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

HEARTLAND PAYMENT SYSTEMS, INC.,

Plaintiff,

v.

MERCURY PAYMENT SYSTEMS, LLC,

Defendant.

No. C 14-0437 CW

ORDER DENYING  
MOTION TO TRANSFER

(Docket No. 19)

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Plaintiff Heartland Payment Systems (Heartland) asserts various unfair business practice claims against Defendant Mercury Payment Systems (Mercury). Mercury moves to transfer the case to the District of Colorado under 28 U.S.C. § 1404(a) (Docket No. 19). Heartland opposes. Having considered the papers, the Court DENIES the motion to transfer.

BACKGROUND

On January 29, 2014, Heartland, a New Jersey-based company incorporated in Delaware, filed a complaint against Mercury, a Colorado-based company incorporated in Delaware, alleging various unfair business practices claims. The complaint was brought in the Northern District of California.

Both parties are payment processors who provide businesses, known as merchants, point-of-sale (POS) systems. Compl. ¶ 11. POS systems enable merchants to accept credit cards and debit cards. Id. at ¶ 9. Through POS systems, banks and credit card brands are able to receive their fees, merchants are able to

1 receive the proceeds from the sale, and consumers have their  
2 accounts charged. Id.

3       The complaint alleges that Mercury engages in unfair business  
4 practices in violation of federal and California law. Both  
5 companies use, although not exclusively, an “interchange-plus  
6 pricing model.” Id. According to this model, banks and credit  
7 card brands charge a fee, typically as a percentage of the  
8 transaction plus a per-transaction fee. Id. at ¶ 16. POS systems  
9 providers then charge an additional fee to the merchants as the  
10 cost for being the intermediary between the banks, credit card  
11 brands and the merchants. Id. The interchange fee is that which  
12 is charged by the banks and credit card brands, and is not  
13 controlled by the POS systems providers. Id. The “plus” fee is  
14 controlled by the POS system providers. Id.

15       Heartland alleges that Mercury deceptively inflates the  
16 interchange fee when presenting its pricing and billing to  
17 merchants and prospective merchants. Id. Rather than disclosing  
18 an increase in the “plus” fee, Heartland alleges that Mercury  
19 instead represents that any increase in the interchange-plus fee  
20 is due to the banks and credit card brands increasing the  
21 interchange fee. Id.

22       Heartland’s claims center on how Mercury prices and bills its  
23 services to merchants, as well as how it advertises its services.  
24 Id. at ¶¶ 18-38. Heartland asserts five causes of action against  
25 Mercury: (1) false advertising in violation of 15 U.S.C.  
26 § 1125(a)(1)(B) (Lanham Act); (2) unfair competition in violation  
27 of California’s Unfair Competition Law, Business and Professions  
28 Code section 17000 et seq. (UCL); (3) false advertising in

1 violation of California Business and Professions Code section  
2 17500 et seq.; (4) intentional interference with contractual  
3 relations; and (5) intentional interference with prospective  
4 economic advantage.

5 LEGAL STANDARD

6 "For the convenience of parties and witnesses, in the  
7 interest of justice, a district court may transfer any civil  
8 action to any other district or division where it might have been  
9 brought or to any district or division to which all parties have  
10 consented." 28 U.S.C. § 1404(a). "Under § 1404(a), the district  
11 court has discretion to adjudicate motions for transfer according  
12 to an individualized, case-by-case consideration of convenience  
13 and fairness. A motion to transfer venue under § 1404(a) requires  
14 the court to weigh multiple factors in its determination whether  
15 transfer is appropriate in a particular case." Jones v. GNC  
16 Franchising, Inc., 211 F.3d 495, 498 (9th Cir. 2000). "To support  
17 a motion for transfer, the moving party must establish: (1) that  
18 venue is proper in the transferor district; (2) that the  
19 transferee district is one where the action might have been  
20 brought; and (3) that the transfer will serve the convenience of  
21 the parties and witnesses and will promote the interest of  
22 justice." Reflex Packaging, Inc. v. Audio Video Color Corp., 2013  
23 WL 5568345, at \*2 (N.D. Cal.) (citations omitted).

24 The Ninth Circuit considers the following factors to  
25 determine whether to transfer venue: "(1) plaintiff's choice of  
26 forum, (2) convenience of the parties, (3) convenience of the  
27 witnesses, (4) ease of access to the evidence, (5) familiarity of  
28 each forum with the applicable law, (6) feasibility of

1 consolidation with other claims, (7) any local interest in the  
2 controversy, and (8) the relative court congestion and time of  
3 trial in each forum." Id. (citing Jones, 211 F.3d at 498-99.)  
4 "The burden is on the defendant to show that, of the relevant  
5 factors, the balance of convenience weighs in favor of transfer to  
6 another district." TransPerfect Global, Inc. v. Motionpoint  
7 Corp., 2010 WL 3619565, at \*2 (N.D. Cal.) (citing Commodity  
8 Futures Trading Comm'n v. Savage, 611 F.2d 270, 279 (9th Cir.  
9 1979)).

10 ANALYSIS

11 Mercury argues that the District of Colorado is a proper  
12 venue, that convenience factors overwhelmingly favor the transfer  
13 and that the interests of justice favor the transfer to discourage  
14 forum-shopping.

15 I. Proper Venue

16 As an initial matter, the Court finds that venue is proper  
17 either in this district or in the District of Colorado. Both  
18 districts have personal jurisdiction over the parties. The  
19 parties agree that they both have sufficient contacts in both  
20 states, and that those contacts satisfy the personal jurisdiction  
21 "minimum contacts" analysis. See Int'l Shoe Co. v. State of  
22 Wash., Office of Unemployment Comp. & Placement, 326 U.S. 310, 316  
23 (1945). In addition, the Court finds that courts in both venues  
24 have subject matter jurisdiction over this case, both diversity  
25 jurisdiction, 28 U.S.C. § 1332, and federal question jurisdiction,  
26 28 U.S.C. § 1331. Given that both fora have subject matter  
27 jurisdiction pursuant to 28 U.S.C. § 1331, the Court finds that  
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1 courts in both venues have supplemental jurisdiction over the  
2 state claims. 28 U.S.C. § 1367.

3 II. Convenience Factors

4 "Once venue is determined to be proper in both districts, the  
5 Court evaluates which venue is more convenient to the parties and  
6 the witnesses." Reflex Packaging, 2103 WL 5568345, at \*3.

7 Mercury argues that "convenience factors overwhelmingly favor  
8 transfer," because "the alleged acts giving rise to the claims  
9 occurred in Colorado, the majority of witnesses (party and  
10 nonparty) reside in Colorado, and virtually all documentary  
11 evidence is located in Colorado." Docket No. 19 at 8. Heartland  
12 counters that this district is the most convenient venue because  
13 it is its preferred forum, many of the acts in question occurred  
14 in California, and many third-party witnesses and evidence is  
15 located here.

16 A. Heartland's choice of forum

17 The plaintiff's choice of forum is generally given deference.  
18 Jones, 211 F.3d at 498-99. Mercury alleges that Heartland's  
19 choice of forum should be given little weight because "the  
20 operative facts giving rise to this complaint occurred in  
21 Colorado." Docket No. 19 at 14. "If the operative facts have not  
22 occurred within the forum of original selection and that forum has  
23 no particular interest in the parties or the subject matter, the  
24 plaintiff's choice is entitled only to minimal consideration."  
25 Pac. Car & Foundry Co. v. Pence, 403 F.2d 949, 954 (9th Cir.  
26 1968).

27 The operative acts alleged in the complaint occurred in  
28 California. The crux of Heartland's suit is that Mercury engaged

1 in deceptive business practices; because California accounts for a  
2 sizable percentage of each entity's business, Heartland alleges  
3 that much of the deceptive practices occurred in California.  
4 Furthermore, Heartland provides, with specificity, the names of  
5 California merchants Mercury allegedly deceived. Thus, this  
6 factor weighs against transfer.

7 B. Convenience of the parties

8 Mercury argues that it will be inconvenient to litigate this  
9 matter in this district. Mercury is headquartered in Colorado,  
10 and has no offices in California. Heartland has, however, two  
11 offices in California and 181 employees in the state. It has only  
12 one Colorado office. Transferring this case to the District of  
13 Colorado would shift the inconvenience of one party to the other  
14 party. See STX, Inc. v. Trik Stik, Inc., 708 F. Supp. 1551, 1556  
15 (N.D. Cal. 1988) ("If the gain of convenience to one party is  
16 offset by the added inconvenience to the other, the courts have  
17 denied transfer of the action.") Thus, this factor weighs against  
18 transfer.

19 C. Convenience to witnesses

20 1. Party witnesses

21 The convenience of witnesses is often the most important  
22 factor in deciding whether to transfer an action. Getz v. Boeing  
23 Co., 547 F. Supp. 2d 1080, 1083 (N.D. Cal. 2008). The convenience  
24 of witnesses includes "a separate but related concern, the  
25 availability of compulsory process to bring unwilling witnesses  
26 live before the jury." Brackett v. Hilton Hotels Corp., 619 F.  
27 Supp. 2d 820, 820 (N.D. Cal. 2008). The Court, however, discounts  
28 inconvenience to the parties' employees, whom the parties can

1 compel to testify. See STX, Inc., 708 F. Supp. at 1556.

2 Mercury argues that it would be inconvenient for it to  
3 litigate in this district because "key party . . . witnesses in  
4 this case reside in Colorado." Docket No. 19 at 9. Specifically,  
5 it argues that its "employees . . . will be the key witnesses in  
6 this case," and that "virtually all of Mercury's current employees  
7 live and work in Colorado." Id. Heartland has, however, 181  
8 employees residing in California, including its Executive Director  
9 of Business Development, who will likely be called to testify.  
10 Given that the Court discounts the inconvenience to Mercury's  
11 employees, this factor weighs against transfer.

12 2. Non-party witnesses

13 As stated above, the convenience of witnesses is often the  
14 most important factor in deciding whether to transfer an action.  
15 Mercury points to its former employees, including former sales  
16 executives, as some of the "key witnesses" in this case. Mercury  
17 rightly points out that Colorado non-party witnesses cannot be  
18 compelled to appear in this Court. Fed. R. Civ. P. 45(c). It has  
19 not stated, however, why the former employees would have  
20 information its current employees lack. In other words, Mercury  
21 has not shown how the inability to compel the non-party witnesses  
22 would lead to unfair prejudice.

23 On the other hand, Heartland has identified several  
24 California witnesses, including merchants, who can be compelled to  
25 appear in this Court. Given that Heartland's allegations arise  
26 out of events that occurred in California, and that the deceptive  
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1 practices have California "victims" whom Heartland will likely  
2 call to testify, California is more convenient to potential non-  
3 party witnesses. Thus, this factor weighs against transfer.

4 D. Access to evidence

5 The "costs of litigation can . . . be substantially lessened  
6 if the venue is in the district in which most of the documentary  
7 evidence is stored." Park v. Dole Fresh Vegetables, Inc., 964 F.  
8 Supp. 2d 1088, 1095 (N.D. Cal. 2013). The weight of this factor  
9 has decreased, however, as technological advances in document  
10 storage and retrieval have greatly reduced the burden of  
11 transporting documents between districts. Brackett, 619 F. Supp.  
12 2d at 820; David v. Alphin, 2007 WL 39400, at \*3 (N.D. Cal.)  
13 ("with technological advances in document storage and retrieval,  
14 transporting documents does not generally create a burden").

15 Mercury claims that "the sources of proof are almost  
16 exclusively located in Colorado." Docket No. 19 at 12. These  
17 sources include "advertising and promotional materials," its  
18 website and social media communications. Id. Mercury admits,  
19 however, that key evidence -- "monthly billing statements" -- is  
20 printed in Michigan. Id. Even assuming those monthly statements  
21 are not electronically stored (which is unlikely), the cost of  
22 transmitting that evidence from Michigan to Colorado will be  
23 equivalent to the cost of transmitting it from Michigan to  
24 California. Thus, this factor is neutral.

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1 E. Forum's familiarity with the applicable law

2 Four of Heartland's five causes of action arise out of  
3 alleged violations of California law. While Mercury rightly  
4 states that the District of Colorado would have jurisdiction over  
5 Heartland's state claims and would apply California law, it is  
6 clear that this Court is more familiar with California law than  
7 any non-California district court. See In re Ferrero Litig., 768  
8 F. Supp. 2d 1074, 1081 (S.D. Cal. 2011) ("A California district  
9 court is more familiar with California law than district courts in  
10 other states"). Thus, this factor weighs against transfer.

11 F. Feasibility of consolidation

12 There are no related cases pending in the federal District of  
13 Colorado. Thus, the factor is neutral.

14 G. Local interest in the controversy

15 This Court has held that when the case implicates the rights  
16 of a state's residents, a court in that state has a greater  
17 interest in the dispute than a court in another state.  
18 Transperfect, 2010 WL 36195565, at \*4. Here, Heartland has  
19 alleged that the rights of California residents are implicated, as  
20 they have been the victims of unfair and deceptive business  
21 practices. Mercury does not dispute that the rights of California  
22 residents are implicated, nor does it assert that the rights of  
23 Colorado residents are at stake. Thus, this factor weighs against  
24 transfer.

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1 H. Relative court congestion

2 Heartland alleges that the median time from filing a  
3 complaint to trial is similar in both districts (24.6 months in  
4 this district, and 24.4 months in the District of Colorado.) The  
5 backlogs are not significantly disproportionate; thus, this factor  
6 is neutral.

7 III. Forum-Shopping

8 "Evidence of forum-shopping by a plaintiff supports a  
9 defendant's motion to transfer venue." Lucas v. Daiichi Sankyo  
10 Co., 2011 WL 2020443, at \*4 (N.D. Cal.).

11 Mercury argues that "the interests of justice favor transfer  
12 to discourage forum-shopping." Docket No. 19 at 15. It asserts  
13 that the parties and the subject matter "are disconnected from  
14 California" and "have nothing to do with California." Id.  
15 Heartland has alleged, however, that many of the operative acts  
16 occurred in California, and that both parties have contacts in the  
17 state. Courts have found evidence of forum shopping when a party  
18 does not reside in the district, see id., or when, in a class  
19 action, the class members reside outside of the state, see Wilson  
20 v. Walgreen Co., 2011 WL 4345079, at \*3 (N.D. Cal.). While  
21 Heartland does not reside in this district, it does have  
22 significant contacts in the district due to its California office  
23 and employees. Thus, the Court does not find sufficient evidence  
24 to support an inference that Heartland is forum-shopping.  
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1 IV. Balancing of Factors

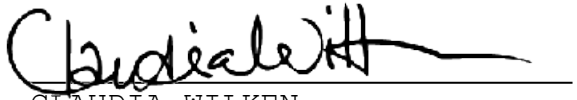
2 All of the factors weigh against transfer or are neutral.  
3 Thus, Mercury has failed to show that the balance of  
4 inconveniences favors transfer to the District of Colorado.

5 CONCLUSION

6 For the foregoing reasons, Mercury's motion to transfer  
7 (Docket No. 19) is DENIED.

8 IT IS SO ORDERED.

9 Dated: November 4, 2014

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11 CLAUDIA WILKEN  
12 United States District Judge

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