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United States District Court  
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BMMSOFT, INC.,  
Plaintiff,  
v.  
WHITE OAKS TECHNOLOGY INC.  
Defendant

No. C-09-4562 MMC

**ORDER AFFORDING PLAINTIFF LEAVE  
TO FILE SURREPLY; CONTINUING  
HEARING ON DEFENDANT’S MOTION  
TO DISMISS; CONTINUING CASE  
MANAGEMENT CONFERENCE**

Before the Court is defendant White Oaks Technology Inc.’s (“WOTI”) motion, filed October 30, 2009 as amended November 3, 2009, to dismiss plaintiff BMMsoft, Inc.’s (“BMM”) complaint. BMM has filed opposition, to which WOTI has replied. Having read and considered the papers filed in support of and in opposition to the motion, the Court deems it appropriate to afford BMM the opportunity to file a surreply to address new evidence offered in support of WOTI’s reply.

In its motion, WOTI argues it is not subject to personal jurisdiction in the Northern District of California. Where, as here, a plaintiff contends a district court may assert specific jurisdiction over the defendant, the court, to exercise jurisdiction, must find “(1) the defendant has performed some act or consummated some transaction within the forum or otherwise purposefully availed himself of the privileges of conducting activities in the forum,

1 (2) the claim arises out of or results from the defendant's forum-related activities, and  
2 (3) the exercise of jurisdiction is reasonable." See Bancroft & Masters, Inc. v. Augusta  
3 National Inc., 223 F.3d 1082, 1086 (9th Cir. 2000). "The plaintiff bears the burden of  
4 satisfying the first two prongs of the test." Schwarzenegger v. Fred Martin Motor Co., 374  
5 F.3d 797, 802 (9th Cir. 2004). If the plaintiff meets such burden, "the burden then shifts to  
6 the defendant to present a compelling case that the exercise of jurisdiction would not be  
7 reasonable." See id.

8 Here, with respect to the issue of reasonableness, WOTI's motion includes only a  
9 short argument, supported by one paragraph in a declaration submitted by Alan J. Broder  
10 ("Broder") in support of the motion. In its reply, however, WOTI, relying on a supplemental  
11 declaration submitted by Broder, significantly expands on its argument. In particular,  
12 Brody's supplemental declaration discusses, for the first time, the location of potential  
13 witnesses, their anticipated testimony (see Supp. Broder Decl. ¶¶ 2, 4, 7, 8), and the  
14 place(s) where various acts occurred (see id. ¶¶ 3, 4, 10). Because "the most efficient  
15 judicial resolution of the controversy" and "the extent of the defendants' purposeful  
16 interjection into the forum state's affairs" are among the factors a district court considers in  
17 determining whether the exercise of specific jurisdiction would be reasonable, see Menken  
18 v. Emm, 503 F.3d 1050, 1058 (9th Cir. 2007) (identifying factors), and because BMM has  
19 not had an opportunity to respond to the evidence offered with WOTI's reply and the  
20 argument made in reliance thereon, the Court finds it appropriate to afford BMM an  
21 opportunity to file a surreply.

22 Accordingly, the Court sets the following schedule:

23 1. No later than December 11, 2009, BMM shall file its surreply, if any, not to  
24 exceed five pages in length, exclusive of exhibits, and limited to the issue of whether it  
25 would be unreasonable for the Court to exercise specific jurisdiction over WOTI.

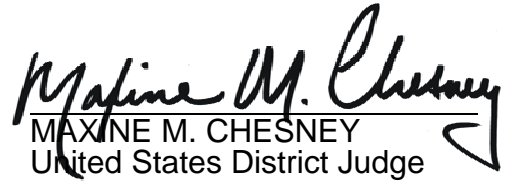
26 2. The hearing on WOTI's motion to dismiss is hereby CONTINUED from December  
27 4, 2009 to January 15, 2010.

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1           3. The Case Management Conference is hereby CONTINUED from January 8,  
2 2010 to March 5, 2010. A Joint Case Management Statement shall be filed no later than  
3 February 26, 2010.

4           **IT IS SO ORDERED.**

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6 Dated: November 24, 2009

  
MAXINE M. CHESNEY  
United States District Judge

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