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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA

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7 **DAVID W. MARTIN,**
8 Plaintiff,

9 v.

10 **GLOBAL TEL*LINK CORPORATION,**
11 Defendant.

Case No. 15-cv-00449-YGR

**ORDER GRANTING DEFENDANT’S MOTION
TO TRANSFER**

Re: Dkt. No. 17

12 On March 20, 2015, defendant Global Tel*Link Corporation filed a motion to transfer this
13 case to the Central District of California, where three other cases—two individual actions and one
14 putative class action—are pending. Each accuses the same defendant of similar conduct and
15 asserts claims under the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”). (Dkt.
16 No. 17 (“Mot.”).) Plaintiff David Martin opposed the motion. (Dkt. No. 28 (“Oppo.”).) A
17 hearing on the motion was held on April 28, 2015.

18 Having carefully considered the papers submitted,¹ the record in this case, and the
19 arguments of counsel, and good cause shown, the Court hereby **GRANTS** the defendant’s motion.

20 **I. RELEVANT BACKGROUND**

21 **A. The Instant Action**

22 The plaintiff instituted this action on December 5, 2014, seeking to represent a California
23 class of individuals who allegedly received unauthorized calls from the defendant purportedly in
24 violation of the TCPA. (Dkt. No. 1.) On February 13, 2015, the plaintiff filed his first amended
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26 ¹ The parties filed unopposed requests for judicial notice of various public filings in related
27 cases. (Dkt. Nos. 19, 35.) The Court **GRANTS** the requests pursuant to Federal Rule of Evidence
28 201, which allows a court to take judicial notice of “matters of public record,” but not facts that
may be subject to a reasonable dispute. *Lee v. City of Los Angeles*, 250 F.3d 668, 689-90 (9th Cir.
2001).

1 complaint, seeking to represent a nationwide class and a California sub-class. (Dkt. No. 9
2 (“FAC”) ¶¶ 31, 33.)

3 According to the operative complaint, the defendant offers “inmate calling services” to
4 thousands of prisons nationwide, including throughout California. (FAC ¶¶ 8, 12.) Inmates
5 allegedly initiate calls using the defendant’s system. Thereafter, the automated system seeks to
6 connect the calls and collect payments from the recipients. (Id. ¶¶ 13-18.) The plaintiff claims he
7 received multiple calls on his cell phone from the defendant’s system and was unable to reach a
8 live operator to prevent future calls, in violation of the TCPA. (Id. ¶¶ 19-29.)

9 The plaintiff is a resident of Alameda County, California—within the Northern District.
10 The defendant is a Delaware corporation headquartered in Virginia.

11 **B. Related Actions**

12 As noted above, three cases are currently pending in the Central District of California
13 asserting TCPA claims against the same defendant based on substantially the same conduct at
14 issue here. The two individual actions were filed before the instant action: Cohen v. Global
15 Tel*Link Corp., No. 12-cv-05447 (“Cohen”) (filed on September 10, 2009 in California Superior
16 Court, Los Angeles County, removed to the Central District, and currently stayed under the
17 primary jurisdiction doctrine pending a ruling by the Federal Communications Commission
18 regarding the defendant’s petition) and Hernandez v. Global Tel*Link Corp., No. 14-cv-01536
19 (“Hernandez”) (filed on September 23, 2014 and currently stayed pursuant to stipulation pending
20 action by the FCC).

21 The putative class action, Lee v. Global Tel*Link Corp., No. 15-cv-02495 (“Lee”), was
22 filed on December 8, 2014 in Nevada state court, seeking to represent a national class and Nevada
23 sub-class. Lee was subsequently removed to the District of Nevada and then transferred pursuant
24 to stipulation to the Central District of California.

25 Cohen and Hernandez are currently related before Judge John F. Walter. He declined to
26 relate Lee to the individual actions and it remains pending before Judge Otis D. Wright II.

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1 **II. LEGAL STANDARDS**

2 The defendant brings a motion to transfer on two alternative grounds: (a) pursuant to 28
3 U.S.C. section 1404(a); and (b) pursuant to the “first-to-file” rule. The legal standards for each
4 follow.

5 **A. Venue Transfer Pursuant to 28 U.S.C. Section 1404(a)**

6 “For the convenience of parties and witnesses, in the interest of justice, a district court may
7 transfer any civil action to any other district or division where it might have been brought”
8 28 U.S.C. § 1404(a). The purpose of section 1404(a) is to “prevent the waste of time, energy and
9 money and to protect litigants, witnesses and the public against unnecessary inconvenience and
10 expense.” *Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964) (internal quotation marks omitted).
11 Courts considering transfer engage in a two-step analysis. Courts first determine whether the
12 action could have been brought in the target district. *Hoffman v. Blaski*, 363 U.S. 335, 343-44
13 (1960). If it could have been, courts then undertake an “individualized, case-by-case consideration
14 of convenience and fairness.” *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988) (quoting
15 *Van Dusen*, 376 U.S. at 622).

16 In conducting the convenience and fairness analysis, the district court has broad discretion
17 in deciding whether to transfer. See *Ventress v. Japan Airlines*, 486 F.3d 1111, 1118 (9th Cir.
18 2007); *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000). In conducting this
19 analysis, courts in this district commonly articulate the relevant factors as follows:

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

23 *Vu v. Ortho-McNeil Pharm., Inc.*, 602 F. Supp. 2d 1151, 1156 (N.D. Cal. 2009); see also *Royal*
24 *Queentex Enters. v. Sara Lee Corp.*, No. C-99-4787, 2000 WL 246599, at *2 (N.D. Cal. March 1,
25 2000) (citing *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986));
26 *Jones*, 211 F.3d at 498-99 (“A motion to transfer venue under § 1404(a) requires the court to
27 weigh multiple factors in its determination [of] whether transfer is appropriate in a particular
28 case.” (citing *Ricoh Corp.*, 487 U.S. at 29)). This list is non-exclusive, and courts may consider

1 other factors, or only those factors which are pertinent to the case at hand. See *Williams v.*
 2 *Bowman*, 157 F. Supp. 2d 1103, 1106 (N.D. Cal. 2001) (noting that this list of factors “does not
 3 exhaust the possibilities” and comparing the factors in *Decker Coal*, 805 F.2d at 843, with those
 4 analyzed in *Jones*, 211 F.3d at 498-99). The burden is on the moving party to show that the
 5 transferee district is the more appropriate forum. *Jones*, 211 F.3d at 499.

6 **B. The First-to-File Rule**

7 A federal district court has discretion to dismiss, stay, or transfer a case to another district
 8 court under the first-to-file rule. See *Pacesetter Sys., Inc. v. Medtronic, Inc.*, 678 F.2d 93, 94-95
 9 (9th Cir. 1982); *Alltrade, Inc. v. Uniweld Prods. Inc.*, 946 F.2d 622, 628 (9th Cir. 1991) (“The
 10 most basic aspect of the first-to-file rule is that it is discretionary . . .”). The first-to-file rule is “a
 11 generally recognized doctrine of federal comity” permitting a district court to decline jurisdiction
 12 over an action. *Inherent.com v. Martindale–Hubbell*, 420 F.Supp.2d 1093, 1097 (N.D. Cal. 2006)
 13 (citing *Pacesetter*, 678 F.2d at 94-95). The rule is primarily meant to alleviate the burden placed
 14 on the federal judiciary by duplicative litigation and to prevent the possibility of conflicting
 15 judgments. *Church of Scientology of Cal. v. U.S. Dep’t of Army*, 611 F.2d 738, 750 (9th Cir.1979)
 16 (citations omitted). As such, the rule “should not be disregarded lightly.” See *Microchip Tech.,*
 17 *Inc. v. United Module Corp.*, No. CV-10-04241, 2011 WL 2669627, at *3 (N.D. Cal. July 7,
 18 2011). Courts analyze three factors in determining whether to apply the first-to-file rule: (1)
 19 chronology of the actions; (2) similarity of the parties; and (3) similarity of the issues. *Schwartz v.*
 20 *Frito–Lay N. Am.*, No. C-12-02740, 2012 WL 8147135, at *2 (N.D. Cal. Sept. 12, 2012) (citing
 21 *Alltrade*, 946 F.2d at 625).

22 A court may, in its discretion, decline to apply the first-to-file rule in the interests of equity
 23 or where the Section 1404(a) balance of convenience weighs in favor of the later-filed action.
 24 *Adoma v. Univ. of Phoenix, Inc.*, 711 F.Supp.2d 1142, 1149 (E.D. Cal. 2010); *Ward v. Follett*
 25 *Corp.*, 158 F.R.D. 645, 648 (N.D. Cal. 1994). Exceptions to the first-to-file rule include where the
 26 filing of the first suit evidences bad faith, anticipatory suits, and forum shopping. *Alltrade*, 946
 27 F.2d at 628. The Ninth Circuit has cautioned that relaxing the first-to-file rule on the basis of
 28 convenience is a determination best left to the court in the first-filed action. *Ward*, 158 F.R.D. at

1 648 (citing Alltrade, 946 F.2d at 628).

2 **III. DISCUSSION**

3 **A. Venue Transfer Pursuant to 28 U.S.C. Section 1404(a)**

4 **1. This Action Could Have Been Brought in the Central District of California**

5 A proper district court is one: (1) that has subject matter jurisdiction; (2) where the
6 defendant would have been subject to personal jurisdiction; and (3) where venue would have been
7 proper. See Hoffman, 363 U.S. at 343-44.

8 The Court finds this action could have been brought in the Central District. First, the
9 Central District, like this Court, would have subject matter jurisdiction over the instant action,
10 which asserts a claim under federal law. (See FAC ¶ 2.) Second, the complaint acknowledges (id.
11 ¶ 2)—and the Court finds based on a declaration submitted by the defendant²—that the defendant
12 is properly subject to specific personal jurisdiction throughout California in connection with this
13 case, having purposefully directed its relevant activities within the state. See Schwarzenegger v.
14 Fred Martin Motor Co., 374 F.3d 797, 802 (9th Cir. 2004) (citing Lake v. Lake, 817 F.2d 1416,
15 1421 (9th Cir. 1987)). Third, and in light of the record including the defendant’s declaration
16 referenced above, venue in the Central District would have been proper at the time this suit was
17 filed under 28 U.S.C. section 1391(b)(2).³

18 **2. Six Factor Analysis**

19 The Court considers in turn each of the six relevant convenience factors central to this
20 analysis: (1) the plaintiff’s choice of forum, (2) the convenience to the parties, (3) the convenience
21 to witnesses, (4) ease of access to the evidence, (5) feasibility of consolidation with other claims,
22 and (6) the relative court congestion and time of trial in each forum. The parties have conceded
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24 ² (See Declaration of Thomas W. Sweeney in Support of Motion to Transfer [Dkt. No. 34],
25 ¶¶ 2-3 (evidencing the defendant’s substantial relevant business activities involving facilities
26 located throughout the Central District).) The Court notes that the plaintiff also submitted a
27 declaration in opposition to the motion to transfer along with an administrative motion for leave to
28 file said declaration. (Dkt. No. 38.) The Court **GRANTS** the administrative motion and has
considered both parties’ declarations in connection with this ruling.

³ Further, the Court notes that the defendant does not contest personal jurisdiction or venue
in the three actions pending in the Central District.

1 that the factors regarding familiarity of each forum with the applicable law and local interest in the
2 controversy are both neutral.

3 **i. The Plaintiff's Choice of Forum**

4 For purposes of a section 1404(a) analysis, the plaintiff's choice of forum always weighs
5 against transfer. Thus, the question for the Court is how much weight to give this choice relative
6 to the other factors. See, e.g., *Vu*, 602 F. Supp. 2d at 1156-57 (balancing plaintiff's choice against
7 other factors weighing in favor of transfer); *Getz v. Boeing Co.*, 547 F. Supp. 2d 1080, 1082-83
8 (N.D. Cal. 2008) (same); *Inherent.com v. Martindale-Hubbell*, 420 F. Supp. 2d 1093, 1100-02
9 (N.D. Cal. 2006) (same).

10 Generally, a plaintiff's choice of forum is entitled to considerable weight and a defendant
11 must make a strong showing of inconvenience to warrant upsetting this choice. *Decker Coal*, 805
12 F.2d at 843 (9th Cir. 1986). However, the plaintiff's choice is given less deference in a class
13 action. *Lou v. Belzberg*, 834 F.2d 730, 739 (9th Cir. 1987); *Wilson*, 2011 WL 4345079, at *3.

14 Not only is the instant action a putative class action, but notably, the plaintiff did not
15 initially choose this forum, despite residing here. To the contrary, the plaintiff instituted this
16 action in the Southern District of California, and only suggested the Northern District as a fallback
17 option in response to an order to show cause as to why the action should not be dismissed for
18 improper venue. (Dkt. Nos. 3, 4.) Presumably the plaintiff preferred the Southern District of
19 California because his lead counsel is located in San Diego. In light of these circumstances, the
20 Court affords the plaintiff's choice of forum minimal weight.

21 **ii. Convenience of the Parties**

22 "Convenience of the parties is an important factor to consider for transfer of venue." *Flint*,
23 2007 WL 4365481, at *3. Even though the plaintiff resides in this District, his initial selection of
24 the Southern District undercuts his argument that he considers the Northern District a more
25 convenient forum—and suggests his interest in maintaining the lawsuit here may instead be due to
26 strategic considerations. The Central District will be a more convenient forum for the defendant,
27 because it is already litigating three similar lawsuits there. Thus, this factor favors transfer.

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1 **iii. Convenience of the Witnesses**

2 The convenience to the witnesses is the most important factor in a section 1404(a) analysis,
3 and the convenience of non-party witnesses is more important than the convenience of the parties.
4 Clark v. Sprint Spectrum L.P., No. C 10-03625 SI, 2010 WL 5173872, at *3 (N.D. Cal. Dec. 15,
5 2010). Convenience of a litigant’s employee witnesses is entitled to little weight because they can
6 be compelled by their employers to testify regardless of venue. Shore to Shore Props., LLC v.
7 Allied World Assurance, No. C 11-01512 JSW, 2011 WL 4344177, at *3 (N.D. Cal. Sept. 15,
8 2011); STX, Inc. v. Trik Stik, Inc., 708 F. Supp. 1551, 1556 (N.D. Cal. 1988).

9 Here, neither party has identified any third-party witnesses likely to testify. The defendant
10 argues, without sufficient support, that there are a greater number of potential class members in
11 the Central District, but does not specifically identify any likely third-party witnesses. See Wilson,
12 2011 WL 4345079, at *4 (finding that the location of putative class members carried little weight
13 in the convenience of witnesses analysis where there was no indication that class members other
14 than the named plaintiffs would be needed to testify); Johns v. Panera Bread Co., No. 08–1071,
15 2008 WL 2811827, at *3 (N.D. Cal. July 21, 2008) (noting that because “the Court lacks any
16 indication of how many people from the putative class are anticipated to be witnesses, and what
17 their relevant testimony would be’ . . . the Court ‘cannot base a decision to transfer based on
18 speculation as to the relevance of potential, but unnamed, witnesses.’” (quoting Flint, 2007 WL
19 4365481, at *4) (citation omitted)).

20 Nevertheless, on balance, this factor weighs slightly against transfer. The plaintiff
21 reasonably suggested—albeit without clearly stating as much—that he is a potential witness in this
22 case. While the Court affords little weight to party-witnesses, the plaintiff’s residence in this
23 District, and therefore his convenience in testifying here, outweighs the purported convenience to
24 hypothetical witnesses raised by the defendant. See Florens Container v. Cho Yang Shipping, 245
25 F. Supp. 2d 1086, 1093 (N.D. Cal. 2002) (finding that the moving party failed to establish that this
26 factor favors transfer because it did not identify key witnesses to be called or present a statement
27 as to the importance of their testimony); Williams, 157 F. Supp. 2d at 1108 (“To demonstrate
28 inconvenience of witnesses, the moving party must identify relevant witnesses, state their location

1 and describe their testimony and its relevance.”).

2 **iv. Ease of Access to the Evidence**

3 The location of evidence may be an important factor in a convenience and fairness
4 analysis. *Vu*, 602 F. Supp. 2d at 1156. However, this factor is neutral or carries only minimal
5 weight when the evidence is in electronic form. See, e.g., *Sarinara v. DS Waters of Am. Inc.*, No.
6 C-13-0905 EMC, 2013 WL 3456687, at *2 (N.D. Cal. July 9, 2013) (finding ease of access to
7 evidence to be a neutral factor “given the availability of digital records”); *Friends of Scot., Inc. v.*
8 *Carroll*, No. C-12-1255 WHA, 2013 WL 1192956, at *3 (N.D. Cal. Mar. 22, 2013) (“[W]ith
9 technological advances in document storage and retrieval, transporting documents does not
10 generally create a burden.”).

11 The parties have failed to provide sufficient guidance on this issue. Nevertheless, based on
12 the information provided, the Court finds this factor to be neutral. The case is proceeding as a
13 putative nationwide class action. The defendant is headquartered out of state and its relevant
14 records may be in electronic form. The plaintiff’s evidence of calls received—such as phone
15 bills—will likely be de minimus. The plaintiff argues there may be relevant evidence located in
16 prisons within this District, to the extent calls at issue were initiated from those prisons. However,
17 the plaintiff has not demonstrated that the calls he received fall within that category.

18 **v. Feasibility of Consolidation**

19 “The feasibility of consolidation is a significant factor in a transfer decision, and even the
20 pendency of an action in another district is important because of the positive effects it might have
21 in possible consolidation of discovery and convenience to witnesses and parties.” *Cardoza v. T-*
22 *Mobile USA Inc.*, No. 08-5120, 2009 WL 723843, at *5 (N.D. Cal. Mar. 18, 2009); *see also Cont’l*
23 *Grain Co. v. The FBL-585*, 364 U.S. 19, 26 (1960) (“To permit a situation in which two cases
24 involving precisely the same issues are simultaneously pending in different District Courts leads to
25 the wastefulness of time, energy and money that § 1404(a) was designed to prevent.”).

26 Here, this factor strongly favors transfer. Three cases—two individual actions and one
27 putative class action—are currently pending in the Central District accusing the defendant of
28 substantially similar, if not identical, TCPA violations. The cases involve many common

1 questions of law and fact—for instance, as to whether the defendant’s systems and the calls at
2 issue fall within the scope of the TCPA. It is possible that some or all of these cases may
3 ultimately be consolidated and/or related if this case is transferred. At a minimum, discovery can
4 be coordinated and/or disputes resolved by the same magistrate judge.⁴ Such coordination cannot
5 occur if the four cases are pending in different districts.

6 **vi. Relative Court Congestion and Time of Trial in Each Forum**

7 The relative docket congestion of the respective forums may be relevant to the Court’s
8 decision on whether to transfer. *Ctr. for Food Safety v. Vilsack*, No. C-11-00831, 2011 WL
9 996343, at *8 (N.D. Cal. March 17, 2011). “This factor examines whether a trial may be speedier
10 in another court because of its less crowded docket. To measure congestion, courts compare the
11 two fora’s median time from filing to disposition or trial.” *Id.* (internal quotation marks and
12 citations omitted). Neither party submitted data relevant to this factor in support of their
13 respective positions. (Instead, they argue about the efficiencies to be gained by transferring this
14 case to the Central District, where three similar actions are pending.) Thus, in the absence of any
15 relevant data, the Court finds this factor to be neutral.

16 **vii. Balancing the Discretionary Factors**

17 Two factors (the plaintiff’s choice of forum and convenience of the witnesses) slightly
18 weigh against transfer. Two factors (convenience of the parties and feasibility of consolidation)
19 favor or strongly favor transfer. The remaining factors are neutral. Based upon the relative
20 balancing of each factor, and in the interests of justice, the Court finds that the defendant has made
21 a sufficiently strong showing to warrant transfer. See *Wilson*, 2011 WL 4345079, at *6 (citing
22 *Decker Coal*, 805 F.2d at 843).

23 **B. The First-to-File Rule**

24 Having found transfer appropriate under section 1404(a), the Court need not reach the
25 defendant’s argument under the first-to-file rule.

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⁴ The Court notes that Judge Wright’s scheduling orders refer discovery matters to a magistrate judge.

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IV. CONCLUSION


For the foregoing reasons, the Court **GRANTS** the defendant’s motion to transfer this action to the Central District of California. The defendant’s motions to strike and to stay (Dkt. No. 18) are **DENIED WITHOUT PREJUDICE** as moot.

This Order terminates Docket Numbers 17, 18, and 38.

The Clerk is directed to transfer the file in this case to the Central District of California.

IT IS SO ORDERED.

Dated: May 6, 2015


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE