

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 04/24/24      TIME: 1:30 P.M.      DEPT: H      CASE NO: CV1800188

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

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PLAINTIFF:      YOUNG REAL ESTATE GROUP LLC	
vs.	
DEFENDANT:    MORGAN PROPERTIES, INC., ET AL	

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NATURE OF PROCEEDINGS: MOTION – SEVER/BIFURCATE BY PLAINTIFF YOUNG REAL ESTATE GROUP LLC

**RULING**

Plaintiff’s request to bifurcate is DENIED. Plaintiff’s request to regulate the order of proof is GRANTED, as set forth below.

***Standard***

Plaintiff brings its motion pursuant to Code of Civil Procedure Section 598, which provides in part:

The court may, when the convenience of witnesses, the ends of justice, or the economy and efficiency of handling the litigation would be promoted thereby, on motion of a party, after notice and hearing, make an order, no later than the close of pretrial conference in cases in which such pretrial conference is to be held, or, in other cases, no later than 30 days before the trial date, that the trial of any issue or any part thereof shall precede the trial of any other issue or any part thereof in the case, except for special defenses which may be tried first pursuant to Sections 597 and 597.5 . . . .

Plaintiff also cites to Code of Civil Procedure Section 128(a)(3), which provides that “[e]very court shall have the power to . . . provide for the orderly conduct of proceedings before it, or its officers” and Evidence Code Section 320, which provides that “[e]xcept as otherwise provided by law, the court in its discretion shall regulate the order of proof.”

***Request for Judicial Notice***

Morgan Properties, Inc.'s ("Morgan") request for judicial notice of Beach Street Builders, Inc.'s ("BSB") motion to sever (Exhibit 1), the Order denying the motion to sever (Exhibit 2), and the settlement agreement between Plaintiff and BSB (Exhibit 3), is granted. (Evid. Code §§ 452, 453.)

***Discussion***

Plaintiff moves to bifurcate the upcoming trial into two phases: (1) Plaintiff's remaining fraud-based claims against Morgan; and (2) Morgan's indemnity-based cross-claims against BSB. In addition and/or in the alternative, Plaintiff requests that the Court regulate the order of proof such that the jury first hears only the evidence bearing on Plaintiff's claims against Morgan, and thereafter hears the evidence on Morgan's cross-claims against BSB.

Plaintiff argues that the requested relief is warranted because Plaintiff has no involvement in the issues in phase two, which involves the construction agreement between Morgan and BSB and the indemnity provision contained in that agreement. Plaintiff argues that the second phase will involve evidence of the defensive efforts Morgan's attorney provided, the reasonable cost of those efforts and whether they were reasonably necessary, and whether the insurer has provided a full defense, and will require testimony of the insurance adjustor as well as participation by the insurer's separate attorneys. Plaintiff argues that without bifurcation, it will be prejudiced because the jury will hear testimony regarding indemnity and insurance but should not consider these issues when determining Plaintiff's claims against Morgan. Further, having the jury first decide Plaintiff's fraud-based claims against Morgan will be more efficient because the verdict at the conclusion of the first phase could render moot some or all of the claims in the second phase or could promote settlement of the claims in the second phase.

Morgan opposes Plaintiff's motion, arguing that it is merely a rehash of BSB's earlier motion to sever/bifurcate, which was denied. Morgan also contends that bifurcation would be inefficient because the same or similar witnesses, evidence, and arguments will be presented in both phases.

The Court denies Plaintiff's request to bifurcate the trial into two phases as bifurcation of the remaining claims in this case would be inefficient given the overlap of evidence and witnesses. However, the Court finds the alternative relief requested by Plaintiff regarding the order of proof to be reasonable. The jury will first hear the evidence relating to Plaintiff's claims against Morgan, and then hear any additional evidence relating to Morgan's claims against BSB. Any issues regarding the jury's consideration of insurance or indemnity can be addressed through appropriate jury instructions.

***All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.***

***The Zoom appearance information for April, 2024 is as follows:***

***Zoom link for Courtroom H CIVIL 160 781 1385 passcode 082614***

***Meeting ID: 160 781 1385***

***Passcode: 082614***

***If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: <https://www.marin.courts.ca.gov>***

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 04/24/24      TIME: 1:30 P.M.      DEPT: H      CASE NO: CV2200032

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

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PLAINTIFF:    BELVEDERE LAND  
COMPANY LIMITED PARTNERSHIP

vs.

DEFENDANT:  RYAN JORGENSON, ET  
AL

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NATURE OF PROCEEDINGS: MOTION – CONTINUE (TRIAL)

RULING

Appearances required.

***All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.***

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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 04/24/24      TIME: 1:30 P.M.      DEPT: H      CASE NO: CV2203781

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

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PLAINTIFF:      MILENA FIORE

and

DEFENDANT: LG ELECTRONICS USA,  
INC., ET AL

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NATURE OF PROCEEDINGS: MOTION – COMPEL ; DISCOVERY FACILITATOR PROGRAM BY DEFENDANT ASI SELECT INSURANCE CORP.

RULING

ASI Select Insurance Corp.’s (“ASI”) motion to compel Plaintiff Milena Fiore(‘Plaintiff’) to provide verified responses to Defendant ASI’s Requests for Admission (‘RFAs’), Set One, Special Interrogatories (‘SROGs’), Set One, Form Interrogatories (‘FROGs’), Set Two, and Requests for Production of Documents (‘RFPs’), Set Two is GRANTED. ASI’s motion for an order compelling Plaintiff to provide further, verified responses to SROG No. 37, RFA Nos. 9, 10, and 14, and FROG No. 17.1 is GRANTED. ASI’s motion to compel Plaintiff to produce documents responsive to RFP Nos. 18-38 is GRANTED. ASI’s request for an order deeming the RFA admitted is DENIED. Finally, ASI’s request for monetary sanctions is GRANTED IN PART.

*Background*

This action involves water damage caused by a new dishwasher installed at plaintiff Milena Fiore’s residence. According to the complaint, Plaintiff purchased the LG-24 dishwasher from the Best Buy store located in San Rafael and subsequently experienced leaks which were exacerbated by Premiere’s attempt to repair it. Plaintiff asserts these leaks cause significant water damage to her home. On November 18, 2022, Plaintiff commenced this action against LG Electronics USA, Inc., Best Buy Co., Inc., ASI Select Insurance Corp., and Premier Logistics & Transportation. As against ASI, the complaint alleges two causes of action: breach of contract (sixth cause of action) and breach of implied covenant of good faith and fair dealing (seventh cause of action).

On May 3, 2023, ASI served Plaintiff with discovery including requests for admission, special interrogatories, form interrogatories, and document requests. ASI granted Plaintiff two extensions to respond to the discovery. Plaintiff served unverified responses late, on July 20, 2023. (Li decl. ¶¶2-3.) ASI filed this motion to compel discovery on November 14, 2023.

### *Discussion*

#### *Timeliness of Motion*

Plaintiff opposes the motion on the basis that it is untimely. According to Plaintiff, verified responses were sent to Defense counsel on August 7, 2023 and therefore, the time limit for bringing this motion expired on September 26, 2023, 49 days before the motion to compel was filed. (McCaslin decl. ¶5.) However, Defendant avers they did not receive the verifications. (Li reply decl. ¶ 2-3.)

Documents which are correctly addressed properly mailed are presumed to have been received in the ordinary course of mail.” (Evid. Code, § 641) However, “the presumption is rebutted by evidence supporting denial of receipt.” (*Wolstoncroft v. County of Yolo* (2021) 68 Cal.App.5<sup>th</sup> 327, 350.)

The Court finds that ASI has adequately rebutted the presumption of receipt. (Li reply decl. ¶¶2-3.) ASI has demonstrated it did not have the verifications, and this is corroborated by the multiple meet and confer correspondence to Plaintiff referencing the lack of verifications. (Exhs. K, L, M, N, O to Li decl. ¶.) Therefore, the motion is not untimely.

#### *Special Interrogatories*

ASI’s motion to compel a further response to special interrogatory no. 37 is granted. This request asks Plaintiff to state each item of economic damages claimed that ASI failed to pay in breach of the policy. Contrary to Plaintiff’s objection, a response to this interrogatory would not require her to make a compilation or summary from her documents. (Code Civ. Proc., § 2030.230.) Even if it did, Plaintiff has not shown that “the burden or expense of preparing or making it would be substantially the same for the party propounding the interrogatory as for the responding party...” (*Id.*) Additionally, Plaintiff failed to “specify the writings from which the answer may be derived or ascertained...in sufficient detail to permit the propounding party to locate and to identify, as readily as the responding party can, the documents from which the answer may be ascertained.” (§ 2030.230.)

#### *Requests for Admission*

ASI’s motion to compel a further response to request for admission nos. 9 and 10 is granted. Request for admission no. 9 requests that Plaintiff admit ASI paid out the entire *amount* owed to Plaintiff under the policy for the insurance claim. Request for admission no. 10 requests that Plaintiff admit that ASI paid the entire *benefit* owed under the policy for the insurance claim. Plaintiff refused to respond to these requests claiming they were repetitive of Request no. 3, and were “burdensome and oppressive.” Plaintiff has failed to show that these requests are unduly repetitive. Request no. 3 requested that Plaintiff admit that ASI did not breach the policy by

failing to pay out the amounts due. These are all slightly different requests. The court fails to see how responding to these request would create an 'unjust burden' on the responding party" such that Plaintiff should be relieved from responding. (See Weil and Brown, Cal. Practice Guide: Civil Procedure Before Trial (TRG 2023) § 8:1355.)

ASI's motion to compel a further response to request for admission no. 14 is also granted. Plaintiff's response "unable to admit or deny," fails to comply with section 2033.220, subdivision (c), which states "[i]f a responding party gives lack of information or knowledge as a reason for a failure to admit all or part of a request for admission, that party shall state in the answer that a reasonable inquiry concerning the matter in the particular request has been made, and that the information known or readily obtainable is insufficient to enable that party to admit the matter."

ASI's motion for deemed admissions based on lack of verification is denied. Requests for admission will be deemed admitted "unless [the court] finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220. ..." (§ 2033.280, subd. (c).) Copies of Plaintiff's verifications were presented with Plaintiff's opposition.

#### Remaining Requests

As to ASI's remaining requests, the court grants the motion to compel a further response to form interrogatory no. 17.1, as Plaintiff offered no response to parts (c) and (d) of that interrogatory. Similarly ASI's motion to compel production of documents is granted as Plaintiff has failed to produce documents despite stating she will do so.

ASI's request for sanctions is granted in part. In reviewing a discovery related sanctions request, the court must impose sanctions against the unsuccessful party, person, or attorney "unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (§ 2031.300, subd. (d); § 2033.290, subd. (d); see also § 2031.320, subd. (b).) In connection with a motion for deemed admissions, "[i]t is mandatory that the court impose a monetary sanction... on the party or attorney, or both, whose failure to serve a timely response to requests for admission necessitated this motion." (§ 2033.280, subd. (c).)

ASI counsel asserts that she spent over 21 hours preparing this motion and also anticipates additional time preparing the reply and attending the hearing. This amount seems elevated for a motion to compel. Additionally, it is unclear whether the parties will attend a hearing. The court therefore, grants sanctions against Plaintiff and her counsel in the amount of \$5,500 to be paid within thirty days of service of this order.

As ASI's motion to compel was granted, Plaintiff's request for sanctions is denied.

***All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.***

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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 04/24/24      TIME: 1:30 P.M.      DEPT: H      CASE NO: CV0001483

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

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PLAINTIFF:    KEEP AMERICA SAFE  
AND BEAUTIFUL

and

DEFENDANT:   THE STOCKROOM, INC.

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NATURE OF PROCEEDINGS: MOTION – CHANGE OF VENUE AND SANCTIONS

**RULING**

Defendant The Stockroom, Inc.'s ("Defendant") motion for transfer of venue is denied.

**BACKGROUND**

This is a case for enforcement of the Safe Drinking Water and Toxic Enforcement Act of 1986's (Health and Safety Code, section 25249.5 *et seq.*, "Proposition 65") warning requirement. Proposition 65 provides that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual[.]" (Health & Saf. Code, § 25249.6.) Plaintiff Keep America Safe and Beautiful ("Plaintiff") alleges that Defendant sells certain adult recreational products containing di-2-ethylhexyl phthalate ("DEHP") without warning consumers of the health risks associated with the substance. (Complaint, ¶¶ 5, 8, 36.) Plaintiff seeks civil penalties as provided by Proposition 65, in addition to other relief. (See Health & Saf. Code, § 25249.7, subd. (b)(1) ["A person who has violated Section 25249.5 or 25249.6 is liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) per day for each violation in addition to any other penalty established by law."] )

The Complaint alleges that venue is proper in Marin County "because one or more instances of wrongful conduct occurred, and continue to occur, in [Marin], and/or because DEFENDANTS conducted, and continue to conduct, business in the County of Marin" with respect to the products at issue. (Complaint, ¶ 16.) Defendant now moves to transfer venue to Los Angeles County (Central Division/Stanley Mosk Courthouse).

**LEGAL STANDARD**

When the court in which the action was filed "is not the proper court[.]" the court must transfer the action to any proper court requested by the moving defendant. (Code Civ. Proc., §§ 396a, subd. (b); 396b, subd. (a); *Cubic Corp. v. Superior Court* (1986) 186 Cal.App.3d 622, 625; see

also Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2023 ¶¶ 3:551-3:552.) A defendant may bring a motion for transfer of venue at the same time he files a response to the complaint or without filing a response at all, provided he moves for a transfer of venue within the time allowed to respond to the complaint. (Code Civ. Proc., § 396b, subd. (a).) “The moving party must overcome the presumption that the plaintiff has selected the proper venue. Thus, “[i]t is the moving defendant’s burden to demonstrate that the plaintiff’s venue selection is not proper under any of the statutory grounds.” (*Fontaine v. Superior Court* (2009) 175 Cal.App.4th 830, 836 [quoting *Mitchell v. Superior Court* (1986) 186 Cal.App.3d 1040, 1046] [internal citations omitted]; see also *Mission Imports, Inc. v. Superior Court* (1982) 31 Cal.3d 921, 928 [absent an “affirmative showing to the contrary,” it is presumed that the county in which plaintiff brought the action is proper] [quoting *Smith v. Stanford Research Institute* (1964) 212 Cal.App.2d 750, 753].) “In its discretion, the court may order the payment to the prevailing party of reasonable expenses and attorney’s fees incurred in making or resisting the motion to transfer[.]” (Code Civ. Proc., § 396b, subd. (b).)

Separately, even if a case was filed in a proper county, a court has discretion to transfer it to a different county “[w]hen the convenience of witnesses and the ends of justice would be promoted by the change.” (Code Civ. Proc., § 397, subd. (c); see *Rycz v. Superior Court of San Francisco County* (2022) 81 Cal.App.5th 824, 836.) The movant “must demonstrate the transfer will promote both the convenience of witnesses and the ends of justice.” (*Rycz, supra*, 81 Cal.App.5th 824, 836.) To obtain a transfer of venue on this ground, the movant must present evidence identifying the witnesses at issue and describing the nature of their anticipated testimony and why their attendance would be inconvenient. (*Peiser v. Mettler* (1958) 50 Cal.2d 594, 607; see also *Rycz, supra*, 81 Cal.App.5th 824, 836; *Juneau v. Juneau* (1941) 45 Cal.App.2d 14, 16.) “[I]t must be shown that their proposed testimony is admissible, relevant and material to some issue in the case[.]” (*Peiser, supra*, 50 Cal.2d 594, 607; see also *Weil & Brown, supra*, ¶ 3:576 [an “extensive factual showing” is required for motions based on this ground].)

#### PLAINTIFF’S EVIDENTIARY OBJECTIONS<sup>1</sup>

##### Declaration of Whitney Petty

- Paragraphs 3, 4, and 5: Sustained. (Evid. Code, § 350 [relevance].)
- Paragraph 10: Overruled.

##### Declaration of Allan B. Gelbard

- Paragraph 2, 5, 8, and 9 and Exs. 1, 12, and 13: Overruled.
- Paragraph 3 and Ex. 2: Sustained only as to the last sentence of Paragraph 3 (“According to the Secretary of State’s website, KASB has not filed its required Statement of

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<sup>1</sup> Defendant presents evidence that Plaintiff’s counsel served Plaintiff’s opposing materials in a manner he had reason to know was unlikely to ensure delivery to opposing counsel. (See Gelbard Reply Dec., ¶¶ 2-3; Code Civ. Proc., § 1005.) This could have been unintentional, a result of e-service mechanics for this case being arranged before counsel learned about the technical difficulties Mr. Gelbard describes and not adjusted after the difficulties arose. Regardless, the Court admonishes Plaintiff’s counsel to correct this service issue moving forward. Because there is no indication that the late service harmed or prejudiced Defendant, the Court has considered Plaintiff’s opposition and evidentiary objections. That said, the Court would have reached the same decision on the motion regardless because Defendant’s moving papers did not satisfy the burden associated with the motion. (See *Fontaine, supra*, 175 Cal.App.4th 830, 836.)

Information for 2023.”). (Evid. Code, § 350.) To be clear, the objection is overruled as to Exhibit 2.

- Paragraph 4 and Ex. 11: Sustained as to the last sentence of Paragraph 4 (“Attached hereto as Exhibit 11 is a true and correct copy of KASB’s current ‘DELINQUENT’ status pertaining to its required non-profit filings with the California Attorney General’s Office.”) and as to Exhibit 11 in its entirety. (Evid. Code, § 350.)

## DISCUSSION

### Transfer

#### *Mandatory Transfer*

“Venue is determined based on the complaint on file at the time the motion to change venue is made.” (*Brown v. Superior Court* (1984) 37 Cal.3d 477, 482.) Code of Civil Procedure, section 393, subdivision (a) (“Section 393(a)”) provides that “the county in which the cause, or some part of the cause, arose” is the proper venue for actions “[f]or the recovery of a penalty or forfeiture imposed by statute.” “For purposes of laying venue, a liability ‘arises’ where the injury occurs.” (*Black Diamond Asphalt, Inc. v. Superior Court* (2003) 109 Cal.App.4th 166, 172.) The First District has held that Section 393(a) governs venue in Proposition 65 cases. (*Dow AgroSciences LLC v. Superior Court* (2017) 16 Cal.App.5th 1067, 1077.)

The Complaint seeks statutory penalties and alleges that “one or more instances of wrongful conduct occurred, and continue to occur” in Marin County. (Complaint, ¶ 16.) This is an allegation that the Proposition 65 claim arose in Marin County, making venue for this action proper in Marin under Section 393(a).

Defendant argues that venue is only proper in the county where the defendant resides, and Defendant does not reside in Marin. Code of Civil Procedure, section 395, subdivision (a) (“Section 395(a)”) provides that “[e]xcept as otherwise provided by law and subject to the power of the court to transfer actions or proceedings as provided in this title, the superior court in the county where the defendants or some of them reside at the commencement of the action is the proper court for trial of the action” (emphasis added). The italicized language means that this statute only applies to the extent that other law does not. (See *Brown, supra*, 37 Cal.3d 477, 483.) Other law applies here. Section 393(a) overrides Section 395(a) in Proposition 65 cases.<sup>2</sup> (*Dow, supra*, 16 Cal.App.5th 1067, 1077.)

Defendant argues that Plaintiff’s counsel manufactured a basis for venue in Marin by ordering one of the products at issue to be delivered to her home in Mill Valley.<sup>3</sup> Defendant does not present any legal authority for the idea that the fact that venue was manufactured is grounds for a

<sup>2</sup> Even if Section 393(a) did not apply, Section 395(a) would not govern this case. It would be supplanted by Code of Civil Procedure, section 395.5, which provides that for corporate defendants, venue is proper in any of several places, including the county “where the obligation or liability arises[.]” (See *Black Diamond Asphalt, supra*, 109 Cal.App.4th 166, 170 [“Section 395.5 governs venue for corporate defendants.”].) In other words, Marin County would be a proper venue regardless.

<sup>3</sup> Defendant has not presented any evidence to support its assumption that the sale of the offending product to Plaintiff’s counsel is necessarily the *only* incident of wrongful conduct occurring in Marin. The Complaint does not identify Plaintiff’s counsel’s purchase as the foundation for venue, but merely alleges in general terms that wrongful conduct of the type at issue in the case occurred in Marin.

transfer. Section 393(a) provides that if the cause of action arose in a county – without regard to how that came about – then venue is proper in that county.

Defendant's remaining arguments are equally unavailing. *Anaheim Extrusion Co. v. Superior Court* (1985) 170 Cal.App.3d 1201 is inapplicable because it interprets the “where the contract is made or is to be performed” language of Code of Civil Procedure, section 395.5, which Plaintiff does not rely on. The argument that there is no injury under Proposition 65 where a buyer knows of the alleged presence of DEHP in a product before ordering, as Defendant contends Plaintiff's counsel did, goes to the merits of the Proposition 65 claim and is premature on a motion for transfer of venue. (See *Brown, supra*, 37 Cal.3d 477, 482 [venue is determined based on the allegations of the complaint].) Still, the Court notes that Defendant has not cited any authority supporting the idea that a Proposition 65 injury is so constrained. It has cited authority describing the general purpose of the statute, which is not the same thing. On its face, Proposition 65 does not prohibit exposing a person who lacks knowledge of the risk to a harmful substance, but instead prohibits “expos[ing] any individual” to such a substance without first affirmatively providing a “clear and reasonable warning to such individual.” (Health & Saf. Code, § 25249.6 [emphasis added].) The “informational and preventative” statutory purpose Defendant identifies – “to facilitate the notification of the public of potentially harmful substances, so informed decisions may be made by consumers on the basis of disclosure” (*DiPirro v. Bondo Corp.* (2007) 153 Cal.App.4th 150, 182-183) – is served regardless of any particular plaintiff's knowledge, because the threat of suit by any consumer encourages defendants to provide the warning. (See *id.*, p. 183 [“An award of civil penalties under the Act is a statutory punitive exaction determined on the basis of equitable principles, designed to deter misconduct and harm, not to compensate the plaintiff for actual damage sustained.”].)

Because this case was filed in a proper court, Defendant is not entitled to a mandatory transfer of venue. (Code Civ. Proc., §§ 396a, subd. (b); 396b, subd. (a).)

#### *Discretionary Transfer*

Defense counsel states in his declaration that “[i]t would be a severe financial strain on [Defendant] to have to defend this action in Marin County.” (Gelbard Dec., ¶ 1.) When considering a discretionary transfer under Code of Civil Procedure, section 397, subdivision (c), “[i]t is only the convenience of the *nonparty witnesses* that is important.” (Weil & Brown, *supra*, ¶ 3:555 [emphasis in original]; see also *Wrin v. Ohlandt* (1931) 213 Cal. 158, 160 [“The inconvenience of the parties in attending the trial is not a factor to be considered in a motion of this character.”]; *Peiser, supra*, 50 Cal.2d 594, 612; *Rycz, supra*, 81 Cal.App.5th 824, 836.) That it will be more burdensome for the defendant to defend the action in the county plaintiff chose is not a valid basis for a change of venue. (Weil & Brown, *supra*, ¶ 3:555.)

Defendant offers evidence that all of its “employees and/or witnesses reside in the Los Angeles area” and it “has no place of business, nor employees that reside in Marin County.” (Petty Dec., ¶ 10.) The convenience of witnesses who are employees of the litigants is not considered on a motion for transfer of venue. (*Dillman v. Superior Court of Los Angeles County* (1962) 205 Cal.App.2d 769, 773-774.) And merely establishing that unspecified potential witnesses reside in a faraway county is not enough to merit a transfer of venue. It falls far short of the “extensive factual showing” required by cases such as *Peiser, Rycz, and Juneau*. (Weil & Brown, *supra*, ¶ 3:576.)

Accordingly, the motion for transfer of venue is denied. Because Defendant is not a “prevailing party,” its request for fees is likewise denied. (Code Civ. Proc., § 396b, subd. (b).)

***All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.***

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