

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

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4 LARRY AMBRIZ, SALVADOR CARRILLO,  
5 MARCO A. CHAVEZ, RANDALL  
6 COURTNEY, DANIEL MALDONADO, MARK  
7 A. RODRIGUEZ, SR., ALEJANDRO  
8 VEGA, DOUGLAS VIVERO, DAVID  
9 CINTAT, MANUEL SALAZAR, HERSCHEL  
10 SURVINE III, EDWIN PUQUIRRE,

No. C 14-1041 CW

ORDER GRANTING  
MOTION TO TRANSFER  
AND DENYING MOTION  
TO DISMISS AS MOOT

11                                    Plaintiffs,

12                                    v.

13 MATHESON TRI-GAS,

14                                    Defendant.

15 \_\_\_\_\_/

16 Plaintiffs Larry Ambriz, Salvador Carrillo, Marco A. Chavez,  
17 Randall Courtney, Daniel Maldonado, Mark A. Rodriguez, Sr.,  
18 Alejandro Vega, Douglas Vivero, David Cintat, Manuel Salazar,  
19 Herschel Survine III, and Edwin Puquirre brought this putative  
20 wage and hour class action on behalf of themselves and other  
21 similarly-situated truck drivers currently or formerly employed by  
22 Defendant Matheson Tri-Gas, Inc. Defendant now moves to dismiss  
23 this action under Federal Rule of Civil Procedure 12(b)(3) for  
24 improper venue or, alternatively, to transfer the action to the  
25 Central District of California under 28 U.S.C. § 1404. Plaintiffs  
26 oppose. Pursuant to Civil Local Rule 7-11(b), the Court  
27 determined that this case was suitable for disposition without  
28 oral argument. Having considered the papers, the Court GRANTS the  
motion to transfer and DENIES the motion to dismiss as MOOT.

1 BACKGROUND

2 Defendant is a Delaware corporation, headquartered in Basking  
3 Ridge, New Jersey. Timmons Decl. ¶ 4. Defendant operates  
4 internationally and has several branch locations in both northern  
5 and southern California, including: Los Nietos, Menlo Park,  
6 Newark, Paso Robles, Rancho Cucamonga, Riverside, Salinas, San  
7 Jose, San Marcos, Santa Cruz, Santa Maria, Santa Rosa, Ukiah,  
8 Sacramento, Vacaville, Vernon, and Irwindale. Id. ¶ 6.

9 The named Plaintiffs are truck drivers employed by Defendant.  
10 All of the named Plaintiffs reside in Los Angeles County, which is  
11 situated within the Central District of California. Tamborrino  
12 Decl. ¶¶ 7-28, 30-31. At all relevant times, the named Plaintiffs  
13 were based out of Defendant's Vernon and Rancho Cucamonga  
14 locations, where they were supervised directly by on-site  
15 managers. Id. ¶¶ 7-9. The named Plaintiffs frequently drive  
16 routes spanning throughout California, including the Northern  
17 District of California. Maldonado Decl. ¶¶ 4-7. All of  
18 Defendant's dispatch locations purportedly set their own  
19 attendance and break-recording policies and practices. Tamborrino  
20 Decl. ¶¶ 10-11. Each location maintains its own electronic and  
21 hard-copy timesheets; for example, the Vernon location has hard-  
22 copy timesheets kept on site. Id. ¶ 6, 29.

23 Plaintiffs brought this suit against Defendant, alleging the  
24 following causes of action: (1) failure to provide meal periods as  
25 required by California Labor Code §§ 226.7 and 512 and Wage Order  
26 No. 9-2001, (2) failure to provide rest breaks as required by the  
27 same, (3) violation of California Labor Code § 2699 of the Private  
28 Attorney General Act (PAGA), (4) violation of Business &

1 Professions Code § 17200, and (5) waiting time penalties under  
2 California Labor Code §§ 201-203. Plaintiffs seek to represent  
3 "all current and former California-based truck drivers employed by  
4 Matheson four years prior to the filing" of the complaint. First  
5 Amended Complaint (FAC) ¶ 28.

6 DISCUSSION

7 Defendant argues that the case should be transferred to the  
8 Central District of California, which is a more convenient forum.  
9 For the convenience of the parties and witnesses and in the  
10 interest of justice, a district court may transfer any civil  
11 action to another district where it may have been brought. 28  
12 U.S.C. § 1404(a). This case could have been filed in the Central  
13 District. See 28 U.S.C. § 1332; 28 U.S.C. § 1391(b).

14 The court makes an "individualized, case-by-case  
15 consideration of convenience and fairness." Jones v. GNC  
16 Franchising, Inc., 211 F.3d 495, 498 (9th Cir. 2000). In Jones,  
17 the Ninth Circuit provided a number of factors that may be  
18 considered: (1) the location where the relevant events occurred,  
19 (2) the forum that is most familiar with the governing law,  
20 (3) the plaintiff's choice of forum, (4) the respective parties'  
21 contacts with the forum, (5) the contacts relating to the  
22 plaintiff's cause of action in the chosen forum, (6) the  
23 differences in the costs of litigating in the two forums, (7) the  
24 availability of compulsory process to compel attendance of  
25 unwilling non-party witnesses, and (8) the ease of access to  
26 sources of proof. Id. The party seeking transfer bears the  
27 burden of proof and generally "must make a strong showing of  
28 inconvenience to warrant upsetting the plaintiff's choice of

1 forum." Decker Coal Co. v. Commonwealth Edison Co., 805 F.2d 834,  
2 843 (9th Cir. 1986). This is because section 1404(a) "provides  
3 for transfer to a more convenient forum, not to a forum likely to  
4 prove equally convenient or inconvenient." Van Dusen v. Barrack,  
5 376 U.S. 612, 645-46 (1964).

6 1. Plaintiffs' choice of forum and the parties' relevant  
7 contacts to the forum

8 Defendant argues that Plaintiffs' choice of forum should be  
9 given less weight. When "an individual brings a derivative suit  
10 or represents a class, the named plaintiff's choice of forum is  
11 given less weight." Lou v. Belzberg, 834 F.2d 730, 739 (9th Cir.  
12 1987) (citations omitted). Moreover, where the plaintiff does not  
13 reside in the forum, or "the operative facts have not occurred  
14 within the forum and the forum has no interest in the parties or  
15 subject matter, [the] plaintiff's choice is entitled to only  
16 minimal consideration." Park v. Dole Fresh Vegetables, Inc., 964  
17 F. Supp. 2d 1088, 1094 (N.D. Cal. 2013) (quoting Lou, 834 F.2d at  
18 739).

19 Because Plaintiffs seek to represent a class and do not  
20 reside in this district, their choice of forum is not entitled to  
21 great weight. The named Plaintiffs do not reside in the Northern  
22 District and thus cannot claim party convenience. While some of  
23 the putative class members reside in this district, the general  
24 rule is that only the named Plaintiffs' residence is relevant to  
25 considerations of convenience. See Levine v. Entrust Grp., Inc.,  
26 2012 WL 6087399, at \*4 (N.D. Cal.).

27 Plaintiffs draw attention to the fact that they drove routes  
28 running through this district and as a result some alleged meal

1 and rest break violations took place here. But Plaintiffs often  
2 drove routes in the Central District, as well. Moreover, the  
3 management decisions causing the alleged violations were made by  
4 branch location managers in the Central District. These policies  
5 are central to Plaintiffs' claims. A substantial portion of the  
6 operative facts occurred in the Central District. Because  
7 Plaintiffs do not reside here and most of the operative facts  
8 occurred elsewhere, their legitimate interest in this forum is  
9 minimal.

10 2. The convenience of non-party witnesses and the ease of  
11 access to sources of proof

12 The convenience of non-party witnesses should be given  
13 significant consideration because they may be compelled to testify  
14 unwillingly. Strigliabotti v. Franklin Res., Inc., 2004 WL  
15 2254556, at \*17 (N.D. Cal.). Here, the named Plaintiffs' on-site  
16 managers have relevant information about Plaintiffs' work  
17 schedules and are likely to testify as witnesses. Because the  
18 named Plaintiffs' on-site managers all reside in the Central  
19 District, it will be more convenient for them to travel to a  
20 Central District courthouse rather than a Northern District one.  
21 As for sources of proof, technological developments have reduced  
22 the burden of retrieving and transporting documents, which has  
23 diminished the importance of this factor in the transfer analysis.  
24 David v. Alphin, 2007 WL 39400, at \*3 (N.D. Cal.). Nevertheless,  
25 each branch location maintains hard-copy timesheets regarding its  
26 employees. Because these highly relevant records are stored  
27 within the Central District, this factor favors transfer. Harms

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1 v. Experian Info. Solutions, Inc., 2007 WL 1430085, at \*2 (N.D.  
2 Cal.).

3 3. The forum's familiarity with the governing law and  
4 relative court congestion

5 Both forums are federal district courts are located in  
6 California, and so they are equally familiar with the applicable  
7 California and federal law. The difference in court congestion  
8 between the two districts is insignificant. These factors are  
9 therefore neutral.

10 4. The comparative costs of litigating in the two forums

11 Plaintiff argues that the comparative financial abilities of  
12 the parties should be considered and the costs of litigation  
13 should fall to Defendant, a large corporation which is better  
14 equipped to withstand the costs of litigation than the individual  
15 truck drivers. This would be persuasive if Plaintiffs showed that  
16 litigating in this forum would be more cost efficient than  
17 litigating in the Central District. But Plaintiffs all reside and  
18 work in the Central District. Their counsel also is located in  
19 the Central District. Litigating in the Central District would  
20 likely be more cost effective for both parties. See Van Dusen,  
21 376 U.S. at 616 ("the purpose of the section is to prevent the  
22 waste of time, energy and money and to protect litigants,  
23 witnesses and the public against unnecessary inconvenience and  
24 expense") (internal quotation marks omitted). Accordingly, this  
25 factor strongly favors transfer.

26 On balance, the interests of justice and convenience outweigh  
27 the named Plaintiffs' original choice of forum. The Court  
28 transfers the case to the Central District of California because

1 it will be a more convenient forum for both parties as well as the  
2 non-party witnesses involved.

3 IT IS SO ORDERED.

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5 Dated: 6/9/2014

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7 CLAUDIA WILKEN  
8 United States District Judge  
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