



selection clause for the State of Washington. The Site Usage Agreement's forum selection clause provides as follows:

**12.2 Contracting Entity/Governing Law/Jurisdiction.** This Agreement shall be governed by the internal substantive laws of the State of Washington, without respect to its conflict of laws principles. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. You hereby attorn to and agree to submit to the exclusive personal jurisdiction of the federal and state courts located in King County, Washington for any action relating to this Agreement.

Site Usage Agreement, § 12.2.

On July 18, 2019, Plaintiff successfully bid on a 2013 Peterbilt Tractor (the "Tractor"). Subsequently, Plaintiff also successfully bid on a 2000 Manac flatbed trailer (the "Trailer"). On November 30, 2020, Plaintiff filed this action in this Court in the State of South Carolina against IronPlanet in connection with Plaintiff's purchase of the Tractor and the Trailer. Plaintiff brings causes of action for fraud, breach of merchantability, larceny, breach of expressed warranty, breach of contract, breach of contract accompanied by a fraudulent act, negligent misrepresentation, negligence, and violation of the South Carolina Automobile Dealer's Act.

#### LEGAL STANDARD

"A forum selection clause is *prima facie* valid and enforceable when made in arms-length transactions by sophisticated business entities absent some compelling and countervailing reason." *Atlantic Floor Services, Inc. v. Wal-Mart Stores, Inc.*, 334 F. Supp. 2d 875, 877 (D.S.C. 2004) (citation omitted). *See also Minorplanet Sys. USA Ltd. v. Am. Aire, Inc.*, 368 S.C. 146, 150 n. 1, 628 S.E.2d 43, 45 n. 1 (2006) ("Under South Carolina law, a consent to jurisdiction clause is generally presumed valid and enforceable when made at arm's length by sophisticated business entities.") (citation omitted); *Atl. Marine Constr. Co. v. United States Dist. Court*, 571 U.S. 49, 59-60, 134 S. Ct. 568, 579 (2013) (holding that a "forum-selection clause [should] be given

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controlling weight in all but the most exceptional cases) (citation and internal quotations omitted); *Willard v. Ainsworth Game Tech., Inc.*, No. 2:19-cv-01970-RAJ, 2020 U.S. Dist. LEXIS 136458, at \*5 (W.D. Wash. July 31, 2020) (applying *Atl. Marine Constr. Co.* and upholding forum selection clause selecting Nevada as the exclusive venue for litigation). Such clauses “should be enforced unless enforcement is shown by the resisting party to be ‘unreasonable’ under the circumstances.” *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 11, 92 S.Ct. 1907, 1913 (1972). “Forum selection clauses may be considered unreasonable if: (1) their formation was induced by fraud or overreaching; (2) the complaining party ‘will for all practical purposes be deprived of his day in court’ because of the grave inconvenience or unfairness of the selected forum; (3) the fundamental unfairness of the chosen law may deprive the plaintiff of a remedy; or (4) their enforcement would contravene a strong policy of the forum state.” *Atlantic Floor Services*, 334 F. Supp. 2d at 877 (citation and internal quotations omitted).

### DISCUSSION

The Court finds that the Site Usage Agreement was entered into in an arms-length transaction by sophisticated business entities and that the forum selection clause is *prima facie* valid and enforceable. The Court further finds that Plaintiff has failed to demonstrate any compelling reason not to enforce the forum selection clause, or that its enforcement would be unreasonable. Here, Plaintiff’s allegations directly relate to the Site Usage Agreement and, thus, the agreement governs Plaintiff’s claims against IronPlanet. Because the forum selection clause therein expressly provides that the Site Usage Agreement “shall be governed by the internal substantive laws of the State of Washington. . .” and that the parties “agree to submit to the exclusive personal jurisdiction of the federal and state courts located in King County, Washington

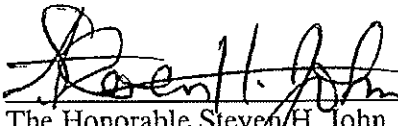
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for any action relating to [the] Agreement,” the proper jurisdiction for Plaintiff’s claims is King County, Washington.

**ORDER**

Accordingly, and based upon the foregoing, it is therefore

ORDERED, ADJUDGED AND DECREED that Defendant IronPlanet Inc.’s Motion to Dismiss is hereby granted.

  
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The Honorable Steven H. John  
Resident Circuit Court Judge  
Fifteenth Judicial Circuit

4/13/, 2021  
Conway, South Carolina

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