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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CASEY J. STEWART,

Plaintiff,

v.

JOS. A. BANK CLOTHIERS, INC.,

Defendant.

No. C 09-5348 PJH

**ORDER GRANTING MOTION TO
TRANSFER**

Before the court is defendant's Jos. A. Bank Clothiers, Inc.'s ("Bank") motion to transfer venue to the United States District Court for the Eastern District of California ("Eastern District") pursuant to 28 U.S.C. § 1404(a). Plaintiff Casey Stewart ("Stewart") opposes this motion. Having carefully read the parties' papers, considered the relevant legal authority, and heard the parties' oral arguments, the court hereby GRANTS Bank's motion to transfer venue for the reasons stated below.

BACKGROUND

The underlying cause of action is an employment discrimination case alleged by Stewart on behalf of a putative class of African Americans who worked at or applied for managerial positions at any Bank store in the chain's western administrative region. See generally Compl.

Bank is a men's clothing retail chain. Decl. of William Craley ¶ 2. Stewart worked at Bank's Sacramento store from July 21, 2008 to October 21, 2009 when he was fired in person at the Sacramento store. Decl. of William Craley ¶¶ 4. Stewart presently lives in Sacramento and lived there throughout the entire course of his employment with Bank. Id.

Stewart alleges that he applied for managerial positions at Bank stores in the

1 Northern District of California (“Northern District”). Decl. of Casey Stewart ¶ 3. Stewart, an
2 African American man, further alleges that he was not hired for these positions because
3 Bank wanted to cultivate a “white image” and that white, lesser-qualified candidates were
4 hired for these managerial positions. Compl. ¶ 21; Decl. of Casey Stewart ¶ 6. Finally,
5 Stewart alleges that Bank operates an intentionally discriminatory system with respect to
6 job assignment, compensation, promotion, and discipline. Compl. ¶ 28.

7 Stewart filed a complaint of discrimination with the California Department of Fair
8 Employment and Housing on August 28, 2009. Exh. A. Stewart then filed the current
9 complaint in this court on November 12, 2009. Stewart’s complaint alleges two claims: (1)
10 a Federal Civil Rights claim under 42 U.S.C. § 1981 alleging that Bank maintains an
11 intentionally discriminatory system of job assignments, compensation, hiring, promotion,
12 and discipline in the western region of the United States; and (2) a California Fair
13 Employment and Housing Act violation under California Government Code § 12940 et seq.
14 based on the same allegations as the federal claim. *Id.* ¶¶ 26-32.

15 DISCUSSION

16 A. Legal Standard

17 In a motion to transfer venue, the moving party first must establish “that venue is
18 proper in the transferor district,” *Vu v. Ortho-McNeil Pharm., Inc.*, 602 F.Supp.2d 1151,
19 1156 (N.D. Cal. 2009) (quoting *Goodyear Tire Rubber Co. v. McDonnell Douglas Corp.*, 820
20 F.Supp. 503, 506 (C.D. Cal. 1992)), and “that the transferee district is one where the action
21 might have been brought.” *Id.* Title 28 U.S.C. § 1391(b)(2) provides that in a case where
22 jurisdiction is based on a federal claim, a civil action may be brought in “a judicial district in
23 which a substantial part of the events or omissions giving rise to the claim occurred”
24 Only events and omissions that directly give rise to the claim are relevant to the proper
25 venue determination. *Jenkins Brick Co. v. Bremer*, 321 F.3d 1366 (11th Cir. 2003). If
26 events giving rise to the claim occur in multiple districts, the proper venue is not necessarily
27 the district in which the majority of the events occurred; rather, it is sufficient that a
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1 substantial part of the events occurred in a district. Gulf Ins. Co. v. Glasbrenner, 417 F.3d
2 353, 356 (2d Cir. 2005); Schwarzer et al., Federal Civil Procedure Before Trial § 4:316.

3 Title 28 U.S.C. § 1404(a) provides that “[f]or the convenience of parties and
4 witnesses, in the interest of justice, a district court may transfer any civil action to any other
5 district or division where it might have been brought.” Once a court has determined that
6 venue would be proper in both the transferor district and the proposed transferee district, it
7 may use the following factors to determine whether a discretionary transfer would further
8 the goals of § 1404(a):

9 (1) plaintiff’s choice of forum, (2) convenience of the parties, (3) convenience
10 of the witnesses, (4) ease of access to the evidence, (5) familiarity of each
11 forum with the applicable law, (6) feasibility of consolidation with other claims,
12 (7) any local interest in the controversy, and (8) the relative court congestion
13 and time of trial in each forum.

14 Vu, 602 F. Supp. 2d at 1156. The party requesting the transfer has the burden of showing
15 that transfer is proper. Futures Trading Comm’n v. Savage, 611 F.2d 270, 279 (9th Cir.
16 1979).

17 B. Motion to Transfer

18 There are two issues that the court must resolve: (1) under § 1391(b), in which
19 district did a substantial part of the events giving rise to Stewart’s claim occur; and (2)
20 which district is most convenient for the parties and witnesses according to the 28 U.S.C. §
21 1404(a) discretionary transfer balancing test.

22 1. Where Did a Substantial Part of the Events Giving Rise to the Claim Occur

23 Under § 1391(b)(2), venue is proper in “a judicial district in which a substantial part
24 of the events or omissions giving rise to the claim occurred” To succeed in a motion
25 to transfer venue, the moving party must establish that both the transferor and transferee
26 districts are proper venues. See Vu, 602 F.Supp.2d at 1156. Therefore, Bank must
27 establish that venue is proper in both the Eastern District and the Northern District before
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1 the § 1404(a) discretionary transfer balancing test may be applied to determine the
2 desirability of transfer. Bank's counsel, at the hearing on this matter, conceded that the
3 Northern District is a proper venue for this case. Therefore, Bank must only establish that
4 venue would also be proper in the Eastern District. See Vu, 602 F.Supp. 2d at 1156.

5 Bank has made an adequate showing that a substantial part of the events giving rise
6 to the claims occurred in the Eastern District. See 28 U.S.C. § 1391(b)(2). The
7 declarations submitted by Bank, which are unchallenged by Stewart, establish that Stewart
8 lived in Sacramento and worked in Bank's Sacramento store throughout the relevant period
9 for this action. Decl. of William Craley ¶¶ 4-6. Although Stewart's complaint focuses on
10 discriminatory hiring and promotion practices, it also alleges discrimination in job
11 assignments, compensation, and discipline. Compl. ¶ 28. Of these allegations, only hiring
12 and promotion are linked to events that occurred outside of the Eastern District. Stewart
13 worked and lived in Sacramento during the relevant time period, so his allegation of a
14 discriminatory system of job assignments, compensation, and discipline only impacted him
15 personally while he was in the Eastern District.

16 Stewart's claim goes beyond hiring and promotion practices at Bank; the breadth of
17 his claim, combined with his residency and work history in Sacramento, establish that a
18 substantial portion of the events giving rise to the claim occurred in the Eastern District.
19 Thus, venue is proper in the Eastern District.

20 2. Balancing Test for Discretionary Transfer

21 Having determined that venue is proper in both the Northern District and the Eastern
22 District under § 1391(b)(2), the court now balances the relevant factors under § 1404(a)
23 case law to determine if a discretionary transfer to the Eastern District is warranted.

24 a. Plaintiff's Choice of Forum

25 Generally, courts give deference to the plaintiff's choice of forum. Schwarzer et al.,
26 Federal Civil Procedure Before Trial § 4:760. However, this deference is considerably
27 diminished when the plaintiff has brought a claim in a district that does not include his or
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1 her residence. Vu, 602 F. Supp. 2d at 1156; Schwarzer et al., Federal Civil Procedure
2 Before Trial § 4:761. Stewart does not live in the Northern District. Bank has continuously
3 asserted this fact throughout its briefs and has submitted declarations and authenticated
4 evidence documenting Stewart's residence in Sacramento. See generally, Bank's Motion;
5 Bank's Reply; Decl. of William Craley; Exhibit A; Exhibit B. Stewart has never challenged
6 these assertions.

7 Because Stewart lives in the Eastern District, his forum choice of the Northern
8 District is afforded less deference than if he had brought the suit in his home district. This
9 factor weighs only slightly against transfer.

10 b. Convenience of the Parties

11 Stewart did not address this factor in his brief; however, taking into account
12 Stewart's residency in Sacramento, the court does not assume that the Northern District
13 would be a more convenient venue than the Eastern District for Stewart, in fact, the court
14 assumes the opposite. In contrast, Bank argues that if the case remains in the Northern
15 District, Bank's business operations will suffer during the time its Sacramento employees
16 are in the Northern District testifying at trial and that it will have to pay its employees'
17 transportation and accommodation expenses while they are testifying at trial. These are
18 valid party convenience concerns that weigh in favor of transfer to the Eastern District.

19 c. Convenience of the Witnesses

20 The convenience of the witnesses is the most important factor in the § 1404(a)
21 transfer determination. Schwarzer et al., Federal Civil Procedure Before Trial § 4:733; see
22 also Saleh v. Titan Corp., 361 F.Supp.2d 1152, 1160 (S.D. Cal. 2005). "The court will want
23 to know who the witnesses are, where they are located, what their testimony will be and
24 why such testimony is relevant or necessary." Schwarzer et al., Federal Civil Procedure
25 Before Trial § 4:733. Additionally, "the court will consider not only the number of witnesses
26 located in the respective districts, but also the nature and quality of their testimony in
27 relation to the issues in the case." Id. (emphasis in original). While relevant, unidentified
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1 witnesses have little impact on the transfer determination because “[i]t is difficult to evaluate
2 the role of these witnesses and realize the impact of a venue change on their function.” E.
3 & J. Gallo Winery v. F. & P. S.p.A., 899 F. Supp. 465, 467 (E.D. Cal. 1994); Miracle Blade,
4 LLC, v. Ebrands Commerce Group, LLC, 207 F. Supp. 2d 1136, 1156 (D. Nev. 2002).

5 Stewart has not stated with particularity who he thinks are relevant or necessary
6 witnesses; he specifically named two witnesses and alluded to the existence of several
7 others. One of the named witnesses, David Beaudin, lives and works in the Northern
8 District. Decl. of David Beaudin ¶¶ 2-4. Because Beaudin resides in the Northern District,
9 the convenience of this witness weighs against transfer. Stewart also named Carol Moore
10 as a potential witness; however, Moore lives in Houston, Texas, so this witness weighs
11 neither against nor for a transfer of venue. Unfortunately, other than these two witnesses,
12 Stewart did not state with particularity any additional witnesses. Stewart suggested several
13 “individual (names unknown at this point)” witnesses who reside in the Northern District.
14 Opposition at 10. These potential, unidentified witnesses residing in the Northern District
15 include: the non-African American individuals who were promoted to the positions for which
16 Stewart applied, the store managers of the San Francisco and San Mateo stores, and the
17 “Nigerian employee who was referred to in the David Beaudin declaration.” Opposition at
18 10. Stewart has not submitted declarations from these individuals nor explained the
19 potential value of these witnesses.

20 Similar to the court’s predicament in Gallo Winery, “these witnesses [though
21 relevant] are not identified and their anticipated testimony has not been presented to the
22 Court in the form of required affidavits or declarations. It is difficult to evaluate the role of
23 these witnesses and realize the impact of a venue change on their function.” Gallo Winery,
24 899 F. Supp. at 467. Stewart has not identified these witnesses with sufficient particularity
25 nor given the court any indication of the nature and quality of the unidentified witnesses’
26 testimony.

27 On the other hand, Bank has specifically identified several witnesses in the Eastern
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1 District whose testimony will be material. In his declaration, William Craley, Bank's
2 Manager of Employee Relations, stated that the following witnesses would have knowledge
3 of the allegations that Stewart makes in his complaint: Patricia Brown, manager of the
4 Sacramento store; Jackie Cordrey, manager of the Roseville store; and Paula Zillner, Ernst
5 Williams, and Ray Prather, Stewart's coworkers at the Sacramento store. Decl. of William
6 Craley ¶ 7. These potential witnesses all reside in the Eastern District. Decl. of William
7 Craley ¶ 7.

8 While Bank did not submit declarations from these witnesses, the nature of their
9 potential testimony as it relates to this case is far clearer than Stewart's proposed
10 witnesses. As noted above, Stewart's complaint alleged not only discrimination in hiring
11 and promotion but also discrimination in job assignments, disciplinary procedures, and
12 compensation. Compl. ¶ 28. Bank's proposed witnesses have personal knowledge of how
13 Stewart was treated while working for Bank.

14 In sum, Bank has shown, both qualitatively and quantitatively, that the witness
15 convenience factor weighs in favor of transfer to the Eastern District.

16 d. Access to Evidence

17 Stewart alleged that David Beaudin, as the former Regional Sales Manager
18 overseeing the Sacramento and Bay Area Bank stores, kept files and certain personnel
19 records at his San Francisco office. Opposition at 10 (citing Decl. of David Beaudin at ¶ 3).
20 However, Beaudin's declaration does not state that he still has access to these files or that
21 the files are still in the Northern District. Furthermore, Beaudin's employment at Bank was
22 not completely contemporaneous with Stewart's; Beaudin left Bank two months before
23 Stewart did. Bank's Motion at 7. Therefore, even if Beaudin continues to have access to
24 the Bank personnel files that he maintained at his San Francisco office, these files would
25 not paint a complete picture of Stewart's employment record at Bank.

26 Bank represents that the personnel files and other records are at its offices "in
27 Maryland or in the Sacramento store where Plaintiff worked." Bank's Motion at 7. While
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1 the Maryland files weigh neither for nor against transfer, the personnel files in the
2 Sacramento store do weigh in favor of transfer. Bank alleged that the files are currently in
3 the Eastern District and currently available.

4 The existence and accessibility of evidence in the Eastern District weigh in favor of
5 transfer to the Eastern District.

6 e. Remaining Factors

7 Although there are other widely accepted factors that courts may weigh when
8 deciding a discretionary § 1404(a) transfer, see Jones v. GNC Franchising, Inc., 211 F.3d
9 495, 498 (9th Cir. 2000), neither of the parties addressed these factors in more than a
10 perfunctory, conclusory manner. Therefore, the court will not sua sponte, and without
11 adequate briefing from the parties, include these factors in its balancing test to determine
12 the appropriateness of a transfer for convenience.

13 C. Conclusion

14 For the reasons stated above, the court finds that the § 1404(a) balancing test
15 weighs in favor of transfer and hereby GRANTS Bank's motion to transfer venue. Pursuant
16 to Civil L.R. 3-14, this order is effective 10 days after it is filed.

17 **IT IS SO ORDERED.**

18 Dated: February 10, 2010



PHYLLIS J. HAMILTON
United States District Judge

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