SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 20 (will be heard in Department 6)
Honorable Evette D. Pennypacker, Presiding (for Hon. Socrates Manoukian)

David Criswell, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2160

DATE: April 9, 2024 TIME: 9:00 A.M.

RECORDING COURT PROCEEDINGS IS PROHIBITED

THIS CALENDAR WILL BE CALLED IN DEPARTMENT 6. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 6 TEAMS LINK FROM THE COURT WEBSITE.
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FOR ORAL ARGUMENT: **Before 4:00 PM 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 at the hearing to contest the ruling

(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

FOR APPEARANCES: The Court strongly prefers in person appearances. If you must appear virtually, please use video. To access the courtroom, click or copy and paste this link into your internet browser and scroll down to Department 6:
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LINE #	CASE #	CASE TITLE	RULING
LINE 1	20CV369111	*Absolute Resolutions Investments, LLC vs Desiree Boudin*	THIS CALENDAR WILL BE CALLED IN DEPARTMENT 6. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 6 TEAMS LINK FROM THE COURT WEBSITE. https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml This motion was previously denied without prejudice for lack of service. The Court is unable to locate a notice of motion with this hearing date and time that was served on defendant. The California Code of Civil Procedure, Rules of Court and Civil Local Rules require that the moving party serve a written notice of motion with the hearing date and time. (See Code Civ. Proc. §§1005(a), 1010.) A court lacks jurisdiction to hear a motion that has not been properly served, even if the non-moving party had some type of advanced notice. (See *Diaz v. Professional Community Mgmt.* (2017) 16 Cal.App.5th 1190, 1204-1205; *Five-O-Drill Co. v. Superior Court of Los Angeles County* (1930) 105 Cal. App. 232.) Accordingly, this motion is again denied without prejudice. This ruling will be reflected in the minutes.
LINE 2	23CV416159	*Martin Miller, MD vs Lawrence McGlynn, MD, et al.*	Continued to April 25, 2024 per stipulation.
LINE 3-4	23CV426317	*Barry Carroll vs. General Motors, LLC*	THIS CALENDAR WILL BE CALLED IN DEPARTMENT 6. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 6 TEAMS LINK FROM THE COURT WEBSITE. https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml General Motor's Demurrer Plaintiff's Fourth Cause of Action for Fraud and Fifth Cause of Action for violation of business and professions code section 17200 et. seq. is SUSTAINED WITHOUT LEAVE TO AMEND. Defendant's Motion to Strike Plaintiff's punitive damages claim is GRANTED WITHOUT LEAVE TO AMEND. A notice of motion with this hearing date and time was served on Plaintiff by electronic mail on February 7, 2024. Plaintiff failed to oppose these motions. "[T]he failure to file an opposition creates an inference that the motion [] is meritorious." (*Sexton v. Super Ct.* (1997) 58 Cal.App.4th 1403, 1410.) There is also good cause to grant these motions. Plaintiff fails to adequately plead the fourth and fifth causes of action or to explain how those claims can be amended to survive demurrer. Without those claims, Plaintiff's claim for punitive damages is appropriately stricken. Moving party to prepare formal order.
LINE 5	23CV426966	*SRD Contract, Inc. vs ECD-Great Street, LLC*	THIS CALENDAR WILL BE CALLED IN DEPARTMENT 6. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 6 TEAMS LINK FROM THE COURT WEBSITE. https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml Please see tentative ruling below; Court to prepare formal order.

LINE 6	22CV393912	*Jose Corona Ceja et al vs Dosanjh Family Automotive*	THE CALENDAR WILL BE CALLED IN DEPARTMENT 6. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 6 TEAMS LINK FROM THE COURT WEBSITE. https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml Plaintiff's motion to compel person most knowledgeable deposition is DENIED. The Court has studied the parties' correspondence, and it does not demonstrate the type of meet and confer required by the Code of Civil Procedure. This case is not scheduled for trial until August. Defendant's last correspondence indicated it was locating other dates. Plaintiff filed this motion six days later. Plaintiff failed to engage in adequate meet and confer before filing this motion. Court to prepare formal order.
LINES 7-8	22CV409212	*Yevgeniy Dukhovny vs. Megan Carr*	THE CALENDAR WILL BE CALLED IN DEPARTMENT 6. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 6 TEAMS LINK FROM THE COURT WEBSITE. https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml Plaintiff's motions to compel responses to request for production (sets four and five) and to have matters in requests of admission admitted are GRANTED. Plaintiff served this discovery on the Essex Defendants on January 4, 2024 and followed up on February 6 and 19, 2024 after receiving no responses. To date, the Essex Defendants have not responded. A party served with Requests for Admission must serve a response within 30 days. (Code of Civ. Pro. §2033.250.) When a party fails to respond—even in the face of a motion to have the matters in the Requests for Admission deemed admitted—as the Essex Defendants have done here, the Court must order the Requests for Admission deemed admitted. (Code of Civ. Pro. §2033.280(c); *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 775-776.) Such a "deemed admitted" order establishes that the nonresponding party has responded to the requests for admission by admitting the truth of the matters contained in the requests. (*Id.*) Further, when a party fails to response to requests for production, the party waives all objections. (Code of Civ. Proc. §2031.300.) Accordingly, (1) the Essex Defendants are ordered to produce complete, code compliant responses without objections to request for production sets four and five within 20 days of service of the formal order and (2) the matters set forth in Plaintiff's request for admissions set four are deemed admitted. Moving party to prepare formal order.

LINE 9	23CV419670	*Alexander Allis vs Ford Motor Company*	THE CALENDAR WILL BE CALLED IN DEPARTMENT 6. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 6 TEAMS LINK FROM THE COURT WEBSITE. https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml Plaintiff's motion to compel further responses to request for production of documents is DENIED. The party to whom a request for production of documents has been directed can make one of three responses: (1) a statement that the party will comply with the demand, (2) a representation that the party lacks the ability to comply, or (3) an objection. (Code Civ. Pro. §2031.210(a).) A party may move for an order compelling a further response to a document demand on the ground that (1) an objection is without merit or too general, (2) a statement of compliance with the demand is incomplete, or (3) a representation of inability to comply is inadequate, incomplete, or evasive. (Code Civ. Pro. §2031.210(a).) A party seeking to compel is required to "set forth specific facts showing good cause justifying the discovery sought by the demand." (Code Civ. Pro. §2031.210(b)(1); *Kirkland v. Superior Court* (2002) 95 Cal.App.4th 92, 98.) Plaintiff fails to meet that burden here. It appears Defendant has produced documents and served code compliant written responses. Plaintiff fails to meet its burden to demonstrate what additional documents are required. Court to prepare formal order.
LINE 10	23CV424871	*Level 5 Security, Inc. vs Julie Puga*	THE CALENDAR WILL BE CALLED IN DEPARTMENT 6. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 6 TEAMS LINK FROM THE COURT WEBSITE. https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml Plaintiff/Cross-Defendant's motion to compel is GRANTED. A notice of motion with this hearing date and time was served by electronic mail on March 13, 2024. No opposition was filed. "[T]he failure to file an opposition creates an inference that the motion [] is meritorious." (*Sexton v. Super Ct.* (1997) 58 Cal.App.4th 1403, 1410.) Accordingly, non-moving parties are ordered to serve complete, code compliant responses within 20 days of service of this formal order. Plaintiff/Cross-Defendant's motion for sanctions is DENIED. It does not appear to this Court that Plaintiff/Cross-Defendant engaged in sufficient meet and confer before bringing this motion. Court to prepare formal order.

LINE 11	20CV369138	*Chicago Title Company vs. 28th St. Villa Apts. LLC*	THE CALENDAR WILL BE CALLED IN DEPARTMENT 6. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 6 TEAMS LINK FROM THE COURT WEBSITE. https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml Roygbiv Real Estate Development and Loida Kirkley's Motion to Amend Answer is GRANTED. "[T]he trial court has wide discretion in allowing the amendment of any pleading". (*Bedolla v. Logan & Frazer* (1975) 52 Cal. App. 3d 118, 135-136.) However, "the exercise of this discretion must be sound and reasonable and not arbitrary or capricious. (*Richter* v. *Adams*, 43 Cal.App.2d 184, 187; *Eckert* v. *Graham*, 131 Cal.App. 718, 721.) [It] is a rare case in which 'a court will be justified in refusing a party leave to amend his pleadings so that he may properly present his case.' (*Guidery* v. *Green*, 95 Cal. 630, 633; *Marr* v. *Rhodes*, 131 Cal. 267, 270. If the motion to amend is timely made and the granting of the motion will not prejudice the opposing party, it is error to refuse permission to amend and where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error but an abuse of discretion. (*Nelson* v. *Superior Court*, 97 Cal.App.2d 78; *Estate of Herbst*, 26 Cal.App.2d 249; *Norton* v. *Bassett*, 158 Cal. 425, 427.)" (*Morgan v. Superior Court of Los Angeles County* (1959) 172 Cal. App. 2d 527, 530-531 (error for trial court to fail to give leave to amend). However, "even if a good amendment is proposed in proper form, unwarranted delay in presenting it may--of itself--be a valid reason for denial." (*Roemer v. Retail Credit Co*. (1975) 44 Cal. App. 3d 926, 939-940; see also *Moss Estate Co. v. Adler* (1953) 41 Cal. 2d 581, 585-587.) Here, Plaintiff claims it will be prejudiced by these amendments, but Plaintiff does not explain how—Plaintiff does not identify any specific discovery not already taken that would cause any delay in the current trial schedule. It appears these amendments clarify already existing defenses. Moving party shall (1) prepare a formal order and (2) file the amended answer separately within 10 days of this tentative ruling.
LINE 12	21CV382585	*Maria Brambila vs. General Motors, LLC*	A motion for fees was reserved for this date by minute order dated February 20, 2024. However, the Court is unable to locate any briefing regarding such motion. This motion is accordingly off calendar.
LINE 13	21CV386157	*Karen Woodbeck vs Alice Chen*	THE CALENDAR WILL BE CALLED IN DEPARTMENT 6. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 6 TEAMS LINK FROM THE COURT WEBSITE. https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml Alice Chen's application for good faith settlement is DENIED WITHOUT PREJUDICE. First, the order prematurely granting this application before the time for the opposition had come due is stricken. The Court apologizes to the parties for that error. Next, to properly analyze whether the proposed $300,000 payment meets the requirements of Civil Procedure 877.6, the Court needs to know Plaintiff's total anticipated recovery. (See *North County Contractor's, Ass'n v. Touchstone Ins. Servs.* (1994) 27 Cal. App. 4th 1085 (The judge should make an educated guess whether the settlement approximates the settling defendant's apportionment of liability and is not grossly disproportionate to the settler's fair share of anticipated damages.) This information is not contained in the complaint or provided with Alice Chen's application. Further, counsel's statements that Ms. Chen has no other assets than this policy limit is not competent evidence, as counsel plainly does not have personal knowledge of Ms. Chen's financial condition. Thus, while this may very well be a good faith settlement, the evidence submitted with the application fails to demonstrate as such. Accordingly, the application is denied without prejudice. Court to prepare formal order.

LINE 14	24CV429870	*Evelyn Kwan vs Sprouts Farmers Market, Inc.*	THE CALENDAR WILL BE CALLED IN DEPARTMENT 6. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 6 TEAMS LINK FROM THE COURT WEBSITE. https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml Defendant SF Markets, LLC dba Sprouts Farmers Market motion to compel arbitration is GRANTED. Plaintiff does not dispute that she entered the arbitration agreement attached as Exhibit A to the Lindsay Bartless declaration or that her claims fall under that agreement. It is thus Plaintiff's burden to demonstrate that agreement is unenforceable. (*Condee v. Longwood Management Corp.* (2001) 88 Cal. App. 4th 215, 218; *Gamboa v. Northeast Community Clinic* (2021) 72 Cal. App. 5th 158, 165 (once moving party produces prima facie evidence of a written arbitration agreement by attaching the agreement or summarizing the terms in a motion to compel, the opposing party bears the burden of producing evidence to challenge the enforceability of the agreement.); California Rules of Court, Rule 371.) Plaintiff's argument that Defendant breached is not persuasive. Paragraph 9 of the parties' agreement states: "either party may, but is not required by this agreement to, request that the claim be promptly submitted to pre-arbitration non-binding mediation. To the request for mediation. If the Parties mutually agree to mediate, but the dispute remains unresolved for 30 calendar days after the selection of a mediator and submission of the matter to mediation, either party may rescind its consent to mediate and initiate the arbitration process. . ." This language unambiguously makes pre-arbitration mediation optional. The parties are "not required by this agreement" to request mediation, and if a party does request, the non-requesting party has 30 days to respond to that request. If the non-requesting party had no right to refuse, they would not have a time limit for response. Moreover, even if the non-requesting party initially agrees to mediate, either party can still withdraw that consent to mediate, further evincing the intention of the parties to make pre-arbitration mediation optional at the time the contract was formed. Here, in response to Plaintiff's demand, Defendant reviewed Plaintiff's personnel file, stated its position with citation to evidence, and responded to the request for mediation by stating it would not be fruitful given Defendant's understanding of the facts surrounding Plaintiff's termination. This is all the agreement required. Plaintiff's argument that the agreement is unconscionable is also unpersuasive. While the agreement may be procedurally unconscionable because of its take it or leave it nature in the employment context, it is not substantively unconscionable. (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83 (in a take-it-or-leave it scenario when a prospective employee is looking for work, the procedural unconscionability prong is generally met). The prevailing view is that both procedural and substantive unconscionability must be present, but the two elements of unconscionability need not be present to the same degree. A sliding scale is invoked such that the more substantively oppressive the contract term the less evidence of the procedural unconscionability is required to conclude that the contract provision is unenforceable, and vice versa. (*Armendariz,* 24 Cal.4th at 114.) Here, the arbitration agreement terms are mutual. And while the arbitrator must follow JAMS employment rules under the agreement, the agreement also provides the arbitrator with authority to issue subpoenas and otherwise order the production of documents. Plaintiff thus fails to meet its burden to show that the arbitration agreement is unenforceable. On this record, the Court is required to send this matter to arbitration. (Code Civ. Pro. § 1281.2 ("the court shall order a matter to arbitration if it determines that there is an agreement to arbitrate and (1) the agreement has not been waived or (2) the agreement has not been revoked."); *Cinel v. Barna* (2012) 206 Cal.App.4th 1383, 1389.) The case is stayed pending the outcome of the arbitration. The July 23, 2024 initial case management conference is VACATED and a status conference regarding the arbitration is set for December 12, 2024 at 10 am in Department 20. Court to prepare formal order.

SUPERIOR COURT, STATE OF CALIFORNIA **COUNTY OF SANTA CLARA** **DEPARTMENT 6** **161 North First Street, San Jose, CA 95113** **408.882.2320 · 408.882.2296 (fax)** ***http://www.scscourt.org***	*(For Clerk's Use Only)*

CASE NO.: 23CV426966 SRD Contract, Inc. v. ECD-Great Street DE, LLC dba theWit Chicago, et al.
DATE: 9 April 2024 TIME: 9:00 am LINE NUMBER: 5

ORDER ON DEFENDANT ECD-GREAT STREET DE, LLC'S MOTION TO QUASH FOR LACK OF JURISDICTION

I. Statement of Facts.

Plaintiff SRD Contract, Inc ("Plaintiff"), previously doing business as Lifestyle Hospitality Inc., provides case goods, seating, millwork, various types of furniture and related items and services to the hospitality industry. (Complaint, ¶¶2, 3, and 11.) Defendant ECD-Great Street DE, LLC dba theWit Chicago ("Defendant") has a principal place of business at 250 Parkway Drive, Suite 120, in Lincolnshire, Illinois. (Complaint, ¶4.) Defendant owns and/or operates one or more hotels and related businesses including, without limitation, theWit Chicago, located at 201 N. State Street in Chicago, Illinois. (*Id.*)

In 2021, Defendants' representatives contacted Plaintiff about sourcing, manufacturing and delivering various furniture related items for a remodel of theWit Chicago hotel. (Complaint, ¶12.) Over several months, Plaintiff worked with Defendants' purchasing agent, Beyer Brown & Associates LP ("BBA"), to understand the scope of the project, begin discussing terms, and timing. (*Id.*)

On or about 28 and 29 September 2021, Plaintiff and Defendants negotiated various terms of a potential purchase order with a value of approximately $2.7 million. (Complaint, ¶13.) On 1 October 2021, Defendants' purchasing agent, BBA, notified Plaintiff in writing that Defendants had awarded the project to Plaintiff. (Complaint, ¶14.) Based on written assurance that Defendants had awarded the project to Plaintiff, Plaintiff mobilized its team, began incurring costs, and quickly began preparing shop drawings and specifications requested by Defendant. (Complaint, ¶15.)

Defendants did not provide a signed purchase order or paid a deposit by 10 October 2021. (Complaint, ¶¶15 – 17.) Instead, Defendants placed a long-term hold on the entire project until next year. (Complaint, ¶18.) In May 2022, Defendants decided to restart the project and place an order from Plaintiff. (Complaint, ¶19.) On or about 24 May 2022, Defendant (through its purchasing agent, BBA) submitted a purchase order by email to Plaintiff in California placing an order in the total amount of $2,680,815. (*Id.*) Plaintiff signed the purchase order and returned it by email to Defendants' agent long with a Proforma Invoice and wire instructions requested by Defendants so that Defendants would process payment, including the required 50% deposit. (Complaint, ¶20.)

On or about 7 June 2022, Defendants paid Plaintiff an initial deposit in the amount of $804,224.50. (Complaint, ¶21.) On or about 8 August 2022, Defendants requested a change to the Purchase Order to account for some modifications it wanted in quantities of items as well as some minor price changes. (Complaint, ¶22.) The

effect of the change order was an increase of $26,397 bringing the total amount of the Purchase Order, as revised, to $2,707,212. (*Id.*) Defendants made another deposit on or about 10 August 2022 in the amount of $549,361.50 bringing the total deposit paid to $1,353,606, or half the total $2,707,212 Purchase Order value. (Complaint, ¶23.)

Over the next several months, Plaintiff performed and delivered products and services ordered. (Complaint, ¶24.) As each shipment was delivered, Plaintiff generated an invoice reflecting the items and services delivered, the amount of the prior deposit applied (generally 50% of the value of goods and services delivered) and reflecting the amount owed on the individual invoice after any deposit was applied. (*Id.*) As products and services were delivered, Defendants made various additional payments. (Complaint, ¶25.)

In March 2023, Defendants requested a final change to the Purchase Order, removing the balance of a service of Plaintiff applying a "Tuffskin" coating to some of the product. (Complaint, ¶26.) That change order reduced the value of the order by $50,925, bringing the total value of the Purchase Order to $2,656,287. (*Id.*) Following final deliveries in March 2023, Defendants made additional payments of $279,245 and $12,063.02, respectively, but there remains owing and unpaid from Defendants to Plaintiff the amount of $581,299.53. (Complaint, ¶27.) Despite repeated demands by Plaintiff, Defendant has failed to pay the remaining $581,299.53. (Complaint, ¶¶28 – 29.)

On 1 December 2023, Plaintiff filed complaint against Defendants asserting causes of action for.

(1) BREACH OF CONTRACT
(2) OPEN BOOK ACCOUNT
(3) ACCOUNT STATED
(4) GOOD SOLD AND DELIVERED

On 16 February 2024, Defendant filed the motion now before the court, a motion to quash service of summons for lack of jurisdiction.

II. Analysis.

A. Defendant's motion to quash service of summons for lack of personal jurisdiction is DENIED.

Code of Civil Procedure section 418.10, subdivision (a)(1) states, in pertinent part, "A defendant, on or before the last day of his or her time to plead or within any further time that the court may for good cause allow, may serve and file a notice of motion for one or more of the following purposes: (1) To quash service of summons on the ground of lack of jurisdiction of the court over him or her."

"Although the defendant is the moving party, the burden of proof is on the plaintiff." (Weil & Brown et al., CAL. PRAC. GUIDE: CIV. PRO. BEFORE TRIAL (The Rutter Group 2020) ¶3:384, p. 3-112 citing *Floveyor International, Ltd. v. Superior Court* (1997) 59 Cal.App.4th 789, 793 (*Floveyor*), et al.) "When jurisdiction is challenged by a nonresident defendant, the burden of proof is on the plaintiff to demonstrate that sufficient 'minimum contacts' exist between the defendant and the forum state to justify imposition of personal jurisdiction." (*Sibley v. Superior Court* (1976) 16 Cal.3d. 442, 445.) "[T]he burden of proof is upon the plaintiff to establish the facts of jurisdiction by a preponderance of the evidence." (*Evangelize China Fellowship, Inc. v. Evangelize China Fellowship, Hong Kong* (1983) 146 Cal.App.3d 440, 444; *Snowney v. Harrah's Entertainment, Inc.* (2005) 35 Cal.4th 1054, 1062 (*Snowney*); *HealthMarkets, Inc. v. Superior Court* (2009) 171 Cal.App.4th 1160, 1167-1168 (*HealthMarkets*); *In re Automobile Antitrust Cases I and II* (2005) 135 Cal.App.4th 100, 110.) The burden must be met by competent affidavits containing specific evidentiary facts or authenticated documentary evidence, not by allegations of an unverified complaint. (*In re Automobile Antitrust Cases I and II*, at p. 110.) If plaintiffs satisfy that

burden, the burden shifts to the defendant to show the exercise of jurisdiction would be unreasonable. (*HealthMarkets*, at p. 1168; *Snowney*, at p. 1062.)

"'California courts may exercise personal jurisdiction on any basis consistent with the Constitution of California and the United States. [Citation.] The exercise of jurisdiction over a nonresident defendant comports with these Constitutions "if the defendant has such minimum contacts with the state that the assertion of jurisdiction does not violate '"traditional notions of fair play and substantial justice."'" [Citations.] [¶] 'The concept of minimum contacts ... requires states to observe certain territorial limits on their sovereignty. It "ensure[s] that the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." ' [Citation.] To do so, the minimum contacts test asks 'whether the "quality and nature" of the defendant's activity is such that it is "reasonable" and "fair" to require him to conduct his defense in that State.' [Citation.] The test 'is not susceptible of mechanical application; rather, the facts of each case must be weighed to determine whether the requisite "affiliating circumstances" are present.'" (*Snowney*, *supra*, 35 Cal.4th at pp. 1061-1062.)

> Pursuant to Code of Civil Procedure section 410.10, California's long-arm statute, "[a] court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States." The long-arm statute "manifests an intent to exercise the broadest possible jurisdiction," limited only by constitutional considerations of due process. (*Sibley v. Superior Court* (1976) 16 Cal.3d 442, 445, [128 Cal. Rptr. 34, 546 P.2d 322]; *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444 (Vons), [58 Cal. Rptr. 2d 899, 926 P.2d 1085].) The general rule is that a state may exercise personal jurisdiction over a nonresident defendant "if the defendant has such minimum contacts with the state that the assertion of jurisdiction does not violate "traditional notions of fair play and substantial justice." (*Vons Companies, Inc. v. Seabest Foods, Inc.*, *supra*, 14 Cal.4th at p. 444, quoting *International Shoe Co. v. Washington* (1945) 326 U.S. 310, 326, [90 L. Ed. 95, 66 S. Ct. 154].) Stated another way, "the forum state may not exercise jurisdiction over a nonresident unless his [or her] relationship to the state is such as to make the exercise of such jurisdiction reasonable." (*Cornelison v. Chaney* (1976) 16 Cal.3d 143, 147, [127 Cal. Rptr. 352, 545 P.2d 264].) As these tests suggest, the question of jurisdiction cannot be answered by the application of precise formulas or mechanical rules. Each case must be decided on its own facts. (*Id.* at p. 150.)
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> Personal jurisdiction may be either general or specific. (*Helicopteros Nacionales de Colombia, S.A. v. Hall* (1984) 466 U.S. 408, 414-415, [80 L. Ed. 2d 404, 104 S. Ct. 1868]; *Vons Companies, Inc. v. Seabest Foods, Inc.*, *supra*, 14 Cal.4th at p. 445.) General jurisdiction may lie for all purposes if a defendant has established a presence in the forum state by virtue of activities in the state which are "extensive or wide-ranging" (*Buckeye Boiler Co. v. Superior Court* (1969) 71 Cal.2d 893, 898-899, [80 Cal. Rptr. 113, 458 P.2d 57]) or "substantial . . . continuous and systematic." (*Cornelison v. Chaney*, *supra*, 16 Cal.3d at p. 148.) In such a case a defendant's contacts "take the place of physical presence in the forum as a basis for jurisdiction." (*Vons Companies, Inc. v. Seabest Foods, Inc.*, *supra*, 14 Cal.4th at p. 446.)

(*Integral Development Corp. v. Weissenbach* (2002) 99 Cal.App.4th 576, 583 – 584 (*Integral*).)

1. General jurisdiction.

Plaintiff does not assert Defendant, an Illinois corporation headquartered in Illinois, is subject to general jurisdiction in California.

2. Specific jurisdiction.

> If a nonresident defendant's activities in the state are not sufficient to allow the forum state to exercise general jurisdiction for all purposes, the state may nonetheless exercise specific jurisdiction "if the defendant has purposefully availed himself or herself of forum benefits (*Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 472-473, [85 L. Ed. 2d 528, 105 S. Ct. 2174]) and the 'controversy is related to or "arises out of" a defendant's contacts with the forum.' (*Helicopteros Nacionales De Columbia v. Hall*, *supra*, 466 U.S. at p. 414) (*Vons Companies, Inc. v. Seabest Foods, Inc.*, *supra*, 14 Cal.4th at p. 446.) Once a court decides that a defendant has purposefully established contacts with the forum state and that plaintiff's cause of action arose out of those forum-related contacts, the final step in the analysis involves balancing the convenience of the parties and the interests of the state in order to determine whether the exercise of personal jurisdiction is fair and reasonable under all of the circumstances. (*Burger King Corp. v. Rudzewicz*, *supra*, 471 U.S. at pp. 477-478; *Vons Companies, Inc. v. Seabest Foods, Inc.*, *supra*, 14 Cal.4th at pp. 447-448.)

(*Integral*, *supra*, 99 Cal.App.4th at pp. 583 – 584.)

a. Purposeful availment.

"The non-resident defendant must have purposefully directed its activities at forum residents, or purposefully availed itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of local law." (Weil & Brown (CAL. PRAC. GUIDE: CIV. PRO. BEFORE TRIAL (The Rutter Group 2010) at ¶3:226, p. 3-64 citing *Hanson v. Denckla* (1958) 357 U.S. 235, 253; *Vons*, *supra*, 14 Cal.4th at p. 446.) "Purposeful availment exists where the defendant purposefully and voluntarily directs its activities toward the forum state in an effort to obtain a benefit from that state." (*Snowney v. Harrah's Entertainment, Inc.* (2005) 35 Cal.4th 1054, 1067.)

"'The purposeful availment inquiry … focuses on the defendant's intentionality. [Citation.] This prong is only satisfied when the defendant purposefully and voluntarily directs his activities toward the forum so that he should expect, by virtue of the benefit he receives, to be subject to the court's jurisdiction based on' his contacts with the forum. [Citation.] Thus, the 'purposeful availment' requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts [citations], or of the 'unilateral activity of another party or a third person.' [Citations.]" (*Elkman v. National States Ins. Co.* (2009) 173 Cal.App.4th 1305, 1317.)

"'Purposeful availment' requires that the defendant 'have performed some type of affirmative conduct which allows or promotes the transaction of business within the forum state.' [Citation.] A contract with an out-of-state party does not automatically establish purposeful availment in the other party's home forum. [Citations.] Rather, a court must evaluate the contract terms and the surrounding circumstances to determine whether the defendant purposefully established minimum contacts within the forum. Relevant factors include prior negotiations, contemplated future consequences, the parties' course of dealings, and the contract's choice-of-law provision. [Citation.]" (*Stone v. Texas* (1999) 76 Cal.App.4th 1043, 1048 (*Stone*).) " '[W]ith respect to interstate contractual obligations . . . parties who "reach out beyond one state and create continuing relationships and obligations with citizens of another state" are subject to . . . sanctions in the other State for the consequences of their activities.' [Citations.] Due process requires a 'substantial connection' between the contract at issue and the forum state." (*Stone*, *supra*, 76 Cal.App.4th at pp. 1048 – 1049.)

In opposition to Defendant's motion to quash, Plaintiff proffers the declaration of its President, Robert Brown, who declares that Plaintiff is a California corporation with its principal place of business in San Jose,

California.[1] Defendant's representatives reached out to Brown in California in early 2020 about Plaintiff helping to renovate guestrooms at a large Hilton affiliated property in downtown Chicago named theWit Chicago.[2] Defendant's representatives asked Plaintiff to bid for theWit Chicago's remodel project with the initial phase to prepare a Model Room.[3] Plaintiff's team in California worked to put together a bid to do the work in response to the request from Defendant's representatives.[4] Thereafter, continued discussions were held and Defendant's representative asked Brown to send a model room proposal.[5] Negotiations continued until 13 March 2020 when Defendant's representative indicated the project was on hold.[6] The project resumed a year later on or about 11 March 2021 with Defendant's representatives and Plaintiff repeatedly interacting with regard to the determination of sample fabrics.[7] The interactions culminated with Defendant's representatives notifying Plaintiff that Defendant awarded the project to Plaintiff on or about 1 October 2021 and Defendant (through BBA) submitting a purchase order for $2,680,815 to Plaintiff on or about 24 May 2022.[8]

One of the specific terms Defendant required in the purchase order was that California fire retardant laws would apply to furniture Plaintiff delivered and Plaintiff had to ensure the furniture met California rules.[9]

On or about 7 June 2022, Defendant paid Plaintiff an initial deposit of $804,224.50.[10] Thereafter, Defendant requested changes to the purchase order and made additional payments.[11] Plaintiff opened an office in Idaho but continued to maintain its presence in California.[12]

Based on the evidence submitted by Plaintiff, the court finds Plaintiff has adequately demonstrated that Defendant has purposefully directed its activities at Plaintiff, a forum resident. While there is no choice of law provision between Plaintiff and Defendant, there is credible evidence that Defendant reached out from Illinois to California and engaged in a lengthy and significant three year relationship with Plaintiff culminating in a contract between Plaintiff and Defendant with one of the provisions required by Defendant that California fire retardant laws would apply to furniture Plaintiff delivered and Plaintiff had to ensure the furniture met California rules.[13]

In opposition, Defendant relies, in part, upon *Peterson v. Kennedy* (9th Cir. 1985) 771 F.2d 1244 (*Peterson*). *Peterson* involved a professional football player who filed a grievance against the league's union when he didn't receive his full salary after being injured and cut from his team. In the course of the grievance, Peterson and his agent spoke to Harold Kennedy, a recent law school graduate serving as an assistant to the union's executive director and the union's staff counsel. Peterson eventually filed suit against the union and included a claim for malpractice against Kennedy. The trial court granted summary judgment in Kennedy's favor concluding Kennedy had insufficient contacts with California to justify personal jurisdiction over him. "Both parties agree that Kennedy's sole contacts with California consisted of a series of telephone calls that he made to Peterson from the union's Washington D.C. office and letters that he sent to a California physician regarding Peterson's injury." (*Peterson*, *supra*, 771 F.2d at p.1261.) The *Peterson* court found no basis for making an exception to the general

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[1] See ¶¶1 – 2 of the Declaration of Robert Brown in Opposition to Defendant's Motion to Quash Summons ("Declaration Brown").
[2] See ¶4 of the Declaration Brown.
[33] See ¶¶5 – 6 and Exh. 2 of the 'Declaration Brown.
[4] See ¶¶7 – 8 and Exh. 3 of the Declaration Brown. 7
[5] See ¶¶9 – 10 and Exh. 4 – 5 of the Declaration Brown.
[6] See ¶¶11 – 15 and Exh. 6 – 10 of the Declaration Brown.
[7] See ¶¶16 – 26 and Exh. 11 – 21 of the Declaration Brown.
[8] See ¶¶`27 – 37 and Exh. 22 – 29 of the Declaration Brown.
[9] See ¶38 of the Declaration Brown.
[10] See ¶¶39 and 41 of the Declaration 'Brown.
[11] See ¶¶42 – 47 of the Declaration Brown.
[12] See ¶40 of the Declaration Brown.
[13] See ¶38 of the Declaration Brown.

rule that, “courts of California [footnote omitted] have concluded that ordinarily ‘use of the mails, telephone, or other international communications simply do not qualify as purposeful activity invoking the benefits and protection of the [forum] state.’ [Citations.]” (*Id.* at p. 1262.) The court finds *Peterson* easily distinguishable in that Kennedy did not purposely direct his activities toward a California resident. Instead, Kennedy was merely interacting with/ responding to a California resident who initiated a grievance. Furthermore, the defendant in *Peterson* did not enter a contract with the California plaintiff.

Defendant also relies, in part, on *Sher v. Johnson* (9th Cir. 1990) 911 F.2d 1357, 1362 (*Sher*) where the California plaintiff, facing criminal charges in Florida, hired a Florida law firm to represent him. The California plaintiff’s conviction was reversed, in part, because one of the firm’s partners had a conflict of interest. The California plaintiff then sued the Florida law firm and its individual partners in California alleging malpractice. The trial court dismissed the action against the law firm and the partners for lack of personal jurisdiction. The *Sher* court wrote:

> the mere existence of a contract with a party in the forum state does not constitute sufficient minimum contacts for jurisdiction. *Burger King*, 471 U.S. at 478. Instead, we must look to "prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing" to determine if the defendant's contacts are "substantial" and not merely "random, fortuitous, or attenuated." *Id.* at 479, 480 (internal quotations omitted).
>
> Here, it is undisputed that a Florida law firm represented a California client in a criminal proceeding in Florida. As normal incidents of this representation the partnership accepted payment from a California bank, made phone calls and sent letters to California. These contacts, by themselves, do not establish purposeful availment; this is not the deliberate creation of a "substantial connection" with California, *id.* at 475 (internal quotations omitted), nor is it the promotion of business within California. For one thing, the business that the partnership promoted was legal representation in Florida, not California. Moreover, the partnership did not solicit Sher's business in California; Sher came to the firm in Florida. There is no "substantial connection" with California because neither the partnership nor any of its partners undertook any affirmative action to promote business within California.

(*Sher*, *supra*, 911 F.2d at p. 1362.)

The court finds *Sher* distinguishable from the facts presented here in at least one significant regard. Specifically, the evidence here establishes that Defendant solicited Plaintiff’s business in California, not in Illinois. Plaintiff did not go out to Illinois to solicit business from Defendant. It cannot be said that Defendant’s contact with California was “random, fortuitous, or attenuated.” The fact that Defendant remained in Illinois while conducting business does not change the fact that Defendant was the party taking affirmative action to contact the California-based Plaintiff. Moreover, Defendant specifically sought to benefit from California’s laws with regard to fire retardant furniture.

Defendant’s reliance on *Hunt v. Superior Court* (2000) 81 Cal.App.4th 901 (*Hunt*) is also misplaced. The *Hunt* court does state, “When an out-of-state resident's only contact with California is a single purchase from a California vendor of goods for delivery out of state, there are insufficient minimum contacts to establish personal jurisdiction even though the California vendor supplies financing to the buyer.” In *Hunt*, the defendant operated a hairstyling salon in Maryland. The defendant wanted to purchase some equipment for her salon from a store in Maryland, but told the store’s owner she needed financing. The store’s owner sent defendant a credit application which defendant completed and returned and then the store’s owner independently arranged for the lease financing from a California company and forwarded the financing documents to defendant for signature. Although defendant did not receive the equipment, the California company lessor demanded payment and when defendant refused to

pay, the California company sued defendant, a Maryland resident, and her husband guarantor in California court. Defendant and her husband moved to quash service of summons for lack of personal jurisdiction which the trial court denied. The *Hunt* court, in issuing a writ of mandate directing the trial court to grant the motion to quash, noted that although defendant signed an agreement with a California company, defendant "had only intra-Maryland communications and dealt only with Maryland residents." (*Hunt*, *supra*, 81 Cal.App.4th 907.) Again, the court finds *Hunt* to be distinguishable from the facts present here. Specifically, Defendant initiated the contact and knowingly dealt with Plaintiff in California.

At first blush, the Sixth District Court of Appeal decision of *Futuresat Industries, Inc. v. Superior Court* (1992) 3 Cal.App.4th 155 (*Futuresat*) might seem compelling in favor of Defendant. In *Futuresat*, defendant Texas companies contacted a California company that wanted to sell its collection of classic movie videotapes. The California company let it be known to several companies in the business of its desire to sell, but did not specifically solicit the Texas defendant company. The Texas defendant company then reached out to the California company and an agreement was reached whereby the Texas defendant company would purchase 740 motion pictures at $75 per title for a total of $55,000. When payment was not made, the California company sued the Texas defendant company. The trial court denied the Texas defendant company's motion to quash, but the *Futuresat* issued a writ of mandate compelling the trial court to grant the motion to quash.

> Regular purchasing activities in this state may be a basis for jurisdiction over an out-of-state buyer. (See *Henry R. Jahn & Son v. Superior Court* (1958) 49 Cal.2d 855 [323 P.2d 437].) On the other hand, no case premises jurisdiction over such a buyer on a single-sale transaction. (See generally, Annot., 23 A.L.R.3d 551; e.g., *Rath Packing Co. v. Intercontinental Meat Trad., Inc.* (Iowa 1970) 181 N.W.2d 184, 188-189.) The predominant rule in the federal courts is that a mere one-time purchaser of goods from a seller in the forum state cannot be constitutionally subject to the exercise of personal jurisdiction by the courts of the forum state. (*Borg-Warner Acceptance Corp. v. Lovett & Tharpe, Inc.* (11th Cir. 1986) 786 F.2d 1055, citing extensive authority.)
>
> California decisions similarly have declined to find jurisdiction against out-of-state buyers except in rare instances where extensive business was done here. [Citations omitted.] ***Jurisdiction over an out-of-state buyer must be premised on a substantial basis such as an ongoing relationship or course of dealings with the plaintiff. The test is not physical presence, which is not essential, but rather the totality of the jurisdictional contacts as relevant to whether the assumption of jurisdiction is fair.*** Continuous and substantial buying activity within the state can constitute sufficient contacts to warrant the exercise of jurisdiction. (*Henry R. Jahn & Son v. Superior Court*, *supra*, 49 Cal.2d 855; *American Continental Import Agency v. Superior Court* (1963) 216 Cal.App.2d 317, 322 [30 Cal.Rptr. 654].)

(*Futuresat*, *supra*, 3 Cal.App.4th at p. 159; emphasis added.)

The *Futuresat* court expressly found "the singularity of the business done [to be] determinative." (*Id.* at p. 162.) Not surprisingly, Defendant emphasizes the singularity of its contract with Plaintiff to support its motion to quash. However, when this court looks to the substance of the transaction and the lengthy three-year course of dealings between Plaintiff and Defendant here resulting in a 126 page purchase order valued at over $2,600,000, the court does not find the singularity of the purchase order to be dispositive. Moreover, even though a single contract, Defendant specifically sought to benefit from California's laws regarding fire retardant furniture which makes the present case distinguishable from *Futuresat*.

b. Claim arising from Defendant's forum-related activity.

The next element required to establish specific jurisdiction against an out-of-state defendant is that "the controversy is related to or arises out of the defendant's contacts with the forum." (*Pavlovich v. Superior Court*

(2002) 29 Cal.4th 262, 269.) The controversy here is a breach of the very contract that Defendant entered into after initiating contact with the Plaintiff. In moving to quash, Defendant cites to a number of facts which, in the court's mind, are neither here nor there. For instance, the fact that the furniture Plaintiff sold to Defendant was manufactured and shipped from China is not determinative or relevant.

c. Reasonableness.

"[T]he plaintiff has the initial burden of demonstrating facts justifying the exercise of jurisdiction." (*Vons*, *supra*, 14 Cal. 4th at p. 449.) If the plaintiff meets this initial burden, then the defendant has the burden of demonstrating "that the exercise of jurisdiction would be unreasonable." (*Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 273.) Once a court decides that a defendant has purposefully established contacts with the forum state and that plaintiff's cause of action arose out of those forum-related contacts, the final step in the analysis involves balancing the convenience of the parties and the interests of the state in order to determine whether the exercise of personal jurisdiction is fair and reasonable under all of the circumstances. (*Burger King Corp. v. Rudzewicz*, *supra*, 471 U.S. at pp. 477-478; *Vons Companies, Inc. v. Seabest Foods, Inc.*, *supra*, 14 Cal.4th at pp. 447-448.)

> "The 'minimum contacts' doctrine provides no mechanical yardstick. Rather, personal jurisdiction depends on the facts of each case … the test being whether, under those facts, California has a sufficient relationship with the defendant and the litigation to make it reasonable ('fair play') to require him or her to defend the action in California courts. The following factors are usually considered:
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> • The extent to which the lawsuit relates to defendant's activities or contacts with California;
>
> • The availability of evidence, and the location of witnesses;
>
> • The availability of an alternative forum in which the claim could be litigated (defendant's amenability to suit elsewhere);
>
> • The relative costs and burdens to the litigants of bringing or defending the action in California rather than elsewhere; and
>
> • Any state policy in providing a forum for this particular litigation (e.g., protection of California resident, or assuring applicability of California law)."

(Weil & Brown et al., CAL. PRAC. GUIDE: CIV. PRO. BEFORE TRIAL (The Rutter Group 20120) ¶3:205, pp. 3-69 to 3-70 citing *World-Wide Volkswagen*, *supra*, 444 U.S. at p. 292.)

Without citation to any supporting evidence, Defendant asserts litigation in California would be unreasonable because Defendant would have to shoulder extensive costs and burdens because its management representatives/ witnesses are all located outside of California as well as third party (BBA, architect, furniture designer, warehousemen) witnesses.

Even if this court accepts Defendant's assertion that relevant witnesses are located outside of California, there is no evidence quantifying the associated costs of litigating in California and thus no basis for the court to measure/ balance the reasonableness or unreasonableness of litigating elsewhere. Consequently, Defendant has not met its burden of demonstrating "that the exercise of jurisdiction would be unreasonable."

For all the reasons discussed above, Defendant's motion to quash service of summons for lack of personal jurisdiction is DENIED.

III. Order.

Defendant's motion to quash service of summons for lack of personal jurisdiction is DENIED.

DATED:

HON. EVETTE D. PENNYPACKER
Judge of the Superior Court
County of Santa Clara