

1 Lyne Richardson, Bar No. 143566
2 Duc Le, Bar No. 204408
3 Alice S. Wang, Bar No. 228351
4 Ford & Harrison LLP
5 350 South Grand Avenue, Suite 2300
6 Los Angeles, CA 90071
7 Telephone: (213) 237-2400
8 Facsimile: (213) 237-2401
9 Email: lrichardson@fordharrison.com
10 Email: dle@fordharrison.com
11 Email: awang@fordharrison.com

12 Attorneys for Defendants
13 Wailuku Tire Center, L.L.C. and Lloyd Kimura

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

16 LUCA MORALES, an individual,
17 LESLEY MORALES, an individual,

18 Plaintiffs,

19 v.

20 WAILUKU TIRE CENTER, L.L.C., a
21 Limited Liability Company, and
22 LLOYD KIMURA, an individual, and
23 DOES 1 through 100, inclusive,

24 Defendants.

Case No. EDCV08-0782 SGL (AJWx)

**NOTICE OF MOTION AND
MOTION TO DISMISS
DEFENDANTS WAILUKU TIRE
CENTER, L.L.C. AND LLOYD
KIMURA FOR LACK OF
PERSONAL JURISDICTION;**

**MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT
THEREOF**

F.R.C.P. 12(b)(2)

**[Filed concurrently with Declarations
of Lloyd Kimura, Roberta Kuulei
Casagan, and Duc Le]**

DATE: July 14, 2008
TIME: 10:00 a.m.
PLACE: Courtroom One

State Complaint Filed: May 2, 2008
Trial Date: None

25 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

26 PLEASE TAKE NOTICE THAT on July 14, 2008 at 10:00 a.m. or as soon
27 thereafter as counsel may be heard, in Courtroom One of Judge Stephen G. Larson,
28 in the United States Courthouse – Riverside, 3470 Twelfth Street, Riverside,

1 California 92501, defendants Wailuku Tire Center, L.L.C., a Hawaii Corporation
2 (hereinafter, "WTC"), and Lloyd Kimura (hereinafter, "Kimura") appearing for the
3 limited purpose of challenging personal jurisdiction, will and do hereby move the
4 Court for dismissal of this action as to WTC and Kimura, pursuant to Rule 12(b)(2)
5 of the Federal Rules of Civil Procedure. This Motion is made on the grounds that
6 this Court lacks jurisdiction over the persons of WTC and Kimura in this action
7 because they have always been citizens of the State of Hawaii, do not reside or
8 conduct business within the State of California, and were served with the Summons
9 and Complaint in this action in Hawaii.

10 In the interest of justice, this Court alternatively should issue an order
11 pursuant to 28 U.S.C. § 1631 transferring this case to the United States District
12 Court – District of Hawaii.

13 This motion is made and based upon this Notice, the accompanying
14 Memorandum of Points and Authorities, the Declarations of Lloyd Kimura, Roberta
15 Kuulei Cagasan, and Duc Le, all the pleadings, documents, and records in the files
16 of this Court in this action, all additional matters of which this Court takes judicial
17 notice, and any oral argument and further written argument permitted by this Court.

18 Dated: June 18, 2008

FORD & HARRISON LLP

19
20
21 By: 

Lynne A. Richardson
Duc Le
Alice S. Wang
Attorneys for Defendants
Wailuku Tire Center, L.L.C., and
Lloyd Kimura

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

I. STATEMENT OF THE CASE4

II. JURISDICTION CAN BE EXERCISED OVER WTC AND KIMURA ONLY IN ACCORD WITH DUE PROCESS STANDARDS6

III. JURISDICTIONAL ANALYSIS IS BASED UPON THE CONDUCT OF A DEFENDANT IN RELATIONSHIP TO THE FORUM, NOT THAT OF THE PLAINTIFF7

IV. PLAINTIFFS HAVE THE BURDEN OF ESTABLISHING THE EXISTENCE OF JURISDICTION8

V. IT IS IMPOSSIBLE TO FIND THE EXISTENCE OF GENERAL OR UNLIMITED JURISDICTION OVER DEFENDANTS IN CALIFORNIA8

VI. THERE ARE NO GROUNDS FOR FINDING LIMITED OR SPECIFIC JURISDICTION OVER DEFENDANTS IN CALIFORNIA9

 A. Purposeful Availment..... 10

 B. Arising Out Of..... 12

 C. Reasonableness..... 12

VII. CONCLUSION..... 13

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	Page
<i>Alexander v. Circus Circus Enterprises Inc.</i> , 972 F.2d 261 (9th Cir. 1991).....	8
<i>Amoco Egypt Oil Co. v. Leoins Navigation Inc.</i> , 1 F.3d 848	8, 12
<i>Ballard v. Savage</i> , 65 F.3d 1495 (9th Cir. 1995).....	12
<i>Bird v. Parsons</i> , 289 F.3d 865 (6th Cir. 2002).....	9
<i>Brand v. Menlove Dodge</i> , 796 F.2d 1070 (9th Cir. 1986).....	8
<i>Burger King v. Rudzewicz</i> , 471 U.S. 462, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985).....	9, 12
<i>Calder v. Jones</i> , 465 U.S. 783 (1984)	7
<i>Conti v. Pneumatic Products Corp.</i> , 977 F.2d 978 (6th Cir. 1992).....	11
<i>Core-Vent Co. v. Nobel Industries A.B.</i> , 11 F.3d 1482 (9th Cir. 1993).....	13
<i>Data Disc, Inc. v. Systems Technology Associates, Inc.</i> , 557 F.2d 1280, fn. 5 (9th Cir. 1977).....	8, 10
<i>Davis v. Metropolitan Productions Inc.</i> , 885 F.2d 515 (9th Cir. 1989).....	7
<i>FTI v. British-America Insurance Co.</i> , 828 F.2d 1439 (9th Cir. 1987).....	12
<i>Fireman's Fund Insurance Co. v. National Bank of Cooperatives</i> , 103 F.3d 888 (9th Cir. 1996).....	12
<i>Flynt Distribution Co. v. Harvey</i> , 734 F.2d 1389 (9th Cir. 1984).....	8
<i>Gordy v. The Daily News, L.P.</i> , 95 F.3d 829 (9th Cir. 1996).....	6
<i>Gray & Co. v. Firstenberg Machinery Co. Inc.</i> , 913 F.2d 758 (9th Cir. 1990).....	11
<i>Haisten v. Grass Valley Medical Reimbursement Fund Ltd.</i> , 784 F.2d 1392 (9th Cir. 1986).....	10

TABLE OF AUTHORITIES (cont'd)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Helicopterous Nacionales de Colombia S.A. v. Hall,
466 U.S. 408 (1984) 8, 9, 11

Hirsch v. Blue Cross Inc.,
800 F.2d 1474 (9th Cir. 1986) 7

Hunt v. Erie Insurance Group,
728 F.2d 1244 (9th Cir. 1984) 11

*Insurance Company of Ireland Ltd. v. Compagnie des Bauxites de
Guinee*, 456 U.S. 694 (1982) 6

Insurance Company of North America v. Marina Salina Cruz,
649 F.2d 1266 (9th Cir. 1981) 7, 13

International Shoe Co. v. Washington,
326 U.S. 310 (1945) 6

Kulko v. Superior Court,
436 U.S. 84, 98 S. Ct. 1690 (1978) 11

McGlinchy v. Shell Chemical Co.,
845 F.2d 802 (9th Cir. 1988) 7

Olson v. Government of Mexico,
729 F.2d 641 (9th Cir.) 9

Omeluk v. Langston, etc.,
52 F.3d 267 (9th Cir. 1995) 5, 10

Paccar International Inc. v. Commercial Bank of Kuwait,
757 F.2d 1058 (9th Cir. 1985) 8

Panavision International Ltd. v. Toepfen,
141 F.3d 1316 (9th Cir. 1998) 11

Peterson v. Kennedy,
771 F.2d 1244 (9th Cir. 1985) 11

Rosenberg Brothers & Co. v. Curtis Brown Co.,
260 U.S. 516 (1923) 11

Roth v. Garcia-Marquez,
942 F.2d 617 (9th Cir. 1991) 11

Shaffer v. Heitner,
433 U.S. 186 (1977) 6

Shute v. Carnival Cruise Lines,
897 F.2d 377 (9th Cir. 1990) 12

TABLE OF AUTHORITIES (cont'd)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Third National Bank v. WEDGE Group, Inc.,
882 F.2d 1087 (6th Cir. 1989) 9

Transure Inc. v. Marsh & McLennan Inc.,
766 F.2d 1297 (9th Cir. 1985) 8

Worldwide Volkswagen Inc. v. Wodson,
444 U.S. 286 (1980) 6, 11

Zeigler v. Indian River Country,
64 F.3d 470 (9th Cir. 1995) 13

FEDERAL STATUTES

28 U.S.C. § 1631 13

MEMORANDUM OF POINTS AND AUTHORITIES

Defendants Wailuku Tire Center, L.L.C., a Hawaii Corporation (hereinafter, “WTC”), and Lloyd Kimura (hereinafter, “Kimura”), appearing for the limited purpose of challenging personal jurisdiction, moves this Court to dismiss the Complaint of plaintiffs Luca Morales and Lesley Morales (collectively, “Plaintiffs”) against them for lack of personal jurisdiction pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure. In the interest of justice, this Court alternatively should issue an order pursuant to 28 U.S.C. § 1631 transferring this case to the United States District Court – District of Hawaii.

Pursuant to California Code of Civil Procedure section 415.40, Plaintiffs served the Summons and Complaint on WTC and Kimura via certified or registered mail, with return-receipt-requested, as persons outside of California.¹ See Proof of Service, attached to Declaration of Duc Le as Exhibit “B”). Defendants are Hawaii residents and citizens. WTC has never been incorporated or registered to do business in California nor does it have any employees, warehouses, or offices in

¹ Defendants WTC and Kimura do not waive their objections to service of summons upon them via registered mail. Cal.C.C.P. § 413.10 provides in part: “Except as otherwise provided by statute, a summons shall be served on a person: ***(b) Outside this state but within the United States, as provided in this chapter or as prescribed by the law of the place where the person is served.”

WTC and Kimura were served in Hawaii, where absent court order to the contrary, FRCP Rule 4 requires personal service of summons.

(c) Same: By Whom Served. Service of all process shall be made: (1) anywhere in the State by the sheriff or the sheriff's deputy, by some other person specially appointed by the court for that purpose, or by any person who is not a party and is not less than 18 years of age; or (2) in any county by the chief of police or the chief's duly authorized subordinate. ***

(d) Same: Personal Service. The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:
(1) Upon an individual other than an infant or an incompetent person, (A) by delivering a copy of the summons and of the complaint to the individual personally or in case the individual cannot be found by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or (B) by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

1 California. It does not advertise or sell in California. It does not have any bank
2 accounts or other tangible real or personal property in California. There are no
3 facts to establish the requisite contacts with California. Moreover, the alleged
4 wrongful acts occurred in Hawaii as Plaintiffs allegedly worked for WTC and were
5 terminated in Hawaii. Kimura has no checking or saving accounts, residence, or
6 mailing address in California. Therefore, it would be improper for this Court to
7 exercise general or limited personal jurisdiction over the persons of WTC and
8 Kimura, and to unreasonably require a Hawaii corporation and citizen to defend
9 themselves in a California court. For these reasons, the Motion to Dismiss
10 Jurisdiction should be granted and the case dismissed as to WTC and Kimura.

11 Defendants' lawyer, Duc Le of Ford & Harrison, called and left phone
12 messages for plaintiffs' lawyer, Michael A. DesJardins, on June 16 and 17, 2008 to
13 discuss this Motion. At the time of filing this Motion, Mr. Le has not heard from
14 Mr. DesJardins or anyone from his office regarding this motion. (Declaration of
15 Duc Le, ¶ 7).

16 **I. STATEMENT OF THE CASE**

17 On or about May 2, 2008, plaintiffs Luca Morales and Lesley Morales
18 (collectively, "Plaintiffs") filed a Complaint in the Superior Court captioned as
19 LUCA MORALES, an individual, LESLEY MORALES, an individual, Plaintiffs,
20 v. WAILUKU TIRE CENTER, L.L.C., a Limited Liability Company, and LLOYD
21 KIMURA, an individual, and DOES 1 through 100, inclusive, Defendants.
22 (California, County of San Bernardino Superior Court Case No. CIVSS 805940).
23 The Complaint alleges causes of action for Breach of Contract, Promissory
24 Estoppel, Misrepresentations Inducing Employee under Labor Code section 970,
25 and Negligent Infliction of Emotional Distress. Plaintiffs seek "loss of wages" and
26 "contract damages, as well as incidental and consequential damages, in an amount
27 . . . no less than \$100,000 per plaintiff." (Complaint, ¶¶ 11 and 15, and pages 6, line
28 24, to page 7, line 19, attached to Declaration of Duc Le as Exhibit "A").

1 Plaintiff alleges that defendants Wailuku Tire Center, L.L.C. (hereinafter,
2 “WTC”) “is, and at all times herein mentioned was, a corporation duly organized
3 and existing under the laws of the State of California.” (Complaint, ¶ 2). The
4 Complaint does not specifically state the residence or citizenship of individual
5 defendant Lloyd Kimura (hereinafter, “Kimura”). Plaintiffs’ actions, however,
6 belie their allegations. If WTC and Kimura were residents of California, Plaintiffs
7 would have served the Summons and Complaint in California. Instead, Plaintiffs
8 served the Summons and Complaint on WTC and Kimura via certified mail
9 coupled with acknowledgement of receipt to their Hawaii addresses. (Declaration
10 of Duc Le, ¶ 4, Exhibit “B” attached thereto).

11 Contrary to the allegations in the Complaint, WTC is a company formed
12 under the laws of Hawaii. (Declaration of Lloyd Kimura, ¶8). Its principal place of
13 business has always been in Hawaii. (Declaration of Lloyd Kimura, ¶8). Plaintiffs’
14 allegations regarding Defendants’ status in California are contradicted by the
15 records of the Hawaii Department of Commerce and Consumer Affairs at
16 <http://hbe.ehawaii.gov/cogs/details.html?t=MSTR&fn=1380+C5>, which was last
17 viewed on June 18, 2008. (Declaration of Duc Le, ¶ 5, and Exhibit “C,”
18 “Certificate of Good Standing,” attached thereto). Correspondingly, a search on the
19 California Business Portal at <http://kepler.sos.ca.gov/corpdata/ShowLpIcList> and
20 shows “no results matched the search terms: ‘Wailuku’ ” and “no results matched
21 the search terms: ‘Wailuku Tire.’ ” (Declaration of Duc Le, ¶ 6 , and Exhibit “D”
22 attached thereto). Likewise, defendant Kimura has always been a resident and
23 citizen of Hawaii. (Declaration of Lloyd Kimura, ¶3).

24 In addition, the established facts supporting dismissal are that: WTC does
25 not have any offices, warehouses, sales representatives, sales outlets, members,
26 officers, or employees outside of Hawaii (Declaration of Lloyd Kimura, ¶¶ 11-15);
27 WTC does not recruit employees outside of Hawaii (Declaration of Lloyd Kimura,
28 ¶ 17); WTC does not have any bank accounts or other tangible personal or real

1 property in California (Declaration of Lloyd Kimura, ¶ 16); WTC does not sell or
 2 advertise outside of Hawaii (Declaration of Lloyd Kimura, ¶ 22g); Plaintiffs allege
 3 at paragraph 5 of the Complaint, accepted arguendo for the purposes of this motion
 4 alone, that they flew to Hawaii to discuss and negotiate employment terms;
 5 Plaintiffs lived in Hawaii when they completed their job applications, allegedly
 6 worked at WTC in Hawaii. (Declaration of Roberta Kuulei Casagan, ¶¶ 3-6, and
 7 Plaintiffs' Employment Applications, attached thereto). Plaintiffs applied for
 8 positions that were not advertised in California. (Declaration of Kimura, ¶ 18).

9 **II. JURISDICTION CAN BE EXERCISED OVER WTC AND KIMURA**
 10 **ONLY IN ACCORD WITH DUE PROCESS STANDARDS**

11 Although it is also necessary to take into account California's long-arm
 12 statute,² as California has expressly adopted federal standards,³ it is established that
 13 the federal decisions cover California as well as federal requirements. Gordy v.
 14 The Daily News, L.P., 95 F.3d 829, 831 (9th Cir. 1996). WTC and Kimura have an
 15 "individual liberty interest" that is protected by the Due Process Clause. Insurance
 16 Company of Ireland Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694,
 17 701-703 (1982). The Due Process Clause is a "guarantor against inconvenient
 18 litigation," and it creates a standard "typically described in terms of
 19 'reasonableness' and 'fairness' . . .". Worldwide Volkswagen Inc. v. Wodson, 444
 20 U.S. 286, 292 (1980).

21 Plaintiffs must demonstrate that defendants WTC and Kimura had sufficient
 22 "minimum contacts" with California, so that requiring defendants to defend this suit
 23 in a distant forum is in accord with "traditional notions of fair play and substantial
 24 justice," which requires this Court to make an ". . . estimate of the inconvenience
 25 which result to . . ." defendants. International Shoe Co. v. Washington, 326 U.S.

26
 27 ² "Jurisdiction must comport with the State long-arm statute and with the constitutional requirement of due process".
Omeluk v. Langston, etc., 52 F.3d 267, 269 (9th Cir. 1995).

28 ³ Code of Civil Procedure §410.10 ["A court of this state may exercise jurisdiction on any basis not inconsistent with
 the Constitution of this state or of the United States."]

1 310, 316-317 (1945). Absent such minimum contacts, Plaintiffs cannot meet their
2 burden of showing that defendants had a “reasonable anticipation” that it would be
3 sued in California. Shaffer v. Heitner, 433 U.S. 186, 216 (1977).

4 **III. JURISDICTIONAL ANALYSIS IS BASED UPON THE CONDUCT**
5 **OF A DEFENDANT IN RELATIONSHIP TO THE FORUM, NOT**
6 **THAT OF THE PLAINTIFF**

7 Plaintiffs have already stressed, and undoubtedly will continue to do so in
8 opposition to this motion, that they are currently residents of California and that but
9 for WTC’s wrongful conduct, they would not have relocated from California to
10 Hawaii to work for WTC. Plaintiffs will undoubtedly invoke the “effects”
11 rationale, focusing on California. All of this is irrelevant to this motion. The
12 hardship to WTC, the defendant, is “the primary concern” underlying the law of
13 personal jurisdiction. Insurance Company of North America v. Marina Salina Cruz,
14 649 F.2d 1266, 1272 (9th Cir. 1981).

15 This Court does not consider the convenience or inconvenience to Plaintiffs
16 or the extent of Plaintiffs’ activity in California. “The court’s focus and due
17 process analysis is on the defendant’s relationship to the forum, and the litigation,
18 rather than the plaintiff’s relationship to them.” Hirsch v. Blue Cross Inc., 800 F.2d
19 1474, 1477 (9th Cir. 1986). It is established that it is the “defendant’s activity that
20 must provide the basis for jurisdiction.” McGlinchy v. Shell Chemical Co., 845
21 F.2d 802, 816-817 (9th Cir. 1988).

22 It is equally irrelevant that there may be jurisdiction over other defendants, or
23 over any new defendants that are added. “Each defendant’s contacts with the forum
24 state must be assessed individually.” Calder v. Jones, 465 U.S. 783, 790 (1984).
25 This principle governs no matter how close the relationship between separate
26 defendants. Even an employer and employee are viewed independently. Davis v.
27 Metro Productions Inc., 885 F.2d 515, 522 (9th Cir. 1989).
28

1 **IV. PLAINTIFFS HAVE THE BURDEN OF ESTABLISHING THE**
 2 **EXISTENCE OF JURISDICTION**

3 Despite the allegation that WTC is a corporation under the laws of the State
 4 of California, now that WTC and Kimura have challenged the propriety of
 5 jurisdiction, Plaintiffs have the burden of proof. Flynt Distribution Co. v. Harvey,
 6 734 F.2d 1389, 1392 (9th Cir. 1984); Amoco Egypt Oil Co. v. Leoins Navigation
 7 Inc., 1 F.3d 848, 851 and n. 2 (9th Cir. 1993). Where the motion challenges the
 8 facts alleged, a Rule 12(b)(2) motion must be decided on the basis of competent
 9 evidence (usually declarations and discovery materials.) Data Disc, Inc. v. Systems
 10 Technology Associates, Inc., 557 F.2d 1280, 1289, fn. 5 (9th Cir. 1977).

11 In order to satisfy this burden, Plaintiffs must present admissible evidence, as
 12 distinguished from opinion, conclusions and argument. Alexander v. Circus Circus
 13 Enterprises Inc., 972 F.2d 261, 262 (9th Cir. 1991). It is the obligation of Plaintiffs
 14 to present “facts” supporting jurisdiction. Paccar International Inc. v. Commercial
 15 Bank of Kuwait, 757 F.2d 1058, 1062 n. 4 (9th Cir. 1985). This Court cannot find
 16 the existence of jurisdiction, unless there is a “competent foundation in the record.”
 17 Transure Inc. v. Marsh & McLennan Inc., 766 F.2d 1297, 1300 (9th Cir. 1985).

18 **V. IT IS IMPOSSIBLE TO FIND THE EXISTENCE OF GENERAL OR**
 19 **UNLIMITED JURISDICTION OVER DEFENDANTS IN**
 20 **CALIFORNIA**

21 This is included in the interest of completeness. A defendant is subject to
 22 general or unlimited jurisdiction only if its contacts with the forum are “substantial”
 23 or “continuous and systematic.” Helicopterous Nacionales de Colombia S.A. v.
 24 Hall, 466 U.S. 408, 414-416 (1984). This is a “fairly high standard” of
 25 involvement and relationship. Brand v. Menlove Dodge, 796 F.2d 1070, 1073 (9th
 26 Cir. 1986). General jurisdiction is proper only where “a defendant's contacts with
 27 the forum state are of such a continuous and systematic nature that the state may
 28 exercise personal jurisdiction over the defendant even if the action is unrelated to

1 the defendant's contacts with the state.” Burger King v. Rudzewicz, 471 U.S. 462,
 2 479, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985) (citing Third Nat'l Bank v. WEDGE
 3 Group, Inc., 882 F.2d 1087, 1089 (6th Cir. 1989)); *see* Helicopteros Nacionales de
 4 Colombia, S.A. v. Hall, 466 U.S. 408, 80 L. Ed. 2d 404, 104 S. Ct. 1868 (1984)
 5 (nonresident corporation negotiating, purchasing, training and accepting payment in
 6 forum state not enough to warrant forum state's assertion of personal jurisdiction
 7 where activities unrelated to those transactions); *see also* Bird v. Parsons, 289 F.3d
 8 865, 874 (6th Cir. 2002) (nonresident corporation's Internet website established to
 9 facilitate commerce in forum state insufficient to justify state's assertion of general
 10 jurisdiction).

11 In this case, there are no facts to establish general jurisdiction. WTC has
 12 never qualified or registered to do business in California, and has no office,
 13 employees, property or other assets in California. WTC has never advertised or
 14 recruited employees in California. Lloyd Kimura has never resided or worked in
 15 California. Plaintiffs effectively acknowledged that defendants do not have any
 16 presence in California when the Summons served on defendants by certified mail to
 17 addresses in Hawaii.

18 **VI. THERE ARE NO GROUNDS FOR FINDING LIMITED OR**
 19 **SPECIFIC JURISDICTION OVER DEFENDANTS IN CALIFORNIA**

20 This kind of jurisdiction “turns on the nature and quality of the defendant's
 21 contacts relating specifically to the cause of action” alleged against the defendant.
 22 Olson v. Government of Mexico, 729 F.2d 641, 648 (9th Cir.) *cert.den.* 469 U.S.
 23 917 (1984). It bears repeating, therefore, that Plaintiffs resided in Hawaii when:
 24 They completed their job applications (Declaration of Roberta Kuulei Casagan, ¶¶
 25 3-7); Plaintiffs were allegedly offered their positions at WTC (Complaint, ¶ 5); they
 26 worked at WTC (Complaint, ¶ 6); and WTC terminated their alleged employment
 27 (*Id.*). WTC did not advertise or recruit employees outside of Hawaii. (Declaration
 28 of Lloyd Kimura, ¶¶ 17 – 18, 22; Declaration of Roberta Kuulei Casagan, ¶¶ 3-6).

1 Data Disc Inc. v. System Technology Associates Inc., 557 F.2d 1280, 1287
2 (9th Cir. 1977) established the factors that in the Ninth Circuit must be considered
3 in determining whether specific or limited jurisdiction is permissible:

- 4 (1) The non-resident defendant must do some act or
5 consummate some transaction with the forum or perform
6 some act by which he purposefully avails himself of the
7 privilege or conducting activities in the forum, thereby
8 invoking the benefits and privileges of its loss; (2) the
9 claim must be one which arises out of or results from the
10 defendant's forum related activity; (3) exercise of
11 jurisdiction must be reasonable.

12 No one of these factors is dispositive; the Court must balance all of them.
13 Roth v. Garcia-Marquez, 942 F.2d 617, 623 (9th Cir. 1991). Each one of these
14 factors must be found in order for jurisdiction to be proper; i.e., "if any one of the
15 three requirements is not satisfied, jurisdiction in the forum would deprive the
16 defendant of due process." Omeluk v. Langston, etc., 52 F.3d 267, 269 (9th Cir.
17 1995).

18 A. **Purposeful Availment.**

19 "... The purposeful availment requirement ensures that a defendant will not
20 be haled into a jurisdiction solely as a result of . . . the unilateral activity of another
21 party or third party." Haisten v. Grass Valley Medical Reimbursement Fund Ltd.,
22 784 F.2d 1392, 1397 (9th Cir. 1986). That is why Plaintiffs' presence in California,
23 and the conduct of Plaintiffs in California, are irrelevant to the issue of jurisdiction
24 over defendants in this case.

25 "... [T]he purposeful availment analysis turns upon whether the defendant's
26 contacts are attributable to actions by the defendant himself, or conversely to the
27 unilateral activity of another party." Roth v. Garcia -Marquez, 942 F.2d 617, 621
28 (9th Cir. 1991) (Court's emphasis). Even as to some tort claims, where it is not

1 always necessary that a defendant be physically present within the forum, plaintiff
 2 still must show that “. . . the defendant has taken deliberate action toward the forum
 3 state,” and that the defendant’s “. . . efforts are purposefully directed toward forum
 4 residents.” Panavision International Ltd. v. Toeppen, 141 F.3d 1316, 1320 (9th Cir.
 5 1998) (emphasis supplied). Unilateral activity by plaintiff or other persons over
 6 whom the nonresident defendant has no control does not satisfy the “purposeful
 7 availment” requirement. Helicopteros Nacionales de Colombia, S.A. v. Hall, 466
 8 U.S. 408, 416-417, 104 S.Ct. 1868, 1873(1984); Roth v. Marquez, 942 F.2d 617,
 9 622 (9th Cir. 1991).

10 For example, due process forbids the exercise of jurisdiction where an out-of-
 11 state car dealer, who otherwise has no contacts with the forum state, is sued for
 12 injuries resulting from a customer’s decision to drive a car there. World-Wide
 13 Volkswagen Corp. v. Woodson, 444 U.S. 286, 295, 100 S.Ct. 559, 565 (1980). A
 14 divorced husband cannot be sued for child support in a state with which he has no
 15 connection other than the fact that his ex-wife has settled there, and his daughter
 16 has chosen to live with the ex-wife. Kulko v. Superior Court, 436 U.S. 84, 98
 17 S.Ct. 1690 (1978).

18 The alleged acts and/or omissions of WTC and Kimura on which Plaintiffs
 19 base their claims, are not directed toward California in any way. WTC does not
 20 recruit employees outside of Hawaii, and it did not recruit Plaintiffs. Plaintiffs
 21 unilaterally decided to seek employment in Hawaii and at WTC, and then moved
 22 back to California after termination of the alleged employment.

23 It is established that “use of the mails, telephone, or other international
 24 communication simply do not qualify as purposeful activity invoking the benefits
 25 and protection of the forum state.” Peterson v. Kennedy, 771 F.2d 1244, 1262 (9th
 26 Cir. 1985);⁴ *see* Conti v. Pneumatic Products Corp., 977 F.2d 978, 983 (6th Cir.

27
 28 ⁴ Also see, Rosenberg Bros. & Co. v. Curtis Brown Co., 260 U.S. 516, 518 (1923); Hunt v. Erie Ins. Group, 728 F.2d
 1244, 1248 (9th Cir. 1984); Gray & Co. v. Firstenberg Machinery Co. Inc., 913 F.2d 758, 761 (9th Cir. 1990).

1 1992) (It would be “unfair” to subject a Florida-based company to Ohio jurisdiction
 2 simply because it hired a job candidate from that state. Even though employer used
 3 Florida-based recruiter to help bring in candidates from throughout the country,
 4 requiring jurisdiction in every such state would “unnecessarily restrict nationwide
 5 searches for candidates.”).

6 **B. Arising Out Of.**

7 In the Ninth Circuit, this requirement is governed by the but for test; i.e., “a
 8 claim arises out of forum related activities only if it would not have happened but
 9 for those activities.” Ballard v. Savage, 65 F.3d 1495, 1498 (9th Cir. 1995). This
 10 test “preserves the requirement that there must be some nexus between the cause of
 11 action and the defendant’s activities in the forum.” Shute v. Carnival Cruise Lines,
 12 897 F.2d 377, 385 (9th Cir. 1990) *reversed on other grounds*, 499 U.S. 585 (1991).

13 It is literally impossible for Plaintiffs to meet this requirement. Defendants
 14 did not do anything in California. Their activities were always confined to Hawaii.
 15 All the alleged wrongful acts by Defendants occurred in Hawaii. Plaintiffs allege
 16 they were terminated in Hawaii. Plaintiffs cannot attribute their location and
 17 contacts in California to Defendants. “[A] lawsuit arises out of the defendant’s
 18 contacts with a forum state if a direct nexus exist between those contacts and the
 19 cause of action.” Fireman’s Fund Ins. Co. v. National Bank of Cooperatives, 103
 20 F.3d 888, 894 (9th Cir. 1996).

21 **C. Reasonableness.**

22 Finally, it must appear that the exercise of jurisdiction by local courts in the
 23 particular case would “comport with fair play and substantial justice,” i.e. the
 24 reasonableness factor. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 477-478,
 25 105 S.Ct. 2174, 2184-2185 (1985). If this condition is not satisfied, jurisdiction is
 26 not proper even if the plaintiff can show “purposeful availment” and “arising out
 27 of.” FTI v. British-America Insurance Co., 828 F.2d 1439, 1442 (9th Cir. 1987);
 28 Amoco Egypt Co. v. Leonis Navigation Co., 1 F.3d 848, 852 (9th Cir. 1993).

1 Plaintiffs have a heavy of proof with regard to reasonableness. “Where the burdens
2 are equal, this factor tips in favor of the defendant because the law of personal
3 jurisdiction is primarily concerned with the defendant’s burden.” Zeigler v. Indian
4 River Country, 64 F.3d 470, 475 (9th Cir. 1995).

5 In this case, it would be unreasonable to force defendants to defend this case
6 in California. Defendants have no contacts with California and have never
7 advertised or recruited employees outside of Hawaii. Plaintiffs applied for work at
8 WTC while physically present in Hawaii, and the positions applied for were not
9 advertised. (Declaration of Kimura, ¶ 18; Declaration of Roberta Kuulei Casagan,
10 ¶¶ 3-6). California has little interest, if any, in adjudicating this employment
11 dispute that arose from events that occurred in Hawaii. The burden on defendants
12 would be significant because WTC’s offices, employees and records are in Hawaii.
13 The existence of an alternative forum is available to Plaintiffs. See Core-Vent Co.
14 v. Nobel Industries A.B., 11 F.3d 1482, 1488 (9th Cir. 1993).⁵

15 **VII. CONCLUSION**

16 The Summons and Complaint were served on Defendants as Hawaii residents
17 and citizens. WTC has never been registered or purported to do business in
18 California. It does not have any employees, warehouses, or offices in California. It
19 does not advertise or sell in California. It does not have any bank accounts or other
20 tangible real or personal property in California. WTC and Kimura did not advertise
21 the positions for which Plaintiffs applied. There are no facts to establish the
22 requisite contacts with California. Moreover, the alleged wrongful acts occurred in
23 Hawaii. Plaintiffs allege no action by WTC or Kimura in California. Therefore, it
24 would be improper for this Court to exercise general or limited personal jurisdiction
25 over the persons of WTC and Kimura, and to force unreasonably a Hawaii

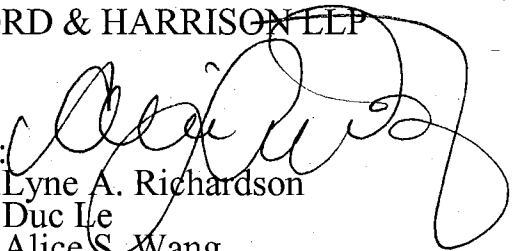
26 ⁵ The factors considered are: (a) “. . . The extent of purposeful interjection; the burden of the defendant to defend
27 and the chosen forum; the extent of conflict with the sovereignty of the defendant’s state, the forum state’s interest in
28 the dispute; the most efficient forum for judicial resolution of the dispute; the importance of the chosen forum to the
plaintiff’s interest and convenience and effective relief; and the existence of an alternative forum.” Insurance
Company of North America v. Marina Salina Cruz, 649 F.2d 1266, 1270 (9th Cir. 1991).

1 corporation and citizen to defend themselves in a California court. For these
2 reasons, the Motion to Dismiss Jurisdiction should be granted and the case
3 dismissed as to WTC and Kimura.

4 In the interest of justice, this Court alternatively should issue an order
5 pursuant to 28 U.S.C. § 1631 transferring this case to the United States District
6 Court – District of Hawaii.⁶

7
8 Dated: June 18, 2008

FORD & HARRISON LLP

9
10 By: 
11 Lyne A. Richardson
12 Duc Le
13 Alice S. Wang
14 Attorneys for Defendants
15 Wailuku Tire Center, L.L.C., and
16 Lloyd Kimura
17
18
19
20
21
22
23
24
25

26 ⁶ 28 U.S.C. section 1631 provides: “Whenever a civil action is filed in a court . . . and that court finds that there is
27 want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such
28 court in which the action or appeal could have been brought at the time it was filed or noticed, and the action or
appeal shall proceed as if it had been filed in or noticed for the court to which it is transferred on the date upon which
it was actually filed in or noticed for the court from which it is transferred.”

PROOF OF SERVICE

I, Carolina Martis, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 350 South Grand Avenue, Suite 2300, Los Angeles, California 90071. On June 18, 2008, I served a copy of the within document(s):

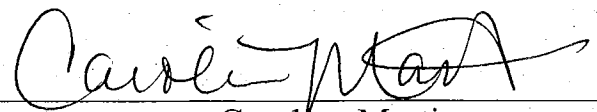
NOTICE OF MOTION AND MOTION TO DISMISS DEFENDANTS WAILUKU TIRE CENTER, L.L.C. AND LLOYD KIMURA FOR LACK OF PERSONAL JURISDICTION; MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT THEREOF

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.
- by placing the document(s) listed above in a sealed _____ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a _____ agent for delivery.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

Michael A. DesJardins, Esq.
Eric A. Panitz, Esq.
DesJardins & Panitz, LLP
3838 Orange Street
Riverside, CA 92501
Telephone: (951) 779-1501/Fax: (951) 559-8379

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct. Executed on June 18, 2008, at Los Angeles, California.



Carolina Martis