

1 LEE AND ROSENBERGER, a Law Corporation
2 Gregg A. Rapoport (Bar No. 136941), of Counsel
3 135 W. Green St., Suite 100
Pasadena, California 91105-2027
(626) 356-8080 Fax: (626) 578-1827

4 Attorneys for Plaintiffs and Cross-Defendants
5 MORTGAGE SENSE, INC. and SCOTT HEMP

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FILED

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

JUN 21 2005

ALAN SLATER, Clerk of the Court

K. Beltran
BY K. BELTRAN

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

11 MORTGAGE SENSE, INC., a California
12 corporation; and SCOTT HEMP, an
Individual,

13 Plaintiff,

14 v.

15 POPULAR LEASING USA, INC., a Delaware
corporation; WELLS FARGO FINANCIAL
LEASING, INC.; and DOES 1-100, inclusive,

Defendants.

Case No. 04CC12007
Hon. Kirk H. Nakamura
Dept. C9 - Unlimited Jurisdiction

**~~PROPOSED~~ ORDER GRANTING
MOTION TO TRANSFER AND
COORDINATE CASES**

Hearing Date: June ¹⁶ 8, 2005
Time: 2:00 p.m.
Place: Dept. C9

Trial date: Not set

19 POPULAR LEASING USA, INC., a Delaware
corporation,

20 Cross-Complainant,

21 v.

22 MORTGAGE SENSE, INC., a California
23 corporation; and SCOTT HEMP, an
Individual,

24 Cross-Defendants.

26 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

27 The Motion to Transfer and Coordinate Cases (the "Motion") brought by Plaintiffs and
28 Cross-Defendants Mortgage Sense, Inc. and Scott Hemp (together, "MSI") came on regularly for

BY: A. ARREVALO

MAY 06 2005

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1 hearing on at 2:00 p.m. on June ¹⁶~~7~~, 2005 in Department C-9 of the above-entitled Court, the
2 Honorable Kirk H. Nakamura presiding. Gregg A. Rapoport, Of Counsel to Lee & Rosenberger,
3 a Law Corporation, appeared as attorney for MSI. Steven E. Ernest of Cooksey, Toolen, Gage,
4 Duffy & Woog appeared as attorney for Defendant and Cross-Complainant Popular Leasing
5 USA, Inc. ("Popular Leasing").

6 The Motion seeks an Order pursuant to Code of Civil Procedure section 403, transferring
7 and coordinating the following actions to this Court: *Charles Suh, Johnston & Associates, Inc. v.*
8 *Popular Leasing, aka Popular Leasing USA, Inc.*, Orange County Superior Court Case No.
9 04CC10197; *Audio Fonix, Inc. v. Popular Leasing USA, Inc.*, Orange County Superior Court
10 Case No. 04CC10457; *Organic By Nature v. Popular Leasing USA, Inc.*, Los Angeles County
11 Superior Court Case No. BC324254; *Medtech Educational Services v. Popular Leasing USA,*
12 *Inc.*, Riverside County Superior Court Case No. RIC418097; and *Price Rite Pharmacy v.*
13 *Popular Leasing USA, Inc.*, San Diego County Superior Court Case No. GIC836803
14 (collectively, the "Coordinated Cases").

15 The Court, having considered the papers submitted by the parties and arguments
16 presented at the hearing, does hereby rule as follows:

17 Pursuant to California Rule of Court 1500(c), the Court finds that transfer of the
18 Coordinated Cases will promote the ends of justice, for the following reasons:

- 19 1. This action and the Coordinated Cases are not complex under the standards of
20 Rule of Court 1800; in that, none of these cases "requires exceptional judicial
21 management to avoid placing unnecessary burdens on the court or the litigants and
22 to expedite the case, keep costs reasonable, and promote effective decision
23 making by the court, the parties, and counsel."
- 24 2. The common questions of fact and law among this action and the Coordinated
25 Cases (*i.e.*, the enforceability of the standard form Norvergence Equipment Rental
26 Agreements, the involvement and liability of Popular Leasing in the alleged fraud
27 by Norvergence, and the viability of Popular Leasing's defenses under the UCC)
28 are predominating and significant to the litigation.

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3. Transfer and coordination of the Coordinated Cases will serve the convenience of the parties, witnesses, and counsel, given that Popular Leasing is represented by a single firm, which is located in Orange County, that each of the other parties resides in Southern California, and that other significant witnesses are believed to reside in Southern California.
4. Transfer and coordination of the Coordinated Cases is appropriate given the similar development of this action and the Coordinated Cases, as well as the similar attorney work product in the actions.
5. Transfer and coordination of the Coordinated Cases will promote the efficient utilization of judicial facilities and staff resources.
6. Transfer and coordination of the Coordinated Cases will not disrupt the calendar of the courts in this action, and would not appear to disrupt the calendar of the courts in the Coordinated Cases.
7. Without transfer and coordination of the Coordinated Cases, there is the possibility of duplicative and inconsistent rulings, order or judgments, as well as potentially inconsistent rulings in different Appellate Districts.
8. Without transfer and coordination of the Coordinated Cases, the likelihood of settlement is diminished due to the apparent economic advantage held by Popular Leasing in each of the cases.

Based on the foregoing findings, IT IS HEREBY ORDERED that the Motion is GRANTED, and that the Coordinated Cases listed above shall be transferred to this Court for coordination.

MSI shall forthwith provide copies of this Order to all parties to the Coordinated Cases and shall send copies to the Judicial Council and to the presiding judge of each court from which each of the Coordinated Cases is to be transferred.

Dated: 6-21-05

KIRK H. NAKAMURA
Hon. Kirk H. Nakamura
Judge of the Superior Court of California
For the County of Orange