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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

YURY ADAMOV, individually,
and on behalf of himself and
all other similarly situated
current and former employees
of PricewaterhouseCoopers,
LLP,

Plaintiffs,

v.

PRICEWATERHOUSECOOPERS, LLP,
a Limited Liability
Partnership, and DOES 1-100,
inclusive,

Defendants.

No. CIV. S-13-1222 LKK/AC

ORDER

Plaintiff is a former Attest Associate of Pricewaterhouse-
Coopers LLC ("PwC"). He has filed this putative class action
lawsuit against PwC alleging violations of California labor laws,
including failure to pay overtime wages. The class he seeks to
represent are similarly situated Attest Associates who were
employed by PwC after the class notice went out in Campbell v.
PwC, 2:06-cv-2376 (E.D. Cal.) (Karlton, J.).

1 interests of justice. Id. § 1404(a).

2 Specific factors the district court may consider are "the
3 plaintiff's choice of forum; ... the respective parties' contacts
4 with the forum; ... the contacts relating to the plaintiff's cause
5 of action in the chosen forum; ... the differences in the costs of
6 litigation in the two forums; ... the availability of compulsory
7 process to compel attendance of unwilling non-party witnesses;
8 and ... the ease of access to sources of proof." Jones, 211 F.3d
9 at 498-99; see also Los Angeles Memorial Coliseum Comm'n v. NFL,
10 89 F.R.D. 497, 499 (C.D. Cal. 1981), aff'd, 726 F.2d 1381 (9th
11 Cir.) (listing and applying factors), cert. denied, 469 U.S. 990
12 (1984). In determining whether the interests of justice are best
13 served by transferring or retaining the case, the court looks to,
14 among other things, the need to conserve scarce judicial
15 resources. See Irving v. Lennar Corp., 2013 WL 1308712 (E.D.
16 Cal.2013) (Mueller, J.).

17 The burden is on the party seeking transfer to show "by
18 particular circumstances that the transferor forum was
19 inappropriate." Savage, 611 F.2d at 279. It is not enough for a
20 moving party merely to show that it prefers another forum nor
21 will transfer be ordered if the result is merely to transfer to a
22 forum equally convenient or inconvenient. Barrack, 376 U.S. at
23 645-46.

24 **B. Motion To Strike.**

25 The rule governing the striking of pleadings provides:

26 The Court may strike from a pleading * * *
27 any redundant, immaterial, impertinent, or
scandalous matter.

28 Fed. R. Civ. P. 12(f). The court does not grant such a motion

1 "unless it is clear that the matter to be stricken could have no
2 possible bearing on the subject matter of the litigation." L.H.
3 v. Schwarzenegger, 2007 WL 662463 at *18 (E.D. Cal. 2007)
4 (Karlton, J.).

5 III. ANALYSIS - MOTION TO TRANSFER VENUE

6 The court has considered the factors applicable to this
7 motion. However, the factor that overwhelms all others in this
8 case is the need to avoid duplication of judicial effort. This
9 case, as alleged in the Complaint, is the same case as Campbell
10 v. PwC, 2:06-cv-2376 (E.D. Cal.) (Karlton, J.). The class in
11 this case consists of those Attest Associates who would be in the
12 Campbell class except that they were employed after the class
13 notice was given in Campbell. Transferring this case would, in
14 essence, put the Campbell case into the hands of two different
15 federal judges, wasting scarce judicial resources and increasing
16 the chances of inconsistent decisions.²

17 Accordingly, the motion to transfer will be denied.

18 IV. ANALYSIS - MOTION TO STRIKE

19 A. Requests for Injunctive Relief and Punitive Damages.

20 The Complaint requests injunctive relief as well as punitive
21

22 ² Defendant argues that judicial resources will not be duplicated
23 because the Central District has already decided a case
24 addressing wage and hour issues for accountants. See In re KPMG
25 Wage & Hour Litigation, 2012 WL 5416939 (C.D. Cal. 2012) (Wilson,
26 J.) (granting partial summary judgment to KPMG). However, the
27 fact that the Central District has decided a wage and hour case
28 involving accountants employed by a different accounting firm
does not show that judicial resources will not be duplicated.
Most importantly however, it is not a valid reason for splitting
this one case between two different judicial districts, thus
risking inconsistent decisions arising from what is, in effect,
one case.

1 or exemplary damages. Defendant moves to strike these claims for
2 relief, and plaintiff does not oppose the motion. Accordingly,
3 these requests for relief will be stricken from the Complaint.

4 **B. Statute of Limitations.**

5 This lawsuit was filed on June 19, 2013. All parties agree
6 that - any possible tolling issues aside - the longest
7 limitations period applicable here is four (4) years.

8 Accordingly, on its face, the limitations period for this case
9 cuts off any plaintiff whose claim arose prior to June 19, 2009.

10 The Complaint, however, asserts claims for putative class
11 members employed after July 23, 2008, the date notice was given
12 for class members in Campbell. In other words, plaintiff wants
13 to include in this lawsuit everyone shut out of the Campbell
14 class. However, nothing in the complaint asserts that the
15 limitations period should be tolled from July 23, 2008 to June
16 19, 2009. Plaintiff could have accomplished his goal of
17 including such persons by filing his complaint at any time during
18 the four-year period from July 23, 2008 through July 23, 2012.
19 He waited, however, to file until June 19, 2013.

20 In his Opposition Brief, plaintiff asserts that the
21 limitations period is tolled, apparently because the Campbell
22 class period is open-ended. That is incorrect - the class is not
23 open-ended. The Campbell class period extends "from October 27,
24 2002, until the time when class notice was given." Campbell,
25 Class Certification Order (ECF No. 557) at 2. Both sides agree
26 that class notice was given on July 23, 2008.

27 Plaintiff's legal basis for arguing that tolling is, even
28 now, on-going, is Crown, Cork & Seal Co., Inc. v. Parker, 462

1 U.S. 345, 353-354 (1983):

2 We conclude ... that "the commencement of a
3 class action suspends the applicable statute
4 of limitations as to all asserted members of
5 the class who would have been parties had the
6 suit been permitted to continue as a class
7 action." Once the statute of limitations has
8 been tolled, it remains tolled for all
members of the putative class until class
certification is denied. At that point,
class members may choose to file their own
suits or to intervene as plaintiffs in the
pending action.

9 Crown, 462 U.S. at 353-354. Plaintiff's reliance on Crown is
10 misplaced. First, Crown applies only to "asserted members of the
11 class." The Campbell class does not include anyone whose claim
12 arises after "the time when class notice was given," July 23,
13 2008.

14 Second, plaintiff's reading of Crown is grossly overbroad.
15 Crown was a case where class certification was denied, and
16 accordingly it made sense to toll the limitations period up until
17 that time. But it does not state or imply that the limitations
18 period is tolled in all cases until class certification is denied
19 - even cases where class certification is never denied.

20 Plaintiff can however, rely upon the standard for granting
21 motions to strike. Such motions "should not be granted unless it
22 is clear that the matter to be stricken could have no possible
23 bearing on the subject matter of the litigation." L.H., 2007 WL
24 662463 at *18. This standard is not met here, as the paragraphs
25 defendant seeks to strike are plainly relevant to the lawsuit,
26 even if the class the allegations refer to is not as broad as
27 those paragraphs assume. As another court has noted (although in
28

1 an FLSA proposed collective action), "[d]efendants' concern is
2 that the proposed definition is overbroad," not that it is
3 "redundant, immaterial, impertinent, or scandalous," the bases
4 for striking a pleading under Rule 12(f). Adedapoidle-Tyehimba
5 v. Crunch, LLC, 2013 WL 4082137 at *7 (N.D. Cal. 2013) (Orrick,
6 J.) (emphasis added).

7 Accordingly, defendant's concerns are more appropriately
8 addressed in the class certification process. At that point
9 defendant will have the opportunity to assert that the class
10 should exclude those persons whose claims arose after July 23,
11 2008 and before June 19, 2009. It will then be able to make its
12 argument that unless plaintiff can make an adequate showing that
13 those persons should be included - and nothing plaintiff has done
14 or argued thus far makes such a showing - the class should be
15 defined so as to exclude them.

16 IV. CONCLUSION

17 For the foregoing reasons:


18 1. Defendant's motion to transfer this case to the Central
19 District of California is **DENIED**;

20 2. Defendant's un-opposed motion to strike the Complaint's
21 requests for injunctive relief and for punitive or exemplary
22 damages is **GRANTED**; and

23 3. Defendant's motion to strike Paragraphs 1, 4, 9 and 18
24 of the Complaint is **DENIED**.

25 IT IS SO ORDERED.

26 DATED: October 22, 2013.

27 
28 LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT