IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:20-cv-01712-SKC

ARROW ELECTRONICS, INC.,

Plaintiff,

v.

THE VOID, LLC,

Defendant.

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS OR, ALTERNATIVELY, TO TRANSFER VENUE

Plaintiff Arrow Electronics, Inc. ("Arrow") responds to the July 22, 2020 Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(2) and Fed. R. Civ. P. 12(b)(3), or, Alternatively, to Transfer Venue [Dkt. 12].

INTRODUCTION

Arrow brought this litigation to enforce the parties' March 1, 2019 Purchase Order ("PO"), as well as their April 2, 2019 agreement that the merchandise VOID ordered would be non-cancelable and non-returnable ("NCNR Agreement"). VOID directed its communications to Arrow's Colorado employees, included Arrow's Colorado address on the PO and NCNR Agreement documents, and sent legally binding notices into the state; for its part, Arrow negotiated and performed under these agreements in Colorado. When VOID breached its obligations to accept delivery of the merchandise and pay for it, that default financially harmed Arrow, which is Colorado's largest company. These facts demonstrate VOID's minimum

contacts with the State and confirm that the Court has jurisdiction under Colorado's long-arm statute, § 13-1-124, C.R.S., and consistent with due process.

As to venue, VOID primarily relies on a May 15, 2017 confidentiality agreement ("Confidentiality Agreement") that contains a forum selection clause. But in its motion, VOID failed even to mention that the Confidentiality Agreement *automatically terminated* on May 24, 2019—roughly a year before Arrow filed suit. In any event, the caselaw is clear that Arrow's choice of venue is entitled to substantial deference, and a transfer isn't appropriate unless the circumstances weigh strongly against proceeding here. In this case, there aren't any factors that strongly favor a transfer to the District of Utah. The Court should deny VOID's motion in its entirety.

FACTS[1]

Arrow provides products, services, and solutions around the world to industrial and commercial users of electronic products, electronic components, and enterprise computing solutions. Aug. 11, 2020 Declaration of Corey Zug ("Decl.") ¶ 3. Arrow's global headquarters are in Centennial, Colorado. *Id.*

In Spring 2019, Arrow submitted budget estimates to VOID that listed Arrow's Colorado address and phone number. [Dkt. 1-1], at 5-9. VOID then issued the PO to Arrow for electronics merchandise to be procured by Arrow on a non-cancelable, non-returnable ("NCNR") basis. [Dkt. 1], ¶ 1; Decl. ¶¶ 5-6. The PO was sent to Deborah Compton and Rob Ingraham,

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[1] For purposes of Rule 12(b)(2), Arrow's allegations must be accepted as true to the extent they are not contradicted by VOID's declaration, and any discrepancy between VOID's and Arrow's declarations must be resolved in Arrow's favor. *Wenz v. Memery Crystal*, 55 F.3d 1503, 1505 (10th Cir. 1995). For purposes of Section 1404(a), Arrow's allegations should be taken as true, although the Court may consider additional facts raised by the declarations. *Galvin v. McCarthy*, 545 F. Supp. 2d 1176, 1179 (D. Colo. 2008); *Bailey v. Union Pac. R.R. Co.*, 364 F. Supp. 2d 1227, 1229 (D. Colo. 2005).

both of whom are Colorado-based Arrow employees and who were in Colorado when they received the PO. *Id.* ¶ 5. During the negotiations, VOID directed its communications by email and telephone to Arrow's Colorado employees, including Compton and Ingraham. *Id.* ¶ 7, 12. The PO and NCNR Agreement repeatedly list a Colorado address and a Colorado phone number for Arrow. [Dkt. 1-1], at 5-9. Similarly, the NCNR Agreement listed Ms. Compton as Arrow's representative. [Dkt. 1-1], at 1; Decl. ¶ 6.

Once the PO and NCNR Agreement were signed, Arrow began procuring the requested merchandise for VOID. Ms. Compton, the manager for VOID's account, worked with Arrow's integrated supply chain group—located in Centennial, Colorado—to source the ordered merchandise. Decl. ¶¶ 8-9. During this time, VOID regularly communicated with Ms. Compton at her Colorado office. *Id.* ¶ 10. After Arrow acquired some of the ordered merchandise, VOID sent a bill-and-hold letter by email to, among others, Arrow's Colorado employee, Salesh Rampersad. *Id.* ¶ 13. In response, Arrow sent VOID the requested invoice from its offices in Colorado. *Id.* ¶ 14. That invoice lists a Colorado address for Arrow and provides a Colorado telephone number for any inquiries. [Dkt. 1-3], at 1; Decl. ¶ 15. And while the invoice says that payment should be remitted through Chicago, Arrow's headquarters are located in Colorado, and that is where Arrow was harmed by VOID's failure to pay. Decl. ¶¶ 20-21.

When VOID didn't pay the amounts due, the parties communicated by email about the outstanding balance. In those emails, VOID directed its communications to Arrow's Colorado employees. *Id.* ¶¶ 11-20. The parties also communicated by phone, with VOID calling Arrow at its Colorado offices. *Id.* ¶ 11. The parties reached an agreement about how VOID would pay down the balance; VOID also communicated with Mr. Hassan about signing a forbearance

agreement. *Id.* ¶ 19. The parties exchanged a draft agreement, which listed a Colorado address for Arrow. *Id.*

VOID's failure to pay the amounts owed has inflicted direct financial harm to Arrow. Decl. ¶ 20. In addition, the witnesses and documents on which Arrow will rely in prosecuting this lawsuit are located almost exclusively in Colorado. Decl. ¶ 22.

LEGAL STANDARD

On a Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction, Arrow must make a *prima facie* showing of jurisdiction based on the allegations in its Complaint or, where VOID disputes the allegations, based on sworn statements of witnesses with knowledge. *Wenz*, 55 F.3d at 1505. "This is a light burden intended only to screen out cases in which personal jurisdiction is obviously lacking …." *Found. for Knowledge in Dev. v. Interactive Design Consultants*, 234 P.3d 673, 678 (Colo. 2010) (quotation marks and citations omitted); *see also Wenz*, 55 F.3d at 1505 ("In the preliminary stages of litigation . . . the plaintiff's burden is light."). Colorado's long-arm statute confers maximum jurisdiction consistent with due process. *See Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063, 1070 (10th Cir. 2008).[2] Under the Due Process Clause, the Court may exercise specific jurisdiction "where the injuries triggering litigation arise out of and are related to 'activities that are significant and purposefully directed by the defendant at residents of the forum.'" *Archangel Diamond Corp. v. Lukoil*, 123 P.3d 1187, 1194 (Colo. 2005) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)).

With respect to venue, "[a] civil action may be brought in … a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part

[2] Arrow alleges only that the Court has specific jurisdiction over VOID with respect to the claims in this case; it doesn't contend that VOID is subject to general jurisdiction here.

of property that is the subject of the action is situated …." 28 U.S.C. § 1391(b). To obtain a transfer under 28 U.S.C. § 1404(a), VOID bears the burden of establishing that Colorado is a prohibitively inconvenient forum. *Scheidt v. Klein*, 956 F.2d 963, 965 (10th Cir. 1992). The analysis of inconvenience turns on several factors, including:

a. Arrow's choice of forum;

b. accessibility of witnesses and other sources of proof, including the availability of compulsory process to insure witness attendance;

c. cost of making the necessary proof;

d. difficulties that may arise from congested dockets;

e. questions that may arise in the area of conflict of laws;

f. advantage of having a local court determine questions of local law; and

g. any other considerations of a practical nature that make a trial easy, expeditious, and economical.

Emp'rs Mut. Cas. Co. v. Bartile Roofs, Inc., 618 F.3d 1153, 1167 (10th Cir. 2010).[3] "[U]nless the balance is strongly in favor of the movant[,] the plaintiff's choice of forum should rarely be disturbed." *Scheidt*, 956 F.2d at 965.

Per DDD Civ. P.S. III.D.1.c, Arrow states that it agrees with VOID that in ruling on a jurisdictional motion, the Court may consider the parties' declarations without converting VOID's motion into one for summary judgment. *See* [Dkt. 12], at 3 n.1 (citations omitted).

ARGUMENT

This Court has specific personal jurisdiction over VOID. Moreover, the District of Colorado is a proper forum for this case and VOID cannot satisfy its heavy burden to transfer venue to the District of Utah. The motion should be denied.

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[3] The remaining factors that guide a court's transfer analysis—enforceability of judgments and fair trial considerations—aren't relevant here. *Bartile*, 618 F.3d at 1167.

I. This Court has personal jurisdiction over VOID (DISPUTED).[4]

As noted above, a court sitting in diversity may exercise specific jurisdiction over a foreign defendant when the claims against the defendant arise out of "minimum contacts" that that the defendant purposefully directed at residents of the forum. *Archangel*, 123 P.3d at 1194 (citing *Burger King*, 471 U.S. at 472). When applied to contract cases, this "purposeful direction" doctrine asks "whether the defendant 'purposefully availed' itself of the privilege of conducting activities or consummating a transaction in the forum state." *Dudnikov*, 514 F.3d at 1071. The doctrine is meant to ensure that "an out-of-state defendant is not bound to appear to account for merely 'random, fortuitous, or attenuated contacts' with the forum state." *Id.* (quoting *Burger King*, 471 U.S. at 475).

The actions of VOID are especially "significant in determining whether [VOID] purposefully availed [itself] of the privilege of conducting business" here, *Archangel*, 123 P.3d at 1194, and even "a single transaction of business" by VOID in Colorado is "sufficient to satisfy the minimum contacts requirement so long as 'the suit [is] based on a contract which had substantial connection with th[e] State,'" *Van Schaack & Co. v. Eighteenth Jud. Dist.*, 538 P.2d 425, 426 (Colo. 1975) (quoting *McGee v. Int'l Life Ins. Co.*, 355 U.S. 220, 223 (1957)). Here, Arrow has alleged—and has provided sworn statements showing—that VOID directed its conduct toward Colorado in connection with the PO and NCNR Agreement and their performance. VOID sent the PO and NCNR Agreement to Colorado; it directed its communications to Arrow personnel in Colorado when it negotiated those agreements; it relied on Arrow to procure the ordered merchandise through its Colorado-based global supply chain

[4] Arrow has listed as "DISPUTED" the elements for personal jurisdiction and venue that are disputed by the parties. *See* DDD Civ. P.S. III.D.1.b.

group; it communicated with Arrow employees in Colorado throughout the performance of the agreements; and it sent legally binding documents like the bill-and-hold letter to Arrow's Colorado employees. Even if VOID never visited Colorado or performed work here, its conduct still demonstrates more than "random, fortuitous, or attenuated contacts" with Colorado. *Found. for Knowledge*, 234 P.3d at 679-81 (contracting for work in Colorado with a company headquartered in Colorado and communicating about that work with individuals in Colorado were not random, fortuitous, or attenuated contacts); *see also Pharmatech Oncology, Inc. v. Tamir Biotech., Inc.*, No. 11-cv-1490-LTB-KMT, 2011 WL 4550202, at *4-6 (D. Colo. Oct. 3, 2011) (defendant had "minimum contacts" with Colorado by contracting with Colorado company that negotiated, executed, and performed parts of the contract in Colorado, including by numerous phone calls and emails to and from Colorado). Here, the "constellation of facts illuminates that Defendant's 'conduct and connection with the forum State [was] such that [it] should reasonably anticipate being haled into court [here].'" *Id.* at *6 (quoting *Benton v. Cameco Corp.*, 375 F.3d 1070, 1078 (10th Cir. 2004)).

Moreover, VOID's "deliberate creation of 'continuing obligations' with the forum state . . . constitute[d] purposeful availment." *Archangel*, 123 P.3d at 1194; *see also Burger King*, 471 U.S. at 473 ("[P]arties who reach out beyond one state and create continuing relationships and obligations with citizens of another state are subject to regulation and sanctions in the other State for the consequences of their activities.") (quotation marks and citations omitted); *Halliburton Co. v. Texana Oil Co., Inc.*, 471 F. Supp. 1017, 1019 (D. Colo. 1979) (jurisdiction in Colorado may be predicated on forum-directed conduct *or* a non-resident's contract obligating him to pay money to someone inside the state). Under the parties' agreements, VOID agreed to ongoing payment obligations to Arrow and, in addition, VOID

agreed to accept products that Arrow worked to procure from its Colorado location. When VOID was unable to pay the amounts due, it sent a bill-and-hold letter to Arrow in Colorado and negotiated with Arrow's Colorado employees about setting up a revised payment schedule, thereby expanding VOID's continuing obligations in the state. These obligations are independently sufficient to establish jurisdiction over VOID in connection with the PO and NCNR Agreement. *See Archangel*, 123 P.3d at 1194.

VOID's reliance on *Sea Eagle Ford, LLC v. Tex. Quality Well Serv., LLC*, No. 17-cv-02141, 2018 WL 4352011 (D. Colo. Sept. 12, 2018), is misplaced. There, a Texas-based defendant entered into a contract with a Colorado plaintiff for well services that would be performed *entirely in Texas*. *Id.* at *1. An accident occurred on one of the plaintiff's wells in Texas, and the plaintiff sued in federal court in Colorado. *Id.* The Court held that it didn't have personal jurisdiction over the defendant because "[t]he contemplated future consequences of the contract [] all relate to a project that was to take place, and did occur, entirely in Texas." *Id.* at *3. Here, the parties' agreements, Arrow's performance under the agreements, and the parties' continued discussions about VOID's unpaid balance took place in Colorado. Likewise, the *Sea Eagle Ford* Court suggested that jurisdiction would have been appropriate if "the defendant sought plaintiff out in Colorado or that defendant ha[d] ongoing contractual duties related to Colorado." *Id.* at *4. But in this case, VOID sought Arrow out for its expertise in acquiring electronics merchandise; moreover, VOID issued a letter that directed Arrow to "bill and hold in storage the available parts as detailed in the schedule below" and that recognized VOID's obligation to "instruct Arrow Electronics" at some point within the next year "to pull the product and ship to the specified location." [Dkt. 1-2], at 1. VOID also had an ongoing duty to accept the merchandise Arrow provided through its work in Colorado and an obligation to pay the

invoices Arrow issued from its Colorado headquarters. In short, VOID's contacts with Colorado aren't random, fortuitous, or attenuated, and Arrow's claims arise directly out of those contacts. Specific personal jurisdiction exists for this very situation—where a defendant resides somewhere else but, by reaching into Colorado to do business here, causes substantial harm to a Colorado resident.

II. The Court should deny VOID's request to dismiss or transfer the case based on venue.

A. *Venue is proper in the District of Colorado under 28 U.S.C. § 1391(b) (DISPUTED).*

VOID makes only a conclusory argument regarding whether venue is proper in this district under 28 U.S.C. § 1391(b), asserting without analysis that this case doesn't satisfy any prong of the statute's three-part test. *See* [Dkt. 12], at 12-13. But in fact, "a substantial part of the events or omissions giving rise to the claim occurred" in this district. 28 U.S.C. § 1391(b)(2). As discussed in detail above, Arrow's performance under the PO and the NCNR Agreement primarily took place in Colorado. *See* Decl. ¶¶ 5, 7-20. In addition, VOID directed its communications to Arrow's Colorado employees throughout the parties' relationship, including when it sent to Arrow the bill-and-hold letter requesting that Arrow invoice VOID for electronics merchandise. These are precisely the acts that give rise to Arrow's claims.

B. *VOID cannot meet its heavy burden for a discretionary transfer (DISPUTED).*

VOID argues in the alternative that this Court should transfer the case to the District of Utah. In support, it primarily relies on the Confidentiality Agreement. *See* [Dkt. 12], at 13 (arguing that forum selection clauses must be given controlling weight absent extraordinarily circumstances). But in making this argument, VOID omits a key provision of that contract—the automatic-termination clause:

> Term. The Agreement shall *terminate automatically* on the second anniversary of the Effective Date; provided that : (i) the Receiving Party's obligations with respect to the Confidential Information under this Agreement shall survive for a period of two (2) years from the date of termination; (ii) any other provision *expressly* surviving beyond such date shall survive *until the expiration provided therefore*; and (iii) any claim for violation of this Agreement shall survive until the expiration of the applicable statute of limitations.

[Dkt. 12-1], at 11 (italics added). It's undisputed that the Confidentiality Agreement's effective date is May 15, 2017, [Dkt. 12], at 4, meaning that the agreement terminated on May 15, 2019—roughly a year before Arrow filed suit. Moreover, the forum selection clause on which VOID relies doesn't "expressly survive" beyond the termination date. By its plain terms, then, the clause terminated on May 15, 2019, rendering it unenforceable and irrelevant to the Court's inquiry.

Without the forum selection clause, VOID's argument has little else to go on. The *Bartile* factors heavily weigh in favor of keeping the case here.

i. Plaintiff's choice of forum.

"[A] plaintiff's choice of forum is given paramount consideration and the burden of demonstrating that an action should be transferred is on the movant." *Villa v. Salazar*, 933 F. Supp. 2d 50, 54 (D.D.C. 2013) (quotation marks and citation omitted); *see also Tex. E. Trans. Corp. v. Marine Office-Appleton & Cox Corp.*, 579 F.2d 561, 567 (10th Cir. 1978). As a consequence, there's a strong presumption in favor of Arrow's decision to commence this action in Colorado. *Bartile*, 618 F.3d at 1167.

ii. Accessibility of witnesses and other sources of proof, and the cost of making the necessary proof.

VOID insists that "several key witnesses to this dispute reside outside of Colorado" and that all of the witnesses it intends to rely on in this case live in Utah. [Dkt. 12], at 15. But VOID hasn't submitted anything "to indicate the quality or materiality of the testimony of [the]

witnesses, nor has Defendant shown that any such witnesses [are] unwilling to come to trial in [Colorado]; that deposition testimony would be unsatisfactory; or that the use of compulsory process would be necessary." *Scheidt*, 956 F.2d at 966; *see also Bartile*, 618 F.3d at 1169 (rejecting accessibility-of-witnesses argument without "indicat[ion of] the subject matter of their testimony"). Moreover, Arrow has identified at least five witnesses who worked for Arrow during the relevant time period, who reside in Colorado, and whose testimony would be relevant to interpreting the parties' agreements, recounting the parties' performance under the agreements, detailing VOID's default on its payment obligations, and establishing Arrow's damages. These individuals are Deborah Compton, Ali Hassan, Salesh Rampersad, Guy Stanley, and Corey Zug. Decl. ¶ 22.

VOID also claims that "the defective products and the virtual entertainment facility" that it runs are located in Utah. [Dkt. 12], at 15. But VOID doesn't explain what these "defective products" are, why they can't be brought to Colorado, or why the Court would need to see them. Likewise, VOID asserts that its "virtual attraction and facilities … are a critical piece of physical evidence that the jury should be permitted to view and possibly inspect," [Dkt. 12], at 9, but doesn't explain why a physical inspection of VOID's business is necessary to adjudicate a case about whether VOID breached a purchase order for particular merchandise Arrow supplied. In addition, all or nearly all of the relevant materials in Arrow's possession are located in Colorado. Decl. ¶ 22. At most, transferring this case to Utah would simply shift VOID's inconvenience to Arrow, and "[m]erely shifting the inconvenience from one side to the other . . . obviously is not a permissible justification for a change of venue." *Scheidt*, 956 F.2d at 966.

iii. **The difficulties that may arise from congested dockets.**

In its motion, VOID says that "the District of Utah has substantially fewer filings and fewer actions per judgeship than the District of Colorado." [Dkt. 12], at 15. But the Tenth Circuit has instructed that four categories are relevant to the analysis, *Bartile*, 618 F.3d at 1169; information on those categories is provided below:[5]

Category (as of March 31, 2020)	**D. Colo.**	**D. Utah**
Median time, filing to disposition (civil)	7.5 months	9.7 months
Median time, filing to trial (civil)	34.4 months	-
Pending cases per judge	515	512
Average weighted filings per judge	640	476

As these numbers confirm, neither district has a clear advantage. Even VOID recognizes in its briefing that this factor is likely neutral. [Dkt. 12], at 15.

iv. **Questions that may arise in the area of conflict of laws.**

VOID claims that there's a public interest "in having the case tried by a Court that is 'at home with the law,' which similarly weighs in favor of a transfer, since Utah law governs." [Dkt. 12], at 15 (citation omitted). This argument appears to be premised on the Confidentiality Agreement's choice-of-law provision. But the choice-of-law provision says only that "[*t*]*his Agreement* shall be governed by and construed in accordance with the law of the State of Utah …." [Dkt. 12-1], at 12 (emphasis added). It doesn't say that a separate contract to purchase goods must be governed by Utah law. And in any event, as noted above, the Confidentiality Agreement expired in May 2019; it has no force or effect.[6]

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[5] This report is online at https://www.uscourts.gov/sites/default/files/data_tables/fcms_na_distprofile0331.2020.pdf. Median time for filing to trial for the District of Utah isn't available in the report.

[6] As a result, Colorado law will likely apply to Arrow's claims because the relevant factors split between Colorado and Utah except the place of contracting, which is Colorado—where Arrow

Even if Utah law did govern this dispute, there would be little public interest in having Utah's federal court adjudicate the case. The *Bartile* court recognized that "this factor receives less weight when the case involves relatively simple legal issues." *Bartile*, 618 F.3d at 1169 (quotations and citations omitted). This case involves run-of-the-mill contract and related equitable claims arising out of a fairly standard purchase order; the potential applicability of Utah law "is not a significant concern in light of the relative simplicity of the legal issues involved …." *Scheidt*, 956 F.2d at 966; *see also Bartile*, 618 F.3d at 1169 ("This factor also is less significant because federal judges are qualified to apply state law.").

v. <u>The advantage of having a local court determine questions of local law.</u>

Finally, Colorado has a localized interest in adjudicating claims related to its largest company, which is a major employer in the state. VOID lumps this factor into its discussion addressing conflict-of-law issues. [Dkt. 12], at 15. But these are distinct factors, and the advantage of placing a "localized controversy" before a local court weighs, if at all, against transfer. Arrow is the largest company based in Colorado, where it employs thousands of individuals and oversees a global services and distribution business with revenues well over $20 billion per year. Decl. ¶ 4. Arrow's extensive ties with Colorado's population and economy counsel against transfer from the District of Colorado. *See Bailey*, 364 F. Supp. 2d at 1233 (approving transfer to Nebraska in part because defendant employed thousands of Nebraskans who have "a local interest in having localized controversies decided at home").

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accepted the purchase order, giving it binding effect. *See Sec. Serv. Fed. Credit Union v. First Am. Mortg. Funding, LLC*, 861 F. Supp. 2d 1256, 1267, 1269 (D. Colo. 2012).

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This case is perhaps most closely analogous to the Court's decision in *Arrow Electronics, Inc. v. Deco Lighting, Inc.*, No. 18-cv-1100-RM-KLM, 2019 WL 926921 (D. Colo. Feb. 26, 2019). The facts of that case closely follow the ones here: an out-of-state company entered into a contract with Arrow; the defendant defaulted on its payment obligations; and Arrow filed a lawsuit for breach of contract and related equitable claims. *Id.* at *1-2. The district court found that it had personal jurisdiction over the defendant and then went on to consider whether it should transfer venue to California. The Court found that while some factors pointed very slightly in favor of a transfer, they weren't enough "to overcome the general presumption that strongly favors a plaintiff's choice of venue." *Id.* at *5. The Court should reach the same conclusion here.

CONCLUSION

For the reasons given above, this Court should deny VOID's motion in its entirety.

DATE: August 12, 2020

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I hereby certify that the foregoing pleading complies with the type-volume limitation set forth in Judge Domenico's Practice Standard III(A)(1).

/s/ *Christopher M. Jackson*
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CERTIFICATE OF SERVICE

I certify that on the August 12, 2020, I electronically filed the foregoing motion and related materials with the Clerk of Court using the Court's electronic filing system and that a copy was sent to the following counsel of record:

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:20-cv-01712-SKC

ARROW ELECTRONICS, INC.,

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v.

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DECLARATION OF COREY ZUG IN SUPPORT OF ARROW'S RESPONSE TO THE MOTION TO DISMISS OR, ALTERNATIVELY, TO TRANSFER VENUE

I, Corey Zug, declare under penalty of perjury the following:

1. I am over eighteen years of age, am competent to testify in this matter, and have personal knowledge of the following facts. I obtained this information directly or through the scope of my current employment.
2. I am a finance manager at Arrow Electronics, Inc. ("Arrow"), the plaintiff in this action.
3. Arrow provides products, services, and solutions around the world to industrial and commercial users of electronic products, electronic components, and enterprise computing solutions. Its global headquarters are in Centennial, Colorado.
4. Arrow is the largest Colorado-based company. It employs thousands of individuals in the state and has revenues well over $20 billion per year.
5. In spring 2019, The VOID, LLC ("VOID") issued a purchase order to Arrow for electronics merchandise to be procured by Arrow on a non-cancelable, non-returnable

basis. That PO was sent to Deborah Compton and Rob Ingraham, Colorado-based Arrow employees who were in Colorado when they received it.

6. VOID also signed a contract on April 2, 2019 confirming that the merchandise it ordered would be non-cancelable and non-returnable ("NCNR Agreement"). The NCNR Agreement lists Ms. Compton as Arrow's representative.
7. Several of Arrow's Colorado-based employees, including Ms. Compton and Mr. Ingraham, participated in the negotiations and communicated with VOID's representatives by email and telephone at their Colorado offices.
8. Once the PO and NCNR Agreement were signed, Arrow began procuring the requested merchandise for VOID.
9. Ms. Compton was the account manager for VOID. After she received the executed PO, she worked with Arrow's integrated supply chain group—located in Centennial, Colorado—to fill the VOID's order.
10. VOID regularly communicated with Ms. Compton at her Colorado location regarding Arrow's efforts to procure the ordered merchandise
11. When it became clear that VOID wouldn't be able to pay for the merchandise on time, VOID contacted and spoke to several Arrow employees in Colorado to set up an alternative payment schedule. These discussions took place by email and telephone from July to September 2019. They involved Arrow employees in Colorado Guy Stanley, Salesh Rampersad, and Corey Zug.
12. In these discussions, Liyuan Woo, VOID's chief financial officer, repeatedly said that as long as VOID received its expected financing, it would be able to pay for and accept the

merchandise that Arrow acquired for VOID. She also thanked Arrow "for being patient with us." These communications were directed to Arrow's employees in Colorado.

13. After Arrow procured some of the ordered merchandise and as a result of the conversations and agreements made in conversations taking place through September 2019, VOID sent a bill-and-hold letter by email to, among others, Salesh Rampersad in Colorado. A copy of the letter is attached to the Complaint in this case.
14. Arrow then sent VOID the requested invoice from its offices in Colorado. A copy of that invoice is also attached to the Complaint in this case.
15. The invoice lists a Colorado address for Arrow and provides a Colorado telephone number for any inquiries.
16. During this time, VOID also spoke frequently with Ali Hassan, an Arrow employee located in Colorado, who became particularly familiar with VOID's relationship with Arrow and proceeded to sign a nondisclosure agreement to continue conversations on finalizing a payment plan for $1.5M outstanding AR and remaining inventory.
17. From December 2019 through February 2020, VOID continued to direct its communications to Arrow's Colorado-based employees, including Ms. Compton, Mr. Hassan, Mr. Rampersad, and Ms. Zug.
18. In these discussions, VOID's representatives emailed Arrow's Colorado employees to ask for additional information about the details of VOID's "commitment to Arrow."
19. By February 2020, VOID and Arrow reached an agreement about paying down the outstanding balance. VOID also communicated with Mr. Hassan about signing a forbearance agreement. The parties exchanged a draft agreement, which listed a Colorado address for Arrow.

20. VOID's continued failure to pay Arrow the amounts due under the PO and the NCNR Agreement has inflicted direct financial harm to Arrow.
21. Arrow's headquarters are located in Colorado, and that is where Arrow was harmed by VOID's failure to pay what it owed Arrow under the PO and NCNR Agreement.
22. To litigate this case, Arrow will primarily rely on witnesses and documents that are located at its Colorado office. With respect to witnesses, these include Deborah Compton, Ali Hassan, Salesh Rampersad, Guy Stanley, and Corey Zug.

DATE: August 11, 2020

____
Corey Zug

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