



September 12, 2002

Superior Court of California
County of San Mateo
500 County Center
Redwood City, CA 94063

Re: Defendant's Reply to Plaintiff's Response to Motion for Change of Venue
Hypertouch Inc. v. Data Exchange Corporation/BidVantage, Inc.
Small Claims Case No.: SCS-111805

Dear Sir or Madam:

This letter is a reply to the Plaintiff's Response dated September 3, 2002 to the Defendant's Motion for Change of Venue.

Despite the Plaintiff's attempt to try his case in this motion, the hurling of invectives and the citation of cases decided in the criminal courts, the fact remains that the ordinary rule in California civil cases is that the defendant is entitled to a trial in the county of its residence. There is a small exception made in personal injury and property damage cases where physical damage took place and the Defendant acted in the Plaintiff's county of residence, such as an auto accident. Where there is only economic damage alleged and the Defendant resides in a different county, the courts have long held that *venue* is not appropriate in the county of the Plaintiff's residence. Thus, in the case of mailing of letters, as cited in the Defendant's motion, venue is proper in the county in which the Defendant resides, in this case, Ventura County.

The Plaintiff also confuses *jurisdiction* with *venue*, and cites only cases which support the proposition that jurisdiction is proper in the place where the Plaintiff resides. Of course, jurisdiction and venue are two different analyses, and the Defendant does not assert that there is no jurisdiction in San Mateo County. That does not mean that venue is proper there.

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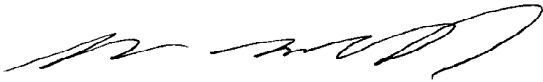
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Plaintiff's citation of an unpublished trial court decision, besides from violating almost every applicable rule of civil procedure, by its own language, addresses jurisdiction and not venue. It is completely inapplicable.

For all of the foregoing reasons, the Defendant requests the court grant this motion to determine the venue is improper and dismiss this case.

Respectfully submitted,



Sheldon Malchicoff, President
Data Exchange Corporation/BidVantage, Inc.

SM:pf
