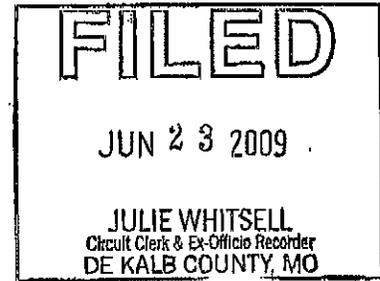


IN THE CIRCUIT COURT OF DEKALB COUNTY  
43<sup>RD</sup> JUDICIAL CIRCUIT  
STATE OF MISSOURI



MAYCEE GARDNER, a Minor,  
By Her Mother and Next Friend,  
CYNDEE GARDNER,

Plaintiff,

v.

PRIME TANNING CORP., et al.,

Defendants.

Cause No.: 09CN-CV00333

**PLAINTIFFS' SUGGESTIONS IN RESPONSE TO PRIME TANNING CORP.'S  
APPLICATION FOR CHANGE OF VENUE**

COMES NOW Plaintiff Cyndee Gardner, as Next Friend for Maycee Gardner, by and through her attorneys of record, and for response to Defendant Prime Tanning Corp.'s (Prime) Application for Change of Venue states as follows:

**Introduction**

Plaintiff acknowledges that Defendant Prime is entitled to an application for change of venue as a matter of right pursuant to Rule 51.03 of the Missouri Rules of Civil Procedure- however, Livingston County is in no way a convenient location which would warrant sending this case, or any other related case, to that venue. It is very likely that there will be more than one hundred (100) similar claims filed against Defendant Prime and its co-defendants. Jackson County is the most convenient and best equipped venue to handle such volume, and plaintiffs

hereby incorporate their suggestions in response to Prime's Application for Change of Venue in support of moving this case to Jackson County.

Defendant Prime's alternative application for change of venue for cause pursuant to Rule 51.04 of the Missouri Rules of Civil Procedure is moot and premature- the judge in the county to whom this case is sent should decide whether there is enough prejudice to warrant transfer of the case. However, in the event that the Court does not find Jackson County to be suitable venue for this case due to the reasons stated in Defendant's Application for Change of Venue, then Plaintiff would suggest that the next best venue capable of handling such a large volume of cases would be in the 22<sup>nd</sup> Judicial Circuit- St. Louis City. Like Jackson County, the 22<sup>nd</sup> Judicial Circuit is located in a large metropolitan area with a vast jury pool, an international airport for easy access for all parties, attorneys, and medical and other experts, and the capabilities to handle large volume of cases which will certainly be filed in this matter.

Livingston County, on the other hand, has absolutely no connection to this case whatsoever. Defendants Prime Tanning Corp. and NBL are headquartered in Buchanan County, Missouri. NBL's parent company National Beef is headquartered in Clay County, Missouri. None of the plaintiffs in any related lawsuit live in Livingston County. There is simply nothing convenient about Livingston County that would warrant sending this case to that venue. Jackson County is best equipped to handle a mass tort such as this case, and the 22<sup>nd</sup> Judicial Circuit- St. Louis City, is the next best choice for venue. Therefore, Plaintiff respectfully requests that the case be transferred to Jackson County, or in the alternative, to the 22<sup>nd</sup> Judicial Circuit- St. Louis City.

**Application for Change of Venue Pursuant to Mo. Ct. Rule 51.03**

A case venued in a county with less than 75,000 residents can be transferred to another county under Mo. Ct. Rule 51.03 even though the first injury or exposure did not occur in the other county. *State ex rel. Audrain Healthcare, Inc. v. Sutherland*, 233 S.W.3d 217 (Mo. 2007). The case is to be transferred to another county that is "convenient to the parties." Prime has in no way demonstrated that Livingston County is convenient to the parties in this case; in fact Livingston County has absolutely no connection to this case whatsoever.

This is a mass tort case in which 100 or more similar claims are likely to be filed against Prime and co-defendants. The case was originally filed in Dekalb County, Missouri because tort reform venue rules mandate that this case and others be filed where the plaintiffs are exposed to toxins. It is unlikely that a rural circuit court, like Livingston County, can handle the expected case load, Livingston County and its taxpayers would simply be overwhelmed by this litigation. In all likelihood a separate docket will have to be established to handle this number of cases. Jackson County is simply best equipped to handle the case load involved in this litigation and there are no potential class members in Jackson County that would create problems for the separate class actions filed against Prime and co-defendants. For the same reasons, the 22<sup>nd</sup> Judicial Circuit- St. Louis City, would also be a suitable venue for this case. St. Louis City has the resources necessary to handle the case load; is removed from this litigation, its media attention and its potential class members; and has an international airport which makes it a convenient location for parties, attorneys and experts.

Jackson County has experience in mass tort matters. For example, a separate docket was created to handle the Hyatt skywalk disaster cases to a successful resolution. Further, many of

the attorneys are headquartered in Jackson County- including lead plaintiff attorneys and attorneys for Prime and co-defendants National Beef Leathers and Rick Ream. In addition, Jackson County has a large number of judges and a large jury pool that will mitigate Prime's concerns about pre-trial bias. This case and the other similar cases will be expert intensive and such experts will likely be located throughout the United States. It would be far more convenient for such experts and the parties if the case were tried in Jackson County, or alternatively in St. Louis City, with easy airport access and hotel accommodations. Further plaintiff Maycee Gardner (like most claimants in this litigation) received her principal medical treatment in the Kansas City Metropolitan area, so Jackson County provides much easier access to treating physicians witnesses.

There is nothing convenient about transferring this case to Livingston County or any other rural county for that matter. This is a mass tort case that will require a circuit equipped to handle a large number of cases and a large jury pool to ameliorate any concerns of jury bias or prejudice. Jackson County, or alternatively the 22<sup>nd</sup> Judicial Circuit- St. Louis City, is the most convenient venue to which this case should be transferred. Both Jackson County and St. Louis City have the size, experience, and convenience to parties, counsel and witnesses that can accommodate this litigation.

#### **Application for Change of Venue for Cause**

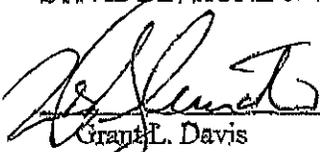
Prime's application for change of venue for cause under Mo. Ct. Rule 51.04(a) is moot and premature. Under Mo. Ct. Rule 51.04(a) Prime must show that "the inhabitants of the county are prejudices against the applicant." No such showing can be made until the case is first transferred to another county. Only at that time can Prime attempt to make a showing that the

inhabitants of the county to which this case is transferred are so prejudiced that Prime can not receive a fair trial.

Prime attempts to confuse this Court by blending issues of convenience and prejudice. The only proper inquiry under Mo. Ct. Rule 51.03 transfer as of right is convenience- and Jackson County is the most convenient venue to which this case should be transferred. Alternatively, the next most convenient (and equipped) venue is the 22<sup>nd</sup> Judicial Circuit- St. Louis City. There is nothing convenient about trying this case in Livingston County. This Court should not consider issues of prejudice in deciding which Circuit is best equipped to handle this mass tort litigation- that is a question best addressed by the Circuit to which this case is transferred.

WHEREFORE, Plaintiff respectfully requests that the case be transferred to Jackson County, or in the alternative, to the 22<sup>nd</sup> Judicial Circuit- St. Louis City for further proceedings.

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**CERTIFICATE OF SERVICE**

I certify that on this 13<sup>th</sup> day of June, 2009, copies of the foregoing were transmitted via facsimile and first class U.S. mail, with proper postage affixed, to:

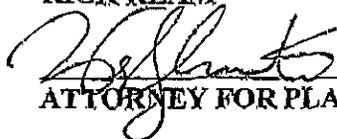
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