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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RICK DELAGARZA, et al.,

No. C 09-5803 MHP

Plaintiffs,

MEMORANDUM & ORDER

v.

Re: Defendant's Motion to Transfer or Stay

TESORO REFINING AND MARKETING
COMPANY,

Defendant.

Plaintiffs brought this putative class action against defendant alleging violations of various labor laws. Now before the court is defendant's motion to transfer venue, or alternatively, to stay the proceedings. Having considered the parties submissions and arguments, and for the reasons set forth below, the court enters the following memorandum and order.

BACKGROUND

I. **USW ACTION**

On April 25, 2008, the United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers International Union, AFL-CIO, CLC (the "Union"), and two individuals, Richard Floyd and Eduardo Carbejal, filed a putative class action against Shell Oil Company, Equilon Enterprises LLC dba Shell Oil Products US, and Tesoro (the "USW" action), in the California Superior Court for the County of Los Angeles. The action was removed to the District Court for the Central District of California. Case No. CV 08-03693-RGK(Ex). The complaint in that action alleged meal and rest period violations, failure to provide complete and

1 accurate wage statements, failure to pay all wages due at the time of discharge or resignation under
2 state wage and hour laws, and violations of California’s Unfair Competition Law (“UCL”). The
3 principal allegation is that defendants failed to provide plaintiffs uninterrupted 30-minute meal
4 periods because they were not allowed to leave the refinery during breaks and remained “on call”
5 during their breaks.

6 The Union, Floyd and Carbejal brought these claims on behalf of a proposed statewide class
7 of similarly situated current and former employees of Shell and Tesoro who had worked at three
8 separate refineries—the Los Angeles refinery, which was owned by both Shell and Tesoro at
9 different times during the relevant limitations period (“Los Angeles refinery”), Tesoro’s Golden
10 Eagle refinery and chemical plant located in Martinez, California (“Golden Eagle refinery”), and
11 Shell’s separate Martinez refinery (“Martinez refinery”). Floyd and Carbejal have worked at the Los
12 Angeles refinery only.

13 On June 5, 2009, Tesoro filed counterclaims against the Union, alleging that the Union was
14 jointly or contributorily liable for any violations of the meal or rest period laws by Tesoro because
15 the Union had, by entering into collective bargaining agreements with Tesoro, undertaken a
16 responsibility to ensure the health and safety of Tesoro’s employees. In its counterclaims, Tesoro
17 alleged breach of contract by the Union and sought indemnity or contribution, and rescission or
18 reformation of the collective bargaining agreements.

19 On July 1, 2009, the Union, Floyd and Carbejal filed a motion for class certification, seeking
20 to certify two separate classes of employees. The putative class members included current, former
21 and future employees who occupied seven different positions. In its opposition, Tesoro argued that
22 the Los Angeles refinery and the Golden Eagle refinery each have their own management, human
23 resources department, operating procedures, labor contracts, unit, shifts and break practices. Tesoro
24 also argued that Golden Eagle employees have worked under four collective bargaining agreements
25 and Los Angeles employees have worked under two. On August 21, 2009, the district court denied
26 class certification, finding that:

27 Plaintiffs seek to certify two classes, comprised of employees of three separate
28 refineries that are owned by two different companies, who each have a separate

1 collective bargaining agreements [sic] with USW. In fact, one of those refineries, the
2 Los Angeles Refinery, had a change in ownership from Shell/Equilon to Tesoro
3 during the relevant time period. Moreover, the proposed classes consist of workers
4 who occupy at least seven different job titles, each with differing duties and
5 responsibilities. Defendants likely promised these employees differing wages, based
6 on their respective duties and responsibilities. In light of these facts, the Court finds
7 that managing such a class would be rife with difficulties because each member's
8 damages would likely vary substantially. Determination of such damages would
9 involve individualized assessments that are not conducive to class treatment.

10 Therefore, Plaintiffs have failed to meet their burden of establishing that class
11 resolution is a superior method of adjudicating this matter, as required for
12 certification under Rule 23(b)(3).

13 On August 27, 2010, the Union's claims against defendants were dismissed for lack of
14 standing. Concurrently, the Union was granted summary judgment on all of defendants' cross-
15 claims against the Union. Consequently, the Union is no longer involved in the Central District
16 action. Trial on Floyd and Carbejal's individual claims, to the extent they have not been adjudicated
17 on summary judgment, is scheduled for October 12, 2010.

18 **II. THE ACTIONS IN THIS DISTRICT**

19 After denial of class certification in the Central District action, on November 17, 2009,
20 individual employees of Shell and Tesoro filed two new putative class actions in Contra Costa
21 County Superior Court, alleging meal period violations, failure to pay all wages due at the time of
22 discharge or resignation, and violations of the UCL. The Union is a not a party to either of these
23 actions, but the individual plaintiffs in these actions are members of the Union that was prosecuting
24 the Central District action.

25 The instant action is one of these two actions, which was filed on behalf of Tesoro's
26 employees at the Golden Eagle refinery. The other action was filed on behalf of Shell's employees
27 at the Martinez refinery (No. C 09-05876 CW, "the Gardner action"). Shell and Tesoro removed
28 both these actions to this District based on the Class Action Fairness Act. Judge Wilken, who was
assigned to the Gardner action issued a *sua sponte* notice to this court to consider whether that action
should be related to this action. This court found the two actions not related.

Individual plaintiffs have also filed two other putative class actions in state court in Los
Angeles with respect to labor practices at the Los Angeles refinery, one against Shell and the other

1 against Tesoro. One of these actions was removed to the Central District of California; however, it
2 was found not to be related to the USW action.

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4 LEGAL STANDARD

5 “For the convenience of parties and witnesses, in the interest of justice, a district court may
6 transfer any civil action to any other district or division where it might have been brought.” 28
7 U.S.C. § 1404(a). A motion to transfer venue lies within the broad discretion of the district court.
8 *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000) (citing *Stewart Org., Inc. v.*
9 *Ricoh Corp.*, 487 U.S. 22, 29 (1988)).

10 District courts use a two-step analysis to determine whether a transfer is proper. The
11 threshold question under Section 1404(a) requires the court to determine whether the action could
12 have been brought in the forum to which the transfer is sought. 28 U.S.C. § 1404(a); *Hatch v.*
13 *Reliance Ins. Co.*, 758 F.2d 409, 414 (9th Cir. 1985). If venue would be appropriate in the would-be
14 transferee court, then the court must make an “individualized, case-by-case consideration of
15 convenience and fairness.” *Jones*, 211 F.3d at 498.

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17 DISCUSSION

18 Defendant seeks transfer of this action to the Central District of California. The gravamen of
19 defendant’s argument is that the Union is already pursuing the claims at issue here in the Central
20 District action. The Union, however, was recently dismissed from the Central District action.
21 Moreover, the collective bargaining agreements that may be implicated in this action are also no
22 longer at issue in the Central District action since summary judgment was granted in favor of the
23 Union with respect to all of counterclaims brought by the defendants in the USW action.
24 Consequently, even if defendant’s defense will rely upon the collective bargaining agreements
25 related to the defendant-owned Golden Eagle refinery, there is no risk of inconsistent judgments
26 since the agreements related to that refinery are no longer at issue in the Central District action.

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1 Numerous factors demonstrate that transfer is improper. The Golden Eagle refinery is
2 located in this judicial district; consequently, all the events at issue took place within this District
3 and all the employees are likely located here. Moreover, the collective bargaining agreements
4 regarding the refinery appear to have been negotiated, executed and performed here. Although the
5 substantive law implicated by this action is similar to the law implicated by the Central District
6 action, the witnesses, proposed class and application of the law to facts could all be very different.
7 Indeed, there appears little factual overlap between this action and the Central District action.
8 According to defendant, the Los Angeles refinery and the Golden Eagle refinery each have their own
9 management, human resources department, operating procedures, labor contracts, unit, shifts and
10 break practices. The duplicative nature of discovery is irrelevant, as appropriate discovery must be
11 conducted independent of whether this action is venued in the Central District or in this District.

12 It is also unclear what judicial efficiency, if any, will result if the claims in this action are
13 heard in the Central District. Indeed, it appears that no judicial efficiency will be created through
14 transfer as Judge Klausner in the Central District is unlikely to consider this action related to the
15 USW action. Recently, he refused to accept the transfer of a similar action pertaining to the Los
16 Angeles refinery, stating: “Different plaintiff; different facts; different damages. Just same defendant
17 being sued.” Docket No. 74 (Order).

18 For the foregoing reasons, transfer would not be in the interests of justice. For the same
19 reasons, the court exercises its discretion to deny defendant’s motion to stay the proceedings. Due to
20 this holding, the court does not reach plaintiffs’ argument that venue for this action is not proper in
21 the Central District of California.

22 CONCLUSION

23 Defendant’s motion to transfer, or alternatively, to stay the proceedings, is DENIED.

24 IT IS SO ORDERED.

25 Dated: September 3, 2010

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MARILYN HALL PATEL
United States District Court Judge
Northern District of California