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CINDI McCORMACK,

Plaintiff,

v.

MEDCOR, INC. a corporation;  
and DOES 1-100, inclusive,

Defendant.

No. 2:13-CV-02011 JAM CKD

**ORDER GRANTING DEFENDANT'S  
MOTION FOR CHANGE OF VENUE**

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This matter is before the Court on Defendant Medcor, Inc.'s ("Defendant" or "Medcor") Motion for Change of Venue (Doc. #10), pursuant to 28 U.S.C. § 1404(a). Plaintiff Cindi McCormack ("Plaintiff" or "McCormack") opposes the motion (Doc. #13). Defendant filed a reply (Doc. #17). For the following reasons, Defendant's motion is GRANTED.<sup>1</sup>

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<sup>1</sup> This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for May 7, 2014.

1 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

2 Plaintiff is an individual and a resident of Monterey  
3 County, California (which is located in the Northern District of  
4 California) Compl. ¶ 1. Defendant is an Illinois corporation,  
5 with its principal place of business in McHenry, Illinois.  
6 Notice of Removal ¶ 10. In 2003, Plaintiff began working for  
7 Defendant. Compl. ¶ 7. In February 2009, Plaintiff became  
8 Director of Operations, Practice Management, for Defendant.  
9 Compl. ¶ 8.

10 In December 2011, Plaintiff was "overcome by a nervous  
11 breakdown and was prescribed medical leave by her physician."  
12 Compl. ¶ 10. She requested and received leave pursuant to the  
13 Family and Medical Leave Act ("FMLA"). Compl. ¶ 10. She began  
14 her medical leave on December 19, 2011, and was scheduled to  
15 return on January 31, 2012. Compl. ¶ 10. In mid-January,  
16 Plaintiff's physician did not clear her to return to work and  
17 Plaintiff was given a new return date of February 19, 2012.  
18 Compl. ¶ 11.

19 On January 23, 2012, Defendant's Director of Human  
20 Resources, Julia Vera informed Plaintiff that, if she was unable  
21 to return to work by February 1, 2012, Defendant would experience  
22 "substantial economic injuries," and that Defendant would "begin  
23 recruiting [her] replacement." Compl. ¶ 12. On January 24,  
24 2012, Plaintiff spoke with Bennett Petersen, Defendant's Chief  
25 Operations Officer. Compl. ¶ 14. Plaintiff alleges that,  
26 despite the fact that she never resigned, Petersen sent out an  
27 email on January 27, 2012, announcing that Plaintiff "ha[d]  
28 decided to leave Medcor to pursue other opportunities."

1 Compl. ¶ 15. On several subsequent occasions, Plaintiff was in  
2 contact with both Vera and Petersen, but alleges that she did not  
3 resign and was terminated, in what Defendant characterized as a  
4 “business decision.” Compl. ¶ 16-20.

5 On August 20, 2013, Plaintiff filed the Complaint in San  
6 Joaquin County Superior Court apparently because her attorneys  
7 are located there. On September 26, 2013, Defendant removed the  
8 case to this Court (Doc. #1). The Complaint alleges the  
9 following causes of action: (1) “Retaliation for Taking Protected  
10 Medical Leave” in violation of the FMLA; (2) “Wrongful  
11 Termination in Violation of Public Policy;” (3) “Breach of  
12 Employment Contract;” (4) “Breach of Implied Covenant of Good  
13 Faith and Fair Dealing;” and (5) “Failure to Pay Wages upon  
14 Termination” in violation of the California Labor Code.

## 15 16 II. OPINION

### 17 A. Legal Standard

18 In pertinent part, 28 U.S.C. § 1404(a) provides that, “[f]or  
19 the convenience of parties and witnesses, in the interest of  
20 justice, a district court may transfer any civil action to any  
21 other district or division where it might have been brought[.]”  
22 A district court’s decision to transfer venue is reviewed for  
23 abuse of discretion. Lou v. Belzberg, 834 F.2d 730, 734 (9th  
24 Cir. 1987).

25 Analysis under § 1404(a) is two-fold. First, the moving  
26 party must establish that the matter “might have been brought” in  
27 the district to which transfer is requested. Metz v. U.S. Life  
28 Ins. Co. in City of New York, 674 F.Supp.2d 1141, 1145 (C.D. Cal.

1 2009). Second, courts must consider the following three factors:  
2 (1) convenience of the parties; (2) convenience of witnesses; and  
3 (3) the interests of justice. Metz, 674 F.Supp.2d at 1145. In  
4 analyzing the third factor, the "interests of justice," a number  
5 of considerations are relevant, including, but not limited to:  
6 (a) the plaintiff's choice of forum; (b) which forum is more  
7 familiar with the governing law; and (c) the relative court  
8 congestion in each forum. Metz, 674 F.Supp.2d at 1145.

9 B. The "District of Illinois"

10 Defendant requests transfer to the "District of Illinois."  
11 Mot. at 1. Unbeknownst to Defendant's counsel, there is no  
12 "District of Illinois." See U.S. Court Locator, (available at  
13 [http://www.uscourts.gov/court\\_locator.aspx](http://www.uscourts.gov/court_locator.aspx)). The state of  
14 Illinois is divided into three federal districts: the Northern  
15 District of Illinois, the Central District of Illinois, and the  
16 Southern District of Illinois. Id. Defendant Medcor's principal  
17 place of business is in McHenry, Illinois, which is located in  
18 the Northern District of Illinois. Notice of Removal ¶ 10.  
19 Accordingly, Defendant's motion is construed as requesting  
20 transfer to the Northern District of Illinois.

21 C. Discussion

22 Defendant must first establish that the matter "might have  
23 been brought" in the Northern District of Illinois. 28 U.S.C.  
24 § 1404(a). A civil action may be brought in "a judicial district  
25 in which any defendant resides, if all defendants are residents  
26 of the State in which the district is located[.]" 28 U.S.C.  
27 § 1391(b)(1). The sole Defendant in this case, Medcor, Inc.,  
28 resides in Illinois. Notice of Removal ¶ 10. Accordingly, the

1 matter might have been brought in the Northern District of  
2 Illinois, and the first prong of § 1404(a) is satisfied.

3 1. Convenience to the Parties

4 In exercising its discretion on a motion for change of  
5 venue, the Court must consider the relative convenience of the  
6 parties. Metz, 674 F.Supp.2d at 1145. In this case, the  
7 original forum of the Eastern District of California is far more  
8 convenient for Plaintiff, who is a resident of Monterey County,  
9 California. Compl. ¶ 1. Conversely, the Northern District of  
10 Illinois is far more convenient for Defendant, whose principal  
11 place of business is in Illinois. Notice of Removal ¶ 10. Thus,  
12 this factor does not weigh strongly in favor of either side.  
13 However, the Court may take into account the relative means of  
14 each party, and the inconvenience to a corporation is somewhat  
15 less significant than the inconvenience to an individual.  
16 Miracle v. N.Y.P. Holdings, Inc., 87 F.Supp.2d 1060, 1073 (D.  
17 Haw. 2000). Accordingly, this factor weighs slightly in favor of  
18 retaining the original forum.

19 2. Convenience to Witnesses

20 "The relative convenience to the witnesses is often  
21 recognized as the most important factor to be considered in  
22 ruling on a motion under § 1404(a)." Saleh v. Titan Corp., 361  
23 F.Supp.2d 1152, 1160 (S.D. Cal. 2005). Fittingly, the parties'  
24 central dispute is over whether the majority of witnesses live in  
25 Illinois or California. Defendant maintains that "[w]ith the  
26 exception of Plaintiff, all witnesses are based in Illinois."  
27 Mot. at 1. Plaintiff responds that "[t]he great majority of  
28 witnesses in this case - McCormack included - reside on the west

1 coast." Opp. at 1.

2 The case at bar is an employment discrimination case. Each  
3 cause of action in the Complaint alleges unlawful action by  
4 Defendant Medcor. For example, the first cause of action alleges  
5 that Defendant "discriminated and retaliated" against Plaintiff  
6 in violation of the FMLA. Compl. ¶¶ 25-30. The central dispute  
7 in this case will be whether Plaintiff was improperly terminated  
8 by Defendant because she took leave under the FMLA. Nearly all  
9 of the witnesses who can address that issue are Medcor employees  
10 who were involved in the termination of Plaintiff. As noted in  
11 the Petersen Declaration, these witnesses reside or work in  
12 Illinois. Petersen Declaration (Doc. #11) ¶¶ 24-40.

13 Accordingly, the Northern District of Illinois would be a more  
14 convenient forum for the witnesses in this case, and this factor  
15 strongly favors granting Defendant's motion to change venue.

16 Plaintiff's argument that "the great majority of witnesses"  
17 do not reside in Illinois is unavailing. Opp. at 1. Plaintiff  
18 supplies a declaration listing "the names of no fewer than  
19 fifteen other witnesses - former co-workers and family members -  
20 all of whom can testify to McCormack's enormous workload and how  
21 it contributed to her mental breakdown." Opp. at 5-6 (citing  
22 McCormack Declaration ¶¶ 5-19). Plaintiff also notes that "[h]er  
23 primary physician and psychotherapist - witnesses to her nervous  
24 breakdown and need for medical leave - both reside in Monterey  
25 County." Opp. at 5. However, Plaintiff does not explain why all  
26 (or any) of these witnesses would be called at trial.

27 "McCormack's enormous workload" and its role in her "mental  
28 breakdown" are not at issue in this employment discrimination

1 case. Indeed, Defendant acknowledges that Plaintiff's "health  
2 problem and her resulting need for time off are undisputed."  
3 Reply at 5. Furthermore, even if these facts were in dispute,  
4 the testimony of these witnesses would be largely cumulative.  
5 Each of Plaintiff's proposed witnesses would provide the same  
6 testimony: that Plaintiff had a "mental breakdown" while working  
7 for Defendant and needed medical leave. McCormack Declaration  
8 ¶¶ 3-19. As noted above, the central dispute is whether  
9 Plaintiff was improperly terminated for taking leave under the  
10 FMLA, and the vast majority of witnesses who can address that  
11 dispute are Medcor employees who work and reside in Illinois.

### 12 3. Interests of Justice

13 A number of considerations can play a role in the Court's  
14 "interests of justice" analysis. See Metz v. U.S. Life Ins. Co.  
15 in City of New York, 674 F. Supp. 2d 1141, 1145-46 (C.D. Cal.  
16 2009) (comprehensively listing all of the factors which might be  
17 relevant to this analysis). However, the only three  
18 considerations relevant in the current case are Plaintiff's  
19 choice of forum, which forum is more familiar with the governing  
20 law, and the relative court congestion in each forum.

21 As is always the case, Plaintiff's choice of forum is  
22 entitled to consideration. Metz, 674 F.Supp.2d at 1145.  
23 However, the Ninth Circuit has instructed that, "[i]f the  
24 operative facts have not occurred within the forum of original  
25 selection . . . the plaintiff's choice is entitled to only  
26 minimal consideration." Pac. Car & Foundry Co. v. Pence, 403  
27 F.2d 949, 954 (9th Cir. 1968). Here, the "operative facts" did  
28 not occur in California. Rather, the decision to terminate

1 Plaintiff (and any accompanying discussions or meetings) occurred  
2 at Defendant's office in Illinois. Plaintiff's contention that  
3 her "termination - giving rise to every cause of action in this  
4 case - occurred in Monterey County" is not supported by the  
5 record. Opp. at 4. Although Plaintiff resided in California  
6 when she was terminated, the decision to terminate her was made  
7 by individuals in Illinois. In addition, Plaintiff's attorneys  
8 chose the original forum, in part, because it was convenient to  
9 them, not necessarily to their client. Plaintiff resides in the  
10 Northern District of California. The Eastern District of  
11 California has no connection to this case other than Plaintiff's  
12 attorneys are located here. Accordingly, Plaintiff's choice of  
13 forum is entitled to only minimal consideration.

14 Consideration of which forum "is most familiar with the  
15 governing law" is also appropriate. Metz, 674 F.Supp.2d at 1145.  
16 As noted by Plaintiff, at least two causes of action in the  
17 Complaint will require the presiding court to interpret and apply  
18 California state law. Opp. at 6. However, a central element of  
19 the Complaint is based on a federal statute, the FMLA. Compl.  
20 ¶ 25-30. A federal district court in the Northern District of  
21 Illinois is equally familiar with the FMLA as this Court.  
22 Moreover, courts are routinely required to interpret the laws of  
23 other states, and this is well within the capability of a federal  
24 district court in the Northern District of Illinois.  
25 Accordingly, the presence of California state law claims weighs  
26 only slightly in favor of retaining the original forum.

27 Finally, the Court considers the "relative court congestion  
28 in the two forums." Metz, 674 F.Supp.2d at 1145. The Eastern



1 District of California is significantly more congested than the  
2 Northern District of Illinois. See U.S. District Courts -  
3 Weighted and Unweighted Filings per Authorized Judgeship, Table  
4 X-1A, at 3, 4 (available at [http://www.uscourts.gov/Statistics/](http://www.uscourts.gov/Statistics/JudicialBusiness/2013/us-district-courts.aspx)  
5 [JudicialBusiness/2013/us-district-courts.aspx](http://www.uscourts.gov/Statistics/JudicialBusiness/2013/us-district-courts.aspx)). Although not  
6 dispositive, this consideration weighs in favor of granting  
7 Defendant's motion to transfer.

8 For the reasons discussed above, the "interests of justice"  
9 factor does not weigh heavily in favor of either party. The  
10 minimal consideration given to Plaintiff's choice in forum and  
11 this Court's familiarity with California state law is offset by  
12 the relative court congestion in the Eastern District of  
13 California.

14 4. Final Analysis

15 The first and third factors of "convenience to the parties"  
16 and "interests of justice" do not weigh strongly in favor of  
17 either party. Conversely, the "most important factor" of  
18 "convenience to witnesses" weighs strongly in favor of granting  
19 Defendant's motion to transfer. Metz, 674 F.Supp.2d at 1145.  
20 Accordingly, transfer to the Northern District of Illinois is  
21 appropriate.

22  
23 III. ORDER

24 For the reasons set forth above, the Court GRANTS  
25 Defendant's Motion for Change of Venue:

26 IT IS SO ORDERED.

27 Dated: May 14, 2014

  
JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE