



1           **I.       Introduction**

2           Defendant Todorov submits this memorandum of points and authorities in support of her  
3 motion to transfer this case from the “wrong court” in Los Angeles County to the proper venue of  
4 San Francisco County pursuant to Code of Civil Procedure sections 396b(a) and 397(a). Because  
5 this action was not commenced in the proper court in the defendant’s county of residence, Section  
6 396b(a) requires transfer to the proper court.

7           **II.       Background and summary of the complaint**

8           After years of friendship and a brief dating relationship of approximately four months,  
9 Defendant ended her relationship with Plaintiff. This did not go over smoothly. Aside from the  
10 difficulties of a failed relationship and a breakup, Defendant was not afforded the opportunity to  
11 move past this and on with her life. Defendant faced a whole new series of problems. For  
12 approximately two months, Plaintiff inundated defendant with text messages, phone calls, emails,  
13 letters, showed up at her home against her demands and contacted her friend regarding their  
14 relationship. (See Defendant’s declaration in support of motion to change venue attached hereto.)

15           Yet, when Defendant explicitly in writing demanded that Plaintiff not contact her again,  
16 Plaintiff did not take kindly to this. From that moment on, he changed his tune completely from an  
17 extended campaign attempting to rekindle the relationship to filing a lawsuit apparently to crush  
18 her financially or in some odd, misguided attempt to continue their relationship through litigation.

19           In his complaint, Plaintiff brings suit against the Defendant for a number of causes of  
20 action (promissory fraud, intentional infliction of emotional distress, breach of contract and unjust  
21 enrichment) for not staying in a relationship with him - as if she were his property.

22           The allegations are that Plaintiff and Defendant made agreements, that she would not leave  
23 his life and that they would stay in a relationship for one year, at the end of which they would get  
24 engaged or part. Plaintiff alleges that Defendant made said agreements with no intention of staying  
25 in the relationship. He now seeks damages “in the minimum amount of \$225,000.00,” for  
26 reimbursement for trips and gifts he purchased for Defendant. Plaintiff further seeks exemplary or  
27 punitive damages.

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1           **III.     Argument**

2           As to venue the Complaint simply states: “Venue is appropriate in the County of Los  
3 Angeles because a substantial portion of Defendants’ unlawful and fraudulent conduct giving rise  
4 to this lawsuit occurred in the County of Los Angeles.” (Complaint ¶ 6.) No factual basis is  
5 provided.

6           “It is well established that a defendant is entitled to have an action tried in the county of his  
7 or her residence unless the action falls within some exception to the general venue rule.  
8 [Citations.]” (*Brown v. Superior Court* (1984) 37 Cal.3d 477, 483 (*Brown*); (*Fontaine v. Superior*  
9 *Court* (2009) 175 Cal.App.4th 830, 837; see also *Massae v. Superior Court (Massae)* (1981) 118  
10 Cal.App.3d 527, 531 [“ ‘policy of the law favors the right of trial at the defendant’s residence’ ”]).  
11 The defendant’s right to have an action tried in his or her county of residence is “an ancient and  
12 valuable right, safeguarded by statute and a long line of decisions. The right of a plaintiff to have  
13 an action tried in a county other than that of the defendant’s residence is exceptional.” (*Johnson v.*  
14 *Superior Court of Fresno County* (1965) 232 Cal.App.2d 212, citing *Kaluzok v. Brisson* (1946) 27  
15 Cal.2d 760, 763.) The law “jealously” guards the right of a defendant to have an action tried in the  
16 defendant’s county of residence and the allegations of a complaint will be strictly construed  
17 against the pleader to ascertain whether a personal or transitory cause has been joined so as to  
18 entitle the defendant a trial in the county of residence. (*Neet v. Holmes* (1942) 19 Cal.2d 605, 612.)

19           This general rule is codified in the first sentence of section 395(a), which states: “Except as  
20 otherwise provided by law and subject to the power of the court to transfer actions or proceedings  
21 as provided in this title, the superior court in the county where the defendants or some of them  
22 reside at the commencement of the action is the proper court for the trial of the action.”  
23 Section 395(a) also contains exceptions to the general venue rule. For example, actions for  
24 personal injury or injury to personal property resulting from the defendant’s negligence may be  
25 filed in the county where the injury occurred, or in the county where the defendant resides.  
26 (§ 395(a).)

27           “Personal injury” in this context is narrowly construed; actions for injury to reputation, or  
28 even for mental or emotional distress, are triable only at defendant’s residence. (*Carruth v. Sup.*

1 *Ct. (Stoike)* (1978) 80 Cal.App.3d 215, 219-220; and *Cubic Corp. v. Sup. Ct. (Warren)* (1986) 186  
2 Cal.App.3d 622, 625 – emotional distress, shock, etc. may be bodily injury for pleading purposes,  
3 but not for venue purposes. An action based upon in injury to person or personal property which is  
4 not a physical injury, such as libel, malicious prosecution and false imprisonment is triable solely  
5 at the defendant’s residence. (*Graham v. Mixon* (1917) 177 Cal. 88; *Monk v. Ehret* (1923) 192  
6 Cal.186.)

7       Actions for breach of contract, other than consumer obligations, are triable in the county  
8 where the defendant resides, where the contract was entered into or where it was to be performed  
9 if where it was to be performed is specified in writing. (CCP 395(a).)

10       A fraud action must be tried in the county where the defendant lives. (*Quick v. Corsaro*  
11 (1960) 180 Cal.App.2d 831; *Thielen v. Sup. Ct. of Los Angeles County* (1963) 219 Cal.App.2d  
12 217; *Dow AgroSciences LLC v. Sup. Ct. (CEH)* (2017) 16 Cal.App.5<sup>th</sup> 1067, 1077-78.)

13       If several causes of action are alleged in a complaint, the action is a mixed action. The  
14 mixed action rule is: “In cases with mixed causes of action, a motion for change of venue must be  
15 granted on the entire complaint if the defendant is entitled to a change of venue on any one cause  
16 of action.” (*Brown v. Superior Court (C.C. Myers, Inc.)* (1984) 37 Cal.3d 477, 488; *Johnson v.*  
17 *Superior Court of Fresno County* (1965) 232 Cal.App.2d 212, 219-220 [complaint purported to  
18 state only cause of action for breach of contract but included allegations for interference and  
19 damage to business reputation, a transitory tort, thus change of venue to county of defendant’s  
20 residence required]; see *Capp Care, Inc. v. Sup. Ct. (Proffitt)* (1987) 195 Cal.App.3d 504, 508.)

21       Here, the Defendant resides in San Francisco and has for many years. Her declaration  
22 attesting to such is attached hereto. No exception to the “jealously guarded” right to trial in her  
23 county of residence applies. Since the Plaintiff has filed suit for fraud, proper venue lies in the  
24 county of Defendant’s residence. Since the Plaintiff has filed suit for intentional infliction of  
25 emotional distress, proper venue lies only the county of Defendant’s residence. Thus, transfer of  
26 venue to San Francisco County is required.<sup>1</sup>

27 \_\_\_\_\_  
28 <sup>1</sup> Defendant Todorov notes that making this motion excuses her from filing a responsive pleading to Plaintiff’s  
Complaint. Code of Civil Procedure section 396b(a) states that a defendant in an action may “at his or her option,  
without answering, demurring or moving to strike and within the time otherwise allowed to respond to the complaint,  
file[] with the clerk, a notice of motion for an order transferring the action or proceeding to the proper court.” (Cal.

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**IV. Conclusion**

Defendant Todorov respectfully requests that the Court order this action transferred to San Francisco County.

Dated: September 24, 2019

Respectfully Submitted,



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JOSHUA B. DAVIS  
Attorney for Defendant  
ELINA E. TODOROV

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Civ. Proc. Code § 396b(a); see also Cal. Civ. Proc. § 585 (no default while a transfer motion is pending); Cal. Civ. Proc. Code § 396b(e) & Cal. Rules of Court, Rule 3.1326 (setting deadlines to respond to complaint following ruling on a motion to transfer.)

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**DECLARATION OF ELINA E. TODOROV**

I, Elina E. Todorov, declare as follows in support of my motion to change venue and my motion for attorney’s fees and costs for motion to change venue:

1. I live and reside in San Francisco, California, and have done so continuously for nearly ten years.
2. Syed Husain and I met when I was in college, were friends for many years, and dated for approximately one month in early 2018 and then again for approximately four months from late 2018 until March of this year.
3. After unceasing harassment (many, many text messages, emails, letters, calls/voicemails, showing up uninvited at my home after being told not to, contacting my friend about our breakup, sending gifts to my place of work) for approximately two months despite my demands to stop contacting me, I blocked his number on my phone so I would no longer receive his text messages.
4. Later that same day, May 14, 2019, I sent an email to Syed that stated explicitly in writing that he was not to contact me.
5. Minutes later, he replied to the email and I then blocked his email address so that I would no longer receive his emails. Attached as Exhibit A is a true and correct copy of this email correspondence.
6. From this point forward, Mr. Husain’s contact with me has been through others, his attorney and attorney’s agents.
7. I am informed and believe that Mr. Husain has filed a similar type lawsuit against at least one other woman following a dating relationship.
8. In December 2018, he told me that he had to go to Truckee in Nevada County, California, for a court hearing because his ex-girlfriend had obtained a domestic violence restraining order against him. Mr. Husain informed me that he had filed a civil lawsuit against this ex-girlfriend.

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9. I believe that Mr. Husain has filed this legal action against me to harass me, crush me financially (see our email correspondence attached) or in a misguided attempt to force our relationship into continuing – not for a legitimate legal dispute. The fact that he filed the lawsuit in Los Angeles only furthers these ends.

10. We both have lived in Northern California for the duration of the time we have known each other and spent very limited time together in Los Angeles.

11. During the time that we were dating, I lived in my apartment in San Francisco and Syed lived with his parents in Hillsborough, in San Mateo County, just south of San Francisco County.

12. While dating, we spent the majority of our time together in San Francisco.

13. While dating, we took a single weekend trip to Los Angeles. Prior to dating, in 2018 we took a weekend trip to Los Angeles, and on another occasion the same year, we drove from San Francisco to Santa Barbara for a weekend trip during which time we drove to Malibu for lunch, before returning to San Francisco.

14. The prospect of a lawsuit is daunting in and of itself and a lawsuit in Los Angeles would be an extreme hardship for me, financially and due to the fact that I live and work in San Francisco.

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 24, 2019, in San Francisco, California.

DocuSigned by:  
  
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ELINA E. TODOROV