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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

STMICROELECTRONICS, INC.,  
Plaintiff,  
v.  
MANUEL LOPEZ,  
Defendant.

Case No. 15-cv-3919-PJH

**ORDER DENYING MOTION TO  
DISMISS AND DENYING MOTION TO  
TRANSFER**

Defendant's motion to dismiss the complaint for improper venue, or in the alternative, to transfer venue to the Southern District of California, came on for hearing before this court on December 2, 2015. Plaintiff appeared by its counsel Rachel R. Davidson, and defendant appeared by his counsel Jayson M. Lorenzo. Having read the parties' papers and carefully considered their arguments and the relevant legal authority, the court hereby DENIES the motion to dismiss and DENIES the alternative motion to transfer.

**BACKGROUND**

Plaintiff STMicroelectronics Inc. ("ST Micro") is a Delaware corporation with its corporate headquarters in Texas. Defendant Manuel Lopez ("Lopez") resides in Brentwood, Contra Costa County, California.

This is an action for declaratory relief, arising out of events that led to the filing of a lawsuit in the Superior Court of California, County of San Diego, in March 1989. The suit was filed by Andarax Technologies Corporation (then an active Canadian corporation), Andarax Corporation (then an active New York corporation), and Lopez, against Metaflow

1 Technologies Inc. ("Metaflow" – a California corporation) and Val Popescue  
2 ("Popescue"), then-President of Metaflow. The plaintiffs asserted claims for breach of  
3 contract and specific performance. Complaint ("Cplt") ¶ 8.

4 Lopez was a shareholder in both Andarax entities, and the president of each. He  
5 was the sole director of Andarax Corporation. He was also a director of Andarax  
6 Technologies, along with Francisco Lopez (now deceased) and Emilio Lopez (now living  
7 in Canada).

8 The litigation was allegedly resolved by a settlement in August 1990, resulting in  
9 the issuance of promissory notes by Metaflow to Andarax Technologies and Andarax  
10 Corporation (collectively "Andarax"). Both notes were dated October 25, 1990, and both  
11 were signed by Popescue as President of Metaflow. The note issued to Andarax  
12 Technologies was in the amount of \$110,000, with interest on unpaid principal accruing  
13 at 12% per year, and the note issued to Andarax Corporation was in the amount of  
14 \$5,000, also carrying the 12% rate of interest. Cplt ¶ 9, Exhs. A, B. Neither of the notes  
15 included any provision regarding a schedule for payment or a deadline for payment.

16 The two promissory notes were allegedly executed in accordance with a related  
17 Escrow Agreement dated October 31, 1990, between Metaflow, Andarax, and Sunwest  
18 Bank of Albuquerque, NA ("Sunwest" – now part of Bank of America). The Escrow  
19 Agreement, which Sunwest executed as the escrow agent, provided that payment to  
20 Andarax by Metaflow would be made pursuant to a December 21, 1989 Product  
21 Development Agreement between Metaflow, LSI Logic Corporation ("LSI"), and Hyundai  
22 Electronics America ("Hyundai"). Cplt ¶ 10, Exhs. C, D.

23 The Escrow Agreement provided that Andarax would receive a percentage of  
24 certain incentive payments made under the Product Development Agreement, and  
25 directed that those payments be made to Sunwest. *Id.*, Exh. C. The Product  
26 Development Agreement provided that the incentive payments would be due to Metaflow  
27 for sales resulting from the implementation by LSI and Hyundai of certain technology. *Id.*  
28 ¶ 11, Exh. D. The term of the Product Development Agreement was December 21, 1989,

1 to August 32, 1991. Id.

2 Lopez claims that he entered into an agreement with Andarax, pursuant to which  
3 he would receive the first \$95,000 of any settlement payment Andarax received from  
4 Metaflow. He also asserts that in April 1990, Metaflow's Board of Directors assigned him  
5 all interests it had in the Metaflow promissory notes. Id. ¶ 12, Exh. E. However, Lopez  
6 contends, he never received any payment on the notes, purportedly because Metaflow  
7 never had the money to pay. Lopez Declaration in Support of Motion to Dismiss (“Lopez  
8 Decl.”) ¶¶ 8-9.

9 ST Micro alleges that Andarax Technologies was terminated in September 1994,  
10 and that Andarax Corporation was dissolved in September 1992. Cplt ¶ 13. ST Micro  
11 asserts that the California Secretary of State has no records showing that either Andarax  
12 entity was ever registered to do business in California. Id. In May 1997, ST Micro's  
13 predecessor, SGS-Thompson Microelectronics acquired a majority interest in Metaflow  
14 pursuant to a stock purchase agreement. In June 2001, Metaflow merged into ST Micro.  
15 Id. ¶ 14.

16 Lopez claims that on March 25, 2015, almost 14 years after Metaflow merged into  
17 ST Micro, Bruce Lightner, the former VP of Metaflow, told him that various development  
18 and/or licensing agreements had been structured in a fashion whereby certain cross-  
19 licensing agreements were in place, which deprived Andarax, and thus, Lopez, from  
20 receiving payments on the notes. Lopez Decl. ¶ 10. Also on March 25, 2015, Lopez  
21 contacted ST Micro's VP of Investors' Relations with a demand that ST Micro pay him the  
22 amounts outstanding on the Metaflow promissory notes. He asserted that he had located  
23 the notes in a New Mexico trust account in 2010. Cplt ¶ 15, Exh. F.

24 ST Micro claims it informed Lopez it had no knowledge of the two promissory  
25 notes, nor any knowledge of his relationship with Metaflow. ST Micro also asserted that  
26 even if the promissory notes and escrow agreement were valid, they were not made in  
27 Lopez's individual capacity, and moreover, that any enforcement action on the notes  
28 would be time-barred. Id. ¶ 16, Exh. G. In May 2015, Lopez renewed his demand for

1 payment, stating that he would accept \$440,000 in full payment of principle and accrued  
2 interest; and ST Micro followed up by filing this action. Cplt. ¶ 17, Exhs. H, I.

3 On August 27, 2015, ST Micro filed the complaint in the present action, alleging  
4 that on August 18, 2015, Lopez threatened to sue ST Micro for breach of contract on two  
5 promissory notes that Lopez claims were assigned to him more than 25 years ago, by  
6 now defunct companies. ST Micro seeks a judicial declaration that there is no contract or  
7 breach; that Lopez lacks standing to sue ST Micro on the notes; that Lopez is not entitled  
8 to any payment for breach of contract because of failure to satisfy contractual terms or  
9 conditions precedent; and that any action on the promissory notes is time-barred.

10 Lopez now seeks an order dismissing the case for improper venue, or in the  
11 alternative, transferring the case to the Southern District of California.

## 12 DISCUSSION

### 13 A. Legal Standard

14 "The district court of a district in which is filed a case laying venue in the wrong  
15 division or district shall dismiss, or if it be in the interest of justice, transfer such case to  
16 any district or division in which it could have been brought." 28 U.S.C. § 1406(a). If a  
17 defendant files a motion pursuant to Federal Rule of Civil Procedure 12(b)(3) to dismiss  
18 for improper venue, it is the plaintiff's burden to establish that venue is properly in the  
19 district where the suit was filed. Piedmont Label Co. v. Sun Garden Packing Co., 598  
20 F.2d 491, 496 (9th Cir. 1979).

21 In addition, "[f]or the convenience of parties and witnesses, in the interest of  
22 justice, a district court may transfer any civil action to any other district or division where it  
23 might have been brought . . ." 28 U.S.C. § 1404(a). The party moving for transfer for the  
24 convenience of parties and witnesses the burden of demonstrating transfer is  
25 appropriate. Commodity Futures Trading Comm'n v. Savage, 611 F.2d 270, 279 (9th Cir.  
26 1979). In considering a § 1404(a) motion to transfer, the court must look at each of the  
27 enumerated factors – whether the action could have been brought in the proposed  
28 transferee district, the convenience of the parties, the convenience of the witnesses, and

1 the interests of justice. Hatch v. Reliance Ins. Co., 758 F.2d 409, 414 (9th Cir. 1985).

2 If the action could have been brought in the transferee venue, the court then must  
3 determine if the defendant has made a “strong showing of inconvenience to warrant  
4 upsetting the plaintiff’s choice of forum” by considering private factors relating to “the  
5 convenience of the parties and witnesses” and public factors relating to “the interest of  
6 justice,” including “the administrative difficulties flowing from court congestion and [the]  
7 local interest in having localized controversies decided at home.” Decker Coal Co. v.  
8 Commonwealth Edison Co., 805 F.2d 834, 843 (9th Cir. 1986) (internal quotation marks  
9 omitted).

10 B. Defendant's Motion

11 Lopez, the sole defendant in this case, resides in Brentwood, which is located in  
12 this judicial district. Nevertheless, he claims that venue is improper in this district.

13 Venue in a civil action is proper in

14 (1) a judicial district in which any defendant resides, if all defendants are  
15 residents of the State in which the district is located; (2) a judicial district in  
16 which a substantial part of the events or omissions giving rise to the claim  
17 occurred, or a substantial part of property that is the subject of the action is  
18 situated; or (3) if there is no district in which an action may otherwise be  
19 brought as provided in this section, any judicial district in which any  
20 defendant is subject to the court's personal jurisdiction with respect to such  
21 action.

22 28 U.S.C. § 1391(b).

23 Lopez concedes that he resides in this district but argues that "an appropriate  
24 analysis of venue would have to include [d]efendant's predecessors in interest" – the  
25 Andarax entities – "as those are the rights being enforced and [d]efendant's predecessor  
26 in interest is the party to the note, not [d]efendant." He claims that because neither of the  
27 now-defunct Andarax entities was incorporated here or had a principal place of business  
28 here, § 1391(b) "would not confer jurisdiction in this district."

Lopez also asserts that venue is not proper in this judicial district because it is not  
the district “in which a substantial part of the events or omissions giving rise to the claim  
occurred.” He asserts that because the notes were entered into in San Diego, and

1 provide that payment is to be made in San Diego, and because none of the other relevant  
2 transactions or events relating to the underlying claim occurred in this district, the  
3 Southern District of California is the proper district.

4 The motion to dismiss or transfer for improper venue is DENIED. Rule 12(b)(3)  
5 and 28 U.S.C. § 1406(a) allow for dismissal only when venue is "wrong" or "improper."  
6 Atlantic Marine Constr. Co. v. U.S. Dist. Court, 134 S.Ct. 568, 577 (2013). Whether  
7 venue is "wrong" or "improper" depends on whether the court in which the case was  
8 brought satisfies the requirements of federal venue laws. Id.

9 The question whether venue is "wrong" or "improper" is generally governed by 28  
10 U.S.C. § 1391. That provision states that "[e]xcept as otherwise provided by law . . . this  
11 section shall govern the venue of all civil actions brought in district courts of the United  
12 States." Id. § 1391(a)(1) (emphasis added). When venue is challenged, the court must  
13 determine whether the case falls within one of the three categories set out in § 1391(b).  
14 If it does, venue is proper; if it does not, venue is improper, and the case must be  
15 dismissed or transferred under § 1406(a). A case that satisfies § 1391 may not be  
16 dismissed under § 1406(a) or Rule 12(b)(3). See Atlantic Marine, 134 S.Ct. at 577.

17 Here, the complaint seeks a judicial declaration that Lopez has no basis upon  
18 which to seek to recover from ST Micro under the promissory notes. Regardless of the  
19 validity of that claim, or the details of the events that led to the filing of the action, Lopez  
20 is the sole defendant named in the case, as it was Lopez who made the demand on ST  
21 Micro. Lopez resides in this judicial district. Thus, § 1391 is satisfied, and venue is  
22 proper here.<sup>1</sup>

23 As for the alternative motion to transfer the case to the Southern District of  
24 California for the convenience of parties and witnesses, and in the interests of justice, the  
25 court finds that Lopez has not met his burden, and that the motion must be DENIED.

26 The district court has discretion "to adjudicate motions for transfer according to an  
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28 <sup>1</sup> Lopez's counsel effectively conceded at the hearing on the motion to transfer that Lopez has no basis for asserting improper venue.

1 individualized, case-by-case consideration of convenience and fairness.” Jones v. GNC  
2 Franchising, Inc., 211 F.3d 495, 498 (9th Cir. 2000) (citing Stewart Org. v. Ricoh Corp.,  
3 487 U.S. 22, 29 (1988)). Courts ordinarily examine a number of factors, but “[n]o single  
4 factor is dispositive.” Ctr. for Biological Diversity v. Kempthorne, 2008 WL 4543043, at \*2  
5 (N.D. Cal. Oct. 10, 2008). Instead, the weighing of the factors for and against transfer is  
6 best left to the discretion of the trial judge.” Ventress v. Japan Airlines, 486 F.3d 1111,  
7 1118 (9th Cir. 2007).

8 In this district, courts commonly examine some variation of the following factors to  
9 determine convenience and fairness:

10 (1) the plaintiff's choice of forum; (2) the convenience of the parties; (3) the  
11 convenience of the witnesses; (4) ease of access to evidence; (5) familiarity  
12 of each forum with applicable law; (6) feasibility of consolidation of other  
claims; (7) any local interest in the controversy; and (8) the relative court  
congestion and time to trial in each forum.

13 Vu v. Ortho-McNeil Pharm., Inc., 602 F.Supp. 2d 1151, 1156 (N.D. Cal. 2009); Williams  
14 v. Bowman, 157 F.Supp. 2d 1103, 1106 (N.D. Cal. 2001); see also Jones, 211 F.3d at  
15 498-99; Decker Coal, 805 F.2d at 843.

16 With regard to the convenience of the parties, Lopez argues that Metaflow, ST  
17 Micro's predecessor, was located in San Diego County, and that his own predecessors-  
18 in-interest (the defunct Andarax entities) were located in Canada and New York. He  
19 claims that the proposed transfer "would not be less inconvenient than the current  
20 District, and in fact, would be more convenient given the location of the key witnesses" –  
21 and thus, that transfer of this case to the Southern District of California "would not  
22 severely inconvenience either party."

23 The court finds that this factor does not favor transfer. Lopez resides in this  
24 judicial district, and thus cannot claim that litigating in this district would be inconvenient  
25 for him. The fact that Metaflow was located in San Diego prior to its merger into ST Micro  
26 is irrelevant for purposes of determining the convenience of the parties as of the time the  
27 complaint was filed. ST Micro has corporate offices in this district, and chose to litigate  
28 here. While the plaintiff's choice of forum is not dispositive, the court should give it some

1 weight when deciding whether to grant a motion to change venue, and “[t]he defendant  
2 must make a strong showing of inconvenience to warrant upsetting the plaintiff’s choice  
3 of forum.” Decker Coal, 805 F.2d at 843.

4 Transfer should not be ordered simply to make it more convenient for the  
5 defendant, and the venue transfer provisions of § 1404(a) are not intended to merely shift  
6 the inconvenience to the plaintiff. Schwarzer, et al., § 4:732; See also Lax v. Toyota  
7 Motor Corp., 65 F. Supp. 3d 772, 776 (N.D. Cal. 2014) (“It is not enough for the  
8 defendant to merely show that it prefers another forum, and transfer will also not be  
9 allowed if the result is merely to shift the convenience from one party to another.”); Catch  
10 Curve, Inc. v. Venali, Inc., 2006 WL 4568799, at \*2 (C.D. Cal. Feb. 27, 2006) (defendant  
11 “must demonstrate that the present forum will result in a clear balance of inconvenience  
12 to him or her”). Here, given that Lopez resides in this district and ST Micro has  
13 corporate offices here and chose to file suit here, the court finds that the convenience of  
14 the parties clearly weighs against transfer.

15 The relative convenience of the witnesses is often the most important factor in the  
16 § 1404(a) analysis. Saleh v. Titan Corp., 361 F.Supp. 2d 1152, 1160 (S.D. Cal. 2005).  
17 The parties should inform the court who the witnesses are, where they are located, what  
18 their testimony will be, and why such testimony is relevant or necessary. See id. at 1161-  
19 65; see also Clark v. Sprint Spectrum L.P., 2010 WL 5173872 at \*4-5 (N.D. Cal. Dec. 15,  
20 2010).

21 Lopez has identified five witnesses who reside in San Diego County – Popescue  
22 (former president of Metaflow, who signed the promissory notes), Lightner (a founder of  
23 Metaflow, not alleged to have been involved in the settlement of the lawsuit), and three  
24 attorneys who represented either Andarax or Metaflow in the 1989 litigation and the 1990  
25 settlement. He claims that these witnesses have information about the statute of  
26 limitations, the interpretation of the agreements, the question whether he (Lopez) has  
27 standing, and about Metaflow's ability to pay on the notes.

28 While he argues that these witnesses can testify regarding the settlement

1 agreement and the notes, and regarding whether there were any cross-license  
2 agreements that prevented any money coming to Andarax, he does not provide any  
3 details regarding what that information might be. He also makes vague references to the  
4 testimony of "former Andarax employees," plus the testimony of Emilio Lopez who now  
5 resides in Canada. However, the motion includes no declarations or affidavits regarding  
6 the content or relevance of the proposed testimony.

7 ST Micro has identified five witnesses who reside in the Northern District of  
8 California – Kent Marshall (named trustee of the Escrow Agreement); Richard Nakashima  
9 (former Metaflow employee, who now works for Hynix, successor to Hyundai); corporate  
10 representatives of LSI and Hyundai (now Hynix), both of which were parties to the  
11 Product Development Agreement; and defendant Lopez himself. In addition, ST Micro  
12 points to Sunwest (the escrow agent, now part of Bank of America), and former Metaflow  
13 employees Charles Stack and Marcin Nowicki, who reside in the Eastern District of  
14 California and Austin Texas, respectively.

15 At the hearing, ST Micro asserted that Lopez, who resides in this district, is the  
16 most important witness, and that the face of the agreements need not be interpreted with  
17 the aid of witnesses. However, ST Micro indicated that the former Metaflow employees it  
18 has identified will likely testify on the same subjects as Lopez's witnesses, and that  
19 Hyundai and LSI will provide corporate representatives to testify that no payments were  
20 made under the Product Development Agreement pursuant to the Escrow Agreement,  
21 although ST Micro could not say exactly who Hyundai and LSI would designate to testify  
22 as their representatives.

23 The court finds that the convenience of the witnesses is essentially a wash, as  
24 neither party has provided specific details about the substance of any expected witness  
25 testimony, nor made a strong showing with regard to the nature and quality of the  
26 anticipated testimony. In particular, since it is Lopez's motion, it is his burden to show  
27 that transfer is warranted. The type of general testimony that he has described is  
28 normally not be considered sufficient to sustain a defendant's burden of persuasion on a

1 motion to transfer. See E. & J. Gallo Winery v. F. & P. S.p.A., 899 F. Supp. 465, 466  
2 (E.D. Cal. 1994).

3 Nor has Lopez explained how any of the witnesses would be inconvenienced if the  
4 case remains in this district. Depositions of witnesses must be taken near their  
5 residences regardless of where the suit is being litigated, and that Lopez has made no  
6 showing that any of the witnesses would not be able to travel to this district in the unlikely  
7 event of a trial. At best, a transfer of venue would only shift, not eliminate, any  
8 inconvenience. However, §1404 provides for transfer to a more convenient forum, “not to  
9 a forum likely to provide equally convenient or inconvenient.” Hua v. MEMC Electr.  
10 Materials, Inc., 2009 WL 1363545, at \*3 (N.D. Cal. May 14, 2009).

11 Finally, the court finds that Lopez has not met his burden of showing that the  
12 “interests of justice” warrant transfer to the Southern District of California. As explained  
13 above, the plaintiff’s choice of forum, while generally not viewed as dispositive, does  
14 weigh against transfer.

15 As for the ease of access to evidence, Lopez contends that the promissory notes  
16 were created in San Diego and that the attorneys with knowledge of the drafting of the  
17 notes reside there; and further, that availability of compulsory process to compel  
18 attendance of non-party witnesses favors transfer, as most of his witnesses reside in San  
19 Diego. However, this argument ignores ST Micro’s contention that it plans on calling as  
20 witnesses several former Metaflow employees who now reside in the Northern District or  
21 in some district other than the Southern District of California.

22 Moreover, the availability of non-party witnesses is a relevant factor only when a  
23 party presents evidence of witnesses unwilling to attend trial, which Lopez has not done.  
24 Further, he has not shown that access to sources of proof would be easier in the  
25 Southern District or that evidence would be somehow unavailable if the case remains in  
26 his home forum (or that the costs of litigating in this district would be higher than the costs  
27 of litigating in San Diego). Indeed, the relevant documents (promissory notes and other  
28 agreements) have already been submitted to the court as exhibits in this case, and given

1 the length of time that has passed and the fact that the Andarax entities no longer exist, it  
2 is not clear that other documentary evidence will be found (and Lopez has not argued  
3 that any exists).

4 As for the respective courts' familiarity with the applicable law, both districts are  
5 located in California, and both courts will be applying California law. Thus, it seems clear  
6 that each forum will be equally familiar with the applicable law.

7 As for the parties' contacts with the forum, and the local interest in the controversy,  
8 while it is true that the relevant agreements were negotiated and executed in San Diego,  
9 and provided for payment to the Andarax entities (Lopez's alleged predecessors), those  
10 entities no longer exist and the notes were executed nearly 25 years ago. In addition,  
11 given that Lopez resides here and has pointed to no contacts either party has with the  
12 Southern District – apart from the contacts between Andarax and Metaflow more than 25  
13 years ago – it appears that the parties have as many contacts with this forum as they do  
14 with San Diego.

15 Lopez has not established that a majority of the “justice” factors favors transfer.  
16 Added to that, the convenience of the parties weighs against transfer, and the  
17 convenience of witnesses neither favors nor disfavors transfer. The court finds that this  
18 showing is not sufficient to satisfy Lopez’s burden as the moving party.

19 **CONCLUSION**

20 In accordance with the foregoing, the motion is DENIED.

21  
22 **IT IS SO ORDERED.**

23 Dated: December 17, 2015

24   
25 \_\_\_\_\_  
26 PHYLLIS J. HAMILTON  
27 United States District Judge  
28