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17 UNITED STATES DISTRICT COURT  
18 NORTHERN DISTRICT OF CALIFORNIA  
19

20 SHIRLEY "RAE" ELLIS, LEAH  
21 HORSTMAN, AND ELAINE SASAKI on  
behalf of themselves and all others  
22 similarly situated,

23 Plaintiffs,

24 v.

25 COSTCO WHOLESALE  
CORPORATION,

26 Defendant.  
27

Case No. C-04-3341 MHP

**PLAINTIFFS' FURTHER  
SUPPLEMENTAL BRIEFING RE  
DEFENDANT'S MOTION TO TRANSFER  
VENUE**

Date: May 16, 2005  
Time: 2:00 p.m.





1 prospects. Sasaki Depo. 14:16-25.

2 In 2004, four years after she was told she was on the promotable list, Sasaki wrote  
3 to Judy Vadney, Costco's Director of Human Resources, to address her failure to be promoted  
4 and "subjective application of standards, particularly if there is an appearance of race or gender  
5 bias." She specifically raised concerns about her treatment by the Bay Area Regional Vice  
6 President, Dennis Hoover. Sasaki Decl. ¶3 and Exh. 1 thereto. She subsequently filed an EEOC  
7 charge. Sasaki Decl. ¶5 and Exh. 2 thereto.

8 Plaintiff Shirley "Rae" Ellis testified that on two occasions she called the Regional  
9 Vice President of the Bay Area Region to express interest in promotion to Warehouse Manager.  
10 Ellis Depo. at 38:20-39:11, attached as exh. 3 to Seligman Decl... She did not receive a return  
11 call. Ellis Depo. at 39:12-20. Ellis also testified that she repeatedly made it known to senior  
12 management that she was interested and available for promotion to Warehouse Manager  
13 anywhere in the country and specifically California, Florida or Texas. Ellis Depo. at 43:8-25.  
14 She was unable to apply for any specific opening, as these openings are not posted within Costco  
15 and Costco has no formal application process for Warehouse Manager. Ellis Decl. in Opposition  
16 to Motion to Transfer Venue ¶2.

17 Although Plaintiff Leah Horstman has worked primarily in the San Diego Region,  
18 she was willing and able to move outside the San Diego Region in order to be promoted to  
19 Assistant Manager. Thus in 1999, Horstman sent a letter of interest in promotion to Mario  
20 Omos, the Regional Vice President of the Texas region. Horstman Depo. at 51:11-52:1, attached  
21 as Exh. 4 to Seligman Decl..

22 **III. PROMOTION PROCESS AND COMPARISON OF NORTHERN AND**  
23 **SOUTHERN DISTRICT CLASS MEMBERSHIP AND VACANCIES AT COSTCO**

24 Discovery has confirmed that while Costco is divided into eight regions and three  
25 divisions in the United States, its promotion policies do not vary by division or region.  
26 According to Costco's Fed R. Civ. Pro. 30(b)(6) witness, there is no posting or application  
27 process at Costco to fill Assistant Manager and Warehouse Manager positions. Zook Depo.  
28 117:17-20, attached as Exhibit 5 to Seligman Decl. There are likewise no written documents that

1 describe for warehouse employees what the procedures are to be considered for promotion or  
2 transfer to such positions. Zook Depo. 126:17-23.

3 Costco's district, regional and divisional management prepare promotion lists of  
4 employees that it believes are ready now, or shortly for promotion or transfer to Assistant  
5 Manager and Warehouse Manager positions. Zook Depo. 139:11-140:13. There is no written  
6 criteria for placement onto these lists. Hoover Depo. 129:9-23, attached as Exh. 1 to Seligman  
7 Decl.. Each region invites potential promotees to attend a company-wide annual management  
8 meeting in Costco's headquarters in Washington. Zook Depo. 17:17-18:8. There are no written  
9 criteria for selection to attend this meeting. Zook Depo. 20:2-11; Hoover Depo. 56:10-20.

10 The "promotable lists" prepared by District and Regional Vice Presidents to  
11 identify those who management believes are ready for promotion to Assistant Manager and  
12 Warehouse Manager are shared with senior management in other regions. Hoover Depo. 130:8-  
13 21. There is substantial movement between Regions and Divisions of Costco when filling  
14 Assistant Manager and Warehouse Manager positions. Hoover Depo. 100:18-101:6; 108:15-21.  
15 Employees can be promoted from one division to another. Zook Depo. 156:25-157:1-2. Costco  
16 has no written policy telling employees how to seek to make such moves. Zook Depo. 157: 15-  
17 20. An analysis of Costco's electronic data shows that, from January 2002 until the end of 2004,  
18 Costco filled 118 Warehouse Manager positions nationally; of these, 32 were filled by employees  
19 who came from another division and 44 from another region. Excluding demotions, there have  
20 been 397 Assistant Manager fills during this period; 41 were filled with employees who came  
21 from another division, and 79 from another region. See Drogin Decl. ¶8 and Appendix 2 thereto.

22 Bay Area Region openings have been filled by employees from other regions,  
23 including the San Diego Region, (Hoover Depo. 100:18-101:6), and a substantial number of Bay  
24 Area employees have filled transferred to fill such positions in other regions and divisions.  
25 Hoover Depo. 108:15-21. See also Drogin Decl., Appendix 3 (From 2002-2004, excluding  
26 demotions, 15 Warehouse Manager and Assistant Manager positions in Bay Area Region were  
27 filled by employees from other Regions and 13 Bay Area Region employees filled such openings  
28 in other Regions.). Indeed, as noted above, plaintiff Elaine Sasaki transferred to and from the

1 Texas Region.

2 Costco's warehouses have the same basic management structure. Zook depo.  
3 55:6-56:3, see also Costco's Answer to Second Amended Complaint ¶ 23. Costco's attorney  
4 estimated that it has 26 warehouses in the Northern District of California<sup>1</sup>, as opposed to 13 in  
5 the Southern District. Kadue Letter of November 1, 2004 at 4, attached as exh.6 to Seligman  
6 Decl. Our count also confirms that there are twice as many warehouses in the Northern District  
7 (24 vs.12). Seligman Decl. ¶3 and Exh 7 thereto. Not only are there more warehouses in the  
8 Northern District, but there have been substantially more openings filled at Warehouse Manager  
9 and Assistant Manager levels than in the Southern District. According to an analysis of Costco's  
10 electronic personnel records, from January 2002 through the end of 2004, there have been 14  
11 Warehouse Manager and 62 Assistant Manager vacancies filled in the Northern District, as  
12 opposed to five Warehouse Manager and eight Assistant Manager positions in the Southern  
13 District. Drogin Decl., Appendix 4.<sup>2</sup>

14 These figures do not tell the whole story; Northern District warehouses have been  
15 a fruitful source of candidates for these positions in other areas. Thus between 2002 and 2004, 19  
16 Warehouse Manager and Assistant Manager positions outside of the Northern District were filled  
17 with employees who had transferred from warehouses in the Northern District, compared with  
18 just 4 from Southern District warehouses. Drogin Decl., Appendix 4. During this same period, 68  
19 class members were employed in these Northern District warehouses, as opposed to 44 in the  
20 Southern District. Drogin Decl. ¶ 7.

21 The Northern District thus clearly has a greater concentration of openings and  
22 class members, factors supporting continued venue here. See *Dudash* at 2004 WL 2623903\*4

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24  
25  
26 <sup>1</sup> While Costco subdivides its Regions into Districts, all references herein to the Northern and  
27 Southern Districts refer to the geographic areas encompassed by the U.S. District Courts in the  
Northern and Southern Districts of California.

28 <sup>2</sup> Excluded are vacancy fills that are demotions.

1 (transfer where majority of class member were in Central District).<sup>3</sup>

2 **IV. NORTHERN DISTRICT VENUE IMPOSES NO INCONVENIENCE**  
3 **ON COSTCO**

4 Costco cannot claim any substantial burden or inconvenience in continued venue  
5 in the Northern District, instead of the Southern District. Senior Management involved in  
6 promotion decisions at Costco are employed in Livermore, San Diego, Garden Grove, Issaquah,  
7 Washington, Oak Brook, Illinois, Duluth, Georgia, Sterling, Virginia and Plano, Texas. Kadue  
8 letter of November 1, 2004 at p. 3. There has been almost no turnover among these decision-  
9 makers—nearly all remain current Costco employees. Zook Depo. 41:17-44:1, 49:17—51:11;  
10 See *Strigliabotti v. Franklin Resources, Inc.* 2004 WL 2254556 at 4 (N.D. Cal. 2004) (primary  
11 convenience consideration given to third party, as opposed to employee, witnesses). The  
12 discovery process will impose no burden on these witnesses by virtue of venue, because the  
13 parties have agreed to take all depositions at the location of the party deponent. Seligman Decl. ¶  
14 4.

15 If this matter proceeds to trial, the most that can be said is that some of these  
16 witnesses may be called by a party. The burden of traveling from San Diego to the Bay Area is  
17 minimal, especially given that these managers travel on a regular basis throughout their regions  
18 and divisions and on occasion outside their division. Zook Depo. 30:10-22; Hoover Depo. 65:19-  
19 66:1. Divisional and Regional Vice Presidents travel to company headquarters in Issaquah,  
20 Washington on at least a monthly basis (Zook Depo. 22:7-10; 30:3-7) and District Managers  
21 travel to Issaquah on a rotating basis every quarter. Zook Depo. 26:10-22.

22  
23 <sup>3</sup> The Northern District is part of Costco's Bay Area Region. The Bay Area Region encompasses  
24 Northern California and 2 warehouses in Nevada. The San Diego Region includes warehouses in  
25 Southern California, Arizona, Colorado, Nevada and New Mexico. There are 46 warehouses in  
26 the Bay Area Region, and 43 in the San Diego Region. See Exh. 7 to Seligman Decl.. Yet, the  
27 Bay Area Region has had more management openings than the San Diego Region. Thus from  
28 2002-2004, excluding demotions, there have been 23 Warehouse Manager and 94 Assistant  
Manager fills in the Bay Area Region, compared to just 14 Warehouse Manager and 30 Assistant  
Manager fills in the San Diego Region, although the San Diego Region has had slightly more  
class members than the Bay Area Region (129 San Diego and 102 in Bay Area Region). Drogin  
Decl. Par. 7-8 and Appendix 3 thereto.

This action should remain in the Northern District.

Dated: April 18, 2005

THE IMPACT FUND

By: \_\_\_\_\_  
Brad Seligman

Attorney for Plaintiffs and the Proposed Class

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