ROBERT M. SUSSMAN, DC Bar No. 226746
Sussman & Associates
3101 Garfield Street, NW
Washington, DC 20008
(202) 716-0118

MICHAEL CONNETT, CA Bar No. 300314
Waters, Kraus and Paul
222 North Pacific Coast Highway
Suite 1900
El l Segundo, California 90245
(310) 414-8146

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

CENTER FOR ENVIRONMENTAL HEALTH et al
\
Plaintiffs,
vs.
MICHAEL REGAN, as Administrator of the United States Environmental Protection Agency, and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
.
Defendants.

Case No. 4:21-cv-01535-PJH

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO TRANSFER VENUE

Date: May 5, 2022
Time: 1:30 p.m.
Location: Zoom webinar

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Federal Statutes

Federal Regulations

INTRODUCTION

This case involves per- and polyfluoroalkyl substances ("PFAS"), a large class of persistent chemicals that are manufactured and used throughout the United States, pervasive in the environment, and present in the blood of nearly all Americans. Defendant U.S. Environmental Protection Agency ("EPA") and other leading authorities consider PFAS a serious threat to human health and the environment but recognize that, while some high-profile PFAS have been shown to have harmful effects, very few substances in the class have been tested to determine their impacts on exposed people and wildlife.

Section 4 of the Toxic Substances Control Act ("TSCA") gives EPA authority to require PFAS manufacturers to fund this testing. Plaintiffs, six nonprofit public health and environmental justice organizations, petitioned EPA under section 21 of TSCA to require The Chemours Company ("Chemours"), a large global PFAS manufacturer headquartered in Wilmington, Delaware, to develop health and environmental data on 54 PFAS produced at its Fayetteville facility that have caused extensive contamination of North Carolina's Cape Fear River basin. Atkins Decl. Exhibit B. In its petition response, EPA did not dispute that over 300,000 people are exposed to these PFAS, that they may present serious health risks and that there is virtually no data with which to determine the nature and severity of these risks. Rather, it "determined that the petition sets forth facts demonstrating that it is appropriate to issue a section 4 order to address the health and environmental effects of PFAS" and therefore "granted" the petition. However, EPA then refused to require Chemours to conduct nearly all the studies requested in plaintiffs' petition. Atkins Decl. Exhibit F.

Plaintiffs filed suit in this Court under section 21 to challenge EPA's untenable rationale for failing to order the comprehensive testing program proposed by the petition after concluding that it demonstrated the need for testing under TSCA. Defendants have moved to transfer the case to the Eastern District of

North Carolina but, as shown below, have not met any of the well-established criteria for transfer under 28 U.S.C. § 1404(a).

Plaintiff Center for Environmental Health ("CEH") is headquartered in Oakland and has venue in this District. CEH's leadership team in Oakland has played a critical role in managing development of the petition and invested substantial time and resources in working with the other plaintiffs to move it forward. Attachment 1, Declaration of Michael Green. CEH is heavily engaged in science and advocacy issues regarding PFAS at the national level and in Northern California, where widespread PFAS contamination is a major concern. Recently, CEH has been a plaintiff in two TSCA cases against EPA in this District and two petitions for review under TSCA in the Ninth Circuit. Where a plaintiff has an established presence in a judicial district, its choice of forum is "entitled to substantial deference" and defendants "must make a strong showing" to overcome that choice. *Decker Coal Co. v. Commonwealth Edison Co.,* 805 F.2d 834, 843 (9th Cir. 1986). Defendants have failed to meet this burden.

First, Defendants make no claim that the Eastern District of North Carolina is a more "convenient" forum for Plaintiffs or EPA. Their only assertion of "inconvenience" is that EPA may seek testimony from two North Carolina employees of Chemours, which is not a party to this case. Motion to Transfer, 10-11. However, EPA's December 28, 2021 response to plaintiffs' petition (Atkins Decl. Exhibit F) did not cite or rely on any evidence received from Chemours and Defendants acknowledge in their motion that they intend to oppose the admission of such extra-record evidence in this case. Moreover, since EPA concluded that testing is warranted under TSCA and did not dispute the evidence in Plaintiffs' petition, Chemours' specific manufacturing activities in North Carolina are irrelevant: EPA counsel seeks to use Chemours' testimony to construct a case which EPA not only failed to make in its petition response but effectively rejected. Finally, even if the Chemours employees were to testify, there is no evidence that they or

Chemours – a multi-billion dollar global company – would experience any hardship if that testimony occurred in this District.

Second, seeking to demonstrate the greater "ease of access to evidence" in North Carolina, EPA claims that "Chemours or its representatives would likely be the subject of non-party discovery." Motion to Transfer at 10. However, documentary evidence obtainable from Chemours is irrelevant for the same reason that testimony of its employees is irrelevant: it played no role in EPA's decision on plaintiffs' petition and would place in dispute matters that the decision effectively resolved in plaintiffs' favor. Nor is there merit to defendants' insistence that the consent order between Chemours and the State of North Carolina provides a basis for discovery. The purposes of the consent order are completely different from the goals of the petition and in any case voluminous information generated under the consent order is available online and can be obtained electronically without the production of documents in North Carolina.

Third, this Court has "greater familiarity with the applicable law" than the Eastern District of North Carolina. Judge Chen of this District recently heard two major cases challenging EPA's denial of petitions under section 21 of TSCA and issued several rulings on key issues that are certain to arise in this case. As a result, this District has a uniquely extensive body of law interpreting and applying section 21. By contrast, there are no reported decisions under section 21 or other TSCA provisions from the Eastern District of North Carolina. This District's expertise in TSCA will enable the Court to resolve the issues in this case more efficiently and expeditiously than in the Eastern District.

Finally, this case is not principally about "local interests" in North Carolina. Since EPA concluded that the petition had demonstrated that testing was justified under TSCA, the focus of the case is EPA's unaccountable failure to require virtually all the studies requested by petitioners. Whether this decision was lawful and supported by the preponderance of the evidence turns on broad scientific, policy and legal considerations, not specific aspects of Chemours' operations or the precise nature of PFAS contamination

in Eastern North Carolina. Thus, the outcome of this case will have important implications for the application of TSCA testing requirements to the larger universe of PFAS found in the environment, products and people throughout the US. Residents of this District will also be impacted directly because they may be exposed to specific PFAS covered by the petition and, as a result of pervasive PFAS contamination in Northern California, are likely exposed to numerous other PFAS that lack test data. The guidance this Court provides on the application of TSCA to PFAS testing needs will therefore be significant to impacted communities in California and elsewhere. Where a case affects national issues and the interests of residents in the jurisdiction where the case was filed, numerous courts have concluded that the local interests of the transferee district do not outweigh the deference owed to the plaintiffs' choice of forum.

Under 28 U.S.C §1404(a), if the Court decides a change in venue is warranted for " the convenience of parties and witnesses [and] in the interest of justice, " it "may transfer [this case] to *any other* district or division where it might have been brought" (emphasis added). This case could have been filed in the District Court for the District of Columbia under 28 U.S.C. § 1391(e)(1). That District is better equipped than the Eastern District of North Carolina to address the national issues of law and science in dispute. Plaintiffs therefore request transfer to that District if the Court does not deny Defendants' motion outright.

BACKGROUND

A. Key Provisions of TSCA

TSCA was enacted in 1976 to create a national program for assessing and managing the risks of chemicals to human health and the environment. As stated in TSCA section 2(b), 15 U.S.C. §2601(b), a major priority of the law was that "adequate information should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of this information should be the responsibility of those who manufacture and those who process such chemical substances and mixtures."

This policy is implemented in section 4 of TSCA, which provides EPA with broad authority to require industry to test its chemicals to determine their risks to human health and the environment.[1] 15 U.S.C. § 2603. Section 4(a)(1)(A)(i) authorizes EPA to issue rules or orders directing manufacturers to undertake health and environmental effects studies where it makes three simple determinations:

(1) "The manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture . . . may present an unreasonable risk of injury to health or the environment";
(2) There is "insufficient information and experience" with which the chemical's effects on health and the environment "can reasonably be determined or predicted"; and
(3) Testing is "necessary to develop such information."

The bar for making these determinations is a low one. In *Chemical Manufacturers Association v. U.S. Environmental Protection Agency,* 859 F.2d 977, 984-987 (1988), the D.C. Circuit concluded that Congress did not expect that EPA would have to document to a certainty the existence of an 'unreasonable risk' before it could require testing" It added that "the word 'may' in section 4(a)(1)(A) was intended to focus the Agency's attention on chemical substances 'about which there is a basis for concern, but about which there is inadequate information to reasonably predict or determine the effects of the substance or mixture on health or the environment.'" Thus, EPA need not demonstrate that exposure or toxicity is "probable" but may "rely on inferences in issuing a section 4 test rule, so long as all the evidence . . . indicates a more-than-theoretical probability of exposure." Inferences can also support findings of potential toxicity since "Congress explicitly contemplated that EPA would base test rules on comparisons among structurally similar chemicals." 859 F.2d at 988-991.

Once EPA determines that the statutory criteria are met, it must require that testing be conducted "to develop information with respect to the health and environmental effects for which there is an insufficiency of information and experience" and which are "relevant to a determination" whether the substance "does or does not present an unreasonable risk to health and the environment." 15 U.S.C. §

[1] Congress amended TSCA in 2016 with the Frank R. Lautenberg Chemical Safety for the 21st Century Act (P.L. 114–182), which significantly enhanced EPA's authorities under TSCA, including authorizing EPA to issue orders under section 4.

2603(a)(1). Under section 4(b)(2)(A), a broad range of studies may be required under test rules or orders. These may include tests to determine "carcinogenesis, mutagenesis, teratogenesis, behavioral disorders, cumulative or synergistic effects, and any other effect which may present an unreasonable risk of injury to health or the environment." 15 U.S.C. § 2603(b)(2)(A).

Under section 21 of TSCA, citizens can petition EPA to take action under different provisions of the law. 15 U.S.C. § 2620. Described as an "unusually powerful procedure[] for citizens to force EPA's hand" in *Trumpeter Swan Society v EPA*, 774 F.3d 1037, 1939 (D.C, Cir. 2014), section 21(b)(3) requires EPA to respond to petitions within 90 days. If EPA denies the petition or fails to act within 90 days, the petitioner may file a civil action in federal district court to "compel the [EPA] Administrator to initiate a rulemaking proceeding as requested in the petition." 15 U.S.C. §2620(b)(4)(A). Section 21(a) explicitly authorizes petitions for issuance of a rule or order under Section 4 requiring manufacturers to undertake testing. *Id.* § 2620(a). Under Section 21(b)(4)(B)(i), where such petitions are denied, the district court must "order the Administrator to initiate the action requested by the petitioner" if it "demonstrates to the satisfaction of the court by a preponderance of the evidence" that "(I) information available to the Administrator is insufficient to permit a reasoned evaluation of the health and environmental effects of the chemical substance . . . ; and (II) in the absence of such information, the substance may present an unreasonable risk to health or the environment . . ." In applying these factors, the court must consider the evidence supporting the petition "in a *de novo* proceeding." 15 U.S.C. § 2620(b)(4)(B).

B. The Dangers of PFAS

In its *PFAS Strategic Roadmap: EPA's Commitments to Action 2021-2024*, the Agency has recognized that PFAS pose a serious threat to all Americans:

> "Harmful per- and poly-fluoroalkyl substances (PFAS) are an urgent public health and environmental issue facing communities across the United States. PFAS have been manufactured and used in a variety of industries in the United States and around the globe since the 1940s, and they are still being used today. Because of the duration and breadth of use, PFAS can be found in surface water, groundwater, soil, and air—from remote rural areas to densely-populated urban centers. A growing body of scientific evidence shows that exposure at certain levels to specific PFAS can adversely impact human health and other living things.

Despite these concerns, PFAS are still used in a wide range of consumer products and industrial applications."

PFAS are often called "forever" chemicals because they do not break down or degrade over time and therefore are highly persistent. Thus, they build up in the natural environment and in biological systems if they are bio-accumulative. Atkins Decl. Exhibit B, at 8-10. These characteristics, combined with the high mobility of many PFAS, have resulted in their widespread distribution and pervasive presence both in environmental media and in people and wildlife around the globe, including many remote locations. As a result, PFAS have been detected in the blood of workers and the general population, with 99 percent of those sampled showing detectable levels of these compounds. Id.

In its National PFAS Testing Strategy, EPA estimates that over 6500 PFAS are manufactured or used in the United States. According to its earlier *PFAS Action Plan*, "[m]ost of these PFAS lack sufficient toxicity data to inform our understanding of the potential for adverse human or ecological effects." However, testing on a small number of significant PFAS demonstrates concern for many serious health effects, including cancer, hormone disruption, liver and kidney damage, developmental and reproductive harm, changes in serum lipid levels, and immunotoxicity, often at low doses. Atkins Decl. Exhibit B at 17-18. Recognizing that "significant gaps remain regarding the impacts of other PFAS on human health and in the environment," the EPA Strategic Roadmap commits to research to "increase understanding of PFAS exposures and toxicities, human health and ecological effects."

C. Plaintiffs' Testing Petition

In their October 14, 2020 petition under section 21 of TSCA, plaintiffs asked EPA to require Chemours to undertake comprehensive health and environmental effects testing on 54 PFAS manufactured at its chemical production facility in Fayetteville, North Carolina. Atkins Decl. Exhibit B. Petitioners selected these 54 PFAS based on evidence of known or anticipated human exposure as demonstrated by

available data on their presence in human blood, drinking water, surface water, air emissions, rainwater, private wells, groundwater and produce. Id. at 12-16. The petition showed that the 54 PFAS meet the TSCA section 4(a) criteria for testing because data on their effects are insufficient; they are similar to other tested PFAS known to cause adverse effects; and they may present unreasonable risks because of the combination of potential toxicity and exposure. Id. at 16-22. The petition proposed a detailed testing program consisting of experimental animal studies, human studies and testing for ecological effects, fate and transport and physical-chemical properties. Id. at 23-34. The goal of this program was to provide residents of the Cape Fear basin with an understanding of how long-term exposure to PFAS manufactured by Chemours has affected their health and what medical professionals can do to diagnose and treat PFAS-related disease.

D. EPA's Response to the Petition

After the petition was denied by the Trump EPA on January 7, 2021, 86 Fed. Reg. 6602 (Jan. 22, 2021), plaintiffs submitted a request for reconsideration on March 4, 2021, which included a comprehensive literature search confirming the absence of meaningful data on nearly all 54 PFAS. Attachment 2, Declaration of Robert Sussman, Exhibit C. The Biden EPA granted reconsideration on September 16, 2021 and issued a revised petition response on December 28, 2021. Atkins Decl. Exhibit F. The response did not dispute plaintiffs' showings that sufficient data are lacking on nearly all the 54 PFAS, that a large population in the Cape Fear River basin is exposed to these PFAS, and that they have the potential for harmful effects.[2] Emphasizing that the Agency "understands, and shares, petitioners' concerns about the historic and ongoing exposures to PFAS in the Cape Fear River watershed of North Carolina," id. at 7, EPA "determined that the petition sets forth facts demonstrating that it is appropriate to issue a section 4 order to address the health and environmental effects of PFAS. As such, EPA is granting the petition and

[2] While referring to the Trump EPA petition denial, the December 28, 2021 petition response did not cite or incorporate by reference any of its findings or reasoning.

will exercise its TSCA authorities to compel development of information on PFAS." Id. at 8.

Remarkably, however, EPA refused to require testing for 47 of the 54 substances proposed for testing in the petition and rejected nearly all the studies that petitioners requested. Thus, EPA (1) only decided to require studies on 7 PFAS previously selected for testing; (2) conditioned this testing on a "tiered" approach that could result in no animal studies for the critical end-points highlighted in the petition; (3) did not address the petition's request for multigeneration or extended one-generation and 2-year rodent cancer studies on the 14 PFAS present in drinking water and/or human blood; (4) refused to require a comprehensive epidemiological study of North Carolina residents exposed to PFAS pollution; (5) declined to require testing on PFAS mixtures found in the drinking water and/or human blood; and (6) failed to address the petition's requests for ecotoxicity and fate and transport studies on the 54 PFAS. Amended Complaint ¶¶ 81-83 ECF No. 32. Plaintiffs estimate that only 3.2 percent of the testing requested in the petition will in fact be required. Sussman Decl. ¶12.

EPA offered a variety of reasons for these decisions but a major factor was its October 18, 2021 National PFAS Testing Strategy (described in Atkins Decl. Exhibit F at 9-11), a framework for dividing the large PFAS universe into numerous "categories," conducting limited testing on 24 PFAS "representative" of certain of these categories, and then extrapolating the results to several thousand other untested PFAS. Plaintiffs will show in this case that the Testing Strategy and EPA's other reasons for rejecting the studies proposed in the petition are not scientifically or legally supportable and fail to address the petition's central goal of providing essential health effects data to populations heavily exposed to PFAS.

ARGUMENT

I. DEFENDANTS FAIL TO MEET ANY OF THE CRITERIA FOR TRANSFER

"For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a). "[T]he

purpose of the section is to prevent the waste 'of time, energy and money' and 'to protect litigants, witnesses and the public against unnecessary inconvenience and expense.'" *Van Dusen v. Barrack,* 376 U.S. 612, 616 (1964) (quoting *Continental Grain,* 364 U.S. 19, 26-27 (1960)). Unless "justified by particular circumstances that render [the chosen] forum inappropriate by reference to the considerations specified in that statute, . . . transfer in derogation of properly laid venue is unwarranted." *Starnes v. McGuire,* 512 F.2d 918, 925-26 (D.C.Cir.1974) (en banc). Accordingly, the moving party has the burden to justify transfer, *Commodity Futures Trading Comm'n v. Savage,* 611 F.2d 270, 279 (9th Cir. 1979), and must make a "strong showing of inconvenience to warrant upsetting the plaintiff's choice of forum" by addressing private factors relating to "the convenience of the parties and witnesses" and public factors relating to "the interest of justice," including "the administrative difficulties flowing from court congestion and [the] local interest in having localized controversies decided at home." *Decker Coal Co. v. Commonwealth Edison Co.,* 805 F.2d at 843 (internal quotation marks omitted).

"Courts in this district commonly examine the following factors to determine convenience and fairness under § 1404(a): (1) the plaintiff's choice of forum, (2) the convenience of the parties, (3) the convenience of the witnesses, (4) the ease of access to the evidence, (5) the familiarity of each forum with the applicable law, (6) the feasibility of consolidation with other claims, (7) any local interest in the controversy, and (8) the relative court congestion and time to trial in each forum." *Fitbit, Inc. v. Koninklijke Philips N.V.*, 336 F.R.D. 574, 580 (N.D. Cal. 2020) (Hamilton, J.). As shown below, none of these factors favors transfer to the Eastern District of North Carolina.

A. Plaintiff CEH's Choice of Forum in its Home District is Entitled to Strong Deference

Plaintiffs' choice of forum is "entitled to substantial deference" and Defendants "must make a strong showing" to overcome that choice. *Ctr. for Biological Diversity v. Lubchenco*, 2009 WL 4545169, at *4 (N.D. Cal. Nov. 30, 2009) (citing *Decker Coal Co. v. Commonwealth Edison C*o, 805 F.2d at 843).

There is no doubt that Plaintiff CEH has venue in this District. CEH is a non-profit public health and environmental organization whose mission is to "protect people from toxic chemicals by working with communities, consumers, workers, government, and the private sector." Green Decl. ¶4. Its headquarters is in Oakland, California, where its leadership provides direction on program development, funding, management, and policy positions. Id. ¶17. Recently, CEH has been a plaintiff in two TSCA cases against EPA in this District and two petitions for review under TSCA in the Ninth Circuit. Id. ¶ 8. The great majority of CEH's 27 employees work out of the Oakland office. Id. ¶15. CEH leadership has identified PFAS pollution as a top priority. In addition to its lead role on the PFAS testing petition, CEH is actively engaged in advocacy and science to address PFAS threats in California and at the national level. Id.¶¶9-14.

Through its Oakland Office, CEH leadership has coordinated and facilitated the development of the testing petition and follow-up legal and scientific initiatives to advance the petition, convening calls, developing agendas, preparing background materials, and working with counsel. Overall direction on petition-related activities is provided by CEH's President, Michael Green, its Managing Director of Programs, Randall Miller, and its Interim Policy Director Kathryn Alcantar, all of whom reside in this District. Id. ¶¶ 17-19. CEH's Communications Director, Emily DiFrisco, is the lead for developing press releases, responding to media inquiries, and managing petition-related materials on CEH's Website.

CEH has two employees based in North Carolina who initially assisted in local outreach on the petition but are no longer working on the project. Id. ¶16. Claiming that CEH's suit in this District was "forum shopping" because its work on the petition occurs in North Carolina, Defendants repeatedly reference a brief 2020 entry on CEH's Website stating that the testing petition was "submitted" by CEH's North Carolina office. Motion to Transfer, at 2,3,9,13. In fact, the petition was signed by Thomas Fox, CEH's Senior Policy Advisor, who is based in Washington, DC and reports to CEH's senior leadership in Oakland. Green Decl. ¶17. Had EPA bothered to read other entries about the petition on CEH's website,

it would have been unmistakably clear that the Oakland office has been heavily engaged in all aspects of the petition.

Given CEH's significant presence in this District and the critical role of its Oakland-based staff in overseeing all petition-related matters, its choice of forum is entitled to "substantial weight." *See Sierra Club v. U.S. Dep't of Agric.,* 2008 WL 5273726, at *3 (N.D. Cal. Dec. 19, 2008) ("Sierra Club's headquarters as well as the hub of its national litigation group are both located in [Oakland], a factor which "weighs strongly against [the] Motion to Transfer"); *Ctr. for Biological Diversity v. Exp.-Imp. Bank of the U.S., 2013 WL 5273088, at *5 (N.D. Cal. Sept. 17, 2013)* at *5 (finding ties between the plaintiff organizations and the district where they "direct their respective environmental protection efforts"). [3]

This "substantial weight" is not diminished because the other five plaintiffs reside in North Carolina. As the District Court for the District of Columbia held in *Sierra Club v. Van Antwerp*, 523 F.Supp.2d 5, 12 (D.D.C. 2007), "[r]egardless of whether the remaining plaintiffs are entitled to a presumption in favor of the chosen forum, the Court determines that Clean Water Action's District of Columbia residency is sufficient to tip the balance in favor of this Court's strong presumption in favor of venue in this District." *See also Lax v. Toyota Motor Corp.,* 65 F. Supp. 3d 772, 778 (N.D. Cal. 2014) ("[t]hat only one of the seven named plaintiffs has a connection to this forum … does not undermine the weight to be given plaintiffs' choice of forum.")

B. The Convenience of the Parties and Witnesses Does Not Support Transfer

Defendants do not – and could not – argue that this District is "inconvenient" for the Plaintiffs. Their decision to file suit in the District demonstrates the contrary. Plaintiffs have no current plans to testify

[3] Courts have held that plaintiff's choice of venue receives most weight when, as here, the suit is filed in its home forum. *American Littoral Soc. v. U.S. E.P.A.*, 943 F. Supp. 548, 551 (E.D. Pa. 1996); *Foote v. Chu*, 858 F. Supp. 2d 116 (D.D.C. 2012)

at trial, Sussman Decl. ¶ 6, and in the unlikely event that EPA needs to depose them on standing issues,[4] this can occur in North Carolina even if the case is being heard in this District. Moreover, plaintiffs' counsel reside in the District of Columbia and Southern California, respectively, and would not realize any benefit if this case is heard in the Eastern District of North Carolina. Indeed, if the case is transferred to the Eastern District, plaintiffs – who are non-profit organizations of limited means – would incur the cost and burden of retaining and educating North Carolina counsel, an *inconvenience* that weighs against transfer. *See Ontel Prods., Inc. v. Project Strategies Corp*., 899 F. Supp. 1144, 1154 (S.D.N.Y. 1995).

EPA has understandably made no claim that its own convenience requires transfer to the Eastern District of North Carolina. EPA's decision on plaintiffs' petition was made in Washington DC. The underlying materials on which the decision was based are maintained at its Washington DC offices and all the EPA scientists and policymakers who contributed to the decision work at these offices. EPA's counsel in this case also resides in Washington DC. While Oakland is further away from DC than North Carolina, a change of forum to North Carolina would not be more efficient or convenient to EPA staff or counsel.[5]

"The relative convenience to the witnesses is often recognized as the most important factor to be considered in ruling on a motion under section 1404(a)." *Saleh v. Titan Corp*., 361 F. Supp. 2d 1152, 1160 (S.D. Cal. 2005) (citation omitted). However, EPA has not met its burden of showing that any witnesses will be "inconvenienced" if this case remains in the Northern District.

Plaintiffs currently expect that their witnesses in this case will include:

- scientific consultants who helped draft plaintiffs' petition and can explain the data and

[4] EPA raises the prospect that it "may depose or subpoena to testify Plaintiffs or their members regarding facts that would support any asserted claim of standing." Motion to Transfer, at 9. However, standing issues are typically resolved by declarations. *E.g.*, *Asbestos Disease Awareness Org. v. Wheeler,* 508 F. Supp. 3d 707, 716-719 (N.D. Cal. 2020). In this case, there will be no dispute about standing since numerous members and officials of the plaintiff organizations reside in the Cape Fear Basin and they and their families have consumed and continue to consume drinking water contaminated with numerous PFAS manufactured by Chemours. Attachment 3, Declaration of Dana Sargent ¶¶5-6.

[5] While there are a small number of non-stop flights from Washington to Wilmington NC, the Bay area is well-served by numerous non-stop flights from the DC area and flight options are likely more convenient.

analysis on which it was based,

- EPA staff who contributed to the petition response and can address the considerations and evidence they took into account,
- EPA scientists and policymakers responsible for other critical scientific assessments on PFAS relevant to the petition response, and
- independent experts who can address why EPA's PFAS testing strategy does not satisfy the data needs identified in the petition and critique the rationale in EPA's petition response for refusing to require studies proposed in plaintiffs' petition.

Sussman Declaration at ¶ 7. These witnesses will likely have little or no nexus to North Carolina. For example, Ruthann Rudel, the principal scientific architect of the petition, is with the Silent Spring Institute in Newton Massachusetts; knowledgeable EPA scientists and policymakers who might testify reside in Washington DC; and expert epidemiologists and toxicologists who plaintiffs may retain are likely scattered across the US and abroad. Id. at ¶ 8.

As this Court stated in *Fitbit, Inc. v. Koninklijke Philips N.V.*, 336 F.R.D. at 580 ("typically, the moving party must name the witnesses, state their location, and explain their testimony and its relevance." *Carolina Cas. Co. v. Data Broad. Corp.*, 158 F. Supp. 2d 1044, 1049 (N.D. Cal. 2001) (citation omitted)." However, EPA's motion is largely silent on the witnesses it intends to call. For example, the motion fails to mention EPA staff and outside experts who might testify on its behalf and have no link to North Carolina.

Instead, struggling to establish a North Carolina connection, Defendants claim they may seek testimony from two employees at the Fayetteville, North Carolina Chemours facility.[6] They note that Chemours, which is not a party to this case, filed comments (Atkins Decl. Exhibit D) with EPA opposing plaintiffs' petition and argue that these Chemours employees shouild testify on issues addressed in the comments, including "the types of PFAS that are handled at the facility," "current knowledge and testing

[6] Chemours, an international chemical manufacturer with $6.3 billion in net revenues in 2021 and 6500 employees, is headquartered and incorporated in Delaware and has over 60 plant, laboratory and office sites in the US and globally. Many of the PFAS chemicals manufactured at the Fayetteville facility are distributed throughout the United States. Sussman Decl. ¶ 11. There is no reason why it would be "inconvenient" for Chemours employees in North Carolina to travel to this District for trial testimony.

efforts regarding PFAS in the vicinity of the Fayetteville facility," and the "discharge-control measures that the Fayetteville facility has undertaken." Motion to Transfer at 11.

The flaw in EPA's position is that it plans to *oppose* admission of the very testimony that it uses to justify transfer to North Carolina. As EPA acknowledges, whether TSCA section 21 "enlarges the scope of review beyond the administrative record . . . is likely to be a contested issue in this case." Id. at 9. In a previous TSCA section 21 case in this District, EPA in fact "contested" the introduction of extra-record evidence but Judge Chen rejected its position.[7] Now, EPA wants to renew its argument. If it succeeds, the testimony of the Chemours witnesses would be disallowed. Indeed, EPA's interest in relitigating the decision of this Court permitting extra-record evidence is the likely motivation for its desire to transfer this case to the Eastern District of North Carolina. For EPA to cite extra-record evidence to justify transferring this case to North Carolina so it can then oppose its introduction is a classic "bait and switch."

Equally important, EPA's December 28, 2021 decision on plaintiffs' petition does not cite Chemours comments or any other evidence received from the company or discuss the consent order between the company and the State of North Carolina.[8] Nor does the decision dispute the showings in plaintiffs' petition that Chemours manufactures the 54 PFAS proposed for testing and there is exposure to

[7] In *Food & Water Watch, Inc., et al. v EPA* , 302 F. Supp. 3d 1058 (N.D. Cal.), public interest plaintiffs challenged EPA's denial of a TSCA section 21 petition seeking to ban the use of fluoride in drinking water. Under TSCA Section 21(b)(4)(B), where a petition seeks issuance of a rule or order under certain TSCA provisions, "the petitioner shall be provided an opportunity to have such petition considered by the court in a *de novo* proceeding." On February 7, 2018, Judge Chen issued a lengthy decision denying EPA's motion for a protective order limiting the scope of review to the administrative record. This request, the Court found, "would effectively foreclose Plaintiffs from introducing any evidence in this litigation that was not attached to their administrative petition." As the Court concluded, the "text of the TSCA, its structure, its purpose, and the legislative history make clear that Congress did not intend to impose such a limitation in judicial review of Section 21 citizen petitions." 302 F. Supp. At 1058.

[8] There is a footnote in Table 2 on page 16 of the petition response (Atkins Decl. Exhibit F) that identifies PFAS subject to testing under the consent order but the response provides no discussion of the consent order provisions themselves. Similarly, EPA's January 7, 2021 petition denial does not mention or cite the Chemours comments and refers to the consent order only to indicate that it calls for testing of 5 of the 54 PFAS. 86 Fed. Reg. at 6609.

these substances by residents of the Cape Fear River basin. In fact, EPA said that it "understands, and shares, petitioners' concerns about the historic and ongoing exposures to PFAS in the Cape Fear River watershed of North Carolina" and that it "is granting the petition under TSCA section 21 to . . . issue an order under TSCA section 4(a)(1)(A)(i) compelling health and environmental effects testing regarding PFAS."[9] Atkins Decl. Exhibit F at 7-8. It added that "EPA has determined that the petition sets forth facts demonstrating that it is appropriate to issue a section 4 order to address the health and environmental effects of PFAS." Id. The disagreement between plaintiffs and EPA in this case is thus not whether the 54 PFAS warrant testing under TSCA but whether it is unnecessary to require the studies requested in the petition in light of EPA's PFAS Testing Strategy and other considerations. This is an important and complex issue but Chemours' specific manufacturing activities in North Carolina have no bearing on it. Thus, EPA counsel seeks to use Chemours' testimony to construct a case against plaintiffs' petition which EPA not only failed to make in its December 28, 2021 petition response but effectively rejected.[10] The likely exclusion of this evidence as irrelevant shows that EPA has failed to meet its burden of showing that witnesses would be inconvenienced if this case remains in the Northern District.

C. Ease of Access to Evidence Does Not Support Transfer

EPA also stresses the importance of "extra-record documents" to demonstrate the greater "ease of access to evidence" in North Carolina. The Agency does not specify which documents are available only in North Carolina but suggests that "Chemours or its representatives would likely be the subject of non-

[9] Plaintiffs do not accept EPA's characterization of its decision as "granting" the petition. Because EPA rejected requiring virtually of the studies requested in the petition, its decision should be treated as a "denial" of the petition which allows plaintiffs to file suit under section 21((b)(4)(A) to compel the Agency to "initiate a rulemaking proceeding as requested in the petition." Amended Complaint, ¶ 82.

[10] To be clear, while Plaintiffs believe that section 21 allows the introduction of extra-record evidence as Judge Chen determined in his February 7, 2018 decision, their position is that any such evidence proffered by EPA should be for the purpose of elaborating on the basis for its response to the petition as articulated in its December 28, 2021 decision, not offering new grounds for rejecting the petition that go beyond, and are in conflict with, EPA's stated rationale.

party discovery." Motion to Transfer, at 10. But who would conduct this discovery? EPA will presumably argue that extra record documents are not admissible under TSCA section 21 and plaintiffs have no current plans to seek discovery from Chemours.[11] Indeed, documentary evidence obtainable from Chemours is irrelevant because, as described above, this evidence played no role in EPA's December 28, 2021 decision on plaintiffs petition and would place in dispute matters that EPA's decision did not contest and effectively resolved in plaintiffs' favor.

Particularly baffling is Defendants' claim that discovery in North Carolina is somehow necessary in connection with the consent order between Chemours and the State of North Carolina and related legal proceedings, Motion to Transfer at 5-6, 11; Atkins Decl. Exhibit A. The order was based on North Carolina law and entered in state court. It requires sampling and analysis of waste streams, groundwater, surface water and air in the vicinity of the facility and a set of abatement actions to reduce emissions and discharges of PFAS.[12] Again, EPA did not rely on these activities in its decision on the petition but determined that the petition demonstrated that testing under TSCA was warranted without considering the consent order. Moreover, both the Chemours and North Carolina DEQ Websites provide links to detailed reports, backup data and other analyses generated under the consent order. Sargent Decl. ¶ 9. EPA and others can thus access these materials electronically without requesting production of documents in North Carolina. *See Cooper v. Curallux* LLC, No. 20-CV-02455-PJH, 2020 WL 4051466, at *4 (N.D. Cal. July 20, 2020) (electronic accessibility of documents reduces the burden of obtaining evidence).

Defendants also point to toxicity testing on 5 PFAS which Chemours must conduct under the order

[11] Should EPA seek discovery from Chemours, plaintiffs might make their own discovery requests but have no present intention to seek documents and testimony from the company unless EPA does so.

[12] Sampling and analysis for PFAS and preparation of reports under the consent order are tasks assigned to two large international consulting firms, whose key personnel may reside outside the Eastern District. Sargent Decl. ¶10.

but fail to explain why testimony and evidence from Chemours on these studies are needed. Motion to Transfer at 5-6. As emphasized in plaintiffs' petition, the studies required are narrow in scope and insufficient to meet the data needs identified in the petition. Atkins Decl. Exhibit B at 21-22; Sargent Decl. ¶ 8. Moreover, the petition is clear that Chemours would not be required to repeat any studies already conducted or in progress. Id. at 30.

D. This District Is More Familiar with the Applicable Law under TSCA

This District recently heard two major cases challenging EPA actions on citizens' petitions under section 21 of TSCA. The first case, filed in 2017, sought to reverse EPA's denial of a petition to regulate the fluoridation of drinking water supplies under section 6 of TSCA. The case progressed through discovery to a lengthy trial, which is not yet complete. In the course of the case, Judge Chen issued several rulings on the proper construction of section 21, its interplay with other TSCA provisions and the scope of discovery and admissible evidence at trial:

- Order denying EPA's motion to dismiss, which provides a detailed examination of the prerequisites for invoking section 21 and its relationship to other TSCA provisions -- *Food & Water Watch, Inc. v. United States Env't Prot. Agency*, 291 F. Supp. 3d 1033 (N.D. Cal. 2017);
- Order denying EPA request to limit the case to the administrative record -- *Food & Water Watch, Inc. v. United States Env't Prot. Agency*, 302 F. Supp. 3d 1058 (N.D. Cal. 2018);
- Order on various discovery issues, including assertions of privilege over internal Agency documents and EPA objections to plaintiffs' depositions of EPA scientists -- *Food & Water Watch, Inc. v. United States Env't Prot. Agency*, No. 17-CV-02162-EMC, 2019 WL 8261655 (N.D. Cal. Dec. 30, 2019); and
- Order denying motions for summary judgment, which examines the definition of "unreasonable risk" under TSCA: *Food & Water Watch, Inc. v. United States Env't Prot. Agency*, No. 17CV02162EMCKAW, 2019 WL 1579898 (N.D. Cal. Apr. 12, 2019)

These issues are certain to arise in this case.

The second case, also heard by Judge Chen, was a challenge under section 21 to EPA's denial of a petition seeking TSCA reporting requirements for asbestos and asbestos-containing products. On December 20, 2020, the Court granted summary judgment to plaintiffs and ordered EPA to proceed with

rulemaking to require reporting on asbestos under TSCA. *Asbestos Disease Awareness Org. v. Wheeler,* 508 F. Supp. 3d 707 (N.D. Cal. 2020). Earlier, Judge Chen issued an important decision on the standards of review for petition denials under section 21 and the Administrative Procedure Act. *ADAO v. Wheeler*, No. 19-871, 2019 WL 6050752 (N.D. Cal. Nov. 15, 2019).

There are no reported cases under section 21 or other TSCA provisions in the Eastern District of North Carolina. Thus, the Northern District of California has a uniquely extensive body of law interpreting and applying section 21. When deciding motions to transfer, courts have considered the relative expertise of the two Districts in the applicable law. *See FMC Corp v USEPA*, 555 F. Supp. 2d 105 (D.D.C. 2008) (transfer of EPA pesticide regulation case proper where transferring court concluded that the "District of Columbia has more expertise in handling a case of this nature and they are much more familiar with these Administrative Procedure Act cases than we are.")

In addition, although previous decisions on an issue are not technically binding in later cases, "[j]udges of the same district court customarily follow a previous decision of a brother judge upon the same question except in unusual or exceptional circumstances." *Buna v. Pacific Far East Line, Inc.,* 441 F. Supp. 1360, 1365 (N.D. Cal.1977). "[J]judges of coordinate jurisdiction within a jurisdiction should follow brethren judges' rulings . . . to avoid or at least limit unnecessary duplication of effort, thereby conserving scarce judicial, governmental and private resources." *United States v. Anaya,* 509 F. Supp. 289, 293 (S.D.Fla.1980), *aff'd,* 685 F.2d 1272 (11th Cir.1982). *See also Flores v. Stock*, 715 F. Supp. 1468, 1471 (C.D. Cal. 1989). In this case, prior on-point decisions in this District will simplify and expedite resolution of the issues. Accordingly, considerations of judicial economy strongly favor keeping the case in the Northern District. *See Pit River Tribe v. Bureau of Land Management*, 2019 WL 6341566 (N.D Cal. December 27, 2019) (Hamilton, J.) (emphasizing "efficient and expeditious administration of justice" and need to "conserve judicial resources" as important factors in deciding transfer motions).

E. Any North Carolina Local Interest in this Case Is Counterbalanced by Its National Implications and Impact on Citizens of this District

In some environmental cases, courts have emphasized the benefit in having "localized controversies

decided at home" because local "communities will be most affected by those cases' resolutions." *Animal Legal Def. Fund v. U.S. Dep't of Agric.,* No. 12-cv-04407-SC, 2013 WL 120185 (N.D. Cal. Jan. 8, 2013), at *4-5 (internal quotation marks omitted). Relying on these cases, EPA invokes the interests of the "people, wildlife, and environment" in Eastern North Carolina as a justification to transfer this case to the Eastern District. Motion to Transfer at 8. However, the best arbiters of the interests of local communities are the five Plaintiffs who are based in Eastern North Carolina. These groups have a demonstrated record of advocating for protection of health and the environment on behalf of residents of the Cape Fear River Basin. They have worked tirelessly to call attention to the impacts of PFAS pollution on the safety of drinking water and ecological resources in the Basin and have fought to hold Chemours accountable for decades of PFAS contamination. Amended Complaint at ¶¶16-20; Sargent Decl. ¶3-4.

The five Plaintiffs whose members live and work in the Cape Fear Basin and who speak for communities harmed by PFAS contamination should have a strong voice in deciding the forum that will best serve local interests. Plaintiffs have chosen to challenge EPA's actions in this District, not the Eastern District of North Carolina, and the Court should respect their choice.

Moreover, while EPA maintains that the "operative facts underlying the administrative petition occurred in the Eastern District of North Carolina," Motion to Transfer at 14, the Agency did not dispute these facts in its December 28, 2021 decision on the petition and they are not the central focus of this case. Instead, as discussed above, EPA's decision assumed that there is exposure to the 54 PFAS by North Carolina communities and emphasized that it "shares petitioners' concerns regarding the potential risks posed by PFAS" to exposed residents. Atkins Decl. Exhibit F at 7. EPA also found that data on the health effects of most of these substances are lacking. Recognizing that there "are hundreds of PFAS in commerce that have limited or no toxicity data," id at 9, it concluded that "that the vast majority of PFAS are 'data-poor', that is, lacking data that inform behavior in the environment or in exposed ecological or human

populations", id. at 7, and that 39 of the 54 PFAS fall into "data-poor" PFAS categories. Id. at 13.[13] Thus, while not "making any final determination . . . whether the TSCA section 4 criteria have been met," id. at 8, EPA did not question whether the 54 PFAS lacked sufficient information "to permit a reasoned evaluation of their health and environmental effects" and that "in the absence of such information. . . [the PFAS] may present an unreasonable risk to health or the environment. . .." These are the critical findings required to justify testing under TSCA section 21(b)(4)(B)(i).[14]

The controversy in this case turns on EPA's failure to require virtually all the studies requested in the petition after determining that testing under TSCA section 4 is warranted and effectively conceding that the TSCA section 4 criteria were met. The justifications EPA offered for this failure involve broad scientific, policy and legal considerations, not specific aspects of Chemours' operations and the precise nature of PFAS contamination in Eastern North Carolina. For example, EPA claimed that for the majority of the 54 PFAS, it could make judgments about health effects by "extrapolating" from testing on a small number of other substances under its PFAS Testing Strategy; that 15 of the substances did not require testing because they "do not fit the definition of PFAS used in developing the Testing Strategy;" that epidemiological studies for the 54 PFAS are unnecessary because "multiple epidemiological studies are ongoing" that will provide adequate data; and that studies on the actual mixtures of PFAS to which people are exposed are not warranted because mixture components can be tested separately. Atkins Decl. Exhibit F at 11, 15, 17 and 18. Plaintiffs believe these claims are fundamentally flawed legally and scientifically.

[13] Petition Response, at 7-9,14. These conclusions are consistent with the comprehensive literature search that plaintiffs submitted to EPA in response to their March 3, 2021 petition for reconsideration. Sussman Decl. Exhibit C. EPA's petition response does not dispute the absence of data on an overwhelming majority of the 54 PFAS even though its counsel now argues that extra-record evidence is needed to understand "the current state of knowledge regarding each of the fifty-four PFAS." Motion to Transfer at 11.

[14] Accordingly, EPA recognized that "the best approach under TSCA to understand the health and environmental effects associated with PFAS is to initiate a program to develop information using the authority of section 4 of TSCA." Atkins Decl. Exhibit F at 8.

They intend to contest them at trial based on expert scientific opinion, testimony by EPA staff, other EPA decisions on PFAS that conflict with its petition response, and the requirements of TSCA.

The outcome of this case will have important implications for the application of TSCA testing requirements to the larger universe of PFAS (estimated by EPA's Testing Strategy to number 6,500) found in the environment, products, and people's blood throughout the US. The Court will examine the scientific and legal basis for the PFAS Testing Strategy, EPA's justification for determining that epidemiological and mixture studies are unnecessary, and its reliance on a narrow definition of PFAS. The resolution of plaintiffs' scientific and legal case will thus affect the general obligations of industry to conduct PFAS testing under TSCA, the nature and scale of the studies to be conducted and the benefits of testing to communities seeking to understand PFAS health risks. Thus, 113 non-profit groups from across the country and 67 leading scientists wrote the EPA Administrator to support the petition and express deep reservations about whether the Testing Strategy would protect communities. Sussman Decl. Exhibits A and B.[15]

Because of its national and California implications, EPA is simply incorrect that the Northern District has "zero local interest" in this case (Motion to Transfer at 2) and plaintiffs have chosen a "forum [that] has no particular interest in the parties or the subject matter." *Pac. Car & Foundry Co. v. Pence*, 403 F.2d 949, 954 (9th Cir. 1968). There is a substantial possibility that residents of the District will be exposed to PFAS covered by the petition and thus benefit directly from testing that Chemours is required to conduct.[16] Moreover, pervasive PFAS contamination has been found in California drinking water and in the blood of its residents throughout the State. In fact, California has the most detections of PFAS chemicals

[15] For example, the scientists' letter cautioned that "the testing strategy will have limited value in informing exposed communities about the health impacts of PFAS pollution because the 24 test substances were selected without regard to whether they are widespread in the environment and human blood and contribute significantly to exposure and risk. Thus, the strategy is unlikely to provide information on those PFAS with the greatest potential to harm exposed populations."

[16] According to the petition, 12 of the 54 PFAS are contained in consumer products or used in the production of such other products outside of North Carolina. Atkins Decl. Exhibit B, Attachment 2.

in drinking water sources of any state in the country. Green Decl. ¶¶ 10-11. Through their use of consumer products and environmental contamination, California residents, including those in this District, are undoubtedly exposed to numerous PFAS chemicals that lack data on their health effects. As a result, these residents have a strong interest in whether EPA will use its TSCA authorities to require manufacturers to develop information on the risks of PFAS and will be directly affected by the outcome of this case.

Where a case affects national issues or the interests of the plaintiffs' chosen forum, courts have concluded that the local interests of the transferee jurisdiction do not outweigh the deference owed to the plaintiffs' choice of forum. *See Nat'l Ass'n of Home Builders v. EPA,* 675 F.Supp.2d 173, 180 (D.D.C.2009) ("although there is some local interest in deciding this case in the District of Arizona, this consideration is outweighed by the need to grant deference to the plaintiffs' choice of forum...."); *Sierra Club v. Van Antwerp,* 523 F.Supp.2d 5, 11-12 (D.D.C.2007) (describing alleged violations of the Endangered Species Act and Clean Water Act as "national in scope" because of the "national character of the statutes . . . and the fact that the issue here is whether federal agencies complied with federal law" and concluding that "the Court is unable to say that the localized Florida impact of this suit sufficiently weighs in favor of transfer absent other factors that would contribute toward undermining this Court's great deference for the plaintiffs' chosen forum"); *Greater Yellowstone Coal. v. Kempthorne,* No. 07-2111 (EGS), 2008 WL 1862298, at *7 (D.D.C. Apr. 24, 2008) (in case involving regulation of snowmobiles in Yellowstone Park, "the national scope of the environmental issues at stake" counseled against transfer, and "[t]he management of the National Parks and the interpretation of federal environmental statutes are nationwide concerns," not localized controversies; *Otay Mesa,* 584 F.Supp.2d 122, 126 (D.D.C. 2008) (denying transfer because designation of California land as critical habitat for the endangered San Diego fairy shrimp "affects the residents of San Diego County no more directly than it does the residents of the District of Columbia, or any other district within the United States, as this is an issue regarding the critical

habitat of an endangered species whose vitality is as much a national concern as it is a local concern"); *ATK Launch Systems Inc. v. United States Environmental Protection Agency*, 651 F.3d 1194, 1198 (10th Cir. 2011) (transferring to DC Circuit a challenge to EPA air non-attainment determinations for portions of Utah because the "contention that EPA's case-by-case consideration of areas and boundaries transforms a national standard to a regional or local rule is ultimately unpersuasive"); *Greater Yellowstone v Bosworth,* 180 F. Supp. 2d 124, 128-29 (D.D.C. 2001) (denying transfer of challenge to renewal of Forest Service cattle-grazing permit in Montana on the basis that, because the claims "focus on interpretation of federal statutes, and federal government officials in the District of Columbia were involved in the decision to reissue the HBA grazing permit, this case has some national significance").

F. The Relative Court Congestion and Time to Trial in Each Forum Do Not Favor Transfer

Plaintiffs agree that these factors do not favor this District or the Eastern District of North Carolina.

II. IF THE COURT DECIDES TO TRANSFER THIS CASE, IT SHOULD BE TO THE DISTRICT OF COLUMBIA

Under 28 U.S.C §1404(a), if the Court decides a change in venue is warranted for " the convenience of parties and witnesses [and] in the interest of justice," it "may transfer [this case] to *any other district* or division where it might have been brought (emphasis added)." We believe the District of Columbia is a superior forum to the Eastern District of North Carolina under the applicable caselaw and request transfer to that District if the Court does not deny Defendants' motion outright.

Although none of the plaintiffs resides in Washington DC, venue in the District of Columbia would be proper in this case under 28 U.S. Code § 1391(e)(1), which allows suits against an officer or agency of the United States to be brought in any judicial district in which "a defendant in the action resides" or "a substantial part of the events or omissions giving rise to the claim occurred." These requirements are met here because (1) Defendants Michael Regan and EPA "reside" in the District of Columbia and (2) EPA's consideration of the petition, and thus "a substantial part of the events" giving rise to Plaintiffs' claims, occurred in the District as well.

As the decisions cited above recognize, the District of Columbia is a preferred forum for suits against federal agencies involving national programs and statutes, even where their application to specific regions is in dispute and local interests are affected. This preference reflects the concentration of federal agencies, policymakers and experts in Washington DC and the experience of federal courts in the District of Columbia in construing federal laws and regulations and applying principles of administrative law to agency actions. These factors are particularly relevant to this case, which involves EPA's application of the national law for controlling unsafe chemicals to a class of substances of national concern. While plaintiffs believe that denial of EPA's motion is necessary because it has failed to meet the heavy burden necessary to overcome plaintiffs' choice of forum, the District of Columbia should take precedence over the Eastern District of California if the Court concludes that transfer is justified.

CONCLUSION

Defendants have failed to meet their heavy burden to justify overriding plaintiffs' choice of forum under 28 U.S.C. § 1404(a) and their motion to transfer this case to the Eastern District of North Carolina should be denied. If the Court concludes that transfer is required, this case should be moved to the District of Columbia.

Respectfully submitted this 24th day of March 2022.

/s/ Robert M Sussman
ROBERT M. SUSSMAN, DC Bar No. 226746
Sussman & Associates
3101 Garfield Street, NW
Washington, DC 20008
(202) 716-0118

MICHAEL CONNETT, CA Bar No. 300314
Waters, Kraus and Paul
222 North Pacific Coast Highway
Suite 1900
El l Segundo, California 90245
(310) 414-8146

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of March, 2022, a true and correct copy of the foregoing Plaintiffs' Opposition To Defendants' Motion To Transfer Venue was filed electronically with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Robert M. Sussman
Robert M. Sussman
Counsel for Plaintiffs