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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ROBERT ROWEN, et al.,  
Plaintiffs,  
v.  
SOUNDVIEW COMMUNICATIONS,  
INC.,  
Defendant.

Case No. 14-cv-05530-WHO

**ORDER GRANTING MOTION TO  
TRANSFER**

Re: Dkt. No. 10

**INTRODUCTION**

Plaintiffs Robert Jay Rowen and Lotus Management, LLC, entered into contracts to provide content and other services for defendant Soundview Communications, Inc., which sells dietary supplements and publishes information on alternative medicine in its newsletter titled *Second Opinion*. The contracts included a covenant not to compete that may well be binding in Georgia but unenforceable in California, and a forum selection clause mandating that all suits be brought in Georgia. Notwithstanding the forum selection clause, plaintiffs filed this declaratory relief lawsuit in California, and Soundview moves to transfer or, in the alternative, to dismiss for improper venue. Since the forum selection clause is valid and that public interest factors do not make transfer inappropriate, I GRANT Soundview’s motion to transfer.

**BACKGROUND**

**I. FACTUAL BACKGROUND**

Soundview entered into separate contracts with plaintiffs. The first was between Soundview and Lotus, a Nevada company. Under the Lotus Contract, Soundview paid Lotus to provide Soundview with an editor and author to create articles and materials for *Second Opinion*, to assist in creating and marketing dietary supplements, and to endorse products related to health

1 and medical treatments. Ex. B. to the Declaration of Robert Rowen [Docket No. 14-10] (“Lotus  
2 Contract”), ¶ 3.

3 The second was between Soundview and Rowen, a well-known expert in alternative  
4 medicine who regularly publishes articles, blogs, and social media posts. Ex. A to the Rowen  
5 Decl. (“Rowen Contract”), at 1, 7. This contract required Rowen to perform all of the editorial  
6 and author duties required for *Second Opinion* and Soundview under the Lotus Contract. *Id.*, ¶¶ 3,  
7 5.

8 Both contracts contained forum selection and choice-of-law clauses. The Rowen Contract  
9 stated:

10 Rowen acknowledges and agrees that the services to be rendered by or through  
11 Lotus, as contemplated by said simultaneously executed Agreement between Lotus  
12 and Soundview, are to be rendered in Fulton County, State of Georgia, where  
13 *SECOND OPINION* will be compiled and published. This Agreement shall be  
14 governed by and construed in accordance with the laws of the State of Georgia. It is  
15 further agreed that any and all claims or actions brought by any party to this  
16 Agreement against any other party to this Agreement shall be brought in a court of  
17 competent jurisdiction located in Fulton County, in the State of Georgia. Rowen  
18 expressly acknowledges, consents, agrees, and submits to the jurisdiction and  
19 venue of the courts of Fulton County, Georgia for the resolution of any disputes  
20 between parties.

21 Rowen Contract, ¶ 17. The Lotus contract contained almost identical forum selection and choice-  
22 of-law clauses:

23 Lotus, in its behalf and in behalf of any writer or editor furnished through Lotus,  
24 acknowledges and agrees the services to be rendered by or through Lotus, as  
25 contemplated herein, are to be rendered in Fulton County, State of Georgia, where  
26 *SECOND OPINION* will be compiled and published. This Agreement shall be  
27 governed by and construed in accordance with the laws of State of Georgia. It is  
28 further agreed that any and all claims or actions brought by any party to this  
29 Agreement against any other party to this Agreement shall be brought in a court of  
30 competent jurisdiction located in Fulton County, in the State of Georgia. The  
31 parties hereto expressly acknowledge, consent, agree, and submit to the jurisdiction  
32 and venue of the courts of Fulton County, Georgia for the resolution of any  
33 disputes between the parties.

34 Lotus Contract, ¶ 17. The parties changed the venue and the workplace in the forum selection  
35 clauses from Fulton County to Gwinnett County, Georgia, when they extended the terms of the  
36 contracts on May 10, 2013. Declaration of Garret Wood [Docket No. 10-2], Exs. 3, 4.

37 The Soundview Contract included a covenant not to compete, which stated:

1 Lotus agrees, in behalf of any editor furnished by Lotus, during the initial term or  
2 any renewal term of this Agreement, and for a period of two (2) years following the  
3 termination, withdrawal or resignation of any writer or editor furnished by Lotus or  
4 the cessation of such writer or editor to furnish editorial material pursuant to the  
5 provisions of this Agreement, that such writer or any agent or employee of Lotus  
6 shall be prohibited and restrained from writing for, contributing to or investing in  
7 another health newsletter, particularly an alternative health newsletter, or internet  
8 web site (or similar electronic medium) that is printing, circulating or distributing  
9 material oriented towards health or alternative health issues similar to or in  
10 competition with *SECOND OPINION* in the States of Georgia, Florida, California,  
11 New York and Texas, without the written consent of Soundview. By the execution  
12 hereof, Lotus, in behalf of any writer or editor furnished by Lotus, acknowledges  
13 that while *SECOND OPINION* circulates in states other than those named in this  
14 paragraph, a concentration of the circulation of *SECOND OPINION* exists in the  
15 states named in this subparagraph. Lotus, in behalf of any editor or writer  
16 furnished, further agrees the time period and geographical limitation imposed  
17 herein and in subparagraphs (c) and (e) are reasonable, acceptable and necessary in  
18 order to protect the interests of Soundview and its publication known as *SECOND*  
19 *OPINION*.

20 Lotus Contract, ¶ 5(d). Further, subparagraph 5(f) stated:

21 Lotus, in behalf of itself and any writer or editor furnished by Lotus, acknowledges  
22 that the violations of any of the non-compete provisions herein would cause  
23 irreparable injury, damage and harm to Soundview, for which it is agreed there is  
24 no adequate remedy at law, in which event Soundview shall have the right, in  
25 addition to any other remedies available at law or in equity, to enjoin Lotus and/or  
26 any writer furnished through Lotus in a court of equity from violating the non-  
27 compete provisions hereof.

28 *Id.* at ¶ 5(f). The Rowen Contract expressly incorporated the Lotus Contract and through it,  
Rowen agreed to be bound by all representations and agreements made by Lotus, including “to be  
bound by the non-compete provisions” of the Lotus Contract. Rowen Contract, at pg. 1 & ¶ 2.

Soundview contends it terminated both contracts on August, 30, 2014 and paid a 90  
day severance pay to Lotus. Rowen Decl., Ex. C. Rowen and Lotus contend that Soundview  
materially breached the parties’ contracts and they also gave notice to Soundview on November 5,  
2014, that they were terminating the contracts, effective January 3, 2015. Compl., ¶ 16.

## II. PROCEDURAL BACKGROUND

Rowen and Lotus filed this action in state court in Sonoma County, California, on  
November 12, 2014. Compl. ¶ 5. On December 18, 2014, Soundview removed the action to this  
Court. Dkt. No. 1, ¶¶ 1-13. In their Declaratory Relief complaint, Rowen and Lotus seek a  
declaration that the non-compete provisions in their contracts are unenforceable because they are

1 void under California Business & Professions Code section 16600. Compl., ¶ 18. Rowen wishes  
2 to continue his work in writing, producing, editing and/or publishing information, advice, and  
3 recommendations through newsletters, blogs, and internet sites and “to be free of threats or  
4 lawsuits by Soundview seeking injunctive relief or damages for exercising his rights to conduct  
5 his chosen occupation and profession granted under Business & Professions Code Section 16600.”  
6 *Id.*

7 Soundview moves to have this case transferred to the Northern District of Georgia, or in  
8 the alternative dismissed, based on the forum selection clause in the parties’ contracts. Mot.  
9 [Docket No. 10].<sup>1</sup> I heard argument on February 25, 2015.

### 10 LEGAL STANDARD

11 “For the convenience of parties and witnesses, in the interest of justice, a district court may  
12 transfer any civil action to any other district or division where it might have been brought or to  
13 any district or division to which all parties have consented.” 28 U.S.C. § 1404(a). When a case  
14 concerns an enforcement of a forum selection clause, section 1404(a) provides a mechanism for its  
15 enforcement and “a proper application of §1404(a) requires that a forum-selection clause be given  
16 controlling weight in all but the most exceptional cases.” *Atlantic Marine Const. Co., Inc. v. U.S.*  
17 *Dist. Court for W. Dist. Of Tex.*, 134 S. Ct. 568, 579 (2013) (internal quotation omitted). Plaintiff  
18 bears the burden of showing these exceptional circumstances that make transfer inappropriate. *Id.*  
19 at 581. Plaintiff must show either that the forum selection clause is not valid or that the public  
20 interest factors recognized under section 1404(a) make transfer inappropriate. *Id.* at 579, 582; *see*  
21

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22 <sup>1</sup> Soundview moved to transfer under 28 U.S.C. section 1406(a) or, in the alternative, to dismiss  
23 pursuant to Federal Rule of Civil Procedure 12(b)(3). Dkt. No. 10. However, as the Supreme  
24 Court recently made clear in *Atlantic Marine*, “a case filed in a district court that falls within  
25 § 1391 may not be dismissed under § 1406(a) or Rule 12(b)(3).” *Atlantic Marine Const. Co., Inc.*  
26 *v. U.S. Dist. Court for W. Dist. of Tex.*, 134 S. Ct. 568, 577 (2013). The parties do not dispute that  
27 this case falls within section 1391 and, regardless, I find that it does because a substantial part of  
28 the events occurred in the Northern District of California. *See* Compl. ¶ 5 (indicating that the  
covenant not to compete prevents Rowen from working at his office in Sonoma County,  
California, where he regularly publishes articles, blogs, and media posts). I will consider the  
Motion to Transfer under section 1404(a). *See Stewart v. Luedtke Eng’g Co.*, No. C 05-3467  
SBA, 2006 WL 334644, at \*5 (N.D. Cal. Feb. 10, 2006) (“A transfer may be made under 28  
U.S.C. § 1404(a) . . . by the Court *sua sponte*.”) (emphasis in original); *Dudash v. Varnell Struk &*  
*Assoc., Inc.*, No. C 04-2748 MHP, 2004 WL 2623903, at \*4 (N.D. Cal. Nov. 16, 2004).

1 *also Bayol v. Zipcar, Inc.*, No. 14-cv-02483-TEH, 2014 WL 4793935, at \*1 (N.D. Cal. Sept. 25,  
2 2014).

### 3 **DISCUSSION**

4 Rowen and Lotus argue that the forum selection clause is not valid because the covenant  
5 not to compete contravenes three California public policies: protecting consumers from deceitful  
6 business practices under Business and Professions Code section 17200, preventing limits on trade  
7 and business activity under Business and Professions Code section 16600, and upholding the right  
8 to free speech and expression under California’s Constitution. Oppo. 12. Rowen and Lotus also  
9 contend that, assuming the forum selection clause is valid, three public interest factors weigh  
10 against transfer: California’s localized interest in having lawsuits decided at home, California  
11 citizens’ interests in having lawsuits decided by a California court best versed in California law,  
12 and practical considerations such as expediency and lower expenses. Oppo. 21-23. Because none  
13 of the public policies identified are tethered to venue, plaintiffs’ arguments are unconvincing.

#### 14 **I. THE FORUM SELECTION CLAUSE IS VALID**

15 “A forum selection clause is presumptively valid; the party seeking to avoid a forum  
16 selection clause bears a ‘heavy burden’ to establish a ground upon which [the court] will conclude  
17 the clause is unenforceable.” *Doe 1 v. AOL LLC*, 552 F.3d 1077, 1083 (9th Cir. 2009) (quoting  
18 *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 17 (1972)). However, “a forum selection clause  
19 is unenforceable ‘if enforcement would contravene a strong public policy of the forum in which  
20 suit is brought . . . .’” *Id.* (quoting *Bremen*, 407 U.S. at 15).

21 Courts in the Ninth Circuit have generally agreed that the choice-of-law analysis is  
22 irrelevant to determining if the enforcement of a forum selection clause contravenes a strong  
23 public policy. *See, e.g., Marcotte v. Micros Sys., Inc.*, No. C 14-01372 LB, 2014 WL 4477349, at  
24 \*8 (N.D. Cal. Sept. 11, 2014) (“[A] party challenging enforcement of a forum selection clause  
25 may not base its challenge on choice of law analysis.”). Instead, absent a total foreclosure of  
26 remedy in the transferee forum, courts tether their policy analysis to the forum selection clause  
27 itself, finding the forum selection clause unreasonable only when it contravenes a policy  
28

1 specifically related to venue.<sup>2</sup> See, e.g., *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 497-98  
 2 (9th Cir. 2000) (finding forum selection clause invalid because California policy at issue under  
 3 California Business and Professions Code section 20040.5 specifically provided that California  
 4 franchisees were entitled to a California venue for franchise agreement suits); *Monastiero v.*  
 5 *appMobi, Inc.*, No. C 13-05711 SI, 2014 WL 1991564, at \*6 (N.D. Cal. May 15, 2014) (rejecting  
 6 plaintiff’s arguments based on California’s policy for “full and prompt payment of an employee’s  
 7 earned wages”, a non-venue policy, because plaintiff did not show a total foreclosure of claims in  
 8 transferee forum irrespective of private interest factors).

9 Courts throughout the Ninth Circuit have consistently followed this analysis, rejecting  
 10 policy arguments unrelated to venue whenever there was no foreclosure of remedy in the  
 11 transferee forum. See *E. Bay Women’s Health, Inc. v. gloStream, Inc.*, No. C 14-00712 WHA,  
 12 2014 WL 1618382, at \*3 (N.D. Cal. April 21, 2014) (rejecting consideration of California’s public  
 13 policy against deceptive business practices under the Unfair Competition Act because “the  
 14 transferee court may decide to apply the substantive law sought by plaintiffs” and plaintiffs “failed  
 15 to identify a fundamental policy underlying California’s Unfair Competition Act that relates to  
 16 venue.”) (emphasis in original); *Voicemail Club, Inc. v. Enhanced Servs. Billing, Inc.*, No. C 12-  
 17 02189 SI, 2012 WL 4837697, at \*3-4 (N.D. Cal. Oct. 10, 2012) (rejecting plaintiff’s arguments  
 18 based on California policies under California Civil Code sections 1542, 1668, and 1717 because  
 19 “the Court only examines public policy as it relates to venue.”); *Hegwer v. Am. Hearing &*  
 20 *Assocs.*, No. C 11-04942 SBA, 2012 WL 629145, at \*3 (N.D. Cal. Feb. 27, 2012) (rejecting  
 21 plaintiff’s argument because plaintiff failed to identify a specific California policy and concluding

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22  
 23 <sup>2</sup> The foreclosure of remedy must be inevitable. In *AOL*, the court considered a California policy  
 24 unrelated to venue because, unlike the California policy, the transferee forum did not allow class  
 25 action lawsuits for consumer claims at all. 552 F.3d at 1079-80, n. 12. In contrast, even if the  
 26 foreclosure is likely or practically certain, courts still refuse to consider policies unrelated to  
 27 venue. For example, in *Swenson v. T-Mobile USA, Inc.*, 415 F. Supp. 2d 1101, 1104 (S.D. Cal.  
 28 Jan. 26, 2006), the court found that even if a transferee forum applies its own laws and renders a  
 decision against a California plaintiff in virtually every case, the mere ability to argue the  
 application of California law means no foreclosure of remedy and prevents consideration of  
 policies unrelated to venue. See also *Monastiero v. appMobi, Inc.*, No. C 13-05711 SI, 2014 WL  
 1991564, at \*6 (N.D. Cal. May 15, 2014) (finding the forum selection clause valid because  
 plaintiff did not show a total foreclosure of claims in transferee forum irrespective of private  
 interest factors).

1 that any such policy must be related to the forum selection clause itself given that no foreclosure  
 2 of remedy would exist in the transferee forum); *Gamayo v. Match.com*, No. C 11-00762 SBA,  
 3 2011 WL 3739542, at \*6 (N.D. Cal. Aug. 24, 2011) (rejecting plaintiff’s policy argument  
 4 concerning the California Legal Remedies Act because plaintiff failed to show a total foreclosure  
 5 of remedy in Texas); *Besag v. Custom Decorators, Inc.*, No. C 08-05463 JSW, 2009 WL 330934,  
 6 at \*3-4 (N.D. Cal. Feb. 10, 2009) (refusing to consider a strong public policy of “providing  
 7 damages to employees who have been deprived of their meal and/or rest periods” under California  
 8 Labor Code section 226.7(b) because “Besag presents no evidence that the public policy  
 9 underlying her claim expressly related to venue[.]”).

10 Drilling down, courts in this District have applied this analysis when addressing the main  
 11 public policy asserted here, California’s prohibition on non-compete agreements. In *Marcotte*, a  
 12 post *Atlantic Marine* case decided in 2014, a judge in this District addressed the validity of a  
 13 forum selection clause in the context of an action challenging a covenant not to compete and found  
 14 it enforceable. 2014 WL 4477349, at \*6, \*9. Plaintiff argued, as Rowen and Lotus do here, that  
 15 the enforcement of the forum selection clause violated California’s public policy against covenants  
 16 not to compete under Business and Professions Code section 16600. *Id.* at \*8. Plaintiff noted, as  
 17 Rowen and Lotus do here, that the transferee forum, unlike California, allowed covenants not to  
 18 compete. *Id.*; *Oppo*. 12. The court found this argument irrelevant. *Id.* “[T]his case does not  
 19 involve foreclosure of a remedy . . . .” *Id.* Instead, “choice of law issues are the same for a district  
 20 court in Maryland or California: both courts, sitting in diversity, consider which law (California or  
 21 Maryland) to apply to the claims.” *Id.* This makes the forum selection clause separate from the  
 22 choice-of-law analysis and therefore “a party challenging enforcement of a forum selection clause  
 23 may not base its challenge on choice of law analysis.” *Id.* (citing *Besag*, 2009 WL 330934, at \*3-  
 24 4).

25 Another judge in this District similarly found a forum selection clause valid in a case  
 26 challenging a covenant not to compete. *Hartstein v. Rembrandt IP Solutions, LLC*, No. 12-2270  
 27 SC, 2012 WL 3075084, at \*6 (N.D. Cal. July 30, 2012). Plaintiff argued that enforcing the forum  
 28 selection clause would contravene California’s public policy against covenants not to compete

1 under section 16600 and that the transferee forum, unlike California, upholds such covenants. *Id.*  
 2 at \*1, \*5. The court found that the “problem with Plaintiff’s argument is that it does not challenge  
 3 the reasonableness of the forum selection clause itself, only the reasonableness of its effect.” *Id.*  
 4 The argument, if accepted, forces the court to “make a determination of the potential outcome of  
 5 the litigation on the merits in the transferee forum and whether that outcome would conflict” with  
 6 California policies. *Id.* It asks for an overly complex analysis of “detailed speculation[.]” The  
 7 court then limited its analysis only to whether the forum selection clause itself was contrary to  
 8 California law or policy and found that the forum selection clause was valid. *Id.* at \*6.

9 In *Universal Operations Risk Management, LLC v. Global Rescue LLC*, No. C 11-5969  
 10 SBA, 2012 WL 2792444, at \*4 (N.D. Cal. July 9, 2012), a third judge in this District found a  
 11 forum selection clause valid in a case challenging a covenant not to compete. Plaintiffs argued  
 12 that enforcing the forum selection clause would violate California’s policy against covenants not  
 13 to compete under section 16600 and that the transferee forum, unlike California, upholds such  
 14 covenants. *Id.* at \*4, \*6. The court enforced the forum selection clause, concluding that plaintiffs  
 15 only “speculate as to how a Massachusetts court may rule on the choice of law clause” and “do not  
 16 directly challenge the forum selection clause itself.” *Id.*<sup>3</sup>

17 Similarly, judges in the Southern District of California have also refused to consider  
 18 California’s policy against non-compete agreements in determining whether a forum selection  
 19 clause was valid. *See Meyer v. Howmedica Osteonics Corp.*, No. 14CV2496 AJB (NLS), 2015  
 20 WL 728631, at \*11-12 (S.D. Cal. Feb. 19, 2015) (transferring the case to New Jersey despite a  
 21 non-compete provision and rejecting plaintiff’s policy arguments based on Business and  
 22 Professions sections 16600 and 17200 because “the Court does not find that the forum selection  
 23

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24 <sup>3</sup> As noted above, plaintiffs also allege that transfer would violate California’s public policy  
 25 against deceptive business practices (as codified in the UCL, Bus. & Prof. Code § 17200 *et seq.*)  
 26 and California’s strong policy of protecting its citizens’ rights to speech and expression. *Oppo.* at  
 27 13. Plaintiffs, however, cite no cases where California courts have relied on these general public  
 28 policies to invalidate a forum selection clause. *But see E. Bay Women’s Health, Inc. v. gloStream, Inc.*, No. C 14-00712 WHA, 2014 WL 1618382, at \*3 (rejecting plaintiff’s argument that California’s public policy as codified in the UCL should invalidate a forum selection clause because plaintiffs “failed to identify a fundamental public policy underlying California’s Unfair Competition Act that relates to venue.”).



1 clause in the Employment Agreement itself [as opposed to its effect due to choice of law]  
2 contravenes California public policy.”); *see also Swenson v. T-Mobile United States, Inc.*, 415 F.  
3 Supp. 2d 1101, 1103 (S.D. Cal. 2006). As the court in *Swenson* explained, plaintiff mounted “no  
4 direct challenge to the forum selection clause itself, but only to its effect.” 415 F. Supp. 2d at  
5 1103-04, 1105. Even after a court in Washington heard the case, applied Washington laws, and  
6 ruled against the California plaintiff, the court stated:

7       While the Court notes that a Washington court’s application of Washington law to  
8 the matter at hand may arguably lead to a result conflicting with the provisions of  
9 § 16600, Swenson was free to, and in fact, did argue for the application of  
10 California law. The fact that the Washington court ruling resulted in a decision  
11 unfavorable to Swenson does not mandate a finding that the clause requiring the  
12 case be litigated in Washington is invalid. Notwithstanding Swenson’s contention  
13 that forum states apply their own law in “virtually every case,” the Washington  
14 court could have applied California law if it found application appropriate. The  
15 Washington court dutifully considered whether to apply Washington or California  
16 law to the agreement in question and its determination was based on an application  
17 of each state’s choice of law standards.

18 *Id.* at 1104. The court then noted that if “Swenson’s argument were correct, forum selection  
19 clauses would be largely meaningless as it would depend on who filed first and whether that  
20 forum’s law was more favorable to them.” *Id.* at 1105.

21       Outside of the non-compete context, judges in other districts also limit policy  
22 considerations to venue when there is no foreclosure of remedy in the transferee forum. *See*  
23 *Mazzola v. Roomster Corp.*, No. CV 10-5954 AHM (JCGx), 2010 WL 4916610, at \*3 (C.D. Cal.  
24 Nov. 30, 2010) (refusing to consider a California policy favoring class actions under Consumer  
25 Legal Remedies Act because “Plaintiff is free to pursue remedies in federal court in New York”  
26 and “is free to argue for application of California law.”); *Billing v. CSA-Credit Solutions of Am.,*  
27 *Inc.*, No. 10-cv-0108 BEN (NLS), 2010 WL 2542275, at \*4 (S.D. Cal. June 22, 2010) (rejecting  
28 policy arguments unrelated to venue because there “is no reason to believe that Texas courts will  
not or cannot entertain Plaintiff’s choice of law arguments or that they cannot apply California  
law[.]”).

Here, there is no reason why the Georgia court will not or cannot entertain Rowen’s and  
Lotus’s choice of law arguments. Rowen may challenge the non-compete agreement in Georgia

1 and argue (under the applicable choice-of-law analysis) that California law should apply in light of  
 2 Rowen’s status as a California resident and California’s strong public policy against non-compete  
 3 provisions. Lotus may make similar arguments. Even if Georgia law is determined to apply,  
 4 Rowen and Lotus will still be free to argue that enforcement of the non-compete would be  
 5 “unreasonable” under Georgia law. *See, e.g., Fab'rik Boutique, Inc. v. Shops Around Lenox, Inc.*,  
 6 329 Ga. App. 21, 25, 763 S.E.2d 492, 495 (2014). There is simply no foreclosure of remedy in  
 7 Georgia.<sup>4</sup>

8 Here, Rowen and Lotus did not make any arguments specifically related to venue or mount  
 9 a public policy challenge to the validity of the forum selection clause itself. Nor have they shown  
 10 that transfer to Georgia would foreclose all of their remedies. As such, Rowen and Lotus have not  
 11 met their heavy burden of showing that the forum selection clause is not valid.

12 **II. PUBLIC INTEREST FACTORS DO NOT WEIGH AGAINST TRANSFER**

13 Once a court finds that the forum selection clause is valid, the clause “should be given  
 14 controlling weight in all but the most exceptional cases.” *Atlantic Marine Const. Co., Inc.*, 134 S.  
 15 Ct. at 582. Plaintiff bears the burden of demonstrating that relevant factors weigh against transfer  
 16 and “a district court may consider arguments about public-interest factors only.” *Id.* at 581-82.  
 17 These factors include “the administrative difficulties flowing from court congestion; the local  
 18 interest in having localized controversies decided at home; [and] the interest in having the trial of a  
 19 diversity case in a forum that is at home with the law.” *Id.* at 581, n. 6 (internal quotation  
 20 omitted). “[T]he plaintiff’s choice of forum merits no weight” and the “transfer of venue will not  
 21

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22 <sup>4</sup> Rowen and Lotus cite case law suggesting that courts may consider public policies unrelated to  
 23 venue even if there is no foreclosure of remedies in the transferee court. In *Bayol v. Zipcar, Inc.*,  
 24 No. 14-cv-02483 TEH, 2014 WL 4793935, at \*3-4 (N.D. Cal. Sept. 25, 2014), a judge in this  
 25 District considered California public policies unrelated to venue because the rights and remedies at  
 26 issue—which would have been given up in the transferee court under Massachusetts law—were  
 27 unwaivable under to California Legal Remedies Act. Similarly, in *Perry v. AT&T Mobility LLC*,  
 28 No. C 11-01488 SI, 2011 WL 4080625, at \*4, n. 4 (N.D. Cal. Sept. 12, 2011), another judge in  
 this District considered California public policies unrelated to venue because the purpose of the  
 whole contract at issue—not just the forum selection clause—was to evade California laws. The  
 considerations at play in those cases do not arise here. The California legislature has not declared  
 that the protections of section 16600 are not waivable and “a single non-compete clause in a  
 contract is categorically different than the creation of an entire contract for the purpose of evading  
 California” law. *See id.*; *Bayol*, 2014 WL 4793935, at \*3-4 (relying on the CLRA’s express  
 provision prohibiting waiver of its protections).

1 carry with it the original venue’s choice-of-law rules—a factor that in some circumstances may  
2 affect public-interest considerations.” *Id.* at 581, 582.

3 Here, two of the public interests plaintiff identifies—“practical considerations” such as  
4 expediency and lower expenses of litigating in California and California citizens’ desire to have a  
5 California court familiar with California law decide the dispute—are irrelevant. As the Supreme  
6 Court noted in *Atlantic Marine*, “convenience” and expense are private interests that “weigh  
7 entirely in favor of the preselected forum.” *Id.* at 582-83; *see also Monastiero*, 2014 WL  
8 1991564, at \*5 (finding that “practical problems” that are “related to making trial of a case easy,  
9 expeditious and inexpensive” have been “deemed private interest factors that may not be  
10 considered[.]”). With respect to the familiarity of the Georgia court with California law, as the  
11 Supreme Court recognized, “federal judges routinely apply the law of a State other than the State  
12 in which they sit.” *Atlantic Marine Const. Co., Inc.*, 134 S. Ct. at 584. As in *Atlantic Marine*,  
13 plaintiffs here do not identify any “exceptionally arcane features” of California’s Unfair  
14 Competition Law or Business and Professions Code “that are likely to defy comprehension by a  
15 federal judge sitting in” Georgia. *Id.*

16 This leaves only one interest: the local interest in having the lawsuit decided at home.  
17 *Oppo*. 21. This interest is insufficient to prevent transfer in this case for three reasons. First, this  
18 limited interest does not outweigh all the private interest factors presumed to be in favor of the  
19 transferee forum and the controlling weight already given to the forum selection clause. *See*  
20 *Atlantic Marine Const. Co., Inc.*, 134 S. Ct. at 582-83. Second, the plaintiff’s choice of forum  
21 generally merits no weight in this context. *Id.* at 581. Third, there are interests other than  
22 Rowen’s at play, including those of Soundview, a Georgia corporation that negotiated the  
23 contracts with Georgia venue and choice of law provisions, and Lotus, the Nevada limited liability  
24 company. The effects of this litigation, while undoubtedly affecting Rowen as a resident of  
25 California, also have effects in Georgia and Nevada. Simply put, Rowen’s interest in having this  
26 dispute settled in California does not make this an “exceptional case” that defeats application of a  
27 valid forum selection clause. *Id.*

28

1 **CONCLUSION**

2 For the foregoing reasons, I find that the forum selection clause is valid and that public  
3 interest factors do not make transfer inappropriate. I GRANT the Motion to Transfer under 28  
4 U.S.C. section 1404(a). The Clerk shall transfer this case to the Northern District of Georgia.

5 **IT IS SO ORDERED.**

6 Dated: March 2, 2015

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8 WILLIAM H. ORRICK  
United States District Judge

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United States District Court  
Northern District of California