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Los Angeles Superior Court

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6 ATTORNEYS FOR DEFENDANT GINA CHA AKA GEUM O. CHA,
AN INDIVIDUAL

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**
10 **CENTRAL DISTRICT**

11 PALACIO CAPITAL PARTNERS, INC., A
CALIFORNIA CORPORATION; GREG JEONG,
12 AN INDIVIDUAL,

13 PLAINTIFFS,

14 v.

15 GINA CHA AKA GEUM O. CHA, AN
INDIVIDUAL; MB INVESTMENTS, LLC, A
16 FLORIDA LIMITED LIABILITY COMPANY; AND
DOES 1 THROUGH 20, INCLUSIVE,

17 DEFENDANTS.

) CASE No: BC 416601

) **SPECIALLY APPEARING
DEFENDANT GINA CHA'S NOTICE
OF MOTION AND MOTION TO
QUASH SERVICE OF SUMMONS FOR
LACK OF PERSONAL JURISDICTION
OR, IN THE ALTERNATIVE, MOTION
TO STAY OR DISMISS THE ACTION
ON THE GROUND OF FORUM NON
CONVENIENS; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

) [Declaration of Gina Cha filed concurrently]

) [Cal. Civ. Proc. Code §§ 410.10;
410.030(a); 418.10(a)(1)-(2)]

) Judge: Michael L. Stern

) Date: October 13, 2009

) Time: 8:30 a.m.

) Dept: 62

1 **TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on October 13, 2009, at 8:30 a.m. in Department
3 62 of this Court, located at 111 N. Hill Street, Los Angeles, California, specially
4 appearing defendant Gina Cha, by and through her attorneys, will appear specially in this
5 Court for an order quashing service of summons for lack of personal jurisdiction or, in
6 the alternative, for an order to stay or dismiss the action on the ground of inconvenient
7 forum. These motions are made on the following grounds:

8 1. This Court lacks personal jurisdiction over Ms. Cha, who is not domiciled
9 in California, was not served with process in California, and does not consent to
10 jurisdiction in California. Moreover, Ms. Cha does not have sufficient contacts with
11 California to warrant this Court's exercise of personal jurisdiction. Accordingly, this
12 Action should be dismissed. Cal. Civ. Proc. Code §§410.10 and 418.10(a)(1).

13 2. California is an inconvenient forum for this Action and a suitable
14 alternative forum exists in the State of Florida. Accordingly, this Action should be
15 dismissed or stayed under the doctrine of forum non conveniens. Cal. Civ. Proc. Code §§
16 410.30(a) and 418.10(a)(2).

17 This motion is based upon this notice of motion and motion, the attached
18 memorandum of points and authorities, the accompanying declaration of Ms. Gina Cha
19 and supporting evidentiary exhibits, all pleadings and papers on file in this action, and
20 such additional facts and argument as may be presented at or before the time of the
21 hearing.

22 Dated: September 17, 2009

23 FOLEY & LARDNER
24 CHRISTOPHER J. HECK
25 COURTNEY R. HENNING

26 By: 

27 CHRISTOPHER J. HECK
28 ATTORNEYS FOR DEFENDANTS GINA
CHA AKA GEUM O. CHA, AN
INDIVIDUAL.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Palacio Capital Partners, Inc. (“Palacio”) and Greg Jeong (collectively “Plaintiffs”) have sued specially appearing defendant Gina Cha¹ over a commission they falsely claim was allegedly paid by a Florida real estate developer to Ms. Cha in connection with a Florida real estate development. Ms. Cha does not now, nor has she ever, had the requisite minimum contacts with California to be subject to the personal jurisdiction of this Court. Moreover, none of the events surrounding the real estate development project at issue occurred in California. In fact, the only connection between this forum and this action is the residency of Plaintiffs.² Subjecting Ms. Cha, a Florida resident, to the jurisdiction of this Court simply because Plaintiffs reside in California is contrary to constitutional protections. Accordingly, Ms. Cha respectfully moves this Court to quash service of summons on Ms. Cha and dismiss this Action pursuant to California Code of Civil Procedure §§ 410.10 and 418.10(a)(1) for lack of personal jurisdiction.

California is also an inconvenient forum, and a far more suitable alternative forum exists in the State of Florida. Accordingly, in the alternative, Ms. Cha moves for a stay or dismissal of this Action under California Code of Civil Procedure §§ 410.30(a) and 418.10(a)(2) under the doctrine of forum non conveniens.

II. FACTS

A. This Action Arises Out Of A Florida Real Estate Development Financing Deal That Was Negotiated In Florida and/or Asia

This action arises out of payments that Plaintiff alleges were made to Ms. Cha by

¹ Plaintiffs have also sued MB Investments, LLC. Plaintiff Jeong was a member of MB, a Florida LLC which was dissolved by operation of Florida law in September 2008. Ms. Cha was also a member of MB, as was non-party Mr. David Cho.

² The Complaint alleges that “Palacio is and at all material times was a California corporation with its principal place of business in Los Angeles County, California.” Compl. ¶ 1. The Complaint further alleges: Mr. Jeong “was and is an individual residing and doing business in Los Angeles County, California” and “Jeong was and is a principal and controlling shareholder of Palacio.” Compl. ¶ 2.

1 Ravallo Resort Development, LLC (the “Ravallo Company”) in connection with the
2 development of the Ravallo Resort (the “Ravallo Resort”) in Orlando, Florida. Compl. ¶
3 9. The Ravallo Company is a Florida limited liability company and the Ravallo Resort is
4 located in Orlando, Florida. Cha Decl. ¶ 16; Ex. D. Plaintiffs allege that certain
5 financing for the development of the Ravallo Resort was provided by Daishin Investment
6 Trust Management (“Daishin”), a South Korean company. Compl. ¶¶ 13-14. Nearly all
7 potential witnesses are located in Florida or Asia, as is nearly all potential documentary
8 evidence. Cha Decl. ¶ 18.

9 **B. The Contracts Alleged in the Complaint Have No Nexus to California**
10 **in Connection with this Action**

11 This entire action is premised on Plaintiffs’ false and unsupported allegations that
12 Ms. Cha received a commission for her work from Ravallo and that she was in some way
13 required by certain contracts between (1) Mr. Jeong/Palacio and Ms. Cha, and/or (2) Mr.
14 Jeong/Palacio and the Ravallo Company to share this commission. These allegations are
15 false, but even assuming they are true, they do not concern California.

16 The Complaint alleges the existence of three contracts³: (1) a “Partnership
17 Agreement” dated March 2007 between Palacio, Ms. Cha, and Mr. David Cho⁴ (Compl. ¶
18 8); (2) a “Membership Agreement” allegedly governing the members of MB Investments,
19 LLC (“MB”), identified as Mr. Jeong, Ms. Cha, and Mr. Cho (Compl. ¶ 12); and (3) a
20 contract between Palacio and Ravallo allegedly providing for a commission to be paid to
21 Palacio for assistance with financing the Ravallo Resort (Compl. ¶¶ 10, 11). Background
22 information on MB, as well as on each contract alleged in the Complaint, is addressed
23 below.

24 **1. MB and the Partnership Agreement**

25 MB was at all relevant times a Florida liability company. Compl. ¶ 4. MB held a
26 business checking account at a bank in Orlando, Florida. Compl. ¶¶ 8, 41.

27
28 ³ Plaintiffs did not attach any of the alleged contracts to their Complaint.

⁴ Mr. Cho is not a party to this Action.

1 In March 2007, Ms. Cha, Mr. Jeong, and Mr. Cho were added as
2 members/managers of MB, as reflected in MB's 2007 Annual Report filed with the State
3 of Florida. Cha Decl. ¶ 11; Ex. A. Also in March 2007, Ms. Cha, Mr. Cho, and Mr.
4 Jeong/Palacio entered into a General Partnership Agreement (the "Partnership
5 Agreement"). Cha Decl. ¶ 12; Ex. B. Thus, Ms. Cha, Mr. Jeong, and Mr. Cho were
6 principals of MB as well as parties to the Partnership Agreement.

7 The Partnership Agreement was drafted by Mr. Jeong and his attorney(s). Cha
8 Decl. ¶ 12. It does not contain a forum selection clause. Cha Decl. ¶ 12; Ex. B. It is
9 governed by the "Uniform Partnership Act of the United States of America."⁵ Cha Decl.
10 ¶ 12; Ex. B.

11 The explicitly stated purpose of the Partnership Agreement was "to handle the
12 hotel development projects for the Hilton Garden Inn & Homewood Suites located on
13 Palm Parkway in Lake Buena Vista, Florida" (the "H-H Project"). Cha Decl. ¶ 13; Ex. B.
14 It makes no mention of the Ravallo Resort project. Significantly, the Ravallo Resort is
15 located in Orlando, Florida and is not part of the Hilton Garden Inn & Homewood Suites
16 in Lake Buena Vista, Florida. Cha Decl. ¶ 17. The work envisioned by the Partnership
17 Agreement in connection with the H-H Project never materialized. Cha Decl. ¶ 15. In an
18 email dated September 1, 2007 entitled "H-H Project," Mr. Jeong asked that MB be
19 terminated. Cha Decl. ¶ 15; Ex. C. MB was administratively dissolved by the State of
20 Florida in September 2008 for failure to file an updated Annual Report with the Florida
21 Department of State, Division of Corporations. Compl. ¶ 4.

22 The Partnership Agreement is irrelevant to this Action because it concerns an
23 unrelated resort development. Moreover, even if the Partnership Agreement were
24 relevant, Plaintiffs' allegation that Palacio, Ms. Cha, and Mr. Cho entered into the
25 partnership agreement in Los Angeles, California (Compl. ¶ 8) is incorrect. Ms. Cha
26 negotiated the Partnership Agreement and discussed the partnership's proposed work for

27 ⁵ The Florida Revised Uniform Partnership Act of 1995 provides that to the extent a
28 partnership agreement does not speak to an issue, the Florida Revised Uniform
Partnership Act governs. Fla. Stat. § 620.8103.

1 the H-H Project with Mr. Jeong over the telephone from her office in Orlando, Florida.
2 Cha Decl. ¶ 14. Ms. Cha did not travel to California to sign the Partnership Agreement.
3 Cha Decl. ¶ 14. Ms. Cha signed the Partnership Agreement in Orlando, Florida and
4 faxed her copy of the signed agreement to Mr. Jeong in California. Cha Decl. ¶ 14.

5 In sum, the only connection the Partnership Agreement has to California is the
6 residency of the Plaintiffs.

7 **2. The Alleged Membership Agreement**

8 To the extent a Membership Agreement exists as alleged in paragraph 12 of the
9 Complaint, any such agreement would be governed by Florida law. Plaintiffs do not
10 allege otherwise and have failed to attach a copy of the alleged agreement to their
11 Complaint. The only jurisdictional fact alleged in connection with the alleged
12 Membership Agreement is that said agreement was “formed to plan and carry out hotel
13 development projects in Florida.” (Compl. ¶ 12.)

14 **3. The Alleged Palacio/Ravallo Agreement**

15 Plaintiffs do not allege Ms. Cha was a party to any alleged agreement between
16 Palacio and the Ravallo Company. (Compl. ¶¶ 10, 11.) Plaintiffs do not allege any
17 jurisdictional facts in connection with this alleged agreement, other than to state that the
18 Ravallo Company was a party to said agreement and that it concerned a “900-unit
19 condominium/hotel/convention project in Orlando.” (Compl. ¶ 9-11.) The Ravallo
20 Company is a Florida Limited Liability Company. Cha Decl. ¶ 16; Ex. D.

21 In sum, Plaintiffs admit in the Complaint that this Action concerns a Florida real
22 estate development managed by a Florida real estate development company. Ms. Cha’s
23 only California contacts even tangentially related to this Action are a handful of isolated
24 telephone calls and a single fax to Mr. Jeong in reference to the Partnership Agreement,
25 an agreement that is irrelevant to this Action.

26 **C. Ms. Cha Lacks Contacts With California**

27 Ms. Cha is a United States citizen who has been a resident of Florida for the past
28 thirteen (13) years. Cha Decl. ¶ 2. She is in the business of providing real estate

1 development and investment strategy consulting services to individuals and businesses in
2 Orlando, Florida. Cha Decl. ¶ 1. She does not do business in California. Cha Decl. ¶ 7.
3 She does not own any property in California, does not have California bank accounts, and
4 does not hold any professional licenses issued by the State of California. Cha Decl. ¶¶ 4-
5 6. Ms. Cha travels to California approximately twice a year to visit friends. Cha Decl. ¶
6 8.

7 **III. ARGUMENT**

8 **A. The Service of Summons Should Be Quashed and This Action Should**
9 **Be Dismissed for Lack of Personal Jurisdiction**

10 California's long-arm statute authorizes California courts to exercise jurisdiction
11 on any basis not inconsistent with the constitutions of California and the United States.
12 Cal. Civ. Proc. Code § 410.10; Pavlovich v. Superior Court, 29 Cal.4th 262, 268 (2002).
13 Accordingly, the California jurisdictional analysis is co-extensive with federal due
14 process requirements. Id.

15 Due process protects an individual's liberty interest in not being subject to the
16 binding judgments of a forum with which she has established no meaningful "contacts,
17 ties, or relations." Vons Cos., Inc. v. Seabest Foods, Inc., 14 Cal.4th 434, 445 (1996)
18 (citing Burger King Corp. v. Rudzewicz, 471 U.S. 462, 471-72 (1985), quoting Int'l Shoe
19 Co. v. Washington, 326 U.S. 310, 319 (1945)). In the absence of the traditional bases for
20 personal jurisdiction – presence, domicile, or consent – jurisdiction comports with due
21 process only where the defendant has "certain minimum contacts with [the forum state]
22 such that the maintenance of the suit does not offend traditional notions of fair play and
23 substantial justice." Vons Cos., 14 Cal.4th at 444-45 (quoting Int'l Shoe, 326 U.S. at
24 316).

25 Personal jurisdiction over nonresident defendants may be general or specific.
26 Vons Cos., 14 Cal.4th at 445. The precise standards for general and specific jurisdiction
27 are set forth below. Notably, "when a defendant moves to quash out-of-state service for
28 lack of personal jurisdiction, the plaintiff has the burden of establishing jurisdiction by a

1 preponderance of the evidence.” Penn. Health & Life Ins. Guar. Assoc. v. Superior
2 Court, 22 Cal.App.4th 477, 480 (1994).

3 Plaintiffs have not established, and cannot establish, any basis for this Court to
4 exercise personal jurisdiction over Ms. Cha. First, none of the traditional bases for
5 personal jurisdiction apply. Second, Ms. Cha lacks sufficient contacts with California for
6 this Court to exercise general jurisdiction. Third, Ms. Cha has not acted in such a way as
7 to create specific jurisdiction. Accordingly, the exercise of jurisdiction would offend
8 traditional notions of fair play and substantial justice, and the Action should be dismissed
9 for lack of personal jurisdiction.

10 **1. No traditional basis for jurisdiction exists.**

11 The three traditional bases for personal jurisdiction are: (1) personal service within
12 the forum state; (2) domicile; and (3) consent. In re Fitzgerald, 39 Cal.App.4th 1419,
13 1420 (1995). None of these bases apply here. First, Ms. Cha was served with the
14 complaint in Florida, not California. Cha Decl. ¶ 3. Second, Ms. Cha is domiciled in
15 Florida. Cha Decl. ¶ 2; Compl. ¶ 3. Third, Ms. Cha did not and does not consent to
16 jurisdiction in California. Cha Decl. ¶ 9.

17 **2. No general jurisdiction exists.**

18 To prove general jurisdiction, Plaintiffs must show that Ms. Cha engaged in
19 “‘continuous and systematic general business contacts’ that ‘approximate physical
20 presence’ in the forum state.” Elkman v. Nat’l States Ins. Co., 173 Cal.App.4th 1305,
21 1315 (2009); Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 801 (9th Cir.
22 2004) (internal citations omitted). This “exacting standard” requires extremely
23 significant forum contacts. Schwarzenegger, 374 F.3d at 801.

24 Ms. Cha lacks such contacts. Plaintiffs do not and cannot allege that Ms. Cha
25 engaged in the type of contacts that would give rise to general personal jurisdiction in
26 California. In fact, Plaintiffs acknowledge that Ms. Cha is an “individual residing and
27 doing business in Orlando, Florida” who is “based in Orlando.” (Compl. ¶¶ 3, 9.)
28 Plaintiffs also concede, as they must, that the Ravallo Resort is situated in Orlando.

1 (Compl. ¶ 9.) Plaintiffs do not allege that any part of the alleged Ravallo Resort
2 financing deal that is the subject of this Action occurred in California.

3 There is also no basis for general jurisdiction because at all times relevant to
4 Plaintiffs' allegations, Ms. Cha did not own any property in California, did not hold a
5 California bank account, did not conduct business in California, and did not hold any
6 professional licenses issued by the State of California. Cha Decl. ¶¶ 4-7. Ms. Cha's
7 handful of telephone/fax calls into California and occasional personal visits to California
8 to visit friends fall far short of the kind of "continuous and systematic general business
9 contacts" required to establish general personal jurisdiction. See e.g., Fireman's Fund
10 Ins. Co. v. Greenberg, 2008 U.S. Dist. LEXIS 88792, at *11 (S.D. Cal. Feb. 26, 2008)
11 (individual defendants who owned a vacation home in California that they visited on
12 occasion not subject to general personal jurisdiction in California); Reyerson v. Ollennu,
13 2007 U.S. Dist. LEXIS 47581, at *5-7 (June 28, 2007) (contacts of truck driver who
14 operated a truck in Idaho for several days insufficiently substantial to for the truck driver
15 to be subject to general personal jurisdiction in Idaho).

16 **3. No specific jurisdiction exists.**

17 Plaintiffs also cannot establish specific personal jurisdiction over Ms. Cha.
18 California courts apply a three-part test to assess whether the exercise of specific
19 jurisdiction is appropriate:

20 (1) the non-resident defendant has purposefully availed
21 herself of forum benefits; (2) the controversy arises out of or
22 relates to the defendant's forum-related activities; and (3) the
23 exercise of jurisdiction comports with fair play and
24 substantial justice, *i.e.* it must be reasonable.

25 Pavlovich, 29 Cal.4th at 269; Boschetto v. Hansing, 539 F.3d 1011, 1016 (9th Cir. 2008).

26 The plaintiff has the burden of "demonstrating facts justifying the exercise of
27 jurisdiction." Vons Cos., 14 Cal.4th at 449. Only if the plaintiff meets its burden under
28 the minimum contacts test does the burden then shift to the defendant to show that the
exercise of jurisdiction would be unreasonable. Id.

///

1 **a. Ms. Cha did not purposefully direct her activities at**
2 **California or purposefully avail herself of the privilege of**
3 **conducting business in California.**

4 Plaintiffs have not shown and will not be able to show that Ms. Cha purposefully
5 directed her activities at California or that she purposefully availed herself of the
6 privilege of conducting business in California. Purposeful direction and purposeful
7 availment are related, but distinct concepts. Boschetto, 539 F.3d at 1016. Cases
8 sounding in tort are typically analyzed under a purposeful direction analysis while cases
9 sounding in contract are typically analyzed under a purposeful availment analysis. Id.
10 Plaintiffs' claims against Ms. Cha include both contract and tort claims.

11 **(1) There is no purposeful availment**

12 To purposefully avail oneself of the privilege of conducting activities in the forum,
13 a defendant must have "performed some type of affirmative conduct which allows or
14 promotes the transaction of business within the forum state." Goehring v. Superior
15 Court, 62 Cal.App.4th 894, 907 (1998); Boschetto, 539 F.3d at 1016 (internal citations
16 omitted). The requirement of affirmative conduct is designed to safeguard the defendant
17 against being "haled into court as the result of random, fortuitous or attenuated contacts."
18 Gray & Co. v. Firstenberg Machinery Co., 913 F.2d 758, 760 (9th Cir. 1990). The
19 formation of a contract with a forum resident, standing alone, is insufficient to establish
20 purposeful availment. Burger King, 471 U.S. at 478; Goehring, 62 Cal.App.4th at 907;
21 Boschetto, 539 F.3d at 1017. Courts must consider prior negotiations, contemplated
22 future consequences, the contract terms, and the parties' course of dealing as part of the
23 purposeful availment test. Burger King, 471 U.S. at 478; Goehring, 62 Cal.App.4th at
24 907.

25 Applying these factors here, it is clear that Ms. Cha has not performed any act by
26 which she purposefully availed herself of the benefits and protections of the laws of
27 California. Ms. Cha has a sole attenuated contact with California in connection with this
28 Action, i.e. the Partnership Agreement she entered into with a California resident

1 (Palacio/Mr. Jeong). However, she negotiated the Partnership Agreement from Florida
2 and signed it in Florida. Cha Decl. ¶ 14. Moreover, the Partnership Agreement did not
3 contemplate any future consequences in California. Instead, its stated purpose was “to
4 handle the hotel development projects” for the Hilton Garden Inn in Florida. Cha Decl. ¶
5 13; Ex. B. The Partnership Agreement is not governed by California law, nor does it
6 contain a forum selection clause. Cha Decl. ¶ 12; Ex. B. These facts are insufficient to
7 support a finding of specific jurisdiction and California courts have squarely rejected any
8 finding of purposeful availment under similar circumstances. See Goehring, 62
9 Cal.App.4th at 907 (no purposeful availment by executing “sales, security and escrow
10 agreements” with a forum resident); Stone v. State of Texas, 76 Cal.App.4th 1043, 1048-
11 49 (1999) (contract with a forum resident insufficient to establish purposeful availment
12 where all future consequences of the contract were outside the forum); accord Boschetto,
13 539 F.3d at 1016 (contract with a forum resident could not support a finding of
14 purposeful availment where the contract did not create any continuing relationships and
15 obligations in California and performance of the contract did not require the defendant to
16 engage in substantial business in California); see also Gray & Co., 913 F.2d at 761
17 (defendants’ contract with a California plaintiff, and a smattering of associated
18 correspondence and telephone calls with the plaintiff, fell into the category of “attenuated
19 contacts” insufficient to establish purposeful availment).

20 **(2) There is no purposeful direction**

21 The purposeful direction test is satisfied only if a plaintiff can prove the defendant:
22 (1) committed an intentional act; (2) that was expressly aimed at the forum state; and (3)
23 causing harm that the defendant knows is likely to be suffered in the forum state.

24 Pavlovich, 29 Cal.4th at 270-71; Schwarzenegger, 374 F.3d at 805. This is known as the
25 Calder “effects” test. Id. Notably, mere foreseeability of injury in the forum state is
26 insufficient to justify a finding of purposeful direction. Pavlovich, 29 Cal.4th at 269-77;
27 Schwarzenegger, 374 F.3d at 804-05.

28 As a threshold matter, the purposeful direction test does not apply to this case.

1 Although Plaintiffs have alleged several tort claims against Ms. Cha, the case is more
2 properly categorized as a contract action because each and every one of Plaintiffs' claims
3 relies on the underlying premise that any involvement Ms. Cha allegedly had with the
4 Ravallo Resort financing was in some way constrained by the alleged contracts.⁶
5 Accordingly, the effects test does not apply because this Action sounds in contract, not in
6 tort. See e.g., Holland Am. Line, Inc. v. Wartsila N. Am., Inc., 485 F.3d 450, 460 (9th
7 Cir. 2006) (rejecting application of the effects test to claims sounding in contract and
8 negligence); see also Benq Am. Corp. v. Forward Electronics, Co., 2005 U.S. Dist.
9 LEXIS 38648, at *14 (N.D. Cal. Dec. 15, 2005) (finding that the purposeful direction test
10 did not apply where the case was "more in the nature of a contract action than in the
11 nature of a tort action").

12 In any event, even if this Court determines that the purposeful direction test
13 applies, Plaintiffs cannot prove that Ms. Cha purposefully directed her activities at
14 California under any set of circumstances. Even assuming that Ms. Cha engaged in
15 intentional acts in securing financing for the Ravallo Resort (which she did not) and
16 accepted a commission for her work from the Ravallo Company (which she did not),
17 Plaintiffs' own Complaint admits that those actions occurred in Florida. There is simply
18 no nexus between Ms. Cha's alleged work in Florida in connection with the Ravallo
19 Resort and California. Even more significantly, Plaintiffs do not allege and cannot show
20 that any actions Ms. Cha took in Florida in connection with the Ravallo project were at

21 ⁶ Plaintiffs' first two causes of action allege breach of contract. Compl. ¶¶ 15-22.
22 Plaintiffs' third cause of action, breach of fiduciary duty, alleges existence of a fiduciary
23 relationship "by virtue of the Partnership Agreement and Membership Agreement."
24 Compl. ¶ 23-27. Plaintiffs' fourth and fifth causes of action are based on interference
25 with Palacio's alleged contract with the Ravallo Company. Compl. ¶¶ 29-34. Plaintiffs'
26 sixth cause of action alleges conversion based on a sum that allegedly belongs to
27 Plaintiffs "under the Contract, the Partnership Agreement, or the Membership
28 Agreement." Compl. ¶¶35-38. Plaintiffs' seventh cause of action alleges fraud based on
a failure "to disclose certain facts to Plaintiffs in connection with the Contract,
Partnership Agreement, and Membership Agreement." Compl. ¶¶ 39-46. Plaintiffs'
eighth cause of action, civil conspiracy (Compl. ¶¶47-48), is not an independent cause of
action under California law and applies only against a party who already owes a duty
under tort law. Entm't Research Group, Inc. v. Genesis Creative Group, 122 F.3d 1211,
1228 (9th Cir. 1997). Plaintiffs' ninth through eleventh causes of action are not based in
tort but are instead common counts that sound in equity. Compl. ¶¶ 49-55.

1 any point expressly aimed at California.

2 Plaintiffs must show something more than mere foreseeability of causing injury in
3 the forum state. Pavlovich, 29 Cal.4th at 270-71; Schwarzenegger, 374 F.3d at 805;
4 Callaway Golf Corp. v. Royal Canadian Golf Ass'n, 125 F.Supp.2d 1194, 1200 (C.D.
5 Cal. 2000). Plaintiffs cannot make this showing. Accordingly, this Court lacks personal
6 jurisdiction over Ms. Cha.

7 **b. Plaintiffs' claims do not arise out of forum-related**
8 **activities.**

9 Ms. Cha is also not subject to personal jurisdiction in California because Plaintiffs
10 cannot show that their claims arise out of Ms. Cha's limited California contacts. This
11 relatedness requirement is satisfied only if "there is a substantial nexus or connection
12 between the defendant's forum activities and the plaintiff's claim." Snowney v. Harrah's
13 Entm't, Inc., 35 Cal.4th 1054, 1068 (2005). No such substantial nexus or connection
14 exists here. All conduct and events relating to the alleged Ravallo Resort financing deal
15 took place in Florida and/or Asia. Moreover, Ms. Cha's alleged work in connection with
16 the Ravallo Resort was not dependent on any connection with California. Accordingly,
17 Plaintiffs' claims do not arise out of any forum-related activities.

18 **c. The exercise of jurisdiction would be unreasonable.**

19 This Court need not reach the issue of whether jurisdiction would be reasonable
20 because Plaintiffs cannot satisfy the other prerequisites for jurisdiction. However, even if
21 it did so, the applicable fairness factors weigh decidedly against jurisdiction. Five factors
22 affect the fairness of jurisdiction: (1) the burden on the defendant; (2) the interests of the
23 forum state; (3) the plaintiff's interest in obtaining relief; (4) the interstate judicial
24 system's interest in obtaining the most efficient resolution of controversies; and (5) the
25 shared interest of the several states in furthering fundamental substantive social policies.
26 Vons Cos., 14 Cal. at 476.

27 California jurisdiction in this case would be unfair. First, it is not reasonable to
28 permit Plaintiffs to drag Ms. Cha 2,500 miles across the country to defend this Action in

1 a forum in which she has almost no contacts. Second, California has no particular
2 interest in a business dispute regarding the alleged financing in Florida. Third, although
3 Plaintiffs have an interest in obtaining relief, nothing prevents them from seeking that
4 relief in Florida, which is also the more convenient forum for Florida-based witnesses.
5 Fourth, as most of the potential witnesses and documentary evidence are in Florida, this
6 dispute should be and can be more efficiently resolved in Florida. Fifth, there is no
7 compelling substantial social policy reason for a California court to hear an action
8 concerning a Florida real estate development. Accordingly, the Action should be
9 dismissed.

10 **B. This Action Should Be Stayed or Dismissed on the Ground of Forum**
11 **Non Conveniens**

12 In the alternative, this Action should be stayed or dismissed on the ground of
13 forum non conveniens because Plaintiffs could have, and should have, filed suit in
14 Florida.⁷ Forum non conveniens is an equitable and discretionary doctrine which permits
15 a court to decline to exercise jurisdiction when it believes that the action may be more
16 appropriately and justly tried elsewhere. Stangvik v. Shiley Inc., 54 Cal.3d 744, 751
17 (1991). Application of the doctrine is a two-step process. First, the court must determine
18 whether the alternate forum is suitable, meaning that the suit may be commenced in the
19 alternate forum, the statute of limitations is not a bar, and a valid judgment may be
20 obtained. Id. at 751-52. Second, assuming that the alternate forum is suitable, the court
21 must then balance the private and public interests to determine the convenience of the
22 forum. Id.

23
24 ⁷ If the California court stays the action, rather than dismissing it, it retains jurisdiction to
25 resume proceedings. Van Keulen v. Cathay Pac. Airways, Ltd., 162 Cal.App.4th 122,
26 129 (2008). The stay procedure allows California courts to protect the interests of
27 California plaintiffs by assuring an adequate forum in the event such plaintiffs are denied
28 a prompt trial in the alternate forum. Id. An action may be stayed regardless of whether
similar litigation is already pending in another jurisdiction. See e.g., Hansen v. Owens-
Corning Fiberglas Corp., 51 Cal.App.4th 753, 758-59 (1996) (affirming trial court order
directing the plaintiffs to bring their actions in Montana and staying the California action
pending the Montana court's determination that the defendants were subject to
jurisdiction in Montana).

1 **1. Florida is a suitable alternate forum.**

2 Florida is a suitable alternate forum. First, Ms. Cha, a Florida resident, is subject
3 to the jurisdiction of the Florida courts. Second, the limitations periods applicable in this
4 case are actually longer in Florida than they are in California. Compare Cal. Civ. Proc.
5 Code § 337 (four years for action upon written contract) and § 339 (two years for action
6 upon oral contract) with Fla. Stat. § 95.11(2) (five years for action upon written contract)
7 and § 95.11(3) (four years for action upon oral contract); also compare Cal. Civ. Proc.
8 Code § 338 (three years for action founded on fraud) with Fla. Stat. § 95.11(3) (four
9 years for action founded on fraud). Thus, a Florida court may hear the case on the merits.

10 **2. The balance of private and public factors favors Florida.**

11 Analysis of both the private and public interests conclusively demonstrate that this
12 Action belongs in Florida, not California. The factors are as follows:

13 The private interest factors are those that make trial and the
14 enforceability of the ensuing judgment expeditious and
15 relatively inexpensive, such as the ease of access to sources of
16 proof, the cost of obtaining attendance of witnesses, and the
17 availability of compulsory process for attendance of unwilling
18 witnesses. The public interest factors include avoidance of
19 overburdening local courts with congested calendars,
20 protecting the interests of potential jurors so that they are not
21 called upon to decide cases in which the local community has
22 little concern, and weighing the competing interests of
23 California and the alternate jurisdiction in the litigation.

24 Stangvik, 54 Cal.3d at 751.

25 Florida is a more convenient forum because it provides greater access to sources
26 of proof, the costs of obtaining attendance of witnesses are lower, and most of the
27 anticipated third party witnesses are in Florida and are therefore subject to compulsory
28 process in Florida. This matter arises entirely out of allegations that a commission was

1 allegedly paid to Ms. Cha by the Ravallo Company for her work in securing financing for
2 the Ravallo Resort from Daishin. Those allegations are false, but even assuming they are
3 true, the Ravallo Company is a Florida limited liability company, and the Ravallo Resort
4 is located in Orlando, Florida. Cha Decl. ¶ 16. Daishin is a South Korean company.
5 Compl. ¶ 13. If there are any relevant witnesses affiliated with Daishin, they will most
6 likely be located in South Korea. Thus, most anticipated third party witnesses will be
7 located in Florida or Asia – not California. California courts have not hesitated to find
8 that the balance of private factors outweighs the plaintiff's choice of forum in similar
9 circumstances. See e.g., Roman v. Liberty Univ., Inc., 162 Cal.App.4th 670, 684 (2008)
10 (granting motion to stay or dismiss the action for forum non conveniens where it was
11 undisputed that most of the witnesses resided in Virginia and were beyond the subpoena
12 power of the California courts); Morris v. AGFA Corp., 144 Cal.App.4th 1452, 1466
13 (2006) (finding the private interest factors weighed heavily in favor of a Texas forum
14 where the vast majority of witnesses were located in Texas).

15 Florida is also a more convenient forum under the public interest factors because
16 neither the local community nor the State of California have an interest in the outcome of
17 this litigation.⁸ California lacks a significant connection to the activities alleged in the
18 Complaint. The operative facts in this matter occurred in Florida and/or Asia – not
19 California. Complaint, ¶¶ 9, 12-13, 41. The Action is solely concerned with a hotel
20 development project in Florida and the financing that was provided by a South Korean
21 company to a Florida company. The Complaint does not allege any misconduct, relevant
22 activities or operative facts that occurred in California. Because Florida is the situs of the
23 material events in this case, the Plaintiffs' choice of forum should be accorded no
24 deference.

25 Equally significantly, Florida law governs all of the allegedly relevant agreements
26 concerning the Ravallo hotel development in Florida. See supra Part II.B. Jurors should

27 ⁸ The first public interest factor – the specter of court congestion – does not apply unless
28 the case is related to multiple separate lawsuits pending against the defendants. Roulier
v. Cannondale, 101 Cal.App.4th 1180, 1191-92 (2002).

1 not be required to decide a case with which they have little or no concern and which
2 requires the application of another jurisdiction's law. Chong v. Superior Court, 58
3 Cal.App.4th 1032, 1039 (1997). Florida has a much stronger interest than California in
4 this dispute which concerns alleged limited liability companies and partnerships
5 organized under Florida law.

6 **IV. CONCLUSION**

7 For the foregoing reasons, Ms. Cha respectfully requests that the Court quash
8 service of summons for lack of personal jurisdiction. Alternatively, Ms. Cha requests
9 that the Court stay or dismiss the Action on the ground of forum non conveniens.

10 Dated: September 17, 2009

11 FOLEY & LARDNER
12 CHRISTOPHER J. HECK
13 COURTNEY R. HENNING

14 By: 

15 CHRISTOPHER J. HECK
16 ATTORNEYS FOR DEFENDANTS GINA
17 CHA AKA GEUM O. CHA, AN
18 INDIVIDUAL.
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PROOF OF SERVICE

I am employed in the **County of Los Angeles, State of California**. I am over the age of 18 and not a party to this action; my current business address is **555 So. Flower St., Los Angeles, CA 90071**

On **September 17, 2009**, I served the foregoing document(s) described as: **SPECIALLY APPEARING DEFENDANT GINA CHA'S NOTICE OF MOTION AND MOTION TO QUASH SERVICE OF SUMMONS FOR LACK OF PERSONAL JURISDICTION OR, IN THE ALTERNATIVE, MOTION TO STAY OR DISMISS THE ACTION ON THE GROUND OF FORUM NON CONVENIENS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** On the interested parties in this action as follows:

BY THE FOLLOWING MEANS:

I placed a true copy thereof enclosed in sealed envelope(s) addressed as follows:

**Brandon M. Tesser, Esq.
Kenneth G. Ruttenberg, Esq.
TESSER & RUTTENBERG
12100 Wilshire Blvd., Ste. 220
Los Angeles, CA 90025
Telephone: (310) 207-4022
Facsimile: (310) 207-4033**

___ BY MAIL

___ I am readily familiar with the firm's practice of collection and processing correspondence for mailing with the United States Postal Service; the firm deposits the collected correspondence with the United States Postal Service that same day, in the ordinary course of business, with postage thereon fully prepaid, at **Los Angeles, California**. I placed the envelope(s) for collection and mailing on the above date following ordinary business practices.

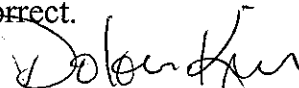
BY EXPRESS SERVICE CARRIER (Via Overnight Courier Service)

I am readily familiar with the firm's practice for collection and processing of correspondence for delivery by Federal Express: collected packages are picked up by an express carrier representative on the same day, with the Airbill listing the account number for billing to sender, at **Los Angeles, California**, in the ordinary course of business. I placed the envelope(s) in an envelope or package designated by the express service carrier for collection and processing for express service delivery on the above date following ordinary business practices.

___ BY HAND DELIVERY. I delivered the envelope(s) by hand to addressee(s).

Executed on **September 17, 2009**, at **Los Angeles, California**.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Dolores Kreider