

IN THE CIRCUIT COURT OF DEKALB COUNTY, MISSOURI

**FILED**  
JUN 15 2009  
JULIE WHITSELL  
Circuit Clerk & Ex-Officio Recorder  
DE KALB COUNTY, MO

MAYCEE GARDNER, A MINOR, )  
BY AND THROUGH HER MOTHER )  
AND NEXT FRIEND, CYNDEE GARDNER )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
PRIME TANNING CORP., et al., )  
 )  
Defendants. )

Case No. 09CV-CV00333  
DADK-CV00054

**NATIONAL BEEF LEATHERS' SUGGESTIONS  
IN SUPPORT OF APPLICATION FOR CHANGE OF VENUE**

National Beef Leathers, LLC ("NBL") applies to the court for a change of venue to Livingston County, Missouri as a matter of right under M.R.C.P. 51.03. NBL's suggestions in support of this application are as follows:

- 1. NBL is entitled to a change of venue as a matter of right under Rule 51.03 because DeKalb County, the current venue, has fewer than 75,000 inhabitants.

Missouri Rule of Civil Procedure 51.03 mandates a change of venue from a county with less than seventy-five thousand inhabitants "upon the filing of a written application therefor not later than ten days after answer is due to be filed." M.R.C.P. 51.03 (2008). NBL's application is timely because NBL filed its answer to Plaintiff's petition on June 5, 2009, and this application is filed with the Court on or before June 15, 2009, within the required ten day period. Furthermore, the application is proper because the population of DeKalb County is 12,275, less than the 75,000 threshold set forth in the rule. NBL is therefore entitled to a change of venue from DeKalb County as a matter of right.

**2. Livingston County is the venue most convenient to the parties because it is in the same circuit as the current venue and, therefore, is proximately located to the Plaintiff, parties and potential witnesses.**

Upon timely application by a party, Rule 51.03(c) mandates that the Court shall immediately order the transfer, after giving the parties an opportunity to make suggestions to the court for the new venue, based on convenience to the parties. M.R.C.P. 51.03(c) (2008). As to what is convenient to the parties, the Missouri Supreme Court requires a venue that will provide a logical and orderly forum for the litigation. State ex rel. Lebanon School District R-III v. Winfrey, 183 S.W.3d 232, 237 (Mo. banc 2006).

In this case, Livingston County is the most convenient alternative venue for the parties. Livingston County is in the 43rd Judicial Circuit, the same circuit as DeKalb County. Plaintiff, Maycee Gardner by and through her mother, Cyndee Gardner, would not be inconvenienced by pursuing her lawsuit in the Livingston County courthouse in Chillicothe, which is merely twenty-one miles further from her home at 808 Rosewood in Cameron than the DeKalb County courthouse.

Likewise, many of the potential witnesses in this case are likely to be located in proximity to Chillicothe, given Plaintiff's allegations that Defendants' actions occurred in and around Buchanan, DeKalb, Andrew and Clinton Counties, all of which are proximately located and within a reasonable driving distance from Chillicothe, where those witnesses may be called to testify at trial. Livingston County will, therefore, provide a convenient, logical and orderly forum for the trial of this lawsuit.

WHEREFORE, NBL respectfully requests this Court to grant its application for change of venue, to transfer this action to Livingston County, and to grant it such other relief as this Court deems proper.

Date: JUNE 15, 2009

Respectfully submitted,

  
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**ATTORNEYS FOR DEFENDANT NATIONAL  
BEEF LEATHERS, LLC**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing **NATIONAL BEEF LEATHERS' SUGGESTIONS IN SUPPORT OF APPLICATION FOR CHANGE OF VENUE** has been deposited in the U.S. Mail, first class postage prepaid, this 15th day of June, 2009, to the following:

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