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6 Attorneys for Specially-Appearing Defendant Kem Crosby Gardner

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10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF SANTA CLARA
12 UNLIMITED JURISDICTION

13 MARK CHRISTOPER TRACY, an individual,
14
15 Plaintiff,

16 v.

17 COHNE KINGHORN PC, a Utah Professional
18 Corporation; SIMPLIFI COMPANY, a Utah
19 Corporation; JEREMY RAND COOK, an
20 individual; ERIC HAWKES, an individual;
21 JENNIFER HAWKES, an individual; MICHAEL
22 SCOTT HUGHES, an individual; DAVID
23 BRADFORD, an individual; KEM CROSBY
24 GARDNER, an individual; WALTER J. PLUMB
25 III, an individual; DAVID BENNION, an
26 individual; R. STEVE CREAMER, an individual
27 PAUL BROWN, an individual; GARY BOWEN,
28 an individual,

Defendants.

Case No. 23CV423435

**MOTION OF SPECIALLY APPEARING
DEFENDANT KEM C. GARDNER TO
QUASH SERVICE OF SUMMONS AND
COMPLAINT FOR LACK OF
PERSONAL JURISDICTION**

[Declarations of Kem C. Gardner and Sarah E. Burns with Exhibit 1 concurrently filed]

Judge: The Hon. Evette Pennypacker
Department: 06

2/20/2024

Date: To Be Assigned By The Court
Time: 9:00 a.m.

Complaint Filed: September 21, 2023

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT as soon as counsel may be heard in Department 6 of the Superior Court of California, County of Santa Clara, located at 191 N. First Street, San Jose, CA 95113, specially-appearing defendant Kem C. Gardner will and hereby does move this Court for

DAVIS WRIGHT TREMAINE LLP

1 an order quashing service of summons pursuant to Code of Civil Procedure § 418.10. This
2 Motion is made on the following two independent grounds:

- 3 1. Plaintiff failed to properly serve Mr. Gardner with process in this matter. Plaintiff
4 purports to have served Mr. Gardner, who is a Utah resident, by mail, but Plaintiff has
5 provided no proof that Mr. Gardner ever received the service package and cannot,
6 because Plaintiff sent it to an address that is not associated with Mr. Gardner. *See*
7 Memorandum, Section IV.
- 8 2. The Court lacks personal jurisdiction over Mr. Gardner in any event. Mr. Gardner is
9 a Utah resident; he does not have substantial ties to California, and certainly has not
10 purposefully availed himself of its privileges; and Plaintiff's claims against
11 Mr. Gardner all arise out of alleged activity in Utah. *See* Memorandum, Section V.


12 For all of these reasons, Mr. Gardner respectfully requests that this Court quash service of
13 the summons and complaint, and dismiss him from the suit for lack of personal jurisdiction.

14 This Motion is based on this Notice; the attached Memorandum of Points and
15 Authorities; the Declarations of Kem C. Gardner and Sarah E. Burns with Exhibit 1; all matters
16 of which this Court may take judicial notice; all pleadings, files, and records in this action; and
17 such other argument as may be received by this Court at the hearing on this Motion.

18
19 DATED: December 29, 2023

Respectfully submitted,

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21 DAVIS WRIGHT TREMAINE LLP

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23 By: 
THOMAS R. BURKE
SARAH E. BURNS

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25 Attorneys for Specially-Appearing Defendant
26 Kem C. Gardner
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I. INTRODUCTION

Pursuant to California Code of Civil Procedure Section 418.10(a)(1), Kem C. Gardner (“Mr. Gardner”) specially appears for the limited purpose of challenging this Court’s jurisdiction over him by moving to quash service of the Summons and Complaint.

In this lawsuit, Plaintiff Mark Tracy brings claims against more than a dozen Utah residents based on his yearslong fight with a Utah water district. Plaintiff’s reason for bringing suit in California, rather than Utah, is obvious: In Utah, Plaintiff’s repeated lawsuits on this same subject have resulted in him being declared a vexatious litigant, barring him from bringing suit unless he first receives permission from the presiding judge there. *See* Declaration of Sarah E. Burns (“Burns Decl.”) Ex. 1. Fortunately, this lawsuit is easily dismissed as to Mr. Gardner, who does not reside in California, conduct any business, vote or own bank accounts here. While Mr. Gardner occasionally travels to California, *none* of Plaintiff’s claims *arise* out of any alleged conduct by Mr. Gardner in California. Simply put, Plaintiff has not alleged any facts to show that Mr. Gardner should be hauled to court in California.

First, as a threshold matter, this Court lacks personal jurisdiction over Mr. Gardner because Plaintiff failed to properly serve him. It appears Plaintiff incorrectly mailed a copy of the Summons and Complaint to a business address for a company Mr. Gardner was last associated with *roughly 20 years ago*. This singular attempt by Plaintiff to effectuate service by mail was incomplete and defective.

Second, even assuming service was proper—and it was not—Plaintiff fails to proffer any facts to show why this Court may exercise personal jurisdiction over Mr. Gardner. Plaintiff acknowledges that Mr. Gardner is a Utah resident. Compl. ¶ 14. Plaintiff also fails to allege any facts—because none exist—to show that Mr. Gardner is subject to this Court’s specific personal jurisdiction. Indeed, the Complaint is entirely devoid of any allegations regarding Mr. Gardner’s *presence* in California—let alone any alleged misconduct in California.

II. FACTUAL BACKGROUND

Plaintiff claims he is a “federal whistleblower in what [is] alleged to be the longest and most lucrative water grab[] in the State of Utah.” Compl. ¶ 1. He alleges that Defendants

1 “perpetuated a fraudulent scheme to retire senior water rights vis-à-vis duplicitous water
2 claims....for the construction and massive expansion of a luxurious private urban development”
3 in Salt Lake City, Utah. *Id.* ¶ 2. This is the last of many similar lawsuits¹ Plaintiff has brought
4 based on the Emigration Oaks Water System, a public drinking water system in Salt Lake
5 County operated by the Emigration Canyon Improvement District, a public entity. *Id.* ¶ 8. On
6 April 8, 2021, Plaintiff was declared a vexatious litigant after a Utah court found that the
7 repeated suits were “filed for the purpose of harassment.” Burns Decl. Ex. 1 at 5. Under the
8 terms of the vexatious litigant order, Plaintiff is prohibited from filing suit in any Utah state court
9 without the permission of the presiding judge of Utah’s Third District Court for Salt Lake
10 County. *Id.*

11 In this Complaint, Plaintiff brings claims for libel, libel per se, false light and intentional
12 infliction of emotional distress based on emails sent by other defendants, and statements on the
13 Emigration Canyon Improvement District’s website, www.ecid.org. Compl. ¶¶ 79-111; 10. He
14 alleges that this Court has jurisdiction for two reasons: (1) because the ecid.org website, though
15 directed at Utah residents, is “routed through San Jose, California”; and (2) because “Defendants
16 published false and defamatory statement[s] for the purpose of obtaining continued payment of
17 monies from property owners residing in California.” *Id.* ¶¶ 4, 21.

18 Plaintiff’s allegations as to specially-appearing Defendant Kem C. Gardner end in 2004
19 and all relate to actions taken in Utah. He alleges that Mr. Gardner “is an individual and resident
20 of Utah” and that he constructed various water reservoirs that are part of the Emigration Oaks
21 Water System in the 1990s. *Id.* ¶¶ 14, 24, 29. The Complaint expressly alleges that Mr.
22 Gardner’s “legal title and liability” in the water system was transferred to the Emigration
23 Improvement District in 1998. *Id.* ¶¶ 40; 24 (including Mr. Gardner in definition of Emigration
24 Oaks Defendants). The Complaint does not allege any facts indicating that the purported

25 _____
26 ¹See *Emigration Canyon Home Owners v. Emigration Improvement District*, Case No.
27 190901675, Third District of Utah (Feb. 25, 2019); *Emigration Canyon Home Owners v.*
28 *Emigration Improvement District*, Case No. 190904621, Third District of Utah (June 11, 2019);
Mark Christopher Tracy v. Simplifi Company, et al., Case No. 200905074, Third District of Utah
(Aug. 10, 2020); *Mark Christopher Tracy v. Simplifi Company, et al.*, Case No. 200905123,
Third District of Utah (Aug. 10, 2020).

1 “payment of monies from property owners residing in California” were paid to Mr. Gardner at
2 any point since 1998. It also does not allege that Mr. Gardner made any of the allegedly
3 defamatory statements, or that he has any current association with ECID. *Id.* Instead, the
4 Complaint includes a blanket allegation that “each Defendant was acting as the agent, servant,
5 employee, partner, co-conspirator, and/or joint venture of each remaining Defendant.” *Id.* ¶ 20.

6 Mr. Gardner is a resident of Utah, and has been since 1988. Declaration of Kem C.
7 Gardner (“Gardner Decl.”) ¶ 2. He has never been a resident of California. *Id.* ¶ 3. He does not
8 conduct business on behalf of himself in California, or maintain bank accounts in the state. *Id.*
9 He does not pay taxes in the state. *Id.* His sole connection to the state is a partial interest in a
10 timeshare here, and visiting the state approximately a handful of times per year. *Id.* ¶ 4.

11 According to a November 20, 2023 Proof of Service filed with the Court (the “11/20/23
12 Proof of Service”), Plaintiff attempted to serve Mr. Gardner by mailing a copy of the complaint
13 and summons to 101 South 200 East, Suite 200, Salt Lake City, Utah 84111. That is not Mr.
14 Gardner’s home or business address. Gardner Decl. ¶¶ 5-7.

15 III. LEGAL STANDARD

16 Plaintiff bears the burden of showing that this Court has the power to exercise general or
17 specific personal jurisdiction over a non-resident defendant. A plaintiff “carr[ies] the initial
18 burden of demonstrating facts by a preponderance of evidence justifying the exercise of
19 jurisdiction in California.” *In re Automobile Antitrust Cases I & II*, 135 Cal. App. 4th 100, 110
20 (2005) (affirming grant of motion to quash where plaintiff failed to present sufficient evidence to
21 show a California court may exercise jurisdiction). *See also* C.C.P. § 418.10(a)(1).

22 To meet that burden, Plaintiff must show that Mr. Gardner, as an individual, possesses
23 sufficient contacts with California such that, pursuant to California’s long-arm statute, this Court
24 may exercise jurisdiction on any basis not inconsistent with the constitutions of California and
25 the United States. C.C.P. § 410.10. Further, if a party “challenges the court’s personal
26 jurisdiction on the ground of improper service of process[,] the burden is on the plaintiff to prove
27 ... the facts requisite to an effective service.” *Summers v. McClanahan*, 140 Cal. App. 4th 403,
28 413 (2006) (internal quotes omitted).

1 IV. PLAINTIFF HAS NOT PROPERLY SERVED MR. GARDNER

2 Under controlling California law, Plaintiff was required to properly serve Mr. Gardner
3 with the Summons and Complaint. “A party cannot be properly joined unless served with the
4 summons and complaint; notice does not substitute for proper service. Until statutory
5 requirements are satisfied, the court lacks jurisdiction over a defendant.” *Ruttenberg v.*
6 *Ruttenberg*, 53 Cal. App. 4th 801, 808 (1997). “Actual notice of the action alone ... is not a
7 substitute for proper service and is not sufficient to confer jurisdiction.” *American Express*
8 *Centurion Bank v. Zara*, 199 Cal. App. 4th 383, 392 (2011). *See also* Weil & Brown, CAL.
9 PRAC. GUIDE: CIV. PROC. BEFORE TRIAL (The Rutter Group 2019) (“Rutter”) § 4:414, p. 4-68
10 (“[a] defendant is under no duty to respond in any way to a defectively served summons,” and it
11 “makes no difference that defendant had actual knowledge of the action” as such “knowledge
12 does not dispense with statutory requirements for service of summons”). Where, as here, service
13 is improper, a motion to quash is appropriate. C.C.P. § 418.10(a)(1) (defendant can move to
14 “quash service of summons on the ground of lack of jurisdiction.”)

15 Plaintiff failed to properly serve Mr. Gardner. A plaintiff may serve a defendant residing
16 in another state by: (a) utilizing the methods of service for persons within California, such as:
17 personal delivery; substitute service; service of mail coupled with notice and acknowledgement,
18 or publication; (b) certified or registered mail with return receipt requested, or (c) any service
19 method permitted under the law of state where the service is made. C.C.P. § 413.10; *see also*
20 C.C.P. § 415.40. Plaintiff has not properly served Mr. Gardner under California or Utah law.

21 Plaintiff’s 11/20/23 Proof of Service states that he attempted to serve Mr. Gardner
22 pursuant to Code of Civil Procedure Section 415.40, by mailing the Summons and Complaint
23 with return receipt requested to 101 South 200 East, Suite 200, Salt Lake City, Utah 84111.
24 Under that statute, however, the “proof of service shall include evidence satisfactory to the court
25 establishing actual delivery to the person to be served, by a signed return receipt or other
26 evidence.” *See* C.C.P. § 417.20(a). Here the proof contains no such evidence, and it could it not,
27 because 101 South 200 East is the address for The Boyer Company, L.C., not Mr. Gardner or his
28 company, which is located at 201 South Main Street, Suite 2000, Salt Lake City, Utah. *See*

1 Gardner Decl. ¶¶ 5-6. Mr. Gardner has not been affiliated with The Boyer Company, L.C. since
2 2004, and that company is not authorized to accept service on Mr. Gardner’s behalf. *Id.* ¶¶ 5, 7.
3 Plaintiff therefore did not cause delivery to be made “to the defendant,” nor provide proof of
4 such, and service was therefore ineffective. C.C.P. § 415.40; *see also Bolkih v. Sup.Ct.*, 74 Cal.
5 App. 4th 984, 1001 (1999) (service by mail on a nonresident requires strict compliance with
6 C.C.P. § 417.20(a)).

7 Because Plaintiff’s attempt to serve Mr. Gardner failed to comply with the California
8 requirements, and he has provided no evidence service was proper under Utah law, it was invalid
9 and insufficient to confer jurisdiction. *See Ramos v. Homeward Residential, Inc.*, 223 Cal. App.
10 4th 1434, 1443 (2014) (voiding default judgment for lack of proper service where plaintiff
11 provided no evidence the person to be served “actually received the documents”); *Gilbert v.*
12 *Haller*, 179 Cal. App. 4th 852, 866 (2009) (service invalid where “no compliance at all” with
13 statutory requirements). This Motion should be granted, and the summons quashed, for this
14 reason alone.

15 **V. THE COURT LACKS PERSONAL JURISDICTION OVER MR. GARDNER**

16 A motion to quash service of summons under C.C.P. § 418.10 also is the proper method
17 for seeking dismissal of a defendant for lack of personal jurisdiction. *See* C.C.P. § 418.10(a)(1);
18 *BBA Aviation PLC v. Superior Court*, 190 Cal. App. 4th 421, 437 (2010) (directing trial court to
19 grant motion to quash service of summons where it lacked personal jurisdiction); Rutter § 3:376
20 (recognizing that proper procedure is “a motion to quash service for lack of personal jurisdiction
21 under C.C.P. § 418.10(a)(1)”).

22 The ability of a California court to exercise personal jurisdiction over an out-of-state
23 defendant must be consistent with the due process requirements of the federal and state
24 constitutions. C.C.P. § 410.10; *BBA Aviation*, 190 Cal. App. 4th at 429. A defendant must have
25 “minimum contacts with the state such that asserting jurisdiction does not violate traditional
26 notions of fair play and substantial justice,” which means that the defendant has engaged in
27 “conduct in, or in connection with, the forum state ... such that the defendant should reasonably
28 anticipate being subject to suit in that state.” *Id.* “Under the minimum contacts test, personal

1 jurisdiction may be either general or specific.” *Id.* (quotation omitted). Plaintiff cannot meet his
2 burden here, under either a general or specific theory of personal jurisdiction.

3 **A. There Is No General Jurisdiction Over Mr. Gardner.**

4 General jurisdiction over a defendant is proper if the individual is domiciled in the forum,
5 or where a defendant’s contacts in the forum state are so “substantial, continuous, and
6 systematic” that they become “at home” in the forum state. *Brue v. Shabaab*, 54 Cal. App. 5th
7 578, 590–591 (2020). “[R]andom, fortuitous, or attenuated” contacts do not sustain a finding of
8 general jurisdiction. *Shisler v. Sanfer Sports Cars, Inc.* 146 Cal. App. 4th 1254, 1259 (2006).

9 None of the requisite facts for the exercise of general jurisdiction are present. As
10 Plaintiff concedes, Mr. Gardner resides in Utah. *See* Compl. ¶ 14. He is also domiciled there.
11 Gardner Decl. ¶ 2. Mr. Gardner is registered to vote in Utah. *Id.* Other than a timeshare interest,
12 Mr. Gardner does not own property in California. *Id.* ¶ 4. He does not maintain any bank
13 accounts in California, and does not seek business opportunities in California or have any
14 employees in California. *Id.* ¶ 3. Mr. Gardner has not appointed anyone to accept service on his
15 behalf in California. *Id.* Mr. Gardner does not consent to jurisdiction in California. *Id.*
16 Ultimately, Mr. Gardner is neither domiciled in California nor “made [himself] at home” in
17 California and is consequently not subject to this Court’s general jurisdiction. *Brue*, 54 Cal.
18 App. 5th at 590–91.

19 **B. There Is No Specific Jurisdiction Over Mr. Gardner.**

20 Plaintiff also fails to meet the burden of showing—by a preponderance of evidence—that
21 Mr. Gardner is subject to this Court’s exercise of specific jurisdiction. A court may exercise
22 specific jurisdiction over a non-resident defendant when the defendant: (1) “purposefully
23 directed” actions at forum residents or “purposefully avail[ed himself or herself] of the privilege
24 of conducting activities within the forum”; (2) the dispute “is related to or arises out of a
25 defendant’s contacts with the forum”; (3) and “whether the assertion of personal jurisdiction
26 would comport with ‘fair play and substantial justice.’” *Vons Companies, Inc. v. Seabest Foods,*
27 *Inc.*, 14 Cal. 4th 434, 447 (1996).

28

1 **1. No Purposeful Availment or Direction.**

2 Plaintiff fails to meet the “purposeful availment” prong of the specific personal
3 jurisdiction test because Plaintiff has not and cannot show any facts indicating that Mr. Gardner
4 “purposefully and voluntarily directs [his] activities toward the forum so that [he] should expect,
5 by virtue of the benefit [he] receives, to be subject to the court’s jurisdiction based on [his]
6 contacts with the forum.” *Bombardier Recreational Prods., Inc. v. Dow Chem. Can. ULC*, 216
7 Cal. App. 4th 591, 602 (2013). These contacts must “proximately result from actions by the
8 defendant himself that create a substantial connection with the forum State.” *Dow Chem. Can.*
9 *ULC v. Super. Ct.*, 202 Cal. App. 4th 170, 175 (2011) (quoting *Burger King Corp. v. Rudzewicz*,
10 471 U.S. 462, 475 (1985)). “[I]t is essential in each case that there be some act by which the
11 defendant purposefully avails itself of the privilege of conducting activities within the forum
12 State, thus invoking the benefits and protections of its laws.” *Malone v. Equitas Reinsurance*
13 *Ltd.*, 84 Cal. App. 4th 1430, 1437 (2000).

14 Plaintiff has failed to allege Mr. Gardner purposefully availed himself of conducting
15 business in California or purposefully directed any activities towards residents in California. The
16 Complaint is entirely devoid of any facts suggesting Mr. Gardner engaged in any activities—let
17 alone tortious activities—in California or directed towards California residents. The Complaint’s
18 **only** jurisdictional allegations are that some defendants made “false and defamatory statements
19 on a website that is created and published on a digital platform in California and routed through
20 San Jose” and that those defendants published the statements “for the purpose of obtaining
21 continued payment of money from property owners residing in California.” Compl. ¶ 21; *see*
22 *also id.* ¶ 4. Plaintiff, however, does not allege that Mr. Gardner made any of the allegedly
23 defamatory statements, or that he had any connection with the website, <https://www.ecid.org>,
24 which Plaintiff alleges is affiliated with the Emigration Canyon Improvement District. Compl.
25 ¶ 59. He also does not allege that Mr. Gardner has any connection with the alleged “continued
26 payment of money from property owners residing in California.” Compl. ¶ 21. To the contrary,
27 he alleges that Mr. Gardner transferred his interest in the underlying water system to ECID 25
28 years ago, in 1998. *Id.* ¶ 40.

1 Mr. Gardner’s only ties to California—that is, brief visits and an interest in a timeshare—
2 are not alleged in the Complaint. *See generally* Compl. And California courts have long held
3 that sporadic visits are not sufficient grounds for exercising specific jurisdiction over out-of-state
4 defendants. By way of example, in *Picot v. Weston*, the Ninth Circuit held that the existence of
5 an “agreement and [defendant’s] two trips to California did not create sufficient minimum
6 contacts to subject defendant to personal jurisdiction [in California].” 780 F.3d 1206, 1213 (9th
7 Cir. 2015). Likewise, in *Edmunds v. Superior Ct.*, a California appellate court reversed the
8 denial of a motion to quash where the non-resident defendant only visited California on a few
9 occasions to represent a client. 24 Cal. App. 4th 221, 234 (1994); *see also e.g., Canaan*
10 *Taiwanese Christian Church v. All World Mission Ministries*, 211 Cal. App. 4th 1115, 1127
11 (2012). In short, Mr. Gardner has done *nothing* to purposefully avail himself of the benefits of
12 either conducting business in California or purposefully directing any conduct—let alone tortious
13 conduct—in California.

14 2. No Claims Against Mr. Gardner Arise Out of California.

15 Plaintiff also fails to show that the controversy arises out of Mr. Gardner’s contacts with
16 the forum. A California court may exercise specific jurisdiction only “if there is a **substantial**
17 connection or nexus between forum contacts and the litigation.” *Greenwell v. Auto-Owners Ins.*
18 *Co.*, 233 Cal. App. 4th 783, 801 (2015). Towards that end, “a court must consider “the nature of
19 the relationship between the claim and the forum contacts” [] to determine whether the claim
20 is *substantially* related to the forum contacts.” *Id.* (quoting *Vons*, 14 Cal. 4th at 454).

21 The Complaint does not—and cannot—contain a single allegation that Mr. Gardner
22 engaged in *any* forum-related conduct tied to the claims at-issue. *First*, Plaintiff has not alleged
23 *any* facts demonstrating any connection—let alone a “substantial connection”—between the
24 claims, Mr. Gardner, and California. All of the facts Plaintiff alleges related to Mr. Gardner
25 concern actions he allegedly carried out *in Utah*, not California. *E.g.*, Compl. ¶¶ 24-41. *Second*,
26 jurisdiction is not proper merely because Mr. Gardner’s alleged involvement—25 years ago—
27 with the water district had some purported “effect” on California—that is not a “substantial
28 connection” that would render the exercise of jurisdiction reasonable. That is, “[i]t does not

1 follow... that the fact that a defendant’s actions in some way set into motion events which
2 ultimately injured a California resident, will be enough to confer jurisdiction over that defendant
3 [in] the California courts.” *Edmunds*, 24 Cal. App. 4th at 236. *See also Sacramento Suncrest*
4 *Apartments, LLC v. Cambridge Advantaged Props. II*, 187 Cal. App. 4th 1, 22 (2010) (finding no
5 “substantial connection” between Oregon investors’ passive investment in a limited partnership
6 that built apartment houses in California and construction claims relating to those apartments).
7 Because Plaintiff fails to show that his claims arise out of or relate to Mr. Gardner’s activities in
8 California, specific jurisdiction is not proper.

9 3. Violations of Fair Play and Justice

10 Because Plaintiff fails the first two prongs of the jurisdictional analysis and Mr. Gardner
11 lacks even minimum contacts with California, the Court need not decide whether “the assertion
12 of personal jurisdiction would comport with fair play and substantial justice.” *See Malone*, 84
13 Cal. App. 4th at 1437 n.3 (“Because we conclude that defendants lacked the requisite minimum
14 contacts with California, we do not reach the question of whether jurisdiction over them would
15 comport with fair play and substantial justice.”). Nevertheless, where, as here, a defendant’s
16 contacts with the forum are insufficient to satisfy the basic requirements for general or specific
17 jurisdiction, the exercise of jurisdiction necessarily violates due process. *See World-Wide*
18 *Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980) (“[T]he defendant’s contacts with the forum
19 State must be such that maintenance of the suit does not offend traditional notions of fair play
20 and substantial justice.”) (internal quotation marks omitted).

21 Furthermore, the exercise of personal jurisdiction over Mr. Gardner would defeat one of
22 the essential guarantees of fairness resulting from the constitutional limitations on personal
23 jurisdiction: giving “a degree of predictability to the legal system that allows potential
24 defendants to structure their primary conduct with some minimum assurance as to where that
25 conduct will and will not render them liable to suit.” *Burger King*, 471 U.S. at 472 (citation and
26 internal quotation marks omitted); *see also World-Wide Volkswagen*, 444 U.S. at 297 (noting that
27 a “critical” inquiry is whether “the defendant’s conduct and connection with the forum State are
28 such that he should reasonably anticipate being haled into court there”). Mr. Gardner has taken

1 no action that he could reasonably believe would subject him to suit in California. Therefore,
2 subjecting Mr. Gardner to this lawsuit would not comport with traditional notions of fair play
3 and substantial justice.


4 **VI. CONCLUSION**

5 Plaintiff has failed to effect service on specially appearing Defendant Kem C. Gardner,
6 and has not established and cannot establish that he is constitutionally subject to personal
7 jurisdiction in California. Therefore, Mr. Gardner respectfully requests that his motion to quash
8 service of summons for lack of personal jurisdiction be granted and that he be dismissed from
9 this action for lack of personal jurisdiction.

10 DATED: December 29, 2023.

Respectfully submitted,

11 DAVIS WRIGHT TREMAINE LLP

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