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12 UNITED STATES DISTRICT COURT

13 NORTHERN DISTRICT OF CALIFORNIA

14 SKYRIVER TECHNOLOGY SOLUTIONS,
15 LLC, a California limited liability company,
and INNOVATIVE INTERFACES, INC, a
16 California corporation,

17 Plaintiffs,

18 vs.

19 OCLC ONLINE COMPUTER LIBRARY
20 CENTER, Inc., an Ohio non-profit corporation,

21 Defendant.

Case No.: 3:10-cv-03305-JSW

**DEFENDANT'S REPLY IN FURTHER
SUPPORT OF ITS MOTION TO
TRANSFER VENUE**

Date: October 29, 2010

Time: 9:00 a.m.

Judge: Judge: Jeffrey S. White

Courtroom: 11, 19th Floor

TABLE OF CONTENTS

	<u>PAGE</u>
I. INTRODUCTION AND SUMMARY	1
II. LAW AND ARGUMENT	2
A. Plaintiffs Fail To Address the “Interest of Justice” Factor	2
B. Plaintiffs’ Choice of Forum Does Not Deserve Deference.....	3
C. Plaintiffs Cannot Rebut OCLC’s Argument That Ohio Is a More Convenient Venue for This Lawsuit	5
D. Plaintiffs Cannot Rebut OCLC’s Argument That Travel to California Will Inconvenience the Majority of Witnesses	7
E. Plaintiffs Cannot Rebut OCLC’s Argument That Sources of Proof Are More Easily Accessed in Ohio	9
F. Plaintiffs Cannot Rebut OCLC’s Argument That Ohio Has a Greater Interest in Litigating This Action Than California	11
G. Plaintiffs Cannot Rebut OCLC’s Argument That an Ohio Court Is Equally Familiar with the Applicable Law.....	12
H. Plaintiffs Cannot Dispute That the Southern District of Ohio’s Court Docket Is Less Congested	13
III. CONCLUSION	14

TABLE OF AUTHORITIES

PAGE

CASES

<u>Colonial Med. Group, Inc. v. Catholic Healthcare West,</u> No. C-09-2192 MMC, 2010 WL 2108123 (N.D. Cal. May 25, 2010)	12
<u>County of Tuolumne v. Sonora Cmty. Hosp.,</u> 236 F.3d 1148 (9th Cir. 2001).....	13
<u>Foster v. Nationwide Mut. Ins. Co.,</u> No. C 07-04928, 2007 WL 4410408 (N.D. Cal. Dec. 14, 2007)	9
<u>Gates Learjet Corp. v. Jenson,</u> 743 F.2d 1325 (9th Cir. 1984).....	7
<u>Glaxo Group Ltd. v. Genetech, Inc.,</u> No. C 10-00675 JSW, 2010 WL 1445666 (N.D. Cal. Apr. 12, 2010).....	2
<u>In re Funeral Consumers Antitrust Lit.,</u> No. C05-01804, 2005 WL 2334362 (N.D. Cal. Sept. 23, 2005)	1, 3
<u>In re Yahoo! Inc.,</u> No. CV 07-3125 CAS (FMOx), 2008 WL 707405 (C.D. Cal. Mar. 10, 2008)	2, 6, 9
<u>Italian Colors Restaurant v. Am. Express Co.,</u> No. C 03-3719 SI, 2003 WL 22682482 (N.D. Cal. Nov. 10, 2003)	9
<u>Little v. Bank One, Del., N.A.,</u> No. C 05-01727 JSW, 2005 WL 3481468 (N.D. Cal. Dec. 19, 2005).....	9
<u>Pacific Car & Foundry Co. v. Pence,</u> 403 F.2d 949 (9th Cir. 1968).....	3
<u>Sherar v. Harless,</u> 561 F.2d 791 (9th Cir. 1977).....	2
<u>Strigliabotti v. Franklin Res., Inc.,</u> No. C 04-0883 SI, 2004 WL 2254556 (N.D. Cal. Oct 5, 2004)	13
<u>Tropos Networks, Inc. v. IPCO LLC,</u> No. C 05-04281 JSW, 2006 WL 1883316 (N.D. Cal. July 7, 2006)	3
<u>United States ex rel. Adrian,</u> No. C 99-3864, 2002 WL 334915 (N.D. Cal. Feb. 25, 2002).....	10
<u>United States v. Brown Univ.,</u> 5 F.3d 658 (1st Cir. 1993)	12
<u>United States v. Nat'l City Lines,</u> 337 U.S. 78 (1949).....	3

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STATUTES

15 U.S.C. § 22 1, 3

Ohio Rev. Code § 5709.72(A) 11

1 **I. INTRODUCTION AND SUMMARY**

2 Plaintiffs' opposition to OCLC's transfer motion erroneously focuses on where the alleged
3 antitrust injury to Plaintiffs occurred (Northern District of California) rather than on where the
4 alleged activity supposedly giving rise to antitrust liability occurred (Southern District of Ohio).
5 It is the latter that is relevant to this transfer motion because that is where the *relevant* witnesses
6 and documents reside. There cannot be an antitrust injury if there has been no antitrust violation.
7 The core allegation of Plaintiffs' complaint is that OCLC adopted policies and practices that
8 supposedly restrain competition throughout the United States (not just in California). As
9 demonstrated in OCLC's moving papers, the adoption and implementation of the policies and
10 practices at issue occurred in the Southern District of Ohio, where OCLC is headquartered. The
11 witnesses and documents relevant to those issues reside in that district. Neither Plaintiffs'
12 Complaint nor their Opposition points to a single event relevant to the alleged antitrust violation
13 that occurred in this District. Many of Plaintiffs' statements in their Memorandum in Opposition
14 are either irrelevant or properly reserved for an opposition to OCLC's Motion to Dismiss, which
15 OCLC will address at the appropriate time.

16 Plaintiffs seek to avoid this problem with two core arguments, neither of which can
17 overcome the compelling case for transfer. First, Plaintiffs argue that the Clayton Act (15 U.S.C.
18 § 22) nationwide venue provisions for antitrust litigation demand greater than normal deference to
19 their choice of forum. The law is to the contrary. In re Funeral Consumers Antitrust Lit., No.
20 C05-01804, 2005 WL 2334362, at *7 (N.D. Cal. Sept. 23, 2005). When, as in this lawsuit, the
21 events alleged in the Complaint have little connection to this District, Plaintiffs' choice of forum
22 is entitled to little weight. Second, Plaintiffs point to an exaggerated list of supposed California
23 witnesses, though few, if any, have any relevant connection to the events actually alleged in the
24 Complaint. They inflate the number of witnesses residing in California and manipulate the
25 statistics addressing the relative congestion of California and Ohio courts. This alone does not
26 overcome the evidence OCLC put forth in its Motion, which clearly demonstrated that transfer to
27 the Southern District of Ohio is appropriate. While numbers can be manipulated, the evidence
28 here shows that Plaintiffs' choice of venue should be given little deference because California

bears only a tenuous relationship to Plaintiffs' antitrust allegations. When the proper standard is applied, transfer to the Southern District of Ohio clearly best serves the interests of justice and the convenience of the parties and witnesses. In re Yahoo! Inc., No. CV 07-3125 CAS (FMOx), 2008 WL 707405, at *3 (C.D. Cal. Mar. 10, 2008) (transfer granted because it is more convenient to litigate case in state where the defendant's corporate headquarters are located and the majority of witnesses work and reside).¹

II. LAW AND ARGUMENT

A. Plaintiffs Fail To Address the "Interest of Justice" Factor

The first factor a court must consider in determining whether transfer is proper is whether transfer would favor the "interest of justice," which underlying considerations include "whether efficient and expeditious administration of justice would be furthered" if the lawsuit is transferred. Glaxo Group Ltd. v. Genetech, Inc., No. C 10-00675 JSW, 2010 WL 1445666, at *2 (N.D. Cal. Apr. 12, 2010) (quoting Sherar v. Harless, 561 F.2d 791, 794 (9th Cir. 1977)). In addition to the "interest of justice" factor, a court should also consider several "convenience" factors, namely, the plaintiff's choice of forum; convenience of the parties and witnesses; ease of access to sources of proof; local interest in controversy; familiarity of each forum with applicable law; and relative congestion in each forum. Plaintiffs addressed only the convenience factors and fail to address directly the "interest of justice" factor.

In its Motion, OCLC addressed the "interest of justice" factor and demonstrated that transfer would create efficient and expeditious administration of justice because (1) the majority of the witnesses reside in Ohio and surrounding states; (2) most depositions will occur in Ohio; (3) most, if not all, documents will be produced from Ohio; (4) the Southern District of Ohio would be readily available to handle discovery disputes in real-time; and (5) and if injunctive relief were granted (which OCLC obviously denies would be appropriate), the Southern District would be in a better position to handle the oversight of that injunction. (Motion to Transfer

¹ Plaintiffs spend a large portion of their Opposition attacking OCLC, again evidencing their use of this lawsuit as an anti-OCLC forum and a marketing tool for their own products. In particular, the following statements are incorrect, inaccurate, misstatements of fact, or exaggerations: page 3, lns. 16-28; 4, lns. 1-13; 6, lns. 25-28; 7, lns. 1-6, 22-23; 8, lns. 11-28; 9, lns 1-2; 10, lns. 21-22.

Venue (“Mot.”) 6.) All of these factors make it more efficient and expeditious to litigate in Ohio. In their Opposition, Plaintiffs did not refute these contentions or offer any rationale for why the interest of justice would be furthered by retaining this lawsuit in California. Plaintiffs gloss over OCLC’s arguments that the interest of justice favors transfer because an Ohio court could more efficiently and expeditiously determine discovery disputes and monitor injunctive relief, and, therefore, this factor must be construed in favor of OCLC.

B. Plaintiffs’ Choice of Forum Does Not Deserve Deference

Plaintiffs appear to argue that the Clayton Act (15 U.S.C. § 22), the law granting them a wide choice of venue in antitrust actions, entitles their choice of venue to special deference. (Memorandum in Opposition to Transfer Venue (“Opp’n”) 5 (“This Congressional mandate strongly favors an antitrust plaintiff’s choice of forum. . .”).) However, as the Northern District explained, “This is not the law.” In re Funeral Consumers Antitrust Lit., No. C05-01804, 2005 WL 2334362, at *7 (N.D. Cal. Sept. 23, 2005) (citing United States v. Nat’l City Lines, 337 U.S. 78, 84 (1949)). There is no greater deference to an antitrust plaintiff’s choice of venue than that given to any other plaintiff.

Here, Plaintiffs’ choice of venue is entitled to little deference because the allegedly anticompetitive activities did not occur in California, let alone in the Northern District. “While the plaintiff’s choice of forum is normally entitled to great deference, minimal consideration should be given to that choice where the operative facts do not occur within the selected forum.” Tropos Networks, Inc. v. IPCO LLC, No. C 05-04281 JSW, 2006 WL 1883316, at *3 (N.D. Cal. July 7, 2006) (holding that the operative facts that gave rise to a patent infringement claim occurred in the state where the defendant, not the plaintiff, was located) (citing Pacific Car & Foundry Co. v. Pence, 403 F.2d 949, 954 (9th Cir. 1968)).

Because Plaintiffs’ allegations are based on the premise that OCLC engaged in anticompetitive behavior, the thrust of this lawsuit centers on OCLC’s actions, not Plaintiffs’ alleged damages. Plaintiffs’ alleged damages present the only nexus to the State of California. As OCLC showed in its Motion, its operations are all based in Ohio, and Ohio is where OCLC made all of the decisions and created all of the policies that Plaintiffs claim constitute

1 anticompetitive behavior. (Mot. 7 & Decl. ¶¶ 9-14.) To attempt to refute this, Plaintiffs claim
2 that OCLC is governed by a Board of Trustees, most of whom are located outside of Ohio.
3 (Opp’n 7.) While this is true, OCLC demonstrated that individuals primarily responsible for
4 making OCLC’s decisions and implementing OCLC policy are located in Ohio, including, but not
5 limited to its Executive Group, Product Management, Human Resources, Information
6 Technology, Legal, Sales, Marketing, Business Development, Software Development, Database
7 Management, Finance, Member Services, Order Entry, Customer Support, and Research and
8 Development departments. (Mot. 8.) The Board of Trustees has little, if any, role in this lawsuit
9 because it is not involved in those day-to-day decisions; instead, it is involved in overseeing
10 broad, general concepts relating to OCLC’s continued mission. It is highly unlikely that any of
11 the Board Members possess any information relevant to this lawsuit that could not be more
12 efficiently presented by OCLC employees, most of whom reside in Ohio.

13 In making allegations that OCLC engaged in anticompetitive behavior, this lawsuit calls
14 into question OCLC’s decisions and actions. Unable to avoid this, Plaintiffs attempt to misdirect
15 the Court’s attention to its alleged damages to find some plausible connection to California. For
16 example, Plaintiffs allege that the harm they suffered arises from OCLC’s treatment of California
17 State University—Long Beach (“CSULB”), a non-party to this lawsuit (and not located in the
18 Northern District), and speculate that the alleged harm from CSULB will spread to all 23 schools
19 in CSU’s system. (Opp’n 6.) Plaintiffs further claim, without providing any factual foundation
20 or evidence, that they were similarly harmed by OCLC’s relationship with the University of
21 California-system (“UC”). (Opp’n 7.) This goes beyond the four corners of the Complaint.
22 Plaintiffs also state in their Memorandum in Opposition that UC is helping OCLC develop a new
23 product, which runs afoul of California’s procurement laws. (Opp’n at 7-8.) Obviously, this new
24 product cannot constitute a monopoly, and this allegation cannot possibly relate to Plaintiffs’
25 antitrust claims. Plaintiffs’ invocation of UC is just another indication of how far Plaintiffs are
26 stretching the facts to establish any connection to California.

27 Plaintiffs also make the unfounded argument that the State of California is
28 disproportionately impacted by OCLC’s allegedly anticompetitive behavior. Plaintiffs presumably

1 make this hypothetical argument to obscure the fact that only one California library (CSULB,
2 located in the Central District, not the Northern District) has the cataloging software that is the
3 subject of this lawsuit. In support, Plaintiffs offer a variety of statistics about the number of
4 universities and libraries in California versus Ohio. (Opp’n 8.) As California is the most
5 populous state in the Union, it is not surprising, then, that it has the most universities and
6 libraries. If Plaintiffs’ logic is accepted, then any lawsuit involving entities with locations in
7 California would always be venued in California simply because of the sheer size of the state.
8 However, this does not mean that California is the most convenient venue for, or even has a
9 plausible connection with the acts and decision relevant to, *this lawsuit*.

10 **C. Plaintiffs Cannot Rebut OCLC’s Argument That Ohio Is a More Convenient**
11 **Venue for This Lawsuit**

12 In its Motion, OCLC showed that Ohio is a more convenient venue for this lawsuit
13 because OCLC’s corporate headquarters are located near Columbus, as are most of the employees
14 who may testify. (Mot. 8.) Despite Plaintiffs’ unjustified accusation that OCLC was “less than
15 candid” in describing its small California presence, OCLC previously set forth in its Motion and
16 Declaration that its small office in Ontario, California does not contain employees who have
17 responsibilities related to the claims in this lawsuit, and that the member service consultant
18 located in the Los Angeles-area does not have knowledge related to this lawsuit. (Mot. 7 & Decl.
19 ¶ 12.) Likewise, OCLC disclosed that it has a small research office in San Mateo (the remnant of
20 RLG) whose operations have nothing to do with the claims in this case. (*Id.*) Plaintiffs ignored
21 these paragraphs of OCLC’s declaration, and instead speculated (with no evidence whatsoever)
22 about OCLC’s Vice President of RLG Programs and Development and a salesperson located in
23 California. (Opp’n at 8.) As OCLC already disclosed, neither employee has information
24 germane to Plaintiffs’ allegations, because neither is involved in the decision making and policy
25 implementation that lies at the heart of Plaintiffs’ allegations of anticompetitive behavior.² (Decl.

26 ² Plaintiffs erroneously refer to this salesperson as “Brian” Ahern, who is one and the same as the
27 allegedly “unidentified” Las Flores, California employee, who OCLC in fact disclosed. (Opp’n 8,
28 10; Mot. 8 & Decl. ¶ 12.) Further, Plaintiffs’ contention that OCLC’s Declaration is “less than
candid” is unjustified. OCLC explained: “OCLC does not own any real property in California. It
has an office in San Mateo, California, which engages in research, software development, and

¶ 12.) While OCLC does have a small presence in California, and does transact business with libraries in California, the question for this Court is whether Ohio is more *convenient* for OCLC – the party with the necessary witnesses and documents and whose behavior is at issue in this lawsuit. See In re Yahoo! Inc., No. CV 07-3125 CAS (FMOx), 2008 WL 707405, at *3 (C.D. Cal. Mar. 10, 2008) (transfer granted because it is more convenient to litigate case in state where the defendant’s corporate headquarters are located and the majority of witnesses work and reside). All evidence before this Court demonstrates that Ohio is dramatically more convenient to litigate this lawsuit.

Plaintiffs also attempt to bolster their contention that OCLC will not be inconvenienced by litigating in a forum over 2,000 miles away by making a variety of unsupported conjectures. For example, Plaintiffs claim that OCLC’s statement that its executives are necessary to the smooth operation of its business “lacks credibility” and is “highly suspect.” (Opp’n 10.) It is hardly “suspect” to assert that an organization runs more smoothly when its key executives are not traveling back and forth across the United States for hearings and trial. Plaintiffs then speculate about the travel schedules of OCLC’s executives, speculations that have no evidentiary basis. (Opp’n 10.) The remainder of Plaintiffs arguments are similarly meritless. Simply, Plaintiffs have not demonstrated that California is as convenient for this lawsuit as Ohio, which is what this prong of the test requires. In contrast, OCLC has demonstrated that that the key personnel and documents relevant to the underlying activities are located at or near OCLC’s headquarters in the Southern District of Ohio.

customer support for products unrelated to the claims in this lawsuit. OCLC also has a small office with training staff located in Ontario, California. None of the employees located in its San Mateo or Ontario offices have responsibilities related to the claims in this lawsuit or are likely to be witnesses concerning the allegations in this case. OCLC also has telecommuting agreements with several individuals and employs one member services consultant located in the Los Angeles-area, none of whom have any knowledge related to the claims in this lawsuit. The only OCLC employee located in California with knowledge related to the claims in this case is a library services consultant (i.e., salesperson) who resides in Las Flores, California [Michael Ahern].” (Decl. ¶ 12.)

1 **D. Plaintiffs Cannot Rebut OCLC’s Argument That Travel to California Will**
2 **Inconvenience the Majority of Witnesses**

3 In attempting to prove that California is a more convenient venue, Plaintiffs concoct a list
4 of witnesses who bear little to no relevance to this lawsuit, which allegedly arises out of OCLC’s
5 anticompetitive behavior. As the Ninth Circuit pointed out in Gates Learjet Corp. v. Jenson, 743
6 F.2d 1325 (9th Cir. 1984), the focus should not be on the “number of witnesses in each location”
7 but instead on “**the materiality and importance of the anticipated witnesses’ testimony**” and
8 then the court should determine those witnesses’ “**accessibility and convenience to the forum.**”
9 Id. at 1335-36. (emphasis added). Given the allegations in Plaintiffs’ complaint, that OCLC
10 engaged in anticompetitive behavior, the majority of witnesses likely will be decision-making
11 employees at OCLC, the majority of whom are located in Ohio. To refute that obvious fact,
12 Plaintiffs concoct a lengthy list of improbable witnesses solely to attempt to add weight to their
13 otherwise unpersuasive argument for venue in California. While Plaintiffs characterize these
14 witnesses as “critical,” they fail to offer any evidence in support of that contention. (Opp’n 11.)

15 The witnesses Plaintiffs identify fall, generally, into four categories: (1) witnesses who
16 are irrelevant to this lawsuit; (2) witnesses who were highlighted by Plaintiffs only because they
17 are California residents; (3) witnesses who would have to travel regardless of the venue; and (4)
18 witnesses who are duplicative.

19 In the first category, witnesses who are irrelevant, Plaintiffs listed several individuals at
20 the University of California (“UC”), a non-party to this lawsuit. Plaintiffs’ Memorandum in
21 Opposition is the first and only time that Plaintiffs alleged that UC has somehow been damaged
22 by OCLC’s actions or that it has evidence to support Plaintiffs’ antitrust claims. As discussed
23 above, the “facts” Plaintiffs allege relating to UC have no relevance to the antitrust claims in this
24 case. Plaintiffs also listed several OCLC employees that OCLC already showed are not involved
25 in the day-to-day decision-making of OCLC. (Mot. 8 & Decl. ¶ 12.) Plaintiffs presumably
26 ignore this portion of OCLC’s Motion and Declaration because they cannot offer evidence to
27 refute OCLC’s proof.

1 The second category of witnesses, those listed only because they are California residents,
2 includes an unnamed group of “Representatives from libraries associated with OCLC WorldCat
3 Local and Navigator pilot projects in California”; OCLC employees located in California who, as
4 OCLC previously showed, have no relationship to the allegations in this complaint; and CSU
5 employees who only will be able to offer tangential testimony regarding discussions that are
6 likely better memorialized in business documents. (Opp’n 11 & Straus Decl. ¶ 3 & Ex. A; Mot. 8
7 & Decl. ¶ 12.)³

8 In the third category of witnesses, those who would have to travel regardless of the venue,
9 Plaintiffs have named several individuals in East Lansing, Michigan and Philadelphia,
10 Pennsylvania. (Straus Decl. ¶ 3 & Ex. A.) Even if some of these witnesses have purportedly
11 agreed to travel to California, it is indisputable that it would be more *convenient* – the purpose of
12 this prong of the balancing test – for them to travel to Ohio.⁴ Plaintiffs also argue, “It is unlikely
13 that many, if any, California third-party witnesses would be willing to travel to Ohio given the
14 inconvenience and time involved,” which does not make sense, given Plaintiffs’ argument that
15 Michigan witnesses *would* be willing to travel to California, despite “the inconvenience and time
16 involved.” (Opp’n 11.) Plaintiffs are simply distorting their witness list.

17 Finally, the fourth category of witnesses, those who are duplicative, includes six of
18 Plaintiffs’ employees, despite the fact that the heart of this lawsuit is OCLC’s actions, not
19 Plaintiffs. (Straus Decl. ¶ 3 & Ex. A.)⁵ This is a final example of Plaintiffs’ attempt to draw
20 more connections to California than actually exist.

21 ³ It is hardly a coincidence that Plaintiffs named only *three* (of a total of twenty) witnesses who
22 reside in Ohio as having evidence in support of their claims against OCLC, *an Ohio entity*
23 *headquartered in Ohio*. (See Straus Decl. ¶ 3 & Ex. A.)

24 Further, Plaintiffs state that OCLC’s declaration, “acknowledges that OCLC’s treatment of CLS
25 Long Beach is one of the significant events alleged in the Complaint.” (Straus Decl. ¶ 7.)
26 OCLC’s declaration does not, in fact, acknowledge this.

27 ⁴ Exhibit B to the Straus Declaration contains redacted emails that fail to provide the
28 circumstances under which those Michigan State employees allegedly agreed to travel to
California.

⁵ Any testimony Plaintiffs’ employees might seek to give regarding the statements of customers
as to OCLC’s actions would obviously be inadmissible hearsay. Plaintiffs’ declarations do not
claim any of these witnesses have direct knowledge of OCLC’s actions.

1 Because OCLC has demonstrated that the majority of the material witnesses in this
2 lawsuit will be located in Ohio, or located closer to Ohio than California, this factor favors
3 transfer to the Southern District of Ohio.

4 **E. Plaintiffs Cannot Rebut OCLC's Argument That Sources of Proof Are More**
5 **Easily Accessed in Ohio**

6 Plaintiffs gloss over OCLC's argument that a voluminous amount of documents is either
7 stored as paper copies at OCLC's Dublin, Ohio headquarters, or electronically maintained on
8 servers there. (See Mot. 11 & Decl. ¶¶ 15, 22.) OCLC showed that nine discrete categories of
9 potentially relevant documents, which together may number in the hundreds of thousands of
10 pages, are located in Dublin, Ohio. (Mot. 11 & Decl. ¶¶ 15, 22.) Despite this, Plaintiffs argue,
11 "OCLC has made no showing, however, that this factor weighs in its favor." (Opp'n 12.)
12 Plaintiffs only response is that because OCLC is engaged in business which is transacted
13 electronically, OCLC should have no problem producing these hundreds of thousands of pages of
14 documents in California. (Opp'n 12.) Even though many companies have moved towards
15 electronic storage and production of documents, case law from this District still holds that the
16 locus of the documents is a weighty factor in determining which venue is most convenient. See,
17 e.g., Little v. Bank One, Del., N.A., No. C 05-01727 JSW, 2005 WL 3481468, at *2 (N.D. Cal.
18 Dec. 19, 2005) (stating that plaintiff's contention that sources of proof are computerized failed to
19 tip the balance away from transfer); see also In re Yahoo! Inc., No. CV 07-3125 CAS (FMOx),
20 2008 WL 707405, at *9 (C.D. Cal. Mar. 10, 2008) (location of relevant documents retains
21 relevance to the venue inquiry in spite of "modern copying and reproduction technologies")
22 (internal quotation omitted). In fact, even when evidence is available in electronic format, the
23 Northern District of California has held that though "developments in electronic conveyance have
24 reduced the cost of document transfer somewhat, the cost of litigation will be substantially
25 lessened if the action is venued in the same district where most of the documentary evidence is
26 found." Foster v. Nationwide Mut. Ins. Co., No. C 07-04928, 2007 WL 4410408, at *6 (N.D.
27 Cal. Dec. 14, 2007) (transferring case to Ohio when defendant's national office and likely
28 witnesses were in Ohio) (citing Italian Colors Restaurant v. Am. Express Co., No. C 03-3719 SI,

1 2003 WL 22682482, at *5 (N.D. Cal. Nov. 10, 2003)). Regardless of whether the documents are
2 maintained electronically, which is impossible to even verify at this point, the documents are
3 located in Dublin, Ohio, the proper venue for this action.

4 Further, the respective custodians of these records work and live in Ohio. (Mot. 12 &
5 Decl. ¶ 23.) See Yahoo! Inc., 2008 WL 707405, at *9 (granting defendant’s motion to transfer
6 where defendant’s “headquarters is the factual center of this case, and the locus of all relevant
7 decision making”) (internal quotation omitted). As the number of electronic documents has
8 exponentially increased in the era of e-mail, document custodians have played a greater role in
9 litigation, and that will likely be no exception in this lawsuit. The burden of transporting all of
10 OCLC’s hundreds of thousands of pages of documents and all necessary document custodians
11 over 2,000 miles away supports transfer to the Southern District of Ohio.

12 As OCLC already showed in its Motion, few, if any of the relevant, documents are stored
13 in this District, and those limited documents that are located here likely relate only to Plaintiffs’
14 alleged damages. (Mot. 12.) Plaintiffs state only that, “all of SkyRiver’s and Innovative business
15 and transactional documents, databases and servers are located in the Northern District” without
16 demonstrating how any of those documents are relevant to their allegations that OCLC engaged
17 in anticompetitive behavior. (Opp’n 12.) Before a court even reaches the issue of damages in an
18 antitrust lawsuit, Plaintiffs must first prove that an antitrust violation actually occurred (which it
19 cannot do) and then must further prove the anticompetitive act itself caused Plaintiffs’ alleged
20 damages (which it will likewise be unable to do).

21 Finally, Plaintiffs allege that third-party witnesses will have “substantial” documentary
22 evidence without explaining what type of evidence that may be, or explaining why that same
23 evidence would not already be in the hands of Plaintiffs or OCLC. (Opp’n 12-13.) Because
24 Plaintiffs failed to identify what this “substantial” evidence might be, this argument should be
25 disregarded. See, e.g., United States ex rel. Adrian, No. C 99-3864, 2002 WL 334915, at *4
26 (N.D. Cal. Feb. 25, 2002) (granting transfer where, *inter alia*, plaintiff’s claim that a “substantial
27 number” of documents are in California was “vague and unsupported.”)

1 As OCLC demonstrated in its Motion, the vast majority of the documentary evidence and
2 all of OCLC's document custodians are located in Ohio. This factor favors transfer to the
3 Southern District of Ohio.

4 **F. Plaintiffs Cannot Rebut OCLC's Argument That Ohio Has a Greater Interest**
5 **in Litigating This Action Than California**

6 OCLC established in its Motion that Ohio courts have a stronger interest in the issues
7 raised by this lawsuit because, among other concerns, Plaintiffs have raised allegations that
8 OCLC is improperly exercising its non-profit status. In response, Plaintiffs cite a 1984 Ohio
9 Supreme Court case which found that OCLC was not exempt from real estate and property tax
10 under then-enacted Ohio law. (Opp'n 12.) In reality, as a result of that lawsuit, the Ohio
11 Legislature demonstrated that it was concerned with OCLC's non-profit mission by creating for
12 OCLC a statutory exemption from the property tax requirements. Indeed, the language of the
13 statute reinforces OCLC's argument that the State of Ohio has a particularly strong interest in
14 OCLC's tax-exempt mission:

15 All tangible and intangible personal property shall be exempt from
16 taxation if the following conditions exist in the year for which
17 exemption is sought: (A) The owner is a nonprofit corporation that
18 is exempt from federal income taxes under the provisions of section
19 501(c)(3) of the Internal Revenue Code of 1954, as amended, and
the owner's primary purposes are **conducting research and
development in library technology and providing computerized
or automated services to public, charitable, or educational
libraries.**

20 Ohio Rev. Code § 5709.72(A) (emphasis added). Plaintiffs' unsupported claim that the Ohio
21 Legislature acted because OCLC improperly exercised "political clout in Ohio" is an unwarranted
22 attack on the Ohio Legislature and its members. Surely, Plaintiffs are not suggesting that the
23 judges in the Southern District of Ohio would be unable to adjudicate fairly a lawsuit brought by
24 an out-of-state litigant, or that they would improperly favor OCLC. (Opp'n 13-14.)

25 Plaintiffs next argument, that "this Court, however, is not going to determine OCLC's
26 state or federal tax-exempt status, nor would an Ohio court," and that, "OCLC [has not] explained
27 why a federal court decision will affect only non-profits in Ohio," misses the point. (Opp'n 13.)
28 First, if OCLC's non-profit status is irrelevant to the lawsuit, then Plaintiffs should not have

1 referenced its non-profit (or tax-exempt) status nearly twenty times in the Complaint or cited to
2 the Ohio Supreme Court decision in their Opposition. (Compl. ¶¶ 4, 9, 13, 26, 31, 39, 46, 60, 62,
3 67-69, 71-74, 76, & 82; Opp’n at 13.) Second, OCLC’s public purpose *is* relevant. OCLC, as a
4 non-profit corporation whose mission extends beyond Plaintiffs’ profit maximizing objectives, is
5 entitled, as this case proceeds, to have the Court, “fully investigate the procompetitive and
6 noneconomic justifications proffered” by OCLC for the design of its products and the manner in
7 which they are sold. United States v. Brown Univ., 5 F.3d 658, 678 (1st Cir. 1993). Ohio courts
8 are better equipped to assess OCLC’s mission under Ohio non-profit law and OCLC’s corporate
9 governance documents than courts in other districts. The fact remains that because of Plaintiffs
10 (unfounded) allegations that OCLC is abusing its non-profit status and improperly using its
11 profits to engage in anticompetitive behavior, Ohio courts have a greater interest in adjudicating
12 this lawsuit.

13 Finally, Plaintiffs fail to offer any evidence or authority in support of their contention that
14 a court 2,000 miles away from OCLC would be more able to monitor an award of injunctive
15 relief (which award OCLC vigorously disagrees is appropriate). Despite case law to the contrary
16 cited in OCLC’s Motion, Plaintiffs’ only response is that this Court is “the appropriate court” to
17 monitor injunctive relief. (Opp’n 14.) This alone is insufficient.

18 Because OCLC demonstrated that the State of Ohio has a much greater interest in this
19 litigation, and California has only a slight interest, this factor supports transfer to the Southern
20 District of Ohio.

21 **G. Plaintiffs Cannot Rebut OCLC’s Argument That an Ohio Court Is Equally**
22 **Familiar with the Applicable Law**

23 It is not true, as Plaintiffs allege, that California courts are somehow more competent than
24 Ohio courts in considering the issues presented in this lawsuit. As OCLC showed in its Motion,
25 California antitrust laws are modeled directly after federal antitrust laws. See, e.g., Colonial Med.
26 Group, Inc. v. Catholic Healthcare West, No. C-09-2192 MMC, 2010 WL 2108123, at *7 (N.D.
27 Cal. May 25, 2010) (“The analysis under California’s antitrust law mirrors the analysis under
28 federal law because the Cartwright Act . . . was modeled after the Sherman Act.”) (quoting

1 County of Tuolumne v. Sonora Cmty. Hosp., 236 F.3d 1148, 1160 (9th Cir. 2001)) (internal
2 citations omitted). Indeed, California courts themselves have recognized that courts outside of
3 California are competent and capable of applying these laws. See, e.g., Strigliabotti v. Franklin
4 Res., Inc., No. C 04-0883 SI, 2004 WL 2254556, at *5 (N.D. Cal. Oct 5, 2004) (“The Court finds
5 that [the transferee] court is **fully capable of applying California law.**”) (emphasis added).
6 Plaintiffs suggest that because the Northern District of California receives more antitrust filings
7 per year than does the Southern District of Ohio, that the Northern District somehow possess
8 greater antitrust expertise. (Opp’n 14.) This should not weigh in favor of retaining venue in the
9 Northern District of California. This District receives more than twice as many annual filings as
10 the Southern District, so the fact that this Court hears more antitrust cases is reflective, in part, of
11 the relative difference in size between the two dockets. Because Ohio and California courts are
12 equally competent to apply federal law, and also to apply laws modeled after federal law, this
13 factor is neutral.

14 **H. Plaintiffs Cannot Dispute That the Southern District of Ohio’s Court Docket**
15 **Is Less Congested**

16 While Plaintiffs attempt to manipulate the statistics regarding case loads in the Southern
17 District of Ohio and the Northern District of California by calculating “the average of the median
18 times,” it is undisputed that (1) the Southern District’s docket has fewer cases; (2) the average
19 number of cases per judge is lower in the Southern District; and (3) the Northern District has only
20 a one month advantage in the time between filing and disposition. (Mot. 14-15.) The workload
21 for judges in this Court is much higher than in Ohio, based on the actual statistics of the
22 respective courts: Northern District of California judges receive **100 more new civil filings per**
23 **year** than judges in the Southern District of Ohio. (See [http://www.uscourts.gov/cgi-](http://www.uscourts.gov/cgi-bin/cmsd2009.pl)
24 [bin/cmsd2009.pl](http://www.uscourts.gov/cgi-bin/cmsd2009.pl).) This factor plainly supports transfer to the Southern District of Ohio.

1 **III. CONCLUSION**

2 Based on the foregoing facts and law, the scales clearly tip in favor of transferring this
3 matter to the Southern District of Ohio. The Court should therefore grant Defendant's Motion
4 and transfer this action to the Southern District of Ohio, Eastern Division.

5 Dated: October 4, 2010

Respectfully submitted

6
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12 I, C. Brandon Wisoff, am the ECT user whose ID and password are being used to filed
13 this Defendant's Reply in Further Support of Its Motion to Transfer Venue.

14 Dated: October 4, 2010.

15 /s/ C. Brandon Wisoff
16 C. Brandon Wisoff (SBN 121930)