

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

EDDIE NUNEZ,)	
)	
Plaintiff,)	
)	
v.)	Case No. 15-3259-EFM-TJJ
)	
JAMES HEIMGARTNER, et al.,)	
)	
Defendants.)	
_____)	

MEMORANDUM AND ORDER

This matter is before the Court on Defendants James Heimgartner, Tammy Martin, Kevin Vick, Ali Plett, Roland Potter, William Wiedener, and Deanna Morris’s Motion to Determine Place of Trial (ECF No. 83).¹ In their motion, Defendants seek a determination that Wichita, Kansas is the appropriate place for trial. Plaintiff has not filed a response.

Plaintiff filed his *pro se* complaint on November 16, 2015, with no designation of place of trial. The first mention of trial location was in the parties’ planning report submitted to the undersigned Magistrate Judge in advance of the Scheduling Conference. The report noted that Plaintiff (now represented by appointed counsel) wants trial to be held in Kansas City, while the State Defendants want it to be held in Wichita. The Scheduling Order noted the inconsistent designations and set a deadline for any Defendant to file a motion seeking a change of place of trial. The State Defendants timely filed their motion.

¹ Defendants Heimgartner, Martin, Vick, Plett, Potter, and Wiedener identify themselves as “State Defendants.” Defendant Morris, who is not an employee of the State of Kansas, is separately represented.

A plaintiff's choice of forum is generally entitled to great deference,² but not when the plaintiff does not reside in the chosen location.³ The court is not bound by the parties' request for place of trial and may determine the location on motion or in its discretion.⁴ In considering a motion for change of location, the most important factor is the convenience of witnesses.⁵

In this case, Plaintiff does not dispute that his residence in Hutchinson is closer to Wichita than to Kansas City, and the witnesses are primarily located in El Dorado and Hutchinson. Defendants argue the only tie to Kansas City is the location of Plaintiff's counsel. While the Court is not insensitive to inconvenience to appointed counsel, their lack of response to Defendants' motion indicates their appreciation that the relevant factors point to moving the place of trial to Wichita.

IT IS THEREFORE ORDERED THAT Defendants James Heimgartner, Tammy Martin, Kevin Vick, Ali Plett, Roland Potter, William Wiedener, and Deanna Morris's Motion to Determine Place of Trial (ECF No. 83) is GRANTED. The jury trial in this case shall be held in Wichita, Kansas.

IT IS SO ORDERED.

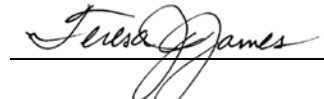
² *E.g.*, *Huggins v. Hayes Co.*, No. 10-cv-2050-CM-GLR, 2010 WL 2131969, at *1 (D. Kan. May 27, 2010).

³ *Benson v. Hawker Beechcraft Corp.*, No. 07-2171-JWL, 2007 WL 1834010, at *2 (D. Kan. June 26, 2007).

⁴ *Id.* See also D. Kan. Rule 40.2(e).

⁵ *Huggins*, 2010 WL 2131969, at *2 (citing *Cook v. Atchison, Topeka & Santa Fe Ry. Co.*, 816 F. Supp. 667, 669 (D. Kan. 1993)).

Dated this 20th day of February, 2018, at Kansas City, Kansas.

A handwritten signature in cursive script, reading "Teresa J. James", positioned above a horizontal line.

Teresa J. James
U. S. Magistrate Judge