

HORVITZ & LEVY

July 29, 2025

VIA TRUEFILING

Chief Justice Patricia Guerrero
and Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, California 94102-4797

Re: *Lathrop v. Thor Motor Coach, Inc.*
Supreme Court No. S287893

Dear Chief Justice Guerrero and Associate Justices:

We write on behalf of petitioners Thor Motor Coach, Inc., Mike Thompson RV, and U.S. Bank to request that this Court order merits briefing in a case now pending on a grant-and-hold basis—*Lathrop v. Thor Motor Coach, Inc.* (2024) 105 Cal.App.5th 808, 819 (*Lathrop*), review granted Jan. 15, 2025, S287893—so that the Court may decide recurring issues of statewide importance expressly left open in *EpicentRx, Inc. v. Superior Court of San Diego County* (July 21, 2025, S282521) __ Cal.5th __ [2025 WL 2027272] (*EpicentRx*).

This Court may dismiss review in grant-and-hold cases after the Court decides the “lead” case. (See Advisory Com. com., 23 pt. 4 West’s Ann. Codes, Rules (2017 ed.) foll. rule 8.528(b)(1).) But where the opinion in the lead case does not resolve the central issues raised in the grant-and-hold cases, this Court instead may order merits briefing and issue a separate opinion in one of the pending cases. (See, e.g., *People v. Burgos* (2024) 16 Cal.5th 1 [review granted July 13, 2022, S274743, briefing ordered Oct. 12, 2022]; *People v. Franklin* (2016) 63 Cal.4th 261 [review granted June 11, 2014, S217699, briefing ordered Oct. 29, 2014]; *Flowers v. Torrance Memorial Hospital Medical Center* (1994) 8 Cal.4th 992 [review granted July 22, 1993, S033331, briefing ordered Jan. 13, 1994].)

This Court granted review in *Lathrop* and deferred consideration pending a decision in *EpicentRx*. Both cases address whether a forum selection clause is enforceable when a party’s right under California state law to a jury trial would not apply in the selected forum. This Court’s opinion in *EpicentRx* addressed that issue. But *Lathrop* also raises the related issue whether, in the context of a case asserting unwaivable California *statutory* rights, a trial court retains discretion to enforce a forum provision in light of a defense stipulation agreeing to apply California substantive law in the agreed-to forum (the “stipulation issue”).

This Court granted review in two additional cases raising the same recurring stipulation issue, and similarly deferred consideration pending review in *EpicentRx*. (See *Hardy v. Forest River, Inc.* (2025) 108 Cal.App.5th 450 (*Hardy*), review granted Apr. 30, 2025, S289309; *The Comedy Store v. Moss Adams LLP* (2024) 106 Cal.App.5th 784 (*Comedy Store*), review granted Feb. 11, 2025, S288469, disapproved of by *EpicentRx*, *supra*, __ Cal.5th__ [2025 WL 2027272, at p. *13, fn. 7].)

In *EpicentRx*, this Court held that a forum agreement is not unenforceable simply because it requires the parties to litigate in a jurisdiction that does not afford civil litigants the same right to trial by jury as litigants in California courts enjoy. The Court reaffirmed the “modern trend” favoring the enforcement of forum selection provisions, noting that one exception to this general rule of enforceability is where enforcement would violate California public policy. Citing its prior decisions, the Court also reaffirmed that a party resisting enforcement of a forum selection clause carries the burden of demonstrating enforcement would violate California public policy.

One key issue this Court left open, however, is who bears what burden when a dispute over enforceability of a forum selection clause arises. The Court noted that some California appellate courts have adopted a framework that reverses “the usual burden of proof” and thereby requires the party seeking to enforce the forum selection provision to show that litigating in the contractually designated forum will not diminish California’s substantive rights. (See *Verdugo v. Alliantgroup, L.P.* (2015) 237 Cal.App.4th 141, 157; *America Online, Inc. v. Superior Court* (2001) 90 Cal.App.4th 1, 10; *Wimsatt v. Beverly Hills Weight etc. Internat., Inc.* (1995) 32 Cal.App.4th 1511, 1522 (*Wimsatt*).) Notably, federal courts have not agreed with this burden-shifting framework. (See, e.g., *Lee v. Fisher* (9th Cir. 2023) 70 F.4th 1129, 1143 [“plaintiff bears the burden”].) In *EpicentRx*, this Court did not consider the merits of *Wimsatt*, *America Online*, or *Verdugo*, and thus did not endorse or reject the burden-shifting framework adopted in those cases.

This Court in *EpicentRx* also declined to address the stipulation issue raised in *Lathrop*, *Comedy Store*, and *Hardy*. But that same issue is also raised in numerous pending appeals, including but not limited to: *Pelascini v. Airstream, Inc.* (May 29, 2025, A169686) 2025 WL 1537776 (*Pelascini*) [nonpub. opn.], petition for review pending, petition filed July 7, 2025, S291386; *Kim v. Airstream, Inc.* (B334720, app. pending); *Wonacott et al. v. Thor Motor Coach, Inc., et al.* (C099248, app. pending); *Emmons et al. v. Forest River RV et al.* (C100189, app. pending); *Taylor et al. v. Thor Motor Coach, Inc.* (D083730, app. pending); *Performance*

Marketing, LLC v. Thor Motor Coach (B336862, app. pending); *Diaz et al. v. Thor Motor Coach, Inc. et al.* (B339037, app. pending).

California courts and litigants need those issues resolved. Due to the prevalent use of forum selection provisions in a wide variety of industries, the sheer number of California rights that, by statute, are unwaivable, and the common practice of postdispute agreement that those rights will apply in the selected forum, the issues raised in *Lathrop*, *Comedy Store*, and *Hardy* affect countless commercial and consumer agreements. (See PFR 12–13, 27–28.) Like *Lathrop*, *Hardy* raised the stipulation issue in the context of motorhome warranties. But in *Comedy Store*, the issue was raised in the context of a financial services agreement. If unresolved, the issues raised in these cases will continue to foster uncertainty as to the enforceability of agreements in countless industries.

Lathrop provides a particularly good vehicle to address the issues that *EpicentRx* did not decide. For example, *Lathrop* held that the trial court erred in placing the burden on the plaintiffs to show enforcing the forum selection clause would diminish the plaintiff's unwaivable California rights. (*Lathrop*, *supra*, 105 Cal.App.5th at p. 812.) Accordingly, *Lathrop* squarely presents the burden-shifting issue that this Court did not address in *EpicentRx*.


In addition, *Lathrop* is a published decision that has already been relied on repeatedly to reverse trial court orders enforcing forum selection provisions. (See *Comedy Store*, *supra*, 106 Cal.App.5th at p. 791; *Hardy*, *supra*, 108 Cal.App.5th at pp. 457–458, 460, 462; see also *Pelascini*, *supra*, 2025 WL 1537776, at p. *5.¹) Trial courts are also relying on *Lathrop*. (See, e.g., *N.Z. v. Fenix International Limited* (C.D.Cal., Apr. 9, 2025, No. 8:24-CV-01655-FWS-SSC) 2025 WL 1122493, at p. *6 [nonpub. opn.].) At the same time, other appellate courts have implicitly disagreed with or distinguished *Lathrop*. (See *Chestnut Westside, LLC v. Amazon Energy LLC* (Mar. 28, 2025, F088003) 2025 WL 942838, at p. *6 [nonpub. opn.]; *In re Torres* (9th Cir. Nov. 21, 2024, No. 24-3164) 2024 WL 4851483, at p. *1 [nonpub. opn.]; see also *Kim v. Airstream, Inc.* (B334720, app. pending) [decision imminent after May 20, 2025 argument].)

¹ We cite the unpublished *Pelascini* decision not for its precedential value (see Cal. Rules of Court, rule 8.1115), but to show the recurring nature of the issues this court should resolve.

Considering the large number of appeals that raise the same forum selection issues decided in *Lathrop* and the simmering disagreement between the state and federal courts that have addressed those issues, this Court should take up *Lathrop* so that it can resolve these issues now. Without clarity, litigants and courts struggle to resolve cases, lacking guidance as to whether the burden-shifting framework adopted in the *Wimsatt* line of authority is still good law, and whether trial courts have any discretion to accept stipulations offering to apply California's unwaivable statutory law in the selected forum. Petitioners respectfully request that the Court decide these issues in *Lathrop*.

Respectfully submitted,

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cc: See attached Proof of Service

PROOF OF SERVICE

Lathrop et al. v. Thor Motor Coach, Inc. et al.
Supreme Court Case No. S287893

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 3601 West Olive Avenue, 8th Floor, Burbank, CA 91505-4681.

On July 29, 2025, I served true copies of the following document(s) described as **LETTER TO CALIFORNIA SUPREME COURT CHIEF JUSTICE PATRICIA GUERRERO AND ASSOCIATE JUSTICES** on the interested parties in this action as follows:

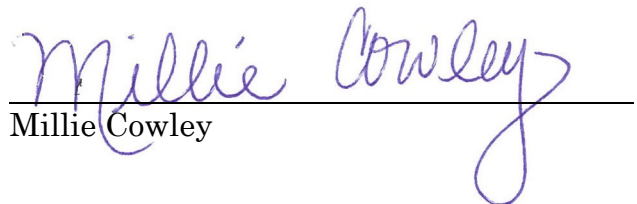
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 29, 2025, at Burbank, California.



Millie Cowley

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