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15 **UNITED STATES DISTRICT COURT**  
16 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

17 ROQUE ROCKY DE LA FUENTE,  
18 Plaintiff,  
19 vs.  
20 ALEX PADILLA,  
21 Defendant

Case No.: 3:19-CV-01433-WQH-AHG

PLAINTIFF’S MEMORANDUM OF POINTS  
AND AUTHORITIES IN OPPOSITION TO  
DEFENDANT’S MOTION TO TRANSFER  
VENUE

Date: September 10, 2019

**NO ORAL ARGUMENT  
UNLESS REQUESTED BY  
THE COURT**

Judge: Hon. William Q. Hayes

Trial Date: Not Set

Action Filed: July 30, 2019

1 Plaintiff Roque Rocky De La Fuente (hereinafter “Plaintiff”) hereby opposes Defendant  
2 Alex Padilla’s (hereinafter “Defendant”) motion to transfer venue from this Court to the United  
3 States District Court for the Eastern District of California. Defendant’s motion is without merit,  
4 and Defendant has failed to demonstrate in his very short brief that Defendant has carried the  
5 burden of showing a strong inconvenience to Defendant sufficient to warrant upsetting Plaintiff’s  
6 chosen forum in his home judicial district. Accordingly, Defendant’s motion should be denied.  
7

8 **INTRODUCTION AND SUMMARY OF ARGUMENT**

9 Under the first-to-file doctrine, this Court should deny Defendant’s pending motion  
10 because Plaintiff filed this action before any of the related actions were filed in the Eastern  
11 District. Defendant should have filed the pending motion in the Eastern District to transfer those  
12 cases to the Southern District for consolidation. Defendant’s motion should also be denied  
13 because Defendant’s brief fails to establish a strong showing of inconvenience sufficient to  
14 warrant upsetting Plaintiff’s choice of forum in the Southern District. In fact, consideration of  
15 all relevant factors show that the balance of inconvenience strongly weighs in favor of Plaintiff’s  
16 chosen home forum in the Southern District. Accordingly, Defendant’s instant motion should be  
17 denied.  
18  
19

20 **ARGUMENT**

21 **A. The First-to-File Doctrine Militates in Favor Against Defendant’s Motion to**  
22 **Transfer Venue to the Eastern District**

23 In *Pacesetter Systems Inc., v. Medtronic, Inc.*, 678 F.2d 93 (9<sup>th</sup> Cir. 1982) the Ninth  
24 Circuit Court of Appeals explained that “[t]here is a generally recognized doctrine of federal  
25 comity which permits a district court to decline jurisdiction over an action when a complaint  
26 involving the same parties and issues has already been filed in another district. *Pacesetter*  
27

1 *Systems, Inc.*, 678 F.2d at 94-95. “This doctrine, known as the first-to-file rule gives priority, for  
2 purposes of choosing among possible venues when parallel litigation has been instituted in  
3 separate courts, to the party who first establishes jurisdiction. *In re Ferrero Litig.*, 768 F. Supp.  
4 2d 1074, 1081-82 (S.D. Cal. 2011). This Court in *In re Ferrero Litig.*, when considering a  
5 motion to transfer an action which was first filed in the Southern District to the New Jersey  
6 District Court noted that “Defendant fails to note that the New Jersey action could be  
7 consolidated with this case” which was the first-to-file in the Southern District of California. *Id.*  
8 at 1081.  
9

10 While discretionary, the rule’s substantial benefits to the parties and the judiciary “should  
11 not be disregarded lightly.” *Church of Scientology v. U.S. Dep’t of the Army*, 611 F.2d 738, 750  
12 (9<sup>th</sup> Cir. 1979). In applying the first-to-file rule, courts examine three factors: (1) the filing dates  
13 of the related cases; (2) the similarity of the parties; and (3) the similarity of the issues. *Ward v.*  
14 *Follett Corp.*, 158 F.R.D. 645, 648 (N.D. Cal. 1994). “Exact parallelism between the two actions  
15 need not exist; it is enough if the . . . actions are substantially similar.” *Alioto v. Hoiles*, 2004 WL  
16 2326367, at \*5 (N.D. Cal. Oct. 12, 2004). The parties agree that the cases pending in the Eastern  
17 District are substantially similar. Accordingly, the first-to-file doctrine should be applied to this  
18 action to deny Defendant’s instant motion to transfer this action to the Eastern District, where all  
19 of the cases pending in that district were filed subsequent to this action.  
20  
21

22 **B. Defendant Fails to Meet the Legal Standard Governing Motions to Transfer Venue**  
23 **Under 28 U.S.C. § 1404(a)**

24 **1. Legal Standard**

25 A district court may transfer any civil action to any other district or division where it  
26 might have been brought “for the convenience of parties and witnesses” and “in the interest of  
27

1 justice.” 28 U.S.C. § 1404(a). Under this section, the district court has discretion to adjudicate  
2 motions for transfer “according to an ‘individualized, case-by-case consideration of convenience  
3 and fairness.’” *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498-99 (9<sup>th</sup> Cir. 2000) (quoting  
4 *Stewart Org. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988)). “The Court must consider public factors  
5 relating to ‘the interest of justice’ and private factors relating to ‘the convenience of the parties  
6 and witnesses.’” *Shultz v. Hyatt Vacation Mktg. Corp.*, 2011 U.S. Dist. LEXIS 24692, at \*6  
7 (N.D. Cal. Feb. 28, 2011) (citing *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834,  
8 843 (9<sup>th</sup> Cir. 1986)). *See generally, Schott v. Ivy Asset Mgmt. Corp.*, 2010 U.S. Dist. LEXIS  
9 113674, at \*9 (N.D. Cal. Oct. 19, 2010):

12 Private factors generally concern the relative impact of the venue on the private  
13 parties participating in the litigation, their access to evidence, the availability of  
14 compulsory process, ‘and all other practical problems that make trial of a case  
15 easy, expeditious and inexpensive.’” *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508  
16 (1947). Public factors concern relative institutional advantages, burdens on the  
17 public, and the general interest in having disputes adjudicated where there is a  
18 genuine interest in the controversy.

19 *Id.* at \*9.

20 Such factors may include: (1) the location where the relevant agreements were negotiated  
21 and executed, (2) the state that is most familiar with the governing law, (3) the plaintiff’s choice  
22 of forum, (4) the respective parties’ contacts with the forum, (5) the contacts relating to the  
23 plaintiff’s cause of action in the chosen forum, (6) the differences in the costs of litigation in the  
24 two forums, (7) the availability of compulsory process to compel attendance of unwilling non-  
25 party witnesses, (8) the ease of access to sources of proof, and (9) the forum state’s relevant  
26 public policy. *See Jones*, 211 F.3d at 498-99. “No single factor is dispositive and a district court  
27 has broad discretion to adjudicate motions to transfer on a case-by-case basis.” *Gatdula v. CRST*

28 *Int’l, Inc.*, 2011 U.S. Dist. LEXIS 13706, at \*8 (E.D. Cal. Feb. 8, 2011) (citing *Ctr. For*  
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1 *Biological Diversity v. Kempthorne*, 2008 U.S. Dist. LEXIS 84978 (N.D. Cal. Oct. 10, 2008), in  
2 turn citing *Stewart*, 487 U.S. at 29; *Sparling v. Hoffman Constr. Co.*, 864 F.2d 635, 639 (9<sup>th</sup> Cir.  
3 1988)).

4  
5 As the moving party, Defendant carries the burden of showing that the requested transfer  
6 of venue is warranted. *Commodities Futures Trading Comm’n v. Savage*, 611 F.2d 270, 279 (9<sup>th</sup>  
7 Cir. 1979); *see also Sequel Techs., Inc. v. Stern*, 2011 U.S. Dist. LEXIS 37007, at \*8 (S.D. Cal.  
8 Apr. 4, 2011) (“The moving party bears the burden of establishing these factors weigh in favor of  
9 transfer.”) “The general rule is that the plaintiff’s choice of forum is to be given substantial  
10 weight.” *Ansel Adams Publ’g Rights Trust v. PRS Media Partners, LLC*, 2010 U.S. Dist. LEXIS  
11 126791, at \*6 (N.D. Cal. Dec. 1, 2010). “The defendant must make a strong showing of  
12 inconvenience to warrant upsetting the plaintiff’s choice of forum.” *Decker*, 805 F.2d at 843; *see*  
13 *also Shultz*, 2011 U.S. Dist. LEXIS 24692, at \*8 (“Generally, the plaintiff’s choice of forum is  
14 treated with great deference, and only significant inconvenience or unfairness will justify  
15 transfer.”); *Sec. Investor Protection Corp. v. Vigman*, 764 F.2d 1309, 1317 (9<sup>th</sup> Cir. 1995)  
16 (“[U]nless the balance of the factors is strongly in favor of the defendants, the plaintiff’s choice  
17 of forum should rarely be disturbed.”); *accord Getz v. Boeing Co.*, 547 F. Supp. 2d 1080, 1086  
18 (N.D. Cal. 2008) (even where “[p]laintiffs’ choice of forum merits only minimal deference,” the  
19 court denied transfer where defendant “fail[ed] to meet its burden of establishing that the balance  
20 of inconveniences weighs heavily in favor of transfer to” another district). “Unless the balance  
21 is strongly in favor of the defendant, the plaintiff’s choice of forum should rarely be disturbed.”  
22 *Gulf Oil Corp.*, 330 U.S. at 508.  
23  
24  
25  
26  
27

1           **2.       Balance of Inconveniences Weigh in Favor of Plaintiff’s Choice of Venue**

2           Defendant intentionally fails to appraise this court in his very short brief, that Defendant  
3 bears the burden of demonstrating that “the balance of the factors is strongly in favor of  
4 Defendant’s” and that in the absence of such a showing “plaintiff’s choice of forum should rarely  
5 be disturbed.” *Sec. Investor Protection Corp.*, 764 F.2d at 1317. Defendant’s scant arguments  
6 demonstrate that Defendants has failed to show that the balance of factors weight in favor of  
7 transfer. To the contrary, the balance of factor actually weight in favor of keeping this litigation  
8 in Plaintiff’s chosen forum. It is simply not enough for Defendant to throw out some thin  
9 argument that because they have their offices in the Eastern District (especially since the  
10 Southern District is also within their own jurisdiction – the entire State of California) and that 4  
11 subsequently filed actions filed in the Eastern District that Plaintiff’s choice to file in his home  
12 forum district court should be displaced.  
13  
14

15                   **a.       Plaintiffs’ Choice of Forum**

16           As explained above, Plaintiff’s choice of forum should normally only be displaced if a  
17 defendant can meet its burden to establishing that the balance of inconveniences weighs heavily  
18 in favor of a transfer to another district. In the instant action, it is also important to stress that  
19 Plaintiff did not engage in forum shopping. Plaintiff filed this action in the Southern District  
20 precisely because this district is his home district and it is vastly more convenient for both the  
21 parties and the witnesses to litigate Plaintiff’s claims in the Southern District. Further, Plaintiffs  
22 legal counsel resides within the Southern District, and, unlike Defendant’s legal counsel who are  
23 salaried, Plaintiff’s local counsel is compensated on a per hour basis and transfer to the Eastern  
24 District will impose significant additional legal fees on Plaintiff. “As plaintiff is a resident of  
25 this forum, her decision to file suit here is accorded substantial weight....”) *Ctr. For Biological*  
26  
27

1 *Diversity v. Kempthorne*, 2008 U.S. Dist. LEXIS 84978 at \*9 (N.D. Cal. Oct. 10, 2008).

2 Additionally, Defendant, as the Secretary of State for California, also has conclusive contact with  
3 this forum, contact which is no less significant than in the Eastern District.

4 Accordingly, Plaintiff's choice of the Southern District weighs heavily against  
5 Defendant's motion to transfer to the Eastern District unless Defendant meets its burden of  
6 establishing that the balance of inconveniences weighs heavily in favor of transfer to another  
7 district.  
8

9 **b. Plaintiff Filed This Action Before Eastern District Cases Were Filed**

10 Plaintiff filed this action in the Southern District on July 30, 2019, approximately 6 hours  
11 after Governor Newsom signed the "Presidential Tax Transparency and Accountability Act" into  
12 law (the "Act"). Accordingly, Plaintiff's constitutional challenge to the Act was the first to be  
13 filed. All other actions filed in the Eastern District were filed after Plaintiff filed the instant  
14 action in this court. The Eastern District cases were not filed until August 2<sup>nd</sup> and 6<sup>th</sup>.  
15

16 The crux of Defendant's argument is that this action should be transferred because 4  
17 other lawsuits were filed in the Eastern District after Plaintiff's action was filed in this court.  
18 Defendant cites no reason why the subsequently filed actions could not be transferred to this  
19 court for consolidation and adjudication, or why he chose to file this motion in the Southern  
20 District rather than the Eastern District. As this Court is well aware, the act of transferring a is an  
21 electronic process, such that it is just as easy for the Eastern District cases to be transferred to the  
22 Southern District as it is to transfer this case to the Eastern District. Furthermore, in three of the  
23 cases subsequently filed in the Eastern District after Plaintiff filed his action, the standing of the  
24 plaintiffs to maintain their actions is speculative, at best, because none of the plaintiffs in *Griffin*  
25  
26  
27

28 *v. Padilla*, 2:19-cv-1477 (filed on August 2, 2019); *Koenig v. Padilla*, 2:19-cv-1507 (filed  
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1 August 6, 2019); and *Melendez v. Newsom*, 2:19-cv-1506 (filed August 6, 2019) allege that they  
2 are seeking access to any primary election ballot. Instead, their claims, at this stage, are both  
3 speculative as to any deprivation of their rights to associate with a particular presidential  
4 candidate and not sufficiently particularized and concrete to them sufficient to evoke Article III  
5 standing in the federal courts. In fact, Defendant’s legal counsel made essentially this argument  
6 to the California Supreme Court in a brief filed in opposition to the California Republican  
7 Party’s “Emergency Petition for Writ of Mandate or Other Extraordinary or Immediate Relief”  
8 against the challenged Act, seeking that court to rule on the validity of the challenged Act under  
9 provisions of the state constitution. *See*, Attachment #1 at pp. 20-22. Defendant argued that  
10 non-presidential candidates lack standing, at this stage, to challenge the Act because they have  
11 not suffered an actual or imminent “injury in fact” and that claims by such plaintiffs “rest upon  
12 contingent future events that may not occur as anticipated, or indeed may not occur at all.” *Id.* at  
13 20-21 (citing *Texas v. United States* 523 U.S. 296, 300 (1998)). In the same brief, at footnote #3,  
14 however, Defendant seems to signal their acknowledgment that the presidential candidates, De  
15 La Fuente and Trump are the proper litigants to adjudicate the constitutionality of the challenged  
16 Act. Accordingly, 3 subsequently filed actions by plaintiffs in the Eastern District who likely  
17 lack standing to advance their claims at this stage provides little heft for Defendant’s argument  
18 for transfer.

19  
20  
21  
22  
23 And, with respect to the challenged filed by President Trump in the Eastern District, legal  
24 counsel for Donald Trump, Thomas R. McCarthy explained to Plaintiff’s legal counsel on  
25 August 13<sup>th</sup> that he did not want to transfer his case into the Southern District because of a prior  
26 litigation in which he was legal counsel where he felt that this court did not act fast enough on  
27 his motion for a preliminary injunction in that prior action. *See*, Rossi Declaration at ¶¶ 4-5,  
28 PLAINTIFF’S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT’S  
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1 attached hereto. A tactical decision by legal counsel for President Trump not to select the  
2 Southern District or agree to transfer to the Southern District does not provide a basis for this  
3 Court to displace Plaintiff's choice of forum in his home district, where he resides and where all  
4 of his witnesses and local counsel also reside and work.  
5

6 **c. Convenience of Witnesses**

7 "The relative convenience to the witnesses is often recognized as the most important  
8 factor to be considered in ruling on a motion under § 1404(a)." *Saleh v. Titan Corp.*, 361 F.  
9 Supp. 2d 1152, 1160 (S.D. Cal. 2005). To carry its burden, a party moving for transfer "must  
10 identify potential witnesses by name and describe their testimony." *Id.* at 1161-65. Moreover,  
11 "[i]n determining whether this factor weighs in favor of transfer, the court must consider not  
12 simply how many witnesses each side has and the location of each, but, rather, the court must  
13 consider the importance of the witnesses." *Id.* at 1160-61; *see also Bohara v. Backus Hosp. Med.*  
14 *Benefit Plan*, 390 F. Supp. 2d 957, 963 (C.D. Cal. 2005) ("[I]f the transfer is for the convenience  
15 of witnesses, defendant must name the witnesses it wishes to call, the anticipated areas of their  
16 testimony and its relevance, and the reasons why the present forum would present a hardship to  
17 them."). "As moving party...defendants are 'obligated to identify the key witnesses to be called  
18 and to present a generalized statement of what their testimony would include.'" *Ctr. For Food*  
19 *Safety v. Vilsack*, 2011 U.S. Dist. LEXIS 31688, at \*18 (N.D. Cal. Mar. 17, 2011; quoting  
20 *Florens Container v. Cho Yang Shipping*, 245 F. Supp. 2d 1086, 1093 (N.D. Cal. 2002).  
21  
22  
23

24 All of the witnesses in this case reside and work in the Southern District of California.  
25 None of the witnesses in this case either live or work in the Eastern District. Plaintiff intends to  
26 testify in this action and is a resident of the Southern District. *See*, De La Fuente Declaration at  
27

28 ¶¶ 2, 13, attached hereto. Plaintiff will testify as to all the details necessary to establish his  
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1 standing to maintain this action. Plaintiff's accountant, who Plaintiff intends to call as a witness  
2 to explain the mountain of tax schedules, attachments and lists that are required to be released to  
3 Defendant under the challenged Act (and their irrelevance to advance any alleged state interest  
4 advanced by Defendant in support of the challenged Act), also resides and works within the  
5 Southern District. *See*, De La Fuente Declaration at ¶14. If this case is transferred from the  
6 Southern District to the Eastern District, Plaintiff does not believe that he will be able to  
7 convince his accountant to testify in this case owing to the travel distance and time and the loss  
8 of one or more work days to testify in this case. *See*, De La Fuente Declaration at ¶15.  
9 Accordingly, Defendant's requested transfer to the Eastern District threatens to deprive Plaintiff  
10 of an important fact witness in this litigation.  
11

12  
13 Furthermore, Defendant fails to identify a single expected witness that they expect to call  
14 in this action who will be inconvenienced by litigation of this action in the Southern District.  
15 Accordingly, one of the most important factors balance against transfer of this case from the  
16 Southern District to the Eastern District.  
17

18 Furthermore Plaintiff's local counsel both reside and maintain their offices within the  
19 Southern District. Additionally, air travel links to San Diego are far more direct and less  
20 expensive than flying into San Francisco and then renting a car and driving to Sacramento,  
21 California. Accordingly, convenience to the witnesses and legal counsel weighs in favor of the  
22 court denying Defendant's instant motion.  
23

24 **d. The Parties Contacts with Forum**

25 Plaintiff is a resident of San Diego and, therefore, resides within this judicial district.  
26 Defendant is the Secretary of State for California. Accordingly, Defendant has jurisdictional  
27 contact with this forum as great as it has with the Eastern District. Transfer to the Eastern  
28  
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1 District will result in a forum where only one party has any contact with the jurisdiction (i.e.  
2 Defendant only). Thus, Defendant's requested transfer will act to deprive adjudication of  
3 Plaintiff's claims in a court where all parties have contact with the forum. Accordingly, both  
4 parties' contact with the Southern District weighs in favor of rejecting Defendant's requested  
5 transfer to the Eastern District.  
6

7 **e. Contacts Relating to Plaintiffs' Cause of Action**

8 Plaintiff's forced compliance with the challenged Act as a condition precedent to  
9 securing access to the 2020 Republican presidential primary election ballot would occur in the  
10 Southern District. If Plaintiff is forced to file his 5 most recent years' worth of federal income  
11 tax returns, along with schedules, attachments and lists, any such filing by Plaintiff will occur  
12 through the use of either Federal Express or the United States Postal Service, either of which will  
13 be utilized from San Diego. Defendant provides no argument or evidence that Plaintiff would be  
14 required to travel to Sacramento in the Eastern District to personally file the documents with  
15 Defendant in his office. Accordingly, Plaintiff's forced compliance with the Act would occur in  
16 this judicial district and not in the Eastern District.  
17

18  
19 Defendant's argument that because the challenged Act was passed by the California state  
20 legislature sitting in Sacramento somehow makes the Eastern District the proper forum to  
21 adjudicate Plaintiff's claims is offered without any precedential support. The state legislature,  
22 while seated in Sacramento, acts for the entire State of California and its jurisdiction extends  
23 coterminous with the entire state. Accordingly, an unconstitutional law enacted in Sacramento  
24 may be properly challenged in any district court within the State of California, including the  
25 Southern District. Plaintiff would request that judicial notice be taken that California has, itself,  
26 challenged federal actions in California district courts and not in the district courts of the District  
27

1 of Columbia, directly undermining Defendant's argument that the judicial district where the  
2 offending statute or order was enacted has any priority in its adjudication.

3  
4 **f. Convenience of the Parties**

5 As noted above, Plaintiff and his local counsel reside in San Diego within this judicial  
6 district. And while Defendant's legal counsel does work out of the Eastern District, the fact that  
7 Defendant's legal counsel is the Attorney General of the State of California deprives them of any  
8 weight in their favor on this prong as the California Attorney General must routinely litigate  
9 cases throughout California and they cannot be heard to complain about having to litigate this  
10 action within a judicial district within their own jurisdiction. At bottom, Defendant's argument  
11 on this prong is that their convenience as government salaried lawyers is more important than  
12 Plaintiff's convenience and the convenience of his counsel. Accordingly, Defendant can derive  
13 no weight from this prong in favor of their requested transfer of venue to the Eastern District.  
14

15  
16 **g. Interest of Justice**

17 The interest of justice prong, as applied to this case, does not require the requested  
18 transfer to the Eastern District. First, as noted above, Plaintiff filed this action first and the cases  
19 subsequently filed in the Eastern District are free to consolidate with this action in the Southern  
20 District. Defendant could have, and still can, make all the same arguments to the Eastern District  
21 for transfer of those cases to the Southern District, it is just that Defendant has chosen to try to  
22 force transfer of this action to the Eastern District. The internal decision made by Defendant,  
23 without more, can carry no weight. Again, Defendant cites no authority that Defendant's  
24 preferred choice of forum is to be given any weight by a district court under 28 U.S.C. § 1404(a).  
25 At bottom, Defendant's legal counsel, for no other reason than it is more convenient to  
26

27 Defendant's own legal counsel is seeking transfer this action to the Eastern District rather than  
28  
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1 seek to transfer and consolidate subsequently filed actions with the action first filed in the  
2 Southern District.

3 Plaintiff does not oppose consolidation of the pending related cases in this judicial district.  
4  
5 Another component in consideration of the “interest of justice” prong clearly weighs in favor of  
6 Plaintiff. This action is time sensitive. The challenged Act requires presidential candidates to  
7 comply on or before November 26, 2019. It is also clear that any party who does not prevail in  
8 the district court will seek immediate emergency review in the Ninth Circuit and, likely,  
9 thereafter in the Supreme Court of the United States. Accordingly, quick and efficient  
10 adjudication of the instant motions for preliminary injunction serves the interest of justice.  
11  
12 Because this action was filed first, this Court has set a briefing and hearing schedule which will  
13 permit adjudication of the pending motions for preliminary injunction before the Eastern District,  
14 which will allowing for more time for appellate review before the November 26, 2019 deadline  
15 for 2020 presidential ballot compliance. Plaintiff filed his motion for a preliminary injunction on  
16 August 5, 2019. This Court has ordered that any brief in opposition be filed on August 26, 2019  
17 and any reply on September 2, 2019. A hearing on Plaintiff’s motion has been set for September  
18 17, 2019. The Eastern District, in contrast, has ordered that any motion for a preliminary  
19 injunction be filed on or before August 20, 2019, any brief in opposition be filed on September 5,  
20 2019 and any reply briefs no later than September 12, 2019. The Eastern District has set a  
21 hearing for September 19, 2019, a full 2 days later than the hearing ordered by this court. Under  
22 normal circumstances, a 2 day delay in a hearing is of little import. However, 2 additional days  
23 in this action may prove meaningful with respect to completion of any appellate review before  
24 the November 26, 2019, deadline for compliance imposed under the challenged Act.  
25  
26  
27

1 In addition, as explained above, it is not likely that Plaintiff will be able to secure the  
2 testimony of his accountant in the Eastern District as a result of the additional time and costs  
3 associated with Plaintiff's accountant having to close down his office to travel to Sacramento,  
4 California, a minimum of a 2 day roundtrip excursion, rather than being able to testify in his  
5 home city of San Diego. *See*, De La Fuente Declaration at ¶¶ 14-15.  
6

7 Accordingly, the interest of justice prong does not weigh in favor of Defendant's instant  
8 motion. In tandem, a close examination of all the prongs weigh heavily in favor of Plaintiff's  
9 choice of venue in the Southern District and Defendant's instant motion should be denied.  
10

### 11 CONCLUSION

12 Defendant's brief in support of the instant pending motion to transfer venue of this case  
13 to the Eastern District lacks any significant analysis of the many various prongs of the test that  
14 this Court must consider in making its decision on whether to transfer venue of this action from  
15 Plaintiff's chosen venue, in his home judicial district, and where this action was filed before any  
16 of the related cases now pending in the Eastern District. The bare fact that there are other related  
17 actions pending in a different judicial district simply fails to meet Defendant's heavy burden to  
18 show that the balance of the inconveniences weight heavily in favor of the requested transfer. A  
19 close examination of all of the relevant prongs of the test for transfer in conjunction with the  
20 first-to-file rule and the obvious ability of the subsequently filed related actions to consolidate in  
21 this judicial district, clearly demonstrate that Defendant has failed his meet his burden to show  
22 that the requested transfer should be granted. In fact, a proper analysis shows that the balance of  
23 inconveniences weigh in favor of Plaintiff's chosen forum.  
24

25 More to the point, Defendant's venue preference is no basis to support transfer, especially  
26 where this judicial district is within the same jurisdiction for which Defendant's legal counsel is  
27  
28  
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1 responsible to serve as lawyers for the Attorney General of California. Defendant has simply  
2 filed this motion in the wrong court. Any motion to transfer should have been filed by  
3 Defendant in the Eastern District of California, so that, in support of any alleged interest of  
4 justice, the subsequently filed related cases (even the three Eastern District cases where the  
5 plaintiffs likely lack standing to maintain their actions) can be consolidated with this action for  
6 prompt adjudication. Accordingly, Defendant's instant motion should be denied.  
7

8 Respectfully submitted,

9  
10 Dated: August 15, 2019

s/ Paul A. Rossi

Paul A. Rossi (PA Bar I.D. #84947)

Admission *Pro Hac Vice*

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11  
12  
13  
14  
15  
16 **CERTIFICATE OF SERVICE**

17 Plaintiff, by and through his undersigned legal counsel, hereby certifies that a true and  
18 correct copy of the foregoing document has been served on this date on opposing counsel via the  
19 Court's CM/ECF system.  
20

21 Dated: August 15, 2019

s/ Paul A. Rossi

Paul A. Rossi