TENTATIVE RULINGS
LAW & MOTION CALENDAR
Friday, September 4, 2026 3:00 pm
Courtroom 19 – Covered by Hon. Elliot Daum for Hon. Oscar A. Pardo
3055 Cleveland Avenue, Santa Rosa

The tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument, **YOU MUST NOTIFY** the Judge's Judicial Assistant by telephone at **(707) 521-6602**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via Zoom**, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

If the tentative ruling is accepted, no appearance is necessary unless otherwise indicated.

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1. 24CV06419, Benedict v. The Ezralow Company, LLC

Plaintiffs Elizabeth Benedict, also known as Betsy Benedict, Megan Benedict, Anthony Piazza, Kimberly Piazza, Breezy Garcia, Faizah Patel, Loren Castillo, Donna Vue, Latasha Williams, Patriana Scott, George Kozlov, and Rigoberto Lemus (together, "Plaintiffs") a filed the currently operative first amended complaint ("FAC") in this action against defendant The Ezralow Company, LLC ("Ezralow") and West Coast Redevelopment, Inc. ("West Coast", together with Ezralow, "Defendants"), and Does 1-10 for causes of action for premises liability and general negligence.

This matter is on calendar for motions by Plaintiffs for summary adjudication of the First cause of action pursuant to Cal. Code Civ. Proc. ("CCP") § 437c. Plaintiffs' motion for summary adjudication is **DENIED** due to the presence of triable issues of material fact.

I. Evidentiary and Procedural Issues

Defendants have tendered multiple objections to Plaintiffs' moving papers, averring that two of the averred exhibits (the Declaration of Breezy Garcia and the Deposition of Cristina Agra-

Hughs) were not served or filed. See Defendants' Objections in Opposition ¶ 2, 5, and 117. Plaintiffs' argue that there is no ascertainable prejudice to the omission of this evidence, and that therefore the objections should be overruled. Plaintiffs have also filed a motion to allow for the Deposition to be allowed as supplemental evidence, arguing that there is no apparent prejudice because Defendants were sufficiently aware of the content of the deposition cited, and were present for the deposition itself. For this proposition, Defendants cite to *Kernan v. Regents of University of California* (2022) 83 Cal.App.5th 675, 682, fn. 4. However, in 2024, the Legislature mended CCP § 437c, effective January 1, 2025. Among various amendments that occurred, the Legislature made two changes to CCP § 437c(b)(4). The amendment changed the time for reply from 5 days before hearing to 11 days before hearing, and it added a second sentence to that subdivision. This language, which Defendants cite to in opposition, provides: "The reply shall not include any new evidentiary matter, additional material facts, or separate statement submitted with the reply and not presented in the moving papers or opposing papers." This is direct, legislative circumscription of Plaintiffs' cited authorities. The omitted evidence, even by inadvertence, is a matter not available for review at the time the motion was filed. It is "new", and its omission was certainly prejudicial to the Court's ability to review the substance of the evidence. This is not a matter Plaintiff remedied months in advance, the evidence was only filed and served at the time for reply. The evidence was omitted from the moving papers, and cannot be considered as a result. Defendants' Objections 2 and 5 are sustained on this basis. Plaintiffs' request to supplement the motion is ADVANCED from its currently set date and DENIED.

Defendants also object to Plaintiffs' Counsel's Declaration being used to establish the content of various documents central to this case. See Plaintiffs' Exhibit A in Support; Defendants' Objection ¶ 3 and 4. Counsel opines that he has "reviewed the Investigative Consumer Reports" produced about Plaintiffs for Defendants. He also relays the purported content of the reports. Defendants object, averring that the documents were easily produced, and Plaintiffs failure to produce it mean that it is precluded under the secondary evidence rule. Plaintiffs' arguments of speciousness fall far short, in part because they argue *authentication*, which is an entirely distinct concept from the failure to *produce the documents*. Authentication relates to whether a document **that was produced** is what it appears to be. See Evid. Code § 1400. The secondary evidence rule applies to writings sought to be established through evidence other than the writings themselves. See Evid. Code § 1521. Although the secondary evidence rule does allow writings to be proven by other evidence, there are notable exceptions, and the evidence is still subject to other objections. Evid. Code § 1521(a); *Pajaro Valley Water Management Agency v. McGrath* (2005) 128 Cal.App.4th 1093, 1107. Defendants' citation to Evid. Code § 1523 is equally inapposite, applying only to oral testimony regarding the content of writings. However, the Court nonetheless sustains the objections on both hearsay and Evid. Code § 1521 (a) grounds. Counsel opines on the content of a document for the truthfulness of items therein (dates, names, that a background check was actually performed). This is hearsay. See, e.g., *DiCola v. White Brothers Performance Products, Inc.* (2008) 158 Cal.App.4th 666, 680. Moreover, Plaintiffs' motion revolves *entirely* around the allegations that a background check was performed and no option to request the report was provided. The content and language of these documents is material and disputed, and therefore they are also properly excluded under Evid. Code § 1521 (a).

Objections 6, 16, 26, 36, 46, 56, 66, 76, 86, 96, and 106 are OVERRULED.

Objections 7, 17, 27, 37, 47, 57, 67, 77, 87, 97, and 107 are SUSTAINED for lack of foundation.

Objections 8, 18, 27, 38, 48, 58, 68, 78, 88, 98, and 108 are SUSTAINED for improper lay opinion and are a legal conclusion.

Objections 9, 19, 29, 39, 49, 59, 69, 79, 89, 99, and 109 are SUSTAINED for as improper secondary evidence for the same reasons applied to Objections 3 and 4.

Objections 10, 20, 30, 40, 50, 60, 70, 80, 90, 100, and 110 are OVERRULED.

Objections 11, 21, 31, 41, 51, 61, 71, 81, 91, 101, and 111 are SUSTAINED as lacking personal knowledge.

Objections 12, 22, 32, 42, 52, 62, 72, 82, 92, 102, and 112 are SUSTAINED as lacking foundation and lacking personal knowledge.

Objections 13, 23, 33, 43, 53, 63, 73, 83, 93, 103, and 113 are OVERRULED.

Objections 14, 24, 34, 44, 54, 64, 74, 84, 94 104, and 114 are SUSTAINED as lacking foundation and lacking personal knowledge.

Objections 15, 25, 35, 45, 55, 65, 75, 85, 95, 105, and 115 are SUSTAINED as lacking foundation and as a legal conclusion.

Objection 116 is SUSTAINED as lacking foundation and lacking personal knowledge.

As to Objections 1, and 118-128 Defendants are correct that this is a conclusion, but the objection is properly addressed as to the matters where the Plaintiffs clearly do not have personal knowledge or foundation, not at the generalized statement of knowledge of matters therein. See, e.g., *Mamou v. Trendwest Resorts, Inc.* (2008) 165 Cal.App.4th 686, 691. Therefore, these are overruled. Defendants have made other objections to the evidence at which the Court will assess the necessary foundation and knowledge.

Defendants' Objections 1, 6, 10, 13, 16, 20, 23, 26, 26, 30, 33, 36, 40, 43, 46, 50, 53, 56, 60, 63, 66, 70, 73, 76, 80, 83, 86, 90, 93, 96, 100, 103, 106, 110, 113, and 118-128 are OVERRULED. The balance of Defendants' Objections are SUSTAINED.

II. <u>Underlying Facts</u>

Plaintiffs aver that they submitted applications for residential tenancy to Addison Ranch Apartments between October 2022 to September 2023. Plaintiffs' Separate Statement of Undisputed Facts, Undisputed Material Fact ("PUMF"), ¶¶ 1-12. Plaintiffs never received a copy of any investigative report produced about them. PUMF ¶ 27.

III. <u>The Burdens and Standards on Summary Judgment and Adjudication</u>

A. Generally

Summary adjudication "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CCP § 437c(c). "A plaintiff moving for summary judgment "bears the burden of persuasion that 'each element of' the 'cause of action' in question has been 'proved,' and hence that 'there is no defense' thereto." *Thompson v. Ioane* (2017) 11 Cal.App.5th 1180, 1195; citing *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850. Plaintiffs are *not* required to disprove a defendant's asserted affirmative defenses as part of their initial showing. *Consumer Cause, Inc. v. SmileCare* (2001) 91 Cal.App.4th 454, 473; CCP § 473(p)(1).

A moving party does not meet its initial burden if some "reasonable inference" can be drawn from the moving party's own evidence which creates a triable issue of material fact. *See, e.g. Conn v. National Can Corp*. (1981) 124 Cal.App.3d 630, 637; *Binder v. Aetna Life Ins. Co*. (1999) 75 Cal.App.4th 832, 840. If the moving plaintiff does not meet its initial burden, the defendant has no evidentiary burden. CCP § 437c(p)(1). Damages are an element which must be proven in a specific amount for a plaintiff to meet their burden on summary judgment. *Pajaro Valley Water Management Agency v. McGrath* (2005) 128 Cal.App.4th 1093, 1106.

If a plaintiff meets its initial burden moving for summary judgment, the burden shifts to the defendant to provide sufficient evidence to raise a triable issue of fact as to the defense asserted. CCP § 437c(p)(1). An issue of fact exists if "the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." *Aguilar*, 25 Cal.4th at 845.

B. Investigative Consumer Reporting Agencies Act (the "ICRAA")

> If an investigative consumer report is sought in connection with the hiring of a dwelling unit, … the person procuring or causing the request to be made shall, not later than three days after the date on which the report was first requested, notify the consumer in writing that an investigative consumer report will be made regarding the consumer's character, general reputation, personal characteristics, and mode of living. The notification shall also include the name and address of the investigative consumer reporting agency that will prepare the report and a summary of the provisions of Section 1786.22.

Civ. Code, § 1786.16 (a)(3).

> Any person described in subdivision (d) of Section 1786.12 who requests an investigative consumer report, in accordance with subdivision (a) regarding that consumer, shall do the following: (1) Provide the consumer a means by which the consumer may indicate on a written form, by means of a box to check, that the consumer wishes to receive a copy of any report that is prepared. If the consumer wishes to receive a copy of the report, the recipient of the report shall send a copy of the report to the consumer

> within three business days of the date that the report is provided to the recipient, who may contract with any other entity to send a copy to the consumer. The notice to request the report may be contained on either the disclosure form, as required by subdivision (a), or a separate consent form. The copy of the report shall contain the name, address, and telephone number of the person who issued the report and how to contact them.

Civ. Code, § 1786.16 (b).

IV. Analysis

A. Plaintiffs Fail to Shift Their Burden

Plaintiffs' burden is to prove each element of the statutory violation averred in the first cause of action. They must tender admissible evidence to make a prima facie case that there are no triable issues of fact. Defendants are entitled to all reasonable inferences in assessing the evidence. The objections sustained above eliminate any admissible evidentiary basis of whether background checks were performed at all, or who was responsible for the background checks. Plaintiffs fail to present admissible evidence that background checks were performed. They fail to present admissible evidence that Defendants failed to send notice that a background check was performed within three days of it being requested (Civ. Code § 1786.16(a)(3)), and have not shown that Defendants failed to provide a box to check to request a copy of the report (Civ. Code § 1786.16(b)(1)).

Even if the Court reached the substance of the evidence Plaintiffs seek to have admitted as a supplement, that evidence would *raise* triable issues of fact, not eliminate them. Plaintiffs have clearly artfully omitted pages from the deposition, not because they are irrelevant, but because they are detrimental to the motion. Emblematic of this is Deposition of PMQ pages 95 and 97. These are submitted, and page 96 is omitted, though page 95 ends with a question *central* to this motion. Depo. of PMQ, pg. 95:21-24 ("And so during the application process, are the tenant applicants provided the box to check so that they can indicate they want to get a copy of the report prepared about them?"). Yet the page which would provide evidence of the response is omitted. Defendants, as the opposing party, are entitled to all reasonable inferences, and the inference clear here is that Plaintiffs knew the answer at issue would present triable issues in this case. Its omission would be a triable issue of fact in and of itself. There is also discussion of what appears to be a central document that may evidence that a notice *was* mailed to Plaintiffs, with the option to check a box. This is not sufficient to shift Plaintiffs' burden at summary adjudication. See Deposition of PMQ pgs. 97-98.

Plaintiffs' Reply asserts that Defendant does not disprove many of their facts to which objections were sustained. If Plaintiffs do not meet their burden, Defendants have no burden to disprove the assertion. Plaintiffs' evidence is left incomplete by the sustained objections, and accordingly the burden never shifts to Defendants to produce any evidence. To the degree that the Court would reach the evidence in opposition, Defendants raise a triable issue of fact as to whether they were responsible for any of the background checks at all.

Plaintiffs' motion for summary adjudication of the first cause of action is **DENIED**.

V. <u>Conclusion</u>

Plaintiffs' motion for summary adjudication is **DENIED**.

Defendants shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

2. <u>25CV05454, Capital One, N.A. v. Garcia</u>

Plaintiff Capital One, N.A. ("Plaintiff") filed the complaint in this action against defendant Jesus Garcia ("Defendant"), with a cause of action for breach of contract. This matter is on calendar for Plaintiff's motion pursuant to pursuant to Cal. Code Civ. Proc. ("CCP") § 664.6 and the settlement agreement executed March 9, 2026 (the "Agreement", filed March 10, 2026) to enter judgment in the case in the amount of $5,263.61, as Defendant has defaulted on the agreement. There is no opposition to the motion.

The Motion is **GRANTED.**

I. Governing Law

CCP § 664.6(a) provides: "If parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement." CCP § 664.6(b) provides that a written agreement is enforceable if signed by a party, that party's attorney, or an insurer's authorized agent. *See also Provost v. Regents of University of California* (2011) 201 Cal.App.4th 1289, 1295. Like proving a contract, in order to have an enforceable agreement under CCP § 664.6, the moving party must show that there was mutual consent to common terms. *Bowers v. Raymond J. Lucia Companies, Inc.* (2012) 206 Cal.App.4th 724, 732-733. A motion to enforce a settlement agreement under CCP § 664.6 must show there is an agreement signed by all the parties to the agreement, not just the parties against whom the agreement is sought to be enforced. *Sully-Miller Contracting Co. v. Gledson/Cashman Construction, Inc.* (2002) 103 Cal.App.4th 30, 37.

Where the terms of a settlement are disputed in a CCP § 664.6 motion, the court has the authority to adjudicate those disputes based on declarations or other evidence. *Malouf Bros. v. Dixon* (1991) 230 Cal.App.3d 280, 284. However, the court does not have the authority to modify the terms of the agreement. *Machado v. Myers* (2019) 39 Cal.App.5th 779, 795. Extrinsic evidence is admissible in ruling on a motion under CCP § 664.6. *Corkland v. Boscoe* (1984) 156 Cal.App.3d 989, 992.

II. Analysis

Plaintiff moves the Court for a judgment pursuant to the Agreement. Plaintiff asks for $4,680.00 in principle, and $583.61 in costs. The Agreement states that Defendant owes $5,849.12. Agreement, ¶ 1. Defendant is to receive credit for any and all payments made under the Agreement. Defendant was to make monthly payments under the terms of an initial payment of $1,169.12 on February 13, 2026, followed by monthly payments of $1,170. Plaintiff avers that Defendant made only the initial payment of $1,169.12. See Counsel's declaration ¶ 5.

The motion is unopposed. The Agreement states that upon Defendant's failure to make a timely payment, "the full remaining balance will be due", plus court costs, less any payments by Defendant, and Plaintiff may file a motion for judgment. Agreement ¶ 5. This appears sufficient to place Defendant on notice that payments are due. Therefore, the amounts of $4,680.00 in principle, and $583.61 in costs are appropriate.

Therefore, the Motion is **GRANTED. Judgment will be entered in the amount of $5,263.61.**

Plaintiff shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b). Thereafter, the Court will enter the proposed judgment.

3. <u>25CV05846, Ruark v. Clearview Funding Group LLC</u>

On or about November 26, 2024, defendant Clearview Funding Group LLC ("Clearview") and plaintiff Atlantic Home Health Care, LLC ("AHH") entered into a Future Receivables Sale and Purchase Agreement whereby Clearview purchased $1,872,000.00 of AHH's "future receipts" in exchange for providing AHH a sum equal to $1,300,000.00, less fees and costs. Plaintiff Jamin Ruark ("Ruark") executed a personal guaranty of AHH's obligation under the agreement.

The agreement contained a forum selection clause which provided that any legal action arising out of or in connection with the agreement shall be heard in any court sitting in New York State.

On August 26, 2025, plaintiffs AHH and Ruark ("plaintiffs") filed the instant action in Sonoma County Superior Court, alleging COAs for: (1) Usury; (2) Unfair Business Practices; (3) Breach of Implied Covenant of Good Faith and Fair Dealing; (4) Unlawful Contract; (5) Fraudulent Misrepresentation; and (6) Money had and Received.

According to Clearview, plaintiffs defaulted under the agreement on or about August 28, 2025.

On October 7, 2025, Clearview filed a lawsuit in the Supreme Court of New York, (County of Monroe) for breach of contract and breach of personal guaranty against plaintiffs and a number of additional entities. The New York action pertains to the Future Receivables Sale and Purchase Agreement.

On November 11, 2025, plaintiffs AHH and Ruark filed a motion in the New York action seeking to dismiss or stay Clearview's New York action for lack of jurisdiction, or alternatively on the grounds that there is a pending action in California (plaintiffs' action) where there is a substantial identity of the parties, the two actions are similar, and the relief sought is substantially the same.

On June 25, 2026, the New York trial court issued an order denying plaintiffs' motion to dismiss Clearview's New York action, but granted plaintiffs' alternative request to stay Clearview's New York action. The New York Court ordered that the New York case be stayed pending resolution of plaintiffs' California action in Sonoma County.

On May 27, 2026, pursuant to CCP section 410.30(a) and 418.10(a)(2), Clearview filed a motion in the instant case requesting the Court dismiss or stay plaintiffs' California action on the grounds that plaintiffs filed the instant action in direct breach of the contractual forum selection clause requiring any action in connection with the Future Receivables Sale and Purchase Agreement be litigated in New York State.

<u>The Parties' Arguments</u>

Clearview argues that, absent a showing that enforcement of the mandatory forum selection clause would be unfair or unreasonable, the Court is required to decline jurisdiction under CCP section 410.30. Clearview argues that burden is on plaintiffs to demonstrate that enforcement of the mandatory forum selection clause is unreasonable. Clearview acknowledges that California courts will refuse to defer to the selected forum if to do so would substantially diminish the rights of California residents in a way that violates California's public policy, but argues that the burden is on plaintiff to identify a California statute that explicitly prohibits the parties from choosing a non-California form and contains an express anti-waiver provision. Clearview argues that no such statute exists, and therefore there is no statutory bar to enforcement of the forum selection clause.

In OPPOSITION, plaintiffs acknowledge that a mandatory forum selection clause is presumed valid and will be enforced unless enforcement of the clause is unreasonable under the circumstances of the case. Plaintiffs further acknowledge a forum selection clause is reasonable if it has a logical connection with at least one of the parties or their transaction. Nonetheless, plaintiffs point out that California Courts will refuse to defer to the selected forum if to do so would diminish the rights of California residents in a way that violates our state's public policy. Citing to *G Companies Management, LLC v. LREP Arizona, LLC* (2023) 88 Cal.App.5th 342, plaintiffs argue that the California Constitution, article XV, section 1 and Civil Code section 1916-2 establish a non-waivable public policy against *usury* – which is central to plaintiffs' complaint against Clearview.

Plaintiffs therefore argue that the burden shifts to Clearview to demonstrate that New York State provides the same or greater rights than California (as to *usury*) or that New York State will apply California law on the claims at issue. Plaintiffs argue that Clearview cannot show that litigation in New York State will not substantially diminish plaintiffs' rights with respect to usury.

Plaintiffs further argue that a stay based on interstate comity would not be appropriate either, arguing that staying the action would create a circular stalemate in which California waits New

York while New York awaits California (in light of New York's order staying the New York action until resolution of the California action).

In REPLY, Clearview argues that, at the time the agreement was entered, plaintiffs disclosed no connection to California, but instead identified Ruark's addresses as being in Michigan with an Arizona guaranty address and that Arizona was the principal place of business. Clearview argues that only now has plaintiffs asserted ties to California. Clearview argues that plaintiffs have no significant ties to California, and that California Public Policy is not implicated where a party with no disclosed ties to California enters a revenue purchase agreement with a New York company. Clearview argues that there is no "California resident" to protect in this case, and therefore the "public policy" exception to enforcement of a forum selection clause does not apply in this case and therefore the burden has *not shifted* to Clearview to demonstrate that the New York Court provides the same or greater rights than California, or that the foreign forum will apply California law on the claims at issue. Clearview argues the burden remains on plaintiffs to demonstrate that enforcement of the forum selection clause would be unreasonable. Clearview further argues that the lawsuit is the result of forum shopping, and neither a stay nor dismissal frustrates comity or judicial economy.

<u>AHH's Request for Judicial Notice</u>

AHH's request for judicial notice of the New York Court's June 25, 2026 order staying the New York action pending resolution of this case is GRANTED.

<u>Clearview's Evidentiary Objections</u>

Clearview filed objections to the declarations of Steen Mirsky (plaintiffs' attorney) and Jamin Ruark (plaintiff). Objections #1-5 pertain to the Mirsky declaration, and Objection #6 pertains to Ruark's declaration.

Clearview's evidentiary objections #s 1 and 2 are OVERRULED. Evidentiary objections #s 3, 4, 5, and 6 are SUSTAINED.
The Court notes that, notwithstanding the sustained objections, the declaration of Jamin Ruark remains admissible in asserting: (1) that Ruark resides in Santa Rosa, CA; (2) that Ruark resided at that address when he electronically signed the agreement at issue in this action; (3) that Ruark signed the agreement while physically located in California; and (4) that, at the time Ruark signed the agreement, AHH maintained and conducted operations at 131 Stony Circle, Santa Rosa, CA.

<u>Applicable Law</u>

A defendant may enforce a forum selection clause by bringing a motion pursuant to CCP sections 410.30 and 418.10, the statutes governing forum non conveniens motions, because they are the ones which generally authorize a trial court to decline jurisdiction when unreasonably invoked and provide a procedure for the motion. *Cal-State Business Products & Services, Inc. v. Ricoh et al.* (1993) 12 Cal.App.4th 1666.

CCP section 410.30(a) permits a court to stay or dismiss an action when the court finds that "in the interest of substantial justice an action should be heard in a forum outside this state."

California favors contractual forum selection clauses so long as they are entered into freely and voluntarily, and their enforcement would not be unreasonable. This favorable treatment is attributed to our law's devotion to the concept of one's free right to contract, and flows from the important practical effect such contractual rights have on commerce generally. *G Companies* at 350.

However, California courts will refuse to defer to the selected forum if to do so would substantially diminish the rights of California residents in a way that violates our state's public policy. *G Companies* at 350.

The party opposing enforcement of a forum selection clause ordinarily bears the substantial burden of proving why it should *not* be enforced. That burden, however, is reversed when the claims at issue are based on unwaivable rights created by California statutes. In that situation, the party seeking to enforce the forum selection clause bears the burden to show litigating the claims in the contractually designated forum will *not diminish in any way* the substantive rights afforded under California law. *G Companies* at 350.

When the burden shifts to defendant, the defendant can meet its burden only by showing that the foreign forum provides the same or greater rights than California, or the foreign forum will apply California law on the claims at issue." *Verdugo v. Alliantgroup, L.P.* (2015) 237 Cal.App.4th 141, 157.

In *G Companies*, the Court of Appeal held that, by virtue of its inclusion in article XV, section 1 of our Constitution and because it cannot be waived, the California usury law establishes a public policy against usury. *G Companies* at 346.

In *G Companies*, following judgment in favor of lender against loan guarantors for deficiency remaining on loan, the guarantors brought an action in California against the commercial borrower (*G Companies*), seeking reimbursement for the judgment. *G Companies* filed a cross-complaint against the lender, alleging causes of action based on the lender's alleged collection of usurious interest. The lender filed a motion to stay or dismiss the cross-complaint based on a mandatory forum selection clause in the loan agreement designating Arizona as the chosen forum. The trial court granted the lender's motion and *G Companies* appealed. On appeal, after finding that California usury law establishes a non-waivable public policy, the Court of Appeal held that the burden was on the lender to show that enforcing the forum selection clause would not diminish in any way the substantive rights afforded under California law regarding usury, and that the lender failed to carry that burden. The Court of Appeal also rejected the lender's argument that "the equities" favored a transfer of the cross-complaint to Arizona. The Court of Appeal held that, when considering the enforcement of a forum selection clause that would deprive a California resident of the protections of a fundamental public policy, the Court does *not* engage in that weighing process. The Court of Appeal went on to add that, even if the Court considered "equities," the equities did not favor a transfer of the cross-complaint to Arizona.

Analysis

The Court is not persuaded by Clearview's argument that, in order to assert a "public policy" exception to the general rule of enforcing a forum selection clause, the plaintiff has an initial burden of demonstrating that plaintiff is a "California resident." Instead, this Court finds that plaintiffs may assert the "public policy" exception regardless of whether the plaintiff is a "California resident," so long as California is an available forum for plaintiff to file the complaint.

Although much of the case law regarding the "public policy" exception states that the purpose of the exception is to protect California residents, Clearview has not cited any published case law where the reviewing Court has expressly stated that the plaintiff has an initial burden of demonstrating "California residency" as a prerequisite to asserting a "public policy" exception.

If such a requirement existed, one would expect the published cases to expressly identify such an initial burden of proof regarding plaintiff's "residence," and one would expect the published cases to expressly identify *what point in time the California "residency" is relevant* for purposes of plaintiff's ability to assert a "public policy" exception to the general rule of enforcing a forum selection clause (i.e., if there is a "California resident" requirement, would the plaintiff merely be required to demonstrate that plaintiff was a "California resident" at the time defendant files a motion to enforce the forum selection clause? Or would plaintiff be required to demonstrate that plaintiff was a "California resident" at one or more points in time before that – such as at the time the underlying Futures Receivables Sale and Purchase Agreement was entered into, or the time the plaintiffs' complaint was filed?)

The lack of any such discussion in the published case law as to *exactly when* the plaintiff's California residency (or lack thereof) would be relevant to plaintiff's ability to assert a "public policy" exception is further indication that plaintiff does not have any initial burden of establishing "California residence" as a prerequisite to asserting a "public policy" exception to the general rule of enforcing forum selection clauses.
At most, the references to protecting California "residents" in the case law appears to be *dicta*, and does not establish a requirement that the plaintiff demonstrate that plaintiff is currently a "California resident" or that plaintiff was a "California resident" at some particular time in the past.

This Court notes that, in *EpicentRx, Inc. v. Superior Court* (2025) 18 Cal.5th 58, the California Supreme Court declined to reach the merits of several arguments by defendants because the arguments were forfeited by virtue of being raised only in the petition for rehearing. The Supreme Court stated in relevant part: "Defendants also attempted to raise several new arguments for the first time in a petition for rehearing, including that "the burden-shifting framework ... is inapplicable because it purportedly applies only to California residents and [plaintiff] has not shown that it is in fact a California resident…" *EpicentRx* at 71 (footnote 3).

Defendant has not cited any published case law where the reviewing court has held that a plaintiff (who is allowed to file a complaint against defendant in California) has been *precluded* from asserting a "public policy" exception based on the plaintiff's failure to demonstrate that plaintiff is or was a "California resident."

It appears that the issue of whether a plaintiff has an initial burden of establishing that plaintiff is (or was) a "California resident" appears to be an issue of first impression.

This Court finds that both plaintiffs (AHH and Ruark) may assert the "public policy" exception. Here, plaintiffs have properly asserted California's "public policy" protection against *usury,* as established by the *G Companies* decision. Therefore, the burden shifts to Clearview to show that enforcing the forum selection clause will not diminish in any way the substantive rights afforded under California law, which requires Clearview to show that the foreign forum (New York) provides the same or greater rights than California or that the foreign forum will apply California law on the usury claims at issue. Clearview has failed to meet that burden. For that reason alone, defendant's motion to stay or dismiss the complaint is DENIED.

Additionally, *assuming arguendo* that Clearview is correct that each of the two plaintiffs have an initial burden of demonstrating that they are currently "California residents" (or that they were "California residents" at some unidentified point in time in the past), this Court would still deny the motion to dismiss or stay plaintiffs' complaint.

Based on plaintiff's Ruark's declaration, Ruark is a "California resident" who can and has asserted California's policy against usury as grounds for denying enforcement of the forum selection clause against him. The declaration states that he presently resides in California and that he resided in California when he electronically signed the agreement at issue in this action (which predates the filing of plaintiffs' complaint). Thus, even if Ruark had an initial burden of showing "California residence," Ruark has met that burden and the burden shifts to Clearview to that enforcing the forum selection clause against Ruark would not diminish in any way the substantive rights afforded to him under California law. Clearview has failed to meet its burden that those rights would not be diminished. Therefore, at least with respect to plaintiff Ruark, Clearview failed to meet that burden as to Ruark.
Assuming arguendo that AHH could only assert a "public policy" exception if it first demonstrates "California residence," and further assuming that AHH has never been a "California resident" at any relevant time, this Court is still denying the motion to dismiss or stay the complaint (or any portion of the complaint).

Having found that plaintiff Ruark has established "California residence" (if such a requirement exists), it would be *unreasonable* to enforce the forum selection clause against co-plaintiff AHH when the forum selection clause cannot be enforced against AHH's co-plaintiff Ruark because of the "public policy" exception. Both co-plaintiffs are inextricably intertwined and each co-plaintiff has alleged the same six causes of action against defendant Clearview. Neither judicial economy nor consistency of rulings would be promoted by dismissing or staying AHH's causes of action against Clearview while proceeding in Sonoma County with Ruark's identical claims against Clearview. The Court further notes that Clearview never specifically requested that AHH's causes of action be stayed or dismissed in the event the motion to dismiss or stay is denied as to Ruark.

Therefore, the Court declines to dismiss or stay any portion of plaintiffs' pending complaint.

The motion to dismiss or stay plaintiffs' August 26, 2025 complaint is DENIED IN ITS ENTIRETY.

Plaintiffs' attorney shall prepare an order for signature consistent with this ruling.

4. MCV-260822, Mercury Insurance Company v. Canning

Plaintiff Mercury Insurance Company ("Plaintiff") filed the presently operative complaint ("Complaint") against defendants Joshua Canning and Emile Canning ("Defendants"), as well as Does 1-20.

This matter is on calendar for Defendants' motion to set aside the default under CCP § 473(d) on the grounds that the summons and complaint were never properly served. The motion is GRANTED.

****This is the end of the Tentative Rulings.*****