

1 Upon review of all papers submitted and pertaining
2 to this Motion [30], the Court **DENIES** Defendants'
3 Motion to Dismiss [30].

4 **I. BACKGROUND**

5 Defendants' Motion [30] arises out of Plaintiff
6 Stephen Hendricks's ("Plaintiff" or "Hendricks") Action
7 [1], brought in April 2014, against six named
8 defendants for federal copyright infringement and
9 breach of implied contract under California law.

10 Plaintiff's Action stems from a screenplay called
11 "Double Double" ("Screenplay") written by Plaintiff and
12 submitted in October 2004 to David Fortier of then-
13 "Temple Street Entertainment," which was later absorbed
14 into Fortier's Temple Street Productions company.

15 Compl. ¶¶ 15-16. On November 15, 2004, Fortier
16 informed Plaintiff via email that Fortier and Temple
17 Street were "going to pass on [Plaintiff's]
18 screenplay." Hendricks Decl., Ex D., ECF No. 39.

19 Plaintiff alleges that around March 2013, he discovered
20 that BBC America was airing a new television series
21 called Orphan Black ("Series"), which is produced by
22 Fortier and Temple Street Productions Inc., and which,
23 Plaintiff alleges, has the "same, unusual core
24 copyrightable expression as [Plaintiff's] Screenplay."

25 Id. ¶¶ 17, 24, 30; Fortier Decl. ¶ 9, ECF No. 30-1;
26 Fortier Dep. 106:17-22, ECF No. 40-3.

27 The present Motion to Dismiss [30], filed on
28 February 3, 2015, is brought by two of the six named

1 defendants in this Action: Temple Street Productions
2 Incorporated ("TSPI") and David Fortier ("Fortier").
3 Plaintiff's Complaint states that TSPI is a "Canadian
4 company, form unknown, doing business in Los Angeles,
5 California," with a business address at 1524 E.
6 Cloverfield Blvd., Santa Monica, California 90404."
7 Compl. ¶ 6. Plaintiff's Complaint states that Fortier
8 is an "individual doing business in Los Angeles
9 California." Id. ¶ 7. The Answer [24] filed by
10 specially appearing Defendants responded that "Temple
11 Street Productions is an entity organized under
12 Canadian law," and denied all other allegations about
13 TSPI and Fortier. Temple/Fortier Answer ¶¶ 6, 8, ECF
14 No. 24. The Motion asserts that TSPI and Fortier "have
15 virtually no contact with the State of California."
16 Mot. Mem. P&A ("Mot.") 1:16-17.

17 **II. LEGAL STANDARD**

18 A party may move for dismissal of an action for
19 lack of personal jurisdiction under Federal Rule of
20 Civil Procedure 12(b)(2). Fed. R. Civ. P. 12(b)(2);
21 see Bos. Telecomms. Grp., Inc. v. Deloitte Touche
22 Tohmatsu, 249 F. App'x 534, 536 (9th Cir. 2007). The
23 plaintiff has the burden of proving personal
24 jurisdiction, but "a plaintiff need only make a prima
25 facie showing of jurisdictional facts in order to
26 defeat a motion to dismiss." Adv. Skin & Hair, Inc. v.
27 Bancroft, 858 F. Supp. 2d 1084, 1087 (C.D. Cal. 2012).
28 A plaintiff makes a prima facie showing of personal

1 jurisdiction if the plaintiff alleges facts that, if
2 true, support a finding of jurisdiction. Id. "Where
3 not directly controverted," the plaintiff's version of
4 the facts is "taken as true," and "conflicts between
5 the facts in the parties' affidavits must be resolved
6 in [the plaintiff's] favor." Doe v. Unocal Corp., 248
7 F.3d 915, 921-22 (9th Cir. 2001) (internal quotation
8 marks omitted). However, "mere allegations . . . , when
9 contradicted by affidavits, are not enough to confer
10 personal jurisdiction of a nonresident defendant."
11 VBCConversions LLC v. New Solutions, Inc, No. CV
12 13-00853 RSWL (ANx), 2013 WL 2370723, at *3 (C.D. Cal.
13 May 20, 2013) (internal quotation marks and alterations
14 omitted).

15 The exercise of personal jurisdiction over a
16 nonresident defendant requires two findings: 1) the
17 forum state's laws provide a basis for exercising
18 personal jurisdiction, and 2) the assertion of personal
19 jurisdiction comports with due process. Adv. Skin &
20 Hair, 858 F. Supp. 2d at 1087. Under California's
21 long-arm statute, a court "need only satisfy itself
22 that its exercise of jurisdiction does not exceed
23 constitutional due process limitations." Doe v.
24 Geller, 533 F. Supp. 2d 996, 1005 (N.D. Cal. 2008).

25 "Due process requires that a defendant have
26 'certain minimum contacts with the forum such that the
27 maintenance of the suit does not offend traditional
28 notions of fair play and substantial justice.'" Adv.

1 Skin & Hair, 858 F. Supp. 2d at 1087 (internal
2 alterations omitted). The defendant's contacts "must
3 be 'such that the defendant should reasonably
4 anticipate being haled into court'" in the forum. Id.
5 at 1088 (internal alterations omitted). Personal
6 jurisdiction may be "general" (i.e., "all-purpose") or
7 "specific" (i.e., "case-specific"). Id.; Daimler AG v.
8 Bauman, 134 S. Ct. 746, 757 (2014).

9 **III. DISCUSSION**

10 **A. Evidentiary Objections**

11 Plaintiff objects [41] to portions of the Fortier
12 Declaration [30-1] on various grounds, such as lack of
13 foundation, Best Evidence Rule, "vague," and
14 "conclusory." To the extent the Court relies on
15 objected-to evidence, the Court relies only on
16 admissible evidence, and, therefore, **OVERRULES** as moot
17 Plaintiff's evidentiary objections. See Becker v.
18 Wells Fargo Bank NA, Inc., No. 2:10-cv-2799-TLN-KJN PS,
19 2014 WL 3891933, at *2-*3 (E.D. Cal. Aug. 7, 2014).

20 **B. General Jurisdiction**

21 General jurisdiction refers to personal
22 jurisdiction over a defendant to adjudicate any and all
23 claims against the defendant, regardless of whether
24 those claims arise from the defendant's contacts with
25 the forum. Coremetrics, Inc. v. Atomic Park.com, LLC,
26 37 F. Supp. 2d 1013, 1016 (N.D. Cal. 2005). The
27 standard for establishing general jurisdiction is
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1 "exacting"¹ and requires that the defendant's contacts
2 be "so substantial and of such a nature as to justify
3 suit against [the defendant] on causes of action
4 arising from dealings entirely distinct from those
5 activities.'" Daimler, 134 S. Ct. at 754.

6 1. TSPI

7 To exercise general jurisdiction over a
8 corporation, the corporation's affiliations with the
9 forum must "render [the corporation] essentially at
10 home in the forum." Daimler, 134 S. Ct. at 761
11 (internal quotation marks and alterations omitted).
12 The "paradigm" of a corporation's "home" is its place
13 of incorporation and its principal place of business,
14 but a corporation may be subject to general
15 jurisdiction elsewhere in "exceptional case[s]" where a
16 "corporation's operations in a forum . . . [are] so
17 substantial and of such a nature as to render the
18 corporation at home in that State." Daimler, 134 S.
19 Ct. at 761 & n.19.

20 Here, TSPI is incorporated and has its principal
21 place of business in Canada. Fortier Decl. ¶ 3. As
22 such, to establish general jurisdiction over TSPI,
23 Plaintiff must make a prima facie showing that this is
24 an "exceptional" case where TSPI's contacts with
25 California are "so substantial and of such a nature as

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27 ¹ Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 801
28 (9th Cir. 2004).

1 to render the corporation at home" in California.

2 Daimler, 134 S. Ct. at 761 n.19.

3 The U.S. Supreme Court in Daimler held out Perkins
4 v. Benguet Consol. Mining Co., 342 U.S. 437 (1952), as
5 "the textbook case of general jurisdiction
6 appropriately exercised over a foreign corporation that
7 has not consented to suit in the forum." Daimler, 134
8 S. Ct. at 755. In Perkins, the defendant, a foreign
9 corporation incorporated under the laws of the
10 Philippines, had temporarily moved its principal place
11 of business to Ohio to avoid the Japanese occupation of
12 the Philippines during World War II. Id. at 755-56.
13 The facts of this case are not analogous to Perkins, as
14 TSPI maintains its principal place of business in
15 Canada, and there is no evidence that TSPI has ever
16 operated out of California.

17 Plaintiff argues that TSPI's decision to
18 incorporate its wholly-owned subsidiary, Temple Street
19 Productions (US), Inc. ("TSP(US)"), under California
20 law and place TSP(US)'s principal place of business in
21 California should subject TSPI to general jurisdiction
22 in California. Opp'n 8:2-9:27; see Fortier Dep. 15:3-
23 16:3; Lowe Decl., Ex. D. Plaintiff also provides
24 evidence showing that TSPI calls TSP(US) its "LA
25 office" and "US office" and that TSPI's website,
26 templestreetproductions.com ("Website"), lists two
27 addresses and telephone numbers for "Temple Street
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1 Productions," with one location in California and one
2 location in Canada. Hendricks Decl., Exs. E-F; see
3 Opp'n 8:2-9:27. TSP(US) is also controlled by the
4 individuals who control TSPI, and both TSP(US) and TSPI
5 are in the same business of tv and film production.
6 Lowe Decl., Ex. D.; Temple Street Prods.' Resp. to
7 First Special Interrogs. No. 9 (Ex. A to Lowe Decl.),
8 ECF No. 40-1; Lowe Decl., Ex. D; Fortier Decl. ¶ 3.
9 For the following reasons, such facts are sufficient to
10 make a prima facie showing that TSPI is at "home" not
11 only in Canada, but also in California.

12 The above facts are distinguishable from the facts
13 in Daimler, where "neither [the parent] nor [the
14 subsidiary] [was] incorporated in California, nor [did]
15 either entity have its principal place of business
16 there."² 134 S. Ct. at 761. Here, TSPI's wholly-owned
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18 ² The U.S. Supreme Court in Daimler disrupted Ninth Circuit
19 precedent regarding general jurisdiction over parent corporations
20 based on subsidiary contacts with a forum. The Supreme Court
21 held that the Ninth Circuit's "agency theory" of general
22 jurisdiction, which attributes a subsidiary's contacts to the
23 parent when the subsidiary "'performs services that are
24 sufficiently important to the foreign corporation that if it did
25 not have a representative to perform them, the corporation's own
26 officials would undertake to perform substantially similar
27 services,'" could "in no event . . . be sustained." Id. at 758-
28 59. The Supreme Court stated that the Ninth Circuit's finding of
general jurisdiction "rested primarily on its observation that
MBUSA's services were 'important' to Daimler," and found that
"[f]ormulated this way, the inquiry into importance stacks the
deck, for it will always yield a pro-jurisdiction answer." Id.
at 759. The Supreme Court stated that the Ninth Circuit's
"importance" rationale "appears to subject foreign corporations
to general jurisdiction whenever they have an in-state subsidiary

1 subsidiary is both incorporated and has its principal
2 place of business in California, and additional facts
3 further strengthen the position that TSPI is at "home"
4 at its "LA office" in California. While merely doing
5 business in a forum does not a "home" make, Daimler
6 leaves open the possibility that a parent corporation's
7 choice to incorporate and headquarter its subsidiary in
8 the forum may, in some instances, be "affiliations with
9 the State [that] are so 'continuous and systematic' as
10 to render [the parent] essentially at home in the forum
11 State.'" Id. Though the precise bounds of Daimler are
12 unclear, the facts supplied by Plaintiff establish a

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15
16 or affiliate." Id.

17 Yet the Supreme Court noted that general jurisdiction is not
18 necessarily limited to only those forums where the corporation is
19 incorporated or has its principal place of business, as
20 demonstrated by Perkins and alluded to in Goodyear when the Court
21 mentions, and does not reject, the idea of piercing the corporate
22 veil for jurisdictional purposes, see Goodyear Dunlop Tires
23 Operations, S.A. v. Brown, 131 S. Ct. 2846, 2857 (2011).
24 Daimler, 134 S. Ct. at 760-61.

25 It also does not appear that the Supreme Court completely
26 rejected a theory of general jurisdiction based on a parent
27 corporation's contacts with a forum through its subsidiary,
28 though the bounds of such general jurisdiction are unclear. The
Supreme Court seemed to engage in a mini analysis of such general
jurisdiction, but focused not on the subsidiary's contacts with
the forum, but on the *parent's* engagement with the forum, even if
the parent's contacts with the forum were by way of its
subsidiary: e.g., the Supreme Court found that the parent's
contacts with the forum did not render it at "home" because
neither the parent *nor the subsidiary* were "incorporated" in
California, nor did the parent *or the subsidiary* have its
principal place of business in California. Id. at 761-62.

1 prima facie showing of general jurisdiction over TSPI
2 under Daimler's facts and rationale.³

3 2. Fortier

4 The "paradigm" for general jurisdiction over an
5 individual is "the individual's domicile." Goodyear
6 Dunlop Tires Operations, S.A. v. Brown, 131 S. Ct.
7 2846, 2853 (2011). But courts have, in rare instances,
8 exercised general jurisdiction over an individual when
9 the individual's contacts with a forum are so
10 substantial that "the defendant can be deemed to be
11 'present' in that forum for all purposes" so that
12 exercising general jurisdiction over the defendant does
13 not offend traditional notions of fair play and
14 substantial justice.⁴ Yahoo! Inc. v. La Ligue Contre Le

16 ³ Regarding the Ninth Circuit's "alter ego" theory of
17 general jurisdiction, see Stewart v. Screen Gems-EMI Music, Inc.,
18 No. 14-cv-04805-JSC, 2015 WL 890994, at *8 (N.D. Cal. Mar. 2,
19 2015), which was left undisturbed by Daimler, see 134 S. Ct. at
20 758, the Court finds that Plaintiff failed to submit evidence,
21 which, if true, would establish the second prong of the alter ego
22 exception. See, e.g., Long v. Nationwide Legal File & Serve,
Inc., No. 12-CV-03578-LHK, 2013 WL 5219053, at *7 (N.D. Cal.
23 Sept. 27, 2013); Ferrigno v. Phillips Elecs. N. Am. Corp., No.
24 C-09-03085 RMW, 2010 WL 2219975, at *4 (N.D. Cal. June 1, 2010);
25 Lisa McConnell, Inc. v. Idearc, Inc., No. 09-CV-00061-IEG (AJB),
26 2010 WL 364172, at *8 (S.D. Cal. Jan. 22, 2010).

27 ⁴ See, e.g., Cohen v. Hansen, No. 2:12-CV-1401 JCM (PAL),
28 2013 WL 3200093, at *3-*4 (D. Nev. June 24, 2013) (finding that
defendant's regular physical presence in the state (two to three
days a month), his significant business contacts, his ownership
of and CEO-position in a corporation headquartered in the forum,
and defendant's disregard for the in-forum corporation's
corporate form established general personal jurisdiction); Span
Constr. & Eng'g, Inc. v. Stephens, No. CIV-F-06-0286 AWI DLB,
2006 WL 1883391, at *5-*6 (E.D. Cal. July 7, 2006) (giving

1 Racisme Et L'Antisemitisme, 433 F.3d 1199, 1205 (9th
2 Cir. 2006). An individual's frequent visits to a
3 forum, or even his owning property in a forum, do not,
4 alone, justify the exercise of general jurisdiction
5 over him. See Span Constr. & Eng'g, Inc. v. Stephens,
6 No. CIV-F-06-0286 AWI DLB, 2006 WL 1883391, at *5 (E.D.
7 Cal. July 7, 2006).

8 Fortier's domicile is Canada. Fortier Decl. ¶ 2.
9 Fortier has never lived in California, does not own
10 property in California, does not maintain any bank
11 accounts in California, and does not, in his individual
12 capacity, regularly conduct business in California.
13 Id. Plaintiff argues that Fortier should be subject to
14 general jurisdiction in California because Fortier is
15 CEO, Director, and has an ownership interest in
16 TSP(US); because Fortier has made business trips to
17 California ("eight or nine"); and because Fortier
18 listed address on TSP(US)'s Statement of Information is
19 TSP(US)'s California address. Opp'n 8:2-24; Lowe Decl.,
20 Ex. D; Fortier Dep. 15:3-13, 52:6-8.

21 Fortier's position as CEO and Director of TSP(US),
22 including his act of filling out TPS(US)'s Statement of
23

24 examples of where general jurisdiction was exercised over a non-
25 resident individual and noting that "constant and extensive
26 personal and business connections with a state are the equivalent
27 of approximate physical presence" conferring general jurisdiction
28 over an individual, but that business activity requiring
"occasional presence in a state" is not sufficient contacts for
general jurisdiction).

1 Information and his indirect ownership interest in
2 TSP(US), cannot subject Fortier to general jurisdiction
3 because such contacts with California are not contacts
4 made by Fortier in his individual capacity.⁵ The
5 address listed by Fortier in TSP(US)'s Statement of
6 Information was TSP(US)'s address, not a personal
7 address. Fortier's "eight or nine" visits to
8 California in his lifetime do not subject Fortier to
9 general jurisdiction in California. See id. As such,
10 Plaintiff has failed to make a prima facie showing of
11 general jurisdiction over Fortier.

12 **C. Specific Jurisdiction**

13 "Specific jurisdiction exists where the cause of
14 action arises out of the defendant's [purposeful]
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17 ⁵ See Swenson v. Murchison, 507 F. Supp. 509, 511-12 & n.3
18 (N.D. Cal. 1981); cf. Martensen v. Koch, 942 F. Supp. 2d 983, 992
19 (N.D. Cal. 2013); see also Fairchild v. Barot, 946 F. Supp. 2d
20 573, 577-78 (N.D. Tex. 2013) (holding that an in-state
21 corporation's non-resident officer did not have sufficient
22 contacts to establish general jurisdiction over him where officer
23 did not live in Texas and, in his individual capacity, did not
24 own real property, maintain bank accounts, have an agent for
25 service of process, pay taxes, conduct business, or maintain a
26 personal mailing address in Texas); Nautilus, Ins. Co. v. Green
27 Eye Tech., LLC, Civil Action No. 11-7322, 2012 WL 5451808, at *5
28 (E.D. Pa. Nov. 8, 2012) (stating that "personal jurisdiction
cannot be exerted 'over an individual defendant whose only
contacts with the forum state were taken in his or her corporate
capacity'"); In re Terrorist Attacks on Sept. 11, 2001, 718 F.
Supp. 2d 456, 470-71 (S.D.N.Y. 2010) (stating that general
jurisdiction "over a corporation's board member, officer or
employee, in his or her individual capacity, must be premised on
the defendant's own personal contacts with the forum, and not the
acts and/or contacts carried out by the defendant in his or her
corporate capacity").

1 contacts with the forum state, even if those contacts
2 are isolated and sporadic." Google Inc. v. Rockstar
3 Consortium U.S. LP, No. C 13-5933 CW, 2014 WL 1571807,
4 at *6 (N.D. Cal. Apr. 17, 2014). The Ninth Circuit
5 applies a three-prong test to determine whether the
6 exercise of specific jurisdiction comports with due
7 process: "1) the defendant must purposefully avail
8 herself of . . . the forum by some affirmative act or
9 conduct; 2) the plaintiff's claim must arise out of, or
10 result from, the defendant's forum-related contacts;
11 and 3) the extension of jurisdiction must be
12 'reasonable.'" Adv. Skin & Hair, 858 F. Supp. 2d at
13 1089. The plaintiff bears the burden of establishing
14 the first two prongs, and if the plaintiff succeeds,
15 "the burden then shifts to the defendant to "present a
16 compelling case" that the exercise of jurisdiction
17 would not be reasonable.'" Id.

18 Additionally, Fortier's actions on behalf of TSPI
19 will be imputed to both Fortier and TSPI for purposes
20 of specific jurisdiction because Plaintiff has
21 sufficiently shown that Fortier was acting as TSPI's
22 agent with regard to the alleged activities and that
23 Fortier "control[led] or directly participate[d] in the
24 alleged activities." Martensen v. Koch, 942 F. Supp.
25 2d 983, 992 (N.D. Cal. 2013).⁶

26 _____

27 ⁶ Ninth Circuit "courts have held in the context of specific
28 jurisdiction that the corporate form does not protect an

1 1. Purposeful Availment

2 The first prong of specific jurisdiction "includes
3 both purposeful availment and purposeful direction" and
4 "may be satisfied by purposeful availment of the
5 privilege of doing business in the forum; by purposeful
6 direction of activities at the forum; or by some
7 combination thereof." Yahoo!, 433 F.3d at 1206.

8 Purposeful availment is "most often used in suits
9 sounding in contract," and purposeful direction is
10 "most often used in suits sounding in [intentional]
11 tort." Brayton Purcell LLP v. Recordon & Recordon, 606
12 F.3d 1124, 1128 (9th Cir. 2010); see Holland Am. Line
13 Inc. v. Wartsila N. Am., Inc., 485 F.3d 450, 459 (9th
14 Cir. 2007).

15 Plaintiff asserts claims of copyright infringement
16 and breach of implied contract. A claim for copyright

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18 individual acting in his official capacity" when either the
19 corporation "is the agent or alter ego of the individual," or
20 where the individual controls or directly participates in the
21 alleged activities, i.e., "where there is an identity of
22 interests between the corporation and the individual[]." Martensen, 942 F. Supp. 2d at 992; Fractional Villas, Inc. v. Reflections, No. 08CV1423 DMS (AJB), 2010 WL 1568509, at *2 (S.D. Cal. Apr. 19, 2010); see also Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 781 n.13 (1984) ("[W]e today reject the suggestion that employees who act in their official capacity are somehow shielded from suit in their individual capacity").

24 Here, Plaintiff's allegations clearly state that Fortier
25 directly participated in the alleged infringement of Plaintiff's
26 copyright and thus that Fortier had control and directly
27 participated in the alleged activities; and the allegations and
28 supporting facts make clear that Fortier, as co-owner and an
officer of TSPI, has, and has acted with, a unity and "identity
of interests" with TSPI. Reflections, 2010 WL 1568509, at *2.

1 infringement "is often characterized as a tort," id.
2 (citing Columbia Pictures, 106 F.3d at 289), and
3 "willful infringement is an intentional tort," Wash.
4 Shoe Co. v. A-Z Sporting Goods Inc., 704 F.3d 668, 674
5 (9th Cir. 2012). Plaintiff sufficiently alleges
6 willful copyright infringement. See Compl. ¶¶ 15-27;
7 Wash. Shoe Co., 704 F.3d at 674. Because Plaintiff
8 also asserts a contract claim, the Court will analyze
9 Defendants' contacts under both frameworks. See
10 Yahoo!, 433 F.3d at 1206.

11 a. *Purposeful Direction*

12 The Ninth Circuit evaluates "purposeful direction"
13 using the three-part "Calder-effects" test, under which
14 "the defendant allegedly must have (1) committed an
15 intentional act, (2) expressly aimed at the forum
16 state, (3) causing harm that the defendant knows is
17 likely to be suffered in the forum state.'" Brayton,
18 606 F.3d at 1128. The defendant need not have any
19 physical contact with the forum. Id.

20 i. *Intentional Act*

21 An intentional act for purposes of the effects test
22 requires only an intent to perform an actual, physical
23 act in the real world, regardless of any intent to
24 accomplish a result or consequence of that act.
25 CYBERSitter, LLC v. People's Republic of China, 805 F.
26 Supp. 2d 958, 969 (C.D. Cal. 2011).

1 Here, Plaintiff has sufficiently shown an
2 intentional act by Fortier and TSPI (acting through
3 Fortier).⁷ Plaintiff alleges that Fortier and TSPI,
4 without Plaintiff's permission, willfully copied
5 "wholly original elements from Plaintiff's Screenplay
6 'Double Double'" in the Orphan Black Series, which
7 Defendants intentionally broadcast, distributed,
8 published, or otherwise exploited in violation of
9 Plaintiff's copyright in the Screenplay. Compl. ¶¶ 22-
10 26. The evidence shows that Fortier, acting on behalf
11 of TSPI, traveled specifically to California to "pitch"
12 the Series and to meet with TSPI's California agent,
13 CAA, to discuss the Series. Fortier Dep. 52:25-57:22.
14 The evidence also shows that, through a "coordinated
15 plan to distribute"⁸ the Series in the United States
16 through TSPI's subsidiaries and BBC Worldwide, which
17 owns 25% of TSPI, Defendants advertise and sell Orphan
18 Black in California. Fortier Dep. 12:17-26:13, 56:25-
19 57:25; Fortier Decl. ¶¶ 9, 19; New Video Channel Am.
20 Resp. to Interrogs. Nos. 3, 4, 7-9, ECF No. 40-2.

21 ii. *Expressly Aimed at Forum*

22 To determine whether an intentional act is
23 "expressly aimed" at the forum, the Ninth Circuit

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25 ⁷ Marshall v. Heringer Ranches, Inc., 455 F. Supp. 285, 289
26 (E.D. Cal. 1979) ("A corporation can act only through its
officers and agents").

27 ⁸ Mattel, Inc. v. MCA Records, Inc., 296 F.3d 894, 899 (9th
28 Cir. 2002).

1 follows the narrow O'Connor opinion of Asahi Metal
2 Indus. Co. v. Sup. Ct. Cal., Solano Cnty., 480 U.S. 102
3 (1987), which states that the "placement of a product
4 into the stream of commerce, without more, is not an
5 act purposefully directed toward a forum state," which
6 requires "[a]dditional conduct . . . indicat[ing] an
7 intent or purpose to serve the market in the forum
8 State." Id. at 112; see Holland Am. Line, 485 F.3d at
9 459. Examples of the requisite "additional conduct"
10 include advertising in the forum, "marketing the
11 product through a distributor who has agreed to serve
12 as the sales agent in the forum State," and
13 "creat[ing], control[ling], or employ[ing] the
14 distribution system that brought its [product] to" the
15 forum. Asahi, 480 U.S. at 112.

16 It is undisputed that Orphan Black is in
17 California's stream of commerce. See New Video Channel
18 Am. Resp. Interrogs., Nos. 3, 4, 7-9. As mentioned
19 above, Plaintiff has shown that Fortier, acting on
20 behalf of TSPI, specifically made at least one trip to
21 California to "pitch" Orphan Black to broadcasters and
22 discuss the Series with TSPI's California agent, CAA.
23 The evidence also shows that TSPI engaged, through
24 subsidiaries and part-owners, in a "coordinated plan to
25 distribute"⁹ the Series in the United States, and
26 specifically in California--Orphan Black is advertised,

27 ⁹ Mattel, 296 F.3d at 899.
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1 sold in DVD, digital, and streaming format, and
2 broadcast in California. Additionally, TSPI's Website
3 lists TSP(US)'s California address and telephone number
4 at the bottom of the page that promotes Orphan Black as
5 "Content" of "Temple Street Productions," thus
6 associating TSPI's "LA office" with the Series.
7 Hendricks Decl., Exs. E-F.

8 Such facts are sufficient for a prima facie showing
9 that Defendants engaged in "additional conduct"
10 evidencing Defendants' "intent" to "serve the market
11 in" California. Asahi, 480 U.S. at 112; see Mattel,
12 296 F.3d at 899; Schwarzenegger v. Fred Martin Motor
13 Co., 374 F.3d 797, 803 (9th Cir. 2004).

14 iii. *Harm*

15 Plaintiff declares that he has "suffered injury in
16 California," including, among other injuries, harm to
17 his copyright, which occurred in California because
18 Plaintiff has been in California at all times relevant
19 to this Action. Hendricks Decl. ¶ 13.

20 Plaintiff provides evidence that he mailed his
21 Screenplay to Fortier from California and that Fortier
22 received his Screenplay in the mail. Compl. ¶ 16, Exs.
23 C-D; Hendricks Decl. ¶ 13. Such facts support
24 circumstantial evidence that Plaintiff's California
25 return address was posted on the package for Fortier to
26 see. Furthermore, Plaintiff emailed Fortier from the
27 email address, "shendricks@playboy.com," which could
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1 support a finding that Fortier was aware that Hendricks
2 was in Los Angeles, since Playboy's location is well-
3 known, especially for someone working in the film and
4 tv production industry. Further, Fortier, by nature of
5 his experience in tv production, almost certainly would
6 have known that infringing on the copyright of a
7 screenplay would likely cause harm in California, which
8 is the "heart of the theatrical motion picture and
9 television industry." Panavision Int'l, L.P. v.
10 Toeppen, 141 F.3d 1316, 1321 (9th Cir. 1998). Indeed,
11 California's importance to the film and tv industry is
12 demonstrated by Defendants' decision to fly to
13 California to "pitch" Orphan Black, to be represented
14 by an agent in California, and to open a "US office" in
15 California. At this stage of the action, such evidence
16 is sufficient to make a prima facie showing that
17 Defendants' intentional acts aimed at California caused
18 harm that Defendants knew would likely be suffered in
19 California.

20 As such, Plaintiff has made a prima facie showing
21 of "purposeful direction" to satisfy the first prong of
22 the Ninth Circuit's three-prong test for specific
23 jurisdiction.

24 b. *Purposeful Availment*

25 While Plaintiff does not need to additionally
26 satisfy the distinct "purposeful availment" standard,
27 the Court will analyze the facts under this standard as
28

1 well. A showing of "purposeful availment" requires the
2 plaintiff to show that the defendant has "purposefully
3 availed itself of the privilege of doing business in
4 the forum" by "'perform[ing] some type of affirmative
5 conduct [that] allows or promotes the transaction of
6 business within the forum state.'" Boschetto v.
7 Hansing, 539 F.3d 1011, 1016 (9th Cir. 2008).

8 The following facts are together sufficient to
9 support a prima facie showing that Defendants
10 purposefully availed themselves of the privilege of
11 doing business in California¹⁰:

12 (1) Fortier, representing TSPI, met in California with
13 CAA, with whom at least TSPI had an agency contract, to
14 discuss Orphan Black. Fortier Dep. 52:25-56:18.

15 (2) Defendants incorporated under California law a
16 wholly-owned subsidiary, TSP(US), which promotes Orphan
17 Black via TSPI's "Temple Street Productions" Website,
18 on which TSP(US)'s California address and telephone
19 number is listed. Hendricks Decl., Exs. E-F.

20 (3) Defendants' product, the Orphan Black Series, is,
21 through a coordinated effort, purposely advertised,
22 broadcast, and sold in California.

23 2. Extent Claims "Arise Out of" Contacts

24 "A lawsuit arises out of a defendant's contacts
25 with a forum state if there is a direct nexus between
26 the claims being asserted and the defendant's

27 ¹⁰ See Schwarzenegger, 374 F.3d at 802.

1 activities in the forum." Adv. Skin & Hair, 858 F.
2 Supp. 2d at 1090. The Ninth Circuit applies a "but
3 for" test to this second prong.¹¹ Id.

4 Plaintiff alleges that Defendants have infringed
5 Plaintiff's copyright in his Screenplay by creating,
6 producing, distributing, publishing, and/or otherwise
7 exploiting the Orphan Black Series, which allegedly
8 "cop[ies] wholly original elements" from Plaintiff's
9 Screenplay without Plaintiff's permission. Compl. ¶¶
10 24-25. Plaintiff also claims that Defendants'
11 exploitation of Plaintiff's copyright created an
12 implied contract, and Defendants' failure to pay
13

14
15 ¹¹ While the Ninth Circuit applies a "but for" test to
16 determine whether an action arises out of the defendant's
17 contacts with the forum, in the context of a tort that, by its
18 nature, is not limited to a "discrete injury," such as copyright
19 infringement, the plaintiff can satisfy the "but for" test by
20 showing that the defendant's contacts in the forum injured the
21 plaintiff as alleged in plaintiff's claim, i.e., that "there is a
22 direct nexus between the claims being asserted and the
23 defendant's activities in the forum," Adv. Skin & Hair, 858 F.
24 Supp. 2d at 1090. See Wilden Pump & Eng'g Co. v. Versa-Matic
25 Tool, Inc., No. 91-1562 SVW (SX), 1991 WL 280844, at *4 (C.D.
26 Cal. July 29, 1991); Keeton v. Hustler Magazine, Inc., 465 U.S.
27 770, 780-81 (1984) (noting that a victim of a tort like libel,
28 where the harm occurs nationwide, and thus in multiple forums,
may choose to bring suit "in any forum with which the defendant
has 'certain minimum contacts'" satisfying due process); Mattel,
296 F.3d at 899 (finding that the Ninth Circuit's "but for" test
was satisfied in an action for trademark infringement and
defamation because defendants' conduct purposefully directed
toward California "allegedly caused harm in" California, even
though the alleged harm occurred outside of California as well).
Here, as in Wilden, literally applying the Ninth Circuit's "but
for" test would result in an "absurd result." Wilden, 1991 WL
280844, at *4; see Mattel, 296 F.3d at 899.

1 Plaintiff resulted in Defendants' breach of the implied
2 contract. Compl. ¶¶ 28-33.

3 The Court finds that there is a "direct nexus"
4 between Plaintiff's claims and Fortier/TSPI's contacts
5 with California, which include Fortier's promotion of
6 Orphan Black via meetings in California, including at
7 least one meeting with TSPI's agent, CAA; as well as
8 TSPI's coordination of the distribution of the Series
9 in California. Because Fortier/TSPI's contacts with
10 California "allegedly caused harm in" California, the
11 Ninth Circuit's "but for" test is satisfied. Mattel,
12 296 F.3d at 899 (analogous); Wilden Pump & Eng'g Co. v.
13 Versa-Matic Tool, Inc., No. 91-1562 SVW (SX), 1991 WL
14 280844, at *4 (C.D. Cal. July 29, 1991).

15 3. Reasonableness

16 Because Plaintiff has made a prima facie showing of
17 the first two prongs of specific jurisdiction, it is
18 Defendants burden to make a prima facie case that
19 exercising jurisdiction over Defendants would violate
20 Defendants' due process rights. See Adv. Skin & Hair,
21 858 F. Supp. 2d at 1091.

22 Defendants argue that exercising jurisdiction over
23 Fortier and TSPI would be unreasonable and inconvenient
24 because the "development and production of the series
25 occurred entirely in Canada," and because Defendants
26 would "be required to incur the costs of having
27 numerous witnesses . . . come to California to testify
28

1 at trial." Mot. 13:24-14:2. Such arguments do not
2 support unreasonableness, as mere inconvenience will
3 not suffice, especially in this age of air travel and
4 when Canada shares the same continent with the United
5 States. Sher v. Johnson, 911 F.2d 1357, 1365 (9th Cir.
6 1990) (holding that "it is not enough . . . [to]
7 demonstrate that some other forum is more reasonable
8 than California, it must show a due process violation;
9 it must show that jurisdiction in California would make
10 the litigation 'so gravely difficult and inconvenient
11 that a party unfairly is at a severe disadvantage in
12 comparison to his opponent'"). Furthermore,
13 Defendants' choice to incorporate and headquarter in
14 California a wholly-owned subsidiary, which TSPI calls
15 its "LA office," makes it extremely unlikely that
16 Defendants' due process rights would be violated if
17 they had to defend an action in California. See, e.g.,
18 Mattel, 296 F.3d at 899 ("[J]urisdiction over the
19 foreign defendants, who are represented by the same
20 counsel and closely associated with the domestic
21 defendants, is reasonable.").

22 In the Ninth Circuit, reasonableness is assessed by
23 the following factors:

24 (1) the extent of the defendant's purposeful
25 interjection into the forum;

26 (2) the burden on the defendant in litigating in the
27 forum;

28

1 (3) the extent of conflict with the sovereignty of the
2 defendant's state;

3 (4) the forum state's interest in adjudicating the
4 dispute;

5 (5) the most efficient judicial resolution of the
6 controversy;

7 (6) the importance of the forum to the plaintiff's
8 interest in convenient and effective relief; and

9 (7) the existence of an alternative forum.

10 Adv. Skin & Hair, 858 F. Supp. 2d at 1091.

11 The first factor, "the extent of the defendant's
12 purposeful interjection into the forum," "'parallels
13 the question of minimum contacts.'" Id. As discussed
14 above, Defendants have an "LA office" that serves as
15 its "US office," which Defendants intentionally
16 incorporated under California law. Defendants also
17 allegedly have, or had, agency contracts with CAA in
18 California, purposely visited California to promote
19 their product, and coordinated efforts to advertise and
20 sale their product in California. Such purposeful
21 interjection into California by Defendants makes this
22 factor weigh in favor of reasonableness.

23 The second factor, which considers the burden that
24 litigating in the forum imposes on the defendant, "must
25 be examined in light of the corresponding burden on the
26 plaintiff." Id. Defendants argue that they would be
27 burdened if they had "to incur the costs of having
28

1 numerous witnesses . . . come to California to testify
2 at trial." Mot. 13:24-14:2. On the other hand,
3 forcing Plaintiff to litigate his claims, based on U.S.
4 and California law, in Canada, a foreign country, would
5 be a much more significant burden than mere travel
6 expenses or inconveniences. As such, this factor
7 weighs in favor of reasonableness.

8 The third factor evaluates "the extent of any
9 conflict with the sovereignty" of the defendant's home
10 country or state. Adv. Skin & Hair, 858 F. Supp. 2d at
11 1091. As Defendants have not provided any evidence of
12 any such conflict, this factor weighs in favor of
13 reasonableness.

14 The fourth factor "considers California's interest
15 in adjudicating the controversy." Id. Because
16 Plaintiff is a California resident, and because
17 Plaintiff's claims are based on California and United
18 States law, California has a strong interest in
19 adjudicating this controversy. See id. This factor
20 weighs in favor of reasonableness.

21 The fifth factor, which considers the efficient
22 judicial resolution of the controversy, primarily
23 focuses on the location of the evidence and the
24 witnesses. Id. Here, Defendants have asserted that
25 the majority of the witnesses and evidence is in
26 Canada. Mot. 13:24-14:3; Fortier Decl. ¶¶ 17-18. As
27
28

1 Plaintiff has not established otherwise, this factor
2 weighs against reasonableness.

3 The sixth factor is the importance of the forum to
4 a plaintiff's interest in convenient and effective
5 relief, though "neither the Supreme Court nor [the
6 Ninth Circuit] has given much weight to inconvenience
7 to the Plaintiff." Ziegler v. Indian River Cnty., 64
8 F.3d 470, 476 (9th Cir. 1995). However, as discussed
9 above, Plaintiff would be more than merely
10 inconvenienced if forced to litigate his claims in a
11 foreign country; such a situation could threaten
12 Plaintiff's "interest in convenient and effective
13 relief." Though Defendants assert that Canada is "an
14 adequate and suitable forum" to hear Plaintiff's
15 claims, Defendants fail to provide any evidence
16 supporting such a claim.¹² As such, this factor weighs
17 in favor of reasonableness.

18 While the plaintiff bears the burden of
19 establishing the final factor, "that an alternative
20 forum is not available," "this factor is significant
21 only if other factors weigh against an exercise of
22

23 ¹² Cf., e.g., Halo Creative & Design Ltd. v. Comptoir Des
24 Indes Inc., Case No. 14 C 8196, 2015 WL 426277, at *2 (N.D. Ill.
25 Jan. 29, 2015) (noting that the Court was unsure "whether a
26 Canadian Court could, in fact, enforce United States intellectual
27 property laws"); see Metro-Goldwyn-Mayer Studios Inc. v.
28 Grokster, Inc., 243 F. Supp. 2d 1073, 1094 (C.D. Cal. 2003)
(noting that the defendant had "not demonstrated that *effective*
relief--remedies for infringement of U.S. copyrights within the
United States--would be available other than in a U.S. forum").

1 jurisdiction." Metro-Goldwyn-Mayer Studios Inc. v.
2 Grokster, Inc., 243 F. Supp. 2d 1073, 1094 (C.D. Cal.
3 2003). Plaintiff fails to show that an alternative
4 forum is not available, but because most of the factors
5 weigh in favor of reasonableness, this factor is not
6 significant. Furthermore, as discussed above, it is
7 unclear whether Defendants' preferred forum in Canada
8 would provide effective relief for Plaintiff's claims.
9 As such, this factor is not significant.

10 The above factors, on the whole, weigh in favor of
11 reasonableness. The Court finds that Plaintiff has
12 made a prima facie showing of specific jurisdiction
13 over both Fortier and TSPI.

14 IV. CONCLUSION

15 For the foregoing reasons, the Court **DENIES** Temple
16 Street Productions Incorporated and David Fortier's
17 Motion to Dismiss for Lack of Personal Jurisdiction
18 [30].

19 **IT IS SO ORDERED.**

20
21 DATED: June 8, 2015

RONALD S.W. LEW

HONORABLE RONALD S.W. LEW
Senior U.S. District Judge