



12(b)(6) motion, a complaint must contain sufficient factual matter “to state a claim to relief that is plausible on its face.” Twombly, 550 U.S. at 570. The court must decide whether the complaint alleges enough facts to “raise a right to relief above the speculative level.” Id. at 555. In so doing, the court accepts as true all well-pleaded facts and draws all reasonable inferences in the plaintiff’s favor. Parker v. Hurley, 514 F.3d 87, 90 (1st Cir. 2008). However, “the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions.” Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 1949 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” Id. (citing Twombly, 550 U.S. at 555). “[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged-but it has not ‘show[n]’ -‘that the pleader is entitled to relief.’” Iqbal, 556 U.S. 662, 129 S. Ct. at 1950 (quoting FED. R. CIV. P. 8(a)(2)).

**II. Factual and Procedural Background**

The facts necessary to adjudicate the present issue of jurisdiction are not overly complex and only the facts pertinent to this issue shall be discussed below. Plaintiff and Poisson entered into a financial agreement regarding an online game titled Clutch Football. (See Docket No. 1 ¶ 4.) Poisson had previously registered the game with the U.S. Patent and Trademark Office and a patent was issued. (See id. ¶ 8.) Unable to finance the development of the game himself, Poisson, acting through his corporate identity, co-defendant Clutch Sportz, sought financing from investors. (See id. ¶¶ 10-12.) During these negotiations between Plaintiff and Poisson, Poisson allegedly made false representations regarding the interest of other gaming corporations in his venture. (See id. ¶ 13.) Eventually, Plaintiff funded Poisson with a \$500,000 advance to develop the game. (See id. ¶ 17.) The promissory note accompanying the \$500,000 contained a governing law clause that states, “This Note shall be construed in accordance with the laws of the State of Texas. Any action brought by either party against the other concerning the transactions contemplated by this Agreement shall be brought only in the state and federal courts located in the State of Texas.” (See Docket No. 7-1.)<sup>1</sup>

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<sup>1</sup> “Ordinarily a court may not consider any documents that are outside of the complaint, or

2 As one might guess by the parties presence in federal court, the loan has not been repaid and Plaintiff  
3 now seeks compensation for his loan and the lost royalties he expected to collect from his  
4 investment. (See Docket No. 1 ¶ 43.)

5 **III. Discussion**

6 **A. The Governing Law Clause**

7 Plaintiff concedes the governing law clause of the promissory note is problematic and argues  
8 the claims against Poisson and Clutch Sportz are personal to Poisson, and therefore not controlled  
9 by the promissory note. (See Docket No. 10 at 2.) Plaintiff claims the promissory note does not  
10 contain all the agreements between the parties, but rather the promissory note is the guarantee on the  
11 contract. (See *id.* at 3-4.) Plaintiff argues this distinction allows the court to overlook the governing  
12 law clause and adjudicate the case. In the alternative, Plaintiff seeks a transfer of the case to the  
13 appropriate court in Texas. (See *id.* at 8.) Poisson succinctly argues the governing law clause is a  
14 valid forum selection clause and it should be given effect. (See Docket No. 7 at 2-3.)

15 The court agrees with Poisson. The governing law clause is clear. The claims by Plaintiff  
16 directly stem out of the promissory note, which included the governing law clause. Without a doubt,  
17 Plaintiff’s claims go beyond the \$500,000 promissory note executed between the parties, but this  
18 money represents a major part of the agreement between the parties. As such, only a court in Texas  
19 has proper authority to adjudicate these claims.

20 **B. Transfer of the Case**

21 Plaintiff requests the court transfer the case to a district court in Texas, as opposed to

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23 not expressly incorporated therein, unless the motion is converted into one for summary judgment.”  
24 *Alt. Energy, Inc. v. St. Paul Fire and Marine Ins. Co.*, 267 F.3d at 30, 33 (1st Cir. 2001) (citing  
25 *Watterson v. Page*, 987 F.2d 1, 3 (1st Cir. 1993)). However, there is “a narrow exception ‘for  
26 documents the authenticity of which are not disputed by the parties; for official public records; for  
27 documents central to the plaintiffs’ claim; or for documents sufficiently referred to in the  
28 complaint.’” *Alt. Energy, Inc.*, 267 F.3d at 33 (quoting *Watterson*, 987 F.2d at 3). The parties in this  
case do not dispute the authenticity of the promissory note and both make reference to the document  
attached to Poisson’s motion to dismiss. (Docket No. 7-1.)

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dismissal of the case. Plaintiff correctly cites 28 U.S.C. § 1406(a) as providing the court with power to make such a transfer; however, Plaintiff does not explain why it would be in the best interest of justice to do so. District courts within this circuit have transferred such cases in the past when the circumstances require fairness. See Russo v. Ballard Med. Products, 352 F. Supp. 2d 177, 182-83 (D.R.I. 2005) (holding action filed in venue other than the one chosen by parties in forum selection clause should be transferred); Henderson v. Am. Steamship Owners Mut. Prot. and Indem. Ass’n Inc., No. 2:11-cv-86-DBH, 2011 WL 2194439, at \*1 (D. Me. June 6, 2011). Additionally, the court notes the state of Texas contains four federal district courts, the Eastern, Western, Northern and Southern Districts. The governing law clause does not specify which district would be appropriate, nor has Plaintiff specified which district in his request. (See Docket No. 10 at 8.) (requesting “this action be transferred to the district court of Texas in which venue shall be deemed proper.”) As such, the court **DENIES** Plaintiff’s motion for transfer.

**IV. Conclusion**

For the reasons set forth above, the court **GRANTS** Defendants’ motion to dismiss at Docket No. 7 and **DENIES** Plaintiff’s request for transfer.

**SO ORDERED.**

In San Juan, Puerto Rico this 16th day of January, 2013.

*s/ Gustavo A. Gelpi*  
GUSTAVO A. GELPI  
United States District Judge