69691-2

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King County No. 12-2-30441-0

Court of Appeals No. 69691-2

APPEAL COURT OF THE STATE OF WASHINGTON
1ST DISTRICT

DEANDRA GRANT
Appellant,

v.

NATIONAL COLLEGE FOR DUI DEFENSE,

Respondent

APPEAL FROM THE DISTRICT COURT FOR KING COUNTY
THE HONORABLE THERESA B. DOYLE, DISTRICT COURT JUDGE

APPELLANT'S OPENING BRIEF

INFORMATIONAL STATEMENT AND JURISDICTIONALSTATEMENT

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I.

INTRODUCTION/PROCEDURAL POSTURE

This appeal is taken from the Superior court's decision to render dismissal for lack of proper jurisdiction against the plaintiff and appellant Deandra Grant ("Appellant"). The Appellate Court of Washington has jurisdiction to consider the issues raised in this appeal under authority of the Wash.R.App.P. 2.2.

The defendant and respondent National College for DUI Defense ("Respondent") responded to the complaint (CP 001-031) with an objectively overzealous, ad hominem and vexatious defense of filing a motion to dismiss/change of venue (CP 042-068), supplementing that with a motion for sanctions (CP 0152-203), and a motion to quash/for protective order (CP 082-111). Appellant filed oppositions thereto, Dismiss (CP 311-323), Quash/Protective Order (CP 325-338), and Sanctions (CP 340-381). On November 16, 2012, the motion to dismiss was granted based upon the District Court's conclusions provided only orally in court, and was not put into a reasoned decision, that because Appellant had no injury occurring in the State of Washington, there was no subject matter or personal jurisdiction. (CP 380-81)

Appellant filed a motion for reconsideration and request for judicial notice. (CP 383-410) This motion was rubber stamp denied, also without any reasoned decision. (CP 421) Appellant then filed a timely notice of appeal. (CP 422).

II.

ISSUES ON APPEAL

1. Does a trial court have a duty to provide a reasoned decision on dispositive motions?

2. Does a company that incorporates in the State of Washington submit to the jurisdiction of Washington State Court?

3. Are Forum Selection and Choice-of-Law provisions that impose requirements that any litigation arising from the contractual relationship, must be filed in a King County Courthouse in Washington, also must be decided under Washington State law, valid and enforceable?

4. Is Washington and King County an inconvenient forum for Respondent, who has incorporated in Washington and had both a forum selection and choice-of-law provision imposed on its members to file their cases in Washington?

III.

ASSIGNMENTS OF ERROR

The District Court erred in holding that Appellant did not have jurisdiction to file the case in King County, Washington, because of the adhesive agreement by Respondent providing that any litigation arising from that agreement would have to be filed in King County, Washington, and decided under Washington State law.

IV.

STATEMENT OF THE CASE

Respondent controls, conducts, and administers the only board certification for DUI defense attorneys in the United States that is approved by the government and/or publicly funded American Bar Association ("ABA").

Respondent corporation is controlled and operated by the white males it designates as "Regents" and "Fellows" and has substantial underrepresentation of women. Appellant is a licensed attorney in the State of Texas and specifically, at all times material hereto, specializes in criminal defense of driving under the influence ("DUI") cases. Respondent is responsible for granting Certification in DUI Defense Specialist to attorneys in the entire United States,

and has the approval of ABA. Respondent holds no elections whatsoever, and only males, (prior to the filing of this lawsuit, at which time there was a scramble to round up anyone female, African-American or both, to be annointed) were chosen to become Respondent Corporation's leaders and decision-makers "Regents", "Dean", "Fellows" and/or Nationally Board Certified in DUI Defense ("Board Certified"). The titles "Fellow", "Regent", and "Dean" are based on being an older White male are used to imply grandeur, but lack substance. The "Board Certification" approved by the ABA is being peddled and gifted amongst "good ol' boys", who are also those with grandiose titles.

Any woman who attempts to obtain the honor, prestige, gigantic marketing and business boost associated with Board Certification is given forms to fill out, asked to spend several thousand dollars, take a "Board Certification examination," and then is arbitrarily told that they failed the exam (Very coincidentally, token women have been certified since the filing of this lawsuit, despite decades of running a racket with and gifting the certification to "good ol' boys". They are not, however, given the opportunity to review their graded exam. In addition, some

women are not even allowed to take the examination while male members with lesser qualifications are allowed to sit for the exam.

Prominently displayed on Respondent's membership website is a Forum Selection and Choice of Law provision that mandates all litigation arising from membership and testing issues must be filed in King County, Washington Court, and must be decided under Washington State law.

> 8. GOVERNING LAW AND JURISDICTION. "Membership in the College shall be governed by the laws of the State of Washington. Exclusive jurisdiction and venue for any dispute arising from or related to membership in the College shall be resolved by litigation under the laws of the State of Washington, in the King County Superior Court, Kent Regional Justice Center, Kent, Washington, and shall be the exclusive jurisdiction and venue." Available at http://ncdd.com/becomeamember.php; (CP 407)

In Respondents pleading to the District Court on its motion to dismiss/transfer, they argued in part forum non conveniens and stated that Washington State was an inconvenient forum that would place a hardship on them, and argued for transferring the case to Alabama.

> "In short there is not one scrap of paper or one potential witness in this case (including Plaintiff herself) located in Washington and **it will be extremely burdensome for everyone involved for this case to be litigated in Washington**.

> Conversely, all of the documents are located in Alabama, and the person with actual personal knowledge regarding those books and records is located in Alabama as well. Thus, the convenience factors weigh strongly in favor of this litigation taking place in Alabama, not Washington." (CP 059)

This was, in effect, a fraud upon the court because Respondents' knew that they had already required Appellant to agree to Washington State court as the forum and Washington law that the claims would be decided under Washington law. They merely made this argument because they wanted to make it inconvenient for Appellant's attorney in the hope that she would give up her case.

As the following points and authorities set forth, The King County court in Washington is the only proper forum for this case and Washington law is the proper legal authorities controlling this case as Respondent's have purposefully availed themselves to the jurisdiction of Washington State court

V.
ARGUMENT/ POINTS AND AUTHORITIES
A.
STANDARDS OF REVIEW

A motion to dismiss based upon subject matter jurisdiction is reviewed de novo. See *Todric Corp. v. Dep't. of Revenue*, 109 Wn. App. 785, 788 n. 2 (2002); and for a motion to dismiss based upon personal jurisdiction, the standard is also de novo.

See *MBM Fisheries, Inc. v. Bollinger Mach. Shop & Shipyard, Inc.*, 60 Wn. App. 414, 418 (1991). A de novo standard of review applies to all questions relating to the forum selection clause because they are questions of law. See *Dix v. ICT Group, Inc.*, 160 Wn.2d 826, 833-34 (2007). The same standard applies to choice-of-law provisions. See *State v. Whelchel*, 97 Wn. App. 813, 817 (1997), "Review of a trial court's choice of law decision, its interpretation, and its application to the facts of the case is de novo."

B.

THE DISTRICT COURT'S FAILURE TO RENDER ANY REASONED DECISION OR ANY SHORT EXPLANATION FOR ITS ORDER IS CAUSE TO REVERSE AND REMAND THE CASE

The District Court has made it difficult to render a decision on appeal because it made no "reasoned decision", or even a short explanation for the decision in its order, while stating orally at the hearing that it believed Washington State had no personal jurisdiction over Defendant because the wrong alleged did not occur in Washington. (CP 340-381. 421) Properly, this court should decide if the order is so devoid of reasoning that it can deem the order void. See *Gov't Employees Ins. Co. v. Dizol*, 133 F.3d 1220, 1225 (9th Cir.1998), "[t]he district court left us with no reasoned decision to review, and no

basis upon which to evaluate its exercise of discretion, thereby making it impossible for us to do our judicial duty. Where, as here, a district court does not explain its reasoning, we must remand to that court to reconsider its decision and to set forth its reasons for whatever decision it reaches, so that we can properly exercise our powers of review." See also *Couveau v. American Airlines, Inc.*, 218 F.3d 1078, 1081 n. 3 (9th Cir. 2000), "Appellate review is a particularly difficult process when there is nothing to review,"

The transcripts of the case indicate that the District Court granted the motion because: 1) No injury or unlawful act occurred in Washington and the Plaintiff does not live or work in Washington; 2) No affect on trade in Washington is pled under the CPA; and 3) No significant injury pled under the Washington State Act Against Discrimination, (RP 15-16)

C.

BY RESPONDENT INCORPORATING IN WASHINGTON, THEY HAVE SUBMITTED TO THE JURISDICTION OF ITS COURTS FOR RESOLUTION OF CIVIL DISPUTES

Respondent's claimed Washington is a forum non conveniens. It was the Respondent's own choice for purposes they have not disclosed to incorporate in the State of Washington. Respondent's

President is listed as being domiciled in King County, and its agent for service of process is in Thurston County. See Respondent's Secretary of State Corporation status page, available at http://www.sos.wa.gov/corps/search_detail.aspx?ubi=601646197. By choosing to incorporate in Washington, Defendants are a legal entity of this state, are subject to its personal jurisdiction, and may be sued here. See RCW 4.12.025

> (1) An action may be brought in any county in which the.... (1) An action may be brought in any county in which the defendant resides, or, if there be more than one defendant, where some one of the defendants resides at the time of the commencement of the action. For the purpose of this section, the residence of a corporation defendant shall be deemed to be in any county where the corporation: (a) Transacts business; (b) has an office for the transaction of business; (c) transacted business at the time the cause of action arose; **or (d) where any person resides upon whom process may be served upon the corporation**.

Further, while RCW 23B.15.010(1) states that a corporation "may not transact business in this state until it obtains a certificate of authority from the secretary of state', transacting business does not include litigation. RCW 23B.15.010(2)(a); RCW 23B.15.010(2)(h). Here, Respondent does not need to do any business in the state, but still may be incorporated here, and may sue and be sued here, and personal jurisdiction exists

by fact of their incorporation. See also Title 28 U.S.C. § 1332 (c), "for diversity purposes, a corporation is a citizen of the State of incorporation".

Respondents cannot legitimately claim forum non conveniens in a state that they chose and elected to incorporate in, and subjected its own personal jurisdiction to. "A party's incorporation in a state is a contact sufficient to allow the parties to choose that state's law to govern their contract." *Nedlloyd Lines B.V. v. Superior Court*, 3 Cal.4th 459, 467 (Cal. 1992); accord, *Carlock v. Pillsbury Co.*, 719 F. Supp. 791, 807-808 (Minn.D.C. 1989); *Ferrofluidics Corp. v. Advanced Vacuum Components, Inc.*, 968 F.2d 1463, 1467-68 (1st Cir. 1992); *Hale v. Co-Mar Offshore Corp.*, 588 F. Supp. 1212, 1215 (W.D.La. 1984). *In re Falk*, 2 B.R. 609, 614 n. 17 (Bankr.D.N.J. 1980); See also Restatement (Second) Conflicts of Laws, § 187 comment f (1971), [domicile of party satisfies "reasonable relation" test].

While Washington has yet to adopt this principal of incorporation conferring jurisdiction in a state, this court should properly do so in this case as a matter of first impression. Based on that holding, Respondent's claim of forum non conveniens is frivolous based upon their incorporation choice.

D.

RESPONDENT'S ADHESIVE AGREEMENT FORUM SELECTION AND CHOICE OF LAW PROVISIONS ARE LEGALLY ENFORCEABLE AND BINDING, CONSTITUTE PERSONAL AVAILMENT TO THIS JURISDICTION, AND WITH KING COUNTY COURT AND WASHINGTON LAW PROPERLY DECIDING ALL OF THE CLAIMS

It would be a mockery of forum selection clauses if the drafting party of a forum selection clause later rescinds that agreement and claims forum nonconveniens; especially where it is an adhesive, "take it or leave it" contract that results in a "Hobson's Choice."[1] That is what Respondent has done in his case in order to avoid having to answer to this lawsuit. They have decided to disavow their own agreement and treat it as the "elephant in the living room" and refuse to even respond to the fact of its existence. They went forward in arguing facts completely contrary to that agreement solely because they wanted to use it to get the case dismissed. Here are those remarkable words:

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[1] A Hobson's choice comes from Thomas Hobson, an English liveryman who required every customer to choose the horse nearest the door or none at all. Webster's Ninth New Collegiate Dictionary 574 (1985). A Hobson's choice is thus an apparently free choice when there is no real alternative. See *Wang v. Reno*, 81 F.3d 808, 813 n. 5 (9th Cir. 1996).

> "In short there is not one scrap of paper or one potential witness in this case (including Plaintiff herself) located in Washington and it will be extremely burdensome for everyone involved for this case to be litigated in Washington."
> (CP 059)

The law is clear that absent any of the established defenses to contracts, forum selection and choice-of-law provisions are to be fully enforced.

1. Respondent's Forum Selection Clause is Enforceable

Here, the unusual situation is the Respondents created and adhered Appellant to their forum selection clause, and they now disavow it because that seems to be their best way to get the case dismissed. Personal jurisdiction, unlike subject matter jurisdiction, may be conferred by agreement. See *Voicelink Data Service, Inc. v. Datapulse, Inc.*, 86 Wn. App. 613, 620 (1997). A party waives any claim of lack of personal jurisdiction if, "before the court rules, he or she asks the court to grant affirmative relief, or otherwise consents, expressly or impliedly, to the court's exercising jurisdiction." *Marriage of Steele*, 90 Wn. App. 992, 997-98 (1998). Affirmative relief is defined as relief for which the defendant "might maintain an action independently of plaintiff's

claim and on which he might proceed to recovery." *Grange Ins. Assn. v. State*, 110 Wn.2d 752, 765-66 (1988).

When genuine factual issues are raised as to personal jurisdiction, it is appropriate for the district court to hold a Rule 12(b)(3) motion in abeyance until an evidentiary hearing on the disputed facts. See *Murphy v. Schneider National, Inc*, 362 F.3d 1133, 1139 (9th Cir. 2004), citing to Fed.R.Civ.P.12(d) (permitting pre-trial "hearing[s]". The pleadings need not be accepted as true. See *Richards v. Lloyd's of London*, 135 F.3d 1289, 1292 (9th Cir. 1998). No such evidentiary hearing was heard here, and the District Court accepted Respondent's facts by declaration at face value.

Forum selection clauses are prima facie valid. See *Kysar v. Lambert*, 76 Wash.App. 470, 484-85 (1995), *Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 10 (1972), "The correct approach for a district court faced with a challenge to such a clause, is to enforce it unless the objecting party can make a strong showing that the forum selection clause is invalid, or that its enforcement would be unreasonable or unjust." *Id.* at 15. "In general, a forum selection clause may be enforced even if it is in a standard form consumer contract not subject to negotiation." *Dix*, 160 Wn.2d at 832, citing to *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 589-95

(1991). "[E]nforcement of forum selection clauses serves the salutary purpose of enhancing contractual predictability." *Voicelink*, 86 Wn. App. at 617, citing to *Carnival Cruise Lines*, 499 U.S. at 593-94. Additionally, such clauses may reduce the costs of doing business, thus resulting in reduced prices to consumers. *Dix*, 160 Wn.2d 834. *Carnival Cruise Lines*, 499 U.S. at 594. "When the parties have agreed on a forum, the trial court must enforce the agreement unless the party objecting to the chosen forum can establish that enforcing it would be "unreasonable and unjust." *Voicelink*, 86 Wash.App. at 617-18. The *Bremen* court recognized three reasons that would make enforcement of a forum selection clause unreasonable: (1) "if the inclusion of the clause in the agreement was the product of fraud or overreaching"; (2) "if the party wishing to repudiate the clause would effectively be deprived of his day in court were the clause enforced"; and (3) "if enforcement would contravene a strong public policy of the forum in which suit is brought." *Richards*, 135 F.3d at 294, citing and quoting *Bremen*, 407 U.S. at 12-13, 15, 18.

Thus, under Washington law, a forum selection clause will defeat a forum non conveniens argument, especially whereas

here, the forum selection clause is an adhesive contract drafted by the party who now attempts to rescind its own prior mandate.

2. Respondent's Choice-of-Law Provision is Equally Enforceable

"A choice of law clause or proper law clause is a term of a contract in which the parties specify that any dispute arising under the contract shall be determined in accordance with the law of a particular jurisdiction." *Whelchel*, 97 Wn. App. at 817. Respondent's choice-of-law provision satisfies the jurisdictional requirement of "purposeful availment". See *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 840 (9th Cir. 1986), "Making the forum state's law the governing law under the contract also meets the purposeful availing test"; accord, *Gates Learjet Corp. v. Jensen*, 743 F.2d 1325, 1331 (9th Cir. 1984). Contractual choice-of-law clauses are routinely enforced, particularly when the jurisdiction selected has some nexus with the action. See *Northrop Corp. v. Triad Int'l Marketing S.A.*, 811 F.2d 1265, 1270 (9th Cir. 1987). The policy in favor of recognizing parties' contractual choice-of-law clauses is also generally considered to be strong. See *Paracor Finance, Inc. v. Gen. El. Cap. Corp.*, 96 F.3d 1151, 1165,

n. 17 (9th Cir. 1996). "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." *Nedlloyd Lines*, 3 Cal.4th at 468. Contract choice-of-law provisions reinforce the "[d]eliberate affiliation with the forum state and the reasonable foreseeability of possible litigation there." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 482 (1985).

Restatement (Second) Conflict of Laws § 187(1) (1971) provides the rule for conflict of laws problems in which the parties have made an express contractual choice of law. Section 187 reads in significant part:

> "(2) The law of the state chosen by the parties to govern their contractual rights and duties will be applied, even if the particular issue is one which the parties could not have resolved by an explicit provision in their agreement directed to that issue, unless either
> (a) the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice, or
> (b) application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and which, under the rule of § 188, would be the state of the applicable law in the absence of an effective choice of law by the parties."

Washington law adopts Restatement Section 187. "We adopt section 187 as the law of Washington when resolving conflict of laws issues in which the parties have made an express contractual choice of law to govern their contractual rights and duties. We apply section 187 here to decide whether the parties' contractual choice of Washington law is effective." *Erwin v. Cotter Health Ctrs. Inc.*, 161 Wn.2d 676, 694 (2007). "When parties dispute the effectiveness of a choice of law provision, we will engage in a conflicts analysis only if the disputing party can demonstrate an actual conflict between the law or interests of the two states." *Id.* at p. 692. "The law of the state chosen by the parties to govern their contractual rights and duties will be applied if the particular issue is one which the parties could have resolved by an explicit provision in their agreement directed to that issue." *O'Brien v. Shearson Hayden Stone, Inc.*, 90 Wn.2d 680, 685 (1978). "We interpret contract provisions to render them enforceable whenever possible." *Patterson v. Bixby*, 58 Wn.2d 454, 459 (1961). "[W]e generally enforce contract choice of law provisions." *McKee v. AT & T Corp.*, 164 Wn.2d 372, 384 (2008). "To effectively void a choice of law provision, a court must find that the chosen state has no substantial relationship to the parties or

that the application of the chosen law would be contrary to a fundamental policy of Washington. *Erwin*, 161 Wn.2d at 698.

Here, Respondent mandated the choice of law provision on Plaintiff as a member through its Governing Law clause on its website. Respondent is a Washington corporation. Enforcing Respondent's choice of law clause would be proper because Respondent has an absolute substantial relationship with the State of Washington, and nothing in the clause is contrary to public policy of Washington.

3. King County Courthouse is the Proper Forum and Washington Law is the Proper Controlling Authority for the Case at Bar and Cannot be Unilaterally Rescinded

Pursuant to Respondent's forum selection clause, Washington is the proper jurisdiction for this case and it must be enforced.

> 8. GOVERNING LAW AND JURISDICTION. "Membership in the College shall be governed by the laws of the State of Washington. Exclusive jurisdiction and venue for any dispute arising from or related to membership in the College shall be resolved by litigation under the laws of the State of Washington, in the King County Superior Court, Kent Regional Justice Center, Kent, Washington,

and shall be the exclusive jurisdiction and venue."
(CP 407)

This forum selection and choice-of-law provision leaves no wiggle room as to where Respondent intended as their forum for the case to be heard or the law upon which it would be decided. Respondent may not now disavow their own unilaterally drafted forum selection and choice-of-law contract in order to avoid a lawsuit. If the Respondents want to not hold themselves to their own words, they should seek a rescission by mutual assent, not pretend that they never made its members to agree to such a requirement for jurisdiction and controlling law. See *Higgins v. Stafford*, 123 Wn.2d 160, 166 (1994). Appellant does not agree to do so here, so their forum selection and choice-of-law provisions control in this case.

E.

RESPONDENT CANNOT CLAIM FORUM NON-CONVENIENS TO A FORUM AND CHOICE OF LAW THAT THEY SELECTED AND COMPELLED ON APPELLANT

Jurisdiction is a matter of a court's power and authority to act, and may exist in courts that are not the proper venue. See *Dougherty v. Dep't of Labor & Indus.*, 150 Wn.2d 310, 315-16 (2003). Personal jurisdiction, unlike subject matter jurisdiction, may be conferred by agreement. *Voicelink*, 86 Wn. App. at 620. Defendants have

proffered no choice of forum agreement that states they could not be sued in the State of Washington where they are incorporated. A plaintiff has the original choice to file his or her complaint in any court of competent jurisdiction. See *Baker v. Hilton*, 64 Wn.2d 964, 965 (1964), "the choice lies with the plaintiff in the first instance". Courts generally do not interfere with the plaintiff's choice of forum where jurisdiction has been properly asserted. See *Johnson v. Spider Staging Corp.*, 87 Wn.2d 577, 579 (1976), "`the plaintiff's choice of forum should rarely be disturbed'" (quoting *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947)).

1. General Forum Non Conveniens Law

Washington's statute forum conveniens law is pursuant to RCW 26.27.261. "The doctrine of forum non conveniens grants a court the discretionary power to decline a proper assertion of its jurisdiction "when the convenience of the parties and the ends of justice would be better served if the action were brought and tried in another forum." *Gulf Oil*, 330 U.S. at 508. Essentially, the doctrine limits the plaintiff's choice of forum to prevent him or her from "`inflicting upon [the defendant] expense or trouble not necessary to [the plaintiff's] own right to pursue his remedy.'" *Myers v. Boeing Co.*, 115 Wn.2d 123, 128 (1990).

The doctrine "is based on the inherent power of the courts to decline jurisdiction in exceptional circumstances." *Paper Operations Consultants Int'l, Ltd. v. S.S. Hong Kong Amber*, 513 F.2d 667, 670 (9th Cir. 1975). "The doctrine of forum non conveniens is a drastic exercise of the court's 'inherent power' because, unlike a mere transfer of venue, it results in the dismissal of a plaintiffs case. The harshness of such a dismissal is especially pronounced where, as here, the district court declines to place any conditions upon its dismissal. Therefore, we have treated forum non conveniens as 'an exceptional tool to be employed sparingly,' and not a 'doctrine that compels plaintiffs to choose the optimal forum for their claim.' " *Dole Food Co. v. Watts*, 303 F.3d 1104, 1118 (9th Cir. 2002). Washington has adopted the *Gulf Oil* factors in *Johnson*, 87 Wn.2d at 579-80.

"Before invoking the doctrine of forum non conveniens to dismiss a case, a court must examine: (1) whether an adequate alternative forum exists, and (2) whether the balance of private and public interest factors favors dismissal. *Piper Aircraft v. Reno*, 454 U.S. 235, 250, 254 n. 22 (1981); *Myers,* 115 Wn.2d at 128-30. An alternative forum is deemed adequate if: (1) the defendant is amenable to process there; and (2) the other jurisdiction offers a

satisfactory remedy. *Piper*, 454 U.S. at 250, 254 n. 22. An alternative forum ordinarily exists when defendants are amenable to service of process in the foreign forum. *Id.* A "dismissal on grounds of forum non conveniens may be granted even though the law applicable in the alternative forum is less favorable to the plaintiffs chance of recovery," but an alternate forum offering a "clearly unsatisfactory" remedy is inadequate. *Id.* "The standard to be applied [to a motion for dismissal on the ground of forum non conveniens] is whether . . . defendants have made a clear showing of facts which . . . establish such oppression and vexation of a defendant as to be out of proportion to plaintiff's convenience, which may be shown to be slight or nonexistent." *Cheng v. Boeing Co.*, 708 F.2d 1406, 1410 (9th Cir. 1983). A defendant bears the burden of demonstrating an adequate alternative forum, and that the balance of private and public interest factors favors dismissal. See *Dole Food Co.*, 303 F.3d at 1118. If the court determines that the alternative jurisdiction offers a more convenient forum for the litigation of the case, then it may dismiss the action "`subject to a stipulation that the defendant submit to jurisdiction in a more convenient forum.'" *Myers*, 115 Wn.2d at 128.

"The effect of *Piper Aircraft* is that a foreign forum will be deemed adequate unless it offers no practical remedy for the plaintiffs

complained of wrong." *Lueck v. Sundstrand Corp.*, 236 F.3d 1137, 1144 (9th Cir. 2001). See also *Leetsch v. Freedman*, 260 F.3d 1100, 1103 (9th Cir. 2001), "The foreign court's jurisdiction over the case and competency to decide the legal questions involved will also be considered. We make the determination of adequacy on a case by case basis, with the party moving for dismissal bearing the burden of proof."

The ultimate question to be decided in determining whether the doctrine of forum non conveniens is applicable is whether " `the forum chosen by the plaintiff is so completely inappropriate and inconvenient that it is better to stop the litigation in the place where brought and let it start all over again somewhere else'" *Norwood v. Kirkpatrick*, 349 U.S. 29, 31 (1955). The determination is entrusted to the sound discretion of the trial court. See *Papers Op.* 513 F.2d at 670. The defendant bears the burden of proving the existence of an adequate alternative forum." *Lueck*, 236 F.3d at 1142.

2. Washington is Not an "Inconvenient Forum" for Respondent

Respondent claimed forum nonconveniens based upon their two clerical employees being based in Alabama. Respondent knows that the people who make the decisions on testing and on who obtains certification are spread throughout the county.

Whereas here, Respondent, a Washington corporation, has drafted a forum selection and choice-of-law provisions and is claiming forum nonconveniens, there is no case where this issue has been reviewed by a Washington court. However, Washington courts have held that a court must consider other factors that would impose a harsh ability to litigate before finding a Washington corporation to be an inconvenient forum in the State of Washington. See *Sales v. Weyerhaeuser Co.*, 163 Wn.2d 14, 25 (2008), ["doctrine of forum non conveniens permits a court to consider the effect of removal to another jurisdiction on the convenience of the litigation in the alternative forum. We further hold that the trial court in this case abused its discretion in applying an erroneous view of the law that prevented consideration of the effect of the MDL on its determination that Arkansas state court offered a more convenient forum than Washington."] It should also be noted that the *Sales* case did not involve a forum selection or choice-of-law provision at issue, as is the case here.

Most imperative here, Respondent is a Washington Corporation and its president resides here. Their forum selection and choice-of-law provisions have mandated that any litigation

arising from membership or its certification process must be filed in King County, Washington and decided under Washington law.

VI.

CONCLUSION

Based on the foregoing, this court should reverse the dismissal of this case based upon personal jurisdiction and forum nonconveniens, and remand for a trial on the merits.

Dated this 31 day of March, 2013

Okorie Okorocha, Esq.

Attorney for Appellant

Deandra Grant

PROOF OF SERVICE

CASE #: 69691-2-I
Deandra Grant, App. vs. National College for DUI Defense, Inc., Resp.

The Court of Appeals of the State of Washington, Division One

ON April 17, 2013, I SERVED THE APPELLANTS OPENING BRIEF ON ALL COUNSEL AT THE ADDRESSES BELOW:

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BY U.S. MAIL – BY DEPOSITING THE BRIEF IN AN ENVELOPE WITH COMPLETE POSTAGE FULY PREPAID IN A MAILBOX AT THE LOCAL POST OFFICE.

I AM OVER THE AGE OF 18 AND NOT A PARTY TO THE INSTANT ACTION. I AM A RESIDENT OF LOS ANGELES COUNTY IN THE STATE OF CALIFORNIA. MY BUSINESS ADDRESS IS 3940 LAUREL CANYON BLVD., SUITE 1038, STUDIO CITY, CA 91604

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATES OF CALIFORNIA, WASHINGTON AND THE UNITED STATES, THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED THIS 17TH DAY OF APRIL, 2013.

OKORIE OKOROCHA