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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KEVIN FRANKEN,

Plaintiff,

v.

MARK T. ESPER, Secretary of
the United States Army,

Defendant.

No. 2:17-cv-01128-JAM-KJN

**ORDER DENYING PLAINTIFF'S MOTION
TO CHANGE VENUE**

This matter is before the Court on Plaintiff Kevin Franken's Motion to Change Venue. Mot., ECF No. 42. Defendant Mark Esper filed an opposition, ECF No. 45, to which Plaintiff replied, ECF No. 46. After consideration of the parties' briefing on the motion and relevant legal authority, the Court DENIES Plaintiff's Motion to Change Venue.¹

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¹ This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for October 2, 2018.

1 I. BACKGROUND

2 Plaintiff previously worked as a Park Ranger/Natural
3 Resources Specialist for Defendant, United States Army. Compl.,
4 ECF No. 1, ¶ 13. Plaintiff's official duty station was in Valley
5 Springs, California. Id. ¶ 2. Between June 2015 and July 2016,
6 Plaintiff alleges that he was subject to a myriad of interactions
7 he found to be discriminatory, harassing, hostile, and
8 retaliatory. Id. ¶¶ 13-110.

9 On May 28, 2017, Plaintiff filed a three-claim complaint in
10 the U.S. District Court for the Eastern District of California,
11 alleging Title VII sex discrimination and hostile work
12 environment, as well as failure to accommodate under the
13 Rehabilitation Act. Id. ¶¶ 111-19. Plaintiff went on to file
14 three additional Title VII cases alleging Defendant engaged in
15 discriminatory employment practices. Mot. at 6. Plaintiff filed
16 those three cases in the U.S. District Court for the Northern
17 District of California. See id.; Franken v. Esper, et al., No.
18 3:17-cv-07161-LB (N.D. Cal. filed Dec. 17, 2017) ("Franken II");
19 Franken v. Harris, et al., No. 3:18-cv-01837-KAW (N.D. Cal. filed
20 March 25, 2018) ("Franken III"); Franken v. Esper, et al., No.
21 3:18-cv-04120-SK (N.D. Cal. filed July 10, 2018) ("Franken IV").
22 Defendant filed motions to dismiss or transfer in Franken II and
23 Franken III. Opp'n, ECF No. 15, p. 15. Defendants have not yet
24 been served in Franken IV. Id.

25
26 II. OPINION

27 Plaintiff now moves this Court to change the venue of this
28 case from the Eastern District of California, where he originally

1 filed the case, to the Northern District of California, where his
2 three other suits are pending. Mot. at 6. Defendant opposes,
3 arguing the Eastern District of California is the location of the
4 alleged acts and the district in which the vast majority of
5 witnesses reside. Opp'n at 2.

6 A. Legal Standard

7 "For the convenience of parties and witnesses, in the
8 interest of justice, a district court may transfer any civil
9 action to any other district or division where it might have
10 been brought or to any district or division to which all parties
11 have consented." 28 U.S.C. § 1404(a). Section 1404(a) seeks to
12 "prevent the waste of time, energy and money and to protect
13 litigants, witnesses and the public against unnecessary
14 inconvenience and expense[.]" Van Dusen v. Barrack, 376 U.S.
15 612, 616 (1964) (internal quotation marks omitted).

16 In a Title VII case, the statute's special venue provision
17 details where cases arising under the statute may be brought:

18 Each United States district court and each United
19 States court of a place subject to the jurisdiction of
20 the United States shall have jurisdiction of actions
21 brought under this subchapter. Such an action may be
22 brought in any judicial district in the State in which
23 the unlawful employment practice is alleged to have
24 been committed, in the judicial district in which the
25 employment records relevant to such practice are
26 maintained and administered, or in the judicial
27 district in which the aggrieved person would have
28 worked but for the alleged unlawful employment
29 practice, but if the respondent is not found within
30 any such district, such an action may be brought
31 within the judicial district in which the respondent
32 has his principal office. For purposes of sections
33 1404 and 1406 of Title 28, the judicial district in
34 which the respondent has his principal office shall in
35 all cases be considered a district in which the action
36 might have been brought.

37 42 U.S.C. § 2000e-5(f)(3); Johnson v. Payless Drug Stores Nw.,

1 Inc., 950 F.2d 586, 587-88 (9th Cir. 1991). This section of
2 Title VII also determines the proper venue for litigating a
3 Rehabilitation Act claim. Slaby v. Holder, 901 F. Supp. 2d 129,
4 132 (D.D.C. 2012).

5 B. Analysis

6 Pursuant to Section 1404(a), the Court evaluates the
7 districts in which the case could have been filed, whether
8 transfer would provide the litigants and witnesses with a more
9 convenient, efficient forum, and whether a transfer serves the
10 interests of justice.

11 (1) Where the Case Could Have Been Brought

12 Under Title VII's special venue provision, the Court
13 evaluates three factors to determine the districts in which
14 Plaintiff could have filed this case. Two of those factors are
15 relevant here: (1) the state in which the allegedly unlawful
16 employment practice occurred and (2) the district in which the
17 defendant maintains and administers employment records. 42
18 U.S.C. § 2000e-5(f)(3).

19 a. The Alleged Unlawful Employment Practice Took
20 Place in California

21 Here, based on the acts alleged in Plaintiff's complaint,
22 the unlawful employment practices took place in Valley Spring,
23 California, within the Eastern District of California. Thus,
24 under Title VII, venue is proper in any of California's four
25 federal districts. See 42 U.S.C. § 2000e-5(f)(3). This factor
26 does not weigh for or against transfer to the Northern District
27 of California.

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1 b. District in Which the Employment Records Are
2 Maintained and Administered

3 Plaintiff alleges in the declaration attached to his motion
4 that the decisions to discharge him and discriminate against him
5 were made in San Francisco. Franken Decl., ECF No. 42-2. He
6 similarly alleges, without factual support, that the computer
7 system containing his employment record was located in San
8 Francisco. See id. Defendant disputes Plaintiff's allegations
9 and offers two declarations: one from Plaintiff's former
10 supervisor and another from the counsel involved in Plaintiff's
11 discrimination complaints. The declaration from Randy Olsen,
12 the Chief of the Operations and Readiness Branch, provides facts
13 that indicate none of the employment decisions alleged were
14 approved, ratified, or finalized in San Francisco. Olsen Decl.,
15 ECF No. 45-2. The declaration from Assistant District Counsel
16 Adrienne Cady details that Plaintiff's electronic employment
17 records are stored in Sacramento and Washington, D.C. Cady
18 Decl., ECF No. 45-3.

19 Having reviewed the declarations in support of and
20 opposition to Plaintiff's motion, the Court finds Defendant's
21 declarations to be more reliable because they provide detailed
22 facts about the location where the individuals described in the
23 Complaint worked and made employment decisions, rather than
24 unsubstantiated beliefs and conclusory allegations. Based on
25 this information, the Court finds it more likely that the
26 decisions regarding Plaintiff's employment were made,
27 implemented, and felt in the Eastern District of California.
28 See Passantino v. Johnson & Johnson Consumer Prod., Inc., 212

1 F.3d 493, 506 (9th Cir. 2000) (“[V]enue is proper in both the
2 forum where the employment decision is made and the forum in
3 which that decision is implemented or its effects are felt.”).
4 This factor weighs against transfer to the Northern District of
5 California.

6 (2) Convenience of the Parties and Witnesses

7 Plaintiff argues in his motion that the case should be
8 transferred because it would be more convenient for him to
9 prosecute this action in San Francisco, where he filed his three
10 subsequent cases. Mot. at 6. He also believes that the
11 Northern District is more convenient because he resides there.
12 Id. Defendant, on the other hand, provides an analysis of the
13 40 unique witnesses, illustrating that 29 witnesses reside in
14 the Eastern District of California, three reside in the Northern
15 District of California and eight are unknown or outside either
16 district’s subpoena power. Kim Decl., ECF No. 45-1. All of the
17 29 witnesses residing in the Eastern District are closer to
18 Sacramento than San Francisco. Id.

19 This review of the evidence demonstrates that the Eastern
20 District of California is a more convenient venue for the vast
21 majority of witnesses whose addresses are known. There is no
22 evidence that the non-party witnesses, other than Plaintiff’s
23 health care providers, are within the subpoena power of the
24 Northern or Eastern Districts of California. See Reply at 2;
25 Kim Decl., Ex. C, ECF No. 45-1, pp. 23-26. Plaintiff argues
26 that the only inconvenience transfer would cause is for
27 witnesses to drive from Sacramento to San Francisco. That
28 argument ignores its converse: it is far more efficient for

1 three individuals to drive from San Francisco to Sacramento than
2 it is for 29 individuals to do the opposite. See Reply at 2.

3 The factor weighing convenience of parties and witnesses
4 weighs against transferring the case to the Northern District of
5 California.

6 (3) Interests of Justice

7 Finally, Plaintiff argues that court congestion weighs in
8 favor of transferring the case. Mot. at 8. Plaintiff is
9 correct that the Eastern District of California has one of the
10 highest caseloads per judge in the nation and has an immediate
11 need for a minimum of five new judgeships. See id.
12 Nevertheless, this district's impending judicial emergency does
13 not permit the Court to transfer every case in which there is a
14 tenuous nexus with another judicial district. The delay
15 Plaintiff will suffer by remaining in the forum he originally
16 selected does not outweigh the other Section 1404(a) factors.

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18 III. ORDER

19 For the reasons set forth above, the Court DENIES
20 Plaintiff's Motion to Change Venue.

21 IT IS SO ORDERED.

22 Dated: October 3, 2018

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25 JOHN A. MENDEZ,
26 UNITED STATES DISTRICT JUDGE
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