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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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MOHIT RANDHAWA aka HARPAL
SINGH, and SHANNON CALLNET PVT
LTD,

NO. CIV. 2:09-02304 WBS DAD

Plaintiffs,

MEMORANDUM AND ORDER RE:
MOTION TO DISMISS AND PROPOSED
ORDER FOR FINAL JUDGMENT

v.

SKYLUX INC.; INTERACTIVE
INTELLIGENCE, INC.; MUJEEB
PUZHAKKARAILLATH; SKYLUX
TELELINK PVT LTD; and DOES 1
through 20, inclusive,

Defendants.

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This matter is again before the court on defendant Skylux Telelink PVT, LTD's ("STPL") motion to dismiss plaintiff Shannon Callnet's single remaining claim against it in the Sixth Amended Complaint ("Sixth AC") pursuant to Federal Rule of Civil Procedure 12(b)(2) for lack of personal jurisdiction. Defendants Mujeeb Puzhakarailath ("Puzhakkarailath") and Skylux, Inc. ("Skylux") have also filed a Proposed Order for Final Judgment seeking final judgment in their favor after the court dismissed

1 the sole claim against them in the Sixth AC, (January 16, 2013
2 Order (Docket No. 161)). (Docket No. 162.)

3 I. Motion to Dismiss for Lack of Personal Jurisdiction

4 Plaintiffs' general allegations have been set out in
5 previous orders, including the October 26, 2012 Order, (Docket
6 No. 148), and will not be repeated here. After the court
7 dismissed the majority of plaintiffs' claims in the Sixth AC,
8 (January 16, 2012 Order), the only remaining claim in the case is
9 a breach of implied warranty of fitness and merchantability
10 asserted by Shannon Callnet against STPL. STPL, an Indian
11 company, argues that the court lacks personal jurisdiction over
12 it for the sale of software to Shannon Callnet, also an Indian
13 company, in the setup and running of a call center business in
14 India. (Pls.' Mem. at 3 (Docket No. 164).) In response, Shannon
15 Callnet argues that STPL has waived the defense of lack of
16 personal jurisdiction. (Defs.' Opp'n at 1 (Docket No. 168).)

17 Federal Rule of Civil Procedure 12(h)(1) provides that
18 the defense of lack of personal jurisdiction is waived by "(A)
19 omitting it from a motion in the circumstances described in Rule
20 12(g)(2); or (B) failing to either: (i) make it by motion under
21 this rule; or (ii) include it in a responsive pleading"
22 Fed. R. Civ. P. 12(h)(1). Rule 12(g)(2) provides that "a party
23 that makes a motion under this rule must not make another motion
24 under this rule raising a defense or objection that was available
25 to the party but omitted from its earlier motion." Id. 12(g)(2).

26 "[A] general appearance or responsive pleading by a
27 defendant that fails to dispute personal jurisdiction will waive
28 any defect in service or personal jurisdiction." Benny v. Pipes,

1 799 F.2d 489, 492 (9th Cir. 1986). "A fundamental tenet of the
2 Federal Rules of Civil Procedure is that certain defenses under
3 [Rule 12] must be raised at the first available opportunity or,
4 if they are not, they are forever waived." Am. Ass'n of
5 Naturopathic Physicians v. Hayhurst, 227 F.3d 1104, 1106 (9th
6 Cir. 2000).

7 Here, plaintiffs first included STPL in their pleadings
8 on January 6, 2010, when plaintiffs alleged various breach of
9 contract, misrepresentation, and breach of warranty claims
10 against STPL in their Second Amended Complaint ("Second AC").
11 (Docket No. 45.) Defendants, including STPL, filed a motion to
12 dismiss a misrepresentation claim against defendants and joined
13 in defendant Interactive's motion to transfer venue. (Docket No.
14 51.) STPL did not argue a lack of personal jurisdiction at that
15 time, nor did STPL assert lack of personal jurisdiction in
16 subsequent motions to dismiss. (Docket Nos. 90, 143, 153.)

17 STPL's argument that the defense of personal
18 jurisdiction was not available to it due to the court's December
19 21, 2009 Order finding personal jurisdiction over
20 Puzhakkarailath and Skylux on similar claims, (Docket No. 37),
21 is unpersuasive. This argument ignores the general rule that
22 "[p]ersonal jurisdiction over each defendant must be analyzed
23 individually," Brainerd v. Governors of the Univ. of Alberta, 873
24 F.2d 1257, 1258 (9th Cir. 1989) (citing Calder v. Jones, 465 U.S.
25 783, 790 (1984)), and STPL could have argued lack of personal
26 jurisdiction in good faith despite the court's holding as to
27 Puzhakkarailath and Skylux. STPL has accordingly waived the
28 defense of lack of personal jurisdiction.

1 II. Proposed Order for Final Judgment for the Remaining
2 Defendants

3 On January 16, 2013, this court dismissed with
4 prejudice plaintiff's claim for unfair competition under
5 California Business and Professions Code section 17200 against
6 defendants STPL, Puzhakkarailath, and Skylux. (Jan. 16, 2013
7 Order at 8 (Docket No. 161).) This was the sole claim against
8 defendants Puzhakkarailath and Skylux in the Sixth AC. Rule
9 54(b) counsels that in actions involving multiple claims or
10 multiple parties, district courts "may direct the entry of a
11 final judgment as to one or more but fewer than all of the claims
12 or parties" upon a determination that there was 1) a "final
13 judgment" and 2) there is "no just reason for delay."□ Fed. R.
14 Civ. P. 54(b); Curtiss-Wright Corp. v. Gen. Elec. Co., 446 U.S.
15 1, 7-8 (1980); Cont'l Airlines, Inc. v. Goodyear Tire & Rubber
16 Co., 819 F.2d 1519, 1524 (9th Cir. 1987).

17 A "final judgment" must be a judgment in the sense that
18 it is a decision upon a cognizable claim for relief, and it must
19 be final in the sense that it is an "ultimate disposition of an
20 individual claim in the course of a multiple claims action."□
21 Sears, Roebuck & Co. v. Mackey, 351 U.S. 427, 436 (1956). The
22 January 16, 2013 Order dismissing the sole claim against
23 Puzhakkarailath and Skylux satisfies Rule 54(b)'s finality
24 requirement.


25 In evaluating whether there is any just reason for
26 delay, it is the district court's function to determine the
27 proper time when each final decision is ready for appeal, given
28 judicial administrative interests as well as the equities

1 involved. See Curtiss-Wright Corp., 446 U.S. at 8. A district
2 court may consider factors such as "whether the claims under
3 review were separable from the others remaining to be
4 adjudicated" as well as "whether the nature of the claims already
5 determined is such that no appellate court would have to decide
6 the same issues more than once even if there were subsequent
7 appeals." Id. "It is left to the sound judicial discretion of
8 the district court" to make this determination. Id.

9 In their dismissed unfair competition claims,
10 plaintiffs broadly alleged fraudulent action in the negotiations
11 over the MOU, in the call center's operations, and in the buying
12 of the calling center software. (Jan. 16, 2013 Order at 5).
13 Here, the sheer scope of that claim will involve factual
14 allegations that are also involved in Shannon Callnet's remaining
15 claim against STPL for breach of implied warranty for the call
16 center software. The unfair competition claim against
17 Puzhakkarailath and Skylux is therefore not "sufficiently
18 severable factually and legally from the remaining matters" to
19 warrant appeal. Cont'l Ailrines, 819 F.2d at 1525. Accordingly,
20 the court will not enter final judgment in favor of
21 Puzhakkarailath and Skylux at this time.

22 IT IS THEREFORE ORDERED that STPL's motion to dismiss
23 for lack of personal jurisdiction be, and the same hereby is,
24 DENIED. The court declines to enter final judgment in favor of
25 defendants Puzhakkarailath and Skylux at this time.

26 DATED: March 16, 2013

27 
28 WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE