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ORDER OF THE SUPREME COURT OF CALIFORNIA (FEBRUARY 15, 2023)

IN THE SUPREME COURT OF CALIFORNIA

FARAZ FADAVI AKHAVAN BONAB,

Plaintiff and Appellant,

v.

SAMUEL GINN,

Defendant and Respondent.

No. S277570

Court of Appeal, Sixth Appellate District - No. H048837

The petition for review is denied.

/s/ Guerrero
Chief Justice

OPINION OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SIXTH APPELLATE DISTRICT (OCTOBER 25, 2022)

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SIXTH APPELLATE DISTRICT

FARAZ FADAVI AKHAVAN BONAB,

Plaintiff and Appellant,

v.

SAMUEL GINN,

Defendant and Respondent.

No. H048837

(Santa Clara County Super. Ct. No. 20CV366892)

Before: LIE, Judge., GREENWOOD, Presiding Judge., GROVER, Judge.

In 2018, plaintiff Fadavi Akhavan Bonab and defendant Samuel Ginn were in a single-car injury accident in West Lafayette, Indiana. Bonab brought suit against Ginn, the driver. The superior court granted Ginn's motion to quash service of the summons for lack of personal jurisdiction. Bonab appeals, arguing that Ginn, domiciled in Illinois, is subject to specific jurisdiction in California based on his contacts with

the state and their connection with the parties' reason for being in Indiana. Because any connection between Ginn's driving and his contacts with California is too attenuated to support personal jurisdiction here, we affirm the trial court's order.

I. Background

Ginn and Bonab met as students at Stanford University in Palo Alto, California. In 2017, while they were still students, Ginn and Bonab formed a corporation called FGSpire, Inc., with the intention to design a software program for use by doctors of veterinary medicine. Ginn became president of FGSpire and Bonab was chief financial officer.

Although FGSpire was incorporated in Delaware, its bylaws, in addition to a number of other corporate documents,[1] designated its principal place of business as a UPS Store mail drop in Palo Alto, California. FGSpire operated in California, establishing an account with Silicon Valley Bank, and engaging the professional services of a San Francisco-based accountant. FGSpire also pursued California clients, entering into non-disclosure agreements with two companies based in California—National Veterinary Associates and the San Francisco SPCA—and entering a contract with Petco Animal Supplies Stores, Inc., also based in California. Certain of FGSpire's corporate documents, such as its Founder Stock Purchase Agreements with

[1] Other documents listing California as the principal place of business included the (1) Action by Unanimous Written Consent of the Board of Directors in Lieu of First Meeting of FGSpire, Inc.; (2) Statement and Designation by Foreign Corporation; (3) Statements of Information; and (4) State of Delaware Annual Franchise Tax Report.

Bonab and with Ginn, specified that the agreements would be governed by the laws of the State of California.

After the conclusion of Stanford's spring quarter in June 2018, Ginn and Bonab both flew to Chicago, Illinois for the purpose of attending a business meeting on behalf of FGSpire, Inc. with representatives of the school of veterinary medicine at Purdue University in Indiana. Ginn, who is domiciled in Oak Park, Illinois, borrowed his mother's car for local ground transportation. Ginn and Bonab spent the appointed day at Purdue's school of veterinary medicine, talking to faculty and staff about FGSpire's program for the management of records.

Ginn and Bonab left Purdue in Ginn's mother's car. On the way to their hotel, Ginn veered off the road into an adjacent stand of trees. Bonab was seriously injured.

On March 30, 2020, Bonab filed suit against Ginn in Tippecanoe County in Indiana, but he dismissed his complaint without prejudice two months later. Bonab then filed suit against Ginn in Santa Clara County on June 5, 2020, asserting two negligence causes of action arising out of the car accident. Bonab in his complaint named Ginn in his individual capacity as the driver and did not name FGSpire as a defendant.

On August 13, 2020, Ginn filed a motion to quash service of summons. The trial court granted the motion on January 6, 2021. The court based its order on the conclusion that specific jurisdiction had not been established, finding that (1) Ginn's out-of-state conduct, the alleged negligent driving in Indiana, was not directed toward California; (2) the accident

arose out of Ginn's driving of the car, an activity that was not an essential basis of Ginn's contacts with California; and (3) Bonab's negligence claims do not arise out of or have a substantial connection with Ginn's forum-related activities. The court stated further that "[t]he fact that [Ginn] was driving the car after leaving a meeting with a potential client of FGSpire, Inc., which has various connections to California, is not a substantial nexus sufficient to establish specific jurisdiction over [Ginn]."

Bonab timely appealed.

II. Discussion

A. Legal Principles and Standard of Review

"California courts may exercise personal jurisdiction on any basis consistent with the Constitutions of California and the United States." (*Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 268 (*Pavlovich*); Code Civ. Proc.; § 410.10.) "A state court's assertion of personal jurisdiction over a nonresident defendant who has not been served with process within the state comports with the requirements of the due process clause of the federal Constitution 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."' [Citations.]" (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444 (*Vons*); *Ford Motor Company v. Montana Eighth Judicial District Court* (2021) 141 S. Ct. 1017, 1024 (*Ford*).)

"Personal jurisdiction may be either general or specific." (*Vons*, *supra*, 14 Cal.4th at p. 445.) Bonab does not contend Ginn, an Illinois resident, is subject

to general jurisdiction and we agree that general jurisdiction does not apply. (*Daimler AG v. Bauman* (2014) 571 U.S. 117, 137 ["'For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile'"].) We therefore consider only whether Ginn is subject to this California lawsuit based on specific jurisdiction.

There are three requirements for the exercise of specific jurisdiction: "(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"' [citation]; and (3) "'the assertion of personal jurisdiction would comport with 'fair play and substantial justice'"' [citations]." (*Pavlovich*, *supra*, 29 Cal.4th at p. 269.) Subjecting a defendant to specific jurisdiction is considered fair "because their forum activities should put them on notice that they will be subject to litigation in the forum." (*Vons*, *supra*, 14 Cal.4th at p. 446.) It is based on the understanding that a defendant that purposefully and voluntarily directs his or her activities toward a forum receives a benefit and therefore should not be surprised that he or she can be sued in that forum. (*Pavlovich*, *supra*, 29 Cal.4th at p. 269.)

The California Supreme Court has described the standard of review for a motion to quash as follows: "When a defendant moves to quash service of process on jurisdictional grounds, the plaintiff has the initial burden of demonstrating facts justifying the exercise of jurisdiction. [Citation.] Once facts showing minimum contacts with the forum state are established, however, it becomes the defendant's burden to demonstrate that the exercise of jurisdiction would be unreasonable.

[Citation.] When there is conflicting evidence, the trial court's factual determinations are not disturbed on appeal 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. [Citation.]" (*Vons*, *supra*, 14 Cal.4th at p. 449.)

B. Specific Jurisdiction

1. Contacts with California

There is little dispute about the underlying facts of this case, which show a number of contacts with California.

Although Ginn argues that FGSpire is a separate entity and that its contacts with California are not his as an individual, it is undisputed that he attended university in California at Stanford, where he partnered with Bonab in forming FGSpire, consulted with Stanford faculty and local counsel in the formation of the startup, agreed to be governed by California law in his personal transactions with FGSpire, and can as chief executive officer be presumed to have consented to FGSpire's choice of California law in its transactions with other entities.

Having availed himself of California law and California-based resources, it should come as no surprise that he could potentially be subject to suit in California. But Ginn's contacts with California alone are not dispositive, where specific jurisdiction turns on the strength of the connection between these California contacts and the car accident.

2. Connection Between the Controversy and Contacts with Forum State

Having reached the conclusion that there are sufficient minimum contacts with California, the question remains whether the "controversy" arises out of or is related to those contacts.

"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. Rather, as long as the claim bears a substantial connection to the nonresident's forum contacts, the exercise of specific jurisdiction is appropriate." (*Vons*, *supra*, 14 Cal.4th at p. 452.) Moreover, it is not necessary that there be a causal link between the incident underlying the lawsuit and the activities in the forum state (*i.e.*, forum conduct giving rise to the plaintiff's claims). (*Ford*, *supra*, 141 S. Ct. at p. 1026.) It is enough for the suit to "'*relate to*'" the defendant's contacts with the forum. (*Ibid.*) But this "does not mean anything goes. In the sphere of specific jurisdiction, the phrase 'relate to' incorporates real limits, as it must to adequately protect defendants foreign to a forum." (*Ibid.*)

The United States Supreme Court has cautioned: "Even if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State; even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient location for litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment." (*World-Wide Volkswagen Corp. v. Woodson* (1980) 444 U.S. 286,

294; *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County* (2017) 137 S. Ct. 1773, 1781 (*Bristol-Myers*).) Consequently, "[i]n order for a court to exercise specific jurisdiction over a claim, there must be an 'affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State.'" (*Bristol-Myers*, *supra*, 137 S. Ct. at p. 1781.) Said differently, "[w]hat is needed . . . is a connection between the forum and *the specific claims at issue*." (*Id*. at p. 1776, italics added.)

In *Bristol-Myers*, therefore, the Supreme Court concluded there was an insufficient basis for specific jurisdiction in California for nonresidents of California who had purchased a prescription drug, Plavix, where "the nonresidents were not prescribed Plavix in California, did not purchase Plavix in California, did not ingest Plavix in California, and were not injured by Plavix in California." (*Bristol-Myers*, *supra*, 137 S. Ct. at p. 1781.) The Court expressly disapproved the California Supreme Court's "'sliding scale approach'" under which "the strength of the requisite connection between the forum and the specific claims at issue is relaxed if the defendant has extensive forum contacts that are unrelated to those claims." (*Ibid*.)

Bonab relies on *Cornelison v. Chaney* (1976) 16 Cal.3d 143 (*Cornelison*), which he contends supports a finding of jurisdiction "even if the actual accident on which the lawsuit is based occurs beyond California's borders." In *Cornelison*, the plaintiff was a California resident whose husband was killed in a highway collision with the defendant's truck in Nevada, not far from the California border. (*Id*. at p. 146.) The defendant was a resident and domiciliary of Nebraska

and was served at his residence in Nebraska. (*Ibid.*) The defendant's activity in California consisted of approximately 20 trips a year into the state over seven years to deliver and obtain goods; he also had an independent contractor relationship with a local broker and a Public Utilities Commission license. (*Id.* at p. 149.) The California Supreme Court concluded that there was a sufficient nexus between the highway collision in Nevada and the California contacts of the defendant truck driver, because (1) defendant engaged in a continuous course of conduct that brought him into the state almost twice a month for seven years as a trucker under a California license; (2) the accident occurred not far from the California border, while the defendant was bound for the state; (3) he was both bringing goods into California and receiving merchandise for delivery elsewhere; and (4) the accident arose out of the driving of the truck, the activity forming the essential basis of the defendant's contacts with the state. (*Ibid.*)

We need not decide whether the outcome in *Cornelison* would be the same even after the *Bristol-Myers* majority derided California's "sliding-scale approach" to specific jurisdiction as "a loose and spurious form of general jurisdiction." (*Bristol-Myers*, *supra*, 137 S. Ct. at p. 1781.) *Cornelison* on its facts does not support jurisdiction in the instant lawsuit. In *Cornelison* the "activity forming the essential basis of the defendant's contacts with the state" was the defendant's truck-driving, which was the basis of the controversy. (*Cornelison*, *supra*, 16 Cal.3d at p. 149.) In contrast, Ginn's driving his mother's car to the hotel is linked only tenuously to his contacts with California, which related to the founding of FGSpire.

Although the parties had gone to Indiana for FGSpire purposes, the underlying controversy was a car accident which related to FGSpire's business only incidentally in that it occurred in the hours following the Purdue marketing meetings. Ginn's driving of the car was not "directed at" California, nor can driving generally be characterized as a basis for Ginn's contacts with California, as was the case in *Cornelison*. Likewise on this record, Bonab's riding with Ginn after the Purdue meetings appears related to Ginn's California contacts only in that California happened to be the location where Ginn and Bonab met and decided to work together. We are unable to discern any other relationship linking Ginn's driving to his "purposefully and voluntarily direct[ing] his activities" toward California or his receiving a benefit thereby. (*See Pavlovich*, *supra*, 29 Cal.4th at p. 269.)

Ginn and Bonab were both in Indiana at the time of the accident because each individually had a relationship with FGSpire. While Ginn's relationship with FGSpire does involve some California activity that is presumed to inure to his benefit, the accident that occasioned this lawsuit at best relates to Bonab's connection with FGSpire, not Ginn's California activities in furtherance of his own. The bare fact that each party's work for FGSpire placed him with the other in the state where it became convenient for the parties to share a ride is too attenuated a connection to Ginn's contacts with California to find the assertion of specific jurisdiction to comport with notions of "'fair play and substantial justice.'" (*Ford*, *supra*, 141 S. Ct. at p. 1024.) Even dissenting in *Bristol-Myers*, Justice Sotomayor noted the limits to her disagreement: "respondents could not, for instance,

hale Bristol–Myers into court in California for negligently maintaining the sidewalk outside its New York headquarters—a claim that has no connection to acts Bristol–Myers took in California." (*Bristol-Myers*, *supra*, 137 S. Ct. at p. 1786, dis. opn. of Sotomayor, J.).) Likewise, Ginn cannot be haled into court in California for negligently driving in Indiana.

III. Disposition

The superior court's order granting the motion to quash is affirmed. Costs on appeal are awarded to Ginn.

Lie, J.

We Concur:

Greenwood, P.J.

Grover, J.

ORDER OF THE SUPERIOR COURT OF CALIFORNIA, SANTA CLARA RE: MOTION TO QUASH SERVICE OF SUMMONS (JANUARY 6, 2021)

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

FARAZ FADAVI AKHAVAN BONAB,

Plaintiff,

v.

SAMUEL GINN, ET AL.,

Defendants.

Case. No. 20CV366892

Before: Thang N. BARRETT, Superior Court Judge.

ORDER RE: MOTION TO QUASH SERVICE OF SUMMONS

Defendant Samuel Ginn ("Defendant")'s motion to quash service of summons for lack of personal jurisdiction ("Motion to Quash") came on for hearing on December 1, 2020, in Department 21, before Judge Thang Nguyen Barrett The matter having been submitted, the Court now finds and orders as follows:

Factual and Procedural Background

This is a personal injury action. According to the allegations of the complaint, on June 14, 2018, plaintiff Faraz Fadavi Akhavan Bonab ("Plaintiff") was a passenger in a car driven by Defendant in Tippecanoe County, Indiana. (Complaint, ¶¶ MV-1, MV-2, & GN-1.) As Defendant approached the intersection of North River Road and Soldiers Home Road, he lost control of the vehicle, left the roadway, and struck multiple trees on the east side of the road. (*Ibid.*) Plaintiff suffered serious physical injuries as a result of the accident. (*Ibid.*) Plaintiff alleges Defendant's negligent operation of the vehicle was the proximate cause of his damages. (*Ibid.*) Based on the foregoing allegations, Plaintiff filed a complaint against Defendant, alleging causes of action for: (1) motor vehicle negligence; and (2) general negligence.

On August 13, 2020, Defendant filed the instant motion to quash service of summons. Defendant filed a supplemental memorandum of points and authorities in support of his motion on September 15, 2020. Plaintiff filed an opposition to the motion on November 16, 2020.

Discussion

Defendant moves to quash service of summons for lack of personal jurisdiction. (*See* Code Civ. Proc., § 418.10, subd. (a)(1).)

I. Request for Judicial Notice

In connection with his moving papers, Defendant asks the Court to take judicial notice of documents filed in the case of *FarazFadavi v. Samuel Ginn*

(Tippecanoe County Superior Court, Case No. 79D01-2003-CT-000056) (the "Indiana Action").

The documents filed in the Indiana Action are not proper subjects of judicial notice because they are not relevant to the material issues before the Court. (*See Silverado Modjeska Recreation and Park Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, 307, citing *People v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 422 fn. 2 [a precondition to judicial notice in either its permissive or mandatory form is that the matter to be noticed be relevant to the material issue before the court]; *see also Ardache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 748, fn. 6 [a court need not take judicial notice of a matter if it is not "necessary, helpful, or relevant"].)

Accordingly, Defendant's request for judicial notice is DENIED.

II. Legal Standard

California courts "may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States." (Code Civ. Proc., § 410.10.) The three traditional bases for personal jurisdiction are: (1) service on persons physically present in the forum state; (2) domicile within the state; and (3) consent or appearance in the action. (Weil & Brown, California Practice Guide: Civil Procedure Before Trial (The Rutter Group 2019) ¶¶ 3:131-3:170; *see Pennoyer v. Neff* (1877) 95 U.S. 714, 733.) If none of the foregoing are implicated, the plaintiff is left with application of the "minimum contacts" doctrine in order to demonstrate jurisdiction. (*See DVI, Inc. v. Super. Ct.* (2002) 104 Cal.App.4th 1080, 1089-1090, quoting *International Shoe Co. v.*

Washington (1945) 326 U.S. 310, 316 ["The federal Constitution permits a state to exercise jurisdiction over a nonresident defendant if the defendant has sufficient 'minimum contacts' with the forum such that 'maintenance of the suit does not offend "traditional notions of fair play and substantial justice." [Citations.]'"].)

The "minimum contacts" doctrine embraces two types of personal jurisdiction: general jurisdiction and specific jurisdiction. (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 445.) General jurisdiction exists where the defendant's contacts in the forum are so "substantial, continuous and systematic" that there need not be any relationship between the alleged causes of action and the defendant's relationship to the forum. (*Ibid.*) Specific jurisdiction "results when the defendant's contacts with the forum state, though not enough to subject the defendant to the general 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." (*Sonora Diamond Corp. v. Super. Ct.* (2000) 83 Cal.App. 4th 523, 536.)

A defendant may move to quash service of the summons on the ground the court lacks personal jurisdiction. (Code Civ. Proc., § 418.10, subd. (a)(1).) When a defendant challenges personal jurisdiction by filing a motion to quash, the plaintiff opposing the motion has the initial burden of proving, by a preponderance of the evidence, the factual bases justifying the exercise of jurisdiction. (*ViaView, Inc. v. Retzlaff* (2016) 1 Cal.App.5th 198, 209-210; *BBA Aviation PLC v. Super. Ct.* (2010) 190 Cal.App.4th 421, 428-429 (*BBA*).) "The plaintiff must do more than merely allege

jurisdictional facts; plaintiff must provide affidavits and other authenticated documents demonstrating competent evidence of jurisdictional facts. [Citation.]" (*BBA, supra,* 190 Cal.App.4th at pp. 428-429; *Strasner v. Touchstone Wireless Repair & Logistics, LP* (2016) 5 Cal.App.5th 215, 221-222 ["The plaintiff must provide specific evidentiary facts, through affidavits and other authenticated documents, sufficient to allow the court to independently conclude whether jurisdiction is appropriate. [Citation.] The plaintiff cannot rely on allegations in an unverified complaint or vague and conclusory assertions of ultimate facts. [Citation.]"].) "If the plaintiff does so, the burden shifts to the defendant to present a compelling case that the exercise of jurisdiction would be unreasonable. [Citation.]" (*BBA, supra,* 190 Cal.App.4th at p. 429; *Snowney v. Harrah's Entertainment, Inc.* (2005) 35 Cal. 4th 1054, 1062.)

"Where there is a conflict in the declarations, resolution of the conflict by the trial court will not be disturbed on appeal if the determination is supported by substantial evidence. [Citations.] However, where the evidence of jurisdictional facts is *not* conflicting, the question of whether a defendant is subject to personal jurisdiction is one of law. [Citation.]" (*Elkman v. National States Ins. Co.* (2009) 173 Cal.App.4th 1305, 1313.)

III. Analysis

As a preliminary matter, Defendant's motion is ambiguous in that it mixes legal doctrines. Defendant frames his motion as one to quash service of summons and argues that the court lacks personal jurisdiction over him. However, Defendant also raises arguments

regarding venue as if they relate to personal jurisdiction. Specifically, Defendant cites Code of Civil Procedure section 395, subdivision (a) and states that he is not a resident of California, but of Illinois.

Venue is a distinct concept from personal jurisdiction. (*See Global Packaging, Inc. v. Super. Ct.* (2011) 196 Cal.App.4th 1623, 1631.) Venue is the location or locations in a state where a case is properly heard. (*See id.* at p. 1634 [distinguishing venue from forum, describing a state as a forum and a county as a venue].) Generally venue is proper where one or more of the defendants reside at the time of the action. (Code Civ. Proc., § 395, subd. (a).) In personal injury cases, such as this one, venue is proper in either the county where the injury occurs or the county where the defendants, or some of them, reside at the commencement of the action. (*Ibid.*) "If none of the defendants reside in the state . . . , the action may be tried in the superior court in any county that the plaintiff may designate in his or her complaint. . . . " (*Ibid.*)

Defendant's arguments regarding venue do not address the material issue under consideration on a motion to quash service of summons under Code of Civil Procedure section 418.10, subdivision (a)—whether there is personal jurisdiction over the defendant. Consequently, the Court disregards Defendant's arguments regarding Code of Civil Procedure section 395, subdivision (a).

Turning to the issue of personal jurisdiction, Plaintiff does not assert that any of the traditional bases for personal jurisdiction apply here. Specifically, Plaintiff does not contend that he effected service of the summons and complaint on Defendant when he was physically present in California. Similarly, Plaintiff

does not argue that Defendant's domicile is within California or that Defendant consented to or appeared in this action. Consequently, Plaintiff is left with the possibility of establishing personal jurisdiction via "minimum contacts."

In opposition to the instant motion, Plaintiff argues the Court may exercise specific jurisdiction over Defendant, relying primarily on *Cornelison v. Chaney* (1976) 16 Cal.3d 143 (*Cornelison*). In support of his argument, Plaintiff presents evidence that Plaintiff and Defendant started a company–FGSpire, Inc.–in May 2017, which designed a software program for use by veterinarians. The company is incorporated in Delaware and has its principal place of business in California. Defendant is the president of the company. At the time the company was incorporated, Plaintiff and Defendant were residents of Stanford, California. Plaintiff and Defendant executed a founder stock purchase agreement in connection with the creation of the company. The company opened bank accounts with Silicon Valley Bank and entered into a promissory note with Pear Ventures II, L.P., which specializes in providing venture capital to startup companies. The company also entered into a contract with Petco Animal Supplies Stores, Inc., which is headquartered in California. In addition, the company advertised its affiliation with Stanford University. On June 13, 2018, Plaintiff and Defendant flew to Chicago, Illinois for the purpose of attending a business meeting on behalf of the company with representatives from the school of veterinary medicine at Purdue University in Indiana. On June 14, 2018, Plaintiff and Defendant spent the day at the university. After finishing their presentation at the university, Plaintiff was riding as a passenger

in a vehicle driven by Defendant when it crashed into a stand of trees on the side of the roadway. Plaintiff concludes that Defendant purposefully availed himself of the privilege of conducting activities in California, this case arises out of or is substantially connected to Defendant's California contacts, and the exercise of jurisdiction would be fair and reasonable.

Conversely, Defendant argues the Court lacks personal jurisdiction over him. Defendant presents evidence that he is a resident of Oak Park, Illinois and was a student at Stanford University from 2015 to 2019. Upon graduating in 2019, Defendant returned home to Oak Park, Illinois. Defendant met Plaintiff during the course of his studies and the formed FGSpire, Inc. On or about June 11, 2018, Defendant finished his spring quarter classes and returned to his home in Oak Park, Illinois. On June 14, 2018, Defendant used his mother's car to travel from Oak Park, Illinois to West Lafayette, Indiana with Plaintiff. After visiting Purdue University, Plaintiff and Defendant were involved in an accident in West Lafayette, Indiana as they were returning to their hotel.

"[S]pecific jurisdiction is determined under a three-part test: '(1) The nonresident defendant must do some act or consummate some transaction with the forum or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws; (2) the claim must be one which arises out of or results from the defendant's forum-related activities; and (3) exercise of jurisdiction must be reasonable.' [Citation.]" (*Jewish Def. Org. v. Super. Ct.* (1999) 72 Cal.App.4th 1045, 1054; *Gilmore*

Bank v. AsiaTrust New Zealand Ltd. (2014) 223 Cal.App.4th 1558, 1568.)

The case of *Cornelison* is instructive here. In *Cornelison,* a California resident brought a wrongful death action against a Nebraska resident, arising out of an accident that occurred in Nevada. (*Cornelison, supra,* 16 Cal.3d at p. 146.) The plaintiff's husband was killed in a highway collision with the defendant's truck in Nevada, 27 miles south of Las Vegas, not far from the California border. (*Ibid.*) The plaintiff filed a complaint in California alleging that her husband's death was caused by the defendant's negligence. (*Ibid.*) The defendant was a resident and domiciliary of Nebraska and process was served upon him by mailing copies of the original summons and complaint to his residence in Nebraska. (*Ibid.*) Appearing specially and without submitting himself to the jurisdiction of the court, the defendant moved to quash service of summons because the court lacked jurisdiction over his person. (*Ibid.*)

On appeal, the reviewing court found the defendant's activities furnished a sufficient basis for specific jurisdiction to attach in California. (*Cornelison, supra,* 16 Cal.3d at pp. 146-147 & 149.) The evidence before the court established that the defendant was engaged in the business of hauling goods by truck in interstate commerce for seven years preceding the accident. (*Ibid.*) He made approximately 20 trips a year to California in the operation of this business. (*Ibid.*) The accident occurred while the defendant was en route to California, hauling dry milk to a company in Long Beach, California. (*Ibid.*) The defendant intended to obtain cargo in California for a return shipment to an undesignated destination. (*Ibid.*) The defendant was

also licensed to haul freight by the Public Utilities Commission of California. (*Ibid.*) As is relevant here, the court opined:

> As we have seen, defendant has been engaged in a continuous course of conduct that has brought him into the state almost twice a month for seven years as a trucker under a California license. The accident occurred not far from the California border, while defendant was bound for this state. He was not only bringing goods into California for a local manufacturer, but he intended to receive merchandise here for delivery elsewhere. The accident arose out of the driving of the truck, the very activity which was the essential basis of defendant's contacts with this state. These factors demonstrate, in our view, a substantial nexus between plaintiffs cause of action and defendant's activities in California.

(*Id.* at p. 149.)

Cornelison has in common with the present case that the plaintiff's injury arose directly from the defendant's conduct outside California. But in *Cornelison,* the defendant's out-of-state conduct, his alleged negligent driving in Nevada, was directed—literally—toward California and was the essential basis of the defendant's contacts with California. The connections to California that justified specific jurisdiction in *Cornelison* are missing here.

First, Defendant's out-of-state conduct—his alleged negligent driving in Indiana—was not directed toward California. Rather, his conduct was directed toward

Indiana. Specifically, the accident occurred thousands of miles away from California, in Indiana, as Defendant was leaving a business meeting with a potential client at Purdue University and returning to his hotel.

Second, the accident arose out of Defendant's driving of his mother's car, an activity which is not the essential basis of Defendant's contacts with California. Unlike the defendant in *Cornelison,* Defendant is not a truck driver whose interstate business necessitates hauling goods to California multiple times a year. Instead, Defendant is the president of a company that sells software to veterinarians.

Third, Plaintiff's negligence claims do not arise out of or have a substantial connection with Defendant's forum-related activities. Defendant's forum-related activities include attending Stanford University, forming FGSpire, Inc., and executing a founder stock purchase agreement. Defendant also worked as the president of FGSpire, Inc., which has its principal place of business in California. FGSpire, Inc.'s forum-related activities include advertising its affiliation with Stanford University, opening bank accounts in California, and entering into contracts with two California companies. Plaintiff's negligence claims do not arise out of or have a substantial connection with any of these activities. The claims are not based on Defendant's conduct during his attendance at Stanford University. Similarly, the claims are not based on Defendant's conduct in connection with the formation of FGSpire, Inc. or the execution the founder stock purchase agreement. Furthermore, Plaintiff does not present any reasoned argument or legal authority demonstrating that FGSpire, Inc.'s activities in California are attributable to Defendant, as an indi-

vidual. In any event, Plaintiff's negligence claims are not based on FGSpire, Inc.'s forum-related activities as the claims are not based on business conducted in California, bank accounts opened in California, or contracts entered into with California companies. Instead, Defendant's alleged wrongful conduct—negligently driving his mother's car in Indiana—bears only a tenuous and tangential connection to California. The fact that Defendant was driving the car after leaving a meeting with a potential client of FGSpire, Inc., which has various connections to California, is not a substantial nexus sufficient to establish specific jurisdiction over Defendant.

Accordingly, Defendant's motion to quash service of summons is GRANTED.

IT IS SO ORDERED.

/s/ Thang N. Barrett
Judge of the Superior Court

Dated: January 6, 2021

APPELLANT'S PETITION FOR REVIEW FILED IN SUPREME COURT OF CALIFORNIA (DECEMBER 2, 2022)

S277570

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

Supreme Court Case No.:

FARAZ FADAVI AKHAVAN BONAB,

Petitioner,

v.

SAMUEL GINN,

Respondent.

Sixth Appellate District, Case No.: H048837
Santa Clara County Civil Case No. 20CV366892

PETITION FOR REVIEW

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TO THE HONORABLE CHIEF JUSTICE, TANI CANTIL-SAKAUYE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Faraz Fadavi Akhavan Bonab, Plaintiff and Petitioner herein, hereby petitions this Honorable Court for review of the decision made by the Court of Appeal, Sixth Appellate District, filed October 25, 2022. A copy of the decision of October 25, 2022 is attached as Exhibit A. There was no Petition for Rehearing. The decision was certified for non-publication.

ISSUE PRESENTED

A. Background of the Case

The facts in this case are uncomplicated and uncontested. The parties met as undergraduate students at Stanford University in Palo Alto. They bonded by their desire to start a technology-based business (FGSpire) that would sell proprietary software of their design to manage veterinary practices. Both parties retained California lawyers, incorporated their business in Delaware and established its headquarters in Palo Alto. Their new business was deeply rooted in California due in part to the bylaws and contracts which selected both California law and California courts to govern any disagreements that might arise. Moreover, in their attempts to sell their product far and wide, they trumpeted their Stanford and Silicon Valley roots repeatedly. One such effort to generate

business garnered an invitation to make a presentation to Purdue University's College of Veterinary Medicine in West Lafayette, Indiana. The two parties traveled to Indiana. After their presentation at Purdue, Respondent Ginn negligently caused an accident by driving the car in which Petitioner Bonab was a passenger into a stand of trees, causing Bonab to suffer severe injuries. Bonab subsequently filed this lawsuit against Ginn in the Superior Court of Santa Clara County.

B. Issue Presented

The sole question on appeal in this case is whether California has personal jurisdiction over the defendant in a case where the defendant causes harm to a California resident outside of California when: (1) both parties were residents of California at the time of the alleged tort; (2) the parties were traveling out of California only in furtherance of their ongoing California business FGSpire; (3) the parties promoted their business by trumpeting its California and Silicon Valley home; and (4) the parties returned to California after the accident, where the Petitioner continues to live. The answer to this question—a straightforward issue of specific jurisdiction—can be determined only by asking: did this accident arise out of or relate to the defendant's purposeful contacts with California? The undisputed fact of the matter is that this accident would never have occurred but for the defendant's purposeful contacts with California. Far from being "attenuated," California is the source from which this entire case emerges.

Defendant and the lower courts have erred by focusing on several irrelevant aspects of this case:

- First, it is of no moment that the defendant is currently domiciled in Illinois. That would matter if this were a case of *general* jurisdiction, which is determined exclusively by the defendant's domicile. In a case of specific jurisdiction, the defendant's current out-of-state residence is of course not dispositive; indeed, the purpose of specific jurisdiction is to ensure that states may hale out-of-state defendants into their courts when doing so is predictable and fair. Here, there can be no doubt that the predictability of a California forum was palpable. As the Court of Appeals indeed stated, "it should come as no surprise that he could potentially be subject to suit in California." It would be patently unfair to allow the defendant to effectively flee the jurisdiction of this state by moving elsewhere after the tort was committed.[1]
- Second, that the defendant's negligence occurred outside California does not bar California from taking jurisdiction in this case. This Court put that question to rest long ago in *Cornelison v. Chaney* (1976) 16 Cal.3d 143, and the Supreme Court has repeatedly held in specific-jurisdiction cases that the tortious conduct need not occur in the forum state. As this Court recognized in *Cornelison*, the fact that the accident occurred out of state does not matter if the accident

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[1] *See Reich v. Purcell,* 67 Cal.2d 551 (1967), Justice Traynor's landmark decision in the choice-of-law jurisprudence holding choice-of-law is based on evidence existing at the time of the collision, not post-collision changes, at 555.

arose out of the parties' business relationship, which was purposefully and intimately connected to California.

- Third, that the corporation the parties formed, FGSpire, is not the defendant in this case has no effect on whether there is jurisdiction over the defendant *individually*. Somehow, the lower court seemed to believe that because FGSpire has California contacts, the defendant's FGSpire-related California activities are subsumed or bracketed. But that is not the law. The question of whether Ginn may be held responsible personally for his actions is a question of the *merits*, not a question of jurisdiction. The fact that FGSpire is not a defendant does not, as the Court of Appeals would have it, erase the fact that the parties' California business activities were the sole reason they traveled from California to Indiana. All that matters to the question of whether there is specific jurisdiction over Ginn is whether his negligence arose out of or relates to his California contacts. It was those contacts, and those contacts *alone*, that took the parties to Indiana, where the accident occurred. That they both returned to California to continue that relationship is evidence enough of that connection. That the defendants' travel was in furtherance of FGSpire's objectives does not mean that there is not also jurisdiction over Ginn individually. If he believes he is not liable then the proper mechanism to assert that is a demurrer.

- Fourth, the Court of Appeals' reliance on *Bristol-Myers Squibb v. Superior Court of California* (2017) 137 S. Ct. 1773 [*BMS*] is misplaced. Not only is *BMS* easily distinguished because, unlike the defendant in this case, there was no specific California connection to the injuries suffered by non-California residents outside California. More troubling, though, is the Court of Appeals' misreading of *BMS*'s prohibition on a "sliding scale" of jurisdiction. It is of course true that *BMS* rejected the use of a sliding scale where jurisdiction over a defendant is proportional to the defendant's forum-state contacts; instead, the Court held, general and specific jurisdiction are discrete categories. But the Court of Appeals then effectively imposed a sliding scale on *specific* jurisdiction. The court's repeated assertion that the California contacts and the accident are "too attenuated" makes the same fundamental error again. There is no need for that complication: the accident in this case arose out of the defendant's California contacts—once that affiliation is found there is no need or power for the court to compare the strength of California's jurisdictional grounds to those of other states.

In sum, the lower court's errors are greater than its focus on the wrong factors or its misreading of precedent. The more serious problem with the lower court's analysis is its formalism. The court does not explain *why* it would be inappropriate for California to exercise jurisdiction in this case. Helpfully, the Supreme Court, in its two most recent personal-jurisdiction opin-

ions, *BMS, supra* and *Ford Motor Co.*, stated the two rationales for limitations on a State's jurisdiction: fairness to the defendant and interstate federalism. *Ford*, 141 S. Ct. at 1025 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 283, 293 (1980)). With respect to the former, it is difficult for the defendant to maintain that it would be either unpredictable or overly burdensome for this case to be litigated in California; if anything it is less predictable that this case would be litigated in the defendant's domicile, Illinois, since the defendant could have moved anywhere after the accident. With respect to the latter, the question is whether California has a legitimate interest in deciding this case. As this Court held in *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, however, and the Supreme Court recently confirmed in *Ford*, California has a legitimate interest in "providing [its] resident[ ] with a convenient forum for redressing injuries inflicted by out-of-state actors." *Ford*, 141 S. Ct. at 1030 (quoting *Burger King*, at 471 U.S. at 473); *see also Vons*, 14 Cal. 4th at 473 (describing the state's interest "in providing a judicial forum for its residents"). This is not a case of "litigation tourism" or "forum shopping"—rather, Petitioner is suing at home. Given the fair warning to Ginn that he might be sued here, and California's legitimate interest in providing a convenient forum for its citizen, there is no defensible reason why California should be barred from hearing Petitioner's case.

WHY REVIEW SHOULD BE GRANTED

California's long-arm statute has long authorized this State's courts to "exercise jurisdiction on any basis not inconsistent with the Constitution of this

state or the United States." Over the last decade, however, the U.S. Supreme Court has issued a series of opinions reshaping the law of jurisdiction in important ways, such as the scope of general jurisdiction. But also leaving it unchanged in many ways, especially with respect to the flexibility granted States when it comes to specific jurisdiction. The lower courts' decisions in this case demonstrate significant confusion about the impact of the Supreme Court's decisions. In particular, the lower courts in this case are far too grudging when it comes to this State's courts' legitimate and important interest in providing a convenient forum for its residents to redress injuries caused by out-of-state residents. In particular, the lower courts were far more stringent than the Supreme Court requires when assessing whether the plaintiff's claims "arise out of or relate to" the defendant's myriad intentional California contacts. This unnecessarily self-abnegating approach is both inconsistent with the Supreme Court's most recent decisions, BMS and Ford, and this State's long-arm statute, it is also potentially harmful to all California citizens seeking to recover in their home states' courts. This Court should take this case, not only to correct the errors by the Court below, but to also clarify the scope of personal jurisdiction under the Supreme Court's current interpretation of the Due Process Clause of the Fourteenth Amendment.

STATEMENT OF FACTS

Pursuant to motion and a trial court order on October 15, 2020, plaintiff took the deposition of Ginn who at the time was a resident of 110 San Antonio Street, Austin, Texas 78701. There were 50 exhibits

marked and verified by Petitioner Bonab verifying the corporation history and the interaction between Bonab and Ginn. Ginn filed no objection to any of the documents in the lower court or in the Court of Appeal. The Court of Appeal concluded:

> "There is little dispute about the underlying facts of this case, which show a number of contacts with California.
>
> Although Ginn argues that FGSpire is a separate entity and that its contacts with California are not his as an individual, it is undisputed that he attended university in California at Stanford, where he partnered with Bonab in forming FGSpire, consulted with Stanford faculty and local counsel in the formation of the startup, agreed to be governed by California law in his personal transactions with FGSpire, and can as chief executive officer be presumed to have consented to FGSpire's choice of California law in its transactions with other entities.
>
> Having availed himself of California law and California-based resources, it should come as no surprise that he could potentially be subject to suit in California." Slip op., page 5.

The exhibits submitted to the trial court and the Court of Appeal below are as follows:

From September 2015 through June 2019 both plaintiff and defendant were students at Stanford University in Stanford, California. Plaintiff and defendant met in the course of their education and struck up a bond generated by their mutual interest in starting their own company. In April of 2017, Ginn

approached a professor at Stanford for the purpose of assisting him in starting their own company (Ex. 3). Their professor was also a lawyer associated with a California law firm, Morrison and Foerster, a well-known Silicon Valley intellectual property firm. With their professor's introduction, the parties were introduced to the Managing Partner at the firm who guided them through the incorporation process with the view to starting their own company (Ex. 4).

On May 9, 2017, under the guidance of California lawyers, the company FGSpire, Inc. was incorporated in the State of Delaware on behalf of Ginn (Exs. 5, 6). Part of the incorporation process required payment of a franchise fee to the State of Delaware, which also in the second paragraph of the report required Ginn to list the principal place of business which was identified as Bryant. The phone number was given as 650-885-8499. Both litigants were listed as directors of the corporation (Ex. 7). The incorporation process required bylaws for its operation. The bylaws once again listed the principal place of business at Bryant on p. 1 sec. 1.2 (Ex. 10).

The California attorneys prepared a "founder stock purchase agreement" signed by both litigants (Exs. 8, 9) setting forth that California law would govern the agreement in accordance or as permitted by CCP § 1646.5 or any similar successor provision (p. 9, para.11). Any notice required to be given under the terms of this agreement was to be addressed to the company at its principal place of business at Bryant (p. 9, para. 12). The agreement was also subject to California securities law (p. 10, sec. 15) citing Cal. Corp. Code §§ 25100, 25102, 25105. The agreement was signed by both parties. Exhibits to this agreement

contained Ex. C, which contained a clause where consent of spouse of either party is to be governed by the community property rights of the State of California, and finally, Ex. D – Assignment provided generally that the assignment of any rights under these agreements would be governed by the laws of the State of California. Ex. D, p. 2.

The first meeting of the Board of Directors consisting of both litigants dated May 23, 2017 was signed by both litigants and authorized the Board on page 2 to open bank accounts on behalf of the corporation (Exs. 25, 26). Accounts with Silicon Valley Bank were opened with the signature of Ginn. Those accounts were still open and in use at the date of Ginn's deposition on November 4, 2020 (Ex. 50, Ginn depo, 123:8-124:14). The principal office on Bryant is once again repeated on page 3 of the agreement, and the Secretary of the corporation was directed to file appropriate notice of transaction with the California Department of Business Oversight.

A convertible promissory note was signed by Ginn with Pear Ventures II, L.P. on June 15, 2017 (Ex. 28). Pear Ventures is a California LLC that specializes in providing venture capital to startup companies (Ex. 50, 124:23-125:11, 126:4-9).

A stock incentive plan was devised for future employees, directors and consultants to promote the success of the company's business (Ex. 12, p. 1). On page 1, paragraph 2(B), the directors are admonished that California law, in addition to the laws of the incorporating state, must be followed. In addition, there were forms provided as part of this incentive plan for a notice of stock option award to employees, but admonishing any prospective employees who had

disagreements over the valuation or any issue involving this plan, the venue for any of these disputes according to page 6, paragraph 19 would be venued in the Northern District of California or in the California State Court, Santa Clara County.

It was anticipated and realized that consultants would be retained by the corporation. Exhibit 14 provided a form for that retention and Exhibit 14a is a signed copy of the corporation's first consultant, Dr. Aisling Glennie. That signed contract on page 4 provided that in the event of any conflicts: "the state and federal courts located in Santa Clara County in the State of California shall have exclusive jurisdiction and shall be the exclusive venue for the resolution of all disputes, claims, suits or actions arising out of or in connection with this agreement." Another significant form provided for the protection of proprietary information and inventions that might arise during the course of an employee's tenure with FGSpire, Inc. (Ex. 15). The corporation had a nine-page form citing Cal. Lab. Code §§ 2870 to 2872 providing protection for the employer. Those sections were specifically referred to by attachment Exhibit 1, and when asked if the current eight employees had signed the agreement, Ginn in his deposition indicated that he believed he had used that form, invoking the protections of California law. (Ex. 50, 46:15-22, 47:2-13, 49:20-24).

Ginn filed Statement and Designation by Foreign Corporation form S&DC-S/N with the Secretary of State of California (Ex. 20) on May 9, 2017. The form required paragraph 3a—principal executive office and 3b—principal office in California both listed at Bryant. The corporation also filed a Form F on May 6, 2019 unsigned by Mr. Castellon CPA (Ex. 22)

indicating Ginn is Chief Executive Officer, Secretary and Chief Financial Officer. Another Form F was filed by Mr. Castellon on April 1, 2020 (this time signed) indicating there had been no change in any of the information since the last filing (Ex. 23). The California Secretary of State website records these principal filings (Ex. 24).

IRS Tax ID numbers were issued to FGSpire, Inc. at their principal place of business, care of Ginn, Bryant (Exs. 16, 17). Extension of the filing of California taxes was granted to FGSpire, Inc. for 2017, prepared by California accountants Moss Adams, LLP, a San Francisco firm located by the Board of Directors (Ex. 18), which also indicated on the last page that the estimated taxes for 2018 would be $800. Corporate tax returns were requested by plaintiff who, according to Ginn, is still an officer of the corporation, and a shareholder (Ex. 50, 78:2-19). These requests for production were denied, despite the status of the plaintiff admitted by Ginn.

In addition to the documentation provided above, the actions of Ginn as president of FGSpire, Inc. is further evidence that he purposefully availed himself of forum benefits and purposely derived benefits from these interstate activities. Both Plaintiff and Ginn attempted to avail themselves of California fame and reputation (Plaintiff Decl., p. 2, para. 5). The parties met with potential clients, courtesy of the Morrison and Foerster Law Firm (Ex. 19). They actively solicited veterinary medicine practices and were successful on at least one occasion whereby a contract was entered into between Petco Animal Supplies Stores, Inc. (Petco), a company headquartered in San Diego, California (See Ex. 32; Ex. 50, 135:25-

136:5) (*See also* Ex. 33, a potential client National Veterinarian Associates Agoura Hills, California and Ex. 34-San Francisco SPCA).

In addition to open solicitation on their website advertisement (which was altered after complaint was filed to delete reference to Stanford) (Ex. 40), FGSpire, Inc. made several proposals to various academic institutions. Ex. 35 is example of a 130-page proposal to the Michigan State University College of Veterinary Medicine. There, the company openly proclaimed its affinity with Stanford University Artificial Intelligence Laboratory in Stanford, California and its general affiliation with Stanford University. Ex. 36 is a proposal dated February 27, 2018 to North Carolina State College of Veterinary Medicine in which FGSpire, Inc. boldly claims that it is "Silicon Valley's" commitment to veterinary medicine. The final proposal was an effort to sell their artificial intelligence program to Purdue University School of Veterinary Medicine "with their artificial intelligence-based insights . . . " (Ex. 37, p. 32). Upon an invitation from Purdue, plaintiff and defendant traveled to Purdue for the purpose of explaining their program and trying to sell their program utilizing the benefits of their experience at Stanford University's artificial intelligence laboratory. This effort was unquestionably related to their corporate business.

Both flew from San Francisco to Chicago on June 13, 2018 where Ginn obtained the use of his mother's vehicle and they drove to Indiana for the purpose of their next day presentation (Plaintiff Decl, p. 2, para. 6). Both spent the day visiting with various departments within the school, offering opinions on the efficacy of their program. At the end of the day they

were driving back to their hotel from the University. Ginn was driving and lost control of the vehicle (probably because he fell asleep) and drove into a stand of trees resulting in severe personal injury to the plaintiff (Plaintiff Decl., p. 2, para. 7). Ginn offers no evidence to deny that this trip was for a business purpose directly related to FGSpire, Inc.

After the accident, for reasons of his own, Ginn determined to sever his relationship with his fellow entrepreneur less than six months after the accident. Ginn discharged Plaintiff from the company (Ex. 42) and purported to reimburse him for his stock purchase with a Silicon Valley Bank check (Ex. 43).

Ginn continued to operate and expand his company. He was now in charge of the daily operations, meeting clients, retaining clients, hiring and firing employees, and was in sole control of the corporation. He has retained a California corporation to administer his billing and collections, and a California corporation to manage his payroll (Ex. 50, 121:21-122:20). His advertisement for new employees continues to advocate his affiliation with Stanford's artificial intelligence laboratory, and by implication, Silicon Valley (*see* Ex. 38). According to his testimony, Ginn now has eight employees, including an office manager and various software engineers improving the program and expanding the corporation. The two entrepreneurs are still negotiating Plaintiff's position in the corporation, his stock holdings, entitlement to share profits and his position on the Board of Directors.

PROCEDURAL HISTORY

Plaintiff filed his Complaint in the Superior Court of California at Santa Clara County on June 5,

2020. The Complaint states Defendant Ginn is president and CEO of FGSpire, a company headquartered at Bryant. (CT 2-10). On August 13, 2020, Defendant Ginn filed the Motion to Quash that is the subject of this appeal (CT 11-44). On September 15, 2020, Defendant Ginn filed a Supplemental Memorandum and Points of Authority in support of that Motion (CT 45-48). Plaintiff filed his opposition to the Motion on November 16, 2020 (CT 217-445). Defendant filed a Reply Brief on November 20, 2020 (CT 697-708). Plaintiff responded to the Motion to Quash and addressed all of Defendant's arguments. Plaintiff's Response included an application of *Bristol-Myers Squibb Co. v. Superior Court of Cal., San Francisco Cty.,* 137 S. Ct. 1773 (2017) and the "settled principals" of personal jurisdiction to the facts of the instant case. Plaintiff, like the trial court, found *Cornelison v. Chaney*, 16 Cal.3rd 143 (1976) instructive and demonstrated the applicability to a finding of jurisdiction in this case.

Before the hearing on the Motion on December 1, 2020, the Court issued a tentative ruling in favor of Defendant Ginn on November 30, 2020 (the clerk does not attach tentative rulings).

The court granted Ginn's Motion to Quash Service of Summons for lack of personal jurisdiction on January 6, 2021 (CT 779-789) (no change from tentative ruling).

Plaintiff filed a Notice of Appeal with the Sixth District Court of Appeal on February 5, 2021. The record was certified on July 26, 2021. Oral Argument was conducted on October 13, 2022. The Court of Appeal issued its decision on October 25, 2022. This Petition for Review was filed on December 2, 2022.

GOVERNING LAW AND PROCEDURAL FACTS

A. California has specific jurisdiction over this case

Pursuant to California's long-arm statute, "A Court of this state may exercise jurisdiction not inconsistent with the Constitution of this state or the United States." Cal. Civ. Code § 410.10. Jurisdiction is consistent with the due process clause of the Fourteenth Amendment so long as the defendant has "sufficient minimum contacts" with the forum state, from which the complaint arises, such that the exercise of jurisdiction "will not offend traditional notions of fair play and substantial justice. . . . " *International Shoe Co. v. Washington* 326 U.S. 310 at 310 (1945). There are two discrete categories of personal jurisdiction: general and specific. General jurisdiction is appropriate over a defendant where he is "essentially at home." *Goodyear Dunlop Tires Ops. v. Brown*, 564 U.S. 915 (2011).

Specific jurisdiction, however "covers defendants less intimately connected with a State, but only as to a narrower set of claims." *Ford Motor Co. v. Mont. Eighth Judicial Dist. Court* , 141 S. Ct. 1017, 1024 (2021). In order for a state to have specific jurisdiction over a defendant, the defendant must "take 'some act by which it purposefully avails itself of the privilege of conducting activities within the forum State.'" *Id.* (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). And "the plaintiff's claims . . . must arise out of or relate to the defendant's contacts with the forum." *Id.* at 1025 (internal quotation marks and citations omitted).

As this Court has explained, "[a] state may exercise specific jurisdiction over a nonresident who purposefully avails himself or herself of forum benefits, because the state has 'a manifest interest in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors.'" *Vons Companies, Inc. v. Seabest Foods, Inc.*, 14 Cal. 4th 434, 448 (1996) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985). The Court continues: "where individuals purposefully derive benefit from interstate activities it may well be unfair to allow them to escape having to account in other States for consequences that arise proximately from those activities." *Id.* Once the plaintiff has successfully demonstrated that the defendant has created the requisite minimum contacts, the burden shifts to the defendant to demonstrate that jurisdiction is nevertheless unreasonable. *Id.*

1. It is undisputed that the defendant purposefully created contacts with the state of California.

The first step of the specific-jurisdiction test requires that the defendant establish purposeful contacts with California; that is, the defendant's *own* actions must connect him to the forum state. *Walden v. Fiore*, 571 U.S. 277, 284 (2014). In other words, "[t]he contacts must be the defendant's own choice and not 'random, isolated, or fortuitous.'" *Ford*, 141 S. Ct. at 1025 (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984)). As *Burger King* explains, when a defendant "deliberately engages in significant activities" or creates "continuing obligations between himself and residents of the forum, he manifestly has availed himself of the privilege of conducting busi-

ness there." 471 U.S. at 475-76 (internal citations and quotation marks omitted). Moreover, "because his activities are shielded by 'the benefits and protections' of the forum's laws it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well." *Id*. at 476. So long as "the defendant 'deliberately reached out beyond' its home-by, for example, 'exploiting a market' in the forum State" jurisdiction is appropriate. *Ford*, 141 S. Ct. at 1025 (quoting *Walden*, 571 U.S. at 285).

The Court of Appeals did not dispute that the defendant had purposefully established myriad contacts with California. As the court below noted, the defendant: "attended university in California at Stanford, where he partnered with Bonab in forming FGSpire, consulted with Stanford faculty and local counsel in the formation of the startup, agreed to be governed by California law in his personal transactions with FG Spire, and can as chief executive officer be presumed to have consented to FGSpire's choice of California law in its transactions with other entities." Slip op. at 5. Based on this conclusion, the Court of Appeals concluded that because Ginn had "availed himself of California law and California-based resources, it should come as no surprise that he could potentially be subject to suit in California." Slip op. at 5.

We agree. Not only did Ginn's many purposeful contacts give him fair warning that he might be sued here, the fact that Ginn's activities were aimed to achieve the benefits and protections of his association with California creates a reciprocal legitimate interest in holding him to account in California's courts. *See Ford*, 141 S. Ct. at 1025 (holding that when "the defendant 'deliberately reached out beyond' its home-

by, for example, 'exploiting a market' in the forum State" jurisdiction is appropriate if the lawsuit relates to that business"); *Burger King*, 471 U.S. at 475-76 (noting that when the defendant's "activities are shielded by 'the benefits and protections' of the forum's laws it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well").

To allow Ginn to scamper away to Illinois to avoid the jurisdiction is an unfair bargain for this state. *See Vons*, 14 Cal.4th at 448 ("where individuals purposefully derive benefit from interstate activities it may well be unfair to allow them to escape having to account in other States for consequences that arise proximately from those activities").

2. This controversy arises out of and relates to the defendant's California contacts.

Although the Court of Appeal had no problem finding that Ginn has purposefully established minimum contacts with California, it concluded that Bonab's claims do not arise out or relate to Ginn's California contacts. As this Court held in *Vons*, "[a] claim need not arise directly from forum contacts in order to be sufficiently related to the contact to warrant the exercise of specific jurisdiction." 14 Cal. 4th at 452. All that is necessary is that the claims "bear[ ] a substantial connection to the nonresident's forum contacts." *Id.* As the U.S. Supreme Court noted in 2021, the California contacts need not be the proximate cause of the plaintiff's claims; it is sufficient for the claims to "relate" to the defendant's contacts with the forum State. *Ford*, 141 S. Ct. at 1026.

The required "nexus" between Ginn's California contacts and Bonab's claim is straightforward. Ginn's California activities included forming a business relationship with Bonab. That relationship-and *only* that relationship-was the reason the parties traveled to Indiana, held a business meeting at Purdue University, and after leaving that meeting Ginn drove the car off the road. Yes, it was an Indiana road. But that the accident occurred out of the state is no bar to California's jurisdiction.

This Court's decision in *Cornelison v. Chaney*, 16 Cal.3d 143 (1976), stands for the opposite proposition. In *Cornelison*, the plaintiff was a California resident whose husband was killed in an auto accident with the defendant's truck in Nevada. The defendant was a domiciliary of Nebraska whose long-haul trucking business took him to California around 20 times a year. Ultimately, as in our case, the question facing the court was whether there was specific jurisdiction over a resident's claim against a non-resident arising from a car accident that took place outside of California. The court said there was. As the Court noted: "The crucial inquiry concerns the character of defendant's activity in the forum, whether the cause of action arises out of or has a substantial connection with that activity, and upon the balancing of the convenience of the parties and the interests of the state in assuming jurisdiction." *Id.* at 148.

In *Cornelison*, the Court concluded that there was "a substantial nexus between plaintiff's cause of action and defendant's activities in California." *Id.* at 149. The Court's conclusion was prompted by the defendants "continuous course of conduct that brought him into the state" regularly, that the accident was

not far from the California border, that defendant was "bound" for the state and intended to receive merchandise in California for delivery elsewhere. Because the "accident arose out of the driving of the truck, the very activity which was the essential basis of defendant's contacts with the state," the Court concluded that the case was sufficiently related to the defendant's purposeful California contacts. *Id.*

Although this case is not on all fours with *Cornelison*, the result should be the same. Like the *Cornelison* defendant, Ginn engaged in a continuous course of conduct in California. Indeed, he continues to engage in that conduct since his company remains headquartered in California and he has had to return here since graduating from Stanford. Moreover, like *Cornelison*, the accident arose out of his business, "the very activity which was the essential basis of defendant's contacts with this state." 16 Cal.3d at 149. It is a stretch to conclude that Ginn, who moved away after the tort was committed and continues to benefit from his business's home base in California, may nevertheless avoid jurisdiction here for a claim that directly arose from his California activities. Moreover, that the *Cornelison* plaintiff was a California resident who suffered damages in California weighed strongly in favor of its conclusion that California was an appropriate forum. *Id.* at 151 ("California has an interest in providing a forum since plaintiff is a California resident."). In *Ford*, the U.S. Supreme Court reaffirmed that "States have significant interests . . . [in] providing [their] residents with a convenient forum for redressing injuries inflicted by out-of-state actors." 141 S Ct. at 1030.

The Court of Appeals, however, thought *Cornelison* was distinguishable, but its reasons are remarkably unpersuasive. First, the lower court stated that the parties' activities were not related to "the essential basis of the defendant's contacts with the state" because "[a]lthough the parties had gone to Indiana for FGSpire purposes, the underlying controversy was a car accident which related to FGSpire's business only incidentally in that it occurred in the hours following the Purdue marketing meeting." Slip op. at 8. Respectfully, this conclusion is wrong. The parties' presence in Indiana arose directly from Ginn's California contacts—no one disputes that the parties would not have been in Indiana but for their California business relationship. These were not two California college kids attending a fraternity party at Purdue on a lark—they were there in furtherance of the business they developed and marketed based on its Silicon Valley origins and under the protections of California law. Moreover, the conclusion that the car accident was unrelated to the parties' California business because it was "in the hours following" the business meeting is misplaced. Surely, the Court of Appeals' conclusion cannot be that if the parties were driving *to* the meeting there would be jurisdiction, but because they were heading back to where they intended to sleep was not.[2]

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[2] See this Court's opinion in *Hinman v. Westinghouse Electric Company* 2 Cal.3d 956 (1970) explaining the enterprise theory indicating that accidents are sure to occur in the conduct of the employer's enterprise. Therefore, it is a cost of doing business. Dean Prosser explains that is a principle of modern jurisdiction that has been accepted for more than 50 years, at page 956. Prosser Law of Torts, Third Edition, page 471 (1964). It has been explained as the inevitable toll of a lawful enterprise. 2

In addition, the lower court's emphasis on the "activity forming the essential basis" of the defendant's contacts misreads *Cornelison*. In *Cornelison*, it was important that the Nebraska defendant's negligence arose out of his trucking business because that was the defendant's *only* contact with California. As a result, it was important that the plaintiff's claim arise out of that single contact. Here, the defendant had myriad contacts with California—the cause of action need only arise out of one such contact to support jurisdiction. Although we contend that by the time of the accident FGSpire *was* the activity forming the essential basis of Ginn's contacts with California, Ginn's contacts were so substantial that the claim need not arise out of *all* of them. The simple fact of this case is that Ginn created a business relationship with Bonab in California. That relationship took them to Indiana where the tort occurred. That is the necessary nexus.

What matters far more is that, like *Cornelison*, the defendant had embarked on a business that required travel outside California. And, as in *Cornelison*, "the existence of an interstate business is . . . relevant to considerations of fairness and reasonableness. The very nature of defendant's business balances in favor of requiring him to defend here." *Cornelison*, 16 Cal.3d at 151. It was Ginn's decision to travel outside California, with a fellow Californian, to pursue his interests in Indiana. He cannot now complain that he is subject to jurisdiction in California for injuries caused to his colleague.

Harper and James Law of Torts, pages 1376-1377 (1956).

3. California jurisdiction comports with traditional notions of fair play and substantial justice.

In *Bristol-Myers Squibb* and *Ford*, the Court made clear the bases for concluding that specific jurisdiction is appropriate. Specific-jurisdiction requirements "derive from and reflect two sets of values—treating defendants fairly and protecting 'interstate federalism.'" *Ford*, 141 S. Ct. at 1025 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 283, 293 (1980)).

With respect to fairness to the defendant, the Court emphasized that a defendant who "exercises the privileges of conducting activities within a state, thus enjoying the benefits and protections of its laws" may be held to account by that state "for related misconduct." *Id.* (citing *Int'l Shoe*, 326 U.S. at 319). Indeed, the defendant's purposeful activities in the forum state constitute "fair warning" that it may be subject to that state's jurisdiction for related activities. Ginn's intentional acts to create a connection to California brought significant benefits—a corporation not only protected by California's laws but also enhanced by its California identity, one that Ginn repeatedly boasted of to investors. Given the extent of his California contacts, there can be little doubt that he has sufficient "fair warning" that he could be sued in California in connection with his activities.

With respect to interstate federalism, "[t]he law of specific jurisdiction thus seeks to ensure that States with 'little legitimate interest' in a suit do not encroach on States more affected by the controversy." *Id.* (quoting *Bristol-Myers Squibb Co. v. Superior Court of Cal., San Francisco Cty.,* 137 S. Ct. 1773, 1780 (2017). Here, California has a legitimate interest in

"'providing [its] resident[ ] with a convenient forum for redressing injuries inflicted by out-of-state actors.'" *Id.* at 1030 (*quoting Burger King*, 471 U.S. at 473); *see also Vons*, 14 Cal. 4th at 473 (describing the state's interest "in providing a judicial forum for its residents—so long as the goal of fairness to defendants is observed. . . . This interest cannot be served when the defendant has no minimum contacts with the state—but when the defendant does have such contacts it can be satisfied.").

The Court of Appeals asserted that *BMS* supports its conclusion that there is no jurisdiction over Ginn in this case, but that support is unwarranted. The distinction between *BMS* and this case is apparent: in *BMS* the Court held that there was no jurisdiction over non-California residents who were injured outside the state. Notably, *Bristol-Myers* did not challenge personal jurisdiction with respect to the claims brought by California residents.

Indeed, when describing *Bristol-Myers*, in its recent *Ford* opinion, the Court explained that "We found jurisdiction improper in Bristol-Myers, because the forum State, and the defendant's activities there, lacked any connection to the forum state . . . . In short, the plaintiffs were engaged in forum-shopping—suing in California because it was thought plaintiff-friendly, even though their cases had no tie to the State." 141 S. Ct. at 1031 (emphasis added). Here, unlike the plaintiffs in *Bristol-Myers*, Bonab is suing in the state where he lives. He can hardly be tarred with the epithet of forum shopping for choosing to sue in the state he makes home, and where the parties' relationship was centered. California is a far more "natural forum" for this case than the defendant's

current home in Illinois, or even Indiana, which the defendants only visited briefly. *See Id.* (distinguishing *Ford* on the ground that "here, the plaintiffs are residents of the forum States").

In this case, however, there is no doubt both that Bonab was a California resident at the time of the tort and remains so today. Moreover, Ginn was a resident of California at the time of the accident and only left the jurisdiction after the fact. As a result, the Court's conclusion in *BMS* that non-Californians could not sue in California for injuries suffered elsewhere is irrelevant. Unlike *BMS*, as noted above, this is very much a case where a California forum was predictable and in which California has an interest in providing a convenient forum to its resident. California need not be self-abnegating to the point of consigning its own plaintiff to litigate thousands of miles away.

All told, Ginn can hardly claim to be a stranger to California, and California is no stranger to this litigation.

B. The Court of Appeals Erred by Conflating Ginn's California Contacts with Those of FGSpire

This is not a lawsuit against FGSpire; it is a lawsuit against Ginn. Whether FGSpire may be liable or whether Ginn is somehow indemnified by FGSpire are non sequiturs to the question of personal jurisdiction. The sole question for this Court is whether Ginn's California contacts warrant jurisdiction over him as a defendant in this case. Adjudicating Ginn, or FGSpire's, relative liability is a question for the merits. Defendant may surely demur that he is not

responsible for the accident, or seek to join FGSpire as a co-defendant. But when assessing personal jurisdiction, the analysis revolves exclusively around whether the defendant's contacts with the state require him to appear here in this lawsuit. That this is a lawsuit against Ginn personally, however, does not render his California contacts in support of FGSpire irrelevant.

California courts have long made clear that the question of jurisdiction over a corporation's employee or official is separate from the question of whether that employee is personally liable. "An individual's status as an employee acting on behalf of his or her employer does not insulate the individual from personal jurisdiction based on his or her forum contacts." *Anglo-Irish Bank Corp., PLC v. Superior Court,* 165 Cal.App.4th 969, 980 (2008). In *Taylor-Rush v. Multitech Corp.,* 217 Cal. App. 3d 103 (1990) the court rejected any notion of a "fiduciary shield doctrine" limiting California's personal jurisdiction over an individual because he was also acting on behalf of a company. In other words, relying on the Supreme Court's analysis in *Calder v. Jones* , 465 U.S. 783, 790 (1984), and *Keeton v. Hustler Magazine, Inc.,* 465 U.S. 770, 781 (1984), the *Taylor-Rush* court held that committing a tort while acting as an employee for a corporation creates no jurisdictional immunity for the individual. *Taylor Rush*, 217 Cal. App. 3d at 116-118. Indeed, both cases relied upon Supreme Court authority of *Frances T. v. Village Green Owners Association*, 42 Cal.3d 490, 503-504 (1986), holding that the officers of a corporation could be held personally liable if they were involved in the tort-whether or not liability exists is a merits question. *See also Keeton* (noting that the Supreme Court has

"reject[ed] the suggestion that employees who act in their official capacity are somehow shielded from suit in their individual capacity.").

In sum, then, all of Ginn's intentional California contacts in co-founding FGSpire do not shield him from jurisdiction in California for any actions taken while working for FGSpire. Holding that Ginn's FGSpire-related contacts do not "count" when it comes to his amenability to jurisdiction in California would be "inconsistent with the legislative intent behind the California long-arm statute which is designed to provide personal jurisdiction to the fullest extent constitutionally permissible." *Seagate Tech. v. A.J. Kogyo Co.*, 219 Cal.App.3d 696 (1990).

The Court of Appeals, however, appeared to hold that Ginn's California activities in support of FGSpire should be attributed only to the corporation and not to him personally. Not only is this contrary to *Taylor-Rush* and *Seagate*, it requires a kind of mental gymnastics that is impossible to perform on a motion to quash service of process. The lower court's conclusion that "the accident that occasioned this lawsuit at best relates to Bonab's connection with FGSpire not Ginn's California activities in furtherance of his own," slip op. at 8, slices the bologna too thin—Ginn was driving that car, with his colleague Bonab in the passenger seat, to further his California activities. There is no other discernible reason for him to have been there.

At this stage, however, the lower court's attempt to divide defendant's contacts between his own and FGSpire's is unnecessary and inappropriate. Should Ginn believe he is not personally liable to Bonab, that is an argument he may make at the merits

stage of the litigation. The proper questions at the jurisdictional stage are whether Ginn established minimum contacts with California, and whether this cause of action arises out of or relates to those activities. Ginn's ultimate liability as an individual can be addressed on a demurrer or at summary judgment.

CONCLUSION

In Petitioner's papers "Why Review Should be Granted" we noted that the Supreme Court has spoken at least two times in recent history and this court has not had an opportunity to acknowledge those opinions in its jurisprudence under CCP § 410.10. There is confusion in the lower courts interpreting the Supreme Court jurisdiction and unnecessarily restricting the California statute enacted to protect its citizens. There is even confusion as to whether an independent review of the record is the same as a *de novo* proceeding. Petitioner notes that most trial courts are still citing the *Vons* case decided in 1996 as the touchstone case, but, as here, the Court of Appeal was questioning the holding and reliability of *Cornelison* in light of the *BMS* case, or the *Ford* case decided later. In our petition we argue that *Vons* and *Cornelison* are both viable authorities and can be relied upon for guidance by the trial courts and the attorneys who represent petitioners in these cases. We pointed out that the Court of Appeal instituted a reverse sliding scale in evaluating Ginn's contacts in this case, but without any authority. According to *Vons,* the only requirement that there be a substantial connection does not evaluate the strength, but rather in the words of the *Ford* case the connection must be made to the underlying minimum contacts. It is

respectfully requested that this Court grant Petitioner's petition and reverse the decision of the court below in light of modern Supreme Court authority.

Dated: December 2, 2022

THE BOCCARDO LAW FIRM, INC.

By: /s/ John C. Stein
Attorneys for Petitioner

{ Certificates of Counsel Omitted }

RESPONDENT'S ANSWER TO PETITION FOR REVIEW FILED IN SUPREME COURT OF CALIFORNIA (DECEMBER 22, 2022)

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

Supreme Court Case No.: S277570
Court of Appeal Case No.

FARAZ FADAVI AKHAVAN BONAB,

Petitioner,

v.

SAMUEL GINN,

Respondent.

Sixth Appellate District, Case No.: H048837
Santa Clara County Civil Case No. 20CV366892

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

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COMES NOW, Specially Appearing Respondent, Samuel Ginn, and in answer to the Petition states as follows:

Respondent Samuel Ginn answers the Petition for Hearing before the California Supreme Court by Plaintiff Faraz Bonab regarding a granted Motion to Quash Service of Summons in favor of Defendant Samuel Ginn for lack of personal jurisdiction. The Motion to Quash was granted by the Santa Clara County Superior Court on January 6, 2021 (CT 779-789). The ruling by the Superior Court was upheld by the Sixth District Court of Appeal on October 2022. Both courts were correct in their decisions.

I. Petitioner Sets Forth Inaccurate Facts.

Despite Petitioner's claim to the contrary, there are disputed and/or inaccurate factual issues set forth in Petitioner's "Issue Presented" (p. 4-8 of the Petition).

First, throughout Petitioner's brief, he indicates that defendant Samuel Ginn was a resident of California. He was not. Like many college students he was a resident of his home state of Illinois, who was attending college at Stanford in Palo Alto, California. At the time of the incident in question, June 2018, Mr. Ginn was returning home for the summer having completed the spring semester at Stanford. He flew to Chicago, Illinois, picked up his

mother's vehicle, which he drove to Indiana where the accident occurred. He was not headed back to California after the Indiana trip, rather, he was home for the summer. In a declaration filed with the Superior Court as part of the motion to quash, Mr. Ginn indicated that he was a resident of Illinois and always considered himself a resident of Illinois. (CT 31-32) Samuel Ginn mentioned several times that his home was in Oakpark, Illinois. (CT 709, 724, 736-737,743-744-745)

Mr. Ginn testified in deposition that when attending college in California he returned home to Oak Park, Illinois each available opportunity during the school year. This consisted of, essentially, four times per year when he would return home. He testified that he would return home for Thanksgiving, the end of the fall semester, spring break, and summer break. (CT 736-737) The vehicular incident in question occurred after he had returned home for summer break, as he returned home each summer. (CT 736-737)

The petition also indicates (page 9 under Statement of Facts) that Samuel Ginn's residence was not Illinois, but Austin, Texas. That is simply not true. His deposition was taken via zoom while he was in Texas, he testified in that same deposition that his residence was Oak Park, Illinois. (CT 709, 724, 736-737,743-744-745) He was served with the lawsuit at his home in Oak Park, Illinois (CT 745).

There were never any documents submitted to the trial court that indicate that Samuel Ginn's residence was anywhere other than Illinois.[1]

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[1] It should be noted that plaintiff's first filed suit for the

Second, throughout Plaintiff Bonab's petition, plaintiff emphasizes the creation of corporate documents for the corporation, FGSpire Inc., which is not a Defendant in the case, rendering the emphasis as not particularly relevant. The corporate documents of FGSpire Inc., create no establishment of personal jurisdiction over the individual, Samuel Ginn. The corporation is not a Defendant, and the issues in this vehicular accident case do not revolve around corporation related documents. The corporation that was formed was called FGSpire Inc. Bonab and Ginn were the only officers and directors. They had no employees. They had no product. They had no customers. FGSpire Inc., had a box at a UPS store in Palo Alto, California that Petitioner claims was their "headquarters" (CT 712).

Plaintiff and Defendant had completed their sophomore year at Stanford at the time of the incident. They had an idea for software for veterinarians. They visited Purdue to primarily to shadow the veterinarians there, not sell a product. (CT 742) After their visit to Purdue on June 14, 2018, they left the University to have dinner and then to an Indiana hotel to spend the night. On the way to the hotel the accident in question occurred. (CT 31-32)

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incident in question in Tippecanoe County Indiana, but dismissed that case without prejudice and filed in California. The trial court denied a request for judicial notice of that case. (CT 33-44) Respondent believes it to be relevant in that it reflects Petitioner's thought process about where the proper place to file suit was located. Should the Court decide to hear this matter, Respondent respectfully requests that the Court determine the Indiana filing's appropriateness and relevance, particularly in light of Petitioner's ongoing claims that he lacks a viable avenue, when, indeed, he chose one earlier in Indiana.

The trial court was provided the declaration of Mr. Ginn indicating that he always considered himself a resident of Illinois, as well as portions of Mr. Ginn's deposition indicating the same. (CT 31-32) The deposition, which lasted several hours, focused on documents of FGSpire Inc., as part of its original formation. The trial court reviewed pertinent portions of the deposition and exercised its discretion to weigh the facts and determine that there was no personal jurisdiction despite the Petitioner's lengthy set of corporate documents attached to the opposition to the motion to quash. Based on the trial court's decision and the Appellate Court's decision, these corporate documents seem to have little effect to making a personal jurisdiction analysis.

Third, the Petitioner also inaccurately and consistently states that the parties were in Indiana to market their product. In deposition, Samuel Ginn stated that he and Petitioner were at Purdue to shadow the veterinarians there, not to present them with benefits of their program, but to understand how they operate and practice medicine (CT 742-743). Purdue was not looking for a software program at that time. (CT 743)

Fourth, Petitioner purposefully intertwines the individual, Samuel Ginn, with the corporation FGSpire, Inc. In an effort to try to make it appear that the corporation actions are Ginn's actions. For example, Petitioner states on page 19 of the Petition that Ginn continues to engage in conduct in California because the company remains headquartered in California. Many corporations deal with the state of California that does not mean that the actions of the corporation are attributed to an individual. Further, it is well known in this day and age that many people, especially

in the software industry, work remotely, often in another state, and the location of box in Palo Alto by a corporation is not determinative of personal jurisdiction against an individual when the corporation for which he works is "headquartered" (a postal-type box) in California. Though the corporation may have arguable minimum contacts with California the individual does not. The corporation in this matter is not a Defendant. Yet, Petitioner continues to try to attribute the acts of the corporation in creating documents in California as acts of the individual, Samuel Ginn, in the circumstances involving the accident, including driving his mother's car in Indiana.

II. Petitioner Presents No New Legal Issue for Determination.

California Rule of Court, Rule 8.500 (b) states as follows:

> "The Supreme Court may order review of a Court of Appeal decision:
>
> (1) when necessary to secure uniformity of decision or to settle an important question of law;
>
> (2) when the Court of Appeal lack jurisdiction;
>
> (3) when the Court of Appeal decision lacks the concurrence of sufficient qualified justices; or
>
> (4) for the purpose of transferring the matter to the Court of Appeal for such proceeding as the Supreme Court may order."

The Petition does not seem to state that the Appellate Court committed an error under Rule

8.500 (b) (2) through (4). The only arguable question that Petitioner seems to raise is whether there was a lack of uniformity of decision or to settle an important question of law under California Rule of Court, 8.500 (b)(1).

Petitioner cites no lack of uniformity of decision among the various district appellate courts with respect to personal jurisdiction. Petitioner cites no conflict of cases at the district appellate court level that require clarification by this Court regarding this personal jurisdiction issue.

Further, the law in California with respect to personal jurisdiction has been discussed and clarified over the relatively recent past. There is no lack of uniformity of decision that is outstanding, nor does there remain any important questions of law for this particular case that need settling. Cases such as *Cornelison v. Chaney* (1976) 16 Cal 3rd 143, *Vons Companies, Inc., v. Sea Best foods Inc.* (1996) 14 Cal 4th 434, and *Bristol-Myers Squibb v Superior Court of California* (2017) 137 S.Ct. (1773) all address personal jurisdiction issues involving California. Some of these personal jurisdiction issues have been clarified at the U.S. Supreme Court as in the *Bristol-Myers Squibb* case. The issues are clear.

As a consequence of the clarity set forth in the *Bristol-Myers Squibb* case, acceptance of the petition of the plaintiff is not necessary to settle an important question of law that arises with respect to this particular matter.

The thrust of the petition is that Petitioner believes that the Appellate Court misapplied the law. It did not. In fact, it followed the analysis of this

Court in *Cornelison* and the U.S. Supreme Court decision in *Bristol-Myers Squibb*. There is no unique circumstance that would suggest this court accept the petition.

III. Petitioner's Citation of New Theories Is Inappropriate.

Petitioner asserts an enterprise theory by citing the case of *Hinman v Westinghouse* (1970) 2 Ca1.3d 956 at page 20 of their petition. Neither the Hinman case nor the enterprise theory was argued at the Appellate level and consequently Petitioner appears to be injecting new analysis into the petition, which had not been considered earlier, for which no new hearing was requested by the Appellate Court and should not be part of this Court's review process.

Further, Petitioner's analysis in this regard ignores the testimony of Samuel Ginn submitted to the trial court indicating their visit did not involve marketing at Purdue (CT 742-743), rather it was research in the form of shadowing of veterinarians as an educational device, followed by driving to and eating at a restaurant and driving to a hotel in Samuel Ginn's mother's car, (Ct 32-33) when the incident occurred. It was not a corporate car, it was Samuel Ginn's mother's car. There is no evidence the corporation paid for the flight or other expenses incurred in the visit to Purdue.

IV. There Was No Misapplication of Law by the Appellate Court.

Respondent Samuel Ginn resides in Illinois. Like many people throughout the United States, the corporation with which he is employed is located in

California. The mere fact that his employer is in the State of California does not make him amenable to personal jurisdiction for a vehicular accident that occurs in another state. Both the Trial Court and the Appellate Court analyzed whether there was sufficient contacts with the State of California and whether the actions at the time of the accident constituted a sufficient connection to the State of California for personal jurisdiction to apply. Neither court accepted that as the case. The Appellate Court stated on page 7-8 of their opinion that:

> "Ginn's driving his mother's car to the hotel is linked only tenuously to his contacts with California, which related to the founding of FGSpire. Although the parties had gone to Indiana for FGSpire purposes, the underlying controversy was a car accident which related to FGSpire's business only incidentally in that it occurred in the hours following the Purdue marketing meetings. Ginn's driving of the car was not "directed at" California, nor can driving generally be characterized as a basis for Ginn's contact with California, as was the case in *Cornelison.*" Page 7-8 Sixth District Court of Appeal Opinion of October 25, 2022.

Petitioner infers that this was a misapplication of the *Cornelison v. Chaney* (1976) 16 Cal 3rd 143 case. In fact, both the Trial Court and Appellate Court's application was correct. In *Cornelison* the truck driver defendant was in the course and scope of his employment as a truck driver, he was traveling from the midwest toward California as he had done many times in the past as part of his independent

truck driving status. He was not in California yet but was near the border of Nevada and California and was directing his activity toward the State of California where he would pick up another load and return to the Midwest. These factors do not exist in this case. The accident that occurred in this case did not involve someone whose occupation was driving a vehicle, nor was the vehicle headed in the direction of California for the purposes of going to California to do anything. In fact, their activities at Purdue University had ceased and the two young men were leaving a restaurant heading to a hotel in Indiana when the accident occurred. Samuel Ginn would return to Chicago, as he was home for the summer. There was no purposeful activity directed at California. Petitioner argues that that is too narrow of an interpretation of the *Cornelison* case, but the facts of this case and the principles of personal jurisdiction over an individual do not warrant an expansion. Both the Appellate Court and the Trial Court applied the analysis of *Cornelison* correctly.

Further, here, the Appellate Court found that there needed to be a greater nexus between the tort and the forum state in the case at hand. The Appellate Court at page 6 of it's opinion analyzed the applicability of the *Bristol-Myers Squibb v. Superior Court of California* (2017) 137 Sup. Ct. 1773, and cited it, referring to page 1781 that:

> "'[i]n order for a court to exercise specific jurisdiction over a claim, there must be an affiliation between the forum and the underlying controversy, principally, [an] activity or occurrence that takes place in the forum State'. . . . 'Said differently, [w]hat

> is needed . . . is a connection between the forum and *the specific claims at issue*.'" (Italics in Court of Appeal opinion.

The tort activity or occurrence did not occur in California. It occurred in Indiana. It was not directed at California. The corporation's presence in California is insufficient to establish personal jurisdiction over the individual when the tort did not occur in California nor was it directed at California. *Bristol-Meyers Squibb* had substantial sales in California, and the corporation was a named defendant in California yet they were not subject to personal jurisdiction in California because the alleged tort did not occur within the State. In *Cornelison* the tort did not occur within the State, but was directed at the State. The facts and principles of neither *Bristol-Meyers Squibb* or *Cornelison* can be circumvented or manipulated to apply to the case at hand. The Appellate Court's decision is consistent with each.

IV. Conclusion

Wherefore, it is respectfully respected that Petitioner's request for review be denied.

Dated: December 22, 2022

WILLIAMS, PINELLI & CULLEN

By: /s/ Anthony F. Pinelli
Attorneys for Respondent
Samuel Ginn

{ Certificates of Counsel Omitted }

APPELLANT'S REPLY TO RESPONDENT'S ANSWER TO PETITION FOR REVIEW FILED IN SUPREME COURT OF CALIFORNIA (DECEMBER 29, 2022)

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

Supreme Court Case No.: S277570

FARAZ FADAVI AKHAVAN BONAB,

Petitioner,

v.

SAMUEL GINN,

Respondent.

Sixth Appellate District, Case No.: H048837

Santa Clara County Civil Case No. 20CV366892

REPLY TO RESPONDENT'S ANSWER TO PETITION FOR REVIEW

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I. Respondent's Answer to the Petition and the Lower Courts' Opinions Demonstrate Why Supreme Court Attention is Urgently Needed

Both the lower courts' opinions and Respondent's answer to the Petition demonstrate that there is immediate need for the Supreme Court to clarify the law of personal jurisdiction under the U.S. Supreme Court's *seven* new decisions since 2010. The fact that the lower courts and Respondent rely primarily on *Cornelison*, decided in 1976, and *Vons*, decided in 1996, alone suggests that clarification of the effect of the U.S. Supreme Court's recent decisions on California's long-arm statute is necessary. As Respondent correctly notes, review by this Court is appropriate "when necessary to secure uniformity of decision or to settle an important question of law." Cal. Rule of Court, 8.500(b)(1). As this Court has explained, such review is required when there is a need for "a uniform rule of decision throughout the state, a correct and uniform construction of the constitution, statutes, and charters, and, in some instances, a final decision by the court of last resort of some doubtful or disputed question of law." *Briggs v. Brown*, 3 Cal.5th 808, 861 (2017) (quoting *People v. Davis*, 147 Cal. 346, 348 (1905)).

Personal jurisdiction is especially ripe for reexamination by this Court if only because over the last ten years "the Roberts Court has transformed the personal jurisdiction field." Charles W. Rhodes, *The Roberts Court's Jurisdictional Revolution Within* Ford*'s Frame*,

51 Stetson L. Rev. 157, 158 (2022). Although Petitioner contends that *Vons* and *Cornelison* remain good law, that the decisions below revolve around precedents issued decades prior to the Supreme Court's recent "revolution" in personal jurisdiction shows why action by this Court is required.

That the Court of Appeals did not even analyze this case under the U.S. Supreme Court's most recent specific-jurisdiction decision, *Ford Motor Co. v. Montana Eighth Judicial Court* , 141 S. Ct. 1017 (2021), indicates that guidance is urgently needed. The lower court's failure to analyze this case under *Ford* also demonstrates how the lower court erred. The Court of Appeals' analysis is based almost entirely on the U.S. Supreme Court's opinion in *Bristol-Myers-Squibb v. Superior Court of California*, 137 S. Ct. 1773 (2017), but the proper analysis is under *Ford*, where "the majority's embrace of a broad concept of relatedness holds promise for an expansion of personal jurisdiction-one that can remedy the gap created by the Court's restriction of general jurisdiction and enhance plaintiff's access to convenient courts." Richard D. Freer, *SCOTUS Analysis* : Ford Motor Co. *and Personal Jurisdiction* , Emory Law News Center, Apr. 19, 2021 (https://law.emory.edu/news-and-events/releases/2021/04/scouts-analysis-ford-motor-company-v.-montana-eighth-judicial-district-court.html).

Beyond the lower court's errors, there are three other prudential reasons to clarify the law of personal jurisdiction: (1) personal jurisdiction is a matter of constitutional right under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution; (2) under this State's long-arm statute, jurisdiction in *all* civil cases is pegged to the limits under the

Fourteenth Amendment; and (3) the U.S. Supreme Court's most recent explanations of specific jurisdiction in *Bristol-Myers Squibb* and *Ford* leave questions about the scope of specific jurisdiction under California's long-arm statute. Given the Court's recent return to a more expansive vision of specific jurisdiction heralded in *Ford*, now is the time for this Court to speak. *See* Maggie Gardner, et al., *The False Promise of General Jurisdiction* , 73 Ala. L. Rev. 456, 479 (2022) (noting that the Court "rightly rejected [ ] a rigid rule" for relatedness in specific jurisdiction in *Ford*). That the Court of Appeal would focus exclusively on *Bristol-Myers* and ignore the holding in *Ford* illustrates the danger of California's courts interpreting the long-arm statute far too grudgingly, leaving California residents such as the Petitioner without recourse for the effects of harms felt in California. This case therefore presents an ideal vehicle to clarify California jurisdiction over torts committed out of state under the U.S. Supreme Court's recent precedents in *Bristol-Myers Squibb* and *Ford*.

II. California Has Specific Jurisdiction Over Petitioner's Case Because the Claim Arises Out or Relates to Respondent's Purposeful California Contacts

Despite Respondent's repeated attempts to obfuscate, the question presented is narrow: did the case arise out of or relate to Ginn's purposeful California contacts. Respondent continues to assert a series of non sequiturs that distract from the crucial issue demanding clarification: the requisite nexus between the defendant's contacts and his California contacts under *Ford*. Respectfully, much of Respond-

ent's Answer is irrelevant to this analysis and unresponsive to the arguments in the Petition.

It is unnecessary to recapitulate the arguments supporting jurisdiction in the Petition here, given the Answer's failure to respond to them, but Petitioner's position has been uniform throughout this case: this is a lawsuit against Mr. Ginn in his personal capacity. As the Court of Appeals held, Mr. Ginn, in choosing to attend Stanford University, personally performing the acts to create a business relationship with Mr. Bonab in California, and personally taking multiple steps to create a California corporation purposefully established the requisite contacts for California jurisdiction. Because the parties' trip to Indiana was in furtherance of that California-based relationship, the claims arising out of the car accident that occurred there arise out of or relate to Mr. Ginn's California contacts. Throughout Mr. Ginn's Answer, there is no answer (nor could there be) to the central fact of this case: that the trip to Indiana would never have occurred but for the parties' relationship, which began and was centered in California. There is no explanation in Respondent's Answer for *why* there should not be jurisdiction in California. There is no assertion that California jurisdiction is unforeseeable or unfairly inconvenient to the Respondent, who, it bears mention, continues to personally operate a California corporation. There is also no argument that California jurisdiction in this case violates principles of interstate federalism because California has a clear interest in providing a convenient forum for its resident who continues to live in California and suffer harm at the hands of the defendant. In short, in neither the Respondent's Answer, nor the

lower courts' opinions, can one find a *reason* that California should not hear this case.

There are, however, several attempts at misdirection in Respondent's Answer. First, Respondent asserts that Ginn was never a resident of California while attending Stanford because he considered his permanent home Illinois. Respectfully, this is irrelevant for several reasons. To begin, Respondent is committing the basic error of conflating the terms "residence" and "domicile." As this Court has observed,

> Courts and legal writers usually distinguish 'domicile' and 'residence,' so that 'domicile' is the one location with which for legal purposes a person is considered to have the most settled and permanent connection, the place where he intends to remain and to which, whenever he is absent, he has the intention of returning, but which the law may also assign to him constructively; whereas 'residence' connotes any factual place of abode of some permanency, more than a mere temporary sojourn. 'Domicile' normally is the more comprehensive term, in that it includes both the act of residence and an Intention to remain; a person may have only one domicile at a given time, but he may have more than one physical residence separate from his domicile, and at the same time.

Smith v. Smith, 45 Cal.2d 235, 239 (1955). Ginn's domicile may always have been Illinois, but there can be little doubt that he resided in California while attending Stanford, and at the time of the accident. *See Bohn v. Better Biscuits*, 26 Cal.App.2d 61, 64

(1938) (explaining that in many circumstances there is nothing "showing the word 'reside' was intended to mean 'domicile'"). At least for purposes of venue the California Code of Civil Procedure,

> "[R]eside means: Live, dwell, abide, sojourn, stay, remain, lodge. Those words are synonyms. . . In common sense, the word 'reside' means 'To abide continuously, to dwell permanently or for a length of time; to be present.' . . . Persons who are said to reside in a place usually include all those who are the actual, stated dwellers there, even though they may have a technical domicil[e] elsewhere."

Id. (internal citations and quotation marks omitted).

While the defendant's domicile may be the single relevant factor in deciding whether a defendant is subject to *general* personal jurisdiction, a defendant need not reside or be domiciled in the state to be subject to its *specific* personal jurisdiction. The need for specific jurisdiction is based on the necessity (which the U.S. Supreme Court has understood well since it overruled *Pennoyer v. Neff* in *International Shoe Co. v. Washington,* 326 U.S. 310 (1945) for a state to assert jurisdiction over *non-domiciliaries* and *non-residents*. *Shaffer v. Heitner* (Scalia, J.), 495 U.S. 604, 618 (1990) ("Subsequent cases have derived from the *International Shoe* standard the general rule that a State may dispense with in-forum personal service on nonresident defendants in suits arising out of their activities in the State."). Ultimately, then, Respondent's emphasis on whether Ginn "resided" in California at the time of the accident is irrelevant since, as we contend, the quality of his

contacts with California are sufficient for specific jurisdiction here. Should residence be relevant, the proper solution should be remand to the Superior Court for a determination, as "[t]he question of residence or domicile is a mixed question of law and fact." *Noble v. Franchise Tax Bd.*, 118 Cal.App.4th 560, 567 (2004).

Second, Respondent continues to argue that his personal actions in creating FGSpire in California are irrelevant because FGSpire is not a defendant. Petitioner agrees FGSpire is not a defendant; Ginn is. However, as discussed in our Petition (at 23-25), and unrefuted in Respondent's Answer, under California law, the existence of a corporation does not shield its employee from personal jurisdiction in California in cases arising out of the employee's personal California contacts. Whether Ginn is somehow relieved of liability by the corporation, that is, whether "the corporation's actions are Ginn's actions" (Answer at 6), is a *merits question* irrelevant to jurisdiction. Therefore, since it remains undisputed that Respondent personally took an array of actions to create a California corporation, and sought to *benefit* from FGSpire's California provenance, his personal actions create specific jurisdiction even though they may have been performed in furtherance of FGSpire's activities. That FGSpire also exists as a legal entity does not invalidate all of the actions Ginn personally took to avail himself of the privileges and protections of California (Petition 6-13).

Respondent also asserts that the trip to Purdue was somehow insufficiently connected to the parties' business relationship, but the Answer to the Petition gives away the game: "Plaintiff and Defendant had

completed their sophomore year at Stanford at the time of the accident. They had an idea for software for veterinarians. They visited Purdue primarily to shadow the veterinarians there, not sell a product." (Answer at 6.) Setting aside whether one can characterize this trip as "marketing," this statement also shows why there was a clear nexus between the parties' California relationship and the trip to Indiana-there was simply no other reason for the parties to be in Indiana other than to further their business relationship. In other words, whether the parties' trip to Purdue was a direct marketing trip or a trip to shadow Purdue representatives to better understand the software needs of veterinarians, it was a trip to further the interests of FGSpire, the parties' California corporation with operations based in California. It defies logic to hold these facts do not create specific jurisdiction under *Ford's* relatedness test. Respondent believes he has good reasons that FGSpire is liable rather than him (despite that he apparently now views the trip to Indiana is insufficiently related to furthering the business, only an "educational device, followed by driving and eating at a restaurant and driving to a hotel" (Answer at 9), but that can be hashed out in a dispositive motion on the merits, should Respondent have good grounds for one.[1]

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[1] Exhibit 37 to the original Opposition to Motion to Quash in the trial court attached a partial excerpt of the written presentation made to Purdue School of Veterinary Medicine at pp. 32-41. Ginn and Bonab asserted that the program would assist veterinary practitioners in finding the best treatment (p. 33), assist in diagnosis (p. 34), and lead to standardized codes for diagnostic purposes (p. 35). The program would manage and validate clinical trials with data collection (p. 38), manage chronic diseases (p. 40) and asserted Purdue would be in the front line

III. This Court's Decision in *Cornelison* Supports Jurisdiction in This Case

Much of the fight in this case has revolved around whether this Court's decision in *Cornelison v. Chaney*, 16 Cal.3d 143 (1976), supports jurisdiction. The scope of *Cornelison*-and therefore jurisdiction under the California long—arm statute in cases where the tort is committed out of state—is ripe for analysis under the Supreme Court's recent jurisprudence. A fair reading of *Cornelison*'s holding and rationale reveals that jurisdiction is appropriate in this case.

At its core, *Cornelison* reaffirms the principle, uncontroversial at least since *International Shoe*, that a tort against a California resident need not occur within California's borders for California to assert jurisdiction. As Justice Mosk noted at the outset of the Court's opinion: "The issue presented by this appeal is whether California, consistent with the due process clause of the United States Constitution, may assert jurisdiction over a nonresident individual whose essentially interstate business has a relationship to this state, but whose allegedly tortious acts occurred outside the state." *Id.* at 146. In holding that such jurisdiction is constitutional, the Court explained that "[t]he crucial inquiry concerns the character of the defendant's activity in the forum, whether his

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of the future of electronic veterinary medicine (p. 41). The trial court concluded that: 1) Ginn was in the business of selling computer software (CT 787), 2) that the meeting at Purdue was a business meeting (CT 784), and 3) Ginn was leaving a business meeting with a potential client (CT 787). The Sixth District utilized the same language of a business meeting on page two of the Slip Opinion and Ginn was driving the car after a business meeting with a potential client (Slip Op. p. 3).

cause of action arises out of or has a substantial connection with that activity, and upon the balancing of the convenience of the parties and the interests of the state in assuming jurisdiction." *Id.* at 148. Although the defendant was a nonresident and the tort occurred outside California, the State's interest was clear: "California has an interest in providing a forum since Plaintiff is a California resident." *Id.* at 151. This interest, and the interest of the plaintiff in making use of her home forum, outweighed the defendant's interest in avoiding suit in California because the defendant's multistate activity rendered causing injury outside his home state foreseeable, and he had not demonstrated that litigation in California would be unreasonable. *Id.*

Jurisdiction is appropriate here for the same reasons. Respondent personally acted in California in myriad ways that created a burgeoning business relationship with Petitioner intended to benefit from their mutual connection to Stanford and Silicon Valley. The sole reason for the parties' travel to Indiana was in support of this business relationship and thus made causing injury outside the state eminently foreseeable. Respondent has not indicated there is any significant inconvenience in litigating in California, and California has a strong interest in providing a convenient forum for its resident, who continues to live and suffer damages here. In short, jurisdiction in this case is entirely consistent with *Cornelison*.

Here, unfortunately, the lower courts and Respondent continue to disregard the central thrust of *Cornelison* (and *Ford*). Instead, they continue to attempt to distinguish the case factually by focusing on the proximity of Nevada (where the accident

occurred) to California and the fact that apparently at the time of the accident the *Cornelison* defendant's car was heading toward California at the time of the accident. It is true that this accident occurred in Indiana, not California. It is also true that the parties were heading to a hotel for the night after their meeting and before eventually returning to California to continue their studies and develop their FGSpire business. These distinctions, however, do not create a different result. They only serve to distract from the critical facts: the parties were engaged in a California-formed and centered business relationship that took them out of state on a business trip, where the defendant engaged in negligence while driving and the plaintiff was in the passenger seat. But for this California-centered business relationship, the parties would not have been in Indiana, nor would they have been in this collision. The notion that Petitioner should be deprived of a home-state forum to redress his injuries contradicts the core principles of *Cornelison, Vons* and *Ford*. Indeed, in this case, the Respondent's contacts with California and Petitioner are far more extensive than the non-resident truck driver in *Cornelison*, rendering California a far more foreseeable forum than even *Cornelison* itself.

Respondent's repeated pleas that his activities at the moment of the accident were not "directed" toward California are beside the point. Rather, as explained in the Petition, this is a case of purposeful availment of California. One of the acts arising from that availment was this business trip, during which the tort occurred. In *Cornelison*, it was the same—the defendant's availment of the California market led to

a tort against a Californian that occurred outside California. Focusing on minutiae like the direction the car was traveling or whether the accident occurred immediately before or after the Purdue meeting serves only to distract from the critical holding of *Cornelison* and *Ford*.

IV. Conclusion

The lower courts' opinions demonstrate the sort of widespread confusion on an important question of law that demands this Court's attention. Although the U.S. Supreme Court's recent interventions in specific-jurisdiction doctrine have been many, they have also been oracular. It is for this Court to clarify their meaning for purposes of applying California's long-arm statute, which is, of course, relevant to every civil case. In so doing, this Court should make clear the vitality of its earlier precedents and that California has jurisdiction over a case like this one, where the tort occurred outside California but arises out of and relates to the defendant's myriad California contacts. Here, the tort—against a California resident—would never have occurred but for defendant's eagerness to exploit his relationship with this State. Under these circumstances, this Court should take the opportunity to confirm that California has ample power to provide a convenient forum to its resident and decide this case.

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Dated: December 29, 2022

{ Certificates of Counsel Omitted }