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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEHROOZ MOHAZZABI,
Plaintiff,
v.
BEHZAD MOHAZZEBI,
Defendant.

Case No. [19-cv-06453-SI](#)

**ORDER GRANTING DEFENDANT’S
MOTION TO DISMISS FOR LACK OF
PERSONAL JURISDICTION AND
DENYING DEFENDANT’S MOTION
TO STRIKE**

Re: Dkt. Nos. 8, 14

Defendant Behzad Mohazzebi’s motion to dismiss the complaint is scheduled for a hearing on December 6, 2019 at 10:00 a.m. Pursuant to Civil Local Rule 7-1(b), the Court finds this matter appropriate for resolution without oral argument and VACATES the hearing. For the reasons set forth below, the Court GRANTS defendant’s motion to dismiss for lack of personal jurisdiction. If plaintiff wishes to pursue this lawsuit in another court that has personal jurisdiction over defendant, the Court recommends that plaintiff seek assistance from the Federal Pro Bono Project, available at 415-782-8982 or fedpro@sfbar.org.

BACKGROUND

On May 6, 2019, plaintiff Behrooz Mohazzabi filed this lawsuit in San Mateo County Superior Court alleging claims for breach of contract and fraud against his brother, defendant Behzad Mohazzebi.¹ After service of the complaint, defendant timely removed the case to the Court.

The complaint alleges that defendant orally agreed to personally guarantee repayment of a

¹ At the time of the filing of the complaint, plaintiff was represented by counsel. Plaintiff is currently proceeding *pro se*.

1 loan that plaintiff made to a third brother, Dariush Mohazzebi (“Dariush”), and that defendant has
2 failed to make payments under that alleged personal guarantee. According to the complaint, on or
3 about April 25, 2013, plaintiff orally agreed to loan Dariush \$200,000, and defendant orally agreed
4 to guarantee the repayment of the loan with interest. Compl. ¶ BC-1 (Dkt. No. 1-1).² Plaintiff
5 alleges that by August 12, 2017, “Dariush Mohazzabi³ failed to make full repayment as originally
6 agreed and as renegotiated[,]” and defendant “then failed to pay the balance of Dariush Mohazzebi’s
7 debt as promised, as per the personal guarantee.” *Id.* at ¶ BC-2. On a “check the box” portion of
8 the state court complaint form, the complaint alleges that “[t]his court is the proper court because
9 the contract was to be performed [in California].” *Id.* at ¶ 7. The complaint does not contain any
10 allegations regarding defendant’s contacts with California.

11 On October 15, 2019, defendant filed a motion to dismiss based on lack of personal
12 jurisdiction and failure to state a claim. In support of the motion, defendant has filed a declaration
13 stating that he is a resident and citizen of Florida, where he has lived since November 2009.
14 Mohazzebi Decl. ¶ 2 (Dkt. No. 8-1). Prior to November 2009, defendant was a resident and citizen
15 of New Jersey. *Id.* Defendant states that he has never been a resident or citizen of California, never
16 been employed in California, does not maintain any businesses or offices in California, and does not
17 have any bank accounts in California. *Id.* ¶¶ 2-6. Defendant denies that he made any agreement to
18 guarantee the loan plaintiff made to Dariush, and defendant states, “I have not met with Plaintiff in
19 California at any time during the events alleged in the Complaint. The last time I met Plaintiff in
20 person in California was approximately 10 years ago at a family wedding in Northern California in
21 the summer of 2009.” *Id.* ¶¶ 8-9.

22 Plaintiff, proceeding *in pro per*, filed an opposition that did not address personal jurisdiction.
23 Instead, plaintiff’s opposition addresses the merits of his breach of contract and fraud claims, and
24 asserts facts that are not contained in the complaint, such as details about the parties’ alleged
25 conversations regarding the oral contract. *See generally* Dkt. No. 11. Defendant filed a reply, to
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27 ² Plaintiff’s opposition states that this agreement was made during a telephone call. Dkt.
No. 11 at 1-1.

28 ³ Plaintiff has spelled Dariush’s last name two different ways, Mohazzebi and Mohazzabi.

1 which plaintiff filed a sur-reply. Dkt. No. 13.⁴ In his sur-reply, plaintiff asserts that defendant
2 regularly visits his two daughters who live in Los Angeles, California. *Id.* Plaintiff’s sur-reply also
3 acknowledges that defendant formerly lived in New Jersey and currently lives in Florida. *Id.*

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5 **LEGAL STANDARD**

6 A defendant may move to dismiss the complaint for lack of personal jurisdiction. Fed. R.
7 Civ. P. 12(b)(2). Where there is no applicable federal statute that governs personal jurisdiction, a
8 district court “may exercise personal jurisdiction over a defendant ‘if it is permitted by [the state’s]
9 long-arm statute and if the exercise of jurisdiction does not violate federal due process.’” *Autodesk,*
10 *Inc. v. Kobayashi + Zedda Architects, Ltd.*, 191 F. Supp. 3d 1007, 1013 (N.D. Cal. 2016) (quoting
11 *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006). Since “California’s long-arm
12 statute allows the exercise of personal jurisdiction to the fullest extent permissible under the U.S.
13 Constitution,” a district court need only determine whether the exercise of jurisdiction comports
14 with federal due process requirements. *Daimler AG v. Bauman*, 571 U.S. 117, 125 (2014). A district
15 court’s exercise of personal jurisdiction comports with due process when the defendant has “certain
16 minimum contacts with [the forum state] such that the maintenance of the suit does not offend
17 ‘traditional notions of fair play and substantial justice.’” *Int’l Shoe Co. v. Washington*, 326 U.S.
18 310, 316 (1945). A court may exercise either general or specific jurisdiction over an out-of-state
19 defendant. *See Daimler AG*, 571 U.S. at 127.

20 Upon defendant’s motion to dismiss for lack of personal jurisdiction, “the plaintiff bears the
21 burden of demonstrating that the court has jurisdiction over the defendant.” *Pebble Beach Co.*, 453
22 F.3d at 1154. However where, as here, a district court rules on a motion to dismiss for lack of
23 personal jurisdiction without holding an evidentiary hearing, the plaintiff need only make “a *prima*
24 *facie* showing of jurisdictional facts to withstand the motion to dismiss.” *Ballard v. Savage*, 65 F.3d
25 1495, 1498 (9th Cir. 1995). Where undisputed, a district court must take as true the plaintiff’s

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⁴ Defendant moved to strike the sur-reply because it was filed without leave of Court. In
28 light of plaintiff’s *pro se* status, the Court grants plaintiff leave to file the sur-reply and DENIES
defendant’s motion to strike.

1 version of the facts. *Am. Tel. & Tel. Co. v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9th
2 Cir. 1996) (citations omitted). Conversely, “conflicts between the facts contained in the parties’
3 affidavits must be resolved in [the plaintiff’s] favor for purposes of deciding whether a *prima facie*
4 case for personal jurisdiction exists.” *Id.*

5
6 **DISCUSSION**

7 Defendant contends that this Court lacks personal jurisdiction over him because he is a
8 Florida resident and he has never lived, worked or done business in California. Defendant argues
9 the only allegation in the complaint that conceivably relates to jurisdiction – that “[t]his court is
10 proper because the contract was to be performed here” – is legally irrelevant because an alleged oral
11 promise made from outside California to guarantee a loan does not subject the promisor to personal
12 jurisdiction in California. Plaintiff’s opposition papers largely do not address personal jurisdiction,
13 except to assert that defendant travels to California to visit his two daughters.

14 The Court concludes that it does not have personal jurisdiction over defendant. There is no
15 basis for general jurisdiction, which requires that “the defendant must engage in continuous and
16 systematic general business contacts” in the forum state. *Schwarzenegger v. Fred Martin Motor*
17 *Co.*, 374 F.3d 797, 802 (9th Cir. 2004) (internal quotation marks and citation omitted). Here, there
18 is no allegation that defendant has engaged in systematic business contacts in California, and to the
19 contrary, defendant has filed a declaration stating he has never been employed in California and that
20 he has no offices or bank accounts in this state.

21 There is also no basis for specific jurisdiction. A district court has specific jurisdiction over
22 the defendant when the following three-prong test is satisfied:

- 23 (1) The non-resident defendant must direct [one’s] activities or consummate some
24 transaction with the forum or a resident thereof; or perform some act by which [one]
25 purposefully avails [oneself] of the privilege of conducting activities in the forum,
26 thereby invoking the benefits and protections of its laws;
- 26 (2) the claim must be one that arises out of or relates to the defendant’s forum-related
27 activities; and
- 27 (3) the exercise of jurisdiction must comport with fair play and substantial justice,
28 i.e. it must be reasonable.

1 *Lake v. Lake*, 817 F.2d 1416, 1421 (9th Cir. 1987). Plaintiff bears the burden of satisfying the first
2 two prongs of the test. *Schwarzenegger*, 374 F.3d at 802.

3 Under the first prong, a plaintiff must establish that the defendant “either purposefully
4 availed itself of the privilege of conducting activities in California, or purposefully directed its
5 activities toward California.” *Id.* at 802. “For claims sounding in contract, we generally apply a
6 ‘purposeful availment’ analysis and ask whether a defendant has ‘purposefully avail[ed] [himself]
7 of the privilege of conducting activities within the forum State, thus invoking the benefits and
8 protections of its laws.’” *Picot v. Weston*, 780 F.3d 1206, 1212 (9th Cir. 2015) (quoting
9 *Schwarzenegger*, 374 F.3d at 802). “For claims sounding in tort, we instead apply a ‘purposeful
10 direction’ test and look to evidence that the defendant has directed his actions at the forum state,
11 even if those actions took place elsewhere.” *Picot*, 780 F.3d at 1212. Because plaintiff asserts
12 contract and tort claims, both tests apply.

13
14 **I. Purposeful Availment – Contract Claim**

15 “A showing that a defendant purposefully availed himself of the privilege of doing business
16 in a forum state typically consists of evidence of the defendant’s actions in the forum, such as
17 executing or performing a contract there.” *Id.* “[T]he mere existence of a contract with a party in
18 the forum state does not constitute sufficient minimum contacts for jurisdiction.” *Sher v. Johnson*,
19 911 F.2d 1357, 1362 (9th Cir. 1990); *see also Doe v. Unocal Corp.*, 248 F.3d 915, 924 (9th Cir.
20 2001) (“However, an individual’s contract with an out-of-state party alone [cannot] automatically
21 establish sufficient minimum contacts to support personal jurisdiction.”) (internal quotation marks
22 and citations omitted). “Instead, we must look to ‘prior negotiations and contemplated future
23 consequences, along with the terms of the contract and the parties’ actual course of dealing’ to
24 determine if the defendant’s contacts are ‘substantial’ and not merely ‘random, fortuitous, or
25 attenuated.’” *Sher*, 911 F.3d at 1362 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 479,
26 480 (1985)).

27 Here, plaintiff does not allege that defendant engaged in any “type of affirmative conduct
28 which allow[ed] or promote[d] the transaction of business within the forum state.” *Id.* Plaintiff

1 does not dispute that defendant is a Florida resident, and he asserts that the parties entered into an
2 oral contract on the telephone. The complaint contains the conclusory allegation that the contract
3 was to be “performed” in California, which presumably means that defendant allegedly agreed to
4 send money to plaintiff in California. Thus, the only alleged connection between defendant and
5 California is that defendant entered into a contract with a California resident and agreed to send the
6 California resident money.⁵ Such a connection is not “substantial” and instead is too attenuated to
7 provide a basis for specific jurisdiction. *See Sher*, 911 F.3d at 1362-63 (California court did not
8 have specific jurisdiction over Florida law firm that represented California client in criminal
9 proceeding in Florida where “[a]s normal incidents of this representation the partnership accepted
10 payment from a California bank, made phone calls and sent letters to California . . . because neither
11 the partnership nor any of its partners undertook any affirmative action to promote business within
12 California”); *see also Picot*, 780 F.3d at 1212-13 (California court did not have specific jurisdiction
13 over Michigan resident who allegedly entered oral agreement with California resident where
14 contract was formed in Michigan and defendant performed most of work in Michigan; holding the
15 plaintiff’s California contacts could not provide basis for jurisdiction; and finding the defendant’s
16 two business trips to California did not create a substantial connection).

17 Because plaintiff has not established the first prong of the specific jurisdiction test for the
18 contract claim, the Court does not address the remainder of the analysis with regard to the contract
19 claim.

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21 **II. Purposeful Direction – Fraud Claim**

22 “[A] defendant purposefully directed his activities at the forum if he: ‘(1) committed an
23 intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is
24 likely to be suffered in the forum state.’” *Picot*, 780 F.3d at 1214 (quoting *Schwarzenegger*, 374
25 F.3d at 803). “In applying this test, we must ‘look[] to the defendant’s contacts with the forum State

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28 ⁵ Plaintiff’s sur-reply asserts that defendant travels to Los Angeles to visit his daughters. Even if this fact was alleged in the complaint, it would not provide a basis for personal jurisdiction because such personal visits are not affirmative conduct showing that defendant purposefully availed himself of the privilege of conducting business in California.

1 itself, not the defendant’s contacts with persons who reside there.” *Id.* (quoting *Walden v. Fiore*,
2 571 U.S. 277, 285 (2014)). A “mere injury to a forum resident is not a sufficient connection to the
3 forum” unless the “defendant’s conduct connects him to the forum in a meaningful way.” *Walden*,
4 571 U.S. at 285.

5 For the same reasons as stated above, the Court finds that defendant did not purposefully
6 direct activities at California. The only alleged connection between defendant and California is the
7 allegation that defendant entered into a contract with a California resident. However, “the plaintiff
8 cannot be the only link between the defendant and the forum.” *Id.* Plaintiff does not allege that
9 defendant expressly aimed acts at California. Because plaintiff has not established the first prong
10 of the specific jurisdiction test for the fraud claim, the Court does not address the remainder of the
11 analysis with regard to this claim.

12
13 **CONCLUSION**

14 For the foregoing reasons, the Court hereby GRANTS defendant’s motion to dismiss for
15 lack of personal jurisdiction and DENIES defendant’s motion to strike the sur-reply. Because the
16 Court does not have personal jurisdiction over the defendant, the Court does not address defendant’s
17 motion to dismiss for failure to state a claim. *See Ronald C. Fish v. Watkins*, No. CV 03-0067-
18 PHX-SMM, 2006 WL 8441121, at *3 (D. Ariz. Dec. 14, 2006) (“[A] court has no authority to
19 address the merits of a claim against a particular party if it lacks personal jurisdiction over that
20 party”), *aff’d sub nom. Fish v. Watkins*, 298 F. App’x 594 (9th Cir. 2008).

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22 **IT IS SO ORDERED.**

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24 Dated: December 3, 2019



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SUSAN ILLSTON
United States District Judge