UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JOANNE C. JACOBSEN,
etc., et al.,

Plaintiffs,

v. CASE NO: 8:10-cv-2536-T-26TBM

VERIZON COMMUNICATIONS INC.,
and VERIZON EMPLOYEE BENEFITS
COMMITTEE,

Defendants.
_____/

O R D E R

UPON DUE CONSIDERATION of Defendant's extensive submissions, it is **ORDERED AND ADJUDGED** that Defendant's unopposed Motion to Transfer (Dkt. 14) is **granted**. The clerk is directed to transfer this case to the United States District Court for the Northern District of Texas and to close the case following transfer. It is also **ORDERED AND ADJUDGED** that the unopposed Motion to Stay Action, or, in the Alternative, Extend the Time to Respond to Plaintiffs' Complaint (Dkt. 17) is **granted**. All proceedings in this case, including Defendant's filing of a response to Plaintiffs' complaint, are stayed pending the transfer of this case to the Northern District of Texas.

DONE AND ORDERED at Tampa, Florida, on March 16, 2011.

s/*Richard A. Lazzara*
RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:
Counsel of Record

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JOANNE C. JACOBSEN and SUSAN A. BURKE, Individually, and as Representatives of retiree plan participants and their beneficiaries of VERIZON EMPLOYEE BENEFIT PLANS involuntarily re-classified and treated as transferred into IDEARC/SUPERMEDIA'S EMPLOYEE BENEFIT PLANS,

Plaintiffs,

vs. **Case No.: 8:10-cv-02536-RAL-TBM**

VERIZON COMMUNICATIONS INC., and VERIZON EMPLOYEE BENEFITS COMMITTEE,

Defendants.
_____/

DEFENDANTS' MOTION TO TRANSFER AND SUPPORTING MEMORANDUM OF LAW

Defendants, Verizon Communications Inc. and Verizon Employee Benefits Committee, pursuant to 28 U.S.C. § 1404, hereby move that this Court transfer this action to the United States District Court for the Northern District of Texas, where a directly related case is pending. Counsel for Plaintiffs has consented to this Motion.

In support hereof, Defendants state the following:

1. This case is a purported class action alleging that Verizon Communications Inc. and the fiduciary of certain Verizon employee benefit plans violated ERISA § 510, 29 U.S.C. § 1140, by transferring assets and liabilities associated with their retirement benefits to another company as part of a spin-off transaction that took place in November 2006.

2. Another ERISA lawsuit brought on behalf of the same class -- and which likewise seeks to challenge the propriety of the employee benefit transfers that occurred as part of the November 2006 spin-off -- has already been pending in the United States District Court for the Northern District of Texas for over a year. *See Philip Murphy, Jr., et al v. Verizon Communications Inc, et al.,* Case No. 3:09-cv-2262-G (N.D. Tex. 2010) (the "*Murphy* Texas Action").

3. Plaintiffs themselves have acknowledged that the instant lawsuit is "directly related" to the *Murphy* Texas Action. Because the two lawsuits involve common questions of fact, trial of the two cases before a single court would be more efficient and would protect Verizon from the risks of inconsistent adjudications. The Court should therefore transfer this case to Texas under 28 U.S.C. § 1404, pursuant to the well-established "first filed" rule.

4. Transfer is especially appropriate here because of the strong connection that this case has to Texas and the absence of any material connection to Florida. The Verizon business unit that was spun off in November 2006 was located in Texas and a number of the Verizon employees most directly involved in decisions regarding the employee benefit aspects of the spin-off transaction worked out of a Verizon headquarters office in Irving, Texas. The locus of operative facts and the convenience of the parties and witnesses thus weigh decisively in favor of a transfer to Texas.

5. By contrast, the *only* connection this case has to Florida is that one of the two Plaintiffs lives here. It is well-established, however, that a plaintiff's choice of forum is entitled to little deference where, as here, (*i*) the plaintiff brings a class action, and (*ii*) the facts underlying the plaintiff's claims have no significant nexus with the jurisdiction in which suit is filed. Deference to Plaintiffs' forum choice in this case would be particularly inappropriate,

given that Plaintiff Jacobsen previously filed a substantially similar lawsuit against Verizon in Texas, and that only a small fraction of the alleged class resides in Florida.

6. On March 15, 2011, counsel for Verizon conferred with counsel for Plaintiffs, and counsel for Plaintiffs consented to Verizon's request that this case be transferred to the Northern District of Texas pursuant to 28 U.S.C. § 1404.

7. This Motion is more fully supported by the following Memorandum of Law.

MEMORANDUM OF LAW

I. BACKGROUND AND STATEMENT OF THE FACTS

A. The Parties

Defendant Verizon Communications Inc. ("Verizon") "is a Delaware corporation and one of the largest telecommunications, broadband and television programming providers in the United States." Dkt. 1, at ¶ 16. Plaintiff Jacobsen has alleged that, "[w]ithin the Dallas Division of [the United States District Court for the Northern District of Texas], Verizon maintains an H.R. Department charged with administering all of Verizon's welfare plans and pension plans." Pistilli Decl., Ex. A, at ¶ 11.

Defendant Verizon Employee Benefits Committee ("EBC") is the named fiduciary and administrator of various Verizon-sponsored pension and welfare plans. Dkt. 1, at ¶ 17. Plaintiff Jacobsen has alleged that the "Verizon EBC has delegated day-to-day administration of Verizon's employee benefit plans to Verizon's human resources department including personnel in the offices located . . . at 600 Hidden Ridge, Irving, Texas." *See* Pistilli Decl., Ex. A, at ¶ 12; *see id.* at ¶ 4.

Plaintiff Susan A. Burke is a resident of Salem, Massachusetts. Dkt. 1, at 14. Plaintiffs have alleged that Plaintiff Joanne Jacobsen is a resident of Venice, Florida. *Id.* at 12. Prior to

filing the instant lawsuit, Plaintiff Jacobsen sued Verizon and the Verizon EBC in the United States District Court for the Northern District of Texas. *See* Pistilli Decl., Ex. A.

B. The November 2006 Spin-Off Transaction

On October 18, 2006, Verizon announced that its Board of Directors had approved the spin-off of its wholly owned directories publishing business, Verizon Information Services ("VIS"), to its stockholders as a separate, publicly traded company named Idearc Inc., now known as SuperMedia Inc. Schoenecker Decl., ¶ 4; *see* Dkt. 1, at ¶ 19. At that time, VIS was a leader in the directories publishing business nationwide and controlled SuperPages.com. Schoenecker Decl., ¶ 4; *see* Dkt. 1, at ¶ 19. The VIS unit of Verizon was located in the Dallas-Fort Worth metropolitan area in Texas, where a substantial number of its current and former employees resided. Schoenecker Decl., ¶ 5.

The spin-off transaction was completed on November 17, 2006. Dkt. 1, at ¶ 31. Pursuant to an Employee Matters Agreement of that date, Verizon's pension plans transferred the assets and liabilities associated with current and certain former VIS employees to newly created Idearc (now SuperMedia) pension plans. *See id.*; Schoenecker Decl., ¶ 6.

C. The Texas ERISA Actions

On November 13, 2009, Plaintiff Jacobsen -- together with Sandra Noe and Claire Palmer -- filed a putative class action lawsuit against Verizon, the Verizon EBC and various Verizon pension plans in the United States District Court for the Northern District of Texas. Plaintiff Jacobsen's Texas lawsuit -- like her current lawsuit -- challenged the propriety of Verizon's decision to transfer assets and/or obligations relating to retired employees of Verizon's directories business from Verizon-sponsored employee benefit plans to Idearc plans and sought "injunctive relief ordering . . . that all Plaintiffs and putative class members be restored to their former status as participants in Verizon's pension and welfare plans." *See id.* at Prayer For

Relief, ¶ J. On November 24, 2009, Plaintiff Jacobsen -- by and through counsel Curtis L. Kennedy -- voluntarily dismissed her Texas action.

On November 25, 2009, Ms. Noe, Ms. Palmer and Philip Murphy -- by and through counsel Curtis L. Kennedy -- filed the *Murphy* Texas Action. Dkt. 1, at ¶ 6; *see* Pistilli Decl., Ex. B. On January 6, 2010, plaintiffs in the *Murphy* Texas Action filed an amended complaint. *See* Pistilli Decl., Ex. C. Both of the complaints in the *Murphy* Texas Action relate to Verizon's decision to spin off its directories business to Idearc and to transfer the assets and liabilities associated with the pensions of former VIS employees to Idearc (now SuperMedia) pension plans. *See id.*; Pistilli Dec. Ex. B. The principal relief sought by plaintiffs in the *Murphy* Texas Action is "injunctive relief ordering . . . that all Plaintiffs and putative class members be restored to their former status as participants in Verizon's pension and welfare plans." Pistilli Decl., Ex. C, at Prayer For Relief, ¶ G.4.

One of the putative class claims pursued by the plaintiffs in the *Murphy* Texas Action was the claim that certain defendants violated Section 510 of ERISA, which prohibits "discriminat[ion] against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan." 29 U.S.C. § 1140. Specifically, the *Murphy* plaintiffs alleged that "when Verizon reclassified Plaintiffs and putative class members so as to treat them as being transferred into Idearc's pension plans, Verizon was motivated in part to interfere with retirees' rights to continue receiving payment of their protected Verizon pension benefits, as well as their welfare benefits." Pistilli Decl., Ex. C, at ¶ 143. On October 18, 2010, Judge Joe Fish, who is presiding over the *Murphy* Texas Action, dismissed the *Murphy* plaintiffs' Section 510 claim with prejudice. *See* Dkt. 1, at ¶ 7.

The *Murphy* Texas Action has been pending for more than 15 months. In that time, significant progress -- including the filing of three separate dispositive motions and substantial document productions by defendants -- has been made. On March 3, 2011, the Court in the *Murphy* Texas Action certified the case, pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, as a non-optout class action. *See* Pistilli Decl. ¶ Ex. D. Discovery in the *Murphy* Texas Action is set to close on July 15, 2011, and the parties' cross-motions for summary judgment are due on August 1, 2011. *See* Pistilli Decl., Ex. E.

D. Plaintiffs' Claims In This Lawsuit

Plaintiffs filed their complaint in the instant action on November 12, 2010. Plaintiffs' complaint -- like the complaint filed by Plaintiff Jacobsen in Texas and like the *Murphy* Texas Action -- relates exclusively to the propriety of Verizon's decision to transfer assets and/or liabilities associated with former employees of its directories business to Idearc employee benefit plans as part of the spin-off transaction. Plaintiffs' complaint in this case -- which references the *Murphy* Texas Action on at least six separate occasions -- expressly acknowledges that Plaintiffs "seek to pursue the very same ERISA Section 510 claim that the *Murphy* case plaintiffs attempted to pursue on behalf of the putative class." Dkt. 1, at ¶ 99; *see id.* at ¶¶ 6-8, 36, 104. The complaints in this case and the *Murphy* Texas action both seek certification of a class consisting of "all retirees and their beneficiaries formerly enrolled in Verizon's pension" plans "who were reclassified by Verizon and treated as transferred into" Idearc's pension plans "pursuant to the [s]pin-off occurring in November 2006." *Compare id.* at ¶ 94, *with* Pistilli Decl., Ex. C, at ¶ 169.[1] Moreover, the principal relief sought by Plaintiffs in this case is also

[1] Although the wording of the class definition adopted by the Court in the *Murphy* Texas Action differs somewhat from the class definition in the complaints, the composition of the class certified by the court is identical to that sought by plaintiffs in the *Murphy* Texas Action and in this action. *Compare* Pistilli Decl., Ex. D, ¶ 1, *with* Dkt. 1, ¶ 94; Pistilli Decl., Ex. C, at ¶ 169.

identical to the relief sought by plaintiffs in the *Murphy* Texas Action: "injunctive relief ordering . . . that all Plaintiffs and putative class members be restored to their former status as participants in Verizon's pension and welfare plans." *Compare* Dkt. 1, at Prayer For Relief ¶ B.2, *with* Pistilli Decl., Ex. C, at Prayer For Relief, ¶ G.4.

Plaintiffs in this case are represented by the same counsel as Plaintiffs in the *Murphy* Texas Action, Curtis L. Kennedy. In a Status Report submitted by plaintiffs to the Court in the *Murphy* Texas Action, counsel acknowledged that the Plaintiffs in this case are members of the *Murphy* class. *See* Pistilli Decl., Ex. F, at 13. Counsel had previously indicated to both Judge Fish and this Court that Plaintiffs would seek to have the instant case transferred to the Northern District of Texas for consolidated pretrial proceedings under 28 U.S.C. § 1407, which permits consolidation where "civil actions involving one or more common questions of fact are pending in different districts." *See* Dkt. 5; Pistilli Decl., Ex. F, at 13. To date, however, Plaintiffs have not requested any such transfer.

E. Facts Relating To Venue

The gravamen of Plaintiffs' complaint in this action relates to Verizon's decisions (*i*) to spin off its directories business to Idearc, and (*ii*) to transfer the assets and liabilities associated with retired former employees of Verizon's directories business from Verizon plans to Idearc plans as part of that transaction. None of these decisions took place in Florida; none of the witnesses with knowledge regarding these decisions resides or resided in Florida; and none of the documents relating to this decision are located in Florida. *See* Schoenecker Decl., ¶¶ 3, 7.

By contrast, Verizon employees in Texas and New Jersey were significantly involved in discussions and decisions concerning the Idearc spin-off and the employee benefit aspects of the transaction. *Id.* ¶ 7. A number of the witnesses with knowledge regarding the Idearc spin-off -- including at least one *former* Verizon employee -- likewise live in Texas. *Id.* ¶¶ 1, 3, 8-9. The

Texas-based Verizon witnesses include the two Verizon employees with the most knowledge regarding the employee benefit aspects of the spin-off transaction and the Verizon employee with the most knowledge regarding Plaintiffs' administrative claims for benefits (*see* Dkt. 1, at ¶¶ 52-76). Schoenecker Decl., ¶¶ 1, 8-9.

Prior to its spin-off, Verizon's directories business --VIS -- was headquartered in Texas, and Idearc (now SuperMedia) is currently headquartered in the Dallas-Fort Worth metropolitan area in Texas. *Id.* at ¶ 5.

In addition to the *Murphy* Texas Action, a third case against Verizon relating to the Idearc spin-off transaction is also currently pending before Judge Fish in the Northern District of Texas. That case -- captioned *U.S. Bank National Association v. Verizon Communications Inc.*, No. 10-01842 -- relates to Idearc's 2009 bankruptcy filing.

II. ARGUMENT

Because this case and the *Murphy* Texas Action involve substantially overlapping issues and parties, the Court should transfer this case to the Northern District of Texas pursuant to the well-established first-filed rule. The *Murphy* Texas Action has been pending before Judge Fish for over a year, and so the interests of efficiency and comity among the federal courts counsels strongly in favor of a transfer. The facts and decisions at issue in this case, moreover, have a very strong connection to Texas. Accordingly, consolidated proceedings in Texas would be more convenient for the parties and witnesses than separate, overlapping actions in two different federal courts. Finally, Plaintiffs' decision to file in a Florida forum is not entitled to significant deference here because Plaintiffs' claims have no material connection to events that occurred in Florida and because Plaintiffs purport to represent a nationwide class.

An action may be transferred "[f]or the convenience of parties and witnesses" and "in the interest of justice" to any other district in which it could have been brought. 28 U.S.C.

§ 1404(a). This case could have been brought in the Northern District of Texas because Verizon resides in that District and "a substantial part of the events or omissions giving rise to [Plaintiffs'] claim[s] occurred" there. 28 U.S.C. § 1391(a). The case should be transferred to Texas because both the "private interest factors" and the "public interest factors" that courts consider in deciding § 1404 transfer motions support a transfer.

A. The Public Interest Factors Strongly Favor Transfer.

Here, a transfer to Texas would be in the public interest because of the strong federal policy in favor of consolidating overlapping lawsuits in the judicial district where the first such lawsuit was filed.

"Where two actions involving overlapping issues and parties are pending in two federal courts, there is a strong presumption across the federal circuits that favors the forum of the first-filed suit under the first-filed rule." *Manuel v. Convergys Corp.*, 430 F.3d 1132, 1135 (11th Cir. 2005). This rule "is premised on judicial economy, comity amongst the district courts, and the desire to avoid potentially conflicting rulings." *Abbate v. Wells Fargo Bank, N.A.*, No. 09-62047, 2010 WL 3446878, at *5 (S.D. Fla. Aug. 31, 2010); *see Global Innovation Tech. Holdings, LLC v. Acer Am. Corp.*, 634 F. Supp. 2d 1346, 1348 (S.D. Fla. Aug. 31, 2009) (holding that "trial efficiency and the interests of justice are best served by transferring" case pursuant to first-filed rule). "Once the moving party establishes that the issues and parties are overlapping, any party objecting to jurisdiction in the first-filed forum [must] carry the burden of proving compelling circumstances to warrant an exception to the first-filed rule." *Abbate*, 2010 WL 3446878, at *5 (internal quotation marks omitted); *see Manuel*, 430 F.3d at 1135.

Here, this case and the *Murphy* Texas Action involve substantially overlapping issues and parties. In both cases, Verizon and the Verizon EBC are defendants. And one of the Plaintiffs in this case, Ms. Jacobsen, originally sought to pursue her claim in Texas, along with two of the

current plaintiffs in the *Murphy* Texas Action. The facts relevant to the two cases, moreover, not only overlap but are virtually identical. For instance, both lawsuits seek to challenge the propriety of Verizon's transfer of retired VIS employees from Verizon pension plans to Idearc pension plans as part of the November 2006 spin-off. And both seek the same relief -- *i.e.*, for transferred VIS retirees to be "restored" to the rolls of their former Verizon plans. Indeed, Plaintiffs themselves have represented to this Court that the instant action is "directly related" to the *Murphy* Texas Action. *See* Dkt. 5.

Under similar circumstances, Florida federal courts routinely transfer cases to the district in which the first-filed suit is pending. For instance, in *Balloveras v. The Purdue Pharma Co.*, No. 04-20360, 2004 WL 1202854 (S.D. Fla. May 19, 2004), the court transferred a claim under Florida's Deceptive and Unfair Trade Practices Act to a New York federal court because it was related to a series of patent actions pending in that court, explaining that the judge in New York already had "considerable experience with the issues." *Id.* at *2. Here, Judge Fish -- who is presiding over the *Murphy* Texas Action and another action relating to the Idearc spin-off -- likewise already has considerable experience with the issues raised in this case. Similarly, in *Global Innovation Technology Holdings, LLC*, the court transferred a case pursuant to the first-filed rule even though they did not involve exactly the same parties. *See* 634 F. Supp. 2d at 1349. Here, Plaintiffs purport to represent the same class as the class that has already been certified in the *Murphy* Texas Action, and each of the Defendants in this action is also a defendant in the *Murphy* Texas Action. Accordingly, the case for a transfer to Texas is even stronger here. *See also Abbate*, 2010 WL 3446878, at *5 (transferring class action brought by a group of noteholders to district where other claims by holders of similar notes were already pending).

In sum, trial efficiency and the interest of justice would be best served by a transfer of this case to the Northern District of Texas for all purposes. Because this case and the *Murphy* Texas Action overlap substantially, the first-filed rule applies. Under that rule, Plaintiffs must establish "compelling circumstances" to defeat a transfer motion. No such compelling circumstances exist here, and the public interest factors militate strongly in favor of a transfer.

B. The Private Interest Factors Weigh Heavily In Favor Of A Transfer.

In addition to the public interest factors, courts also consider various private interest factors under the "convenience of parties and witnesses" rubric. 28 U.S.C. § 1404(a). These private interest factors include "the convenience of the witnesses"; "the location of relevant documents"; "the convenience of the parties"; and "the locus of operative facts." *Manuel*, 430 F.3d at 1135 n.1. Each of these factors weighs heavily in favor of a transfer to Texas.[2]

First, Texas is a "locus of operative facts" relating to this lawsuit. The spin-off transaction at the heart of this case concerns a former Verizon business that was and remains headquartered in Texas. Schoenecker Decl., at ¶ 5. The decisions regarding the spin-off transaction -- including the decision to transfer assets and liabilities associated with the benefits of certain retired VIS employees -- were made by and reviewed with Verizon employees primarily located in either Irving, Texas or Basking Ridge, New Jersey. *Id.* at ¶¶ 3, 7. Thus, unlike Florida, Texas has a substantial connection to the facts at issue in this lawsuit.

Second, a transfer to Texas would be more convenient for the witnesses. In its initial disclosures in the *Murphy* Texas Action, Verizon identified four witnesses with knowledge relevant to the Idearc spin-off and, in particular, the employee benefits aspects of the spin-off

[2] Because Plaintiffs' claims arise exclusively under federal law, the "forum's familiarity with the governing law" is irrelevant here. *See, e.g., Corioliss, Ltd. v. Corioliss USA, Inc.*, No. 08-21579, 2008 WL 4272746, at *3 (S.D. Fla. Sept. 17, 2008)

transaction. *See* Pistilli Decl., Ex. G. Two of those witnesses are located in Texas and two are located in New Jersey. *See id.*; Schoenecker Decl., ¶ 8 By contrast, none of the witnesses with knowledge relevant to this case lives or works in Florida. *See id.* ¶ 3. Thus, Texas is a more convenient location for the witnesses, including at least one former Verizon employee (*see id.* ¶ 8), who would not be subject to the subpoena power of the Florida courts. *See Moghaddam v. Dunkin Donuts, Inc.*, 2002 WL 1940724, at *4 (S.D. Fla. Aug. 13, 2002) (inconvenience to defendants' employees of traveling to trial weighs in favor of transfer); *Windmere Corp. v. Remington Prods., Inc.*, 617 F. Supp. 8, 10 (S.D. Fla. 1985) (location of defendants' employees with knowledge regarding the claim weighs in favor of transfer).

A transfer to Texas would also be more convenient for the witnesses because it likely would obviate the need for the same group of individuals to be deposed twice and to testify at two separate trials. Because the facts of this case and the *Murphy* Texas Action overlap so substantially, it is probable that they would be tried together (if necessary) before Judge Fish in Texas. This represents yet another reason for transfer.

Third, Texas would be more convenient for the parties. It would be more convenient for Verizon to defend these two, virtually identical lawsuits in one place. It also would be less disruptive to Verizon's business operations if its Texas-based witnesses were not required to travel. *See id.* Nor would a Texas trial be inconvenient for Plaintiffs. As Plaintiffs' counsel has observed in the context of the *Murphy* Texas Action, "none of the ERISA based claims in this civil action involve either the conduct of Plaintiffs[] or the conduct of any putative class member." Pistilli Decl., Ex. F, at 10. Thus, it is unlikely that Plaintiffs' testimony will be necessary at trial. *See Balloveras*, 2004 WL 1202854, at *2 ("Plaintiff's testimony is unlikely to be required as she is merely a class representative."). And, should she attend the trial, Plaintiff

Burke would need to travel regardless of whether the trial takes place in Florida or Texas. Accordingly, Texas is a more convenient location for the parties.

Fourth, the location of documents and records factor also weighs in favor of a transfer. The vast majority of the documents at issue in this case are located at Verizon facilities in either Irving, Texas or Basking Ridge, New Jersey. *See* Schoenecker Decl., ¶ 3. By contrast, few if any relevant documents are located in Florida. *See id.*

In sum, each of the foregoing private interest factors weighs decisively in favor of a transfer. Consolidation of this proceeding with the *Murphy* Action in Texas would be substantially more convenient for the parties and the witnesses. Texas is also the more appropriate forum because -- unlike Florida -- it has a substantial connection to the decisions and events at issue in this lawsuit. The Court should therefore transfer this case to Texas.

C. Plaintiffs' Forum Choice Is Not Entitled To Substantial Deference.

As shown above, the public interest, the locus of operative facts, the location of documents and records, and the convenience of the parties and witnesses all unite in support of a transfer to Texas. Plaintiffs' selection of a Florida forum does not outweigh these factors supporting transfer. *See Garner v. Wolfinbarger*, 433 F.2d 117, 119 (5th Cir. 1970) (plaintiff's forum choice "is not controlling"); *Global Innovation Tech. Holdings, LLC*, 634 F. Supp. 2d at 1349 (fact that plaintiffs were Florida residents "cannot overcome the strong presumption of the first-filed rule").[3]

[3] Verizon acknowledges that it has comparatively greater means than Plaintiffs. However, there is no evidence that pursuing their class claims in Texas would materially increase the cost to Plaintiffs of pursuing their claims. Moreover, "this factor carries little weight under the circumstances because initiating a lawsuit here, while a substantially similar one . . . is proceeding in [Texas], does not support an economical approach to resolving the issues for any of the parties." *SOC-USA, LLC v. Office Depot, Inc.*, No. 09-80545, 2009 WL 2365863, at *4 (S.D. Fla. 2009). Here, the most economical approach to resolving these issues would be achieved by a transfer to Texas.

First, Plaintiffs themselves have suggested that this case should be sent to the Northern District of Texas for purposes of discovery and all other pre-trial matters. Dkt. 5. Moreover, Plaintiffs have consented to Verizon's request for a transfer pursuant to 28 U.S.C. § 1404. Under these circumstances, Plaintiffs' initial selection of a Florida forum is not entitled to any weight.

Second, a plaintiff's forum choice is entitled to diminished deference where, as here, the plaintiff brings a class action. *See, e.g.*, *Balloveras*, 2004 WL 1202854, at *1. This is because,

> where there are hundreds of potential plaintiffs, all . . . of whom could with equal show of right go into their many home courts, the claim of any one plaintiff that a forum is appropriate merely because it is his home forum is considerably weakened.

Moghaddam, 2002 WL 1940724, at *3 (*quoting Koster v. Lumbermens Mutual Cas. Co.*, 330 U.S. 518, 524 (1947)). Because Plaintiffs purport to represent a nationwide class, their choice of forum is entitled to little deference. This is especially so here, where a substantial number of the former VIS employees reside in Texas. *See* Schoenecker Decl., ¶ 5.

Third, "where the operative facts underlying the cause of action did not occur within the forum chosen by the Plaintiff, the choice of forum is entitled to less consideration." *Windmere Corp.*, 617 F. Supp. at 10; *accord Moghaddam*, 2002 WL 1940724, at *3; *Balloveras*, 2004 WL 1202854, at *2. Here, none of the operative facts underlying Plaintiffs' class claims occurred in Florida. See Schoenecker Decl., ¶¶ 3, 7. Rather, as explained above, the decisions, people and documents relevant to Plaintiffs' claims live and work in either Irving, Texas or Basking Ridge, New Jersey. Plaintiffs' selection of a Florida forum is therefore not entitled to deference.[4] The Court should transfer this case to Texas, where the first-filed *Murphy* Texas Action has already

[4] Plaintiff Burke's selection of a Florida forum is not entitled to deference for the additional reason that she is not a Florida resident. *See generally Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 256 (1981) ("When the plaintiff is foreign, . . . [the] assumption [favoring the plaintiff's choice of forum] is much less reasonable.").

been pending for over a year, for all purposes. WHEREFORE, based on the foregoing, Defendants respectfully request that this Court transfer this case to the United States District Court for the Northern District of Texas.

Dated this 15th day of March, 2011.

/s/ CHRISTIAN J. PISTILLI
JEFFREY G. HUVELLE
Trial Counsel
District of Columbia Bar No. 227769
Massachusetts Bar No. 246269
Written Designation and Consent to Act Forthcoming
CHRISTIAN J. PISTILLI
District of Columbia Bar No. 496157
New York Bar. No. 4324851
Written Designation and Consent to Act Previously Filed
COVINGTON & BURLING LLP
1201 Pennsylvania Avenue, NW
Washington, DC 20004-2401
Tel: 202-662-5526
Fax: 202-778-5526
E-mail: jhuvelle@cov.com
cpistilli@cov.com

/s/ GREGORY A. HEARING
GREGORY A. HEARING
Florida Bar No. 817790
SACHA DYSON
Florida Bar No. 509191
JEFFERY L. PATENAUDE
Florida Bar. No. 0070215
THOMPSON, SIZEMORE, GONZALEZ & HEARING, P.A.
Local Counsel
Post Office Box 639
Tampa, Florida 33601
Tel: (813) 273-0050
Fax: (813) 273-0072
E-mail: ghearing@tsghlaw.com
sdyson@tsghlaw.com
jpatenaude@tsghlaw.com

CERTIFICATE OF GOOD FAITH

Pursuant to Local Rule 3.01(g) of the United States District Court for the Middle District of Florida, the undersigned hereby certifies that his co-counsel, Christian J. Pistilli, contacted opposing counsel, Curtis L. Kennedy, regarding the substance of this motion and opposing counsel consented to the relief requested herein.

/s/ GREGORY A. HEARING
Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15th day of March, 2011, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to the following: Curtis L. Kennedy, Law Office of Curtis L. Kennedy, 8405 E. Princeton Ave., Denver, CO 80237-1741; Daniel J. Newman, Daniel J. Newman, PA, 1001 Royal Birkdale Dr., P.O. BOX 129, Tarpon Springs, FL 34688-0129.

/s/ GREGORY A. HEARING
Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JOANNE C. JACOBSEN., *et al.*,	
Plaintiffs,	
v.	**NO 8:10-cv-02536-RAL-TBM**
VERIZON COMMUNICATIONS INC., *et al.*,	
Defendants.	

DECLARATION OF CHRISTIAN J. PISTILLI

Christian J. Pistilli swears as follows:

1. My name is Chris Pistilli. I am an attorney at the law firm of Covington & Burling LLP. My business address is 1201 Pennsylvania Avenue, NW, Washington DC 20004. I represent Defendants Verizon Communications Inc. and the Verizon Employee Benefits Committee in the above-captioned matter. I submit this declaration in support of Defendants' motion to transfer this case to the United States District Court for the Northern District of Texas.

2. The Defendants in this action are also defendants in an action styled *Philip A. Murphy, et al. v. Verizon Communications Inc., et al.*, Civil Action No. 3:09-CV-2262-G, currently pending before the Honorable Judge Joe Fish in the United States District Court for the Northern District of Texas (the "*Murphy* Texas Action"). I am also counsel to the Verizon defendants in the *Murphy* Texas Action.

3. Attached hereto as Exhibit A is a true and correct copy of a complaint filed, *inter alia*, by Plaintiff Joanne C. Jacobsen, in the United States District Court for the Northern District of Texas, captioned *Sandra R. Noe, et al. v. Verizon Communications Inc., et al.*, Civil Action No. 3:09-cv-2173. This case was voluntarily dismissed by plaintiffs on November 24, 2009.

4. Attached hereto as Exhibit B is a true and correct copy of a complaint filed on November 25, 2009 in the *Murphy* Texas Action.

5. Attached hereto as Exhibit C is a true and correct copy of an amended complaint filed on January 6, 2010 in the *Murphy* Texas Action.

6. Attached hereto as Exhibit D is a true and correct copy of an order dated March 3, 2011 certifying a non-optout class action in the *Murphy* Texas Action.

7. Attached hereto as Exhibit E is a true and correct copy of the operative scheduling order in the *Murphy* Texas Action.

8. Attached hereto as Exhibit F is a true and correct copy of a joint status report filed by the parties on November 24, 2010 in the *Murphy* Texas Action.

9. Attached hereto as Exhibit G is a true and correct copy of the Verizon defendants' initial disclosures in the *Murphy* Texas Action.

Pursuant to 17 U.S.C. Section 1746, I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information, and belief.

Chris Pistilli

Date: March 11, 2011

Washington, DC

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JOANNE C. JACOBSEN., *et al.*,	
Plaintiffs,	
v.	**NO 8:10-cv-02536-RAL-TBM**
VERIZON COMMUNICATIONS INC., *et al.*,	
Defendants.	

DECLARATION OF MARC SCHOENECKER

Marc Schoenecker swears as follows:

1. My name is Marc Schoenecker. My business address is 600 Hidden Ridge, HQE02J19, Irving, Texas 75038. I submit this affidavit in support of Defendants' motion to transfer the above-captioned matter to the United States District Court for the Northern District of Texas. The statements in this declaration are based on my personal knowledge from working at Verizon and/or my review of records kept by Verizon in the ordinary course of business.

2. I am counsel to the Verizon Employee Benefits Committee and Assistant General Counsel of Verizon Communications Inc. ("Verizon"), with responsibility for employee benefit matters. I have held those or similar positions with Verizon or one of its predecessors since 1998. I have personal knowledge regarding (i) Verizon's decision to spin off its directories publishing business in 2006, (ii) Verizon's decision to transfer assets and liabilities associated with the employee benefits of certain employees and former employees of its directories

publishing business as part of that spin-off, (iii) the implementation of Verizon's decision, and (iv) the administrative claims for benefits brought by plaintiffs relating to Verizon's decision.

3. I have reviewed the Complaint in this action. The Verizon employees knowledgeable about the allegations in the Complaint and the business records relevant to those allegations are primarily located at Verizon offices in Basking Ridge, New Jersey and Irving, Texas. To the best of my knowledge, no individuals with relevant knowledge regarding the allegations in the Complaint resides or at any relevant time resided in Florida, and no documents relating to the spin-off transaction were created, disseminated from or are stored by Verizon in Florida.

4. On October 18, 2006, Verizon announced that its Board of Directors had approved the spin-off of its wholly owned directories publishing business, Verizon Information Services ("VIS"), to its stockholders as a separate, publicly traded company named Idearc Inc., now known as SuperMedia Inc. (hereinafter, "SuperMedia"). At that time, VIS was a leader in the directories publishing business nationwide and controlled SuperPages.com.

5. The VIS business of Verizon was headquartered in the Dallas-Forth Worth metropolitan area in Texas, and a substantial number of its current and former employees reside in Texas. SuperMedia is currently headquartered at 2200 West Airfield Drive, DFW Airport, Texas.

6. The spin-off transaction was completed on November 17, 2006. Pursuant to an Employee Matters Agreement of that date, Verizon's employee benefit plans transferred the assets and liabilities associated with current and certain former VIS employees to newly created SuperMedia employee benefit plans.

7. The decisions (i) to spin-off Verizon's directories business to SuperMedia, and (ii) to transfer the assets and liabilities associated with former employees of Verizon's directories business from Verizon plans to SuperMedia plans as part of that transaction, were made by and reviewed with Verizon employees located in Basking Ridge, New Jersey and Irving, Texas. To the best of my knowledge, no individual who worked or resided in Florida was involved in making, reviewing or implementing these decisions.

8. The two Verizon employees with the most knowledge regarding the human resources and employee benefits aspects of the SuperMedia spin-off transaction are myself and Rick Wiley. At the time of the spin-off transaction, Mr. Wiley was a Director of Business Operations Support for Verizon. Mr. Wiley is now retired from Verizon and resides in Texas.

9. I am the primary provider of legal support to Verizon's employee benefits plans and am the Verizon employee with the most knowledge regarding Plaintiffs' administrative claims for employee benefits. None of Verizon's employee benefit plans are or have at any relevant time been administered from Florida.

Pursuant to 17 U.S.C. Section 1746, I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information, and belief.

Marc Schoenecker

Date: March 10, 2011

Irving, Texas