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11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN JOSE DIVISION

15 ARTHUR J. GARCIA, RONALD K.
16 BROOKS, BETTY JEAN NORMAN,
17 RODERICK VOLD, ROBERT ELANDER,
AND JOHN LYNN, INDIVIDUALLY AND
18 ON BEHALF OF OTHERS SIMILARLY
SITUATED,

19 Plaintiffs,

20 v.

21 3M COMPANY,

22 Defendant.
23

CASE NO. C09-01943 RMW (PVT)

**MOTION TO TRANSFER (28 U.S.C.
§ 1404(a))**

Date: September 25, 2009
Time: 9:00 a.m.
Dept.: 6

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NOTICE OF MOTION

TO PLAINTIFFS AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on September 25, 2009, at 9:00 a.m., or as soon thereafter as the matter may be heard at the above-entitled court, located at 280 South First Street, San Jose, California, defendant 3M Company will bring on for hearing its motion to transfer pursuant to 28 U.S.C. § 1404(a).

By this motion, 3M Company seeks a transfer of the above-captioned action from this judicial district to the District of Minnesota on the grounds that virtually all witnesses and documents are located in Minnesota or closer to St. Paul than this Court; the operative events occurred either in Minnesota or were implemented at 3M workplaces across the nation; most of the putative class members work in Minnesota or closer to St. Paul than this Court; any injunctive relief, if granted, would most easily be monitored by the court in Minnesota; and a substantially similar state law age discrimination case against 3M by plaintiffs represented by the same law firm as in this case has been underway in Minnesota state court for more than four years and currently is being litigated in Minnesota.

POINTS & AUTHORITIES

I. STATEMENT OF THE ISSUE

Pursuant to 28 U.S.C. § 1404(a), the issue is whether transfer of this case from the Northern District of California to the District of Minnesota is warranted, given that virtually all witnesses and documents are located in Minnesota or closer to St. Paul than this Court; that the operative events occurred either in Minnesota or were implemented in 3M workplaces across the nation; that most of the putative class members work in Minnesota or closer to St. Paul than this Court; that any injunctive relief, if granted, would most easily be monitored by the court in Minnesota; and that a substantially similar state law age discrimination case against 3M by plaintiffs represented by the same law firm as in this case has been underway in Minnesota state court for more than four years and currently is being litigated in Minnesota.

1 **II. INTRODUCTION**

2 Plaintiffs' counsel, Sprenger & Lang PLLC, is attempting to expand its Minnesota-based
 3 age discrimination lawsuit against 3M, *Whitaker v. 3M Co.*, No. 62-C4-04-012239 (Ramsey
 4 County) ("*Whitaker*"), into a nationwide action. Plaintiffs' counsel's decision to file suit in this
 5 Court rather than in Minnesota is difficult to explain, given that, in this District, almost no
 6 decisions were made relevant to the claims, almost no witnesses or documents are located, only
 7 one named plaintiff resides, only two out of 61 opt-in signatories reside, comparatively few
 8 putative class members reside, and the Court would likely experience some difficulty monitoring
 9 compliance with Plaintiffs' requested injunctive relief, if it were granted. Whatever Plaintiffs'
 10 counsel's explanation may be, in the interests of justice and the convenience of all involved, 3M
 11 respectfully requests that this case, like its state-law counterpart, proceed in Minnesota.

12 **III. STATEMENT OF FACTS**

13 **A. Parties**

14 **1. 3M**

15 3M is a diversified technology company serving customers and employing individuals
 16 worldwide. The Company's corporate headquarters are in St. Paul, Minnesota.

17 3M employs 32,093 employees nationwide, with 11,788, or over one-third of the total,
 18 residing in Minnesota. *See* Declaration of Sandy Chaussee ("*Chaussee Decl.*") ¶ 5. By
 19 comparison, only 101 3M employees, or less than one-third of one percent, reside in areas within
 20 the Northern District of California. *See id.* Of the 3M employees in this Court's jurisdiction,
 21 only one is a Named Plaintiff: Arthur J. Garcia. Of the 61 opt-in signatories, only two reside
 22 locally: Michael G. Sedlak and Thomas Eager, in Pleasanton and Danville, California,
 23 respectively. *See* Declaration of Holly S.A. Eng ("*Eng Decl.*") ¶ 10. By comparison, even in
 24 this California action, two out of six Named Plaintiffs (Roderick Vold and Robert Elander), and
 25 24 opt-ins (or 39.3 percent) reside in Minnesota.¹ *See id.*

26
 27 ¹ An additional five opt-ins live just across the Minnesota border, in Wisconsin. *See id.* The
 28 St. Paul headquarters is located about 12 miles from the Minnesota/Wisconsin border, and an
 additional 1,543 current employees reside in the three Wisconsin counties closest to 3M's
 headquarters. *See* Chaussee Decl. ¶ 5.

1 **2. Plaintiffs**

2 Named Plaintiffs are six current and former 3M employees who reside in Minnesota,
 3 Texas, and Southern and Northern California. They claim that virtually all of 3M’s employment
 4 practices are intentionally discriminatory based on age, or, alternatively, have an unintentional
 5 discriminatory impact based on age. They have sought certification of a class action against 3M
 6 for two classes of 3M employees: a “Declaratory Judgment Class” and an “ADEA Collective
 7 Action” class. *See* Complaint ¶¶ 71, 91, and 101. The Declaratory Judgment putative class
 8 consists of 3M employees age 40 or older when employed by 3M in salaried positions below
 9 grade 18 at any time on or after January 1, 2001, who signed a release of claims on or after
 10 January 1, 2001. The ADEA putative class consists of 3M employees age 46 or older when
 11 employed by 3M in salaried positions below grade 18 on or after January 1, 2001.²

12 For the Declaratory Judgment putative class, approximately 2,044 members currently
 13 reside in and/or had last known addresses in the District of Minnesota. By contrast,
 14 approximately 32 members currently reside in and/or had last known addresses in the Northern
 15 District of California. Similarly, approximately 79 percent currently reside in and/or had last
 16 known addresses in the District of Minnesota or states or U.S. territories east of Minnesota, while
 17 approximately 21 percent currently reside in and/or had last known addresses in states west of
 18 Minnesota. *See* Chaussee Decl. ¶¶ 6-8; *see also* Declaration of Frank Moosic ¶¶ 2-3.

19 The data are similar for the ADEA classes. Approximately 8,490 members currently
 20 reside in and/or had last known addresses in Minnesota, while approximately 112 members
 21 currently reside in and/or had last known addresses in counties within the Northern District of
 22 California. Approximately 81 percent currently reside in and/or had last known addresses in
 23 Minnesota or states east of Minnesota, while approximately 19 percent currently reside in and/or
 24 had last known addresses in states west of Minnesota. *See* Chaussee Decl. ¶¶ 9-11.

25 Even at this early stage, one can be certain that potential witnesses at a trial in this action

26 ² The ADEA Collective Action class asserts two claims: disparate treatment and disparate
 27 impact. The disparate impact claim alleges two alternative classes: one covering persons
 28 age 46 and older, and, to the extent the court holds a disparate impact claim can be stated
 only on behalf of persons age 40 and older, one covering persons age 40 and older. *See*
 Complaint ¶ 101.

1 will include individuals residing in Minnesota, Texas, Southern California, Missouri, and
 2 Northern California (Named Plaintiff residences). Other witnesses also will be located
 3 throughout the United States, but principally in Minnesota (where most 3M employees are
 4 located). Very few witnesses reside in this District. *See* Eng Decl. ¶¶ 7-9 & Ex. 2.³

5 **B. *Whitaker v. 3M***

6 3M is currently the defendant in a virtually identical age discrimination lawsuit, *Whitaker*
 7 *v. 3M Co.*, brought under the Minnesota Human Rights Act (“MHRA”) in Ramsey County,
 8 Minnesota.⁴ The *Whitaker* lawsuit attacks the exact same 3M policies and practices that are at
 9 issue here, namely, 3M’s various performance evaluation, training, promotion, compensation,
 10 and termination policies and practices. The plaintiffs in *Whitaker* are represented by Sprenger &
 11 Lang, one of the law firms representing Plaintiffs in this matter. All six Named Plaintiffs
 12 brought their EEOC or state charges with the assistance of Sprenger & Lang, and, in fact, each
 13 charge explicitly references the *Whitaker* litigation either as an alleged basis for tolling their
 14 respective expired statutes of limitations, or as inspiration for their charge. *See* Declaration of
 15 Joel O’Malley (“O’Malley Decl.”) Ex. 3 at 4-10; Ex. 4 at 4-8; Ex. 5 at 1; Ex. 6 at 8-15; Ex. 7 at
 16 2-12; Ex. 8 at 5. Sprenger & Lang has communicated with most of the opt-in signatories, some
 17 as early as December 2004 – four and a half years before the filing of this lawsuit – and, in fact,
 18 claimed that 33 of the current opt-ins in this action were clients in the *Whitaker* case.⁵ *See* Eng

19 _____
 20 ³ Of the current opt-ins’ respective final coach/supervisors and next level managers (who could
 21 testify about each opt-in’s particular claim), almost half currently reside in Minnesota. *See*
 22 Chaussee Decl. ¶ 12.

23 ⁴ The *Whitaker* case arguably “involves all or a material part of the same subject matter and all
 24 or substantially all of the same parties as” this case. *See* L.R. 3-13. As such, 3M has jointly
 25 filed with this Motion and Memorandum a Notice of Pendency of Other Action or
 26 Proceeding pursuant to Local Rule 3-13.

27 ⁵ Sprenger & Lang was requested to disclose during discovery the names of 3M employees
 28 with whom they had communicated to gather information the *Whitaker* matter. *See*
 O’Malley Decl. Ex. 1 (Defendant’s First Set of Interrogatories, Interrogatories 1, 2). The list
 Sprenger & Lang produced included 33 of the 61 opt-ins in this case (54.1 percent). *See id.*
 at Ex. 2 (Plaintiffs’ Answers to Defendant’s First Set of Interrogatories (Supplement 2),
 Interrogatories 1, 2, and various iterations of appendix C). Notably, many of those opt-ins
 claimed to be putative class members in *Whitaker* or were working directly with Sprenger &
 Lang before leaving their 3M employment. Moreover, 3M provided 13 of the opt-ins (21.3
 percent of the total opt-ins) Sprenger & Lang’s contact information by way of adding it on or
 after July 12, 2008, to the language in 3M’s releases disclosing the *Whitaker* litigation, and

1 Decl. ¶ 3. Sixteen of the 61 opt-ins in this case prepared affidavits in support of Sprenger &
 2 Lang’s motion for class certification in *Whitaker*. *See id.* ¶ 4. Sprenger & Lang advertises this
 3 lawsuit, as well as *Whitaker*, on its website, and it requests that interested individuals contact
 4 them in Minnesota. *See O’Malley Decl. Ex. 9.*

5 C. The Current Action

6 After more than four years of litigating, on September 11, 2007, the *Whitaker* plaintiffs
 7 moved for class certification, which the trial court granted. 3M appealed. After briefing and oral
 8 argument, the Minnesota Court of Appeals on April 28, 2009, reversed the trial court, holding it
 9 had erred “both by failing to require proof of rule 23 certification requirements by a
 10 preponderance of the evidence and by failing to resolve factual disputes relevant to class-
 11 certification requirements.” *See Whitaker v. 3M Co.*, 2009 WL 1118951, at *7 (Minn. Ct. App.
 12 Apr. 28, 2009). The case was remanded to the Minnesota district court to determine class
 13 certification under the proper standard. Less than one week after this significant setback in the
 14 *Whitaker* case, Sprenger & Lang filed this action.

15 Plaintiffs’ counsel acknowledge that, except for the release issue, there is no difference in
 16 subject matter between this lawsuit and *Whitaker*.⁶ They invite individuals to contact them to opt
 17 in “except to the extent that their claims are encompassed in the case *Whitaker v. 3M Company*,
 18 No. 62-C4-04-012239 (Ramsey Co.).” *See O’Malley Decl. Ex. 10.* In fact, although Plaintiffs
 19 seek to represent employees age 40 and older for their Declaratory Judgment class (because the
 20 ADEA and Older Workers Benefit Protection Act direct that age cutoff), they seek to certify
 21 Disparate Treatment and Disparate Impact classes for employees age 46 and older – the same

23 notified those opt-ins that they could contact Sprenger & Lang. *See Eng Decl. ¶ 5.* The 13
 24 opt-ins nonetheless signed releases and accepted 3M’s severance package. Amazingly, they
 25 now claim, notwithstanding their communication with Sprenger & Lang throughout that
 26 period, that they somehow did not understand the releases they were signing.

27 ⁶ Not only does the Complaint here parrot the allegations almost word-for-word about 3M’s
 28 corporate policies and procedures, but it also explicitly and repeatedly references the
Whitaker litigation to support those allegations. It quotes the now-reversed Order certifying
 the *Whitaker* class (without mentioning that it had been reversed). *See Complaint ¶¶ 18, 19.*
 It also admits the 3M practices that allegedly cause statistical disparities in employment
 outcomes for older 3M workers are the “same practices” allegedly causing nationwide
 disparities. *See id.* ¶ 20.

1 oddly-conceived class sought to be certified in Minnesota. *See* Complaint ¶¶ 91, 101; 29 U.S.C.
2 § 631(a) (limiting protections of ADEA “to individuals who are at least 40 years of age”). They
3 do so for obvious reasons: they hope to use the same curious age cutoff from *Whitaker* and
4 apply it here.

5 **IV. LEGAL ARGUMENT**

6 This case should be transferred to Minnesota pursuant to 28 U.S.C. § 1404(a), which
7 provides: “For the convenience of the parties and witnesses, in the interest of justice, a district
8 court may transfer any civil action to any other district or division where it might have been
9 brought.”

10 In determining whether to transfer venue, courts consider, in addition to the statutory
11 factors and among other factors, the location of the operative events, where related actions are
12 pending, and other practical considerations, including the monitoring of possible injunctive
13 relief. *See generally Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498-99 (9th Cir. 2000); *Lou*
14 *v. Belzberg*, 834 F.2d 730, 739 (9th Cir. 1987). Section 1404 is interpreted broadly to allow a
15 court to consider the particular facts of each case. *See Lopez Perez v. Hufstedler*, 505 F. Supp.
16 39, 41 (D.D.C. 1980).

17 Minnesota is the appropriate forum for this action under each of these factors. Venue
18 would unquestionably be appropriate in the District of Minnesota, where 3M is headquartered
19 and where most of the putative class and witnesses reside or are near. There is, in contrast,
20 almost no connection between this case and the Northern District of California.

21 **A. This Action Could Have Been Brought In The District Of Minnesota.**

22 Plaintiffs invoke federal question jurisdiction pursuant to the ADEA, 29 U.S.C. § 626(c).
23 Venue is proper both in this forum and the United States District Court for the District of
24 Minnesota pursuant to 28 U.S.C. §§ 1331 and 1391.

25 **B. The Convenience Of The Parties And Witnesses Support Transfer To The** 26 **District Of Minnesota.**

27 **1. Plaintiffs’ Forum Choice is Entitled No Deference.**

28 Plaintiffs’ preference for this forum merits no deference. While a plaintiff’s choice may

1 in other cases be entitled to consideration, that fact has no weight in a class action where the
 2 filing location is based merely on the “accidental residence” of a single named plaintiff – in this
 3 case, Arthur J. Garcia’s San Jose address. *See IBJ Schroder Bank & Trust Co. v. Mellon Bank,*
 4 *N.A.*, 730 F. Supp. 1278, 1282 (S.D.N.Y. 1990); *see also Milton v. TruePosition, Inc.*, 2009 WL
 5 323036, at *2 (N.D. Cal. Feb. 9, 2009) (“[I]n class actions a plaintiff’s choice of forum is
 6 generally accorded less weight.”); *Georgouses v. NaTec Res., Inc.*, 963 F. Supp. 728, 730 (N.D.
 7 Ill. 1997) (“[B]ecause plaintiff alleges a class action, plaintiff’s home forum is irrelevant.”).

8 The Named Plaintiffs’ choice is even less persuasive here, where putative class members
 9 are dispersed nationwide. *See Jones v. Walgreen, Co.*, 463 F. Supp. 2d 267, 274 (D. Conn.
 10 2006). As this Court has noted, “where there are hundreds of potential plaintiffs . . . all of whom
 11 could with equal show of right go into their many home courts, the claim of any one plaintiff that
 12 a forum is appropriate merely because it is his home forum is considerably weakened.”
 13 *Kaloghlian v. Best Buy Stores, L.P.*, 2008 WL 4890895, at *2 (N.D. Cal. Nov. 12, 2008)
 14 (quoting *Koster v. Lumberman’s Mut. Co.*, 330 U.S. 518, 524 (1947)); *Italian Colors Rest. v.*
 15 *Am. Express*, 2003 WL 22682482, at *5 (N.D. Cal. Nov. 10, 2003). Mr. Garcia’s residence is
 16 especially irrelevant when, as demonstrated below, there is little if any contact between this
 17 forum and the operative events alleged in the lawsuit. *See IBM Credit Corp. v. Definitive*
 18 *Computer Servs., Inc.*, 1996 WL 101172, at *2 (N.D. Cal. Feb. 28, 1996) (“Ordinarily, where the
 19 forum lacks any significant contact with the activities alleged in the complaint, plaintiff’s choice
 20 of forum is given considerably less weight, even if the plaintiff is a resident of the forum.”).⁷

21 What Plaintiffs’ choice of this Court really indicates is improper forum shopping. *See*
 22 *Italian Colors Rest*, 2003 WL 22682482, at *5 (disregarding plaintiff’s choice of forum when
 23 forum-shopping is suspected). Plaintiffs’ choice warrants no weight, since a more convenient
 24 forum exists elsewhere. *See Reiffin v. Microsoft Corp.*, 104 F. Supp. 2d 48, 54 n.12 (D.D.C.
 25 2000) (“[F]orum shopping must not be indulged in the face of multiple litigation especially
 26

27 ⁷ Even if Mr. Garcia’s local residence were somehow relevant, that residence must be viewed
 28 in contrast to the residences of the five other Named Plaintiffs, two of whom, Mr. Vold and
 Mr. Elander, live in Minnesota, and at least one of whom, Mr. Vold, worked for 3M in
 Minnesota.

1 where, as here, the shopper is offered an equally convenient forum.”) (quotation omitted)).

2 **2. Witnesses are Located Primarily in Minnesota or Spread Throughout**
3 **the Country; Few Reside in this District.**

4 With Plaintiff’s choice of this Court meriting no weight, where, then is the most proper
5 venue? The first, and by far the most important, factor in making such a determination is the
6 location of parties and residences of the potential witnesses. *See Jarvis v. Marietta Corp.*, 1999
7 WL 638231, at *4 (N.D. Cal. Aug. 12, 1999). When, as here, “the distance between an existing
8 venue for trial of a matter and a proposed venue under § 1404(a) is more than 100 miles, the
9 factor of inconvenience to witnesses increases in direct relationship to the additional distance to
10 be traveled.” *In re Volkswagen of Am., Inc.*, 504 F.3d 376, 386 (5th Cir. 2007).

11 Witnesses and documents in a potential trial of this matter are in locations nationwide,
12 but are concentrated in Minnesota. First, as the chart attached as Exhibit 2 to the Eng
13 Declaration demonstrates, many likely witnesses work at 3M’s headquarters, where most of the
14 challenged policies and practices were developed as best practices for the Company by 3M’s
15 human resources experts. These witnesses will testify at trial about 3M’s employment practices,
16 their development as best practices, the witnesses’ communications regarding implementation by
17 various 3M business units, and the witnesses’ experiences with that diverse implementation. 3M
18 witnesses also will include business unit employees throughout the United States who modified
19 and implemented 3M’s recommended practices in myriad ways to match the needs and existing
20 unique processes of the particular units. *See Eng Decl.* ¶¶ 7-9 & Ex. 2.

21 Second, witnesses will be located at or near where the individual Named Plaintiffs and
22 putative class members worked. *See id.* Witnesses for each Named Plaintiff will include all the
23 witnesses one would expect at a single-plaintiff discrimination trial: the plaintiff, his/her
24 supervisor, his/her next level manager, human resources professionals (who may have presented
25 the release to the employee), and other individuals playing a role in employment decisions. *See*
26 *Int’l Bhd. of Teamsters v. United States*, 431 U.S. 324, 361-62 (1977) (stating that during second
27 “remedial” phase of pattern-and-practice trial, class members must prove individually they were
28 victims of the employer’s pattern and practice of discrimination). Witnesses regarding putative

1 class members will be concentrated where the majority of such putative class members were
2 employed, which, of course, is in Minnesota. *See Adkins v. Kellwood Co.*, 1984 WL 1138, at *3
3 (W.D.N.C. Nov. 16, 1984).

4 This court has not hesitated to transfer putative class action cases, like this one, to the
5 forum of the defendant corporation's headquarters. In *Foster v. Nationwide Mutual Insurance*
6 *Co.*, a similar case involving opposing parties both represented by Minneapolis-based law firms,
7 this Court transferred venue of a wage and hour putative class action to the location of the
8 defendant's corporate headquarters. In doing so, the court noted that "most of defendant's
9 management-level employees who . . . work in human resources are based in Ohio; others work
10 in Iowa and Florida, making Ohio more convenient for them as well." 2007 WL 4410408, at *4
11 (N.D. Cal. Dec. 14, 2007); *see also Cardoza v. T-Mobile USA Inc.*, 2009 WL 723843, at *4
12 (N.D. Cal. Mar. 18, 2009) (transferring venue to defendant's headquarters where employees
13 familiar with challenged policies predominantly worked); *Panetta v. SAP Am., Inc.*, 2005 WL
14 1774327, at *4 (N.D. Cal. July 26, 2007) (transferring venue to where defendant's senior
15 executives, who contributed to the creation of the defendant's challenged policy, resided).

16 This Court also has routinely transferred similar cases with witnesses nationally dispersed
17 though concentrated in another forum. *See Evancho v. Sanofi-Aventis U.S. Inc.*, 2007 WL
18 1302985, at *3 (N.D. Cal. May 3, 2007) (transferring case to New Jersey where "a large number
19 of critical witnesses live and work in New Jersey, and a greater proportion of the putative class
20 members lives and works on the east coast than the west coast"); *Hoefler v. U.S. Dep't of*
21 *Commerce*, 2000 WL 890862, at *2 (N.D. Cal. June 28, 2000) (transferring venue where
22 "members of the purported class are numerous and are located throughout the nation"); *see also*
23 *Adachi v. Carlyle/Galaxy San Pedro L.P.*, 595 F. Supp. 2d 1147, 1151 (S.D. Cal. 2009)
24 (transferring out of district where only 1 of 239 prospective class members resided).

25 Moreover, nationwide pattern-and-practice cases, like this one, routinely have been
26 transferred to venues where witnesses are concentrated. For example, in *Jones v. Walgreen*, the
27 plaintiff alleged a nationwide pattern and practice of gender discrimination against her employer.
28 She filed suit in Connecticut, her primary workplace, rather than Illinois, Walgreen's corporate

1 headquarters, where a “disproportionately large share” of the defendant’s employees were
2 located. 463 F. Supp. 2d at 275. In transferring venue to Illinois, the court expressly noted the
3 very nature of pattern-and-practice allegations compelled transfer to the location of the corporate
4 headquarters:

5
6 [I]t is unlikely in the extreme that the discrimination allegedly
7 suffered by all female Walgreens employees nationwide has
8 occurred as a result of the coincidental conduct of hundreds of
9 District Managers operating independently. Rather . . . in order for
the “systemic” and “endemic” discrimination Ms. Jones describes
to have occurred, there would have to have been either some
affirmative acts or, at a minimum, intentional disregard at the
Walgreens corporate level.

10 *Id.* at 276; *see also Perkins v. Rent-A-Center, Inc.*, 2004 WL 2182190 (D. Kan. Sept. 21, 2004);
11 *Adkins*, 1984 WL 1138, at *3. Similarly, here, while 3M vigorously denies Plaintiffs’ claims of
12 a centralized pattern and practice of discriminatory policies, that contest will be won or lost
13 based upon evidence from Minnesota. Those allegations claim systemic discrimination by
14 decision-makers in Minnesota, not Northern California.

15 The list of likely witnesses described above and provided in Exhibit 2 to the Eng
16 Declaration naturally will grow if/as opt-in signatories increase in number. At this early stage it
17 is too early to tell exactly where all opt-in class members will reside. The growing list will not,
18 however, alter the fact that a significant majority of witnesses will be located in Minnesota or far
19 closer to Minnesota than California, as most putative class members reside in or east of
20 Minnesota, while comparatively few reside west of Minnesota. *See Chausee Decl.* ¶¶ 8, 11;
21 *Foster*, 2007 WL 4410408, at *5 (determining venue based on expected opt-ins); *Sorensen v.*
22 *Daimler Chrysler Ag*, 2003 WL 1888866, at *3 (N.D. Cal. Apr. 11, 2003) (transferring case to
23 New Jersey where most witnesses closer).

24 Thus, whether judged by the current opt-ins or potential future ones, the greater
25 convenience and decreased cost of a Minnesota venue is apparent. *See Panetta*, 2005 WL
26 1774327, at *7. Also, it cannot be said that the enormous increase in convenience to the
27 Minnesota witnesses from transferring this case to the District of Minnesota would be at the
28 expense of witnesses near this Court. Rather, a Minnesota forum would be more convenient for

1 both Plaintiffs' and 3M's witnesses, most of whom reside in Minnesota.⁸ *See Foster*, 2007 WL
 2 4410408, at *4 (reviewing defendant's nationwide employment patterns to conclude venue
 3 properly transferred out of California to centrally located Ohio).

4 Finally, the inconvenience to 3M witnesses in having to travel to this Court is made
 5 worse by the expected lengthy trial that would be necessary for this case, if a class were certified.
 6 Numerous key employees, both in HR and elsewhere, would be forced to be absent from their
 7 duties while attending a prolonged out-of-state trial, which likely would damage 3M's
 8 operations. *See Jarvis*, 1999 WL 638231, at *4 (“[I]t would be burdensome on Marietta to send
 9 a significant number of its employees to California for purposes of trial. These employees . . .
 10 are involved in the daily operations of the company and it could be detrimental to business to
 11 remove them from their duties.”).⁹

12 3. The Operative Events Supporting the Putative Class's Claims and 13 3M's Defenses Arose in Minnesota and at 3M Locations Nationwide.

14 Even if the location of the vast majority of witnesses in or near Minnesota (and almost
 15 none residing in this District) were not dispositive, additional factors also support transfer of this
 16 case to Minnesota. One such factor is the location of the operative events at issue in the lawsuit.
 17 Here, virtually all of the operative events are concentrated in Minnesota – where 3M is
 18 headquartered, most of its HR experts are employed, and the majority of its employees reside
 19 and work. *See Lou*, 834 F.2d at 739 (ignoring plaintiff's forum choice when “the operative facts
 20 have not occurred within the forum and the forum has no interest in the parties or subject
 21 matter”). Operative events simply are not concentrated in this District.

22 ⁸ Typical travel time for a witness located at 3M's St. Paul headquarters to the Warren E.
 23 Burger Federal Building & United States Courthouse, by car, is approximately 11 minutes.
 24 Travel time from 3M's St. Paul headquarters to the San Jose Federal Building and
 Courthouse, by taxi and plane, with a 4-hour non-stop flight and 1 hour of pre-flight time, is
 at least 5 hours and 32 minutes, but generally would be longer. *See O'Malley Decl. Ex. 11.*

25 ⁹ While California courts have held that the location of counsel is generally not relevant to a
 26 determination of whether a particular forum is appropriate, *see, e.g., Panetta*, 2005 WL
 1774327, at *5, it is important to note that, given the corollary *Whitaker* litigation ensuing in
 27 Minnesota, both parties employ Minnesota counsel that have been working on the subject
 28 matter of the instant case for years. Given this unique circumstance, requiring the parties to
 retain California counsel and litigate a parallel case over 2,000 miles away will result in
 unnecessary and significant increased litigation costs. *See id.* at *7 (noting that differences in
 litigation costs is a relevant factor in assessing whether transfer of venue is appropriate).

1 Plaintiffs first challenge the validity of the releases signed by departing 3M employees
2 when they collected their severance pay, claiming that they and the individuals they seek to
3 represent somehow did not understand what they were signing. The operative events
4 surrounding the releases are both the design and drafting of those releases in Minnesota, and the
5 presentation to, and signing of those releases by, individual putative class members located
6 nationwide. Whether the issue is drafting or subsequent signing, the operative facts surrounding
7 the releases mostly occurred in Minnesota, not Northern California. *See Panetta*, 2005 WL
8 1774327, at *6 (transferring venue to forum where challenged plans were drafted).

9 Plaintiffs also allege flaws in two aspects of 3M's employment practices: their overall
10 design by 3M's HR professionals, and their implementation by thousands of supervisors
11 nationwide. The operative events underlying Plaintiffs' claims thus include the development by
12 3M's human resources experts in Minnesota of employment policies and programs, as well as
13 the local adaptation, modification, and implementation of those policies on a unit-by-unit basis.
14 *See Abram v. United Parcel Service of Am., Inc.*, 200 F.R.D. 424, 426 (E.D. Wis. 2001)
15 ("Decentralization in personnel matters is a practical necessity in any large business."). 3M has
16 operations in 37 states plus Guam and Puerto Rico (not including sales personnel), and the events
17 surrounding the development, modification, and implementation of 3M's varied employment
18 practices took place not only in Minnesota but at all 3M locations, but with no center of gravity
19 in the Northern District of California. *See Chaussee Decl.* ¶ 13.

20 Many of the operative events underlying Plaintiffs' claims also include the very detailed
21 and individualized employment decisions separately made with respect to each individual
22 putative class member, *e.g.*, whether a supervisor rated a putative class member a 3 or a 4 on a
23 performance rating, whether a supervisor promoted a putative class member, etc. These
24 decisions, like the specific implementation of 3M's employment practices, are made in scores of
25 locations across the nation by supervisors having direct and daily contact with 3M employees.
26 Again, the operative events in the case are scattered throughout the country, but generally located
27 in or close to Minnesota.¹⁰

28 _____
¹⁰ Not only are the operative events scattered throughout the country, but, as demonstrated by

1 **4. The District of Minnesota Would Be Best Able to Monitor Compliance**
 2 **with Possible Injunctive Relief.**

3 Plaintiffs pray in their Complaint for numerous forms of injunctive relief, including an
 4 Order (1) enjoining 3M from using its challenged releases in connection with workers age 40 and
 5 over, (2) requiring 3M to inform all release signing former employees age 40 and over that the
 6 release is invalid, (3) permanently prohibiting 3M from continuing its employment practices, (4)
 7 permanently mandating that 3M take affirmative action to remedy alleged violations of the
 8 ADEA, and (5) “retaining jurisdiction over this action until such time as [the Court] is satisfied
 9 that 3M has remedied the practices complained of and is determined to be in full compliance
 10 with the law.” *See* Complaint Prayer for Relief ¶¶ A.3., A.4., B.3., B.4., and C.3.

11 While 3M denies the underlying assumptions, nature, and need for the “relief” Plaintiffs
 12 seek, these requests, themselves, warrant transfer to Minnesota, where the District Court would
 13 be better able to implement and monitor compliance, if Plaintiffs’ requests were granted. Courts
 14 routinely transfer cases for this very reason. *See, e.g., Law Bulletin Pub., Co. v. LRP Publ’ns,*
 15 *Inc.* 992 F. Supp. 1014, 1021 (N.D. Ill. 1998) (holding that “as a practical matter in this case,
 16 Florida is the better forum to enforce and monitor any injunctive relief awarded because the
 17 Florida court would be ‘closer to the action’” (citation omitted)); *Habitat Wallpaper and Blinds,*
 18 *Inc. v. K.T. Scott Ltd. P’ship,* 807 F. Supp. 470, 475 (N.D. Ill. 1992) (noting that the injunctive
 19 relief sought by the plaintiffs, if granted, would require enforcement in forum where defendant
 20 headquartered).

21 **C. Transfer To The District Of Minnesota Is In The Interests Of Justice.**

22 In examining whether the “interests of justice” support a transfer, courts in this District
 23 also examine what are generally referred to as “public factors,” among them the (1) familiarity of
 24 each forum with applicable law, (2) feasibility of consolidation with other claims, (3) local
 25 interest in having localized controversies decided at home, (4) administrative difficulties flowing

26 discovery already conducted in the *Whitaker* case, so too is most of the documentary
 27 evidence, which again merits transfer to Minnesota. *See Jones*, 211 F.3d at 498-99; *Jarvis*,
 28 1999 WL 638231, at *5 (stating “the relative ease of access to proof is an important factor to
 be considered”); *Adkins*, 1984 WL 1138, at *3 (transferring venue of pattern-and-practice
 case where “most of documentary evidence expected to be offered at trial is located in
 districts in which each individual Plaintiff resides and previously worked”).

1 from court congestion, and (5) unfairness of burdening citizens in an unrelated forum with jury
 2 duty. *See Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986)
 3 (quotations omitted); *Williams v. Bowman*, 157 F. Supp. 2d 1103, 1106 (N.D. Cal. 2001). These
 4 public factors support a transfer.¹¹

5 Minnesota has a strong local interest in deciding this controversy. 3M is a significant
 6 employer and corporate citizen in Minnesota. Because the policies and practices of a business
 7 headquartered in Minnesota that employs thousands of individuals in that State are at the heart of
 8 this matter, the community in and around Minneapolis / St. Paul has a more significant interest in
 9 this case than does the community in the Northern District of California, as demonstrated by the
 10 interest shown in *Whitaker*.¹² *See, e.g., Ctr. for Biological Diversity and Pac. Env't v.*
 11 *Kemphorne*, 2007 WL 2023515, at *5 (N.D. Cal. July 12, 2007) (noting the “local interest in
 12 having local controversies resolved at home” (quotation and citation omitted)); *Jamhour v.*
 13 *Scottsdale Ins. Co.*, 211 F. Supp. 2d 941, 945 (S.D. Ohio 2002) (noting that public interest
 14 factors include “the value of holding trial in a community where the public affected live”); *Ellis*
 15 *Corp. v. Jensen USA, Inc.*, 2003 WL 22111100, at *4 (N.D. Ill. Sept. 9, 2003) (“[T]he
 16 administration of justice is served more efficiently when the action is brought before a court that
 17 is closer to the action.” (internal quotation marks omitted)). In that same vein, Minnesota
 18 citizens would be the most invested and fairly burdened with possible jury duty.

19 The convenience of transferring to Minnesota is, of course, increased by the pendency of
 20 the *Whitaker* action in Minnesota. Even absent consolidation, duplication of witnesses and
 21 evidence between the two cases supports transferring this case there. *See Cardoza*, 2009 WL
 22 723843, at *5 (“[T]he pendency of an action in another district is important because of the
 23

24 ¹¹ Factors (1) and (4) support neither party. Both this Court and the District of Minnesota are
 25 equally competent to resolve federal age claims, and based on statistics produced by the
 26 Federal Judiciary, the median time from filing to disposition is virtually the same between
 27 this Court and the District of Minnesota. *See* <http://www.uscourts.gov/caseload2008/tables/C05Mar08.pdf>. Any minor difference in average time to trial does not outweigh the many
 28 other convenience factors weighing in Minnesota’s favor. *See, e.g., Burstein v. Applied*
Extrusion Techs., Inc., 829 F. Supp. 106, 114 (D. Del. 1992).

¹² Both daily newspapers in the Twin Cities featured articles on the filing of the Complaint in
 this action. *See O’Malley Decl. Ex. 12.*

