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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Jason Roth, an Arizona resident,  
10 Plaintiff,

No. CV13-1735-PHX DGC

**ORDER**

11 vs.

12 Adtran, Inc., an Alabama corporation,  
13 Defendant.  
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16 Defendant has filed a motion to transfer venue. Doc. 10. The motion has been  
17 fully briefed. Docs.11, 12, 13. No party has requested oral argument. For reasons stated  
18 below, the Court will deny the motion.

19 **I. Background.**

20 Between 2004 and 2011, Plaintiff Jason Roth was a technical writer for employer  
21 Defendant Adtran, Inc., a Delaware corporation with its principal place of business in  
22 Huntsville, Alabama. Doc. 1 at 2; Doc. 11 at 2. Plaintiff lived and worked in Arizona  
23 during the relevant time period, and was the only Technical Writer employed by  
24 Defendant who lived and worked outside of Huntsville. Doc. 11 at 2. In or around June  
25 2009, Plaintiff asserts he was diagnosed with fibromyalgia, a condition that he contends  
26 substantially limits his ability to work. Doc. 1 at 2. Plaintiff alleges he requested  
27 accommodations for his condition from Defendant in 2009, but that his requests were  
28 ignored. *Id.* at 5.

1 In the summer of 2010, Plaintiff initiated charges against Defendant with the  
2 Equal Employment Opportunity Commission (“EEOC”) on the basis of failure to  
3 accommodate under the Americans with Disabilities Act (“ADA”). *Id.* Plaintiff  
4 subsequently filed a second EEOC complaint on January 3, 2011, and a third on April 8,  
5 2011, after his position with Defendant in Phoenix was eliminated and his employment  
6 terminated. *Id.* at 8-9. On October 12, 2012 the EEOC issued a Letter of Determination  
7 with respect to all three complaints, and on June 20, 2013, the EEOC issued Plaintiff a  
8 Notice of Right to Sue with respect to each of Plaintiff’s charges. *Id.* at 9. Plaintiff filed  
9 his complaint against Defendant on August 22, 2013. Doc. 1. The complaint asserts  
10 claims for discrimination under the ADA, 42 U.S.C. § 12112, and retaliation in violation  
11 of the ADA, 42 U.S.C. § 12203. Doc. 1 at 10-12.

## 12 **II. Analysis.**

13 Defendant asks the Court to transfer this case to the Northern District of Alabama,  
14 Northeast Division. 28 U.S.C. § 1404(a) authorizes such a transfer if the action could  
15 have been brought in the Northern District of Alabama and “transfer is warranted by the  
16 convenience of parties and witnesses and promotes the interests of justice.” *Van Dusen v.*  
17 *Barrack*, 376 U.S. 612, 616 (1964), *superseded by statute on other grounds*. “[T]he  
18 purpose of [section 1404(a)] is to prevent the waste of time, energy and money and to  
19 protect litigants and the public against unnecessary inconvenience and expense.” *Id.*  
20 (citation omitted).

21 The parties do not dispute that this action could have been brought in the Northern  
22 District of Alabama. The Court must determine whether Defendant has made “a strong  
23 showing of inconvenience to warrant upsetting [Plaintiff’s] choice of forum.” *Decker*  
24 *Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986). This  
25 determination requires the weighing of several factors: (1) Plaintiffs’ choice of forum,  
26 (2) the convenience of the parties and witnesses, (3) the ease of access to sources of  
27 proof, (4) the presence of a forum selection clause, (5) the state that is most familiar with  
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1 the governing law, (6) the location where the relevant agreements were negotiated and  
2 executed, (7) the respective parties' contacts with the forum, (8) the availability of  
3 compulsory process to compel attendance of unwilling non-party witnesses, (9) the  
4 relevant public policy of the forum state, and (10) the differences in the costs of litigation  
5 in the two forums. See 28 U.S.C. § 1404(a); *Jones v. GNC Franchising, Inc.*, 211 F.3d  
6 495, 498-99 (9th Cir. 2000); *Sparling v. Hoffman Constr. Co.*, 864 F.2d 635, 639 (9th  
7 Cir. 1988); *Decker Coal*, 805 F.2d at 843.

8 **A. Plaintiff's choice of forum.**

9 Plaintiff elected to file his claim in the District of Arizona. There is ordinarily "a  
10 strong presumption in favor of the plaintiff's choice of forum," such that great weight and  
11 substantial deference is generally afforded to a plaintiff's choice. *Piper Aircraft Co. v.*  
12 *Reyno*, 454 U.S. 235, 265 (1981); see also *Sinochem Intern. Co., Ltd. v. Malaysia Intern.*  
13 *Shipping Corp.*, 549 U.S. 422, 423 (2007); *Lou v. Belzberg*, 834 F.2d 730, 739 (9th Cir.  
14 1987); *Decker Coal*, 805 F.2d at 843. This factor weighs strongly against transfer.

15 **B. Convenience of the parties and witnesses.**

16 Convenience of parties and witnesses are critical factors for a court considering a  
17 motion to transfer, but a transfer which "merely shifts the inconvenience from one party  
18 to another" is not appropriate. *Warfield v. Gardner*, 346 F. Supp. 2d 1033, 1044 (D. Ariz.  
19 2004).

20 Plaintiff is an Arizona resident. Doc. 12 at 4. Defendant is incorporated in  
21 Delaware and headquartered in Alabama. Doc. 11 at 2. Between the two parties, transfer  
22 of venue from Arizona to Alabama would inconvenience Plaintiff, while increasing  
23 convenience only for Defendant. Further, Defendant had an office in Phoenix and  
24 continues to do business in Arizona, including hiring new employees for its Arizona  
25 office. Doc. 12 at 8, Ex. 5. Given this connection with Arizona, any inconvenience  
26 caused by litigating in this Court would be less than that suffered by Plaintiff if the case  
27 were transferred to the Northern District of Alabama.

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1 Defendant's key witnesses all reside in Alabama. Doc. 11 at 5. Plaintiff claims,  
2 however, that at least four of his witnesses are in Arizona. Doc. 12 at 4. The  
3 inconvenience to witnesses, therefore, appears to be equal in both venues. Given that  
4 Plaintiff would be disadvantaged more than Defendant by litigating outside of his forum  
5 of choice, and that both sides have witnesses who would be inconvenienced by the other  
6 party's choice, this factor weighs against transfer.

7 **C. Ease of access to sources of proof.**

8 Personnel files, policies, performance evaluations, pay records and other work-  
9 related documents are located in Alabama. Doc. 11 at 6. Plaintiff's medical records,  
10 related to his condition, are located in Arizona. Doc. 12 at 6. This factor weighs neither  
11 for nor against transfer, particularly in light of the fact that "documentary evidence is  
12 substantially less costly to produce than witness testimony." *Berry v. Potter*, CIV 04-  
13 2922 PHX RCB, 2006 WL 335841 (D. Ariz. Feb. 10, 2006).

14 **D. Existence of a forum selection clause.**

15 There is no forum selection clause. This factor is neutral.

16 **E. The state most familiar with the governing law.**

17 Plaintiff asserts claims under the ADA, a federal law. Either state is adequately  
18 situated to rule on these claims. This factor is neutral.

19 **F. Where relevant agreements were negotiated and executed.**

20 Communications between Plaintiff and Defendant were all telephonic or  
21 electronic, and could thus be said to have taken place in either Arizona or Alabama.  
22 *Hisun Motors Corp., U.S.A. v. Auto. Testing & Dev. Servs., Inc.*, CV11-1918-PHX DGC,  
23 2011 WL 5290149 (D. Ariz. Nov. 1, 2011). All accommodation and personnel decisions,  
24 however, occurred in Alabama because that is where Defendant's headquarters and  
25 management are located. Doc. 11 at 5. This factor weighs slightly in favor of transfer.

26 **G. The parties' contacts with the chosen forum.**

27 Plaintiff is an Arizona resident. Defendant is registered to do business in Arizona  
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1 and, during the relevant time period, employed an Arizona resident in an Arizona office.  
2 Doc. 12 at 7, ex. 3. Additionally, Defendant communicated extensively with Plaintiff in  
3 Arizona regarding the subject at issue in the complaint, Doc. 12 at 8, and received  
4 communications from the EEOC regarding the same at its Phoenix office, Doc. 12 at 8,  
5 ex. 2, 4, 5. This factor weighs against transfer.

6 **H. The availability of compulsory process.**

7 Defendant asserts that Arizona is an inconvenient forum for relevant management  
8 and other employees who live and work in Alabama. But any inconvenience to witnesses  
9 still employed by the company carries little weight, as this court presumes Defendant can  
10 compel their attendance at trial. *Berry*, No. CIV 04-2922 PHX RCB, 2006 WL 335841, at  
11 \*5.

12 Two non-party witnesses – both former employees of Defendant – are located  
13 outside the subpoena power of this Court for trial purposes. *See* Doc. 11 at 4; FRCP  
14 45(b)(2). One is Defendant’s former Director of Human Resources and the other is a  
15 former Human Resources Manager. Doc. 11 at 4. Defendant alleges that both were  
16 involved in communications with Plaintiff regarding his claims and are key to the issues  
17 raised by Plaintiff. *Id.* This factor favors transfer, but only slightly. Although live  
18 testimony is preferable, the Court’s lack of subpoena power may be solved through the  
19 use of deposition or video testimony. *Hisun*, CV11-1918-PHX DGC, 2011 WL 5290149.

20 **I. Relevant public policy of the forum state.**

21 Arizona has a strong interest in ensuring that its citizens are compensated for their  
22 injuries. *Ochoa v. J.B. Martin & Sons Farms, Inc.*, 287 F.3d 1182, 1193 (9th Cir. 2002).  
23 This factor weighs against transfer.

24 **J. Differences in the costs of litigation in the two forums.**

25 Given the recent advances in electronic communication and document production,  
26 discovery costs should be about the same in either forum. *See Television Events & Mktg.,*  
27 *Inc. v. Amcon Distrib. Co.*, 416 F. Supp. 2d 948, 971 (D. Haw. 2006). At this stage, the  
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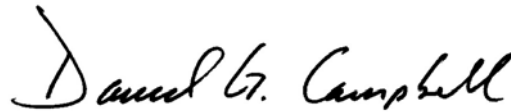
1 Court cannot conclude that travel and transportation costs will be greater if the case is  
2 tried in Alabama or Arizona. This factor is neutral.

3 **K. Consideration of all the factors.**

4 The Court concludes that this case should not be transferred. Plaintiff's choice of  
5 forum should not be disturbed unless Defendant has made "a strong showing of  
6 inconvenience." *Decker Coal*, 805 F.2d at 843. Defendant has not met this burden.

7 **IT IS ORDERED** that Defendant's motion for change of venue (Doc. 10) is  
8 **denied.**

9 Dated this 18th day of November, 2013.

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David G. Campbell  
United States District Judge  
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