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9 NORTH SHORE LEASING & FUNDING, INC.

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF KERN, METROPOLITAN DIVISION - LIMITED CIVIL**

10 ANNETTE WILLIAMS and NATHANIEL) Case No.: S-1500-CL-222084
11 WILLIAMS,)
12) **NOTICE OF MOTION AND MOTION TO**
13 Plaintiffs,) **DISMISS ACTION ON BASIS COURT**
14 vs.) **LACKS SUBJECT MATTER**
15) **JURISDICTION**
16 NORTH SHORE LEASING & FUNDING,)
17 INC.,) Date: April 2, 2008
18) Time: 8:30 a.m.
19 Defendant.) Dept.: 14
20)
21)

22 TO THE COURT AND TO ALL PARTIES HEREIN AND THEIR ATTORNEYS
23 OF RECORD:

24 PLEASE TAKE NOTICE THAT on April 2, 2008, at 8:30 a.m. in
25 Department 14 of the Kern County Superior Court located at 1415
26 Truxtun Avenue, Bakersfield, California, Defendant NORTH SHORE
27 LEASING & FUNDING, INC. (hereinafter 'Defendant') will, and
28 hereby does, move for an order dismissing this action.

The motion will be made on the ground that this court lacks
jurisdiction of the subject of this action and that the Court of
King County in the State of Washington has such jurisdiction.

The motion is based upon this notice of motion, the attached
memorandum of points of authorities, the declaration of Kassandra

1 McQuillen, the anticipated reply brief, and such other oral
2 and/or documentary evidence presented at or before the hearing.

3 Dated: February 29, 2008

4 BY: _____
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Kassandra McQuillen, Counsel for
Defendant NORTH SHORE LEASING
FUNDING, INC.

1 On February 18, 2008 Counsel for Plaintiffs responded to the
2 letter declining to dismiss the Complaint. The letter is attached
3 as Exhibit B to the Declaration of Kassandra McQuillen in support
4 of this motion.

5 This Motion to Dismiss follows.

6 **II.**

7 **BASIS FOR MOTION TO DISMISS ACTION**

8 "When a court upon motion of a party or its own motion finds
9 that in the interest of substantial justice an action should be
10 heard in a forum outside this state, the court shall stay or
11 dismiss the action in whole or in part on any conditions that may
12 be just." California Code of Civil Procedure § 410.30(a)

13
14 **III.**

15 **THERE IS A VALID FORUM SELECTION CLAUSE INDICATING ANOTHER COURT**

16 The contract at issue contains a forum selection clause that
17 states in no fewer than three places in capital letters that the
18 jurisdiction and venue of all claims arising under the agreement
19 shall be King County in the State of Washington.

20 The forum selection clause can be found in Plaintiff's
21 Exhibit 1 to the Complaint on page 1, paragraph 5; on page 4 of
22 the Exhibit, labeled 'Addendum to Lease Purchase and Jurisdiction
23 Agreement'; and on page 6 of the Exhibit, titled 'Guarantee' in
24 the fourth paragraph called "Law Which Applies".

25 "A forum selection clause is valid in the absence of the
26 resisting party meeting a heavy burden of proving enforcement of
27 the clause would be unreasonable under the circumstances of the
28

1 case." *Bancomer v. Superior Court* (1996) 44 Cal.App.4th 1450,
2 1457.

3 This requires plaintiffs to prove that litigating in the
4 designated forum would be so gravely inconvenient that it would
5 effectively deny them their day in court. *The Bremen v. Zapata*
6 *Off-Shore Co.* (1972) 407 U.S. 1, 18.

7 Plaintiffs allege "the contract provided that only the
8 defendant could choose any venue it wanted and that plaintiff
9 would have to give up all suitable venues and court jurisdiction
10 and litigate any disputes in the State of Washington" (Complaint,
11 page 3, line 11).

12 Plaintiffs make no allegations that the designated forum is
13 inconvenient in any way or that they may be denied justice by
14 bringing the action in King County, Washington.

15 Forum selection clauses are common in commercial contracts,
16 especially where the parties to the contracts reside in differing
17 jurisdictions. Here Plaintiffs reside in Kern County, California
18 and Defendant resides in New York. The designated forum is King
19 County, Washington - the location of the lender involved in the
20 lease agreement. The burden on Defendants to litigate in King
21 County, Washington is equal to that of Plaintiffs.

22 Plaintiffs do not allege they were forced to sign the
23 contract by Defendant. They do not allege they had no other
24 meaningful choice but to accept the forum selection clause. They
25 do not allege there was no other lender available to fund their
26 lease. Plaintiffs certainly cannot expect the court to believe
27 they did not notice the forum selection clause that is mentioned
28 three times in six pages.

1 As such, the forum selection clause in the contract that is
2 the subject of this action should be upheld and the action
3 dismissed for lack of subject matter jurisdiction.

4 **IV.**

5 **THE CONTRACT PROVIDES FOR ATTORNEY FEES AND COSTS**

6 The contract that is incorporated into the Complaint
7 includes a provision for attorney fees and costs relating to the
8 enforcement of Defendant's rights under the contract. The
9 provision is found on page 3, paragraph 20 of the Lease Agreement
10 attached as Exhibit 1 to the Complaint.

11 Because Plaintiffs intentionally and without merit brought
12 this matter in the incorrect court, and refused to dismiss the
13 action voluntarily when notified of the error, Defendant requests
14 Plaintiffs be ordered to pay the attorney fees and costs
15 associated with the bringing of this motion. The total fees and
16 costs associated with this motion are \$1,100 (See para. 5,
17 Declaration of Kassandra McQuillen).

18 **CONCLUSION**

19 Plaintiffs have not alleged any facts to show the forum
20 selection clause contained in the contract in the present matter
21 is unreasonable and should not be enforced. As such, Defendant
22 requests the entire action be dismissed for lack of subject
23 matter jurisdiction and that attorney fees and costs incurred in
24 bringing this motion be granted to Defendant.

25 Dated: February 29, 2008

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27 KASSANDRA MCQUILLEN, Counsel for
28 Defendant NORTH SHORE LEASING &
FUNDING, INC.

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