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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11  
12 ALCON 3PL, INC. a  
13 California corporation,  
14 Plaintiff,

15 v.

16 SUN GROUP PARTNERS LLC, a  
17 California limited  
18 liability company; GLENN  
19 SANDS, an individual;  
20 BRENT SANDS, an  
21 individual; DOES 1 THROUGH  
22 10, INCLUSIVE

23 Defendants.  
24

CV 20-02523-RSWL-PVCx

**ORDER re: MOTION TO  
DISMISS [23]**

25 Plaintiff Alcon 3PL, Inc. ("Plaintiff") brought the  
26 instant Action against Defendants Sun Group Partners,  
27 LLC ("Defendant Sun Group"), Glenn Sands, and Brent  
28 Sands ("Individual Defendants"), alleging breach of  
contract, open book account, account stated, and quantum  
meruit. Currently before the Court is Defendants'

1 Motion to Dismiss for Lack of Personal Jurisdiction  
2 [23].<sup>1</sup>

3 Having reviewed all papers submitted pertaining to  
4 this Motion, the Court **NOW FINDS AND RULES AS FOLLOWS:**  
5 the Court **GRANTS** Defendants' Motion to Dismiss.

6 **I. BACKGROUND**

7 **A. Factual & Procedural Background**

8 Plaintiff alleges the following in its Complaint:

9 Plaintiff is a corporation with its principal place  
10 of business in Los Angeles, California. Compl. ¶ 2, ECF

11  
12 <sup>1</sup> Local Rule 7-3 provides that "counsel contemplating the  
13 filing of any motion shall first contact opposing counsel to  
14 discuss thoroughly, preferably in person, the substance of the  
15 contemplated motion and any potential resolution. The conference  
16 shall take place at least seven (7) days prior to the filing of  
17 the motion." C.D. Cal. Local Civ. R. 7-3. "Failure to comply  
18 with the Local Rules does not automatically require the denial of  
19 a party's motion, however, particularly where the non-moving  
20 party has suffered no apparent prejudice as a result of the  
21 failure to comply." CarMax Auto Superstores Cal. LLC v.  
22 Hernandez, 94 F. Supp. 3d 1078, 1088 (C.D. Cal. 2015); see also  
23 ECASH Techs., Inc. v. Guagliardo, 35 F. App'x 498, 500 (9th Cir.  
24 2002) ("The Central District of California's local rules do not  
25 require dismissal of appellee's motions for failure to satisfy  
26 the meet-and-confer requirements."). Here, the parties are in  
27 violation of Local Rule 7-3 because there is no indication the  
28 parties met and conferred. Nevertheless, Plaintiff does not seem  
to have been prejudiced by the violation because, although it did  
not file an opposition, it did file a stipulation to continue the  
hearing date for this Motion, showing that Plaintiff was aware of  
the Motion and its opportunity to oppose. See generally Pl.'s  
Stipulation to Continue Hr'g Date on Defs.' Mot. to Dismiss, ECF  
No. 27. Moreover, Plaintiff had sufficient time to oppose since  
the Court granted Plaintiff's stipulation. See generally Order  
Granting Pl.'s Stipulation to Continue Hr'g Date on Defs.' Mot.  
to Dismiss, ECF No. 28. Thus, the Court should exercise its  
discretion to consider the Motion's merits. See CarMax Auto  
Superstores Cal. LLC, 94 F. Supp. 3d at 1088 (electing to  
consider a motion's merits despite a violation of Local Rule 7-  
3).

1 No. 1. Defendant Sun Group is a limited liability  
2 company with its principal place of business in Palm  
3 Beach Gardens, Florida. Id. ¶ 3. Individual Defendants  
4 are citizens of Florida. Id.

5 Individual Defendants are “members and/or managers,  
6 and/or officers[, ] and/or directors” of Defendant Sun  
7 Group. Moreover, “[Defendant] Sun Group is, and at all  
8 relevant times was, a mere shell, instrumentality, and  
9 conduit through which Individual Defendants carried on  
10 business in the name of [Defendant] Sun Group.” Id.

11 ¶ 12. Specifically, Individual Defendants “controlled,  
12 dominated, and operated [Defendant] Sun Group in that  
13 the activities and business of [Defendant] Sun Group  
14 were carried out without holding annual meetings, and  
15 without keeping records or minutes of any proceedings,  
16 or maintaining written resolutions.” Id. Therefore,  
17 Defendant Sun Group is the alter ego of the Individual  
18 Defendants, and the Individual Defendants cannot use  
19 their company to shield themselves from personal  
20 liability. Id. at ¶¶ 12-13.

21 In or about late 2020 and early 2021, Plaintiff  
22 entered into an agreement with Defendant Sun Group  
23 through the Individual Defendants for warehouse personal  
24 protective equipment. Id. ¶ 14. On or about May 4,  
25 2021, however, Defendants stopped paying the monthly  
26 sum. Id. ¶ 15. In addition, from May 4, 2021, to March  
27 25, 2022, Defendants failed to make any payments for  
28 business transactions conducted between Defendants and

1 Plaintiff. Id.

2 Plaintiff filed its Complaint [1] on April 14,  
3 2022. Defendant filed the instant Motion [23] on  
4 September 1, 2022.

## 5 II. DISCUSSION

### 6 A. Legal Standard

7 Federal Rule of Civil Procedure 12(b)(2) authorizes  
8 dismissal of an action for lack of personal  
9 jurisdiction. Fed. R. Civ. P. 12(b)(2). Once a  
10 defendant moves to dismiss for lack of personal  
11 jurisdiction, the plaintiff bears the burden of  
12 demonstrating that jurisdiction is appropriate.  
13 Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797,  
14 800 (9th Cir. 2004).

15 Where the motion is “based on written materials  
16 rather than an evidentiary hearing, the plaintiff need  
17 only make a prima facie showing of jurisdictional facts”  
18 to survive dismissal. Id. (internal quotation marks  
19 omitted). Absent an evidentiary hearing this court  
20 “only inquire[s] into whether [the plaintiff’s]  
21 pleadings and affidavits make a prima facie showing of  
22 personal jurisdiction.” Caruth v. Int’l  
23 Psychoanalytical Ass’n, 59 F.3d 126, 127-28 (9th Cir.  
24 1995); Boschetto v. Hansing, 539 F.3d 1011 (9th Cir.  
25 2008). To make a prima facie showing, the plaintiff  
26 must allege facts that, if true, would support a finding  
27 of jurisdiction. Ballard v. Savage, 65 F.3d 1495, 1498  
28 (9th Cir. 1995). Although the plaintiff cannot rely on

1 the bare allegations of the complaint, uncontroverted  
2 allegations in the complaint must be taken as true and  
3 conflicts between statements contained in the parties'  
4 affidavits must be resolved in the plaintiff's favor.  
5 Schwarzenegger, 374 F.3d at 800.

6 **B. Discussion**

7 1. Personal Jurisdiction

8 Whether a federal court can exercise personal  
9 jurisdiction over a non-resident defendant turns on two  
10 independent considerations: whether an applicable state  
11 rule or statute permits service of process on the  
12 defendant, and whether the assertion of personal  
13 jurisdiction comports with constitutional due process  
14 principles. See Pac. Atl. Trading Co. v. M/V Main  
15 Express, 758 F.2d 1325, 1327 (9th Cir. 1985). District  
16 courts in California may exercise specific personal  
17 jurisdiction over a nonresident defendant to the extent  
18 permitted by the Due Process Clause of the United States  
19 Constitution. Cal. Civ. Prov. Code § 410.10. The Due  
20 Process Clause permits courts to exercise personal  
21 jurisdiction over any defendant who has sufficient  
22 "minimum contacts" with the forum state such that the  
23 "maintenance of the suit [would] not offend traditional  
24 notions of fair play and substantial justice." Int'l  
25 Shoe Co. v. Washington, 326 U.S. 310, 316 (1945).

26 There are two recognized bases for personal  
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1 jurisdiction over non-resident<sup>2</sup> defendants: (1) "general  
2 jurisdiction," which arises where the defendant's  
3 activities in the forum state are sufficiently  
4 "substantial" or "continuous and systematic" to justify  
5 the exercise of jurisdiction over him in all matters;  
6 and (2) "specific jurisdiction," which arises when a  
7 defendant's specific contacts with the forum have given  
8 rise to the claim in question. See Helicopteros  
9 Nacionales de Columbia S.A. v. Hall, 466 U.S. 408, 414-  
10 16 (1984); Doe v. Am. Nat'l Red Cross, 112 F.3d 1048,  
11 1050-51 (9th Cir. 1997). To survive a 12(b)(2) motion,  
12 a plaintiff must show the court has personal  
13 jurisdiction over the defendants. See Schwarzenegger,  
14 374 F.3d at 800.

15 Plaintiff has not satisfied its burden to show that  
16 the Court has personal jurisdiction over Individual  
17 Defendants. Plaintiff alleges in its Complaint that the  
18 three Defendants<sup>3</sup> are citizens of Florida and entered  
19 into a contract with Plaintiff, a California  
20 corporation, to "warehouse" Defendants' goods. Compl.

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21 <sup>2</sup> Plaintiff stated in its Complaint that Individual  
22 Defendants are citizens of Florida and Defendant Sun Group is  
23 organized under Florida laws and has its principal place of  
24 business in Florida. Compl. ¶¶ 3-5. Therefore, with no  
allegations that any Defendant resides in California, all  
Defendants are nonresidents.

25 <sup>3</sup> Plaintiff asserts that Defendant Sun Group is the alter  
26 ego of Individual Defendants. See Compl. ¶¶ 12-13. The Court  
27 declines to assess whether this theory is viable at this stage of  
28 litigation, and instead centers its analysis on whether Plaintiff  
has met its burden of showing that the Court has personal  
jurisdiction over Individual Defendants.

¶¶ 2-5, 14-15. Plaintiff fails to provide the location of this warehouse or any other facts that could conceivably support the notion that Defendants had minimum contacts with California. See generally id. Plaintiff merely states that Defendants entered into a contract with a California corporation for warehousing services when it is well established that a contract alone does not automatically establish minimum contacts with a plaintiff's home forum. See Boschetto v. Hansing, 539 F.3d 1011, 1017 (9th Cir. 2008) ("[A] contract alone does not create minimum contacts with the plaintiff's forum."); Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475 (1985) ("[There must be] actions by the defendant . . . that create a substantial connection with the forum [s]tate [to establish personal jurisdiction].") (internal quotation marks omitted).

Moreover, Plaintiff did not file an opposition or affidavits alleging that the Court has personal jurisdiction over Individual Defendants. And even if Plaintiff's allegations in its Complaint did support finding that Individual Defendants had minimum contacts with California, Defendants dispute that contention by arguing that "there exists no minimum contacts with the forum state." See Schwarzenegger, 374 F.3d at 800 (holding that only uncontroverted allegations in the complaint must be taken as true for the purposes of ascertaining whether a plaintiff has met its burden of showing personal jurisdiction). Therefore, Plaintiff

1 has failed to provide adequate information to establish  
2 a prima facie case for exercising personal jurisdiction  
3 over Individual Defendants.

4 2. Local Rule 7-12

5 Local Rule 7-12 reinforces the conclusion that  
6 Plaintiff has not sufficiently alleged personal  
7 jurisdiction. Local Rule 7-12 states in pertinent part:  
8 "failure to file any required document, or the failure  
9 to file it within the deadline, may be deemed consent to  
10 the granting or denial of the motion." C.D. Cal. Local  
11 Civ. R. 7-12. In assessing whether this rule applies  
12 and a court should grant an unopposed motion, the Ninth  
13 Circuit considers the following five factors: (1) the  
14 public's interest in expeditious resolution in  
15 litigation; (2) the court's need to manage its docket;  
16 (3) the risk of prejudice to the defendants; (4) the  
17 public policy favoring disposition of cases of their  
18 merits; and (5) the availability of less drastic  
19 sanctions. Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th  
20 Cir. 2002). This test for dismissal is "a disjunctive  
21 balancing test, so not all five factors must support  
22 dismissal." Sowinski v. Cal. Air Res. Board, No. SACV  
23 15-2123-JLS (JCGx), 2016 WL 5886902 (C.D. Cal. Aug. 18,  
24 2016) (citing Valley Eng'rs Inc. v. Elec. Eng'g Co., 158  
25 F.3d 1051, 1057 (9th Cir. 1998)).

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1           a.   The Public's Interest in Expeditious  
2               Resolution of Litigation

3           Here, as to the first factor, the public's interest  
4 in expeditious resolution of litigation always favors  
5 dismissal. Yourish v. Cal. Amplifier, 191 F.3d 983, 990  
6 (9th Cir. 1999). Thus, this factor weighs in favor of  
7 dismissal.

8           b.   The Court's Need to Manage Its Docket

9           Second, the Court's need to manage its docket  
10 depends on whether the delay in a particular case  
11 interferes with docket management and the public  
12 interest. Pagtalunan, 291 F.3d at 642. Here,  
13 Plaintiff's failure to file a response or request an  
14 extension indicates that the Plaintiff does not intend  
15 to prosecute the action against the Individual  
16 Defendants. See Balsin v. Equable Ascent Fin., LLC, CV  
17 11-01113 MMM (FMOx), 2011 WL 13218018 at \*2 (C.D. Cal.  
18 May 12, 2011) (finding in favor of dismissal where  
19 plaintiff's inattention and nonresponsive behavior  
20 suggests further litigation would waste the court's  
21 valuable resources). Thus, this factor weighs in favor  
22 of dismissal.

23           c.   The Risk of Prejudice to the Defendants

24           Next, to prove risk of prejudice, a defendant must  
25 establish that a plaintiff's actions impaired a  
26 defendant's ability to proceed to trial or threatened to  
27 interfere with the rightful decision of the case.  
28 Pagtalunan, 291 F.3d at 642 (citing Malone v. U.S.

1 Postal Serv., 833 F.2d 129, 131 (9th Cir. 1987)). Here,  
2 Plaintiff neither provides an explanation for its  
3 failure to file an opposition nor requests an extension  
4 to do so. See, e.g., Foster v. Jacquez, No. CV 09-01406  
5 JFW, 2009 WL 1559586, \*3 (C.D. Cal. May 28, 2009)  
6 ("Where a party offers a poor excuse for failing to  
7 comply with a court's order, the prejudice to the  
8 opposing party is sufficient to favor dismissal.");  
9 Grubb v. Hernandez, No. ED CV 06-00807SJOAJW, 2009 WL  
10 1357411 at \*2 (C.D. Cal. May 1, 2009) ("In the absence  
11 of a showing to the contrary, prejudice to defendants or  
12 respondents is presumed from unreasonable delay [for the  
13 purpose of Local Rule 7-12]."). Therefore, this factor  
14 weighs in favor of dismissal.

15 d. The Public Policy Favoring Disposition of  
16 Cases on Their Merits

17 Fourth, public policy favors disposition of cases  
18 on the merits, and therefore, this factor generally  
19 weighs against dismissal. Hernandez v. City of El  
20 Monte, 138 F.3d 393, 399 (9th Cir. 1998). This  
21 presumes, however, that the plaintiff "has manifested a  
22 diligent desire to prosecute his or her claims." Ewing  
23 v. Ruano, No. CV 09-08471 VAP, 2012 WL 2138159 at \*2  
24 (C.D. Cal. June 12, 2012). Here, Plaintiff has neither  
25 filed a timely opposition nor applied for an extension  
26 to file an opposition. See id. (finding this factor  
27 favored dismissal where plaintiff failed to file a  
28

1 timely opposition or apply for an extension). Thus,  
2 this factor weighs in favor of dismissal.

3 e. The Availability of Less Drastic Sanctions

4 Finally, this factor “ordinarily counsels against  
5 dismissal” unless the court gave plaintiff an  
6 opportunity to avoid dismissal, in which case no lesser  
7 sanctions are available. Sperow v. Ponce, No. CV 19-  
8 10525-KS, 2020 WL 3100645 at \*2 (C.D. Cal. June 11,  
9 2020). Here, the Court did not offer Plaintiff an  
10 opportunity to avoid dismissal, nor did it find it  
11 necessary to consider the availability of other less  
12 drastic alternatives. See Pagtalunan, 291 F.3d at 643  
13 (finding this factor weighed against dismissal because  
14 the court did not consider the lesser alternative of  
15 imposing sanctions). Therefore, this factor weighs  
16 against dismissal.

17 Of the five factors, four factors weigh in favor of  
18 dismissal. Thus, the Court dismisses the Complaint  
19 against the Individual Defendants pursuant to Local Rule  
20 7-12.

21 3. Leave to Amend

22 “Where a motion to dismiss is granted, a district  
23 court must decide whether to grant leave to amend.”

24 Winebarger v. Pennsylvania Higher Educ. Assistance  
25 Agency, 411 F. Supp. 3d 1070, 1082 (C.D. Cal. 2019).

26 “The court should give leave [to amend] freely when  
27 justice so requires.” Fed. R. Civ. P. 15(a)(2). In the  
28 Ninth Circuit, “Rule 15’s policy of favoring amendments

1 to pleadings should be applied with 'extreme  
2 liberality.'" United States v. Webb, 655 F.2d 977, 979  
3 (9th Cir. 1981). Against this extremely liberal  
4 standard, the Court may consider "the presence of any of  
5 four factors: bad faith, undue delay, prejudice to the  
6 opposing party, and/or futility." Owens v. Kaiser  
7 Found. Health Plan, Inc., 244 F.3d 708, 712 (9th Cir.  
8 2001).

9 Here, leave to amend Plaintiff's claims is  
10 appropriate because Plaintiff can cure its failure to  
11 meet its burden by pleading facts that support  
12 exercising personal jurisdiction over the Individual  
13 Defendants. Thus, leave to amend would not be futile.  
14 Moreover, there is no evidence of bad faith by  
15 Plaintiff. While Plaintiff's failure to file an  
16 opposition could weigh toward finding undue delay or  
17 prejudice; ultimately, "[t]he purpose of the litigation  
18 process is to vindicate meritorious claims. Refusing,  
19 solely because of delay, to permit an amendment to a  
20 pleading in order to state a potentially valid claim  
21 would hinder this purpose without promoting any other  
22 sound judicial policy." Howey v. U.S., 481, F.2d 1187,  
23 1191 (9th Cir. 1973). The Court therefore **GRANTS**  
24 Defendants' Motion to Dismiss Plaintiff's claims **with**  
25 **leave to amend.**

### 26 III. CONCLUSION

27 In sum, Plaintiff has not sufficiently alleged that  
28 the Court has personal jurisdiction over the Individual

1 Defendants. Based on the foregoing, the Court **GRANTS**  
2 Defendant's Motion to Dismiss **with leave to amend.**  
3 **IT IS SO ORDERED.**

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DATED: November 17, 2022

/S/ RONALD S.W. LEW

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**HONORABLE RONALD S.W. LEW**  
Senior U.S. District Judge