UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:19-cv-01542-SVW-PLA	Date	July 24, 2019
Title	*Miguel Porras v. Point Blank Enterprises, Inc.*		

JS-6

Present: The Honorable	STEPHEN V. WILSON, U.S. DISTRICT JUDGE

Paul M. Cruz	N/A
Deputy Clerk	Court Reporter / Recorder
Attorneys Present for Plaintiff:	Attorneys Present for Defendant:
N/A	N/A

Proceedings: ORDER GRANTING DEFENDANT'S MOTION TO TRANSFER [29]

On March 1, 2019, Plaintiff Miguel Porras filed a class action complaint against Defendant Point Blank Enterprises, Inc., alleging that certain bullet-resistant vests Defendant manufactures are defective. *See* Dkt. 1 ("Compl."). Plaintiff defines the class as encompassing all individuals and entities in California that purchased a defective vest from Defendant. *Id.* ¶ 157. Plaintiff brings five causes of action under California law against Defendant for (1) breach of express warranty, (2) breach of implied warranty, (3) false advertising under Cal. Bus. & Prof. Code §§ 17500 *et seq.*, (4) unfair competition under Cal. Bus. & Prof. Code §§ 17200 *et seq.*, and (5) fraudulent concealment. *See id.* ¶¶ 162-235.

On April 16, 2019, Defendant filed a motion to transfer this case to the Southern District of Florida, in light of a pending class action case brought under Florida law featuring substantially similar allegations. *See* Dkt. 29. For the reasons set forth below, the Court GRANTS Defendant's motion and transfers this action to the Southern District of Florida.

I. Factual Background

A. Plaintiff's Substantive Allegations

Defendant is a Florida-based manufacturer, seller, and distributor of bullet resistant vests. Compl. ¶¶ 1, 35. As Plaintiff alleges, bullet resistant vests typically contain a ballistic panel system and an outer garment that carries the ballistic panel system, which Plaintiff refers to as the "carrier." *Id.* ¶ 3. By contrast, Defendant manufactures four models of vests that contain a self-suspending ballistic system

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(the "SSBS"), which integrates the suspension function of the carrier into the ballistic panels themselves through the use of shoulder straps that "connect to a Velcro-like material sewn directly into the ballistic panels." *Id.* ¶ 5; *see also id.* ¶¶ 40-41 (describing the different models of SSBS vests manufactured by Defendant). Plaintiff elaborates that "Velcro-like half circle c-clamps" are sewn into the shoulder straps of the ballistic panels and connect the front ballistic panel to the back ballistic panel, together forming the overall ballistic panel system that suspends itself over the wearer's body. *Id.* ¶ 6. Because the ballistic panels already contain these Velcro-like shoulder straps, Defendant's SSBS vests feature a carrier that does not have its own shoulder straps or any other suspension system to hold the ballistic panels in place when worn. *Id.* ¶ 5. Plaintiff alleges that the SSBS is "identical or substantially the same" for each of the four models of Defendant's concealable vests, which is something that Defendant allegedly has represented to consumers via advertising as well. *See id.* ¶¶ 42, 44.

Plaintiff alleges generally that the SSBS in Defendant's vests "contains latent defects in material, workmanship, and design that result in the vests falling apart on officers in the line of duty and present a safety hazard." *Id.* ¶ 8. This includes the alleged "[s]ubstandard stitching of the c-clamps to the ballistic panels." *Id.* ¶¶ 8, 55. Due to these defects, Plaintiff alleges that the SSBS deteriorates each time it is "cycled," or engaged and disengaged, and that "[r]epeated disengagement of the SSBS straps from the c-clamps . . . rapidly accelerates the weakening of the SSBS closure." *Id.* ¶ 54. As a result of these alleged defects, Plaintiff alleges that the SSBS loses the ability to support the weight of the vest, "as rapidly as within a few months." *Id.* ¶ 8. Plaintiff also alleges that vest failure is particularly accelerated due to exposure of the SSBS to moisture, which is foreseeable in the line of duty. *Id.* ¶¶ 8, 54. Plaintiff alleges that, when Defendant's SSBS vests "unexpectedly fall apart," the SSBS separates from the carrier and "sinks down into the user's uniform," requiring the wearer to "stop whatever he or she is doing, find a safe place, remove their uniform and find some way to hold the vest in place other than the failed SSBS." *Id.* ¶ 9. Plaintiff alleges that because of the manufacturing and design of Defendant's SSBS vests, individual officers cannot simply remove the ballistic panels from an older carrier when the SSBS fails and place them into a new carrier, which is allegedly the typical outcome when the shoulder straps fail on an "industry-design" vest. *Id.* ¶¶ 7-8. Rather, Plaintiff suggests that Defendant's SSBS vests must be returned to the manufacturer for repairs. *See id.* ¶ 7.

Defendant allegedly provides a five-year express written warranty for the SSBS and the ballistic panel system and a two-year express written warranty for the carrier for each of its four models of SSBS concealable vests. *Id.* ¶ 39. These express warranties are sewn into Defendant's vests and are included in

Defendant's Care and Maintenance Manual. *Id.* ¶¶ 123-27.[1] Plaintiff further alleges that Defendant made express representations regarding the warranties in its marketing materials and other representations constituting an implied warranty that the SSBS vests would be free of defects. *Id.* ¶¶ 128-31.

In September 2014, Plaintiff purchased Defendant's PBBA Elite (AXII) model vest, featuring the SSBS, through an in-person meeting with one of Defendant's sales representatives. *Id.* ¶ 23. The vest was allegedly manufactured at Defendant's facility in Florida and then shipped to Plaintiff. *Id.* ¶ 30. Plaintiff alleges that he began to experience issues with the SSBS in his vest, specifically with the vest coming apart at the SSBS shoulder connection and falling down inside his uniform, approximately one year after his purchase. *Id.* ¶ 26. According to Plaintiff, when the vest malfunctions, he "has to stop what he is doing while on duty, find a safe place, remove his uniform" and try to reattach the SSBS shoulder connection. *Id.* Because the law enforcement agency employing Plaintiff has a mandatory wear policy, Plaintiff is required to wear a bullet resistant vest at all times during his shift. *Id.* ¶ 27. Plaintiff alleges that he has been "forced to use self-help measures" on his SSBS vest to keep it from "falling apart." *Id.*

Plaintiff alleges that he relied on representations in Defendant's marketing materials, including Defendant's website and product catalogue, prior to purchasing the vest. *Id.* ¶ 23; *see also id.* ¶¶ 46-47 (alleging comments from Defendant's marketing department confirming that Defendant's marketing materials are distributed nationwide, including California). These materials include statements that the SSBS prevents "the rolling or sagging of the ballistic panels inside the carrier," has a "five-year lifecycle," and makes for "easy doffing and donning" and "adjustment" as needed. *Id.* ¶ 23. Defendant's marketing materials do not disclose any defects or limitations with the SSBS used in Defendant's concealable vests, and Plaintiff alleges that he would not have purchased his vest if Defendant disclosed any of the problems with the SSBS. *Id.*

B. Procedural History

1. *The First Florida Action*

The instant action is not the first class action case filed against Defendant regarding defects with the SSBS vests. The first such case was brought in the Southern District of Florida on October 19, 2017.

[1] Plaintiff purported to attach the Care and Maintenance Manual as Exhibit C to the Complaint, but the document attached as Exhibit C appears to be an image from Defendant's website that lists the different models of concealable SSBS vests available for purchase. *See* Dkt. 1-3.

See Ohio State Troopers Ass'n, Inc. et al. v. Point Blank Enters., Inc., No. 0:17-cv-62051-UU (S.D. Fla.) (the "First Florida Action"). There, a combination of associational plaintiffs and individual plaintiffs sought to represent a class consisting of "[a]ll individuals and entities in the fifty United States and the District of Columbia that purchased and/or used new SSBS Vests from Defendant or one of Defendant's authorized distributors or sales representatives." *Ohio State Troopers Ass'n, Inc. v. Point Blank Enters., Inc.*, 347 F. Supp. 3d 1207, 1216 (S.D. Fla. 2018). The plaintiffs raised claims under Florida law for (1) breach of express warranty, (2) breach of the implied warranty of merchantability, (3) breach of the implied warranty of fitness, and (4) damages and injunctive relief under the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501 *et seq.* (the "FDUTPA"). *Id.*

On October 26, 2018, Judge Ursula Ungaro issued an order denying the plaintiffs' motion to certify the class in the First Florida Action. *Id.* at 1230-31. The court held that, pursuant to 11th Circuit precedent, the individual plaintiffs lacked standing to bring breach of warranty claims on behalf of class members who purchased all models of Defendant's vests alleged to be defective, because the individual plaintiffs only purchased two particular models of Defendant's vests and therefore did not purchase or use the other models of Defendant's vests at issue in the class action complaint. *Id.* at 1221-22. However, the court found that the individual plaintiffs maintained standing to bring their breach of warranty claims individually regarding the two models that they did purchase. *Id.* at 1222. The court also held that the associational plaintiffs did not have Article III standing to seek injunctive relief under the FDUTPA, because neither associational plaintiff alleged that it had purchased or used any of Defendant's vests. *Id.* at 1223-24. The court also found associational standing inapplicable, because the associational plaintiffs sought to represent a class beyond their associational members. *Id.* at 1224-25.

Because the plaintiffs lacked standing to bring their class action claims, the court dismissed those claims without prejudice and denied the plaintiffs' motion for class certification without prejudice. *Id.* at 1230. And, since the only remaining viable claims were state law claims from the named individual plaintiffs, the court found that subject matter jurisdiction was lacking and dismissed the action without prejudice. *Id.* at 1231-33. Although the court did not rule on the merits of whether the plaintiffs' proposed classes could be certified, the court explained in a footnote that the motion for class certification "appears to be deficient in other material ways," including the lack of clearly-defined classes, the improper attempt to amend the scope of the proposed class at the last minute to include both purchasers and users of Defendant's SSBS vests, and the absence of typicality of claims between the named representatives and the class action claims. *Id.* at 1232 n. 12.

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2. *The Second Florida Action*

On December 25, 2018, following dismissal of the First Florida Action, the same named individual and associational plaintiffs, along with two additional named individual plaintiffs, filed a new complaint in the Southern District of Florida, asserting substantially identical allegations and raising the same claims for breach of express and implied warranties and for violations of the FDUTPA. *See Ohio State Troopers Ass'n, Inc. et al. v. Point Blank Enters., Inc.*, No. 0:18-cv-63130-RAR (S.D. Fla.) (the "Second Florida Action"). In the Second Florida Action, the plaintiffs revised the definition of the putative class and the models of Defendant's SSBS vests at issue for their breach of warranty claims, which now encompassed "[a]ll individuals and entities in Florida, Georgia, Illinois, Indiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Texas, Virginia, and Washington that purchased Hi-Lite/Perform-X, Vision/Blue Steel or Elite model vest with a Self-Suspending Ballistic System from Defendant." Second Florida Action Dkt. 1 ¶ 162. The plaintiffs also revised their proposed class for their FDUTPA claims, which were brought on behalf of all individuals and entities in the fifty United States and the District of Columbia, except Alabama and California, that purchased a Hi-Lite/Perform-X, Vision/Blue Steel or Elite model SSBS vest from Defendant. *Id.*

After the complaint was filed in the Second Florida Action, the case was transferred to Judge Ungaro. Second Florida Action Dkt. 5. Defendant filed a motion to dismiss the plaintiffs' claims for lack of standing under Rule 12(b)(1) and to dismiss or strike the plaintiff's allegations as insufficient under Rule 23. *See* Second Florida Action Dkt. 19. Ultimately, the court again held that the named associational plaintiffs did not maintain associational standing to bring suit on behalf of the putative class for the FDUTPA claims for the same reasons as the court found standing to be lacking in the First Florida Action. *See* Second Florida Action Dkt. 53 at 18-20. On the other hand, the court held that each of the named individual plaintiffs except one maintained Article III standing to bring their FDUTPA claims. *Id.* at 14-15. The court also held that the individual plaintiffs had standing to sue on behalf of the putative class under the breach of warranty claims. *Id.* at 11-13. Therefore, the court denied Defendant's motion to strike or dismiss the plaintiffs' complaint under Rule 23 and permitted Defendant to raise the same arguments at the ensuing class certification stage. *Id.* at 21-22. The court then ordered Defendant to answer the plaintiff's complaint by July 1, 2019. *Id.* at 22; *see also* Second Florida Action Dkt. 60.

On June 20, 2019, the same day that Judge Ungaro issued the order denying Defendant's motion to dismiss the Second Florida Action, the Second Florida Action was reassigned from Judge Ungaro to Judge Rodolfo A. Ruiz. *See* Second Florida Action Dkt. 52. The case has since been transferred to Magistrate Judge Patrick M. Hunt for all further proceedings. *See* Second Florida Action Dkt. 62.

3. *The Instant Action*

On March 1, 2019, Plaintiff filed the instant class action complaint on March 1, 2019, just over two months after the filing of the Second Florida Action. *See* Dkt. 1. On April 16, 2019 Defendant filed a motion to transfer this action to the Southern District of Florida, arguing that this action is barred under the "first-to-file" rule and that, in the alternative, transfer would be in the interests of justice. *See* Dkt. 29. The same day, Defendant also filed a motion to strike Plaintiff's class allegations and to dismiss the case for lack of subject matter jurisdiction, on similar grounds as the motion filed in the Second Florida Action and in the court's order denying class certification in the First Florida Action. *See* Dkt. 30.

II. Analysis

A. First-to-File Rule

The "first-to-file" doctrine, also referred to as federal comity, allows a district court to "decline jurisdiction over an action when a complaint involving the same parties and issues has already been filed" in federal court. *Pacesetter Sys., Inc. v. Medtronic, Inc.*, 678 F.2d 93, 94-95 (9th Cir. 1982). The Ninth Circuit has cautioned that, because the doctrine seeks to promote judicial efficiency, it "should not be disregarded lightly." *Church of Scientology of Cal. v. U.S. Dep't of Army*, 611 F.2d 738, 750 (9th Cir. 1979), *overruled on other grounds by Animal Legal Def. Fund v. U.S. Food & Drug Admin.*, 836 F.3d 987 (9th Cir. 2016). In the absence of "compelling circumstances" that warrant an exception to the rule, the parties in the first-filed case "should be permitted to proceed without concern about a conflicting order being issued in the later-filed action." *Guthy-Renker Fitness, L.L.C. v. Icon Health & Fitness, Inc.*, 179 F.R.D. 264, 269 (C.D. Cal. 1998).

To determine whether the first-to-file doctrine applies, courts analyze the following factors: (1) the chronology of the filed actions, (2) the similar identity of the parties, and (3) the similarity of the issues involved. *Alltrade, Inc. v. Uniweld Prods., Inc.*, 946 F.2d 622, 625 (9th Cir. 1991). Where plaintiffs bring class action claims, in analyzing the identity of the plaintiffs, "courts look to the proposed classes rather than the named plaintiffs." *Priddy v. Lane Bryant, Inc.*, No. 08-06889 MMM (CWx), 2008 WL 11410109, at *6 (C.D. Cal. Nov. 24, 2008) (collecting cases); *see also Adoma v. Univ. of Phoenix, Inc.*, 711 F. Supp. 2d 1142, 1147 (E.D. Cal. 2010).

The parties and issues do not need to be identical across the two comparative actions; it is enough if there is "substantial similarity" between the two actions. *Kohn Law Grp., Inc. v. Auto Parts Mfg. Miss., Inc.*, 787 F.3d 1237, 1240 (9th Cir. 2015); *see also Guthy-Renker Fitness*, 179 F.R.D. at 270 (analyzing the parties and issues for "sufficient similarity"). In determining similarity, courts consider whether the two actions are "so duplicative or involve substantially similar issues that one court should decide the issues." *Intersearch Worldwide, Ltd. v. Intersearch Grp., Inc.*, 544 F. Supp. 2d 949, 959-60 (N.D. Cal. 2008).

Here, the parties do not contest that the Second Florida Action was filed before the instant action, and therefore chronology is not at issue. Furthermore, in both the Second Florida Action and the instant action, the only defendant is Point Blank Enterprises, Inc., meaning that the identity of the defendants is identical between the two actions.[2]

However, the putative classes in the Second Florida Action and the instant action are mutually exclusive. The putative class for the plaintiffs' breach of warranty claims in the Second Florida Action does not include individuals in California who have purchased Defendant's SSBS vests and therefore does not include Plaintiff. *See* Second Florida Action Dkt. 1 ¶ 162. The same is true for the putative class in the Second Florida Action for the FDUTPA claims for false advertising, which *expressly* excludes individuals in California. *See id.* Because Plaintiff, and the class of California purchasers Plaintiff seeks to represent, are not a part of the Second Florida Action, the two putative classes are mutually exclusive and share no similarity or identicality as required for the first-to-file rule to apply. *See, e.g.*, *Gardner v. GC Servs., LP*, No. 10-CV-997-IEG (CAB), 2010 WL 2721271, at *5 (S.D. Cal. July 6, 2010) (holding that the first-to-file rule did not apply because the earlier filed action specifically excluded California employees from the putative class and the later filed action sought to represent only California employees); *Poertner v. Gillette Co.*, No. 6:12-cv-803-Orl-31DAB, 2012 WL 12898875, at *2 (M.D. Fla. July 9, 2012) (finding no overlap in two class actions against the same defendant because the earlier filed case comprised only of California consumers and the later filed case comprised only of Florida consumers).

[2] Because the First Florida Action was dismissed for lack of subject matter jurisdiction, it is no longer pending and is therefore irrelevant to the Court's analysis regarding the first-to-file rule. *See Wallerstein v. Dole Fresh Vegetables, Inc.*, 967 F. Supp. 2d 1289, 1293-94 (N.D. Cal. 2013) (noting that actions voluntarily dismissed without prejudice "are no longer pending and are therefore moot for the purposes of the first-to-file rule").

Because the putative classes in the instant action and the Second Florida Action are mutually exclusive, the absence of any similarity in the identity of the putative classes is alone dispositive, and therefore the first-to-file rule does not apply to warrant a dismissal or transfer Plaintiff's class action in California on that basis.

B. Transfer Pursuant to 28 U.S.C. § 1404(a)

In the alternative to the first-to-file-rule, Defendant seeks to transfer this action to the Southern District of Florida pursuant 28 U.S.C. § 1404(a). Section 1404(a) states provides that, "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented."

A case "might have been brought" in any district where venue is proper, meaning a judicial district "in which any defendant resides, if all defendants are residents of the State in which the district is located." *See* 28 U.S.C. § 1391; *Atl. Marine Constr. Co., Inc. v. U.S. Dist. Court for W. Dist. of Tex.*, 571 U.S. 49, 59 (2013) (noting that § 1404(a) "permits transfer to any district where venue is also proper"). Here, it is undisputed that Defendant's principal place of business is in Florida, see Compl. ¶ 35, and therefore venue would be appropriate in the Southern District of Florida. Plaintiff admits as much in his opposition to Defendant's motion to transfer. *See* Dkt. 32 at 16.

Once it is determined that a case may have been brought in a different district, a district court possesses broad discretion when determining whether to a transfer the case to that district under § 1404(a). *See Ventress v. Japan Airlines*, 486 F.3d 1111, 1118 (9th Cir. 2007). "The purpose of section 1404(a) is to prevent waste of time, energy and money and to protect litigants, witnesses and the public against unnecessary inconvenience and expense." *Hoefer v. U.S. Dep't of Commerce*, No. C 00 0918 VRW, 2000 WL 890862, at *3 (N.D. Cal. June 28, 2000) (citing *Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964)). Courts are directed to consider many factors that inform whether transfer is appropriate on a case-by-case basis. *See Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988); *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498-99 (9th Cir. 2000). These factors include the following, among others:

> (1) plaintiffs' choice of forum, (2) convenience of the parties, (3) convenience of the witnesses, (4) ease of access to the evidence, (5) familiarity of each forum with the applicable law, (6) feasibility of

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> consolidation with other claims, (7) any local interest in the controversy, and (8) the relative court congestion and time of trial in each forum.

Vu v. Ortho-McNeil Pharm., Inc., 602 F. Supp. 2d 1151, 1156 (N.D. Cal. 2009) (citing *Williams v. Bowman*, 157 F. Supp. 2d 1103, 1106 (N.D. Cal. 2001)). Furthermore, "[a]n important consideration in determining whether the interests of justice dictate a transfer of venue is the pendency of a related case in the transferee forum." *Am. Canine Found. v. Sun*, No. CIV. S-06-654 LKK/DAD, 2006 WL 2092614, at *3 (E.D. Cal. July 27, 2006) (citing *A.J. Indus., Inc. v. U.S. Dist. Court for Cent. Dist.*, 503 F.2d 384, 389 (9th Cir. 1974)).

The Ninth Circuit has further noted that a defendant who files a motion to transfer "must make a strong showing of inconvenience to warrant upsetting the plaintiff's choice of forum." *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986). However, "this premise does not implicate the court's power to transfer an action where the interests of justice so require." *Mussetter Distrib., Inc. v. DBI Beverage Inc.*, No. CIV. 09–1442 WBS EFB, 2009 WL 1992356, at *6 (E.D. Cal. July 8, 2009) (internal quotation marks and citations omitted). Regardless, the burden is on the movant to show why transfer of a case would generate additional convenience and would better serve the interests of justice. *See Rubio v. Monsanto Co.*, 181 F. Supp. 3d 746, 759-60 (C.D. Cal. 2016) (citations omitted).

1. *Convenience*

As an initial matter, the convenience of the parties, witnesses, and evidence are neutral factors that do not strongly favor adjudicating this case either in California or Florida.

First, the parties would not be more convenience by a transfer to Florida. Regardless of in which forum this case is heard, one of the two parties will be required to litigate outside of their home state. Transferring this case to the Southern District of Florida "would serve to 'merely shift rather than eliminate the inconvenience'" raised by Defendant in having to litigate this case in California. *DIRECTV, Inc. v. EQ Stuff, Inc.*, 207 F. Supp. 2d 1077, 1083 (C.D. Cal. 2002) (quoting *Decker Coal*, 805 F.2d at 843). Plaintiff has also acknowledged in the Complaint that Plaintiff is being represented on a contingent basis with an agreement for Plaintiff's counsel to advance reasonable and necessary costs of litigation, regardless where the case is to proceed. *See* Compl. ¶ 160(D). In fact, Plaintiff here, and the plaintiffs in the Second Florida Action, are both represented by the same two firms, Kanner & Whiteley, LLC and Complex Law Group, LLC, thus weighing against a finding that it would be any more

financially burdensome for Plaintiff to litigate in the Southern District of Florida. Conversely, Defendant has not shown how litigating in California would be substantially more financially burdensome for Defendant when compared to litigating in Florida; Defendant's only argument is that there would be duplicative discovery and motion practice in both California and Florida, Dkt. 29-1 at 17, but the same "duplicative" concerns would exist if this action was transferred to Florida and proceeded as a separate action alongside the Second Florida Action. In the end, neither party would be manifestly more inconvenienced by proceeding in their less desirable venue, and therefore the "convenience of the parties" factor is neutral or weighs slightly against transfer in light of Defendant's evidentiary burden.

Second, in terms of the convenience of the witnesses, courts consider "both the location and number of witnesses each side has and the relative importance of those witnesses." *Rubio*, 181 F. Supp. 3d at 763 (citation omitted). Any inconvenience to non-party witnesses should be afforded more consideration, since party witnesses can be compelled to testify in either forum. *Id.* (citation omitted).

Here, there are pertinent fact party witnesses in both districts that will almost certainly be required to provide discovery and/or testimony, regardless of in which forum the case is heard. Plaintiff and the putative class members are located in California, see Compl. ¶ 157, while the fact witnesses for Defendant regarding the design, manufacturing, and advertising of Defendant's SSBS vests are primarily located in Florida, see Dkt. 29-2 ¶ 6 (declaration from Hoyt Schmidt, Defendant's Executive Vice President of Commercial Business, averring that all of Defendant's employees with information relevant to the instant case are located in Florida). Plaintiff has also provided evidence through a declaration from counsel that Defendant operates a distribution network throughout California for the SSBS vests, including through the employment of sales representatives residing in California. *See* Dkt. 32-1 ¶ 1; *id.* Ex. A. All in all, the Court finds that the existence of party witnesses in both California and Florida does not weigh in either direction when considering Defendant's motion to transfer.

Nevertheless, Plaintiff and Defendant will still be entitled to obtain discovery from certain non-party witnesses. Defendant has already identified some such non-party witnesses in Florida—police officers using Defendant's SSBS vests without any problems—who submitted declarations in the First Florida Action. *See* Dkt. 29-2 ¶ 7. But by merely identifying the names of these officers, Defendant has not satisfactorily met its obligation to "name the witnesses it wishes to call, the anticipated area of their testimony and its relevance, and the reasons why the present forum would present hardship to them." *Rubio*, 181 F. Supp. 3d at 764 (internal quotation marks omitted) (quoting *Bohara v. Backus Hosp. Med. Benefit Plan*, 390 F. Supp. 2d 957, 963 (C.D. Cal. 2005)). On the other hand, Plaintiff's counsel has stated in a declaration that Defendant intends to rely on experts based in or near California. *See* Dkt. 32-

1 ¶ 4. But Defendant's choice of expert witness is less probative than the location of non-party *fact* witnesses, who are not required to submit to the expert discovery requirements of Federal Rule of Civil Procedure 26(a)(2) and (b)(4). Plaintiff's only support for the existence of non-party fact witnesses outside of Florida is by reference to non-party witnesses testifying in the First Florida Action. *See* Dkt. 32-1 ¶ 5. But Plaintiff has not offered any explanation as to whether or to what extent those same non-party witnesses would be relevant in this action, which brings only California claims on behalf of California purchasers. Therefore, the Court finds that the minimal number of non-party witnesses identified to date are primarily located in Florida, but because those witnesses are of unknown to the issues to be decided in the present case, the convenience of non-party witnesses is neutral and does not weigh in favor of transfer.

Lastly, regarding the convenience of the evidence, Plaintiff represents that documentary evidence from Florida regarding Defendant's SSBS vests can be electronically produced from Florida and therefore easily made available in California. *See* Dkt. 31-1 ¶ 6; *id.* Ex. D. Defendant has not "show[n] with particularity the location, difficulty of transportation, and the importance" of any documentary records or other physical evidence in Florida beyond what has already been electronically produced from the First Florida Action. *Rubio*, 181 F. Supp. 3d at 764 (citations omitted). Defendant concedes that the electronic nature of all documentary evidence makes the convenience of the evidence factor "[a]t worst" neutral. Dkt. 34 at 8. The Court agrees and finds this factor to be neutral and not to favor transfer; if anything, the new documentary evidence to be produced is located in California, which weighs against transfer.

In summary, the convenience of the parties is not better served by litigating this case in Florida rather than California; instead, this factor is largely neutral and does not favor one district over the other.

2. *Interests of Justice*

Turning to the public interest factors, however, reveals that the collective interests of the public and the judicial system favor transferring this case to the Southern District of Florida where it may be heard by the same court overseeing the pending Second Florida Action.

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Plaintiff undeniably has an interest in being able to select his preferred forum to litigate his claims.[3] So does the State of California, which maintains a bona fide interest in protecting the rights of its own citizens under its own laws.[4] But here, those interests are outweighed by the undisputed fact that Plaintiff's substantive allegations in this case are substantially factually similar—if not identical—to those raised in the Second Florida Action. *Compare generally* Compl. ¶¶ 3-10, 48-83, 91-113 *with* Second Florida Action Dkt. 1 ¶¶ 64-132.

Judicial efficiency is a "paramount" concern when a court is faced with a motion to transfer under § 1404(a), see *Geringer v. Strong*, No. 2:15-cv-08696-CAS(GJSx), 2016 WL 2732134, at *5 (C.D. Cal. May 9, 2016) (internal quotation marks and citation omitted), and such a concern is directly implicated when there is another action "arising from the same transaction or event" or "otherwise related" currently pending in a different forum, *id.* (internal quotation marks and citation omitted). Indeed, as the Supreme Court has noted, "[t]o permit a situation in which two cases involving precisely the same issues are simultaneously pending in different District Courts leads to the wastefulness of time, energy and money that § 1404(a) was designed to prevent." *Cont'l Grain Co. v. The Barge FBL-585*, 364 U.S. 19, 26 (1960). Accordingly, district courts commonly transfer a case under § 1404(a) to a district where such a related case is pending, to avoid the risk of inconsistent rulings and to foster judicial efficiency over any common issues of fact or law. *See, e.g.*, *Geringer*, 2016 WL 2732134, at *6 (granting a motion to transfer under § 1404(a) because the claims raised in the California case were each

[3] The Court rejects Defendant's argument that Plaintiff is "forum shopping" by filing this case in California. "A plaintiff's choice of forum is entitled to greater deference when the plaintiff has chosen its 'home forum.'" *In re Ferrero Litig.*, 768 F. Supp. 2d 1074, 1078-79 (S.D. Cal. 2011) (quoting *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 256 (1981)). Such deference is particularly warranted where the plaintiffs "reside in this district and purchased the product at issue in this district," ultimately bringing their lawsuit in the same district as well. *Id.* at 1078. Defendant has not presented any evidence of impermissible "forum shopping," and had the Second Florida Action not already been filed, nothing about Plaintiff's lawsuit in this district would prevent Plaintiff from proceeding on his claim for forum shopping reasons.

[4] While this Court is more familiar with California law than the Southern District of Florida, the "familiarity of governing law" factor "is to be accorded little weight . . . because federal courts are deemed capable of applying the substantive law of other states." *HIS Concepts, Inc. v. BonWorth, Inc.*, No. CV 18-01428-RSWL-MRW, 2018 WL 3244496, at *4 (C.D. Cal. Apr. 17, 2018) (internal quotation marks and citation omitted). Thus, the "familiarity with governing law" factor only slightly weighs against transfer.

Furthermore, the "local controversy" factor is diminished where, as here, the bulk of the plaintiff's allegations pertain to events that transpired at the defendant's headquarters in a different state. *See, e.g.*, *Fleming v. Matco Tools Corp.*, No. 19-CV-00463-WHO, 2019 WL 1980696, at *5 (N.D. Cal. May 3, 2019) (finding the local controversy factor was neutral or weighed slightly against transfer because the defendant was headquartered in Ohio and negotiated contracts in Ohio containing choice of law provisions, while on the other hand the plaintiff had worked for the defendant in California and had no connection to Ohio as a forum).

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affirmative defenses or counterclaims available in a pending case in Utah and "[a]llowing the California [case] and the [Utah case] to proceed independently in different forums, despite the substantial overlap of issues between the two actions, presents a significant possibility of inconsistent results"); *Hoefer*, 2000 WL 890862, at *3 ("Perhaps most compelling to the court's consideration of these factors is that plaintiffs' counsel previously instituted a lawsuit very similar to the case at bar in federal court in the District of Columbia. It would appear that to allow this case to proceed in the Northern District of California would entail a significant waste of time and energy and would involve duplicative effort by this court."); *Am. Canine Found.*, 2006 WL 2092614, at *3 (finding the interests of justice "weigh particularly heavily" in favor of transfer because a pending case in the Northern District of California "involves 'precisely the same issues' as the case at bar" and therefore "[i]t would save judicial resources, time and money to have these similar cases tried in the same district").

Here, the factual issues to be resolved in Plaintiff's breach of warranty claims are the exact same as those to be resolved in the Second Florida Action, even though each case proceeds under each state's respective breach of warranty laws. Whatever nuanced differences exist in the doctrines applicable to each set of plaintiffs' claims is miniscule and unlikely to produce different outcomes under each state's respective laws. When considering the substantial breadth of common issues of law that encompass both actions, this is not a situation where "cases have similar factual backgrounds but present different legal issues," thus weighing against transfer. *See AXIS Reinsurance Co. v. Northrop Grumman Corp.*, No. 2:17-cv-08660-AB (JCx), 2018 3326670, at *5 (C.D. Cal. Mar. 27, 2018) (citations omitted). Rather, the issues to resolve in this action and the Second Florida Action regarding the similar claims for breach of warranty and false advertising are substantively the same, a point which Plaintiff does not legitimately contest. Indeed, the fact that Plaintiff is represented by the same counsel representing the plaintiffs in the Second Florida Action strongly suggests that the approaches taken in each case by counsel with respect to any common issues of fact or law between the two actions will be identical. Thus, it would undoubtedly be more efficient, and would save considerable judicial resources, to have this action heard by the same court that adjudicates the same or similar factual and legal issues in the Second Florida Action. The risk of inconsistent judgments is obvious and outweighs any countervailing interests that favor keeping this case in California.[5]

[5] Even if Plaintiff's counsel is not "forum shopping" as a matter of law by pursuing a class action of California purchasers in an entirely separate action from the Second Florida Action—rather than identifying a subclass of California purchasers bringing claims under California law in the Second Florida Action—the Court cannot help but wonder whether this action was brought in this district an attempt to find a more favorable jurisdiction for adjudicating the breach of warranty and false advertising claims against Defendant.

In addition, as Plaintiff concedes, the relative congestion of this district when compared to the Southern District of Florida further supports transfer. In the Southern District of Florida, for the 12-month period ending March 31, 2019, the median time from filing to disposition of a civil case is 3.5 months, while the median time from filing to trial is 17.7 months. *See* United States Courts, *Nat'l Judicial Caseload Profile* (Mar. 2019), https://www.uscourts.gov/sites/default/files/data_tables/fcms_na_distprofile0331.2019.pdf. By comparison, the Central District of California recorded a median time from filing to disposition of 5.2 for civil cases, and a 21.8 median time from filing to trial, over the same time period. *See id.* Therefore, transfer to the Southern District of Florida would likely produce a speedier result in the instant case, rendering the "relative court congestion" factor in favor of transfer.

Moreover, to quell any of the parties' misconceptions, an order transferring this case to the Southern District of Florida would not necessitate that the transferee court consolidate this action with the Second Florida Action. Such procedural relief is outside the scope of Defendant's motion to transfer under § 1404(a). However, consolidation would be possible if this case was transferred to the Southern District of Florida. While this case could proceed as a separate case from the Second Florida Action, Defendant could fairly move to consolidate this action with the Second Florida Action under Rule 42(a), which could conceivably allow for a subclass exclusively comprised of California purchasers that could be integrated into the Second Florida Action. Again, this would undoubtedly be feasible from Plaintiff's perspective, given that Plaintiff's counsel is the same counsel representing the plaintiffs in the Second Florida Action. Thus, consolidation would be feasible in the Second Florida Action and weighs further in favor of transfer.

In summary, the substantial overlap of legal and factual issues that pervade this case and the Second Florida Action necessitate a transfer of this case to the Southern District of Florida in the interests of justice. Concerns of judicial efficiency and inconsistent results between this action and the Second Florida Action would predominate if this Court were to adjudicate Plaintiff's claims at the same time as a different court in a different district. Therefore, the Court GRANTS Defendant's motion to transfer and transfers the instant case to the Southern District of Florida for all further proceedings.[6]

[6] The Court recognizes that Judge Ungaro is no longer assigned to the Second Florida Action, see Second Florida Action Dkt. 52, thereby removing Judge Ungaro's substantial expertise in the substantive facts and allegations at issue in both this action and the Second Florida Action. However, simply because Judge Ungaro is no longer overseeing the Second Florida Action does not mean that the concerns of judicial efficiency identified in this Order, mainly the risk of inconsistent

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:19-cv-01542-SVW-PLA	Date	July 24, 2019
Title	*Miguel Porras v. Point Blank Enterprises, Inc.*		

III. Conclusion

For the reasons set forth above, the Court GRANTS Defendant's motion to transfer, and the Court transfers this action to the Southern District of Florida. Because transfer is appropriate, the Court declines to address Defendant's motion to dismiss Plaintiff's Complaint, Dkt. 30.

IT IS SO ORDERED.

judgments between this action and the Second Florida Action, no longer exist. Even if the Judge Ruiz in the Southern District of Florida must now approach the Second Florida Action anew, without the benefit of Judge Ungaro's prior experience in administering the First Florida Action, the Court is fully confident that Judge Ruiz will be capable of adjudicating this action alongside the Second Florida Action in a judicially efficient manner.

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