

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DATE: 02/03/05

DEPT. 38

HONORABLE MAUREEN DUFFY-LEWIS

JUDGE

D. LARSON

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

M. ROBINSON, CA

Deputy Sheriff

G. VIRAY

Reporter

9:30 am BC324254

ORGANIC BY NATURE INC  
VS  
POPULAR LEASING USA INC ET AL

Plaintiff	LEE & ROSENBERGER
Counsel	By GREGG A. RAPOPORT (X) 626 356 8080
Defendant	FAX: 626 578 1827
Counsel	COOKSEY TOOLEN GAGE ETC By STEVEN E. ERNEST (X) 714 431 1083 FAX: 714 431 1119

**NATURE OF PROCEEDINGS:**

- A. DEFENDANT POPULAR LEASING USA, INC.'S MOTION TO DISMISS OR STAY ACTION;
- B. ORDER TO SHOW CAUSE RE PROOF OF SERVICE AS TO DEFENDANT JOSETTE DOUGLAS

A. Motion to Dismiss or Stay Action is heard and court rules as follows:

Defendant moves to dismiss the matter on the grounds that the contract between plaintiff and Norvergence has a forum selection clause. In the alternative, defendant moves to dismiss on grounds of inconvenient forum.

-FORUM SELECTION - Motion is DENIED.

Forum selection clauses will not be enforced if they are unreasonable. CQL ORIGINAL PRODUCTS v. NATIONAL HOCKEY LEAGUE PLAYERS ASSOCIATION (1995) 39 Cal.App. 4th 1347, 1354.

A clause will be found to be unreasonable if there is lack of adequate notice that a party is agreeing to a particular jurisdiction. HUNT v. SUPERIOR COURT (2000) 81 Cal.App.4th 901, 908. There is no notice as to the venue.

The Court need not address the issue of unconscionability. There is no proof that the bargaining was

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ORGANIC BY NATURE INC  
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**NATURE OF PROCEEDINGS:**

unfairly one-sided or without meaningful negotiation.  
SZETELA v. DISCOVERY BANK (2002) 97 Cal.App.4th 1094,  
1100.

-INCONVENIENT FORUM - Motion is DENIED.

Forum non-conveniens is an equitable doctrine wherein it is determined - by the court's equitable power - that the action may be more appropriate somewhere else. STANGVIK v. SHILEY (1991) 54 Cal.3d 744. The inquiry is not whether some other state or country provides a better forum but whether California is a "seriously" inconvenient forum. FORD MOTOR COMPANY v. INSURANCE COMPANY OF NORTH AMERICA (1995) 35 Cal.App.4th 604. It is defendant's burden to show inconvenient forum. Defendant has not provided any evidence to support this argument. Without any evidence, defendant fails to meet its burden.

B. ORDER TO SHOW CAUSE RE NO PROOF OF SERVICE AS TO DEFENDANT JOSETTE DOUGLAS -

Plaintiff's counsel represents that Application re Service by Publication is pending.

ORDER TO SHOW CAUSE RE NO PROOF OF SERVICE AS TO DEFENDANT JOSETTE DOUGLAS is continued to APRIL 4, 2005, at 8:30 a.m., in this department.

Plaintiff represents that counsel have agreed to extend time for 30 days after today's ruling to bring

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By STEVEN E. ERNEST (X)  
714 431 1083  
FAX: 714 431 1119

**NATURE OF PROCEEDINGS:**


motion to compel discovery if necessary - so approved.

CLERK'S CERTIFICATE OF MAILING/  
NOTICE OF ENTRY OF ORDER

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served Notice of Entry of the above minute order of this date upon each party or counsel named below by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original entered herein in a separate sealed envelope for each, addressed as shown below with the postage thereon fully prepaid. [Copy also forwarded via FAX.]

John A. Clarke, Executive Officer/Clerk

By:

  
D. Larson, Deputy Court Clerk

✓ GREGG A. RAPOPORT, ESQ.  
LEE & ROSENBERGER  
135 W. GREEN ST., STE 100  
PASADENA, CA 91105-2027

STEVEN E. ERNEST, ESQ  
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