

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

E-Filed: 11/16/09

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

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

Plaintiffs,

v.

3M COMPANY,

Defendant.

No. C-09-01943 RMW

ORDER GRANTING MOTION TO  
TRANSFER VENUE

**[Re Docket No. 47]**

Defendant 3M Company's motion to transfer venue pursuant to 28 U.S.C. § 1404(a) came on for hearing before the court on September 25, 2009. Plaintiffs oppose defendant's motion. The court has read the moving and responding papers and considered the arguments of counsel. For the reasons set forth below, the court grants defendant's motion for change of venue.

**I. BACKGROUND**

On May 4, 2009, the six named plaintiffs in this suit filed a putative class-action complaint against defendant 3M Company ("3M") alleging that 3M engaged in an interwoven set of personnel actions designed to elevate younger employees into the company's leadership and to marginalize and

1 remove older employees beginning with employee performance appraisals and extending to other  
2 personnel actions negatively affecting employees age 46 and older. Compl. ¶ 1. Pursuant to the  
3 Federal Age Discrimination in Employment Act ("ADEA"), as amended by the Older Worker  
4 Benefit Protection Act ("OWBPA"), plaintiffs allege age discrimination on behalf of themselves and  
5 other persons similarly situated. Compl. ¶ 2. 29 U.S.C. § 621, 29 U.S.C. § 626(f). Plaintiffs  
6 proposed two classes for certification: a "Declaratory Judgment Class" and an "ADEA Collective  
7 Action" class. Compl. ¶ 71, 91 and 101.

8 A related age discrimination lawsuit, *Whitaker v. 3M Co.*, No. 62-C4-04-012239, is  
9 currently pending in Minnesota state court. Mot. at 4. The Minnesota state lawsuit is brought under  
10 the Minnesota Human Rights Act ("MHRA") but attacks the same 3M policies and practices at issue  
11 in the instant case. *Id.* The Minnesota trial court granted class certification, however, on April 28,  
12 2009, the Minnesota Court of Appeals reversed the trial court holding it had erred "both by failing to  
13 require proof of certification requirements by a preponderance of the evidence and by failing to  
14 resolve factual disputes relevant to class-certification requirements." *See Whitaker v. 3M Co.*, 2009  
15 WL 1118951 at 7 (Minn. Ct. App. Apr. 28, 2009). The case was then remanded to determine class  
16 certification under the proper standard. The instant federal action was filed with this court less than  
17 one week after the Minnesota Court of Appeals issued its remand order. Mot. at 5.

## 18 II. ANALYSIS

19 Defendant brings this motion to transfer on the grounds that the District of Minnesota is a  
20 more appropriate venue and is more convenient for the parties and witnesses than the Northern  
21 District of California. Mot. at 6. 3M contends that transferring the action to the District of  
22 Minnesota is appropriate under 28 U.S.C. § 1404(a) because a related lawsuit is already underway in  
23 Minnesota, virtually all witnesses and documents are located in Minnesota or closer to St. Paul than  
24 this court, the operative events occurred either in Minnesota or 3M workplaces, most of the putative  
25 class members work in Minnesota or closer to St. Paul than this court, and any injunctive relief, if  
26 granted, would most easily be monitored by the court in Minnesota. Mot. at 1. Plaintiffs oppose the  
27 motion, arguing that defendant has not met its burden of demonstrating that the convenience of the  
28

1 parties and witnesses and the interest of justice favor transfer of venue to the District of Minnesota.

2 Opp. at 1.

3 Section 1404(a) provides: "For the convenience of parties and witnesses, in the interest of  
4 justice, a district court may transfer any civil action to any other district or division where it might  
5 have been brought." In ruling on a motion to transfer, a court may consider such factors as: (1) the  
6 plaintiffs' choice of forum, (2) convenience to the parties, (3) convenience to the witnesses, (4) ease  
7 of access to the evidence, (5) familiarity of each forum to the applicable law, (6) the feasibility of  
8 consolidation with other claims, (7) any local interest in the controversy, and (8) the relative court  
9 congestion and time of trial in each forum. *Jones v. GNC Franchising*, 211 F.3d 495, 498-99 (9th  
10 Cir. 2000).

11 Section 1404(a) limits transfer to courts where the action might have been brought. *Hoffman*  
12 *v. Blaski*, 363 U.S. 335, 343-44 (1960). The transferee court must: (1) be able to exercise personal  
13 jurisdiction over the defendants, (2) have subject matter jurisdiction over the claim, and (3) be a  
14 proper forum. *Id.* In the present case, the parties do not dispute that the action might have been  
15 brought in the District of Minnesota. Turning to the applicable factors:

#### 16 **A. Plaintiffs' Choice of Forum**

17 The burden falls on the moving party to demonstrate that matters of convenience and the  
18 interest of justice weigh heavily in favor of transfer. *Decker Coal Co. v. Commonwealth Edison Co.*,  
19 805 F.2d 834, 843 (9th Cir. 1986). The Northern District of California is plaintiffs' choice of forum.  
20 However, the weight given to the plaintiffs' choice of forum diminishes when the plaintiffs reside  
21 outside the chosen forum. *Gemini Capital Group v. Yap Fishing Corp.*, 150 F.3d 1088, 1091 (9th  
22 Cir. 1998). Where plaintiffs' choice of forum is largely fortuitous, such as in class actions, where  
23 putative class members reside in many different states, the plaintiffs' choice of forum is given less  
24 weight. *See In re Warrick*, 70 F.3d 736, 740 (2d Cir. 1995); *Georgouses v. Natec Res., Inc.*, 963 F.  
25 Supp. 728, 730 (N.D. Ill. 1997); *Lou v. Belzberg*, 834 F.2d 730, 739 (9th Cir. 1987). Only two of  
26 the named plaintiffs reside in California. Opp. at 3. The other named plaintiffs live in Texas,  
27 Minnesota and the Southern District of California. *Id.* The remaining potential class members are  
28 nationwide. *Id.* Plaintiffs cite *Ellis v. Costco Wholesale Corp.* and argue that in class based

1 employment discrimination cases, plaintiffs' choice of forum is afforded less deference only when a  
2 named plaintiff lacks contacts with the district. Opp. at 3, *citing* 372 F. Supp. 2d 530, 538 (N.D.  
3 2005). However, *Ellis* was decided under Title VII's special venue provision, 42 U.S.C. § 2000e-  
4 5(f)(3), which provides greater deference "as a matter of law" to choice of forum in Title VII class  
5 action cases. Since this is not a Title VII case, the greater deference the court provided in *Ellis* is not  
6 applicable. Furthermore, the Ninth Circuit has established that courts should disregard a plaintiff's  
7 forum choice where the suit is a result of forum-shopping. *See Alltrade, Inc., v. Uniweld Products,*  
8 *Inc.*, 946 F.2d 622, 628 (9th Cir. 1991). One could rationally infer forum shopping here, based on  
9 plaintiffs' filing in California less than one week after remand in Minnesota. Accordingly, this factor  
10 does not weigh in favor of retaining the action in the Northern District of California.

#### 11 **B. Convenience of Witnesses**

12 The convenience of witnesses has been called the most powerful factor governing the  
13 decision to transfer a case. *Florens Container v. Cho Yang Shipping*, 245 F. Supp. 2d 1086, 1092  
14 (N.D. Cal. 2002). To meet the burden of demonstrating that transfer is in the convenience of the  
15 witnesses, "the party seeking transfer must specifically list the evidence and witnesses on which the  
16 party intends to rely in the transferee district, along with a general statement of the topics of each  
17 witness' testimony." *Moore's Federal Practice - Civil* § 111.13 (2009). Absent such a showing, the  
18 motion should be denied. *Id.* In judging the weight to be given to a plaintiffs' choice of forum,  
19 "consideration must be given to the extent both of the defendant's business contacts with the chosen  
20 forum and of the plaintiff[s'] contacts, including those relating to [plaintiffs'] cause of action."  
21 *Pacific Car and Foundry Co. v. Pence*, 403 F.2d 949, 954 (9th Cir. 1968). Defendant attached  
22 Exhibits 1-12 to its motion which provide a list and graphic representations of the locations of  
23 specific witnesses, and the location of evidence. 3M contends that many of 3M's witnesses and the  
24 concentration of documents relevant to the claims asserted in the complaint are located in  
25 Minnesota. Mot. at 8. Specifically, the 3M human resource witnesses, who developed the  
26 challenged practices and policies and who have knowledge of 3M's experiences with their  
27 implementation reside in Minnesota. *Id.* Additionally, the 3M business unit employees who  
28

1 modified and implemented the recommended practices and who also have knowledge of the 3M  
2 pattern and practice with regard to these policies reside in Minnesota. *Id.*

3 Plaintiffs assert that the EEOC investigation and the involvement of the EEOC's San  
4 Francisco District Office is a sufficient contact with this district. Opp. at 4. In its opposition,  
5 plaintiffs list five class members who filed claims with EEOC offices in Minneapolis, San Francisco,  
6 and Missouri and whose claims were consolidated and transferred to the EEOC office in San  
7 Francisco. Opp. at 1. Plaintiffs argue that given the San Francisco office of the EEOC's continued  
8 investigation into the age discrimination claims, severing those ties by moving the litigation to  
9 Minnesota would frustrate an important connection between the EEOC and the litigation. *Id.* As  
10 noted by defendant, however, the EEOC is not a witness and has nationwide offices, including an  
11 office in Minnesota. Defendant has named witnesses for whom its choice of forum is more  
12 convenient. Accordingly, the convenience of witnesses weighs in favor of transfer.

### 13 C. Convenience of the Parties

14 Defendant argues that the District of Minnesota is a more appropriate forum because both  
15 plaintiffs and defendant have stronger contacts with the District of Minnesota than the Northern  
16 District of California. 3M's principal place of business is in Minnesota and it is more convenient for  
17 3M to litigate in Minnesota than in California. Plaintiffs assert that named plaintiffs Arthur Garcia  
18 and Ronald Brooks's primary residences are California, and the case is brought on behalf of former  
19 employees who were employed primarily outside of Minnesota. Opp. at 1. Plaintiffs contend  
20 further that given electronic document production, the costs of discovery will be unaffected by the  
21 location of forum and therefore, location of evidence has no bearing on transfer. Opp. at 5.  
22 Likewise, the ease with which witnesses can be deposed either near their residences or at a location  
23 convenient to the parties makes any inconvenience to witnesses minimal whether the action is  
24 venued in Minnesota or California. Plaintiffs assert this factor is neutral and therefore the litigation  
25 ought to remain in California, plaintiffs' choice of forum. *Id.*

26 In considering the convenience of the two parties in this action the court is compelled to take  
27 into account related factors, such as the potential for disruption to the parties' business and the  
28 parties' relative financial means. Plaintiffs, situated throughout the United States include residents

1 of this district and the District of Minnesota. Approximately 2,044 of 4,728 putative class members  
2 who signed releases (the "Declaratory Judgment" putative class) reside or had last known addresses  
3 in Minnesota. Reply at 5, Exhibits 1-3. Approximately 32 reside in this district. *Id.* For the ADEA  
4 class, approximately 8,490 of 18,653 putative class members reside or had last known addresses in  
5 Minnesota while barely more than 100 reside in this district. *Id.* Given these statistics on plaintiffs,  
6 and that defendant is situated in Minnesota the convenience of the parties favors transfer.

#### 7 **D. Where the Events Occurred and Local Adjudication**

8 Defendant argues Minnesota has a strong local interest in deciding this controversy given  
9 that 3M is a significant employer and corporate citizen of Minnesota. Mot. at 14. In its opposition  
10 plaintiffs assert that 3M's contacts with Minnesota will enhance advantages 3M already enjoys.  
11 Opp. at 8. Plaintiffs argue that confusion will arise among lay persons and potential class members  
12 by blurring the state and the federal causes of action. *Id.* Plaintiffs' argument is not persuasive and  
13 offers no cogent reason against adjudicating this action in Minnesota. When an action involves an  
14 incident occurring in a particular locale, there is a public interest in having the controversy  
15 adjudicated in that locale, rather than in a remote forum. *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501,  
16 511 (1947). The local public in the District of Minnesota presumably has a strong interest in the  
17 litigation and an interest in having the trial in their view. *Id.* Plaintiffs cite no specific local  
18 influence other than knowledge of the company that would hamper a fair trial. Mot. at 14. The  
19 Northern District of California's interest does not extend as forcefully to the class as a whole, as the  
20 District of Minnesota with the largest concentration of plaintiffs and a stronger interest in ensuring  
21 non-discriminatory management of corporation. *Ellis*, 372 F. Supp. 2d at 543. Given 3M's  
22 presence in Minnesota, plaintiffs' residences in Minnesota, the large amount of evidence and  
23 witnesses in Minnesota and the pendency of the *Whitaker* action in Minnesota, the public's interest  
24 and preference for local adjudication weighs in favor of transfer.

#### 25 **E. Enforceability of Judgment**

26 3M argues the District of Minnesota would best be able to monitor compliance with possible  
27 injunctive relief and therefore weighs in favor of transferring the case. Although the relative  
28 enforceability of the judgment in the respective forums is a factor to consider, it is generally taken

1 into account under the common-law doctrine. Mot. at 13 *citing Law Bulletin Pub., Co. v. LRP*  
 2 *Publ'ns Inc.* 992 F. Supp. 1014, 1021 (N.D. Ill. 1998). In Section 1404(a) convenience transfers,  
 3 when both forums are federal district courts, this factor has little relevance because it is unlikely that  
 4 there would be any significant difference in the difficulty of enforcing a judgment rendered by one  
 5 federal forum or the other. *Moore's Federal Practice - Civil* § 111.13 (2009).

#### 6 **F. Judicial Economy**


7 The final factor discussed by the parties is judicial economy. Defendant argues that judicial  
 8 economy interests would be served if the present action is transferred to Minnesota. Mot. at 15.  
 9 Defendant contends that although the suits cannot be consolidated, transfer will allow possible  
 10 consolidation of discovery. *Id.* Additionally defendant asserts that transfer will more easily allow  
 11 the state court to resolve issues common to both actions before the federal case proceeds. *Id. citing*  
 12 *Bally Mfg. Corp. v. Kane*, 698 F.Supp. 734, 739 (N.D. Ill. 1988). Plaintiffs assert that because the  
 13 two cases cannot be consolidated any "beneficial osmosis to be derived" from transfer is a fiction.  
 14 Opp. at 7. Even though consolidation with the state claim would not be possible this court considers  
 15 the practicalities of making the trials easy, expeditious and economical. This case is based on  
 16 federal law and both this court and the District of Minnesota would be equally familiar with the  
 17 applicable law. Given the arguments in favor of transfer to Minnesota the court finds it to be more  
 18 prudent to grant the motion to transfer the claims against 3M to Minnesota.

19 As the examination of the factors above illustrates, defendant has met its relevant burden of  
 20 proof and has established that transferring this action to the District of Minnesota is appropriate  
 21 under 28 U.S.C. § 1404(a).

#### 22 **III. ORDER**

23 For the foregoing reasons, 3M's motion to transfer the instant action to the District of  
 24 Minnesota is granted.

25  
 26  
 27 DATED: 11/13/09

  
 \_\_\_\_\_  
 RONALD M. WHYTE  
 United States District Judge

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**THIS SHALL CERTIFY THAT A COPY OF THIS ORDER WAS PROVIDED TO:**

**Counsel for plaintiff:**

Daniel Benjamin Kohrman  
Email: dkohrman@aarp.org

Laurie A McCann  
Email: lmccann@aarp.org

Michael D Lieder  
Email: mlieder@sprengerlang.com

Roberta Louise Steele  
Email: RLS@gdblegal.com

Steven Marshall Sprenger  
Email: ssprenger@sprengerlang.com

Teresa Demchak  
Email: dem@gdblegal.com

Thomas J Henderson  
Email: thenderson@sprengerlang.com

Thomas W. Osborne  
Email: tosborne@aarp.org

**Counsel for defendant:**

Martha Corcoran Luemers  
Email: eFilingPA@dorsey.com

Paul B. Klaas  
Email: klaas.paul@dorsey.com

Date: 11/16/09

TER  
Chambers of Judge Whyte