

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI**

MICHAEL KENDRICK,
individually and as Administrator of
the Estate of Jonathan M. Kendrick,
and on behalf of all others similarly
situated,

Plaintiff

Case No. 4:24-cv-00596-BP

vs.

AW DISTRIBUTING, INC., et al.,

Defendants.

**DEFENDANTS' MOTION TO TRANSFER TO THE DISTRICT OF KANSAS
AND SUGGESTIONS IN SUPPORT**

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Defendants Technical Chemical Co., Micro Electronics, Inc., Micro Center Sales Corporation, International Products Sourcing Group, Inc., The ODP Corporation, ODP Business Solutions, LLC, Office Depot, LLC, AW Distributing, Inc., AW Product Sales & Marketing, Inc., Norazza, Inc., Walmart, Inc., Wal-Mart Stores East, L.P., and Wal-Mart Stores East, L.L.C. (hereinafter “Moving Defendants”) submit this Motion to Transfer to the District of Kansas and Suggestions in Support. In support, Moving Defendants state as follows:

NATURE OF THE MATTER

In this wrongful-death action involving Jonathan Kendrick—an individual who began abusing computer dusters in Kansas, who was criminally convicted for “abuse of toxic vapors” in Kansas, who died in Kansas after purchasing computer dusters at three separate retail locations in Kansas, and whose father (the Plaintiff here) incurred all his wrongful-death damages in Kansas—venue is not appropriate in the Western District of Missouri. This case should be transferred to the District of Kansas, the only appropriate venue. This is because, under the venue statute, “[a] civil action may be brought in—

- (1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located;
- (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or
- (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court’s personal jurisdiction with respect to such action.”

28 U.S.C. § 1391(b). Section (b)(1) does not support venue in this District because not all defendants are residents of Missouri. *See, e.g.*, Compl. ¶ 38 (Norazza, Inc.); ¶ 39 (Technical Chemical Company); ¶ 40 (Micro Electronics, Inc.); ¶ 42 (International Products Sourcing Group, Inc.); ¶ 45 (The ODP Corporation).

Section (b)(2) does not support venue in this District either. The relevant facts, taken from allegations in the Complaint as well as evidence outside the Complaint, establish that the Western District of Missouri is not “a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred[.]” 28 U.S.C. § 1391(b)(2). The only such judicial district under the relevant facts is the District of Kansas.

Section (b)(3) does not apply because venue in the District of Kansas is appropriate.

As such, the Court should transfer this matter to the District of Kansas under 28 U.S.C. § 1406(a). Should the Court determine that venue in the Western District of Missouri is proper, however, this matter should still be transferred to the District of Kansas under 28 U.S.C. § 1404(a).

RELEVANT FACTS

1. Jonathan Kendrick was born in 1985. Kansas Motor Vehicle Record Search Results, **Exhibit 1**.

2. In June 1999, Jonathan Kendrick, at the age of 14, was issued a Kansas Driver’s License (#K00941399). *See id.* Jonathan Kendrick was most recently issued a Kansas Driver’s License in August 2021. *See id.* (showing Jonathan Kendrick’s “address” as “12705 FONTANA ST LEAWOOD KS 66209-2320”).

3. In July 2010, Jonathan Kendrick was cited by a Leawood, Kansas police officer for “possess[ing] an object with the intent to use the object as drug paraphernalia to wit: glass pipe with burnt marijuana residue inside[.]” *See* Complaint-Number: 001140L, **Exhibit 2** (showing Jonathan Kendrick’s “address” as “12705 Fontana St. / Leawood / KS / 66209”). In August 2010, the Leawood Municipal Court found him “Guilty” of “POSSESSION WITH INTENT TO USE DRUG PARAPHERNALIA.” *See* Party Case History Report, **Exhibit 3**.

4. In 2011, Jonathan Kendrick started abusing computer dusters. *See* Compl. ¶ 57 (“Jonathan began intentionally inhaling computer duster in approximately 2011 after being introduced to the immediate and intense intoxication from intentionally inhaling DFE.”).

5. In August 2012, Jonathan Kendrick was cited by a Leawood, Kansas police officer for shoplifting “two bottles of Robitussin” from the Price Chopper grocery store at “13351 Mission Road,” which is located in Leawood, Kansas. *See* Complaint-Number: 002164L, **Exhibit 4** (showing Jonathan Kendrick’s “address” as “12705 Fontana Leawood KS 66209”). In October 2012, the Leawood Municipal Court found him “Guilty” of “THEFT.” *See* Party Case History Report, **Exhibit 3**.

6. In October 2013, Jonathan Kendrick was cited by a Leawood, Kansas police officer for “Unlawful Abuse of toxic vapors.” *See* Complaint-Number: 002730L, **Exhibit 5** (showing Jonathan Kendrick’s “address” as “12705 Fontana, Leawood, KS 66209”). In November 2015, the Leawood Municipal Court found him “Guilty” of “Abuse of Toxic Vapors.” *See* Party Case History Report, **Exhibit 3**.

7. In May 2014, Jonathan Kendrick was cited by a Leawood, Kansas police officer for driving under the influence (DUI) and “unlawful use of toxic vapors” near 119th Street and Pawnee Lane, which is located in Leawood, Kansas. *See* Kansas Notice to Appear and Complaint No. 261971, **Exhibit 6** (showing Jonathan Kendrick’s “address” as “12705 Fontana Leawood, KS 66209” and vehicle license plate as “KS”); Kansas Notice to Appear and Complaint No. 261972, **Exhibit 7** (same). In June 2017, the Leawood Municipal Court found him “Guilty” of “DUI-Drugs” and dismissed a related charge for “Abuse of Toxic Vapors.” *See* Party Case History Report, **Exhibit 3**. On the Journal Entry of Judgment dated June 14, 2017, Jonathan Kendrick’s

signature appears above his “Address,” which is “12705 FONTANA ST LEAWOOD, KS 66209.”
See Journal Entry of Judgment, **Exhibit 8**.

8. The Missouri State Highway Patrol conducted a “statewide search” for any criminal convictions corresponding to Jonathan Kendrick’s name, date of birth, and social security number; the search was conducted on December 24, 2024, and “revealed no criminal conviction or sex offender information on file.” *See* No Match Notification (Control Number: 6988297), **Exhibit 9**.

9. Jonathan Kendrick purchased computer dusters from Office Depot. Compl. ¶ 286. The Complaint does not specify whether those purchases were made at Office Depot stores located in Kansas or Missouri. On information and belief, however, over 80% of such purchases in 2021 were made at Office Depot stores located in Kansas. *See* Decl. of Fritz Lutz ¶ 3, **Exhibit 10**. And per the Complaint, “[i]n the days preceding Jonathan’s death on September 25, 2022, he made two trips to Office Depot the day before, both in the afternoon.” *Id.* ¶ 286. The Office Depot store referenced in that allegation is located in Kansas. *See* Decl. of Fritz Lutz ¶ 4, **Exhibit 10**.

10. Jonathan Kendrick purchased computer dusters from Micro Center. Compl. ¶ 283. On information and belief, Jonathan Kendrick purchased all computer dusters from Micro Center in Kansas. There is only one Micro Center in the greater Kansas City area, and it is located at 9294 Metcalf Avenue, Overland Park, Kansas 66212. *See* Decl. of David Story ¶ 2, **Exhibit 11**; *see also id.* ¶ 4 (affirming that the closest Micro Center to the Overland Park location is approximately 250 miles away in Brentwood, Missouri). The Complaint alleges that this Micro Center was negligent because it “never took steps to meaningfully restrict the availability of computer dusters in its store,” Compl. ¶ 282, and to illustrate this, the Complaint includes the below photo to show that Micro Center “displayed computer duster multipacks in prominent check

out aisle and end-cap space,” *id.* ¶ 284. The photograph at paragraph 284 of the Complaint depicts the Micro Center located in Overland Park, Kansas. *See* Decl. of David Story ¶ 3, **Exhibit 11**.



11. On September 25, 2022, Jonathan Kendrick died at a Motel 6 in Overland Park, Kansas, shortly after inhaling computer dusters he bought from three nearby stores (Walmart, Office Depot, Micro Center). *See* Compl. ¶ 59 (“On the day of his death, he rented a hotel room near a Super Walmart where he had purchased numerous cans of Surf onn. to feed his addiction. He had also purchased numerous cans of Office Depot private-labeled duster and Micro Center’s private-labeled Inland Air Duster. All three types of cans were found at the scene of his death. In total, 35 cans were found in his room of which 27 were empty.”); *id.* ¶ 30 (“Jonathan Kendrick was found dead at the Motel 6 at 6850 W. 108th St., Overland Park, Johnson County, Kansas with 35 cans of Inland Air Duster, Office Depot duster, and Surf onn. duster near his body. He had used each of the brands leading up to his death.”); *id.* ¶ 62 (“Jonathan passed away on September 25, 2022, in Room 143 at the Motel 6 in Overland Park, Johnson County, Kansas. His death certificate lists ‘acute 1,1-Difluoroethane toxicity’ as his cause of death.”).

Murray, 770 F.3d 698, 700–01 (8th Cir. 2014); *see also Schoberlein v. Westrux Int’l, Inc.*, 2:13-CV-04079, 2013 WL 12155465, at *1 (W.D. Mo. June 18, 2013). The party challenging venue generally bears the burden of showing that venue is improper. *Turner v. ILG Techs., LLC*, 2:21-CV-04192-NKL, 2022 WL 4543209, at *3 n.3 (W.D. Mo. Sept. 28, 2022); *but see Fed. Trade Comm’n v. BINT Operations LLC*, 595 F. Supp. 3d 740, 754 (E.D. Ark. 2022) (“Once a defendant raises the issue of proper venue by motion, the burden of proof is on the plaintiff to sustain venue.” (citing *Cohen v. Newsweek, Inc.*, 312 F.2d 76, 78 (8th Cir. 1963))). “[W]hen reviewing a motion to transfer venue, a court may consider evidence outside of the pleadings. . . .” *Sitzer v. Nat’l Ass’n of Realtors*, No. 4:19-CV-00332-SRB, 2019 WL 3892873, at *1 (W.D. Mo. Aug. 19, 2019).

Once a court finds venue is improper, Section 1406(a) provides that the court “shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.” *See Woodward v. Moad*, 23-03377-CV-S-DPR, 2024 WL 1774007, at *1 (W.D. Mo. Apr. 24, 2024) (quoting 28 U.S.C. § 1406(a)). The preferred relief under these circumstances is to transfer the case to an appropriate district rather than dismissal. *See Arkansas-Missouri Forest Prods., LLC v. Lerner*, No. 4:15-CV-00771-SRB, 2016 WL 756503, at *4 (W.D. Mo. Feb. 25, 2016).

ARGUMENT

I. The Court Should Transfer This Case to the District of Kansas Under Section 1406(a) Because Venue Is Improper in the Western District of Missouri.

Venue is not proper in the Western District of Missouri because this District is not “a judicial district in which a *substantial part* of the events or omissions giving rise to the *claim* occurred.” 28 U.S.C. § 1391(b)(2) (emphases added). The “claim” in this lawsuit—i.e., the alleged wrongful conduct—can be fairly summarized as two distinct claims, namely:

1. **Product-liability claims** asserting that all Defendants are liable under various theories of liability (strict liability, negligence, and warranty) for making or selling computer dusters with product defects (including design defects, manufacturing defects, and

inadequate warnings) that proximately caused Jonathan Kendrick's death, *see* Compl. ¶¶ 198, 220, 242, 322; and,

2. **Sales-practices claims** asserting that three retailer Defendants (Walmart, Office Depot, Micro Center) are liable for Jonathan Kendrick's death because each retailer "never took steps to meaningfully restrict the availability of computer dusters in its store or track and monitor incidents involving computer dusters," *id.* ¶¶ 282, 285, 288.

A "substantial part" of the events or omissions giving rise to those two categories of claims did not occur in this District. Plaintiff's product-liability claims derive from Defendants' decisions regarding the design, manufacture, and warnings for their respective computer dusters. Those decisions did not take place in this District, as none of Defendants' headquarters (or any other relevant office) are located in this District. Because none of the relevant events or omissions relating to Plaintiff's product-liability claims occurred in the Western District of Missouri, venue is not proper here. *See Holley v. BSH Home Appliances Corp.*, No. 2:19-CV-04168-BCW, 2019 WL 11274862, at *2 (W.D. Mo. Oct. 29, 2019) ("Plaintiffs' claims arise from Defendant's alleged defective design, manufacture, and/or sale of the dishwasher that allegedly led to a house fire and property damage to Plaintiffs' residence in Des Peres, Missouri. Even assuming Defendant sold the dishwasher in Missouri, Plaintiffs' products liability claims mainly derive from the dishwasher's design and manufacture, which likely occurred in Delaware. Thus, venue is not proper in the Western District of Missouri through the first clause of § 1391(b)(2).").

A "substantial part" of the events or omissions giving rise to Plaintiff's sales-practices claims against the three retailer Defendants (Walmart, Office Depot, Micro Center) did not occur in this District either. Instead, they took place in the District of Kansas, the judicial district where:

- Jonathan Kendrick made all purchases of computer dusters in the days before his death.
- Jonathan Kendrick made all his Micro Center and Walmart purchases of computer dusters, as well as 80% of his Office Depot purchases of computer dusters in 2021 and the "two trips" to the Office Depot in Overland Park, Kansas, on the day before his death in 2022.

See Relevant Facts ¶¶ 9–12. Further, substantially all other relevant events occurred in Kansas, including the following:

- Jonathan Kendrick started abusing computer dusters (circa 2011) in Kansas. *Id.* ¶ 4.
- Jonathan Kendrick was criminally charged with “abuse of toxic vapors”—i.e., inhaling computer dusters—multiple times in Kansas. *Id.* ¶¶ 6–7. He never faced similar charges in Missouri. *Id.* ¶ 8.
- Jonathan Kendrick died from “acute 1,1-Difluoroethane toxicity”—i.e., inhaling computer dusters—in Kansas. *Id.* ¶ 11.
- At all relevant times, including from 2010 to 2022, Jonathan Kendrick held a Kansas Driver’s License (#K00941399) and claimed a Kansas address (12705 Fontana St., Leawood, KS 66209). *Id.* ¶ 2; *see also id.* ¶¶ 3, 5–7.
- All wrongful-death damages claimed by Plaintiff (Jonathan Kendrick’s father) were incurred in Kansas. *Id.* ¶¶ 13–14.

Defendants have met their burden to establish this District is not a proper venue. The appropriate remedy is to transfer this action to the District of Kansas under 28 U.S.C. § 1406(a).

II. In the Alternative, the Court Should Transfer This Case to the District of Kansas Under Section 1404(a).

Should the Court determine that the Western District of Missouri is an appropriate venue, the Court should still transfer this matter to the District of Kansas under 28 U.S.C. § 1404(a). In deciding whether to transfer venue under Section 1404(a), the Court must consider: “(1) the convenience of the parties, (2) the convenience of the witnesses, and (3) the interests of justice,” in addition to considering case-specific circumstances and “all relevant factors.” *Terra Int’l, Inc. v. Miss. Chem. Corp.*, 119 F.3d 688, 691 (8th Cir. 1997) (citations omitted). The Court must also consider relevant unenumerated factors. *Id.* at 691.

Under the “convenience” factors, the Court may consider “(1) the convenience of the parties, (2) the convenience of the witnesses—including the willingness of witnesses to appear, the ability

to subpoena witnesses, and the adequacy of deposition testimony, (3) the accessibility to records and documents, (4) the location where the conduct complained of occurred, and (5) the applicability of each forum state's substantive law." *Id.* at 696.

The first factor (convenience of the parties) weighs in favor of transfer to the District of Kansas because Plaintiff resides in that District (making it more convenient) and no Defendant does (making it equally inconvenient for Defendants). *See Caricato v. Nissan N. Am., Inc.*, No. 4:20-CV-01007-NKL, 2021 WL 5044867, at *2 (W.D. Mo. June 1, 2021) ("Because the District of Colorado will be more convenient to [the plaintiff] because she resides in that District, and the District of Colorado will be equally inconvenient to [the defendant], this factor weighs in favor of transfer."); *see also Gaarder v. Webster Univ.*, No. 4:22-CV-00739-RK, 2023 WL 1928283, at *3 (W.D. Mo. Feb. 10, 2023) (granting transfer, including because "Plaintiff is not a resident of Western District of Missouri or the State of Missouri at all. Rather, Plaintiff currently resides in Utah.").

The second factor (convenience of the witnesses) and third factor (access to records) are, at worst, neutral. Based on the facts above, more witnesses and records will likely be located in the District of Kansas than in the Western District of Missouri. But these Districts are geographically nearby, making the convenience of witnesses and access to records similar in both Districts. *See Russell v. Liberty Fruit Co., Inc.*, No. 22-CV-00176-SRB, 2022 WL 947169, at *3 (W.D. Mo. Mar. 29, 2022) ("This Court and the District of Kansas courthouse in Kansas City, Kansas, are separated by approximately five miles. The current forum and the District of Kansas are therefore similarly convenient for witnesses."); *see Sitzer v. Nat'l Ass'n of Realtors*, No. 4:19-CV-00332-SRB, 2019 WL 11648563, at *3 (W.D. Mo. Aug. 22, 2019) (explaining the access-to-records factors is "less relevant in the modern era since most documents are produced electronically").

The fourth factor (location where the conduct complained of occurred) heavily favors the District of Kansas, which is the “location where the alleged unlawful conduct occurred, and more importantly, where the effect on Plaintiffs was felt.” *Sitzer*, 2019 WL 11648563, at *3. Kansas is where Jonathan Kendrick started abusing computer dusters, where he was criminally convicted for “abuse of toxic vapors,” where he died at a Motel 6 in Overland Park, Kansas after purchasing computer dusters at three separate retail locations in Kansas, and where his father (the Plaintiff here) resides and incurred all his wrongful-death damages.

The fifth factor (applicability of each forum state’s substantive law) heavily favors the District of Kansas because Kansas law will apply. “Missouri cases have consistently held that ‘the substantive law of the state in which the fatal injury occurred should apply to the cause of action for wrongful death.’” *Wilson v. New Prime, Inc.*, 565 S.W.3d 255, 257 (Mo. Ct. App. 2019) (quoting *Thompson v. Crawford*, 833 S.W.2d 868, 870 (Mo. 1992) (en banc)). There is no dispute that Jonathan Kendrick’s fatal injury occurred in Kansas.

Under the “interests of justice” prong, the Court may consider “(1) judicial economy, (2) the plaintiff’s choice of forum, (3) the comparative costs to the parties of litigating in each forum, (4) each party’s ability to enforce a judgment, (5) obstacles to a fair trial, (6) conflict of law issues, and (7) the advantages of having a local court determine questions of local law.” *Terra Int’l*, 119 F.3d at 696. Several interest-of-justice factors weigh heavily in favor of transfer to the District of Kansas:

The first factor (judicial economy) heavily favors transfer to the District of Kansas, where two wrongful-death computer-duster lawsuits (*Messerli* and *Leet*) that are nearly identical factually and legally to the instant *Kendrick* lawsuit have already been filed. All three cases are wrongful-death lawsuits governed by Kansas law and brought by the same Kansas law firm on behalf of a Kansas parent for the wrongful-death of an adult child who started inhaling computer dusters in

Kansas and died from inhaling computer dusters in Kansas. *See generally* Compl.; Compl., *Messerli v. AW Distrib., Inc.*, No. 2:22-cv-02305 (D. Kan. Aug. 1, 2022), **Exhibit 12**; Compl., *Leet v. AW Distrib., Inc.*, No. 2:23-cv-02322 (D. Kan. July 24, 2023), **Exhibit 13**. If the instant matter is transferred to the District of Kansas, then it could be consolidated with the other two matters, as appropriate (for coordinated discovery or motion practice, for example). *See Gaarder*, 2023 WL 1928283, at *3 (granting motion to transfer, including because “the interests of justice weigh heavily in favor of transfer to the extent the instant case could be consolidated with [a ‘nearly identical lawsuit currently pending in the Eastern District’]. Doing so would enhance judicial economy and avoid potentially inconsistent judgments.” (internal citation omitted)).

The second factor (plaintiff’s choice of forum) is entitled to less deference here because Plaintiff does not reside in this District and the facts giving rise to this lawsuit have no significant connection to this District. *See Kizzee v. Am. Fam. Mut. Ins. Co.*, No. 10-0213-CV-W-HFS, 2011 WL 13290812, at *1 (W.D. Mo. Mar. 25, 2011) (granting transfer to District of Kansas and observing that the “[choice-of-forum factor] can be outweighed by other factors, such as when plaintiff resides outside the forum and when ‘the facts giving rise to a lawsuit have no material relation or significant connection to plaintiff’s chosen forum.’” (quoting *Schecher v. Purdue Pharma L.P.*, 317 F. Supp. 2d 1253, 1263 (D. Kan. 2004))).

The third, fourth and fifth factors do not appear to favor one forum over the other.

The sixth factor (choice of law) and seventh factor (advantages of having a local court determine questions of local law) heavily favor the District of Kansas. Kansas law will apply, *see Wilson*, 565 S.W.3d at 257, so these factors favor transfer, *see Estate of Logan ex rel. Logan v. Busch*, No. 4:21-CV-00416-RK, 2022 WL 551256, at *5 (W.D. Mo. Feb. 23, 2022) (granting transfer to District of Kansas, including because “[the interest-of-justice] factor weighs in favor of

transfer because it appears (and Plaintiff does not contest) Kansas substantive law applies to its legal malpractice claim”). The District of Kansas has already considered Rule 12 and certification motions implicating legal issues unique to Kansas substantive law in *Messerli*, including the application of the illegality defense to product-liability claims under the Kansas Product Liability Act. The application of that defense is on appeal to the Tenth Circuit, which includes a request to certify questions to the Kansas Supreme Court. On these facts, choice-of-law considerations favor transfer to the District of Kansas. See *Caricato*, 2021 WL 5044867, at *4 (“[T]he Eighth Circuit has recognized ‘advantages of having a local [Kansas] court determine questions of local [Kansas] law.’” (quoting *Terra Int’l*, 119 F.3d at 696)); *DesignSense, Inc. v. MRIGlobal*, No. 4:13-CV-010-DGK, 2013 WL 3205569, at *3 (W.D. Mo. June 25, 2013) (“Judicial economy suggests this case should be sent to the District of Colorado because that court is already familiar with the issues in this action. It has considered two different motions to dismiss, issued a scheduling order, held multiple scheduling conferences, and monitored the parties’ discovery.”).

CONCLUSION

The Court should grant Moving Defendants’ motion and transfer this action to the District of Kansas under 28 U.S.C. § 1406(a) or, in the alternative, 28 U.S.C. § 1404(a).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2025, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Scott D. Kaiser
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