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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Lisa Pierucci,

10 Plaintiff,

11 v.

12 Homes.com Incorporated,

13 Defendant.
14

No. CV-20-08048-PCT-DWL

ORDER

15 Pending before the Court are four motions filed by Defendant Homes.com,
16 Incorporated (“Homes.com”). (Docs. 13, 14, 15, 28). The first is a motion to transfer
17 venue to the Eastern District of Virginia pursuant to 28 U.S.C. § 1404(a), the second a
18 motion to dismiss under Rule 12(b)(6), the third a motion to strike a proposed class
19 definition, and the last a motion to stay further proceedings in this case. (*Id.*) For the
20 following reasons, the motion to transfer will be granted and the other motions will be
21 denied without prejudice, to be refiled in the Eastern District of Virginia.

22 **BACKGROUND**

23 I. Factual Background

24 The facts as alleged in Plaintiff Lisa Pierucci’s complaint are as follows.
25 Homes.com is a “real estate website that among other things generates leads for listing for
26 real estate agents.” (Doc. 1 ¶ 5.) It markets these leads through the use of “unsolicited,
27 autodialed text messages.” (*Id.* ¶ 6.)

28 On February 27, 2020 Pierucci, a resident of Lake Havasu City, Arizona, received

1 one such text message. (*Id.* ¶¶ 7-8.) The message purported to be from “Dion with
2 Homes.com” and stated that Homes.com was “looking for an agent to pick up openings we
3 have in your county and surrounding areas to work every pre-screened buyer/seller lead
4 coming through.” (*Id.* ¶ 7.) The text further offered “30% OFF on ANY zip codes, to help
5 agents get a head start on preparing for the upcoming season” and asked “[w]hat zip
6 codes/areas” Pierucci liked to target. (*Id.*)

7 According to Pierucci, that text message “was a nuisance that aggravated [her],
8 wasted her time, invaded her privacy, diminished the value of the cellular services she paid
9 for, caused her to temporarily lose the use and enjoyment of her phone, and caused wear
10 and tear to her phone’s data, memory, software, hardware, and battery components.” (*Id.*
11 ¶ 9.)

12 II. Procedural History

13 On March 4, 2020, Pierucci initiated this action. (Doc. 1.) In addition to recounting
14 the facts described above, Pierucci alleged that Homes.com had “utilized an automatic
15 telephone dialing system [‘ATDS’]; hardware or software with the capacity to store or
16 produce cellular telephone number[s] to be called, using a random or sequential number
17 generator, or to dial telephone numbers from preloaded lists.” (*Id.* ¶ 10.) This, she alleged,
18 was in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”).
19 (*Id.* ¶ 3.) She further alleged, upon information and belief, that “substantively identical
20 unsolicited text messages” had been sent “en masse to the cellular telephone numbers of
21 thousands of customers.” (*Id.* ¶ 11.) Thus, Pierucci brought a single claim under the TCPA
22 based on the use of ATDSs and sought to represent a class composed of:

23 All persons who, on or after four years prior to the filing of the initial
24 complaint in this action through the date of class certification (1) were sent a
25 text message to their cellular telephone number by or on behalf of
26 Homes.com, (2) using a dialing system substantially similar . . . as used to
text message Plaintiff, (3) for a substantially similar reason as Homes.com
texted Plaintiff.

27 (*Id.* ¶¶ 13, 21-24.)

28 Pierucci originally brought this action against, and served a summons on, Dominion

1 Enterprises, Incorporated (“Dominion”), which Pierucci believed did business as
2 Homes.com. (*Id.* at 2; Docs. 5, 7.) Dominion, in turn, informed Pierucci that it didn’t do
3 business as Homes.com and that the entity Pierucci really wanted to sue was Homes.com,
4 Inc. (Doc. 10 ¶ 3.) Pierucci, Dominion, and Homes.com then filed a joint motion to
5 substitute Homes.com as the defendant in this case and to dismiss Dominion. (*Id.*) That
6 motion was granted. (Doc. 11).

7 On June 8, 2020, Homes.com filed four motions, all of which Pierucci opposes. The
8 first is a motion to “transfer venue on the grounds of *forum non conveniens*” pursuant to
9 28 U.S.C. § 1404(a). (Doc. 13.) In it, Homes.com argues that transferring this case to the
10 Eastern District of Virginia will best “serve the convenience of the parties, witnesses, and
11 the interests of justice” because Virginia is “the center of gravity in this case” and “the bulk
12 of the conduct challenged took place” there. (*Id.* at 1-2.)

13 The second motion is a Rule 12(b)(6) motion to dismiss. (Doc. 14.) In it,
14 Homes.com argues (1) the complaint’s allegations are insufficient to state a claim; (2) the
15 TCPA is unconstitutional because it favors some forms of speech over others in violation
16 of the First Amendment; and (3) because Pierucci seeks to represent a nationwide class,
17 the different definitions of ATDSs utilized by different Circuits renders the TCPA
18 unconstitutionally vague. (*Id.*)

19 The third motion is a motion to strike Pierucci’s class definition. (Doc. 15.) In it,
20 Homes.com argues that Pierucci’s class definition is “facially deficient” because it uses
21 “imprecise, vague, and subjective criteria.” (*Id.* at 1.) Homes.com further argues that
22 Pierucci “should not be permitted to pursue a class action on behalf of non-Arizona class
23 members, whose claims have no connection whatsoever to Arizona.” (*Id.* at 1-2.)

24 The final motion was a motion to stay proceedings. (Doc. 16.) That motion sought
25 a stay pending the Supreme Court’s then-unreleased decision in *Barr v. Am. Ass’n of*
26 *Political Consultants*, 140 S. Ct. 2335 (2020), which would determine the constitutionality
27 of the TCPA. (Doc. 16.) But after *Barr* was decided, Homes.com withdrew its original
28 motion to stay (Doc. 26) and then filed a new motion to stay, which seeks a stay pending

1 the Supreme Court’s decision in *Facebook, Inc. v. Duguid*, No. 19-511, because that case
2 will determine the definition of ATDSs. (Doc. 28.)

3 On June 8, 2020, in addition to its flurry of motions, Homes.com filed a notice
4 pursuant to Rule 5.1(a) that it is challenging the constitutionality of a federal statute. (Doc.
5 17.) On July 29, 2020, the United States acknowledged the notice and requested additional
6 time to determine whether it wanted to intervene. (Doc. 30.) The Court granted that
7 request, giving the United States until October 6, 2020 to make a decision. (Doc. 32.)

8 ANALYSIS

9 The Court is faced with four fully briefed motions. Because the motion to transfer
10 could obviate the need to address the other motions, and because the other motions don’t
11 challenge the existence of personal or subject matter jurisdiction, the Court, in its
12 discretion, will begin with the transfer request. *Cf. Sinochem Int’l Co. Ltd. v. Malaysia*
13 *Int’l Shipping Corp.*, 549 U.S. 422, 425 (2007) (“We hold that a district court has discretion
14 to respond at once to a defendant’s *forum non conveniens* plea, and need not take up first
15 any other threshold objection.”); *Smith v. Gen. Info. Solutions, Inc.*, 2018 WL 4019463, *2
16 (S.D. Ohio 2018) (“Contrary to Defendant’s argument, the Court finds it appropriate and
17 in the interest of judicial economy to consider first Plaintiff’s Motion to Transfer Venue.”).

18 I. Motion To Transfer

19 As a threshold matter, although Homes.com has styled its motion as a request
20 “pursuant to 28 U.S.C. § 1404(a) to transfer venue on the grounds of *forum non*
21 *conveniens*” (*id.* at 1), this is something of a misnomer. Transfer under § 1404(a) and
22 *forum non conveniens* are distinct concepts. The latter applies only when the alternative
23 forum is not a “sister federal court”—most commonly, when the alternative forum is
24 another country’s judicial system. *Sinochem*, 549 U.S. at 430 (“The common-law doctrine
25 of *forum non conveniens* has continuing application [in federal courts] only in cases where
26 the alternative forum is abroad For the federal court system, Congress has . . . provided
27 for transfer, rather than dismissal, when a sister federal court is the more convenient place
28 for trial of the action.”) (quotation and internal citation omitted). *See also Am. Dredging*

1 *Co. v. Miller*, 510 U.S. 443, 449 n.2 (1994) (“[T]he federal doctrine of *forum non*
2 *conveniens* has continuing application only in cases where the alternative forum is
3 abroad.”); *Galvin v. McCarthy*, 545 F. Supp. 2d 1176, 1182 (D. Colo. 2008) (denying
4 motion to dismiss for *forum non conveniens* because “the Supreme Court has . . . made
5 clear that the doctrine survives only as it relates to dismissal to a *foreign* forum” and
6 “Texas, contrary to the wishes of some of its citizens, is not at this point a foreign forum”).
7 Nevertheless, Homes.com brought its motion under § 1404(a) and its intent—to transfer
8 the case to a more convenient forum—aligns with the purpose of that statute. Accordingly,
9 the Court will consider Homes.com’s motion under § 1404(a). *Cf. Galvin*, 545 F. Supp.
10 2d at 1181 (“I deny Spirit’s motion to dismiss on *forum non conveniens* grounds.
11 Nonetheless, I consider Spirit’s arguments under the relevant federal statute.”).

12 Section 1404(a) allows a district court to “transfer any civil action to any other
13 district or division where it might have been brought” if a transfer would promote “the
14 convenience of parties and witnesses [and] the interest of justice.” Section 1404(a) thus
15 vests courts with the discretion “to adjudicate motions for transfer according to an
16 individualized, case-by-case consideration of convenience and fairness.” *Stewart Org.,*
17 *Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988) (internal quotation marks omitted). Because
18 § 1404(a) governs transfer only in a properly venued case, the first step is to determine
19 whether the transferor and transferee courts are proper venues. *LaGuardia v. Designer*
20 *Brands, Inc.*, 2020 WL 2463385, *6 (S.D. Cal. 2020). “After it is established that venue
21 is proper in both districts, the court must then weigh multiple factors to determine whether
22 transfer is appropriate.” *Id.* at *7.

23 **A. Whether Venue Is Proper In Both Districts**

24 Neither party disputes that venue is proper in both the District of Arizona and the
25 Eastern District of Virginia. The Court sees no reason to disagree. Venue is proper “in a
26 judicial district in which any defendant resides.” 28 U.S.C. § 1391(b)(1). Homes.com
27 maintains its principal place of business in Norfolk, Virginia, which is in the Eastern
28 District of Virginia. (Doc. 13-1 ¶ 5.) Because “an entity with the capacity to sue and be

1 sued” is “deemed to reside . . . in any judicial district in which . . . [it] is subject to the
2 court’s personal jurisdiction,” venue is proper in the Eastern District of Virginia. 28 U.S.C
3 § 1391(c)(2).

4 Venue is also proper in “a judicial district in which a substantial part of the events
5 or omissions giving rise to the claim occurred.” *Id.* § 1391(b)(2). For purposes of TCPA
6 claims, a “substantial part” of the events occur where the plaintiff received the purportedly
7 prohibited communication. *See, e.g., Schick v. Resolute Bank*, 2019 WL 8014435, *1 (D.
8 Ariz. 2019); *Sapan v. Dynamic Network Factory, Inc.*, 2013 WL 12094829, *3 (S.D. Cal.
9 2013). Pierucci alleges she received the offending text message in Lake Havasu City,
10 Arizona, which is in the District of Arizona. Accordingly, venue is appropriate in this
11 District as well.

12 **B. Whether Transfer Is Appropriate**

13 Having established that venue is proper in both the District of Arizona and the
14 Eastern District of Virginia, the Court next “weigh[s] multiple factors in its determination
15 whether transfer is appropriate in [this] particular case.” *Jones v. GNC Franchising, Inc.*,
16 211 F.3d 495, 498 (9th Cir. 2000). There are eight factors that courts frequently consider:

- 17 (1) plaintiff’s choice of forum, (2) convenience of the parties, (3)
18 convenience of the witnesses, (4) ease of access to the evidence, (5)
19 familiarity of each forum with the applicable law, (6) feasibility of
20 consolidation with other claims, (7) any local interest in the controversy, and
(8) the relative court congestion and time of trial in each forum.

21 *Vu v. Ortho-McNeil Pharm., Inc.*, 602 F. Supp. 2d 1151, 1156 (N.D. Cal. 2009). “This list
22 is non-exclusive, and courts may consider other factors, or only those factors which are
23 pertinent to the case at hand.” *Kempton v. Life for Relief and Dev. Inc.*, 2019 WL 5188750,
24 *2 (D. Ariz. 2019). *See also Jones*, 211 F.3d at 498-99 (providing a similar list of factors
25 and noting “that the relevant public policy of the forum state” may be a relevant
26 consideration). Because the parties point to no other ongoing litigation, the Court will
27 consider all but the sixth factor. *Cf. Martin v. Global Tel*Link Corp.*, 2015 WL 2124379,
28 *4 (N.D. Cal. 2015) (declining to consider a factor the parties had conceded was neutral).

...

1 1. Plaintiff's Choice Of Forum

2 “For purposes of a section 1404(a) analysis, the plaintiff’s choice of forum always
3 weighs against transfer.” *Martin*, 2015 WL 2124379 at *4. In general, “a plaintiff’s choice
4 of forum is afforded substantial weight.” *Williams v. Bowman*, 157 F. Supp. 2d 1103, 1106
5 (N.D. Cal. 2001). However, that general rule falls away “when an individual . . . represents
6 a class,” in which case the plaintiff’s choice of forum is “given less weight.” *Lou v.*
7 *Belzberg*, 834 F. 2d 730, 739 (9th Cir. 1987). This is especially true where “the operative
8 facts have not occurred within the forum and the forum has no interest in the parties or
9 subject matter.” *Id.* Further, where there is evidence of forum shopping, “plaintiff’s choice
10 will be accorded little deference.” *Williams*, 157 F. Supp. 2d at 1106; *Kempton*, 2019 WL
11 5188750 at *2-3.

12 Here, Pierucci’s choice of forum is entitled to some deference, but not the
13 “substantial weight” it would be accorded in most cases. The reason is simple—Pierucci
14 seeks to represent a class. Moreover, most of the operative facts—where Homes.com made
15 its marketing decisions, where the equipment used to generate the text message in question
16 is kept, and from where the text message was sent—occurred in Virginia, not Arizona.
17 *Kissick v. Am. Residential Servs., LLC*, 2019 WL 6434639, *3 (C.D. Cal. 2019) (“Contrary
18 to Plaintiff’s contention that the only operative facts are that he ‘resides in this District and
19 received the call(s) at issue in this District,’ this action will necessarily involve numerous
20 other operative facts about [defendant’s] business practices and decisions behind the call
21 that was alleged to be in violation of the TCPA, whether an automated dialer was used,
22 etc.”). *See also LaGuardia*, 2020 WL 2463385 at *7. This further weakens the connection
23 to Arizona and further reduces the weight afforded to Pierucci’s choice of forum. *Lou*, 834
24 F.3d at 739.

25 On the other hand, there is no evidence of forum shopping—Pierucci resides in this
26 District and has, thus far, sought to litigate her claim only in this District. *Compare*
27 *Kempton*, 2019 WL 5188750 at *3 (discrediting plaintiff’s choice of venue because the
28 case had been filed to avoid adverse result in a different venue); *Martin*, 2015 WL 2124379

1 at *4 (discrediting plaintiff's choice of venue because case was originally filed in a different
2 venue); *Fabus Corp. v. Asiana Exp. Corp.*, 2001 WL 253185, *1 (N.D. Cal. 2001) ("The
3 degree to which courts defer to the plaintiff's chosen venue is substantially reduced where
4 the plaintiff's choice is not its residence.").

5 2. Convenience of Parties

6 The Court next considers the relative convenience to the parties of litigating in
7 Virginia versus Arizona. This factor doesn't weigh in favor of a transfer if "[t]he transfer
8 would merely shift rather than eliminate the inconvenience." *Decker Coal Co. v.*
9 *Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986). Instead, it must make the
10 litigation more convenient overall, even if that comes at the expense of slightly increasing
11 the inconvenience to one party. *Cf. Kissick*, 2019 WL 6434639 at *4.

12 This factor weighs in favor of transfer. Litigating this case in Virginia is obviously
13 more convenient for Homes.com. It is headquartered there, and, as noted, many of the
14 operative facts in this case occurred in Virginia. *Kissick*, 2019 WL 6434639 at *3-4.
15 Moreover, the Eastern District of Virginia will be more able to compel the testimony of
16 any former employee unwilling to testify, an option likely unavailable in this district. *Mina*
17 *v. Red Robin Int'l, Inc.*, 2020 WL 4037163, *3 (C.D. Cal. 2020); *Jones*, 211 F.3d at 498-
18 99 ("[T]he court may consider . . . the availability of compulsory process to compel
19 attendance of unwilling non-party witnesses."); Fed. R. Civ. Proc. 45(c)(1) ("A subpoena
20 may command a person to attend a trial, hearing, or deposition . . . within 100 miles of
21 where the person resides, is employed, or regularly transacts business in person.").

22 On the other hand, Pierucci would suffer only modest inconvenience if forced to
23 litigate in Virginia. It's true that litigating this action in Virginia will be less convenient to
24 her than litigating in her home state. But the fact this is a class action mitigates that
25 concern. "TCPA class actions are normally attorney driven and require limited
26 participation from the named plaintiff for their individual claims or as class
27 representatives." *LaGuardia*, 2020 WL 2463385 at *8. Additionally, "potential class
28 plaintiffs will come from all over the country," which means that the convenience to

1 Pierucci is “accorded less weight.” *Mina*, 2020 WL 4037163 at *3.

2 Taken together, the relatively small inconvenience to Pierucci is outweighed by the
3 greater convenience that will come from litigating in Virginia, including access to
4 unwilling witnesses. Thus, this is not a case of “merely shift[ing] the inconvenience” from
5 one party to another, but a shift that will promote the efficient resolution of the entire action.

6 3. Convenience Of Witnesses

7 “The convenience of witnesses is often the most important factor considered by the
8 court when deciding a motion to transfer for convenience.” *Hawkins v. Gerber Prods. Co.*,
9 924 F. Supp. 2d 1208, 1215 (S.D. Cal. 2013) (internal quotation marks omitted). However,
10 this factor is primarily concerned with *non-party* witnesses—“convenience of a litigant’s
11 employee witnesses is entitled to little weight because they can be compelled by their
12 employers to testify regardless of venue.” *Kempton*, 2019 WL 5188750 at *3.

13 The largest concentration of witnesses relevant to this case is in Virginia, where “the
14 largest number of Homes.com employees reside.” (Doc. 13-1 ¶ 11.) In particular, the
15 individuals knowledgeable about Homes.com’s marketing and texting operations, as well
16 as the individual who sent the text message to Pierucci, are all located in Virginia. (*Id.*
17 ¶¶ 7-9.) Also, although Pierucci seeks to represent a nationwide class, she identifies no
18 Arizona witnesses other than herself. (Doc. 21 at 5-6.) Thus, Virginia is “more convenient
19 for everyone other than” Pierucci. *LaGuardia*, 2020 WL 2463385 at *7.

20 That said, Homes.com has not identified any third-party witnesses who would be
21 inconvenienced by litigating in Arizona. *Hawkins*, 924 F. Supp. 2d at 1215-16. As such,
22 this factor only weighs “slightly in favor of transfer.” *LaGuardia*, 2020 WL 2463385 at
23 *7; *Kissick*, 2019 WL 6434639 at *5 (“[O]ther district courts have frequently found it *more*
24 convenient and preferable for witnesses to testify in person at depositions and trial.”). *See*
25 *also Mina*, 2020 WL 4037163 at *3. *But see Kempton*, 2019 WL 5188750 at *3 (“Here,
26 neither [party has] identified any third-party witnesses who are likely to testify. Therefore,
27 this factor is neutral.”); *Hawkins*, 924 F. Supp. 2d at 1215-16 (finding this factor neutral
28 where movant didn’t identify any relevant third-party witnesses).

1 4. Ease Of Access To Evidence

2 Generally, this factor favors whichever venue is home to the bulk of the
3 documentary evidence and witnesses. *Kissick*, 2019 WL 6434639 at *6; *Kempton*, 2019
4 WL 5188750 at *4; *Hawkins*, 924 F. Supp. 2d at 1216. That said, “this factor no longer
5 carries much weight in the transfer analysis given that technology has made it easier for
6 documents to be transferred to different locations.” *Kissick*, 2019 WL 6434639 at *6.

7 Here, Homes.com has failed to identify any specific documentary evidence not
8 stored in an electronic format. When a party fails to “suppl[y] the court with any
9 information regarding what documents may be relied upon that are only available in hard
10 copy or could not be produced electronically,” this factor is neutral. *LaGuardia*, 2020 WL
11 2463385 at *8; *Martin*, 2015 WL 2124379 at *5 (“[T]his factor [is] neutral. The case is
12 proceeding as a putative nationwide class action. The defendant is headquartered out of
13 state and its relevant records may be in electronic form. The plaintiff’s evidence . . . will
14 likely be *de minimis*.”). *But see Kissick*, 2019 WL 6434639 at *6 (“[T]his factor marginally
15 weighs in favor of transfer.”).

16 5. Familiarity Of Each Forum With Applicable Law

17 Transfer is favored where the receiving court is more familiar with the law
18 underlying the plaintiff’s claim. But as the parties agree, because “the TCPA is a federal
19 statute,” both this District and the Eastern District of Virginia are equally familiar with the
20 law. *Kempton*, 2019 WL 5188750 at *3. As such, this factor is neutral. *Id.*; *LaGuardia*,
21 2020 WL 2463385 at *8; *Kissick*, 2019 WL 6434639 at *5.

22 6. Local Interest In Controversy

23 The venue with the greater local interest is the venue favored in the transfer analysis.
24 *Williams*, 157 F. Supp. 2d at 1109-10. Where the case is not “particular[ly] localized,” this
25 factor favors transfer to the venue where the “crux” of the underlying events took place.
26 *Hawkins*, 924 F. Supp. 2d at 1216-17.

27 The conflict here is between Arizona’s interest in protecting its own citizen
28 (Pierucci) and Virginia’s interest in holding a local alleged wrongdoer (Homes.com)

1 responsible. The crux of this case, as alleged, comes down to wrongdoing emanating from
2 Virginia and reaching nationwide. Although Pierucci felt the harm from the alleged
3 wrongdoing in Arizona, the class-wide nature of her allegations makes the real geographic
4 center of gravity in this case the place where the harm originated. In other words, the
5 “primary focus” of this action is the use of ATDSs to market Homes.com’s services to a
6 nationwide audience. In these circumstances, the interest is not “particular[ly] localized”
7 and venue is more appropriate where the crux of the case—where the marketing strategy
8 was developed and the ATDSs were utilized—occurred. *Id.* Accordingly, this factor
9 favors transfer. *See also Mina*, 2020 WL 4037163 at *4 (“[A] TCPA class action making
10 similar allegations against Defendants was recently transferred to Colorado. As in that
11 case, the Court similarly finds that Colorado has a significant local interest in having a
12 dispute involving a company headquartered in its state decided at home.”).

13 7. Relative Court Congestion

14 Finally, the Court considers where the case would likely proceed most quickly.
15 *Martin*, 2015 WL 2124379 at *6.

16 According to information available from the Administrative Office of the U.S.
17 Courts (on which both parties rely), the average time to disposition of a civil case in the
18 Eastern District of Virginia—which is sometimes referred to “as the ‘rocket docket’
19 because of its reputation for getting cases to trial quickly,” *Parrish v. Nat. Football League*
20 *Players Inc.*, 2007 WL 1624601, *8 (C.D. Cal. 2007)—is 5.7 months.¹ The average time
21 to disposition of a civil case in this District is 12.5 months. Halving the time to disposition
22 weighs in favor of transfer.

23 8. Conclusion

24 Having balanced the relevant factors, the Court concludes that a transfer to the
25 Eastern District of Virginia is warranted. The only factor weighing against transfer is
26 Pierucci’s choice of forum, but because this is a class action, that choice is only entitled to

27 ¹ *Federal Judicial Caseload Statistics, Table C-5-U.S. District Courts-Civil Federal*
28 *Judicial Statistics (March 31, 2020)*, <https://www.uscourts.gov/statistics/table/c-5/federal-judicial-caseload-statistics/2020/03/31>.

1 modest weight. On the other hand, court congestion and Virginia's interest in this case
2 strongly favor transfer and the convenience to the parties and witnesses both add to that
3 weight. The rest of the factors are neutral or slightly weigh in favor of transfer. Taken
4 together, this is not a particularly close call.

5 II. Other Pending Motions

6 Also pending before the Court are a Rule 12(b)(6) motion to dismiss, a motion to
7 strike Pierucci's class definition, and a motion to stay proceedings. (Docs. 14, 15, 28.)
8 Because the Court has granted Homes.com's motion to transfer, it denies these motions
9 without prejudice so they can be refiled in the Eastern District of Virginia. *Rogovsky*
10 *Enter., Inc. v. Masterbran Cabinets, Inc.*, 88 F. Supp. 3d 1034, 1049 (D. Minn. 2015)
11 ("Because this Court granted Defendant's Motion to Transfer, its Motion to Stay is denied
12 as moot."); *Papatheodou v. Clark*, 2008 WL 11391375, *5 (N.D. Cal. 2008) ("Since the
13 Court has granted Defendant's NCB's Motion to Transfer the case . . . [t]he Court denies
14 Defendant NCB's Motion to Dismiss for Failure to State a Claim without prejudice to be
15 renewed in the [new venue]."). This has the added benefit of allowing the parties to update
16 their briefing in light of developments in *Barr* and *Facebook* and to invoke the legal
17 standards applicable in the Fourth Circuit.

18 Accordingly, **IT IS ORDERED** that:

- 19 (1) Homes.com's motion to transfer (Doc. 13) is **granted**.
20 (2) Homes.com's motion to dismiss (Doc. 14) is **denied without prejudice**.
21 (3) Homes.com's motion to strike (Doc. 15) is **denied without prejudice**.
22 (4) Homes.com's motion to stay (Doc. 28) is **denied without prejudice**.
23 (5) This case shall be transferred to the Eastern District of Virginia.

24 Dated this 10th day of September, 2020.

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28 _____
Dominic W. Lanza
United States District Judge