

Perfect 10 Inc v. Arlo Gilbert

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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION

ENTERED
 CLERK, U.S. DISTRICT COURT
 MAR 24 2005
 CENTRAL DISTRICT OF CALIFORNIA
 BY *DJA* DEPUTY

| | | | |
|----|------------------------------|---|---------------------------------|
| 13 | PERFECT 10, INC., |) | CASE NO.: CV 04-9098 ABC (SSx) |
| | |) | |
| 14 | Plaintiff |) | |
| | |) | |
| 15 | v. |) | ORDER RE: DEFENDANT'S MOTION TO |
| | |) | DISMISS FOR LACK OF PERSONAL |
| | |) | JURISDICTION |
| 16 | ARLO GILBERT, an individual; |) | |
| | and DOES 1 through 10, |) | |
| 17 | inclusive, |) | |
| | |) | |
| 18 | Defendants. |) | |
| | |) | |
| 19 | |) | |

Arlo Gilbert ("Defendant") filed the above-referenced motion on
 March 4, 2005. The Court finds the matter appropriate for submission
 without oral argument. See Fed. R. Civ. P. 78; Local Rule 7-15.
 Accordingly, the scheduled hearing date of March 28, 2005 is VACATED.
 After consideration of the materials submitted by the parties and the
 case file, it is hereby ORDERED that Defendant's motion to dismiss is
 DENIED.

THIS CONSTITUTES NOTICE OF ENTRY
 AS REQUIRED BY FRCP, RULE 77(d).

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1 I. FACTUAL AND PROCEDURAL BACKGROUND

2 Perfect 10, Inc. ("Plaintiff") produces, publishes, and
3 distributes photographs, films, video productions, and other works
4 through its website at www.perfect10.com. See Complaint ¶¶ 12-13.
5 Plaintiff employs models for its photographs and other arts and owns
6 the legal rights to its models' likenesses and names. See *id.* ¶ 14.

7 Defendant creates websites that offer Internet users access to
8 adult photographs to Internet users on a subscribe-and-pay plan. See
9 Complaint ¶ 6. Defendant does business in California and filed
10 fictitious registrations of ownership of the domain names
11 www.badstars.com and www.exposedcelebrity.com, which both resolve to
12 www.celebrityplugin.com. See *id.* ¶¶ 5, 7, 10. Defendant allegedly
13 copied Plaintiff's copyrighted works and offered them for sale on his
14 websites without authorization. See *id.* ¶ 15. According to
15 Plaintiff, Defendant has either sold or offered to sell infringing
16 photographs over the Internet to California residents, in addition to
17 web users throughout the country. See *id.* Defendant receives revenue
18 from Internet users, including in California, who provide a credit
19 card number (processed by Paycom Billing Services) before being
20 granted access to the adult photographs. See Declaration of Norman
21 Zada ("Zada Decl.") ¶ 14 and Ex. 10. Users may also establish
22 membership on Defendant's websites through "Porn Multi Pass" accounts.
23 See Zada Decl., Ex. 10.

24 On November 3, 2004, Plaintiff filed a complaint alleging claims
25 of direct copyright infringement, contributory copyright infringement,
26 and violation of right of publicity. Defendant filed the instant
27 motion to dismiss for lack of personal jurisdiction on March 4, 2005.
28 On March 14, 2005, Plaintiff opposed the motion, to which Defendant

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1 | replied on March 21, 2005.

2 | **II. LEGAL STANDARD**

3 | The plaintiff bears the burden of establishing jurisdiction. See Ziegler v. Indian River County, 64 F.3d 470, 473 (9th Cir. 1995).
4 | Absent formal discovery or an evidentiary hearing, the plaintiff need
5 | establish only a prima facie showing that personal jurisdiction exists
6 | to survive a motion to dismiss for lack of jurisdiction. See Fields
7 | v. Sedgwick Associated Risks, Ltd., 796 F.2d 299, 301 (9th Cir. 1986);
8 | Ziegler, 54 F.3d at 473. "Prima facie" showing means that the
9 | plaintiff has demonstrated facts that if true would support a finding
10 | of jurisdiction. Data Disc, Inc. v. Systems Technology Associates,
11 | Inc., 557 F.2d 1280, 1285 (9th Cir. 1977); Ballard v. Savage, 65 F.2d
12 | 1495, 1498 (9th Cir. 1995). In determining whether a plaintiff has
13 | met this burden, uncontroverted allegations in the complaint "must be
14 | taken as true, and 'conflicts between the facts contained in the
15 | parties' affidavits must be resolved in [the plaintiff's] favor . . .
16 | ." AT&T Co. v. Compagnie Bruxelles Lambert, 94 F.3d 586, 588 (9th
17 | Cir. 1996) (citing WNS, Inc. v. Farrow, 884 F.2d 200, 203 (5th Cir.
18 | 1989)).
19 |

20 | Where there is no applicable federal statute governing personal
21 | jurisdiction, the Court must apply the law of the state in which the
22 | Court sits. See Core-Vent Corp. v. Nobel Industries AB, 11 F.3d 1482,
23 | 1484 (9th Cir. 1993). California's long-arm statute permits a court
24 | to exercise personal jurisdiction over a defendant to the extent
25 | permitted by the Due Process Clause of the Constitution. See Cal.
26 | Code Civ. P. § 410.10; Gordy v. Daily News, L.P., 95 F.3d 829, 831
27 | (9th Cir. 1996). Due process requires only that the nonresident
28 | defendant "'have certain minimum contacts'" with the forum state such

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1 that the maintenance of the suit "does not offend 'traditional notions
 2 of fair play and substantial justice.'" Terracom v. Valley Nat'l
 3 Bank, 49 F.3d 555, 559 (9th Cir. 1995) (quoting Int'l Shoe Co. v.
 4 Washington, 326 U.S. 310, 316 (1945)). The defendant's "conduct and
 5 connection with the forum state" must be such that defendant "should
 6 reasonably anticipate being haled into court there." World-Wide
 7 Volkswagen v. Woodson, 444 U.S. 286, 297 (1980).

8 There are two recognized bases for personal jurisdiction over a
 9 non-resident defendant: (1) "general jurisdiction," which arises when
 10 a non-resident defendant's activities within the forum state are so
 11 "substantial" or "continuous and systematic" as to justify the
 12 exercise of jurisdiction over the defendant in all matters; and (2)
 13 "specific jurisdiction," which arises out of the defendant's contacts
 14 with the forum giving rise to the subject litigation. Helicopteros
 15 Nacionales de Columbia S.A. v. Hall, 466 U.S. 408, 414-16 (1984).

16 III. DISCUSSION

17 Defendant contends that he lacks sufficient minimum contacts with
 18 California to establish personal jurisdiction in this Court because he
 19 (1) does not reside in California; (2) has not conducted business in
 20 California; (3) does not own real or personal property in California;
 21 and (4) is not the officer or director of any California company.
 22 Defendant argues that he did not purposefully direct his activities to
 23 California. Moreover, assuming he has any contacts with California,
 24 Defendant claims that Plaintiff's causes of actions against Defendant
 25 do not arise from those contacts, but from his corporation's
 26 activities. Finally, Defendant submits that subjecting him to
 27 personal jurisdiction in this case would be unreasonable.

28 Plaintiff opposes on the grounds that Defendant, as President of

1 the corporation Click Feel Media, Inc., has minimum contacts with
2 California. Specifically, Plaintiff asserts that Defendant is the
3 true owner of the infringing websites and that whether Defendant
4 possessed knowledge of the infringements is a question of fact
5 irrelevant to the instant motion to dismiss. Moreover, Plaintiff
6 contends that there are sufficient minimum contacts to subject
7 Defendant to personal jurisdiction in California because (1) Defendant
8 receives revenue from subscribers downloading infringing material in
9 California; and (2) the infringing website has a contractual
10 relationship with a California billing company that processes payments
11 for Defendant.

12 The Court finds that Defendant has sufficient minimum contacts
13 with California to subject him to personal jurisdiction, as Defendant
14 owns and operates commercial websites that purposely seek out and
15 derive revenue from California residents. Moreover, in deciding the
16 instant motion to dismiss, the Court must assume as true Plaintiff's
17 allegations that Defendant filed registrations under false information
18 and is the true owner and operator of the alleged infringing websites.
19 See Compagnie Bruxelles Lambert, 94 F.3d at 588. Accordingly,
20 although Defendant contests such assertions, the parties' conflicting
21 allegations regarding the true ownership of the infringing websites
22 must be resolved in favor of Plaintiff for purposes of the instant
23 motion.¹ See id. The Court discusses the two bases for personal
24 jurisdiction over a non-resident defendant, namely general and
25 specific jurisdiction, below.

26
27
28 ¹ It is unclear to the Court why Plaintiff has not also
named Click Feel Media, Inc. as a defendant in this action.

1 **A. General Jurisdiction**

2 "General jurisdiction exists when a defendant is domiciled in the
3 forum state or his activities there are 'substantial' or 'continuous
4 and systematic.'" Panavision International, L.P. v. Toeppen, 141 F.3d
5 1316, 1320 (9th Cir. 1998) (quoting Helicopteros Nacionales de
6 Columbia, S.A. v. Hall, 466 U.S. 408, 414-16 (1984)). Factors that
7 courts may consider in determining whether general jurisdiction exists
8 include "whether the defendant makes sales, solicits or engages in
9 business in the state, serves the state's markets, designates an agent
10 for service of process, holds a license, or is incorporated there."
11 Bancroft & Masters, Inc. v. Augusta National Inc., 223 F.3d 1082, 1086
12 (9th Cir. 2000). The standard for establishing general jurisdiction
13 is "fairly high." Id. (quoting Brand v. Menlove Dodge, 796 F.2d 1070,
14 1073 (9th Cir. 1986)). Indeed, the plaintiff cannot meet its burden
15 to establish general jurisdiction unless it shows that the defendant's
16 contacts are the type that approximate physical presence. See id.

17 Here, Defendant's activities in California are insufficient to
18 subject Defendant to general jurisdiction.² Plaintiff has failed to
19 demonstrate that Defendant's Internet activities in California are
20 substantial, continuous, and systematic or that Defendant's activities
21 approximate physical presence in California. Moreover, Defendant has
22 taken none of the steps that traditionally give rise to general
23 jurisdiction, such as designating an agent for service of process or
24 incorporating in California. Accordingly, Defendant is not subject to
25 general jurisdiction.

26 _____
27 ² Plaintiff appears to concede that the Court does not have
28 general jurisdiction, as it fails to address the issue in its
opposition.

B. Specific Jurisdiction

Specific jurisdiction is proper when the case arises out of "certain forum-related acts." Bancroft, 223 F.3d at 1086. The Ninth Circuit evaluates three factors to determine whether specific jurisdiction exists. First, the defendant must perform some act by which he purposefully avails himself to the benefits and protections of the forum's laws. Second, the plaintiff's cause of action must arise out of or result from the defendant's forum-related activities. Finally, the exercise of jurisdiction must be reasonable under the circumstances of the given case. See Ochoa v. J.B. Martin & Sons Farms, Inc., 287 F.3d 1182, 1188-89 (9th Cir. 2002) (citation omitted).

1. Purposeful Availment

Purposeful availment requires a finding that the defendant "[has] performed some type of affirmative conduct which allows or promotes the transaction of business within the forum state." Doe v. Unocal Corp., 248 F.3d 915, 924 (9th Cir. 2001) (citing Sher v. Johnson, 911 F.2d 1357, 1362 (9th Cir. 1990)). The purposeful availment requirement protects a nonresident from being haled into a jurisdiction solely because of "'random,' 'fortuitous' or 'attenuated' contacts" over which he has no control. Terracom v. Valley Nat. Bank, 49 F.3d 555, 560 (9th Cir. 1995) (quoting Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475 (1985)). The defendant's activities, however, need not physically take place in the forum state to show purposeful availment. See Haisten v. Grass Valley Medical Reimbursement Fund, Ltd., 784 F.2d 1392, 1397 (9th Cir. 1986).

For purposes of analyzing purposeful availment, courts generally categorize websites into three different types: actively commercial,

1 passive, and interactive. See Cybersell, Inc. v. Cybersell, Inc., 130
2 F.3d 414, 417-19 (9th Cir. 1997). When a defendant sells products or
3 conducts business through a website, he has purposefully availed
4 himself to any state in which he offers to sell products or do
5 business. See, e.g., Stomp v. Neato, LLC., 61 F. Supp. 2d 1074, 1078-
6 79 (C.D. Cal. 1999); Zippo Mfg. Co. v. Zippo Dot Com, Inc., 952 F.
7 Supp. 1119, 1124-26 (W.D. Penn. 1997) (finding purposeful availment
8 where defendant contracted through website with thousands of
9 individuals in forum state because a company conducting business over
10 the Internet should expect to be called into court in states in which
11 it does business). In Stomp, for example, the court found purposeful
12 availment where a Connecticut corporation maintained a website through
13 which it marketed and sold its goods to California residents. Stomp,
14 61 F. Supp. 2d at 1087. Although the actual number of California
15 sales were small, the court concluded that the quality of the contacts
16 with the forum state rendered jurisdiction proper. See id.

17 In contrast, a defendant does not purposefully avail himself to a
18 forum state's protections and benefits by maintaining a passive
19 website that merely informs users about the defendant company's
20 services. See, e.g., Cybersell, 130 F.3d at 419-20; New Tech
21 Stainless steel Prods. Co., Ltd. v. Sun Mfg. Corp., 2004 WL 1773416,
22 at *4 (C.D. Cal. July 20, 2004) (finding no specific jurisdiction
23 where defendant maintained "purely informative" website and allowed
24 only "minimal" interaction between defendant and users). Thus, in
25 Cybersell, the Ninth Circuit found no purposeful availment where the
26 defendant maintained a website advertising its construction services.
27 Cybersell, 130 F.3d at 419. Although the website gathered users'
28 names and addresses and provided an e-mail address for people seeking

1 to do business with defendant, no business was actually conducted on
2 the website. See id. In fact, users were not even given the option
3 to sign up on-line for the defendant's service. See id.

4 Between commercial and passive websites lie interactive websites,
5 which allow Internet users to exchange information with a host
6 computer. See Cybersell, 130 F.3d at 418-19; Zippo, 952 F. Supp. at
7 1124. To determine whether maintaining an interactive website
8 constitutes purposeful availment, courts look to the nature and
9 quality of the information exchanged over the website. See Zippo, 952
10 F. Supp. at 1124 ("[T]he likelihood that personal jurisdiction can be
11 constitutionally exercised is directly proportionate to the nature and
12 quality of commercial activity that an entity conducts over the
13 Internet.").

14 Here, Defendant purposefully availed himself of the protections
15 and benefits of California through his commercial websites. First,
16 Defendant actually conducts business over the websites. Unlike the
17 website in Cybersell, which merely informed users of the company's
18 products, Defendant's websites allow users to pay subscription fees
19 for Defendant's products, namely, adult photographs. Subscribers to
20 Defendant's website in California must first provide a credit card
21 number and other information and gain access to the adult content only
22 after the credit card is charged. See Zada Decl. ¶¶ 13-14; Ex. 10.
23 Importantly, California residents' ability to purchase access to
24 content through Defendant's website is neither random nor fortuitous;
25 rather, it is the result of a conscious decision by Defendant to allow
26 California residents to purchase such access. Moreover, Defendant
27 appears to use a California company to process the credit card
28 payments received from California users over the websites. These

1 activities demonstrate Defendant's efforts to avail himself to the
2 protections and benefits of California.

3 **2. Relationship Between Claim and Defendant's Forum-
4 Related Activities**

5 The Ninth Circuit applies a "but for" test to determine whether a
6 given cause of action arises out of the defendant's forum-related
7 activities. See Bancroft, 223 F.3d at 1088. In essence, the court
8 must ask whether the cause of action would exist but for the
9 defendant's contacts with the forum. See id.

10 Here, Plaintiff's causes of action against Defendant arise
11 directly from Defendant's contacts with California. Indeed, Plaintiff
12 alleges that Defendant sells, or offers to sell, infringing
13 photographs over Defendant's websites. Accordingly, the claims
14 against Defendant would not exist but for Defendant's forum-related
15 activities.

16 **3. Reasonableness of Exercising Jurisdiction**

17 The "reasonableness" prong of the specific jurisdiction analysis
18 requires that the Court's exercise of jurisdiction comport with
19 "'fair and substantial justice.'" Core-Vent Corp., 11 F.3d at 1487
20 (quoting Burger King Corp., 471 U.S. at 476-77). "If the plaintiff
21 succeeds in satisfying both of the first two prongs [of the specific
22 jurisdiction analysis], the burden then shifts to the defendant to
23 'present a compelling case' that the exercise of jurisdiction would be
24 unreasonable." Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797,
25 802 (9th Cir. 2004) (quoting Burger King, 471 U.S. at 476-78).

26 The Ninth Circuit evaluates seven factors in considering whether
27 the exercise of jurisdiction is reasonable: (1) the extent of the
28 defendant's purposeful interjection into the forum; (2) the burden on

1 the defendant of litigating in the forum; (3) the extent of conflict
 2 with the sovereignty of the defendant's state; (4) the forum's
 3 interest in adjudicating the dispute; (5) the most efficient judicial
 4 resolution of the controversy; (6) the importance of the forum to the
 5 plaintiff's interest in obtaining convenient and effective relief; and
 6 (7) the existence of an alternative forum. See Core-Vent Corp., 11
 7 F.3d at 1487-88. No one factor is dispositive. See id. at 1488.
 8 Instead, courts must balance all seven factors and determine whether
 9 or not exercising jurisdiction is reasonable. See id.

10 Upon examination of all of the factors, the Court concludes that
 11 the balance in this case favors exercising jurisdiction over
 12 Defendant.³

13 **(i) Extent of Purposeful Interjection**

14 Under the law of this circuit, "[e]ven if there is sufficient
 15 'interjection' into the state to satisfy the [purposeful availment
 16 prong], the degree of interjection is a factor to be weighed in
 17 assessing the overall reasonableness of jurisdiction under the
 18 [reasonableness prong]." Core-Vent Corp., 11 F.3d at 1488 (quoting
 19 Insurance Co. of N. Am. v. Marina Salina Cruz, 649 F.2d 1266, 1271
 20 (9th Cir. 1981). "[T]he smaller the element of purposeful
 21 interjection, the less is jurisdiction to be anticipated and the less
 22 reasonable is its exercise." Id.

23 Here, the degree of interjection favors exercising jurisdiction.
 24 As discussed above, Defendant's website allows users in California to

25
 26 ³ Defendant argues unreasonableness based solely on the
 27 first, second, and fourth factors, namely, that Defendant has not
 28 purposefully interjected himself into the forum; Defendant would
 be burdened if required to defend himself across the country in
 California; and California has no particular interest in
 adjudicating the dispute.

1 purchase Defendant's photographs over the Internet. Moreover,
2 Defendant appears to have entered into a contractual relationship with
3 a California company, Paycom Billing Services, to process payments
4 from California subscribers to Defendant's website at
5 www.exposedcelebrity.com. See Zada Decl., Ex. 10. While these
6 activities may not approximate physical presence in California, they
7 nevertheless constitute sufficient injection into California, thus
8 making the Court's exercise of jurisdiction reasonable.

9 **(ii) Burden on the Defendant**

10 This factor examines the burden to a non-resident defendant
11 forced to litigate in California. See Ziegler, 64 F.3d at 475.
12 Inconvenience to a defendant will overcome clear justifications for
13 the exercise of jurisdiction only if the burden is so great that it
14 violates the defendant's right to due process. Caruth v.
15 International Psychoanalytical Ass'n, 59 F.3d 126, 128-29 (citing Roth
16 v. Garcia Marquez, 942 F.2d 617, 623 (9th Cir. 1991)). Moreover, the
17 Ninth Circuit has recognized that "[m]odern means of communication and
18 transportation have tended to diminish the burdens of defense of a
19 lawsuit in a distant forum." Insurance Co. of N. Am., 649 F.2d at
20 1271; Federal Deposit Ins. Corp. v. British-American Ins. Co., Ltd.,
21 828 F.2d 1439, 1444 (9th Cir. 1987) ("The burden of litigating in a
22 foreign forum has become less significant as a result of advances in
23 communication and transportation.").

24 In this case, Defendant has not shown that litigating in
25 California would subject him to an undue burden. While Defendant may
26 incur travel-related expenses, these costs hardly rise to the level of
27 a due process violation. Moreover, much, if not most, of the
28 litigation will not require Defendant to travel to California. These

1 facts, coupled with the well-recognized advances in modern
2 communication and transportation, minimize any burden that Defendant
3 might endure in defending this action in California.

4 **(iii) Conflict With Sovereignty of Defendant's State**

5 This factor concerns the extent to which the Court's exercise of
6 jurisdiction in California would conflict with the sovereignty of
7 Defendant's state of residence.⁴ See Core-Vent Corp., 11 F.3d at
8 1489. Such a conflict is not a concern in this case because
9 Plaintiff's claims are primarily based on uniform federal law, namely
10 the Copyright Act, 17 U.S.C. § 501. Thus, regardless of whether the
11 case is heard in California or Defendant's state of residence, the
12 applicable law will remain the same. Although Plaintiff alleges one
13 state law right of publicity claim, Defendant does not contend that
14 the law governing this claim would conflict with the sovereignty of
15 Defendant's state of residence.

16 **(iv) Forum State's Interest in Case**

17 A state generally has a "manifest interest" in providing its
18 residents with a convenient forum for redressing injuries by non-
19 resident actors. Burger King, 471 U.S. at 473. "California maintains
20 a strong interest in providing an effective means of redress for its
21 residents [who have been] tortiously injured." Caruth, 59 F.3d at 129
22 (citations and internal quotations omitted). Thus, because Plaintiff
23 is a California corporation, California has a strong interest in
24 providing Plaintiff redress for its alleged injury. Moreover, the
25 allegedly infringing photographs are being offered for sale to
26 residents in California. As such, this factor favors the exercise of

27 _____
28 ⁴ Plaintiff alleged that Defendant resides in Texas, while Defendant asserts that he resides in New York.

1 jurisdiction.

2 **(v) Most Efficient Judicial Resolution**

3 This factor calls for an evaluation of the efficiency of
4 alternate forums. See Amoco Egypt Oil Co. v. Leonis Nav. Co., Inc., 1
5 F.3d 848, 852 (9th Cir. 1993). Generally, the most efficient forum
6 will be the forum in which the injury occurred and where the witnesses
7 and the evidence are likely to be located. See id.; Terracom, 49 F.3d
8 at 561.

9 Here, this factor favors Plaintiff, albeit only slightly. The
10 location of witnesses and evidence is largely neutral, as the parties'
11 witnesses and documents are presumably located in their respective
12 states. The place of injury, however, favors Plaintiff. Although
13 Defendant sells his allegedly infringing photographs in cyberspace,
14 the resulting injury occurs in California, as that is where Plaintiff
15 is incorporated and maintains its principal place of business.

16 **(vi) Importance of Forum to Plaintiff's Interest in
17 Convenience and Effective Relief**

18 A plaintiff will almost always prefer to try a case at home or in
19 the forum closest to home. See Harris Rutsky & Co. Ins. Services,
20 Inc. v. Bell & Clements Ltd., 328 F.3d 1122, 1133 (9th Cir. 2003).
21 Indeed, the Ninth Circuit has observed that "'no doctorate in
22 astrophysics is required to deduce that trying a case where one lives
23 is almost always a plaintiff's preference.'" Core-Vent Corp., 11 F.3d
24 at 1490 (quoting Roth v. Garcia Marquez, 942 F.2d 617, 624 (9th Cir.
25 1991)). Courts, therefore, do not give much weight to the plaintiff's
26 convenience in determining whether exercising jurisdiction is
27 reasonable. See id. Indeed, "[a] mere preference on the part of the
28 plaintiff for its home forum does not affect the balancing." Core-

1 Vent Corp., 11 F.3d at 1490.

2 Here, this factor, to the extent it is given any weight, favors
3 exercising jurisdiction. While forcing Plaintiff to pursue this
4 action in New York or Texas would subject Plaintiff to substantially
5 higher litigation costs, the converse of this argument applies equally
6 to Defendant. Accordingly, the Court gives this factor minimal
7 consideration.

8 **(vii) Existence of an Alternative Forum**

9 Although the plaintiff bears the burden of proving the
10 unavailability of an alternative forum, the mere existence of an
11 alternate forum does not render a court's exercise of jurisdiction
12 unreasonable. See Core-Vent Corp., 11 F.3d at 1490. Here, an
13 alternate forum exists. Consequently, the Court finds that this
14 factor favors Defendant.

15 Nevertheless, the overall balance of these seven factors favors a
16 finding that exercising jurisdiction is reasonable in this case. Only
17 one factor (the existence of an alternate forum) truly weighs against
18 exercising jurisdiction. The remaining factors either weigh in favor
19 of exercising jurisdiction or do not favor one side or the other.
20 Given these circumstances, the Court cannot find that Defendant has
21 met his burden to present a compelling case that exercising
22 jurisdiction would be unreasonable.

23 **IV. CONCLUSION**

24 For the foregoing reasons, the Court DENIES Defendant's motion to
25 dismiss for lack of personal jurisdiction.

26 DATED: March 23, 2005

27 Audrey B. Collins
28 **AUDREY B. COLLINS**
UNITED STATES DISTRICT JUDGE