

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

Department 6

Honorable Rafael Sivilla-Jones, Presiding

191 North First Street, San Jose, CA 95113

Telephone: (408) 882-2160

March 3, 2026

9:00 and 9:01 A.M.

RECORDING COURT PROCEEDINGS IS PROHIBITED

ORAL ARGUMENT

Before 4:00 PM today you must notify the:

- (1) Court by calling (408) 808-6856 and
- (2) Other side by phone or email that you will appear at the hearing to contest the tentative

If you fail to so notify the court or opposing side, the Court will not hear argument, and the tentative ruling will be adopted. (California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

REMOTE APPEARANCES

Phone only appearances are PROHIBITED. In-person appearances are preferred.

For necessary virtual appearances, you **must use video** and follow **Civil Local Rule 5**.

To access the courtroom, click or copy and paste this link into your internet browser and scroll to

Department 6: <https://santaclara.courts.ca.gov/online-services/remote-hearings>

LINE	CASE NO.	CASE TITLE	TENTATIVE RULING
			;
9:00 1	24CV443183	Huynh vs Redis Labs	Case is off calendar.
9:00 2	25CV460465	Nicholas v. Compass Group, et. Al.	Defendant moves for a demurrer to the first cause of action against the Santa Clara Stadium Authority (SCSA). The SCSA is a public entity. Plaintiff fails to cite statutory authority establishing liability by a public entity. (Eastburn v. Reg'l. Fire Protection Authority (2003) 31 Cal.4 th 1175,1183).Defendant's motion for demurrer is GRANTED.
9:00 3-5	24CV448038	Ne Wang v. Daili Ren	Cases have transferred.
9:00 6,7	24CV441941	Devin Shaffer vs. Santa Clara County	Defendant moves for demurrer against Plaintiff's complaint. Santa Clara county is a public entity. Plaintiff failed to state a statutory basis for Defendant's liability pursuant to Government Code section 825(a). Plaintiff also filed his complaint untimely. Defendant's motion for demurrer is GRANTED. Plaintiff's motion transportation from prison is DENIED.
9:00 8	25CV458157	Discover Bank vs. Holly Phan	Plaintiff moves for Summary Judgment. Plaintiff disbursed funds pursuant to a loan agreement with Defendant. Defendant did not make payments as they became due. Plaintiff's Summary Judgment motion is GRANTED. Defendant is ordered to pay \$35,919.33 and order to pay \$1014.80 to Plaintiff for attorney costs.
9:00 9	24CV442402	Jessica Ebert et.al. vs. Garrick Wang, MD	Plaintiff moves this Court to compel Discovery Responses. Defendant objects that each request needs to be accompanied with a separate motion. CRC 3.1345(a) requires each request to be accompanied with a separate motion. Plaintiff's motion is DENIED.
9:00 10	23CV428298	Pisamai Cuesta et.al. vs. Arsenia Naughton	Plaintiff moves this court for terminating sanctions against Defendant. Defendant failed to respond to Plaintiff's Special Interrogatories despite being ordered by Court. Defendant also failed to pay monetary sanctions despite being ordered by the Court to do so. Plaintiff's motion for Terminating Sanctions is GRANTED; Plaintiff's motion to dismiss Defendant's Cross-Complaint is GRANTED; Defendant's answer to the Plaintiff's complaint is stricken and default judgment is entered against Defendant. Defendant is ordered to pay attorney fees.
De9:00 11	25CV468424	Freelancer International vs. Walter Bright,et.al.	Defendant moves this court to dismiss based on jurisdictional grounds. Defendant's motion to dismiss is GRANTED. See Line 11 below for further analysis.
9:00 12	25CV474364	Lee Casper v. Ford Motor Company	Case is off calendar.
9:00 13	23CV419882	Pahl & McCay vs. David Lawver, et.al.	Plaintiffs move this Court to confirm arbitration and award Plaintiff with \$12,033.33 in legal fees. Plaintiffs won their arbitration case against Defendant. Pursuant to CCP 1287.4, this Court AFFIRMS the arbitration order and enters a judgment of \$12033.33 against Defendant.

Line 11

FREELANCER INTERNATIONAL PROPRIETY, Ltd.,

Plaintiff,

vs.

WALTER BRIGHT, et all,

Defendants.

Case No.

25CV468425

**[Tentative] ORDER RE: DEFENDANT HP INC.
MOTION TO DISMISS OR STAY ON GROUND
INCONVENIENT FORUM**

The Motion to Dismiss or Stay on the Ground of Inconvenient Forum by Defendant HP Inc.

(“Defendant”) came on for hearing before the Honorable Rafael Sivilla-Jones on March 3, 2026 at 9:00 a.m. in Department 6. The matter having been submitted, the Court finds and orders as follows:

I. Background

In the instant case Plaintiff Freelancer International Proprietary Ltd., an Australian company, sues defendants Defendant, HP India Sales Pvt. Ltd., Flextronics International, Ltd. (“Flextronics”) Walter Bright (“Bright”), Ashish Mishra (“Mishra”), Vikas Singh (“Singh”), and DOES 1-20 for (1) breach of contract (alleged against Defendant and HP India Sales Pvt. Ltd.), (2) negligent misrepresentation (alleged against Defendant and HP India Sales Pvt. Ltd.), (3) fraud (alleged against Defendant and HP India Sales Pvt. Ltd.), (4) conspiracy (alleged against Defendant, HP India Sales Pvt. Ltd., and Flextronics), (5) aiding and abetting (alleged against Flextronics only), (6) intentional interference with contractual obligations (alleged against Flextronics only), and (7) intentional interference with prospective economic advantage (alleged against Flextronics only).

In 2019, Plaintiff and Defendant began to discuss Defendant’s need for on-demand field service engineers (“FSEs”) worldwide. (Complaint, ¶ 11.) Defendant was interested in using Plaintiff’s freelancing platform to provide global coverage in geographic areas where Defendant lacked its own service personnel and needed support handling spikes in service demand even though Defendant had a presence in those areas. (*Ibid.*) After a series of meetings and negotiations, on December 4, 2020,

Plaintiff and Defendant entered into a Base Services and Consulting Agreement (the “Agreement”). (*Id.* ¶ 15.) On December 2, 2023, the Agreement was amended to, among other things, update termination and payment terms, but all other terms and conditions of the Agreement remained in place and the Agreement was meant to remain in effect for six years. (*Ibid.*)

The Agreement “established the framework of the parties’ relationship: any HP Inc. entity or its subsidiary could engage Freelancer’s services by executing a Statement of Work (‘SOW’) under the [Agreement].” (Complaint, ¶ 15.) Plaintiff then entered into SOWs with various subsidiaries of Defendant, including HP India Sales Pvt. Ltd. (Complaint, ¶¶ 16, 18, 19, 26-29.) Plaintiff performed well under all of the SOWs and never received a complaint from any of Defendant’s subsidiaries. (Complaint, ¶¶ 33-34.) Plaintiff believed the business relationship with Defendant would grow and relied on the terms of its contracts with Defendant and its subsidiaries, so it continued to invest in the partnership despite operating at a significant loss due to the low volume of work requested by Defendant. (Complaint, ¶¶ 35-39.) When Plaintiff brought up the low volume issue with Defendant, Defendant’s representatives and representatives of HP India Sales Pvt. Ltd. repeatedly told Plaintiff that the volume would “ramp up.” (Complaint, ¶¶ 40-47.) But, the increased volume never came to pass. (Complaint, ¶ 49.)

Instead, at the time Defendant and HP India Sales Pvt. Ltd. knew that Defendant did not intend to continue to utilize Plaintiff’s services. (Complaint, ¶¶ 50, 56.) In October 2024, Defendant “abruptly announced the termination of the [HP India Sales Pvt. Ltd.] SOW and the termination of the relationship with all other related HP entities as well.” (Complaint, ¶ 75.) Finally, Defendant allegedly represented to Plaintiff that it could potentially continue to provide services but as a “sub-contractor” who would provide services through two intermediaries, Flextronics and Mphasis. (Complaint, ¶ 76.) But, Flextronics aggressively usurped Plaintiff’s role and poached its employees, despite the freelancer agreements required by the Agreement, and the volume of work conducted through Plaintiff dropped to zero. (Complaint, ¶¶ 78-86.) On June 18, 2025, Plaintiff filed the Complaint in the instant case. On November 25, 2025, Defendant filed this instant Motion to Dismiss or Stay on the Ground of Inconvenient Forum. Plaintiff has opposed the motion and Defendant has filed a reply. On December 31, 2025, Plaintiff dismissed Bright, Mishra, Singh, and Flextronics from the action

without prejudice.

II. Discussion

A. Legal Standard

“A defendant, on or before the last day of his or her time to plead or within any further time that the court may for good cause allow, may serve and file a notice of motion ... [t]o stay or dismiss the action on the ground of inconvenient forum.” (Code Civ. Proc., § 418.10, subd. (a)(2).) “When a court upon motion of a party or its own motion finds that in the interest of substantial justice an action should be heard in a forum outside this state, the court shall stay or dismiss the action in whole or in part on any conditions that may be just.” (Code Civ. Proc., §410.30, subd. (a).)

“Although not even a ‘mandatory’ forum selection clause can completely eliminate a court’s discretion to make appropriate rulings regarding choice of forum, the modern trend is to enforce mandatory forum selection clauses unless they are unfair or unreasonable. [Citations.] In California, the procedure for enforcing a forum selection clause is a motion to stay or dismiss for forum non conveniens pursuant to Code of Civil Procedure sections 410.30 and 418.10 [citation], but a motion based on a forum selection clause is a special type of forum non conveniens motion. The factors that apply generally to a forum non conveniens motion do not control in a case involving a mandatory forum selection clause. [Citations.]” (*Berg v. MTC Electronics Technologies* (1998) 61 Cal.App.4th 349, 358 (*Berg*)). “If there is no mandatory forum selection clause, a forum non conveniens motion ‘requires the weighing of a gamut of factors of public and private convenience ...’ [Citation.] [¶] However if there *is* a mandatory forum selection clause, the test is simply whether application of the clause is unfair or unreasonable, and the clause is usually given effect. Claims that the previously chosen forum is unfair or inconvenient are generally rejected. [Citation.] A court will usually honor a mandatory forum selection clause without extensive analysis of factors relating to convenience. [Citation.]” (*Berg, supra*, 61 Cal.App.4th at pp. 358-359, italics in original.)

When a Plaintiff seeks to avoid the enforcement of a mandatory forum selection clause, “[t]he burden of proof is on the plaintiff, and the factors involved in traditional forum non conveniens analysis do not control. [Citation.] ‘Instead, the forum selection [clause is] presumed valid and will be enforced unless the plaintiff shows that enforcement of the clause would be unreasonable under the circumstances of

the case.’ [Citations.]” (*Trident Labs, Inc. v. Merrill Lynch Commercial Finance Corp.* (2011) 200 Cal.App.4th 147, 154.)

B. Merits of the Motion

Defendant contends that the Agreement contains a mandatory¹ forum selection clause, which provides, “Governing Laws. This Agreement shall be governed by and construed in accordance with the laws of New York, USA without regard to its conflict of law principles. Any dispute that may arise in connection with the interpretation or implementation of this Agreement shall be submitted to the ordinary courts of New York.” (Declaration of Brad Hartz in Support of Motion to Dismiss or Stay (“Hartz Decl.”), ¶ 3, Ex. 1, § 19.10.) Accordingly, it argues that the case should be dismissed or, alternatively, stayed so that litigation may commence in New York.

Plaintiff raises three main arguments in opposition: (1) the forum selection clause does not cover all of the claims raised in the Complaint, (2) Defendant has not established that it is subject to personal jurisdiction in New York, and (3) the forum selection clause is unreasonable because neither party has connections to New York.

i. Limits of the Forum Selection Clause

Plaintiff maintains that the forum selection clause, which applies to “[a]ny dispute that may arise in connection with the interpretation or implementation of” the Agreement, does not apply to all of its claims because they do not all arise from the Agreement. At this time, the only causes of action that are operative are (1) the breach of contract claim, (2) the negligent representation claim, (3) the fraud claim, and (4) the conspiracy claim² because the remaining claims were alleged solely against Flextronics, which has been dismissed from this case.

The court rejects Plaintiff’s argument that its tort claims do not constitute “[a]ny dispute that may arise in connection with the interpretation or implementation of” the Agreement. Notably, Plaintiff merely compares the language of the forum selection clause to partial quotations of forum selection clauses in other published cases with no meaningful analysis and no argument regarding what the tort causes of

¹ Plaintiff does not argue the clause is not mandatory.

² The court will refer to the second cause of action for negligent representation, the third cause of action for fraud, and the fourth cause of action for conspiracy, collectively, as the “tort claims.”

action are based on, if not the parties' contractual obligations.

In *Intershop Communications AG v. Superior Court* (2002) 104 Cal.App.4th 191 (*Intershop*), on which Plaintiff relies, the forum selection clause read, " 'The conclusion and the performance of this Agreement is governed by and has to be construed in accordance with the laws of the Federal Republic of Germany. To the extent permitted by the applicable laws the parties elect Hamburg to be the place of jurisdiction.' " (*Id.* at p. 195.) In *Lu v. Dryclean-U.S.A. of California, Inc.* (1992) 11 Cal.App.4th 1490, 1492 (*Lu*), on which Plaintiff also relies, the clause stated, " '[a]ny and all litigation that may arise as a result of this Agreement shall be litigated in Dade County, Florida.' " Finally, in *CQL Original Products, Inc. v. National Hockey League Players' Assn.* (1995) 39 Cal.App.4th 1347, 1352 (*CQL*), on which Plaintiff relies, the clause stated, in pertinent part, "This Agreement shall be governed by the law of Ontario, Canada and any claims arising hereunder shall, at the Licensor's election, be prosecuted in the appropriate court of Ontario . . . ' "

In each of these cases, the Court of Appeal held those clauses enforceable. (*Lu, supra*, 11 Cal.App.4th at p. 1494; *Intershop, supra*, 104 Cal.App.4th at p. 202; *CQL, supra*, 39 Cal.App.4th at p. 1359.) But, in none of those cases, did the Court of Appeal address the issue of whether claims other than a breach of contract claim would be covered under the agreement containing the clause. (See *CQL, supra*, 39 Cal.App.4th at p. 1353 [only cause of action raised against moving defendant was breach of contract]; *Intershop, supra*, 104 Cal.App.4th at p. 202 [only claims remaining after demurrer were breach of contract and conversion based on that breach]³; see, generally, *Lu, supra*, 11 Cal.App.4th 1490 [not discussing whether causes of action arose from contract under the language of the forum selection clause].) " '[A]n opinion is not authority for a proposition not therein considered. [Citations.]' [Citations.]" (*Settle v. State of California* (2014) 228 Cal.App.4th 215, 219.)

" '[F]orum selection clauses can be equally applicable to contractual and tort causes of action. [Citations.] Whether a forum selection clause applies to tort claims depends on whether resolution of the claims relates to interpretation of the contract. [Citations.]' [Citation.]" (*Bancomer,*

³ While the *Intershop* court did state that the forum selection clause did not apply to the causes of action that had been dismissed, the issue of whether those claims were covered by the forum selection clause was not before the court and the opinion does not contain significant discussion of the dismissed claims such that the court can compare them to the claims herein.

S.A. v. Superior Court (1996) 44 Cal.App.4th 1450, 1461 [tort claims that did not arise from performance under the agreement did not relate to the agreement].)

The breach of contract claim, as it applies to Defendant, would appear to arise from the Agreement. (Complaint, ¶¶ 11-14 [describing the parties' negotiations leading to the Agreement] 15 [“The [Agreement] established the framework of the parties' relationship: any HP Inc. entity or its subsidiary could engage Freelancer's services by executing a Statement of Work ('SOW') under the [Agreement].”], 86 [indicating that Defendant effectively breached and terminated the Agreement by lowering the volume of work coming from Plaintiff to zero].)

The negligent misrepresentation and fraud claims appear to arise from the representations of Defendant and HP India Sales Pvt. Ltd. that the volume of services performed by Plaintiff could be “ramped up” so that Plaintiff could begin to break even or turn a profit under the Agreement and the SOWs Plaintiff entered into under the Agreement. (Complaint, ¶¶ 39-52, 57.) The Complaint alleges that those representations were false because Defendant had already decided to terminate the Agreement and cease using Plaintiff's services at the time those promises were made. (Complaint, ¶¶ 56, 60-62.) The Complaint also alleges that Defendant promised not to terminate the Agreement and represented that it would continue to work with Plaintiff directly. (Complaint, ¶ 71.) Instead, Defendant “abruptly announced the termination of the [HP India Sales Pvt. Ltd.] SOW and the termination of the relationship with all other related HP entities as well.” (Complaint, ¶ 75.) Finally, Defendant allegedly represented to Plaintiff that it could potentially continue to provide services but as a “sub-contractor” who would provide services through two intermediaries, Flextronics and Mphasis. (Complaint, ¶ 76.) But, Flextronics aggressively usurped Plaintiff's role and poached its employees, despite the freelancer agreements required by the Agreement, and the volume of work conducted through Plaintiff dropped to zero. (Complaint, ¶¶ 78-86.)

As to the conspiracy cause of action, the basis for that claim appears to be that Defendant, HP India Sales Pvt. Ltd., and Flextronics colluded to usurp Plaintiff's relationship with Defendant and poach its employees. (Complaint, ¶¶ 88-99.) Plaintiff's relationship with Defendant is contractual and based on the Agreement and, as discussed above, the SOWs with the various HP entities themselves arose under the Agreement.

In *Cal-State Business Products & Services, Inc. v. Ricoh* (1993) 12 Cal.App.4th 1666, 1672, fn. 4 (*Cal-State*), the Court of Appeal considered a forum selection clause stating, “[A]ny appropriate state or federal district court located in the Borough of Manhattan, New York City, New York shall have exclusive jurisdiction over *any case of controversy arising under or in connection with this Agreement.*” (Italics added.) There, the Court of Appeal concluded that the forum selection clause applied to tort claims. (*Id.* at p. 1677.)

The *Cal-State* court quoted extensively from a then-recent California Supreme Court opinion, *Nedlloyd Lines B.V. v. Superior Court* (1992) 3 Cal.4th 459,⁴ stating:

“When two sophisticated, commercial entities agree to a choice-of-law clause like the one in this case, the most reasonable interpretation of their actions is that they intended for the clause to apply to all causes of action arising from or related to their contract.” (*Id.* at pp. 468.) The contract between the parties stated it was to be “governed by” Hong Kong law and did not provide for any exceptions. (*Id.* at pp. 468-469.) The court concluded this language meant Hong Kong law applied not only to construction of the contract but to any cause of action based on the relationship created by the contract. (*Id.* at p. 469.)

“Our conclusion in this regard comports with common sense and commercial reality. When a rational businessperson enters into an agreement establishing a transaction or relationship and provides that disputes arising from the agreement shall be governed by the law of an identified jurisdiction, the logical conclusion is that he or she intended that law to apply to *all* disputes arising out of the transaction or relationship. We seriously doubt that any rational businessperson, attempting to provide by contract for an efficient and business-like resolution of possible future disputes, would intend that the laws of multiple jurisdictions would apply to a single controversy having its origin in a single, contract-based relationship. (3 Cal.4th at p. 469.) Any argument to the contrary “would require extensive litigation of the parties’ supposed intentions regarding the choice-of-law clause . . . [and] is more likely the product of postdispute litigation strategy, not predispute contractual intent. (*Id.* at p.

⁴ Although that opinion addressed a choice of law provision, the *Cal-State* court indicated the analysis applied equally to a choice of forum provision. (*Cal-State, supra*, 12 Cal.App.4th at p. 1677.)

470.) Thus, “a valid choice-of-law clause, which provides that a specified body of law ‘governs’ the ‘agreement’ between the parties, encompasses all causes of action *arising from or relating to* that agreement, regardless of how they are characterized, including tortious breaches of duties emanating from the agreement of the legal relationships it creates.” (*Ibid.* [italics added].) (*Cal-State, supra*, 12 Cal.App.4th at pp. 1676-1677.) Here, similarly, the Agreement was entered into by two sophisticated business entities after arms length negotiations. The *Cal-State* court further explained “[t]he entire gist of the complaint in the present action relates to allegedly false promises made in the course of the negotiations (that culminated in contracts with integration clauses) and the subsequent conduct of the relationship between the parties created by the contracts.” (*Ibid.*) Here, similarly, the gist of the Complaint is misrepresentations alleged to have occurred in the performance of the contract. The court finds that the forum selection clause governs each of the remaining causes of action.

ii. Personal Jurisdiction Over Defendant in New York

Plaintiff asserts that Defendant is not authorized to do business in New York and therefore New York law precludes it from being involved in a lawsuit there. Plaintiff further argues that there is no evidence that Defendant transacts business in New York or has sufficient minimum contacts in New York to confer personal jurisdiction over Defendant in the New York courts. Plaintiff also speculates as to whether an “HP LLC,” which it discovered in an internet search for entities related to Defendant in New York, is actually affiliated with Defendant. For the purposes of this discussion, the court assumes that Defendant is not authorized to do business in New York and that the presence of an entity called HP LLC in New York does not provide a basis for jurisdiction over Defendant in New York.

New York’s Business Corporation Law section 1314(b) provides, “Except as otherwise provided in this article, an action or special proceeding against a foreign corporation may be maintained by another foreign corporation of any type or kind or by a non-resident in the following cases only:...(4) Where, a non-domiciliary would be subject to the personal jurisdiction of the courts of this state under section 302 of the civil practice law and rules.” New York’s Civil Law and Practice Rule section 302(a) provides, “a court may exercise personal jurisdiction over any non-domiciliary, or his executor or administrator, who in person or through an agent: 1. transacts any business within the state or contracts anywhere to

supply goods or services in the state.”

New York’s Business Corporation Law section 1312 provides

(a) A foreign corporation doing business in this state without authority shall not maintain any action or special proceeding in this state unless and until such corporation has been authorized to do business in this state and it has paid to the state all fees and taxes imposed under the tax law or any related statute, as defined in section eighteen hundred of such law, as well as penalties and interest charges related thereto, accrued against the corporation. This prohibition shall apply to any successor in interest of such foreign corporation.

(b) *The failure of a foreign corporation to obtain authority to do business in this state shall not impair the validity of any contract or act of the foreign corporation or the right of any other party to the contract to maintain any action or special proceeding thereon, and shall not prevent the foreign corporation from defending any action or special proceeding in this state.*

(N.Y. Bus. Corp. Law § 1312, italics added.) Here, Defendant would not be maintaining the action in New York and New York’s Business Corporation Law section 1312(b) provides that the failure to obtain authority to do business in New York does not prevent a foreign corporation from defending an action in this state.

Additionally, New York law provides that, by entering into an agreement with a forum selection clause in favor of New York confers personal jurisdiction over the signatories.

(See *Golf Glen Plaza Niles, II. L.P. v AMCOID USA, LLC* (App.Div.) 2018 NY Slip Op 02935, ¶ 1 [160 A.D.3d 1375, 1376, 76 N.Y.S.3d 307, 308]; *Professional Merchant Advance Capital, LLC v Your Trading Room, LLC* (App.Div.) 2014 NY Slip Op 09115, ¶ 1 [123 A.D.3d 1101, 1102, 1 N.Y.S.3d 208, 209] [by assuming signatory’s obligations under contract containing forum selection clause, party submitted to jurisdiction in New York].)

iii. Reasonableness of the Forum Selection Clause

“ ‘When a case involves a mandatory forum selection clause, it will usually be given effect unless it is unfair or unreasonable. [Citation.]’ [Citation.]” (*Korman v. Princess Cruise Lines, Ltd.* (2019) 32 Cal.App.5th 206, 216 (*Korman*)). “In the context of forum selection clauses, enforcement is considered unreasonable where the forum selected would be unavailable or unable to accomplish substantial

justice or there is no rational basis for the selected forum. [Citation.] [Citation.] Mere inconvenience or additional expense is not the test of unreasonableness ... of a mandatory forum selection clause. [Citation.] [Citation.]” (*Ibid.*, internal quotation marks omitted.) The plaintiff bears the “heavy burden . . . to demonstrate that enforcement of the clause would be unreasonable under the circumstances of the case.” (*Lu, supra*, 11 Cal.App.4th at p. 1493.)

Citing *Korman*, Plaintiff contends that “[a] clause is reasonable if it has a logical connection with at least one of the parties or their transaction.” (*Korman, supra*, 32 Cal.App.5th at p. 216, internal quotation marks and citation omitted.) Plaintiff maintains that neither the parties nor the case have any connection to New York. It points out that it is an Australian company and Defendant is a Delaware company. Plaintiff also indicates that the performance of the agreement has no connection to New York, work was not performed in New York, and Defendant does not have offices in New York. In contrast, Defendant’s principal place of business is in Palo Alto, California, which is in Santa Clara County. Further, the LinkedIn profile of Chris Humes, the representative who signed the Agreement on behalf of Defendant, shows that he worked in a California office at the time the parties entered into the agreement.

Defendant argues that the California Supreme Court, in *EpicentRx, Inc. v. Superior Court* (2025) 18 Cal.5th 58, recently upheld a mandatory forum selection clause providing that the parties must litigate in Delaware despite the fact that the Delaware chancery court did not allow jury trials. But, in that case, the Supreme Court expressly stated that it did not have occasion to consider other potential grounds for declining to enforce a forum selection clause, such as where there was no rational basis for the forum selected. (*Id.* at p. 75, fn. 4.)

The court notes that Plaintiff does not claim that New York would be an unavailable forum or that substantial justice could not be obtained there.⁵ The court reject’s Plaintiff’s implied argument that, because Defendant may have signed the Agreement in California and have other connections thereto, the matter must be litigated here. (See *Lu, supra*, 11 Cal.App.4th at p. 1493 [enforcing forum selection clause in favor of Florida and rejecting arguments that plaintiffs both reside in California, the contract

⁵ While Plaintiff’s argument that New York courts do not have personal jurisdiction over Defendant could be considered such an argument, the court has rejected that argument above.

at issue was signed in California, and they have no connection to Florida because they contracted away the right to litigate in California].)

Further, the court concludes that, although the parties and the underlying transactions do not have any apparent connection to New York, there is nonetheless a rational basis for the parties to litigate there as they selected that location as the appropriate forum and they have an interest in the “ ‘vital certainty’ ” an agreed upon forum brings. (*EpicentRx, Inc. v. Superior Court, supra*, 18 Cal.5th at p. 74.) Notably, Plaintiff asserts that there is no convenient forum for this case as the entities are located in Australia, the United States, and “at least two Asian countries.” (Opposition, p. 7:21-23.) Plaintiff also concedes that it has no interest in litigating in California as it is an Australian company that must be “dragged across the ocean” to litigate in the United States. (Opposition, p. 7:19-20.) As Plaintiff points out, that must be done regardless of whether the case is litigated in California or New York. Under the circumstances, the court finds that enforcement of the forum selection clause is appropriate.

iv. A Stay is Appropriate

Neither party provides any reasoned argument as to whether the court should dismiss the action or stay it, as Defendant requests in the alternative. “[W]hether to grant a motion to dismiss or stay an action on forum non conveniens grounds rests in the trial court’s sound discretion, requiring appellate deference on review. [Citations.]” (*Laboratory Specialists Internat., Inc. v. Shimadzu Scientific Instruments, Inc.* (2017) 17 Cal.App.5th 755, 764.) Here, it appears that no action has yet been filed in a New York court. Although the court does not share Plaintiff’s concerns with jurisdiction over Defendant in New York, the court will stay this matter.

III. Conclusion

The motion is GRANTED. The proceedings in the instant case are hereby stayed pending further order of the court.