

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

RICKY B. PERRITT, Individually; §  
The Cupcakery, LLC, a Texas Limited §  
Liability Company; Buster Baking, LLC, §  
a Texas Limited Liability Company; and the §  
Woodlands Baking, LLC, a Texas Limited §  
Liability Company, §  
§  
Plaintiffs, §  
§  
v. §  
§  
PAMELA F. JENKINS, Individually; and §  
The Cupcakery, LLC, a Nevada Limited §  
Liability Company, §  
§  
Defendants. §

CAUSE NO. 4:11-CV-23

**DEFENDANTS PAMELA F. JENKINS AND THE CUPCAKERY, LLC, A NEVADA LIMITED LIABILITY COMPANY’S RESPONSE TO EMERGENCY MOTION FOR EXTENSION OF DEADLINE TO RESPOND TO MOTION TO TRANSFER VENUE**

Defendants Pamela F. Jenkins (“Jenkins”) and The Cupcakery, LLC, a Nevada Limited Liability Company (“Nevada Cupcakery”) (collectively, the “Defendants”) file this Response to Plaintiffs Ricky B. Perritt (“Perritt”), The Cupcakery, LLC, a Texas Limited Liability Company (the “Texas Cupcakery”), Buster Baking, LLC, a Texas Limited Liability Company (“BLLC”), and the Woodlands Baking, LLC, a Texas Limited Liability Company’s (“WLLC”), and Custom Version Corporation’s (“Custom”) (collectively, Perritt, Texas Cupcakery, BLLC, WLLC, and Custom are the “Plaintiffs”) Emergency Motion for Extension of Deadline to

**DEFENDANTS PAMELA F. JENKINS AND THE CUPCAKERY, LLC, A NEVADA LIMITED LIABILITY COMPANY’S RESPONSE TO EMERGENCY MOTION FOR EXTENSION OF DEADLINE TO RESPOND TO MOTION TO TRANSFER VENUE**

Respond to Defendants' Motion to Transfer Venue, filed March 3, 2011 (Dkt. No. 34) (the "Motion") based on the following:

1. Plaintiffs chose to file this lawsuit in the Eastern District of Texas. Yet, instead of explaining why they believe the Eastern District of Texas is a more convenient forum than the District of Nevada for trial in this matter, Plaintiffs want to shift the focus to Ms. Jenkins, seeking to take her deposition in Texas on an expedited basis. Ms. Jenkins is a single mother living, running a small business, and raising a two (2) year-old son in Las Vegas, Nevada. As Plaintiffs' counsel's February 8, 2011 correspondence indicated, Plaintiffs are seeking Ms. Jenkins's deposition in Texas, stating "[o]bviously, party depositions would take place in the Eastern District [of Texas]." *See Slater Aff. at Ex. C.* Plaintiffs intend to drag Ms. Jenkins across the country for a deposition in Texas, completely ignoring the impact that such actions would have on Ms. Jenkins's family and business. Whether Texas or Nevada is a more convenient forum for Plaintiffs is a question that Plaintiffs should be able to answer from their own perspective, without Ms. Jenkins's deposition. After all, Plaintiffs must have had some basis to support filing this case in the forum they chose.

2. Plaintiffs brought this suit and in doing so made a venue determination, likely evaluating (1) the relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) the cost of attendance for willing witnesses; and (4) all other practical problems that make trial of a case easy, expeditious and inexpensive. Plaintiffs do not need to depose Ms. Jenkins to evaluate whether the location of witnesses and documents are more conveniently located in the Eastern District of Texas or the District of

Nevada.

3. Nowhere in their Motion do Plaintiffs provide any factual information that calls into question the veracity of Ms. Jenkins's Affidavit. Instead, Plaintiffs simply state they "wish to challenge the affidavit Ms. Jenkins filed in support of Defendants' Motion to Transfer Venue." *See* Motion, p. 2. Plaintiffs do not provide the Court with any verified facts that counter or contradict the information in Ms. Jenkins's affidavit and therefore have no basis for "challenging" her affidavit.

4. Plaintiffs' request for Ms. Jenkins's deposition is harassing and constitutes a request for early fishing expedition. As grounds for their request, Plaintiffs generally state that "there are important venue facts, including without limitation, acts and/or omissions that took place in Texas that form the basis of Plaintiffs' causes of action, which will be demonstrated and/or elaborated on in Ms. Jenkins' deposition." *See* Motion, p. 2. Plaintiffs offer no details as to what venue facts they seek, and based on their request to depose Ms. Jenkins regarding Plaintiffs' claims, appear to seek Ms. Jenkins deposition twice – once under the guise of a "venue" deposition.

5. The only venue facts that are relevant to the pending Motion to Transfer Venue are those related to the factors set forth in *In re Volkswagen AG*, 371 F.3d 201, 203 (5th Cir. 2004). Plaintiffs should not need the deposition of another party to address the private and public interest factors.

6. Last, Plaintiff's response to the Motion to Transfer Venue is currently due on March 14, 2011. Counsel for Plaintiffs and Defendants have already discussed the matter, and in

the event the Court denies the instant Motion, Defendants have agreed to give Plaintiffs a reasonable extension of time following the Court's ruling on this Motion to respond to the Motion to Transfer Venue.

For all of the foregoing reasons, Plaintiffs' Motion should be denied.

Respectfully submitted,

/s/ Jodie A. Slater  
Jodie A. Slater

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**ATTORNEY FOR DEFEDANTS**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 9th day of March 2011, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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*/s/Jodie A. Slater*

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Jodie A. Slater