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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

SHAHROKH MIRESKANDARI, Plaintiff and Appellant, v. EDWARDS WILDMAN PALMER LLP et al., Defendants and Respondents.	B334797 Los Angeles County Super. Ct. No. BC517799

APPEAL from a judgment of the Superior Court, Los Angeles County, Michael L. Stern, Judge. Affirmed.

Law Offices of Robert C. Moest and Robert C. Moest for Plaintiff and Appellant.

Valle Makoff, John M. Moscarino and Katherine Balatbat for Defendants and Respondents.

The trial court dismissed plaintiff Shahrokh Mireskandari's professional negligence action after he failed to comply with the court's order to post an undertaking under Code of Civil Procedure section 1030.[1] Mireskandari argues the undertaking should not have been required because defendants Edwards Wildman Palmer LLP and Dominique Shelton (collectively, Edwards Wildman) did not make a sufficient showing that he resided outside of the state or that they had a reasonable possibility of obtaining a defense verdict. Mireskandari also contends the court abused its discretion by declining to waive the undertaking after he offered evidence of his indigency. The evidence supports the trial court's findings, and we see no abuse of discretion on the record presented. We affirm.

BACKGROUND

Consistent with our standard of review, we state the evidence in the light most favorable to the trial court's factual findings.[2] (See *Shannon v. Sims Service Center, Inc.* (1985) 164 Cal.App.3d 907, 911 (*Shannon*).)

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[1] Statutory references are to the Code of Civil Procedure, unless otherwise stated.

[2] Some of the facts are from our earlier opinion in *Mireskandari v. Edwards Wildman Palmer LLP* (2022) 77 Cal.App.5th 247 (*Mireskandari I*), which Edwards Wildman included as judicially noticeable evidence in support of its motion. We drew these facts from evidence admitted at the trial of Mireskandari's claims for breach of fiduciary duty and breach of contract against Edwards Wildman. (See *Mireskandari I,* at p. 256.)

1. *Mireskandari I*

Mireskandari was educated in the United States and later moved to London, England. He was admitted to the English bar as a solicitor in 2000 and became a partner in the law firm of Dean & Dean in 2005.

Beginning in September 2008, the Daily Mail—a London tabloid—published a series of unflattering articles about Mireskandari. Among other things, the articles said Mireskandari had been convicted of fraud in California in connection with a telemarketing scam; he claimed to have a bachelor's degree from the University of Pennsylvania, of which the university had no record; he failed to pass his classes at a "minor local" law school in the United States; he obtained his law degree from the American University of Hawaii, which subsequently was shut down by the courts; and he overcharged clients for legal work.

In December 2008, the Solicitors Regulation Authority (SRA)—the regulatory body for solicitors in England and Wales—took over Dean & Dean and brought a disciplinary action against Mireskandari in the Solicitor's Disciplinary Tribunal (SDT). The SRA alleged Mireskandari had misrepresented his education, training, and background to gain bar admission. It also alleged that, after obtaining his license, Mireskandari misused client funds; lied about doctoring evidence; and invited serious adverse findings for his litigation misconduct.

In 2011, Brett Bocchieri—a Los Angeles attorney who Mireskandari described as the "quarterback" of his U.S. legal team—proposed a plan for Mireskandari to file lawsuits against the SRA and the Daily Mail in California. At the urging of other advisors, Mireskandari approached Edwards Wildman to pursue

an invasion of privacy claim. The essence of the claim was that a Los Angeles-based Daily Mail reporter had misrepresented that he had Mireskandari's consent to search a National Student Clearinghouse (NSC) website to access Mireskandari's confidential education records.

On April 4, 2012, Edwards Wildman filed Mireskandari's invasion of privacy case in the United States District Court for the Central District of California, alleging the Daily Mail had hacked into his confidential educational records on the NSC website.

On April 16, 2012, the NSC informed Mireskandari it did not have his law school records. Because this disclosure confirmed there had not been an "unlawful hacking," Edwards Wildman advised Mireskandari that he would need either to dismiss the case or to file an amended complaint. The firm also advised Mireskandari that continuing the litigation would pit his privacy rights against the Daily Mail's First Amendment rights and would likely draw a motion to strike under California's anti-SLAPP statute. Mireskandari nonetheless instructed Edwards Wildman to file the amended complaint.

On May 23, 2012, defendants filed Mireskandari's first amended complaint, alleging, among other things, the Daily Mail published false and misleading articles about him. In June 2012, the Daily Mail's publisher filed a special motion to strike all of Mireskandari's state law claims under the anti-SLAPP statute.

The same month, the SDT issued its decision, finding Mireskandari had misrepresented his education, been convicted of telemarketing fraud in California, and caused financial harm to clients. The tribunal concluded he posed a significant risk to the public and ordered him struck from the Roll of Solicitors.

Following the SDT's decision, Mireskandari's relationship with Edwards Wildman deteriorated, and he substituted in the Greenberg Glusker law firm to work on the Daily Mail case. In the months that followed, his new lawyers advised Mireskandari to consider an exit strategy due to the probable preclusive effect of the SDT judgment. Mireskandari rejected the advice and, in April 2013, retained Bocchieri to replace Greenberg Glusker in the litigation. That attorney-client relationship later soured over Mireskandari disregarding Bocchieri's advice, and Mireskandari substituted another attorney into the case.

In October 2013, the federal district court granted the Daily Mail's special motion to strike several of Mireskandari's claims, with leave to amend. In November 2013, Mireskandari filed a second amended complaint. The Daily Mail filed a second anti-SLAPP motion. Finally, after lodging a third amended complaint, Mireskandari dismissed his federal action.[3]

In August 2013 (while his suit against the Daily Mail was still pending), Mireskandari filed the current action against Edwards Wildman for professional negligence, breach of fiduciary duty, and breach of contract. His complaint alleged defendants negligently failed to advise him of California's anti-SLAPP statute; breached their fiduciary duties by, among other things,

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[3] In March 2014, Mireskandari filed a new action against the Daily Mail's publisher in California state court. The publisher filed another anti-SLAPP motion. The trial court granted the motion in part but denied it with respect to the false light claim. This court reversed the order in part and directed the trial court to grant the anti-SLAPP motion in its entirety, concluding the SDT judgment barred Mireskandari's false light claim under the substantial truth doctrine.

generating unreasonable fees and failing to advise him of the anti-SLAPP statute; and breached provisions of the parties' engagement agreement. The trial court granted summary adjudication on the negligence claim, leaving the remaining causes of action for trial.

In May 2019, trial commenced on the remaining claims. Mireskandari testified that his wife—Saeedeh Mirshahi—had paid the legal invoices under a 2011 funding agreement. Mirshahi confirmed the arrangement and testified about her background as a U.K. solicitor and her financial support of Mireskandari's litigation. The couple also described anticipated profits from entertainment ventures and a substantial inheritance from Mireskandari's father.

The jury found Edwards Wildman liable for breach of fiduciary duty in one respect but awarded no damages, concluding Mireskandari could have reasonably avoided the claimed harm. It rejected all of Mireskandari's other claims. Mireskandari moved for a new trial and for judgment notwithstanding the verdict. The trial court denied the motions, concluding the evidence amply supported the jury's implicit finding that Mireskandari was personally committed to pursuing the Daily Mail litigation regardless of the cost or advice of his counsel.

Mireskandari appealed the summary adjudication of his professional negligence claim and the denial of his post-trial motions. We reversed the summary adjudication and affirmed the judgment in all other respects. (See *Mireskandari I, supra,* 77 Cal.App.5th at p. 251.)

2. *The Motion to Compel an Undertaking*

Eric Medel appeared as Mireskandari's counsel after remand. He moved to withdraw as counsel two months later, listing Mireskandari's address as a home in Potomac, Maryland. Medel declared that he had confirmed that the Maryland address was "current" within the past 30 days "by telephone conversations, email correspondence and written correspondence related to the residential address."

Medel's withdrawal spurred Edwards Wildman to move for an undertaking from Mireskandari under section 1030. A supporting declaration by Edwards Wildman's attorney —who had been "involved in the case since its inception"— catalogued the evidence admitted at trial regarding Mireskandari's "relentless pursuit" of litigation against the Daily Mail. Among other things, he declared this evidence showed that Mireskandari's former attorney "Bocchieri developed a plan for Mireskandari to pursue both the SRA and the Daily Mail in California"; that "Mireskandari began implementing that plan long before he sought representation by Edwards Wildman"; and that "Mireskandari was aware of his potential anti-SLAPP attorneys' fee exposure before he filed his First Amended Complaint" in the Daily Mail litigation. Exhibits to the declaration included the jury's 2019 special verdict and a transcript of the trial court's commentary, wherein the judge recounted evidence proving Mireskandari was a "raging bull" who "was going to pursue this through years and years and years, despite the odds, despite the losses."

On November 30, 2022—one day after his opposition was due—Mireskandari applied ex parte to continue both his response deadline and the hearing date, citing efforts to secure

new counsel. His filings listed the Potomac, Maryland address, and his process server—his wife, Mirshahi—admitted her Maryland residency. In support, Mireskandari claimed financial hardship, citing lack of regular employment and Mirshahi's chronic illness. The trial court denied the ex parte request.

Mireskandari continued to use the Maryland address in subsequent filings, including a consent to electronic service and a case management statement.

In February 2023, Mireskandari again sought a continuance, asserting a prospective attorney had withdrawn unexpectedly. For the first time, his caption page listed a Northridge, California address in place of the Potomac, Maryland residence. The trial court granted a 30-day continuance.

Five days before the rescheduled hearing, attorney Keith Turner substituted in as Mireskandari's counsel and filed a late opposition. The opposition did not assert economic hardship but instead contested the residency issue and Edwards Wildman's likelihood of prevailing on the professional negligence claim. In a supporting declaration, Mireskandari acknowledged his family resided in Maryland, but said he "primarily reside[s] and spend[s] most of [his] time in California." He added that he spent approximately eight to nine months in California in 2022, he had a California driver's license, was registered to vote in California, and he worked "in California for Zumi Worldwide, a California corporation." He said he "never authorized" his former attorney Medel to use his "wife's address in Maryland on the Substitution of Attorney forms" and suggested that Medel may have "inadvertently" used the Maryland address because Medel had represented his wife "in different legal matters."

Edwards Wildman filed a reply brief challenging the plausibility of Mireskandari's claims. The firm also submitted judicially noticeable court records showing Mireskandari had used the Potomac, Maryland address as his address of record in two other cases pending in California superior courts, as well as a California Secretary of State filing showing that Mireskandari's employer—Zumi Worldwide—used the Maryland address as its principal address.

The trial court granted the motion to compel an undertaking. The court found Edwards Wildman met its burden and that Mireskandari failed to "present sufficient evidence of his claimed California residence . . . to overcome that evidentiary showing." The order required Mireskandari to post security in the amount of $143,300.32 within 60 days (by August 14, 2023).

3. *The Motion to Dismiss*

On the date the undertaking was due, Mireskandari applied ex parte for additional time and a waiver or reduction of the undertaking.[4] His sworn declaration admitted he could not obtain a bond from a surety company because "I am not a California resident and I do not own any real property in California or anywhere." He also claimed indigency and requested a 60-day extension and an in camera hearing.[5] The trial court denied the ex parte application. Mireskandari did not post an undertaking by the ordered deadline, nor did he seek modification of the bond requirement by noticed motion.

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[4] Mireskandari filed the ex parte application three days earlier, on August 11, 2023.

[5] Mireskandari stated he was "unemployed" and did "not have an income," in contradiction of his earlier declaration stating he worked "in California for Zumi Worldwide."

Almost a month later, Edwards Wildman filed a motion to dismiss, setting the matter for hearing on October 11, 2023. The papers detailed Mireskandari's litigation activity and financial resources and argued his prolific pursuit of lawsuits undermined any claim of indigency. The evidence included trial testimony regarding Mireskandari's finances and deeds showing his wife Mirshahi's purchase of a $2.3 million residence in Potomac, Maryland, described as a 14,000-square-foot estate with luxury amenities.

Nine days before the opposition deadline, Mireskandari's counsel emailed Edwards Wildman stating that Mireskandari had "raised the $143,000.00 security" and wished to arrange payment "subject of course to a basic, written and signed agreement." Edwards Wildman proposed a direct deposit with the clerk in lieu of a formal undertaking. Mireskandari did not make the deposit.

On the due date for his opposition to the motion to dismiss, Mireskandari requested a continuance, citing delays in financial processing. Four days later, he submitted a late opposition, requesting additional time to post the undertaking. Mireskandari, Mirshahi, and Mark Slater—a friend of Mireskandari's in the United Kingdom—filed supporting declarations. In sum, the declarations averred that Slater had agreed to transfer $143,300.32 to Mirshahi's account, but he needed 25 days to complete the transfer due to unspecified "daily banking limits" in the U.K.

While the trial court expressed skepticism about whether Mireskandari would meet the deadline, it nonetheless granted him a final continuance, requiring Mireskandari to post the undertaking by noon on October 30, 2023 with a compliance

hearing the next day. Mireskandari's notice of ruling confirmed "[t]his is the last continuance on the Motion to Dismiss" and Mireskandari "shall provide proof of posting the undertaking before noon on or before October 30, 2023."

On October 30, 2023, Mireskandari failed to post the undertaking. Instead, he filed a new declaration, removed Turner as counsel, and substituted himself in pro per. His declaration (executed in Maryland) attached declarations from Slater and Mirshahi purporting to "undertake" payment of the required amount. Slater's declaration stated he would "undertake" to pay Edwards Wildman $143,300.32 upon order of the trial court and, "subject to appropriate legal advice," he would execute a form of guaranty to "fortify" his undertaking. Mirshahi's declaration said she had the "means and ability" to satisfy any court order up to $143,000.00. Neither declaration was independently filed with the court.

Following the compliance hearing, the trial court entered a judgment of dismissal. Edwards Wildman served notice. This appeal followed.

DISCUSSION

1. *Governing Law*

"Plaintiffs who reside outside of California may be required to post an undertaking to ensure payment of costs to a prevailing defendant." (*Alshafie v. Lallande* (2009) 171 Cal.App.4th 421, 428 (*Alshafie*).) Under section 1030, when the plaintiff resides outside the state, "the defendant may at any time apply to the court by noticed motion for an order requiring the plaintiff to file an undertaking to secure an award of costs and attorney's fees which may be awarded in the action or special proceeding." (§ 1030, subd. (a).) The defendant must prove two elements

by an accompanying affidavit and memorandum of points and authorities: (1) "the plaintiff resides out of the state or is a foreign corporation"; and (2) "there is a reasonable possibility that the moving defendant will obtain judgment in the action or special proceeding." (§ 1030, subd. (b).) If the court, after hearing, determines the grounds for the motion have been established, it "shall order that the plaintiff file the undertaking in an amount specified in the court's order as security for costs and attorney's fees." (§ 1030, subd. (c).) The plaintiff must file the undertaking "not later than 30 days after service of the court's order" or "within a greater time allowed by the court." (§ 1030, subd. (d).) "If the plaintiff fails to file the undertaking within the time allowed, the plaintiff's action or special proceeding shall be dismissed as to the defendant in whose favor the order requiring the undertaking was made." (*Ibid.*)

The purpose of section 1030 "is to enable a California resident sued by an out-of-state resident ' "to secure costs in light of the difficulty of enforcing a judgment for costs against a person who is not within the court's jurisdiction." ' [Citation.] The statute therefore acts to prevent out-of-state residents from filing frivolous lawsuits against California residents." (*Yao v. Superior Court* (2002) 104 Cal.App.4th 327, 331 (*Yao*).)

"Even if the defendant establishes the grounds for an undertaking, the trial court may waive the requirement if the plaintiff establishes indigency." (*Alshafie, supra,* 171 Cal.App.4th at p. 429.) Thus, "[w]here the plaintiff establishes indigency, a trial court has discretion to waive the posting of security" under section 1030 and related governing law. (*Baltayan v. Estate of Getemyan* (2001) 90 Cal.App.4th 1427,

1433 (*Baltayan*); *Alshafie,* at p. 429 [discussing requirements for bond waiver under section 995.240].)

2. *The Mirshahi and Slater Declarations Do Not Qualify as Undertakings*

Mireskandari contends the trial court erred when it dismissed his action while refusing to accept the Mirshahi and Slater declarations as undertakings sufficient to satisfy the court's section 1030 order. While section 1030 does not define the term "undertaking," Mireskandari acknowledges that our state's Bond and Undertaking Law (§ 995.010 et seq.) supplies the governing standard.[6] He maintains the Mirshahi and Slater declarations satisfied the law's requirements. We disagree.

Because Mireskandari's contention concerns the application of a statute to undisputed facts, we review the claim de novo. (See *Jenkins v. County of Riverside* (2006) 138 Cal.App.4th 593, 604 ["Questions of statutory interpretation, and the applicability of a statutory standard to undisputed facts, present questions of law, which we review de novo."].) "In ascertaining the meaning of a statute, we look to the intent of the Legislature as expressed by the actual words of the statute" (*Wasatch Property Management v. Degrate* (2005) 35 Cal.4th 1111, 1117), "giving them a plain and commonsense meaning" (*County of Fresno v. Malaga County Water Dist*. (2002) 100 Cal.App.4th 937, 941). "If there is no ambiguity in the language, we presume the Legislature meant what it said and the plain

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[6] The Bond and Undertaking Law applies to any "undertaking executed, filed, posted, furnished, or otherwise given as security pursuant to any statute of this state, except to the extent the statute prescribes a different rule or is inconsistent." (§ 995.020, subd. (a).)

meaning of the statute governs." (*People v. Snook* (1997) 16 Cal.4th 1210, 1215.)

Section 995.190 defines " 'Undertaking' " to mean "a surety, indemnity, fiduciary, or like undertaking *executed by the sureties alone*." (Italics added.) Critically, to qualify as a surety, the person executing the undertaking must be, among other things, "a resident, and either an owner of real property or householder, within the state." (§ 995.510, subd. (a)(2).) The record is undisputed that neither Mirshahi—a Maryland resident—nor Slater—a resident of the United Kingdom—was a resident of California. Accordingly, neither could execute an undertaking as a personal surety under applicable law. Mireskandari's claim of error has no merit.

3. *Substantial Evidence Supports the Trial Court's Statutory Findings*

Mireskandari contends Edwards Wildman's evidence was insufficient to establish the grounds for requiring an undertaking under section 1030. The substantial evidence standard governs our review of the claim. (See *Baltayan, supra,* 90 Cal.App.4th at pp. 1432–1433; *Shannon, supra,* 164 Cal.App.3d at p. 911.) Under this standard, our power to set aside the trial court's order " 'begins and ends with a determination as to whether there is *any* substantial evidence' " to support the court's factual findings, and " 'we have no power to judge . . . the effect or value of the evidence, to weigh the evidence, to consider the credibility of the witnesses, or to resolve conflicts in the evidence or in the reasonable inferences that may be drawn therefrom.' " (*Shannon,* at p. 911.) We presume the order is correct, and it is Mireskandari's burden—as the appellant—to present a record

adequate to establish reversible error. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140–1141 (*Ketchum*).)

Mireskandari argues the evidence was insufficient to support the court's finding that Edwards Wildman had demonstrated a "reasonable possibility" of defeating his professional negligence claim and, thus, obtaining judgment in the action. (§ 1030, subd. (b).) In his telling, the "only evidence" Edwards Wildman offered on this element was the "part of the special verdict in the case, in which the jury found that plaintiff could [have] 'reasonably avoided harm' in connection with other claims." The argument mischaracterizes the record.

As discussed above, in addition to the jury's special verdict, Edwards Wildman's evidence included a declaration by its attorney who had represented the firm since the case's "inception," a transcript of the trial court's comments explaining its reasons for denying Mireskandari's motion for a new trial, and this court's opinion affirming the denial of the new trial motion. This evidence showed Mireskandari and the "quarterback" of his U.S. legal team had developed a plan to sue the Daily Mail's publisher in California before approaching Edwards Wildman to file the lawsuit; the original complaint that Edwards Wildman filed (based on an alleged "unlawful hacking" of Mireskandari's educational records) did not elicit an anti-SLAPP motion from the publisher; after the NSC informed Mireskandari it did not have his law school records, Edwards Wildman advised him the original complaint was no longer viable and continuing the litigation would pit his privacy rights against the Daily Mail's First Amendment rights, which would likely draw a motion to strike under the anti-SLAPP statute; notwithstanding the firm's warning, Mireskandari instructed Edwards Wildman to file the

amended complaint, which drew the anti-SLAPP motion that is the basis for his professional negligence claim; the trial court —in its role as thirteenth juror—agreed with the jury's implicit finding that Mireskandari was a "raging bull," intent on pursuing litigation against the Daily Mail regardless of the cost or advice of his legal counsel; and this court affirmed the denial of Mireskandari's new trial motion, concluding the evidence admitted at trial amply supported the court's assessment.

To meet its burden, Edwards Wildman was "not required to show that there was no possibility that [Mireskandari] could win at trial, but only that it was *reasonably possible* that [defendants] would win." (*Baltayan, supra,* 90 Cal.App.4th at p. 1432, citing § 1030, subd. (b).) Edwards Wildman satisfied this requirement by showing the jury, the judge who presided over the trial, and this court all had found the evidence sufficient to warrant a finding that Mireskandari unreasonably failed to avoid his claimed damages because he was irrationally committed to prosecuting his lawsuit against the Daily Mail, no matter the risks or costs. Critically, this evidence was not part of the record when the professional negligence claim was summarily adjudicated, and we, therefore, did not consider it when we reversed the summary adjudication and remanded the claim for further proceedings. Nevertheless, the evidence of Mireskandari's stubborn pursuit of his lawsuit would have been relevant had the professional negligence claim gone to trial, as it showed that, even after Mireskandari was warned about our state's anti-SLAPP statute, he instructed his attorneys to proceed with the amended complaint anyway. On this record, Edwards Wildman's evidence was more than sufficient to support the court's finding that it was reasonably possible the firm would

achieve a similar result in defending the professional negligence claim. (See *Shannon, supra,* 164 Cal.App.3d at p. 914 [reasonable possibility shown by arbitration decision in favor of defendant]; *Baltayan,* at p. 1433 [favorable arbitration award and evidence supporting it was sufficient to uphold reasonable possibility finding].)

Mireskandari also challenges the evidence offered to prove his out-of-state residency. Much as he does with the reasonable possibility finding, he contends the "only evidence submitted on [his] residenc[y] was a substitution of attorney for[m] on which his former attorney listed a mailing address in Potomac, Maryland." Again, this argument mischaracterizes the record.

As discussed above, in addition to the sworn declaration by Mireskandari's former attorney attesting that he had confirmed Mireskandari's "current" address was the residence in Potomac, Maryland, the record also includes the substitution of attorney form *signed by Mireskandari*, stating he would be representing himself and listing his address as the Maryland address; a sworn declaration by Mireskandari stating he could not obtain a bond from a surety company "because I am not a California resident"; more sworn declarations by Mireskandari executed in Potomac, Maryland over the course of several months; court records from two other cases pending in California superior courts in which Mireskandari (representing himself in pro per) had listed the Maryland address as his address of record; and a California Secretary of State filing showing that Mireskandari's purported California employer—Zumi Worldwide—used the Maryland address as its "Principal Address." This evidence was sufficient to prove Mireskandari resided outside of California for purposes of satisfying the requirement under section 1030. (See, e.g.,

Myers v. Carter (1960) 178 Cal.App.2d 622, 626 (*Myers*) [plaintiff's "affidavit reveal[ing] that 'for the last year or so' plaintiff and his wife had been living in other states" sufficient to establish out-of-state residency under section 1030].)[7]

Although Mireskandari offered a declaration claiming his family resided in Maryland, while he "primarily reside[s] and spend[s] most of [his] time in California," the trial court was not obligated to credit this assertion in the face of contrary evidence, and we are not empowered to second guess the court's implicit credibility determination. (*Shannon, supra,* 164 Cal.App.3d at p. 911; see also Evid. Code, § 780, subd. (f) [the court may consider the "existence or nonexistence of a bias, interest, or other motive" "in determining the credibility of a witness"].) Because substantial evidence (together with reasonable inferences that can be drawn from the evidence) supports the trial court's out-of-state residency finding, Mireskandari's reliance on his own declaration to show (at most) a conflicting evidentiary record is insufficient to establish reversible error.

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[7] As the *Myers* court recognized, the statute's out-of-state residency requirement is " 'based upon the probable difficulty or impracticability of enforcing judicial mandates against persons not dwelling within the jurisdiction of the courts.' " (*Myers, supra,* 178 Cal.App.2d at p. 625 [discussing New York law]; see also *id.* at p. 626 [concluding the purposes of New York law and section 1030 are "similar"]; accord *Yao, supra,* 104 Cal.App.4th at p. 331.) In view of this purpose, the court construed "the phrase 'resides out of the state' " in section 1030 "as referring to actual residence, rather than domicile." (*Myers,* at p. 626.) We agree with this construction and thus reject Mireskandari's argument that the evidence was insufficient to establish he was a Maryland domiciliary.

(See *Ketchum, supra,* 24 Cal.4th at pp. 1140–1141; *Shamblin v. Brattain* (1988) 44 Cal.3d 474, 479 ["when the evidence is in conflict," the reviewing court must "defer to the factual determinations made by the trial court," even though "contrary findings *could* have been made"]; cf. *Myers, supra,* 178 Cal.App.2d at pp. 626–627 [on motion for reconsideration of undertaking order, "*uncontradicted* affidavits" stating plaintiff and his wife "had been temporarily absent, they had returned to California, the state of their long-time domicile, and had reestablished their California residence" mandated reconsideration (italics added)].)

4. *Mireskandari Did Not Properly Request a Waiver of the Undertaking, and the Trial Court Did Not Abuse Its Discretion by Declining to Grant One*

Finally, Mireskandari contends the trial court erred when it declined to waive the undertaking requirement or to further inquire about his claimed indigency. We review this claim for an abuse of discretion. (See *Alshafie, supra,* 171 Cal.App.4th at p. 431 [when the plaintiff has "not sought or obtained in forma pauperis status," the "trial court's ultimate decision to grant or deny a waiver of the section 1030 security deposit requirement is reviewed under an abuse of discretion standard"]; accord *Baltayan, supra,* 90 Cal.App.4th at p. 1434.) As our Supreme Court has explained, the "abuse of discretion standard is not a unified standard" and "the deference it calls for varies according to the aspect of a trial court's ruling under review." (*Haraguchi v. Superior Court* (2008) 43 Cal.4th 706, 711.) "The trial court's findings of fact are reviewed for substantial evidence, its conclusions of law are reviewed de novo, and its application of the law to the facts is reversible only if arbitrary and capricious."

(*Id.* at pp. 711–712, fns. omitted.) Again, the burden rests with Mireskandari to establish reversible error. (*Ketchum, supra,* 24 Cal.4th at pp. 1140–1141.)

Under the Bond and Undertaking Law (see fn. 6, *ante*), the trial court "may, in its discretion, waive a provision for a bond in an action or proceeding and make such orders as may be appropriate as if the bond were given, if the court determines that the principal is unable to give the bond because the principal is indigent and is unable to obtain sufficient sureties." (§ 995.240.) "In exercising its discretion the court shall take into consideration all factors it deems relevant, including but not limited to the character of the action or proceeding, the nature of the beneficiary, whether public or private, and the potential harm to the beneficiary if the provision for the bond is waived." (*Ibid.*)

A plaintiff seeking relief under section 995.240 "must make a motion to the trial court and has the burden of proving he was in fact indigent." (*Burkes v. Robertson* (2018) 26 Cal.App.5th 334, 346.) If the moving plaintiff presents "adequate evidence support[ing] relief from the requirement of posting a bond or undertaking, the trial court may then exercise its discretion by waiving the requirement of a security." (*Williams v. Freedomcard, Inc.* (2004) 123 Cal.App.4th 609, 614.) This "does not mean, however, that the trial court abus[es] its discretion by declining to do so." (*Baltayan, supra,* 90 Cal.App.4th at p. 1434.) As we have noted, an "exercise of discretion will be disturbed on appeal only if the court exercised it in an arbitrary, capricious, or patently absurd manner resulting in a manifest miscarriage of justice." (*Ibid.*) A "weak and incomplete showing of indigency," for example, is sufficient to support a conclusion that "the trial

court did not act arbitrarily, capriciously or absurdly in denying [a] motion for relief from the undertaking." (*Id.* at p. 1435.)

Mireskandari did not make a noticed motion for relief from the undertaking requirement. Instead, on the day the security was due (60 days after the court entered its order), he applied ex parte to request additional time and a waiver or reduction of the undertaking. With respect to his claimed indigency, Mireskandari's declaration said he was "unemployed"; he did "not have an income"; his monthly living expenses were "paid for by others"; and he had "no assets." Edwards Wildman opposed the ex parte application, arguing the waiver request "should have been brought by noticed motion" that would allow "a true adversary hearing . . . with adequate notice to the defense" to present, among other things, evidence "about his family's financial condition" as well as his "litigation spending" in the pending case and other lawsuits. The trial court denied the ex parte request. Mireskandari does not directly challenge this ruling, and we find no error in the court's denial of ex parte relief. (See *McDonald v. Severy* (1936) 6 Cal.2d 629, 631 ["notice of motion must be given whenever the order sought may affect the rights of an adverse party"]; see, e.g., *People ex. rel. Allstate Ins. Co. v. Suh* (2019) 37 Cal.App.5th 253, 256–258 [ex parte application properly denied, observing a noticed motion would have given the trial court "an opportunity to weigh the parties' interests and make an informed decision"].)

Notwithstanding his failure to make a noticed motion, Mireskandari argues his ex parte application nonetheless obligated the trial court to "request[ ] that [he] augment the information about his financial condition, or schedule a hearing into his financial circumstances" before enforcing the

undertaking order and dismissing his lawsuit under section 1030. He relies exclusively upon *Alshafie* to support the contention. The facts of that case are materially different from those presented to the trial court here.

The trial court in *Alshafie* ordered an out-of-state plaintiff to post a section 1030 undertaking, finding the plaintiff's opposition and supporting declaration "conclusory regarding indigency as there [were] no facts to support the indigency statement such as tax returns, receipts or other substantive documentation."[8] (*Alshafie, supra,* 171 Cal.App.4th at pp. 426–427.) After the plaintiff failed to post the undertaking, the defendants moved to dismiss the action. In opposition, the plaintiff filed a new declaration providing "more specific information" to support his claim of indigency, including his annual income; his child's monthly Social Security Disability Income; his monthly rent payment; his savings and checking account holdings; the models of his family cars; and a statement that he did "not have any friends and/or relatives that are [in] a financial position to pay or bond the undertaking costs in this matter." (*Id.* at p. 427.) Notwithstanding this detailed financial information, the trial court dismissed the action, ruling the

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[8] The plaintiff's original declaration stated he had a wife and three children; the family lived in a rented apartment; he was a tow truck dispatch manager; his wife did not work outside of their home; the family had " 'extraordinary expenses' " due to one child's medical condition; he had " 'no tangible assets' "; and " '[a]ny requirement to pay money to post a bond for costs in this case would pose an unbearable and impossible financial hardship and preclude further litigation of this case.' " (*Alshafie, supra,* 171 Cal.App.4th at pp. 426–427.)

plaintiff's declaration " 'remain[ed] conclusory and lacking in the required facts to establish the alleged indigency.' " (*Id.* at pp. 427–428.)

The *Alshafie* court reversed, concluding the trial court had "failed to provide a meaningful opportunity for [the plaintiff] to demonstrate his financial inability to post an undertaking and to address the court's concerns about the showing he had made." (*Alshafie, supra,* 171 Cal.App.4th at pp. 436–437.) The reviewing court recognized "the 'party seeking relief from the requirement of posting a bond or undertaking has the burden of proof to show entitlement to such relief,' " but observed there is "no rigid standard for the requisite showing of indigency" under section 995.240. (*Alshafie*, at pp. 432, 434.) Thus, drawing on the procedures mandated when, in the absence of contrary evidence, a party nonetheless fails to make an adequate showing to obtain in forma pauperis status (see former Cal. Rules of Court, rule 3.53(b); Gov. Code, § 68634, subd. (e)), the *Alshafie* court held that, "to fulfill its statutory duties when exercising its discretion, the [trial] court must review the plaintiff's showing, identify deficiencies, if any, and give the plaintiff the opportunity to supply additional information that may be necessary to establish his or her entitlement to a waiver under the circumstances of the particular case." (*Alshafie,* at pp. 433–435.) Critically, in reaching this conclusion, the *Alshafie* court ratified its earlier holding in *Baltayan*, reaffirming that the trial court there had reasonably exercised its discretion in refusing to waive the undertaking requirement where the plaintiff's initial showing " 'reasonably cast doubt upon [his] indigency claim.' " (*Alshafie*, at pp. 429–431, quoting *Baltayan, supra,* 90 Cal.App.4th at pp. 1434–1435; see also *Alshafie*, at pp. 428–430 [*Baltayan*

"is the necessary starting point for evaluating the trial court's orders" under sections 1030 and 995.240].)

Like the plaintiff in *Alshafie*, the plaintiff in *Baltayan* had moved for relief from an order to post a section 1030 undertaking on the ground he was indigent, offering a supporting declaration "stating that he had no savings and neither he nor his wife owned real property" and that his family's income was the same as that reflected on attached copies of their recent federal income tax returns. (*Baltayan, supra,* 90 Cal.App.4th at pp. 1430–1431, 1434.) However, the plaintiff "apparently deliberately omitted from each return schedule C," which "would have revealed the actual business gross receipts of [his] business" and his declaration "did not address whether his wife had any savings, nor did it deny ownership of assets other than real property" or state whether the couple "had a friend or relative who would be willing to either post a cash bond or pay the premium on a surety bond." (*Id.* at p. 1434.) Most importantly, other evidence "showed a spending level that reasonably cast doubt upon [the plaintiff's] indigency claim," including evidence suggesting he spent over $3,000 a month to rent a room and a car in Los Angeles, while also maintaining his home in Washington State. (*Id.* at pp. 1434–1435.) On this record, "given [the plaintiff's] weak and incomplete showing of indigency," the *Baltayan* court held it was not an abuse of discretion to deny his motion for relief from the undertaking. (*Id.* at p. 1435.)

This case is much more like *Baltayan* than it is like *Alshafie*. Unlike in *Alshafie,* after the trial court denied Mireskandari's ex parte application to waive the undertaking requirement, Mireskandari did not come forward with more detailed financial information to support his hardship claim.

Instead, nine days before his deadline to oppose the motion to dismiss, Mireskandari's counsel emailed Edwards Wildman stating that Mireskandari had "raised the $143,000.00 security." Then, four days after the deadline had passed, Mireskandari filed a late opposition requesting additional time to post the undertaking. In support of the request for more time, Mireskandari submitted declarations stating in substance that his friend Slater had agreed to transfer $143,300.32 to Mireskandari's wife, but Slater needed 25 days to complete the transfer due to "daily banking limits" in the U.K.[9] Mireskandari received the continuance, but on the day the security was due, he failed to post a valid undertaking.

Critically, Mireskandari's final declaration made no claim of financial hardship, nor did it address the substantial evidence that Edwards Wildman offered about Mireskandari's lavish lifestyle and significant litigation expenditures. This included evidence that Mireskandari fought expensive legal battles in the U.K., and then in California, Arizona, and Virginia; his own declarations that showed he regularly travelled back and forth from the East Coast to the West Coast while opposing the motion for an undertaking; and other evidence of a written funding agreement he had with his wife, who owned a 2.68 acre estate with a 14,000-square-foot home and amenities that included

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[9] Mireskandari contends his accompanying declaration "explained the continuing unsuccessful efforts he had made to raise the necessary funds." In fact, his declaration states, "I respectfully request that the hearing on Defendants' Motion to Dismiss be continued at least thirty (30) days *because I obtained the funds to post security for costs in the amount of $143,300.32*." (Italics added.)

a tennis court, a pool house for year-round swimming, and two garages with spaces for five cars.

On this record, even if Mireskandari had made a noticed motion for a waiver, it would not have been an abuse of discretion for the trial court to reject it. (See *Baltayan, supra,* 90 Cal.App.4th at p. 1435; cf. *Alshafie, supra,* 171 Cal.App.4th at pp. 426–427, 436 [no contrary evidence offered to dispute plaintiff's claim of indigency].) The trial court did not err by enforcing the undertaking order and dismissing Mireskandari's action. (§ 1030, subd. (d) ["If the plaintiff fails to file the undertaking within the time allowed, the plaintiff's action or special proceeding *shall be dismissed* as to the defendant in whose favor the order requiring the undertaking was made." (Italics added.)].)

DISPOSITION

The judgment is affirmed. Defendants Edwards Wildman Palmer LLP and Dominique Shelton are entitled to costs.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EGERTON, J.

We concur:

EDMON, P. J.

HANASONO, J.