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

TOGAIL TECHNOLOGIES LTD. **Plaintiff,** **v.** **APPLE INC.** **Defendant.**	**Civil Action No. 6:22-cv-00326-ADA** **JURY TRIAL DEMANDED** [redacted] PUBLIC VERSION

DEFENDANT APPLE INC.'S SEALED REPLY IN SUPPORT OF ITS MOTION TO TRANSFER VENUE TO THE NORTHERN DISTRICT OF CALIFORNIA UNDER 28 U.S.C. § 1404(A)

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Apple and Togail agree this case belongs in California, not Texas. *See* DI 34 ("Mot.") at 1; DI 48 ("Opp.") at 1. The only dispute is whether this case should be transferred to NDCA or SDCA. Apple's motion showed why NDCA is the most convenient forum for this action and is clearly more convenient than WDTX. Namely, NDCA:

- Is where nearly all of Apple's engineering, marketing, and licensing personnel relevant to the accused functionalities of the Accused Products live and work (Mot. at 6-8);
- Is where most of those employees keep—and access—their documents and things (Mot. at 2-3, 8-10; Vashi Decl. ¶¶ 5-7; Jotwani Decl. ¶ 6; Ankenbrandt Decl. ¶ 5); and
- Has subpoena power over relevant domestic third parties (Mot. at 11-12).

Togail offers ***no defense of the venue it selected when filing suit***. And Togail fails to dispute Apple's comparisons between WDTX and NDCA—this alone is grounds to grant Apple's motion.

Togail instead now contends that SDCA is the "most convenient venue." Opp. at 3. Togail is right that SDCA is clearly more convenient than WDTX, but is wrong in asserting that SDCA is more convenient than NDCA. SDCA has far fewer relevant witnesses and sources of proof than NDCA; is less convenient for relevant party witnesses in NDCA; does not have subpoena power over anyone who is not also subject to the subpoena power of NDCA; and has a more limited local interest than NDCA. Togail cites "several developments" that occurred "[s]ince the filing of Apple's motion" (Opp. at 1), but conveniently ignores one such development: this Court's transfer of *Speir Technologies Ltd. v. Apple Inc.*—where Speir accused "5G cellular technology" for which it argued the "Qualcomm witnesses are in San Diego"—to NDCA (not SDCA). *See* No. 6:22-cv-00077, 2022 WL 17945398, at *1, *5 (W.D. Tex. Dec. 15, 2022). Notably, Togail's counsel here represented Speir there. The Court should grant Apple's motion to transfer this case to NDCA.

I. TOGAIL FAILS TO REBUT APPLE'S SHOWING THAT NDCA IS CLEARLY MORE CONVENIENT THAN WDTX.

Apple's motion showed that the overwhelming majority of relevant people and documents

are in NDCA; none are in WDTX. Togail concedes this case should be transferred and has not disputed that NDCA is clearly more convenient than WDTX. Opp. at 1.

Witness convenience. Togail does not address witness convenience as between NDCA and WDTX. *See* Opp. at 5-8. Apple cited sworn declarations from individuals responsible for engineering, marketing, and licensing relating to the accused functionality of the Accused Products. *See* Mot. at 2-3, 6-8. Each one is based in NDCA and the vast majority of each one's team is in NDCA, with none in Texas. *Id.*; Vashi Decl. ¶ 1 [redacted], ¶ 5 [redacted]; Jotwani Decl. ¶ 4 [redacted]; Ankenbrandt Decl. ¶ 3 [redacted], ¶ 4 [redacted]. Togail did not identify anyone in Texas.

Sources of proof. Togail does not address sources of proof as between NDCA and WDTX. *See* Opp. at 3-5. Apple cited sworn declarations of its likely trial witnesses in engineering, marketing, and licensing, who state that they and most of their team keep and access their documents in NDCA. *See* Mot. at 2. Togail did not identify any source of proof in Texas.

Compulsory process. Togail does not address compulsory process as between NDCA and WDTX. *See* Opp. at 8-10. Togail does not dispute that NDCA has subpoena power over the witnesses and parties Apple identified, including Qualcomm and its San Diego employees. Instead, Togail identified 25 prior artists it claims are located in the San Diego area. *See* Opp. at 8-10. But Togail does not argue that NDCA lacks subpoena power over anyone in San Diego.

Practical problems. Apple's showing in favor of NDCA is uncontested. Opp. at 11.

Local interest. Apple's showing in favor of NDCA remains unrebutted. *See* Opp. at 10.

Remaining factors. Togail agrees that the remaining factors are neutral. *See* Opp. at 11. In sum, Apple demonstrated why the factors strongly favor NDCA, and Togail offered no rebuttal.

II. ALTHOUGH SDCA IS CLEARLY MORE CONVENIENT THAN WDTX, IT IS LESS CONVENIENT THAN NDCA.

Togail—apparently realizing it has no viable argument to avoid transfer—asks the Court to "deny Apple's request to transfer to NDCA and instead transfer this case to SDCA." Opp. at 3. While Apple agrees that Togail could have sued Apple in SDCA, and that SDCA is clearly more convenient than WDTX, SDCA is merely the second-most convenient venue, behind NDCA.

Witness convenience. Togail has not shown that witness convenience clearly favors SDCA over NDCA. Togail claims that Apple "names just three NDCA" employees, but this glosses over the facts Apple supplied with its motion. Opp. at 5. In reality, Apple provided three ***declarations***—one from an engineer (Prashant Vashi), one from a marketing employee (Anjali Jotwani), and one from a licensing employee (Brian Ankenbrandt), and each one provided testimony about themselves and their teams. Mot. at 1-3. Apple's declarants identified eleven engineers, five marketing personnel, and eleven licensing personnel, as follows:

- [redacted] Vashi Decl. ¶¶ 5-6.
- [redacted] Jotwani Decl. ¶¶ 4-5.
- [redacted] Ankenbrandt Decl. ¶¶ 3-5.

Rather than depose those witnesses, Togail's response identifies Apple employees who work in San Diego and who are in the departments for which it asked about certain job postings and argues that Togail "independently corroborate[d] their work on the Qualcomm 5G wireless technology that is at issue." Opp. at 6-7. Togail's argument is flawed in four ways. ***First***, Togail offers no proof that the departments in which these eight individuals work have responsibility over

the specific aspects of 5G at issue in Togail's contentions. Togail also ignores that Apple's discovery response explained that those job postings do not relate to the accused functionalities. *See* Opp. Ex. 15 at 11. In contrast, Apple offered a declaration from the engineer who knows first-hand that ***his*** group has that responsibility. Vashi Decl. ¶ 4 [redacted].

Second, Togail points only to the work of those eight individuals while at their ***previous employer***, based on content in LinkedIn profiles, as the basis for their relevance. Togail implies that they would testify about Qualcomm confidential information as witnesses for their current employer, Apple, which is absurd. *See* Opp. at 6 ("extensive 5G experience from prior work . . . at Qualcomm"; "from his prior employment at Qualcomm"; "extensive 5G experience from his prior thirteen years at Qualcomm"); *id.* at 7 ("their combined forty-six years of prior relevant Qualcomm experience"). Togail has not established that these individuals ever had relevant knowledge, nor can it plausibly assert that they would or could testify about source code and technical information to which they do not have access.

Third, Togail's argument relies on cherry-picking the eight individuals in those departments in San Diego, while ignoring the far greater number [redacted] located in "Santa Clara Valley" in NDCA. *See* Opp. Ex. 5 (spreadsheet of employees in various departments). While Apple maintains its position that ***none*** of the employees in that spreadsheet are relevant, Togail cannot pluck out only some such individuals to artificially inflate its argument. Even accepting Togail's cherry-picking, it has only identified eight engineers in San Diego, but Apple's motion identifies: (1) a greater number of engineers in NDCA; (2) licensing personnel in NDCA (none in SDCA); and (3) marketing personnel in NDCA (none in SDCA). ***Finally***, Togail ignores additional inconvenience to Apple's NDCA witnesses for trial in SDCA. Mot. Exs. E-1–3, F-5.

Sources of proof. Togail's argument that third-party Qualcomm makes this factor favor

SDCA over NDCA is incorrect because it overly emphasizes Qualcomm source code against all evidence in the possession of the largely NDCA-based Apple teams. As an initial matter, Togail identifies no physical evidence in Qualcomm's possession. Additionally, Togail's assertion the Court should "disregard Apple's claim of sources of proof" because its declarants "did not ***review*** any evidence responsive to Venue Requests for Production" (Opp. at 5) is nonsense because Apple's engineer, marketing witness, and licensing witness have ***first-hand knowledge*** of where they and their teams keep and access sources of proof. And Togail's reliance on briefing filed a decade ago in another case, ***before 5G existed***, is obviously flawed because it cannot substantiate the location of evidence about ***5G***. *See* Opp. at 4 (citing *Wi-LAN USA, Inc. v. Apple Inc.,* No, 3:13-cv-00798, DI 39, 40, 41, 46 (S.D. Cal. Feb. 20, 2013) (discussing ***4G LTE***)).

Compulsory process. Here, again, Togail points to briefing from a different case that predates 5G and is irrelevant. *See* Opp. at 8 (citing *Odyssey Wireless, Inc. v. Apple Inc.*, No. 3:15-cv-01735, Dkt. No. 55 at 8 (E.D.N.C. Mar. 24, 2015) (discussing 4G LTE)). Togail also identifies ***25*** prior artists across 7 patents allegedly in the San Diego area. *Id.* at 8-9. But Togail grossly overestimates the number of prior artists who will testify at trial and overstates their relevance. *See, e.g.*, *VoIP-PAL.com, Inc. v. T-Mobile USA, Inc.*, No. 6:21-cv-674-ADA, 2022 WL 1750473, at *3-4 (W.D. Tex. May 31, 2022) (considering but discounting ***12*** prior artists, as "[t]he Court rarely sees any prior art witnesses testify at trial and has yet to see a dozen of them testify."). Critically, Togail does not argue any such person is outside NDCA's subpoena power.

Local interest. Togail sued ***Apple, not Qualcomm.*** Togail accuses ***Apple*** products. *See* Mot. Ex. A. ***Apple*** will stand before a jury if this case goes to trial. This factor favors NDCA.

Remaining factors. Togail states all other factors are "neutral," without explanation.

In sum, NDCA is clearly more convenient than WDTX. SDCA is second-most convenient.

Dated: February 2, 2023

Respectfully submitted,

/s/ J. Stephen Ravel

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