



1 **I. Background**

2 Plaintiff NFC Collections LLC ("NFC") is the successor-in-  
3 interest to Newbridge Film Capital, LLC ("Newbridge"). (Compl. ¶  
4 1.) Newbridge was engaged in the business of financing motion  
5 picture productions. (Id. ¶ 8.) NFC asserts that in 2010, a  
6 producer of animated motion pictures, Crest Animation Holdings,  
7 Inc. ("Crest"), approached Newbridge to participate in the  
8 financing of a motion picture entitled "Norm of the North" (the  
9 "Film"). (Id.) Bayrakkale, LTD STI ("Bayrakkale"), a company  
10 organized under the laws of Turkey and a named Defendant in this  
11 action, agreed to fund the production of the Film in the amount of  
12 \$25,000,000, but required a \$6,250,000 deposit "to enable it to  
13 obtain financing for its funding commitment." (Id.) Newbridge  
14 agreed to make a loan to Crest in the amount of \$5,930,000, and  
15 Crest agreed to provide the remaining \$320,000 to make the required  
16 deposit. (Id.) Bayrakkale agreed to secure repayment of the  
17 deposit with an irrevocable letter of credit, naming Newbridge as  
18 the beneficiary. (Id.)

19 As of November 18, 2010, Newbridge, Crest, and Bayrakkale  
20 entered into an escrow agreement (the "Escrow Agreement") with a  
21 law firm (the "Escrow Agent"). (Id. ¶ 11.) The escrow agreement  
22 provided:

23 (a) the Escrow Agent would act as an escrow agent for  
24 Newbridge, Crest, and Bayrakkale; (b) Newbridge would deposit  
25 \$5,930,000 (the 'Newbridge Deposit') and Crest would deposit  
26 \$320,000 (the 'Crest Deposit') into an escrow account set up  
27 by the Escrow Agent; c) after receiving notice from the Escrow  
28 Agent that Newbridge and Crest had made their respective

1 deposits into the escrow account, Bayrakkale would cause a  
2 letter of credit in the amount of \$6,562,500 to be issued by a  
3 mutually agreed upon financial institution in favor of  
4 Newbridge as the beneficiary and to be delivered by the Escrow  
5 Agent...;and (d) upon satisfaction of certain conditions, the  
6 Escrow Agent would disburse the Newbridge and Crest Deposits  
7 to Bayrakkale and deliver the original Letter of Credit to  
8 Newbridge.

9 (Id.)

10 The parties agreed the Letter of Credit ("LOC") would be  
11 issued by Deutsche Bank,<sup>1</sup> and on January 12, 2011, "Deutsche Bank  
12 wrote a letter to Bayrakkale stating that its request to issue a  
13 letter of credit in favor of Newbridge was being processed and that  
14 it expected to issue the letter of credit the following week."

15 (Id. ¶ 12.) On January 26, 2011, Vincent Nuccio, Jr. ("Nuccio"), a  
16 shareholder of the law firm, the Escrow Agent, "went to the offices  
17 of Deutsche Bank in Dortmund, Germany,<sup>2</sup> where he received an  
18 original, executed letter confirming that the Letter of Credit was  
19 ready to be issued and would be ready for collection on January 27,  
20 2011." (Id. ¶ 13.) Later that day, Newbridge and Crest each wired  
21 their deposits to the escrow account, and Nuccio notified  
22 Bayrakkale that the deposits had been received. (Id. ¶ 14.) On  
23 January 27, 2011, Nuccio went back to the Deutsche Bank in  
24 Dortmund, Germany, and received the original, executed LOC and

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25  
26 <sup>1</sup> Defendant states that this Bank was DB Privat. Plaintiff  
27 does not state this in the Complaint. Plaintiff refers to DB AG and  
28 DP Private as one entity, "Deutsche Bank."

1 notified and provided copies to Newbridge, Crest, and Bayrakkale.  
2 (Id., Exh. 1.)

3 The LOC "provides that it shall be paid upon presentation by  
4 Newbridge, at any counter of Deutsche Bank worldwide...." (Id. ¶  
5 18; DB AG's Motion to Dismiss ("DB AG Motion"), Exh. 1.) On or  
6 about April 12, 2011, Newbridge presented the LOC and the required  
7 certificate to Deutsche Bank in New York, New York. (Compl. ¶ 18.)  
8 On or about May 26, 2011, Deutsche Bank rejected the draw on the  
9 LOC on the grounds "that the Letter of Credit was 'neither validly  
10 issued by Deutsche Bank Privat-und Geschäftskunden AG nor  
11 recognized in its books.'" (Id. ¶ 19.)

12 NFC brought this action against Defendants DB AG and DB Privat  
13 for failure to honor the letter of credit, negligence, negligent  
14 misrepresentation, and aiding and abetting fraud.<sup>3</sup> DB Privat is a  
15 wholly owned subsidiary of DB AG. (Id. ¶ 1.)

16 Defendant DB AG moves to dismiss on the grounds of forum non  
17 conveniens, NFC's lack of standing, and NFC's failure to assert any  
18 plausible claims against DB AG. DB Privat moves to dismiss on the  
19 grounds of forum non conveniens and lack of personal jurisdiction.

## 20 **II. Legal Standard**

21 Federal Rule of Civil Procedure 8(a)(2) requires a complaint  
22 to contain "a short and plain statement of the claim showing that  
23 the pleader is entitled to relief." The purpose of the rule is "to  
24 give the defendant fair notice of what the claim is and the grounds  
25 upon which it rests." Bell Atlantic Corp. v. Twombly, 550 U.S.

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27 <sup>3</sup> NFC also brought this action against Bayrakkale LTD STI  
28 ("Bayrakkale") for fraud and unjust enrichment. It appears  
Bayrakkale has not been served yet.

1 544, 555 (2007) (alteration and internal quotation marks omitted).  
2 Though a complaint "does not need detailed factual allegations, . .  
3 . a plaintiff's obligation to provide the grounds of his  
4 entitlement to relief requires more than labels and conclusions,  
5 and a formulaic recitation of the elements of a cause of action  
6 will not do." Id. (alteration, citations, and internal quotation  
7 marks omitted).

8 In considering a motion to dismiss, the court "begin[s] by  
9 identifying pleadings that, because they are no more than  
10 conclusions, are not entitled to the assumption of truth. While  
11 legal conclusions can provide the framework of a complaint, they  
12 must be supported by factual allegations. When there are well-  
13 pleaded factual allegations, a court should assume their veracity  
14 and then determine whether they plausibly give rise to an  
15 entitlement to relief." Ashcroft v. Iqbal, 556 U.S. 662, 679  
16 (2009).

17 "[O]nly a complaint that states a plausible claim for relief  
18 survives a motion to dismiss." Id. "Determining whether a  
19 complaint states a plausible claim for relief will . . . be a  
20 context-specific task that requires the reviewing court to draw  
21 upon its judicial experience and common sense." Id. "[A] well-  
22 pleaded complaint may proceed even if it strikes a savvy judge that  
23 actual proof of those facts is improbable, and that a recovery is  
24 very remote and unlikely." Twombly, 550 U.S. at 556 (internal  
25 quotation marks omitted).

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1 **III. Discussion**

2 **A. DB AG's Motion to Dismiss**

3 **1. Forum Non Conveniens**

4 "[A] plaintiff's choice of forum should rarely be disturbed."  
5 Piper Aircraft Co. V. Reyno, 454 U.S. 235, 241 (1981). When  
6 considering a motion to dismiss on the grounds of forum non  
7 conveniens, the court must examine: "(1) whether an adequate  
8 alternative forum exists, and (2) whether the balance of private  
9 and public interest factors favors dismissal." Lueck v. Sundstrand  
10 Corp., 236 F.3d 1137, 1142 (9th Cir. 2001). Moreover, "a  
11 plaintiff's choice of forum is entitled to greater deference when  
12 the plaintiff has chosen the home forum." Piper Aircraft, 454 U.S.  
13 at 255.

14 Generally, an adequate alternative forum exists when "the  
15 Defendant is 'amenable to process' in the other jurisdiction."  
16 Piper Aircraft, 454 U.S. at 255 n.22 (quoting Gulf Oil Corp. v.  
17 Gilbert, 330 U.S. 501, 506-07 (1947)). Although this requirement  
18 is easily satisfied, "[i]n rare circumstances...where the remedy  
19 offered by the other forum is clearly unsatisfactory," the other  
20 forum may not be an adequate alternative. Id. Dismissal would not  
21 be appropriate if, for example, the other forum does not permit  
22 litigation of the subject matter in dispute. Id.

23 Even when an adequate alternative forum exists, the court will  
24 not "disturb the plaintiff's original choice of forum unless the  
25 private interest and the public interest factors strongly favor  
26 dismissal." Tuazon v. R.J. Reynolds Tobacco Co., 433 F.3d 1163,  
27 1181 (9th Cir. 2006) (internal quotation marks omitted).  
28 Defendants must make "a clear showing of facts which establish such  
oppression and vexation of a defendant as to be out of proportion

1 to plaintiff's convenience." Boston Telecomm. Group, Inc. v. Wood,  
2 588 F.3d 1201, 1206 (9th Cir. 2009).

3 **i. Adequate Alternative Forum**

4 **a. Service of Process**

5 DB AG asserts Germany is an adequate alternative forum because  
6 DB AG is "amenable to process" in Germany. (DB AG Mot. at 5.) NFC  
7 concedes DB AG is amenable to process in Germany but argues Germany  
8 is not an adequate forum because DB AG did not prove Bayrakkale to  
9 be amenable to process in Germany. (Opp. to DB AG's Mot. to Dismiss  
10 ("Opp. to DB AG") 10-11.) DB AG argues Bayrakkale is not a party  
11 to any of the claims against DB AG and has not been served in this  
12 matter, making the argument irrelevant to DB AG's motion to  
13 dismiss. (DB AG's Reply to NFC's Opposition ("DB AG Reply") 4.)

14 The court has insufficient information to determine whether  
15 Bayrakkale is amenable to process in Germany. However, because  
16 Bayrakkale has yet to be served in this action, the court finds it  
17 is not dispositive.

18 **b. Statute of Limitations**

19 NFC asserts that Germany is not an adequate forum because its  
20 claims may be time-barred in Germany. Under California law, a one  
21 year statute of limitations applies. NFC claims a German court may  
22 not toll the statute of limitations thus barring the claims. DB AG  
23 contends that NFC's tort claims are governed by German law, under  
24 which the statute of limitations is three years. To determine  
25 whether Germany is an adequate alternative forum in regards to the  
26 statute of limitations, the court must first determine which law  
27 applies.

28 **1. Choice of Law**

1           In determining which body of law or rule applies to a standby  
2 letter of credit, three major sources may apply: (1) International  
3 Chamber of Commerce, Uniform Customs and Practices for Documentary  
4 Credits, Publication Numbers 500 and 600 ("U.C.P."); (2) the  
5 Uniform Commercial Code ("U.C.C."); (3) and the International  
6 Standby Practices ("ISP 98"). 7 Bus. & Com. Litig. Fed. Cts. §82:8  
7 (3d. Ed). In addition, "the common law rules of contract  
8 construction, where they are not inconsistent with the U.C.P.,  
9 U.C.C., or I.S.P., may be used to examine the terms of a letter of  
10 credit, to determine whether any of the terms are ambiguous, and to  
11 resolve any perceived ambiguity." Id.

12           ISP98 does not have a default choice of law rule, as it  
13 represents a commercial agreement on the "terms and conditions of a  
14 contractual relationship rather than a body of law." Jeffrey S.  
15 Wood, Drafting Letters of Credit: Basic Issues Under Article 5 of  
16 the Uniform Commercial Code, UCP 600, and ISP98, 125 Banking L.J.  
17 103, 110 (February 2008). ISP98 "attempts to shield an issuer from  
18 economic harm if the credit is structured to be subject to, or is  
19 determined by a court to be subject to, the laws of a jurisdiction  
20 other than the jurisdiction in which the issuer is located. Id.  
21 Under ISP98 Rule 1.08(d), "[a]n issuer is not responsible  
22 for...observance of law or practice other than that chosen in the  
23 standby or applicable at the place of issuance." Id.

24           "In diversity cases, federal courts must apply the conflict-  
25 of-law principles of the forum state." S.A. Empresa De Viacao  
26 Aerea Rio Grandense v. Boeing Co., 641 F.2d 746, 749 (9th Cir.  
27 1981). This is a diversity case in the Central District of  
28 California; therefore, the court applies California's principles.



1           When an agreement provides a choice of law provision,  
2 California courts apply "the law of the state chosen by the parties  
3 . . . unless . . . the chosen state has no substantial relationship  
4 to the parties or the transaction and there is no other reasonable  
5 basis for the parties' choice." Nedlloyd Lines B.V. v. Superior  
6 Court, 3 Cal. 4th 459, 465 (1992); See also Hoffman v. Citibank  
7 (South Dakota) N.A., 546 F.3d 1078, 1082 (9th Cir. 2008). A  
8 substantial relationship exists, for example, "when one of the  
9 parties is domiciled in the chosen state." Nedlloyd, 3 Cal. 4th at  
10 467 (internal quotations omitted). If there is a substantial  
11 relationship or reasonable basis for the parties' choice, the court  
12 must "determine whether the chosen state's law is contrary to a  
13 fundamental policy of California." Id. at 466; See also Bridge  
14 Fund Capital Corp. v. Fastbucks Franchise Corp., 622 F.3d 996, 1002  
15 (9th Cir. 2010). If there is no conflict, "the court shall enforce  
16 the parties' choice of law." Id. If, however, a conflict exists,  
17 "the court must then determine whether California law has a  
18 materially greater interest than the chosen state in the  
19 determination of the particular issue." Id. (internal quotations  
20 omitted); See also Hoffman, 546 F.3d at 1082.

21           These "rules apply regardless of whether the dispute arises  
22 out of contract or tort." S.A. Empresa, 641 F.2d at 749. A choice  
23 of law provision "which provides that a specified body of law  
24 'governs' the 'agreement' between the parties, encompasses all  
25 causes of action arising from or related to that agreement,  
26 regardless of how they are characterized, including tortious  
27 breaches of duties emanating from the agreement or the legal  
28 relationships it creates." Nedlloyd, 3 Cal. 4th at 470.



1 German law, a statute of limitations is tolled by a foreign action  
2 only if the foreign action was brought in a court that has  
3 international jurisdiction, which requires the foreign forum to  
4 have a sufficient connection to the case." (Opp. to DB AG at 11.)  
5 NFC argues it may be "foreclosed from any remedy. . .if a German  
6 court found this court lacks a sufficient connection to the case."  
7 (Id.) The uncertainty regarding the statute of limitations weighs  
8 against Germany's adequacy as a forum.

9 **ii. Private Interest Factors**

10 In evaluating private interest, the court considers seven  
11 factors:

12 (1) the residence of the parties and witnesses, (2) the  
13 forum's convenience to the litigants, (3) access to physical  
14 evidence and other sources of proof, (4) whether unwilling  
15 witnesses can be compelled to testify, (5) the cost of  
16 bringing witnesses to trial, (6) the enforceability of the  
17 judgment, (7) any practical problems or other factors that  
18 contribute to an efficient resolution.

19 Boston Telecomm., 588 F.3d at 1206.

20 DB AG contends "the vast majority of evidence and witnesses  
21 are in Germany where the [LOC] was allegedly negotiated and issued  
22 and where the two individuals . . .who purportedly signed the [LOC]  
23 on behalf of DB Privat were allegedly located." (DB AG Motion at  
24 6.) DB AG also argues any judgment obtained against DB AG is  
25 enforceable in Germany.

26 \_\_\_\_\_  
27 <sup>5</sup>(...continued)  
28 tolling rules. DB AG only argued that German law governed the  
statute of limitations.

1 NFC concedes "primary residences of the parties balance out"  
2 but points out that Newbridge and Crest's management's staff, who  
3 are primary witnesses, are located in California. (Opp. to DB AG at  
4 11-12.) NFC also argues that while Germany may be more convenient  
5 for DB AG, DB AG has been a party to 50 lawsuits in California, and  
6 that unlike NFC which has no ties to Germany, DB AG is well-  
7 equipped to handle litigation in California. (Id.) NFC also  
8 contends Germany does not allow pre-trial discovery, in particular  
9 deposition testimony, forcing NFC's witnesses to travel to Germany.  
10 (Id. at 13, n.3.) NFC argues DB AG's cost of bringing witnesses to  
11 California is not minimally relevant because they can be deposed at  
12 minimal cost in Germany and are not required to be present in  
13 California. (Id. at 14.)

14 The court finds private interest factors do not weigh in favor  
15 of dismissal. While under United States' rules any and all of DB  
16 AG's witnesses may be deposed in Germany, under Germany's pre-trial  
17 discovery, NFC's witnesses would have to travel to Germany to be  
18 heard. The cost of traveling to Germany for a trial is  
19 substantially greater than the cost of deposing witnesses.  
20 Moreover, DB AG has a significant presence in California, while NFC  
21 has no presence at all in Germany. On balance, this forum is more  
22 convenient to the litigants.

### 23 **iii. Public Interest Factors**

24 In evaluating public interest, five factors are considered:  
25 "(1) the local interest in the lawsuit, (2) the court's familiarity  
26 with the governing law, (3) the burden on local courts and juries,  
27 (4) congestion in the court, and (5) the costs of resolving a  
28 dispute unrelated to a particular forum." Boston Telecomm., 588

1 F.3d at 1206.

2 DB AG argues public interest factors also weigh in favor of  
3 dismissal, particularly because Germany has a local interest in  
4 regulating its banks and regulating conduct that occurred in its  
5 jurisdiction. (DB AG Reply at 8.) DB AG argues that NFC "has not  
6 alleged a single transaction or action that took place in  
7 California." (DB AG Motion at 6.) DB AG also argues NFC's claims  
8 are subject to German law, since the transaction occurred in  
9 Germany.

10 NFC responds that California has a local interest in this  
11 lawsuit because the transaction involved a \$25 million California  
12 motion picture production in which a California resident was  
13 essentially put out of business, and "California has a strong  
14 interest in maintaining a stable and successful film business in  
15 addition to providing an effective forum for its residents." (Opp.  
16 to DB AG at 15.) NFC also argues the court is more familiar with  
17 California law, which governs the LOC, and thus there would not be  
18 an unfair burden on the court because California has a substantial  
19 connection to the case. (Id.)

20 Although the court agrees that Germany has a significant local  
21 interest in this action, California also has a significant interest  
22 given that California law governs the LOC. DB AG's argument that  
23 the entire transaction took place in Germany is not persuasive.  
24 Although the LOC was issued in Germany, negotiations took place  
25 from California to create the terms of the LOC and the effects of  
26 the LOC were felt most in California.

27 For these reasons the court declines to disturb plaintiff's  
28 original choice of forum. Neither private nor public factors weigh

1 in favor of dismissal on the grounds of forum non conveniens.

2 **2. Standing**

3 DB AG argues NFC, as a successor-in-interest, lacks standing  
4 to assert its claims because under the International Standby  
5 Practices ("ISP 98") and California Commercial Code 5114(c), an  
6 assignment of a letter of credit confers no rights unless the  
7 issuer consents to the assignment. (DB AG Motion 8-9.) NFC argues  
8 a successor-in-interest is not the same as an assignee. The court  
9 agrees.

10 In Export-Import Bank of the U.S. v. United Cal. Discount  
11 Corp., 738 F.Supp.2d 1047 (C.D. Cal. 2010), the defendant argued  
12 the plaintiff lacked standing because it was not a party to the  
13 Letters of Credit at issue or any other agreement. The court held  
14 that the plaintiff had standing because it was assigned "the  
15 complete bundle of rights," including the rights to a cause of  
16 action against defendant. Id.

17 The court finds that as a successor-in-interest NFC is not  
18 simply an assignee and was similarly assigned the right to a cause  
19 of action against DB AG. The court finds that NFC has standing to  
20 bring this action.

21 **3. Failure to State a Claim**

22 DB AG asserts that NFC has failed to plead its four causes of  
23 action sufficiently. DB AG argues primarily that although the  
24 complaint refers to DB AG and DB Privat collectively as "Deutsche  
25 Bank," the conduct underlying the causes of action is attributable  
26 only to DB Privat. As a consequence, to find DB AG liable for the  
27 conduct of DB Privat, the court must consider the relationship  
28 between the two entities.

1 The Complaint asserts two theories for finding that the  
2 relationship is such that DB AG may be liable for the acts of DB  
3 Privat: DB Privat is "an alter ego" of DB AG, (Compl. ¶ 3), or DB  
4 Privat is "the actual or ostensible agent" of DB AG, (id. ¶ 5).  
5 Before considering the four causes of action, the court addresses  
6 the allegations of these two relationships.

7 **i. Liability of DB AG**

8 **a. Alter ego**

9 The Complaint alleges that "DB Privat is a wholly owned  
10 subsidiary and an alter ego of DB [AG]. In particular, DB [AG]  
11 controls the management of DB Privat; appoints members to, and has  
12 common members on, DB Privat's supervisory board; takes the profits  
13 and is obligated to absorb the losses of DB Privat; and shares  
14 certain assets with DB Privat." (Compl. ¶ 3.) In response, DB AG  
15 asserts that NFC's "conclusory statement that DB AG is DB Privat's  
16 alter ego does not satisfy the requirement that claims be  
17 plausible." (DB AG's Motion 8:15-16.) The court disagrees.

18 "Like other shareholders, a parent company is presumed to have  
19 an existence separate from its subsidiaries. Accordingly, the mere  
20 fact that it owns the stock of the subsidiary will not suffice to  
21 prove that the two entities are alter egos of one another; rather,  
22 the evidence must show that the wholly-owned subsidiary is merely a  
23 conduit for, or is financially dependent on, the parent  
24 corporation." Nielson v. Union Bank of Cal., N.A., 290 F. Supp. 2d  
25 1101, 1116 (C.D. Cal. 2003).

26 To "satisfy the alter ego exception to the general rule that a  
27 subsidiary and the parent are separate entities, the plaintiff must  
28 make out a prima facie case (1) that there is such unity of

1 interest and ownership that the separate personalities of the two  
2 entities no longer exist and (2) that failure to disregard their  
3 separate identities would result in fraud or injustice." Doe v.  
4 Unocal Corp., 248 F.3d 915, 926 (9th Cir. 2001) (alterations and  
5 internal quotations marks omitted).

#### 6 **1. Unity of interest and ownership**

7 The first alter ego component is met if the parent company is  
8 shown to control the subsidiary "to such a degree as to render the  
9 latter the mere instrumentality of the former." Unocal Corp., 248  
10 F.3d at 926 (quoting Calvert v. Huckins, 875 F. Supp. 674, 678  
11 (E.D. Cal. 1995)). This relationship is established, for example,  
12 where "the parent dictates every facet of the subsidiary's  
13 business—from broad policy decisions to routine matters of day-to-  
14 day operation." Id. (alterations and internal quotation marks  
15 omitted). The Ninth Circuit has explained, however, that "a parent  
16 corporation may be directly involved in the activities of its  
17 subsidiaries without incurring liability so long as that  
18 involvement is consistent with the parent's investor status."  
19 Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd., 328  
20 F.3d 1122, 1135 (9th Cir. 2003).

21 "Ownership is a prerequisite to alter ego liability." S.E.C.  
22 v. Hickey, 322 F.3d 1123, 1128 (9th Cir. 2003). "Among the factors  
23 to be considered in applying the [alter ego] doctrine are  
24 commingling of funds and other assets of the two entities, the  
25 holding out by one entity that it is liable for the debts of the  
26 other, identical equitable ownership in the two entities, use of  
27 the same offices and employees, and use of one as a mere shell or  
28 conduit for the affairs of the other." Wady v. Provident Life and



1 Accident Ins. Co. of Am., 216 F. Supp. 2d 1060, 1066 (C.D. Cal.  
2 2002); see also Associated Vendors, Inc. v. Oakland Meat Co., 26  
3 Cal. Rptr. 806, 813-15 (Ct. App. 1962) (listing factors considered  
4 in California).

5 Here, NFC points to a "Control and Profit-Transfer Agreement"  
6 between DB AG and DB Privat. Section 1.1 of that agreement provides  
7 as follows:

8 The Parent Company shall . . . be entitled to issue  
9 instructions to the Directors of the Subsidiary Company  
10 as regards management of the company. The Subsidiary  
11 Company undertakes to follow instructions issued by the  
12 Parent Company. Management and representation of the  
13 Subsidiary Company shall continue to be the  
14 responsibility of the Directors of this company. The  
15 Parent Company shall take note of the existing sole  
16 responsibility of the Directors of the Subsidiary Company  
17 . . . when issuing instructions.

18 (Gans Decl. Exh. G.) Sections 2 and 3 of the agreement provide,  
19 respectively, that "[t]he Subsidiary Company undertakes to pay all  
20 of its profits to the Parent Company for the term of this  
21 agreement" and that "the Parent Company shall be obliged to absorb  
22 the Subsidiary Company's losses . . . ." (Id.) NFC also points to  
23 Hermann-Joseph Lamberti, a member of DB AG's board who "also was  
24 chairman of every committee of the supervisory board of DB Privat,  
25 including (i) the executive committee, (ii) the auditing committee,  
26 and (iii) the committee for credit and market risks." (Opp. to DB  
27 Privat 5:2-6.) In addition, NFC asserts that DB AG and DB Privat  
28 share certain assets, including a website, an email network, and

1 litigation counsel. (Id. at 5:9-10.) NFC concludes that it "has  
2 alleged that DB AG acts as far more than an investor, i.e. it  
3 controls management, takes all profits, absorbs all losses, has  
4 common directors and shares assets, all specific attributes of  
5 alter egos." (Opp. to DB AG 23:27-24:1.)

6 The court agrees. For the purposes of a 12(b)(6) motion, NFC  
7 has sufficiently pleaded factual allegations that DB AG is more  
8 than a mere investor in DB Privat. NFC has presented facts showing  
9 that DB AG has discretion to control the operations of DB Privat,  
10 takes the profits and is liable for the losses of DB Privat, shares  
11 assets with DB Privat, and has common board members with DB Privat.

## 12 **2. Fraud or injustice**

13 The second component is satisfied either by "evidence of any  
14 fraudulent intent in forming the corporation" or if "substantial  
15 injustice" will result from respecting the corporate separateness.  
16 Seymour v. Hull & Moreland Eng'g, 605 F.2d 1105, 1112-13 (9th Cir.  
17 1979). The inability to collect a judgment "does not, by itself,  
18 constitute an inequitable result" amounting to substantial  
19 injustice. Id. at 1113.

20 NFC asserts that a failure to disregard the separate  
21 identities of DB AG and DB Privat would allow DB AG to shield  
22 itself from the consequences of DB Privat's conduct. (Opp. to DB AG  
23 24:8-10.) NFC concludes that "failing to impose alter ego liability  
24 on DB AG would inequitably enable it to limit its liability for  
25 illegal acts by performing them through its controlled division, DB  
26 Privat." (Id. at 24:13-15.) The court finds that NFC has  
27 sufficiently pleaded injustice.

28 In sum, the court finds that NFC has pleaded a prima facie

1 case that DB AG and DB Privat are alter egos.

2 **b. Ostensible agency**

3 The Complaint also alleges that DB AG and DB Privat acted as  
4 the ostensible agents of each other. (Compl. ¶ 5.) "In the case of  
5 agency, 'the question is not whether there exists justification to  
6 disregard the subsidiary's corporate identity, the point of the  
7 alter ego analysis, but instead whether the degree of control  
8 exerted over the subsidiary by the parent is enough to reasonably  
9 deem the subsidiary an agent of the parent under traditional agency  
10 principles." Fru-Con Const. Corp. v. Sacramento Municipal Utility  
11 Dist., No. CIV.S-050583 LKK/GGH, 2007 WL 238481, at \*3 (E.D. Cal.  
12 Aug. 17, 2007) (quoting Sonora Diamond Corp. v. Super. Ct., 83 Cal.  
13 App. 4th 523, 541 (2000)).

14 In California, "[a]n agency is ostensible when the principal  
15 intentionally, or by want of ordinary care, causes a third person  
16 to believe another to be his agent who is not really employed by  
17 him." Cal. Civ. Code § 2300. "Ostensible authority is such as a  
18 principal, intentionally or by want of ordinary care, causes or  
19 allows a third person to believe the agent to possess." Id. § 2317;  
20 see also Restatement (Third) of Agency § 2.03 (2006) ("Apparent  
21 authority is the power held by an agent or other actor to affect a  
22 principal's legal relations with third parties when a third party  
23 reasonably believes the actor has authority to act on behalf of the  
24 principal and that belief is traceable to the principal's  
25 manifestations.").

26 An agent acting with ostensible or apparent authority may bind  
27 a disclosed principal to contracts with third parties. Cal. Civ.  
28 Code § 2330 ("An agent represents his principal for all purposes

1 within the scope of his actual or ostensible authority, and all the  
2 rights and liabilities which would accrue to the agent from the  
3 transaction within such limit, if they had been entered into on his  
4 own account, accrue to the principal."); see also Restatement  
5 (Third) of Agency § 6.01 ("When an agent acting with actual or  
6 apparent authority makes a contract on behalf of a disclosed  
7 principal, (1) the principal and the third party are parties to the  
8 contract; and (2) the agent is not a party to the contract unless  
9 the agent and third party agree otherwise.").

10 In other words, if DB Privat was the ostensible agent of DB  
11 AG, as the Complaint alleges, then the obligations that accrued to  
12 DB Privat under the LOC may have also accrued to DB AG.

13 The court finds that Newbridge had reason to believe DB Privat  
14 was an ostensible agent of DB AG. First, the LOC expressly provided  
15 that Newbridge could present its documents to "any counter[] of  
16 Deutsche Bank AG worldwide." (Nuccio Decl. Exh. J.) Second, the  
17 words "Deutsche Bank" appear in the top right corner of each page  
18 of the LOC accompanied by the logo that appears on DB AG's website  
19 and securities registration document. (Compare id., with Gans Decl.  
20 Exhs. A (showing a copy of the webpage titled "Deutsche Bank -  
21 Location Finder"), J (showing a copy of DB AG's registration  
22 document).) The name and logo appear directly above and in larger  
23 font than DB Privat's own name and address. Third, the business  
24 cards of Ulas Erkan and Mehmet Girgin, the DB Privat employees who  
25 met with Nuccio, bore the same logo. (Nuccio Decl. Exh. H.) Taken  
26 as true, these facts state a claim that Newbridge's belief was  
27 reasonable and that DB Privat acted with ostensible authority.

28 **ii. Failure to honor Letter of Credit**

1 California Commercial Code § 5108(a) provides that "an issuer  
2 [of a letter of credit] shall honor a presentation that . . .  
3 appears on its face strictly to comply with the terms and  
4 conditions of the letter of credit. . . . [A]n issuer shall  
5 dishonor a presentation that does not appear so to comply." See  
6 also I.S.P. Rule 4.01(a) ("[d]emands for honour of a standby  
7 [letter of credit] must comply with the terms and conditions of the  
8 standby"). Under the strict compliance standard, followed by  
9 California, the documents presented by the beneficiary to a letter  
10 of credit must comply word for word with the specifications set  
11 forth in the letter of credit. 7 Bus. & Com. Litig. Fed. Cts. §  
12 82:29 (3d ed.). The strict compliance standard is justified by the  
13 ministerial nature of the issuer's role in the transaction; to  
14 require the issuer "to determine the materiality of discrepancies  
15 would be inconsistent with that [ministerial] function." Id. Both  
16 NFC and DB AG agree that Newbridge was subject to the strict  
17 compliance standard when it presented its documents to the DB AG  
18 counter in New York. (See Opp. to DB AG 18:2-3; DB AG Motion 12:2-  
19 5.)

20 The LOC issued by DB Privat describes the types of documents  
21 that may be presented and provides where the documents may be  
22 presented: "All documents to be presented to us shall be sent to us  
23 in person or by an internationally recognized courier service at  
24 the following address or at any of our counters or any counters of  
25 Deutsche Bank AG worldwide . . . ." (Nuccio Decl. Exh. J (emphasis  
26 added).) The LOC's language, written and issued by DB Privat,  
27 indicates that presentation to either DB Privat (i.e., "us") or DB  
28 AG is acceptable.

1 DB AG, however, argues that it "possessed no obligation in  
2 connection with the Letter of Credit. Simply put, even if the  
3 Letter of Credit had been legitimate (which is disputed), DB AG was  
4 not required to pay upon a presentation to it or to DB Privat. Only  
5 DB Privat would possibly have the duties and liabilities of an  
6 'issuer' under the purported Letter of Credit" since the LOC  
7 indicates that DB Privat was the issuer.<sup>6</sup> (DB AG Motion 12:7-13.)

8 The court disagrees. The court has already found that the  
9 Complaint sufficiently alleges that DB Privat acted as either the  
10 alter ego or the ostensible agent of DB AG. Should NFC ultimately  
11 prove either of these relationships, the obligations belonging to  
12 DB Privat, as issuer of the LOC, would also belong to DB AG.  
13 Accordingly, if the LOC was validly issued, then NFC has made a  
14 plausible claim against DB AG for failure to honor the LOC.

#### 15 iv. Negligence

16 The Complaint asserts that "Deutsche Bank had duties to the  
17 public, inter alia: (a) not to employ people suspected of criminal  
18 activities in position in which they can cause harm to third  
19 parties; and (b) to ensure that their agents and employees did not  
20 use Deutsche Bank to commit, or aid and abet, fraud or other  
21 wrongful acts." (Compl. ¶ 46.)

22 It further asserts that "Deutsche Bank negligently breached  
23 its duties by, inter alia: (a) continuing to employ Girgin and  
24

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25 <sup>6</sup> The face of the LOC indicates that DB Privat was the issuer.  
26 The name and address of DB Privat appear in the top right corner of  
27 each page of the LOC and at the bottom of the second page  
28 immediately after the text of the LOC ends and immediately before  
the signatures of Girgin and Erkan. In addition, the name and  
address are stamped onto the very bottom of the second page.  
(Nuccio Decl. Exh. J.)

1 Erkan in positions in which they dealt with the public and could  
2 cause harm to third parties; (b) failing to monitor or supervise  
3 Girgin's and Erkan's activities adequately; and (c) failing to  
4 restrict or control Girgin's or Erkan's activities." (Compl. ¶ 47.)

5 Finally, it asserts that "[a]s an actual and proximate result  
6 of the negligence of Deutsche Bank, NFC is entitled to recover  
7 damages in an amount to be proved at trial together with interest  
8 thereon." (Compl. ¶ 48.)

9 DB AG argues that NFC's allegations fail to state a plausible  
10 claim for negligence for three reasons: (1) NFC does not allege  
11 that DB AG owed NFC "any specific duty," (DB AG Motion 17:12-13);  
12 (2) NFC does not allege that "Girgin and Erkan engaged in wrongful  
13 activity or that they did so on DB AG's watch," (id. at 17:16-17);  
14 and (3) NFC does not allege that "it suffered any damage as a  
15 result of DB AG's alleged negligence," (id. at 17:19-20).

16 The court has already found that NFC has sufficiently pled  
17 alter ego and ostensible agency. Thus, DB AG's first two arguments  
18 are unpersuasive. The third argument asserts that being "entitled  
19 to recover damages" does not equate to an allegation that NFC was  
20 damaged. The Complaint, however, alleges that DB Privat induced  
21 Newbridge to complete the transaction with Bayrakkale, resulting in  
22 a loss to Newbridge of \$5.93 million. (Compl. ¶¶ 8, 12, 13, 15, 36.)  
23 Accordingly, the court finds that NFC has sufficiently pled a cause  
24 of action for negligence.

#### 25 **V. Negligent Misrepresentation**

26 Pointing to Federal Rule of Civil Procedure 9(b), DB AG argues  
27 that NFC must state with particularity the circumstances  
28 constituting fraud, a higher standard than plausibility. (DB AG

1 Motion at 13.) NFC argues negligent misrepresentation is not  
2 subject to a heightened pleading standard, but that under any  
3 standard, "it has satisfied its pleading burden." (Opp. to DB AG  
4 at 20.)

5 "The Ninth Circuit has not yet decided whether Rule 9(b)'s  
6 heightened pleading standard applies to a claim for negligent  
7 misrepresentation, but most district courts in California hold that  
8 it does." Villegas v. Wells Fargo Bank N.A., 2012 WL 4097747  
9 (N.D. Cal September 12, 2012). Here, the court need not take a  
10 position because, regardless, NFC has satisfied the particularity  
11 requirement.

12 DB AG argues that NFC fails to state a claim for negligent  
13 misrepresentation on three grounds. First, DB AG claims that NFC  
14 does not meet the particularity requirement because the  
15 misrepresentations NFC alleges were not made by DB AG. (DB AG  
16 Motion at 14.) DB AG points to the LOC's letterhead and claims it  
17 was issued by only DP Privat. (Id.) NFC, however, claims the LOC  
18 and other communications were made by both DB AG and DB Privat.  
19 (Opp. to DB AG at 20.) NFC contends the LOC is on DB AG's  
20 letterhead and DB AG is the agent of DB Privat. (Id.)

21 The court is not persuaded DB AG's argument. As stated  
22 above, the court finds NFC sufficiently pleaded that DB Privat is  
23 DB AG's ostensible agent. If this is later proved, DB AG is bound  
24 by the actions of its agent. Therefore, if NFC has sufficiently  
25 pleaded negligent misrepresentation against DB Privat, then NFC  
26 has stated a claim against DB AG.

27 In pleading negligent misrepresentation NFC states  
28



1 "Deutsche Bank made representations that: (1) the Letter of Credit  
2 was ready to be issued; (2) a valid letter of credit was issued  
3 and; (3) Girgin and Erkan had authority to act in connection with  
4 the Letter of Credit, including the authority to execute the  
5 Letter of Credit." (Compl. ¶ 37.) The court finds that NFC  
6 points to and provides documents which it alleges to contain  
7 misrepresentations by DB Privat and their employees, Girgin and  
8 Erkan.

9 Second, DB AG argues that the alleged communications prior to  
10 the LOC could not have been "reasonably relied upon as they were  
11 merely precatory." (DB AG Mot. at 14.) NFC contends it reasonably  
12 relied on the communications prior to the LOC because those  
13 communications "induced Newbridge to wire \$5,930,000 to the escrow  
14 account." (Opp. to DB AG at 20.)

15 The court finds NFC pleaded with particularity that Newbridge  
16 relied on the communications prior to the LOC. NFC states, "[i]f  
17 Newbridge had known of the falsity of the foregoing  
18 representations, it would not have continued to conduct business  
19 with Bayrakkale and would not have made the Newbridge Deposit."  
20 (Compl. ¶ 37.) NFC pleads that it relied on each communication as  
21 it went forward in making the Newbridge deposit.

22 Third, DB AG argues that NFC may not twist a contractual  
23 claim into a tort claim. (DB AG Mot. at 15.) NFC contends it is  
24 not twisting a contractual claim into a tort claim because its  
25 tort claims are "premised on the absence of a contract." (Opp. to  
26 DB AG at 21.) Thus, if the court later finds there is no valid  
27 contract, NFC will only have tort claims. The court agrees that  
28 NFC pleaded its contract and tort claims in the alternative.

1           Accordingly, the court finds NFC has sufficiently pleaded,  
2 with particularity, a claim for negligent misrepresentation.

3                           **vi. Aiding and abetting fraud**

4           As with DB AG's other arguments, this one depends on the  
5 assertion that DB AG and DB Privat are separate entities. The  
6 Ninth Circuit has observed that "[a]iding and abetting liability  
7 under California law, as applied by the California state courts,  
8 requires a finding of actual knowledge . . . ." In re First  
9 Alliance Mortg. Co., 471 F.3d 977, 993 (9th Cir. 2006). The  
10 Complaint alleges that "Deutsche Bank knew that Bayrakkale was  
11 committing a fraud . . . ." (Compl. ¶ 41.) DB AG challenges the  
12 sufficiency of the Complaint, asserting that it failed "to provide  
13 an explanation of how DB AG actually knew of defendant  
14 Bayrakkale's alleged fraud." (DB AG Motion 16:4-5.)

15           As discussed, the Complaint alleges that Girgin and Erkan, as  
16 employees of DB Privat, issued the LOC and, in addition, that DB  
17 Privat acted as the alter ego or ostensible agent of DB AG. The  
18 court therefore finds that NFC has sufficiently pled a cause of  
19 action for aiding and abetting Bayrakkale's fraud.

20           Accordingly, the court DENIES DB AG's Motion to Dismiss.

21                           **B. DB Privat's Motion to Dismiss**

22                                   **1. Forum Non Conveniens**

23           DB Privat, like DB AG, argues that this case should be  
24 dismissed on the ground of forum non conveniens and invokes  
25 arguments similar to those in DB AG's Motion. To satisfy the first  
26 prong, DB Privat notes that it, as a German corporation, "is  
27 indisputably subject to service of process in Germany." (DB Privat  
28 Reply 17:15-16.) With regard to the private factors, DB Privat

1 asserts that "the vast majority of evidence and witnesses are in  
2 Germany" and emphasizes that the meetings between Nuccio and  
3 Girgin and Erkan occurred in Germany. (Id. at 18:1-7.) In  
4 considering the public factors, DB Privat argues that "the  
5 interests of Germany greatly outweigh those of a court sitting in  
6 California," (id. at 18:22-23), that German law should apply to  
7 the majority of legal issues, (id. at 19:1-2), and that this case  
8 would unnecessarily burden the court, (id. at 19:9-10).

9 For the reasons discussed above, the court finds that DB  
10 Privat, like DB AG, has not met its burden. Accordingly, the court  
11 DENIES DB Privat's Motion to Dismiss on the ground of forum non  
12 conveniens.

## 13 **2. Personal Jurisdiction**

### 14 **i. Specific jurisdiction**

15 A nonresident defendant has sufficient minimum contacts with  
16 a forum to be subject to its specific jurisdiction when the  
17 following criteria are met:

18 (1) The non-resident defendant must purposefully direct  
19 his activities or consummate some transaction with the  
20 forum or resident thereof; or perform some act by which  
21 he purposefully avails himself of the privilege of  
22 conducting activities in the forum, thereby invoking the  
23 benefits and protections of its laws;

24 (2) the claim must be one which arises out of or relates  
25 to the defendant's forum-related activities; and

26 (3) the exercise of jurisdiction must comport with fair  
27 play and substantial justice, i.e. it must be  
28 reasonable.

1 Wash. Shoe Co. v. A-Z Sporting Goods Inc., 704 F.3d 668, 672 (9th  
2 Cir. 2012).

3 **a. Purposeful direction**

4 Where intentional torts are alleged, the purposeful direction  
5 component may be satisfied by the "effects" test established in  
6 Calder v. Jones, 465 U.S. 783 (1984). Taking the Complaint's  
7 factual allegations as true, the court finds that DB Privat is  
8 subject to the court's specific jurisdiction under the test.

9 In Calder, the Court concluded that "[a]n individual injured  
10 in California need not go to Florida to seek redress from persons  
11 who, though remaining in Florida, knowingly cause the injury in  
12 California." Id. at 790. The Court found that the defendant could  
13 "reasonably anticipate being haled into court" in California  
14 because "their intentional, and allegedly tortious, actions were  
15 expressly aimed at California," where they knew that "the brunt of  
16 the injury would be felt" and "would have a potentially  
17 devastating impact." Id. at 789-90.

18 The Ninth Circuit has refashioned Calder into a three-part  
19 test: (1) whether the defendant committed an intentional act; (2)  
20 whether the act was "expressly aimed" at the forum state; and (3)  
21 whether the act caused harm that the defendant knew was likely to  
22 be suffered in the forum state. Wash. Shoe Co., 704 F.3d at 673.

23 DB Privat argues that NFC "has not alleged any facts to  
24 satisfy either of the first two prongs of the Calder 'effects'  
25 test, i.e. that DB Privat committed an intentional act expressly  
26 aimed at California." (Id. at 8:17-19.) The court disagrees.

27 The intentional acts at issue here are DB Privat's  
28 representations that it was going to issue a letter of credit and

1 its issuance of the LOC. The Complaint alleges that on January 12,  
2 2011, DB Privat "wrote a letter to Bayrakkale stating that its  
3 request . . . was being processed and that it expected to issue  
4 the letter of credit the following week." (Compl. ¶ 12.)  
5 Bayrakkale then forwarded the letter to Newbridge and the Escrow  
6 Agent. (Id.) The Complaint next alleges that on January 26, Nuccio  
7 "went to the offices of Deutsche Bank in Dortmund, Germany, where  
8 he received an original, executed letter confirming that the  
9 Letter of Credit was ready to be issued and would be ready for  
10 collection" the next day. (Id. ¶ 13.) Nuccio then notified  
11 Newbridge and Bayrakkale. (Id.) The next day, Nuccio allegedly  
12 returned to the Dortmund office, received the LOC, and again  
13 notified Newbridge and Bayrakkale. (Id. ¶ 15.)

14 Nuccio's declaration supports this account. He describes  
15 going to the Dortmund office on January 26 with representatives  
16 from Bayrakkale to meet Erkan and Girgin. (Nuccio Decl. ¶ 12.) He  
17 describes forwarding a letter signed by Girgin later that day to  
18 Newbridge and Bayrakkale. (Id. ¶¶ 13-14.) He then describes  
19 returning the next day to collect the issued LOC. (Id. ¶ 15.)

20 Because DB Privat knew that Newbridge—the LOC's sole  
21 beneficiary—was a California resident, the court finds that the  
22 Complaint sufficiently alleges that DB Privat aimed its  
23 intentional acts at California for the purpose of causing harm it  
24 knew would be felt in California.

25 **b. Arising out of**

26 Where the causes of action arise out of the defendant's  
27 intentionally tortious conduct, the plaintiff has sufficiently  
28 alleged minimum contacts with the forum. For example, "the

1 inducement of reliance in California is a sufficient act within  
2 California to satisfy the requirement of minimum contacts where  
3 the cause of action arises out of that inducement." Paccar  
4 International, Inc. V. Commercial Bank of Kuwait, S.A.K., 757 F.2d  
5 1058, 1064 (9th Cir. 1985) (alteration omitted) (quoting Data  
6 Disc, Inc. V. Systems Technology Associates, Inc., 557 F.2d 1280,  
7 1288 (9th Cir. 1977)).

8 Here, NFC's causes of action against DB Privat arise out of  
9 Newbridge's reliance on the January 12 and January 26 letters and  
10 the LOC. DB Privat allegedly induced that reliance. Accordingly,  
11 NFC has sufficiently alleged that DB Privat has sufficient minimum  
12 contacts with California.

13 **c. Reasonableness**

14 "[W]here a defendant who purposefully has directed his  
15 activities at forum residents seeks to defeat jurisdiction, he  
16 must present a compelling case that the presence of some other  
17 considerations would render jurisdiction unreasonable." Burger  
18 King Corp. v. Rudzewicz, 471 U.S. 462, 477 (1985). To determine  
19 whether the exercise of jurisdiction is reasonable, the Ninth  
20 Circuit considers seven factors:

21 (1) the extent of the defendants' purposeful injection  
22 into the forum state's affairs; (2) the burden on the  
23 defendant of defending in the forum; (3) the extent of  
24 the conflict with the sovereignty of the defendant's  
25 state; (4) the forum state's interest in adjudicating  
26 the dispute; (5) the most efficient judicial resolution  
27 of the controversy; (6) the importance of the forum to  
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1 the plaintiff's interest in convenience and effective  
2 relief; and (7) the existence of an alternative forum.  
3 CollegeSource, Inc. v. AcademyOne, Inc., 653 F.3d 1066, 1079 (9th  
4 Cir. 2011) (quoting Dole Food Co. v. Watts, 303 F.3d 1104, 1114  
5 (9th Cir. 2002)); see also Burger King, 471 U.S. at 477.

6 The parties dispute the reasonableness of exercising  
7 jurisdiction over DB Privat. (Compare DB Privat Motion 10:9-11,  
8 with Opp. to DB Privat 21-24.) The court finds that DB Privat has  
9 not made a sufficiently compelling case to render jurisdiction  
10 unreasonable.

11 The first factor favors exercising jurisdiction. DB Privat  
12 argues that it "has not purposefully injected itself into the  
13 forum state's affairs. It is a German company doing business in  
14 Germany for the German market." (DB Privat Motion 10:10-11.)  
15 However, "[a]ctions directed at a forum resident expected to cause  
16 harm in the forum constitute purposeful injection." CollegeSource,  
17 653 F.3d at 1080. Though DB Privat resides and primarily conducts  
18 business in Germany, the Complaint alleges that DB Privat  
19 purposefully directed its tortious activities at a California  
20 resident.

21 Though the second and sixth factors oppose each other in  
22 theory, on balance here they favor exercising jurisdiction. The  
23 court acknowledges the burden potentially imposed on DB Privat by  
24 requiring it to defend in California, (see DB Privat Motion 10:12-  
25 16), but also recognizes that DB Privat is the subsidiary of a  
26 large international bank with offices worldwide. The court also  
27 realizes that denying jurisdiction to NFC's claims would not only  
28

1 inconvenience NFC but would likely force NFC to file in Germany,  
2 the limitations of which have been discussed above.

3 Similarly, the third and fourth factors, on balance, favor  
4 jurisdiction. The court recognizes the interest that German courts  
5 likely have in adjudicating a dispute involving a German financial  
6 institution. (See DB Privat Reply 17:19-20.) However, California  
7 has an interest in providing its residents a forum for relief.  
8 (See Opp. to DB Privat 22:27-23:2.) The court notes that the  
9 parties agreed to a California choice-of-law clause. Indeed, DB  
10 Privat appears to have agreed to California law after initially  
11 proposing German law. (Compare Nuccio Decl. Exh. A, with id. Exh.  
12 J.) Though a choice-of-law clause differs from a choice-of-forum  
13 provision, in conjunction with the other factors, it adds to the  
14 reasonableness of exercising jurisdiction.

15 In considering the fifth factor, NFC argues that "the most  
16 important witnesses . . . are Vincent Nuccio, the escrow agent;  
17 Dan Mandel, former executive of Newbridge; Noah Fogelson, former  
18 President of Crest; Loeb & Loeb, Newbridge's counsel; [and] Scott  
19 Frank, a producer . . . ." (Opp. to DB Privat 23:8-13.) DB Privat  
20 responds that these witnesses "have no knowledge related to the  
21 claims against DB Privat, with the possible exception of Nuccio  
22 (who is not even in California)." (DB Privat Reply 16:12-13.) The  
23 court recognizes that Girgin, Erkan, and Nuccio, along with other  
24 employees of DB Privat, may be important witnesses. However, DB  
25 Privat is unable to confirm that Girgin and Erkan remain in  
26 Germany. (See Peschkes Decl. ¶ 18 ("To the best of my knowledge,  
27 they both still reside in Germany.")) International disputes such  
28 as this one subject judicial efficiency to the geography of the



1 parties, witnesses, and evidence, and the court is not persuaded  
2 that judicial efficiency would be better served in a German court.

3 In sum, the court finds that exercising its personal  
4 jurisdiction over DB Privat is reasonable. The court therefore  
5 DENIES DB Privat's Motion to Dismiss on the ground of personal  
6 jurisdiction.

7 **IV. Conclusion**

8 For the above reasons, the court DENIES DB AG's and DB  
9 Privat's Motions to Dismiss.

10 IT IS SO ORDERED.

11  
12 Dated: July 2, 2013

  
DEAN D. PREGERSON  
United States District Judge

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