BEFORE THE
UNITED STATES JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

IN RE: WELLS FARGO PAYCHECK PROTECTION PROGRAM LITIGATION	MDL No. 2954

DECLARATION OF KATHLEEN A. HERKENHOFF IN SUPPORT OF PLAINTIFF KAREN'S CUSTOM GROOMING LLC'S OPPOSITION TO PLAINTIFF DNM CONTRACTING, INC.'S MOTION FOR TRANSFER OF ACTIONS TO THE SOUTHERN DISTRICT OF TEXAS PURSUANT TO 28 U.S.C. §1407 FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS

I, Kathleen A. Herkenhoff, declare as follows:

1. I am an attorney licensed to practice before all of the courts of the State of California. I am a partner with the law firm of Haeggquist & Eck, LLP, counsel of record for Plaintiff in *Karen's Custom Grooming LLC v. Wells Fargo & Company, et al*., pending before the Honorable Chief Judge Larry Alan Burns in the Southern District of California (Case No. 3:20-cv-00956-LAB-BGS) (the "*KCG Action*").

2. I submit this declaration in support of Plaintiff Karen's Custom Grooming LLC's ("KCG") Opposition to Plaintiff DNM Contracting, Inc.'s Motion for Transfer of Actions to the Southern District of Texas Pursuant to 28 U.S.C. §1407 for Coordinated or Consolidated Pretrial Proceedings (the "DNM Motion").

3. I have conferred with Sullivan & Cromwell LLP, one of the counsel for Defendant Wells Fargo & Company and Wells Fargo Bank, N.A. (the "Defendants"), in connection with the *KCG Action* on several occasions, between approximately June 11, 2020 and June 22, 2020, in connection with the preparation, drafting, and submission of Exhibits 1 and 2 attached to this declaration. Exhibits 1 and 2 (the "KCG Stipulations") are stipulated joint motions to extend the

Defendants' time to answer or otherwise respond to the operative complaint in the *KCG Action*. During those discussions, as documented in the KCG Stipulations, the parties to the *KCG Action* did discuss some aspects of the related actions pending in the above-captioned MDL, notably the schedule for responses by Defendants to the operative complaints in those actions. The undersigned also noted that KCG would be issuing a document preservation letter to Defendants now that they had appeared through counsel in the *KCG Action*.

4. On various dates and times prior to the notification by ECF of the filing of ECF No. 17 (Defendants' response in opposition to the DNM Motion), the undersigned Plaintiff's counsel has made inquiries of Defendants' counsel as to the position that Defendants anticipated taking on the DNM Motion, such as if Defendants had a preferred district and other matters. While all communications with Defendants' counsel have been cordial and professional, until receipt of ECF No. 17, KCG did not receive the requested information from Defendants' counsel with which to evaluate the position that Defendants intended to take in response to the DNM Motion, including with regard to a preferred district due to the location of documents or witnesses. After ECF No. 17 was filed, I did receive a return call from one of Defendants' counsel, but I still do not have the requested information on the location of key corporate documents and witnesses. Certainly, as alleged in the *KCG Action,* and as also noted in ECF No. 17, KCG received communications from employees of one or more of the Defendants, including communications initiated from locations within San Diego, California, and Defendants each have principal offices in California.

5. Attached are true and correct copies of the following exhibits:

Exhibit No.	**Description**
1.	Joint Motion to Extend Time for Defendants to Respond to Complaint, filed June 16, 2020 in *Karen's Custom Grooming LLC v. Wells Fargo & Company, et al.*, Case No. 3:20-cv-00956-LAB-BGS (S.D. Cal.) (the "*KCG Action*").
2.	Joint Motion to Extend Time for Defendants to Respond to Complaint, filed June 22, 2020 in the *KCG Action*.

EXHIBIT NO.	**DESCRIPTION**
3.	Stipulation to Transfer Venue Pursuant to 28 U.S.C. §1404(a); Order, filed on or about July 21, 2015 in *Maldonado v. Wells Fargo Bank, N.A.*, Case No. 3:15-cv-02333-CRB (N D. Cal.) (the "*Maldonado Action*").
4.	Defendant Wells Fargo Bank, N.A.'s Notice of Motion and Motion to Transfer Pursuant to 28 U.S.C. §1404(a), filed on or about July 2, 2015 in the *Maldonado Action*.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct. Executed this 24th day of June 2020, in San Diego, California.

s/ Kathleen A. Herkenhoff
KATHLEEN A. HERKENHOFF

EXHIBIT 1

Case 3:20-cv-00956-LAB-BGS Document 34 Filed 06/12/20 Page 1 of 6

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Counsel for Defendants Wells Fargo & Company and Wells Fargo Bank, N.A.

[*Additional counsel listed on signature page*]

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

KAREN'S CUSTOM GROOMING LLC, a California Limited Liability Company, On Behalf of Itself and On Behalf of Similarly Situated Businesses and Individuals,

Plaintiff,

v.

WELLS FARGO & COMPANY, a Delaware Corporation; WELLS FARGO BANK, NATIONAL ASSOCIATION; and DOES 1-10, Inclusive,

Defendants.

Case No. 3:20-cv-00956-LAB-BGS

JOINT MOTION TO EXTEND TIME FOR DEFENDANTS TO RESPOND TO COMPLAINT

The Hon. Larry A. Burns

Defendants Wells Fargo & Company and Wells Fargo Bank, N.A. ("Defendants") and plaintiff Karen's Custom Grooming LLC ("Plaintiff"; together with Defendants, the "Parties"), by and through undersigned counsel, and pursuant to Federal Rule of Civil Procedure ("FRCP") 6(b)(1)(A) and Civil Local Rules 7.2 and 12.1, hereby move the Court to extend the time for Defendants to answer or otherwise respond to Plaintiff's Class Action Complaint for Damages and Equitable Relief ("Complaint") in the above-captioned action ("Action") to June 25, 2020.

WHEREAS, Karen's Custom Grooming LLC ("Plaintiff") filed the instant action on May 22, 2020 against Wells Fargo & Company and Wells Fargo Bank, N.A.

WHEREAS, Defendants were served with a summons and complaint on or about May 28, 2020.

WHEREAS, Defendants' current deadline to answer or respond to the complaint is June 18, 2020.

WHEREAS, on June 9, 2020, a Motion for Transfer of Actions to the Southern District of Texas Pursuant to 28 U.S.C. § 1407 for Coordinated or Consolidated Pretrial Proceeding (the "MDL Transfer Motion") was filed with the Judicial Panel on Multidistrict Litigation ("JPML"), seeking to transfer this Action and seven other cases to the Southern District of Texas for coordinated or consolidated proceedings in a multidistrict litigation entitled *In re Wells Fargo Paycheck Protection Plan Litigation*, MDL No. 2954.

WHEREAS, briefing on the MDL Transfer Motion is scheduled to begin on June 24, 2020, and the JPML is scheduled to hold a hearing on the MDL Transfer Motion on July 30, 2020.

WHEREAS, a notice of related case will shortly be filed in this Action listing all the cases included in the MDL Transfer Motion, as well as any other known cases that may be related to the Action that are not currently listed in the pending MDL Transfer Motion (the "Related Actions").

WHEREAS, under FRCP 6(b)(1)(A) and Civil Local Rule 12.1, the Court may upon a showing of "good cause" extend the time for answering or moving to dismiss a complaint, and it is Defendants' position that good cause exists for the Court to extend the Defendants' time to respond to the Complaint because an extension will promote judicial economy, avoid inconsistent rulings, and conserve the efforts and resources of both the parties and the Court while the parties address MDL-related issues.

WHEREAS, Plaintiff has agreed to extend the time for Defendants to answer or respond to the Complaint to a date that is the same as the earliest response due to the operative complaints in the pending Related Actions, which Defendants currently represent is June 25, 2020.

WHEREAS, Defendants agree not to file any 28 U.S.C. Section 1404 or similar motions to transfer the Action to a different jurisdiction, but shall instead brief the MDL Transfer Motion.

WHEREAS, Defendants reserve the right to seek further extensions of their deadline to respond to or answer Plaintiff's complaint in light of the JPML proceedings.

WHEREFORE, the Parties respectfully stipulate and request that the Court grant this Joint Motion and enter an Order extending the time within which Defendants may respond to the Complaint up to and including June 25, 2020. The Parties further agree that, at such time as any responsive motion is due, they shall confer in advance and submit a further joint motion and proposed order seeking a mutually convenient briefing and hearing schedule.

IT IS SO STIPULATED.

DATED: June 16, 2020

s/ Sverker K. Hogberg
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Counsel for Defendants Wells Fargo & Company and Wells Fargo Bank, N.A.

DATED: June 16, 2020

s/ Kathleen A. Herkenhoff
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Counsel for Plaintiff

Case 3:20-cv-00956-LAB-BGS Document 35 Filed 06/16/20 PageID.79 Page 9 of 49

Attestation

Pursuant to Southern District of California Electronic Case Filing Administrative Policies and Procedures section 2.f.4, I certify that authorization for filing this document has been obtained from each of the other signatories.

Dated: June 16, 2020

s/ Sverker K. Hogberg
Sverker K. Hogberg

CERTIFICATE OF SERVICE

I certify that on June 16, 2020, I filed the foregoing document with the Clerk of Court for the United States District Court, Southern District of California, by using the Court's CM/ECF system, and also served counsel for record via this Court's CM/ECF system.

s/ Sverker K. Hogberg
Sverker K. Hogberg

EXHIBIT 2

Case 3:20-cv-00956-LAB-BGS Document 15 Filed 06/25/20 Page 1 of 6

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Counsel for Defendants Wells Fargo & Company and Wells Fargo Bank, N.A.

[*Additional counsel listed on signature page*]

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

KAREN'S CUSTOM GROOMING LLC, a California Limited Liability Company, On Behalf of Itself and On Behalf of Similarly Situated Businesses and Individuals, Plaintiff, v. WELLS FARGO & COMPANY, a Delaware Corporation; WELLS FARGO BANK, NATIONAL ASSOCIATION; and DOES 1-10, Inclusive, Defendants.	Case No. 3:20-cv-00956-LAB-BGS **JOINT MOTION TO EXTEND TIME FOR DEFENDANTS TO RESPOND TO COMPLAINT** The Hon. Larry A. Burns

Case 3:20-cv-00956-LAB-BGS Document 19 Filed 06/25/20 Page 13 of 49

Defendants Wells Fargo & Company and Wells Fargo Bank, N.A. ("Defendants") and plaintiff Karen's Custom Grooming LLC ("Plaintiff"; together with Defendants, the "Parties"), by and through undersigned counsel, and pursuant to Federal Rule of Civil Procedure ("FRCP") 6(b)(1)(A) and Civil Local Rules 7.2 and 12.1, hereby move the Court to further extend the time for Defendants to answer or otherwise respond to Plaintiff's Class Action Complaint for Damages and Equitable Relief ("Complaint") in the above-captioned action ("Action") to August 4, 2020.

WHEREAS, Karen's Custom Grooming LLC ("Plaintiff") filed the instant action on May 22, 2020 against Wells Fargo & Company and Wells Fargo Bank, N.A.

WHEREAS, Defendants were served with a summons and complaint on or about May 28, 2020.

WHEREAS, on June 17, 2020, the Court granted the parties' Joint Motion to Extend Time For Defendants Wells Fargo & Company and Wells Fargo Bank, N.A., which extended Defendants to answer or respond to the complaint to June 25, 2020.

WHEREAS, Defendants' current deadline to answer or respond to the complaint is June 25, 2020.

WHEREAS, on June 9, 2020, a Motion for Transfer of Actions to the Southern District of Texas Pursuant to 28 U.S.C. § 1407 for Coordinated or Consolidated Pretrial Proceeding (the "MDL Transfer Motion") was filed with the Judicial Panel on Multidistrict Litigation ("JPML"), seeking to transfer this Action and seven other cases to the Southern District of Texas for coordinated or consolidated proceedings in a multidistrict litigation entitled *In re Wells Fargo Paycheck Protection Plan Litigation*, MDL No. 2954.

WHEREAS, briefing on the MDL Transfer Motion is scheduled to begin on June 24, 2020, and the JPML is scheduled to hold a hearing on the MDL Transfer Motion on July 30, 2020.

WHEREAS, a notice of related case will shortly be filed in this Action listing all the cases included in the MDL Transfer Motion, as well as any other known cases that may be related to the Action that are not currently listed in the pending MDL Transfer Motion (the "Related Actions").

WHEREAS, under FRCP 6(b)(1)(A) and Civil Local Rule 12.1, the Court may upon a showing of "good cause" extend the time for answering or moving to dismiss a complaint, and it is Defendants' position that good cause exists for the Court to extend the Defendants' time to respond to the Complaint because an extension will promote judicial economy, avoid inconsistent rulings, and conserve the efforts and resources of both the parties and the Court while the parties address MDL-related issues.

WHEREAS, Plaintiff has agreed to extend the time for Defendants to answer or respond to the Complaint to August 4, 2020, which Defendants represent is the date that is the same as the earliest response due to the operative complaints in the pending Related Actions.

WHEREAS, Defendants agree not to file any 28 U.S.C. Section 1404 or similar motions to transfer the Action to a different jurisdiction, but shall instead brief the MDL Transfer Motion.

WHEREAS, Defendants reserve the right to seek further extensions of their deadline to respond to or answer Plaintiff's complaint in light of the JPML proceedings.

WHEREFORE, the Parties respectfully stipulate and request that the Court grant this Joint Motion and enter an Order extending the time within which Defendants may respond to the Complaint up to and including August 4, 2020. The Parties further agree that, at such time as any responsive motion is due, they shall confer in advance and submit a further joint motion and proposed order seeking a mutually convenient briefing and hearing schedule.

IT IS SO STIPULATED.

DATED: June 22, 2020

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Counsel for Defendants Wells Fargo & Company and Wells Fargo Bank, N.A.

DATED: June 22, 2020

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Counsel for Plaintiff

Attestation

Pursuant to Southern District of California Electronic Case Filing Administrative Policies and Procedures section 2.f.4, I certify that authorization for filing this document has been obtained from each of the other signatories.

Dated: June 22, 2020

s/ Sverker K. Hogberg
Sverker K. Hogberg

CERTIFICATE OF SERVICE

I certify that on June 22, 2020, I filed the foregoing document with the Clerk of Court for the United States District Court, Southern District of California, by using the Court's CM/ECF system, and also served counsel for record via this Court's CM/ECF system.

s/ Sverker K. Hogberg
Sverker K. Hogberg

EXHIBIT 3

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Attorneys for Defendant
WELLS FARGO BANK, N.A.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO COURTHOUSE

RANASEE MALDONADO, individually and on behalf of all others similarly situated, Plaintiff, vs. WELLS FARGO BANK, N.A., a South Dakota association, Defendant.	Case No. 3:15-cv-02333-CRB Hon. Charles R. Breyer Courtroom 6 – 17th Floor **CLASS ACTION** **STIPULATION TO TRANSFER VENUE PURSUANT TO 28 U.S.C. § 1404(a); [PROPOSED] ORDER** Action Filed: May 26, 2015 Trial Date: None Set

Defendant Wells Fargo Bank, N.A. (“Wells Fargo”) and Plaintiff Ranasee Maldonado (“Plaintiff”) (collectively referred to as the “Parties”), through their respective counsel of record hereby agree and stipulate as follows:

WHEREAS, Plaintiff filed his class action Complaint in this matter on May 26, 2014 in the United States District Court for Northern District of California;

WHEREAS, subject to two stipulations enlarging time, Wells Fargo’s time to file its responsive pleading was extended to July 14, 2015;

WHEREAS Wells Fargo filed a Motion for Transfer of Venue Pursuant to 28 U.S.C. § 1404(a) on July 2, 2015;

WHEREAS, Wells Fargo contends at least one forum identified in its Motion for Transfer of Venue, the United States District Court for the Southern District of California (“Southern District”), has superior connection to this case under the applicable private and public interest factors; and

WHEREAS, the parties agree that the Southern District is a viable and appropriate alternate venue;

NOW, THEREFORE, IT IS HEREBY STIPULATED:

1. This action shall be transferred to the United States District Court for the Southern District of California;

IT IS SO STIPULATED.

DATED: July 16, 2015

SEVERSON & WERSON
A Professional Corporation

By: *<u>/s/ Eric J. Troutman</u>*
Eric J. Troutman, Esq.

Attorneys for Defendant
WELLS FARGO BANK, N.A.

Case 3:15-cv-01646-BTM-JLB Document 16 Filed 07/16/15 Page 3 of 5

DATED: July 16, 2015

AHDOOT & WOLFSON, PC

By: */s/ Robert Ahdoot*
Robert Ahdoot, Esq.

Attorneys for Plaintiff
RANASEE MALDONADO

Pursuant to Local Civil Rule 5-1(i)(3) regarding signatures, I, Eric J. Troutman, attest that concurrence in the filing of this document has been obtained from each of the other signatories.

By: */s/ Eric J. Troutman*
Eric J. Troutman, Esq.

ORDER

PURSUANT TO THE STIPULATION, IT IS SO ORDERED.

Pursuant to 28 U.S.C. § 1404(a), the Court DIRECTS the clerk to transfer this action, in its entirety, to the Southern District of California, for all further proceedings.

By: ______________________________

Honorable Charles R. Bryer
United States District Court Judge

PROOF OF SERVICE
Maldonado v. Wells Fargo Bank, N.A.
USDC Northern District Case No. 4:15-cv-02333-CRB

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Orange, State of California. My business address is The Atrium, 19100 Von Karman Avenue, Suite 700, Irvine, CA 92612.

On July 16, 2015, I served true copies of the following document(s):

STIPULATION TO TRANSFER VENUE PURSUANT TO 28 U.S.C. § 1404(A); [PROPOSED] ORDER

on the interested parties in this action as follows:

Robert Ahdoot, Esq. Tina Wolfson, Esq. Brad King, Esq. AHDOOT & WOLFSON, PC 1016 Palm Ave. West Hollywood, CA 90069	Attorneys for Plaintiff RANASEE MALDONADO Telephone: (310) 474-9111 Facsimile: (310) 474-8585 rahdoot@ahdootwolfson.com twolfson@ahdootwolfson.com bking@ahdootwolfson.com
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☒ **BY CM/ECF NOTICE OF ELECTRONIC FILING:** I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on July 16, 2015, at Irvine, California.

Taylor P. Hankins

EXHIBIT 4

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Attorneys for Defendant
WELLS FARGO BANK, N.A.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA — OAKLAND DIVISION

RANASEE MALDONADO, individually and on behalf of all others similarly situated, Plaintiff, vs. WELLS FARGO BANK, N.A., a South Dakota association, Defendant.	Case No. 4:15-cv-02333-KAW Hon. Kandis A. Westmore Courtroom 4, 3rd Floor **<u>CLASS ACTION</u>** **DEFENDANT WELLS FARGO BANK, N.A.'S NOTICE OF MOTION AND MOTION TO TRANSFER PURSUANT TO 28 U.S.C. 1404(a)** *[Memorandum of Points and Authorities; Declaration of John Heyse; [Proposed] Order]* Date: August 20, 2015 Time: 11:00 a.m. Crtrm.: 4 Action Filed: May 26, 2015 Trial Date: None Set

PLEASE TAKE NOTICE that, on August 20, 2015, at 11:00 a.m., or as soon thereafter as the matter may be heard in the above entitled Court, located at 1300 Clay Street, Oakland, CA 94612, Defendant Wells Fargo Bank, N.A. ("Wells Fargo") will and hereby does move, pursuant 28 U.S.C. § 1404(a), to transfer venue to the Southern District of Iowa, the Central District of California, or the Southern District of California.

This motion is made on the grounds that (i) venue is proper in alternate, superior, venues; (ii) Plaintiffs' choice of forum is not entitled to deference; (iii) the three alternate, superior, venues are more convenient for the parties and witnesses; (iv) the three alternate, superior, venues provide the parties greater ease of access to the evidence; (v) familiarity with governing law does not mitigate against transfer; (vi) the three alternate, superior, venues have a superior local interest in the controversy; and (vii) relative court congestion favors transfer.

This motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities and the Declaration of John Heyse, the Complaint, and all other papers on file in this action.

DATED: July 2, 2015

SEVERSON & WERSON
A Professional Corporation

By: */s/ Eric J. Troutman*
Eric J. Troutman

Attorneys for Defendant
WELLS FARGO BANK, N.A.

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Attorneys for Defendant
WELLS FARGO BANK, N.A.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA — OAKLAND DIVISION

RANASEE MALDONADO, individually and on behalf of all others similarly situated,

Plaintiff,

vs.

WELLS FARGO BANK, N.A., a South Dakota association,

Defendant.

Case No. 4:15-cv-02333-KAW
Hon. Kandis A. Westmore
Courtroom 4, 3rd Floor

CLASS ACTION

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT WELLS FARGO BANK, N.A.'S MOTION TO TRANSFER VENUE PURSUANT TO 28 U.S.C. § 1404(a)

[Filed concurrently with Notice of Motion and Motion; Declaration of John Heyse; [Proposed] Order]

Date: August 20, 2015
Time: 11:00 a.m.
Crtrm.: 4

Action Filed: May 26, 2015
Trial Date: None Set

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

I. INTRODUCTION

Plaintiff, Ranasee Maldonado ("Plaintiff" or "Maldonado"), brings this putative class action claiming that Wells Fargo Bank, N.A. ("Wells Fargo") violated the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. Section 227(b)(1)(A)(iii), by using pre-recorded message to contact her cell phone without her consent.

Plaintiff's suit was filed in an improper venue. Although Plaintiff is a Los Angeles area resident[1] and her counsel resides in Southern California, she has filed suit in Oakland, California.

Oakland has no discernable connection to this lawsuit. While Wells Fargo has been unable to locate any calls to the Plaintiff's phone number,[2] any calls from Wells Fargo's Home Mortgage[3] business line do not emanate from call centers in Northern California. Declaration of John Heyse, ¶8. All pertinent Wells Fargo data and witnesses are located in Iowa and the dialing technology is located in Minneapolis, Minnesota or San Bernardino, California. Declaration of John Heyse, ¶6-8. Similarly, the Plaintiff is located in Southern California and all pertinent witnesses to Plaintiff's claim—such as individuals that can attest she received calls from Wells Fargo—presumably also reside in Southern California. Counsel for both the Plaintiff and Wells Fargo also reside in Southern California.

But "[l]itigation should proceed where the case finds its 'center of gravity,' i.e., where the majority of the documents and witnesses are located." *Hoefer v. U.S. Dep't of Commerce*, No. C 00 0918 VRW, 2000 WL 890862, *3 (N.D. Cal. June 28, 2000) (internal citations omitted). In this case three alternate venues exist— the Southern District of Iowa, the Central District of California and the Southern District of California—all of which offer superior convenience to the

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[1] Complaint, ¶9.
[2] Declaration of John Heyse, ¶8.
[3] The calls at issue pertained to a consumer home mortgage account. Complaint ¶16.

Case 3:15-cv-01646-BTM-JLB Document 10-1 Filed 07/02/15 Page 7 of 17

parties, witnesses, and their counsel.[4]

As Plaintiff has selected a forum that is not her residence, her choice of forum is entitled to little deference. *Marinus v. Altria Grp. Distribution Co.*, No. C 11-4665 PJH, 2012 WL 588705, at *5 (N.D. Cal. Feb. 22, 2012) citing, *Lucas v. Daiichi Sankyo Co*., 2011 WL 2020443, at *3 (N.D. Cal. May 24, 2011); *Roling v. E* Trade Securities, LLC*, 756 F. Supp. 2d 1179, 1185 (N.D. Cal. 2010). This is especially true as the Plaintiff here is pursuing a class action. *See Park v. Dole Fresh Vegetables, Inc*., 964 F. Supp. 2d 1088, 1094 (N.D. Cal. 2013) (noting that class plaintiff's choice of forum is entitled to less deference.)

On the other hand, a transfer is supported by almost all of the private and public interest factors set forth in 28 U.S.C. § 1404(a), including the convenience of the parties, the convenience of the witnesses, and access to the evidence. Those factors that do not favor a transfer are neutral. None support Plaintiff's chosen venue. As such, Wells Fargo moves that the case be transferred to a more convenient forum. 28 U.S.C. § 1404(a).

II. LEGAL STANDARD

This motion for transfer of venue is governed by 28 U.S.C. § 1404(a), which provides that "for 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." 28 U.S.C. § 1404(a). The purpose of this provision is to "prevent the waste of time, energy, and money and to protect litigants, witnesses and the public against unnecessary inconvenience and expense." *Van Dusen v. Barrack*, 376 U.S. 612, 616, 84 S.Ct. 805 (1964) (internal citations and quotations omitted).

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[4] As noted below, the private interest factors support a transfer to the Central District of California or the Southern District of Iowa. The public interest factors support a transfer to the Southern District of California where similar cases against Wells Fargo have been decided and are currently pending. Wells Fargo agrees to litigate this case in any of these superior venues.

Transfer pursuant to § 1404(a) lies within the broad discretion of the district court, determined on an individualized case-by-case consideration of convenience and fairness. *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000). A court may transfer an action where (1) venue is proper in the transferor district; (2) the transferee district is one where the action could have been brought; and (3) the transfer will serve the convenience of the parties and witnesses and promote the interest of justice. *Goodyear Tire & Rubber Co. v. McDonnell Douglas Corp.*, 820 F.Supp. 503, 506 (C.D. Cal. 1992). "Thus, even when venue is proper where the action is pending, section 1404(a) provides the Court with the discretion to transfer an action to a different venue under certain circumstances." *Metz v. United States Life Ins. Co.*, 674 F. Supp. 2d 1141, 1145 (C.D. Cal. 2009) (citation omitted).

Under Section 1404(a), the district court has discretion to adjudicate motions for transfer by weighing both private and public factors. *Gulf Oil Corp. v Gilbert*, 330 U.S. 501 (1947) (Courts in all circuits generally look to the private and public interest factors). "Weighing of the factors for and against transfer involves subtle considerations and is best left to the discretion of the trial judge." *Commodity Futures Trading Comm'n v. Savage*, 611 F.2d 270, 279 (9th Cir. 1979). In this district, courts generally consider eight factors. The first four pertain to the private interest and the remaining four the public interest. These factors are:

> (1) plaintiff's 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 consolidation of other claims, (7) any local interest in the controversy, and (8) the relative court congestion and time of trial in each forum.
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> *Vu v. Ortho-Mcneil Pharm., Inc.*, 602 F. Supp. 2d 1151, 1156 (N.D. Cal. 2009.)

Here, all non-neutral factors favor transfer to one of the three available alternate venues.

III. ARGUMENT—WELLS FARGO'S MOTION TO TRANSFER VENUE SHOULD BE GRANTED

A. Alternative Forums Exist

"When determining whether a transfer is proper, a court must employ a two-step analysis."

Park, 964 F. Supp. 2d at 1093. A court must first consider the threshold question of whether the case could have been brought in the forum to which the moving party seeks to transfer the case. *Id.* citing *Hoffman v. Blaski*, 363 U.S. 335, 344 (1960) and *Hatch v. Reliance Ins. Co.*, 758 F.2d 409, 414 (9th Cir. 1985) ("In determining whether an action might have been brought in a district, the court looks to whether the action initially could have been commenced in that district.") (internal quotation marks and citations omitted). Once the party seeking transfer has made this showing, district courts have discretion to consider motions to change venue based on an "individualized, case-by-case consideration of convenience and fairness." *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988).

A proper district court is one: (1) that has subject matter jurisdiction; (2) where the defendant would have been subject to personal jurisdiction; and (3) where venue would have been proper. *Martin v. Global Tel*Link Corp.*, No. 15-CV-00449-YGR, 2015 WL 2124379, at *3 (N.D. Cal. May 6, 2015). Here, there at least three alternative forums exist with superior connection to this case:

1. Southern District of Iowa;
2. Central District of California;
3. Southern District of California.

As argued in sections C. and D. below, each of these districts is superior to the Northern District of California given the private and public interest factors at issue under Section 1404(a).

B. Plaintiff's Chosen Forum is Entitled to Little Deference

Ordinarily, a plaintiff has the right to choose the forum for his lawsuit and his selection of an appropriate venue is given substantial deference. *Park*, 964 F. Supp. 2d at 1094. However, the degree of deference is substantially diminished in several circumstances, including where: "(1) the plaintiff's venue choice is not its residence; (2) the conduct giving rise to the claims occurred in a different forum; [or] (3) the plaintiff sues on behalf of a putative class…" *Id.* (internal citations omitted.) *See also Pac. Car & Foundry Co. v. Pence*, 403 F.2d 949, 954 (9th Cir. 1968) ("If the operative facts have not occurred within the forum of original selection and that forum has no particular interest in the parties or the subject matter, the plaintiff's choice is entitled only to minimal consideration”); *Sarinana v. DS Waters of Am., Inc.,* No. C-13-0905 EMC, 2013 WL 3456687, at *2 (N.D. Cal. July 9, 2013) (“Here, Plaintiff is bringing a class action, and does not reside in this district. His choice of forum is thus entitled to little deference”); *Cambridge v. Millard Refrigerated Servs., Inc.*, No. C 12-1460 CW, 2012 WL 1755750, at *2 (N.D. Cal. May 16, 2012) (Judge Wilken) (granting order to transfer venue finding, in part, “[g]iven the fact that Plaintiff is not a resident of this forum, her choice is not afforded substantial deference); *Inherent.com v. Martindale-Hubbell*, 420 F. Supp. 2d 1093, 1100 (N.D. Cal. 2006) (“the degree to which courts defer to the plaintiff's chosen venue is substantially reduced when the plaintiff's choice is not its residence or where the forum lacks a significant connection to the activities alleged in the complaint”) (internal quotation marks and citations omitted); *Strigliabotti v. Franklin Res., Inc*., No. C-04-0883, 2004 WL 2254556 *3 (N.D. Cal. Oct. 5, 2004) (“Where a plaintiff’s choice of forum is a district other than one in which he resides, his choice may be given considerably less weight.”)

Underlying each of these factors is concerns over the possibility of forum shopping. *Williams v. Bowman*, 157 F. Supp. 2d 1103, 1107 (N.D. Cal. 2001) (“[t]he policy behind not deferring to a nonresident plaintiff’s choice of venue appears tied to the notion that plaintiffs should be discouraged from forum shopping”); *Heartland Payment Sys., Inc. v. Mercury Payment Sys., LLC*, No. C 14-0437 CW, 2014 WL 5695051, at *4 (N.D. Cal. Nov. 4, 2014) (“[c]ourts have found evidence of forum shopping when a party does not reside in the district,” (citing *Lucas*, 2011 WL 2020443 at *4), or when, in a class action, the class members reside outside of the state, (citing *Wilson v. Walgreen Co*., 2011 WL 4345079, at *3 (N.D. Cal.)); See also *Gerin v. Aegon USA, Inc*., No. 06-5407, 2007 WL 1033472, at *8 (N.D. Cal. Apr. 4, 2007) (“The interests of justice strongly weigh in favor of granting the motion to transfer in order to discourage forum-shopping”).

Here, the Plaintiff has elected to i) pursue a class action; ii) in a forum wholly unrelated to the underlying facts in this case; and iii) hundreds of miles from her place of residence and the offices of her chosen counsel. Her choice of forum should be looked upon with suspicion and is entitled to little deference. *Park*, 964 F. Supp. 2d at 1094; *Sarinana*, 2013 WL 3456687 at *2*;*

Cambridge, 2012 WL 1755750 at *2; *Inherent.com*, 420 F. Supp. 2d at 1100.[5]

C. The Convenience of the Witnesses and Parties Weigh in Favor of a Transfer

The convenience to the witnesses is the most important factor in a section 1404(a) analysis, and the convenience of non-party witnesses is more important than the convenience of the parties. *Clark v. Sprint Spectrum L.P.*, No. C 10–03625 SI, 2010 WL 5173872, at *3 (N.D. Cal. Dec. 15, 2010), citing *Saleh v. Titan Corp.*, 361 F. Supp. 2d 1152, 1160 (S.D. Cal. 2005). In assessing the convenience of witnesses, courts usually require that the party seeking transfer describe the key witnesses to be called, where these witnesses are located, what their testimony will generally cover, and why such testimony is relevant or necessary. *A.J. Indus., Inc. v. United States District Court*, 503 F.2d 384 (9th Cir. 1974).

In this case the primary witnesses will be:

1. The Plaintiff;

2. Witnesses that can confirm the Plaintiff owned the phone number dialed[6] and that she was, in fact, called;[7]

3. Witnesses from Wells Fargo Home Mortgage regarding the number of calls placed (if any) to the Plaintiff's phone number, the reason the calls (if any) were placed and the technology used to place these calls (if any); and

4. Witnesses from Wells Fargo Home Mortgage that can and will testify regarding various defenses—including the express consent of purported class members—applicable to the case.

As described in the Declaration of John Heyse, Wells Fargo's mortgage division

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[5] Indeed, in *Martin*, 2015 WL 2124379 at *1, Judge Rogers of this court recently granted a defendant's motion to transfer venue in a putative TCPA class action under very similar circumstances.

[6] As Plaintiff was a non-customer that was not the intended recipient of the calls at issue, she will need to demonstrate that she owned the phone at the time the calls were placed and that she actually received some calls.

[7] The TCPA forbids "mak[ing] a call" to a cell phone number without the express consent of the "called party." 47 U.S.C. § 227(b)(1)(A).

("WFHM") is primarily headquartered in Des Moines, Iowa where several thousand WFHM employees work at a multi-building complex, including agents responsible for collection calls. Declaration of John Heyse, ¶5. Moreover, the majority of the pertinent Wells Fargo witnesses reside in Iowa; there are no WFHM employees involved in Operations in the Northern California San Francisco area. Declaration of John Heyse, ¶5. It is the WFHM officers and employees mostly located in Des Moines who would be able to testify about its loan servicing operations and its policies and procedures concerning telephone calls to borrowers in default, and specifically the procedures related to leaving pre-recorded messages. Declaration of John Heyse, ¶6.[8]

Further, Plaintiffs' convenience does not mitigate against the transfer of this case. Plaintiff resides in Los Angeles, within the Central District of California. Her counsel too is located in Los Angeles. Presumably, witnesses to her version of events also reside within that district as well.

Moreover, given its proximity to Los Angeles, the Southern District of California is a viable and appropriate alternate choice that appears to be the best balance of the private and public interest factors.[9]

Accordingly, the convenience of the witnesses dictate that the case should be venued elsewhere.[10]

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[8] While Wells Fargo has a holding company (Wells Fargo & Co.) headquartered in San Francisco, it was not involved in the creation, execution or supervision of the policies and practices at issue in this action. Declaration of John Heyse, ¶4. Thus, the location the few directors and officers of the holding company is irrelevant to the question of the convenience of witnesses.

[9] As noted below, the Southern District of California is the most appropriate district when public interest factors are considered—Judge Benitez of that district has already overseen a nationwide TCPA class settlement involving this same business line of Wells Fargo Bank, N.A. *See Malta v. Wells Fargo Home Mortgage, Inc.*, No. 10-CV-1290 BEN NLS, 2013 WL 444619, (S.D. Cal. Feb. 5, 2013).

[10] Similarly, the relevant documents at issue in this case are stored out-of-state. Wells Fargo Home Mortgage maintains loan servicing records, which are stored on the mainframe computer system Fidelity MSP. Declaration of John Heyse, ¶7. However, computer servers for Fidelity MSP are not located in California. *Id*. Rather, they are maintained in Jacksonville, Florida and Little Rock, Arkansas. *Id*. The persons knowledgeable about how that system is programmed are located throughout the United States, including Des Moines, Iowa. *Id*. Accordingly, the ease of access to evidence also weighs in favor of transfer or is, at worst, neutral on the topic. See e.g. *Sloan v.* (footnote continued)

D. The Public Interest Factors Also Favor Transfer to a Superior Venue

As noted above, the public interest factors are:

> [1] familiarity of each forum with the applicable law; [2] feasibility of consolidation of other claims, [3] any local interest in the controversy, and [4] the relative court congestion and time of trial in each forum.

Vu, 602 F. Supp. 2d at 1156.

1. The Southern District of California is the Forum Most Familiar with Applicable Law

Certainly this Court is no stranger to TCPA litigation. Numerous such cases have been filed in this district, and elsewhere around the country. It appears, however, that the Southern District of California is the true hotbed for TCPA class litigation on the west coast. Numerous recent TCPA class action settlements have been approved or are pending final approval in that district. *See Nicole Newman v. AmeriCredit Financial Services, Inc.*, No. 11-cv-3041 (S.D. Cal. filed Dec. 29, 2011); *Lund v. JP Morgan Chase USA*, No. 12-cv-2554 (S.D. Cal. filed Oct. 19, 2012); *Connor v. JPMorgan Chase Bank et al*., No. 10-cv-1284 (S.D. Cal. filed June 16, 2010); *Couser v. Comenity Bank et al*., No. 12-cv-02484 (S.D. Cal. filed October 12, 2012); *Trenz v. Sirius XM Radio, Inc. et al.*, No. 15-cv-00044 (S.D. Cal. filed January 8, 2015); *Rooney v. Rite Aid Corporation*, No. 14-cv-01249 (S.D. Cal. filed May 20, 2014); *Barani v. Wells Fargo Bank, N.A.*, No. 12CV2999-GPC KSC, 2014 WL 1389329 (S.D. Cal. Apr. 9, 2014); *Malta v. Fed. Home Loan Mortgage Corp*., No. 10-CV-1290 BEN NLS, 2013 WL 444619, (S.D. Cal. Feb. 5, 2013).

Most pertinently to this motion, however, Judge Benitez of the Southern District of California has already overseen the years-long course of *Malta*, 2013 WL 444619, that was litigated between 2010 and 2013. This case appears to be a direct continuation of that litigation, albeit with different timeframes at issue. As His Honor Judge Benitez presided over, and

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Pfizer, Inc., 2008 WL 4167083, *5 (N.D. Cal. 2008) ("the ease of access to evidence can be an important factor in deciding whether to grant a motion to transfer") citing *Decker Coal Co. v. Commonwealth Edison Co*., 805 F.2d 834, 843 (9th Cir. 1986).

approved, the final class settlement reached in that case he is presumably well-versed with the legal issues and even some of the factual nuances to be expected in this litigation.[11]

2. The Southern District of California Offers the Potential for Consolidation with Other Pending TCPA Class Litigation Involving Wells Fargo

"[T]he feasibility of consolidation is a significant factor in a transfer decision, and even the pendency of an action in another district is important because of the positive effects it might have in possible consolidation of discovery and convenience to witnesses and parties." *Cardoza v. T–Mobile USA Inc.*, No. 08–5120, 2009 WL 723843, at *5 (N.D.Cal. Mar. 18, 2009); *see also Cont'l Grain Co. v. The FBL–585*, 364 U.S. 19, 26 (1960) ("To 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.").

Here, this factor strongly favors transfer to the Southern District of California. In addition to *Malta*, 2013 WL 444619, discussed *supra*, two other TCPA class actions involving different Wells Fargo business lines are currently pending in the Southern District of California before Judge Anello. *See Franklin v. Wells Fargo Bank, N.A.*, No. 14-cv-02349 (S.D. Cal. filed October 3, 2014); and *Prather v Wells Fargo Bank, N.A.*, No. 15-cv-01296 (S.D. Cal. filed June 11, 2015).

[11] It should be noted that whereas Plaintiff cannot control what department a newly-filed case is initially assigned to, the parties will be required to file a Notice of Related Cases with the assigned judge that will, per local rule, result in the reassignment of the case to Judge Benitez. See *Southern District Civil Local Rule* 40.1(f)("Whenever counsel has reason to believe that a pending action or proceeding on file or about to be filed is related to another pending action or proceeding on file in this or any other federal or state court (whether ***pending, dismissed, or otherwise terminated***), counsel must promptly file and serve on all known parties to each related action or proceeding a notice of related case, stating the title, number and filing date of each action or proceeding believed to be related, together with a brief statement of their relationship and the reasons why assignment to a single district judge is or is not likely to effect a saving of judicial effort and other economies. The clerk will promptly notify the court of such filing…")(emphasis added); and *Southern District Civil Local Rule* 40.1(i)("In order to avoid unnecessary duplication of judicial effort, all pending civil actions and proceedings, which are determined to be related to any other pending civil action or proceeding pursuant to the criteria set forth in Civil Local Rule 40.1.e will be assigned to the district and magistrate judge to whom the lowest numbered case was assigned…")

The issues involved in this case are "precisely the same" as those involved in *Malta* and similar (although not identical) to those involved in *Franklin* and *Prather*. Accordingly, there is a meaningful potential for consolidation if the case is transferred, and the salutary benefits that go along with it.

3. The Alternate Venues all Have a Greater Local Interest in the Controversy than the Northern District of California

The localized interest factor requires the court to consider the current and transferee forums' interests "in having localized controversies decided at home." *Decker Coal*, 805 F.2d at 843. The district or districts where the events giving rise to a claim took place generally have the greatest interest in the outcome of the controversy. *See e.g. Vu*, 602 F. Supp. 2d at 1157 ("the Court finds that if either court has a stronger interest in the controversy, it is the Central District…the events giving rise to plaintiffs' claims took place in the Central District of California"); *Carolina Cas. Co. v. Data Broadcasting Corp*., 158 F. Supp. 2d 1044, 1050 (N.D. Cal. 2001) ("since more of the events leading up to this dispute occurred in the Central District, the court concludes that the interest in that district is greater than the interest in this district"); *Hawkes v. Hewlett-Packard Co*., No. CV-10-05957-EJD, 2012 WL 506569, at *6 (N.D. Cal. Feb. 15, 2012) ("The Eastern District of Virginia has a strong interest in this case because Hawkes resides within the jurisdiction of the Eastern District of Virginia and because a substantial portion of the transactions and events occurred within that jurisdiction.")

Here, the events giving rise to this claim occurred in Iowa or Southern California. None occurred in the Northern District of California. Hence, all three of the alternate forums have a superior local interest in the outcome of this controversy.

Moreover, as the Plaintiff has alleged a nationwide class action, Iowa and California each have equal claim to assuring that the rights of its citizens are justly determined.[12] Yet the presence of a large Wells Fargo campus within the state of Iowa strongly suggests that Iowa has the greatest

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[12] Even if California's interest is to be preferred due to the named class representative's residence within this state, however, that does not justify or support venue in the Northern District of California when alternate and superior venues within California exist.

interest in the just outcome of this dispute—weighing on the one hand the interest of consumers and, on the other, the interests of a major local employer.

It is also significant that California has no interest in applying and interpreting its own laws in this case, as Plaintiff's claims arise from federal law. *Hawkes*, 2012 WL 506569 at *5.

On balance, therefore, the public interest factor supports a transfer.

4. Relative Court Congestion In The Respective Forums Favor Transfer to Any of the Superior Venues

The relative docket congestion of the respective forums may be relevant to the Court's decision on whether to transfer. *Ctr. for Food Safety v. Vilsack*, No. C–11–00831, 2011 WL 996343, at *8 (N.D. Cal. March 17, 2011). "This factor examines whether a trial may be speedier in another court because of its less crowded docket. To measure congestion, courts compare the two fora's median time from filing to disposition or trial." *Id.* (citations omitted). The speed at which the case will proceed to trial favors transfer. This is generally considered the least important factor in transfer analysis. *See Geo. F. Martin Co. v. Royal Ins. Co. of Am.*, No. C03-5859 SI, 2004 WL 1125048, at *6 (N.D. Cal. May 14, 2004) ("Relative court congestion is at best, a minor factor in the section 1404 calculus." (internal citations omitted)).

There is a difference between the lengths of time an action takes to proceed from the filing of the complaint to the time of trial in the Northern District versus the alternative venues.

In the Northern District, a civil action from filing to trial takes approximately 25.9 months, while in the Central District it takes 19.9 months. See Comparison of Districts Within the Ninth Circuit — 12 Month Period Ending December 31, 2014, available at http://www.uscourts.gov/statistics/table/na/federal-court-management-statistics/2014/12/31-3.

While six full months off the litigation calendar is substantial, litigation in the Southern District of Iowa is even swifter. Notably, disposition time in the Southern District of Iowa is a mere **9.9 months** from filing to disposition. See Comparison of Districts Within the Either Circuit

– 12 Month Period Ending December 31, 2014, available at http://www.uscourts.gov/statistics/table/na/federal-court-management-statistics/2014/12/31-3. On the other hand, disposition time in the Southern District of California is slightly greater than in the Northern District of California.

On balance, therefore, this factor cuts in favor of a transfer to the Southern District of Iowa or to the Central District of California, but cuts against transfer to the Southern District of California.[13]

IV. CONCLUSION

For the reasons stated above, the Court should grant Defendant's Motion to Transfer Venue and transfer this action to a more convenient forum – the Southern District of Iowa, the Central District of California, or the Southern District of California.

DATED: July 2, 2015

SEVERSON & WERSON
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By: */s/ Eric J. Troutman*
Eric J. Troutman

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[13] Although that District's relative experience with the subject matter should offer offsetting time savings.

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA — OAKLAND DIVISION

RANASEE MALDONADO, individually and on behalf of all others similarly situated, Plaintiff, vs. WELLS FARGO BANK, N.A., a South Dakota association, Defendant.	Case No. 4:15-cv-02333-KAW Hon. Kandis A. Westmore Courtroom 4, 3rd Floor **CLASS ACTION** **DECLARATION OF JOHN HEYSE IN SUPPORT OF WELLS FARGO'S MOTION TO TRANSFER VENUE PURSUANT TO 28 U.S.C. § 1404(a)** *[Filed concurrently with Notice of Motion and Motion; Memorandum of Points and Authorities; and [Proposed] Order]* Action Filed: May 26, 2015

I, John Heyse hereby declare:

1. I am a Call Center Planning and Analysis Manager of Wells Fargo Bank, N.A. ("Wells Fargo"). I have worked with Wells Fargo for 12 years. My job responsibilities include management and day-to-day oversight of Wells Fargo's mortgage loan default servicing business, predictive dialer and collection calls made in connection with the business. I have

personal knowledge of the matters set forth below and could and would testify competently thereto.

2. I have reviewed the complaint filed by plaintiff Ranasee Maldonado ("Complaint"). The Complaint alleges that Plaintiff brings the action on behalf of a class of individuals called by Wells Fargo using an automatic telephone dialing service or by an artificial or prerecorded voice without their prior express consent in an "effort to collect on a consumer mortgage account." (Complaint, ¶25).

3. Wells Fargo is a national banking association, chartered and with a principal place of business in South Dakota. Wells Fargo does business throughout all 50 states, including California. Wells Fargo operates a myriad of different business lines. Collection calls placed on "consumer mortgage account[s]" are placed by Wells Fargo Home Mortgage. ("WFHM").

4. Wells Fargo's bank holding company (Wells Fargo & Co.) is headquartered in San Francisco. The officers located in San Francisco are not involved in the administration of Wells Fargo's mortgage business, and they were not involved in the creation, execution or supervision of the particular policies and practices at issue in this action, i.e., the telephone calls made to customers in default, and specifically, the procedures related to leaving pre-recorded messages. The majority of the officers and employees involved in these operations, policies and practices live and work in other parts of the country, including in the Des Moines area of Iowa.

5. WFHM is Wells Fargo's residential mortgage loan origination and servicing division. WFHM does not have headquarters in California. The closest call center is located in Southern California, specifically San Bernardino. WFHM is primarily headquartered in Des Moines, Iowa where several thousand WFHM employees work at a multi-building complex. To my knowledge, the WFHM employees who work in these facilities live in Des Moines or its suburbs. Importantly, there are no WFHM employees involved in Operations in the Northern California San Francisco area.

6. The chief officers and many of the employees responsible for WFHM's mortgage business are located in these offices in Des Moines. These include the co-Presidents of WFHM,

the Vice President - Head of Mortgage Servicing, and the Vice President - Loss Control/Claims/Property Preservation. The officers and directors who work in the mortgage division, WFHM, and who are responsible for developing, implementing and managing the policies, practices and procedures at issue in this action are mostly located in the Des Moines area. None of these persons are located in California. These WFHM officers and employees would be able to testify about its loan servicing operations and its policies and procedures concerning phone calls to borrowers in default, which are at issue in this action.

7. WFHM maintains loan servicing records stored on WFHM's mainframe computer system known as the Fidelity MSP System. Computer servers for the Fidelity MSP System are not located in California. Rather, they are maintained in Jacksonville, Florida and Little Rock, Arkansas. WFHM employees responsible for operating the Fidelity System are located throughout the United States, including Des Moines, Iowa. These employees are the persons knowledgeable about how that system is programmed, and would be able to testify about its loan servicing operations and its policies and procedures concerning telephone calls to borrowers in default, and specifically the procedures related to leaving pre-recorded messages.

8. Moreover, any calls from WFMH emanate from call centers not located in Northern California. The dialing technology is located in Minneapolis, Minnesota or San Bernardino, California. Importantly, however, Wells Fargo has been unable to locate any calls to the Plaintiff's cell phone number, including from WFHM.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 30 day of June, 2015 in Chester, Pennsylvania.

JOHN HEYSE

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA — OAKLAND DIVISION

RANASEE MALDONADO, individually and on behalf of all others similarly situated, Plaintiff, vs. WELLS FARGO BANK, N.A., a South Dakota association, Defendant.	Case No. 4:15-cv-02333-KAW Hon. Kandis A. Westmore Courtroom 4, 3rd Floor **<u>CLASS ACTION</u>** **[PROPOSED] ORDER GRANTING DEFENDANT WELLS FARGO BANK N.A.'S MOTION TO TRANSFER VENUE PURSUANT TO 28 U.S.C. 1404(a)** *[Filed concurrently with* Date: August 20, 2015 Time: 11:00 a.m. Crtrm.: 4 Action Filed: May 26, 2015 Trial Date: None Set

The Motion of Defendants Wells Fargo Bank, N.A. for an order to transfer venue pursuant to 28 U.S.C. § 1404(a) having been duly noticed and served on all interested parties, came on regularly for hearing before this Court, on August 20, 2015, at 11:00 a.m., the Honorable Kandis A. Westmore presiding.

All arguments, papers and evidence considered and good cause appearing, the Court hereby orders that:

Wells Fargo's Motion to Transfer is GRANTED. The Clerk is ordered to transfer this action to (*check applicable venue*):

___ the Southern District of Iowa;

___ the Central District of California;

___the Southern District of California.

IT IS SO ORDERED.

DATED: ____________________

____
United States District Court

PROOF OF SERVICE
Maldonado v. Wells Fargo Bank, N.A.
USDC Northern District Case No. 4:15-cv-02333-KAW

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Orange, State of California. My business address is The Atrium, 19100 Von Karman Avenue, Suite 700, Irvine, CA 92612.

On July 2, 2015, I served true copies of the following document(s):

DEFENDANT WELLS FARGO BANK, N.A.'S NOTICE OF MOTION AND MOTION TO TRANSFER PURSUANT TO 28 U.S.C. 1404(a); MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF JOHN HEYSE; [PROPOSED] ORDER GRANTING DEFENDANT WELLS FARGO BANK N.A.'S MOTION TO TRANSFER VENUE

on the interested parties in this action as follows:

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☒ **BY CM/ECF NOTICE OF ELECTRONIC FILING:** I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 2, 2015, at Irvine, California.

Taylor P. Hankins