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UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA

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BUTA SINGH,

No. 2:14-cv-02146 JAM DAD

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Plaintiff,

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v.

**ORDER GRANTING IN PART, AND
DENYING IN PART, DEFENDANTS'
MOTION TO DISMISS**

14

HARMINDER S. POONI, RAVINDER
KAUR, and PAN-AM TRANSPORT,
INC., a Kansas corporation,

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Defendants.

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Defendants Harminder Pooni ("Defendant Pooni"), Ravinder

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Kaur Kalarai ("Defendant Kaur"), and Pan-Am Transport, Inc.

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("Defendant Pan-Am") (collectively, "Defendants") move to

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dismiss (Doc. #18) Plaintiff Buta Singh's ("Plaintiff")

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complaint (Doc. #2). Plaintiff opposes Defendants' motion (Doc.

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#22) and Defendants filed a reply (Doc. #25). For the following

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reasons, Defendants' motion is granted in part and denied in

25

part.¹

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¹ This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for February 11, 2015.

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1 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

2 In 2012, Plaintiff purchased a 2005 Hummer H2. Compl. ¶ 4.
3 Over the next two years, he made a number of modifications to
4 the vehicle, including the installation of a \$10,000 sound
5 system and a conversion to right-hand drive. Compl. ¶ 4.
6 Plaintiff alleges that "the purpose of these upgrades was to
7 increase its market value in the European and Indian markets."
8 Compl. ¶ 4.

9 In June 2014, Plaintiff and Defendant Pooni "agreed that
10 Pooni would broker the sale of the vehicle on behalf of
11 [Plaintiff.]" Compl. ¶ 5. They agreed that Plaintiff would pay
12 Defendant Pooni a commission of approximately \$35,000 for a
13 successful sale. Compl. ¶ 5. Plaintiff agreed to give
14 Defendant Pooni possession of the vehicle and partially complete
15 the bill of sale, to facilitate the eventual sale of the Hummer.
16 Compl. ¶ 5. Over the next few months, Defendant Pooni allegedly
17 "made repeated false representations that he was actively
18 engaged in attempting to locate a buyer for the vehicle."
19 Compl. ¶ 6.

20 Plaintiff alleges that Defendant Pooni and his daughter
21 (erroneously identified as Pooni's wife in the complaint),
22 Defendant Kaur, "illicitly transferred title into their own name
23 in the State of Kansas." Compl. ¶ 6. He further alleges that
24 Defendant Pooni and Defendant Kaur "fraudulently and illicitly
25 completed the bill of sale document . . . to indicate they
26 themselves were the buyers, and that the purchase price was
27 seventeen thousand dollars in cash," despite the fact that "no
28 cash ever changed hands." Compl. ¶ 7.

1 Plaintiff alleges that Defendant Pooni "is the majority
2 shareholder" of Defendant Pan-Am, which is "an overland trucking
3 company based in Shawnee, Kansas." Compl. ¶ 8.

4 On September 15, 2014, Plaintiff filed the complaint in
5 this Court. The complaint includes the following causes of
6 action: (1) unlawful conversion; (2) theft by false pretenses;
7 (3) breach of contract; (4) unfair business practices in
8 violation of the California Unfair Competition Law ("UCL"); and
9 (5) claim and delivery. On September 16, 2014, Plaintiff filed
10 an ex parte application for a writ of possession of the Hummer,
11 which was subsequently granted by the Court.

12 13 II. OPINION

14 A. Judicial Notice

15 Defendants request that the Court take judicial notice
16 (Doc. #19) of several documents which are already part of the
17 record in this case: (1) the Complaint; (2) Plaintiff's
18 declaration in support of his opposition to Defendants' motion
19 to quash the writ of possession; (3) the exhibits to Plaintiff's
20 declaration in support of his opposition to Defendants' motion
21 to quash the writ of possession; and (4) Plaintiff's declaration
22 in support of his application for a writ of possession. The
23 Court notes that it can only take judicial notice of the
24 existence of these documents, not the facts contained therein.
25 Regardless, these documents are already on the docket in this
26 case, and Defendants' request is DENIED as unnecessary.

1 B. Analysis

2 1. Personal Jurisdiction

3 Defendants argue that the Court does not have personal
4 jurisdiction over Defendant Kaur or Defendant Pan-Am. Mot. at
5 3. Specifically, Defendants argue that neither Kaur nor Pan-Am
6 purposely availed themselves of the benefits of the laws of
7 California, such that personal jurisdiction over them does not
8 exist. Mot. at 4-5. Plaintiff responds that both Kaur and Pan-
9 Am are subject to personal jurisdiction in California because of
10 their actions relating to the purported sale of the Hummer.
11 Opp. at 6.

12 A federal district court has personal jurisdiction over a
13 nonresident defendant in a diversity of citizenship case where
14 (1) a state statute of the forum confers personal jurisdiction
15 over the nonresident defendant and (2) the exercise of
16 jurisdiction accords with federal constitutional principles of
17 due process. Flynt Distrib. Co. v. Harvey, 734 F.2d 1389, 1392
18 (9th Cir. 1984). With regard to the first requirement, section
19 410.10 of the California Code of Civil Procedure permits the
20 exercise of jurisdiction to the extent authorized by the
21 Constitution of the United States. Id. at 1392. With regard to
22 the second, constitutional requirement, the "basic federal rule
23 is that the defendant must have certain minimum contacts with
24 the forum such that the maintenance of the suit does not offend
25 traditional notions of fair play and substantial justice." Id.
26 at 1392. The Ninth Circuit has adopted the following approach
27 in determining whether specific personal jurisdiction exists
28 over a defendant:

1 (1) The nonresident defendant must do some act or
2 consummate some transaction with the forum or perform
3 some act by which he purposefully avails himself of
4 the privilege of conducting activities in the forum,
5 thereby invoking the benefits and protections of its
6 laws. (2) The claim must be one which arises out of or
7 results from the defendant's forum-related activities.
8 (3) Exercise of jurisdiction must be reasonable.

9 Id. at 1393.

10 Accordingly, Plaintiff must demonstrate that both Defendant Kaur
11 and Defendant Pan-Am purposely availed themselves of the
12 privilege of conducting activities in California, and that this
13 matter arises out of that California-related activity.

14 Plaintiff, as the party seeking to invoke federal jurisdiction,
15 has the burden of establishing that personal jurisdiction over
16 Defendants exists. Id. at 1392. However, Plaintiff "must make
17 only a prima facie showing of jurisdictional facts through the
18 submitted materials in order to avoid a defendant's motion to
19 dismiss." Data Disc, Inc. v. Sys. Tech. Associates, Inc., 557
20 F.2d 1280, 1285 (9th Cir. 1977).

21 Although Plaintiff does not allege that Defendant Kaur
22 accompanied her father to California, he alleges that she took
23 the following actions in relation to the purported sale of the
24 Hummer: (1) Defendant Kaur and Defendant Pooni "illicitly
25 transferred title into their own name in the State of Kansas;"
26 and (2) Defendant Kaur and Defendant Pooni "fraudulently and
27 illicitly completed the bill of sale document . . . to indicate
28 they themselves were the buyers[.]" Compl. ¶¶ 6-7. In support
of these allegations, Plaintiff points to the purported Bill of
Sale for the vehicle, which appears to list "Harminder S. Pooni
and/or Ravinder Kaur Kalirai" as "Buyer." Bolanos Declaration,

1 Ex. 1. Plaintiff also points to the Kansas Certificate of
2 Title, which lists "Ravinder Kalirai" as the "Transfer on Death
3 Benefactor." Pooni Declaration, Ex. A. These allegations and
4 the supporting documentation are sufficient to satisfy
5 Plaintiff's prima facie burden. Despite the fact that Defendant
6 Kaur did not speak with Plaintiff and did not travel to
7 California, her status as a joint buyer of a California vehicle
8 from a California seller - in a transfer that was initiated in
9 California - constitutes a purposeful availment of the forum of
10 California. As Plaintiff's claims arise from the disputed
11 transfer of that vehicle, the Court has personal jurisdiction
12 over Defendant Kaur and Defendants' motion to dismiss for lack
13 of personal jurisdiction is DENIED, with regard to Defendant
14 Kaur.

15 Conversely, Plaintiff fails to allege that Defendant Pan-
16 Am, through an authorized agent, played any role in the transfer
17 of the vehicle. Nor has Plaintiff submitted any documents to
18 that effect. Although Plaintiff argues in his opposition that
19 Defendant Pooni acted "in both his individual capacity and as
20 the authorized agent of Pan-Am," he cites to an allegation in
21 the complaint which makes no mention of Pooni as an authorized
22 agent of Defendant Pan-Am. Opp. at 7 (citing Compl. ¶ 22).
23 Other than conclusory allegations which mention Pan-Am along
24 with both other defendants, the only portion of the complaint
25 which directly relates to Defendant Pan-Am reads as follows:

26 On information and belief, Pooni is the majority
27 shareholder of a Kansas corporation called Pan-Am
28 Transport, Inc. This is an overland trucking company
based in Shawnee, Kansas. The entity owns trucks
which could easily transport the subject vehicle

1 across state lines and indeed out of the United
2 States. Plaintiff Singh is informed and believes that
3 the vehicle is located at Pan-Am's Shawnee
4 headquarters.

5 Compl. ¶ 8.

6 Notably absent from the complaint is any allegation that
7 Defendant Pooni was acting as an authorized agent for Pan-Am
8 when he spoke with Plaintiff Singh. Nor do Plaintiff's
9 supporting documents suggest that Pan-Am played any significant
10 role in the disputed transfer of the vehicle. Although
11 Plaintiff argues that "the vehicle went to Pan-Am's address of
12 record with the Kansas Secretary of State," this address also
13 happens to be the residential address of Defendant Pooni. Opp.
14 at 7; Bolanos Declaration, Ex. 6. Similarly, Plaintiff's
15 reliance on a FedEx receipt listing "Panam Transport Inc." as
16 the recipient of title-related documents does not demonstrate
17 any meaningful participation by Pan-Am: it was Plaintiff who
18 sent these documents and, again, the address is the same as
19 Defendant Pooni's residential address. Bolanos Declaration, Ex.
20 2.

21 As Plaintiff has not put forth sufficient allegations or
22 evidence that Defendant Pan-Am purposely availed itself of the
23 forum of California, the Court does not have personal
24 jurisdiction over Defendant Pan-Am and Defendants' motion to
25 dismiss for lack of personal jurisdiction is GRANTED WITH LEAVE
26 TO AMEND, with regard to Defendant Pan-Am. See Chirila v.
Conforte, 47 F. App'x 838, 843 (9th Cir. 2002).

27 2. Subject Matter Jurisdiction

28 Defendants next argue that the matter must be dismissed

1 because the Court lacks subject matter jurisdiction. Mot. at 6.
2 Specifically, Defendants argue that diversity jurisdiction does
3 not lie because the amount in controversy is less than \$75,000.
4 Mot. at 6. Plaintiff responds that the amount pled in the
5 complaint - \$80,000 - controls unless Defendants can prove "to a
6 legal certainty" that the claim is actually for less than the
7 jurisdictional threshold. Opp. at 4.

8 Where complete diversity exists and a plaintiff has
9 expressly alleged damages that exceed the jurisdictional
10 threshold, federal jurisdiction exists unless it appears "to a
11 legal certainty" that the claim is actually for less than the
12 amount pled. Sanchez v. Monumental Life Ins. Co., 102 F.3d 398,
13 402 (9th Cir. 1996) (noting that the "legal certainty test is
14 applicable in . . . cases . . . brought in federal court in
15 which the plaintiff has filed a good faith complaint alleging
16 damages in excess of the required jurisdictional minimum").
17 Here, Plaintiff has alleged that "the vehicle is reasonably
18 valued in excess of seventy-five thousand dollars" and that he
19 was "damaged in the amount of eighty thousand dollars." Compl.
20 ¶¶ 2, 8. Defendants must, therefore, show "to a legal
21 certainty" that the value of the Hummer is less than \$75,000.

22 Defendants make several arguments, all of which fail to
23 meet the demanding "legal certainty" standard. First,
24 Defendants argue that "the Kelley Blue Book value of a 2005 H2
25 Hummer with all available packages and amenities [and comparable
26 mileage] is less than \$30,000[.]" Mot. at 7. However, the
27 vehicle at issue in this case differs significantly from the
28 typical Hummer, in that it has been converted to right hand

1 drive. Missing from Defendants' argument is any showing that a
2 comparable Hummer *with right hand drive* has a market value of
3 well under \$75,000. Although Defendants "submit that the right-
4 hand drive conversion renders the vehicle less valuable and
5 desirable," they offer no legal or evidentiary support for this
6 conclusion. Mot. at 7. Similarly, Defendants' objections to
7 the exhibits submitted by Plaintiff - although well-taken - are
8 misplaced: the burden is on Defendants, not Plaintiff, to
9 establish the value of the Hummer to a legal certainty. Reply
10 at 1. Having failed to satisfy their burden of proof, the
11 amount pled by Plaintiff controls and Defendants' motion to
12 dismiss for lack of subject matter jurisdiction is DENIED.

13 3. Failure to State a Claim

14 Defendants argue that Plaintiff's fourth cause of action
15 for violation of the UCL must be dismissed for failure to state
16 a claim. Mot. at 7. Specifically, Defendants argue that,
17 because the UCL claim is based in fraud, it must meet the
18 heightened pleading standard of Rule 9(b). Mot. at 8.
19 Plaintiff disputes the applicability of Rule 9(b), and also
20 argues that the allegations in the complaint satisfy that
21 heightened standard. Opp. at 8.

22 Rule 9(b) of the Federal Rules of Civil Procedure requires
23 that allegations of fraud set forth the "who, what, when, where,
24 and how" of the alleged misconduct. Vess v. Ciba-Geigy Corp.
25 USA, 317 F.3d 1097, 1106 (9th Cir. 2003). This heightened
26 pleading standard does not only apply to claims for which fraud
27 is an essential element. Id. at 1103. Rather, when a plaintiff
28 "allege[s] a unified course of fraudulent conduct," that claim

1 "is said to be grounded in fraud or to sound in fraud, and the
2 pleading of that claim as a whole must satisfy the particularity
3 requirement of Rule 9(b)." Id. at 1103-04. Generally, "a
4 complaint that attributes misrepresentations to all defendants,
5 lumped together for pleading purposes . . . is insufficient."
6 Sears v. Likens, 912 F.2d 889, 893 (7th Cir. 1990).

7 Here, Plaintiff's fourth cause of action "sounds in fraud."
8 Vess, 317 F.3d at 1106 The essential allegation is that
9 "Defendants, and each of them, engaged in the unfair and
10 deceptive business practice of holding themselves out as brokers
11 of luxury and exotic vehicles, when in reality their intention
12 was to co[n]vert the vehicles to their own uses. These actions
13 are at the same time unlawful, unfair, and deceptive." Compl.
14 ¶ 22. As Plaintiff has alleged a "unified course of fraudulent
15 conduct," the heightened pleading standard of Rule 9(b) applies
16 and Plaintiff must sufficiently allege the "who, what, when,
17 where, and how" for each Defendant. As Defendant Pan-Am has
18 been dismissed from this lawsuit for lack of personal
19 jurisdiction, the Court must examine Plaintiff's UCL claim for
20 the two remaining defendants: Defendant Pooni and Defendant
21 Kaur.

22 Plaintiff alleges with adequate specificity the fraudulent
23 conduct of Defendant Pooni. He alleges that, in June 2014, he
24 and Pooni "agreed that Pooni would broker the sale of the
25 vehicle on [Plaintiff's] behalf." Compl. ¶ 5. In the following
26 months "during subsequent telephone conversations," Defendant
27 Pooni "made repeated false representations that he was actively
28 engaged in attempting to locate a buyer for the vehicle."

1 Compl. ¶ 6. Plaintiff alleges that these representations were
2 false because Defendant Pooni and Defendant Kaur "had already
3 illicitly transferred title into their own name in the State of
4 Kansas." These allegations describe the "who" (Defendant
5 Pooni), the "what" (that he would serve as the broker in the
6 sale of Plaintiff's vehicle), the "when" (June 2014 and the
7 following months), the "where" (in California and Kansas), and
8 the "how" (in person and in phone conversations) of the alleged
9 fraud. Defendants' argument that Plaintiff does not "identify
10 the fraudulent words that allegedly constituted the
11 misrepresentation" is without merit. Plaintiff's UCL claim is
12 alleged with sufficient particularity with regard to Defendant
13 Pooni. Accordingly, Defendants' motion to dismiss Plaintiff's
14 fourth cause of action is DENIED, to the extent that it is
15 brought against Defendant Pooni.

16 Conversely, Plaintiff does not allege the fraudulent
17 conduct of Defendant Kaur with adequate specificity. Unlike the
18 allegations against Defendant Pooni, Plaintiff's allegations
19 against Defendant Kaur are conclusory and run afoul of the rule
20 against "lump[ing] together for pleading purposes" all
21 defendants. Sears v. Likens, 912 F.2d at 893. For example, as
22 quoted above, Plaintiff alleges that "Defendants, and each of
23 them, engaged in the unfair and deceptive business practice of
24 holding themselves out as brokers of luxury and exotic vehicles,
25 when in reality their intention was to co[n]vert the vehicles to
26 their own uses." Compl. ¶ 22. In the absence of specific
27 allegations as to the fraudulent statements or
28 misrepresentations made by Defendant Kaur, and the circumstances

1 surrounding those statements, Plaintiff has failed to adequately
2 allege his UCL claim against this defendant. Defendants' motion
3 to dismiss Plaintiff's fourth cause of action is GRANTED WITH
4 LEAVE TO AMEND, to the extent it is brought against Defendant
5 Kaur.

6
7 III. ORDER

8 For the reasons set forth above, the Court GRANTS WITH
9 LEAVE TO AMEND Defendants' motion to dismiss Plaintiff's
10 complaint for lack of personal jurisdiction, insofar as it is
11 brought against Defendant Pan-Am, and DENIES Defendants' motion
12 to dismiss for lack of personal jurisdiction, insofar as it is
13 brought against Defendant Pooni and Defendant Kaur. The Court
14 DENIES Defendants' motion to dismiss for lack of subject matter
15 jurisdiction. The Court GRANTS WITH LEAVE TO AMEND Defendants'
16 motion to dismiss Plaintiff's fourth cause of action, insofar as
17 it is brought against Defendant Kaur, and DENIES Defendants'
18 motion to dismiss Plaintiff's fourth cause of action, insofar as
19 it is brought against Defendant Pooni.

20 Plaintiff's Amended Complaint must be filed within twenty
21 (20) days from the date of this order. Defendants' responsive
22 pleading is due within twenty (20) days thereafter. If
23 Plaintiff elects not to file an Amended Complaint, the case will
24 proceed consistent with this Order:

25 IT IS SO ORDERED.

26 Dated: March 6, 2015

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28 
JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE