

# Exhibit Y

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION

CUB CLUB INVESTMENT, LLC,  
*Plaintiff,*

v.

APPLE, INC.,  
*Defendant,*

6-20-CV-00856-ADA

**ORDER GRANTING DEFENDANT’S MOTION TO  
TRANSFER**

Before the Court is Defendant Apple, Inc.’s (“Apple”) Motion to Transfer Venue to the Northern District of California (“NDCA”) pursuant to 28 U.S.C. § 1404(a). ECF No. 21. The Mot. to Transfer was filed on November 24, 2020. *Id.* Plaintiff, Cub Club Investment, LLC, (“CCI”) filed its response on December 9, 2020. ECF No. 26. Apple filed its reply on December 16, 2020. ECF No. 27. After considering all related pleadings and the relevant law, the Court is of the opinion that Apple’s Motion should be **GRANTED**.

**Background**

CCI filed this action on September 18, 2020, pursuant to the Court’s original jurisdiction under 28 U.S.C. §§ 1331 and 1338(a). ECF No. 1. Plaintiffs allege that Apple infringes on the following copyrights: (1) Nos. VAu 001-204-290, (2) VAu 001-186-920, (3) VAu 001-152-200, (4) VAu 001-152-192, (5) VAu 001-152-187, (6) VAu 001-180-102, and (7) VAu 001-152-204 (collectively, “Works”). ECF No. 1 ¶ 1.

On November 24, 2020, Apple filed an opposed Mot. to Transfer under 28 U.S.C. § 1404. Defendant’s Opposed Mot. to Transfer to the Northern District of California (hereinafter “Mot. to Transfer”), ECF No. 21. In its motion, Apple argues transfer to the NDCA is proper because the convenience of the parties and interests of justice weigh in favor of transfer. *Id.* at

4–10. On December 9, 2020, CCI filed a response to Apple’s Mot. to Transfer, opposing transfer to NDCA and asking the Court to transfer to the Galveston Division of the Southern District of Texas in the alternative. Pls.’ Resp. in Opp’n to Defs.’ Mot. to Transfer Venue. (hereinafter “Resp.”), ECF No. 26. On December 16, 2020, Apple filed a reply. Def’s. Reply in Supp. of Def’s. Mot. to Transfer Under 28 U.S.C. § 1404(a) (hereinafter “Reply”), ECF No. 27.

### Legal Standard

Whether to transfer venue is a preliminary issue that must be addressed at the outset of a federal action and must take “top priority in the handling of this case.” *In re Horseshoe Ent.*, 337 F.3d 429, 433 (5th Cir. 2003). The Court may transfer an action to any district or division where it might have been brought if that transfer serves “the convenience of parties and witnesses” and “the interest of justice.” 28 U.S.C. § 1404(a). Section 1404(a)’s threshold inquiry is whether the case could initially have been brought in the proposed transferee forum. *In re Volkswagen AG*, 371 F.3d 201, 202–03 (5th Cir. 2004) [*Volkswagen I*]. If that inquiry is satisfied, the Court determines whether transfer is proper by analyzing and weighing various private and public interest factors. *Humble Oil & Ref. Co. v. Bell Marine Serv.*, 321 F.2d 53, 56 (5th Cir. 1963); *In re Apple Inc.*, 979 F.3d 1332, 1338 (Fed. Cir. 2020) (applying Fifth Circuit law).

The private interest factors are “(1) the relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) the cost of the case; and (4) the avoidance of unnecessary problems of conflict of laws [or in] the application of foreign law.” *Id.* (quoting *Volkswagen I*, 371 F.3d at 203) (alterations in original). The public interest factors are “(1) the administrative difficulties flowing from court congestion; (2) the local interest in having localized interests decided at home; (3) the familiarity of the forum with

the law that will govern the case; and (4) the avoidance of unnecessary problems of conflict of laws [or in] the application of foreign law.” *Id.* (quoting *Volkswagen I*, 371 F.3d at 203) (alterations in original). The factors are neither exclusive nor exhaustive, and no one factor is dispositive. *Id.* In applying these factors, the court enjoys considerable discretion and assesses the case “on an ‘individualized, case-by-case consideration of convenience and fairness.’” *In re Vistaprint Ltd.*, 628 F.3d 1342, 1346 (Fed. Cir. 2010) (quotation omitted). The burden to prove that a case should be transferred for convenience falls squarely on the moving party. *See id.* Although the plaintiff’s choice of forum is not a separate factor entitled to special weight, respect for the plaintiff’s choice of forum is encompassed in the movant’s elevated burden to “clearly demonstrate” that the proposed transferee forum is “clearly more convenient” than the forum in which the case was filed. *Id.* at 314–15. While “clearly more convenient” is not necessarily equivalent to “clear and convincing,” the moving party “must show materially more than a mere preponderance of convenience, lest the standard have no real or practical meaning.” *Quest NetTech Corp. v. Apple, Inc.*, No. 2:19-cv-118, 2019 WL 6344267, at \*7 (E.D. Tex. Nov. 27, 2019).

## Discussion

### I. The *Volkswagen* Private and Public Interest Factors Favor Transfer to the Northern District of California.

In order to determine whether Apple has demonstrated good cause, the Court must weigh the private and public interest factors cataloged in *Volkswagen II*. The private interest factors include: “(1) the relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) the cost of attendance for willing witnesses; and (4) all other practical problems that make trial of a case easy, expeditious and inexpensive.”

*Volkswagen II*, 545 F.3d at 315 (quoting *Volkswagen I*, 371 F.3d at 203). The public interest factors are “(1) the administrative difficulties flowing from court congestion; (2) the local interest in having localized interests decided at home; (3) the familiarity of the forum with the law that will govern the case; and (4) the avoidance of unnecessary problems of conflict of laws [or in] the application of foreign law.” *Id.* (quoting *Volkswagen I*, 371 F.3d at 203) (alterations in original). If, when added together, the relevant private and public interest factors are in equilibrium, or even if they do not clearly lean in favor of the transferee venue, the motion must be denied. *Volkswagen II*, 545 F.3d at 315. Once again, the Court’s ultimate inquiry is which forum will best serve the convenience of the parties and the interests of justice. *Koster v. Am. Lumbermens Mut. Cas. Co.*, 330 U.S. 518, 527 (1947). Here, when weighing the *Volkswagen* private and public interest factors, the Court finds that Apple has shown that the NDCA is “clearly more convenient” than the Western District of Texas (“WDTX”).

**a. The Private Interest Factors Clearly Establish that the Northern District of California is a More Convenient Venue.**

In considering private factors, the Court necessarily engages in a comparison between the hardships the defendant would suffer through the retention of jurisdiction and the hardships the plaintiff would suffer from transferring the action to the transferee venue. *Cf. Iragorri v. United Technologies Corp.*, 274 F.3d 65, 74 (2d Cir. 2001) (stating courts engage in such a comparison for *forum non conveniens* analyses). The Court will assess each of these factors in turn.

**i. The Relative Ease of Access to Sources of Proof**

In considering “the relative ease of access to sources of proof,” a court looks to where documentary evidence, such as documents and physical evidence, is stored. *Volkswagen II*, 545 F.3d at 316. Parties must “describe with specificity the evidence they would not be able to

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