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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA
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12 [REDACTED] [REDACTED]n individual ,
13 Plaintiff,
14 v.
15 [REDACTED] AND [REDACTED]LEGAL, PC,
16 a New York professional corporation;
17 [REDACTED] [REDACTED] an individual; and
18 DOES 1 through 10, inclusive,
19 Defendants.

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**ORDER DENYING MOTION TO
DISMISS FOR LACK OF SUBJECT
MATTER JURISDICTION AND
PERSONAL JURISDICTION (Doc. 8)**

20 Plaintiff [REDACTED] [REDACTED] a citizen of Canada, filed a state-law claim for professional
21 negligence against his former law firm and lawyers on grounds of alienage diversity
22 jurisdiction. 28 U.S.C. § 1332(a)(2). Defendants moved to dismiss the case for lack of
23 subject matter jurisdiction and lack of personal jurisdiction under Federal Rules of Civil
24 Procedure 12(b)(1), (b)(2). The Court decides the matter on the papers submitted and
25 without oral argument. *See* CivLR 7.1(d.1). For the following reasons, the Court
26 concludes that diversity subject matter jurisdiction exists and that the Court has personal
27 jurisdiction over Defendants. Accordingly, the Court **DENIES** Defendants' motion to
28 dismiss (Doc. 8).

I. Procedural Background

Plaintiff filed his Complaint through litigation counsel against his former attorneys and law firm, Defendants (1) [REDACTED] & [REDACTED] gal, PC [REDACTED] [REDACTED] [REDACTED] a lawyer and the owner and president of [REDACTED] and (3) [REDACTED] [REDACTED] lawyer with [REDACTED] (*Comp't* [Doc. 1] ¶¶ 1–4, 9–12; [REDACTED] *Decl.* [Doc. 8-2] ¶ 5.) The Complaint states a single cause of action for “professional negligence” in the provision or omission of legal advice regarding an operating agreement for a California company called [REDACTED] LLC. (*Comp't* ¶¶ 48–53.) Plaintiff alleges that Defendants prepared the operating agreement for [REDACTED] which they knew would operate in California, and that they knew Plaintiff “intended to use his work for and investment in [REDACTED] to obtain a [visa] to live and work in the United States and California specifically.” (*Comp't* ¶¶ 7, 13.)

The two bases for Plaintiff’s claim of malpractice are that (1) Defendants failed to meet their professional duties and standards “by directing legal work to California without a license in the State of California and . . . failed to prepare an engagement letter when such a letter was required;” and (2) “Defendants failed to use the skill, prudence, and diligence” required when they “improperly prepared the [REDACTED] Operating Agreement .” (*Comp't* ¶¶ 49–50.) Plaintiff alleges that Defendants’ negligence caused Plaintiff to be “stripped of his ownership interests in [REDACTED] as a result of an arbitration order against himself and in favor of his single [REDACTED] partner, [REDACTED] [REDACTED] (*Comp't* ¶¶ 25– 47, 51.) Plaintiff alleges damages exceeding \$10,000,000. (*Comp't* ¶ 52.)

After filing the Complaint, Plaintiff’s litigation counsel moved to withdraw their representation of Plaintiff. Defendants then moved to dismiss the Complaint for lack of subject matter jurisdiction and lack of personal jurisdiction, attaching the sworn declarations of [REDACTED] and [REDACTED] [REDACTED] declares that (1) she is a United States citizen and resident of New York, who is licensed to practice law in New York, and (2) she is the owner and president of the [REDACTED] law firm, a New York professional “C” corporation. [REDACTED] *Decl.* ¶¶ 2, 5–7.) [REDACTED] declares that she, like Plaintiff, is a citizen of Canada, that she has always resided in Canada, that she is licensed to practice law in the State of

Florida, and that [REDACTED] employs her as a lawyer in New York, via a work permit allowing her to work in the United States. [REDACTED] Decl. [Doc. 8-3] ¶¶ 1, 8).

After [REDACTED] identified her Canadian citizenship and domicile, Plaintiff voluntarily dismissed her without prejudice. Fed. R. Civ. P. 41(a)(1)(A)(i). [REDACTED] and [REDACTED] replied in support of dismissal. This Court then granted Plaintiff's counsel's motion to withdraw from Plaintiff's representation on the grounds that the attorney-client relationship had completely broken down. The Court continued the briefing schedule to permit Plaintiff time to find new counsel. Plaintiff, [REDACTED], completed his briefing on the motion and filed his sworn declaration and exhibits opposing dismissal. (*Plaintiff's Exh.* [Doc. 15] (filed with response brief); *Plaintiff's Decl.* [Doc. 15-1].)

II. Motion to Dismiss for Lack of Subject Matter Jurisdiction

Defendants move for dismissal under Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction. Federal courts have subject matter jurisdiction only over matters authorized by the United States Constitution and the United States Congress. U.S. Const. art. III, § 2; 28 U.S.C. § 1332; *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). As dictated by 28 U.S.C. § 1332(a), federal diversity jurisdiction requires an amount in controversy exceeding \$75,000 and that "each plaintiff must be diverse from each defendant." *Lee v. Am. Nat'l Ins. Co.*, 260 F.3d 997, 1004 (9th Cir. 2001). Plaintiff bears the burden of establishing subject matter jurisdiction. *Kokkonen*, 511 U.S. at 377; *Columbia Riverkeeper v. U.S. Coast Guard*, 761 F.3d 1084, 1091 (9th Cir. 2014).

Alienage diversity jurisdiction provides for diversity jurisdiction when a party is a citizen of a foreign state. 28 U.S.C. § 1332(a)(2). Alienage diversity jurisdiction "require[s] complete diversity of parties," and therefore "aliens may not be on both sides of the litigation." *Lee v. ANC Rental Corp.*, 220 F. App'x 493, 495 (9th Cir. 2007). Diversity is satisfied if the case is between "citizens of a State and citizens or subjects of a foreign state." 28 U.S.C. § 1332(a)(2). Pursuant to § 1332(a), to be considered a "citizen

of a State” within the United States, “a natural person must both be a citizen of the United States *and* be domiciled within the State.” *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 828 (1989) (emphasis in original). To be considered a “citizen[] or subject[] of a foreign state,” a natural person cannot be a citizen of the United States. *Id.* For purposes of diversity jurisdiction, “a corporation shall be deemed to be a citizen of every State . . . by which it has been incorporated and of the State . . . where it has its principal place of business.” 28 U.S.C. § 1332(c)(1).

It is undisputed that Plaintiff is a foreign subject and that the remaining Defendants are residents of New York. Plaintiff is a citizen of Canada. (*Comp’t* ¶ 1.) [REDACTED] is a citizen of New York. (*Comp’t* ¶ 3; [REDACTED] *Decl.* ¶¶ 1–2.) [REDACTED] is a citizen of New York because it is incorporated in New York and has its principal place of business, its sole office, in New York. (*Comp’t* ¶ 2; [REDACTED] *Decl.* ¶¶ 5–7.) Defendants’ initial objections to diversity jurisdiction were grounded on the fact that former-Defendant [REDACTED] is a citizen of Canada. [REDACTED] *Decl.* ¶ 9; [REDACTED] *Decl.* ¶¶ 4–5.) [REDACTED] is no longer a party to this case. The remaining parties are diverse because Plaintiff is a citizen of Canada and Defendants [REDACTED] and [REDACTED] are citizens of New York. No party disputes that the amount in controversy exceeds \$75,000. *See* 28 U.S.C. § 1332(a). Accordingly, the Court has diversity jurisdiction over Plaintiff’s state-law claim and denies Defendants’ motion to dismiss under Rule 12(b)(1).¹

¹ Defendants failed to concede that [REDACTED] dismissal cured the subject matter jurisdiction defect, even though their reply brief implied as much: “The challenge to the allegation of diversity was based on the fact that Defendant [REDACTED] [REDACTED] is and is a full -time resident of Canada. That fact meant . . . that diversity was indisputably lacking in this case between all parties. Apparently, Plaintiff recognized the insurmountable hurdle to retain diversity jurisdiction and chose *to solve the problem* by dismissing, without prejudice, Ms. [REDACTED].” *Defs’ Reply* [Doc. 16] at 4, ll. 18-23 (emphasis added). Defendants then raise for the first time in their reply brief that [REDACTED] is a required party under Fed. R. Civ. P. 19, who must be rejoined, or that the case must be dismissed. The Court will not address Defendants’ Rule 19 argument here because it was not timely raised to permit Plaintiff’s response.

1 **III. Motion to Dismiss for Lack of Specific Personal Jurisdiction**

2 Defendants also move for dismissal, under Rule 12(b)(2), on the grounds that the
3 Court lacks personal jurisdiction over them. Plaintiff bears the burden to demonstrate
4 personal jurisdiction over each Defendant. *Fireman's Fund Ins. Co. v. Nat'l Bank of*
5 *Coops.*, 103 F.3d 888, 893 (9th Cir. 1996). Where, as here, the defendants' motion is based
6 on written materials in the absence of an evidentiary hearing, the plaintiff need only make
7 a prima facie showing of jurisdictional facts to avoid dismissal. *Burri Law P.A. v. Skurla*,
8 35 F.4th 1207, 1213 (9th Cir. 2022); *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990).
9 "Uncontroverted allegations in the complaint are taken as true, but in the face of a
10 contradictory affidavit, the 'plaintiff cannot simply rest on the bare allegations of its
11 complaint.'" *Yamashita v. LG Chem, Ltd.*, 62 F.4th 496, 502 (9th Cir. 2023) (quoting
12 *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1223 (9th Cir. 2011) (cleaned
13 up)). "[F]actual conflicts between dueling affidavits must be resolved in the plaintiff's
14 favor." *Ayla, LLC v. Alya Skin Pty. Ltd.*, 11 F.4th 972, 978 (9th Cir. 2021) (internal
15 quotation marks and citation omitted).

16 Here, the parties' declarations conflict on several material facts, particularly whether
17 [REDACTED] or [REDACTED] acting in their capacities as [REDACTED] lawyers, provided legal advice to
18 Plaintiff or his assistant about the contents and legal implications of the form operating
19 agreement for [REDACTED]. The Court does not resolve those conflicts on their merits. The
20 Court accepts Plaintiff's declaration as true for purposes of determining whether he made
21 a prima facie showing of personal jurisdiction. *Ayla*, 11 F.4th at 978. Plaintiff alleges that
22 all Defendants gave him negligent legal advice, or negligently failed to give legal advice,
23 regarding the impacts of a form operating agreement on him, on his California company
24 [REDACTED] and on his California partner in [REDACTED] [REDACTED]. The Court must resolve
25 these factual disputes in Plaintiff's favor at this stage in the proceedings.

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1 **A. Factual Background Regarding Personal Jurisdiction**

2 Plaintiff retained Defendants in 2017, to represent him in filing a petition for an L1-
3 A visa to live and work in the United States and “to accomplish legal residency in
4 California specifically.”² (*Plaintiff’s Decl.* ¶¶ 3–6.) Based on Defendants’ representation
5 of Plaintiff in his prior visa petitions, Plaintiff alleges that █████ knew his “goals and
6 businesses” and knew that Plaintiff “intended to use his work for and investment in”
7 █████ to obtain an L1-A visa “to live and work in the United States and California
8 specifically.” (*Comp’t* ¶¶ 9, 13–14.) The parties agree that no written retainer agreement
9 or engagement letter governed Defendants’ work for Plaintiff’s L1-A visa petition or the
10 related corporate formation work. (*Comp’t* ¶¶ 11, 51; █████ *Decl.* ¶ 18.)

11 During her most recent representation of Plaintiff, █████ determined that a United
12 States entity would need to be created.” █████ *Decl.* ¶ 16.) Defendants advised Plaintiff
13 that he needed “to have a company set up and that [he] MUST maintain at least 51%
14 ownership at ALL times” for the visa petition. (*Plaintiff’s Decl.* ¶ 6; *Comp’t* ¶¶ 13–14;
15 *Comp’t* at Exh. A–C; █████ *Decl.* ¶¶ 16–17.) Plaintiff asked Defendants to form a
16 company called █████ LLC █████ with Plaintiff owning 51% and his business
17 partner, █████ █████ning 49%. (*Comp’t* ¶ 14; *Comp’t* at Exh. A.) Plaintiff declares
18 that █████ is a “California citizen.” (*Plaintiff’s Decl.* ¶ 13.) It is also undisputed that
19 Defendants knew that █████ address of record was in California. (*Comp’t* at Exh. C;
20 *Comp’t* at Exh. D, § 1.37; *Plaintiff’s Exh.* 7, 11.) Plaintiff also alleges that the “purpose of
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24 ² L Visas apply to eligible intracompany employee transferees who are executives, managers, or whose
25 work involves specialized knowledge. 8 U.S.C. § 1101(a)(15)(L). An L-1A visa is a nonimmigrant visa
26 issued when a United States employer petitions for qualified employees, in managerial or executive
27 positions, to be allowed to work and live in the United States. See U.S. Citizenship and Immigration

28 1a-intracompany-transferee-executive-or-manager (last visited on █████). (See also *Plaintiff’s*
Exh. 1.)

the ownership split was primarily for” him to ensure “majority ownership status, but also was necessary [] to obtain an L1A VISA and reside in the United States.” (*Comp’t* ¶ 15.)³

Defendants advised Plaintiff to form ██████ in California, as opposed to another state. Plaintiff’s “original intent was to incorporate in Delaware and set up an office in California.” (*Plaintiff’s Decl.* ¶ 18.) “Only after getting advised by ██████id [Plaintiff] consult with ██████ ██████ his California ██████ business] partner and agree[] to incorporate the company in California.” (*Id.*)

Plaintiff next alleges that ██████ “filed ██████ Articles of Organization with the California Secretary of State, and with her signature.” (*Comp’t* ¶ 17; *Comp’t* at Exh. B.) ██████ signed the ██████ Articles of Organization Limited Liability Company form on the line for “Organizer,” affirming that the “Information contained herein . . . is true and correct.” (*Comp’t* at Exh. B.) In its representation of Plaintiff, ██████ provided two member certificates for ██████ one for Plaintiff and one for his California business partner, ██████ (*Comp’t* ¶ 22; *Plaintiff’s Exh.* 15.) Plaintiff’s member certificate shows 51 membership units, and the member certificate for ██████ shows 49 membership units in ██████ (*Plaintiff’s Exh.* 15.) Plaintiff also declares that ██████ gave him legal advice in the context of forming ██████ including (1) making “legal modifications to the terms of a California lease,” (2) reviewing and making “recommendations on a California LLC business plan,” (3) reviewing the application of a California operating agreement to

³ The L-1A visa does not necessarily require that the transferee employee own any part of the employing entity. See 8 U.S.C. § 1101(a)(15)(L). Plaintiff makes no factual allegation to support how his majority ownership of an employing entity is relevant to his L1-A visa petition, but Defendants agree that they advised Plaintiff that ██████ creation was a necessary predicate to his visa petition. ██████ *Decl.* ¶ 16.) “[T]o have a successful outcome for his petition, ██████ determined that a United States entity would need to be created, and [she] shared this recommendation with Mr. ██████ at the outset of ██████ retention by Mr. ██████ (*Id.*)

██████████ with Plaintiff's assistant, and (4) preparing the membership certificates for ██████████ (Plaintiff's Decl. ¶ 21.)

Plaintiff alleges that Defendants negligently handled Plaintiff's request for a ██████████ operating agreement, about which Plaintiff reiterated "the requirement that [he] hold a 51% majority ownership interest and that ██████████ hold the remaining 49% minority share." (Comp't ¶ 18.) ██████████ provided a "form operating agreement . . . from a template," and the Complaint alleges that this form operating agreement contained errors or omissions that harmed Plaintiff in a later dispute and arbitration with ██████████ over control of the California company. (Comp't ¶¶ 19, 25–47.) Plaintiff complains that Defendants negligently failed to prepare the operating agreement to reflect his majority ownership or negligently failed to instruct him that the operating agreement created another, unintended ownership structure for ██████████

The topic of a ██████████ operating agreement was raised in writing by ██████████ on ██████████. (Comp't ¶ 18, Comp't at Exh. C; ██████████ Decl. ¶ 11; ██████████ Decl. ¶¶ 20–21.) ██████████ email stated:

Currently this is what is online for ██████████ it was just posted even though it say [sic] May 9th. It is incorporated and we will give you the EIN # later today. Just confirming that we are using ██████████ Social Security Number that you gave me and that he resides at [a California

⁴ Plaintiff alleges that all "Defendants provided [him] ownership certificates." (Comp't ¶ 22.) ██████████ emailed Plaintiff that "We will issue 2 Member Certificates – yourself and ██████████ (Comp't at Exh. C.) Plaintiff declares that ██████████ by way of employee ██████████. prepared membership certificates for a California LLC." (Plaintiff's Decl. ¶ 21.) If ██████████ took any action to produce the California membership certificates, ("We will issue . . ." (Comp't at Exh. C.) (emphasis added)), those actions would be attributable to ██████████ because ██████████ was acting in her official capacity as a lawyer with, a partner of, and the owner of ██████████ (See ██████████ Decl. ¶ 10 ██████████ handled [the formation of a new entity in the United States] separately.") It is not possible to conclude in resolving this motion whether ██████████ took any action in the creation of the two California membership certificates. ██████████ did instruct ██████████ to give legal advice about company requirements to Plaintiff and ██████████ (Plaintiff's Exh. 11.) "Please remind the members – the default tax filing status with 2 members is a partnership with a Schedule C on the members 1040 tax return. SUB S below on Form 2553 is not available as ██████████ is a foreign member. They can elect Form 8832 where the Corporation would file its own tax return." (Id.)

address] Also, [REDACTED] can provide an operating agreement unless you have one? We will issue 2 Member Certificates – yourself and [REDACTED]

(*Comp't at Exh. C; Plaintiff's Exh. 7.*) Plaintiff declares that “it was [REDACTED] who suggested getting an operating agreement from Defendant [REDACTED] and [REDACTED] and “I simply accepted [REDACTED] suggestion to get the operating agreement from [REDACTED] (*Plaintiff's Decl. ¶ 15.*) Plaintiff responded the same day with his instructions. “Yes using [REDACTED] social for EIN. NEED ASAP PLEASE. [REDACTED] is copied. Send over generic operating agreement. [REDACTED] 1% [REDACTED] % [sic].” (*Comp't at Exh. C; Plaintiff's Exh. 10.*) Plaintiff requested a “generic operating agreement.” (*Comp't at Exh. C; Plaintiff's Exh. 10.*)

[REDACTED] declares that Plaintiff “requested that I locate and forward suitable blank, generic Operating Agreement forms that he could use to create an Operating Agreement for his new LLC. I found some suitable forms on line.” [REDACTED] *Decl. ¶ 20.*) “Mr. [REDACTED] did not ask my law firm to create an Operating Agreement for his newly formed entity. So we did not.” [REDACTED] *Decl. ¶ 21.*) [REDACTED] emailed Plaintiff the “blank, generic forms” of operating agreements that [REDACTED] found “suitable .” [REDACTED] *Decl. ¶ 11; [REDACTED] Decl. ¶ 20.*) [REDACTED] asked Plaintiff in her email, “Can you look over the Operating Agreements and let me know your thoughts.” (*Plaintiff's Exh. 11.*)

On [REDACTED] [REDACTED] [REDACTED], Plaintiff's assistant emailed [REDACTED] asking for her [REDACTED] telephone number and saying, “I am struggling with this Operating Agreement.” (*Plaintiff's Exh. 17.*) [REDACTED] emailed back with numbers. (*Id.*) Plaintiff declares, “After [REDACTED] sent us the operating agreements, neither my assistant [] nor myself knew which one to choose, how to fill it out or which clauses to take out. I completely relied on [REDACTED] legal services. [REDACTED] specifically had a phone call with my assistant [] and specifically was providing legal advice on how to fill in the operating agreement.” (*Plaintiff's Decl. ¶ 16.*) Plaintiff also avers that “[l]egal instructions about the operating agreement was advised [sic] after the company was formed,” that [REDACTED] also did not disclose in any way

that the operating agreements were described in any manner as merely ‘forms,’” and that “reviewed the California operating agreement with my assistant.” (*Plaintiff’s Decl.* ¶¶ 20–21.) Plaintiff also identifies an email exchange between and himself in . (*Plaintiff’s Exh.* 18.) Plaintiff asked: “Was there any emails [sic] to with the operating agreement and share certificates?” (*Id.*) responded: “No, I worked with [your assistant] regarding the shares and the operating agreement.” (*Id.*)

did not bill Plaintiff for the research regarding a suitable operating agreement or for the provision of the operating agreements. “We did not invoice for ‘creating and formation’ of any Operating Agreement, since we did not do that work. Our scope of work was limited to filing the articles of organization, the operative effect was to form the entity. No other work was invoiced, and no other work was requested or performed regarding the LLC.” *Decl.* ¶ 22.) However, Plaintiff declares that in “working with relied on them 100% for the legal services in connection with the immigration and the legal company documents of LLC.” (*Plaintiff’s Decl.* ¶ 20.) Moreover, cover letter to Plaintiff’s visa petition to the U.S. Customs & Border Protection examiner, relied on the California company to support Plaintiff’s eligibility for admission. (*Plaintiff’s Exh.* 20.) The letter was signed by on behalf of and stated that “[w]e represent Inc. and Mr. this Petition.” (*Id.*) The letter included an index of documents supporting the petition, and with respect to eleven documents are listed. (*Id.*) Those documents include a “Copy of California Secretary of State, Articles of Organization dated and member certificate and Certificate of Status,” “Copy of signed Lease Agreement, dated [between Landlord and LLC Business Plan with 5 year projections,” “Employment Identification Number,” and “Current signed service contracts for (*Plaintiff’s Exh.* 20.) In the letter, stated that it represented the interests of Plaintiff and Inc. (Ontario).” (*Id.*) There, Defendants relied upon the corporate formation documents they created for to complete the

immigration legal work they performed for Plaintiff. “We trust we have included all documents necessary for the favorable adjudication of this petition.” (*Id.*)

Given the factual disputes between Plaintiff’s and Defendants’ declarations, the Court must accept Plaintiff’s declaration as true and must presume for this analysis that (1) neither Plaintiff nor his assistant knew how to fill the operating agreement form out or what changes to make; (2) that Plaintiff completely relied on [REDACTED] legal services for the creation of [REDACTED] and to achieve his desired outcome from representation, to live and work in California and relocate his family there; (3) that [REDACTED] did not disclose that the operating agreements were merely forms; (4) that [REDACTED] provided legal advice on how to fill in the operating agreement; and (5) that [REDACTED] and that at least one of the lawyers [REDACTED] [REDACTED] or both) provided allegedly negligent legal advice regarding [REDACTED] operating agreement. *See Ayla, LLC*, 11 F.4th at 978.

With respect to the operating agreement, the Complaint states three errors or omissions. First, Plaintiff alleges that the form agreement did not specify the correct ownership allocation and instead “called for ownership to float based on capital contributions” and that Defendants failed to explain “this critical point” to Plaintiff. (*Comp’t* ¶ 20.) Second, Plaintiff alleges that the operating agreement left blank or unanswered the members’ names and addresses, “the descriptions of the capital contribution, the value of the capital contribution, and the percentage interest.” (*Comp’t* ¶ 21.) Third, although Defendants provided Plaintiff ownership certificates and the operating agreement permitted [REDACTED] to issue certificates, the operating agreement “failed to indicate the percentage split required in the ownership certificates.” (*Comp’t* ¶ 22.) In summary, Plaintiff alleges that Defendants failed to review the operating agreement with him, failed to advise him that the ownership percentages could be affected by capital contributions, or failed to counsel him about how the form operating agreement could impact his ownership interest in [REDACTED] (*Comp’t* ¶¶ 7, 23–24.)

Plaintiff became aware of Defendants’ negligence when he and his California business partner, [REDACTED] [REDACTED] disputed their respective ownership of [REDACTED] and

arbitration commenced, each partner claiming against the other. (*Comp't* ¶¶ 25–35.) Claims proceeded in arbitration because the [REDACTED] operating agreement contained an arbitral jurisdiction provision specific to California dispute resolution: “Any action to enforce or interpret this Agreement, or to resolve disputes with respect to this Agreement between the Company and a Member, or between or among the Members, will be settled by arbitration. . . . Arbitration will be the exclusive dispute resolution process in the state of California” (*Comp't* at Exh. D § 11.2; *Plaintiff's Exh.* 21 at 2.) The operating agreement also provided for the application of the substantive law of California by the arbitrator and provided that California law govern the agreement's construction and enforcement. (*Comp't* at Exh. D §§ 11.2, 13.3)

In resolving the partners' dispute, the arbitrator concluded that Plaintiff had no ownership interest in [REDACTED] and that [REDACTED] was the controlling owner with “the right to elect to dissolve the LLC without the consent and over the objection of [REDACTED] (*Comp't* ¶ 27.)⁵ One basis for this determination and order was the arbitrator's note that the operating agreement stated that the owners' “respective capital contributions are ‘TBD’, and Exhibit B to the Agreement was left blank.” (*Comp't* ¶ 30; *Comp't* at Exh. E.)⁶

Plaintiff alleges he is a Canadian citizen who was a California resident “during much of the relevant time.” (*Comp't* ¶ 1; *Plaintiff's Decl.* ¶ 1.) Defendants declare that at the time of the allegedly negligent legal work, Plaintiff was a resident of Canada, not California, and Plaintiff does not dispute this fact in his responsive declaration.⁷ [REDACTED]

⁵ The arbitrator found that “[w]hen [REDACTED] and [REDACTED] decided to go into business together, they engaged an attorney to formalize their business relationship.” (*Plaintiff's Exh.* 21 at 4.)

⁶ The Complaint and declarations before the Court do not establish who typed “TBD” on [REDACTED] operating agreement, nor who decided to leave blank other portions of the operating agreement that Plaintiff returned, executed, to Defendants. Therefore, the Court omits these facts from the analysis and conclusions.

⁷ Plaintiff's declaration supports that he was a Canadian resident at the time Defendants gave him legal advice about [REDACTED] and its operating agreement. (*Plaintiff's Decl.* ¶ 9.) “As soon as my L1 Visa was approved, my family and I moved to California and have been residents of the state since.” (*Id.* ¶ 11.)

Decl. ¶¶ 15–17, 23.) Plaintiff moved from Canada to California after the legal work forming the basis of this case was completed and before Plaintiff became aware that the legal work was negligent and caused him damage. (*Plaintiff's Decl.* ¶¶ 9, 11; [REDACTED] *Decl.* ¶¶ 15–17, 23; [REDACTED] *Decl.* ¶ 11.)

B. Legal Standard for Personal Jurisdiction

As this Court sits within the State of California, the forum State for personal jurisdiction purposes is California. *Walden v. Fiore*, 571 U.S. 277, 283 (2014) (citing Fed. R. Civ. P. 4(k)(1)(A)). “An exercise of personal jurisdiction in federal court must comport with both the applicable state’s long-arm statute and the federal Due Process Clause.” *Burri Law PA v. Skurla*, 35 F.4th 1207, 1212 (9th Cir. 2022). “California’s long-arm statute allows the exercise of personal jurisdiction to the full extent permissible under the U.S. Constitution.” *Daimler AG v. Bauman*, 571 U.S. 117, 125 (2014); *Fireman’s Fund Ins. Co. v. Nat’l Bank of Coops.*, 103 F.3d 888, 893 (9th Cir. 1996) (citing Cal. Code Civ. P. § 410.10). “Due Process, in turn, requires that the non-resident defendants have sufficient ‘minimum contacts’ with the forum state such that exercising jurisdiction would not offend ‘traditional notions of fair play and substantial justice.’” *Burri Law*, 35 F.4th at 1212 (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).

Personal jurisdiction may be general or specific. *Goodyear Dunlop Tires Ops., S.A. v. Brown*, 564 U.S. 915, 919 (2011). Plaintiff alleged specific jurisdiction. (*Comp’t* ¶ 7.) “Specific jurisdiction exists when a case aris[es] out of or relate[s] to the defendant’s [sufficient] contacts with the forum.” *Helicopteros Nacionales de Colom., S.A. v. Hall*, 466 U.S. 408, 414 n.8 (1984); *see also Ratha v. Phatthana Seafood Co.*, 35 F.4th 1159, 1171 (9th Cir. 2022).

Before [REDACTED] and during the time Defendants represented Plaintiff on his L1-A visa application and on the formation and operation of [REDACTED] Plaintiff was not residing in California. (*Id.* ¶¶ 9, 11.)

The Ninth Circuit conducts a three-part “minimum contacts” test to determine whether specific personal jurisdiction exists. *Freestream Aircraft (Berm.) Ltd. v. Aero Law Grp.*, 905 F.3d 597, 603 (9th Cir. 2018) (“*Freestream*”). “[D]erived from the Due Process clause,” the test “examines [1] the defendant’s purposeful conduct towards the forum, [2] the relation between his conduct and the cause of action asserted against him, and [3] the reasonableness of the exercise of jurisdiction.” *Silk v. Bond*, 65 F.4th 445, 457 (9th Cir. 2023) (quoting *S.E.C. v. Ross*, 504 F.3d 1130, 1138 (9th Cir. 2007)).⁸ This analysis examines a defendant’s contacts with California, and not the plaintiff’s conduct or intentions regarding the forum. *Rush v. Savchuk*, 444 U.S. 320, 332 (1980). The first prong of the test “examines whether [a] defendant’s contacts with the forum are attributable to his own actions or are solely the actions of the plaintiff.” *Sinatra v. Nat’l Enquirer, Inc.*, 854 F.2d 1191, 1195 (9th Cir. 1988). A determination of purposeful conduct requires that a “defendant ‘have performed some type of affirmative conduct which allows or promotes the transaction of business within the forum state.’” *Sher*, 911 F.2d at 1362 (emphasis added) (quoting *Sinatra*, 854 F.2d at 1195); *see also Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985); *Joseph Saveri Law Firm, Inc. v. Criden*, 696 Fed. App’x 189, 192 (9th Cir. 2017) (plaintiff cannot “establish jurisdiction over a defendant through the

⁸ In legal malpractice cases, the Ninth Circuit refers to the first prong of this test as “purposeful availment” (traditionally applied in contract cases) as opposed to “purposeful direction” (traditionally applied in intentional tort cases). *Sher*, 911 F.2d at 1361; *see also Webb v. Sitzes*, 82 F.3d 424, 1996 U.S. App. LEXIS 8961 at *4–6 (9th Cir. 1996) (unpublished); *Krug v. Lomonaco*, No. 92-56434, 1993 U.S. App. LEXIS 20258, at *3–6, 1993 WL 300617 (Table) (9th Cir. 1993) (unpublished). However, the phrase purposeful availment “is used[d] . . . in shorthand fashion, to include both purposeful availment and purposeful direction.” *Schwarzenegger v. Fred Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004); *see also Johnson v. UBS AG*, 860 Fed. App’x 531, 532 (9th Cir. 2021) (stating “there is not ‘a rigid dividing line’ and both tests are relevant when both types of claims are at issue.”); *Yahoo Inc. v. La Ligue Contre Le Racisme Et L’antisemitisme*, 433 F.3d 1199, 1206 (9th Cir. 2006) (en banc). In a recent professional services malpractice case, the Ninth Circuit referred to the first prong of the test as “purposeful conduct” and “purposeful contact” towards the forum. *Silk*, 65 F.4th at 457. In this case, the only claim is for professional negligence; accordingly, the Court uses “purposeful conduct” to refer, “in shorthand fashion,” to the first prong of the minimum contacts test. *Id.*; *Schwarzenegger*, 374 F.3d at 802.

plaintiff's own contractual performance within a forum state") (emphasis in original); *Johnson v. UBS AG*, 860 Fed. App'x 531, 532–533 (9th Cir. 2021).

The Court applies the three-step specific jurisdiction test as to each Defendant. *Rush*, 444 U.S. at 332–33; *Sher*, 911 F.2d at 1365–66. For specific jurisdiction to exist, each non-resident defendant's "suit-related conduct must create a substantial connection with the forum State." *Walden*, 571 U.S. at 284. It is undisputed that the alleged legal malpractice occurred in New York, outside of the forum state.

C. Specific Personal Jurisdiction Over [REDACTED]

With respect to [REDACTED] in her individual capacity, the Court omits any of [REDACTED] contacts with or actions directed toward California. The parties do not dispute that [REDACTED] does not live, work, or own or lease property in California, nor has she held or applied to hold a license to practice law in California, or filed or paid state or local taxes to any California governmental entity. [REDACTED] declares that she does "not conduct any business whatsoever in the State of California." [REDACTED] Decl. ¶ 4.) There is no evidence that [REDACTED] advertised to obtain California clients.

1. [REDACTED] Purposeful Conduct Towards California

Under the first step of the minimum contacts test, a defendant must have "purposefully direct[ed her] activities or consummate[d] some transaction with the forum or resident thereof" or performed an act by which she "purposefully availed herself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws." *Freestream*, 905 F.3d at 603 (quoting *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004)). "[C]ourts look to whether the defendant deliberately engaged in significant activities within the forum or created continuing obligations between [herself] and forum residents." *Johnson v. UBS AG*, 860 Fed. App'x 531, 532 (9th Cir. 2021); *Sher*, 911 F.2d at 1362. This first prong of the three-step test "may be satisfied by purposeful availment of the privilege of doing business in

the forum; by purposeful direction of the activities at the forum; or by some combination thereof.” *Yahoo Inc. v. La Ligue Contre Le Racisme Et L’antisemitisme*, 433 F.3d 1199, 1206 (9th Cir. 2006) (en banc).

To determine minimum contacts in a legal malpractice case, the Court considers the defendant’s “entire course of dealing” with the client, *Sher*, 911 F.2d at 1363–64, and the defendant’s connections to the forum, including prior negotiations and contemplated future consequences, *see Burger King*, 471 U.S. at 479. In the context of legal malpractice, “it is appropriate to look to the ‘contemplated future consequences’ of a contract in assessing whether that contract constitutes purposeful availment.” *Jacqueline B. v. Rawls Law Grp.*, P.C. 68 Cal. App. 5th 243, 258 (Cal. Ct. App. 2021) (quoting *Burger King*, 471 U.S. at 479; *Sher*, 911 F.2d at 1362). “Out-of-state legal representation does not establish purposeful availment of the privilege of conducting activities in the forum state, where the law firm is solicited in its home state and takes no affirmative action to promote business within the forum state.” *Sher*, 911 F.2d at 1363.

In *Sher v. Johnson*, a California resident retained a non-forum law firm and its non-forum lawyers to represent him in a Florida criminal case. 911 F.2d 1357, 1360. The Ninth Circuit panel concluded that the law firm partnership had sufficient minimum contacts with California to support specific personal jurisdiction but that the individual partner lawyers did not. *Id.* at 1363–64. The law firm’s contacts with the forum state included a retainer agreement signed in California; the firm’s acceptance of its client’s payments drawn on a California bank; pursuant to the retainer agreement, an executed deed of trust and promissory note in favor of the legal partnership, encumbering the client’s California residence for \$75,000, which was held by a third-party California lawyer and was not recorded; multiple trips to California regarding the representation; and phone calls and letters between counsel and California. *Id.* at 1360. *Sher* concluded that these facts together demonstrated sufficient minimum contacts. *Id.* at 1363 (“We need not decide . . . whether” the deed alone “would constitute a ‘substantial connection’ with California for jurisdictional purposes”). The panel’s analysis, however, underscored the

importance of the deed in the law firm's favor. *Id.* The deed of trust that encumbered the client's California real property and residence "contemplated [significant] future consequences in California," including the possibility of future enforcement of a judgment rendered under California law, and represented "a significant contact with California." *Id.* (alternation in original). The firm "was looking to the laws of California" to conduct its business of legal representation. *Id.*

Here, as true of the law firm in *Sher*, [REDACTED] suit-related, purposeful conduct created a substantial connection between her professional legal services and California. *See id.*; *see also Walden*, 571 U.S. at 284. First, [REDACTED] accepted legal representation of a client whose desired outcome was admission to the United States to specifically live and work in California. This action alone does not reach the level of significance necessary for purposeful conduct directed at California, *see Sher*, 911 F.2d at 1363, but it is relevant in the context of [REDACTED] other purposeful actions directed toward California, its residents, and its laws in [REDACTED] provision of professional legal services.

Second, [REDACTED] purposefully decided, in the exercise of her legal expertise and license to practice, that (1) [REDACTED] should be formed in California, as opposed to Plaintiff's initial intention to incorporate in Delaware, and (2) the new California entity [REDACTED] would form the corporate employer to substantiate her client's eligibility for a non-immigrant visa that [REDACTED] prepared on his behalf.

Third and critically, [REDACTED] recommended [REDACTED] California creation to Plaintiff, and then formed the company herself, with the knowledge that her client's only business partner in [REDACTED] was a California resident. A California limited liability company "is an entity distinct from its members," with "perpetual duration." Cal. Corp. Code § 17701.04(a), (c). [REDACTED] knew or should have known that in forming [REDACTED] as a California company, she was taking "affirmative action to promote business within the forum state" in at least two immediate and material ways: (1) [REDACTED] created a new commercial operation in California with imminently effective future consequences in the forum (only a few examples of which are the creation of bank accounts, the payment of

employees, the entering of commercial contracts related to [REDACTED] business, and the reliance by other California businesses and residents on [REDACTED] existence as a California company), *Sher* 911 F.2d at 1363; and (2) [REDACTED] made California law the governing authority for the legal relationships between [REDACTED] her client, and his California business partner [REDACTED] see Cal. Corp. Code § 17701.06 (providing that California law governs internal affairs of a limited liability company, the authority of members of a company, and the liability of a member for the debts or liabilities of the company). The intended consequences of [REDACTED] legal advice contemplated future consequences in California as opposed to any other jurisdiction.

Fourth, [REDACTED] created a California entity of perpetual duration in her provision of legal services to Plaintiff by completing the Articles of Organization from the California Secretary of State, by signing that form as an Organizer, representing the truth and accuracy of the statements made there, and by filing the Organizer's representations with the California Secretary of State. *See id.* §§ 17701.04(a), 17702.01(e). She took this action as part of her legal advice to Plaintiff that [REDACTED] form the basis of Plaintiff's eligibility for the visa petition that [REDACTED] prepared on his behalf.

Fifth, after [REDACTED] raised the possibility of an operating agreement to Plaintiff and Plaintiff requested an operating agreement, [REDACTED] purposefully selected a "suitable" operating agreement for [REDACTED] the California entity she had herself created. The "suitable operating agreement," which [REDACTED] chose for her client, mandated the application of California law to the interpretation of the agreement and specified arbitration as the exclusive process for resolution of disputes in California (*Plaintiff's Exh. 21* at 2). In short, [REDACTED] selected an operating agreement that would foreseeably deny [REDACTED] access to the courts of his resident state in any dispute related to the company he partially owned.

The challenged legal advice here is not provided in the context of litigation, but rather in the context of transactional representation (entity formation) or representation before an agency (preparation of immigration petition), the attorney should be prepared to answer in the forum that formed the substantial basis for her legal representation of the

client, if the other minimum contacts requirements are also satisfied. For example, in the context of real estate transaction counsel, “an attorney who represents a client in connection with the acquisition of real property [in the forum state] can reasonably be expected to face a breach of fiduciary duty claim [in that forum state] where the claim involves the same properties that were the focus of the representation.” *Arm. Genocide Museum and Mem’l, Inc. v. Cafesjian Family Found., Inc.*, 607 F. Supp. 2d 185, 189 (D.D.C. 2009). Another example arises in the context of a lawyer’s preparation of a prenuptial agreement. *McDevitt v. Guenther*, No. 06-00216, 2006 U.S. Dist. LEXIS 51012 at *18–19; 2006 WL 2092385 at *6 (D. Haw. [REDACTED]). There, the legal work “contemplated future consequences in” the forum state, not in any other location. *Id.*

[REDACTED] understates her purposeful direction of legal services to and about California and its residents. She declares that her sole contact with California was the filing of articles of organization in Sacramento via the Internet while situated at her desk in New York by filling in the fields on the State of California Website and clicking “file,” and she declares that no interpretation of California law was required to complete the Internet-based form to file the articles of incorporation. [REDACTED] *Decl.* ¶¶ 17, 19, 24.) As explained above, the entire course of [REDACTED] dealings on Plaintiff’s representation evince a pattern of legal services invoking the laws and privileges of California that extend well beyond just the administrative completion of a form without consideration of legal advice. [REDACTED] representation of Plaintiff depended on “contemplated future consequences” in California and not in any other location. *See McDevitt*, 2006 U.S. Dist. LEXIS 51012 at *19; 2006 WL 2092385 at *6.

[REDACTED] argues that *Sher* supports her position because the individual [REDACTED] lawyers did not purposefully avail themselves of the forum by signing a retainer agreement in the forum or taking physical trips to the forum. [REDACTED] *Decl.* ¶¶ 2–4, 18.) The physical presence in California of *Sher*’s lawyers was not sufficient contact where the trips arose “out of a case *centered entirely in*” another state. *Sher*, 911 F.2d at 1363 (emphasis added). Similarly, the significance of [REDACTED] contacts with California is not where her legal

advice was provided but the quality of her actions. Her purposeful conduct centered entirely around California and its laws and not any other state forum. Her professional conduct for Plaintiff centered around advice about California law.⁹ Unlike the individual lawyers in *Sher*, ██████ took “affirmative action to promote business within the forum state.” She promoted both the business of ██████ and her own legal business in the representation of Plaintiff’s immigration and corporate matters. *See id.*

In the context of the “prior negotiations and contemplated future consequences,” and the “parties’ actual course of dealing,” ██████ purposeful actions are substantial and are not “random, fortuitous, or attenuated” such that the exercise of personal jurisdiction offends due process. *Sher*, 911 F.2d at 1362 (quoting *Burger King*, 471 U.S. at 479, 480). Plaintiff has made a prima facie showing of ██████ purposeful conduct toward California. As with the law firm in *Sher*, ██████ purposeful conduct towards California satisfies minimum contacts when viewing both the entire course of her dealings with Plaintiff and the future consequences to California and its residents of the legal advice she allegedly negligently provided or failed to provide. 911 F.2d at 1363–64; *McDevitt*, 2006 U.S. Dist. LEXIS 51012 at *18–19; 2006 WL 2092385 at *6. ██████ purposeful contacts with California may approach the outer boundaries of due process limitations. Given the context, however, of a lawyer’s actions in her representation of a client who expressly retained counsel to invoke the laws of California for the operation of his business with his California partner, coupled with the lawyer’s reliance upon that invocation of California law to form the basis of the visa petition filed on Plaintiff’s behalf, the exercise of specific jurisdiction here does not offend due process or “traditional notions of fair play and substantial justice.” *Int’l Shoe*, 326 U.S. at 316.

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⁹ As explained above, ██████ primarily provided legal advice and work on the visa petition.

2. Connection Of Claim To ██████████ Forum-Related Activities

The Court next examines whether Plaintiff made a prima facie case that his claim is connected to ██████████ forum-related contacts. Specific personal jurisdiction requires “adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction.” *Goodyear Dunlop*, 564 U.S. at 919 (internal quotation marks and citation omitted); *Hirsch v. Blue Cross, Blue Shield of Kan. City*, 800 F.2d 1474, 1480 (9th Cir. 1986). This prong of the test “demands that the suit ‘arise out of or relate to the defendant’s contacts with the forum.’” *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, ___ U.S. ___, 141 S. Ct. 1017, 1026 (2021).

Here, Plaintiff’s claim arises from the financial injuries allegedly caused by ██████████ malpractice in her selection of the suitable form operating agreement to govern ██████████ and in the negligent advice or negligent failure to give advice regarding (1) the operating agreement’s impact on her client, (2) the California company she formed for him, and (3) his California partner who was the only other member of the company. Plaintiff alleged that the operating agreement “called for ownership to float based on capital contributions [and] Defendants never explained this critical point to Mr. ██████████ who had requested that ██████████ be owned by “setting a fixed ownership percentage” between himself and ██████████ (*Comp’t* at ¶ 20.) As alleged, “The operating agreement should have not permitted ownership to be determinative, or even arguably determinative, upon capital contributions or otherwise. The Operating Agreement should have definitively established the ownership percentages as [Plaintiff] directed.” (*Id.* at ¶ 23.) Plaintiff alleged that all Defendants negligently selected the operating agreement for ██████████ and “negligently failed to counsel” him about “its language and effect.” (*Id.* at ¶ 24.)

As alleged, Plaintiff’s claim is connected to ██████████ forum-related conduct. Not only is the claim connected with ██████████ forum-directed conduct, it arose from it. Plaintiff’s claim arose from ██████████ alleged malpractice in the legal advice that she failed to give him about the application of the suitable form operating agreement to ██████████. Although a “but for” test is not required to conclude that the claims and contacts are related,

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1 *Ford Motor Co.*, 141 S. Ct. at 1026, that more-demanding test is satisfied in this case.
2 Plaintiff's claim, as alleged, would not exist if ██████████ had not formed ██████████ had not
3 provided the "suitable" form operating agreement, or had not provided legal advice about
4 the form's application to the ownership structure between Plaintiff and ██████████ Defendants
5 argue that they did not bill Plaintiff for the provision of the blank operating agreements
6 because they did not represent Plaintiff regarding an operating agreement for ██████████
7 ██████████ declares that she provided no advice about the suitable form operating agreement.
8 Even excluding the alleged failure to provide legal advice related to the operating
9 agreement's application to ██████████ Plaintiff's claim is connected to and arose from
10 ██████████ purposeful contacts with California to facilitate business there. She created the
11 California limited liability company with ownership divided between her client and a
12 California resident and selected a suitable form operating agreement to govern that
13 California company—both while ██████████ used the California company as a basis for
14 Plaintiff's visa application.

16 3. Reasonableness

17 The Court next applies the third element of the minimum contacts test,
18 reasonableness. *See Sher*, 911 F.2d at 1364. After a finding that Plaintiff made a prima
19 facie showing on the first two elements of the test, personal jurisdiction is presumptively
20 reasonable. *Id.* On the third prong, the burden shifts to Defendants, who must show that
21 the exercise of personal jurisdiction over them is unreasonable or offends notions of fair
22 play. *Schwarzenegger*, 374 F.3d at 802. Defendants "must come forward with a
23 'compelling case' that the exercise of jurisdiction would not be reasonable." *Boschetto v.*
24 *Hansing*, 539 F.3d 1011, 1016 (9th Cir. 2008) (quoting *Burger King*, 471 U.S. at 476–78).
25 Here, Defendants do not make any distinction between the reasonableness of specific
26 jurisdiction over ██████████ versus ██████████

27 The Court considers seven factors to determine whether the exercise of jurisdiction
28 is reasonable, (1) the extent of the defendants' purposeful interjection into the forum state's

affairs; (2) the burden on the defendant; (3) the extent of conflict with the sovereignty of the defendants' state; (4) the forum state's interest in adjudicating the dispute; (5) the most efficient judicial resolution of the controversy; (6) the importance of the forum to the plaintiff's interest in convenient and effective relief; and (7) the existence of an alternative forum. *Silk*, 65 F.4th at 458 (quoting *Roth v. Garcia Marquez*, 942 F.2d 617, 623 (9th Cir. 1991)); *Menken v. Emm*, 503 F.3d. 1050, 1058 (9th Cir. 2007). "[N]one of these factors is dispositive;" rather all seven must be balanced. *Roth*, 942 F.2d at 623.

First, ██████ purposefully interjected herself into the forum state's affairs by signing and filing the Articles of Organization for a California limited liability company with the California Secretary of State on behalf of a Canadian client with a partner who meets the prima facie showing of being a California resident. This factor is somewhat strengthened on this record given that ██████ was on notice that the company was related to a potential California resident because (1) the address of record for ██████ ██████ was in California, (2) the intended ownership structure was fifty-one percent by their Canadian client and forty-nine percent by ██████ and (3) the EIN provided for the company was ██████ social security number. ██████ put a new California entity into business in California and selected, in her capacity as an attorney, a "suitable form operating agreement" to govern that entity. The suitable form mandated the application of California substantive law and precluded potential California litigants from access to California courts through its arbitration provision. This factor weighs in favor of specific personal jurisdiction.

Second, Defendants are burdened to some degree by litigating in California because the testimony of ██████ a New York resident, and ██████ a Canadian citizen and resident, will likely be the center of Plaintiff's case and of the defense. This burden is slightly mitigated by the importance of documentary evidence in the form of e-mails, but ██████ and ██████ testimony about the legal advice they provided, particularly by telephone or personal interactions with their former client, enhances the burden to them of

defending in the forum. This factor weighs against the reasonableness of specific personal jurisdiction.

Third, no party has identified any conflict between California laws and the sovereignty of New York to the substantive law of Plaintiff's legal malpractice claim.¹⁰ The Court finds that this factor is neutral.

Fourth, California has a significant interest in adjudicating this dispute—at least based on the prima facie showing made by Plaintiff at this stage. California's interest in governing the existence and conduct of its recorded limited liability companies and their lawful operation is strong. In addition, California has a strong interest in protecting California citizens from the harms Plaintiff alleges and from the wrongs disputed by Plaintiff and █████ during the arbitration. California is the state principally interested in governing the application of California law to its own companies, as the operating agreement here requires. Also, California has a strong interest in arbitration jurisdiction provisions that foreclose full access to California courts. Finally, █████ relevant conduct occurred entirely in her capacity as a licensed lawyer representing a client whom she advised to invoke the laws of California to achieve his goal of living and working there. The licensure and regulation of lawyers and the practice of law falls to the states. The United States Supreme Court and California recognize that "whether or not a state has passed special legislation relating to the subject matter of the action is significant in determining the reasonableness of jurisdiction over an out-of-state defendant." *Sibley v. Sup. Ct. of L.A. Cty.*, 16 Cal. 3d 442, 448 (Cal. 1976) (citing *McGee v. Int'l Life Ins. Co.*,

¹⁰ As a related matter, New York must regulate the conduct of attorneys licensed there. See N.Y. Rules of Professional Conduct 8.5(a). Rule 8.5(a) of the New York Rules provides that a "lawyer admitted to practice in this state is subject to the disciplinary authority of this state, regardless of where the lawyer's conduct occurs." *Id.* California would also regulate the conduct of non-forum attorneys who formed a California entity and provided legal advice on the operation of that entity. Cal. Rules of Professional Conduct 8.5(a). Rule 8.5(a) of the California rules provides that "a lawyer not admitted in California is also subject to the disciplinary authority of California if the lawyer provides or offers to provide any legal services in California. A lawyer may be subject to disciplinary authority of both California and another jurisdiction for the same conduct." *Id.*

355 U.S. 220 (1957) (regulation over foreign insurance companies)); *Quattrone v. Sup. Ct.*, 44 Cal. App. 3d 296, 306–07 (Cal. Ct. App. 1975) (issuance of shares of stock a subject of special California regulation)). This factor weighs in favor of the reasonableness of specific personal jurisdiction.

Fifth, the efficiency of judicial resolution is neutral because it is efficient to continue resolution where litigation has already begun, and it is efficient to resolve the case where the documents and witnesses regarding the negligent legal representation reside, New York. Defendants proffer that resolution in New York remains available to Plaintiff. Defendants argue that [REDACTED] ‘still faces the prospect of malpractice litigation being initiated against her by Plaintiff in *either state or federal court in New York.*’ (*Defs’ Reply* at 5 (emphasis added).) Defendants’ concession—that multiple fora in New York are available—weighs slightly in favor of efficient resolution available there, but that is undermined as to New York federal court by this Court’s ruling on federal subject matter jurisdiction. This factor is neutral.

Sixth, Plaintiff selected the California forum. Accordingly, the Court credits that Plaintiff prefers this forum for convenient and effective relief. Also, Plaintiff alleges to continue to reside in California, and his residency here weighs in favor of convenience here. The Court finds that Plaintiff may be inconvenienced, and bear increased costs, to prosecute his claim in New York. This factor weighs in favor of reasonableness.

Seventh, the availability of a state forum in New York weighs against reasonableness of specific jurisdiction in California for three reasons: (1) Defendants concede the availability of that forum in their reply brief; (2) a legal malpractice claim is available to Plaintiff in New York, *Dombrowski v. Bulson*, 19 N.Y.3d 347, 350 (N.Y. 2012); and (3) although this Court makes no conclusion on a matter of New York state law, a New York state court theoretically *might permit* Plaintiff to rejoin [REDACTED] as a party, where her Canadian citizenship does not destroy federal diversity subject matter jurisdiction, and where all related disputes could be efficiently resolved.

1 Weighing these factors together, the exercise of personal jurisdiction over [REDACTED]
2 is reasonable. [REDACTED] purposeful conduct to allow and promote the transaction of
3 business in California includes her legal advice to create a California company, her creation
4 of that California company with the knowledge that it was owned by her client and a
5 California resident, and her determination of the suitability of a form operating agreement,
6 which applied California law and foreclosed access to California courts, to the California
7 entity she formed and its members. Although all alleged legal advice was provided outside
8 of the forum, while Plaintiff was a Canadian resident, [REDACTED] purposeful direction of her
9 legal work to California and its residents requires that this Court exercise specific
10 jurisdiction over [REDACTED]
11

12 **D. Specific Personal Jurisdiction Over [REDACTED]**

13 The actions of [REDACTED] and [REDACTED] attributable to the [REDACTED] firm. A partner is
14 an agent of the partnership when conducting the business of the partnership in the usual
15 manner in both New York and California. N.Y. Partnership Law § 20(1); Cal. Corp. Code
16 § 16301(1). The actions of [REDACTED] as an owner and partner of [REDACTED] are attributable to
17 the [REDACTED] partnership for purposes of personal jurisdiction. *Sher*, 911 F.2d at 1362. The
18 actions of [REDACTED] as a lawyer employed by the [REDACTED] law firm, are attributed to the [REDACTED]
19 partnership for purposes of personal jurisdiction. *Id.*; *see also Krypt, Inc. v. Ropaar LLC*,
20 No. [REDACTED] 2020 WL 3639651, at *4 –5 (N.D. Cal. 2020) (“if an agency relationship
21 between [employee and employer] is sufficiently pled, [employee’s] actions in the alleged
22 [tort] would be imputed to [employer]”). Here, as in *Sher*, the actions by [REDACTED] and
23 [REDACTED] in their legal representation of Plaintiff are actions attributable to [REDACTED] for purposes
24 of determining its contacts with California. 911 F.2d at 1362. [REDACTED] and [REDACTED]
25 actions are within the ordinary business of the law firm partnership providing legal counsel
26 to clients. [REDACTED] has no other contacts with California beyond the attorneys’ actions in
27 representing Plaintiff.
28

1 **1. █████ Purposeful Conduct Towards California**

2 For all of the reasons that █████ purposeful conduct satisfies the first prong of
3 the minimum contacts test, so also does █████ purposeful conduct. In addition to actions
4 taken by █████ Plaintiff alleges or declares that █████ provided legal advice to Plaintiff
5 or his assistant about how to complete the suitable operating agreement form for specific
6 application to █████ (*See Plaintiff's Decl.* ¶¶ 16, 21.) █████ also prepared and delivered
7 member certificates for the California company to Plaintiff and his California partner.
8 (*Comp't* ¶ 22.) █████ emailed a California member of █████ regarding the manner of
9 the company's formation, gave legal advice regarding a California lease of real property to
10 which the California company was a party, and gave legal advice about how a California
11 operating agreement (including an arbitration provision limiting access to California
12 courts) should apply to that California company.

13 █████ purposeful conduct towards California is similar to that of the partnership in
14 *Sher*, despite the absence here of lawyers' travel and calls to the forum state. 911 F.2d at
15 1363. █████ took affirmative action to promote business within the forum states when it
16 provided legal advice about and then formed a California company as central to its legal
17 representation of Plaintiff. In the provision of legal services, █████ purposefully invoked
18 the benefits and protections of the laws of California with the knowledge, or in the
19 expectation, that its counsel on California's laws and legal process impacted █████
20 formation and operation, the member certificates of █████ the "suitability" of the
21 operating agreement that █████ selected, and the rights and obligations of a California
22 company and its members, including a California resident. █████ provided legal services to
23 Plaintiff involving then-present and future consequences in California and in no other state
24 forum. Viewing the entire course of dealing between █████ and Plaintiff, █████ purposefully
25 directed its provision of legal professional services to California and California residents.

26 //

27 //

1 **2. Connection Of Claim To [REDACTED] Forum-Related Activities**

2 The Court next examines whether Plaintiff made a prima facie case that his claim is
3 connected to [REDACTED] forum-related contacts. *Goodyear Dunlop*, 564 U.S. at 919; *Hirsch*,
4 800 F.2d at 1480. [REDACTED] and [REDACTED] conduct is attributable to [REDACTED] For the same
5 reasons previously explained, [REDACTED] forum -related activities are connected to
6 Plaintiff's legal malpractice claim. Plaintiff's claim is also related to (1) [REDACTED] alleged
7 provision of legal advice to Plaintiff or his assistant about completing the form operating
8 agreement and (2) [REDACTED] or [REDACTED] provision of the [REDACTED] members' certificates.
9 [REDACTED] purposeful conduct toward California is related to Plaintiff's claim.

10
11 **3. Reasonableness**

12 Personal jurisdiction over [REDACTED] is presumptively reasonable because the partnership
13 purposefully conducted its legal representation of Plaintiff to California and Plaintiff's
14 claim is connected to those forum-related activities. *See Sher*, 911 F.2d at 1364. [REDACTED]
15 "must come forward with a 'compelling case' that the exercise of jurisdiction would not
16 be reasonable." *Boschetto*, 539 F.3d at 1016 (quoting *Burger King*, 471 U.S. at 476–78).
17 [REDACTED] failed to show that the exercise of personal jurisdiction is unreasonable.

18
19 **IV. Conclusion**

20 For the foregoing reasons, the Court **DENIES** Defendants' motion to dismiss for
21 lack of subject matter jurisdiction and **DENIES** Defendants' motion to dismiss for lack of
22 personal jurisdiction [Doc. 8].
23
24 [REDACTED] [REDACTED]
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28