LEXSEE 2008 U.S. DIST. LEXIS 20605

IN RE: YAHOO! INC.

Case No. CV 07-3125 CAS (FMOx) c/w: CV07-3902-CAS(FMOx)

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

2008 U.S. Dist. LEXIS 20605

March 10, 2008, Decided
March 10, 2008, Filed

COUNSEL: [*1] Attorneys Present for Plaintiffs: Anne Box, Spencer Burkholz.

Attorneys Present for Defendants: Judson Lobdell, Jordon Eth.

JUDGES: Present: The Honorable CHRISTINA A. SNYDER.

OPINION BY: CHRISTINA A. SNYDER

OPINION

CIVIL MINUTES - GENERAL

Proceedings: DEFENDANTS' MOTION TO TRANSFER VENUE UNDER *28 USC § 1404(a)* (filed 02/12/08)

1. INTRODUCTION

On August 20, 2007, the Court consolidated two related class actions against defendants Yahoo!, Inc. ("Yahoo!"), Terry S. Semel ("Semel"), and Susan L. Decker ("Decker") and appointed the Pension Trust Fund for Operating Engineers ("Operating Engineers") and the Pompano Beach Policy & Firefighters' Retirement System ("Pompano Beach") (collectively, "the Pension Funds") as lead plaintiffs. [1] Docket 19.

1 These two actions were Case No. CV 07-3125 CAS (FMOx), filed by Ellen Rosenthal Brodsky on May 11, 2007, and Case No. CV 07-3902 CAS (FMOx), filed by Manfred Hacker on June 15, 2007.

On December 21, 2007, plaintiffs filed a consolidated amended complaint ("CAC") on behalf of all persons who purchased or otherwise acquired Yahoo! common stock between April 8, 2004 and July 18, 2006 ("the Class Period") against Yahoo!, Semel, Decker; Daniel L. Rosensweig ("Rosensweig"), and Farzad **[*2]** Nazerim ("Nazem"). [2] CAC P 1. Plaintiffs allege that defendants made false and misleading statements regarding Yahoo!'s business model, financial results, continued sales, and earnings growth. Specifically, plaintiffs allege that defendants made misrepresentations regarding the acquisition and integration of Overture Services, Inc. ("Overture"), a company based in Pasadena, California, and the development and implementation of a new Internet search engine ("Project Panama"). Id. at PP 157-74. Plaintiffs further allege that defendants overstated Yahoo!'s revenues and growth rate by improperly recognizing revenue derived from "click fraud" in which Yahoo!'s Internet advertising customers allegedly made improper payments to Yahoo!. Id. at PP 175-78, 199-210. Additionally, plaintiffs allege that defendants, in order to manipulate Yahoo!'s quarterly revenues, altered Yahoo!'s click fraud detection system in order to pass along to advertising customers additional click fraud related charges. See, e.g., id. at P 56(f). Plaintiffs allege that they relied on defendants' false and misleading statements in deciding to purchase Yahoo! stock during the Class Period and suffered economic losses **[*3]** when Yahoo!'s stock declined. Plaintiffs allege violations of *sections 10(b)* and *20(a)* of the Securities Exchange Act of 1934, as amended, *15 U.S.C. §§ 78j(b)* and *78t(a)* ("the 1934 Act"), and *Rule 10b-5* promulgated thereunder.

2 The CAC alleges that the four individual defendants were Yahoo!'s "top four officers" during the Class Period. CAC P 1. According to the CAC, Semel was chairman of the board and chief executive officer, Rosensweig was chief operating officer, Nazem was executive vice president and chief technology officer, and Decker was executive vice president of finance and administration and chief financial officer. Id. at PP 15-18.

On February 12, 2008, defendants filed the instant motion to transfer this case to the United States District Court for the Northern District of California. On February 25, 2008, plaintiffs filed an opposition thereto. Defendants filed a reply on March 3, 2008.

On March 5, 2008, plaintiffs filed an *ex parte* application for leave to file a response to defendants' reply brief pursuant to *Local Rule 7-10*. Defendants filed an opposition thereto on March 6, 2008. Having reviewed the respective arguments of the parties in regard to plaintiffs' *ex* **[*4]** *parte* application, the Court GRANTS this application.

Plaintiffs surreply, which was attached as exhibit one to plaintiffs' *ex parte* application, is deemed filed with the Court on March 6, 2008.

A hearing was held on March 10, 2008. After carefully considering the arguments set forth by the parties, the Court finds and concludes as follows.

II. LEGAL STANDARD

In deciding a motion to transfer, the Court must consider the following three factors: (1) the convenience of the parties; (2) the convenience of the witnesses; and (3) the interests of justice. *28 U.S.C. § 1404(a)*; see *Los Angeles Mem'l Coliseum Comm'n v. NFL, 89 F.R.D. 497, 499 (C.D. Cal. 1981)*.

In analyzing the "interests of justice," a number of factors are relevant, including the following: (1) the location where the relevant agreements were negotiated and executed, (2) the state that is most familiar with the governing law, (3) the plaintiff's choice of forum, (4) the respective parties' contacts with the forum, (5) the contacts relating to the plaintiff's cause of action in the chosen forum, (6) the differences in the costs of litigation in the two forums, (7) the availability of compulsory process to compel attendance of **[*5]** unwilling non-party witnesses, and (8) the ease of access to sources of proof. *Stewart Org. v. Ricoh Corp., 487 U.S. 22, 29-30, 108 S. Ct. 2239, 101 L. Ed. 2d 22 (1988)*; *Jones v. GNC Franchising, Inc., 211 F.3d 495, 498-99 (9th Cir. 2000)*. Other factors that can be considered are: the enforceability of the judgment; the relative court congestion in the two forums; and which forum would better serve judicial economy. 17 *MOORE'S FEDERAL PRACTICE § 111.13 [1][c]* (3d ed. 1997).

Generally, "[s]ubstantial weight is accorded to the plaintiff's choice of forum, and a court should not order a transfer unless the 'convenience' and 'justice' factors set forth above weigh heavily in favor of venue elsewhere." *Catch Curve, Inc. v. Venali, Inc., 2006 U.S. Dist. LEXIS 96379, *3-4 (C.D. Cal. 2006)*.

The party seeking to transfer venue bears the burden of showing that convenience and justice require transfer. *Commodity Futures Trading Comm'n v. Savage, 611 F.2d 270, 278-279 (9th Cir. 1979)*; *Decker Coal Co. v. Commonwealth Edison Co., 805 F.2d 834, 843 (9th Cir. 1986)* ("The defendant must make a strong showing of inconvenience to warrant upsetting the plaintiff's choice of forum."). The decision to transfer lies within the sound discretion **[*6]** of the trial judge. See *Sparling v. Hoffman Constr. Co., 864 F.2d 635, 639 (9th Cir. 1988)*.

III. DISCUSSION

A. Convenience of the Parties

Defendants contend that it is more convenient for them to litigate this case in the Northern District of California because Yahoo!'s headquarters, in Sunnyvale, California, is located there and that is where Decker, Rosensweig, and Nazem reside. Declaration of Ceming Chao ("Chao Decl.") PP 2, 4(c), 4(j), 4(1). Defendants argue that Semel is the only defendant who lives in the Central District. Id. at P 4(m). Additionally, defendants argue that one of the two lead plaintiffs, Operating Engineers, is administered in the Northern District, and therefore, this plaintiff would not be inconvenienced were the action to be transferred there. Declaration of Jordan Eth ("Eth Decl.") Ex. 13, at P 7 (complaint filed by Operating Engineers and other parties in the Northern District of California alleging that Operating Engineers is administered in the Northern District).

Plaintiffs respond that compelling the individual

defendants to litigate in this judicial district would only minimally inconvenience them because plaintiffs would agree to depose Decker, Rosensweig, **[*7]** and Nazem in the Northern District. Plaintiffs further argue that Yahoo! maintains offices in the Central District of California, and therefore, it would not be burdensome to compel Yahoo! to litigate in this forum.

While plaintiffs correctly note that transfer must not "merely shift rather than eliminate the inconvenience" to the parties, *Decker Coal Co. v. Commonwealth Edison Co., 805 F.2d 834, 843 (9th Cir. 1986)*, plaintiffs have set forth no reasons why they would be inconvenienced if this action were transferred to the Northern District. Plaintiffs do not claim that any of them reside in this district or that this district is for some other reason especially convenient for them. Plaintiffs do not dispute defendants' contention that one of the two lead plaintiffs is administered in the Northern District. Moreover, the putative class which plaintiffs define as all persons who purchased Yahoo! common stock within the Class Period, presumably consists of persons residing throughout the United States. Additionally, plaintiffs do not dispute that three of the four individual defendants reside in the Northern District of California and that Yahoo! is headquartered there. Therefore, the **[*8]** convenience of the parties factor weighs in favor of transfer.

The Court is also persuaded by defendants' contention that the location of the defendants is a weighty consideration in deciding whether this securities class action is properly transferred because plaintiffs' allegations focus on defendants' conduct and do not appear to implicate involved questions of fact regarding plaintiffs' behavior. See *In re Hanger Orthopedic Group, Inc., 418 F.Supp.2d 164, 169 (E.D.N.Y. 2006)* ("because 'trials in securities class actions focus almost entirely on the defendants' conduct,' defendants' presence at trial is crucial, while 'matters within any particular plaintiff's individual knowledge would not be particularly relevant to the claims and likely defenses.")(quoting *In re Nematron Corp. Secs. Litig., 30 F. Supp. 2d 397, 402 (S.D.N.Y. 1998))*.

B. Convenience of the Witnesses

The convenience of the witnesses is usually the most important factor to consider in deciding whether to transfer an action. *Ironworkers Local Union No. 68 & Participating Employers Health and Welfare Fund v. Amgen, Inc., 2008 U.S. Dist. LEXIS 8740, at *14 (C.D. Cal. 2008)*. "'Convenience of witnesses' includes both non-party **[*9]** witnesses outside the scope of the Court's subpoena power and the geographic location of any witnesses likely to testify in this case." *Costco Wholesale Corp. v. Liberty Mut. Ins. Co., 472 F. Supp. 2d 1183, 1193 (S.D. Cal. 2007)*. However, it is often the convenience of the non-party witnesses that figures most prominently in this analysis. *Flotsam of Cal., Inc. v. Huntington Beach Conf. & Visitors Bureau, 2007 U.S. Dist. LEXIS 31762, *9 (N.D. Cal. 2007)*; *Saleh v. Titan Corp, 361 F. Supp. 2d 1152, 1161 (S.D. Cal. 2005)*. A court must consider "not simply how many witnesses each side has and the location of each, but also the importance of the witnesses." *Costco Wholesale Corp., 472 F. Supp. 2d at 1193* (quoting *Saleh, 361 F. Supp. 2d at 1157*).

Defendants maintain that the majority of the potential witnesses work at Yahoo!'s headquarters in Silicon Valley or reside in the vicinity. Defendants aver that Yahoo!'s "management team" was responsible for the subject matter raised by the allegations in the CAC. According to defendants, eight non-defendant members of the management team reside in the Northern District and are presently employed by Yahoo!. Chao Decl. PP 4(b), 4(d), 4(g), 4(h), **[*10]** 4(i), 4(k), 4(n), 4(o). Defendants also aver that Yahoo!'s staff responsible for accounting, financial analysis, financial reporting, and investor communications work in Yahoo!'s Silicon Valley headquarters. Declaration of Aman Kothari ("Kothari Decl.") PP 3-8.

Defendants further assert that of the three non-defendant members of the management team who are no longer employed by Yahoo!, one resides in the Central District and two reside in the Northern District. Chao Decl. PP 4(a), 4(e), 4(f). [3] Additionally, defendants assert that Yahoo!'s independent auditors during the Class Period are based in the San Jose office of PricewaterhouseCoopers, in the Northern District. Kothari Decl. P 15.

> 3 Defendants have set forth the names and capacities of the members of the management team, including those who are presently employed by Yahoo! and those who are no longer so employed.

Plaintiffs respond that the allegations in the CAC are based on information provided by fifteen confidential witnesses, thirteen of whom worked in the Central

District either for Yahoo! or Overture -- a Yahoo! subsidiary -- during the Class period. Declaration of Spencer Burkholz ("Burkholz Decl.") P 4. The CAC alleges **[*11]** that these fifteen confidential witnesses include former Yahoo! employees and customers. CAC PP 19-34. Plaintiffs assert that nine of these fifteen individuals presently reside in the Central District. Burkholz Decl. P 5. Plaintiffs also state that they have identified eleven former Overture or Yahoo! employees who have knowledge of facts relevant to this action and who reside in the Central District. Id. P 6.

Because plaintiffs do not identify the eleven former Overture or Yahoo! employees who, according to plaintiffs, may offer relevant testimony, or specify how their testimony might be relevant to the issues raised in this action, plaintiffs' assertion that these witnesses reside in the Central District is of no consequence. See *Saleh, 361 F. Supp. 2d at 1164* (declining to consider the convenience of potential witnesses proffered by the plaintiffs where the plaintiffs did not identify these individuals or specify how they might provide important testimony). Moreover, while plaintiffs assert that nine of the fifteen confidential witnesses live in the Central District, plaintiffs do not state how many of these nine witnesses are presently employed by Yahoo! or Overture. Thus, to the **[*12]** extent that plaintiffs' confidential witnesses are current employees of Yahoo! or its subsidiary Overture, their convenience is a less weighty consideration because they are party witnesses. *Id. at 1163-64* (noting that the convenience of witnesses employed by the defendants was a less weighty consideration in the transfer analysis, even where these witnesses were proffered by the plaintiffs).

Furthermore, although the CAC sets forth allegations bearing on the potential testimony of each of plaintiffs' confidential witnesses, plaintiffs do not state where each of these witnesses is presently located in a manner that would enable the Court to evaluate the importance of the potential testimony of each of plaintiffs' nine purportedly local confidential witnesses. Plaintiffs simply state that nine of its fifteen confidential witnesses reside in the Central District, but do not state what information possessed by these nine individuals would be pertinent to the issues raised in this case.

In any event, defendants have identified numerous other party and non-party witnesses for whom the litigation of this action in the Northern District would be more convenient. See Chao Decl. P 4; Kothari **[*13]** Decl. P 15. Defendants persuasively argue that these witnesses, including individuals no longer employed by Yahoo! who were formerly on Yahoo!'s management team and Yahoo!'s third-party auditors, are likely to provide important testimony in this securities class action, in which it appears from plaintiffs' allegations that the state of mind and the actions of Yahoo!'s senior officers regarding Yahoo!'s policies, management, decision-making, and accounting practices will be prominent issues. In considering the witnesses and the evidence proffered by both sides, the Court finds and concludes that defendants have made the stronger showing and that the convenience of the witnesses factor weighs in favor of transfer.

C. Interests of Justice

1. Plaintiffs' Choice of Forum

The parties argue at length regarding the weight to be accorded the plaintiffs' choice of forum. As plaintiffs' point out, where relevant factors do not strongly favor transfer, "the plaintiff's choice of forum should rarely be disturbed." *Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508, 67 S. Ct. 839, 91 L. Ed. 1055 (1947)*. However, the Ninth Circuit has held that "when an individual brings a derivative suit or represents a class, the named plaintiff's **[*14]** choice of forum is given less weight." *Lou v. Belzberg, 834 F.2d 730, 739 (9th Cir. 1987)*; accord *Forrand v. Fed. Express Corp., 2008 U.S. Dist. LEXIS 10858, at *7 (N.D. Cal. 2008)*; *Ironworkers Local Union No. 68 & Participating Employers Health and Welfare Fund v. Amen, Inc., 2008 U.S. Dist. LEXIS 8740, at *11 (C.D. Cal. 2008)*; *Flores v. Zale Del., Inc., 2007 U.S. Dist. LEXIS 95095, at *6 (N.D. Cal. 2007)*; *Ray v. BlueHippo Funding, LLC, 2007 U.S. Dist. LEXIS 91060, at *7 (N.D. Cal. 2007)*; *Gerin v. Aegon USA, Inc., 2007 U.S. Dist. LEXIS 28049, at *20 (N.D. Cal. 2007)*.

Plaintiffs note that Lou also stated that relevant considerations in determining how much weight to place on the plaintiffs choice of forum include whether the operative facts occurred within the forum and whether the forum has an interest in the parties or the subject matter of the litigation. *Lou, 834 F.2d at 739*. Plaintiffs contend that their choice of forum should control because their claims relating to Overture and Project Panama involve facts that occurred in the Central District and Yahoo! and Overture employees who worked in the Central District. However, while some of the relevant facts appear to have

occurred **[*15]** in this forum, many other relevant facts relating to plaintiffs claims undisputably occurred in the Northern District, where Yahoo! is headquartered. It cannot be said that the Central District has a greater connection to the parties or the subject matter of this case than does the Northern District, especially where defendants are mostly based in the Northern District and no named plaintiffs appear to reside in the Central District.

Because plaintiffs do not reside in this forum and because this case is a class action, the usual reasons for deferring to a plaintiffs choice of forum do not apply. See Koster v. (*Am.) Lumbermens Mut. Casual Co., 330 U.S. 518, 524, 67 S. Ct. 828, 91 L. Ed. 1067 (1947)* ("where there are hundreds of potential plaintiffs, all equally entitled voluntarily to invest themselves with the corporation's cause of action and all of whom could with equal show of right go into their many home courts, the claim of any one plaintiff that a forum is appropriate merely because it is his home forum is considerably weakened."); *Baird v. California Faculty Ass'n, 2000 U.S. Dist. LEXIS 6145, at *4 (N.D. Cal. 2000)*(eschewing "mechanistic adherence" to the traditional rule giving the plaintiff's choice of **[*16]** forum substantial deference "in a class action in which plaintiffs are dispersed throughout the state."); *Shulof v. Westinghouse Elec. Corp., 402 F. Supp. 1262, 1263 (S.D.N.Y. 1975)* ("While it is axiomatic that a plaintiff's choice of forum is entitled to great consideration, the adage has little weight in stockholder class actions . . ."); see also *Williams v. Bowman, 157 F. Supp. 2d 1103, 1106 (N.D. Cal. 2001)* (noting that the degree to which courts defer to the plaintiff's choice of forum is "substantially reduced" where the plaintiff is a nonresident); accord *Forrand v. Fed. Express Corp., 2008 U.S. Dist. LEXIS 10858, at *7 (N.D. Cal. 2008)*. Moreover, this action appears to have at least as many connections to the Northern District as it does to the Central District. Furthermore, plaintiffs' choice of the Central District is far less compelling because the Northern District is also in the Ninth Circuit. Under these circumstances, there is no reason to accord plaintiffs' choice of forum special deference.

Plaintiffs further argue that because this action is a securities action, it is subject to the special venue provision of *15 U.S.C. § 78aa* which, according to plaintiffs, requires **[*17]** a court to defer to a plaintiff's choice of forum. [4] In this regard, plaintiffs rely on *Sec. Investor Protection Corp. v. Vigman, 764 F.2d 1309 (9th Cir. 1985)*, in which the Ninth Circuit stated, "the intent of the venue and jurisdictional provisions of the securities laws is to grant potential plaintiffs liberal choice in their selection of a forum, and unless the balance of factors is strongly in favor of the defendants, the plaintiff's choice of forum should rarely be disturbed." *Id. at 1317* (quoting *Ritter v. Zuspan, 451 F. Supp. 926, 928 (E.D. Mich. 1978))*.

4 *Section 78aa* provides, in pertinent part, that

> [a]ny criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by [the 1934 Act] or rules and regulations thereunder, or to enjoin any violation of [the 1934 Act] or rules and regulations, may be brought in any such district or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found.
>
> *15 U.S.C. § 78aa*.

There **[*18]** is authority for plaintiffs' contention that the fact that this case arises under the 1934 Act counsels in favor of granting plaintiffs' choice of venue additional deference. See *SEC v. Rose Fund, LLC, 2004 U.S. Dist. LEXIS 22491, at *4-5 (N.D. Cal. 2004)* (in an civil enforcement action brought by the SEC, stating that the general rule affording the plaintiff's choice of forum is afforded substantial weight "applies even more so here where Congress has enacted a special venue provision for actions under the federal securities laws."); *Stanley Works v. Kain, 833 F. Supp. 134, 137 (D. Conn. 1993)* ("The breadth of ... *[§78aa*] arguably strengthens [the presumption favoring the plaintiffs choice of forum] in securities actions. 'The venue provision of the 1934 Act represents an affirmative congressional policy choice to allow plaintiffs in securities cases the widest possible choice of forums in which to sue.'") (quoting *SEC v. Elecs. Warehouse, Inc., 689 F. Supp. 53, 74 (D. Conn. 1988))*; *Lemberger v. Westinghouse Elec. Corp., 1976 U.S. Dist. LEXIS 12506, at *13-*14 (E.D.N.Y. 1976)* ("The weight attached to a plaintiff's choice of forum is particularly great where, as here, the applicable **[*19]** venue provision is designed to serve a national policy underlying the Securities Exchange Act: the policy of

allowing a plaintiff the widest possible number of choices of a district in which to sue. If transfers were granted in securities cases with too much abandon, the effect would be to undermine Congressional efforts to enforce securities laws by minimizing burdens on plaintiffs in civil suits."); see also *Ellis v. Costco Wholesale Corp., 372 F. Supp. 2d 530, 537-38 (N.D. Cal. 2005)* (finding that the plaintiff's choice of forum was entitled to greater deference in light of Title VII's special venue provision); accord *Berry v. Potter, 2006 U.S. Dist. LEXIS 6756, at *11-12 (D. Ariz. 2006)*.

However, the special venue provision of *§ 78aa* and the above-quoted language from Vigman do not change the foregoing analysis regarding the deference to which plaintiffs' choice of forum is entitled. Nothing in *§ 78aa* prevents the Court from determining whether this action should be transferred under *§ 1404(a)*. *Section 1404(a)* applies to "any civil action," including actions governed by special venue provisions. *Ex parte Collett, 337 U.S. 55, 58-59, 69 S. Ct. 944, 93 L. Ed. 1207 (1949)*; *Commodity Futures Trading Com. v. Savage, 611 F.2d 270, 279 (9th Cir. 1979)*. **[*20]** Thus, while under *§ 78aa*, plaintiffs are free to lay venue in the forum of their choice, that choice of forum must be measured by the standards of *§ 1404(a)*. *In re Nematron Corp. Secs. Litig., 30 F. Supp. 2d 397, (S.D.N.Y. 1998)* (stating that the securities acts' special venue provisions "do not prohibit, by their own terms, a court from entertaining a motion to transfer under *§ 1404(a)* or from transferring an action to a more convenient forum. They also do not alter the standard employed in deciding whether transfer is appropriate.") (citation omitted); *Blumental v. Management Assistance, Inc., 480 F. Supp. 470, 472 (N.D. Ill. 1979)*.

None of the cases relied upon by plaintiffs, including *Vigman*, holds that in a securities class action, the usual deference to the plaintiff's choice of forum applies by virtue of the securities acts' special venue provisions. The majority of decisions that have considered the securities acts' special venue provisions against the line of cases rejecting deference to the plaintiff's choice of forum in class and derivative actions hold that, where the class plaintiffs are not residents of the chosen forum, their chosen forum deserves no special treatment. **[*21]** See *In re Amkor Tech., Inc. Sec. Litig., 2006 U.S. Dist. LEXIS 93931, at *11-*12 (E.D. Pa. 2006)* (holding that the co-lead plaintiffs' choice of forum should not receive great deference where they were non-residents and they alleged a large number of unknown plaintiffs potentially located nationwide); *Collier v. Stuart-James Co., 1990 U.S. Dist. LEXIS 4896, at *9-*10 (S.D.N.Y. 1990)* (rejecting the plaintiffs' reliance on the securities acts' venue provisions and stating, "plaintiffs' choice of forum in a class action is given little weight 'because in such a case, there will be numerous potential plaintiffs, each possibly able to make a showing that a particular forum is best suited for the adjudication of the class' claim.'")(quoting *Eichenhotlz v. Brennan, 677 F. Supp. 198, 202 (S.D.N.Y. 1988)*); *Blumenthal, 480 F. Supp. at 472* (holding, in a securities class action, "[b]ecause this case is a class action, plaintiffs' choice of forum cannot be accorded great weight. The fact that the action was brought under a special venue statute does not change that result."); see also *In re Nematron, 30 F. Supp. 2d at 405-07* (in granting the transfer of a securities class action, noting that even **[*22]** if the plaintiff's choice of forum were entitled to substantial deference by virtue of the security acts' special venue provisions, "[i]n isolation, given its nature as a class action brought under the federal securities law, the [plaintiff's choice of forum] weighs moderately" in favor of transfer); *Job Haines Home for the Aged v. Young, 936 F. Supp. 223, 229 (D. N.J. 1996)* (granting motion to transfer a securities class action despite the plaintiff's invocation of *§77aa* where the convenience and justice factors favored transfer).

In light of these authorities, plaintiffs' reliance on *Vigman*, which was not a class action case, is inapposite. Because this is a class action and because plaintiffs do not reside in this forum, plaintiffs choice of forum is entitled to only minimal weight, *§77aa* notwithstanding.

2. Additional Considerations

Plaintiffs argue that the instant action involves allegations that "directly relate" to two class actions that were previously heard in this Court -- Checkmate Strategic Group, Inc. v. Yahoo!, Inc., CV-05-4588 CAS (FMOx), and Online Merchant Sys. LLC v. Overture Servs, Inc., CV-05-4833 RGK (MANx) -- and one class action that is currently pending in this **[*23]** Court -- In re Yahoo! Litig., CV-06-2737 CAS (FMOx). Opp'n 2. Plaintiffs argue that because these actions share common facts with the instant action, transferring this action to the Northern District would increase the risk of inconsistent rulings and waste judicial resources and the parties' time.

This argument is without merit. Although the cases referenced by plaintiffs are class actions brought against

Yahoo!, involving alleged click fraud and other types of online adverting fraud, plaintiffs overlook the substantial differences between these cases and the case at bar. Unlike the instant case, the cases referenced by plaintiffs are not securities class actions. While the plaintiffs in this case are stockholders who allege that defendants injured them by unlawfully manipulating Yahoo! stock price and making material misrepresentations about the company upon which they relied in deciding to purchase Yahoo! shares, in the foregoing cases referenced by plaintiffs, the plaintiffs are *advertisers* who allege that Yahoo! defrauded them by engaging in various schemes to inflate their advertising charges. Thus, the factual and legal questions raised in this case on the one hand, and these **[*24]** other cases, on the other hand, are wholly different. The presence of these other class actions in the Central District do not militate against the transfer of the instant action. [5]

> 5 Although on May 31, 2007, the Court consented to the transfer of this action as one related to In re Yahoo!, CV-06-2737 CAS (FMOx), the Court did so based on the representation of counsel that the case is related. At that time, the Court did not consider the application of the *§ 1404(a)* factors.

Other considerations bearing on the interests of justice favor transfer. Because this is a securities fraud action, plaintiffs' claims are based on defendants' alleged misrepresentations and omissions, which "are deemed to 'occur' in the district where they are transmitted or withheld, not where they are received." *In re Nematron Corp. Secs. Liti., 30 F. Supp. 2d 397, 404 (S.D.N.Y. 1998)*; *In re Hanger Orthopedic Group, Inc., 418 F. Supp. 2d 164, 169 (E.D.N.Y. 2006)*. Plaintiffs contend that their claims give rise to contacts in the Central District because their allegations are based on the failed efforts to integrate Overture into Yahoo!'s business, the problems with Project Panama, and the click fraud that occurred **[*25]** at Overture -- all of which allegedly occurred in the Central District. However, plaintiffs do not dispute that the defendants' allegedly false public statements regarding Yahoo!'s revenues and performance predominantly occurred in the Northern District.

While evidence involving Project Panama, Overture, and its employees is likely to play a role in this action, this case turns on the allegedly false public statements and the decisions made by Yahoo!'s senior management, which indisputably occurred at Yahoo!'s headquarters. Because Yahoo!'s headquarters is the "factual center of this case, and the locus of all relevant decisionmaking," plaintiffs' claims have stronger contacts with the Northern District. *In re AtheroGenics Sec. Litig., 2006 U.S. Dist. LEXIS 15786, at *12 (S.D.N.Y. 2006)*; *In re Connetics Sec. Litig., 2007 U.S. Dist. LEXIS 38480, at *23 (S.D.N.Y. 2007)* ("the operative facts are centered around the Northern District of California, wherein the defendants allegedly issued the misrepresentations that constitute the basis of this litigation. Thus, the location of the operative facts weighs heavily in favor of a transfer of venue."); *Wojtunik v. Kealy, 2003 U.S. Dist. LEXIS 14734, at *17, n.7 (E.D. Pa. 2003)* **[*26]** ("the nature of the action occurred in Arizona, where [the defendant] was based, since the misrepresentations and fraud would have occurred at [the defendant's] headquarters in Arizona, not where the engineering group was located."); see also *In re Hanger Orthopedic, 418 F. Supp. 2d at 168 *8-*9* (noting that while there is no "*per se* rule requiring or presumptively favoring the transfer of a securities-fraud action to the district where the issuer is headquartered," nevertheless, "as a practical matter, such transfers are routine.").

Additionally, considerations regarding access to sources of proof weigh in favor of transfer. Defendants assert that Yahoo!'s corporate books and records are kept at its headquarters, including most of its documents relating to financial reporting. Kothari Decl. PP 5-7, 9, 10, 12-13. Defendants further assert that Yahoo!'s financial database and records regarding insiders' stock transactions in Yahoo! stock are maintained at its headquarters. Id. P 14. By contrast, plaintiffs state that relevant documents are located in the Central District, but they do not identify these documents or discuss how they are important to this action. "Although the location of **[*27]** relevant documents may be of less significance in light of modern copying and reproduction technologies, it nonetheless retains at least some relevance to the venue inquiry." *In re Connetics, 2007 U.S. Dist. LEXIS 38480, at *16*.

On balance, the Court, in its discretion, finds and concludes that the interests of justice weigh in favor of transferring this action. Likewise, the convenience of the parties and the witnesses factors favor granting defendants' motion to transfer. The Court GRANTS defendants' motion to transfer this action to the Northern District of California.

III. CONCLUSION

In accordance with the foregoing, the Court GRANTS defendants' motion to transfer this action to the Northern District of California.

IT IS SO ORDERED.