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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

KATHRINE ROSAS,

Plaintiff and Appellant,

v.

CHARLES HALLINAN et al.,

Defendants and Respondents.

A139936

(Alameda County
Super. Ct. No. JCCP004688)

This appeal arises from a lawsuit brought by plaintiff and appellant Kathrine Rosas, as private attorney general and on behalf of herself and all other similarly situated persons, against numerous defendants based upon their purported involvement in illegal internet payday loan practices.¹ The particular order challenged herein is the trial court’s grant of the motion to quash service of summons for lack of personal jurisdiction and to dismiss filed by specially appearing defendants and respondents Charles Hallinan and Hallinan Capital Corporation (hereinafter, the Hallinan defendants). The Hallinan

¹ The named defendants that are not the subject of this appeal include the so-called “Tribal Entities” (to wit, Miami Tribe of Oklahoma, MNE doing business as Ameriloan, United Cash Loans and US FastCash, Santee Sioux Nation, SFS Inc. doing business as Preferred Cash Loans and One Click Cash, and AMG Services, Inc.); the so-called “Scott Tucker Corporations” (to wit, defendants, to wit, AMG Capital Management, LLC, Black Creek Capital Corporation, Black Creek Capital LLC, Broadmoor Capital Partners, LLC, Leadflash Consulting LLC, Level 5 Motorsports, N.M. Service Corp., Park 269 LLC, St. Capital LLC); as well as the Muir Law Firm LLC, and individual defendants, Don Brady, Robert D. Campbell, Timothy J. Muir, Scott Tucker, Blaine Tucker and Kim Tucker. The trial court’s separate order to dismiss the Tribal Entities from the case based upon the doctrine of tribal sovereign immunity is also the subject of a pending appeal.

defendants argued, and the trial court agreed that, as a factual matter, they had no significant ties to California and, as a legal matter, the exercise of jurisdiction cannot be based on the ties of any other defendant in the case. For reasons set forth below, we affirm the trial court's judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In or around 2005 and 2006, plaintiff obtained five separate payday loans over the internet from the "DEFENDANT LENDERS," defined to include defendants US FastCash, Ameriloan, United Cash Loans, Preferred Cash Loans, One Click Cash, MNE, SFS, Inc., AMG Services, Inc. (AMG), Miami Tribe of Oklahoma, Santee Sioux Nation, and Scott and Blaine Tucker. The interest rate on each loan exceeded 750 percent per annum, and the periodic payments on the loans were deducted from plaintiff's Comerica Bank checking account in Salinas, California.

After paying each loan in full, including principal and interest, plaintiff filed this lawsuit in San Francisco Superior Court on July 1, 2009 (San Francisco Superior Court No. CGC-09-489981), alleging defendants were engaged in illegal consumer lending activities on the internet that included charging consumers unconscionable and/or usurious interest rates in excess of 750 percent on payday loans.

In October 2011, this lawsuit was, on Rosas's motion, consolidated by court order with a related lawsuit, *Baillie, et al. v. Dollar Financial Corp., et al.*, and assigned for all purposes to Alameda Superior Court Judge Wynn Carville. Plaintiff Amy Baillie is not a party to this appeal.

On July 31, 2012, plaintiff filed a second amended complaint, the operative complaint on appeal, adding the Hallinan defendants as DOE defendants (hereinafter, Complaint). The Complaint identified causes of action for: (1) usury and/or unconscionable lending; (2) injunctive relief and restitution under Business & Professions Code, § 17200 et seq.; (3) money had and received; and (4) imposition of a constructive trust. Only one of these causes, for imposition of a constructive trust, was asserted against the Hallinan defendants.

According to the Complaint, Hallinan Capital Corporation (Hallinan Capital) was a Florida corporation with principal place of business in Boca Raton that, “acting alone or in concert with others, formulated, directed, controlled and had the authority to control or participate in the acts and practices of all the corporate and individual defendants, including [those] set forth in [the Complaint].” It was further alleged on information and belief that individual defendants Charles Hallinan and his wife, Carolyn Hallinan, own and control Hallinan Capital.

The gist of the Complaint is that the “DEFENDANT LENDERS,” which include the Tuckers and AMG (among others) but not the Hallinan defendants, engaged in an illicit scheme to provide payday loans over the internet to consumers, including California consumers, with unconscionable and/or usurious interest rates. With respect to the Hallinan defendants, the Complaint alleged on information and belief that, in 2010 and 2011, Hallinan Capital received “a total of at least \$22,000,000.00” from defendant AMG, a Nevada corporation, in Nevada, which money was “obtained from the [allegedly unlawfully] payday lending . . . and such lending was known to CHARLES HALLINAN AND CAROLYN HALLINAN.” It was further alleged that Carolyn and Charles Hallinan “were personally the recipients of the sum of \$22,000,000 sent by AMG to HALLINAN CAPITAL in 2010 and 2011,” and, thus, by their conduct, ratified the aforementioned unlawful payday lending.

In addition, the Complaint alleged more generally on information and belief with respect to all defendants that their “actions and/or inactions proximately caused or otherwise contributed to Plaintiffs’ injuries and damages as herein alleged. Each defendant was acting as the agent, officer, servant, associate, employee or co-conspirator of each of the other Defendants and each of the Defendants authorized, ratified, approved, directed and/or consented to all of the acts of each of the other Defendants.” With respect to plaintiff’s request for imposition of a constructive trust, the Complaint asserted that the named defendants (including the Hallinan defendants) “knew the source of the monies from their own participation in the unconscionable and unlawful usurious

payday loan activity, and/or by their relationship with an active participant in the wrongful activity”

On February 21, 2013, the Hallinan defendants made a special appearance to move to quash the summons for lack of personal jurisdiction and to dismiss. In doing so, the Hallinan defendants argued that plaintiff could not establish general or specific jurisdiction because they had no significant contacts with or in California. (Code Civ. Proc., § 418.10.) To support their motion, the Hallinan defendants submitted a declaration from Charles Hallinan, who attested that he had conducted no business in California; was not an officer, owner or director of any entity licensed or registered to do business in California; had no real property or bank accounts in California; paid no taxes in California; and had not entered into any contracts with a California resident in connection with consumer lending. In addition, Hallinan denied that he or Hallinan Capital had ever directed, formulated, controlled, had authority to control, or participated in any of the acts or practices alleged in the Complaint, or was involved in an agency or joint venture relationship with any other defendant.

Similarly, Brent Kopenhaver, Chief Financial Officer of Hallinan Capital, submitted a declaration attesting that Hallinan Capital was not licensed or registered to conduct business in California; had not conducted business in California; had no real property, offices, addresses, bank accounts, employees, or registered agents for service of process in California; had paid no taxes in California; and had not contracted with any resident of California in connection with consumer lending. Finally, Kopenhaver attested that Hallinan Capital had not directed, formulated, controlled, had authority to control, or participated in any of the acts or practices alleged in the Complaint, and was not involved with any other defendant in this case in an agency or joint venture relationship.

Plaintiff opposed the Hallinan defendants’ motion to quash, supporting her arguments in support of jurisdiction with over 200 pages of exhibits, including various discovery responses and excerpts of deposition testimony from these consolidated cases, and a copy of a complaint filed in 2009 by Hallinan against the Tuckers, among others, in the federal district court of Nevada, alleging theft, fraud and diversion of assets during

the course of their joint operation of a short-term loan business. She also sought further discovery on the personal jurisdiction issue with respect to several named defendants, including AMG Capital Management, LLC, Black Creek Capital Corporation, Black Creek Capital LLC, Broadmoor Capital Partners, LLC, Leadflash Consulting LLC, Level 5 Motorsports, N.M. Service Corp., Park 269 LLC, St. Capital LLC, and Kim Tucker, but not as to the Hallinan defendants.

On August 5, 2013, following a contested hearing, the trial court granted the Hallinan defendants' motion to quash for lack of specific jurisdiction. In doing so, the trial court found a "patent disconnect" between the lending activity underlying plaintiff's claims of usury and unfair competition and any activity undertaken by the Hallinan defendants that would subject them to personal jurisdiction in California. According to the court: "Plaintiff has failed to provide any authority for the proposition that the mere receipt of money outside of California from one or more entities that may themselves be subject to personal jurisdiction in California – which is the only theory of recovery reflected in the Constructive Trust cause of action – may be viewed as satisfying [the legal standard for establishing personal jurisdiction]." The court added that, while plaintiff sought further discovery with respect to other named defendants, she did not do so with respect to the Hallinan defendants. Accordingly, the trial court entered a judgment of dismissal in favor of the Hallinan defendants (as well as the other Constructive Trust defendants).² This timely appeal followed.

² When granting the Hallinan defendants' motion to quash or to dismiss, the trial court also granted the motion to quash service of summons or, in the alternative, to dismiss filed by another group of specially appearing defendants. This group, referred to herein as the "Constructive Trust defendants," include AMG Capital Management, LLC, Black Creek Capital Corporation, Black Creek Capital LLC, Broadmoor Capital Partners, LLC, Leadflash Consulting LLC, Level 5 Motorsports, N.M. Service Corp., Park 269 LLC, St. Capital LLC, and Kim Tucker. The Constructive Trust defendants have filed a separate respondents' brief in this appeal, in which they correctly state that plaintiff does not challenge the trial court's ruling as to them in her opening brief. Rather, her arguments are directed only at the Hallinan defendants. Under these circumstances, we agree plaintiff has forfeited the right to challenge the court's dismissal of the

DISCUSSION

Plaintiff raises the following principal arguments on appeal. First, plaintiff contends the trial court erred in finding it lacked authority to exercise personal jurisdiction over the Hallinan defendants given their lack of minimum contacts with the State of California. In addition, plaintiff contends the trial court erred when finding that she had “failed to demonstrate that any further discovery is likely to produce evidence supporting personal jurisdiction.” She thus requests that we instruct the trial court to permit her to conduct additional discovery with respect to the Hallinan defendants. We address these issues in turn below.

I. Exercise of Jurisdiction over The Hallinan Defendants.

“California courts may exercise personal jurisdiction on any basis consistent with the Constitution of California and the United States. (Code Civ. Proc., § 410.10.) The exercise of jurisdiction over a nonresident defendant comports with these Constitutions “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 (*Vons*), quoting *Internat. Shoe Co. v. Washington* (1945) 326 U.S. 310, 216 [90 L.Ed. 95, 66 S.Ct. 154] (*Internat. Shoe*).) (*Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 268 [127 Cal.Rptr.2d 329, 58 P.3d 2] (*Pavlovich*).)” (*Snowney v. Harrah’s Entertainment, Inc.* (2005) 35 Cal.4th 1054, 1061 [*Snowney*].)

“The concept of minimum contacts . . . requires states to observe certain territorial limits on their sovereignty. It “ensure[s] that the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system.” ’ (*Vons, supra*, 14 Cal.4th at p. 445, quoting *World-Wide Volkswagen Corp. v. Woodson* (1980) 444 U.S. 286, 292 [62 L.Ed.2d 490, 100 S.Ct. 559] (*World-Wide Volkswagen*).) To do so, the minimum contacts test asks ‘whether the “quality and nature” of the defendant’s activity is such that it is “reasonable” and “fair” to

Constructive Trust defendants and, thus, limit our discussion going forward to the Hallinan defendants.

require him to conduct his defense in that State.’ (*Kulko v. California Superior Court* (1978) 436 U.S. 84, 92 [56 L.Ed.2d 132, 98 S.Ct. 1690], quoting *Internat. Shoe, supra*, 326 U.S. at pp. 316-317.) The test ‘is not susceptible of mechanical application; rather, the facts of each case must be weighed to determine whether the requisite “affiliating circumstances” are present.’ (*Kulko*, at p. 92.)” (*Snowney, supra*, 35 Cal.4th at p. 1061.)

“Under the minimum contacts test, ‘[p]ersonal jurisdiction may be either general or specific.’ [Citation.]” (*Snowney, supra*, 35 Cal.4th at p. 1062.) Here, plaintiff does not claim on appeal that general jurisdiction exists with respect to the Hallinan defendants and, accordingly, we consider only whether specific jurisdiction has been established. In doing so, we must look to the “relationship among the defendant, the forum, and the litigation.” (*Snowney, supra*, 35 Cal.4th at p. 1062.) As the California Supreme Court has held, 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 court’s assertion of personal jurisdiction over the defendant would comport with “fair play and substantial justice.” (*Ibid; Bristol-Myers Squibb Co. v. Superior Court* (2016) 1 Cal.5th 783, 799.)

Where a defendant moves to quash service of process for lack of specific jurisdiction, the plaintiff has the initial burden of demonstrating facts justifying the court’s exercise of jurisdiction. (*Snowney, supra*, 35 Cal.4th at p. 1062.) If the plaintiff meets this initial burden, the burden shifts to the defendant to demonstrate “the exercise of jurisdiction would be unreasonable.” (*Ibid.*) “The merits of the complaint are not at issue at this stage of proceedings. [Citation.] However, when personal jurisdiction is asserted on the basis of a nonresident defendant’s alleged activities in this state, facts relevant to jurisdiction may also bear on the merits of the complaint. [Citation.] The jurisdictional facts shown must pertain to each separate nonresident defendant, even in a case alleging a conspiracy.” (*In re Automobile Antitrust Cases I and II* (2005) 135 Cal.App.4th 100, 110 (*Automobile Antitrust Cases*).

“ ‘On review, we apply our independent judgment to the ultimate question of jurisdiction, but to the extent that the question of jurisdiction turns on factual issues, we are bound by the trial court’s findings of fact if they are supported by substantial evidence.’ (*Automobile Antitrust Cases, supra*, 135 Cal.App.4th at pp. 113-114; see *Center Point Energy[, Inc. v. Superior Court* (2007)] 157 Cal.App.4th [1101,] 1117 (*Center Point Energy*) [in personal jurisdiction matters ‘ ‘we review independently the trial court’s conclusions as to the legal significance of the facts’ ’ ’.]” (*Young v. Daimler AG* (2014) 228 Cal.App.4th 855, 865.)

Here, plaintiff theorizes that specific jurisdiction exists with respect to the Hallinan defendants based upon their receipt of \$22 million in Nevada from a nonresident corporation, defendant AMG, in 2010 and 2011, years during which the defendant lenders were allegedly engaged in unlawful internet lending. The trial court, as stated above, found the “mere receipt” of money from a nonresident (AMG) outside California by another nonresident (Hallinan) does not suffice to establish specific jurisdiction. In opposing this finding, plaintiff insists the Hallinan defendants’ receipt of this money does in fact prove their involvement in the unlawful internet lending to California residents because the “only business conducted by AMG was payday lending, and Scott Tucker and Blaine Tucker were the only two signators on AMG’s bank accounts through which many millions of dollars passed.” We disagree.

As stated above, our focus for purposes of the specific jurisdiction analysis is whether the Hallinan defendants purposefully availed themselves of the privilege of doing business in California, and whether they did so in a manner substantially related to or arising out of the controversy at hand. As such, we look for evidence of intentionality: “ ‘This prong is only satisfied when the defendant purposefully and voluntarily directs [its] activities toward the forum so that [it] should expect, by virtue of the benefit [it] receives, to be subject to the court’s jurisdiction based on’ [its] contacts with the forum.” (*Pavlovich, supra*, 29 Cal.4th at p. 269, quoting *U.S. v. Swiss American Bank, Ltd.* (1st Cir. 2001) 274 F.3d 610, 623-624; see also *Burger King, supra*, 471 U.S. at p. 474-476 [purposeful availment occurs where a nonresident defendant “purposefully direct[s]”

activities at residents of the forum, “purposefully derive[s] benefit” from its forum-related activities, has created a “substantial connection” with the forum, has deliberately engaged in significant activities within the forum, or has created “continuing obligations between [itself] and residents of the forum”].)

And while a plaintiff may also establish purposeful availment based on the effects of the defendant’s out-of-state conduct in the forum state (*Pavlovich, supra*, 29 Cal.4th at pp. 269-270), “mere foreseeability — that the defendant knew or should have known that its intentional acts could cause harm in this state — is not sufficient to establish jurisdiction under the [so-called] effects test. Instead, the plaintiff must point to contacts demonstrating that the defendant *expressly aimed or targeted* its tortious conduct at our state.” (*Automobile Antitrust Cases, supra*, 135 Cal.App.4th at p. 122 [italics added]; see also *Pavlovich, supra*, 29 Cal.4th at pp. 270-273.)

Thus, as these decisions reflect, the purposeful availment standard is designed to ensure “the defendant will only be subject to personal jurisdiction if ‘ “it has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the state.” ’” (*Pavlovich, supra*, 29 Cal.4th at p. 269, quoting *World-Wide Volkswagen, supra*, 444 U.S. at p. 297.)” (*Snowney, supra*, 35 Cal.4th at p. 1063.)

Here, we agree with the trial court the Hallinan defendants have insufficient California contacts to subject them to personal jurisdiction in this case. As respondents note (and the trial court found), there is no evidence whatsoever suggesting the Hallinan defendants expressly aimed or targeted the allegedly tortious conduct – to wit, usurious and unconscionable internet payday lending — at California consumers. (See *Pavlovich, supra*, 29 Cal.4th at p. 269.) Moreover, even assuming plaintiff is correct that the Hallinan defendants must have known the \$22 million they received from AMG in 2010 and 2011 was generated through this allegedly tortious lending, personal jurisdiction over a nonresident defendant cannot be based upon mere awareness by the defendant of the possibility that the alleged unlawful conduct could harm a California resident.

(*Automobile Antitrust Cases*, *supra*, 135 Cal.App.4th at p. 123 [“defendant’s knowledge that tortious conduct might cause harm in California is certainly relevant to the inquiry before us, but that knowledge alone is not sufficient to establish express aiming at California”].) Nor can it be based on the mere fact that the defendant’s unlawful conduct outside California actually caused harm or injury to a resident within California. (*Goehring v. Superior Court* (1998) 62 Cal.App.4th 894, 908-909 [“the mere causing of an effect ‘is not necessarily sufficient to afford a constitutional basis for jurisdiction’” [Citation.] Jurisdiction may be invoked only where the actor committed an out-of-state act intending to cause effects in California or reasonably expecting that effects in California would result”]; see also *J. McIntyre Machinery Ltd. v. Nicastro* (2011) 564 U.S. 873, 886 [“facts [that] may reveal an intent to serve the U.S. market . . . do not show [the defendant] purposefully availed itself of the [forum] market”].) As explained by our highest court, a defendant cannot be hauled into court in a foreign jurisdiction based merely on the defendant’s random, fortuitous, or wholly attenuated contacts with the forum state. (*Burger King*, *supra*, 471 U.S. at pp. 471-472, 475 [“[t]he Due Process Clause protects an individual’s liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful ‘contacts, ties, or relations’ ”].)

In reaching this conclusion, we specifically reject plaintiff’s attempt to rely on the alleged unlawful acts of other named defendants in this action that were directed at and caused harm to California residents as the basis for establishing personal jurisdiction. The law is clear: “Personal jurisdiction must be based on forum-related acts that were personally committed by each nonresident defendant. The purposes and acts of one party — even an alleged coconspirator — cannot be imputed to a third party to establish jurisdiction over the third party defendant.” (*Automobile Antitrust Cases*, *supra*, 135 Cal.App.4th at p. 113; accord *Center Point Energy*, *supra*, 157 Cal.App.4th at p. 1118 [“an exercise of personal jurisdiction must be based on forum-related acts that were personally committed by each nonresident defendant, and acts of an ‘alleged coconspirator — cannot be imputed . . . to establish jurisdiction over the third party

defendant’ ”]; *Helicopteros Nacionales de Colombia, S.A. v. Hall* (1984) 466 U.S. 408, 417 [“unilateral activity of another party or a third person is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction”].) In the absence of actual evidence of any forum-related acts personally committed by the Hallinan defendants, plaintiff’s boilerplate allegations that each defendant was acting as agent or co-conspirator of the other defendants, and each defendant authorized, ratified, approved or directed the others’ acts, do not help her make the requisite showing to establish jurisdiction.³

On this point, *Automobile Antitrust Cases, supra*, is particularly demonstrative. There, the reviewing court affirmed the nonresident defendants’ motion to quash based upon the plaintiffs’ failure to meet the second prong of the specific jurisdiction standard requiring evidence that the controversy was related to or arose out of the defendants’ forum-based contacts: “As plaintiffs have no evidence that these three parent manufacturers actually participated in the alleged conspiracy, we find that they did not demonstrate a sufficient connection between these defendants and the allegations of the

³ Plaintiff’s reply brief on appeal states that Instant Cash USA, an internet lending company not named as a defendant in this action, made a loan to plaintiff Baillie (not Rosas) in California. However, her brief contains no record citation supporting her statement. Plaintiff’s attorney also asserted at oral argument that Instant Cash USA made a loan to Rosas in California, and that Hallinan was the sole owner of Instant Cash USA. However, he directed us to no actual evidence in the record to support his assertions. While there is deposition testimony from Thomas Assenzio that Hallinan was one of the owners of Instant Cash USA, which was in turn an “investor” in MTE, Assenzio immediately clarified for the record that he had no idea how many owners there were in Instant Cash USA. Further, while plaintiff’s attorney also asserted at oral argument that there was evidence Hallinan Capital gave approximately \$450,000 in “seed money” to Instant Cash USA, there, again, is no record support in this case for her assertion. Specifically, the record reflects that, when plaintiff’s counsel presented deponent Michael Kevitch, the person designated by defendants as most qualified to answer questions about Instant Cash USA, with a document reflecting a total payment of approximately \$450,000 from Hallinan Capital to Instant Cash USA, Kevitch responded that he was not aware of this payment and had no idea why it occurred (much less where it occurred). Kevitch also stated that he had no idea whether any loan customers were in California. Given these circumstances, we conclude none of these “facts,” viewed individually or collectively, supports a finding of purposeful availment in California.

lawsuit to support a finding of personal jurisdiction over these nonresident defendants.” (135 Cal.App.4th at p. 118.) In other words, a plaintiff cannot establish that a moving defendant had sufficient minimum contacts with the forum state based upon the mere fact the moving defendant is somehow associated with other defendants who have engaged in wrongdoing in the forum state. (*Id.* at p. 119 [“[plaintiffs] must provide some evidence allowing the trial court — as finder of fact on jurisdictional issues — to conclude that these particular named defendants were involved in the alleged conspiracy”].) Plaintiff’s jurisdiction theory in this case likewise fails due to her inability to provide any evidence beyond the mere fact of the Hallinan defendants’ association with other named defendants, coupled with the inference from this association that Hallinan must have known the \$22 million payment was the fruit of illegal lending. Under the law set forth above, this showing is not enough. (Accord *Goehring v. Superior Court*, *supra*, 62 Cal.App.4th at p. 907 [“ ‘ ‘Purposeful availment’ requires that the defendant ‘have performed some type of affirmative conduct which allows or promotes the transaction of business within the forum state’ ”].)

Perhaps in recognition of her evidentiary shortcomings in opposing the motion to quash, plaintiff seeks to use additional documents for purposes of this appeal from a federal case, *Federal Trade Commission v. AMG Services, Inc.* (Case No. 2:12-cv-536-GMN-VCF; United States District Court, (D. Nev. Jul. 29, 2016) (hereinafter, FTC case). According to plaintiff, these federal court documents support her allegation that, between January 2010 and March 2011, Hallinan was paid \$22,000,000 by one of the lender defendants in this case, AMG.⁴ Plaintiff concedes this evidence is “not in admissible form,” but nonetheless asks that we take judicial notice of it. Plaintiff then theorizes that the \$22 million sum reflects the amount Scott Tucker paid Hallinan to settle Hallinan’s legal claims for his share of the profits from the payday lending activity that he architected (and Tucker then implemented), a significant portion of which, according to plaintiff, was unlawfully collected from Californians in the form of “usurious interest.”

⁴ As previously mentioned, defendant AMG was dismissed from this case on tribal sovereign immunity grounds, a ruling that is the subject of a separate appeal (A139147).

Even were we to take judicial notice of the FTC case documents for purposes of this appeal, which we are disinclined to do, we would nonetheless find no grounds for reversing the trial court's order. “ ‘Although a court may judicially notice a variety of matters [citation], only *relevant* material may be noticed. “But judicial notice, since it is a substitute for proof [citation], is always confined to those matters which are relevant to the issue at hand.” [Citation.]’ (*Mangini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063) Further, when a court takes judicial notice of official acts or public records, it does not also judicially notice ‘ “the truth of all matters stated therein.” [Citations.] “[T]he taking of judicial notice of the official acts of a governmental entity does not in and of itself require acceptance of the truth of factual matters which might be deduced therefrom, since in many instances what is being noticed, and thereby established, is no more than the existence of such acts and not, without supporting evidence, what might factually be associated with or flow therefrom.” [Citation.]’ (*Id.* at pp. 1063-1064.)” (*Aquila Inc. v. Superior Court* (2007) 148 Cal.App.4th 556, 569 (*Aquila*)).

Applying these principles here, we question the relevance of the FTC case documents with respect to the only issue now before the court — to wit, whether the court's exercise of personal jurisdiction over the Hallinan defendants would comport with constitutional principles of due process. Indeed, our review of the documents sought to be noticed reveal not a single mention of California, much less of any affirmative act by the Hallihan defendants related to plaintiff's claims or directed at our forum state. Moreover, even accepting for the sake of argument that the FTC case documents are correct that the Hallinan defendants received \$22 million from AMG during the time period in which AMG was engaged in tortious internet lending, this fact alone would not assist plaintiff in meeting her burden of proving the Hallinan defendants purposefully availed themselves of the privilege of doing business in this state. Thus, viewed in proper context, we conclude the FTC case documents, even if admissible for the truth of their contents, “lacked relevance and persuasiveness” with respect to whether the court's

exercise of jurisdiction over the Hallinan defendants would be appropriate.⁵ (See *Aquila, supra*, 148 Cal.App.4th at p. 573 [concluding that, “[o]n balance, the judicial notice taken of the [contract] does not adequately show that Aquila or its predecessor purposefully availed itself of the benefits of forum contacts through this particular relationship with SMUD, so as to create the kind of relationship with California . . . consumers to justify specific jurisdiction on these claims”].)

Accordingly, for the reasons stated, we affirm the trial court’s finding that plaintiff failed to establish specific jurisdiction with respect to the Hallinan defendants. Moreover, given this affirmance, we need not consider the ancillary issue of whether the exercise of jurisdiction over these defendants would comport with fair play and substantial justice. (See *Snowney, supra*, 35 Cal.4th at p. 1062 [only if plaintiff meets the initial burden to demonstrate facts justifying the court’s exercise of jurisdiction does the burden shift to defendant to demonstrate “the exercise of jurisdiction would be unreasonable”]; *Automobile Antitrust Cases, supra*, 135 Cal.App.4th at p. 119, fn. 8.)

II. Plaintiff Is Not Entitled to Further Discovery.

Lastly, plaintiff contends that, even if we agree with the trial court that she has failed to prove on the given record that the Hallinan defendants have sufficient minimum contacts in California to support jurisdiction, we should nonetheless remand the matter to the trial court with an order for further jurisdictional discovery. According to plaintiff, she deserves the opportunity to depose necessary witnesses, including defendant Charles Hallinan, to “ascertain the reasons for the payment of such a large sum (at least \$22,000,000) by AMG to [the Hallinan defendants], and how that payment fits into the lending which is the subject of this case.” The relevant law is not in dispute.

⁵ We accept respondents’ point that imposition of a constructive trust is generally viewed as a remedy rather than a separate cause of action. (See *Kim v. Westmoore Partners, Inc.* (2011) 201 Cal.App.4th 267, 277, fn. 4 [“imposition of constructive trust,” however, “is a remed[y], not a cause of action”]; see also *Glue-Fold, Inc. v. Slautterback Corp.* (2000) 82 Cal.App.4th 1018, 1023, fn. 3.) However, given our conclusion that no basis exists for the court’s exercise of jurisdiction given the Hallinan defendants’ lack of even minimal contacts with this state, we need not delve into the substance of this issue for purposes of this appeal.

To prevail on a motion for further jurisdictional discovery where a defendant has moved to quash, the plaintiff must demonstrate further discovery is likely to lead to the production of admissible evidence supporting the court's assertion of personal jurisdiction over the defendant. (*Beckman v. Thompson* (1992) 4 Cal.App.4th 481, 486-487.) On appeal, we review the trial court's discovery ruling only for abuse of discretion. (*Automobile Antitrust Cases, supra*, 135 Cal.App.4th at p. 127.) As our federal appellate colleagues have held in a similar context, " 'refusal to grant [jurisdictional] discovery constitutes an abuse of discretion if the denial results in prejudice to a litigant' and that '[p]rejudice is present where "pertinent facts bearing on the question of jurisdiction are controverted . . . or where a more satisfactory showing of the facts is necessary." ' " (*Breakthrough Mgmt. Group, Inc. v. Chukchansi Gold Casino & Resort* (10th Cir. 2010) 629 F.3d 1173, 1189.)

As an initial matter, we agree with the Hallinan defendants that plaintiff forfeited the right to seek an order for further jurisdictional discovery by failing to make such a request before the trial court. (*Children's Hospital & Medical Center v. Bontá* (2002) 97 Cal.App.4th 740, 776-777 [“ ‘An appellate court will not consider procedural defects or erroneous rulings where an objection could have been, but was not, raised in the court below.’ [Citation.] It is unfair to the trial judge and to the adverse party to take advantage of an alleged error on appeal where it could easily have been corrected at trial”].) The record on appeal reflects that, while plaintiff did move for further discovery with respect to certain other named defendants, she did not do so with respect to the Hallinan defendants. Plaintiff failed to respond to respondents' forfeiture argument in her reply brief, thereby implicitly conceding the issue. Further, while plaintiff's attorney, at oral argument, denied any forfeiture had occurred, counsel offered no reasoned argument, much less evidence, to establish otherwise.

However, even were we to excuse plaintiff's forfeiture, her argument for further discovery would nonetheless fail on the merits. As the trial court observed, plaintiff's insistence that further jurisdictional discovery is necessary arises from nothing more than her "bedrock faith" that further discovery will lead to production of admissible evidence

demonstrating jurisdiction. Such faith, however, is not enough; rather, plaintiff was required – but failed – to demonstrate based upon actual facts that further discovery is likely to lead to the production of admissible evidence that the Hallinan defendants, as opposed to some other named defendant in this action, purposefully availed themselves of the privilege of doing business in California in some manner connected to the underlying controversy. (*Beckman v. Thompson, supra*, 4 Cal.App.4th at pp. 486-487.) Under these circumstances, the trial court’s ruling stands. (See *Automobile Antitrust Cases, supra*, 135 Cal.App.4th at p. 127 [rejecting plaintiffs’ theory that an inference of personal jurisdiction could be drawn from evidence implicating other entities: “Even when the underlying complaint alleges a conspiracy, the plaintiff must still offer evidence tending to support the existence of personal jurisdiction over each named nonresident defendant”].)

DISPOSITION

The judgment of dismissal as to the defendants is affirmed. Plaintiff shall bear costs on appeal.

Jenkins, J.

We concur:

Pollak, Acting P. J.

Siggins, J.