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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CENTRAL DISTRICT

PALACIO CAPITAL PARTNERS, INC., A CALIFORNIA CORPORATION; GREG JEONG, AN INDIVIDUAL, PLAINTIFFS, V. GINA CHA AKA GEUM O. CHA, AN INDIVIDUAL; MB INVESTMENTS, LLC, A FLORIDA LIMITED LIABILITY COMPANY; AND DOES 1 THROUGH 20, INCLUSIVE, DEFENDANTS.	CASE NO: BC 416601 **REPLY OF SPECIALLY APPEARING DEFENDANT GINA CHA IN SUPPORT OF MOTION TO QUASH SERVICE OF SUMMONS FOR LACK OF PERSONAL JURISDICTION OR, IN THE ALTERNATIVE, MOTION TO STAY OR DISMISS THE ACTION ON THE GROUND OF FORUM NON CONVENIENS** [Filed concurrently with Specially Appearing Defendant Gina Cha's Supplemental Declaration and Evidentiary Objections] Judge: Hon. Michael L. Stern Date: October 13, 2009 Time: 8:30 a.m. Dept: 62

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Plaintiffs' speculation and surmise is insufficient to meet their burden of proof to establish the requisite minimum contacts over specially appearing defendant Gina Cha. Plaintiffs' opposition offers no evidence that any of Ms. Cha's California contacts were in any way connected to the alleged Ravallo Resort deal that is at the center of this action. It is undisputed that the partnership agreement which Plaintiffs allege creates the primary basis for this Court's jurisdiction was formed to develop an unrelated real estate project. Moreover, although Plaintiffs would like this Court to believe that Ms. Cha has ongoing business contacts with California, the evidence does not support Plaintiffs' allegations. Plaintiffs' opposition relies on a few years-old emails, and distorts this evidence, which in fact, merely demonstrates what is already known – that Ms. Cha occasionally travels to California, but that her contacts with California are minimal. For these reasons, this Court lacks personal jurisdiction over Ms. Cha and her motion to quash service of summons should be granted.[1]

ARGUMENT

A. Plaintiffs Have Not Met Their Burden Of Establishing Minimum Contacts By A Preponderance Of The Evidence

It is undisputed that Plaintiffs have the burden of establishing minimum contacts by a preponderance of the evidence. See Opp'n at 4. Importantly, "that burden must be met by competent evidence in affidavits and authenticated documentary evidence." Jewish Defense Org., Inc. v. Superior Court, 72 Cal.App.4th 1045, 1055 (1999). Moreover, "declarations are insufficient to support the assertions for which they are offered if they consist primarily of vague assertions of ultimate facts rather than specific evidentiary facts permitting a court to form an independent conclusion on the issue." Id.

Much of Plaintiffs' purported evidence is not competent and Mr. Jeong's

[1] Plaintiffs' opposition does not address Ms. Cha's motion in the alternative that the action be stayed or dismissed on the ground of forum non conveniens. It is well-established that failure to file a written opposition creates an inference that the motion is meritorious. Sexton v. Superior Court, 58 Cal.App.4th 1403, 1410 (1997). If the Court is, for some reason, inclined to deny the motion to quash, it should still grant this alternative relief.

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declaration is replete with half-truths, untruths, and unsupported assertions.[2] Accordingly, under the standard set forth in Jewish Defense Organization v. Superior Court, much of Plaintiffs' evidence should be disregarded as insufficient to support the assertions for which it is offered. See id. at 72 Cal.App.4th at 1055-56 (finding declarations offered in opposition to a motion to quash for lack of personal jurisdiction lacked foundation, contained conclusory and vague statements, and were therefore inadequate to support the exercise of jurisdiction); see also In re Automobile Antitrust Cases I & II, 135 Cal.App.4th 100, 114 (2005) (declarations opposing a motion to quash failed to establish the requisite facts to support personal jurisdiction).

B. There is No Jurisdiction Over Ms. Cha, Which Plaintiffs Implicitly Concede

Plaintiffs implicitly concede that no basis for general jurisdiction exists by basing their entire opposition on the legal standard for specific jurisdiction. See Opp'n at 3-5. The only two cases Plaintiffs rely upon – World-Wide Volkswagen Corp. v. Woodson, 44 U.S. 286 (1980) and Fisher Governor Co. v. Superior Court, 53 Cal.2d 222 (1959) – both set forth the standard for specific, not general, jurisdiction. Accordingly, it is unnecessary for this court to even consider an analysis of general jurisdiction. See e.g., Pavlovich v. Superior Court, 29 Cal.4th 262, 268-69 (2002) (where the plaintiff does not contend that general jurisdiction exists, the court need only consider specific jurisdiction); Roman v. Liberty Univ., Inc., 162 Cal.App.4th 670, 678 (2008) (same); Anglo Irish Bank Corp. v. Superior Court, 165 Cal.App.4th 969, 978 (2008) (same).

Should the Court nonetheless elect to consider general jurisdiction, the evidence proffered by Plaintiffs cannot possibly warrant this court's exercise of general jurisdiction over Ms. Cha, which requires showing that Ms. Cha engaged in "continuous and systematic general business contacts that approximate physical presence in the forum state." Elkman v. Nat'l States Ins. Co., 173 Cal.App.4th 1305, 1315 (2009).

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[2] See Evidentiary Objections filed concurrently herewith.

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Even assuming all seven exhibits submitted by Plaintiffs in opposition to the instant motion to quash are admissible under the rules of evidence,[3] those seven exhibits show, ***at most***, that Ms. Cha made three trips to California in 2006 (January, March, and April), and two trips to California in 2007. See Opp'n Exs. A-G. Apparently cognizant that evidence of a mere five trips into California is insufficient to warrant Ms. Cha being haled into court in California, Plaintiffs have attempted to bolster their position through the inaccurate testimony of plaintiff Greg Jeong. Specifically, Mr. Jeong claims, among other things, that he "know[s] of" at least eleven visits Cha made to Los Angeles during that period to Los Angeles." Jeong Decl. ¶ 3. Mr. Jeong, however, provides no support for his claim. Mr. Jeong also falsely asserts that "Cha is a branch manager for New Star…she therefore attends New Star's monthly meetings in Los Angeles." Jeong Decl. ¶ 8. The truth is that Ms. Cha has never been a branch manager for New Star Realty, and she has never attended New Star Realty meetings on a monthly basis. Supp. Cha Decl. ¶ 8. Similarly, it is not true that Ms. Cha would "often drop in on [Mr. Jeong] unannounced" in his Los Angeles office as alleged in the Jeong Declaration. Supp. Cha Decl. ¶ 9. In a final desperate attempt to create a basis for jurisdiction where none exists, Mr. Jeong complains that he would have "more proof of Cha's ongoing contacts with California" if he could recover emails from MB's "network." Jeong Decl. ¶ 9. No such "network" ever existed. Supp. Cha Decl. ¶ 10. MB did not own any computers and it did not have an office. Id. Email was set up at one point, but was never used. Id. Ms. Cha used her personal Hotmail email account to correspond on MB business. Id.

Courts have routinely rejected general jurisdiction in situations that involved far more forum contacts than what is present here. See e.g., Cornelison v. Chaney, 16 Cal.3d 143, 149 (1976) (no general jurisdiction over an interstate trucker who had made 20 trips a year into California over a period of seven years, worked as an independent contractor for a California broker, and held a Public Utilities Commission License); Gates Learjet

[3] See Evidentiary Objections.

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Corp. v. Jensen, 743 F.2d 1325, 1330-31 (9th Cir. 1984) (numerous business trips, solicitation of business, and telephone calls, telexes, and letter to the forum were insufficient to establish general jurisdiction because such contacts "were more occasional than continuous, and more infrequent than systematic"). At most, Plaintiffs' evidence shows that Ms. Cha made a mere five trips into California in 2006-2007, and one in 2009. These kind of intermittent contacts cannot substitute for the required "continuous and systematic general business contacts that approximate physical presence."

C. There is No Specific Jurisdiction

At its heart, "specific jurisdiction depends on the quality and nature of the defendant's forum contacts *in relation to the particular cause of action alleged*." Anglo Irish Bank, 165 Cal.App.4th at 978 (emphasis added). This entire action is premised on Plaintiffs' false and unsupported allegation that Ms. Cha received a commission for assisting with financing provided by Daishin Investment Trust Management ("Daishin") for the development of the Ravallo Resort in Orlando, Florida, and that Ms. Cha was in some way required to share said commission with Plaintiffs. Complaint ¶ 14. Accordingly, Plaintiffs must show that Ms. Cha has California contacts that are connected to the alleged Ravallo commission. There is no specific jurisdiction because Plaintiffs have not shown, and cannot show, that Ms. Cha's few and intermittent California contacts were in any way connected to Ravallo.

1. The Partnership and MB Existed Solely to Facilitate The H-H Project and Had Nothing To Do With The Alleged Ravallo Deal

Plaintiffs' argument that Ms. Cha's "business activities in California have been closely linked to the parties and subject-matter in this case" (Opp'n at 4) is wrong.[4]

[4] To establish sufficient contacts to support specific jurisdiction, the plaintiff must show (1) the defendant purposely availed herself of forum benefits; and (2) the controversy is related to or arises out of the defendant's contacts with the forum. Roman, 162 Cal.App.4th at 677-78. Plaintiffs' opposition ignores the purposeful availment element of this test. Ms. Cha did not purposefully avail herself of the benefits and protections of the laws of California for the reasons stated in pp. 7-11 of her opening memorandum. The formation of a contract with a forum resident, standing alone, is insufficient to establish purposeful availment. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 478

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Plaintiffs base their argument solely on Ms. Cha's partnership with Mr. Jeong (and nonparty Mr. Cho) and her membership in MB Investments, LLC ("MB"), which Plaintiffs misleadingly allege was the partnership's agent in connection with hotel developments in Florida. See Opp'n at 4:12-22; Jeong Decl. ¶ 6.

The opposition conspicuously fails to acknowledge that the explicitly stated purpose of the partnership was "to handle the hotel development projects for the Hilton Garden Inn & Homewood Suites located on Palm Parkway in Lake Buena Vista, Florida" (the "H-H Project"). Cha Decl. ¶ 13; Ex. B. The partnership was formed for the exclusive purpose of developing the H-H Project and that the H-H Project was unconnected to the Ravallo Resort development. Cha Opening Memo. at 3. Significantly, Plaintiffs do not dispute this fact.

Plaintiffs' attempt to create some kind of nexus between this lawsuit and Ms. Cha's California contacts based on the allegation that MB was the partnership's Florida agent fares no better. MB was created to act as the partnership's agent solely in connection with the planned development of the H-H Project. Supp. Cha Decl. ¶ 7. MB had no purpose other than the H-H Project. Id. The partnership and MB were created to facilitate the H-H Project in March 2007 but the H-H Project failed just a few months later. Supp. Cha Decl. ¶ 9. Mr. Jeong stated in an email dated September 1, 2007 that MB "should be closed." Cha Decl. ¶ 15; Ex. C; Supp. Cha Decl. ¶ 9. In sum, ***this lawsuit has nothing to do with the H-H Project, the subject of the partnership agreement. The partnership and MB existed solely to support the H-H Project.***

Notably, Plaintiffs' allegations that Ms. Cha was required to share the alleged Ravallo commission is based on activities that Plaintiffs allege occurred many months after Mr. Jeong recommended that MB be closed in his email dated September 1, 2007. Plaintiffs allege that Daeshin first invested in Ravallo "***in or about December 2007***" or "***in or about the first quarter of 2008***." Complaint ¶ 14. Furthermore, Plaintiffs allege

(1985); Goehring v. Superior Ct., 62 Cal.App.4th 894, 907 (1998).

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that Ms. Cha received the alleged commission "at some unknown time ***after*** Daeshin lent funds to or invested in Ravallo." Complaint ¶ 14. Plaintiffs appear to be asking this Court to infer that MB was in some way connected to the Ravallo Resort financing. This makes no sense given that Plaintiffs themselves allege that the alleged commission occurred many months after Mr. Jeong stated that MB should be closed.

Mr. Jeong's testimony that Ms. Cha signed the Partnership Agreement and signed a promissory note for MB in Los Angeles (Jeong Decl. ¶ 6) is also false. First, Ms. Cha signed the Partnership Agreement in Orlando, Florida, not Los Angeles. Cha Decl. ¶ 14; Supp. Cha Decl. ¶ 5. The documents corroborate this fact. The signature page signed by Mr. Cho shows a March 4, 2007 facsimile date stamp, which is not on Ms. Cha's signature page. Supp. Cha Decl. ¶ 5; Cha Decl. Ex. B. Also, Mr. Cho and Ms. Cha signed the Partnership Agreement on two different pages, which is inconsistent with Mr. Jeong's claim that Mr. Cho, Mr. Jeong and Ms. Cha all signed it in the same place at the same. Cha Decl. ¶ 12; Ex. B. Second, Ms. Cha did not sign the promissory note for MB in Los Angeles as alleged in the Jeong Declaration. Supp. Cha Decl. ¶ 6. Mr. Jeong emailed Ms. Cha a copy of the note and instructed her to fax the signed note back to him. Supp. Cha Decl. ¶ 6; Ex. E.

2. None Of Ms. Cha's California Contacts Relate To Or Arose Out Of The Alleged Ravallo Deal

There is not a shred of evidence to show that this controversy – based on the alleged Ravallo commission – relates to or arose out of Ms. Cha's California contacts. Consistent with statements made in Ms. Cha's opening memorandum, Ms. Cha has traveled to California on occasion, but rarely for purely business reasons. Ms. Cha's intermittent business contacts with California over past several years are unconnected to the Ravallo Resort financing that forms the heart of this dispute. For example, Ms. Cha has had infrequent business meetings in California in connection with other real estate developments located in Florida, including for the Sleep Inn, the H-H Project, and the

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Hawthorne Suites Hotel. Supp. Cha Decl. ¶ 2. Those projects are not connected to the Ravallo Resort in Orlando, Florida. Id. Contrary to the insinuations in the Jeong Declaration, the primary purpose of Ms. Cha's trip to Los Angeles in April 2007 was to attend a party to celebrate the purchase of the Hawthorne Suites with its investors. Supp. Cha Decl. ¶ 3. Also in 2007, Ms. Cha spoke to her contacts from New Star Realty in San Francisco regarding investment opportunities in the H-H Project. Supp. Cha Decl. ¶ 4. Again, that contact did not relate to or arise out of the Ravallo Resort financing.

The Jeong Declaration is notable for its many misleading statements, omissions, and incorrect suppositions with respect to Ms. Cha's trips to California. The opposition places a great deal of emphasis on Ms. Cha's 2006 trips to Los Angeles. See Opp'n at 2:17-28. However, these trips (1) had nothing to do with Ravallo; (2) occurred before the formation of the partnership or MB; and (3) were made primarily for personal reasons. For example, the primary purpose of Ms. Cha's 2006 California trips was to raise money for the South Korean Presidential campaign of Myung-Bak Lee, the former mayor of Seoul, who was elected President of South Korea in 2007. Supp. Cha Decl. ¶ 1. Similarly, Ms. Cha's contact with Mr. Jeong in Los Angeles in April 2009 was not part of a series of "unannounced" and "frequent" visits to Mr. Jeong, but was instead nothing more than a single contact in which Ms. Cha facilitated an introduction between Mr. Jeong and one of Ms. Cha's Korean business contacts who wanted to meet with Mr. Jeong regarding a proposed spa development project in Florida. Supp. Cha Decl. ¶ 11. Ms. Cha did not act as "local broker" to Mr. Leo Lee in connection with the sale of a Ramada Inn in Orlando, Florida as alleged in the Jeong Declaration. Supp. Cha Decl. ¶ 12. Mr. Cho introduced Ms. Cha to Mr. Lee after that deal closed, and Ms. Cha has not seen Mr. Lee for over two years. Id. In sum, the Jeong Declaration is largely a work of fiction, and the so-called "facts" contained therein do not support the specific jurisdiction of this Court.[5]

[5] Plaintiffs' exhibits also cannot provide a basis for specific jurisdiction as none of them concern the Ravallo Resort. Pls' Exhibit A concerns the Sleep Inn; Pls' Exhibit B

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D. The Exercise of Jurisdiction Would Be Unreasonable

Plaintiffs have failed to satisfy their burden of showing Ms. Cha has minimum contacts with California under either a general jurisdiction or a specific jurisdiction standard. Therefore, this Court need not reach the issue of whether jurisdiction would be reasonable. Doe v. Roman Catholic Archbishop of Cashel & Emly, 177 Cal.App.4th 209, 217 (2009) (only if the plaintiff meets his burden of demonstrating facts justifying jurisdiction does the burden shift to the defendant to show that jurisdiction would be unreasonable); Roman, 162 Cal.App.4th at 677 (same). However, even if minimum contacts existed, the jurisdiction of this Court would be unreasonable and unfair.

The factors affecting the fairness of jurisdiction are well-established: (1) the burden on the defendant; (2) the interests of the forum state; (3) the plaintiff's interest in obtaining relief; (4) the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and (5) the shared interest of the several states in furthering fundamental substantive social policies. Vons Cos., Inc. v. Seabest Foods, Inc., 14 Cal.4th 434, 476 (1996); Roman Catholic Archbishop, 177 Cal.App.4th at 217. Plaintiffs' opposition fundamentally misconstrues these requirements, most notably by mistakenly assuming that "the costs and burdens *to the parties* of litigation in California compared to another forum" is a factor. See Opp'n at 4:3-4 (emphasis added). The factor to be considered is the burden on *the defendant*, not the burden to the parties. Vons Cos., 14 Cal.4th at 476. Accordingly, Plaintiffs' emphasis on the contacts of Mr. Jeong and the partnership (Opp'n at 5:2-5) is misplaced.

Plaintiffs do not dispute that most of the documentary evidence is likely to be elsewhere and that this dispute can be more efficiently resolved in Florida. Nor have they provided any compelling policy reason why a California court should hear a dispute

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concerns political activities on behalf of former Seoul South Korea major Lee; Pls' Exhibit C is not admissible because Plaintiffs failed to provide a certified translation, and does not concern the Ravallo Resort in any event; Pls' Exhibits D and E contain nothing more than two travel itineraries from 2006; Pls' Exhibit F concerns the Hawthorne Suites; and Pls' Exhibit G concerns the H-H Project. Supp. Cha Decl. ¶¶ 1-4.

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against a Florida defendant, purportedly involving a now-defunct Florida LLC, concerning a Florida real estate development. Plaintiffs' apparent belief that California courts have a policy of exercising jurisdiction whenever conduct has a "direct, harmful" impact in the state (Opp'n at 5:18-23) is incorrect. As discussed in Ms. Cha's opening memorandum (p. 9-11) harmful effects in the forum (which are not present here in any event) cannot create an independent basis for jurisdiction.

Finally, Fisher Governor v. Superior Court, 53 Cal.2d 222 (1959), cited by Plaintiffs, does not support their position. In Fisher Governor, the plaintiffs sought to sue an Iowa corporation in California for injuries and deaths that occurred in Idaho. 53 Cal.2d at 223. The California Supreme Court concluded that the exercise of jurisdiction would be unreasonable, summarizing its analysis of the factors as follows.

> None of these considerations support an assumption of jurisdiction in plaintiffs' actions. The causes of action did not arise out of and are not related to [the defendant's] activities in this state, and none of the relevant events occurred here. Evidence can be produced as easily or more easily elsewhere, and…[plaintiffs] can prosecute their actions against [the defendant] as conveniently in Iowa as here.

Id. at 226.

In sum, Plaintiffs have failed to meet their burden to satisfy the first two prongs of the specific jurisdiction test: there is no purposeful availment; and there are no forum-related activities that relate to or arise out of the alleged Ravallo commission. And, it would be unfair to assert jurisdiction over Ms. Cha for the reasons stated in Ms. Cha's opening memorandum, as well as in accordance with Fisher Governor.

CONCLUSION

For the reasons stated in Ms. Cha's opening memorandum and above, the Court should grant Ms. Cha's Motion to Quash.