

UNITED STATES DISTRICT COURT
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; §
THE WOODLANDS BAKING, LLC, §
a Texas Limited Liability Company; §
CUSTOM VERSION CORPORATION, §
a Texas Corporation §

Plaintiffs, §

Civil Action No. 4:11-CV-23

v. §

PAMELA F. JENKINS, Individually; and §
THE CUPCAKERY LLC, a Nevada §
Limited Liability Company §

Defendants. §

**REPLY BRIEF IN SUPPORT OF PLAINTIFFS’ EMERGENCY MOTION
FOR EXTENSION OF DEADLINE TO RESPOND TO
DEFENDANTS’ MOTION TO TRANSFER VENUE**

Plaintiffs RICKY B. PERRITT, Individually, THE CUPCAKERY, LLC, a Texas Limited Liability Company, BUSTER BAKING, LLC, a Texas Limited Liability Company, THE WOODLANDS BAKING, LLC, a Texas Limited Liability Company, and CUSTOM VERSION CORPORATION, a Texas Corporation (collectively “Plaintiffs”) file this their Reply Brief in support of their Emergency Motion for an Extension of the Deadline to Respond to Defendants’ PAMELA F. JENKINS Individually and THE CUPCAKERY LLC, a Nevada Limited Liability Company (collectively “Defendants”) Motion to Transfer venue to the District of Nevada, Las Vegas Division (Docket No. 34). Plaintiffs filed the instant motion on or about March 3, 2011 as an emergency motion in an effort to receive the Court’s ruling on this matter before the current deadline to respond to Defendants’ Motion to Transfer, which is March 14,

2011, expires. The Court entered an expedited briefing schedule and Defendants filed a Response brief on or about March 9, 2011. (Docket No. 36).

In their motion Plaintiffs request an extension of the deadline to respond to Defendants' Motion to Transfer Venue through and until fourteen (14) days after Plaintiffs receive the transcript of Ms. Jenkins' deposition. Defendants oppose the motion arguing that Plaintiffs brought suit in this venue and should know the basis for their venue determination. Contrary to Defendants' argument, Plaintiffs are not tasked with "explaining" why the Eastern District of Texas is a more convenient forum for this case as the burden is on Defendants to show "good cause," including a showing that the venue they propose (Nevada) is "clearly more convenient" than the Eastern District of Texas. *In re Volkswagen of America, Inc.*, 545 F.3d 304, 315 (5th Cir. 2008), *cert. denied*, 129 S. Ct. 1336 (2009).

Plaintiffs have evaluated their venue determination and it is Plaintiffs' position that venue is proper in the Eastern District of Texas for numerous reasons, including the fact that Ms. Jenkins was previously sued in this Court and the resulting settlement agreement from that case is one of the relevant documents that will determine the outcome of this case. *See Perritt v. Jenkins*, case number 4:09-CV-406 in the Eastern District of Texas, Sherman Division. Despite the overwhelming basis for venue in the Eastern District of Texas, Defendants dispute this and have moved to transfer this case to Nevada arguing mostly that it would be "more convenient" for Defendants if the litigation was transferred to Nevada as it would be a hardship for Ms. Jenkins, who is a small business owner and single mother, to travel to Texas. *See* Docket No. 36 at p. 2 ("Ms. Jenkins is a single mother living, running a small business, and raising a two (2) year-old son in Las Vegas, Nevada.") While suggesting to this Court under oath in an affidavit in support of Defendants' Motion to Transfer that it would be a hardship for Ms. Jenkins to travel

to this Court, Ms. Jenkins recognizes her Texas roots and characterizes herself as a world traveler in promoting herself on The Cupcakery™'s website. *See* Exhibit A (“Jenkins, who was born and raised in Jacksboro, Texas, studied in New York City, Spain, Argentina, and has traveled the globe.”). Additionally, Defendants, by and through Ms. Jenkins, are marketing and advertising selling products nationwide. *See* Plaintiffs’ Amended Complaint, Docket No. 30, ¶¶ 68-75. Considering these inconsistencies, Plaintiffs need to take Ms. Jenkins’ deposition regarding the veracity of her affidavit filed in support of Defendants’ Motion to Transfer.

As noted in Plaintiffs’ motion (Docket No. 34), Defendants’ counsel objected to Ms. Jenkins’ testimony regarding venue issues as not relevant while she testified at the hearing held on Plaintiffs’ Application for a Temporary Restraining Order and Plaintiffs were not able to elicit and/or elaborate on Ms. Jenkins’ testimony regarding these issues. Ms. Jenkins issued press releases and/or media interviews and/or published statements which form the basis of some of Plaintiffs’ claims while she was physically located in Texas. *See* Plaintiffs’ Amended Complaint, Docket No. 30, ¶¶ 58-66. Plaintiffs need to depose Ms. Jenkins to determine the extent of her additional contacts with Texas, including the Eastern District of Texas.

Plaintiffs have requested to take Ms. Jenkins’ deposition previously and Defendants have declined. In order to obtain all of the facts necessary to challenge the factual basis set forth in Defendants’ Motion to Transfer Venue and in order to challenge the veracity of Ms. Jenkins’ affidavit filed in support of such Motion, Plaintiffs need to take Ms. Jenkins’ deposition prior to responding to Defendants’ Motion to Transfer. Plaintiffs intend to take Ms. Jenkins’ deposition as soon as possible and do not seek to unduly delay their response to Defendants’ Motion to Transfer.

WHEREFORE, based on the reasons stated herein, Plaintiffs request the Court enter an order extending the deadline to respond to Defendants' Motion to Transfer Venue (Docket No. 24) through and until fourteen (14) days after Plaintiffs receive the transcript of Ms. Jenkins' deposition, prior to the current deadline which is March 14, 2011.

Respectfully submitted,

SIEBMAN, BURG, PHILLIPS & SMITH, LLP

/s/ Clyde M. Siebman

CLYDE M. SIEBMAN

State Bar No. 18341600

BRYAN H. BURG

State Bar No. 03374500

STEPHANIE R. BARNES

State Bar No. 24045696

Federal Courthouse Square

300 North Travis Street

Sherman, Texas 75090

Telephone: (903) 870-0070

Facsimile: (903) 870-0066

clydesiebman@siebman.com

bryanburg@siebman.com

stephaniebarnes@siebman.com

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned certifies that on this 10th day of March, 2011, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document through the Court's CM/ECF system under Local Rule CV-5(a)(3). Any other counsel of record will be served by a facsimile transmission and/or first class mail.

SIEBMAN, BURG, PHILLIPS & SMITH, LLP

/s/ Clyde M. Siebman