

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

3  
4 SARA WELLENS, KELLY JENSEN,  
5 JACQUELINE PENA, BERNICE  
6 GIOVANNI, LARA HOLLINGER,  
7 and JENNIFER BENNIE,  
8 on behalf of themselves and all  
9 others similarly situated,

10                                    Plaintiffs,

11                                    v.

12 DAIICHI SANKYO COMPANY, INC.,  
13                                    Defendant.

No. C 13-00581 CW

ORDER DENYING  
DEFENDANT'S MOTION  
TO TRANSFER VENUE  
(Docket No. 38)

14                                    \_\_\_\_\_/

15                                    Defendant Daiichi Sankyo, Inc. (DSI) moves, pursuant to 28  
16 U.S.C. § 1404(a), to transfer this action to the United States  
17 District Court for the District of New Jersey for the convenience  
18 of parties and witnesses and in the interests of justice.  
19 Plaintiffs Sara Wellens, Kelly Jensen, Jacqueline Pena, Bernice  
20 Giovanni, Lara Hollinger and Jennifer Bennie oppose the motion.  
21 The Court having considered the papers DENIES Defendant's Motion  
22 to Transfer Venue.

23                                    BACKGROUND

24                                    DSI, a pharmaceutical company, began operating in the United  
25 States in 2006. DSI is incorporated in Delaware and its principal  
26 place of business is Parispany, New Jersey. Benadon Decl. ¶ 1.

27                                    Plaintiffs are all California residents and have been  
28 employed by DSI in the state of California. Wellens Decl. ¶ 2;  
Jensen Decl. ¶ 2; Pena Decl. ¶ 4; Giovanni Decl. ¶ 4; Hollinger  
Decl. ¶ 4; Bennie Decl. ¶ 4. Plaintiffs seek to represent a  
California and nation-wide class of "current, former and future

1 female sales employees in a sales representative and first level  
2 district manager role . . . ." See Compl. ¶¶ 114, 116, 146, 152.

3 Plaintiffs allege systemic gender discrimination and  
4 disparate impact in pay, benefits and promotional and career  
5 advancement opportunities under Title VII of the Civil Rights Act  
6 of 1964, 42 U.S.C. §§ 2000(e), et seq., as amended; the Equal Pay  
7 Act of 1963, 29 U.S.C. § 201, et seq.; the California Fair  
8 Employment and Housing Act, Cal. Gov't Code § 12940, et seq.; the  
9 California Equal Pay Act, Cal. Lab. Code § 1197.5, and the  
10 California Unfair Business Practices Act, Cal. Bus. and Prof. Code  
11 §§ 17200, et seq. Plaintiffs contend that the common employment  
12 policies, practices and actions that underpin Plaintiffs' pay,  
13 promotion and pregnancy/caregiver employment discrimination claims  
14 were implemented, and the effects felt, in California, not New  
15 Jersey. Wellens Decl. ¶ 7. DSI responds that this may be true  
16 for named Plaintiffs' individual claims, but not for Plaintiffs'  
17 nationwide class action.

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  
24 case-by-case basis, considering factors of convenience and  
25 fairness. See Stewart Org. Inc. v. Ricoh Corp., 487 U.S. 22, 29  
26 (1988); Sparling v. Hoffman Constr. Co., 864 F.2d 635, 639 (9th  
27 Cir. 1988). Factors the court may consider include (1) the  
28 plaintiff's choice of forum; (2) convenience of the parties;

1 (3) convenience of the witnesses; (4) relative ease of access to  
2 the evidence; (5) familiarity of each forum with the applicable  
3 law; (6) feasibility of consolidation with other claims; (7) any  
4 local interest in the controversy; and (8) the relative court  
5 congestion and time to trial in each forum. Saleh v. Titan Corp.,  
6 361 F. Supp. 1152, 1156 (N.D. Cal. 2005) (citing Jones v. GNC  
7 Franchising, Inc., 211 F.3d 495, 498-99 (9th Cir. 2000), and  
8 Decker Coal Co. v. Commonwealth Edison Co., 805 F.2d 834, 843 (9th  
9 Cir. 1986)).

10 The movant bears the burden of justifying the transfer by a  
11 strong showing of inconvenience. Decker Coal, 805 F.2d at 843.  
12 The motion may be denied if the increased convenience to one party  
13 is offset by the added inconvenience to the other party. Id. As  
14 a general rule, the plaintiff's choice of forum is given  
15 significant weight and will not be disturbed unless other factors  
16 weigh substantially in favor of transfer. See 28 U.S.C.  
17 § 1404(a). However, when the plaintiff represents a class that  
18 includes members in other fora, the plaintiff's choice of forum is  
19 given less weight. Lou v. Belzberg, 834 F.2d 730, 739 (9th Cir.  
20 1987).

21 Title 42 U.S.C. § 2000e-5(f)(3) provides that Title VII  
22 cases:

23 may be brought in any judicial district in the  
24 State in which the unlawful employment practice is  
25 alleged to have been committed, in the judicial  
26 district in which the employment records relevant  
27 to such practice are maintained and administered,  
28 or in the judicial district in which the aggrieved  
person would have worked but for the alleged  
unlawful employment practice, but if the  
respondent is not found within any such district,  
such an action may be brought within the judicial

1 district in which the respondent has his principal  
2 office. For purposes of sections 1404 and 1406 of  
3 Title 28, the judicial district in which the  
4 respondent has his principal office shall in all  
5 cases be considered a district in which the action  
6 might have been brought.

7 DISCUSSION

8 Neither Plaintiffs nor DSI denies that this action could have  
9 been brought in the District of New Jersey, but they vigorously  
10 contest which forum is most convenient for the parties and  
11 witnesses and which promotes the interest of justice.

12 As a preliminary matter, DSI is correct that "the analysis  
13 prescribed for section 1404(a) transfers governs in spite of the  
14 fact that a case includes Title VII allegations," and "ample case  
15 law supports the basic proposition that the statute does not  
16 prohibit transfers away from a plaintiff's chosen forum." Ellis  
17 v. Costco Wholesale Corp., 372 F. Supp. 2d 530, 537 (N.D. Cal.  
18 2005), overruled in part on other grounds by Ellis v. Costco  
19 Wholesale Corp., 657 F.3d 970, 988 (9th Cir. 2011). However,  
20 Plaintiffs are correct that the Title VII venue provision  
21 "influences the contours of the section 1404(a) analysis." Ellis,  
22 372 F. Supp. 2d at 537.

23 I. Plaintiffs' Choice of Forum

24 The parties disagree as to the level of deference to be given  
25 to Plaintiffs' choice of forum.

26 Plaintiffs maintain that their choice of forum should be  
27 given deference because their allegations arise under Title VII's  
28 special provision and because the named Plaintiffs have worked in  
California. The Ninth Circuit has held that "the effect of Title  
VII's venue provision is to allow suit in the judicial district in

1 which the plaintiff worked." Passantino v. Johnson & Johnson  
2 Consumer Products, Inc., 212 F.3d 493, 504 (9th Cir. 2000).

3 Moreover, "a plaintiff's choice of forum is entitled to greater  
4 deference where a case arises under Title VII." Ellis, 372 F.  
5 Supp. 2d at 537.

6 However, DSI argues that Plaintiffs' choice of forum should  
7 not be given "greater deference" under Title VII, because  
8 Plaintiffs' suit is brought as a nationwide class and collective  
9 action. "[W]here there are hundreds of potential plaintiffs,  
10 . . . all of whom could with equal show of right go into their  
11 many home courts, the claim of any one plaintiff that a forum is  
12 appropriate . . . is considerably weakened." Koster v. Am.  
13 Lumbermen's Mut. Cas. Co., 330 U.S. 518, 524 (1947). When  
14 plaintiffs represent a class, their choice of forum is given less  
15 weight. Lou, 834 F.2d 730, 739. DSI contends that Plaintiffs'  
16 choice of forum is weakened because California will not be a  
17 favored forum for many of the class members from different states.  
18 Def. Mot. 8:12-17.

19 Koster and Lou are distinguishable because Plaintiffs' claims  
20 arise under Title VII, which is governed by a more permissive  
21 standard of evaluation that applies deference in class action  
22 suits as well as individual actions. Ellis, 372 F. Supp. 2d at  
23 537 ("Where venue is governed by a more permissive standard, a  
24 plaintiff's choice of forum is entitled to greater deference as a  
25 matter of law, even where that case is brought as a class  
26 action.").

27 DSI also asserts that, because Plaintiffs' nationwide  
28 allegations against DSI contend that discrimination resulted from

1 "centralized control" by individuals who worked at corporate  
2 headquarters in New Jersey, venue is more proper in New Jersey.  
3 Def. Reply 4:5-7. Plaintiffs counter that all of the named  
4 Plaintiffs live and work in California and the effects of DSI's  
5 alleged discriminatory policies, practices and actions were  
6 implemented in California and felt by Plaintiffs in California.  
7 Pl's Opp. 2:12-14.

8 The Ninth Circuit has held that "unless the balance of  
9 factors is strongly in favor of the defendants, the plaintiff's  
10 choice of forum should rarely be disturbed." Sec. Investor  
11 Protection Corp. v. Vigman, 764 F.2d 1309, 1317 (9th Cir. 1985).  
12 "Congress expanded the available fora to plaintiffs grieving civil  
13 rights violations, thereby expressing intent to broaden a Title  
14 VII plaintiff's choice of forum." Ellis, 372 F. Supp. 2d at 537.  
15 The Court will give deference to Plaintiffs' choice of forum and  
16 this factor weighs against transfer.

17 II. Convenience of the Parties

18 The parties dispute which venue is the most convenient forum.  
19 DSI asserts that the most convenient venue is New Jersey because  
20 ten of the twelve additional opt-in Plaintiffs do not live in  
21 California and Plaintiffs' allegations of a "centralized  
22 predominately male sales leadership team" will necessitate  
23 testimony from several of DSI's New Jersey-based human resources,  
24 sales and business leaders, all of whom work and reside in or  
25 around the District of New Jersey. Def. Mot. 9:1-7.

26 However, Plaintiffs respond that all named Plaintiffs reside  
27 in, work or have worked in California. Plaintiffs argue that to  
28 require them to travel across the country when they have familial

1 obligations in the state of California would cause them hardship  
2 and would shift the inconvenience from DSI to themselves. Pl's  
3 Opp. 14:23-26; see Gelber v. Leonard Wood Mem'l for the  
4 Eradication of Leprosy, No. C 07-01785, 2007 U.S. LEXIS 47535  
5 (N.D. Cal. 2007) (citing Jumara v. State Farm Ins. Co., 55 F.3d  
6 873, 879 (3d Cir. 1995)). Where the defendant attempts to shift  
7 the inconvenience—and disproportionately so—onto plaintiff,  
8 transfer must be denied. Decker Coal, 805 F.2d at 843. The Court  
9 finds transfer would disproportionately shift the inconvenience  
10 from DSI, which is a major corporation that does business in  
11 California and has litigated in California, to Plaintiffs. Thus,  
12 this factor weighs against transfer.

13 III. Convenience of the Witnesses

14 The parties disagree as to which forum would be most  
15 convenient for the parties' witnesses. The convenience of  
16 witnesses is often the most important factor in deciding whether  
17 to transfer an action. Getz v. Boeing Co., 547 F. Supp. 2d 1080,  
18 1083 (N.D. Cal. 2008).

19 DSI's potential witnesses are employees or officers of DSI  
20 and reside in the District of New Jersey. Def. Mot. 9:6. The  
21 Court, however, discounts inconvenience to the parties' employees,  
22 whom the parties can compel to testify. STX, Inc. v. Trik Stik,  
23 Inc., 708 F. Supp. 1551, 1556 (N.D. Cal. 1988) (discounting  
24 inconvenience to witnesses when they are employees who can be  
25 compelled to testify).

26 A majority of Plaintiffs' potential witnesses, some of whom  
27 are non-party witnesses, reside in California. Pl's Opp. 16:1-3.  
28 The convenience of witnesses includes "a separate but related

1 concern, the availability of compulsory process to bring unwilling  
2 witnesses live before the jury." Brackett v. Hilton Hotels Corp.,  
3 619 F. Supp. 2d 810, 820 (N.D. Cal.). Plaintiffs argue that, if  
4 DSI's transfer motion is granted, they may lose their non-party  
5 witnesses because the witnesses would not be within New Jersey's  
6 subpoena power. Pl's Opp. 16:7-10. DSI argues that Plaintiffs  
7 have "cobbled up" these non-party witnesses residing in California  
8 for the purposes of defeating the transfer motion. Def. Reply  
9 10:24-26. However, DSI fails to provide supporting evidence for  
10 this charge. This factor weighs against transfer because  
11 Plaintiffs would be prejudiced by not being able to compel their  
12 non-party witnesses to testify in New Jersey.

13 IV. Ease of Access to Sources of Proof

14 The parties disagree as to whether the location of relevant  
15 records favors transfer. DSI argues that this factor weighs in  
16 favor of transfer because the electronically stored information  
17 (ESI) and hard copy documents relevant to the allegations in  
18 Plaintiffs' complaint are primarily maintained at DSI's corporate  
19 headquarters within the District of New Jersey. Def. Reply 13:24-  
20 25. These records include personnel files, job descriptions,  
21 promotional materials, policies and procedures (including those  
22 relating to employment, compensation and benefit plans and  
23 documents). Def. Mot. 12:6-10; Benadon Decl. ¶ 6.

24 Plaintiffs admit that key evidence can be found in New  
25 Jersey. However, Plaintiffs argue the location of the ESI is  
26 irrelevant because this evidence can be transferred without grave  
27 inconvenience through modern technology. Pl's 21:15-16. "Given  
28 technological advances in document storage and retrieval,



1 transporting documents between districts does not generally create  
2 a burden." Brackett, 619 F. Supp. 2d at 820.

3 The Court finds that the burden on DSI of transferring the  
4 records to California would be minimal.

5 V. Remaining Factors

6 A. State's Interest in the Controversy

7 The parties dispute whether New Jersey or California has a  
8 greater interest in this controversy. An important consideration  
9 in transfer of venue disputes is the "local interest in having  
10 local controversies decided at home." Decker Coal, 805 F.2d at  
11 843. DSI argues that the local interest in this controversy is  
12 either neutral or favors transfer to New Jersey. Def. Mot. 12:12-  
13 14. DSI argues that although Plaintiffs bring California claims,  
14 putative class members reside outside of the State and the  
15 challenged policies and practices "emanate" from DSI's  
16 headquarters in New Jersey—thus favoring transfer to New Jersey.  
17 Def. Mot. 12:15-22.

18 However, Plaintiffs respond that, because all named  
19 Plaintiffs have worked, resided and allegedly been subjected to  
20 DSI's discriminatory policies in the state of California,  
21 California has a strong public interest in deciding this  
22 controversy involving its citizens. Lockman Foundation v.  
23 Evangelical Alliance Mission, 930 F.2d 764, 771 (9th Cir. 1991).  
24 Plaintiffs argue that California's interest in protecting its  
25 citizens prevails because named Plaintiffs have filed actions  
26 under California's Fair Employment and Housing Act and other  
27 California statutes. Pl's Opp. 19:7-13.

28

1 The Court finds that both states have a relatively equal  
2 interest in this matter and views this factor as neutral.

3 B. Court's Familiarity with the Law

4 Plaintiffs assert that a Northern District of California  
5 court is more familiar with California law underlying Plaintiffs'  
6 state class claims and therefore transfer should be denied. Pl's  
7 Opp. 18:12-13. However, "other federal courts are capable of  
8 applying California law." Foster v. Nationwide Mut. Ins. Co.,  
9 2007 U.S. Dist. LEXIS 95240, at \*15 (N.D. Cal.). In addition,  
10 "where a federal court's jurisdiction is based on the existence of  
11 a federal question, as it is here, one forum's familiarity with  
12 supplemental state law claims should not override other factors  
13 favoring a different forum." Id. at \*16.

14 The Court finds that although it may be more familiar with  
15 Plaintiffs' state law claims, there is no reason to believe that  
16 the New Jersey court could not successfully apply California law.  
17 The Court weighs this factor as neutral in the section 1404  
18 analysis.

19 C. Districts' Judicial Efficiency

20 The parties disagree whether transferring this case to the  
21 District of New Jersey would promote judicial efficiency. DSI  
22 argues transferring this matter to New Jersey will not cause any  
23 significant delay and a transfer may promote judicial efficiency  
24 because the District of New Jersey moves cases to disposition more  
25 quickly. Def. Mot. 13:13-15. Judges in the District of New  
26 Jersey handle an average of 570 cases per year compared to 602  
27 cases heard per year in the Northern District of California. Def.  
28 Reply 14:12-13; see Chukwu Decl. ¶ 2, Ex. 1.

1 Plaintiffs contend that if this Court is to consider  
2 congestion, the focus should be the median time from the filing to  
3 trial. Pl's Opp. 22:11-12. In the Northern District, the median  
4 time from filing to trial is 32.7 months and in the District of  
5 New Jersey the median time from filing is 35.6 months. Chukwu  
6 Decl. ¶ 2, Ex. 1.

7 The Court finds that this factor is neutral because the  
8 backlogs are not disproportionate taking either method into  
9 consideration.

10 VI. Balancing of Factors

11 DSI fails to meet its burden of establishing that the balance  
12 of inconveniences weighs heavily in favor of transfer to the  
13 District of New Jersey. As noted above, Plaintiffs' choice of  
14 forum is afforded deference, which is increased because they  
15 allege Title VII claims. Accordingly, Plaintiffs' choice of forum  
16 will not be disturbed.

17 CONCLUSION

18 For the forgoing reasons, Defendant's Motion to Transfer  
19 Venue (Docket No. 38) is DENIED.

20 IT IS SO ORDERED.

21  
22 Dated: 6/25/2013

  
CLAUDIA WILKEN  
United States District Judge

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