

1
2
3
4
5 **UNITED STATES DISTRICT COURT**
6 **NORTHERN DISTRICT OF CALIFORNIA**

7
8 **PHYSICIANS HEALTHSOURCE, INC.,**

9 Plaintiff,

10 vs.

11 **TRANSCAPT PHARMA, INC., PURDUE**
12 **PHARMA, L.P., ET. AL.,**

13 Defendants.

Case No.: 13-CV-5490 YGR

**ORDER GRANTING MOTION OF DEFENDANTS
TO TRANSFER CASE PURSUANT TO 28 U.S.C.
§ 1404(A)**

14
15 Defendants Transcept Pharma, Inc., *et al.* (Defendants) filed their Motion to Transfer the
16 instant action. (Dkt. No. 26.) Defendants contend that a substantially similar action has been
17 pending for over a year in the District of Connecticut, entitled *Physicians Healthsource, Inc. v.*
18 *Purdue Pharma, L.P., et al*, No. 12-cv-1208-SRU, and that the factors to be considered in a transfer
19 under 28 U.S.C. section 1404(a) favor transfer to that district. Plaintiff Physicians Healthsource,
20 Inc. filed its opposition on March 10, 2014. (Dkt. No. 31.)

21 Having carefully considered the papers submitted and the pleadings in this action, and the
22 opposition to the motion by Plaintiff, and for the reasons set forth below, the Court hereby **GRANTS**
23 the Motion to Transfer.¹

24
25 ¹ In its Order to Show Cause (“OSC”), issued April 10, 2014, the Court set forth a number
26 of unsupported arguments made in Plaintiff’s opposition brief filed March 10, 2014 (Dkt. No. 31).
27 In its response to the OSC, filed April 15, 2014 (Dkt. No. 38), Plaintiff conceded that it had
28 mistakenly copied arguments made in connection with a different motion in a different case. The
Court vacated the OSC and declined to order sanctions based upon Plaintiff’s counsel’s forthright
acknowledgment of, and apology for, the mistake. Plaintiff’s counsel is cautioned to exercise
greater oversight in the filings it submits to this Court.

1 **I. BACKGROUND**

2 This case arises from an alleged violation of the Telephone Consumer Protection Act
3 (“TCPA”) 47 U.S.C. 227(b)(1), which makes it is unlawful to send an advertisement to someone’s
4 fax machine without the recipient’s express permission. Plaintiff alleges that, on October 15 and
5 24, 2012, it received an advertisement via its facsimile machine for various products and services
6 offered by Defendants. Defendants had not sought or obtained Plaintiff’s permission. Plaintiff
7 brought this action against Defendants to recover statutory damages. Plaintiff asserted its own
8 individual claim and also asserted a putative class consisting of other recipients of Defendants’
9 unlawful advertisements.

10 The instant action was preceded by a similar case against a number of the Defendants,
11 involving a similar but separate advertisement, filed in federal court in a different state, *i.e.*
12 *Physicians Healthsource, Inc., v. Purdue Pharma L.P.*, Case No. 3:12-cv-1208 in the U.S. District
13 Court for the District of Connecticut. The District of Connecticut case has been pending for over a
14 year. The court there already denied without prejudice Plaintiff’s early motion for class
15 certification.

16 **II. DISCUSSION**

17 Pursuant to 28 U.S.C. section 1404(a), the Court has discretion to transfer this matter to the
18 District of Connecticut where it could have been brought and where Defendants all consent to its
19 transfer. A district court has discretion to transfer matters pursuant to Section 1404(a) in order to
20 serve the “convenience of the parties and witnesses” or to promote “the interest of justice.” *Id.*
21 Courts make this determination of whether to transfer venue by considering, on a case-by-case
22 basis, factors of convenience and fairness. *See Hoffman v. Blaski*, 363 U.S. 335, 343–44, 80 S.Ct.
23 1084, 4 L.Ed.2d 1254 (1960); *see Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th
24 Cir.2000). Among the factors a court may consider are: the state that is most familiar with the
25 governing law, the plaintiff’s choice of forum, the respective parties’ contacts with the forum, the
26 contacts relating to the plaintiff’s cause of action in the chosen forum, the differences in the costs of
27 litigation in the two forums, and the ease of access to sources of proof. *Jones*, 211 F.3d at 498.

28

1 Having considered where the action could have been brought and the relevant factors, the
2 Court concludes that the action should be transferred to the District of Connecticut. First, venue
3 appears to be proper in Connecticut. Under 28 U.S.C. section 1391(b)(2), venue is proper in a
4 judicial district in which “a substantial part of the events or omissions giving rise to the claim
5 occurred.” 28 U.S.C. § 1391(b)(2). Here, a substantial part of the alleged conduct giving rise to
6 claim occurred in the District of Connecticut. The events giving rise to the claim are receipt of a
7 fax in Ohio from “defendants,” and the motion provides evidence that the employees involved in
8 marketing operations and policies, including the use of fax marketing, work in Stamford,
9 Connecticut. Plaintiff offers no evidence to the contrary in its opposition.

10 Next, the Court finds that the convenience of the parties and the witnesses favors transfer.
11 Plaintiff is not located in California, and has no connections to this forum. Plaintiff is an Ohio
12 corporation with a principal place of business in Ohio and no significant contacts with this forum.
13 Plaintiff previously filed a similar case under the TCPA in the District of Connecticut against three
14 of the same defendants here: Purdue Pharma LP, Purdue Pharma Inc., and Purdue Products LP
15 (collectively, “Purdue Defendants”). The Purdue Defendants are located in Connecticut, and
16 Defendant Logistic Innovations, LLC is located in New York. Purdue’s headquarters are located in
17 Stamford, Connecticut. Connecticut is also more convenient for Defendant Logistic because its
18 principal place of business is in New York City. Individuals that Purdue expects to testify
19 regarding the relevant allegations of this case all work in the District of Connecticut. Moreover, the
20 motion establishes that much of the evidence in this matter, concerning Purdue’s marketing
21 operations, is located at Purdue’s headquarters in Stamford, Connecticut. Other relevant witnesses
22 and relevant documents from Defendant Logistic would also likely be located on the East Coast,
23 given that its headquarters is in New York. The only party to this case that has any significant
24 connection to the Northern District of California is Defendant Transcept. Although Transcept
25 developed the drug that was the subject matter of the faxes at issue, Defendants have submitted
26 evidence indicating that Transcept exercises little to no control or monitoring over the marketing
27 strategy for that drug and does not control the use of marketing faxes. Thus, it appears that there
28 will be few, if any, Transcept witnesses with information relevant to the litigation.

1 Turning to the interests of justice factors, the Court finds that transfer would avoid
2 duplicative litigation, ensure judicial economy, and prevent the waste of time and money. The
3 court in the District of Connecticut case has spent significant time managing that case, and has
4 gained considerable familiarity with the law and subject matter relevant to this action as well.
5 Moreover, Plaintiff's "willfulness" claims alleged in the instant action are factually predicated on a
6 finding of liability in the Connecticut case (*see* Complaint ¶ 23), and therefore should be considered
7 by the same court.

8 Thus, the interests of judicial economy and efficiency, the convenience of the parties and
9 witnesses, and the interests of justice, all favor transfer of this matter to the District of Connecticut.²

10 **III. CONCLUSION**

11 Accordingly, Defendants' Motion to Transfer is **GRANTED**. This action is transferred to the
12 District of Connecticut.

13 This Order terminates Docket No. 26.

14 **IT IS SO ORDERED.**

15 Date: April 30, 2014



YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

16
17
18
19
20
21
22
23
24
25 _____
26 ² In its response to the OSC, Plaintiff conceded its errors as to all but one argument,
27 maintaining its contention that the subject advertisement was "likely planned and sent by
28 employees working at [Defendant and drug developer] Transcept's headquarters in Point
Richmond, California (Oppo. at 7:8-10). In its response to the OSC, Plaintiff softened that
argument to a "belie[f]" that "decisions regarding its advertising, marketing, and related faxing
originated or were approved" in Point Richmond (Response to OSC at 3:7-9). This "belief" is not
sufficient to tip the balance in favor of a California forum.