CIVIL COURT OF APPEAL CASE NO. H052028
Superior Court No. 23CV423435

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

MARK CHRISTOPHER TRACY
Plaintiff and Appellant

v.

COHNE KINGHORN PC., et al.,
Defendants and Respondents

Appeal from the Superior Court of the State of California, Santa Clara, Honorable Evette D. Pennypacker
Case No. 23CV423435

CONSOLIDATED RESPONDENTS' BRIEF

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Court of Appeal Case Number: H052028
Superior Court Case Number: 23CV423435

Appellant/Petitioner: Mark Christopher Tracy
Respondent/Real Party in Interest: Cohne Kinghorn, PC, Simplifi Company, Eric Hawkes, Jennifer Hawkes, Michael Scott Hughes, David Bradford, David Bennion, Simplifi Company, a Utah Corporation, and Gary Bowen

This Certificate is submitted on behalf of the following parties:

COHNE KINGHORN, PC, JEREMY RAND COOK, ERIC HAWKES, JENNIFER HAWKES, MICHAEL SCOTT HUGHES, DAVID BRADFORD, DAVID BENNION, SIMPLIFI COMPANY, A UTAH CORPORATION, and GARY BOWEN

(Check if applicable):
☒ INITIAL CERTIFICATE ☐ SUPPLEMENTAL CERTIFICATE

☒ There are no interested entities or persons that must be listed in this certificate under rule 8.208.
☐ Interested entities or persons required to be listed under rule 8.208:

	Full Name of Interested Entity or Person	**Nature of Interest (*Explain*):**
1.		
2.		

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Date: November 4, 2024 */s/* Timothy Kassouni
Signature of Attorney or Party

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Court of Appeal Case Number: H052028
Superior Court Case Number: 23CV423435

Appellant/Petitioner: Mark Christopher Tracy
Respondent/Real Party in Interest: Paul Brown
This Certificate is submitted on behalf of the following party:
PAUL BROWN

(Check if applicable):
☒ INITIAL CERTIFICATE ☐ SUPPLEMENTAL CERTIFICATE

☒ There are no interested entities or persons that must be listed in this certificate under rule 8.208.
☐ Interested entities or persons required to be listed under rule 8.208:

	Full Name of Interested Entity or Person	**Nature of Interest (*Explain*):**
3.		
4.		

Attorney Name: Nicholas C. Larson
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Party Represented: Paul Brown, Defendant

Date: November 4, 2024 */s/ Nicholas C. Larson*
Signature of Attorney or Party

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STATEMENT OF THE CASE

Appellant Mark Christopher Tracy ("Appellant") claims to be a "federal whistleblower in what has alleged to be the longest and most lucrative water grabs in the history of the State of Utah." (Appellant's Appendix on Appeal ["AA"] 8). Yet, the reality is that Appellant is a vexatious litigant who has spent nearly a decade engaging in futile and vexatious litigations against a Utah governmental entity and its members, officers and attorneys before state and federal courts in Utah. As a result of Appellant's vexatious litigation tactics, Appellant has been sanctioned by both state and federal courts in Utah. Appellant has also been declared a vexatious litigant by the state courts of Utah, precluding Appellant from filing suit in Utah state courts without permission from the presiding Judge of Utah's Third District Court in and for Salt Lake County. Now, in an effort to circumvent the Utah Court's order, Appellant brings this litigation in California despite no respondent residing in California and all alleged events underlying the Complaint occurring exclusively in Utah.

Based on the allegations raised in Appellant's Complaint, the trial court correctly granted the Respondents' Motions to Quash Service of Process for lack of personal jurisdiction. Despite the complete lack of facts or law supporting personal jurisdiction in California in this matter, Appellant now seeks to advance his unsupported and nebulous theories of personal jurisdiction.

For the reasons set forth in this brief, respondents Cohne Kinghorn PC, Jeremy Rand Cook, Eric Hawkes, Jennifer

Hawkes, Michael Scott Hughes, David Bradford, David Bennion, Simplifi Company, a Utah Corporation, Gary Bowen and Paul Brown (collectively, "Respondents") respectfully request that the Court deny Appellant's appeal and affirm the trial court's Order on Motions to Quash.

SUMMARY OF ISSUES ON APPEAL

I. Whether the trial court erred in considering the Amended Declarations of Respondents Brown and Bowen? – No.

II. Whether the trial court erred in granting Respondents' Motions to Quash? – No.

III. Whether the trial court erred in denying Appellant leave to conduct jurisdictional discovery? – No.

SUMMARY OF FACTS

I. Factual Allegations Raised in Appellant's Complaint

Appellant filed this action alleging causes of action for defamation, false light, and intentional infliction of emotional distress. (AA 23-25.) These allegations are based on alleged emails sent by some Respondents and statements allegedly posted on the website www.ecid.org. (AA 23-25).

However, the primary factual allegations raised in the Complaint relate to the Emigration Canyon Improvement District ("EID") located in Utah, and the allegedly fraudulent acquisition of water rights in Utah. (AA 8-9, 13-20.) EID is a small public entity that has the authority to provide water and sewer services to residents within Emigration Canyon, which is

located in Salt Lake County, Utah. (AA 10.) Notably, EID is not a named party in this action. (AA 8)

Appellant's Complaint acknowledges that Respondents all reside in Utah, are domiciled in Utah, and/or professional corporations with offices in Utah. (AA 10-12.) In addition, the allegations related to the individual Respondents have no connection to California. For example, Appellant's sole allegation against respondent Paul Brown ("Respondent Brown") relates to an email that Respondent Brown allegedly sent to the residents of the Emigration Oaks Homeowners Association, which is located in Emigration Canyon, Utah. (AA 22.) Appellant's sole allegation against respondent Gary Bowen ("Respondent Bowen") is that he sent an email to Utah local press and an email to Deputy Utah State Engineer Boyd Clayton. (AA 22.) Appellant's sole allegation against respondent Jeremy Rand Cook ("Respondent Cook") is that Respondent Cook, who is an attorney who represents EID, allegedly stated during a hearing before the Utah State Record's Committee that Mr. Tracy was "hiding assets" to avoid paying the judgments against him. (AA 23.) Appellant's sole allegation against respondent Eric Hawkes ("Respondent Hawkes") is that Respondent Hawkes posted a notice of water rate increase for Emigration Canyon, Utah residents that indicated that one of the reasons for the rate increase was that EID has been required to defend against lawsuits filed by Appellant. (AA 22.) Appellant's sole allegation against respondents Michael Hughes ("Respondent Hughes") and David Bradford ("Respondent Bradford") is that they made false

statements in a letter sent to residents of Emigration Canyon, Utah. (AA 21.) The Complaint lacks any factual allegation that any Respondent did anything related to or directed at the State of California. (AA 13-23.)

II. Appellant's Previous Vexatious Litigations

Appellant's allegations cover a forty-year span of allegedly fraudulently obtained water rights. (AA 8-9, 13-20.) This is not the first time that Appellant has attempted to litigate his frivolous claims alleging fraudulent acquisition of water rights in Utah.

As Appellant stated in the Complaint, in 2014, Appellant filed a Complaint against EID in the United States District Court for the District of Utah alleging violations of the Federal False Claims Act ("FCA Litigation"). (AA 20.) On October 29, 2021, the District Court issued an Order holding that Appellant's claims were clearly vexatious and brough in bad faith for the primary purpose of harassing the defendants and airing Appellant's own personal grievances. (Respondents' Appendix on Appeal ["RA"] 000390-93.) The United States Court of Appeals for the Tenth Circuit has affirmed the District Court's decision to impose sanctions against Appellant because the litigation was "clearly vexatious and brought primarily for the purpose of harassment." (RA 000052-65.)

In August of 2020, Appellant filed a Petition for Judicial Review of Denied Request for Disclosure of Public Records with the Third District Court for the State of Utah. (RA 000240-255.) This was Plaintiff's second such petition before the Court raising

identical issues against identical respondents. (RA 000257-262.) In the previous petition, the Court had informed Appellant that there was no basis to sue the respondents. (*Id*.) Despite the warning from the Court that Appellant's claims lacked a legal basis, Appellant filed a new petition naming the same respondents. *Id*.

Despite being captioned as a petition related to the denial of a request for disclosure of public records, the primary focus of the August 2020 Petition revolved around allegations of violations of the Clean Water Act and fraudulently obtained senior water rights. (RA 000240-255.) On February 24, 2021, the Honorable Mark Kouris issued an order granting the respondents' motion to dismiss and awarding the respondent their reasonable attorney's fees against Appellant. (RA 000257-262.) Judge Kouris held that the petition was without merit, brought in bad faith and that Appellant's motivation was to attack and harass the respondents. (*Id*.) Subsequently, Judge Kouris issued an order finding Appellant to be a vexatious litigant pursuant to Utah Rules of Civil Procedure. (RA 000264-269.)

In July of 2021, Appellant also filed a Civil Rights Complaint in the United States District Court for the District of Utah. (RA 000271-281.) Once again Appellant's Civil Rights Complaint revolved around allegations of fraudulently obtained water rights in Utah. (*Id*.) Appellant's Civil Rights Complaint was ultimately dismissed for lack of standing. (RA 000283-287.)

In short, Appellant has been litigating his frivolous and vexatious theories regarding fraudulently obtained water rights in Utah since 2014. Similarly to the Complaint underlying this Appeal, Appellant's previous complaints and petitions alleged facts that purportedly occurred in Utah. Unsurprisingly, Appellant's previous complaints and petitions were all filed in Utah. The only reason that this action is now before a California court is because Appellant has been sanctioned by state and federal courts in Utah, and is now subject to a pre-filing vexatious litigant order with the state courts of Utah.

III. Procedural History

Respondents each filed Motions to Quash Service of Summons and Complaint for Lack of Personal Jurisdiction and Motion to Dismiss for Inconvenient Forum. (RA 000012-21 [Respondent Brown's Motion]; RA 000080-89 [Respondent Bowen's Motion]; RA 000117-142 [Respondents Cohne Kinghorn, P.C., Simplifi Company, Jeremy Rand Cook, Eric Hawes, Jennifer Hawkes, Michael Scott Huges, David Bennion's Motion.) The Respondents' Motions were based on the factual allegations raised in Appellant's Complaint, which even if taken as true, fail to allege that any Respondent had any substantial continuous and systematic contact with the State of California. (RA 0000012-21; RA 000080-89; RA 000117-142.) Following briefing on Respondents' Motions, on February 16, 2024, the Court issued a tentative ruling granting Respondents' Motions. (AA 137.) After oral argument on Respondents' Motions, the Court issued its Order Granting Motions to Quash. (AA 136-145.)

On February 29, 2024, Appellant filed a Motion to Reconsider Order Granting Defendants' Motion to Quash Service of Process for Lack of Personal Jurisdiction. (AA 146-151.) Following briefing on Appellant's Motion, on March 25, 2024, the Court issued a tentative ruling denying Appellant's Motion. (AA 236-37.) On March 26, 2024 the Court held oral argument on the tentative ruling denying Appellant's Motion. (AA 236-37.) On April 3, 2024, the Court issued an order adopting the tentative ruling and denying Appellant's Motion. (AA 236-37.)

LEGAL ARGUMENT

I. The Trial Court Did Not Err In Considering the Amended Declarations of Respondent Brown and Bowen.

Evidentiary decisions such as considering new evidence on reply are left to the sound discretion of the trial court and should only be reversed for clear abuse of discretion. (*Carbajal v. CWPSC, Inc.*, (2016) 245 Cal.App.4th 227, 241; *Hahn v. Diaz-Barba*, (2011) 194 Cal.App.4th 1177, 1193.) Under the abuse of discretion standard of review a trial court's decision will only be disturbed upon a showing of clear abuse and miscarriage of justice. (*Blank v. Kirwan*, (1985) 39 Cal.3d 311, 331; *Denham v. Superior Court*, (1970) 2 Cal.3d 557, 566 ["Discretion is abused whenever, in its exercise, the court exceeds the bounds of reason"]; *Sargon Enterprises, Inc., v. University of Southern California*, (2012) 55 Cal.4th 747, 773 ["A ruling that constitutes an abuse of discretion has been described as one that is so irrational or arbitrary that no reasonable person could agree with it."] [internal quotations omitted.])

While evidentiary materials submitted with a reply are generally not considered, a trial court has the discretion to consider such material when they do not pose prejudice to the opposing party. (*Hahn*, 194 Cal.App.4th at 1193; *Alliant Ins. Services, Inc. v. Gaddy*, (2008) 159 Cal.App.4th 1292, 1308.)

In support of Respondent Brown's Motion to Quash, Respondent Brown submitted a declaration attesting to the fact that Respondent Brown is a resident of Utah and does not reside or conduct business in California. (AA 29-30.) The attestation of Respondent Brown's declaration was signed under the laws of Utah, in Salt Lake County, Utah. (AA 30) Appellant's Opposition raised procedural challenges to the Respondent's declaration based on the fact that it was executed in Utah – where Respondent Brown resides – and under the laws of Utah. (AA 33-37.) Appellant did not challenge nor address the substance of Respondent Brown's Declaration. (AA 33-37.) Appellant's Opposition did not address the substance of Respondent Brown's Motion nor did it address the clear jurisdictional deficiencies in Appellant's Complaint. (AA 33-37.)

In Respondent Brown's Reply in Support of the Motion, Respondent Brown explained that Respondent Brown's Declaration substantially complied with the California Rules of Procedure. (RA 000143-145.) Respondent Brown's Reply also explained that even if Respondent Brown's Declaration was defective, this finding would not have any impact on Respondent Brown's Motion because Appellant bears the burden of demonstrating sufficient facts to support the court's exercise of

personal jurisdiction. (*Id.*) Neither Appellant's Complaint nor Appellant's Opposition provided any facts whatsoever supporting the exercise of personal jurisdiction over Respondent Brown in California. (AA 8-28; AA 33-37.) However, out of an abundance of caution and to eliminate any procedural concerns, Respondent Brown submitted an Amended Declaration executed under the laws of California. (RA 000143-145; RA 000174-179.) The Amended Declaration is identical in substance to the original declaration submitted with Respondent Brown's Motion, the only difference being the statement of attestation. (RA 000143-145.)

In support of Respondent Bowen's Motion to Quash, Respondent Bowen submitted a declaration attesting that Respondent Bowen is a resident of Utah and does not reside in or conduct business in California. (AA 38-39.) Respondent Bowen's Declaration states that the declaration was signed under penalty of perjury but omits a statement regarding where the declaration was signed or under what state laws of perjury the declaration was signed. (AA 38-39.) Again, Appellant raised only procedural challenges to the Respondent Bowen's Declaration without addressing the substance or merits of Respondent Bowen's Declaration. (AA 40-44.) Subsequently, Respondent Bowen submitted a substantively identical Amended Declaration. (AA 45-46.) The only change made to Respondent Bowen's Declaration is that the attestation statement was updated to reflect that the Declaration was signed in Utah under penalty of perjury under the laws of the State of California. (AA 45-46.)

In the Order Granting Motions to Quash, the trial court correctly exercised its discretion to consider Respondent Brown's Amended Declaration and Respondent Bowen's Amended Declaration. (AA 141-42.) The Court explained that "[t]he Court will consider the resubmitted declaration since the content of each declaration was not changed and no new evidence was presented." (AA 142.)

In *Hahn*, the Fourth District Court of Appeal held that the trial court did not abuse its discretion in considering a new declaration filed in support of a Reply because "defendants had no duty to submit this type of evidence with their moving papers, it was not untimely and caused plaintiff no prejudice." (*Hahn*, 194 Cal.App.4th at 1193.) The Court's decision in the instant action is analogous to the decision affirmed by the Court in *Hahn*.

When a non-resident defendant moves to quash service for lack of personal jurisdiction, the plaintiff bears the initial burden of proof by a preponderance of evidence to demonstrate facts justifying the exercise of personal jurisdiction. (*Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 273; *DVI, Inc. v. Superior Court* (2002), 104 Cal.App. 4th 1080, 1090.) Mere conclusory jurisdictional allegations are insufficient to make this showing. (*BBA Aviation PLC v. Superior Court* (2010) 190 Cal.App. 4th 421, 429.) Only after a plaintiff carries their initial burden of proof does the burden shift to defendant to demonstrate that the court's exercise of personal jurisdiction over it would be unfair or unreasonable. (*Burger King Corp. v. Rudzewicz*, 471 U.S. 462,

472 (1985); *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 449.)

Appellant's Complaint does not raise any factual allegations supporting the exercise of personal jurisdiction by a Court in California over either Respondent Brown or Bowen. The Complaint expressly acknowledges that both Respondents are residents of Utah and that the events alleged occurred in Utah. Appellant failed to identify any facts indicating that Respondents Brown or Bowen had sufficient contacts with California to justify personal jurisdiction. Accordingly, because Appellant's Complaint was fatally deficient on its face, Appellant failed to carry his burden of proof. Respondents Brown and Bowen had no affirmative duty to submit evidentiary materials in support of their Motion to Quash. Therefore, similarly to the plaintiff in *Hahn*, Appellant did not suffer prejudice from the Court's consideration of the subject declarations because neither respondent had a duty to submit this type of evidence with their moving papers. (*Hahn*, 194 Cal.App.4th at 1193.)

Next, as the trial court correctly noted, Appellant was not prejudiced by the consideration of the amended declarations because the content of each amended declarations was identical to the original declaration and no new evidence was presented. (AA 142.) The main argument raised in Respondents Brown and Bowen's Motions to Quash was that Appellant's Complaint failed to raise any facts justifying the exercise of personal jurisdiction. (RA 0000014-21; RA 000082-89.) Appellant was put on notice that Appellant had failed to meet his burden of proof with

regards to jurisdictional facts. Appellant had sufficient opportunity to address the deficiencies in Appellant's Complaint, the substance of Respondents' Motions and the substance of the jurisdictional statements made in the original declarations. Appellant chose to ignore the substance of Respondents Brown and Bowen's Motions to Quash and their respective declarations, instead choosing to focus on procedural challenges. Accordingly, consideration of the substantively identical Amended Declarations did not prejudice Appellant because Appellant was provided ample opportunity to address the substance of the declarations in opposition to Respondents' Motions to Quash.

Based on the foregoing discussion, the Court did not abuse its discretion in considering Respondents Brown and Bowen's Amended Declarations because the Amended Declarations did not introduce new evidence, were substantively identical to the original declarations and did not prejudice Appellant.

Accordingly, the Court should affirm the trial court's Order Granting Motions to Quash.

II. The Court Did Not Err in its Order Granting Motions To Quash

A. Appellant Does Have An Evidentiary Burden.

Appellant first argues that he has no evidentiary burden since none of the defendants denied any verified allegation of the complaint. (Opening Brief at 16.) However, this argument is simply incorrect.

As has been discussed in this brief, a plaintiff bears the burden of demonstrating, by a preponderance of evidence, that the named defendants have sufficient minimum contact with the

forum state to justify jurisdiction. (*DVI, Inc.*, 104 Cal.App.4th at 1090.) Under California's long-arm statute, California state courts may exercise jurisdiction over nonresident defendants only if doing so would be consistent with the "Constitution of this state [and] of the United States." (Code of Civil Procedure § 410.10). The federal Constitution permits a state to exercise jurisdiction over a nonresident defendant only if the defendant has sufficient "minimum contacts" with the forum such that "maintenance of the suit does not offend traditional notions of fair play and substantial justice." (*International Shoe Co. v. Washington*, (1945) 326 U.S. 310, 316.) "The substantial connection between the defendant and the forum State necessary for a finding of minimum contacts must come about by an action of the defendant purposefully directed towards the forum State." (*Asahi Metal Industry Co. v. Superior Court* (1987) 480 U.S. 102, 112.)

"Personal jurisdiction may be either general or specific." (*Vons*, 14 Cal.4th at 445.) A nonresident defendant is subject to a forum's general jurisdiction when the defendant's contacts are substantial, continuous and systematic. (*Id.*) Such conduct must be so wide ranging that the defendant is essentially physically present within the forum state. (*DVI*, 104 Cal.App.4th at 1090.)

Absent such general contacts, a defendant may be subject to specific personal jurisdiction if: (1) "the defendant has purposefully availed himself or herself of forum benefits" with respect to the matter in controversy, (2) the "controversy is related to or arises out of the defendant's contact with the forum" and (3) the exercise of jurisdiction would "comport with fair play

and substantial justice." (*Pavlovich*, 29 Cal.4th at 269 [internal quotations omitted] [citing *Vons*, 14 Cal.4th at 446.])

The purposeful availment inquiry is satisfied "when the defendant purposefully and voluntarily directs his activities toward the forum so that he should, expect by virtue of the benefits he receives, to be subject to the court's jurisdiction based on his contacts with the forum." (*Pavlovich*, 29 Cal.4th at 269.) The purposeful availment requirement is intended to ensure a defendant will not be hauled into a jurisdiction solely as a result of "random, fortuitous, or attenuated" contacts, or as a result of the "unilateral activity" of another party or third person. (*Id.*; *Herbal Brands, Inc. v. Photoplaza, Inc.*, (9th Cir. 2023) 72 F.4th 1085, 1090.) For the purpose of determining personal jurisdiction, each defendant's contacts with the forum state must be assessed individually. (*Calder v. Jones*, (1984) 465 U.S. 783, 790.)

The trial court's decision included a detailed and well-reasoned analysis of the allegations in the Complaint and the reason that Appellant failed to establish general jurisdiction or specific jurisdiction with respect to any of the Respondents. Specifically, the Court analyzed whether the assertion that Mr. Bowen had sold approximately 500 copies of a self-published book on Amazon was sufficient to establish general jurisdiction, and whether the specific allegations in the Complaint were deliberately directed at California residents or were sufficient to establish an agency or conspiratory relationship among defendants. (AA 142.) Appellant fails to make any arguments or

provide any analysis as to why the decision of the trial court was in error, and instead incorrectly relies on his unsupported one sentence argument that he has no evidentiary burden.

Accordingly, the Court should affirm the trial court's Order Granting Motions to Quash.

B. Posting Information on a Website Hosted in California is Insufficient to Establish Personal Jurisdiction

Appellant's sole substantive argument regarding jurisdictional facts allegedly establishing personal jurisdiction is that at the behest of defendant Eric Hawkes, the Emigration Improvement District, which is a public entity in Utah and not a named defendant, posted allegedly defamatory statements on EID's website that is hosted in San Jose, California, and that the allegedly defamatory statements were read by people who reside in California. (Opening Brief at 16-17.) Appellant does not argue that any other respondents ever posted any information on any websites related to this action, but instead appears to argue that because there was a "conspiratorial relationship" among defendants, the postings of the allegedly defamatory statements on EID's website was sufficient to establish personal jurisdiction in California against all the defendants.

Appellant cites to the Court of Appeals decision in *Jewish Defense Organization, Inc. v. Superior Court* as supporting Appellant's position. (Opening Brief at 17.) However, in the *Jewish Defense Organization, Inc* case, the Court of Appeals – on nearly identical factual allegations – held the exact opposite of

Appellant's argument, finding that merely using a website hosted in California was insufficient to establish personal jurisdiction. (*Jewish Defense Organization, Inc., v. Superior Court* (1999) 72 Cal.App.4th 1045, 1055-1063.)

In *Jewish Defense Organization, Inc.*, the plaintiff brought a defamation claim in California against two defendants – both residents of New York – for alleged defamatory statements posted on a website. (72 Cal.App.4th at 1050.) The plaintiff argued in part, that the defendant's use of websites served by providers residing in California established specific personal jurisdiction. (*Id*. at 1052, 1057.)

In reversing the trial court's denial of the defendant's motion to quash for lack of personal jurisdiction, the Court of Appeals held that merely posting content on a website hosted in California was insufficient to establish personal jurisdiction. (*Id*. at 1058-1063.) The Court of Appeals explained that "defendant's conduct of contracting, via computer, with internet service providers, which may be California corporations, or which may maintain offices or databases in California, is insufficient to constitute 'purposeful availment' and does not satisfy the first prong of the three-part test for specific jurisdiction." (*Id*. at 1062.)

Consistent with the Court's decision in *Jewish Defense Organization, Inc.*, more recent decisions have affirmed that merely passively posting on a website either based out of California or accessible by residents of California is insufficient to establish personal jurisdiction. (*Pavlovich,* 29 Cal.4th at 274-76 [holding that passively posting information on a website which is

accessible in a foreign jurisdiction is insufficient to exercise personal jurisdiction in the foreign jurisdiction – even if the defendant should have been aware that harm might occur in the foreign jurisdiction.]; *Strasner v. Touchstone Wireless Repair & Logistics, LP*, (2016) 5 Cal.App.5th 215, 230-32 [holding that merely posting information to a website accessible in California was insufficient to establish personal jurisdiction] [collecting cases]; *Hungerstation LLC v. Fast Choice LLC*, (9th Cir. 2021) 857 Fed.Appx. 349, 351 ["no authority supports the proposition that the act of using a third-party company's server in the United States to host illegally-obtained information, without more, is sufficient to convey personal jurisdiction."]. As the California Supreme Court has noted, allowing personal jurisdiction for passively posting content on a website simply because a state's residents could access the information would create a situation where personal jurisdiction would almost always be found and would "vitiate long-held and inviolate principles of personal jurisdiction." (*Pavlovich*, 29 Cal.4th at 274-75 [citing *GTE New Media Services Inc. v. BellSouth Corp.*, (D.C. Cir. 2000) 199 F.3d 1343, 1350.])

In short, Appellant's sole substantive argument – that posting content on a website with servers in California establishes personal jurisdiction – is legally unsupported and seeks to completely destroy the principles of personal jurisdiction. Furthermore, Appellant's position that all the defendants are subject to personal jurisdiction in California because the posting on EID's website was part of an alleged conspiracy is completely

without merit. As the trial court correctly observed and explained during oral argument – Appellant's proposed interpretation of personal jurisdiction would "swallow specific and general jurisdiction entirely, since under [Appellant's] theory any person or corporate entity posting information on social media or other website in any way that's accessible to anyone in California – whether intentionally or not – would be subject to this Court's jurisdiction." (AA 137.)

For the reasons set forth herein the Court should decline to adopt Appellant's untenable theory of personal jurisdiction and affirm the trial court's Order Granting Motions to Quash.

III. The Court Did Not Err in Denying Plaintiff Jurisdictional Discovery

Evidentiary decisions are left to the sound discretion of the trial court and should only be reversed for clear abuse of discretion. (*Carbajal,* 245 Cal.App.4th at 241; *Hahn* 194 Cal.App.4th at 1193.) Under the abuse of discretion standard of review a trial court's decision will only be disturbed upon a showing of clear abuse and miscarriage of justice. (*Blank,* 39 Cal.3d at 331; *Denham,* 2 Cal.3d at 566 ["Discretion is abused whenever, in its exercise, the court exceeds the bounds of reason"]; *Sargon Enterprises, Inc.,* 55 Cal.4th at 773 ["A ruling that constitutes an abuse of discretion has been described as one that is so irrational or arbitrary that no reasonable person could agree with it."] [internal quotations omitted.])

The decision whether to continue a hearing on a motion to quash for lack of personal jurisdiction to allow a plaintiff to conduct jurisdictional discovery is left to the trial court's

discretion. (*Preciado v. Freightliner Customs Chassis Corporation* (2023) 87 Cal.App.5th 964, 972 [*citing HealthMarkets, Inc. v. Superior Court* (2009) 171 Cal.App.4th 1160, 1173.]) Accordingly, a trial court's decision should only be reversed upon a finding of manifest abuse of discretion. (*Preciado*, 87 Cal.App.5th at 972.) In order to prevail on a motion for continuance to conduct jurisdictional discovery, the moving party must "demonstrate that discovery is likely to lead to the production of evidence of facts establishing jurisdiction." (*Id.* [quoting *In re Automobile Antitrust Cases I & II* (2005) 135 Cal.App.4th 100, 127.])

The trial court denied Appellant's request for jurisdictional discovery because "Plaintiff offers no factual basis to justify continuing these motions for discovery. The evidence already before the Court is such that the Court concludes such discovery would be futile." (AA 145.)

As an initial matter, the Court should decline to consider Appellant's argument regarding jurisdictional discovery related to Respondent's Brown and Bowen because Appellant never raised these arguments before the trial court. (*People v. Catlin* (2001) 26 Cal.4th 81, 122-23 [holding that arguments not raised before the trial court are waived]; *People v. Graham* (2024) 102 Cal.App.5th 787, 798 ["It is axiomatic that arguments not raised in the trial court are forfeited on appeal."] [quoting *Kern County Dept. of Child Support Services v. Camacho*, (2012) 209 Cal.App.4th 1028, 1038.]) Appellant's Opposition to Respondent Brown's and Respondent Bowen's Motions to Quash did not request leave to conduct jurisdictional discovery. (AA 33-37

[Opposition to Respondent Brown's Motion to Quash]; AA 40-44 [Opposition to Respondent Bowen's Motion to Quash.]) Appellant did not raise any substantive arguments regarding jurisdictional discovery related to Respondent Brown or Bowen in the Motion for Reconsideration. (AA 146-151.) Accordingly, the Court should hold that by failing to raise the issue of jurisdictional discovery related to Respondent Brown and Bowen's Motions to Quash before the trial court, Appellant has forfeited any such arguments on appeal.

Even if the Court allowed Appellant's argument regarding jurisdictional discovery related to Respondent's Brown and Bowen, simply submitting discovery requests to a party does not demonstrate that the discovery will lead to evidence of facts establishing jurisdiction, and Appellant's only other argument in his Opening Brief is that the trial court erred by not permitting discovery because only Attorney Bennion and Defendants Bradford, Eric and Jennifer Hawkes submitted sworn declarations that they do not conduct business in the forum state. (Opening Brief at 18.) Not only does Appellant fail to cite where this argument was raised to the trial court, none of the Respondents had an obligation to submit sworn declarations that they do not conduct business in the forum state. The burden is on Appellant to demonstrate that discovery is likely to lead to the production of evidence of facts establishing jurisdiction, which he failed to do. Thus, Appellant has provided no possible basis to overturn the finding of the trial court that discovery would be futile. (AA 145.)

In summary, Appellant's vague and conclusory argument that the trial court's decision was "without basis in fact or law" is wholly insufficient to demonstrate manifest abuse of discretion, the Court should affirm the trial court Order Granting Motions to Quash in its entirety.

CONCLUSION

For the reasons set forth herein, the trial court did not err in its Order Granting Motions to Quash. Accordingly, the Court should deny Appellant's Appeal and affirm the trial court's Order Granting Motions to Quash.

DATED: November 4, 2024

MURPHY, PEARSON, BRADLEY & FEENEY

By: */s/Miguel E. Mendez-Pintado*
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CERTIFICATE OF WORD COUNT

The text of this brief consists of 4,819 words as counted by the Microsoft Word processing program used to prepare this brief.

DATED: November 4, 2024

MURPHY, PEARSON, BRADLEY & FEENEY

By: */s/Miguel E. Mendez-Pintado*
Miguel E. Mendez-Pintado
Attorneys for Respondent
PAUL BROWN

CERTIFICATE OF SERVICE

I, Juliana C. Schuh, declare:

I am a citizen of the United States, am over the age of eighteen years, and am not a party to or interested in the within entitled case. My business address is 520 Pike Street, Suite 1205, Seattle, WA 98101.

On November 4, 2024, I served the following document(s) on the parties in the within action:

CONSOLIDATED RESPONDENTS' BRIEF

	VIA MAIL: I am familiar with the business practice for collection and processing of mail. The above-described document(s) will be enclosed in a sealed envelope, with first class postage thereon fully prepaid, and deposited with the United States Postal Service at on this date, addressed as listed below.
	VIA E-MAIL: I attached the above-described document(s) to an e-mail message, and invoked the send command at approximately _____ AM/PM to transmit the e-mail message to the person(s) at the e-mail address(es) listed below. My email address is jschuh@mpbf.com.
	VIA HAND: The above-described document(s) will be placed in a sealed envelope which will be hand-delivered on this same date by _____, addressed as listed below.
	VIA FACSIMILE: The above-described document was transmitted via facsimile and a copy of same was mailed on this same date to the addresses listed below.
	VIA OVERNIGHT SERVICE: The above-described document(s) will be delivered by overnight service, to the addresses listed below.

X	**VIA FILE & SERVE:** By causing a true and correct copy thereof to be served through File & ServeXpress addressed to all parties appearing on the File & ServeXpress Serve electronic service list.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is a true and correct

statement and that this Certificate was executed on November 4, 2024.

By: */s/Juliana C. Schuh*
Juliana C. Schuh