

United States District Court  
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DONOVAN LUCAS, on behalf of  
himself and others similarly  
situated,

Plaintiff,

v.

DAIICHI SANKYO COMPANY, INC.; and  
DOES 1 TO 50, inclusive,

Defendants.

No. C 11-0772 CW

ORDER GRANTING  
DEFENDANT'S MOTION  
TO TRANSFER VENUE  
(Docket No. 10)

Plaintiff Donovan Lucas filed the present class complaint in Alameda County Superior Court, alleging violations of California law governing overtime pay and rest and meal break periods. On February 18, 2011, Defendant Daiichi Sankyo, Inc. (DSI)<sup>1</sup> removed the lawsuit to federal court. Docket No. 1. DSI now moves to transfer the lawsuit from this District to the Central District of California, pursuant to 28 U.S.C. § 1404(a). Docket No. 10. Plaintiff opposes the motion. Having considered all of the parties' submissions, the Court GRANTS Defendant's motion.

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<sup>1</sup> Defendant DSI has answered the suit, Docket No. 4, and has stated that Plaintiff incorrectly named Daiichi Sankyo Company, Inc., its Japanese parent company, as Defendant in his complaint, Def.'s Mot. to Transfer Venue at 1 n.1.

BACKGROUND

1  
2 DSI is a pharmaceutical company which markets certain drugs  
3 and conducts research to develop new therapies. Lucas seeks to  
4 represent a class of "All persons who are employed or have been  
5 employed as 'Pharmaceutical Representatives' by defendants in the  
6 State of California and for at least four (4) years prior to the  
7 filing of this action." Compl. ¶ 21. Lucas alleges that  
8 "Pharmaceutical Representative" means all persons employed by  
9 Defendant whose title is or was "Sales Representative," "Senior  
10 Sales Representative," "Executive Sales Representative," or  
11 "Senior Executive Sales Representative." Compl. ¶ 2.

12  
13 DSI employs representatives to inform physicians about its  
14 products and to convince them to write prescriptions for those  
15 products. DSI asserts that "sales representatives" are  
16 categorized by the group of health care providers to whom they  
17 sell particular groupings of products, such as products marketed  
18 to primary care physicians, hospital-marketed products, and  
19 products marketed to specialists. Declaration of Craig Mangan in  
20 Support of DSI's Mot. to Transfer, at ¶ 6. According to DSI, its  
21 "sales professional tiered position categories" include: "Sales  
22 Representative," "Sales Representative II," "Sales Specialist,"  
23 "Senior Sales Specialist," "Senior Sales Professional," "CV  
24 Specialty Sales Representative," "Senior CV Specialty Sales  
25 Representative," "Hospital Representative," "Senior Hospital Sales  
26 Representative," and "Hospital Sales Specialist." Id.

1 From December 2006 through March 2011, DSI has employed at  
2 least 206 "sales representatives" in California. Id. at ¶ 9. Of  
3 these employees, 107 have resided in the Central District of  
4 California. Id. During that same time, forty-four sales  
5 representatives have resided in the Northern District of  
6 California. Id. The sales representatives are supervised by  
7 district managers. As of March 2011, nine of the twenty district  
8 managers charged with supervising California sales representatives  
9 are located in the Central District. Id. at ¶ 10. Substantially  
10 more district managers reside in the Central District than in any  
11 other district in California. Id.

12  
13 The Daiichi Sankyo Administrative and Corporate Division<sup>2</sup> is  
14 headquartered in New Jersey, and the DSI Human Resources  
15 department charged with supporting DSI sales operations is also  
16 located in that state. Id. at ¶¶ 2, 11. The DSI Vice President  
17 responsible for overseeing the department lives in New Jersey.  
18  
19 Id. at ¶ 5.

20 The Human Resources department includes managers and staff  
21 members who are personally familiar with the job duties, positions  
22 and procedures applicable to Lucas and the putative class members.  
23 Id. at 11. Payroll records and files, official personnel files,  
24 position description questionnaires, job descriptions, promotional  
25 materials, policies and procedures (including those relating to  
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27 <sup>2</sup> The record does not further explain the relationship  
28 between this Division and DSI.

1 employment, not limited to compensation, overtime, compliance, and  
2 product samples), compensation records, incentive compensation  
3 plans, training materials, benefit plans and other documents  
4 applicable to Lucas and putative class members are all located in  
5 New Jersey. Id. at 13.

6 DSI does not maintain any office space for employees, such as  
7 sales representatives, in California. Id. at 8. The sales  
8 representatives primarily rely on laptop computers and home  
9 offices. Id. Their job duties entail analyzing information  
10 regarding prescription-writing habits of key physicians on their  
11 call lists and visiting the offices of these physicians. Id.  
12 Lucas worked as a primary care sales representative in the Palm  
13 Springs area from July 2008 through November 2010. Id. at 12.  
14 Lucas's counsel, except for one attorney located in New York, and  
15 DSI's counsel are located in the Central District.

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18 LEGAL STANDARD

19 Title 28 U.S.C. § 1404(a) provides, "For the convenience of  
20 the parties and witnesses, in the interest of justice, a district  
21 court may transfer any civil action to any other district or  
22 division where it might have been brought." A district court has  
23 broad discretion to adjudicate motions for transfer on a case-by-  
24 case basis, considering factors of convenience and fairness. See  
25 Stewart Org. Inc. v. Ricoh Corp., 487 U.S. 22, 29 (1988); Sparling  
26 v. Hoffman Constr. Co., 864 F.2d 635, 639 (9th Cir. 1988).  
27 Factors the court may consider include (1) the plaintiff's choice  
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1 of forum; (2) convenience of the parties; (3) convenience of the  
2 witnesses; (4) relative ease of access to the evidence;  
3 (5) familiarity of each forum with the applicable law;  
4 (6) feasibility of consolidation with other claims; (7) any local  
5 interest in the controversy; and (8) the relative court congestion  
6 and time of trial in each forum. Saleh v. Titan Corp., 361 F.  
7 Supp. 1152, 1156 (N.D. Cal. 2005) (citing Jones v. GNC  
8 Franchising, Inc., 211 F.3d 495, 498-99 (9th Cir. 2000), and  
9 Decker Coal Co. v. Commonwealth Edison Co., 805 F.2d 834, 843 (9th  
10 Cir. 1986)).

11  
12 The movant bears the burden of justifying the transfer by a  
13 strong showing of inconvenience. Decker Coal, 805 F.2d at 843.  
14 The motion may be denied if the increased convenience to one party  
15 is offset by the added inconvenience to the other party. Id. As  
16 a general rule, the plaintiff's choice of forum is given  
17 significant weight and will not be disturbed unless other factors  
18 weigh substantially in favor of transfer. See 28 U.S.C.  
19 § 1404(a). However, the plaintiff's selection of forum has  
20 minimal value where the plaintiff is not a resident of the  
21 judicial district in which the suit commenced. Armstrong v. Home  
22 Depot U.S.A., Inc., 1996 WL 382895, \*1 (N.D. Cal.) (citing Grubs  
23 v. Consolidated Freightways, Inc., 189 F. Supp. 404, 409 (D. Mont.  
24 1960) and Pacific Car & Foundry Co. v. Pence, 403 F.2d 949, 954  
25 (9th Cir. 1968)). In addition, when the plaintiff represents a  
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1 class, its choice of forum is given less weight. Lou v. Belzberg,  
2 834 F.2d 730, 739 (9th Cir. 1987).

3 DISCUSSION

4 The parties do not dispute that this action could have been  
5 brought in the Central District of California. DSI concedes that  
6 the Northern District and Central District of California are  
7 equally familiar with the law applicable to this action, and makes  
8 no argument that relative court congestion in the Northern  
9 District or the potential consolidation of claims favors  
10 transferring this action to the Central District. However, DSI  
11 argues that the remaining factors, primarily related to the issue  
12 of convenience, support transferring the case to the Central  
13 District.  
14

15 DSI's central contention is that Lucas and a majority of  
16 sales representatives reside in the Central District and, thus,  
17 venue in that district is more convenient for the parties and  
18 witnesses, and serves to ease access to evidence. DSI contends  
19 that most witnesses relevant to Lucas's individual claim that he  
20 was misclassified as exempt are in the Palm Springs area, and  
21 because most putative class members are in the Central District,  
22 the relevant witnesses are predominantly located there as well.  
23 In addition, DSI asserts that documents related to Lucas's and  
24 most putative class members' claims are primarily located in  
25 either the Central District or New Jersey. Finally, DSI argues  
26 that the Central District has a stronger interest in the  
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1 controversy because a majority of the putative class members  
2 reside in that district.

3 Lucas's choice of forum in this action is entitled to reduced  
4 deference because he seeks to represent a class, Lou, 834 F.2d at  
5 739, and he has filed his complaint in a district outside of the  
6 district in which he is domiciled, Forrand v. Fed. Express Corp.,  
7 2008 U.S. Dist. LEXIS 10858, \*7 (N.D. Cal.) (holding that  
8 deference owed to a nonresident plaintiff's choice of forum is  
9 "substantially reduced."). The relative convenience of hearing  
10 this case in the Central District compared to the Northern  
11 District favors granting DSI's motion to transfer venue.

12 First, DSI asserts that venue in the Central District is most  
13 convenient for the parties. DSI points to records indicating that  
14 fifty-two percent of its California sales representatives reside  
15 in the Central District, while approximately twenty-one percent  
16 reside in the Northern District and the remainder reside in the  
17 Southern and Eastern Districts. In contrast to Adoma v.  
18 University of Phoenix, Inc., a more significant number of putative  
19 class members in this case reside in the Central District compared  
20 to the Northern District. 711 F. Supp. 2d 1142, 1151 (E.D. Cal.  
21 2010) (holding that, where forty percent of potential class  
22 members were residing in the Eastern District compared to sixty  
23 percent in the Central District, transfer of venue to the Central  
24 District was not warranted). Furthermore, it is not clear in  
25 Adoma whether the named plaintiff lived in or outside of the  
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1 Eastern District, where the suit was filed, and the court did not  
2 consider that factor in deciding to deny the motion to transfer.  
3 Nor did the Adoma court consider where the parties' counsel were  
4 located. Here, however, it is undisputed that Lucas lives in the  
5 Central District, and his and DSI's counsel, except for one  
6 attorney located in New York, are also based in that district.  
7 DSI argues that litigating the case in the district in which Lucas  
8 and counsel for parties are located will be substantially more  
9 convenient. Accordingly, DSI has made a strong showing that the  
10 Central District is a more convenient venue for the parties.  
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12 As a second factor, the Court considers whether hearing the  
13 case in the Central District will be more convenient for the  
14 witnesses in this action. Many of the witnesses most relevant to  
15 resolving Lucas's complaint are based in DSI's Human Resources  
16 department. Personnel in this department are likely the most  
17 familiar with Lucas's and putative class members' job  
18 responsibilities, as well as DSI's work schedule policies,  
19 timekeeping and payroll procedures and practices. Because the  
20 Human Resources department personnel are located in New Jersey,  
21 the convenience of these witnesses favors neither the Northern  
22 District nor the Central District. However, substantially more  
23 district managers reside in the Central District than in any other  
24 district in California. District managers supervise putative  
25 class members, and are likely to know about their work schedules  
26 and responsibilities. Although inconvenience to witnesses who are  
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1 employed by a party and may be compelled to testify may be  
2 discounted, STX, Inc. v. Trik Stik, Inc., 708 F. Supp. 1551, 1556  
3 (N.D. Cal. 1988), it is nonetheless of some relevance. The  
4 convenience of the witnesses supports transferring this case to  
5 the Central District.

6 Third, access to proof, apart from the witnesses' and  
7 parties' testimony, adds some support to transferring this case to  
8 the Central District. DSI admits that documentary evidence, such  
9 as payroll records and other files, is stored in New Jersey.  
10 Thus, neither the Northern District nor the Central District  
11 provides any comparative advantage in accessing those documents.  
12 However, because Lucas and most putative class members reside in  
13 the Central District, evidence they possess is more conveniently  
14 accessed in the Central District, although modern technology  
15 likely minimizes the expense or inconvenience of transporting such  
16 evidence. Accordingly, access to proof slightly favors  
17 transferring this action to the Central District.

18 Finally, DSI argues that the interests of justice are served  
19 by transferring this case to the Central District. While the  
20 Northern District's interest in the action is not insubstantial,  
21 it appears that the Central District has a greater interest in the  
22 case because Lucas and most putative class members live there.  
23 Moreover, the fact that Lucas does not reside in the Northern  
24 District, the vast majority of putative class members reside  
25 outside of this district and the parties' counsel are in Southern  
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1 California evidence forum-shopping by Lucas. Evidence of forum-  
2 shopping by a plaintiff supports a defendant's motion to transfer  
3 venue. See e.g., Forrand, 2008 U.S. Dist. LEXIS 10858, \*7-11.

4 Lucas's choice of forum is entitled to little deference. DSI  
5 has made a strong showing that convenience and the interest of  
6 justice favor transferring this action to the Central District.

7  
8 CONCLUSION

9 DSI's motion to transfer this action to the Central District  
10 is GRANTED. Docket No. 10. The case management conference  
11 currently scheduled for June 14, 2011 is VACATED.

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13 IT IS SO ORDERED.

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15 Dated: 5/24/2011

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17 CLAUDIA WILKEN  
18 United States District Judge  
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