

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

**Department 3
Honorable William J. Monahan, Presiding**

Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2130

DATE: 6/11/2024 TIME: 9:00 A.M.

TO CONTEST THE RULING: Before 4:00 p.m. today (6/10/2024) you must notify the:

- (1) Court by calling (408) 808-6856 and
- (2) Other side by phone or email that you plan to appear and contest the ruling.
(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

TO APPEAR AT THE HEARING: The Court prefers in-person or Teams appearances. If you must appear virtually, please use video. To access the link, click on the below link or copy and paste into your internet browser and scroll down to **Department 3**.

https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml

FOR YOUR NEXT HEARING DATE: Please reserve your next hearing date using Court Schedule—an online scheduling tool that can be found on the Santa Clara County court website here:

<https://reservations.sccscourt.org/>

FINAL ORDERS: The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.) **Please Note:** Any proposed orders must be submitted with the Judicial Council Form EFS-020 Proposed Order (Cover Sheet). Please include the date, time, dept., and line number.

COURT REPORTERS: The Court no longer provides official court reporters. If any party wants a court reporter, the appropriate form must be submitted. See court website for policy and forms.

LINE #	CASE #	CASE TITLE	RULING
LINE 1	23CV421434	Lesley Singson Singson vs Eric Schmitz	Motion: Compel Plaintiff Lesley Singson answers to discovery requests Set One and for sanctions by Def Eric David Schmitz Unopposed and GRANTED. The answers without objections and payment of monetary sanctions of \$620 against plaintiff Lesley Singson are due within 20 days of this signed order. Moving party to prepare order.

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LINE 2	22CV405280	Pigeon Loft Condominium Association Inc vs Lorenzo Rios et al	Hearing: Other appointment of a receiver by Plaintiff Pigeon Loft Condominium Association Inc. OFF CALENDAR. No proof of service. [Note: It appears that there are still four named defendants that Plaintiff's request for default (RFD) has NOT been entered: 1. Ivan V. Romo, RFD filed 4/9/24 rejected 4/15/24; 2. John P. Kennedy, RFD filed 4/9/24 rejected 4/15/24; 3. Cliff Tan, RFD filed 4/9/24 rejected no date; and 4. Norma E. Rios, RFD filed 4/15/24 rejected 4/15/24.]
LINE 3	23CV413944	Xiufeng Xie vs Silin Chen et al	Motion: Change of Venue by Defendant Silin Chen (pro per) Ctrl Click (or scroll down) on Line 3 for tentative ruling. The court will prepare the order.
LINE 4	23CV416199	Duc Tran vs AMERICAN HONDA MOTOR CO., INC	Hearing: Other Compel Arbitration by Def American Honda Motor Co., Inc. Ctrl Click (or scroll down) on Line 4 for tentative ruling. The court will prepare the order.
LINE 5	23CV420300	Northeast Securities Co., Ltd. vs Que Wenbin et al	Hearing: Other pro hac vice to permit attorney Ronping Wu to appear as counsel for Plaintiff Northeast Securities Co., Ltd. [CTSCH Id: 1095. Confirmation: GIE9ASND scheduled online.] Unopposed and GRANTED. Moving party to prepare order.
LINE 6	23CV420976	Navy Federal Credit Union vs Danny Nguyen	Motion: Order for Judgment on the Pleadings by Plaintiff Navy Federal Credit Union OFF CALENDAR. See 5/20/2024 minute order where this motion was advanced and heard on 5/20/2024 in Dept. 19 by Judge Zayner.
LINE 7			
LINE 8			
LINE 9			
LINE 10			
LINE 11			
LINE 12			

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Calendar Line 3

Case Name: Xiufeng Xie vs Silin Chen et al

Case No.: 23CV413944

Defendant Silen Chen, Pro Se Doe (“Defendant”)’s motion for change of venue to the Superior Court in the County of Sacramento under Code of Civil Procedure (“CCP”) sections 395 to 397 and for monetary sanctions is DENIED.

Defendant brought this motion for change of venue on two grounds:

1. This Court is not the proper court for the trial of this action under the general venue rule and the Superior Court in the County of Sacramento is a proper court under that rule. [CCP § 395(a).]
2. Litigating in the Court will increase significant burden and inconvenience to non-party witnesses. [CCP § 397(C).]

(Defendant’s Notice of Motion, p. 2.) However, Defendant failed to file any declarations (or evidence) with her moving papers.

As the moving party, Defendant “must overcome the presumption that the plaintiff has selected the proper venue. (*Mitchell v. Superior Court* (1986) 186 Cal.App.3d 1040, 1046.) Thus, ‘[i]t is the moving defendant’s burden to demonstrate that the plaintiff’s venue selection is not proper under any of the statutory grounds.’ (*Ibid.*)” (*Fontaine v. Superior Court* (2009) 175 Cal.App.4th 830, 836.)

“The burden is on the moving party to establish whatever facts are needed to justify transfer. Normally this requires declarations containing admissible evidence. But the court may also consider facts alleged in the moving party’s *verified complaint* if *uncontroverted* by opposing affidavits.” (Weil & Brown, (2023 The Rutter Group) Civil Practice Guide: Civil Proc. Before Trial ¶ 3:575 (“Weil & Brown”) citing *Mission Imports, Inc. v. Sup. Ct. (Monterey Bay Co. Inc.)* (1982) 31 Cal.3d 921, 929.) Here, Plaintiff’s complaint and first amended complaint (“FAC”) were unverified. (See Complaint filed 4/3/2024: FAC filed 6/6/2024)

“Where the complaint alleges defendant’s local residence as the basis for venue, defendant must establish he or she resided elsewhere at the time the action was commenced; and if there are several defendants, that *no codefendant* resided in the county in which plaintiff filed suit.” (Weil & Brown, *supra*, ¶3:575:5 citing *Sequoia Pine Mills, Inc v. Sup.Ct. (Avram)* (1968) 258 Cal.App.2d 65, 68.)

“A much more extensive factual showing is required for motions based on the ‘convenience of witnesses and the ends of justice.’ [CCP § 397(c).] Declarations must show (*Juneau v. Juneau* (1941) [45 Cal.App.2d 14, 16]:

The names of each witness expected to testify for both parties;
The substance of their expected testimony.

Whether the witness has been deposed or has given a statement regarding the facts of the case (and if so, the date of the deposition or statement);
The reasons why it would be “inconvenient” for the witnesses to appear locally; and
The reasons why the ‘ends of justice’ would be promoted by transfer to a different county (e.g., to permit view of the scene or make other material evidence available.”

(Weil & Brown, *supra*, ¶ 3:576.)

All evidence that will be presented to the court [by the moving party] at a motion hearing must be served along with the notice of motion and points and authorities. (CCP §1005(b); *David S. Karton, a Law Corp. v. Musick, Peeler & Garrett LLP* (2022) 83 Cal.App.5th 1027, 1048; Weil & Brown, *supra*, ¶9:44.) Defendant failed to file any declaration (or evidence) with her moving papers. Accordingly, Defendant’s moving papers failed to overcome the presumption that plaintiff has selected the proper venue. Defendant also failed to show any factual basis for her claim that “the convenience of witnesses and ends of justice” would be served by the change of venue with her moving papers.

"The general rule of motion practice, which applies here, is that new evidence is not permitted with reply papers. . . . '[T]he inclusion of additional evidentiary matter with the reply should only be allowed in the exceptional case . . . ' and if permitted, the other party should be given the opportunity to respond. [Citations.]" (*Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537-1537.)

Self-represented litigants are entitled to the same, but no greater, consideration than other litigants and attorneys. (*County of Orange v. Smith* (2005) 132 Cal.App.4th 1434, 1444.) Self-represented litigants “are held to the same standards as attorneys” and must comply with the rules of civil procedure. (*Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543; see also *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985 [“A doctrine generally requiring or permitting exceptional treatment of parties who represent themselves would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation.”].)

Defendant’s declaration (and evidence) filed with her reply papers on 6/4/2024 should have been filed with her moving papers to be considered. No justification is provided for the withholding of evidence until the reply. The evidence was available to Defendant at the time she filed her the moving papers. For the reasons stated, this is not an exceptional case.

Defendant’s motion for change of venue is DENIED.

Defendant’s request for monetary sanctions is DENIED.

The court will prepare the order.

Calendar line 4

Case Name: *Duc Tran vs American Honda Motor Co., Inc.*

Case No.: 23CV416199

Defendant American Honda Motor Co., Inc. (“AHM” or “Defendant”)’s motion for order compelling plaintiff Duc Tran (“Plaintiff” or “Lessee”) to arbitrate claims in this action pursuant to the provisions in the CLOSED-END MOTOR VEHICLE LEASE AGREEMENT-CALIFORNIA (“Lease Agreement”) agreed to by Plaintiff, as well as the Federal Arbitration Act (“FAA”) 9 U.S.C. section 1 et seq. and the California Arbitration Act (“CAA”) and the California Code of Civil Procedure (“CCP”) section 1280, et seq., is DENIED.

Defendant’s motion pursuant to 9 U.S.C. section 3 and CCP section 1281.4 for a stay in this action is DENIED.

Legal Standards

Both federal law and California law favor the enforcement of valid arbitration agreements. The United States Supreme Court has often reaffirmed the long-standing “liberal federal policy favoring arbitration,” and the “fundamental principle that arbitration is a matter of contract” stating, “[i]n line with these principles, courts must place arbitration agreements on equal footing with other contracts... and enforce them according to their terms.” (See, e.g., *AT&T Mobility, LLC v. Concepcion* (2011) 563 U.S. 333, 131 S.Ct. 1740, 1745-46.) Courts are required to resolve any doubt as to whether a dispute falls within an arbitration provision in favor of arbitration. (See *AT&T Tech., Inc. v. Comm. Workers of Am.* (1986) 475 U.S. 643, 649-50, 106 S.Ct. 1415.)

“‘The strong public policy in favor of arbitration does not extend to those who are not parties to an arbitration agreement, and a party cannot be compelled to arbitrate a dispute that he has not agreed to resolve by arbitration. [Citation.]’” (*Buckner v. Tamarin* (2002) 98 Cal.App.4th 140, 142; see also CCP § 1280 [right to arbitrate depends on contract].)

"A written agreement to submit to arbitration an existing controversy or a controversy thereafter arising is valid, enforceable and irrevocable, save upon such grounds as exist for the revocation of any contract." (CCP § 1281.)

"On petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party to the agreement refuses to arbitrate that controversy, the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists [unless it makes certain determinations]." (CCP § 1281.2.)

"Under both federal and state law, arbitration agreements are valid and enforceable, unless they are revocable for reasons under state law that would render any contract revocable. Reasons that would render any contract revocable under state law include fraud, duress, and unconscionability." (*Tiri v. Lucky Chances, Inc.* (2014) 226 Cal.App.4th 231, 239, citations omitted.)

"The party seeking to compel arbitration bears the burden of proving by a preponderance of the evidence the existence of an arbitration agreement. The party opposing

the petition bears the burden of establishing a defense to the agreement's enforcement by a preponderance of the evidence. In determining whether there is a duty to arbitrate, the trial court must, at least to some extent, examine and construe the agreement." (*Tiri, supra*, at p. 239, citations omitted.)

Discussion

This case involves a 2019 Honda Odyssey VIN: 5FNRL6H5KB071539 ("Subject Vehicle") that Plaintiff leased from non-party dealer Capitol Honda ("Capitol Honda") on July 22, 2019, pursuant to the Lease Agreement. A copy of the Lease Agreement is attached to the Declaration of Reshma Bajaj as Exhibit 1 (as produced by Plaintiff), and Exhibit 2 (as produced by selling dealer, Capitol Honda).

Page 3 of the Lease Agreement between Plaintiff and Capitol Honda contains the following language, and signature line immediately underneath the language bearing Plaintiff's signature:

15. ARBITRATION

The parties agree that any unresolved disputes shall be submitted to arbitration in accordance with the Arbitration clause (Section 52). By initialing this Section, I am confirming that I have read this Section and the Arbitration clause, including the method of opting out of arbitration.

On the page seven of the Lease Agreement there is a section titled "**ARBITRATION: PLEASE READ THIS SECTION CAREFULLY.**" (Bajaj Decl. Ex 2 at p. 7. bold and capitalization in original.)

Defendant contends that the arbitration provision below that heading allows either party (or third parties who do not sign the contract) to arbitrate all of the claims Plaintiff alleges in his complaint:

52. ARBITRATION:

PLEASE READ THIS ARBITRATION PROVISION CAREFULLY TO UNDERSTAND YOUR RIGHTS. BY ELECTING ARBITRATION, YOU AGREE THAT ANY CLAIM THAT YOU MAY HAVE IN THE FUTURE MUST BE RESOLVED THROUGH BINDING ARBITRATION. YOU WAIVE THE RIGHT TO HAVE YOUR DISPUTE HEARD IN COURT AND WAIVE THE RIGHT TO BRING CLASS CLAIMS. YOU UNDERSTAND THAT DISCOVERY AND APPEAL RIGHTS ARE MORE LIMITED IN ARBITRATION.

(*Id.*)

Pertinently, the arbitration provision provides for the scope of the provision to include: By signing the Arbitration Consent, [Lessee] elect[s] to have disputes resolved by arbitration. [Lessee], **HONDA** or any involved third party may pursue a Claim. "Claim" means any dispute between [Lessee], **HONDA**, or any involved third party relating to your account, this Lease, or our relationship including [...] the Vehicle, its performance and any representations, omissions or warranties.

(See *Id.*, emphasis added.)

[Lessee] may opt out [of the Arbitration Provision] within 30 days of signing this Lease by sending a signed, written notice to **HONDA** at Honda Financial Services, P.O. Box 165007, Irving, TX 75018. HONDA reserves the right to make changes to this provision after providing written notice and an opportunity to opt out.

(See *Id.*)

The definition of **HONDA** in the Lease Agreement includes “American Honda Motor Company, Inc.” “**YOU** means Lessee and Co-Lesse to this Lease.” (Bajaj Decl., Ex. 2.)

In Section 11 of the Lease Agreement, the Lessor (“Dealer”) [i.e., Capital Honda] explicitly “[...] makes no express or implied warranties or representations as to the vehicle’s condition...or warranties whatsoever.” (See Bajaj Decl., Ex. 2.)

The subsequent text in the Lease Agreement discloses, in detail, the terms of the arbitration provision and the limitations that the provisions place on the party’s respective rights. (*Id.*)

The arbitration provision also states that “[Lessee] and **HONDA** agree and acknowledge that this Lease affects interstate commerce and the Federal Arbitration Act (“FAA”) [9 U.S.C. § 1 et seq.] applies.” (*Id.*)

The Complaint’s causes of action include violation of the Song-Beverly Act against Defendant. Defendant contends that each of the allegations arise directly from the lease or condition of the Subject Vehicle. Accordingly, while Defendant denies Plaintiff’s allegations, Defendant requests that all the causes of action be resolved through arbitration, pursuant to the Lease Agreement.

The Lease Agreement is only signed by Plaintiff and Capital Honda. It was *not* signed by Defendant.

The Court finds that:

- (1) Equitable Estoppel does not apply because the manufacturer (AHM) has not shown that the claims against it are founded in or intertwined with the Lease Agreement;**
- (2) The manufacturer (AMH)’s warranty outside of the contract is not a part of the Lease Agreement;**
- (3) The manufacturer (AMH) is not a third-party beneficiary of the Lease Agreement; and**
- (4) There is no agency that gives the manufacturer (AMH) the right to compel arbitration as an undisclosed principal.**

The situation here - where a non-signatory automobile manufacturer attempts to compel a consumer to arbitration - is similar to that in *Ford Motor Warranty Cases* (2023) 89 Cal.App.5th 1324, review pending at *Ochoa v. Ford Motor Co. (In re Ford Motor Warranty Cases)* (2023) Cal. LEXIS 4235. On the other hand, the Court finds that *Felisilda v. FCA US LLC* (2020) 53 Cal.App.5th 486 - in which a signatory automobile dealership moved to compel arbitration based on the contract that it signed - is neither binding nor persuasive.

The *Ford Motor Warranty Cases* held that: (1) equitable estoppel does not apply because the manufacturer has not shown that the claims against it are founded in or intertwined with the contract; (2) the manufacturer's warranty outside of the contract is not a part of the contract; (3) the manufacturer is not a third-party beneficiary of the contract; and (4) there is no agency connection that gives the manufacturer the right to compel arbitration as an undisclosed principal. (*Ford Motor Warranty Cases*, *supra*, 89 Cal.App.5th at pp. 1332, 1335, 1336, 1340.)

Further, several recent cases have agreed with the holdings in *Ford Motor Warranty Cases*. These cases include: *Montemayor v. Ford Motor Co.* (2023) 92 Cal.App.5th 958, 968, 972; *Kielar v. Superior Court* (2023) 94 Cal.App.5th 614, 620-621, review granted; and *Yeh v. Superior Court* (2023) 95 Cal.App.5th 264, 269-279, review granted. The facts and reasoning in these cases are also similar to the situation in the case before the Court today.¹

The Court adopts the reasoning of the *Ford Motor Warranty Cases* and its progeny and declines to compel arbitration with the non-signatory manufacturer (AHM) based on the arbitration provision in the Lease Agreement.

Plaintiff's request for Judicial Notice is DENIED as to Exhibits D and E because they are *unpublished* responses to petitions for writ of mandates. (See Cal. Rules of Court, Rule 8.1115.) It's DENIED as to the other exhibits because it is *unnecessary* to request judicial notice of *published* California cases that are cited in Plaintiff's MPA for the court to consider them.

Conclusion

Defendant's motion to compel arbitration and for stay pending arbitration are DENIED.

The court will prepare the order.

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¹ Although the *Ford Motor Warranty Cases* and its progeny involved a sales contract, the reasoning would be the same with respect to this Lease Agreement.

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