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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

BRUCE GILLEY,

Plaintiff,

v.

TOVA STABIN, Communications Manager,
University of Oregon Division of Equity and
Inclusion, in her official and individual
capacities,

Defendant.

Case No. 3:22-cv-01181-HZ

**DEFENDANT'S REPLY IN
SUPPORT OF MOTION TO
CHANGE DIVISIONAL VENUE**

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I. INTRODUCTION

Plaintiff Bruce Gilley argues that a change of divisional venue, from the Portland Division to the Eugene Division, is unwarranted. First, he argues that the Portland Division is a proper venue under Local Rule 3-2. He primarily bases this argument on allegations that he resides in Multnomah County and experiences the “effects” of Defendant’s alleged conduct, in the form of “self-censorship,” in Multnomah County. Response at 2–3. That argument should be rejected because it would make every plaintiff’s residence dispositive in the venue analysis. This is not the law. The venue inquiry focuses on the entire sequence of events underlying the claim, including the defendant’s actions and where a challenged decision is implemented. The place where a plaintiff experiences the negative effects of a defendant’s alleged conduct is merely one factor that a court may consider in the analysis. Here, all the alleged conduct took place in Eugene. Eugene therefore is the proper divisional venue.

Second, Plaintiff scoffs at Defendant’s alternative request for a discretionary transfer. Plaintiff does not, however, deny that non-party witnesses are located in Eugene, a factor weighing heavily in favor of transfer. Further, Plaintiff’s emphasis on the location of the University of Oregon’s attorneys is irrelevant. The location of counsel is not even an appropriate consideration. *Ruiz v. Darigold, Inc.*, No. 14-02054, 2014 WL 4063002, at *3 (N.D. Cal. Aug. 14, 2014); *Vu v. Ortho-McNeil Pharm., Inc.*, 602 F. Supp. 2d 1151, 1157 (N.D. Cal. 2009). Both convenience and the interests of justice favor transfer to the Eugene Division.

II. ARGUMENT

A. **The Place Where Plaintiff Experiences the Effects of the Alleged Conduct Does Not Outweigh Other Factors Making Eugene the Proper Divisional Venue**

Plaintiff argues that venue in the Portland Division is proper because he experiences the effects of Defendant’s alleged conduct in Multnomah County, where he works and resides. It is axiomatic that “where the harms were felt” may be a relevant factor “when considering whether a substantial part of the events or omissions giving rise to the claim did or did not occur in the

forum.” *Serv. Women’s Action Network v. Mattis*, 320 F. Supp. 3d 1082, 1088 (N.D. Cal. 2018) (quoting Wright & Miller, 14D Fed. Prac. & Proc. Juris. § 3806 (4th ed.)). However, other relevant factors include where the alleged wrongful conduct took place, where decisions were made, and where decisions were implemented. *Id.* Courts look to “the entire sequence of events underlying the claim” and focus “on the defendants’ (rather than the plaintiff’s) actions.” *Lee v. Corr. Corp. of Am.*, 525 F. Supp. 2d 1238, 1241 (D. Haw. 2007) (quoting *Uffner v. La Reunion Francaise, S.A.*, 244 F.3d 38, 42 (1st Cir. 2001)).

In the District of Oregon, courts have attached particular importance to the place where a decision is implemented. *Nw. Env’t Def. Ctr. v. U.S. Army Corps of Engineers*, No. 10-1129, 2011 WL 1527598, at *5 (D. Or. Apr. 20, 2011). Often, the place where a decision is implemented coincides with where “the burden of the harms alleged would be suffered.” *Id.* However, sometimes, those places differ, and in that event, “the location where the agency action was to be carried out” takes precedence over the location of the plaintiff and where the plaintiff may experience an “informational injury.” *Id.* at *4.

The place where a plaintiff experiences the effects of alleged wrongdoing will almost always be where the plaintiff lives. But a plaintiff’s residence is not dispositive in the venue inquiry. *See King v. Russell*, 963 F.2d 1301, 1304 (9th Cir. 1992) (concluding that plaintiff’s residence in Arizona was insufficient to establish venue there). This is why courts have not recognized economic harm as sufficient to establish venue in a district. *See Wright & Miller*, 14D Fed. Prac. & Proc. Juris. § 3806 (“There is a tendency to conclude that suffering economic harm within a district is not by itself sufficient to warrant transactional venue there. This is probably the correct view, because otherwise venue almost always would be proper at the place of the plaintiff’s residence, an option that Congress abolished in the general venue statute 1990.” (footnote omitted)); *see also K’oyit’ots’ina, Ltd. v. Gottschalk*, No. 19-0030, 2019 WL 6257723, at *4 (D. Alaska Nov. 22, 2019) (“[I]t is not sufficient for venue purposes that the alleged harm from defendant’s alleged tortious interference was felt in Alaska.”).

If Plaintiff were right that his experience of harm in Multnomah County is enough to justify venue in the Portland Division, then virtually all plaintiffs could justify filing and keeping a case in their home venue. Moreover, the logical conclusion of Plaintiff's argument would cause venue to shift depending on where Plaintiff was when he decided to "self-censure." For example, if Plaintiff happened to be on sabbatical and working at Southern Oregon University in Ashland when the alleged self-censoring occurred, he could argue that venue should be in the Medford Division, no matter how unconnected Medford was to the challenged conduct. Plaintiff's momentary location should not be a trump card in the venue analysis.

Here, the entire sequence of events underlying the claim establishes that venue is proper in the Eugene Division, not the Portland Division. Plaintiff sued an employee of the University of Oregon, located in the City of Eugene, Lane County. Defendant made and implemented the relevant decisions in Lane County; Plaintiff filed public records requests that were received and processed in Lane County; and any required changes in policies and procedures would be performed in Lane County. Local Rule 3-2 therefore requires that divisional venue to be changed to the Eugene Division.

B. Convenience and the Interests of Justice Strongly Favor Transfer to the Eugene Division

Courts have discretion to transfer a case to another venue, pursuant to 28 U.S.C. § 1404(a), for convenience and fairness. *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000). Regarding convenience, the convenience of non-party witnesses often figures prominently in deciding a motion to transfer. *Saleh v. Titan Corp.*, 361 F. Supp. 2d 1152, 1160 (S.D. Cal. 2005); *Volks USA Inc. v. A2 Hosting, Inc.*, No. 16-4277, 2016 WL 6808113, at *4 (C.D. Cal. Nov. 16, 2016). Here, Plaintiff does not appear to dispute that all non-party witnesses, such as the University's Vice President of Equity and Inclusion, employees in the Public Records Office, or employees in the University's Communications Department, live and work in Lane County. It would be far easier for these witnesses to appear for court proceedings

at the federal courthouse in Eugene, which is within walking distance of the University's main campus where they work.

Courts also consider ease of access to proof as a factor. *Saleh*, 361 F. Supp. 2d at 1166. Plaintiff argues that documents are not unavailable if this case goes forward in Portland because the documents could be shared digitally with Defendant's counsel. "However, the issue is the 'ease of access' to the sources of proof, not whether the evidence would be unavailable absent the transfer." *Id.* (emphasis added). Gathering and producing evidence for court proceedings in Eugene would be much easier for Defendant and non-party witnesses alike.

Plaintiff argues that despite other convenience and fairness factors, the Court should decline to transfer the case because Defendant "chose to obtain high-priced counsel based in Portland." Response at 12. As an initial matter, Plaintiff does not know what discounts firms like Perkins Coie provide to public entities like the University of Oregon. More importantly, "[t]he location of counsel is not an appropriate consideration." *Ruiz*, 2014 WL 4063002, at *3; *Vu*, 602 F. Supp. 2d at 1157; *see also Encore D.E.C., LLC v. APRESI I, LLC*, No. 1401238, 2014 WL 12576650, at *6 (D. Or. Dec. 22, 2014) ("Although Encore has chosen counsel in Oregon, this is not a valid consideration on a motion to transfer venue."). Defendant is free to retain counsel of Defendant's choosing, regardless of the location of counsel's office.

Finally, Plaintiff points to the University's Portland campus as evidence that this case should remain in the Portland Division. However, despite the University's ties to Portland, no one can seriously dispute that the University's "home will always be Eugene." Univ. of Oregon, *About UO Portland*, <https://pdx.uoregon.edu/about> (last visited Aug. 21, 2022). Moreover, none of the University's or Defendant's actions or decisions occurred in Portland. This case is about policies and procedures enacted and carried out at the University's main campus in Eugene by individuals who live and work there. That is where this case belongs.

III. CONCLUSION

Defendant respectfully requests that the Court transfer this case to the Eugene Division pursuant to Local Rule 3-2 or 28 U.S.C. § 1404.

DATED: September 8, 2022.

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