

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

TIMOTHY POWERS, on behalf of)	
himself and all others similarly situated,)	
Plaintiff,)	
)	
v.)	CAUSE NO.: 2:13-CV-394-RLM-JEM
)	
CAMPBELL SOUP COMPANY and)	
AMERICAN HEART ASSOCIATION,)	
Defendants.)	

ORDER

This matter is before the Court on an Unopposed Motion to Transfer Venue to the United States District Court for the District of New Jersey [DE 22], filed by Defendants on December 5, 2013. In the instant Motion, Defendants request that the Court transfer venue over this matter to the United States District Court for the District of New Jersey, where two similar previously-filed actions are proceeding.

Section 1404(a) of the United States Code governs change of venue and provides that: “[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.” 28 U.S.C. § 1404(a). As the Supreme Court has stated, “Section 1404(a) is intended to place discretion in the district court to adjudicate motions for transfer according to an ‘individualized, case-by-case consideration of convenience and fairness.’” *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988) (quoting *Van Dusen v. Barrack*, 376 U.S. 612, 622 (1964)). In exercising their discretion, courts consider: “(1) propriety of venue in both the transferor and transferee districts; (2) whether transfer will serve the convenience of the parties and witnesses; and (3) whether the transfer will serve the interests of justice.” *Zimmer US, Inc. v. Ford*, 3:11CV151, 2012 WL 5509804, at *3 (N.D. Ind. Nov. 13, 2012)

(citing *Stewart.*, 487 U.S. at 29-31; *Heller Fin. v. Midwhey Powder Co.*, 883 F.2d 1286, 1293 (7th Cir. 1989)).

The parties agree that the Court has subject matter jurisdiction based on diversity of citizenship under 28 U.S.C. § 1332, as complete diversity exists between the parties and the amount in controversy exceeds \$75,000.00. *See* Compl. at ¶ 10. 28 U.S.C. § 1391(c) provides that venue is appropriate in diversity cases in “a judicial district in which any defendant is subject to personal jurisdiction at the time the action is commenced, if there is no district in which the action may otherwise be brought.” 28 U.S.C. § 1391(c). As Defendants are subject to personal jurisdiction in both the Northern District of Indiana and the District of New Jersey, venue is appropriate in either district.

“With respect to the convenience evaluation, courts generally consider the availability of and access to witnesses, and each party's access to and distance from resources in each forum” as well as “the location of material events and the relative ease of access to sources of proof.” *Research Automation, Inc. v. Schrader-Bridgeport Int’l, Inc.*, 626 F.3d 973, 978 (7th Cir. 2010). The parties agree that transfer to New Jersey will serve the convenience of the parties and witnesses. Defendant Campbell is located in New Jersey, making New Jersey a convenient forum for it and allowing all parties easy access to any information in Defendant Campbell’s possession. Defendant AHA asserts that both Indiana and New Jersey are equally convenient for it. Although Plaintiff Powers is an Indiana resident and thus likely to experience some inconvenience if the case is transferred, he represents a nationwide class and consents to the transfer.

For the “interests of justice” portion of the analysis, “courts look to factors including docket congestion and likely speed to trial in the transferor and potential transferee forums, each court's

relative familiarity with the relevant law, the respective desirability of resolving controversies in each locale, and the relationship of each community to the controversy.” *Research Automation*, 626 F.3d at 978. As mentioned above, two similar previously-filed cases are already pending in New Jersey. Transfer may speed resolution of the case since discovery has already begun in the similar cases, and the New Jersey District Court has greater familiarity with the New Jersey Consumer Fraud Act, which forms the basis for Count IV of Plaintiff’s Complaint. *See* Compl. at ¶ 158. Furthermore, section 1404(a) was, as the Supreme Court explained, designed to prevent “a situation in which two cases involving precisely the same issues are simultaneously pending in different District Courts.” *Cont’l Grain Co. v. The FBL-585*, 364 U.S. 19, 25 (1960). Although the three cases may not be identical, the parties agree that all are based on “the same core of factual allegations and assert[] essentially the same claims.” Mot. at 5 [DE 22].

For all of the above reasons, and especially noting the agreement of the parties, the Court concludes that transfer is appropriate.

Accordingly, the Court hereby **GRANTS** the Unopposed Motion to Transfer Venue to the United States District Court for the District of New Jersey [DE 22]. The Clerk of this Court is **ORDERED** to transfer this case to the District of New Jersey for all further proceedings.

SO ORDERED this 17th day of December, 2013.

s/ John E. Martin
MAGISTRATE JUDGE JOHN E. MARTIN
UNITED STATES DISTRICT COURT

cc: All counsel of record