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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TONY HONG,)	Case No. CV 18-08519 DDP (SSx)
)	
Plaintiff,)	
)	
v.)	ORDER GRANTING DEFENDANTS'
)	MOTIONS TO DISMISS
RECREATIONAL EQUIPMENT,)	
INC.,)	
)	[Dkt. 22, 23]
Defendants.)	
)	
_____)	

Presently before the court are two motions to dismiss or, in the alternative, transfer venue, filed separately by Defendants Recreational Equipment, Inc. ("REI") and Samuel Krieg ("Krieg"), an individual. Having considered the submissions of the parties and heard oral argument, the court grants the motions and adopts the following Order.

I. Background

Plaintiff, a resident of Los Angeles, California, created "Tree Rings," an illustration depicting the tree rings of a tree trunk. (Complaint ¶ 7.) Plaintiff obtained a copyright registration for Tree Rings. (Id.) Krieg, a resident of Idaho, creates and sells specialty climbing bags. (Complaint ¶ 10.)

1 Krieg allegedly sold climbing bags bearing some variant of
2 Plaintiff's Tree Rings design, both through Krieg's own website and
3 to Defendant REI, which in turn sold the bags at its own retail
4 stores and on its website. (Id. ¶¶ 11-12.) Plaintiff's Complaint
5 alleges copyright causes of action against both Krieg and REI.

6 Plaintiff filed his Complaint on October 3, 2018. Ninety-two
7 days later, on January 3, 2019, Plaintiff personally served the
8 Complaint on REI. On February 1, 2019, this Court ordered
9 Plaintiff to show cause, no later than February 8, why this action
10 should not be dismissed for lack of prosecution against Krieg, who
11 had not yet been served. (Dkt. 17.) The court stated that it
12 would consider proof of service upon Krieg as an adequate response.
13 (Id.) In accordance with this Court's Order, on February 7, 2019,
14 Plaintiff filed a proof of service indicating that he had served
15 Krieg by mail in Idaho on February 1. (Dkt. 18.)

16 Defendants now separately move to dismiss the Complaint for
17 lack of proper service and lack of personal jurisdiction. In the
18 alternative, Defendants ask that this court transfer this matter to
19 the District of Idaho.

20 **II. Discussion**

21 A. Insufficient Service

22 A party may seek to dismiss a pleading for insufficient
23 service of process. Fed. R. Civ. P. 12(b)(5). In the face of a
24 challenge to the validity of service of process, the plaintiff
25 bears the burden of demonstrating effective service. Brockmeyer v.
26 May, 383 F.3d 798, 801 (9th Cir. 2004). Generally, a plaintiff
27 must serve a complaint within ninety days after the complaint is
28 filed. Fed. R. Civ. P. 4(m). Plaintiff here, however, served

1 Defendant REI one day late.¹ Thus, REI argues, the Complaint must
2 be dismissed. District courts, however, "have broad discretion to
3 extend time for service under Rule 4(m)." Efaw v. Williams, 473
4 F.3d 1038, 1041 (9th Cir. 2007). REI appears to have suffered no
5 prejudice from the one day delay in service, and this Court
6 therefore declines to dismiss Plaintiff's claims against REI for
7 failure to timely serve.

8 Krieg, like REI, argues that the Complaint should be dismissed
9 as to him because he was not served within ninety days of the
10 filing of the Complaint. However, Rule 4(m), which imposes the
11 ninety day deadline, also provides that courts may, after the
12 expiration of the ninety day period, order that service be made
13 within a specific time. Fed. R. Civ. P. 4(m). Consistent with
14 Rule 4(m), this Court's February 1 Order to Show Cause required
15 Plaintiff to file a proof of service before February 8.² Plaintiff
16 did so. Accordingly, this Court declines to dismiss the Complaint
17 as to Krieg for failure to timely serve.

18 Krieg raises an additional argument that, even putting aside
19 timeliness issues, service on him was defective. Krieg argues that
20 Plaintiff failed to serve him as required under Rule 4(e)(2), which
21 does not permit service by mail. Fed. R. Civ. P. 4(e)(2).
22 Plaintiff, however, does not claim to have served Krieg in
23 accordance with Rule 4(e)(2). Rather, Plaintiff claims to have

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25 ¹ The ninetieth day was January 1, 2019, a holiday. See Fed.
R. Civ. P. 26(a)(1)(C).

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27 ² Courts are somewhat divided on the question whether mailed
service pursuant to California Code of Civil Procedure § 415.40 is
28 effective on the date of mailing or ten days thereafter. See,
e.g., Friedman v. Conair Corp., No. CV11-04156 JAK, 2011 WL
13220461, at *2-3 (C.D. Cal. July 12, 2011).

1 served Krieg pursuant to Rule 4(e)(1), which provides that service
2 can be made by "following state law for serving a summons in an
3 action brought in courts of general jurisdiction in the state where
4 the district court is located" Fed. R. Civ. P. 4(e)(1).
5 Under California Code of Civil Procedure § 415.40, "[a] summons may
6 be served on a person outside [California] . . . by sending a copy
7 of the summons and of the complaint to the person to be served by
8 first-class mail, postage prepaid, requiring a return receipt."
9 Cal. Code Civ. Pro. § 415.40.

10 Krieg does not appear to dispute that Plaintiff complied with
11 Section 415.40. Instead, Krieg argues that service was
12 nevertheless defective because Plaintiff failed to comply with the
13 requirements of California Code of Civil Procedure § 415.30, which
14 requires that mailed service on an individual within California
15 also include an acknowledgment of receipt. Cal. Code Civ. Pro. §
16 415.30. This Court is not aware of, nor does Krieg cite, any
17 authority for the proposition that a plaintiff who properly
18 executes service under Section 415.40 must also meet the
19 requirements of Section 415.30. To the contrary, California courts
20 have reiterated that "with service by mail on a defendant outside
21 the state, no executed acknowledgment of receipt is required."
22 Bolkiah v. Superior Court, 74 Cal. App. 4th 984, 1000 (1999).
23 There is no deficiency in service warranting dismissal.

24 B. Personal Jurisdiction

25 Both Defendants also seek to dismiss the Complaint for lack of
26 personal jurisdiction. District courts have the power to exercise
27 personal jurisdiction to the extent authorized by the law of the
28 state in which they sit. Fed. R. Civ. P. 4(k)(1)(A); Panavision

1 Int'l, L.P. v. Toeppen, 141 F.3d 1316, 1320 (9th Cir. 1998). When
2 a defendant moves to dismiss under Federal Rule of Civil Procedure
3 12(b)(2), the plaintiff bears the burden of demonstrating that the
4 court may properly exercise personal jurisdiction over the
5 defendant. Pebble Beach Co. v. Caddy, 453 F.3d 1151, 1154 (9th Cir.
6 2006); Bohara v. Backus Hosp. Med. Benefit Plan, 390 F.Supp.2d 951,
7 961 (CD. Cal. 2005) (citing Ziegler v. Indian River Cty., 64 F.3d
8 470, 473 (9th Cir. 1995)). California's long-arm statute
9 authorizes personal jurisdiction coextensive with the Due Process
10 Clause of the United States Constitution. Cal. Civ. Code § 410.10.
11 Thus, this Court can exercise personal jurisdiction over a
12 nonresident defendant when that defendant has "at least 'minimum
13 contacts' with the relevant forum such that the exercise of
14 jurisdiction 'does not offend traditional notions of fair play and
15 substantial justice.'"; see also Schwarzenegger v. Fred Martin
16 Motor Co., 374 F.3d 797, 800-01 (9th Cir. 2004) (citing Int'l Shoe
17 Co. v. Wash., 326 U.S. 310, 316 (1945)). The contacts must be of
18 such a quality and nature that the defendants could reasonably
19 expect to be "haled into court there." World-Wide Volkswagen v.
20 Woodson, 444 U.S. 286, 297 (1980).

21 A district court may exercise either general or specific
22 personal jurisdiction over non-resident defendants. Fed. Deposit
23 Ins. Corp. v. British-Am. Ins. Co., 828 F.2d 1439, 1442 (9th Cir.
24 1987). A court may exercise general jurisdiction when the
25 defendant's activities within the forum state are so "continuous
26 and systematic" as to render them essentially at home in the forum
27 state. Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S.
28 915, 919 (2011). A court may exercise specific jurisdiction when

1 there is an affiliation between the forum and the underlying
2 controversy, i.e., an activity that takes place in the forum state
3 and is therefore subject to the state's regulation. Walden v.
4 Fiore, 571 U.S. 277, 284-85 (2014).

5 Here, Plaintiff argues that this Court has specific
6 jurisdiction over both Defendants. (Opposition to Krieg motion at
7 5; Opposition to REI motion at 8-12). Courts in this circuit apply
8 a three prong test when analyzing specific jurisdiction:

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

18 Schwarzenegger, 374 F.3d at 802. Once the plaintiff satisfies the
19 first two prongs of the test, the burden shifts to the defendant to
20 show that exercising personal jurisdiction would be unreasonable.
21 Id.

22 Under the first prong of the specific jurisdiction test, the
23 plaintiff must show that the defendant purposefully directed his
24 activities toward the forum state or purposefully availed himself
25 of the privilege of conducting activities there. Id. Purposeful
26 direction "requires that the defendant ... have (1) committed an
27 intentional act; (2) expressly aimed at the forum state; and (3)
28 causing harm that the defendant knows is likely to be suffered in
the forum state." Id. at 803 (quoting Dole Food Co. v. Watts, 303
F.3d 1104, 1111 (9th Cir. 2002)). Here, Plaintiff has not
demonstrated that Krieg, a resident of Idaho, purposefully directed
his activities toward California. Although this Court must take

1 Plaintiff's uncontroverted allegations as true and resolve all
2 conflicts in affidavits in Plaintiff's favor, Plaintiff cannot
3 "simply rest on the bare allegations of its complaint."
4 Schwarzenegger, 374 F.3d at 800. In a copyright case such as this
5 one, an allegation that a defendant knowingly infringed the
6 copyright of a known forum resident does not, without more, support
7 the exercise of specific jurisdiction. Axiom Foods, Inc. v.
8 Acerchem Int'l, Inc., 674 F.3d 1064, 1069-70 (9th Cir. 2017).
9 Although the Complaint alleges that Krieg intentionally infringed
10 upon Plaintiff's copyright, Krieg's declaration states that he
11 encountered the design on the internet and that it was presented as
12 "copyright free," unaccompanied by any copyright management
13 information. (Krieg Decl. ¶ 5.) Plaintiff has submitted no
14 evidence to the contrary.

15 The only other allegations of purposeful direction cited by
16 Plaintiff are (1) that Krieg's website does not specifically
17 restrict California purchasers from completing online transactions,
18 (2) Krieg sold to REI, which itself has physical locations in
19 California, and (3) some of Krieg's designs bear "California
20 motifs." (Mot. at 9.) Even if true, these allegations are
21 insufficient to constitute purposeful direction. "The placement of
22 a product into the stream of commerce, without more, is not an act
23 purposefully directed toward a forum state[,]" even where the
24 defendant is aware "that the stream of commerce may or will sweep
25 the product into the forum state" Holland Am. Line Inc. v.
26 Wartsila N. Am., Inc., 485 F.3d 450, 459 (9th Cir. 2007); see also
27 Mavrix Photo, Inc. v. Brand Techs., Inc., 647 F.3d 1218, 1231 (9th
28 Cir. 2011) ("Not all material placed on the Internet is, solely by

1 virtue of its universal accessibility, expressly aimed at every
2 state in which it is accessed.”).

3 Both parties’ arguments are less developed with respect to
4 REI, a Washington resident. Plaintiff, for his part, largely
5 repeats the unconvincing arguments discussed above. The only
6 significant additional allegation is that REI has several retail
7 locations within California. There is no evidence or allegation,
8 however, that REI ever displayed or sold a product bearing
9 Plaintiff’s copyrighted image in any of its California stores.³
10 Thus, even assuming that REI’s physical presence in California
11 constitutes purposeful availment of the privilege of conducting
12 business in California, Plaintiff has failed to make a prima facie
13 showing that his claim arises out of REI’s California-related
14 activities and, therefore, that this court can exercise specific
15 jurisdiction over REI.

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25 ³ Mavrix Photo is distinguishable. There, a non-resident
26 allegedly published infringing photos relating to the “California-
27 centered celebrity and entertainment industries” on a website that
28 displayed advertisements directed to Californians. As stated
solely by virtue of its universal accessibility, expressly aimed at
every state in which it is accessed.” Mavrix Photo, 647 F.3d at
1231.

1 **III. Conclusion**

2 For the reasons stated above, Defendants' motions to dismiss
3 are GRANTED, for lack of personal jurisdiction.^{4 5}
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8 IT IS SO ORDERED.
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11 Dated: May 15, 2019



DEAN D. PREGERSON
United States District Judge

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⁴ This court has "broad discretion" over Plaintiff's request
24 for jurisdictional discovery. Data Disc, Inc. v. Sys. Tech.
25 Assocs., Inc., 557 F.2d 1280, 1285 n.1 (9th Cir. 1977). Although
26 discovery may be appropriate in cases where relevant facts are
27 disputed, this does not appear to be such a case. Id.
Accordingly, Plaintiffs' request for jurisdictional discovery is
denied.

28 ⁵ Having dismissed the Complaint, the court need not and does
not address defendants' arguments regarding transfer of venue.