14 jurisdiction).

15           For these reasons, it is in the interest of justice to transfer this action to the  
16 District Court in which *Ingalls* and *Fuzell* are already pending.

17           IT IS HEREBY ORDERED that this action be transferred to the United  
18 States District Court for the Central District of California.

19  
20 Dated: November 12, 2008

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22 WILLIAM B. SHUBB  
23 UNITED STATES DISTRICT JUDGE  
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