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8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**  
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10  
11 JOHN K. NORRIS, an individual,  
12 Plaintiff,

13 v.

14 GREGG BARTON, an individual; JAMES  
BARTON, an individual; GENESIS  
15 DEVELOPMENT GROUP-PACIFIC, LLC,  
a Michigan limited liability company,  
16 HOMESTEAD DE XIV, a Michigan limited  
liability company; GIBRALTAR SCBP,  
17 LLC, a Michigan limited liability company;  
SAN ANTONIO STANDRIDGE XX, LLC,  
18 a Michigan limited Liability company; and  
DOES I through 100, inclusive,  
19 Defendants.  
20

) Case No.: 9876543  
)  
)

) **MEMORANDUM OF POINTS AND**  
) **AUTHORITIES IN SUPPORT OF**  
) **MOTION TO QUASH SERVICE OF**  
) **SUMMONS AND TO COMPEL**  
) **ARBTRATION**

21  
22 Defendants, and each of them, specially appearing by and through counsel respectfully  
23 Submit the Following Memorandum of Points and Authorities in Support of Their Motion to  
24 Quash the Service of Summons, and to Compel Arbitration.

25 **STATEMENT OF FACTS**

26 As is more fully set forth in the declarations of Lauren J. Bear-Musgrave, James  
27 Barton, and Gregg Barton, Defendant Genesis Development Group-Pacific, LLC (Genesis)  
28 was begun to purchase and develop real property in various parts of the nation. These

1 developed properties were to be rented to the United States Government. Genesis would only  
2 make a profit from the eventual rent paid by the United States Government for its tenancy in  
3 the developed property.

4 Washington State real estate broker Lauren J. Bear-Musgrave (Bear) first met Plaintiff  
5 John K. Norris (Norris) during a due diligence she was doing on another property not  
6 connected with this action. At that time, Norris was employed by a development group  
7 involved in developing property in Imperial County, California. Norris' expertise in the  
8 federal bidding system seemed to be what was needed for Genesis.

9 In or during October, 2004, Bear, Defendants James Barton, and Gregg Barton met  
10 Norris at a meeting of CALPERS in Anaheim, California. There was an introductory  
11 breakfast lasting some 45 minutes during which the Genesis idea was discussed.

12 In or during late November, 2004, or early December, 2004, Norris traveled to see  
13 James Barton at his office in Grosse Ile, Michigan.<sup>1</sup> At that meeting Norris stated he was  
14 interested in Genesis. Norris agreed to participate in Genesis, and the other LLCs that would  
15 arise as a part of the land acquisition process. Norris told James Barton that he could not  
16 "make it without income." James Barton told Norris that his participation in the venture was  
17 not a salaried position. Any monies received by Norris from the LLCs was an advance on his  
18 15% interest in Genesis. Genesis advanced approximately \$68,750 as a draw against his  
19 interest, together with \$7,748 in travel expense reimbursement. There was no oral or written  
20 agreement regarding a salaried position for Norris. Norris' 15% equity in the Defendant  
21 LLCs was specifically given in lieu of any other form of compensation. See ¶4 of James  
22 Barton's declaration.

23 As a part of Norris' activities on behalf of the LLC, he traveled extensively to view  
24 and acquire property with an eye toward development for the federal bid approval process to  
25 rent the developed property to the United States Government. All the records of these  
26 activities are in Cashmere, Washington (Bear) and Grosse Ile, Michigan (Barton).

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28 <sup>1</sup> Grosse Ile, Michigan is an island community in Wayne County, Michigan. Wayne County, Michigan includes the City of Detroit.

1 Norris was apparently dissatisfied with the arrangement, and the instant action  
2 followed.

3 Defendants, and each of them, move to quash the service of the summons on the basis  
4 that the court lacks jurisdiction over them. Defendants, and each of them, invite the court to  
5 review the LLC agreements appended to the complaint. In each of the LLC agreements,  
6 ¶10.9 provides that the matter must be decided under the laws of the State of Michigan.  
7 ¶10.10 of these agreements provide that any dispute arising under the agreement must be  
8 arbitrated.

9 Simply stated, Plaintiff was a signatory member of four Michigan LLCs. Norris'  
10 participation in the LLCs required him to travel to various sites all over the nation, to acquire  
11 land, and to work on the Federal bidding process for leasing the building to be built on the  
12 acquired property. Defendants assert that Plaintiff's mere residence here is insufficient to  
13 establish jurisdiction over the Defendants based on the totality of the circumstances.

#### 14 **LEGAL ARGUMENT**

15 Defendants contend that there are not sufficient minimum contacts between  
16 Defendants and the forum state for this court to find that jurisdiction exists. Code of Civil  
17 Procedure §418.10(a)(1). Additionally, Defendants, and each of them, have not purposefully  
18 availed themselves of the right of doing business in California. When a motion to quash  
19 service of summons is made, the plaintiff must present facts demonstrating that the conduct of  
20 defendants related to the pleaded causes is such as to constitute constitutionally cognizable  
21 minimum contacts. DVI v. Superior Court, 104 Cal.App.4<sup>th</sup> 1080, 1090-1 (2002). An  
22 unverified complaint [such as the complaint here], has no evidentiary value in meeting the  
23 plaintiff's burden of proving minimum contacts. Id. at 1091.

#### 24 **A. This Court has NO Jurisdiction Over These Defendants.**

25 The individual defendants are residents and domiciliaries of the County of Wayne,  
26 State of Michigan. The corporate defendants are Michigan LLCs organized and existing  
27 under the laws of the State of Michigan. The corporate defendants are NOT registered to do  
28 business in the State of California or San Diego County.

1           The exercise of jurisdiction over a nonresident defendant comports with the United  
2 States Constitution and the California Constitution if the defendant has such minimum  
3 contacts with the state that the assertion of jurisdiction does not violate traditional notions of  
4 fair play and substantial justice. Vons Companies, Inc. v. Seabest Foods, Inc., 14 Cal.4<sup>th</sup> 434,  
5 444 (1996) quoting International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945).

6           Under the minimum contacts test, an essential criterion in all cases is whether the  
7 quality and nature of the defendant's activity is such that it is reasonable and fair to require  
8 him to conduct his defense in that state. Pavlovich v. Superior Court, 29 Cal.4<sup>th</sup> 262, 268  
9 (2002). The minimum contacts test is not susceptible of mechanical application; rather, the  
10 facts of each case must be weighed to determine whether the requisite affiliating  
11 circumstances are present Id. at 268. In making this determination, courts have identified  
12 two ways to establish personal jurisdiction. Personal jurisdiction may be either general or  
13 specific. Id. at 268-9.

14           Where, as here, a nonresident defendant whose contacts with the state are not  
15 substantial, continuous, and systematic may be subject to the specific jurisdiction of the  
16 forum. Vons Grocery Company, supra, at 446. A court may exercise specific jurisdiction  
17 over a nonresident defendant only if: (1) the defendant has purposefully availed himself of  
18 the forum benefits; (2) the controversy is related to or arises out of the defendant's contacts  
19 with the forum; and (3) the assertion of personal jurisdiction would comport with fair play and  
20 substantial justice. Id. at 446-7.

21           Defendant assert that by virtue of having a California signatory to the Michigan LLCs  
22 to obtain property in states other than California, they have not availed themselves of the  
23 forum's benefits. If the LLCs' activities came to fruition (earning rental monies from the  
24 United States government), then Norris would have a 15% interest in those monies, offset  
25 against the monies the LLCs already advanced to him. None of the defendants have sufficient  
26 contacts with the forum state that the assertion of personal jurisdiction would comport with  
27 fair play and substantial justice.

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1            *Without waiving our Special Appearance* for the Motion to Quash only, and for the  
2 convenience of the Court, we also argue our position regarding the motion to compel  
3 arbitration. Defendants do not wish the Court to consider this as a general appearance by  
4 Defendants and their counsel. Even if the court somehow found that it had jurisdiction, the  
5 plain language of ¶10.10 of the LLCs’ operating agreements (appended to the Complaint)  
6 clearly show that the LLC members agree to arbitrate their disputes.

7            Purposeful Availment

8            The purposeful availment inquiry focuses on the defendant’s intentionality. This  
9 prong is only satisfied when the defendant purposefully and voluntarily directs his activities  
10 toward the forum so that he should be expected, by virtue of the benefit he receives, to be  
11 subject to the court’s jurisdiction based on his contacts with the forum. Pavlovich, *supra*, at  
12 269. Thus, the purposeful availment requirement ensures that a defendant will not be hauled  
13 into a jurisdiction solely as a result of random, fortuitous or attenuated contacts, or the  
14 unilateral activities of another party. Id.

15            Jurisdiction of a California court is proper only where the nonresident defendant  
16 himself created a substantial connection with the forum state. Where a nonresident defendant  
17 has created a continuing obligation between himself and the residents of the forum he has  
18 purposefully availed himself of the benefits and protections of the forum’s laws. Pedus  
19 Building Services v. Taxes W. Allen, 96 Cal.App.4<sup>th</sup> 152, 162-3 (2002).

20            Here, the individual defendants and the corporate defendants have no office in  
21 California, and transacts no business here. None of the LLC assets have ever been held or  
22 administered in California, and the record discloses no solicitation of business by the LLCs in  
23 California either in person or by mail. The individual Defendants and the corporate  
24 Defendants own no property in California, and have no telephone or bank account in  
25 California. The unilateral activity of those (Norris) who claim some relationship with a  
26 nonresident defendant cannot satisfy the requirement of contact with California. See: Hanson  
27 v. Denkla, 357 U.S. 235, 253 (1958). In the instant matter, the plaintiff, a signatory member  
28 to four Michigan LLCs resides in California, but conducts the LLC’s business all over the

1 nation. Norris coordinates his activities from all over the nation with LLC members Bear (in  
2 Washington) and the Bartons (in Michigan).

3 Just as importantly, Norris traveled to Michigan to negotiate and participate in the  
4 LLCs. When Norris signed the LLC operating agreements, he was fully aware of the choice  
5 of law clause (Michigan) [¶10.9 of each operating agreement] and the arbitration agreement  
6 [¶10.10 of each operating agreement]. As stated in Hanson v Denkla, *supra*, Norris'  
7 unilateral activity with the LLCs cannot satisfy the requirement of defendants' contact with  
8 California. Despite the allegations in the Complaint, Norris has no evidence to the contrary.

### 9 Effects Test

10 There mere causing of an effect in California is not necessarily sufficient to afford a  
11 constitutional basis for jurisdiction. Sibley v. Superior Court, 16 Cal.3d 442, 446 (1976).  
12 The court in Mansour v. Superior Court, 38 Cal.App.4<sup>th</sup> 1750, 1762 (1995) in refusing to  
13 exercise jurisdiction under the effects test because there was no evidence that defendants  
14 purposefully directed their activities toward California. The court in Edmunds v. Superior  
15 Court, 24 Cal.App.4<sup>th</sup> 221, 236, (1994) refused to exercise jurisdiction under the effects test  
16 because the defendant's acts were directed at Hawaii and not California. It is important to  
17 note that the individual and corporate defendants here aimed their acts at a number of other  
18 states, including Michigan, but not California.

19 The court in Farris v. Capt. J. B. Fronapfel Co., 182 Cal.App.3d 982, 990 (1986) held  
20 that the effects in California of the defendant's tortious acts were too remote in time and  
21 causal connection to fairly and justly require the defendant to come to California to defend  
22 himself. Here, the causal connection between any of plaintiff's claims and the forum state are  
23 simply too remote. It would be manifestly unfair and unjust to require the defendants to come  
24 to California to defend themselves.

### 25 B. The Parties Agreed to Arbitrate Their Disputes.

26 ¶10.10 of each of the LLC operating agreements provides that the parties to the LLC  
27 operating agreement agree to arbitrate their disputes. That paragraphs states that the  
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1 arbitration should take place with the American Arbitration Association, or some other similar  
2 organization.

3 Both the California arbitration statutes, Code of Civil Procedure §1281, et.seq., as well  
4 as the Federal Arbitration Act reflect a recognized public policy favoring arbitration.  
5 Arbitration has become an accepted, favored, and expeditious method of resolving disputes.  
6 Armendariz v. Foundation Health Psychcare Services, Inc., 24 Cal.4<sup>th</sup> 83, 97 (2000).

7 A request for arbitration cannot be denied or stayed because California Code of Civil  
8 Procedure §1281.2(c) is preempted by the Federal Arbitration Act. When the controversy at  
9 issue is one involving interstate commerce or involving a written contract containing  
10 arbitration provisions, it is thus governed by the Federal Arbitration Act. Van Luven v.  
11 Rooney Pace, Inc., 195 Cal.App.3<sup>rd</sup> 1201, 1205 (1987). The Federal Arbitration Act (“FAA”)  
12 expresses a strong federal policy in favor of arbitration. See: 9 U.S.C.A. §2; Allied-Bruce  
13 Terminix Cos. v. Dobson, 513 U.S. 265 (1995). The act “leaves no place for the exercise of  
14 discretion ... but instead mandates that ...courts *shall* direct the parties to proceed to arbitration  
15 on issues as to which an arbitration agreement has been signed.” Dean Witter Reynolds Inc.  
16 v. Byrd, 470 U.S. 213, 218 105 S. Ct. 1238 (1985). The arbitration provisions in ¶10.10 of  
17 the operating agreements are clear and unambiguous.

18 The Arbitration Act establishes that, as a matter of federal law, any doubts concerning  
19 the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem  
20 at hand is the construction of the contract language itself or an allegation of waiver, delay, or  
21 a like defense to arbitrability. Moses H. Cone Memorial Hospital v. Mercury Constr. Corp.,  
22 460 U.S. 1, 24-25 (1983). .

23 The language of the FAA evidences congressional intent to “exercise its Commerce  
24 Clause power to the full.” Allied-Bruce Terminix, Inc. v. Dobson, *supra*. Thus, the FAA  
25 sweeps broadly enough to include even transactions as localized as an individual’s contract  
26 for home termite protection, *Id*.

27 Defendants respectfully contend that the clear and unambiguous intent of the  
28 signatories to the LLC operating agreements (including Plaintiff Norris), intend that any

1 dispute between the parties should be referred to arbitration. In this case, the arbitration  
2 should take place in Michigan. Michigan law is the law of choice in the operating  
3 agreements. [¶10.9 of each operating agreement]. Accordingly, Defendants motion to  
4 compel arbitration of this matter should be granted.

5 **CONCLUSION**

6 Defendants respectfully submit that this Court does not have jurisdiction over them, as  
7 they do not have sufficient minimum contacts with the forum state. The motion to quash the  
8 service of summons should be granted. If the Court denies the motion to quash the service of  
9 summons, a motion to compel arbitration pursuant to the provisions of the LLC operating  
10 agreements should be granted.

11 Dated: December 13, 2010

Respectfully submitted,

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14 Oliver Holmes  
15 Attorney Specially Appearing for  
16 All Defendants  
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