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15 *Caption continued on following page*

16  
17 UNITED STATES DISTRICT COURT  
18 NORTHERN DISTRICT OF CALIFORNIA

19 SARA WELLENS, KELLY JENSEN,  
20 JACQUELINE PENA, BERNICE  
GIOVANNI, LARA HOLLINGER,  
21 and JENNIFER BENNIE  
on behalf of themselves and all others  
22 similarly situated,

23 Plaintiffs,

24 vs.

25 DAIICHI SANKYO COMPANY, INC,  
26 Defendant.

Case No. C 13-00581 CW

**DEFENDANT DAIICHI SANKYO, INC.'S  
NOTICE OF MOTION AND MOTION TO  
TRANSFER VENUE TO THE DISTRICT  
OF NEW JERSEY (28 U.S.C. § 1404(a));  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF**

Date: May 23, 2013  
Time: 2:00 p.m.  
Judge: Hon. Claudia Wilken  
Courtroom: 2

Complaint Filed: February 11, 2013  
Trial Date: None Set

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1           **TO PLAINTIFFS SARA WELLENS, KELLY JENSEN, JACQUELINE PENA,**  
2 **BERNICE GIOVANNI, LARA HOLLINGER, JENNIFER BENNIE AND THEIR**  
3 **COUNSEL OF RECORD:**

4           **PLEASE TAKE NOTICE** that on May 23, 2013 at 2:00 p.m. or as soon after that time as  
5 counsel may be heard, in Courtroom 2 of the above-entitled Court, located at 1301 Clay Street,  
6 Courtroom 2, Fourth Floor, Oakland, California 94612, Defendant Daiichi Sankyo, Inc. (“DSI”)  
7 will, and hereby does, move this Court, pursuant to 28 U.S.C. § 1404(a), for an order transferring  
8 this case to the United States District Court for the District of New Jersey.

9           As explained more fully in the attached memorandum, pursuant to 28 U.S.C. § 1404(a),  
10 this case should be transferred to the District of New Jersey for the convenience of the parties and  
11 witnesses and in the interests of justice.

12           This motion is based upon this Notice of Motion and Motion, the accompanying  
13 Memorandum of Points and Authorities, the Declaration of David Benadon, all other records on  
14 file with the Court relating to this matter, and any and all argument provided by counsel at the  
15 hearing.

16 Dated: April 12, 2013

MORGAN, LEWIS & BOCKIUS LLP

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By: /s/ Megan Barry Borovicka  
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**MEMORANDUM OF POINTS & AUTHORITIES**

**I. INTRODUCTION**

Plaintiffs Sara Wellens, Kelly Jensen, Jacqueline Pena, Bernice Giovanni, Lara Hollinger, and Jennifer Bennie (“Plaintiffs”) have brought a purported nationwide class and collective action against Defendant Daiichi Sankyo, Inc. (“DSI” or “Defendant”). They allege “systemic” gender discrimination and disparate impact in pay, benefits, and promotional and career advancement opportunities under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* (“Title VII”) and the Equal Pay Act of 1963, 29 U.S.C. § 206(d) (the “Equal Pay Act”), and their California counterparts. Although Plaintiffs themselves contend that the alleged “systemic” and “company-wide” problems “stem from flawed policies, practices and procedures that emanate from the Company’s centralized predominately males sales leadership team” (Compl. ¶109), Plaintiffs have filed this case not in the District of New Jersey, where that leadership team resides, but instead in the Northern District of California. A review of the relevant factors, however, support a discretionary transfer of this case to the District of New Jersey pursuant to 28 U.S.C. § 1404(a).

Though Plaintiffs are California residents, their choice of forum is accorded less deference where, as here, putative class members and opt-ins—including all but one who have opted in to the litigation thus far—reside outside of the state. And, while DSI denies that it “engaged in” any “systemic” discriminatory policies or procedures, the very nature of Plaintiffs’ “pattern or practice” discrimination claim requires that they prove that DSI maintained “centralized control” over the sales employees’ terms and conditions of employment...” (Compl. ¶ 102.) Such alleged “centralized control” only could have been formulated and administered in Parsippany, New Jersey.

Furthermore, most of the management witnesses who would be called to testify about the challenged pay, benefit and promotional policies and procedures implicated by Plaintiffs’ claims reside in New Jersey and work out of DSI’s corporate headquarters in New Jersey, less than 23 miles from the Federal Courthouse in Newark, New Jersey. Moreover, the personnel files, job descriptions, employment policies and procedures (including those related to compensation and

1 promotions), compensation plans, training materials, payroll documents, and benefit plans are all  
 2 located in New Jersey. Thus, because the key evidence and witnesses are located in New Jersey,  
 3 it would be more convenient and efficient to litigate this case in New Jersey.

4 Finally, the remaining relevant factors favor transfer or, at worst, are neutral. Given the  
 5 nature of Plaintiffs' nationwide claims, the state of New Jersey has at least as much interest in this  
 6 case as California; a federal district court judge in New Jersey is just as capable of deciding  
 7 Plaintiffs' claims; and a transfer to New Jersey is likely to promote judicial efficiency. In sum,  
 8 the logical course of action would be to transfer this case to New Jersey. Thus, the Court should  
 9 grant DSI's motion and transfer this case pursuant to 28 U.S.C. § 1404(a).

## 10 **II. FACTUAL BACKGROUND**

### 11 **A. Daiichi Sankyo, Inc.**

12 Daiichi Sankyo, Inc. ("DSI"), a pharmaceutical company, began operating in the U.S. in  
 13 2006. (Declaration of David Benadon ("Benadon Decl." ¶ 1.) DSI is incorporated in Delaware  
 14 and its principal place of business is Parispany, New Jersey. (*Id.*) Its global clinical  
 15 development organization, Daiichi Sankyo Pharma Development ("Daiichi Pharma") an  
 16 unincorporated subsidiary, is located in Edison, New Jersey. (*Id.*)

#### 17 **1. DSI's Field Sales Force**

18 DSI employs sales representatives to inform physicians about DSI's products and thereby  
 19 convince the physicians to write prescriptions for appropriate patients. (Benadon Decl. ¶ 4.)  
 20 Sales representatives are categorized by the group of health care providers to whom they sell  
 21 particular groupings of products — *e.g.*, products marketed to primary care physicians, hospital-  
 22 marketed products, and products marketed to specialists, such as cardiologists. (*Id.*) The  
 23 representatives also are assigned particular geographical territories, with each representative  
 24 reporting to a District Manager ("DM"). (*Id.*) The DM typically manages multiple territories,  
 25 often in multiple states, within a geographic boundary comprising a district. (*Id.*)

### 26 **B. Plaintiffs' Allegations Of "Centralized Control."**

27 Plaintiffs, who are California residents, allege that DSI "engaged in" a "pattern or practice  
 28 of gender discrimination and disparate impact gender discrimination" and that the Class

1 Representatives and class they seek to represent “have been individually and systemically  
 2 discriminated against.” (Compl. ¶ 114.) For the nation-wide and California classes, they seek to  
 3 represent “current, former and future female sales employees in a sales representative and first  
 4 level district manager role . . . .” (Compl. ¶¶ 116, 146, 152.)

5 The gravamen of Plaintiffs’ claims is that “Daiichi Sankyo’s compact and predominately  
 6 male sales leadership team maintains *centralized control* over the sales employees’ terms and  
 7 conditions of employment, including, without limitation, job assignment, career progression,  
 8 promotion, discipline, demotion, evaluations, reorganization/realignments, territory and growth  
 9 potential/account assignments, and compensation policies, practices and procedures.” (*Id.* ¶ 102)  
 10 (emphasis added). This theory of “centralized control” permeates Plaintiffs’ class allegations:

- 11 • “Defendant’s common and *centralized* employment policies have been  
 12 implemented in an intentionally discriminatory manner and have had an adverse  
 13 disparate impact on female sales employees. Defendant’s *centralized* decision-  
 14 making by predominately male executives and senior sales leadership has been  
 15 implemented in an intentionally discriminatory manner and has had an adverse  
 16 disparate impact on female sales employees” (*Id.* ¶107) (emphasis added);
- 17 • “These problems are systemic and company-wide because, upon information and  
 18 belief, they all stem from flawed policies, practices and procedures that *emanate*  
 19 from the Company’s *centralized* predominately male sales leadership team.” (*Id.*  
 20 ¶109) (emphasis added);
- 21 • “In order to gain such relief for themselves, as well as for the class members, Class  
 22 Representatives will first establish the existence of *systemic* gender discrimination  
 23 as the premise for the relief they seek.” (*Id.*, ¶123) (emphasis added).
- 24 • “The employment policies, practices, and procedures to which the Class  
 25 Representatives and the class members are subjected are set by Defendant’s  
 26 predominately male sales leadership team.” (*Id.* ¶129).

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 28

1 **III. ARGUMENT**

2 “For the convenience of the parties and witnesses, in the interest of justice, a district court  
3 may transfer any civil action to any other district or division in which it might have been  
4 brought.” 28 U.S.C. §1404(a). Congress enacted §1404(a) “to prevent the waste of time, energy  
5 and money and to protect litigants, witnesses, and the public against unnecessary inconvenience  
6 and expense.” *Van Deusen v. Barrack*, 376 U.S. 612, 616 (1964). To transfer a case under  
7 Section 1404(a), a party must first show that the transferee district is one where the action might  
8 have been brought. *See Peralta v. Countrywide Home Loans, Inc.*, No. C 09-3288 PJH, 2009 WL  
9 3837235, at \*6 (N.D. Cal. Nov. 16, 2009). The court then assesses various factors related to  
10 convenience and the interest of justice. *Id.* (citing *Jones v. GNC Franchising, Inc.*, 211 F.3d 495,  
11 498-99 (9th Cir. 2000)).

12 Because this case could have been brought in the District of New Jersey and only can be  
13 resolved through evidence and witnesses found in New Jersey, the interests of justice warrant a  
14 transfer under 28 U.S.C. § 1404(a) to the District of New Jersey.

15 **A. This Action Could and Should Have Been Brought in the District of New**  
16 **Jersey.**

17 A district court is a forum where the action “might have been brought” if it has subject  
18 matter jurisdiction and personal jurisdiction over the defendant, and venue would have been  
19 proper. *Hoffman v. Blaski*, 363 U.S. 335, 343-44 (1960); *Commercial Lighting Prods., Inc. v.*  
20 *U.S. Dist. Ct.*, 537 F.2d 1078, 1079 (9th Cir. 1976). Here, all three criteria are met.

21 Indisputably, Plaintiff could have brought this matter in the District of New Jersey. First,  
22 the District of New Jersey has subject matter jurisdiction over this matter under both 28 U.S.C.  
23 Section 1331 and 28 U.S.C. Section 1337. Federal question jurisdiction exists because the  
24 Plaintiffs have asserted claims under Title VII and the Equal Pay Act. Plaintiffs’ remaining state  
25 law claims arise out of the same nuclei of facts and are therefore subject to the Court’s  
26 supplemental jurisdiction. The District of New Jersey, like this Court, also has subject matter  
27 jurisdiction over this case under the Class Action Fairness Act (“CAFA”), 28 U.S.C. Section  
28 1332(d) because there are more than 100 members in the putative class, there is at least \$5 million

1 in controversy, and at least some members of the putative class have a different citizenship than  
2 Defendant. (See Compl. ¶¶ 14-19; Benadon Decl. ¶ 8(d)-(n).)

3 Moreover, Title VII confers jurisdiction upon “any judicial district in the State in which  
4 the unlawful employment practice is alleged to have been committed, in the judicial district in  
5 which the employment records relevant to such practice are maintained and administered, or in  
6 the judicial district in which the aggrieved person would have worked but for the alleged unlawful  
7 employment practice.” 42 U.S.C. §2000e-5(f)(1). Here, Plaintiffs have alleged that the  
8 discriminatory practices “emanate from the Company’s centralized predominantly males sales  
9 leadership team” (Compl. ¶109); that sales leadership team is located in New Jersey. (See  
10 Benadon Decl. ¶¶ 8(a), (g)). Furthermore, the records relevant to the challenged employment  
11 practices are maintained and administered in the District of New Jersey. (Benadon Decl. ¶ 6).

12 In addition, venue is proper in any jurisdiction in which a defendant is deemed to reside.  
13 28 U.S.C. §1391(b). DSI is headquartered in New Jersey. “Accordingly, DSI is deemed a  
14 resident of the District of New Jersey, and venue for this litigation is proper there.” *Kaiser v.*  
15 *Daiichi Sankyo, Inc.*, No. 1:10-cv-918 (S.D. Ohio Apr. 26, 2011) slip op. at 4.

16 **B. The Balance of Private Interests Weighs in Favor of Transfer.**

17 “Courts apply a multi-factor balancing test to determine if transfer would serve the  
18 convenience of the parties and witnesses, and would be in the interest of justice.” *Peralta*, 2009  
19 WL 3837235, at \*7 (citing *Jones*, 211 F.3d at 498-99)). Factors that the Court may consider  
20 include the following: (1) the plaintiff’s choice of forum; (2) convenience of the parties; (3)  
21 convenience of the witnesses; (4) relative ease of access to the evidence; (5) familiarity of each  
22 forum with the applicable law; (6) feasibility of consolidation with other claims; (7) any local  
23 interest in the controversy; and (8) the relative court congestion and time of trial in each forum.  
24 *Id.* (citing *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986)).  
25 The balance of these factors weighs in favor of transfer to New Jersey.

1                   **1. Plaintiffs' Forum Choice is Entitled to Less Deference Given Their**  
 2                   **Nationwide Class and Collective Action Allegations.**

3                   Because Plaintiffs are California residents and have brought California claims, their  
 4 choice of forum is "accorded some deference." *Evancho v. Sanofi-Aventis U.S., Inc.*, No. C 07-  
 5 00098, 2007 WL 1302985, at \*2 (N.D. Cal. May 3, 2007). But, while a plaintiff's choice of  
 6 venue is a factor to be considered, "[c]ourts will not blindly prefer the plaintiff's choice of  
 7 forum." *Waste Distillation Tech., Inc. v. Pan Am. Resources, Inc.*, 775 F. Supp. 759, 764 (D. Del.  
 8 1991). Indeed, in addition to their California claims, Plaintiffs purport to bring a nationwide class  
 9 and collective action under Title VII and the EPA on behalf of "hundreds" of putative class  
 10 members. Compl. ¶ 117-118, 125. Where, as here, "the gravamen of the case involves federal  
 11 law, a state law claim is usually not a significant consideration on a motion to transfer venue."  
 12 *Hoefler*, 2000 WL 890862 at \*3 (granting motion to transfer).

13                   Moreover, any deference to Plaintiffs' choice of forum is further weakened because they  
 14 have brought this case as a class and collective action. *See Koster v. Am. Lumbermen's Mut. Cas.*  
 15 *Co.*, 330 U.S. 518, 524 (1947) ("[W]here there are hundreds of potential plaintiffs, . . . all of  
 16 whom could with equal show of right go into their many home courts, the claim of any one  
 17 plaintiff that a forum is appropriate . . . is considerably weakened."); *see also Lou v. Belzberg*,  
 18 834 F.2d 730, 739 (9th Cir. 1987) (when a plaintiff "brings a derivative suit or represents a class,  
 19 the named plaintiff's choice of forum is given less weight."); *Hoefler v. U.S. Dep't of Commerce*,  
 20 No. C 00 0918 VRW, 2000 WL 890862, at \*2 (N.D. Cal. June 28, 2000) ("Little deference . . . is  
 21 given to a plaintiff's choice of forum on behalf of a nationwide class."); *Stewart v. AT&T, Inc.*,  
 22 No C 06-7363 SI, 2007 WL 1031263, at \*2 (N.D. Cal. April 3, 2007) (giving plaintiff's choice of  
 23 forum less deference as she represented a nationwide class). Because Plaintiffs purport to  
 24 represent a class, the Court must look to whether the operative facts occurred within the forum  
 25 and whether the forum has an interest in the parties or subject matter; if not, the plaintiff's choice  
 26 is entitled to minimal consideration. *Peralta*, 2009 WL 3837235, at \*7 (affording plaintiff's  
 27 forum choice "not a significant amount" of deference because plaintiff purported to represent a  
 28 class) (citing *Lou*, 834 F.2d at 739).

1 Here, the operative facts on which Plaintiffs’ class claims are based—the alleged  
 2 “systemic” and “centralized” discriminatory policies that “emanate” from corporate  
 3 headquarters—cannot possibly be said to have been promulgated in California. Assuming,  
 4 *arguendo*, that any such “systemic” policies or procedures existed—and DSI maintains that they  
 5 did not—they necessarily would have originated in New Jersey. *See Jones v. Walgreens*, 463 F.  
 6 Supp. 2d 267, 276 (D. Conn. 2006) (holding that it was “significant to the Court’s analysis” in  
 7 granting a motion to transfer nationwide Title VII class action that plaintiff was raising an  
 8 allegation of “systemic and pervasive pattern and practice discrimination,” as “in order for the  
 9 ‘systemic’ and ‘endemic’ discrimination [p]laintiff’ describes to have occurred, there would have  
 10 had to have been either some affirmative acts or, at a minimum, intentional disregard at the  
 11 Walgreens corporate level.”); *Evancho*, 2007 WL 1302985, at \*4 (granting motion to transfer  
 12 where “it appears that defendant made most, if not all, of the relevant personnel decisions in New  
 13 Jersey, at its headquarters.”); *Waldmer v. SER Solutions, Inc.*, No. 05-2098-JAR, 2006 U.S. Dist.  
 14 LEXIS 4934, at \*17 (D. Kan. Feb. 3, 2006) (“[T]he logical origin of this dispute is in Virginia. It  
 15 was at the company’s headquarters in Virginia that [defendant]’s personnel made and  
 16 implemented the decision to treat plaintiffs as exempt under the FLSA. No company policies  
 17 were ever established in Kansas.”)

18 Furthermore, Plaintiffs have sought to bring a nationwide EPA claim, which will proceed  
 19 not as a class action on behalf of absent class members, but rather as a collective action under 29  
 20 U.S.C. § 216(b),<sup>1</sup> which requires putative plaintiffs to affirmatively opt-in to the litigation. These  
 21 party-plaintiffs, unlike absent Rule 23 class members, may be subject to the same discovery  
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23 <sup>1</sup> The Equal Pay Act is part of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* Recovery for EPA  
 24 violations is governed by 29 U.S.C. § 216(b). Under Rule 216(b), an “action to recover such liability may  
 25 be maintained in any court of competent jurisdiction by any one or more employees for and on behalf of  
 26 himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to  
 27 any such action unless he gives his consent in writing to become such a party and such consent is filed in  
 28 the court in which such action is brought.” “This procedure is exactly the opposite of that in Rule 23  
 where members of the class are bound by the judgment unless, in certain instances, they “opt-out” of the  
 case.” *Waters v. Heublein, Inc.*, C-73-1148 ACW, 1975 WL 285 (N.D. Cal. Dec. 5, 1975); *see also*  
*Rollins v. Alabama Cmty. Coll. Sys.*, 2:09-CV-636-WHA, 2010 WL 4269133 (M.D. Ala. Oct. 25, 2010)  
 (analyzing motion for conditional certification of EPA collective action by reference to FLSA and ADEA  
 cases, which, like the EPA, involve collective actions brought pursuant to § 216(b) of the FLSA).

1 demands as the named Plaintiffs themselves. *See Hill v. R+L Carriers Shared Services, LLC*, No.  
 2 C 09–1907, 2010 WL 3769247 (N.D. Cal. 2010) (ordering depositions of certain opt-in plaintiffs  
 3 in FLSA overtime case because the “job responsibilities and expectations differ among opt-ins,”  
 4 making depositions necessary to determine whether the class members are similarly situated);  
 5 *Renfro v. Spartan Computer Services, Inc.*, 2008 WL 474253 (D. Kan. Feb. 19, 2008) (permitting  
 6 depositions and individualized discovery for opt-in plaintiffs in FLSA claim for overtime  
 7 because plaintiffs had failed to show undue burden with particularized facts and because each  
 8 plaintiff to be deposed had consented to participate in the lawsuit); *Kaas v. Pratt & Whitney*, 1991  
 9 WL 158943, \*3 (S.D. Fla. 1991) (finding, in FLSA case, because the defendant could challenge  
 10 the joinder of any party with respect to whether the parties are in fact similarly situated,  
 11 meaningful discovery is not only permissible, but “essential”).

12 For many of these party-plaintiffs, California will not be a favored venue. Indeed, aside  
 13 from the named Plaintiffs, only two of the additional twelve individuals who already have  
 14 consented to join this suit as party-plaintiffs is a California resident—the rest are scattered  
 15 throughout the country, in states as far afield from California as Georgia, Texas, Iowa, North  
 16 Carolina and Alabama. (*See Benadon Decl.* ¶ 8(g) to (n)) The presence of party-plaintiffs from  
 17 around the country further diminishes Plaintiffs’ choice of California as forum in this case. *See*  
 18 *Lou*, 834 F.2d at 739; *Freeman v. Hoffman-La Roche Inc.*, No. 06CV13497, 2007 WL 895282, \*3  
 19 (S.D.N.Y. Mar. 21, 2007) (noting that plaintiff’s choice of forum “is afforded little weight” in a  
 20 purported class action where “numerous potential plaintiffs [are] each possibly able to make a  
 21 showing that a particular forum is best suited.”)

## 22 2. The Convenience of the Parties and Witnesses Favors Transfer.

23 “The relative convenience to the witnesses is often recognized as the most important  
 24 factor to be considered in ruling on a motion under § 1404(a).” *Morris v. Safeco Ins. Co.*, No. C  
 25 07-2890 PJH, 2008 WL 5273719, at \*4 (N.D. Cal. Dec. 19, 2008) (internal quotation marks  
 26 omitted). *See also Jarvis v. Marietta Corp*, No. C 98-4051 MJJ, 1999 WL 638231, at \*4 (N.D.  
 27 Cal. Aug. 12, 1999) (“One of the most important factors in determining whether to transfer is the  
 28 convenience of the witnesses”). On balance, this factor favors transfer.

1 It is true that the named Plaintiffs live and work or worked in California. Ten of the  
 2 twelve additional opt-in plaintiffs, however, do not. (*See* Benadon Decl. ¶ 8(g)–(n).<sup>2</sup> And,  
 3 Plaintiffs’ allegations concerning “flawed policies, practices and procedures that emanate from  
 4 the Company’s centralized predominately male sales leadership team” (Compl. ¶109) will  
 5 necessitate testimony from several of DSI’s Parsippany-based human resources, sales, and  
 6 business leaders, all of whom work and reside in or around the District of New Jersey. By way of  
 7 example:

- 8 a. William McLean, Vice President of Sales, works at the Parsippany headquarters  
 9 and has ultimate responsibility for DSI’s Primary Care, Specialty and Hospital  
 10 field sales operations. (Benadon Decl. ¶ 5(a)).
- 11 b. Another member of the implicated “sales leadership team,” Northeast Area  
 12 Business Director Brian Hauser, works at DSI’s Northeast Area office in Basking  
 13 Ridge, New Jersey.<sup>3</sup> (Benadon Decl. ¶ 5(b)).
- 14 c. The Human Resources (“HR”) department, including the three HRBPs who  
 15 support field sales personnel, work at the Parsippany headquarters. (Benadon  
 16 Decl. ¶ 5(c)). They will be called to refute Plaintiffs’ contention that “[w]here HR  
 17 complaint and compliance policies exist, they lack meaningful quality controls,  
 18 standards, implementation metrics and means of redress.” (Compl. ¶110).
- 19 d. Sue Feldman, the Senior Director, Compensation and Benefits, has responsibility  
 20 for the administration of benefits plans offered to DSI employees and relating to  
 21 the compensation and classification of field sales personnel. Ms. Feldman  
 22 manages a staff of nine. These managers are responsible for the administration of  
 23

24  
 25  
 26 <sup>2</sup> Plaintiffs allege that Opt-in Plaintiff Carol Vaughn worked in the same district in California as Plaintiff Wellens. (*See* Compl. ¶ 33.)

27 <sup>3</sup> The remaining two Area Business Directors, William Pruit (West) and Lerryn Trzcinski (Southeast) are  
 28 located in Dallas, TX and Atlanta, GA, respectively. (Benadon Decl. ¶ 5(b) n.2). The Regional Directors named in the Complaint, James Paplomatas, Frank Schellack and Adam Arena, likewise reside outside of California. (Benadon Decl. ¶ 8(a)-(c)).

- 1 compensation and benefits challenged by Plaintiffs in this suit. (Benadon Decl. ¶  
2 5(d)). Ms. Feldman and her staff all work in Parsippany, New Jersey. (*Id.*)
- 3 e. The members of DSI’s Governance Committee, Total Reward Working Group,  
4 Total Reward Committee, and Tier Promotion Exception Committee, who,  
5 according to Plaintiffs, “are responsible for reviewing and approving the acts,  
6 policies and practices that either have a disparate impact on female employees, or  
7 result in systemic disparate treatment of women,” (Compl. ¶ 103), work out of  
8 DSI’s corporate headquarters. (Benadon Decl. ¶ 5(e)).
- 9 f. Margarita Goettlicher, DSI’s Senior Director, Talent Staffing and Diversity, is  
10 responsible for managing recruiting processes, including those that pertain to field  
11 sales personnel. She supervises seven direct reports, including a core recruiting  
12 team that includes a Manager of Sales Recruiting and a Recruiting Coordinator.  
13 Ms. Goettlicher and her core recruiting team have knowledge regarding the sales  
14 recruiting process nationwide (Benadon Decl. ¶ 5(f)), placed at issue by Plaintiffs’  
15 contention that DSI “placed female sales professionals in job titles or  
16 classifications lower than similarly-situated male employees” (Compl. ¶128).  
17 Ms. Goettlicher and her core team work at DSI’s corporate headquarters in  
18 Parsippany. (Benadon Decl. ¶ 5(f)).
- 19 g. Jim Melvin is DSI’s Director of Sales Incentives. Mr. Melvin and his three direct  
20 reports work at the corporate headquarters in New Jersey. These individuals have  
21 responsibility for the various sales incentive compensation plans applicable to field  
22 sales personnel. (Benadon Decl. ¶ 5(g)).
- 23 h. John Sjovall and his staff lead the development and implementation of DSI  
24 training for its sales force. Mr. Sjovall and his training team (which consists of  
25 over 30 individuals) work at the Parsippany (New Jersey) Training Center.  
26 (Benadon Decl. ¶ 5(h)).

27 In other words, “[t]he policies about which [Plaintiffs] complain[] were formulated in  
28 New Jersey and the witnesses there are necessary to understanding the contours of and rationale

1 behind the policies.” *Kaiser*, No. 1:10-v-918, slip op. at 10. *See also Freeman*, 2007 WL 895282  
 2 at \*2 (convenience of the New Jersey-based corporate witnesses was an important factor); *Gerin*  
 3 *v. Aegon USA, Inc.*, No. C 06-5407 SBA, 2007 WL 1033472, at \*6 (N.D. Cal. Apr. 4, 2007)  
 4 (“Plaintiff’s only basis for filing the suit in this venue is that [named plaintiff] Gerin and Hughes  
 5 reside here and purchased their annuities here. Thus, in the event plaintiffs Gerin and Hughes are  
 6 dismissed, there will be essentially no reason for venue in the Northern District of California. . . .  
 7 [By contrast,] most of the Defendants’ material witnesses and documentary evidence are located  
 8 in Florida.”); *Adam v. Hawaii Property Ins. Ass’n*, No. No. Civ. 04-342-SM, 2005 WL 643358, at  
 9 \*4 (D.N.H. Mar. 21, 2005) (“Here, [the named] plaintiff and his family members appear to be the  
 10 only witnesses who reside in New Hampshire. Virtually all other material witnesses live in  
 11 Hawaii (though, according to plaintiff, some now live in Florida and Arizona). Obviously, many  
 12 relevant witnesses are employed by defendants and live in Hawaii;” granting transfer because  
 13 “New Hampshire simply does not have the type of interest in the outcome that Hawaii does.”).  
 14 Under these circumstances, “it is more convenient for the present Plaintiffs to travel to the  
 15 District of New Jersey than for the named witnesses of the Defendant, who are much more  
 16 numerous, to travel to the [Northern District of California].”<sup>4</sup> *Kaiser*, No. 1:10-v-918, slip op. at  
 17 10. Thus, “the convenience of the witnesses and the materiality of their testimony weigh strongly  
 18 in favor of transferring the case to the District of New Jersey.” *Id.* at 11.

### 19 3. The Location of Records Weighs in Favor of Transfer.

20 Though modern technology and electronic storage have lessened the importance of the  
 21 location of documents in venue analysis, it remains a consideration. Where “the location of the  
 22 evidence is supported by other factors in favor of transfer, the relative ease of access to proof is  
 23 an important factor to be considered in deciding whether to grant a motion to transfer under  
 24 section 1404.” *Jarvis*, 1999 WL 638231, at \*5. *See also Foster v. Nationwide Mutual Ins. Co.*,  
 25 No. C 07-04928, 2007 WL 4410408, at \* 6 (N.D. Cal. Dec. 14, 2007) (“while developments in  
 26 electronic conveyance have reduced the cost of document transfer somewhat, the cost of litigation  
 27 \_\_\_\_\_

28 <sup>4</sup> DSI is prepared to take Plaintiffs’ depositions in California.

1 will be substantially lessened if the action is venued in the same district where most of the  
2 documentary evidence is found.”) (internal quotations omitted). This is especially true when the  
3 case involves claims under Title VII. *See In re Horseshoe Entertainment*, 337 F.3d 429, 434 (5th  
4 Cir. 2003) (holding that location of relevant employment records should be given significance  
5 because it was expressly stated in the Title VII venue provision).

6 Here, documents relevant to the allegations in Plaintiffs’ Complaint are primarily  
7 maintained at DSI’s corporate headquarters within the District of New Jersey. These include  
8 personnel files, job descriptions, promotional materials, policies and procedures (including those  
9 relating to employment, compensation, and benefit plans and documents). (*See Benadon Decl.* ¶  
10 6.) Thus, this factor also favors transfer to the District of New Jersey.

#### 11 4. Other Factors Favor Transfer Or Are At Worst Neutral.

12 Other relevant factors include the familiarity of each forum with the applicable law, and  
13 any local interest in the controversy. *Peralta*, 2009 WL 3837235, at \*8. In this case, each of  
14 these factors is neutral or favors transfer.

15 Although Plaintiffs bring California claims, putative class members reside outside of the  
16 State, and the challenged policies and practices “emanate,” according to Plaintiffs, from DSI’s  
17 headquarters in New Jersey. *See Jones*, 463 F. Supp. 2d at 277 (“Because the allegations involve  
18 claims of pervasive and systemic discrimination, the Court finds that the locus of operative facts  
19 is likely to be in Illinois. Any systemic policy that resulted in unequal pay for female employees  
20 necessarily would have originated at the company’s headquarters.”). Thus, the District of New  
21 Jersey has at least as much – if not more – interest in this case than the Northern District of  
22 California.

23 Familiarity of each forum with the applicable law is also neutral. While this Court may be  
24 more familiar with Plaintiffs’ state law claims, there is no reason to believe that the New Jersey  
25 court could not successfully apply California law to those claims. *See Johns v. Panera Bread*  
26 *Co.*, No. 08-1071 SC, 2008 WL 2811827, at \* 5 (N.D. Cal. July 21, 2008) (“Plaintiff’s First  
27 Amended Complaint contains one claim under the FLSA and four claims under California law. It  
28 is true that this Court is more familiar with California law than is the Eastern District of Missouri.

1 It is also true, however, that other federal courts are fully capable of applying California law.”)  
 2 (citing *Foster*, 2007 WL 4410408, at \*7). Moreover, “it has been noted that where a federal  
 3 court’s jurisdiction is based on the existence of a federal question, as it is here, one forum’s  
 4 familiarity with supplemental state law claims should not override other factors favoring a  
 5 different forum.” *Id.* See also *Roling v. E\*Trade Securities, LLC*, 756 F. Supp. 2d 1179, 1186  
 6 (N.D. Cal. 2010) (“Two of plaintiffs’ four claims require the interpretation of California law.  
 7 E\*Trade argues that New York courts are best equipped to adjudicate claims under New York  
 8 law. While this may be true, E\*Trade fails to recognize that the converse is also true. E\*Trade’s  
 9 own argument that courts outside of California are fully capable of applying California law also  
 10 holds true of this court’s ability to interpret New York law.”); *Metz v. U.S. Life Ins. Co.*, 674 F.  
 11 Supp. 2d 1141, 1148 (C.D. Cal. 2009) (holding that judges in both New York and California are  
 12 fully capable of deciding issues arising under both California and New York law).

13 Finally, transferring this matter to the District of New Jersey will not cause any significant  
 14 delay. In fact, a transfer may promote judicial efficiency, because the District of New Jersey  
 15 moves cases to disposition more quickly.<sup>5</sup> Therefore, this factor also favors transfer.

#### 16 **IV. CONCLUSION**

17 This case should be transferred to the District of New Jersey. The majority of putative  
 18 class members are located outside of the Northern District of California. The majority of  
 19 witnesses are located outside of the Northern District of California, and the key management  
 20 witnesses reside in New Jersey. And, the District of New Jersey has at least an equal interest, if  
 21 not a greater interest, in the outcome of the case at bar. Accordingly, Defendant DSI respectfully  
 22 requests that this Court transfer the instant action to the District of New Jersey pursuant to 28  
 23 U.S.C. §1404(a).

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24  
 25  
 26  
 27 <sup>5</sup> For civil cases, the median time from filing to disposition is 6.1 months in the District of New  
 28 Jersey, compared to 8.2 months in the Northern District of California. See Table C-5 to the  
 Judicial Caseload Statistics, attached as Exhibit A to the Declaration of Allison N. Powers, filed  
 herewith.

1 Dated: April 12, 2013 /s/ Megan Barry Borovicka

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