

**UNITED STATES DISTRICT COURT**

**Southern District of California**

Office Of The Clerk  
333 West Broadway, Suite 420  
San Diego, California 92101  
Phone: (619) 557-5600  
Fax: (619) 702-9900

John Morrill,  
Clerk of Court

October 14, 2021

Clerk, U.S. District Court  
Eastern District of Wisconsin, Milwaukee Division  
517 E. Wisconsin Ave – Room 362  
Milwaukee, WI 53202

Re: Benjamin Bodde v. VRX Media Group, LLC, Case No. 3:21-cv-00320-TWR-RBB

Dear Sir or Madam:

Pursuant to Order transferring the above-entitled action to your District, we are electronically transmitting herewith our entire original file.

Sincerely yours,

John Morrill,  
Clerk of the Court

By: s/ F. T. Hernandez, Deputy Clerk

Copy to Attorney for Plaintiffs:  
Copy to Attorney for Defendants:

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
10

11 BENJAMIN BODDE, Individually and on  
12 behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 VRX MEDIA GROUP, LLC,  
16

17 Defendant.  
18  
19  
20

Case No.: 21-CV-320 TWR (RBB)

**ORDER (1) DENYING  
DEFENDANT’S MOTION TO  
DISMISS FOR LACK OF  
PERSONAL JURISDICTION;  
(2) GRANTING DEFENDANT’S  
MOTION FOR TRANSFER; AND  
(3) TRANSFERRING ACTION TO  
THE UNITED STATES DISTRICT  
COURT FOR THE EASTERN  
DISTRICT OF WISCONSIN,  
MILWAUKEE DIVISION**

(ECF No. 13)

21  
22 Presently before the Court is Defendant VRX Media Group, LLC’s Motion to  
23 Dismiss for Lack of Personal Jurisdiction Under Fed. R. Civ. P. 12(b)(2) or, Alternatively,  
24 for Transfer (“Mot.,” ECF No. 13), as well as Plaintiff Benjamin Bodde’s Response in  
25 Opposition to (“Opp’n,” ECF No. 14) and Defendant’s Reply in Support of (“Reply,” ECF  
26 No. 17) the Motion. The Court vacated the hearing and took Defendant’s Motion under  
27 submission on the papers pursuant to Civil Local Rule 7.1(d)(1). (See ECF No. 20.)  
28 Having carefully reviewed the Parties’ arguments, the record, and the law, the Court

1 **DENIES** Defendants’ Motion to Dismiss (ECF No. 13 at 7–12 (“MTD”)); **GRANTS**  
2 Defendant’s Motion to Transfer (ECF No. 13 at 12–18 (“Mot. to Transfer”)); and  
3 **TRANSFERS** this action for the convenience of the Parties and in the interest of justice to  
4 the United States District Court for the Eastern District of Wisconsin, Milwaukee Division.

### 5 **BACKGROUND**

6 Plaintiff initiated this putative class action against Defendant on February 23, 2021,  
7 filing a Complaint alleging two causes of action for negligent and knowing and/or willful  
8 violations of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. §§ 227, *et seq.*  
9 (*See generally* ECF No. 1 (“Compl.”).) Plaintiff seeks to represent two classes comprised  
10 of “[a]ll persons within the United States who received an automated call to their cellular  
11 telephone from Defendant, its employees or its agents, [(1)] using the same equipment to  
12 call Plaintiff, [or (2) with an artificial or prerecorded voice message], within the four years  
13 prior to the filing of the Complaint.” (*See id.* ¶¶ 39–40.) Generally, Plaintiff alleges that  
14 Defendant (or its agent) placed two automated calls to his cell phone, which has a San  
15 Diego-based (858) area code. (*See generally id.* ¶¶ 18–37.) Defendant placed a first  
16 automated call to Plaintiff’s cell phone on October 27, 2020, (*see id.* ¶ 20), leaving a  
17 voicemail from “Kelly from VRX Media” that advertised Defendant’s real estate  
18 photography services. (*See id.* ¶ 21.) On November 17, 2020, Plaintiff received a second  
19 call on his cell phone, (*see id.* ¶ 23), this time from “Patrick from VRX Media.” (*See id.*  
20 ¶ 24.) The voicemail left by “Patrick” again advertised Defendant’s business and also  
21 instructed “all San Diego [real estate] agents” to visit its website. (*See id.*) According to  
22 Plaintiff, “[b]ecause Defendant directs and conducts business within the State of California  
23 and this judicial district, personal jurisdiction is established.” (*See id.* ¶ 11; *see also id.*  
24 ¶ 12.)

25 On April 23, 2021, Defendant filed the instant Motion, seeking dismissal of  
26 Plaintiff’s Complaint for lack of personal jurisdiction pursuant to Federal Rule of Civil  
27 Procedure 12(b)(2), (*see generally* MTD), or, alternatively, transfer of venue pursuant to  
28 28 U.S.C. § 1404(a). (*See generally* Mot. to Transfer.)

## ANALYSIS

### I. Personal Jurisdiction

#### A. Legal Standard

“A Court’s power to exercise jurisdiction over a party is limited by both statutory and constitutional considerations.” *In re Packaged Seafood Prod. Antitrust Litig.*, 338 F. Supp. 3d 1118, 1135 (S.D. Cal. 2018). Constitutionally, “[t]he Due Process Clause of the Fourteenth Amendment constrains a State’s authority to bind a nonresident defendant to a judgment of its courts.” *Walden v. Fiore*, 571 U.S. 277, 283 (2014) (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980)). Statutorily, “[w]here, as here, there is no applicable federal statute governing personal jurisdiction, the district court applies the law of the state in which the district court sits.” *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L’Antisemitisme*, 433 F.3d 1199, 1205 (9th Cir. 2006) (citing Fed. R. Civ. P. 4(k)(1)(A); *Panavision Int’l, L.P. v. Toepfen*, 141 F.3d 1316, 1320 (9th Cir. 1998)). “California’s long-arm statute allows the exercise of personal jurisdiction to the full extent permissible under the U.S. Constitution.” *Daimler AG v. Bauman*, 571 U.S. 117, 125 (2014); *see also* Cal. Civ. Proc. Code § 410.10. “The plaintiff bears the burden of demonstrating that personal jurisdiction is proper.” *Glob. Commodities Trading Grp., Inc. v. Beneficio de Arroz Choloma, S.A.*, 972 F.3d 1101, 1106 (9th Cir. 2020).

The Supreme Court has recognized “two types of personal jurisdiction: ‘general’ (sometimes called ‘all-purpose’) jurisdiction and ‘specific’ (sometimes called ‘case-linked’) jurisdiction.” *Bristol-Myers Squibb Co. v. Super. Ct.*, 582 U.S. \_\_\_, 137 S. Ct. 1773, 1780 (2017) (citing *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). “For an individual, the paradigm forum for the exercise of general jurisdiction is the individual’s domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home.” *Id.* (quoting *Goodyear*, 564 U.S. at 924). “A court with general jurisdiction may hear *any* claim against that defendant, even if all the incidents underlying the claim occurred in a different State.” *Id.* (emphasis in original) (citing *Goodyear*, 564 U.S. at 919).

1 For a federal court to exercise specific jurisdiction, by contrast, “‘the *suit*’ must  
2 ‘aris[e] out of or relat[e] to the defendant’s contacts with the *forum*.’” *Id.* (alterations and  
3 emphasis in original) (quoting *Daimler*, 571 U.S. at 127 (2014)) (citing *Burger King Corp.*  
4 *v. Rudzewicz*, 471 U.S. 462, 472–473 (1985); *Helicopteros Nacionales de Colombia, S.A.*  
5 *v. Hall*, 466 U.S. 408, 414 (1984)). “In other words, there must be ‘an affiliation between  
6 the forum and the underlying controversy, principally, [an] activity or an occurrence that  
7 takes place in the forum State and is therefore subject to the State’s regulation.’” *Id.*  
8 (alteration in original) (quoting *Goodyear*, 564 U.S. at 919). “For this reason, ‘specific  
9 jurisdiction is confined to adjudication of issues deriving from, or connected with, the very  
10 controversy that establishes jurisdiction.’” *Id.* (quoting *Goodyear*, 564 U.S. at 919).

11 ***B. Analysis***

12 Defendant challenges the Court’s personal jurisdiction over it under Federal Rule of  
13 Civil Procedure 12(b)(2). (*See generally* MTD.) Plaintiff implicitly concedes that this  
14 Court lacks general jurisdiction over Defendant, arguing only that Defendant is subject to  
15 this Court’s specific jurisdiction. (*See* Opp’n at 2–15.)

16 Specific jurisdiction requires “certain minimum contacts . . . such that the  
17 maintenance of the suit does not offend ‘traditional notions of fair play and substantial  
18 justice.’” *Walden*, 571 U.S. at 283 (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310,  
19 316 (1945)). The Ninth Circuit applies a three-part test to assess whether a non-resident  
20 defendant has sufficient contacts to be subject to a State’s personal jurisdiction:

- 21 (1) The non-resident defendant must purposefully direct his activities or  
22 consummate some transaction with the forum or resident thereof; or  
23 perform some act by which he purposefully avails himself of the  
24 privilege of conducting activities in the forum, thereby invoking the  
benefits and protections of its laws;
- 25 (2) the claim must be one which arises out of or relates to the defendant’s  
26 forum-related activities; and
- 27 (3) the exercise of jurisdiction must comport with fair play and substantial  
28 justice, i.e. it must be reasonable.

1 *Morrill v. Scott Fin. Corp.*, 873 F.3d 1136, 1142 (9th Cir. 2017) (quoting *Schwarzenegger*  
2 *v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004)). “The plaintiff bears the  
3 burden of satisfying the first two prongs of the test. If the plaintiff fails to satisfy either of  
4 these prongs, personal jurisdiction is not established in the forum state.” *Id.* (quoting  
5 *Schwarzenegger*, 374 F.3d at 802). “If the plaintiff succeeds in satisfying both of the first  
6 two prongs, the burden then shifts to the defendant to ‘present a compelling case’ that the  
7 exercise of jurisdiction would not be reasonable.” *Id.* (quoting *Schwarzenegger*, 374 F.3d  
8 at 802).

9 Under the first prong of the Ninth Circuit’s test, courts are to “apply the purposeful  
10 availment test when the underlying claims arise from a contract, and the purposeful  
11 direction test when they arise from alleged tortious conduct.” *Id.* (citing *Schwarzenegger*,  
12 374 F.3d at 802). “Because ‘TCPA actions are essentially tort claims,’ purposeful direction  
13 analysis is appropriate here.” *Jackson v. Euphoria Wellness, LLC*, No. 3:20-CV-03297-  
14 CRB, 2020 WL 5366419, at \*4 (N.D. Cal. Sept. 8, 2020) (quoting *Komaiko v. Baker*  
15 *Techs., Inc.*, No. 19-cv-03795-DMR, 2020 WL 1915884, at \*6 (N.D. Cal. Apr. 20, 2020)).  
16 “Purposeful direction ‘requires that the defendant . . . have (1) committed an intentional  
17 act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is  
18 likely to be suffered in the forum state.’” *Morrill*, 873 F.3d at 1142 (quoting  
19 *Schwarzenegger*, 374 F.3d at 803).

20 Defendant cites to the declaration of its Chief Executive Officer, Nate Strom, to  
21 support its contention that the Court cannot have personal jurisdiction over Defendant  
22 because “VRX has never called Bodde’s cell phone number.” (MTD at 9 (citing ECF No.  
23 13-3 (“Strom Decl.”) ¶ 11).) Specifically, Mr. Strom attests that, “[t]o [his] knowledge,  
24 VRX has never placed a call to Benjamin Bodde’s cell phone number.” (Strom Decl. ¶ 11.)  
25 Plaintiff challenges Mr. Strom’s declaration, contending that Mr. Strom lacks personal  
26 knowledge because he “fails to explain the basis for his claimed knowledge of [Defendant]  
27 n[ever] having placed a call to Plaintiff’s cell phone number.” (*See Opp’n* at 5.) Plaintiff  
28 also argues that Mr. Strom’s declaration “does not contradict the factual allegations in the

1 Complaint . . . because he qualifies the statement and presents no other evidence to support  
2 the contention.” (*See id.* at 4–5.) Defendant responds that Plaintiff’s argument is “pure  
3 word play” because Mr. Strom “swore in his affidavit based on his personal knowledge,  
4 not information and belief” and “[t]he declaration would have the same meaning had Strom  
5 wr[itten] that ‘VRX has never placed a call to Benjamin Bodde’s cell phone.’” (*See Reply*  
6 at 6.)

7 The Court agrees with Plaintiff that Defendant fails to rebut the allegations in his  
8 Complaint that Defendant called Plaintiff’s cell phone. Had Mr. Strom been able to swear  
9 that Defendant had never placed a call to Plaintiff’s cell phone, he would have done so.  
10 Instead, Mr. Strom could attest only that, “*to his knowledge,*” Defendant had never placed  
11 a call to Plaintiff. (*See Strom Decl.* ¶ 11.) This qualification is not superfluous verbiage.  
12 Of course, Mr. Strom can attest only to that information that is within his personal  
13 knowledge, (*see Reply* at 6 & n.2), but there is a vast evidentiary difference between  
14 personal knowledge that is based on ignorance and personal knowledge that is informed  
15 by a thorough review of records, interviews with relevant personnel, etc. Because  
16 Mr. Strom puts his personal knowledge at issue by qualifying the facts to which he attests  
17 based on that knowledge, the Court requires additional information concerning the breadth  
18 of Mr. Strom’s knowledge for his testimony to have any evidentiary weight. Mr. Strom’s  
19 declaration contains no such information and, consequently, the Court concludes that  
20 Mr. Strom’s attestation that, “[t]o [his] knowledge, VRX has never placed a call to  
21 Benjamin Bodde’s cell phone number,” (*see Strom Decl.* ¶ 11), has insufficient evidentiary  
22 value to rebut the allegations in Plaintiff’s Complaint. *See, e.g., Belloni v. Roman Cath.*  
23 *Archbishop of San Francisco*, No. 13-CV-03509-KAW, 2015 WL 106587, at \*12 (N.D.  
24 Cal. Jan. 7, 2015) (sustaining objection based on personal knowledge to a sentence in a  
25 declaration providing, “To my knowledge, Fr. Mark never asked the parish to pray for my  
26 recovery, nor did he inquire as to my well-being”).

27 The question, therefore, is whether Defendant purposefully directed its conduct  
28 toward California by dialing Plaintiff’s cell phone in San Diego. Having put all its

1 jurisdictional eggs in Mr. Strom’s basket, Defendant fails to address this issue. In any  
2 event, there can be no doubt that Defendant purposefully directed its conduct toward  
3 California given Plaintiff’s allegation that one of the voicemails specifically instructed “all  
4 *San Diego* [real estate] agents” to visit Defendant’s website. (*See* Compl. ¶ 24 (emphasis  
5 added).) As for the remaining factors of the analysis, Defendant does not challenge that  
6 Plaintiff’s claims “arise[] out of or relate[] to” this conduct; the burden therefore shifts to  
7 Defendant to establish that this Court’s exercise of personal jurisdiction over it would be  
8 unreasonable. *See Morrill*, 873 F.3d at 1142. Because Defendant has made no such  
9 arguments in favor of its Motion to Dismiss, (*see generally* MTD at 9–12; Reply at 5–8),  
10 the Court concludes that it has personal jurisdiction over Defendant and **DENIES**  
11 Defendant’s Motion to Dismiss. *See, e.g., Ewing v. McCarthy*, No. 3:17-CV-01554-GPC-  
12 RBB, 2017 WL 4810098, at \*3 (S.D. Cal. Oct. 25, 2017) (concluding that the court  
13 possessed personal jurisdiction over the TCPA defendant under a purposeful direction  
14 analysis because “[o]ther district courts in the Ninth Circuit have concluded that [dialing a  
15 phone number with a California area code] is sufficient to establish purposeful direction”).

## 16 **II. Transfer of Venue Pursuant to 28 U.S.C. § 1404(a)**

### 17 **A. Legal Standard**

18 “For the convenience of parties and witnesses, in the interest of justice, a district  
19 court may transfer any civil action to any other district or division where it might have been  
20 brought or to any district or division to which all parties have consented.” 28 U.S.C.  
21 § 1404(a). “[T]he purpose of [Section 1404(a)] is to prevent the waste ‘of time, energy  
22 and money’ and ‘to protect litigants, witnesses and the public against unnecessary  
23 inconvenience and expense.’” *Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964) (quoting  
24 *Cont’l Grain Co. v. Barge FBL-585*, 364 U.S. 19, 26–27 (1960)). “Under § 1404(a), the  
25 district court has discretion to adjudicate motions for transfer according to an  
26 individualized, case-by-case consideration of convenience and fairness.” *Jones v. GNC*  
27 *Franchising, Inc.*, 211 F.3d 495, 499 (9th Cir. 2000) (internal quotation marks omitted)  
28 (quoting *Stewart Org. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988)).



1 The moving party bears the burden of demonstrating that transfer is appropriate. *See*  
2 *Commodity Futures Trading Comm'n v. Savage*, 611 F.2d 270, 279 (9th Cir. 1979).  
3 Specifically, “the moving party must show: (1) that venue is proper in the transferor  
4 district; (2) that the transferee district is one where the action might have been brought; and  
5 (3) that the transfer will serve the convenience of the parties and witnesses and will promote  
6 the interest of justice.” *See Goodyear Tire & Rubber Co. v. McDonnell Douglas Corp.*,  
7 820 F. Supp. 503, 506 (C.D. Cal. 1992) (citing *Mercury Serv., Inc. v. Allied Bank of*  
8 *Tex.*, 117 F.R.D. 147, 154–55 (C.D. Cal. 1987), *aff'd*, 907 F.2d 154 (9th Cir. 1990),  
9 *overruled on other reasons as recognized by Triad Sys. Corp. v. Se. Exp. Co.*, 64 F.3d 1330,  
10 1339 n.21 (9th Cir. 1995)). The last of these requires the court to “consider private and  
11 public interest factors affecting the convenience of the forum.” *Decker Coal Co. v.*  
12 *Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986) (citing *Piper Aircraft Co.*  
13 *v. Reyno*, 454 U.S. 235, 241 (1981)).

14 For example, the court may consider: (1) the location where the relevant  
15 agreements were negotiated and executed, (2) the state that is most familiar  
16 with the governing law, (3) the plaintiff’s choice of forum, (4) the respective  
17 parties’ contacts with the forum, (5) the contacts relating to the plaintiff’s  
18 cause of action in the chosen forum, (6) the differences in the costs of  
19 litigation in the two forums, (7) the availability of compulsory process to  
20 compel attendance of unwilling non-party witnesses, and (8) the ease of access  
21 to sources of proof.

22 *Jones*, 211 F.3d at 498–99 (citing *Stewart*, 487 U.S. at 29–31; *Lou v. Belzberg*, 834 F.2d  
23 730, 739 (9th Cir. 1987)). “Weighing of the factors for and against transfer involves subtle  
24 considerations and is best left to the discretion of the trial judge.” *Savage*, 611 F.2d at 279  
25 (citing *Van Dusen v. Barrack*, 376 U.S. 612, 622 (1964)).

26 ///

27 ///

28 ///

1           **B.     Analysis**

2           There is no genuine dispute that venue is proper in this District or that Plaintiff could  
3 have brought this suit in the Eastern District of Wisconsin, Milwaukee Division.<sup>1</sup> The  
4 question, therefore, is whether the relevant factors establish that transfer will serve the  
5 convenience of the Parties and witnesses and will promote the interest of justice. The Court  
6 concludes that, on balance, the factors weigh in favor of transfer.

7           The first factor has minimal, if any, relevance here. Nonetheless, Plaintiff alleges  
8 that Defendant may have acted through an agent, (*see, e.g.*, Compl. ¶ 4), and it is  
9 conceivable that Defendant may have negotiated such an agency agreement (if any) in or  
10 from Wisconsin. The first factor is therefore neutral at best.

11           Because this action is brought under a federal statute, the Court concludes that both  
12 this District and the Eastern District of Wisconsin are equally familiar with the governing  
13 law. *See, e.g., Williams v. Granite Const. Co.*, No. C08-04202 HRL, 2009 WL 250104, at  
14 \*4 (N.D. Cal. Feb. 3, 2009). Consequently, the second factor is also neutral.

15           “Although great weight is generally accorded plaintiff’s choice of forum . . . , when  
16 an individual brings a derivative suit or represents a class, the named plaintiff’s choice of  
17 forum is given less weight.” *Lou*, 834 F.2d at 739 (citation omitted). Here, Plaintiff seeks  
18

---

19  
20 <sup>1</sup> Plaintiff contends that, unless Defendant concedes that Plaintiff will have Article III standing to bring  
21 his claims in the Eastern District of Wisconsin, Defendant cannot meet its burden of showing that the  
22 Eastern District of Wisconsin will have subject-matter jurisdiction over his claims. (*See Opp’n* at 18.)  
23 Article III standing is an element of subject-matter jurisdiction that must be established by the plaintiff,  
*see Lujan*, 504 U.S. at 559–61, and “cannot be forfeited or waived.” *See Ashcroft v. Iqbal*, 556 U.S. 662,  
671 (2009) (citing *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006)); (*see also Reply* at 10 n.3).

24 In any event, it is unclear to the Court how Plaintiff’s standing (which is unlikely to differ between this  
25 District and the Eastern District of Wisconsin) is relevant; rather, the operative question is one of venue,  
26 and “[a] civil action may be brought in . . . (1) a judicial district in which any defendant resides, if all  
27 defendants are residents of the State in which the district is located; [or] (2) a judicial district in which a  
28 substantial part of the events or omissions giving rise to the claim occurred[.]” 28 U.S.C.  
§§ 1391(b)(1)–(2). Given that Defendant is a resident of Wisconsin, (*see Strom Decl.* ¶¶ 4–6), and  
therefore engaged in the vast majority of conduct underlying Plaintiff’s Complaint in Wisconsin, there  
can be no doubt that Plaintiff could originally have filed this action in the Eastern District of Wisconsin,  
Milwaukee Division, under Section 1391(b)(1) and/or (2).

1 to represent a nationwide class. (See Compl. ¶¶ 38–44.) Additionally, although Plaintiff  
2 received Defendant’s call in California, Wisconsin “is likely the place where Defendants  
3 made the marketing decision to send the alleged” voicemails. See *LaGuardia v. Designer*  
4 *Brands, Inc.*, No. 19CV1568 JM(BLM), 2020 WL 2463385, at \*7 (S.D. Cal. May 7, 2020).  
5 The third factor therefore weighs against transfer, although not heavily.

6 The fourth and fifth factors also weigh slightly against transfer. Plaintiff is a resident  
7 of and allegedly received Defendant’s voicemails in this forum, while Defendant has  
8 contacts—albeit limited—to California through the business it conducts here, including the  
9 marketing such as that Plaintiff allegedly received in this forum. Defendant clearly has  
10 strong ties to the Eastern District of Wisconsin, and it is likely that the vast majority of  
11 Defendant’s alleged conduct occurred in that forum, but it appears that Plaintiff has no  
12 contacts with that forum apart from those created by Defendant.

13 It is not clear that the costs of litigation would differ greatly between the two forums.  
14 Plaintiff (and his counsel) would likely incur higher costs to travel to Milwaukee, but  
15 Defendant is likely to save a greater sum litigating in Wisconsin. Although Plaintiff is  
16 currently represented by the California-based offices of Kazerouni Law Group, APC, the  
17 Court takes judicial notice of the fact that his counsel also has an office in Minneapolis,  
18 Minnesota, which is approximately 350 miles from the Milwaukee courthouse. Overall,  
19 the sixth factor weighs slightly in favor of transfer.

20 “The convenience of witnesses ‘is often the most important factor considered by the  
21 court when deciding a motion to transfer for convenience.’” *LaGuardia*, 2020 WL  
22 2463385, at \*7 (quoting *Hawkins v. Gerber Prods. Co.*, 924 F. Supp. 2d 1208, 1216 (S.D.  
23 Cal. 2013)). It is clear that Plaintiff resides in this forum; however, Defendant has  
24 identified several key witnesses—including Mr. Strom, Defendant’s Social Media and  
25 Outside Sales Manager, Defendant’s Chief Marketing Officer, and Defendant’s Chief Sales  
26 Officer—who reside in the Milwaukee-area or in the Midwest. (See Strom Decl. ¶¶ 6–8,  
27 14; see also ECF No. 13-4 (“Greenwell Decl.”) ¶¶ 1, 3–5.) Consequently, the majority of

28 ///

1 potential key witnesses identified to date reside in, or can more easily access, the  
2 Milwaukee area, meaning the seventh factor weighs in favor of transfer.<sup>2</sup>

3 As for the eighth factor, “advances in technology have made this factor of less  
4 importance.” *See LaGuardia*, 2020 WL 2463385, at \*8. That said, Plaintiff is likely to  
5 have far fewer records in San Diego than Defendant is likely to have at its Wisconsin  
6 headquarters. This factor therefore slightly favors transfer.

7 Finally, the Court may also consider “the practical issues that make a case easier or  
8 more difficult to try in a given forum, such as . . . the relative court congestion.” *See Bibo*  
9 *v. Fed. Express, Inc.*, No. C07-2505TEH, 2007 WL 2972948, at \*2 (N.D. Cal. Oct. 10,  
10 2007) (citing *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir.  
11 1986); *Royal Queenex Enters., Inc. v. Sara Lee Corp.*, No. C-99-4787MJJ, 2000 WL  
12 246599, at \*2 (N.D. Cal. Mar. 1, 2000)). This District is in the midst of a judicial  
13 emergency, with only six of thirteen authorized judgeships filled. *See United States Courts,*  
14 *Judicial Emergencies*, available at [https://www.uscourts.gov/judges-judgeships/judicial-](https://www.uscourts.gov/judges-judgeships/judicial-vacancies/judicial-emergencies)  
15 [vacancies/judicial-emergencies](https://www.uscourts.gov/judges-judgeships/judicial-vacancies/judicial-emergencies) (last accessed Sept. 24, 2021). Accordingly,  
16 administrative considerations, including docket congestion, weigh heavily in favor of  
17 transfer to Wisconsin.

18 On balance, the Court determines that the convenience of the Parties and witnesses  
19 and the interests of justice will be best served by transferring this action to the Eastern  
20 District of Wisconsin, Milwaukee Division.

## 21 CONCLUSION

22 In light of the foregoing, the Court **DENIES** Defendant’s Motion to Dismiss for  
23 Lack of Personal Jurisdiction Under Federal Rule of Civil Procedure 12(b)(2) but  
24

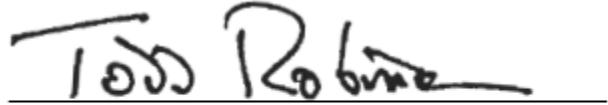
---

25 <sup>2</sup> The Parties fail to identify any non-party witnesses that would be compelled to testify in either this  
26 District or the Eastern District of Wisconsin, so consideration of the courts’ relative subpoena powers is  
27 not necessary. Further, because this is a nationwide class action, there is also the possibility that additional  
28 named plaintiffs or witnesses could be identified who live outside of both this District and the Eastern  
District of Wisconsin. Because the Eastern District of Wisconsin is more centrally located, it is likely to  
be the more convenient forum for any additional nationwide witnesses.

1 **GRANTS** Defendant's alternative request for transfer of venue pursuant to 28 U.S.C.  
2 § 1404(a) (ECF No. 13). Accordingly, the Court **TRANSFERS** this action to the United  
3 States District Court for the Eastern District of Wisconsin, Milwaukee Division. The Clerk  
4 of Court **SHALL CLOSE** the file.

5 **IT IS SO ORDERED.**

6  
7 Dated: October 14, 2021



8  
9 Honorable Todd W. Robinson  
United States District Court