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UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION

In re:  
NE OPCO, INC., et al.,  
(filed in District of Delaware),  
Debtors.

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PAUL TORRES,  
Plaintiff.

vs.

NE OPCO INC, CENVEO CORP, THE  
GORES GRP LLC, DOES 1-25,  
Defendants.

Chapter 11  
Case No. 13-11482 (CSS)  
(Filed in District of Delaware)  
Jointly Administered  
Adv. No. 2:14-ap-01121 RK  
ORDER DENYING MOTION TO  
TRANSFER VENUE TO THE UNITED  
STATES BANKRUPTCY COURT FOR  
THE DISTRICT OF DELAWARE  
PURSUANT TO 28 U.S.C. § 1412

Pending before the court is the motion of defendant Cenveo Corp. (“Cenveo” or “Defendant”) to transfer this removed action to the United States Bankruptcy Court for the District of Delaware. Defendant Cenveo filed a notice of removal, removing this action from the Superior Court of California for the County of Los Angeles, where Plaintiff Paul Torres (“Plaintiff”) commenced the action, to this court, on February 26, 2014. After removal, Cenveo filed its motion to transfer the case to the Delaware Bankruptcy Court pursuant to 28 U.S.C. § 1412 on March 28, 2014. The motion came on for hearing

1 before the undersigned United States Bankruptcy Judge on May 6, 2014. After this  
2 hearing, the parties filed supplemental briefing, which was argued and considered at a  
3 further hearing July 8, 2014. Appearances were made as noted on the record at the  
4 hearings.

5 Cenvéo purchased assets from NE Opco, Inc. (“NE Opco” or “Debtor”), pursuant  
6 to a sale order of the United States Bankruptcy Court for the District of Delaware,  
7 Christopher S. Sontchi, J. presiding (“Sale Order”). The sale closed on September 16,  
8 2013 (“Closing”). During the pendency of the proceedings of this remand motion,  
9 Cenvéo filed a motion for clarification of the Sale Order in the NE Opco bankruptcy case  
10 before Judge Sontchi, seeking a determination that the Sale Order barred Plaintiff’s  
11 claims in the removed action. On August 8, 2014, Judge Sontchi issued a decision in the  
12 NE Opco bankruptcy case which clarified the Sale Order to bar all claims by Plaintiff  
13 against Defendant arising prior to the September 16, 2013 Closing (“Delaware Opinion”).  
14 The court had continued the hearing and stayed the proceedings relating to this motion  
15 pending Judge Sontchi’s ruling on the Sale Order clarification motion. At this court’s  
16 request, the parties filed supplemental briefing discussing the effect of the Delaware  
17 Opinion on this motion.

18 Having carefully considered the moving and opposing papers and the arguments  
19 of the parties, the court now issues this order and denies the motion to transfer venue.

20 Under 28 U.S.C. § 1412, the court can transfer a case under Title 11 of the United  
21 States Code to a district court for another judicial district in the interest of justice or for the  
22 convenience of the parties. The courts in this judicial district have looked to up to seven  
23 “interest of justice” factors and four “convenience of the parties” factors in deciding  
24 whether to transfer a case to another district pursuant to 28 U.S.C. § 1412. *In re Cytodyn*  
25 *of N.M., Inc.*, 374 B.R. 733, 742-743 (Bankr. C.D. Cal. 2007). The seven “interest of  
26 justice” factors are: (1) the location of the pending bankruptcy; (2) whether the transfer  
27 would promote the economic and efficient administration of the bankruptcy estate; (3)  
28 whether the interests of judicial economy would be served by the transfer; (4) whether the

1 parties would be able to receive a fair trial in each of the possible venues; (5) whether  
2 either forum has an interest in having the controversy decided within its borders; (6)  
3 whether the enforceability of any judgment obtained would be affected by the transfer;  
4 and (7) whether the Plaintiff's original choice of forum should be disturbed. The four  
5 "convenience of the parties" factors are: (1) ease of access to the necessary proof; (2)  
6 the convenience of the witnesses and the parties and their relative physical and financial  
7 condition; (3) the availability of the subpoena power for unwilling witnesses; (4) the  
8 expense related to obtaining witnesses. *Id.*

9 The first "interest of justice" factor (location of pending bankruptcy) weighs in favor  
10 of transfer because the NE OPCO bankruptcy case is pending before the Delaware  
11 Bankruptcy Court.

12 The second "interest of justice" factor (economic and efficient administration of the  
13 bankruptcy estate) weighs against transfer. Litigation of the Plaintiff's Post-Closing  
14 claims will be higher for the parties in Delaware than in California because most, if not all,  
15 of the events alleged regarding the Post-Closing employment-related claims took place in  
16 California, where Plaintiff was employed, and most of the witnesses and the relevant  
17 documents are located in California. Moreover, litigation of the Post-Closing claims in  
18 California will have a negligible effect on the economic and efficient administration of the  
19 bankruptcy estate in the NE OPCO's bankruptcy case because the Post-Closing claims  
20 do not implicate NE OPCO, the bankruptcy debtor, but rather Defendant, a non-debtor  
21 party.

22 The third "interest of justice" factor (judicial economy) weighs against transfer. The  
23 Delaware Opinion effectively severs any relationship between the NE Opco bankruptcy  
24 case because under that ruling Plaintiff's Pre-Closing claims may not continue in the  
25 removed action as they barred by the Sale Order and Plaintiff may only pursue Post-  
26 Closing claims against Defendant, which claims do not implicate NE Opco, the  
27 bankruptcy debtor. This means that it is unlikely that the case could be adjudicated more  
28 efficiently in Delaware.

1 The fourth “interest of justice” factor (ability to receive a fair trial) is a neutral factor.  
2 It appears that under California law Plaintiff has the right to a jury trial on his employment  
3 law claims but his ability to obtain one may be more restricted in bankruptcy court than in  
4 state court. In a bankruptcy court, Defendants would be able to avoid a jury trial simply  
5 by refusing to consent under 28 U.S.C. § 157(e), which requires “the express consent of  
6 all parties” in order for a bankruptcy judge to conduct a jury trial. See *In re Cytodyn*, 374  
7 B.R. at 743. In such instance, the action would most likely have to be tried by a jury in  
8 the district court in Delaware. 28 U.S.C. § 157(b)(5) (the district court in which the  
9 bankruptcy case is pending would determine whether the jury trial would be conducted in  
10 that court or in the district court in the district in which the claim arose). In considering  
11 these circumstances, the court considers this factor as neutral in that the parties would  
12 likely receive a fair trial by jury, whether conducted in Delaware or in this judicial district.

13 The fifth “interest of justice” factor (having controversy decided within borders)  
14 weighs against transfer. California’s interest in adjudicating the employment  
15 discrimination lawsuit is greater than Delaware’s interest in the same. Plaintiff’s  
16 employment law claims are governed by California law and the events giving rise to  
17 Plaintiff’s claims took place in California.

18 The sixth “interest of justice” factor (enforceability of judgment) weighs against  
19 transfer. The remaining defendants do not have any physical presence in Delaware.  
20 Defendant Cenvéo has substantial operations in California and none in Delaware, while  
21 Defendant Gores’s corporate headquarters are in Los Angeles. Thus, any judgment  
22 could more easily be enforced in California than Delaware.

23 The seventh “interest of justice” factor (whether plaintiff’s original choice of forum  
24 should be disturbed) weighs against transfer. Plaintiff chose the state court, and as  
25 discussed herein, there is no compelling reason to disturb that choice.

26 The first “convenience of the parties” factor (access to necessary proof) weighs  
27 against transfer. Most, if not all, of the material witnesses and documents are located in  
28

1 California, including Plaintiff's former coworkers and supervisors, most of whom were  
2 employed at the facility in Los Angeles, California, where Plaintiff worked.

3 The second "convenience of the parties" factor (convenience of the witnesses and  
4 parties) weighs against transfer. As stated above, Plaintiff and the witnesses (including  
5 Plaintiff's physicians who would testify regarding Plaintiff's disability) are located in the  
6 Los Angeles, California, area and it would be expensive and inconvenient for them to  
7 travel to Delaware.

8 The third "convenience of the parties" factor (availability of subpoena power)  
9 weighs strongly against transfer. The Delaware Bankruptcy Court would have no power  
10 to subpoena the majority of the witnesses in this case. Most of the witnesses reside in  
11 California, which is well outside the 100 mile subpoena service limit under Fed. R. Civ. P.  
12 45(b)(2).

13 The fourth "convenience of the parties" factor (expense of obtaining witnesses)  
14 weighs against transfer. Any California witnesses willing to travel to Delaware would  
15 have to be flown there at great expense to the parties, especially Plaintiff.

16 The court determines that most of the relevant "interest of justice" factors and all of  
17 the "convenience of the parties" factors under 28 U.S.C. § 1412 weigh against transfer.  
18 Based on a weighing of these factors, Plaintiff's choice of forum in California is the logical  
19 location for trial. Plaintiff's claims are governed by California substantive law and will be  
20 determined based on testimony of witnesses and documents located in California. After  
21 the Delaware Opinion barring Plaintiff's Pre-Closing claims, there is even less reason to  
22 have the case heard in Delaware because the Post-Closing claims which may proceed  
23 under the clarification of the Sale Order in the Delaware Opinion are based on California-  
24 centric conduct of non-debtor defendants in California. Finally, in the light of the court's  
25 concurrent ruling to grant Plaintiff's motion to remand this action to the Superior Court of  
26 California for the County of Los Angeles, the reasons for granting that motion further  
27 support the denial of the transfer motion (i.e., the court cannot both grant a remand of the  
28 action to one court and transfer it to another court)..

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Accordingly, the court denies Cenveo's motion to transfer venue.  
IT IS SO ORDERED.

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Date: August 28, 2014



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Robert Kwan  
United States Bankruptcy Judge