

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

Department 3

Honorable William J. Monahan, Presiding

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

DATE: 5/30/2024 TIME: 9:00 A.M.

TO CONTEST THE RULING: Before 4:00 p.m. today (5/29/2024) 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 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	23CV426083	N.R. WATERLOO, LLC et al vs FIRST COMMERCE, LLC et al	Motion: Quash OFF CALENDAR. Continued (by order dated 5/16/2024) to 8/13/2024 at 9am in Dept. 3.
LINE 2	23CV428289	Brandon Lum vs FORMA ALMADEN VALLEY LLC et al	Hearing: Demurrer OFF CALENDAR. Vacated per Moving Party's request.

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LINE 3	22CV401773	GREGORY MALLEY et al vs MARCUS & MILLICHAP, Real Estate Investment Services Inc. et al	Hearing: Petition Compel Arbitration OFF CALENDAR. Continued by stip./order to 6/6/2024 at 9:00 am in Dept. 3.
LINE 4	22CV406880	Sriadhibhatla Chainulu vs Ajit Sanzgiri et al	Motion: Leave to Amend to file a second amended complaint by Plaintiff OFF CALENDAR. No proof of service.
LINE 5	23CV425157	Patrick Nugent vs Ksai Liang et al	Motion/Amended: for order For Specific Performance by Plaintiff Patrick Nugent (pro per) OFF CALENDAR. No proof of service.
LINE 6	23CV426746	Carl Finkle vs Good Samaritan Hospital et al	Motion: Order [substitute Plaintiff's Wife in place of Plaintiff (deceased).] Motion to substitute Karen Louise Finkle in place of deceased plaintiff Carl Richard Finkle. Unopposed and GRANTED. Moving Party to submit proposed order.
LINE 7	24CV432413	Rigoberto Flores et al vs Gurpreet Singh et al	Hearing: Dismissal of action on grounds of forum non conveniens by defendants Warrior Freightlines, Inc. and Gurpreet Singh Ctrl Click (or scroll down) on Line 7 for tentative ruling. The court will prepare the order.

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DATE: 5/30/2024 TIME: 9:00 A.M.

LINE 8	1997-1-CV-764650	J. Ascencion Calderon vs Bhula M. Patel	<p>Motion: Enforce Settlement By Plaintiffs J. Cascencion Calderon and Mabiela R. Calderon *c/f 10/26/21, 04/05/22 and 09/13/22 & 4.4.23* **CF 6.6.23 M.O* **c/f 2/6/24 minute order**</p> <p>Motion of Plaintiff to enforce settlement/status conference.</p> <p>Plaintiffs purchased certain property from defendants which is located at 1620 Storry Rd., in San Jose, California. Due to massive petroleum contamination of the property defendants were required to commence the remediation of the property by order of this court.</p> <p>This court continues to retain jurisdiction to enforce the settlement agreement by court order.</p> <p>The matter is here for motion to enforce settlement/status conference for the parties to report on the progress of the remediation ordered by the court.</p> <p>NO FORMAL TENTATIVE RULING.</p> <p>APPEAR. The parties are to appear in person or by Teams and provide this court with an update and to set next hearing.</p> <p>The court instructs the parties to submit 5-page brief at least 5-court days prior to the next hearing detailing the progress made at meet and confer.</p>
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Case Name: *Rigoberto Flores et al v. Gurpreet Singh et al*

Case No.: 24-CV-432413

Defendants Warrior Freightlines, Inc. and Gurpreet Singh (“Defendants”)’ motion to dismiss action on grounds of forum non conveniens (“Motion”) against plaintiffs Rigoberto Flores and Jose De La Paz Mejia (“Plaintiffs”) pursuant to California Code of Civil Procedure (“CCP”) section 418.10 is DENIED.

A court may stay or dismiss an action on the grounds of an inconvenient forum, even if it has subject matter and personal jurisdiction over the action. (CCP § 418.10(a).) Should the court find that it is “in the interest of substantial justice” that an action filed in California should be heard elsewhere, it may stay or dismiss the action. (CCP § 410.30(a).)¹ The defendant bears the burden of proof on a motion for forum non conveniens. (*Stangvik v. Shiley Inc.* (1991) 54 Cal.3d 744, 751 (“*Stangvik*”).) The adjudication of the motion is at the trial court’s discretion, and substantial deference is to be accorded to its determination. (*Id.*, at p. 752.)

The plaintiff’s choice of forum will not be disturbed unless: (1) a suitable alternative forum exists, and (2) the balancing of private and public interests makes it just that the action proceeds in the alternative forum. (*Stangvik, supra* 54 Cal.3d at p. 751.) An alternative forum is suitable if it has jurisdiction over the action, and the action is not barred by the statute of limitations in that forum. (*Morris v. AGFA Corp.* (2006) 144 Cal.App.4th 1452, 1463.) The alternative forum must provide a remedy for the claim sued upon; but it is sufficient that the action can be brought, although not necessarily won, in the alternative forum. (See *Guimei v. Gen. Elec. Co.* (2009) 172 Cal.App.4th 689, 696.)

A Suitable Alternative Forum Exists in Nebraska

The court finds that Defendants have satisfied their initial burden on the threshold suitability issue. First, Nebraska is a suitable forum for this action because it has jurisdiction over this accident. The subject accident occurred in Nebraska. Although Defendants are California residents, they are subject to service of process in Nebraska by virtue of the fact that they conduct business in the state by using roadways within Nebraska, as they were doing at the time of the subject accident. In addition, Defendants are willing and prepared to submit to jurisdiction in Nebraska as a condition of this court granting the motion to dismiss the present action. (See *Stangvik, supra*, 54 Cal.3d at p. 752.)

As a further procedural matter, Nebraska is a suitable forum for this action because the statute of limitations has not run for filing a personal injury action in Nebraska—the limitations period is four years from the date of the subject incident. (Neb. Rev. Stat. § 25-207(3).) Here, under Nebraska law, the statute of limitations would not run until September 18, 2026, four years after the date of the subject incident. Thus, there is ample time for Plaintiffs to file an action against Defendants without any statute of limitations preclusion any time soon.

Finally, like California, Nebraska provides ample remedy for Plaintiffs’ requested relief in a personal injury action. Nebraska’s personal injury statute provides for remedies

¹ Here, Defendants request that this action be dismissed.

comparable to those in California's personal injury regime; past and future medical expenses; loss of wages and loss of future earning capacity, property loss, loss of use of property, and general damages. (*Gallon v. O'Conner* (NEB. 1993) 494 N.W.2d 532, 533-34; see *Hartwig v. Oregon Trail Eye Clinic* (Neb.1998) 580 N.W.2d 86, 90; compare Cal. Civ. Code §§ 3281, 3282.)

Plaintiffs' written opposition did not argue that Plaintiffs failed to meet their threshold burden of proof that a suitable alternative forum exists in Nebraska, but instead focuses on the private interest factors and public interest factors that the court must consider in this case.

The Balancing of the Public Interest Factors and Private Interest Factors

Public interest factors include: (1) overburdening the local courts, (2) protecting local jurors from deciding cases over which the local community has little concern, and (3) weighing California's interest in regulating the activities involved against the alternative forum's interest in doing so. (*Stangvik, supra* 54 Cal.3d 744, 751.) The private interest factors are those that make the trial and the enforceability of its judgment relatively expeditious and inexpensive, such as (1) access to evidence, (2) cost of obtaining witnesses, (3) availability of process. (*Ibid.*)

Defendants bear the burden of proof meaning the defendants must provide the trial court with sufficient evidence to enable it to carry out its weighing and balancing analysis. (*National Football League v. Fireman's Fund Ins. Co.* (2013) 216 Cal.App.4th 902, 926-927, 933, fn. 15.) The quantum of evidence needed to satisfy that burden may vary, however, depending on whether plaintiff is or is not a California resident and whether defendant seeks a stay of the action or dismissal. (*Id.*, at pp. 939-940 [collecting and analyzing cases].)

Where the plaintiff is a California resident for forum non conveniens purposes, there is a strong presumption in favor of the plaintiff's choice of forum. (*National Football League v. Fireman's Fund Ins. Co.* (2013) 216 Cal.App.4th 902, 926.) A defendant is presumptively in a convenient forum if they are incorporated in California and have their principal place of business there. (*Stangvik, supra*, 54 Cal.3d at p. 760.)

A nonresident plaintiff's choice of forum is entitled to "due deference" under all circumstances, but not a "strong presumption" of appropriateness. (*National Football League v. Fireman's Fund Ins. Co.*, *supra*, 216 Cal.App.4th at 929-930.)

Here, the police report indicates that plaintiff Jose De La Paz Mejia is a resident of Los Angeles, California and that the other plaintiff Rigoberto Flores is a resident of Sioux Falls, South Dakota (based on their addresses).

Here, the moving papers acknowledge that defendant "Singh is a resident of Haward, California and his alleged employer at the time of the accident, [defendant] Warrior Freightlines, [Inc.] is a California corporation." (Motion filed 4/22/2024, p. 2.) Both Defendants are California residents.

However, the motor vehicle accident giving rise to this case occurred in Defendant's proposed forum state of Nebraska. A call from a passerby alerted local police to the occurrence of the accident took place in Nebraska, with initial responses to the incident stemming from

Nebraska-based personnel.² Plaintiff's initial treatment also occurred in Nebraska. Accordingly, Defendants contend that witnesses and evidence are located in Nebraska and that litigating in Nebraska would be more convenient and less costly as that is where the accident occurred, and its driving laws would apply.

Defendants have expressed these facts as the foundation for their proposed dismissal of this suit on the basis of forum non conveniens. While such facts are reasons in support for the movement of this case to Nebraska, they do not fulfill the burden of proof attributed to the moving Defendants in a forum non conveniens action. (*Stangvik, supra*, 54 Cal.3d at p. 751.)

Plaintiffs point out that Defendants failed to file any declaration about what crucial witnesses are located in Nebraska and acknowledge that *some* witnesses and evidence may be located in Nebraska, but claim that the crucial witnesses and evidence, including some medical records and healthcare providers, are situated in California.

Beyond the basic suitability of Nebraska as the forum state for the litigation of this dispute, Plaintiffs argue a multitude of factors which lend credence to the State of California as the continued forum for this suit, including: (1) the extent to which medical treatment stemming from the accident took place in California, (2) the presence of potential witnesses in California who have facilitated such treatment and (3) Plaintiff's residential status and Defendant's incorporation status in California. Plaintiffs have brought this action in California and both Defendants are residents of California.

Furthermore, extant emergency rules allow for the execution of remote pre-trial depositions. (*Oswald v. Landmark Builders, Inc.* (2023) 97 Cal.App.5th 240, 248.)

In weighing each of the foregoing factors in comparison to the factors which are in favor of Nebraska as the forum state, the court finds that Defendants have not met their burden of proof on this Motion. Instead, the court finds that in the balancing of private and public interests (discussed in both sides' papers) it is in the interest of substantial justice that this action proceeds in California.

Defendant's motion to dismiss on grounds of forum non conveniens is DENIED.

The court will prepare the Order.

² Both sides point to the police report. However, Plaintiffs point out that the police report does *not* indicate that the caller saw how the accident occurred.

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