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9 IN THE UNITED STATES DISTRICT COURT
 10 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

11
 12 **ROQUE ROCKY DE LA FUENTE,**
 13
 Plaintiff,
 14
 v.
 15
ALEX PADILLA,
 16
 Defendant.
 17

3:19-cv-1433-WQH-AHG

**REPLY IN SUPPORT OF MOTION
TO TRANSFER VENUE [28 U.S.C.
§ 1404(a)]**

Date: September 10, 2019
**NO ORAL ARGUMENT
UNLESS REQUESTED BY
THE COURT**

Judge: Hon. William Q. Hayes
Trial Date: Not Set
Action Filed: 7/30/2019

1 **I. INTRODUCTION**

2 The Court should transfer this case to the Eastern District of California, where
3 four other suits with similar claims brought by similar plaintiffs—including a
4 Republican Presidential Candidate and the current President of the United States,
5 the National Republican Committee, the California Republican Party, voters, and
6 would-be delegates to the Republican National Convention—will be considered by
7 a single judge. It inures to the benefit of all of the litigants to have these matters
8 resolved before one court to avoid inconsistencies, ambiguity, and to ensure a clear
9 and cogent path on appeal. Plaintiffs in the Eastern District cases have moved for
10 preliminary injunctions. Those motions will be considered and heard collectively
11 on September 19, 2019, and the motion for preliminary injunction in this case
12 should be included in that proceeding.

13 Plaintiff's suit here should be considered along with the others, before the
14 same court, to avoid inconsistencies that might arise from different courts
15 considering the same set of operative facts. In the interests of justice, judicial
16 economy, and for the convenience of the parties, the Court should transfer *De La*
17 *Fuente* to the Eastern District of California.

18 **ARGUMENT**

19 **I. THE DISCRETIONARY FIRST-TO-FILE DOCTRINE IS NOT APPLICABLE**
20 **HERE, AND AN ALTERNATIVE FORUM EXISTS THAT WILL SERVE ALL**
21 **THE PARTIES' INTERESTS.**

22 Relying primarily on *Pacesetter Systems Inc. v. Medtronic, Inc.*, 678 F.2d 93
23 (9th Cir. 1982), Plaintiff De La Fuente asserts that Defendant Secretary of State
24 Alex Padilla's motion should be denied because Plaintiff won the race to the
25 courthouse (by a mere two days) and was the "first to file". (Opp'n 2-3, ECF No.
26 17.) But the first-to-file doctrine simply does not apply here. As *Pacesetter*
27 explained, the "first-to-file" rule is a "generally recognized doctrine of federal
28 comity which permits a district court to decline jurisdiction over an action when a

1 complaint involving the *same parties* and issues has already been filed in another
2 district.” *Pacesetter Systems, Inc.*, 678 F.2d at 94–95 (italics added). Plaintiff is
3 not a party in any of the Eastern District cases, and none of the plaintiffs in the
4 Eastern District are parties here.¹

5 Even if the Court finds the “first-to-file” rule relevant, it should decline to
6 apply it here. “The most basic aspect of the first-to-file rule is that it is
7 discretionary; ‘an ample degree of discretion, appropriate for disciplined and
8 experienced judges, must be left to the lower courts.’” *Alltrade, Inc. v. Uniweld*
9 *Products, Inc.*, 946 F.2d 622, 628 (9th Cir. 1991) (quoting *Kerotest Mfg. Co. v. C-*
10 *O-Two Fire Equipment Co.*, 342 U.S. 180, 183–84 (1952)); *see also id.* at 628
11 (“[D]istrict court judges can, in the exercise of their discretion, dispense with the
12 first-filed principle for reasons of equity.... The decision and the discretion belong
13 to the district court.”); *Pacesetter Systems, Inc.*, 678 F.2d at 95. Thus, the trial
14 court’s discretion tempers the preference for the first-filed suit, when such
15 preference should yield to the forum in which all interests are best served. *See*
16 *Kerotest*, 342 U.S. at 184. The forum in which all interests are best served is the
17 Eastern District of California, where the current President and potential 2020
18 Republican nominee, the Republican National Committee, the California
19 Republican Party, numerous voters, and others are pursuing similar claims on a
20 parallel track.

21 If the Court considers the first-filed rule in connection with the transfer
22 analysis here, the Court should exercise its discretion to dispense with the rule in
23 the interests of justice, because the district court decisions on the merits of these
24 constitutional claims of national importance should be consistent and without
25 conflict as they inevitably wind their way through the appellate courts. Moreover,

26 _____
27 ¹ Plaintiff De La Fuente appears to conflate the first-to-file rule with the choice of forum
28 factor, which is relevant to a court’s weighing of a motion to transfer. As explained below,
though, that factor is entitled to minimal consideration here.

1 transfer is appropriate without regard to the filing of this suit just two days before
2 the first suit was filed in Sacramento, considering the balance of convenience
3 weighs in favor of the greater number of parties litigating in Sacramento; the lack
4 of any prejudice to a national figure like Plaintiff De La Fuente and his “national
5 litigation counsel” (Rossi Decl. ¶ 1) who can just as easily travel to Sacramento
6 rather than San Diego; and the interests of sound judicial administration and
7 economy. *See, e.g., Z-Line Designs, Inc. v. Bell'O Int'l, LLC*, 218 F.R.D. 663, 665
8 (N.D. Cal. 2003) (noting that court may refuse to apply first-to-file rule if balance
9 of convenience weighs in favor of later-filed action); *Capitol Records, Inc. v.*
10 *Optical Recording Corp.*, 810 F. Supp. 1350, 1354 (S.D.N.Y. 1992) (even absent
11 forum shopping by plaintiff, wise judicial administration favored Delaware rather
12 than New York ; the Delaware court had previously tried cases involving the same
13 patent); *Ward v. Follett Corp.*, 158 F.R.D. 645, 648 (N.D. Cal. 1994) (“first-to-file”
14 rule may be relaxed if “the balance of convenience weighs in favor of the later-filed
15 action.”).

16 Moreover, Plaintiff’s claim that he and his accountant will testify in support of
17 the motion for preliminary injunction disregards local rules, which do not provide
18 for witness testimony in motion hearings. *See* S.D. Cal. Local Rule of Court
19 7.1(d)(1) (“Motions must be determined upon the moving papers referred to herein
20 and oral argument.”) and Rule 7.1(f)(2)(a) (“In addition to the affidavits required or
21 permitted by Fed. R. Civ. Pro. 6(d) and 56, copies of all documentary evidence
22 which the movant intends to submit in support of the motion ... must be served and
23 filed with the motion.”). Conversely, Eastern District rules expressly provide for
24 witness testimony at motions for preliminary injunctions, if the Court is advised in
25 advance of such a request within the brief. (E.D. Cal. Local Rule of Court
26 231(d)(3).) If Plaintiff would like to testify and call witnesses in support of his
27 motion, transfer will actually advance his stated interests.
28

1 **II. THE INTERESTS OF JUSTICE AND JUDICIAL ADMINISTRATION SUPPORT**
2 **TRANSFER.**

3 Tellingly, Plaintiff's opposition gives short shrift to the interest of justice.
4 "[T]he interest of justice, which includes judicial economy, may be determinative
5 [of] a particular transfer motion, even if the convenience of the parties and
6 witnesses might call for a different result." *Regents of the Univ. of Cal. v. Eli Lilly*
7 *& Co.*, 119 F.3d 1159, 1565 (9th Cir. 1997) (internal quotation and citation
8 omitted); *see also Alere Med., Inc. v. Health Hero Network, Inc.*, 2007 WL
9 4351019 at *1–2 (N.D. Cal. Dec. 12, 2007) (finding interest of justice favored
10 transfer, balancing whether actions should be tried "separately or in a coordinated
11 fashion.") And "[t]here is a strong policy favoring the litigation of related claims in
12 the same tribunal in order that pretrial discovery can be conducted more efficiently,
13 duplicitous litigation can be avoided, thereby saving time and expense for both
14 parties and witnesses, and inconsistent results can be avoided." *Wyndham*
15 *Associates v. Bintliff*, 398 F.2d 614, 619 (2d Cir. 1968). Here, because a transfer of
16 venue would "reduce the time, energy, and money it will take to litigate the instant
17 action, to the benefit of both the court and the parties," Defendant's motion should
18 be granted. *Synopsys, Inc. v. Mentor Graphics Corp.*, No. C 12-5025-MMC, 2013
19 WL 1365946, at *7–8 (N.D. Cal., Apr. 3, 2013).

20 The Honorable Morrison C. England, Jr. is presiding over all four cases in the
21 Eastern District, and plaintiffs in three of those matters have filed motions for
22 preliminary injunction, which will be considered and heard together on September
23 19, 2019. Plaintiff here has also filed a motion for preliminary injunction, which is
24 set for hearing on September 17. (ECF Nos. 6, 9.) Given these hearing dates'
25 proximity, Plaintiff will not be prejudiced in the relief sought in this case by a
26 transfer. To conserve judicial resources and to avoid inconsistent decisions, to
27 streamline judicial administration of these cases, and in the interests of justice, the
28

1 same court should hear and make decisions concerning the constitutionality of the
2 Act.

3 **III. PLAINTIFF’S CHOICE OF FORUM IS ENTITLED TO MINIMAL**
4 **CONSIDERATION.**

5 The deference afforded to Plaintiff’s choice of forum is “far from absolute.”
6 *Loya v. Starwood Hotels & Resorts Worldwide, Inc.*, 583 F.3d 656, 665 (9th Cir.
7 2009). The weight to be given to a plaintiff’s choice of forum depends on the
8 extent of a defendant’s contacts with the chosen forum and plaintiff’s contacts,
9 including those relating to his cause of action. *Pacific Car & Foundry Co. v. Pence*,
10 403 F.2d 949, 954 (9th Cir. 1986). “If the operative facts have not occurred within
11 the forum and the forum has no interest in the parties or subject matter, [plaintiff’s]
12 choice is entitled to only minimal consideration.” *Id.*

13 Here, Plaintiff’s choice of forum is entitled to little weight. Plaintiff’s asserted
14 causes of action are not based on occurrences in this district. Plaintiff intends to
15 run as a presidential candidate in the California statewide primary election. He
16 challenges the validity of the Act, which places certain requirements on all
17 California primary election candidates for the office of the president. Nothing
18 about the Act or Plaintiff’s challenge to it relates to any specific conduct in this
19 district. Indeed, it is unlikely that any factual occurrence in this district is relevant
20 to the resolution of Plaintiff’s claims, which are likely to be resolved on purely
21 legal grounds. And this district also has no greater interest in the subject matter
22 than the Eastern District because the Act applies statewide.

23 Nor do Plaintiff’s purported “contacts” with the Southern District mitigate
24 against a transfer to the Eastern District. *See, e.g., Pierce-Nunes v. Toshiba Amer.*
25 *Info. Sys., Inc.*, (N.D. Cal., Sept. 15, 2014, No. 14-cv-00796 JST) 2014 WL
26 4674666, at *4. Plaintiff argues that he resides in San Diego and has had no contact
27 with the Eastern District. (ECF 17 at 10-11.) But that assertion rings hollow,
28 considering Plaintiff has a track record as a *statewide* candidate in California, both

1 in the 2016 Democratic Presidential primary election, and the 2018 senate election.
2 (Cal. Sec’y of State, *Certified List of Candidates*,
3 [https://elections.cdn.sos.ca.gov//statewide-elections/2016-primary/june-2016-
5 presidential-abbrev.pdf](https://elections.cdn.sos.ca.gov//statewide-elections/2016-primary/june-2016-
4 presidential-abbrev.pdf); Cal. Sec’y of State, *Certified List of Candidates for the
6 June 5, 2018 Statewide Direct Primary Election*,
7 [https://elections.cdn.sos.ca.gov//statewide-elections/2018-primary/cert-list-
9 candidates.pdf](https://elections.cdn.sos.ca.gov//statewide-elections/2018-primary/cert-list-
8 candidates.pdf).)

8 Plaintiff also has purposefully availed himself of the Eastern District because
9 he previously sued Defendant Padilla in the Eastern District in a case relating to
10 ballot access and his ability to appear on a statewide ballot as a presidential
11 candidate. *See De La Fuente v. Padilla*, Case No. 2:16-v-2877-JAM-GGH (E.D.
12 Cal.); *see De La Fuente v. Padilla*, 9830 F.3d 1101 (9th Cir. 2019). Given
13 Plaintiff’s past political campaigns and lawsuit against defendant Secretary of State
14 in the Eastern District, Plaintiff has established contact with the Eastern District
15 sufficient enough to expect to be involved in additional transactions there, including
16 litigation concerning alleged ballot access.

17 Among the considerations to be reviewed when evaluating a transfer motion
18 are “the contacts relating to the plaintiff’s cause of action in the chosen forum.”
19 *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498-99 (9th Cir. 2000.) Because he
20 would be required to comply with SB 27 by depositing document in the mail from
21 San Diego, Plaintiff argues that these “contacts” vitiate against transferring venue.
22 (ECF No. 17 at 11.) But the “contact with the chosen forum” consideration should
23 be more closely examined by considering whether “the operative facts [in the
24 complaint]” have occurred within the originally selected forum. *Pacific Car &
25 Foundry Co. v. Pence*, 403 F.2d 949, 954 (9th Cir. 1968). If “the forum of original
26 selection ... has no particular interest in the parties or the subject matter, the
27 plaintiff’s choice is entitled only to minimal consideration.” *Id.*

28

1 Here, there is no “particular interest” in this action in the Southern District,
2 and certainly no more than that in the Eastern District, where the remaining cases
3 are all venued. Without such “particular interest,” Plaintiff’s selection of the
4 Southern District as a venue is entitled to “minimal consideration.”

5 **IV. THE ALLEGED CONVENIENCE OF THE PARTIES DOES NOT MILITATE IN**
6 **FAVOR OF VENUE IN THIS COURT.**

7 In addition, Plaintiff argues that the “convenience of witnesses” mitigates in
8 favor of the case remaining in this Court, because both he and his accountant intend
9 to appear as witnesses. (Opp’n 9-10.) Again, though, Plaintiff wrongly assumes he
10 will be allowed to testify and call witnesses in support of his motion for preliminary
11 injunction. This Court’s rules do not allow for that. (See S.D. Cal. Local Rules of
12 Court 7.1(d)(1) and 7.1(f)(2)(a).) In contrast, the Eastern District rules expressly
13 provide for witness testimony at motions for preliminary injunctions, if the Court is
14 advised in advance of such a request within the brief. (E.D. Cal. Local Rule of
15 Court 231(d)(3).) Accordingly, the only prejudice that Plaintiff and his potential
16 witness would incur—the alleged inconvenience or inability to testify—would only
17 arise if this matter is not transferred to the Eastern District of California.

18 Plaintiff argues that litigating this case in the Eastern District would require
19 him to incur more legal fees because his “local counsel” is located in San Diego.
20 (Opp’n 6.) But any additional fees he might incur would be “a function of
21 Plaintiff’s having selected a [San Diego] lawyer.” *Devaux-Spitzley v. Prudential*
22 *Ins. Co. of Am.*, 18-CV-04436-JST, 2019 WL 935137, at *4 (N.D. Cal. Feb. 26,
23 2019). Plaintiff has not suggested that he is unable to find a lawyer in the Eastern
24 District, so “to weigh this factor against transfer would put the cart before the horse,
25 and incentivize future plaintiffs to hire in-district lawyers as a way to fend off
26 meritorious motions to transfer.” *Id.* Furthermore, Plaintiff’s “local counsel” and
27 his national counsel (based in Pennsylvania) are no strangers to the Eastern District,
28 as both of them previously represented Plaintiff in a lawsuit against the Secretary of

1 State there. *See De La Fuente v. Padilla*, Case No. 2:16-v-2877-JAM-GGH (E.D.
2 Cal.).

3 Plaintiff's arguments about convenience based on the location of his "local
4 counsel" are without merit.

5 **CONCLUSION**

6 For the reasons set forth above and in Defendant's motion, the Court should
7 order this case transferred to the Eastern District under 28 U.S.C. § 1404(a), where
8 it can be related to the other similar pending cases.

9
10 Dated: August 16, 2019

Respectfully submitted,

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