

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MCDONALD APIARY, LLC, a Nebraska
Limited Liability Company;

Plaintiff,

vs.

STARRH BEES, INC., a California
Corporation; et. al,

Defendants.

8:14CV351

MEMORANDUM AND ORDER

This action was initially filed in the District Court of Sheridan County, Nebraska. The defendant removed the action to federal court, and it was placed on the Omaha trial docket. ([Filing No. 1](#)). Plaintiff McDonald Apiary, LLC has moved to change the trial location to North Platte, Nebraska. ([Filing No. 10](#)). The plaintiff filed an amended complaint requesting trial in North Platte. ([Filing No. 6](#)). For the reasons discussed below, the plaintiff's motion will be granted, and this case will be tried in North Platte, Nebraska.

Under the court's local rules, when deciding the place of trial "the judge shall consider the convenience of litigants, witnesses and counsel," NECivR. 40.1(b)(1), with the convenience of the litigants and witnesses generally afforded greater weight than the convenience of counsel. [Bank of Beaver City v. Southwest Feeders, L.L.C., No. 4:10CV3209, 2011 WL 116863, at *1 \(D. Neb. Jan. 13, 2011\)](#).

The plaintiff is a business owned and operated by Ed McDonald and Susan McDonald. The McDonalds are Colorado citizens. The principal place of McDonald Apiary's business is located in Hay Springs, Nebraska, but it has operations in other parts of Nebraska, including in Gordon, Nebraska and Lisco, Nebraska. The testifying employees for the plaintiff reside in Hay Springs, Gordon, and Lisco. Hay Springs is 212

miles from North Platte, and over 400 miles from Omaha; Lisco is 110 miles from North Platte, and 385 miles from Omaha; Gordon is 191 miles from North Platte, and 386 miles from Omaha. ([Filing No. 12-1, at CM/ECF p. 3](#)).

The defendants and their identified witnesses are from the Central Valley area of California. The defendants assert a trial in North Platte will be inconvenient because the flights from California to North Platte are both scarce and expensive when compared to Omaha. Defendant Starr Bees owns real estate in Lincoln County, Nebraska. ([Filing No. 17-1](#)). North Platte is located in Lincoln County, Nebraska, and is 280 miles from the Omaha airport, and 224 miles from the airport in Lincoln, Nebraska.

The plaintiff has counsel from both Omaha and Alliance, Nebraska; defense counsel is from Omaha.

Having considered the convenience of litigants, witnesses, and counsel as supported by the evidence of record, the court finds that, on balance, North Platte is the proper location for the trial of this case. Whether the case is tried in North Platte or in Omaha, the defendants will be flying to Nebraska, and staying in Nebraska overnight, for trial. If the defendants choose to fly into Omaha or Lincoln (rather than North Platte), and then drive to North Platte, their highway time will be equivalent, or not significantly greater than, the time incurred by the plaintiff's owners and witnesses. In other words, subtracting the flight time the defendants will inevitably incur, North Platte is the middle ground for the parties and the witnesses they have identified.

Accordingly,

IT IS ORDERED:

- 1) The plaintiff's motion to change the trial location, ([Filing No. 10](#)), is granted.

2) The trial of this case will be held in North Platte, Nebraska.

Dated this 11th day of February, 2015

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge

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