

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

ALFRED L. CROSS,

Plaintiff,

vs.

PAY IT FORWARD ANIMAL
WELFARE NETWORK, INC.,
et al.,

Defendants.

CASE NO. CV F 10-0680 LJO DLB

**ORDER TO SHOW CAUSE WHY ACTION
SHOULD NOT BE DISMISSED FOR LACK
OF PERSONAL JURISDICTION**
(Doc. 11.)

BACKGROUND

On April 19, 2010, pro se plaintiff Al Cross (“Mr. Cross”) filed his complaint to address placement of his dogs in “custody” of several defendants and the dogs’ removal from Mr. Cross’ access. The complaint reveals that all relevant events occurred in Kentucky or Illinois where defendants reside or are domiciled. The complaint alleges that “Plaintiff is a citizen of California, and Defendants are citizens of Kentucky and Illinois.” The complaint lacks facts for this Court’s exercise of personal jurisdiction over defendants.

DISCUSSION

Personal Jurisdiction

In personam jurisdiction is required when a judgment is sought as to a defendant personally. Personal jurisdiction is an essential element of a court’s jurisdiction and without it, a court “is powerless

1 to proceed to an adjudication.” *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 119 S.Ct. 1563, 1572
2 (1999). “Because a court without jurisdiction over the parties cannot render a valid judgement, [the
3 court] must address Defendants’ personal jurisdiction argument before reaching the merits of the case.”
4 *OMI Holdings, Inc. v. Royal Ins. Co. of Canada*, 149 F.3d 1086, 1090 (10th Cir. 1998).

5 In this case, defendant Robin Dance challenges this Court’s exercise of personal jurisdiction over
6 her. F.R.Civ.P. 12(b)(2) empowers a defendant to challenge a complaint “for lack of personal
7 jurisdiction.” A district court’s determination whether to exercise personal jurisdiction is a question of
8 law. *Rio Properties, Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1019 (9th Cir. 2002). Although the
9 defendant is the moving party on a F.R.Civ.P. 12(b)(2) motion to dismiss, “the plaintiff bears the burden
10 of establishing that jurisdiction.” *Rio Properties*, 284 F.3d at 1019.

11 Federal courts lack nationwide personal jurisdiction and have no broader power over persons
12 outside the state in which they sit than do local state courts. *Omni Capital Int’l v. Rudolph Wolff & Co.*,
13 *Ltd.*, 484 U.S. 97, 104-105, 108 S.Ct. 404, 410 (1987); *see* F.R.Civ.P. 4(k)(1)(A).

14 Two recognized bases exist for personal jurisdiction over nonresident defendants: (1) “general
15 jurisdiction” which arises when a defendant’s contacts with the forum state are so pervasive as to justify
16 the exercise of jurisdiction over the person in all matters; and (2) “specific” or “limited” jurisdiction
17 which arises out of the defendant’s contacts with the forum giving rise to the subject of the litigation.
18 *See Helicopteros Nacionales de Colombia S.A. v. Hall*, 466 U.S. 408, 414, 104 S.Ct. 1868 (1984).
19 Absent a traditional basis for jurisdiction (presence, domicile or consent), due process requires that the
20 defendant have “certain minimum contacts with (the forum state) such that the maintenance of the suit
21 does not offend traditional notions of fair play and substantial justice.” *International Shoe Co. v.*
22 *Washington*, 326 U.S. 310, 316, 66 S.Ct. 154 (1945). A plaintiff has the burden to make a prima facie
23 showing of a court’s personal jurisdiction over a defendant. *See Data Disc, Inc. v. Systems Technology*
24 *Associates, Inc.*, 557 F.2d 1280, 1285 (9th Cir. 1977).

25 The complaint lacks a showing that this Court’s exercise of personal jurisdiction over defendants
26 satisfies due process. The complaint indicates that this Court’s exercise of personal jurisdiction over
27 the defendants is improper given that all relevant events occurred in Illinois and Kentucky and that
28 defendants are citizens of those states.

1 Moreover, given the complaint's reliance on diversity jurisdiction, the complaint fails to satisfy
2 that this Court is the proper venue. F.R.Civ.P. 12(b)(3) empowers a challenge to a complaint for
3 "improper venue." The general venue statute, 28 U.S.C. § 1391, provides in pertinent part:

4 (a) A civil action wherein jurisdiction is founded only on diversity of citizenship
5 may, except as otherwise provided by law, be brought only in (1) a judicial district where
6 any defendant resides, if all defendants reside in the same State, (2) a judicial district in
7 which a substantial part of the events or omissions giving rise to the claim occurred, or
8 a substantial part of property that is the subject of the action is situated, or (3) a judicial
9 district in which any defendant is subject to personal jurisdiction at the time the action
10 is commenced, if there is no district in which the action may otherwise be brought.

11 The complaint pleads itself out of this Court as a proper venue.

12 Malice

13 Moreover, this Court surmises that Mr. Cross has filed this action in this Court in absence of
14 good faith and that Mr. Cross exploits the court system solely to vex defendants. The test for
15 maliciousness is a subjective one and requires the court to "determine the . . . good faith of the
16 applicant." *Kinney v. Plymouth Rock Squab Co.*, 236 U.S. 43, 46 (1915); *see Wright v. Newsome*, 795
17 F.2d 964, 968, n. 1 (11th Cir. 1986); *cf. Glick v. Gutbrod*, 782 F.2d 754, 757 (7th Cir. 1986) (court has
18 inherent power to dismiss case demonstrating "clear pattern of abuse of judicial process"). A lack of
19 good faith or malice also can be inferred from a complaint containing untrue material allegations of fact
20 or false statements made with intent to deceive the court. *See Horsey v. Asher*, 741 F.2d 209, 212 (8th
21 Cir. 1984). An attempt to vex provides further grounds to question personal jurisdiction over
22 defendants.

23 CONCLUSION AND ORDER

24 For the reasons discussed above, this Court ORDERS Mr. Cross, no later than August 3, 2010,
25 to file papers to show cause why this Court should not dismiss this action against all defendants in the
26 absence of grounds to exercise personal jurisdiction over defendants. **This Court ADMONISHES Mr.
27 Collins that it will dismiss this action if Mr. Collins fails to comply with this order and to file
28 timely papers to show cause why this Court should not dismiss this action against all defendants.**

IT IS SO ORDERED.

Dated: July 20, 2010

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