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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

ANDREW AND WILLIAMSON SALES
CO.,

Plaintiff and Appellant,

v.

CARLOS ARMANDO ESPINOZA PABLOS
et al.,

Defendants and Respondents.

D069607

(Super. Ct. No.
37-2013-00077045-CU-OR-CTL)

APPEAL from an order of the Superior Court of San Diego County, Joel M. Pressman, Judge. Affirmed in part, reversed in part and remanded with directions.

Scudi & Ayers and Morgan J.C. Scudi, Jimmy Ray Ayers, for Plaintiff and Appellant.

Fennemore Craig and Todd Stephen Kartchner, for Defendant and Respondent Omega Produce Company, Inc.

Foley & Lardner and Victor A. Vilaplana, for Defendants and Respondents Carlos Armando Espinoza Pablos, Javier Espinoza Pablos, Juan Espinoza Pablos, Antonio Arias

Contreras, Ramon de Jesus Machado Galvez, Juan Ramon Navarrete Garcia and Diana Claudette Burgueño Mendivil.

Plaintiff and appellant Andrew and Williamson Sales Co. (AW), a produce distributor, sued Omega Produce Company (Omega) and other entities and individuals including Carlos Armando Espinoza Pablos, Javier Espinoza Pablos, Juan Espinoza Pablos, Antonio Arias Contreras, Ramon de Jesus Machado Galvez, Juan Ramon Navarrete Garcia, and Diana Claudette Burgueño Mendivil (collectively, the individual defendants¹), alleging in part that a grower, Jose Gonzalo Espinoza Pablos (Gonzalo Espinoza), and the individual defendants had conspired to mishandle, misappropriate and/or convert millions of dollars AW had advanced for the benefit of a joint venture. The trial court granted Omega's motion brought on forum non conveniens grounds and stayed the case against it. It also granted a motion to quash service of summons as to the individual defendants, ruling there was insufficient evidence to show they had contacts with California or knowledge of any conspiracy so as to confer personal jurisdiction over them in California.

On appeal, AW contends the trial court erred by these rulings. As to the individual defendants, it contends the exercise of specific personal jurisdiction is appropriate because (1) the defendants admitted that they had certain contacts with

¹ AW originally sued 11 individuals, but only seven are parties to this appeal. For brevity and consistent with the parties' briefing, we will refer to the Espinoza defendants as Carlos Espinoza, Javier Espinoza, and Juan Espinoza. The trial court denied the individual defendants' motion as to Jose Gonzalo Espinoza Pablos and Daniela Dabdoub, and denied the individual defendants' motion to quash service on forum non conveniens grounds.

California, including engaging in e-mails, phone calls, and trips to AW's facilities in San Diego during which they allegedly made false claims to obtain AW's money, and in one defendant's case, worked at AW; (2) the defendants' California contacts were related to AW's claims; (3) AW proved the defendants engaged in false representations that they knew caused harm to AW in California; (4) the defendants failed to present evidence that jurisdiction would be unreasonable; and (5) the court improperly viewed the defendants' contacts with AW as separate from their California contacts. With respect to Omega, AW contends: (1) Omega did not meet its burden to show that Arizona was a suitable alternative forum, defendants were subject to Arizona jurisdiction, and the action was not barred by Arizona's statute of limitations; and (2) the trial court applied an incorrect legal standard in balancing the public and private interest factors, which favor jurisdiction in California.

We agree that Omega did not meet its burden to demonstrate that Arizona is a suitable forum for AW's lawsuit, and reverse the order staying the action as to Omega. As for the individual defendants, we affirm the order quashing service as to Carlos Espinoza, Navarrete and Burgeño, but reverse as to Javier Espinoza, Juan Espinoza, Arias and Machado based on AW's evidence that they regularly or weekly sent e-mails containing falsified or inflated requests for joint venture funding, activity having a substantial connection to AW's claims. We remand the matter for the trial court to enter a new order denying Omega's motion on forum non conveniens grounds, granting the motion to quash of Carlos Espinoza, Navarrete and Burgeño, and denying the motion to quash as to Javier Espinoza, Juan Espinoza, Arias and Machado.

FACTUAL AND PROCEDURAL BACKGROUND

We set forth the undisputed facts or facts favoring the trial court's order that are supported by substantial evidence. (*VirtualMagic Asia, Inc. v. Fil-Cartoons, Inc.* (2002) 99 Cal.App.4th 228, 234, fn. 1; *Sonora Diamond v. Superior Court* (2000) 83 Cal.App.4th 523, 535.)

The Joint Venture

AW is a California corporation located in San Diego. It grows and distributes produce throughout the United States, and is a large commercial supplier of tomatoes in California. Gonzalo Espinoza is a citizen and resident of Mexico, and he grows produce there in the Culiacan area. Omega is a produce distributor and Arizona corporation with its principal place of business in Nogales, Arizona.

In 2002, AW decided to start a program in Culiacan, Sinaloa, Mexico to ensure year-round tomato production, and sought to partner with a grower in that area. That year, at AW's San Diego offices, AW and Gonzalo Espinoza negotiated and entered into an oral joint venture agreement in which Gonzalo Espinoza would plant, grow, harvest, and exclusively ship tomatoes to AW for AW to distribute, and AW agreed to finance the operation and sell the produce from San Diego. AW agreed to finance the joint venture in exchange for 60 percent of the venture's profits or losses, and Gonzalo Espinoza was to receive 40 percent of the profits or losses of the venture in exchange for growing and shipping the produce to AW. AW was also to receive a commission on all sales of produce grown by the joint venture.

In November 2002, AW and Gonzalo Espinoza formed a Mexican corporation, Agricola EPSA, S.A. de C.V. (EPSA) as the vehicle for operating the joint venture, and appointed Gonzalo Espinoza its sole director and officer. He engaged primarily family members, citizens and residents of Mexico, to assist with the joint venture's administration and operation. EPSA's business transactions with AW were entered into in Mexico, but Gonzalo Espinoza came to AW approximately quarterly to update the status of the Joint Venture's operations, present budgets, and request funding, and brought other individual defendants to AW's San Diego offices to present information regarding operations and projecting in person. AW received financial information and accountings concerning the joint venture from some of the defendants via e-mail and in person, but at some point it came to learn that the information did not accurately reflect the joint venture's actual costs or true use of AW's funds. The joint venture was terminated in August 2013.

AW's Lawsuit

AW filed suit against Omega and the individual defendants, as well as other individual and corporate defendants, for civil theft, conversion, breach of fiduciary duty, fraud, negligence and negligent misrepresentation. It sought restitution by way of a claim for unjust enrichment and constructive trust, and pleaded a common count for monies had and received.² AW alleged Gonzalo Espinoza, and the Espinozas generally, had

² The operative pleading is AW's second amended complaint. AW also pleaded causes of action for breach of the joint venture agreement, accounting and violation of the Uniform Fraudulent Transfer Act against defendants not involved in this appeal.

improperly paid other defendants for services that were either not performed for the joint venture or rendered for their personal benefit. AW alleged it had advanced approximately \$130 million to Gonzalo Espinoza over the course of about 10 years as operating capital and for the joint venture's benefit, but had received only reports of losses and cost overruns. It alleged in part that unbeknownst to AW, Gonzalo Espinoza and other individual defendants had provided false accountings and were secretly siphoning off millions of dollars AW put toward the joint venture.

Motions to Quash

Omega moved to quash service of the summons for lack of personal jurisdiction, or alternatively to stay or dismiss the action based on forum non conveniens.³ On the issue of an inconvenient forum, it argued AW should have filed its claims in Arizona or Mexico. According to Omega, because it was formed in Arizona and its customers picked up their goods in Nogales, Arizona, it was subject to jurisdiction in Arizona. Omega presented the declaration of Roberto Gotsis, the treasurer and general manager of Agricola Gotsis, a Mexican produce grower with its principal place of business in Culiacan, Sinaloa, Mexico. Gotsis averred that Agricola Gotsis had a business arrangement with Omega in which Agricola Gotsis provided Omega with produce on consignment, which was delivered to and stored in Nogales, Arizona until one of

³ Omega's motion was filed jointly with defendant Agricola Gotsis, S.A. de C.V. (Agricola Gotsis), but the court ruled Agricola Gotsis's contacts with California did not establish it was subject to general or specific personal jurisdiction in California. AW does not appeal that ruling. The trial court denied Omega's motion to quash service challenging personal jurisdiction over it.

Omega's customers purchased the produce. He averred that the buyers accepted the goods f.o.b. Nogales,⁴ assuming the risk of loss and accepting title to them in Nogales. Omega also presented a declaration from its treasurer, Toru Fujiwara, who likewise explained that all of the produce distributed by Omega was accepted from growers under consignment and stored in Nogales until it was retrieved f.o.b. Nogales by its customers. He averred that rarely, Omega had to assume the cost of freight and accepted the return of rejected produce that a customer transported to California after retrieving it from Nogales, but that circumstance had happened less than five times over the past five years. According to Fujiwara, after Omega's customers accepted the produce, Omega had no control over the goods or anything done with them. He stated: "Except for the rare limitation noted above, Omega Produce has no connection with California and has never (i) maintained a place of business in California; (ii) designated a registered agent for service of process in California; (iii) maintained a bank account in California; (iv) maintained a telephone listing in California; (v) solicited, hired or paid employees in California; (vi) solicited contact with California residents; (vii) engaged in marketing or otherwise solicited business in California; or (viii) held any professional licenses issued by the State of California."

Eleven of the individual defendants moved to quash service of the summons on them for lack of personal jurisdiction or alternatively on the grounds of an inconvenient

⁴ An agreement using the term "f.o.b. seller's place of business" means that the seller bears the risk of putting them into the carrier's possession, and the risk passes to the buyer when the goods are delivered to the carrier. (Cal. U. Com. Code, § 2319, subd. (1)(a); 1 White & Summers' U. Com. Code (5th ed. 2006) § 6-4.)

forum. In their motion, they argued all of the claims-related activity took place in Mexico. They presented declarations asserting that they were not U.S. citizens or residents of California, they did not consent to jurisdiction in California, and, with the exception of Carlos Espinoza, they had never engaged in any business transaction with AW in California. Each defendant's declaration addressed his or her general contacts with California.⁵ The individual defendants also presented a declaration from Walter Daniel Diaz, a Mexican attorney, who stated that as a condition of admitting AW as an

⁵ Carlos Espinoza, who stated he was in charge of supplier and customer relations for EPSA, averred that he had a Wells Fargo bank account in California with a zero balance, a California driver's license and a car registered in California but no assets in California; he lived in California from 2006 to 2008 and then returned to Culiacan. Javier Espinoza, who stated he was the director of production for EPSA, averred that he had a Wells Fargo bank account in California but no other assets in California, had no California driver's license and never lived in California, but visited California approximately 21 times in the last five years. Juan Espinoza averred that he was assistant manager of EPSA, he has had a Wells Fargo bank account in California but no California driver's license and no assets in California, and he visited California approximately five times in the last five years. Antonio Arias averred that until 2007 he was an employee of EPSA, he had no bank account or assets in California, he does not have a California driver's license and never lived in California, and he had visited California approximately five times in the last five years. Ramon Machado averred that he was the controller of EPSA from 2010 to 2013, he had no bank account or assets in California, he does not have a California driver's license and never lived in California, and he had not been to California in the last five years. Juan Navarrete averred he was in charge of payroll at EPSA, he had no bank account or assets of any kind including property in California, he does not have a California driver's license and never lived in California, and he had visited California approximately three times in the last five years. Diana Burgueño averred that she was in charge of human resources for EPSA, she had no bank account or assets in California, she does not have a California driver's license, and she had visited California approximately five times in the last five years. All of the individual defendants' declarations were signed in June 2015.

EPSA shareholder, AW had agreed to be considered as a Mexican national for all purposes related to the rights and obligations under EPSA's charter.⁶

AW opposed the motions. With regard to Omega, AW argued in part that Omega had not provided proof of a proper alternative suitable forum in that it had only claimed Arizona jurisdiction was proper for it, and had not demonstrated the state of Arizona's ability to hale *all* of the defendants into its jurisdiction. AW also argued Omega did not articulate the applicable statutes of limitation or whether its claims fell within the limitations time limits. With respect to the individual defendants' motion to quash, AW argued the defendants had contacts in California related to the joint venture and tort claims so as to subject them to specific jurisdiction in California.

The Trial Court's Ruling

The trial court granted Omega's motion on forum non conveniens grounds and stayed the case for AW to refile in the state of Arizona. It ruled first that Omega was

⁶ Attached to attorney Diaz's declaration was a copy of minutes of a shareholder meeting amending the EPSA charter and certified translation, which reads: "Third clause: foreign shareholders formally obligate themselves towards the ministry of foreign affairs to be considered as nationals regarding the shares they acquire or hold, as well as the property, rights, concessions and interests that such corporations hold, or the rights and obligations derived from the agreements entered into by the corporations, and not to invoke therefore the protection of their governments, under penalty of losing in favor of the nation the shareholding interests they have acquired." (Capitalization omitted.) AW objected to portions of Diaz's declaration but the trial court did not rule on the objections. Though AW acknowledges some of its objections in its reply papers, it does not meaningfully reargue them on appeal with citation to authority.

subject to jurisdiction in California, but agreed, "after balancing the public and private interests involved, that Arizona is the suitable forum for resolution of any action against Omega. There is no question that Arizona is a suitable forum and the statute of limitations would not be a bar and nothing impairs [AW's] ability to obtain a valid judgment." The court ruled that Arizona was a suitable forum because Omega was subject to jurisdiction there; it pointed out Omega was formed there and its customers picked up their goods in Nogales. The court further ruled that Arizona was more convenient because it provided "greater access to evidentiary sources," reasoning "Omega conducts its business in Nogales, Arizona" and "[a]ny witnesses who can testify regarding their businesses are therefore likely to reside in Arizona."

The court likewise granted the individual defendants' motion to quash on grounds of personal jurisdiction. It ruled: "It does not appear that any of the individual defendants directed their activity at California, other than [AW] being domiciled in California. . . . [T]here is no written agreement regarding the terms and conditions, the governance and the corporate purpose of EPSA other than the corporate charter of EPSA." The court found that the individual defendants "were either employees of EPSA or shareholders or relations to . . . Gonzalo Espinoza. There is insufficient evidence to support contacts with California or knowledge of any 'conspiracy' directed at [AW]."

AW filed this appeal.

DISCUSSION

I. *Personal Jurisdiction Over Individual Defendants*

A. *Legal Principles*

" 'California courts may exercise personal jurisdiction on any basis consistent with the Constitutions of California and the United States. [Citation.] 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." ' ' ' ' ' (Snowney v. Harrah's Entertainment, Inc. (2005) 35 Cal.4th 1054, 1061 (Snowney); Pavlovich v. Superior Court (2002) 29 Cal.4th 262, 268 (Pavlovich); see also ViaView, Inc. v. Retzlaff (2016) 1 Cal.App.5th 198, 209.) The minimum contacts test is not susceptible of mechanical application, but " 'an essential criterion in all cases is whether the "quality and nature" of the defendant's activity is such that it is "reasonable" and "fair" to require him to conduct his defense in that State.' " (Pavlovich, at p. 268; Snowney, at p. 1061.) Our inquiry is whether the court's order comports with the limits imposed by federal due process. (Buchanan v. Soto (2015) 241 Cal.App.4th 1353, 1362.)

The minimum contacts test embraces two types of jurisdiction, general and specific.⁷ (Snowney, supra, 35 Cal.4th at p. 1062; Walden v. Fiore (2014) 571 U.S. ____ [134 S.Ct. 1115, 1121, fn. 6].) "Specific jurisdiction results when the defendant's contacts with the forum state, though not enough to subject the defendant to the general

⁷ AW does not argue the individual defendants are subject to general jurisdiction. Such jurisdiction is appropriate over a foreign entity when its "affiliations with the State are so "continuous and systematic" as to render them essentially at home in the forum State.' " (Young v. Daimler Agency (2014) 228 Cal.App.4th 855, 858, fn. 2, quoting Goodyear Dunlop Tires Operations, S.A. v. Brown (2011) 564 U.S. 915, 919.) General jurisdiction may bring the defendant before a California court even if the cause of action is not related to the defendant's activities in the state. (Young, at p. 858, fn. 2.)

jurisdiction of the forum, are sufficient to subject the defendant to suit in the forum on a cause of action related to or arising out of those contacts." (*Aquila, Inc. v. Superior Court* (2007) 148 Cal.App.4th 556, 569-570.) "When determining whether specific jurisdiction exists, courts consider the ' "relationship among the defendant, the forum, and the litigation.' " [Citations.] A court may exercise specific jurisdiction over a nonresident defendant only if: (1) 'the defendant has purposefully availed himself or herself of forum benefits' [citation]; (2) 'the "controversy is related to or 'arises out of' [the] defendant's contacts with the forum" ' [citations]; and (3) ' "the assertion of personal jurisdiction would comport with 'fair play and substantial justice.' " ' " (*Pavlovich, supra*, 29 Cal.4th at p. 269; see also *Walden v. Fiore, supra*, 571 U.S. at p. ____ [134 S.Ct. at p. 1121].)

Our state's high court has explained that " '[t]he purposeful availment inquiry . . . focuses on the defendant's intentionality. [Citation.] This prong is only satisfied when the defendant purposefully and voluntarily directs his activities toward the forum so that he should expect, by virtue of the benefit he receives, to be subject to the court's jurisdiction based on' his contacts with the forum. [Citation.] Thus, the ' "purposeful availment" requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of "random," "fortuitous," or "attenuated" contacts [citations], or of the "unilateral activity of another party or a third person." ' " (*Pavlovich, supra*, 29 Cal.4th at p. 269; see also *Snowney, supra*, 35 Cal.4th at pp. 1062-1063.)

The United States Supreme Court revisited these principles for intentional torts in *Walden v. Fiore, supra*, 571 U.S. at pp. ____, [134 S.Ct. at pp. 1121, 1123]. *Walden*

reiterated that "it is . . . insufficient [for minimum contacts] to rely on a defendant's 'random, fortuitous, or attenuated contacts' or on the 'unilateral activity' of a plaintiff." (*Id.* at p. 1123.) In *Walden*, the court held that a Nevada court could not exercise personal jurisdiction over a Georgia police officer merely on the basis that he knew his allegedly tortious conduct in Georgia (his seizure of cash from plaintiffs' luggage in Georgia as well as his preparation and sending of an assertedly false affidavit to a United States Attorney's office in Georgia) would delay the return of funds to the plaintiffs, who had connections to Nevada. In reversing the Ninth Circuit Court of Appeals, the court explained that the defendant's suit-related conduct must create a substantial connection with the forum State. (*Id.* at p. 1122.) As relevant to the facts there, the court emphasized that this relationship must arise out of contacts the defendant *himself* created with the forum State, not from the unilateral activity of another party or third person. (*Ibid.*) Further, minimum contacts analysis looks to the defendant's contacts with the forum State itself, not the contacts with persons who reside there. (*Ibid.*) In reaching this conclusion, the court observed that "a defendant's contacts with the forum State may be intertwined with his transactions or interactions with the plaintiff or other parties. But a defendant's relationship with a plaintiff or third party, *standing alone*, is an insufficient basis for jurisdiction." (*Id.* at p. 1123, italics added.)

The *Walden* court looked to *Calder v. Jones* (1984) 465 U.S. 783, which requires an assessment of whether the effects of the alleged tort connect the defendant to the forum state, not just to the plaintiff who lives there. (*Walden v. Fiore, supra*, 571 U.S. at p. ___ [134 S.Ct. at pp. 1123-1124].) Under *Calder's* principles, the officer in *Walden*

lacked the minimum contacts with Nevada: "[N]o part of [defendant's] course of conduct occurred in Nevada . . . [he] never traveled to, conducted activities within, contacted anyone in, or sent anything or anyone to Nevada." (*Id.* at p. 1124.) The officer's "actions in Georgia did not create sufficient contacts with Nevada simply because he allegedly directed his conduct at plaintiffs whom he knew had Nevada connections." (*Id.* at p. 1125.) Furthermore, the fact the plaintiffs suffered the delayed return of funds caused by the officer while residing in the forum did not authorize jurisdiction, as under *Calder*, "mere injury to a forum resident is not a sufficient connection to the forum." (*Walden v. Fiore*, at p. 1125.) "Regardless of where a plaintiff lives or works, an injury is jurisdictionally relevant only insofar as it shows that the defendant has formed a contact with the forum State. The proper question is not where the plaintiff experienced a particular injury or effect but whether the defendant's conduct connects him to the forum in a meaningful way." (*Ibid.*) In that case, the plaintiffs "would have experienced this same lack of access in California, Mississippi, or wherever else they might have traveled and found themselves wanting more money than they had." (*Ibid.*) In short, the court held, the officer's relevant conduct occurred entirely in Georgia, and the mere fact his conduct affected plaintiffs with connections to Nevada did not suffice to authorize Nevada jurisdiction. (*Id.* at p. 1126.)

B. *Standard of Review*

It is AW's initial burden to demonstrate facts justifying the exercise of specific jurisdiction. (*Snowney, supra*, 35 Cal.4th at p. 1062.) AW must do more than "merely allege jurisdictional facts," it must present evidence—by affidavits and other

authenticated documents—in order to demonstrate competent evidence of jurisdictional facts. (*CenterPoint Energy, Inc. v. Superior Court* (2007) 157 Cal.App.4th 1101, 1118; *In re Automobile Antitrust Cases I and II* (2005) 135 Cal.App.4th 100, 110.)

Furthermore, "[d]eclarations cannot be mere vague assertions of ultimate facts, but must offer specific evidentiary facts permitting a court to form an independent conclusion on the issue of jurisdiction.'" (*CenterPoint*, at p. 1118.)

If AW meets that burden, the individual defendants then have the burden of demonstrating that the exercise of jurisdiction would be unreasonable. (*Snowney, supra*, 35 Cal.4th at p. 1062.) "In reviewing a trial court's determination of jurisdiction, we will not disturb the court's factual determinations 'if supported by substantial evidence.' [Citation.] 'When no conflict in the evidence exists, however, the question of jurisdiction is purely one of law and the reviewing court engages in an independent review of the record.'" (*Pavlovich, supra*, 29 Cal.4th at p. 273; *Moncrief v. Clark* (2015) 238 Cal.App.4th 1000, 1005.) To the extent the court has reached conclusions concerning the legal significance of facts, we likewise review those conclusions independently. (*Buchanan v. Soto, supra*, 241 Cal.App.4th at p. 1362.)

Where defendants from foreign nations are involved, "[w]e are charged to apply a higher degree of care when considering jurisdictional issues." (*In re Automobile Antitrust Cases I and II, supra*, 135 Cal.App.4th at p. 113.)

C. AW's Factual Showing

Because AW had the initial burden, we first review its evidence of the individual defendants' contacts with California.

In opposition to the individual defendants' motion to quash, AW presented declarations, one supplemental, of Ira Gershow, its CFO and a certified public accountant. In his first declaration, Gershow stated that the defendants, Mexico citizens and residents, were representatives, agents, or employees of the joint venture. Specifically, he averred that defendant Carlos Espinoza acted as the joint venture's packing manager and was responsible for national marketing sales; Javier Espinoza was in charge of tomato production, including costs and budgets; Juan Espinoza was in charge of directing the joint venture's accounting; Machado, the joint venture's controller and accountant, helped prepare and account for payroll; Arias acted as controller during the 2008-2009 season and a consultant; Navarrete was the joint venture's payroll accountant; and Burgueño was its human resources manager.

Gershow averred that AW had engaged in a detailed review of the joint venture's accounting records for 2008 to 2012 and learned of financial and accounting irregularities; its investigation demonstrated secret transfers back to the Espinozas in the form of kickbacks, and revealed that Machado's weekly requests for money to pay for labor obligations "misrepresented and grossly overstated the amounts of monies actually paid for Joint Venture labor obligations" while the remaining sums were transferred back to the Espinozas. Gershow attached a spreadsheet showing a sample of one week of Machado's requests. He averred that the defendants engaged outsourcing companies (all apparently Mexican companies) to take care of the joint venture payroll and other employment-related obligations in exchange for a commission, but AW learned the

outsourcing companies "were used to cover the Espinozas [*sic*] misappropriation of millions of dollars [AW] had advanced to the Joint Venture."⁸

Gershow averred that the Espinozas diverted a substantial portion of tomatoes and secretly sold them in the US and domestic market without reporting the sales to AW, and kept the proceeds for themselves. Specifically, he stated that in 2010, the Espinozas sold joint venture produce via a broker, Roberto Ramirez, to Anavale Produce Corp (Anavale), which AW alleged was a Texas corporation, and transferred the money to Juan Espinoza, who did not report the sales to AW but kept the proceeds. He attached documents showing sales proceeds going from Anavale to Ramirez, as well as a wire transfer from Anavale to Juan Espinoza signed by an Anavale sales representative in McAllen, Texas.

In his supplemental declaration, Gershow stated that Carlos Espinoza worked in San Diego at AW's offices and was on the AW payroll, and Gonzalo Espinoza would come to AW approximately quarterly to, among other things, update the status of the Joint Venture's operations, present budgets, and request funding, bringing Carlos Espinoza, Javier Espinoza, Juan Espinoza, and Arias to AW's San Diego offices to present information regarding operations and projecting in person. According to Gershow, Arias, Machado, Javier Espinoza and Juan Espinoza "regularly presented

⁸ In part, Gershow stated that to hide the scheme, the defendants would transfer each week's payroll to outsourcing companies, but unknown to AW, they also sent secret instructions for distribution of some of the sums back to the Espinozas as a kickback. The exhibits included a letter that Gershow described as from Navarrete to an outsourcing company with "secret distribution instructions" directing the distribution of money to various persons and entities, including Gonzalo Espinoza.

financial information regarding the Joint Venture to [AW] via e[-]mail and in person" but AW "believes this information was false and fraudulent in that it did not accurately reflect the Joint Venture's actual costs or true use of the funds given to the Joint Venture by [AW]." He averred that Machado and Arias "regularly prepared and presented Joint Venture accountings to [AW] for the Joint Venture's payroll and other expenses and requested funds (often weekly)"; "[t]his information was generally transmitted to [AW] by e[-]mail, and sometimes in person"; and AW "reasonably believes that this information was false and inaccurate."

Gershow averred that Navarrete "regularly prepared and presented payroll information to [AW] in his roll [*sic*] as payroll accountant for the Joint Venture."

Gershow averred that Burgueño gave what AW believed was deliberately falsified information to AW "generally . . . by e[-]mail and sometimes in person." He referenced two e-mails from February and July 2010 in which Burgueño (1) informed him that Ramon (presumably Machado) and another individual were doing an updated account (unspecified other than by accounts 1115, 1117, 1105) and gave him modified numbers, and (2) sent a first draft of a "growing budget," telling Gershow they were additionally gathering data of certain capital investments and would let him know the amount. He stated that Burgueño "regularly prepared and presented similar information" in her role as human resources manager.

Gershow also referred to a March 2005 e-mail from Carlos Espinoza to Roberto Gotsis regarding packing cucumbers, which he states shows an AW box in the background. According to Gershow, AW was "unable to definitively state the purpose of

the recovered documents," but this and other documents "seem to indicate that the Espinozas were either using Joint Venture assets to grow with third parties . . . or were simply taking the Joint Venture produce and diverting it to third party deals about which [AW] had no knowledge."

Gershow does not directly state where the referenced in-person meetings took place, how often, or who from AW participated in these in-person meetings.

D. *Analysis*

Viewing AW's evidence and drawing all inferences from it in favor of the trial court's order as we must, we are compelled to conclude AW did not demonstrate that Carlos Espinoza, Navarette and Burgueño are subject to specific jurisdiction in California, and we uphold the court's order as to those defendants. However, as we explain below, we conclude this state may exercise specific jurisdiction over Javier Espinoza, Juan Espinoza, Arias and Machado.

1. *The Requisite Connection is Not Established by the Defendants' Mere Employment by EPSA or Work on the Joint Venture's Behalf, or by Unilateral Activity of Another*

As set forth above, in the case of intentional torts as are alleged here, *Walden* requires us to assess whether the effects of the tortious conduct connect the individual defendants to California itself, not just to AW who is domiciled or has ties to California. (*Walden v. Fiore, supra*, 571 U.S. at pp. ____ [134 S.Ct. at pp. 1122-1124].) The "*Calder* effects test requires intentional conduct *expressly aimed at or targeting* the forum state in addition to the defendant's knowledge that his intentional conduct would cause harm in

the forum." (*Pavlovich, supra*, 29 Cal.4th at p. 271; *Walden*, at p. 1124, fn. 7.)

Foreseeability of harm, without more, is insufficient to support jurisdiction. "The knowledge that harm will likely be suffered in the forum state, 'when unaccompanied by other contacts,' is 'too unfocused to justify personal jurisdiction.'" (*Pavlovich*, at p. 272; *Walden*, at p. 1125; see also *In re Automobile Antitrust Cases I & II, supra*, 135 Cal.App.4th at p. 122.)

Such a connection is not established by the mere fact the individual defendants have held various positions or employment with EPSA, a Mexican corporation, or worked on behalf of the joint venture, which is a distinct entity. (*Victor Valley Transit Authority v. Workers' Compensation Appeals Bd.* (2000) 83 Cal.App.4th 1068, 1076 ["A joint venture is a distinct entity virtually identical to a partnership"].) "[J]urisdiction over an employee does not automatically follow from jurisdiction over the corporation which employs him[.]" (*Keeton v. Hustler Magazine, Inc.* (1984) 465 U.S. 770, 781, fn. 13; *Calder v. Jones, supra*, 465 U.S. at p. 790 ["[e]ach defendant's contacts with the forum State must be assessed individually" and the defendants' "status as employees does not somehow insulate them from jurisdiction"]; see *Goehring v. Superior Court* (1998) 62 Cal.App.4th 894, 904 ["jurisdiction over a partnership does not necessarily permit a court to assume jurisdiction over the individual partners"].) Jurisdiction must be established with respect to each individual nonresident defendant, as the relationship between the defendant and the forum State "must arise out of contacts that the 'defendant *himself*' creates with the forum State." (*Walden v. Fiore, supra*, 571 U.S. at p. ____ [134 S.Ct. at

p. 1122]; *Snowney, supra*, 35 Cal.4th at p. 1062; *Sibley v. Superior Court* (1976) 16 Cal.3d 442, 448 ["the purpose of other parties cannot be imputed to petitioner for the purpose of assuming personal jurisdiction over him"]; *In re Automobile Antitrust Cases I & II, supra*, 135 Cal.App.4th at p. 113 ["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"].)

Moreover, the individual defendants demonstrated via Diaz's declaration, and AW does not meaningfully dispute,⁹ that AW agreed to be considered a Mexican national with respect to "the rights and obligations derived from the agreements entered into" by it (see footnote 6, *ante*) and also agreed "not to invoke therefore the protection of their governments" In view of this evidence, the trial court reasonably found, and we infer it did so find, that as relevant to this litigation the joint venture between AW and EPSA was one between Mexican entities, one of which (AW) was domiciled in California. Thus, the fact that Gonzalo Espinoza hired the individual defendants, all Mexican citizens and residents, to work for EPSA in various capacities to further a

⁹ The individual defendants rely on Gershow's declaration to state that AW's and their own "duties, obligations and rights and responsibilities" are governed by EPSA's corporate charter and Mexican law. In reply, AW attacks that statement as unsupported by the record, as conflating EPSA with the joint venture, and as improperly treating AW's rights and duties "as shareholders" as the same thing as its rights and duties "as joint venturers." But the language of EPSA's corporate charter set forth by attorney Diaz is not so limited.

Mexican joint venture does not establish any of the individual defendants intentionally or voluntarily directed any conduct towards the state of California.

Nor is purposeful availment established by AW's evidence that when Gonzalo Espinoza came to AW in San Diego to provide reports on the joint venture, he brought Carlos Espinoza, Javier Espinoza, Juan Espinoza and Arias with him. As we have stated, the defendant cannot be haled into court based on the " 'unilateral activity of another party or a third person' " (*Walden v. Fiore, supra*, 571 U.S. at p. ____ [134 S.Ct. at p. 1122]; see also *Bridgestone Corp. v. Superior Court* (2002) 99 Cal.App.4th 767, 775.) The requisite contacts between these defendants and California cannot arise from the unilateral activity of Gonzalo Espinoza in bringing them to California.

2. *AW Did Not Meet its Burden as to Carlos Espinoza, Navarrete and Burgueño*

As for Carlos Espinoza, AW presented evidence that he worked in San Diego at AW's offices from 2006 to 2008 and was on the AW payroll, and also presented evidence he had sent e-mails to Gershow and another AW representative regarding the joint venture in 2005, 2009 and 2010, the first in 2005 explaining sizes of cucumbers and how they were being packed to some individuals, and the others regarding the 2009-2010 season results and EPSA's account with another company on which EPSA owed money.

Gershow characterizes the 2005 e-mail as being addressed to Roberto Gotsis with Agricola Gotsis. But evidence of the 2005 e-mail from Carlos Espinoza, then a Mexican citizen and resident, to a Mexican company does not establish any contact with California, much less that he expressly aimed any tortious conduct at California or intentionally targeted California. (*Pavlovich, supra*, 29 Cal.4th at p. 273.) And as *Walden v. Fiore* has made clear, mere loss of AW's profits or commissions in California stemming from such out of state contacts is not a sufficient connection to California by itself. (See *Walden v. Fiore, supra*, 57 U.S. at p. ____ [134 S.Ct. at pp. 1125-1126].) AW gives no record citation for its assertion on appeal that Carlos *himself* (as opposed to the individual defendants generally) "regularly communicated with AW personnel in San Diego, in person and via email, in connection with the Joint Venture." Even if that were the case with regard to Carlos Espinoza's employment with AW from 2006 to 2008, AW presented no evidence that he took actions with respect to that employment in California that had any " 'substantial nexus or connection' " with AW's claim. (*Snowney, supra*, 35 Cal.4th at p. 1068; see also *Buchanan v. Soto, supra*, 241 Cal.App.4th at p. 1364.) This latter conclusion applies to Carlos Espinoza's 2009 and 2010 e-mails, which AW characterizes as relating to tax payments or a proposed planting program. These e-mails, even assuming they constitute contacts with California, appear to have little connection to AW's tort claims, which are based on the operative facts of false payroll requests and accountings, the spending of joint venture assets for non-joint venture purposes, the diversion of produce intended for AW to third parties, and the use of outsourcing companies to divert joint venture funds and kick them back to the Espinozas. When the

operative facts of the controversy are not related to the defendant's contact with the state, the cause of action does not arise from that contact. (*Snowney*, at p. 1068.) We conclude AW failed to meet its burden of demonstrating facts justifying the exercise of personal jurisdiction over Carlos Espinoza.

We reach the same conclusion concerning AW's showing as to Navarrete and Burgueño. AW's evidence as to Navarrete is Gershow's statement that he "regularly prepared and presented payroll information to [AW]" as the joint venture's payroll accountant, and evidence that Navarrete wrote a January 2011 letter to a Mexican outsourcing company directing the distribution of money to Gonzalo Espinoza's accounts, to EPSA, and to another unidentified individual and company (EME Recursos). Even assuming the payroll information was false, neither of Gershow's statements demonstrate that Navarrete himself sent such payroll information to California or presented it there. And Navarrete's letter to a Mexican outsourcing company directing money to other Mexican individuals or companies does not constitute intentional targeting or tortious conduct aimed at California.

Likewise, the sole evidence as to Burgueño consists of the two e-mails she sent to AW representatives passing along general information and a growing budget. But AW has not shown that either of these contacts has a substantial nexus or connection to AW's causes of action. This conclusion applies to Gershow's generic statement concerning Burgueño's actions in sending e-mail communications of "similar information" to AW in her capacity as human resources manager. In addition, absent evidence concerning the location of any in-person meetings or other specifics concerning such meetings, there is

no reason to conclude those meetings took place in San Diego. Given the absence of evidence on that point, the trial court reasonably concluded by implication that the in-person meetings did not take place there. Finally, because we have concluded that the trial court properly deemed the joint venture as one between Mexican nationals, it follows that neither Navarrete's nor Burgueño's actions furthering joint venture business were expressly aimed or intentionally directed at the state of California. Having shown no jurisdictionally relevant contacts in California, AW did not meet its burden to show the exercise of personal jurisdiction over Navarrete or Burgueño was proper.

3. *The Court Erred by Granting the Motion to Quash of Javier Espinoza, Juan Espinoza, Arias, and Machado*

As to Javier Espinoza, Juan Espinoza, Arias, and Machado, AW's evidence shows:

- these individuals regularly presented assertedly false financial information regarding the joint venture's costs and use of funds to AW via e-mail and in person;
- Machado and Arias, directed by Juan Espinoza, regularly prepared and presented inflated joint venture accountings to AW for labor obligations, payroll and other expenses, and requested funds on a weekly basis, prompting AW to deposit amounts into the joint venture's bank account, where only some was used for payroll and the remaining kicked back to the Espinozas. Gershow states that this information, which AW believes was false and inaccurate, was "generally transmitted to [AW] by e[-]mail, and sometimes in person."
- Juan Espinoza received wire transfers from Anavale for joint venture produce sales from EPSA to Anavale.

With respect to the latter evidence involving Juan Espinoza and Anavale, we conclude that arranging wire transfers from a Texas entity to a Mexican resident and citizen for produce grown in Mexico and sold by a Mexican company to the Texas company, even if reflecting some tortious conduct, is not conduct intentionally directed or expressly aimed at the state of California. The sole connection between these actions and AW's claims is the loss of sales suffered by AW, but again, under *Walden v. Fiore*, *supra*, 571 U.S. ____ [134 S.Ct. at p. 1125], mere injury occurring to AW, which happens to be domiciled in the forum state, is not enough by itself to authorize specific jurisdiction.

With respect to Machado, who was a controller for EPSA from 2010 to 2013, the individual defendants presented evidence that during that time, he did not visit the state of California. The trial court accepted this evidence for purposes of the individual defendants' motion, and we conclude it found implicitly that Machado did not transact business in California on the joint venture's behalf. And we have already concluded that Gershow's assertion that these individuals presented information "in person" to AW was too unspecific for the trial court to conclude that those meetings took place at AW's San Diego offices. None of AW's other evidence demonstrates that Javier Espinoza, Juan Espinoza, or Arias physically entered California for purposes related to AW business, other than the times they were brought there by Gonzalo Espinoza. Meetings in San Diego occurring as a result of the actions of another party is insufficient to authorize specific jurisdiction. (*Pavlovich*, *supra*, 29 Cal.4th at p. 269; *Archdiocese of Milwaukee v. Superior Court* (2003) 112 Cal.App.4th 423, 436.)

We are left with the evidence of "regular[] or weekly" e-mails sent to AW by or at the direction of Javier Espinoza, Juan Espinoza, Arias, and Machado containing assertedly false information concerning the joint venture's costs and use of funds, its financials, accountings and requests for funding. Of course, a nonresident defendant need not have been physically present in the forum state as long as the defendant otherwise made sufficient contacts in that state, such as by mail, telephone, or electronic communication. (See *Gilmore Bank v. AsiaTrust New Zealand Limited* (2014) 223 Cal.App.4th 1558, 1572-1573 ["It 'is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines, thus obviating the need for physical presence within a State in which business is conducted' ".].)

These defendants' actions in reaching out to California via e-mail on a regular or weekly basis to request funds, which AW then transferred from its physical location in California to EPSA for payroll and other joint venture expenses, amounts to conduct by which they purposefully availed themselves of the privilege of doing business in California. In *Hall v. LaRonde* (1997) 56 Cal.App.4th 1342, Hall, a California resident with its principal place of business in California, sued LaRonde, a New York resident with his principal place of business there, for breach of a software licensing agreement that required LaRonde to pay Hall royalty payments for every license sold. (*Id.* at pp. 1344, 1347.) In the course of performing under the agreement, Hall and LaRonde worked together from their respective locations via telephone and e-mail to integrate and to upgrade their respective software. (*Id.* at pp. 1345, 1347.) On appeal, the appellate

court reversed an order granting LaRonde's motion to quash, holding that the telephone and e-mail contacts were sufficient to establish specific jurisdiction. (*Id.* at pp. 1344, 1347.) It pointed out that Hall reached out to New York in a search for business and that LaRonde "reached back to California," doing more than merely purchasing a software module but working with Hall to integrate and modify it. (*Id.* at p. 1347.) Further, the parties' agreement for continued royalties "created a ' "continuing obligation[]" ' between [LaRonde] and a resident of California. [Citation.] [¶] LaRonde's contacts with California were more than ' "random," "fortuitous," or "attenuated." ' [Citation.] Nor were the contacts the ' "unilateral activity of another party or third person." ' [Citation.] LaRonde purposefully derived a benefit from interstate activities. [Citation.] It is fair to require that he account in California for the consequences that arise from such activities." (*Id.* at p. 1347, quoting *Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 475-476.)

That AW agreed to be treated as Mexican national for joint venture purposes does not alter the fact that these defendants on a regular basis reached out to AW's place of business in California, specifically for the purpose of seeking AW's transfer of money from California. Gershow's declaration was sufficiently specific that we may conclude these defendants specifically and intentionally directed their actions to California.

Furthermore, we conclude AW's claims are related to or arise out of these four defendants' forum contacts. (*Pavlovich, supra*, 29 Cal.4th at p. 269.) " '[A] claim need not arise directly from the defendant's forum contacts in order to be sufficiently related to the contact to warrant the exercise of specific jurisdiction.' " (*Snowney, supra*, 35 Cal.4th at p. 1068.) " '[T]he more wide ranging the defendant's forum contacts, the more readily

is shown a connection between the forum contacts and the claim.' " (*Ibid.*) Here, AW alleges that these defendants engaged in fraud on a regular or weekly basis by e-mailing to AW false or inflated accountings and requests for payment, which were then used for purposes unrelated to the joint venture or diverted to the Espinozas' personal use.

Because AW's claims bear a substantial connection to the defendants' e-mails intentionally and expressly aimed at California and seeking the release of funds from California, the exercise of specific jurisdiction is appropriate.

"If a defendant has purposely availed himself of the benefits of the forum state, and the controversy is related to the defendant's contacts with the forum, the defendant will be subject to specific jurisdiction if it would be fair. [Citation.] 'In making this determination, the "court 'must consider the burden on the defendant, the interests of the forum State, and the plaintiff's interest in obtaining relief. It must also weigh in its determination "the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies." ' " [Citation.]' [Citation.] However, where a defendant who ' "purposefully has directed [his or her] activities at forum residents seeks to defeat jurisdiction, [he or she] must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable." ' " (*Moncrief v. Clark, supra*, 238 Cal.App.4th at p. 1008, quoting *Snowney, supra*, 35 Cal.4th at p. 1070.)

In arguing that the exercise of jurisdiction would be unfair and unreasonable, the individual defendants merely point to the fact they are Mexican nationals who live

hundreds of miles from San Diego, and they assert all of their acts occurred in Mexico.¹⁰ Such a perfunctory argument focusing on their non-California residency disregards AW's evidence of their regular or weekly e-mails seeking joint venture funding, and it falls far short of meeting their burden to show a *compelling* case of unreasonableness. (Accord, *Moncrief v. Clark*, *supra*, 238 Cal.App.4th at p. 1008.) They also assert that AW has availed itself of the courts of Mexico. But they cite a "statement" of attorney Diaz that is not signed under penalty of perjury under the laws of the State of California as required by Code of Civil Procedure section 2015.5, and consequently has no evidentiary value. (Accord, *ViaView, Inc. v. Retzlaff*, *supra*, 1 Cal.App.5th at p. 217.) And the claim that EPSA has commenced litigation in Mexico at AW's direction is unsupported by any citation to the record. We disregard such claims.

In sum, the trial court erred by granting the motion to quash as to Javier Espinoza, Juan Espinoza, Arias, and Machado.

II. *Forum Non Conveniens* Ruling

A. *Legal Principles and Standard of Review*

"Forum non conveniens is an equitable doctrine invoking the discretionary power of a court to decline to exercise the jurisdiction it has over a transitory cause of action when it believes that the action may be more appropriately and justly tried elsewhere."

¹⁰ The sole argument made by the individual defendants on this point below was that "the exercise of jurisdiction by the court over this matter would not conform with fair play and substantial justice" because "AW went to Mexico, entered into a joint venture under the laws of Mexico, (the EPSA corporate charger), the purpose of the joint venture was to grow produce in Mexico, and all the alleged improper actions of moving defendants took place in Mexico."

(*Stangvik v. Shiley Inc.* (1991) 54 Cal.3d 744, 751 (*Stangvik*)). The doctrine is codified in Code of Civil Procedure section 410.30.¹¹ Both case authority and the statute distinguish between the dismissal of an action on this ground and a stay. (*Archibald v. Cinerama Hotels* (1976) 15 Cal.3d 853, 857; see *Verdugo v. Alliantgroup, L.P.* (2015) 237 Cal.App.4th 141, 161.) When, as here, a court stays an action on ground of forum non conveniens, it retains jurisdiction over the parties and the cause to protect the interests of the California resident pending the foreign forum's final decision. (*Ibid.*) Omega as the moving defendant bears the burden of proof on a motion to stay or dismiss on grounds of an inconvenient forum. (*Stangvik*, at p. 751; *David v. Medtronic, Inc* (2015) 237 Cal.App.4th 734, 743.)

In ruling on a motion based on this doctrine, the trial court engages in a two-step process, first determining whether the proposed alternative forum is a suitable place for trial. (*Stangvik, supra*, 54 Cal.3d at p. 751; *David v. Medtronic, Inc., supra*, 237 Cal.App.4th at p. 741; *National Football League v. Fireman's Fund Insurance Company*

¹¹ Code of Civil Procedure Section 410.30, subdivision (a) provides: "When a court upon motion of a party or its own motion finds that in the interest of substantial justice an action should be heard in a forum outside this state, the court shall stay or dismiss the action in whole or in part on any conditions that may be just." The Judicial Council comments to section 410.30 state in part: "Under the doctrine of inconvenient forum, a court, even though it has jurisdiction, will not entertain the suit if it believes that the forum of filing is a seriously inconvenient forum for the trial of the action. But in such instances a more appropriate forum must be available to the plaintiff." (Judicial Council of Cal., com., reprinted at 14A West's Ann. Code Civ. Proc. (2004 ed.) foll. § 410.30, p. 486.)

(2013) 216 Cal.App.4th 902, 917.) " 'An alternative forum is suitable if it has jurisdiction and the action in that forum will not be barred by the statute of limitations. [Citation.] . . . "[I]t is sufficient that the action can be brought, although not necessarily won, in the suitable alternative forum." ' " (*Investors Equity Life Holding Co. v. Schmidt* (2011) 195 Cal.App.4th 1519, 1529.) A lawsuit " 'will be entertained, no matter how inappropriate the forum may be, . . . if the plaintiff's cause of action would elsewhere be barred by the statute of limitations, unless the court is willing to accept the defendant's stipulation that he will not raise this defense in the second state [citations].' " (*Stangvik*, at p. 752; see also *Investors Equity Life*, at p. 1531.) Any concerns regarding the " 'suitability' " of the alternative forum may be avoided by defendant's agreement to comply with certain conditions, such as submission to jurisdiction or waiver of the statute of limitations defense. (*Stangvik*, at p. 752; see *Investors Equity Life Holding Co. v. Schmidt* (2015) 233 Cal.App.4th 1363, 1376-1377.) The threshold issue of a suitable forum is nondiscretionary and subject to de novo review. (*Diaz-Barba v. Superior Court* (2015) 236 Cal.App.4th 1470, 1483-1484; *American Cemwood Corp. v. American Home Assurance Co.* (2001) 87 Cal.App.4th 431, 436 (*American Cemwood*); see *Stangvik*, at p. 752, fn. 3.)

If the court finds the forum a suitable alternative, "the next step is to consider the private interests of the litigants and the interests of the public in retaining the action for trial in California. The private interest factors are those that make trial and the enforceability of the ensuing judgment expeditious and relatively inexpensive, such as the ease of access to sources of proof, the cost of obtaining attendance of witnesses, and the

availability of compulsory process for attendance of unwilling witnesses. The public interest factors include avoidance of overburdening local courts with congested calendars, protecting the interests of potential jurors so that they are not called upon to decide cases in which the local community has little concern, and weighing the competing interests of California and the alternate jurisdiction in the litigation."

(*Stangvik, supra*, 54 Cal.3d at p. 751; see *National Football League v. Fireman's Fund Insurance Company, supra*, 216 Cal.App.4th at p. 917.) We review the court's weighing and balancing of public and private factors for abuse of discretion, giving "substantial deference" to the trial court's ruling. (*Stangvik*, at p. 751.) "We "will only interfere with a trial court's exercise of discretion where [we find] that under all the evidence, viewed most favorably in support of the trial court's action, no judge could have reasonably reached the challenged result." ' ' " (*National Football League*, at p. 918.)

B. Omega Did Not Meet its Burden to Demonstrate that Arizona Is a Suitable Forum for the Action

AW contends Omega did not meet its burden of establishing that the state of Arizona was a suitable forum for its lawsuit. Pointing out there were approximately 12 defendants remaining in the case at the time Omega filed its motion, it maintains Omega failed to show both that AW's action would not be barred by the statute of limitations in Arizona, and that *all of the defendants*, not merely Omega, are subject to jurisdiction there. Omega responds by arguing it admitted it was subject to Arizona jurisdiction and was not required to show all of the defendants could be subject to such jurisdiction

because it was unclear which court would retain jurisdiction over the defendants. Relying on *Hansen v. Owens-Corning Fiberglas Corp.* (1996) 51 Cal.App.4th 753 (*Hansen*), Omega maintains it should not have the burden of showing every defendant is subject to jurisdiction at this stage, and pointing out the trial court stayed the action rather than dismissing it, it argues AW must attempt to unsuccessfully bring its claims in Arizona before it can claim Arizona is not a suitable forum.

Appellate courts in the First and Second District have held that a moving defendant such as Omega, seeking to establish the suitability of an alternative forum "must show that *all* defendants are subject to jurisdiction in the proposed alternative forum." (*David v. Medtronic, supra*, 237 Cal.App.4th at p. 743; see also *American Cemwood, supra*, 87 Cal.App.4th at pp. 438-439; see, e.g., *Investors Equity Life Holding Co. v. Schmidt, supra*, 195 Cal.App.4th at p. 1529 [multiple defendants were subject to and in fact stipulated to jurisdiction in Hawaii, the alternate forum].) In *American Cemwood*, the Court of Appeal rejected a defendant's contention that it need not show the alternative forum has jurisdiction over all the defendants, but each defendant could be sued in separate actions brought in different states. (*Id.* at p. 437.) Reversing the trial court's grant of a stay (*id.* at p. 441), it explained: "The court's discretion to decline to exercise its authorized jurisdiction over an action for considerations of convenience is limited by the proviso that another forum must be available for the plaintiff's action. A rule permitting a stay or dismissal of an action over which no single alternative court could exercise jurisdiction would force the plaintiff to pursue separate actions in multiple states or countries to obtain complete relief. Such a rule, by encouraging piecemeal

litigation and blossoming numbers of actions in multiple jurisdictions, would threaten precisely those considerations of convenience, economy and justice the doctrine was designed to bolster. [Citations.] It would also encourage the tactical use of forum non conveniens motions, not for valid reasons of public and private convenience, but to overburden plaintiffs with the difficulty and expense of litigating on multiple fronts. In short, we think Respondents' position comports neither with the language of our statute nor its purposes." (*Id.* at pp. 438-439.)

In *David v. Medtronic, Inc., supra*, 237 Cal.App.4th 734, the court relied on this rule but recognized some "limited flexibility" (*id.* at p. 743) evidenced by *Hansen, supra*, 51 Cal.App.4th 753: "In a case with 200 defendants, the moving defendants were not required to establish that the alternative forum had jurisdiction over all 200. Instead, the court *stayed* the action in California (rather than dismissing it) and allowed the case to proceed in the alternative forum, with the understanding that the stay would be lifted if the alternative forum did not, in fact, have jurisdiction over all defendants. [Citation.] That, however, is a unique situation. When the moving defendant seeks dismissal of an action for forum non conveniens, and there is a reasonable number of defendants, the moving defendant must establish jurisdiction exists in the alternative forum over all defendants." (*Medtronic, supra*, 237 Cal.App.4th at p. 743, citing *Hansen, supra*, 51 Cal.App.4th at p. 758.) In *Medtronic*, the action involved several defendants, including a "nominal" defendant, the claims against whom were ancillary to the main issue and were not subject to jurisdiction in the alternative forum. (*Medtronic*, at p. 742.) One defendant argued the nominal defendant was sued only to keep the case in California.

(*Id.* at p. 738.) The Court of Appeal held that the presence of a nominal defendant could not defeat a forum non conveniens dismissal that should otherwise be granted. It reversed in part the trial court's dismissal of the action based on forum non conveniens, holding the court should have severed the action against the nominal defendant and allowed it to proceed in California. (*Id.* at pp. 737, 745.)

Here, there is no nominal defendant as in *Medtronic*, nor are there an extraordinary number of defendants as in *Hansen* so as to eliminate the requirement that Omega demonstrate Arizona is a forum suitable to *all* the defendants. (See *American Cemwood*, *supra*, 87 Cal.App.4th at p. 440 [pointing out *Hansen* was decided in a "narrow and specific context" and finding it "not surprising that no other courts in this state or elsewhere, have cited it as support" for a broader interpretation of the suitable forum requirement].) The rationale expressed by the *American Cemwood* court for this rule—to avoid a multiplicity of actions and discourage the tactical use of forum non conveniens (*American Cemwood*, at pp. 438-439)—is sound, and we follow it. This rationale is not furthered by Omega's suggestion that the trial court's stay permits AW to refile its action in Arizona so as to *then* establish all of the defendants will be subject to jurisdiction there, and if not, return to California. Such an approach is directly contrary to the traditional forum non conveniens considerations of convenience of the parties, justice, and conservation of judicial resources. (*Stangvik*, *supra*, 54 Cal.3d at p. 751; *American Cemwood*, at p. 439; see *Berg v. MTC Electronics Technologies* (1998) 61 Cal.App.4th 349, 362, fn. 8.)

The threshold inquiry of a suitable alternative forum required Omega to show that "an action may be commenced in the alternative jurisdiction and a valid judgment obtained there against the defendant[s]." (*Stangvik, supra*, 54 Cal.3d at p. 752, fn. 3.) Omega must at least make this threshold showing that AW's action against it and the other defendants may be commenced in Arizona—that no statute of limitations bars it and that Arizona has jurisdiction—before the court can consider a forum non conveniens stay or dismissal, and Omega did not meet this burden.

Because Omega did not meet its burden to demonstrate Arizona was a suitable alternative forum for trial, we need not reach the balancing of public and private interests in retaining the action in California. (*Stangvik, supra*, 54 Cal.4th at p. 751.)

DISPOSITION

The order granting Omega's motion to quash on forum non conveniens grounds is reversed. The order granting the motion to quash based on the lack of personal jurisdiction is affirmed as to Carlos Espinoza, Navarrete, and Burgueño, and reversed as to Javier Espinoza, Juan Espinoza, Arias and Machado. The matter is remanded for the trial court to enter a new order denying Omega's motion, granting the motion to quash of Carlos Espinoza, Navarrete, and Burgueño, and denying the motion of Javier Espinoza, Juan Espinoza, Arias and Machado. The parties shall bear their own costs.

O'ROURKE, J.

WE CONCUR:

McCONNELL, P. J.

IRION, J.