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11 **THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF LOS ANGELES**

13 CHRISTINA GARNER, an individual;

14 Plaintiff,

15 vs.

16 SHANA RAYWOOD dba REBECCA
17 HAMILTON, an individual; QBW SERVICES,
18 LLC, a Florida limited liability company; and
19 DOES 1-20, inclusive,

20 Defendants.

Case No.: BC664530

**DEFENDANTS' NOTICE OF MOTION
AND MOTION TO QUASH SERVICE OF
SUMMONS, OR IN THE
ALTERNATIVE, TO DISMISS OR STAY
FOR *FORUM NON CONVENIENS*;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

The Honorable Frederick C. Shaller, Dept. 46

SPECIAL APPEARANCE

Date: August 31, 2017
Time: 8:30am
Dept.: 46
Reservation No.: 170728238355

[Concurrently-filed with the Declarations of
Shana Raywood and Daniel Woodrum, Esq.]

21 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

22
23 PLEASE TAKE NOTICE that on the above-referenced date and time, or as soon thereafter as
24 may be heard, in Department 46 of the Los Angeles County Superior Court located at 111 North Hill
25 St., Los Angeles, CA 90012, defendants Shana Raywood ("Raywood") and QBW Services, LLC
26 ("QBW") (collectively, the "Out-of-State Defendants") will specially appear and move the Court
27

1 pursuant to Code of Civil Procedure section 418.10(a)(1) and (2) and/or section 410.30(a) for an order
2 quashing service on the Out-of-State Defendants, or in the alternative, to dismiss or stay the above-
3 captioned lawsuit (the "Action") for *forum non conveniens* (the "Motion").

4 The Motion is based upon the grounds that this Court lacks personal jurisdiction as to the Out-
5 of-State Defendants under Code of Civil Procedure section 418.10(a)(1) because both QBW and
6 Raywood do not have continuous, systematic contacts with California and have not purposefully
7 availed themselves of California's jurisdiction. In the alternative, this Motion is also based upon the
8 grounds that California is not the most appropriate forum to resolve the issues in the Action under
9 Code of Civil Procedure section 418.10(a)(2) and/or section 410.30(a) because this dispute does not
10 have a sufficient connection to California and is more appropriate where the Out-of-State Defendants
11 reside: Georgia or Florida.

12 The Motion is further based upon this Notice, the accompanying Memorandum of Points and
13 Authorities in Support, and the Declarations of Raywood and Woodrum, and all other pleadings and
14 documents on file, including any Motions and Orders, and upon such additional materials or arguments
15 set forth at the hearing on this matter.

16
17 Dated: July 31, 2017

KUSHNER CARLSON, PC

18
19
20 By: 

MICHAEL B. KUSHNER
JONATHAN D. KENT
JONATHAN P. SCHMIDT
Attorneys Specially Appearing for Defendants

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Raywood is a resident of Georgia and her company, QBW, is principally located in Florida.
4 The two Out-of-State Defendants were not served in California, have not consented to jurisdiction in
5 California via contract or otherwise, and have no legal connection to California whatsoever. Their
6 business, which is to contract with and provide independent authors with book covers, promotional
7 images, and other marketing incentives, does not have anything to do with the California market. The
8 independent authors, a vast majority of whom are located in states other than California, decide *for*
9 *themselves* where to market their newly-advertised works. As discussed more particularly below,
10 plaintiff Christina Garner (“Plaintiff”), who by happenstance lives in California, should not be allowed
11 to unilaterally or legally seek California personal jurisdiction for the Out-of-State Defendants who
12 reside and work nearly 2,000 miles away. Both Raywood and QBW pray that the Court dismiss this
13 Action for lack of personal jurisdiction as a matter of law.

14 Alternatively, the Out-of-State Defendants request that the Court dismiss, or at the very least
15 stay the Action, for *forum non conveniens* as Georgia or Florida are more appropriate venues. To
16 assist the Court, both Raywood and QBW are willing to stipulate to personal jurisdiction in their home
17 states, as well as to any other relevant conditions as discussed in *Stangvik v. Shiley, Inc.* (1991) 54
18 Cal.3d 744, 750 fn. 2. And, perhaps more importantly, both private and public interest factors favor
19 Georgia or Florida over California, as the principal witnesses, issues raised, and more concerned jury
20 pools are all located on the opposite coast. The Court should not require the Out-of-State Defendants
21 and other witnesses to expend significant litigation cost to travel back-and-forth for depositions,
22 hearings, and other mandatory appearances, when they have no connection to California, and
23 particularly when this state has no overriding interest in the Action.

24 **II. STATEMENT OF FACTS**

25 QBW is a Florida-registered limited liability company with a principal place of business
26 located at 300 E Oakland Park Blvd., Suite #162, Oakland Park, FL 33334. (Raywood Decl., ¶ 2.)
27 Raywood, a New York Times best-selling author, is the owner of QBW and lives at her residence at
28

1 210 Tall Tree Rd., Athens, GA 30606 (the "Residence"). (Raywood Decl., ¶ 2.) She spends most if
2 not all of her time at her Residence, and intends to remain there for the foreseeable future. (Raywood
3 Decl., ¶ 3.) Her and QBW's business, which is to contract with and provide independent authors with
4 book covers, promotional images, and other marketing incentives, does not have anything to do with
5 the California market. (Raywood Decl., ¶ 3.) The independent authors, a vast majority of whom are
6 located in states other than California, decide for themselves where to market their newly-advertised
7 works. (Raywood Decl., ¶ 3.)

8 The Out-of-State Defendants conduct hardly any sales in California, have never resided,
9 owned, leased property, nor worked in California, and maintain no operational structure in California
10 whatsoever. (Raywood Decl., ¶ 4.) QBW's main contractors live and work in Tennessee within
11 driving distance of the Residence, Raywood's assistants on running the subject boxed sets live in
12 Oregon and Ohio, Raywood's cover designer lives in Pennsylvania, her agent lives in Italy, her social
13 media director lives in New Jersey, and her promotional image designer lives in New York. (Raywood
14 Decl., ¶ 4.) A vast majority of her sales are to states other than California, and also include other
15 countries across the Atlantic Ocean in Europe, such as France. (Raywood Decl., ¶ 5.)

16 On one occasion, QBW and Raywood became involved with an independent author allegedly
17 residing in California, who now maintains a dispute here locally. (See Raywood Decl., ¶ 5; see also
18 Complaint.) The dispute centers around four purportedly breached contracts between QBW and
19 Plaintiff, as well as Raywood's alleged defamation regarding Plaintiff in postings over the social media
20 platform, Facebook. (See Complaint.) The contracts in the Complaint contain Plaintiff's address in
21 California, but no choice-of-law provision. (Complaint, Ex. A-D.) The causes of action in the
22 Complaint include: (i) Breach of Written Contract; (ii) Breach of Implied Covenant of Good Faith and
23 Fair Dealing; (iii) Fraud; (iv) Unjust Enrichment; (v) Libel Per Se; and (vi) Defamation. (See
24 Complaint.) The Summons was served on both QBW and Raywood in Georgia. (See Summons.)

25 As discussed below, none of these causes of action are sufficiently connected to this forum.
26 The Out-of-State Defendants did not negotiate, sign, or perform those contracts with Plaintiff in
27 California. (Raywood Decl., ¶ 6.) And, although the Out-of-State Defendants provide marketing
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1 materials to Plaintiff for her books along with other incentives, there is nothing in the contracts
2 directing Plaintiff to market her independent works to California. (Complaint, Ex. A-D; Raywood
3 Decl., ¶ 6.) The Out-of-State Defendants have no way of knowing where Plaintiff or any one of their
4 other hundreds of authors, will choose to market their own, independently-written novels. (Raywood
5 Decl., ¶ 6.) Furthermore, QBW does not market their products toward California, has scarcely
6 contracted with any other author in California, and Raywood does not even write the books that
7 ultimately get marketed under these contracts. (Raywood Decl., ¶ 7.) As for the Facebook posts, the
8 Facebook groups alleged in the Complaint contained authors from throughout the United States, and
9 Raywood had no intention to target any conduct at California specifically. (Raywood Decl., ¶ 7.)
10 Moreover, Raywood made the subject Facebook postings while located in Georgia (Raywood Decl., ¶
11 7), and there is no evidence Plaintiff could proffer of any intentional conduct directed at this state.

12 Nevertheless, Plaintiff decided to burden the already overburdened Los Angeles Superior Court
13 with the Action. But a more suitable forum exists, as Georgia and Florida have less overburdened
14 local courts and less congested calendars than Los Angeles County Superior Court, and would be much
15 more efficient in resolving the Action. (Decl. Woodrum, ¶ 3.) Indeed, Plaintiff may bring a lawsuit
16 for remedies in the exact same causes of action in Georgia or Florida, specifically: (i) Breach of
17 Written Contract; (ii) Breach of Implied Covenant of Good Faith and Fair Dealing; (iii) Fraud; (iv)
18 Unjust Enrichment; (v) Libel Per Se; and (vi) Defamation. (Woodrum Decl., ¶ 4.) The statute of
19 limitations in both states for these causes of action also have yet to run, as the alleged wrongful
20 conduct occurred in late 2016. (Woodrum Decl., ¶ 4.) Moreover, the Out-of-State Defendants would
21 be willing to stipulate several helpful conditions, including a submission to personal jurisdiction and a
22 waiver of procedural defenses, such as statute of limitations, should this Court dismiss or stay the
23 Action. (Raywood Decl, ¶ 8; Woodrum Decl., ¶ 5.) The Out-of-State Defendants pray that this Court
24 allow them to defend this lawsuit in either of their home states.

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26 ///

1 **III. THE COURT LACKS PERSONAL JURISDICTION OVER THE OUT-OF-STATE**
2 **DEFENDANTS BECAUSE THEY ARE RESIDENTS OF GEORGIA AND FLORIDA,**
3 **DO NOT OTHERWISE HAVE SUFFICIENT MINIMUM CONTACTS WITH**
4 **CALIFORNIA, AND HAVE NOT PURPOSEFULLY AVAILED THEMSELVES OF**
5 **THE PRIVILEGE OF CONDUCTING ACTIVITIES IN CALIFORNIA**

6 The Court maintains the right to quash the service of the Summons and dismiss the Action
7 under Code of Civil Procedure section 418.10(a)(1) based on lack of personal jurisdiction—either
8 general or specific. Under the prevailing case law discussed below, the Court may not maintain
9 personal jurisdiction over the Out-of-State Defendants for three main reasons: (i) no recognized basis
10 for general jurisdiction due to in-state service, domicile, general appearance, or consent exists as to
11 either Raywood or QBW; (ii) California’s long-arm statute and constitutional due process do not
12 provide a basis for general jurisdiction because the Out-of-State Defendants lack the requisite
13 “minimum contacts”; and (iii) no specific jurisdiction exists as to Raywood or QBW because neither
14 has purposefully availed themselves of the privilege of conducting business in California.

15 **A. The Court Lacks General Jurisdiction Because the Out-of-State Defendants Were**
16 **Not Served in California, Are Not Domiciled Nor Reside in California, and Have**
17 **Not Generally Appeared or Consented to Jurisdiction in California**

18 There are several recognized bases to confer general personal jurisdiction on a defendant in
19 California pursuant to Code of Civil Procedure section 410.10 and federal case law. Service of a
20 summons upon a transitory individual or agent in California may suffice. (See *Burnham v. Sup. Ct.*
21 (1990) 495 U.S. 604, 612.) Whether an individual is “domiciled” in California (see *Milliken v. Meyer*
22 (1940) 311 U.S. 457, 562), and whether a corporation is incorporated or has a principal place of
23 business in California (see *Daimler AG v. Bauman* (2014) 134 S.Ct. 746, 760), also suffices for general
24 jurisdiction. If a defendant makes a general appearance in a California action, he or she is subject to
25 general personal jurisdiction. (Code Civ. Proc. § 410.50(a).) Finally, California courts may also
26 exercise jurisdiction over contracting parties with a forum-selection clause in the subject agreement.
27 (See *Nat’l Equip. Rental Ltd. v. Szukhent* (1964) 375 U.S. 311, 315-16.)

1 None of these general jurisdiction paradigms apply in this case. Both QBW and Raywood were
2 both personally served at Raywood’s residence at 210 Tall Tree Rd., Athens, GA 30606 (the
3 “Residence”). (Raywood Decl., ¶ 2.) Raywood lives at the Residence, spends most if not all of her
4 time there, and intends to remain there—which renders the Residence a “domicile.” (See *DeYoung v.*
5 *DeYoung* (1946) 27 Cal.2nd 521, 524; Raywood Decl., ¶ 3.) QBW is also registered in Florida with a
6 principal place of business located at 300 E Oakland Park Blvd., Suite #162, Oakland Park, FL 33334.
7 (Raywood Decl., ¶ 2.) Moreover, as noted in the caption, this appearance is a “special appearance”
8 pursuant to Code of Civil Procedure section 418.10(a) and the Out-of-State Defendants have not made
9 any general appearances in the Action. And finally, none of the four alleged contracts in the
10 Complaint between Plaintiff and the Out-of-State Defendants contain a forum-selection clause.
11 (Complaint, Ex. A-D.) The Court may not confer general personal jurisdiction on either QBW or
12 Raywood given the above facts.

13 **B. The Court Lacks General Jurisdiction Because the Out-of-State Defendants Do**
14 **Not Have Sufficient Minimum Contacts with California**

15 The exercise of general jurisdiction over a nonresident defendant also comports with due
16 process “if the defendant has such minimum contacts with the state that the assertion of jurisdiction
17 does not violate ‘traditional notions of fair place and substantial justice.’” (*Vons Companies, Inc. v.*
18 *Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444 [citations omitted].) The “‘minimum contacts test’
19 asks ‘whether the quality and nature’ of the defendant’s activity is such that it is ‘reasonable’ and ‘fair’
20 to require him to conduct his defense in that state.” (*Kulko v. Cal. Sup. Ct.* (1978) 436 U.S. 84, 92
21 [citations omitted].) To confer general jurisdiction, the Court must find that a company or individual
22 has “substantial, continuous and systematic contacts with the forum state, i.e., its contacts with the
23 forum are so wide-ranging that they take the place of a physical presence in the state.” (See *Daimler*
24 *AG, supra*, 134 S.Ct. at p. 754.) A defendant’s substantial sales in a state are insufficient to establish
25 general jurisdiction, as the general jurisdiction analysis turns on the nature of the defendant’s
26 continuous corporate *operations* within a state. (*Id.* at p. 761.)

1 Here, the Out-of-State Defendants conduct hardly any sales in California, have never resided,
2 owned, leased property, nor worked in California, and maintain no operational structure in California
3 whatsoever. (Raywood Decl., ¶ 4.) QBW’s main contractors live and work in Tennessee within
4 driving distance of the Residence, Raywood’s assistants on running the subject boxed sets live in
5 Oregon and Ohio, Raywood’s cover designer lives in Pennsylvania, her agent lives in Italy, her social
6 media director lives in New Jersey, and her promotional image designer lives in New York. (Raywood
7 Decl., ¶ 4.) A vast majority of her sales similar to those mentioned in the Complaint are to states other
8 than California, and also include other countries across the Atlantic Ocean in Europe, such as France.
9 (Raywood Decl., ¶ 5.) And, as Plaintiff has the initial burden of demonstrating facts justifying the
10 Court’s exercise of jurisdiction (see *Snowney v. Harrah’s Entertainment, Inc.* (2005) 35 Cal.4th 1054,
11 1062), it is not possible for Plaintiff to demonstrate that the Out-of-State Defendants have any
12 significant relationship to California whatsoever.¹ Consequently, the Court may not exercise general
13 jurisdiction on either QBW or Raywood in a way that comports with notions of fair play and
14 substantial justice.

15 **C. The Court Lacks Specific Jurisdiction Because the Out-of-State Defendants Have**
16 **Not Purposefully Availed Themselves of the Privilege of Conducting Activities in**
17 **California**

18 Courts may also look to whether it may exercise specific jurisdiction over issues in a lawsuit.
19 The specific jurisdiction analysis focuses on the “relationship among the defendant, the forum, and the
20 litigation.” (*Bristol-Myers Squibb Co. v. Sup. Ct.* (2016) 1 Cal.5th 783, 799.) To establish specific
21 jurisdiction, a plaintiff must demonstrate that: (i) the nonresident defendant has purposefully directed
22 its activities at the forum; (ii) the litigation is related to, or arises out of, these forum-related activities;
23 and (iii) the exercise of jurisdiction is reasonable and comports with traditional notions of fair play and

24 _____
25 ¹ In addition, Plaintiff cannot demonstrate any evidence of “alter ego” to support personal jurisdiction against Raywood
26 individually, even if the Court found that QBW was subject to general jurisdiction. (See *Strasner v. Touchstone Wireless*
27 *Repair and Logistics, LP* (2016) 5 Cal.App.5th 215, 223.) Plaintiff must present evidence to justify a finding of “alter
28 ego”—allegations are insufficient. (See *Sanora Diamond Corp. v. Sup. Ct.* (2000) 83 Cal.App.4th 523, 540.) This, coupled
with the section below regarding the insufficiency of Raywood’s alleged tortious actions, should at the very least indicate
that Raywood individually is not subject to personal jurisdiction in this Court.

1 substantial justice.” (*Strasner, supra* 5 Cal.App.5th at p. 226.) Although the above test mostly applies
2 for the contract-based causes of action in the Complaint, the “effects test” is mostly applied for the
3 intentional torts, like defamation. (See *Calder v. Jones* (1984) 465 U.S. 783.) As discussed below,
4 under both tests as applied to both the contract-based and tort-based causes of action in the Complaint,
5 and for both Out-of-State Defendants, this Court may not confer specific personal jurisdiction and
6 must dismiss the Action.

7 i. **The Out-of-State Defendants’ Business Activities are Insufficient to Confer**
8 **Specific Jurisdiction Under the Purposeful Availment Test**

9 To establish specific jurisdiction under the “purposeful availment test,” a plaintiff must show
10 each of the three factors cited above from *Strasner*. Although there are several sub-inquiries in that
11 three-part test, most important inquiry in this Action is whether there is a sufficient “nexus” between
12 the Out-of-State Defendants, *the forum*, and the litigation—not between the Out-of-State Defendants
13 and Plaintiff individually. (See *Vons, supra* 14 Cal.4th at p. 926.) And, critically, that a nonresident
14 executes a contract with a California resident does not *per se* establish minimum contacts. (*Burger*
15 *King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 478-79.) The Court must consider all factors affecting
16 negotiation, execution, and performance of the contract, in addition to other contacts, in determining
17 whether the Out-of-State Defendants purposefully established contacts with *the forum*. (See *ibid.*)

18 Although it is true that the contracts alleged in the Complaint contain Plaintiff’s address in
19 California (Complaint, Ex. A-D), that is the *only fact* connecting the entire Action to this forum. The
20 Out-of-State Defendants did not negotiate, sign, or perform those contracts with Plaintiff in California.
21 (Raywood Decl., ¶ 6.) And importantly, although the Out-of-State Defendants provide marketing
22 materials to Plaintiff for her books along with other incentives, there is nothing in the contracts
23 directing Plaintiff to market her independent works to California. (Complaint, Ex. A-D; Raywood
24 Decl., ¶ 6.) The Out-of-State Defendants have no way of knowing where Plaintiff or any one of their
25 other hundreds of authors, will choose to market their own, independently-written novels. (Raywood
26 Decl., ¶ 6.) Furthermore, QBW does not market their products toward California, has scarcely
27 contracted with any other author in California, and Raywood does not even write the books that
28

1 ultimately get marketed under these contracts. (Raywood Decl., ¶ 7.) Such conduct is not
2 purposefully directed at California, nor does such conduct sufficiently relate to this forum. As a result,
3 subjecting the Out-of-State Defendants to jurisdiction in California would be manifestly unreasonable
4 under any due process standard.

5 ii. **The Out-of-State Defendants’ Allegedly Tortious Activities are Insufficient**
6 **to Confer Specific Jurisdiction Under the Effects Test, and Specifically**
7 **Under *Burdick***

8 To establish specific jurisdiction under the “effects test,” a plaintiff must show the defendant
9 committed an intentional act, expressly aimed at or targeting the forum state, with the knowledge that
10 his act would cause harm in the state. (*Pavlovich v. Sup. Ct.* (2002) 29 Cal.4th 262, 271-72.)
11 Pertinently, alleged torts based on acts conducted over the internet are subject to an increasingly strict
12 view under the “effects test” in California. (See *Strasner. Supra* 5.Cal.App.5th at pp. 228-30
13 [discussing several recent appellate cases and their analyses of intentional tort actions committed over
14 the internet].) Most prominent among them is *Burdick*, in which the court held that “merely posting on
15 the internet negative comments about the plaintiff and knowing the plaintiff is in the forum state are
16 insufficient to create minimum contacts.” (See *Burdick v. Sup. Ct.* (2015) 233 Cal.App.4th 8, 25.) The
17 court in *Burdick* went on to state that the “effects test” requires evidence *in addition* to intentional
18 conduct causing harm to a California resident, such as evidence that the nonresident defendant
19 expressly targeted the conduct at the state itself. (*Ibid.*)

20 Upon looking at the Complaint, the Court may note that the tortious conduct alleged relates to
21 Raywood’s allegedly defamatory comments made on Facebook. (Complaint, Ex. F-H.) Specifically,
22 Plaintiff alleges that “in or about February 2017 and through and including April 2017 [the Out-of-
23 State Defendants] made...[the above] defamatory statements...to other professionals in the literary
24 industry concerning Plaintiff.” (Complaint, pp. 11-12.) Nowhere does Plaintiff allege that these
25 professionals are located in California, nor does Plaintiff allege anywhere that the Out-of-State
26 Defendants were directing their tortious conduct toward California. And, there is a reason: The
27 Facebook groups alleged in the Complaint contained authors from throughout the United States, and
28

1 Raywood had no intention to target any conduct at California specifically. (Raywood Decl., ¶ 7.)
2 Moreover, Raywood made the subject Facebook postings while located in Georgia (Raywood Decl., ¶
3 7), and there is no evidence Plaintiff could proffer of any intentional conduct directed at this state. As
4 such, Raywood’s allegedly defamatory comments on Facebook are insufficient to confer jurisdiction
5 under *Burdick* and progeny, and this Court must dismiss for lack of personal jurisdiction.

6 **IV. IN THE ALTERNATIVE, THE COURT SHOULD DISMISS OR STAY THE ACTION**
7 **BECAUSE CALIFORNIA IS NOT THE MOST APPROPRIATE FORUM, GIVEN**
8 **THAT GEORGIA OR FLORIDA WOULD BE MORE SUITABLE, AND ALSO THAT**
9 **PUBLIC AND PRIVATE FACTORS FAVOR THEIR INTEREST IN LITIGATION**

10 Even if the Court determines that personal jurisdiction is proper, the Court should nonetheless
11 dismiss or stay the Action for *forum non conveniens*. The doctrine of *forum non conveniens*, codified
12 in Code of Civil Procedure sections 410.30 and 418.10(a)(2), authorizes a court to decline to exercise
13 jurisdiction over an action should it believe it may be more appropriately and fairly tried in another
14 forum. (*Stangvik v. Shiley, Inc.* (1991) 54 Cal.3d 744, 751.) Even where a plaintiff is a California
15 resident, a court may retain the authority to stay or dismiss when a lawsuit may be more justly tried
16 elsewhere. (*Credit Lyonnais Bank Nederland v. Manatt, Phelps, Rothenberg & Tunney* (1988) 202
17 Cal.App.3d 1424, 1434.) In evaluating such a motion, a court has a two-step process: (i) determine
18 whether an alternative forum exists that is “suitable”; and (ii) weigh the private interests of the litigants
19 and the public interest in retaining the lawsuit in California. (*Stangvik, supra* 54 Cal.3d at p. 751.) As
20 discussed below, both criteria are satisfied as Georgia or Florida would be a more suitable forum for
21 the Action.

22 **A. Georgia or Florida Would Be a More Suitable Forum Because the Out-of-State**
23 **Defendants Residing There Would Stipulate to Jurisdiction, Both States Provide a**
24 **Remedy for Plaintiff, and the Out-of-State Defendants Would Stipulate to the**
25 **Conditions Detailed in *Stangvik***

26 As referenced above, the threshold step in a court’s *forum non conveniens* analysis is
27 determining whether a suitable alternative forum exists. (*Investors Equity Life Holding Co. v. Schmidt*
28

1 (2015) 233 Cal.App.4th 1363, 1375.) The key to assessing whether an alternative forum would be
2 suitable is a determination that the forum would be able to exercise jurisdiction over the defendant, and
3 that plaintiff's claim would not be barred by its statute of limitations. (*Id.* at p. 1376.) In addition,
4 plaintiff must be entitled to "some remedy" in the alternative forum.² (*Stangvik, supra*, 54 Cal.3d at p.
5 753.) In *Stangvik*, the court also noted that the "suitability" criteria may be satisfied if defendant
6 agrees to stipulate to helpful conditions, such as: (i) submission to jurisdiction in the alternative forum;
7 (ii) compliance with future discovery orders; (iii) agreement to make past and present employees
8 reasonably available to testify at cost if so ordered; (iv) tolling of statute of limitations; (v) agreement
9 to make documents available pursuant to order; (vi) agreement that depositions proceed; and (vii)
10 agreement to pay any final judgments rendered in the alternative forum. (*Id.* at p. 750, fn. 2.) The
11 Court may even stay the proceedings pending filing in the alternative forum to enforce the stipulation.
12 (See *Investors Equity Life Holding Co., supra*, 233 Cal.App.4th at p. 1376.)

13 In this case, Plaintiff may bring a lawsuit for remedies in the exact same causes of action in
14 Georgia or Florida, specifically: (i) Breach of Written Contract; (ii) Breach of Implied Covenant of
15 Good Faith and Fair Dealing; (iii) Fraud; (iv) Unjust Enrichment; (v) Libel Per Se; and (vi)
16 Defamation. (Woodrum Decl., ¶ 4.) The statute of limitations in both states for these causes of action
17 also have yet to run, as the alleged wrongful conduct occurred in late 2016. (Woodrum Decl., ¶ 4.)
18 Moreover, as in *Stangvik*, the Out-of-State Defendants would be willing to stipulate to each and every
19 condition, including a submission to personal jurisdiction and a waiver of procedural defenses, such as
20 statute of limitations, should this Court dismiss or stay the Action. (Raywood Decl, ¶ 8; Woodrum
21 Decl., ¶ 5.) Given these circumstances, either Georgia or Florida would provide a much more
22 "suitable" alternative forum than California.

23 ///

24 ///

25
26 _____
27 ² It is irrelevant whether the law of the alternative forum is more or less favorable to either party, so long as plaintiff's
28 claim could be brought in the forum. (*Stangvik, supra*, 54 Cal.3d at p. 753.)

1 **B. Private and Public Interest Factors Favor Georgia or Florida Because the Out-of-**
2 **State Defendants, Witnesses, and Documents are Located There, and Also Because**
3 **California Has Less Interest in the Litigation Than Those States**

4 The second step for the Court in this analysis is weighing two sets of factors: (i) the private
5 interests of the litigants; and (ii) the public interest in retaining jurisdiction in California as opposed to
6 Georgia or Florida. (See *Morris v. AGFA Corp.* (2006) 144 Cal.App.4th 1452, 1463-64.) And, as a
7 general principle, a plaintiff's choice of forum may be disturbed by the court if the balance is strongly
8 in favor of the defendant. (*Hansen v. Owens-Corning Fiberglas Corp.* (1996) 51 Cal.App.4th 753,
9 760.) Although Plaintiff chose California as her preferred forum, the balancing of the above factors
10 weighs strongly in favor of Georgia or Florida, and this Court should entertain dismissing or staying
11 the Action, so that it may proceed in one of those jurisdictions.

12 **i. The Private Interests of the Litigants Favor Georgia or Florida Because**
13 **Trial and Enforcement of Any Judgment Would Be More Expeditious and**
14 **Less Expensive**

15 The "private interest" factors the Court may consider are "those that make trial and the
16 enforceability of the ensuing judgment expeditious and relatively inexpensive." (*Stangvik, supra*, 54
17 Cal.3d at p. 751.) Those factors include "the ease of access to sources of proof, the cost of obtaining
18 attendance of witnesses, and the availability of compulsory process for attendance of unwilling
19 witnesses." (*Morris, supra*, 144 Cal.App.4th at p. 1463-64.) The defendant's residence is also a major
20 factor to be considered in the balancing process—an individual's residence and a corporate defendant's
21 state of incorporation and principal place of business are presumptively convenient forums. (*Id.* at p.
22 1465.)

23 Raywood's Residence is located in Georgia, and QBW's state of incorporation and principal
24 place of business is located in next-door Florida. (Raywood Decl., ¶ 2.) As such, the Out-of-State
25 Defendants would be much more easily compelled to testify, to produce documents and contracts, and
26 to have a potential judgment enforced in those states than in California, which is 2,000 miles away. As
27 for the potential witnesses, QBW's main contractors live and work in Tennessee within driving
28

1 distance of the Residence, Raywood’s assistants on running the subject boxed sets live in Oregon and
2 Ohio, Raywood’s cover designer lives in Pennsylvania, her agent lives in Italy, her social media
3 director lives in New Jersey, and her promotional image designer lives in New York. (Raywood Decl.,
4 ¶ 4.) Most of those witnesses would be closer and better served travelling to Georgia or Florida, rather
5 than California. In addition, a vast majority of QBW’s sales similar to those mentioned in the
6 Complaint are to states other than California, and also include other countries across the Atlantic
7 Ocean in Europe, such as France. (Raywood Decl., ¶ 5.) Accordingly, any third-party witnesses to the
8 defamation or how QBW conducts business, such as other independent authors, would be more
9 centrally-located in Georgia or Florida, rather than on the west coast in California. Given the
10 foregoing, the “private interest” factors undoubtedly weigh in favor of Georgia or Florida.

11 ii. **California Has Less Interest in Regulating These Products Because They**
12 **Originate From Georgia and Florida and Do Not Involve California**

13 The “public interest” factors also weigh in favor of Georgia or Florida and against California.
14 The focus of this analysis is whether the events out of which the action arose have a substantial
15 relationship to California. (*Stangvik, supra*, 54 Cal.3d at p. 751.) The relevant factors include
16 “avoidance of overburdening local courts with congested calendars, protecting the interests of potential
17 jurors so that they are not called upon to decide cases in which the local community has little concern,
18 and weighing the competing interests of the states in the litigation. (*Ibid.*) For example, California
19 recognizes that states have an interest in deciding actions against their own resident corporations
20 whose conduct may cause injury to persons in many other jurisdictions. (*Morris, supra*, 144
21 Cal.App.4th at p. 1465-66.)

22 The jury pools that should resolve a dispute about QBW, Raywood, and their purported bad
23 faith conduct in contracting with independent authors across the United States and Europe, are those in
24 the states where this conduct originates: Georgia or Florida. Moreover, Georgia and Florida have less
25 overburdened local courts and less congested calendars than Los Angeles County Superior Court, and
26 would be much more efficient in resolving the Action. (Decl. Woodrum, ¶ 3.) Prosecution of this
27 Action in this state would burden California’s judicial resources disproportionately to the relationship
28

1 to the parties or claims to this state. Indeed, California has no significant interest in this litigation other
2 than providing one of its residents, Plaintiff, with a forum that provides a remedy. Other than that, all
3 public and private interests favor Georgia or Florida, and thus the Court should dismiss or stay the
4 Action for a more convenient forum.

5 **V. CONCLUSION**

6 Based on the forgoing, the Out-of-State Defendants respectfully request that the Court grant
7 this Motion and either: (i) dismiss the Action for lack of personal jurisdiction; (ii) dismiss the Action
8 based on *forum non conveniens*; or (iii) stay the Action pending commencement of litigation in either
9 Georgia or Florida based on *forum non conveniens*.

10
11 Dated: July 31, 2017

KUSHNER CARLSON, PC

12
13 By: 

14 MICHAEL B. KUSHNER
15 JONATHAN D. KENT
16 JONATHAN P. SCHMIDT

Attorneys Specially Appearing for Defendants
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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3) ss.
4 COUNTY OF ORANGE)

5 I am employed in the County of Orange, State of California. I am over the age of 18 and
6 not a party to the within action. My business address is 85 Enterprise, Suite 310, Aliso
7 Viejo, CA 92656.

8 On July 31, 2017, I served the following document(s) described as follows:

9 **DEFENDANTS' NOTICE OF MOTION AND MOTION TO QUASH SERVICE
10 OF SUMMONS, OR IN THE ALTERNATIVE, TO DISMISS OR STAY FOR
11 FORUM NON CONVENIENS; MEMORANDUM OF POINTS AND
12 AUTHORITIES IN SUPPORT**

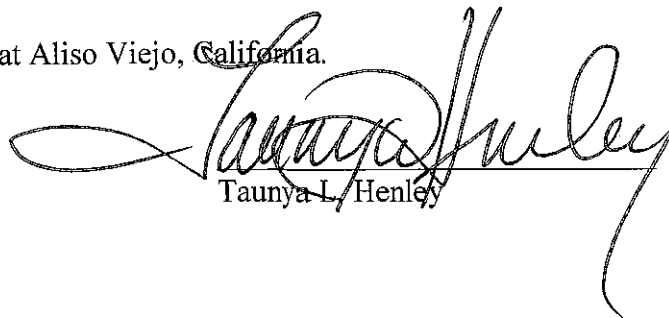
13 On the following interested parties in this action:

14 Michelle Seañez, Esq.
15 Seañez Legal
16 13351 Riverside Drive, Suite 400
17 Sherman Oaks, CA 9123
18 Tel: (818) 538-6850
19 Fax: (818) 561-3994
20 *Attorney for Plaintiff*

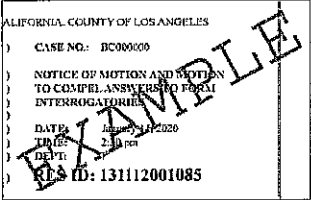
21 **VIA MAIL -- CCP §1013(a)**. I caused a true copy of said document(s) to be placed in a
22 sealed envelope, addressed as above and placed for collection and processing under the
23 firm's ordinary course of business. I am readily familiar with Kushner Carlson's practice
24 of collecting, processing and depositing correspondence for mailing. Under this practice,
25 envelopes would be deposited with the United States Postal Service at Aliso Viejo,
26 California the same day with postage thereon fully prepaid.

27 I declare under penalty of perjury, under the laws of the State of California that the
28 foregoing is true and correct.

Executed on July 31, 2017, at Aliso Viejo, California.


Taunya L. Henley

THIS IS YOUR CRS RECEIPT

INSTRUCTIONS
<p>Please print this receipt and attach it to the corresponding motion/document as the last page. Indicate the Reservation ID on the motion/document face page (see example). The document will not be accepted without this receipt page and the Reservation ID.</p>


RESERVATION INFORMATION

Reservation ID: 170728238355
Transaction Date: July 28, 2017
Case Number: BC664530
Case Title: CHRISTINA GARNER VS SHANA RAYWOOD ET AL
Party: QBW SERVICES LLC (Defendant/Respondent)
Courthouse: Stanley Mosk Courthouse
Department: 46
Reservation Type: Motion to Quash Service of Summons and Complaint
Date: 8/31/2017
Time: 08:30 am

FEE INFORMATION (Fees are non-refundable)

First Paper Fee: (See below)

Description	Fee
First Paper (Unlimited Civil)	\$435.00
Total Fees:	\$435.00

Receipt Number: 1170728K6668

PAYMENT INFORMATION

Name on Credit Card: Michael Kushner
Credit Card Number: XXXX-XXXX-XXXX-5253

A COPY OF THIS RECEIPT MUST BE ATTACHED TO THE CORRESPONDING MOTION/DOCUMENT AS THE LAST PAGE AND THE RESERVATION ID INDICATED ON THE MOTION/DOCUMENT FACE PAGE.