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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KANDANCE CLARK, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

SPRINT SPECTRUM L.P. *et al.*,

Defendants.

No. C 10-03625 SI

**ORDER GRANTING DEFENDANTS'
MOTION TO TRANSFER VENUE TO
CENTRAL DISTRICT OF CALIFORNIA**

Defendants have filed a motion to transfer venue, which is scheduled for hearing on December 16, 2010. Pursuant to Civil Local Rule 7-1(b), the Court finds this matter appropriate for resolution without oral argument, and hereby VACATES the hearing. For the reasons set forth below, the Court hereby GRANTS defendants' motion to transfer, and TRANSFERS this action to the United States District Court for the Central District of California.

BACKGROUND

In 2009, plaintiff Kandance Clark purchased a cellular telephone as well as an Equipment Service and Repair Program ("ESRP") and an Equipment Replacement Program from defendants Sprint Spectrum L.P. and Sprint Solutions, Inc. (collectively "Sprint"). First Amend. Compl. ("FAC") ¶ 23. Plaintiff alleges that the telephone was not immersed in nor directly exposed to water during the time that she owned it. *Id.* In early 2010, plaintiff's telephone began to malfunction, so she took it to a Sprint store in San Pedro, California, to be repaired. *Id.* ¶¶ 6, 24. Plaintiff alleges that a Sprint employee opened the telephone's battery cover and discovered that the "rejection sticker" inside had

1 turned red. *Id.* The employee allegedly told plaintiff that because red rejection stickers indicate water
2 damage, the manufacturer warranty and ESRP did not apply. *Id.* ¶¶ 6, 25. Plaintiff alleges that the
3 employee made no further attempt to ascertain whether plaintiff’s telephone had in fact been exposed
4 to water. *Id.* ¶ 6. Plaintiff was required to pay a \$100 insurance deductible to replace the telephone.
5 *Id.* ¶¶ 6, 27.

6 In her first amended complaint, plaintiff alleges claims for (1) declaratory relief, (2) breach of
7 warranty, (3) breach of contract, (4) violations of the Song-Beverly Consumer Warranty Act, (5) fraud,
8 (6) unfair and deceptive acts and practices in violation of the Consumers Legal Remedies Act, (7) unfair
9 business practices in violation of Cal. B.P.C. § 17200, *et seq.*, (8) untrue and misleading advertising in
10 violation of Cal. B.P.C. § 17500, *et seq.*, and (9) unjust enrichment. *See id.* ¶¶ 48-113. In addition,
11 plaintiff seeks to certify her claims as a nationwide and statewide class action. *See id.* ¶¶ 34-47.
12 Specifically, plaintiff seeks to represent “[a]ll persons who reside in the United States who (a) own a
13 Sprint cellular telephone that is covered by the ESRP; and/or (b) own or once owned a Sprint cellular
14 telephone and who were denied coverage under the Warranty and/or the ESRP by Sprint for its repair
15 or replacement because a Rejection Sticker had been triggered, without Sprint’s determining whether
16 the cellular telephone had actually been damaged by water.” *Id.* ¶ 35. Plaintiff also seeks to represent
17 a subclass of such persons, in which the members are “‘consumer[s],’ as that term is defined by
18 California Civil Code section 1761(d), or purchased ‘goods’ or ‘consumer goods,’ as those terms are
19 defined by California Civil Code sections 1761(a) and 1791(a), respectively.” *Id.* ¶ 36. Plaintiff’s
20 claims have not yet been certified as a class action.

21 Presently before the Court is defendants’ motion to transfer venue to the Central District of
22 California.

LEGAL STANDARD

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25 “For the convenience of parties and witnesses, in the interest of justice, a district court may
26 transfer any civil action to any other district or division where it might have been brought.” 28 U.S.C.
27 § 1404(a). The purpose of § 1404(a) is to “prevent the waste of time, energy and money and to protect
28 litigants, witnesses and the public against unnecessary inconvenience and expense.” *Van Dusen v.*

1 *Barrack*, 376 U.S. 612, 616 (1964) (internal quotation omitted). A motion to transfer lies within the
2 broad discretion of the district court, and must be determined on an individualized basis. *See Jones v.*
3 *GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000).

4 To support a motion for transfer, the moving party must establish “(1) that venue is proper in the
5 transferor district; (2) that the transferee district is one where the action might have been brought; and
6 (3) that the transfer will serve the convenience of the parties and witnesses and will promote the interest
7 of justice.” *Goodyear Tire & Rubber Co. v. McDonnell Douglas Corp.*, 820 F. Supp. 503, 506 (C.D.
8 Cal. 1992).

10 DISCUSSION

11 I. Propriety of Venue in Transferor and Transferee Districts

12 The parties agree that venue would be proper in either the Northern District or the Central
13 District. *See* Def. Mot. to Transfer, at 2 (arguing that the “proper venue for this action is the Central
14 District of California”); *id.* at 5 (“Sprint Solutions and Sprint Spectrum both do business in the Northern
15 District of California, both therefore are subject to personal jurisdiction in the Northern District, and an
16 action could be maintained there if it were a convenient location for the witnesses and parties.”); Pl.
17 Opp., at 4 (“[V]enue is proper in either the Northern District of California or the Central District of
18 California.”). As the parties agree that venue would be proper in both the transferor and transferee
19 districts, the only disputed issue is whether transfer to the Central District would serve the convenience
20 of the parties and witnesses as well as promote the interests of justice.

22 II. Convenience and Promotion of the Interests of Justice

23 Courts use the following factors to evaluate whether a transfer of venue would be more
24 convenient to the parties and the witnesses and would promote the interests of justice: “(1) plaintiff’s
25 choice of forum, (2) convenience of the parties, (3) convenience of the witnesses, (4) ease of access to
26 the evidence, (5) familiarity of each forum with the applicable law, (6) feasibility of consolidation of
27 other claims, (7) any local interest in the controversy, and (8) the relative court congestion and time of
28 trial in each forum.” *Williams v. Bowman*, 157 F. Supp. 2d 1103, 1106 (N.D. Cal. 2001).

1 **A. Plaintiff’s Choice of Forum**

2 The plaintiff’s choice of forum is usually given significant weight in transfer proceedings. *See*
3 *Sec. Investor Prot. Corp. v. Vigman*, 764 F.2d 1309, 1317 (9th Cir. 1985). Where a plaintiff does not
4 reside in the forum, however, the Court may afford plaintiff’s choice considerably less weight. *See*
5 *Sweet-Reddy v. Vons Cos. Inc.*, No. C 06-06667, 2007 WL 841792, at *2 (N.D. Cal. Mar. 20, 2007)
6 (finding that deference to plaintiff’s choice of forum is diminished where plaintiff does not reside in the
7 chosen forum and none of the events alleged in the complaint occurred there). Here, plaintiff resides
8 in Clovis, California, which is in the Eastern District. Decl. of Kandance Clark ¶ 2.¹ She does not reside
9 in the Northern District, which reduces the weight the Court will afford her choice of forum.²

10 Moreover, “[i]f the operative facts have not occurred within the forum and the forum has no
11 interest in the parties or subject matter, [plaintiff’s] choice is entitled to only minimal consideration.”
12 *Lou v. Belzberg*, 834 F.2d 730, 739 (9th Cir. 1987). As mentioned above, plaintiff does not reside in

13
14 ¹ Defendants point out that plaintiff was a resident of San Pedro, California, which is in the
15 Central District, at the time of the event giving rise to this cause of action. Def. Mot. to Transfer, at 2
16 & n.2. For the purpose of venue, however, residence is determined at the time the action is filed, rather
17 than at the time of the event giving rise to the cause of action. *See Technograph Printed Circuits, Ltd.*
18 *v. Packard Bell Elecs. Corp.*, 290 F. Supp. 308, 326 (C.D. Cal. 1968).

19 ² Plaintiff argues that because she does not currently reside in either the transferor or transferee
20 district, the Court should follow the reasoning in *Temple v. Guardsmark LLC*, No. C 09-02124, 2009
21 WL 2997396 (N.D. Cal. Sept. 16, 2009). In *Temple*, the court denied defendant’s motion to transfer to
22 the Central District, where a resident of Vallejo, in the Eastern District, originally sued in the Northern
23 District. *Id.* at *1. The court reasoned:

24 Although plaintiff resides in the Eastern District, the Northern District is the federal
25 court located closest to his residence. Therefore, it can be inferred that plaintiff has not
26 engaged in forum-shopping as he has chosen the forum that is most convenient for
27 him. Furthermore, plaintiff’s claims arise under California law and involve events that
28 occurred within this judicial district and throughout the state. Thus, this is not a case
where “the operative facts have not occurred within the forum and the forum has no
interest in the parties or subject matter.”

29 *Id.* at *3 (quoting *Lou v. Belzberg*, 834 F.2d 730, 739 (9th Cir. 1987)).

30 This case, however, can be distinguished from *Temple* in two important ways. First, although
31 Temple resided in the Eastern District, he lived very close to the Northern District. The court noted that
32 Temple lived 34 miles from downtown San Francisco and 380 miles from downtown Los Angeles. *Id.*
33 at *1 n.1. Here, however, plaintiff lives much further away from the Northern District. Plaintiff resides
34 in Clovis, which is approximately 30 miles away from Fresno. *See* Def. Reply, at 1. Second, plaintiff
35 does not allege any events that took place in the Northern District. Rather, the Sprint store that informed
36 plaintiff that her telephone was not covered by the manufacturer warranty or the ESRP is located in San
37 Pedro, which is in the Central District. *See* FAC ¶ 6; Decl. of John Wagener Decl. ¶ 5. Unlike *Temple*,
38 then, this is a case where the operative facts have not occurred within the transferor district.

1 the Northern District. Furthermore, the Sprint store where plaintiff was informed that her telephone was
2 not covered by the manufacturer warranty or the ESRP is located in San Pedro, which is in the Central
3 District. *See* FAC ¶ 6; Decl. of John Wagener Decl. ¶ 5. Plaintiff is not able to identify any connection
4 between this case and the Northern District. Indeed, defendants assert that only plaintiff’s counsel is
5 located in the Northern District, and the location of plaintiff’s counsel is not an appropriate factor for
6 the Court to consider when deciding a motion to transfer. *See In re Horseshoe Entm’t*, 337 F.3d 429,
7 434 (5th Cir. 2003) (“The factor of ‘location of counsel’ is irrelevant and improper for consideration in
8 determining the question of transfer of venue.”); *Lupiani v. Wal-Mart Stores, Inc.*, No. C-03-2614, 2003
9 U.S. Dist. LEXIS 18804, at *10 (N.D. Cal. Oct. 17, 2003) (“[C]ourts have consistently held that the
10 convenience of plaintiff’s counsel is not a factor to be considered in determining whether a particular
11 locale is a convenient forum.”). As the operative facts have not occurred within the Northern District
12 and the Northern District has no interest in the plaintiff or subject matter of this suit, plaintiff’s choice
13 of forum is entitled to only minimal consideration.

14 In addition, the named plaintiff’s choice of forum is given less weight when that individual
15 represents a class. *See Lou*, 834 F.2d at 739 (“[W]hen an individual brings a derivative suit or represents
16 a class, the named plaintiff’s choice of forum is given less weight.”). As plaintiff seeks to certify her
17 claims as a class action, her choice of forum is afforded less weight.

18 Overall, plaintiff’s choice of forum does not have significant weight in this case.
19

20 **B. Convenience of the Parties**

21 Regarding the convenience of the plaintiff, plaintiff resides in Clovis. Because Clovis is
22 approximately midway between the Northern and Central Districts,³ this does not weigh either for or
23 against transfer. Defendants Sprint Spectrum L.P. and Sprint Solutions, Inc., were both incorporated
24 under the laws of Delaware and have their headquarters in Kansas. FAC ¶¶ 7-8. As both the Northern
25

26 ³ Plaintiff alleges that the Northern District is more convenient for her than the Central District,
27 as she lives closer to the Northern District. Although this is true, plaintiff is not significantly closer to
28 the Northern District than the Central District; plaintiff lives in Clovis, which is approximately 30 miles
away from Fresno. *See* Def. Reply, at 1.

1 and Central Districts will be equally inconvenient for defendants, this factor is also neutral.

2
3 **C. Convenience of the Witnesses**

4 “The relative convenience to the witnesses is often recognized as the most important factor to
5 be considered in ruling on a motion under § 1404(a).” *Saleh v. Titan Corp.*, 361 F. Supp. 2d 1152, 1160
6 (S.D. Cal. 2005) (quotation omitted). The convenience of non-party witnesses is a more important factor
7 than the convenience of the parties. *Id.* In support of a motion to transfer, a party must identify
8 potential witnesses by name and describe their testimony. *See id.* at 1161-65. “In determining whether
9 this factor weighs in favor of transfer, the court must consider not simply how many witnesses each side
10 has and the location of each, but, rather, the court must consider the importance of the witnesses.” *Id.*
11 at 1160-61.

12 Defendants have named and provided the declarations of two non-party witnesses who reside
13 in the Central District. First, they name Jorge Hernandez, an employee of North American Wireless⁴
14 who works at the San Pedro store and who examined plaintiff’s telephone. *See* Decl. of Jorge
15 Hernandez ¶¶ 3-4. Hernandez is expected to testify about the San Pedro store’s policies and procedures
16 regarding repairs and warranties, the condition of the telephone brought in for repair, and any
17 information communicated to plaintiff while she was in the store. *See id.* ¶¶ 4-5; Decl. of A. Brooks
18 Gresham ¶ 9. Second, defendants name Jaber Abuitah, Hernandez’s direct supervisor who is also an
19 employee of North American Wireless. *See* Decl. of Jaber Abuitah ¶¶ 4, 7. Abuitah is expected to
20 testify about the San Pedro store’s policies and procedures regarding repairs and employee training; the
21 store’s documents, facilities, and personnel; and any information communicated to plaintiff while she
22 was in the store. *See id.* ¶ 7; Gresham Decl. ¶ 10. Both Hernandez and Abuitah assert that it would
23 be financially difficult for them to travel to the Northern District to testify. Hernandez Decl. ¶ 7;
24 Abuitah Decl. ¶ 10.

25 In addition, defendants name several potential party witnesses, who are located in Sprint’s
26 regional management offices in Irvine, which is in the Central District. Def. Mot. to Transfer, at 10.

27 _____
28 ⁴ North American Wireless is an “independent authorized service provider” for Sprint. Decl. of
Jaber Abuitah ¶ 4.

1 First, Scott Weed can testify about Sprint’s policies and procedures regarding repairs and employee
2 training; related documents; and Sprint’s business facilities, practices, and personnel. Gresham Decl.
3 ¶ 12. Second, Bruce Elebee, who works with Sprint Service and Repair Technical Support, is able to
4 testify about the daily support of North American Wireless’s service and repair center operations. *Id.*
5 ¶ 13. Third, Tony Tuor, the Indirect Account Sales Executive for North American Wireless, can testify
6 about sales structure and account information for North American Wireless. *Id.* Finally, Steve Santos
7 is able to testify about “operations support for the indirect account sales executives for the indirect
8 stores, including North American Wireless.” *Id.* ¶ 14.

9 On the other hand, plaintiff is not able to name or describe the testimony of a single witness who
10 resides in the Northern District. Rather, plaintiff offers the Court only speculative and general
11 predictions about the identity of potential witnesses. *See* Pl. Opp., at 5 (“[T]he primary witnesses
12 responsible for formulating and implementing Sprint’s nationwide policies are likely in Kansas.”); *id.*
13 (“The secondary witnesses (e.g., retail agents for Defendants) are likewise scattered throughout
14 California and the nation, where Sprint does business.”).

15 The Court finds that the Central District is more convenient for the identified witnesses.
16

17 **D. Ease of Access to Evidence**

18 When ruling on motions to transfer, courts consider “the ease of access to the sources of proof,”
19 rather than “whether the evidence would be unavailable absent the transfer.” *Saleh*, 361 F. Supp. 2d at
20 1166 (internal quotation marks omitted). Defendants argue that because the event underlying plaintiff’s
21 claims took place in San Pedro, the most relevant documents and materials are likely to be located in
22 the Central District. Plaintiff, on the other hand, argues that the documentary evidence of defendants’
23 corporate policies and practices will be located at Sprint’s headquarters in Kansas. Plaintiff also argues
24 that because this is a statewide and nationwide class action, evidence relating to individual class member
25 claims will be located throughout California and the United States.

26 Both of the parties’ theories about where the evidence for this class action will be located are
27 speculative. However, plaintiff’s theory that the documentary evidence of the defendants’ corporate
28 policies and practices will be located at their headquarters in Kansas is the most plausible. At issue is

1 defendants’ “corporate policy,” which allegedly “dictates that Sprint personnel must refuse warranty
2 coverage and ESRP coverage to consumers who seek a repair or replacement of a Sprint cellular
3 telephone if its Rejection Sticker has changed color.” FAC ¶ 17. Defendants’ policy regarding warranty
4 coverage and ESRP coverage is likely to be developed at defendants’ headquarters in Kansas. This
5 means that the relevant evidence will not be located in either the Northern or Central District, making
6 this factor neutral.

7
8 **E. Remaining Factors**

9 The parties do not address the remaining factors. The Court notes, however, that the remaining
10 factors are either neutral or favor transfer. With respect to familiarity with plaintiff’s claims, feasibility
11 of consolidation, and relative court congestion, there is no evidence that either district is more favorable
12 than the other. Finally, the Court finds that if either court has a stronger interest in the controversy, it
13 is the Central District. While the law applied is the same in either district, the event giving rise to
14 plaintiff’s claims took place in the Central District. Thus, while the Central District’s local interest in
15 the controversy may not be substantially stronger than the Northern District’s, it nevertheless remains
16 stronger because the events at issue took place there.

17 There is no connection between this case and the Northern District, in regards to the location of
18 the operative facts, residences of the parties and witnesses, and location of the evidence. Because
19 deference to plaintiff’s choice of forum is limited by the fact that she resides elsewhere and because it
20 would be substantially more convenient for the witnesses, the Court finds that transfer of venue to the
21 Central District of California would serve the convenience of the parties and witnesses and would
22 promote the interests of justice.

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CONCLUSION

For the foregoing reasons and good cause shown, the Court hereby GRANTS defendants' motion to transfer venue (Docket No. 15). The Court TRANSFERS this action to the United States District Court for the Central District of California.

IT IS SO ORDERED.

Dated: December 15, 2010



SUSAN ILLSTON
United States District Judge