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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

SHEILA DOYLE, et al.,
Plaintiffs,

CASE NO. CV F 08-0971 LJO SMS

**ORDER ON DEFENDANT ILLINOIS
CENTRAL’S MOTION TO DISMISS**

vs.

ILLINOIS CENTRAL RAILROAD
COMPANY, et al.,
Defendants.

INTRODUCTION

Defendant Illinois Central Railroad Company seeks to dismiss plaintiffs’ complaint pursuant to Fed.R.Civ.P 12(b)(2) on the grounds that this Court lacks personal jurisdiction over defendant. Plaintiffs Sheila Doyle and Charles Lortz filed an opposition on December 17, 2008. Defendant Illinois Central filed a reply on January 28, 2009. Pursuant to Local Rule 78-230(h), this matter is submitted on the pleadings without oral argument. Therefore, the hearing set for February 4, 2009 is vacated. Having considered the moving, opposition, and reply papers, as well as the Court’s file, the Court issues the following order.¹

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¹ While this motion was pending as to the First Amended Complaint, plaintiffs filed a Second Amended Complaint. For purposes of judicial and litigation economy, the Court construes the motion as a challenge to the Second Amended Complaint.

1 **BACKGROUND**

2 **Plaintiffs' Underlying Train Accident And Claims**

3 Plaintiffs are married and reside in Murphys, California. On April 6, 2004, plaintiffs were
4 passengers on an Amtrak train and were injured when the train derailed on tracks several miles north
5 of Jackson, Mississippi. The tracks were owned by defendant Illinois Central Railroad Company dba
6 Canadian National, CN.² Plaintiff alleges that “Defendant Canadian National owned and operated the
7 railroad tracks located in Yazoo County, Mississippi. It was also responsible for maintaining, inspecting,
8 owning, operating, repairing, rebuilding and servicing the railroad tracks and insuring that the railroad
9 tracks (located near milepost 196.5) were in serviceable condition.” (Doc. 52, Second Amended
10 Complaint ¶22.) Ms. Doyle and Mr. Lortz both suffered severe injuries as a result of the accident.

11 The gist of plaintiffs’ claims is that the eight defendants in this action conspired to defraud and
12 harass plaintiffs to prevent and delay plaintiffs to pursue claims arising from the train derailment.
13 Plaintiffs allege that Illinois Central fraudulently induced plaintiffs to forego hiring an attorney based
14 on Illinois Central’s repeated oral and written representations that:

- 15 1. Illinois Central “will be honest and promptly and fairly pay Plaintiffs’ claim, once the
16 full extent of Plaintiffs’ injuries were determined”;
- 17 2. Illinois Central “will be honest and promptly and fairly pay Plaintiffs’ claim;” and
- 18 3. Illinois Central sought plaintiffs’ proposal “based on what [plaintiffs’] future needs may
19 be, such as a new car, vacations, children’s college, retirement, etc.”

20 Plaintiffs also allege that defendant and its agents were sent to California to spy on plaintiffs,
21 video tape plaintiffs’ activities and conduct surveillance of plaintiffs. Plaintiffs allege as a result of
22 defendants’ activities, plaintiffs were defamed, their privacy was invaded, they were stalked, among
23 other wrongs. Plaintiff’s complaint alleges claims for fraud, deceit, fraudulent inducement, breach of
24 contract, breach of the implied covenant of good faith and fair dealing, invasion of privacy, false light,
25 stalking, nuisance, and defamation, among other claims.

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27 ² Plaintiff refers to defendant Illinois Central in the Second Amended Complaint as “Canadian National.” Defendant
28 Illinois Central refers to itself in its motion as “Illinois Central,” and the Court will adopt this terminology.

1 In their papers in support of and in opposition to this motion, the parties mention that an
2 underlying litigation is proceeding in Mississippi. The parties do not discuss the litigation in any
3 respect, but presumably it is to resolve liability for the train accident.

4 ANALYSIS AND DISCUSSION

5 **A. Motion to Dismiss Pursuant to Rule 12(b)(2)**

6 Defendant moves to dismiss this action on the grounds that the Court lacks personal jurisdiction
7 over defendant pursuant to Rule 12(b)(2).

8 Fed.R.Civ.P. 12(b)(2) empowers a defendant to challenge a complaint “for lack of jurisdiction
9 over the person.” A district court’s determination whether to exercise personal jurisdiction is a question
10 of law. *Rio Properties, Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1019 (9th Cir. 2002). Although
11 defendant is the moving party on the motion to dismiss, plaintiff is the party who invoked the court's
12 jurisdiction. Therefore, plaintiff bears the burden of proof on the necessary jurisdictional facts; e.g., the
13 existence of “minimum contacts” between defendant and the forum state. *Rio Properties, Inc. v. Rio*
14 *Int'l Interlink*, 284 F.3d at 1019. When defendant's motion to dismiss is made as its initial response and
15 the court decides the motion without conducting an evidentiary hearing, plaintiff need only make a prima
16 facie showing that personal jurisdiction exists. *Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995).
17 A “prima facie” showing means that plaintiff has produced admissible evidence which, if believed, would
18 be sufficient to establish the existence of personal jurisdiction. *See Harris Rutsky & Co. Ins. Services,*
19 *Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1129 (9th Cir. 2003). The complaint's uncontroverted
20 factual allegations must be accepted as true, and any factual conflicts in the parties' declarations must
21 be resolved in plaintiff's favor. *Harris Rutsky & Co. Ins. Services, Inc.*, 328 F.3d at 1129. To defeat
22 plaintiff's prima facie showing of jurisdiction on a Rule 12(b)(2) motion, defendants must demonstrate
23 the presence of other considerations that would render personal jurisdiction unreasonable. *OMI*
24 *Holdings, Inc. v. Royal Ins. Co. of Canada*, 149 F.3d 1086, 1091 (10th Cir. 1998).

25 **B. Personal Jurisdiction**

26 Two recognized bases exist for personal jurisdiction over nonresident defendants: (1) “general
27 jurisdiction” which arises when a defendant’s contacts with the forum state are so pervasive as to justify
28 the exercise of jurisdiction over the person in all matters; and (2) “specific” or “limited” jurisdiction

1 which arises out of the defendant's contacts with the forum giving rise to the subject of the litigation.
2 *See Helicopteros Nacionales de Colombia S.A. v. Hall*, 466 U.S. 408, 414, 104 S.Ct. 1868 (1984).
3 Absent a traditional basis for jurisdiction (presence, domicile or consent), due process requires that the
4 defendant have "certain minimum contacts with (the forum state) such that the maintenance of the suit
5 does not offend traditional notions of fair play and substantial justice." *International Shoe Co. v.*
6 *Washington*, 326 U.S. 310, 316, 66 S.Ct. 154 (1945).

7 **1. General Jurisdiction**

8 Defendant argues that the Court does not have general jurisdiction because Illinois Central does
9 not have continuous and systematic contacts with California. Plaintiffs argue Illinois Central's contacts
10 with California were substantial, systematic and continuous over a period of years. For example, Illinois
11 Central's railcars regularly travel within California and are stopped and brought to California rail yards.
12 Illinois Central has also entered into long-term agreements with California railroads regarding the
13 maintenance, inspection and transport of railcars owned by Illinois Central.

14 It is the nature and extent of the contacts, not a mechanical checklist, that determines whether
15 defendant's activities are "substantial" or "continuous and systematic." Longevity, continuity, volume,
16 economic impact, physical presence, and integration into the state's regulatory or economic markets are
17 among the indicia of such a presence. *Tuazon v. R.J. Reynolds Tobacco Co.*, 433 F3d 1163, 1172 (9th
18 Cir. 2006). For general (unlimited) jurisdiction, a higher level of "contacts" with the forum state is
19 required to support local jurisdiction ("fair play" concept, above). *See Data Disc, Inc. v. Systems*
20 *Technology Assocs., Inc.*, 557 F2d 1280, 1287 (9th Cir. 1977). This broad basis for jurisdiction is
21 usually limited to large companies doing a large amount of business locally on a regular basis ... and
22 such companies rarely contest personal jurisdiction. *See Amoco Egypt Oil Co. v. Leonis Navigation Co.,*
23 *Inc.*, 1 F3d 848, 851, fn. 3 (9th Cir. 1993).

24 Here, the only evidence of "systematic" contacts is the contracts Illinois Central has with other
25 rail roads. The evidence submitted as to Illinois Central is that it has contracts with other railroads
26 which use its railcars and those other entities have custody and control of its railcars. (Doc. 50, Novak
27 Decl. ¶ 7-8.) These contracts with other rail roads do not raise Illinois Central's contacts with California
28 to the systematic, higher level of contacts with California which warrant imposing jurisdiction for any

1 and all activity. Thus, the Court finds that plaintiffs have failed to carry their burden that general
2 jurisdiction exists over defendant Illinois Central.

3 **2. Limited Jurisdiction**

4 The focus then turns to whether this Court has “specific” or “limited” jurisdiction arising from
5 Illinois Central’s contacts with California giving rise to the subject of this action.

6 Defendant argues that specific jurisdiction does not exist because it did not purposefully avail
7 itself of California law. Defendant argues that plaintiffs’ injuries are not related to any contacts with the
8 state of California. Plaintiff argues, however, that over a two year period, Illinois Central orchestrated,
9 arranged and conducted activities in which defendant hired California residents to conduct surveillance
10 activities of plaintiffs and during which Illinois Central or its agents harassed and defamed plaintiffs,
11 and invaded their privacy, among other things. (Doc. 59, Plaintiffs’ Opposition p.10.)

12 Even if a nonresident defendant’s contacts with the forum state are not sufficiently “continuous
13 and systematic” for general jurisdiction, the nonresident defendant may be subject to jurisdiction on
14 claims related to its activities or contacts there. Whether limited jurisdiction lies “turns on the nature
15 and quality of the defendant’s contacts in relation to the cause of action.” *Data Disc, Inc. v. Systems*
16 *Technology Associates, Inc.*, 557 F.2d 1280, 1287 (9th Cir. 1977). The Ninth Circuit uses a three-part
17 test to determine whether the district court may exercise specific jurisdiction over a nonresident
18 defendant:

- 19 (a) The nonresident defendant must do some act or consummate some transaction
20 with the forum or perform some act by which he purposefully avails himself of
21 the privilege of conducting activities in the forum, thereby invoking the benefits
22 and protections;
- 23 (b) The claim must be one which arises out of or results from the defendant's
24 forum-related activities, and
- 25 (c) Exercise of jurisdiction must be reasonable.

26 *Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995). The Court evaluates each requirement of the
27 three part test.

28 **(a) Purposeful availment**

The “purposeful availment” requirement “ensures that a defendant will not be hauled into a
jurisdiction solely as a result of random, fortuitous, or attenuated contacts, or of the unilateral activity

1 of another party or third person.” *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme*, 379
2 F.3d 1120, 1129 (9th Cir. 2004).

3 As to a defendant’s purposefully directed activities, the Ninth Circuit explained in *Sinatra v.*
4 *National Enquirer, Inc.*, 854 F.2d 1191, 1195 (9th Cir. 1988):

5 Purposeful availment analysis examines whether the defendant’s contacts with the forum
6 are attributable to his own actions or are solely the actions of the plaintiff. In order to
7 have purposefully availed oneself of conducting activities in the forum, the defendant
must have performed some type of affirmative conduct which allows or promotes the
transaction of business with the forum state.

8 The requirement that “conduct is expressly aimed” at the forum state is satisfied “when the defendant
9 is alleged to have engaged in wrongful conduct targeted at a plaintiff whom the defendant knows to be
10 a resident of the forum state.” *Menken v. Emm*, 503 F.3d at 1059. In tort cases, the Ninth Circuit
11 typically inquires whether a defendant “purposefully directs his activities” at the forum state, applying
12 an “effects” test which focuses on the forum in which the defendant's actions were felt, and whether or
13 not the actions themselves occurred within the forum. *Menken v. Emm*, 503 F.3d 1050, 1057 (9th Cir.
14 2007). The “effects” test imposes three requirements: “the defendant allegedly must have (1) committed
15 an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is
16 likely to be suffered in the forum state.” *Yahoo! Inc.*, 433 F.3d at 1206.

17 Illinois Central argues it did not have any contacts with California. To demonstrate an absence
18 of minimal contacts with California, Illinois Central provides evidence that it:

- 19 1. Does not own or operate any railroad, freight or passenger cars in California nor has its
20 railroad cars traveled to California;
- 21 2. Is not incorporated in or qualified to do business in California;
- 22 3. Does not have any offices or facilities in California;
- 23 4. Does not have active employees residing in California;
- 24 5. Does not direct advertising toward California residents or businesses; and
- 25 6. Does not own, use or possess any office, property or assets in California.

26 (Doc. 50, Decl. Novak ¶2-11.) Illinois Central argues that its contacts with California do not exist.

27 Illinois Central argues it has no contacts with California at all, and the accident which gave rise to the
28 underlying litigation occurred in Mississippi.

1 Plaintiffs, however, have alleged conduct which satisfies all three elements of the “effects” test.
2 Plaintiffs allege Illinois Central’s agents committed intentional acts of invading their privacy, defaming
3 their character, by trespassing on their property and by stalking them. Further, plaintiffs allege that the
4 intentional conduct was aimed in California because the conduct actually occurred in California. Finally,
5 plaintiffs allege that they suffered harm as a result of the intentional acts in California. Thus, the
6 elements of the “effects” test are satisfied.

7 **(b) Claim Arises out of Activities in California**

8 Limited jurisdiction means jurisdiction is limited to causes of action arising out of or related to
9 the nonresident's forum-related activities. *Doe v. National Medical Services*, 974 F.2d 143, 145 (10th
10 Cir. 1992); *Aviles v. Kunkle*, 978 F.2d 201, 204 (5th Cir. 1992). A “but for” test is used for determining
11 whether the claim “arises out of” the nonresident's forum-related activities. If plaintiff would not have
12 suffered loss “but for” defendant's activities, this element is satisfied. *Ballard v. Savage*, 65 F.3d 1495,
13 1500 (9th Cir. 1995).

14 Plaintiffs allege activities in California which harmed plaintiffs in California. Plaintiff allege
15 stalking, which occurred in Fresno, nuisance which occurred in Fresno, and defamation (contacting
16 plaintiffs’ neighbors) in Fresno. (SAC ¶66, “Over a period of 2 ½ years, . . .defendants ... followed,
17 harassed, stalked, trespassed and invaded the privacy of plaintiffs and made threats.”) Plaintiffs allege
18 that: “As recently as July 10, 2008, Defendants Canadian National . . .and their agents, were sent to
19 Murphys, California to spy on Plaintiffs and invade their privacy, and at least one of them previously
20 contacted neighbors of the plaintiffs and falsely told and published to Plaintiffs’ neighbors that
21 Defendants were investigating a case of “insurance fraud” on the part of Plaintiffs.” (SAC ¶67.) Torts
22 committed by employees within the scope of their employment may subject a nonresident employer to
23 local jurisdiction. *Ochoa v. J.B. Martin & Sons Farms, Inc.*, 287 F.3d 1182, 1189 (9th Cir. 2002).
24 Plaintiff alleges stalking of them in California: “Canadian National, . . . and their agents, employees,
25 and/or investigators and co-conspirators, engaged in a pattern of conduct the intent of which was to
26 follow, alarm, and harass Plaintiffs, invade Plaintiffs’ privacy, and trespass upon Plaintiffs’ property.
27 . .”) (SAC ¶75, 95.) Thus, plaintiffs allege harmful conduct which occurred within California.

28 Illinois Central argues that it is not responsible for the investigation or “stalking” of plaintiffs.

1 Defendants submit evidence that the investigators were hired by another defendant to investigate
2 plaintiffs, and were not hired or controlled by Illinois Central. (Doc.77, Reply Brief, p. 2; Doc. Decl.
3 Vendetti ¶2.) Illinois Central argues that Amtrak provided Illinois Central with a defense in the
4 underlying Mississippi action and Amtrak hired an investigator who allegedly engaged in wrongful
5 conduct. (Doc.77, Reply Brief, p. 2.) Illinois Central also argues that it has never received any
6 documentation from the investigator with regard to the investigations of plaintiffs. (Doc.77, Reply Brief,
7 p. 3.) Illinois Central argues that it never had any connection with the investigation of plaintiffs and any
8 statement to the contrary is “fabrication.”

9 This Court, however, cannot assess the “truth” of factual allegations at this point in the litigation.
10 Illinois Central’s argument merely contradicts the evidence presented by plaintiffs. Any factual conflicts
11 in the parties’ declarations must be resolved in plaintiff’s favor. *Harris Rutsky & Co. Ins. Services, Inc.*,
12 328 F.3d at 1129 (“conflicts between the facts contained in the parties’ affidavits must be resolved in
13 [plaintiffs’] favor for purposes of deciding whether a prima facie case for personal jurisdiction exists.”)
14 Factual contradictions are resolved in plaintiff’s favor. Accordingly, the facts show the claims arise out
15 of defendants’ conduct in California.

16 (c) Reasonableness

17 If the plaintiff succeeds in satisfying both of the first two prongs, “the burden then shifts to the
18 defendant to ‘present a compelling case’ that the exercise of jurisdiction would not be reasonable.”
19 *Menken v. Emm*, 503 F.3d 1050, 1057 (9th Cir. 2007). Here, plaintiff has satisfied the first two prongs
20 of the three prong test for specific jurisdiction. Defendant Illinois Central must therefore make a
21 “compelling case” that exercise of jurisdiction would be unreasonable.

22 A “highly realistic” approach is required to determine whether a nonresident party is subject to
23 local jurisdiction. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477-478, 105 S.Ct. 77 (1985). It
24 must appear that the exercise of jurisdiction by local courts in the particular case would “comport with
25 fair play and substantial justice.” *Burger King Corp. v. Rudzewicz*, 471 U.S. at 477–478. Turning to
26 reasonableness to exercise personal jurisdiction, the Ninth Circuit Court of Appeals has developed a
27 seven-factor test:

- 28 1. The extent of defendant’s purposeful interjection into the forum state;

1 848, 851-852 (9th Cir. 1993).

2 Illinois Central has not made a showing of any burden on it. Thus, this factor militates in
3 plaintiffs' favor.

4 ***Conflict with Sovereignty of Aircraft Maintenance's State***

5 There is no argument as to any conflicts with any other sovereignty. As such, this factor appears
6 neutral to plaintiffs and Illinois Central.

7 ***Forum State's Interest***

8 California has an interest in providing effective means of redress for its residents who are
9 damaged by alleged tortious conduct. Thus, this factor favors plaintiffs.

10 ***Most Efficient Resolution***

11 "In evaluating this factor, we have looked primarily at where the witnesses and the evidence are
12 likely to be located." *CoreVent Corp. v. Nobel Indus. AB*, 11 F.3d 1482, 1489 (9th Cir.1993). Here,
13 presumably, the witnesses and evidence of the alleged tortious conduct will mostly be in California
14 because the tortious conduct occurred in California.

15 ***Convenience and Effective Relief for Plaintiff***

16 This Court is the more convenient and effective forum for plaintiff and most likely played a large
17 part in plaintiffs' filing the action here. This factor favors plaintiffs.

18 ***Existence of an Alternative Forum***

19 Illinois Central bears the burden of proving the unavailability of an alternative forum. *Core-Vent*
20 *Corp.*, 11 F.3d at 1490. No argument has been made on this element. Thus, this factor favors plaintiffs.

21
22 Weighing these seven considerations, the balance of factors does not favor Illinois Central. It has
23 not presented a compelling case that the exercise of jurisdiction would be unreasonable. *See e.g.*,
24 *Panavision Int'l, L.P. v. Toeppen*, 141 F.3d 1316, 1324 (9th Cir.1998) ("[W]e conclude that although
25 some factors weigh in [defendant's] favor, he failed to present a compelling case that the district court's
26 exercise of jurisdiction in California would be unreasonable.") On balance, Illinois Central has not
27 presented a compelling case that the exercise of jurisdiction would not comport with fair play and
28 substantial justice and would thus be unreasonable.

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CONCLUSION

For the foregoing reasons, Illinois Central's motion to dismiss for lack of personal jurisdiction is DENIED.

IT IS SO ORDERED.

Dated: January 30, 2009

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE