

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JORGE PEREZ,
Plaintiff,
v.
PERFORMANCE FOOD GROUP, INC., et
al.,
Defendants.

Case No. [15-cv-02390-HSG](#)

**ORDER GRANTING MOTION TO
TRANSFER**

Re: Dkt. No. 49

On April 20, 2015, Plaintiff Jorge Perez filed a complaint in the Alameda Superior Court against Defendants Performance Food Group, Inc. (“PFG”), Vistar Transportation, LLC (“VT”), and Roma Food Enterprises (“RFE”). Dkt. No. 1-1. Defendants removed the action to this Court on May 29, 2015. Dkt. No. 1. Following partial dismissal with leave to amend, Dkt. No. 28, Plaintiff filed the operative Second Amended Complaint (“SAC”) on April 13, 2016, Dkt. No. 29. Pending before the Court is the motion to transfer filed by PFG and VT. Dkt. No. 49 (“Mot.”).¹ For the reasons articulated below, the Court **GRANTS** the motion to transfer this action from the Northern District of California to the Central District of California.²

I. BACKGROUND

Plaintiff asserts claims not only individually but also as the named plaintiff in a putative class action on behalf of California employees. SAC ¶¶ 2-4, 10-19. Specifically, the SAC alleges eight claims on behalf of Plaintiff and similarly situated employees: failure to provide meal

¹ RFE did not join in the motion to transfer. Apart from this motion, PFG and VT have filed a motion to dismiss and/or strike Plaintiff’s SAC. Dkt. No. 36. RFE has filed a separate motion to dismiss Plaintiff’s SAC. Dkt. No. 45. Because the Court grants the motion to transfer, it does not reach these other motions.

² The Court finds that this matter is appropriate for disposition without oral argument and the matter is deemed submitted. See N.D. Civ. L.R. 7–1(b).

1 periods (Cal. Lab. Code §§ 204, 223, 226.7, 512, 1198 (West 2016)); failure to pay hourly wages
2 (id. §§ 223, 510, 1194, 1194.2, 1197, 1197.1, 1198); failure to provide accurate written wage
3 statements (id. § 226(a)); forfeiture of vested vacation pay (id. §§ 201, 204, 223, 227.3); failure to
4 timely pay all final wages (id. §§ 201-03); unfair competition (Cal. Bus. & Prof. Code §§ 17200-
5 10 (West 2016) (“Unfair Competition Law”)); civil penalties (Cal. Lab. Code §§ 2698-99.5
6 (“Private Attorneys General’s Act”)); and failure to pay employees for all hours worked (29
7 U.S.C. §§ 201-19 (2012) (“Fair Labor Standards Act”). SAC ¶¶ 20-136. The putative class has
8 not been certified, and no person besides Plaintiff has filed a notice of consent to join the FLSA
9 action. See Dkt. No. 9 (Plaintiff’s notice, filed June 9, 2015).

10 Plaintiff was employed by PFG in the City of Industry, California, from May 29, 2013
11 until June 11, 2014. Dkt. No. 49-1 (“Ferguson Decl.”) ¶ 4. His residential address was in the
12 County of Los Angeles during that entire period, according to PFG’s business records. Id. ¶ 4.
13 Since February 2016, Plaintiff has lived Hanford, California. Dkt. No. 53-2 (“Perez Decl.”) ¶¶ 3-
14 4. Of the 1151 current and former PFG employees in the proded class, 654 were last employed in
15 the City of Industry and Ontario, and 497 were last employed in the cities of Livermore and Santa
16 Cruz, all within the State of California. Ferguson Decl. ¶ 5.³

17 **II. LEGAL STANDARD**

18 “For the convenience of the parties and witnesses, in the interest of justice, a district court
19 may transfer any civil action to any other district or division where it might have been brought . . .
20 .” 28 U.S.C. § 1404(a) (2012). The purpose of this statute is “to prevent the waste of time, energy
21 and money and to protect litigants, witnesses and the public against unnecessary inconvenience
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23 ³ As a preliminary matter, the Court takes judicial notice of several facts that are “‘generally
24 known’ under [Federal] Rule [of Evidence] 201(b)(1) or ‘capable of accurate and ready
25 determination by resort to sources whose accuracy cannot be reasonably questioned’ under Rule
26 201(b)(2).” United States v. Ritchie, 342 F.3d 903, 909 (9th Cir. 2003) (quoting Fed. R. Evid.
27 201(b)); see also Fed. R. Evid. 201(c) (allowing courts to take judicial notice sua sponte). These
28 facts are as follows: (1) Hartford, California is located in Kings County; (2) Kings County is
located in the Eastern District of California; (3) Beverly Hills, City of Industry, and Los Angeles,
California are all located in Los Angeles County; (4) Ontario, California is located in San
Bernardino County; (5) Los Angeles and San Bernardino Counties are located in the Central
District of California; (6) Livermore, California, is located in Alameda County; (7) Santa Cruz,
California is located in Santa Cruz County; (8) Alameda and Santa Cruz Counties are located in
the Northern District of California.

1 and expense.” *Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964) (internal quotation marks
 2 omitted). The moving party bears the burden of showing that the transferee district is a “more
 3 appropriate forum.” See *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 499 (9th Cir. 2000). The
 4 district court has broad discretion in deciding whether or not transfer. See *Ventress v. Japan*
 5 *Airlines*, 486 F.3d 1111, 1118 (9th Cir. 2007) (“[T]he district court’s decision to change venue is
 6 reviewed for abuse of discretion. Weighing of the factors for and against transfer involves subtle
 7 considerations and is best left to the discretion of the trial judge.” (citation and internal quotation
 8 marks omitted)).

9 District courts engage in a two-step analysis for motions to transfer. First, they determine
 10 “whether the transferee district was one in which the action ‘might have been brought’ by the
 11 plaintiff.” *Hoffman v. Blaski*, 363 U.S. 335, 343–44 (1960) (quoting 28 U.S.C. § 1404(a)). If so,
 12 the courts engage in “an ‘individualized, case-by-case consideration of convenience and
 13 fairness.’” *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29, (1988) (quoting *Van Dusen*, 376
 14 U.S. at 622)). In this district, courts typically consider the following factors: (1) plaintiffs’ choice
 15 of forum, (2) convenience of the parties, (3) convenience of the witnesses, (4) ease of access to the
 16 evidence, (5) familiarity of each forum with the applicable law, (6) feasibility of consolidation
 17 with other claims, (7) any local interest in the controversy, and (8) the relative court congestion
 18 and time to trial in each forum. See, e.g., *Brown v. Abercrombie & Fitch Co.*, No. 4:13-CV-05205
 19 YGR, 2014 WL 715082, at *2 (N.D. Cal. Feb. 14, 2014); *Wilson v. Walgreen Co.*, No. C-11-2930
 20 EMC, 2011 WL 4345079, at *2 (N.D. Cal. Sept. 14, 2011); *Vu v. Ortho-McNeil Pharm., Inc.*, 602
 21 F. Supp. 2d 1151, 1156 (N.D. Cal. 2009); *Royal Queentex Enters. v. Sara Lee Corp.*, No. C-99-
 22 4787 MJJ, 2000 WL 246599, at *2 (N.D. Cal. Mar. 1, 2000).⁴ Here, exercising its discretion, the
 23 Court omits consideration of one of the eight factors typically considered by the Northern
 24 District,⁵ and separately considers one of the factors that the Ninth Circuit has suggested district

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26 ⁴ These factors are “[c]onsistent” with Ninth Circuit precedent. See *Wilson*, 2011 WL 4345079, at
 27 2; see also *Jones*, 211 F.3d at 498-99 (listing eight examples of factors that courts may consider).
 28 *Jones* also declared that “the presence of a forum selection cause” and “the relevant public policy
 of the forum state” were both “significant” factors. 211 F.3d at 499. However, these two factors
 are irrelevant here, given that this is an intrastate transfer and no forum selection clause is at issue.

⁵ The Court does not compare the court congestion and time of trial in the two districts because

1 courts might consider: “differences in the costs of litigation in the two forums.” See Jones, 211
2 F.3d at 499.

3 **III. DISCUSSION**

4 As explained below, this case could have been brought in the Central District of California,
5 and the balancing of the convenience and fairness factors favors transfer.

6 **A. Whether Action Could Have Been Brought in Central District of California**

7 “A proper district court is one: (1) that has subject matter jurisdiction; (2) where defendant
8 would have been subject to personal jurisdiction; and (3) venue would have been proper.” Brown,
9 2014 WL 715082, at *3 (citing Hoffman, 363 U.S. at 343–44)); see also James M. Wagstaffe,
10 Federal Civil Procedure Before Trial, Calif. & 9th Cir. Editions § 4:714 (Rutter Group Practice
11 Guide, March 2016 Update) (same). The Court finds that this threshold requirement is met. First,
12 there is federal question jurisdiction because Plaintiff has alleged a violation of federal law. See
13 28 U.S.C. 1331 (2012); SAC ¶¶ 118-36 (Fair Labor Standards Act claim). Second, “Defendant[s]
14 would have been subject to the personal jurisdiction of another California District Court.” See
15 Brown, 2014 WL 715082, at *3. Third, venue would be proper in the Central District because
16 Defendant would be subject to personal jurisdiction there, see 28 U.S.C. § 1391(b)(1), (c)(2), or
17 alternatively, because “a substantial part of the events or omissions giving rise to the claim
18 occurred” there, see id. § 1391(b)(2), given that Plaintiff was employed exclusively in the Central
19 District of California, see Ferguson Decl. ¶ 4; supra note 3. Moreover, Plaintiff does not dispute
20 that the action could have been brought in the Central District of California, so the only contested
21 issue before the Court is the second step of the transfer analysis.

22 **B. Convenience and Fairness Analysis**

23 **1. Plaintiff’s Choice of Forum**

24 Since the plaintiff’s choice of forum invariably weighs against transfer, the Court must
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26 ongoing application of this doctrine could have the unintended consequence of penalizing
27 efficiency by effectively placing more cases in the districts with the shortest time to trial. In
28 addition, the Court is somewhat skeptical of the ability of the Court or the parties to accurately and
meaningfully capture these metrics as of today, which is the only timeframe that matters for this
purpose.

1 decide “how much weight to give this choice relative to the other factors. See Brown, 2014 WL
2 715082, at 3. “Although great weight is generally accorded plaintiff’s choice of forum, when an
3 individual . . . represents a class, the named plaintiff’s choice of forum is given less weight.” Lou
4 v. Belzberg, 834 F.2d 730, 739 (9th Cir. 1987) (citations omitted). Similarly, where the plaintiff
5 resides outside of the chosen forum, his choice of forum is entitled to less weight. Ambriz v.
6 Matheson Tri-Gas, No. C 14-1041 CW, 2014 WL 2753886, at *2 (N.D. Cal. June 9, 2014);
7 Brown, 2014 WL 715082, at *3; Wilson, 2011 WL 4345079, at *3. The weight given to plaintiff’s
8 choice of forum is also diminished where “the conduct giving rise to the claims occurred in a
9 different forum.” See Park v. Dole Fresh Vegetables, Inc., 964 F. Supp. 2d 1088, 1094 (N.D. Cal.
10 2013) (citing Lou, 834 F.2d at 739). Here, Plaintiff’s choice of forum is entitled little deference
11 because he has brought a class action, does not reside in the Northern District, see Perez Decl. ¶¶
12 3-4; supra note 3, and did not suffer any of the alleged violations here.⁶

13 2. Convenience of the Parties

14 “‘Convenience of the parties is an important factor to consider for transfer of venue.’ In
15 weighing this factor, courts do not consider the convenience to parties that have chosen to bring a
16 case in a forum where they do not reside, nor do courts consider the convenience to potential class
17 members whose participation in the case is merely speculative.” Brown, 2014 WL 715082, at *4
18 (quoting Flint v. UGS Corp., No. C07-04640 MJJ, 2007 WL 4365481, at *3 (N.D. Cal. Dec. 12,
19 2007)); Arreola v. Finish Line, No. 14-CV-03339-LHK, 2014 WL 6982571, at *9 (N.D. Cal. Dec.
20 9, 2014) (same). Here, Plaintiff’s convenience is entitled to little if any weight because he chose
21 to sue in a forum where he did not reside. See Dkt. No. 1-1; Perez Decl. ¶¶ 3-4; supra note 3.
22 Since Defendants PFG and VT both reside in other states, litigating in either the Northern District
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25 ⁶ The alleged violations must have occurred in the Central District because that is where Plaintiff
26 exclusively worked during his period of employment. See Ferguson Decl. ¶ 4; supra note 3. For
27 purposes of assigning weight to Plaintiff’s choice of forum, the alleged violations suffered by the
28 putative class members are irrelevant. See Ambriz, 2014 WL 2753886, at 2 (citing Levine v.
Entrust Grp., Inc., No. C 12-03959 WHA, 2012 WL 6087399, at *4 (N.D. Cal. Dec. 6, 2012); see
also Brown, 2014 WL 715082, at *4 (considering only the named plaintiffs, not the putative class
members, when determining where the alleged violations took place and the resulting impact on
the weight given to the plaintiffs’ choice of forum); Wilson, 2011 WL 4345079, at *3 (same).

1 or the Central District appears equally convenient.⁷ Even assuming arguendo that Defendant RFE
2 still exists, there is currently no basis for anything but a neutral finding regarding its convenience.⁸
3 Finally, weighing the convenience of the putative class members is not appropriate: any projection
4 at this point as to the nature and extent of any particular putative class member’s participation in
5 the case would be purely speculative. See *Brown*, 2014 WL 715082, at *4. Accordingly, the
6 Court finds that this factor is neutral.

7 **3. Convenience of the Witnesses**

8 The convenience of non-party witnesses is often considered the most important factor for a
9 motion to transfer. *Arreola*, 2014 WL 6982571, at *10; *Brown*, 2014 WL 715082, at *4.
10 Relatedly, courts also may consider “the availability of compulsory process to compel attendance
11 of unwilling non-party witnesses.” *Jones*, 211 F.3d at 498-99; *Arreola*, 2014 WL 6982571, at
12 *10. Here, because Plaintiff worked entirely in the Central District, any non-party witnesses—
13 such as his former co-workers or managers—are most likely to reside in the Central District, and
14 therefore, most likely would find it more convenient to testify there. See *Arreola*, 2014 WL
15 6982571, at *10. Courts in the Northern District have repeatedly found that where, as here, one or
16 more named plaintiffs brings a statewide class action based upon alleged employment law
17 violations that occurred in the Central District, the witnesses’ convenience favors transfer. See *id.*
18 at *10; *Brown*, 2014 WL 715082, at *5; *Ambriz*, 2014 WL 2753866, at *2; *Wilson*, 2011 WL
19 4345079, at *4. Moreover, insofar as any non-party witnesses in the Central District would need
20 be compelled to testify at a deposition, hearing, or trial, such witnesses would very likely be
21 beyond this Court’s subpoena power. See *Arreola*, 2014 WL 6982571, at *10; *Wilson*, 2011 WL

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24 ⁷ PFG is a Colorado corporation with corporate headquarters and principal place of business in
25 Richmond, Virginia. Dkt. No. 1 ¶ 19. VT is a Delaware limited liability company with its
26 headquarters and principal place of business in Richmond, Virginia. *Id.* ¶ 20.
27 ⁸ Defendants argue that RFE is no longer in existence because it was acquired by and merged into
28 Vistar Corporation, which subsequently changed its name to PFG. See *id.* ¶ 21; Dkt. No. 45-1 ¶ 2.
Plaintiff’s SAC states only that RFE is “a California corporation authorized to do business in
California.” ¶ 7. Even if the Court were to consider Plaintiff’s late-filed opposition to Defendant
RFE’s motion to dismiss, that document contains no arguments regarding Defendant RFE’s
alleged residence. Even assuming arguendo that Defendant RFE still exists, there is still no basis
upon which to find that either the Northern District or the Central District is more convenient for
that entity. And clearly, if the entity no longer exists, its convenience cannot be considered.

1 4345079, at *4; Fed. R. Civ. Proc. 45(c) (limiting subpoena power under most circumstances to
2 “within 100 miles of where the person resides, is employed, or regularly transacts business in
3 person”). Accordingly, the Court finds that this factor weighs in favor of transfer.

4 **4. Ease of Access to Evidence**

5 “The location of evidence may be an important factor[,] . . . [but] is neutral or carries only
6 minimal weight when the evidence is in electronic form.” Brown, 2014 WL 715082. Moreover,
7 “technological developments have reduced the burden of retrieving and transporting documents,
8 which has diminished the importance of this factor in the transfer analysis.” Ambriz, 2014 WL
9 2743886, at *2. Even where the evidence is stored in hard copy form, courts may look to whether
10 transporting or producing the documents would impose “significant hardship.” See Wilson, 2011
11 WL 4345079, at *2 (quoting Van Slyke v. Capital One Bank, 503 F. Supp. 2d 1353, 1362 (N.D.
12 Cal. 2007)).

13 Here, Defendants argue that “[t]his factor favors transfer inasmuch as relevant . . .
14 documentary evidence, including that specific to Plaintiff’s employment, is already available in
15 the Central District of California where Plaintiff worked.” Mot. at 9. In reply, Defendants
16 vaguely allude to “documentary evidence specific to Plaintiff’s employment” that is maintained at
17 worksites in the Central District. See Dkt. No. 54 (“Reply”) at 9. But Defendants have not
18 actually identified any relevant documentary evidence that is stored only in hard copy. Compare
19 Ambriz, 2014 WL 2743886, at *2 (“[E]ach branch location maintains hard-copy timesheets
20 regarding its employees. Because these highly relevant records are stored within the Central
21 District, this factor favors transfer.”) Moreover, Defendants have not indicated any “significant
22 hardship” that they would suffer by producing documentary evidence electronically. See Wilson,
23 2011 WL 4345079, at *2; Mot. at 9 (“[D]ocumentary evidence regarding timekeeping and payroll
24 records can be found and/or made available electronically anywhere in California.”); Reply at 9
25 (arguing only that Defendants would suffer “inconvenience” by converting certain unspecified
26 “documentary evidence” to electronic format). Accordingly, the Court finds that this factor is
27 neutral, or favors transfer only marginally.

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1 **5. Familiarity of Each Forum with the Applicable Law**

2 Here, both forums are federal district courts located in California, and are equally familiar
3 with the applicable California and federal law. Accordingly, this factor is neutral.

4 **6. Feasibility of Consolidation with Other Claims**

5 The parties agree that this factor is neutral. Compare Mot. 10 with Dkt. No. 53 (“Opp.”) at
6 7. The Court concurs.

7 **7. Any Local Interest in the Controversy**

8 Courts also consider the “local interest in deciding local controversies.” Brown, 2014 WL
9 715082; Arreola, 2014 WL 6982571, at *11; see also Decker Coal Co. v. Commonwealth Edison
10 Co., 805 F.2d 834, 843 (1986) (listing public factors relevant to convenience of forum). Here,
11 Defendant PFG had two distribution centers employing members of the proposed class in both the
12 Northern District and the Central District. Ferguson Decl. ¶ 5; supra note 3. Of the 1151 current
13 and former PFG employees in the proposed class, 654 were last employed in the Central District,
14 whereas only 497 were last employed in the Northern District. Id.; supra note 3. Moreover,
15 Plaintiff was employed exclusively in the Central District, such that the alleged employment law
16 violations must have occurred there. Supra note 6. Based on the foregoing, the Court finds that
17 this factor favors transfer because the Central District would have a modestly stronger interest in
18 the class action, if certified, and more importantly, the Central District clearly has a stronger
19 interest in Plaintiff’s individual claims. See Arreola, 2014 WL 6982571, at *11 (finding this factor
20 favored transfer even though “the Northern and Central Districts would have an equal interest in a
21 certified class’s case” because “the Central District has a greater interest in [Plaintiff’s] individual
22 claim”); Brown, 2014 WL 715082, at *6 (ruling that this factor favored transfer even though
23 Defendant operated stores in both the Northern and Central Districts because “the majority of
24 events occurred in the Central District”); Vu, 602 F. Supp. 2d at 1157 (finding that this factor
25 favored transfer because “the events giving rise to plaintiffs[’] claims took place in the Central
26 District of California”).

27 **8. Differences in the Cost of Litigation in the Two Forums**

28 “While convenience to the parties’ attorneys is ‘not an appropriate factor for the Court to

1 consider when deciding a motion to transfer,’ the ‘difference[] in the costs of litigation in the two
2 forums’ is relevant.” See Arreola, 2014 WL 6982571, at *10 (quoting Wilson, 2011 WL 4345079,
3 at *5 (first quote); Jones, 211 F.3d at 498-99 (second quote)). Here, the offices of both parties’
4 counsel are located in the Central District,⁹ and non-party witnesses, such as Plaintiff’s current and
5 former co-workers and managers, most likely reside in the Central District, where he worked
6 exclusively, see supra note 6.¹⁰ “Therefore, the cost of litigation would likely be lower in the
7 Central District than in the Northern District, as counsel and at least some of the key witnesses
8 would not need to travel to the Northern District for court proceedings. Thus this factor weights in
9 favor of transfer.” See id. at *10.

10 **9. Balancing of Discretionary Factors**

11 Plaintiff’s choice of forum, as always, weighs against transfer, but is entitled to little
12 deference because he brought his case as a class action, does not reside in the Northern District,
13 and did not suffer any of the alleged violations there. In contrast, the convenience of the witnesses
14 (often considered the most important factor) weighs for transfer, as do two other factors—the local
15 interest in the controversy and the cost of litigation. The remaining factors are neutral.
16 Accordingly, transfer is appropriate.

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24 ⁹ Defendants’ counsel has an office in Los Angeles, California, and Plaintiff’s counsel has an
25 office in Beverly Hills, California. See also supra note 3.

26 ¹⁰ The residence of the parties appears to be neutral with relation to cost. Plaintiff resides in
27 Hartford, California, Perez Decl. ¶ 3, which he concedes is “approximately the same distance
28 between Los Angeles and San Francisco,” see Opp. 6. Defendants PFG and VT both reside
outside California, see supra note 7, so will incur substantial travel costs regardless of whether the
case is litigated in the Northern District or Central District. And even if the Court assumes
arguendo that Defendant RFE still exists, there is no indication that the entity’s costs of litigation
would be lower in either forum. See supra note 8.

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IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Defendants' motion to transfer venue to the Central District of California.

IT IS SO ORDERED.

Dated: 1/6/2017


HAYWOOD S. GILLIAM, JR.
United States District Judge