

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

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EDWARD WESTERMAN,
Plaintiff,
v.
FTI CONSULTING, INC., et al.,
Defendants.

Case No. 24-cv-04118-JCS

ORDER RE:

- 1) **MOTION TO DISMISS
PLAINTIFF’S COMPLAINT**

- 2) **MOTION FOR LIMITED
EXPEDITED DISCOVERY**

Re: Dkt. Nos. 10, 34

I. INTRODUCTION

This case involves a dispute about the enforceability of non-compete provisions in an employment contract between Defendants FTI Consulting, Inc. and FTI Consulting LLC (collectively, “FTI”)¹ and a former FTI employee, Plaintiff Edward Westerman. Presently before the Court is FTI’s Motion to Dismiss Plaintiff’s Complaint (dkt. no. 10) (“Motion to Dismiss”), in which FTI asserts that this case should be dismissed for lack of personal jurisdiction and improper venue. Also pending are Plaintiff’s Motion for a Preliminary Injunction (dkt. no. 22) (“Preliminary Injunction Motion”) and FTI’s Motion for Limited Expedited Discovery (dkt. no. 34) (“Discovery Motion”). A hearing on the Motion to Dismiss and the Discovery Motion was held on September 25, 2024. The Court addresses only those motions in this Order. For the reasons set forth below, the Court DENIES the Motion to Dismiss and GRANTS in part and DENIES in part the Discovery Motion.²

¹ At the September 25, 2024 hearing, the parties stipulated that for the purposes of the instant motions the Court need not differentiate between the two entities.
² The parties have consented to the jurisdiction of a United States magistrate judge pursuant to 28 U.S.C. § 636(c).

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

II. BACKGROUND

A. Factual Background

FTI Consulting, Inc., is a global business advisory firm that is incorporated in Maryland. Declaration of Curtis Lu in Support of Defendants FTI Consulting, Inc. and FTI LLC’s Motion to Dismiss Plaintiff’s Complaint, dkt. no. 10-1 (“Lu Decl.”), ¶ 2. FTI Consulting, Inc. has its principal office in Bowie, Maryland, and headquarters in Washington, D.C. *Id.* FTI Consulting LLC is a wholly-owned subsidiary of FTI Consulting, Inc., organized under the laws of Maryland and with its headquarters in Washington, D.C. *Id.* ¶ 3. According to FTI’s general counsel, Curtis Lu, FTI’s business operations are directed from its principal office in Maryland or its corporate headquarters in Washington, D.C. and its senior executive corporate officers are based in Washington, D.C. *Id.* ¶ 5. FTI has domestic offices in twenty-one states and the District of Columbia, as well as international offices throughout the world. *Id.* ¶ 6. It has eight physical offices in California, which is at least twice the number of offices it maintains in any other state. Declaration Of Ashley Kemper Corkery in Support of Plaintiff’s Opposition to Defendants’ Motion to Dismiss (“Corkery Decl.”) ¶ 2. FTI’s website indicates that it employs numerous people in California, including 35 people in its San Francisco office. *Id.* ¶ 3.

Westerman was employed by FTI as a senior managing director in its San Francisco office from March 2011 to February 29, 2024. Declaration of Edward Westerman in Support of Plaintiff’s Opposition to Defendants’ Motion to Dismiss, dkt. no. 33-1 (“Westerman Opposition Decl.”) ¶¶ 9, 11, 13. Previously, he had been employed by another consulting firm, LECG, and worked out of LECG’s San Francisco office from 2004 to 2011. *Id.* ¶ 8. Before that, Westerman was a partner at Deloitte from 1999-2004, also working out of Deloitte’s San Francisco office. *Id.* ¶ 7. Westerman became an FTI employee when his practice group at LECG was bought and absorbed by FTI. *Id.* ¶ 9. According to Westerman, at all times during his employment with FTI, he was affiliated with FTI’s San Francisco, California office, where he had a physical office, and that affiliation was reflected on FTI’s website, Westerman’s business cards, and in his email signature block. *Id.* ¶¶ 11-13. He also states that when he commenced his employment with FTI in 2011, he signed an employment agreement providing that he would work out of FTI’s San

1 Francisco office. *Id.* ¶ 12. Westerman lived in San Francisco, California from June 1996 to
2 September 2016, when he moved his primary residence to Wyoming. *Id.* ¶¶ 6, 17. After he
3 moved to Wyoming, Westerman continued to be affiliated with FTI’s San Francisco office and
4 regularly travelled to San Francisco to perform work out of that office. *Id.* ¶ 17.

5 According to Westerman, FTI hired him “in part due to [his] extensive professional
6 network in California and [his] years of experience working on California-specific matters.” *Id.* ¶
7 10. He estimates that for the duration of his employment with FTI, “approximately 75% of [his]
8 work was with California-based FTI clients[]” and states that “the client engagement teams [he]
9 managed were largely based in California and Oregon, although [he] also managed some
10 employees in other locations such as Chicago and Hong Kong.” *Id.* ¶¶ 14-15.

11 FTI’s general counsel reviewed Westerman’s billing records from October 5, 2020 to
12 February 25, 2024, and found that Westerman “logged eighty-one percent of his overall hours for
13 FTI outside of California” and that “the vast majority” of this time was for work performed in
14 Wyoming. Lu Decl. ¶ 11. Westerman also logged the number of days each year that he performed
15 work while physically in California for tax purposes and states that he worked in California 84
16 days in 2020, 56 days in 2021, 76 days in 2022 and 59 days in 2023. Westerman Opposition Decl.
17 ¶ 27. He further states that he “never performed any work that created any tax obligation in D.C.”
18 and that “[d]uring the last few years of [his] employment with FTI, [he] was in Washington, D.C.
19 for a total of less than five days.” *Id.* ¶¶ 18, 27.

20 Westerman signed a new employment agreement with FTI on October 21, 2019. *Id.* ¶ 19;
21 Lu Decl., Ex. B (“2019 Employment Agreement”). Section 12 of the 2019 Employment
22 Agreement contains a set of non-competitions covenants, including a prohibition on employment
23 in a similar capacity by a competing company for one year after the date of termination (the
24 “restricted period”). Lu Decl., Ex. B (2019 Employment Agreement) §§ 12, 17(a) & (b). Section
25 13 of the 2019 Employment Agreement prohibits solicitation of business regarding any case the
26 employee worked on while at FTI, including solicitation of FTI clients or employees, during the
27 same restricted period. *Id.* § 13. The parties also agreed that violations of Sections 12 and 13
28 would result in the imposition of liquidated damages and established guidelines for determining

1 the amount of liquidated damages, depending on the specific violation. *Id.* § 19.

2 In its 2023 annual report filed with the Securities and Exchange Commission, FTI
3 recognized that “[w]hile [its] written employment agreements with [its] Senior Managing
4 Directors and equivalent employees may include non-competition and non-solicitation clauses,
5 such clauses may offer us only limited or no protections and may be unenforceable in one or more
6 jurisdictions.” Corkery Decl., Ex. A (“2023 Annual Report”) at 23. In that report, FTI
7 specifically recognized that “[i]n certain jurisdictions, non-competition clauses have been
8 abolished or banned” and noted that “[s]tarting January 1, 2024, California adopted legislation that
9 expanded that state’s existing restrictions on non-competes to agreements created out-of-state and
10 created new enforcement rights for employees to challenge such clauses.” *Id.*

11 The 2019 Employment Agreement specifies that Maryland law controls the interpretation
12 and enforcement of that agreement. *Id.* § 24. And like Westerman’s previous employment
13 agreement, the 2019 Employment Agreement lists Westerman’s “office location” as “San
14 Francisco, California.” Lu Decl., Ex. B at ECF p. 35. Westerman negotiated the agreement with
15 his supervisor of the time, Paul Ficca, who lived in Washington state and worked out of FTI’s
16 Seattle office. Westerman Opposition Decl. ¶¶ 21-22. Westerman traveled from San Francisco to
17 Jackson, Wyoming on the day he signed the agreement and signed it either before he left San
18 Francisco or after he landed in Jackson that day. *Id.* ¶ 20.

19 According to Lu, in April 2021, Westerman “requested that his state jurisdiction for
20 income tax reporting purposes be changed retroactively from California to Wyoming, where he
21 had been living and working since 2016.” *Id.* ¶ 10 & Ex. A. The email exchange between
22 Westerman and FTI indicates that he sought to change his tax jurisdiction retroactive to 2020. Lu
23 Decl., Ex. A at ECF p. 10. FTI’s Senior HR Business Partner, Marilyn Israel, responded as
24 follows:

25 To change your tax jurisdiction, I will need to change your status to
26 work from home. You will continue to be assigned to the SF office
27 for reporting purposes, and this change does mean that you will not
28 have an assigned office in SF. I’m not sure how much you plan to be
in SF when we can travel again, but I wanted to make sure that you
knew this change would impact that. Changing your status to work
from home will tie your tax jurisdiction to your home address.

1 Lu Decl., Ex. A at ECF p. 11 (March 29, 2021 email from Israel to Westerman). According to
2 Westerman, this request “related to paid time off and/or holiday as being artificially assigned to
3 California in light of [his] more recent personal residence” in Wyoming. Opposition at 4. In
4 November 2021, Westerman “updated his status with FTI to record as a work-from-home
5 employee based in Wyoming.” Lu Decl. ¶ 9. The record is silent, however, as to whether
6 Westerman’s tax jurisdiction was actually changed to Wyoming, and apparently Westerman did
7 not lose his physical office in San Francisco. *See* Westerman Decl. ¶ 13 (“At all times during my
8 employment with FTI, I had a physical office in FTI’s San Francisco offices.”).³

9 On September 20, 2023, Westerman signed an amendment to the employment agreement
10 that “largely concerned incremental compensation issues[.]” *Id.* ¶ 23; Lu Decl., Ex. C (“2023
11 Amendment”). The 2023 Amendment listed San Francisco as Westerman’s principal office
12 location. Lu Decl., Ex. C at ECF p. 44.

13 On January 15, 2024, Westerman sent FTI a letter resigning from his position at FTI,
14 which he signed in Jackson, Wyoming and sent to FTI’s General Counsel, who was based in
15 Washington, D.C. *Id.* ¶¶ 24-25; Lu Decl., Ex. D (resignation letter). According to Westerman,
16 “[o]ther than sending this letter and limited administrative communications with human resources
17 personnel, [he] had no contact with FTI employees based in Washington, D.C. regarding [his]
18 resignation.” Westerman Opposition Decl. ¶ 25. February 29, 2024 was Westerman’s last day of
19 employment with FTI. *Id.* ¶ 26.

20 On March 1, 2024, the day after Westerman stopped working for FTI, he began working
21 for Secretariat Advisors, LLC (“Secretariat”), a Georgia-based consulting firm that competes with
22 FTI in a variety of sectors, including construction, forensic accounting, and investigations. *Id.* ¶¶
23 28-29; Lu Decl. ¶ 16.⁴ Lu states, based on review of Secretariat’s website, that Secretariat is a
24 limited liability company organized under the laws of the State of Delaware with its principal
25 place of business located in Atlanta, Georgia. Lu Decl. ¶ 17. According to Westerman, he is

26 _____
27 ³ FTI stipulated at the hearing that it does not dispute that Westerman had a physical office in its
28 San Francisco office during the entire duration of his employment with FTI, even after he moved
to Wyoming.

⁴ At the hearing, the parties stipulated that Secretariat is a direct competitor of FTI.

1 “affiliated with Secretariat’s San Francisco, California office[,]” as is “reflected on Secretariat’s
2 public-facing website, available at <https://secretariat-intl.com/people/edward-westerman/> (last
3 accessed on July 30, 2024).” Westerman Opposition Decl. ¶ 30. He states further that “[m]uch of
4 [his] work is related to building out a global practice for Secretariat, but [he has] multiple
5 engagements with attorneys located in California.” *Id.* ¶ 31. He says that he “was hired, in part,
6 because of [his] many connections to former clients and attorneys in California.” *Id.* Westerman
7 “continues to work remotely from [his] home in Wyoming, with periodic travel to California for
8 work.” *Id.*

9 **B. Procedural Background**

10 Since FTI’s general counsel learned of Westerman’s intent to work for Secretariat, FTI has
11 been seeking to enforce the non-competition and non-solicitation covenants in the 2019
12 Employment Agreement. Lu Decl. ¶¶ 16-18. On February 28, 2024, FTI’s Associate General
13 Counsel, J. Tara Holubar, wrote a letter to Westerman acknowledging his letter of resignation and
14 reminding him of his “post-resignation obligations” under his employment agreement. *Id.* ¶ 19 &
15 Ex. E. That letter stated that by working for Secretariat within the restricted period, Westerman
16 would be violating Section 12 of the 2019 Employment Agreement, resulting in \$2,317,564.06 in
17 liquidated damages that would be due within two weeks of commencing his employment with
18 Secretariat. *Id.* The February 28, 2024 letter was sent via email and does not list any physical
19 address for the sender but Lu states that the letter was sent from FTI’s Washington, D.C.
20 headquarters. *Id.*

21 On March 25, 2024, after FTI learned Westerman was planning a visit to London “for the
22 apparent purpose of recruiting additional FTI professionals to join Secretariat[,]” Lu sent a
23 follow-up letter to Westerman “requesting assurances that he would comply with his post-
24 employment obligations under the Employment Agreement and demanding repayment of the
25 outstanding amounts he owed under the terms of that Agreement based on breaches of the non-
26 competition clause.” *Id.* ¶¶ 20-21 & Ex. F. The footer on this letter lists the address of an FTI
27 office in Washington D.C. and Westerman’s Wyoming address is listed at the top of the letter. *Id.*
28 According to Lu, this letter was sent from FTI’s headquarters in Washington, D.C. to

1 Westerman’s home in Wyoming. Lu Decl. ¶ 21.

2 On March 28, 2024, FTI sued Secretariat in the district court for the Northern District of
3 Georgia based on its alleged “raiding” of FTI’s employees. *FTI Consulting v. Secretariat*
4 *Advisors, LLC*, Case No. C-24-1356 (“Georgia Action”). Westerman is not named as a defendant
5 in that action but is listed as one of the FTI employees that Secretariat allegedly poached from
6 FTI. Georgia Action, Compl. ¶ 5.

7 On April 12, 2024, FTI sued Westerman in the district court for the District of Columbia
8 seeking money damages and declaratory relief for Westerman’s alleged breach of the 2019
9 Employment Agreement. Compl. *FTI Consulting, Inc. v. Westerman*, Case No. C-24-1055 (“D.C.
10 Action”). In the D.C. Action, FTI asserts that it has personal jurisdiction over Westerman “based
11 upon his transacting business in the District of Columbia, including through his employment
12 agreement with FTI (the ‘Employment Agreement’), his travel to the District of Columbia to meet
13 with other senior FTI colleagues, and his numerous interactions with FTI personnel in the District
14 of Columbia in connection with his employment with FTI.” D.C. Action, Compl. ¶ 9. On June 4,
15 2024, Westerman filed a motion to dismiss for lack of personal jurisdiction and improper venue in
16 the D.C. Action. That motion is fully briefed and remains pending.

17 Westerman filed the instant action in San Francisco Superior Court on June 4, 2024 and
18 FTI removed to this Court on June 7, 2024, asserting subject matter jurisdiction on the basis of
19 diversity jurisdiction under 28 U.S.C. § 1332. On July 15, 2024, FTI filed the Motion to Dismiss
20 and on July 18, 2024, Westerman filed a motion for a preliminary injunction barring FTI from
21 enforcing the non-competition and non-solicitation provisions in the 2019 Employment
22 Agreement against him. Dkt. nos. 10, 22. On August 21, 2024, FTI filed a motion seeking limited
23 expedited discovery in connection with Westerman’s Preliminary Injunction Motion.

24 **III. MOTION TO DISMISS**

25 **A. Contentions of the Parties**

26 **1. Motion**

27 In the Motion, FTI accuses Westerman of filing this action to “circumvent the District
28 Court for the District of Columbia’s jurisdiction over these same claims in a pending, earlier-filed

1 action between the parties.” Motion at 8. FTI contends Westerman’s efforts must fail, however,
2 because this Court lacks personal jurisdiction over FTI and venue is also improper. *Id.*

3 With respect to personal jurisdiction, FTI argues that there is neither general nor specific
4 jurisdiction over FTI because it has not engaged in continuous and systematic contacts with
5 California sufficient to establish general jurisdiction and Westerman’s claims do not arise out of
6 FTI’s activities in California. *Id.* Venue is improper, FTI contends, because 1) FTI does not reside
7 in the Northern District; 2) “a substantially identical action is and has been pending between FTI
8 and Plaintiff in Washington, D.C. for months[;]” and 3) “the events giving rise to Plaintiff’s
9 claims—including his current work in Wyoming for FTI’s Georgia-based competitor, as part of
10 building an international consulting practice—are not substantially connected to the Northern
11 District.” *Id.*

12 In support of its contention that there is no general jurisdiction over FTI in California, FTI
13 points out that it is not incorporated in California and does not have its principal place of business
14 in California. Motion at 15. FTI argues further that while it maintains California offices, this is
15 not sufficient to establish that it is “essentially at home” for the purposes of general jurisdiction
16 given that it has offices throughout the United States, including in over 20 U.S. states and
17 Washington, D.C. Motion at 15-16 (citing *Daimler AG v. Bauman*, 571 U.S. 117, 152 (2014);
18 *BNSF Ry. Co. v. Tyrrell*, 581 U.S. 402, 414 (2017); *Bojorquez v. Abercrombie & Fitch, Co.*, 193
19 F. Supp. 3d 1117, 1131 (C.D. Cal. 2016)).

20 FTI argues further that Westerman’s claims do not arise out of FTI’s contacts with
21 California and therefore, that he also cannot establish specific jurisdiction. *Id.* at 17. First, it
22 points to evidence that FTI did not enter into or negotiate the 2019 Employment Agreement in
23 California. *Id.* at 17 (citing *Rashidi v. Veritiss, LLC*, No. 2:16-cv-04761-CAS(JPRx), 2016 WL
24 5219448 (C.D. Cal. Sept. 19, 2016)). Second, it contends, the formation of the employment
25 agreement with a nonresident party is insufficient to give rise to personal jurisdiction in California.
26 *Id.* (citing *Rush v. Savchuk*, 444 U.S. 320, 330 (1980); *McGlinchy v. Shell Chem. Co.*, 845 F.2d
27 802, 816 n.9 (9th Cir. 1988)).

28 Third, FTI cites the fact that the 2019 Employment Agreement “created continuing

1 obligations for Plaintiff that are unconnected to California, which is evident from the scope of the
2 noncompetition and non-solicitation provisions at issue.” *Id.* at 18 (citing *Teras Cargo Transp.*
3 *(Am.), LLC v. Cal Dive Int’l (Australia) Pty Ltd.*, No. 15-CV-03566-JSC, 2015 WL 6089276, at *6
4 (N.D. Cal. Oct. 16, 2015)). Moreover, FTI asserts, “FTI’s efforts to enforce those obligations
5 undoubtedly emanated from Washington, D.C., where it filed suit against Plaintiff following
6 unrelated [sic] correspondence to and from its headquarters.” *Id.*

7 Fourth, FTI argues that Westerman is not a California employee as he moved to Wyoming
8 in 2016, changed his tax jurisdiction to Wyoming in 2021, and worked with clients throughout the
9 United States and internationally. *Id.* at 18-19 (citing *Hill v. Workday, Inc.*, No. 23-CV-06558-
10 PHK, 2024 WL 3012802, at *11 (N.D. Cal. June 14, 2024)).

11 Fifth, FTI asserts that Westerman’s “alleged injury—that his employment agreement with
12 FTI is restricting [his] ability to work from his home in Wyoming for a Georgia company—is not
13 connected to California.” *Id.* at 19 (citing *Bristol Meyers Squibb v. Superior Court*, 582 U.S. 255,
14 264 (2017)). Furthermore, FTI contends, “the provisions of the restrictive covenants are only at
15 issue because of Plaintiff’s new employment with a Georgia company, work that Plaintiff is
16 continuing to perform from his residence in Wyoming, and Plaintiff’s activities on behalf of
17 Secretariat to build an international consulting practice.” *Id.* To find personal jurisdiction under
18 those circumstances would make “California courts the arbiter of all disputes concerning non-
19 compete provisions in employment agreements—even when those contracts are challenged in
20 declaratory judgment actions by employees who were not California residents or employees.” *Id.*
21 at 20. FTI also argues that whether Westerman now works with Secretariat’s California clients
22 has no bearing on the jurisdiction inquiry as it is FTI’s contacts with California that are the focus
23 of that inquiry. *Id.* (citing *Walden v. Fiore*, 571 U.S. 277, 289 (2014)).

24 Finally, FTI argues that Westerman’s claims do not arise out of his contacts with
25 California because FTI’s enforcement efforts are occurring in Washington, D.C. and Westerman
26 himself was not a California resident at the time he signed the 2019 Employment Agreement. *Id.*
27 According to FTI, “[t]his is not the type of ‘substantial connection’ required for specific
28 jurisdiction.” *Id.* (citing *Glencore Grain Rotterdam BV v. Shivnath Rai Harnarain Co.*, 284 F.3d

1 1114, 1123 (9th Cir. 2002)).

2 FTI argues further that exercise of specific jurisdiction over it does not “comport with the
3 principles of fair play and substantial justice” based on the seven-factor test applied to that
4 question *Id.* at 20-24.

5 FTI challenges venue under 28 U.S.C. § 1391(b)⁵ on the basis that Westerman has not
6 established that any of the three bases for venue in that section are met. *Id.* at 24-25. In particular,
7 it asserts that “[p]rong one and three definitively cut against the Northern District of
8 California being the proper venue [because] FTI does not reside in the Northern District of
9 California, and the District of Columbia is a district in which the action may have been brought
10 (and indeed, is the district where FTI has already filed an action against Plaintiff based on
11 identical contractual provisions).” *Id.* at 24. The second prong of Section 1391(b), giving rise to
12 venue in a district where “a substantial part of the events happened[,]” also is not met, FTI
13 contends, “because the employment agreement at issue was negotiated, executed, and enforced
14 from Washington, D.C.[,] Plaintiff substantially performed under the employment agreement in
15 Wyoming[,] [and] [t]he employment agreement was breached in Wyoming, Georgia, and possibly
16 many other locations as yet unknown to FTI[,]” and “the effects of the restrictive covenants in the
17 employment agreement are felt by Plaintiff in Wyoming and Georgia, where his new employer is
18 based, while the effects of Plaintiff’s violations are felt most directly where FTI is based, in
19 Washington, D.C.” *Id.* at 24-25 (citing *Jenkins Brick Co. v. Bremer*, 321 F.3d 1366, 1372 (11th
20 Cir. 2003) for the proposition that “in cases involving employee’s covenant not to compete, courts
21 should look to the place the contract was negotiated and executed, and place of performance and
22 breach”).

23
24 _____
⁵ Section 1391(b) provides for venue in the following judicial districts:

- 25 (1) a judicial district in which any defendant resides, if all defendants are residents of the
26 [same] State . . . ; (2) a judicial district in which a substantial part of the events or omissions
27 giving rise to the claim occurred, or a substantial part of property that is the subject of the
28 action is situated, or (3) if there is no district in which an action may otherwise be brought .
29 . . . , [a] judicial district in which any defendant [may be found].

28 U.S.C. § 1391(b).

1 **2. Opposition**

2 In his opposition brief, Westerman argues that the three-part test for specific jurisdiction is
3 “easily met” because: 1) FTI purposefully availed itself of the privilege of conducting activities in
4 California; 2) Westerman’s claims arise from and relate to FTI’s contacts with California; and 3)
5 exercising jurisdiction over FTI comports with fair play and substantial justice. Opposition at 8.

6 According to Westerman, the purposeful availment requirement is met because “FTI
7 deliberately reached out to then-California resident Mr. Westerman to employ him as a California-
8 based expert consultant in FTI’s San Francisco office” and “derived the benefits of its affiliation
9 with a California-stationed employee.” *Id.* at 8-9 (citing *Roth v. Garcia Marquez*, 942 F.2d 617,
10 621 (1991); *Ting v. Orbit Commc’n Co.*, 105 F.3d 666, 1997 WL 8470, at *3 (9th Cir. 1997);
11 *LeGarie v. Nurse*, No. 21-CV-04739-JCS, 2021 WL 5771144, at *7-9 (N.D. Cal. Dec. 6, 2021)).

12 Westerman argues that his claims arise from and relate to FTI’s contacts with California
13 because they are “based on his employment agreement with FTI, which includes working with
14 FTI’s California office, serving FTI’s California clients, and building FTI’s California business.”
15 *Id.* at 10. According to Westerman, “courts find specific jurisdiction based on a fraction of the
16 connections present here.” *Id.* (citing *Mewawalla v. Middleman*, 601 F. Supp. 3d 574, 594 (N.D.
17 Cal. 2022); *Berdux v. Project Time & Cost, Inc.* *Berdux v. Project Time & Cost, Inc.*, 669 F. Supp.
18 2d 1094, 1098 (N.D. Cal. 2009)).

19 As to the third requirement, Westerman argues that because the first two requirements are
20 met there is a presumption that jurisdiction is reasonable, which shifts the burden to FTI to make a
21 “compelling case” that jurisdiction is unreasonable. *Id.* at 10-11 (citing *Klemmer v. Evans*, No. C-
22 08-03732 JCS, 2009 WL 10695592, at *6 (N.D. Cal. Feb. 13, 2009), report and recommendation
23 adopted, No. 08-03732 CW, 2009 WL 10695461 (N.D. Cal. Mar. 19, 2009) (citation omitted)).

24 Westerman contends FTI has not met that burden and that the cases it cites on this point are
25 “factually distinct” and rely on “irrelevant facts.” *Id.* at 11 (citing Motion at 16-17) (citing
26 *Boschetto v. Hansing*, 539 F.3d 1011, 1016 (9th Cir. 2008); *Peterson v. Kennedy*, 771 F.2d 1244,
27 1261-62 (9th Cir. 1985); *McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 816 n.9 (9th Cir. 1988)).

28 Westerman further asserts that FTI’s reliance on *Bristol Meyers Squibb v. Superior Court*,

1 582 U.S. 255 (2017) is misplaced because that case “involved mostly non-California plaintiffs
 2 who had no connection to the forum state” whereas Westerman “was a California employee who
 3 now seeks to continue to keep work in California” and “he has therefore ‘suffered harm in th[is]
 4 State’ as a result of the contract he seeks to enjoin.” *Id.* at 12. Likewise, Westerman argues that
 5 *Teras Cargo Transp. (Am.), LLC v. Cal Dive Int’l (Australia) Pty Ltd.*, No. 15-CV-03566-JSC,
 6 2015 WL 6089276, at *6 (N.D. Cal. Oct. 16, 2015) is distinguishable because that case concerned
 7 “an employment contract for a non-California business, unlike Mr. Westerman’s 2019
 8 Employment Agreement, which expressly contemplated performance on behalf of FTI’s San
 9 Francisco office.” *Id.* at 12. Westerman also rejects FTI’s reliance on *Hill v. Workday, Inc.*, No.
 10 23-CV-06558-PHK, 2024 WL 3012802, at *11 (N.D. Cal. June 14, 2024), which Westerman
 11 contends FTI has taken “out of context” because it was addressing the extraterritorial reach of
 12 FEHA and the CFRA rather than personal jurisdiction. *Id.* at 12-13.

13 Westerman also argues that FTI’s “fixation on the location where Mr. Westerman signed
 14 and/or negotiated the 2019 Employment Agreement is irrelevant” and that the case cited on this
 15 issue, *Rashidi v. Veritiss, LLC*, No. 2:16-cv-04761-CAS(JPRx), 2016 WL 5219448 at *6 (C.D.
 16 Cal. Sept. 19, 2016), “did *not* hold—as FTI alleges—that the defendant must negotiate or enter
 17 into the contract in the forum state.” *Id.* at 13 (emphasis in original). According to Westerman,
 18 “[w]here, as here, the substance of the underlying contract directly and expressly implicates
 19 California, the location where either party executed the contract is immaterial.” *Id.* (citing *Berdux*,
 20 669 F. Supp. 2d at 1101; *McGlinchy*, 845 F.2d at 816; *Rashidi*, 2016 WL 5219448, at *5-6;
 21 *Lerman v. My Pillow, Inc.*, No. SACV 12-0916 AG (RNBx), 2012 WL 12953662, at *4 (C.D. Cal.
 22 Oct. 1, 2012); *Roth*, 942 F.2d at 622).

23 Westerman also contends there is general jurisdiction over FTI based on the large number
 24 of offices and clients it has in California, which meet the “continuous and systematic” contacts
 25 requirement under *Daimler*. *Id.* at 14-15. According to Westerman, the Ninth Circuit has found
 26 general jurisdiction in cases involving facts similar to the facts here. *Id.* at 15 (citing *Tuazon v.*
 27 *R.J. Reynolds Tobacco Co.*, 433 F.3d 1163, 1172-75 (9th Cir. 2006)). Furthermore, he contends,
 28 the facts of *Daimler*, where the Court found that there was no general jurisdiction because

1 defendant was not “at home” in the state, are distinguishable from the facts of this case because
 2 there, “the defendant company Mercedes-Benz . . . had only scant California-based facilities and
 3 third-party dealership sales, both of which accounted for a mere 2.4% of its revenue.” *Id.* at 15
 4 (citing *Daimler*, 571 U.S. at 139, 148). In contrast, Westerman asserts, “FTI has more than double
 5 the number of offices in California, as compared to any other state and derives significant revenue
 6 from California.” *Id.* (citing Corkery Decl. ¶ 2). Westerman also points out that “FTI makes no
 7 representations as to its overall percentage of revenue from California-based work or the
 8 percentage of California-based employees, as compared to other states.” *Id.*

9 Finally, Westerman argues that venue in this district is proper under 28 U.S.C. §
 10 1391(b)(2) because “a substantial part of the events or omissions giving rise to the claim[s]
 11 occurred” in this District. *Id.* at 16-18.⁶ In particular, he points to the fact that “FTI at all times
 12 identified Mr. Westerman as a San Francisco based employee, and Mr. Westerman spent
 13 significant time supporting California-based FTI clients” and that “FTI now seeks to prevent Mr.
 14 Westerman from working with these same clients and former colleagues and from working on
 15 behalf of his new employer in its San Francisco office.” *Id.* at 16-17. According to Westerman,
 16 “[c]ourts analyzing similar facts readily find venue proper.” *Id.* at 17 (citing *Richmond*
 17 *Technologies, Inc. v. Aumtech Business Solutions*, No. 11-CV-02460-LHK, 2011 WL 2607158, at
 18 *10 (N.D. Cal. July 1, 2011)).

19 Furthermore, Westerman contends, “even when it is unclear where the employment
 20 contract was negotiated and executed, courts still find venue proper where it is reasonably clear
 21 that the intended place of performance of the contract is in California.” *Id.* (citing *Jacobs v.*
 22 *Sustainability Partners LLC*, No. 20-CV-01981-PJH, 2020 WL 5593200, at *5 (N.D. Cal. Sept.
 23 18, 2020); *Richmond Techs.*, 2011 WL 2607158, at *10; *Lerman*, 2012 WL 12953662,
 24 at *7). Westerman also argues that venue is proper under 28 U.S.C. § 1391(c)(2) because he
 25 “easily satisfies the test for specific jurisdiction.” *Id.*

26 Westerman rejects FTI’s reliance on the Eleventh Circuit’s decision in *Jenkins Brick Co. v.*
 27

28 ⁶ Westerman stipulated at the motion hearing that his venue argument is based *only* on Section 1391(b)(2) and that he does not dispute that Sections 1391(b)(1) & (3) do not apply.

1 *Bremer*, 321 F.3d 1366, 1372 (11th Cir. 2003), arguing that that case reflects an “outlier position”
2 with respect to venue and has been rejected by courts in this district. *Id.* at 18 (citing *Jacobs*, 2020
3 WL 5593200, at *6).

4 **3. Reply**

5 In its Reply, FTI asserts that the facts relating to personal jurisdiction and venue are
6 undisputed and reiterates the arguments in the Motion that these facts are insufficient to establish
7 personal jurisdiction or venue in this district.

8 **B. Rules 12(b)(2) and (3) of the Federal Rules of Civil Procedure**

9 A party may move for dismissal under Rule 12(b)(2) of the Federal Rules of Civil
10 Procedure for lack of personal jurisdiction. “When a defendant moves to dismiss for lack of
11 personal jurisdiction, the plaintiff bears the burden of demonstrating that the court has jurisdiction
12 over the defendant.” *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006). “Where,
13 as here, the motion is based on written materials rather than an evidentiary hearing, ‘the plaintiff
14 need only make a prima facie showing of jurisdictional facts.’” *Id.* (quoting *Sher v. Johnson*, 911
15 F.3d 1357, 1361 (9th Cir.1990)). “Although the plaintiff ‘cannot simply rest on the bare
16 allegations of its complaint,’ . . . uncontroverted allegations in the complaint must be taken as
17 true.” *Schwarzenegger v. Fred Motor Corp.*, 374 F.3d 797, 800 (9th Cir. 1998) (quoting *Amba*
18 *Marketing Systems, Inc. v. Jobar International, Inc.*, 551 F.2d 784, 787 (9th Cir.1977)).
19 “Conflicts between parties over statements contained in affidavits must be resolved in the
20 plaintiff’s favor.” *Id.* (citing *AT & T v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir.
21 1996)).

22 In reviewing a challenge to venue under Rule 12(b)(3), the Court accepts as true the
23 allegations in the complaint unless they are contradicted by the defendant’s evidence. *BOA*
24 *Technology, Inc. v. MacNeill Engineering Company, Inc.*, No. 23-CV-01431-GPC-JLB, 2024 WL
25 3929890, at *2 (S.D. Cal. Aug. 23, 2024) (citing *Allstar Mktg. Grp., LLC v. Your Store Online,*
26 *LLC*, 666 F. Supp. 2d 1109, 1129 (C.D. Cal. 2009)); *see also Doe I v. AOL LLC*, 552 F.3d 1077,
27 1081 (9th Cir. 2009) (when considering a Rule 12(b)(3) motion, “pleadings need not be accepted
28 as true, and facts outside the pleadings may be considered.”). Even where the facts are

1 contradicted, the court must still “draw all reasonable inferences in favor of the non-moving party
2 and resolve all factual conflicts in favor of the non-moving party[.]” *Id.* (citing *Murphy v.*
3 *Schneider Nat’l, Inc.*, 362 F.3d 1133, 1138 (9th Cir. 2004)). Once the defendant makes a venue
4 challenge, the plaintiff bears the burden of demonstrating that venue is proper. *See Piedmont Label*
5 *Co. v. Sun Garden Packing Co.*, 598 F.2d 491, 496 (9th Cir. 1979).

6 **C. Personal Jurisdiction**

7 **1. Legal Standards**

8 “Where . . . there is no applicable federal statute governing personal jurisdiction, the
9 district court applies the law of the state in which the district court sits.” *Dole Food Company,*
10 *Inc. v. Watts*, 303 F.3d 1104, 1110 (9th Cir. 2002). “Under California’s long-arm statute,
11 California state courts may exercise personal jurisdiction ‘on any basis not inconsistent with the
12 Constitution of this state or of the United States.’” *Daimler AG v. Bauman*, 571 U.S. 117, 125
13 (2014) (quoting Cal. Civ. Proc. Code § 410.10). Thus, the Court must determine whether the
14 exercise of personal jurisdiction over FTI “comports with the limits imposed by federal due
15 process.” *Id.* (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 464 (1985)).

16 “For a court to exercise personal jurisdiction over a non-resident defendant, that defendant
17 must have at least ‘minimum contacts’ with the relevant forum such that the exercise of
18 jurisdiction ‘does not offend traditional notions of fair play and substantial justice.’” *Dole Food*
19 *Company*, 303 F.3d at 1110–11 (citing *International Shoe Co. v. Washington*, 326 U.S. 310, 316
20 (1945)). “In judging minimum contacts, a court properly focuses on ‘the relationship among the
21 defendant, the forum, and the litigation.’” *Calder v. Jones*, 465 U.S. 783, 788 (1984) (quoting
22 *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977)). “Opinions in the wake of the pathmarking
23 *International Shoe* decision have differentiated between general or all-purpose jurisdiction, and
24 specific or case-linked jurisdiction.” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S.
25 915, 919 (2011) (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414, nn.
26 8, 9 (1984)).

27 “A court may assert general jurisdiction over foreign (sister-state or foreign-country)
28 corporations to hear any and all claims against them when their affiliations with the State are so

1 ‘continuous and systematic’ as to render them essentially at home in the forum State.” *Id.*
2 Typically, this requirement is met when a corporation is incorporated in the forum state or has its
3 principal place of business there, but the Court has recognized “that in an exceptional case . . . a
4 corporation’s operations in a forum other than its formal place of incorporation or principal place
5 of business may be so substantial and of such a nature as to render the corporation at home in that
6 State.” *Daimler*, 571 U.S. at 139 n. 19.

7 Application of this standard “calls for an appraisal of a corporation’s activities in their
8 entirety, nationwide and worldwide.” *Daimler*, 571 U.S. at 139 n. 20. Thus, the Supreme Court
9 has explained that “[a] corporation that operates in many places can scarcely be deemed at home
10 in all of them.” *Id.* “Otherwise, ‘at home’ would be synonymous with ‘doing business’ tests
11 framed before specific jurisdiction evolved in the United States.” *Id.* (citation omitted). The
12 *Daimler* Court found that “[n]othing in *International Shoe* and its progeny suggests that ‘a
13 particular quantum of local activity’ should give a State authority over a ‘far larger quantum of . . .
14 activity’ having no connection to any in-state activity.” *Id.*

15 A court may exercise specific jurisdiction when the following requirements are met:

- 16 (1) the non-resident defendant must purposefully direct his
17 activities or consummate some transaction with the forum or
18 resident thereof; or perform some act by which he
19 purposefully avails himself of the privileges of conducting
20 activities in the forum, thereby invoking the benefits and
21 protections of its laws;
- 22 (2) the claim must be one which arises out of or relates to the
23 defendant’s forum-related activities; and
- 24 (3) the exercise of jurisdiction must comport with fair play and
25 substantial justice, i.e. it must be reasonable.

26 *Dole Food*, 303 F.3d at 1111 (internal quotations and citations omitted). “The plaintiff bears the
27 burden of satisfying the first two prongs of the test.” *Schwarzenegger v. Fred Martin Motor Co.*,
28 374 F.3d 797, 802 (9th Cir. 2004) (citing *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990)).
“If the plaintiff fails to satisfy either of these prongs, personal jurisdiction is not established in the
forum state.” *Id.* If the plaintiff succeeds in satisfying both of the first two prongs, the burden

1 then shifts to the defendant to present a ‘compelling case’ that the exercise of jurisdiction would
2 not be reasonable.” *Id.* (quoting *Burger King Corp.*, 471 U.S. at 476–78).

3 To determine whether the exercise of jurisdiction is reasonable, and therefore, “comports
4 with fair play and substantial justice,” courts consider seven factors:

- 5 (1) the extent of the defendants’ purposeful injection into the forum
6 state’s affairs; (2) the burden on the defendant of defending in the
7 forum; (3) the extent of conflict with the sovereignty of the
8 defendant’s state; (4) the forum state’s interest in adjudicating the
9 dispute; (5) the most efficient judicial resolution of the controversy;
10 (6) the importance of the forum to the plaintiff’s interest in convenient
11 and effective relief; and (7) the existence of an alternative forum.

12 *Insurance Co. of North America v. Marina Salina Cruz*, 649 F.2d 1266, 1270 (9th Cir. 1981).

13 **2. General Jurisdiction**

14 In support of his assertion that this Court has general jurisdiction over FTI, Westerman
15 relies heavily on a Ninth Circuit case, *Tuazon v. R.J. Reynolds Tobacco Co.*, 433 F.3d 1163 (9th
16 Cir. 2006). In that case, the Ninth Circuit found that there was general jurisdiction over the
17 tobacco company defendant because it had a “serious” presence in the forum and generated
18 “enormous” revenues from the state. 433 F.3d at 1173. The defendant also had held a license to do
19 business in the state, advertised in purely local publications, engaged in local political activity to
20 protect its market, and maintained a permanent office and workforce in the state. *Id.* The Court
21 finds Westerman’s reliance on *Tuazon* misplaced, however.

22 *Tuazon* was decided before *Daimler* and *Goodyear*, and the Supreme Court’s more “recent
23 guidance on the theory of general jurisdiction has made clear that the concept of ‘home’ in the
24 context of general jurisdiction should be understood narrowly[.]” *Senne v. Kansas City Royals
25 Baseball Corp.*, 105 F. Supp. 3d 981, 1018 (N.D. Cal. 2015). Furthermore, the *Daimler* Court
26 cautioned that a company that has offices throughout the United States may not be subject to
27 general jurisdiction simply on the basis of maintaining offices in the forum state where the
28 quantum of unrelated activity that occurs outside of the forum is “much larger” than the quantum
of local activity. 571 U.S. at 139 n. 20.

This point was driven home by the Supreme Court in *BNSF Ry. Co. v. Tyrrell*, 581 U.S.
402, 414 (2017). In that case, the Supreme Court found that there was no personal jurisdiction

1 over BNSF Railroad Company in Montana even though BNSF had “over 2,000 miles of railroad
2 track and more than 2,000 employees in Montana.” 581 U.S. at 414. Citing *Daimler*, the Court
3 explained that the contacts of BNSF with the forum state had to be considered “in their entirety”
4 and reiterated that “[a] corporation that operates in many places can scarcely be deemed at home
5 in all of them.” *Id.* (quoting *Daimler*, 571 U.S. at 139 n. 20). Thus, the Supreme Court held that
6 BNSF could be subject only to specific jurisdiction in Montana. *Id.*

7 Here, Westerman points to evidence that FTI maintains eight offices in California, which is
8 more than twice the number of offices it maintains in any other state. He has not, however,
9 offered any evidence or pointed to any uncontroverted allegations in his complaint establishing
10 that the *quantum* of FTI’s activities in California (whether measured in terms of revenues, number
11 of employees or volume of clients) is greater than the quantum of its activities outside of
12 California. Thus, his attempt to distinguish *BNSF* on the basis that in that case, the “amount of
13 railroad track and employees accounted for only 6% of the defendant’s total track mileage and less
14 than 5% of its workforce[,]” Opposition at 16 (citing *BNSF Ry. Co.*, 581 U.S. at 406), is to no
15 avail. And while Westerman calls out FTI for failing to make any representations “as to its overall
16 percentage of revenue from California-based work or the percentage of California-based
17 employees, as compared to other states[,]” Opposition at 15, it is Westerman’s burden to make a
18 prima facie case that there is general jurisdiction over FTI. He has not met that burden.
19 Therefore, the Court concludes, for the purposes of the instant Motion to Dismiss only, that there
20 is no general jurisdiction over FTI in California.⁷

21 3. Specific Jurisdiction

22 FTI does not dispute that the first prong of the three-prong test for specific jurisdiction –
23 the purposeful direction requirement – is satisfied. Rather, it argues that the second and third
24 prongs of the test are not met. In particular, it contends Westerman’s claims do not “arise out of
25 or relate to” FTI’s forum-related activities and exercise of personal jurisdiction over FTI does not
26 comport with principles of fair play and substantial justices. The Court finds both arguments

27 _____
28 ⁷ The parties agreed at the hearing that the Court may revisit this issue at the summary judgment
stage of the case, when the factual record has been developed.

1 unpersuasive.

2 a. Whether Westerman’s claims arise out of or relate to FTI’s forum-related
3 activities

4 While FTI argues that the second prong of the specific jurisdiction test is not met, the cases
5 it relies on address the *first prong* of the test, the purposeful availment requirement, and shed little
6 light on the “arising out of or relate” prong of the test. In its briefs, FTI does not even address the
7 standards that govern this requirement or the recent Supreme Court and Ninth Circuit authority on
8 this question. When applying those standards to the facts of this case, the Court finds that the
9 second prong of the specific jurisdiction inquiry is met.

10 Historically, the Ninth Circuit has applied a “but for” standard to the “arising out of”
11 requirement. *Doe v. Unocal Corp.*, 248 F.3d 915, 924–25 (9th Cir.2 001) (citing *Ballard v.*
12 *Savage*, 65 F.3d 1495, 1500 (9th Cir. 1995)); see also *Alexander v. Circus Circus Enterprises,*
13 *Inc.*, 939 F.2d 847, 853 (9th Cir. 1991), withdrawn and superseded on rehearing, 972 F.2d 261
14 (9th Cir. 1992) (“[t]his circuit has already decided that the critical focus in the ‘arising out of’
15 prong is whether, ‘but for’ the defendant’s forum-related activities, the injury would have
16 occurred; that is, whether the ‘entire course of events . . . was an uninterrupted whole which began
17 with, and was uniquely made possible by, the [defendant’s] contacts in [the forum state]’ ”)
18 (quoting *Shute v. Carnival Cruise Lines*, 897 F.2d 377, 383–84 (9th Cir.1990), rev’d on other
19 grounds by *Carnival Cruise Lines v. Shute*, 499 U.S. 585(1991)).

20 Recently, the Supreme Court applied a more “relaxed standard” in *Ford Motor Co. v.*
21 *Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351 (2021). *Zarkesh v. Vinmar Polymers Am., LLC*, No.
22 C23-1002-JCC, 2023 WL 8089733, at *1 (W.D. Wash. Nov. 21, 2023). In *Ford*, the Supreme
23 Court rejected a “causation only approach” to the second prong of the specific jurisdiction inquiry,
24 stating that “[n]one of [its] precedents has suggested that only a strict causal relationship between
25 the defendant’s in-state activity and the litigation will do.” 592 U.S. at 362. The Court pointed to
26 its “most common formulation of the rule[,] [which] demands that the suit ‘arise out of or relate to
27 the defendant’s contacts with the forum.” *Id.* (quoting *Bristol-Myers Squibb Co. v. Superior Ct. of*
28 *California, San Francisco Cnty.*, 582 U.S. 255, 262 (2017) (quoting *Daimler*, 571 U.S. at 127))

1 (emphasis added in *Ford*). It continued:

2 The first half of that standard asks about causation; but the back half,
3 after the “or,” contemplates that some relationships will support
4 jurisdiction without a causal showing. That does not mean anything
5 goes. In the sphere of specific jurisdiction, the phrase “relate to”
6 incorporates real limits, as it must to adequately protect defendants
7 foreign to a forum. But again, we have never framed the specific
8 jurisdiction inquiry as always requiring proof of causation—i.e.,
9 proof that the plaintiff’s claim came about because of the defendant’s
10 in-state conduct.

7 *Ford*, 592 U.S. at 362.

8 In the wake of *Ford*, the Ninth Circuit has recognized that while the “arising out of or
9 relate to” prong is satisfied when the “but for” standard is met, that is not the *only* way the
10 requirement is met. Rather, the “Supreme Court announced in *Ford* that ‘arise out of’ and ‘relate
11 to’ are alternatives: for a claim to arise out of a defendant’s forum contacts requires causation,
12 while a claim can relate to those contacts, even absent causation, where, for example, ‘a company .
13 . . . serves a market for a product in the forum State and the product malfunctions there.’ ”
14 *Yamashita v. LG Chem, Ltd.*, 62 F. 4th 496, 504–05 (9th Cir. 2023). Thus, “*Ford* modified but did
15 not abolish the requirement that a claim must arise out of or relate to a forum contact in order for a
16 court to exercise specific personal jurisdiction.” *Id.* at 508.

17 Further, the Ninth Circuit has noted that the “arising out of or relate to” prong of the
18 specific jurisdiction test tends to be “less exacting” and thus, “[i]n most cases where the plaintiff’s
19 allegations satisfy the purposeful direction test, the ‘arise out of or relate to’ prong of the
20 minimum contacts inquiry will also be satisfied.” *Burri L. PA v. Skurla*, 35 F.4th 1207, 1216 n. 5
21 (9th Cir. 2022). This is because the “purposeful direction test ordinarily subsumes the . . . ‘arise
22 out of or relate to’ inquiry.” *Id.* (citing *Dole Food Co.*, 303 F.3d at 1114 (holding that because
23 purposeful direction was established, it was “obvious” that the second prong of the minimum
24 contacts test was also satisfied)). While *Burri* involved a tort case and thus was analyzed under the
25 purposeful direction theory rather than the purposeful avilment test that is applied in contract
26 cases, *see Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004), the
27 reasoning of that case and of *Dole Foods*, upon which it the court relied, suggests that the same
28 conclusion applies in both contexts.

1 Here, FTI does not dispute that it has purposefully availed itself of the privilege of
2 conducting activities in California and the Court finds that this requirement is satisfied. “Because
3 a contract is ‘ordinarily but an intermediate step serving to tie up prior business negotiations with
4 future consequences which themselves are the real object of the business transaction,’ a court must
5 evaluate four factors to determine whether purposeful availment has occurred: (1) prior
6 negotiations, (2) contemplated future consequences, (3) the terms of the contract, (4) the parties’
7 actual course of dealing.” *Rashidi v. Veritiss, LLC*, No. 216CV04761CASJPRX, 2016 WL
8 5219448, at *3 (C.D. Cal. Sept. 19, 2016) (quoting *Burger King*, 471 U.S. at 478-479). All of
9 these factors point to the conclusion that FTI purposefully availed itself of the privilege of doing
10 business in California when it entered into the 2019 Employment Agreement with Westerman.

11 First, FTI initially hired Westerman by acquiring his California-based practice group at a
12 time when Westerman was a resident of California. Second, the contemplated future
13 consequences of the agreement were for Westerman to serve as a managing director of FTI’s San
14 Francisco office, as is explicitly stated in the 2019 Employment Agreement and the 2023
15 Amendment. Finally, Westerman maintained a physical office at FTI’s San Francisco location at
16 all relevant times, including during the period when he worked remotely from Wyoming, spent a
17 significant amount of time every year in San Francisco for work, and was identified by FTI on its
18 website and on Westerman’s business card as an employee of the San Francisco office.

19 Under those circumstances, it is difficult to fathom FTI’s insistence that Westerman was
20 *not* a California employee because he worked remotely from Wyoming. FTI places great
21 emphasis on Westerman’s use of Wyoming as his “tax jurisdiction” but offers no explanation of
22 why the rules that govern the taxation of Westerman’s vacation and paid holidays have any
23 bearing on the personal jurisdiction inquiry. Furthermore, the “less exacting” “arising out of or
24 related to” requirement is clearly met under the standards set forth above as FTI entered into an
25 employment agreement with Westerman specifying that Westerman would be an employee of
26 FTI’s San Francisco office and included the restrictive covenants that are the basis of Westerman’s
27 claims.

28 The authority FTI cites to support its arguments related to this prong of the specific

1 jurisdiction test is not on point. FTI repeatedly relies on *Bristol Myers Squibb v. Superior Court*,
2 582 U.S. 255 (2017), calling it “instructive” and arguing that its reasoning applies here. Motion at
3 17; Reply at 12-13. But that case does not help FTI. *Bristol Meyers* stands for the proposition
4 that “there must be ‘an affiliation between the forum and the underlying controversy, principally,
5 [an] activity or an occurrence that takes place in the forum State and is therefore subject to the
6 State’s regulation.’ ” *Ford.*, 592 U.S. at 359–60) (quoting *Bristol Meyers*, 528 U.S. at 262)
7 (quoting *Goodyear*, 564 U.S. at 919). That case, however, did not involve an employment
8 contract and the facts were quite different from the facts here.

9 In *Bristol Meyers*, California residents and non-residents sued the manufacturer of a
10 prescription drug that was sold in California, bringing products liability and false advertising
11 claims based on allegations that they had been injured by the drug. 528 U.S. at 259. Although the
12 non-resident plaintiffs had not purchased the drug in California or been injured by it there, the
13 California Supreme Court found that their claims arose out of the manufacturer’s ties with
14 California because the *resident* plaintiffs had suffered similar harm in California, applying a
15 “sliding scale approach to specific jurisdiction” under which “the more wide ranging the
16 defendant’s forum contacts, the more readily is shown a connection between the forum contacts
17 and the claim.” *Id.* at 260 (citation omitted). The United States Supreme Court rejected this
18 approach, finding that it was a “loose and spurious form of general jurisdiction” and found that the
19 connection between the manufacturer’s contacts with California and the claims of the non-resident
20 plaintiffs’ claims was too attenuated to meet the “arising out of or relate to” requirement. *Id.* at
21 264-265. The facts here are markedly different, however, as FTI maintained multiple offices in
22 California and entered into an employment agreement with Westerman to work in one of those
23 offices.

24 Likewise, FTI’s reliance on *Rashidi v. Veritiss, LLC*, No. 2:16-cv-04761-CAS(JPRx), 2016
25 WL 5219448 (C.D. Cal. Sept. 19, 2016) is misplaced. FTI cites *Rashidi* in support of its assertion
26 that there is no specific jurisdiction because the 2019 Employment Agreement in this case was not
27 negotiated or signed in California. Motion at 17. But *Rashidi* did not establish a bright-line test
28 requiring that a contract must have been negotiated and/or signed in the forum state in order for its

1 breach to give rise to specific jurisdiction. Rather, that case applied the *Burger King* factors to the
 2 purposeful avilment inquiry and found that under the facts of that case, there was no connection
 3 to the forum state. 2016 WL 5219448, at *6. It went on to conclude the claims did not arise out
 4 of the defendant’s conduct in the forum. But the facts of that case are not analogous to the facts
 5 here.

6 The plaintiff in *Rashidi* was hired by a company called Veritiss to perform work in
 7 Afghanistan, where the day-to-day supervision of his employment was handled by a separate
 8 company, Mission Essential. *Id.* at *1. The plaintiff was eventually terminated by Mission
 9 Essential while the plaintiff was on medical leave in California based on time-card discrepancies,
 10 but the only contact Mission Essential – an Ohio limited liability company with offices in Ohio
 11 and Virginia – had with California was an email sent to the plaintiff requesting that he address the
 12 discrepancies; Mission Essential did not terminate the plaintiff in that email, however. *Id.* The
 13 plaintiff sued both Veritiss and Mission Essential, but only Mission Essential challenged personal
 14 jurisdiction. The court found that the purposeful avilment requirement was not satisfied as to
 15 Mission Essential and further concluded that the wrongful termination claims asserted by the
 16 plaintiff did not arise out of the single email to California, applying the “but-for” test that was
 17 accepted in this Circuit prior to *Ford*. The court reasoned that that test was not met because
 18 “Mission Essential’s email to Rashidi in California did not address Rashidi’s termination, the basis
 19 for Rashidi’s claims.” *Id.* at *6. FTI, in contrast to Mission Essential in *Rashidi*, hired
 20 Westerman to work as a managing director in its San Francisco office and entered into an
 21 employment contract related to that position that contains the non-compete provisions that are the
 22 subject of these claims. As discussed above, these contacts are sufficient to satisfy both the first
 23 and second prongs of the specific jurisdiction inquiry. Moreover, the court in *Rashidi* applied the
 24 stricter standard that was applied pre-*Ford*, further undermining FTI’s reliance on that case.

25 Accordingly, the Court finds that the “arise out of or relate” requirement is satisfied here.⁸

26 _____
 27 ⁸ FTI belatedly brings to the Court’s attention a 2019 San Francisco Superior Court decision in
 28 which the court found that it lacked personal jurisdiction over claims brought by FTI employees
 challenging non-compete provisions in his employment agreements. *See* FTI’s Supplement

1 b. Whether Exercise of Jurisdiction is Reasonable

2 Because Westerman has demonstrated that the first two prongs of the specific jurisdiction
3 inquiry are satisfied, it is FTI’s burden to make a “compelling case” that exercise of personal
4 jurisdiction is unreasonable. It has not done so.

5 **Purposeful Interjection.** FTI asserts that its “purposeful interjection” in this forum is so
6 small as to weigh against a finding of personal jurisdiction, citing *Mitan v. Feeney*, 497 F. Supp.
7 2d 1113, 1122 (C.D. Cal. 2007). Motion at 21. But in *Mitan*, the facts that led the court to
8 conclude that the personal interjection requirement was not met were dramatically different from
9 the facts here. There, a California man purchased a business (Prime Line) from an Arkansas
10 couple (the Feeneys) and sued them in California for various torts allegedly committed in
11 connection with that transaction and with subsequent interactions with American Express relating
12 to obtaining credit for the business. 497 F. Supp. 2d at 1115. The Feeneys’ only contact with
13 California that had any connection to the plaintiff was a telephone conversation that occurred
14 when the Redondo Beach, California police department called Mr. Feeney in connection with the
15 plaintiff’s arrest. *Id.* at 1122. In fact, the declarations supplied by the Feeneys indicated that they
16 had virtually *no* contacts with California:

17 According to the Feeneys, the following is true: the Feeneys are
18 residents of Arkansas; they have never been residents of California;
19 they do not own any real or personal property in California, and they
20 do not lease, rent or otherwise possess any real or personal property
in California; they do not pay any taxes in California and maintain no
bank accounts in California; Prime Line is not registered to do
business in California and does not have a registered agent for service

21 Request for Judicial Notice in Support of Motion to Dismiss Plaintiff’s Complaint (“Supp. RJN”).
22 While the Court takes judicial notice of this decision under Rule 201 of the Federal Rules of
23 Evidence on the basis that it is “not subject to reasonable dispute[,]” the request is nonetheless
24 improper to the extent that the decision was issued many years ago and should have been cited in
25 FTI’s opening brief. Even if the Court were to consider this decision, however, it would not
26 change the result here. The decision itself is brief and does not contain a recitation of the facts.
27 Moreover, it appears from the court’s decision that the plaintiffs based their claim of specific
28 jurisdiction in California on the fact that FTI “directed” them to work in California. Supplemental
Declaration of Chris Jalien in Support of Defendants FTI Consulting, Inc. and FTI LLC’s Request
for Judicial Notice in Support of Motion to Dismiss (“Jalien Supp. Decl.”), Ex. A. The court
found that the claims did not arise out of the employment agreement that was being challenged
because it was not negotiated and executed in California and the plaintiffs were not California
residents. However, there is no suggestion that the employment agreements of those plaintiffs
specifically envisioned that performance of the contract would be in California, in contrast to the
facts here.

1 of process in California; the Feeneys and Prime Line do not and have
2 never maintained an office in California; the Feeneys and Prime Line
3 do not regularly buy goods or services from residents of California;
4 they do not regularly do or solicit business in California or engage in
5 any advertising in California; and neither Feeney has traveled to
6 California in more than ten years. (Doug Feeney Decl. ¶¶ 2–14;
7 Doreen Feeney Decl. ¶¶ 2–14.)

8 With respect to the allegations in Plaintiff's complaint, the Feeneys
9 state that all transactions and interactions with Plaintiff occurred in
10 Arkansas. (Doug Feeney Decl. ¶ 15; Doreen Feeney Decl. ¶ 15.) They
11 claim they were not aware Plaintiff resided in California and that
12 Plaintiff represented to the Feeneys that his name was John Smith.
13 (Doug Feeney Decl. ¶ 15; Doreen Feeney Decl. ¶ 15.) Doreen Feeney
14 asserts that she had no contact with American Express and no contact
15 with any California entity regarding Plaintiff. (Doreen Feeney Decl.
16 ¶¶ 16, 17.) Doug Feeney states that he only contacted the Arkansas
17 office of American Express about Plaintiff and never contacted
18 American Express in California. (Doug Feeney Decl. ¶ 16.) Doug
19 Feeney asserts that the only contact he had with California relating to
20 Plaintiff was initiated by the Redondo Beach police after Plaintiff had
21 been arrested. (Doug Feeney Decl. ¶ 17.) Doug Feeney also asserts
22 that he did not know John Smith was Kenneth Mitran until Redondo
23 Beach police told him. (Doug Feeney Decl. ¶ 17.)

24 *Id.* at 1116. Under these circumstance, the court found that the purposeful interjection factor
25 weighed against a finding that exercise of personal jurisdiction was reasonable. There is no
26 comparison between those facts and the ones here, where FTI operates eight offices in California
27 and hired the plaintiff to be an employee in one of those offices. Here, the purposeful interjection
28 factor weighs in favor of the conclusion that exercise of personal jurisdiction in California is
reasonable.

29 **Burden of litigating in California.** FTI contends it will be a burden to litigate this case in
30 California because its principal office is in Maryland and its corporate headquarters are in
31 Washington, D.C. Motion at 21. This factor typically weighs in favor of a defendant who is a
32 non-U.S. resident. *See Tuazon v. R.J Reynolds Tobacco Co.*, 433 F.3d 1163, 1175 (9th Cir. 2006).
33 Under those circumstances, “[t]he unique burdens placed upon one who must defend oneself in a
34 foreign legal system should have significant weight in assessing the reasonableness of stretching
35 the long arm of personal jurisdiction over national borders.” *Id.* (quoting *Asahi Metal Indus. Co. v.*
36 *Superior Court*, 480 U.S. 102, 114 (1987)). Here, however, defending itself in California will not
37 subject FTI to a foreign legal system. Further, although defending the case in California will
38

1 create some burden, “with the advances in transportation and telecommunications and the
2 increasing interstate practice of law, any burden is substantially less than in days past.” *Menken v.*
3 *EMM*, 503 F.3d 1050, 1060 (9th Cir. 2007) (citation omitted). This burden will not be
4 “onerous[,]” given FTI’s substantial business in California. *Tuazon*, 433 F.3d at 1175. Therefore,
5 this factor weighs only slightly in FTI’s favor. *Shorter v. Peaches Uniforms, Inc.*, No. 2:10-CV-
6 02232, 2010 WL 5135366, at *4 (E.D. Cal. Dec. 8, 2010).

7 **Conflict with defendant state sovereignty.** FTI contends Washington D.C. has a greater
8 interest in asserting jurisdiction because its main headquarters is there, citing *Brand v. Menlove*
9 *Dodge*, 796 F.2d 1070, 1075 (9th Cir. 1986) for the proposition that “the exercise of personal
10 jurisdiction is not reasonable where action could proceed in defendant’s home State.” In *Brand*,
11 however, the court expressly concluded that the sovereignty factor did *not* support a finding that
12 jurisdiction was unreasonable. In that case, the Utah-based defendant challenged personal
13 jurisdiction in California. 796 F.2d at 1072. Although the court ultimately concluded that exercise
14 of specific jurisdiction over the defendant was unreasonable, it explained that the sovereignty
15 factor did not point to that conclusion, stating:

16 The conflict with the sovereignty of the defendant’s state is not a very
17 significant factor in cases involving only U.S. citizens; conflicting
18 policies between states are settled through choice of law analysis, not
19 through loss of jurisdiction. *See Burger King*, 105 S.Ct. at 2188 n. 26;
Haisten, 784 F.2d at 1402; *see also Keeton*, 465 U.S. at 778, 104 S.Ct.
at 1480. Utah’s sovereignty would not be significantly impaired by
allowing the action to proceed in California.

20 *Id.* at 1076. Thus, FTI’s reliance on this factor is misplaced. Further, FTI has cited no authority in
21 which courts have found that this factor supports unreasonableness merely because the defendant
22 has its headquarters in another state or is incorporated in another state. This factor does not
23 support its assertion that exercise of jurisdiction over FTI is unreasonable.

24 **California’s Interest.** FTI argues that “California has no interest in opening its courts to
25 nonresident plaintiffs with attenuated connections to California.” Motion at 22 (citing *Moretti v.*
26 *Hertz Corp.*, No. C 13-02972 JSW, 2014 WL 1410432, at *5 (N.D. Cal. Apr. 11, 2014); *Shanze*
27 *Enters., Inc. v. Am. Cas. Co. of Reading, Pa.*, No. 2:14-CV-02623-KJM-AC, 2015 WL 1014167,
28 at *6 (E.D. Cal. Mar. 5, 2015). Westerman, on the other hand, contends California has a strong

1 public policy interest in protecting California employees from restrictive covenants such as the
2 ones in his 2019 Employment Agreement with FTI. Opposition at 3 n. 1 (citing *Application Grp.,*
3 *Inc. v. Hunter Grp., Inc.*, 61 Cal. App. 4th 881, 902 (1998)). Neither party has cited authority that
4 is on point.

5 Neither of the cases cited by FTI (*Moretti* and *Shanze*) involved personal jurisdiction,
6 involving instead motions to transfer under 28 U.S.C. § 1404(a) based on the convenience of the
7 forum state. Further, neither case addresses California’s interest in protecting California
8 employees who work remotely from another state from non-compete provisions in employment
9 contracts with corporations headquartered outside of California but who operate offices within the
10 state and employ remote workers to staff those offices. Likewise, the case cited by Westerman
11 addresses a choice of law question and not personal jurisdiction.

12 From the case law this Court has found, this factor is generally treated as a “toss up” in this
13 Circuit in the contract context. *See Roth v. Garcia Marquez*, 942 F.2d 617, 624 (9th Cir. 1991).
14 On the one hand, states generally have an interest in protecting their residents from harm, though
15 this interest is usually expressed in connection with torts rather than contracts; on the other hand,
16 states generally do not have an interest in the adjudication of private contractual disputes. *Id.*
17 Therefore, the Court concludes that this factor is neutral.

18 **Efficiency of the Forum.** Courts evaluate this factor by looking at where the witnesses
19 and the evidence are likely to be located. *Terracom v. Valley Nat’l Bank*, 49 F.3d 555, 561-62 (9th
20 Cir. 1995). Although FTI asserts that the witnesses and evidence are located outside of California,
21 its assertions are entirely conclusory. It has not identified any specific witnesses or evidence in
22 support of its assertion. Therefore, this factor is neutral.

23 **Plaintiff’s Interest in Convenient and Effective Relief.** Westerman does not rely on this
24 factor to establish that jurisdiction is reasonable – perhaps because he does not reside in the forum
25 – and neither the Ninth Circuit nor the Supreme Court has given “much weight to inconvenience
26 to the plaintiff.” *Ziegler v. Indian River Cnty.*, 64 F.3d 470, 476 (9th Cir. 1995) (citing *Core-Vent*
27 *Corp. v. Nobel Indus. AB*, 11 F.3d 1482, 1490 (9th Cir. 1993), holding modified by *Yahoo! Inc. v.*
28 *La Ligue Contre Le Racisme Et L’Antisemitisme*, 433 F.3d 1199 (9th Cir. 2006)). There also does

1 not appear to be any reason why Westerman could not obtain effective relief in the District Court
2 for the District of Columbia, assuming personal jurisdiction over Westerman in the District of
3 Columbia is proper. Therefore, this factor is neutral.

4 **Existence of an Alternative Forum.** FTI contends the District Court of the District of
5 Columbia provides an alternative forum, supporting the conclusion that personal jurisdiction in
6 this forum is unreasonable. It is not clear, however, whether that court provides an alternative
7 forum given that Westerman has brought a motion to dismiss for lack of personal jurisdiction in
8 the Washington D.C. case and that motion remains pending. Therefore, the Court finds that this
9 factor slightly favors Westerman’s position.

10 Considering all of the factors discussed above, the Court concludes that FTI has failed to
11 make a compelling case that the exercise of personal jurisdiction over it is unreasonable.
12 Therefore, the Court concludes, for the purposes of the Motion to Dismiss, that personal
13 jurisdiction over FTI is proper on the basis of specific jurisdiction.

14 **D. Venue**

15 **4. 28 U.S.C. § 1391**

16 The parties’ dispute about venue turns on whether venue is proper under 28 U.S.C. §
17 1391(b)(2). That section provides for venue in “a judicial district in which a substantial part of
18 the events or omissions giving rise to the claim occurred, or a substantial part of property that is
19 the subject of the action is situated[.]” FTI argues venue is not proper in this District because “the
20 employment agreement at issue was negotiated, executed, and enforced from Washington, D.C.”
21 Motion at 24-25 (citing *Jenkins Brick Co. v. Bremer*, 321 F.3d 1366, 1372 (11th Cir. 2003)). The
22 Court rejects FTI’s argument.

23 To determine venue in cases involving contract disputes, courts in the Ninth Circuit “have
24 ‘looked to such factors as where the contract was negotiated or executed, where it was to be
25 performed, and where the alleged breach occurred.’ ” *Richmond Techs., Inc. v. Aumtech Bus.*
26 *Solutions*, 2011 WL 2607158, at *10 (N.D. Cal., July 1, 2011) (quoting *Gulf Ins. Co. v.*
27 *Glasbrenner*, 417 F.3d 353, 357 (2d Cir. 2005)); *see also Decker Coal Co. v. Commonwealth*
28 *Edison Co.*, 805 F.2d 834, 842 (9th Cir. 1986). As discussed above, the 2019 Employment

1 Agreement in this case makes clear that Westerman’s services were to be performed in California
2 as he was hired as a managing director based in FTI’s San Francisco office. That is sufficient to
3 establish that a substantial part of the events or omissions giving rise to Westerman’s claims
4 occurred in this district.

5 FTI argues that *Richmond Technologies* is distinguishable because in that case, the
6 employment contract was negotiated and executed between a California resident and a California-
7 based company. Reply at 17. However, the court in *Richmond Technologies* considered
8 numerous factors in determining that venue in that case was proper under Section 1391(b)(2),
9 including the place of intended performance, explaining:

10 If § 1391(a)(2) authorized venue in the single district in which the
11 most substantial part of the events or omissions giving rise to the
12 claim occurred, the Court would agree with Defendants that venue in
13 the Northern District of California is improper. However, under the
14 current version of § 1391(a)(2), the circuits appear to agree that venue
15 may be proper in multiple districts if a “substantial part” of the
16 underlying events took place in each of those districts. *See Gulf Ins.*
17 *Co. v. Glasbrenner*, 417 F.3d 353, 356 (2d Cir.2005) (collecting cases
18 from various federal courts of appeals). Thus, Plaintiff need not show
19 that the Northern District of California has the most substantial
20 relationship to the dispute, *Kirkpatrick v. Rays Group*, 71 F.Supp.2d
21 204, 213 (W.D.N.Y.1999), or that it is the “best” venue. *Silver Valley*
22 *Partners, LLC v. De Motte*, 400 F.Supp.2d 1262, 1269
(W.D.Wash.2005). Rather, “for venue to be proper, significant events
or omissions material to the plaintiff’s claim must have occurred in
the district in question, even if other material events occurred
elsewhere.” *Gulf Ins. Co. v. Glasbrenner*, 417 F.3d at 357. Where, as
here, a case involves a contract dispute, courts have “looked to such
factors as where the contract was negotiated or executed, where it was
to be performed, and where the alleged breach occurred” to determine
whether venue is proper. *Id.* (quotation mark and citation omitted);
see also Shropshire v. Fred Rappoport Co., 294 F.Supp.2d 1085,
1094 (N.D.Cal.2003) (finding venue proper in case turning on
contract interpretation because contract was partially negotiated,
signed, and substantially performed in the district).

23 2011 WL 2607158, at *10. The court in *Richmond Technologies* went on to conclude that venue
24 may be proper “in the place of intended performance” even if “the Defendants may have executed
25 and performed their contracts in other locations.” *Id.* Thus, FTI’s reading of *Richmond*
26 *Technologies* as limiting venue to the place where the contract was negotiated and executed – or
27 requiring that the parties to the contract must reside in the forum – is not consistent with the
28 reasoning of that case.

1 Likewise, the Court disagrees with FTI’s assertion that *Jacobs v. Sustainability Partners*
2 *LLC*, No. 20-CV-01981-PJH, 2020 WL 5593200, at *5 (N.D. Cal. Sept. 18, 2020), cited by
3 Westerman in support of venue in this District, actually supports FTI’s position. In that case, the
4 court applied the reasoning of *Richmond Technologies*, concluding that venue in the Northern
5 District of California was proper, even though it was “not clear where the contract was negotiated
6 or executed” because it was “reasonably clear that the intended place of performance of plaintiff’s
7 duties and responsibilities for [the defendant] was his home in the Northern District of California.”
8 2020 WL 5593200, at *5. FTI seems to rely on this case for the proposition that for remote
9 workers, the place of performance is where the worker resides and therefore, that the place of
10 performance in this case is Wyoming rather than San Francisco. But that reading of the case,
11 again, ignores its underlying reasoning, as well as distinctions between the facts of that case and
12 the facts here. As both *Jacobs* and *Richmond Technologies* make clear, Section 13919(b)(2)
13 allows for venue in more than one district and does not require that the *most* substantial part of the
14 underlying events occur in the chosen forum. Here, Westerman performed under the 2019
15 Employment Agreement not only from his home in Wyoming but also from his physical office in
16 San Francisco, where he was specifically hired to work as a managing director and spent a
17 significant number of work-days each year. That is enough to make venue in this District proper.

18 For these reasons, the Court DENIES FTI’s Motion to Dismiss in its entirety

19 **IV. DISCOVERY MOTION**

20 **A. Background**

21 In its Discovery Motion, FTI seeks an order requiring that Westerman respond to ten
22 requests for production and submit to a deposition before it is required to respond to Westerman’s
23 Preliminary Injunction Motion. Discovery Motion at 5. FTI argues that this discovery is
24 necessary to test the statements in Westerman’s declaration, dkt. no. 22-1, relating to three key
25 issues in this case, namely, 1) whether Westerman was a California employee when he worked for
26 FTI; 2) whether Westerman’s current employer, Secretariat, is a California-based employer; and
27 3) whether he will suffer irreparable harm if a preliminary injunction is not entered.

28 Westerman counters that the key issue that must be decided in connection with the

1 Preliminary Injunction Motion -- whether the non-compete provisions of the Employment
2 Agreement are void under Cal. Bus. & Prof. Code §§ 16600 because California has a materially
3 greater interest in this case than Maryland – can be decided on the basis of facts that are
4 undisputed, and therefore, that the expedited discovery FTI seeks is unnecessary. Opposition at 2-
5 3 (citing *Application Group, Inc. v. Hunter Group, Inc.*, 61 Cal. App. 4th 881, 888-889 (1998)).
6 He further contends FTI fails to demonstrate that there is good cause for expedited discovery
7 because: 1) it does not show that the requests for production are tailored to obtain discovery
8 necessary to the Court’s determination of the Preliminary Injunction Motion and provides no
9 explanation of the purpose of the deposition of Westerman; 2) the requests for production are
10 overbroad; 3) the requests for production and a deposition will impose a significant burden on
11 Westerman; and 4) “FTI misconstrues and overstates the relevance of its unnecessary discovery
12 on Mr. Westerman’s pending preliminary injunction.” *Id.* at 4.

13 **B. Legal Standards**

14 Rule 26(d) of the Federal Rules of Civil Procedure provides that “[a] party may not seek
15 discovery from any source before the parties have conferred as required by Rule 26(f), except ...
16 when authorized by these rules, by stipulation, or by court order.” Fed. R. Civ. P. 26(d). A party
17 must show good cause for early discovery. *Bungie, Inc. v. Thorpe*, No. 21CV05677EMCDMR,
18 2021 WL 5178825, at *3 (N.D. Cal. Nov. 8, 2021) (citation omitted). “Good cause may be found
19 where the need for expedited discovery, in consideration of the administration of justice,
20 outweighs the prejudice to the responding party.” *Semitool, Inc. v. Tokyo Electron Am., Inc.*, 208
21 F.R.D. 273, 276 (N.D. Cal. 2002).

22 “The following factors are commonly considered by courts to determine whether there is
23 good cause for expedited discovery: ‘(1) whether a preliminary injunction is pending; (2) the
24 breadth of the discovery requests; (3) the purpose for requesting the expedited discovery; (4) the
25 burden on the defendants to comply with the requests; and (5) how far in advance of the typical
26 discovery process the request was made.’ ” *Kayvan v. Pompeo*, No. 5:19-CV-08071-EJD, 2020
27 WL 553940, at *1 (N.D. Cal. Feb. 4, 2020) (quoting *Am. LegalNet, Inc. v. Davis*, 673 F. Supp. 2d
28 1063, 1067 (C.D. Cal. 2009)).

1 The parties agree that in determining what discovery (if any) is appropriate, the Court
2 should look to *Application Grp., Inc. v. Hunter Grp., Inc.*, in which the California Court of Appeal
3 found “that California law may be applied to determine the enforceability of a covenant not to
4 compete, in an employment agreement between an employee who is not a resident of California
5 and an employer whose business is based outside of California, when a California-based employer
6 seeks to recruit or hire the nonresident for employment in California.” 61 Cal. App. 4th 881, 885
7 (1998).

8 **C. Discussion**

9 Applying the standards set forth above, and having considered the parties’ briefs, the Court
10 concludes that there is good cause for *some* of the early discovery that FTI seeks so that FTI can
11 test the veracity of the Westerman Declaration, as set forth below.

12 **Deposition of Westerman:** The Court GRANTS FTI’s request to depose Westerman
13 before responding to the Preliminary Injunction Motion. Because the Preliminary Injunction
14 Motion relies on Westerman’s declaration, FTI is entitled to test his assertions in a deposition.
15 Therefore, FTI will be permitted to depose Westerman. The parties should meet and confer as to
16 appropriate time limits and scope of this deposition, which will not bar FTI from taking a further
17 deposition, if warranted, during general discovery.

18 **Requests for Production.**

19 **1. RFP #1**

20 This RFP seeks “ All DOCUMENTS PLAINTIFF relied on in preparing his declaration in
21 support of the Motion for Preliminary Injunction.” The Court finds that this request is aimed
22 primarily at uncovering information that is likely to be subject to attorney-client privilege or is
23 work product. Therefore, the good cause requirement is not met as to this request. The
24 Discovery Motion is DENIED as to this request.

25 **2. RFP #2**

26 This RFP seeks “All DOCUMENTS and COMMUNICATIONS relating to harm allegedly
27 suffered by PLAINTIFF in support of PLAINTIFF’s Motion for Preliminary Injunction, including,
28 without limitation, PLAINTIFF’s ability or inability to perform work for SECRETARIAT.” This

1 request is DENIED. The harm Westerman alleges is apparent from the theory of his claims,
2 namely, the harm associated with being prohibited from working for Secretariat, and the evidence
3 of that harm is, primarily, the 2019 Employment Agreement. Therefore, FTI has not demonstrated
4 that this discovery is necessary to decide the Preliminary Injunction Motion. The Discovery
5 Motion is DENIED as to this request.

6 **3. RFP # 3**

7 This RFP seeks “All DOCUMENTS and COMMUNICATIONS relating to PLAINTIFF’s
8 contact or attempted contact with former clients, former colleagues and other former business
9 associates with who [sic] he is attempting to develop business.” To the extent that this RFP is
10 aimed at Westerman’s current efforts to obtain California (and non-California) clients, this
11 discovery may have some bearing on the Preliminary Injunction Motion, the primary focus of
12 which is whether Secretariat is a California employer. However, the request is extremely broad
13 and therefore unnecessarily burdensome. Therefore, the Discovery Motion is DENIED without
14 prejudice as to this request. If the Court determines after the Preliminary Injunction Motion is
15 fully briefed that discovery on this issue is necessary to decide that motion, it will defer ruling on
16 the motion to allow the deposition and any associated supplemental briefing to occur.

17 **4. RFP #4**

18 This RFP seeks “All DOCUMENTS and COMMUNICATIONS sufficient to identify
19 PLAINTIFF’s plans to build SECRETARIAT’s accounting and internal investigations practice
20 that PLAINTIFF contends will be harmed if PLAINTIFF’s Motion for Preliminary Injunction is
21 not granted.” The Court finds that this discovery is not necessary to decide the Preliminary
22 Injunction Motion as the primary harm Westerman alleges is evidenced by the 2019 Employment
23 Agreement. Therefore, the Discovery Motion is DENIED as to this request. If the Court
24 determines after the Preliminary Injunction Motion is fully briefed that discovery on this issue is
25 necessary to decide that motion, it will defer ruling on the motion to allow the deposition and any
26 associated supplemental briefing to occur.

27 **5. RFP #5**

28 This RFP seeks “All DOCUMENTS and COMMUNICATIONS sufficient to identify

1 Plaintiff’s work with California clients and companies and non-California clients and companies
2 for SECRETARIAT, including, without limitation, actual location where Plaintiff performed said
3 work and hours worked for each client or company.” As this discovery is directly related to the
4 question of whether Secretariat is a California-based employer, the Court finds that there is good
5 cause as to this request. The Discovery Motion is GRANTED as to this request.

6 **6. RFP #6**

7 This RFP seeks “All DOCUMENTS relating to PLAINTIFF’s residency from October
8 2019 to the present, including travel records, calendars, credit card statements, cell phone records
9 (sufficient to identify where his cell phone is being used), voter registration, insurance, homestead
10 registrations, and address of his spouse’s employer.” The Court denies this request, which is
11 overly burdensome and unnecessary as Westerman does not dispute that he moved to Wyoming in
12 2016 and has lived there ever since. The Discovery Motion is DENIED as to this request.

13 **7. RFP #7**

14 This RFP seeks “All DOCUMENTS and COMMUNICATIONS relating to PLAINTIFF’s
15 job placement at SECRETARIAT, including, without limitation, recruitment, job application,
16 interview(s), compensation, and correspondence and contact with SECRETARIAT prior to the
17 start of his employment with SECRETARIAT.” This discovery is directly relevant to the
18 Preliminary Injunction Motion and does not impose an excessive burden on Westerman.
19 Therefore, the Court finds that there is good cause for permitting this discovery. The Discovery
20 Motion is GRANTED as to this request.

21 **8. RFP #8**

22 This request seeks “All DOCUMENTS and COMMUNICATIONS relating to
23 PLAINTIFF’s employment contract and negotiation of same with SECRETARIAT, including,
24 without limitation, PLAINTIFF’s office location, affiliation with SECRETARIAT’s San Francisco
25 office, job description, responsibilities, and duties at SECRETARIAT.” This discovery is directly
26 relevant to the Preliminary Injunction Motion and does not impose an excessive burden on
27 Westerman. Therefore, the Court finds that there is good cause for permitting this discovery. The
28 Discovery Motion is GRANTED at to this request.

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

9. RFP #9

This request seeks “All DOCUMENTS and COMMUNICATIONS relating to and/or evidencing the actual work locations of PLAINTIFF’s direct reports, managers, and supervisors at SECRETARIAT.” The request is overbroad to the extent it seeks “all” documents on this issue; however, the work locations of Westerman’s managers and supervisors is directly relevant to the Preliminary Injunction Motion. Therefore, the Court limits this request to documents sufficient to show the actual work locations of PLAINTIFF’s direct reports, managers, and supervisors at Secretariat. As limited, the Discovery Motion is GRANTED as to this request.

10. RFP #10

This request seeks “ALL DOCUMENTS and COMMUNICATIONS between PLAINTIFF and SECRETARIAT relating to PLAINTIFF’s FTI employment agreement.” This discovery is directly relevant to the Preliminary Injunction Motion and does not impose an excessive burden on Westerman. Therefore, the Court finds that there is good cause for permitting this discovery. The Discovery Motion is GRANTED at to this request.

D. CONCLUSION

The parties should meet and confer to determine whether any documents should be produced on an attorneys’ eyes only basis and to negotiate a stipulated protective order. A stipulated protective order and a stipulation addressing the scope and timing of the Westerman deposition, as well as any other agreements the parties reach as to the terms of Westerman’s production of documents consistent with this Order, shall be submitted by **October 3, 2024**.

IT IS SO ORDERED.

Dated: September 25, 2024



JOSEPH C. SPERO
United States Magistrate Judge