6th Civil Nos. H052028
(Santa Clara County Superior Court
Case No. 23CV423435)

COURT OF APPEAL, STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

MARK CHRISTOPHER TRACY,

Plaintiff-Appellant,

v.

COHNE KINGHORN PC, et al.,

Defendants-Respondents.

Appeal from an Order of the Santa Clara County Superior Court
The Honorable Evette D. Pennypacker

SPECIALLY APPEARING RESPONDENT KEM C. GARDNER'S ANSWERING BRIEF

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to California Rule of Court 8.208, Defendant-Respondent Kem C. Gardner ("Mr. Gardner") hereby certifies the following: other than himself, Mr. Gardner is not aware of any entity or person that has a financial or other interest in the outcome of this proceeding that Mr. Gardner reasonably believes the justices should consider.

Dated: November 27th, 2024

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TO THE HONORABLE PRESIDING JUSTICE AND ASSOCIATE JUSTICES OF THE SIXTH APPELLATE DISTRICT COURT OF APPEAL FOR THE STATE OF CALIFORNIA:

Specially-appearing Defendant-Respondent Kem C. Gardner ("Mr. Gardner") respectfully submits this brief in support of affirming the trial court's order ("MTQ Order") granting his Motion to Quash Service of Summons of Complaint for Lack of Personal Jurisdiction ("Motion to Quash") and its order ("Reconsideration Order") denying Plaintiff's subsequent Motion for Reconsideration ("Reconsideration Motion").

I. SUMMARY OF ARGUMENT

In this lawsuit, Plaintiff Mark Tracy brings claims against more than a dozen Utah defendants based on his yearslong fight with a Utah water district. It is the latest in a string of similar suits[1]. In Utah, Plaintiff's repeated lawsuits on this subject resulted in him being declared a vexatious litigant. 1 R.A.[2] 111-116. Here, the trial court granted Mr. Gardner's Motion to Quash for lack of personal jurisdiction, denied Plaintiff's subsequent Reconsideration Motion, and then found Plaintiff a vexatious

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

[2] "R.A." or "Respondents' Appendix" refers to the Respondents Joint Appendix filed by the other Defendants on November 4, 2024.

litigant in this state as well. 2 A.A. 136-145, 236-237; 3 R.A. 700-707. Plaintiff's appeal concerns the first two of those orders. Because Plaintiff did not come close to showing that California has personal jurisdiction over Mr. Gardner, who is a Utah resident, and did not meet even the threshold test for reconsideration, this Court should affirm those orders.

Personal jurisdiction over an individual can be established in two ways: (1) by finding general jurisdiction based on the individual's "systemic and [ ] continuous" contacts in the state domicile in the forum, or (2) by finding specific jurisdiction based on the individual's contacts with the forum connected to the suit. *Sonora Diamond Corp. v. Superior Ct.*, 83 Cal. App. 4th 523, 536 (2000) (citations omitted). Once a nonresident defendant challenges personal jurisdiction, "the plaintiff bears the burden of proof by a preponderance of the evidence to demonstrate the defendant has sufficient minimum contacts with the forum state to justify jurisdiction." *Thomson v. Anderson*, 113 Cal. App. 4th 258, 266 (2003) (citing *Vons Cos., Inc. v. Seabest Foods, Inc.*, 14 Cal. 4th 434, 449 (1996)). To meet this burden, the plaintiff must "present facts demonstrating that the conduct of defendants related to the pleaded causes is such as to constitute constitutionally cognizable 'minimum contacts.'" *Thomson*, 113 Cal. App. 4th at 266 (citations omitted). He also must present "competent evidence" to support the facts he alleges demonstrate that all jurisdictional criteria are met. *Ziller Elecs. Lab GmbH v. Superior Ct.*, 206 Cal. App. 3d 1222, 1233

(1988) ("vague assertions of ultimate facts rather than specific evidentiary facts permitting a court to form an independent conclusion on" jurisdictional issues are not sufficient). If the plaintiff does not meet that burden, the court does not continue to the second step of the test, which asks whether the exercise of jurisdiction would nonetheless be unreasonable. *Id.* at 1233-34 (affirming grant of motion to quash where plaintiff failed to present sufficient evidence to show a California court may exercise jurisdiction over defendant); *see also* Code Civ. Proc. § 418.10(a)(1).

Plaintiff's Opening Brief contains very little argument relevant to Mr. Gardner's Motion to Quash, and ignores the difference between specific and general personal jurisdiction. Recognizing that he failed to adduce any evidence of personal jurisdiction whatsoever, the Opening Brief makes three arguments relevant to Mr. Gardner: (1) that the trial court was required to accept the Complaint's conclusory jurisdiction allegations as true because the Complaint was verified; (2) that, despite failing to make the threshold requirements for doing so, Plaintiff should have been allowed to take jurisdictional discovery; and (3) that Plaintiff's Reconsideration Motion should have been granted based on the facts before the trial court when it entered the MTQ Order.

The Court should reject Plaintiff's arguments for three reasons.

First, substantial evidence supports the trial court's factual findings in the MTQ Order that Plaintiff provided no evidence justifying the exercise of specific jurisdiction.

Second, under any standard of review, Plaintiff has not shown the trial court erred in denying his request to take jurisdictional discovery.

Third, the trial court did not abuse its discretion in denying Plaintiff's Reconsideration Motion.

II. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff's Complaint claims he is a "federal whistleblower in what [is] alleged to be the longest and most lucrative water grab[] in the history of the State of Utah." 1 A.A. 8 ¶ 1. He alleges that more than a dozen defendants[3] "perpetuated a fraudulent scheme to retire senior water rights vis-à-vis duplicitous water claims….for the construction and massive expansion of a luxurious private urban development" in Salt Lake City, Utah. 1 A.A. 9 ¶ 2. This is the last of many similar lawsuits Plaintiff has brought based on the Emigration Oaks Water System, a public drinking water system in Salt Lake County operated by the Emigration Canyon

[3] All but one of the other Defendants in this case are separately represented and filed a separate Respondents' Brief, on November 4, 2024. The remaining Defendant, Mr. Walter Plumb, brought his own motion to quash for lack of personal jurisdiction, which the trial court granted. Plaintiff also appealed that order. Because the appeal was taken after the vexatious litigant order was entered in the trial court, it was prescreened by this Court, found frivolous, and dismissed. *See* Appeal No. H052239.

Improvement District, a public entity. 1 A.A. 10 ¶ 8. On April 8, 2021, Plaintiff was declared a vexatious litigant in Utah after it was found that his repeated suits were "filed for the purpose of harassment." 1 R.A. 000111-000116. Under the terms of that vexatious litigant order, Plaintiff is prohibited from filing suit in any Utah state court without the permission of the presiding judge of Utah's Third District Court for Salt Lake County. *Id.*

Plaintiff's Complaint asserts claims for libel, libel *per se*, false light and intentional infliction of emotional distress based on emails sent by other defendants, and statements on the Emigration Canyon Improvement District's website, www.ecid.org. 1 A.A. 10 ¶ 10; 1 A.A. 23-25 ¶¶ 79-111. The Complaint alleges that California has jurisdiction over all of the Defendants for two reasons: (1) because the ecid.org website ("ECID Website"), though directed at Utah residents, is "routed through San Jose, California"; and (2) because "Defendants published false and defamatory statement[s] for the purpose of obtaining continued payment of monies from property owners residing in California." 1 A.A. 9 ¶ 4; 1 A.A. 13 ¶ 21.

The Complaint's allegations specific to Mr. Gardner end in 2004 and all relate to actions Mr. Gardner allegedly took in Utah. It alleges that Mr. Gardner "is an individual and resident of Utah" and that in the 1990s he constructed various water reservoirs that are part of the Emigration Oaks Water System. 1 A.A. 11 ¶ 14; 1 A.A. 13 ¶ 24; 1 A.A. 15 ¶ 29. The Complaint expressly alleges that Mr. Gardner's "legal title and liability" in

the water system was transferred to the Emigration Improvement District in 1998. 1 A.A. 13 ¶ 24; 1 A.A. 17 ¶ 40 (including Mr. Gardner in definition of Emigration Oaks Defendants).

The Complaint does not allege any facts indicating that the purported "payment of monies from property owners residing in California" were paid to Mr. Gardner at any point since 1998. It also does not allege that Mr. Gardner made any of the allegedly defamatory statements, or that he has any current association with ECID. Instead, the Complaint includes a blanket allegation that "each Defendant was acting as the agent, servant, employee, partner, co-conspirator, and/or joint venture of each remaining Defendant." 1 A.A. 12 ¶ 20.

Mr. Gardner is a resident of Utah, and has been since 1988. 1 A.A. 48 ¶ 2. He has never been a resident of California. *Id.* ¶ 3. He does not conduct business on behalf of himself in California, or maintain bank accounts in the state. *Id.* He does not pay taxes in the state. *Id.* His sole connection to the state is a partial interest in a timeshare here, and visiting the state approximately a handful of times per year. *Id.* ¶ 4.

Mr. Gardner filed his Motion to Quash on December 29, 2023, and the trial court granted the Motion in its lengthy MTQ Order dated February 20, 2024. 2 A.A. 136-145. The trial court found that it lacked general jurisdiction over Mr. Gardner because Plaintiff had not shown Mr. Gardner had substantial, continuous contact with California. 2 A.A. 142. The court

also found that Plaintiff failed to show California could assert specific jurisdiction over Mr. Gardner. The MTQ Order first noted that the Complaint lacked any jurisdiction allegations specific to Mr. Gardner, and instead simply alleged that "Defendants were/are agents, collaborators, and co-conspirators with each other Defendants." 2 A.A. 143-144. It then found that "there is no evidence" that Defendants' alleged posting of false statements "were deliberately directed at California residents or establishing agency or a conspiratorial relationship among Defendants." 2 A.A. 144. More specifically, it found "[t]here is no evidence showing Defendants (1) intentionally routed [the] ECID Website through San Jose, (2) deliberately posted false statements knowing it would be read by California residents, (3) the postings were read by property owners residing in California, and (4) as the result, California property owners paid monies to the moving Defendants." 2 A.A. 144.

The trial court found that Mr. Gardner's timeshare interest satisfied the purposeful availment requirement of the specific jurisdiction inquiry. 2 A.A. 144. However, because specific jurisdiction requires "a substantial nexus or connection between [Mr. Gardner's] fractional property ownership and Plaintiffs' claims," and here "there is no evidence of any nexus, much less a substantial nexus, between Plaintiff's claims and Mr. Gardner's California timeshare ownership," 2 A.A. 144, the trial court found Plaintiff "fails to satisfy his initial burden of establishing the necessary jurisdictional

facts to justify the trial court's exercise of specific jurisdiction" such that "the burden does not shift to [Mr. Gardner] to demonstrate that assertion of jurisdiction would be unreasonable." *Id.* It therefore granted Mr. Gardner's Motion to Quash.

The trial court in the MTQ Order also denied Plaintiff's request for jurisdictional discovery. 2 A.A. 144-145. It explained that "[t]here must be some basis in fact to justify jurisdictional discovery" and that "[w]hen a plaintiff is not able to make an offer of proof of the existence of 'additional relevant jurisdictional evidence,' a court does not abuse its discretion in denying jurisdictional discovery." 2 A.A. 144-145 (quoting *In re Automobile Antitrust Cases*, 136 Cal. App. 4th 100, 127 (2005)). Because the only evidence Plaintiff offered to support his request for jurisdictional discovery was two deposition notices, and thereby "offers no *factual* basis to justify continuing" the Motion to Quash, the trial court found that "[t]he evidence already before the Court is such that the Court concludes such discovery would be futile." 2 A.A. 145 (emphasis added).

Plaintiff thereafter filed his Reconsideration Motion under Code of Civil Procedure Section 1008, which the trial court denied through its Reconsideration Order on April 3, 2024, finding Plaintiff failed to identify any proper basis for reconsideration. 2 A.A. 236-237.

The Kinghorn Defendants subsequently filed a motion to have Plaintiff deemed a vexatious litigant. 1 R.A. 108-224. The trial court

granted that motion on April 15, 2024. 3 R.A. 700-707. It found that the current suit is based on the same facts at issue in the case where Plaintiff was deemed a vexatious litigant in Utah, and that Plaintiff therefore qualifies as a vexatious litigant under Code of Civil Procedure 391(b)(4). 2 R.A. 706; *see* Cal. Civ. Proc. § 391(b)(4) (providing that a vexatious litigant order is appropriate where a litigant "[h]as previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction, or occurrence"). Plaintiff separately appealed the Vexatious Litigant Order. *See* Appeal No. H052301. It is not the subject of this appeal.

III. STANDARD OF REVIEW

The issue of whether a defendant is subject to personal jurisdiction is a legal question subject to *de novo* review if the evidence of jurisdictional facts is not in dispute. *Thomson*, 113 Cal. App. 4th at 266. When the evidence of jurisdictional facts is in dispute, "the trial court's factual determinations are not disturbed on appeal if supported by substantial evidence." *Vons Cos.*, 14 Cal. 4th at 449. On appeal, a reviewing court "must accept the trial court's resolution of factual issues and draw all reasonable inferences in support of the trial court's order." *Thomson*, 113 Cal. App. 4th at 266–67. The denial of a motion for reconsideration is

reviewed for abuse of discretion. *Hudson v. County of Los Angeles*, 232 Cal. App. 4th 392, 408 (2014).

IV. ARGUMENT

This Court should affirm the trial court's Orders in their entirety because Plaintiff failed to (a) meet his factual burden of showing Mr. Gardner is subject to personal jurisdiction in California; (b) demonstrate entitlement to jurisdictional discovery; and (c) satisfy any reconsideration factor under Code of Civil Procedure § 1008.

A. The Trial Court Properly Concluded That Plaintiff Failed to Meet His Burden of Demonstrating Facts Justifying Personal Jurisdiction.

Personal jurisdiction can be general or specific. General jurisdiction over a defendant is proper if the individual is domiciled in the forum, or where a defendant's contacts with the forum state are so "substantial, continuous, and systematic" that they become "at home" in the forum state. *Brue v. Al Shabaab*, 54 Cal. App. 5th 578, 590–91 (2020). A court may exercise specific jurisdiction over a non-resident defendant when: (1) the defendant "purposefully directed" actions at forum residents or "purposefully avail[ed himself or herself] of the privilege of conducting activities within the forum"; (2) the dispute "is related to or arises out of a defendant's contacts with the forum"; (3) and "the assertion of personal jurisdiction would comport with 'fair play and substantial justice.'" *Vons Cos.*, 14 Cal. 4th at 446-47 (citations omitted). A plaintiff "carr[ies] the

initial burden of demonstrating facts by a preponderance of evidence justifying the exercise of jurisdiction in California." *In re Automobile Anti-trust Cases I & II*, 135 Cal. App. 4th 100, 110 (2005) (citations omitted). Here, under any standard of review, the trial court properly found that Plaintiff failed to meet his initial burden that California has jurisdiction over Mr. Gardner.

As discussed above, the trial court found that the Complaint lacked any jurisdictional allegations specific to Mr. Gardner at all—let alone allegations directed to either general or specific jurisdiction. 2 A.A. 136-145. It further found that "there is no evidence" to support the Complaint's undifferentiated specific-jurisdiction allegation that all of the Defendants' alleged posting of false statements "were deliberately directed at California residents or establishing agency or a conspiratorial relationship among Defendants." 2 A.A. 144. More specifically, it found "[t]here is no evidence showing Defendants (1) intentionally routed [the] ECID Website through San Jose, (2) deliberately posted false statements knowing it would be read by California residents, (3) the postings were read by property owners residing in California, and (4) as the result, California property owners paid monies to the moving Defendants." *Id.*

The trial court further found that "there is no evidence of any nexus, much less a substantial nexus," between Mr. Gardner's one connection with California—a partial ownership in a timeshare—and Plaintiff's claims.

2 A.A. 144. On the basis of that complete paucity of evidence, the court concluded that Plaintiff "fails to satisfy his initial burden of establishing the necessary jurisdictional facts to justify the trial court's exercise of specific jurisdiction" such that "the burden does not shift to [Mr. Gardner] to demonstrate that assertion of jurisdiction would be unreasonable." *Id.*

Plaintiff's only argument in the Opening Brief on the evidentiary point is that the Court should have treated the allegations in his Complaint "as a counter affidavit"—i.e., as evidence—because the Complaint was verified. O.B. at 16. The argument fails as a matter of law. Although Plaintiff is correct that the allegations in a verified complaint sometimes can be treated as evidence, that is not true where, as here, the relevant allegations are conclusory allegations of ultimate facts. *E.g., Ziller Elecs. Lab GmbH v. Superior Ct.*, 206 Cal. App. 3d 1222, 1233 (1988) ("vague assertions of ultimate facts rather than specific evidentiary facts permitting a court to form an independent conclusion on" jurisdictional issues are not sufficient); *Thomas J. Palmer, Inc. v. Turkiye Is Bankasi A.S.*, 105 Cal. App. 3d 135, 148 (1980) ("Though a verified complaint may be treated as a declaration for the purpose of sustaining plaintiffs' burden" to show facts establishing jurisdiction "this rule does not dispense with the requirement that all affidavits relied upon as probative must state evidentiary facts… an affidavit that recites only ultimate facts or conclusions of law is thus insufficient") (citations and italics omitted).

Plaintiff cites allegations that the Defendants intentionally routed the ECID Website through San Jose, and published defamatory statements for purposes of continued payments from California property owners. He claims that because Defendants did not dispute those allegations with evidence, Plaintiff "had no evidentiary burden" and the trial court was required to accept those allegations as undisputed evidence. O.B. at 16. Not so. As in *Thomas J. Palmer*, Plaintiffs' jurisdictional facts are not facts at all: "[a]t best, they constitute a statement of ultimate facts, and at worst they are pure conclusions." 105 Cal. App. 3d at 149 (allegation that all defendants acted "pursuant to a common plan, scheme, conspiracy, design and agreement among themselves, each acting as agent one for the other" and that defendants intended to "deprive…plaintiffs of the benefits of the financing agreement" are "probative of nothing whatever").

For example, Plaintiff alleges no *facts* whatsoever to show how the ECID Website came to be routed through San Jose; that any of the Defendants had any knowledge that it was routed through San Jose; what any of the Defendants' intent was—let alone what Mr. Gardner's intent was—or that any of the Defendants actually received any "payment of monies" from "California property owners." 1 A.A. 8-29. To the contrary, he alleges that Mr. Gardner transferred his interest in the underlying water system 25 years ago, in 1998. 1 A.A. 13 ¶ 21; 1 A.A. 17 ¶ 40. The trial court properly thus concluded that "there is no evidence" to support any of

Plaintiff's jurisdictional allegations. 2 A.A. 144. *See also Thomas J. Palmer*, 105 Cal. App. 3d at 146 ("any factual issue as to which plaintiffs failed to produce evidence or as to which the evidence was evenly balanced was properly resolved in favor of" defendant moving to quash).

B. The Trial Court Properly Denied Plaintiff's Request for Jurisdictional Discovery.

A plaintiff seeking jurisdictional discovery is required to demonstrate that "discovery is likely to lead to the production of evidence of facts establishing jurisdiction." *In re Automobile Antitrust Cases I & II*, 135 Cal. App. 4th at 127. Plaintiff's only attempt at meeting this burden was citing to deposition notices he served on two other Defendants in this case (not Mr. Gardner). *See* 1 A.A. 111, 125-134. Because deposition notices are not evidence, the trial court concluded that Plaintiff "offers no factual basis to justify continuing" the Motion to Quash. Because Plaintiff failed to raise any other evidence showing jurisdiction, *see* Section IV.A, the trial court also properly concluded that "the evidence already before the Court is such that the Court concludes such discovery would be futile," and did not err in denying the request for jurisdictional discovery. 2 A.A. 144-145.

C. The Trial Court Did Not Abuse Its Discretion in Denying Plaintiff's Motion for Reconsideration.

Code of Civil Procedure Section 1008 allows a party to seek reconsideration of an order only if "new or different facts, circumstances, or

law" can be shown. *See* Cal. Code Civ. Proc. § 1008(a). Because re-litigating issues after they have been adjudicated poses such an obvious potential for abuse of the judicial process, Section 1008 prohibits parties from making renewed motions unless this requirement is met. As the California Supreme Court has explained, the statutory restrictions imposed by the Legislature mean that a party "may not file" a motion to reconsider without satisfying the requirements of Section 1008; "[t]he court need not rule on any suggestion that it should reconsider a previous ruling and, without more, another party would not be expected to respond to such a suggestion." *Le Francois v. Goel*, 35 Cal. 4th 1094, 1108 (2005); *see also id.* (recognizing that where the moving party has not complied with the requirements of Section 1008, the other side should "not bear the burden of preparing opposition unless the court indicated an interest in reconsideration") (citation omitted). The Court further explained that these strict requirements "serve a purpose": "They are 'designed to conserve the court's resources by constraining litigants who would attempt to bring the same motion over and over.'" *Id.* at 1104 (citation omitted).

Moreover, the requirement that the moving party demonstrate "new or different" facts or law does not mean that a lack of diligence or claim of ignorance by the moving party will be rewarded. To the contrary, reconsideration motions based on facts or law that a party **could have** discovered with reasonable diligence must be denied. "The burden under

section 1008 is comparable to that of a party seeking a new trial on the ground of newly discovered evidence: the information must be such that the moving party **could not, with reasonable diligence**, have discovered or produced it at the trial." *New York Times Co. v. Superior Ct.*, 135 Cal. App. 4th 206, 212–13 (2006) (emphasis added); *see also Shiffer v. CBS Corp.*, 240 Cal. App. 4th 246, 254–55 (2015) (rejecting reconsideration motion where expert witness's post-summary judgment declaration basing new opinions on additional materials were not "new" evidence because documents were produced two weeks before the expert's original declaration, and a month before the summary judgment hearing); *In re Marriage of Herr*, 174 Cal. App. 4th 1463, 1468 (2009) (any "facts of which the party seeking reconsideration was aware at the time of the original ruling are not 'new or different'") (citation omitted); *Hennigan v. White*, 199 Cal. App. 4th 395, 405–06 (2011) (denying motion for reconsideration that was based on information known to the parties at the time of the original ruling).

Given these strict requirements, a party's displeasure with a court's ruling also is not a basis for seeking reconsideration—nor is an argument that the court "erred" in its ruling. *Le Francois*, 35 Cal.4th at 1106; *Jones v. P.S. Dev. Co.*, 166 Cal. App. 4th 707, 725 (2008). If the moving party fails to comply with Section 1008, the court must deny the reconsideration motion. CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL,

Ch. 9(I)-E (The Rutter Group 2024); *see also Tuchscher Dev. Enters., Inc. v. San Diego Unified Port Dist.*, 106 Cal. App. 4th 1219, 1245 (2003) ("[a]n order denying a motion for reconsideration is interpreted as a determination that the application does not meet the requirements of section 1008") (citation omitted).

The trial court correctly concluded that Plaintiff failed to make that threshold showing, finding that "Plaintiff cites no legally cognizable basis under Code of Civil Procedure 1008, or otherwise, for the Court to reconsider." 2 A.A. 237.

On appeal, Plaintiff argues that the trial court's holding was error for two reasons. He claims the trial court should have granted reconsideration because (1) Mr. Gardner purportedly "failed to inform the [the trial court] of his extensive and continuing businesses in the forum state through the companies 'The Boyer Company L.C.,' 'The Gardner Group,' and 'rPlus Energies,' partial ownership of a radio station in Mountain Press, California, and payment of property taxes in Carlsbad, California two months prior to execution of his sworn declaration" in support of his Motion To Quash (O.B. at 8 (citing 1 A.A. 120, 2 A.A. 179-203, 2 A.A. 235)); and (2) "a $460 million dollar renewable energy project lead [sic] by Los Angeles, California attorney Jeffery Atkins on behalf of Defendant Gardner through rPlus Energies was announced two days after" the trial court issued the MTQ Order (*id.*).

Neither argument comes close to showing the trial court abused its discretion in denying the Reconsideration Motion.

First, Plaintiff's arguments about Mr. Gardner's "extensive" business dealings in California do not meet Section 1008's threshold requirement that a reconsideration motion be based on new facts or law. Plaintiff made these very same arguments in his opposition to the Motion to Quash. *See* 1 A.A. 105 n.5, 1 A.A. 119-124. *Le Francois*, 35 Cal. 4th at 1108 ("[t]he court need not rule on any suggestion that it should reconsider a previous ruling and, without more, another party would not be expected to respond to such a suggestion.").

Second, even if the purported contacts Plaintiff identifies *were* new facts or law—and they are not—they are not sufficient to show California can exercise jurisdiction over Mr. Gardner, because none of Plaintiff's claims arise out of those contacts. *E.g., Greenwell v. Auto-Owners Ins. Co.*, 233 Cal. App. 4th 783, 801 (2015) (a court may exercise specific jurisdiction only "if there is a substantial connection or nexus between forum contacts and the litigation") (citation omitted). Plaintiff's claims have nothing whatsoever to do with Mr. Gardner's interest in the San Diego timeshare (or taxes paid on that interest). Nor are they related to West Valley City Television Associates (an entity Mr. Gardner had an interest in in 1985). *See* 1 A.A. 105 n. 5; 1 A.A. 113 ¶ 5; 1 A.A. 118-121.

Just as in his Opposition to the Motion To Quash, Plaintiff's Reconsideration Motion offered no facts tying any contacts Mr. Gardner purportedly had with California to the actual claims at issue here, i.e., the allegedly defamatory statements upon which the lawsuit is based, 1 A.A. 10 ¶ 10; 1 A.A. 23-25 ¶¶ 79-111, or to the San Jose server upon which Plaintiff bases jurisdiction. 1 A.A. 9 ¶ 4; 1 A.A. 13 ¶ 21.

Third, even if Plaintiff's claims in some way arose out of or related to these limited California contacts, and they do not, they *still* would be insufficient, because jurisdiction over a partnership or corporation does not establish jurisdiction over its individual partners or shareholders. Instead, "jurisdiction over each defendant must be established individually." *Sher v. Johnson*, 911 F.2d 1357, 1365 (9th Cir. 1990); *Goehring v. Superior Ct. (Bernier)*, 62 Cal. App. 4th 894, 904–05 (1998) (same). Thus, a California court "has jurisdiction over only those individual partners who personally established the requisite minimum contacts with California." *Sher*, 911 F.2d at 1366.

Plaintiff has not alleged, much less offered evidence to show, that Mr. Gardner took any actions in California in his personal capacity through any of the companies Plaintiff identifies. *See also* 1 Cal. Affirmative Def. § 4:28 (2d ed.), Special jurisdictional issues—Officers, agents and employees ("A nonresident corporate shareholder is not subject to the personal jurisdiction of the California courts even if the corporation is so

subject, absent the shareholder's personal participation in the transaction sufficient to warrant personal jurisdiction"); *Indiana Plumbing Supply, Inc. v. Standard of Lynn*, Inc., 880 F. Supp. 743, 751 (C.D. Cal. 1995) (finding jurisdiction over corporation but not its officer).

Finally, Plaintiff's argument that personal jurisdiction can be exercised here because a California lawyer worked on a project Plaintiff alleges Mr. Gardner is associated with, O.B. at 8, is nonsense. Plaintiff cites no law—and there is none—supporting the exercise of jurisdiction based on an attorney's domicile. In any event, none of Plaintiff's claims have any connection with that company or that lawyer, and Plaintiff has not alleged or provided evidence that Mr. Gardner took any actions in California related to the company. *Pavlovich v. Superior Ct.*, 29 Cal. 4th 262, 269 (2002) (contacts with California must "arise out of" or relate to claims to be relevant to personal jurisdiction analysis) (citation omitted).

The trial court did not abuse its discretion in denying the Reconsideration Motion.

V. CONCLUSION

For the foregoing reasons, Mr. Gardner respectfully requests that this Court affirm the trial court's judgment of dismissal for lack of personal jurisdiction.

RESPECTFULLY SUBMITTED this 27th day of November, 2024.

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CERTIFICATE OF COMPLIANCE

I certify that pursuant to Rule 8.204(c)(1) of the California Rules of Court, the attached Opposition was produced using 13-point Times New Roman font type, including footnotes, and contains approximately 4,849 words, which is less than the total words permitted by the rules of court. I relied on the word count of the Word 2016 computer program used to prepare this brief.

Dated: November 27th, 2024

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