

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

3  
4 STEPHEN ECHOLS,

No. C 12-1581 CW

5                                    Plaintiff,

ORDER TRANSFERRING  
CASE TO THE  
CENTRAL DISTRICT  
OF CALIFORNIA

6                                    v.

7 MORPHO DETECTION, INC.; UNITED  
8 STATES DEPARTMENT OF HOMELAND  
9 SECURITY; TRANSPORTATION SECURITY  
10 AGENCY; and JANET NAPOLITANO, in  
her official capacity as  
Secretary of Homeland Security,

11                                    Defendants.

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13                                    On April 11, 2013, the Court informed the parties that it was  
14 "considering whether to transfer the case on its own motion to  
15 Plaintiff's home forum, the Central District of California," and  
16 directed the parties to "include their views on transfer in their  
17 joint case management statement," if no motion or stipulation to  
18 transfer was filed before their joint statement was due. Docket  
19 No. 48, 14-15. The parties have since filed their joint case  
20 management statement addressing transfer. Having considered the  
21 parties' statement and the record of this case, the Court now  
22 finds good cause to transfer this case to the United States  
23 District Court for the Central District of California pursuant to  
24 28 U.S.C. § 1404(a).

25                                    As explained in greater detail in the Court's April 11, 2013  
26 order, in this action, Plaintiff brings claims against Defendants  
27 related to Federal Defendants' finding that he was ineligible to  
28 work on certain federal contracts because of his failed background

1 check and Morpho's subsequent termination of him. Plaintiff  
2 sought leave to amend his pleading to assert a Privacy Act claim  
3 against Federal Defendants, which the Court denied because venue  
4 for that claim is not proper in this district. Docket No. 48, 11-  
5 13. In the joint case management statement, Plaintiff represents  
6 that he intends to re-assert his Privacy Act claim in a proper  
7 district, which he identifies as the Central District of  
8 California, and that he would like to transfer this case to that  
9 venue, so that his claims can proceed together. Docket No. 49, 4,  
10 6. Federal Defendants also state that they would like the  
11 surviving claim against them under the Freedom of Information Act  
12 (FOIA) to be transferred to the District Court for the Central  
13 District of California, where they believe that "venue would be  
14 proper." Id. at 3. Despite the Court's invitation to set forth  
15 its views on transfer in the case management statement, Morpho has  
16 not expressed any opposition to transfer of the case to the  
17 Central District of California.

18 Under 28 U.S.C. § 1404(a), a district court may transfer a  
19 civil case if the court determines that the action "might have  
20 been brought" in the transferee court, and the convenience of the  
21 parties and witnesses in the interests of justice favor transfer.  
22 Hatch v. Reliance Ins. Co., 758 F.2d 409, 414 (9th Cir. 1985). If  
23 the court finds that the first prong of the § 1404(a) analysis is  
24 satisfied, it has discretion to engage in an "individualized,  
25 case-by-case consideration of convenience and fairness." Jones v.  
26 GNC Franchising, Inc., 211 F.3d 495, 498 (9th Cir. 2000) (quoting  
27 Stewart Org. v. Ricoh Corp., 487 U.S. 22, 29 (1988)). A court may  
28 transfer a case sua sponte. See Muldoon v. Tropitone Furniture

1 Co., 1 F.3d 964, 966 (9th Cir. 1993); Washington Pub. Util. Group  
2 v. United States Dist. Court for Western Dist., 843 F.2d 319, 326  
3 (9th Cir. 1987).

4 As an initial matter, the Court finds that this action could  
5 have been brought in the Central District of California. This has  
6 not been disputed by any party. Venue is proper in that district  
7 because a substantial part of the events or omissions giving rise  
8 to the claims in this suit took place within that district, which  
9 is where Plaintiff was employed by and terminated by Morpho and  
10 where the alleged identity theft took place. See 1AC ¶¶ 2, 8 &  
11 Exs. 1 & 2. Further, Plaintiff resides in that district. See 5  
12 U.S.C. § 552(a)(4)(B) (providing that, among others, "the district  
13 court of the United States in the district in which the  
14 complainant resides" is a proper venue for FOIA claims). Finally,  
15 based on Plaintiff's allegations, it appears that all Defendants  
16 are subject to personal jurisdiction in the Central District.

17 The Court also concludes that the interests of fairness and  
18 convenience strongly favor transfer. Although Plaintiff's  
19 original choice of forum is generally given considerable weight,  
20 his choice is less important where, as here, it is neither  
21 Plaintiff's home forum nor where the operative events took place.  
22 See, e.g., Emplrs Mut. Cas. Co. v. Bartile Roofs, Inc., 618 F.3d  
23 1153, 1168 (10th Cir. 2010) ("The plaintiff's choice of forum  
24 receives less deference . . . if the plaintiff does not reside in  
25 the district" or "where the facts giving rise to the lawsuit have  
26 no material relation or significant connection to the plaintiff's  
27 chosen forum.") (internal quotation marks and citations omitted).  
28 Further, Plaintiff supports transfer. In addition, witnesses and

1 physical evidence are more likely to be found in that district.  
2 Finally, transfer would allow all of Plaintiff's claims to proceed  
3 together, thereby conserving the resources of the parties, the  
4 judiciary and witnesses who may otherwise be called in multiple  
5 courts.

6 Accordingly, the Court TRANSFERS this action on its own  
7 motion to the United States District Court for the Central  
8 District of California, Western Division. The Court DENIES  
9 Plaintiff's renewed request in the case management statement for  
10 leave to amend to assert a Privacy Act claim because, as explained  
11 in the April 11, 2013 order, venue in this district is improper.<sup>1</sup>  
12 Plaintiff's request otherwise appears proper, except against  
13 Secretary Napolitano, and the denial is without prejudice to  
14 Plaintiff renewing his request before the Central District of  
15 California court.

16 The parties may proceed with discovery at this time and  
17 should seek resolution of any discovery disputes, including the  
18 appropriate scope of discovery from the Federal Defendants, before  
19 the Central District of California court.

20 The Court requests that the assigned judge in the Central  
21 District of California refer the parties for a settlement  
22 conference with a magistrate judge, to be held as soon as  
23 practicable.


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25 <sup>1</sup> Plaintiff represents that his proposed second amended  
26 complaint is attached to the case management statement as Exhibit  
27 1. However, no exhibits were filed with the statement. The Court  
28 assumes for the purposes of this order that Plaintiff sought to  
assert the same Privacy Act claim that was contained in the  
proposed second amended complaint filed with Plaintiff's motion  
for leave to amend his pleadings. See Docket No. 42-1.

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Accordingly, pursuant to 28 U.S.C. § 1404(a), and in the interest of justice, the Clerk of the Court is ordered to TRANSFER this action forthwith to the United States District Court for the Central District of California, Western Division.

IT IS SO ORDERED.

Dated: 5/1/2013

  
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CLAUDIA WILKEN  
United States District Judge