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**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA**

<b>COZAD TRAILERS SALES, LLC,</b>	)	<b>CV F 10 – 0668 AWI GSA</b>
	)	
<b>Plaintiff,</b>	)	<b>ORDER ON PLAINTIFFS’</b>
	)	<b>MOTION TO FILE SUR-</b>
<b>v.</b>	)	<b>REPLY TO DEFENDANTS’</b>
	)	<b>MOTION TO DISMISS OR</b>
<b>PACIFIC COAST TRAILERS, LLC, a</b>	)	<b>FOR CHANGE OF VENUE</b>
<b>Washington limited liability company;</b>	)	
<b>RELIANCE TRAILER CO., LLC, a</b>	)	
<b>Washington limited liability company;</b>	)	
<b>RELIANCE TRAILER</b>	)	
<b>MANUFACTURING, a California</b>	)	
<b>corporation; REDWOOD RELIANCE</b>	)	
<b>SALES COMPANY, a California</b>	)	
<b>corporation; BRIAN LING, an individual;</b>	)	
<b>DONALD K. LING, an individual; and</b>	)	
<b>JOSEPH MAYO, an individual,</b>	)	
	)	
<b>Defendants.</b>	)	
	)	

This is an action for trademark infringement under the Lanham Act wherein the main issue in contention is ownership of the “RELIANCE” trademark (hereinafter, the “Mark”). The issue immediately in dispute is whether the proper forum for this action lies in the Eastern District of California or in the Eastern District of Washington where Pacific Coast Trailers, LLC (“Pacific Coast”), a defendant in this action, first filed a suit in the Eastern District of Washington against the plaintiff in this action, Cozad Trailers Sales, LLC (“Cozad” or “Plaintiff”).

On April 26, 2010, two defendants in this action, Pacific Coast Trailers (“Pacific

1 Coast”) and Joseph Mayo (“Mayo”) (collectively, “Defendants”) moved to dismiss this action  
2 for lack of personal jurisdiction or, in the alternative, to transfer venue to the Eastern District  
3 of Washington. Doc. # 7. Cozad filed its opposition on May 21, 2010, and Pacific Coast and  
4 Mayo filed a reply on June 1, 2010.<sup>1</sup> On June 10, 2010, Cozad filed a request for leave to file  
5 a sur-reply. Cozad’s primary contention is that Defendants’ reply brief contains assertions of  
6 fact and legal arguments not presented in their original moving papers. In particular, Cozad’s  
7 request for leave to file a sur-reply objects to a number of factual allegations or legal  
8 contentions that were presented for the first time in Defendants reply brief that appear to  
9 pertain to the ultimate issue of ownership of the Mark.

10 The court has received courtesy copies of both Cozad’s proposed sur-reply and its  
11 objections to the additional facts Defendants set forth in their reply brief. As of this writing,  
12 Defendants have submitted no opposition to Cozad’s request for leave to file a sur-reply. The  
13 court agrees that Defendants’ reply brief does contain both allegations of fact and contentions  
14 of law that were not presented in Defendants’ initial moving papers. The court will therefore  
15 grant Cozad’s request to file sur-reply in order to respond to new allegations or contentions  
16 asserted by Defendants. The court has not yet, however, determined that some or any of the  
17 new alleged facts or legal contentions are relevant to the questions of either jurisdiction or  
18 venue. Until such time as the court may determine that any, some, or all of the new facts or  
19 legal contentions put forward by Defendants in their reply brief have relevance to their  
20 arguments concerning jurisdiction or venue, the court will hold Cozad’s objections in  
21 abeyance.

22  
23 THEREFORE, in accord with the forgoing, it is hereby ORDERED that Cozad may  
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25 <sup>1</sup> On May 21, 2010, defendants Reliance Trailer Co., Reliance Trailer Manufacturing, Redwood  
26 Reliance Sales Co. Brian Ling, and Donald K. Ling filed a separate motion to dismiss or transfer venue to the  
27 Eastern District of Washington (the “May 21 Motion,” Doc. # 20). Cozad filed its opposition to the May 21 Motion  
on June 14, 2010. No reply brief has been filed as of this writing. For purposes of this order only, the court uses the  
term “Defendants” here to refer to Pacific Coast and Mayo.

1 file and serve its proposed sur-reply to Defendants' reply to the motion to dismiss or for  
2 change of venue not later than seven (7) days from the date of service of this order.

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4 IT IS SO ORDERED.

5 **Dated: June 15, 2010**

/s/ Anthony W. Ishii  
CHIEF UNITED STATES DISTRICT JUDGE

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