***Superior Court of the State of California***
***County of Orange***

***Tentative Rulings***
***Law and Motion Calendar***
***Department C23***
***Honorable David J. Hesseltine***

***Hearing Date and Time: May 8, 2024, at 2:00 p.m.***

**Court Reporters:** Official court reporters (i.e., court reporters employed by the court) are **NOT** typically provided for law and motion matters in this department. If a party desires a record of a law and motion proceeding, it is that party's responsibility to provide a court reporter, unless the party has a fee waiver and timely requests a court reporter in advance of the hearing (see link at end of this paragraph for further information). Parties must comply with the Court's policy on the use of privately retained court reporters, which may be found at the following link: **Civil Court Reporter Pooling**. For additional information regarding court reporter availability, please visit the court's website at **Court Reporter Interpreter Services**.

**Tentative Rulings:** The court endeavors to post tentative rulings on the court's website no later than 12:00 noon on the date of the afternoon hearing. Tentative rulings will be posted case by case on a rolling basis as they become available. Jury trials and other ongoing proceedings, however, may prevent the timely posting of tentative rulings, and a tentative ruling may not be posted in every case. Please do not call the department for tentative rulings if one has not been posted in your case. **The court will not entertain a request to continue a hearing or any document filed after the court has posted a tentative ruling.**

**Submitting on Tentative Rulings:** If all counsel intend to submit on the tentative ruling and do not desire oral argument, please advise the courtroom clerk or courtroom attendant by calling (657) 622-5223. Please do not call the department unless **ALL** parties submit on the tentative ruling. If all sides submit on the tentative ruling and advise the court, the tentative ruling shall become the court's final ruling and the prevailing party shall give notice of the ruling and prepare an order for the court's signature if appropriate under California Rules of Court, rule 3.1312.

**Non-Appearances:** If no one appears for the hearing and the court has not been notified that all parties submit on the tentative ruling, the court shall determine whether the matter is taken off calendar or the tentative ruling becomes the final ruling. The court also may make a different order at the hearing. (*Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

**Appearances:** Department C23 conducts non-evidentiary proceedings, such as law and motion hearings, remotely by Zoom videoconference pursuant to Code of Civil Procedure section 367.75 and Orange County Local Rule 375. Any party or attorney, however, may appear in person by coming to Department C23 at the Central Justice Center, located at 700 Civic Center Drive West in Santa Ana, California. All counsel and self-represented parties appearing in-person must check in with the courtroom clerk or courtroom attendant before the designated hearing time.

All counsel and self-represented parties appearing remotely must check-in online through the court's civil video appearance website at

**https://www.occourts.org/media-relations/civil.html** before the designated hearing time. Once the online check-in is completed, participants will be prompted to join the courtroom's Zoom hearing session. Participants will initially be directed to a virtual waiting room pending the start of their specific video hearing. Check-in instructions and instructional video are available at **https://www.occourts.org/media-relations/aci.html**. The Court's "Appearance Procedures and Information--Civil Unlimited and Complex" and "Guidelines for Remote Appearances" also are available at **https://www.occourts.org/media-relations/aci.html**. Those procedures and guidelines will be strictly enforced.

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| # | Case Name | Tentative |
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| 1. | Allen v. Brooks | Before the court is the motion for monetary sanctions filed by plaintiff Carlitha Martez Allen (Plaintiff) seeking sanctions against "Defendants and its counsels of record Kimberly L. Maxwell and Brian P. Trela, jointly and severally." Presumably "Defendants" refers to all defendants—i.e., defendants Boyd Beaman Concrete Construction Services, Boyd Leon Beaman, Charles Brooks, and Keegan's Concrete Corporation (collectively, Defendants). The court also notes several substitutions of attorneys have been filed such that Ms. Maxwell and Mr. Trela no longer represent any of Defendants, after previously representing all Defendants.<br><br>The motion is made pursuant to Code of Civil Procedure sections 128.5 and 128.7(b). The motion and arguments in support of it are sparse, but it is clear the motion is based on the mistrial declared in this action on September 12, 2023, after Ms. Maxwell and Mr. Trela declared a conflict regarding their joint representation of all Defendants.<br><br>The motion is not proper under Code of Civil Procedure section 128.7 as, "[t]he purpose of section 128.7 is to deter frivolous filings." (*Kojababian v. Genuine Home Loans, Inc.* (2009) 174 Cal.App.4th 408, 421.) "The primary purpose of the statute is deterrence of filing abuses, not to provide compensation for those |

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| | | impacted by those abuses. 'While section 128.7 does allow for reimbursement of expenses, including attorney fees, its primary purpose is to deter filing abuses, not to compensate those affected by them. It requires the court to limit sanctions "to what is sufficient to deter repetition of [the sanctionable] conduct or comparable conduct by others similarly situated."'" (*Optimal Markets, Inc. v. Salant* (2013) 221 Cal.App.4th 912, 920–21.)<br><br>The motion identifies no filing that is at issue. Instead, it identifies a previously nondisclosed conflict of interest that led to the mistrial.<br><br>Further, section 128.7, "requires strict compliance with the [21-day] safe harbor provisions. [Citation.] Failure to comply with the safe harbor provisions 'precludes an award of sanctions.'" (*Transcon Fin., Inc. v. Reid & Hellyer, APC* (2022) 81 Cal.App.5th 547, 550-51 (*Transcon*).) As the motion is not based upon any pleading, no 21-day safe harbor period for withdrawal of such a pleading could have been provided. Thus, Plaintiff failed to comply with the requirements of section 128.7 and is precluded from recovering attorney fees under that code section.<br><br>Finally, an award of the attorney fees for expenses incurred in preparing for trial is not permissible as this code section only permits sanctions in an amount sufficient to deter repetition of the conduct, and not to provide compensation to Plaintiff for any purported abuse. Moreover, the request includes at least some trial preparation work that is required regardless of when the case goes to trial.<br><br>The motion also is improper under Code of Civil Procedure section 128.5, which "requires both a subjective element of bad faith and an objective element of frivolousness or unwarranted delay." (*Abbett Elec. Corp. v. Sullwold* (1987) 193 Cal.App.3d 708, 712 (*Abbett*).)<br><br>There is no objective evidence of bad faith on the part of Ms. Maxwell and Mr. Trela. Plaintiff contends the mistrial was based upon a conflict of interest among Defendants that Plaintiff's counsel brought to the attention of Ms. Maxwell and Mr. Trela on multiple occasions prior to trial. The transcript, however, shows Ms. Maxwell and Mr. Trela were not at liberty to discuss any potential conflict issues, but instead wanted to give Plaintiff the opportunity to decide how |

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| | | Plaintiff wanted to proceed. (King Decl., Ex. B p. 6:26-7:23.) There also was potentially another party that should be in the case. Ms. Maxwell and Mr. Trela requested the matter be continued to allow Plaintiff to explore the issue, and also to possibly allow defendants to hire additional counsel.<br><br>Although the outcome was not ideal, there is no evidence the acts of Ms. Maxwell and Mr. Trela were frivolous or solely intended to cause unnecessary delay and performed in bad faith. They may well have been sloppy, as suggested by the trial judge, but that does not rise to the level required by section 128.5.<br><br>"This is not a finding of a wrongful state of mind, but of a failure to exercise due care. At most it suggests a form of negligence. No case known to us supports the idea that negligence can, in the context of section 128.5, constitute a subjective lack of good faith. An inquiry into good faith necessarily focuses on the actor's belief as to the propriety of his or her actions, and his or her purposes in taking those actions." (*Abbett*, *supra*, 193 Cal.App.3d at p. 713.)<br><br>The 21-day safe harbor period also is a requirement for sanctions motion brought under section 128.5. (*Transcon*, *supra*, 81 Cal.App.5th at pp. 550–51.) As Plaintiff failed to comply with the requirement, the motion is improper for that reason as well.<br><br>Based on the foregoing, the motion is **DENIED**.<br><br>Plaintiff's counsel to give notice. |
| 2. | Creditors Adjustment Bureau, Inc. v. Oceanline Builder, Inc. | Before the court, is the motion to set aside default and default judgment filed by defendant Oceanline Builder, Inc. (Oceanline). The motion is **GRANTED** as set forth below.<br><br>In this case, plaintiff Creditors Adjustment Bureau, Inc. (Plaintiff) seeks to collect a debt owed to its assignee, the State Compensation Insurance Fund. The complaint was served by substitute service on June 2, 2023, by delivery to Oceanline's agent for service of process, a law firm in Orange. Upon receipt of the complaint and other documents, the law firm sent the documents to Oceanline at its Laguna Beach address with an advisement a court date had been set for September 29, 2023, and that the law firm would not be representing Oceanline. |

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| | | On July 19, 2023, Plaintiff filed a request for entry of default the clerk entered that same day. Thereafter, Plaintiff submitted a default packet and a default judgment the court entered on September 11, 2023. It appears Plaintiff decided not to send the request for entry and default judgment to Oceanline's address in Laguna Beach (where it had previously communicated with Oceanline), and instead sent the documents to the agent for service of process. Jaime Alvarez, Oceanline's principal, states in his reply declaration the law firm to which the default was mailed never forwarded it to him. (Alvarez Decl. ¶3.) Mr. Alvarez states, in reliance on the June 2, 2023 letter from the law firm, he understood he was required to appear at the case management conference on September 29, 2024, but did not understand a default could be entered before the hearing. (Alvarez Decl. at ¶3.) On September 29, 2023, he appeared for the case management conference and was informed the default had been entered. (Alvarez Decl. at ¶4.) The subject motion was then promptly filed on October 12, 2023, in which Oceanline seeks to set aside both the default entered at ROA No. 11 and the default judgment entered at ROA No. 20.<br><br>The court "may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken." (Code Civ. Proc. § 473(b).)<br><br>Excusable neglect simply requires the moving party to show a reasonable excuse for the default. (*Shapiro v. Clark* (2008) 164 Cal.App.4th 1128, 1141-42.) Excusable neglect is "by far the most common ground for obtaining discretionary relief from default." (Weil & Brown, Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2023) Ch. 5-G at ¶ 5:327.) Evidence the defendant did not contact his attorney in time because he "mislaid" or "misfiled" the summons and complaint in his briefcase, without being aware of their nature, was |

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| | | sufficient to show "excusable neglect." (*Bernards v. Grey* (1950) 97 Cal.App.2d 679, 686.)<br><br>Here, the declaration of Mr. Alvarez meets Oceanline's burden of establishing excusable neglect. The letter from the law firm suggested the relevant date for Oceanline to be aware of was the September 29, 2023 case management conference. The letter also advised Mr. Alvarez to contact his insurer or to contact the law firm for a referral to another attorney who could represent them. There was no mention, however, of the 30-day time limit on responding to the complaint. This omission, along with the other parts of the letter, supports Mr. Alvarez's explanation as to why he did not file a timely response.<br><br>"The law strongly favors trial and disposition on the merits. Therefore, any doubts in applying section 473 must be resolved in favor of the party seeking relief. When the moving party promptly seeks relief and there is no prejudice to the opposing party, very slight evidence is required to justify relief. We will more carefully scrutinize an order denying relief than one which permits a trial on the merits." (*Mink v. Superior Ct.* (1992) 2 Cal.App.4th 1338, 1343.)<br><br>Given Mr. Alvarez appeared at the hearing on September 29, 2023, and then filed the motion to vacate on October 12, 2023, this is evidence he acted diligently. There also is no evidence of prejudice to Plaintiff's ability to recover its debt or to otherwise prosecute the action.<br><br>Accordingly, the motion is **GRANTED** and the court **ORDERS** the default entered at ROA No. 11 and the default judgment entered at ROA No. 20 are **VACATED**.<br><br>Further, Oceanline is ordered to file and serve the answer attached as Exhibit B to the Alvarez Declaration within 5 days of this ruling.<br><br>Counsel for Oceanline is ordered to give notice of this ruling. |
| 3. | Khoa v. Thang | Before the court is the motion of defendants Nguyen Dinh Thang and Boat People S.O.S., Inc. (collectively, Defendants) for attorney fees following a partially successful special motion to strike the claims of plaintiff Le Xuan Khoa (Plaintiff) under Code of Civil |

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| | | Procedure section 425.16. The motion is **GRANTED** as set forth below.<br><br>Defendants were partially successful on the underlying special motion to strike as the prior judicial officer struck the second cause of action for negligent infliction of emotional distress and one of the two defamatory statements alleged as the basis for the first cause of action for defamation (and the court of appeal affirmed that ruling).<br><br>The governing analysis for a fee motion regarding a partially successful special motion to strike was described in *Mann v. Quality Old Time Serv., Inc.* (2006) 139 Cal.App.4th 328, 344-345:<br><br>"An award of attorney fees to a partially prevailing defendant under section 425.16, subdivision (c) thus involves competing public policies: (1) the public policy to discourage meritless SLAPP claims by compelling a SLAPP plaintiff to bear a defendant's litigation costs incurred to eliminate the claim from the lawsuit; and (2) the public policy to provide a plaintiff who has facially valid claims to exercise his or her constitutional petition rights by filing a complaint and litigating those claims in court. [Citations.] In balancing these policies, we conclude a defendant should not be entitled to obtain as a matter of right his or her entire attorney fees incurred on successful and unsuccessful claims merely because the attorney work on those claims was overlapping. Instead, the court should first determine the lodestar amount for the hours expended on the successful claims, and, if the work on the successful and unsuccessful causes of action was overlapping, the court should then consider the defendant's relative success on the motion in achieving his or her objective, and reduce the amount if appropriate.<br><br>"This analysis includes factors such as the extent to which the defendant's litigation posture was advanced by the motion, whether the same factual allegations remain to be litigated, whether discovery and motion practice have been narrowed, and the extent to which future litigation expenses and strategy were impacted by the motion. The fees awarded to a defendant who was only partially successful on an anti-SLAPP motion should be commensurate with the extent to which the motion changed the nature and character of the lawsuit in a practical way. The court should also |

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| | | consider any other applicable relevant factors, such as the experience and abilities of the attorney and the novelty and difficulty of the issues, to adjust the lodestar amount as appropriate. [Citation.]"<br><br>Here, Defendants were successful in striking one of the two statements alleged as the basis for the defamation claim. The court agrees with Defendants characterization the two statements alleged as the basis for the defamation claim were distinction statements pertaining to different sets of facts, and presenting at least some distinct issues. Defendants also successfully struck the negligent infliction of emotional distress claim, but the court does not view that success as being as significant as striking one of the defamatory statements because it does not completely remove issues relating to any emotional distress from the action. As such, the successful components of the special motion to strike advanced Defendants' litigation posture, limited some of the factual allegations of the complaint, somewhat reduced discovery and motion work, and somewhat impacted future litigation expenses. The court therefore concludes Defendants' success on the motion was not insignificant and did impact the case, thereby making them the prevailing party entitled to recover at least some of the attorney fees and costs they incurred in connection with the special motion to strike (and this motion for attorney fees). (Code Civ. Proc., § 425.16(c)(1); *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131, 1141 (*Ketchum*).)<br><br>The court has reviewed all the declarations and fee statements Defendants submitted in support of this motion. Before getting to any reduction in the amount of fees based on the partial success of the special motion to strike, the court finds the total amount of fees sought (116.4 hours) to be excessive, to include some duplicative entries among the four attorneys who billed on the motion, and to include some impermissible billing (such as work relating to the eventual appeal). Moreover, as Defendants recognize, a reduction across the board or percentage deduction is appropriate based on the partial success of the motion. Defendants suggest a 25% reduction (or an award of 75% of the amount the court finds to be the reasonable lodestar), and the court agrees with that figure. |

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| | | The court denies the request for "prevailing fees" and will award actual fees—i.e., the fees based on the actual hourly rates. The court also denies the request for a lodestar enhancement as there was no "exceptional representation" that "far exceeds" representation by a comparable attorney that would support enhancement. (*Ketchum*, *supra*, 24 Cal. 4th at p. 1139.)<br><br>Based on its review of the billing entries, the court finds the reasonable number of hours spent by attorney Voss to be 10 hours, by attorney Bassir to be 40 hours, by attorney Gagnon to be 25 hours, and by attorney Erigero to be 16 hours. When attorney Voss's $650 hourly rate is applied, that leads to $6,500 in fees. When attorney Bassir's $375 hourly rate is applied, that leads to $15,000 in fees. When attorney Gagnon's $285 hourly rate is applied, that leads to $7,125 in fees. When attorney Erigero's $285 hourly rate is applied, that leads to $4,560 in fees. The total of these fees is $33,185. When that amount is reduced by 25%, the total amount of attorney fees the court awards for the special motion to strike is $24,888.75. The court also awards the requested $6,038.09 in costs associated with the motion, including the translation fees.<br><br>Defendants also are entitled to attorney fees and costs on this fee motion. (*Ketchum*, *supra*, 24 Cal.4th at 1141.) The court finds the requested amount reasonable and awards $8,310.75 in fees and costs for this motion.<br><br>Accordingly, when the fees and costs for both motions are added together, the total amount the court awards is $39,237.59 (i.e., $24,888.75 + $6,038.09 + $8,310.75). Defendants are hereby awarded that amount as against Plaintiff under Code of Civil Procedure section 425.16(c). Plaintiff is ordered to pay such fees and costs within 60 days of service of notice of this ruling. Plaintiff unsupported request to stay enforcement of the award pending trial is denied.<br><br>Defendants' counsel is ordered to give notice of this ruling. |
| 4. | Heureux v. Vivakor, Inc. | Before the court are the following two motions by defendant Mathew Nicosia (Defendant): (1) motion to quash service of the summons and complaint of plaintiff Espri L'Heureux (Plaintiff), and (2) demurrer to Plaintiff's complaint. The motion to |

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| | | quash is **GRANTED** as set forth below, and therefore the demurrer is **MOOT**.<br><br>**Motion No. 1: Quash Service of Summons**<br><br>A defendant may move to quash service of summons on the ground of lack of jurisdiction of the court over him or her. (Code Civ. Proc., § 418.10, subd. (a)(1).) The court may dismiss without prejudice the complaint in whole, or as to that defendant, when dismissal is made pursuant to Section 418.10. (Code Civ. Proc., § 581(h).)<br><br>Here, Defendant, a Utah resident, asserts the court lacks personal jurisdiction over him as it relates to Plaintiff's complaint. Defendant submits evidence showing he has been a resident of Utah since 2015, has a Utah driver's license, pays state income taxes to the state of Utah, and does not own property in California. (Nicosia Decl. ¶¶3-5, 12) He also states he was CEO and Chairman of Vivakor, Inc. from 2011 to October 2022, and Vivakor, Inc. is a Nevada corporation with its principal place of business in the Utah. (Nicosia Decl. ¶5)<br><br>"When a nonresident defendant challenges personal jurisdiction the burden shifts to the plaintiff to demonstrate by a preponderance of the evidence that all necessary jurisdictional criteria are met. [Citation.] This burden must be met by competent evidence in affidavits and authenticated documentary evidence. An unverified complaint may not be considered as an affidavit supplying necessary facts. [Citation.]" (*Ziller Elecs. Lab GmbH v. Superior Ct.* (1988) 206 Cal.App.3d 1222, 1232-33.)<br><br>In the action, Plaintiff alleges a wide variety of wage and hour claims, discrimination claims, and wrongful discharge claims. As to Defendant specifically, Plaintiff alleges the first cause of action for misclassification as exempt employee, second cause of action for failure to provide meal periods, third cause of action for failure to provide rest periods, fourth cause of action for failure to provide itemized wage statements, fifth cause of action for failure to pay wages due at termination, sixth cause of action for failure to timely pay wages, and twelfth cause of action for unfair business practices. The only specific allegations against Defendant are that he was the CEO of the corporate defendants, he signed Plaintiff's independent contractor |

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| | | agreement, and otherwise managed the supervisors responsible for the wage and hour violations Plaintiff alleges. Plaintiff seeks to hold Defendant personally liable under Labor Code section 558.1 as an owner, director, officer, or managing agent of the corporate defendants who violated or caused the corporate defendants to violate the wage and hour laws. Finally, Plaintiff alleges she worked at the Irvine office of defendant Vivakor, Inc. from approximately November 2019, through June 2021. It is important to note, Plaintiff's complaint is note verified.<br><br>The only evidence submitted by Plaintiff in opposition to the motion is her own declaration, which states Defendant was "intimately involved in the day-to-day operations and management." She also states that for the last nine and one-half months of her employment, Defendant was in the office "approximately twice per week." (Heureux Decl. at ¶¶3-4) Defendant objects to these two paragraphs in Plaintiff's declaration on the grounds of lack of personal knowledge/foundation, speculation/inadmissible lay opinion, and hearsay. The court sustains the objections to the following statement in paragraph 3 of Plaintiff's declaration: "[Defendant] was intimately involved in the day-to-day operations and management of its place of business located in Irvine, California." The objections are otherwise overruled.<br><br>In response to Plaintiff's declaration, Defendant submitted a supplemental declaration stating, among other things, "my presence in the Irvine office was intermittent, sporadic, and irregular. On average, I was in the Irvine office 2 days per month between 2015 and 2022. At most, I was in the Irvine office 4 days per month, but this was rare and irregular. . . . [¶] When traveling to the Irvine office, I would stay in a hotel, and my visits were limited to fulfilling my duties as chief executive officer." (Nicosia Supp. Decl. ¶¶ 5-6.)<br><br>Personal jurisdiction may be either general or specific for purposes of the minimum contacts inquiry. (*Snowney v. Harrah's Entertainment, Inc.* (2005) 35 Cal.4th 1054, 1062.)<br><br>Based on the foregoing evidence, Plaintiff asserts she has established general jurisdiction over |

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| | | Defendant. "'For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home.' [Citation.] A court with general jurisdiction may hear any claim against that defendant, even if all the incidents underlying the claim occurred in a different State." (*Bristol-Meyers Squibb Co. v. Superior Court* (2017) 582 U.S. 255, 262.)<br><br>Here, the evidence is insufficient to establish Defendant's contacts with California rise to the level to give the court general personal jurisdiction over Defendant. Although the evidence shows Defendant made repeated visits to the Irvine office, those visits were intermittent, sporadic, and irregular, and limited to his work for the corporate defendants. The court finds Defendant's evidence regarding his contacts more credible and resolves the conflicts in the evidence in his favor. As such, Plaintiff has failed to establish general personal jurisdiction over Defendant.<br><br>Where a defendant's contacts are not so pervasive as to exercise general jurisdiction over him, the defendant may still be subject to jurisdiction on claims related to its activities in California under a specific jurisdiction analysis. The inquiry focuses on the relationship between the defendant, the forum, and the litigation. (*Walden v. Fiore* (2014) 571 US 277, 283-284.) For the state to exercise jurisdiction over a defendant consistent with due process, "the defendant's suit-related conduct must create a substantial connection with the forum State." (Id. at p. 284; *Bristol-Myers Squibb Co. v. Sup.Ct. of Calif., San Francisco County* (2017) 582 US 255, 262-268.)<br><br>Such "specific" personal jurisdiction requires a showing of: (1) purposeful availment—the out-of-state defendant purposefully established contacts with the forum state; (2) arising out of—the plaintiff's cause of action "arises out of" or is "related to" the defendant's contacts with the forum state; and (3) reasonableness—the forum's exercise of personal jurisdiction in the particular case comports with "fair play and substantial justice." (*Burger King Corp. v. Rudzewicz* (1985) 471 US |

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| | | 462, 477-478; *Vons Cos., Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 446.)<br><br>Each defendant's "contacts" with the forum state must be assessed individually. (*Calder v. Jones* (1984) 465 US 783, 790 (*Calder*).) Thus, for example, personal jurisdiction over a foreign corporation does not automatically confer personal jurisdiction over its nonresident officers, directors, and employees. (*Keeton v. Hustler Magazine, Inc.* (1984) 465 US 770, 781, fn. 13.) Personal jurisdiction over a corporation does not automatically establish personal jurisdiction over its officers, directors, agents, and employees. (See *Calder*, at p. , 790; *Mihlon v. Superior Court* (1985) 169 Cal.App.3d 703, 713 (*Mihlon*).)<br><br>"[I]t is well established by California case law that for jurisdictional purposes the acts of corporate officers and directors, in their official capacities, are acts exclusively of (qua) the corporation, and are thus not material for purposes of establishing minimum contacts as to individuals. [Citations.] Implicit in this principle is the consideration that corporations are separate legal entities that cannot speak or act without their designated officers and directors. Accordingly, acts performed by individuals in such official capacities may not reasonably be attributed to them as individual acts creating personal jurisdiction." (*Mihlon*, *supra*, 169 Cal.App.3d at p. 713)<br><br>Nonetheless, there is no "fiduciary shield" or jurisdictional immunity for nonresident corporate officers and directors who act on behalf of a corporation if their acts otherwise would subject them to local personal jurisdiction. (*Keeton v. Hustler Magazine, Inc.* (1984) 465 US 770, 781, fn. 13; *Taylor-Rush v. Multitech Corp.* (1990) 217 Cal.App.3d 103, 116-117.) Corporate agents or employees who are primary participants in intentional wrongdoing causing injury locally are suable here along with their employer. (*Calder*, *supra*, 465 US at pp.789-790.)<br><br>Here, Plaintiff's evidence shows only that Defendant was in the office at most 2 days a week for 9 ½ months and sporadically before that. Moreover, Defendant's evidence shows his contacts were much less, and as explained above, the court credits Defendant's evidence over Plaintiffs. |

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| | | Moreover, there is no evidence as to what Defendant did when he was in California. There is no evidence as to how Defendant interacted with Plaintiff or if he interacted with her at all. Plaintiff claims Defendant was "involved in the day-to-day operations and management" of the Irvine office but submits no evidence as to what he did, and the court sustain Defendant's objection to this statement.<br><br>Plaintiff does not say Defendant had any involvement in the decisions regarding her maternity leave. To the contrary, the complaint alleges she interacted with her supervisor, Tyler Nelson, regarding the maternity leave. (Complaint at ¶¶14-15.) There is no evidence Defendant denied her meal or rest breaks, or that he was even involved with that aspect of her employment. In fact, Nicosia submits evidence he had no involvement with HR or Payroll issues and states: "In my capacity as CEO for Vivakor, Inc., I did not draft, implement, or otherwise manage any wage and hour policy, specifically for any California offices. I also had no personal involvement in the development of any wage and hour policies. I did not manage or have personal involvement in the payroll process or any payroll policies." (Nicosia Decl. at ¶8.) While in the motion Plaintiff points to an allegation in the complaint that Defendant signed her Independent Contractor Agreement, "an unverified pleading has no evidentiary value in determination of personal jurisdiction." (*Mihlon*, *supra*, 169 Cal.App.3d at p. 710.) Moreover, that alone is not sufficient. Indeed, there is simply no evidence presented to show Defendant had any involvement in the alleged acts regarding Plaintiff's claims so as to establish specific jurisdiction over him—his title as CEO and his signature on the Agreement alone are not sufficient.<br><br>It is important to note, the parties twice stipulated to continue the hearing on this motion to engage in settlement discussions, and also to allow Plaintiff to conduct discovery on jurisdictional facts. Plaintiff has had ample time to conduct any necessary discovery to establish jurisdiction over Defendant, and again, also she submitted was her very brief, and largely conclusory declaration. Indeed, the motion was filed and served on January 9, 2023, |

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| | | and it is being heard nearly 16 months in early May 2024.<br><br>Based on the foregoing, Plaintiff failed to meet her burden to establish personal jurisdiction over Defendant, and therefore the motion to quash is **GRANTED** and Plaintiff's complaint against Defendant is **DISMISSED WITHOUT PREJUDICE**.<br><br>**Motion No. 2: Demurrer**<br><br>In light of the foregoing ruling on the motion to quash, the demurrer is MOOT and therefore ordered off calendar.<br><br>Defendant's counsel is ordered to give notice and submit an appropriate order. |
| 5. | Varilease Finance, Inc. v. Tactical Fleet Services, LLC | The motion for leave to amend is **OFF CALENDAR** based on the stipulation of the parties for the amended pleading to be filed.<br><br>In light of the amended pleading, the case management conference is **CONTINUED to Friday, August 9, 2024, at 9:30 a.m.**, in Department C23. |
| 6. | Lang Van, Inc. v. Truc | Before the court are eight motions to compel responses to discovery filed on October 12, 2023, by plaintiff Lang Van, Inc. (Plaintiff). Four motions are directed to cross-complainant and cross-defendant Tran Thien Anh Chi (Chi), and the other four are directed to cross-complainant and cross-defendant My Lan Luu (Luu).<br><br>As to both Chi and Luu, the motions seek responses to (1) form interrogatories, set one, (2) special interrogatories, set one, (3) requests for admission, set one, and (4) requests for production, set one. (See ROA No. 85, Exhs. 1-8.) Plaintiff asserts no responses to these discovery requests have been provided by either Chi or Luu, despite a follow-up request after the deadline to respond had passed. (*Id*. at ¶¶ 6-9.) [Note: With respect to the requests for admissions, the proper motion is a motion to deem the requests admitted, not to compel responses, when no responses are served.]<br><br>In their consolidated oppositions, Chi and Luu assert, through sworn statements from their counsel, responses were timely served by mail on October 2, 2023. (See Doan Decls., at ¶ 2, and Exh. 1.) The exhibit shows responses, verifications, and a proof of service by mail dated October 2, 2023. (*Id*. at Exh. 1.) It thus appears responses |

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| | | were timely mailed, even if they had not been received when the motions were filed – although Chi and Luu's counsel has failed to explain why he did not promptly advise Plaintiff's counsel that was the case in response to Plaintiff's counsel's October 9, 2023 letter.<br><br>In any event, as responses to the discovery at issue clearly have been provided, all these motions are **MOOT** and therefore are **DENIED** on that ground, except as to the requests for sanctions. The oppositions also seek sanctions based on the contention responses were served before the motions were filed.<br><br>Under the circumstances presented, the court finds all parties acted with substantial justification and the imposition of sanctions would be inequitable. Moreover, the requests in the motions are defective because they fail to clearly state against whom sanctions are sought—i.e., the party, counsel, or both. (Code Civ. Proc. § 2023.040 ["A request for a sanction shall, in the notice of motion, identify every person, party, and attorney against whom the sanction is sought, and specify the type of sanction sought"].) Accordingly, all sanctions requests are **DENIED**.<br><br>Plaintiff's counsel is ordered to give notice of these rulings. |
| 7. | SFG West SAC, LLC v. Real Advantage Title Insurance Company | **CONTINUED** to July 22, 2024, by agreement of the parties. |
| 8. | Birch Gold Group v. Alexander | Before the court are the applications of William A. Rome and Michael A. Eisenberg for pro hac vice admission to appear on behalf of plaintiff Birch Gold Group, LP (Plaintiff). Both applications are **CONTINUED TO MAY 20, 2024, at 2:00 p.m.**, in Department C23, for the applicants to submit supplemental, verified applications and a new proof of service that fully complies with California Rules of Court, rule 9.40. The supplemental application must be filed and served by May 13, 2024.<br><br>Specifically, the current application of each applicant is deficient in that (1) it fails to provide the applicant's residential address, (2) it fails to state the applicant is a "licensee" in good standing |

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| | | [member and licensee are different], and (3) it fails to confirm the applicant is not a resident of California, is not regularly employed in California, and is not regularly engaged in substantial business, professional, or other activities in California. (Cal. Rules Ct., rule 9.40(a)&(d).) Moreover, each application fails to include a proof of service on the State Bar. Counsel has included a declaration stating the conclusion the State Bar was served, but rule 9.40(c)(1) requires a proof of service on the State Bar.<br><br>Plaintiff's counsel is ordered to give notice. |
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