

1 **TROUTMAN PEPPER HAMILTON SANDERS LLP**
 2 Ronald I. Raether, Jr. (SBN 303118)
 3 E-mail: ron.raether@troutman.com
 4 100 Spectrum Center Drive, Suite 1500
 Irvine, California 92618
 Telephone: 949.622.2722
 Facsimile: 949.622.2739

5 *Attorneys for Defendant Filmsupply, LLC*

6
 7 **UNITED STATES DISTRICT COURT**
 8 **NORTHERN DISTRICT OF CALIFORNIA**

9 **JONATHAN TRIMBOLI,**
 10
 11 Plaintiff,
 12 v.
 13 **FILMSUPPLY, LLC,** a Texas Limited
 14 Liability Company
 15 Defendant.
 16

Case No. 3:24-cv-06752-JD

(Assigned to the Honorable James Donato)

**STIPULATED MOTION TO TRANSFER
 VENUE TO THE NORTHERN
 DISTRICT OF TEXAS AND TO
 EXTEND DEADLINE TO ANSWER,
 MOVE, OR OTHERWISE PLEAD**

Complaint served: September 26, 2024
 Current response date: November 27, 2024
 New response date: January 11, 2025

17
 18 Plaintiff Jonathan Trimboli (“Plaintiff”) and Defendant Filmsupply, LLC (“Filmsupply,”
 19 collectively Defendant and Filmsupply are referred to as the “Parties”), hereby stipulate and move
 20 the Court, pursuant to 28 U.S.C. § 1404(a), to transfer this action to the United States District
 21 Court for the Northern District of Texas and to extend Filmsupply’s responsive pleading deadline
 22 forty-five (45) days up to and including January 11, 2025. In support of this stipulated motion, the
 23 parties state as follows:

24 1. On September 26, 2024, Plaintiff filed a Complaint against Filmsupply, ECF No. 1
 25 (“Compl.”), alleging three claims that are based on allegations related to Plaintiff’s alleged use of
 26 Filmsupply’s website located at www.Filmsupply.com (the “Website”). *See, e.g.*, Compl. ¶¶ 3
 27 and 34.

1 2. The Website contains a Terms of Use governing Plaintiff’s use of the Website.
2 Paragraph 14(e) of the Terms of Use contains a forum selection clause which states, in relevant
3 part, as follows:

4 “YOU CONSENT AND AGREE ANY CLAIM OR DISPUTE BETWEEN YOU AND
5 FILMSUPPLY THAT ARISES IN WHOLE OR IN PART FROM THE SERVICE
6 SHALL BE DECIDED EXCLUSIVELY BY A STATE OR FEDERAL COURT OF
7 COMPETENT JURISDICTION LOCATED IN TARRANT COUNTY, TEXAS. To the
8 fullest extent permitted under applicable law, you irrevocably waive and agree not to
9 assert, by way of motion, as a defense or otherwise, any claim that you are not subject to
10 the jurisdiction of the above-referenced Texas courts and any objection that you may now
11 or hereafter have to the laying of venue of any suit, action, or proceeding brought in any
12 such court has been brought in an inconvenient forum.”

13 <https://www.filmsupply.com/terms-and-conditions>, ¶ 14(e) (emphasis in original).

14 3. The United States District Court for the Northern District of Texas is located in
15 Tarrant County, Texas.

16 4. Under 28 U.S.C. Section 1404(a), a court is authorized to, “[f]or the convenience
17 of parties and witnesses, in the interest of justice . . . transfer any civil action to any other district
18 or division where it might have been brought.” Section 1404 thus requires two showings: that
19 “the transferee court is a proper forum in which the action could have been brought originally”
20 and that “the transfer will enhance the convenience of the parties and witnesses, and is in the
21 interest of justice.” *Brown v. Newsom*, No. 23-cv-04040, 2024 U.S. Dist. LEXIS 101434, at *2
22 (N.D. Cal. May 1, 2024).

23 5. Courts consider several factors when considering whether a transfer of venue is
24 warranted, including: (1) “the state that is most familiar with the governing law,” (2) “the
25 plaintiff’s choice of forum,” (3) “the respective parties’ contacts with the forum,” (4) “the contacts
26 relating to the plaintiff’s cause of action in the chosen forum,” (5) “the differences in the costs of
27 litigation in the two forums,” (6) “the availability of compulsory process to compel attendance of
28 unwilling non-party witnesses,” and (7) “the ease of access to sources of proof.” *Clark v. VIP*

1 *Petcare, LLC*, No. 22-cv-08935, 2023 U.S. Dist. LEXIS 217274, at *3 (N.D. Cal. Dec. 6, 2023)
2 (quoting *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498-99 (9th Cir. 2000)).

3 6. However, when a forum selection clause exists, it is well-recognized that this
4 clause is presumptively valid and must be enforced absent an overwhelming showing that public
5 interest factors warrant setting aside the Parties' agreed upon choice of forum. *See Atl. Marine*
6 *Const. Co.*, 571 U.S. at 64-65 (stating that while a court "may consider arguments about public-
7 interest factors only," "those factors will rarely defeat a transfer motion" and "such cases will not
8 be common"); *Murphy v. Schneider Nat'l Inc.*, 362 F.3d 1133, 1140 (9th Cir. 2004) ("[F]orum
9 selection clauses are presumptively valid").

10 7. With these principles in mind, the Section 1404(a) factors demonstrate this matter
11 should be transferred to the Northern District of Texas.

12 8. First, the Northern District of Texas has original subject matter jurisdiction over
13 this action pursuant to 28 U.S.C. § 1331 because it arises under a law of the United States (*i.e.*,
14 the Video Privacy Protection Act). Compl. at ¶ 8.

15 9. Second, the Northern District of Texas has personal jurisdiction over Filmsupply
16 because Filmsupply is a Texas limited liability company with its principal place of business in
17 Tarrant County, Texas, *Id.* at ¶ 7, and over Plaintiff, because Plaintiff consented to the jurisdiction
18 of the Northern District of Texas. *See Stipulation*, at ¶ 2.

19 10. Third, venue is proper in the Northern District of Texas pursuant to 28 U.S.C. §
20 1391 because a substantial part of the events or omissions giving rise to Plaintiff's allegations
21 occurred in the District and the parties consented to venue being proper in the Northern District of
22 Texas. *See id., supra* at ¶ 2.

23 11. The Parties agree that the Northern District of Texas is not an inconvenient forum.
24 *See Atl. Marine Constr. Co.*, 571 U.S. at 64 ("when parties agree to a forum-selection clause, they
25 waive the right to challenge the preselected forum as inconvenient or less convenient for
26 themselves or their witnesses, or for their pursuit of the litigation.").

27 12. Fourth, the cost of litigating a putative class action is the same in Northern District
28 of Texas as it is in the Northern District of California.

1 13. Fifth, the Northern District of Texas and this Court have the same ability to
2 compel the attendance of unwilling non-party witnesses in this case.

3 14. Sixth, Filmsupply is located in the Northern District of Texas and its witnesses,
4 policies, and business records are located in that jurisdiction.

5 15. Finally, the Northern District of Texas is familiar with and capable of resolving the
6 three claims at issue here: (1) the Video Privacy Protection Act (18 U.S.C. § 2710); (2) the
7 California Video Privacy Protection Act (Cal. Civ. Code § 1799.3); and (3) California’s Unfair
8 Competition Law (Cal. Bus. & Prof. Code § 17200, *et seq.*). The Parties stipulate that the
9 Northern District of Texas is familiar with the Video Privacy Protection Act (18 U.S.C. § 2710)
10 and that Plaintiff’s claim under California’s Video Privacy Protection Act (Cal. Civ. Code §
11 1799.3), is nearly identical to Plaintiff’s claim under the Video Privacy Protection Act. *See Fan v.*
12 *NBA Props. Inc.*, No. 23-cv-05069, 2024 U.S. Dist. LEXIS 57205, at *5 (N.D. Cal. Mar. 26,
13 2024) (“The parties agree that the elements of both statutes are similar, except that the VPPA
14 imposes more stringent requirements for consent, including that the consent is “informed, written
15 consent . . . in a form distinct and separate from any form setting forth other legal or financial
16 obligations of the consumer.”). In addition, the Northern District of Texas is familiar with
17 California’s Unfair Competition Law (Cal. Bus. & Prof. Code § 17200, *et seq.*). *See, e.g., PHP*
18 *Agency, Inc. v. Martinez*, No. 21-cv-00418, 2022 U.S. Dist. LEXIS 174572, at *5 (N.D. Tex.
19 Sept. 27, 2022) (addressing claims under California’s Unfair Competition Law).

20 16. On October 25, 2024, the Parties filed a stipulation extending the time for
21 Filmsupply to answer, move, or otherwise plead in response to the Complaint from October 28,
22 2024 until November 27, 2024. ECF No. 12. The extension for an additional forty-five (45) days,
23 until January 11, 2025, is not for the purpose of delay, but to enable the parties to confer and the
24 case to be transferred.

25 17. This Stipulation is submitted solely for the purpose of this Stipulated Motion to
26 Transfer Venue and without prejudice to any Party’s claims or defenses in this case.

27 Accordingly, for the foregoing reasons, the Parties stipulate to extend Filmsupply’s
28 responsive pleading deadline forty-five (45) days until January 11, 2025 and to transfer this action

1 to the Northern District of Texas. A proposed form of Order is filed with this Stipulation for the
2 Court's convenience.

3 IT IS SO STIPULATED on this 20th day of November 2024.

4 **MILBERG COLEMAN BRYSON**
5 **PHILLIPS GROSSMAN, PLLC**

TROUTMAN PEPPER HAMILTON
SANDERS LLP

6 By: s/John J. Nelson

By: s/Ronald I. Raether, Jr.

7 John J. Nelson, Esq.
8 MILBERG COLEMAN BRYSON
9 PHILLIPS GROSSMAN, PLLC
402 W. Broadway, Suite 1760
10 San Diego, CA 92101
Telephone: (858) 209-6941
11 Email: jnelson@milberg.com

Ronald I. Raether, Jr., Esq.
TROUTMAN PEPPER HAMILTON
SANDERS LLP
100 Spectrum Center Drive, Suite 1500
Irvine, California 92618
Telephone: 949.622.2722
E-mail: ron.raether@troutman.com

Attorneys for Defendant Filmsupply, LLC

12 **HAMMOND LAW, PC**

13 By: s/Julian Hammond

14 Julian Hammond, Esq.
15 1201 Pacific Ave., Suite 600
Tacoma, WA 98402
16 Telephone: 310-601-6766
Email: jhammond@hammondlawpc.com

17 *Attorneys for Plaintiff Jonathan Trimboli*

18
19
20 **L.R. 5-1(i)(3) Attestation**

21
22 The undersigned hereby attests that each of the other Signatories hereto have concurred in
23 the filing of this document. All necessary records supporting this concurrence have been
24 maintained, as required by the Local Rules.

25 By: s/ Ronald I. Raether, Jr.

26 Ronald I. Raether, Jr., Esq.

1
2
3
4
5
6
7
8
9
10
11
12
13

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Case No. 3:24-cv-06752-JD

(Assigned to the Honorable James Donato)

JONATHAN TRIMBOLI,

Plaintiff,

v.

FILMSUPPLY, LLC, a Texas Limited
Liability Company

Defendant.

**ORDER GRANTING STIPULATED
MOTION TO TRANSFER VENUE TO
THE NORTHERN DISTRICT OF TEXAS
AND TO EXTEND THE DEADLINE TO
ANSWER, MOVE, OR OTHERWISE
PLEAD**

Complaint served: September 26, 2024

Current response date: November 27, 2024

New response date: January 11, 2025

14 Before the Court is the Parties' Stipulated Motion to Transfer Venue to the Northern
15 District of Texas and to Extend the Deadline to Answer, Move, or Otherwise Plead in Response
16 to the Complaint. The undersigned Parties hereto have consented to transfer venue to the
17 Northern District of Texas and stipulated that the transfer will enhance the convenience of the
18 parties and witnesses and is in the interest of justice. The Parties also agree to extend the time for
19 Defendant to answer, move, or otherwise plead in response to the Complaint from November 27,
20 2024 to January 11, 2025.

21 Having considered the Stipulated Motion and for good cause appearing, the Court hereby
22 **ORDERS** as follows:

- 23 1) The Stipulated Motion to Transfer Venue to the Northern District of Texas and to
24 Extend the Deadline to Answer, Move, or Otherwise Plead in Response to the
25 Complaint is **GRANTED**.
- 26 2) The Clerk is directed to **TRANSFER** this case to the United States District Court for
27 the Northern District of Texas.
- 28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3) Defendant's responsive pleading deadline is extended forty-five (45) days up to and including January 11, 2025.

Upon transfer, the Clerk shall CLOSE this case.

SO ORDERED this 25th day of November, 2024

BY THE COURT



Hon. James Donato
United States District Judge