SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 16
(Dept 16 is now hearing cases that were formerly in Dept 2)
Honorable Amber Rosen, Presiding

Felicia Samoy, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408.882.2270

DATE: 12-05-23 TIME: 9 A.M.

All those intending to speak at the hearing are requested to appear by video.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.
The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

TO CONTEST THE RULING: Before 4:00 p.m. today you must notify the:

(1) Court by calling (408) 808-6856 and
(2) Other side by phone or email that you plan to appear and contest the ruling
(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

TO APPEAR AT THE HEARING: The Court strongly prefers in person appearances. If you must appear virtually, please use video. To access the link, click on the below link or copy and paste into your internet browser and scroll down to Department 16.
https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml

TO SET YOUR NEXT HEARING DATE: You no longer need to file a blank notice of motion to obtain a hearing date. Phone lines are now open for you to call and reserve a date before you file your motion. If moving papers are not filed within 5 business days of reserving the date, the date will be released for use in other cases. Where to call for your hearing date: 408-882-2430 When you can call: Monday to Friday, 8:30 am to 12:30 pm

FINAL ORDERS: The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

COURT REPORTERS: The Court no longer provides official court reporters. If any party wants a court reporter, the appropriate form must be submitted. See court website for policy and forms.

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	22CV394946 Hearing: Order of Examination	Cicelyn Slade vs Paragon Home Health Care & Hospice, Inc. et al	All parties are to appear in Department 16 at 9:00 AM, either in person or via TEAMS. If all parties appear, the Court will administer the oath and the examination will take place off line. The parties are to report after the examination has been completed.
LINE 2	20CV367419 Motion: Strike	*SOLAR JUICE, INC. et al vs SHENGRUN INT'L INDUSTRY GROUP INC et al	Notice appearing proper, Plaintiff's unopposed motion to strike Defendant's answer is GRANTED for failure to conform to Code of Civil Procedure § 431.30. Plaintiff is advised that the default filed June 12, 2023, was not entered.
LINE 3	21CV386441 Hearing: Demurrer	Sean Marzola vs Berkeley Select et al	See Tentative Ruling. Court will prepare the final order.

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The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

LINE 4	23CV416455 Hearing: Demurrer	N. Charles Podaras vs Valerie Weirauch et al	Notice appearing proper, the unopposed motion of Defendants' Barry Vickrey and Marsha Dyslin Demurrer to Plaintiff's Complaint is SUSTAINED with 20 days leave to amend. The failure to file a written opposition "'creates an inference that the motion or demurrer is meritorious.'" *Sexton v. Superior Court* (1997) 58 Cal.App.4th 1403, 1410. Defendants Vickery and Dyslin shall submit the final order within 10 days.
LINE 5	21CV376478 Motion: Summary Judgment/Adjudication	Christopher Qin vs Yash Sinha	See Tentative Ruling. Court will prepare the final order.
LINE 6	23CV419244 Hearing: Motion hearings on mediation	Robert Lindblad vs Yahoo Inc. et al	Notice is not proper as no amended notice has been filed. If Plaintiff comes to the hearing, a continuance will be granted to allow for proper notice. If Plaintiff fails to appear the matter will be taken off calendar. Parties are advised that they no longer need to file a blank notice of motion to obtain a hearing date. Parties may now call and reserve a date before filing a motion by calling 408-882-2430 Monday to Friday, 8:30 am to 12:30 pm. If moving papers are not filed within 5 business days of reserving the date, the date will be released for use in other cases.

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Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.
The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

LINE 7	23CV419244 Motion: Compel	Robert Lindblad vs Yahoo Inc. et al	Notice is not proper as no amended notice has been filed. If Plaintiff comes to the hearing, a continuance will be granted to allow for proper notice. If Plaintiff fails to appear the matter will be taken off calendar.
LINE 8	23CV419244 Motion Stay	Robert Lindblad vs Yahoo Inc. et al	Notice is not proper as no amended notice has been filed. If Plaintiff comes to the hearing, a continuance will be granted to allow for proper notice. If Plaintiff fails to appear the matter will be taken off calendar.
LINE 9	21CV384705 Motion: Sanctions	Varick Partners, LLC vs Rana Rekhi et al	It does not appear notice was proper as there is no proof of service. If Defendant Mark Gibbs appears, the case may be continued to allow for proper service. If Defendant Gibbs fails to appear the matter will be taken off calendar.
LINE 10	21CV387639 Motion Joinder	Elizabeth Chung vs Altva Capital Management Limited et al	The unopposed motion is GRANTED.
LINE 11	21CV387639 Motion Stay action	Elizabeth Chung vs Altva Capital Management Limited et al	See Tentative Ruling. Altva shall submit final order within 10 days.
LINE 12	22CV408815 Motion: Withdraw as attorney	Ray Barghi vs Well Fargo Bank NA et al	It does not appear notice was proper as the court sees no amended notice of hearing date filed. Plaintiff's counsel is ordered to appear or the matter will go off calendar.

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The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

LINE 13	23CV412077 Hearing: Motion for Leave of Court to Intervene	ROBERT FUTIA vs MASTEC, INC.	While the Court is inclined to grant the unopposed motion to intervene, it does not appear that the moving party served notice on any Defendant. Moving party must appear and demonstrate whether notice was proper. If not, the motion may be continued to allow for proper notice. If moving party fails to appear, the motion will go off calendar.
LINE 14	2000-7-CV-393402 Hearing: Claim of Exemption	First Select Corporation Vs Comer Shawnette M	The Court does not see any claim of exemption filed by the debtor in the court docket. Parties are ordered to appear at the hearing. If Parties fail to appear, the matter will go off calendar.
LINE 15	2014-1-CV-269683 Hearing: Motion for Judgment per CCP664.6	Absolute Resolutions V LLC vs Sevy Intoc	It is not clear whether Plaintiff served notice of the motions date on Defendant. Plaintiff must appear or the matter will go off calendar.

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Calendar Line 3
Case Name: *Marzola v. Platinum Roofing, Inc., et al.*
Case No.: 21CV386441

According to the allegations of the second amended complaint ("SAC"), on May 8, 2015, plaintiff Sean Marzola ("Plaintiff") was hired by defendant Platinum Roofing, Inc. ("Platinum") as its Chief Operating Officer in which Plaintiff was to have no equity stake in Platinum, but would receive an annual salary of $120,000 and work 35% of a standard workweek. (See SAC, ¶ 11.) Plaintiff was made by Platinum's CEO to sign certain vendor credit applications that, unbeknownst to Plaintiff, included personal guaranties against both Plaintiff and the CEO. (See SAC, ¶ 12.) On June 30, 2016, defendant Ron Jankov ("Jankov") had Plaintiff sign an indemnification agreement concerning the personal guarantees on the credit application Plaintiff signed. (See SAC, ¶ 13.) Platinum also obtained insurance policies from Admiral Insurance Company and QBE Specialty Insurance and expressly represented that these policies specifically included negotiated carve-outs to cover any liability arising from the breach of any written or oral agreements including the guaranties. (*Id*.) Jankov expressly told Plaintiff that the insurance policies were obtained in order to protect Plaintiff specifically. (See SAC, ¶ 14.)

Within 6 months of his hire, Plaintiff's hours increased to above 35% of a standard workweek, but his wages did not increase. (See SAC, ¶ 15.) Throughout 2016 and 2017, Platinum began to default on its credit obligations. (See SAC, ¶ 16.) On December 7, 2017, Plaintiff was asked to become CEO of Platinum at an annual salary of $210,000. (See SAC, ¶ 17.) Plaintiff performed in an exemplary manner and was promised a $90,000 bonus for obtaining a bank credit that did not require a personal guarantee by the chairman. (See SAC, ¶ 18.) The bonus was never paid but Plaintiff received a raise in 2019 that was ostensibly to cover a portion of the bonus. (See SAC, ¶ 19.) The former CEO was removed as a personal guarantor on the various aforementioned vendor credit applications in November 2018. (See SAC, ¶¶ 20-21.)

In 2020, Ahern Rentals, Inc. filed a complaint against Platinum in the Superior Court of California, County of Santa Clara (Case No. 19CV352644), relating to a dispute arising from the alleged breach of a credit application secured by a personal guarantee executed by Platinum's previous owner, Michael Stephenson. (See SAC, ¶ 22.) Admiral Insurance Company interpreted the same insurance policy in question to cover the alleged breach of contract. (*Id*.)

Plaintiff expended over $85,521.02 of his own funds during the course of his employment for the purchase of building materials for Platinum for which Plaintiff was not reimbursed even though Platinum and Jankov received funds for these materials from the property owners on which work was to be done. (See SAC, ¶ 23.) In January 2019, Plaintiff's father was suffering from a serious medical condition and Plaintiff needed to care for him; however, Platinum and Jankov refused to allow Plaintiff sufficient time off to care for his ailing father. (See SAC, ¶ 24.) Throughout the final quarter of 2019, Plaintiff was having health problems directly caused by or exacerbated by the stress of Plaintiff's job, and defendants Platinum and Jankov knew of these health problems. (See SAC, ¶ 25.) From the middle of 2019 through the middle of 2020, the various venders who had personal guaranties filed at least five lawsuits against Plaintiff, and despite having executed the indemnification agreements, the defendants have not taken any action to protect Plaintiff in those lawsuits,

causing Plaintiff to incur additional expenses to defend himself. (See SAC, ¶ 26.) On November 20, 2019, Platinum went into receivership. (See SAC, ¶ 27.) On February 28, 2020, Platinum ceased operation and Plaintiff was separated from his employment. (See SAC, ¶ 28.) Plaintiff was not paid all wages due to him at the time of his separation of employment. (*Id*.)

On June 26, 2023, Plaintiff filed the SAC against Platinum, Jankov, Admiral Insurance Company, and QBE Specialty Insurance (collectively "defendants"), asserting causes of action for:

1) Failure to indemnify in violation of Labor Code § 2802 (against Platinum and Jankov);
2) Breach of written contract (indemnification agreement) (against Platinum and Jankov);
3) Unpaid wages (against Platinum and Jankov);
4) Breach of written contract (employment agreement) (against Platinum and Jankov);
5) Breach of the covenant of good faith and fair dealing (against Platinum and Jankov);
6) Violation of the California Family Rights Act (against Platinum and Jankov);
7) Violation of the Family Medical Leave Act (against Platinum and Jankov);
8) Denial of accommodation (against Platinum and Jankov);
9) Failure to engage in interactive process (against Platinum and Jankov);
10) Conversion (against Platinum and Jankov); and,
11) Breach of written contract (against Admiral Insurance Company and QBE Specialty Insurance Company).

On July 18, 2022, the Court [Hon. Hayashi] granted the substitution of Richard Jankov, as Administrator of the Estate of Ron Jankov ("Estate"), in place of defendant Ron Jankov.

Defendant Estate demurs to the SAC, arguing that: Plaintiff fails to allege sufficient facts to support the allegation that Ron Jankov was the alter ego of Platinum; the sixth, eighth and ninth causes of action lack merit because Plaintiff did not exhaust his administrative remedies; the fourth cause of action for breach of contract lacks merit because Plaintiff is not being sued in his corporate capacity; and, the first cause of action lacks merit because it is not yet ripe for adjudication.

The demurrer to the SAC on the ground that it fails to allege facts supporting alter ego liability.

Parties' arguments

Estate argues that the SAC does not allege facts sufficient to constitute a cause of action against it because "[a]ll claims against Ronald Jankov (and, in turn, the Estate) are based on the theory that he was the alter ego of Platinum and thus, is derivatively liable for its corporate debts… [n]o theory or claim imposing direct liability is asserted against Ronald Jankov (or the Estate)… [and] Marzola fails to allege sufficient facts showing (1) a unity of interest and ownership between Platinum and Ronald Jankov such that their separate personalities did not exist; and (2) an inequitable result if the acts in question are treated as those of Platinum alone." (Estate's memorandum of points and authorities in support of demurrer ("Estate's memo"), pp.4:23-27, 5:1-7.)

In opposition, Plaintiff argues that: no specific arguments are presented as against the causes of action for unpaid wages, breach of written contract (employment agreement), breach of the covenant of good faith and fair dealing, and Family Medical Leave Act; Jankov and, has liability in his personal capacity under Labor Code § 558.1 for violations of Labor Code §§ 203, 226 and 2802; under Labor Code § 244(a). (See Pl.'s opposition to demurrer ("Opposition"), p.3:2-12.)

The SAC alleges causes of action against "the employer" and alleges that the employment agreement and indemnification agreement are between Plaintiff and Platinum.

Here, the SAC alleges causes of action based on violations of the Labor Code that provide liability against employers. (See SAC, ¶ 32 (alleging that "Labor Code § 2802 provides that "[a]n employer shall indemnify his or her employee…"), ¶¶ 44-49 (alleging Defendant failed to pay the entirety of Plaintiff's just and due compensation… [in] violat[ion] of Labor Code § 200, et seq… [t]he defendant's failure to pay wages, as alleged above, was willful, thus entitling plaintiff to penalties under Labor Code § 203"); see also Lab. Code § 203 (providing penalty "[i]f an employer willfully fails to pay, without abatement or reduction… any wages of an employee who is discharged or who quits").) Further, the causes of action regarding indemnification also are premised on an agreement between Plaintiff and Platinum—Jankov is neither a party nor a signatory to the agreement. (See SAC, ¶ 37, exh. A.) The SAC also alleges violation of the California Family Rights Act, Government Code § 12945.2, which likewise prohibits "any employer" from granting certain requests to its employee. (See SAC, ¶¶ 63-67; see also Gov. Code, § 12945.2, subd. (a) (stating that "[i]t shall be an unlawful employment practice for any employer, as defined in paragraph (4) of subdivision (b), to refuse to grant a request by any employee with more than 12 months of service with the employer, and who has at least 1,250 hours of service with the employer during the previous 12-month period or who meets the requirements of subdivision (r), to take up to a total of 12 workweeks in any 12-month period for family care and medical leave").) The SAC also alleges causes of action for denial of accommodation and failure to engage in the interactive process, which are presumably causes of action for violation of Government Code section 12940, subdivisions (m) and (n), respectively, and likewise require "an employer" to provide reasonable accommodations and engagement in the interactive process for an employee with a known physical or mental disability or known medical condition. (See Gov. Code § 12940, subds. (m) and (n).) The SAC also alleges a violation of the Family Medical Leave Act, 29 U.S.C. §

2611, et seq., which also imposes certain restrictions on employers. (See 29 U.S.C. § 2615, subds.(a)(1)-(2) (stating that "[i]t shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this title… [or] to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this title").) As to the contract-based causes of action, the SAC alleges that Platinum and Plaintiff are the parties to the employment agreement. (See SAC, ¶ 54 (alleging that "[t]he essential terms were that Plaintiff would perform [] certain duties as the Chief Executive Officer of PLATINUM in exchange for compensation, to include a salary and certain employee benefits").) Thus, the SAC's causes of action allege causes of action against Platinum.

The SAC does not allege facts supporting alter ego liability.

"Ordinarily, a corporation is regarded as a legal entity, separate and distinct from its stockholders, officers and directors, with separate and distinct liabilities and obligations." (*Sonora Diamond Corp. v. Super. Ct. (Sonora Union High School Dist.)* (2000) 83 Cal.App.4th 523, 538.) "A corporate identity may be disregarded--the 'corporate veil' pierced--where an abuse of the corporate privilege justifies holding the equitable ownership of a corporation liable for the actions of the corporation." (*Id.*) "The alter ego doctrine prevents individuals or other corporations from misusing the corporate laws by the device of a sham corporate entity formed for the purpose of committing fraud or other misdeeds." (*Id.*)

> In California, two conditions must be met before the alter ego doctrine will be invoked. First, there must be such a unity of interest and ownership between the corporation and its equitable owner that the separate personalities of the corporation and the shareholder do not in reality exist. Second, there must be an inequitable result if the acts in question are treated as those of the corporation alone. [Citations.] Among the factors to be considered in applying the doctrine are commingling of funds and other assets of the two entities, the holding out by one entity that it is liable for the debts of the other, identical equitable ownership in the two entities, use of the same offices and employees, and use of one as a mere shell or conduit for the affairs of the other. [Citations.] Other factors which have been described in the case law include inadequate capitalization, disregard of corporate formalities, lack of segregation of corporate records, and identical directors and officers. [Citations.] No one characteristic governs, but the courts must look at all the circumstances to determine whether the doctrine should be applied. [Citation.] Alter ego is an extreme remedy, sparingly used. [Citation.]

(*Id. at pp.*538-539; see also *Troyk v. Farmers Group, Inc.* (2009) 171 Cal.App.4th 1305, 1341 (stating same); see also *Cam-Carson, LLC v. Carson Reclamation Authority* (2022) 82 Cal.App.5th 535, 549 (regarding demurrer, stating same).)

With regards to alter ego, the SAC's lone allegations are that "Plaintiff is informed and believes, and thereon alleges, that JANKOV was, at all relevant times a controlling owner of

PLATINUM as well as the Chairman of the Board and that JANKOV and PLATINUM are alter-egos of each other" (SAC, ¶ 5), and that "Defendants, and each of them, were… alter egos… of each other Defendant" (SAC, ¶ 9). Here, these allegations are plainly insufficient to show a unity of interest and ownership and do not address any inequitable result. (See *Leek v. Cooper* (2011) 194 Cal.App.4th 399, 415 (stating that "[t]o recover on an alter ego theory, a plaintiff need not use the words 'alter ego,' but must allege sufficient facts to show a unity of interest and ownership, and an unjust result if the corporation is treated as the sole actor… [a]n allegation that a person owns all of the corporate stock and makes all of the management decisions is insufficient to cause the court to disregard the corporate entity").)

As the SAC's causes of action allege facts only as to Platinum and as the SAC fails to allege sufficient facts to support alter ego liability, Estate's demurrer to the SAC is SUSTAINED with 10 days leave to amend on this basis.

The demurrer to the sixth, eighth and ninth causes of action on the ground that they fail to allege exhaustion of administrative remedies

Estate also argues that the sixth, eighth and ninth causes of action also fail to state facts sufficient to constitute a cause of action against it because they do not allege that Plaintiff exhausted his administrative remedies. Indeed, causes of action for violation of CFRA (Gov. Code § 12945.2), denial of accommodation (Gov. Code § 12940, subd. (m)(1)), and failure to engage in interactive process (Gov. Code § 12940, subd. (m)(2)) are all causes of action pursuant to FEHA, and, as such, Plaintiff must allege that he has exhausted his administrative remedies prior to filing suit. (See *Okoli v. Lockheed Technical Operations Co*. (1995) 36 Cal.App.4th 1607, 1613 (stating that "in the context of the FEHA, exhaustion of the administrative remedy is a jurisdictional prerequisite to resort to the courts: 'Under California law 'an employee must exhaust the . . . administrative remedy' provided by the Fair Employment and Housing Act, by filing an administrative complaint with the [DFEH] (Gov. Code, § 12960; cf. *id*. § 12901, 12925, subd. (b)) and obtaining the DFEH's notice of right to sue (*id*. § 12965, subd. (b)), 'before bringing suit on a cause of action under the act or seeking the relief provided therein'"); see also *Blum v. Super. Ct. (Copley Press Inc.)* (2006) 141 Cal.App.4th 418, 422 (stating same); see also *Mora v. Chem-Tronics, Inc*. (S.D.Cal. 1998) 16 F.Supp.2d 1192, 1201 (stating that "before bringing a CFRA claim in federal court Plaintiff must have exhausted his administrative remedies… [u]nder California law, employees must exhaust administrative remedies provided by FEHA by filing an administrative complaint with DFEH, and obtain a notice of a right to sue"); see also *Kannan v. Apple Inc.* (N.D.Cal. Oct. 13, 2020, No. 5:17-cv-07305-EJD) 2020 U.S.Dist.LEXIS 193214, at p. *19 (stating that "FEHA, and CFRA require exhaustion of administrative remedies as a prerequisite to judicial relief"); see also *Medix Ambulance Serv. v. Super. Ct. (Collado)* (2002) 97 Cal.App.4th 109, 115-118 (stating that "[u]nder the FEHA, the employee must exhaust the administrative remedy provided by the statute by filing a complaint with the [Department] and must obtain from the Department a notice of right to sue in order to be entitled to file a civil action in court based on violations of the FEHA…[t]he timely filing of an administrative complaint is a prerequisite to the bringing of a civil action for damages under the FEHA… the court should have sustained their demurrer").) As Estate argues, the SAC does not allege that Plaintiff exhausted his administrative remedies by filing an administrative complaint with the DFEH and obtaining the DFEH's notice of right to sue. (See SAC, ¶¶ 63-67, 73-88.)

In opposition, Plaintiff argues that "[u]nder Labor Code § 244(a), Plaintiff is only required to exhaust his administrative remedies when 'that section under which the action is brought expressly requires exhaustion of an administrative remedy." (Opposition, p. 3:15-17.) However, Labor Code section 244, subdivision (a) states that "[a]n individual is not required to exhaust administrative remedies or procedures in order to bring a civil action under any provision of **this code**, unless that section under which the action is brought expressly requires exhaustion of an administrative remedy." (Lab. Code § 244, subd.(a) (emphasis added).) Causes of action pursuant to FEHA are not pursuant to the *Labor* Code, but rather to certain sections of the *Government* Code, starting with section 12900. (See Gov. Code § 12900 (stating that "[t]his part may be known and referred to as the 'California Fair Employment and Housing Act'").) Plaintiff's argument is without merit.

As to the eighth and ninth causes of action, Plaintiff may also not avoid the exhaustion requirement by failing to identify the specific statute on which he relies in his cause of action. (See *Covenant Care, Inc. v. Super. Ct. (Inclan)* (2004) 32 Cal.4th 771, 790 (stating that "statutory causes of action must be pleaded with particularity").) The court is unaware of any common law cause of action for failure to accommodate or to engage in an interactive process, research does not reveal any such cause of action and Plaintiff does not cite to any authority for such cause of action.

While it is unlikely that Plaintiff will be able to amend these causes of action, as it is Estate's first demurrer, Plaintiff will be allowed leave to amend so as to allege facts supporting exhaustion of his administrative remedies as to the sixth, eighth, and ninth causes of action of the SAC.

Estate's demurrer to the sixth, eighth, and ninth causes of action of the SAC on the ground that it fails to allege facts supporting the exhaustion of administrative remedies is SUSTAINED with 10 days leave to amend on this basis as well.

In light of the above rulings, the Court declines to address the remaining bases for the demurrer asserted by Estate.

The Court will prepare the Order.

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Calendar Line 5
Case Name: *Christopher Qin v. Yash Sinha*
Case No.: 21CV376478

I. Factual and Procedural Background

On January 26, 2021, plaintiff Christopher Koh Young Qin ("Plaintiff") filed a complaint for registration and entry of judgment based on a foreign judgment against defendant Yash Sinha ("Defendant"). The Complaint was filed pursuant to Code of Civil Procedure section 1713 et seq., known as the Uniform Foreign Country Money Judgments Recognition Act ("UFCMJRA" or "the Act"), in Los Angeles County. The case was thereafter transferred to Santa Clara County.

Plaintiff alleges that on September 5, 2019, following an open court hearing in the State Courts of the Republic of Singapore, Jennifer Marie, Registrar of State Courts of Singapore entered a conclusive and enforceable judgment ("Judgment") against Defendant in the principal amount of $48,000 (USD), plus costs of $1,800 USD, plus interest at 5.33% per annum from the date of the preceding writ to the date of the Judgment. (Compl., ¶ 3.) The Judgment grants recovery of a sum of money due to a breach of contract claim brought by Plaintiff against Defendant. (*Id.* at ¶ 4.) The Judgment concerns the enforcement of a Settlement Agreement signed by Plaintiff and Defendant on September 24, 2018. (*Id.* at ¶ 7.)

On August 1, 2023, Plaintiff filed a motion for summary judgment to enforce the foreign-court judgment. Defendant opposes the motion.

II. Legal Standard

A motion for summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).)

The "party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact[.]" (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850 (*Aguilar*).) "A prima facie showing is one that is sufficient to support the position of the party in question." (*Id*. at p. 851.)

If the moving party makes the necessary initial showing, the burden of production shifts to the opposing party to make a prima facie showing of the existence of a triable issue of material fact. (*Aguilar, supra*, 25 Cal.4th at p. 850.) "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Ibid*.) "[I]f the court concludes that the [opposing party's] evidence or inferences raise a triable issue of material fact, it must conclude its consideration and deny the [moving party's] motion." (*Id*. at p. 856.)

Throughout the process, the trial court "must consider all of the evidence and all of the inferences reasonably drawn therefrom[.]" (*Aguilar, supra,* 25 Cal.4th at p. 844 [internal

quotations omitted].) The moving party's evidence is strictly construed, while the opposing party's evidence is liberally construed. (*Id*. at p. 843.)

III. Procedural Arguments

A. Plaintiff's Separate Statement

In opposition, Defendant contends Plaintiff's motion is defective and in violation of Code of Civil Procedure section 437c(b)(1) and California Rules of Court, Rule 3.1350(d)(2). (Opposition, p. 2:16-17.) Specifically, Defendant asserts that Plaintiff's separate statement is not concise and includes immaterial facts. (Opposition, p. 3:4-5.) The Court is not persuaded by this argument, as a majority of Plaintiff's UMFs appear to be relevant to establish Plaintiff's burden, as well as relevant to the exceptions for recognition, which Defendant insists is Plaintiff's burden to establish. (See e.g., Opposition, p. 6:6-8.) Further, the Court does not find that Plaintiff's separate statement is in violation of section 437c(b)(1) and declines to exercise its discretion to deny the motion on this basis. (See *Truong v. Glasser* (2009) 181 Cal.App.4th 102, 118 ["the court's power to deny summary judgment on the basis of failure to comply with California Rules of Court, rule 3.1350 is discretionary, not mandatory"].)

B. Defendant's Declaration

In reply, Plaintiff asserts that Defendant's declaration is inadmissible pursuant to Code of Civil Procedure section 2015.5 because the declaration fails to indicate the place of execution. (Reply, p. 2:24-28.) "[S]ection 2015.5 specifies that a declaration must *either* reveal a 'place of execution' within California, *or* recite that it is made 'under the laws of the State of California.'" (*Kulshrestha v. First Union Commercial Corp.* (2004) 33 Cal.4th 601, 606 [emphasis original].) Here, while Defendant's declaration does not indicate a place of execution, it does state it is made under penalty of perjury under the laws of the State of California. Thus, the declaration is admissible.

IV. Defendant's Objections

As an initial matter, the Court notes that objections do not need to be ruled upon when they do not comply with California Rules of Court, Rule 3.1354. (See *Vineyard Spring Estates v. Superior Ct.* (2004) 120 Cal.App.4th 633, 642 [trial courts only have duty to rule on evidentiary objections presented in the proper format]; *Hodjat v. State Farm Mutual Automobile Ins. Co.* (2012) 211 Cal.App.4th 1 [trial court not required to rule on objections that do not comply with Rule of Court 3.1354 and not required to give objecting party a second chance at filing properly formatted papers].)

Rule 3.1354 requires two documents to be submitted when evidentiary objections are made: the objections and a separate proposed order on the objections, both of which must be in one of the two approved formats set forth in the rule. (Rule 3.1354, subd. (c).) Here, Defendant submits one document that attempts to be both the objections and the proposed order, in violation of the Rule.

Additionally, Rule 3.1354 requires that each written objection quote or set forth the objectionable statement or material. (Rule 3.1354, subd. (b)(3).) Here, Defendant objects only to specific paragraphs in the Qin Declaration, but his reasons for objecting reference the

various exhibits attached to the declaration. However, Defendant does not quote or set forth the objectionable statement or material. Accordingly, Objection Nos. 1-11, 13-15, 18-25, and 27-28 are OVERRULED.

That said, even if the Court in its discretion found the objections to comply with Rule of Court 3.1354, the Court relies only on Paragraphs 26 and 41 of the Qin Declaration in determining this motion. The Court will rule on Defendant's objections to these paragraphs; however, Defense counsel is reminded to follow all Rules of Court going forward.

1) Objection No. 12 to Qin Decl., ¶ 26 on the ground it attempts to assert an ultimate fact and/or legal conclusion, calls for expert witness testimony, and lacks foundation is OVERRULED. The Court relied on Paragraph 26 of the Qin Declaration only as it relates to Defendant's RFA No. 15 and did not rely on Plaintiff's statement of due process in Singapore.
2) Objection No. 16 to Qin Decl., ¶ 31 on the ground it lacks foundation is OVERRULED. Plaintiff has made clear that the Agreement refers to the Settlement Agreement (attached to the Qin Decl., Ex. 1), and further provides Defendant's response to RFA No. 25 admitting to agreeing to service through email and WhatsApp.

V. Motion for Summary Judgment

A. The UFCMJRA Generally

The UFCMJRA sets forth the procedure for recognition by California courts of a foreign-country money judgment. (See *Hyundai Securities Co., Ltd. v. Lee* (2013) 215 Cal.App.4th 682, 688.) The issue of recognition must be raised by filing an action, and if the party raising the issue of recognition wishes to have the issue dealt with summarily, it must do so by way of a motion for summary judgment or judgment on the pleadings. (*Id.* at p. 682.)

The Act applies to a foreign-country judgment to the extent the judgment: 1) grants or denies recovery of a sum of money; and 2) under the law of the foreign country where rendered, is final, conclusive, and enforceable. (Code Civ. Proc., § 1715, subd. (a).) The Act does not apply to a foreign-country judgment, even if the judgment grants or denies recovery of a sum of money, to the extent the judgment is: a judgment for taxes, a fine or other penalty, or a divorce judgment. (*Id.* at § 1715, subd. (b).) A party seeking recognition of a foreign-country judgment has the burden of establishing that the foreign-country judgment is entitled to recognition under the Act. (*Id.* at § 1715, subd. (c).)

Pursuant to the Act, California courts must recognize a foreign-country judgment to which the Act applies, subject to several exceptions. (Code Civ. Proc., § 1716, subd. (a).) These exceptions include:

1) The judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requires of due process of law;
2) Foreign court did not have personal jurisdiction over the defendant;
3) Foreign court did not have subject matter jurisdiction;
4) Defendant did not receive notice of the proceeding in the foreign court in sufficient time to enable defendant to defend;

5) Judgment was obtained by fraud;
6) Judgment is repugnant to the public policy of this state or of the United States;
7) Proceeding in the foreign court was contrary to an agreement between the parties to determine the dispute in a different way;
8) Where jurisdiction is based on personal service, the foreign court was seriously inconvenient;
9) Judgment was rendered in circumstances raising substantial doubt about the integrity of the rendering court;
10) The specific proceeding in the foreign court was not compatible with the requirements of due process of law; and
11) The judgment conflicts with another final and conclusive judgment.

(Code Civ. Proc., § 1716, subds. (b)-(d).)

If the party seeking recognition of a foreign-country judgment has met its burden of establishing recognition pursuant to Section 1715, subdivision (c), a party resisting recognition of the judgment has the burden of establishing that a ground for nonrecognition stated in subdivisions (b), (c), or (d) exists. (Code Civ. Proc., § 1716, subd. (f).)

B. Plaintiff's Burden

Based on the above, Plaintiff's burden is to establish that: 1) the judgment grants recovery of money; 2) the judgment is final, conclusive, and enforceable in Singapore; and 3) it is not a judgment for taxes, a fine or other penalty, or divorce. (*AO Alfa-Bank v. Yakovlev* (2018) 21 Cal.App.5th 189, 199 (*Yakovlev*); see also *Ohno v. Yasuma* (9th Cir. 2013) 723 F.3d 984, 991.) "Once the initial showing is made, there is a presumption in favor of enforcement, and the party resisting recognition bears the burden of establishing a basis for nonrecognition." (*Ibid*.)[1]

1. Foreign Judgment was for a Sum of Money and Not for Taxes, Fines, or Divorce

In arguing that the foreign judgment was one for the recovery of a sum of money, Plaintiff attaches the Judgment. (See Qin Decl., Ex. 4, P0003.) The Judgment indicates that Defendant failed to appear and ordered Defendant to pay Plaintiff $48,000 USD; contractual interest at 5.33% per annum from the date of the Writ to the date of the Judgment; and costs

[1] In *Yakovlev*, on summary judgment, the trial court denied recognition of a foreign judgment under the UFCMJRA, determining that, after Plaintiff met its burden, Defendant then met its burden of demonstrating a basis for nonrecognition. (*Yakovlev, supra,* 21 Cal.App.5th at p. 189.) The Court of Appeal reversed, concluding that lack of personal jurisdiction was not established as a mandatory ground for nonrecognition because plaintiff's expert testimony showed that service was proper under the foreign law. (*Ibid*.) The Court of Appeal further held that evidence of proper service defeated an argument that defendant did not receive sufficient notice. (*Ibid*.) Because the Court of Appeal reversed on this ground, it declined to address plaintiff's remaining personal jurisdiction argument regarding Code of Civil Procedure section 1717. (*Id.* at p. 213.)

fixed at $1,800. (*Ibid*.)[2] Thus, the judgment was for a sum of money and not for taxes, a fine or penalty, or divorce. This fact is undisputed by Defendant. (Defendant's Separate Statement, p. 4, UMF 15.) Moreover, based on the plain language of the Judgment, it was not one for taxes, a fine or penalty, or divorce.

2. Foreign Judgment is Final, Conclusive, and Enforceable

Plaintiff further asserts the judgment entered by the Registrar of State Courts of Singapore, in the State Courts of the Republic of Singapore in favor of Plaintiff was a final, conclusive, and enforceable money judgment. (Qin Decl., ¶ 14; UMF 11.) To support this, Plaintiff provides the Notarial Certificate of the Judgment isused by the State Courts of the Republic of Singapore on September 5, 2019 (Qin Decl., Ex. 4, P0001), as well as the actual judgment (*id.* at P0003), and Defendant's RFA admitting he did not appeal the Judgment (Qin Decl., Ex. 3, p. 4, RFA No. 16). (See *Forest Lawn Memorial-Park Assn. v. Superior Court* (2021) 70 Cal.App.5th 1, 13 ["admissions 'have a very high credibility value' and 'should receive a kind of deference not normally accorded evidentiary allegations in affidavits'"].) Defendant also does not dispute the money judgment was final. (See Defendant's Separate Statement, p. 3, UMF 11.)

Accordingly, Plaintiff has met his preliminary burden to show that the Singaporean Judgment grants a sum of money, is final, conclusive, and enforceable, and is not for taxes, a fine or other penalty, or divorce. The burden now shifts to Defendant to demonstrate a statutory basis for nonrecognition.[3]

C. Defendant's Burden

In opposition, Defendant asserts three grounds for nonrecognition: 1) lack of personal jurisdiction by the State Court of Singapore; 2) insufficient notice of proceedings; and 3) entry of default Judgment against Defendant as incompatible with due process of law.

1. Lack of Personal Jurisdiction Due to Insufficient Service

[2] The terms of the Judgment match the terms of the Settlement Agreement signed by both parties. (See Qin Decl., Ex. 1, P0009-0011.) Defendant does not dispute that the Judgment concerns the enforcement of the Settlement Agreement. (See Defendant's Separate Statement, p. 4, UMF 12.)

[3] While it is Defendant's burden to demonstrate a basis for nonrecognition, Plaintiff has included with his motion evidence to demonstrate that none of the exceptions found in Code of Civil Procedure section 1716, subdivision (b)-(d) are applicable. Moreover, Defendant mistakenly asserts throughout his opposition that it is *Plaintiff's* burden to provide evidence of proper service. (Opposition, p. 6:6-8.) Given that Plaintiff has included this evidence with his motion, and that Defendant had the opportunity to review and respond to such evidence, and did not object to the Exhibits attached to Plaintiff's declaration, the Court takes Plaintiff's evidence into consideration in reaching its decision as to nonrecognition based on personal jurisdiction. (See e.g., *San Diego Watercrafts, Inc. v. Wells Fargo Bank* (2002) 102 Cal.App.4th 308, 316 [due process requirement "'is self evident--to inform the opposing party of the evidence to be disputed to defeat the motion'"]; *Cordova v. 21st Century Ins. Co.* (2005) 129 Cal.App.4th 89, 109-110 ["summary judgment may not be granted on a ground not asserted by the moving party without giving the opposing party an opportunity to respond"].)

Defendant states he was not personally served with: 1) the Writ of Summons in the Singapore lawsuit (Defendant's UMF) 1); 2) the Statement of Claim in the Singapore lawsuit; (Defendant's UMF 2); and 3) the Judgment (Defendant's UMF 3), and therefore, the Singapore court lacked personal jurisdiction over him. In support, Defendant relies on his declaration, where he indicates he was not personally served with these documents. (See Sinha Decl., ¶¶ 3-5.)

"Lack of personal jurisdiction is a mandatory ground for nonrecognition." (*Yakovlev, supra,* 21 Cal.App.5th at p. 202.) "'In the absence of service of process . . . a court ordinarily may not exercise power over a party the complaint names as defendant.'" (*Ibid*.) The *Yakovlev* Court acknowledged that there is "some debate whether the personal jurisdiction defense under the [Act] encompasses ineffective service" but ultimately determined that it should consider "both amenability to jurisdiction and service in evaluating the lack of personal jurisdiction defense." (*Id*. at p. 203.) Thus, this Court must determine if there is a triable issue of fact as to whether service of process was effective to confer personal jurisdiction over Defendant in Singapore. (*Ibid.*) The first consideration is whether the evidence establishes proper service under Singaporean law. (*Ibid*.) The second consideration is whether foreign court's service comported with due process. (*Ibid*.)

Neither party proffers expert evidence as to what is considered proper service under Singaporean laws; however, the Settlement Agreement, signed by both parties states that the parties agreed to service through their respective email addresses or WhatsApp phone numbers. (See Qin Decl., ¶ 31, Ex. 3, RFA No. 25.) Thus, the Court next turns to whether there is evidence that Defendant was properly served.

Plaintiff does not provide evidence such as letters showing each document was served on Defendant through his email or WhatsApp number. Plaintiff's declaration merely indicates Defendant was personally served with all documents. (See Qin Decl., ¶ 26.) Plaintiff also cites to Defendant's RFA No. 15, where Defendant admitted to receiving papers related to default in the underlying proceeding. (Qin Decl., ¶ 26, Ex. 3, p. 4, RFA No. 15.) The RFA does not indicate what related papers Defendant received or in what manner he received them.

Defendant's declaration states he was not personally served (see Sinha Decl., ¶¶ 3-5). On summary judgment, courts "strictly construe[] the moving party's proffered evidence, and liberally construe[] the opposing party's evidence." (*Girard v. Ball* (1981) 125 Cal.App.3d 772, 781.) "However, this rule is subject to the modification discussed in *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 21 [], indicating that an admission or the testimony of an opposing party made during discovery is entitled to great weight." (*Ibid*.) Here, Plaintiff's declaration additionally cites to Ex. 2, RFAs, No. 2 to assert that Defendant admitted to being personally served in Singapore. However, as Defendant notes in opposition, Ex. 2 of Qin's Declaration includes requests for production of documents, not RFAs. Further, Ex. 3 of Qin's Declaration includes the RFAs that Plaintiff references, but does not include RFA No. 2.

In addition, Plaintiff's assertion that Defendant consented to being served through his Email or WhatsApp phone number (Qin Decl., ¶ 31) are insufficient, as no evidence is provided that Defendant was actually served through these channels. (*Cf. Yakovlev, supra,* 21

Cal.App.5th at pp. 204-205 [evidence sufficient where plaintiff proffered documents[4] from Russian court file including two summons letters dated, signed, and including defendant's address, and two telegrams from the court to defendant].) Finally, the Writ of Summons attached to Plaintiff's declaration is likewise unavailing. Defendant's address on the Writ of Summons[5] is a different address from that listed on the Settlement Agreement and does not reference the email address or WhatsApp phone number listed within the Settlement Agreement. Moreover, there are no documents to indicate the Writ of Summons was actually mailed to the listed address.

As mentioned above, Defendant states in his declaration that he was not personally served. (Sinha Decl., ¶¶ 3-5.) In Reply, Plaintiff argues that while service is relevant, there is no requirement that service be personal. (See Reply, p. 4:12-13.) However, as already noted, there is no evidence provided regarding proper service in Singapore or evidence that Defendant was served at all. As such, the Court need not address whether the foreign court's service comported with due process.

That said, there are "limitations to nonrecognition for lack of personal jurisdiction. The court may not refuse to recognize a foreign judgment on this basis if 'the defendant, before the commencement of the proceeding had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved.'" (*Yakovlev, supra,* 21 Cal.App.5th at p. 200, citing Code Civ. Proc., § 1717, subd. (b)(3).) Here, Defendant does not dispute that he entered into the Settlement Agreement with Plaintiff (Defendant's Separate Statement, p. 1, UMF 1 [undisputed that the parties entered into a settlement agreement]; p. 2, UMF 6 ["Undisputed that Plaintiff and Defendant entered into the Settlement"].) Further, Defendant does not dispute that the Judgment concerns the enforcement of the Settlement Agreement. (Defendant's Separate Statement, p. 4, UMF 12.) Moreover, the attached Settlement Agreement, signed by both parties, states:

> This Agreement shall be governed and construed in accordance with Singapore laws. Parties agree to be governed by and submit to the laws of Singapore and that the courts of Singapore shall have jurisdiction to hear and determine any and all legal proceedings and/or any disputes which may arise in relation hereto.

(Qin Decl., Ex. 1, P0010.)

Defendant admits that he agreed to this clause in the Settlement Agreement. (See Qin Decl., Ex. 3, RFAs, p. 6, No. 23.) Defendant's statement in his declaration that the Singapore

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[4] Similar to this case, the *Yakovlev* Court relied on evidence submitted in support of Plaintiff's motion for summary judgment to determine that the burden to establish a ground for nonrecognition was not met. (*Yakovlev, supra,* 21 Cal.App.5th at pp. 204-205 ["In support of its summary judgment motion, [plaintiff] proffered several documents . . . we find that the above referenced documents are admissible and conclusive as to proper service under Russian law"].)

[5] Defendant's address on the Writ of Summons is listed as being in San Jose. The Settlement Agreement indicates Defendant's address is in New York and that he is to be served through email or WhatsApp.

court did not have jurisdiction does "not constitute[] evidence substantial enough to create a triable issue of fact because its credibility has been destroyed by the prior admission." (*Hoover Cmty. Hotel Dev. Corp. v. Thomson* (1985) 167 Cal.App.3d 1130, 1141; *Leasman v. Beech Aircraft Corp.* (1975) 48 Cal.App.3d 376, 382 ["in view of [the party's] admissions in her deposition and answers to interrogatories . . . the rule of liberal construction loses its efficacy. . . . [T]he credibility of the admissions are valued so highly that the controverting affidavits may be disregarded as irrelevant, inadmissible or evasive"].) Accordingly, pursuant to Code of Civil Procedure section 1717, subdivision (b)(3), and based on the terms of the undisputed Stipulation Agreement, this Court may not refuse to recognize the Singapore Judgment for lack of personal jurisdiction. (See *Yakovlev, supra*, 21 Cal.App.5th at p. 200; see also *Corso v. Rejuvi Lab., Inc. (In re Rejuvi Lab., Inc.)* (9th Cir. 2022) 26 F.4th 1129, 1134 [applying California law, explaining that a foreign-country judgment shall not be refused pursuant to exceptions listed in Code of Civil Procedure section 1717]; *De Fontbrune v. Wofsy* (9th Cir. 2022) 39 F.4th 1214, 1218 [applying California law on summary judgment, stating same].) The Court next turns to the argument of nonrecognition based on notice.

2. Notice

"A court is not required to recognize a foreign-country judgment if 'the defendant in the proceeding in the foreign court did not receive notice of the proceedings in sufficient time to enable the defendant to defend.'" (*Yakovlev, supra*, 21 Cal.App.5th at p. 213, citing Code Civ. Proc., § 1716, subd. (c)(1)(A).)

In opposition, Defendant argues he did not receive notice in sufficient time to defend himself. (Opposition, p. 5:27-28.) However, while Defendant claims he was not personally served, he does not address notice in his declaration and does not provide any other evidence to demonstrate a triable of issue of fact as to notice. (See *Cole v. Town of Los Gatos* (2012) 205 Cal.App.4th 749, 767, fn. 8 ["It goes without saying that statements in a memorandum of points and authorities are not evidence"].) Thus, Defendant has failed to demonstrate the ground for nonrecognition as stated in Code of Civil Procedure section 1716, subdivision (c)(1)(A).

3. Due Process of Law

As for nonrecognition based on lack of due process, Defendant argues that 1) "it is certainly disputed whether the default Judgment entered against Defendant in Singapore actually afforded Defendant due process of law" and 2) Plaintiff "has also failed to establish whether California law would recognize [lack of personal service] as not violating due process of law."

i. Due Process of Specific Proceeding

"A court is not required[6] to recognize a foreign-country judgment if 'the specific proceeding in the foreign court leading to the judgment was not compatible with the

[6] While a California court must refuse to recognize a foreign judgment where the judgment was rendered under an entire judicial system that does not provide impartial tribunals or procedures compatible with due process of law, a court has discretion to recognize a foreign judgment where Defendant establishes that a specific proceeding in the foreign court resulted in a

requirements of due process of law.'" (*Yakovlev, supra*, 21 Cal.App.5th at p. 214.) As noted above, it is Defendant's burden to demonstrate this basis for nonrecognition. Defendant's declaration is devoid of any reference to due process. Further, Defendant provides no further evidence that would establish lack of due process, such as that he "'could not expect fair treatment from the courts of [Singapore], could not personally appear before those courts, could not obtain proper legal representation in [Singapore], and could not even obtain local witnesses on [his] behalf.'" (*Yakovlev, supra*, 21 Cal.App.5th at p. 215, citing *Bank Melli Iran v. Pahlavi* (9th Cir. 1995) 58 F.3d 1406, 1413.) Moreover, Defendant's opposition incorrectly states that it is Plaintiff's burden to demonstrate the foreign-court proceeding was compatible with due process requirements. Thus, Defendant has failed to meet his burden.

ii. Due Process of Personal Service

The Court again notes that it is not Plaintiff's burden to establish whether California law would recognize lack of personal service as not violating due process of law. While "'notice is an element of our notion of due process and the United States will not enforce a judgment obtained without the bare minimum requirements of notice[,]'" as stated above, Defendant has not provided evidence of a lack of notice. (*Yakovlev, supra*, 21 Cal.App.5th at p. 215, citing *International Transactions, Ltd. v. Embotelladora Agral Regiomontana, SA de CV* (5th Cir. 2003) 347 F.3d 589, 594.) Accordingly, Defendant has not met his burden of establishing a lack of due process.

Based on the foregoing, Defendant fails to demonstrate the existence of a triable issue of material fact with regard to nonrecognition under Code of Civil Procedure section 1716, subdivisions (b)-(d). Thus, Plaintiff's motion for summary judgment is GRANTED.

VI. Conclusion and Order

Plaintiff's motion for summary judgment is GRANTED.[7] The Court shall prepare the final Order.

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judgment that was not compatible with the requirements of due process of law. (See Code Civ. Proc., § 1716, subds. (c)(1)(G), (c)(2); see also *Yakovlev, supra*, 21 Cal.App.5th at p. 215.)

[7] "The Act specifies that if the trial court finds that a foreign-country money judgment is entitled to recognition in California then, to the extent the judgment grants or denies recovery of a sum of money, it is conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this state would be conclusive, and the foreign-country money judgment is enforceable in the same manner and to the same extent as a judgment rendered in this state." (*Hyundai Securities Co., Ltd. v. Lee* (2015) 232 Cal.App.4th 1379, 1386, citing Code Civ. Proc., § 1719.)

Calendar line 10
Case Name: Elizabeth Chung v. Altva Capital Management, et al.
Case No.: 21CV387639

Defendant Altva Capital Management ("Altva") asks to stay this action pending the outcome of a pending case in Hong Kong, on the grounds of forum non conveniens, pursuant to CCP § 410.30(a). That section states that "[w]hen a court upon motion of a party or its own motion finds that in the interest of substantial justice an action should be heard in a forum outside this state, the court shall stay or dismiss the action in whole or in part on any conditions that may be just." Code Civ. Proc. § 410.30(a).

Factual Background

In dissolving their marriage, Elizabeth Chung and David Chung are dividing their assets.
Bend Capital, LLC ("Bend") holds title to the family home. Elizabeth and David are Members of Bend and each holds a 50% interest in Bend. The purpose of Bend is to borrow money and hold title to the family home. Elizabeth and David disagree about whether there is an outstanding loan on the family home. Elizabeth filed this lawsuit, in both her individual and derivative capacity, against various company defendants and David for declaratory and injunctive relief as to whether the loan on the family home is legitimate and should be enforced. She did not sue Bend. Her claims as an individual plaintiff have since been dismissed. One defendant, Altva Capital Management Limited, filed a counterclaim against Elizabeth, David and Bend to enforce the loan on the family home. Altva also filed a claim in Hong Kong, before it knew about Ms. Chung's suit in California.

Joinder

The unopposed motion for joinder is GRANTED.

Requests for Judicial Notice

Altva's unopposed request judicial notice of Exhibits A-C is granted. See Evidence Code § 452(d). RJN of Exhibit D is granted. Evid. Code § 452(c). RJN Ex. E is denied. Altva's supplemental request for judicial notice is granted. Evid. Code § 452(f).

Legal Standard

Forum non conveniens is "an equitable doctrine invoking the discretionary power of a court to decline to exercise the jurisdiction it has over a transitory cause of action when it believes that the action may be more appropriately and justly tried elsewhere." *Stangvik v. Shiley Inc.*, (1991) 54 Cal.3d 744, 751. "In determining whether to grant a motion based on forum non conveniens, a court must first determine whether the alternate forum is a 'suitable' place for trial. If it is, the next step is to consider the private interests of the litigants and the interests of the public in retaining the action for trial in California. The private interest factors are those that make trial and the enforceability of the ensuing judgment expeditious and relatively inexpensive, such as the ease of access to sources of proof, the cost of obtaining attendance of witnesses, and the availability of compulsory process for attendance of unwilling witnesses. The public interest factors include avoidance of overburdening local courts with

congested calendars, protecting the interests of potential jurors so that they are not called upon to decide cases in which the local community has little concern, and weighing the competing interests of California and the alternate jurisdiction in the litigation." *Stangvik,* 54 Cal.3d at 559-560. To carry its burden, the moving defendant must present evidence "establishing a suitable alternate forum and providing the trial court with sufficient facts to carry out its weighing and balancing analysis." *Nat'l Football League v. Fireman's Fund Ins. Co.* (2013) 216 Cal.App.4th 902, 933 n.15. The Court has discretion in ruling on the motion. *Ford Motor Co. v. Ins. Co. of N. Am.* (1995) 35 Cal.App.4th 604, 610.

Analysis

Timeliness

A motion to dismiss or stay an action on the grounds of forum non conveniens under Code of Civil Procedure section 410.30 must be brought "within a reasonable time." *Global Financial Distributors Inc. v. Sup.Ct.* 35 Cal.App.5th 179, 193 (2019). In its discretion, the Court may decide whether a motion for forum non conveniens is timely under the circumstances. "Trial courts generally have the inherent power to stay proceedings in the interests of justice and to promote judicial efficiency." *Friebert v. City of Mission Viejo* 33 Cal.App.4th 1484, 1489 (1995).

Relying on *Trident Labs, Inc. v. Merrill Lynch Comm. Fin. Corp*. (2011) 200 Cal.App.4th 147, Ms. Chung claims this motion is not timely because Altva waited 20 months to file its motion for stay and invoked the rights of California litigants in that time by seeking leave to file a cross-complaint, by serving special interrogatories, by responding to discovery requests served by Ms. Chung, and other actions (See Opp. pp. 6-7).

Altva says that its motion was filed in a reasonable amount of time. It claims that it delayed filing until it felt assured that its case would proceed in Hong Kong. It filed its Hong Kong case on October 12, 2021, before it was served with or knew about the California lawsuit. It did not receive leave to file its Writ of Summons and Statement of Claim for the Hong Kong case until May 25, 2022. It was not until July 27, 2023 that it learned that Ms. Chung would not be able to intervene in that case and that her request for stay was denied. Altva claims in its reply that it was only then that it had "sufficient assurance" the Hong Kong case would proceed.

In *Trident Labs,* the defendant waited 19 months and then moved to dismiss or stay the lawsuit, citing CPP § 410.30, based on a forum selection clause in the loan agreement. The Court found the motion was not brought in a reasonable amount of time given that 19 months had elapsed, the case was extensively litigated during that time, and given that defendant provided no reason for why it waited to bring its motion to enforce the forum selection clause.

Here, Altva is not trying to invoke a forum selection clause, as was the case in *Trident Labs*. Rather it is moving to stay the action given that another lawsuit in another forum is going to decide the major issue in this litigation, namely whether the loan agreement between Bend and Filbert Global is enforceable.

Unlike the defendant in *Trident Labs*, Altva has provided a reason why it waited to bring this motion to stay. It wanted to insure it would be able to proceed with its case in Hong Kong. Given that Ms. Chung filed a motion to stay the Hong Kong case in September 2022, a

motion which was not decided until July 2023, it was reasonable of Altva to wait to file this motion for stay until it knew whether the Hong Kong case would proceed. Altva also claims that it has not extensively litigated this case or unfairly invoked the rights of California litigants during the pendency of this case. While it is true that Altva has taken actions in this case including filing a cross-complaint and taking some discovery, those actions have not prejudiced Ms. Chung, who is not a Plaintiff in this action nor a litigant in the Hong Kong case. Altva's actions have not entitled Altva to more discovery than it would have in the Hong Kong case (see Reply at pp 3-4).

As such, this Court finds this motion timely.

Suitability of Hong Kong

Altva claims that Hong is a more suitable location because (1) the Filbert Loan Agreement is governed by, and the parties to the Loan bargained for, Hong Kong law as controlling; (2) Bend and Filbert Global agreed the Loan would be subject to the jurisdiction of the Hong Kong Courts; (3) most witnesses live in Hong Kong or Southeast Asia; and (4) Ms. Chung is not a plaintiff in this action, as her personal cause of action "should be" dismissed because she had no standing to sue Altva in an individual capacity. The Court notes that since the motion was filed, this Court dismissed Ms. Chung from her complaint in her individual capacity.

In opposition to the motion for stay, Ms. Chung relies strongly on the presumption in favor of a plaintiff's choice of forum. See Opp. pp8-9. But Ms. Chung is no longer a plaintiff in this action, as the Court dismissed her individual claims from the case on November 16, 2023 (though the final order has not yet been filed by Defendant Altva). As such, there is no such presumption favoring California on this basis.

The court agrees that the forum selection clause in this case is permissive.Yet, the agreement does provide that Hong Kong law will apply. While it is true that "California courts are able to and do routinely apply non-California law" (see *Animal Film, LLC v. D.E.J. Productions, Inc.*, (2011) 193 Cal. App. 4th 466, 475), the fact that Hong Kong law will apply is still a factor the Court may consider in determining whether Hong Kong is a suitable forum. It is easier and more efficient for the Hong Kong court to apply Hong Kong law than it is a California court.

Ms. Chung also claims that Hong Kong is not suitable because the Hong Kong case does not include all of the claims brought in the California case. But she fails to provide any authority demonstrating that Altva must demonstrate that the California case could be filed entirely in Hong Kong. Moreover, it is only Altva's cross-claims that exceed the scope of the Hong Kong lawsuit. Ms. Chung claims she would be denied the "right to remove the cloud" of the cross-complaint against her, but it is also unfair to allow both jurisdictions to go forward at the same time on the same the claim regarding the enforceability of the agreement and risk conflicting judgments.

Accordingly, the Court finds that Hong Kong is a suitable forum.

Private and Public Interests

"The private interest factors are those that make trial and the enforceability of the ensuing judgment expeditious and relatively inexpensive, such as the ease of access to sources of proof, the cost of obtaining attendance of witnesses, and the availability of compulsory process for attendance of unwilling witnesses." *Stangvik*, 54 Cal.3d at 559-560. Here, Hong Kong is the more efficient forum for applying Hong Kong law. Many of the key witnesses are located in Hong Kong or Southeast Asia. While Ms. Chung claims that Altva failed to show which witnesses would be needed at trial, she does not dispute that most of those involved in the case or with knowledge of the case live in or near Hong Kong. Given the choice of law and the location of the witnesses, the Court finds that the private interests favor Hong Kong.

The public interest factors include avoidance of overburdening local courts with congested calendars, protecting the interests of potential jurors so that they are not called upon to decide cases in which the local community has little concern, and weighing the competing interests of California and the alternate jurisdiction in the litigation. See *Id*. Atlva has not provided much to suggest that the public interest favors Hong Kong, since the members of Bend are California residents.

But it is significant that the loan agreement itself states that the parties "submit to the non-exclusive jurisdiction of the Hong Kong court at the first instance," suggesting not only that they agreed to try any disputes in Hong Kong, but that it was the preferred forum, as indicated by the inclusion of the words "in the first instance." Thus, on balance, this Court finds that the motion should be granted.

The motion is GRANTED and this action will be stayed pending the Hong Kong action. Defendant Altva shall submit the final order. Both this final order and the final order from the November 16, 2023 hearing shall be filed within 10 days of this hearing.

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