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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH CREAM, et al.,  
Plaintiffs,  
v.  
NORTHERN LEASING SYSTEMS, INC.,  
et al.,  
Defendants.

Case No. [15-cv-01208-MEJ](#)  
**ORDER DEFERRING RULING ON  
MOTION TO DISMISS AND  
REQUESTING AUTHENTICATION OF  
DOCUMENTS**  
Re: Dkt. No. 16

**INTRODUCTION**

Plaintiffs Joseph Cream, Jr., Amanda Cream, Cathy Cream, and Fernando Carillo (“Plaintiffs”) bring this action against Defendant Northern Leasing Systems, Inc. and related Defendants,<sup>1</sup> alleging that they fraudulently induce small business owners like Plaintiffs to lease credit card machines under undisclosed and onerous terms. First Am. Compl. (“FAC”) at 1, Dkt. No. 13. Defendants Northern Leasing Systems, Inc., Lease Finance Group, LLC, CIT Financial USA, Inc., Lease Source, Inc. and Jay Cohen (collectively, “Defendants”) move to dismiss the FAC pursuant to Federal Rule of Procedure 12(b)(3) on the ground that the action is improperly venued in this Court, as the leases referenced in the FAC contain forum selection clauses requiring that actions be filed in New York (and one lease requires filing in Illinois). Dkt. No. 16 (“Mot.”). Plaintiffs filed an Opposition (Dkt. No. 23), and Defendants filed a Reply (Dkt. No. 28). The Court finds this matter suitable for disposition without oral argument and **VACATES** the hearing. *See* Fed. R. Civ. P. 78(b); Civil L.R. 7-1(b). Having considered the parties’ positions, relevant legal authority, and the record in this case, the Court **DEFERS** ruling on Defendants’ Motion at this time for the reasons discussed below.

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<sup>1</sup> Plaintiffs named as Defendants Northern Leasing Systems, Inc; Lease Finance Group LLC; EVO Merchant Services, LLC; EVO Payments International, LLC; Allen & Associates; Lease Source Inc.; Lease Source-LSI, LLC; CIT Financial USA, Inc; Jay Cohen; Peter S Cohen; Ron G Arrington; and Does 1-100.

1 **DISCUSSION**

2 Defendants argue that this action must be dismissed or transferred because each of the  
3 leases referenced in Plaintiffs’ FAC require that actions relating to those agreements be filed in  
4 jurisdictions other than California. Mot. at 1. Defendants thus request that the Court take judicial  
5 notice of 14 lease agreements, which they assert are the same agreements specifically referenced  
6 by number in Plaintiffs’ FAC. Reply at 1; Req. for Judicial Notice, Dkt. No. 16-4; *see also id.*,  
7 Exs. A-N. Plaintiffs object, arguing that judicial notice is not appropriate for these documents  
8 under Federal Rule of Evidence 201, which permits judicial notice only of documents capable of  
9 immediate and accurate determination by resort to easily accessible sources of indisputable  
10 accuracy. *See* Dkt. No. 23-1. Plaintiffs also challenge the validity of these agreements, alleging  
11 that they did not receive a copy of their agreements and that they were unaware of the existence of  
12 the additional pages or of the onerous terms contained in the agreements. FAC at 6-9.

13 While the Court agrees that the documents are not judicially noticeable, the Court may  
14 nevertheless consider them under certain circumstances. First, while generally a court may not  
15 look beyond the four corners of a complaint in ruling on a Rule 12(b) motion, there is an exception  
16 for documents incorporated into the complaint by reference. *See Swartz v. KPMG LLP*, 476 F.3d  
17 756, 763 (9th Cir. 2007) (per curiam); *Lee v. City of L.A.*, 250 F.3d 668, 688-89 (9th Cir. 2001).  
18 Under the doctrine of incorporation by reference, the Court may consider documents whose  
19 contents are alleged in the complaint, provided the complaint “necessarily relies” on the  
20 documents or contents thereof, the document’s authenticity is uncontested, and the documents’  
21 relevance is uncontested. *Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1038 (9th Cir. 2010);  
22 *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) (“Even if a document is not attached to  
23 a complaint, it may be incorporated by reference into a complaint if the plaintiff refers extensively  
24 to the document or the document forms the basis of the plaintiff’s claim.”). “The defendant may  
25 offer such a document, and the district court may treat such a document as part of the complaint,  
26 and thus may assume that its contents are true for purposes of a motion to dismiss under Rule  
27 12(b)(6).” *Id.* Although the pending Motion is not made under Rule 12(b)(6), the same principles  
28 apply, as Plaintiffs’ FAC refers to the lease agreements but does not include the actual documents.

1 As such, Defendants should be permitted to offer these documents for the Court’s consideration.

2 Second, Courts regularly accept such evidence in determining motions to transfer based on  
3 forum selection clauses. *See, e.g., T & M Solar & Air Conditioning, Inc. v. Lennox Int’l Inc.*, \_\_\_  
4 F. Supp. 3d \_\_\_, 2015 WL 1289497, at \*3-5 (N.D. Cal. Mar. 20, 2015); *Monastiero v. appMobi,*  
5 *Inc.*, 2014 WL 1991564, at \*1 (N.D. Cal. May 15, 2014); *Bayol v. Zipcar, Inc.*, 2014 WL  
6 4793935, at \*1 (N.D. Cal. Sept. 25, 2014) (all reviewing and considering the agreements that  
7 contained the allegedly applicable forum-selection clause).

8 That said, Defendants submitted the lease agreements only through a request for judicial  
9 notice, with no affidavit or declaration authenticating these documents. Defendants state that such  
10 declarations “appear[] to be an unnecessary waste of judicial resources and time.” Reply at 1.  
11 Nonetheless, in this District, Civil Local Rule 7-5 requires that factual contentions made in  
12 support of any motion “must be supported by affidavit or declaration” and “evidentiary matters  
13 must be appropriately authenticated by an affidavit or declaration.” Accordingly, Defendants must  
14 properly authenticate these lease agreements to support their Motion.

15 **CONCLUSION**

16 In light of the foregoing, the Court currently **DEFERS** ruling on Defendants’ Motion to  
17 Dismiss. To support their Motion, Defendants must file the lease agreements as properly  
18 authenticated documents in accordance with Local Rule 7-5 **by July 10, 2015**. Failure to timely  
19 file the authenticated documents will result in denial of Defendants’ Motion without prejudice.  
20 Following Defendants’ filing of such authenticated documents, Plaintiffs will have one week (i.e.,  
21 **by July 17, 2015**) to assert any objections to the Defendants’ evidence before the Court makes its  
22 ruling on Defendants’ Motion.

23 **IT IS SO ORDERED.**

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25 Dated: June 26, 2015

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28 MARIA-ELENA JAMES  
United States Magistrate Judge