NO.

XXXXXX IN THE DISTRICT COURT OF

and XXXXXX,

Plaintiffs,

 XXXXXX COUNTY, TEXAS

vs.

XXXXXX,

XXXXXX, XXXXXX JUDICIAL DISTRICT

Transportation, Inc., and

XXXXXX,

Defendants. **JURY TRIAL REQUESTED**

 **PLAINTIFFS RESPONSE TO DEFENDANTS XXXXXXS**

 **XXXXXXS AND XXXXXX TRANSPORTATION, INC.S**

 **MOTION TO TRANSFER VENUE**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW XXXXXXand XXXXXX, Plaintiffs herein, and file this Response to Defendants XXXXXXs (hereinafter XXXXXX), XXXXXXs (hereinafter XXXXXX), and XXXXXX Transportation, Inc.s (hereinafter XXXXXX) Motion to Transfer Venue as follows:

**I.**

**Overview.**

Three XXXXXX Corporations are taking the position that a XXXXXX County Courthouse is so inconvenient that an injustice would occur if trial proceeds in XXXXXX County; however, they believe XXXXXX County would be acceptable. XXXXXX County is inconvenient, but XXXXXX County is not. These XXXXXX Defendants provide no reasonable basis, if any basis at all, for their position. The facts and the law allow Plaintiffs to proceed in the District Court in XXXXXX County.

 **II.**

 **Factual Background.**

Plaintiffs were severely injured[[1]](#footnote-2) in XXXXXX, when Defendants 18 wheeler ran a red light and slammed into Plaintiffs car. **Defendant XXXXXX, the driver of the 18-wheeler and the only Defendant who is a Texas resident, resides in XXXXXX County.**  Defendants XXXXXX, XXXXXX, and XXXXXX (the XXXXXX Defendants) are all XXXXXX corporations doing business in the State of Texas. The XXXXXX Defendants filed a Motion to Transfer Venue along with their Original Answer. Defendant XXXXXX did not. **The XXXXXX Defendants admit XXXXXX County is proper venue.**

 **III.**

 **ARGUMENT & AUTHORITIES**

**A. XXXXXX County is a county of proper venue. Defendants Agree.**

None of the Defendants contend that XXXXXX County is a county of improper venue. That is because the general venue rule provides that all lawsuits must be brought in one of the following counties:

1. The county in which all or a substantial part of events or omissions giving rise to the claim occurred.

2. **The county of the defendant's residence at the time the cause of action accrued, if the defendant is natural person.**

3. The county of the defendant's ''principal office'' in Texas, if the defendant is not a natural person.

4. The county in which the plaintiff resided at the time of accrual of the cause of action, if the rules in paragraphs (1), (2), and (3), above, do not apply.

 C.P.R.C. 15.002(a) (emphasis added)(West 2005). Venue is clearly proper as to Defendant XXXXXX, and XXXXXX has appeared and answered without objecting to venue. In a suit in which the plaintiff has established proper venue against one defendant, **the court also has venue of all the defendants in all claims or actions arising out of the same transaction, occurrence, or series of transactions or occurrences.**  C.P.R.C., 15.005. Venue is therefore proper as to all Defendants.

The plaintiff has the first choice to fix venue in a proper county, which is done by filing suit in the county of choice, and is ordinarily bound by this choice . *Chiriboga v. State Farm Mut. Auto. Ins. Co.*, 96 S.W.3d 673, 677 (Tex. App.--Austin 2003, no pet.). Plaintiffs have the right to choose venue first; as long as suit is initially filed in county of proper venue (i.e., county that is proper under permissive venue exception, and no mandatory provision applies), plaintiff's venue choice cannot be disturbed. *Id.*; *In re Pepsico, Inc.*, 87 S.W.3d 787, 789 (Tex. App.--Texarkana 2002, orig. proceeding). Having selected a county of proper venue, Plaintiffs choice should prevail unless Defendants can establish an injustice.

**B. There is No Injustice in XXXXXX County.**

By focusing on the actual legal standards at issue here, it becomes clear that there really is no legal basis for Defendants Motion. A court may only transfer an action from a county of proper venue to any other county of proper venue upon a judicial finding that the convenience of the parties and witnesses and the interest of justice mandates such a transfer. C.P.R.C. 15.002(b). To order the transfer, the court must make all of the following findings:

1. Maintenance of the action in the county of suit **would work an injustice to the movant considering the movant's economic and personal hardship**.

2. The balance of **interests of all the parties** predominates in favor of the action being brought in the other county.

3. The transfer would not work an **injustice to any other party**.

C.P.R.C. 15.002(b)(emphasis added).

There is no evidence before the Court that the XXXXXX defendants would be prejudiced economically by traveling to XXXXXX County more so than they would be in traveling to XXXXXX County. XXXXXX lives in XXXXXX County, so XXXXXX certainly wouldnt be better served by defending himself in XXXXXX County as opposed to XXXXXX. More likely is the conclusion that a transfer to XXXXXX County away from XXXXXX would work a number of injustices upon XXXXXX, including financial. And none of the lawyers involved are based in XXXXXX or XXXXXX County, so the economics are irrelevant on that front as well. There is simply no economic impetus to this Motion.

**C. Much Ado about Witnesses.**

Defendant takes great strides to discuss the witnesses involved in this litigation. While citing 15.002 for support for the proposition that the witnesses interests should prevail, the word witness appears *once* in the statute, and only then in introductory remarks. Each of the actual elements set forth at (1) - (3) discusses the *parties* interests, not that of potential witnesses. And even if by inference or implication, contiguous Counties separated by tens of miles does not constitute injustice or create interests that predominate for witnesses, parties, or anyone else.

**IV.**

**CONCLUSION**

Plaintiffs therefore respectfully request that any request to transfer this action to XXXXXX County be DENIED.

Respectfully submitted,

XXXXXX

ATTORNEYS FOR PLAINTIFF

**CERTIFICATE OF SERVICE**

This is to certify that on this the \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a true and correct copy of the above and foregoing instrument was properly forwarded to the following counsel of record in accordance with the Texas Rules of Civil Procedure as indicated below:

1. [↑](#footnote-ref-2)