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

MEGAN CAMBRIDGE,

No. C 12-1460 CW

Plaintiff,

ORDER GRANTING
DEFENDANT'S MOTION
TO TRANSFER

v.

MILLARD REFRIGERATED SERVICES,
INC., and DOES 1-100,

Defendants.

_____ /

United States District Court
For the Northern District of California

Defendant Millard Refrigerator Services, Inc. moves, pursuant to 28 U.S.C. § 1404(a), to transfer venue of this personal injury case from the Northern District of California to the Southern District of Alabama, for the convenience of parties and witnesses and in the interests of justice. Plaintiff Megan Cambridge opposes the motion. The motion was taken under submission and decided on the papers. Having considered the papers filed by the parties, the Court grants Defendant's motion to transfer.

BACKGROUND

Defendant, a provider of refrigeration and distribution services, is incorporated in Georgia and has its principal place of business in Nebraska. Defendant has two facilities in California, located in Manteca and Riverside, neither of which is in the Northern District of California.

1 Plaintiff, an environmental specialist, lives in Sacramento,
2 California, which is located in the Eastern District of
3 California. On August 23, 2010, Plaintiff was working on the
4 British Petroleum spill cleanup in Theodore, Alabama, when she was
5 exposed to ammonia from a plume which originated from Defendant's
6 refrigeration facility, located in Theodore. Plaintiff alleges
7 that she immediately began experiencing severe emotional distress,
8 a sore throat, watery and burning eyes, burning in her lungs and
9 esophagus and significant shortness of breath. She was taken by
10 ambulance to a hospital emergency room and treated. She alleges
11 that the ammonia exposure has caused and will continue to cause
12 her emotional distress, pain, suffering, discomfort, shortness of
13 breath, lost wages and medical expenses.¹

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15 On February 23, 2012, Plaintiff filed this complaint in San
16 Francisco superior court alleging state law causes of action for
17 negligence, negligence per se, strict liability for ultrahazardous
18 activity and negligent infliction of emotional distress. On March
19 22, 2012, Defendant removed the action on the basis of diversity
20 jurisdiction, and now moves to have it transferred to the Southern
21 District of Alabama.
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25 ¹ Defendant objects to Plaintiff's description of her
26 symptoms without the support of medical evidence. However, these
27 are Plaintiff's allegations; the Court does not consider
28 Plaintiff's medical condition in determining the outcome of this
motion. Therefore, Defendant's objection is overruled.

LEGAL STANDARD

Title 28 U.S.C. § 1404(a) states: "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." A motion for transfer under § 1404(a) is addressed to the sound discretion of the trial court. That discretion requires "an individualized case by case consideration of convenience and fairness." DeFazio v. Hollister Employee Share Ownership Trust, 406 F. Supp. 2d 1085, 1088 (E.D. Cal. 2005).

The party moving for a transfer under § 1404(a) bears the burden of showing that transfer is appropriate. Costco Wholesale Corp. v. Liberty Mutual Ins. Co., 472 F. Supp. 2d 1183, 1189 (S.D. Cal. 2007). An action may be transferred to another court if:

- (1) that court is one where the action might have been brought;
- (2) the transfer serves the convenience of the parties; and
- (3) the transfer will promote the interests of justice. E & J Gallo Winery v. F.&P. S.p.A., 899 F. Supp. 465, 466 (E.D. Cal. 1994). The Ninth Circuit has identified numerous additional factors a court may consider in determining whether a change of venue should be granted pursuant to § 1404(a):

- (1) the location where the relevant agreements were negotiated and executed, (2) the state that is most familiar with the governing law, (3) the plaintiff's choice of forum, (4) the respective parties' contacts with the forum, (5) the contacts relating to the plaintiff's cause of action in the chosen forum, (6) the differences in the costs of litigation in the two forums, (7) the availability of compulsory process

1 to compel attendance of unwilling non-party witnesses, and
2 (8) the ease of access to sources of proof.

3 Jones v. GNC Franchising Inc., 211 F.3d 495, 498-99 (9th Cir.
4 2000). Plaintiffs' choice of forum is generally given great
5 weight. Lou v. Belzberg, 834 F.2d 730, 739 (9th Cir. 1987);
6 DeFazio, 406 F. Supp. 2d at 1088. "Transfer is inappropriate
7 where it would merely shift rather than eliminate the
8 inconvenience." Costco, 472 F. Supp. 2d. at 1195.

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10 DISCUSSION

11 Neither Plaintiff nor Defendant contests that this action
12 could have been brought in the Southern District of Alabama, but
13 they vigorously contest which forum is most convenient for the
14 parties and witnesses and which promotes the interests of justice.

15 I. Plaintiff's Choice of Forum and Convenience of the Parties

16 Defendant contends that Plaintiff's choice of the Northern
17 District of California is an example of forum shopping because
18 Plaintiff lives in the Eastern District of California, not in this
19 district.² Because Plaintiff does not reside here, Defendant
20 contends that her choice of forum should get no deference.

21 Plaintiff responds that she filed this action in the San Francisco
22 superior court in the belief that Defendant had a facility in San

23 ² Defendant actually contends that Plaintiff did not "choose"
24 the Northern District of California because she filed suit in San
25 Francisco superior court and Defendant removed it to the Northern
26 District of California. Defendant contends that Plaintiff
27 improperly filed her action in San Francisco because neither she
28 nor Defendant reside there and none of the events giving rise to
her causes of action took place there. Because the Court
transfers this matter to the Southern District of Alabama,
Defendant's argument is moot.

1 Francisco. She argues that she chose California as the venue for
2 her action and, under the "home turf" rule, her choice should be
3 accorded substantial weight.

4 Although a plaintiff's choice of forum is generally given
5 great weight, to discourage forum shopping, a non-resident
6 plaintiff's choice of venue is not given substantial deference.
7 Williams v. Bowman, 157 F. Supp. 2d 1103, 1107 (N.D. Cal. 2001).

8 Plaintiff's argument that she filed this action in San
9 Francisco in the mistaken belief that Defendant has a facility
10 there is disingenuous given the ease of researching a company's
11 geographic location on the internet. In fact, as discussed below,
12 Plaintiff submits Defendant's website in support of her argument
13 that it is a large corporation with many resources. Furthermore,
14 she does not explain why she did not file this action in
15 Sacramento, the county in which she resides. Given the fact that
16 Plaintiff is not a resident of this forum, her choice is not
17 afforded substantial deference.

18 Plaintiff argues that litigating in Alabama would pose a
19 great inconvenience to her because she is a private individual,
20 with limited resources, who lives and works in Northern
21 California, with no connection to Alabama. Thus, she argues that
22 it would be difficult and costly for her to litigate this action
23 2,000 miles away in Alabama. She points out that, in contrast,
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1 Defendant is a large corporation with facilities in California so
2 that it can easily litigate here.³

3 Defendant does not dispute that Plaintiff is an individual
4 with relatively little financial resources and that it is a large
5 corporation with relatively vast resources. Thus, based on
6 relative financial resources, Plaintiff would be greatly
7 inconvenienced by litigating her lawsuit 2000 miles away in
8 Alabama and Defendant would not be inconvenienced by litigating
9 here. Therefore, the convenience of the parties weighs against
10 transferring this action to Alabama.

11 II. Convenience of Witnesses

12 The convenience of witnesses is often the most important
13 factor in deciding whether to transfer an action. Bunker v. Union
14 Pacific Railroad Co., 2006 WL 193856, *2 (N.D. Cal.).

15 According to Plaintiff, because Defendant does not deny that
16 ammonia was released from its Alabama facility, the focus of the
17 litigation will be on the injuries that she sustained as a result
18 her exposure to ammonia. Therefore, she argues, the witnesses in
19 this case will be her doctors who are in California and her co-
20 workers who were working with her in Alabama at the time she was

21 _____
22 ³ Defendant objects to Plaintiff's statement that it is a
23 "very large corporation" with "enormous" facilities and "extensive
24 on-going operations" in California as not supported by any
25 evidence. However, Plaintiff submits the declaration of Brian
26 Paget who refers to Defendant's website, which describes Defendant
27 as the second-largest refrigerated warehouse and distribution
28 company in the United States and as serving all of North America
through the operation of thirty-six regional facilities. This
evidence is sufficient to establish that Defendant is a large
corporation, with two of its facilities located in California.
Therefore, Defendant's objection is overruled.

1 exposed to ammonia, but who live in California. She concludes
2 that it would be a great inconvenience for these witnesses to fly
3 to Alabama to testify at a trial.

4 Although Defendant acknowledges that its Alabama facility
5 experienced an ammonia release, it points out that it does not
6 concede liability for the release. Defendant argues that, before
7 Plaintiff can reach the issue of her injuries and damages, she
8 will have to prove that the release was caused by Defendant's
9 wrongdoing. Defendant identifies many percipient witnesses with
10 material testimony who are within the jurisdiction of the Southern
11 District of Alabama, including Defendant's employees and employees
12 of public agencies such as the United States Coast Guard based in
13 Mobile County, the Mobile County Emergency Management Agency, the
14 Alabama Department of Environmental Management based in Mobile
15 County, the Mobile Fire Department and the Theodore Fire
16 Department. Defendant indicates that the employees of these
17 public agencies may provide testimony regarding the emergency
18 response and investigation into the event. Defendant identifies
19 medical personnel at local hospitals who may have knowledge about
20 the health effects of the event. Defendant also identifies Marvin
21 Byrum, Deputy Inspector with the State of Alabama Department of
22 Labor, who may provide testimony regarding machinery inspections
23 at Defendant's Theodore facility.

24 Defendant points out that most of the non-party witnesses
25 with key testimony are subject to subpoena within the Southern
26 District of Alabama, but are not subject to process in the
27 Northern District of California. Defendant asserts that it, as
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1 well as Plaintiff, would be severely prejudiced if they could not
2 compel material witnesses to testify at trial.

3 It is clear that most, if not all, of the percipient
4 witnesses whose testimony will be essential for the determination
5 of Defendant's liability are located in Alabama, are subject to
6 the subpoena power of the district court in the Southern District
7 of Alabama and are not subject to subpoena in the Northern
8 District of California.

9 Based on the foregoing, the factor of convenience of
10 witnesses weighs heavily in favor of transfer to the Southern
11 District of Alabama.

12 III. Ease of Access to Sources of Proof

13 In keeping with her theory that the extent of her injuries is
14 the only issue that will be litigated, Plaintiff argues that her
15 medical records, located in Sacramento, will be more readily
16 accessible in this forum. However, as Defendant correctly points
17 out, immovable evidence such as Defendant's facility and the
18 machinery within it are located in the Southern District of
19 Alabama. Therefore, this factor weighs in favor of transfer.

20 IV. Interests of the Forum

21 There is strong public interest in the local adjudication of
22 local controversies. In re Eastern Dist. Repetitive Stress Injury
23 Litig., 850 F. Supp. 188, 195 (E.D.N.Y. 1994). The Northern
24 District of California has minimal interest in litigating this
25 action. Neither of the parties resides in this district and none
26 of the events giving rise to this litigation occurred here. On
27 the other hand, as shown by the declaration of Alexandra Ozols,
28 the ammonia discharge was a significant event to the regulating

1 bodies that are responsible for worker safety and environmental
2 protection in Alabama and, most likely, to the citizens of
3 Alabama. The Southern District of Alabama has a substantial
4 interest in this event which took place within its jurisdiction,
5 which was allegedly caused by one of its residents, and which
6 could cause harm to its residents.

7 For all these reasons, this factor weighs heavily in favor of
8 transfer.

9 V. Remaining Factors

10 Plaintiff argues that, because her claims are based on
11 California state law, this forum is more familiar with the law
12 that will govern this case. Defendant argues that it has raised a
13 choice of law affirmative defense in its Answer and that issue has
14 not yet been decided. Defendant points out that, even though
15 Plaintiff is a citizen of California, the events giving rise to
16 the lawsuit occurred in Alabama and, therefore, it is arguable
17 that Alabama law could apply. However, because Defendant bears
18 the burden of establishing that transfer is appropriate, the Court
19 will assume, without deciding, that California law applies.
20 Therefore, this factor weighs against transfer.

21 Plaintiff argues that relative docket congestion weighs in
22 favor of litigating in this forum because the median time from
23 filing a complaint to disposition of civil cases for 2011 was 8.4
24 months in the Southern District of Alabama and only eight months
25 in this district. However, as pointed out by Defendant, during
26 the twelve months ending on September 30, 2011, the time from
27 filing a lawsuit to trial was 16.8 months in the Southern District
28 of Alabama and 33.4 months in this district. As of September 30,

1 2011, there were twenty-six civil cases over three years old in
2 the Southern District of Alabama, whereas there were 516 cases
3 over three years old in the Northern District of California.

4 These statistics show that, if a trial is unnecessary, a case
5 may be resolved a few weeks faster in the Northern District of
6 California; however, if a trial is necessary, resolution will take
7 much longer in the Northern District of California. This factor
8 weighs slightly in favor of transfer.

9 Without citing authority, Plaintiff argues that the timing of
10 Defendant's motion to transfer weighs in favor of litigating the
11 action in California because Defendant filed its motion two weeks
12 after it filed its answer. This argument is without merit.
13 Defendant filed its motion to transfer only three weeks after it
14 removed the case from state court and the case is in the earliest
15 stages. No discovery has taken place and no case management
16 conference has been held. The timing of the motion to transfer
17 does not support keeping the litigation in this district.

18 Finally, Defendant points out that transfer would further
19 judicial economy because there are two other actions arising from
20 the same events that have been filed in the Southern District of
21 Alabama.

22 VI. Balancing of Factors

23 Only Plaintiff's convenience and the familiarity of this
24 district with California law weigh against transfer. As noted
25 above, Plaintiff's choice of forum merits no deference. The
26 convenience of witnesses, the availability of compulsory process
27 to compel attendance of unwilling non-party witnesses, the ease of
28 access to sources of proof, the interests of the forum and

1 judicial economy all weigh in favor of transfer. Weighing
2 significantly in favor of transfer is the fact that neither party
3 has any relevant contact with this district and none of the events
4 giving rise to Plaintiff's causes of action occurred here.

5 For these reasons, the material factors weigh in favor of
6 transferring this case to the Southern District of Alabama.

7 Plaintiff asks that, if the Court is inclined to transfer the
8 case, the ruling be stayed to allow the parties to proceed with
9 initial disclosures and discovery to determine how many witnesses
10 from Alabama need to be deposed. The Court declines to stay
11 ruling on this motion. As discussed above, many factors in
12 addition to the convenience of the witnesses weigh in favor of
13 transfer.

14 Plaintiff also requests that the Court condition transfer on
15 Defendant's waiver of all applicable statutes of limitations.
16 However, this is not necessary because the statute of limitations
17 for this type of personal injury action in Alabama is two years,
18 as it is in California. See Ala. Code, Title 6, § 6-2-38(1) ("All
19 actions for any injury to the person or rights of another not
20 arising from contract and not specifically enumerated in this
21 section must be brought within two years."); Cal. Civ. Pro. Code
22 § 340.8 (two-year statute of limitations for action for injury
23 based upon exposure to hazardous material or toxic substance).
24 Finally, Plaintiff requests that the Court transfer this case to
25 the Eastern District of California, where she resides. However,
26 Plaintiff has not filed a noticed motion in support of transfer; a
27 one sentence request at the end of her opposition is insufficient
28 to put this issue before the Court.


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CONCLUSION

For the foregoing reasons, Defendant's motion to transfer is granted. The Court orders the instant case transferred to the United States District Court for the Southern District Alabama.

IT IS SO ORDERED.

Dated: 5/16/2012



CLAUDIA WILKEN
United States District Judge