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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 AMA Multimedia LLC, a Nevada limited  
10 liability company,

11 Plaintiff,

12 v.

13 Sagan Limited, a Republic of Seychelles  
14 company, Cyberweb Ltd., a Barbados  
15 company, and Netmedia Services Inc., a  
16 Canadian company, individually and d/b/a  
Porn.com; GLP 5, Inc., a Michigan  
company d/b/a Trafficforce.com; and David  
Koonar, an individual,

17 Defendants.  
18

No. CV16-01269-PHX-DGC

**ORDER**

19 Before the Court is Defendants' renewed motion to dismiss based on forum non  
20 conveniens. Doc. 154. The motion is fully briefed, and oral argument has not been  
21 requested. For the reasons stated below, the motion will be granted.

22 **I. Background.**

23 Plaintiff AMA Multimedia, LLC, a producer of pornographic material, asserts  
24 copyright infringement claims against several entities and one individual associated with  
25 Porn.com. Doc. 16. Porn.com is a video streaming website that generates revenue  
26 through paid memberships and advertising space. *Id.* ¶¶ 48-49, 57. AMA alleges that  
27 Defendants Sagan Limited, Cyberweb Ltd., Netmedia Services Inc., and David Koonar  
28 are owners or operators of Porn.com. *Id.* ¶¶ 2-8, 46. AMA further alleges that these

1 Defendants own and operate Defendant GLP 5, Inc., an advertising broker doing business  
2 as Trafficforce.com. *Id.* ¶¶ 7, 47, 94-95.

3 AMA distributes its pornographic material through DVD sales and various  
4 websites. *Id.* ¶ 28. Users of AMA websites must be paid members to view the material.  
5 *Id.* ¶¶ 29-30. AMA provides sample promotional videos to advertising affiliates and  
6 licenses certain material to other pornographic websites. *Id.* ¶ 30. Beginning in 2007,  
7 pursuant to an AMA affiliate program agreement, AMA provided certain promotional  
8 videos for Defendants to display on Porn.com for the purpose of directing traffic to  
9 AMA’s paid membership sites. *Id.* ¶ 63; *see* Doc. 157-1 at 19.

10 In November 2015, AMA learned that Porn.com had displayed 64 of AMA’s  
11 copyrighted works, none of which was a promotional video provided by AMA pursuant  
12 to the affiliate program agreement. Doc. 16 ¶¶ 63, 78; *see* Doc. 1-1 at 1-9. AMA asserts  
13 that the works were uploaded onto Porn.com by Defendants, not third-party users as  
14 Defendants claim. Doc. 16 ¶¶ 78-92. AMA further asserts that in March 2016, other  
15 copyrighted works were displayed on Trafficforce advertising banners on Porn.com. *Id.*  
16 ¶ 98; *see* Doc. 1-1 at 31-34. Claiming that the works were displayed on Porn.com  
17 without its approval or consent, AMA asserts various copyright infringement claims  
18 against all Defendants. Doc. 16 ¶¶ 82, 105-58.

19 Defendants contend that they had the right to display the allegedly infringing  
20 material based on a licensing agreement between AMA and one of Defendants’ affiliates,  
21 GIM Corporation. This agreement – formally, the Content Partner Revenue Sharing  
22 Agreement (“CPRA”) – was entered into in September 2012 when AMA joined GIM’s  
23 Paidperview.com revenue sharing program. Doc. 27-3 at 25-34. The CPRA granted  
24 GIM a license to use content provided by AMA on websites whose advertisements are  
25 controlled by Trafficforce.com. *Id.* at 25 (CPRA §§ B, 1.1).

26 Defendants moved to dismiss or stay this case based in part on the CPRA’s forum  
27 selection clause, which provides that “[a]ny legal action arising out of or relating to  
28 [the CPRA] must be instituted in a court located in Barbados[.]” *Id.* at 30 (CPRA

1 § 10.5); *see* Docs. 27-1 at 18, 42-1 at 18, 49-1 at 14-17, 70-1 at 11-17. The Court denied  
2 the stay request and deferred ruling on motions to dismiss pending jurisdictional  
3 discovery. Doc. 64. Following the discovery and additional briefing, the Court granted  
4 Defendants’ motions to dismiss on the basis of the forum selection clause. Doc. 126.  
5 The Court found that the clause (1) applies to AMA’s copyright infringement claims  
6 because the dispute arises out of or relates to the CPRA, (2) is valid and enforceable, and  
7 (3) can be invoked by Koonar as an officer of GIM and by Cyberweb, Netmedia, and  
8 Sagan because they are affiliates of GIM which were assigned rights under the CPRA.  
9 *Id.* at 5-17. AMA appealed and the Ninth Circuit reversed, finding that the record did not  
10 support an assignment of GIM’s rights under the CPRA. Doc. 147-1 at 4. The case was  
11 remanded for further proceedings, including consideration of Defendants’ alternative  
12 arguments for enforcing the forum selection clause. *Id.* at 5.<sup>1</sup>

13 At the Court’s direction, the parties filed supplemental briefs. Docs. 154, 157,  
14 161. Defendants argue that they have standing to enforce the forum selection clause as  
15 agents of GIM, third-party beneficiaries of the CPRA, implied licensees and assignees of  
16 rights under the CPRA, and closely related parties under *Manetti-Farrow, Inc. v. Gucci*  
17 *America, Inc.*, 858 F.2d 509 (9th Cir. 1988). Doc. 154 at 10-20. AMA contends that  
18 these arguments lack merit because Defendants’ infringing conduct and operation of  
19 Porn.com have nothing to do with the CPRA or GIM. Doc. 157 at 9-21.

20 The Court previously found that the CPRA’s forum selection clause applies to  
21 AMA’s copyright claims and otherwise is valid and enforceable. Doc. 126 at 5-11,  
22 14-17. These findings were not disturbed on appeal. *See* Doc. 147-1. Having considered  
23 the supplement briefs and relevant case law, the Court now finds that Defendants have  
24 standing to enforce the CPRA’s forum selection clause because they are closely related to  
25 the contractual relationship between AMA and GIM. The Court therefore will grant the  
26 renewed motion to dismiss. Given this ruling, the Court need not consider Defendants’

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28 <sup>1</sup> The Court previously had dismissed the claims against GLP for lack of personal jurisdiction. Docs. 64 at 7-8, 126 at 2 n.1. This ruling was not addressed on appeal.

1 other arguments for enforcing the forum selection clause.

2 **II. Legal Standard.**

3 Interpretation and enforcement of forum selection clauses are procedural issues to  
4 be decided under federal law. *See Manetti-Farrow*, 858 F.2d at 513; *TAAG Linhas*  
5 *Aereas de Angola v. Transamerica Airlines, Inc.*, 915 F.2d 1351, 1353 (9th Cir. 1990).  
6 The Supreme Court has instructed that such clauses are presumptively valid and should  
7 not be set aside unless the party challenging the clause “clearly show[s] that enforcement  
8 would be unreasonable and unjust, or that the clause [is] invalid for reasons such as fraud  
9 or overreaching.” *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 15 (1972). Courts  
10 decline to enforce forum selection clauses “[o]nly under extraordinary circumstances  
11 unrelated to the convenience of the parties[.]” *Atl. Marine Constr. Co. v. U.S. Dist. Ct.*  
12 *for the W. Dist. of Tex.*, 571 U.S. 49, 61 (2013).

13 A motion to dismiss based on a forum selection clause is treated as an improper  
14 venue motion under Federal Rule of Civil Procedure 12(b)(3). *See Argueta v. Banco*  
15 *Mexicano, S.A.*, 87 F.3d 320, 324 (9th Cir. 1996). In ruling on a Rule 12(b)(3) motion,  
16 the pleadings are not accepted as true and the court may consider other evidence. *Id.*  
17 The court must resolve all factual conflicts and draw all reasonable inferences in favor of  
18 the non-moving party. *See Murphy v. Schneider Nat’l, Inc.*, 362 F.3d 1133, 1138 (9th  
19 Cir. 2004); *Holland Am. Line Inc. v. Wartsila N. Am., Inc.*, 485 F.3d 450, 455 (9th Cir.  
20 2007).

21 **III. Discussion.**

22 Ordinarily, a contractual right may not be invoked by one who is not a party to the  
23 agreement. *See EEOC v. Waffle House, Inc.*, 534 U.S. 279, 294 (2002). In *Manetti-*  
24 *Farrow*, however, the Ninth Circuit held that “a range of transaction participants, parties  
25 and non-parties,” can benefit from a forum selection clause where their alleged conduct is  
26 “closely related to the contractual relationship.” 858 F.2d at 514 n.5 (citations omitted).  
27 In *Holland America Line*, the Ninth Circuit similarly held that a forum selection clause  
28 applied to non-parties where their actions were “part of the larger contractual

1 relationship” between the parties to the agreement. 485 F.3d at 456 & n.2 (citing  
2 *Manetti-Farrow*, 858 F.2d at 514 n.5). The evidence in this case, even when construed in  
3 AMA’s favor, shows that Defendants are so closely related to the contractual relationship  
4 between AMA and GIM that they have standing to invoke the CPRA’s forum selection  
5 clause.

6 AMA itself alleges that “Defendants Sagan Limited, Cyberweb Ltd., Netmedia  
7 Services, Inc., and David Koonar are each owners and/or operators of Porn.com and/or  
8 are doing business as Porn.com.” Doc. 16 ¶ 46. When AMA became a member of  
9 GIM’s Paidperview.com program in order to post videos on Porn.com, GIM necessarily  
10 involved Defendants in the CPRA. Porn.com is owned by Cyberweb and Sagan, not  
11 GIM. Docs. 67 at 2, 157 at 3-4. Cyberweb entered into an agreement with GIM to  
12 facilitate the operation of Porn.com, and GIM in turn subcontracted with Netmedia  
13 because GIM does not have the technical capacity to operate Porn.com or administer the  
14 Paidperview.com program. Docs. 117 at 8, 132 at 10. All technical aspects and day-to-  
15 day operation of both Porn.com and Paidperview.com is performed by Netmedia.  
16 Docs. 67 at 3, 117 at 3-4, 7. In short, AMA could not have posted its videos on Porn.com  
17 and benefited from the Paidperview.com program – the express purpose of the CPRA –  
18 without Defendants’ involvement.

19 AMA’s assertion that Defendants are strangers to the CPRA is disproved by the  
20 record. Doc. 157 at 2. AMA notes that while the CPRA required GIM to develop and  
21 operate the websites featuring the AMA videos, Defendants – not GIM – own and  
22 operate Porn.com. *Id.* at 4-6, 13. AMA suggests that it had no knowledge or expectation  
23 that its videos would be posted on Porn.com pursuant to the CPRA, but this plainly is  
24 incorrect. The evidence shows that AMA entered into the CPRA for the specific purpose  
25 of having its videos displayed on Porn.com, not GIM-owned websites, and that AMA  
26 knew Porn.com was owned and operated by Cyberweb and Netmedia. Shortly before  
27 entering into the CPRA, AMA’s president, Adam Silverman, asked a colleague to check  
28 out “a submission prog[ram] for porn.com that also includes a payout for views,” and the

1 colleague responded that he “was keen to get our videos *on porn.com.*” Doc. 38-3 at 6  
2 (emphasis added). Mr. Silverman stated in a declaration that “[i]n September 2012,  
3 AMA entered into a content partnership agreement with GIM *for revenue sharing on*  
4 *content posted on Porn.com.*” Doc. 33-2 ¶ 17 (emphasis added); *see also* Doc. 34-1 ¶ 22  
5 (“AMA previously entered into a [CPRA] for promotional materials to be posted on  
6 Porn.com. The [CPRA] is with GIM[.]”); Doc. 38-1 ¶ 22 (same). Mr. Silverman  
7 testified that “[w]hen AMA signed up for the [CPRA] *for Porn.com,* AMA  
8 representatives had direct contact with . . . *Netmedia* regarding initiating the program.”  
9 Doc. 38-1 ¶ 29 (emphasis added). Further, when AMA had questions about user-  
10 uploaded videos under the Paidperview.com program, AMA communicated with  
11 representatives of Netmedia and Cyberweb. Doc. 83-1. Contrary to AMA’s assertion,  
12 the parties intended that AMA’s videos would be posted on Porn.com pursuant to the  
13 CPRA, and AMA knew that the site was not actually operated by GIM.

14 Defendants Cyberweb, Netmedia, and Sagan are not only involved in the  
15 operation of Porn.com, they are, as AMA acknowledges, closely related entities. Indeed,  
16 AMA asserts that Koonar is the “common thread” among these entities and the “driving  
17 and guiding force behind Porn.com.” Doc. 117 at 8. Koonar is the president of the  
18 holding company that owns all of GIM and 50% of Cyberweb. *Id.* He is also the  
19 president of GIM and Netmedia. *Id.* Sagan is a Seychelles corporation and is listed as  
20 the owner-operator of Porn.com in Porn.com’s terms of service and a form filed with the  
21 U.S. Copyright Office. Docs. 16 ¶ 3, 38 at 3 n.1.

22 In short, there can be no doubt that Defendants are all closely related to the  
23 contractual relationship created by the CPRA – the relationship under which AMA  
24 sought to have its materials displayed on Porn.com. Several cases in the Ninth Circuit  
25 have held that parties closely related to a contractual relationship may benefit from the  
26 contract’s forum selection clause. *See Manetti-Farrow*, 58 F.2d at 514 & n.5 (applying  
27 the forum selection clause in a dealership contract to the signatory defendants’ parent  
28 company, foreign affiliate, and individual directors where their alleged tortious conduct

1 was closely related to the contractual relationship); *Holland Am. Line*, 485 F.3d at 456  
2 & n.2 (finding that a forum selection applied to the signatory defendant’s foreign  
3 affiliates because their alleged conduct was tied to the contract); *see also TAAG*, 915 F.2d  
4 at 1353 (“Transamerica Corporation and the individual defendants . . . do not object to  
5 being governed by the forum selection clause . . . . It is not unreasonable or unjust to  
6 enforce the clause even though some of them did not sign the agreement.” (citing  
7 *Manetti-Farrow*, 58 F.2d at 514 n.5)); *In re Yahoo! Inc. Customer Data Sec. Breach*  
8 *Litig.*, No. 16-MD-02752-LHK, 2017 WL 3727318, at \*51 (N.D. Cal. Aug. 30, 2017)  
9 (“[T]he allegations in the [complaint] make clear that the negligence claim against Yahoo  
10 is ‘closely related’ to the contractual relationship between foreign users and Yahoo  
11 subsidiaries, and that the Court must evaluate and ‘interpret’ this contractual relationship  
12 to resolve Plaintiffs’ negligence claim. Therefore, applying Ninth Circuit precedent, the  
13 Court determines that Yahoo ‘should benefit from and be subject to the forum-selection  
14 clauses.’” (quoting *TAAG*, 915 F.2d at 1354)); *Robeson v. Twin Rivers Unified Sch. Dist.*,  
15 No. CIV. 2:14-2 WBS KJN, 2014 WL 1392922, at \*3 (E.D. Cal. Apr. 9, 2014) (finding  
16 that the individual defendants’ conduct was closely related to the plaintiff’s employment  
17 pursuant to her contract with the school district where she alleged that all defendants  
18 conspired together); *Dawson v. Cagle Cartoons, Inc.*, No. 2:13-CV-0610 KJM KJN,  
19 2013 WL 4829317, at \*7 (E.D. Cal. Sept. 9, 2013) (finding that the defendant was closely  
20 related to the contractual relationship where the plaintiff alleged that he was part of the  
21 joint venture and common enterprise).

22 The Court further finds that Defendant Koonar may avail himself of the forum  
23 selection clause. As noted, he is the president of GIM, Netmedia, and the holding  
24 company that owns all of GIM and 50% of Cyberweb. Doc. 117 at 8. “With one  
25 exception, every district court in our circuit that has considered whether to apply a forum-  
26 selection clause to a corporate officer . . . that was not part of the agreement . . . has  
27 enforced that forum-selection clause, provided the claims in the suit related to the  
28 contractual relationship.” *Ultratech, Inc. v. Ensure NanoTech (Beijing), Inc.*, 108 F.

1 Supp. 3d 816, 822 (N.D. Cal. 2015); *see also Liberty City Church of Christ, Inc. v.*  
2 *Taylor*, No. 5:12-CV-04392 EJD, 2013 WL 621792, at \*2 (N.D. Cal. Feb. 15, 2013)  
3 (finding that any claims against a party employee relating to activities that occurred  
4 within the scope of his employment are subject to the employer’s forum selection clause).

5 AMA contends that the range of transaction participants that may benefit from a  
6 forum selection clause under *Manetti-Farrow* is limited to third-party beneficiaries.  
7 Doc. 157 at 14. But AMA cites no legal authority to support this assertion, and the Ninth  
8 Circuit in *Holland America* applied the *Manetti-Farrow* doctrine without any mention of  
9 a third-party beneficiary status. 485 F.3d at 456. AMA asserts that in finding that a  
10 range of transaction participants should benefit from a forum selection clause, *Manetti-*  
11 *Farrow* cited a case involving third-party beneficiaries, *Coastal Steel Corp. v. Tilghman*  
12 *Wheelabrator, Ltd.*, 709 F.2d 190 (3d Cir. 1983). Doc. 157 at 14. *Manetti-Farrow*  
13 actually quoted an Illinois district court case, *Clinton v. Janger*, 583 F. Supp. 284, 290  
14 (N.D. Ill. 1984), which in turn cited *Coastal Steel*. 858 F.2d at 514 n.5. Nothing in either  
15 of those cases, however, suggests that third-party beneficiaries are the only non-parties to  
16 the contract that may benefit from a forum selection clause. *Coastal Steel* held only that  
17 third-party beneficiary status is no basis for disregarding such a clause. 709 F.2d at 203.  
18 *Clinton* noted that the range of transaction participants encompasses third-party  
19 beneficiaries, but made clear that other non-parties to the contract may also enforce  
20 forum selection clauses. 583 F. Supp. at 290 (“[T]he cases hold that a range of  
21 transaction participants, parties and non-parties, should benefit from and be subject to  
22 forum selection clauses. This is especially true where the non-party is a third party  
23 beneficiary of the disputed contract[.]” (citing *Coastal Steel*)).

24 In summary, the Court finds that Defendants have standing to enforce the CPRA’s  
25 forum selection clause. They are closely related to the contractual relationship between  
26 AMA and GIM, a relationship created for the purpose of posting AMA’s videos on  
27 Porn.com. The claims against Defendants Sagan, Cyberweb, Netmedia, and Koonar will,  
28 therefore, be dismissed for improper venue.



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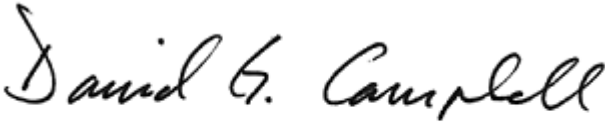
**IT IS ORDERED:**

1. The renewed motion to dismiss based on forum non conveniens filed by Defendants Sagan Limited, Cyberweb Ltd., Netmedia Services Inc., and David Koonar (Doc. 154) is **granted**.

2. The claims asserted against Defendant GLP 5, Inc. are dismissed for lack of personal jurisdiction (see Docs. 64 at 7-8, 126 at n.1).

3. The Clerk shall terminate this action.

Dated this 24th day of October, 2018.



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David G. Campbell  
Senior United States District Judge