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Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Mayton Plaintiff/Petitioner(s)	No. <u>RG12657116</u>
VS.	Order
Konica Minolta Business Solutions, U.S.A. Defendant/Respondent(s) (Abbreviated Title)	Motion for Change of Venue (Out of County) Denied

The Motion for Change of Venue (Out of County) was set for hearing on 03/29/2013 at 10:30 AM in Department 21 before the Honorable Wynne Carvill. The Tentative Ruling was published and has not been contested.

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: The Motion of defendant Konica Minolta Business Solutions, U.S.A., Inc. ("Defendant") To Transfer Venue ("Motion") is ruled on as follows:

BACKGROUND:

The complaint in this case, filed on November 21, 2012 ("Complaint"), by plaintiff Roger Mayton, individually and on behalf of all others similarly situated ("Plaintiff") contains causes of action for (1) Failure to Reimburse For Business Expenses (Labor Code section 2802), and (2) Unfair Competition (Bus. & Prof. Code sections 17200, et seq. ["UCL"]) and is properly pled as a class action (California Rule of Court 3.761). Plaintiff alleges that he and other persons formerly and currently working for Defendant as Sales Representatives incurred expenses associated with the operation of their own vehicles in the course of their employment for which they were not reimbursed. Defendant is alleged to have approximately eleven offices throughout the State of California out of which putative class members operate[d]. During his employment with Defendant, Plaintiff worked out of Defendant's San Diego office.

MOTION:

Defendant now moves to transfer venue to San Diego County, pursuant to Code of Civil Procedure ("CCP") section 397(c) ("convenience of witnesses and the ends of justice"). Defendant asserts that Plaintiff, his former supervisor, his branch manager, his office manager, and all of the members of his sales team, all live in San Diego County, and most of his former customers are located there. Evidentiary support for these assertions is in the form of the declaration of Plaintiff's former supervisor, Stanton Roberts.

Defendant asserts that the fact that Plaintiff seeks to represent a putative class is of no consequence. Venue should be decided based solely on the named plaintiff's claims and related witnesses. (Citing General Motors v. Sup.Ct. (1983) 141 Cal.App.3d 966, 969; Young v. Wells Fargo & Co. (N.D. Cal.) 2008 WL 5245894; Ruiz v. Affinity Logistics Corp. (N.D. Cal.) 2005 WL 5490240.)

Order

Since the testimony of San Diego County witnesses is critical to Defendant's ability to defend itself because the witnesses saw the job duties Plaintiff actually performed, as well as the expenses he allegedly incurred, transferring the case to San Diego County would promote the ends of justice.

OPPOSITION:

In opposition Plaintiff argues (a) that the convenience of the parties and of Defendant's employees may not be considered, (b) that the Roberts Declaration, which does not set forth the names of any of the other witnesses or the nature of their expected testimony, is insufficient to meet Defendant's burden of proof, and (c) that the court should consider that relevant witnesses are located around the state, including in Alameda County. In support of (c), Plaintiff has submitted the declarations of three putative class members, including one whom Plaintiff intends to add as a named plaintiff (Motion For Leave to Amend pending).

DISCUSSION:

The court notes that Plaintiff apparently did not comply with CCP section 1005(c) in the service of his opposition on Defendant, but declines Defendant's request that the opposition not be considered at all for that reason. Plaintiff is admonished, however, to scrupulously comply with all applicable rules and statutes going forward. Both parties are also expected to interact with a high level of professional courtesy.

Defendant's position on the venue issue fails to acknowledge the distinction between a motion brought on the basis of CCP section 397(c) and "wrong court" venue challenges (CCP sections 396b, 397(a)). For example, there is no authority for the proposition that what Defendant refers to in its reply as the "freezing of facts" doctrine" (*Gutierrez v. Sup.Ct.* (1966) 243 Cal.App.2d 710, 716) or the "stay" rule articulated in *Pickwick Stages System v. Sup.Ct.* (1934) 138 Cal.App. 448 apply where, as here, the sole basis for the desired change of venue is witness convenience and ends of justice. Indeed, these concepts are inconsistent with the fact that a 397(c) motion should not be heard until the pleadings are settled. (*Buran Equipment Co., Inc. v. Sup.Ct.* (1987) 190 Cal.App.3d 1662, 1665.) Although Plaintiff has not presented evidence to support its assertions that Defendant is a New York corporation, its principal place of business is in New Jersey, and it has not registered a California place of business with the Secretary of State (Opposition, p.3, Fn.1), Defendant has not argued otherwise. That being the case, venue is proper in any any county in the State (*Easton v. Sup.Ct.* (1970) 12 Cal.App.3d 243, 246-247), subject only to a discretionary transfer under CCP section 397(c), a motion for which need only be brought with a "reasonable time" after the case is at issue, which is also a discretionary determination. (*Cooney v. Cooney* (1944) 25 Cal.2d 202, 208.)

The other fundamental problem with Defendant's position is its insistence that the class action nature of the case should not, indeed cannot be considered in the convenience of witnesses equation. The authorities cited by Defendant simply do not support this proposition. The only state court case cited, *General Motors v. Sup.Ct.*, supra, 141 Cal.App.3d 966, does not arise in the CCP section 397(c) context, and the two federal district court cases, *Young v. Wells Fargo & Co.* (N.D. Cal.) 2008 WL 5245894 and *Ruiz v. Affinity Logistics Corp.* (N.D. Cal.) 2005 WL 5490240, both involved the application of a multi-part test under federal law (28 U.S.C. section 1404(a)) that is significantly different than the test applied under CCP section 397(c). Furthermore, neither of the federal district court cases stand for the blanket proposition that trial testimony expected from witnesses on issues not directly related to the named representative plaintiff's individual claims cannot be considered in the convenience of witnesses and ends of justice analysis. Accordingly, the court has considered the declarations of Cathy Kennedy, Millie Saunders, and Trevor Marshall, submitted by Plaintiff with his opposition.

Finally, while the court does not agree with Plaintiff that (a) the names of witnesses are necessary where, as here, they have been adequately identified by other characteristics, and (b) that employees of Defendant must be categorically excluded from the analysis (see, e.g., *Lieberman v. Sup.Ct.* (1987) 194 Cal.App.3d 396, 401 ["limited exception ... obtains when the employees are called as witnesses by the adverse party...]), on balance the court, in its discretion, concludes that Defendant has not established that the convenience of witnesses and ends of justice would be better served in San Diego County.

The Motion is DENIED.

Dated: 03/29/2013

Wynne Carvill
Facsimile

Judge Wynne Carvill

Order

SHORT TITLE:

Mayton VS Konica Minolta Business Solutions, U.S.A.

CASE NUMBER:

RG12657116

ADDITIONAL ADDRESSEES

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Case Number: RG12657116
Order After Hearing Re: of 03/29/2013

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 03/29/2013.

Executive Officer / Clerk of the Superior Court

By *Alean Williams*^{digital}
Deputy Clerk

Received

03/29/2013