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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

12	L.A. GEM & JEWELRY DESIGN,)	CV 16-9325-RSWL-KSx
13	INC.,)	
14	Plaintiff,)	ORDER re: Defendants'
15	v.)	Motion to Dismiss for
16)	Lack of Personal
17	ECOMMERCE INNOVATIONS, LLC)	Jurisdiction and
18	dba INSPIRED SILVER;)	Improper Venue [13]
19	ENDOFRETAIL, INC.; DAVID)	
20	STRAGER; and DOES 1-10,)	
)	
)	
	Defendants.)	

21 The present Motion to Dismiss for Lack of Personal
 22 Jurisdiction and/or Improper Venue ("Motion") [13]
 23 arises from a copyright infringement action between
 24 Plaintiff L.A. Gem & Jewelry Design, Inc. ("Plaintiff")
 25 and Defendants Ecommerce Innovations, LLC dba Inspired
 26 Silver ("Ecommerce"); EndofRetail, Inc. ("EOR"); and
 27 David Strager ("Strager")(collectively, "Defendants").
 28 Having reviewed all papers submitted pertaining to this

1 Motion, the Court **NOW FINDS AND RULES AS FOLLOWS:** the
2 Court **GRANTS** Defendants' Motion to Dismiss for Lack of
3 Personal Jurisdiction and Improper Venue pursuant to
4 Federal Rules of Civil Procedure 12(b)(2) and 12(b)(3)
5 [13]. The Court also **DENIES** Plaintiff's request for
6 jurisdictional discovery.

7 I. BACKGROUND

8 A. Factual Background

9 Plaintiff is a California corporation with its
10 principal place of business in Los Angeles. Compl. ¶
11 3, ECF No. 1. Plaintiff designs and creates jewelry
12 and original artwork. Id. at ¶¶ 10-11. Ecommerce is a
13 Nevada LLC with its principal place of business in Las
14 Vegas. Id. at ¶ 4. Ecommerce is an online retailer
15 that sells jewelry under other brand names like
16 "Inspired Silver." Decl. of David Strager ("Strager
17 Decl.") ¶ 7, ECF No. 13-1. EOR is a Delaware
18 corporation with its principal place of business in
19 Redondo Beach, California.¹ Compl. ¶ 5. EOR is a
20 division of Ecommerce that offers daily online deals
21 for fashion and beauty products. Strager Decl. ¶ 11.
22 Defendants also manufacture and distribute jewelry
23 products. Compl. ¶ 12. Strager is the founder and CEO
24 of EOR and Ecommerce, and resides in Nevada. Compl. ¶
25 6; Strager Decl. ¶ 4.

26
27 ¹ Defendants aver that EOR is a division of Ecommerce that
28 moved its principal place of business to Las Vegas, Nevada in
June 2013. Mot. 1:24-26; Supp. Decl. of David Strager ("Strager
Supp. Decl.") ¶ 5, ECF No. 18-1.

1 From 2011-2014, Plaintiff designed various
2 iterations of an "LA Rocks I Love You to the Moon and
3 Back" pendant. Compl. ¶¶ 14, 22. Plaintiff registered
4 a copyright for the pendants, id. at ¶¶ 14, 23, and
5 claims that Defendants have sold unauthorized and
6 infringing copies of the pendants. Id. at ¶¶ 20, 31-
7 32. Ecommerce sells the allegedly infringing jewelry
8 through its website, www.inspiredsilver.com, its
9 jewelry club at www.jewelryclub.inspiredsilver.com and
10 through retailers www.bonanza.com and www.amazon.com.
11 Id. at ¶ 4. EOR sells the allegedly infringing jewelry
12 through its personal website, www.endofretail.com and
13 through www.bonanza.com. Id. at ¶ 5.

14 **B. Procedural Background**

15 Plaintiff filed a Complaint on December 16, 2016,
16 alleging copyright infringement and
17 contributory/vicarious infringement. See generally
18 Compl. On February 9, 2017, Defendants filed a Motion
19 to Dismiss for Lack of Personal Jurisdiction and
20 Improper Venue [13]. On February 21, Plaintiff filed
21 its Opposition [17]. Defendants filed a Reply on
22 February 28, 2017 [18].

23 **II. DISCUSSION**

24 **A. Legal Standard**

25 1. Federal Rule of Civil Procedure 12(b)(2)

26 When a defendant moves to dismiss for lack of
27 personal jurisdiction, the plaintiff bears the burden
28 of demonstrating that the court may properly exercise

1 jurisdiction over the defendant. Pebble Beach Co. v.
2 Caddy, 453 F.3d 1151, 1154 (9th Cir. 2006). Absent
3 formal discovery or an evidentiary hearing, a plaintiff
4 need only make a prima facie showing that jurisdiction
5 is proper to survive dismissal. Id. at 1154.

6 To satisfy this burden, a plaintiff can rely on the
7 allegations in his complaint to the extent they are not
8 controverted by the moving party. Barantsevich v. VTB
9 Bank, 954 F. Supp. 2d 972, 982 (C.D. Cal. 2013). If
10 defendants adduce evidence controverting the
11 allegations, however, the plaintiff must "come forward
12 with facts, by affidavit or otherwise, supporting
13 personal jurisdiction." Id. at 982 (citation omitted).

14 "The general rule is that personal jurisdiction
15 over a defendant is proper if it is permitted by a
16 long-arm statute and if the exercise of that
17 jurisdiction does not violate federal due process."
18 Pebble Beach, 453 F.3d at 1154-55. California
19 authorizes jurisdiction in the full extent permitted by
20 the Constitution. See Cal. Code Civ. Proc. § 410.
21 Therefore, the only question the Court must ask is
22 whether the exercise of jurisdiction over defendants
23 would be consistent with due process. Harris Rutsky &
24 Co. Ins. Servs., Inc. v. Bell & Clements Ltd., 328 F.3d
25 1122, 1129 (9th Cir. 2003).

26 Due process requires that a defendant must have
27 such "minimum contacts" with the forum state that
28 "maintenance of the suit does not offend traditional

1 notions of fair play and substantial justice." Int'l
2 Shoe Co. v. Washington, 326 U.S. 310, 316 (1945). The
3 minimum contacts required mean that the defendant must
4 have purposefully availed itself of the privilege of
5 conducting activities within the foreign jurisdiction,
6 thereby invoking the benefits and protections of the
7 foreign jurisdiction's laws. See Asahi Metal Indus.
8 Co. v. Sup. Ct. of Cal., 480 U.S. 102, 109 (1987).

9 There are two recognized bases for exercising
10 jurisdiction over a nonresident defendant: (1) "general
11 jurisdiction," which arises where defendant's
12 activities in the forum are sufficiently "substantial"
13 or "continuous and systematic" to justify the exercise
14 of jurisdiction over him in all matters; and (2)
15 "specific jurisdiction," which arises when a
16 defendant's specific contacts with the forum give rise
17 to the claim in question. Helicopteros Nacionales de
18 Colombia, S.A. v. Hall, 466 U.S. 408, 414-16 (1984).

19 2. Federal Rule of Civil Procedure 12(b)(3)

20 Federal Rule of Civil Procedure 12(b)(3) allows a
21 party to file a motion to dismiss on the basis of
22 improper venue. The plaintiff is required to establish
23 that venue is proper as to each defendant and as to
24 each claim. Allstar Mktg. Grp., LLC v. Your Store
25 Online, LLC, 666 F. Supp. 2d 1109, 1126 (C.D. Cal.
26 2009)(quotation omitted). Venue in a copyright action
27 "may be instituted in the district in which the
28 defendant or his agent resides or may be found." 28

1 U.S.C. § 1400(a). Thus, in order to determine whether
2 venue is proper in this District, the Court must
3 determine whether it has personal jurisdiction over
4 defendant. See Ins. Corp. of Ireland, Ltd. v.
5 Compagnie des Bauxites de Guinee, 456 U.S. 694, 711 n.1
6 (1982); see also Metro-Goldwyn-Mayer Studios Inc. v.
7 Grokster, Ltd., 243 F. Supp. 2d 1073, 1095 (C.D. Cal.
8 2003) ("Because the Court concludes that jurisdiction
9 is proper in this district [over copyright defendant],
10 venue is proper as well.").

11 **B. Analysis**

12 1. Plaintiff's Request for Judicial Notice

13 Plaintiff seeks judicial notice of four items.
14 First, Ecommerce's August 27, 2003 and September 4,
15 2015 "Statement of Information" filings with the
16 California Secretary of State. Pl.'s Req. for Judicial
17 Notice ("Pl.'s RJN") 2:7-9, Ex. 1, ECF No. 17-3.
18 Second, the record for Trademark Registration Number
19 3124880, Ecommerce's trademark registration for
20 "Inspired Silver" from the Trademark Electronic Search
21 System ("TESS") on the United States Patent and
22 Trademark Office ("USPTO") website, dated August 1,
23 2006; and the record for Trademark Registration Number
24 4309910 for EOR's "End of Retail" trademark
25 registration from the TESS on the USPTO, dated March
26 26, 2013. Id. at 2:10-13, Ex. 2. Third, (1) keyword
27 search results for "I love you to the moon and back
28 440811" from the database of registered copyrights on

1 the Copyright Office's website; (2) and Plaintiff's "LA
2 rocks I Love You to the Moon and Back: 440811"
3 Copyright Registration No. VA000912320. Id. at 2:14-
4 17, Ex. 3. Fourth, the Complaint and Civil Cover Sheet
5 for Ecommerce's 2008 lawsuit filed in this Court,
6 Ecommerce Innovations, LLC v. Does 1-10, No. 2:08-cv-
7 04596-R-SS (C.D. Cal. July 11, 2008), ECF Nos. 1, 1-2.
8 Id. at 2:18-20, Ex. 4. Defendants object to each of
9 these requests on the grounds that the proffered
10 documents are unauthenticated or not certified copies.
11 See generally Defs.' Evid. Objs. ("Defs.' Objs."), ECF
12 No. 19.

13 The Court **GRANTS** Plaintiff's Request for Judicial
14 Notice [17-3] in its entirety. The California
15 Secretary of State filings are appropriate for judicial
16 notice, as they are matters of public record, and
17 Defendants have offered no compelling reason why the
18 documents are inauthentic. Theta Chi Fraternity, Inc.
19 v. Leland Stanford Jr. Univ., ---F. Supp. 3d---, 2016
20 WL 4524305, at *4 (N.D. Cal. Aug. 30, 2016). The USPTO
21 trademark registrations are also judicially noticeable.
22 TESS "is an official record memorializing the
23 applications for the marks, and is published by a
24 government organization [the USPTO];" thus, the
25 exhibits' accuracy cannot reasonably be questioned.
26 Eksouzian v. Albanese, No. CV 13-728 PSG (MANx), 2013
27 WL 12139828, at *n.2 (C.D. Cal. July 12, 2013).

28 The two remaining exhibits are also judicially

1 noticeable. Judicial notice is appropriate for
2 copyright registration documents. Idema v. Dreamworks,
3 Inc., 90 F. App'x 496, 498 (9th Cir. 2003). Because
4 the Copyright Office database search results are
5 publicly available and Defendants offer no compelling
6 reason why they are inauthentic or subject to dispute,
7 judicial notice is appropriate. Finally, a court may
8 "take judicial notice of the *existence* of another
9 court's opinion or of the filing of pleadings in
10 related proceedings; the Court may not, however, accept
11 as true the facts found or alleged in such documents."
12 Peel v. BrooksAmerica Mortg. Corp., 788 F. Supp. 2d
13 1149, 1158 (C.D. Cal. 2011)(emphasis added)(citations
14 omitted). The Court takes judicial notice of the 2008
15 Complaint for the *existence* of its filing, but does not
16 rely on the statements therein in its ruling on the
17 instant Motion.

18 2. Evidentiary Objections

19 The Parties have filed objections to one another's
20 declarations, exhibits, and requests for judicial
21 notice. ECF Nos. 17-2, 19. To the extent the Court
22 relies upon the objected-to evidence in reaching its
23 conclusions, the Court addresses those objections
24 below. However, to the extent the Court has not relied
25 on the objected to evidence, it need not rule on those
26 evidentiary objections and deems the objections moot.

27 ///

28 ///

1 a. *Plaintiff's Objections*

2 Plaintiff objects to the Strager Declaration and
3 Supplemental Strager Declaration. Plaintiff objects to
4 Paragraph 8, lines 10-2 and Paragraph 12, lines 8-10 of
5 the Strager Declaration where he declares that "the
6 amount of transactions [Defendants] achieved from
7 California residents over the past five years accounts
8 for less than 10% of [Defendants'] total sales." Pl.'s
9 Objs. to Strager Decl. 3:4-4:23, ECF No. 17-2.

10 Plaintiff objects on the grounds of lack of foundation,
11 best evidence rule, hearsay, irrelevance, and
12 prejudice. As CEO, Strager has personal knowledge
13 regarding ECommerce and EOR's sales, and the
14 information is relevant to the personal jurisdiction
15 inquiry. The Court **OVERRULES** Plaintiff's objections in
16 their entirety.

17 Plaintiff objects to Paragraphs 4 and 5 in the
18 Supplemental Strager Declaration where he declares that
19 Defendants relocated their operations and principal
20 place of business to Las Vegas, Nevada in June 2013.
21 Plaintiff objects on the grounds that the evidence's
22 prejudice outweighs its probative value. See generally
23 Pl.'s Objs, ECF No. 22. Because this evidence directly
24 controverts Plaintiff's insistence that Defendants
25 conduct business in Los Angeles, these statements are
26 relevant to the issue of whether Defendants are subject
27 to general jurisdiction in California. The Court thus
28 **OVERRULES** Plaintiff's Objections in their entirety

1 [22].

2 b. *Defendants' Objections*

3 Defendants object to the Keshishian Declaration and
4 Plaintiff's Request for Judicial Notice. Defendants
5 object to nearly all of the paragraphs and exhibits in
6 the Keshishian Declaration, reciting nearly verbatim
7 objections on the grounds of foundation, personal
8 knowledge, authentication, improper lay opinion, lacks
9 relevance, and hearsay. See generally Defs.' Evid.
10 Objs. to Keshishian Decl., ECF No. 19. Plaintiff
11 replied to Defendants' Objections on March 7, 2017
12 [21].² Because many of Defendants' objections are
13 boilerplate and "devoid of any specific argument or
14 analysis as to why any particular exhibit or assertion
15 in a declaration should be excluded," United States v.
16 HVI Cat Canyon, Inc., ---F. Supp. 3d---, 2016 WL
17 7011348, at *5 (C.D. Cal. Sept. 30, 2016), the Court
18 **OVERRULES** all of Defendants' objections as to
19 paragraphs 9-20 of the Keshishian and the associated
20

21 ² Defendants filed an Objection to this document as an
22 "Improper Surreply" because Plaintiff filed rebuttal arguments
23 in response to Defendants' Reply without seeking leave of Court.
24 Objs. to Pl.'s Improper Surreply 2:5-9; 2:26-28, ECF No. 24; C.D.
25 Cal. L.R. 7-10 ("Absent prior written order of the Court, the
26 opposing party shall not file a response to the reply.") The
27 Court has reviewed Plaintiff's alleged "improper surreply." It
28 does not contain citations and arguments responding to
Defendants' Reply brief; it merely responds to Defendants'
specific evidentiary objections. In any event, the Court has not
considered Plaintiff's Response to Defendants' Objections [21] in
its rulings on Defendants' Objections or in its substantive
analysis.

1 exhibits [19].

2 3. Personal Jurisdiction

3 Plaintiff has not demonstrated Defendants are
4 subject to personal jurisdiction in California.
5 General jurisdiction is lacking in this case. And
6 while specific jurisdiction is a closer call, Plaintiff
7 ultimately fails to make a prima facie showing that
8 Defendants are subject to specific jurisdiction in
9 California.

10 a. *General Jurisdiction*

11 General jurisdiction arises where the defendant's
12 activities in the forum are sufficiently "continuous
13 and systematic" to "render them essentially at home in
14 the forum state." Daimler AG v. Bauman, 134 S. Ct.
15 746, 754 (2014). The Court discusses Strager first.

16 "The paradigm for general jurisdiction over an
17 individual is the individual's domicile." Hendricks v.
18 New Video Channel Am., LLC, No. 2:14-cv-02989-RSWL-SSx,
19 2015 WL 3616983, at *4 (C.D. Cal. June 8,
20 2015)(internal quotation marks omitted). Plaintiff
21 concedes in its Complaint that Strager is a Nevada
22 citizen. Compl. ¶ 6. Strager agrees: his stated
23 permanent home is in Las Vegas, Nevada, he does not
24 have a personal mailing address in California, he does
25 not conduct extensive business here, and he does not
26 maintain personal bank accounts here. Strager Decl. ¶
27 4.

28 Plaintiff avers that Strager owns property in

1 Hermosa Beach, California, and the property was "owner-
2 occupied" according to a 2016 property assessment.
3 Decl. of Milord Keshishian ("Keshishian Decl.") ¶ 17,
4 Ex. L, ECF No. 17-1. But frequent visits to a forum or
5 owning property in the forum, alone, do not satisfy
6 general jurisdiction. Hendricks, 2015 WL 3616983, at
7 *4. Beyond this lone piece of evidence, Plaintiff does
8 not show that Strager frequently traveled to California
9 for business, spent substantial amounts of time at his
10 alleged Hermosa Beach property, or that Strager is
11 integrated into California personally and fiscally.
12 Thus, his contacts with California are neither
13 systematic nor continuous.

14 The Court similarly concludes that Ecommerce and
15 EOR are not "essentially at home" in California. The
16 "paradigm" of a corporation's "home" is its place of
17 incorporation and its principal place of business.
18 Daimler, 134 S. Ct. at 760. The Complaint states that
19 Ecommerce and EOR are a Nevada Limited Liability
20 Company and Delaware corporation, respectively. Compl.
21 ¶¶ 4, 5. Plaintiff alleges in the Complaint that EOR's
22 principal place of business is in Redondo Beach,
23 California. Compl. ¶ 5. But Defendants argue that
24 Ecommerce and EOR both operate out of the same
25 principal place of business in Las Vegas, Nevada after
26 moving operations there in June 2013. Strager Decl. ¶¶
27 10, 14.

28 Because the Court cannot deduce Defendants' general

1 jurisdiction from the principal place of business
2 alone, it examines all Defendants' activities impacting
3 the state. Barantsevich, 954 F. Supp. 2d at 983.
4 Factors to be considered are "whether the defendant
5 makes sales, solicits or engages in business in the
6 state, serves the state's markets, designates an agent
7 for service of process, holds a license, or is
8 incorporated there." Bancroft & Masters, Inc. v.
9 Augusta Nat'l. Inc., 223 F.3d 1082, 1086 (9th Cir.
10 2000).

11 Plaintiff avers that Ecommerce and EOR have an
12 extensive business presence in this district, as shown
13 through (1) California Secretary of State registrations
14 designating agents for service of process in Rancho
15 Palos Verdes and Santa Monica, California; (2)
16 "repeated use" of Central District courts for
17 litigation;³ (3) Terms of Service agreements with social
18 media companies whereby Defendants agreed to California
19 jurisdiction; (4) an agreement with SoftLayer
20 Technologies, Inc. to physically host its website in
21 California; and (5) USPTO trademark registrations
22 listing EOR's office location in Redondo Beach,
23 California. Opp'n 9:23-25; Keshishian Decl. ¶¶ 19, 20,
24 Exs. F-I; Pl.'s RJN Exs. 1, 2.

25 Defendants' first four arguments for general
26

27 ³ In 2008, Defendants filed Ecommerce Innovations, LLC v.
28 Does 1-10, No. 2:08-cv-04596-R-SS, (C.D. Cal. July 14, 2008).
Keshishian Decl. ¶ 15; Pl.'s RJN Ex. 4.

1 jurisdiction are largely unavailing. Designation of an
2 agent for service of process in California, alone, is
3 not enough to show general jurisdiction. See, e.g.,
4 King v. Am. Family Mut. Ins. Co., 632 F.3d 570, 579
5 (9th Cir. 2011). And the 2008 lawsuit, in which
6 Defendants apparently stated that they had a principal
7 place of business in Torrance, California, Opp'n 3:1-3,
8 is unpersuasive in establishing general jurisdiction,
9 as Ecommerce voluntarily dismissed the case without any
10 explicit findings of general jurisdiction, nor was any
11 judgment rendered in Ecommerce's favor. "[G]eneral
12 jurisdiction is [not] forever established over
13 Defendants solely because of their admissions in a
14 prior unrelated case, particularly when these
15 admissions did not previously result in an explicit
16 finding of general jurisdiction." Regal Beloit Am.,
17 Inc. v. Broad Ocean Motor LLC, No. 4:16-cv-00111-JCH,
18 2016 WL 3549624, at *3 (E.D. Mo. June 30, 2016).

19 Plaintiff's argument—that Defendants stipulated to
20 California jurisdiction through promotion contracts
21 with various social media entities—is not well-taken.
22 An individual's contract with an out-of-state party, on
23 its own, is insufficient to establish general
24 jurisdiction. NuboNau, Inc. v. NB Labs, Ltd., No. 10
25 cv2631-LAB (BGS), 2012 WL 843503, at *6 (S.D. Cal. Mar.
26 9, 2012). As to the argument that the SoftLayer
27 contract confers general jurisdiction, having a single-
28 contract based relationship with California is a far

1 cry from "systematic, continuous" contacts when coupled
2 with the remaining evidence. Man-D-Tec, Inc. v. Nylube
3 Prods. Co., LLC, No. CV-11-1573-PHX-GMS, 2012 WL
4 1831521, at *2 (D. Ariz. May 18, 2012)("If the mere
5 location of a server could create personal
6 jurisdiction, any state where a server is located would
7 have personal jurisdiction over any user of that
8 server.")

9 Plaintiff's evidence regarding sales to California
10 and EOR's alleged Redondo Beach business location
11 present a closer call for general jurisdiction.

12 Transactions with California consumers amount to
13 less than 10% of total sales over the past five years;
14 thus, approximately 2% of Defendants' annual sales are
15 dedicated to California. Plaintiff argues that
16 California is one of Defendants' largest markets for
17 sales, Compl. ¶ 2, but this evidence is controverted by
18 Defendants' allegation that Defendants' California
19 sales only make up less than 10% of its total sales.
20 Strager Decl. ¶¶ 8, 12.

21 Percentages of sales in a given state, while not
22 dispositive, may inform the general jurisdiction
23 inquiry. Coremetrics, Inc. v. Atomic Park.com, LLC,
24 370 F. Supp. 2d 1013, 1022-23 (N.D. Cal. 2005). And
25 courts' varying decisions as to sales percentages
26 suggest that there is no magic number to confer general
27 jurisdiction. Compare Sky Billiards, Inc. v. Loong
28 Star Inc., No. EDCV 14-00921 JGB (Spx), 2014 WL

1 12601022, at *3 (C.D. Cal. Sept. 4, 2014)(18% of total
2 sales to California, while "significant," did not make
3 defendant at home in California), and Natural Wellness
4 Ctrs. of Am., Inc. v. Golden Health Prods., Inc., No. C
5 12-05586 CW, 2013 WL 245594, at *3 (N.D. Cal. Jan. 22,
6 2013)(no general jurisdiction where defendants' website
7 generated \$191,000 to California, less than 15% of its
8 total sales), with West Marine, Inc. v. Watercraft
9 Superstore, Inc., No. C11-04459 HRL, 2012 WL 479677, at
10 *4 (N.D. Cal. Feb. 14, 2012)(7.4% of all sales to
11 California, totaling \$300,000 over a three-year period
12 was high enough to confer general jurisdiction).

13 The context of Defendants' 10% sales is unclear.
14 The parties do not show the state with the next highest
15 percentage of sales, Coremetrics, 370 F. Supp. 2d at
16 1022, nor does Plaintiff provide guidance as to whether
17 10% over a five-year period is significant sales for
18 California, or what percentage of Defendants' total
19 revenue is dedicated to California sales. Plaintiff's
20 exhibits that depict jewelry with the phrases "Los
21 Angeles," "California," and the California state flag
22 on the designs provide no calculable means to show
23 "California is one of the largest markets for
24 Defendants' sales." Keshishian Decl. Ex. L. Moreover,
25 it is not clear whether these sales "prompted
26 Defendants to travel to California, send sales agents
27 there, or tailor their marketing activities towards the
28 state." Natural Wellness Ctrs. of America, 2013 WL

1 245594, at *3.

2 Plaintiff alleges that USPTO registrations for
3 Ecommerce's "Inspired Silver" trademark and EOR's "End
4 of Retail" trademark list the owner/registrant's
5 address in Redondo Beach, California. Keshishian Decl.
6 ¶ 19; Pl.'s RJN Ex. 2. Defendants counter that the
7 trademark registrations are from August 2006 and March
8 2013, long before the allegedly infringing conduct in
9 this case occurred, and Defendants have since moved all
10 business operations to Las Vegas, Nevada. Reply 4:8-
11 10.

12 "General jurisdiction can be assessed by evaluating
13 contacts of the defendant with the forum over a
14 reasonable number of years, up to the date the suit was
15 filed." Berdux v. Project Time & Cost, Inc., 669 F.
16 Supp. 2d 1094 n.2 (N.D. Cal. 2009). Thus, the
17 trademark registrations could feasibly indicate that
18 Defendants previously had their principal place of
19 business in California. Even so, the trademark
20 registrations do not provide any quantitative or
21 qualitative details of Defendants' business activities
22 here; these trademark registrations only describe the
23 address of the owner. Beijing Auto. Indus. Import &
24 Export Co. v. Indian Indus., Inc., No. CV 13-4279-GHK
25 (Shx), 2013 WL 4040072, at *2 n.2 (C.D. Cal. Aug. 7,
26 2013)("[R]egistration to do business in a state is
27 merely one of several relevant factors in determining
28 general jurisdiction."). The Court is unpersuaded that

1 trademark registrations from several years ago are
2 sufficient to confer general jurisdiction. For
3 instance, Defendants dispute that the service of
4 process agent only remains in California to contest
5 pending tax liens. Defendants may have previously
6 resided and conducted business in California, but "the
7 relevant contacts between the defendant and the forum
8 state must not have been weakened by the passage of
9 time." Mattel, Inc. v. Greiner & Hausser GmbH, 354
10 F.3d 857, 866 (9th Cir. 2003).

11 Plaintiff builds out its general jurisdiction
12 argument by cobbling together agent-for-service-of-
13 process records and public records searches showing
14 Defendants' previous California-based addresses, but
15 does not provide additional compelling evidence that
16 Defendants continue a "business presence" here (i.e.
17 send employees here for training, travel here
18 extensively for business development, or operate
19 storefronts in California). "Given the high threshold
20 of business activity that is required under Daimler,
21 the Court is not convinced that general jurisdiction
22 may be established solely on Defendant's corporate
23 predecessors' past activity when Defendant has no
24 current business activity." Senju Pharm. Co. v.
25 Metrics, Inc., 96 F. Supp. 3d 428, 441 (D.N.J. 2015).

26 In conclusion, general jurisdiction is not
27 satisfied for any defendant.

28 ///

1 b. *Specific Jurisdiction*

2 The Ninth Circuit employs a three-part test to
3 determine whether a court has specific jurisdiction
4 over a defendant:

5 (1) The non-resident defendant must purposefully
6 direct his activities or consummate some
7 transaction with the forum or resident thereof;
8 or perform some act by which he purposefully
9 avails himself of the privilege of conducting
10 activities in the forum, thereby invoking the
11 benefits and protections of its laws; (2) the
12 claim must be one which arises out of or relates
13 to the defendant's forum-related activities; and
14 (3) the exercise of jurisdiction must comport
15 with fair play and substantial justice, i.e. it
16 must be reasonable.

17 Mavrix Photo, Inc. v. Brand Techs., Inc., 647 F.3d
18 1218, 1227-28 (9th Cir. 2011).

19 The plaintiff bears the burden of proving prongs
20 one and two. Id. If the plaintiff fails to establish
21 either prong one or two, the "jurisdictional inquiry
22 ends and the case must be dismissed." Id.

23 i. *Purposeful Direction*

24 The Ninth Circuit generally uses a purposeful
25 direction analysis (as opposed to purposeful availment)
26 when an action sounds in tort; this includes copyright
27 infringement actions. Brayton Purcell LLP v. Recordon
28 & Recordon, 606 F.3d 1124, 1128 (9th Cir. 2010). To
determine whether a defendant has purposefully directed
itself at the forum, courts use the three-part
"effects" test set forth by the Supreme Court in Calder
v. Jones, 465 U.S. 783 (1984). To satisfy the Calder
test, the defendant must have: (1) committed an
intentional act; (2) that is expressly aimed at the

1 forum state; (3) causing harm that defendant
2 understands is likely to be felt in the forum state.
3 Dole Food v. Watts, 303 F.3d 1104, 1111 (9th Cir.
4 2002).

5 1. *Intentional Act*

6 To commit an "intentional act," the defendant must
7 intend to perform the actual, physical act, rather than
8 the result. Schwarzenegger v. Fred Martin Motor Co.,
9 373 F.3d 797, 797 (9th Cir. 2004).

10 The parties seemingly agree that corporate
11 Defendants' marketing, manufacturing, and distributing
12 of the allegedly infringing jewelry pieces constitutes
13 an "intentional act." Compl. ¶¶ 19-21, 29-31; Mot.
14 13:24-14:5. But Defendants aver that Strager did not
15 perform intentional acts because any alleged
16 intentional act could only be performed in his
17 corporate capacity, not in his personal capacity as
18 CEO. Mot. 14:18-20.

19 Per the "fiduciary shield doctrine," the fact that
20 a corporation is subject to local jurisdiction does not
21 mean its nonresident officers and directors are also
22 subject to personal jurisdiction. Colt Studio, Inc. v.
23 Badpuppy Enter., 75 F. Supp. 2d 1104, 1111 (C.D. Cal.
24 1999). But a CEO may be subject to personal
25 jurisdiction if it is a "primary participant" in the
26 wrongdoing or if Plaintiff "establish[es] that the
27 individual defendant personally directed the activities
28 toward the forum state giving rise to the complaint."

1 Indiana Plumbing Supply, Inc. v. Standard of Lynn,
2 Inc., 800 F. Supp. 743, 750 (C.D. Cal. 1995).

3 Plaintiff alleges in its Complaint that Strager "is
4 a principal, guiding spirit, and/or central figure" in
5 Ecommerce and EOR with "control over the day to day
6 operations," Compl. ¶ 6, and Defendants stated that
7 Strager handles "management and oversight of the sales,
8 manufacturing and distribution [plus] . . . design,
9 production, and customer fulfillment for [Ecommerce and
10 EOR]." Strager Decl. ¶¶ 1, 5. Beyond these general
11 allegations, the Court cannot say that Strager, in his
12 individual capacity, was a "primary participant" in the
13 alleged wrongdoing.

14 2. *Express Aiming*

15 Plaintiff argues that Defendants expressly aimed
16 their conduct at California by (1) advertising their
17 pendants online to California consumers; (2) marketing
18 them through California-based social media companies,
19 personal websites, and Amazon; and (3) controlling the
20 pendants' distribution into California. Opp'n 13:15-
21 19.

22 The Ninth Circuit "has struggled with the question
23 whether tortious conduct on a nationally accessible
24 website is expressly aimed at any, or all, of the
25 forums in which the website can be viewed." Mavrix,
26 647 F.3d at 1229. "One rule, however, is clear: A
27 defendant has not purposefully availed himself of the
28 privilege of conducting activities in a forum state

1 merely because he operates a website which can be
2 accessed there." DFSB Kollektive Co. Ltd v. Bourne,
3 897 F. Supp. 2d 871, 880 (N.D. Cal. 2012)(internal
4 quotation marks and citations omitted). Something more
5 than a passive website is required, and courts will
6 consider the website's interactivity, the "geographic
7 scope of defendant's commercial ambitions," and whether
8 the defendant individually targeted a known plaintiff
9 of the forum state. Mavrix, 647 F.3d at 1229.

10 Most of Plaintiff's arguments regarding this prong
11 are unavailing. First, marketing the allegedly
12 infringing jewelry through California-based social
13 media companies like Facebook and Twitter is inadequate
14 to constitute conduct "expressly aimed" at California.
15 DFSB Kollektive, 897 F. Supp. 2d at 883. Plaintiff
16 argues Defendants expressly aim their conduct at
17 California in the following ways: Defendants' jewelry
18 pieces are advertised as "for all the cool cats in Los
19 Angeles;" Plaintiff's counsel received a "targeted"
20 online banner at their office in this forum that
21 advertised the infringing pendants; and Plaintiff's
22 counsel ordered the infringing pendants and had them
23 delivered to their office in this forum. Keshishian
24 Decl. ¶¶ 14, 21, 22; Ex. K, N, O.

25 Advertisements for the Pave Heart Necklaces which
26 state "[t]his one is for all the cool cats in Los
27 Angeles" suggest that Defendants were looking to
28 attract California consumers and target California

1 markets. In-N-Out Burgers v. Basso, No. CV 05-1231 ER,
2 2005 WL 5337562, at *2 (C.D. Cal. June 27,
3 2005)(defendant's website stated that his California
4 work-out locations were "coming soon," and provided
5 relevant contacts and phone numbers for this
6 businesses). While Basso was slightly more emphatic in
7 aiming business conduct at California, the Court could
8 see how Defendants target California consumers, at
9 least on their retail website. This also contradicts
10 Defendants' assertion that they do not target any print
11 media toward California. Strager Decl. ¶¶ 8, 12.

12 But the Pave Heart Necklace, which was advertised
13 towards "cool cats in Los Angeles," is not one of the
14 allegedly infringing pieces giving rise to the
15 copyright infringement action. Compare Compl. with
16 Keshishian Decl. Ex. K. Warner Bros. Home Entm't, Inc.
17 v. Shi, No. CV 12-07753 DMG (PLAx), 2013 WL 12116586,
18 at *6 (C.D. Cal. Jan. 29, 2013)(emphasis in
19 original)(internal quotation marks and citations
20 omitted) stated that "[t]here is a material difference
21 between a defendant who incidentally harms the
22 plaintiff by selling illegal copies of the plaintiff's
23 goods to a national or global audience and a defendant
24 who engages in wrongful conduct *targeted* at a plaintiff
25 whom the defendant knows to be a resident of the forum
26 state." The advertisement apparently aimed at
27 California and Los Angeles residents advertises a piece
28 of jewelry that did not even give rise to the

1 apparently wrongful conduct. Thus, the Court cannot
2 say that through a passing reference to California, on
3 a jewelry piece not even giving rise to the lawsuit,
4 Defendants "expressly aimed" their intentionally
5 infringing acts at California.

6 Plaintiff's counsel was also apparently able to
7 access an online banner at his office in California.
8 The banner advertised various jewelry from
9 inspiredsilver.com. But the banner does not
10 specifically target California residents, nor do the
11 surrounding facts suggest that Defendants "continuously
12 and deliberately exploited" the California market any
13 more than they did another market which may have seen
14 this online banner. L.A. Gem & Jewelry Design, Inc. v.
15 Reese, No. CV 15-03035 SJO (MRWx), 2015 WL 4163336, at
16 *4 (C.D. Cal. July 9, 2015) ("Absent evidence of
17 significant sales in the forum state, email or website
18 advertising, standing alone, do not give rise to
19 [personal] jurisdiction.").

20 And Plaintiff's counsel's efforts to order and
21 receive Defendants' products in California are not
22 dispositive of capitalizing on a stream of commerce to
23 California. "Defendants cannot be said to have
24 purposely availed themselves . . . of this forum when
25 it was an act of someone associated with plaintiff,
26 rather than Defendants' Web site advertising, that
27 brought defendants' product into this forum." Simone
28 v. VSL Pharmaceuticals, Inc., No. TDC-15-1356, 2017 WL

1 658711, at *5 (D. Md. Feb. 16, 2017). Plaintiff L.A.
2 Gem has previously tried to present a court in this
3 district with evidence of internet sales to California
4 residents by having his law clerk order allegedly
5 infringing jewelry from defendant corporations. Reese,
6 2015 WL4163336, at *4. But here, as in Reese,
7 Plaintiff's Complaint did not state that Defendants
8 made any internet sales to California residents, only
9 generally asserting that "California is one of
10 Defendants' primary markets for jewelry." Keshishian
11 Decl. ¶ 16. The Court is wary of relying too heavily
12 on these contacts arising after the alleged copyright
13 infringement in 2015-2016. Farmers Ins. Exch. v.
14 Portage La Prairie Mut. Ins. Co., 907 F.2d 911, 913
15 (9th Cir. 1990)("Only contacts occurring prior to the
16 event causing the litigation may be considered.")
17 Thus, Defendants have not expressly aimed conduct at
18 California.

19 3. *Harm in California*

20 To satisfy this prong, "the brunt of the harm need
21 not be suffered in the forum state," but merely "a
22 jurisdictionally sufficient amount of harm." Yahoo!
23 Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme,
24 433 F.3d 1199, 1207 (9th Cir. 2006).

25 Plaintiff alleges that Defendants "wilfully
26 infringed [their] registered copyrights while knowing
27 [Plaintiff] is located in this state." Compl. ¶ 7. In
28 response, Defendants argue that the bulk of the harm

1 was not felt in California, and Defendants had no
2 knowledge of Plaintiff's existence before the lawsuit.
3 Strager Decl. ¶ 6.

4 For a copyright action, the Ninth Circuit has
5 reasoned that "it [would be] foreseeable that
6 [plaintiff] would be harmed by infringement of its
7 copyright, including harm to its business reputation
8 and goodwill, and decreased business and profits. It
9 was also foreseeable that some of this harm would occur
10 in the Forum, where [plaintiff] was known to reside."
11 Brayton, 606 F.3d 1124 at 1127; see also Amini
12 Innovation Corp. v. JS Imports, Inc., 497 F. Supp. 2d
13 1093, 1105 (C.D. Cal. 2007)("[N]umerous courts within
14 the Ninth Circuit have found specific jurisdiction in
15 cases where a plaintiff brings suit in its home forum
16 against an out-of-state defendant, alleging that the
17 defendant engaged in infringing activities knowing that
18 plaintiff was located in the forum.") Plaintiff has
19 made at least a prima facie showing that Defendants
20 knew their infringing conduct could have borne harm in
21 California, where Plaintiff's principal place of
22 business was located.

23 To conclude, while intentional acts and harm in
24 California are satisfied, Plaintiff cannot show that
25 Defendants purposefully directed their alleged
26 copyright infringement at the forum state, as it cannot
27 show the activities were expressly aimed at the forum.

28 ///

1 ii. *Remaining Prongs*

2 The remaining prongs are whether Plaintiff's claims
3 arise out of Defendants' forum-related activities and
4 whether the exercise of jurisdiction would be
5 reasonable. Because Plaintiff did not show that
6 Defendants purposefully availed themselves of the
7 privileges of conducting activities in the forum, the
8 Court need not delve into the remaining two prongs.
9 Boschetto v. Hansing, 539 F.3d 1011, 1021 (9th Cir.
10 2008)(if the plaintiff fails to establish either prong
11 one or two of the Ninth Circuit three-part test for
12 specific jurisdiction, the "jurisdictional inquiry ends
13 and the case must be dismissed.").⁴ Therefore, specific
14 jurisdiction is not satisfied, and the Court lacks
15 personal jurisdiction over Defendants.

16 4. Venue

17 Under 28 U.S.C. § 1400(a), venue for copyright
18 actions is proper "in the district in which the
19 defendant or his agent resides or may be found." A
20 defendant "may be found" wherever personal jurisdiction
21 is proper. Colt Studio, 75 F. Supp. 2d at 1112. For
22 the same reasons stated above regarding the Court's
23 lack of personal jurisdiction over Defendants, venue is

24
25 ⁴ The Court does note that "whether the claims arose out of
26 Defendants' contacts" prong is easily satisfied, as "[b]ut for
27 Defendant's delivering infringing pendants into the stream of
28 commerce [through its websites], Plaintiff would not have been
injured[,] giving rise to its claims." Opp'n 16:26-27. This is
a sufficient nexus between the copyright infringement claims and
Defendants' activities. Allstar, 666 F. Supp. 2d at 1122.

1 also improper in the Central District of California.

2 5. Jurisdictional Discovery

3 Plaintiff requests that if the Court grants
4 Defendants' Motion, that it be afforded the opportunity
5 to conduct jurisdictional discovery on both general and
6 specific jurisdiction. Opp'n 24:10-17. The Court
7 **DENIES** Plaintiff's request. Plaintiff's Opposition
8 does not inform the Court of details regarding what the
9 additional discovery would establish. Boschetto, 539
10 F.3d at 1020 (affirming jurisdictional discovery
11 request denial "based on little more than a hunch that
12 [discovery] might yield jurisdictionally relevant
13 facts.") Because Plaintiff has failed to show more
14 than speculative allegations of attenuated
15 jurisdictional contacts "in the face of specific
16 denials made by [D]efendants" thus far, "the Court need
17 not permit even limited discovery." Terracom v. Valley
18 Nat'l Bank, 49 F.3d 555, 562 (9th Cir. 1995).

19 **III. CONCLUSION**

20 For the reasons set forth above, the Court **GRANTS**
21 Defendants' Motion to Dismiss for Lack of Personal
22 Jurisdiction and Improper Venue pursuant to Federal
23 Rules of Civil Procedure 12(b)(2) and 12(b)(3) [13].
24 Clerk to close this action.

25 **IT IS SO ORDERED.**

26 DATED: April 27, 2017

s/ RONALD S.W. LEW

27 **HONORABLE RONALD S.W. LEW**
28 Senior U.S. District Judge