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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA BREWING COMPANY, a  
California Corporation,

Plaintiff,

v.

3 DAUGHTERS BREWING LLC, a  
Florida Limited Liability Company, et al.,

Defendants.

No. 2:15-cv-02278-KJM-CMK

ORDER

This action arises from defendant 3 Daughters Brewing, LLC's ("3 Daughters") and defendant LMMML, LLC's ("LM") alleged use of plaintiff California Brewing Company's ("CBC") "Beach Blonde Ale" mark. Before the court is defendants' motion to dismiss for lack of personal jurisdiction and improper venue or, alternatively, to transfer venue. ECF No. 10. Plaintiff opposes the motion. ECF No. 14. The court submitted the matter as provided by Local Rule 230(g). As explained below, the court DENIES defendants' motion.

I. BACKGROUND

On November 2, 2015, plaintiff filed a complaint, which makes the following allegations. Compl., ECF No. 1. Plaintiff CBC is a California corporation with its principal place of business in Anderson, California. *Id.* ¶ 11. CBC is engaged in the business of creating, manufacturing, distributing, and marketing handmade craft beer. *Id.* In 2007, CBC created a

1 recipe for a very pale, American ale style beer, and conceived of the “Beach Blonde Ale” mark to  
2 identify the beer. *Id.* ¶ 14. CBC applied to register its mark with the U.S. Patent and Trademark  
3 Office (“USPTO”) on December 23, 2007, and the USPTO granted registration of the mark on  
4 October 7, 2008. *Id.* ¶¶ 15–17, Ex. 2. CBC has continuously used its mark in connection with  
5 the advertisement and sale of its beer products and merchandise since 2007. *Id.* ¶¶ 14–18.

6 Defendants 3 Daughters and LM are Florida limited liability companies with their  
7 principal places of business in St. Petersburg, Florida. *See id.* ¶¶ 12–13; Harting Aff. ¶¶ 3–10.  
8 According to an affidavit submitted by Michael Harting, the CEO of LM, LM is the sole manager  
9 of 3 Daughters. *See* Harting Aff. ¶ 4. The complaint alleges defendants began selling beer using  
10 plaintiff’s Beach Blond Ale mark in 2014. Compl. ¶ 25. Defendants allegedly have engaged in a  
11 marketing campaign promoting the infringing product, and sell the beer nationwide through  
12 online retailers, tasting rooms, and retail stores. *Id.* ¶¶ 25–27. The complaint alleges defendants’  
13 use of the mark is likely to confuse consumers, because defendants’ product uses an identical  
14 mark to plaintiff’s product, both products are beer, and both products are marketed and sold  
15 through similar channels. *Id.* ¶ 33. The complaint further alleges defendant 3 Daughters filed an  
16 application with the USPTO to register the word mark “Beach Blonde Ale” on May 17, 2013, but  
17 the USPTO rejected the application on September 5, 2013 based on CBC’s existing registration.  
18 *Id.* ¶ 39.

19 The complaint asserts claims for false designation of origin and unfair competition  
20 under 15 U.S.C. § 1125(a); trademark infringement under 15 U.S.C. § 1114; unfair competition  
21 and/or unfair and deceptive practices under the laws of all U.S. states, including California  
22 Business & Professions Code section 17200 *et seq.*; trademark infringement under California  
23 common law; common law unfair competition; false advertising under California Business &  
24 Professions Code section 17500 *et seq.*; and unjust enrichment. *See id.* ¶ 7.

25 On December 3, 2015, defendants moved to dismiss the complaint for lack of  
26 personal jurisdiction and improper venue or, alternatively, to transfer venue. ECF No. 10  
27 (“Mot.”). As noted, plaintiff opposes the motion, ECF No. 14 (“Opp’n”), and defendants replied,  
28 ECF No. 18 (“Reply”).

1 II. LEGAL STANDARD

2 A. Rule 12(b)(2) Lack of Personal Jurisdiction

3 A defendant may move to dismiss a complaint for lack of personal jurisdiction.  
4 Fed. R. Civ. P. 12(b)(2). Even though the defendant makes a motion under Rule 12(b)(2), it is the  
5 plaintiff's burden to establish the court's personal jurisdiction. *See Sher v. Johnson*, 911 F.2d  
6 1357, 1361 (9th Cir. 1990). When, as here, the court acts without holding an evidentiary hearing,  
7 "the plaintiff need make only a prima facie showing of jurisdictional facts to withstand the motion  
8 to dismiss." *Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995). In other words, "the plaintiff  
9 need only demonstrate facts that if true would support jurisdiction over the defendant." *Id.* The  
10 plaintiff may not rely on "bare allegations" alone, *Schwarzenegger v. Fred Martin Motor Co.*,  
11 374 F.3d 797, 800 (9th Cir. 2004), but the court assumes the complaint's allegations are true  
12 unless "directly contravened" by other evidence, *Harris Rutsky & Co. Ins. Servs., Inc. v. Bell &*  
13 *Clements Ltd.*, 328 F.3d 1122, 1129 (9th Cir. 2003). Any factual conflicts contained in the  
14 parties' affidavits are resolved in the plaintiff's favor. *Doe v. Unocal Corp.*, 248 F.3d 915, 922  
15 (9th Cir. 2001) (per curiam).

16 B. Rule 12(b)(3) Improper Venue

17 Under Rule 12(b)(3), a defendant may move to dismiss a complaint for improper  
18 venue. Fed. R. Civ. P. 12(b)(3). Once the defendant has challenged the propriety of venue in a  
19 given court, the plaintiff bears the burden of showing that venue is proper. *See Piedmont Label*  
20 *Co. v. Sun Garden Packing Co.*, 598 F.2d 491, 496 (9th Cir. 1979). In assessing a motion to  
21 dismiss for improper venue, a court may consider facts outside of the pleadings, but must draw all  
22 reasonable inferences and resolve all factual conflicts in favor of the non-moving party. *Murphy*  
23 *v. Schneider Nat'l, Inc.*, 362 F.3d 1133, 1138 (9th Cir. 2004). If the court determines that venue  
24 is improper, the court must either dismiss the action or, if it is in the interests of justice, transfer  
25 the case to a district or division in which it could have been brought. 28 U.S.C. § 1406(a); *see*  
26 *King v. Russell*, 963 F.2d 1301, 1304 (9th Cir. 1992).

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1 III. DISCUSSION

2 A. Personal Jurisdiction

3 When no federal statute governing personal jurisdiction applies, the district court  
4 applies the law of the state in which it sits, here California. *Schwarzenegger*, 374 F.3d at 800  
5 (citing Fed. R. Civ. P. 4(k)(1)(A)). “Because California’s long-arm statute allows the exercise of  
6 personal jurisdiction to the full extent permissible under the U.S. Constitution, our inquiry centers  
7 on whether exercising jurisdiction comports with due process.” *Picot v. Weston*, 780 F.3d 1206,  
8 1211–12 (9th Cir. 2015) (internal quotation marks and citation omitted; citing Cal. Civ. Proc.  
9 Code § 410.10). Federal due process requires some “minimum contacts” between the defendant  
10 and the relevant forum so that the court’s exercise of personal jurisdiction “does not offend  
11 traditional notions of fair play and substantial justice.” *Int’l Shoe Co. v. Washington*, 326 U.S.  
12 310, 316 (1945) (internal quotation marks and citations omitted).

13 There are two forms that personal jurisdiction may take: general and specific.  
14 *Picot*, 780 F.3d at 1211. CBC does not contend defendants are subject to general jurisdiction in  
15 California, and instead argues specific jurisdiction exists. *See* Opp’n at 1. The test for specific  
16 personal jurisdiction has three parts: first, the plaintiff must show the defendant purposefully  
17 directed its activities at residents of the forum or purposefully availed itself of the privilege of  
18 doing business in the forum state; second, the plaintiff must show its claim arises out of or is  
19 related to the forum-related activities; and third, if the plaintiff satisfies the first two prongs, the  
20 burden shifts to the defendant to present a “compelling case” that the exercise of personal  
21 jurisdiction would be unreasonable or unfair. *Picot*, 780 F.3d at 1211–12 (quoting  
22 *Schwarzenegger*, 374 F.3d at 802; citations omitted).

23 1. Purposeful Direction

24 The first prong of the specific jurisdiction test refers to both purposeful direction  
25 and purposeful availment, in the disjunctive. In cases sounding in tort, the Ninth Circuit typically  
26 employs a purposeful direction analysis. *Id.* at 1212 (citing *Schwarzenegger*, 374 F.3d at 802–  
27 03); *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1228 (9th Cir. 2011) (employing  
28 purposeful direction analysis in action for copyright infringement). Because trademark

1 infringement involves tortious conduct, the court here addresses only purposeful direction,  
2 without reaching purposeful availment. Purposeful direction is evaluated under the three-part  
3 “effects” test established in *Calder v. Jones*, 465 U.S. 783 (1984), which requires a plaintiff to  
4 show the defendant “(1) committed an intentional act, (2) expressly aimed at the forum state, (3)  
5 causing harm that the defendant knows is likely to be suffered in the forum state.” *Picot*, 780  
6 F.3d at 1214 (quoting *Schwarzenegger*, 374 F.3d at 803). “The inquiry whether a forum State  
7 may assert specific jurisdiction over a nonresident defendant focuses on the relationship among  
8 the defendant, the forum, and the litigation.” *Walden v. Fiore*, 571 U.S. \_\_\_, 134 S. Ct. 1115,  
9 1121 (2014) (internal quotation marks and citation omitted).

10 a) Intentional Act

11 In the context of the *Calder* effects test, “intent” means “an intent to perform an  
12 actual, physical act in the real world, rather than an intent to accomplish a result or consequence  
13 of that act.” *Schwarzenegger*, 374 F.3d at 806. CBC alleges defendants market and sell beer  
14 products that infringe CBC’s Beach Blonde Ale trademark. Compl. ¶¶ 22–33, 38, 58–59. This is  
15 a sufficient allegation of an intentional act within the meaning of the *Calder* test. *See Wash. Shoe*  
16 *Co. v. A-Z Sporting Goods Inc.*, 704 F.3d 668, 674 (9th Cir. 2012) (purchasing and selling boots  
17 that allegedly infringed plaintiff’s copyrighted design constituted “intentional acts” under *Calder*  
18 test).

19 b) Express Aiming

20 The second prong of the purposeful direction inquiry is whether the defendant  
21 expressly aimed its act at the forum state. *Picot*, 780 F.3d at 1214. “The ‘express aiming’  
22 analysis depends, to a significant degree, on the specific type of tort or other wrongful conduct at  
23 issue.” *Schwarzenegger*, 374 F.3d at 807. In intellectual property cases, “the Ninth Circuit has  
24 held that specific jurisdiction exists where a plaintiff files suit in its home state against an out-of-  
25 state defendant and alleges that defendant intentionally infringed its intellectual property rights  
26 knowing [the plaintiff] was located in the forum state.” *Amini Innovation Corp. v. JS Imps., Inc.*,  
27 497 F. Supp. 2d 1093, 1105 (C.D. Cal. 2007) (citing *Columbia Pictures Television v. Krypton*  
28 *Broad. of Birmingham, Inc.*, 106 F.3d 284 (9th Cir. 1997), *reversed on other grounds by Feltner*

1 *v. Columbia Pictures Television, Inc.*, 523 U.S. 340 (1998), and *Panavision Int’l, L.P. v. Toeppen*,  
2 141 F.3d 1316, 1321 (9th Cir. 1998); collecting subsequent cases); *see also Wash. Shoe Co.*, 704  
3 F.3d at 675–76; *Adobe Sys. Inc. v. Blue Source Grp., Inc.*, 125 F. Supp. 3d 945, 961 (N.D. Cal.  
4 2015). Courts often refer to this theory of specific jurisdiction as “individualized targeting” of the  
5 plaintiff. *See, e.g., Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1130 (9th Cir.  
6 2010).

7           Here, CBC alleges defendants intentionally infringed its Beach Blonde Ale mark  
8 with knowledge of CBC’s ownership of the mark and with knowledge CBC is located in  
9 California. *See, e.g.,* Opp’n at 5–6; Compl. ¶¶ 24, 39, 62. CBC alleges the USPTO rejected  
10 defendants’ application to register marks in 2013 because the marks were confusingly similar or  
11 identical to CBC’s existing registered trademark, and the USPTO informed defendants of CBC’s  
12 superior rights. Compl. ¶ 39; Goschke Decl. ¶ 6. In addition, plaintiff’s CEO, Jack Goschke,  
13 contacted defendants in March 2015 to inform defendants of CBC’s rights and to ask defendants  
14 to stop using the mark. *See* Goschke Decl. ¶ 8; Harting Decl. ¶ 27. CBC contends defendants  
15 had knowledge of plaintiff’s residence in the forum state because plaintiff’s trademark  
16 registration identifies CBC as a resident of California and of this district. Opp’n at 5. The court  
17 notes plaintiff’s name—California Brewing Company—also signals it is a resident of California.  
18 Defendants have not offered any evidence contradicting these allegations and have not denied  
19 knowledge of plaintiff’s mark registration or location. Mr. Harting’s declaration admits  
20 defendants were aware of CBC’s trademark registration and investigated the registration after Mr.  
21 Goschke contacted defendants. Harting Decl. ¶ 27.

22           CBC alleges defendants have used plaintiff’s mark for the purpose of promoting  
23 defendants’ business and attracting new business in competition with plaintiff. For example,  
24 CBC avers defendants use metatags and search engine optimization to attract consumers  
25 searching for “Beach Blonde Ale” to their website and social media pages, and use “Beach  
26 Blonde Ale” branding throughout their website and social media posts. Goschke Decl. ¶¶ 12, 14,  
27 16, 20. Because plaintiff and defendants each sell beer using the name “Beach Blonde Ale,” with  
28 CBC’s use allegedly beginning first in time, it is plausible defendants divert consumers searching

1 for plaintiff's product to defendants' web pages to profit from the goodwill and recognition  
2 associated with the Beach Blonde Ale mark. In addition, CBC has submitted evidence defendants  
3 sell their product to consumers in California through national retailers and market to California  
4 consumers through social media, Wilks Decl. ¶¶ 2–3; Gillette Decl. ¶¶ 2–3; Liedtke Decl. ¶¶ 2–9;  
5 Goschke Decl. ¶¶ 16–20, 28–29; defendants' website states they ship their beer nationwide,  
6 Goschke Decl. ¶ 21; and defendants' CEO has said defendants want to grow significantly, *id.*  
7 ¶ 22. The court finds these allegations of individualized targeting with knowledge of plaintiff's  
8 location sufficient to establish express aiming under Ninth Circuit precedent. *See, e.g., Wash.*  
9 *Shoe Co.*, 704 F.3d at 675–79.

10 In their reply brief, defendants argue these allegations cannot form the basis of the  
11 court's jurisdiction after the Supreme Court's recent decision in *Walden v. Fiore*, 571 U.S. \_\_\_\_,  
12 134 S. Ct. 1115 (2014). Reply at 3–4, 6–9. In *Walden*, the plaintiffs alleged an agent of the Drug  
13 Enforcement Administration (DEA) violated their Fourth Amendment rights by seizing cash from  
14 them at a Georgia airport on their return trip to their Nevada residence. 134 S. Ct. at 1119–20.  
15 The Court held the fact the agent knew a delay in returning the funds would affect persons with  
16 connections to Nevada was not sufficient to establish specific jurisdiction over the agent in  
17 Nevada. *Id.* at 1124–25. The Court emphasized the specific jurisdiction inquiry must focus on  
18 the relationship between the defendant's conduct and the forum state, and “a defendant's  
19 relationship with a plaintiff or third party, standing alone, is an insufficient basis for jurisdiction.”  
20 *Id.* at 1122–23; *accord Picot*, 780 F.3d at 1214. To illustrate these principles, the Court  
21 distinguished *Calder*, explaining:

22 The crux of *Calder* was that the reputation-based “effects” of the  
23 alleged libel connected the defendants to California, not just to the  
24 plaintiff. The strength of that connection was largely a function of  
25 the nature of the libel tort. However scandalous a newspaper article  
might be, it can lead to a loss of reputation only if communicated to  
(and read and understood by) third persons.

26 *Walden*, 134 S. Ct. at 1123–24. In *Walden*, by contrast, the Court found a DEA agent's alleged  
27 tortious conduct of seizing cash from the plaintiffs at an airport in Georgia in no way connected  
28 the agent to Nevada. *See id.*

1           The instant action is more analogous to *Calder* than to *Walden*, because the nature  
2 of defendants’ alleged tortious conduct connects defendants to California. *Cf. Schwarzenegger*,  
3 374 F.3d at 807 (“The ‘express aiming’ analysis depends, to a significant degree, on the specific  
4 type of tort or other wrongful conduct at issue.”). Just as publication to third persons is a  
5 necessary element of libel, likelihood of consumer confusion is a necessary element of trademark  
6 infringement. *See KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.*, 408 F.3d 596, 602  
7 (9th Cir. 2005). Specific jurisdiction over 3 Daughters and LM is not based on “random,  
8 fortuitous, or attenuated” contacts defendants made with CBC, *Walden*, 134 S. Ct. at 1123  
9 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)), but rather on defendants’  
10 alleged conduct in marketing and selling an infringing product to California consumers with an  
11 alleged intent to directly compete with CBC. Accordingly, exercising personal jurisdiction over  
12 defendants in this action is not inconsistent with *Walden*. *Cf. Tresona Multimedia LLC v. Legg*,  
13 No. 14-02141, 2015 WL 470228, at \*4 (D. Ariz. Feb. 4, 2015) (“The central lesson of *Walden* is  
14 that . . . jurisdiction must be based on a defendant’s contacts with the forum. Case law has  
15 established that certain actions by an out-of-state defendant—such as . . . directly competing with  
16 a person (*Brayton*)—create contacts with that person’s forum.”).

17           Moreover, the court is not persuaded by defendants’ argument that acts by third  
18 party retailers are irrelevant to the analysis. Although standalone acts by third parties cannot  
19 establish specific jurisdiction, *see Walden*, 134 S. Ct. at 1123, here, there is evidence defendants  
20 sold their goods to national retailers with the intent to develop a national market, *see, e.g.*,  
21 Goschke Decl. ¶¶ 21–23. If such allegations are true, it would not be reasonable for defendants to  
22 disclaim any connection to sales in California. *Cf. Seirus Innovative Accessories, Inc. v.*  
23 *Cabela’s, Inc.*, No. 09-102, 2009 WL 9141752, at \*3 (S.D. Cal. Nov. 2, 2009) (defendant who  
24 sold products through a national retailer should have reasonably expected sales in state where  
25 retailer marketed products); *Hilsinger Co. v. FBW Investments*, 109 F. Supp. 3d 409, 426 (D.  
26 Mass. 2015). Otherwise, defendants could avoid jurisdiction in a forum simply by acting through  
27 a third party and pleading ignorance.



1           At this stage of the proceedings, the court finds plaintiff has satisfied express  
2 aiming.

3                           c)     Foreseeable Harm

4           With respect to the third part of the *Calder* test, the court finds plaintiff's  
5 allegations sufficient to establish defendants knew the resulting harm would be suffered in  
6 California. Here, it was foreseeable that plaintiff would be harmed by infringement of its Beach  
7 Blonde Ale mark, and that some of the harm would occur in California, where defendants knew  
8 CBC resided at least as early as March 2015, Harting Decl. ¶ 27, and likely as early as September  
9 2013, Compl. ¶ 39; Goschke Decl. ¶ 6. *See Brayton*, 606 F.3d at 1131. As discussed above, Mr.  
10 Harting admits plaintiff contacted him and asked him to stop using its Beach Blonde Ale mark in  
11 March 2015, and he subsequently investigated plaintiff's use and registration of the mark.  
12 Harting Decl. ¶ 27. In addition, plaintiff alleges the USPTO rejected defendants' application to  
13 register the word mark "Beach Blonde Ale" on or about September 5, 2013, in light of plaintiff's  
14 existing mark registration, and CBC's registration identifies it as a resident of this district.  
15 Compl. ¶ 39; Goschke Decl. ¶¶ 6, 10. Defendants have not submitted any evidence suggesting it  
16 was not foreseeable that harm would be suffered in California.

17           The court finds plaintiff has established purposeful direction under the *Calder* test.

18                           2.     The "But For" Test

19           The second prong of the test for specific personal jurisdiction focuses on the  
20 connection between the defendant's acts and the harm those acts caused. It requires the plaintiff  
21 to show the claim would not have arisen but for the defendant's contacts with the forum state.  
22 *Ballard*, 65 F.3d at 1500. Other decisions have articulated the test as requiring a "direct nexus"  
23 between the defendant's contacts with the forum and the cause of action. *Fireman's Fund Ins.*  
24 *Co. v. Nat'l Bank of Coops.*, 103 F.3d 888, 894 (9th Cir. 1996).

25           Despite its apparently strict language, many district courts in the Ninth Circuit  
26 have not applied the "but for" test stringently. *See, e.g., Planned Parenthood v. Am. Coalition of*  
27 *Life Activists*, 945 F. Supp. 1355, 1368 (D. Or. 1996) ("The 'but for' test should not be narrowly  
28 applied; rather, the requirement is merely designed to confirm that there is some nexus between

1 the cause of action and defendant’s contact with the forum.” (citing *Shute v. Carnival Cruise*  
2 *Lines*, 897 F.2d 377, 385 (9th Cir. 1990), *reversed on other grounds*, 499 U.S. 585 (1991)).

3 Whether a stricter or more lenient interpretation of *Ballard*’s “but for” test is  
4 appropriate, defendants’ alleged contacts satisfy both versions. As stated above, this action arises  
5 from defendants’ alleged individualized targeting of plaintiff and use of plaintiff’s mark in  
6 advertising, marketing, and sales reaching California consumers. Plaintiff’s injury would not  
7 have occurred but for defendants’ contacts with California, where plaintiff’s principal place of  
8 business is located, Compl. ¶ 11. See *Rio Props., Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1021  
9 (9th Cir. 2002). Defendants’ motion addresses only purposeful direction, the first prong of the  
10 specific jurisdiction test, effectively conceding the second. The court finds the second prong is  
11 satisfied.

12 3. Reasonableness

13 Because plaintiff has established defendants’ contacts were purposefully directed  
14 at California and caused the alleged injuries, the burden shifts to defendants to present a  
15 “compelling case” of the unreasonableness of personal jurisdiction over it. See *Schwarzenegger*,  
16 374 F.3d at 802 (quoting *Burger King*, 471 U.S. at 476–48). In assessing the overall  
17 reasonableness and fairness of exercising personal jurisdiction, the court considers, among other  
18 things,

19 (1) the extent of a defendant’s purposeful interjection; (2) the  
20 burden on the defendant in defending in the forum; (3) the extent of  
21 conflict with the sovereignty of the defendant’s state; (4) the forum  
22 state’s interest in adjudicating the dispute; (5) the most efficient  
judicial resolution of the controversy; (6) the importance of the  
forum to the plaintiff’s interest in convenient and effective relief;  
and (7) the existence of an alternative forum.

23 *Panavision*, 141 F.3d at 1323 (citing *Burger King*, 471 U.S. at 476–77)).

24 Here, as well, defendants’ motion does not address the reasonableness prong.  
25 Accordingly, defendants have not met their burden of presenting a “compelling case” of the  
26 unreasonableness of this court’s exercising personal jurisdiction over them.

27 Plaintiff has made a sufficient showing of jurisdictional facts to withstand  
28 defendants’ motion to dismiss. Defendants’ motion to dismiss is DENIED.

1           B.     Venue

2           A district court may dismiss or transfer a case “to any district or division in which  
3 it could have been brought” if venue is “wrong.” 28 U.S.C. § 1406(a). Venue over trademark  
4 and UCL claims is governed by the general venue statute. *See Adobe*, 125 F. Supp. 3d at 959.  
5 The general venue statute provides in relevant part, “A civil action may be brought in . . . a  
6 judicial district in which any defendant resides, if all defendants are residents of the State in  
7 which the district is located.” 28 U.S.C. § 1391(b)(1). Section 1391 also provides that “an entity  
8 with the capacity to sue and be sued in its common name under applicable law . . . shall be  
9 deemed to reside . . . in any judicial district in which such defendant is subject to the court’s  
10 personal jurisdiction with respect to the civil action in question . . . .” *Id.* § 1391(c). Here, the  
11 court has found defendants are subject to the court’s personal jurisdiction with respect to this  
12 action, so defendants are both deemed to “reside” in this district. *See id.* Accordingly, venue in  
13 this district is proper under § 1391(b)(1).

14           Moreover, § 1391 also allows a civil action to be brought in “a judicial district in  
15 which a substantial part of the events or omissions giving rise to the claim occurred . . . .” 28  
16 U.S.C. § 1391(b)(2). In trademark cases, infringement takes place in any district in which  
17 consumers are likely to be confused by the challenged goods. *See E & J Gallo Winery v.*  
18 *Grenade Beverage LLC*, No. 1:13-00770, 2013 WL 6048140, at \*4 (E.D. Cal. Nov. 14, 2013);  
19 *see also Cottman Transmission Sys., Inc. v. Martino*, 36 F.3d 291, 295 (3d Cir. 1994). Here, the  
20 complaint alleges a likelihood of consumer confusion in this district, where plaintiff is based, as a  
21 result of defendants’ sales, marketing, and advertising to California consumers. The court finds  
22 plaintiff has sufficiently alleged a substantial part of the events giving rise to the claim occurred  
23 in this district. Because venue is proper in this district under both 28 U.S.C. §§ 1391(b)(1) and  
24 (b)(2), the court DENIES defendants’ motion to dismiss the case under 28 U.S.C. § 1406(a).

25           C.     Transfer

26           Alternatively, defendant moves to transfer venue under 28 U.S.C. § 1404. When  
27 the district court finds venue is proper, it may still exercise discretion, “[f]or the convenience of  
28 parties and witnesses, [and] in the interest of justice,” to transfer an action “to any other district

1 where it might have been brought.” 28 U.S.C. § 1404(a). The Ninth Circuit has set out the  
2 following non-exclusive list of factors to consider in adjudicating a motion to transfer: “(1) the  
3 location where the relevant agreements were negotiated and executed, (2) the state that is most  
4 familiar with the governing law, (3) the plaintiff’s choice of forum, (4) the respective parties’  
5 contacts with the forum, (5) the contacts relating to the plaintiff’s cause of action in the chosen  
6 forum, (6) the differences in the costs of litigation in the two forums, (7) the availability of  
7 compulsory process to compel attendance of unwilling non-party witnesses, . . . (8) the ease of  
8 access to sources of proof,” (9) “the presence of a forum selection clause,” if any, and (10) “the  
9 relevant public policy of the forum state,” if any. *Jones v. GNC Franchising, Inc.*, 211 F.3d 495,  
10 498–99 (9th Cir. 2000). The Ninth Circuit requires the defendant to make a “strong showing” of  
11 inconvenience to overcome the preference traditionally accorded a plaintiff’s choice of forum.  
12 *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986).

13 Here, defendants’ motion does not address the *Jones* factors or provide any  
14 reasons explaining why transfer to the Middle District of Florida would be more convenient or in  
15 the interests of justice. See ECF No. 10-1 at 4 n.1. Accordingly, defendants have not met their  
16 burden of showing transfer is appropriate. See *Decker Coal*, 805 F.2d at 843. Defendants’  
17 motion to transfer venue under 28 U.S.C. § 1404(a) is DENIED.

18 IV. CONCLUSION

19 For the foregoing reasons, defendants’ motion to dismiss or to transfer venue is  
20 DENIED.

21 IT IS SO ORDERED.

22 DATED: April 18, 2016.

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24   
25 UNITED STATES DISTRICT JUDGE  
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28