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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ROSALINDA M. GANDARA,  
Plaintiff,  
v.  
NESTLE PURINA PETCARE  
COMPANY, *et al.*,  
Defendants.

Case No. 13-cv-487-L(WMC)  
**ORDER GRANTING MOTION TO  
TRANSFER VENUE TO THE  
NORTHERN DISTRICT OF  
ILLINOIS [DOC. 9]**

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On March 4, 2013, Defendants Nestle Purina PetCare Company (“Purina”) and Waggin’ Train, LLC filed a motion to transfer this action to the Northern District of Illinois under to 28 U.S.C. § 1404(a). Plaintiff Rosalinda M. Gandara opposes.

The Court found this motion suitable for determination on the papers submitted and without oral argument in accordance with Civil Local Rule 7.1(d.1). (Doc. 16.) For the following reasons, the Court **GRANTS** Defendants’ motion to transfer this action to the Northern District of Illinois.

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1 **I. BACKGROUND**

2 This is a consumer class action. (Compl. ¶ 1.) Plaintiff is a resident of California. (*Id.* ¶  
3 3.) Purina is a Missouri corporation with its principle place of business in St. Louis, Missouri.  
4 (*Id.* ¶ 4.) Waggin’ Train is a Delaware limited liability company with its principle place of  
5 business in St. Louis, Missouri, and a wholly owned subsidiary of Purina. (*Id.* ¶ 5.) Defendants  
6 market and sell Waggin’ Train® brand chicken jerky dog treats (hereinafter, “Chicken Jerky  
7 Treats”) allegedly containing illegal antibiotics in the State of California. (*Id.* ¶ 8.)

8 Plaintiff had been purchasing the Chicken Jerky Treats for the past four years in Wal-  
9 Mart stores located in San Diego County. (Compl. ¶ 10.) The United States Federal Drug  
10 Administration (“FDA”) investigated reports of dogs suffering from several maladies after  
11 consuming Chicken Jerky Treats and found that the products contained residue from antibiotics  
12 that Plaintiff believes cannot be sold without a prescription from a veterinarian. (*Id.* ¶ 12.)  
13 Additionally, Plaintiff alleges that some of these antibiotics are “not approved by the Federal  
14 Drug Administration for use in food animals[.]” (*Id.*) According to Plaintiff, she “suffered injury  
15 in fact by losing money as the result of her purchase of Waggin’ Train® brand Chicken Jerky  
16 Products, which she would have not purchased had she known that they contained illegal  
17 antibiotics.” (*Id.* ¶ 3.)

18 On January 25, 2013, Plaintiff initiated this action in the San Diego Superior Court. In her  
19 complaint, she alleges two causes of action: (1) Violation of the Consumers Legal Remedies Act  
20 (“CLRA”), California Civil Code § 1750; and (2) Violation of California’s Unfair Competition  
21 Law (“UCL”), California Business and Professions Code § 17200. On February 28, 2013,  
22 Defendants removed the action to this Court.

23 Defendants move to transfer this action to the United States District Court for Northern  
24 District of Illinois under 28 U.S.C. § 1404(a) where a consolidated, earlier-filed putative class  
25 litigation is pending. Plaintiff opposes.

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1 **II. LEGAL STANDARD**

2 Section 1404(a) of Title 28 of the United States Code provides that even when venue is  
3 proper, the court has discretion to transfer an action “[f]or the convenience of parties and  
4 witnesses, in the interest of justice, . . . to any other district or division where it might have been  
5 brought.” 28 U.S.C. § 1404(a). The purpose of this section is to “prevent the waste ‘of time,  
6 energy and money’ and to ‘protect litigants, witnesses and the public against unnecessary  
7 inconvenience and expense.’” *Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964) (quoting *Cont’l*  
8 *Grain Co. v. Barge F.B.L.-585*, 364 U.S. 19, 26-27 (1960)). The party requesting the transfer  
9 bears the burden of showing that the balance of conveniences weighs heavily in favor of the  
10 transfer in order to overcome the strong presumption in favor of the plaintiff’s choice of forum.  
11 *Piper Aircraft v. Reyno*, 454 U.S. 235, 255-56 (1981); *Decker Coal Co. v. Commonwealth*  
12 *Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986).

13 To support a motion to transfer under § 1404(a), the moving party must first show the  
14 proposed transferee court possesses subject matter jurisdiction over the action, the parties would  
15 be subject to personal jurisdiction in the transferee court, and venue would have been proper in  
16 the transferee court. *Hoffman v. Blaski*, 363 U.S. 335, 344 (1960); *A.J. Indus., Inc. v. United*  
17 *States Dist. Ct. for the Cent. Dist. of Cal.*, 503 F.2d 384, 386 (9th Cir. 1974). Once this threshold  
18 requirement has been established, the Court next looks at whether the convenience of parties and  
19 witnesses, and the interests of justice favor transfer. 28 U.S.C. § 1404(a). In the Ninth Circuit,  
20 courts weigh several considerations when determining whether transfer is appropriate: (1)  
21 plaintiff’s choice of forum; (2) convenience of the parties; (3) convenience of the witnesses and  
22 availability of compulsory process; (4) ease of access to the evidence; (5) feasibility of  
23 consolidation of other claims; (6) familiarity of each forum with the applicable law; (7) any local  
24 interest in the controversy; and (8) the relative court congestion and time to trial in each forum.  
25 *Decker Coal*, 805 F.2d at 843; *see Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498-99 (9th  
26 Cir. 2000), *cert. denied*, 531 U.S. 928 (2000).

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1 **III. DISCUSSION**

2 Plaintiff does not contest whether this action could have initially been brought in the  
3 Northern District of Illinois, nor is there a dispute over subject matter jurisdiction and whether  
4 the parties would be subject to personal jurisdiction in the transferee court. Thus, Defendants  
5 readily satisfy the threshold requirement of showing that the action could have been originally  
6 brought in the Northern District of Illinois. *See Hoffman*, 363 U.S. at 344; *A.J. Indus.*, 503 F.2d  
7 at 386.

8 Defendants instead begin by arguing that the transfer should be granted in the interest of  
9 justice and for the convenience of the parties and witnesses. (Defs.’ Mot. 11:19–19:8.) Plaintiff  
10 challenges these arguments. (Pl.’s Opp’n 4:22–9:4.) The Court addresses these issues below.

11  
12 **A. Possibility of Consolidation with Other Claims**

13 “The pendency of related actions in the transferee forum is a significant factor in  
14 considering the interest of justice factor.” *Jolly v. Purdue Pharma L.P.*, No. 05-CV-1452H, 2005  
15 WL 2439197, at \*5 (N.D. Cal. Oct. 19, 2010). Additionally, “[c]oncerns over judicial efficiency  
16 are paramount” when related actions are overlapping putative class actions. *Hawkins v. Gerber*  
17 *Prods. Co.*, No. 12-cv-465-MMA(JMA), 2013 WL 627066, at \*3 (S.D. Cal. Feb. 20, 2013)  
18 (quoting *Johansson v. Cent. Garden & Pet Co.*, No. C 10-03771 MEJ, 2010 WL 4977725, at \*2  
19 (N.D. Cal. Dec. 2, 2010)).

20 The claims in the pending consolidated Northern District of Illinois class action seek to  
21 recover the price of the product. *See Adkins et al. v. Nestle Purina PetCare Company et al.*, No.  
22 12-cv-2871 (N.D. Ill.). The *Adkins* plaintiffs argue that by offering the treats for sale as  
23 wholesome and safe for consumption, Purina falsely marketed the products to consumers. But  
24 here, Plaintiff seeks refunds for the Chicken Jerky Treat that she purchased based on  
25 Defendants’ alleged unlawful business practices under California law, which she contends is  
26 substantially different from the fraudulent-sale claim made in the *Adkins* complaint and thus  
27 cannot be combined. At the core, these allegations are strikingly similar and will require much of  
28 the same discovery. Pet owners will not buy treats that contain prohibited substances just as they

1 would not buy treats that are marketed as safe, when they are in fact not fit for consumption.

2 Furthermore, the Northern District of California recently transferred a putative class  
3 action to the Northern District of Illinois that contains the same claims asserted in this action.  
4 *See Matin v. Nestle Purina PetCare Company, et al.* No. 12-cv-6465-THE (N.D. Cal.).  
5 Specifically, the *Matin* plaintiffs assert claims under California’s CLRA and UCL, the same  
6 claims asserted by Plaintiff here, which Plaintiff conveniently overlooks in her attempt to  
7 distinguish the cases. The *Matin* plaintiffs’ complaint also involves the same product for these  
8 violations. As a result of the overlap between this action and the Northern District of Illinois’  
9 consolidated action, which now includes claims for violations of California’s CLRA and UCL, a  
10 transfer to the Northern District of Illinois would greatly reduce the cost of discovery and  
11 prevent inconsistent judgments. *See generally Van Dusen*, 376 U.S. at 616 (stating the purpose  
12 of § 1404(a) is to “prevent the waste of time, energy and money”); *see also Jolly*, 2005 WL  
13 2439197, at \*2.

14 Three similar cases against Defendants have already been consolidated and  
15 transferred—including two cases from the Northern District of California—and are currently  
16 pending in the Northern District of Illinois. This action similarly overlaps with the first-filed  
17 *Adkins* action. The products, core facts, and parties involved substantially overlap. Therefore, the  
18 Court finds that the transfer of this action to the Northern District of Illinois would serve the  
19 interest of justice by promoting judicial efficiency through consolidating pre-trial proceedings.  
20 *See Hawkins*, 2013 WL 627066, at \*2.

## 21 22 **B. Feasibility of Prejudicial Application of California Law**

23 Plaintiff contends that the Northern District of Illinois is ill-suited to interpret California  
24 law and that their attempt to do so will result in a prejudicial application. She is especially  
25 concerned with the “unique” nature of California’s UCL. While “it seems logical that ‘[a]  
26 California district court is more familiar with California law than district courts in other states’ . .  
27 . ‘courts in [one state] are fully capable of applying [another state’s] substantive law.’” *Hawkins*,  
28 2013 WL 627066, at \*5 (quoting *In re Ferrero Litig.*, 768 F. Supp. 2d 1074, 1081 (S.D. Cal.

1 2011); *Metz v. U.S. Life Ins. Co. in City of New York*, 674 F. Supp. 2d 1141, 1148 (C.D. Cal.  
2 2009)). The Court does not find that this concern outweighs the benefits that would be gained by  
3 having similar issues adjudicated by the same court.

4 Consequently, Plaintiff’s argument neglects the fact that several California actions have  
5 already been transferred to the Northern District of Illinois, so the court has already been  
6 familiarized with California law. The Northern District of California transferred the *Matin* action  
7 to the Northern District of Illinois, finding it capable of applying California law. This Court will  
8 follow the Northern District of California’s decision and defer to the Northern District of  
9 Illinois.

### 11 C. Convenience for the Parties and Witnesses

12 “The question of which forum will better serve the interest of justice is of predominant  
13 importance on the question of transfer, and the factors involving convenience of parties and  
14 witnesses are in fact subordinate.” *Madani v. Shell Oil Co.*, No. C07-04296 MJJ, 2008 WL  
15 268986, at \*2 (N.D. Cal. Jan. 30, 2008) (quotation marks omitted); *see also Mussetter Distrib.,*  
16 *Inc. v. DBI Beverage Inc.*, No. CIV 09-1442 WBS EFB, 2009 WL 1992356, at \*6 (E.D. Cal.  
17 July 8, 2009). “[T]he court should consider private and public interest factors affecting  
18 convenience of the forum.” *Decker Coal*, 805 F.2d at 843 (citing *Piper Aircraft Co. v. Reyno*,  
19 454 U.S. 235, 241 (1981)). Private factors include the “relative ease of access to sources of  
20 proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining  
21 attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to  
22 the action; and all other practical problems that make trial of a case easy, expeditious and  
23 inexpensive.” *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947). Public factors include “the  
24 administrative difficulties flowing from court congestion; the ‘local interest in having localized  
25 controversies decided at home’; the interest of having the trial of a diversity case in a forum that  
26 is at home with the law that must govern the action; the avoidance of unnecessary problems in  
27 conflict of laws, or in the application of foreign law; and the unfairness of burdening citizens in  
28 an unrelated forum with jury duty.” *Piper Aircraft*, 454 U.S. at 251 n.6 (quoting *Gulf Oil Corp.*,

1 330 U.S. at 509).

2 It is highly unlikely that the alleged thousands of members of the putative class will  
3 provide witness testimony in Illinois or anywhere else as Plaintiff suggests. (*See* Pl.'s Opp'n  
4 6:18–21.) Plaintiff's contention that Defendants will be inconvenienced also strains credulity.  
5 Defendants chose the Northern District of Illinois because they already face an action there and  
6 it is where many of the same required witnesses and documents for this case are currently  
7 located. (*Id.* at 6:21–7:4.) Defendants would not have chosen to request a transfer to the  
8 Northern District of Illinois if it would be a great inconvenience to them.

9 Moreover, any deference that Plaintiff is given for her choice of forum is substantially  
10 depleted since she brought her suit on behalf of a putative class. *See, e.g., Hawkins*, 2013 WL  
11 627066, at \*4. There are no other substantial ties to California that warrant denying the motion  
12 other than Plaintiff's initial purchase of the Chicken Jerky Treats, since discovery will be largely  
13 conducted outside of the state. Accordingly, the Court finds that the perceived inconvenience of  
14 the parties is insufficient to justify denying the transfer of venue. *See Van Dusen*, 376 U.S. at  
15 622 (noting that it is the role of a court to balance § 1404(a) factors in a case-by-case basis to  
16 promote convenience and fairness).

17  
18 **IV. CONCLUSION AND ORDER**

19 For the reasons set forth above, the Court **GRANTS** Defendants' motion to transfer  
20 venue. (Doc. 9.) The Clerk of the Court shall transfer this case to the Northern District of  
21 Illinois.

22 **IT IS SO ORDERED.**

23  
24 DATED: June 3, 2013

25   
26 M. James Lorenz  
United States District Court Judge

27 COPY TO:  
HON. WILLIAM MCCURINE, JR.  
UNITED STATES MAGISTRATE JUDGE  
28 ALL PARTIES/COUNSEL