

Prepared by
Plaintiff's Counsel

FILED
Superior Court of California
County of San Francisco

JAN 31 2022

CLERK OF THE COURT

BY: *[Signature]*
Deputy Clerk

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION**

OMONDI NYONG'O

Plaintiff,

v.

SUTTER HEALTH, PALO ALTO
MEDICAL FOUNDATION, and PALO
ALTO FOUNDATION MEDICAL GROUP,

Defendants.

Case No. CGC-21-592714

**ORDER DENYING DEFENDANT PALO
ALTO FOUNDATION MEDICAL
GROUP'S MOTION TO TRANSFER
ACTION TO SANTA CLARA COUNTY
SUPERIOR COURT AND REQUEST
FOR MONETARY SANCTIONS**

Amended Complaint Filed: October 13, 2021
Complaint Filed: June 22, 2021

Defendant Palo Alto Foundation Medical Group's motion to transfer action is denied.

As a preliminary matter, the Court rejects Plaintiff's argument that this motion is untimely. Plaintiff asserts that because Defendants failed to file their present motion to transfer but filed an answer to the First Amended Complaint on November 12, 2021 and served discovery this motion to transfer venue is untimely. However, Defendants acted with reasonable diligence in bringing their motion to transfer venue, which was filed December 14, 2021. (*See Walt Disney Parks & Resorts U.S., Inc. v. Sup. Ct.* (2021) 21 Cal.App.5th 872, 876-878 [motion to change venue not necessarily untimely even though the defendant filed it after filing an answer and removing the case to federal court].)

Under Gov. Code, sec. 12965, FEHA actions have a special venue requirement that

1 supersedes the general venue rules. An action for a FEHA violation may be brought “in any county
2 in the state in which the unlawful practice is alleged to have been committed, in the county in which
3 records relevant to the practice are maintained...or in the county in which the aggrieved person
4 would have worked.” (Gov. Code, sec. 12965; *see also Brown v. Superior Court* (1984) 37 Cal.3d
5 477, 487 [“The wide choice of venue afforded plaintiffs by the FEHA venue statute effectuates
6 enforcement of that law by permitting venue in a county which plaintiffs deem the most appropriate
7 and convenient.”].) “[T]he special provisions of the FEHA venue statute control in cases involving
8 FEHA claims joined with non-FEHA claims arising from the same facts.” (*Id.* at 487.) Plaintiffs
9 are entitled to a presumption of bringing the action in a proper county, and the burden to secure a
10 change of venue is on the Defendant. (*J. C. Millett Co. v. Latchford-Marble Glass Co.* (1956) 144
11 Cal.App.2d 838.)

12 In this case, Plaintiff alleges unlawful discrimination and retaliation occurred in San
13 Francisco and the relevant records are maintained and administered in San Francisco. Specifically,
14 Plaintiff asserts “one or more Sutter entities maintain and administer records relevant to the
15 unlawful practices alleged here in San Francisco County, because Sutter’s unlawful actions giving
16 rise to its liability were committed in part in San Francisco County, and because Dr. Nyong’o
17 resides and works in San Francisco County. (FAC 10.) The work in San Francisco includes
18 telehealth visits with his patients, reviewing work reports and medical records, performing medical
19 research, attending work meetings, and speaking with donors, and also conducting charitable
20 medical treatments at San Francisco General Hospital that PAFMG declares as part of its own
21 required community benefit work. (Nyong’o Decl., 6-16.) Finally, Defendants’ discriminatory and
22 retaliatory conduct since “March 18, 2020” arguably occurred in San Francisco, where Dr. Nyong’o
23 has remained “Shelter[ed]-in- Place” during the pandemic. (FAC 50-67; *Ford Motor Credit Co. v.*
24 *Superior Court* (1996) 50 Cal.App.4th 306 [Venue for lawsuit alleging racial discrimination, hostile
25 work environment, and retaliation in violation of Fair Employment and Housing Act lay in county
26 where employees worked and employer maintained its offices and pertinent records, absent
27 allegation that unlawful employment practice occurred in county where employees lived and
28 brought suit.])

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Thus, the Court finds that alleged unlawful practices and conduct at issue occurred in San Francisco.

Finally, Defendant asks the Court to award \$12,508 in attorney fees and costs under Code of Civil Procedure section 396b, subdivision (b). That statute provides that the court, in its discretion, may award attorney fees to the party prevailing in connection with a motion to transfer venue. (Code Civ. Proc. sec. 396b, subd. (b).) Because Defendant's motion to change venue was unsuccessful, Defendant is not entitled to reasonable expenses and attorney fees. Accordingly, Defendants request for attorney fees and costs is denied.

IT IS SO ORDERED.

DATED: 1/31/22

wh
Judge of the Superior Court

RICHARD B. ULMER

