

Tentative Rulings for April 16, 2024
Department 403

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) *The above rule also applies to cases listed in this "must appear" section.*

22CECG03674 *Nizam Azam v. Dennis Galvez*

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

22CECG00390 *Melissa Gone v. Daniel Willard* is continued to Thursday, April 25, 2024, at 3:30 p.m. in Department 403

22CECG01773 *Cinda Doll v. City of Fresno* is continued to Thursday, May 30, 2024, at 3:30 p.m. in Department 403

23CECG02034 *David Torosian v. Susan Patten* is continued to Thursday, May 16, 2024, at 3:30 p.m. in Department 403

23CECG02454 *Tpine Leasing Capital L.P. v. Rohtash Rohtash* is continued to Wednesday, May 29, 2024, at 3:30 p.m. in Department 403

24CECG00394 *Matthew Dean v. Ronald Kirby* is continued to Wednesday, May 22, 2024, at 3:30 p.m. in Department 403

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Tentative Ruling

Re: ***Aguilar v. Ink Projects, et al.***
Superior Court Case No. 23CECG00643

Hearing Date: April 16, 2024 (Dept. 403)

Motion: by Defendant Ink Projects to Quash Summons

Tentative Ruling:

To grant.

Explanation:

When a nonresident defendant moves to quash service of process for lack of personal jurisdiction, the plaintiff has the initial burden of demonstrating facts justifying the exercise of jurisdiction. The plaintiff must do more than merely allege jurisdictional facts; plaintiff must provide affidavits and other authenticated documents demonstrating competent evidence of jurisdictional facts. (*BBA Aviation PLC v. Superior Court* (2010) 190 Cal.App.4th 421, 428-429.) If this is met, the defendant then has the burden of demonstrating that the exercise of jurisdiction would be unreasonable. (*Snowney v. Harrah's Entertainment, Inc.* (2005) 35 Cal.4th 1054, 1062.)

California courts may exercise personal jurisdiction over out-of-state defendants only to the extent allowed under the State and Federal Constitutions. (Code Civ. Proc., § 410.10.) Namely, the exercise of jurisdiction over a nonresident defendant comports with constitutional concerns if the defendant has "such minimum contacts with the state that the assertion of jurisdiction does not violate 'traditional notions of fair play and substantial justice.'" (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, quoting *International Shoe Co. v. State of Wash., Office of Unemployment Compensation and Placement* (1945) 326 U.S. 310, 316.) The minimum contacts test, then, asks whether the "quality and nature" of defendant's activity in the state is such that it is "reasonable" and "fair" to require it to defend itself in that state. (*Kulko v. Superior Court of California In and For City and County of San Francisco* (1978) 436 U.S. 84, 92 [quoting *International Shoe Co. v. State of Wash., Office of Unemployment Compensation and Placement* (1945) 326 U.S. 310, 316-317.])

The cases speak of both "general" and "specific" jurisdiction. (See, e.g., *Vons, supra*, 14 Cal.4th at p. 445.) A nonresident is subject to the forum's general jurisdiction, such that any and all causes of action may be asserted against him/her/it, where the nonresident's contacts are substantial, continuous, and systematic. (*DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 1090 [quoting *Perkins v. Benguet Mining Co.* (1952) 342 U.S. 437, 445].) General jurisdiction exists as to a corporation if its activities in the forum are so "continuous and systematic" that it can be said to be already "present" in that forum, in which case it can be served regarding all causes of action, even if not related to its forum activities. (*Elkman v. National States Ins. Co.* (2009) 173 Cal.App.4th 1305, 1314.)

Specific jurisdiction exists where a nonresident defendant's activities in the forum are not pervasive enough to justify the exercise of general jurisdiction, but the quality and nature of his activity in the forum with regard to the particular cause of action at issue on the motion to quash merits the exercise of jurisdiction. For this test, the court considers "the relationship among the defendant, the forum, and the litigation." (*Elkman, supra*, 173 Cal.App.4th at p. 1314.) "A court may exercise specific jurisdiction over a nonresident defendant only if: (1) the defendant has *purposefully availed* himself or herself of forum benefits; (2) the controversy is related to or arises out of the defendant's contacts with the forum; and (3) the assertion of personal jurisdiction would comport with fair play and substantial justice. [Citation]" (*Ibid.*, emphasis in the original.)

In the case at bench, plaintiff has sued the manufacturer of the Perma Blend permanent makeup alleged to have caused cancer in the area of her face where it was applied. The manufacturer, Project Ink, LLC is a Delaware corporation with its principal place of business in South Carolina. There is no dispute as to these facts and there is no dispute that there is no basis for the exercise of general jurisdiction over Project Ink.

In support specific personal jurisdiction, plaintiff primarily relies upon what is described as a vast network of at least 32 distributors of defendant's product located within the State of California. The presence of distributors in the state is insufficient to confer specific jurisdiction without a connection between the claims asserted by the plaintiff and the defendant's contacts with the state. A defendant's relationship with a third party alone is an insufficient basis for jurisdiction. (*Bristol-Myers Squibb v. Superior Court of California, San Francisco Cty.* (2017) 582 U.S. 255, 268, citing *Rush v. Savchuk* (1980) 444 U.S. 320, 332 and *Walden v. Fiore* (2014) 571 U.S. 277, 286.) Plaintiff's claims for strict products liability, breach of warranties, negligence and intentional misrepresentation are not premised on plaintiff's purchase of the product through a distributor. This is highlighted when the evidence presented by plaintiff in opposition demonstrates the product was not obtained through a distributor at all but directly from the defendant's website. (See, Johnson Decl., ¶ 3, Exh. 2 [Defendant Garza's responses to Special Interrogatory Nos. 10 and 11.]

Ink Projects compares defendant Garza's purchase of the Perma Blend product through its website to website-initiated car purchase in *Shisler v. Sanfer Sports Cars, Inc.* (2006) 146 Cal.App.4th 1254. In *Shisler*, the California buyer's purchase of a vehicle advertised on a Florida-based corporation's website did not specifically target California residents and thus did not support finding personal jurisdiction over the Florida corporation. (*Id.* at pp. 1261-1262.) The court found the evidence did not establish the "purposeful availment" prong of the test for specific jurisdiction. (*Id.* at p. 1262.) The court noted that without some act purposefully directed toward the forum state "... personal jurisdiction in internet related cases would almost always be found in any forum in the country, contrary to long-settled principles of personal jurisdiction. [Citations]" (*Id.* at p. 1261.)

Here, plaintiff has produced no evidence of the website specifically targeting California residents. There is no evidence to suggest defendant's use of the website to sell its product directly to consumers should be considered more than simply placing the product in the stream of commerce. (*Shisler v. Sanfer Sports Cars, Inc., supra*, 146

